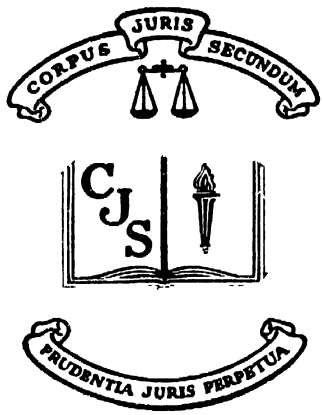

CORPUS JURIS SECUNDUM
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CITE BY TITLE AND SECTION

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5A C.J.S. Appeal and Error § 1600

CORPUS JURIS SECUNDUM

A COMPLETE RESTATEMENT OF THE ENTIRE AMERICAN LAW

AS DEVELOPED BY

ALL REPORTED CASES

By

FRANCIS J. LUDES
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and
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Assisted by

The Combined Editorial Staffs
of
THE AMERICAN LAW BOOK CO.
and
WEST PUBLISHING CO.

Volume 5A

Kept to Date by Cumulative Annual Pocket Parts

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MODERN APPELLATE PRACTICE CLARIFIED

OVER 150,000 Appeal and Error questions have been determined by our courts since the C.J.S. volumes covering the subject were published 20 years ago. In addition, modern statutes and court rules have made many great changes in the mode and manner of appellate review. These facts have necessitated a complete revision of this important practice title.

Every effort has been made to reduce the tremendous case load to a concise statement of the law, so that a minimum amount of time must be devoted to finding the entire law on any given point. While there are some points which are so well established that they have become almost axiomatic, such as the rule that an appellate court will not review an exercise of discretion in the absence of an abuse thereof, the subject is by no means a static one. The wealth of material on the subject, instead of being a time-consuming burden, now, through these convenient new volumes, merely leads to greater certainty in appellate practice.

The thousands of times the courts have quoted and cited C.J.S. Appeal and Error attest to its authoritative nature and to its description by the courts as "A thoroughly dependable text work." (McCullen, Presiding Judge, in Stone v. Boston, St. Louis Court of Appeals, Mo., 218 S.W.2d 783, 787).

The many excellent features of the original volumes have been retained. Additional factual reading notes and new sections have been added in order to incorporate and integrate more appropriately the later decisions. A completely revised and up-to-date Descriptive-Word-Index has been prepared which will lead you to the precise case in point.

THE PUBLISHERS

TABLE OF ABBREVIATIONS

REPORTS AND TEXTBOOKS

A

A.	Atlantic Reporter
A.2d	Atlantic Reporter Second Series
Abb.	Abbott (U.S.)
Abb.Adm.	Abbott's Admiralty (U.S.)
Abb.App.Dec.	Abbott's Appeals Decisions (N.Y.)
Abb.Dec.	Abbott's Decisions (N.Y.)
Abb.N.Cas.	Abbott's New Cases (N.Y.)
Abb.Pr.	Abbott's Practice (N.Y.)
Abb.Pr.N.S.	Abbott's Practice New Series (N.Y.)
A'Beck.Res. Judgm.	A'Beckett's Reserved Judgments (Vict.)
[1917]A.C.	[1917] Appeal Cases (Can.)
[1918]A.C.	Law Reports [1918] Appeal Cases (Eng.)
Acton	Acton (Eng.)
Adams	Adams Reports (N.H.)
A.D.2d	Appellate Division Second Series (N.Y.)
Add.	Addison (Pa.)
Add.Eccl.	Addams' Ecclesiastical (Eng.)
A.&E.	Adolphus & Ellis (Eng.)
A.&E.Enc.L.	American & English Encyclopædia of Law
A.&E.Enc.L.&Pr.	American & English Encyclopædia of Law & Practice
Aik.	Aikens (Vt.)
A.K.Marsh.	A. K. Marshall (Ky.)
Ala.	Alabama
Ala.App.	Alabama Appellate Court
Alaska	Alaska
Alb.L.J.	Albany Law Journal
A.L.C.	American Leading Cases
Alc.&N.	Alcott & Napier (Eng.)
Alc.Reg.Cas.	Alcock's Registry Cases (Eng.)
Aleyn	Aleyn (Eng.)
Alison Pr.	Alison's Practice (Sc.)
Allen	Allen (Mass.)
Allen (N.B.)	Allen, New Brunswick
Alta.L.	Alberta Law
A.L.R.	American Law Reports
A.L.R.2d	American Law Reports, Second Series
Am.Bankr.	American Bankruptcy (U.S.)
Ambl.	Ambler (Eng.)
A.M.C.	American Maritime Cases
Am.Corp.Cas.	American Corporation Cases
Am.Cr.	American Criminal
Am.D.	American Decisions
Am.&E.Corp.Cas.	American & English Corporation Cases
Am.&E.Corp.Cas. N.S.	American & English Corporation Cases New Series
Am.&Eng.Ency. Law	American and English Encyclopedia of Law
Am.&Eng.Pat. Cas.	American & English Decisions in Equity
Am.&E.Eq.D.	American and English Patent Cases
Am.&Eng.R.R. Cas.	American and English Railroad Cases
Am.Electr.Cas.	American Electrical Cases
Am.&E.R.Cas.	American & English Railroad Cases
Am.&E.R.Cas.N.S.	American & English Railroad Cases New Series
Am.J.Int.L.	American Journal of International Law
Am.L.J.	American Law Journal (Pa.)
Am.L.J.N.S.	American Law Journal New Series (Pa.)
Am.L.Rec.	American Law Record (Ohio)
Am.L.Reg.	American Law Register
Am.L.Reg.N.S.	American Law Register New Series
Am.Law Reg.O.S.	American Law Register Old Series
Am.L.Rev.	American Law Review
Am.L.T.Bankr.	American Law Times Bankruptcy Reports
Am.Law Inst.	American Law Institute, Restatement of the Law
Am.Negl.Cas.	American Negligence Cases
Am.Negl.R.	American Negligence Reports
A.M.&O.	Armstrong, Macartney & Ogle (Ir.)
Am.Prob.	American Probate
Am.Prob.N.S.	American Probate New Series
Am.Pr.	American Practice
Am.R.	American Reports
Am.R.&Corp.	American Railroad & Corporation
Am.R.Rep.	American Railway Reports
Am.S.R.	American State Reports
Am.St.R.D.	American Street Railway Decisions
And.	Anderson (Eng.)
Andr.	Andrews (Eng.)
Ann.Cas.	American & English Annotated Cases
Ann.Cas.1912A	American Annotated Cases 1912A, et seq.
Anstr.	Anstruther (Eng.)
Anth.N.P.	Anthon's Nisi Prius (N.Y.)
App.D.C.	Appeal Cases (D.C.)
App.Cas.	Law Reports Appeal Cases (Eng.)
App.Div.	Appellate Division (N.Y.)
Ariz.	Arizona
Ark.	Arkansas
Ark.Just.	Arkley's Justiciary (Sc.)
Arn.	Arnold (Eng.)
Arn.&H.	Arnold & Hodges (Eng.)
Ashm.	Ashmead (Pa.)
Aspin.	Aspinall's Maritime Cases (Eng.)
Atk.	Atkyn (Eng.)
Austr.C.L.R.	Commonwealth Law Reports, Australia
Austr.Jur.	Australian Jurist
Austr.L.T.	Australian Law Times

B

Bacon Abr.	Bacon's Abridgment (Eng.)
Bail.Eq.	Bailey's Equity (S.C.)
Bailey	Bailey's Law (S.C.)
B.&Ad.	Barnewall & Adolphus (Eng.)
B.&Ald.	Barnewall & Alderson (Eng.)
Baldw.	Baldwin (U.S.)
Balf.Pr.	Balfour's Practice (Sc.)
Ball&B.	Ball & Beatty (Ir.)
Bank.&Ins.R.	Bankruptcy and Insolvency Reports (Eng.)
Bann.	Bannister (Eng.)
Bann.&A.	Banning & Arden (U.S.)
Barb.	Barbour (N.Y.)
Barb.Ch.	Barbour's Chancery (N.Y.)
B.&Arn.	Barron & Arnold (Eng.)
Barn.	Barnardiston King's Bench (Eng.)
Barn.Ch.	Barnardiston Chancery (Eng.)
Barnes	Barnes' Practice Cases (Eng.)
Barnes Notes	Barnes' Notes (Eng.)
Batty	Batty (Ir.)
B.&Aust.	Barron & Austin (Eng.)
Baxt.	Baxter (Tenn.)
Bay	Bay (S.C.)
B.&B.	Broderip & Bingham (Eng.)
B.C.	British Columbia
B.&C.	Barnewall & Cresswell (Eng.)
B.&Macn.	Browne & Macnamara (Eng.)
B.D.&O.	Blackham, Dundas & Osborne (Ir.)
Beatty	Beatty (Ir.)

Beav.	Beavan (Eng.)
Beav.&Wal.Ry. Cas.	Beavan & Walford's Railway and Canal Cases (Eng.)
Beav.R.&C.Cas.	English Railway and Canal Cases
Beaver	Beaver County Legal Journal (Pa.)
Beaw.Lex.Mer.	Beawes Lex Mercatoria (Eng.)
Bee	Bee (U.S.)
Bell.	Bellewe (Eng.)
Bell App.Cas.	Bell's Appeal Cases (Sc.)
Bell Cas.	Bell's Cases (Sc.)
Bell C.C.	Bell's Crown Cases (Eng.)
Bell Comm.	Bell's Commentaries (Eng.)
Bell Sc.Cas.	Bell's Scotch Court of Session Cases
Ben.	Benedict (U.S.)
Benl.	Benloe (Eng.)
Benl.&D.	Benloe & Dallison (Eng.)
Berks	Berks County Law Journal (Pa.)
B.&H.Cr.Cas.	Bennett & Heard Leading Criminal Cases (Eng.)
Bibb	Bibb (Ky.)
Bing.	Bingham (Eng.)
Bing.N.Cas.	Bingham's New Cases (Eng.)
Binn.	Binney (Pa.)
Biss.	Bissell (U.S.)
Bitt.W.&P.	Bittleson, Wise & Parnell (Eng.)
Black	Black (U.S.)
Blackf.	Blackford (Ind.)
Blackstone Comm.	Blackstone Commentaries
Bla.H.	Henry Blackstone's English Common Pleas (Eng.)
Blair	Blair County (Pa.)
Bland	Bland (Md.)
Bland's Ch.	Bland's Chancery (Md.)
Blatchf.	Blatchford (U.S.)
Blatchf.&H.	Blatchford & Howland (U.S.)
Blatchf.PrizeCas.	Blatchford's Prize Cases (U.S.)
Bligh	Bligh (Eng.)
Bligh N.S.	Bligh New Series (Eng.)
B.Mon.	B. Monroe (Ky.)
Bond	Bond (U.S.)
Bouvier	Bouvier's Law Dictionary
Boyce	Boyce (Del.)
B.&P.	Bosanquet & Puller (Eng.)
B.&P.N.R.	Bosanquet & Puller's New Reports (Eng.)
Bract.	Bracton de Legibus et Consuetudinibus Angliæ
Bradf.Surr.	Bradford's Surrogate (N.Y.)
Brayt.	Brayton (Vt.)
B.R.C.	British Ruling Cases
Brev.	Brevard (S.C.)
Brewst.	Brewster (Pa.)
Brightly	Brightly (Pa.)
Brightly El.Cas.	Brightly's Election Cases (Pa.)
Bro.Ch.	Brown's Chancery (Eng.)
Brock.	Brockenbrough (U.S.)
Brock.Cas.	Brockenbrough's Virginia Cases
Brod.&B.	Broderip & Bingham (Eng.)
Brod.&Fr.	Broderick & Fremantle's Ecclesiastical Cases
Brodix Am.&E. Pat.Cas.	Brodix's American & English Patent Cases
Bro.Just.	Broun's Justiciary (Sc.)
Brook Abr.	Brook's Abridgments (Eng.)
Brook N.Cas.	Brook's New Cases (Eng.)
Brooke N.C.	Brooke's New Cases
Bro.P.C.	Brown's Parliament Cases (Eng.)
Brown Adm.	Brown's Admiralty (U.S.)
Brown, Ch.	Brown's Chancery Cases (Eng.)
Brown Ecc.	Brown's Ecclesiastical (Eng.)
Brown N.P.	Brown's Michigan Nisi Prius
Brown,Parl.Cas.	Brown Parliamentary Cases (Eng.)
Browne	Browne (Pa.)
Brown.&L.	Browning & Lushington (Eng.)
Brownl.&G.	Brownlow & Goldesborough (Eng.)
Bruce	Bruce (Sc.)
Brunn.Coll.Cas.	Brunner's Collective Cases (U.S.)
B.&S.	Best & Smith (Eng.)
B.T.A.	Board of Tax Appeals (U.S.)
Buck	Buck (Eng.)
Bucks	Bucks County Law Reporter (Pa.)
Buller N.P.	Buller's Nisi Prius (Eng.)
Bulstr.	Bulstrode (Eng.)
Bunb.	Bunbury (Eng.)
Burn.	Burnett (Wis.)
Burr.	Burrows (Eng.)
Burr.S.Cas.	Burrows' Settlement Cases (Eng.)
Busb.	Busbee (N.C.)
Busb.Eq.	Busbee Equity (N.C.)
Bush	Bush (Ky.)
B.W.C.C.	Butterworth's Workmen's Compensation Cases (Eng.)

C

C.	California Reports
C.2d	California Reports, Second Series
C.A.	Court of Appeals (U.S.)
C.A.	California Appellate Reports
C.A.2d	California Appellate Reports, Second Series
Cab.&E.	Cababe & Ellis (Eng.)
Cai.	Caines (N.Y.)
Cai.Cas.	Caines' Cases (N.Y.)
Cald.	Caldecott (Eng.)
Call	Call (Va.)
Calthr.	Calthrop (Eng.)
Cal.Unrep.Cas.	California Unreported Cases
Cambria	Cambria County Legal Journal (Pa.)
Cam.Cas.	Cameron's Cases (Can.)
Campb.	Campbell (Eng.)
Canal Zone	Canal Zone Supreme Court
Can.App.Cas.	Canadian Appeal Cases
Can.Cr.Cas.	Canadian Criminal Cases
Can.Exch.	Canadian Exchequer
Can.L.J.	Canada Law Journal
Can.L.J.N.S.	Canada Law Journal New Series
Can.L.T.Occ. Notes	Canadian Law Times Occasional Notes
Can.R.Cas.	Canadian Railway Cases
Can.S.C.	Canada Supreme Court
Cane&L.	Cane & Leigh Crown Cases Reserved (Eng.)
Car.&K.	Carrington & Kirwan (Eng.)
Car.&M.	Carrington & Marshman (Eng.)
Car.&P.	Carrington & Payne (Eng.)
Car.H.&A.	Carrow, Hamerton & Allen (Eng.)
Carp.P.C.	Carpmael Patent Cases (Eng.)
Carter	Carter (Eng.)
Carth.	Carthew (Eng.)
Cartwr.Cas.	Cartwright's Cases (Can.)
Cary	Cary (Eng.)
Cas.	Casey (Pa.)
Cas.t.Hardw.	Cases temp. Hardwicke (Eng.)
Cas.t.Holt	Cases temp. Holt (Eng.)
Cas.t.King	Cases temp. King (Eng.)
Cas.t.Talb.	Cases temp. Talbot (Eng.)
C.B.	Common Bench (Manning, Granger & Scott) (Eng.)
C.B.N.S.	Common Bench New Series (Manning, Granger & Scott New Series) (Eng.)
C.C.A.	Circuit Court of Appeals (U.S.)
C.C.P.A.	Court of Customs and Patent Appeals
Centr.L.J.	Central Law Journal
[1891] Ch.	Law Reports [1891] Chancery (Eng.)
Chamb.Rep.	Chamber (Ont.)
Chandl.	Chandler (Wis.)
Charlt.R.M.	R. M. Charlton (Ga.)
Charlt.T.U.P.	T. U. P. Charlton (Ga.)
Chase	Chase (U.S.)
Ch.Cas.	Cases in Chancery (Eng.)
Ch.Chamb.	Chancery Chambers (U.C.)
Ch.Col.Op.	Chalmers' Colonial Opinions
Ch.D.	Law Reports Chancery Division (Eng.)
Chest.	Chester County (Pa.)
Chev.	Cheves (S.C.)
Chit.	Chitty (Eng.)
Choyce Cas.Ch.	Choyce Cases in Chancery (Eng.)
Ch.Rep.	Chancery Reports (Eng.)
Ch.Sent.	Chancery Sentinel (N.Y.)
Cinc.L.Bul.	Weekly Law Bulletin (Oh.)
Cinc.Super.	Cincinnati Superior Court Reporter (Oh.)
City Ct.R.	City Court Reports (N.Y.)
City Hall Rec.	City Hall Recorder (N.Y.)
Civ.Proc.Rep.	Civil Procedure Reports (N.Y.)

C.J.	Corpus Juris
C.J.Ann.	Corpus Juris Annotations
C.J.S.	Corpus Juris Secundum
C.&K.	Carrington & Kirwan (Eng.)
C.&L.	Connor & Lawson (Ir.)
Cl.App.	Clark's Appeal Cases (Eng.)
Cl.Ch.	Clarke's Chancery (N.Y.)
Clark &F.	Clark & Finnelly (Eng.)
Clark & Fin.N.S.	Clark's House of Lords Cases (Eng.)
Clarke	Clarke's Chancery (N.Y.)
Clarke&S.Dr.Cas.	Clarke & Scully's Drainage Cases (Ont.)
Clarke Ch.	Clarke's Chancery (N.Y.)
Clayt.	Clayton's Reports, York Assizes (Eng.)
C.L.Chamb.	Chamber's Common Law (U.C.)
Clev.L.Rec.	Cleveland Law Record (Oh.)
Clev.L.Rep.	Cleveland Law Reporter (Oh.)
Cl.&F.	Clark & Finnelly (Eng.)
Clif.El.Cas.	Clifford's Southwick Election Cases
Cliff.	Clifford (U.S.)
C.L.R.	Common Law Reports (Eng.)
C.&M.	Carrington & Marshman (Eng.)
C.M.&R.	Crompton, Meeson & Roscoe (Eng.)
Cock.&Rowe	Cockburn & Rowe's Election Cases
Code Rep.	Code Reporter (N.Y.)
Code Rep.N.S.	Code Reports New Series (N.Y.)
Coff.Prob.	Coffey's Probate (Cal.)
Co.Inst.	Coke's Institutes
Coke	Coke (Eng.)
Col.Cas.	Coleman's Cases (N.Y.)
Col.&C.Cas.	Coleman & Caines' Cases (N.Y.)
Col.C.C.	Collyer's Chancery Cases (Eng.)
Coldw.	Coldwell (Tenn.)
Coll.	Collyer (Eng.)
Col.L.Rep.	Colorado Law Reporter
Col.Law Review	Columbia Law Review
Coll.&E.Bank.	Collier and Eaton's American Bankruptcy Reports
Colles	Colles' Cases in Parliament (Eng.)
Colo.	Colorado
Colo.App.	Colorado Appeals
Colq.	Colquit
Coltm.	Coltman (Eng.)
Comb.	Comberbach (Eng.)
Com.Cas.	Commercial Cases (Eng.)
Com.L.	Commercial Law (Can.)
Comptr.Treas. Dec.	Comptroller, Treasury Decisions
Comst.	Comstock (N.Y.)
Comyns	Comyns (Eng.)
Comyns Dig.	Comyns Digest (Eng.)
Con.&Law.	Connor & Lawson (Ir.)
Conf.	Conference Reports (N.C.)
Conn.	Connecticut
Conn.Sup.	Connecticut Supplement
Conn.Surr.	Connolly's Surrogate (N.Y.)
Const.	Constitutional Reports (N.C.)
Cooke	Cooke (Eng.)
Cooke	Cooke (Tenn.)
Cooke & A.	Cooke & Alcock (Ir.)
Cook Vice-Adm.	Cook's Vice-Admiralty (L.C.)
Coop.	Cooper's Chancery (Eng.)
Coop.Pr.Cas.	Cooper's Practice Cases (Eng.)
Coop.t.Brough.	Cooper's Cases temp. Brougham (Eng.)
Coop.t.Cott.	Cooper's Cases temp. Cottenham (Eng.)
Coop.t.Eld.	Cooper's Cases *tempore* Eldon (Eng.)
Co.P.C.	Coke's Reports (Eng.)
Corb.&D.	Corbett & Daniell's Election Cases (Eng.)
Court.&Macl.	Courtnay & Maclean (Sc.)
Cow.	Cowen (N.Y.)
Cow.Cr.Rep.	Cowen's Criminal (N.Y.)
Cowp.	Cowper (Eng.)
Cox Am.T.M.Cas.	Cox's American Trade-Mark Cases
Cox C.C.	Cox's Criminal Cases (Eng.)
Cox Ch.	Cox's Chancery (Eng.)
Cox &Atk.	Cox & Atkinson (Eng.)
C.&P.	Carrington & Payne (Eng.)
C.P.C.	C. P. Cooper's Chancery Practice Cases (Eng.)
C.P.D.	Law Reports Common Pleas Division (Eng.)
Crabbe	Crabbe (U.S.)
Cranch	Cranch (U.S.)
Cranch C.C.	Cranch's Circuit Court (U.S.)
Cranch Pat.Dec.	Cranch's Patent Decisions (U.S.)
Cr.App.	Criminal Appeals (Eng.)
Crawf.&D.	Crawford & Dix (Ir.)
Crawf.&D.Abr. Cas.	Crawford & Dix's Abridged Cases (Ir.)
Cripp's Ch.Cas.	Cripp's Church and Clergy Cases
Cr.L.Mag.	Criminal Law Magazine
Cr.&Ph.	Craig & Phillips (Eng.)
C.Rob.	Christopher Robinson's Admiralty (Eng.)
Cro.Car.	Croke Charles (Eng.)
Cro.Eliz.	Croke Elizabeth (Eng.)
Cro.Jac.	Croke's Reports tempore James (Jacobus) (Eng.)
Cromp.&J.	Crompton & Jervis (Eng.)
Cromp.&M.	Crompton & Meeson (Eng.)
Crosw.Pat.Cas.	Croswell's Collection of Patent Cases (U.S.)
Cr.&Ph.	Craig & Phillips (Eng.)
Ct.Cl.	Court of Claims (U.S.)
Ct.Cust.& Pat. App.	Court of Customs and Patent Appeals
Cumb.	Cumberland Law Journal (Pa.)
Cunn.	Cunningham (Eng.)
Curt.	Curtis (U.S.)
Curt.Eccl.	Curteis Ecclesiastical (Eng.)
Cush.	Cushing (Mass.)
Cust.A.	United States Customs Appeals
Cyc.	Cyclopedia of Law & Procedure
Cyc.Ann.	Cyclopedia of Law & Procedure Annotations

D

Dak.	Dakota
Dal.C.P.	Dalison's Common Pleas (Eng.)
Dall.	Dallaman's Decisions (Tex.)
Dall.	Dallas (Pa.)
Dall.	Dallas (U.S.)
Dalr.Dec.	Dalrymple's Decisions (Sc.)
Daly	Daly (N.Y.)
Dan.	Daniell (Eng.)
Dana	Dana (Ky.)
Dane Abr.	Dane's Abridgment
Dans.&L.	Danson & Lloyd (Eng.)
D'Anv.Abr.	D'Anver's Abridgment (Eng.)
Dauph.	Dauphin County (Pa.)
Dav.&M.	Davison & Merivale (Eng.)
Davys	Davys (Ir.)
Day	Day (Conn.)
D.B.&M.	Dunlop, Bell & Murray (Sc.)
D.C.	District of Columbia
D. & C.	District and County (Pa.)
D. & C.2d	District and County, Second Series (Pa.)
D.Chipm.	D. Chipman (Vt.)
D.C.Mun.App.	Municipal Court of Appeals (D.C.)
Deac.	Deacon (Eng.)
Deac.&C.	Deacon & Chitty (Eng.)
Deady	Deady (U.S.)
Dears.&B.	Dearsley & Bell (Eng.)
Dears.C.C.	Dearsley's Crown Cases (Eng.)
Deas & A.	Deas & Anderson (Eng.)
De Gex	De Gex (Eng.)
De G.F.&J.	De Gex, Fisher & Jones (Eng.)
De G.J.&S.	De Gex, Jones & Smith (Eng.)
De G.&J.	De Gex & Jones (Eng.)
De G.M.&G.	De Gex, MacNaghten & Gordon (Eng.)
De G.&Sm.	De Gex & Smale (Eng.)
Del.	Delaware
Del.Ch.	Delaware Chancery
Del.Co.	Delaware County (Pa.)
Dem.Surr.	Demarest's Surrogate (N.Y.)
Den.	Denio (N.Y.)
Den.C.C.	Denison's Crown Cases (Eng.)
Desaus.Eq.	Desaussure (S.C.)
Dev.Ct.Cl.	Devereux's Court of Claims (U.S.)
Dev.L.	Devereux (N.C.)
Dev.&Bat.	Devereux & Battle (N.C.)
Dick.	Dickens (Sc.)
Dill.	Dillon (U.S.)
Dirl.Dec.	Dirleton's Decisions (Sc.)
Disn.	Disney (Oh.)
D.&L.	Dowling & Lowndes (Eng.)
Dods.	Dodson's Admiralty (Eng.)

Dom.L.R.	Dominion Law Reports (Can.)
Donnelly	Donnelly (Eng.)
Dorion	Dorion (L.C.)
Dougl.	Douglas (Eng.)
Dougl.	Douglass (Mich.)
Dougl.El.Cas.	Douglas' Election Cases (Eng.)
Dow	Dow (Eng.)
Dow & Cl.	Dow & Clark (Eng.)
Dow.& L.	Dowling & Lowndes (Eng.)
Dow.N.S.	Dowling, New Series (Eng.)
Dowl.	Dowling's English Bail Court (Practice) Cases
Dowl.P.C.	Dowling's Practice Cases (Eng.)
Dowl.P.C.N.S.	Dowling's Practice Cases New Series (Eng.)
D.&R.	Dowling & Ryland (Eng.)
Draper	Draper (U.C.)
Drew.	Drewry (Eng.)
Drinkw.	Drinkwater (Eng.)
D.&R.Mag.Cas.	Dowling & Ryland's Magistrate Cases (Eng.)
D.&R.N.P.	Dowling & Ryland's Nisi Prius (Eng.)
Dr.&Sm.	Drewry & Smale (Eng.)
Drury	Drury (Ir.)
Dr.&Wal.	Drury & Walsh (Ir.)
Dr.&War.	Drury & Warren (Ir.)
D.&Sw.	Deane & Swabey (Eng.)
Dud.Eq.	Dudley (S.C.)
Dudl.	Dudley (Ga.)
Duer	Duer's Superior Court (N.Y.)
Dunl.B.&M.	Dunlop, Bell & Murray (Sc.)
Dunlop	Dunlop (Sc.)
Dunn.	Dunning (Eng.)
Durie	Durie (Sc.)
Durn.&E.	Durnford & East (Eng.)
Duv.	Duvall (Ky.)
Dyer	Dyer (Eng.)

E

East	East (Eng.)
East.L.R.	Eastern Law Reporter (Can.)
East P.C.	East's Pleas of the Crown (Eng.)
East.T.	Eastern Term (Eng.)
E.&B.	Ellis & Blackburn (Eng.)
E.B.&E.	Ellis, Blackburn & Ellis (Eng.)
E.B.&S.	Ellis, Best & Smith (Eng.)
E.C.L.	English Common Law
Eden	Eden (Eng.)
Edgar	Edgar (Sc.)
Edm.Sel.Cas.	Edmond's Select Cases (N.Y.)
E. D. Smith	E. D. Smith (N.Y.)
Edw.	Edwards (Eng.)
Edw.	Edwards' Chancery (N.Y.)
Edw.Abr.	Edwards' Abridgment of Prerogative Court Cases
Edw.Adm.	Edwards' Admiralty (Eng.)
E.&E.	Ellis & Ellis (Eng.)
Em.App.	Emergency Court of Appeals (U.S.)
Enc.Pl.&Pr.	Encyclopædia of Pleading & Practice
Ency.Law	American and English Encyclopædia of Law
Eng.Ad.	English Admiralty
Eng.C.C.	English Crown Cases
Eng.Ch.	English Chancery
Eng.Eccl.	English Ecclesiastical Reports
Eng.Ecc.R.	English Ecclesiastical Reports
Eng.Exch.	English Exchequer Reports
Eng.L.&Eq.	English Law & Equity
Eng.Rep.R.	English Reports, Full Reprint
Eng.Ry.&C.Cas.	English Railway and Canal Cases
Eng.&Ir.App.	Law Reports, English and Irish Appeal Cases
Eq.Cas.Abr.	Equity Cases Abridged (Eng.)
Eq.Rep.	Equity Reports (Eng.)
E.R.C.	English Ruling Cases
Erie	Erie County Law Journal (Pa.)
Esp.	Espinasse's Nisi Prius (Eng.)
Euer	Euer (Eng.)
Exch.	Exchequer (Eng.)
Exch.Cas.	Exchequer Cases (Sc.)
Ex.D.	Law Reports Exchequer Division (Eng.)
Eyre	Eyre's Reports (Eng.)

F

Falc.	Falconer's Court of Sessions (Sc.)
Falc.&F.	Falconer & Fitzherbert (Eng.)
Far.	Farresley (Eng.)
Fay.L.J.	Fayette Legal Journal (Pa.)
F.Cas.No.	Federal Cases (U.S.)
F.(Ct.Sess.)	Fraser's Court of Sessions Cases (Sc.)
F.	Federal Reporter (U.S.)
F.2d	Federal Reporter Second Series
F.R.D.	Federal Rules Decisions
F.Supp.	Federal Supplement
Ferg.Cons.	Ferguson's Consistory (Eng.)
F.&F.	Foster & Finlason (Eng.)
Fiduciary	Fiduciary Reporter (Pa.)
Fish.Pat.Cas.	Fisher's Patent Cases (U.S.)
Fish.Pat.R.	Fisher's Patent Reports (U.S.)
Fish.PrizeCas.	Fisher's Prize Cases (U.S.)
Fitzg.	Fitzgibbon (Eng.)
Fitzh.	Fitzherbert's Abridgment (Eng.)
Fitzh.N.Br.	Fitzherbert's Natura Brevium (Eng.)
Fla.	Florida
Flipp.	Flippin (U.S.)
Fl.&K.	Flanagan & Kelly (Ir.)
Fonb.Eq.	Fonblanque's Equity (Eng.)
Fonbl.	Fonblanque (Eng.)
Fonbl.R.	Fonblanque's English Cases
Forbes	Forbes (Eng.)
Forr.	Forrest (Eng.)
Forrester	Forrester's Cases (Eng.)
Fortesc.	Fortescue (Eng.)
Fost.	Foster (Eng.)
Fost.	Foster (N.H.)
Fost.&Fin.	Foster & Finlason (Eng.)
Fount.Dec.	Fountainhall's Decisions (Sc.)
Fox	Fox Reports (Eng.)
Fox & S.	Fox & Smith (Ir.)
Freem.	Freeman's Chancery (Eng.)
Freem.	Freeman's Chancery (Miss.)
Freem.K.B.	Freeman's King's Bench (Eng.)

G

Ga.	Georgia
Ga.App.	Georgia Appeals
Ga.Dec.	Georgia Decisions
Gale	Gale (Eng.)
Gal.	Gallison (U.S.)
G.Coop.	G. Cooper (Eng.)
G.&D.	Gale & Davidson (Eng.)
Geld.&M.	Geldart & Maddock (Eng.)
Gibb.Surr.	Gibbon's Surrogate (N.Y.)
Giffard	Giffard (Eng.)
Giff.&H.	Giffard and Hemming (Eng.)
Gil.	Gilfillan's Edition (Minn.)
Gilb.	Gilbert's (Eng.)
Gilb.Cas.	Gilbert's Cases (Eng.)
Gilb.C.P.	Gilbert's Common Pleas (Eng.)
Gilb.Exch.	Gilbert's Exchequer (Eng.)
Gill	Gill (Md.)
Gill&J.	Gill & Johnson (Md.)
Gilm.	Gilmer (Va.)
Gilm.&Falc.	Gilmour & Falconer (Sc.)
Gilp.	Gilpin (U.S.)
Glasc.	Glascock (Ir.)
Glyn&J.	Glyn & Jameson (Eng.)
Godb.	Godbolt (Eng.)
Godo.	Godolphin's Abridgment of Ecclesiastical Law
Goeb.	Goebel's Probate Court Cases
Gosf.	Gosford (Eng.)
Gouldsb.	Gouldsborough (Eng.)
Gow	Gow (Eng.)
Gow N.P.	Gow's English Nisi Prius Cases
Grant	Grant's Cases (Pa.)
Grant Ch.	Grant's Chancery (U.C.)
Grant Err.&App.	Grant's Error & Appeal (U.C.)
Gratt.	Grattan (Va.)
Gray	Gray (Mass.)
Green Cr.	Green's Criminal Law (Eng.)
Greene	Greene (Iowa)
Gwill.T.Cas.	Gwillim's Tithe Cases (Eng.)

H

Hadd.	Haddington (Eng.)
Hagg.Adm.	Haggard's Admiralty (Eng.)

Hagg.Cons.	Haggard's Consistory (Eng.)
Hagg.Eccl.	Haggard's Ecclesiastical (Eng.)
Hailes Dec.	Hailes' Decisions (Sc.)
Hale	Hale's Common Law (Eng.)
Hale Ecc.	Hale's Ecclesiastical (Eng.)
Hale P.C.	Hale's Pleas of the Crown (Eng.)
Hall	Hall's Superior Court (N.Y.)
Hall&T.	Hall & Twells (Eng.)
Halsbury L.Eng.	Halsbury's Law of England
Handy	Handy (Oh.)
Han.(N.B.)	Hannay's Reports, New Brunswick
Hard.	Hardin (Ky.)
Hardres	Hardres (Eng.)
Hare	Hare (Eng.)
Harp.Eq.	Harper (S.C.)
Harr.	Harrison's Chancery (Mich.)
Harr.Del.	Harrington (Del.)
Harr.Mich.	Harrington's Michigan Chancery Reports
Harr.&G.	Harris & Gill (Md.)
Harr.Ch.	Harrison's Chancery (Eng.)
Harr.&H.	Harrison & Hodgins (U.C.)
Harr.&J.	Harris & Johnson (Md.)
Harr.&M.	Harris & McHenry (Md.)
Harr.&R.	Harrison & Rutherford (Eng.)
Harr.&W.	Harrison & Wollaston (Eng.)
Hask.	Haskell (U.S.)
Havil.	Haviland (Pr.Edw.Isl.)
Hawaii	Hawaiian
Hawaii Fed.	Hawaiian Federal
Hawaii Rep.	Hawaii Reports
Hawk.P.C.	Hawkins' Pleas of the Crown (Eng.)
Hay.Exch.	Hayes Exchequer (Ir.)
Hayes	Hayes (Ir.)
Hayes&J.	Hayes & Jones (Ir.)
Hay&M.	Hay & Marriott (Eng.)
Hayw.	Haywood (N.C.)
Hayw.	Haywood (Tenn.)
Hayw.&H.	Haywood & Hazelton (U.S.)
Haz.Reg.	Hazard's Register (Pa.)
H.Bl.	Henry Blackstone (Eng.)
H.&C.	Hurlstone & Coltman (Eng.)
Head	Head (Tenn.)
Heisk.	Heiskell (Tenn.)
Hem.&M.	Hemming & Miller (Eng.)
Hempst.	Hempstead (U.S.)
Hen.&M.	Hening & Munford (Va.)
Het.	Hetley (Eng.)
Het.C.P.	Hetley's Common Pleas (Eng.)
H.&H.	Horn & Hurlstone (Eng.)
Hill	Hill (N.Y.)
Hill S.C.	Hill (S.C.)
Hill &Den.	Hill & Denio (N.Y.)
Hill &Den.Supp.	Lalor's Supplement to Hill & Denio's (N.Y.)
Hilt.	Hilton (N.Y.)
Hil.T.	Hilary Term (Eng.)
H.L.Cas.	House of Lords Cases (Eng.)
H.&N.	Hurlstone & Norman (Eng.)
Hob.	Hobart (Eng.)
Hodg.El.	Hodgins' Election (U.C.)
Hodges	Hodges (Eng.)
Hoffm.	Hoffman's Chancery (N.Y.)
Hoffm.Land Cas.	Hoffman's Land Cases (U.S.)
Hog.	Hogan (Ir.)
Holmes	Holmes (U.S.)
Holt's Adm.Cas.	Holt's English Admiralty Cases
Holt Eq.	Holt's Equity (Eng.)
Holt K.B.	Holt's King's Bench (Eng.)
Holt N.P.	Holt's Nisi Prius (Eng.)
Home	Home (Sc.)
Hope Dec.	Hope's Decisions (Sc.)
Hopk.	Hopkins' Chancery (N.Y.)
Hopk.Dec.	Hopkins' Decisions (Pa.)
Hopw.&C.	Hopwood & Coltman (Eng.)
Hopw.&P.	Hopwood & Philbrick (Eng.)
Hosea	Hosea (Ohio)
Houst.	Houston (Del.)
Houst.Cr.	Houston's Criminal Cases (Del.)
How.	Howard (U.S.)
How.Miss.	Howard (Miss.)
How.A.Cas.	Howard's Appeal Cases (N.Y.)
How.N.P.	Howell's Nisi Prius (Mich.)
How.Pr.	Howard's Practice (N.Y.)
How.Pr.N.S.	Howard's Practice New Series (N.Y.)
How.St.Tr.	Howell's State Trials (Eng.)
Hud.&B.	Hudson & Brooke (Ir.)
Hughes	Hughes (Ky.)
Hughes	Hughes (U.S.)
Hume	Hume's Decisions (Sc.)
Humphr.	Humphreys (Tenn.)
Hun	Hun (N.Y.)
Hurl.&Gord.	Hurlstone & Gordon (Eng.)
Hurl.&W.	Hurlstone & Walmsley (Eng.)
Hutt.	Hutton (Eng.)

I

Idaho	Idaho
Iddings D.R.D.	Iddings Dayton Term Reports
Ill.	Illinois Reports
Ill.2d	Illinois Reports, Second Series
Ill.App.	Illinois Appellate Court Reports
Ill.App.2d	Illinois Appellate Court Reports, Second Series
Ill.Cir.	Illinois Circuit Court
Ind.	Indiana
Ind.App.	Indiana Appellate Court
Ind.T.	Indian Territory
Ins.L.J.	Insurance Law Journal
Int.Com.Commn.	Interstate Commerce Commission
Int.Com.Rep.	Interstate Commerce Reports
Int.Rev.Rec.	Internal Revenue Record
Iowa	Iowa
[1891] Ir.	Law Reports [1891] Irish
Ir.Ch.	Irish Chancery
Ir.C.L.	Irish Common Law
Ir.Eccl.	Irish Ecclesiastical Reports
Ired.	Iredell (N.C.)
Ir.Eq.	Irish Equity
Ir.Law Rep.	Irish Law Reports
Ir.Law& Eq.	Irish Law and Equity Reports
Ir.R.1894.	Irish Law Reports for Year 1894
Ir.R.C.L.	Irish Reports Common Law
Ir.R.Eq.	Irish Reports Equity
Irv.Just.	Irvine's Justiciary Cases (Eng.)

J

Jac.	Jacob (Eng.)
Jac.&W.	Jacob & Walker (Eng.)
J.Bridgm.	John Bridgman (Eng.)
J.&C.	Jones & Carey (Ir.)
Jebb &B.	Jebb & Bourke (Ir.)
Jebb C.C.	Jebb's Crown Cases (Ir.)
Jebb&S.	Jebb & Symes (Ir.)
Jeff.	Jefferson (Va.)
Jenk.	Jenkins (Eng.)
J.J.Marsh.	J. J. Marshall (Ky.)
J.&L.	Jones & La Touche (Eng.)
Johns.	Johnson (Eng.)
Johns.	Johnson (N.Y.)
Johns.Cas.	Johnson's Cases (N.Y.)
Johns.Ch.	Johnson's Chancery (N.Y.)
Johns.V.C.	Johnson's English Vice-Chancellors (Eng.)
Johns.&H.	Johnson & Hemming (Eng.)
Jones Exch.	Jones Exchequer (Ir.)
Jones T.	Sir Thomas Jones' English King's Bench Reports
Jones W.	Sir William Jones' English King's Bench Reports
Jones&Spen.	Jones & Spencer (N.Y.)
Journ.Jur.	Journal of Jurisprudence (Pa.)
J.P.	Justice of Peace (Eng.)
Jur.	Jurist (Eng.)
Jur.N.S.	Jurist New Series (Eng.)
Just.L.R.	Justices' Law Reporter (Pa.)

K

Kames Dec.	Kames' Decisions (Sc.)
Kames Elucid.	Kames' Elucidation (Sc.)
Kames Rem.Dec.	Kames' Remarkable Decisions (Sc.)
Kames Sel.Dec.	Kames' Select Decisions (Sc.)
Kan.	Kansas
Kan.App.	Kansas Appeals
Kay	Kay (Eng.)
Kay&J.	Kay & Johnson (Eng.)
[1917]K.B.	Law Reports [1917] King's Bench (Eng.)
Keane &Gr.	Keane & Grant (Eng.)

Keb.	Keble (Eng.)
Keen	Keen (Eng.)
Keil.	Keilwey (Eng.)
Keilw.	Keilway (Eng.)
Kel.C.C.	Kelyng's Crown Cases (Eng.)
Kelly	Kelly (Ga.)
Kelyng, J.	Kelyng's English Crown Cases
Kelynge, W.	Kelynge's Chancery (Eng.)
Keyes	Keyes (N.Y.)
K.&G.	Keane & Grant (Eng.)
Kilk.	Kilkerran's Decisions (Sc.)
Kirby	Kirby (Conn.)
Knapp	Knapp (Eng.)
Knapp&O.	Knapp & Ombler (Eng.)
Kn.&Moo.	Knapp & Moore (Eng.)
Knox	Knox (N.S.Wales)
Knox&F.	Knox & Fitzhardinge (N.S.Wales)
Kulp	Kulp (Pa.)
Ky.	Kentucky
Ky.Dec.	Kentucky Decisions
Ky.L.	Kentucky Law Reporter
Ky.Op.	Kentucky Opinions

L

La.	Louisiana
La.App.	Louisiana Court of Appeals
La.A.(Orleans)	Court of Appeal, Parish of Orleans
La.Ann.	Louisiana Annual
Lab.	Labatt's District Court (Cal.)
Lack.Bar	Lackawanna Bar (Pa.)
Lack.Jur.	Lackawanna Jurist (Pa.)
Lack.Leg.N.	Lackawanna Legal News (Pa.)
Lack.Leg.Rec.	Lackawanna Legal Record (Pa.)
Lalor	Lalor's Supplement to Hill & Denio (N.Y.)
Lanc.Bar	Lancaster Bar (Pa.)
Lanc.Rev.	Lancaster Law Review (Pa.)
Land Dec.	Land Decisions (U.S.)
Lane	Lane (Eng.)
Lans.	Lansing (N.Y.)
Lans.Ch.	Lansing Chancery Decisions (N.Y.)
Latch	Latch (Eng.)
Law Rep.N.S.	Law Reports New Series (N.Y.)
Law.L.J.	Lawrence Law Journal (Pa.)
L.C.	Lower Canada
L.&C.	Leigh & Cave (Eng.)
L.C.Jur.	Lower Canada Jurist
L.C.L.J.	Lower Canada Law Journal
L.C.Rep.S.Qu.	Lower Canada Reports Seignorial Questions
L.D.	Law Dictionary
Ld.Ken.	Lord Kenyon (Eng.)
Ld.Raym.	Lord Raymond (Eng.)
Lea	Lea (Tenn.)
Leach C.C.	Leach's Crown Cases (Eng.)
Lebanon	Lebanon County Legal Journal (Pa.)
L.Ed.	Lawyers' Edition United States Supreme Court
Lee Eccl.	Lee's Ecclesiastical (Eng.)
Lee t.Hardw.	Lee temp. Hardwicke (Eng.)
Lef.Dec.	Lefevre's Parliamentary Decisions (Eng.)
Leg.Chron.	Legal Chronicle (Pa.)
Leg.Gaz.	Legal Gazette (Pa.)
Leg.&Ins.R.	Legal & Insurance Reporter (Pa.)
Leg.Int.	Legal Intelligencer (Pa.)
Leg.Op.	Legal Opinions (Pa.)
Leg.Rec.	Legal Record (Pa.)
Leh.L.J.	Lehigh County Law Journal (Pa.)
Lehigh Val.L.R.	Lehigh Valley Law Reporter (Pa.)
Leigh	Leigh (Va.)
Leigh &C.	Leigh & Cave's English Crown Cases
Leon.	Leonard (Eng.)
Lev.	Levinz (Eng.)
Lew.C.C.	Lewin's Crown Cases (Eng.)
Ley	Ley (Eng.)
L.G.	Law Glossary
Liberian L.	Liberian Law
Litt.	Littell (Ky.)
Litt.	Littleton (Eng.)
Litt.Sel.Cas.	Littell's Select Cases (Ky.)
L.J.Adm.	Law Journal Admiralty New Series (Eng.)
L.J.Bankr.	Law Journal Bankruptcy New Series (Eng.)
L.J.Ch.	Law Journal Chancery New Series (Eng.)
L.J.Ch.O.S.	Law Journal Chancery Old Series (Eng.)
L.J.C.P.	Law Journal Common Pleas New Series (Eng.)
L.J.C.P.O.S.	Law Journal Common Pleas Old Series (Eng.)
L.J.Eccl.	Law Journal Ecclesiastical New Series (Eng.)
L.J.Exch.	Law Journal Exchequer New Series (Eng.)
L.J.Exch.O.S.	Law Journal Exchequer Old Series (Eng.)
L.J.K.B.	Law Journal King's Bench New Series (Eng.)
L.J.K.B.O.S	Law Journal King's Bench Old Series (Eng.)
L.J.M.C.	Law Journal Magistrate Cases New Series (Eng.)
L.J.M.C.O.S	Law Journal Magistrate Cases Old Series (Eng.)
L.J.P.C.	Law Journal Privy Council New Series (Eng.)
L.J.P.D.&Adm.	Law Journal Probate Divorce & Admiralty New Series (Eng.)
L.J.P.&M.	Law Journal Probate & Matrimonial New Series (Eng.)
L.J.Q.B.	Law Journal Queen's Bench New Series (Eng.)
L.J.Rep.	Law Journal Reports (Eng.)
Ll.&G.t.Pl.	Lloyd & Goold temp. Plunket (Ir.)
Ll.&G.t.S.	Lloyd & Goold temp. Sugden (Ir.)
Ll.&W.	Lloyd & Welsby (Eng.)
L.&M.	Lowndes & Maxwell (Eng.)
L.M.&P.	Lowndes, Maxwell & Pollack (Eng.)
Loc.Gov.	Local Government (Eng.)
Lofft	Lofft (Eng.)
Longf.&T.	Longfield & Townsend (Ir.)
Low.Can.Seign.	Lower Canada Seignorial Reports
Lowell	Lowell (U.S.)
L.R.	Law Reports (U.S.)
L.R.A.	Lawyers' Reports Annotated
L.R.A.1915A	Lawyers' Reports Annotated 1915A
L.R.App.Cas.	English Law Reports, Appeal Cases (Eng.)
L.R.A.&E.	Law Reports Admiralty & Ecclesiastical (Eng.)
L.R.A.N.S.	Lawyers' Reports Annotated New Series
L.R.C.C.	Law Reports Crown Cases (Eng.)
L.R.Ch.	Law Reports Chancery Appeal Cases (Eng.)
L.R.C.P.	Law Reports Common Pleas Cases (Eng.)
L.R.Eq.	Law Reports Equity Cases (Eng.)
L.R.Exch.	Law Reports Exchequer Cases (Eng.)
L.R.H.L.	Law Reports House of Lords (English & Irish Appeal Cases)
L.R.H.L.Sc.	Law Reports House of Lords (Scotch Appeal Cases)
L.R.Indian App.	Law Reports Indian Appeals (Eng.)
L.R.Ir.	Law Reports Irish
L.R.P.C.	Law Reports Privy Council (Eng.)
L.R.P.&D.	Law Reports Probate & Divorce (Eng.)
L.R.Q.B.	Law Reports Queen's Bench Cases (Eng.)
L.T.	Law Times (Pa.)
L.T.N.S.	Law Times, New Series (Pa.)
L.T.O.S.	Law Times, Old Series (Eng.)
L.T.O.S.	Law Times, Old Series (Pa.)
L.T.Rep.N.S.	Law Times Reports, New Series (Eng.)
Lush.	Lushington's Admiralty (Eng.)
Lutw.	Lutwyche (Eng.)
Lutw.Reg.Cas.	Lutwyche's Registration Cases (Eng.)
Luz.Leg.Obs.	Luzerne Legal Observer (Pa.)
Luz.Leg.Reg.	Luzerne Legal Register (Pa.)
Luz.L.J.	Luzerne Law Journal (Pa.)
Lycoming	Lycoming Reporter (Pa.)
Lynd.Prov.	Lyndwood's Provinciales

M

MacA.Pat.Cas.	MacArthur's Patent Cases (D.C.)
MacArth.	MacArthur's District of Columbia Reports

MacAr.&M.	MacArthur & Mackey's District of Columbia Reports
Maccl.	Macclesfield (Eng.)
MacFarl.	MacFarlane (Sc.)
Mackey	Mackey's Reports, District of Columbia
Macl.&R.	Maclean & Robinson (Eng.)
Macn.&G.	Macnaghten & Gordon (Eng.)
Macph.	Macpherson (Sc.)
Macph.S.&L.	Macpherson, Shirreff & Lee (Sc.)
Macq.	Macqueen's Scotch Appeal Cases
Madd.	Maddock (Eng.)
Madd.Ch.Pr.	Maddock's Chancery Practice (Eng.)
Malloy	Malloy (Ir.)
Man.	Manitoba Law
Man.El.Cas.	Manning's Election Cases (Eng.)
Man.Exch.Pr.	Manning's Exchequer Practice (Eng.)
Man.Gr.&S.	Manning, Granger & Scott (Eng.)
Man.L.J.	Manitoba Law Journal
Man.&Ry.	Manning & Ryland (Eng.)
Man.&Ry.Mag. Cas.	Manning & Ryland's Magistrates' Cases (Eng.)
Man.&S.	Manning & Scott (Eng.)
Man.Unrep.Cas.	Manning's Unreported Cases (La.)
Manson	Manson (Eng.)
Man.t.Wood	Manitoba temp. Wood
March	March (Eng.)
Mar.Prov.	Maritime Province Reports (Can.)
Mars.Adm.	Marsden's Admiralty (Eng.)
Marsh.	Marshall (Eng.)
Marsh.J.J.	J. J. Marshall (Ky.)
Mart.	Martin Old Series (La.)
Mart.	Martin (N.C.)
Mart.N.S.	Martin New Series (La.)
Mart.&Y.	Martin & Yerger (Tenn.)
Marv.	Marvel (Del.)
Mason	Mason (U.S.)
Mass.	Massachusetts
Maule & S.	Maule & Selwyn (Eng.)
Mayn.	Maynard (Eng.)
McAll.	McAllister (U.S.)
McC.	McCahon (Kan.)
McClell.	McClelland (Eng.)
McClell.&Y.	McClelland & Younge (Eng.)
McCord	McCord (S.C.)
McCrary	McCrary (U.S.)
McG.	McGloin (La.)
McLean	McLean (U.S.)
McMul.	McMullan (S.C.)
Md.	Maryland
Md.Ch.	Maryland Chancery
Me.	Maine
Mees.&Ros.	Meeson & Roscoe (Eng.)
Mees.&W.	Meeson & Welsby (Eng.)
Meg.	Megone (Eng.)
Meigs	Meigs (Tenn.)
Menzies Cape of Good Hope	Menzies Cape of Good Hope
Meriv.	Merivale (Eng.)
Metc.	Metcalf (Mass.)
Metc.	Metcalfe (Ky.)
M.&G.	Manning & Granger (Eng.)
M.&H.	Murphy & Hurlstone (Eng.)
Mich.	Michigan
Mich.N.P.	Michigan Nisi Prius
Mich.T.	Michaelmas Term (Eng.)
Miles	Miles (Pa.)
Mill Const.	Mill's Constitutional (S.C.)
Mill.Dec.	Miller's Decisions (U.S.)
Mills	Mills (N.Y.)
Milw.	Milward (Ir.)
Minn.	Minnesota
Minor	Minor (Ala.)
Misc.	Miscellaneous Reports (N.Y.)
Misc.2d	Miscellaneous Reports, Second Series (N.Y.)
Miss.	Mississippi
Miss.Dec.	Mississippi Decisions
Miss.St.Cas.	Mississippi State Cases
M.&M.	Moody & Malkin (Eng.)
Mo.	Missouri
Mo.App.	Missouri Appeals
Moak	Moak (Eng.)
Mo.A.R.	Missouri Appeals Reporter
Mod.	Modern (Eng.)
M.A.L.	Modern American Law
Mod.Cas.L.&Eq.	Modern Cases at Law and Equity (Eng.)
Molloy	Molloy (Ir.)
Mon.	Monaghan (Pa.)
Monroe L.R.	Monroe Law Reports (Pa.)
Mont.	Montana
Mont.	Montagu (Eng.)
Mont.Bank.Rep.	Montagu's English Bankruptcy Reports
Mont.L.R.	Montreal Law Reports (Can.)
Mont.&A.	Montagu & Ayrton (Eng.)
Mont.&B.	Montagu & Bligh (Eng.)
Mont.&C.	Montagu & Chitty (Eng.)
Mont.D.&DeG.	Montagu, Deacon & De Gex (Eng.)
Montg.	Montgomery County Law Reporter (Pa.)
Mont.&M.	Montagu & McArthur (Eng.)
Montr.Cond.Rep.	Montreal Condensed Reports
Montr.Leg.N.	Montreal Legal News
Montr.Q.B.	Montreal Law Reports Queen's Bench
Montr.Super.	Montreal Law Reports Superior Court
Moody C.C.	Moody's Crown Cases (Eng.)
Moore C.P.	Moore's Common Pleas (Eng.)
Moore Indian App.	Moore's Indian Appeals (Eng.)
Moore K.B.	Moore's King's Bench (Eng.)
Moore P.C.	Moore's Privy Council Old Series (Eng.)
Moore P.C.N.S.	Moore's Privy Council New Series (Eng.)
Moore&S.	Moore & Scott (Eng.)
Moore&W.	Moore & Walker (Tex.)
Mor.Min.Rep.	Morrison's Mining Reports
Morr.	Morris (Iowa)
Morr.Bankr.Cas.	Morrell's Bankruptcy Cases (Eng.)
Morr.St.Cas.	Morris' State Cases (Miss.)
Mosely	Mosely (Eng.)
M.&P.	Moore & Payne (Eng.)
M.&R.	Manning & Ryland (Eng.)
M.&Rob.	Moody & Robinson (Eng.)
M.&S.	Maule & Selwyn (Eng.)
Mun.	Municipal Law Reporter (Pa.)
Mun.Corp.Cas.	Municipal Corporation Cases
Munf.	Munford (Va.)
Murph.	Murphey (N.C.)
Murr.	Murray (Sc.)
M.&W.	Meeson & Welsby (Eng.)
Myl.&C.	Mylne & Craig (Eng.)
Myl.&K.	Mylne & Keen (Eng.)
Myr.Prob.	Myrick's Probate (Cal.)

N

Nat.Bankr.Reg.	National Bankruptcy Register (U.S.)
Nat.Corp.Rep.	National Corporation Reporter
Nat.L.Rep.	National Law Reporter
N.B.	New Brunswick
N.Benl.	New Benloe (Eng.)
N.B.Eq.	New Brunswick Equity
N.C.	North Carolina
N.Chipm.	N. Chipman (Vt.)
N.C.Conf.	North Carolina Conference
N.C.T.Rep.	North Carolina Term Reports
N.D.	North Dakota
N.E.	North Eastern Reporter
N.E.2d	North Eastern Reporter Second Series
Neb.	Nebraska
Neb.Unoff.	Nebraska Unofficial
Nels.	Nelson (Eng.)
Nels.Abr.	Nelson's Abridgment of the Common Law
Nev.	Nevada
Newb.Adm.	Newberry's Admiralty (U.S.)
Newfoundl.	Newfoundland
Newf.Sel.Cas.	Newfoundland Select Cases
NewRep.	New Reports in all Courts (Eng.)
NewSess.Cas.	New Session Cases (Eng.)
New Zeal.L.	New Zealand Law
N.H.	New Hampshire
N.J.	New Jersey Reports
N.J.Eq.	New Jersey Equity
N.J.Law	New Jersey Law
N.J.L.J.	New Jersey Law Journal
N.J.Misc.	New Jersey Miscellaneous
N.J.Super.	New Jersey Superior Court Reports
N.M.	New Mexico
N.&M.	Nevile & Manning (Eng.)

N.&Macn.	Neville & Macnamara (Eng.)
Nolan	Nolan (Eng.)
North.	Northington (Eng.)
North.	Northampton County Reporter (Pa.)
Northumb.Co.Leg. N.	Northumberland County Legal News (Pa.)
Northumb.L.J.	Northumberland Legal Journal (Pa.)
Notes of Cas.	Notes of Cases (Eng.)
Nott & McC.	Nott & McCord (S.C.)
Noy	Noy (Eng.)
N.&P.	Nevile & Perry (Eng.)
N.S.	Nova Scotia
N.S.Dec.	Nova Scotia Decisions
N.S.Wales	New South Wales
N.S.Wales L.	New South Wales Law
N.S.Wales L.R.Eq.	New South Wales Law Reports Equity
N.W.	North Western Reporter
N.W.2d	North Western Reporter Second Series
N.Y.	New York
N.Y.2d	New York Second Series
N.Y.Ann.Cas.	New York Annotated Cases
N.Y.City Ct.	New York City Court
N.Y.City Ct.Suppl.	New York City Court Supplement
N.Y.Civ.Proc.	New York Civil Procedure
N.Y.Civ.Pr.Rep.	New York Civil Procedure Reports
N.Y.Code Reports N.S.	New York Code Reports, New Series
N.Y.Cr.	New York Criminal
N.Y.Leg.Obs.	New York Legal Observer
N.Y.L.Rec.	New York Law Record
N.Y.Month.L.Bul.	New York Monthly Law Bulletin
N.Y.S.	New York Supplement
N.Y.S.2d	New York Supplement Second Series
N.Y.St.	New York State Reporter
N.Y.Super.	New York Superior Court
N.Y.Wkly.Dig.	New York Weekly Digest

O

O.Ben.	Old Benloe (Eng.)
O.Bridgm.	Orlando Bridgman (Eng.)
Off.Gaz.	Official Gazette
Ohio	Ohio
Ohio App.	Ohio Court of Appeals
Ohio Cir.Ct.	Ohio Circuit Court
Ohio Cir.Ct.N.S.	Ohio Circuit Court New Series
Ohio Cir.Dec.	Ohio Circuit Decisions
Ohio Dec. Reprint	Ohio Decisions (Reprint)
Ohio F.Dec.	Ohio Federal Decisions
Ohio L.J.	Ohio Law Journal
Ohio N.P.	Ohio Nisi Prius
Ohio N.P.N.S.	Ohio Nisi Prius New Series
Ohio O.	Ohio Opinions
Ohio Prob.	Ohio Probate
Ohio S.&C.P.	Ohio Superior & Common Pleas Decisions
Ohio St.	Ohio State
Ohio Supp.	Ohio Supplement
Okl.	Oklahoma
Okl.Cr.	Oklahoma Criminal
Olcott	Olcott (U.S.)
Oliv.B.&L.	Oliver, Beavan & Lefroy (Eng.)
O'M.&H.	O'Malley & Hardcastle (Ir.)
Ont.	Ontario
Ont.A.	Ontario Appeals
Ont.El.Cas.	Ontario Election Cases
Ont.L.	Ontario Law
Ont.L.J.	Ontario Law Journal
Ont.L.J.N.S.	Ontario Law Journal New Series
Ont.Pr.	Ontario Practice
Ont.W.N.	Ontario Weekly Notes
Ont.W.R.	Ontario Weekly Reporter
Op.Atty.-Gen.	Opinions of Attorneys-General (U.S.)
Op.Sol.Dept. Labor	Opinions of the Solicitor for the Department of Labor Dealing with Workmen's Compensation
Or.	Oregon
Orleans App.	Orleans Appeals (La.)
Overt.	Overton (Tenn.)
Owen	Owen (Eng.)

P

P.	Pacific Reporter
P.2d.	Pacific Reporter Second Series
[1891] P.	Law Reports [1891] Probate (Eng.)
Pa.	Pennsylvania State
Pa.Cas.	Pennsylvania Supreme Court Cases (Sadler)
Pa.Co.	Pennsylvania County Court
Pa.Corp.	Pennsylvania Corporation Reporter
Pa.C.Pl.	Common Pleas (Pa.)
Pa.Dist.	Pennsylvania District
Pa.D.&C.	Pennsylvania District and County
Pa.D.&C.2d	Pennsylvania District and County Second Series
Paige	Paige's Chancery (N.Y.)
Paine	Paine (U.S.)
Pa.L.J.	Pennsylvania Law Journal
Pa.L.Rec.	Pennsylvania Law Record
Pa.L.J.R.	Clark's Pennsylvania Law Journal Reports
Palm.	Palmer (Eng.)
Pa.Rec.	Pennsylvania Record
Park.	Parker (Eng.)
Park.Cr.	Parker's Criminal (N.Y.)
Park.Exch.	Parker's Exchequer (Eng.)
Park.Ins.	Parker's Insurance (Eng.)
Pars.Eq.Cas.	Parsons' Equity Cases (Pa.)
Pa.Super.	Pennsylvania Superior Court
Paton App.Cas.	Paton's Appeal Cases (Sc.)
Patrick El.Cas.	Patrick's Election Cases (Can.)
Patt.&H.	Patton & Heath (Va.)
P.D.	Law Reports Probate Division (Eng.)
P.&D.	Perry & Davison (Eng.)
Peake N.P.	Peake's Nisi Prius (Eng.)
Pearce C.C.	Pearce's Reports in Dearsly's (Eng.)
Pearson	Pearson (Pa.)
Peck	Peck (Tenn.)
Peck.El.Cas.	Peckwell's Election Cases (Eng.)
Pennew.	Pennewill (Del.)
Pennyp.	Pennypacker (Pa.)
Penr.&W.	Penrose & Watts (Pa.)
Perry & Kn.	Perry & Knapp Election Cases (Eng.)
Pet.	Peters (U.S.)
Pet.Adm.	Peters' Admiralty (U.S.)
Pet.C.C.	Peters' Circuit Court (U.S.)
Phil.	Phillips (Eng.)
Phil.	Phillip (N.C.)
Phila.	Philadelphia (Pa.)
Philippine	Philippine
Phillim.	Phillimore Ecclesiastical (Eng.)
Pick.	Pickering (Mass.)
Pig.&R.	Pigott & Rodwell (Eng.)
Pig.Rec.	Pigott's Recoveries (Eng.)
Pinn.	Pinney (Wis.)
Pittsb.	Pittsburgh (Pa.)
P.&K.	Perry & Knapp (Eng.)
P.L.J.	Pittsburgh Legal Journal (Pa.)
P.L.J.N.S.	Pittsburgh Legal Journal New Series (Pa.)
Plowd.	Plowden (Eng.)
Pollexf.	Pollexfen (Eng.)
Poph.	Popham (Eng.)
Port.	Porter (Ala.)
Posey	Posey's Unreported Cases (Tex.)
Puerto Rico	Puerto Rico
Puerto Rico Fed.	Puerto Rico Federal
Pow.Surr.	Powers' Surrogate (N.Y.)
P.R.&D.El.Cas.	Power, Rodwell & Dew's Election Cases (Eng.)
Prec.Ch.	Precedents in Chancery (Eng.)
Pr.Edw.Isl.	Prince Edward Island
Price	Price (Eng.)
Price Pr.Cas.	Price's Practice Cases (Eng.)
Prid.&C.	Prideaux & Cole (Eng.)
Prob.[1917]	Law Reports, Probate Division (Eng.)
Prob.Rep.	Probate Reports (Eng.)
Pr.Rep.	Practice Reports (Eng.)
P.Wms.	Peere-Williams (Eng.)
P.U.R.	Public Utilities Reports
Pyke	Pyke (Can.)

Q

Q.B.	Queen's Bench (Adolphus & Ellis New Series) (Eng.)

[1891]Q.B.	Law Reports [1891] Queen's Bench (Eng.)
Q.B.D.	Law Reports Queen's Bench Division (Eng.)
Queensl.J.P.	Queensland Justice of the Peace
Queensl.L.	Queensland Law
Queensl.L.J.	Queensland Law Journal
Que.L.	Quebec Law
Que.Pr.	Quebec Practice
Que.Q.B.	Quebec Official Reports Queen's Bench
Que.Rev.Jud.	Quebec Revised Judicial
Que.Super.	Quebec Official Reports Superior Court
Quincy	Quincy (Mass.)

R

Rand.	Randolph (Va.)
Rap.Jud. Q.C.S.	Rapport's Judiciaries de Quebec Cour Superieure
Rawle	Rawle (Pa.)
R.C.L.	Ruling Case Law
R.&Can.Cas.	Railway & Canal Cases (Eng.)
R.&Can.Tr.Cas.	Railway & Canal Traffic Cases (Eng.)
Redf.	Redfield's Surrogate (N.Y.)
Redf.&B.	Redfield & Bigelow's Leading Cases (Eng.)
Redf.R.Cas.	Redfield's Railway Cases (Eng.)
Redf.Surr.	Redfield's Surrogate (N.Y.)
Reeve Eng.L.	Reeve's English Law
Reports	Reports (Eng.)
Reprint	English Reprint
Rep.t.Finch	Cases temp. Finch (Eng.)
Rep.t.Hard.	Lee's Reports *tempore* Hardwicke (Eng.)
Rep.t.Holt	Reports *tempore* Holt (English Cases of Settlement)
Res.&Eq.Judgm.	Reserved & Equity Judgments (N.S. Wales)
Rev.Crit.	Revue Critique (Can.)
Rev.de Jur.	Revue de Jurisprudence (Can.)
Rev.de Legis.	Revue de Legislation (Can.)
Rev.Leg.	Revue Legale (Can.)
Rev.Leg.N.S.	Revue Legale New Series (Can.)
Rev.Rep.	Revised Reports (Eng.)
R.I.	Rhode Island
Rice	Rice (S.C.)
Rich.	Richardson (S.C.)
Rich.C.P.	Richardson's Practice Common Pleas (Eng.)
Ridg.	Ridgeway's Reports *tempore* Hardwicke (Eng.)
Ridg.Ap.	Ridgeway's Appeal (Ir.)
Ridg.L.&S.	Ridgeway, Lapp & Schoale (Ir.)
Ridg.P.C.	Ridgeway's Parliament Cases (Ir.)
Ridg.t.Hardw.	Ridgeway temp. Hardwicke (Eng.)
Riley	Riley (S.C.)
R.&M.	Ryan & Moody (Eng.)
R.M.Charlt.	R. M. Charlton (Ga.)
Rob.	Robinson (La.)
Rob.	Robinson (Va.)
Robb Pat.Cas.	Robb's Patent Cases (U.S.)
Robert.App.Cas.	Robertson's Appeal Cases (Sc.)
Rob.Eccl.	Robertson's Ecclesiastical (Eng.)
Robin.App.Cas.	Robinson's Appeal Cases (Sc.)
Rob.Wm.Adm.	William Robinson's Admiralty (Eng.)
Rolle	Rolle (Eng.)
Rolle Abr.	Rolle's Abridgment (Eng.)
Rolls Ct.Rep.	Rolls' Court Reports
Rom.Cas.	Romilly's Notes of Cases (Eng.)
Root	Root (Conn.)
Rose	Rose (Eng.)
Ross Lead.Cas.	Ross' Leading Cases (Eng.)
R.&R.	Russell & Ryan Crown Cases (Eng.)
Russ.	Russell (Eng.)
Russ.&C.Eq.Cas.	Russell's & Chesley's Equity Cases (N.S.)
Russ.Eq.Cas.	Russell's Equity Cases (N.S.)
Russ.&Geld.	Russell & Geldert, Nova Scotia
Russ.&M.	Russell & Mylne (Eng.)
Ry.&M.	Ryan & Moody (Eng.)

S

Salk.	Salkeld (Eng.)
Sandf.	Sandford's Superior Court (N.Y.)
Sandf.Ch.	Sandford's Chancery (N.Y.)
Sask.L.	Saskatchewan Law
Saund.	Saunders (Eng.)
Saund.&C.	Saunders & Cole (Eng.)
Sau.&Sc.	Sausse & Scully (Ir.)
S.Austr.L.	South Australia Law
Sav.	Savile (Eng.)
Sawy.	Sawyer (U.S.)
Saxt.	Saxton (N.J.)
Say.	Sayer (Eng.)
S.C.	South Carolina
[1907]S.C.	Court of Session Cases (Sc.)
Scam.	Scammon (Ill.)
S.C.Eq.	South Carolina Equity
Sch.&Lef.	Schoales & Lefroy (Ir.)
Sch.Leg.Rec.	Schuylkill Legal Record (Pa.)
Sch.Reg.	Schuylkill Register (Pa.)
[1907]S.C.(J.)	Court of Justiciary Cases (Sc.)
Sc.Jur.	Scottish Jurist
S.C.L.	South Carolina Law
Sc.L.Rep.	Scottish Law Reporter
ScotL.T.	Scot Law Times
Scott	Scott (Eng.)
Scott N.R.	Scott's New Reports (Eng.)
Scr.L.T.	Scranton Law Times (Pa.)
Sc.Sess.Cas.	Scotch Court of Session Cases
S.Ct.	Supreme Court Reporter (U.S.)
S.D.	South Dakota
S.E.	South Eastern Reporter
S.E.2d	South Eastern Reporter Second Series
Searle & Sm.	Searle & Smith (Eng.)
Sel.Cas.Ch.	Select Cases in Chancery (Eng.)
Seld.	Selden's Notes (N.Y.)
Selden	Selden (N.Y.)
Selw.	Selwyn's Nisi Prius (Eng.)
Serg.&R.	Sergeant & Rawle (Pa.)
Sess.Cas.	Court of Session Cases (Eng.)
Shan.	Shannon (Tenn.)
Shaw	Shaw (Sc.)
Shaw & D.	Shaw & Dunlop (Sc.)
Shaw Dec.	Shaw's Digest of Decisions (Sc.)
Shaw,Dunl.&B.	Shaw, Dunlop & Bell (Sc.)
Shaw&M.	Shaw & MacLean (Sc.)
Sheld.	Sheldon (N.Y.)
Shep.Abr.	Sheppard's Abridgment
Sheph.Sel.Cas.	Shepherd's Select Cases (Ala.)
Show.	Shower (Eng.)
Show.P.C.	Shower's Parliament Cases (Eng.)
Sid.	Siderfin (Eng.)
Silv.A.	Silvernail's Appeals (N.Y.)
Silv.Sup.	Silvernail's Supreme (N.Y.)
Sim.	Simons (Eng.)
Sim.N.S.	Simons New Series (Eng.)
Sim.&St.	Simons & Stuart (Eng.)
Skin.	Skinner (Eng.)
Smale&G.	Smale & Giffard (Eng.)
Smith	Smith (Ind.)
Smith	Smith (N.H.)
Smith&B.	Smith & Batty (Ir.)
Smith K.B.	Smith's King's Bench (Eng.)
Smith Lead.Cas.	Smith's Leading Cases (Eng.)
Smith Reg.	Smith's Registration (Eng.)
Sm.&M.	Smedes & Marshall (Miss.)
Sm.&M.Ch.	Smedes & Marshall Chancery (Miss.)
Smythe	Smythe (Ir.)
Sneed	Sneed (Tenn.)
So.	Southern Reporter
So.2d	Southern Reporter Second Series
Sol.J.	Solicitor's Journal (Eng.)
Som.	Somerset Legal Journal (Pa.)
Sp.	Speers (S.C.)
Spinks	Spinks Admiralty (Eng.)
Spinks	Spinks' Ecclesiastical and Admiralty (Eng.)
Spinks, P.C.	Spinks' Prize Cases (Eng.)
Spottisw.	Spottiswoode (Sc.)
Spottisw.Eq.	Spottiswoode's Equity (Sc.)
Sprague	Sprague (U.S.)
Stair	Stair (Sc.)
Stark.	Starkie Nisi Prius (Eng.)
Stat. at L.	United States Statutes at Large
Stew.	Stewart (Ala.)
Stew.	Stewart's Reports (N.S.)
Stew.&P.	Stewart & Porter (Ala.)
Stockt.Vice-Adm.	Stockton's Vice-Admiralty (N.B.)
Story	Story (U.S.)
Str.	Strange (Eng.)

Strob.	Strobhart (S.C.)
Stuart Vice-Adm.	Stuart's Vice-Admiralty (L.C.)
Stu.M.&P.	Stuart, Milne & Peddie (Sc.)
Style	Style (Eng.)
Sumn.	Sumner (U.S.)
Susq.Leg.Chron.	Susquehanna Legal Chronicle (Pa.)
S.W.	South Western Reporter
S.W.2d	South Western Reporter Second Series
Swab.	Swabey's Admiralty (Eng.)
Swab.&Tr.	Swabey & Tristram (Eng.)
Swan	Swan (Tenn.)
Swanst.	Swanston (Eng.)

T

Taml.	Tamlyn (Eng.)
Taney	Taney (U.S.)
Tapp.	Tappan (Oh.)
Taunt.	Taunton (Eng.)
Taylor	Taylor (N.C.)
T.B.Mon.	T. B. Monroe (Ky.)
Tenn.	Tennessee
Tenn.App.	Tennessee Appeals
Tenn.Cas.	Unreported Tennessee Cases
Tenn.Ch.	Tennessee Chancery
Tenn.Ch.A.	Tennessee Chancery Appeals
Tenn.Civ.A.	Tennessee Civil Appeals
Terr.L.	Territories Law (Northwest Territories)
Tex.	Texas
Tex.App.	Texas Court of Appeals
Tex.A.Civ.Cas.	White & Wilson's Civil Cases (Tex.)
Tex.Civ.App.	Texas Civil Appeals
Tex.Cr.	Texas Criminal
Tex.Suppl.	Texas Supplement
Tex.Unrep.Cas.	Posey's Unreported Cases (Tex.)
Thach.Cr.	Thacher's Criminal Cases (Mass.)
Thomps.&C.	Thompson & Cook (N.Y.)
Thomps.Cas.	Thompson's Cases (Tenn.)
Tinw.	Tinwald (Sc.)
T.Jones	Thomas Jones (Eng.)
T.L.R.	Times Law Reports (Eng.)
T.M.R.	Trade Mark Reports
T.&M.	Temple & Mew (Eng.)
Toth.	Tothill (Eng.)
T.R.	Term Reports (Durnford & East) (Eng.)
Transcr.A.	Transcript Appeals (N.Y.)
T.Raym.	Thomas Raymond (Eng.)
Tread.Const.	Treadway Constitutional (S.C.)
Treas.Dec.	Treasury Decisions (U.S.)
Tr.&H.P.r.	Troubat & Haly's Practice (Pa.)
Trint.T.	Trinity Term (Eng.)
Truem.Eq.Cas.	Trueman's Equity Cases (N.B.)
Tuck.Sel.Cas.	Tucker's Select Cases (Newfoundland)
Tuck.Surr.	Tucker's Surrogate (N.Y.)
T.U.P.Charlt.	T. U. P. Charlton (Ga.)
Turn.&R.	Turner & Russell (Eng.)
Tyler	Tyler (Vt.)
Tyrw.	Tyrwhitt (Eng.)
Tyrw.&G.	Tyrwhitt & Granger (Eng.)

U

U.C.	Upper Canada
U.C.Ch.	Upper Canada Chancery
U.C.Cham.	Upper Canada Chamber
U.C.C.P.	Upper Canada Common Pleas
U.C.E.&A.	Upper Canada Error and Appeal
U.C.K.B.	Upper Canada King's Bench Reports
U.C.Q.B.	Upper Canada Queen's Bench
U.C.Q.B.O.S.	Upper Canada Queen's Bench Old Series
U.S.	United States
U.S.App.D.C.	United States Appeal Cases (D.C.)
U.S.Aviation Rep.	Aviation Reports (U.S.)
U.S.C.A.	United States Code Annotated
Utah	Utah Reports
Utah 2d	Utah Reports Second Series

V

Va.	Virginia
Va.Cas.	Virginia Cases
Va.Ch.Dec.	Chancery Decisions (Va.)
Va.Dec.	Virginia Decisions
Van Ness Prize Cas.	Van Ness Prize Cases (U.S.)
Vaugh.	Vaughan (Eng.)
Vaux	Vaux's Decisions (Pa.)
Vent.	Ventris (Eng.)
Vern.	Vernon's Cases (Eng.)
Vern.Ch.	Vernon's Chancery (Eng.)
Vern.&S.	Vernon & Scriven (Ir.)
Ves.	Vesey Senior (Eng.)
Ves.& B.	Vesey & Beames (Eng.)
Ves.Jr.	Vesey Junior (Eng.)
Ves.Jr.Suppl.	Vesey Junior Supplement (Eng.)
Ves.Suppl.	Vesey Senior Supplement (Eng.)
Vict.	Victorian
Vict.L.	Victorian Law
Vict.L.T.	Victorian Law Times
Vict.Rep.	Victorian Reports
Vict.St.Tr.	Victorian State Trials
Vin.Abr.	Viner's Abridgment (Eng.)
Virgin Islands	Virgin Islands
Vt.	Vermont

W

Walk.	Walker (Pa.)
Walk.	Walker's Chancery (Mich.)
Wall.	Wallace (U.S.)
Wall.C.C.	Wallace (U.S.)
Wall.Jr.	Wallace Junior (U.S.)
Wall.Sr.	Wallace Senior (U.S.)
Wallis	Wallis (Ir.)
Ware	Ware (U.S.)
Wash.	Washington
Wash.2d	Washington Reports, Second Series
Wash.	Washington (Va.)
Wash.St.	Washington State
Wash.C.C.	Washington Circuit Court (U.S.)
Wash.Co.	Washington County Reports (Pa.)
Wash.T.	Washington Territory
Watts	Watts (Pa.)
Watts&S.	Watts & Sergeant (Pa.)
W.Bl.	William Blackstone (Eng.)
W.C.C.	Minton-Senhouse's Workmen's Compensation Cases (Eng.)
Webb, A'B.&W.I. P.& M.	Webb, A'Beckett & Williams' Insolvency, Probate, and Matrimonial Reports (Victoria)
Web.Pat.Cas.	Webster's Patent Cases (Eng.)
Welsh	Welsh Registry Cases (Ir.)
Wend.	Wendell (N.Y.)
West	West (Eng.)
West.	Westmoreland County Law Journal (Pa.)
West.L.J.	Western Law Journal (Oh.)
West.L.Month.	Western Law Monthly (Oh.)
West.L.R.	Western Law Reporter (Can.)
West.L.T.	Western Law Times (Can.)
West.R.	Western Reporter
West t.Hardw.	West temp. Hardwicke (Eng.)
West.Wkly.	Western Weekly (Can.)
[1917]West.Wkly.	[1917] Western Weekly (Can.)
Whart.	Wharton (Pa.)
Wheat.	Wheaton (U.S.)
Wheel.Cr.	Wheeler's Criminal (N.Y.)
White&T.Lead. Cas.Eq.	White & Tudor's Leading Cases in Equity (Eng.)
Whitm.Pat.Cas.	Whitman's Patent Cases (U.S.)
Wight.	Wightwicke (Eng.)
Wilcox	Wilcox (Pa.)
Willes	Willes (Eng.)
Wilm.	Wilmot's Notes (Eng.)
Wils.	Wilson (Ind.)
Wils.Ch.	Wilson's Chancery (Eng.)
Wils.C.P.	Wilson's Common Pleas (Eng.)
Wils.Exch.	Wilson's Exchequer (Eng.)
Wils.P.C.	Wilson's Privy Council (Eng.)
Wils.&S.	Wilson & Shaw (Sc.)
Winch	Winch (Eng.)
Winst.	Winston (N.C.)
Wis.	Wisconsin
W.Jones	William Jones (Eng.)
W.Kel.	William Kelynge (Eng.)
Wkly.L.Gaz.	Weekly Law Gazette (Oh.)

Wkly.N.C.	Weekly Notes of Cases (Pa.)
Wkly.Rep.	Weekly Reporter (Eng.)
Wms.Saund.	Williams Notes to Saunders' Reports
W.N.	Weekly Notes (Eng.)
Wolf.&B.	Wolferstan & Bristow's Election Cases (Eng.)
Wolf.&D.	Wolferstan & Dew's Election Cases (Eng.)
Woll.	Wollaston (Eng.)
Woodb.&M.	Woodbury & Minot (U.S.)
Woods	Woods (U.S.)
Woodw.	Woodward's Decisions (Pa.)
Woolw.	Woolworth (U.S.)
Words & Phrases	Words & Phrases
Wright	Wright (Oh.)
W.Rob.	William Robinson's Admiralty (Eng.)
Wr.Pa.	Wright (Pa.)
W.Va.	West Virginia
W.W.Harr.	W. W. Harrington (Del.)
W.W.&D.	Willmore, Wollaston & Davidson (Eng.)
W.W.&H.	Willmore, Wollaston & Hodges (Eng.)
Wyo.	Wyoming
Wythe	Wythe's Chancery (Va.)
Wy.&W.	Wyatt & Webb (Vict.)
Wy.W.&A'Beck.	Wyatt, Webb & A'Beckett (Vict.)

Y

Yates Sel.Cas.	Yates Select Cases (N.Y.)
Y.B.	Year Book (Eng.)
Y.&C.Exch.	Younge & Collyer's Exchequer (Eng.)
Y.&Coll.	Younge & Collyer's Chancery (Eng.)
Yeates	Yeates (Pa.)
Yelv.	Yelverton (Eng.)
Yerg.	Yerger (Tenn.)
Y.&J.	Younge & Jervis (Eng.)
York	York Legal Record (Pa.)
Young Adm.	Young's Admiralty Decisions (N.S.)
Younge	Younge Exchequer (Eng.)

LAW REVIEWS AND LAW JOURNALS

A.B.A.Jour.	American Bar Association Journal
Ala.L.Rev.	Alabama Law Review
Albany L.Rev.	Albany Law Review
Am.J.Int.Law	American Journal of International Law
Am.Law S.Rev.	American Law School Review
Ark.L.Rev.	Arkansas Law Review
Aust.L.J.	Australian Law Journal
B.U.L.Rev.	Boston University Law Review
Brooklyn L.Rev.	Brooklyn Law Review
Calif.L.Rev.	California Law Review
Camb.L.J.	Cambridge Law Journal
Chi.-Kent Rev.	Chicago-Kent Review
Colum.L.Rev.	Columbia Law Review
Com.L.J.	Commercial Law Journal
Cornell L.Q.	Cornell Law Quarterly
Detroit L.Rev.	Detroit Law Review
Dick.L.Rev.	Dickinson Law Review
Fed.B.A.J.	Federal Bar Association Journal
Fla.L.J.	Florida Law Journal
Fordham L.Rev.	Fordham Law Review
Geo.Wash.L.Rev.	George Washington Law Review
Geo.L.J.	Georgetown Law Journal
Harv.L.Rev.	Harvard Law Review
Ia.L.Rev.	Iowa Law Review
Idaho L.J.	Idaho Law Journal
Ill.L.Rev.	Illinois Law Review
Ind.L.J.	Indiana Law Journal
J.Am.Jud.Soc.	Journal of the American Judicature Society
J.Comp.Leg.	Journal of the Society of Comparative Legislation
J.N.A.Referees Bank.	Journal of the National Association of Referees in Bankruptcy
J.Soc.Pub.Teach. Law	Journal of the Society of Pub. Teachers of Law
John Marshall L. Q.	The John Marshall Law Quarterly
Kan.City L.Rev.	Kansas City Law Review
Kan.St.L.J.	Kansas State Law Journal
Ky.L.J.	Kentucky Law Journal
L.J.	Law Journal
L.Lib.J.	Law Library Journal
Law Q.Rev.	Law Quarterly Review
Law Ser.Mo.Bull.	University of Missouri Bulletin, Law Series
Law Soc.J.	Law Society Journal
Lincoln L.Rev.	Lincoln Law Review
La.L.Rev.	Louisiana Law Review
Loyola L.Rev.	Loyola Law Review
Marq.L.Rev.	Marquette Law Review
Md.L.Rev.	Maryland Law Review
Mass.L.Q.	Massachusetts Law Quarterly
Mercer, Beasley L.Rev.	Mercer, Beasley Law Review
Miami L.Q.	Miami Law Quarterly
Mich.L.Rev.	Michigan Law Review
Minn.L.Rev.	Minnesota Law Review
Miss.L.J.	Mississippi Law Journal
Mo.L.Rev.	Missouri Law Review
Montana L.Rev.	Montana Law Review
Neb.L.B.	Nebraska Law Bulletin
N.J.L.J.	New Jersey Law Journal
N.J.L.Rev.	New Jersey Law Review
N.Y.U.L.Q.Rev.	New York University Law Quarterly Review
Notre Dame Law.	Notre Dame Lawyer
N.C.L.Rev.	North Carolina Law Review
Okla.L.Rev.	Oklahoma Law Review
Oreg.L.Rev.	Oregon Law Review
Phil.L.J.	Philippine Law Journal
Rocky Mt.L.Rev.	Rocky Mountain Law Review
Rutgers U.L.Rev.	Rutgers University Law Review
St. John's L.Rev.	St. John's Law Review
St. Louis L.Rev.	St. Louis Law Review (now Washton University Law Quarterly)
So.Calif.L.Rev.	Southern California Law Review
Southwestern L.J.	Southwestern Law Journal
Stanford L.Rev.	Stanford Law Review
Temp.L.Q.	Temple Law Quarterly
Tenn.L.Rev.	Tennessee Law Review
Tex.L.Rev.	Texas Law Review
Tul.L.Rev.	Tulane Law Review
U.Chi.L.Rev.	University of Chicago Law Review
U.Cin.L.Rev.	University of Cincinnati Law Review
U.Detroit L.J.	University of Detroit Law Journal
U.Florida L.Rev.	University of Florida Law Review
U.Kan.City L.Rev.	University of Kansas City Law Review.
U.Pa.L.Rev.	University of Pennsylvania Law Review
U. of Pitts.L.Rev.	University of Pittsburgh Law Review
U.Toronto L.J.	University of Toronto Law Journal
Vanderbilt L.Rev.	Vanderbilt Law Review
Va.L.Rev.	Virginia Law Review
Wash.L.Rev.	Washington Law Review
Wash.U.L.Q.	Washington University Law Quarterly
Wash.& Lee L.Rev.	Washington and Lee Law Review
W.Va.L.Q.	West Virginia Law Quarterly and The Bar
Wis.L.Rev.	Wisconsin Law Review
Wyo.L.J.	Wyoming Law Journal
Yale L.J.	Yale Law Journal

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CORPUS JURIS SECUNDUM

VOLUME FIVE A

APPEAL AND ERROR

This Title includes review by superior tribunals of judicial action of inferior tribunals in general, and, more particularly, such review of decisions of courts of record in civil actions, by removal of the cause to the higher court by appeal or writ of error, or by hearing on a case made and reported or certified by the lower court, or on exceptions taken in the lower court; nature and scope of the remedy and of appellate jurisdiction in general; proceedings in the trial court to make objections to its action available on appeal, writ of error, etc.; proceedings to take and perfect appeals, sue out writs of error, etc., and effect thereof and of supersedeas or stay pending appeal, error, etc.; removal of cause, record, etc., to higher court; hearing and determination of appeals, writs of error, exceptions, etc., effect of decisions thereon, and proceedings on such decisions; and liabilities on and enforcement of securities given to perfect appeal or obtain supersedeas, stay, etc.

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a. In general
b. What constitutes abuse of discretion

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(2) Particular applications of rule

(1) General Rule

As a general rule, an appellate court will not review the action or rulings of the trial court with reference to matters resting in the latter's judicial discretion, unless such discretion has been clearly and prejudicially abused; and some decisions appear to recognize an absolute or arbitrary discretion in certain classes of cases, which is never reviewable.

Quoted in: Tex.—Schroeder v. Brandon, 172 S.W.2d 488, 491, 141 Tex. 319.

Broadly speaking, the exercise of judicial discretion has been declared subject to review;[4.50] but it has also been held that, ordinarily, where a judge is vested with discretion, his doing, or refusing to do, the act in question is not reviewable on appeal,[4.55] that it is not the use or exercise of the discretion of a lower court that is reviewable, but only the alleged abuse thereof,[4.60] and that the only question for determination on review of a discretionary ruling is whether the trial court has abused its discretion.[4.65]

4.50 Fla.—Western Union Tel. Co. v. Suit, 15 So.2d 33, 153 Fla. 490.
Ill.—Dawson v. Maxwell, 141 N.E.2d 642, 13 Ill.App.2d 228.
N.J.—Cortese v. Cortese, 76 A.2d 717, 10 N.J.Super. 152.
Tex.—Paul v. Houston Oil Co. of Tex., Civ.App., 211 S.W.2d 345, error refused no reversible error.
Wis.—Hartwig v. Harvey, 27 N.W.2d 363, 250 Wis. 478, 15 A.L.R.2d 333.
47 C.J. p 548 note 70.
Discretionary action and matters of practice as decisions reviewable see supra § 111.
"No language, however strong, will take away the right of review where there is shown an abuse of discretion."
Ohio.—Thompson v. Stonom, App., 57 N.E 2d 788, 790.
"The fact that a determination of the issue involves the discretion of the court does not preclude this court from reviewing the acts of the trial court for abuse of discretion."
Ind.—State ex rel. Steers v. Holovachka, 142 N.E.2d 593, 597.

Ground for reversal

(1) An abuse of discretion is legal ground for reversing a judgment.
Ga.—Alford v. Alford, 9 S.E.2d 895, 190 Ga. 562.

(2) Grounds for reversal generally see infra §§ 1886–1914.

In equity

(1) In equity, an appeal brings to supreme judicial court questions of discretion as well as questions of law.
Mass.—McDade v. Moynihan, 115 N. E.2d 372, 330 Mass. 437, 39 A.L.R. 2d 1223.

(2) In equity, questions of discretion, like other questions of fact, are open on appeal, but error of law or fact must be shown by record on appeal, in order that discretionary action may be reversed.
Mass.—Long v. George, 7 N.E.2d 149, 296 Mass. 574.

Abuse of discretion

(1) The question of abuse of discretion is always open to judicial inquiry on appeal.
Ill.—Black Hawk Motor Transit Co. v. Illinois Commerce Commission, 48 N.E.2d 341, 383 Ill. 57.

(2) The question of abuse of discretion is always subject to review in the supreme court.
Ill.—Whitney v. Madden, 79 N.E.2d 593, 400 Ill. 185, certiorari denied 69 S.Ct. 55, 335 U.S. 828, 93 L.Ed. 382.

(3) An abuse of discretion by trial court may be reviewed by supreme court on appeal.
Utah.—Salt Lake City v. Anderson, 148 P.2d 346, 106 Utah 350.

Exceptions

Exercise of discretion, vested by law in justice of superior court or supreme court of probate is not reviewable on exceptions; but where justice finds facts without evidence or exercises discretion without authority, his actions may be challenged by exceptions.
Me.—Sard v. Sard, 83 A.2d 286, 147 Me. 46.

4.55 N.C.—Harmon v. Harmon, 95 S.E.2d 355, 245 N.C. 83.

4.60 Ind.—State v. Holovachka, 142 N.E.2d 593—McFarlan v. Fowler Bank City Trust Co., 12 N.E.2d 752, 214 Ind. 10.
Iowa.—Best v. Yerkes, 77 N.W.2d 23, 247 Iowa 800.
Ferguson v. Ferguson, 125 N.E. 2d 816, 125 Ind.App. 596.
Pa.—Adelman v. John McShain, Inc., 24 A.2d 703, 148 Pa.Super. 138.

4.65 Iowa.—Rudolph v. Davis, 26 N. W.2d 231, 238 Iowa 474.
Tex.—Janelli v. Janelli, Civ.App., 220 S.W.2d 255, mandamus denied Janelli v. Bond, 225 S.W.2d 824, 148 Tex. 416, and set aside, Civ.App., 227 S.W.2d 889, mandamus overruled.
Vt.—Russell v. Pilger, 37 A.2d 403, 113 Vt. 537.

Sole issue

Tex.—International Ass'n of Carpenters and Joiners of America, Local 213, A. F. of L. v. Sharp, Civ. App., 202 S.W.2d 506.

Ultimate issue

Tex.—International Ass'n of Machinists Union, Local No. 1488, v. Federated Ass'n of Accessory Workers, Civ.App., 105 S.W.2d 301.

Discretionary order

While an appeal may be taken from a discretionary order, the matter will be reviewed solely to determine whether there was an abuse of discretion.
Wis.—Hartwig v. Harvey, 27 N.W. 2d 363, 250 Wis. 478, 15 A.L.R.2d 333.

Interlocutory order as to writ

(1) In all appeals from interlocutory orders granting or refusing a writ or dissolving or refusing to dissolve one, sole question is whether trial court abused its discretion in entering order appealed from.
Tex.—Rudd v. Wallace, Civ.App., 232 S.W.2d 121—Jeter v. State, Civ. App., 184 S.W.2d 716.

As a general rule, if there has not been a clear, palpable, manifest, or flagrant abuse, or an improper or erroneous exercise, of discretion resulting to the complaining party's prejudice, the appellate court will not review or revise the action or rulings of the trial court with reference to matters resting in the latter's judicial discretion;[5] and the exercise of its discretion by the trial court will not be reviewed

(2) This is especially true if the order was based on conflicting evidence.

Tex.—Rudd v. Wallace, supra.

Abuse held not shown

Ind.—McFarlan v. Fowler Bank City Trust Co., 12 N.E.2d 752, 214 Ind. 10.

5. Ala.—Colquett v. Williams, 86 So. 2d 381, 264 Ala. 214—Stansell v. Tharp, 16 So.2d 857, 245 Ala. 270—Hayes v. Hayes, 68 So. 351, 192 Ala. 280.

Laseter v. C. I. T. Corporation, 152 So. 607, 26 Ala.App. 58, reversed on other grounds 152 So. 607, 228 Ala. 19—Ex parte Crumpton, 109 So. 184, 21 Ala.App. 446.

Ark.—Louisiana & A. Ry. Co. v. Woodson, 192 S.W. 174, 127 Ark. 323—Rural Special School Dist. No. 17 of Pope County v. Special School Dist. No. 56, 186 S.W. 70, 123 Ark. 570.

Cal.—Hicks v. Bridges, App., 313 P. 2d 15—Howard v. Howard, 275 P. 2d 93, 128 C.A.2d 188—In re Knowlton's Estate, 257 P.2d 1031, 118 C. A.2d 374—Miller v. Republic Grocery, 242 P.2d 396, 110 C.A.2d 187—California Employment Stabilization Commission v. Chichester Transp. Co., 172 P.2d 100, 175 C.A. 2d 899—Berry v. Chaplin, 169 P.2d 453, 74 C.A.2d 669—Wellborn v. Wellborn, 155 P.2d 95, 67 C.A.2d 540—Empire Star Mines Co. v. Butler, 145 P.2d 49, 62 C.A.2d 49—Sharpe v. Sharpe, 130 P.2d 462, 55 C.A.2d 262—Benedict v. Calkins, 65 P.2d 831, 19 C.A.2d 416—Veterans' Welfare Board v. Burt, 41 P. 2d 587, 4 C.A.2d 659—Hasendahl v. J. D. Halstead Lumber Co., 22 P. 2d 577, 132 C.A. 205—Schwartz v. Brandon, 275 P. 448, 97 C.A. 30—In re Triest's Estate, 236 P. 930, 72 C.A. 268.

Colo.—Welborn v. Bucci, 37 P.2d 399, 95 Colo. 478.

Conn.—Grievance Committee of Fairfield County Bar v. Nevas, 96 A.2d 802, 139 Conn. 660—H. O. Canfield Co. v. United Const. Workers, 70 A.2d 547, 136 Conn. 293.

Fla.—Astor v. Astor, 89 So.2d 645—Ellard v. Godwin, 77 So.2d 617—Northern Inv. Corp. v. Coppock, 183 So. 635, 134 Fla. 168—Bowers v. Bixler, 75 So. 751, 73 Fla. 692.

Ill.—Wise v. Potomac Nat. Bank, 65 N.E.2d 767, 393 Ill. 357.

Hadley v. Lilliander, 66 N.E.2d 822, 328 Ill.App. 591—First Nat. Bank of Jonesboro, Ill., v. Road Dist. No. 8 Union County, 54 N.E. 2d 847, 322 Ill.App. 293, reversed on other grounds 58 N.E.2d 884, 389 Ill. 156. See Corbly v. Corbly, 206 Ill.App. 527.

Ind.—**Corpus Juris Secundum cited in** State v. Criminal Court of Marion County, 130 N.E.2d 128, 133, 234 Ind. 632—Noble County Council v. State ex rel. Fifer, 125 N.E.2d 709, 234 Ind. 172.

Iowa.—**Corpus Juris Secundum quoted in** Rudolph v. Davis, 26 N.W. 2d 231, 233, 238 Iowa 474—Anfinson v. Cook, 276 N.W. 762, 224 Iowa 833.

Kan.—McDonald v. Joint Rural High School Dist. No. 9, 306 P.2d 175, 180 Kan. 563.

Ky.—Singleton v. Bond Lumber Co., 277 S.W. 1018, 211 Ky. 729.

La.—Auto Painting & Repairing Co. v. Ware, App., 159 So. 749.

Me.—Young v. Carignan, 129 A.2d 216—Torrey v. Congress Square Hotel Co., 75 A.2d 451, 145 Me. 234—Rioux v. Portland Water Dist., 170 A. 63, 132 Me. 307—Myers v. Thompson, 102 A. 776, 117 Me. 80.

Md.—Skirven v. Skirven, 140 A. 205, 154 Md. 267, 56 A.L.R. 697.

Mass.—Miller v. Perry, 129 N.E.2d 143, 333 Mass. 155—Curley v. City of Boston, 43 N.E.2d 377, 312 Mass 58—Massachusetts Gasoline & Oil Co. v. Go Gas Co., 166 N.E. 563, 267 Mass. 122, certiorari denied 50 S Ct. 86, 280 U.S. 604, 74 L.Ed. 648—Ilurnanen v. Gardner Automobile Co., 114 N.E. 198, 225 Mass. 189.

Mich.—Brookdale Cemetery Ass'n v. Lewis, 69 N.W.2d 176, 342 Mich. 14—Detroit Trust Co. v. Sosensky, 1 N.W.2d 570, 300 Mich. 353—O'Brien v. Hirschfeld, 281 N.W. 9, 285 Mich. 308—Sezor v. Proctor & Gamble Soap Co., 255 N.W. 175, 267 Mich. 128—Greenberg v. Chambers, 247 N.W. 926, 262 Mich. 706—Common Council of City of Negaunee v. Muck, 171 N.W. 397, 205 Mich. 382.

Minn.—Lamberton v. Lamberton, 38 N.W.2d 72, 229 Minn. 29—Fruen v. Fruen, 37 N.W.2d 417, 228 Minn. 391.

Mo.—Arno v. St. Louis Public Service Co., 202 S.W.2d 787, 356 Mo. 584—Sartin v. Springfield Hospital Ass'n, 195 S.W. 1037.

Brungs v. St. Louis Public Service Co., App., 230 S.W.2d 181—State ex rel. and to Use of Piepmeier v. Camren, 41 S.W.2d 902, 226 Mo.App. 100—Commonwealth Finance Corporation v. Missouri Motor Bus Co., App., 251 S.W. 756.

Mont.—In re Bank's Estate, 260 P. 128, 80 Mont. 159—Pue v. Bushnell, 233 P. 124, 72 Mont. 265.

Neb.—**Corpus Juris Secundum cited in** In re Grainger's Estate, 38 N.W. 2d 435, 439, 151 Neb. 555.

Nev.—Nelson v. Reinhart, 167 P. 690, 41 Nev. 69.

N.H.—Perkins v. Exeter Associates, Inc., 123 A.2d 825.

N.J.—Schuttler v. Reinhardt, 86 A. 2d 438, 17 N.J.Super. 480—Waltz v. Waltz, 83 A 2d 904, 16 N.J.Super. 119—Cortese v. Cortese, 76 A.2d 717, 10 N.J.Super. 152.

Hudson Bergen County Retail Liquor Stores Ass'n v. Board of Com'rs of Hoboken, 52 A.2d 668, 135 N.J.Law 502—Nelson v. Eastern Air Lines, 24 A.2d 371, 128 N.J. Law 46—La Bell v. Quasdorf, 184 A. 750, 116 N.J.Law 368—Martin v. Lehigh Valley R. Co., 176 A. 665, 114 N.J.Law 243—Waton v. Detroit Fidelity & Surety Co., 160 A. 657, 109 N.J.Law 71.

In re Boury's Estate, 3 A.2d 137, 124 N.J.Eq. 608—Bothwell v. Godfrey, 168 A. 287, 114 N.J.Eq. 45.

Ruby v. Quotidian, 183 A. 910, 14 N.J.Misc. 227—Benz v. Miller, 174 A. 167, 12 N.J Misc. 630

N.M.—Garcia v. J. C. Penney Co., 200 P.2d 372, 52 N.M. 410—State v. Raynolds, 164 P. 530, 22 N.M. 473.

N.Y.—Clark v. Delaware & H. R. Corporation, 283 N.Y.S. 739, 245 App Div. 417—Clark v. Delaware & H. R. Corporation, 283 N.Y.S. 739, 245 App Div. 147—Hogan v. Franken, 223 N.Y.S. 1, 221 App Div. 164—McGurty v. Delaware, L. & W. R. Co., 158 N.Y.S. 285, 172 App. Div. 46.

N.C.—Lamm v. Lorbacher, 71 S.E.2d 49, 235 N.C. 728—Hughes v. Oliver, 47 S.E.2d 6, 228 N.C. 680—Brown v. Hall, 40 S.E.2d 412, 226 N.C. 732—King v. Rudd, 37 S.E.2d 116, 226 N.C. 156—Hall v. Landen, 29 S.E. 2d 753, 224 N.C. 233—Moyle v. Hopkins, 21 S.E.2d 826, 222 N.C. 33—Cody v. Hovey, 14 S.E.2d 30, 219 N.C. 369—Texas Co. v. Beaufort Oil & Fuel Co., 154 S.E. 829, 199 N. C. 492—In re La Fayette Bank & Trust Co. of Fayetteville, 153 S.E. 452, 198 N.C. 783.

N.D.—Wolfson v. Schieber, 201 N.W. 830, 52 N.D. 165.

Ohio—S. S. Kresge Co. v. Trester, 175 N.E. 611, 123 Ohio St. 383.

Ramsey v. Holland, 172 N.E. 411, 35 Ohio App. 199.

Cleveland Telephone Co. v. Village of Chagrin Falls, 1 Ohio N.P., N.S., 534.

Okl.—Bennett v. Kiowa County Bank, 145 P. 807, 44 Okl. 575.

Pa.—Ben Avon Borough v. Ohio Valley Water Co., 114 A. 369, 271 Pa. 346.

Brady v. Brady, 79 A.2d 803, 168 Pa.Super. 538—In re Ensign Oil Co.'s Dissolution, 85 Pa.Super. 527.

R.I.—Vingi v. Trillo, 73 A.2d 43, 77 R.I. 55—Kirsh v. Frank, 71 A.2d 778, 76 R.I. 438—Durepo v. Watson, 63 A.2d 570, 75 R.I. 51—Harvey v. Brown, 183 A. 639, 56 R.I. 34—Roy v. Tanguay, 131 A. 553.

S.C.—Johnston v. Standard Oil Co. of New Jersey, 152 S.E. 176, 155 S.C. 179.

S.D.—State v. Plucker, 229 N.W. 934, 56 S.D. 573.

Tenn.—Plantt v. Plantt, 186 S.W.2d 338, 28 Tenn.App. 79—Hemmer v. Tennessee Electric Power Co., 139 S.W.2d 698, 24 Tenn.App. 42.

Tex.—Schroeder v. Brandon, 172 S.W.2d 488, 141 Tex. 319—Casstevens v. Texas & P. Ry. Co., 32 S.W.2d 637, 119 Tex. 456, 78 A.L.R. 89—Hubb Diggs Co. v. Bell, 293 S.W. 808, 116 Tex. 427.

Aronoff v. Texas Turnpike Authority, Civ.App., 299 S.W.2d 342—Weatherly v. Longoria, Civ.App., 292 S.W.2d 139, error refused no reversible error—Penix v. First Nat. Bank of Paris, Civ.App., 260 S.W.2d 63, error refused—Ingham v. Ingham, Civ.App., 240 S.W.2d 409, mandamus overruled—Dallas General Drivers, Warehousemen & Helpers Local Union No. 745 v. Vilbig Bros., Civ.App., 225 S.W.2d 617, error refused no reversible error—Gilles v. Yarbrough, Civ.App., 224 S.W.2d 720—Gowan v. Reimers, Civ.App., 220 S.W.2d 331, error refused no reversible error—Paul v. Houston Oil Co. of Tex., Civ. App., 211 S.W.2d 345, error refused no reversible error—Brenan v. Eubank, Civ.App., 56 S.W.2d 513—Smith's Heirs v. Hirsch, Civ. App. 197 S.W. 754, error refused—Peters v. City of San Antonio, Civ.App., 195 S.W. 989.

Utah.—Campbell v. Union Sav. & Inv. Co., 226 P. 190, 63 Utah 366.

Vt.—Bigelow v. Denis, 117 A.2d 261, 119 Vt. 21—Winegar v. Aubin's Estate, 94 A.2d 240, 117 Vt. 440—Richardson v. Pesons, 77 A.2d 842, 116 Vt. 413—Horicon v. Langlois' Estate, 52 A.2d 888, 115 Vt. 81—Lariviere v. Larocque, 168 A. 559, 105 Vt. 460, 91 A.L.R. 1514—Parizo v. Wilson, 144 A. 856, 101 Vt. 514—Parkhurst v. Healy's Estate, 122 A. 895, 97 Vt. 295—Schlitz v. Lowell Mut. Fire Ins. Co., 119 A. 513, 96 Vt. 337—Pierce v. Mitchell, 90 A. 577, 87 Vt. 538.

Wash.—State v. American University of Sanipractic, 250 P. 52, 140 Wash. 625.

Wis.—Lange v. Olson, 202 N.W. 361, 185 Wis. 657.

§ C.J. p 796 note 15—19 C.J. p 592 note 21—23 C.J. p 609 note 52—26 C.J. p 771 note 41—27 C.J. p 868 note 93—34 C.J. p 1085 notes 53, 54—37 C.J. p 1260 note 43—40 C.J. p 515 notes 24, 25—42 C.J. p 445 note 8, p 1288 note 34—43 C.J. p 1324 note 45—47 C.J. p 548 note 71, p 595 notes 2-10—51 C.J. p 285 note 7—53 C.J. p 591 note 20—58 C.J. p 1279 notes 25, 26.

"When . . . acting [on fair judicial consideration and not arbitrarily] in a matter committed to the discretion of the court by the law the judgment ought not to be overruled by a reviewing court, for to do so would be to deny the right to exercise the discretion given by the law itself."

Kan.—Willoughby v. Willoughby, 283 P.2d 428, 432, 178 Kan. 62.

"Rulings of the superior court on matters addressed to the court's discretion, e. g., granting or refusing a continuance (C.S. § 560), allowing or disallowing removal or change of venue, for convenience of witnesses (C.S. § 470), or to secure a fair trial (C.S. § 471), permitting or denying amendment to pleadings (C.S. § 547), granting or refusing request to file pleadings after time for filing has expired . . . passing upon motion for mistrial on account of the misconduct of parties or counsel . . . or to prevent an alleged miscarriage of justice . . . determination of motion at trial term to set aside verdict as contrary to the weight of the evidence . . . adjudication of application for new trial on ground of newly discovered evidence . . . and the like, which involve no question of law or legal inference, are not subject to review on appeal."

N.C.—Goodman v. Goodman, 161 S.E. 686, 687, 201 N.C. 808.

Exercise of discretion within scope of law

Ill.—Whitney v. Madden, 79 N.E.2d 593, 400 Ill. 185, certiorari denied 69 S.Ct. 55, 335 U.S. 828, 93 L.Ed. 382.

Discretionary order of lower court

(1) The rule stated in the text has been applied to discretionary orders of the lower court.

Fla.—Blue v. Blue, 66 So.2d 228.

N.J.—In re Donohue's Estate, 24 A.2d 185, 131 J.N.Eq. 91.

Or.—In re Oregon Liquor Control Commission, 185 P.2d 246, 181 Or. 707.

Wis.—Hartwig v. Harvey, 27 N.W.2d 363, 250 Wis. 478, 15 A.L.R.2d 333—State v. Marshall & Illsley Bank of Milwaukee, 291 N.W. 361, 234 Wis. 375.

(2) Generally, appellate courts will not interfere on jurisdictional grounds with trial court's reconsideration of discretionary order not based on merits of litigation.

Cal.—Key System Transit Lines v. Superior Court of State, in and for Alameda County, 222 P.2d 867, 36 C.2d 184.

Svistunoff v. Svistunoff, 239 P.2d 650, 108 C.A.2d 638.

In a matter of equitable cognizance, supreme court will not substitute its judgment for that of trial court in absence of a clear abuse of discretion.

Okl.—Missouri, Kansas-Texas R. Co. v. District Court of Creek County, 294 P.2d 579.

Serious error; autocratic action

Questions within discretion of trial court are much better decided by that court than by appellate courts, and decisions of trial judges will be disturbed only where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.

Md.—Northwestern Nat. Ins. Co. v. Samuel R. Rosoff, Limited, 73 A.2d 461, 195 Md. 402.

Mistake of law

(1) If a discretionary order is made by a trial court as a result of an erroneous view of the law, the order may be reversed without establishing an abuse of discretion on part of trial court.

Wis.—Miller v. Belanger, 81 N.W.2d 545, 275 Wis. 187.

(2) Exercise by trial court of its judicial discretion will not be reviewed by the supreme court unless clearly abused in the circumstances or based on a mistake of law as to powers of trial court.

R.I.—Strzebinska v. Jary, 193 A. 747, 58 R.I. 496, 112 A.L.R. 391.

Regulating and controlling business of court

(1) The judge has a discretion in regulating and controlling the business of the court, and the appellate court should never interfere with the exercise of such discretion, unless it is plainly apparent that wrong has resulted from its abuse.

Ga.—Banister v. Hubbard, 62 S.E.2d 761, 82 Ga.App. 813.

(2) Court of appeals has no lawful power or authority to control discretion of trial courts in legitimate exercise of their discretion in conducting business before them, unless that discretion has been abused, or some law of land violated.

Ga.—Digsby v. Johnson, 61 S.E.2d 792, 82 Ga.App. 611.

(3) Trial courts are endowed with large administrative discretion in the conduct of their business and, in absence of abuse of discretion, supreme court will not interfere in such matters.

Ind.—Rogers v. Youngblood, 78 N.E. 2d 663, 226 Ind. 165.

(4) Appellate courts will not interfere with judicial discretion of trial judge to see that the business coming into his court is disposed of in an orderly manner according to the laws and rules of procedure applicable thereto, unless it appears that the discretion has been abused.

where it manifestly appears that justice has been done without sacrificing the rights of litigants.[5.5] In all matters within the discretion of the trial court, appellate courts should hesitate to disturb its actions,[5.10] especially where the controversy involves a factual situation;[5.15] and where a trial court has exercised a legal discretion, the appellate court, although clothed with power of discretion under statute, will be slow to interfere with that discretion.[5.20]

Great weight is, accordingly, given to the judgment of the trial court on discretionary matters;[6] but it is not necessarily conclusive,[7] and the general rule above stated does not give the trial judge an entirely free hand in discretionary matters.[7.5] If the discretion involved is not an arbitrary, absolute one, but a judicial discretion which must be exercised within legal lines in accordance with fixed principles of law, its exercise is subject to review and revision for plain abuse resulting in prejudice

Tex.—Looney v. Traders & General Ins. Co., Civ.App., 231 S.W.2d 735, error refused no reversible error.

The scope of the action must be determined in the court below.
Iowa.—In re Carson's Will, 289 N.W. 30, 227 Iowa 941.

5.5 Ala.—Ex parte Jones, 20 So.2d 859, 246 Ala. 433.
Pa.—Montour Furniture Co. v. Sakolsky, 189 A. 761, 125 Pa.Super. 512.

Instantly visible injustice
There is no error in discretionary ruling unless trial judge plainly and unmistakably does an injustice so apparent as to be instantly visible without argument.
Me.—Young v. Carignan, 129 A.2d 216.

Exceptions
When some palpable error has been committed, or an apparent injustice has been done, ruling is reviewable on exceptions.
Me.—Young v. Carignan, supra.

5.10 Kan.—Gillet v. Powell, 254 P. 2d 258, 174 Kan. 88.
Tex.—Butcher v. Tinkle, Civ.App., 183 S.W.2d 227, error refused.

A reviewing court is likely to affirm an action by the trial court taken in exercise of discretion.
Mo.—Trice v. Lancaster, App., 270 S.W.2d 519.

Reversal rare
An exercise of discretion by trial judge should rarely be reversed.
Mass.—Amory v. Commonwealth, 72 N.E.2d 549, 321 Mass. 240, 174 A.L.R. 370.

Imputed error of law or legal inference
Discretionary rulings of the trial court are not generally considered on appeal, unless accompanied by some imputed error of law or legal inference.
N.C.—Gold v. Kiker, 10 S.E.2d 650, 218 N.C. 204.

5.15 Ohio.—Davies v. Columbia Gas & Elec. Corp., App., 79 N.E.2d 327, reversed on other grounds 86 N.E. 2d 603, 151 Ohio St. 417.

Reason for rule
In such case the reviewing court does not have the same opportunity of determining the merits of the controversy as is given to the trial court.
Ohio.—Davies v. Columbia Gas & Elec. Corp., supra.

5.20 Cal.—Crouch v. Crouch, 147 P. 2d 678, 63 C.A.2d 747.

6. Ill.—People v. Burrell, 139 N.E. 865, 308 Ill. 600.

Rule in equity
Mass.—McDade v. Moynihan, 115 N. E.2d 372, 330 Mass. 437, 39 A.L.R. 2d 1223.

Discretion superseded by imperative legal duty
In action at law, exercise of discretion of trial court can be revised only where matter is so clear that discretion is superseded by imperative legal duty.
Mass.—Desmond v. Boston Elevated Ry. Co., 64 N.E.2d 357, 319 Mass. 13—Bartley v. Phillips, 57 N.E.2d 26, 317 Mass. 35.

Basis for action appearing in record
(1) Even though basis for action appears fully in record on appeal, some weight should be given to exercise of discretion by court below.
Mass.—Long v. George, 7 N.E.2d 149, 296 Mass. 574.

(2) This rule has been applied.
Mass.—Briggs v. Briggs, 65 N.E.2d 9, 319 Mass. 149.

Leave to file bill of review
On appeal from superior court decree granting leave to file a bill of review on ground of newly discovered evidence, weight must be given to exercise of discretionary power by that court, and error of law or fact must be shown by the record to justify reversal of action of trial court.
Mass.—Curley v. City of Boston, 43 N.E.2d 377, 312 Mass. 58.

7. Mo.—State ex rel. and to Use of Piepmeier v. Camren, 41 S.W.2d 902, 226 Mo.App. 100.

Much latitude is given trial courts in exercise of judicial discretion, but not every discretion so exercised is without appellate review.
Tex.—Pearl Assur. Co. v. Williams, Civ.App., 167 S.W.2d 808.

In equity, questions of discretion, like other questions of fact, are open on appeal.
Mass.—D. J. Doyle & Co. v. Darden, 103 N.E.2d 248, 328 Mass. 286, 288.

Reviewing court cannot disregard questions that fairly challenge action of trial court and is not warranted in disregarding such questions by simply reiterating principle that reviewing court should not interfere with discretion of trial judge.
Ill.—Stobbs v. Cumby, 132 N.E.2d 448, 9 Ill.App.2d 138.

Discretion of appellate division
(1) Appellate division may review matters of discretion; since that court is a branch of the supreme court, whenever discretion is vested in supreme court, such discretion may be exercised by appellate division in reviewing action of trial term or special term, although trial term or special term has not been guilty of abuse of discretion.
N.Y.—O'Connor v. Papertsian, 131 N. E.2d 883, 309 N.Y. 465.

(2) Appellate division should correct error if right is shown to exist to which special term has not accorded proper recognition.
N.Y.—International Ry. Co. v. Barone, 284 N.Y.S. 122, 246 App.Div. 450.

7.5 S.C.—Page v. North Carolina Mut. Life Ins. Co., 35 S.E.2d 716, 207 S.C. 277.

Action as basis for reversal
Action of trial judge commonly characterized as discretionary may constitute a basis for reversal, although it is only in the exceptional case that a discretionary act of a trial judge will lead to a reversal.
N.J.—Schuttler v. Reinhardt, 86 A.2d 438, 17 N.J.Super. 480.

Litigant's right to reasonable action
Court of appeals has not power or inclination to control trial judge's discretion in deciding particular matter in particular way or to direct court as to what judgment to enter; but litigant has constitutional right to have trial court act seasonably and reasonably and render some sort of judgment and statutory right to appeal from judgment entered, if trial court has power to grant appeal.
Ky.—Ragland v. Baxter, 177 S.W.2d 579, 296 Ky. 457.

to the complaining party;[8] if the court goes beyond the confines of its discretionary latitude, its action is considered not as discretionary, but as erroneous.[8.5]

In this connection, judicial discretion is the option which the judge may exercise between the doing and the not doing of a thing, the doing of which cannot be demanded as an absolute right of the party asking that it be done,[8.10] or is the power of a court to determine a question on fair judicial consideration with respect to what is right and equitable under the law and the circumstances, and directed by reason and conscience to a just result.[8.15] Judicial discretion requires action in conformity with law on the facts and circumstances before the court after hearing and due consideration;[8.20] but it has also been held that judicial discretion, as habitually employed, simply means that the case before the court is governed, not by legal rules, but by some well-established equitable principles.[8.25] The exercise of judicial discretion implies conscientious judgment, not arbitrary action, taking into account the law and the particular circumstances of the case;[8.30] the essence of judicial discretion is

8. Ariz.—Kimball v. Statler, 176 P. 843, 20 Ariz. 81.
Cal.—Gordon v. Harbolt, App., 280 P. 701, rehearing denied 281 P. 1048, hearing dismissed.
Mass.—Boynton v. Tarbell, 172 N.E. 340, 272 Mass. 142—Nickerson v. Glines, 107 N.E. 942, 220 Mass. 333.
Mich.—Daly v. Blair, 150 N.W. 134, 183 Mich. 351.
Mo.—State Bank of Seneca v. Saft, App., 75 S.W.2d 420.
Neb.—Pettegrew v. Pettegrew, 260 N. W. 287, 128 Neb. 783.
N.J.—Fotopak Corp. v. Merlin, Inc., 112 A.2d 578, 34 N.J.Super. 343—Smith v. Smith, 85 A.2d 523, 17 N.J.Super. 128.
Ruby v. Quotidian, 183 A. 910, 14 N.J.Misc. 227.
N.Y.—Baltimore Mail S. S. Co. v. Fawcett, 199 N.E. 628, 269 N.Y. 379.
International Ry. Co. v. Barone, 284 N.Y.S. 122, 246 App.Div. 450.
N.D.—Kohlman v. Hyland, 219 N.W. 228, 56 N.D. 772.
Ohio.—Fessenden v. Fessenden, 165 N.E. 746, 32 Ohio App. 16.
R.I.—Harvey v. Brown, 183 A. 639, 56 R.I. 34—MacKenzie & Shea v. Rhode Island Hospital Trust Co., 122 A. 774, 45 R.I. 407.
Tenn.—Knaffl v. Knoxville Banking & Trust Co., 201 S.W. 775, 139 Tenn. 240.
Wash.—State v. Superior Court for King County, 163 P. 765, 95 Wash. 258.
4 C.J. p 797 note 18—47 C.J. p 548 note 72.

Necessity of showing prejudicial error
Trial court cannot be convicted of abuse of discretion in the absence of a showing of prejudicial error.
Mo.—Enyart v. Santa Fe Trail Transp. Co., 241 S.W.2d 268.

Noncompliance with procedural rules
A lower court will not be reversed either for waiving or refusing to waive noncompliance with procedural rules, in the absence of a showing of an abuse of discretion which has caused manifest and palpable injury to the complaining party.
Pa.—Coppage v. Smith, 113 A.2d 247, 381 Pa. 400.

Party going without day
Matters resting in discretion may not be urged for error unless the party suffering thereby goes without day and abuse of discretion is shown.
N.J.—Kople v. Zalon, 5 A.2d 750, 122 N.J.Law 422.

Appeal from interlocutory order
(1) On an appeal from an interlocutory order which does not destroy, impair, or seriously imperil some substantial right of appellant, unless corrected before trial, supreme court, ordinarily, will not interfere with the order entered.
N.C.—Carolina Power & Light Co. v. Bowman, 56 S.E.2d 602, 231 N.C. 332.

(2) Particular interlocutory proceedings see infra §§ 1593–1600.

Injurious abuse of discretion held not shown
N.J.—Palestroni v. Jacobs, 87 A.2d 356, 18 N.J.Super. 438.

Forum non conveniens
Supreme court may grant relief where district court abuses discretion in refusing to consider border-state cases.
Minn.—Ramsey v. Chicago Great Western Ry. Co., 77 N.W.2d 176, 247 Minn. 217, certiorari denied Chicago Great Western Ry. Co. v. Ramsey, 77 S.Ct. 63, 352 U.S. 841, 1 L.Ed.2d 57.

8.5 N.J.—Schuttler v. Reinhardt, 86 A.2d 438, 17 N.J.Super. 480.

Abuse as legal error
Where the abuse becomes a ground of reversal, it is, even when committed by a court of record, legal error.
N.J.—Hudson Bergen County Retail Liquor Stores Ass'n v. Board of Com'rs of Hoboken, 52 A.2d 668, 135 N.J.Law 502.

8.10 Ind.—McFarlan v. Fowler Bank City Trust Co., 12 N.E.2d 752, 214 Ind. 10.
Judicial discretion defined generally see 27 C.J.S. p 135 note 49—p 138 note 83.

Whim of judge as to action
Judicial discretion does not imply that a court may act, or fail to act, according to the mere whim or caprice of the presiding judge, but means a discretion exercised within the limits of the applicable principles of law and equity.
Fla.—Ellard v. Godwin, 77 So.2d 617.

Taking of action as question of fact
Whether or not action within discretion of court shall be taken is ordinarily a question of fact whether, under rules of law and established principles of practice, having respect to rights and interests of all parties, justice and equity require action in question.
Mass.—Long v. George, 7 N.E.2d 149, 296 Mass. 574.

8.15 Md.—Schneider v. Hawkins, 16 A.2d 861, 179 Md. 21.

8.20 Pa.—In re Philadelphia County Grand Jury, April 1943, 32 A.2d 199, 347 Pa. 316.
In re Grand Jury Investigation of Conditions at the Western State Penitentiary, 96 A.2d 189, 173 Pa. Super. 197.

Discretion as legal discretion
(1) Judicial discretion is always a legal discretion.
Conn.—Grievance Committee of Fairfield County Bar v. Nevas, 96 A.2d 802, 139 Conn. 660.

(2) Judicial power, as contradistinguished from the power of the laws, has no existence, and courts are mere instruments of the law and can will nothing; and when they are said to exercise a discretion, it is a mere legal discretion, to be exercised in discerning the course prescribed by law.
Pa.—In re Philadelphia County Grand Jury, April 1943, 32 A.2d 199, 347 Pa. 316.

8.25 N.H.—Morgan v. Morgan, 47 A. 2d 569, 94 N.H. 116.

8.30 N.J.—Hager v. Weber, 81 A.2d 155, 7 N.J. 201.

"Judicial" distinguished from "arbitrary" discretion
(1) "When invoked as a guide to judicial action, it ["discretion"] means a sound discretion, that is to say, a discretion exercised not arbi-

the exercise of judgment directed by conscience and reason, as opposed to capricious or arbitrary action,[8.35] and the exercise of discretion does not necessarily follow along strict rules of law, but may be exercised in what the court conceives to be demanded in justice.[8.40]

Some decisions, however, appear to recognize, in certain classes of cases, the existence of an arbitrary, absolute discretion which is not subject to review at all;[9] and it has been held that discretionary rulings may, on occasion, be reviewed, but not when exercise of the best judgment of the judge on the occasion that called therefor was guided by the law.[9.5]

If a ruling which might have been made as a matter of discretion is based entirely on other grounds, the appellate court will not consider whether the ruling would constitute a proper exercise of the discretionary power.[10]

Where the trial court is not entitled, in the particular circumstances, to exercise discretion, the record does not present for review a question of abuse of discretion.[10.5]

trarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result."

U.S.—Langnes v. Green, Wash., 51 S.Ct. 243, 247, 282 U.S. 531, 75 L. Ed. 520.

Neb.—Pettegrew v. Pettegrew, 260 N. W. 287, 289, 128 Neb. 783.

(2) "It is the general rule that matters which rest in the judicial discretion of the trial court cannot be reviewed by this court. . . . It is, however, a sound judicial and not an arbitrary discretion which must be exercised. . . . Abuse of discretion as to specifications [among other matters not in question] becomes error of law and is subject to revision."

Mass.—Nickerson v. Glines, 107 N.E. 942, 943, 944, 220 Mass. 333.

(3) "Judicial discretion" is a discretion which is not arbitrary, vague, or fanciful, or controlled by humor or caprice, but is governed by principle and regular procedure for the accomplishment of the ends of right and justice.

N.M.—Pankey v. Hot Springs Nat. Bank, 84 P.2d 649, 653, 42 N.M. 674.

(4) "In the absence of something to indicate that a discretionary power has been exercised arbitrarily, capriciously, or contrary to legal usage, we are bound by the result. So long as such discretion is exercised judicially, the result is beyond our reach."

Minn.—Plunkett v. Lampert, 43 N.W. 2d 489, 494, 231 Minn. 484—Ogrosky v. Commonwealth Electric Co., 214 N.W. 765, 766, 172 Minn. 46.

8.35 Del.—Pitts v. White, 109 A.2d 786, 10 Terry 78.

In re Public Service Holding Corp., 24 A.2d 584, 26 Del.Ch. 436—Radio Corp. of America v. Philadelphia Storage Battery Co., 6 A. 2d 329, 23 Del.Ch. 289.

8.40 Ohio.—Thompson v. Stonom, App., 57 N.E.2d 788.

9. Md.—Johnson & Higgins v. Simpson, 163 A. 832, 163 Md. 574.

4 C.J. p 797 note 16.

Discretionary action and matters of practice as decisions reviewable see supra § 111.

When a court has authority to act "within its discretion," it is vested with power to decide as it considers proper, and its discretion is not subject to review by the Court of Appeals. Watson v. Cook, 170 Md. 377, 380 A. 908. To hold that the exercise of discretion may be reviewed by a tribunal other than that upon which it is conferred would pervert and destroy the meaning of the word.

Md.—Schneider v. Hawkins, 16 A.2d 861, 864, 179 Md. 21.

Procedure not affecting ultimate rights

The term "judicial discretion" has two meanings, one pertaining to procedure not affecting the ultimate rights of litigants, from which no appeal lies; the other involving legal and equitable rights determinable only according to applicable principles and not according to arbitrary will of court.

Tex.—Sunshine Bus Lines v. Craddock, Civ.App., 112 S.W.2d 248, affirmed 133 S.W.2d 124, 134 Tex. 388.

Area of discretion of court

While an appeal will not lie from an order or decree passed in the exercise of the discretion of the lower court, question whether subject matter of order or decree is within the area of the discretion of the lower court is open to examination on an appeal in the same case, since a court cannot improvidently extend the exercise of its jurisdiction to matters which lie beyond its legitimate reach.

Md.—Saltzgaver v. Saltzgaver, 35 A. 2d 810, 182 Md. 624—Gottschalk v. Mercantile Trust & Deposit Co., 62 A. 810, 102 Md. 521.

Motion for judgment on pleadings

(1) Trial judge had absolute discretion over motion or rule for judgment on pleadings, and his ruling dismissing the motion was not reviewable.

La.—Smith v. Parker, App., 59 So.2d 718.

(2) The trial judge's refusal to render judgment on the petition is not subject to review by appeal; where trial judge, on the petition and answer, makes rule absolute and grants judgment, appeal lies, but it is only when judge has arbitrarily abused discretion that appellate court is called on to pass on his ruling.

La.—Beam v. Dudding, App., 43 So. 2d 73.

9.5 Me.—Collins v. Bugbee & Brown Co., 1 A.2d 178, 136 Me. 12.

10. Cal.—**Corpus Juris Secundum quoted in** People Acting By and Through Dept. of Public Works v. Union Mach. Co., 284 P.2d 72, 74, 133 C.A.2d 167.

N.Y.—Waisikoski v. Philadelphia & Reading Coal & Iron Co., 159 N.Y. S. 906, 173 App.Div. 538, affirmed 127 N.E. 923, 228 N.Y. 581.

Rulings made as matters of admissibility

Where rulings which might have been made as matters of discretion were instead made as matters of law, of admissibility, the correctness of the rulings must be reviewed on same basis.

Cal.—People Acting By and Through Dept. of Public Works v. Union Mach. Co., 284 P.2d 72, 133 C.A.2d 167.

10.5 Ind.—Zumpfe v. Piccadilly Realty Co., 13 N.E.2d 715, 214 Ind. 282, 124 A.L.R. 1060, reheard 15 N.E.2d 362, 214 Ind. 282, 124 A.L.R. 1068.

Prohibition

Order granting or denying remedy of prohibition is reviewable on appeal, where there is no room for exercise of discretion.

N.Y.—Baltimore Mail S. S. Co. v. Fawcett, 199 N.E. 628, 269 N.Y. 379, 104 A.L.R. 1068, conformed to 287 N.Y.S. 159, 247 App.Div. 739, certiorari denied Madsen v. Baltimore Mail S. S. Co., 56 S.Ct. 939, 298 U.S. 675, 82 L.Ed. 1396.

Matters of procedure. A reviewing court will not interfere in matters of procedure calculated to determine with reasonable speed the substantive rights of the parties, unless there is an unreasonable abuse of discretion.[10.10]

Abuse as matter of law. It has been held that the discretion of the trial court will be upset on appeal only on a showing that as a matter of law the trial court abused its discretion,[10.15] or that its discretion was erroneously exercised as a matter of law.[10.20]

Liability or extent thereof. A more strict scrutiny of the discretion of the trial court is due, and must be applied, in those cases in which defendant's liability is debatable than in those in which the extent only of that liability is in issue.[10.25]

(2) Particular Applications of Rule

The general rule that the exercise of the judicial discretion of the trial court will not be reviewed or revised on appeal in the absence of an abuse of discretion has been applied to a wide variety of rulings or actions of trial courts.

Cases on matters involving the exercise of a judicial discretion within the application of the rules stated supra subdivision a (1) of this section are legion. Among those not specifically considered infra §§ 1586–1641 are the grant or refusal of discretionary equitable relief or orders,[11] including specific performance;[11.5] determination of the na-

10.10 Ky.—Coca Cola Bottling Works of Lexington v. Seale, 185 S.W.2d 685, 299 Ky. 409.

Possible or probable prejudice to party

When an attack is made on a discretionary procedural order of trial court, reviewing court may deduce that order was not made in exercise of sound discretion if record indicates that order resulted in probable or possible prejudice to a party.

Cal.—San Diego County v. Bank of America Nat. Trust & Sav. Ass'n, 286 P.2d 880, 135 C.A.2d 143.

10.15 Cal.—Rice v. Schubert, 226 P. 2d 50, 101 C.A.2d 638.

N.Y.—Delaware, L. & W. R. Co. v. Slocum, 87 N.E.2d 532, 299 N.Y. 496, reversed on other grounds 70 S.Ct. 577, 339 U.S. 239, 94 L.Ed. 795, and reargument denied 93 N.E.2d 926, 301 N.Y. 661.

10.20 S.C.—Jordan v. State Highway Department, 3 S.E.2d 201, 190 S.C. 397.

10.25 Ariz.—Miller v. Condon, 182 P. 2d 105, 66 Ariz. 34.

11. Cal.—Strong v. Hancock, 258 P. 60, 201 C. 530.

Robertson v. Nichols, 206 P.2d 898, 92 C.A.2d 201.

Fla.—Borson v. Lisenby, 156 So. 10, 115 Fla. 333—Small v. Colonial Inv. Co., 109 So. 433, 92 Fla. 503.

Ky.—Rallihan v. Motschmann, 200 S. W. 358, 179 Ky. 180.

Ohio.—Montalto v. Yeckley, 54 N.E. 2d 421, 143 Ohio St. 181.

Okl.—Eastland v. Oklahoma City, 248 P. 830, 118 Okl. 97.

Tenn.—Chumbley v. People's Bank & Trust Co., 60 S.W.2d 164, 166 Tenn. 35.

Tex.—Burnett v. Surratt, Civ.App., 67 S.W.2d 1041.

Discretionary rulings with respect to injunctions see infra § 1591.

Equitable proceeding involving foreign corporation

Ariz.—Van Denburgh v. Tungsten Reef Mines Co., 63 P.2d 647, 48 Ariz. 540.

Cancellation or setting aside of instruments

(1) Conveyances by elderly persons of impaired mentality but not absolutely disqualified made without independent advice and for no consideration.

Cal.—George v. Soares, 128 P.2d 377, 54 C.A.2d 29.

(2) In a suit to have a conveyance set aside as fraudulent, on the question of the adequacy of the consideration, "the determination of just what is an adequate consideration for a transfer calls for the exercise of judicial discretion, and . . . to warrant interference with the discretion vested in the trial court, the disparity between the ascertained value of the thing sold and the price paid must be so clear and so great as at first glance to shock the moral sense."

Cal.—Commercial Nat. Bank of Los Angeles v. Roberts, 194 P. 751, 753, 49 C.A. 764.

(3) In a suit to set aside the sale of a deceased partner's interest to the surviving partner, an exception to the court's refusal to order the cancellation fails where the record shows the discretion of the court to have been properly exercised.

N.H.—Cotton v. Stevens, 129 A. 873, 82 N.H. 105.

Enforcement of mechanics' liens

In a proceeding in which materialmen seek to enforce their liens, where, as provided by statute, the court has the discretionary power to restrict recovery to the contractor and the sureties on his bond, its conclusion that it would be equitable to do so cannot be disturbed on appeal in the absence of a plain abuse of discretion.

Cal.—Simpson v. Bergmann, 13 P.2d 531, 125 C.A. 1.

Matters relating to trusts

(1) Supervision of trusts.

Miss.—Reedy v. Johnson's Estate, 26 So.2d 685, 200 Miss. 205.

(2) Distribution of proceeds of sale of trust property.

Pa.—In re Dempwolf's Estate, 57 Pa. Dist. & Co. 271, 60 York Leg.Rec. 61.

(3) Refusal of chancellor to revoke trust because of complainant's inability to manage his own affairs.

Tenn.—Guion v. National Bank of Commerce, 218 S.W.2d 739, 31 Tenn. App. 540.

(4) Although the terms of a trust deed are matters of contract, the medium provided for its execution may be a matter within the discretion of a court of equity and, unless this discretion has been abused, the appellate court will not interfere.

Va.—New York Life Ins. Co. v. Kennedy, 135 S.E. 882, 146 Va. 197.

Rescission

"An action for rescission is addressed to the sound discretion of the court and, like all such matters, when passed upon by the trial court, will not be disturbed excepting for abuse of discretion."

Wis.—Mueller v. Michels, 199 N.W. 380, 382, 184 Wis. 324.

4 C.J. p 796 note 15 [c].

In Massachusetts it is often held that an appeal in equity brings up questions of discretion for review.

Mass.—Frechette v. Thibodeau, 200 N.E. 538, 294 Mass. 51—Trade Mut. Liability Ins. Co. v. Peters, 195 N. E. 900, 291 Mass. 79.

4 C.J. p 797 note 16 [b] (3).

11.5 Cal.—McGinn v. Willey, 141 P. 49, 24 C.A. 303.

Fla.—Ray Richardson, Inc., v. Carlton, 191 So. 433, 140 Fla. 229—Scott v. City of Venice, 167 So. 654, 123 Fla. 772—Merrill v. Barnes, 114 So. 527, 94 Fla. 882—Orlando Realty Board Bldg. Corporation v. Hilpert, 113 So. 100, 93 Fla. 954—Toomer v. Chancey, 109 So. 641, 92 Fla. 458—Wimbish v. Douglass, 109 So. 306, 92

ture of the action;[11.10] rulings on motions generally,[11.15] and method of procedure and conduct as to hearing motions;[11.20] grant and disposition of rules to show cause;[11.25] management of the court calendar;[11.30] probate proceedings or matters;[12] and determination or decision as to the care, custody, or control of a child.[12.5]

The rules have also been applied to the allowance of a particular remedy or proceeding;[13] the compel-

Fla. 224—Daubmyre v. Hunter, 98 So. 69, 86 Fla. 326—Dixie Naval Stores Co. v. German-American Lumber Co., 79 So. 836, 76 Fla. 339—Murphy v. Hohne, 74 So. 973, 73 Fla. 803, L.R.A.1917F 594.
Ill.—Mohnk v. Seyfarth, 171 N.E. 510, 339 Ill. 371—Chicago Title & Trust Co. v. Schwartz, 171 N.E. 169, 339 Ill. 184.
Ky.—Coral Gables v. Sherrill, 65 S.W.2d 732, 251 Ky. 658.
Mont.—Interior Securities Co. v. Campbell, 178 P. 582, 55 Mont. 459.
N.J.—Elmora Development Corporation v. Horwitz, 130 A. 655, 98 N.J. Eq. 690.
Pa.—Shillington Bank v. Moore, 131 A. 718, 285 Pa. 101.
Vt.—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292.
Wis.—Johnson v. McKeon, 251 N.W. 226, 213 Wis. 358.
4 C.J. p 796 note 15 [d].

Judicial discretion

The discretion exercised by the trial court in granting or denying specific performance is a judicial discretion, to be exercised in conformity with established principles and rules, and is therefore subject to review for abuse.
Fla.—Witham v. Shepard, 92 So. 685, 84 Fla. 75.
Vt.—Bufton v. Crane, 143 A. 382, 101 Vt. 276.

The test on appeal in specific performance case is whether trial court has exercised its discretion on grounds, or for reason, clearly untenable or to an extent clearly unreasonable.
Vt.—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292.

No hardship or injustice

Remedy of specific performance is discretionary, and where neither hardship nor injustice results to defeated party, court of review will not interfere with a judgment which requires its enforcement.
N.Y.—Mongaup Valley Co. v. Nyamco Associates, 289 N.Y.S. 221, 247 App.Div. 694.

Oral contract
Fla.—Trimble v. Hart, 177 So. 710, 130 Fla. 396.

Contract for sale or lease of land
Fla.—Topper v. Alcazar Operating Co., 35 So.2d 392, 160 Fla. 42—White v. Cohn, 188 So. 581, 137 Fla. 501—Speisberger v. Newman Realty Co., 169 So. 859, 125 Fla. 342.
Iowa.—Vermeulen v. Meyer, 29 N.W. 2d 232, 238 Iowa 1033.
Mass.—Exchange Realty Co. v. Bines, 18 N.E.2d 425, 302 Mass. 93.

11.10 Wash.—Pollock v. Ralston, 104 P.2d 934, 5 Wash.2d 36.

Action at law or equitable in nature
Wash.—Coleman v. Highland Lumber, 283 P.2d 123, 46 Wash.2d 549.

11.15 Ark.—State v. Midland Valley R. Co., 122 S.W.2d 173, 197 Ark. 243.
Cal.—Coviello v. Moco Fruit Co., 109 P.2d 765, 42 C.A.2d 637.
Determination as to grant of leave to renew see Motions and Orders § 45 c.

11.20 Fla.—**Corpus Juris cited in** Zemurray v. Kilgore, 177 So. 714, 718, 130 Fla. 317.
N.H.—Goodwin v. Blanchard, 64 A. 22, 73 N.H. 550.

11.25 N.J.—Becker v. Welliver, 34 A.2d 893, 131 N.J.Law 64.

11.30 N.Y.—Siegler v. Massachusetts Accident Co., 8 N.Y.S.2d 751, 255 App.Div. 1031.

12. Ind.—Fowler v. Ball, 141 N.E. 64, 82 Ind.App. 167.
Minn.—In re Fults' Estate, 225 N.W. 152, 177 Minn. 334.
Ohio.—In re Callan's Estate, App., 135 N.E.2d 464.
Or.—In re Workman's Estate, 68 P. 2d 479, 156 Or. 333—In re Faulkner's Estate, 65 P.2d 1045, 156 Or. 23.
R.I.—MacKenzie & Shea v. Rhode Island Hospital Trust Co., 122 A. 774, 45 R.I. 407.
Wash.—In re St. Martin's Estate, 27 P.2d 326, 175 Wash. 285.

Investment by guardian

The finding of the trial court as to whether the funds in a guardian's hands are sufficient to justify a prudent person in seeking investment therefor will not be disturbed in the absence of an abuse of discretion.
Okl.—Kerr v. Weathers, 153 P. 866, 49 Okl. 574.

12.5 Cal.—De Freitas v. De Freitas, 285 P.2d 111, 133 C.A.2d 769.
Idaho.—Wilson v. Wilson, 291 P.2d 1113, 77 Idaho 325.
Ind.—McKay v. Carstens, 108 N.E.2d 249, 231 Ind. 252.
Kan.—Powell v. Powell, 249 P.2d 630, 173 Kan. 435.
Okl.—House v. House, 249 P.2d 113, 207 Okl. 238.
Tex.—Herre v. Morris, Civ.App., 251 S.W.2d 260—Gardner v. Bryan, Civ. App., 241 S.W.2d 297, error refused no reversible error.
Wash.—Klettke v. Klettke, 294 P.2d 938, 48 Wash.2d 502.

Release of delinquent children on bond
Tex.—Espinosa v. Price, 188 S.W.2d 576, 144 Tex. 121, 160 A.L.R. 284.

13. Cal.—Sunset Scavenger Corporation v. Oddou, 53 P.2d 188, 11 C.A. 2d 92.
N.Y.—Baltimore Mail S. S. Co. v. Fawcett, 199 N.E. 628, 269 N.Y. 379.

Alias writ of inquiry of damages

The action of the trial court in granting or refusing an alias writ of inquiry of damages will not be reviewed, except for a clear case of abuse of discretion.
Pa.—Reese & Bernard Electric Co. v. Leventry, 156 A. 581, 102 Pa.Super. 353.

Declaratory judgment or relief

(1) Where, under the provisions authorizing such judgment, the granting or withholding of a declaratory judgment, or declaratory relief, rests in the sound judicial discretion of the court, the exercise of such discretion is subject to appellate review only for abuse.
Cal.—Silva v. City and County of San Francisco, 198 P.2d 78, 87 C.A.2d 784—Caldwell v. Gem Packing Co., 125 P.2d 901, 52 C.A.2d 80—Frederick v. North Side Water Co. of Walnut, 122 P.2d 59, 49 C.A.2d 489—Fay Securities Co. v. Mortgage Guarantee Co., 100 P.2d 344, 37 C.A.2d 637—Handschy v. Handschy, 90 P.2d 123, 32 C.A.2d 504—Sunset Scavenger Corp. v. Oddou, 53 P.2d 188, 11 C.A.2d 92—Bard v. Standard Mortg. Corporation, 6 P. 2d 582, 119 C.A. 509.
N.Y.—Delaware, L. & W. R. Co. v. Slocum, 87 N.E.2d 532, 299 N.Y. 496, reversed on other grounds 70 S.Ct. 577, 339 U.S. 239, 94 L.Ed. 795, and reargument denied 93 N.E.2d 926, 301 N.Y. 661.
Strobe v. Netherland Co., 283 N. Y.S. 246, 245 App.Div. 573.

(2) Where there was no dispute with respect to facts, but only a question of law as to whether case was proper one for declaratory judgment, no legal discretion was involved, as against contention that the exercise of discretion by the lower court in assuming jurisdiction under Declaratory Judgment Act should not be disturbed on appeal unless supreme court could say that there had been an abuse of discretion.
Or.—Oregon Creamery Mfrs. Ass'n v. White, 78 P.2d 572, 159 Or. 99.

(3) The trial court should have some discretion in passing on ques-

ling of an election of remedies,[14] or of election between theories of recovery alleged in separate counts;[14.5] the granting of relief from a stipulation;[15] the determination by the court or judge of his, or its, own jurisdiction[16] or qualifications or disqualification;[17] a request by a judge to have another hold court for him,[18] and the transfer of causes from law to equity[19] or vice versa.[20]

Other matters within the application of the general rules are the allowance or refusal of amendments;[21] laches, or the lapse of sufficient time to

tion whether a cross action will be permitted in a declaratory judgment action, and its disposition of such question should not be disturbed on appeal unless it clearly appears that the trial court abused its discretion.
Tex.—Darling v. Panhandle & Santa Fe Ry. Co., Civ.App., 209 S.W.2d 660, refused no reversible error.

(4) Discretion of lower court as to declaratory judgments generally see Declaratory Judgments § 164.

Quo warranto
Tex.—State ex rel. Manchac v. City of Orange, Civ.App., 274 S.W.2d 886.
Wash.—State ex rel. Winters v. Steele, 224 P.2d 332, 37 Wash.2d 434.

14. Colo.—Enyart v. Orr, 238 P. 29, 78 Colo. 6.
Conn.—Hoard v. Sears, Roebuck & Co., 188 A. 269, 122 Conn. 185.
Fla.—Wilkie v. Roberts, 109 So. 225, 91 Fla. 1064
Or.—Kaller v. Spady, 24 P.2d 351, 144 Or. 206—Patterson v. Babcock & Peets, 274 P. 903, 128 Or. 476.
4 C.J. p 810 note 48.

14.5 Or.—Cook v. Kinzua Pine Mills Co., 293 P.2d 717, 207 Or. 34.

15. Cal.—Cohn v. Cohn, 118 P.2d 903, 47 C.A.2d 683.
Minn.—National Council of Knights and Ladies of Security v. Scheiber, 169 N.W. 272, 141 Minn. 41.
N.H.—Perley v. Bailey, 199 A. 570, 89 N.H. 359.
S.D.—Payton v. Rogers, 285 N.W. 873, 66 S.D. 486.
Vt.—In re Mangan, 32 A.2d 673, 113 Vt. 246.
Wash.—Stevenson v. Hazard, 277 P. 450, 152 Wash. 104.
60 C.J. p 95 notes 48, 49.
"An order of a court disregarding a stipulation entered into between the parties to an action is discretionary, and . . . such order may be disturbed only when it clearly appears that the order was the result of an abuse of discretion."
Cal.—Baucus v. Riveroll, 272 P. 760, 761, 95 C.A. 224.
Discretion and power of court to relieve from stipulations see Stipulations § 34.
60 C.J. p 94 notes 34–40.

16. Okl.—McDonald v. Renz, 88 P.2d 336, 184 Okl. 485—Adair v. Montgomery, 176 P. 911, 74 Okl. 21.
Or.—Horner v. Pleasant Creek Mining Corp., 107 P.2d 989, 165 Or. 683, rehearing denied 109 P.2d 1044, 165 Or. 683.

Appellate jurisdiction
A court to which legislature has granted appellate jurisdiction has the authority to decide whether such jurisdiction is properly exercised, and court of appeals will not pass on alleged abuse of such discretion.
Md.—Montgomery Ward & Co. v. Herrmann, 58 A.2d 677, 190 Md. 405.

Held subject to review
N.C.—Jones v. Standard Oil Co. of New Jersey, 162 S.E. 741, 202 N.C. 328.

17. Cal.—Wilson v. Davis, 81 P.2d 971, 11 C.2d 761.
Okl.—Parnacher v. Mount, 248 P.2d 1021, 207 Okl. 275—Sabin v. Levorsen, 214 P.2d 445, 202 Okl. 465, supplemented on other grounds and rehearing denied 214 P.2d 449, 202 Okl. 468, certiorari denied 71 S.Ct. 53, 340 U.S. 833, 95 L.Ed. 611, rehearing denied 71 S.Ct. 193, 340 U.S. 885, 95 L.Ed. 642—Twin City Fire Ins. Co. of Minneapolis, Minn. v. First Nat. Bank, 292 P. 833, 145 Okl. 293—Fidelity-Phoenix Fire Ins. Co. of New York v. First Nat. Bank, 292 P. 829, 145 Okl. 289—Williams v. Williams, 249 P. 920, 120 Okl. 12.
Pa.—In re Crawford's Estate, 160 A. 585, 307 Pa. 102.
Utah—Musser v. Third Judicial Dist. Court of Salt Lake County, 148 P. 2d 802, 106 Utah 373.

18. Wis.—State v. Circuit Court of Outagamie County, 208 N.W. 490, 189 Wis. 629.

Application to board of circuit judges
Under a statute authorizing the application, a circuit judge may apply to the chairman of the board of circuit judges to have another judge hold court for him in his circuit; such application and the act of such chairman in designating a judge are highly discretionary, and will not be set aside except for gross abuse of discretion.
Wis.—State v. Circuit Court of Outagamie County, supra.

19. Ky.—Brown v. Crescent Stave Co., 269 S.W. 739, 207 Ky. 470.

In Alabama it is held that, because the statute providing for the removal or transfer of causes from law to equity does not authorize an appeal, the action of the trial court with respect to a removal or transfer is not subject to review.
Ala.—Pickens County v. Johnson, 149 So. 252, 227 Ala. 190, followed in Montgomery v. Johnson, 149 So. 257, 227 Ala. 196—Greene v. Rolston, 147 So. 628, 226 Ala. 446—Maryland Casualty Co. v. Dupree, 136 So. 811, 213 Ala. 420—Wiggins v. Stewart Bros., 109 So. 101, 215 Ala. 9—Fountain v. State, 100 So. 892, 211 Ala. 586—Crocker v. Goldstein, 95 So. 873, 209 Ala. 172.
Thompson v. Manufacturers' Finance Acceptance Corporation, 150 So. 175, 25 Ala.App. 534, certiorari denied 150 So. 178, 227 Ala. 43, and 150 So. 178, 227 Ala. 334.

20. Iowa.—Fitzgibbon v. Midland Mortg. Co., 199 N.W. 292, 197 Iowa 1379.

21. Md.—Holloway v. Safe Deposit & Trust Co. of Baltimore, 136 A. 269, 152 Md. 289.
N.J.—Hoffman v. Maloratsky, 164 A. 260, 112 N.J.Eq. 333.
N.C.—Gordon v. Pintsch Gas Co., 100 S.E. 878, 178 N.C. 435.
S.C.—Sauls-Baker Co. v. Atlantic Coast Line R. Co., 96 S.E. 118, 109 S.C. 285.
Amendments as to parties see infra § 1586.
Amendment of pleadings see infra § 1587(2).

Amendment of motion
Cal.—Joe Lowe Corp. v. Rasmusson, 127 P.2d 1002, 53 C.A.2d 490.

Change of record
The appellate court will not interfere with a ruling of the trial court with respect to changing its records, unless there is a clear showing that the trial court was in error.
Iowa.—Gow v. Dubuque County, 238 N.W. 578, 213 Iowa 92.

Amendment of verdict
The refusal to amend a verdict against one defendant so as to include a verdict for a codefendant was within the sound discretion of the trial court, and will not be disturbed on appeal.
Pa.—Nelson v. Philadelphia Rapid Transit Co., 170 A. 269, 314 Pa. 27.

Amendment of findings of fact and conclusions of law
Minn.—Frisbie v. Frisbie, 33 N.W.2d 23, 226 Minn. 435.

Amendment of decree
Ill.—Hadley v. Lilliander, 66 N.E.2d 322, 328 Ill.App. 591.

bar an action;[22] abandonment of an action;[22.5] the grant or refusal of a jury trial,[22.10] or the extension of time for filing a demand therefor;[22.15] stay of proceedings;[22.20] revivor of action;[22.25] ruling on an application for a writ of prohibi-

22. U.S.—**Corpus Juris Secundum cited in** Laursen v. O'Brien, C.C.A. Wis., 90 F.2d 792, 795.
Ariz.—Barr v. Petzhold, 273 P.2d 161, 77 Ariz. 399.
Cal.—Toomey v. Toomey, 89 P.2d 634, 13 C.2d 317.
Friedberg v. Weissbuch, 287 P.2d 785, 135 C.A.2d 750—Gedstad v. Ellichman, 269 P.2d 661, 124 C.A.2d 831—Wilkerson v. Thomas, 263 P. 2d 678, 121 C.A.2d 479—Smith v. Sheffey, 248 P.2d 959, 113 C.A.2d 741—Bodkin v. Silveria, 120 P.2d 910, 49 C.A.2d 1—Lind v. Baker, 119 P.2d 806, 48 C.A.2d 234—Davis v. Schneider, 267 P. 352, 91 C.A. 631.
Ga.—Mountain Manor Co. v. Greenoe, 54 S.E.2d 629, 205 Ga. 619.
Ill.—Trustees of Schools of Tp. No. 38 North v. City of Chicago, 32 N. E.2d 180, 308 Ill.App. 391. See Cory v. City of Hillsboro, 205 Ill. App. 49.
Ind.—Haas v. Holder, 32 N.E.2d 590, 218 Ind. 263.
Burton v. Ryan, 165 N.E. 260, 88 Ind.App. 549.
Miss.—Denkmann Lumber Co. v. Morgan, 69 So.2d 802, 219 Miss. 692.
Mont.—Williard v. Campbell Oil Co., 248 P. 219, 77 Mont. 30.
Okl.—Phelen v. Roberts, 77 P.2d 9, 182 Okl. 202.
Tex.—Brady v. Garrett, Civ.App., 66 S.W.2d 502.
Vt.—Page v. Cave, 111 A. 398, 94 Vt. 306.
4 C.J. p 796 note 15 [f]—21 C.J. p 219 note 4.

Proceeding to enforce judgment
Cal.—Danz v. Danz, 216 P.2d 162, 96 C.A.2d 709.

Claim against municipality
Pa.—Badger v. Upper Darby Tp., 36 A.2d 507, 348 Pa. 551—McBride v. Rome Tp., 32 A.2d 212, 347 Pa. 228.

Action against estate of deceased administrator
The discretion of the court as to whether an action against a deceased administrator's estate on a claim based on nonpayment to heir is barred by lapse of time will not be disturbed on appeal unless manifestly an injustice has been done.
Cal.—Pratt v. Pratt, 184 P. 956, 43 C.A. 261.

Commencement of limitations on fraud action
There is a wide zone for the exercise of discretion by the trial judge in determining what facts or circumstances are sufficient to compel further inquiry as to facts constituting fraud, so as to start limitations running under Code Civ.Proc. § 338 subd 4.
Cal.—Calkins v. Calkins, 218 P. 611, 63 C.A. 292.

Time to file claims in bank liquidation
Where the court had power to fix a time in connection with the liquidation of a bank after which no claim was to be filed or suit begun, a justice, in denying a petition to file an amended claim and bring a suit in equity, was exercising his discretion, and this discretion will not be reversed unless plainly wrong.
Mass.—Commissioner of Banks of Commonwealth v. Pitocchelli, 176 N.E. 774, 276 Mass. 201.

22.5 Cal.—Lind v. Baker, 119 P.2d 806, 48 C.A.2d 234.

22.10 Ill.—Du Hamel v. Board of Education of Community Unit School Dist. No. 1 of Christian County, 130 N.E.2d 10, 7 Ill.App. 2d 487.
Tex.—Aronoff v. Texas Turnpike Authority, Civ.App., 299 S.W.2d 342.
Wash.—Niemeier v. Rosenbaum, 63 P.2d 424, 189 Wash. 1.
Selection and impaneling of jury see infra §§ 1601, 1602.

Allowance on late demand
Tex.—Lebman v. Sullivan, Civ.App., 198 S.W.2d 280, refused no reversible error.

Grant or refusal after waiver of demand
Ohio.—Moknach v. New York Life Ins. Co., 36 N.E.2d 529, 67 Ohio App. 293.
Wash.—Davis v. Falconer, 292 P. 424, 159 Wash. 230.

Motion for foreign jury
N.J.—State v. Collins, 67 A.2d 158, 2 N.J. 406.

22.15 Ill.—Dawson v. Maxwell, 141 N.E.2d 642, 13 Ill.App.2d 228.

22.20 Colo.—Trujillo v. Wilson, 189 P.2d 147, 117 Colo. 430.

Motion of enemy alien
Appellate term of supreme court would review order of lower court denying motion of enemy alien for stay of an action until termination of war, notwithstanding order involved exercise of discretionary power.
N.Y.—S. K. Adams, Inc., v. Mitsubishi Shoji Kaisha, Limited, 37 N. Y.S.2d 533, 178 Misc. 689.

Election of church officials
N.Y.—Application of Kaminsky, 2 N. Y.S.2d 336, 253 App.Div. 925.

Party in military service
(1) The granting of a stay, on the ground that a party is absent in the military service and that his absence will materially affect his prosecution or defense of the action, is in discretion of trial court and will not be interfered with on appeal except in event of abuse of discretion.
Ala.—Martin v. Wagner, 25 So.2d 409, 247 Ala. 591, certiorari denied 67 S.Ct. 77, 329 U.S. 740, 91 L.Ed. 639.
Colo.—Koons v. Nelson, 160 P.2d 367, 113 Colo. 574.
Ind.—Sharp v. Grip Nut Co., 62 N.E. 2d 774, 116 Ind.App. 106.

(2) Opinion of trial court that ability to defend is not materially affected by military service is not conclusive regardless of reasons of court for such opinion, but the final question is whether the evidence sufficiently supports such opinion or whether order constitutes an abuse of discretion.
Conn.—Esposito v. Schille, 40 A.2d 745, 131 Conn. 449.

(3) Trial court has wide discretion in determining whether action against a defendant in military service should be stayed or whether defendant's ability to prosecute or defend is not materially impaired by his absence while in military service, and exercise of that discretion is reviewable.
Tex.—Ulmer v. Mackey, Civ.App., 242 S.W.2d 679, error refused no reversible error—Lofstedt v. Gulf Paving Co., Civ.App., 185 S.W.2d 203, affirmed 188 S.W.2d 155, 144 Tex. 17.

(4) Under provision of statute for stay of action against person in military service unless ability of person to conduct his defense is not materially affected by reason of his military service, the discretion to be exercised by trial judge is not unlimited, and, where stay has been denied under circumstances showing an abuse of discretion, decision may be reversed.
Mass.—Barry v. Keeler, 76 N.E.2d 158, 322 Mass. 114.

(5) On appeal charging abuse of discretion in placing a will contest on military list for period of six months because caveator was in military service, appellate division would not enter on nice calculations as to extent to which caveator's absence would be of prejudice to his case.
N.J.—In re Coleman's Will, 99 A.2d 812, 27 N.J.Super. 532.

22.25 Okl.—St. Louis-San Francisco Ry. Co. v. Gochenour, 249 P.2d 728, 207 Okl. 334.

tion;[22.30] the manner of weighing the evidence;[22.35] the supervision of verdicts;[22.40] and rulings on motions to set aside a verdict,[23] or for judgment notwithstanding the verdict.[24]

The refusal to allow a supersedeas to an interlocutory judgment granting extraordinary relief,[24.5] the grant of judgment by default,[24.10] the modification of an award of damages,[25] ordering,[25.5] suggesting,[25.10] or refusing to require[25.15] a remittitur, the adjournment of a term to a later day,[26] and other matters[26.5] have also been held subject to the general rules.

22.30 N.Y.—Baltimore Mail S. S. Co. v. Fawcett, 199 N.E. 628, 269 N.Y. 379; 104 A.L.R. 1068, conformed to 287 N.Y.S. 159, 247 App.Div. 739, certiorari denied Madsen v. Baltimore Mail S. S. Co., 56 S.Ct. 939, 298 U.S. 675, 82 L.Ed. 1396.

22.35 Cal.—Baker v. Baker, 220 P.2d 576, 98 C.A.2d 424.

22.40 Cal.—Khan v. Southern Pac. Co., 282 P.2d 78, 132 C.A.2d 410.

N.C.—Lamm v. Lorbacher, 71 S.E.2d 49, 235 N.C. 728—Johnston v. Johnston, 195 S.E. 807, 213 N.C. 255.

Inadequacy

Refusal to set aside verdict for inadequacy is not reviewable on appeal except on showing of manifest abuse of discretion.

N.C.—Lamm v. Lorbacher, 71 S.E.2d 49, 235 N.C. 728.

Error of law; legal inference

(1) In absence of imputed error of law or legal inference arising in connection therewith the direct supervision of verdicts is a matter resting in the sound discretion of trial court, and is not reviewable on appeal.

N.C.—Lamm v. Lorbacher, supra—Johnston v. Johnston, 195 S.E. 807, 213 N.C. 255.

(2) This is the rule with respect to damages.

N.C.—Lamm v. Lorbacher, 71 S.E.2d 49, 235 N.C. 728—Johnston v. v. Johnston, 195 S.E. 807, 213 N.C. 255.

23. N.C.—Ward v. Cruse, 67 S.E.2d 257, 234 N.C. 388—Webb v. Statesville Theatre Corp., 38 S.E.2d 84, 226 N.C. 342.

Vt.—Massari v. Bolognani, 162 A. 364, 104 Vt. 474.

24. Ky.—Stone v. Smith, 151 S.W. 2d 71, 286 Ky. 468.

Minn.—Shastid v. Shue, 77 N.W.2d 273, 247 Minn. 314.

Pa.—Vereb v. Markowitz, 108 A.2d 774, 379 Pa. 344—Aland v. P G Pub. Co., 10 A.2d 5, 337 Pa. 259—Trimble v. Mennel Milling Co., 169 A. 84, 313 Pa. 188—Fertax Co. v. Spiegelman, 140 A. 853, 292 Pa. 139—March v. Philadelphia & West Chester Traction Co., 132 A. 355, 285 Pa. 413.

Ellerbe v. Steinman, 58 A.2d 202, 162 Pa.Super. 440—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa. Super. 41—Nestor v. George, 36 A. 2d 345, 154 Pa.Super. 442—Bunn v. Furstein, 34 A.2d 924, 153 Pa.Super. 637—Blassotti v. Greensboro Gas Co., 96 Pa.Super. 162.

Tex.—Spence v. National Life & Accident Ins. Co., Civ.App., 59 S.W.2d 212.

Sharp conflict as to major questions

Idaho.—Ausich v. Frank, 222 P.2d 1073, 70 Idaho 494.

Failure to order judgment held error

However, where the evidence is insufficient to sustain verdict and it appears that there is no reasonable probability that the defects in the proof necessary to support verdict may be remedied on another trial, and that, on the whole record, the party against whom the verdict was rendered is entitled to judgment on the merits as a matter of law, the trial court, on motion, should order judgment notwithstanding the verdict, and failure to do so constitutes error subject to correction on appeal.

N.D.—Cunningham v. Great Northern Ry. Co., 14 N.W.2d 753, 73 N. D. 315.

24.5 Ga.—Pope v. U. S. Fidelity & Guaranty Co., 20 S.E.2d 13, 193 Ga. 769.

24.10 Ala.—Ex parte Central Alabama Dry Goods Co., 189 So. 56, 238 Ala. 20.

Discretion held not abused

Refusal to grant plaintiff judgment by default where defendants were tardy in filing responsive pleadings was not abuse of discretion.

N.M.—Heron v. Garcia, 199 P.2d 1003, 52 N.M. 389.

25. Cal.—Khan v. Southern Pac. Co., 282 P.2d 78, 132 C.A.2d 410.

Wis.—Heindel v. Wisconsin Traction, Light, Heat & Power Co., 171 N.W. 938, 169 Wis. 181.

Refusal to reduce amount of verdict

Wash.—Lujan v. Santoya, 250 P.2d 543, 41 Wash.2d 499.

Trebling of damages

Primarily, the trebling of damages for injuries by fire negligently suffered to extend beyond the land of one setting it is for the trial court.

Cal.—Haverstick v. Southern Pac. Co., 37 P.2d 146, 1 C.A.2d 605.

25.5 Conn.—Brower v. Perkins, 68 A.2d 146, 135 Conn. 675.

Mo.—Williamson v. Wabash R. Co., 196 S.W.2d 129, 355 Mo. 248, certiorari denied 67 S.Ct. 860, 330 U.S. 824, 91 L.Ed. 1274.

Tenn.—Yellow Cab Co. v. Maloaf, 3 Tenn.App. 11.

Discretion held abused

Where court found that verdict of two thousand dollars for personal injuries was not grossly excessive an order that plaintiff remit five hundred dollars was an abuse of discretion.

Vt.—Joly v. Jones, 55 A.2d 181, 115 Vt. 174.

25.10 Tenn.—International Harvester Co. v. Sartain, 222 S.W.2d 854, 32 Tenn.App. 425.

25.15 Mo.—Williamson v. Wabash R. Co., 196 S.W.2d 129, 355 Mo. 248, certiorari denied 67 S.Ct. 860, 330 U.S. 824, 91 L.Ed. 1274.

Further remittitur

(1) Reviewing court must find that trial court abused its discretion in refusing to require further remittitur, if judgment entered on verdict after first remittitur is not to stand; in passing on such refusal, reviewing court will not substitute its discretion for discretion reasonably exercised by trial court in banc.

Pa.—Packard v. Pittsburgh Rys. Co., 192 A. 395, 326 Pa. 474.

(2) Fact that defendant's witnesses preponderated in comparative quality or trustworthiness of evidence will not alone overthrow verdict for plaintiff or discretion of trial court in refusing to require further remittitur.

Pa.—Packard v. Pittsburgh Rys. Co., supra.

26. W.Va.—State v. Roane County Court, 135 S.E. 174, 102 W.Va. 327.

26.5 Application of cy pres doctrine

Pa.—In re Glase's Estate, 119 A.2d 294, 384 Pa. 118—In re Kensington Hospital for Women, 58 A.2d 154, 358 Pa. 458, 3 A.L.R.2d 73.

Apportionment of dividend on stock held in trust

Pa.—In re Nirdlinger's Estate, 193 A. 33, 327 Pa. 160.

Approval of settlement of derivative stockholder suits

Del.—Braun v. Fleming-Hall Tobacco Co., 92 A.2d 302, 33 Del.Ch. 246.

Award of alimony and support money

Md.—Brown v. Brown, 103 A.2d 856, 204 Md. 197—Mariani v. Mariani, 55 A.2d 713, 189 Md. 283.

Bill or writ of review

(1) Whether leave shall be granted to file bill of review of final decree of superior court after rescript from supreme judicial court is matter within discretion of the superior

Substantial compliance with statute. If the case is one in which a requirement of the applicable statute has not been entirely disregarded, the determination by the trial court of the question of substantial compliance with the statute should be controlling in the absence of an abuse of discretion.[26.10]

b. What Constitutes Abuse of Discretion

In a legal sense, discretion is abused whenever, in its exercise, a court exceeds the bounds of reason in the circumstances, or exercises its discretion in violation of established or equitable principles. The fact that the appellate court would have decided otherwise does not establish an abuse of discretion.

There is no hard and fast rule by which to determine whether a court has abused its discretion.[26.50] In determining whether abuse of discretion is shown, the reviewing court construes the findings of the trial court in the light of the record.[26.55]

A reviewing court is never justified in substituting its discretion for that of the trial court;[26.60] in determining whether the lower court has abused its discretion, the question is not whether the reviewing court agrees with the court below, but, rather, whether it believes that a judicial mind, in view of the relevant rules of law applicable to the particular case and on due consideration of all the circumstances, could reasonably have reached the conclusion of the court below, of which complaint is made.[27] The mere fact that the appellate court would have decided otherwise does not establish that the discretion has been abused,[28] nor does a mere mistake or

court, subject to review by supreme judicial court.
Mass.—City of Boston v. Santosuosso, 31 N.E.2d 564, 308 Mass. 189.

(2) The granting or denial of a petition for a writ of review rests substantially in the sound discretion of the court, the exercise of which will not be set aside unless positive error of law appears.
Mass.—City of Quincy v. Brooks-Skinner, Inc., 91 N.E.2d 206, 325 Mass. 406.

(3) Trial court held not to have abused its discretion in overruling demurrer to petition for writ of review of a judgment by default in an action on a promissory note.
Mass.—Hendrick v. West Roxbury Co-op. Bank, 92 N.E.2d 238, 325 Mass. 671.

Change of personal name
Cal.—In re Ross, 67 P.2d 94, 8 C.2d 608, 110 A.L.R. 217.

Confirmation of judicial sale at auction
Hawaii.—Vasconcellos v. Vasconcellos, 39 Hawaii 653.

Continuance of grand jury during adjourned session of court
Pa.—Shenker v. Harr, 2 A.2d 298, 332 Pa. 382.

Dismissal of complaint for plaintiff's default
N.Y.—Jennings v. Doyle, 33 N.Y.S.2d 695, 263 App.Div. 488, affirmed 50 N.E.2d 645, 291 N.Y. 503.

Disqualification of attorneys
Tex.—Ramirez v. Sanchez, Civ.App., 97 S.W.2d 1034.

Dissolution of corporation
Conn.—Bator v. United Sausage Co., 81 A.2d 442, 138 Conn. 18.

Grant or refusal of moratorium
Mich.—Friar v. Dausman, 278 N.W. 737, 283 Mich. 692.

Permitting filing of exceptions nunc pro tunc
Pa.—Pokrzywnicki v. Kozak, 44 A.2d 247, 353 Pa. 5.

Presumption from failure to testify
Cal.—In re Way's Estate, App., 157 P.2d 46.

Request for admission of facts
Tex.—Sanchez v. Caroland, Civ.App., 274 S.W.2d 114.

Use of particular mortality table
Ky.—Lee v. McKinney, 256 S.W.2d 537.

26.10 Cal.—In re Shafter-Wasco Irr. Dist., 134 P.2d 46, 57 C.A.2d 90.

26.50 Iowa.—Best v. Yerkes, 77 N.W.2d 23, 247 Iowa 800.

26.55 Minn.—Lamberton v. Lamberton, 38 N.W.2d 72, 229 Minn. 29—Fruen v. Fruen, 37 N.W.2d 417, 228 Minn. 391.

26.60 Cal.—In re Knowlton's Estate, 257 P.2d 1031, 118 C.A.2d 374—People ex rel. Kenny v. Christ's Church of the Golden Rule, 181 P.2d 49, 79 C.A.2d 858—Furniss v. Furniss, 170 P.2d 486, 75 C.A.2d 138—Sharpe v. Sharpe, 130 P.2d 462, 55 C.A.2d 262—Whitehead v. Whitehead, 114 P.2d 403, 45 C.A.2d 447—Elson v. Nyhan, 113 P.2d 474, 45 C.A.2d 1—Lent v. H. C. Morris Co., 77 P.2d 301, 25 C.A.2d 305.
N.J.—Becker v. Welliver, 34 A.2d 893, 131 N.J.Law 64.

27. Ariz.—**Corpus Juris Secundum cited in** Davis v. Davis, 277 P.2d 261, 265, 78 Ariz. 174.
Cal.—Waybright v. Anderson, 253 P. 148, 200 C. 374.
McManus v. Larson, 10 P.2d 523, 122 C.A. 716.
Del.—Pitts v. White, 109 A.2d 786, 10 Terry 78.
In re Public Service Holding Corp., 24 A.2d 584, 26 Del.Ch. 436—Radio Corp. of America v. Philadelphia Storage Battery Co., 6 A.2d 329, 23 Del.Ch. 289.
Pa.—In re Fink's Estate, 165 A. 832, 310 Pa. 453.

Nisi prius argument on merits insufficient
Where trial court has exercised its best judgment on occasion that called for it, appellate court will demand more than a nisi prius argument on merits of controversy before it will reverse determination on ground that there has been an abuse of discretion.
Cal.—Swall v. Anderson, 140 P.2d 196, reheard 141 P.2d 912, 60 C.A.2d 825.

28. Ariz.—**Corpus Juris Secundum cited in** Bradley v. Philhower, 299 P.2d 648, 649, 81 Ariz. 61.
Cal.—Waybright v. Anderson, 253 P. 148, 200 C. 374.
Howard v. Howard, 275 P.2d 93, 128 C.A.2d 188—Swall v. Anderson, 140 P.2d 196, reheard 141 P.2d 912, 60 C.A.2d 825.
N.J.—Smith v. Smith, 85 A.2d 523, 17 N.J.Super. 128.
N.Y.—Sherlock v. Manwaren, 203 N.Y.S. 709, 208 App.Div. 538.
Steinleger v. Frankel, 192 N.Y.S. 74, 117 Misc. 693.
Ohio.—Lake Shore Saw Mill & Lumber Co. v. Cleveland Realization Co., 11 Ohio App. 387.
Pa.—In re Glase's Estate, 119 A.2d 294, 384 Pa. 118—Echon v. Pennsylvania R. Co., 76 A.2d 175, 365 Pa. 529—In re Garrett's Estate, 6 A.2d 858, 335 Pa. 287—Mielcuszny v. Rosol, 176 A. 236, 317 Pa. 91.
In re Mount Lebanon Tp., 79 A.2d 670, 168 Pa.Super. 516.
S.D.—**Corpus Juris Secundum cited in** F. M. Slagle & Co. v. Bushnell, 16 N.W.2d 914, 916, 70 S.D. 250, 116 A.L.R. 1070.
Tex.—Smock v. Fischel, Civ.App., 207 S.W.2d 888, affirmed in part and reversed in part on other grounds 207 S.W.2d 891, 146 Tex. 347.

Insufficiency to bring about reversal
Circumstance that appellate judges, had they been presiding at trial, would have made a ruling to the contrary is far from enough to bring about a reversal.
N.J.—Schuttler v. Reinhardt, 86 A.2d 438, 17 N.J.Super. 480.

error of law;[29] but it has also been held that action taken by a court under a mistake of law and in conformity to such mistake,[29.5] or an erroneous holding of a trial court on a question of law,[29.10] is an abuse of discretion, that an abuse of discretion may amount to an error of law,[29.15] and that the term "abuse of discretion" indicates the opinion of the appellate court that there was commission of an error of law in the circumstances.[29.20]

An "abuse of discretion" does not necessarily imply a bad or improper motive, a wrong purpose, willfulness, prejudice, partiality, or an intentional wrong;[30] it is not ordinarily a term of approach,[30.5] and does not mean any reflection on the presiding judge of the lower court,[30.10] or carry with it an implication of conduct deserving of censure.[30.15]

In a legal sense, discretion is abused whenever, in its exercise, the court has acted arbitrarily without the employment of its conscientious judgment,[31] has exceeded the bounds of reason in view of all the circumstances,[32] or has so far ignored recognized rules or principles of law or practice as to

29. Ill.—Adamsen v. Magnelia, 280 Ill.App. 418.
Ohio.—Steiner v. Custer, 81 N.E.2d 855, 137 Ohio St. 448.
Granneman v. Cincinnati St. Ry. Co., 87 N.E.2d 971, 67 Ohio App. 536.
"If the alleged error appealed from involved a disregard of some positive fixed rule of law, the error would be a mistake of law and not an abuse of discretion. The distinction is often a nice one. 'A proper balance between strict rule and magisterial discretion is one of the most difficult problems of the science of the law.' Roscoe Pound, 'Criminal Practice in the American City,' The Survey, October 29, 1921. In discussing a somewhat similar distinction in legislative powers Prof. Wigmore has said of Justice Holmes: 'He has ever been keenly conscious of the delicacy involved in reviewing other men's judgment, not as to its wisdom, but as to their right to entertain the reasonableness of its wisdom.' 29 Harvard Law Review, 686."
N.Y.—Steinleger v. Frankel, 192 N.Y.S. 74, 76, 117 Misc. 693.

29.5 Ohio.—Karl Kiefer Mach. Co. v. Henry Niemes, Inc., 80 N.E.2d 183, 82 Ohio App. 310.

29.10 Tex.—Robinson v. Wampler, Civ.App., 202 S.W.2d 500.

29.15 Mass.—In re Loeb, 52 N.E.2d 37, 315 Mass. 191.

29.20 Ariz.—Brown v. Beck, 169 P. 2d 855, 64 Ariz. 299.
S.C.—Macauley v. Query, 7 S.E.2d 519, 193 S.C. 1—Barrett v. Broad River Power Co., 143 S.E. 650, 146 S.C. 85.
Wyo.—Eager v. Derowtsch, 232 P.2d 713, 68 Wyo. 251.

30. Cal.—Weisbecker v. Weisbecker, 161 P.2d 990, 71 C.A.2d 41.
Iowa.—Best v. Yerkes, 77 N.W.2d 23, 247 Iowa 800.
Neb.—Pettegrew v. Pettegrew, 260 N.W. 287, 128 Neb. 783.
Ohio.—Sinclair v. Sinclair, 129 N.E. 2d 311, 98 Ohio App. 308.
4 C.J. p 798 note 19.

Honest opinion

An abuse of discretion on the part of the court may occur through an honest, although erroneous, opinion, entertained by the court as to the nature and extent of its discretionary power, and as to the legal principles governing its exercise; such abuse of discretion is as much reviewable as a willful abuse or intentional wrong.
Pa.—Adelman v. John McShain, Inc., 24 A.2d 703, 148 Pa.Super. 138—In re English's License, 59 Pa.Super. 621.

30.5 Iowa.—Best v. Yerkes, 77 N.W. 2d 23, 247 Iowa 800.

30.10 Ariz.—Brown v. Beck, 169 P. 2d 855, 64 Ariz. 299.
S.C.—Macauley v. Query, 7 S.E.2d 519, 193 S.C. 1—Barrett v. Broad River Power Co., 143 S.E. 650, 146 S.C. 85.
Wyo.—Eager v. Derowitsch, 232 P. 2d 713, 68 Wyo. 251.

30.15 Ariz.—Brown v. Beck, 169 P. 2d 855, 64 Ariz. 299.

31. N.J.—Hoffman v. Maloratsky, 164 A. 260, 112 N.J.Eq. 333.
R.I.—Superior Glass Co. v. District Court of Sixth Judicial Dist., 135 A. 50, 48 R.I. 4.
Tex.—Smock v. Fischel, Civ.App., 207 S.W.2d 888, affirmed in part and reversed in part on other grounds 207 S.W.2d 891, 146 Tex. 397.

Similar statement

When the law provides that a right be determined by opinion or judgment of a court or jury and does not specify the factors or elements entering into such opinion or judgment, such opinion or judgment involves discretion, not to be overturned except where it is shown to be arbitrary, capricious, indeliberate, or something else affirmatively shown to affect its fairness or justice.
Tex.—Texas Indemnity Ins. Co. v. Arant, Civ.App., 171 S.W.2d 915, error refused.

32. Ariz.—**Corpus Juris Secundum cited in** Bradley v. Philhower, 299 P.2d 648, 649, 81 Ariz. 61.
Cal.—Miller v. Republic Grocery, 242 P.2d 396, 110 C.A.2d 187—De Sylva v. Ballentine, 215 P.2d 780, 96 C.A. 2d 503—In re Selb's Estate, 210 P.2d 45, 93 C.A.2d 788—Berry v. Chaplin, 169 P.2d 453, 74 C.A.2d 669—Weisbecker v. Weisbecker, 161 P.2d 990, 71 C.A.2d 41.
Del.—Bringhurst v. Harkins, 122 A. 783, 2 W.W.Harr. 324.
Corpus Juris Secundum cited in Radio Corp. of America v. Philadelphia Storage Battery Co., 6 A.2d 329, 342, 23 Del.Ch. 289.
Iowa.—Best v. Yerkes, 77 N.W.2d 23, 247 Iowa 800.
Mont.—Pue v. Bushnell, 233 P. 124, 72 Mont. 265.
N.J.—Fotopak Corp. v. Merlin, Inc., 112 A.2d 578, 34 N.J.Super. 343—Smith v. Smith, 85 A.2d 523, 17 N.J.Super. 128.
N.M.—Independent Steel & Wire Co. v. New Mexico Cent. R. Co., 178 P. 842, 25 N.M. 160.
Okl.—Seaba v. State, 290 P. 1098, 144 Okl. 295—State v. State ex rel. Shull, 286 P. 891, 142 Okl. 293.
S.D.—**Corpus Juris Secundum cited in** F. M. Slagle & Co. v. Bushnell, 16 N.W.2d 914, 916, 70 S.D. 250, 156 A.L.R. 1070.
Tex.—Smock v. Fischel, Civ.App., 207 S.W.2d 888, affirmed in part and reversed in part on other grounds 207 S.W.2d 891, 146 Tex. 347.
Vt.—Schlitz v. Lowell Mut. Fire Ins. Co., 119 A. 513, 96 Vt. 337.
4 C.J. p 798 notes 19, 20.
"Our function in reviewing matters which rest in the discretion of the trial court is to protect litigants from conclusions which exceed the bounds of reason."
S.D.—F. M. Slagle & Co. v. Bushnell, 16 N.W.2d 914, 916, 70 S.D. 250, 156 A.L.R. 1070.

Untenable rulings amounting to denial of justice

In the exercise of judicial discretion, there is an abuse of that power where the rulings of the court are clearly untenable and deprive a party of a substantial right, clearly and fairly established, and amount to a denial of justice.
Cal.—Hale v. Hale, 45 P.2d 246, 6 C.A.2d 661.
Neb.—Pettegrew v. Pettegrew, 260 N.W. 287, 128 Neb. 783.
Ohio.—Fessenden v. Fessenden, 165 N.E. 746, 32 Ohio App. 16.

result in substantial injustice.[33] Also, discretion is abused where manifest injustice has been done,[33.2] or substantial rights lost through mere technicalities,[33.4] or where the action of the court was so opposed to sound discretion as to amount to a deprivation of the rights of the complaining party,[33.6] or the decision of the court cannot reasonably be held to find support in the evidence.[33.8] The recognized test for an abuse of discretion has been held to be whether the court exercised its discretion on grounds, or for reasons, clearly untenable, or to an extent clearly unreasonable.[33.10]

Other statements are that an abuse of discretion implies[33.12] or connotes[33.14] more than an error of judgment; that it implies an unreasonable, arbitrary, or unconscionable attitude on the part of the court;[33.16] that there is an abuse of discretion when the authority is exercised capriciously, in violation of settled principles of equity or of law,[33.18] or to an end or purpose not justified by, and clearly against, reason and the evidence;[33.20] that an abuse of discretion is not merely an error of judgment, but if, in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused;[33.22] and that an abuse of discretion, reviewable on appeal, is an erroneous conclusion and judgment, one clearly against the logic and effect of the facts before the court or against reasonable, probable, and actual deductions to be drawn therefrom.[33.24] It has been

33. Tex.—Hubb Diggs Co. v. Bell, 293 S.W. 808, 116 Tex. 427.
Borger v. Mineral Wells Clay Products Co., Civ.App., 80 S.W.2d 333.
W.Va.—Hyre v. Johnson, 149 S.E. 385, 107 W.Va. 524, 64 A.L.R. 1536.
4 C.J. p 798 note 20.

Denial of substantial justice
La.—Rawls v. Brotherhood of R. R. Trainmen Ins. Dept., 35 So.2d 809, 213 La. 899.

33.2 Cal.—In re Knowlton's Estate, 257 P.2d 1031, 118 C.A.2d 374—Miller v. Republic Grocery, 242 P.2d 396, 110 C.A.2d 187—Furniss v. Furniss, 170 P.2d 486, 75 C.A.2d 138—Berry v. Chaplin, 169 P.2d 453, 74 C.A.2d 669—Sharpe v. Sharpe, 130 P.2d 462, 55 C.A.2d 262—Bodkin v. Silveria, 120 P.2d 910, 49 C.A.2d 1—Whitehead v. Whitehead, 114 P.2d 403, 45 C.A.2d 447—Elson v. Nyhan, 113 P.2d 474, 45 C.A.2d 1—Lent v. H. C. Morris Co., 77 P.2d 301, 25 C.A.2d 305.
Conn.—Grievance Committee of Fairfield County Bar v. Nevas, 96 A.2d 802, 139 Conn. 660.
N.J.—Healy v. Billias, 85 A.2d 527, 17 N.J.Super. 119.
Tenn.—Plantt v. Plantt, 186 S.W.2d 338, 28 Tenn.App. 79.

One of the essential attributes of abuse of discretion is that it must plainly appear to effect injustice.
Cal.—Fine v. Fine, 173 P.2d 355, 76 C.A.2d 490.

Reversible error
For action of trial court to constitute reversible error on ground that action is an abuse of discretion, the action must plainly appear to effect an injustice to appellant.
Ohio.—Sinclair v. Sinclair, 129 N.E.2d 311, 98 Ohio App. 308.

33.4 La.—Rawls v. Brotherhood of R. R. Trainmen Ins. Dept., 35 So.2d 809, 213 La. 899.

33.6 S.C.—Johnston v. Belk-McKnight Co. of Newberry, 10 S.E.2d 1, 194 S.C. 490.

33.8 Cal.—Smith v. Sheffey, 248 P.2d 959, 113 C.A.2d 741—Bodkin v. Silveria, 120 P.2d 910, 49 C.A.2d 1.

Lack of competent proof
Where orders appealed from are within jurisdiction and discretion of trial court, they can be attacked only on showing that they were not supported by competent proof.
Cal.—Culver v. Culver, 150 P.2d 292, 65 C.A.2d 145.

33.10 Vt.—Gray v. Janicki, 99 A.2d 707, 118 Vt. 49—Richardson v. Persons, 77 A.2d 842, 116 Vt. 413—Ricci v. Bove's Estate, 75 A.2d 682, 116 Vt. 335—McCutcheon v. Leonard, 39 A.2d 348, 114 Vt. 38—Stone v. Briggs, 26 A.2d 828, 112 Vt. 410.

33.12 Tex.—Johnson v. City of Richardson, Civ.App., 206 S.W.2d 98.

Misconstruction of law; exercise of judgment
Where it conclusively appears that action of trial court was predicated alone on misconstruction of the law, judgment may not stand, but where record discloses an exercise of judgment in addition, the appellate court will sustain, unless there appears an abuse of discretion.
Ohio.—Thompson v. Stonom, App., 57 N.E.2d 788.

33.14 Ohio.—Steiner v. Custer, 31 N.E.2d 855, 137 Ohio St. 448.
Granneman v. Cincinnati St. Ry. Co., 37 N.E.2d 971, 67 Ohio App. 536.

33.16 Ohio.—Steiner v. Custer, 31 N.E.2d 855, 137 Ohio St. 448.
Granneman v. Cincinnati St. Ry. Co., 37 N.E.2d 971, 67 Ohio App. 536.

33.18 N.J.—La Bell v. Quasdorf, 184 A. 750, 116 N.J.Law 368.

33.20 Ohio.—Sinclair v. Sinclair, 129 N.E.2d 311, 98 Ohio App. 308—Wilgus v. Arthur, 53 N.E.2d 197, 72 Ohio App. 511.
Okl.—In re Crane's Estate, 206 P.2d 726, 201 Okl. 354, 9 A.L.R.2d 524.

33.22 Pa.—Rosenberg v. Silver, 97 A.2d 92, 374 Pa. 74—Echon v. Pennsylvania R. Co., 76 A.2d 175, 365 Pa. 529—In re Garrett's Estate, 6 A.2d 858, 335 Pa. 287—Mielcuszny v. Rosol, 176 A. 236, 317 Pa. 91.
Gregory v. Fassett, 116 A.2d 304, 178 Pa.Super. 599—In re Mount Lebanon Tp., 79 A.2d 670, 168 Pa. Super. 516—In re Annexation by Borough of Irwin of Land in North Huntingdon Tp., 67 A.2d 757, 165 Pa.Super. 119—Associates Discount Corp. v. Wise, 41 A.2d 418, 156 Pa. Super. 659—Adelman v. John McShain, Inc., 24 A.2d 703, 148 Pa. Super. 138—Michaels v. Moritz, 200 A. 176, 131 Pa.Super. 426.

Reversal
Where the court, in reaching its conclusion, overrides or misapplies the law, or the judgment exercised is manifestly unreasonable, the reviewing court will not hesitate to reverse.
Del.—Pitts v. White, 109 A.2d 786, 10 Terry 78.

33.24 Ind.—Bailin v. Bailin, 57 N.E.2d 436, 223 Ind. 7—McFarlan v. Fowler Bank City Trust Co., 12 N.E.2d 752, 214 Ind. 10.
Guraly v. Tenta, App., 132 N.E.2d 725—Parks v. Koser, 126 N.E.2d 785, 125 Ind.App. 585—Ferguson v. Ferguson, 125 N.E.2d 816, 125 Ind. App. 596—Hollingsworth Tool Works v. Review Bd. of Ind. Employment Sec. Division, 84 N.E.2d 895, 119 Ind.App. 191.
Iowa.—Best v. Yerkes, 77 N.W.2d 23, 247 Iowa 800.

held that an abuse of discretion must be such as to shock reason and justice,[33.26] and that before an order or decree of the trial judge will be reversed for abuse of discretion, it should clearly appear from the record that there has been a disregard of the rights of a party.[33.28]

Conversely, there is no abuse of discretion where the action taken is in furtherance of justice and does not do violence to accepted principles,[33.30] or where the court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law or practice so as to produce injustice.[33.32]

A judicial finding of facts is not subject to attack as an abuse of discretion, since such finding has nothing to do with discretion.[33.34]

Undisputed facts. An abuse of discretion may appear in cases where the facts are undisputed and the issue is one of law only.[33.36]

§ 1584. —— Burden of Showing Abuse

The complaining party has the burden of showing that the trial court abused its discretion; such abuse will not be presumed, but it will be presumed that the discretion was properly exercised.

In accordance with the rules stated supra § 1533, the appellate court will generally make all reasonable presumptions to the effect that the discretionary powers of the trial court have been exercised properly, correctly, or without abuse,[34] and will not presume, or assume, that there has been an abuse of discretion.[35] So, the complaining party ordinarily

33.26 N.J.—Becker v. Welliver, 34 A.2d 893, 131 N.J.Law 64.

33.28 Tex.—Schroeder v. Brandon, 172 S.W.2d 488, 141 Tex. 319.
Peters v. City of San Antonio, Civ.App., 195 S.W. 989.

33.30 N.J.—La Bell v. Quasdorf, 184 A. 750, 116 N.J.Law 368.

33.32 Del.—Pitts v. White, 109 A.2d 786, 10 Terry 78.
In re Public Service Holding Corp., 24 A.2d 584, 26 Del.Ch. 436—**Corpus Juris Secundum cited in** Radio Corp. of America v. Philadelphia Storage Battery Co., 6 A.2d 329, 342, 23 Del.Ch. 289.

33.34 N.J.—Campanella v. Bono, 200 A. 544, 120 N.J.Law 435.

33.36 Tex.—Rudd v. Wallace, Civ. App., 232 S.W.2d 121.

34. Ala.—Ex parte Jones, 20 So.2d 859, 246 Ala. 433.
Ariz.—Kimball v. Statler, 176 P. 843, 20 Ariz. 81.
Cal.—Pacific Tel. & Tel. Co. v. Fink, 296 P.2d 843, 141 C.A.2d 332—De Freitas v. De Freitas, 285 P.2d 111, 133 C.A.2d 769—Swall v. Anderson, 140 P.2d 196, reheard 141 P.2d 912, 60 C.A.2d 825—In re Bartholomew's Adoption, 84 P.2d 199, 29 C.A.2d 343—In re McCarthy's Estate, 73 P.2d 914, 23 C.A.2d 398—In re Triest's Estate, 236 P. 930, 72 C.A. 268—Lapique v. Walsh, 195 P. 296, 50 C.A. 82.
Colo.—Maryland Casualty Co. v. City and County of Denver, 6 P.2d 6, 90 Colo. 20.
Conn.—Oginskas v. Fredsal, 143 A. 888, 108 Conn. 505.
Fla.—Williams v. Yelvington, 137 So. 156, 103 Fla. 145.
Ill.—People v. Arnett, 148 N.E. 306, 317 Ill. 425.
Iowa.—Frazier v. Wood, 242 N.W. 78, 214 Iowa 237.
Mo.—Fuenfgeld v. Holt, App., 70 S.W.2d 143—Paepke v. Stadelman, 300 S.W. 845, 222 Mo.App. 346.
N.D.—**Corpus Juris Secundum cited in** Blasl v. Peterson, 53 N.W.2d 856, 858, 78 N.D. 915—Beauchamp v. Retail Merchants' Ass'n Mut. Fire Ins. Co., 165 N.W. 545, 38 N.D. 483.
Pa.—Brandis v. Empire State Life Assur. Soc., 174 A. 104, 315 Pa. 558.
S.C.—O'Barr v. Pioneer Life Ins. Co., 172 S.E. 769, 172 S.C. 72—McKenzie v. Long, 92 S.E. 1032, 107 S.C. 336.
S.D.—Caldwell v. Caldwell, 207 N.W 461, 49 S.D. 514.
Tex.—Lone Star Steel Co. v. Owens, Civ.App., 302 S.W.2d 213, refused no reversible error—Ingham v. Ingham, Civ.App., 240 S.W.2d 409, mandamus overruled—Ohmart v. Highbarger, Civ.App., 43 S.W.2d 975.
Gable v. State, 38 S.W.2d 96, 118 Tex.Cr. 268.
Vt.—Belock v. State Mut. Fire Ins. Co., 175 A. 19, 106 Vt. 435, followed in Belock v. Vermont Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 445, and Belock v. Union Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 444.
Va.—Massie v. Parrish, 125 S.E. 691, 140 Va. 717.
Wash.—Machenheimer v. Falknor, 276 P. 297, 151 Wash. 447.
4 C.J. p 798 note 21–22.

All intendments are in favor of the correctness of the orders appealed from, which cannot be reversed except on a showing of an abuse of discretion.
Cal.—Thorndyke v. Jenkins, 142 P.2d 348, 61 C.A.2d 119—Swall v. Anderson, 141 P.2d 912, 60 C.A.2d 825.

Facts most favorable to respondent
In determining whether there has been abuse of discretion, facts on issue of damage most favorable to respondent must be considered.
Cal.—Gersick v. Shilling, 218 P.2d 583, 97 C.A.2d 641.

Stay of proceedings against person in military service
Colo.—Koons v. Nelson, 160 P.2d 367, 113 Colo. 574.

35. Ala.—Ex parte Jones, 20 So.2d 859, 246 Ala. 433.
Cal.—Hall v. Superior Court in and for Los Angeles County, 289 P.2d 431, 45 C.2d 377—Wilder v. Wilder, 7 P.2d 1032, 214 C. 783.
Howard v. Howard, 275 P.2d 93, 128 C.A.2d 188—Marks v. Marks, 246 P.2d 82, 112 C.A.2d 283—Furniss v. Furniss, 170 P.2d 486, 75 C.A.2d 138—Berry v. Chaplin, 169 P.2d 453, 74 C.A.2d 669—Whitehead v. Whitehead, 114 P.2d 403, 45 C.A.2d 447—Lynch v. Lynch, 230 P. 462, 69 C.A. 66—Glenn v. California Trona Co., 177 P. 178, 38 C.A. 601.
Ill.—Anthony v. Gilbrath, 71 N.E. 2d 84, 396 Ill. 125.
Ohio.—Wyant v. Russell, 142 N.E. 144, 109 Ohio St. 167.
S.C.—Betsill v. Betsill, 196 S.E. 381, 187 S.C. 50.
Vt.—Ricci v. Bove's Estate, 75 A.2d 682, 116 Vt. 335.
Wash.—Abel v. Abel, 289 P.2d 724, 47 Wash.2d 816—Calhoun, Denny & Ewing v. Quinlan, 150 P. 1132, 86 Wash. 547.

Manifest abuse
Pa.—In re Kensington Hospital for Women, 58 A.2d 154, 158 Pa. 458, 3 A.L.R.2d 73.

Procedural rulings
An abuse of discretion by trial judge in making procedural rulings will never be presumed.
Cal.—Meyer v. State Bd. of Equalization, 267 P.2d 257, 42 C.2d 376.

Refusal to set aside submission
The reviewing court could not assume that the trial court abused its discretion in refusing to set the submission aside to permit counsel to argue the case.
Cal.—Lee v. Dawson, 112 P.2d 683, 44 C.A.2d 362.

has the burden of proving abuse of discretion,[36] which must plainly appear from the record;[37] such abuse must be affirmatively established[37.5] or shown,[37.10] or clearly demonstrated,[37.15] or must affirmatively appear.[37.20] Also, there may be held

Proof of untenable or unreasonable exercise

To justify interference by reviewing court where it is alleged that trial court abused its judicial discretion, proof that discretion exercised was clearly untenable or manifestly unreasonable is required.

Wash.—Abel v. Abel, 289 P.2d 724, 47 Wash.2d 816.

36. U.S.—**Corpus Juris Secundum cited in** Pittsburgh Equitable Meter Co. v. Paul C. Loeber & Co., C.C.A. Ill., 160 F.2d 721, 728.

Ala.—City of Birmingham v. Goolsby, 150 So. 322, 227 Ala. 421.

Cal.—Wilder v. Wilder, 7 P.2d 1032, 214 C. 783.

Bird v. Bird, App., 312 P.2d 773—Stockton v. Newman, App., 307 P. 2d 56—Riverside County Flood Control and Water Conservation Dist. v. Joseph W. Wolfskill Co., App., 306 P.2d 22, followed in Joseph W. Wolfskill Co. v. Riverside County Flood Control and Water Conservation Dist., 306 P. 2d 25—Pacific Tel. & Tel. Co. v. Fink, 296 P.2d 843, 141 C.A.2d 332—In re Knowlton's Estate, 257 P.2d 1031, 118 C.A.2d 374—Miller v. Republic Grocery, 242 P.2d 396, 110 C.A.2d 187—Sharpe v. Sharpe, 130 P.2d 462, 55 C.A.2d 262—In re Bartholomew's Adoption, 84 P.2d 109, 29 C.A.2d 343—People v. Ocean Shore Railroad, Inc., 75 P.2d 560, 24 C.A.2d 420—In re McCarthy's Estate, 73 P.2d 914, 23 C.A.2d 398—California Bond & Mortgage Co. v. Washburn, 271 P. 554, 94 C.A. 530—Hanlon Drydock & Shipbuilding Co. v. Southern Pac. Co., 268 P. 385, 92 C.A. 230—In re Triest's Estate, 236 P. 930, 72 C.A. 268.

Fla.—Durham v. Durham, 188 So. 609, 137 Fla. 506—Coral Gables Inv Co. v. Delaware Mortg. Co., 127 So. 861, 99 Fla. 921.

Iowa.—Frazier v. Wood, 242 N.W. 78, 214 Iowa 237—Stromberg v. Walsh, 192 N.W. 811—Herman & Ben Marks v. Haas, 147 N.W. 740, 166 Iowa 340.

Minn.—Plunkett v. Lampert, 43 N.W. 2d 489, 231 Minn. 484.

Mo.—**Corpus Juris Secundum cited in** Fullerton v. Atchison, T. & S. F. Ry. Co., 285 S.W.2d 572, 574—**Corpus Juris Secundum cited in** Dye v. St. Louis-San Francisco Ry. Co., 234 S.W.2d 532, 534, 361 Mo. 331.

Corpus Juris Secundum cited in Jenkins v. Terminal Railroad Association of St. Louis, App., 285 S.W.2d 12, 16.

Mont.—**Fox v. Curry**, 29 P.2d 663, 96 **Mont. 212**—Pereira v. Wulf, 272 P. 532, 83 Mont. 343—Montana Ranches Co. v. Dolan, 164 P. 306, 53 Mont. 397.

N.Y.—Sherlock v. Manwaren, 203 N. Y.S. 709, 208 App.Div. 538.

N.D.—**Corpus Juris Secundum cited in** Blasl v. Peterson, 53 N.W.2d 856, 858, 78 N.D. 915—Beauchamp v. Retail Merchants' Ass'n Mut. Fire Ins. Co., 165 N.W. 545, 38 N. D. 483.

Okl.—Saunders v. Commercial Credit Co., 268 P. 228, 131 Okl. 193—Compier v. Thomas, 218 P. 661, 92 Okl. 112.

Pa.—O'Farrell v. Mawson, 182 A. 538, 320 Pa. 316—Koch v. Franklin, 172 A. 672, 315 Pa. 145.

S.C.—Betsill v. Betsill, 196 S.E. 381, 187 S.C. 50—Tollner v. American Pub. Co., 118 S.E. 619, 125 S.C. 317—Gales v. Poe, 93 S.E. 189, 107 S.C. 482.

S.D.—**Corpus Juris Secundum cited in** Magenton v. State, 81 N.W.2d 894, 897—Caldwell v. Caldwell, 207 N.W. 461, 49 S.D. 514.

Tex.—**Corpus Juris Secundum cited in** Schroeder v. Brandon, 172 S.W. 2d 488, 491, 141 Tex. 319.

Home Ins. Co. v. Collins, Civ. App., 55 S.W.2d 898—American Rio Grande Land & Irrigation Co. v. Barker, Civ.App., 268 S.W. 506.

Vt.—Bigelow v. Denis, 117 A.2d 261, 119 Vt. 21—Gray v. Janicki, 99 A.2d 707, 118 Vt. 49—Daniels v. Preston, 148 A. 285, 102 Vt. 337.

Wash.—Thornton v. Eneroth, 30 P.2d 951, 177 Wash. 1.

4 C.J. p 798 notes 21–28.

Rule applied to:

Allowance or refusal of amendment to pleading see infra § 1587 (2).

Grant or denial of new trial see infra § 1619.

Heavy burden

Pa.—Echon v. Pennsylvania R. Co., 76 A.2d 175, 365 Pa. 529—In re Garrett's Estate, 6 A.2d 858, 335 Pa. 287.

In re Mount Lebanon Tp., 79 A.2d 670, 168 Pa.Super. 516—In re Annexation by Borough of Irwin of Land in North Huntingdon Tp., 67 A.2d 757, 165 Pa.Super. 119.

Refusal to decree specific performance

On appeal from refusal to decree specific performance of contract to convey real estate, it was incumbent on appellant to establish that court had abused its discretion.

Ind.—Guraly v. Tenta, App., 132 N.E. 2d 725.

Award of attorney's fees

Although the appellate court has discretion in reviewing an allowance of attorney's fees on substitution, a complaining party should present evidence of the worth of the work, its extent, character, or other basis to justify the court in substituting its own judgment of the proper award for that of the chancellor.

Mich.—Horvath v. Vasvary, 224 N.W. 365, 246 Mich. 231.

37. Cal.—Lynch v. Lynch, 230 P. 462, 69 C.A. 66.

Colo.—City of Victor v. Halstead, 271 P. 185, 84 Colo. 450.

Fla.—Hall v. Florida State Drainage Land Co., 103 So. 828, 89 Fla. 312.

Mo.—State Bank of Seneca v. Saft, App., 75 S.W.2d 420.

Neb.—Thomas v. Haspel, 253 N.W. 73, 126 Neb. 255.

N.M.—**Corpus Juris Secundum cited in** Garcia v. J. C. Penney Co., 200 P.2d 372, 374, 52 N.M. 410.

Ohio.—Wyant v. Russell, 142 N.E. 144, 109 Ohio St. 167.

Procedural rulings

An abuse of discretion by trial judge in making procedural rulings must appear affirmatively from the record.

Cal.—Meyer v. State Bd. of Equalization, 267 P.2d 257, 42 C.2d 376.

Where record did not include transcript of proceedings, court would not presume abuse of discretion in rulings on various motions.

Cal.—Hall v. Superior Court In and For Los Angeles County, 289 P.2d 431, 45 C.2d 377.

37.5 Cal.—Wilder v. Wilder, 7 P.2d 1032, 214 C. 783.

Howard v. Howard, 275 P.2d 93, 128 C.A.2d 188—Furniss v. Furniss, 170 P.2d 486, 75 C.A.2d 138—Berry v. Chaplin, 169 P.2d 453, 74 C.A.2d 669—Whitehead v. Whitehead, 114 P.2d 403, 45 C.A.2d 447.

37.10 N.C.—Goode v. Barton, 78 S.E. 2d 398, 238 N.C. 492—Hooper v. Glenn, 53 S.E.2d 843, 230 N.C. 571.

Tenn.—Hemmer v. Tennessee Electric Power Co., 139 S.W.2d 698, 24 Tenn.App. 42.

Reversal

A judgment rendered by a trial court in exercise of a discretionary power will not be reversed, either on direct or collateral attack, in absence of showing of an abuse of discretion.

Tenn.—Brown v. Jarvis, 123 S.W.2d 852, 22 Tenn.App. 394.

37.15 Cal.—Marks v. Marks, 246 P. 2d 82, 112 C.A.2d 283.

37.20 Cal.—Meyer v. State Bd. of Equalization, 267 P.2d 257, 42 C.2d 376.

Silva v. City and County of San Francisco, 198 P.2d 78, 87 C.A.2d 784.

to be no abuse of discretion in the absence of a showing of prejudice.[37.25]

If, on the whole record, any doubt exists as to whether the discretion has been abused, the court below will not be reversed.[38]

§ 1585. Refusal to Exercise Discretion

If the trial court has improperly refused to exercise its discretionary power, the judgment will ordinarily be reversed so that the discretion shall be exercised; but in the absence of a showing to the contrary it will be presumed that the court exercised its discretion.

A test of an abuse of discretion has been held to be failure to exercise discretion.[38.50] If the trial court has refused or failed to exercise a discretion vested in it, as on the supposed ground of want of power, the judgment will generally be reversed to the end that the discretion shall be exercised,[39] unless there is no ground for the exercise of such discretion[40] or the trial court decides that, if it had the power to exercise its discretion, it would deny it.[41]

It has been held not to be orderly procedure for an appellate court to pass on the issue of proper exercise of discretion unless it appears that it has been exercised.[41.5] However, in the absence of a showing to the contrary, the appellate court will presume that the trial court exercised the discretion required of, or vested in, it by law;[42] and consideration of a matter by the court for even a few minutes may be enough to show that the matter was given attention and discretion exercised.[42.5] If it does not appear whether a ruling on a discretionary matter was made as a matter of discretion or a matter of law, it will be presumed that it was ruled on as a matter of discretion.[43]

Vt.—Bigelow v. Denis, 117 A.2d 261, 119 Vt. 21—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292—Horicon v. Langlois' Estate, 52 A.2d 888, 115 Vt. 81.

Reversal

(1) Appellate court cannot reverse ruling of lower court made as matter of discretion unless abuse of discretion affirmatively appears.

Vt.—Ricci v. Bove's Estate, 75 A.2d 682, 116 Vt. 335.

(2) The court of appeals will not reverse unless it affirmatively appears that trial court has improperly used, or manifestly abused, its discretion to great injustice and injury of complaining party.

Tenn.—Plantt v. Plantt, 186 S.W.2d 338, 28 Tenn.App. 79.

37.25 Minn.—Moose v. Vesey, 29 N.W.2d 649, 225 Minn. 64.

Denial of motion to disqualify attorney

Minn.—Moose v. Vesey, supra.

38. Pa.—Kanai v. Sowa, 167 A. 429, 109 Pa.Super. 426.

38.50 Vt.—Richardson v. Persons, 77 A.2d 842, 116 Vt. 413—McCutcheon v. Leonard, 39 A.2d 348, 114 Vt. 38.

39. Mass.—Long v. George, 7 N.E.2d 149, 296 Mass. 574.

Mich.—Daly v. Blair, 150 N.W. 134, 183 Mich. 351, overruling Polhemus v. Ann Arbor Savings Bank, 27 Mich. 44.

Mo.—State v. Wynne, 204 S.W.2d 927, 356 Mo. 1095.

N.Y.—Tilton v. Beecher, 59 N.Y. 176, 17 Am.R. 337.

N.D.—Kohlman v. Hyland, 219 N.W. 228, 56 N.D. 772.

Ohio.—**Corpus Juris Secundum quoted in** Bauer v. Heaton, 38 N.E.2d 413, 414, 68 Ohio App. 181.

Vt.—Parkhurst v. Healy's Estate, 122 A. 895, 97 Vt. 295.

4 C.J. p 798 note 29.

Refusal to exercise discretion as to new trial see infra § 1619.

Discretion withheld

Vt.—Bigelow v. Denis, 117 A.2d 261, 119 Vt. 21—Travers & Thomas v. Rupe, 75 A.2d 692, 116 Vt. 314—Horicon v. Langlois' Estate, 52 A.2d 888, 115 Vt. 81.

Abuse of discretion in refusing to consider case

Minn.—Ramsey v. Chicago Great Western Ry. Co., 77 N.W.2d 176, 247 Minn. 217, certiorari denied Chicago Great Western Ry. Co. v. Ramsey, 77 S.Ct. 63, 352 U.S. 841, 1 L.Ed.2d 57.

Profert not necessary

Where trial court erred in refusing to exercise discretion in permitting plaintiff to reopen case to introduce additional evidence, and in ruling that, no matter how competent and relevant the evidence was, he was without power to hear it, no profert was necessary to show the error of the court.

Ohio.—Bauer v. Heaton, 38 N.E.2d 413, 68 Ohio App. 181.

40. Wis.—Katz v. De Wolf, 138 N.W. 1013, 151 Wis. 337, Ann.Cas.1914B 237.

4 C.J. p 798 note 30.

41. Wis.—Katz v. De Wolf, supra.

41.5 N.H.—Vallee v. Spaulding Fibre Co., 197 A. 697, 89 N.H. 285, rehearing denied 199 A. 894, 89 N.H. 558.

42. Ga.—Seaboard Air Line Ry. Co. v. Benton, 159 S.E. 717, 43 Ga.App. 495, reversed on other grounds 165 S.E. 593, 175 Ga. 491, conformed to 166 S.E. 219, 45 Ga.App. 832—Davis v. Jones, 129 S.E. 892, 34 Ga.App. 7.

N.M.—**Corpus Juris Secundum cited in** Kuert v. Kuert, 292 P.2d 115, 120, 60 N.M. 432.

Vt.—Travers & Thomas v. Rupe, 75 A.2d 692, 116 Vt. 314—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42.

Conclusive presumption

Ga.—Milton v. Mitchell County Electric Membership Ass'n, 12 S.E.2d 367, 64 Ga.App. 63.

Contrary not appearing by record

Vt.—Horicon v. Langlois' Estate, 66 A.2d 16, 115 Vt. 470, 9 A.L.R.2d 195.

Presumption held negatived

(1) Where record had tendency to indicate that court below considered only narrow issue.

N.H.—Delisle v. Smalley, 69 A.2d 868, 96 N.H. 58.

(2) Where trial court, in making order on plaintiff's motion to consolidate issues of fraud and liability, stated that the motion raised the issue which the court had heard previously and received briefs on, but the bill of exceptions stated that defendant filed no brief, presumption that the discretion of the trial court was exercised was negatived, and a hearing was required to be had on the motion.

N.H.—Schofield v. E. R. Bates & Co., 3 A.2d 818, 90 N.H. 31.

(3) Consolidation of causes see infra § 1599.

42.5 Vt.—Travers & Thomas v. Rupe, 75 A.2d 692, 116 Vt. 314.

43. Vt.—Parkhurst v. Healy's Estate, 122 A. 895, 97 Vt. 295—Murray v. Nelson, 122 A. 519, 97 Vt. 101—Schlitz v. Lowell Mut. Fire Ins. Co., 119 A. 513, 96 Vt. 337—Thayer v. Glynn, 106 A. 834, 93 Vt. 257.

Facts stated hypothetically in requests for rulings, although not expressly established, may suffice to present question of law concerning exercise of power ordinarily discretionary.

Mass.—Long v. George, 7 N.E.2d 149, 296 Mass. 574.

2. QUESTIONS REVIEWABLE

a. Parties, Process, and Pleadings

§ 1586. Parties and Process

Discretionary action or ruling by the trial court with respect to parties or process will not be reviewed or revised except for clear abuse.

Unless a prejudicial abuse of discretion is clearly shown,[44] the appellate court generally will not review or revise the trial court's exercise of its discretionary powers with respect to parties[45] or process.[46] The party claiming that the trial court abused its discretion in ruling as to parties has the burden of affirmatively showing such abuse;[46.5] in the absence of such a showing, the appellate court will assume that the trial court exercised proper judicial discretion.[46.10]

Within the above rule are rulings on amendments as to parties,[47] joinder[47.5] or misjoinder[47.10] of parties, the bringing in or addition of new parties,[48]

44. Cal.—**Corpus Juris Secundum cited in** People v. Union Machinery Co., 284 P.2d 72, 74, 133 C.A.2d 167—Freedman v. Imperial Cattle Co., 246 P.2d 986, 112 C.A.2d 593.

Okl.—Fehlman v. Kinnear, 205 P. 1091, 85 Okl. 282.

S.C.—Miller & Barnhardt v. Gulf & Atlantic Ins. Co., 129 S.E. 131, 132 S.C. 78.

Tex.—Grand Lodge, Colored K. P. of Texas v. Cleo Lodge No. 222, Colored K. P., Civ.App., 189 S.W. 764.

4 C.J. p 799 note 33.

Impleaded defendant

Order refusing to strike impleaded defendant as party reversed.

N.Y.—Ciaccio v. James Stewart & Co., 27 N.Y.S.2d 916, 262 App.Div. 758.

Abuse held not shown

S.C.—Weinberg v. Weinberg, 37 S.E. 2d 507, 208 S.C. 157.

45. Md.—Christy v. Hammond, 155 A. 322, 161 Md. 139.

N.C.—Choate Rental Co. v. Justice, 193 S.E. 817, 212 N.C. 523.

4 C.J. p 798 note 32.

"Proper parties . . . must be determined in the court below."

Iowa.—In re Carson's Will, 289 N.W. 30, 35, 227 Iowa 941.

Person interested in subject of suit

S.C.—Graham v. Alliance Ins. Co., 6 S.E.2d 754, 192 S.C. 370.

Necessary party

(1) Generally.

Cal.—Freedman v. Imperial Cattle Co., 246 P.2d 986, 112 C.A.2d 593.

(2) State as necessary party.

Tex.—Petroleum Producers Co. v. Reed, Civ.App., 122 S.W.2d 1116, reversed on other grounds 144 S. W.2d 540, 135 Tex. 386.

Impleaded defendant

In action for injuries, order refusing to strike impleaded defendant as party was reversed, where no facts were pleaded in cross complaint pointing to fault or responsibility of impleaded defendant or his employees.

N.Y.—Ciaccio v. James Stewart & Co., 27 N.Y.S.2d 916, 262 App.Div. 758.

46. Idaho.—Pond v. Babcock, 296 P. 596, 50 Idaho 400.

Mich.—Detroit Bar Ass'n v. American Life Ins. Co., 250 N.W. 288, 264 Mich. 495.

4 C.J. p 798 note 32.

Amendment of process

N.C.—Crump v. Eckerd's Inc., 85 S.E. 2d 607, 241 N.C. 489.

Issuance of further process

Whether further process shall issue, under a statute authorizing supplementary process after defective service, is within the discretion of the judge, to the exercise of which no exception lies.

Mass.—Luce v. Columbia River Packers Ass'n, 190 N.E. 539, 286 Mass. 343.

Refusal to cancel subpœna duces tecum

An appellate court will not interfere with the trial court's refusal to cancel a subpœna duces tecum where there has been no abuse of discretion and defendant's rights have not been invaded.

Mich.—Detroit Bar Ass'n v. American Life Ins. Co., 250 N.W. 288, 264 Mich. 495.

46.5 Va.—Laburnum Const. Corp. v. Richmond Redevelopment & Housing Authority, 66 S.E.2d 474, 192 Va. 727.

Wis.—White House Milk Co. v. Thomson, 81 N.W.2d 725, 275 Wis. 243.

46.10 Tex.—Matthews v. Landowners Oil Ass'n, Civ.App., 204 S.W. 2d 647, refused no reversible error.

Sustaining plea in abatement for nonjoinder

Tex.—Matthews v. Landowners Oil Ass'n, supra.

47. Kan.—Farmers' & Merchants' Bank v. Bank of Glen Elder, 26 P. 680, 46 Kan. 376.

Md.—Christy v. Hammond, 155 A. 322, 161 Md. 139.

N.J.—Hoffman v. Maloratsky, 164 A. 260, 112 N.J.Eq. 338.

4 C.J. p 798 note 32.

Correction of misnomer

(1) Amendment to show true name of fictitious party.

Cal.—Simon v. City and County of San Francisco, 180 P.2d 393, 79 C. A.2d 590—Day v. Western Loan & Bldg. Co., 108 P.2d 702, 42 C.A. 2d 226.

(2) As Code Pub.Civ.L. art. 75 § 37, allows an amendment in case of misnomer of plaintiff or defendant, the action of the trial court in allowing an amendment of the narratio on the ground of misnomer cannot be reviewed on appeal, being a matter of discretion.

Md.—Abromatis v. Amos, 96 A. 554, 127 Md. 394.

Abuse held not shown

Tex.—Brown v. Jones, Civ.App., 134 S.W.2d 850.

47.5 Tex.—Stanolind Oil & Gas Co. v. State, 133 S.W.2d 767, 136 Tex. 5, modified on other grounds 145 S.W.2d 569, 136 Tex. 5.

Harder v. Sanders, Civ.App., 275 S.W.2d 160, reversed on other grounds, Sup., 284 S.W.2d 144—Montgomery v. Willbanks, Civ. App., 202 S.W.2d 851, refused no reversible error.

47.10 N.C.—Western N. C. Conference v. Talley, 39 S.E.2d 816, 226 N.C. 654.

48. Md.—Mead v. Tydings, 105 A. 863, 133 Md. 608.

Minn.—Chapman v. Dorsey, 41 N. W.2d 438, 230 Minn. 279, 16 A.L.R. 2d 1015.

Mo.—Stanley v. Ray, App., 220 S.W. 2d 75—State ex rel. Ely v. Bandall, 299 S.W. 155, 220 Mo.App. 1222.

N.C.—Colbert v. Collins, 42 S.E.2d 349, 227 N.C. 395—Service Fire Ins. Co. of N. Y. v. Horton Motor Lines, 35 S.E.2d 879, 225 N.C. 588—City of Wilmington v. Board of Education of New Hanover County, 185 S.E. 767, 210 N.C. 197—Joyner v. Champion Fibre Co., 101 S.E. 373, 178 N.C. 634.

S.C.—Carolina Housing & Mortg. Corp. v. Orange Hill A. M. E. Church, 97 S.E.2d 28.

the substitution of parties,[49] and petitions or applications to intervene.[50]

Where a motion to amend a return is denied as a matter of law rather than as a matter of discretion, the question is reviewable by the appellate court.[51]

§ 1587(1). Pleadings

The exercise by the trial court of its discretionary powers as to pleadings will generally not be reviewed or revised unless a prejudicial abuse of discretion clearly appears.

As a general rule, an appellate court will not review or revise the exercise by the trial court of its discretionary powers in ruling on motions to make more specific and other matters relating to pleadings,[52] unless the fact that the party has been preju-

Tex.—Ohmart v. Highbarger, Civ. App., 43 S.W.2d 975.
Va.—American Surety Co. of New York v. White, 127 S.E. 178, 142 Va. 1.
4 C.J. p 798 note 32 [c], p 800 note 49.

Reason for rule

Orders making additional parties defendant are usually discretionary and not reviewable, since it can rarely happen that making an additional party defendant will be prejudicial.
N.C.—Morgan v. Turnage Co., 196 S.E. 307, 213 N.C. 425.

Discretion held abused

(1) It is an abuse of discretion for a trial court to permit an additional party to be joined as plaintiff in an action, just as the case is called for trial, and to proceed immediately with the trial, over the objections of defendants, without giving them ample time to amend their pleadings and prepare their defense under the changed conditions.
Okl.—Fehlman v. Kinnear, 205 P. 1091, 85 Okl. 282.

(2) Under a statute providing that proper or necessary parties to a suit may be brought in, but not in a manner to delay the trial of the case unreasonably, if it appears that the trial court abused its discretion as to whether such delay is reasonable or unreasonable the appellate court will interfere.
Tex.—Grand Lodge, Colored K. P. of Texas v. Cleo Lodge No. 222, Colored K. P., Civ.App., 189 S.W. 764.

49. Ind.—Kokomo, F. & W. Traction Co. v. Kokomo Trust Co., 137 N.E. 763, 193 Ind. 219.
Okl.—Gross v. Lincoln, 196 P. 960, 81 Okl. 87.
Pa.—Rosenberg v. Silver, 97 A.2d 92, 374 Pa. 74.
4 C.J. p 798 note 32 [b].

Revivor in name of personal representative

In jurisdictions where the revivor of an action and the substitution of the representative of the deceased party is regarded as discretionary (see Abatement and Revival § 160 a) the exercise of such discretion will be reviewed only for clear abuse.
Wis.—Wills v. Shepard, 198 N.W. 618, 184 Wis. 26.
4 C.J. p 796 note 15 [e].

50. Fla.—Switow v. Sher, 186 So. 519, 136 Fla. 284—Nelson v. Tropical Land Co., 111 So. 512, 93 Fla. 203.
Ill.—Baker v. Baker, 128 N.E.2d 616, 6 Ill.App.2d 557—Hurley v. Finley, 126 N.E.2d 513, 6 Ill.App.2d 23—Jackson v. Pioletti, 105 N.E. 2d 779, 346 Ill.App. 569—Toman v. Tufts, 56 N.E.2d 135, 323 Ill.App. 516—Chicago Title & Trust Co. v. 1146 Milwaukee Ave. Bldg. Corp., 42 N.E.2d 142, 315 Ill.App. 128.
Ind.—Barnard v. Kruzan, App., 44 N.E.2d 233, reversed on other grounds 46 N.E.2d 238, 221 Ind. 208.
Kan.—Porth v. Local Union 201, 199 P.2d 788, 166 Kan. 166.
Mass.—Check v. Kaplan, 182 N.E. 305, 280 Mass. 170—Dillaway v. Burton, 153 N.E. 13, 256 Mass. 568.
Md.—Bauer v. Hamill, 53 A.2d 399, 188 Md. 553.
N.C.—Carter v. Smith, 185 S.E. 15, 209 N.C. 788—Horne v. Horne, 171 S.E. 92, 205 N.C. 835—Horne v. Horne, 171 S.E. 91, 205 N.C. 309.
Ohio.—Holmes v. Republic Steel Corp. of N. J., App., 64 N.E.2d 426—Central Nat. Bank of Cleveland v. Newton Steel Co., 22 N.E.2d 428, 61 Ohio App. 57.
Pa.—Darlington v. Reilly, 69 A.2d 84, 363 Pa. 72—Valmont Development Co. v. Rosser, 146 A. 557, 297 Pa. 140—Slifer v. Slifer, 133 A. 504, 286 Pa. 299.
In re Tax Claim Bureau of Luzerne County, 104 A.2d 176, 175 Pa.Super. 270—Petition of Butler County Com'rs, 15 A.2d 504, 141 Pa.Super. 597—Landis v. Giessner, 200 A. 899, 132 Pa.Super. 301.
Wis.—White House Milk Co. v. Thomson, 81 N.W.2d 725, 275 Wis. 243—Hartwig v. Harvey, 27 N.W.2d 363, 250 Wis. 478, 15 A.L.R.2d 333.
4 C.J. p 798 note 32 [d].

Intervention as friend of court

Neb.—Anglim v. City of Omaha, 299 N.W. 353, 140 Neb. 147.

Intervention after final judgment

Generally, discretion of trial court will be exercised against granting intervention after final judgment, and if so exercised, will not be reviewed by appellate court.
Mich.—School Dist. of City of Ferndale v. Royal Oak Tp. School Dist. No. 8, 291 N.W. 199, 293 Mich. 1, 127 A.L.R. 661.

Where there is an absolute right to intervene, so that permission to do so is not discretionary with the court, an order refusing permission to intervene is reviewable by appeal.
Okl.—Morton v. Baker, 82 P.2d 998, 183 Okl. 406.

Change of issues; complication of case

Where intervention would change the issues or unduly complicate the case, refusal of leave to intervene is not ground for reversal, particularly if refusal does not deprive person seeking to intervene of a right of action.
Ill.—Town of Centreville v. Deckard, 53 N.E.2d 717, 322 Ill.App. 9.

Discretion held abused

In an action on a sheriff's bond for damages alleged to be caused by mismanagement of attached property, the court's refusal, without good reason, to permit the sheriff on his application and that of defendant surety company to become a party defendant, although not a necessary party, was an abuse of discretion reviewable on appeal.
S.C.—Miller & Barnhardt v. Gulf & Atlantic Ins. Co., 129 S.E. 131, 132 S.C. 78.

Number of interveners

Discretion as to the number allowed to intervene in a proceeding affecting the general common interest, the number not materially adding to the costs, will not be interfered with.
Tex.—Tyree v. Road Dist. No. 5, Navarro County, Civ.App., 199 S.W. 644, error refused.

No question of law held presented

Denial of a petition to intervene, filed by stockholders of plaintiff corporation in suit by a lessee to restrain enforcement of lessor's judgment for possession of the premises, was held to present no question of law for review.
Mass.—Poll-Parrot Beauty Salons v. Gilchrist Co., 6 N.E.2d 612, 296 Mass. 451.

Intervention not dismissed on appeal

La.—Le Blanc v. Le Blanc, App., 80 So.2d 715.

51. Vt.—Murphy v. Punt, 180 A. 886, 107 Vt. 421.

52. Ill.—Hackman v. City of Staunton, 190 Ill.App. 545.

diced by the court's exercise of its discretion is clearly shown.[53]

This rule has been applied to discretionary rulings as to the time of filing or perfecting pleadings.[54]

Ind.—Seymour Water Co. v. Lebline, 144 N.E. 30, 195 Ind. 481, rehearing overruled 145 N.E. 764, 195 Ind. 481.
Iowa.—Kenwood Lumber Co. v. Armstrong, 208 N.W. 371, 201 Iowa 888.
La.—R. P. Farnsworth & Co. v. Estrade, Cotton & Fricke, App., 166 So. 160, amended and rehearing denied 166 So. 676.
Mass.—Blaufarb v. Drooker, 146 N. E. 242, 251 Mass. 201, 39 A.L.R. 291.
Mo.—Jacobs v. Chicago, P. & St. L. R. Co., App., 204 S.W. 954.
Vt.—Johnson & Wight v. Rickard, 52 A.2d 786, 115 Vt. 118.

Leave to file motions
Kan.—Fleming v. Campbell, 69 P.2d 718, 146 Kan. 294.

Dilatory pleas and exceptions
In absence of flagrant abuse of discretion, action of district court in matters concerning dilatory pleas and exceptions is final.
La.—R. P. Farnsworth & Co. v. Estrade, Cotton & Fricke, App., 166 So. 160, amended on other grounds and rehearing denied 166 So. 676.

A judgment permitting lost pleadings to be substituted is not reviewable.
N.C.—McIver Park, Inc., v. Brinn, 27 S.E.2d 548, 223 N.C. 502.

Want of sufficient affidavit of defense or reply
(1) While plaintiff has a statutory right to appeal from an order discharging a rule for judgment for want of a sufficient affidavit of defense, reviewing court will not reverse unless it appears clearly and without doubt that trial court erred.
Pa.—Bean v. Harleysville Nat. Bank, 51 A.2d 394, 160 Pa.Super. 396—Holladay v. Fidler, 43 A.2d 919, 158 Pa.Super. 100—Miller v. Wayne Title & Trust Co., 29 A.2d 206, 150 Pa.Super. 536—Hufl v. Regula, 13 A.2d 117, 140 Pa.Super. 69—State Trading Corp. v. Addis, 13 A.2d 116, 140 Pa.Super. 64—Sundheim v. Beaver County Building & Loan Ass'n, 7 A.2d 17, 136 Pa.Super. 9—Commonwealth, to Use of Hoppes, v. Fidelity & Deposit Co. of Maryland, 198 A. 526, 130 Pa.Super. 455—Russ Soda Fountain Co. v. Victor Pastry Shoppe, 190 A. 376, 125 Pa.Super. 452.

(2) Statute authorizing appeal from refusal of judgment for want of sufficient affidavit of defense was held intended to reach only clear cases of error of law so as to avoid delay of trial.
Pa.—Russ Soda Fountain Co. v. Victor Pastry Shoppe, 190 A. 376, 125 Pa.Super. 452.

(3) Appeal from refusal to enter judgment for defendant for want of sufficient reply to defendant's affirmative defense is warranted, but judgment of lower court will not be reversed unless pleadings show beyond doubt that defendant was entitled to judgment asked.
Pa.—Gehret v. Mitten Bank Securities Corp., 182 A. 125, 120 Pa.Super. 198.

(4) Defendant's right to a summary judgment for want of a sufficient reply to the averments of new matter contained in the affidavit of defense was held not so clear and free from doubt as to require reversal of trial court's refusal of summary judgment.
Pa.—Mariatt v. Fire Ass'n of Philadelphia, 189 A. 722, 124 Pa.Super. 543.

53. Ohio.—Walters v. Baltimore & O. S. W. Ry. Co., 146 N.E. 75, 111 Ohio St. 575.
Tex.—Hammonds v. Hammonds, Civ. App., 278 S.W.2d 380, reversed on other grounds Sup., 285 S.W.2d 362—Mercantile Nat. Bank at Dallas v. McCullough Tool Co., Civ.App., 250 S.W.2d 870, reversed on other grounds 259 S.W.2d 724, 152 Tex. 471—Tucker v. Northcutt, Civ. App., 248 S.W.2d 750—Southern Underwriters v. Hodges, Civ.App., 141 S.W.2d 707, error refused—Fulmore v. Benson, Civ.App., 257 S.W. 697, reversed on other grounds Benson v. Fulmore, Com.App., 269 S.W. 71.
4 C.J. p 800 note 54.

54. Ill.—Carlson v. Johnson, 105 N. E. 712, 263 Ill. 556.
Hardy v. Dobler, 248 Ill.App. 361.
Ind.—Evansville White Swan Laundry v. Goodman, 91 N.E.2d 180, 228 Ind. 253.
Iowa—Rice v. Bolton, 100 N.W. 634, 102 N.W. 509, 126 Iowa 654.
Kan.—Cummins v. Standard Oil Co., 296 P. 731, 132 Kan. 600.
Mont.—Slattery v. Labbitt, 181 P.2d 601, 120 Mont. 183.
Neb.—Jensen v. Omaha Public Power Dist., 66 N.W.2d 591, 159 Neb. 277—Application of City of Seward, 62 N.W.2d 537, 158 Neb. 143—In re Myers' Estate, 40 N.W.2d 536, 152 Neb. 165.
N.C.—Gregory v. Pinnix, 158 N.C. 153, 73 S.E. 816.
Ohio.—Case v. National Life & Acc. Ins. Co., App., 66 N.E.2d 270.
Okl.—Gilbert v. Conservative Loan & Trust Co., 280 P. 278, 138 Okl. 1, 67 A.L.R. 885.
Or.—Brown v. Becker, 295 P. 1113, 135 Or. 353.
S.C.—Mallard Lumber Co. v. Carolina Portland Cement Co., 132 S.E. 614, 134 S.C. 228.
Tex.—Waters v. Victoria Independent School Dist., Civ.App., 279 S.W.2d 695.
Vt.—Johnson & Wight v. Rickard, 52 A.2d 786, 115 Vt. 118.
Va.—Keister's Ex'rs v. Philips' Ex'x, 98 S.E. 674, 124 Va. 585.
Wash.—West Side Telephone Co. v. Kenison, 266 P. 706, 147 Wash. 542.
4 C.J. p 802 notes 73, 74.

Plea in abatement
Tenn.—Oliver v. Altsheler, 278 S.W. 2d 675, 198 Tenn. 155.

Enlargement of time
(1) For filing complaint.
N.C.—Veasey v. King, 92 S.E.2d 761, 244 N.C. 216.
(2) For pleading.
N.C.—Early v. Eley, 91 S.E.2d 919, 243 N.C. 695.

Filing late or out of time
(1) A ruling of the trial judge permitting pleadings to be filed out of time will not be reversed on appeal, except where it is shown that such discretion has been abused to the injury or prejudice of the complaining party.
Okl.—Warr v. Norton, 121 P.2d 583, 190 Okl. 114—Gilbert v. Conservative Loan & Trust Co., 280 P. 278, 138 Okl. 1, 67 A.L.R. 885.
Or.—Brown v. Becker, 295 P. 1113, 135 Or. 353.
S.C.—Mallard Lumber Co. v. Carolina Portland Cement Co., 132 S. E. 614, 134 S.C. 228.

(2) A motion made under code section authorizing court to allow answer to be made after time limited is addressed to sound discretion of trial court, and where trial court refuses to allow an answer to be filed, appellant, to prevail in reviewing court, must show that there was a clear abuse of discretion by trial judge.
S.C.—Ward v. Miller, 95 S.E.2d 482, 230 S.C. 288.

(3) To defeat trial court's ruling in denying permission for late filing of cross complaint or counterclaim, it must be shown that trial court abused its discretion.
Cal.—Glogau v. Hagan, 237 P.2d 329, 107 C.A.2d 313.

(4) A filing of a demurrer after the time prescribed by law is the privilege to be accorded or denied within the sound discretion of the trial judge, and such discretion is not revisable on appeal.
Ala.—MacMahon v. City of Mobile, 44 So.2d 570, 253 Ala. 436.

(5) Order refusing defendant an extension of time in which to file answer, and authorizing plaintiff to proceed with entering up of a de-

§ 1587(2). —— Amendment

a. In general
b. Subject matter or purpose of amendment
c. Time of amendment

a. In General

Rulings on amendments to pleadings will, in general, be disturbed on appeal only for abuse of the discretion of the trial court; the complaining party has the burden of showing such abuse.

The general rule, stated supra § 1587(1), that the exercise by the trial court of its discretionary powers as to pleadings will not be reviewed or revised in the absence of an abuse of discretion has been applied to amendments to pleadings,[55] includ-

fault judgment, would not be disturbed by the supreme court on appeal, unless there was a clear showing of abuse of discretion.
S.C.—Morgan v. State Farm Mut. Ins. Co., 91 S.E.2d 723, 229 S.C. 44.

(6) Permitting the filing of an answer in the nature of a general denial during the trial will not be disturbed on appeal, in the absence of abuse of discretion.
Wash.—West Side Telephone Co. v. Kenison, 266 P. 706, 147 Wash. 542.

Plea of statute of frauds

Permitting defendant to file plea of statute of frauds after complainant had testified was a matter within discretion of the chancellor, which would not be disturbed in absence of abuse of discretion.
Tenn.—Boutwell v. Lewis Bros. Lbr. Co., 182 S.W.2d 1, 27 Tenn.App. 460.

55. Ark.—Butler v. Butler, 2 S.W. 2d 63, 176 Ark. 126.
Cal.—Peters v. Binnard, 25 P.2d 834, 219 Cal. 141—Fetterley v. Gibson, 291 P. 411, 210 C. 282—Dodd v. Dunn, 223 P. 952, 193 C. 334—Mercantile Trust Co. of San Francisco v. Sunset Road Oil Co., 168 P. 1037, 176 C. 461—Schalich v. Bell, 161 P. 983, 173 C. 773—Postlethwaite v. Minor, 142 P. 55, 168 C. 227.
Crome v. Allen, 125 P.2d 898, 52 C.A.2d 137—Fuller v. Vista Del Arroyo Hotel, 108 P.2d 920, 42 C.A. 2d 400—Unger v. Goldman, 54 P.2d 1126, 12 C.A.2d 129—Lincoln Holding Corporation v. Union Indemnity Co., 18 P.2d 744, 129 C.A. 399—National Gypsum Products Co. v. Buttonlath Mfg. Co., 17 P.2d 1012, 128 C.A. 500—Dodge v. Snow, 14 P.2d 156, 125 C.A. 691—Hawels v. Baddour, 9 P.2d 235, 121 C.A. 437—Rhodes v. Bush, 8 P.2d 542, 121 C.A. 137—Karlik v. Peters, 288 P. 863, 106 C.A. 126—College Nat. Bank of Berkeley v. Morrison, 280 P. 218, 100 C.A. 403—Mays v. Wann, 274 P. 1020, 96 C.A. 760—Cullinan v. McColgan, 263 P. 353, 87 C.A. 684—In re Goldman's Estate, 260 P. 586, 86 C.A. 125—Blodgett v. Rowlet, 260 P. 324, 86 C.A. 32—Sweet v. Hamilothoris, 258 P. 652, 84 C.A. 775—Long Beach Fisheries Co. v. Curtis Corporation, 208 P. 872, 58 C.A. 318—Yolo Water & Power Co. v. Edmands, 195 P. 463, 50 C.A. 444—Lippert v. Pacific Sugar Corp., 164 P. 810, 33 C.A. 198.
Conn.—Masi v. General Ice Cream Corporation, 180 A. 455, 120 Conn. 259—Raymond v. Bailey, 118 A. 915, 98 Conn. 201.
Fla.—E. O. Painter Fertilizer Co. v. Foss, 145 So. 253, 107 Fla. 464—Kennedy v. Kennedy, 134 So. 201, 101 Fla. 239—Atlantic Coast Line R. Co. v. Feagin, 113 So. 89, 93 Fla. 1015—Williams v. Peninsular Grocery Co., 75 So. 517, 73 Fla. 937—Warren v. Warren, 75 So. 35, 73 Fla. 764, L.R.A.1917E, 490.
Ga.—Park v. Jones, 92 S.E. 396, 20 Ga.App. 38.
Hawaii.—McMillan v. Peters, 30 Hawaii 148.
Idaho.—Todd v. City of Hailey, 260 P. 1092, 45 Idaho 175—Marysville Development Co. v. Marotz, 258 P. 180, 44 Idaho 469—Idaho Trust Co. v. Eastman, 249 P. 890, 43 Idaho 142—Hoy v. Anderson, 227 P. 1058, 39 Idaho 430—Craven v. Bos, 225 P. 136, 38 Idaho 722—Swanson v. Olsen, 220 P. 407, 38 Idaho 24.
Ill.—Hoerrmann v. Wabash Ry. Co., 141 N.E. 289, 309 Ill. 524.
McMahon v. Smith, 275 Ill.App. 56—Hunziker v. Mulcahey, 215 Ill. App. 508—Scovill Mfg. Co. v. Cassidy, 195 Ill.App. 448, affirmed 114 N.E. 181, 275 Ill. 462.
Ind.—Goines v. Brown, 167 N.E. 124, 201 Ind. 217.
Hartford Accident & Indemnity Co. v. State, 159 N.E. 21, 94 Ind. App. 531.
Iowa.—McKeown v. McKeown, 263 N. W. 266, 220 Iowa 791—Benson v. Sawyer, 249 N.W. 424, 216 Iowa 841—State v. Cordaro, 241 N.W. 448, 214 Iowa 1070—A. Y. McDonald Co. v. Morrison, 228 N.W. 878, 211 Iowa 882—Cary-Platt v. Iowa Electric Co., 224 N.W. 89, 207 Iowa 1052—Conklin v. Towne, 216 N.W. 264, 204 Iowa 916—Charles G. Lowery Co. v. Lamp, 205 N.W. 538, 200 Iowa 853—Breen v. Iowa Cent. Ry. Co., 168 N.W. 901, 184 Iowa 1200, certiorari denied Iowa Cent. R. Co. v. Breen, 39 S.Ct. 288, 249 U.S. 604, 63 L.Ed. 798—Cottong v. Zybell, 162 N.W. 767, 179 Iowa 1184.
Kan.—Cobb v. Burford, 246 P. 1009, 121 Kan. 199—German-American State Bank v. Badders, 152 P. 651, 96 Kan. 533—Alexander v. Clarkson, 150 P. 576, 96 Kan. 174.
Ky.—Bullock v. Young, 67 S.W.2d 941, 252 Ky. 640—City of Springfield v. Haydon, 288 S.W. 337, 216 Ky. 483—Scholl v. Margulis, 284 S. W. 421, 215 Ky. 62—Duff v. Hodge's Guardian, 281 S.W. 183, 213 Ky. 392—Levy v. Nelson, 279 S.W. 620, 212 Ky. 444—First State Bank of Monterey v. Vories, 242 S.W. 18, 195 Ky. 96—Million v. Johnson, 242 S.W. 14, 195 Ky. 233—Foxwell v. Justice, 231 S.W. 509, 191 Ky. 749—Western Union Telegraph Co. v. Chas. C. Brent & Bro., 230 S.W. 921, 191 Ky. 503—Gardner v. Alexander, 181 S.W. 180, 167 Ky. 599.
Fuller v. Fuller, 13 Ky.Op. 730.
La.—Williamson v. Williamson, 113 So. 796, 164 La. 144.
Sliman v. Weaver, App., 162 So. 87.
Me.—Tuttle v. Somerset County Com'rs, 164 A. 541, 131 Me. 475—Fournier v. Great Atlantic & Pacific Tea Co., 148 A. 147, 128 Me. 393, 68 A.L.R. 481—Consolidated Rendering Co. v. Harrington, 96 A. 724, 114 Me. 394—Cole v. Cole, 94 A. 120, 113 Me. 358—Garmong v. Henderson, 92 A. 322, 112 Me. 383.
Md.—Pullman Co. v. Ray, 94 A.2d 266, 201 Md. 268—Noellert v. Noellert, 182 A. 427, 169 Md. 559—Buckner v. Jones, 145 A. 550, 157 Md. 239—Kearney v. Beverly Hills Corporation, 145 A. 385, 157 Md. 136.
Mass.—Gallagher v. Wheeler, 198 N. E. 891, 292 Mass. 547—Grandchamp v. Costello, 194 N.E. 837, 289 Mass. 506—McCoole v. Mackintosh, 192 N.E. 600, 288 Mass. 115—Ames v. Beal, 187 N.E. 99, 284 Mass. 56—Waltham Bleachery & Dye Works v. Clark-Rice Corporation, 175 N.E. 174, 274 Mass. 488—Knox v. City of Springfield, 173 N.E. 439, 273 Mass. 109—Crowley v. Holdsworth, 165 N.E. 884, 267 Mass. 13—Hall Pub. Co. v. MacLaughlin, 120 N.E. 69, 230 Mass. 534—Hannaberry v. Green, 114 N.E. 197, 225 Mass. 201—Lowrie v. Castle, 113 N.E. 206, 225 Mass. 37—Aronson v. Nurenburg, 105 N.E. 1056, 218 Mass. 376.
Mich.—Grant v. National Mfr. & Plating Co., 243 N.W. 21, 258 Mich. 453—Merrill v. Leisenring, 131 N. W. 538, 166 Mich. 219.
Minn.—Anderson v. Minneapolis, St. P. & S. S. M. Ry. Co., 179 N.W. 45, 146 Minn. 430.
Mo.—Lee v. W. E. Fuetterer Battery & Supplies Co., 23 S.W.2d 45, 323 Mo. 1204—Montague v. Missouri &

K. I. Ry. Co., 233 S.W. 189, 289 Mo. 288—State ex rel. Bankers' Life Co. of Des Moines, Iowa v. Reynolds, 208 S.W. 618, 277 Mo. 14.

Fischman-Harris Realty Co. v. Kleine, App., 82 S.W.2d 605—Oliver v. Wilkey, App., 62 S.W.2d 776—Bradley v. Page, App., 46 S.W.2d 208—Scheerer v. Waltner, 29 S.W.2d 193, 225 Mo.App. 837—Berlau v. Metropolitan Life Ins. Co., 24 S.W.2d 686, 224 Mo.App. 938—Schroll v. Noe, App., 297 S.W. 999, certiorari quashed State ex rel. Noe v. Cox, 19 S.W.2d 695, 323 Mo. 520—Ratcliff v. Ratcliff, 288 S.W. 794, 221 Mo.App. 944—Jacobs v. Chicago, P. & St. L. R. Co., App., 204 S.W. 954—Jennings v. National American, App., 179 S.W. 789.

Mont.—Granger v. Erie, 53 P.2d 443, 101 Mont. 170—Clack v. Clack, 41 P.2d 32, 98 Mont. 552—Besse v. McHenry, 300 P. 199, 89 Mont. 520—Sawyer v. Somers Lumber Co., 282 P. 852, 86 Mont. 169—Hardie v. Peterson, 282 P. 494, 86 Mont. 150—State v. Clapp, 263 P. 433, 81 Mont. 200, certiorari denied State of Montana ex rel. Ingersoll v. Clapp, 48 S.Ct. 528, 277 U.S. 591, 72 L.Ed. 1003, and error dismissed 49 S.Ct. 7, 278 U.S. 661, 73 L.Ed. 568—Wandel v. Wandel, 248 P. 864, 76 Mont. 160—Callan v. Hample, 236 P. 650, 73 Mont. 321—Morrison v. Concordia Fire Ins. Co. of Milwaukee, Wis., 231 P. 905, 72 Mont. 97.

Neb.—State ex rel. Sorensen v. Farmers' State Bank, 254 N.W. 728, 127 Neb. 139—Scharf v. Frontier County, 204 N.W. 516, 113 Neb. 688—Rawlins v. Myers, 148 N.W. 915, 96 Neb. 819.

N.H.—Lavallee v. Laconia Nat. Bank, 47 A.2d 416, 94 N.H. 76—Bacon v. Thompson, 177 A. 548, 87 N.H. 270.

N.J.—Yuska v. Yuska's Estate, 176 A. 133, 114 N.J.Law 157—Vinik v. Niagara Fire Ins. Co., 171 A. 555, 112 N.J.Law 462, affirmed 174 A. 753, 113 N.J.Law 406—Robert Allen, Inc. v. Spring St. Realty Co., 166 A. 199, 111 N.J.Law 88—King v. Steglitz, 166 A. 146, 111 N.J.Law 11.

N.Y.—Harriss v. Tams, 179 N.E. 476, 258 N.Y. 229.

Benton v. Kennedy-Van Saun Mfg. & Eng. Corp., 152 N.Y.S.2d 955, 2 App.Div.2d 20—Wendring v. Louis & L. J. White Co., 8 N.Y.S.2d 825, 255 App.Div. 939, reargument denied 10 N.Y.S.2d 218, 256 App. Div. 895.

N.C.—Paul v. Neece, 94 S.E.2d 596, 244 N.C. 565—Sawyer v. Cowell, 86 S.E.2d 431, 241 N.C. 681—Park Terrace v. Phoenix Indem. Co., 85 S.E.2d 677, 241 N.C. 473—Pharr v. Pharr, 25 S.E.2d 471, 223 N.C. 115—Byers v. Byers, 25 S.E.2d 466, 223 N.C. 85—Hood v. Elder Motor Co., 183 S.E. 529, 209 N.C. 303—Life Ins. Co. of Virginia v. Edgerton, 174 S.E. 96, 206 N.C. 402—McKeel v. Latham, 165 S.E. 694, 203 N.C. 246—Town of Rockingham v. Coley, 155 S.E. 871, 199 N.C. 745—Patterson v. Champion Lumber Co., 94 S.E. 692, 175 N.C. 90—Johnson v. Western Union Telegraph Co., 87 S.E. 993, 171 N.C. 130—Mason v. Stephens, 84 S.E. 528, 168 N.C. 369—Adickes v. Chatham, 83 S.E. 748, 167 N.C. 681—Cauley v. Dunn, 83 S.E. 16, 167 N.C. 32.

N.D.—Flamer v. Johnson, 162 N.W. 307, 36 N.D. 215.

Ohio.—Davies v. Columbia Gas & Elec. Corp., App., 79 N.E.2d 327, reversed on other grounds 86 N.E. 2d 603, 151 Ohio St. 417—Scottwood Realty Co. v. Bowman, 153 N.E. 172, 21 Ohio App. 244.

Brown v. Kiechler Mfg. Co., 26 Ohio Cir.Ct.,N.S., 401.

Okl.—Townsend v. Townsend, 50 P. 2d 147, 174 Okl. 185—Pierce v. C. I. T. Pierce Corporation, 41 P.2d 481, 170 Okl. 633—Donnelly v. Atkins, 264 P. 911, 130 Okl. 33—Fireman's Fund Ins. Co. v. Box, 252 P. 433, 123 Okl. 113—Reynolds v. Schmidt, 247 P. 110, 118 Okl. 161—U. S. Fidelity & Guaranty Co. v. Minnehoma Oil Corporation, 243 P. 154, 116 Okl. 10—Walters v. Tulsa Rig, Reel & Mfg. Co., 241 P. 1095, 113 Okl. 293—Clem Oil Co. v. Oliver, 232 P. 942, 106 Okl. 22—Breene & Kinnear v. MacWhyte Co., 224 P. 959, 101 Okl. 247—Mitchell v. Hines, 223 P. 182, 101 Okl. 38—Magna Oil & Refining Co. v. Parkville Oil Corporation, 221 P. 65, 96 Okl. 157—Barnett v. Ætna Explosives Co., 220 P. 874, 96 Okl. 132—Beaty v. Armstrong, 218 P. 516, 95 Okl. 109—American Nat. Ins. Co. v. Rardin, 177 P. 601, 74 Okl. 146—Turk v. Page, 167 P. 462, 64 Okl. 251—Jones v. S. H. Kress & Co., 153 P. 655, 54 Okl. 194—Scivally & Hodges v. Doyle, 151 P. 618, 50 Okl. 275—Lewis v. Bandy, 144 P. 624, 45 Okl. 45.

Or.—Hall v. Cutler Bindery Co., 26 P.2d 1109, 145 Or. 565—Klingback v. Mendiola, 6 P.2d 237, 138 Or. 234—Bennett v. City of Portland, 265 P. 433, 124 Or. 691—Vermont Loan & Trust Co. v. Bramel, 224 P. 1085, 111 Or. 50—Kimball v. Horticultural Fire Relief of Oregon, 154 P. 578, 79 Or. 133—Filkins v. Portland Lumber Co., 142 P. 578, 71 Or. 249.

Pa.—Trabue v. Walsh, 177 A. 815, 318 Pa. 391—William B. Rambo Building & Loan Ass'n v. Dragone, 166 A. 888, 311 Pa. 422—Piesneski v. Stepien, 150 A. 296, 300 Pa. 161—Leafgreen v. Labar, 124 A. 443, 280 Pa. 215.

Severance v. Heyl & Patterson, 174 A. 787, 115 Pa.Super. 36.

R.I.—Farnell v. Farnell, 199 A. 445, 60 R.I. 439—Colitz v. Gilbert, 166 A. 685, 53 R.I. 319.

S.C.—Metts v. Wenberg, 155 S.E. 734, 158 S.C. 411—J. R. Watkins Co. v. Stephens, 142 S.E. 245, 144 S.C. 125—Home Bank of Barnwell v. Mixon, 121 S.E. 787, 128 S.C. 310—Thornhill v. Davis, 113 S.E. 370, 121 S.C. 49, 24 A.L.R. 617—Faysoux v. Seaboard Air Line Ry. Co., 96 S.E. 150, 109 S.C. 352—Marion County Lumber Co. v. Hodges, 85 S.E. 49, 100 S.C. 477.

S.D.—Koenekamp v. Picasso, 260 N. W. 623, 63 S.D. 440—Cornell v. Johnson, 241 N.W. 740, 59 S.D. 617—Cronholm v. Sheldon, 226 N.W. 948, 55 S.D. 582—Samp v. Long, 210 N.W. 733, 50 S.D. 492.

Tenn.—Young v. Little's Unknown Heirs, 232 S.W.2d 614, 34 Tenn. App. 39—Boillin-Harrison Co. v. Keeble, 14 Tenn.App. 347—City of Memphis v. Byrne, 9 Tenn.App. 379—Voncannon & Co. v. Burleson & Laws, 6 Tenn.App. 369—Dreher v. Hill, 5 Tenn.App. 10.

Tex.—Brenan v. Eubank, Civ.App., 56 S.W.2d 513—National Mut. Ben. Ass'n v. Aaron, Civ.App., 45 S.W. 2d 371, modified on other grounds Com.App., 67 S.W.2d 855—Shell Petroleum Corporation v. Parker, Civ.App., 37 S.W.2d 1064—Morrissey v. Jones, Civ.App., 24 S.W.2d 1101—Texas Mut. Life Ins. Ass'n v. Wilson, Civ.App., 19 S.W.2d 591—American Rio Grande Land & Irrigation Co. v. Barker, Civ.App., 268 S.W. 506—Bender v. Bender, Civ.App., 187 S.W. 735, reversed on other grounds Bergstedt v. Bender, Com.App., 222 S.W. 547.

Va.—Watson v. Brunner, 105 S.E. 97, 128 Va. 600.

Wash.—D'Ambrosia v. Acme Packing & Provision Co., 37 P.2d 887, 179 Wash. 405—Brown v. Nelson, 271 P. 894, 149 Wash. 587—Anderson v. Hall, 157 P. 996, 91 Wash. 376—Stoner v. Fryett, 157 P. 213, 91 Wash. 89.

W.Va.—Sammons Bros. Const. Co. v. Elk Creek Coal Co., 65 S.E.2d 94, 135 W.Va. 656—Stealey v. Lyons, 37 S.E.2d 569, 128 W.Va. 686—Webster v. Hurvitz, 180 S.E. 265, 116 W.Va. 328.

Wis.—Turner Mfg. Co. v. Gmeinder, 198 N.W. 611, 183 Wis. 664.

Wyo.—Salt Lake Hardware Co. v. Connell, 34 P.2d 23, 47 Wyo. 145.

4 C.J. p 799 notes 34, 35—19 C.J. p 1129 notes 87, 88, p 1226 note 97.

"With few exceptions the action of the trial court in permitting or rejecting the amendments to pleadings will be approved."

Ky.—Culton v. Napier, 47 S.W.2d 519, 521, 242 Ky. 683.

Discretion not absolute but subject to review

W.Va.—Buffa v. Baumgartner, 58 S. E.2d 270, 133 W.Va. 753.

ing, under a number of decisions, pleadings in equity.[55.1] When a ruling on a motion to amend a pleading is presented for review, the question is not whether the judges of the reviewing court would have made an original like ruling,[55.2] but whether they believe that a judicial mind, in view of the law and the circumstances, could reasonably have reached that conclusion.[55.3]

So, rulings allowing or refusing amendments are subject to review or reversal only for, and will not be disturbed in the absence of, abuse of discretion,[55.4]

Exercise of discretion rarely disturbed

(1) Exercise of discretion by trial court in permitting or refusing to permit amendments to pleadings will rarely be revised or interfered with by appellate court.

Cal.—Jenssen v. R. K. O. Studios, 67 P.2d 757, 20 C.A.2d 705.

Ky.—Perros v. Stone's Adm'r, 202 S. W.2d 160, 305 Ky. 142.

Mo.—Uitz v. Pollard, App., 159 S.W. 2d 687.

Tenn.—Caccamisi v. Thurmond, App., 282 S.W.2d 633.

(2) Granting or refusing of leave to amend an answer is within sound discretion of trial court, which discretion will seldom be disturbed where exercised for purpose of allowing true facts to be alleged.

Cal.—Hyman v. Tarplee, 149 P.2d 453, 64 C.A.2d 805.

(3) Allowance or refusal of belated amendments to pleadings is so largely addressed to trial court's discretion that error can rarely be predicated thereon.

Kan.—Hirt v. Bucklin State Bank of Bucklin, 109 P.2d 171, 153 Kan. 194.

When substantial legal rights are involved, the appellate court not only has the power to review the action of the trial court in ruling on amendments to pleadings, but it is its duty to do so.

Iowa.—State v. Cordaro, 241 N.W. 448, 214 Iowa 1070.

Manner of exercising discretion

(1) The manner in which discretion of court in denying leave to amend answer is exercised is subject to review.

Ill.—Martin v. Kozjak, 125 N.E.2d 690, 5 Ill.App.2d 390.

(2) The discretion exercised by the trial court in preventing an amendment in pleadings is subject to review to determine whether there was some sound reason for trial court to exercise its discretion in that manner.

Conn.—Cook v. Lawlor, 90 A.2d 164, 139 Conn. 68.

(3) Amendment of a declaration or bill of complaint after appearance of defendant and before final judgment is a matter which rests in sound judicial discretion of the court, and manner in which such discretion is exercised is subject to appellate review.

W.Va.—Grottendick v. Webber, 52 S. E.2d 700, 132 W.Va. 539.

Plea in abatement

Cal.—Stewart v. San Fernando Refining Co., 71 P.2d 1118, 22 C.A.2d 661.

Arbitrary action

The reasonableness of time or opportunity to amend or to avail pleader of other procedure provided by statutes on a holding that a pleading does not state a claim or legal defense is peculiarly within discretionary province of trial court, and action of trial court in furtherance of such objectives will not be disturbed unless it is arbitrary.

Mo.—Gerber v. Schutte Inv. Co., 194 S.W.2d 25, 354 Mo. 1246.

Grant not required as matter of law

Mass.—Smith v. Miles, 5 N.E.2d 12, 296 Mass. 126.

Question of law

(1) The refusal of leave to amend bill of complaint rested in sound judicial discretion, and presented no question of law.

Mass.—Foster v. Shubert Holding Co., 55 N.E.2d 772, 316 Mass. 470.

(2) Refusal to permit amendment held to raise a question of law on appeal, and not to be a matter of judicial discretion.

Ill.—People ex rel. Anderson v. Chicago & E. I. R. Co., 78 N.E.2d 265, 399 Ill. 520.

Matter of right

Where the allowance of an amendment to pleading which at common law was discretionary becomes, by statute, a matter of right, the refusal of the right to amend is subject to review.

Pa.—Wessling v. Latkanich, 19 A.2d 553, 144 Pa.Super. 317.

Loss of right to jury trial

A finding that justice requires that an action at law for embezzlement be amended by a bill in equity for an accounting to ascertain the amount of indebtedness will not be set aside merely on ground that defendant thereby lost right to a jury trial of action at law.

N.H.—Dondero v. Ferranti, 3 A.2d 831, 90 N.H. 554.

55.1 Ala.—Pasquale v. Francis, 98 So. 568, 210 Ala. 590—Stover v. Hill, 94 So. 826, 208 Ala. 575.

Ill.—Smith v. Lincoln-Catalpa Bldg. Corporation, 182 N.E. 774, 349 Ill. 530—Soltysik v. Soltysik, 148 N.E. 40, 317 Ill. 247—Hoerrmann v. Wabash Ry. Co., 141 N.E. 289, 309 Ill. 524—Walker v. Struthers, 112 N.E. 961, 273 Ill. 387. See Ferrell v. Southern Illinois Ry. & Power Co., 206 Ill.App. 169.

Md.—Stoewer v. Porcelain Enamel & Mfg. Co. of Baltimore, 85 A.2d 911, 199 Md. 146—Allers v. Klein, 155 A. 420, 161 Md. 194.

Mass.—Wyatt v. Boston Consol. Gas. Co., 65 N.E.2d 320, 319 Mass. 251.

Mo.—Eckhardt v. Bock, App., 159 S. W.2d 395.

Mont.—Buhler v. Loftus, 165 P. 601, 53 Mont. 546.

N.J.—Schaffer v. Krestovnikow, 105 A. 239, 89 N.J.Eq. 549.

Pa.—Miller v. Foulke, Com.Pl., 46 Dauph.Co. 326.

Tenn.—Tennessee Public Service Co. v. City of Knoxville, 91 S.W.2d 566, 170 Tenn. 40.

21 C.J. p 452 note 18 [c].

However, it has been said: "Although the allowance of a legally permissible amendment is discretionary . . . questions of discretion are carried up on appeal in equity. . . . It does not follow, however, that in deciding them this court will give no weight to the way in which discretion was exercised by the court below."

Mass.—Abbott v. Bean, 189 N.E. 435, 285 Mass. 474.

Weight given to exercise of discretion by court below

Mass.—Hill v. Trustees of Glenwood Cemetery, 82 N.E.2d 238, 323 Mass. 388.

55.2 S.D.—F. M. Slagle & Co. v. Bushnell, 16 N.W.2d 914, 70 S.D. 250, 156 A.L.R. 1070.

55.3 S.D.—F. M. Slagle & Co. v. Bushnell, supra.

55.4 U.S.—**Corpus Juris Secundum cited in** Atlantic Seaboard Corp. v. Federal Power Co., C.A.4, 201 F. 2d 568, 571.

Cal.—In re Marler's Estate, App., 306 P.2d 105—Marshall v. Von Zumwalt, 262 P.2d 363, 120 C.A.2d 807—Industrial Indem. Co. v. Golden State Co., 256 P.2d 677, 117 C.A.2d 519—Security First Nat. Bank of Los Angeles v. Rospaw, 237 P.2d 76, 107 C.A.2d 220—Vilardo v. Sacramento County, 129 P.2d 165, 54 C.A.2d 413—Rose v. Ames, 128 P. 2d 65, 53 C.A.2d 583—Woodcock v. Petrol Corp., 120 P.2d 889, 48 C.A. 2d 652—Walsh v. Parker, 106 P.2d 925, 41 C.A.2d 435—Ross v. McDougal, 87 P.2d 709, 31 C.A.2d 114—Powell v. Lampton, 85 P.2d 495, 30 C.A.2d 43—Webster v. Freeman, 80 P.2d 497, 27 C.A.2d 5—Angelis v. Foster, 75 P.2d 650, 24 C.A.2d

541—Hurley v. Lake County, 19 P. 2d 26, 129 C.A. 615.

Conn.—Evans v. Byrolly Transp. Co., 197 A. 758, 124 Conn. 10—Bennett v. United Lumber & Supply Co., 159 A. 572, 114 Conn. 614.

Fla.—Joseph T. Miller Const. Co. v. Borak, 82 So.2d 147—McCullough v. McCullough, 23 So.2d 139, 156 Fla. 321, 326—Hollingsworth v. Arcadia Citrus Growers Ass'n, 18 So.2d 159, 154 Fla. 399—Mills Rock Co. v. Mills, 188 So. 210, 137 Fla. 607.

Idaho.—Mole v. Payne, 227 P. 23, 39 Idaho 247.

Ill.—Jilek v. Missouri Pac. R. Co., 142 N.E.2d 708, 13 Ill.App.2d 518—Royal L. Brockob Const. Co. v. Trust Co. of Chicago, 128 N.E.2d 620, 6 Ill.App.2d 565—Martin v. Kosjak, 125 N.E.2d 690, 5 Ill.App. 2d 390.

Ind.—Needham v. Proffitt, 41 N.E.2d 606, 220 Ind. 265.

Calumet Lumber Co. v. Pearson, 24 N.E.2d 793, 107 Ind.App. 343.

Iowa—Munn v. Town of Drakesville, 285 N.W. 644, 226 Iowa 1040—R. P. Andreas & Son v. Hempy, 268 N.W. 13, 221 Iowa 1184—Cottong v. Zybell, 162 N.W. 767, 179 Iowa 1184.

Kan.—T. M. Deal Lumber Co. v. Vieux, 298 P.2d 339, 179 Kan. 760.

Ky.—Bradford v. Billington, 299 S. W.2d 601—Hannan v. Hannan, 256 S.W.2d 485—Reno v. Katterjohn, 230 S.W.2d 89, 313 Ky. 33—Croley v. Huddleston, 202 S.W.2d 637, 304 Ky. 811—Eline v. Commonwealth Life Ins. Co., 126 S.W.2d 1103, 277 Ky. 744.

La.—Williamson v. Williamson, 113 So. 796, 164 La. 144.

Md.—Stoewer v. Porcelain Enamel & Mfg. Co. of Baltimore, 85 A.2d 911, 199 Md. 146—Perlmutter v. Minskoff, 75 A.2d 129, 196 Md. 99.

Mass.—Blaufarb v. Drooker, 146 N. E. 242, 251 Mass. 201, 39 A.L.R. 291.

Mich.—Singewald v. Local Union No. 7, U.A.W.-C.I.O., 64 N.W.2d 653, 339 Mich. 503—Howard v. Burton, 61 N.W.2d 77, 338 Mich. 178—Randall v. Douglass, 32 N.W.2d 721, 321 Mich. 492—Gratiot Lumber & Coal Co. v. Lubinski, 16 N.W.2d 112, 309 Mich. 662—Konstantine v. City of Dearborn, 273 N.W. 580, 280 Mich. 310.

Mo.—Hughes v. St. Louis Public Service Co., App., 251 S.W.2d 360—Murray v. De Luxe Motor Stages of Illinois, App., 133 S.W.2d 1074.

Mont.—Hage v. Orton, 175 P.2d 174, 119 Mont. 419—Nesbitt v. City of Butte, 163 P.2d 251, 118 Mont. 84—Hatch v. National Surety Corp., 72 P.2d 107, 105 Mont. 245—Granger v. Erie, 53 P.2d 443, 101 Mont. 170.

Neb.—Minton v. Palmer, 112 N.W. 610, 79 Neb. 351.

N.J.—Goodyear Tire & Rubber Co. v. Kruvant, 115 A. 304, 96 N.J.Law 352.

N.C.—Bradshaw v. Warren, 4 S.E.2d 883, 216 N.C. 354—Brooks v. Brooks, 90 N.C. 142.

N.D.—**Corpus Juris Secundum cited** in Blasl v. Peterson, 53 N.W.2d 856, 858, 78 N.D. 915.

Okl.—Taylor v. Hayes, 261 P.2d 599—Luke v. Patterson, 164 P.2d 394, 196 Okl. 522—McMillan v. Atlas Life Ins. Co., 155 P.2d 516, 195 Okl. 125—Crabtree v. Standard Savings & Loan Ass'n, 102 P.2d 127, 187 Okl. 189—Beaty v. Armstrong, 218 P. 516, 95 Okl. 109.

Or.—Burnett v. Hatch, 266 P.2d 414, 200 Or. 291.

Pa.—Trabue v. Walsh, 177 A. 815, 318 Pa. 391.

Miller v. Foulke, Com.Pl., 46 Dauph.Co. 326.

R.I.—Hulton v. Phaneuf, 132 A.2d 85.

S.C.—Continental Radio & Television Corp. v. Furman, 8 S.E.2d 902, 193 S.C. 357—*Monteith* v. Harby, 3 S. E.2d 250, 190 S.C. 453.

S.D.—Hopkins v. Educational Mut. Ben. Ass'n, 7 N.W.2d 296, 69 S.D. 132.

Tenn.—Blackwood v. Hollingsworth, 260 S.W.2d 164, 195 Tenn. 427—Baker v. Tennessee Gas Transmission Co., 250 S.W.2d 566, 194 Tenn. 368—Tennessee Public Service Co. v. City of Knoxville, 91 S.W.2d 566, 170 Tenn. 40.

Caccamisi v. Thurmond, App., 282 S.W.2d 633—Troutt v. Troutt, 250 S.W.2d 372, 35 Tenn.App. 617—Plantt v. Plantt, 186 S.W.2d 338, 28 Tenn.App. 79—Chattanooga Ice Delivery Co. v. George F. Burnett Co., 147 S.W.2d 750, 24 Tenn.App. 535.

Tex.—Coffey v. Fort Worth & D. Ry. Co., Civ.App., 285 S.W.2d 453—Southwestern Hotel Co. v. Rogers, Civ.App., 183 S.W.2d 751, affirmed 184 S.W.2d 835, 143 Tex. 343—Warren v. Ward Oil Corporation, Civ.App., 87 S.W.2d 501, error dismissed—Reagh v. Texas Indemnity Ins. Co., Civ.App., 70 S.W.2d 465, conforming to answers, Com.App., 67 S.W.2d 233.

Vt.—Schlitz v. Lowell Mut. Fire Ins. Co., 119 A. 513, 96 Vt. 337.

W.Va.—Webster v. Hurvitz, 180 S.E. 265, 116 W.Va. 328.

4 C.J. p 800 note 54.

"The general rule is settled that amendment of the pleadings is a matter within the discretion of the court and not appealable; but that discretion is a judicial discretion to be exercised in accordance with the principle that a party charged is entitled to a reasonable opportunity to make his answer and present his defense, and when the court at the trial permits by amendment the substitution of a different cause of action and refuses to allow defendant reasonable time to prepare a defense appropriate to the new complaint, or to file a counterclaim in reduction of the damages claimed thereunder, legal error is committed which will be rectified on appeal."

N.J.—Goodyear Tire & Rubber Co. v. Kruvant, 115 A. 304, 96 N.J.Law 352.

Amendment necessary to prevent injustice

N.H.—Whitney v. H. P. Hood & Sons, 192 A. 493, 88 N.H. 483.

Compulsory amendment

(1) A ruling which grants or denies a motion for the compulsory amendment of a pleading is within the trial court's discretion, which will not be disturbed unless an abuse of discretion is shown or plainly appears.

Fla.—Brown v. Cosmopolitan Ice Co., 8 So.2d 400, 150 Fla. 599—Tampa Shipbuilding & Engineering Co. v. Thomas, 179 So. 705, 131 Fla. 650—Cook v. Hopkins, 124 So. 441, 98 Fla. 847—Holman v. Klutho, 109 So. 314, 91 Fla. 853—Wilkie v. Roberts, 109 So. 225, 91 Fla. 1064—Williams v. Peninsular Grocery Co., 75 So. 517, 73 Fla. 937.

4 C.J. p 800 note 53.

(2) While the granting or denial of a motion for compulsory amendment is a matter resting within the discretion of the court, it is a discretion which must be exercised within the rules of good pleading, and is subject to review by the appellate court.

Fla.—Tampa Shipbuilding & Engineering Co. v. Thomas, 179 So. 705, 131 Fla. 650—Cook v. Hopkins, 124 So. 441, 98 Fla. 847.

Amendment of intervening petition

Mass.—Regan v. Tierney, 27 N.E.2d 698, 306 Mass. 168.

Sustaining demurrer without leave to amend

(1) In order to sustain action of trial court in sustaining a demurrer without leave to amend in a declaratory judgment action on ground that trial court was exercising its discretion to deny relief in such cases, it must appear, directly or indirectly, that such discretion was in fact exercised.

Cal.—Coruccini v. Lambert, 248 P.2d 457, 113 C.A.2d 486—Collins v. City & County of San Francisco, 247 P. 2d 362, 112 C.A.2d 719.

(2) Where formal order sustaining a demurrer without leave to amend in declaratory judgment action demonstrated that the denial of relief was based on the merits of controversy, order could not be sustained as constituting exercise of discretionary power of trial court in such actions to refuse to entertain jurisdiction.

Cal.—Collins v. City & County of San

or, under other decisions, the erroneous or improper exercise of discretion,[55.5] the thwarting of justice,[55.6] or the deprivation of a fair trial;[55.7] the exercise of discretion will not be disturbed on appeal where it is apparent that the ends of justice have been promoted and that the parties have had a fair trial.[55.8] The decisions have variously required a showing of clear,[55.9] distinct,[55.10] gross,[55.11] or harmful abuse of discretion by the

Francisco, 247 P.2d 362, 112 C.A.2d 719.

(3) Sustaining demurrer without leave to amend is an abuse of discretion if only sound basis of order is a defect challenged by special demurrer, and in such case the judgment will be reversed notwithstanding one or more grounds of special demurrer may have been good.

Cal.—Veterans' Welfare Bd. v. City of Oakland, 169 P.2d 1000, 74 C.A.2d 818.

(4) When an order is made sustaining a demurrer without leave to amend, question whether court abused its discretion is open on appeal, even though no request to amend was made.

Cal.—Johnston v. Long, 133 P.2d 409, 56 C.A.2d 834.

Allowance held not abuse of discretion

N.Y.—Austin v. Saccacio, 152 N.Y.S.2d 41, 1 A.D.2d 1027.

Denial held not abuse of discretion

(1) Generally.

Cal.—Macbeth v. West Coast Packing Corp., 187 P.2d 815, 83 C.A.2d 96.

Mass.—Foster v. Shubert Holding Co., 55 N.E.2d 772, 316 Mass. 470.

Tex.—Westinghouse Elec. Corp. v. Pierce, 271 S.W.2d 422, 153 Tex. 527.

(2) Denial of leave to file amendment setting up contributory negligence.

N.C.—Hooper v. Glenn, 53 S.E.2d 843, 230 N.C. 571.

(3) Refusal to permit defendant to amend his demurrer to raise tne question of improper joinder of two causes of action.

Idaho.—Radermacher v. Eckert, 123 P.2d 426, 63 Idaho 531.

55.5 N.J.—Neidig v. Fisher, 8 A.2d 564, 123 N.J.Law 242.

S.C.—Page v. North Carolina Mut. Life Ins. Co., 35 S.E.2d 716, 207 S.C. 277.

W.Va.—Stealey v. Lyons, 87 S.E.2d 569, 128 W.Va. 686.

Improper exercise held not shown

Mass.—Wyatt v. Boston Consol. Gas. Co., 65 N.E.2d 320, 319 Mass. 251—Sweeny v. Home Owners' Loan Corp., 29 N.E.2d 712, 307 Mass. 165—Massachusetts Hospital Life Ins. Co. v. Shulman, 12 N.E.2d 856, 299 Mass. 312.

Ignoring conditions for exercise of discretion

Where trial court denied motion to amend complaint, purportedly on basis of exercise of its discretion, but it was evident that judge ignored conditions under which that discretion might have been exercised, supreme court, on appeal, was not bound by trial court's decision.

N.C.—Ionic Lodge No. 72, F. & A. A. M., v. Ionic Lodge Free Ancient & Accepted Masons No. 72 Co., 59 S.E.2d 829, 232 N.C. 252, reheard 62 S.E.2d 73, 232 N.C. 648.

55.6 Ark.—Union Motor Co. v. Tait, 276 S.W.2d 690, 224 Ark. 807.

Cal.—Westwood Temple v. Emanuel Center, 221 P.2d 146, 98 C.A.2d 755.

Ky.—Salyers v. Moran, 177 S.W.2d 143, 296 Ky. 386.

La.—Russell v. Vance, App., 90 So.2d 553.

55.7 Ky.—Salyers v. Moran, 177 S.W.2d 143, 296 Ky. 386.

55.8 Ky.—Crittenden County v. Towery, 95 S.W.2d 233, 264 Ky. 606.

55.9 Ark.—Union Motor Co. v. Tait, 276 S.W.2d 690, 224 Ark. 807.

Cal.—Jones v. Shears, 299 P.2d 986, 143 C.A.2d 360—Peterson v. Peterson, 168 P.2d 474, 74 C.A.2d 312—Vallera v. Vallera, 148 P.2d 694, 64 C.A.2d 266—Richter v. Adams, 110 P.2d 486, 43 C.A.2d 184—Bank of America Nat. Trust & Savings Ass'n v. Goldstein, 76 P.2d 545, 25 C.A.2d 37.

Fla.—Surfside Hotel v. W. E. Moorehead Co., 5 So.2d 857, 149 Fla. 397.

Ill.—Moneta v. Hoinacki, 67 N.E.2d 204, 394 Ill. 47—McGlaughlin v. Pickerel, 46 N.E.2d 368, 381 Ill. 574.

Ind.—Ralph J. Rimer, Inc. v. Stanz, 101 N.E.2d 428, 122 Ind.App. 178—Inter-state Motor Freight System v. Morgan, 47 N.E.2d 326, 113 Ind. App. 374.

Kan.—Fiest v. Steere, 259 P.2d 140, 175 Kan. 1—Alexander v. Smith, 229 P.2d 1022, 171 Kan. 83—Barton v. Hackney, 224 P.2d 995, 170 Kan. 197.

Ky.—Shelley v. Hill, 265 S.W.2d 34—Central Trust Co. of Owensboro v. Moffitt, 171 S.W.2d 21, 294 Ky. 103.

Minn.—Dale v. Pushor, 75 N.W.2d 595, 246 Minn. 254—Aasen v. Aasen, 36 N.W.2d 27, 228 Minn. 1—Raspler v. Seng, 11 N.W.2d 440, 215 Minn. 596.

Mo.—Cramer v. Parker, App., 100 S.W.2d 640.

N.H.—Steeves v. New England Telephone & Telegraph Co., 24 A.2d 606, 92 N.H. 52.

N.M.—In re Stern's Will, 301 P.2d 1094, 61 N.M. 446.

N.D.—Myers v. Hagert Const. Co., 23 N.W.2d 29, 74 N.D. 435.

Okl.—Cooke v. Townley, 265 P.2d 1108—Rowe v. Oklahoma Ry. Co., 185 P.2d 194, 199 Okl. 243—Miles v. Thomas, 147 P.2d 774, 194 Okl. 163—Loos v. Parent, 142 P.2d 616, 193 Okl. 231—Seidenbach's, Inc., v. Murdock, 68 P.2d 92, 180 Okl. 85.

S.D.—Raney v. Riedy, 23 N.W.2d 809, 71 S.D. 280.

Tenn.—State v. Breedlove, 270 S.W.2d 582, 38 Tenn.App. 80—Evans v. Boggs, 245 S.W.2d 641, 35 Tenn. App. 354—Phœnix Ins. Co. v. Jordan, 184 S.W.2d 721, 28 Tenn.App. 11.

Tex.—Vermillion v. Haynes, 215 S.W.2d 605, 147 Tex. 359.

Stroud v. Temple Lumber Co., Civ.App., 284 S.W.2d 909, error refused no reversible error—Cox v. Piwonka, Civ.App., 257 S.W.2d 955. error dismissed—Staats v. Miller, Civ.App., 240 S.W.2d 342, reversed on other grounds 243 S.W.2d 686, 150 Tex. 581—Reiser v. Jennings, Civ.App., 148 S.W.2d 99—McTaggart v. Texas Bitulithic Co., Civ. App., 132 S.W.2d 436—De Walt v. Universal Film Exchanges, Civ. App., 132 S.W.2d 421, error dismissed, judgment correct.

Wis.—State ex rel. Schroedel v. Pagels, 43 N.W.2d 349, 257 Wis. 376—Dunham v. Howard Industries, 34 N.W.2d 140, 253 Wis. 347—Kuester v. Rowlands, 26 N.W.2d 639, 250 Wis. 277—Kaegi v. Industrial Commission, 285 N.W. 845, 232 Wis. 16.

55.10 Okl.—Horton v. Reid, 87 P.2d 936, 184 Okl. 389.

55.11 Cal.—Wing v. Forest Lawn Cemetery Ass'n, 101 P.2d 1099, 15 C.2d 472, 130 A.L.R. 120—Dos Pueblos Ranch & Improvement Co. v. Ellis, 67 P.2d 340, 8 C.2d 617.

Baker v. Van Dolzer, 298 P.2d 86, 142 C.A.2d 428—Jew Fun Him v. Occidental Life Ins. Co., 198 P.2d 711, 88 C.A.2d 246—Vesper v. Forest Lawn Cemetery Ass'n, 67 P.2d 368, 20 C.A.2d 157.

N.Y.—In re Miller's Will, 295 N.Y.S. 943, 162 Misc. 563, affirmed 300 N.Y.S. 798, 252 App.Div. 872.

Ohio.—Flynn v. Sharon Steel Corp., 50 N.E.2d 319, 142 Ohio St. 145.

Gross abuse clearly appearing

Cal.—Jenssen v. R. K. O. Studios, 67 P.2d 757, 20 C.A.2d 705.

trial court;[55.12] manifest,[55.13] obvious,[55.14] palpable,[55.15] plain,[55.16] prejudicial,[55.17] or unmistakable[55.18] abuse, or a showing of clear legal error,[55.19] or of manifest error[55.20] or manifest injustice,[55.21] or a showing that as a matter of law the allowance of the amendment is unwarranted on the face of the record or on the facts found.[55.22]

Whether refusal of an amendment constitutes an abuse of discretion depends on the circumstances of each case,[55.23] although it has been said to be a

Action at law

Nev.—Edmonds v. Perry, 140 P.2d 566, 62 Nev. 41.

Permission to plead de novo rests in the discretion of trial court, whose decision in such respect will not be disturbed by reviewing court except on showing the grossest abuse of discretion.

Ill.—Lipski v. Schwartz, 126 N.E.2d 415, 5 Ill.App. 577.

55.12 Ind.—Ralph J. Rimer, Inc., v. Stanz, 101 N.E.2d 428, 122 Ind.App. 178.

Harmless or prejudicial error as to amendments see infra § 1688.

55.13 Cal.—Dos Pueblos Ranch & Improvement Co. v. Ellis, 67 P.2d 340, 8 C.2d 617.

Unruh v. Smith, 267 P.2d 52, 123 C.A.2d 431—Willson v. Turner Resilient Floors, 201 P.2d 406, 89 C.A.2d 589—Spencer v. Crocker First Nat. Bank of San Francisco, 194 P.2d 775, 86 C.A.2d 397—Burrows v. Burrows, 63 P.2d 1135, 18 C.A.2d 275.

Ga.—Walker v. Sheehan, 56 S.E.2d 628, 80 Ga.App. 606.

Idaho.—Radermacher v. Eckert, 123 P.2d 426, 63 Idaho 531.

Ill.—Glakemeier v. Calhoun, 121 N.E. 2d 513, 3 Ill.2d 329—Deasey v. City of Chicago, 105 N.E.2d 727, 412 Ill. 151—Winnebago County v. Cannell, 33 N.E.2d 478, 376 Ill. 277.

Frey v. Schaab, 43 N.E.2d 564, 315 Ill.App. 668—Voliva v. WCBD, Inc., 39 N.E.2d 685, 313 Ill.App. 177.

Kan.—Beye v. Andres, 296 P.2d 1049, 179 Kan. 502.

Ky.—Shaw v. Halmhuber, 234 S.W.2d 746, 314 Ky. 242—Conley v. Conley, 211 S.W.2d 401, 307 Ky. 429.

La.—Russell v. Vance, App., 90 So.2d 553.

Mont.—Slattery v. Labbitt, 181 P.2d 601, 120 Mont. 183.

N.C.—Crump v. Eckerd's Inc., 85 S.E. 2d 607, 241 N.C. 489—Goode v. Barton, 78 S.E.2d 398, 238 N.C. 492—Hooper v. Glenn, 53 S.E.2d 843, 230 N.C. 571—Hardy v. Mayo, 31 S.E.2d 748, 224 N.C. 558—Osborne v. Town of Canton, 13 S.E.2d 265, 219 N.C. 139—Hogsed v. Pearlman, 195 S.E. 789, 213 N.C. 240.

Or.—Lancaster v. May, 243 P.2d 268, 194 Or. 647.

Wash.—Heuss v. Olson, 264 P.2d 875, 43 Wash.2d 901—Hendricks v. Hendricks, 211 P.2d 715, 35 Wash. 2d 139—Weihs v. Watson, 203 P.2d 350, 32 Wash.2d 625—Forbus v. Knight, 163 P.2d 822, 24 Wash.2d 297.

Evidence closed

This is especially true where request for leave to amend is made after evidence has been closed.

Ill.—Oran v. Kraft-Phenix Cheese Corp., 58 N.E.2d 731, 324 Ill.App. 463.

55.14 Mo.—Stewart v. Stewart, App., 277 S.W.2d 322—Runnion v. Paquet, App., 233 S.W.2d 803—Eckhardt v. Bock, App., 159 S.W.2d 395.

55.15 Mo.—Stewart v. Stewart, App., 277 S.W.2d 322—Runnion v. Paquet, App., 233 S.W.2d 803—Brinkmann Realty Co. v. Deidesheimer, App., 201 S.W.2d 503—Uitz v. Pollard, App., 159 S.W.2d 687—Wooldridge v. Scott County Milling Co., App., 102 S.W.2d 958.

55.16 Cal.—Unger v. Goldman, 54 P.2d 1126, 12 C.A.2d 129.

W.Va.—Shrimplin v. Simmons Auto Co., 9 S.E.2d 49, 122 W.Va. 248.

55.17 Mont.—Gobel v. Rinio, 200 P. 2d 700, 122 Mont. 235—Nesbitt v. City of Butte, 163 P.2d 251, 118 Mont. 84—Hatch v. National Surety Corp., 72 P.2d 107, 105 Mont. 245.

Neb.—Ericsson v. Streitz, 273 N.W. 17, 132 Neb. 692.

N.C.—Handley Motor Co. v. Wood, 78 S.E.2d 391, 238 N.C. 468.

S.D.—Behringer v. Muchow, 30 N.W. 2d 5, 72 S.D. 80.

Harmless or prejudicial error as to amendments see infra § 1688.

Amendments not changing cause of action

Okl.—Atchison, T. & S. F. Ry. Co. v. Perryman, 192 P.2d 670, 200 Okl. 266—Thomas v. State ex rel. Com'rs of Land Office, 172 P.2d 973, 197 Okl. 450.

Substantial rights affected or taken away

Ind.—Ralph J. Rimer, Inc., v. Stanz, 101 N.E.2d 428, 122 Ind.App. 178.

Kan.—Fiest v. Steere, 259 P.2d 140, 175 Kan. 1.

55.18 N.Y.—In re Miller's Will, 295 N.Y.S. 943, 162 Misc. 563, affirmed 300 N.Y.S. 798, 252 App.Div. 872.

55.19 S.C.—Vernon v. Atlantic Coast Line R. Co., 63 S.E.2d 53, 218 S.C. 402.

55.20 La.—King v. Burris, App., 57 So.2d 779.

55.21 La.—King v. Burris, supra—Thomas v. Leonard Truck Lines, App., 7 So.2d 753.

55.22 Mass.—Gallagher v. Wheeler, 198 N.E. 891, 292 Mass. 547.

55.23 Pa.—Trabue v. Walsh, 177 A. 815, 318 Pa. 391.

All facts within judicial knowledge

In passing on an alleged abuse of discretion in sustaining a general demurrer to complaint without leave to amend, all proper facts within judicial knowledge of court should be taken into consideration in determining whether complaint may be amended.

Cal.—Black Rock Placer Mining Dist. v. Summit Water & Irrigation Co., 133 P.2d 58, 56 C.A.2d 513.

Question raised

Refusal to permit filing of amended complaint in accordance with suggestion of the appellate court reversing judgment of dismissal raises the question of abuse of discretion properly considered on appeal.

Cal.—Hurley v. Lake County, 19 P.2d 26, 129 C.A. 615.

Refusal held abuse of discretion

Refusal to allow amendment to correspond with established and uncontroverted facts, proved by one party without objection and in accordance with testimony of the other, is an abuse of the trial court's discretion, warranting the intervention of the appellate court.

Iowa.—Cottong v. Zybell, 162 N.W. 767, 179 Iowa 1184.

Refusal held not abuse of discretion

(1) Generally.

Colo.—Fedderson v. Goode, 145 P.2d 981, 112 Colo. 38.

Ill.—Dean v. Kirkland, 23 N.E.2d 180, 301 Ill.App. 495.

Mass.—Long v. George, 7 N.E.2d 149, 296 Mass. 574.

Neb.—Coverdale & Colpitts v. Dakota County, 12 N.W.2d 764, 144 Neb. 166.

N.J.—City of Bayonne v. Murphy & Perrett Co., 81 A.2d 485, 7 N.J. 298.

(2) As a matter of law.

Conn.—Burley v. Davis, 46 A.2d 417, 132 Conn. 631.

(3) Where plaintiff did not serve a proposed amendment or affidavit of merits.

Minn.—Nelson v. Auman, 13 N.W.2d 38, 216 Minn. 407.

(4) Refusal of trial court to permit insurance company at trial to amend answer which was of evasive character was not an abuse of discretion.

Ohio.—Williams v. Goodwin, 104 N.E. 2d 81, 90 Ohio App. 159.

(5) Where proposed amended complaint failed in the same respect as original to state facts sufficient to

general rule that the refusal of a trial court to permit the amendment of pleadings on the trial is not an abuse of discretion reviewable by the reviewing court.[55.24] The burden of showing an abuse of discretion in allowing or refusing an amendment to a pleading rests on the party complaining,[55.25] and such abuse must affirmatively appear or be shown.[55.26] It will be presumed, in the absence of a showing to the contrary, that the discretion of the lower court with respect to amendments to pleadings was not abused,[55.27] and was exercised properly[55.28] and in furtherance of justice;[55.29] an abuse of discretion will not be presumed.[55.30]

Where the trial judge bases his refusal to allow an amendment on a want of power under the law, his judgment is reviewable.[55.31]

b. Subject Matter or Purpose of Amendment

The rule that discretionary rulings on amendments to pleadings will not be reviewed except for abuse of discretion has been applied to amendments dealing with various types of subject matter or offered for various purposes.

The rule that discretionary rulings on amendments to pleadings will not be reviewed except for abuse of discretion has been applied to amendments which add to, or change, the cause of action[55.40] or the defense,[55.41] amend pleadings which have already

constitute a cause of action, the appellate court would not interfere with denial of motion to file proposed amended complaint.
Cal.—Wing v. Forest Lawn Cemetery Ass'n, 101 P.2d 1099, 15 C.2d 472, 130 A.L.R. 120.

Refusal held appealable
Where the amendment is of such a nature as to render a corresponding amendment necessary on the part of the adverse party, the refusal to allow the latter is appealable.
N.C.—Brooks v. Brooks, 90 N.C. 142—Gill v. Young, 88 N.C. 58.

55.24 "Something more than a request and a refusal . . . must appear before this court may say that the trial judge abused his discretion."
Ohio.—Williams v. Goodwin, 104 N.E. 2d 81, 90 Ohio App. 159.
Tex.—Lone Star Steel Co. v. Owens, Civ.App., 302 S.W.2d 213, 219, refused no reversible error.

55.25 Cal.—Broadway Federal Sav. & Loan Ass'n of Los Angeles v. Howard, 285 P.2d 61, 133 C.A.2d 382—Thomson v. Mortgage Inv. Co., 278 P. 468, 99 C.A. 205.
Kan.—Krouse v. Pratt, 16 P. 103, 37 Kan. 651.
Neb.—Minton v. Palmer, 112 N.W. 610, 79 Neb. 351.
N.D.—Blasl v. Peterson, 53 N.W.2d 856, 78 N.D. 915—Beauchamp v. Retail Merchants' Ass'n Mut. Fire Ins. Co., 165 N.W. 545, 38 N.D. 483.
S.C.—Trotti v. Neams, 105 S.E. 443, 115 S.C. 292.
Tex.—American Rio Grande Land & Irrigation Co. v. Barker, Civ.App., 268 S.W. 506—Bear v. Houston & T. C. Ry. Co., Civ.App., 265 S.W. 246—Harris v. Wheeler, Civ.App., 255 S.W. 206, reversed on other grounds, Com.App., 267 S.W. 465.

Sustaining demurrer without leave to amend
(1) Plaintiff has the burden of affirmatively showing an abuse of discretion before an order of the trial court sustaining a demurrer to a complaint without leave to amend will be disturbed on appeal.
Cal.—Powell v. Lampton, 85 P.2d 495, 30 C.A.2d 43.

(2) Burden held not sustained.
Cal.—Bollinger v. National Fire Ins. Co. of Hartford, Conn., 147 P.2d 611, reheard 154 P.2d 399, 25 C.2d 399.

Pleading of limitations
Where complaint had anticipated defense of limitations, on appeal following refusal of trial court to allow defendant to amend his answer to make it comply with statute pertaining to pleading of limitations by remedying defendant's mechanical error in failing to specify the particular subdivision of admittedly proper sections of statute of limitations pleaded, plaintiff had burden of establishing that denial was in furtherance of justice.
Cal.—Hopkins v. Hopkins, 253 P.2d 723, 116 C.A.2d 174.

55.26 Idaho.—Durant v. Snyder, 151 P.2d 776, 65 Idaho 678.
Kan.—Fiest v. Steere, 259 P.2d 140, 175 Kan. 1—Barton v. Hackney, 224 P.2d 995, 170 Kan. 197—Reed v. Western Light & Tel. Co., 122 P.2d 723, 155 Kan. 134—Board of Education of City of Great Bend v. Board of Com'rs of Barton County, 58 P. 2d 40, 144 Kan. 124.
Mont.—Betor v. Chevalier, 193 P.2d 374, 121 Mont. 337—Slattery v. Labbitt, 181 P.2d 601, 120 Mont. 183—Hatch v. National Surety Corp., 72 P.2d 107, 105 Mont. 245.
N.D.—**Corpus Juris quoted in** Blasl v. Peterson, 53 N.W.2d 856, 858, 78 N.D. 915.
Ohio.—Flynn v. Sharon Steel Corp., 50 N.E.2d 319, 142 Ohio St. 145.
Okl.—Thomas v. State ex rel. Com'rs of Land Office, 172 P.2d 973, 197 Okl. 450.
4 C.J. p 799 note 35.

The record must show that the ruling was an abuse of discretion.
Neb.—Coverdale & Colpitts v. Dakota County, 12 N.W.2d 764, 144 Neb. 166.

55.27 Ark.—Richards v. Howell, 196 S.W. 483, 129 Ark. 390.
Cal.—Lapique v. Walsh, 195 P. 296, 50 C.A. 82.
Colo.—Maryland Casualty Co. v. City and County of Denver, 6 P.2d 6, 90 Colo. 20.
Ind.—Calumet Lumber Co. v. Pearson, 24 N.E.2d 793, 107 Ind.App. 343.
N.D.—Beauchamp v. Retail Merchants' Ass'n Mut. Fire Ins. Co., 165 N.W. 545, 38 N.D. 483.

Proposed amendment not disclosed
Appellate court will conclusively presume that trial judge properly exercised his discretion in refusing to allow an amendment, where record does not disclose proposed amendment.
Tenn.—Plantt v. Plantt, 186 S.W.2d 338, 28 Tenn.App. 79.

55.28 N.Y.—In re Miller's Will, 295 N.Y.S. 943, 162 Misc. 563, affirmed 300 N.Y.S. 798, 252 App.Div. 872.

55.29 Cal.—Unger v. Goldman, 54 P. 2d 1126, 12 C.A.2d 129.

55.30 Cal.—Glenn v. California Trona Co., 177 P. 178, 38 C.A. 601.

55.31 N.C.—Cody v. Hovey, 8 S.E.2d 479, 217 N.C. 407.

55.40 Ark.—Austin v. Dermott Canning Co., 34 S.W.2d 773, 182 Ark. 1128—Cole v. Branch, 285 S.W. 353, 171 Ark. 611.
Ky.—Arn v. Chesapeake & O. Ry. of Kentucky, 188 S.W. 340, 171 Ky. 157.
N.H.—Bacon v. Thompson, 177 A. 548, 87 N.H. 270.
Tenn.—Madison Land & Loan Co. v. Hammond, 2 Tenn.App. 423.
4 C.J. p 800 note 46.

Substantial change of claim may result in interference by reviewing court with ruling of trial court.
Ky.—Salyers v. Moran, 177 S.W.2d 143, 296 Ky. 386.

55.41 Ark.—Central Clay Drainage Dist. v. Hunter, 295 S.W. 19, 174 Ark. 293.
Cal.—College Nat. Bank of Berkeley v. Morrison, 280 P. 218, 100 C.A. 403

been amended,[55.42] change or add to the issues,[55.43] change the form of action[55.44] or of the answer,[55.45] conform the pleadings to the proof or findings,[55.46] or increase the ad damnum or amount sought to be recovered,[55.47] or which are offered, or sought, for other purposes.[55.48]

c. Time of Amendment

The rule that discretionary rulings on amendments to pleadings will not be reviewed except for abuse of discretion has been applied to amendments offered, or sought, at various times before, during, or after trial.

The rule that discretionary rulings on amendments to pleadings will not be reviewed except for abuse of discretion has been applied to amendments offered, or sought, out of time generally,[55.60] after the time for filing the pleading has expired,[55.61] after demurrer or affidavit of defense has been sus-

—Johnson v. Cordes, 165 P. 1040, 33 C.A. 619.
Fla.—E. O. Painter Fertilizer Co. v. Foss, 145 So. 253, 107 Fla. 464.
Mich.—McLaughlin v. Ætna Life Ins. Co. of Hartford, Conn., 191 N.W. 224, 221 Mich. 479.
N.D.—Continental Supply Co. v. Syndicate Trust Co., 202 N.W. 404, 52 N.D. 83.
Or.—Pollock v. Lumbermen's Nat. Bank of Portland, 168 P. 616, 86 Or. 324, L.R.A.1918B 402.
4 C.J. p 800 note 47.

Adding paragraph to answer
Ind.—Inter-State Motor Freight System v. Morgan, 47 N.E.2d 326, 113 Ind.App. 374.

Entirely new defense
Ruling on request to amend answer so as to set up entirely new defense is wholly within discretion of trial judge and may not be reviewed on appeal except for abuse of discretion.
Cal.—Goodson v. Goodson, App., 232 P.2d 876, hearing dismissed.

Substantial change of defense may result in interference by reviewing court with ruling of trial court.
Ky.—Salyers v. Moran, 177 S.W.2d 143, 296 Ky. 386.

Refusal held not abuse of discretion
Mo.—Hicks v. National Life & Accident Ins. Co., App., 96 S.W.2d 626.

55.42 Md.—Brack v. Barton, 45 A.2d 100, 185 Md. 366—Kernan v. Carter, 104 A. 530, 132 Md. 577.
N.M.—Martinez v. Cook, 258 P.2d 375, 57 N.M. 263.
N.Y.—Molloy v. Village of Briar-Cliff Manor, 112 N.E. 429, 217 N.Y. 577.
49 C.J. p 477 note 71.

55.43 Fla.—Standard Lumber Co. v. Florida Industrial Co., 141 So. 729, 106 Fla. 884, certiorari denied 53 S.Ct. 322, 289 U.S. 723, 77 L.Ed. 1474.
Kan.—Long v. Kansas City, M. & O. R. Co., 164 P. 175, 100 Kan. 361.
Ky.—Speer v. Hall, 245 S.W. 282, 196 Ky. 597—Schrodt's Ex'r v. Schrodt, 225 S.W. 151, 189 Ky. 457.
Wash.—Finn v. City of Bremerton, 203 P. 971, 118 Wash. 381.

55.44 Mass.—Newburyport Sav. Inst. v. Puffer, 87 N.E. 562, 201 Mass. 41.
4 C.J. p 800 note 50.

55.45 Ky.—Lurker v. Ross, 121 S.W. 647.

55.46 Cal.—Young v. Three for One Oil Royalties, 36 P.2d 1065, 1 C.2d 639—Hind v. Oriental Products Co., 235 P. 438, 195 C. 655.
Jones v. Shears, 299 P.2d 986, 143 C.A.2d 360—Baker v. Van Dolzer, 298 P.2d 86, 142 C.A.2d 428—Unruh v. Smith, 267 P.2d 52, 123 C.A.2d 431—Frank v. Dominick, 264 P.2d 161, 122 C.A.2d 45—Burrows v. Burrows, 63 P.2d 1135, 18 C.A.2d 275.
Conn.—Skaling v. Sheedy, 126 A. 721, 101 Conn. 545, 36 A.L.R. 540.
Ind.—C. H. Maloney & Co. v. Whitney, 124 N.E. 496, 71 Ind.App. 157.
Kan.—Bisagno v. Lane, 211 P.2d 85, 168 Kan. 153—Wait v. McKibben, 140 P. 860, 92 Kan. 394.
Mo.—People's Trust & Savings Co. v. Arthaud, App., 22 S.W.2d 860.
Neb.—Scharf v. Frontier County, 204 N.W. 516, 113 Neb. 688.
N.C.—King v. McRackan, 84 S.E. 1027, 168 N.C. 621, reheard 88 S.E. 226, 171 N.C. 752.
Ohio.—Raymond v. Haught, 143 N.E. 2d 731, 102 Ohio App. 337.
Okl.—Revard v. Py-ah-hun-kah, 42 P. 2d 838, 171 Okl. 304—Cummins v. Houghton, 29 P.2d 71, 167 Okl. 278—First Nat. Bank v. Gum, 293 P. 188, 146 Okl. 53.
Or.—Lancaster v. May, 243 P.2d 268, 194 Or. 647—Goff v. Elde, 288 P. 212, 132 Or. 689.
Tex.—Davis v. Krupp, Civ.App., 75 S.W.2d 309.
Wash.—Shultz v. Crewdson, 163 P. 734, 95 Wash. 266.
Wyo.—Bissinger & Co. v. Weiss, 195 P. 527, 27 Wyo. 262.

The utmost liberality is allowed in upholding orders made by trial court permitting amendments for such purpose.
Cal.—Woods v. Cook, 58 P.2d 965, 14 C.A.2d 560.

55.47 Cal.—Ross v. McDougal, 87 P. 2d 709, 31 C.A.2d 114.
Mo.—Muehlebach v. Muehlebach Brewing Co., App., 242 S.W. 174.
4 C.J. p 800 note 45.

55.48 Particular purposes
(1) To defeat a demurrer or motion for judgment on the pleadings.
La.—Penton v. Fisher, App., 155 So. 35, followed in Entrevia v. Fisher, 155 So. 41, and Nettles v. Fisher, 155 So. 41.
Okl.—Carignano v. Box, 223 P. 673, 97 Okl. 184.

(2) To eliminate an inadvertent admission.
N.Y.—Horan v. Hastorf, 120 N.E. 58, 223 N.Y. 490.
N.C.—Brewer v. Ring, 99 S.E. 358, 177 N.C. 476.

(3) To withdraw a plea in bar and substitute one in abatement.
U.S.—Eberly v. Moore, Tex., 24 How. 147, 16 L.Ed. 612.
4 C.J. p 800 note 52.

(4) To set up a counterclaim or set-off.
Cal.—Miller v. Murphy, 248 P. 934, 78 C.A. 751.
Neb.—Holmes v. Doll, 162 N.W. 487, 101 Neb. 156.
N.J.—Sarner v. Sarner, 132 A.2d 28, 45 N.J.Super. 216.
N.C.—J. A. Fay & Egan Co. v. Crowell, 114 S.E. 529, 184 N.C. 415.
4 C.J. p 800 note 48.

(5) To add a new element of damages which did not exist at the commencement of the action.
N.H.—Mansfield v. Federal Services Finance Corp., 111 A.2d 322, 99 N. H. 352.

55.60 Kan.—Alexander v. Smith, 229 P.2d 1022, 171 Kan. 83.
Mo.—Dyer v. Harper, 77 S.W.2d 106, 336 Mo. 52—Neville v. D'Oench, 34 S.W.2d 491, 327 Mo. 34—Moore v. Mansfield, 286 S.W. 353.
Uitz v. Pollard, App., 159 S.W.2d 687.
Wyo.—Moshannon Nat. Bank v. Iron Mountain Ranch Co., 18 P.2d 623, 45 Wyo. 265, rehearing denied 21 P.2d 834, 45 Wyo. 265.

After expiration of time for answering pleading
N.C.—Hardy v. Mayo, 31 S.E.2d 748, 224 N.C. 558—Osborne v. Town of Canton, 13 S.E.2d 265, 219 N.C. 139.

55.61 N.C.—Goode v. Barton, 78 S.E. 2d 398, 238 N.C. 492—Handley Motor Co. v. Wood, 78 S.E.2d 391, 238 N.C. 468—Hooper v. Glenn, 53 S.E. 2d 843, 230 N.C. 571.

tained,[55.62] after issue has been joined,[55.63] or formed,[55.64] or the issues are closed,[55.65] after the cause has been set for trial,[55.66] on the day of the trial,[55.67] immediately before trial,[55.68] at the commencement of the trial,[55.69] at the time of the trial,[55.70] after the trial has begun,[55.71] or during the trial, or the course of the trial.[55.72]

55.62 Cal.—Broadway Federal Sav. & Loan Ass'n of Los Angeles v. Howard, 285 P.2d 61, 133 C.A.2d 382—Spencer v. Crocker First Nat. Bank of San Francisco, 194 P.2d 775, 86 C.A.2d 397—Anderson v. Parmenter, 177 P.2d 818, 78 C.A.2d 378—Angelis v. Foster, 75 P.2d 650, 24 C.A.2d 541—Vesper v. Forest Lawn Cemetery Ass'n, 67 P.2d 868, 20 C.A.2d 157—Blodgett v. Rowlet, 260 P. 324, 86 C.A. 32—Hansen v. Carr, 238 P. 1048, 73 C.A. 511.

Mont.—Shampagne v. Keplinger, 252 P. 803, 78 Mont. 114.

Neb.—Coverdale & Colpitts v. Dakota County, 12 N.W.2d 764, 144 Neb. 166.

N.C.—Hood v. Elder Motor Co., 183 S.E. 529, 209 N.C. 303.

Pa.—Levine v. Roth, 120 A. 115, 276 Pa. 244.

4 C.J. p 799 note 36.

Failure to apply to amend

An order sustaining demurrer to complaint without leave to amend may be such an abuse of discretion as to require reversal, notwithstanding plaintiff's failure to make application to amend, if it clearly appears from the face of the complaint that a good cause of action could be stated in an amendment.

Cal.—Powell v. Lampton, 85 P.2d 495, 30 C.A.2d 43.

55.63 Ill.—Hoerrmann v. Wabash Ry. Co., 141 N.E. 289, 309 Ill. 524.

Wash.—Judish v. Rovig Lumber Co., 222 P. 898, 128 Wash. 287.

4 C.J. p 800 note 37.

Issues closed

Ind.—Inter-State Motor Freight System v. Morgan, 47 N.E.2d 326, 113 Ind.App. 374.

55.64 Ill.—Glakemeier v. Calhoun, 121 N.E.2d 513, 3 Ill.2d 329.

55.65 Ind.—Calumet Lumber Co. v. Pearson, 24 N.E.2d 793, 107 Ind. App. 343.

55.66 Ark.—Austin v. Dermott Canning Co., 34 S.W.2d 773, 182 Ark. 1128.

Colo.—Maryland Casualty Co. v. City and County of Denver, 6 P.2d 6, 90 Colo. 20.

Kan.—Long v. Kansas City, M. & O. R. Co., 164 P. 175, 100 Kan. 361.

Wash.—John R. O'Reilly, Inc. v. Tillman, 191 P. 866, 111 Wash. 594.

55.67 Okl.—Cimarron Valley Pipe Line Co. v. Holmes, 78 P.2d 403, 182 Okl. 450.

55.68 Cal.—Richter v. Adams, 110 P.2d 486, 43 C.A.2d 184.

55.69 Cal.—Anderson v. Permenter, 177 P.2d 818, 78 C.A.2d 378.

Okl.—Kershaw v. Reynolds, 254 P. 713, 124 Okl. 174.

55.70 Cal.—Lewis & Queen v. S. Edmondson & Sons, 248 P.2d 973, 113 C.A.2d 705.

55.71 Ark.—Union Motor Co. v. Tait, 276 S.W.2d 690, 224 Ark. 807.

55.72 Ark.—Central Clay Drainage Dist. v. Hunter, 295 S.W. 19, 174 Ark. 293—Butler County R. Co. v. Exum, 187 S.W. 329, 124 Ark. 229.

Cal.—Gartlan v. C. A. Hooper & Co., 170 P. 1115, 177 C. 414.

Westwood Temple v. Emanuel Center, 221 P.2d 146, 98 C.A.2d 755—Richter v. Adams, 110 P.2d 486, 43 C.A.2d 184—Taylor v. Lewis, 22 P.2d 569, 132 C.A. 381—Davidson v. National Tool & Metals, 10 P.2d 491, 122 C.A. 720—Davidson Inv. Co. v. Dabney, 284 P. 673, 103 C.A. 392—Elaterite Varnish & Rubber Co. v. Chamberlin Metal Weather Strip Co., 275 P. 523, 97 C.A. 304—Hagar v. Home Stores, 259 P. 1007, 85 C.A. 533—Milliken v. Valencia, 189 P. 1049, 47 C.A. 16—Allen v. Los Molinos Land Co., 143 P. 253, 25 C.A. 206.

Conn.—Crowell v. Middletown Sav. Bank, 189 A. 172, 122 Conn. 362—Clayton v. Clayton, 163 A. 458, 115 Conn. 683.

Fla.—Standard Lumber Co. v. Florida Industrial Co., 141 So. 729, 106 Fla. 884, certiorari denied 53 S.Ct. 522, 289 U.S. 723, 77 L.Ed. 1474.

Ill.—Bell v. Toluca Coal Co., 112 N. E. 311, 272 Ill. 576.

Ind.—Inter-State Motor Freight System v. Morgan, 47 N.E.2d 326, 113 Ind.App. 374—Calumet Lumber Co. v. Pearson, 24 N.E.2d 793, 107 Ind. App. 343.

Minn.—Bass v. Ring, 9 N.W.2d 234, 215 Minn. 11—D. M. Gilmore Co. v. Douglas County Hospital Ass'n, 244 N.W. 557, 187 Minn. 132—Garedpy v. Chicago, M., St. P. & P. R. Co., 226 N.W. 943, 178 Minn. 620, certiorari denied Chicago, M., St. P. & P. R. Co. v. Garedpy, 50 S.Ct. 246, 281 U.S. 729, 74 L.Ed. 1145—Garedpy v. Chicago, M., St. P. & P. R. Co., 223 N.W. 605, 176 Minn. 331—Peterson v. Parvialnen, 219 N.W. 180, 174 Minn. 297.

Mo.—Yerxa, Andrews & Thurston v. Randazzo Macaroni Mfg. Co., 288 S. W. 20, 315 Mo. 927—Kregain v. Blake, 239 S.W. 495, 292 Mo. 498.

Miller v. A. P. Green Fire Brick Co., App., 246 S.W. 960.

Mont.—Betor v. Chevalier, 193 P.2d 374, 121 Mont. 337—Berthelote v. Loy Oil Co., 28 P.2d 137, 95 Mont. 434—Backer v. Parker-Morelli-Barclay Motor Co., 289 P. 571, 87 Mont. 595—Phelps v. Great Northern Ry. Co., 213 P. 610, 66 Mont. 198, error dismissed Great Northern Ry. Co. v. Galbreath Cattle Co., 44 S.Ct. 334, 264 U.S. 571, 68 L.Ed. 855, and reversed on other grounds 46 S.Ct. 439, 271 U.S. 99, 70 L.Ed. 854.

Neb.—Ericsson v. Streitz, 273 N.W. 17, 132 Neb. 692—Andrews v. Commercial Casualty Ins. Co., 259 N.W. 653, 128 Neb. 496.

N.J.—Reed v. Director General of Railroads, 113 A. 146, 95 N.J.Law 525.

N.M.—Klasner v. Klasner, 170 P. 745, 23 N.M. 627.

N.Y.—Feizi v. Second Russian Ins. Co., 192 N.Y.S. 118, 199 App.Div. 775.

Okl.—Cooke v. Townley, 265 P.2d 1108—McClellan v. Smith, 68 P.2d 875, 180 Okl. 348—Seidenbach's, Inc., v. Murdock, 68 P.2d 92, 180 Okl. 85—Kelly v. Watkins, 39 P. 2d 975, 170 Okl. 185—Davis v. Wallace, 37 P.2d 602, 169 Okl. 497—Adwon v. Ketcham, 37 P.2d 432, 169 Okl. 428—Missouri, Kansas & Oklahoma Coach Lines v. Benton, 10 P.2d 451, 157 Okl. 10—Woodruff v. Phillips, 280 P. 449, 138 Okl. 77—Hines v. McCall, 269 P. 269, 132 Okl. 5—Board of Com'rs of McCurtain County v. Western Bank & Office Supply Co., 254 P. 741, 122 Okl. 244—Owens v. Taylor, 213 P. 300, 90 Okl. 96—Thompson v. Hashbarger, 210 P. 922, 87 Okl. 267—Lamb v. Alexander, 201 P. 519, 83 Okl. 292—Smith v. Rockett, 192 P. 691, 79 Okl. 244—Burr v. Gordon 173 P. 527, 68 Okl. 254—Dixon v. Helena Society of Free Methodist Church of North America, 166 P. 114, 65 Okl. 203—Amazon Fire Ins. Co. v. Bond, 165 P. 414, 65 Okl. 224—Hamilton v. Blakeney, 165 P. 141, 65 Okl. 154—Maston v. Glen Lumber Co., 163 P. 128, 65 Okl. 80—Abraham v. Provance, 150 P. 105, 48 Okl. 243.

Or.—Stark v. McKenna, 263 P. 391, 124 Or. 332—Hollywood Orchards Co. v. Dennis, Kimball & Pope, 263 P. 66, 124 Or. 71—Horn v. Davis, 142 P. 544, 70 Or. 498.

R.I.—Sachem Co. v. Allen, 192 A. 478, 58 R.I. 311.

S.D.—Union Inv. Co. v. Schonebaum, 175 N.W. 357, 42 S.D. 350.

Tex.—Vermillion v. Haynes, 215 S.W. 2d 605, 147 Tex. 359—Victory v. State, 158 S.W.2d 760, 138 Tex. 285.

Ravel v. Couravallos, Civ.App., 245 S.W.2d 731—Staats v. Miller, Civ.App., 240 S.W.2d 343, reversed

The rule has also been applied to amendments offered, or sought, after plaintiff has rested,[55.73] or both parties have done so,[55.74] after the evidence has been closed,[55.75] or adduced,[55.76] or all proof taken,[55.77] at the close of the testimony,[55.78] after the submission of the cause,[55.79] after trial,[55.80] after verdict,[55.81] before judgment[55.82] or entry of judgment,[55.83] at any time before final decree,[55.84] or after judgment.[55.85] The rule has also been applied to amendments offered, or sought, at other times.[55.86]

on other grounds 243 S.W.2d 686, 150 Tex. 581—Southern Underwriters v. Blair, Civ.App., 144 S.W. 2d 641—Korkmas v. Ham, Civ.App., 141 S.W.2d 433—Ellis v. Michigan Realty Co., Civ.App., 138 S.W.2d 880, error refused—McTaggart v. Texas Bitulithic Co., Civ.App., 132 S.W.2d 436—De Walt v. Universal Film Exchanges, Civ.App., 132 S.W. 2d 421, error dismissed, judgment correct—Boynton v. Smith, Civ. App., 110 S.W.2d 640, error dismissed—Griffiths v. Travis, Civ. App., 102 S.W.2d 445, error refused—Kennard v. Kennard, Civ. App., 84 S.W.2d 315, error dismissed—Missouri Pac. R. Co. v. South Texas Candy Co., Civ.App., 65 S.W.2d 325—Rosson v. Groom Mut. Hail Ass'n, Civ.App., 58 S.W. 2d 572—Evans v. Galbraith-Foxworth Lumber Co., Civ.App., 51 S. W.2d 831—National Life & Accident Ins. Co. v. Hines, Civ.App., 50 S.W.2d 364—Gill v. Baird, Civ. App., 32 S.W.2d 941, affirmed 77 S.W.2d 201, 124 Tex. 252—Big Four Ice & Cold Storage Co. v. Williams, Civ.App., 9 S.W.2d 177—Texas Utilities Co. v. Clark, Civ.App., 269 S.W. 903—Ellerd v. Burkhalter, Civ.App., 269 S.W. 197—Guffey v. Farmers' & Merchants' State Bank, Civ.App., 205 S.W. 301—Ames Portable Silo & Lumber Co. v. Gill, Civ.App., 190 S.W. 1130.

Wash.—Heuss v. Olson, 264 P.2d 875, 43 Wash.2d 901—Hendricks v. Hendricks, 211 P.2d 715, 35 Wash. 2d 139—Weihs v. Watson, 203 P.2d 350, 32 Wash.2d 625—Forbus v. Knight, 163 P.2d 822, 24 Wash.2d 297—Carstens Packing Co. v. Granger Irr. Dist., 295 P. 930, 160 Wash. 674.

4 C.J. p 800 note 40.

Any stage of trial

Cal.—Unruh v. Smith, 267 P.2d 52, 123 C.A.2d 431—Burrows v. Burrows, 63 P.2d 1135, 18 C.A.2d 275.

Mont.—Nesbitt v. City of Butte, 163 P.2d 251, 118 Mont. 84.

Discretion held not abused

Tex.—Senegar v. La Vaughan, Civ. App., 230 S.W.2d 311, error refused no reversible error.

No question of law raised

Where it did not clearly appear that trial court had abused its discretion in denying a motion to amend after trial had begun, no question of law was raised for the consideration of supreme court.

N.H.—Steeves v. New England Telephone & Telegraph Co., 24 A.2d 606, 92 N.H. 52.

55.73 Ala.—Sovereign Camp, W. O. W. v. Dennis, 87 So. 616, 17 Ala. App. 642, certiorari denied Ex parte Sovereign Camp, W. O. W., 87 So. 620, 205 Ala. 316.

55.74 Tex.—Stroud v. Temple Lumber Co., Civ.App., 284 S.W.2d 90.

55.75 Ill.—Moneta v. Hoinacki, 67 N. E.2d 204, 394 Ill. 47—McGlaughlin v. Pickerel, 46 N.E.2d 368, 381 Ill. 574.

Okl.—Horton v. Reid, 87 P.2d 936, 184 Okl. 389.

Held no reversible error

Tex.—Texas City Terminal Ry. Co. v. McLemore, Civ.App., 225 S.W.2d 1007, error refused no reversible error.

55.76 La.—Rials v. Davis, 31 So.2d 726, 212 La. 161.

Tex.—Ravel v. Couravallos, Civ.App., 245 S.W.2d 731.

55.77 Ky.—Tichenor v. Goff, 91 S. W.2d 63, 263 Ky. 18.

55.78 Ky.—Tichenor v. Goff, supra.

Mo.—Loughlin v. Marr-Bridger Grocer Co., App., 10 S.W.2d 75.

Okl.—Fisher v. Kansas City, M. & O. Ry. Co., 36 P.2d 744, 169 Okl. 282.

Tex.—Continental Paper Bag Co. v. Bosworth, Com.App., 276 S.W. 170. City of Waco v. Darnell, Civ. App., 20 S.W.2d 409, reversed on other grounds, Com.App., 35 S.W. 2d 134—Thornton v. Goodman, Civ. App., 185 S.W. 926, reversed on other grounds, Com.App., 216 S.W. 147.

55.79 Cal.—Unruh v. Smith, 267 P. 2d 52, 123 C.A.2d 431—Burrows v. Burrows, 63 P.2d 1135, 18 C.A.2d 275.

55.80 Cal.—Tracy v. Stock Assur. Bureau, 23 P.2d 41, 132 C.A. 573—Brun v. Evans, 251 P. 330, 80 C.A. 74.

4 C.J. p 800 note 42.

55.81 Tex.—Davis v. Krupp, Civ. App., 75 S.W.2d 309.

4 C.J. p 800 note 43—49 C.J. p 483 note 62.

After verdict and pending motion for new trial

Ind.—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.

55.82 N.D.—L. W. Wentzel Implement Co. v. State Finance Co., 63 N.W.2d 525.

Okl.—Frey v. Glenn, 240 P.2d 1061, 206 Okl. 28—A. & A. Cab Operating Co. v. Allen, 147 P.2d 792, 194 Okl. 103—Sells v. Sells, 140 P.2d 1022, 193 Okl. 27.

Before final judgment

Mo.—Uitz v. Pollard, App., 159 S.W. 2d 687.

W.Va.—Konopka v. Montgomery Ward & Co., 58 S.E.2d 128, 133 W. Va. 775—Grottendick v. Webber, 52 S.E.2d 700, 132 W.Va. 539.

55.83 Cal.—Keller v. Keller, 22 P. 2d 798, 132 C.A. 343.

Conn.—Mazulis v. Zeldner, 164 A. 713, 116 Conn. 314.

Ind.—Haley v. Wilson, 181 N.E. 46, 94 Ind.App. 402.

55.84 Md.—Dougherty v. Dougherty, 48 A.2d 451, 187 Md. 21—Richfield Oil Corp. of New York v. Chesapeake & C. B. R. Co., 20 A.2d 581, 179 Md. 560—Funkhouser v. Mooers, 18 A.2d 205, 179 Md. 266.

55.85 Mo.—Northwestern Stove Repair Co. v. Cornwall, 128 S.W. 535, 148 Mo.App. 605.

N.D.—L. W. Wentzel Implement Co. v. State Finance Co., 63 N.W.2d 525.

Okl.—Frey v. Glenn, 240 P.2d 1061, 206 Okl. 28—Sells v. Sells, 140 P. 2d 1022, 193 Okl. 27.

4 C.J. p 800 note 44.

After judgment entered on pleadings

Cal.—Security First Nat. Bank of Los Angeles v. Rospaw, 237 P.2d 76, 107 C.A.2d 220.

Abuse of discretion held shown

Permitting material amendment of pleading after judgment without notice to, and in absence of, adverse party was held abuse of discretion requiring judgment to be set aside on appeal by adverse party.

Okl.—Flag Oil Corporation of Delaware v. Triplett, 68 P.2d 108, 180 Okl. 154.

55.86 Particular times

(1) After referee's report has been filed and at the argument of exceptions.

Mo.—Freasier v. Harrison, 118 S.W. 108, 137 Mo.App. 375.

(2) After announcement of ready.

Tex.—Mercer v. McMurry, Civ.App., 229 S.W. 699.

4 C.J. p 800 note 39.

(3) On day case is ready for trial.

Ill.—Royal L. Brockob Const. Co. v. Trust Co. of Chicago, 128 N.E.2d 620, 6 Ill.App.2d 565.

(4) After appearance of defendant.

W.Va.—Konopka v. Montgomery Ward & Co., 58 S.E.2d 128, 133 W. Va. 775—Grottendick v. Webber, 52 S.E.2d 700, 132 W.Va. 539.

(5) After evidence taken and arguments made.

§ 1587(3). —— Other Particular Matters as to Pleadings

The rule that discretionary rulings as to pleadings will not be reviewed except for abuse of discretion has been applied to various rulings other than those referred to in preceding subdivisions.

The rule that discretionary rulings as to pleadings will not be reviewed except for abuse of discretion has been applied to bills of particulars,[56] rulings on demurrer[56.5] or motion to dismiss,[56.10] the division or separation of a pleading into counts or paragraphs,[57] the making of a pleading more specific,[57.5] the rulings of the court granting or denying

Ala.—Pennington v. Mixon, 74 So. 238, 199 Ala. 74.

(6) After motion for a verdict.

N.Y.—Reiner v. Jones, 56 N.Y.S. 423, 38 App.Div. 441.

(7) After reversal of judgment on appeal.

Cal.—Dressler v. Johnston, 21 P.2d 969, 131 C.A. 690.

(8) At hearing of motion for new trial.

Kan.—Tri-State Hotel Co. v. Southwestern Bell Tel. Co., 125 P.2d 728, 155 Kan. 358.

56. Fla.—Wilkie v. Roberts, 109 So. 225, 91 Fla. 1064.

Ill.—American Rolling Mill Corp. v. Ohio Iron & Metal Co., 120 Ill.App. 614.

N.Y.—People v. McClellan, 84 N.E. 68, 191 N.Y. 341—Dwight v. Germania L. Ins. Co., 84 N.Y. 493.

Tomasino v. Prudential Westchester Corp., 147 N.Y.S.2d 601, 1 A.D.2d 781—Richards v. Miller, 153 N.Y.S. 388, 167 App.Div. 443.

Steinleger v. Frankel, 192 N.Y.S. 74, 117 Misc. 693.

N.C.—Temple v. Western Union Telegraph Co., 171 S.E. 630, 205 N.C. 441.

N.D.—Farmers' State Bank of Richardton v. Walth, 248 N.W. 268, 63 N.D. 326.

R.I.—Kenyon v. Hart, 96 A. 529, 38 R.I. 524.

Va.—Kelly v. Schneller, 139 S.E. 275, 148 Va. 573—Blue Ridge Light, etc., Co. v. Tutwiler, 55 S.E. 539, 106 Va. 54—Driver v. Southern R. Co., 49 S.E. 1000, 103 Va. 650.

4 C.J. p 801 notes 57, 58.

Grant or refusal of motion for bill held subject to review

Va.—City of Portsmouth v. Weiss, 133 S.E. 781, 145 Va. 94.

4 C.J. p 801 note 59.

Ruling not reviewable except perhaps in extreme cases

(1) Generally.

N.C.—Moss-Marlow Bldg. Co. v. Jones, 41 S.E.2d 742, 227 N.C. 282—Ogburn v. Sterchi Bros. Stores, 11 S.E.2d 460, 218 N.C. 507—Tickle v. Hobgood, 194 S.E. 461, 212 N.C. 762.

(2) Case held not within such exception.

N.C.—Moss-Marlow Bldg. Co. v. Jones, 41 S.E.2d 742, 227 N.C. 282.

Plain, clear, or manifest abuse of discretion

(1) A motion for a bill of particulars is addressed to sound discretion of trial court, and its ruling thereon will not be disturbed unless it plainly appears that there has been an abuse of discretion.

Fla.—Poland v. Cooper, 197 So. 446, 143 Fla. 729.

(2) Trial court has discretion to overrule defendant's objection and to receive evidence of plaintiff's account, notwithstanding plaintiff's failure to furnish bill of particulars within required period after demand, and such ruling should not be disturbed in absence of showing of clear abuse of discretion.

Cal.—Dodge v. Harbor Boat Bldg. Co., 222 P.2d 697, 99 C.A.2d 782.

(3) An application for a bill of particulars is addressed to sound discretion of trial judge, and his ruling thereon is not reviewable except in case of manifest abuse of discretion.

N.C.—Tillis v. Calvine Cotton Mills, Inc., 73 S.E.2d 296, 236 N.C. 533.

(4) Abuse of discretion in denying motion held not shown.

N.C.—Tillis v. Calvine Cotton Mills, Inc., 73 S.E.2d 296, 236 N.C. 533.

Motion for more detailed bill

The ruling of the trial court on a motion for a more detailed or specific bill of particulars is not reviewable except for abuse of discretion.

Fla.—Payne v. Kello, 143 So. 790, 106 Fla. 831.

4 C.J. p 801 note 58.

Sufficiency of bill

The discretion of the trial court as to the sufficiency of the bill of particulars which is filed in pursuance of a motion is a judicial discretion which may be reviewed for abuse.

R.I.—Sullivan v. Waterman, 41 A. 1006, 21 R.I. 72.

56.5 Cal.—City of Alturas v. Gloster, 104 P.2d 810, 16 C.2d 46.

Leave to file demurrer

Kan.—Fleming v. Campbell, 69 P.2d 718, 146 Kan. 294.

Demurrer to petition for discovery

Ohio.—Driver v. F. W. Woolworth Co., 16 N.E.2d 548, 58 Ohio App. 299.

56.10 Kan.—Smith v. Wright, 305 P. 2d 810, 180 Kan. 584.

57. Ind.—School City of Peru v. State ex rel. Youngblood, 7 N.E.2d 176, 212 Ind. 255—School City of Peru v. State ex rel. Youngblood, 7 N.E.2d 1002, 212 Ind. 255, rehearing denied 9 N.E.2d 80, 212 Ind. 255.

Kittle v. Garner, 198 N.E. 445, 101 Ind.App. 535.

Kan.—Hickman v. Cave, 224 P. 57, 115 Kan. 701—Small v. Small, 190 P. 623, 107 Kan. 122—Mullarky v. Manker, 170 P. 31, 102 Kan. 92.

Okl.—Harn v. Missouri State Life Ins. Co., 173 P. 214, 70 Okl. 120—Henry v. Gulf Coast Drilling Co., 156 P. 321, 56 Okl. 604—Southern Surety Co. v. Waits, 146 P. 431, 45 Okl. 513.

4 C.J. p 802 note 71.

Separately stating and numbering

(1) Motions separately to state and number rest in sound discretion of trial court whose rulings thereon are not ordinarily appealable.

Kan.—Lessley v. Kansas Power & Light Co., 231 P.2d 239, 171 Kan. 197—Nelson v. Schippel, 56 P.2d 469, 143 Kan. 546.

Utah.—Adams v. Portage Irr., Reservoir & Power Co., 72 P.2d 648, 95 Utah 1, rehearing denied 81 P.2d 368, 95 Utah 20.

(2) Motions separately to state and number causes of action rest in discretion of trial court and are not appealable unless it appears that rulings thereon affect a substantial right and in effect determine the action.

Kan.—Toklan Royalty Corp. v. Panhandle Eastern Pipe Line Co., 212 P.2d 348, 168 Kan. 259—Sanders v. Visser, 194 P.2d 511, 165 Kan. 336.

57.5 Colo.—William A. Box Iron Works Co. v. American Nat. Bank of Denver, 64 P.2d 802, 99 Colo. 489.

Ind.—Atkinson v. Davis, 13 N.E.2d 355, 105 Ind.App. 375.

Abuse of discretion

(1) A ruling by the trial court on a motion to make more specific will be upheld on appeal unless it appears, or is shown, that the court abused its discretion.

Ind.—Marcisz v. Osborne, 118 N.E. 2d 378, 228 Ind.App. 574—Oliver v. Coffman, 45 N.E.2d 351, 112 Ind. App. 507.

(2) Abuse to the harm of the complaining party is required for reversal.

Ind.—Kamarata v. Hayes Freight Lines, Inc., 108 N.E.2d 723, 123 Ind.App. 222—A. & B. Automatic Heating Sales & Service v. Cooley, 92 N.E.2d 865, 120 Ind.App. 590—Public Service Co. of Indiana v.

motions to make the pleadings more definite and certain,[58] the addition or correction of a verification

Tackett, 47 N.E.2d 851, 113 Ind. App. 307—Chesapeake & O. Ry. Co. v. Powell, 44 N.E.2d 514, 113 Ind.App. 1—King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523—Meyer v. Garvin, 37 N.E.2d 291, 110 Ind.App. 403.

(3) The overruling of defendant's motion to make amended complaint more specific was not reversible error where defendant did not point out wherein the trial court abused its discretion or wherein defendant had been harmed.

Ind.—Public Service Co. of Indiana v. Tackett, 47 N.E.2d 851, 113 Ind. App. 307.

Suffering of rights

The granting or refusing of motion to make complaint more specific is so far discretionary that a reversal would not follow, except where rights of party complaining may have suffered.

Ind.—Town of Frankton v. Closser, 20 N.E.2d 216, 107 Ind.App. 193.

58. Ariz.—Shill v. Jones, 190 P. 77, 21 Ariz. 465.

Colo.—Spaulding v. Porter, 31 P.2d 711, 94 Colo. 496—Louden Irrigating Canal & Reservoir Co. v. Neville, 227 P. 562, 75 Colo. 536—Sheridan Oil Corporation v. Davidson, 227 P. 553, 75 Colo. 584—Seeing Denver Co. v. Morgan, 185 P. 339, 66 Colo. 565.

Ind.—Haskell & Barker Car Co. v. Trzop, 128 N.E. 401, 190 Ind. 35.

Illinois Pipe Line Co. v. Coffman, 188 N.E. 217, 98 Ind.App. 419—Hill v. Boggs, 185 N.E. 300, 98 Ind.App. 506—Baltimore & O. S. W. R. Co. v. Beach, App., 168 N.E. 204, 99 Ind.App. 672—Diamond v. Cleary, 162 N.E. 372, 88 Ind.App. 518—Union Traction Co. of Indiana v. City of Muncie, 133 N.E. 160, 80 Ind.App. 260—Berkey v. Montwheler, 132 N.E. 306, 76 Ind.App. 386—Lake County Agr. Soc. v. Verplank, 124 N.E. 494, 71 Ind.App. 186.

Minn.—Cull v. Brennam, 206 N.W. 929, 166 Minn. 53—Hart v. Lincoln Nat. Life Ins. Co., 174 N.W. 740, 144 Minn. 155—Young v. Lindquist, 148 N.W. 455, 126 Minn. 414.

Mo.—Allen v. St. Louis-San Francisco R. R., 297 S.W.2d 483—Kansas City Stock Yards Co. v. A. Reich & Sons, 250 S.W.2d 692—**Corpus Juris Secundum cited in** Hartvedt v. Harpst, 173 S.W.2d 65, 67—Sartin v. Springfield Hospital Ass'n, 195 S.W. 1037.

Ozark Fruit Growers' Ass'n v. Sullinger, App., 45 S.W.2d 887.

Neb.—Northport Irr. Dist. v. Farmers' Irr. Dist., 251 N.W. 174, 125 Neb. 607—Scott v. Scott, 248 N.W. 923, 125 Neb. 32.

N.C.—Privette v. Morgan, 41 S.E.2d 845, 227 N.C. 264—Scottish Bank v. Daniel, 12 S.E.2d 224, 218 N.C. 710—Temple v. Western Union Telegraph Co., 171 S.E. 630, 205 N. C. 441.

Ohio.—Trustees of Ohio Wesleyan University v. State ex rel. Fulton, 197 N.E. 612, 50 Ohio App. 51.

Okl.—Commonwealth Co. v. Lowenhaupt, 66 P.2d 1064, 179 Okl. 557—Oklahoma City v. Banks, 53 P. 2d 1120, 175 Okl. 569—Ramsey Oil Co. v. Dunbar, 46 P.2d 535, 172 Okl. 571—Missouri State Life Ins. Co. v. Everett, 29 P.2d 575, 167 Okl. 350—Commercial Casualty Ins. Co. of Newark, N. J. v. Adkisson, 4 P.2d 50, 152 Okl. 216—Griffin Grocery Co. v. Scroggins, 293 P. 235, 145 Okl. 9—Rhodes v. Lamar, 292 P. 335, 145 Okl. 223—Shunkamolah v. Delco, 268 P. 270, 131 Okl. 272—Schaff v. Coyle, 249 P. 947, 121 Okl. 228—Elk City State Bank of Elk City v. Davis, 248 P. 639, 118 Okl. 294—Fox v. Fox, 245 P. 641, 117 Okl. 46—Oklahoma City v. Stewart, 184 P. 779, 76 Okl. 211—Frear v. State, 184 P. 771, 76 Okl. 213—Felt v. Westlake, 174 P. 1041, 68 Okl. 294—Harn v. Missouri State Life Ins. Co., 173 P. 214, 70 Okl. 120—City of Lawton v. Hills, 156 P. 297, 53 Okl. 243—Union Coal Co. v. Wooley, 154 P. 62, 54 Okl. 391, 19 A.L.R. 312—Skelton v. Standard Inv. Co., 130 P. 562, 37 Okl. 82.

4 C.J. p 801 note 56.

Harmless or prejudicial error in ruling on motion to make more definite and certain see infra § 1691.

Rulings ordinarily not appealable

Kan.—Lessley v. Kansas Power & Light Co., 231 P.2d 239, 171 Kan. 197—Mead v. City of Coffeyville, 107 P.2d 711, 152 Kan. 799—Lofland v. Croman, 103 P.2d 772, 152 Kan. 312—Hasty v. Bays, 66 P.2d 265, 145 Kan. 463—Nelson v. Schippel, 56 P.2d 469, 143 Kan. 546.

Extreme cases

A motion to require pleading to be made more definite and certain is addressed to sound discretion of trial court and his ruling thereon, made in exercise of discretion, is not reviewable on appeal, except perhaps in extreme cases.

N.C.—Tickle v. Hobgood, 194 S.E. 461, 212 N.C. 762.

Abuse of discretion

(1) Discretionary ruling on motion to make pleading more definite and certain is not reviewable or reversible in absence of evidence of abuse of discretion.

N.C.—Lutz Industries v. Dixie Home Stores, 88 S.E.2d 333, 242 N.C. 332, followed in 88 S.E.2d 343, 242 N.C. 346.

Okl.—Thomas v. Owens, 241 P.2d 1114, 206 Okl. 50—Lewis v. Red, 152 P.2d 690, 194 Okl. 432—Smith v. Arrow Drilling Co., 130 P.2d 95, 191 Okl. 381—McDonald v. Bruhn, 126 P.2d 986, 190 Okl. 682—Johnson v. Gaines, 96 P.2d 68, 186 Okl. 91—Mitchell v. Lehmer, 94 P.2d 916, 185 Okl. 530—Brazelton's Wholesale Cleaners & Dyers v. Cash, 78 P.2d 810, 182 Okl. 493—Commonwealth Co. v. Lowenhaupt, 66 P.2d 1064, 179 Okl. 557—Oklahoma City v. Banks, 53 P.2d 1120, 175 Okl. 569.

Or.—Moe v. Alsop, 216 P.2d 686, 189 Or. 59.

Wis.—State v. Golden Guernsey Dairy Co-op., 43 N.W.2d 31, 257 Wis. 254.

(2) Where ruling on motion to make pleading definite and certain constitutes an abuse of sound judicial discretion and prejudices a substantial right, it is reviewable.

Kan.—Mead v. City of Coffeyville, 107 P.2d 711, 152 Kan. 799—Lofland v. Croman, 103 P.2d 772, 152 Kan. 312.

Okl.—Conliff v. Hall, 305 P.2d 1041.

(3) Clear abuse of discretion is required for disturbance or reversal of ruling.

Kan.—Vitt v. McDowell Motors, Inc., 308 P.2d 115, 180 Kan. 800—Wilson v. Cyrus, 284 P.2d 597, 178 Kan. 239—Clark v. Meyers, 244 P.2d 217, 173 Kan. 96—Connell v. Saco Oil Co., 223 P.2d 1020, 170 Kan. 91.

Neb.—Schuster v. Douglas, 56 N.W. 2d 618, 156 Neb. 484.

Ohio.—Rock v. Beachler, App., 118 N.E.2d 921—Spencer v. Miller, 82 N.E.2d 763, 84 Ohio App. 190—Rudd v. City of Reading, 28 N.E. 2d 768, 64 Ohio App. 308.

(4) Prejudicial abuse of discretion is required.

Neb.—Schuster v. Douglas, 56 N.W. 2d 618, 156 Neb. 484—Vaughan v. Omaha Wimsett System Co., 9 N. W.2d 792, 143 Neb. 470.

Okl.—Smith v. Arrow Drilling Co., 130 P.2d 95, 191 Okl. 381—McDonald v. Bruhn, 126 P.2d 956, 190 Okl. 682—Johnson v. Harris, 102 P.2d 940, 187 Okl. 239—Johnson v. Gaines, 96 P.2d 68, 186 Okl. 91—Mitchell v. Lehmer, 94 P.2d 916, 185 Okl. 530—Brazelton's Wholesale Cleaners & Dyers v. Cash, 78 P.2d 810, 182 Okl. 493—Commonwealth Co. v. Lowenhaupt, 66 P. 2d 1064, 179 Okl. 557.

(5) Capricious or arbitrary exercise of discretion may be set aside.

Mo.—Yeargain v. Importers & Exporters Ins. Co. of New York, App., 104 S.W.2d 793.

(6) An abuse of discretion in dismissing action for failure to comply

of a pleading,[59] joinder of causes of action,[59.5] duplicity,[59.10] multifariousness in a bill in equity,[60] the filing of additional or supplemental pleadings[61]

with order to make petition definite and certain is not shown by mere fact that members of reviewing court would have exercised that discretion differently if sitting as a trial court.

Ohio.—Reck v. Beachler, App., 118 N.E.2d 921.

(7) Discretion held not abused in sustaining portions of motion.

Kan.—Overholt v. City of Ellinwood, 270 P.2d 213, 176 Kan. 330.

(8) Discretion held not abused in denying motion.

N.C.—Lutz Industries v. Dixie Home Stores, 88 S.E.2d 333, 242 N.C. 332, followed in 88 S.E.2d 343, 242 N.C. 346.

Intermediate review

Generally, motions to make pleadings more definite and certain are addressed to discretion of trial court, and its rulings thereon are not open to intermediate appellate review.

Kan.—Lee v. Midwest Cold Storage & Ice Corp., 130 P.2d 574, 155 Kan. 876.

Effect on substantial rights; determining action

(1) A ruling denying a motion to make a pleading more definite and certain will not be disturbed unless substantial rights of the moving party have been denied or prejudiced by the ruling.

Ind.—Patton v. State Bank of Hardinsburg, 15 N.E.2d 106, 105 Ind. App. 381.

Kan.—Mead v. City of Coffeyville, 107 P.2d 711, 152 Kan. 799—Lofland v. Croman, 103 P.2d 772, 152 Kan. 312.

Utah.—Adams v. Portage Irr., Reservoir & Power Co., 72 P.2d 648, 95 Utah 1, rehearing denied 81 P.2d 368, 95 Utah 20.

(2) Motion to make definite and certain rests in sound discretion of trial court, and rulings thereon are not appealable unless they affect a substantial right and in effect determine the action.

Kan.—Krey v. Schmidt, 223 P.2d 1015, 170 Kan. 86—Estes v. J. A. Tobin Construction Co., 153 P.2d 939, 159 Kan. 322.

(3) Rulings on motions to make definite and certain ordinarily rest in sound discretion of the court and will not be considered on appeal unless the rulings in effect determine finally the results reached in the various actions.

Kan.—Giltner v. Stephens, 180 P.2d 288, 163 Kan. 37.

59. Kan.—State Bank of Downs v. Abbott, 179 P. 326, 104 Kan. 344.

La.—Dubach Lumber Co. v. Carroll Lumber Co., 4 La.App. 349.

N.C.—Horney v. Mills, 128 S.E. 324, 189 N.C. 724.

Or.—Clark v. Clark, 159 P. 969, 81 Or. 405.

Tex.—Hamilton v. Bell, 84 S.W. 289, 37 Tex.Civ.App. 456.

59.5 Idaho.—Radermacher v. Eckert, 123 P.2d 426, 63 Idaho 531.

Tex.—Harder v. Sanders, Civ.App., 275 S.W.2d 160, reversed on other grounds, Sup., 284 S.W.2d 144—Montgomery v. Willbanks, Civ. App., 202 S.W.2d 851, error refused no reversible error.

59.10 Vt.—Curtis Funeral Home v. Smith Lumber Co., 40 A.2d 531, 114 Vt. 150.

60. Ala.—Wilkinson v. Wright, 153 So. 204, 228 Ala. 243.

Ill.—Hurlbut v. Talbot, 112 N.E. 693, 273 Ill. 299.

Tenn.—Burns v. City of Nashville, 221 S.W. 828, 142 Tenn. 541.

61. Ala.—Sovereign Camp, W. O. W. v. Hutchinson, 114 So. 684, 217 Ala. 71—Sample v. Tennessee Valley Bank, 76 So. 936, 200 Ala. 578—Lampkin v. Rose, 73 So. 896, 198 Ala. 533—Bixby-Theisen Co. v. Evans, 65 So. 81, 186 Ala. 507—Union Marine Ins. Co. v. Charlie's Transfer Co., 65 So. 78, 186 Ala. 443.

Outcault Advertising Co. v. J. W. Hooten & Co., 66 So. 901, 11 Ala. App. 454.

Cal.—Slankard v. Wagnon, 183 P. 562, 181 C. 135.

Dressler v. Johnston, 21 P.2d 969, 131 Cal.App. 690—Miller v. Murphy, 248 P. 934, 78 Cal.App. 751—Bryant v. Hobert, 186 P. 379, 44 Cal.App. 315.

Ga.—Hendricks v. Kelley, 92 S.E. 395, 20 Ga.App. 103.

Ill.—Willard v. Bristol, 251 Ill.App. 234.

Kan.—Rogers v. Hodgson, 26 P. 732, 46 Kan. 276.

La.—Williamson v. Williamson, 113 So. 796, 164 La. 144.

Sliman v. Weaver, App., 162 So. 87.

Md.—Diedel v. Diedel, 105 A. 271, 133 Md. 286.

Mass.—Crowinshield Shipbuilding Co. v. Jackson, 186 N.E. 87, 283 Mass. 21.

Mich.—Zilz v. Wilcox, 157 N.W. 77, 190 Mich. 486.

N.H.—Kittredge v. Bartis, 146 A. 815, 83 N.H. 588.

N.D.—Weiser v. Ridgeway, 215 N.W. 870, 56 N.D. 14.

Okl.—Clem Oil Co. v. Oliver, 232 P. 942, 106 Okl. 22.

S.C.—Pickett v. Fidelity, etc., Co., 38 S.E. 160, 629, 60 S.C. 477.

S.D.—Schouweiler v. Hough, 63 N. W. 776, 7 S.D. 163.

Tex.—Howard v. Howard, Civ.App., 48 S.W.2d 489.

Vt.—Ford v. Hersey, 104 A. 875, 92 Vt. 405.

Va.—O. L. Standard Dry Goods Co. v. Hale & Pressley, 139 S.E. 300, 148 Va. 640.

Wash.—McDaniels v. Gowey, 71 P. 12, 30 Wash. 412—Long v. Eisenbeis, 63 P. 249, 23 Wash. 556.

4 C.J. p 802 note 66.

Abuse of discretion

(1) The manner of exercising the trial court's discretion with respect to additional or supplemental pleadings is subject to review and if it is found to have been abused such abuse constitutes reversible error.

Cal.—Seehorn v. Big Meadows, etc., Road Co., 60 C. 240.

Walsh v. Parker, 106 P.2d 925, 41 C.A.2d 435.

Ill.—Dean v. Kirkland, 23 N.E.2d 180, 301 Ill.App. 495—Hunziker v. Mulcahey, 215 Ill.App. 508.

Ind.—Calumet Lumber Co. v. Pearson, 24 N.E.2d 793, 107 Ind.App. 343.

Kan.—Austin v. Jones, 28 P. 621, 47 Kan. 565.

Ky.—Hannan v. Hannan, 256 S.W. 2d 485.

N.Y.—Benton v. Kennedy-Van Saun Mfg. & Eng. Corp., 152 N.Y.S.2d 955, 2 A.D.2d 27.

Okl.—Smith v. Fourth Nat. Bank of Tulsa, 112 P.2d 158, 189 Okl. 1, certiorari denied 62 S.Ct. 92, 314 U.S. 648, 86 L.Ed. 520—Federal Life Ins. Co. v. Bartlett, 80 P.2d 587, 183 Okl. 189.

S.C.—Moon v. Johnson, 14 S.C. 434.

Wash.—Davis v. Erickson, 29 P. 86, 3 Wash. 654.

(2) Clear abuse of discretion has been required for reversal.

Okl.—Smith v. Fourth Nat. Bank of Tulsa, 112 P.2d 158, 189 Okl. 1, certiorari denied 62 S.Ct. 92, 314 U.S. 648, 86 L.Ed. 520—Federal Life Ins. Co. v. Bartlett, 80 P.2d 587, 183 Okl. 189.

(3) Manifest abuse has also been required.

Cal.—Erickson v. Boothe, 274 P.2d 460, 127 C.A.2d 644.

(4) To permit a supplemental pleading to be filed without notice to the prejudice of other parties to the action is such an abuse of discretion as requires reversal.

Kan.—Beecher v. Ireland, 54 P. 9, 8 Kan.App. 10.

(5) Refusal of leave held not abuse of discretion.

Pa.—Pinsky v. Master, 23 A.2d 727, 343 Pa. 451.

Burden of showing an abuse of discretion is on the party complaining.

Colo.—Woods v. Chellew, 62 P. 230, 15 Colo.App. 368.

the filing of a cross complaint or the making of a counterclaim,[61.5] repleader,[61.10] and pleading over after the ruling on a demurrer.[62]

The rule has also been applied to the withdrawal or substitution of pleadings,[63] the striking of pleadings or portions thereof,[64] and to the rulings of the

Reply to answer setting up new matter

(1) The trial court's exercise of a discretionary power to determine whether plaintiff shall be required to file a reply to an answer setting up new matter ordinarily will not be reviewed except for abuse.

Ga.—Johnson v. Georgia Fertilizer & Oil Co., 94 S.E. 850, 21 Ga.App. 530.

S.C.—Powell v. Continental Ins. Co. of City of New York, 81 S.E. 654, 97 S.C. 375.

4 C.J. p 802 note 68.

(2) The court on appeal may review the exercise by the trial court of the discretion conferred by Code Civ.Proc. § 516, authorizing the court in its discretion to direct a reply.

N.Y.—Linzee v. Frankfort General Ins. Co. of Frankfort-on-the-Main, Germany, 147 N.Y.S. 606, 162 App. Div. 282.

61.5 Declaratory judgment action

The trial court has some discretion in determining whether cross complaint will be permitted in declaratory judgment action, and its disposition of such matter should not be disturbed on appeal, unless abuse of discretion clearly appears.

Or.—Recall Bennett Committee v. Bennett, 249 P.2d 479, 196 Or. 299.

Merits of counterclaim considered

To determine whether there has been an abuse of judicial discretion in denying appellant's motion for leave to file a counterclaim, after all evidence has been heard by master, merits of counterclaim must be considered.

Ill.—Bydalek v. Bydalek, 71 N.E.2d 19, 396 Ill. 65.

61.10 N.C.—Privette v. Morgan, 41 S.E.2d 845, 227 N.C. 264.

Tex.—Landers v. East Tex. Salt Water Disposal Co., Civ.App., 242 S.W.2d 236, reversed on other grounds 248 S.W.2d 731, 151 Tex. 251—Shaw v. Universal Life & Accident Ins. Co., Civ.App., 123 S.W. 2d 738, error dismissed, judgment correct.

62. N.C.—Atlantic Coast Line R. Co. v. Brunswick County, 100 S.E. 428, 178 N.C. 254.

4 C.J. p 802 notes 69, 70.

Even if demurrer was frivolous, the matter is referred to the sound discretion of the trial judge, and his judgment permitting the demurring defendant to answer over will not be interfered with, except perhaps in case of great abuse.

N.C.—Atlantic Coast Line R. Co. v. Brunswick County, supra.

Leave both to demur and plead

The trial court's discretionary grant of leave to demur and, without waiving the demurrer, file pleas to the whole of a bill of complaint, is not reviewable in the absence of abuse.

D.C.—Alexander v. Alexander, 13 App.D.C. 334, 45 L.R.A. 806.

63. Mass.—Beacon Motorcar Co. v. Shadman, 116 N.E. 559, 226 Mass. 570.

4 C.J. p 801 notes 63, 64, p 802 note 65.

Clear abuse of discretion

A party's right to withdraw pleading rests in sound discretion of trial court, whose action with respect thereto will not be disturbed on appeal, unless abuse of such discretion is clearly shown.

Ind.—Heeter v. Fleming, 67 N.E.2d 317, 116 Ind.App. 644.

Answer; motion to strike and demurrer

Where no abuse of discretion was shown in permitting withdrawal of answer and substitution therefor of a motion to strike and demurrer, supreme court could not interfere.

Iowa.—In re Arduser's Estate, 283 N. W. 879, 226 Iowa 103.

64. Ala.—Mazer v. Brown, 66 So.2d 561, 259 Ala. 449—Birmingham Baptist Hospital v. Branton, 113 So. 79, 216 Ala. 326.

Ark.—Temple Cotton Oil Co. v. Davis, 268 S.W. 38, 167 Ark. 448.

Colo.—Spaulding v. Porter, 31 P.2d 711, 94 Colo. 496.

Ill.—Gottschalk v. Village of Posen, 252 Ill.App. 352.

Ind.—Rooker v. Fidelity Trust Co., 131 N.E. 769, 191 Ind. 141, certiorari denied 42 S.Ct. 463, 259 U.S. 580, 66 L.Ed. 1073, and error dismissed 43 S.Ct. 288, 261 U.S. 114, 67 L.Ed. 556.

National Life Co. v. Jordan, 47 N.E.2d 827, 113 Ind.App. 394—Oliver v. Coffman, 45 N.E.2d 351, 112 Ind.App. 507—Lyon v. Ætna Life Ins. Co., 44 N.E.2d 186, 112 Ind. App. 573—Inter State Motor Freight System v. Henry, 38 N.E. 2d 909, 111 Ind.App. 179—Dickerson v. Dickerson, 10 N.E.2d 424, 104 Ind.App. 686, reheard 11 N.E. 2d 514, 104 Ind.App. 686—London & Lancashire Indemnity Co. of America v. Community Savings & Loan Ass'n, 4 N.E.2d 688, 102 Ind. App. 665.

Iowa.—Cary-Platt v. Iowa Electric Co., 224 N.W. 89, 207 Iowa 1052—Witousek v. Ideal Food Products Co., 197 N.W. 912, 197 Iowa 839—Stacey Fruit Co. v. Sketchley, 183 N.W. 452, 192 Iowa 186—Heiman v. Felder, 160 N.W. 234, 178 Iowa 740.

Mo.—Frankel v. Hudson, 196 S.W. 1121, 271 Mo. 495.

N.H.—Abbott v. Hayes, 26 A.2d 842, 92 N.H. 126.

N.J.—Schmidt v. Schmidt, 135 A. 770, 100 N.J.Eq. 541—O'Keefe v. O'Keefe, 126 A. 451, 96 N.J.Eq. 617.

N.C.—Privette v. Morgan, 41 S.E.2d 845, 227 N.C. 264—Ludwick v. Southern Ry. Co., 194 S.E. 282, 212 N.C. 664—Sugg v. St. Mary's Oil Engine Co., 138 S.E. 169, 193 N.C. 814.

Ohio.—Trustees of Ohio Wesleyan University v. State ex rel. Fulton, 197 N.E. 612, 50 Ohio App. 51.

Harrison v. Knight, 19 Ohio Cir. Ct.,N.S., 457.

Or.—**Corpus Juris Secundum cited in** McGinnis v. Keen, 221 P.2d 907. 909, 189 Or. 445.

Tex.—Wright v. Austin, Civ.App., 1 S.W.2d 703—Jackson v. Greenville Compress Co., Civ.App., 202 S.W. 324.

Utah.—**Corpus Juris Secundum cited in** Adams v. Portage Irrigation, Reservoir & Power Co., 72 P.2d 648, 651, 95 Utah 1, rehearing denied 81 P.2d 368, 95 Utah 20.

Wash.—Painter v. Kennedy, 154 P. 161, 89 Wash. 275.

4 C.J. p 801 note 61.

Harmless or prejudicial error in ruling on motion to strike see infra § 1689.

Rulings ordinarily not appealable

Kan.—Lessley v. Kansas Power & Light Co., 231 P.2d 239, 171 Kan. 197—Munger v. Beiderwell, 124 P. 2d 452, 155 Kan. 187—Nelson v. Schippel, 56 P.2d 469, 143 Kan. 546.

Abuse of discretion

(1) The ruling of the trial court on a motion to strike will not be disturbed on review unless the discretion of the trial court has been abused.

Colo.—McMullin v. Magnuson, 78 P. 2d 964, 102 Colo. 230—William A. Box Iron Works Co. v. American Nat. Bank of Denver, 64 P.2d 802, 99 Colo. 489.

Ind.—King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523.

N.C.—Bolin v. Bolin, 89 S.E.2d 303, 242 N.C. 642.

Or.—McGinnis v. Keen, 221 P.2d 907, 189 Or. 445.

(2) This rule applies to a motion not made in apt time.

N.C.—Tucker v. Transou, 88 S.E.2d 131, 242 N.C. 498.

(3) Abuse of discretion in ruling on a motion to strike will result in a reversal.

trial court granting or denying motions by one or another of the parties for judgment on the pleadings.[64.5]

b. Provisional Remedies and Interlocutory or Other Proceedings before Trial

§ 1588. Provisional Remedies

The exercise, by the trial court, of its discretionary powers as to provisional remedies will not be reviewed except for clear abuse of discretion.

The exercise, by the trial court, of its discretionary powers with reference to provisional remedies will not be reviewed except for clear abuse of discretion.[65]

§ 1589. —— Arrest and Bail

An appellate court will interfere with the exercise, by a trial court, of discretion as to arrest or bail only in a case of clear abuse thereof.

Ill.—Gottschalk v. Village of Posen, 252 Ill.App. 352.
4 C.J. p 801 note 62.

(4) Clear abuse of discretion is required for disturbance on reversal of ruling.
Kan.—Clark v. Meyers, 244 P.2d 217, 173 Kan. 96—Connell v. Saco Oil Co., 223 P.2d 1020, 170 Kan. 91.
Mo.—Franklin v. Franklin, App., 273 S.W.2d 737, reversed on other grounds, Sup., 283 S.W.2d 483.
Mont.—Collishaw v. American Smelting & Refining Co., 190 P.2d 673, 121 Mont. 196.
Utah.—Adams v. Portage Irr., Reservoir & Power Co., 72 P.2d 648, 95 Utah 1, rehearing denied 81 P. 2d 368, 95 Utah 20.

(5) Granting motion to strike, or portions thereof, held not abuse of discretion.
Kan.—Overholt v. City of Ellinwood, 270 P.2d 213, 176 Kan. 330.
N.C.—Tucker v. Transou, 88 S.E.2d 131, 242 N.C. 498.

(6) Striking of counterclaim held not abuse of discretion.
N.J.—D'Orsi v. Galdieri, 20 A.2d 367, 126 N.J.Law 574.

(7) Denial of motion to strike held abuse of discretion.
N.Y.—Rauch v. Hudson River Naval Academy, 74 N.Y.S.2d 594, 272 App. Div. 1067.

(8) Denial of motion to strike held not abuse of discretion.
Ariz.—State Bd. of Barber Examiners v. Walker, 192 P.2d 723, 67 Ariz. 156.
Mo.—Graveman v. Huncker, 139 S. W.2d 494, 345 Mo. 1207.
N.Y.—Giessler v. Accurate Brass Co., 68 N.Y.S.2d 1, 271 App.Div. 980, appeal denied 73 N.E.2d 578, 296 N. Y. 1003, appeal dismissed 73 N.E. 2d 578, 296 N.Y. 1003.

(9) However, where motion to strike improper, irrelevant, or redundant matter from complaint was made within statutory period, movant was entitled to review of order overruling such motion as matter of right and not of judicial discretion.
N.C.—Patuxent Development Co. v. Bearden, 41 S.E.2d 85, 227 N.C. 124—Poovey v. City of Hickory, 188 S. E. 78, 210 N.C. 630.

Effect on substantial right; determining action

(1) Motion to strike rests in sound discretion of trial court, and rulings thereon are not appealable unless they affect a substantial right and in effect determine action.
Kan.—Krey v. Schmidt, 223 P.2d 1015, 170 Kan. 86—Estes v. J. A. Tobin Construction Co., 153 P.2d 939, 159 Kan. 322.

(2) Rulings on motions to strike ordinarily rest in sound discretion of the court and will not be considered on appeal unless the rulings in effect determine finally the results reached in the various actions.
Kan.—Giltner v. Stephens, 180 P.2d 288, 163 Kan. 37.

Motion as demurrer; demurrer as motion

(1) Treating a motion to strike answer as a demurrer and hearing it as such is so far within the trial court's discretion as hardly to be reviewable in any case, and certainly not unless for manifest abuse.
Wash.—Maltbie v. Gadd, 172 P. 557, 101 Wash. 483.

(2) A pleading denominated a special demurrer which challenges plaintiff's right merely to a portion of a cause of action may be treated as a motion to strike, addressed to sound discretion of court, and ordinarily refusal to grant it will not be disturbed unless it clearly appears that trial court's discretion has been abused.
Kan.—Krey v. Schmidt, 223 P.2d 1015, 170 Kan. 86.

Immaterial allegation

Error may not be predicated on action of trial court in overruling a motion to make more specific an immaterial allegation.
Ind.—Oliver v. Coffman, 45 N.E.2d 351, 112 Ind.App. 532.

Amended pleadings filed out of time

(1) The discretion of the trial court in striking or refusing to strike amended pleadings filed out of time is rarely interfered with by appellate court, and then only when trial court palpably abused such discretion.
Mo.—Bader v. Beck, App., 173 S.W. 2d 647.

(2) Amendment of pleadings generally see supra § 1587(2).

Charting course of trial

(1) Supreme court will not chart the course of the trial on motion to strike portions of the pleadings.
N.C.—Scarboro v. Morgan, 58 S.E. 2d 354, 231 N.C. 597.

(2) The supreme court, on appeal on close or attenuate motions to strike portions of the pleadings, does not chart the course of the trial.
N.C.—Parker v. Duke University, 55 S.E.2d 189, 230 N.C. 656.

Irrelevant or redundant matter; permission to replead

The power to strike from complaint, on motion made in apt time, should be exercised with caution, and, on appeal from order denying motion, supreme court should strike matter which is clearly irrelevant or redundant; an order, on defendant's motion, striking from complaint allegations of law inserted to preserve continuity of subjects dealt with, or by way of inducement or to show relation of defendants to specific requirements of law, would not be disturbed on appeal, where plaintiffs were given permission to replead.
N.C.—Hill v. Stansbury, 20 S.E.2d 308, 221 N.C. 339.

64.5 Ruling not within discretion of court

Where matters set forth in defendant's answer, if true, constituted a complete defense to plaintiff's claim, defendant was entitled to an opportunity to establish the truth of those matters as a matter of right, and to disregard them was not within the discretionary power of the court below, as against contention that the granting of plaintiff's motion for judgment on the pleadings was a ruling within the discretion of the court which should not be disturbed on exceptions.
Vt.—McCutcheon v. Leonard, 22 A. 2d 186, 112 Vt. 172.

65. Fla.—Florida Power Corporation v. Ocklawaha Reclamation Farms, 112 So. 616, 93 Fla. 740.
4 C.J. p 802 note 75.

The exercise, by a trial court, of its discretion in fixing the amount of an undertaking to obtain an order of arrest,[66] in continuing or vacating an order of arrest,[67] or with respect to the discharge, change, or reduction of bail,[68] will be reviewed or revised only on a clear showing of abuse. However, a limited statutory discretion with respect to the estreature or enforcement of bail bonds has been held subject to review and control by the appellate court.[69]

Bail trover. The inability of an applicant for discharge from jail on his own recognizance in a bail trover case to give the required security or to produce the personalty involved is a question for the trial judge, whose determination will not be disturbed unless it is affirmatively shown to be a manifest abuse of his discretion.[69.5] The finding of the trial judge against such an application cannot be held, on appeal, to be an abuse of discretion as a matter of law, if it is supported by any competent evidence and no error of law appears.[69.10]

§ 1590. —— Attachment and Garnishment

The determination of discretionary matters by a trial court as to attachment or garnishment is subject to review only for abuse of discretion.

It is only for manifest or clear abuse that an appellate court will review or revise the exercise, by a trial court, of its discretionary powers in ruling on an application for an attachment,[69.50] with respect to the dissolution of an attachment,[70] the correction of an irregularity in the signing of an attachment,[71] the revocation of an order directing the attaching creditor to pay a chattel mortgage,[72] or the determination of the fees to which an attaching officer is entitled;[73] but the refusal to grant an attachment, amounting to an abuse of discretion, may be reviewed.[74]

Likewise, the appellate court will review only for abuse of discretion the determination by the trial court of discretionary matters in garnishment proceedings,[75] such as the quashing of the garnishment,[76] the making of an order requiring a garnishee to pay money attached into court,[77] the sub-

66. N.C.—Fayetteville Light & Power Co. v. Lessem Co., 93 S.E. 836, 174 N.C. 358.

67. N.D.—Thompson v. Thompson, 88 N.W. 565, 10 N.D. 564.
5 C.J. p 523 note 47 [c].

68. Ga.—Peavy v. Moore & Evans, 92 S.E. 299, 19 Ga.App. 812.
4 C.J. p 803 note 76.

69. Fla.—West v. State, 78 So. 285, 75 Fla. 379—Catlett v. State, 78 So. 284, 75 Fla. 375—West v. State, 78 So. 275, 75 Fla. 342, followed in Fidelity & Deposit Co. of Maryland v. State, 136 So. 881, 103 Fla. 15.

69.5 Ga.—Sutton v. Perdue, 44 S.E. 2d 405, 75 Ga.App. 720.

69.10 Ga.—Sutton v. Perdue, supra.

69.50 N.J.—Whiteman Food Products Co. v. G. Arrigoni & C., Societa Per Azioni, 99 A.2d 434, 27 N.J.Super. 359, reheard 106 A.2d 321, 31 N.J.Super. 277.

70. Ga.—Friedman v. First Nat. Bank, 122 S.E. 81, 31 Ga.App. 742.
Mass.—Richardson v. Greenhood, 114 N.E. 821, 225 Mass. 608, Ann.Cas. 1918A 515.
Okl.—Antrim Lumber Co. v. Hazel, 246 P. 476, 118 Okl. 71—Farmers' Exchange Bank of Lindsay v. Cutler, 229 P. 186, 100 Okl. 193.
4 C.J. p 803 note 77.

In Pennsylvania

(1) Under statute relating to appeals in writs of foreign attachment, record must present a plain case of abuse of discretion before a reversal may be had.
Pa.—Badler v. L. Gillarde Sons Co., 127 A.2d 680, 387 Pa. 266.

(2) "The Pennsylvania authorities, down to certain recent cases . . . held consistently that the determination of an application either to quash the writ or to dissolve an attachment was not reviewable, because it was a matter within the discretion of the court below, and, since no bill of exceptions lay to bring the evidence relating thereto upon the record, the practical effect of this was that such discretion could not be reviewed. . . . The act of April 26, 1917 (P.L. 102; Pa.St.1920, §§ 514-516), expressly allows 'appeals from orders of court entered on motions to quash or dissolve writs of foreign attachment,' and provides that 'the evidence on which the case was heard and disposed of in the court below, together with the opinion of the court thereon, shall constitute a part of the record'; further, that the appellate court shall consider the evidence and opinion brought before it and 'dispose of the case according as the law and the facts shall be found therefrom.' See, also, the General Act of April 18, 1919 (P.L. 72; Pa.St.1920, § 553), making the testimony part of the record in all appellate proceedings. Under this legislation, we examine the proofs to see whether there is any evidence to warrant the findings of the trial court, or to sustain the action complained of . . . but, in making such examination, the prevailing presumption 'that everything was done rightly and according to law' . . . still holds, and, since the act of 1917 allows an appeal (like the one before us) from the refusal to quash a writ, which is an interlocutory order, the usual rule governing appeals from such orders applies, and the record must present plainly a clear abuse of discretion before a reversal can be had."
Pa.—Pasquinelli v. Southern Macaroni Mfg. Co., 116 A. 372, 374, 375, 272 Pa. 468, followed in Nazareth Cement Co. v. Union Indemnity Co., 177 A. 64, 67, 68, 116 Pa.Super. 506.

71. N.Y.—Sullivan v. Presdee, 9 Daly 552.

72. Mass.—O'Neil v. Small, 167 N.E. 649, 268 Mass. 305.

73. Mass.—Helliwell Garages v. Feinberg, 126 N.E. 476, 235 Mass. 258.

74. Neb.—Seidentopf v. Annabil, 6 Neb. 524.
4 C.J. p 803 note 80.

75. N.H.—Palmer v. Duplex Truck Co., 108 A. 943, 79 N.H. 28.

Question for review

On appeal from order refusing to permit garnishee defendant to serve and file affidavit denying liability after expiration of statutory time for doing so, question was whether court had abused its discretion.
S.D.—Credit Management Service v. Wendbourne, 72 N.W.2d 926.

76. Pa.—Omaha First Nat. Bank v. Crosby, 36 A. 155, 179 Pa. 63.

Question for review is whether trial court abused its discretion.
Mich.—Brookdale Cemetery Ass'n v. Lewis, 69 N.W.2d 176, 342 Mich. 14.

77. S.C.—Arnold v. Lord, 16 S.C.L. 538.

mission of proceedings to a jury on special issues at the garnishee's request,[78] the continuance of the trial until after the determination of an appeal of the principal case,[79] the relieving of a garnishee for want of prosecution,[80] or the manner in which the disclosure of the garnishee was obtained or in which the examination was conducted.[81]

§ 1591. —— Injunctions

Discretionary rulings by a trial court with respect to injunctions will not be reviewed or revised except for manifest abuse; the question on review is whether the court abused its discretion.

Generally, in the absence of manifest abuse of discretion or of a clear showing of abuse, an appellate court will not review, modify, or revise discretionary actions of the trial court in passing on an application for an injunction or restraining order,[81.50] or discretionary rulings as to the grant or refusal thereof.[82] The same principle applies with

78. Tex.—Milwaukee Mechanics' Ins. Co. v. Frosch, Civ.App., 130 S.W. 600.

79. Mich.—Wattles v. Lillibridge, 78 N.W. 123, 119 Mich. 356.

80. Mich.—Noble v. Bourke, 6 N.W. 237, 44 Mich. 193.

81. Vt.—Peck v. Merrill, 26 Vt. 686.

81.50 Ala.—Western Grain Co. Cases, 85 So.2d 395, 264 Ala. 145—Slay v. Hess, 41 So.2d 582, 252 Ala. 455—Boatwright v. Town of Leighton, 166 So. 418, 231 Ala. 607.
Ga.—Thompson v. Mutual Inv. Corp., 4 S.E.2d 44, 188 Ga. 476.
Idaho.—Western Gas & Power of Idaho, Inc. v. Nash, 272 P.2d 316, 75 Idaho 327.
La.—Brooks v. Chinn, App., 52 So. 2d 583.
Okl.—Barnsdall Oil Co. v. Jackson, 71 P.2d 719, 180 Okl. 589—Inselman v. Berryman, 68 P.2d 527, 180 Okl. 136.
Tex.—Wortham Independent School Dist. v. State ex rel. Fairfield Consol. Independent School Dist., Civ. App., 244 S.W.2d 838, error refused no reversible error—State v. Guardian Foundation of Texas, Civ.App., 112 S.W.2d 806—International Ladies' Garment Workers' Local Union No. 123 v. Dorothy Frocks Co., Civ.App., 95 S.W.2d 1346.

82. Ala.—Madison Limestone Co. v. McDonald, 87 So.2d 539, 264 Ala. 295—**Corpus Juris Secundum cited** in Pritchett v. Wade, 73 So.2d 533, 538, 261 Ala. 156—Boatwright v. Town of Leighton, 166 So. 418, 231 Ala. 607—Woodstock Operating Corporation v. Quinn, 79 So. 253, 201 Ala. 681.
Ariz.—Pacific Greyhound Lines v. Sun Valley Bus Lines, 216 P.2d 404, 70 Ariz. 65.
Ark.—Harrison v. Terry Dairy Products Co., 287 S.W.2d 473, 225 Ark. 953—Arkansas Public Service Commission v. Arkansas-Missouri Power Co., 246 S.W.2d 117, 220 Ark. 39—Jones v. Bartlett, 191 S.W.2d 967, 209 Ark. 681—Riggs v. Hill, 144 S.W.2d 26, 201 Ark. 206.
Cal.—Isthmian S. S. Co. v. National Marine Engineers Beneficial Ass'n, 254 P.2d 578, 40 C.2d 433—Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church, 245 P.2d 481, 39 C.2d 121, certiorari denied 73 S.Ct. 828, 345 U.S. 938, 97 L.Ed. 1365—Thompson v. Moore Drydock Co., 165 P.2d 901, 27 C.2d 595—People v. Black's Food Store, 105 P.2d 361, 16 C.2d 59—Isert v. Riecks, 234 P. 371, 195 C. 569—People v. Stafford Packing Co., 227 P. 485, 193 C. 719—Piper v. Hawley, 175 P. 417, 179 C. 10—Fresno Canal & Irrigation Co. v. People's Ditch Co., 163 P. 497, 174 C. 441—Efford v. South Pac. R. Co., 52 C. 277.
Dennis v. Overholtzer, App., 307 P.2d 1012—Hartsif v. Wann, 293 P.2d 65, 139 C.A.2d 119—Oktanski v. Burn, 291 P.2d 954, 138 C.A.2d 419—Wallace v. Carpenters Local Union No. 1040 of the United Broth. of Carpenters and Joiners of America, 290 P.2d 583, 137 C.A. 2d 468—Hidden Harbor v. American Federation of Musicians, 285 P.2d 691, 134 C.A.2d 399—Daniels v. Williams, 270 P.2d 556, 125 C.A. 2d 310—State Compensation Ins. Fund v. Maloney, 262 P.2d 662, 121 C.A.2d 33—Nyman v. Desert Club, 240 P.2d 37, 109 C.A.2d 63—People v. Gordon, 234 P.2d 287, 105 C.A. 2d 711—London v. Marco, 229 P.2d 401, 103 C.A.2d 450—Wilms v. Hand, 226 P.2d 728, 101 C.A.2d 811—McNeil v. Graner, 206 P.2d 1120, 92 C.A.2d 371—Riviello v. Journeymen Barbers, Hairdressers and Cosmetologists' Intern. Union of America, Local No. 148, 199 P.2d 400, 88 C.A.2d 499—Killeen v. Hotel & Restaurant Emp. Intern. Alliance & Bartenders' Intern. League of America, 190 P.2d 80, 84 C.A.2d 87—People v. Morehouse, 169 P.2d 983, 74 C.A.2d 870—Wellborn v. Wellborn, 155 P.2d 95, 67 C.A.2d 540—Gray v. Bybee, 141 P. 2d 32, 60 C.A.2d 564—General Distillers v. Wholesale Liquor Drivers-Salesmen Union, Local 109, 135 P.2d 592, 57 C.A.2d 908—Breedlove v. J. W. & E. M. Breedlove Excavating Co., 132 P.2d 239, 56 C.A.2d 141—Palm Springs-La Quinta Development Co. v. Kieberk Corp., 100 P.2d 346, 37 C.A.2d 642—Metropolitan Laundry Co. v. Greenfield, 66 P.2d 722, 20 C.A.2d 246—Bank of America of California v. Slingerland, 16 P.2d 756, 128 C.A. 32—Sun-Maid Raisin Growers of California v. Mosesian, 258 P. 630, 84 C.A. 485—Wood v. Bufford, 214 P. 516, 61 C.A. 150—Pavilion Ice Rink v. O'Brien, 212 P. 632, 60 C.A. 185—Pellissier v. Whittier Water Co., 209 P. 593, 59 C.A. 1—Temple v. Gordon, 159 P. 983, 31 C.A. 127.
Conn.—H. O. Canfield Co. v. United Const. Workers, 70 A.2d 547, 136 Conn. 293.
Fla.—Clark v. Kreidt, 199 So. 333, 145 Fla. 1—Bishop v. First Old State Bank, 194 So. 488, 142 Fla. 190—Black v. Shayne Dixie Music Co., 193 So. 822, 141 Fla. 792—Sharp v. Bussey, 176 So. 763, 129 Fla. 775—Town of North Miami v. Travis Co., 160 So. 360, 118 Fla. 879—City of Tarpon Springs v. Chrysostomides, 146 So. 845, 108 Fla. 500—Willis v. Hathaway, 117 So. 89, 95 Fla. 608—Gillis v. State Live Stock Sanitary Board, 114 So. 509, 94 Fla. 890—Florida Power Corporation v. Ocklawaha Reclamation Farms, 112 So. 616, 93 Fla. 740—Farmers' Bank & Trust Co. v. Palms Pub. Co., 98 So. 143, 86 Fla. 371—Nelson v. State, 94 So. 680, 84 Fla. 631—Gracy v. Fielding, 91 So. 373, 83 Fla. 386—McKinne v. Dickenson, 5 So. 34, 24 Fla. 366.
Ga.—Lowry v. Rosenfeld, 96 S.E.2d 581, 213 Ga. 60—Roughton v. Thiele Kaolin Co., 83 S.E.2d 590, 211 Ga. 15—Kingsley Mill Corp. v. Edmonds, 67 S.E.2d 111, 208 Ga. 374—Jones v. Camp, 65 S.E.2d 596, 208 Ga. 164—City of East Point v. Minton, 62 S.E.2d 911, 207 Ga. 495—Verner v. DeKalb County, 61 S.E. 2d 921, 207 Ga. 436—Cairo Pickle Co. v. Muggridge, 55 S.E.2d 562, 206 P.2d 80, 206 Ga. 80—McCollum v. McCollum, 43 S.E.2d 663, 202 Ga. 406—Deriso v. Castleberry, 42 S.E. 2d 356, 202 Ga. 174—Kelley v. Cromer, 39 S.E.2d 880, 201 Ga. 375—Associated Mutuals v. Coe, 26 S.E. 2d 450, 196 Ga. 435—Moon v. Clark, 14 S.E.2d 481, 192 Ga. 47—Hudson v. Tate, 4 S.E.2d 577, 188 Ga. 707—Harrison v. Fulton County Board of Health, 195 S.E. 864, 185 Ga. 624—Simon v. Simon, 195 S.E. 430, 185 Ga. 385—Crockett v. Wilson, 192 S.E. 19, 184 Ga. 539—Reagin v. Harrison, 184 S.E. 321, 181 Ga. 742—Vickers v. City of Gainesville, 171 S.E. 299, 177 Ga. 793—Holland Pecan Co. v. Brown, 170 S.E. 357, 177 Ga. 525—Voyles v. Carr, 160

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Idaho.—Western Gas & Power of Idaho, Inc. v. Nash, 272 P.2d 316, 75 Idaho 327—Blue Creek Land & Livestock Co. v. Battle Creek Sheep Co., 19 P.2d 628, 52 Idaho 728—Independent Irr. Co. v. Baldwin, 252 P. 489, 43 Idaho 371—Washington Water Power Co. v. Crane, 233 P. 878, 40 Idaho 310—Rowland v. Kellogg Power & Water Co., 233 P. 869, 40 Idaho 216—Pfirman v. Success Mining Co., 179 P. 50, 32 Idaho 125—Harriman v. Woodall, 176 P. 565, 31 Idaho 750.

Ill.—Arends v. Naughton, 136 N.E.2d 697, 11 Ill.App.2d 227—General Elec. Co. v. Local 997 United Auto. Workers of America, 130 N.E.2d 758, 8 Ill.App.2d 154—Shatz v. Paul, 129 N.E.2d 348, 7 Ill.App.2d 223—Terminal R. Ass'n of St. Louis v. International Ass'n of Machinists, 77 N.E.2d 448, 333 Ill.App. 288—Bernard Bros. v. Deibler, 62 N.E.2d 248, 326 Ill.App. 538—Thibodeaux v. Uptown Motors Corporation, 270 Ill.App. 191—Hurt v. Hejhal, 259 Ill.App. 221—Grounds v. Van Laningham, 256 Ill.App. 540—Friedman v. Peckler, 255 Ill.App. 199—Fitzgerald v. Christy, 242 Ill.App. 343—First Nat. Bank of Herrin v. Sobosky, 186 Ill.App. 545—West Side Hospital of Chicago v. Steele, 124 Ill.App. 534—Hinson v. Ralston, 100 Ill.App. 214.

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Wasmuth-Endicott Co. v. Richmond Cabinet Co., 159 N.E. 697, 86 Ind.App. 686—Advance Oil Co. v. Hunt, 116 N.E. 340, 66 Ind.App. 228.

Iowa.—Kent Products, Inc. v. Hoegh, 61 N.W.2d 711, 245 Iowa 205—Ontjes v. Bagley, 250 N.W. 17, 217 Iowa 1200.

Kan.—Smith v. Kansas City, 208 P. 2d 233, 167 Kan. 684—Wyatt v. Mickey, 271 P. 304, 126 Kan. 690—Hanke v. Harlow, 112 P. 616, 83 Kan. 738.

La.—George M. Cox, Inc., v. Eddy, 189 So. 283, 192 La. 802.

Twiggs v. Journeymen Barbers, Hairdresser, Cosmetologists and Proprietors Intern. Union of America, Local 496 A.F.L., App., 58 So. 2d 298—Brooks v. Chinn, App., 52 So.2d 583—Noe v. Maestri, App., 190 So. 590.

Me.—Usen v. Usen, 18 A.2d 738, 136 Me. 480, 128 A.L.R. 1449.

Mich.—Seifert v. Buhl Optical Co., 268 N.W. 784, 276 Mich. 692—Furniture Mfrs.' Ass'n of Grand Rapids v. Grand Rapids Guild of Exhibitors, 256 N.W. 595, 268 Mich. 685—Nissenbaum v. Pikstein, 253 N.W. 203, 266 Mich. 28—Flemming v. Heffner & Flemming, 248 N.W. 900, 263 Mich. 561—Freeman v. Mitchell, 164 N.W. 445, 198 Mich. 207.

Minn.—Plunkett v. Lampert, 43 N.W. 2d 489, 231 Minn. 484—Hotel & Restaurant Emp. Union Local No. 556—C. v. Tzakis, 33 N.W.2d 859, 227 Minn. 32—East Lake Drug Co. v. Pharmacists and Drug Clerks' Union, Local No. 1353, 298 N.W. 722, 210 Minn. 433—McFadden Lambert Co. v. Winston & Newell Co., 296 N.W. 18, 209 Minn. 242—Behrens v. City of Minneapolis, 271 N.W. 814, 199 Minn. 363—Schmidt v. Gould, 215 N.W. 215, 172 Minn. 179—Owens v. Levine, 204 N.W. 629, 164 Minn. 519—Moyer v. Chippewa County State Bank, 203 N.W. 784, 163 Minn. 510—Kief v. Chippewa County State Bank, 203 N.W. 784, 163 Minn. 278—Minneapolis Electric Lamp Co. v. Federal Holding Co., 201 N.W. 324, 161 Minn. 198—Hackett v. Starks, 196 N.W. 492, 157 Minn. 411—Neill v. City of Red Wing, 195 N.W. 145, 156 Minn. 467—Berman v. Minneapolis Photo Engraving Co., 174 N.W. 735, 144 Minn. 146—Potter v. Engler, 153 N.W. 1088, 130 Minn. 510.

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Mont.—Hansen v. Galiger, 208 P.2d 1049, 123 Mont. 101—Thrasher v. Hodge, 283 P. 219, 86 Mont. 218—Williams v. Neal, 271 P. 455, 83 Mont. 244—National Bank of Montana v. Bingham, 269 P. 162, 83 Mont. 21—Atkinson v. Roosevelt County, 214 P. 74, 66 Mont. 411—Parsons v. Mussigbrod, 196 P. 528, 59 Mont. 386—Postal Telegraph-Cable Co. of Montana v. Nolan, 162 P. 169, 53 Mont. 129—Heinze v. Boston, etc., Consol. Copper, etc., Min. Co., 77 P. 421, 30 Mont. 484—Colusa Parrot Min. etc., Co. v. Barnard, 72 P. 45, 28 Mont. 11—Boston, etc., Consol. Copper, etc., Min. Co. v. Montana Ore Purchasing Co., 71 P. 471, 27 Mont. 431—Craver v. Stapp, 67 P. 937, 26 Mont. 314—Montana Ore Purchasing Co. v. Butte, etc., Consol. Min. Co., 65 P. 420, 25 Mont. 427—Boston, etc., Consol. Copper, etc., Min. Co. v. Montana Ore Purchasing Co., 59 P. 919, 23 Mont. 557—Shilling v. Reagan, 48 P. 1109, 19 Mont. 508—Cotter v. Cotter, 40 P. 63, 16 Mont. 63—Blue Bird Min. Co. v. Murray, 23 P. 1022, 9 Mont. 468—Nelson v. O'Neal, 1 Mont. 284.

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N.Y.—Steinkritz Amusement Corporation v. Kaplan, 178 N.E. 11, 257 N.Y. 294, followed in Brooklyn United Theatre Inc. v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators' Union, 178 N.E. 793, 257 N.Y. 555—Nann v. Raimist, 174 N.E. 690, 255 N.Y. 307, 73 A.L.R. 669, motion denied 175 N.E. 314, 255 N.Y. 564—Wormser v. Brown, 43 N.E. 524, 149 N.Y. 163—Strasser v. Moonelis, 15 N.E. 730, 108 N.Y. 611—McHenry v. Jewett, 90 N.Y. 58.

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N.D.—Mevorah v. Goodman, 65 N.W. 2d 278—Lee v. Jordan, 195 N.W. 660, 50 N.D. 365—State v. Union Light, Heat & Power Co., 182 N.W.

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Ohio.—Cieslikowski v. Radecki, App., 185 N.E.2d 433—State ex rel. Shafer v. Merrell, 185 N.E. 815, 44 Ohio App. 347.

Union Reduction Co. v. Story, 25 Ohio Cir.Ct., N.S., 533.

Okl.—Roberts v. Roberts, 270 P.2d 651—Truttman v. City of McAlester, 243 P.2d 352, 206 Okl. 297—State ex rel. Scanland v. John A. Brown Co., 241 P.2d 951, 206 Okl. 186—Smilie v. Taft Stadium Board of Control, 205 P.2d 301, 201 Okl. 303—State ex rel. Grigsby v. Silvers, 180 P.2d 657, 198 Okl. 526—Cherry v. Sharp, 45 P.2d 70, 172 Okl. 241—Miller v. Noble Drilling Co., 271 P. 666, 133 Okl. 125—Head v. Carlton, 229 P. 178, 100 Okl. 292—Midland Valley R. Co. v. Imler, 225 P. 919, 101 Okl. 298—Correll v. Kroth, 162 P. 215, 62 Okl. 137—Galbreath v. McLane, 152 P. 355, 51 Okl. 754—Webb v. Bowman, 149 P. 159, 47 Okl. 554.

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Tenn.—Foster v. Harle, 57 S.W.2d 452, 165 Tenn. 616.

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Tex.—Dallas General Drivers, Warehousemen and Helpers v. Wamix, Inc., of Dallas, 295 S.W.2d 873—Transport Co. of Tex. v. Robertson Transports, Inc., 261 S.W.2d 549, 152 Tex. 551—Texas Foundries v. International Moulders & Foundry Workers' Union, 248 S.W.2d 460, 151 Tex. 239—Railroad Commission v. Shell Oil Co., 206 S.W.2d 235, 146 Tex. 286—Repka v. American Nat. Ins. Co., 186 S.W.2d 977, 143 Tex. 542—Southwestern Greyhound Lines v. Railroad Commission of Texas, 99 S.W.2d 263, 128 Tex. 560, 109 A.L.R. 1235.

Southland Life Ins. Co. v. Egan, Com.App., 86 S.W.2d 722—Harding v. W. L. Pearson & Co., Com.App., 48 S.W.2d 964.

Lawless v. Big State Land Co., Civ.App., 301 S.W.2d 958—Garcia v. Sun Oil Co., Civ.App., 300 S.W. 2d 724, error refused no reversible error—Falkner v. Memorial Gardens Ass'n, Civ.App., 298 S.W.2d 934—Missouri-Kansas-Texas R. Co. v. Neuhoff Bros., Civ.App., 297 S. W.2d 316, error refused no reversible error—Murray v. R. & M. Well Servicing & Drilling Co., Civ. App., 297 S.W.2d 225, error refused no reversible error—Butler v. Butler, Civ.App., 296 S.W.2d 635—Scurry Area Canyon Reef Operators Corp. v. Popnoe, Civ.App., 283 S.W.2d 819—Chandler v. Darwin, Civ.App., 281 S.W.2d 363—Briarcroft Development Co. v. Stone, Civ.App., 281 S.W.2d 347—King v. Miller, Civ.App., 280 S.W.2d 331, error refused no reversible error—Rattikin Title Co. v. Grievance Committee of State Bar of Tex., Civ.App., 272 S.W.2d 948—City of Waco v. Marstaller, Civ.App., 271 S.W.2d 722—Stevenson v. Cabell's, Inc., Civ.App., 267 S.W.2d 887—Scoggins v. Cameron County Water Imp. Dist. No. 15, Civ.App., 264 S.W.2d 169, error refused no reversible error—Haig v. Gittings, Civ.App., 260 S.W.2d 311—Bond v. Owen, Civ.App., 257 S.W.2d 833—Cooper v. Milam, Civ.App., 256 S. W.2d 196—Carter v. City of Houston, Civ.App., 255 S.W.2d 336—Southwestern Associated Tel. Co. v. City of Dalhart, Civ.App., 254 S.W.2d 819, error refused no reversible error—Nelson v. Lamb, Civ.App., 252 S.W.2d 713—Cramer v. State, Civ.App., 248 S.W.2d 963—General Drivers, Warehousemen and Helpers, Local Union 745 v. Dallas County Const. Emp. Ass'n, Civ.App., 246 S.W.2d 677, error refused no reversible error—Richter v. Hickman, Civ.App., 243 S.W.2d 466—Blocker v. Lawrence, Civ.App., 233 S.W.2d 457—Martin v. Bentsen, Civ.App., 232 S.W.2d 690, error refused no reversible error—Dickard v. Crawley, Civ.App., 230 S.W.2d 833—Hastings Oil Co. v. Texas Co., Civ.App., 227 S.W.2d 317, affirmed 234 S.W.2d 389, 149 Tex. 416—Suburban Club v. State, Civ. App., 222 S.W.2d 321, error refused no reversible error—Carter v. Tomlinson, Civ.App., 220 S.W.2d 351, reversed on other grounds 227 S.W.2d 795, 149 Tex. 7—Brewer v. Height, Civ.App., 219 S.W.2d 516—Wichita County v. Vance, Civ. App., 217 S.W.2d 702, error refused no reversible error—Huston v. Throckmorton County, Civ.App., 215 S.W.2d 387—Fuller v. McDaniel, Civ.App., 213 S.W.2d 574—Izard v. Townsend, Civ.App., 208 S.W.2d 666—Bryan v. Darlington, Civ.App., 207 S.W.2d 681, error refused no reversible error—Huntsville Independent School Dist. v. McAdams, Civ.App., 207 S.W.2d 165, error refused no reversible error—Witt v. Witt, Civ.App., 205 S. W.2d 612—International Ass'n of Machinists Lodge 1488 v. Downtown Emp. Ass'n, Civ.App., 204 S. W.2d 685, error refused no reversible error—Ridgway v. Missouri-Kansas-Texas R. Co. of Tex., Civ. App., 204 S.W.2d 411, reversed on other grounds 208 S.W.2d 363, 146 Tex. 392—Dallas General Drivers, Warehousemen and Helpers Local Union No. 745 v. Oak Cliff Baking Co., Civ.App., 203 S.W.2d 586—Gray v. Luther, Civ.App., 195 S.W.2d 434, error refused—Horwitz v. Finkelstein, Civ.App., 189 S.W.2d 895, refused for want of merit—Willbanks v. Montgomery, Civ.App., 189 S.W.2d 337—Landwer v. Fuller, Civ.App., 187 S.W.2d 670, refused for want of merit—District Trustees of Dist. No. 46 and Freestone County v. Trustees of Freestone County, Civ.App., 186 S.W.2d 378—Gillian v. Day, Civ.App., 181 S.W. 2d 327, reversed on other grounds 182 S.W.2d 687, 143 Tex. 56—Weart v. Mahone, Civ.App., 176 S.W.2d 197—Shugart v. Rogers, Civ.App., 170 S.W.2d 813, error refused—Hamblen v. Horwitz-Texan Theatres Co., Civ.App., 162 S.W.2d 455—The Fair, Inc. v. Retail Clerks International Protective Ass'n, Local No. 131, Civ.App., 157 S.W.2d 716—Iden v. Lippard, Civ. App., 153 S.W.2d 642—Borden Co. v. Local No. 133 of International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Civ.App., 152 S.W.2d 828, error refused—Plocek v. Welhausen, Civ.App., 144 S.W.2d 631—

respect to rulings granting or denying motions or applications for the dissolution,[83] vaca-

Harris County v. Bassett, Civ.App., 139 S.W.2d 180, error refused—Ford v. State ex rel. Schultz, Civ. App., 138 S.W.2d 1105—Pancake v. Kansas City Life Ins. Co., Civ. App., 134 S.W.2d 776—Frels v. Consolidated Theatres, Civ.App., 134 S.W.2d 369, error dismissed, judgment correct—Fowlkes v. Fowlkes, Civ.App., 133 S.W.2d 241—Burka Bagging Co. v. State, Civ.App., 131 S.W.2d 1111—Wilburn v. City of Ladonia, Civ.App., 125 S.W.2d 1061—Irish v. Bahner, Civ.App., 109 S.W.2d 1023, error dismissed—Employees Loan Co. v. Templeton, Civ.App., 109 S.W.2d 774—Moffitt v. Lloyd, Civ.App., 98 S.W.2d 860—Cooper v. Walker, Civ.App., 96 S.W. 2d 847—Kenyon v. United Salt Corp., Civ.App., 96 S.W.2d 149, dismissed by agreement—Aldridge Seed Farms v. Texas Centennial Central Exposition, Civ.App., 95 S. W.2d 1051—Continental Oil Co. v. City of Groesbeck, Civ.App., 95 S. W.2d 714, error dismissed—Vireca Corporation v. Cole, Civ.App., 93 S. W.2d 567—Clark v. Eagle, Civ.App., 89 S.W.2d 795—Hutchison v. Ross, Civ.App., 89 S.W.2d 495—King v. Plainview Nat. Farm Loan Ass'n, Civ.App., 86 S.W.2d 833—City of Dallas v. City Packing Co., Civ. App., 86 S.W.2d 60, error dismissed—Glass v. Hoblitzelle, Civ. App., 83 S.W.2d 796, error dismissed—Fisher v. Frito Co., Civ. App., 81 S.W.2d 282—Wizig v. Jefferson, Civ.App., 74 S.W.2d 428—Jackson v. Reagan, Civ.App., 70 S.W.2d 446—Anthony v. North American Building & Loan Ass'n, Civ.App., 68 S.W.2d 581—Dunn v. Tennant, Civ.App., 68 S.W.2d 269—Jones v. Hilliard, Civ.App., 63 S. W.2d 909—Diamond v. Hodges, Civ.App., 58 S.W.2d 187—Amarillo Mut. Benev. Ass'n v. Sims, Civ. App., 53 S.W.2d 329—Lewis Ice & Cold Storage Co. v. Gibbons, Civ.App., 49 S.W.2d 958—Tyrrell & Grath Inv. Co. v. City of Highlands, Civ.App., 44 S.W.2d 1059—Hudspeth County Conservation and Reclamation Dist. No. 1 v. Spears & Co., Civ.App., 39 S.W.2d 94—Beall v. Barsch, Civ.App., 37 S.W.2d 761—Midland Bldg. & Loan Ass'n v. Sparks Chapel, Colored M. E. Church in America, Civ.App., 35 S.W.2d 774—Fort v. Moore, Civ. App., 33 S.W.2d 807—City of Farmersville v. Texas-Louisiana Power Co., Civ.App., 33 S.W.2d 272—Goldberg v. Soltes, Civ.App., 32 S.W.2d 246—Nagy v. Bennett, Civ.App., 24 S.W.2d 778—Hart v. Fakes & Co., Civ.App., 19 S.W.2d 462—City of Lufkin v. Behannon, Civ.App., 8 S.W.2d 329—Diamond Steel Highway Sign Co. v. Commercial Trust Co., Civ.App., 298 S.W. 456—Herman v. Forrest, Civ.App., 294 S.W. 624—Woods v. Humber, Civ.App., 282 S.W. 834—City of Waco v. Grimes, Civ.App., 279 S.W. 312—Hudspeth v. Gugenheim, Civ.App., 278 S.W. 952—Dilworth v. Buchanan, Civ.App., 275 S.W. 177—Meyer v. Cockcroft, Civ.App., 273 S.W. 665—Wilmut v. Franklin, Civ. App., 268 S.W. 971—Railroad Commission of Texas v. San Antonio Compress Co., Civ.App., 264 S.W. 214—Massa v. Guardian Trust Co., Civ.App., 258 S.W. 598—Mahaney v. City of Cisco, Civ.App., 248 S.W. 420—Basham v. Holcombe, Civ. App., 240 S.W. 691—Pavey v. McFarland, Civ.App., 234 S.W. 591—George v. Jonesville Oil & Gas Co., Civ.App., 226 S.W. 445—Sutherland v. City of Winnsboro, Civ.App., 225 S.W. 63—Beirne v. North Texas Gas Co., Civ.App., 221 S.W. 301—People's Guaranty State Bank of Tyler v. Castle, Civ.App., 218 S.W. 519—Ward County Water Improvement Dist. No. 2 v. Ward County Irrigation Dist. No. 1, Civ. App., 214 S.W. 490—Houston Electric Co. v. City of Houston, Civ. App., 212 S.W. 198, error granted—Williamson v. Cayo, Civ.App., 198 S.W. 643—Southern Oil & Gas Co. v. Mexia Oil & Gas Co., Civ. App., 186 S.W. 446—Wells Fargo & Co. v. Guilheim, Civ.App., 169 S. W. 1053.

Vt.—Hooker, Corser & Mitchell Co. v. Hooker, 92 A. 443, 88 Vt. 335.

Wash.—Vander Vaet v. Watson, 140 P.2d 964, 19 Wash.2d 68.

W.Va.—Stuart v. Lake Washington Realty Corp., 92 S.E.2d 891—Mercer County Court v. Princeton Power Co., 169 S.E. 450, 113 W.Va. 617.

Wis.—Culligan, Inc. v. Rheaume, 68 N.W.2d 810, 269 Wis. 242—Madison Gas & Elec. Co. v. Public Service Commission, 26 N.W.2d 285, 250 Wis. 59—State ex rel. Attorney General v. Manske, 285 N.W. 378, 231 Wis. 16—Gross v. Peter Pirsch & Sons Co., 247 N.W. 335, 210 Wis. 682—Fassbender v. Peters, 191 N. W. 973, 179 Wis. 587—Paine Lumber Co. v. Oshkosh, 56 N.W. 1088, 86 Wis. 397—Koeffler v. Milwaukee, 55 N.W. 400, 85 Wis. 397.

4 C.J. p 803 note 87—63 C.J. p 580 note 65.

Burden of showing abuse of discretion, operating to his prejudice, is on the party complaining of the trial court's ruling.

Cal.—Stockton v. Newman, App., 307 P.2d 56.

Fla.—Black v. Shayne Dixie Music Co., 193 So. 822, 141 Fla. 792.

Mont.—Heinze v. Boston, etc., Copper, etc., Min. Co., 52 P. 273, 20 Mont. 528.

Effect of denial under oath of allegations

Merely because material allegations of the petition were denied under oath will not justify the reversal of a judgment granting a temporary injunction, in the absence of an abuse of discretion.

Tex.—City of Dallas v. Atkins, Civ. App., 197 S.W. 593, affirmed 223 S. W. 170, 110 Tex. 627.

Hearing oral testimony

The court's exercise of discretion in hearing oral testimony in determining whether or not to issue a temporary injunction will not be disturbed, unless that discretion was abused.

Tex.—Harding v. W. L. Pearson & Co., Com.App., 48 S.W.2d 964.

Whole record

Action of court on right to, and necessity for, granting or refusal of interlocutory injunction will not be disturbed on appeal unless from whole record it appears that there was an abuse of discretion.

Minn.—General Minn. Utilities Co. v. Carlton County Co-op. Power Ass'n, 22 N.W.2d 673, 221 Minn. 510.

Mandatory injunction

(1) Generally.

Tenn.—King v. Elrod, 268 S.W.2d 103, 196 Tenn. 378.

Tex.—Port Arthur Housing Co. v. City of Port Arthur, Civ.App., 181 S.W.2d 1017, error refused.

(2) An order refusing mandatory injunction ordinarily will not be disturbed.

Fla.—McDowell v. Trustees of Internal Imp. Fund of State of Fla., 90 So.2d 715.

(3) In absence of showing of emergency or extreme necessity, reviewing court will not reverse order of trial judge refusing temporary injunction, especially if requested relief is mandatory in nature.

Tex.—Gilson v. Central Power & Light Co., Civ.App., 231 S.W.2d 683.

83. Ala.—Yarbrough v. Taylor, 67 So. 990, 191 Ala. 109.

Ark.—Harrison v. Terry Dairy Products Co., 287 S.W.2d 473—Riggs v. Hill, 144 S.W.2d 26, 201 Ark. 206.

Fla.—Clark v. Kredit, 199 So. 333, 145 Fla. 1—Kline v. Witmer, 165 So. 664, 122 Fla. 504—Ogden v. Baile, 68 So. 671, 69 Fla. 458.

Ga.—Spivey v. Pope, 180 S.E. 118, 180 Ga. 609—Dutton v. Byrd-Matthews Lumber Co., 94 S.E. 1013, 147 Ga. 558.

Idaho.—Blue Creek Land & Livestock Co. v. Battle Creek Sheep Co., 19 P.2d 628, 52 Idaho 728—Rowland v. Kellogg Power & Water Co., 233 P. 869, 40 Idaho 216—Pfirman v.

tion,[83.5] continuance,[84] extension, [84.5] or modification[85] of an injunction or restraining order.

The general rule is particularly applicable where the application is considered by the trial court solely on the pleadings,[85.5] where the facts are in dispute, or the evidence conflicting,[86] where opposing infer-

Success Mining Co., 179 P. 50, 32 Idaho 125.
Ill.—See Stone v. Janette Mfg. Co., 205 Ill.App. 407.
Iowa.—Gossard v. Crosby, 109 N.W. 482, 132 Iowa 155.
La.—Salomon v. Equitable Life Assur. Soc. of U. S., 13 So.2d 329, 202 La. 1001—Blacksher v. Leh, 72 So. 377, 139 La. 848.
Mich.—Furniture Mfrs.' Ass'n of Grand Rapids v. Grand Rapids Guild of Exhibitors, 256 N.W. 595, 268 Mich. 685—Nissenbaum v. Pikstein, 253 N.W. 203, 266 Mich. 28—Flemming v. Heffner & Flemming, 248 N.W. 900, 263 Mich. 561.
N.D.—Larson v. Jacobson, 208 N.W. 833, 54 N.D. 69—Hurley v. Village of Fairmount, 171 N.W. 833, 42 N. D. 198.
Okl.—Bradham v. Johnson, 156 P.2d 806, 195 Okl. 275—Wright v. City of Guthrie, 1 P.2d 162, 150 Okl. 171—Livesay v. Town of Webb City, 277 P. 1036, 137 Okl. 81—Miller v. White, 265 P. 646, 129 Okl. 184—Stout v. Pardoe, 261 P. 366, 128 Okl. 3—Midland Valley R. Co. v. Imler, 225 P. 919, 101 Okl. 298—Correll v. Kroth, 162 P. 215, 62 Okl. 137.
Pa.—Salus v. Lawrence, 3 A.2d 696, 332 Pa. 431—Wilson v. City of New Castle, 152 A. 102, 301 Pa. 358—Smith v. Blanchard, 116 A. 667, 273 Pa. 158—Davis v. Porch Bros., 112 A. 32, 268 Pa. 376—Bixler v. Swartz, 101 A. 647, 257 Pa. 300.
Tenn.—Foster v. Harle, 57 S.W.2d 452, 165 Tenn. 616.
Alexander v. Alexander, App., 286 S.W.2d 104.
Tex.—Horwitz v. Finkelstein, Civ. App., 189 S.W.2d 895, refused for want of merit—District Trustees of Dist. No. 46 and Freestone County v. Trustees of Freestone County, Civ.App., 186 S.W.2d 378—Iden v. Lippard, Civ.App., 153 S. W.2d 642—Pancake v. Kansas City Life Ins. Co., Civ.App., 134 S.W.2d 776—Clark v. Eagle, Civ.App., 89 S.W.2d 795—Wilkenfeld v. Ballard, Civ.App., 84 S.W.2d 279—Fisher v. Frito Co., Civ.App., 81 S.W.2d 282—Lewis Ice & Cold Storage Co. v. Gibbons, Civ.App., 49 S.W.2d 958—Pearce v. Atlantic Life Ins. Co., Civ.App., 36 S.W.2d 553—City of Farmersville v. Texas-Louisiana Power Co., Civ.App., 33 S.W. 2d 272—Reilly v. Delmore Corporation, Civ.App., 11 S.W.2d 827—Merrell v. Moore, Civ.App., 300 S. W. 953—Dilworth v. Buchanan, Civ. App., 275 S.W. 177.
W.Va.—Stuart v. Lake Washington Realty Corp., 92 S.E.2d 891—Kessel v. Cohen, 140 S.E. 15, 104 W. Va. 296.
4 C.J. p 803 note 87.

"In considering the question of dissolution on the denials of the answer, the court is invested with a wide discretion, and will weigh the relative degree of injury or benefit to the respective parties which may ensue from the maintenance of the injunction on the one hand, or its dissolution on the other'; and especially so where the discretion of the lower court has been apparently exercised without abuse."
Ala.—Fleming v. Bryars, 151 So. 846, 847, 227 Ala. 660.

Refusal to dissolve
Cal.—Daniels v. Williams, 270 P.2d 556, 125 C.A.2d 310.
N.D.—Mevorah v. Goodman, 65 N.W. 2d 278.
W.Va.—City of Huntington v. Greene Line Terminal Co., 28 S.E.2d 905, 126 W.Va. 463.

The assessing of statutory penalty, under statute authorizing allowance of damages of ten per cent of amount released by dissolution of injunction against collection of moneys if injunction was only for delay, is discretionary, and in absence of showing of abuse of discretion action of court will not be disturbed.
Tex.—Clare v. Maroney, Civ.App., 152 S.W.2d 410, error dismissed.

83.5 Ill.—Arends v. Naughton, 136 N.E.2d 697, 11 Ill.App.2d 227—Bernard Bros. v. Deibler, 62 N.E.2d 248, 326 Ill.App. 538.
Minn.—East Lake Drug Co. v. Pharmacists and Drug Clerks' Union, Local No. 1353, 298 N.W. 722, 210 Minn. 433.
Ohio.—Cieslikowski v. Radecki, App., 135 N.E.2d 433.
S.C.—Bryant v. Epps, 60 S.E.2d 685, 217 S.C. 361.

84. N.C.—Porter v. Jefferson Standard Life Ins. Co., 178 S.E. 223, 207 N.C. 646.
N.D.—Mevorah v. Goodman, 65 N.W. 2d 278.
Pa.—Blenko v. Schmeltz, 67 A.2d 99, 362 Pa. 365, 20 A.L.R.2d 523—Salus v. Lawrence, 3 A.2d 417, 332 Pa. 429.
W.Va.—Stuart v. Lake Washington Realty Corp., 92 S.E.2d 891.

84.5 Pa.—Trainer v. International Alliance of Theatrical Stage Emp. & Moving Picture Mach. Operators of U. S. and Canada, Local No. 516, of Chester, Pa., 46 A.2d 463, 353 Pa. 487.

85. Fla.—Clark v. Kreidt, 199 So. 333, 145 Fla. 1.
N.D.—Mevorah v. Goodman, 65 N.W. 2d 278.
Tex.—Mendelsohn v. Gordon, Civ. App., 156 S.W. 1149.
W.Va.—Stuart v. Lake Washington Realty Corp., 92 S.E.2d 891.
4 C.J. p 803 note 87.

85.5 Ga.—Verner v. DeKalb County, 61 S.E.2d 921, 207 Ga. 436.

86. Ala.—Pritchett v. Wade, 73 So. 2d 533, 261 Ala. 156.
Cal.—People v. Black's Food Store, 105 P.2d 361, 16 C.2d 59—Yreka Min., etc., Co. v. Knight, 65 P. 1091, 133 C. 544.
Daniels v. Williams, 270 P.2d 556, 125 C.A.2d 310—People v. Gordon, 234 P.2d 287, 105 C.A.2d 711—London v. Marco, 229 P.2d 401, 103 C.A.2d 450—Wilms v. Hand, 226 P.2d 728, 101 C.A.2d 811.
Ga.—Mayor, etc., of Savannah v. Collins, 84 S.E.2d 454, 211 Ga. 191—Loadman v. Davis, 81 S.E.2d 465, 210 Ga. 520—First Federal Sav. & Loan Ass'n v. Owen, 80 S.E.2d 169, 210 Ga. 424—Tift v. Farmers Bank of Tifton, 77 S.E.2d 505, 210 Ga. 35—Danielsville & Comer Tel. Co. v. Sanders, 71 S.E.2d 226, 209 Ga. 144—Ray v. Ray, 69 S.E.2d 261, 208 Ga. 733—Sirota v. Kay Homes, Inc., 65 S.E.2d 597, 208 Ga. 113—Ott v. Raburn, 48 S.E.2d 871, 204 Ga. 198—Sachs v. Dempsey, 47 S.E.2d 326, 203 Ga. 438—Fitzgerald v. Head, 44 S.E.2d 117, 202 Ga. 640—Deriso v. Castleberry, 42 S.E.2d 356, 202 Ga. 174—Ballard v. Waites, 21 S.E.2d 848, 194 Ga. 427—Pritchett v. Payne, 20 S.E.2d 765, 191 Ga. 84—Ingram & Le Grand Lumber Co. v. McAllister, 4 S.E.2d 558, 188 Ga. 626—House v. Batson, 4 S. E.2d 33, 188 Ga. 314—Jones v. Lanier Development Co., 2 S.E.2d 923, 188 Ga. 141—Taylor v. Nix, 195 S. E. 416, 185 Ga. 536—Dickison v. Warren Co., 189 S.E. 839, 183 Ga. 746—Levitsky v. Turk, 187 S.E. 107, 182 Ga. 873—Bowman v. Darby, 181 S.E. 584—Traylor v. People's Bank of Carrollton, 177 S.E. 702, 179 Ga. 895—Gheesling v. Martin, 168 S.E. 767, 176 Ga. 738—Volunteer State Life Ins. Co. v. Chapman, 160 S.E. 783, 173 Ga. 633—Gillen v. Coconut Grove Bank & Trust Co., 154 S.E. 787, 171 Ga. 162—Bosworth v. Nelson, 152 S.E. 575, 170 Ga. 279—Gilstrap v. Palmour Hardware Co., 152 S.E. 53, 170 Ga. 27—Cummings v. Bird, 150 S.E. 906, 169 Ga. 567—Lamb v. Lamb, 150 S.E. 817, 169 Ga. 567—Sapp v. Ritch, 149 S.E. 636, 169 Ga. 33—Phillips v. Schmitt, 149 S.E. 43, 168 Ga. 769—Wilson v. Cox, 144 S.E. 169, 166 Ga. 705—City of Atlanta

ences may reasonably be drawn from the facts,[87] and where no irreparable injury impends.[88]

On review, the question presented by the action of the trial judge is whether he abused his discretion,[88.5] and not whether the appellate court would have granted the injunction had it been in the trial

v. Conkle, 141 S.E. 200, 165 Ga. 449—Superior Pine Products Co. v. Cone, 140 S.E. 288, 165 Ga. 175—Beall v. Francis, 137 S.E. 251, 163 Ga. 894—Johnson v. Southern States Phosphate & Fertilizer Co., 135 S.E. 435, 163 Ga. 98—Chapple v. Hight, 131 S.E. 505, 161 Ga. 629—Zelner v. Copeland, 129 S.E. 285, 160 Ga. 893—McKenzie v. Emanuel Farm Co., 129 S.E. 89, 160 Ga. 848—Andrews v. Moss, 129 S.E. 62, 160 Ga. 793—Dillard v. Gulf Refining Co., 125 S.E. 862, 159 Ga. 425—Bennett v. Dickey & Martin, 125 S.E. 455, 159 Ga. 267—Gray v. Chason, 123 S.E. 290, 158 Ga. 313—Stokes v. Board of Missions of M. E. Church South, 122 S.E. 610, 158 Ga. 216—Buffington v. Bank of College Park, 122 S.E. 50, 157 Ga. 570—Hope v. Governor's Horse Guard, 113 S.E. 189, 153 Ga. 633—Brandenburg v. City of Covington, 111 S.E. 574, 153 Ga. 92—Porter v. Allman, 107 S.E. 332, 151 Ga. 494—Dodson v. Evans, 107 S.E. 59, 151 Ga. 435—Mathews v. Mathews, 95 S.E. 962, 148 Ga. 116—Polite v. Williams, 95 S.E. 674, 147 Ga. 820—Fletcher v. Clements, 95 S.E. 285, 147 Ga. 754—Spires v. Wright, 95 S.E. 232, 147 Ga. 633—Fain v. Bank of Doerun, 95 S.E. 210, 147 Ga. 652—Wash v. Dickson, 94 S.E. 1009, 147 Ga. 540—Rountree v. Neely, 86 S.E. 543, 144 Ga. 179—Hasbrouck v. Bondurant, 56 S.E. 241, 127 Ga. 220—McConnell v. Jones Naval Stores Co., 54 S.E. 117, 125 Ga. 376.

Minn.—Seward v. Schrieber, 62 N.W. 2d 48, 240 Minn. 489—Hotel & Restaurant Emp. Union, Local No. 556–C, v. Tzakis, 33 N.W.2d 859, 227 Minn. 32—Goodrich v. Northwestern Tel. Exch. Co., 181 N.W. 333, 148 Minn. 219—Twitchell v. Cummings, 151 N.W. 139, 128 Minn. 391.

S.C.—Seabrook v. Carolina Power & Light Co., 156 S.E. 1, 159 S.C. 1.

Tex.—Huston v. Throckmorton County, Civ.App., 215 S.W.2d 387—Scanlan v. City of Houston, Civ.App., 137 S.W.2d 204, error dismissed, judgment correct—Tips v. Railroad Commission of Texas, Civ.App., 110 S.W.2d 585, error dismissed—Scanlan v. Houston Lighting & Power Co., Civ.App., 62 S.W.2d 537—City of Amarillo v. Garwood, Civ.App., 63 S.W.2d 888—Taylor v. American Trust & Savings Bank of El Paso, Civ.App., 265 S.W. 727—George v. Jonesville Oil & Gas Co., Civ.App., 226 S.W. 445.

4 C.J. p 804 note 88.

Partial grant or refusal

Ga.—Associated Mutuals v. Coe, 26 S.E.2d 450, 196 Ga. 435.

Mandatory injunction

Ind.—Watson v. Burnett, 23 N.E.2d 420, 216 Ind. 216.

87. Cal.—People v. Monterey Fish Products Co., 234 P. 398, 195 C. 548, 38 A.L.R. 1186.

Tex.—King v. Plainview Nat. Farm Loan Ass'n, Civ.App., 86 S.W.2d 833.

88. Cal.—People v. Black's Food Store, 105 P.2d 361, 16 C.2d 59.

Iowa.—Baehne v. Independent School Dist. of Manly, 207 N.W. 755, 201 Iowa 625.

Minn.—Hotel & Restaurant Emp. Union, Local No. 556–C, v. Tzakis, 33 N.W.2d 859, 227 Minn. 32—Minneapolis Electric Lamp Co. v. Federal Holding Co., 201 N.W. 324, 161 Minn. 198—Borough of Belle Plaine v. Northern Power Co., 172 N.W. 217, 142 Minn. 361.

N.J.—Haines v. Burlington County Bridge Commission, 63 A.2d 284, 1 N.J.Super. 163.

88.5 Ark.—Keith v. Arkansas State Highway Commission, 279 S.W.2d 292, 225 Ark. 86.

Ill.—Cassidy v. Triebel, 85 N.E.2d 461, 337 Ill.App. 117—Baldassano v. Accettura, 84 N.E.2d 336, 336 Ill.App. 445—Schock v. Illinois Bell Tel. Co., 58 N.E.2d 470, 324 Ill.App. 322.

Ind.—State ex rel. Bd. of Medical Registration & Examination v. Henry, 97 N.E.2d 487, 229 Ind. 219.

R.I.—Wright v. Wright, 105 A.2d 809—Studley Land Co. v. Myers, 103 A.2d 924—Miller v. Tanenbaum, 200 A. 449, 61 R.I. 92.

Tex.—Butler v. Butler, Civ.App., 296 S.W.2d 635—Cain, Brogden & Cain, Inc. v. Local Union No. 47, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers, 285 S.W.2d 942—Texas Foundries v. International Moulders & Foundry Workers' Union, 248 S.W.2d 460, 151 Tex. 239.

Scott v. Graham, Civ.App., 283 S.W.2d 443, affirmed, Sup., 292 S.W. 2d 324—General Tel. Co. of the Southwest v. City of Eden, Civ. App., 281 S.W.2d 379, reversed on other grounds, Sup., 293 S.W.2d 753—General Tel. Co. of the Southwest v. City of Wellington, Civ. App., 279 S.W.2d 922, reversed on other grounds, Sup., 294 S.W.2d 385—McDaniel v. San Patricio Municipal Water Dist., Civ.App., 279 S.W.2d 697—Rattikin Title Co. v. Grievance Committee of State Bar of Tex., Civ.App., 272 S.W.2d 948—City of Houston v. Southwestern Bell Tel. Co., Civ.App., 263 S.W.2d 169, error refused—Weaver v. Van Wagner, Civ.App., 259 S.W.2d 348—Hudson v. International Exterminator Corp., Civ.App., 256 S.W. 2d 123, error refused no reversible error—Southwestern Associated Tel. Co. v. City of Dalhart, Civ. App., 254 S.W.2d 819, error refused no reversible error—Parker v. Smith, Civ.App., 254 S.W.2d 144—Nelson v. Lamb, Civ.App., 252 S.W. 2d 713—Huston v. Throckmorton County, Civ.App., 215 S.W.2d 387—Dallas General Drivers, Warehousemen and Helpers Local Union No. 745 v. Oak Cliff Baking Co., Civ.App., 203 S.W.2d 586—Cunningham v. Frito Co., Civ.App., 198 S.W.2d 772—San Angelo v. Amalgamated Meat Cutters & Butchers Workmen of North America, Local 103, Civ.App., 139 S.W. 2d 843—Houston v. Interstate Circuit, Civ.App., 132 S.W.2d 903—Burka Bagging Co. v. State, Civ. App., 131 S.W.2d 1111—Union Transfer & Storage Co. v. Greve, Civ.App., 131 S.W.2d 796—Henke & Pillot v. Amalgamated Meat Cutters & Butchers Workmen, etc., No. 408, Civ.App., 109 S.W.2d 1083, error dismissed—Clark v. Eagle, Civ. App., 89 S.W.2d 795.

Wis.—Culligan, Inc. v. Rheaume, 68 N.W.2d 810, 269 Wis. 242.

Wyo.—Ridley v. Krout, 180 P.2d 124, 63 Wyo. 252.

Preservation or destruction of status quo

(1) Issue to be determined on appeal from pendente lite injunctive order as to easement is whether trial judge abused his discretion in preserving status quo as of date on which controversy arose.

Tex.—Richter v. Hickman, Civ.App., 243 S.W.2d 466.

(2) Primary question is whether chancellor abused his discretion in its issuance, and whether injunction destroys, rather than preserves, the status quo.

Ill.—Gillam v. 661 Sheridan Apartments, Inc., 116 N.E.2d 91, 1 Ill. App.2d 11.

Date of determination

(1) In determining propriety of order granting temporary injunction without notice or bond, appellate court will not consider affidavits supporting complaint or any proceeding subsequent to granting of injunction, but will judge order on pleadings as they existed when order was entered; whether any harm to defendant from issuance of temporary injunction without bond was

judge's place.[88.10] In determining whether a trial court abused its discretion, an appellate court will consider the answer along with other evidence.[88.15]

The discretion exercised by the trial court is, however, a legal or judicial one which is subject to review for abuse or improper exercise,[89] as where there has been a violation of some established rule of law or principle of equity,[90] or a clear misapprehension of the controlling law[90.5] or of the

cured by plaintiff's filing of bond when defendant's motion to dissolve injunction was denied cannot be considered by appellate court, as question whether injunction issued improvidently must be determined as of date of issuance thereof.
Ill.—Lee v. Morris, 62 N.E.2d 573, 326 Ill.App. 555.

(2) Where motion of defendant to dissolve temporary injunction directly attacked issuance of injunction without notice, appellate court would not consider any pleadings or proceedings subsequent to granting of injunction and would judge injunctive order on pleadings as they existed at time order was entered.
Ill.—Hope v. Hope, 112 N.E.2d 495, 350 Ill.App. 190.

88.10 Tex.—Nelson v. Lamb, Civ. App., 252 S.W.2d 713.
Wis.—Culligan, Inc. v. Rheaume, 68 N.W.2d 810, 269 Wis. 242.

88.15 Ga.—Hill v. Agnew, 34 S.E.2d 702, 199 Ga. 644.

89. Ala.—City of Mobile v. Farrell, 158 So. 539, 229 Ala. 582, followed in City of Mobile v. Nelson, 158 So. 543, 229 Ala. 587, and City of Mobile v. Mounaites, 158 So. 543, 229 Ala. 588—Cullman Property Co. v. H. H. Hitt Lumber Co., 77 So. 574, 201 Ala. 150.
Conn.—Weil v. Poulsen, 112 A.2d 890, 142 Conn. 213.
Fla.—Price v. Gordon, 177 So. 276, 129 Fla. 715—Gillis v. State Live Stock Sanitary Board, 114 So. 509, 94 Fla. 890.
N.Y.—International Ry. Co. v. Barone, 284 N.Y.S. 122, 246 App.Div. 450—Holton v. Board of Sup'rs of Monroe County, 281 N.Y.S. 350, 245 App.Div. 144.
Okl.—Quaker Oil & Gas Co. v. Jane Oil & Gas Co., 164 P. 671, 63 Okl. 234.
Pa.—Rick v. Cramp, 53 A.2d 84, 357 Pa. 83.
Tenn.—Thompson v. Menefee, 6 Tenn. App. 118.
Tex.—Crouch v. Crouch, Civ.App., 164 S.W.2d 35—Fisher v. Frito Co., Civ.App., 81 S.W.2d 282—Blair v. Paggi, Civ.App., 282 S.W. 627—Phœbus v. Connellee, Civ.App., 223 S.W. 1019.
4 C.J. p 804 notes 89, 93, 94.

Discretion not arbitrary
Ala.—Lybrand v. Town of Pell City, 71 So.2d 797, 260 Ala. 534.

"Abuse of discretion" warranting interference by appellate court is an abuse "so plain that upon consideration of the facts upon which the trial judge acted, an unprejudiced person can say that there was no justification or excuse for the ruling made."
Mich.—Seifert v. Buhl Optical Co., 268 N.W. 784, 276 Mich. 692—Furniture Mfrs.' Ass'n of Grand Rapids v. Grand Rapids Guild of Exhibitors, 256 N.W. 595, 597, 268 Mich. 685.

To establish that the trial court abused its discretion in refusing an injunction "it is necessary for appellants to here show that they not only both alleged and proved every essential element to a cause of action for the injunctive relief they sought, but also that they likewise negatived all reasonable inferences of the existence of other facts under which they might not have been entitled to such relief."
Tex.—Scanlan v. Houston Lighting & Power Co., Civ.App., 62 S.W.2d 537, 539.

Questions for review
In suit by wife to enjoin another woman from alienating affections of wife's husband, judicial discretion of trial judge was subject to review by the supreme court, not merely on question of jurisdiction, but also on expediency and sound policy.
Ala.—Henley v. Rockett, 8 So.2d 852, 243 Ala. 172.

Test of abuse of discretion
Abuse of discretion in granting or refusing temporary injunction may be found only when record reflects that findings necessary to sustain order are not supported by some evidence of a substantial and probative character.
Tex.—City of Houston v. Southwestern Bell Tel. Co., Civ.App., 263 S.W.2d 169, error refused.

Test of propriety of action
Propriety of action of trial court is to be determined from probability of right and probability of injury thereto if the injunction is not granted, as shown by the pleadings and evidence addressed to those questions.
Tex.—Nelson v. Lamb, Civ.App., 252 S.W.2d 713.

90. Conn.—**Corpus Juris Secundum cited in** Hammerberg v. Leinert, 46 A.2d 420, 424, 132 Conn. 596.
Ill.—Cleaning & Dyeing Plant Owners Ass'n of Chicago v. Sterling Cleaners & Dyers, 278 Ill.App. 70—City of Chicago v. People's Gaslight & Coke Co., 170 Ill.App. 98.
Ind.—Public Service Commission v. Indianapolis Rys., 72 N.E.2d 434, 225 Ind. 30.
Iowa.—Kent Products, Inc. v. Hoegh, 61 N.W.2d 711, 245 Iowa 205.
Md.—Western Maryland Dairy v. Chenowith, 23 A.2d 660, 180 Md. 236.
Mass.—Service Wood Heel Co. v. Mackesy, 199 N.E. 400, 293 Mass. 183.
N.M.—De Soto v. De Jaquez, 106 P. 2d 301, 44 N.M. 564.
N.D.—Bissel v. Olson, 143 N.W. 340, 26 N.D. 60.
Okl.—Quaker Oil & Gas Co. v. Jane Oil & Gas Co., 164 P. 671, 63 Okl. 234.
Tex.—Southland Life Ins. Co. v. Egan, Com.App., 86 S.W.2d 722.
General Drivers, Warehousemen and Helpers, Local Union 745 v. Dallas County Const. Emp. Ass'n, Civ.App., 246 S.W.2d 677, error refused no reversible error—Eason v. David, Civ.App., 232 S.W.2d 427, error refused no reversible error—Crouch v. Crouch, Civ.App., 164 S.W.2d 35—State v. Guardian Foundation of Texas, Civ.App., 112 S.W.2d 806.
4 C.J. p 804 notes 89, 90, 92.

"The trial court's discretion is not unlimited and does not extend to the erroneous application of the law to undisputed facts. If the facts are such that solely questions of law are presented, the trial court's action is reviewable, and should be reviewed on appeal. Differently stated, the trial court abuses its discretion when it fails or refuses to apply the law to conceded or undisputed facts."
Tex.—Southland Life Ins. Co. v. Egan, Com.App., 86 S.W.2d 722, 723. 723.

Refusal of injunction on sufficient undefended bill
If the allegations of the bill are sufficient, and the evidence in support thereof is ample, to warrant the injunction, and no sufficient defense is made, an order denying an injunction will be reversed.
Fla.—Seaboard Oil Co. v. Donovan, 128 So. 821, 99 Fla. 1296—Taylor v. Florida East Coast Ry. Co., 45 So. 574, 54 Fla. 636, 127 Am.St.R. 155, 16 L.R.A.,N.S., 307, 14 Ann. Cas. 472.

90.5 Fla.—Webb v. Hill, 75 So.2d 596.
Pa.—Westinghouse Elec. Corp. v. United Elec., Radio & Mach. Workers of America (CIO) Local 601, 46 A.2d 16, 353 Pa. 446, 163 A.L.R. 656.

facts,[91] or the judgment rendered by the court is clearly against the weight of the evidence;[91.5] and, where an abuse of discretion is clearly made to appear, the appellate court will reverse the order or decree.[92] Moreover, the general rule forbidding the review of discretionary rulings on injunctions does not apply where the trial court does not base its decision on a discretionary matter but expressly rests it on a point of law.[93]

Requirement of bond. In accordance with the general rule as to the review of the granting of an injunction, an order of the trial court, requiring a bond to be given on the granting of an injunction, will not be disturbed in the absence of a clear abuse of discretion,[93.5] and it will be presumed that the trial court did not abuse its discretion in ordering the filing of a bond in a certain amount, where there is nothing in the record whereby an appellate court can determine whether the amount was excessive.[93.10]

§ 1592. —— Receivers

The determination by a lower court of discretionary matters in connection with receiverships will be reviewed by an appellate court only for the manifest abuse of discretion.

Unless some principle of substantial equity has been violated,[93.50] it is only for clear or manifest abuse of discretion that an appellate court will review or interfere with the lower court's exercise of its discretionary powers with respect to the appointment of a receiver;[94] this principle applies

Tex.—Falkner v. Memorial Gardens Ass'n, Civ.App., 298 S.W.2d 934.

91. Iowa.—Swan v. Indianola, 121 N.W. 547, 142 Iowa 731.
Md.—Western Maryland Dairy v. Chenowith, 23 A.2d 660, 180 Md. 236.
Mont.—Schilling v. Reagan, 48 P. 1109, 19 Mont. 508.
Tex.—International Ass'n of Machinists Lodge 1488 v. Downtown Emp. Ass'n, Civ.App., 204 S.W.2d 685, error refused no reversible error.
4 C.J. p 804 notes 89, 91.

91.5 Okl.—State ex rel. Scanland v. John A. Brown Co., 241 P.2d 951, 206 Okl. 136—Smillie v. Taft Stadium Bd. of Control, 205 P.2d 301, 201 Okl. 303.

92. Fla.—Taylor v. Florida East Coast Ry. Co., 45 So. 574, 54 Fla. 636, 127 Am.S.R. 155, 16 L.R.A.,N.S., 307, 14 Ann.Cas. 472.
Ga.—Sachs v. Dempsey, 47 S.E.2d 326, 203 Ga. 438.
Md.—Western Maryland Dairy v. Chenowith, 23 A.2d 660, 180 Md. 236.
N.Y.—Waters of White Lake v. Fricke, 93 N.Y.S.2d 102, 276 App. Div. 807.
Okl.—Quaker Oil & Gas Co. v. Jane Oil & Gas Co., 164 P. 671, 63 Okl. 234.
Tex.—Horwitz v. Finkelstein, Civ. App., 189 S.W.2d 895, refused for want of merit—Crouch v. Crouch, Civ.App., 164 S.W.2d 35—City of Dallas v. Fry, Civ.App., 263 S.W. 653.
4 C.J. p 804 note 95.

Denial of injunction

Where on undisputed facts only reasonable conclusion is that plaintiff is entitled to injunctive relief, denial of it may amount to an abuse of discretion and is subject to reversal on appeal.
Conn.—Adams v. Greenwich Water Co., 83 A.2d 177, 138 Conn. 205—Hammerberg v. Leinert, 46 A.2d 420, 132 Conn. 596.

93. Conn.—Weil v. Poulsen, 112 A. 2d 890, 142 Conn. 213—Crowell v. Palmer, 58 A.2d 729, 134 Conn. 502.
Fla.—Webb v. Hill, 75 So.2d 596.
Ga.—Danielsville & Comer Tel. Co. v. Sanders, 71 S.E.2d 226, 209 Ga. 144—Sirota v. Kay Homes, Inc., 65 S.E.2d 597, 208 Ga. 113—Griffin v. Loman, 56 S.E.2d 263, 206 Ga. 116—Shackelford v. Riddling, 33 S.E. 2d 14, 198 Ga. 827—Washington Nat. Ins. Co. v. Mayor, etc., of Savannah, 26 S.E.2d 359, 196 Ga. 126—Ballard v. Waites, 21 S.E.2d 848, 194 Ga. 427—Collins v. Collins, 121 S.E. 218, 157 Ga. 85—Wilkins v. City of Savannah, 111 S.E. 42, 152 Ga. 638—Colclough v. Bank of Penfield, 103 S.E. 489, 150 Ga. 316—Spires v. Wright, 95 S.E. 232, 147 Ga. 633.
Iowa.—Town of Williams v. Iowa Falls Electric Co., 170 N.W. 815, 185 Iowa 493.
N.M.—De Soto v. De Jaquez, 106 P. 2d 301, 44 N.M. 564.
Pa.—Aldrich v. Geahry, 61 A.2d 843, 360 Pa. 376—Philadelphia Record Co. v. Curtis-Martin Newspapers, 157 A. 796, 305 Pa. 372.
Tex.—Anthony v. North American Building & Loan Ass'n, Civ.App., 68 S.W.2d 581.

Construction of statute

"Where the trial court predicates its action upon a construction or interpretation of a statute, refusing the mover for injunction the right to be heard and to a determination of the issues involved in suit, the question arising is one of law and not of equity."
Tex.—Anthony v. North American Building & Loan Ass'n, Civ.App., 68 S.W.2d 581, 583.

Denial because of lack of power

A broad discretion is vested in the trial court regarding temporary injunctions, but a denial thereof based on lack of power may be revised by the appellate court, without interfering with such discretionary power.
Tex.—Blume v. J. I. Case Threshing Mach. Co., Civ.App., 225 S.W. 831, error refused.

93.5 Ill.—Morris v. Patterson, 37 N. E.2d 918, 311 Ill.App. 657.

93.10 Md.—Joseph F. Moreland, Inc., v. Moreland, 199 A. 871, 175 Md. 145.

93.50 Ga.—Cairo Pickle Co. v. Muggridge, 55 S.E.2d 562, 206 Ga. 80—Crockett v. Wilson, 192 S.E. 19, 184 Ga. 539—Jones v. Johnson, 60 Ga. 260.

94. U.S.—**Corpus Juris Secundum cited in** U. S. v. Otley, C.C.A.Or., 116 F.2d 958.
Ala.—Parker v. Williams, 165 So. 848, 231 Ala. 569—Henry v. Ide, 96 So. 698, 209 Ala. 367.
Ariz.—Mosher v. Lount, 240 P. 1027, 29 Ariz. 267.
Ark.—Paving Dist. No. 5 of Ft. Smith v. Fernandez, 217 S.W. 795, 142 Ark. 21.
Cal.—Goes v. Perry, 115 P.2d 441, 18 C.2d 373—Golden State Glass Corporation v. Superior Court of Los Angeles County, 90 P.2d 75, 13 C. 2d 384.
Sibert v. Shaver, 247 P.2d 609, 113 C.A.2d 19—Galich v. Brkich, 229 P.2d 89, 103 C.A.2d 187—Venza v. Venza, 211 P.2d 913, 94 C.A.2d 878—Snidow v. Hill, 191 P.2d 513, 84 C.A.2d 702—Elson v. Nyhan, 113 P.2d 474, 45 C.A.2d 1—Lent v. H. C. Morris Co., 77 P.2d 301, 25 C.A.2d 305—Brush v. Apartment & Hotel Financing Corporation, 256 P. 285, 82 C.A. 723—McCarthy v. Kurkjian, 232 P. 161, 69 C.A. 682—Fox v. Flood, 187 P. 68, 44 C.A. 786.
Colo.—Melville v. Weybrew, 103 P. 2d 7, 106 Colo. 121, certiorari denied 61 S.Ct. 140, 311 U.S. 695, 85 L.Ed. 450—French v. Jarvis, 246 P. 1032, 79 Colo. 571—Western Ac-

deptance Co. v. Simmons Co., 203 P. 1096, 71 Colo. 127.
Conn.—Krall v. Krall, 106 A.2d 165, 141 Conn. 335—Bator v. United Sausage Co., 81 A.2d 442, 138 Conn. 18—Masterton v. Lenox Realty Co., 1832, 15 A.2d 11, 127 Conn. 25.
Fla.—Smith v. Fleetwood Bldg. Corporation, 163 So. 293, 120 Fla. 481—Prudence Co. v. Garvin, 160 So. 7, 118 Fla. 96.
Ga.—Saliba v. Saliba, 40 S.E.2d 732, 201 Ga. 681—Parrish v. Rigell, 188 S.E. 15, 183 Ga. 218, 107 A.L.R. 1385—Friedlander v. Friedlander Bros., 165 S.E. 426, 175 Ga. 477—Lamb v. Lamb, 150 S.E. 817, 169 Ga. 567—Crockett v. Tripp, 145 S. E. 507, 167 Ga. 322.
Ill.—Kelly v. Marks, 267 Ill.App. 199.
Ind.—Yanakeff v. George, 194 N.E. 329, 207 Ind. 710—Portage Brick Co. v. North Indiana Brick Co., 128 N.E. 847, 189 Ind. 639—Strebel v. Bligh, 109 N.E. 45, 183 Ind. 537.
Iowa.—Cooley v. Will, 237 N.W. 315, 212 Iowa 701, followed in 237 N.W. 318, 319—Parry v. West, 197 N.W. 297.
Kan.—Geiman-Herthel Furniture Co. v. Geiman, 161 P.2d 504, 160 Kan. 346.
Minn.—State ex rel. Goff v. O'Neil, 286 N.W. 316, 205 Minn. 366—House v. Anderson, 266 N.W. 739, 197 Minn. 283—Wilkins v. Corey, 209 N.W. 754, 168 Minn. 102.
Mo.—Abramsky v. Abramsky, 168 S. W. 1178, 261 Mo. 117.
Neb.—Stocker v. Hilger, 18 N.W.2d 106, 144 Neb. 202—Cressman v. Bonham, 260 N.W. 818, 129 Neb. 201—Duffy v. Omaha Merchants' Express & Transfer Co., 255 N.W. 1, 127 Neb. 273—Howell v. Poff, 241 N.W. 548, 122 Neb. 793.
N.C.—In re Wright's Estate, 158 S. E. 192, 200 N.C. 620.
N.D.—Ingwalson v. Aney, 210 N.W. 498, 54 N.D. 627.
Ohio.—McDorman v. Johnson, App., 39 N.E.2d 162.
Okl.—Guaranty Laundry Co. v. Pulliam, 191 P.2d 975, 200 Okl. 185—**Corpus Juris Secundum cited in** Stovall v. Edwards, 151 P.2d 385, 386, 194 Okl. 335—Lexington Land Co. v. Holland, 129 P.2d 843, 191 Okl. 335—Lee v. Farmers Co-op. Ass'n of Mountain View, 113 P.2d 391, 189 Okl. 55—Whisman v. Missouri State Life Ins. Co., 97 P.2d 1, 186 Okl. 261—Galer Oil Co. v. Pryor, 78 P.2d 281, 182 Okl. 376—Boynton Gas & Electric Co. v. Mosier, 65 P.2d 448, 179 Okl. 232—Mitchell v. Murphy, 43 P.2d 424, 171 Okl. 326—Ellis v. Panther Oil & Gas Co., 43 P.2d 423, 171 Okl. 552—Oklahoma City Building & Loan Ass'n v. Hinton, 36 P.2d 735, 169 Okl. 205—Tolbert v. Chisholm, 21 P.2d 16, 163 Okl. 92—McCann v. Spiro State Bank, 16 P.2d 81, 160 Okl. 123—Posey v. Brown, 11 P.2d 936, 157 Okl. 210—Western & Southern Life Ins. Co. v. Crook, 289 P. 728, 144 Okl. 105—Exchange Trust Co., Tulsa v. Shi, 229 P. 406, 103 Okl. 46—McDonald v. Bohling, 228 P. 783, 102 Okl. 243—Moran v. Park, 220 P. 589, 93 Okl. 201—Skelly Oil Co. v. Globe Oil Co., 200 P. 537, 82 Okl. 214—Cowokochee v. Chapman, 171 P. 50, 67 Okl. 263.
Pa.—Com. ex rel. Truscott v. Yiddisher Kultur Farband, 116 A.2d 555, 382 Pa. 553—Franklin Nat. Bank v. Kennerly Coal & Coke Co., 150 A. 902, 300 Pa. 479—McDougal v. Huntingdon & Broad Top Mountain Railroad & Coal Co., 143 A. 574, 294 Pa. 108.
S.C.—Southern Trust Co. v. Cudd, 164 S.E. 428, 166 S.C. 108.
S.D.—Lasell v. Yankton County, 6 N. W.2d 439, 69 S.D. 66.
Tenn.—Harkins v. Wells, 13 Tenn. App. 299—Bragg v. Witherspoon, 7 Tenn.App. 466.
Tex.—Archer v. Ross, Civ.App., 262 S.W.2d 213—Jones v. Springer, Civ. App., 256 S.W.2d 1016—Boger v. Moore, Inc., Civ.App., 196 S.W.2d 646—Ellis v. Filgo, Civ.App., 185 S.W.2d 739—Irish v. Bahner, Civ. App., 109 S.W.2d 1023, error dismissed—Taylor v. Taylor, Civ.App., 91 S.W.2d 394—Lines v. Robinson, Civ.App., 91 S.W.2d 1108—Bargaimes v. Coke, Civ.App., 86 S.W. 2d 653—Central Nat. Bank v. Dallas Bank & Trust Co., Civ.App., 66 S.W.2d 474—Cash v. Ervin, Civ. App., 62 S.W.2d 242—Law v. Lubbock Nat. Bank, Civ.App., 11 S.W. 2d 244—Diamond Steel Highway Sign Co. v. Commercial Trust Co., Civ.App., 298 S.W. 456—Richardson v. McCloskey, Civ.App., 228 S. W. 323, dismissed for want of jurisdiction—Davis v. Hudgins, Civ. App., 225 S.W. 73—Bingham v. Graham, Civ.App., 220 S.W. 105.
Wash.—Womach v. Sandygren, 162 P. 354, 94 Wash. 256.
W.Va.—Ward v. Ward, 194 S.E. 769, 119 W.Va. 527—Snodgrass v. Snodgrass, 147 S.E. 483, 107 W.Va. 136.
4 C.J. p 804 note 96.

Conservator

Ind.—Department of Ins. of Ind. v. Indiana Travelers Assur. Co., 58 N. E.2d 761, 115 Ind.App. 285.

Receiver for trust property

Chancellor's findings with respect to propriety of receivership for trust property will not ordinarily be disturbed on appeal.
Fla.—Harvey v. City of St. Petersburg, 189 So. 861, 138 Fla. 597, certiorari denied 60 S.Ct. 131, 308 U. S. 596, 84 L.Ed. 499—Smith v. Fleetwood Building Corp., 163 So. 293, 120 Fla. 481—Douglas Properties v. Stix, 159 So. 1, 118 Fla. 354.

Refusal to appoint receiver

(1) Generally.
Cal.—Golden State Glass Corporation v. Superior Court of Los Angeles County, 90 P.2d 75, 13 C.2d 384.
Fla.—Wilkins v. Wilkins, 198 So. 335, 144 Fla. 590.
Okl.—Whisman v. Missouri State Life Ins. Co., 97 P.2d 1, 186 Okl. 261—Boynton Gas & Electric Co. v. Mosier, 65 P.2d 448, 179 Okl. 232.

(2) Supreme court will not disturb ruling of trial judge in refusing to appoint receiver of corporation unless it clearly appears that interests of minority stockholders are in imminent danger, particularly where the parties have full and adequate remedy through other means.
La.—Peiser v. Grand Isle, Inc., 60 So.2d 1, 198 La. 585.

Abuse of discretion

(1) The appellate court will reverse the appointment of a receiver if it is of the opinion that the lower court's discretion has been abused.
Cal.—California Delta Farms v. Chinese American Farms, 269 P. 443, 204 C. 524.
Fla.—Apalachicola Northern R. Co. v. Sommers, 85 So. 361, 79 Fla. 816.
Mo.—Bushman v. Bushman, 279 S.W. 122, 311 Mo. 551.
Tex.—Dixie Cotton Machinery Co. v. Garber, Civ.App., 63 S.W.2d 895—Alworth v. Morris, Civ.App., 19 S. W.2d 212—Amason v. Harrigan, Civ.App., 288 S.W. 566.

(2) "Abuse of discretion" is a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.
Ohio.—Wilgus v. Arthur, 53 N.E.2d 197, 72 Ohio App. 511.

(3) Although discretion will not be disturbed on appeal in doubtful cases, yet, when it is determined from examination of application and evidence favorable to plaintiff that there has been no cause either alleged or proved for appointment of a receiver, the order must be reversed on appeal.
Ind.—Indianapolis Dairymen's Co-op. v. Bottema, 79 N.E.2d 399, 226 Ind. 237.

(4) If court, in appointing receiver for corporation, departs from or misapplies the law, or judgment exercised is manifestly unreasonable as shown by evidence on record, court's discretion is abused, and it is duty of reviewing court to correct the error.
Pa.—Com. ex rel. Truscott v. Yiddisher Kultur Farband, 116 A.2d 555, 382 Pa. 553.

Fitness of person appointed

The trial court's discretion in selecting the person appointed as receiver will not be disturbed because of unfitness of the receiver unless some objection appears which is overwhelming in propriety or fatal on principle.

to the appointment of a temporary,[94.5] or a pendente lite,[94.10] receiver.

The general rule applies also with respect to the removal of a receiver,[95] to controlling a receiver's actions in the discharge of his duties,[96] the conduct or management of a receivership,[97] filing or en-

Ga.—Jacoby v. Kiesling, 13 S.E. 161, 87 Ga. 28.
La.—McGilliard v. Donaldsonville Foundry, etc., Works, 29 So. 254, 104 La. 544, 81 Am.S.R. 145.
N.C.—Mitchell v. Aulander Realty Co., 86 S.E. 358, 169 N.C. 516.
4 C.J. p 804 note 96 [b] (1).

Postponement of hearing on application

The appellate court will not reverse the trial court's action in postponing hearing on an application for appointment of a receiver in a mortgage foreclosure suit until after the foreclosure decree and execution sale, unless an abuse of discretion is shown.
Iowa.—First Trust Joint Stock Land Bank of Chicago v. Schmidt, 244 N. W. 866, 215 Iowa 103.

Provisional receiver in foreclosure

The appointment of a provisional receiver in a foreclosure proceeding on statutory ground that the property was insufficient to discharge the debt would not be disturbed, where the trial court heard the evidence, judged the credibility of the witnesses and the weight to be given their testimony, and found that the appointment of the receiver was justiciable, since the appointment of the receiver was largely a matter of discretion of the trial court.
Tex.—Bean v. Peurifoy, Civ.App., 75 S.W.2d 489.

Stipulation for appointment

Even when stipulated for by the parties, the appointment of a receiver rests in the equity court's sound discretion, subject to appellate review when abused.
Fla.—Carolina Portland Cement Co. v. Baumgartner, 128 So. 241, 99 Fla. 987.

Weight of evidence

In determining whether a receiver has been properly appointed, the supreme court will not interfere with the trial court's discretion on the mere weight of evidence.
Wash.—Draper v. J. G. Robinson Lettuce Farms, 2 P.2d 661, 164 Wash. 8.

Conflicting evidence

(1) Where evidence is conflicting, proof of actual partnership, that business is insolvent, and that assets are being wasted or misappropriated, are matters entirely for trial court, with respect to appointment of receiver.
Cal.—Baldwin v. Baldwin, 153 P.2d 567, 67 C.A.2d 175.

(2) If it appears that party seeking appointment of a receiver has at least a probable right or interest in the property involved and that there is danger of its being lost, destroyed, or misappropriated, and on conflicting testimony such right or interest and danger are found to exist, a reviewing court generally is in no position to say that a nisi prius court has abused its discretion in the appointment of a receiver.
Cal.—Armbrust v. Armbrust, 171 P. 2d 75, 75 C.A.2d 272—Whitley v. Bradley, 110 P. 596, 18 C.A. 720.

(3) Where it appears that there is danger of misappropriation of property, and evidence is conflicting as to likelihood of loss, reviewing court is in no position to say that court below has abused its discretion in appointment of receiver.
Cal.—Sibert v. Shaver, 247 P.2d 609, 113 C.A.2d 19.

(4) Ordinarily, where a receiver has been appointed on a finding based on conflicting evidence that danger is threatened to property or funds, reviewing court will not hold that trial court has abused its discretion.
Cal.—Breedlove v. J. W. & E. M. Breedlove Excavating Co., 132 P.2d 239, 56 C.A.2d 141.

(5) In suit involving appointment of receiver, discretion of trial judge is so broad that his order based on facts concerning which reasonable minds might differ with respect to necessity for receivership will not be reversed.
Cal.—Armbrust v. Armbrust, supra—Moore v. Oberg, 142 P.2d 443, 61 C.A.2d 216.

Question for review; test

(1) Generally.
Cal.—Baldwin v. Baldwin, 153 P.2d 567, 67 C.A.2d 175—Misita v. Distillers Corp., 128 P.2d 888, 54 C.A.2d 244.
Tex.—Jones v. Springer, Civ.App., 256 S.W.2d 1016.

(2) To justify interference with appointment of receiver, it must clearly appear that order was arbitrary exercise of power.
Cal.—Armbrust v. Armbrust, 171 P.2d 75, 75 C.A.2d 272—Moore v. Oberg, 142 P.2d 443, 61 C.A.2d 216—Breedlove v. J. W. & E. M. Breedlove Excavating Co., 132 P.2d 239, 56 C.A.2d 141.

(3) Since power to appoint receiver for a corporation ex parte lies in superior court, question on appeal is not one of jurisdiction, but of error, and as such is limited to inquiry whether trial court abused its discretion.
Cal.—People ex rel. Kenny v. Christ's Church of the Golden Rule, 181 P.2d 49, 79 C.A.2d 858—Misita v. Distillers Corp., 128 P. 2d 888, 54 C.A.2d 244.

94.5 Okl.—Brady v. Oklahoma City ex rel. Domb, 108 P.2d 144, 188 Okl. 255—Eason Oil Co. v. Oklahoma City Petroleum Corp., 94 P.2d 222, 185 Okl. 448.

94.10 Mich.—Burton v. May, 298 N. W. 286, 297 Mich. 571.
Nev.—Bowler v. Leonard, 269 P.2d 833, 70 Nev. 370.
Okl.—Wood v. Wood, 156 P.2d 136, 195 Okl. 184—Marathon Oil Co. v. Western Oil & Drilling Co., 89 P. 2d 939, 185 Okl. 53.

95. Mo.—Commonwealth Finance Corporation v. Missouri Motor Bus Co., 233 S.W. 167.
S.D.—Lasell v. Yankton County, 6 N.W.2d 439, 69 S.D. 66.
4 C.J. p 804 note 96.

Abuse of discretion in appointment required

Denial of motion to vacate receivership would not be reversed in absence of showing of abuse of discretion in appointing receiver.
Okl.—Jones v. Cabaniss, 90 P.2d 650, 185 Okl. 237.

96. Ind.—First Nat. Bank v. Gregg, 169 N.E. 691, 91 Ind.App. 405.
Neb.—State v. Nebraska State Bank of Bloomfield, 247 N.W. 31, 124 Neb. 449.
4 C.J. p 805 note 97.

Compromise of claims

(1) Generally.
Fla.—**Corpus Juris Secundum cited in** Bancroft v. Allen, 190 So. 885, 890, 138 Fla. 841.

(2) An order authorizing the receivers of an insolvent company to compromise claims of the company is one entered in the exercise of the court's discretionary power, and cannot be set aside unless it appears so unreasonable as to amount to a clear abuse of judicial discretion.
Pa.—Gordon v. Hartford Sterling Co., 179 A. 234, 319 Pa. 174.
4 C.J. p 804 note 96 [a].

Replacement of attorney discharged by receiver

The order of the trial court replacing an attorney who had been discharged by the department of insurance, which was the receiver of the insurance company, to the position as attorney for the receiver, would not be disturbed, in the absence of a showing of abuse of discretion.
Neb.—State ex rel. Good v. National Old Line Life Ins. Co., 261 N.W. 902, 129 Neb. 473.

97. Fla.—Karafilakis v. Stavroulakis, 150 So. 277, 112 Fla. 303.

forcement of claims,[98] approval of a receiver's account,[99] and to the compensation of a receiver,[1] or his attorney,[2] and to the wages to be paid the

Okl.—Fernow v. Watts, 44 P.2d 24 172 Okl. 128.

Continuation of business

It is within the discretion of the court appointing a receiver to determine whether the receiver shall continue to operate the business, or shall convert the assets into cash for the payment of creditors, and its determination on that question will not be set aside unless an abuse of discretion is clearly shown.

Ind.—Portage Brick Co. v. North Indiana Brick Co., 128 N.E. 847, 189 Ind. 639.

53 C.J. p 167 note 79.

Sale of property

(1) An order for the sale of receivership property will not be disturbed by the appellate court in the absence of an abuse of discretion.

Mass.—Plumer v. Houghton & Dutton Co., 178 N.E. 716, 277 Mass. 209—Boucher v. Hamilton Mfg. Co., 156 N.E. 424, 259 Mass. 259.

(2) Also, the confirmation or setting aside of a sale is a discretionary matter on which the lower court will not be disturbed in the absence of abuse.

Okl.—Fernow v. Watts, 44 P.2d 24, 172 Okl. 128—First Nat. Bank v. Colonial Trust Co., 167 P. 985, 66 Okl. 106.

(3) Reviewing court will not disturb acts of plaintiff's attorney as receiver, appointed on parties' agreement, in selling properties involved to plaintiff in manner authorized and later confirmed by trial court, in absence of contention that plaintiff paid inadequate price, that properties would bring more at another sale, that any collusion or fraud was practiced, that receiver did not act in good faith in obtaining best possible price, that sale was had without written notice by registered mail to appellant, or that sale was confirmed without proper notice.

Tex.—O'Ferral v. Coolidge, App., 225 S.W.2d 582, affirmed 228 S.W.2d 146, 149 Tex. 61.

98. Wash.—J. E. Berkheimer Mfg. Co. v. American Wood Pipe Co., 34 P.2d 351, 178 Wash. 98.

Extension of time to file

In a receivership proceeding, the extension of time for filing claims and permission to file claims within such period are matters resting in the sound discretion of the court, the exercise of which will be reviewed only for manifest abuse.

Wash.—J. E. Berkheimer Mfg. Co. v. American Wood Pipe Co., supra.

Motion to make the purchaser at a receiver's sale defendant in a proceeding to enforce a claim for breach of lease was addressed to the discretion of the court, whose denial thereof is not reviewable.

N.C.—Raleigh Banking & Trust Co. v. Safety Transit Lines, 157 S.E. 62, 200 N.C. 415.

99. U.S.—First Nat. Bank v. Waters, C.C.A.Pa., 82 F.2d 339.

Mich.—Kurrasch v. Kunze Realty Co., 295 N.W. 583, 296 Mich. 122—Corell v. Reliance Corporation, 294 N.W. 92, 295 Mich. 45.

Entire record examined

On direct appeal from final judgment approving a receiver's report, supreme court will examine entire record to determine whether an abuse of judicial discretion is found.

Okl.—McGrath v. Clift, 181 P.2d 555, 198 Okl. 644.

1. Ala.—Seiple v. Mitchell, 195 So. 865, 239 Ala. 533.

Cal.—Venza v. Venza, 226 P.2d 60, 101 C.A.2d 678.

Ill.—Kudela v. Northwestern Securities Co., 43 N.E.2d 192, 315 Ill. App. 492.

Mo.—Graham v. Hundley Dry Goods Co., 177 S.W. 600.

N.M.—Independent Steel & Wire Co. v. New Mexico Cent. R. Co., 178 P. 842, 25 N.M. 160.

N.C.—Hood ex rel. North Carolina Bank & Trust Co. v. Cheshire, 189 S.E. 189, 211 N.C. 103.

Okl.—Russell v. International Supply Co., 154 P.2d 57, 194 Okl. 630—Bearly v. Moseley, 117 P.2d 506, 189 Okl. 405—Liberty Royalties Corp. v. Watts, 106 P.2d 798, 188 Okl. 81.

Or.—Mursener v. Forte, 205 P.2d 568, 186 Or. 253.

Pa.—Commonwealth v. Traders' & Mechanics' Bank of Pittsburgh, 113 A. 186, 268 Pa. 526—Traction Materials Co. v. Pittsburgh, M. & W. Ry. Co., 104 A. 554, 261 Pa. 162—Traction Materials Co. v. Pittsburgh, M. & W. Ry. Co., 104 A. 552, 261 Pa. 153.

R.I.—Woodward v. Providence Teaming Co., 44 A.2d 550, 71 R.I. 291.

Tex.—Archer v. Ross, Civ.App., 262 S.W.2d 213—Taylor v. Taylor, Civ. App., 91 S.W.2d 394.

Wash.—Steele v. Puget Sound Realty Associates, 90 P.2d 721, 199 Wash. 128—Jensen v. Angeles Brewing & Malting Co., 151 P. 825, 87 Wash. 392.

W.Va.—Stannard Supply Co. v. Delmar Coal Co., 174 S.E. 695, 115 W. Va. 64.

4 C.J. p 805 note 98.

Review of discretion of trial court as to fees generally see infra § 1636.

Review for abuse

(1) The discretion of the court in fixing the compensation of a receiver may be reviewed for abuse.

Ky.—Amick's Adm'r v. Hudson, 109 S.W.2d 1177, 270 Ky. 452—Fidelity Oil Corporation v. Southern Oil & Pipe Line Co., 247 S.W. 950, 197 Ky. 676.

(2) Where it appears that allowances made or commissions paid to receiver were excessive, and where upon the evidence disclosed by the record the appellate court is unable to say what amount the receiver should have been paid, the cause will be remanded for further proceedings with instructions to readjust such allowances as the evidence in the matter warrants.

Fla.—W. & W. Corporation v. Feit, 134 So. 57, 101 Fla. 1091.

Md.—Great Nat. Ins. Co. of Washington, D. C. v. Empire Fire Ins. Co., 170 A. 165, 165 Md. 510.

(3) Reviewing court will interfere with allowance only to correct an abuse of discretion, and will reverse only on clear proof of error.

Pa.—Rose v. Standard Trailer Co., 33 A.2d 504, 153 Pa.Super. 234.

(4) If record fails to establish reasonable basis for exercise of sound discretion, supreme court must return cause with directions to take such evidence as is necessary to permit proper exercise of discretion.

Fla.—Lewis v. Gramil Corp., 94 So. 2d 174.

2. Cal.—Venza v. Venza, 226 P.2d 60, 101 C.A.2d 678.

Del.—Veeder v. Public Service Holding Corp., 70 A.2d 22, 31 Del.Ch. 499.

Ill.—Kudela v. Northwestern Securities Co., 43 N.E.2d 192, 315 Ill. App. 492.

Minn.—In re Hill Furniture Co., 216 N.W. 784, 173 Minn. 619.

N.C.—Hood ex rel. North Carolina Bank & Trust Co. v. Cheshire, 189 S.E. 189, 211 N.C. 103.

N.J.—Fidelity Trust Co. v. J. H. Halsey & Smith, 115 A. 396, 93 N.J. Eq. 161.

N.M.—Oldfather v. Tyler, 252 P. 1000, 32 N.M. 247.

Okl.—Brann v. Harris, 47 P.2d 876, 173 Okl. 167—Hudson v. Hubbell, 41 P.2d 844, 171 Okl. 201.

R.I.—Barba v. Cassano, 163 A. 880—Rhode Island Hospital Trust Co. v. S. H. Greene & Sons Corporation, 150 A. 74.

Wash.—Wroten v. Robbins, 174 P. 968, 103 Wash. 393.

W.Va.—Hyre v. Johnson, 149 S.E. 385, 107 W.Va. 524, 64 A.L.R. 1536.

4 C.J. p 805 note 98.

Review of discretion of trial court as to fees of attorneys generally see infra § 1636.

"The fundamental rule is that the amount lies in the discretion of the

receiver's employees.[3]

§ 1593. Depositions

Discretionary action of the trial court with respect to depositions is reviewable only in case of an abuse of its discretion.

Discretionary action of the trial court in connection with the taking or suppression of depositions is ordinarily reviewable only in case of palpable abuse of its discretion,[4] or where substantial rights have been prejudiced.[4.5] This rule is applicable to the action of a trial judge in permitting the deposition to be admitted instead of requiring the witness, who was in court pursuant to a subpoena, to be placed on the stand.[4.10]

It has been held, however, that where there are no circumstances better known to the trial court than to the appellate court, it is the duty of the latter to review a decision excluding a deposition.[5]

§ 1594. Discovery

The exercise by the trial court of its discretionary powers with respect to discovery or examination before trial will be reviewed only for manifest abuse of its discretion.

The exercise by the trial court of its discretionary powers in granting or denying an order for discovery or examination before trial,[6] vacating a no-

court, having regard to all the circumstances; that the action of the court is presumptively correct, and will be upheld if it does not plainly appear that there has been an abuse of discretion."
N.J.—Fidelity Trust Co. v. J. H. Halsey & Smith, 115 A. 396, 397, 93 N.J.Eq. 161.

Reversal of action of chancellor on application for allowance of counsel fees, both in determining whether to make an allowance and in setting its amount, should occur only where it appears that he has abused discretion or that in exercising it he has been guided by a misapprehension of law.
Del.—Veeder v. Public Service Holding Corp., 70 A.2d 22, 31 Del.Ch. 499.

3. Colo.—Stone v. Denver & S. L. R. Co., 241 P. 532, 78 Colo. 323.
Ky.—Amick's Adm'r v. Hudson, 109 S.W.2d 1177, 270 Ky. 452.
La.—International Harvester Co. of America v. Union Irr. Co., 90 So. 741, 150 La. 405.

4. Ala.—Ex parte Nolen, 135 So. 337, 223 Ala. 213.
Ariz.—Torosian v. Paulos, 313 P.2d 382, 82 Ariz. 304.
Ark.—Red Bud Realty Co. v. South, 241 S.W. 21, 153 Ark. 380.
Hawaii.—Baldwin v. Hilo Tribune-Herald, 32 Hawaii 87.
Ky.—Gish v. Hale, 283 S.W.2d 202.
Mich.—Spelman v. Addison, 2 N.W. 2d 883, 300 Mich. 690.
Mo.—Boyle v. Crimm, 253 S.W.2d 149, 363 Mo. 731.
N.C.—Howell v. Solomon, 83 S.E. 609, 167 N.C. 588.
Ohio.—Campbell v. Hughes Provision Co., 94 N.E.2d 273, 87 Ohio App. 151, affirmed 90 N.E.2d 694, 153 Ohio St. 9.
Leeper v. Nimer, Com.Pl., 94 N.E.2d 286.
Pa.—Anderson v. Long, 56 Pa.Super. 183.
Tex.—Southern Pine Lumber Co. v. Andrade, 124 S.W.2d 334, 132 Tex. 372.
Missouri, O. & G. Ry. Co. of Texas v. Love, Civ.App., 169 S.W. 922.
4 C.J. p 805 note 99—18 C.J. p 728 note 28.

Denial of motion to suppress will not be reversed on appeal, in the absence of a showing of abuse of discretion.
Tex.—Missouri, O. & G. Ry. Co. of Texas v. Love, supra.

Determination of witness' competency
Competency of a lunatic to testify is for the trial court, whose refusal to admit a deposition by such lunatic will not be reversed, unless the record shows an abuse of discretion.
Tex.—Maier v. Hill, Civ.App., 285 S.W. 638.

Issuance of commission
While ordinarily a party is entitled as a matter of right to issuance of a commission for taking of deposition of a witness at any time after service of summons or appearance of defendant, exercise of such right is subject to a reasonable control by trial court, and refusal to issue commission should not be disturbed.
Cal.—Patrick Farms v. Superior Court in and for Santa Cruz County, 56 P.2d 1283, 13 C.A.2d 424.

Propriety of leading questions
The discretion of the court in upholding leading questions to a defendant, examined on written interrogatories will not be reviewed unless abused.
N.C.—Howell v. Solomon, 83 S.E. 609, 167 N.C. 588.

Refusal to permit reading of affidavits
The refusal of the trial court to permit defendant to read affidavits which had been investigated and the substance of which had already been shown has been held not an abuse of discretion which would require reversal.
Wash.—Calhoun, Denny & Ewing v. Quinlan, 150 P. 1132, 86 Wash. 547.

Sufficiency of notice to appear at hearing at which order to take deposition was made is not reviewable where such sufficiency rests in the sound discretion of the judge making the order, and the judge found that the notice was sufficient.
Vt.—Gilman v. Hoosac Tunnel & W. R. Co., 98 A. 982, 90 Vt. 451.

Sustaining refusal to answer
The trial court cannot be put in error in sustaining refusal to answer interrogatory apparently answered to the court's satisfaction.
Ala.—Ex parte Nolen, 135 So. 337, 223 Ala. 213.

Question for review
On appeal from decree denying letters rogatory to take testimony, question was whether there was abuse of judicial discretion in refusing the petition.
Pa.—In re Garrett's Estate, 6 A.2d 858, 335 Pa. 287.

4.5 Ky.—Gish v. Hale, 283 S.W.2d 202.

4.10 Tex.—Southern Pine Lumber Co. v. Andrade, 124 S.W.2d 334, 132 Tex. 372.

5. Mich.—McCall Co. v. Jacobson, 102 N.W. 969, 139 Mich. 455.

6. Cal.—Holm v. Superior Court In and For City and County of San Francisco, 267 P.2d 1025, 42 C.2d 500, rehearing denied 268 P.2d 722, 42 C.2d 500.
Md.—Barnes v. Lednum, 79 A.2d 520, 197 Md. 398—Hallman v. Gross, 59 A.2d 304, 190 Md. 563.
N.Y.—Drake v. Herman, 185 N.E. 685, 261 N.Y. 414.
Pierce v. Morris, 182 N.Y.S. 132, 192 App.Div. 502.
N.C.—Abbitt v. Gregory, 144 S.E. 297, 196 N.C. 9.
S.C.—Planters Fertilizer & Phosphate Co. v. McCreight, 198 S.E. 405, 187 S.C. 483.
Tex.—Southern Bag & Burlap Co. v. Boyd, 38 S.W.2d 565, 120 Tex. 418.
Wash.—Will v. Domer, 236 P. 104, 134 Wash. 576.
4 C.J. p 806 note 2.

tice of examination before trial,[7] or prescribing the scope of the examination,[8] will be reviewed or interfered with only if there has been an abuse of discretion. Accordingly, where the discretion of the trial court is improvidently exercised in limiting the scope of an examination before trial, the action will be reversed on appeal.[8.5]

One appealing from an order denying him the right to inspect papers or machines has the burden of proving that the trial court abused its discretion.[8.10]

§ 1595. —— Physical Examination

Discretionary rulings of the trial court in connection with an application for the physical examination of plaintiff in an action for personal injuries will be reviewed or corrected only for abuse of discretion.

Unless there has been an abuse of discretion,[9] an appellate court ordinarily will not review or correct the trial court's discretionary action in permitting, compelling, or refusing to compel the physical examination of plaintiff in a suit for personal injuries,[10] or in selecting experts to make the ex-

Inspection of premises

Kan.—Bortzfield v. Sutton, 299 P.2d 584, 180 Kan. 46.

Examination before trial

"The discretion exercised by a judge who grants such an order [examination of a party before trial] will not ordinarily be interfered with, if it appears that the provisions of the statutes have been substantially complied with, and if it fairly appears that there is an issue of fact to be determined, and that the adverse party has knowledge of facts which are material. It should appear that the application for the order is made in good faith and for the purpose of the trial of the action."

N.Y.—Pierce v. Morris, 182 N.Y.S. 132, 135, 192 App.Div. 502.

Production or inspection of books or papers

(1) The discretion of the trial court in granting or refusing an application for the production or inspection of books or papers will not be interfered with unless it clearly appears that it was abused.

Cal.—Union Oil Co. of Cal. v. Superior Court, Los Angeles County, App., 311 P.2d 640—American Federation of Musicians v. Superior Court In and For Los Angeles County, App., 309 P.2d 874—Construction Products Corp. v. Superior Court in and for Los Angeles County, 229 P.2d 399, 103 C.A.2d 403—Milton Kauffman, Inc., v. Superior Court in and for Los Angeles County, 210 P.2d 88, 94 C.A. 2d 8.

Mich.—Spelman v. Addison, 2 N.W.2d 883, 300 Mich. 690.

N.C.—Abbitt v. Gregory, 144 S.E. 297, 196 N.C. 9—Evans v. Seaboard Air Line Ry. Co., 88 S.E. 617, 167 N.C. 415—Merchants' Nat. Bank v. Newton, 81 S.E. 317, 165 N.C. 368.

Wis.—Tilsen v. Rubin, 66 N.W.2d 648, 268 Wis. 131.

4 C.J. p 806 note 2 [b] (1).

(2) Supreme court may not interfere with discretion of trial court as to whether it will order the production of requested documents which are not privileged, unless it appears that the discretion was abused or that documents were ordered produced in violation of the fundamental rights of privilege and privacy.

Mo.—State ex rel. Cummings v. Withaus, 219 S.W.2d 383, 358 Mo. 1088, 8 A.L.R.2d 1124.

Manner of discovery

Supreme court cannot interfere with exercise by trial court of power to order discovery, unless it appears that trial court abused its discretion and ordered discovery in such a manner as to violate fundamental rights.

Mo.—State ex rel. Iron Fireman Corp. v. Ward, 173 S.W.2d 920, 351 Mo. 761—State ex rel. St. Louis Union Trust Co. v. Sartorius, 171 S.W.2d 569, 351 Mo. 111.

7. N.Y.—Citizens' Trust Co. of Utica v. R. Prescott & Son, 223 N.Y.S. 188, 221 App.Div. 424.

8. Fla.—Charles Sales Corp. v. Rovenger, 88 So.2d 551.

Md.—Barnes v. Lednum, 79 A.2d 520, 197 Md. 398.

N.Y.—Middleton v. Boardman, 148 N. E. 701, 240 N.Y. 552.

Pierce v. Morris, 182 N.Y.S. 132, 192 App.Div. 502.

4 C.J. p 806 note 2 [a] (2).

8.5 N.Y.—Monteverdi v. French Realty Corp., 76 N.Y.S.2d 244, 273 App.Div. 822.

8.10 Fla.—Certain Underwriters at Lloyd's, London v. Hawthorne Flying Service, 63 So.2d 308.

Wis.—Tilsen v. Rubin, 66 N.W.2d 648, 268 Wis. 131.

9. Ind.—City of Valparaiso v. Kinney, 131 N.E. 237, 75 Ind.App. 660.

Neb.—Ziskovsky v. Miller, 231 N.W. 809, 120 Neb. 255—O'Brien v. Sullivan, 186 N.W. 532, 107 Neb. 512.

Or.—Carnine v. Tibbetts, 74 P.2d 974, 158 Or. 21.

4 C.J. p 806 note 5.

Palpable abuse

Ohio.—Distler v. John Shillito Co., 3 Ohio Supp. 299.

Or.—Hahn v. Dewey, 72 P.2d 593, 157 Or. 433.

10. Ga.—Southern Grocery Stores v. Cain, 187 S.E. 250, 54 Ga.App. 48.

Ind.—Kokomo, M. & W. Traction Co. v. Walsh, 108 N.E. 19, 58 Ind.App. 182.

Ky.—Cincinnati, N. O. & T. P. Ry. Co. v. Perkins, 266 S.W. 652, 205 Ky. 798.

Md.—Scheffler v. Lee, 94 A. 907, 126 Md. 373.

Mo.—Enyart v. Santa Fe Trail Transp. Co., 241 S.W.2d 268.

Wechsler v. Davis, 239 S.W. 554, 209 Mo.App. 570, reversed on other grounds 44 S.Ct. 13, 263 U.S. 22, 68 L.Ed. 143.

N.C.—Flythe v. Eastern Carolina Coach Co., 143 S.E. 865, 195 N.C. 777.

Or.—Carnine v. Tibbetts, 74 P.2d 974, 158 Or. 21.

Pa.—Myers v. Travelers Ins. Co., 46 A.2d 224, 353 Pa. 523, 163 A.L.R. 919.

Tex.—United Employers Casualty Co. v. Curry, Civ.App., 152 S.W.2d 862.

4 C.J. p 806 note 3—18 C.J. p 1112 note 79.

Matters considered to determine abuse

(1) "The age and sex of the person who is the subject of the examination, and the nature and character of the examination involved, will all be considered by the appellate tribunal in determining whether the trial court has abused its discretion in a given case."

Ind.—Kokomo, M. & W. Traction Co. v. Walsh, 108 N.E. 19, 24, 58 Ind. App. 182.

(2) Delay in filing a motion for the physical examination of plaintiff until evidence as to her injuries, secured by physicians from an examination of her person, had been presented in her behalf at the trial should be considered in determining whether the trial court abused its discretion in overruling defendant's motion.

Ind.—Kokomo, M. & W. Traction Co. v. Walsh, supra.

In Tennessee the decision of the trial court in either granting or disallowing an application for the physical examination of plaintiff "is subject to review on appellate proceedings, and the revising court, being furnished with the grounds of his ac-

amination.[11] The burden rests on appellant to prove that the trial court abused its discretion in denying his motion for a physical examination.[11.5]

§ 1596. Dismissal or Nonsuit before Trial

Discretionary rulings, made before trial, granting or denying a dismissal or nonsuit, or reinstatement of the cause after dismissal or nonsuit, will be reviewed or reversed only in case of abuse of discretion.

Unless the discretion vested in the trial court has been abused or arbitrarily exercised,[12] or its ruling results in a clear error of law,[13] an appellate court will not review or reverse a discretionary ruling of the trial court granting or denying a dismissal or nonsuit, before trial,[14] or granting or denying a

tion, preserved in the record or by bill of exceptions, together with his conclusions and reasons therefor, will be able likewise to exercise an intelligent discretion, either in affirmance or reversal of the trial court's action."

Tenn.—Williams v. Chattanooga Iron Works, 176 S.W. 1031, 1034, 131 Tenn. 683, Ann.Cas.1916B 101.

11. Ga.—Temples v. Central of Georgia Ry. Co., 91 S.E. 502, 19 Ga.App. 307.

4 C.J. p 806 note 4.

11.5 Tex.—United Employers Cas. Co. v. Curry, Civ.App., 152 S.W.2d 862.

12. Cal.—City of Bell v. American States Water Service Co. of California, 52 P.2d 503, 10 C.A.2d 604.

Fla.—Eaton v. Harrison, 132 So. 635, 100 Fla. 1668.

4 C.J. p 830 note 39.

Clear abuse

Cal.—Netzley v. Hillstrom, 265 P.2d 57, 122 C.A.2d 417—Gurst v. San Diego Transit System, 258 P.2d 1109, 119 C.A.2d 51—California Employment Stabilization Commission v. Guernewood Park Resort & Tavern, 160 P.2d 581, 70 C.A.2d 245—Hibernia Savings & Loan Soc. v. Lauffer, 107 P.2d 494, 41 C.A.2d 725.

Pa.—Wargovich v. Metropolitan Life Ins. Co., 7 A.2d 568, 136 Pa.Super. 421.

Gross abuse

Cal.—Cohn v. Rosenberg, 144 P.2d 399, 62 C.A.2d 140.

Nev.—Harris v. Harris, 196 P.2d 402, 65 Nev. 342.

N.M.—Emmco Ins. Co. v. Walker, 260 P.2d 712, 57 N.M. 525.

Manifest abuse

Cal.—Jackson v. De Benedetti, 103 P.2d 990, 39 C.A.2d 574.

Dismissal order reversed

Ark.—Running v. Southwest Freight Lines, Inc., 303 S.W.2d 578.

13. Cal.—Raggio v. Southern Pac. Co., 185 P. 171, 181 C. 472.

4 C.J. p 830 note 40.

14. Ala.—Kay-Noojin Development Co. v. Kinzer, 65 So.2d 510, 259 Ala. 49.

Ariz.—Brown v. Haymore, 32 P.2d 1027, 43 Ariz. 466.

Ark.—Chandler v. Furlow, 192 S.W. 2d 764, 209 Ark. 852—Thompson v. Foote, 134 S.W.2d 11, 199 Ark. 474—Chalkley v. Henley, 12 S.W.2d 18, 178 Ark. 635.

Cal.—Hiroko Kawakita Hayashi v. Lorenz, 271 P.2d 18, 42 C.2d 848—Kraner v. Snow Mountain Water & Power Co., 262 P. 1094, 203 C. 126—Overaa v. Keeney, 147 P. 466, 169 C. 628.

Gunner v. Van Ness Garage, App., 310 P.2d 32—Ordway v. Arata, App., 309 P.2d 919—Wisler v. California State Bd. of Accountancy, 288 P.2d 322, 136 C.A.2d 79—Neustadt v. Superior Court of State, In and For City and County of San Francisco, 247 P.2d 569, 112 C.A.2d 825—Cameron v. Cameron, 242 P.2d 408, 110 C.A.2d 258—Hillsdale Builders Supply Co. v. Eichler, 240 P.2d 343, 109 C.A.2d 117—Jepsen v. Sherry, 220 P.2d 819, 99 C.A.2d 119—Thompson v. Lester, 67 P.2d 1093, 20 C.A.2d 745—Inderbitzen v. Lane Hospital, 61 P.2d 514, 17 C.A.2d 103.

Fla.—Sontag Inv. Co. of Indiana v. Nautilus Realty Co., 83 So. 389, 78 Fla. 529.

Ill.—Municipal Employees Ins. Ass'n of Chicago v. Taylor, 20 N.E.2d 835, 300 Ill.App. 231.

Ind.—Blickenstaff v. Cowgill, 106 N. E. 376, 58 Ind.App. 378.

Mo.—City of Jefferson v. Capital City Oil Co., App., 286 S.W.2d 65.

Mont.—Silver v. Eakins, 175 P. 876, 55 Mont. 210.

Or.—Reed v. First Nat. Bank of Gardiner, 241 P.2d 109, 194 Or. 45.

Pa.—Talbot v. Delaware County Trust Co., 119 A.2d 518, 384 Pa. 85—Manson v. First Nat. Bank in Ind., 77 A.2d 399, 366 Pa. 211—Brown v. T. W. Phillips Gas & Oil Co., 74 A.2d 105, 365 Pa. 155—Pennsylvania R. Co. v. City of Pittsburgh, 6 A.2d 907, 335 Pa. 449.

Geyer v. Walton, 30 A.2d 643, 151 Pa.Super. 549—Weil v. Power Building & Loan Ass'n, 17 A.2d 634, 142 Pa.Super. 257.

Mosolino v. Gavula, Com.Pl., 41 Sch.Leg.Rec. 141.

Tex.—Routh v. City of San Antonio, Civ.App., 302 S.W.2d 452—State v. Perkins, Civ.App., 185 S.W.2d 1019, reversed on other grounds 185 S. W.2d 975, 143 Tex. 386—San Antonio & A. P. Ry. Co. v. D. M. Picton & Co., Civ.App., 111 S.W.2d 842, error refused—Hinkle v. Thompson, Civ.App., 195 S.W. 311, error refused.

Vt.—Capital Sav. Bank & Trust Co. v. Hammett, 112 A. 360, 95 Vt. 47.

Wash.—National Surety Co. v. American Savings Bank & Trust Co., 172 P. 264, 101 Wash. 213.

4 C.J. p 829 note 38.

Discretion of trial court in:

Granting or refusing leave to dismiss, discontinue, or take nonsuit see Dismissal and Nonsuit § 11.

Granting or refusing motion for involuntary dismissal or nonsuit see Dismissal and Nonsuit § 71.

Setting aside involuntary dismissal or nonsuit, see Dismissal and Nonsuit § 78.

Review of dismissal or nonsuit during trial see infra § 1612.

Voluntary dismissal

N.M.—Emmco Ins. Co. v. Walker, 260 P.2d 712, 57 N.M. 525.

Burden of showing abuse of discretion, operating to his prejudice, is on the party complaining of the dismissal of an action for want of prosecution.

Cal.—Netzley v. Hillstrom, 265 P.2d 57, 122 C.A.2d 417—Gurst v. San Diego Transit System, 258 P.2d 1109, 119 C.A.2d 51—Simonini v. Jay Dee Leather Products Co., 193 P.2d 53, 85 C.A.2d 565—Jackson v. De Benedetti, 103 P.2d 990, 39 C. A.2d 574—St. Clair v. Brix, 264 P. 307, 89 C.A. 94.

4 C.J. p 798 note 25.

Discontinuance

Where plaintiff, while his actions on certain notes were pending in a magistrate's court, sued in the circuit court thereon, and defendant set up a defense and a counterclaim, the amount of which was within the jurisdiction of the magistrate's court, the granting of plaintiff's motion to discontinue his suit in the circuit court was within the discretion of such court, and would not be interfered with on appeal, where defendant was not prejudiced by the discontinuance.

S.C.—Langley v. Stokes, 90 S.E. 31, 105 S.C. 429.

Dismissal of equity cause without prejudice

Where the dismissal of an equity cause without prejudice is refused on the proper application of the rule requiring discretion on part of court to avoid prejudice to defendant, as where he has entitled himself to affirmative relief, or to a hearing and

reinstatement of the cause after a dismissal or nonsuit.[15] An order dismissing an action because of the lapse of more than a certain period of time since it was commenced cannot be affirmed as being within the discretionary power of the trial court, where the motion on which the order is based was addressed to the mandatory power of the court.[15.5]

§ 1597. Reference

Ordinarily, the exercise by the trial court of its discretionary powers as to the grant or conduct of a reference, the acceptance or rejection of the referee's report, or recommitment thereof will be reviewed only for an abuse of discretion.

Unless it has been abused or erroneously exercised,[16] the exercise by the trial court of its discretion in granting or refusing to grant an order of reference will not be reviewed or interfered with.[17] This is also true with respect to the discretionary

disposition on the merits, etc., the ruling will not be disturbed.
Fla.—Sontag Inv. Co. of Indiana v. Nautilus Realty Co., 83 So. 389, 78 Fla. 529.

Questions for review

(1) On appeal from order granting motion for judgment of non pros for want of prosecution, question was whether there was a manifest abuse of discretion.
Pa.—Margolis v. Blecher, 72 A.2d 127, 364 Pa. 234.

(2) Province of reviewing court on appeal from dismissal of action for failure to prosecute action diligently is to review exercise of discretion by trial court.
Wash.—Hayes v. Quigg, 282 P.2d 301, 46 Wash.2d 453.

(3) Under statute authorizing trial court to dismiss action for failure of plaintiff to comply with its order, supreme court's review is limited to questions whether trial court abused its sound judicial discretion in making the ruling, and unless the record on appeal makes it clearly appear that the action was so wrong that conformance therewith would have resulted in prejudice to substantial rights, the supreme court cannot disturb action of trial court.
Kan.—Fletcher v. Securities Acceptance Corp., 231 P.2d 249, 171 Kan. 215.

15. Ark.—Thompson v. Foote, 134 S.W.2d 11, 199 Ark. 474—Chalkley v. Henley, 12 S.W.2d 18, 178 Ark. 635.
Cal.—Jackson v. De Benedetti, 103 P.2d 990, 39 C.A.2d 574.
Ga.—Drain Tile Mach. v. McCannon, 56 S.E.2d 165, 80 Ga.App. 373—Smith v. Armour Fertilizer Co., 89 S.E. 1087, 18 Ga.App. 521.
Ill.—Shemaitis v. Shemaitis, 97 N.E.2d 126, 342 Ill.App. 513.
Mo.—Levee Dist. No. 4 of Dunklin County v. Small, App., 281 S.W.2d 614—Southwest Nat. Bank of Kansas City v. McDermand, App., 187 S.W. 121.
Tex.—Chester v. Texas Emp. Ins. Ass'n, Civ.App., 265 S.W.2d 648, error refused no reversible error—Cardwell v. Cardwell, Civ.App., 145 S.W.2d 635—Guyer v. Chapman, Civ.App., 227 S.W. 217, dismissed for want of jurisdiction.
W.Va.—Nibert v. Carroll Trucking Co., 82 S.E.2d 445, 139 W.Va. 583.
4 C.J. p 830 note 41.

Review of:
Action on application to vacate judgment see infra § 1631.
Application to reinstate cause after dismissal or nonsuit during trial see infra § 1612.

Excusing neglect resulting in dismissal

Whether plaintiffs' attorney's neglect to have plaintiffs in court and ready to proceed with trial at time set therefor was excusable was question addressed to discretion of trial court under circumstances shown by record.
Cal.—Proulx v. De Moti, 234 P.2d 1009, 106 C.A.2d 265.

Burden of convincing that denial of motion to set aside dismissal was abuse of discretion is on appellants.
Cal.—Mann v. Pacific Greyhound Lines, 207 P.2d 105, 92 C.A.2d 439.

Burden of showing abuse of discretion, operating to his prejudice, is on the party complaining of the setting aside of a nonsuit.
Mo.—Cohn v. Metropolitan St. R. Co., 81 S.W. 846, 182 Mo. 577.

15.5 Cal.—Westphal v. Westphal, 143 P.2d 405, 61 C.A.2d 544.

16. Mo.—Buchanan v. Rechner, 62 S.W.2d 1071—Wahl v. Cunningham, 56 S.W.2d 1052, 332 Mo. 21—Browning v. North Missouri Cent. Ry. Co., 224 S.W. 748, 284 Mo. 439. Couser v. Thayer, App., 204 S.W. 27.
N.Y.—Miller v. Albertina Realty Co., 190 N.Y.S. 407, 198 App.Div. 340.
S.C.—Farmers' & Merchants' Nat. Bank of Lake City v. Foster, 129 S.E. 629, 132 S.C. 410—Rainwater v. Merchants' & Farmers' Bank of Cheraw, 93 S.E. 770, 108 S.C. 206.
Utah.—Baker v. Holland Furnace Co., 81 P.2d 1114, 95 Utah 396.

Abuse determined from pleadings

"Whether the trial court abused its discretion in denying a reference should be decided from the pleadings as they were when appellants made application."
Mo.—Buchanan v. Rechner, 62 S.W.2d 1071, 1072.

Erroneous conception of law

Although refusal of compulsory reference is largely within the discretion of judge, his action is reviewable when based on an erroneous conception of law, it being in such case technically an "abuse of discretion."
S.C.—Farmers' & Merchants' Nat. Bank of Lake City v. Foster, 129 S.E. 629, 132 S.C. 410.

17. Cal.—Puim v. Callahan, 286 P.2d 526, 135 C.A.2d 70—Reed v. Reed, 257 P.2d 1002, 118 C.A.2d 399.
Ga.—Mobley v. Faulk, 156 S.E. 40, 42 Ga.App. 314.
Mass.—Stockbridge v. Mixer, 116 N.E. 877, 227 Mass. 501.
Pa.—Curtis v. Mankus, 145 A. 427, 295 Pa. 381.
S.C.—Peeples v. South Carolina Agr. Loan Ass'n, 153 S.E. 283, 156 S.C. 429—Newell Contracting Co. v. J. F. & J. D. Blankenship, 125 S.E. 420, 130 S.C. 131—Trump v. Mikell, 89 S.E. 645, 105 S.C. 280.
Wis.—Volk v. Flatz, 239 N.W. 424, 206 Wis. 270.
4 C.J. p 807 note 15.

Reference of account matters

(1) The necessity of submitting questions of accounting to auditor is within the chancellor's discretion, and his action will not be set aside, absent abuse thereof.
Pa.—Curtis v. Mankus, 145 A. 427, 295 Pa. 381.

(2) Where the transaction involves numerous debit and credit entries, the order of reference will not be disturbed on appeal.
Or.—Shell Co. of California v. O'Reilly, 253 P. 1046, 121 Or. 215.

(3) Under Civ.Code (1910) § 5128, authorizing the judge to appoint an auditor in cases involving matters of account where, in his judgment, the facts and circumstances require it, the judge's statutory discretion will not be interfered with unless abused.
Ga.—Spencer v. Northwestern Nat. Ins. Co., 109 S.E. 510, 27 Ga.App. 710.

Reference to take testimony

Where specific performance is sought, a chancellor will not be held in error for requiring testimony to be taken on complicated matters of fact presented for decision on bill

action of the court in appointing a special master in place of a disqualified master,[17.5] accepting or rejecting the referee's report,[18] granting or denying a motion to set aside an order confirming the report of a special commissioner,[18.5] to recommit the report of a referee, master, auditor, or commissioner,[19] or to reopen the case for the receipt of additional evidence,[20] extending the time for taking testimony before a master,[21] or approving the amount of an auditor's[22] or master's[22.5] fee.

The discretion of commissioners in allotting shares in a partition proceedings will not be disturbed by the appellate court in the absence of an affirmative showing of abuse of discretion,[23] such as a mistake

and answers and exceptions to the answer when no abuse of discretion appears.
Fla.—Albritton v. Scott, 74 So. 975, 73 Fla. 856.

17.5 S.C.—Kirk v. Douglass, 6 S.E. 2d 757, 192 S.C. 359.

18. Cal.—First Nat. Bank v. Stansbury, 5 P.2d 13, 118 C.A. 80.
Ga.—Henderson Lumber Co. v. Chatham Bank & Trust Co., 149 S.E. 885, 169 Ga. 139.
N.J.—Bocchiero v. Carrino, 154 A. 845, 108 N.J.Law 176.
S.C.—Momeier v. John McAllister, Inc., 3 S.E.2d 606, 190 S.C. 529.
19 C.J. p 592 note 21.

Overruling exceptions to auditor's report in equity

Where an equity case has been referred to an auditor and exceptions of fact are filed to his report, the approval or disapproval of the exceptions to the findings of the auditor upon the facts is within the discretion of the court, and the exercise of that discretion will not be interfered with unless manifestly abused.
Ga.—Christian v. Bremer, 34 S.E.2d 40, 199 Ga. 285—Parsons v. Fox, 176 S.E. 642, 179 Ga. 615—Crim v. Alston, 151 S.E. 807, 169 Ga. 852—Broderick v. Reid, 139 S.E. 18, 164 Ga. 474—Bacon v. Bacon, 133 S.E. 512, 161 Ga. 978.

Report set aside for legal reasons

Where it affirmatively appears that an order setting aside a referee's report was not granted in the exercise of the discretion of the court but for reasons specified in the order itself, an appeal from the order presents a legal question and the discretion of the trial court is not involved.
S.D.—Neeley v. Roberts, 95 N.W. 921, 17 S.D. 161.

18.5 Discretion held not abused
Ky.—Kingsley's Adm'x v. Spurlock, 215 S.W.2d 124, 308 Ky. 510.

19. Conn.—Clark v. Hughes, 97 A. 2d 114, 139 Conn. 696—Alishausky v. MacDonald, 167 A. 96, 117 Conn. 138.
Fla.—Downing v. Carlton, 80 So. 57, 76 Fla. 490.
Me.—Bourisk v. Mohican Co., 175 A. 345, 133 Me. 207—Chasse v. Soucier, 105 A. 853, 118 Me. 62.
Mass.—New England Factors v. Genstil, 76 N.E.2d 151, 322 Mass. 36—Minot v. Minot, 66 N.E.2d 5, 319 Mass. 253—Horvitz v. Golen, 192 N.E. 925, 288 Mass. 375—Brine v. Parker, 171 N.E. 324, 271 Mass. 86—Ledoux v. Lariviere, 158 N.E. 779, 261 Mass. 242—Technical Economist Corporation v. Moors, 152 N.E. 83, 255 Mass. 591—Kilkus v. Shakman, 150 N.E. 186, 254 Mass. 274—Selwyn v. Harris, 146 N.E. 248, 251 Mass. 68—Raymond v. Stone, 141 N.E. 100, 246 Mass. 421—Magullion v. Magee, 135 N.E. 565, 241 Mass. 355—Magullion v. Magee, 135 N.E. 560, 241 Mass. 360—Manning v. Woodlawn Cemetery Corporation, 131 N.E. 287, 239 Mass. 5—Reed v. Chase, 130 N.E. 257, 238 Mass. 83—Hannaberry v. Green, 114 N.E. 197, 225 Mass. 201.
N.H.—Snierson v. Raab, 128 A. 8, 81 N.H. 403.
W.Va.—Raleigh County Const. Co. v. Amere Gas Utilities Co., 163 S.E. 42, 111 W.Va. 459.
4 C.J. p 807 note 16.

Order modified

Where master's report was recommitted with directions to report evidence and make subsidiary findings, and he failed to comply, but report after recommittal was confirmed, supreme judicial court could not enforce compliance.
Mass.—Bumpus v. Church, 19 N.E. 2d 716, 302 Mass. 419.

Review or reversal for abuse of discretion

(1) "The question of recommitting a report of referees is addressed to the discretion of the court, and it has been held in some cases that an order to recommit is not open to exceptions. . . . That statement of the rule is too broad. The discretionary power of the court to recommit reports of referees for further consideration 'must be exercised judicially, and upon consideration of the facts and circumstances of the case.' . . . And it is well settled that judicial discretion must be exercised soundly according to the well-established rules of practice and procedure, a discretion guided by the law so as to work out substantial equity and justice. It is magisterial, not personal discretion. When some palpable error has been committed or an apparent injustice has been done, the ruling is reviewable on exceptions. . . . It is when judicial discretion is exercised in accordance with this rule that it is final and conclusive."
Me.—Bourisk v. Mohican Co., 175 A. 345, 346, 133 Me. 207.

(2) A reviewing court has the power to remand the case to have a recommittal ordered in exceptional cases where injustice would result from disposing of the case on the report of the referee as made.
Vt.—Van Dyke v. Grand Trunk R. Co., 78 A. 958, 84 Vt. 212, Ann.Cas. 1913A 640.

Rule inapplicable

"It is a general rule that a motion to recommit an auditor's report rests in the judicial discretion of the court and its decision is not subject to exception. Where, however, as in the case at bar, the findings of the auditor are agreed to be final, the general rule is not applicable; in such cases the auditor's rulings on the admission of evidence are reviewable on a motion to recommit for alleged errors. If the motion is denied, the party aggrieved may have the order reversed by this court."
Mass.—Technical Economist Corporation v. Moors, 152 N.E. 83, 86, 255 Mass. 591.

20. Conn.—Kane v. Kane, 172 A. 84, 118 Conn. 291.
Iowa.—Spooner v. Spooner, 11 N.W. 2d 600, 234 Iowa 33.

21. Fla.—Morgan v. Howell, 76 So. 869, 74 Fla. 334.

22. Pa.—Moats v. Thompson, 129 A. 105, 283 Pa. 313.

22.5 Allowance in gross

Where several accounts of trustees are separately referred to same master, necessitating separate reports by master on each account, and one or more of the accounts require different types of professional service, in absence of evidence of, and findings determining, value of services rendered by master on each reference and respective values of different types of professional service necessarily performed with respect to each account, this court is not in a position to determine whether an allowance in gross is excessive.
Hawaii.—In re Bishop's Estate, 36 Hawaii 728.

23. S.C.—Aldrich v. Aldrich, 55 S.E. 887, 75 S.C. 369, 117 Am.S.R. 909.
47 C.J. p 595 notes 11, 15.

in quantity,[24] a decidedly erroneous judgment,[25] or partiality and unfairness.[26]

§ 1598. Change of Venue

Discretionary rulings of a trial court on applications for change of venue will be reviewed or reversed only for clear abuse or legal error.

Although the action of the trial court on a motion or application for change of venue may be subject to review and reversal because of an abuse of discretion,[27] or for legal error,[28] it is well settled that the exercise, by a trial court, of discretionary power to grant or deny a change of venue will not be reviewed or reversed in the absence of a clear showing of abuse.[29] This general rule has been ap-

24. Ky.—Chamberlain v. Ballinger, 13 S.W. 429, 11 Ky.L. 966.

25. Ky.—Chamberlain v. Ballinger, supra.

26. Md.—Godwin v. Banks, 43 A. 863, 89 Md. 679.

27. Nev.—Fabbi v. First Nat. Bank of Nevada, 153 P.2d 122, 62 Nev. 405.
S.C.—Reynolds v. Atlantic Coast Line R. Co., 59 S.E.2d 344, 217 S.C. 16—McCarty v. Bolick, 58 S.E.2d 338, 216 S.C. 396.
Tex.—Bennett v. Jackson, Civ.App., 172 S.W.2d 395, error refused—Trammell v. Currie, Civ.App., 261 S.W. 827.
Utah.—Schramm-Johnson, Drugs v. Cox, 9 P.2d 399, 79 Utah 276.
4 C.J. p 808 notes 27, 28.

Abuse in refusing change to defendant pleading no defense

Fact that defendant pleaded no defense and that the trial court erred in overruling exceptions to answer, is no ground for not reversing for abuse of discretion in denying defendant a change of venue, since, if exceptions had been sustained, defendant might have amended to meet points raised.
Tex.—Trammell v. Currie, Civ.App., 261 S.W. 827.

Burden of showing abuse of discretion rests on the party complaining of the action of the trial court in granting or denying a change of venue.
Cal.—Barnett v. United Oil Co., 42 P.2d 656, 5 C.A.2d 175.
S.C.—Wallace v. Dickerson Const. Co., 79 S.E.2d 371, 224 S.C. 396.
Tex.—Colgrove v. Falfurrias State Bank, Civ.App., 192 S.W. 580.

Matters from which abuse determined

Whether or not the trial court abused its discretion in denying a motion for a change of venue must be determined by what was before the court at the time of the motion and not by what developed afterward.
Ariz.—Slovenic Nat. Ben. Soc. v. Dabcevich, 246 P. 765, 30 Ariz. 294.

28. Iowa.—Atchison, T. & S. F. Ry. Co. v. Mershon, 165 N.W. 86, 181 Iowa 892.
Mo.—Stevens v. Hurst Automatic Switch & Signal Co., App., 270 S.W. 414.
Mont.—State v. District Court of Seventeenth Judicial Dist. in and for Valley County, 231 P. 395, 72 Mont. 56.
S.C.—Beard v. Billups Petroleum Co. of S. C., 90 S.E.2d 685, 228 S.C. 481—Wilson v. Southern Furniture Co., 78 S.E.2d 890, 224 S.C. 281—Becker v. Uhe, 70 S.E.2d 346, 221 S.C. 334—Adams v. Fripp, 94 S.E. 109, 108 S.C. 234.
4 C.J. p 808 note 28 [a].

Lack of facts to justify ruling

(1) Where there are no facts stated in the affidavits in support of the motion to remove cause to another county, the ruling of the court below may be reviewed; but where facts are stated, their sufficiency rests in the discretion of the judge, and his decision is final.
N.C.—Gilliken v. Norcom, 137 S.E. 136, 193 N.C. 352.

(2) Where the trial judge found sufficient facts to warrant the removal of the cause to another county because a fair trial could not be had in the county in which the action was instituted, and sufficient facts appeared in the affidavit to support such finding and order, the order is not reviewable, although the judge stated in the order of removal that "the court came to this conclusion upon personal observation."
N.C.—Gilliken v. Norcom, supra.

29. Ariz.—Slovenic Nat. Ben. Soc. v. Dabcevich, 246 P. 765, 30 Ariz. 294.
Ark.—Mosley v. Mohawk Lumber Co., 183 S.W. 187, 122 Ark. 227.
Cal.—White v. Kaiser-Frazer Corp., 224 P.2d 833, 100 C.A.2d 754—Willingham v. Pecora, 112 P.2d 328, 44 C.A.2d 289—Smith v. Smith, 85 P.2d 473, 30 C.A.2d 70—Beyer v. Carrasco, 293 P. 662, 109 C.A. 745—Werner v. Bryden, 278 P. 869, 99 C.A. 398—Kenyon v. Hartford Accident & Indemnity Co., 260 P. 954, 86 C.A. 266—Ross v. Kalin, 200 P. 745, 53 C.A. 616—Tait v. Midway Field Oil Co., 151 P. 378, 28 C.A. 107.
Colo.—Reyher v. Mayne, 10 P.2d 1109, 90 Colo. 586.
Idaho.—Spaulding v. Hoops, 287 P. 947, 49 Idaho 289—Ondes v. Bunker Hill & Sullivan Mining & Concentrating Co., 232 P. 578, 40 Idaho 186—Lessman v. Anschustigui, 215 P. 460, 37 Idaho 127.
Kan.—Federal Deposit Ins. Corp. v. Cloonan, 222 P.2d 553, 169 Kan. 735.
Ky.—Big Sandy Realty Co. v. Stansifer Motor Co., 253 S.W.2d 601—Southeastern Greyhound Lines v. Davis, 160 S.W.2d 625, 290 Ky. 362—Reynolds v. Coburn, 148 S.W.2d 705, 285 Ky. 544—Bringardner Lumber Co. v. Knuckles, 128 S.W. 2d 727, 278 Ky. 356—Pierce v. Crisp, 102 S.W.2d 386, 267 Ky. 420—Louisville Times Co. v. Lyttle, 77 S.W.2d 432, 257 Ky. 132—Thompson's Adm'r v. First Nat. Bank, 27 S.W.2d 978, 234 Ky. 252—Dyer v. Staggs, 290 S.W. 494, 217 Ky. 683—Louisville & N. R. Co. v. Nethery, 169 S.W. 883, 160 Ky. 369.
Minn.—Roesler v. Union Hay Co., 154 N.W. 789, 131 Minn. 489.
Mo.—Neal v. Kansas City Rys. Co., 229 S.W. 215.
State ex rel. Wilson v. Burney, 186 S.W. 23, 193 Mo.App. 326.
Mont.—Conway v. Fabian, 63 P.2d 1022, 103 Mont. 574—Kroehnke v. Gold Creek Mining Co., 51 P.2d 640, 100 Mont. 571—Torstenson v. Independent Pub. Co., 282 P. 861, 86 Mont. 163—Atkinson v. Bonners Ferry Lumber Co., 240 P. 823, 74 Mont. 393.
Neb.—Heiden v. Loup River Public Power Dist., 298 N.W. 736, 139 Neb. 754—Markel v. Glassmeyer, 273 N. W. 33, 132 Neb. 716—Boyd v. Chicago, B. & Q. R. Co., 149 N.W. 818, 97 Neb. 238.
N.J.—State v. Collins, 67 A.2d 158, 2 N.J. 406.
N.M.—Blake v. Cavins, 185 P. 374, 25 N.M. 574.
N.C.—Perry v. Perry, 89 S.E. 999, 172 N.C. 62—Ludwick v. Uwarra Mining Co., 87 S.E. 949, 171 N.C. 60—Oettinger v. Hill Live Stock Co., 86 S.E. 957, 170 N.C. 152.
N.D.—Springer v. Paulson, 9 N.W.2d 440, 72 N.D. 560—Moen v. Melin, 231 N.W. 283, 59 N.D. 582—Curren v. Story, 170 N.W. 875, 41 N.D. 361.
Okl.—Grand River Dam Authority v. Bymaster, 116 P.2d 902, 189 Okl. 245—Grand River Dam Authority v. Beauchamp, 116 P.2d 904, 189 Okl. 246—Twin City Fire Ins. Co. of Minneapolis, Minn., v. First Nat. Bank, 292 P. 833, 145 Okl. 293—Southwestern Surety Ins. Co. v. Board of Com'rs of Coal County, 187 P. 467, 77 Okl. 137.
Or.—Bramwell v. Rowland, 261 P. 57, 123 Or. 33.
Pa.—Commonwealth v. Donough, 4

plied to rulings on applications for a change of venue sought on the ground of the convenience of the parties,[29.5] the convenience of witnesses,[29.10] local

Lebanon 211, affirmed 103 A.2d 694, 377 Pa. 46.

S.C.—Beard v. Billups Petroleum Co. of S. C., 90 S.E.2d 685, 228 S.C. 481—McKinney v. Noland Co., 86 S.E. 2d 607, 227 S.C. 27—Rice v. Hartness Bottling Works, 86 S.E.2d 67, 226 S.C. 532—McCarty v. Bolick, 58 S.E.2d 338, 216 S.C. 396.

Tex.—Texas & N. O. R. Co. v. Wilkerson, Civ.App., 260 S.W.2d 912—Bennett v. Jackson, Civ.App., 172 S.W.2d 395, error refused—Rienhard v. Newlin Truck Line, Civ. App., 103 S.W.2d 484—Ramirez v. Sanchez, Civ.App., 97 S.W.2d 1034—Herd v. Wade, Civ.App., 63 S.W.2d 253—Barrow v. Barclay, Civ.App., 269 S.W. 235.

Utah.—Winters v. Turner, 278 P. 816, 74 Utah 222, appeal dismissed and certiorari denied Turner v. Winters, 50 S.Ct. 238, 281 U.S. 692, 74 L.Ed. 1121.

W.Va.—Hatfield v. Hatfield, 167 S.E 89, 113 W.Va. 135—Proudfoot v. Pocahontas Transp. Co., 132 S.E. 746, 100 W.Va. 733.

4 C.J. p 807 note 19—67 C.J. p 144 note 45, p 225 notes 43, 44.

Clear and positive abuse

Utah.—Anderson v. Johnson, 268 P.2d 427, 1 Utah 2d 400.

Manifest abuse

Idaho.—Jarvis v. Hamilton, 246 P.2d 216, 73 Idaho 131, 33 A.L.R.2d 910—Moscow Vets Club v. Bishop, 207 P.2d 503, 69 Idaho 350.

S.C.—Bruner v. Seaboard Air Line R. Co., 84 S.E.2d 557, 226 S.C. 177—Webb v. Southern Ry. Co., 71 S.E. 2d 12, 221 S.C. 450—Patterson v. Charleston & W. C. Ry. Co., 1 S.E. 2d 920, 190 S.C. 66.

Palpable abuse

Fla.—McMichael v. Harris, 174 So. 323, 127 Fla. 861.

Conflicting affidavits

Where the affidavits on a motion for a change of venue are conflicting, the discretion of the trial court in reaching its conclusion as to the facts will not be disturbed in the absence of a showing of abuse.

Cal.—Hughes v. Gorlek, 268 P.2d 43, 123 C.A.2d 912—Swartz v. California Olive Growers' Packing Corp., 133 P.2d 20, 56 C.A.2d 168—Connell v. Bowes, 122 P.2d 71, 49 C.A. 2d 542—Costello v. Bell, 148 P. 948, 27 C.A. 102.

Colo.—Welborn v. Bucci, 37 P.2d 399, 95 Colo. 478.

Mont.—Kroehnke v. Gold Creek Mining Co., 55 P.2d 678, 102 Mont. 21—Kroehnke v. Gold Creek Mining Co., 51 P.2d 640, 100 Mont. 571.

N.D.—Baird v. Agricultural Credit Corporation, 253 N.W. 68, 64 N.D. 426.

Tex.—Taylor v. Batte, Civ.App., 145 S.W.2d 1116.

Lack of diligence in applying for change

The question of diligence in presenting an application for a change of venue is a matter confided to the discretion of the trial court, and its action will not be interfered with except for abuse of discretion.

Cal.—In re Hart's Estate, 236 P.2d 884, 107 C.A.2d 60—Nelson v. Enos, 117 P.2d 429, 47 C.A.2d 79—Davison v. Gentry, 29 P.2d 266, 136 C. A. 423.

Questions for review

(1) A decision on motion for change of venue is reviewable only to extent of inquiring whether evidence adduced at hearing does not as a matter of law justify decision of the court and whether trial court abused its discretion.

Cal.—People v. Ocean Shore R. R., 75 P.2d 560, 24 C.A.2d 420.

(2) On an appeal from an order denying motion for change of venue, supreme court does not try issue anew, but determines whether trial judge abused his discretion by making a manifest error of law so opposed to a sound discretion as to amount to a deprivation of legal rights of moving party.

S.C.—O'Shields v. Caldwell, 37 S.E. 2d 665, 208 S.C. 245.

Sufficiency of notice

In the absence of abuse of discretion, the ruling of the trial judge as to the sufficiency of a notice of an application for a change of venue will not be disturbed on appeal.

Ill.—Hutson v. Wood, 105 N.E. 343, 263 Ill. 376, Ann.Cas.1915C 587.

People v. Brogan, 73 N.E.2d 133, 331 Ill.App. 404.

29.5 Mich.—Bradley-Watkins Co. v. Kalamazoo Cir. Judge, 107 N.W. 875, 144 Mich. 142.

29.10 Cal.—Wrin v. Ohlandt, 1 P.2d 991, 213 C. 158—Ayres v. Wright, 270 P. 453, 205 C. 201—Scott v. Stuart, 213 P. 947, 190 C. 526—Perky v. Perky, 213 P. 492, 190 C. 492—Blevins v. Blevins, 173 P. 402, 178 C. 318.

Harden v. Skinner and Hammond, 279 P.2d 978, 130 C.A.2d 750—Prewitt v. Prewitt, 275 P.2d 63, 128 C.A.2d 344—Rios v. Lacey Trucking Co., 268 P.2d 160, 123 C. A.2d 865—State Compensation Ins. Fund v. Maloney, 266 P.2d 81, 122 C.A.2d 920—Maselli v. E. H. Appleby & Co., 256 P.2d 618, 117 C.A. 2d 634—Figley v. California Arrow Airlines, 244 P.2d 472, 111 C.A. 2d 285—Alhambra Shumway Mines v. Alhambra Gold Mine Corp., 240 P.2d 340, 109 C.A.2d 119—Rice v. Schubert, 226 P.2d 50, 101 C.A.2d 638—Pacific Coast Title Ins. Co. v. Land Title Ins. Co., 218 P.2d 573, 97 C.A.2d 829—Whitaker v. Haitian Coffee Co., 161 P.2d 564, 70 C.A.2d 856—Hicks v. Haitian Coffee Co., 161 P.2d 564, 70 C.A.2d 740—Di Giorgio Fruit Corp. v. Zachary, 141 P.2d 8, 60 C.A.2d 560—Borba v. Toste, 126 P.2d 655, 52 C.A.2d 591—Lyon v. Master Holding Corp., 122 P.2d 947, 50 C.A.2d 238—Harris v. Cannon, 109 P.2d 961, 42 C.A.2d 748—Wood v. Silvers, 96 P.2d 366, 35 C.A.2d 604, rehearing denied and opinion modified on other grounds 97 P.2d 265, 35 C.A.2d 604—First-Trust Joint Stock Land Bank of Chicago v. Meredith, 60 P.2d 1023, 16 C.A.2d 504—Barnett v. United Oil Co., 42 P.2d 656, 5 C.A.2d 175—Goodpastor v. Cary, 38 P.2d 794, 2 C.A.2d 635—Groobman v. Pfeiffer, 37 P.2d 198, 2 C.A.2d 10—Plum v. Newhart, 4 P.2d 805, 118 C.A. 73—Plum v. Forgay Lumber Co., 4 P. 2d 804, 118 C.A. 76—Topham v. Huntington, 293 P. 678, 109 C.A. 593—Pacific States Corporation v. Shepardson, 288 P. 714, 105 C.A. 747—Ryan v. Inyo Cerro Gordo Mining & Power Co., 183 P. 251, 41 C.A. 758—Blossom v. Waller, 158 P. 509, 30 C.A. 439.

Colo.—People ex rel. Plunkett v. District Court of Rio Grande County in the 12th Judicial Dist., 258 P.2d 483, 127 Colo. 483—Enyart v. Orr, 238 P. 29, 78 Colo. 6.

Idaho.—Sweeney v. American Nat. Bank, 136 P.2d 973, 64 Idaho 695.

Minn.—Thon v. Erickson, 45 N.W.2d 560, 232 Minn. 323—King v. Schultz, 43 N.W.2d 278, 231 Minn. 569—Bowen v. Johnson, 21 N.W.2d 225, 221 Minn. 99—Vornbrock v. Bollig, 18 N.W.2d 441, 219 Minn. 577—Desjardins v. Emeralite Surfacing Products Co., 249 N.W. 576, 189 Minn. 356.

Mont.—Dawson v. Dawson, 10 P.2d 381, 92 Mont. 46.

Nev.—Fabbi v. First Nat. Bank of Nevada, 153 P.2d 122, 62 Nev. 405.

N.Y.—Kingsboro Silk Mills v. Auburn Fabrics, 21 N.Y.S.2d 316, 259 App.Div. 1108.

N.C.—Hartford Acc. & Indem. Co. v. Hood, 34 S.E.2d 204, 225 N.C. 361—Howard v. Queen City Coach Co., 193 S.E. 138, 212 N.C. 201—Western Carolina Power Co. v. Klutz, 145 S.E. 681, 196 N.C. 358—Causey v. Morris, 142 S.E. 783, 195 N.C. 532—Curlee v. National Bank of Fayetteville, 121 S.E. 194, 187 N.C. 119.

N.D.—Gessner v. Benson, 79 N.W.2d 152—Ott v. Kelley, 252 N.W. 269,

prejudice,[29.15] prejudice of the trial judge,[29.20] undue local influence of a party,[29.25] undue local influence of an attorney for one of the parties,[29.30] the county being a party,[29.35] and essential evidence in the county to which a change in venue is sought.[29.40]

Likewise, the discretionary determination by the trial court of the county to which the case shall be sent,[30] the place of residence of a party,[30.5] or reopening the hearing on a motion for change after the matter has been submitted,[31] will not be reviewed if the discretion has not been abused.

§ 1599. Consolidation or Severance of Causes, and Advancement on Docket

Discretionary action of the trial court as to consolidating, severing, or setting causes for trial will not be disturbed on appeal in the absence of an abuse of discretion.

Unless there has been a prejudicial and manifest abuse of discretion, an appellate court ordinarily will not review or revise the discretionary action of the trial court with respect to the consolidation of causes;[32] the determinations of the trial court

followed in 252 N.W. 271, 64 N.D. 361.

S.C.—Herndon v. Huckabee Transport Co., 98 S.E.2d 833—Jackson v. Powers, 95 S.E.2d 624, 230 S.C. 371—McCauley v. McLeod, 95 S.E.2d 611, 230 S.C. 380—Dison v. Wimbly, 94 S.E.2d 877, 230 S.C. 187—Holden v. Beach, 89 S.E.2d 433, 228 S.C. 234—Simmons v. Cohen, 88 S.E.2d 679, 227 S.C. 606—Haigler v. Westbury, 77 S.E.2d 207, 223 S.C. 517—Wingard v. Sims, 73 S.E.2d 279, 222 S.C. 396—Thompson v. State Highway Dept., 70 S.E.2d 241, 221 S.C. 250—Gregory v. Powell, 33 S.E.2d 629, 206 S.C. 261—Frost v. Protective Life Ins. Co., 19 S.E.2d 471, 199 S.C. 349—Roof v. Tiller, 10 S.E.2d 333, 195 S.C. 132, 132 A.L.R. 500—Wade v. Southern Ry. Co., 195 S.E. 560, 186 S.C. 265—Griffin v. Owens, 172 S.E. 221, 171 S.C. 276—Sample v. Bedenbaugh, 155 S.E. 828, 158 S.C. 496.

S.D.—Nedved v. Nedved, 238 N.W. 643, 59 S.D. 161.

Wash.—State ex rel. Bartels v. Hall, 118 P.2d 430, 11 Wash.2d 58—State ex rel. Nielsen v. Superior Court for Thurston County, 115 P.2d 142, 7 Wash.2d 562.

4 C.J. p 808 note 22—67 C.J. p 225 note 43 [d].

Burden of proof on appellant

S.C.—Wallace v. Dickerson Const. Co., 79 S.E.2d 371, 224 S.C. 396.

29.15 Minn.—Wolfe v. City of Austin, 60 N.W.2d 74, 240 Minn. 165—Sander v. Dieseth, 40 N.W.2d 844, 230 Minn. 125—American Bldg. & Const. Corporation v. Herrmann, 201 N.W. 949, 162 Minn. 507.

N.D.—Brace v. Steele County, 50 N.W.2d 90, 78 N.D. 429—Swiggum v. Valley Inv. Co., 19 N.W.2d 569, 73 N.D. 765—Kaczor v. Swendseid, 215 N.W. 271, 55 N.D. 770—Langer v. Courier News, 186 N.W. 102, 48 N.D. 678—Boeren v. McWilliams, 157 N.W. 117, 33 N.D 339.

Tex.—Ferguson Seed Farms v. Fort Worth & D.-S. P. Ry. Co., Civ.App., 100 S.W.2d 177, error dismissed.

4 C.J. p 808 note 23—67 C.J. p 225 note 43 [b].

Extent of review

District court of appeal may review such ruling only to extent of inquiring whether it constitutes an abuse of such discretion.

Cal.—Riverside County Flood Control and Water Conservation Dist. v. Joseph W. Wolfskill Co., App., 306 P.2d 22, followed in Joseph W. Wolfskill Co. v. Riverside County Flood Control and Water Conservation Dist., 306 P.2d 25.

Burden of proof

The district court of appeal cannot say that trial court has abused its discretion in determining whether change of venue should be granted on ground that an impartial trial cannot be had in county in which action has been commenced, unless it clearly appears that the evidence adduced at hearing on motion for change of venue does not, as matter of law, justify determination by trial court, and burden of pointing out such deficiency is on party appealing from determination.

Cal.—Riverside County Flood Control and Water Conservation Dist. v. Joseph W. Wolfskill Co., App., 306 P.2d 22, followed in Joseph W. Wolfskill Co. v. Riverside County Flood Control and Water Conservation Dist., 306 P.2d 25.

29.20 Cal.—San Joaquin & Kings River Canal & Irrigation Co. v. James J. Stevinson, Inc., 178 P. 292, 179 C. 533.

Kan.—Meek v. Ames, 280 P.2d 957, 177 Kan. 565—Linn County Bank v. Grisham, 185 P. 54, 105 Kan. 460.

Minn.—State ex rel. Austin Mut. Ins. Co. v. District Court of Brown County, 261 N.W. 701, 194 Minn. 595.

Okl.—Parnacher v. Mount, 248 P.2d 1021, 207 Okl. 275—Gee v. Security Bank & Trust Co., Enid, 98 P.2d 922, 186 Okl. 477.

4 C.J. p 808 note 20—67 C.J. p 225 note 43 [c].

29.25 Iowa.—Bigelow v. Wilson, 54 N.W. 465, 87 Iowa 628.

N.D.—Swiggum v. Valley Inv. Co., 19 N.W.2d 569, 73 N.D. 765.

29.30 N.D.—Swiggum v. Valley Inv. Co., supra.

29.35 Pa.—Pittsburgh, etc., Bridge Co. v. Allegheny County, 86 A. 693, 239 Pa. 67.

29.40 N.C.—Eames v. Armstrong, 48 S.E. 769, 136 N.C. 392.

30. Mo.—Irons v. American Ry. Express Co., 300 S.W. 283, 318 Mo. 318.

30.5 Cal.—Benjamin v. Benjamin, 275 P.2d 43, 128 C.A.2d 367.

31. Cal.—Blevins v. Blevins, 173 P. 402, 178 C. 318.

32. Cal.—Fellner v. Steinbaum, 282 P.2d 584, 132 C.A.2d 509—Fisher v. Nash Bldg. Co., 248 P.2d 466, 113 C.A.2d 397—Jud Whitehead Heater Co. v. Obler, 245 P.2d 608, 111 C.A. 2d 861.

Conn.—Rode v. Adley Express Co., 33 A.2d 329, 130 Conn. 274.

Ga.—Worley v. Gaston, 80 S.E.2d 304, 210 Ga. 350—Beavers v. Mabry, 23 S.E.2d 672, 195 Ga. 169—O'Malley v. Wilson, 185 S.E. 109, 182 Ga. 97—Spinks v. La Grange Banking & Trust Co., 129 S.E. 31, 160 Ga. 705—Railroad Commission of Georgia v. Southern Ry. Co., 114 S.E. 335, 154 Ga. 297.

National Finance Co. v. Brewer, 151 S.E. 395, 40 Ga.App. 689.

Ill.—Black Hawk Motor Transit Co. v. Illinois Commerce Commission, 48 N.E.2d 341, 383 Ill. 57.

Fishman v. Slack, 10 N.E.2d 895, 291 Ill.App. 617.

Ind.—Trook v. Crouch, 137 N.E. 773, 82 Ind.App. 309.

Kan.—In re Kansas Turnpike Project, 310 P.2d 217, 181 Kan. 139—Todd v. Central Petroleum Co., 112 P.2d 80, 153 Kan. 550.

Ky.—Greer v. Richards' Adm'r, 115 S.W.2d 568, 273 Ky. 91—Farrar v. Hank, 265 S.W. 487, 205 Ky. 89—Reid v. Nichols, 179 S.W. 440, 166 Ky. 423.

Md.—**Corpus Juris Secundum cited in** Pitts v. Pitts, 29 A.2d 300, 304, 181 Md. 182.

Miss.—Gwin v. Fountain, 126 So. 18, 159 Miss. 619, suggestion of error sustained 132 So. 559, 159 Miss. 619—Planters' Oil Mill v. Yazoo & M. V. R. Co., 121 So. 138, 153 Miss. 712.

Mont.—St. George v. Boucher, 274 P. 489, 84 Mont. 158.

Nev.—Ward v. Scheeline Banking & Trust Co., 22 P.2d 358, 54 Nev. 442.

N.H.—Perkins v. Exeter Associates, Inc., 123 A.2d 825—Carbone v. Boston & Maine R. R., 192 A. 858, 89 N.H. 12.

in the matter of granting of separate trials,[32.5] as between plaintiff and different defendants[33] or on some issues,[33.5] or of the main action and a cross action;[33.10] or the setting,[34] deferring,[34.5] or advancing,[35] of a cause for trial.

N.M.—Vargas v. Clauser, 311 P.2d 381, 62 N.M. 405.
N.Y.—Socony-Vacuum Oil Co. v. Seaman, 104 N.Y.S.2d 295, 278 App.Div. 876—Crandall v. A. B. Leach & Co., 225 N.Y.S. 649, 927, 222 App.Div. 292—Sherlock v. Manwaren, 203 N.Y.S. 709, 208 App.Div. 538.
N.C.—Durham v. Laird, 153 S.E. 261, 198 N.C. 695—Fleming v. Holleman, 130 S.E. 171, 190 N.C. 449.
Tex.—Womack v. Berry, 291 S.W.2d 677—Hamilton v. Hamilton, 280 S.W.2d 588, 154 Tex. 511.
Harder v. Sanders, Civ.App., 275 S.W.2d 160, reversed on other grounds 284 S.W.2d 144—Montgomery v. Willbanks, Civ.App., 202 S.W. 2d 851, error refused no reversible error—Colvin v. Colvin, Civ.App., 91 S.W.2d 910, error dismissed—Regester v. Lang, Civ.App., 33 S.W. 2d 230, reversed on other grounds Com.App., 49 S.W.2d 715—Stewart v. Poinbœuf, Civ.App., 270 S.W. 885—Bain v. Coats, Civ.App., 228 S.W. 571, reversed on other grounds Com.App., 244 S.W. 130—Foster v. Foster, Civ.App., 220 S.W. 215.
Vt.—Yardley v. Rutland R. Co., 153 A. 195, 103 Vt. 182.
Wash.—King v. Manson, 4 P.2d 885, 165 Wash. 90.
W.Va.—State v. R. M. Hudson Paving & Construction Co., 122 S.E. 173, 95 W.Va. 610.
1 C.J. p 1124 notes 5, 6—4 C.J. p 808 note 29.

Interests of justice and expediency
An order denying a motion to consolidate actions and fix place of trial was reversed and motion granted, where motion should have been granted in interests of justice and expediency.
N.Y.—Egan v. Bascom, 34 N.Y.S.2d 934, 264 App.Div. 807.

Unwarranted action
The trial court's exercise of discretion in granting or denying a consolidation of causes will be disturbed where the ruling is wholly unwarranted and deprives a party of a substantial right to which he is entitled.
Ala.—Ex parte Green, 129 So. 69, 221 Ala. 415.
N.M.—Kandelin v. Lee Moor Contracting Co., 24 P.2d 731, 37 N.M. 479.
S.C.—Bishop v. Bishop, 162 S.E. 756, 164 S.C. 493—Barrett v. Broad River Power Co., 143 S.E. 650, 146 S.C. 85.

32.5 Tex.—Womack v. Berry, 291 S.W.2d 677.
Harder v. Sanders, Civ.App., 275 S.W.2d 160, reversed on other grounds 284 S.W.2d 144—Montgomery v. Willbanks, Civ.App., 202 S. W.2d 851, error refused no reversible error.

33. Cal.—Caldwell v. Regents of University of California, 170 P. 666, 35 C.A. 639.
Ind.—Hoesel v. Cain, 53 N.E.2d 165, 222 Ind. 330, rehearing denied 53 N.E.2d 769, 222 Ind. 330.
Kan.—Hoskinson v. Bagby, 27 P. 110, 46 Kan. 758.
N.Y.—National Exch. Bank v. McFarlan, 59 Hun 618, 13 N.Y.S. 202.
S.D.—Davison County v. Watertown Tile & Construction Co., 201 N.W. 1005, 48 S.D. 24.
Tex.—Williams v. Moers, Civ.App., 240 S.W.2d 336, error refused no reversible error.
1 C.J. p 1141 notes 10, 11—4 C.J. p 808 note 30.

Joint defendants
(1) It has been held, however, that in no case will the appellate court approve the action of the trial court in permitting a severance of the action, where defendants are sued jointly for a tort, unless it is affirmatively made to appear of record that the order was properly allowed.
Ky.—Hutchison v. Ohio Valley Electric Ry. Co., 209 S.W. 355, 357, 183 Ky. 396.

(2) "To hold otherwise would, it seems to us, deprive the plaintiff of the right of election, given him by the law to sue the joint wrongdoers jointly or severally and yet give the latter the right to elect, to their advantage in every instance, to have separate trials."
Ky.—Hutchison v. Ohio Valley Electric Ry. Co., supra.

(3) Where separate trials to defendants jointly sued for tort have been granted, judgment will not be reversed merely because of severance where it is manifest that substantial rights of none of parties were prejudiced.
Ky.—Malcolm v. Poland, 126 S.W.2d 1098, 277 Ky. 512.

Lack of proper grounds for severance
Where the order for a separate trial is not based on any recognizable ground, and there is no need for a severance, the order should be reversed.
N.Y.—Hill v. Alvord, 19 Hun 77.

33.5 Ill.—Johnson v. Johnson, 125 N.E.2d 843, 5 Ill.App.2d 453.
Mo.—Landau v. Fred Schmitt Contracting Co., 179 S.W.2d 138, 237 Mo.App. 908.
N.M.—Mendenhall v. Vandeventer, 299 P.2d 457, 61 N.M. 277.
Allowance during trial of separate trials for different issues or questions see infra § 1603.

33.10 Idaho.—Nelson v. Inland Motor Freight Co., 92 P.2d 790, 60 Idaho 443.

34. Ill.—Kula v. Sitkowski, 69 N.E. 2d 688, 395 Ill. 167.
Ky.—Borderland Coal Co. v. Burchett, 237 S.W. 663, 193 Ky. 602.
N.Y.—Polstein v. General Accident, Fire & Life Assur. Corporation, 152 N.Y.S. 906, 90 Misc. 3.

Time after issue joined
Fixing case for trial three days after issue was joined over objection of defendant requires reversal of judgment.
La.—Alford v. Glenn, App., 185 So. 720.

Change of date set by clerk
Where no abuse of discretion is shown, a judgment will not be reversed because the court of its own motion set a case for trial at a later date than that on which it was set by the clerk of the court in making up the trial docket or because the court, of its own motion, reset a case for a later date in the term.
Okl.—Anderson v. Malone, 6 P.2d 795, 154 Okl. 4—Missouri, O. & G. Ry. Co. v. Vandivere, 141 P. 799, 42 Okl. 427.

Waiver of jury trial
Denial of defendant's motion to be relieved of his neglect in waiving trial by jury cannot be disturbed on appeal unless it is established that he made timely application to be relieved of such neglect and that trial court grossly abused its discretion in denying application.
Cal.—Holbrook & Tarr v. Thomson, App., 304 P.2d 186.

34.5 N.C.—Commercial Credit Corp. v. Barnes, 90 S.E.2d 893, 243 N.C. 335.
Wash.—Lloyd v. Superior Court for Walla Walla County, 259 P.2d 369, 42 Wash.2d 908.

35. Ill.—O. S. Richardson Fueling Co. v. Seymour, 85 N.E. 496, 235 Ill. 319—Bonney v. McClelland, 85 N.E. 242, 235 Ill. 259.
Fergus v. Miln, 128 Ill.App. 434. See In re Rahn's Will, 209 Ill.App. 234.
N.D.—Burdick v. Mann, 236 N.W. 340, 60 N.D. 710, 82 A.L.R. 1443.
4 C.J. p 808 note 31.

In New York
(1) An order granting a preference for trial would be affirmed in absence of showing of an abuse of discretion.
N.Y.—Gladstone v. Killian, 103 N.Y.S. 2d 38, 278 App.Div. 736.

(2) Ordinarily the appellate division will not interfere with exercise of discretion by judge in denying application for two-year advance of case on tort calendar.
N.Y.—Fitzgerald v. South Norwalk Trust Co., 149 N.Y.S.2d 355, 1 A.D. 2d 822.

§ 1600. Continuance

Discretionary rulings of the trial court with respect to the grant or denial of continuances will be reviewed or revised only for prejudicial abuse of discretion or for legal error.

A ruling on a motion for a continuance may be reversed for legal error,[36] and any discretion that the trial court may have with reference to such a motion is a legal one subject to review and revision for prejudicial abuse,[37] particularly when the continuance statute has been complied with in every way;[37.5] the discretion of the trial court is not absolute or arbitrary.[37.10] However, it is more generally held that a motion or application for a continuance or postponement is addressed to the discretion of the trial court, and that its grant or refusal thereof will not be reviewed or reversed if no abuse is shown,[38] some authorities also requiring,

(3) Exercise of discretion by court in granting preference of trial in "interests of justice" should not be disturbed merely because it is deemed to have been improvident.
N.Y.—Bernstein v. Strammiello, 120 N.Y.S.2d 490, 202 Misc. 823.

(4) Where facts alleged were not sufficient to justify, on ground of indigence, preference in trial, granting of preference was improvident exercise of discretion, and would be reversed.
N.Y.—Roberts v. Ellis, 107 N.Y.S.2d 272, 279 App.Div. 597.

(5) In action for infant's injuries, order granting plaintiffs' motion for preference was improvident exercise of discretion requiring a reversal.
N.Y.—Lavicka v. National Transp. Co., 34 N.Y.S.2d 892, 264 App.Div. 785.

(6) Where a plaintiff is entitled to have his action placed on a special calendar for trial, pursuant to a rule of court, and his application is denied under a misconstruction of the rule and not in the exercise of discretion, the order will be reversed and the motion granted.
N.Y.—Lederer v. Kaufman, 163 N.Y.S. 581.

36. Mass.—Tierney v. Coolidge, 32 N.E.2d 198, 308 Mass. 255, 132 A. L.R. 1349.
Tex.—Ft. Worth & R. G. Ry. Co. v. Jones, Civ.App., 212 S.W. 552.
4 C.J. p 810 note 41.

Continuance as matter of right
Me.—Waterville Realty Corporation v. City of Eastport, 8 A.2d 898, 136 Me. 309.

Admission of hearsay evidence on hearing
Although hearsay evidence was admitted on the hearing of a motion for a continuance, but other evidence showed that the court did not abuse its discretion in refusing a continuance, its judgment will not be reversed for the alleged error in admitting the hearsay evidence.
Ga.—Odom v. Attaway, 152 S.E. 148, 41 Ga.App. 51.

37. Ark.—Ashworth v. Brickey, 195 S.W. 682, 129 Ark. 295.
Ill.—Krupinski v. Denison, 132 N.E.2d 451, 9 Ill.App.2d 155—Adcock v. Adcock, 91 N.E.2d 99, 339 Ill.App. 543.
Ind.—Simpson v. Swinehart, 98 N.E. 2d 509, 122 Ind.App. 1—House v. Cardinal, 122 N.E. 11, 69 Ind.App. 428.
Iowa.—Kemp v. Day & Zimmerman, 33 N.W.2d 569, 239 Iowa 829.
La.—Succession of Muller, 1 La.App. 402.
Mass.—Knapp v. Graham, 67 N.E.2d 841, 320 Mass. 50.
Mo.—Savings Finance Corp. v. Blair, App., 280 S.W.2d 675—Van Fleet v. Van Fleet, App., 253 S.W.2d 508—Nelson v. Dorste, App., 250 S.W.2d 726—State ex rel. Stanley v. American Surety Co. of New York, App., 80 S.W.2d 260, followed in State ex rel. Harris v. American Surety Co. of New York, 80 S.W.2d 264—Noah v. L. B. Price Mercantile Co. 231 S.W. 300, 208 Mo.App. 149—Jones v. Jones, 175 S.W. 227, 188 Mo.App. 220.
N.C.—Abernethy v. State Planters' Bank & Trust Co., 161 S.E. 705, 202 N.C. 46.
Okl.—Kinnear v. Dennis, 223 P. 383, 97 Okl. 206—Slusser v. Daniel, 206 P. 827, 86 Okl. 116.
Or.—Baker v. Jensen, 295 P. 467, 135 Or. 669.
Tex.—Leija v. Concha, Civ.App., 39 S.W.2d 948—Fidelity Oil Co. of New Jersey v. Swinney, Civ.App., 254 S.W. 137, motion overruled 260 S.W. 1111—Lee v. Zundelowitz, Civ. App., 242 S.W. 279.
Vt.—Land Finance Corporation v. St. Johnsbury Wiring Co., 137 A. 324, 100 Vt. 328.
W.Va.—Staples v. Left Fork Fuel Co., 77 S.E.2d 872, 138 W.Va. 819—Powell v. Sayres, 60 S.E.2d 740, 134 W.Va. 653—Hutchinson v. Montgomery Memorial Park Corp., 36 S. E.2d 889, 128 W.Va. 419—Doane v. Parsons Pulp & Lumber Co., 87 S. E. 859, 77 W.Va. 454.
4 C.J. p 809 note 40.

Arbitrary or capricious refusal
Discretion of trial court to grant or refuse a continuance must be exercised judiciously and not arbitrarily or capriciously, and arbitrary or capricious refusal of continuance will justify a reversal.
Ill.—Heideman v. Kelsey, 121 N.E.2d 45, 3 Ill.App.2d 189.

Compelling trial without party or attorney
(1) Where rights of party have been sacrificed, as when defendant's attorney was forced to go to trial without him, he being a necessary witness, the supreme court will review the exercise of discretion of the trial court in the matter of continuance.
Ark.—Ashworth v. Brickey, 195 S.W. 682, 129 Ark. 295.

(2) Where during the progress of a trial the attorney for one of the parties is stricken with a serious illness, and this attorney's law clerk appears and moves the court for a postponement or that the case be stricken from the day's assignment, and the record is uncontroverted in showing that the stricken attorney is the only person familiar with the facts and the theory of the case represented by him, and is the only one who has prepared to try the case, the overruling of such motion and requiring such attorney's law clerk to proceed with the trial is a denial of the right of the party litigant to be represented by counsel of his own choosing, and is such an abuse of judicial discretion as to require correction by this court.
Okl.—Kinnear v. Dennis, 223 P. 383, 97 Okl. 206.

37.5 Tex.—Robertson v. Robertson, Civ.App., 291 S.W.2d 452—Piedmont Fire Ins. Co. v. Dunlap, Civ.App., 193 S.W.2d 853, error refused no reversible error—United Employers Cas. Co. v. McCloud, Civ.App., 146 S.W.2d 247.

37.10 Mo.—Van Fleet v. Van Fleet, App., 253 S.W.2d 508.

38. Ala.—American Rubber Corp. v. Jolley, 72 So.2d 102, 260 Ala. 600—Ex parte Driver, 62 So.2d 241, 258 Ala. 233—Ray v. Richardson, 36 So. 2d 89, 250 Ala. 705—Ex parte Central Alabama Dry Goods Co., 189 So. 56, 238 Ala. 20—City of Birmingham v. Banks, 153 So. 189, 228 Ala. 295—Berry v. Dannelly, 145 So. 663, 226 Ala. 151—Sheffield Chamber of Commerce v. Hatch, 127 So. 173, 220 Ala. 601—Morris v. McElroy, 122 So. 608, 219 Ala. 369—Knowles v. Blue, 95 So. 481, 209 Ala. 27—Lutz v. Van Heynigen Brokerage Co., 80 So. 72, 202 Ala. 234.
Pensacola, St. A. & G. S. S. Co. v. Brooks, 70 So. 968, 14 Ala.App. 364.
Ariz.—City of Tucson v. O'Rielly

Motor Co., 168 P.2d 245, 64 Ariz. 240—Merryman v. Sears, 72 P.2d 943, 50 Ariz. 412—Schuster v. Schuster, 23 P.2d 559, 42 Ariz. 190—Arnett v. Peterson, 210 P. 683, 24 Ariz. 405.

Ark.—Thompson v. Foote, 134 S.W.2d 11, 199 Ark. 474—Norton & Wheeler Stave Co. v. Wright, 106 S.W.2d 178, 194 Ark. 115—Greer v. Keathly, 87 S.W.2d 26, 191 Ark. 529—Missouri Pac. R. Co. v. Berry, 83 S.W.2d 531, 191 Ark. 1165—City Nat. Bank v. Riggs, 70 S.W.2d 574, 189 Ark. 123—Palmer v. Folsom, 66 S.W.2d 1063, 188 Ark. 1167—Baltimore & O. R. Co. v. McGill Bros. Rice Mill, 46 S.W.2d 651, 185 Ark. 108—Chalkey v. Henley, 12 S.W.2d 18, 178 Ark. 635—Newsom v. Reed, 6 S.W.2d 10, 177 Ark. 177—Bankers' Fire Ins. Co. v. Williams, 5 S.W.2d 916, 176 Ark. 1188—Sinclair Oil & Gas Co. v. Langley, 293 S.W. 1015, 173 Ark. 956—C. H. Robinson Co. v. Hudgins Produce Co., 212 S.W. 305, 138 Ark. 500.

Cal.—Schlothan v. Rusalem, 260 P.2d 68, 41 C.2d 414—In re Kay's Estate, 181 P.2d 1, 30 C.2d 215—Miller v. Miller, 156 P.2d 931, 26 C.2d 119—Berk v. Equitable Life Assur. Soc. of U. S., 61 P.2d 762, 7 C.2d 544—Bank of America Nat. Trust & Savings Ass'n v. Harriscolor Films, 31 P.2d 189, 200 C. 383.

Gonzalez v. Gonzalez, App., 312 P.2d 333—Beck v. Reinholtz, 292 P. 2d 906, 138 C.A.2d 719—Johnson v. Fassett, 283 P.2d 281, 132 C.A.2d 871—Slaughter v. Zimman, 234 P.2d 94, 105 C.A.2d 623—In re Harrison's Estate, 228 P.2d 881, 103 C.A.2d 12—Taylor v. Gordon, 227 P.2d 64, 102 C.A.2d 233—Maynard v. Bullis, 222 P.2d 685, 99 C.A.2d 805—Volkering v. Allen, 216 P.2d 552, 96 C.A.2d 804—Biedebach v. Charles, 215 P.2d 114, 96 C.A.2d 250—In re Lefranc's Estate, 214 P.2d 420, 95 C.A.2d 885—Connor v. Jackson, 210 P.2d 897, 94 C.A.2d 462—May v. Rosen, 205 P.2d 1118, 91 C.A.2d 794—Thorpe v. Thorpe, 171 P.2d 126, 75 C.A.2d 605—Ferrari v. Mambretti, 161 P.2d 275, 70 C.A.2d 492—Capital Nat. Bank of Sacramento v. Smith, 144 P.2d 665, 62 C.A.2d 328—Johnson v Johnson, 139 P.2d 33, 59 C.A.2d 375—Miller v. Miller, 134 P.2d 292, 57 C.A.2d 354—In re McCarthy's Estate, 73 P.2d 913, 23 C.A.2d 395—In re McCarthy's Estate, 73 P.2d 910, 23 C.A.2d 389—Bailey v. Pacific Greyhound Lines, 66 P.2d 1246, 20 C.A.2d 372—Canal Oil Co. v. National Oil Co., 66 P.2d 197, 19 C.A. 2d 524—Callegari v. Maurer, 40 P. 2d 883, 4 C.A.2d 178—Southwestern Creditors' Ass'n v. Garvey, 16 P.2d 796, 128 C.A. 28—Spadoni v. Maggenti, 8 P.2d 874, 121 C.A. 147—Ross v. Thirlwall, 281 P. 714, 101 C.A. 411—Clinton v. Yates, 263 P. 383, 88 C.A. 281—Blankman v. Parsons, 238 P. 728, 73 C.A. 218—Corbin v. Howard, 215 P. 920, 61 C.A. 715—Flynn v. Fink, 213 P. 716, 60 C.A. 670.

Colo.—Benster v. Bell, 267 P. 792, 83 Colo. 587.

Fla.—Fain v. Cartwright, 182 So. 302, 132 Fla. 855—Hall v. Florida State Drainage Land Co., 103 So. 828, 89 Fla. 312—Bolles v. Carson, 74 So. 509, 73 Fla. 504.

Ga.—Pope v. U. S. Fidelity & Guaranty Co., 35 S.E.2d 899, 200 Ga. 69—Benjamin v. Weintraub, 151 S.E. 381, 169 Ga. 770—Loe v. Brown, 116 S.E. 309, 155 Ga. 24—Hilton v. Haynes, 95 S.E. 220, 147 Ga. 725—Dale v. Beasley, 81 S.E. 849, 141 Ga. 594.

Beazley v. De Kalb County, 75 S.E.2d 657, 87 Ga.App. 910, reversed on other grounds 77 S.E.2d 740, 210 Ga. 41, opinion conformed to 78 S.E. 2d 365, 88 Ga.App. 856, and judgment vacated on other grounds 78 S.E.2d 365, 88 Ga.App. 856—Stanley v. Amos, 53 S.E.2d 568, 79 Ga. App. 297—State Highway Dept. v. Peavy, 48 S.E.2d 478, 77 Ga.App. 308—United Motor Freight Terminals v. Driver, 44 S.E.2d 156, 75 Ga.App. 571—Gaines v. Alexander, 26 S.E.2d 130, 69 Ga.App. 512—Department of Revenue v. Stewart, 20 S.E.2d 40, 67 Ga.App. 281, followed in 20 S.E.2d 46, first case, 67 Ga.App. 290, 20 S.E.2d 46, second case, 67 Ga.App. 291, and 20 S.E.2d 47—Williams v. Baber, 5 S.E.2d 703, 61 Ga.App. 56—Metropolitan Life Ins. Co. v. Hale, 171 S.E. 306, 47 Ga.App. 674—Atlanta & W. P. R. Co. v. Lambert, 147 S.E. 163, 39 Ga. App. 371—Camp v. Lainer, 135 S.E. 224, 36 Ga App. 54—Betenbo v. Brooks & Tabor, 88 S.E. 411, 17 Ga. App. 754—Porter v. Porter, 87 S.E. 707, 17 Ga.App. 456.

Hawaii.—Irwin v. Lyman, 29 Hawaii 434.

Idaho.—Pauley v. Salmon River Lumber Co., 264 P.2d 466, 74 Idaho 483—Lanning v. Sprague, 227 P.2d 347, 71 Idaho 138—Pacific Coast Joint Stock Land Bank v. Security Products Co., 55 P.2d 716, 56 Idaho 436—Eldridge v. Black Canyon Irr. Dist., 43 P.2d 1052—Burlington Sav. Bank v. Grayson, 254 P. 215, 43 Idaho 654—Berlin Machine Works v. Dehlbom Lumber Co., 186 P 513, 32 Idaho 566.

Ill.—Gray v. Gray, 128 N.E.2d 602, 6 Ill.App.2d 571—In re Adams' Estate, 108 N.E.2d 32, 348 Ill.App. 115—Ferrell v. Southern Illinois Ry. & Power Co., 206 Ill.App. 169.

Ind.—Louisville & Southern Indiana Traction Co. v. Montgomery, 115 N.E. 673, 136 Ind. 384.

Kroll v. Smith, App., 139 N.E.2d 573—Stair v. Meissel, 193 N.E. 398, 99 Ind.App. 495—Sager v. Moltz, 189 N.E. 687, 80 Ind.App. 122—Ruddick v. Hollowell, 125 N.E. 82, 71 Ind.App. 442.

Iowa.—J. F. Wilcox & Sons v. City of Omaha, 264 N.W. 5, 220 Iowa 1131—Van Houten v. Barrans, 258 N.W. 546—Suiter v. Wehde, 254 N. W. 33, 218 Iowa 200—Anspach v. Littler, 253 N.W. 120, 217 Iowa 787—Newland v. G. McClelland & Son, 250 N.W. 229, 217 Iowa 568—Duncan v. Rhomberg, 236 N.W. 638, 212 Iowa 389—Temple Lumber Co. v. Lattner, 233 N.W. 522, 211 Iowa 465—Twaites v. Bailly, 231 N.W. 332, 210 Iowa 783—Des Moines Joint Stock Land Bank of Des Moines v. Danson, 220 N.W. 102, 206 Iowa 897, opinion supplemented 221 N.W. 542, 206 Iowa 897—Robinson v. Hawkeye Commercial Men's Ass'n, 171 N.W. 118, 186 Iowa 759—Mitchell v. Beck, 156 N.W. 428, rehearing denied 160 N.W. 232, 178 Iowa 786.

Kan.—Minch v. Winters, 253 P. 578, 122 Kan. 533.

Ky.—Riordan v. Riordan, 252 S.W.2d 901—Farris v. Evans, 158 S.W.2d 941, 289 Ky. 418—Herrell v. Davenport's Ex'x, 82 S.W.2d 506, 259 Ky. 514—Overstreet v. Citizens' Union Nat. Bank, 76 S.W.2d 641, 256 Ky. 653—Fidelity & Deposit Co. of Maryland v. Jones, 75 S.W.2d 1057, 256 Ky. 181—Park Circuit & Realty Co. v. Coulter, 24 S.W.2d 942, 233 Ky. 1—Ocean Accident & Guarantee Corporation v. Heavrin, 21 S.W.2d 435, 231 Ky. 305—Watson v. Bean, 270 S.W. 801, 208 Ky. 295—Holliday v. Cornett, 244 S.W. 875, 196 Ky. 427—Cassidy v. Berkovitz, 185 S.W. 129, 169 Ky. 785—Eich v. Mader, 175 S.W. 997, 164 Ky. 522.

La.—State ex rel. Armstrong v. McNoughton, 164 So. 630, 183 La. 697—Pender v. Gray, 88 So. 786, 149 La. 184.

Gillentine v. McLeod, App., 70 So. 2d 384—Wild v. Standard General Realty Co., App., 145 So. 58, affirmed 149 So. 114, 177 La. 664—Lewis v. Brunson, 122 So. 143, 11 La.App. 22—Fuqua v. Couvillion, 5 La.App. 452—Schiro v. Monteleone, 2 La.App. 280—Succession of Muller, 1 La.App. 402.

Me.—Cunningham v. Long, 135 A. 198, 125 Me. 494.

Md.—Steele v. Seth, 127 A.2d 388, 211 Md. 323—Millstein v. Yost, 79 A.2d 149, 197 Md. 348—Phoebus v. Sterling, 198 A. 717, 174 Md. 394—Mead v. Tydings, 105 A. 863, 133 Md. 608.

Mass.—Barnes v. City of Springfield, 168 N.E. 78, 268 Mass. 497, certiorari denied 50 S.Ct. 246, 281 U.S. 732, 74 L.Ed. 1148.

Mich.—Baker v. Wetherald, 289 N.W. 282, 291 Mich. 646—Union Guardian Trust Co. v. Kowalsky, 255 N. W. 171, 267 Mich. 110—Kranich & Bach v. Lobell, 198 N.W. 922, 227 Mich. 288—Robertson v. Hulbert, 197 N.W. 505, 226 Mich. 219—People v. Fenner, 185 N.W. 806, 217 Mich. 239.

Minn.—Kate v. Kate, 48 N.W.2d 551, 234 Minn. 402—Lehman v. Lehman, 13 N.W.2d 604, 216 Minn. 538—Peterson v. Parviainen, 219 N.W. 180, 174 Minn. 297—Sundin v. County Fire Ins. Co. of Philadelphia, 174 N.W. 729, 144 Minn. 100.

Miss.—Southern Beverage Co. v. Barbarin, 69 So.2d 395, 219 Miss. 493—Roberson v. Quave, 51 So.2d 62, 211 Miss. 398—Gardner v. Price, 25 So.2d 459, 199 Miss. 809, 164 A.L.R. 532—Tonnar v. Wade, 121 So. 156, 153 Miss. 722—Continental Ins. Co. of City of New York v. Brown, 106 So. 633, 142 Miss. 199.

Mo.—Graves v. Davidson, 68 S.W.2d 711, 334 Mo. 882—Laumeier v. Laumeier, 271 S.W. 481, 308 Mo. 201—Seelig v. Missouri, K. & T. Ry. Co., 230 S.W. 94, 287 Mo. 343.

McGinley v. McGinley, App., 170 S.W.2d 938—Harrison v. McNergney, App., 111 S.W.2d 191—Gregory v. Hansen, App., 224 S.W. 82—Bank of Raymondville v. National Safe & Lock Co., App., 184 S.W. 1176—Jones v. Jones, 175 S.W. 227, 188 Mo.App. 220—Gibson v. Pioneer Life Ins. Co., 168 S.W. 818, 181 Mo. App. 302.

Mont.—State ex rel. Clark v. Bailey, 44 P.2d 740—St. George v. Boucher, 274 P. 489, 84 Mont. 158—Ward v. Strowd, 244 P. 1007, 76 Mont. 93—McCarthy v. Anaconda Copper Mining Co., 225 P. 391, 70 Mont. 309—Roy v. Clark, 215 P. 232—Hunt v. Van, 202 P. 573, 61 Mont. 395.

Neb.—Kulhanek v. Kulhanek, 278 N. W. 563, 134 Neb. 349—Waldron v. Lapidus, 236 N.W. 139, 121 Neb. 54—Mahaffy v. Hansen Live Stock & Feeding Co., 178 N.W. 829, 105 Neb. 9.

Nev.—Benson v. Benson, 204 P.2d 816, 66 Nev. 94—Neven v. Neven, 148 P. 354, 38 Nev. 541, Ann.Cas. 1918B, 1083, rehearing denied 154 P. 78, 38 Nev. 541, Ann.Cas.1918B 1083.

'Nev.—Benson v. Benson, 204 P.2d 2d 238, 8 N.J. 506.

Borough of Hawthorne v. Jowett, 1 A.2d 431, 121 N.J.Law 38—Heinz v. Atlantic Stages, 174 A. 682, 113 N.J.Law 321—Crossley v. William H. Connolly Co., 97 A. 945, 89 N.J. Law 55, reversed on other grounds 100 A. 228, 90 N.J.Law 238.

N.M.—Askew v. Rice, 146 P.2d 865, 48 N.M. 145—First Nat. Bank v. Lutz, 216 P. 505, 28 N.M. 615—State Bank of Commerce of Clayton v. Western Union Telegraph Co., 142 P. 156, 19 N.M. 211, L.R.A. 1915A 120.

N.Y.—Citizens' Trust Co. of Utica v. R. Prescott & Son, 223 N.Y.S. 191, 221 App.Div. 426.

N.C.—Better Home Furniture Co. of Winston-Salem v. Baron, 91 S.E.2d 236, 243 N.C. 502—Todd v. Smathers, 68 S.E.2d 783, 235 N.C. 123—Cole v. Bryant, 197 S.E. 160, 213 N.C. 672—In re Bank of Whiteville, 162 S.E. 568, 202 N.C. 251—Massey v. North Carolina R. Co., 84 S.E. 1047, 169 N.C. 245.

N.D.—In re Smith's Estate, 288 N.W. 235, 69 N.D. 437.

Ohio.—State ex rel. Buck v. McCabe, 45 N.E.2d 763, 140 Ohio St. 535.

State ex rel. General Exchange Ins. Corp. v. Crawford, 131 N.E.2d 661, 99 Ohio App. 129—Davis v. Shigley, 100 N.E.2d 261, 88 Ohio App. 423—Zaggi v. Republic Steel Corp. Employees Relief Ass'n, 37 N.E.2d 968, 67 Ohio App. 533.

Okl.—Morgan v. Duncan, 287 P.2d 694—City of Altus v. Martin, 268 P.2d 228—Magnolia Petroleum Co. v. Norvell, 240 P.2d 80, 205 Okl. 645—Highway Ins. Underwriters v. Evans, 228 P.2d 361, 204 Okl. 205—Bailey v. Lovin, 209 P.2d 994, 202 Okl. 17—Atkins v. Bean, 184 P.2d 449, 199 Okl. 114—Thomas v. State ex rel. Com'rs of Land Office, 172 P.2d 973, 197 Okl. 450—Riley v. Lindley, 165 P.2d 633, 196 Okl. 413—Logan v. Jacobs, 119 P.2d 53, 189 Okl. 617—State ex rel. Hembree v. Cleveland County Court, 118 P. 2d 247, 189 Okl. 383—In re Johnson's Estate, 114 P.2d 469, 189 Okl. 157—Kurn v. Margolin, 101 P.2d 818, 187 Okl. 135—Barlow v. Prudential Ins. Co. of America, 62 P.2d 969, 178 Okl. 265—Hope v. Gordon, 50 P.2d 669, 174 Okl. 368—Martin v. McCune, 39 P.2d 978, 170 Okl. 196—Oil Reclaiming Co. v. Reagin, 37 P.2d 289, 169 Okl. 505—Exendine v. Iron, 4 P.2d 1035, 153 Okl. 177—Knapp v. State Land Com'rs, 281 P. 773, 139 Okl. 164—Improved Industrial Order of Wisemen v. Muskogee Sec. Nat. Bank, 280 P. 1087, 139 Okl. 16—Sparrow v. Oklahoma Club, 267 P. 835, 131 Okl. 110—Sampson v. Lindley, 249 P. 285, 121 Okl. 252—Houser v. Ivey, 249 P. 141, 119 Okl. 42—Moore v. Morris, 243 P. 933, 116 Okl. 224—Bilby v. Halsell, 232 P. 379, 105 Okl. 215—Muskogee Electric Traction Co. v. Bolin, 232 P. 105, 105 Okl. 142—Chortney v. Curry, 225 P. 950, 99 Okl. 69—Johnston v. Shaffer, 221 P. 748, 96 Okl. 236—Barker v. Barker, 218 P. 812, 99 Okl. 103—Lynch v. Peterson, 215 P. 617, 91 Okl. 28—Central Coal & Lumber Co. v. Jones, 212 P. 606, 88 Okl. 219—Alva Roller Mills v. Simmons, 185 P. 76, 74 Okl. 314—Columbian Nat. Life Ins. Co. v. Wirthle, 176 P. 406, 73 Okl. 302—Scott v. Iman, 176 P. 81, 74 Okl. 13—Lusk v. Phelps, 175 P. 756, 71 Okl. 150—Cowokochee v. Chapman, 171 P. 50, 67 Okl. 263—Holland Banking Co. v. Dicks, 170 P. 253, 67 Okl. 228—Schafer v. Lee, 166 P. 94, 64 Okl. 106—Kennedy v. Pulliam, 158 P. 1140, 60 Okl. 16—Daugherty v. Feland, 157 P. 1144, 59 Okl. 122—Elliot v. Coggswell, 155 P. 1146, 56 Okl. 239—Comanche Mercantile Co. v. Waymire, 155 P. 542, 55 Okl. 318—Jones v. Thompson, 154 P. 1139, 55 Okl. 24—Missouri, O. & G. Ry. Co. v. West, 151 P. 212, 50 Okl. 521—Pool v. Riegel, 147 P. 1193, 46 Okl. 5.

Or.—In re Losie's Estate, 66 P.2d 1175, 156 Or. 207—Taylor v. Nelson, 8 P.2d 1089, 139 Or. 155, denying rehearing 5 P.2d 707, 139 Or. 155—Clevenger v. Smith, 270 P. 501, 126 Or. 384—Portland & Oregon City Ry. Co. v. Sanders, 167 P. 564, 86 Or. 62.

Pa.—Anderson v. Guerrein Sky-Way Amusement Co., 29 A.2d 682, 346 Pa. 80, 144 A.L.R. 1258.

Com. ex rel. Glener v. Glener, 94 A.2d 102, 173 Pa.Super. 108—Frendlich v. Montgomery, 89 Pa. Super. 179—Birdsong v. Polinsky, 58 Pa.Super. 515.

R.I.—Capobianco v. United Wire & Supply Corp., 117 A.2d 436—Williams v. Altruda, 58 A.2d 562, 74 R.I. 47—Anthony v. Anthony & Cowell Co., 99 A. 641, 40 R.I. 1.

S.C.—Byus v. Eason, 182 S.E. 442—Lerner v. Bluestein, 178 S.E. 265, 175 S.C. 57—Williams v. Metropolitan Life Ins. Co., 176 S.E. 340, 173 S.C. 448—Pardue v. Pardue, 166 S. E. 101, 167 S.C. 129—Merchants' Fertilizer & Phosphate Co. v. American Land & Building Corporation, 164 S.E. 17, 165 S.C. 394—Edwards v. Union Buffalo Mills Co., 159 S.E. 818, 162 S.C. 17—King v. Smith, 146 S.E. 237, 148 S.C. 419—Lummus Cotton Gin Co. v Counts, 82 S.E. 391, 98 S.C. 136.

S.D.—Sprick v. Schreiner, 236 N.W. 299, 58 S.D. 394.

Tenn.—Northcross v. Taylor, 197 S. W.2d 9, 29 Tenn.App. 438—Patton v. Morarity, 74 S.W.2d 513, 18 Tenn.App. 184.

Tex.—Massingill v. Henwood, 159 S. W.2d 118, 138 Tex. 317.

Chandler v. Brown, Civ.App., 301 S.W.2d 720, error refused no reversible error—Johnson v. Johnson, Civ.App., 296 S.W.2d 615—Mitchell v. Mitchell, Civ.App., 233 S.W.2d 187—Butcher v. Tinkle, Civ.App., 183 S.W.2d 227, error refused—Butler v. Express Pub. Co., Civ.App., 151 S.W.2d 309, error dismissed, judgment correct—McFaddin v. Oakwood Realty Co., Civ. App., 139 S.W.2d 636, error dismissed, judgment correct—Federal Underwriters Exchange v. Rigsby, Civ.App., 130 S.W.2d 1105, error dismissed, judgment correct—Gulftex Drug Co. v. Schachter, Civ. App., 110 S.W.2d 1220—Stribling v. Stribling, Civ.App., 85 S.W.2d 315, error dismissed and followed in 85 S.W.2d 322—Vey v. City of Fort Worth, Civ.App., 81 S.W.2d 228—American Employers' Ins. Co. v. McMickle, Civ.App., 67 S.W.2d 379—Morriss-Buick Co. v. Davis,

Civ.App., 59 S.W.2d 937—Ferguson v. Ferguson, Civ.App., 11 S.W.2d 214, affirmed, Com.App., 23 S.W.2d 673—Lowe v. Lowe, Civ.App., 293 S.W. 915—Minney v. Scharbauer, Civ.App., 286 S.W. 552—Jeffers v. Brewer, Civ.App., 266 S.W. 1110—Costley v. Chapman, Civ.App., 262 S.W. 543—Goodwin v. American Nat. Bank of Shreveport, La., Civ. App., 236 S.W. 780—Short v. Walters, Civ.App., 231 S.W. 161—Guyer v. Chapman, Civ.App., 227 S.W. 217, dismissed for want of jurisdiction—Gateway Produce Co. v. Sunset Fruit & Produce Co., Civ.App., 222 S.W. 654—Hutson v. Cade, Civ. App., 217 S.W. 438—City of Ft. Worth v. Rosen, Civ.App., 203 S.W. 84, affirmed, Com.App., 228 S.W. 933—Adams v. Overland Automobile Co., Civ.App., 202 S.W. 207—Alderete v. Mosley, Civ.App., 200 S.W. 261—St. Louis Southwestern Ry. Co. of Texas v. Williams, Civ. App., 170 S.W. 1069.

Utah.—Patton v. Evans, 69 P.2d 969, 92 Utah 524, 112 A.L.R. 589—Sharp v. Canakis Gianulakis, 225 P. 337, 63 Utah 249.

Va.—Miller v. Grier S. Johnson, Inc., 62 S.E.2d 870, 191 Va. 768—Clinchfield Coal Corporation v. Webber, 181 S.E. 357, 165 Va. 49—Atkinson v. Neblett, 132 S.E. 326, 144 Va. 220—Elliott v. United Realty Corporation, 130 S.E. 802, 144 Va. 752—Big Sandy & C. R. Co. v. Ball, 113 S.E. 722, 133 Va. 431—Town of Farmville v. Wells, 103 S.E. 596, 127 Va. 528—Matoaka Coal Corp. v. Clinch Valley Mining Corp., 93 S.E. 799, 121 Va. 522—Chesapeake & O. Ry. Co. v. Newton's Adm'r, 85 S.E. 461, 117 Va. 260.

Wash.—Kemp v. Putnam, 288 P.2d 837, 47 Wash.2d 530—Barrinuevo v. Barrinuevo, 287 P.2d 349, 47 Wash.2d 296—Donaldson v. Greenwood, 242 P.2d 1038, 40 Wash.2d 238—Jerkovich v. Pacific First Federal Sav. & Loan Ass'n, 160 P.2d 512, 23 Wash.2d 130—State ex rel. Walton v. Superior Court for Snohomish County, 140 P.2d 554, 18 Wash.2d 810—State ex rel. Hamilton v. Standard Oil Co. of California, 68 P.2d 1031, 190 Wash. 496—Firestone Tire & Rubber Co. v. Bordeaux, 30 P.2d 385, 176 Wash. 592—Empens v. Tomer, 17 P.2d 21, 170 Wash. 524.

W.Va.—Powell v. Sayres, 60 S.E.2d 740, 134 W.Va. 653—Kitson v. Messenger, 27 S.E.2d 265, 126 W.Va. 60—Rogers v. Goforth, 2 S.E.2d 903, 121 W.Va. 239—Proudfoot v. Pocahontas Transp. Co., 132 S.E. 746, 100 W.Va. 733—McDermott v. Pentress Gas Co., 95 S.E. 841, 82 W.Va. 230—Doane v. Parsons Pulp & Lumber Co., 87 S.E. 850—Cave v. Blair Limestone Co., 82 S.E. 1095, 74 W.Va. 752.

Wis.—Druska v. Western Wisconsin Telephone Co., 189 N.W. 152, 177 Wis. 621—In re Bilty's Will, 176 N.W. 220, 171 Wis. 20.

4 C.J. p 809 note 32—51 C.J. p 285 note 7 [a].

Review of grant of recess or adjournment pending trial see infra § 1603.

"It is not enough that if the application for a continuance had been presented to us we might have felt inclined to grant it. On appeal we must go further, and find as a matter of law that the district court, in view of the facts and circumstances disclosed by the record, abused the discretion which the law has conferred upon it, and which the law wisely withholds from us. We cannot exercise original discretion in such cases, but all we may do is to determine as a matter of law whether the district court has abused its discretion."

Utah.—Van Cott v. Wall, 178 P. 42, 48, 53 Utah 282.

Reason for rule

Judge observes and knows surrounding facts and circumstances, and hence is in better position than appellate court to determine whether design of party making motion for continuance is delay, or whether continuance is essential to fair and impartial trial.

Va.—Miller v. Grier S. Johnson, Inc., 62 S.E.2d 870, 191 Va. 768.

Motion of trial judge sitting as jury

Mo.—Harlan v. Blume, App., 190 S.W.2d 273.

Second motion

Tex.—Kramer v. Crout, Civ.App., 279 S.W.2d 932, error refused no reversible error.

Presumptions and burden of proof

(1) An abuse of discretion will not be presumed.

Wash.—Calhoun, Denny & Ewing v. Quinlan, 150 P. 1132, 86 Wash. 547.

(2) Decision of trial court on a motion for a continuance is presumed to be proper.

Tex.—Texas Indem. Ins. Co. v. Harlan, Civ.App., 236 S.W.2d 564, error dismissed—Dittmar v. St. Louis Union Trust Co., Civ.App., 155 S.W.2d 388, error refused.

(3) Where motion for continuance does not comply with rule relating thereto, presumption is court did not abuse its discretion in refusing a continuance.

Tex.—Jinks v. Jinks, Civ.App., 205 S.W.2d 816.

(4) When continuance rule has been complied with, there is no presumption that court did not abuse its discretion.

Tex.—Piedmont Fire Ins. Co. v. Dunlap, Civ.App., 193 S.W.2d 853, error refused no reversible error—United Employers Cas. Co. v. McCloud, Civ.App., 146 S.W.2d 247—Gulf, C. & S. F. R. Co. v. Brooks, 132 S.W. 95, 63 Civ.App. 231, error refused.

(5) Burden of proving a prejudicial abuse of discretion rests on the party complaining of the grant or denial of a continuance.

Ala.—City of Birmingham v. Goolsby, 150 So. 322, 227 Ala. 421.

Cal.—White v. Rurup, 199 P.2d 451, 88 C.A.2d 692.

Ga.—Betenbo v. Brooks & Tabor, 88 S.E. 411, 17 Ga.App. 754.

Iowa.—Cavanagh v. O'Connor, 186 N.W. 907, 194 Iowa 670.

Okl.—Saunders v. Commercial Credit Co., 268 P. 228, 131 Okl. 193.

Tex.—Dean v. Allied Oil Co., Civ. App., 261 S.W.2d 900, error dismissed.

(6) Presumptions as to grant or refusal of continuances generally see supra § 1545.

Stipulation of parties

(1) Whether a continuance should be granted on the stipulation of the parties is in the discretion of the trial court, subject to revision only if such discretion is abused.

Cal.—Lorraine v. McComb, 32 P.2d 960, 220 C. 753.

(2) "The essence of the grievance of petitioners is that under said practice a trial court, by insisting upon trial on a day certain, over protest of both litigants, acts so arbitrarily as to violate the legal rights of the parties. However, it requires no effort to see that there are two sides to this controversy. The orderly and effective dispatch of legal business is the controlling factor with the court. The rights and conveniences of the parties to each particular cause present the other side. It is regrettable that a clash may at times occur between these forces. But the exercise of controlling discretion in such a situation must be exerted by the trial court, subject to revision by the higher courts if such discretion is abused. Ordinarily it should be possible to accommodate the parties in cases where they mutually agree to a postponement of the trial date, but in case this becomes impracticable, the judicial control imposed in the court by the Constitution must prevail."

Cal.—Lorraine v. McComb, 32 P.2d 960, 961, 220 C. 753.

Consideration of alleged facts and testimony

In determining whether denial of continuance constituted abuse of discretion, alleged facts and testimony taken on trial should be considered together.

Tex.—Sears, Roebuck & Co. v. Jones, Civ.App., 303 S.W.2d 432.

for review, that injustice be shown.[38.5]

The general rule has been applied where the continuance or postponement has been sought because of the absence or illness of witnesses,[39] parties,[40] counsel,[41] the court reporter,[42] or a juror;[43] inability to obtain counsel;[43.5] surprise;[44] amendments to pleadings;[45] the pendency of another ac-

38.5 Ind.—Simpson v. Swinehart, 98 N.E.2d 509, 122 Ind.App. 1.
Iowa.—State v. One Certain Auto., 23 N.W.2d 847, 237 Iowa 1024—Gaynor v. Magoun, 294 N.W. 256, 229 Iowa 134.
N.J.—Allegro v. Afton Village Corp., 87 A.2d 430, 9 N.J. 156.

Injustice to party denied continuance

Iowa.—In re Rogers' Estate, 283 N. W. 906, 226 Iowa 183.

39. Ala.—Roberson v. McCarley, 67 So.2d 814, 259 Ala. 583—Deegan v. Pake, 172 So. 270, 233 Ala. 435—Alabama Fuel & Iron Co. v. Minyard, 88 So. 145, 205 Ala. 140.
Ark.—American Nat. Life Ins. Co. v. White, 191 S.W. 25, 126 Ark. 483.
Cal.—In re Steiner, 285 P.2d 972, 134 C.A.2d 391—Derkmann v. Von Blumenthal, 232 P. 152, 69 C.A. 606—McNett v. McNett, 187 P. 447, 44 C.A. 778.
Ill.—Cairo Lumber Co. v. Corwin, 60 N.E.2d 110, 325 Ill.App. 319—Summers v. Hendricks, 21 N.E.2d 635, 300 Ill.App. 498.
Ky.—Greathouse v. Mitchell, 249 S. W.2d 738—Commonwealth Life Ins. Co. v. Brandon, 97 S.W.2d 2, 265 Ky. 434—Morgan v. Mengel Co., 242 S.W. 860, 195 Ky. 545.
Md.—Cumberland & Westernport Transit Co. v. Metz, 149 A. 4, 158 Md. 424, reargument denied 149 A. 565, 158 Md. 424, and appeal dismissed American Oil Co. v. Metz, 51 S.Ct. 40, 282 U.S. 801, 75 L.Ed. 720.
N.J.—Michael v. Southern Lumber Co., 127 A. 580, 101 N.J.Law 1.
Carty v. McElwee, 107 A.2d 511, 31 N.J.Super. 532—Pepe v. Urban, 78 A.2d 406, 11 N.J.Super. 385.
May v. Van Benschoten, 177 A. 841, 13 N.J.Misc. 268.
Okl.—Employers Cas. Co. v. Barnett, 235 P.2d 685, 205 Okl. 73—O'Hern v. Hatter, 119 P.2d 48, 189 Okl. 663—Schuman's, Inc., v. Missy Dress Co., 44 P.2d 862, 172 Okl. 211—N. S. Sherman Machine & Iron Works v. R. D. Cole Mfg. Co., 151 P. 1181, 51 Okl. 353.
Pa.—Parkin v. Philadelphia Rapid Transit Co., 151 A. 362, 300 Pa. 569.
Maryland Casualty Co. v. Specht, 83 Pa.Super. 429—Lawrence McFadden Co. v. City of Philadelphia, 59 Pa.Super. 44.
Tex.—Texas Emp. Ins. Ass'n v. Locke, Civ.App., 224 S.W.2d 755, error refused no reversible error—Texas Employers' Ins. Ass'n v. Howard, Civ.App., 61 S.W.2d 132—Hutson v. Cade, Civ.App., 217 S.W. 438—Kansas City Southern Ry. Co. v. Carter, Civ.App., 166 S.W. 115.
W.Va.—Ohio Valley Bank v. Berry, 100 S.E. 875, 85 W.Va. 95.
4 C.J. p 809 note 33.

Prejudicial abuse of discretion required

Va.—Bradley v. Poole, 47 S.E.2d 341, 187 Va. 432.

Person in military service

Cal.—Culver v. Superior Court In and For Los Angeles County, 270 P.2d 78, 125 C.A.2d 76.

Burden of showing abuse is on appellant.
Ala.—Deegan v. Pake, 172 So. 270, 233 Ala. 435.

Testimony of absent witness

Contention as to what testimony of absent witness might have been in absence of showing of what it would have been is insufficient to show abuse of discretion.
Cal.—Young v. Evans, 144 P.2d 651, 62 C.A.2d 365.

40. Cal.—Kalmus v. Kalmus, 230 P. 2d 57, 103 C.A.2d 405, certiorari denied 72 S.Ct. 292, 342 U.S. 903, 96 L.Ed. 676—Spadoni v. Maggenti, 8 P.2d 874, 121 C.A. 147.
Colo.—McClelland v. Smith, 222 P. 349, 74 Colo. 429.
Ga.—Owen v. Sweat, 117 S.E. 749, 155 Ga. 559.
Collier v. Chamlee, 111 S.E. 223, 28 Ga.App. 334.
Ky.—Terrell v. Flack's Adm'r, 33 S. W.2d 23, 236 Ky. 325—Fennell v. Frisch's Adm'r, 234 S.W. 198, 192 Ky. 535.
Okl.—Norman v. McGraw, 299 P.2d 521—Cullison v. Triplett, 281 P.2d 743—Beck v. Peard, 80 P.2d 614, 183 Okl. 195—Saunders v. Commercial Credit Co., 268 P. 228, 131 Okl. 193—Lynch v. Peterson, 215 P. 617, 91 Okl. 28—N. S. Sherman Machine & Iron Works v. R. D. Cole Mfg. Co., 151 P. 1181, 51 Okl. 353.
Pa.—Weinberger v. Suess, 59 Pa.Super. 616.
Tex.—Erback v. Donald, Civ.App., 170 S.W.2d 289, error refused—Payne v. Latham, Civ.App., 8 S.W.2d 326—Costley v. Chapman, Civ.App., 262 S.W. 543.
4 C.J. p 809 notes 34, 35.

Illness of member of party's family

The grant or refusal of a continuance because of the illness of a member of the family of a party will not be disturbed unless the court's discretion was abused.
Cal.—Lindsey v. Wright, 258 P. 438, 84 C.A. 499.

41. Cal.—Jones v. Green, 168 P.2d 418, 74 C.A.2d 223.
Neb.—Middaugh v. Chicago & N. W. R. Co., 208 N.W. 139, 114 Neb. 438.
Okl.—Jackson v. Jackson, 205 P.2d 297, 201 Okl. 292, 7 A.L.R.2d 1410—Woodmen of the World Life Ins. Soc. v. Chapman, 113 P.2d 600, 189 Okl. 69—House v. Gragg, 44 P.2d 832, 170 Okl. 550—McAllister v. Ealy, 225 P. 146, 98 Okl. 223—Houk v. Gallecies, 214 P. 689, 89 Okl. 175.
Pa.—Weinberger v. Suess, 59 Pa. Super. 616.
4 C.J. p 809 notes 36, 37.

42. Ala.—Shaw v. Knight, 102 So. 701, 212 Ala. 356.

43. Kan.—Schlesener v. Mott, 190 P. 745, 107 Kan. 41.

43.5 Okl.—Rourke v. Myers, 84 P. 2d 639, 184 Okl. 46.

44. Colo.—Dussart v. M. Abdo Mercantile Co., 140 P. 806, 57 Colo. 423.
Ga.—Camp & Camp v. Interstate Chemical Co., 89 S.E. 491, 18 Ga. App. 416.
Mo.—Baker v. Chicago, B. & Q. R. Co., 39 S.W.2d 535, 327 Mo. 986.
4 C.J. p 809 note 38.

45. Ga.—Central Truckaway System v. Harrigan, 53 S.E.2d 186, 79 Ga. App. 117.
Ky.—Western Automobile Casualty Co. v. Lee, 55 S.W.2d 1, 246 Ky. 364.
Mich.—Folkerts v. Marysville Land Co., 210 N.W. 231, 236 Mich. 294.
Okl.—Cimarron Valley Pipe Line Co. v. Holmes, 78 P.2d 403, 182 Okl. 450—Seidenbach's Inc., v. Murdock, 68 P.2d 92, 180 Okl. 85.
S.D.—Voegele v. Tschirley, 81 N.W. 2d 604.
Tex.—Western Union Telegraph Co. v. Hicks, Civ.App., 47 S.W.2d 466—Texas Utilities Co. v. Clark, Civ. App., 269 S.W. 903.

Reverification of pleading

"The granting of permission to defendant at the opening of the trial to verify an answer which was a general denial, and which previously had been verified by defendants' counsel, and the refusal of the court on application by plaintiff for a continuance because of the reverification, does not disclose an abuse of discretion by the court nor afford ground for a reversal."
Kan.—State Bank of Downs v. Abbott, 179 P. 326, 104 Kan. 344.

tion or proceeding;[45.5] or for the purpose of obtaining evidence.[46]

Likewise, the exercise by the trial court of its discretion in determining the time which should be allowed a party to prepare his application or affidavit for a continuance,[47] or the length of time for which a continuance shall be granted,[48] will be interfered with only if there has been a clear abuse of discretion.

c. Selection and Impaneling of Jury

§ 1601. In General

The exercise by the trial court of its discretionary powers as to the selection or impaneling of the jury will be interfered with on appeal only for a clear abuse of discretion.

Although such discretion is a legal one subject to review or revision for manifest abuse,[49] it is generally held that, if no abuse is shown, the appellate court will not review or disturb the trial court's determination of discretionary matters relating to the selection or impaneling of jurors.[50] This rule has been applied with respect to the scope and extent of the voir dire examination of a prospective juror,[51] the order in which parties are allowed to challenge jurors,[51.5] and the allowance of a peremptory challenge to which a party is not entitled as a matter of right.[52]

Special jury. Where the governing statute does not lay down any rule by which the trial judge is to be governed in exercising his discretion in ruling on a motion for a special jury, his judgment thereon is not reviewable.[52.5]

§ 1602. Rulings as to Competency

A discretionary ruling by the trial court on the competency or qualifications of a juror will not be reviewed or interfered with except for clear abuse of discretion.

Unless the discretion of the trial court has been abused or erroneously exercised,[53] its determination

45.5 R.I.—Harrop v. Tillinghast, 195 A. 226, 59 R.I. 255.

Indictment pending in federal court

S.C.—Poston v. Home Ins. Co. of New York, 4 S.E.2d 261, 191 S.C. 314, 123 A.L.R. 1451.

46. Ala.—Centennial Ice Co. v. Mitchell, 112 So. 239, 215 Ala. 688.
Cal.—Johnston v. Johnston, 119 P. 2d 158, 48 C.A.2d 23—Neil v. Gane, 12 P.2d 131, 124 C.A. 51.
Fla.—Dukes v. Walton, 129 So. 700, 100 Fla. 173.
Iowa.—Putnam v. Bussing, 266 N.W. 559, 221 Iowa 871.
Kan.—Willard State Bank v. Clark, 208 P. 549, 111 Kan. 439.
N.D.—Kaye v. Taylor, 148 N.W. 629, 28 N.D. 293.
4 C.J. p 809 note 39.

47. Ill.—Bell v. Toluca Coal Co., 112 N.E. 311, 272 Ill. 576.
Ky.—Neely v. Strong, 217 S.W. 898, 186 Ky. 540.

48. Cal.—Craghill v. Ford, 16 P.2d 343, 127 C.A. 661.

49. Ky.—Martin v. Stumbo Elkhorn Coal Co., 287 S.W. 539, 216 Ky. 147.
Mo.—Hieber v. Thompson, App., 252 S.W.2d 116—Kelley v. Sinn, App., 277 S.W. 360.
4 C.J. p 812 note 56.

50. Ala.—City of Birmingham v. Lane, 97 So. 728, 210 Ala. 252.
Ark.—Hallum v. Blackford, 151 S. W.2d 82, 202 Ark. 544.
Mo.—Rose v. Sheedy, 134 S.W.2d 18, 345 Mo. 610.
Genova v. Kansas City, App., 254 S.W.2d 38.
Ohio.—Miller v. Loy, 140 N.E.2d 38, 101 Ohio App. 405.
Tex.—Galveston, H. & S. A. Ry. Co. v. Contois, Civ.App., 279 S.W. 929, affirmed, Com.App., 288 S.W. 154, certiorari denied 47 S.Ct. 659, 274 U.S. 747, 71 L.Ed. 1328.
4 C.J. p 811 note 55.

Striking jury

Ga.—Holtsinger v. Scarborough, 30 S.E.2d 835, 71 Ga.App. 318.

51. Ark.—Cooper v. Kelly, 198 S.W. 94, 131 Ark. 6.
Ill.—St. Clair County Housing Authority v. Quirin, 39 N.E.2d 363, 379 Ill. 52.
Iowa.—Holub v. Fitzgerald, 243 N.W. 575, 214 Iowa 857—Raines v. Wilson, 239 N.W. 36, 213 Iowa 1251.
Mo.—Gray v. Williams, App., 289 S. W.2d 463.
Neb.—Trebelhorn v. Bartlett, 47 N. W.2d 374, 154 Neb. 113.
Okl.—Rhodes v. Lamar, 292 P. 335, 145 Okl. 223.
Tex.—Fenton v. Wade, Civ.App., 303 S.W.2d 816—Lubbock Bus Co. v. Pearson, Civ.App., 277 S.W.2d 186, error refused no reversible error—Fort Worth & D. C. Ry. Co. v. Kiel, Civ.App., 195 S.W.2d 405, error refused no reversible error.
Vt.—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1716.
4 C.J. p 811 note 55 [b].
Discretion of trial court as to scope and extent of voir dire examination see Juries § 275.

Jurors' relationship to insurance companies

Idaho.—Clark v. Alloway, 170 P.2d 425, 67 Idaho 32.
Ill.—Wheeler v. Rudek, 74 N.E.2d 601, 397 Ill. 438, 4 A.L.R 2d 748.
Mo.—May v. Hexter, App., 226 S.W. 2d 383—Henry v. Tinsley, 218 S.W. 2d 771, 240 Mo.App. 163—Gerran v. Minor, App., 192 S.W.2d 57.
N.M.—Stalcup v. Ruzic, 185 P.2d 298, 51 N.M. 377—Olguin v. Thygesen, 143 P.2d 585, 47 N.M. 377.
Okl.—Beasley v. Bond, 48 P.2d 299, 173 Okl. 355.

51.5 Pa.—Wright v. City of Scranton, 194 A. 10, 128 Pa.Super. 185.
4 C.J. p 811 note 55 [c]—35 C.J. p 418 note 24.

52. N.D.—Comeford v. Morwood, 158 N.W. 258, 34 N.D. 276.
4 C.J. p 811 note 55 [j].

Separate peremptory challenges

The verdict will not be vacated because the court refused defendants separate peremptory challenges of jurors in the absence of abuse of discretion.
Kan.—Seymour v. Kelso, 16 P.2d 958, 136 Kan. 543.

52.5 Tenn.—Clingan v. E. T., V. & G. R. R. Co., 70 Tenn. 726.
Act-O-Lane Gas Service Co. v. Clinton, 245 S.W.2d 795, 35 Tenn. App. 442.

53. Fla.—Johnson v. Reynolds, 121 So. 793, 97 Fla. 591.
N.Y.—Sorensen v. Hunter, 52 N.Y.S. 2d 872, 268 App.Div. 1078, reargument denied 56 N.Y.S.2d 404, 269 App.Div. 808.
S.C.—Brown v. S. H. Kress & Co., 170 S.E. 142, 170 S.C. 178.
Va.—Rust v. Reid, 97 S.E. 324, 124 Va. 1.

of the competency or qualifications of jurors ordinarily will not be reviewed or revised by the appellate court.[54] This rule has been applied to the allowance or denial of a challenge of a juror for cause[54.5] not based on any statutory ground.[54.10]

d. Proceedings at Trial

§ 1603. Conduct of Trial in General

An appellate court will not disturb the exercise by the trial court of its discretion as to the course and conduct of a trial unless an abuse of discretion clearly appears.

Unless an abuse of discretion clearly appears,[55] an appellate court will generally not review or interfere with rulings of the trial court on discretionary matters as to the course and conduct of the trial.[56]

54. Ala.—Brown v. Woolverton, 121 So. 404, 219 Ala. 112, 64 A.L.R. 640.
Ark.—Phoenix Assur. Co. v. Loetscher, 219 S.W.2d 629, 215 Ark. 23—Crouch v. Richards, 208 S.W. 2d 460, 212 Ark. 980—Rumping v. Arkansas Nat. Bank of Hot Springs, 180 S.W. 749, 121 Ark. 202.
Fla.—Johnson v. Reynolds, 121 So. 793, 97 Fla. 591.
Ind.—Maffenbeier v. Koenig, 108 N.E. 594, 59 Ind.App. 518—Tipton Light, etc., Co. v. Newcomer, 67 N.E. 548, 33 Ind.App. 42.
Iowa.—Harris v. Moore, 112 N.W. 163, 134 Iowa 704.
Kan.—Parnell v. Security Elevator Co., 258 P.2d 288, 174 Kan. 643—Bailey v. McLeod, 56 P.2d 460, 143 Kan. 638.
Ky.—Brumfield v. Consolidated Coach Corporation, 40 S.W.2d 356, 240 Ky. 1.
Mo.—Grimm v. Gargis, 303 S.W.2d 43—State ex rel. State Highway Commission v. McMurtrey, 300 S. W.2d 521—Cleghorn v. Terminal R. Ass'n of St. Louis, 289 S.W.2d 13—Moore v. Middlewest Freightways, 266 S.W.2d 578—**Corpus Juris Secundum cited in** Pioneer Const. Co. v. Schmidt, 192 S.W.2d 859, 862—Parlon v. Wells, 17 S.W. 2d 528, 322 Mo. 1001.
State ex rel. State Highway Commission v. McMurtry, App. 292 S.W.2d 947—Hieber v. Thompson, App., 252 S.W.2d 116—Knudsen v. Kansas City Public Service Co., App., 141 S.W.2d 252—Robbins v. Olson-Schmidt Const. Co., App., 215 S.W. 779—Bright v. Sammons, App., 214 S.W. 425—McManama v. United R. Co. of St. Louis, 158 S. W. 442, 175 Mo.App. 43.
Mont.—Watson v. City of Bozeman, 156 P.2d 178, 117 Mont. 5—Simons v. Jennings, 46 P.2d 704, 100 Mont. 55.
Neb.—Phillips v. Union Pac. R. Co., 158 N.W. 966, 100 Neb. 157, certiorari denied Union Pac. R. Co. v. Phillips, 37 S.Ct. 742, 244 U.S. 656, 61 L.Ed. 1374.
Ohio.—Thompson v. Cleveland, etc., R. Co., 9 Ohio Dec.(Reprint) 209, 11 Cinc.L.Bul. 211.
Okl.—Montgomery Ward & Co. v. Curtis, 188 P.2d 199, 199 Okl. 525—Meier v. Edsall, 137 P.2d 926, 192 Okl. 529—Rice v. Emerson, 72 P.2d 498, 181 Okl. 51—Indian Territory Illuminating Oil Co. v. Carter, 57 P.2d 864, 177 Okl. 1—Sinclair Oil & Gas Co. v. Crane, 51 P.2d 711, 175 Okl. 198—Dyal v. Norton, 150 P. 703, 47 Okl. 794.
Or.—Mount v. Welsh, 247 P. 815, 118 Or. 568.
R.I.—Industrial Trust Co. v. Feuer, 189 A. 42, 57 R.I. 243.
S.C.—Fender v. New York Life Ins. Co., 155 S.E. 577, 158 S.C. 331—Calhoun v. Anderson, 146 S.E. 245, 148 S.C. 392—First Nat. Bank v. Pierson, 117 S.E. 542, 124 S.C. 327.
Tex.—Zimmerman v. Gianelloni, Civ. App., 206 S.W.2d 843—Harrison v. Missouri-Kansas & T. R. Co. of Texas, Civ.App., 89 S.W.2d 455, error dismissed—Sellers v. Galveston, H. & S. A. Ry. Co., Civ.App., 208 S.W. 397, error refused—Washington v. Austin Nat. Bank, Civ. App., 207 S.W. 382, error refused—McIntosh v. Atchison, T. & S. F. Ry. Co., Civ.App., 192 S.W. 285.
W.Va.—Ritz v. Kingdon, 79 S.E.2d 123, 139 W.Va. 189.
Wis.—Good v. Farmers Mut. Ins. Co., 62 N.W.2d 425, 265 Wis. 596.
4 C.J. p 811 note 55.

Great weight given to trial judge's judgment

Va.—Temple v. Moses, 8 S.E.2d 262, 175 Va. 320.

54.5 Ariz.—J. & B. Motors v. Margolis, 257 P.2d 588, 75 Ariz. 392, 38 A.L.R.2d 946.
Mo.—Rogers v. Metropolitan Life Ins. Co., App., 122 S.W.2d 5.
W.Va.—Ritz v. Kingdon, 79 S.E.2d 123, 139 W.Va. 189.

Bias or prejudice

(1) Determination by trial court of whether a challenged juror is biased will not be disturbed if there has been no abuse of discretion or the finding is not wholly without supporting evidence.
Ala.—Clendenon v. Yarbrough, 171 So. 277, 233 Ala. 269—Brown v. Woolverton, 121 So. 404, 219 Ala. 112, 64 A.L.R. 640.
Minn.—Hannula v. Duluth & I. R. R. Co., 153 N.W. 250, 130 Minn. 3.
Mo.—Hieber v. Thompson, App., 252 S.W.2d 116—Johnson v. Kansas City Electric Light Co., App., 232 S.W. 1094.
N.C.—Butler v. Greensboro Fire Ins. Co., 145 S.E. 3, 196 N.C. 203.
Ohio.—Miller v. Loy, 140 N.E.2d 38, 101 Ohio App. 405—Carle v. Courtright, 43 N.E.2d 296, 69 Ohio App. 69.
4 C.J. p 811 note 55 [a]—35 C.J. p 328 note 46.

(2) Ruling on challenge to individual juror for bias and prejudice will not be reversed unless it appears that court abused its discretion to such an extent as to work injustice, or that ruling might have worked such an injustice.
Okl.—Jamison v. Oklahoma Power & Water Co., 90 P.2d 419, 185 Okl. 103.

(3) Unless there is some fact which, in and of itself, necessarily shows prejudice, or there is an admission of prejudice, past or present, or something in demeanor of venireman which, despite his actual words, discloses existence of prejudice in fact, the reviewing court should not convict the trial court of abuse of discretion in overruling challenge for cause.
Mo.—Moss v. Mindlin's, Inc., 301 S. W.2d 761.

Formation of opinion

The issue raised on challenge on ground that juror had formed opinion founded on rumor, statements in public journals, or common notoriety, and on which he has expressed opinion, is one of mixed law and fact, and finding of court thereon should not be set aside by reviewing court, unless juror could not in law be deemed impartial.
Okl.—Rice v. Emerson, 72 P.2d 498, 181 Okl. 51.

54.10 Tex.—Liberty Mut. Ins. Co. v. Hughes, Civ.App., 238 S.W.2d 803, error refused no reversible error—Bennett v. Jackson, Civ.App., 172 S.W.2d 395, error refused.

55. Cal.—McMunn v. Lehrke, 155 P. 473, 29 C.A. 298.

56. Ala.—Denson v. Stanley, 84 So. 770, 17 Ala.App. 198, certiorari granted Ex parte Stanley, 84 So. 773, 203 Ala. 408.
Ark.—Kansas City Southern Ry. Co. v. Larsen, 114 S.W.2d 1081, 195 Ark. 808, certiorari denied 59 S.Ct. 82, 305 U.S. 621, 83 L.Ed. 397—White v. Williams, 89 S.W.2d 927,

This rule has been applied to matters concerning the decorum and dignity of the trial;[56.5] the determination of the trial court as to the measures to be taken to maintain order or an unprejudiced working of the proceedings;[57] the allowance of separate trials for different issues or questions;[58] the order in which issues should be disposed of;[59] the necessity of an interpreter for a witness;[60] whether to wait or to send for witnesses;[61] the grant of a recess or temporary adjournment pending trial;[62] the length of time the jury is kept in the courtroom;[62.5] whether the jury should be excluded during argument of counsel on questions of law;[63] and whether occurrences or misconduct during the trial tended to prejudice the jury.[64] So, questions as to discharging the jury, withdrawing

192 Ark. 41—McCaskey Register Co. v. McCurry, 26 S.W.2d 1108, 181 Ark. 649—Taaffe v. Sanderson, 294 S.W. 74, 173 Ark. 970.

Cal.—Kraft v. Nemeth, 251 P.2d 355, 115 C.A.2d 50—Gunn v. Superior Court, In and For Lake County, 173 P.2d 328, 76 C.A.2d 203—Mayers v. Alexander, 167 P.2d 818, 73 C.A. 2d 752—Minnich v. Minnich, 15 P. 2d 804, 127 C.A. 1.

Idaho.—Cardoza v. Cardoza, 282 P.2d 475, 76 Idaho 347—**Corpus Juris Secundum cited in** Henderson v. Twin Falls County, 80 P.2d 801, 802, 59 Idaho 97, appeal dismissed 59 S.Ct. 149, 305 U.S. 568, 83 L.Ed. 358.

Ind.—State ex rel. Rooney v. Lake Circuit Court, 140 N.E.2d 217.

Iowa.—Korf v. Fleming, 32 N.W.2d 85, 239 Iowa 501, 3 A.L.R.2d 270.

Kan.—**Corpus Juris Secundum cited in** Mahan v. Kansas City Public Service Co., 146 P.2d 383, 387, 158 Kan. 206.

Md.—Plank v. Summers, 102 A.2d 262, 203 Md. 552.

Miss.—Flynn v. Kurn, 184 So. 160, 183 Miss. 413—Winterton v. Illinois Cent. R. Co., 20 So. 157, 73 Miss. 831.

Mo.—Graves v. Dakessian, 132 S.W. 2d 972—Bobos v. Krey Packing Co., 19 S.W.2d 630, 323 Mo. 224—Sartin v. Springfield Hospital Ass'n, 195 S.W. 1037.

Koeppel v. Koeppel, App., 208 S. W.2d 929—Huth v. Picotte, App., 154 S.W.2d 382—Graves v. May Department Stores Co., App., 153 S.W.2d 778—Day v. Banks, App., 143 S.W.2d 68.

N.J.—Donovan v. Limouze, 158 A. 423, 108 N.J.Law 494.

N.Y.—People v. Royal Development Co., 268 N.Y.S. 98, 239 App.Div. 518.

Or.—Cholia v. Kelty, 63 P.2d 895, 155 Or. 287.

S.C.—Dutton v. Atlantic Coast Line R. Co., 88 S.E. 263, 104 S.C. 16, affirmed Atlantic Coast Line R. Co. v. Dutton, 38 S.Ct. 191, 245 U.S. 637, 62 L.Ed. 525.

Tenn.—Wilson v. Maury County Bd. of Ed., App., 302 S.W.2d 502.

Tex.—Gulf, C. & S. F. Ry. Co. v. Metcalf, Civ.App., 100 S.W.2d 389.

W.Va.—Kitson v. Messenger, 27 S.E. 2d 265, 126 W.Va. 60—Nicholas v. Granite State Fire Ins. Co., 24 S.E. 2d 280, 125 W.Va. 349.

4 C.J. p 810 note 42.

56.5 Tex.—Prater v. Holbrook, Civ. App., 283 S.W.2d 263—Texas Emp. Ins. Ass'n v. Davis, Civ.App., 228 S.W.2d 257, error refused—Williams v. Merchant Fast Motor Lines, Civ.App., 214 S.W.2d 307.

57. Conn.—Antel v. Poli, 123 A. 272, 100 Conn. 64.

Md.—Calder v. Levi, 177 A. 392, 168 Md. 260—Nelson v. Seiler, 139 A. 564, 154 Md. 63.

58. Mo.—Sexton v. Anderson Electric Car Co., App., 234 S.W. 358.

N.H.—Williams v. Walker, 61 A.2d 522, 95 N.H. 231—Carbone v. Boston & Maine R. R., 192 A. 858, 89 N.H. 12—Kenalos v. H. V. Greene Co., 128 A. 335, 81 N.H. 426.

N.Y.—Romania v. Lamport & Holt, 202 N.Y.S. 216, 207 App.Div. 861.

N.C.—De Loache v. De Loache, 127 S.E. 419, 189 N.C. 394—McAuley v. Sloan, 91 S.E. 701, 173 N.C. 80.

Pa.—Samuels v. Johnson, 50 A.2d 670, 355 Pa. 624.

4 C.J. p 810 note 45.

Consolidation or severance of actions see supra § 1599.

Joint defendants in tort actions

Ind.—Kizer v. Hazelett, 49 N.E.2d 543, 221 Ind. 575.

59. N.H.—Genest v. Odell Mfg. Co., 74 A. 593, 75 N.H. 365.

Affirmative defenses tried first

Cal.—Donovan v. Security-First Nat. Bank of Los Angeles, 155 P.2d 856, 67 C.A.2d 845.

60. Cal.—Hilbert v. Kundicoff, 268 P. 905, 204 C. 485.

Ill.—Kozlowski v. Chicago, 113 Ill. App. 513.

4 C.J. p 822 note 62 [j].

61. Okl.—Snyder v. U. S. Fidelity & Guaranty Co., 249 P. 422, 119 Okl. 280—Pratt v. Hancock, 246 P. 220, 117 Okl. 300.

Tex.—Lofstedt v. Gulf Paving Co., Civ.App., 185 S.W.2d 203, affirmed 188 S.W.2d 155, 144 Tex. 17.

4 C.J. p 810 note 43.

62. Ala.—Peterman v. Southern Cotton Oil Co., 73 So. 991, 15 Ala.App. 491.

Minn.—Lehman v. Lehman, 13 N.W. 2d 604, 216 Minn. 538.

N.J.—Pepe v. Urban, 78 A.2d 406, 11 N.J.Super. 385.

N.Y.—Bianchi v. Markese, 95 N.Y.S. 2d 897, 276 App.Div. 1048—Zirn v. Bradley, 60 N.Y.S.2d 114, 270 App. Div. 829, appeal denied 61 N.Y.S.2d 926, 270 App.Div. 897.

Okl.—Montgomery v. Moore, 292 P. 2d 1040.

Tex.—Looney v. Traders & General Ins. Co., Civ.App., 231 S.W.2d 735, error refused no reversible error—Missouri, K. & T. Ry. Co. of Texas v. Price, 106 S.W. 700, 48 Tex. Civ.App. 210.

Rulings as to continuances generally see supra § 1600.

Abuse of discretion not assumed or presumed

Okl.—Chase v. Watson, 294 P.2d 801.

Illness of attorney's father

The adjournment of court for the illness of the father of one of defendant's attorneys was within the discretion of the court, not reversible on appeal, without a showing of abuse.

Ark.—Camden Fire Ins. Ass'n of Camden, N. J. v. Meloy, 294 S.W. 378, 174 Ark. 84.

Time for witness to bring book from his home

Refusal, during reëxamination of a witness, for whom no subpœna duces tecum had been issued, to suspend the hearing to permit him to go to his home for a certain book, as to the availability of which no inquiry was made by counsel before such reëxamination, was not reversible error, being a matter largely within the court's discretion, no abuse of which was shown.

Ala.—Woodmen of the World v. Maynor, 96 So. 352, 209 Ala. 443.

62.5 Md.—Plank v. Summers, 102 A.2d 262, 203 Md. 552.

From 10 A.M. until 2:18 A.M. on following day

Md.—Plank v. Summers, supra.

63. Wash.—Glicher v. Seattle Electric Co., 144 P. 530, 82 Wash. 414.

64. Ala.—Foster & Creighton Co. v. St. Paul Mercury Indem. Co., 88 So. 2d 825, 264 Ala. 581.

Ill.—Kempinski v. Tuthill Building Material Co., 255 Ill.App. 375.

Kan.—**Corpus Juris Secundum cited in** Mahan v. Kansas City Public Service Co., 146 P.2d 383, 387, 158 Kan. 206—Maxfield v. Fox Kansas Theatre Co., 107 P.2d 685, 152 Kan. 716—Couch v. Kansas Electric Power Co., 28 P.2d 724, 138 Kan. 822.

Mo.—Boyer v. Missouri Pac. R. Co., 293 S.W. 386.

a juror, or ordering a mistrial for matters occurring during the trial are matters within the discretion of the trial court and reversible only for abuse.[64.5] The question whether error has been committed by reason of the injection of improper matter before the jury must be considered in the light of whether a trial judge has abused his discretion in the management of a trial with due regard to the rights of the parties.[64.10]

Comments by trial judge. The comments of the court on occurrences during the trial,[65] or on the evidence, where he is authorized to comment thereon,[66] will not be reviewed or held erroneous except for an abuse of discretion.

Making findings of fact. When the trial judge is not required to make requested findings of fact, his failure to do so is not reviewable.[67]

Requested findings and conclusions. Unless an abuse of discretion is shown, an appellate court will not disturb the exercise by the trial court of its discretion in allowing an opportunity to file requested findings and conclusions.[67.5]

§ 1604. Reception of Evidence

a. In general
b. Determination of preliminary questions of fact
c. Subpoena duces tecum

a. In General

The exercise by the trial court of its discretion in ruling on the admission or rejection of evidence will generally not be reviewed unless its discretion has been abused.

The exercise by the trial court of its discretion in ruling on the admission or rejection of evidence will generally not be reviewed by an appellate court,[67.50] unless it is clearly or plainly shown that the trial court abused its discretion.[68]

Marshak v. William J. Brennan Grocery Co., App., 83 S.W.2d 185—Sanguinett v. May Department Stores Co., App., 65 S.W.2d 162—Kuether v. Kansas City Light & Power Co., 276 S.W. 105, 220 Mo. App. 452.

N.J.—Stiles v. Maclean, 138 A. 119, 103 N.J.Law 537.

Pa.—O'Malley v. Public Ledger Co., 101 A. 94, 257 Pa. 17.

64.5 Ga.—Walker v. Smith, 74 S.E.2d 374, 87 Ga.App. 517—Yellow Cab Co. v. Adams, 31 S.E.2d 195, 71 Ga.App. 404—Southeastern Greyhound Lines v. Hancock, 31 S.E.2d 59, 71 Ga.App. 471.

Idaho.—**Corpus Juris Secundum cited in** Henderson v. Twin Falls County, 80 P.2d 801, 802, 59 Idaho 97, appeal dismissed 59 S.Ct. 149, 305 U.S. 568, 83 L.Ed. 358.

Ill.—Karpiuk v. Daniszewicz, 38 N.E. 2d 823, 312 Ill.App. 597.

Mo.—Sallee v. St. Louis-San Francisco Ry. Co., 12 S.W.2d 476, 321 Mo. 798.

American Displays v. E. T. Swiney Motors, App., 240 S.W.2d 732—Fair v. Thompson, 212 S.W. 2d 923, 240 Mo.App. 664—Graves v. May Department Stores Co., App., 153 S.W.2d 778—Neuhaus v. United Neighbors of Missouri, App., 150 S.W.2d 590—Baird v. National Health Foundation, 144 S.W.2d 850, 235 Mo.App. 594—Day v. Banks, App., 143 S.W.2d 68.

N.J.—Budden v. Goldstein, 128 A.2d 730, 43 N.J.Super. 340.

Okl.—Aderhold v. Stewart, 46 P.2d 340, 172 Okl. 72.

Or.—Denton v. Arnstein, 250 P.2d 407, 197 Or. 28.

Pa.—Todd v. Lit Bros., 112 A.2d 810, 381 Pa. 109—Menarde v. Philadelphia Transp. Co., 103 A.2d 681, 376 Pa. 497—Clark v. Essex Wire Corp., 63 A.2d 35, 361 Pa. 60—Cain v. Kohlman, 22 A.2d 667, 344 Pa. 63—Nalevanko v. Marie, 195 A. 49, 328 Pa. 586—Curry v. J. M. Willson & Sons, 152 A. 746, 301 Pa. 467—Carroll v. Hannan, 137 A. 127, 289 Pa. 65.

Fahrer v. Blumenthal, 190 A. 206, 125 Pa.Super. 568—Ruttenberg v. Fire Ass'n of Philadelphia, 186 A. 194, 122 Pa.Super. 363—Prinkey v. Dunbar Tp., 161 A. 640, 105 Pa. Super. 326—Lopresti v. Sulkin, 49 Pa.Super. 417.

R.I.—Romano v. Caldarone, 79 A.2d 763, 78 R.I. 107.

S.C.—Wynn v. Rood, 91 S.E.2d 276, 228 S.C. 577—Gordon v. Rothberg, 50 S.E.2d 202, 213 S.C. 492.

Tenn.—Seals v. Sharp, 212 S.W.2d 620, 31 Tenn.App. 75.

Vt.—Ryan v. Barrett, 162 A. 793, 105 Vt. 21.

4 C.J. p 829 note 38 [g] (2)—64 C.J. p 509 note 47.

Discretion of trial court as to withdrawal of juror see Trial § 224.

64.10 Ind.—Kelley v. Hocutt, 128 N. E.2d 879, 125 Ind.App. 617.

65. N.Y.—Cross v. Syracuse, 94 N.E. 184, 200 N.Y. 393, 21 Ann.Cas. 324.

66. Conn.—Heslin v. Malone, 165 A. 594, 116 Conn. 471—Morro v. Brockett, 145 A. 659, 109 Conn. 87—Aldrich v. Duggan, 139 A. 270, 107 Conn. 17—Smith v. Hausdorf, 103 A. 939, 92 Conn. 579.

67. Mass.—Hews v. Troiana, 179 N. E. 622, 278 Mass. 224—Berenson v. French, 159 N.E. 909, 262 Mass. 247.

67.5 Pa.—Barrows v. Allum, 66 A. 2d 66, 361 Pa. 624.

Appellant's failure to act

Pa.—Barrows v. Allum, supra.

67.50 Va.—Savage v. Nute, 23 S.E. 2d 133, 180 Va. 394.

68. Ala.—Raymond v. Pointer, 133 So. 260, 222 Ala. 518—Alabama Fidelity & Casualty Co. v. Alabama Penny Sav. Bank, 76 So. 103, 200 Ala. 337.

Cal.—Thomas Haverty Co. v. Jones, 197 P. 105, 185 C. 285.

McGlasson v. Blythe, 299 P.2d 325, 143 C.A.2d 152.

Colo.—Thomas v. Beirne, 80 P.2d 863, 94 Colo. 429.

Ga.—Durden v. Durden, 91 S.E. 114, 146 Ga. 371.

Idaho.—Marshall-Wells Co. v. Kramlich, 267 P. 611, 46 Idaho 355.

Ill.—Kankakee Park Dist. v. Heidenreich, 159 N.E. 289, 328 Ill. 198.

Ind.—Lay v. Lay, 155 N.E. 212, 86 Ind.App. 160—Roper v. Cannel City Oil Co., 121 N.E. 96, 68 Ind.App. 637.

Iowa.—Hayes v. Stunkard, 10 N.W.2d 19, 233 Iowa 582—Langham v. Chicago, R. I. & P. Ry. Co., 198 N.W. 525, 197 Iowa 1118.

Kan.—Thompson v. Barnette, 227 P. 2d 120, 170 Kan. 384.

Ky.—Cavalier Advertising Service v. Hudson, 90 S.W.2d 28, 262 Ky. 282.

Md.—Zeller v. Mayson, 179 A. 179, 168 Md. 663.

Mass.—E. P. Sanderson Co. v. Carroll Bros., 130 N.E. 81, 238 Mass. 142—Johnson v. Foster, 108 N.E. 928, 221 Mass. 248.

Mich.—Eberts v. Detroit, etc., R. Co., 115 N.W. 43, 151 Mich. 260.

Mo.—Counts v. Thompson, 222 S.W. 2d 487, 359 Mo. 485—Brunner v. Stix, Baer & Fuller Co., 181 S.W. 2d 643, 352 Mo. 1225.

Application of this principle has been made to rulings relating to the reception of evidence the admissibility of which turns upon its relevancy,[69] evidence collateral to the main issue,[70] or which bears remotely on issues involved;[71] and to rulings relat-

Deichmann v. Aronoff, App., 296 S.W.2d 171—Holman v. Terminal R. Ass'n of St. Louis, App., 125 S.W.2d 527—Kelso v. Lincoln Nat. Life Ins. Co., 51 S.W.2d 203, 227 Mo. App. 184—Donijanovic v. Hartman, 152 S.W. 424, 169 Mo.App. 204.

Mont.—Stagg v. Stagg, 32 P.2d 856, 96 Mont. 573.

Neb.—Ruppert v. Penner, 53 N.W. 598, 35 Neb. 587, 17 L.R.A. 824.

N.H.—Fitzpatrick v. Public Service Co. of N. H., 131 A.2d 634.

N.J.—Miller v. Trans Oil Co., 109 A.2d 427, 33 N.J.Super. 53, affirmed 113 A.2d 777, 18 N.J. 407.

Davis v. New Jersey Zinc Co., 182 A. 850, 116 N.J.Law 103—W. A. Manda, Inc. v. Delaware, L. & W. R. Co., 98 A. 467, 89 N.J.Law 327.

N.Y.—Toomey v. Farley, 156 N.Y.S.2d 840, 2 N.Y.2d 71, 138 N.E.2d 221.

N.D.—Veum v. Stefferud, 196 N.W. 104, 50 N.D. 371.

Okl.—First State Bank of Noble v. McKiddy, 240 P.2d 1103, 206 Okl. 57.

Pa.—Ries v. Ries' Estate, 185 A. 288, 322 Pa. 211—Crick v. Paull, 135 A. 103, 287 Pa. 431.

S.C.—Chastain v. United Ins. Co., 96 S.E.2d 464—James v. Atlantic Coast Line R. Co., 18 S.E.2d 616, 199 S.C. 45—Fetner v. Ætna Life Ins. Co., 18 S.E.2d 521, 199 S.C. 79—Godfrey v. Godfrey, 188 S.E. 653, 182 S.C. 117—Johnson v. Atlantic Coast Line R. Co., 140 S.E. 443, 142 S.C. 125.

S.D.—Smith v. Funston, 208 N.W. 776, 50 S.D. 175.

Tenn.—Adcock v. Simon, 2 Tenn.App. 617.

Tex.—Ditto v. Piper, Civ.App., 244 S.W.2d 547, error refused no reversible error—Price v. Humble Oil & Refining Co., Civ.App., 152 S.W.2d 804, error refused—Chambers v. Winn, Civ.App., 133 S.W.2d 279, reversed on other grounds 154 S.W.2d 454, 137 Tex. 444—State Nat. Bank v. Davidson, Civ.App., 295 S.W. 311—Merchants' Cotton Oil Co. v. Acme Gin Co., Civ.App., 284 S.W. 680—Schaff v. Beale, Civ. App., 250 S.W. 757—Hamilton v. Bell, 84 S.W. 289, 37 Tex.Civ.App. 456.

4 C.J. p 812 note 57.

"It is true that the trial judge is vested with large discretion in the matter of the competency, pertinency, and admissibility of testimony, but it is equally true that if, in the exercise of that discretion, he infringes upon a legal right of a party to the trial, this court will review his action."

S.C.—Peay v. Durham Life Ins. Co., 193 S.E. 199, 201, 185 S.C. 78.

No general test has been established for determining whether evidence is too slight, conjectural, or remote to afford a basis for relief; such questions must be left largely to the judgment of the trial court.

Minn.—Austin v. Rosecke, 61 N.W.2d 240, 240 Minn. 321—Frame v. Hohrman, 39 N.W.2d 881, 229 Minn. 468—Watre v. Great Northern Ry. Co., 149 N.W. 18, 127 Minn. 118.

Arbitrary exercise of discretion

Va.—Slate v. Saul, 40 S.E.2d 171, 185 Va. 700.

Manifest abuse

Cal.—Brocke v. Naseath, 285 P.2d 291, 134 C.A.2d 196.

Pa.—Thompson v. American Steel & Wire Co., 175 A. 541, 317 Pa. 7.

D'Allura v. Perri, 10 A.2d 124, 138 Pa.Super. 261.

Discretion held not abused

Ga.—Magid v. Beaver, 192 S.E. 532, 56 Ga.App. 286, reversed on other grounds 196 S.E. 422, 185 Ga. 669, conformed to 197 S.E. 80, 57 Ga. App. 871.

Mass.—Iris v. Town of Hingham, 22 N.E.2d 13, 303 Mass. 401.

Rebuttal testimony

Ordinarily, the rulings of the trial court with respect to whether testimony is admissible as rebuttal are not reversible for error.

Mont.—Rossberg v. Montgomery Ward & Co., 99 P.2d 979, 110 Mont. 154.

Admissibility held matter of law

Tex.—Houston Oxygen Co. v. Davis, 161 S.W.2d 474, 139 Tex. 1, 140 A. L.R. 868.

Latitude afforded to judgment

On questions of evidence, trial judge must be accorded considerable discretion, and his judgment will be accorded greater latitude than on questions of law.

Ill.—Jacobson v. Central Ill. Elec. & Gas Co., 135 N.E.2d 506, 10 Ill. App. 528.

Reading of affidavits

Mo.—Good v. Crow, 51 Mo. 212.

69. Cal.—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334.

Mo.—Radloff v. Penny, App., 225 S.W.2d 498—Biener v. St. Louis Public Service Co., App., 160 S.W.2d 780.

N.J.—Testa v. Metropolitan Life Ins. Co., 54 A.2d 455, 136 N.J.Law 9.

R.I.—Scherer v. J. Sarubi Co., 181 A. 556—Swartz v. Edwards Motor Car Co., 139 A. 466, 49 R.I. 18.

S.C.—Dubose v. Sullivan, 152 S.E. 699, 155 S.C. 526—Dutton v. Atlantic Coast Line R. Co., 88 S.E. 263, 104 S.C. 16, affirmed Atlantic Coast Line R. Co. v. Dutton, 38 S.Ct. 191, 245 U.S. 637, 62 L.Ed. 525—Crawford v. Rice & Hutchins Baltimore Co., 82 S.E. 273, 98 S.C. 121.

Tex.—Chambers v. Winn, Civ.App., 133 S.W.2d 279, reversed on other grounds 154 S.W.2d 454, 137 Tex. 444—Texas & P. Ry. Co. v. Williams, Civ.App., 200 S.W. 1149, error refused.

Wash.—Snyder v. General Elec. Co., 287 P.2d 108, 47 Wash.2d 60.

4 C.J. p 813 note 58.

70. Mass.—Keller v. New York, N. H. & H. R. R., 152 N.E. 335, 255 Mass. 526.

Neb.—Hampton v. Struve, 70 N.W. 2d 74, 160 Neb. 305.

N.H.—Cox v. Pinkham, 114 A. 18, 80 N.H. 134.

Tenn.—Lewisburg & N. R. Co. v. Hinds, 183 S.W. 985, 134 Tenn. 293, L.R.A.1916E 420.

4 C.J. p 813 note 59.

Settled rule of law

Admissibility of evidence of collateral facts is addressed to sound and practical judgment of trial judge, whose discretion will not be disturbed on appeal except where case is controlled by settled rule of law.

Minn.—Henderson v. Bjork Monument Co., 24 N.W.2d 42, 222 Minn. 241.

Similiar occurrences

Mo.—Green v. Terminal R. Ass'n of St. Louis, App., 135 S.W.2d 652.

Evidence without weight

Action of court in admitting evidence of collateral fact will not be reversed unless it can be said that evidence was without any weight in determining issue before court.

Cal.—Firlotte v. Jessee, 172 P.2d 710, 76 C.A.2d 207—Moody v. Peirano, 88 P. 380, 4 C.A. 411.

Rules of common carrier

Exercise by trial court of its discretion in determining applicability to factual situation and consequent admissibility of rules of common carrier in matters affecting safety of passengers will be reversed only if a clear abuse of discretion is shown.

R.I.—Shipman v. United Electric Rys. Co., 40 A.2d 730, 70 R.I. 454.

71. Ala.—Kay-Noojin Development Co. v. Kinzer, 65 So.2d 510, 259 Ala. 49—Springer v. Sullivan, 119 So. 851, 218 Ala. 645—Sorrell v. Scheuer, 96 So. 216, 209 Ala. 268.

Cal.—Earl v. Times-Mirror Co., 196 P. 57, 185 C. 165.

In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334—Traynor v. McGilvray, 200 P. 1056, 54 C.A. 31.

Iowa.—Younkin v. Yetter, 181 N.W. 793, 192 Iowa 279.

Mass.—Johnson v. Foster, 108 N.E. 928, 221 Mass. 248.

ing to cumulative evidence,[72] opinion evidence,[73] evidence concerning a matter of common knowledge,[74] and evidence which is otherwise competent but is claimed to have a tendency to excite undue prejudice.[75]

The general principle has also been applied to experiments and demonstrations;[76] drawings made

Neb.—Hartford v. Pinnie, 260 N.W. 371, 128 Neb. 771—In re Dovey's Estate, 162 N.W. 134, 101 Neb. 11—Neal v. Missouri Pac. Ry. Co., 153 N.W. 492, 98 Neb. 460.
N.H.—Manseau v. Boston & M. R. R., 69 A.2d 613, 96 N.H. 7—Chatman v. Maine Cent. R. R., 167 A. 559, 86 N.H. 317—St. Laurent v. Manchester St. Ry., 92 A. 959, 77 N.H. 460—Nawn v. Boston & M. R. R., 91 A. 181, 77 N.H. 299.
N.J.—Miller v. Trans Oil Co., 109 A.2d 427, 33 N.J.Super. 53, affirmed 113 A. 777, 18 N.J. 407.
Iverson v. Prudential Ins. Co. of America, 19 A.2d 214, 126 N.J.Law 280.
N.D.—Kemmer v. Sunshine Mut. Ins. Co., 57 N.W.2d 856, 79 N.D. 518.
R.I.—Scherer v. J. Sarubi Co., 181 A. 556.
S.C.—Tate v. Mauldin, 154 S.E. 431, 157 S.C. 392—Lewis v. Williams, 89 S.E. 647, 105 S.C. 165.
Vt.—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91—McAllister v. Benjamin, 121 A. 263, 96 Vt. 475—Smith v. Martin, 106 A. 666, 93 Vt. 111—Aldrich v. Boston & M. R. R., 100 A. 765, 91 Vt. 379.
Wash.—Hutteball v. Montgomery, 60 P.2d 679, 187 Wash. 516.
Va.—Yuncke v. Welker, 36 S.E.2d 410, 128 W.Va. 299.
4 C.J. p 813 note 60.

Actions and conduct just before accident

(1) The question of remoteness of evidence as to the actions and conduct of a party, particularly as to the rate of speed and method of driving an automobile just before a collision, rests largely in the discretion of the trial court, the ruling of which will not be disturbed except on a clear showing of an abuse of discretion.
Cal.—Traynor v. McGilvray, 200 P. 1056, 54 C.A. 31.
Md.—Reid v. Humphreys, 122 A.2d 756, 210 Md. 178.

(2) Appellate court will not disturb exercise by trial court of its discretion in determining whether evidence as to speed at points more or less remote from place of accident should be admitted, where question does not indicate that such speed was connected with speed at point of collision.
Iowa.—Thomas v. Charter, 278 N.W. 920, 224 Iowa 1278.

Exclusion held ground for reversal
N.H.—Daley v. Metropolitan Life Ins. Co., 128 A. 531, 81 N.H. 502.

Remoteness in point of time
Miss.—Gowan v. State Highway Commission, 9 So.2d 637, 193 Miss. 365.

72. Ga.—Seaboard Air Line Ry. v. Horning, 89 S.E. 493, 18 Ga.App. 396.
Ill.—Falvai v. Calumet & South Chicago Ry. Co., 177 Ill.App. 125.
Me.—Pillsbury v. Kesslen Shoe Co., 188 A. 726, 134 Me. 504.
Neb.—Klinginsmith v. Allen, 53 N.W.2d 77, 155 Neb. 674—O'Dell v. Goodsell, 41 N.W.2d 123, 152 Neb. 290—Horky v. Schroll, 26 N.W.2d 396, 148 Neb. 96.
Tex.—Shelton v. Shelton, Civ.App., 281 S.W. 331.
Wash.—Braack v. Bailey, 200 P.2d 525, 32 Wash.2d 60—Delsman v. Bertotti, 93 P.2d 371, 200 Wash. 380.
W.Va.—Elswick v. Charleston Transit Co., 36 S.E.2d 419, 128 W.Va. 241.
4 C.J. p 813 note 61, p 816 note 71 [c].

Exclusion held erroneous where the evidence was important and affected the chief question of fact involved.
N.Y.—Capron v. Douglass, 85 N.E. 827, 193 N.Y. 11, 20 L.R.A.,N.S., 1003.

73. Cal.—Ackel v. American Creamery Co., 55 P.2d 1195, 12 C.A.2d 672.
Ind.—Archer v. Ostemeier, 105 N.E. 522, 56 Ind.App. 385.
Kan.—Kirkham v. Leavenworth Light, Heat & Power Co., 176 P. 979, 103 Kan. 862.
Me.—Wiles v. Connor Coal & Wood Co., 60 A.2d 786, 143 Me. 250.
Mass.—Campbell v. Shea, 125 N.E. 2d 922, 332 Mass. 422.
Minn.—Abar v. Ramsey Motor Service, 263 N.W. 917, 195 Minn. 597.
Mo.—Fair Mercantile Co. v. St. Paul Fire & Marine Ins. Co., 175 S.W.2d 930, 237 Mo.App. 511—Adkins v. Chicago, R. I. & P. Ry. Co., 292 S.W. 1075, 222 Mo.App. 578.
Neb.—James Poultry Co. v. Nebraska City, 284 N.W. 273, 135 Neb. 787, rehearing denied and opinion supplemented 286 N.W. 337, 136 Neb. 456.
N.H.—Terrien v. Pawtucket Mut. Fire Ins. Co., 71 A.2d 742, 96 N.H. 182—Leonard v. City of Manchester, 70 A.2d 915, 96 N.H. 115—Danos v. Manchester Coal & Ice Co., 49 A.2d 926, 94 N.H. 200—Stevens v. Mutual Protection Fire Ins. Co., 149 A. 498, 84 N.H. 275, 69 A.L.R. 624.
Okl.—Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132 of Comanche County, 228 P. 489, 102 Okl. 251—Springfield Fire & Marine Ins. Co. v. Griffin, 166 P. 431, 64 Okl. 131.
Or.—Goldfoot v. Lofgren, 296 P. 843, 135 Or. 533.
Tex.—Home Ins. Co. v. Collins, Civ. App., 55 S.W.2d 898—Exporters' & Traders' Compress & Warehouse Co. v. Shaw, Civ.App., 20 S.W.2d 248—Panhandle & S. F. Ry. Co. v. Sanderson, Civ.App., 218 S.W. 540, dismissed for want of jurisdiction.
Wash.—Wilkins v. Knox, 253 P. 797, 142 Wash. 571.
4 C.J. p 812 note 57 [c].

Manifest abuse
Iowa.—Knaus Truck Lines v. Commercial Freight Lines, 29 N.W.2d 204, 238 Iowa 1356—Grismore v. Consolidated Products Co., 5 N.W. 2d 646, 232 Iowa 328.
Or.—Tuite v. Union Pac. Stages, Inc., 284 P.2d 333, 204 Or. 565.

74. N.D.—Stockwell v. Brinton, 142 N.W. 242, 26 N.D. 1.
4 C.J. p 812 note 57 [b].

75. N.H.—O'Dowd v. Heller, 134 A. 344, 82 N.H. 387.

76. Ala.—Birmingham Elec. Co. v. Woodward, 35 So.2d 369, 33 Ala. App. 526.
Cal.—Temple v. De Mirjian, 125 P.2d 544, 51 C.A.2d 559—Willoughby v. Zylstra, 42 P.2d 685, 5 C.A.2d 297—Maris v. H. Crummey, Inc., 204 P. 259, 55 C.A. 573.
Idaho.—Kelly v. Troy Laundry Co., 267 P. 222, 46 Idaho 214.
Iowa.—Langham v. Chicago, R. I. & P. Ry. Co., 198 N.W. 525, 197 Iowa 1118.
Mass.—Guinan v. Famous Players-Lasky Corporation, 167 N.E. 235, 267 Mass. 501.
Mo.—Carlson v. Kansas City, Clay County & St. Joseph Auto Transit Co., 282 S.W. 1037, 221 Mo.App. 537.
Neb.—Franks v. Jirdon, 20 N.W.2d 597, 146 Neb. 585—Crecelius v. Gamble-Skogmo, Inc., 13 N.W.2d 627, 144 Neb. 394.
N.H.—Bailey Lumber Co. v. Boston & M. R. R., 97 A. 555, 78 N.H. 94—Lindell v. Stone, 94 A. 963, 77 N. H. 582.
N.C.—Mintz v. Atlantic Coast Line R. Co., 72 S.E.2d 38, 236 N.C. 109.
Ohio.—St. Paul Fire & Marine Ins. Co. v. Baltimore & O. R. Co., 195 N. E. 861, 129 Ohio St. 401.
Okl.—Sinclair Oil & Gas Co. v. Albright, 18 P.2d 540, 161 Okl. 272.
Or.—Tuite v. Union Pac. Stages, Inc., 284 P.2d 333, 204 Or. 565—Erickson's Dairy Products Co. v. Northwest Baker Ice Machine Co., 109 P.2d 53, 165 Or. 553.

by witnesses;[76.5] an exhibition of plaintiff's person to the jury;[77] a writing offered as a standard of comparison;[78] the remaining parts of an instrument to explain a part which has already been introduced in evidence;[79] maps, plans, and charts;[80] and photographs or motion pictures.[81]

Practical justice. The exercise by the trial court of its discretion in determining the questions of the materiality and relevancy of evidence will not be disturbed unless required by practical justice.[81.5]

Dying declarations. An appellate court will not lightly disturb the exercise by the trial court of its

S.C.—Richardson v. Northwestern R. Co. of South Carolina, 117 S.E. 510, 124 S.C. 314.
Vt.—Leonard v. Henderson, 99 A.2d 698, 118 Vt. 29—Davis v. Raymond, 152 A. 806, 103 Vt. 195.
Va.—Norfolk & W. Ry. Co. v. Henderson, 111 S.E. 277, 132 Va. 297.
W.Va.—Bond v. National Fire Ins. Co., 88 S.E. 389, 77 W.Va. 736.
4 C.J. p 815 note 64.
Admissibility of evidence as to experiments as being in discretion of trial court generally see Evidence § 587.

Similarity of conditions

Unless it is manifest that there has been an abuse of discretion, determination by trial court of question of similarity of conditions attending experiment to actual conditions will not be disturbed on appeal.
Or.—Tuite v. Union Pac. Stages, Inc., 284 P.2d 333, 204 Or. 565.

Ruling either way not erroneous

The appellate court may refuse to reverse on account of the exclusion of evidence of certain experiments, although the trial court would not have been held in error had it admitted the evidence.
Neb.—Ord v. Nash, 69 N.W. 964, 50 Neb. 335.

Rejection more critically viewed than reception

The exercise of the court's discretion in this regard is reviewable and will be viewed more critically when the evidence is rejected than when received.
Wash.—American Products Co. v. Villwock, 109 P.2d 570, 7 Wash.2d 246, 132 A.L.R. 1010—Amsbary v. Grays Harbor R. etc., Co., 139 P. 46, 78 Wash. 379.
4 C.J. p 815 note 66 [a].

Demonstration of extent of physical disability

Ill.—Avram v. Hammond, 107 N.E. 2d 882, 348 Ill.App. 68.

Test operation

Cal.—Grupe v. Glick, 160 P.2d 832, 26 C.2d 680.

Inability to commit suicide

Fla.—Mutual Life Ins. Co. of New York v. Bell, 3 So.2d 487, 147 Fla. 734.

76.5 Ga.—Parsons v. Foshee, 55 S.E.2d 386, 80 Ga.App. 127.

Illustration of scene of accident

Ga.—Parsons v. Foshee, supra.

77. N.H.—Lapointe v. Berlin Mills Co., 73 A. 406, 75 N.H. 294.
Or.—Sears v. Goldsmith, 298 P. 219, 136 Or. 151.
S.D.—Cass v. Pacific Mut. Life Ins. Co. of California, 253 N.W. 626, 62 S.D. 509.
Tex.—Missouri, K. & T. R. Co. of Texas v. O'Hare, Civ.App., 39 S.W. 2d 939.

Injured knee

R.I.—Auclair v. Legare, 105 A.2d 669.

78. Me.—Williams v. Williams, 85 A. 43, 109 Me. 537.
4 C.J. p 812 note 57 [a].

79. N.C.—Farmers' Mfg. Co. v. Steinmetz, 45 S.E. 552, 133 N.C. 192.
4 C.J. p 812 note 57 [f].

80. Idaho.—Kleinschmidt v. Scribner, 30 P.2d 362, 54 Idaho 185.
N.J.—McMichael v. Eastern Hydraulic Press Brick Co., 80 N.J.Law 398, 78 A. 144.
Or.—Babcock v. Gray, 107 P.2d 846, 165 Or. 398.
4 C.J. p 812 note 57 [d].

Exclusion held not abuse of discretion

Vt.—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107.

81. Ariz.—Henderson v. Breesman, 269 P.2d 1059, 77 Ariz. 256.
Ark.—McGeorge Contracting Co. v. Mizell, 226 S.W.2d 566, 216 Ark. 509—Lee v. Crittenden County, 226 S.W.2d 79, 216 Ark. 480.
Cal.—Barone v. Jones, 176 P.2d 392, 77 C.A.2d 656, rehearing denied and modified on other grounds 177 P. 2d 30, 77 C.A.2d 656.
Colo.—Reed v. Davidson Dairy Co., 50 P.2d 532, 97 Colo. 462.
Conn.—Murray v. Gagliardi, 135 A. 293, 105 Conn. 392.
Ill.—Pennell v. Baltimore & O. R. Co., 142 N.E.2d 497, 13 Ill.App.2d 433.
Ill.—Eizerman v. Behn, 132 N.E.2d 788, 9 Ill.App.2d 263.
Ind.—Dill v. Dill, 88 N.E.2d 396, 128 Ind.App. 61—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121.
Iowa.—Coonley v. Lowden, 12 N.W. 2d 870, 234 Iowa 731—Gose v. True, 198 N.W. 528, 197 Iowa 1094—Nolte v. Chicago, R. I. & P. Ry. Co., 147 N.W. 192, 165 Iowa 721.
Me.—Penley v. Teague & Harlow Co., 140 A. 374, 126 Me. 583.
Md.—York Ice Machinery Corporation v. Sachs, 173 A. 240, 167 Md. 113—Weiller v. Weiss, 92 A. 1028, 124 Md. 461.
Mich.—Amedeo v. Grand Rapids & I. R. Co., 183 N.W. 929, 215 Mich. 37.
Mo.—Brock v. Gulf, M. & O. R. Co., 270 S.W.2d 827.
Blackburn v. Gaydou, 245 S.W.2d 161, 241 Mo.App. 917—Hutchison v. Moerschel Products Co., 133 S.W.2d 701, 234 Mo.App. 518—Home Ins. Co. of New York v. Savage, 103 S.W.2d 900, 231 Mo.App. 569.
N.H.—Palmer v. Edgerly, 181 A. 125, 419, 87 N.H. 391.
Or.—Pond v. Jantzen Knitting Mills, 190 P.2d 141, 183 Or. 256—De Witt v. Sandy Market, 115 P.2d 184, 167 Or. 226—Knapp v. Standard Oil Co. of California, 68 P.2d 1052, 156 Or. 564.
Tex.—Richardson v. Missouri-K.-T. R. Co. of Tex., Civ.App., 205 S.W. 2d 819, error dismissed.
Vt.—Hutchinson v. Knowles, 184 A. 705, 108 Vt. 195, followed in 184 A. 711, 108 Vt. 208—Leland v. Leonard, 112 A. 198, 95 Vt. 36.
Wash.—Fabbio v. Diesel Oil Sales Co., 95 P.2d 788, 1 Wash.2d 234—Gooschin v. Ladd, 33 P.2d 653, 177 Wash. 625.
Wis.—Wagner v. Peiffer, 49 N.W.2d 739, 259 Wis. 566, followed in 49 N.W.2d 747, 259 Wis. 583—City of Baraboo v. Excelsior Creamery Co., 177 N.W. 36, 171 Wis. 242.
4 C.J. p 812 note 57 [e]—22 C.J. p 922 notes 98, 1.

Abuse of discretion resulting in prejudicial error

Wis.—Commerce Ins. Co. v. Badger Paint & Hardware Stores, 60 N.W. 2d 742, 265 Wis. 174.

Clear proof that discretion was improperly exercised

N.J.—Ellis v. Rosenberg, 188 A. 499, 15 N.J.Misc. 37.

Manifest abuse of discretion

Pa.—Eves v. Tritch, 58 A.2d 364, 162 Pa.Super. 443.

Exception

Whether admitting photograph of child in evidence in action for death when struck by automobile was wise exercise of discretion could not be raised by exception.
Mass.—Ferris v. Turner, 70 N.E.2d 715, 320 Mass. 555.

81.5 Minn.—Fulsom v. Egner, 79 N.W.2d 25, 248 Minn. 156—Meemken v. O'Hara, 66 N.W.2d 601, 243 Minn. 138.

discretion in passing on the admissibility of dying declarations.[81.10]

Fixation, limitation, and extension of time. In the absence of anything showing an abuse of discretion, an appellate court will not disturb the ruling by the trial court fixing, limiting, and extending the time for taking testimony.[81.15]

Transactions or conversations with deceased persons. The exercise by the trial court of its discretion in permitting evidence as to transactions or conversations with a deceased person to be introduced is subject to review to determine whether the trial court abused its discretion.[81.20] The appellate court will not disturb the ruling by the trial court unless it is clear that an error has been made,[81.25] and must examine the record for testimony on which it is reasonable to conclude that there is credibility in a party's claim that such testimony should be admitted in order to prevent injustice.[81.30] Unless the record demonstrates that the trial court has acted unreasonably in either receiving or rejecting evidence of conversations with deceased persons, an appellate court will not interfere.[81.35]

b. Determination of Preliminary Questions of Fact

(1) In general
(2) Competency of children
(3) Foundation for parol or secondary evidence
(4) Qualifications of experts or opinion witnesses
(5) Res gestae

(1) In General

Only where there has been a clear abuse of discretion will an appellate court review the exercise by the trial court of its discretion in determining the preliminary questions of fact on which the competency or relevancy of a witness or evidence depends.

The exercise by the trial court of its discretion in determining the preliminary questions of fact on which the competency or relevancy of a witness or evidence depends will be reviewed or reversed only where there has been a clear abuse of discretion;[82]

81.10 Or.—Mercep v. State Industrial Accident Commission, 118 P.2d 1061, 167 Or. 460.
Admission of dying declarations generally see Evidence § 238.

81.15 Fla.—Rollins v. Rollins, 19 So. 2d 562, 155 Fla. 83.

81.20 Mont.—Cox v. Williamson, 227 P.2d 614, 124 Mont. 512.
Admissibility of declarations of deceased persons generally see Evidence § 205.
Transactions or communications between third person and person since deceased see Witnesses § 228.

81.25 Mont.—Ahlquist v. Pinski, 185 P.2d 499, 120 Mont. 355—Sharp v. Sharp, 139 P.2d 235, 115 Mont. 35.

81.30 Mont.—Ahlquist v. Pinski, 185 P.2d 499, 120 Mont. 355—Sharp v. Sharp, 139 P.2d 235, 115 Mont. 35.

81.35 S.D.—In re Congdon's Estate, 51 N.W.2d 877, 74 S.D. 301.

82. Ala.—Hingle v. Sims, 163 So. 459, 26 Ala.App. 546.
Cal.—Dwelly v. McReynolds, 56 P.2d 1232, 6 C.2d 128.
Sim v. Weeks, 45 P.2d 350, 7 C.A.2d 28—Brown v. Gow, 18 P.2d 377, 128 C.A. 671—In re Cook, 210 P. 528, 59 C.A. 279.
Colo.—Wold v. City of Boulder, 9 P.2d 931, 91 Colo. 44.
Conn.—Haugh v. Kirsch, 135 A. 568, 105 Conn. 429—Bisnovich v. British American Assur. Co., 123 A. 339, 100 Conn. 240.
Ga.—Orr v. Dunn, 88 S.E. 669, 145 Ga. 137.
Haney & Tinsley v. Owens, 147 S.E. 720, 39 Ga.App. 462.
Idaho.—Marshall-Wells Co. v. Kramlich, 267 P. 611, 46 Idaho 355.
Me.—St. Croix Co. v. Sea Coast Canning Co., 96 A. 1059, 114 Me. 521.
Md.—Peninsula Produce Exch. v. American Ry. Express Co., 128 A. 403, 147 Md. 424—Johnston v. Frederick, 117 A. 768, 140 Md. 272.
Mass.—Iris v. Town of Hingham, 22 N.E.2d 13, 303 Mass. 401—McSweeney v. Edison Electric Illuminating Co. of Boston, 117 N.E. 847, 228 Mass. 563.
Minn.—De Vita v. Payne, 184 N.W. 184, 149 Minn. 405.
Mo.—Scrivner v. American Car & Foundry Co., 50 S.W.2d 1001, 330 Mo. 448.
Mont.—Sullivan v. Metropolitan Life Ins. Co., 29 P.2d 1046, 96 Mont. 254.
Neb.—Bishop v. Lincoln Baseball Club, 153 N.W. 586, 98 Neb. 558.
N.H.—Williams v. Williams, 182 A. 172, 87 N.H. 430—Ricard v. Prudential Ins. Co. of America, 173 A. 375, 87 N.H. 31, 93 A.L.R. 784.
N.J.—Tsibikas v. Morrof, 79 A.2d 64, 12 N.J.Super. 102.
Okl.—Ada Steam Laundry v. Kitchens, 164 P.2d 877, 196 Okl. 235—Sinclair Oil & Gas Co. v. Albright, 18 P.2d 540, 161 Okl. 272—Standard Accident Ins. Co. v. Baker, 291 P. 962, 145 Okl. 100—Bristow Cotton Oil Co. v. Hubbell, Slack & Co., 223 P. 855, 97 Okl. 291—Missouri, K. & T. Ry. Co. v. Smith, 223 P. 373, 97 Okl. 152—Selby Oil & Gas Co. v. Rogers, 221 P. 1012, 94 Okl. 269.
Or.—State v. Mohler, 237 P. 690, 115 Or. 562, petition denied 239 P. 193, 115 Or. 562—Filkins v. Portland Lumber Co., 142 P. 578, 71 Or. 249.
Pa.—Wilson v. Reiszner, 118 A. 557, 275 Pa. 5.
S.C.—Neal v. Southern Ry., Carolina Division, 160 S.E. 837, 162 S.C. 288, certiorari denied Southern Railway—Carolina Division v. Neal, 52 S.Ct. 9, 284 U.S. 621, 76 L.Ed. 530.
S.D.—Chiles v. Rohl, 201 N.W. 154, 47 S.D. 580.
Tex.—Westcliff Co. v. Wall, Civ.App., 261 S.W.2d 450, reversed on other grounds 267 S.W.2d 544, 153 Tex. 271—Culver v. State, Civ.App., 85 S.W.2d 997, error refused—McElwrath v. Dixon, Civ.App., 49 S.W. 2d 995—Bowles v. Bryan, Civ.App., 277 S.W. 760.
Vt.—Sanders v. Burnham, 100 A. 905, 91 Vt. 480.
Wash.—Quayle v. Knox, 27 P.2d 115, 175 Wash. 182.
Wis.—Andrzejewski v. Northwestern Fuel Co., 148 N.W. 37, 158 Wis. 170.
4 C.J. p 814 note 63—70 C.J. p 192 note 99.
Rulings as to competency or qualifications of experts or opinion witnesses see infra subdivision b (4) of this section.

Authentication of photographs

(1) Action of trial court in determining preliminary question whether photograph offered in evidence shows situation with sufficient accuracy to render it admissible can rarely be reviewed.
Ark.—Dermott Grocery & Commission Co. of Eudora v. Meyer, 102 S.W.2d 443, 193 Ark. 591.
Conn.—Crowell v. Middletown Sav. Bank, 189 A. 172, 122 Conn. 362.

and whether or not the jury shall be excused while the trial judge is hearing evidence bearing on the preliminary questions is a discretionary matter for the judge as to which his ruling will be reversed only in case of abuse.[83]

Business records. The determination by the trial court of whether a sufficient foundation for the admission of business records under the Uniform Business Records as Evidence Act and similar statutes will not be disturbed unless the court abused its discretion;[83.1] where nothing appears in the evidence which indicates any factual basis on which to exclude the evidence in the exercise of the sound discretion by the trial court, an appellate court must hold that the lower court erred in excluding the business records.[83.2] The proper verification of account book entries, as a basis for receiving them in evidence, is a question within the sound discretion of the trial judge, and his discretion will not be reversed if there is any evidence reasonably tending to support it.[83.3]

Judicial notice. The exercise by the trial court of its discretion in determining whether to take judicial notice of certain matters is subject to review for abuse.[83.4]

Testimony given on former trial. In the absence of abuse, an appellate court will not review the exercise by the trial court of its discretion in determining whether a sufficient predicate has been laid to justify the admission of a transcript of the testimony given by a witness on a former trial.[83.5]

(2) The trial judge's ruling on whether a photograph is sufficiently identified, as a correct representation of the object it purports to portray, to be admissible will not be disturbed in the absence of an abuse of discretion.

Cal.—Olson v. Meacham, 19 P.2d 527, 129 C.A. 670—Hayes v. Emerson, 294 P. 765, 110 C.A. 470.

Colo.—Wold v. City of Boulder, 9 P.2d 931, 91 Colo. 44.

Ind.—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind. App. 121.

Tex.—Richardson v. Missouri-K.-T. R. Co. of Tex., Civ.App., 205 S.W. 2d 819, error dismissed.

Wash.—Kramer v. Portland-Seattle Auto Freight, Inc., 261 P.2d 692, 43 Wash.2d 386—Kellerher v. Porter, 189 P.2d 223, 29 Wash.2d 650—Quayle v. Knox, 27 P.2d 115, 175 Wash. 182.

4 C.J. p 814 note 62 [1].

(3) Appellate court will not review trial court's exercise of its discretion in determining sufficiency of preliminary proofs offered to identify photograph and to show that it is an accurate representation of objects which it purports to portray except for gross abuse.

Ala.—International Union, United Auto., Aircraft and Agr. Implement Workers of America, C. I. O., v. Russell, 88 So.2d 175, 264 Ala. 456, certiorari granted 77 S.Ct. 213, 352 U.S. 915, 1 L.Ed.2d 121.

Change in physical appearance

Whenever an object is offered in evidence and its probative value as such depends upon its physical appearance, and objection to its admission is based on claim that its condition and appearance has so materially changed that it does not portray true situation, trial court's ruling will not be disturbed in absence of clear abuse in exercise of its discretion.

Wash.—Kiessling v. Northwest Greyhound Lines, 229 P.2d 835, 38 Wash.2d 289.

Competency of insane person to testify

Ohio.—Shupp v. Farrar, 88 N.E.2d 924, 85 Ohio App. 366.

Declarations of coconspirators

The amount of evidence necessary before evidence of declarations of alleged coconspirators is admissible lies within the discretion of the trial court, which will not be questioned unless abused.

Conn.—Antonio Pepe Co. v. Apuzzo, 120 A. 681, 98 Conn. 807.

Demonstrative evidence

Trial court's exercise of its discretion in determining relevancy and explanatory value of demonstrative evidence is subject to review, in order to curtail abuses, as to actual use made of object.

Ill.—Smith v. Ohio Oil Co., 134 N.E. 2d 526, 10 Ill.App.2d 67.

Documentary evidence

The trial court's discretion, as to whether sufficient preliminary proof of the authenticity of documentary evidence has been offered to justify its admission, will not be disturbed in the absence of abuse.

Cal.—Duggan v. Forderer, 249 P. 533, 79 C.A. 339.

Spontaneity of declarations

(1) Even though reviewing court, if sitting as trial court, would have made a different decision, where decision by trial judge appears to be a reasonable one, appellate court will not interfere in determination of whether or not declaration should be admissible under spontaneous exclamation exception to hearsay rule.

Ohio.—Potter v. Baker, 124 N.E.2d 140, 162 Ohio St. 488.

(2) Before admitting evidence of a claimed spontaneous declaration, the trial judge must decide the preliminary question of whether declarant had opportunity for deliberation and reflection, and whether the declaration was spontaneous, but his decision thereon is in his discretion, and not reviewable unless an unreasonable exercise of discretion.

Conn.—Perry v. Haritos, 124 A. 44, 100 Conn. 476.

(3) Unless trial court abused its discretion, ruling on admissibility of spontaneous statements will not be disturbed.

Ill.—Ryan v. Ryan, 53 N.E.2d 283, 321 Ill.App. 467.

83. S.C.—Roach v. Williams, 95 S.E. 120, 109 S.C. 29.

83.1 Ariz.—Colvin v. Westinghouse Elec. Corp., 288 P.2d 490, 79 Ariz. 275.

Mo.—Fisher v. Gunn, 270 S.W.2d 869.

Manifest abuse

N.D.—Northern Pac. Ry. Co. v. Advance Realty Co., 78 N.W.2d 705—Northwestern Imp. Co. v. Norris, 74 N.W.2d 497.

Wash.—Cantrill v. American Mail Line, 257 P.2d 179, 42 Wash.2d 590.

Abuse held not shown

Ariz.—Colvin v. Westinghouse Elec. Corp., 288 P.2d 490, 79 Ariz. 275.

Or.—Douglas Creditors Ass'n v. Padelford, 182 P.2d 390, 181 Or. 345.

Wash.—Choate v. Robertson, 195 P. 2d 630, 31 Wash.2d 118.

83.2 Mo.—Fisher v. Gunn, 270 S.W. 2d 869.

83.3 Conn.—Wilcox v. Downing, 91 A. 262, 88 Conn. 368.

Minn.—De Vita v. Payne, 184 N.W. 184, 149 Minn. 405.

4 C.J. p 813 note 58 [a].

83.4 Tex.—State v. Arkansas Fuel Oil Co., Civ.App., 268 S.W.2d 311, reversed on other grounds 280 S. W.2d 723, 154 Tex. 573.

83.5 Colo.—Schwalbe v. Postle, 249 P. 495, 80 Colo. 1.

Fla.—Alexander v. Bess, 167 So. 533, 123 Fla. 713.

(2) Competency of Children

The determination by the trial court of the competency of children to testify will not be disturbed on appeal unless it clearly abused its discretion.

The determination by the trial court of the question whether a child is competent to testify will not be disturbed on appeal unless the trial court clearly[83.10] abused its discretion.[83.11] An appellate court will not disturb the decision of the trial court unless error is manifest,[83.12] or it is plainly shown that the judgment of the trial court was without any evidentiary support.[83.13]

A trial court permitting a child to testify after finding him unqualified on his voir dire examination commits a palpable abuse of discretion, reviewable by the appellate court.[83.14]

(3) Foundation for Parol or Secondary Evidence

Unless an abuse of discretion is shown, an appellate court will not disturb the determination by the trial court of whether or not a sufficient foundation for the admission of secondary evidence has been laid.

An appellate court may review the exercise by the trial court of its judicial discretion as to whether an adequate predicate for the admission of parol testimony has been laid.[83.20]

The determination by the trial court of whether or not a sufficient foundation has been laid for the admission of secondary evidence will not be reversed in the absence of a clear,[83.21] gross,[83.22] or manifest[83.23] abuse of discretion,[83.24] or unless an abuse of discretion amounting to error of law is shown to exist.[83.25]

(4) Qualifications of Experts or Opinion Witnesses

An appellate court will ordinarily interfere with the exercise by the trial court of its discretion in determining the qualifications of experts or opinion witnesses only where error or an abuse of discretion is shown.

Ga.—Estill v. Citizens' & Southern Bank, 113 S.E. 552, 153 Ga. 618.
Allen v. Davis, 128 S.E. 74, 34 Ga.App. 5.
Ind.—New York Cent. R. Co. v. Pinnell, 40 N.E.2d 988, 112 Ind.App. 116.
Md.—Bielski v. Rising, 163 A. 207, 163 Md. 492.
Mich.—Andrews v. Murphy, 209 N. W. 63, 235 Mich. 236—Karwick v. Pickands, 147 N.W. 605, 181 Mich. 169.
Okl.—King Auto Service v. Hodges, 288 P. 483, 143 Okl. 260.
Tex.—Culver v. State, Civ.App., 85 S.W.2d 997, error refused—Bowles v. Bryan, Civ.App., 277 S.W. 760.

Abuse of discretion held not shown

Cal.—Long v. California-Western States Life Insurance Co., 279 P. 2d 43, 43 C.2d 871.
Pa.—Del Vitto v. Schiavo, 87 A.2d 913, 370 Pa. 299.
Va.—Burton v. Oldfield, 79 S.E.2d 660, 195 Va. 544.

83.10 Ark.—Wakin v. Wakin, 180 S. W. 471, 119 Ark. 509—Lamden v. St. Louis Southwestern Ry. Co., 170 S.W. 1001, 115 Ark. 238.
Mo.—Petty v. Kansas City Public Service Co., 191 S.W.2d 653, 354 Mo. 823.
Neb.—Rueger v. Hawks, 36 N.W.2d 236, 150 Neb. 834.
Okl.—Schaff v. Coyle, 249 P. 947, 121 Okl. 228.
Wash.—Wilkerson v. McGinn, 188 P. 472, 110 Wash. 454.
4 C.J. p 814 note 63 [f].

83.11 Mo.—Burnam v. Chicago Great Western R. Co., 100 S.W.2d 858, 340 Mo. 25.
Ohio.—Hill v. Skinner, 79 N.E.2d 787, 81 Ohio App. 375.
Okl.—Beatrice Foods Co. v. Jennings, 246 P.2d 347, 206 Okl. 688.

Abuse of discretion held not shown

Mo.—Kleinschmidt v. Bell, 183 S.W. 2d 87, 353 Mo. 516.

83.12 Va.—Hepler v. Hepler, 79 S.E. 2d 652, 195 Va. 611.

83.13 N.J.—Carlotz v. Gavin, 42 A. 2d 461, 133 N.J.Law 61.

83.14 Ky.—Whitehead v. Stith, 105 S.W.2d 834, 268 Ky. 703.

Reversal of judgment and remand required

Ky.—Whitehead v. Stith, supra.

83.20 Tex.—Dabney v. Keene, Civ. App., 195 S.W.2d 682, error refused no reversible error.

83.21 Cal.—In re Levy's Estate and Guardianship, 290 P.2d 320, 137 C. A.2d 237.
Ga.—Bryan v. Barnett, 52 S.E.2d 613, 205 Ga. 94—Turner v. Elliott, 56 S. E. 434, 127 Ga. 338.
Goettee v. Carlyle, 22 S.E.2d 854, 68 Ga.App. 288.

83.22 Ga.—Harrison v. Durham, 78 S.E.2d 482, 210 Ga. 187.

83.23 Ga.—Williams v. American Sur. Co. of N. Y., 62 S.E.2d 673, 83 Ga.App. 66—Goettee v. Carlyle, 22 S.E.2d 854, 68 Ga.App. 288.
Md.—Barranco v. Kostens, 54 A.2d 326, 189 Md. 94.
Pa.—Hacker v. Price, 71 A.2d 851, 166 Pa.Super. 404.

83.24 Cal.—Elbert Limited v. Semerad, 254 P.2d 49, 116 C.A.2d 652—Cotton v. Hudson, 110 P.2d 70, 42 C.A.2d 812—Brown v. Gow, 18 P.2d 377, 128 C.A. 671.
Ga.—Brookman v. Rennolds, 98 S.E. 543, 148 Ga. 721—Orr v. Dunn, 88 S.E. 669, 145 Ga. 137.
Metropolitan Life Ins. Co. v. Vickery, 176 S.E. 815, 49 Ga.App. 727—Haney & Tinsley v. Owens, 147 S.E. 720, 39 Ga.App. 462—Trice v. Adams, 125 S.E. 878, 33 Ga.App. 257.
Idaho.—Marshall-Wells Co. v. Kramlich, 267 P. 611, 46 Idaho 355.
Me.—St. Croix Co. v. Sea Coast Canning Co., 96 A. 1059, 114 Me. 521.
Mo.—Nibler v. Coltrane, 275 S.W.2d 270—Scrivner v. American Car & Foundry Co., 50 S.W.2d 1001, 330 Mo. 448.
City of Macon v. Fidelity & Deposit Co. of Maryland, 189 S.W. 645, 194 Mo.App. 677.
Neb.—Bishop v. Lincoln Baseball Club, 153 N.W. 586, 98 Neb. 558.
Okl.—Marker v. Gillam, 154 P. 351, 54 Okl. 766.
Pa.—Wilson v. Reiszner, 118 A. 557, 275 Pa. 5.
S.C.—Southern Cotton Oil Co. v. Schafer Co., 138 S.E. 882, 140 S.C. 445.
Tex.—Shelby County v. O'Banion, Civ.App., 188 S.W.2d 195.
4 C.J. p 814 note 63 [d].

Discretion held not abused

Ga.—Cox v. McDonald, 45 S.E. 401, 118 Ga. 414.

83.25 Mo.—Nibler v. Coltrane, 275 S.W.2d 270—Garrett v. Terminal R. Ass'n of St. Louis, 259 S.W.2d 807—Bullock v. Johnson, 166 S.W.2d 573, 350 Mo. 443—Scrivner v. American Car & Foundry Co., 50 S. W.2d 1001, 330 Mo. 408.
Jarrett v. St. Francois County Finance Co., App., 185 S.W.2d 855.
Wis.—Spellbrink v. Bramberg, 13 N. W.2d 600, 245 Wis. 103.
22 C.J. p 1053 note 35.

Appellate courts are slow to interfere with the exercise by the trial court of its discretion in ruling on the competency of witnesses to testify as experts.[83.30] The determination by the trial court is ordinarily final or conclusive,[83.31] and will not be disturbed by an appellate court,[83.32] even though the appellate court might have decided differently if the question had been presented to it in the first instance.[83.33]

The rulings of the trial court as to whether or not a witness is qualified to testify as an expert or give his opinion on a subject will ordinarily not be reversed unless an abuse of discretion is shown,[83.34]

83.30 Ind.—Linton-Summit Coal Co. v. Hutchison, 111 N.E.2d 819, 232 Ind. 369.

Whether a witness' qualifications to state his opinion is sufficiently established as resting largely in the discretion of the trial court see Evidence § 458.

Great consideration given to trial judge's decision

Minn.—Detroit Lakes Realty Co. v. McKenzie, 284 N.W. 60, 204 Minn. 490.

83.31 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 781, 189 Ark. 640.

N.C.—LaVecchia v. North Carolina Joint Stock Land Bank of Durham, 9 S.E.2d 489, 218 N.C. 35—Hardy v. Dahl, 187 S.E. 788, 210 N.C. 530.

Okl.—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.

Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P.2d 615, 618, 59 Wyo. 120.

22 C.J. p 527 note 12.

83.32 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 781, 189 Ark. 640.

Okl.—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.

Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P.2d 615, 618, 59 Wyo. 120.

22 C.J. p 526 note 11.

83.33 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 781, 189 Ark. 640.

Okl.—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.

Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P.2d 615, 618, 59 Wyo. 120.

83.34 U.S.—Chicago, Great Western Ry. Co. v. Beecher, C.C.A.Minn., 150 F.2d 394, certiorari denied 66 S.Ct. 339, 326 U.S. 781, 90 L.Ed. 473.

Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 189 Ark. 640.

Cal.—Wilson v. Foley, App., 309 P.2d 97—Waters v. Lanigan, 290 P.2d 370, 137 C.A.2d 268—India Paint & Lacquer Co. v. United Steel Products Corp., 267 P.2d 408, 123 C.A.2d 597—Morrison v. Jose, 135 P.2d 586, 57 C.A.2d 795—People v. Lang Transp. Corp., 110 P.2d 464, 43 C.A.2d 134—Linde v. Emmick, 61 P.2d 338, 16 C.A.2d 676.

Ill.—Rigdon v. Crosby, 66 N.E.2d 190, 328 Ill.App. 399—Pastore v. Sasso, 46 N.E.2d 857, 317 Ill.App. 538—Popp v. Terminal R. Ass'n of St. Louis, 45 N.E.2d 298, 316 Ill. App. 670.

Ind.—Knapp v. Ellyson Realty Co., 5 N.E.2d 973, 211 Ind. 180—Public Utilities Co. v. Handorf, 112 N.E. 775, 185 Ind. 254.

Iowa.—In re Guinn's Estate, 47 N.W. 2d 243, 242 Iowa 542.

Md.—Turner v. State Roads Commission, 132 A.2d 455, 213 Md. 428.

Mass.—Muzi v. Commonwealth, 138 N.E.2d 578.

Mo.—Davis v. Gatewood, 299 S.W.2d 504—Christian v. Jeter, 287 S.W. 2d 768—Stephens v. Kansas City Gas Co., 191 S.W.2d 601, 354 Mo. 835—Baker v. Kansas City Public Service Co., 183 S.W.2d 873, 353 Mo. 625—Arnold v. Alton R. Co., 154 S.W.2d 58, 348 Mo. 516.

Cunningham v. Union Elec. Co. of Mo., App., 221 S.W.2d 758—Fair v. Thompson, 212 S.W.2d 923, 240 Mo.App. 664—Grace v. Union Elec. Co. of Mo., 200 S.W.2d 364, 239 Mo.App. 1210—In re Stein's Estate, App., 177 S.W.2d 678.

Mont.—Nesbitt v. City of Butte, 163 P.2d 251, 118 Mont. 84.

Neb.—James Poultry Co. v. Nebraska City, 284 N.W. 273, 135 Neb. 787, rehearing denied and opinion supplemented 286 N.W. 337, 136 Neb. 456.

N.H.—Brunelle v. Nashua Bldg. & Loan Ass'n, 64 A.2d 315, 95 N.H. 391.

N.J.—Bosze v. Metropolitan Life Ins. Co., 61 A.2d 499, 1 N.J. 5.

N.M.—Bunton v. Hull, 177 P.2d 168, 51 N.M. 5.

N.Y.—Meiselman v. Crown Heights Hospital, 34 N.E.2d 367, 285 N.Y. 389.

Aguilar v. State, 108 N.Y.S.2d 456, 279 App.Div. 103, amended on other grounds 112 N.Y.S.2d 779, 279 App.Div. 1121, appeal withdrawn 107 N.E.2d 94, 304 N.Y. 616.

N.C.—In re Humphrey, 71 S.E.2d 915, 236 N.C. 142.

Okl.—Lyons v. McKay, 313 P.2d 527—Continental Oil Co. v. Elias, 307 P.2d 849—Chickasha Cotton Oil Co. v. Hancock, 306 P.2d 330—Magnolia Petroleum Co. v. McGeeley, 223 P.2d 131, 203 Okl. 470—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Magnolia Petroleum Co. v. Norton, 116 P.2d 893, 189 Okl. 252—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 102 Okl. 251.

Or.—Shaver Forwarding Co. v. Eagle Star Ins. Co., 162 P.2d 789, 177 Or. 410—Stonebrink v. Highland Motors, 137 P.2d 986, 171 Or. 415.

Pa.—Cooper v. Metropolitan Life Ins. Co., 186 A. 125, 323 Pa. 295, 111 A. L.R. 598.

R.I.—Cavallaro v. Sharp, 121 A.2d 669—Loughran v. Del Santo, 85 A.2d 66, 79 R.I. 150—Baffoni v. Baffoni, 74 A.2d 857, 77 R.I. 232.

S.D.—Peters v. Hoisington, 37 N.W. 2d 410, 72 S.D. 542, opinion adhered to 39 N.W.2d 667, 73 S.D. 144.

Tenn.—Monday v. Millsaps, 264 S.W. 2d 6, 37 Tenn.App. 371—Evans v. Boggs, 245 S.W.2d 641, 35 Tenn.

which abuse has been required to be a clear | abuse.[83.35] Other authorities have required a show-

App. 354—Foster & Creighton Co. v. Hale, 222 S.W.2d 222, 32 Tenn. App. 208—Keys v. Keys, 129 S.W. 2d 1103, 23 Tenn.App. 188.

Tex.—Montgomery Ward & Co. v. Levy, Civ.App., 136 S.W.2d 663, error dismissed, judgment correct—Martin v. Martin, Civ.App., 130 S. W.2d 863, error dismissed, judgment correct.

Utah.—Battle Creek Bread Wrapping Mach. Co. v. Paramount Baking Co., 39 P.2d 923, 88 Utah 67.

Va.—Swersky v. Higgins, 76 S.E.2d 200, 194 Va. 983.

Wis.—Drott Tractor Co. v. Kehrein, 81 N.W.2d 500, 275 Wis. 320.

4 C.J. p 848 note 31—22 C.J. p 526 note 11.

Abuse of judicial discretion

Okl.—Ruther v. Tyra, 247 P.2d 964, 207 Okl. 112—Kurn v. Margolin, 101 P.2d 818, 187 Okl. 135.

Mental condition

(1) In general.

Ill.—DeMarco v. McGill, 83 N.E.2d 313, 402 Ill. 46—Tyler v. Tyler, 82 N.E.2d 346, 401 Ill. 435—Ergang v. Anderson, 38 N.E.2d 26, 378 Ill. 312, 137 A.L.R. 984.

In re Dombrowski's Estate, 53 N.E.2d 18, 321 Ill.App. 300.

Minn.—In re Crosby's Estate, 15 N. W.2d 501, 218 Minn. 149.

Mo.—Pickett v. Cooper, 192 S.W.2d 412, 354 Mo. 910.

Tex.—Jowers v. Smith, Civ.App., 237 S.W.2d 805—Martin v. Martin, Civ. App., 130 S.W.2d 863, error dismissed, judgment correct.

4 C.J. p 814 note 63 [g] (2).

(2) Intimate acquaintance within meaning of statute.

Cal.—Atkins Corp. v. Tourny, 57 P. 2d 480, 6 C.2d 206.

Jorgensen v. Dahlstrom, 127 P. 2d 551, 53 C.A.2d 322.

4 C.J. p 814 note 63 [b].

(3) Competency of subscribing witness to testify as to mental condition of testator, unless witness was competent to give such testimony solely by reason of being a subscribing witness to will, was question for court, subject to review for abuse of discretion.

Tex.—Whatley v. McKanna, Civ. App., 207 S.W.2d 645, error refused no reversible error.

Value

Okl.—Ada Steam Laundry v. Kitchens, 164 P.2d 877, 196 Okl. 235—Wilkerson v. Grand River Dam Authority, 161 P.2d 745, 195 Okl. 678.

[83.35] Ala.—American Ins. Co. of Newark, N. J. v. Fuller, 140 So. 555, 224 Ala. 387—Batson v. Batson, 117 So. 10, 217 Ala. 450—Houston v. Grigsby, 116 So. 686, 217 Ala. 506—National Life & Accident Ins. Co. v. Hannon, 108 So. 575, 214 Ala. 663—Lewis v. Martin, 98 So. 635, 210 Ala. 401—Brown v. Mobile Electric Co., 91 So. 802, 207 Ala. 61—Marbury Lumber Co. v. Heinege, 85 So. 453, 204 Ala. 241—Wear v. Wear, 76 So. 111, 200 Ala. 345—Alabama City, G. & A. Ry. Co. v. Bessiere, 72 So. 325, 197 Ala. 5—Woodward Iron Co. v. Spencer, 69 So. 902, 194 Ala. 285—Southern Bitulithic Co. v. Perrine, 67 So. 601, 191 Ala. 411—Cummings v. McDonnell, 66 So. 717, 189 Ala. 96—Birmingham, E. & B. R. Co. v. Williams, 66 So. 653, 190 Ala. 53.

White v. State, 51 So.2d 550, 35 Ala.App. 617—Hale v. Southern Ry. Co., 142 So. 587, 25 Ala.App. 111, certiorari denied Ex parte Hale, 142 So. 589, 225 Ala. 267.

Cal.—Sinz v. Owens, 205 P.2d 3, 33 C.2d 749, 8 A.L.R.2d 757—Hutter v. Hommel, 3 P.2d 554, 213 C. 677—Darling v. Pacific Electric Ry., 242 P. 703, 197 C. 702—In re Perkins' Estate, 235 P. 45, 195 C. 699—Vallejo & N. R. Co. v. Reed Orchard Co., 147 P. 238, 169 C. 545.

Richard v. Mead, 297 P.2d 680, 141 C.A.2d 866—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Wells Truckways v. Cebrian, 265 P.2d 557, 122 C.A.2d 666—Fall v. Coastwise Lines, 254 P.2d 58, 116 C.A.2d 345—Bennett v. Los Angeles Tumor Institute, 227 P.2d 473, 102 C. A.2d 293—In re Johnson's Estate, 223 P.2d 105, 100 C.A.2d 73—Agnew v. City of Los Angeles, 218 P.2d 66, 97 C.A.2d 557—Cloud v. Market St. Ry. Co., 168 P.2d 191, 74 C.A. 2d 92—Mirich v. Balsinger, 127 P. 2d 639, 53 C.A.2d 103—Johnson v. Western Air Express Corp., 114 P. 2d 688, 45 C.A.2d 614—People v. Willis, 86 P.2d 670, 30 C.A.2d 419—Gaumnitz v. Indemnity Ins. Co. of North America, 37 P.2d 712, 2 C.A.2d 134—Rudat v. Carithers, 30 P.2d 435, 137 C.A. 92—People v. Broome, 7 P.2d 757, 120 C.A. 267—Coast Counties Gas & Electric Co. v. Miller & Lux, 5 P.2d 34, 118 C.A. 140—Home Fire Ins. Co. v. Southwestern Engineering Corporation, 299 P. 771, 114 C.A. 235—Powers v. Central Surety & Insurance Corporation, 298 P. 1027, 113 C.A. 735—In re Alexander's Estate, 295 P. 53, 111 C.A. 1—Branch v. Bekins Van & Storage Co., 290 P. 146, 106 C.A. 623—In re Lenci's Estate, 288 P. 841, 106 C.A. 771—Davenport v. National Reserve Ins. Co. of Illinois, Dubuque, Iowa, 267 P. 132, 91 C.A. 460—Barsi v. Simpson, 161 P. 127, 31 C.A. 612.

Colo.—Hoover v. Shott, 189 P. 848, 68 Colo. 385.

Conn.—Ruocco v. Logiocco, 134 A. 73, 104 Conn. 585—Katz v. Delohery Hat Co., 118 A. 88, 97 Conn. 665—Richmond v. City of Norwich, 115 A. 11, 96 Conn. 582—Coffin v. Laskau, 94 A. 870, 89 Conn. 325, L.R.A. 1915E 959.

Fla.—Thomas v. State, 74 So. 1, 73 Fla. 115.

Idaho.—Lowe v. Skagg's Safeway Stores, 286 P. 616, 49 Idaho 48—Fritcher v. Kelley, 201 P. 1037, 34 Idaho 468.

Ill.—Down v. Comstock, 149 N.E. 507, 318 Ill. 445—Catt v. Robins, 137 N. E. 101, 305 Ill. 76—Supolski v. Ferguson & Lange Foundry Co., 111 N.E. 544, 272 Ill. 82.

Ind.—Public Utilities Co. v. Handorf, 112 N.E. 775, 185 Ind. 254—Eckman v. Funderburg, 108 N.E. 577, 183 Ind. 208.

Iowa.—Olsen v. Corporation of New Melleray, 60 N.W.2d 832, 245 Iowa 407.

Me.—Grant v. Dolley, 163 A. 85, 131 Me. 500.

Md.—General Automobile Owners' Ass'n v. State, 140 A. 48, 154 Md. 204—Peninsula Produce Exch. v. American Ry. Express Co., 128 A. 403, 147 Md. 424—Wingert v. Bowie, 128 A. 274, 147 Md. 610—Mahan v. Adam, 124 A. 901, 144 Md. 355—Riley v. State, 117 A. 237, 140 Md. 137—Susquehanna Transmission Co. of Maryland v. Murphy, 101 A. 791, 131 Md. 340—Ottenberg v. Ryan & Riley Co., 99 A. 984, 130 Md. 38.

Mass.—Graustein v. H. P. Hood & Sons, 200 N.E. 14, 293 Mass. 207—Harrington v. Travers, 192 N.E. 495, 288 Mass. 156—Vineyard Grove Co. v. Town of Oak Bluffs, 163 N.E. 888, 265 Mass. 270—Johnson v. City of Lowell, 134 N.E. 627, 240 Mass. 546—Jordan v. Adams Gaslight Co., 120 N.E. 654, 231 Mass. 186.

Minn.—Backstrom v. New York Life Ins. Co., 259 N.W. 681, 194 Minn. 67—Palmer v. Order of United Commercial Travelers of America, 253 N.W. 543, 191 Minn. 204.

Mo.—Boring v. Kansas City Life Ins. Co., 274 S.W.2d 233—**Corpus Juris Secundum cited in** White v. Atchison, T. & S. F. Ry. Co., 244 S.W.2d 26, 30, certiorari denied 72 S.Ct. 648, 343 U.S. 915, 96 L.Ed. 1330—Fields v. Luck, 74 S.W.2d 35, 335 Mo. 765.

York v. Daniels, 259 S.W.2d 109, 241 Mo.App. 809—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180—Owens v. Kansas City, C. C. & S. J. Ry. Co., App., 225 S.W. 234.

Mont.—Wilson v. Wilson, 278 P.2d 219, 128 Mont. 511.

Neb.—Elliott v. Swift & Co., 39 N. W.2d 617, 151 Neb. 787—Schmidbauer v. Omaha & C. B. St. Ry. Co., 177 N.W. 336, 104 Neb. 250—

Meyers & Cox v. Western Union Telegraph Co., 153 N.W. 558, 98 Neb. 471.

N.H.—Ricard v. Prudential Ins. Co. of America, 173 A. 375, 87 N.H. 31, 93 A.L.R. 784—Smith & Sargent v. American Car Sprinkler Co., 97 A. 872, 78 N.H. 152.

N.J.—Monaco v. Jackson Engineering Co., 132 A.2d 548, 45 N.J.Super. 313.

In re Proceedings to Acquire Lands, etc., for Public Park, 150 A. 387, 107 N.J.Law 110—Ringwood Co. v. North Jersey Dist. Water Supply Commission, 143 A. 369, 105 N.J.Law 165—Leonard v. Standard Aero Corporation of New York, 112 A. 252, 95 N.J.Law 235—Ross v. Commissioners of Palisades Interstate Park, 101 A. 60, 90 N.J.Law 461.

Overbridge Realty Corporation v. City of Hackensack, 180 A. 666, 13 N.J.Misc. 702—W. J. Donnell Lumber Co. v. State Highway Commission, 139 A. 30, 5 N.J.Misc. 966.

N.Y.—New York Cent. & H. R. R. Co. v. Newbold, 151 N.Y.S. 732, 166 App.Div. 193.

N.C.—Shaw v. National Handle Co., 124 S.E. 325, 188 N.C. 222—Lanier v. Bryan, 114 S.E. 6, 184 N.C. 235, 26 A.L.R. 1488.

Ohio.—**Corpus Juris Secundum cited in** In re Ohio Turnpike Commission, 131 N.E.2d 397, 405, 164 Ohio St. 377, appeal dismissed 77 S.Ct. 51, 352 U.S. 806, 1 L.Ed.2d 39, rehearing denied 77 S.Ct. 260, 352 U. S. 945, 1 L.Ed.2d 240.

Okl.—Finley v. Board of County Com'rs of Oklahoma County, 291 P. 2d 333—H. D. Youngman Contractor, Inc. v. Girdner, 262 P.2d 693—Thompson v. Boydstun, 118 P.2d 236, 189 Okl. 530—Gypsy Oil Co. v. Brightwell, 49 P.2d 800, 174 Okl. 519—Town of Sentinel v. Riley, 43 P.2d 742, 171 Okl. 533—Texas Co. v. Alred, 28 P.2d 556, 167 Okl. 128—Roxana Petroleum Corporation v. Dormire, 18 P.2d 544, 161 Okl. 262—Toombs v. Cummings, 3 P.2d 177, 151 Okl. 166—Bell v. Tackett, 272 P. 461. 134 Okl. 164—Mid-Co Pipe & Supply Co. v. Central Torpedo Co., 260 P. 753, 127 Okl. 273—Tankersley v. Ferrin, 238 P. 853, 113 Okl. 68—Phœnix Ins. Co. of Hartford, Conn., v. School Dist. No. 132 of Comanche County, 228 P. 489, 102 Okl. 251—Lusk v. Phelps, 175 P. 756, 71 Okl. 150—Incorporated Town of Sallisaw v. Priest, 159 P. 1093, 61 Okl. 9—International Harvester Co. v. Lawyer, 155 P. 617, 56 Okl. 207—Wichita Falls & N. W. Ry. Co. v. McAlary, 144 P. 583, 44 Okl. 326—Wichita Falls & N. W. Ry. Co. v. Harvey, 144 P. 581, 44 Okl. 321.

Or.—Laam v. Green, 211 P. 791, 106 Or. 311—Northwest Door Co. v. Lewis Inv. Co., 180 P. 495, 92 Or. 186—Filkins v. Portland Lumber Co., 142 P. 578, 71 Or. 249—Rugenstein v. Ottenheimer, 140 P. 747, 70 Or. 600.

Pa.—Davis v. Southern Surety Co., 153 A. 119, 302 Pa. 21—McCullough v. Holland Furnace Co., 141 A. 631, 293 Pa. 45—Corbin v. Haws Refractories Co., 120 A. 811, 277 Pa. 126—Allegro v. Rural Valley Mut. Fire Ins. Co., 112 A. 140, 268 Pa. 333—Gordon v. Philadelphia Rapid Transit Co., 107 A. 811, 264 Pa. 461—Iron City Automobile Co. v. City of Pittsburgh, 98 A. 679, 253 Pa. 478, L.R.A.1917C 420.

Krein v. Steigerwald, 193 A. 390, 128 Pa.Super. 51—Commonwealth Trust Co. v. Heh, 99 Pa.Super. 479—Altman v. Lande, 84 Pa.Super. 399—Commonwealth v. Blenkenstein, 81 Pa.Super. 340—Beck v. Philadelphia Automobile Trade Ass'n, 59 Pa.Super. 145.

R.I.—Bond v. Berson, 146 A. 773, 50 R.I. 192—Combination Fountain Co. v. Millard, 144 A. 883, 50 R.I. 50—C. Cretors & Co. v. Licht, 141 A. 466, 49 R.I. 198—Mersky v. Leary, 134 A. 13.

Tenn.—Roper v. Memphis St. Ry. Co., 188 S.W. 588, 136 Tenn. 23.

Tex.—Rogers & Adams v. Lancaster, Com.App., 248 S.W. 660.

State v. Griffis, Civ.App., 300 S. W.2d 220, error refused no reversible error—City of Teague v. Stiles, Civ.App., 263 S.W.2d 623, error refused no reversible error—Ætna Ins. Co. v. Collins, Civ.App., 134 S.W.2d 709—Bettis v. Bettis, Civ. App., 83 S.W.2d 1076—General Motors Acceptance Corporation v. Killingsworth, Civ.App., 54 S.W.2d 266—McElwrath v. Dixon, Civ.App., 49 S.W.2d 995—Goode v. Ramey, Civ.App., 48 S.W.2d 719—Texas Pacific Coal & Oil Co. v. Taylor, Civ. App., 47 S.W.2d 1110—St. Mary's Oil Engine Co. v. Allen-Morrow Co., Civ.App., 20 S.W.2d 266—International-Great Northern R. Co. v. Motley, Civ.App., 18 S.W.2d 782—Longenecker v. Ward County Water Improvement Dist. No. 3, Civ.App., 8 S.W.2d 306—El Paso Electric Co. v. Whitenack, Civ. App., 297 S.W. 258, affirmed, Com. App., 1 S.W.2d 594—Automobile Underwriters of America v. Radford, Civ.App., 293 S.W. 869, affirmed Radford v. Automobile Underwriters of America, Com.App., 299 S.W. 852—Sparrow v. Tillman, Civ.App., 283 S.W. 877—Ross v. Wilkerson, Civ.App., 277 S.W. 425—Dunlap Hardware Co. v. E. F. Elmberg Co., Civ.App., 252 S.W. 1098, affirmed E. F. Elmberg Co. v. Dunlap Hardware Co., Com.App., 267 S.W. 258—Hines v. Davis, Civ. App., 225 S.W. 862—Galveston, H. & S. A. Ry. Co. v. Hartford Fire Ins. Co., Civ.App., 220 S.W. 781, reversed on other grounds Hartford Fire Ins. Co. v. Galveston, H. & S. A. R. Co., Com.App., 239 S.W. 919—Wichita Valley Ry. Co. v. Martin & Walker, Civ.App., 219 S.W. 559—Gulf, C. & S. F. Ry. Co. v. McKie, Civ.App., 217 S.W. 737—Early-Foster Co. v. Gottlieb, Civ. App., 214 S.W. 520, dismissed for want of jurisdiction—Texas & P. Ry. Co. v. Martin Bros., Civ.App., 175 S.W. 707.

Utah.—Graham v. Ogden Union Ry. & Depot Co., 6 P.2d 465, 79 Utah 1.

Vt.—Laferriere v. Gray, 160 A. 270, 104 Vt. 366—Andrews v. Aldrich, 158 A. 676, 104 Vt. 235—Shields v. Vermont Mut. Fire Ins. Co., 147 A. 352, 102 Vt. 224—Congdon v. Torrey, 112 A. 202, 95 Vt. 38—Brown v. Aitken, 99 A. 265, 90 Vt. 569.

Va.—Crowson v. Swan, 178 S.E. 898, 164 Va. 82—Chesapeake & O. Ry. Co. v. Meyer, 143 S.E. 478, 150 Va. 656—Powhatan Lime Co. v. Whetzel's Adm'x, 86 S.E. 898, 118 Va. 161.

Wash.—State v. City of Hoquiam, 286 P. 286, 155 Wash. 678, modified on other grounds 287 P. 670, 155 Wash. 678—Lipsett v. Dettering, 162 P. 1007, 94 Wash. 629—Kranzusch v. Trustee Co., 161 P. 492, 93 Wash. 629.

W.Va.—Toppins v. Oshel, 89 S.E.2d 359—Byrd v. Virginian Ry. Co., 13 S.E.2d 273, 123 W.Va. 47.

4 C.J. p 814 note 63 [g] (1).

Mental condition

(1) In general.

Iowa.—Ward v. Sears, 78 N.W.2d 545, 247 Iowa 1231—Insen v. Ruess, 35 N.W.2d 82, 239 Iowa 1376.

(2) Appellate court will not interfere with exercise by trial court of its discretion in determining whether witness was an intimate acquaintance of decedent and qualified to testify as to his mental condition in absence of clear abuse of discretion.

Cal.—In re McKenna's Estate, 77 P. 461, 143 C. 580.

In re Watkins' Estate, 184 P.2d 192, 81 C.A.2d 465—In re Rich's Estate, 179 P.2d 373, 79 C.A.2d 22—Hart v. Olson, 157 P.2d 385, 68 C.A.2d 657—In re Lenci's Estate, 288 P. 841, 106 C.A. 171.

Value

Cal.—Sooy v. Kunde, 181 P.2d 758, 80 C.A.2d 347—People v. McReynolds, 87 P.2d 734, 31 C.A.2d 219.

Pa.—Brewer v. Blue Mountain Consol. Water Co., 191 A. 408, 126 Pa. Super. 553.

Tex.—Rosinbaum v. Billingsley, Civ. App., 272 S.W.2d 591, error refused no reversible error—Rayburn v. Giles, Civ.App., 182 S.W.2d 9, error refused.

W.Va.—Tennessee Gas Transmission Co. v. Fox, 58 S.E.2d 584, 134 W. Va. 106.

4 C.J. p 814 note [g] (4).

ing of grave,[83.36] manifest,[83.37] or palpable[83.38] abuse of discretion.

An appellate court will interfere only in a clear and strong case,[83.39] or in extreme cases;[83.40] and it will not disturb the rulings of the trial court unless it appears that they were unjust and worked an injury to a litigant,[83.41] or that prejudice to the complaining party has resulted.[83.42] The determination by the trial court will stand unless it was so clearly the result of an unreasonable evaluation of the facts as to constitute a mistaken use of discretion,[83.43] or unless it clearly appears that the knowledge and experience of the witness is of no aid to the triers of the facts.[83.44]

Error. An appellate court will not disturb the exercise of discretion by the lower court in the absence of a showing of clear,[83.45] extreme,[83.46] mani-

83.36 Ill.—Werner v. Illinois Cent. R. Co., 33 N.E.2d 121, 309 Ill.App. 292, reversed on other grounds 42 N.E.2d 82, 379 Ill. 559.

83.37 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 781, 189 Ark. 640.

Cal.—Beresford v. Pacific Gas & Elec. Co., 290 P.2d 498, 45 C.2d 738—Lynch v. Birdwell, 285 P.2d 919, 44 C.2d 839—Pfingsten v. Westenhaver, 244 P.2d 395, 39 C.2d 12—Huffman v. Lindquist, 234 P.2d 34, 37 C.2d 465, 29 A.L.R.2d 485—Hutter v. Hommel, 3 P.2d 554, 213 C. 677.

International Airports v. Finn, 282 P.2d 102, 132 C.A.2d 293—Pearce v. Linde, 248 P.2d 506, 113 C.A.2d 627—Knox v. Wolfe, 167 P. 2d 3, 73 C.A.2d 494.

Ind.—Chicago & Erie R. Co. v. Monesmith, 37 N.E.2d 724, 110 Ind.App. 281.

Okl.—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.

Or.—Tuite v. Union Pac. Stages, Inc., 284 P.2d 333, 204 Or. 565—Timber Structures v. C. W. S. Grinding & Mach. Works, 229 P.2d 623, 191 Or. 231, 25 A.L.R.2d 1358.

Wash.—Johnson v. Harvey, 268 P.2d 662, 44 Wash.2d 455—White v. Fenner, 133 P.2d 270, 16 Wash.2d 226.

Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P. 2d 615, 618, 59 Wyo. 120.

22 C.J. p 527 note 15.

Reasonable market value of crops

Cal.—Eubanks v. Milton G. Cooper & Son, 156 P.2d 775, 68 C.A.2d 366.

83.38 Ala.—Dorsey Trailers, Inc. v. Foreman, 69 So.2d 459, 260 Ala. 141—Kay-Noojin Development Co. v. Kinzer, 65 So.2d 510, 259 Ala. 49—Johnson v. Battles, 52 So.2d 702, 255 Ala. 624.

Nash v. Nash, App., 94 So.2d 217, certiorari denied 94 So.2d 223.

83.39 Pa.—Allegro v. Rural Valley Mut. Fire Ins. Co., 112 A. 140, 268 Pa. 333.

Condition and value of goods

Pa.—Allegro v. Rural Valley Mut. Fire Ins. Co., supra.

Czerwinski v. National Ben Franklin Fire Ins. Co. of Pittsburgh, 10 A.2d 40, 138 Pa.Super. 84.

83.40 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 781, 189 Ark. 640.

Okl.—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.

Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P.2d 615, 618, 59 Wyo. 120.

22 C.J. p 527 note 14.

83.41 Ala.—Lambert v. Jefferson, 36 So.2d 583, 34 Ala.App. 67, reversed on other grounds 36 So.2d 594, 251 Ala. 5.

83.42 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S. W.2d 777, 781, 189 Ark. 640.

Okl.—Smith v. Kious, 147 P.2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.

Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P.2d 615, 618, 59 Wyo. 120.

4 C.J. p 527 note 18.

83.43 N.J.—Carbone v. Warburton, 91 A.2d 518, 22 N.J.Super. 5, affirmed 94 A.2d 680, 11 N.J. 418.

83.44 Minn.—Moeller v. St. Paul City Ry. Co., 16 N.W.2d 289, 218 Minn. 353, 156 A.L.R. 371—Palmer v. Order of United Commercial Travelers of America, 253 N.W. 543, 191 Minn. 204.

83.45 Ala.—Price v. Marshall, 52 So. 2d 149, 255 Ala. 447—Tucker v. Tucker, 28 So.2d 637, 248 Ala. 602—McClelland v. Coston, 149 So. 697, 227 Ala. 267.

Ark.—Lee v. Crittenden County, 226 S.W.2d 79, 216 Ark. 480.

Ky.—Maddox v. Peacock Coal Co., 281 S.W.2d 704.

Neb.—Devore v. Board of Equalization, 13 N.W.2d 451, 144 Neb. 351—Aurora Hotel v. Board of Equalization of Hamilton County, 300 N.W. 419, 140 Neb. 511.

N.J.—Carbone v. Warburton, 94 A.2d 680, 11 N.J. 418.

Ohio.—Beam v. Baltimore & O. R. Co., 68 N.E.2d 159, 77 Ohio App. 419.

Pa.—Stevenson v. East Deer Tp., 108 A.2d 815, 379 Pa. 103.

Tenn.—Monday v. Millsaps, 264 S.W. 2d 6, 37 Tenn.App. 371—Evans v. Boggs, 245 S.W.2d 641, 35 Tenn. App. 354—Keys v. Keys, 129 S.W. 2d 1103, 23 Tenn.App. 188.

Value

Neb.—Borden v. General Ins. Co. of America, 59 N.W.2d 141, 157 Neb. 98.

Pa.—Stevenson v. East Deer Tp., 108 A.2d 815, 379 Pa. 103.

Tex.—Slack v. Magee Heirs, Civ.App., 252 S.W.2d 274, affirmed Magee Heirs v. Slack, 258 S.W.2d 797, 152 Tex. 427—Foley Bros. Dry Goods Co. v. Settegast, Civ.App., 133 S. W.2d 228, error refused.

83.46 Okl.—Smith v. Kious, 147 P. 2d 442, 194 Okl. 17—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164.

fest,[83.47] palpable,[83.48] plain,[83.49] or prejudicial[83.50] error;[83.51] and a clear showing of error as a matter of law,[83.52] or as an abuse of discretion,[83.53] has been required.

If the exercise by the trial court of its discretion is misguided by error of law as to who is an expert, its determination is subject to review.[83.54] The ruling of the trial court is subject to review where there is a manifest misunderstanding,[83.55] or an erroneous view,[83.56] of legal principles, or where the trial court proceeded on erroneous legal standards.[83.57]

Evidence. The ruling of the trial court may be reviewed if there is no evidence of the qualification of the witness,[83.58] or if it is not justified by,[83.59] or is against,[83.60] the evidence. Such ruling will not be disturbed if there is any,[83.61] or any substantial,[83.62] evidence to support it, or unless an actual want of evidence is shown.[83.63]

83.47 N.H.—Bohan v. Lord & Keenan, Inc., 95 A.2d 786, 98 N.H. 144—Ricard v. Prudential Ins. Co. of America, 173 A. 375, 87 N.H. 31, 93 A.L.R. 784.
Va.—Williams v. Williams, 66 S.E.2d 500, 192 Va. 787.

Value of services
Neb.—In re Cook's Estate, 68 N.W. 2d 351, 159 Neb. 739—In re Baker's Estate, 14 N.W.2d 585, 144 Neb. 797, 155 A.L.R. 950.

83.48 Utah.—Mary Jane Stevens Co. v. First Nat. Bldg. Co., 57 P.2d 1099, 89 Utah 456.

Property values
Utah.—Mary Jane Stevens Co. v. First Nat. Bldg. Co., supra.

83.49 Ala.—Little v. Sugg, 8 So.2d 866, 243 Ala. 196—Wear v. Wear, 76 So. 111, 200 Ala. 345.

Mental condition
Ala.—Little v. Sugg, 8 So.2d 866, 243 Ala. 196—Wear v. Wear, 76 So. 111, 200 Ala. 345.

83.50 Okl.—Magnolia Petroleum Co. v. McGeeley, 223 P.2d 131, 203 Okl. 470—Smith v. Arrow Drilling Co., 130 P.2d 95, 191 Okl. 381—Magnolia Petroleum Co. v. Norton, 116 P.2d 893, 189 Okl. 252.

83.51 Ark.—Arkansas Power & Light Co. v. Morris, 254 S.W.2d 684, 221 Ark. 576—**Corpus Juris quoted in** Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 781, 189 Ark. 640.
Okl.—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589—Oklahoma City v. Dyer, 61 P.2d 660, 177 Okl. 620—Town of Sentinel v. Boggs, 61 P. 2d 654, 177 Okl. 623—Small v. Comer, 43 P.2d 716, 171 Okl. 418—Bell v. Tackett, 272 P. 461, 134 Okl. 164—**Corpus Juris quoted in** Phœnix Ins. Co. of Hartford, Conn. v. School Dist. No. 132, 228 P. 489, 491, 102 Okl. 251.
Wyo.—**Corpus Juris quoted in** Johnson v. Hanover Fire Ins. Co., 137 P.2d 615, 618, 59 Wyo. 120.
22 C.J. p 526 note 11.

83.52 Mass.—Campbell v. Shea, 125 N.E.2d 922, 332 Mass. 422—Murphy v. Chichetto, 79 N.E.2d 898, 323 Mass. 11—Johnson v. Lowell, 134 N.E. 627, 240 Mass. 546.

N.J.—Rempfer v. Deerfield Packing Corp., 72 A.2d 204, 4 N.J. 135—Cowdrick v. Pennsylvania R. Co., 39 A. 2d 98, 132 N.J.Law 131, certiorari denied 65 S.Ct. 555, 323 U.S. 799, 89 L.Ed. 637.
Garafola v. Rosecliff Realty Co., 93 A.2d 608, 24 N.J.Super. 28—Carbone v. Warburton, 91 A.2d 518, 22 N.J.Super. 5, affirmed 94 A.2d 680, 11 N.J. 418—Perlberg v. Geminder, 89 A.2d 448, 20 N.J.Super. 191—Leider v. Pitock, 83 A.2d 796, 15 N.J.Super. 592—Bergen County Sewer Authority v. Borough of Little Ferry, 83 A.2d 4, 15 N.J.Super. 43—Clayton v. New Dreamland Roller Skating Rink, 82 A.2d 458, 14 N.J.Super. 390—Coll v. Bernstein, 81 A.2d 389, 14 N.J.Super. 71—Canonico v. Celanese Corp. of America, Plastics Division, 78 A.2d 411, 11 N.J.Super. 445.
N.D.—City of Bismarck v. Casey, 43 N.W.2d 372, 77 N.D. 295.

83.53 Md.—Pennsylvania Threshermen & Farmers' Mut. Cas. Ins. Co. v. Messenger, 29 A.2d 653, 181 Md. 295.

83.54 Ala.—Roberts v. Davis, 160 So. 718, 230 Ala. 272—Ex parte Hale, 142 So. 589, 225 Ala. 267.
N.Y.—Meiselman v. Crown Heights Hospital, 34 N.E.2d 367, 285 N.Y. 389.
N.C.—Pridgen v. Gibson, 139 S.E. 443, 194 N.C. 289, 54 A.L.R. 855.

83.55 Ill.—Pastore v. Sasso, 46 N.E. 2d 857, 317 Ill.App. 538.

83.56 Minn.—Hartmon v. National Heater Co., 60 N.W.2d 804, 240 Minn. 264—Woyak v. Konieske, 54 N.W.2d 649, 237 Minn. 213, 33 A. L.R.2d 1241—Detroit Lakes Realty Co. v. McKenzie, 284 N.W. 60, 204 Minn. 490—Apitz v. City of New Ulm, 248 N.W. 733, 189 Minn. 205—Stevens v. City of Minneapolis, 43 N.W. 842, 42 Minn. 136.

83.57 N.J.—Kagan v. Berman, 98 A. 2d 683, 27 N.J.Super. 20, reversed on other grounds 102 A.2d 765, 14 N.J. 467—Grand View Gardens v. Borough of Hasbrouck Heights, 81 A.2d 510, 14 N.J.Super. 167.
S.D.—State ex rel. Helgerson v. Riiff, 44 N.W.2d 126, 73 S.D. 467.

83.58 Cal.—Mirich v. Balsinger, 127 P.2d 639, 53 C.A.2d 103.
Mo.—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180.
N.J.—Kagan v. Berman, 98 A.2d 683, 27 N.J.Super. 20, reversed on other grounds 102 A.2d 765, 14 N.J. 467—Grand View Gardens v. Borough of Hasbrouck Heights, 81 A.2d 510, 14 N.J.Super. 167.

83.59 Minn.—Hartmon v. National Heater Co., 60 N.W.2d 804, 240 Minn. 264—Woyak v. Konieske, 54 N.W.2d 649, 237 Minn. 213, 33 A. L.R.2d 1241—Detroit Lakes Realty Co. v. McKenzie, 284 N.W. 60, 204 Minn. 490—Backstrom v. New York Life Ins. Co., 259 N.W. 681, 194 Minn. 67—Apitz v. City of New Ulm, 248 N.W. 733, 189 Minn. 205—Stevens v. City of Minneapolis, 43 N.W. 842, 42 Minn. 136.

83.60 N.Y.—Cole v. Ackerson, 25 N. Y.S.2d 891, 261 App.Div. 1041, reargument denied 28 N.Y.S.2d 750, 262 App.Div. 805.

Value
N.Y.—Cole v. Ackerson, supra.

83.61 N.H.—Ricard v. Prudential Ins. Co. of America, 173 A. 375, 87 N.H. 31, 93 A.L.R. 784.
N.J.—Leider v. Pitock, 83 A.2d 796, 15 N.J.Super. 592.
Young v. Stevens, 39 A.2d 115, 132 N.J.Law 124.

83.62 Cal.—In re Johnson's Estate, 223 P.2d 105, 100 C.A.2d 73—Humiston v. Hook, 194 P.2d 122, 86 C.A.2d 101.
Cal.—Mirich v. Balsinger, 127 P.2d 639, 53 C.A.2d 103.

Reasonable market value of crops
Cal.—Eubanks v. Milton G. Cooper & Son, 156 P.2d 775, 68 C.A.2d 366.

83.63 Cal.—Risley v. Lenwell, 277 P. 2d 897, 129 C.A.2d 608—Johnson v. Western Air Express Corp., 114 P.2d 688, 45 C.A.2d 614.
Ind.—Chicago & Erie R. Co. v. Monesmith, 37 N.E.2d 724, 110 Ind.App. 281.
N.C.—In re Humphrey, 71 S.E.2d 915, 236 N.C. 142.
S.D.—State ex rel. Helgerson v. Riiff, 44 N.W.2d 126, 73 S.D. 467.

Matter of law. The determination by the trial court is subject to review when the preliminary question of the competency of a witness to testify as an expert is made to turn on a matter of law.[83.64]

Serious mistake. An appellate court will not disturb the exercise by the trial court of its discretion unless a serious mistake is shown.[83.65]

Wrong determination. A reviewing court will not interfere unless the determination by the trial court was clearly,[83.66] palpably,[83.67] palpably and grossly,[83.68] or plainly[83.69] wrong.

(5) Res Gestae

Where there is no evidence that the declarations were of a spontaneous character, or where the trial court abused its discretion, its ruling as to whether a statement is admissible as part of the res gestæ is subject to review or reversal.

The exercise by the trial court of its discretion in determining whether a statement is admissible as part of the res gestæ is subject to review[83.80] or reversal,[83.81] as where there is no evidence showing that the declarations were of a spontaneous character.[83.82] Unless there is a clear[83.83] abuse of discretion, the determination by the trial court will not be interfered with.[83.84] It is also held that such exercise of discretion will not be interfered with unless it is made to appear that the trial court erred to the prejudice of the complaining party,[83.85] or it clearly appears from the undisputed circumstances in the evidence that the testimony should have been admitted or rejected.[83.86]

Matter of law. Unless an appellate court can say as a matter of law that the trial court erred in applying the rule of res gestæ it must refuse to disturb the action of the trial court.[83.87]

c. Subpoena Duces Tecum

The action of the trial court on matters involving a subpoena duces tecum is reviewable only where its discretion has been abused or has not been properly exercised.

The review of the issuance of a subpœna duces tecum is limited to determining whether there has been a clear abuse of discretion by the trial court.[83.91]

Granting opposing counsel permission to examine papers and documents which a party has been compelled to bring into court by subpœna duces tecum is reviewable only where the discretion of the lower court in this connection has not been properly exercised.[84]

§ 1605. —— Order of Proof

Rulings of the trial court as to the order in which evidence shall be introduced will not be reviewed unless there is an abuse of the discretion with which the court is vested in such matters.

It is very generally held that a ruling of the trial court with respect to the order in which evidence

83.64 N.C.—Hardy v. Dahl, 187 S.E. 788, 210 N.C. 530.

83.65 N.Y.—Meiselman v. Crown Heights Hospital, 34 N.E.2d 367, 285 N.Y. 389.

83.66 Tex.—Calvert Fire Ins. Co. v. McClintic, Civ.App., 267 S.W.2d 568, error refused no reversible error.

Value

Tex.—Calvert Fire Ins. Co. v. McClintic, supra.

83.67 Okl.—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623.

83.68 R.I.—McGovern v. Michael, 6 A.2d 709, 62 R.I. 485, modified on other grounds 9 A.2d 274, 63 R.I. 464—Combination Fountain Co. v. Millard, 144 A. 883, 50 R.I. 50.

83.69 Mass.—Graustein v. H. P. Hood & Sons, 200 N.E. 14, 293 Mass. 207.

83.80 Ariz.—Maynard v. Hall, 143 P.2d 684, 61 Ariz. 32, 150 A.L.R. 618.

Ind.—Lake Erie & W. R. Co. v. Scott, 147 N.E. 315, 83 Ind.App. 357.

83.81 Ind.—Lake Erie & W. R. Co. v. Scott, supra.

83.82 Ind.—Lake Erie & W. R. Co. v. Scott, supra.

83.83 Okl.—Henry Chevrolet Co. v. Taylor, 108 P.2d 1024, 188 Okl. 380.

83.84 Ariz.—Anderson v. Alabam Freight Lines, 169 P.2d 865, 64 Ariz. 313—Musgrave v. Karis, 163 P.2d 278, 63 Ariz. 417.

Cal.—Showalter v. Western R. Co., 106 P.2d 895, 16 C.2d 460.

Dolberg v. Pacific Elec. Ry. Co., 272 P.2d 527, 126 C.A.2d 487—Coryell v. Clifford F. Reid, Inc., 4 P.2d 295, 117 C.A. 534—Lloyd v. Boulevard Express, 249 P. 837, 79 C.A. 406.

Mo.—Cummings v. Illinois Cent. R. Co., 269 S.W.2d 111, 364 Mo. 868—Moore v. St. Louis Public Service Co., 251 S.W.2d 38.

Collins v. Phœnix Assur. Co. Limited, of London, App., 285 S.W. 783.

Mont.—Stagg v. Stagg, 32 P.2d 856, 96 Mont. 573—Sullivan v. Metropolitan Life Ins. Co., 29 P.2d 1046, 96 Mont. 254.

Okl.—Margay Oil Corp. v. Jamison, 59 P.2d 790, 177 Okl. 433—Standard Accident Ins. Co. v. Baker, 291 P. 962, 145 Okl. 100—Marland Refining Co. v. Snider, 251 P. 989, 120 Okl. 116—St. Louis & S. F. R. Co. v. Fick, 149 P. 1126, 47 Okl. 530.

S.C.—Neal v. Southern Ry., Carolina Division, 160 S.E. 837, 162 S.C. 288, certiorari denied Southern Railway-Carolina Division v. Neal, 52 S.Ct. 9, 284 U.S. 621, 76 L.Ed. 530.

S.D.—Chiles v. Rohl, 201 N.W. 154, 47 S.D. 580.

Tex.—Southern Surety Co. v. Weaver, Com.App., 273 S.W. 838.

Gilmer v. Griffin, Civ.App., 265 S.W.2d 252, error refused no reversible error—City of Austin v. Johnson, Civ.App., 195 S.W.2d 222.

Wash.—Williams v. Clayton, 64 P.2d 1017, 189 Wash. 282.

Wis.—Andrzejewski v. Northwestern Fuel Co., 148 N.W. 37, 158 Wis. 170.

4 C.J. p 814 note 63 [e] (1).

83.85 Tex.—Richardson v. Watson, Civ.App., 105 S.W.2d 473, error dismissed.

83.86 S.C.—Funderburk v. Powell, 187 S.E. 742, 181 S.C. 412.

83.87 Tex.—A. B. C. Storage & Moving Co. v. Herron, Civ.App., 138 S.W.2d 211, error dismissed, judgment correct.

83.91 Ky.—International Union of Operating Engineers v. Bryan, 255 S.W.2d 471.

84. Conn.—Hurley v. Connecticut Co., 172 A. 86, 118 Conn. 276.

or proof shall be introduced or received is not reviewable or reversible unless there has been an abuse of discretion.[85]

Application of the foregoing rule has been made to rulings with respect to the reception of evidence in chief which would have been proper in rebuttal;[86] evidence in rebuttal which should have been introduced in the party's case in chief;[87] evidence on

85. Ala.—Sansom v. Covington County Bank, 87 So. 406, 17 Ala. App. 556, certiorari denied Ex parte Sansom, 87 So. 408, 205 Ala. 54.
Ariz.—Independent Meat Co. of Jerome v. Crane Co., 184 P. 992, 21 Ariz. 1.
Ark.—City of Fayetteville v. Stone, 106 S.W.2d 158, 194 Ark. 218—Western Coal & Mining Co. v. Nichols, 269 S.W. 991, 168 Ark. 346.
Cal.—In re Lafranc's Estate, 214 P. 2d 420, 95 C.A.2d 885—Mayers v. Alexander, 167 P.2d 818, 73 C.A.2d 752—Smeland v. Renwick, 196 P. 283, 50 C.A. 565—Johnson v. Cordes, 165 P. 1040, 33 C.A. 619.
Colo.—In re Wartenbee's Estate, 26 P.2d 101, 93 Colo. 347—Brunton v. Stapleton, 179 P. 815, 65 Colo. 576.
Conn.—Fagan v. Ohler, 153 A. 778, 112 Conn. 667—Finch v. Weiner, 145 A. 81, 109 Conn. 616—Hurlburt v. Bussemey, 126 A. 273, 101 Conn. 406—Dimon v. Romeo, 121 A. 352, 99 Conn. 197—Plumb v. Curtis, 33 A. 998, 66 Conn. 154.
Fla.—Moses v. Woodward, 140 So. 651, 109 Fla. 348, rehearing granted 141 So. 117, 109 Fla. 348, and reversed on other grounds, 147 So. 690, 109 Fla. 348—Paul v. Commercial Bank of Ocala, 68 So. 68, 69 Fla. 62.
Ga.—Roberts v. Georgia Southern Supply Co., 88 S.E.2d 554, 92 Ga. App. 303.
Ill.—Rosehill Cemetery Co. v. City of Chicago, 185 N.E. 170, 352 Ill. 11, 87 A.L.R. 742—Brelsford v. Community High School Dist. No. 36 of Pulaski County, 159 N.E. 237, 328 Ill. 27.
Havill v. Darch, 52 N.E.2d 64, 320 Ill.App. 667.
Ind.—City of Fort Wayne v. Bishop, 92 N.E.2d 544, 228 Ind. 304.
Gandy v. Orr, 44 N.E.2d 181, 112 Ind.App. 605—Snider v. Preachers Aid Soc., 41 N.E.2d 665, 111 Ind. App. 410—Croly v. Indianapolis Traction & Terminal Co., 115 N.E. 105, 63 Ind.App. 663.
Iowa.—Graham v. Courtright, 161 N. W. 774, 180 Iowa 394.
Ky.—Jonas v. South Covington & C. St. Ry. Co., 185 S.W. 117, 169 Ky. 807.
Md.—Gordon v. Opalecky, 137 A. 299, 152 Md. 536.
Mass.—Wilson v. Davison, 136 N.E. 354, 242 Mass. 237—Bilodeau v. Fitchburg & L. St. Ry. Co., 128 N.E. 872, 236 Mass. 526.
Mich.—Madalinski v. Hill, 269 N.W. 147, 277 Mich. 219—Tanis v. Eding, 264 N.W. 375, 274 Mich. 288.
Minn.—McWethy v. Norby, 173 N.W. 803, 143 Minn. 386—Nardinger v. Ladies of the Maccabees of the World, 163 N.W. 785, 138 Minn. 16.
Miss.—St. Louis-San Francisco Ry. Co. v. Dyson, 43 So.2d 95, 207 Miss. 639—Flynn v. Kurn, 184 So. 160, 183 Miss. 413—Stevens v. Locke, 125 So. 529, 156 Miss. 182—Winterton v. Illinois Cent. R. Co., 20 So. 157, 73 Miss. 831.
Mo.—Meyers v. Drake, 24 S.W.2d 116, 324 Mo. 612—Koonse v. Missouri Pac. R. Co., 18 S.W.2d 467, 322 Mo. 813, certiorari denied Missouri Pac. R. Co. v. Koonse, 50 S. Ct. 34, 280 U.S. 582, 74 L.Ed. 632.
Miller v. Geeser, 180 S.W. 3, 193 Mo.App. 1.
Mont.—Spurgeon v. Imperial Elevator Co., 43 P.2d 891, 99 Mont. 432—Dubie v. Batani, 37 P.2d 662, 97 Mont. 468.
N.J.—Carlo v. Okonite-Callender Cable Co., 69 A.2d 734, 3 N.J. 253.
O'Neil v. Bilotta, 86 A.2d 705, 18 N.J.Super. 82, affirmed 91 A.2d 231, 10 N.J. 308—Healy v. Billias, 85 A.2d 527, 17 N.J.Super. 119.
N.C.—Woodall v. Western Wake Highway Commission, 97 S.E. 226, 176 N.C. 377.
N.D.—Killmer v. Duchscherer, 72 N. W.2d 650—Mevorah v. Goodman, 57 N.W.2d 600, 79 N.D. 443—Blackorby v. Ginther, 158 N.W. 354, 34 N.D. 248.
Okl.—Stanfield v. Lincoln, 1 P.2d 387, 150 Okl. 289—Colby v. Daniels, 257 P. 298, 125 Okl. 202—Youngblood v. Roake, 253 P. 1017, 124 Okl. 84—In re McDade's Estate, 218 P. 532, 95 Okl. 120—McKee v. Jolly, 178 P. 656, 72 Okl. 37—Lamont Mercantile Co. v. Piburn, 152 P. 112, 51 Okl. 618.
Or.—Parmentier v. Ransom, 169 P.2d 883, 179 Or. 17—Hansen-Rynning v. Oregon-Washington R. & Nav. Co., 209 P. 462, 105 Or. 67.
Pa.—Kress House Moving Co. v. George Hogg Co., 106 A. 351, 263 Pa. 191.
Tenn.—Hansard v. Ferguson, 132 S. W.2d 221, 23 Tenn.App. 306.
Vt.—Paska v. Saunders, 153 A. 451, 103 Vt. 204—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215.
Va.—Butler v. Parrocha, 43 S.E.2d 1, 186 Va. 426—Ashby v. Virginia Ry. & Power Co., 122 S.E. 104, 138 Va. 310—Gallion & Gregory v. Winfree, 105 S.E. 539, 129 Va. 122—Sutherland v. Gent, 82 S.E. 713, 116 Va. 783.
Wash.—Seal v. Long, 192 P. 896, 112 Wash. 370.
W.Va.—Wills v. Montfair Gas Coal Co., 138 S.E. 749, 104 W.Va. 12.
4 C.J. p 815 note 67, p 816 note 68, p 962 note 43.
Order of proof or order in which evidence should be introduced as being in sound discretion of trial court see Trial § 96.
Rulings as to order of proof not grounds for reversal unless prejudicial error is shown see infra § 1718.

Clear abuse
Ill.—Forest Preserve Dist. of Cook County v. Lehmann Estate, 58 N. E.2d 538, 388 Ill. 416—McGlaughlin v. Pickerel, 46 N.E.2d 368, 381 Ill. 574.
Ind.—Bowman v. Bowman, 77 N.E.2d 900, 118 Ind.App. 137.
S.C.—Ford v. A. A. A. Highway Express, 39 S.E.2d 760, 204 S.C. 433.

Manifest and very gross abuse
Pa.—Knoble v. Ritter, 20 A.2d 848, 145 Pa.Super. 149.

Palpable abuse
Mo.—Bedenk v. St. Louis Public Service Co., 285 S.W.2d 609.

Prejudicial and unsound exercise of discretion is ground for reversal.
Colo.—Gray v. Sharp, 67 P. 351, 17 Colo.App. 139.
Me.—**Corpus Juris quoted in** Hill v. Finnemore, 172 A. 826, 834, 133 Me. 115.

Existence of conspiracy
Mo.—McCutchan v. Kansas City Life Ins. Co. of Kansas City, App., 122 S.W.2d 59.

Abuse held not shown
Ind.—City of Fort Wayne v. Bishop, 92 N.E.2d 544, 228 Ind. 304.

86. Iowa.—Alquist v. Eagle Iron Works, 101 N.W. 520, 126 Iowa 67.
Pa.—Montour Furniture Co. v. Sakolsky, 189 A. 761, 125 Pa.Super. 512.
4 C.J. p 816 notes 69, 70.

Rebutting evidence before evidence to be rebutted introduced
Where the materiality of evidence, although properly rebutting, is foreshadowed by the line of defense, the discretion of the court in admitting it in advance of the evidence which it is intended to rebut will not be reviewed in the absence of abuse.
Ill.—Dimick v. Downs, 82 Ill. 570.
Ind.—Williams v. Dewitt, 12 Ind. 309.

87. Ariz.—Central Copper Co. v. Klefisch, 270 P. 629, 34 Ariz. 230.
Ark.—Bain v. Ft. Smith Light & Traction Co., 172 S.W. 843, 116 Ark. 125, L.R.A.1915D 1021.
Ga.—Seaboard Air Line Ry. v. Horning, 89 S.E. 493, 18 Ga.App. 396.

surrebuttal which should have been part of the party's case in chief;[88] evidence requiring the establishment of a preliminary foundation to render it admissible before the foundation has been laid;[89] or with respect to the order in which several defendants will proceed with their testimony.[90]

Burden of showing abuse. An appellate court will not presume that the trial court abused its discretion in regulating the order of proof,[90.5] and the complaining party has the burden of affirmatively establishing an abuse of discretion.[90.10]

§ 1606. —— Reopening Case

The exercise by the trial court of its discretion as to reopening the case for further proof, or as to what evidence shall be admitted after such reopening, will not be reviewed unless its discretion has been abused or improperly exercised.

Whether a case shall be reopened for the taking of additional evidence is a matter primarily for the trial court.[90.50] The exercise of its discretion in reopening or refusing to reopen a case is subject to review,[90.52] although it is seldom, and only under unusual circumstances, resulting in manifest prejudice to the complaining party, that such exercise of discretion is reversed.[90.54] A reviewing court cannot interfere merely because it may believe that it would have decided the issue differently,[90.56] nor can it consider the result it might have reached; it is required to look at the situation as it was presented to the trial court, in view of which its discretion was necessarily exercised.[90.58]

While it has been broadly held that the exercise of its discretion by the trial court will not be revised on appeal,[90.60] the more general rule is that such

Ill.—Wunderlich v. Buerger, 122 N. E. 827, 287 Ill. 440.
Schmoldt v. Chicago Stone Setting Co., 51 N.E.2d 615, 320 Ill. App. 489—Cooper v. Shaffer, 40 N. E.2d 622, 313 Ill.App. 392.
Ind.—Carter v. Ætna Life Ins Co., 27 N.E.2d 75, 217 Ind. 282.
Snider v. Preachers Aid Soc., 41 N.E.2d 665, 111 Ind.App. 410.
Iowa.—Robson v. Barnett, 44 N.W. 2d 382, 241 Iowa 1066—Lamson Bros. & Co. v. Mensen, 174 N.W. 688, 187 Iowa 972—International Harvester Co. of America v. Chicago, M. & St. P. Ry. Co., 172 N.W. 471, 186 Iowa 86.
Kan.—Finley v. Pierce, 244 P. 2, 120 Kan. 474.
Ky.—New Bell Jellico Coal Co. v. Sowders, 172 S.W. 914, 162 Ky. 443.
Md.—Marine v. Stewart, 168 A. 891, 165 Md. 698—City of Baltimore v. Carroll, 96 A. 1076, 128 Md. 68.
Mich.—Gilchrist v. Mystic Workers of the World, 163 N.W. 10, 196 Mich. 247.
Miss.—Illinois Cent. R. Co. v. Brown, 115 So. 115, 149 Miss. 42.
Mo.—Fuerstenberg v. Kram, App., 249 S.W. 143.
Okl.—Caughlin v. Sheets, 242 P.2d 724, 206 Okl. 283.
Or.—Sather v. Giaconi, 220 P. 740, 110 Or. 433—Duncan Lumber Co. v. Willapa Lumber Co., 182 P. 172, 93 Or. 386, rehearing denied 183 P. 476, 93 Or. 386.
Pa.—Aland v. Pyle, 106 A. 349, 263 Pa. 254.
R.I.—David v. Hanna, 2 A.2d 630, 62 R.I. 19.
S.C.—Goethe v. Browning, 143 S.E. 362, 146 S.C. 7—Smith v. Union-Buffalo Mills Co., 84 S.E. 422, 100 S.C. 115.
Tenn.—Sloan v. Nevil, 229 S.W.2d 350, 33 Tenn.App. 100.
Tex.—Travelers Ins. Co. v. Noble, Civ. App., 106 S.W.2d 789.
Wash.—Hardman v. Younkers, 131 P. 2d 177, 15 Wash.2d 483, 151 A.L.R. 868—Pylate v. Hadman, 275 P. 559, 151 Wash. 245—Hightower v. Union Savings & Trust Co., 152 P. 1015, 88 Wash. 179, Ann.Cas.1918A 489.
W.Va.—Farley v. Farley, 68 S.E.2d 353, 136 W.Va. 598—Weaver v. Wheeling Traction Co., 114 S.E. 131, 91 W.Va. 528.
Wis.—Johnson v. Smitz, 79 N.W.2d 337, 274 Wis. 96—Dixon v. Russell, 145 N.W. 761, 156 Wis. 161.
Wyo.—Hunt v. City of Laramie, 181 P. 137, 26 Wyo. 160.
4 C.J. p 816 note 71, p 817 note 73, p 818 note 74.

Subject fully covered in chief
The rule of the text is particularly applicable where the subject gone into in rebuttal has been fully covered by the party in his case in chief.
U.S.—Gilpins v. Consequa, Pa., 10 F. Cas. No. 5,452, Pet.C.C. 85, 3 Wash. C.C. 184.
Ill.—Kuznik v. Orient Ins. Co., 73 Ill. App. 201.
N.Y.—Gibson v. Johnson, 46 N.Y.S. 870, 21 Misc. 59.

Refusal held abuse of discretion
Ind.—Gandy v. Orr, 44 N.E.2d 181, 112 Ind.App. 605.

88. Mo.—Beyer v. Hermann, 73 S.W. 164, 173 Mo. 295.

Rejection of evidence in chief offered on surrebuttal was held not reviewable where the alleged ground for the introduction of the evidence on surrebuttal was that the party had just learned that the witness would testify favorably.
Mo.—Beyer v. Hermann, supra.

89. U.S.—Spencer v. Read, Iowa, 217 F. 508, 133 C.C.A. 360.
Ariz.—Brutinel v. Nygren, 154 P. 1042, 17 Ariz. 491, L.R.A.1918F 713.
Kan.—Stull v. Burdett, 204 P. 1005, 110 Kan. 393.
4 C.J. p 812 note 57 [h].

Proof of agent's acts before proof of agency is a matter as to which the trial court's discretion will not be disturbed on appeal.
Ariz.—Brutinel v. Nygren, 154 P. 1042, 17 Ariz. 491, L.R.A.1918F 713.

General reputation
In the absence of a showing of an abuse of discretion, an appellate court will not disturb the ruling of the trial court as to whether a sufficient foundation has been laid to warrant a witness to express an opinion as to the general reputation of a party for truth, honesty, and integrity.
Cal.—Cosler v. Norwood, 218 P.2d 800, 97 C.A.2d 665.

90. Md.—Mullan v. Belbin, 100 A. 384, 130 Md. 313.

90.5 Cal.—Silver v. Shemanski, 201 P.2d 418, 89 C.A.2d 520.
General rules as to presumptions see supra § 1533.

90.10 Cal.—Silver v. Shemanski, supra.

90.50 Minn.—Locksted v. Locksted, 295 N.W. 402, 208 Minn. 551.

90.52 Wash.—Zulauf v. Carton, 192 P.2d 328, 30 Wash.2d 425.

90.54 Ohio.—McMullen v. F. & R. Lazarus & Co., App., 107 N.E.2d 250.

Ruling held to raise no question of law
N.H.—Ricker v. Mathews, 53 A.2d 196, 94 N.H. 313, 171 A.L.R. 296.

90.56 N.J.—Healy v. Billias, 85 A.2d 527, 17 N.J.Super. 119—Smith v. Smith, 85 A.2d 523, 17 N.J.Super. 128.

90.58 Vt.—Houran v. Preferred Accident Ins. Co. of New York, 195 A. 253, 109 Vt. 258.

90.60 N.H.—Croteau v. Harvey & Landers, 109 A.2d 553, 99 N.H. 264—Ricker v. Mathews, 53 A.2d 196, 94 N.H. 313, 171 A.L.R. 296—Snook

exercise will not be disturbed or interfered with unless there has been an apparent,[90.62] arbitrary,[90.64] clear,[90.66] manifest,[90.68] palpable,[90.70] patent,[90.72] or plain[90.74] abuse of discretion,[91] or a

v. City of Portsmouth, 10 A.2d 654, 90 N.H. 441—Wells v. Burbank, 17 N.H. 393.

Exception to ruling of lower court denying motion to review presents nothing for decision by appellate court.

N.H.—Twardosky v. New England Tel. & Tel. Co., 62 A.2d 723, 95 N.H. 279—Gerrish v. Whitfield, 55 A. 551, 72 N.H. 222.

90.62 Tex.—Dallas General Drivers, Warehousemen & Helpers Local Union No. 745 v. Vilbig Bros., Civ. App., 225 S.W.2d 617, error refused no reversible error.

90.64 La.—Lampton Reid & Co. v. Fortenberry, App., 168 So. 36, rehearing denied 168 So. 711.

Md.—Shook v. Shook, 132 A.2d 460, 213 Md. 603.

90.66 Cal.—Giomi v. Viotti, 301 P.2d 597, 144 C.A.2d 617—Chung v. Jonston, 274 P.2d 922, 128 C.A.2d 157—Keppelman v. Heikes, 245 P.2d 54, 111 C.A.2d 475—In re Lefranc's Estate, 214 P.2d 420, 95 C.A.2d 885—Gelberg v. Consolo, 125 P.2d 74, 51 C.A.2d 516—Lee v. Dawson, 112 P. 2d 683, 44 C.A.2d 362.

Ill.—Cienki v. Rusnak, 75 N.E.2d 372, 398 Ill. 77—Forest Preserve Dist. of Cook County v. Lehmann Estate, 58 N.E.2d 538, 388 Ill. 416—Rosehill Cemetery Co. v. City of Chicago, 185 N.E. 170, 352 Ill. 11, 87 A.L.R. 742.

Havill v. Darch, 52 N.E.2d 64, 320 Ill.App. 667.

Iowa.—Egy v. Winterset Motor Co., 2 N.W.2d 93, 231 Iowa 680—Allemang v. White, 298 N.W. 658, 230 Iowa 526.

La.—Ruiz v. Trocchiano, App., 38 So.2d 184.

N.D.—Charon v. Windingland, 4 N.W. 2d 645, 72 N.D. 70—Fried v. Olsen, 133 N.W. 1041, 22 N.D. 1041.

Okl.—White v. City Nat. Bank of Norman, 271 P.2d 713—City of Weatherford v. Luton, 117 P.2d 765, 189 Okl. 438—Railway Express Agency v. Stephens, 83 P.2d 858, 183 Okl. 615—Save Sales Co. of Toledo, Ohio v. Futral, 69 P.2d 349, 180 Okl. 145—Collum v. Stokes, 293 P. 1037, 146 Okl. 176—Home Ins. Co. of New York v. Whitchurch, 281 P. 234, 139 Okl. 1—Federal Life Ins. Co. v. Whitehead, 174 P. 784, 73 Okl. 71.

Tex.—Stroud v. Temple Lumber Company, Civ.App., 284 S.W.2d 909.

Wash.—First Bank of Cordova v. Tjosevig, 244 P. 736, 138 Wash. 231.

90.68 Cal.—Brocke v. Naseath, 285 P.2d 291, 134 C.A.2d 23.

Ga.—Supreme Forest Woodmen Circle v. Newsome, 11 S.E.2d 480, 63 Ga.App. 550.

Mo.—Patton-Worsham Drug Co. v. Goddard Grocer Co., 162 S.W. 288, 179 Mo.App. 676.

Wash.—Fuller v. Ostruske, 296 P.2d 996, 48 Wash.2d 802—Zackovich v. Jasmont, 200 P.2d 742, 32 Wash.2d 73—Hyak Lumber & Millwork v. Cissell, 244 P.2d 253, 40 Wash.2d 484—Strong v. Sunset Copper Co., 114 P.2d 526, 9 Wash.2d 214, 135 A.L.R. 423—Dorian v. Benj. E. Boone, Inc., 279 P. 107, 152 Wash. 681.

Manifest abuse of trial judge's power

Ohio.—Cook v. Williams, 108 N.E.2d 232, 92 Ohio App. 277.

Manifest denial of justice

N.J.—O'Neil v. Bilotta, 86 A.2d 705, 18 N.J.Super. 82, affirmed 91 A.2d 231, 10 N.J. 308.

Manifest error

La.—Succession of Lefort, 71 So. 215, 139 La. 51, Ann.Cas.1917E 769.

Walker v. Joyner, App., 45 So.2d 113.

Manifest misuse of discretion

N.J.—Smith v. Smith, 85 A.2d 523, 17 N.J.Super. 128.

90.70 Okl.—State Bank of Westfield v. Kiser, 148 P. 685, 46 Okl. 180.

90.72 Okl.—Deems v. Milligan, 64 P. 2d 701, 179 Okl. 25.

90.74 Pa.—Appeal of Braddock Tp., Allegheny County, 24 A.2d 705, 148 Pa.Super. 52—Sheinman Brothers v. Hovland-Sardeson-McColm Co., 78 Pa Super. 479.

Tex.—Safety Cas. Co. v. Malvoux, Civ.App., 204 S.W.2d 862, error refused no reversible error.

Plainly erroneous

N.J.—Smith v. Smith, 85 A.2d 523, 17 N.J.Super. 128.

91. Ariz.—Costello v. Cunningham, 147 P. 701, 16 Ariz. 447.

Ark.—Nutt v. Fry, 177 S.W. 1137, 119 Ark. 450.

Cal.—Weber v. Marine Cooks' & Stewards' Ass'n, 208 P.2d 1009, 93 C.A.2d 327—Castro v. Singh, 21 P. 2d 169, 131 C.A. 106.

Fla.—Pitt v. Abrams, 139 So. 152, 103 Fla. 1022.

Ga.—Roberts v. Georgia Southern Supply Co., 88 S.E.2d 554, 92 Ga. App. 303—Polhill v. Postal-Telegraph-Cable Co., 85 S.E. 936, 16 Ga. App. 601.

Idaho.—Froman v. First Nat. Bank, 204 P. 145, 35 Idaho 10.

Ill.—See Cope v. Brentz, 190 Ill.App. 504.

Ind.—Bope v. Ballinger, 7 N.E.2d 638, 103 Ind.App. 329.

Iowa.—Fair v. Ida County, 216 N.W. 952, 204 Iowa 1046—Cresco Union Sav. Bank v. Terry & Terry, 211 N. W. 228, 202 Iowa 778—Garretson v. Altomari, 181 N.W. 400, 190 Iowa 1194—Robinson v. Hawkeye Commercial Men's Ass'n, 171 N.W. 118, 186 Iowa 759—Buck v. Bender, 159 N.W. 990.

Kan.—Doonan v. Crossland, 311 P.2d 1011, 181 Kan. 372—Minch v. Winters, 253 P. 578, 122 Kan. 533.

Ky.—Louisville & N. R. Co. v. Jolly's Adm'x, 23 S.W.2d 564, 232 Ky. 702, certiorari denied Louisville & N. R. Co. v. Jolly, 51 S.Ct. 26, 282 U.S. 847, 15 L.Ed. 751.

La.—In re Succession of Bright, 1 So.2d 94, 197 La. 251.

Huderston v. American Mut. Liability Co., App., 14 So.2d 489—Ingargiola v. Schnell, App., 11 So.2d 281—Hornsby v. Rives, App., 2 So. 2d 532—Vaughan v. Canik, App., 152 So. 364, followed in 152 So. 368—Blunson v. Knighton, App., 140 So. 302.

Me.—Benner v. Benner, 115 A. 202, 120 Me. 468.

Md.—Guyer v. Snyder, 104 A. 116, 133 Md. 19.

Mass.—Reynolds v. Missouri, K. & T. Ry. Co., 113 N.E. 413, 224 Mass. 379.

Minn.—State v. City of Eveleth, 228 N.W. 447, 179 Minn. 99—Smith v. Kurtzenacker, 180 N.W. 243, 147 Minn. 398.

Mo.—Long v. Thompson, 183 S.W.2d 96, 353 Mo. 531, applying Kansas law—Marsden v. Nipp, 30 S.W.2d 77, 325 Mo. 822—Pritchard v. Thomas, 192 S.W. 956—Buck v. St. Louis Union Trust Co., 185 S.W. 208, 267 Mo. 644.

Narens v. St. Louis Public Service Co., App., 238 S.W.2d 37—Blomeyer v. Willey, App., 151 S.W.2d 535—Waters v. Gallemore, App., 41 S.W.2d 870—State ex rel. Park Nat. Bank v. Globe Indemnity Co., 2 S. W.2d 815, 222 Mo.App. 153.

Mont.—Cole v. Helena Light & Ry. Co., 143 P. 974, 49 Mont. 443.

N.H.—Thistle v. Halstead, 72 A.2d 455, 96 N.H. 192—Town of Tilton v. Sharpe, 155 A. 44, 85 N.H. 138.

N.J.—Carlo v. Okonite-Callender Cable Co., 69 A.2d 734, 3 N.J. 253.

Hannon v. Delaware, L. & W. R. Co., 119 A. 86, 98 N.J.Law 191.

N.M.—Holthoff v. Freudenthal, 162 P. 173, 22 N.M. 377—Hodges v. Hodges, 159 P. 1007, 22 N.M. 192.

N.Y.—Rosen v. Greenwald, 186 N.Y. S. 68, reversed on other grounds 193 N.Y.S. 87, 200 App.Div. 499.

Ohio.—In re Shartle's Estate, App., 36 N.E.2d 534.

Okl.—Collum v. Stokes, 293 P. 1036, 146 Okl. 176—Potts v. First Nat. Bank, 287 P. 1003, 143 Okl. 140—Home Ins. Co. of New York v. Whitchurch, 281 P. 234, 139 Okl. 1—Federal Life Ins. Co. v. Whitehead, 174 P. 784, 73 Okl. 71—State

failure to exercise discretion,[91.5] or an improper exercise thereof which will warrant a reversal.[92]

This rule is applicable although the motion for reopening is made, or the new evidence offered, after the party making the motion or offering the proof has rested;[93] after both parties have rested their cases in chief;[94] after the close of the evidence generally,[95] or the close of evidence by the party not seeking to give further evidence;[95.5] after a demurrer to evidence or a motion for nonsuit or to direct a verdict has been made;[96] after the court announced its intention as to its ruling on the motion,[97] or has denied[98] or granted[99] it; after the argument of the case has been commenced[1] or con-

Bank of Westfield v. Kiser, 148 P. 685, 46 Okl. 180.
Pa.—Quinn v. Gormley, 153 A. 623, 302 Pa. 360—Jackson v. Conneautville Borough School Dist., 125 A. 310, 280 Pa. 601—Duncan v. Duncan, 109 A. 220, 265 Pa. 464.
Tex.—Safety Cas. Co. v. Malvoux, Civ.App., 204 S.W.2d 862—Ketchum v. Gillespie, Civ.App., 145 S.W.2d 215—Bolyard v. Toronto Pipe Line Co., Civ.App., 120 S.W.2d 960, error dismissed—Sammann v. Deitrich, Civ.App., 39 S.W.2d 647—Woods v. Bost, Civ.App., 26 S.W.2d 299—Puckett & Wear v. City of Ft. Worth, Civ.App., 180 S.W. 1115.
Utah.—Wasatch Oil Refining Co. v. Wade, 63 P.2d 1070, 92 Utah 50.
Vt.—Houran v. Preferred Accident Ins. Co. of New York, 195 A. 253, 109 Vt. 258.
Wash.—Hansen v. Walker, 282 P.2d 829, 46 Wash.2d 499—Turpen v. Johnson, 175 P.2d 495, 26 Wash.2d 716—Beadle v. Barta, 123 P.2d 761, 13 Wash.2d 67—Field v. Field, 300 P. 532, 163 Wash. 115—Mansfield v. Yates-American Mach. Co., 279 P. 595, 153 Wash. 345—Dorian v. Benj. E. Boone, Inc., 279 P. 107, 152 Wash. 681—Ross v. Fisher Co., 268 P. 883, 148 Wash. 274—First Bank of Cordova v. Tjosevig, 244 P. 736, 138 Wash. 231—Everly v. Wold, 217 P. 7, 125 Wash. 467—Pleasant Valley Irrigation & Power Co. v. Okanogan Power & Irrigation Co., 167 P. 1122, 98 Wash. 401—Norton v. Pacific Power & Light Co., 140 P. 905, 79 Wash. 625.
Wyo.—Higley v. Jeffrey, 8 P.2d 96, 44 Wyo. 37—Wyoming Stockmen's Loan Co. v. Johnston, 240 P. 449, 33 Wyo. 457.
4 C.J. p 818 notes 77–83—64 C.J. p 1204 note 92.
Motion to reopen a case for purpose of introducing further evidence as being in sound discretion of trial judge see Trial § 104.

Denial of application to reopen a cause held not an abuse of discretion where it appears that, if granted, court would not have jurisdiction of issues sought to be raised on further hearing.
Vt.—Horicon v. Langlois' Estate, 52 A.2d 883, 115 Vt. 81.

91.5 Vt.—Houran v. Preferred Accident Ins. Co. of New York, 195 A. 253, 109 Vt. 258.

92. Cal.—Pocock v. Deniz, 286 P.2d 466, 134 C.A.2d 758.
Fla.—Barry v. Walker, 137 So. 711, 103 Fla. 533.
Ill.—Oneida State Bank v. Peterson, 211 Ill.App. 655.
Tex.—Dallas General Drivers, Warehousemen & Helpers Local Union No. 745 v. Vilbig Bros., Civ.App., 225 S.W.2d 617, error refused no reversible error—Safety Cas. Co. v. Malvoux, Civ.App., 204 S.W.2d 862, error refused no reversible error.
4 C.J. p 818 note 84, p 822 note 45.

93. Ill.—Weir v. Weir, 122 N.E. 868, 287 Ill. 495.
Ohio.—Cook v. Williams, 108 N.E.2d 232, 92 Ohio App. 277.
Okl.—Webber v. Sandridge, 2 P.2d 959, 151 Okl. 112—Houser v. Ivey 249 P. 141, 119 Okl. 42.
Pa.—Appeal of Braddock Tp., Allegheny County, 24 A.2d 705, 148 Pa. Super. 52.
Tex.—Cross v. Texas Military College, Civ.App., 65 S.W.2d 794—Day v. Andersen, Civ.App., 62 S.W.2d 201.
4 C.J. p 819 note 13.

94. La.—Succession of Lefort, 71 So. 215, 139 La. 51, Ann.Cas.1917E 769.
Okl.—St. Louis-San Francisco Ry. Co. v. Clark, 229 P. 779, 104 Okl. 24.
Tex.—Stroud v. Temple Lumber Co., Civ.App., 284 S.W.2d 909, error refused no reversible error.
4 C.J. p 820 note 21.

95. Cal.—Pocock v. Deniz, 286 P.2d 466, 134 C.A.2d 758.
Ind.—Dickerson v. Dickerson, 10 N.E. 2d 424, 104 Ind.App. 686, affirmed 11 N.E.2d 514, 104 Ind.App. 686—Gehring v. Ohm, 168 N.E. 613, 90 Ind.App. 300.
Ky.—Town of Wingo v. Rhodes, 28 S.W.2d 465, 234 Ky. 385.
Md.—Weinstein v. Boyd, 110 A. 506, 136 Md. 227.
Mo.—Buck v. St. Louis Union Trust Co., 185 S.W. 208, 267 Mo. 644.
Harlan v. Blume, App., 190 S.W. 2d 273.
Mont.—Gilcrest v. Bowen, 24 P.2d 141, 95 Mont. 44—Brange v. Bowen, 186 P. 680, 57 Mont. 77.
N.Y.—Bianchi v. Markese, 95 N.Y.S. 2d 897, 276 App.Div. 1048.
Pa.—Seaboard Container Corp. v. Rothschild, 58 A.2d 800, 359 Pa. 51.
Sheinman Brothers v. Hovland-Sardeson-McColm Co., 78 Pa.Super. 479.
R.I.—Kwasniewski v. New York, N. H. & H. R. Co., 164 A. 558, 53 R.I. 144.
Tex.—Zurich General Accident & Liability Ins. Co. v. Wood, Civ.App., 10 S.W.2d 760—Mantel v. Mitchell, Civ.App., 293 S.W. 835—W. T. Wilson Grain Co. v. Fitch, Civ.App., 208 S.W. 556.
Wash.—Shultz v. Crewdson, 163 P. 734, 95 Wash. 266.
Wyo.—Boyle v. Mountford, 270 P. 537, 39 Wyo. 141.
4 C.J. p 820 notes 22, 23, p 821 note 25.

95.5 W.Va.—Farley v. Farley, 68 S.W.2d 353, 136 W.Va. 598—Weaver v. Wheeling Traction Co., 114 S.E. 131, 91 W.Va. 528.

96. Iowa.—Wiley v. Fleck, 178 N.W. 410, 189 Iowa 614—Peterson v. Phillips Coal Co., 157 N.W. 194, 175 Iowa 223.
Md.—East Baltimore Transfer Co. v. Goeb, 118 A. 74, 140 Md. 534.
Mo.—Harlan v. Blume, App., 190 S.W. 2d 273.
N.J.—William H. Barkhorn & Co. v. Zinno, 130 A. 823, 3 N.J.Misc. 1145.
N.Y.—Bianchi v. Markese, 95 N.Y.S. 2d 897, 276 App.Div. 1048.
Pa.—Seaboard Container Corp. v. Rothschild, 58 A.2d 800, 359 Pa. 51.
Tenn.—Dick v. Power Co., 6 Tenn. Civ.App. 599.
4 C.J. p 821 note 33.

97. Conn.—Currie v. Consolidated R. Co., 71 A. 356, 81 Conn. 383.
Fla.—Eli Witt Cigar & Tobacco Co. v. Matatics, 55 So.2d 549.
Ga.—Stewart v. Mundy, 62 S.E. 986, 131 Ga. 586—Freyermuth v. South Pound R. Co., 32 S.E. 668, 107 Ga. 31.
Pa.—Seaboard Container Corp. v. Rothschild, 58 A.2d 800, 359 Pa. 51.
S.C.—Browning v. Huff, 18 S.C.L. 174.

98. Mo.—Woolsey v. City of Chillicothe, App., 209 S.W. 566.
4 C.J. p 821 note 35.

99. Fla.—Pavlis v. Atlas-Imperial Diesel Engine Co., 163 So. 515, 121 Fla. 185.
Utah.—Johnson v. Silver King Consol. Mining Co. of Utah, 179 P. 61, 54 Utah 34.
4 C.J. p 821 notes 36, 37.

1. Ill.—Schleicher v. General Accident, Fire & Life Assur. Corporation, 240 Ill.App. 247.
4 C.J. p 821 notes 38–40.

cluded;[2] or at practically any other time before final judgment,[3] but not thereafter.[4]

Cases will be found in the notes illustrating the circumstances under which courts, in accordance with the rules above stated, have held not reviewable the reopening by the trial court,[5] or refusal to reopen,[6] the case for further evidence or proof, or

2. Ill.—Brelsford v. Community High School Dist. No. 86 of Pulaski County, 159 N.E. 237, 328 Ill. 27.
Havill v. Darch, 52 N.E.2d 64, 320 Ill.App. 667.
Or.—Beck v. General Ins. Co. of America, 18 P.2d 579, 141 Or. 446.
4 C.J. p 821 notes 41, 42.

3. Ind.—Maynard v. Shorb, 85 Ind. 501.
4 C.J. p 822 note 54.

Various times before judgment when reopening not reviewable. The general rule that the discretion by the court in reopening a case for further evidence will not be reviewed unless it has been abused applies, although the discretion is exercised:

(1) During the charge to the jury.
R.I.—Case v. Dodge, 29 A. 785, 18 R.I. 661.

(2) After the charge.
Ill.—Brelsford v. Community High School Dist. No. 86 of Pulaski County, 159 N.E. 237, 328 Ill. 27.
Havill v. Darch, 52 N.E.2d 64, 320 Ill.App. 667.
4 C.J. p 822 note 47.

(3) Before the case is submitted to the jury.
Cal.—Loewenthal v. Coonan, 67 P. 324, 1033, 68 P. 303, 135 C. 381.
4 C.J. p 822 note 48.

(4) After the case is submitted to the jury.
Ark.—Bynum v. Brady, 100 S.W. 66, 82 Ark. 603.
4 C.J. p 822 note 49.

(5) After submission of the case to the court.
Ala.—Ex parte State ex rel. Brittain, 186 So. 148, 237 Ala. 104.
Cal.—Gelberg v. Consolo, 125 P.2d 74, 51 C.A.2d 516.
Ind.—Dickerson v. Dickerson, 10 N.E. 2d 424, 104 Ind.App. 686, affirmed 11 N.E.2d 514, 104 Ind.App. 686.
Iowa.—Allemang v. White, 298 N.W. 658, 230 Iowa 526.

(6) After the jury have retired.
Miss.—Royston v. Illinois Cent. R. Co., 7 So. 320, 67 Miss. 376.
4 C.J. p 822 note 50.

(7) When the jury come into court for information.
N.C.—Parish v. Fite, 6 N.C. 258.
Tenn.—Van Huss v. Rainbolt, 2 Coldw. 139.
4 C.J. p 822 note 51.

(8) After verdict.
Cal.—Clavey v. Lord, 25 P. 493, 87 C. 413.
4 C.J. p 822 note 52.

(9) After finding.
Wis.—Leary v. Leary, 32 N.W. 623, 68 Wis. 662.
4 C.J. p 822 note 53.

(10) After motion to set aside the verdict had been made on evidence then introduced.
N.C.—Baker v. Brown, 65 S.E. 520, 151 N.C. 12.

(11) After trial court has taken case under advisement but before it has announced its decision.
Utah.—Tuft v. Brotherson, 150 P.2d 384, 106 Utah 499.

(12) After trial and before entry of judgment.
Cal.—Keppelman v. Heikes, 245 P.2d 54, 111 C.A.2d 475—Weber v. Marine Cooks' & Stewards' Ass'n, 208 P.2d 1009, 93 C.A.2d 327.

(13) After rendition of judgment but before signing.
La.—Rea v. Dow Motor Co., App., 36 So.2d 750.

(14) After announcement of decision from bench and before written judgment has been finally prepared and signed.
Tex.—Dallas General Drivers, Warehousemen & Helpers Local Union No. 745 v. Vilbig Bros., Civ.App., 225 S.W.2d 617, error refused no reversible error.

4. Ky.—Webb v. Galloway, 1 Litt. 78.
4 C.J. p 822 note 56.

5. **Reopening held not reviewable where:**

(1) The evidence introduced had been omitted through inadvertence or mistake.
S.C.—Cantey v. Whitaker, 17 S.C. 527.
4 C.J. p 818 note 85, p 819 notes 86, 87, p 820 notes 14, 24, p 821 note 25.

(2) The evidence was newly discovered.
Mont.—Gilcrest v. Bowen, 24 P.2d 141, 95 Mont. 44.
4 C.J. p 819 note 88, p 820 note 17.

(3) The opposite party attempted to take advantage of some formal point inadvertently overlooked.
R.I.—Hampson v. Taylor, 8 A. 331, 23 A. 732, 15 R.I. 83.
4 C.J. p 819 note 89, p 820 note 16.

(4) Counsel charged that the judge had misstated the evidence in the latter's recapitulation thereof to the jury.
N.Y.—Meyer v. Goedel, 31 How.Pr. 456.

(5) A party has been surprised by the testimony of a witness.
Ga.—Bone v. Ingram, 27 Ga. 382.

(6) The evidence is only such as the opposite party might have anticipated.
Ky.—Chesapeake, etc., R. Co. v. Dupee, 67 S.W. 15, 23 Ky.L. 2349.

(7) The purpose of the evidence is to correct evidence previously offered.
Wis.—Humphry v. State, 47 N.W. 836, 78 Wis. 569.

(8) No injustice is suffered by the opposite party.
U.S.—Alaska United Gold Min. Co. v. Keating, Alaska, 116 F. 561, 53 C.C. A. 655.

(9) The court permits the opposite party the same latitude in introducing further evidence as was granted to the party moving to have the case reopened.
Wash.—Bergman v. London, etc., F. Ins. Co., 75 P. 989, 34 Wash. 398.

6. **Refusal to reopen held not reviewable where:**

(1) The moving party fails to show good cause for reopening the case.
N.H.—Town of Tilton v. Sharpe, 155 A. 44, 85 N.H. 138.
4 C.J. p 819 note 92.

(2) The evidence which the moving party wishes to introduce is merely cumulative.
Me.—**Corpus Juris quoted in** Hill v. Finnemore, 172 A. 826, 834, 132 Me. 459.
Pa.—Quinn v. Gormley, 153 A. 623, 302 Pa. 360.
Wash.—Zackovich v. Jasmont, 200 P. 2d 742, 32 Wash.2d 73—In re Krilich's Estate, 210 P. 788, 122 Wash. 306.
4 C.J. p 819 note 93, p 821 note 28.

(3) No diligence was used to secure the evidence.
Iowa.—Seekel v. Norman, 43 N.W. 190, 78 Iowa 254.

(4) The existence and materiality of the evidence were known to the party offering it before the case was closed or before he rested.
Cal.—Loftus v. Fischer, 45 P. 328, 113 C. 286.
Me.—**Corpus Juris quoted in** Hill v. Finnemore, 172 A. 826, 834, 132 Me. 459.
4 C.J. p 819 note 95, p 820 note 19, p 821 note 31.

(5) Although the motion is made because of the sickness of the party, his counsel announced ready during the absence of the party and failed to ask a postponement.
Tex.—Oliver v. Cooper First Nat. Bank, 33 S.W. 706, 12 Tex.Civ.App. 78.

(6) There is no showing as to the materiality of the evidence or the reason it was not sooner produced.
Me.—**Corpus Juris quoted in** Hill v. Finnemore, 172 A. 826, 834, 132 Me. 459.
Va.—Wilkie v. Richmond Tract. Co., 54 S.E. 43, 105 Va. 290.
4 C.J. p 819 note 97, p 821 note 32.

have held a refusal to reopen reviewable and ground for reversal.[7]

General rules applied in considering motions for new trial will be applied in reviewing the denial of an application for a retrial of one of the issues.[7.5]

Evidence admitted after reopening. After the case has been reopened, the further evidence or proof which will be admitted is discretionary with the court, as discussed in Trial § 110, and its exercise of discretion with respect thereto will not be reviewed unless it has been abused.[8]

Positive injustice. A reviewing court will not override the exercise by the trial court of its discretion unless positive injustice would result from the action of the lower court.[8.5]

§ 1607. Striking or Withdrawal of Evidence

The exercise by the trial court of its discretion as to the striking or withdrawal of evidence will not be reviewed unless there has been an abuse.

The exercise by the trial court of its discretion with respect to the striking of evidence,[9] or the ex-

(7) It would operate to permit further testimony in behalf of one party after the other parties' witnesses have gone away.
Ga.—Davis v. Central R. Co., 75 Ga. 645.
Iowa.—Osgood v. Bauder, 47 N.W. 1001, 82 Iowa 171.
Mich.—Peppett v. Michigan Cent. R. Co., 78 N.W. 900, 119 Mich. 640.
Wis.—Wood v. Washington, 115 N.W. 810, 135 Wis. 299.

(8) Failure to produce sooner did not occur through oversight.
Iowa.—Banning v. Purinton, 75 N.W. 639, 105 Iowa 642.

(9) The witness sought to be introduced was in court on subpœna before the motion was made.
Mo.—Goodrich v. Kansas City, etc., R. Co., 53 S.W. 917, 152 Mo. 222.

(10) The object was merely to permit a witness to be recalled for the purpose of stating what his testimony was.
Md.—Green v. Ford, 35 Md. 82.

(11) The purpose was to ask the witness in regard to a statement made by him in the presence of plaintiff's intestate, which was not contradicted by the intestate, nor was his attention called particularly to it.
Ga.—Beale v. Hall, 22 Ga. 431.

(12) It would permit a party to show the impertinency of testimony which was competent at the time it was offered.
Ala.—Morrisett v. Wood, 26 So. 307, 123 Ala. 384, 82 Am.S.R. 127.

(13) Movant wished to introduce expert evidence to impeach entries in an account book, when he had not reserved the right or asked permission so to do and the suspicious entries were open to an ordinary inspection of the book.
Minn.—Nelson v. Finseth, 57 N.W. 141, 55 Minn. 417.

(14) It would have permitted parties or witnesses who reside in the county where the case is tried, but who are not present until after the evidence is closed, to testify then.
Ga.—Maddox v. Cole, 6 S.E. 601, 81 Ga. 325.
Iowa.—Clinton Nat. Bank v. Torry, 30 Iowa 85.

(15) The testimony which movant wished to introduce would have been ineffectual for the purpose offered.
Neb.—Pence v. Uhl, 9 N.W. 40, 11 Neb. 320.

(16) The evidence was sought to be introduced simply to refute other evidence immaterial to any issue in the case.
Colo.—Layton v. Kirkendall, 38 P. 55, 20 Colo. 236.
Me.—**Corpus Juris quoted in** Hill v. Finnemore, 172 A. 826, 834, 132 Me. 459.

(17) No foundation is shown for the admission of the evidence which is secondary in nature.
Ga.—Leake v. J. R. King Dry Goods Co., 62 S.E. 729, 5 Ga.App. 102.

(18) The evidence is of doubtful admissibility.
Ga.—Hilburn v. Hilburn, 30 S.E. 656, 105 Ga. 471.

(19) The moving party failed to inform the judge what he expected to prove by the new evidence.
Ga.—Ward v. State, 37 S.E. 111, 112 Ga. 75.

(20) It appeared from record that all matters were fully presented.
Or.—Jones v. Warm springs Irr. Dist., 91 P.2d 542, 162 Or. 186.

(21) The moving party seeks to produce evidence it refused to offer at trial.
Pa.—Battle v. Prudential Ins. Co. of America, 25 A.2d 849, 148 Pa.Super. 525.

(22) Defendant rested without requesting introduction of deposition which could have been read to jury on same afternoon, and testimony contained in deposition was not of sufficient importance to defense to require a reversal.
Tex.—Safety Cas. Co. v. Malvoux, Civ.App., 204 S.W.2d 862, error refused no reversible error.

7. Refusal to reopen held reviewable and ground for reversal where:

(1) The court permitted amendments to the pleadings to be made after the evidence was closed and then declined to hear evidence on the new issues.
Ind.—Miller v. Hibben, 17 Ind. 441.

(2) It prevented plaintiff from producing additional evidence sufficient to avoid a nonsuit or directed verdict.
Ill.—Oneida State Bank v. Peterson, 211 Ill.App. 655.
4 C.J. p 819 note 9.

(3) Movant wishing permission to read depositions after argument had previously been improperly refused an adjournment because of the nonarrival of the depositions.
Ky.—Sun Ins. Office v. Stegar, 112 S.W. 992, 129 Ky. 808.

(4) The court after plaintiff's opening argument declined to permit an important witness of defendant who became sick to testify.
Tex.—Ft. Worth, etc., R. Co. v. Johnson, 23 S.W. 827, 5 Civ.App. 24.

(5) After the close of the evidence, material evidence on a controlling point was discovered, the witnesses were in court, and it did not appear that the testimony would have taken the opposite party by surprise.
Ark.—St. Louis, etc., R. Co. v. Philadelphia Fire Assoc., 18 S.W. 43, 55 Ark. 163.
4 C.J. p 819 note 12.

(6) When error of counsel was sought to be remedied while all witnesses were present and refusal was arbitrary and would result in denial of substantial justice on mere technicality.
La.—Rawls v. Brotherhood of R. R. Trainmen Ins. Dept., 35 So.2d 809, 213 La. 899.

7.5 Pa.—Thomas v. Waters, 38 A. 2d 237, 350 Pa. 214.

8. Cal.—Lee v. Murphy, 51 P. 549, 955, 119 C. 364.
4 C.J. p 822 notes 57–59.

8.5 La.—Succession of Lefort, 71 So. 215, 139 La. 51, Ann.Cas.1917E, 769. Hornsby v. Rives, App., 2 So.2d 532.

9. Ala.—Central of Georgia Ry. Co. v. Teasley, 65 So. 981, 187 Ala. 610.
Ind.—Indiana Utilities Co. v. Wareham, 118 N.E. 572, 66 Ind.App. 542.
N.M.—Crawford v. Gurley, 170 P. 736, 23 N.M. 659.
N.Y.—Clark v. Traver, 200 N.Y.S. 52, 205 App.Div. 206, affirmed 143 N.E. 736, 237 N.Y. 544.

ercise of its discretion in the matter of withdrawal[10] of evidence is not subject to review in the absence of an abuse thereof.

Incompetent testimony without objection. Where incompetent testimony comes into the record without objection, the refusal by the trial court to strike the testimony on a subsequent motion is not such an abuse of discretion as would require a reversal on appeal.[10.5]

§ 1608. Examination and Impeachment of Witnesses

An appellate court will not review or control the exercise by the trial court of its discretion as to the examination or impeachment of witnesses unless such discretion has been abused.

Unless such discretion has been abused, an appellate court will not seek to review or control the exercise by the trial court of its discretion as to the examination[11] or cross-examination[12] of witnesses;

Vt.—Thayer v. Glynn, 106 A. 834, 93 Vt. 257.
4 C.J. p 822 note 60.

Manifest abuse
Iowa.—Nicholson v. City of Des Moines, 67 N.W.2d 533, 246 Iowa 318.

10. Tex.—Hubb-Diggs Co. v. Mitchell, Civ.App., 256 S.W. 702.
4 C.J. p 822 note 61.

10.5 Minn.—Peterson v. Barnsdall Oil Co., 273 N.W. 260, 200 Minn. 42.

Incompetent testimony kept out by timely objection
Minn.—Peterson v. Barnsdall Oil Co., supra.

11. Cal.—Frampton v. Stoloff, 298 P. 2d 10, 142 C.A.2d 175—Burke v. City and County of San Francisco, 244 P.2d 708, 111 C.A.2d 314.
Conn.—McWilliams v. American Fidelity Co., 102 A.2d 345, 140 Conn. 572.
Fla.—Johnson v. Rhodes, 56 So. 439, 62 Fla. 220.
Ga.—Brown v. Tankersley, 119 S.E. 459, 31 Ga.App. 23.
Hawaii.—Smith v. Laamea, 29 Hawaii 750.
Ind.—Christman v. Hack, 156 N.E. 165, 86 Ind.App. 79—Vandalia Coal Co. v. Butler, 119 N.E. 34, 68 Ind. App. 245—Indiana Utilities Co. v. Wareham, 118 N.E. 572, 66 Ind. App. 542—Yost v. Dunk, 106 N.E. 644, 57 Ind.App. 151.
Kan.—Unruh v. Kansas Turnpike Authority, 313 P.2d 286, 181 Kan. 521—Hillebrand v. Board of County Com'rs of Johnson County, 304 P. 2d 517, 180 Kan. 348.
Mo.—Schonlau v. Terminal R. Ass'n of St. Louis, 212 S.W.2d 420, 357 Mo. 1108.
Murphy v. Fidelity Nat. Bank & Trust Co., 49 S.W.2d 668, 226 Mo. App. 1181.
N.H.—Thistle v. Halstead, 72 A.2d 455, 96 N.H. 192.
N.J.—Fielder v. Friedman, 12 A.2d 897, 124 N.J.Law 514—Carr v. Motor Bus Lines, 197 A. 290, 119 N.J. Law 433—Vargo v. P. Ballantine & Sons, 197 A. 52, 119 N.J.Law 561—Johnson v. Central R. Co. of New Jersey, 166 A. 180, 111 N.J.Law 93—Donovan v. Limouze, 158 A. 423, 108 N.J.Law 494.
N.D.—Kilmer v. Duchscherer, 72 N. W.2d 650—Mevorah v. Goodman, 57 N.W.2d 600, 79 N.D. 443—Blackorby v. Ginther, 158 N.W. 354, 34 N.D. 248.
Ohio.—Eagleson v. McKee, App., 33 N.E.2d 417.
Okl.—Stallaby v. Gallagher, 268 P. 303, 131 Okl. 242.
Tex.—Morten Inv. Co. v. Trevey, Civ. App., 8 S.W.2d 527.
Vt.—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91.
Va.—Butler v. Parrocha, 43 S.E.2d 1, 186 Va. 426—Robertson's Ex'r v. Atlantic Coast Realty Co., 106 S.E. 521, 129 Va. 494.
W.Va.—Jones v. Hebdo, 106 S.E. 898, 88 W.Va. 386.
4 C.J. p 822 note 62—70 C.J. p 476 note 55.
Prejudice from rulings with respect to witnesses see infra §§ 1721-1723.

Manifest abuse
Ky.—Hollis v. Fisk, 242 S.W.2d 1012.

Explanation of answer
Unless a clear abuse of discretion appears, appellate court will not disturb exercise by trial court of its discretion in permitting or refusing to permit witness to explain his answers to questions.
Minn.—Bank v. Egan, 60 N.W.2d 257, 240 Minn. 192.

Extent of, and limitation on, expert testimony is a matter as to which the trial court will not be reversed if its discretion has not been abused.
Okl.—Missouri State Life Ins. Co. v. Everett, 29 P.2d 575, 167 Okl. 350.

Form of questions put to witnesses on their examination is a matter as to which the discretion of the trial court will not be reviewed unless abused.
Iowa.—Robbins v. Weed, 169 N.W. 773, 187 Iowa 64.

Judge's examination of witnesses or asking them questions is not ground for reversal unless there has been a prejudicial abuse of discretion.
Okl.—St. Louis & S. F. Ry. Co. v. Clampitt, 154 P. 40, 55 Okl. 686.
4 C.J. p 822 note 62 [h].

Refreshing of witness' recollection
The action of the trial court with reference to permitting a witness to refresh his memory or recollection is not ground for reversal unless there has been an abuse of discretion.
Conn.—Henowitz v. Rockville Sav. Bank, 173 A. 221, 118 Conn. 527.
Minn.—Madigan v. De Graff, 17 Minn. 52.
Mo.—Voyles v. Columbia Terminals Co., App., 223 S.W.2d 870.
Neb.—Burlington, etc., R. Co. v. Wallace, 44 N.W. 223, 28 Neb. 179.
N.C.—Davenport v. McKee, 94 N.C. 325.
Tex.—Milby Auto Co. v. Kendrick, Civ.App., 8 S.W.2d 743.
4 C.J. p 822 note 62 [a].

Repetition of testimony
The trial court's permitting a witness to repeat his testimony will not be reviewed unless there has been an abuse of discretion.
Ohio.—Industrial Commission of Ohio v. Laird, 186 N.E. 718, 126 Ohio St. 617.

12. Ala.—Alabama Power Co. v. Berry, 130 So. 541, 222 Ala. 20—Smith v. S. H. Kress & Co., 98 So. 378, 210 Ala. 436—Bice v. Stevenson, 88 So. 753, 205 Ala. 576.
Ark.—Hightower v. Scholes, 193 S.W. 257, 128 Ark. 88.
Cal.—Frampton v. Stoloff, 298 P.2d 10, 142 C.A.2d 175—Roynon v. Battin, 132 P.2d 266, 55 C.A.2d 861—Ghiglione v. American Trust Co., 122 P.2d 301, 49 C.A.2d 633—Melvin v. Berendsen, 46 P.2d 189, 7 C. A.2d 389—Belm v. Patrick, 293 P. 847, 109 C.A. 599—East Bay Municipal Utility Dist. v. Kieffer, 279 P. 178, 99 C.A. 240—Good v. Brown, 196 P. 299, 51 C.A. 199.
Colo.—Howry v. Sigel-Campion Live Stock Commission Co., 249 P. 658, 80 Colo. 143—Western Investment & Land Co. v. First Nat. Bank, 172 P. 6, 64 Colo. 37.
Idaho.—In re Brown's Estate, 15 P. 2d 604, 52 Idaho 286—Portland Cattle Loan Co. v. Gemmell, 242 P. 798, 41 Idaho 756—Cupples v. Zupan, 207 P. 328, 35 Idaho 458.
Ill.—General Exchange Ins. Corporation v. McRoy, 268 Ill.App. 425.
Ind.—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62.
Vandalia Coal Co. v. Butler, 119 N.E. 34, 68 Ind.App. 245.
Iowa.—Laudner v. James, 266 N.W.

so, in the absence of such abuse, the rulings of the trial court on the manner, scope, and extent of the cross-examination will not be reviewed.[12.5]

15, 221 Iowa 863—Priest v. Hogan, 257 N.W. 403—W. T. Rawleigh Medical Co. v. Bane, 254 N.W. 18, 218 Iowa 154.

Kan.—Macmillan v. Carlton, 250 P. 308, 121 Kan. 797.

Mass.—Phillips v. Vorenberg, 156 N. E. 61, 259 Mass. 46—Walsh v. Feinstein, 146 N.E. 355, 251 Mass. 109—Earle v. New York Cent. & H. R. R. Co., 126 N.E. 274, 235 Mass. 61.

Mich.—Marsh v. Burnham, 179 N.W. 300, 211 Mich. 675.

Minn.—Bonderson v. Hovde, 184 N. W. 853, 150 Minn. 175.

Mo.—Page v. Payne, 240 S.W. 156, 293 Mo. 600.

Dent v. Monarch Life Ins. Co., 98 S.W.2d 123, 231 Mo.App. 283—Hinds v. Chicago, B. & Q. R. Co., App., 85 S.W.2d 165—Lang v. J. C. Nichols Inv. Co., 59 S.W.2d 63, 227 Mo.App. 1123—Tueteberg v. St. Louis Public Service Co., App., 41 S.W.2d 956—Crews v. Bogy, App., 285 S.W. 549.

Mont.—McGonigle v. Prudential Ins. Co. of America, 46 P.2d 687, 100 Mont. 203.

Nev.—Butzbach v. Siri, 5 P.2d 533, 53 Nev. 453.

N.H.—Goddard v. Berlin Mills Co., 131 A. 601, 82 N.H. 225—Laird v. Boston & M. R. R., 117 A. 591, 80 N.H. 377—Morrison v. Noone, 100 A. 45, 78 N.H. 338—Moody v. Perley, 95 A. 1047, 78 N.H. 17.

N.J.—Carr v. Motor Bus Lines, 197 A. 290, 119 N.J.Law 433—Vargo v. P. Ballantine & Sons, 197 A. 52, 119 N.J.Law 561—Donovan v. Limouze, 158 A. 423, 108 N.J.Law 494.

N.D.—Killmer v. Duchscherer, 72 N. W.2d 650—Mevorah v. Goodman, 57 N.W.2d 600, 79 N.D. 443—Whipple v. First Nat. Bank, 224 N.W. 297, 57 N.D. 844.

Okl.—Layton v. Purcell, 267 P.2d 547—Devonian Oil Co. v. Smith, 254 P. 14, 124 Okl. 71.

Or.—Fisher v. Ochoco Lumber Co., 173 P.2d 298, 179 Or. 524—McCauley v. Pacific Atlantic S. S. Co., 115 P.2d 307, 167 Or. 80—Richer v. Burke, 34 P.2d 317, 147 Or. 465—Burrowes v. Skibbe, 29 P.2d 552, 146 Or. 123.

Pa.—Pennsylvania Co. for Insurances on Lives and Granting Annuities v. City of Philadelphia, 112 A. 76, 268 Pa. 559.

Valentine v. Federal Life Ins. Co., 169 A. 387, 111 Pa.Super. 311.

S.C.—Kirven v. Kirven, 160 S.E. 432, 162 S.C. 162.

S.D.—Van Horn v. Simpson, 153 N.W. 883, 35 S.D. 640.

Tenn.—**Corpus Juris Secundum cited in** Mutual Life Ins. Co. of New York v. Moore, 171 S.W.2d 414, 419, 26 Tenn.App. 297.

Tex.—National Biscuit Co. v. Lawrence, Civ.App., 152 S.W.2d 882, error refused—Tallabas v. Wing Chong, Civ.App., 72 S.W.2d 636—Allala v. A. N. Tandy & Sons, Civ. App., 59 S.W.2d 205—Johnston v. Morales, Civ.App., 19 S.W.2d 451—Cresson v. Wortham-Carter Pub. Co., Civ.App., 248 S.W. 1077.

Utah.—Malia for Use and Benefit of Creditors of North Sanpete Bank v. Seeley, 57 P.2d 357, 89 Utah 262—In re Bryan's Estate, 25 P.2d 602, 82 Utah 390.

Vt.—Town of Brattleboro v. Carpenter, 158 A. 73, 104 Vt. 158—Merrihew v. Goodspeed, 147 A. 346, 102 Vt. 206, 66 A.L.R. 1109.

Va.—Adams v. Ristine, 122 S.E. 126, 138 Va. 273, 31 A.L.R. 1413.

W.Va.—Nees v. Julian Goldman Stores, 154 S.E. 769, 109 W.Va. 329.

Wis.—Branegan v. Town of Verona, 174 N.W. 468, 170 Wis. 137.

4 C.J. p 823 note 63.

Abuse of discretion with respect to cross-examination ground for new trial where:

(1) A cross-examination was allowed to an extent clearly prejudicial to the party complaining.

Idaho.—Boeck v. Boeck, 161 P. 576, 29 Idaho 639.

4 C.J. p 824 note 64.

(2) The right of cross-examination had been unduly restricted and arbitrarily limited to the prejudice of the complaining party.

Colo.—Reiter v. Pollard, 225 P. 222, 75 Colo. 203.

4 C.J. p 824 note 65.

(3) The court denied cross-examination of a party concerning facts connected with his own acts and statements relating to the case, and tending to impair his credibility, or show his interest, bias, or motives.

Ind.—Lavengood v. Lavengood, 73 N.E.2d 685, 225 Ind. 206.

Propriety of cross-examination dependent on relevancy of evidence

It has been held that where the propriety of certain cross-examination depends on the relevancy of the evidence, or whether it is in reply or not, it becomes a matter of law which may be reviewed.

S.C.—Bunch v. Charleston, etc., R. Co., 74 S.E. 363, 91 S.C. 139

12.5 Ala.—Nelson v. Johnson, 88 So. 2d 358, 264 Ala. 422—Housing Authority of City of Decatur v. Decatur Land Co., 64 So.2d 594, 258 Ala. 607—Louisville & N. R. Co. v. Martin, 198 So. 141, 240 Ala. 124—Jefferson v. Republic Iron & Steel Co., 93 So. 890, 208 Ala. 143—Bradford v. Buttram, 88 So. 829, 205 Ala. 599—Hodges v. Davis, 75 So. 300, 199 Ala. 685—Central of Georgia Ry. Co. v. Stephenson, 66 So. 495, 189 Ala. 553—Meador v. Evans, 66 So. 446, 188 Ala. 229.

May v. Lewis, 184 So. 203, 28 Ala.App. 330, certiorari denied 184 So. 204, 236 Ala. 584.

Cal.—Duff v. Schaefer Ambulance Service, 283 P.2d 91, 132 C.A.2d 655—Hill v. Hill, 187 P.2d 28, 82 C.A. 2d 682.

Fla.—Pandula v. Fonseca, 199 So. 358, 145 Fla. 395.

Ga.—Western & Atlantic R. R. v. Burnett, 54 S.E.2d 357, 79 Ga.App. 530—Cox v. Norris, 28 S.E.2d 888, 70 Ga.App. 580—Haugabrooks v. Metropolitan Life Ins. Co., 12 S.E. 2d 163, 63 Ga.App. 829.

Ill.—Eizerman v. Behn, 132 N.E.2d 788, 9 Ill.App.2d 263—Sarelas v. Meyer, 46 N.E.2d 140, 317 Ill.App. 382.

Ind.—Craig v. Citizens Trust Co., 26 N.E.2d 1006, 217 Ind. 434—Vanosdol v. Henderson, 22 N.E.2d 812, 216 Ind. 240—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62.

Huntington Post No. 7 the American Legion Dept. of Ind. v. Arnold, 109 N.E.2d 98, 123 Ind.App. 160—Evansville City Coach Lines v. Roger, 99 N.E.2d 435, 122 Ind.App. 119, rehearing denied 102 N.E.2d 504 122 Ind.App. 119.

Iowa.—Korf v. Fleming, 32 N.W.2d 85, 239 Iowa 501, 3 A.L.R.2d 270—Schultz v. Starr, 164 N.W. 163, 180 Iowa 1319.

Kan.—Dickey v. Wagoner, 160 P.2d 698, 160 Kan. 216.

Md.—Plank v. Summers, 109 A.2d 914, 205 Md. 598—Williams v. Graff, 71 A.2d 450, 194 Md. 516, 23 A.L.R.2d 106—State, for Use of Piper, v. Henson Flying Service, 60 A.2d 675, 191 Md. 240, 4 A.L.R.2d 1300—Naughton v. Paul Jones & Co., 59 A.2d 496, 190 Md. 599.

Mich.—Gilchrist v. Gilchrist, 52 N.W. 2d 531, 333 Mich. 275.

Minn.—Boutang v. Twin City Motor Bus Co., 80 N.W.2d 30—Zuber v. Northern Pac. Ry. Co., 74 N.W.2d 641, 246 Minn. 157—Minneapolis & St. Louis Ry. Co. v. Ellsworth, 54 N.W.2d 800, 237 Minn. 439—Damrow v. Zauner, 53 N.W.2d 139, 236 Minn. 447—Flemming v. Thorson, 43 N.W.2d 225, 231 Minn. 343—Mattfeld v. Nester, 32 N.W.2d 291, 226 Minn. 196, 3 A.L.R.2d 909—State v. Minneapolis Cold Storage Co., 184 N.W. 854, 150 Minn. 208.

Mo.—Baker v. Brown's Estate, 294 S.W.2d 22—Fisher v. Gunn, 270 S. W.2d 869—Lonnecker v. Borris, 245 S.W.2d 53—Wilcox v. Coons, 241 S.W.2d 907, 362 Mo. 351—Schonlau v. Terminal R. Ass'n of St. Louis, 212 S.W.2d 420, 357 Mo. 1108—

Hungate v. Hudson, 185 S.W.2d 646, 353 Mo. 944, 157 A.L.R. 598—Kleckamp v. Lautenschlaeger, 266 S.W. 470, 305 Mo. 528—Lehnerts v. Otis Elevator Co., 256 S.W. 819.

State ex rel. Rueseler Motor Co. v. Klaus, App., 281 S.W.2d 543—Hoffman v. Illinois Terminal R. Co., App., 274 S.W.2d 591—Farmer v. Kansas City Public Service Co., App., 186 S.W.2d 766—Massman v. Muehlebach, 95 S.W.2d 808, 231 Mo. App. 72—Heier v. Funsch, App., 61 S.W.2d 253—Burton v. Phillips, App., 7 S.W.2d 712.

Mont.—Conway v. Monidah Trust, 149 P. 711, 51 Mont. 113.

Neb.—Guyette v. Schmer, 35 N.W.2d 689, 150 Neb. 659—Devore v. Board of Equalization, 13 N.W.2d 451, 144 Neb. 351—Aurora Hotel v. Board of Equalization of Hamilton County, 300 N.W. 419, 140 Neb. 511—Andrews v. Commercial Casualty Ins. Co., 259 N.W. 653, 128 Neb. 496.

N.H.—Goddard v. Berlin Mills Co., 131 A. 601, 82 N.H. 225—Constantine v. Grenier, 127 A. 656, 81 N. H. 550—Benoit v. Perkins, 104 A. 254, 79 N.H. 11.

N.J.—Palkoski v. Garcia, 108 A.2d 271, 32 N.J.Super. 343, affirmed 115 A.2d 539, 19 N.J. 175.

Rynar v. Lincoln Transit Co., 30 A.2d 406, 129 N.J.Law 525—Fielder v. Friedman, 12 A.2d 897, 124 N.J. Law 514—Service Fuel Oil Co. v. Hoboken Bank for Savings, 191 A. 551, 118 N.J.Law 61.

N.M.—Medler v. Henry, 101 P.2d 398, 44 N.M. 275.

Ohio.—Di Marzo v. Columbus Transit Co., 137 N.E.2d 766, 100 Ohio App. 521—A. H. Haeseler Bldg. & Contracting Co. v. John J. Dupps Co., App., 129 N.E.2d 383—State v. Liff, 87 N.E.2d 917, 86 Ohio App. 396—Taylor v. Ross, App., 78 N.E.2d 395, reversed on other grounds 83 N.E. 2d 222, 150 Ohio St. 448, 10 A.L.R. 2d 377—Rutledge v. Hoffman, 75 N.E.2d 608, 81 Ohio App. 85.

Okl.—Rodgers v. Oklahoma Wheat Pool Terminal Corp., 96 P.2d 1040, 186 Okl. 171—Commercial Drilling Co. v. Kennedy, 45 P.2d 534, 172 Okl. 475—Stallaby v. Gallagher, 268 P. 303, 131 Okl. 242—Sharpe v. Wright, 211 P. 70, 88 Okl. 16—Cobb v. Oklahoma Pub. Co., 140 P. 1079, 42 Okl. 314.

Or.—Furbeck v. I. Gevurtz & Son, 143 P. 654, 922, 72 Or. 12.

Pa.—Tolomeo v. Harmony Short Line Motor Transp. Co., 37 A.2d 511, 349 Pa. 420—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55—Conley v. Mervis, 188 A. 350, 324 Pa. 577, 108 A.L.R. 160—Maloy v. Rosenbaum Co., 103 A. 832, 260 Pa. 466—Gallagher v. Philadelphia Rapid Transit Co., 93 A. 1074, 248 Pa. 304.

Pantano v. Zamer Motor Sales Co., 85 A.2d 681, 170 Pa.Super. 317—In re Weintraub, 71 A.2d 823, 166 Pa.Super. 342—Murphy v. Wolverine Express, 38 A.2d 511, 155 Pa. Super. 125—Besecker v. General Acceptance Corp., 17 A.2d 916, 143 Pa.Super. 367—Shobert v. Brookville Bank & Trust Co., 200 A. 942, 132 Pa.Super. 365—Charles Wagner Co. v. Exeter Mach. Works, 58 Pa. Super. 477.

In re Zolyan's Estate, 46 Dist. & Co. 74.

Rothschild v. Dilts, Com.Pl., 24 Erie Co. 336.

S.C.—Schreiberg v. Southern Coatings & Chemical Co., 97 S.E.2d 214.

Tex.—Story v. Partridge, Civ.App., 298 S.W.2d 662, error refused no reversible error—Driver v. Worth Const. Co., Civ.App., 264 S.W.2d 174, reversed on other grounds 273 S.W.2d 603, 154 Tex. 66—Swanson v. Fort Worth Transit Co., Civ. App., 209 S.W.2d 772—In re Struthers' Estate, Civ.App., 103 S.W.2d 798.

Utah.—In re Bryan's Estate, 25 P.2d 602, 82 Utah 390.

Vt.—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216—In re Moody's Estate, 49 A.2d 562, 115 Vt. 1, certiorari denied Perry v. Wheeler, 67 S.Ct. 1201, 331 U.S. 814, 91 L.Ed. 1833—Gero v. John Hancock Mut. Life Ins. Co., 18 A.2d 154, 111 Vt. 462—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Perkins v. Vermont Hydro-Electric Corporation, 177 A. 631, 106 Vt. 367—Webster v. Canadian Pac. Ry. Co., 156 A. 524, 103 Vt. 460—Saliba v. New York Cent. R. Co., 144 A. 194, 101 Vt. 427.

Va.—Adams v. Ristine, 122 S.E. 126, 138 Va. 273, 31 A.L.R. 1413.

W.Va.—Nees v. Julian Goldman Stores, 154 S.E. 769, 109 W.Va. 329.

Wyo.—Benham Const. Co. v. Rentz, 238 P.2d 927, 69 Wyo. 176.

70 C.J. p 684 note 71, p 802 note 67.

Flagrant abuse

Wyo.—Benham Const. Co. v. Rentz, 238 P.2d 927, 69 Wyo. 176—Henderson v. Coleman, 115 P. 439, 1136, 19 Wyo. 183.

Other statements as to scope

(1) Rulings as to the extent to which the cross-examiner may go into matters not gone into on direct examination will not be reviewed unless there has been an abuse of discretion.

Nev.—Butzbach v. Siri, 5 P.2d 533, 53 Nev. 453.

N.J.—Weiss v. Weiss, 112 A. 184, 95 N.J.Law 125.

Decker v. Everson, 187 A. 783, 14 N.J.Misc. 860.

Pa.—C. J. Mitchell Co. v. Moore, 65 Dauph.Co. 325.

4 C.J. p 823 note 63 [b].

(2) Rulings refusing to permit cross-examination of a witness on irrelevant facts to test accuracy or bias will not be disturbed on appeal.

Ala.—Birmingham Ry., Light & Power Co. v. Lipscomb, 73 So. 962, 198 Ala. 653.

(3) Rulings permitting great latitude in the cross-examination of witnesses who are parties, will not cause a reversal unless abuse of discretion is shown.

Idaho.—Cupples v. Zupan, 207 P. 328, 35 Idaho 458.

(4) Rulings refusing to permit further cross-examination of a witness about a matter on which he had already been interrogated and had fully answered will not be reviewed.

N.H.—Wright v. Woodward, 111 A. 494, 79 N.H. 474.

4 C.J. p 823 note 63 [c].

(5) Rulings as to cross-examination with reference to collateral matters of little materiality generally will not be reviewed in the absence of abuse of discretion.

Ark.—St. Louis, I. M. & S. Ry. Co. v. McMichael, 171 S.W. 115, 115 Ark. 101.

Iowa.—Nichols v. Kirchner, 40 N.W. 2d 13, 241 Iowa 99—Korf v. Fleming, 32 N.W.2d 85, 239 Iowa 501, 3 A.L.R.2d 270.

Me.—Page v. Hemingway Bros. Interstate Trucking Co., 114 A.2d 238—Grant v. Libby, 71 Me. 427.

Mo.—Hungate v. Hudson, 185 S.W.2d 646, 353 Mo. 944, 157 A.L.R. 598—Mauck v. Atchison, T. & S. F. Ry. Co., 154 S.W.2d 73.

Moore v. Connecticut Fire Ins. Co., 181 S.W.2d 176, 238 Mo.App. 328.

N.H.—Lafferty v. Houlihan, 121 A. 92, 81 N.H. 67—Simpson v. Gilbert, 119 A. 798, 80 N.H. 537.

N.M.—Medler v. Henry, 101 P.2d 398, 44 N.M. 275.

Or.—Bowles v. Creason, 66 P.2d 1183, 156 Or. 278.

4 C.J. p 823 note 63 [f].

(6) When the question presented is whether the trial court abused its discretion in unduly restricting the cross-examination, the appellate court will only inquire as to whether a sufficiently wide range has been allowed to test the credibility and weight of the testimony, and will give no regard to whether some particular question should have been allowed.

Cal.—People v. La Macchia, 264 P.2d 15, 41 C.2d 738.

East Bay Municipal Utility Dist. v. Kieffer, 279 P. 178, 99 C.A. 240.

(7) While unjustified attack on witness on cross-examination is reversible error, appellate court will not interfere unless discretion was abused.

Mich.—Wood v. Henley, 296 N.W. 657, 296 Mich. 491.

(8) Appellate court will not recognize error in ruling with respect to

The same principle applies to recross-examination,[12.10] or redirect examination,[13] of witnesses; the recalling of witnesses for further examination or reëxamination;[14] the extent to which argumentative[14.5] or leading[15] questions shall be allowed; and the introduction of evidence or scope of examina-

objection that question is not pertinent cross-examination in absence of abuse of discretion.
Iowa.—Uhlenhopp v. Steege, 7 N.W. 2d 195, 233 Iowa 368.

(9) Whether or not the trial judge abused his discretion in refusing one or more questions on cross-examination must be determined in each case under the facts thereof.
Ga.—Western & Atlantic R. R. v. Burnett, 54 S.E.2d 357, 79 Ga.App. 530.

Exclusion of statement held not abuse
Wis.—Knowles v. Stargel, 52 N.W.2d 387, 261 Wis. 106.

Record held not to show abuse
Pa.—Berry v. Heinel Motors, 56 A.2d 374, 162 Pa.Super. 52.

Refusal held not manifest abuse
Ariz.—General Petroleum Corp. v. Barker, 269 P.2d 729, 77 Ariz. 235.
Pa.—Murphy v. Wolverine Express, 38 A.2d 511, 155 Pa.Super. 125.

12.10 Md.—S. J. Van Lill Co. v. Frederick City Packing Co., 141 A. 898, 155 Md. 303.
70 C.J. p 716 note 11.
Recross-examination of witnesses as being in discretion of trial court see Witnesses § 429.

13. Md.—Ottenberg v. Ryan & Riley Co., 99 A. 984, 130 Md. 38.
Mo.—Eickmann v. St. Louis Public Service Co., 253 S.W.2d 122, 363 Mo. 651—Johnson v. Minihan, 200 S.W.2d 334, 355 Mo. 1208.
State ex rel. State Highway Commission v. Bengal, App., 124 S.W.2d 687.

14. Ark.—St. Louis, I. M. & S. Ry. Co. v. Grimsley, 117 S.W. 1064, 90 Ark. 64.
Ga.—Jones v. Western & A. R. Co., 99 S.E. 388, 23 Ga.App. 725—Putnam v. Taylor, 94 S.E. 862, 21 Ga. App. 537.
Md.—Maxa v. Neidlein, 163 A. 202, 163 Md. 366.
Mo.—Johnston v. Mason, 27 Mo. 511.
Fuerstenberg v. Kram, App., 249 S.W. 143.
N.Y.—Hegarty v. Hatch, 220 N.Y.S. 214, 129 Misc. 232.
N.C.—A. B. Hunter & Co. v. Sherron, 97 S.E. 5, 176 N.C. 226—McDonald v. McLendon, 91 S.E. 1017, 173 N.C. 172, Ann.Cas.1918A 1063—House v. Boyd, 91 S.E. 603, 173 N. C. 701.
Or.—Gerlinger v. Frank, 145 P. 1069, 74 Or. 517.
Pa.—Van Buren v. Eberhard, 104 A. 2d 98, 377 Pa. 22.
S.D.—Citizens' State Bank v. Bailey, 195 N.W. 37, 46 S.D. 547—First State Bank of Wood v. Anderson, 191 N.W. 339, 46 S.D. 104.
Tex.—Foster v. Guerra, Civ.App., 219 S.W. 295, dismissed for want of jurisdiction.
Va.—Van Sickler v. Washington & O. D. Ry., 128 S.E. 367, 142 Va. 857.
Wash.—Deitchler v. Ball, 170 P. 123, 99 Wash. 483.
4 C.J. p 825 note 70.

14.5 R.I.—Ashton v. Higgins, 96 A. 2d 632, 80 R.I. 350.

Manifest abuse
R.I.—Ashton v. Higgins, supra.

15. Ala.—Salter v. Cobb, 88 So.2d 845, 264 Ala. 609—Louisville & N. R. Co. v. Dumas, 96 So. 243, 209 Ala. 324—Davis v. Smitherman, 96 So. 208, 209 Ala. 244—Denson v. Acker, 78 So. 76, 201 Ala. 300.
Elliott v. McCraney, 163 So. 814, 26 Ala.App. 565—Boddy v. Continental Inv. Co., 88 So. 294, 18 Ala. App. 65.
Ariz.—General Petroleum Corp. v. Barker, 269 P.2d 729, 77 Ariz. 235.
Ark.—Missouri Pac. R. Co. v. Sullivan, 122 S.W.2d 947, 197 Ark. 360.
Cal.—In re Siemers' Estate, 261 P. 298, 202 C. 424.
Stewart v. Marvin, 294 P.2d 114, 139 C.A.2d 769—In re Cesare's Estate, 279 P.2d 607, 130 C.A.2d 557.
Colo.—Foderaro v. Ghione, 142 P.2d 274, 111 Colo. 422.
Conn.—Wright v. Blakeslee, 128 A. 113, 102 Conn. 162.
Ga.—Tippins v. Lane, 191 S.E. 134, 184 Ga. 331.
Hawthorne v. Pope, App., 180 S. E. 920, 51 Ga.App. 498—White Sewing Mach. Co. v. Horkan, 86 S.E. 257, 17 Ga.App. 48.
Idaho.—Pedersen v. Moore, 184 P. 475, 32 Idaho 420.
Ill.—Thompson v. Atchison, T. & S. F. Ry. Co., 258 Ill.App. 123.
Ind.—Tecumseh Coal & Mining Co. v. Buck, 135 N.E. 481, 192 Ind. 122.
Iowa.—Liddle v. Hyde, 247 N.W. 827, 216 Iowa 1311.
Md.—Wilhem v. Boyd, 190 A. 823, 172 Md. 79.
Mass.—Partridge v. Middlesex & B. St. Ry. Co., 108 N.E. 918, 221 Mass. 273.
Minn.—Kugling v. Williamson, 42 N. W.2d 534, 231 Minn. 135—Usher v. Eckhardt, 222 N.W. 924, 176 Minn. 210—Eichorn v. Schochie, 191 N.W. 737, 154 Minn. 261.
Mo.—Harrison v. St. Louis-San Francisco Ry. Co., 99 S.W.2d 841, 339 Mo. 821—Pritchard v. Thomas, 192 S.W. 956.
Howlett v. Randol, App., 39 S.W. 2d 463—Jennemann v. Bucher, 171 S.W. 613, 186 Mo.App. 179.
Neb.—Morris v. Missouri Pac. R. Co., 187 N.W. 130, 107 Neb. 788.
N.H.—Richards v. Rizzi, 110 A.2d 275, 99 N.H. 327.
N.J.—Williams v. Guerreri, 54 A.2d 198, 136 N.J.Law 60—Davenport v. Holden, 112 A. 418, 95 N.J.Law 418—Leonard v. Standard Aero Corporation of New York, 112 A. 252, 95 N.J.Law 235—Finkelstein v. Geismar, 106 A. 209, 91 N.J.Law 46, 92 N.J.Law 251.
Bailey v. Fortugno, 151 A. 484, 8 N.J.Misc. 739.
N.C.—McKay v. Bullard, 14 S.E.2d 657, 219 N.C. 589.
Okl.—In re Free's Estate, 75 P.2d 476, 181 Okl. 564—Huffman v. Huffman, 31 P.2d 576, 168 Okl. 39—Smith v. Gillis, 151 P. 869, 51 Okl. 134—Hammett v. State, 141 P. 419, 42 Okl. 384, Ann.Cas.1916D 1148, 51 Okl. 134.
S.C.—Belue v. City of Greenville, 84 S.E.2d 631, 226 S.C. 192—Bosdell v. Dixie Stores Co., 167 S.E. 834, 168 S.C. 520—Smith v. Union-Buffalo Mills Co., 84 S.E. 422, 100 S.C. 115.
S.D.—State v. Fullerton Lumber Co., 152 N.W. 708, 35 S.D. 410.
Tenn.—Hager v. Hager, 66 S.W.2d 250, 17 Tenn.App. 143—Landrum v. Callaway, 12 Tenn.App. 150—Adcock v. Simon, 2 Tenn.App. 617.
Tex.—Butcher v. Tinkle, Civ.App., 234 S.W.2d 285, error refused no reversible error—Hensley v. Waco Drug Co., Civ.App., 18 S.W.2d 778, reversed on other grounds Waco Drug Co. v. Hensley, Com.App., 34 S.W.2d 832.
Va.—Portner v. Portner's Ex'rs, 112 S.E. 762, 133 Va. 251.
Vt.—Laplante v. Eastman, 105 A.2d 265, 118 Vt. 221—Berkley v. Burlington Cadillac Co., 122 A. 665, 97 Vt. 260.
Wyo.—Morrison v. Cottonwood Development Co., 266 P. 117, 38 Wyo. 190.
4 C.J. p 824 note 67—70 C.J. p 528 note 73.
70 C.J. p 532 note 7 [g].

Clear abuse
Iowa.—Hackman v. Beckwith, 64 N. W.2d 275, 245 Iowa 791.
Pa.—Stompler v. Richman, 189 A. 730, 125 Pa.Super. 385.
Wash.—Bristol v. Streibich, 167 P.2d 125, 24 Wash.2d 657.

Manifest abuse
R.I.—Ashton v. Higgins, 96 A.2d 632, 80 R.I. 350.

Discretion not lightly overturned
N.H.—Lepage v. Theberge, 89 A.2d 534, 97 N.H. 375.

tion, for the purpose of impeaching the credibility of witnesses.[16]

Administrative fact-finding tribunals. An appellate court will not review the exercise of discretion by an administrative fact-finding tribunal as to the extent of cross-examination unless an abuse of discretion is shown to exist.[16.5]

Criminal records. Unless it is shown that the trial court abused its discretion in rejecting the evidence of prior convictions of a defendant who testified as a witness, an appellate court will not disturb the rulings of the trial court.[16.10] An appellate court will not interfere with the ruling of the trial court with reference to remoteness, for impeachment purposes, of a former conviction, in the absence of an abuse of discretion,[16.15] or unless

Reversal for palpable abuse of discretion

Where there has been a palpable abuse of discretion in permitting or refusing leading questions resulting in prejudice to the party complaining, the court will have no hesitation in reversing the judgment.

Ky.—Foutz v. Hacker, 254 S.W. 744, 200 Ky. 233.

4 C.J. p 824 note 68.

Abuse held not shown in nonjury case

Wash.—Balkema v. Warner, 14 P.2d 46, 169 Wash. 601.

Leading interrogatories

As the admission or exclusion of leading questions is a matter within the discretion of the trial court, an appellate court will not set aside a verdict because the court permitted the party calling a witness to put leading interrogatories.

N.H.—Atherton v. Rowe, 195 A. 676, 89 N.H. 196—Hunt v. Haven, 56 N.H. 87.

16. Ala.—Nelson v. Johnson, 88 So. 2d 358, 264 Ala. 422—West v. Spratling, 86 So. 32, 204 Ala. 478.

Cal.—Mendoza v. Gomes, 299 P.2d 707, 143 C.A.2d 172.

Ga.—Jenkins v. Lane, 115 S.E. 126, 154 Ga. 454.

Hawaii.—Kametani v. Qkuhama, 28 Hawaii 458.

Iowa.—Jettre v. Healy, 60 N.W.2d 541, 245 Iowa 294—Frick v. Kabaker, 90 N.W. 498, 116 Iowa 494.

Kan.—Dickey v. Wagoner, 160 P.2d 698, 160 Kan. 216—Lassen v. Marland Production Co., 299 P. 947, 133 Kan. 313.

Md.—Dorman v. Koontz, 165 A. 461, 164 Md. 535.

Mo.—Schipper v. Brashear Truck Co., 132 S.W.2d 993, 125 A.L.R. 674—Magill v. Boatmen's Bank, 250 S.W. 41.

Neb.—Hampton v. Struve, 70 N.W.2d 74, 160 Neb. 305—Lewis v. Miller, 230 N.W. 769, 119 Neb. 765, 70 A.L.R. 532—Peterson v. Andrews, 129 N.W. 191, 88 Neb. 136.

N.J.—Mitilenes v. Snead, 132 A.2d 321, 45 N.J.Super. 246.

Service Fuel Oil Co. v. Hoboken Bank for Savings, 191 A. 551, 118 N.J.Law 61.

Okl.—Layton v. Purcell, 267 P.2d 547.

Pa.—Sweeney v. Floyd, 90 Pa.Super. 14.

Vt.—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471.

4 C.J. p 824 note 69.

Interest or bias of witness

Wash.—Moffitt v. Goldcamp, 79 P. 2d 695, 195 Wash. 75.

Own witness

(1) Error cannot be predicated on refusal of trial court to allow cross-examination of one's own witness on ground of hostility, surprise, or deceit.

Conn.—Gondek v. Pliska, 67 A.2d 552, 135 Conn. 610—Sandora v. Times Co., 155 A. 819, 113 Conn. 574—Appeal of Carpenter, 51 A. 126, 74 Conn. 431.

(2) Exercise by trial court of its judicial discretion as to whether plea of surprise by testimony of witness called by party should be sustained is reviewable.

Pa.—Selden v. Metropolitan Life Ins. Co., 43 A.2d 571, 157 Pa.Super. 500.

(3) The trial judge's exercise of discretion as to whether or not a party shall be allowed to impeach his own witness will not be reviewed in the absence of abuse.

Kan.—Lassen v. Marland Production Co., 299 P. 947, 133 Kan. 313.

4 C.J. p 824 note 69 [b].

(4) Exercise of discretion by an appellate court in permitting a party to cross-examine his own witness is reviewable where it appears that there has been an abuse of discretion.

Mo.—Zips v. Mutual Ben. Health & Accident Ass'n, App., 169 S.W.2d 62, modified on other grounds State ex rel. Mutual Ben. Health & Accident Ass'n v. Hughes, 174 S.W. 2d 859, 351 Mo. 1081—Vernon v. Rife, App., 294 S.W. 747.

Pa.—In re Nagy, 82 A.2d 591, 169 Pa.Super. 388.

(5) Ruling of trial court as to sufficiency of showing of hostility or surprise to permit cross-examination or impeachment of one's own witness will not be disturbed, except on a showing of abuse of discretion.

Cal.—Stevenson v. Alta Bates, Inc., 66 P.2d 1265, 20 C.A.2d 303.

(6) The exercise by the trial court of its discretion in permitting a party to cross-examine his own witness is not subject to exception.

Me.—In re Paradis' Will, 87 A.2d 512, 47 Me. 347.

(7) The exercise by the trial court of its discretion in granting a party on direct examination of his own witness the privilege of cross-examining the witness as a hostile one can be ground for appeal only if court abused its discretion.

Conn.—Fox v. Schaeffer, 41 A.2d 46, 131 Conn. 439, 157 A.L.R. 132.

(8) Trial court prejudicially abused its discretion in permitting plaintiff to cross-examine his own witness, where witness was not a party and did not appear hostile, and during cross-examination plaintiff's counsel made unsupported insinuations that witness had intimidated other witnesses and otherwise acted wrongfully.

Mo.—Burnam v. Chicago Great Western R. Co., 100 S.W.2d 858, 340 Mo. 25.

Prior contradictory statements

(1) The discretion of the trial court as to whether or not a party should be permitted to introduce prior contradictory statements of a witness, on the grounds of surprise, will not be reviewed unless abused.

Neb.—Lewis v. Miller, 230 N.W. 769, 119 Neb. 765, 70 A.L.R. 532.

4 C.J. p 824 note 69 [a] (7).

(2) The exercise by trial court of its discretion in permitting the confronting of a party with an allegedly contradictory pleading for the purpose of impeachment is not reviewable except for an abuse of discretion.

Pa.—Giles v. Valentic, 49 A.2d 384, 355 Pa. 108.

16.5 N.Y.—Friedel v. Board of Regents of University of N. Y., 73 N.E.2d 545, 548, 296 N.Y. 347, motion granted 74 N.E.2d 557, 297 N.Y. 585.

"Unless there is a plain abuse of discretion, limitation is for the quasi-judicial tribunal, and the courts may not revise such a reasonable limitation, any more than they can revise any other such discretionary doings."

N.Y.—Friedel v. Board of Regents of University of N. Y., supra

16.10 Pa.—Keough v. Republic Fuel & Burner Co., 116 A.2d 671, 382 Pa. 593.

16.15 S.D.—Moberg v. Scott, 175 N. W. 559, 42 S.D. 372.

its ruling is clearly wrong.[16.20]

Double examination. The exercise by the trial court of its discretion in permitting a double examination by a person appearing as plaintiff and defendant by different counsel will not be reviewed in the absence of an abuse of discretion.[16.25] In the absence of an abuse of discretion, an appellate court will not disturb the trial court's ruling permitting both attorneys for a party to examine a witness at separate times.[16.30]

Hypothetical questions. In passing on the sufficiency of the facts narrated in a hypothetical question, the appellate court is justified in placing considerable reliance on the determination by the trial court.[16.35] The ruling by the trial court on the sufficiency of the form and contents of a hypothetical question propounded to a witness will not be reviewed unless there has been an abuse of discretion,[16.40] and an appellate court will not override the exercise by the trial court of its discretion in determining the scope, fullness, and distinctness of hypothetical questions unless it very clearly appears to have been wrongly exercised.[16.45]

§ 1609. Limiting Number of Witnesses

Except where abuse is clearly shown, an appellate court will not review the exercise by the trial court of its discretion in limiting the number of witnesses or depositions.

An appellate court will not review the exercise by the trial court of its discretion in limiting the number of witnesses or depositions that may be offered on a given point,[17] except where an abuse thereof is clearly shown.[18] Likewise, the discretion of the court as to the number of witnesses for whom the prevailing party shall be allowed to tax costs will not be reviewed unless it appears to have been abused.[19]

Expert witnesses. The ruling of the trial court as to the number of expert witnesses who will be allowed to testify on each side will not ordinarily be disturbed on appeal.[19.5]

§ 1610. Separation and Exclusion of Witnesses

Discretionary rulings of the trial court as to the separation or exclusion of witnesses will not be reviewed except for abuse of discretion.

In the absence of an abuse in the exercise by the trial court of its discretion in excluding witnesses, its ruling is conclusive.[19.50] The discretion of the trial court in determining whether witnesses shall be excluded or separated and examined out of the presence of each other,[20] whether a witness shall

Conviction for felony
Tex.—York v. Glenn, Civ.App., 242 S.W.2d 653—Bunch v. Texas Emp. Ins. Ass'n, Civ.App., 209 S.W.2d 657.

Abuse of discretion held not shown
Tex.—York v. Glenn, Civ.App., 242 S.W.2d 653.

16.20 S.D.—Allen v. McLain, 69 N.W.2d 390, 75 S.D. 520.

16.25 Minn.—Simon v. Carroll, 62 N.W.2d 822, 241 Minn. 211.
N.H.—Lynch v. Bissell, 116 A.2d 121, 99 N.H. 473.

16.30 Tex.—John F. Buckner & Sons v. Allen, Civ.App., 289 S.W.2d 387.

16.35 Cal.—Christiansen v. Hollings, 112 P.2d 723, 44 C.A.2d 332—Graves v. Union Oil Co. of California, 173 P. 618, 36 C.A. 766.

16.40 Ala.—J. H. Burton & Sons Co. v. May, 103 So. 46, 212 Ala. 435—Brown v. Mobile Electric Co., 91 So. 802, 207 Ala. 61—Louis Pizitz Dry Goods Co. v. Cusimano, 91 So. 779, 206 Ala. 689.
Grissom v. Dahart Ice Cream Co., 40 So.2d 333, 34 Ala.App. 282, certiorari denied 40 So.2d 339, 252 Ala. 235.
Cal.—Graves v. Union Oil Co. of California, 173 P. 618, 36 C.A. 766.
Kan.—In re Eyth's Estate, 139 P.2d 378, 157 Kan. 268.
Mass.—King v. Belmore, 142 N.E. 911, 248 Mass. 108—Mahoney v. Gooch, 141 N.E. 605, 246 Mass. 567.
Minn.—Briggs v. Chicago Great Western Ry. Co., 80 N.W.2d 625.
Okl.—Shawnee Gas & Electric Co. v. Griffith, 222 P. 235, 96 Okl. 261.
Utah.—Coon v. Shields, 39 P.2d 348, 88 Utah 76.

16.45 Mass.—Adams v. Town of Bolton, 9 N.E.2d 562, 297 Mass. 459, 111 A.L.R. 856—Carroll v. Boston Elevated Ry. Co., 86 N.E. 793, 200 Mass. 527.

17. Cal.—In re Wineteer's Estate, 167 P. 516, 176 C. 28.
Ill.—Geohegan v. Union Elevated R. Co., 107 N.E. 786, 266 Ill. 482, Ann. Cas.1916B 762.
S.C.—Suber v. Parr Shoals Power Co., 102 S.E. 335, 113 S.C. 317.
4 C.J. p 825 notes 71–76, 82–85.
Discretion of, and control by, trial court of number of witnesses see Trial § 92.

18. R.I.—Campbell v. Campbell, 73 A. 354, 30 R.I. 63.
4 C.J. p 826 note 81.

19. Ky.—Kash v. Miller, 2 Bush 568.
4 C.J. p 825 note 79—15 C.J. p 131 note 46.

19.5 Wash.—Lynch v. Republic Pub. Co., 243 P.2d 636, 40 Wash.2d 379.

19.50 Wash.—Devlin v. Department of Labor and Industries of Washington, 78 P.2d 952, 194 Wash. 549.

20. Ala.—Raymond v. Pointer, 133 So. 260, 222 Ala. 518—Ryan v. Couch, 66 Ala. 244.
Fla.—Romano v. Palazzo, 91 So. 115, 83 Fla. 243.
Ga.—Groover v. Simmons, 129 S.E. 778, 161 Ga. 93.
Kelley v. Bristol, 119 S.E. 334, 30 Ga.App. 725.
Ill.—Staver, etc., Mfg. Co. v. Coe, 49 Ill.App. 426.
Ind.—Cincinnati, I. & W. R. Co. v. Little, 131 N.E. 762, 190 Ind. 662—Detrick v. McGlone, 46 Ind. 291.
Consumers' Co. v. Ruble, 122 N.E. 607, 69 Ind.App. 617.
Kan.—West v. West, 9 P.2d 981, 135 Kan. 223—Simpson v. Schiff, 197 P. 857, 109 Kan. 9.
La.—Finkelstein v. Naihaus, App., 151 So. 686.
Mont.—Smith v. Armstrong, 198 P. 2d 795, 121 Mont. 377.
N.C.—Lee v. Thornton, 93 S.E. 788, 174 N.C. 288.
R.I.—Roy v. United Electric Rys. Co., 148 A. 595.
Tex.—Medrano v. City of El Paso, Civ.App., 231 S.W.2d 514—Vaughn v. Gulf Ins. Co., Civ.App., 151 S.W.2d 227—**Corpus Juris Secundum** cited in Texas Indemnity Ins. Co.

be excluded while the deposition of another witness is being read,[21] whether a particular witness or witnesses should be released or excepted from the rule ordering their exclusion and separation,[22] or whether or not a witness who has disobeyed a rule of exclusion or separation should be permitted to testify,[23] is not subject to review except in case of abuse. To justify review, such abuse has been required to be clear[23.5] or manifest;[24] and prejudice to the party complaining has also been required.[25]

Exclusion of attorney who testified as a witness will not be reviewed in the absence of an affirmative injury to the complaining party.[25.5]

§ 1611. Arguments and Conduct of Counsel

An appellate court will not disturb the exercise by the trial court of its discretion as to the arguments and conduct of counsel unless there has been an abuse of discretion.

Although such exercise is reviewable,[26] an appellate court will not, in the absence of an abuse of discretion, disturb the exercise by the trial court of its discretion with respect to the conduct of counsel in the course of the trial,[27] and their opening state-

v. Hubbard, Civ.App., 138 S.W.2d 626, 628, error dismissed, judgment correct—Dunnagan v. Lackey, Civ. App., 283 S.W. 927—In re Brackenridge's Estate, Civ.App., 245 S.W. 786, reversed on other grounds Brackenridge v. Roberts, 267 S.W. 244, 114 Tex. 418, rehearing denied 270 S.W. 1001, 114 Tex. 418.

Utah.—Xenakis v. Garrett Freight Lines, Inc., 265 P.2d 1007, 1 Utah 2d 299.

Wash.—Wiles v. Northern Pac. Ry. Co., 119 P. 810, 66 Wash. 337.

4 C.J. p 826 notes 90, 91.

Separation and exclusion of witnesses see Trial §§ 65–70.

21. U.S.—Patton v. Janney, D.C., 18 F.Cas.No.10,836, 2 Cranch C.C. 71.

22. Okl.—Rives v. Ada Electric & Gas Co., 217 P. 447, 91 Okl. 275.

Tex.—Vaughn v. Gulf Ins. Co., Civ. App., 151 S.W.2d 227—American Cent. Ins. Co. v. Nunn, Civ.App., 79 S.W. 88.

W.Va.—Denoff v. Fama, 135 S.E. 578, 102 W.Va. 494.

4 C.J. p 826 notes 96–1.

Discretion of trial court in this connection see Trial § 67.

23. Ala.—Wilson Bros. v. Mobile & O. R. Co., 92 So. 246, 207 Ala. 171.

Fla.—Romano v. Palazzo, 91 So. 115, 83 Fla. 243.

Ill.—Hogg v. Fannie May Candy Shops, 53 N.E.2d 494, 321 Ill.App. 640—Chicago Paper Co. v. Grigsby-Grunow-Hinds Co., 262 Ill.App. 74. See Goldstein v. Freudenberg, 191 Ill.App. 63.

Ky.—Illinois Cent. R. Co. v. Outland's Adm'x, 170 S.W. 48, 160 Ky. 714.

Miss.—Chilcutt v. Keating, 71 So.2d 472, 220 Miss. 545.

Tex.—Vaughn v. Gulf Ins. Co., Civ. App., 151 S.W.2d 227—Missouri, K. & T. Ry. Co. v. Pacheco, Civ.App., 185 S.W. 1051.

Wash.—Lund v. Johnson, 298 P. 702, 162 Wash. 525.

4 C.J. p 826 notes 95, 1–3, p 827 notes 4–6.

Discretion of court in this connection see Trial § 70 [64 C.J. p 121 notes 48–55, p 122 notes 56–71].

Refusing permission to testify where the court has no discretion, but is legally required to permit the witness disobeying the rule of exclusion to testify, is ground for reversal.

N.D.—Crosby v. Minneapolis, St. P. & S. S. M. Ry. Co., 222 N.W. 476, 57 N.D. 447.

23.5 Utah.—Xenakis v. Garrett Freight Lines, Inc., 265 P.2d 1007, 1 Utah 2d 299.

24. Ala.—Ryan v. Couch, 66 Ala. 244.

Ark.—St. Louis, etc., R. Co. v. Pate, 118 S.W. 260, 90 Ark. 135.

Ill.—Staver, etc., Mfg. Co. v. Coe, 49 Ill.App. 426.

Ind.—Detrick v. McGlone, 46 Ind. 691.

Ky.—South Covington St. R. Co. v. McCleave, 38 S.W. 1055, 18 Ky.L. 1036.

Miss.—Chilcutt v. Keating, 71 So.2d 472, 220 Miss. 545.

Tex.—Medrano v. City of El Paso, Civ.App., 231 S.W.2d 514—**Corpus Juris Secundum cited in** Wise v. City of Abilene, Civ.App., 141 S.W. 2d 400, 403, error dismissed, judgment correct—Garlington v. McIntosh, Civ.App., 33 S.W. 389—Texas, etc., R. Co. v. Pearl, 3 Tex.App.Civ. Cas. § 4.

4 C.J. p 826 note 93, p 827 note 7.

25. Tex.—Vaughn v. Gulf Ins. Co., Civ.App., 151 S.W.2d 227—Beaumont, etc., R. Co. v. Elliott, Civ. App., 148 S.W. 1125.

25.5 Tex.—Texas & N. O. R. Co. v. Ivey, Civ.App., 283 S.W.2d 78.

26. Mo.—Ryan v. Sheffield Car & Equipment Co., App., 24 S.W.2d 166—Morgan v. Doe Run Lead Co., App., 273 S.W. 244—Williams v. Columbia Taxicab Co., App., 241 S.W. 970.

27. Ariz.—Selaster v. Simmons, 7 P. 2d 258, 39 Ariz. 432.

Cal.—Rosenfield v. Vosper, 195 P.2d 530, 86 C.A.2d 687—Moffitt v. Ford Motor Co., 26 P.2d 661, 135 C.A. 7—Imlay v. California Cab Co., 11 P. 2d 1116, 124 C.A. 68.

Ga.—Cohen v. Saffer, 160 S.E. 130, 43 Ga.App. 746.

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Markle, 119 N.E. 371, 187 Ind. 553.

Kelley v. Hocutt, 128 N.E.2d 879, 125 Ind.App. 617—Freeman v. Grand Trunk Western R. Co., 51 N.E.2d 375, 114 Ind.App. 356—King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523—Jay v. Holman, 20 N.E.2d 656, 106 Ind. App. 413.

Iowa.—Haman v. Preston, 173 N.W. 894, 186 Iowa 1292—James v. Winifred Coal Co., 169 N.W. 121, 184 Iowa 619.

Mo.—Hancock v. Kansas City Terminal R. Co., 146 S.W.2d 627, 347 Mo. 166—Gettys v. American Car & Foundry Co., 16 S.W.2d 85, 322 Mo. 787—Adams v. Kendrick, 11 S. W.2d 16, 321 Mo. 310.

Day v. Banks, App., 143 S.W.2d 68—Reutner, Klaus & Co. v. Nelson Chesman & Co., App., 9 S.W.2d 655—Bishop v. Musick Plating Works, 3 S.W.2d 256, 222 Mo.App. 370—Burston v. Fennewald, 2 S.W.2d 824, 222 Mo.App. 128.

N.J.—De Palma v. Economy Auto Supply Co., 130 A. 206, 3 N.J.Misc. 827, affirmed 133 A. 919, 102 N.J. Law 714.

N.C.—Johnson v. Hoffler & Boney Transfer Co., 168 S.E. 495, 204 N.C. 420.

Ohio.—Washington Tp. Mut. Fire & Lightning Ins. Ass'n v. Sherrer, 168 N.E. 234, 32 Ohio App. 465.

Pa.—Pentimall v. Bankers' Automobile Finance Corporation, 92 Pa. Super. 110.

S.D.—Gartner v. Mohan, 170 N.W. 640, 41 S.D. 406.

W.Va.—Fleming v. Nay, 200 S.E. 577, 120 W.Va. 625.

Discretion possessed by trial court see Trial § 158.

"The question as to whether error has been committed by reason of alleged misconduct of counsel is a matter which must be considered by us in the light of whether a trial judge has abused his discretion in the management of a trial with due regard to the rights of the parties."

ments[28] or arguments,[29] including the right to open and close,[30] the time to be allowed for the opening

Ind.—Lawson v. Cole, 115 N.E.2d 134, 136, 124 Ind.App. 89.

Clear abuse

Ariz.—Buehman v. Smelker, 68 P.2d 946, 50 Ariz. 18.

Side bar remarks

Only in instances in which trial judge's exercise of his discretion was abused should appellate court find grounds for reversal because of action of counsel in making side bar remarks which were not addressed to court for purpose of prejudicing jury against opponent.

Tex.—Airline Motor Coaches v. Campbell, Civ.App., 184 S.W.2d 532, error refused.

28. Ala.—Atlanta Life Ins. Co. v. Canady, 143 So. 561, 225 Ala. 377.

Cal.—Bates v. Newman, 264 P.2d 197, 121 C.A.2d 800.

Ind.—Inter-Ocean Casualty Co. v. Wilkins, 182 N.E. 252, 96 Ind.App. 231.

Tenn.—Graham v. Cloar, 205 S.W.2d 764, 30 Tenn.App. 306.

29. Ala.—British General Ins. Co. v. Simpson Sales Co., 93 So.2d 763, 265 Ala. 683.

Ark.—Tri-State Transit Co. of Louisiana v. Westbrook, 180 S.W.2d 121, 207 Ark. 270—Kansas City Southern Ry. Co. v. Murphy, 85 S.W. 428, 74 Ark. 256.

Cal.—Eley v. Curzon, 263 P.2d 86, 121 C.A.2d 280—Rosenfield v. Vosper, 195 P.2d 530, 86 C.A.2d 687.

Ga.—Adkins v. Flagg, 93 S.E. 92, 147 Ga. 136.

Dictograph Products v. Cooper, 69 S.E.2d 821, 85 Ga.App. 421.

Ind.—Spry v. Logansport Loan & Trust Co., 133 N.E. 827, 191 Ind. 522.

Iowa.—**Corpus Juris Secundum cited in** Johnson v. Kinney, 7 N.W.2d 188, 194, 232 Iowa 1016, 144 A.L.R. 997—Mitchell v. Mystic Coal Co., 179 N.W. 428, 189 Iowa 1018—Womack v. Horsley, 152 N.W. 65, 178 Iowa 1079.

Miss.—Overing v. Skrmetta, 67 So.2d 606, 218 Miss. 648—Lamar Hardwood Co. v. Case, 107 So. 868, 143 Miss. 277.

Mo.—Davis v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 460—Comstock v. Ingles, 296 S.W.2d 68—Marler v. Pinkston, 293 S.W.2d 385—Collins v. Cowger, 283 S.W.2d 554—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220—Schonlau v. Terminal R. Ass'n of St. Louis, 212 S.W.2d 420, 357 Mo. 1108—Burow v. Red Line Service, 122 S.W.2d 919, 343 Mo. 605—Jones v. Kansas City, 76 S.W.2d 340—Goyette v. St. Louis-San Francisco Ry. Co., 37 S.W.2d 552—Bobos v. Krey Packing Co., 19 S.W.2d 630, 323 Mo. 224—Gettys v. American Car & Foundry Co., 16 S.W.2d 85, 322 Mo. 787—Kersten v. Hines, 223 S.W. 586, 283 Mo. 623.

Yankoff v. Allied Mut. Ins. Co., App., 289 S.W.2d 471—Satterfield v. Southern Ry. Co., App., 287 S.W.2d 395—Riley v. St. Louis Public Service Co., App., 245 S.W.2d 666—White v. Teague, 177 S.W.2d 517, App., affirmed 182 S.W.2d 288, 353 Mo. 247—Graves v. May Department Stores Co., App., 153 S.W.2d 778—Neuhaus v. United Neighbors of Missouri, App., 150 S.W.2d 590—Day v. Banks, App., 143 S.W.2d 68—Bain v. Missouri-Kansas-Texas R. Co., App., 141 S.W.2d 577—Albert v. Metropolitan Life Ins. Co., App., 95 S.W.2d 343—Miller v. Mutual Life Ins. Co. of New York, App., 79 S.W.2d 750—Whitley v. Stein, App., 34 S.W.2d 998—Berlau v. Metropolitan Life Ins. Co., 24 S.W.2d 686, 224 Mo.App. 938—Harris v. Chouteau Shoe Mfg. Co., App., 16 S.W.2d 633—Burton v. Phillips, App., 7 S.W.2d 712—Allen v. Autenrieth, App., 280 S.W. 79.

N.M.—Rival v. Atchison, T. & S. F. Ry. Co., 306 P.2d 648, 62 N.M. 159.

N.C.—Heilig v. Home Security Life Ins. Co., 22 S.E.2d 429, 222 N.C. 231—Lamborn & Co. v. Hollingsworth & Hatch, 142 S.E. 19, 195 N.C. 350.

Ohio.—Jahraus v. Fryman, App., 129 N.E.2d 200.

Or.—Walker v. Penner, 227 P.2d 316, 190 Or. 542—Cholia v. Kelty, 63 P.2d 895, 155 Or. 287.

Pa.—Padden v. Local 90 United Ass'n of Journeymen Plumbers, 82 A.2d 327, 168 Pa.Super. 611—Berry v. Heinel Motors, 56 A.2d 374, 162 Pa.Super. 52—Trustees of Bryn Mawr College v. Gold Building & Loan Ass'n, 182 A. 98, 120 Pa.Super. 246—Babis v. New York Extract Co., 181 A. 846, 120 Pa.Super. 73.

Tenn.—Nashville, Chattanooga & St. Louis Ry. v. Mangrum, 15 Tenn. App. 518.

Crews v. Gould, 6 Tenn.Civ.App. 620.

Tex.—Floyd v. Fidelity Union Casualty Co., Com.App., 24 S.W.2d 363, rehearing denied 39 S.W.2d 1091—Brazelton v. St. Louis Southwestern Ry. Co. of Texas, Com.App., 296 S.W. 290.

Texas Emp. Ins. Ass'n v. Davis, Civ.App., 228 S.W.2d 257, error refused—Burrow v. Davis, 226 S.W.2d 199, error refused no reversible error—Thornburg v. Manskey, Civ.App., 219 S.W.2d 720—Belt v. Texas Co., Civ.App., 204 S.W.2d 653, error refused no reversible error—Commercial Standard Ins. Co. v. Shudde, Civ.App., 76 S.W.2d 561—Allen v. Texas & N. O. R. Co., Civ.App., 70 S.W.2d 758—Gulf Refining Co. v. Youngblood, Civ. App., 23 S.W.2d 522—Travelers' Ins. Co. v. Peters, Civ.App., 3 S.W.2d 568, reversed on other grounds, Com.App., 14 S.W.2d 1007, set aside 17 S.W.2d 457, rehearing denied 18 S.W.2d 590—Fidelity-Phœnix Fire Ins. Co. v. Mumaw, Civ.App., 287 S.W. 120—Heard v. Heard, Civ. App., 272 S.W. 501—Nimitz v. Holland, Civ.App., 217 S.W. 244, affirmed Holland v. Nimitz, 232 S.W. 298, 111 Tex. 419, reheard 239 S.W. 185, 111 Tex. 419—Peck v. Murphy & Bolanz, Civ.App., 184 S.W. 542.

Vt.—Drown v. Oderkirk, 96 A. 11, 89 Vt. 484.

Va.—Cape Charles Flying Service v. Nottingham, 47 S.E.2d 540, 187 Va. 444—Cohen v. Power, 32 S.E.2d 64, 183 Va. 258.

4 C.J. p 827 note 9.

Clear abuse

Mo.—Crews v. Kansas City Public Service Co., 111 S.W.2d 54, 341 Mo. 1090.

Huth v. Picotte, App., 154 S.W. 2d 382.

Tex.—Price v. Humble Oil & Refining Co., Civ.App., 152 S.W.2d 804, error refused.

Manifest abuse

Mo.—F. A. Sander Real Estate & Inv. Co. v. Warner, App., 205 S.W.2d 283.

30. Ga.—Dictograph Products v. Cooper, 69 S.E.2d 821, 85 Ga.App. 421.

Idaho.—Exchange State Bank v. Taber, 145 P. 1090, 26 Idaho 723.

Iowa.—Schipfer v. Stone, 218 N.W. 568, 206 Iowa 328, rehearing denied and modified on other grounds 219 N.W. 933, 206 Iowa 328—First State Bank of Riverside v. Tobin, 215 N.W. 767, 204 Iowa 456—City Bank of Mitchellville v. Alcorn, 176 N.W. 628, 188 Iowa 592.

Minn.—Bullock v. New York Life Ins. Co., 233 N.W. 858, 182 Minn. 192.

Miss.—Lamar Hardwood Co. v. Case, 107 So. 868, 143 Miss. 277.

Mo.—White v. Teague, App., 177 S.W. 2d 517, affirmed 182 S.W.2d 288, 353 Mo. 247—Hill v. Connecticut Mut. Ins. Co. of Hartford, 146 S.W.2d 651, 235 Mo.App. 752—Walton v. Cathey, App., 137 S.W.2d 637—Weller v. Weaver, 100 S.W.2d 594, 231 Mo.App. 400—E. C. Robinson Lumber Co. v. Lansdell, 253 S.W. 24, 215 Mo.App. 357—McDonald v. Redemeyer, 198 S.W. 483, 197 Mo. App. 630.

N.H.—Blaisdell v. Young, 6 A.2d 441, 90 N.H. 185.

N.C.—Heilig v. Home Security Life Ins. Co., 22 S.E.2d 429, 222 N.C. 231—Michaux v. Paul Rubber Co., 130 S.E. 306, 190 N.C. 617—A. J. Higgins Export & Lumber Co. v.

statements or arguments of counsel,[31] whether the right to make a closing argument shall be denied the counsel opening the argument where adverse counsel has waived the right to reply,[32] the reopening of the case for further arguments,[33] and the order,[34] propriety,[35] effect,[36] or nature, scope, and contents[37] thereof, and the measures or steps to be taken to correct or punish misconduct or an

Elizabeth City Shipyard Co., 107 S.E. 449, 181 N.C. 442.
Okl.—Congdon v. McAlester Carriage & Wagon Factory, 155 P. 597, 56 Okl. 201.
Pa.—Goldman v. Lichtenstul, 179 A. 870, 118 Pa.Super. 124.
Discretion of court see Trial § 43.

Prejudicial refusal of right

It is within the discretion of the trial court to award the right to open and close; but where defendant had the burden of proof on the only issue in the case, the refusal to award him such right was ground for reversal, it appearing that the verdict on conflicting evidence for plaintiff was not unanimous and that plaintiff only succeeded in obtaining a sufficient number of the jurors to return a verdict.
Mo.—Dorrell v. Sparks, 127 S.W. 103, 142 Mo.App. 460.

Oral summation
N.J.—Bacharach v. Mitnick, 3 A.2d 92, 121 N.J.Law 401.

Question of procedure

The granting or denying of a right to open and close argument is a question of procedure, and appellate court is always reluctant to base a reversal on this.
Iowa.—In re Cooklin's Estate, 5 N.W.2d 577, 232 Iowa 266—O'Conner v. Kleiman, 121 N.W. 1088, 143 Iowa 435.

Where the right to open and close is a legal right not dependent on discretion a denial thereof is reviewable.
Me.—Reed v. Reed, 99 A. 181, 115 Me. 441.
N.Y.—Herreshoff v. American & British Mfg. Co., 149 N.Y.S. 703, 164 App.Div. 238.

31. Cal.—Bates v. Newman, 264 P. 2d 197, 121 C.A.2d 800—Eley v. Curzon, 263 P.2d 86, 121 C.A.2d 280—Rosenfield v. Vosper, 195 P.2d 530, 86 C.A.2d 687.
Colo.—Sylvester v. Jerome, 34 P. 760, 19 Colo. 128.
Ky.—Southern Express Co. v. Southard, 206 S.W. 773, 182 Ky. 492—Vaughn v. City of Corbin, 186 S.W. 131, 170 Ky. 426.
Miss.—Lamar Hardwood Co. v. Case, 107 So. 868, 143 Miss. 277.
Mo.—Brickell v. Fleming, Mo., 281 S.W. 951—Reagan v. St. Louis Transit Co., 79 S.W. 435, 180 Mo. 117.
Larkin v. Wells, App., 44 S.W.2d 882.
Wyo.—Spriggs v. Cheyenne Newspapers, 182 P.2d 801, 63 Wyo. 416.
4 C.J. p 827 note 9.

Discretion possessed by trial court see Trial § 168.
Harmless or prejudicial error see infra § 1713.

32. Ind.—Conrad v. Cleveland, etc., R. Co., 72 N.E. 489, 34 Ind.App. 133.
Discretion of court in this connection see Trial § 164.

33. Wash.—Joyce v. Gibbons, 233 P. 921, 133 Wash. 385.

34. Tex.—Panhandle Grain & Elevator Co. v. Dowlin, Civ.App., 247 S.W. 873.
4 C.J. p 827 note 8.
Discretion of court, see Trial § 166.

35. Ark.—Tri-State Transit Co. of Louisiana v. Westbrook, 180 S.W. 2d 121, 207 Ark. 270.
Iowa.—**Corpus Juris Secundum cited in** Johnson v. Kinney, 7 N.W.2d 188, 194, 232 Iowa 1016, 144 A.L.R. 997.
Mo.—Votrain v. Illinois Terminal R. Co., 268 S.W.2d 838.
Shelley v. St. Louis Public Service Company, App., 279 S.W.2d 182—Blaco v. Kansas City, App., 56 S.W.2d 1062—Burston v. Fennewald, 2 S.W.2d 824, 222 Mo.App. 128—Tucker v. Hagan, App., 300 S.W. 301—Plannett v. McFall, App., 284 S.W. 850.
Pa.—Padden v. Local 90 United Ass'n of Journeymen Plumbers, 82 A.2d 327, 168 Pa.Super. 611.
S.C.—Estridge v. Metropolitan Life Ins. Co., 182 S.E. 834, 178 S.C. 310.
Tex.—Burrow v. Davis, 226 S.W.2d 199, Civ.App., error refused no reversible error—Thornburg v. Manskey, Civ.App., 219 S.W.2d 720—Community Theaters v. Weilbacher, Civ.App., 57 S.W.2d 941—Bowles v. Bryan, Civ.App., 277 S.W. 760.
W.Va.—Cavender v. Cline Ice Cream Co., 131 S.E. 862, 101 W.Va. 3.

Clear abuse
Mo.—Griffith v. Gardner, 217 S.W.2d 519, 358 Mo. 859.
Joshmer v. Fred Weber Contractors, Inc., App., 294 S.W.2d 576—Benoist v. Driveaway Co. of Missouri, App., 122 S.W.2d 86.
Tex.—Belt v. Texas Co., Civ.App., 204 S.W.2d 653, error refused no reversible error—F. H. Vahlsing, Inc., v. Hartford Fire Ins. Co., Civ. App., 108 S.W.2d 947, error dismissed.

36. Mo.—Votrain v. Illinois Terminal R. Co., 268 S.W.2d 838—Griffith v. Gardner, 217 S.W.2d 519, 358 Mo. 859—Gettys v. American Car & Foundry Co., 16 S.W.2d 85, 322 Mo. 787.
Gray v. Phillips Bldg. Co., App., 51 S.W.2d 181—Haggard v. Rogers-Schmitt Wire & Iron Co., App., 249 S.W. 712—Baird v. Larabee Flour Mills Corporation, 220 S.W. 988, 203 Mo.App. 432.
N.H.—Knighton v. Cushman-Rankin Co., 119 A. 797, 80 N.H. 546.
N.D.—Leach v. Nelson, 196 N.W. 755, 50 N.D. 538.
Pa.—Meyer v. S. R. Moss Co., 66 Pa. Super. 149.
Tex.—Davis v. Hill, Com.App., 298 S.W. 526.
Thornburg v. Manskey, Civ.App., 219 S.W.2d 720—Patterson v. Fuller, Civ.App., 110 S.W.2d 1230, error dismissed—Vincent v. Bell, Civ.App., 22 S.W.2d 753—Smith v. Irwin, Civ.App., 7 S.W.2d 926.

37. Cal.—Dam v. Bond, 251 P. 818, 80 C.A. 342.
Ga.—Greenfield v. Rhodes, 94 S.E. 1036, 21 Ga.App. 676.
Mo.—Kelso v. W. A. Ross Const. Co., 85 S.W.2d 527—Crockett v. Kansas City Rys. Co., 243 S.W. 902.
State ex rel. State Highway Commission v. Ferbert, App., 71 S.W.2d 55—Green v. Boehm, App., 66 S.W.2d 570.
Ohio.—Miami Conservancy Dist. v. Mitman, 11 Ohio App. 106, affirmed 125 N.E. 875, 100 Ohio St. 315—City of St. Bernard v. Gohman, 10 Ohio App. 402.
Tex.—Three States Telephone Co. v. Kirkwood, Civ.App., 61 S.W.2d 568—Heard v. Heard, Civ.App., 272 S.W. 501.
4 C.J. p 827 note 8.

Reading of legal authorities to jury

(1) The trial court's decision on the right of counsel to read to, or in the presence, of the jury from legal authorities will not be reversed in the absence of an abuse of discretion.
Ala.—City of Anniston v. Oliver, 185 So. 187, 28 Ala.App. 390.
Ga.—Greenfield v. Rhodes, 94 S.E. 1036, 21 Ga.App. 676.
Me.—Crosby v. Maine Cent. R. Co., 69 Me. 418.
Md.—Baltimore, etc., R. Co. v. Kean, 5 A. 325, 65 Md. 394.
Mont.—In re Williams' Estate, 156 P. 1087, 52 Mont. 192.
Tex.—Springfield Fire & Marine Ins. Co. v. Hubbs-Johnson Motor Co., Civ.App., 28 S.W.2d 1088, reversed on other grounds, Com.App., 42 S.W.2d 248.
4 C.J. p 827 note 8 [c].

(2) However, an abuse of discretion in this connection is reviewable and ground for reversal.
Neb.—Stratton v. Dole, 65 N.W. 875, 45 Neb. 472.

improper argument,[38] will not be disturbed, unless there has been an abuse of discretion.

Double argument. The exercise by the trial court of its discretion in permitting a double argument by a person appearing as plaintiff and defendant by different counsel will not be reviewed in the absence of an abuse of discretion.[38.5] Where there are two attorneys engaged in the trial of a cause for plaintiff, and when the evidence is in, one attorney makes an opening argument for plaintiff, and defendant's counsel waives argument, the refusal of the trial court to permit the second counsel to further address jury for plaintiff will not be held error unless an abuse of discretion is shown.[38.10]

If the answering argument was provoked as a rejoinder to the argument made by the other party, no error is shown in the absence of a clear showing of an abuse of the discretion by the trial court.[38.15] An appellate court will not disturb the ruling of the trial court in permitting counsel to reply to a comment made by opposing counsel, in the absence of an abuse of the discretion of the trial court.[38.20]

Mistrial. Unless it is apparent that a mistrial was essential to the preservation of the right of a fair trial, an appellate court will not interfere with the exercise by the trial court of its discretion in passing on a motion for a mistrial because of improper arguments or conduct of counsel.[38.25] An appellate court will not disturb the exercise by the trial court of its discretion in ordering or refusing a mistrial for improper argument unless it appears that the trial court abused its discretion,[38.30] and positive injury resulted.[38.35]

Withdrawal of juror. The exercise by the trial court of its discretion in granting or refusing a motion to withdraw a juror because of improper remarks by counsel will not be disturbed in the absence of an abuse of discretion.[38.40] Unless the

N.Y.—Griebel v. Rochester Printing Co., 48 N.Y.S. 505, 24 App.Div. 288.
W.Va.—Gregory's Adm'r v. Ohio River R. Co., 16 S.E. 819, 37 W.Va. 606.

38. Ala.—Tennessee Coal, Iron & R. R. Co. v. Spicer, 89 So. 293, 206 Ala. 141.
Conn.—Lebas v. Patriotic Assur. Co., 137 A. 241, 106 Conn. 119.
Ga.—Black & White Cab Co. v. Clark, 19 S.E.2d 570, 67 Ga.App. 170.
Ind.—New York Cent. R. Co. v. Milhiser, 106 N.E.2d 453, 231 Ind. 180, rehearing denied 108 N.E.2d 57, 231 Ind. 180.
Me.—Trumpfeller v. Crandall, 155 A. 646, 130 Me. 279.
Mass.—Kennedy v. Armstrong, 111 N.E. 886, 223 Mass. 354.
Mo.—Polizzi v. Nedrow, 247 S.W.2d 809.
Mo.—Kamer v. Missouri-Kansas-Texas R. Co., 32 S.W.2d 1075, 326 Mo. 792, certiorari denied Missouri-Kansas-Texas R. Co. v. Kamer, 51 S.Ct. 216, 282 U.S. 903, 75 L.Ed. 795—Rockenstein v. Rogers, 31 S.W.2d 792, 326 Mo. 468.
Tevlin v. Federal Life Ins. Co. of Chicago, App., 127 S.W.2d 743—Raleigh v. Raleigh, App., 5 S.W.2d 689—Wair v. American Car & Foundry Co., App., 300 S.W. 1048—Williams v. Fleming, 267 S.W. 6, 218 Mo.App. 563.
N.J.—Altieri v. Public Service Ry. Co., 135 A. 786, 103 N.J.Law 351—De Palma v. Economy Auto Supply Co., 133 A. 919, 102 N.J.Law 714—Price v. New York Cent. R. Co., 110 A. 126, 94 N.J.Law 10, affirmed 111 A. 927, 95 N.J.Law 262—Smith v. Brunswick Laundry Co., 108 A. 184, 93 N.J.Law 436.
Gibbs v. Barton, 130 A. 439, 3 N.J.Misc. 1025.
Tex.—Regester v. Lang, Com.App., 49 S.W.2d 715.

Clear abuse
Mo.—Collins v. Cowger, 283 S.W.2d 554.
Shelley v. St. Louis Public Service Co., App., 279 S.W.2d 182.

Manifest abuse
Mo.—Hoffman v. Illinois Terminal R. Co., App., 274 S.W.2d 591.

38.5 Minn.—Simon v. Carroll, 62 N.W.2d 822, 241 Minn. 211—Tripplet v. Hernandez, 56 N.W.2d 645, 238 Minn. 208.
N.H.—Lynch v. Bissell, 116 A.2d 121, 99 N.H. 473.

38.10 Okl.—Kinder v. Barnett Tank Line, 194 P.2d 864, 200 Okl. 370.

Presumption that court acted within limits of its sound discretion.
Okl.—Kinder v. Barnett Tank Line, 194 P.2d 864, 200 Okl. 370.

38.15 Tex.—Garrett v. Brock, Civ. App., 144 S.W.2d 408, error dismissed, judgment correct.

38.20 Mo.—Koeppel v. Koeppel, App., 208 S.W.2d 929.

Failure to call witness
Mo.—Koeppel v. Koeppel, supra.

38.25 Ga.—United Motor Freight Terminal Co. v. Hixon, 51 S.E.2d 679, 78 Ga.App. 638—McCoy v. Scarborough, 37 S.E.2d 221, 73 Ga.App. 519—Louisville & N. R. Co. v. McCamy, 35 S.E.2d 206, 72 Ga.App. 769—Trammell v. Atlanta Coach Co., 181 S.E. 315, 51 Ga.App. 507.

38.30 Ala.—British General Ins. Co. v. Simpson Sales Co., 93 So.2d 763, 265 Ala. 683.
Ga.—Yellow Cab Co. v. Adams, 31 S.E.2d 195, 71 Ga.App. 404.
Mo.—American Displays v. E. T. Swiney Motors, App., 240 S.W.2d 732—Fair v. Thompson, 212 S.W.2d 923, 240 Mo.App. 664—Neuhaus v. United Neighbors of Missouri, App., 150 S.W.2d 590—Baird v. National Health Foundation, 144 S.W.2d 850, 235 Mo.App. 594.
N.J.—Hansson v. Catalytic Const. Co., 127 A.2d 431, 43 N.J.Super. 23.
N.M.—Addison v. Tessier, 305 P.2d 1067, 62 N.M. 120.

Clear abuse
Colo.—Johns v. Shinall, 86 P.2d 605, 103 Colo. 381.

Manifest abuse
Ga.—J. W. Starr & Sons Lumber Co. v. York, 78 S.E.2d 429, 89 Ga.App. 22—Banks v. Kilday, 76 S.E.2d 642, 88 Ga.App. 307—West Lumber Co. v. Schnuck, 69 S.E.2d 577, 85 Ga. App. 385—Caldwell v. Brown, 57 S.E.2d 618, 80 Ga.App. 858—McCoy v. Scarborough, 37 S.E.2d 221, 73 Ga.App. 519.

38.35 Ga.—Metropolitan Life Ins. Co. v. Saul, 5 S.E.2d 214, 189 Ga. 1.

38.40 Ohio.—Zaggi v. Republic Steel Corp. Employees Relief Ass'n, 37 N.E.2d 968, 67 Ohio App. 533.
Pa.—Clark v. Essex Wire Corp., 63 A.2d 35, 361 Pa. 60—Nalevanko v. Marie, 195 A. 49, 328 Pa. 586—Carroll v. Hannan, 137 A. 127, 289 Pa. 65—Dannals v. Sylvania Tp., 99 A. 475, 255 Pa. 156.
Fahrer v. Blumenthal, 190 A. 206, 125 Pa.Super. 568—Ruttenberg v. Fire Ass'n of Philadelphia, 186 A. 194, 122 Pa.Super. 363—Lopresti v. Sulkin, 49 Pa.Super. 417.

Palpable abuse
Pa.—Menarde v. Philadelphia Transp. Co., 103 A.2d 681, 376 Pa. 497.

Record showing abuse
Refusal to withdraw juror will be

impropriety is gross, if the lower court feels that an admonition to the jury to disregard improper remarks is sufficient, an appellate court will not interfere with the refusal of the trial court to withdraw a juror unless an abuse of discretion is shown.[38.45]

Preparation of findings. Unless it is shown that the trial court abused its discretion, an appellate court will not disturb the ruling of the trial court as to whether counsel were dilatory in the time taken in preparing their findings.[38.50]

Reference to insurance. The rulings of the trial court on the injection of the question of insurance before the jury by question or argument will not be disturbed unless the court abused its discretion.[38.55]

§ 1612. Dismissal, Nonsuit, Demurrer to Evidence, or Direction of Verdict

The exercise by the trial court of its discretion as to dismissal, nonsuit, direction or setting aside of verdict, motion for judgment, demurrer to the evidence, or the reinstatement of a cause after dismissal or nonsuit will not be reviewed unless the discretion has been abused.

The exercise by the trial court of its discretion with reference to granting or denying a motion for dismissal or nonsuit,[39] an application to reinstate a cause after dismissal or nonsuit,[40] a motion to

reversed only where record shows abuse.
Pa.—Todd v. Lit Bros., 112 A.2d 810, 381 Pa. 109.

38.45 Pa.—McCune v. Leamer, 119 A.2d 89, 383 Pa. 434.
Admonition to jury as curing misconduct see Trial § 200.

38.50 Cal.—Scoville v. Keglor, 80 P. 2d 162, 27 C.A.2d 17, motion denied 84 P.2d 212, 29 C.A.2d 66.

38.55 Mo.—Adams v. Le Bow, 172 S. W.2d 874, 237 Mo.App. 191.
Reference to insurance on voir dire examination of jurors see supra § 1601.

39. Ark.—Raymond v. Young, 201 S. W.2d 583, 211 Ark. 577—Watts v. Watts, 15 S.W.2d 997, 179 Ark. 367—Chalkey v. Henley, 12 S.W.2d 18, 178 Ark. 635.
Cal.—Farbstein v. Woulfe, 269 P. 446, 204 C. 595—Wallace v. Great Western Power Co. of California, 266 P. 281, 204 C. 15—In re Friedman's Estate, 172 P. 140, 178 C. 27. Lieb v. Lager, 49 P.2d 886, 9 C. A.2d 324—Mercantile Finance Corporation v. Hucke, 14 P.2d 558, 126 C.A. 221—Steinbauer v. Bondesen, 14 P.2d 106, 125 C.A. 419—Barry v. Learner, 299 P. 82, 113 C.A. 651—Grass v. Rindge Co., 258 P. 673, 84 C.A. 635.
Colo.—Haefeli v. Ahlstrand, 73 P.2d 1378, 101 Colo. 296.
Fla.—Masser v. London Operating Co., 145 So. 72, 106 Fla. 474—Phillips v. Lindsay, 136 So. 666, 102 Fla. 935—Veillard v. City of St. Petersburg, 100 So. 163, 87 Fla. 381.
Idaho.—Werner Piano Co. v. Baker, 207 P. 588, 35 Idaho 496.
Kan.—Schrag v. Blaze Fork Drainage Dist., 256 P. 979, 123 Kan. 739.
Me.—Harmon v. Harmon, 159 A. 856, 131 Me. 171—Inhabitants of Town of Lisbon v. Inhabitants of Town of Minot, 134 A. 563, 125 Me. 520.
N.J.—Smith v. Brunswick Laundry Co., 108 A. 184, 93 N.J.Law 436. Friedlander v. Lehr, 129 A. 241, 98 N.J.Eq. 359.
N.Y.—Riley v. Pierce Oil Corporation, 156 N.E. 647, 245 N.Y. 152, reargument denied 157 N.E. 877, 245 N.Y. 607.
N.C.—Graves v. Pritchett, 177 S.E. 641, 207 N.C. 518.
Okl.—Guegel v. Bailey, 186 P.2d 827, 199 Okl. 441—Taylor v. Green, 249 P. 393, 119 Okl. 297.
Pa.—Wingert v. Anderson, 164 A. 333, 309 Pa. 402—Potter Title & Trust Co. v. Frank, 148 A. 50, 298 Pa. 137—Moore v. Sheafer, 127 A. 784, 282 Pa. 360.
R.I.—Goulet v. Coco-Cola Bottling Co. of R. I., 116 A.2d 178—Plainfield Realty Co. v. Salway, 53 A.2d 496, 72 R.I. 503—Hayman v. Union Corp., 17 A.2d 30, 66 R.I. 11—Solomon v. Shepard Co., 200 A. 993, 61 R.I. 332—Kent v. Allen, 123 A. 690, 45 R.I. 451—Huebel v. Baldwin, 119 A. 639, 45 R.I. 40—Cranston Print Works Co. v. American Telephone & Telegraph Co., 110 A. 419, 43 R. I. 88.
S.C.—Fine v. Hall & Co., 59 S.E.2d 161, 216 S.C. 564.
Tex.—Rhodius v. Miller, Civ.App., 139 S.W.2d 316, error dismissed, judgment correct—Vincent v. Bell, Civ. App., 22 S.W.2d 753—Broussard v. Indemnity Ins. Co. of North America, Civ.App., 299 S.W. 506—Beaudette v. City of El Paso, Civ.App., 247 S.W. 895.
Wis.—Wisconsin Lumber & Supply Co. v. Dahl, 252 N.W. 714, 214 Wis. 137—Condon Wrapping Mach. Co. v. Racine Engine & Machinery Co., 198 N.W. 268, 183 Wis. 435.
4 C.J. p 829 note 38.

Failure to make pleading more definite and certain
Ohio.—Reck v. Beachler, App., 118 N.E.2d 921—Spencer v. Miller, 82 N.E.2d 763, 84 Ohio App. 190—Rudd v. City of Reading, 28 N.E.2d 768, 64 Ohio App. 308.

Failure of proof
S.C.—Moore v. Southern Coatings & Chemical Co., 71 S.E.2d 311, 221 S.C. 522.

Forum non conveniens
Appellate court will review and correct an abuse of discretion in dismissal of an action on grounds of forum non conveniens.
Okl.—St. Louis-San Francisco Ry. Co. v. Superior Court, Creek County, 290 P.2d 118.

Opening statement
In absence of showing of abuse of discretion, appellate court would not disturb overruling by trial court of defendant's motion to dismiss plaintiff's petition on opening statement of his counsel on ground that he had filed no reply to defendant's affirmative defense.
Ohio.—Case v. National Life & Acc. Ins. Co., App., 66 N.E.2d 270.

Clean hands maxim
Unless it is shown that the trial court abused its discretion in refusing to dismiss an action under the clean hands maxim, an appellate court will not disturb the ruling of the lower court.
N.J.—Hughes v. Eisner, 81 A.2d 394, 14 N.J.Super. 58, appeal dismissed 84 A.2d 626, 8 N.J. 228.

40. Ala.—Stover v. Hill, 94 So. 826, 208 Ala. 575.
Ariz.—Zimmerman v. Western Builders' & Salvage Co., 297 P. 449, 38 Ariz. 91.
Cal.—Hecq v. Conner, 265 P. 180, 203 C. 504.
Reed v. Rose, 37 P.2d 723, 2 C. A.2d 121.
Fla.—Whitaker v. Wright, 129 So. 889, 100 Fla. 282.
Ga.—Nelms v. Venable, 33 S.E.2d 418, 199 Ga. 109—Brooks v. Brooks, 165 S.E. 106, 175 Ga. 313—Glenn v. Glenn, 111 S.E. 378, 152 Ga. 793.
Shore v. Brown, 91 S.E. 909, 19 Ga.App. 476.
Ill.—Smith v. Monumental Life Ins. Co., 22 N.E.2d 399, 301 Ill.App. 217.
Iowa.—Pride v. Kittrell, 257 N.W. 204, 218 Iowa 1247—Bliss v. Watson, 227 N.W. 108, 208 Iowa 1199.
N.C.—Cummings v. Swepson, 32 S.E. 966, 124 N.C. 579.
Pa.—Dellacasse v. Floyd, 2 A.2d 860, 332 Pa. 218.

direct[41] or set aside[41.5] a verdict, a motion for judgment,[41.10] a demurrer to the evidence,[42] or a motion to withdraw a demurrer to the evidence,[43] will not be disturbed unless such discretion has been abused. If, however, plaintiff's own case shows that he has no legal right to recover, a failure of the trial court to dismiss the action cannot be considered as an exercise of discretion and is therefore reviewable.[44] In considering whether the action of the trial court was well founded, an appellate court applies stricter rules to actions ordering a directed verdict or granting a nonsuit than where only a new trial has been granted.[44.5]

§ 1613. Instructions

Unless there has been an abuse, the exercise by the trial court of its discretion as to the giving of instructions to the jury will not be reviewed.

Unless an abuse of discretion is clearly shown, an appellate court will not disturb the exercise by the trial court of its discretion with reference to recalling the jury for further instructions after retirement,[45] the giving of, or refusal to give, instructions which it has a discretionary power to withhold,[46] granting requests for instructions out of time, or at a late stage of the case,[47] oral requests to charge the jury,[48] the sequence in which instructions are given,[48.5] the form and contents of instructions,[48.10] the extent to which the evidence

Tex.—Butler v. Light Pub. Co., Civ. App., 112 S.W.2d 542, error dismissed.
W.Va.—Thomas v. Jones, 141 S.E. 434, 105 W.Va. 46.
4 C.J. p 830 note 41—18 C.J. p 1172 notes 56, 57.
Dismissal or nonsuit before trial see supra § 1596.
Setting aside dismissal or nonsuit and reinstatement of cause generally see Dismissal and Nonsuit § 78.

Manifest abuse

Ga.—Horne v. Phillips, 91 S.E.2d 203, 93 Ga.App. 223—Adams v. Seay, 9 S.E.2d 117, 62 Ga.App. 589.

Attempt to reframe issue

Grounds of appeal relating to matters properly within trial judge's discretion, such as attempt to reframe issue when nonsuit was granted, need not be considered by appellate court.
N.J.—Marcus & Co. v. K. L. G. Baking Co., 3 A.2d 627, 122 N.J.Law 202.

41. Cal.—Parker v. James E. Granger, Inc., 52 P.2d 226, 4 C.2d 668, appeal dismissed and certiorari denied 56 S.Ct. 958, 298 U.S. 644, 80 L.Ed. 1375—Quinn v. Recreation Park Ass'n, 46 P.2d 144, 3 C.2d 725. Bruce v. Risley, 59 P.2d 847, 15 C.A.2d 659—Stonaker v. Big Sisters Hospital, 2 P.2d 520, 116 C.A. 375—Spring v. Tawa, 192 P. 1051, 49 C.A. 100—Lynch v. Pacific Electric Ry. Co., 164 P. 20, 32 C.A. 689.
Ga.—Claude S. Bennett, Inc. v. Vanneman, 97 S.E.2d 375, 95 Ga.App. 140.
Ohio.—Grosser v. Armet Allory, App., 113 N.E.2d 391.
R.I.—Regan v. Rogers, 27 A.2d 302, 68 R.I. 319—Solomon v. Shepard Co., 200 A. 993, 61 R.I. 332—Cranston Print Works Co. v. American Telephone & Telegraph Co., 110 A. 419, 43 R.I. 88.
S.C.—Nichols v. Congaree Fertilizer Co., 149 S.E. 162, 151 S.C. 417.
Vt.—Callahan v. Disorda, 16 A.2d 179, 111 Vt. 331.
4 C.J. p 830 note 42.

Under the statutes of Georgia, while a judge may direct a verdict, the supreme court will in no case reverse the action of the trial court for refusing to do so.
Ga.—Reeves v. Daniel, 85 S.E. 756, 143 Ga. 569—Cunningham v. Waters, 82 S.E. 518, 142 Ga. 115. Roddenberry Hardware Co. v. Merritt, 87 S.E. 681, 17 Ga.App. 425—Webb v. Crawford, 86 S.E. 45, 16 Ga.App. 758.
4 C.J. p 830 note 42 [a].

41.5 N.C.—McBride v. Williams, 23 S.E.2d 49, 222 N.C. 755.

41.10 Pa.—Thomas v. Brohm, 47 A.2d 244, 354 Pa. 384—Rossner v. Pennsylvania R. Co., 47 A.2d 243, 354 Pa. 385—Hoban v. Conroy, 32 A.2d 769, 347 Pa. 487—Phillips v. American Stores Co., 20 A.2d 190, 342 Pa. 33. National Carloading Corporation v. Lee, 28 A.2d 811, 151 Pa.Super. 23.

42. U.S.—Van Stone v. Stilwell, etc., Mfg. Co., Mo., 12 S.Ct. 181, 142 U.S. 128, 35 L.Ed. 961.
Miss.—Waul v. Kirkman, 27 Miss. 823.
Va.—Smoot v. Johnson, 76 S.E. 911, 114 Va. 454.
W.Va.—Burns v. Morrison, 15 S.E. 62, 36 W.Va. 423.

43. W.Va.—Daniels v. Thacker Fuel Co., 90 S.E. 840, 79 W.Va. 255.
4 C.J. p 830 note 43.

44. N.Y.—Watkins v. Commercial Stevedoring Co., 214 N.Y.S. 634, 216 App.Div. 234.
4 C.J. p 830 note 40.

44.5 Cal.—Galiano v. Pacific Gas & Electric Co., 67 P.2d 388, 20 C.A.2d 534.

45. Kan.—Bray v. St. Louis, San Francisco Ry. Co., 205 P. 1112, 111 Kan. 60.
Okl.—Lowe v. First Nat. Bank, 288 P. 283, 143 Okl. 134.
Tenn.—Llewellyn v. City of Knoxville, 232 S.W.2d 568, 33 Tenn.App. 632.
Tex.—Mulligan v. McConnell Bros., Civ.App., 242 S.W. 512.
4 C.J. p 327 note 10.

46. Cal.—Chandler v. Benafel, 39 P. 2d 890, 3 C.A.2d 368.
Colo.—Kellogg v. Kellog, 40 P. 358, 21 Colo. 181.
N.H.—LaDuke v. Lord, 83 A.2d 138, 97 N.H. 122.

47. Va.—Seaboard Air Line Ry. Co. v. J. E. Bowden & Co., 131 S.E. 245, 144 Va. 154.
4 C.J. p 827 note 11.

48. Conn.—Plucherino v. Shey, 143 A. 886, 108 Conn. 544.

48.5 Cal.—Nungaray v. Pleasant Val. Lima Bean Growers & Warehouse Ass'n, 300 P.2d 285, 142 C.A.2d 653.

Fact that instructions were not given in logical order did not indicate such deliberate prejudice as would warrant interference with discretion of trial court as to sequence in which instructions should be given.
Cal.—Manuel v. Calistoga Vineyard Co., 61 P.2d 1204, 17 C.A.2d 377.

48.10 Tex.—J. Weingarten, Inc. v. Sanchez, Civ.App., 228 S.W.2d 303. "We cannot put the trial judge in a straight jacket, and prescribe or adopt a formula to be used and followed by him."
Md.—Larkin v. Smith, 37 A.2d 340, 344, 183 Md. 274—Feinglos v. Weiner, 28 A.2d 577, 581, 181 Md. 38.

Facts

(1) Trial judge's action in determining extent to which facts shall be stated in charge, and commentaries to be made on them, held not open to exception.
N.H.—American Employers Ins. Co. v. Wentworth, 5 A.2d 265, 90 N.H. 112.

(2) Extent to which details of the facts should be discussed in charge

should be referred to in the instructions,[49] whether there should be a repetition in one part of the instructions of matters elsewhere covered,[50] whether the jury should be instructed to state in their verdict upon which of several counts they find for plaintiff,[51] attempting to correct in the instructions the prejudicial effect of inadmissible evidence rather than order a mistrial,[52] or the giving of, or refusal to give, cautionary instructions.[53]

Examination of charges. Unless it appears that the trial court abused its discretion in fixing the time allowed for the examination of the charge by the court and the preparation of exceptions and objections thereto, an appellate court will not interfere.[53.5]

§ 1614. Submission of Issues to Jury

Exercise by a trial court of its discretionary power to grant or deny a jury trial will not be disturbed unless there is an abuse.

Where the trial court has become vested with the discretionary power either to grant or deny a jury trial, its order on the matter will not be disturbed on appeal in the absence of a manifest abuse of discretion,[54] nor will a refusal of the trial court, at a late hour of the day, to delay submission of the case until the following morning to give appellant an opportunity to produce an additional witness.[55]

Withdrawal instructions. The exercise by the trial court of its discretion in the giving or refusal of withdrawal instructions will not be disturbed unless an abuse of discretion is shown.[55.5]

§ 1615. —— Interrogatories or Special Verdicts

Unless discretion has been abused, an appellate court will not disturb the exercise by the trial court of its discretion as to submission to the jury of interrogatories or questions for special findings or verdicts.

Unless there has been a clear abuse of discretion, an appellate court will not disturb the exercise by the trial court of its discretion in determining whether or not interrogatories or questions for special findings or verdicts should be submitted to the

to jury held for trial judge's determination.
Mass.—Sanford v. Boston Herald-Traveler Corp., 61 N.E.2d 5, 318 Mass. 156.

Phraseology of instructions
Ark.—Missouri Pac. Transp. Co. v. Allen, 184 S.W.2d 961, 208 Ark. 122.

49. Mass.—Sanford v. Boston Herald-Traveler Corp., 61 N.E.2d 5, 318 Mass. 156.
N.J.—Van Sciver v. Public Service Ry. Co., 114 A. 146, 96 N.J.Law 13.

50. Mass.—Savageau v. Boston, etc., R. Co., 96 N.E. 67, 210 Mass. 164.
Mo.—Reidinger v. Adams, 266 S.W. 2d 610.
Wood v. Hulsey, App., 271 S.W. 2d 218.
4 C.J. p 827 note 12.

51. Fla.—Beckwith v. Bailey, 161 So. 576, 119 Fla. 316.

52. Ga.—American Fidelity & Casualty Co. v. Farmer, 48 S.E.2d 122, 77 Ga.App. 166.
Me.—Beaulieu v. Tremblay, 153 A. 353, 130 Me. 51.

53. Ariz.—Allied Van Lines v. Parsons, 293 P.2d 430, 80 Ariz. 88—Tenney v. Enkeball, 158 P.2d 519, 62 Ariz. 416.
Mo.—Enyart v. Santa Fe Trail Transp. Co., 241 S.W.2d 268—West v. St. Louis Public Service Co., 236 S.W.2d 308, 361 Mo. 140—Morris v. E. I. Du Pont De Nemours & Co., 173 S.W.2d 39, 351 Mo. 479.
Wollard v. Pollock, App., 263 S. W.2d 748—McCollum v. Shubert, App., 185 S.W.2d 48—Hart v. Kansas City Public Service Co., App., 154 S.W.2d 600—Fuenfgeld v. Holt, App., 70 S.W.2d 143.
N.H.—McDonald v. Elkins, 187 A. 725, 88 N.H. 249.
4 C.J. p 827 notes 13, 14, p 828 notes 15–18.
Refusal or omission of cautionary instructions as not erroneous unless prejudice results see infra § 1775.

Clear abuse
Mo.—Stephens v. St. Louis Public Service Co., 276 S.W.2d 138—Daniels v. Brown, 266 S.W.2d 680.

Manifest abuse
Iowa.—Nicholson v. City of Des Moines, 67 N.W.2d 533, 246 Iowa 318.

Particular cautionary instructions to which rule applied:
(1) That the jury should not allow sympathy for either party to affect the verdict.
Neb.—Hoskovec v. Omaha St. R. Co., 123 N.W. 305, 85 Neb. 295.

(2) That the jury are the sole judges of the credibility of a witness.
Mo.—Beasley v. Jefferson Bank, 89 S.W. 1040, 114 Mo.App. 406.

(3) That the jury may disregard the testimony of any witness who has sworn falsely to any material fact.
Mo.—Beasley v. Jefferson Bank, supra.

(4) That the testimony of a witness is to be construed most strongly against the party offering him when it is self-contradictory, vague, or equivocal.
Ga.—Charleston, etc., R. Co. v. Thompson, 79 S.E. 242, 13 Ga.App. 541, revised opinion 80 S.E. 1097, 13 Ga.App. 528.

(5) That it is not within the province of the jury to inquire into the propriety of existing laws but that they should be governed by them.
Neb.—Henkel v. Boudreau, 130 N.W. 753, 88 Neb. 784.

Presumption is that the discretionary powers as to the giving of cautionary instructions were exercised without abuse.
Mo.—Fuenfgeld v. Holt, App., 70 S. W.2d 143.

53.5 Tex.—Federal Underwriters Exchange v. Tubbe, Civ.App., 180 S.W.2d 473, reversed on other grounds 183 S.W.2d 444, 143 Tex. 216.

54. Cal.—Harmon v. Hopkins, 2 P. 2d 540, 116 C.A. 184.
Ill.—Du Hamel v. Board of Education of C. U. Sch. Dist. No. 1, 130 N. E.2d 10, 7 Ill.App.2d 487.
Ind.—Daugherty v. Daugherty, 75 N. E.2d 427, 118 Ind.App. 141.
N.J.—Baunach v. Liebman, 119 A. 629, 98 N.J.Law 554.
Wash.—Stempel v. Oregon Life Ins. Co., 290 P. 222, 157 Wash. 678.

55. Ala.—Sovereign Camp, W. O. W. v. Screws, 119 So. 644, 218 Ala. 599.

55.5 Mo.—Stephens v. Kansas City Gas Co., 191 S.W.2d 601, 354 Mo. 835—Atchison v. Weakley, 169 S. W.2d 914, 350 Mo. 1092—Kick v. Franklin, 137 S.W.2d 512, 345 Mo. 752.
Songer v. Brittain, App., 272 S. W.2d 16.

jury,[56] the time when a request for answers to interrogatories shall be made,[57] the form of special issues to be submitted,[58] whether an amendment of interrogatories propounded should be allowed after a general verdict has been returned,[59] or whether the answers made to interrogatories by the jury are sufficient to enable the trial court to render any judgment.[60]

Setting aside findings. The action of the trial court in setting aside findings made by the jury because of the insufficiency of evidence will not be disturbed by an appellate court unless it is shown that the trial court abused its discretion.[60.5]

§ 1616. —— Issues Out of Chancery

In the absence of manifest abuse, a chancellor's exercise of discretion in determining whether an issue in equity should be directed or framed to be tried by a jury will generally not be disturbed on appeal.

While an improper exercise of the chancellor's sound judicial discretion in determining whether or not an issue in equity should be directed or framed to be tried by a jury is subject to review and correction on appeal,[61] his determination of the question will seldom be disturbed in the absence of

56. Ark.—Missouri Pac. Transp. Co. v. Parker, 140 S.W.2d 997, 200 Ark. 620, certiorari denied 61 S.Ct. 133, 311 U.S. 696, 85 L.Ed. 450—Johnson v. Missouri Pac. R. Co., 233 S.W. 699, 149 Ark. 418—Surridge v. Ellis, 174 S.W. 537, 117 Ark. 223.

Cal.—House Grain Co. v. Finerman & Sons, 253 P.2d 1034, 116 C.A.2d 485—Moran v. Zenith Oil Co., 206 P.2d 679, 92 C.A.2d 236—Lloyd v. Kleefisch, 120 P.2d 97, 48 C.A.2d 408—King v. Schumacher, 89 P.2d 466, 32 C.A.2d 172, certiorari denied 60 S.Ct. 123, 308 U.S. 593, 84 L.Ed. 496—Mayfield v. Fidelity & Cas. Co. of New York, 61 P.2d 83, 16 C.A.2d 611—De Martini v. Wheatley, 14 P.2d 869, 126 C.A. 230—Weintraub v. Soronow, 1 P.2d 28, 115 C.A. 145—Oberholzer v. Hubbell, 171 P. 436, 36 C.A. 16.

Conn.—Ford v. H. W. Dubiske Co., 136 A. 560, 105 Conn. 572—Katsonas v. W. M. Sutherland Bldg. & Const. Co., 132 A. 553, 104 Conn. 54.

Idaho.—Tsuboi v. Cohn, 231 P. 708, 40 Idaho 102, 39 A.L.R. 851.

Ind.—Citizens' Telephone Co. v. Prickett, 125 N.E. 193, 189 Ind. 141. McKinnon v. Parrill, 38 N.E.2d 1008, 111 Ind.App. 343—Oaktown Telephone Co. v. Miller, 194 N.E. 741, 101 Ind.App. 108, followed in Bruceville Telephone Co. v. Miller, 194 N.E. 775, 101 Ind.App. 701 and Freelandville Telephone Co. v. Miller, 194 N.E. 775, 101 Ind.App. 701.

Mass.—Cozzo v. Atlantic Refining Co., 12 N.E.2d 744, 299 Mass. 260—Stone v. Orth Chevrolet Co., 187 N.E. 910, 284 Mass. 525.

Mont.—Duckett v. Biggs, 188 P. 938, 57 Mont. 443.

Neb.—Huxoll v. Union Pac. R. Co., 155 N.W. 900, 99 Neb. 170, affirmed 38 S.Ct. 187, 245 U.S. 535, 62 L. Ed. 455.

N.H.—Jackson v. Smart, 5 A.2d 713, 90 N.H. 153—Bridges v. Great Falls Mfg. Co., 156 A. 697, 85 N. H. 220.

N.M.—American Ins. Co. v. Foutz & Bursum, 291 P.2d 1081, 60 N.M. 351—Crocker v. Johnston, 95 P.2d 214, 43 N.M. 469.

N.C.—Drennan v. Wilkes, 103 S.E. 9, 179 N.C. 512—Millikin v. Sessoms, 92 S.E. 359, 173 N.C. 723—Mutual Life Ins. Co. v. Leaksville Woolen Mills, 90 S.E. 574, 172 N.C. 534—Petree v. Savage, 88 S.E. 725, 171 N.C. 437.

Okl.—Hanover Fire Ins. Co. v. Eisman, 146 P. 214, 45 Okl. 639, Ann. Cas.1918D 288.

Or.—Laubhein v. Holsman, 225 P. 190, 111 Or. 78—Steinmetz v. Grennon, 212 P. 532, 106 Or. 625—Meier & Frank Co. v. Mitlehner, 146 P. 796, 75 Or. 331—Herrlin v. Brown & McCabe, 142 P. 772, 71 Or. 470.

Pa.—Hutchison v. Pennsylvania R. Co., 105 A.2d 356, 378 Pa. 24.

S.C.—Tollner v. American Pub. Co., 118 S.E. 619, 125 S.C. 317.

Utah.—Berg v. Otis Elevator Co., 231 P. 832, 64 Utah 518—Bunce v. Pace, 210 P. 984, 61 Utah 74.

Wash.—Brown v. Intercoastal Fisheries, 207 P.2d 1205, 34 Wash.2d 48—Salo v. Nelson, 156 P.2d 664, 22 Wash.2d 525—Whitaker v. G. B. & S. Mill, Inc., 152 P.2d 719, 21 Wash.2d 625—Robinson v. Silver Lake Ry. & Lumber Co., 299 P. 356, 163 Wash. 31—Child v. Hill, 283 P. 1076, 155 Wash. 133—Cramer v. Cramer, 180 P. 915, 106 Wash. 681.

W.Va.—Spence v. Browning Motor Freight Lines, Inc., 77 S.E.2d 806, 138 W.Va. 748—Tennessee Gas Transmission Co. v. Fox, 58 S.E.2d 584, 134 W.Va. 106—Davis v. Pugh, 57 S.E.2d 9, 133 W.Va. 569—Lovett v. Lisagor, 130 S.E. 125, 100 W.Va. 154.

Wis.—Olk v. Marquardt, 234 N.W. 723, 203 Wis. 479.

Wyo.—Wyoming Cent. Irr. Co. v. Laporte, 182 P. 485, 26 Wyo. 249.

4 C.J. p 828 note 19.

Refusal standing alone held not erroneous

Okl.—Anthony v. Colvin, 130 P.2d 819, 191 Okl. 476, rehearing denied 145 P.2d 384, 191 Okl. 476.

57. Ind.—Bachman v. Cooper, 50 N. E. 394, 20 Ind.App. 173.

58. N.C.—De Loache v. De Loache, 127 S.E. 419, 189 N.C. 394.

Tex.—Texas City Transp. Co. v. Winters, Com.App., 222 S.W. 541, rehearing overruled 224 S.W. 1087. Franzetti v. Franzetti, Civ.App., 120 S.W.2d 123—Kansas City, M. & O. Ry. Co. of Texas v. McMullan, Civ.App., 48 S.W.2d 445—Davis v. Teague, Civ.App., 256 S.W. 957.

Wis.—Ehlers v. Gold, 173 N.W. 825, 169 Wis. 494.

4 C.J. p 828 note 20.

59. Ind.—Fidelity Mut. Life Assoc. v. McDaniel, 57 N.E. 645, 25 Ind. App. 608.

60. Tex.—Phoebus v. Connellee, Civ. App., 228 S.W. 982.

Construction of answers to special issues, where they admit of more than one reasonable construction, is a matter within the discretion of the trial court and on which its determination will not be disturbed if reasonable.

Tex.—Root & Fehl v. Murray Tool Co., Com.App., 26 S.W.2d 189, 75 A.L.R. 902.

60.5 Tex.—Black v. Black, Civ.App., 240 S.W.2d 458, error refused no reversible error.

61. Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—City of Boston v. Dolan, 10 N. E.2d 275, 298 Mass. 346.

Va.—Eastern Finance Co. v. Gordon, 20 S.E.2d 522, 179 Va. 674—Adams v. Snodgrass, 7 S.E.2d 147, 175 Va. 1—Harris v. Citizens Bank & Trust Co., 200 S.E. 652, 172 Va. 111—Fitchette v. Cape Charles Bank, 133 S.E. 492, 146 Va. 715—Hook v. Hook, 101 S.E. 223, 126 Va. 249—Catron v. Norton Hardware Co., 96 S.E. 853, 123 Va. 380.

4 C.J. p 828 note 26.

Lack of request by parties

Failure to direct an issue which should have been directed, although not requested by either party, is ground for reversal.

Va.—English-Ott Lumber Co. v. Waddle, 129 S.E. 215.

manifest abuse.[62] This is particularly true where there has been laches in making application for a submission of issues to the jury,[63] or where there has been no application whatsoever.[64]

§ 1617. Custody and Conduct of Jury

Unless there has been a manifest abuse of discretion, an appellate court will not disturb the exercise by the trial court of its discretion as to the custody or conduct of the jury.

An appellate court will not interfere with the exercise by the trial court of its discretion in procedural matters with respect to the returning of a verdict by a jury unless a manifest abuse of discretion is shown;[64.50] and the same principle applies to the exercise by the trial court of its discretionary powers with reference to the custody[65] and conduct[66] of the jury generally. This rule has been applied to the ruling of the trial court on whether there was misconduct on the part of jurors justifying the declaring of a mistrial,[67] the length of time which should be given to the consideration of the case by the jury,[68] the exclusion of the jury during arguments on questions of law,[69] permitting jurors to leave the court room,[70] or to separate before the verdict,[71] the reading to the jurors of certain portions of the testimony during their deliberations,[71.5] the papers, exhibits, or documents which shall be taken or sent to the jury room,[72] polling

62. Idaho.—Independent Irr. Co. v. Baldwin, 252 P. 489, 43 Idaho 371.
Ind.—Daugherty v. Daugherty, 75 N.E.2d 427, 118 Ind.App. 141.
Mont.—First Nat. Bank v. Hergert, 22 P.2d 169, 94 Mont. 197—Yellowstone Nat. Bank v. McCullough, 154 P. 919, 51 Mont. 590.
Okl.—Ball v. White, 150 P. 901, 50 Okl. 429—Success Realty Co. v. Trowbridge, 150 P. 898, 50 Okl. 402.
S.C.—People's Bank of Hartsville v. Helms, 138 S.E. 622, 140 S.C. 107—Cantey v. Edward L. Summersett & Co., 135 S.E. 875, 138 S.C. 151—Erskine v. Erskine, 92 S.E. 465, 107 S.C. 233.
Utah.—Felice v. Biscardi, 246 P. 535, 67 Utah 171.
4 C.J. p 828 note 23.
"While directing an issue to be tried by a jury is a matter of discretion with a court of equity, it is not an arbitrary discretion, but one to be exercised upon sound principles of reason and justice, a mistake in its exercise is just ground of appeal, and the appellate court will determine whether or not it has been properly exercised in a given case. It is error to direct an issue when it should not have been exercised, and it is equally error to fail to direct one when it should have been directed."
Va.—Adams v. Snodgrass, 7 S.E.2d 147, 149, 175 Va. 1—Hook v. Hook, 101 S.E. 223, 225, 126 Va. 249—Catron v. Norton Hardware Co., 96 S.E. 853, 855, 123 Va. 380.

Presumption
It is presumed on appeal that the chancellor in directing, or refusing to direct, a jury issue properly exercised his discretion.
Va.—Eastern Finance Co. v. Gordon, 20 S.E.2d 522, 179 Va. 674—Planters Nat. Bank of Fredericksburg v. E. G. Heflin Co., 184 S.E. 216, 166 Va. 166—Massie v. Parrish, 125 S.E. 691, 140 Va. 717.

Error of law or fact must be shown by record on appeal in order that discretionary action of trial judge with respect to framing of issues for trial by jury in equity case may be reversed.
Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302.

Arbitrary action or abuse of discretion
Appellate court will not interfere with denial of request by trial court to frame issues of fact to be tried by jury unless action of lower court was arbitrary or abuse of discretion.
R.I.—Old Colony Co-op. Bank v. Burger, 7 A.2d 725, 63 R.I. 223.

63. Mass.—Bourke v. Callanan, 35 N.E. 460, 160 Mass. 195.

64. W.Va.—West Virginia Bldg. Co. v. Saucer, 31 S.E. 965, 45 W.Va. 483, 72 Am.S.R. 822.

64.50 Ga.—Davis v. Terrell, 28 S.E.2d 590, 70 Ga.App. 478.

65. Conn.—Cook v. Miller, 130 A. 571, 103 Conn. 276.
4 C.J. p 828 note 27.

66. Iowa.—Turner v. Hansen, 75 N.W.2d 341, 247 Iowa 669—In re Murray's Estate, 26 N.W.2d 58, 238 Iowa 112.
Md.—Joseph F. Hughes & Co. v. Stockhausen, 129 A.2d 844, 212 Md. 559.
Neb.—Kohrt v. Hammond, 70 N.W.2d 102, 160 Neb. 347.
N.J.—Maulsbury v. Shure, 170 A. 41, 12 N.J.Misc. 137.
Tex.—Belt v. Texas Co., Civ.App., 204 S.W.2d 653, error refused no reversible error.
4 C.J. p 828 note 27.

67. Kan.—Barber v. Emery, 167 P. 1044, 101 Kan. 314.
Md.—Rent-A-Car Co. v. Globe & Rutgers Fire Ins. Co., 163 A. 702, 163 Md. 401, 86 A.L.R. 922.
Mo.—Hill v. Jackson, 290 S.W. 1012, 220 Mo.App. 1302.
N.J.—Maulsbury v. Shure, 170 A. 41, 12 N.J.Misc. 137.
Okl.—Wiggins v. Sterne, 293 P.2d 603.
Tex.—Penelope Real Estate Co. v. Dawson, Civ.App., 206 S.W. 702.

Reference to insurance
In absence of abuse of discretion, refusal of trial court to grant mistrial because of juror's reference to insurance will not be disturbed on appeal.
Or.—Denton v. Arnstein, 250 P.2d 407, 197 Or. 28.

68. Ga.—Davis v. Terrell, 28 S.E.2d 590, 70 Ga.App. 478.
S.C.—Dover v. Lockhart Mills, 68 S.E. 525, 86 S.C. 229.
4 C.J. p 829 note 28.

69. Ga.—Southern Ry. Co. v. Ray, 113 S.E. 590, 28 Ga.App. 792, reversed on other grounds 118 S.E. 53, 155 Ga. 579, conformed to 118 S.E. 411, 30 Ga.App. 376.
4 C.J. p 829 note 29.

70. S.C.—Watts v. South Bound R. Co., 38 S.E. 240, 60 S.C. 67.

71. Conn.—Cook v. Miller, 130 A. 571, 103 Conn. 267.
4 C.J. p 829 note 31.

Excusing the jury over the weekend after admonishing them is discretionary action on the part of the trial court which is not subject to review.
Conn.—Cook v. Miller, 130 A. 571, 103 Conn. 276.

71.5 Fla.—Florida Power & Light Co. v. Robinson, 68 So.2d 406.

72. Ariz.—**Corpus Juris Secundum cited in** Town & Country Securities Co. v. Place, 285 P.2d 165, 167, 79 Ariz. 122.
Colo.—Fowler v. Fowler, 168 P. 648, 63 Colo. 451.
Fla.—Florida Power & Light Co. v. Robinson, 68 So.2d 406—Routh v. Williams, 193 So. 71, 141 Fla. 334.
Ky.—Davis v. Pendennis Club, 19 S.W.2d 1078, 230 Ky. 465.
Md.—Evening News Co. v. Bowie, 141 A. 416, 154 Md. 604—Nichols v. Meyer, 115 A. 786, 139 Md. 450.
Mass.—Annawan Mills v. Mangene, 130 N.E. 77, 237 Mass. 451.
Mo.—Holtz v. Daniel Hamm Drayage Co., 209 S.W.2d 883, 357 Mo. 538.

the jury as to their verdict,[73] calling the jury together after separation, but before discharge, to ascertain the grounds for the verdict,[74] and to a ruling that a jury have given sufficient consideration to justify receiving a verdict not unanimous where such a verdict is permissible.[75]

§ 1618. View by Court or Jury

Unless an abuse of discretion clearly appears, an appellate court will not disturb the exercise by the trial court of its discretion as to whether the jury shall be permitted to view the physical facts involved, or whether the court itself will do so.

Where an abuse of discretion is not shown, the action of the trial court in allowing or refusing to allow the jury to view the locus in quo will not ordinarily be reversed.[75.50] The exercise by the trial court of its discretion as to whether or not the jury shall be permitted to view or inspect the premises or the physical facts involved will be interfered with on appeal only where an abuse of discretion is clearly shown,[76] or where it appears that the ruling of the trial court was plainly wrong.[76.5]

Where the trial court refused to view the premises, an appellate court will not reverse the judgment of the lower court unless it is apparent from the record that there has been an abuse of discretion.[76.10]

e. New Trial or Rehearing

§ 1619. In General

A discretionary ruling on a motion for a new trial or rehearing will be disturbed on appeal only for a clear or manifest abuse of discretion; the grant of a new trial is more reluctantly interfered with than a a denial thereof, and a much stronger showing is necessary for reversal where a new trial is granted than where it is denied.

When a motion or application for a new trial is addressed to the sound discretion of the lower court under the rules stated in New Trial § 201 an appellate court will interfere with the exercise of that discretion on comparatively rare occasions,[76.50] in

Freeman v. De Hart, App., 303 S.W.2d 217—Dougherty Real Estate Co. v. Gast, App., 95 S.W.2d 877—R. C. Stone Milling Co. v. McWilliams, 98 S.W. 828, 121 Mo.App. 319.

N.D.—Rolette State Bank v. Minnekota Elevator Co., 195 N.W. 6, 50 N.D. 141.

4 C.J. p 829 notes 32, 33.

Objects not introduced in evidence

Unless a clear abuse of the discretion of the trial court is shown, an appellate court will not disturb the action of the lower court in sending in, or withholding from the jury, objects which have been used by witnesses at the trial but were not introduced in evidence.

Minn.—Jensen v. Dikel, 69 N.W.2d 108, 244 Minn. 71.

73. Ga.—Bell v. Hutchings, 12 S.E. 974, 86 Ga. 562.

Tennessee Coal, etc., Co. v. George, 75 S.E. 567, 11 Ga.App. 221.

Tenn.—Dixon Stave & Heading Co. v. Archer, App., 291 S.W.2d 603.

74. Vt.—Pocket v. Almon, 96 A. 421, 90 Vt. 10.

75. Minn.—In re Hurlbut's Estate, 148 N.W. 51, 126 Minn. 180.

4 C.J. p 829 note 35.

75.50 Fla.—Stanley v. Powers, 169 So. 861, 125 Fla. 322.

76. Ala.—Rutledge v. Brilliant Coal Co., 22 So.2d 428, 247 Ala. 40.

City of Tuscaloosa v. Hill, 69 So. 486, 14 Ala.App. 541, certiorari denied Ex parte Hill, 69 So. 598, 194 Ala. 559.

Ark.—Barrett v. Fort Smith Structural Steel Co., 246 S.W.2d 414, 220 Ark. 114.

Cal.—Brown v. Lemon Cove Ditch Co., 171 P. 705, 36 C.A. 94.

Fla.—Panama City v. Eytchison, 184 So. 490, 134 Fla. 833.

Ill.—Eizerman v. Behn, 132 N.E.2d 788, 9 Ill.App.2d 263.

Ind.—Jackson Hill Coal & Coke Co. v. Bales, 108 N.E. 962, 183 Ind. 276—Jackson County v. Nichols, 38 N.E. 526, 139 Ind. 611.

Ky.—Nash v. Searcy, 75 S.W.2d 1052, 256 Ky. 234—Wallis v. Illinois Cent. R. Co., 56 S.W.2d 715, 247 Ky. 70—Paust v. Whiteside Bakery Co., 299 S.W. 176, 221 Ky. 505—Majestic Theater Co. v. Lutz, 275 S.W. 16, 210 Ky. 92—Alexander v. Cincinnati, N. O. & T. P. R. Co., 260 S.W. 14, 202 Ky. 475—Payne v. Bowman's Adm'x, 252 S.W. 1010, 200 Ky. 171—Louisville & N. R. Co. v. Scott's Adm'r, 220 S.W. 1066, 188 Ky. 99.

Neb.—Pospichal v. Wiley, 79 N.W.2d 275, 163 Neb. 236—Peake v. Omaha Cold Storage Co., 64 N.W.2d 470, 158 Neb. 676—Large v. Johnson, 248 N.W. 400, 124 Neb. 821.

N.J.—Braelow v. Klein, 125 A. 103, 100 N.J.Law 156.

Okl.—Texas Co. v. Harrison, 141 P.2d 802, 193 Okl. 185—Rodgers v. Oklahoma Wheat Pool Terminal Corp., 96 P.2d 1040, 186 Okl. 171—Indian Territory Illuminating Oil Co. v. Earnheart, 95 P.2d 583, 185 Okl. 644—City of Norman v. Lewis, 69 P.2d 377, 180 Okl. 344—Phillips Petroleum Co. v. Malone, 66 P.2d 5, 179 Okl. 449—Empire Pipeline Co. v. Dowdy, 60 P.2d 757, 177 Okl. 386—Robinson Oil Corporation v. Davis, 43 P.2d 754, 171 Okl. 557.

Or.—Natwick v. Moyer, 163 P.2d 936, 177 Or. 486.

Pa.—Rudolph v. Pennsylvania Schuylkill Valley R. Co., 40 A. 1083, 186 Pa. 541, 47 L.R.A. 782.

Brown v. Jones, 10 A.2d 839, 138 Pa.Super. 350—Diehm v. Borough of New Holland, 191 A. 393, 126 Pa. Super. 315—Lacey v. Hardy, 159 A. 68, 104 Pa.Super. 490.

S.C.—Thornton v. Spartan Mills, 82 S.E. 414, 98 S.C. 262.

Utah.—Summers v. Provo Foundry & Machine Co., 178 P. 916, 53 Utah 320.

Va.—P. Lorillard Co. v. Clay, 104 S. E. 384, 127 Va. 734.

Wash.—Finn v. City of Bremerton, 203 P. 971, 118 Wash. 381.

W.Va.—Collar v. McMullin, 148 S.E. 496, 107 W.Va. 440—Fairview Fruit Co. v. H. P. Brydon & Bro., 102 S. E. 231, 85 W.Va. 609—Bond v. National Fire Ins. Co., 88 S.E. 389, 77 W.Va. 736.

Wis.—Max L. Bloom Co. v. U. S. Casualty Co., 210 N.W. 689, 191 Wis. 524.

4 C.J. p 829 note 36.

Introduction of scene of accident in evidence

S.C.—Jacks v. Townsend, 88 S.E.2d 776, 228 S.E. 26.

76.5 N.H.—Sweeney v. Willette, 104 A.2d 398, 98 N.H. 512.

Manner and extent of view

N.H.—Chouinard v. Shaw, 104 A.2d 522, 99 N.H. 26.

76.10 Neb.—Ricenbaw v. Kraus, 61 N.W.2d 350, 157 Neb. 723.

76.50 Iowa.—In re Hollis' Estate, 16 N.W.2d 599, 235 Iowa 753.

Grant of new trial seldom reversed

Kan.—McFadden v. McFadden, 296 P.2d 1098, 179 Kan. 455—Bateman v. Roller, 211 P.2d 440, 168 Kan. 111.

exceptional cases,[76.55] and with reluctance.[76.60] Although the exercise of that discretion is reviewable,[76.65] a ruling on such a motion must be accorded great weight on appeal,[76.70] and ordinarily will not be reviewed or reversed[76.75] in the absence of a clear and affirmative showing of a gross, manifest, or unmistakable abuse of discretion.[76.80]

Another statement is that a discretionary ruling on a motion for a new trial will be disturbed only if the record shows an abuse of discretion on the part of the trial court.[76.85] This abuse, it has been

76.55 Ky.—Indian Refining Co. v. Crain, 132 S.W.2d 750, 280 Ky. 112—Wilkins v. Hopkins, 128 S.W. 2d 772, 278 Ky. 280.

76.60 Iowa.—Henrich v. Oppedal, 81 N.W.2d 429.

Iowa.—Dunham v. Des Moines Ry. Co., 35 N.W.2d 578, 240 Iowa 421—In re Hollis' Estate, 16 N.W.2d 599, 235 Iowa 753.

Ky.—Indian Refining Co. v. Crain, 132 S.W.2d 750, 280 Ky. 112.

Mo.—Spears v. De Clue, App., 133 S.W.2d 1044, record quashed on other grounds State ex rel. Spears v. Hughes, 142 S.W.2d 3, 346 Mo. 421.

N.Y.—Markel Cleaning & Dyeing Works v. Rutkin, 294 N.Y.S. 738, 250 App.Div. 820.

76.65 Ill.—Verna v. Moffat, 15 N.E. 2d 62, 295 Ill.App. 624.

Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302.

76.70 Wash.—Discargar v. City of Seattle, 191 P.2d 870, 30 Wash.2d 461.

76.75 Idaho.—Cook v. Saltzer, 257 P.2d 228, 74 Idaho 97.

Kan.—Blake v. National Mut. Cas. Co., 124 P.2d 478, 155 Kan 201.

Ky.—Gottsegen v. Wilson, 129 S.W. 2d 575, 278 Ky. 734.

Md.—Phoebus v. Sterling, 198 A. 717, 174 Md. 394.

N.J.—Natale v. Automobile Finance Co., 44 A.2d 27, 133 N.J.Law 253—Heuser v. Rothenberg, 8 A.2d 391, 123 N.J.Law 319—Courtney v. Garden State Lines, 199 A. 38, 120 N.J.Law 294—Trovato v. Capozzi, 194 A. 611, 119 N.J.Law 147.

Pa.—Weinfeld v. Funk, 20 A.2d 206, 342 Pa. 160.

Tex.—Bunker v. Lott, Civ.App., 282 S.W.2d 879, error refused no reversible error—M. W. Fruit Co. v. Bierbauer, Civ.App., 216 S.W.2d 831, error refused no reversible error—Citizen's Nat. Bank v. E. V. Graham & Co., Civ.App., 25 S.W. 2d 636.

"It is only in an extraordinary case revealing an abuse of judicial power, or an excess of jurisdiction or similar error, that the action of the trial court upon a motion for a new trial can be reversed."

Mass.—Cohen v. Peterson, 69 N.E.2d 462, 463, 320 Mass. 315—Berggren v. Mutual Life Ins. Co. of New York, 120 N.E. 402, 403, 231 Mass. 173.

Common-law rule

Me.—Bodwell-Leighton Co. v. Coffin & Wimple, 69 A.2d 567, 144 Me 367.

76.80 Cal.—Clark v. Bradley, 235 P. 2d 439, 106 C.A.2d 537—MacKenzie v. Angle, 186 P.2d 30, 82 C.A.2d 254—Gallichotte v. California Mut. Building & Loan Ass'n, 74 P.2d 73, 23 C.A.2d 570, rehearing denied 74 P.2d 535, 23 C.A.2d 570.

76.85 Ariz.—Rothman v. Rumbeck, 96 P.2d 755, 54 Ariz. 443.

Cal.—Burger v. Burger, 288 P.2d 926, 136 C.A.2d 360—Kroiss v. Butler, 277 P.2d 873, 129 C.A.2d 550—Standley v. Feather River Pine Mills, 245 P.2d 657, 112 C.A.2d 101—Abercrombie v. Thomsen, 138 P.2d 701, 59 C.A.2d 331—Robertson v. Brown, 99 P.2d 288, 37 C.A.2d 189.

Fla.—Brinson v. Howard, 71 So.2d 172.

Iowa.—Hoovler v. Wolfe, 66 N.W. 2d 486, 245 Iowa 1302—In re Hollis' Estate, 16 N.W.2d 599, 235 Iowa 753—Piper v. Brickley, 264 N.W. 29, 220 Iowa 1090.

Kan.—Bateman v. Roller, 211 P.2d 440, 168 Kan. 111—Clark v. Southwestern Greyhound Lines, 69 P.2d 20, 146 Kan. 115.

La.—Huderston v. American Mut. Liability Co., App., 14 So.2d 489.

Mo.—Sapp v. Key, 287 S.W.2d 775.

N.J.—Randazzo v. Bacque, 117 A.2d 629, 37 N.J.Super. 548—Brendel v. Public Service Elec. & Gas Co., 101 A.2d 56, 28 N.J.Super. 500.

Littman v. Goldfleis, 33 A.2d 399, 130 N.J.Law 384—Phipps v. Hulit, 24 A.2d 506, 128 N.J.Law 74—Nelson v. Eastern Air Lines, 24 A.2d 371, 128 N.J.Law 46.

N.M.—Adams v. Cox, 234 P.2d 1043, 55 N.M. 444.

N.C.—Pruitt v. Ray, 52 S.E.2d 876, 230 N.C. 322.

N.D.—Mevorah v. Goodman, 68 N.W. 2d 469.

Okl.—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845—Long v. McInnich, 264 P.2d 767—Hildebrand v. Harrison, 263 P.2d 174—Bates v. Winkle, 254 P.2d 361, 208 Okl. 199—McMahan v. McCafferty, 240 P.2d 443, 205 Okl. 656.

Or.—Lampa v. Hakola, 55 P.2d 13, 152 Or. 626.

Tex.—Goodrich v. Masey, Civ.App., 227 S.W.2d 844—Harris v. Elm Oil Co., Civ.App., 183 S.W.2d 216, error refused—Kahn v. Ilitzky, Civ. App., 107 S.W.2d 1015, error dismissed—Kountze v. Tucker, Civ. App., 103 S.W.2d 828, error dismissed.

Utah.—Bowden v. Denver & R. G. W. R. Co., 286 P.2d 240, 3 Utah 444—Marshall v. Ogden Union Ry. & Depot Co., 221 P.2d 868, 118 Utah 161.

Wash.—Johnson v. Howard, 275 P. 2d 736, 45 Wash.2d 433—Kagele v. Frederick, 261 P.2d 699, 43 Wash.2d 410—Rettinger v. Bresnahan, 257 P.2d 633, 42 Wash.2d 631—Hayes v. Sears, Roebuck & Co., 209 P.2d 468, 34 Wash.2d 666—Potts v. Laos, 200 P.2d 505, 31 Wash.2d 889—Sun Life Assur. Co. of Canada v. Cushman, 158 P.2d 101, 22 Wash.2d 930—Bystrom v. Purkey, 97 P.2d 158, 2 Wash.2d 67—Dibley v. Peters, 93 P.2d 720, 200 Wash. 100—Mathisen v. Norton, 60 P.2d 1, 187 Wash. 240.

Wis.—Erickson v. Clifton, 61 N.W. 2d 329, 265 Wis. 236—Schreiner v. Beghin, 51 N.W.2d 485, 260 Wis. 561—Jolitz v. Fintch, 282 N.W. 87, 229 Wis. 256—Markowitz v. Milwaukee Electric Railway & Light Co., 271 N.W. 380, 224 Wis. 347.

4 C.J. p 830 note 45—48 C.J. p 734 note 1.

Discretion means sound judicial discretion grounded on reason arising out of law and evidence.

Idaho.—Baldwin v. Ewing, 204 P.2d 430, 69 Idaho 176.

Findings of fact on motion

Mass.—Nicoli v. Berglund, 200 N.E. 373, 293 Mass. 426.

Approval or rejection of verdict on motion for new trial

Ark.—Texas & Pac. Ry. Co. v. Stephens, 90 S.W.2d 978, 192 Ark. 115.

Abuse as question for review

Conn.—Trani v. Anchor Hocking Glass Corp., 116 A.2d 167, 142 Conn. 541—Ardoline v. Keegan, 102 A.2d 352, 140 Conn. 552.

Pa.—Bickerton v. Tanney, 74 A.2d 760, 167 Pa.Super. 219.

S.D.—Skinner v. F. C. Krotter Co., 38 N.W.2d 145, 72 S.D. 622.

Test of abuse of discretion

Test of whether court abused its discretion in ruling on motion to set aside verdict is whether discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

Vt.—Oligny v. Underwood, 71 A.2d 250, 116 Vt. 193—Macauley v. Hyde, 42 A.2d 482, 114 Vt. 198—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351.

Second new trial

Where a trial judge's ruling is made after a prior trial before a dif-

held by many authorities, must be clear;[77] other au- | thorities require that a showing be made of pal-

ferent judge and jury, his ruling will not be reversed unless he has abused the sound discretion confided to him; if evidence is substantially similar at both trials and both juries reach the same conclusion, it is a factor to be considered in determining whether discretion was abused, but that fact taken alone is not controlling.

Cal.—Perry v. Fowler, 229 P.2d 46, 102 C.A.2d 808.

Inconsistent ruling

Where trial court denied motion in one case, but granted motion in action tried together therewith, and no appeal was taken in first case, any inconsistency in court's action was not ground for reversal of grant in absence of showing that such order was otherwise improper.

Cal.—McCranie v. Moorehead, 281 P. 2d 542, 131 C.A.2d 837.

77. Ala.—Alexander v. Letson, 167 So. 265, 232 Ala. 208—Moseley v. Neville, 129 So. 12, 221 Ala. 429—Parke v. Dennard, 118 So. 396, 218 Ala. 209.

Ariz.—Ramirez v. Burrell, 266 P.2d 390, 77 Ariz. 1.

Ark.—Thomas v. Arnold, 96 S.W.2d 1108, 192 Ark. 1127—Texas & Pac. Ry. Co. v. Stephens, 90 S.W.2d 978, 192 Ark. 115—Arkadelphia Lumber Co. v. Posey, 85 S.W. 1127, 74 Ark. 377.

Cal.—Fennessey v. Pacific Gas & Electric Co., 76 P.2d 104, 10 C.2d 538—First Nat. Finance Corporation v. Five-O Drilling Co., 289 P. 844, 209 C. 569—Merralls v. Southern Pac. Co., 186 P. 778, 182 C. 19—Mercantile Trust Co. of San Francisco v. Sunset Road Oil Co., 168 P. 1033, 176 C. 451—In re Emerson's Estate, 148 P. 523, 170 C. 81—Crawford v. Harris, 45 P. 819, 113 C. xvii—Symons v. Bunnell, 20 P. 559, 22 C.Unrep. 69, reheard 22 P. 193, 80 C. 330, modified on other grounds 22 P. 550.

Harper v. Superior Air Parts, 268 P.2d 115, 124 C.A.2d 91—Cadwell v. Borough, 264 P.2d 580, 122 C.A.2d 188—California Employment Stabilization Commission v. Smileage Co., 156 P.2d 454, 68 C.A.2d 249—Green v. Merced County, 144 P. 2d 874, 62 C.A.2d 570—Capital Nat. Bank of Sacramento v. Smith, 144 P.2d 665, 62 C.A.2d 328—Montaldo v. Hires Bottling Co., 139 P.2d 666, 59 C.A.2d 642—Prescott v. City of Orange, 132 P.2d 523, 56 C.A.2d 144—Moran v. Moran, 128 P.2d 796, 54 C.A.2d 221—Van Rennes v. Southern Counties Gas Co. of California, 124 P.2d 350, 51 C.A.2d 228—Pettigrew v. O'Donnell, 90 P.2d 93, 32 C.A.2d 502—Murphy v. Davis, 65 P.2d 917, 19 C.A.2d 316—Whitfield v. Debrincat, 64 P.2d 960, 18 C.A. 2d 730—Bonner v. Los Angeles Examiner, 62 P.2d 427, 17 C.A.2d 458—Kelley v. Corcoran, 61 P.2d 344, 16 C.A.2d 593—Strauch v. Bieloh, 60 P.2d 582, 16 C.A.2d 278—Thomason v. Hethcock, 46 P.2d 832, 7 C.A.2d 634—Smith v. Hale, 39 P.2d 445, 3 C.A.2d 277—Bogan v. White, 30 P.2d 429, 137 C.A. 150—Peri v. Culley, 6 P.2d 86, 119 C. A. 117—Ford v. Wilson, 290 P. 120, 107 C.A. 131—Norman v. De Botiller, 272 P. 613, 95 C.A. 336—Blankman v. Parsons, 238 P. 728, 73 C.A. 218—Carlsen v. Diehl, 208 P. 150, 57 C.A. 731—Roberts v. Southern Pac. Co., 201 P. 958, 54 C.A. 315—Potter v. Smith, 191 P. 1023, 48 C. A. 162—Donnatin v. Union Hardware & Metal Co., 175 P. 26, 38 C. A. 8, petition denied 177 P. 845, 38 C.A. 8.

Conn.—City of Meriden v. Rogers, 149 A. 406, 111 Conn. 115—Gonirenki v. American Steel & Wire Co., 137 A. 26, 106 Conn. 1—Monczport v. Csongradi, 129 A. 41, 102 Conn. 448—Murray v. Krenz, 109 A. 859, 94 Conn. 503—Moeller v. Johnston, 98 A. 295, 91 Conn. 23.

Fla.—Hollywood, Inc., v. Clark, 15 So. 2d 175, 153 Fla. 501—Braznell v. Braznell, 191 So. 457, 140 Fla. 192—Atlantic Peninsular Holding Co. v. Oenbrink, 182 So. 812, 133 Fla. 325—Phillips v. Garrett, 147 So. 857, 109 Fla. 435—Holman v. Klutho, 109 So. 314, 91 Fla. 853.

Ga.—Savannah, etc., R. Co. v. Godkin, 30 S.E. 378, 104 Ga. 655, 69 Am.S.R. 187—Grace v. Martin, 9 S. E. 841, 83 Ga. 245—Erskine v. Duffy, 76 Ga. 602.

Ellis v. Spell, 93 S.E. 49, 20 Ga. App. 347.

Idaho.—Woodland v. Lyon, 298 P.2d 380—Walker v. Distler, 296 P.2d 452—Stearns v. Graves, 111 P.2d 882, 62 Idaho 312—Stone v. Matthies, 287 P. 951, 49 Idaho 277—McAllister v. Bardsley, 215 P. 852, 37 Idaho 220.

Ill.—Phillips v. Scales Mound, 63 N. E. 180, 195 Ill. 353.

Hulke v. International Mfg. Co., 142 N.E.2d 717, 14 Ill.App.2d 5—Stobbs v. Cumby, 132 N.E.2d 448, 9 Ill.App.2d 138—In re Velie's Estate, 48 N.E.2d 431, 318 Ill.App. 550—Ledferd v. Reardon, 25 N.E. 2d 116, 303 Ill.App. 300—Josate v. Mack, 23 N.E.2d 778, 302 Ill.App. 246—Couch v. Southern Ry. Co., 14 N.E.2d 266, 294 Ill.App. 490—**Corpus Juris cited in** Village of La-Grange v. Clark, 278 Ill.App. 269, 285—Illinois Cent. R. Co. v. Robinson, 58 Ill.App. 181—Chicago, etc., R. Co. v. Kuster, 22 Ill.App. 188.

Ind.—Hamm v. Romine, 98 Ind. 77—Miller v. Miller, 61 Ind. 471—Mitchell v. Chambers, 55 Ind. 289—Harding v. Whitney, 40 Ind. 379. Gish v. Gish, 34 N.E. 305, 7 Ind. App. 104.

Iowa.—Krieg v. Grant, 80 N.W.2d 724—Glatstein v. Grund, 51 N.W.2d 162, 243 Iowa 541, 36 A.L.R.2d 531—Modern Heat & Power Co. v. Bishop Steamotor Corp., 34 N.W. 2d 581, 239 Iowa 1267—Williams v. Kearney, 278 N.W. 180, 224 Iowa 1006—Eby v. Sanford, 273 N.W. 918, 223 Iowa 805—Holman v. Rook, 271 N.W. 612—Gregory v. Suhr, 268 N.W. 14, 221 Iowa 1283—Piper v. Brickley, 264 N.W. 29, 220 Iowa 1090—Greene v. Lagerquist, 252 N.W. 94, 217 Iowa 718—Manders v. Dallam, 244 N.W. 724, 215 Iowa 137—Rupp v. Kohn, 232 N. W. 174, 210 Iowa 969—Utilities Holding Corporation v. Chapman, 232 N.W. 116, 210 Iowa 994—Jelsma v. English, 231 N.W. 304, 210 Iowa 1065—Lange v. Nissen, 216 N.W. 697, 204 Iowa 1080—Meyer v. Noel, 206 N.W. 290—Euclid Ave. State Bank v. Nesbit, 204 N.W. 253, reheard 207 N.W. 761, 201 Iowa 506—Printy v. Reimbold, 202 N.W. 122, 200 Iowa 541, 41 A.L.R. 1423, petition overruled 205 N.W. 211, 200 Iowa 541, 41 A.L.R. 1423—Benefiel v. Semper, 170 N.W. 737, 185 Iowa 410—Wightman v. Butler County, 49 N.W. 1041, 83 Iowa 691—Taylor v. Chicago, etc., R. Co., 46 N.W. 64, 80 Iowa 431—McNamara v. Dratt, 40 Iowa 413.

Kan.—Durkin v. Kansas City Public Service Co., 27 P.2d 259, 138 Kan. 558—Bateman v. Preisser, 254 P. 1028, 123 Kan. 217—Culp v. Mulvane, 71 P. 273, 66 Kan. 143.

Ky.—Burton v. Spurlock's Adm'r, 171 S.W.2d 1012, 294 Ky. 336—Goff v. Hubbard, 290 S.W. 696, 217 Ky. 729, 50 A.L.R. 1382—Elkhorn Coal Corporation v. Cuzzort, 284 S.W. 1005, 215 Ky. 254—Clark v. Pullman Co., 265 S.W. 820, 205 Ky. 336—Tackett v. Tackett, 265 S.W. 336, 204 Ky. 831—Wilson v. Rockcastle Mining Lumber & Oil Co., 255 S. W. 88, 200 Ky. 484—Chesapeake & O. Ry. Co. v. Salyers, 218 S.W. 474, 187 Ky. 144, 150—Gnau v. Ackerman, 179 S.W. 217, 166 Ky. 258.

La.—Oil Field Supply & Scrap Material Co. v. Gifford-Hill & Co., App., 16 So.2d 77, annulled on other grounds 16 So.2d 483, 204 La. 929—Cassiere v. Cuban Coffee Mills, App., 175 So. 491—Cutrer v. Cutrer, App., 169 So. 807—Vaughan v. Canik, App., 152 So. 364, followed in 152 So. 368—Henderson v. Mayer, 126 So. 531, 12 La.App. 531—Shreveport Grocery Co. v. Johnson, 121 So. 351, 10 La.App. 437—Betts v. Attaway, 8 La.App. 366.

Md.—Winslow v. Atz, 177 A. 272, 168 Md. 230—Mt. Royal Cab Co. v. Dolan, 171 A. 854, 166 Md. 581—Puga-

czewska v. Maszko, 163 A. 205, 163 Md. 355—Gallagher v. Kornblatt, 131 A. 450, 149 Md. 304—Griffith v. Bensinger, 125 A. 512, 144 Md. 575—Washington, B. & A. Electric R. Co. v. Kimmey, 118 A. 648, 141 Md. 243—Washington & R. Ry. Co. of Montgomery County v. Sullivan, 110 A. 478, 136 Md. 202—Leland v. Empire Engineering Co., 108 A. 570, 135 Md. 208.

Mass.—Donovan v. Donovan, 200 N. E. 884, 294 Mass. 94—Nicoli v. Berglund, 200 N.E. 373, 293 Mass. 426—Restuccia v. Bonner, 192 N. E. 17, 287 Mass. 592—Menici v. Orton Crane & Shovel Co., 189 N.E. 839, 285 Mass. 499—Mantho v. Nelson, 188 N.E. 599, 285 Mass. 156—Cerrato v. Miller, 163 N.E. 251, 264 Mass. 533—W. R. Grace & Co. v. Shaghalian's, Inc., 146 N.E. 799, 251 Mass. 340—Anti v. Boston Elevated Ry. Co., 141 N.E. 598, 247 Mass. 1—Barnett v. Loud, 137 N. E. 740, 243 Mass. 510—Harrington v. Boston Elevated Ry. Co., 118 N. E. 880, 229 Mass. 421, 2 A.L.R. 1057—Brown v. Learmouth, 117 N.E. 829, 228 Mass. 417—Boyd v. Boston Elevated Ry. Co., 112 N.E. 607, 224 Mass. 199—Edwards v. Willey, 105 N.E. 986, 218 Mass. 363.

Mich.—Orcutt v. White, 195 N.W. 420, 224 Mich. 656.

Minn.—School Dist. No. 1, Itasca County, v. Aiton, 221 N.W. 424, 175 Minn. 346.

Mo.—Reichmuth v. Adler, 155 S.W. 2d 181, 348 Mo. 812—Beer v. Martel, 55 S.W.2d 482, 332 Mo. 53—Grubbs v. Kansas City Public Service Co., 45 S.W.2d 71, 329 Mo. 390—Devine v. Wells, 254 S.W. 65, 300 Mo. 177—Tiede v. Fuhr, 195 S. W. 1008.

Bollinger v. Mungle, App., 175 S. W.2d 912—Æolian Co. of Missouri v. Boyd, App., 138 S.W.2d 692—Darnall v. Lyons, App., 51 S.W.2d 159—Primmer v. American Car & Foundry Co., App., 299 S.W. 825—Best v. Equitable Life Assur. Soc., App., 299 S.W. 118—Sullivan v. Wilson, App., 283 S.W. 743—Ismert-Hincke Milling Co. v. Mercurio Bros. Spaghetti Mfg. Co., App., 243 S.W. 408—Oliver v. St. Louis-San Francisco Ry. Co., App., 211 S.W. 699—Remfry v. Mutual Life Ins. Co. of New York, App., 196 S.W. 775—Miles v. Haney, 176 S.W. 429, 190 Mo.App. 220—Kelly v. City of Higginsville, 171 S.W. 966, 185 Mo.App. 55.

Mont.—Garrison v. Trowbridge, 177 P.2d 464, 119 Mont. 505—Wieri v. Anaconda Copper Min. Co., 156 P. 2d 838, 116 Mont. 524—Skelton v. Great Northern Ry. Co., 100 P.2d 929, 110 Mont. 257—Walsh v. Butte, A. & P. Ry. Co., 97 P.2d 325, 109 Mont. 456—Wibaux Realty Co. v. Northern Pac. Ry. Co., 54 P.2d 1175, 101 Mont. 126—Maki v. Murray Hospital, 7 P.2d 228, 91 Mont. 251—Rhoades v. Ness, 163 P. 559, 53 Mont. 322.

Neb.—Allender v. Chicago & N. W. Ry. Co., 230 N.W. 102, 119 Neb. 559—Derr v. Kirkpatrick, 184 N.W. 91, 106 Neb. 403—Schlaifer v. Omaha & Council Bluffs St. Ry. Co., 152 N.W. 370, 98 Neb. 207—Everton v. Esgate, 38 N.W. 794, 24 Neb. 235.

N.J.—Sokol v. Liebstein, 87 A.2d 1, 9 N.J. 93.

Natale v. Automobile Finance Co., 44 A.2d 27, 133 N.J.Law 253—Wasker v. G. R. Wood, Inc., 176 A. 171, 114 N.J.Law 266—Gormley v. Gasiorowski, 164 A. 440, 110 N.J. Law 287—Giordano v. Asbury Park & Ocean Grove Bank, 135 A. 354, 103 N.J.Law 194.

Adamucci v. Pennsylvania-Reading Seashore Lines, 182 A. 895, 14 N.J.Misc. 137—Reynolds v. Herman, 174 A. 245, 12 N.J.Misc. 693.

N.M.—Addison v. Tessier, 305 P.2d 1067, 62 N.M. 120—Cienfuegos v. Pacheco, 248 P.2d 664, 56 N.M. 667—Frank A. Hubbell Co. v. Curtis, 58 P.2d 1163, 40 N.M. 234.

N.Y.—Haight v. Elmira, 59 N.Y.S. 193, 42 App.Div. 391.

Gautier v. Douglass Mfg. Co., 52 How.Pr. 325, affirmed 13 Hun 514.

N.C.—Harrill v. Seaboard Air Line Ry. Co., 107 S.E. 136, 181 N.C. 315—Coats v. Norris, 104 S.E. 71, 180 N.C. 77—Riley v. Stone, 86 S.E. 348, 169 N.C. 421.

N.D.—State v. Hummel, 14 N.W.2d 368, 73 N.D. 308—Olson v. Carlson, 290 N.W. 243, 69 N.D. 732—Blum v. Standard Oil Co., 279 N. W. 764, 68 N.D. 329—Crane-Johnson Co. v. Prairie Fibre Co., 241 N.W. 593, 62 N.D. 51—Webster v. Ek, 241 N.W. 503, 62 N.D. 44—Krumpelmann v. Ulsaker Printing Co., 197 N.W. 689, 50 N.D. 622—Eckstrand v. Johnson, 168 N.W. 824, 40 N.D. 294.

Okl.—Kurn v. Freeman, 113 P.2d 194, 189 Okl. 57—Parkhill Truck Co. v. Ok-Tex Drilling Co., 100 P. 2d 863, 187 Okl. 50—Hartman v. Dunn, 95 P.2d 897, 186 Okl. 9—Mitchell v. Lehmer, 94 P.2d 916, 185 Okl. 530—Yellow Cab Operating Co. v. McNamara, 49 P.2d 563, 173 Okl. 572—Lane v. O'Brien, 49 P.2d 171, 173 Okl. 475—Keystone Pipe & Supply Co. v. Crabtree, 35 P.2d 875, 169 Okl. 20—Billy v. Le Flore County Gas & Electric Co., 26 P.2d 149, 166 Okl. 130—Roberts v. Franklin, 10 P.2d 703, 156 Okl. 254—Aughenbaugh v. Spellman & Co., 2 P.2d 1028, 151 Okl. 152—Markham v. Reynolds, 263 P. 1084, 129 Okl. 127—Thomas v. Darks, 260 P. 75, 127 Okl. 179—Carr v. Wichita State Bank & Trust Co., 246 P. 1088, 118 Okl. 136—Wagoner v. Caskey, 205 P. 137, 85 Okl. 168—Hicks v. Alexander, 204 P. 923, 85 Okl. 96—Swan v. Duncan, 190 P. 678, 78 Okl. 305—St. Paul Fire & Marine Ins. Co. v. Peck, 158 P. 595, 59 Okl. 195—Crouch v. Crouch, 158 P. 573, 59 Okl. 181—Jones v. Oklahoma Planing Mill & Mfg. Co., 147 P. 999, 47 Okl. 477.

Or.—Lampa v. Hakola, 55 P.2d 13, 152 Or. 626—Cline v. Bush, 52 P.2d 652, 152 Or. 63—Barclay v. Oregon-Washington R. & Nav. Co., 147 P. 541, 75 Or. 559.

Pa.—Huntzinger v. Wileman, 45 A.2d 7, 353 Pa. 274—Koppenhaver v. Swab, 174 A. 393, 316 Pa. 207—Brandis v. Empire State Life Assur. Soc., 174 A. 104, 315 Pa. 558—Giles v. Vockel, 166 A. 849, 311 Pa. 347—Williams v. Southern Mut. Ins. Co. of Lancaster County, 166 A. 582, 312 Pa. 114—Bailey v. C. Lewis Lavine, Inc., 153 A. 422, 302 Pa. 273—Rose v. Adelphia Hotel, 149 A. 644, 300 Pa. 1—Dravo Contracting Co. v. James Rees & Sons Co., 140 A. 148, 291 Pa. 387—McKee v. Ward, 137 A. 599, 289 Pa. 414—First Nat. Bank v. Cattie Bros. Corporation, 131 A. 731, 285 Pa. 202—Haughney v. Gannon, 118 A. 427, 274 Pa. 443—Lurie v. Erie R. Co., 109 A. 916, 266 Pa. 355—Boggs v. Jewell Tea Co., 109 A. 666, 266 Pa. 428—McEvoy v. Quaker City Cab Co., 107 A. 777, 264 Pa. 418—Smyth v. Philadelphia & West Chester Traction Co., 107 A. 20, 263 Pa. 511—Sgier v. Philadelphia & R. Ry. Co., 103 A. 730, 260 Pa. 343—Fulginiti v. Diamond Coal & Coke Co., 103 A. 51, 259 Pa. 344—President, etc., of Danboro & Plumsteadville Turnpike Road Co. v. Bucks County, 102 A. 171, 258 Pa. 391—First Nat. Bank of Hanover v. Delone, 98 A. 1042, 254 Pa. 409.

Small v. Morgan, 195 A. 153, 129 Pa.Super. 41—Cervi v. Mori, 186 A. 261, 122 Pa.Super. 355—McPeek v. Shafer, 183 A. 80, 120 Pa.Super. 425—McAllister v. Pennsylvania R. Co., 182 A. 738, 121 Pa.Super. 131—Kushie v. Western & Southern Life Ins. Co., 174 A. 585, 114 Pa. Super. 593—Frendlich v. Montgomery, 89 Pa.Super. 179—Klekotka v. Chalfant, 82 Pa.Super. 159—Kardon v. Forst, 70 Pa.Super. 565—Whipple v. Lewis, 69 Pa.Super. 279—Carnes v. Minehan, 64 Pa.Super. 388—Kenney v. Barry, 63 Pa.Super. 201.

Devine v. Pocono Freight Lines, Com.Pl., 54 Lack.Jur. 105—Heiss v. Bailey, 20 Lanc.L.Rev. 51.

R.I.—Galucci v. Prete, 136 A. 247—Gardner v. Gardner, 129 A. 3.

S.C.—Anderson v. Ballenger, 164 S. E. 313, 166 S.C. 44—McClain v. Reliance Life Ins. Co. of Pittsburgh, Pa., 148 S.E. 478, 150 S.C. 459—Sanders v. Commonwealth Life Ins. Co. of Kentucky, 132 S.E. 828, 134 S.C. 435.

pable,[77.5] unmistakable,[77.10] or manifest[77.15] abuse. Similarly, a discretionary ruling on a motion for a new trial will not be reviewed or revised unless an obvious miscarriage of justice will otherwise result.[77.20]

Furthermore, where there appears to be a reasonable, or even a fairly debatable, justification for the order, it will not be set aside[77.25] even though a contrary order might not be disapproved or the appellate court might be inclined to take a different view of the motion.[77.30] These rules are particularly applicable where there are questions or matters involved which the trial court is better qualified to pass on or determine than the appellate court.[78] Similar rules prevail with respect to the review of discretionary rulings on motions for rehearing.[79]

The rules above stated are applicable where the new trial or rehearing has been granted.[80] A re-

S.D.—Houck v. Hult, 245 N.W. 469, 60 S.D. 570—Farmers' & Merchants' Nat. Bank of Alcester v. Monk, 189 N.W. 513, 45 S.D. 535—Wilson v. Seaman, 87 N.W. 577, 15 S.D. 103.

Tex.—Taylor v. Lowe, Civ.App., 87 S.W.2d 800—Bowles v. Bowles, Civ. App., 69 S.W.2d 495—Employers' Liability Assur. Corporation v. Young, Civ.App., 34 S.W.2d 622—Sfiris v. Madis, Civ.App., 13 S.W. 2d 750—Bledsoe v. Burleson, Civ. App., 289 S.W. 143, error dismissed Burleson v. Bledsoe, Com.App., 294 S.W. 516—Galveston, H. & S. A. Ry. Co. v. Summers, Civ.App., 278 S.W. 881—Coombs v. Jackson, Civ.App., 238 S.W. 992—McAnally v. Vickry, Civ.App., 79 S.W. 857—Texas Cent. R. Co. v. Stuart, 20 S. W. 962, 1 Civ.App. 642.

Hannah v. Chadwick, 2 Tex.App. Civ.Cas. § 517.

Utah.—Bowden v. Denver & R. G. W. R. Co., 286 P.2d 240, 3 Utah 2d 444—Moser v. Zion's Co-op. Mercantile Inst., 197 P.2d 136, 114 Utah 58—Jensen v. Logan City, 57 P.2d 708, 89 Utah 347—Clark v. Los Angeles & S. L. R. Co., 275 P. 582, 73 Utah 486—Allen v. J. G. McDonald Chocolate Co., 218 P. 971, 62 Utah 273—Pence v. California Min. Co., 75 P. 934, 27 Utah 378.

Vt.—Taplin v. Stanley, 148 A. 750, 102 Vt. 398—Temple v. Atwood, 134 A. 591, 99 Vt. 434—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91—Sharby v. Town of Fletcher, 127 A. 300, 98 Vt. 273—Pocket v. Almon, 96 A. 421, 90 Vt. 10.

Wash.—McCall v. Smith, 52 P.2d 338, 184 Wash. 615—Norland v. Peterson, 13 P.2d 483, 169 Wash. 380—McKay v. General Accident, Fire & Life Assur. Corporation, Limited, of Perth, Scotland, 299 P. 987, 163 Wash. 92—Leach v. Erickson, 297 P. 738, 161 Wash. 473—Black v. Thompson, 200 P. 1106, 117 Wash. 156—Getty v. Hutton, 188 P. 497, 110 Wash. 429—Skarlatos v. Brice, 164 P. 939, 96 Wash. 205—Wik v. King, 149 P. 640, 86 Wash. 171—Gamer v. Schlentz, 146 P. 166, 84 Wash. 37.

W.Va.—McClaugherty v. Tri-City Traction Co., 14 S.E.2d 432, 123 W. Va. 112.

Wis.—Wolf v. Evans, 247 N.W. 844, 211 Wis. 601—Kramer v. Bins, 238 N.W. 407, 205 Wis. 562—West v. Day, 212 N.W. 648, 193 Wis. 187—Lange v. Olson, 202 N.W. 361, 185 Wis. 657—Miller Saw-Trimmer Co. v. Cheshire, 189 N.W. 465, 177 Wis. 354.

4 C.J. p 830 note 45.

Statutory provisions, requiring a written motion for a new trial stating the reasons therefor, and a filed statement by the judge setting forth the grounds upon which the motion is granted, merely regulate the manner of exercising the judicial discretion in granting a new trial and do not enlarge in any way the jurisdiction of the appellate court to review the exercise of the trial court's discretionary power.

Mass.—Edwards v. Willey, 105 N.E. 986, 218 Mass. 363.

77.5 Mich.—Brown v. Arnold, 6 N. W.2d 914, 303 Mich. 616.

Pa.—Dupont v. Gallagher, 62 A.2d 28, 360 Pa. 419—Long v. Daylor, 194 A. 495, 327 Pa. 484—Hostetler v. Kniseley, 185 A. 300, 322 Pa. 248.

McCray v. Pittsburgh Rys. Co., 200 A. 717, 132 Pa.Super. 386.

77.10 Cal.—Ziesemer v. McCarty, 162 P.2d 857, 71 C.A.2d 378—Stamper v. Schemmel, 159 P.2d 66, 69 C. A.2d 449—Prescott v. City of Orange, 132 P.2d 523, 56 C.A.2d 144.

77.15 Idaho.—Baldwin v. Ewing, 204 P.2d 430, 69 Idaho 176—Poston v. Hollar, 132 P.2d 142, 64 Idaho 322.

Ill.—Henderson v. Shives, 135 N.E. 2d 186, 10 Ill.App.2d 475.

Ind.—Sprague v. Sowash, 106 N.E.2d 471, 122 Ind.App. 519.

Iowa.—Westergard v. Des Moines Ry. Co., 52 N.W.2d 39, 243 Iowa 495.

Mont.—Garrison v. Trowbridge, 177 P.2d 464, 119 Mont. 505.

N.M.—Mathis v. Atchison, T. & S. F. Ry. Co., 300 P.2d 482, 61 N.M. 330.

Or.—Burrows v. Nash, 259 P.2d 106, 199 Or. 114—Clark v. Fazio, 230 P.2d 553, 191 Or. 522.

Pa.—Matovich v. Mutual Ben. Health & Accident Ass'n, 43 A.2d 648, 157 Pa.Super. 604.

Wash.—Skov v. MacKenzie-Richardson, Inc., 296 P.2d 521, 48 Wash.2d 710.

77.20 La.—Surgi v. McDonough Motor Express, App., 187 So. 693—Maison Blanche Co. v. Mefsut, App., 181 So. 646.

77.25 Cal.—Kent v. Los Angeles Ry. Corp., 84 P.2d 1057, 29 C.A.2d 435—Whitfield v. Debrincat, 64 P.2d 960, 18 C.A.2d 730.

77.30 Cal.—Sloboden v. Time Oil Co., 281 P.2d 85, 131 C.A.2d 557—MacKenzie v. Angle, 186 P.2d 30, 82 C.A.2d 254—Shivers v. Palmer, 139 P.2d 952, 59 C.A.2d 572—Abercrombie v. Thomsen, 138 P.2d 701, 59 C.A.2d 331—Baker v. Berreman, 136 P.2d 576, reheard 142 P.2d 448, 61 C.A.2d 235—Anderson v. Lang, 109 P.2d 981, 42 C.A.2d 725—Gallichotte v. California Mut. Building & Loan Ass'n, 74 P.2d 73, 23 C. A.2d 570, rehearing denied 74 P.2d 535, 23 C.A.2d 570.

78. Cal.—Hollingsworth v. Pemberton, 31 P.2d 1063, 138 C.A. 261.

Ill.—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill.App. 269, 285.

Iowa.—Reed v. Incorporated Town of Wellsburg, 161 N.W. 660, 179 Iowa 593.

Mass.—Nicoli v. Berglund, 200 N.E. 373, 293 Mass. 426.

Mo.—Reissman v. Wells, App., 258 S.W. 43.

4 C.J. p 830 note 45, p 831 note 46.

79. Ala.—Alexander v. Letson, 167 So. 265, 232 Ala. 208—Van Schaick v. Goodwyn, 163 So. 327, 230 Ala. 687—Simpson v. James R. Crowe Post No. 27, American Legion, 161 So. 705, 230 Ala. 487—Cox v. Brown, 73 So. 964, 198 Ala. 638.

Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302.

N.J.—O'Driscoll v. Scott, 176 A. 170, 114 N.J.Law 265.

80. Ala.—Taylor v. Brownell-O'Hear Pontiac Co., 91 So.2d 828—Schaeffer v. Walker, 3 So.2d 405, 241 Ala. 530—Williams v. Birmingham Water Works Co., 162 So. 95, 230 Ala. 438—Carter v. Perry, 118 So. 172, 218 Ala. 169.

Lassetter v. King, 31 So.2d 586, 33 Ala.App. 204, certiorari denied 31 So.2d 588, 249 Ala. 422—Spencer v. Campbell Motor Co., 129 So. 919, 24 Ala.App. 39.

Ariz.—Smith v. Moroney, 282 P.2d 470, 79 Ariz. 35—General Petroleum Corp. v. Barker, 269 P.2d 729, 77

Ariz. 235—Murphy v. Thompson, 219 P.2d 334, 70 Ariz. 250—Filer v. Maricopa County, 198 P.2d 131, 68 Ariz. 11—Brownell v. Freedman, 6 P.2d 1115, 39 Ariz. 385—Young Mines Co. v. Citizens' State Bank, 296 P. 247, 37 Ariz. 521—Scott v. Hammons, 274 P. 1042, 35 Ariz. 144.

Cal.—Brandelius v. City and County of San Francisco, 306 P.2d 432—Ballard v. Pacific Greyhound Lines, 170 P.2d 465, 28 C.2d 357—Mazzotta v. Los Angeles Ry. Corporation, 153 P.2d 338, 25 C.2d 165—Adams v. American President Lines, 146 P.2d 1, 23 C.2d 681—In re Yale's Estate, 4 P.2d 153, 214 C. 115—Sheets v. Southern Pac. Co., 299 P. 71, 212 C. 509—Phillips v. Powell, 290 P. 441, 210 C. 39—City and County of San Francisco v. Tillman Estate Co., 272 P. 585, 205 C. 651—Campanella v. Campanella, 269 P. 433, 204 C. 515—Biaggi v. Ramont, 209 P. 892, 189 C. 675—Scott v. Times-Mirror Co., 174 P. 312, 178 C. 688—Tweedale v. Barnett, 156 P. 483, 172 C. 271—McEwen v. Occidental Life Ins. Co., 155 P. 86, 172 C. 6.

Heffington v. Paul, App., 313 P. 2d 157—Sardisco v. Kiek, App., 313 P.2d 101—Rowe v. Edwards, App., 313 P.2d 82—Condaffer v. Hoskinson, App., 311 P.2d 553—Kingen v. Weyant, App., 307 P.2d 369—De Wit v. Glazier, App., 307 P.2d 1031—Thomas v. Moore, App., 303 P. 2d 624—Hargrave v. Acme Tool & Tester Co., App., 302 P.2d 592—Henderson v. Balcom, App., 301 P. 2d 928—Long v. Newlin, 301 P.2d 271, 144 C.A.2d 509—Balthrop v. Atchison, T. & S. F. Ry. Co., 299 P.2d 341, 142 C.A.2d 823—Edler v. Sepulveda Park Apartments, 297 P.2d 508, 141 C.A.2d 675—Mowrey v. Marina Corp., 290 P.2d 886, 137 C.A.2d 786—Gallegos v. Nash, San Francisco, 289 P.2d 835, 137 C.A. 2d 14—Legg v. Mutual Ben. Health & Acc. of Omaha, 289 P.2d 550, 136 C.A.2d 887, rehearing denied 290 P.2d 87, 136 C.A.2d 887—Hoel v. City of Los Angeles, 288 P.2d 989, 136 C.A.2d 295—Conjorsky v. Murray, 287 P.2d 505, 135 C.A.2d 478—Brandwein v. Rodriguez, 284 P. 2d 130, 133 C.A.2d 374—Bruns v. Southern Pac. R. Co., 281 P.2d 531, 132 C.A.2d 142—Quinn v. Oil Fields Trucking Co., 279 P.2d 775, 130 C. A.2d 720—Linn v. Roby, 277 P.2d 67, 129 C.A.2d 448—Shipley v. Permanente Hospitals, 274 P.2d 53, 127 C.A.2d 417—Pierce v. Nash, 272 P. 2d 938, 126 C.A.2d 606—Deshotel v. Atchison, T. & S. F. Ry. Co., 272 P.2d 71, 126 C.A.2d 303—Gilbert v. Yellow Cab Co., 267 P.2d 392, 123 C.A.2d 782—Cadwell v. Borough, 264 P.2d 580, 122 C.A.2d 188—Thomasset v. Thomasset, 264 P.2d 626, 122 C.A.2d 116—Patterson v. Rowe, 247 P.2d 949, 113 C.A.2d 119—Standley v. Feather River Pine Mills, 245 P.2d 657, 112 C.A.2d 101—Marosi v. J. W. Robinson Co., 238 P.2d 78, 107 C.A.2d 811—Ridenour v. Scarcella, 237 P.2d 322, 107 C.A.2d 554—Brinkerhoff by Nelson v. Ferguson, 236 P.2d 588, 107 C. A.2d 175—Tice v. Kaiser Co., 226 P.2d 624, 102 C.A.2d 44—In re Standing's Estate, 223 P.2d 255, 99 C.A.2d 668—People, by and through Dept. of Public Works v. McCullough, 223 P.2d 37, 100 C.A.2d 101—Shellhaas v. Petrolane, Limited, 219 P.2d 797, 98 C.A.2d 171—Piru Citrus Ass'n v. Williams, 214 P.2d 426, 95 C.A.2d 911—Dearing v. Fessler, 210 P.2d 535, 94 C.A.2d 260—Barnett v. Garrison, 209 P. 2d 426, 93 C.A.2d 553—Downs v. Sherry, 202 P.2d 101, 90 C.A.2d 1—McCoy v. Yellow Cab Co. of Cal., 198 P.2d 371, 88 C.A.2d 47—Stone v. Los Angeles County Flood Control Dist., 185 P.2d 396, 81 C.A. 2d 902—Blumenthal v. W. I. Hollingsworth & Co., 159 P.2d 75, 69 C.A.2d 337—California Employment Stabilization Commission v. Smilege Co., 156 P.2d 454, 68 C.A. 2d 249—Stewart v. Kelly, 155 P.2d 850, 68 C.A.2d 122—Conroy v. Perez, 148 P.2d 680, 64 C.A.2d 217—Green v. Merced County, 144 P.2d 874, 62 C.A.2d 570—Abercrombie v. Thomsen, 138 P.2d 701, 59 C.A.2d 331—Reuman v. La Monica, 136 P. 2d 81, 58 C.A.2d 303—Finney v. Wierman, 126 P.2d 143, 52 C.A.2d 282—Van Rennes v. Southern Counties Gas Co. of California, 124 P. 2d 350, 51 C.A.2d 228—Provin v. Continental Oil Co., 121 P.2d 740, 49 C.A.2d 417—Anderson v. Lang, 109 P.2d 981, 42 C.A.2d 725—Silcott v. City of Monrovia, 107 P.2d 95, 41 C.A.2d 508—Ohran v. Yolo County, 104 P.2d 700, 40 C.A.2d 289—Charles Lomoi & Son v. Globe Laboratories, 95 P.2d 173, 35 C.A. 2d 248—Simmons v. Lamb, 94 P. 2d 814, 35 C.A.2d 109—Gray v. Robinson, 91 P.2d 194, 33 C.A.2d 177—Owings v. Gatchell, 90 P.2d 368, 32 C.A.2d 482—Barber v. Quatacker, 85 P.2d 560, 29 C.A.2d 728—Cunha v. Lewis, 76 P.2d 1198, 31 C.A.2d 1—Smith v. Schwartz, 57 P. 2d 1386, 14 C.A.2d 160—Scott v. Flanagan, 57 P.2d 1382, 14 C.A.2d 105—Taylor v. Rodriquez, 52 P.2d 494, 10 C.A.2d 608—Olinger v. Pacific Greyhound Lines, 46 P.2d 774, 7 C.A.2d 484—Breeze v. Southern Petro Tank Line Co., 43 P.2d 584, 5 C.A.2d 507—Collins v. Hodgson, 42 P.2d 700, 5 C.A.2d 366—Lewis v. Memmler, 35 P.2d 406, 140 C.A. 364—Glascock v. Watters, 29 P.2d 434, 136 C.A. 713—Security-First Nat. Bank v. Superior Court of California in and for San Diego County, 28 P.2d 1055, 132 C.A. 683, recalled Security-First Nat. Bank v. Superior Court in and for San Diego County, 25 P.2d 234, 134 C.A. 195—Menne v. P. J. Friermuth Co., 19 P.2d 535, 130 C.A. 106—Dodds v. Gifford, 16 P.2d 279, 127 C.A. 629—Malloway v. Hughes, 13 P.2d 1062, 125 C.A. 573—Howe v. Owsley, 11 P.2d 663, 123 C.A. 550—Anderson v. Dahl, 8 P.2d 883, 121 C.A. 198—Peri v. Culley, 6 P.2d 86, 119 C.A. 117—Stoneburner v. Richfield Oil Co. of California, 5 P.2d 436, 118 C.A. 449—Wulbern v. Gilroy Express, 2 P.2d 508, 116 C.A. 222—Lewis v. Southern California Edison Co., 2 P.2d 419, 116 C.A. 44—Coolidge v. Standard Accident Ins. Co., 300 P. 885, 114 C.A. 716—People's Finance & Thrift Co. of Porterville v. Phœnix Assur. Co., Limited, of London, 285 P. 857, 104 C.A. 334—Johnson v. Schimpf, 266 P. 597, 91 C.A. 26—Gustason v. Speak, 258 P. 725, 85 C.A. 18—Butler v. Miller, 231 P. 1007, 69 C.A. 586—Roberts v. Southern Pac. Co., 201 P. 958, 54 C.A. 315—Preluzsky v. Rittigstein, 196 P. 917, 51 C.A. 427—Ham v. Los Angeles County, 189 P. 462, 46 C.A. 148—Tunmore v. Macleish, 187 P. 443, 45 C.A. 266—American Marine Paint Co. v. Nyno Line, 187 P. 71, 45 C.A. 1—Ramsay v. McCreery Estate Co., 180 P. 544, 40 C.A. 190—Mayer v. Goldman, 169 P. 412, 35 C.A. 111—Miller v. Logan, 161 P. 1022, 32 C.A. 28—Meinberg v. Jordan, 157 P. 1005, 29 C.A. 760, rehearing denied 157 P. 1007, 29 C.A. 760—Waltz v. Silveira, 145 P. 169, 25 C.A. 717—Buckley v. Marin County, 144 P. 545, 25 C.A. 577.

Conn.—Orsillo v. Russo, 156 A. 862, 113 Conn. 727—Schlag v. Paffney, 131 A. 420, 103 Conn. 683—D. A. Schulte, Inc. v. Hewitt Grocery Co., 125 A. 365, 101 Conn. 750—Shea v. Berry, 106 A. 761, 93 Conn. 475—Robinson v. Backes, 99 A. 1057, 91 Conn. 457.

Fla.—Wiggs v. Loftin, 61 So.2d 490—Geffrey v. Langston Const. Co., 58 So.2d 698—Dent v. Margaret Ann Super Markets, 52 So.2d 130—Miami Coca Cola Bottling Co. v. Mahlo, 45 So.2d 119—Edwards v. Miami Shores Village, 40 So.2d 360—Florida Coastal Theatres v. Belflower, 32 So.2d 738, 159 Fla. 741—Daley v. Mayo, 26 So.2d 820, 157 Fla. 762—Seaver v. Stratton, 183 So. 335, 133 Fla. 183—Lincoln Fire Ins. Co. of New York v. Lilleback, 178 So. 394, 130 Fla. 635—Atlantic Coast Line R. Co. v. McIlvaine, 163 So. 496, 121 Fla. 78—Kahn v. American Surety Co. of New York, 162 So. 335, 120 Fla. 50—Beckwith v. Bailey, 161 So. 576, 119 Fla. 316—City of Miami v. Bopp, 158 So. 89, 117 Fla. 532, 97 A.L.R. 1035, followed in City of Miami v. Wolfe, 158 So. 91, 117 Fla. 538—Phillips v. Garrett, 147 So. 857, 109 Fla. 435

—Duboise Const. Co. v. City of South Miami, 146 So. 833, 108 Fla. 362—Scott v. National City Bank of Tampa, 142 So. 650, 107 Fla. 818, rehearing denied 142 So. 444, 107 Fla. 818—Miami Transit Co. v. Mowrey, 138 So. 481, 103 Fla. 840—Florida East Coast Ry. Co. v. Turner, 137 So. 255, 103 Fla. 300—Zigler v. Erler Corporation, 136 So. 718, 102 Fla. 981—Woods v. Atlantic Coast Line R. Co., 130 So. 601, 100 Fla. 909—Elks Club of Tampa v. Adair, 116 So. 26, 95 Fla. 415—Town of Punta Gorda v. Charlotte Realty & Investment Co., 111 So. 631, 93 Fla. 253—Huston v. Green, 108 So. 846, 91 Fla. 434—Lockhart v. Butt-Landstreet, 107 So. 641, 91 Fla. 497—McLendon v. Lurton-Hardaker Co., 91 So. 113, 83 Fla. 263—Gravette v. Turner, 81 So. 476, 77 Fla. 311—Cheyney v. Roberts, 81 So. 475, 77 Fla. 324—Carney v. Stringfellow, 74 So. 866, 73 Fla. 700—Anthony Farms Co. v. Seaboard Air Line Ry., 67 So. 913, 69 Fla. 188—Aberson v. Atlantic Coast Line R. Co., 67 So. 44, 68 Fla. 196.

Ga.—Powell v. Palmer, 198 S.E. 753, 186 Ga. 747.

Estroff v. Gillis, 126 S.E. 304, 33 Ga.App. 354—Scarlett v. Wright, 116 S.E. 126, 29 Ga.App. 505.

Idaho.—Sanchotena v. Tower Co., 264 P.2d 1021, 74 Idaho 541—Fredricksen v. Luthy, 238 P.2d 430, 72 Idaho 164—Financial Credit Corp. v. Douglas, 230 P.2d 1002, 71 Idaho 312—Elliott v. Lee, 229 P.2d 1000, 71 Idaho 240—Egbert v. Twin Falls Canal Co., 11 P.2d 360, 52 Idaho 39—Riggs v. Smith, 11 P.2d 358, 52 Idaho 43—Marker v. McCue, 297 P. 401, 50 Idaho 462—Applebaum v. Stanton, 276 P. 47, 47 Idaho 395—Turner v. First Nat. Bank, 248 P. 14, 42 Idaho 597.

Ill.—Miller v. Interstate Bedding Co., 133 N.E.2d 773, 9 Ill.App.2d 571—McNurney v. Pointer, 124 N.E.2d 595, 5 Ill.App.2d 237—Hart v. Goebelt, 112 N.E.2d 726, 350 Ill.App. 325—Eckhardt v. Hickman, 111 N.E.2d 199, 349 Ill.App. 474, appeal dismissed 116 N.E.2d 873, 2 Ill.2d 98—Matkins v. Fenorsky, 108 N.E.2d 373, 348 Ill.App. 125—Loucks v. Pierce, 93 N.E.2d 372, 341 Ill.App. 253—Thomas v. Rossetter, 91 N.E. 2d 155, 339 Ill.App. 647—Bugdoian v. Union Trust Co. of East St. Louis, 86 N.E.2d 253, 337 Ill.App. 405—Rulison v. Sprout & Davis, 71 N.E.2d 815, 330 Ill.App. 621—Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695, 325 Ill.App. 124—Nordhaus v. Marek, 45 N.E.2d 993, 317 Ill.App. 351—Lawson v. Fisk, 45 N.E.2d 707, 316 Ill.App. 591—Brenton v. Sloan's United Storage & Van Co., 42 N.E.2d 945, 315 Ill. App. 278—Valiant v. Metropolitan Life Ins. Co., 38 N.E.2d 369, 312 Ill.App. 262—Couch v. Southern Ry. Co., 14 N.E.2d 266, 294 Ill.App. 490—Cassens v. Tillberg, 13 N.E.2d 644, 294 Ill.App. 168. See McHale v. McHale, 211 Ill.App. 400.

Ind.—Wayne Sewer & Drain Co. v. Ward-Cowan Const. Co., 143 N.E. 290, 195 Ind. 75.

Lowry v. Indianapolis Traction and Terminal Co., 126 N.E. 223, 77 Ind.App. 138.

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Corp., 72 A.2d 66, 364 Pa. 284—Streilein v. Vogel, 69 A.2d 97, 363 Pa. 379—Frank v. W. S. Losier & Co., 64 A.2d 829, 361 Pa. 272—Tupponce v. Pennsylvania R. Co., 57 A.2d 898, 358 Pa. 589—Samuels v. Johnson, 50 A.2d 670, 355 Pa. 624—Thomas v. Brohm, 47 A.2d 244, 354 Pa. 384—Cox v. Scarazzo, 44 A.2d 294, 353 Pa. 15—Bekelja v. James E. Strates Shows, 37 A.2d 502, 349 Pa. 442—Burton v. Morvay, 34 A.2d 489, 348 Pa. 113—Hoban v. Conroy, 32 A.2d 769, 347 Pa. 487—Werner v. Automobile Finance Co., 31 A.2d 898, 347 Pa. 217—Brogan v. City of Philadelphia, 29 A.2d 671, 346 Pa. 208—Brown v. George, 25 A.2d 691, 344 Pa. 399—Schonhardt v. City of Pittsburgh, 16 A.2d 421, 340 Pa. 155—Reese v. Pittsburgh Rys. Co., 9 A.2d 394, 336 Pa. 299—Girard Trust Co. v. George V. Cresson Co., 5 A.2d 221, 333 Pa. 418—Kline v. Mover, 3 A.2d 920, 333 Pa. 486—Cirquitella v. C. C. Callaghan, Inc., 200 A. 588, 331 Pa. 465—Williamson v. McCracken, 199 A. 166, 330 Pa. 254—Edwards v. Crawford, 196 A. 58, 328 Pa. 449—Reiser v. Smith, 195 A. 56, 328 Pa. 292—Isaac v. Davis, 194 A. 401, 327 Pa. 401—Frank v. Bayuk, 185 A. 705, 322 Pa. 282—Hitchay v. Phillips, 175 A. 389, 316 Pa. 290—Marko v. Mendelowski, 169 A. 99, 313 Pa. 46—Trimble v. Mennel Milling Co., 169 A. 84, 313 Pa. 188—Krick v. Fairy Silk Co., 166 A. 554, 311 Pa. 202—Krenitsky v. Kelly, 163 A. 450, 309 Pa. 234—Loftus v. Miners' Nat. Bank of Pottsville, 162 A. 227, 308 Pa. 362—Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Lynch, 162 A. 157, 308 Pa. 23—Kirkpatrick v. Smedley, 159 A. 333, 306 Pa 236—Evans v. Porter, 159 A. 21, 306 Pa. 146—Cuteri v. West Penn Rys. Co., 157 A. 686, 305 Pa. 347—Athas v. Port Pitt Brewing Co., 157 A. 677, 305 Pa. 350—Lombardo v. Barilla, 153 A. 725, 302 Pa. 460—Lawrence v. Gillespie, 151 A. 343, 300 Pa. 584—Schroeder v. Gulf Refining Co. of Port Arthur, Tex., 150 A. 665, 300 Pa. 405—Statler v. Pennsylvania R. Co., 149 A. 494, 299 Pa. 321—Riff v. Pittsburgh Rys. Co., 148 A. 102, 298 Pa. 256—Van Horn v. Philadelphia Rapid Transit Co., 145 A. 532, 295 Pa. 525—Garland v. Gordon, 144 A. 829, 295 Pa. 99—Fertax Co. v. Spiegelman, 140 A. 853, 292 Pa. 139—Dorris v. Bridgman & Co., 137 A. 609, 289 Pa. 533—March v. Philadelphia & West Chester Traction Co., 132 A. 355, 285 Pa. 413—Feite v. Goll, 131 A. 726, 285 Pa. 151—Duaine v. Gulf Refining Co., 131 A. 654, 285 Pa. 81—Rittenhouse v. Exeter Mach. Works, 129 A. 91, 283 Pa. 304—Weiss v. London Guarantee & Accident Co., 127 A. 450, 282 Pa. 127—Reist v. Wogan, 126 A. 249, 281 Pa. 107—Class & Nachod Brewing Co. v. Giacobello, 121 A. 333, 277 Pa. 530—Sloan v. Miller, 119 A. 556, 275 Pa. 452—Ferry v. Payne, 118 A. 436, 274 Pa. 466—Hess v. Gusdorff, 117 A. 671, 274 Pa. 123—Lebo v. Reading Transit & Light Co., 107 A. 687, 264 Pa. 270—Shade v. Llewellyn, 95 A. 583, 250 Pa. 456.

Waters v. Beaty, 132 A.2d 403, 183 Pa.Super. 558—Kiska v. Rosen, 124 A.2d 468, 181 Pa.Super. 506—Dura Seal Products Co. v. Carver, 124 A.2d 438, 181 Pa.Super. 377—McBride v. Yosko, 116 A.2d 313, 178 Pa.Super. 395—Jacobs v. Caldwell, 115 A.2d 872, 179 Pa.Super. 348—Sigel v. American Guarantee & Liability Ins. Co., 98 A.2d 376, 173 Pa.Super. 434—Ross v. Crisanti, 90 A.2d 299, 171 Pa.Super. 117—Kowalsky's Exp. Service v. Haverford Tp., 85 A.2d 884, 170 Pa.Super. 229—Thomas v. De Sabato, 80 A.2d 862, 168 Pa.Super. 586—Oster v. Coca Cola Bottling Co. of Philadelphia, 69 A.2d 164, 165 Pa.Super. 470—Durdella v. Rothman, 49 A.2d 64, 159 Pa.Super. 508—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa.Super. 41—Brady v. City of Philadelphia, 41 A.2d 355, 156 Pa.Super. 607—Nestor v. George, 36 A.2d 345, 154 Pa.Super. 442—Bertolet v. Lanard, 30 A.2d 630, 152 Pa.Super. 37—Gerber v. Jones, 30 A.2d 534, 151 Pa.Super. 489—National Carloading Corp. v. Lee, 28 A.2d 811, 151 Pa.Super. 23—German v. Riddle, 27 A.2d 680, 149 Pa.Super. 647—Szidor v. Greek Catholic Union of Russian Brotherhoods of U. S., 21 A.2d 104, 145 Pa.Super. 251—Hess v. Stiner, 19 A.2d 560, 144 Pa.Super. 249—Dormont Motors v. Hoerr, 1 A.2d 493, 132 Pa.Super. 567—Lasch v. Cohn, 196 A. 581, 130 Pa.Super. 161—Widson v. Philadelphia Rapid Transit Co., 182 A. 757, 120 Pa.Super. 350—Spegele v. Blumfield, 182 A. 149, 120 Pa.Super. 231—Iwankow v. Colonial Life Ins. Co. of America, 181 A. 870, 120 Pa.Super. 114—Leonard v. Houston, 180 A. 100, 118 Pa.Super. 219—Engel v. Werner, 178 A. 162, 117 Pa.Super. 498—Osgood Co. v. Emblem Oil Co., 168 A. 515, 111 Pa.Super. 38—Hilkirk v. Hughes, 157 A. 915, 103 Pa.Super. 73—Sheffield King Milling Co. v. Vasiloff, 101 Pa.Super. 482—Hill Silk Corporation v. Victoria Silk Co., 101 Pa.Super. 260—Mandel v. Freeland, 100 Pa.Super. 81—Blassotti v. Greensboro Gas Co., 96 Pa.Super. 162—Columbia Fur Co. v. Needro, 94 Pa.Super. 592—Crowl Bldg. Co. v. Beacon Match Co., 91 Pa.Super. 580—Harkai v. Pisano, 88 Pa.Super. 475—Highland Mantel & Tile Co. v. Wilson, 88 Pa.Super. 193—Electric City Motors v. Ross, 87 Pa.Super. 327—Aronson v. Mackey, 85 Pa. Super. 108—Strohlein v. J. Turner & Co., 83 Pa.Super. 465—Polish Realty Co. of Canonsburg v. Bonczek, 83 Pa.Super. 187—Ransberry v. Fulmer, 80 Pa.Super. 512—Lawver v. Anderson, 72 Pa.Super. 337—Kardon v. Forst, 70 Pa.Super. 565—Whipple v. Lewis, 69 Pa.Super. 279.

Devine v. Pocono Freight Lines, 54 Lack.Jur. 105.

R.I.—Manchester v. United Electric Rys. Co., 169 A. 921—Hamilton Co. v. Rosen, 166 A. 691, 53 R.I. 346—Normandin v. Parenteau, 150 A. 460—Miller & Warburton v. King, 144 A. 442—Frain v. Brady, 134 A. 645, 48 R.I. 24—Guertin v. Mexican Petroleum Co., 121 A. 386—Sullivan v. Hope Pub. Co., 117 A. 426—Kelly v. Rhode Island Co., 105 A. 182—Blaney v. Rhode Island Co., 103 A. 700—Rondeau v. Sayles, 100 A. 753—Wilmot v. Bartlett, 94 A. 427, 37 R.I. 568.

S.C.—Sellars v. Collins, 46 S.E.2d 176, 212 S.C. 26—Morrison v. South Carolina State Highway Department, 187 S.E. 344, 181 S.C. 258—Dantzler v. Funderburg, 123 S.E. 788, 129 S.C. 79—Watson v. Paschall, 84 S.E. 531, 100 S.C. 281.

S.D—Museus v. Geyer, 66 N.W.2d 63, 75 S.D. 381—Hylland v. Lawrenson, 47 N.W.2d 287, 73 S.D. 605—State ex rel. Sievert v. Merrigan, 46 N.W.2d 909, 73 S.D. 574—State v. Hilton, 240 N.W. 494, 59 S.D. 459—Huntly v. Younginger, 220 N.W. 530, 53 S.D. 195—Misel v. Cottonwood Live Stock & Loan Co., 205 N.W. 663, 48 S.D. 624—Davenport v. Firemen's Ins. Co. of Newark, N. J., 199 N.W. 203, 47 S.D. 426—Clarke v. Pelter, 195 N.W. 442, 46 S.D. 595—Western Surety Co. v. Boettcher, 165 N.W. 381, 39 S.D. 541—Drew v. Lawrence, 159 N.W. 274, 37 S.D. 620.

Tenn.—Gardner v. Burke, 187 S.W. 2d 25, 28 Tenn.App. 119.

Tex.—Missouri-K.-T. R. Co. v. Evans, Civ.App., 243 S.W.2d 181, reversed on other grounds 250 S.W.2d 385, 151 Tex. 340—Goodrich v. Masey, Civ.App., 227 S.W.2d 844—Citizens' Nat. Bank v. E. V. Graham & Co., Civ.App., 25 S.W.2d 636—Lambert v. Gant, Civ.App., 290 S.W. 548—Bledsoe v. Burleson, Civ.App., 289 S.W. 143, error dismissed Burleson v. Bledsoe, Com.App., 294 S.W. 516—Brown v. Tyner, Civ.App., 285 S.W. 674—Tarbutton v. Ambriz, Civ. App., 282 S.W. 891.

Utah.—Burton v. Zions Co-op. Mercantile Institution, 249 P.2d 514, 122 Utah 360—Moser v. Zion's Co-op. Mercantile Inst., 197 P.2d 136, 114 Utah 58—Utah State Nat. Bank v. Livingston, 254 P. 781, 69 Utah 284—Perrin v. Union Pac. R. Co.,

281 P. 405, 83 Utah 536, certiorari denied Union Pac. R. Co. v. Perrin, 42 S.Ct. 270, 257 U.S. 661, 66 L.Ed. 423.

Wash.—Fleenor v. Erickson, 215 P.2d 885, 35 Wash.2d 891—Costello v. Kupersmith, 183 P.2d 481, 28 Wash.2d 891—Wheeler v. Bill, 138 P.2d 857, 18 Wash.2d 196—Stuckrath v. Schwarz, 115 P.2d 974, 10 Wash.2d 1—Easton v. Chaffee, 113 P.2d 31, 8 Wash.2d 509—Trunk v. Wilkes, 297 P. 1091, 162 Wash. 114—Leach v. Erickson, 297 P. 738, 161 Wash. 473—O'Brien v. City of Seattle, 296 P. 152, 161 Wash. 25—Longmire v. King County, 271 P. 582, 149 Wash. 527—Janovich v. Northwestern Herring Co., 267 P. 37, 147 Wash. 619—Panos v. Sourwine, 251 P. 883, 142 Wash. 15—Dulchevsky v. Solomon, 241 P. 19, 136 Wash. 645—Jackson v. Mitsui & Co., 232 P. 317, 132 Wash. 395, reheard 236 P. 806, 135 Wash. 695—Piper v. Piper, 224 P. 576, 129 Wash. 72—Sutherland v. Northern Pac. Ry. Co., 214 P. 823, 124 Wash. 413—Getty v. Hutton, 188 P. 497, 110 Wash. 429—Hurd v. Wysong, 186 P. 301, 109 Wash. 202—Murray v. Star Paint & Wall Paper Co., 173 P. 721, 103 Wash. 133—Mann v. American Bonding Co. of Baltimore, Md., 170 P. 565, 100 Wash. 258—Commercial Bank of Port Huron v. Elliott, 159 P. 377, 92 Wash. 357—Pugsley v. Stebbins, 151 P. 501, 87 Wash. 187—Clark v. Ellington, 149 P. 350, 86 Wash. 110—Nordeen Iron Works v. Rucker, 145 P. 219, 83 Wash. 126—Jett v. Old Nat. Bank Bldg. Co., 140 P. 554, 79 Wash. 562, rehearing denied Jett v. Old Nat. Bank Co., 145 P. 605, 82 Wash. 374.

W.Va.—Liston v. Miller, 169 S.E. 398, 113 W.Va. 730—Pittsburgh-Wheeling Coal Co. v. Wheeling Public Service Co., 145 S.E. 272, 106 W.Va. 206—Ross v. Lake & Export Coal Corporation, 116 S.E. 155, 92 W.Va. 229—Levine Bros. v. Mantell, 111 S.E. 501, 90 W.Va. 166—Wilson v. Fleming, 109 S.E. 810, 89 W.Va. 553—Henderson v. Hazlett, 83 S.E. 907, 75 W.Va. 255.

Wis.—Schill v. Meers, 70 N.W.2d 234, 269 Wis. 653—Erickson v. Clifton, 61 N.W.2d 329, 265 Wis. 236—Flatley v. American Auto. Ins. Co., 56 N.W.2d 523, 262 Wis. 665—Alexander v. Meyers, 52 N.W.2d 881, 261 Wis. 384—Graff v. Hartford Acc. & Indem. Co., 44 N.W.2d 565, 258 Wis. 22—McCarthy v. Thompson, 40 N.W.2d 560, 256 Wis. 113—Wollangk v. Jurgela, 21 N.W.2d 272, 248 Wis. 178—Theilacker v. Time Ins. Co. of Milwaukee, 288 N.W. 813, 233 Wis. 113—Gray v. Gray, 287 N.W. 708, 232 Wis. 400—Hoffman v. Regling, 258 N.W. 347, 217 Wis. 66—Rusch v. Sentinel-News Co., 250 N.W. 405, 212 Wis. 530—Zabinski v. Novak, 248 N.W. 99, 211 Wis. 215—In re Hilgermann's Estate, 243 N.W. 753, 208 Wis. 520—Bayliss v. Clayton, 241 N.W. 329, 207 Wis. 313—Sichling v. Nash Motors Co., 238 N.W. 843, 207 Wis. 16—Fontaine v. Fontaine, 238 N.W. 410, 205 Wis. 570—Crombie v. Powers, 227 N.W. 278, 200 Wis. 299—Colla v. City of Racine, 217 N.W. 297, 194 Wis. 501—Stockhausen v. Oehler, 211 N.W. 287, 191 Wis. 403—Edwards v. Milwaukee Electric Ry. & Light Co., 210 N.W. 686, 191 Wis. 328—Schmidt v. Chicago & N. W. Ry. Co., 210 N.W. 370, 191 Wis. 184—Naus v. Chicago & M. Electric Ry. Co., 201 N.W. 281, 185 Wis. 178—Welch v. Morton Salt Co., 184 N. W. 678, 175 Wis. 415.

Wyo.—Bales v. Brome, 84 P.2d 714, 53 Wyo. 370—Elliott v. Sloan, 266 P. 1059, 38 Wyo. 276.

4 C.J. p 830 note 45.

First grant

Ga.—Law v. Hodges, 185 S.E. 584, 53 Ga.App. 319.

Second grant

(1) Since presumption of legality of grant weakens on each concurrent verdict and a second and third grant should be more closely scrutinized, reviewing court must carefully investigate to determine if discretion to grant second or third new trial has been justly, wisely, and prudently exercised.

Ga.—Ansley v. Atlantic Coast Line R. Co., 71 S.E.2d 434, 86 Ga.App. 152.

(2) After grant of one new trial, subsequent grant will be closely examined to see that discretion has been wisely exercised, with due regard to realization of superior opportunity of juries to ascertain facts and of necessity eventually to end litigation; second grant of new trial will be affirmed, not only where verdict was not supported by evidence, but where supporting evidence was unsatisfactory and decided preponderance was on side of losing party.

Ga.—Allen v. Southern Ins. Securities Corp., 187 S.E. 714, 54 Ga.App. 316.

Motion of parties or trial court

Kan.—Moon v. Theo W. Lord, Inc., 238 P.2d 506, 172 Kan. 139.

Pa.—Dempsey v. First Nat. Bank of Scranton, 46 A.2d 160, 353 Pa. 473—Trerotola v. City of Philadelphia, 29 A.2d 788, 346 Pa. 222.

Gerber v. Jones, 30 A.2d 534, 151 Pa.Super. 489.

Question for review

(1) Generally.

Cal.—Woods v. Walker, 136 P.2d 72, 57 C.A.2d 968—Roma Wine Co. v. Hardware Mut. Fire Ins. Co. of Minnesota, 88 P.2d 260, 31 C.A.2d 455.

Mo.—Reece v. Jefferson Transp. Co., App., 160 S.W.2d 789.

Pa.—Morse Boulger Destructor Co. v. Arnoni, 101 A.2d 705, 376 Pa. 57.

Werner v. Aunkst, 115 A.2d 416, 178 Pa.Super. 404—Ellerbe v. Steinman, 58 A.2d 202, 162 Pa.Super. 440—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa.Super. 41—Bunn v. Furstein, 34 A.2d 924, 153 Pa. Super. 637.

(2) Reviewing court has duty to review grant of new trial and determine whether there has been an abuse of discretion.

Pa.—Millenson v. City Stores Co., 114 A.2d 80, 382 Pa. 39—Wilt v. Blazier, 114 A.2d 111, 382 Pa. 143—Londrino v. Equitable Life Assur. Soc. of the U. S., 105 A.2d 333, 377 Pa. 543—Decker v. Kulesza, 85 A.2d 413, 369 Pa. 259.

(3) Appellate court considers only whether under evidence trial court had sufficient ground to exercise its discretion and, if so, whether it abused that discretion.

N.D.—McDermott v. Sway, 50 N.W.2d 235, 78 N.D. 521.

Wash.—Coppo v. Van Wieringen, 217 P.2d 294, 36 Wash.2d 120.

(4) Appellate review is confined to examination of reasons assigned for award of new trial to determine whether court below properly exercised judicial discretion.

Pa.—Elser v. Union Paving Co., 74 A.2d 529, 167 Pa.Super. 62.

(5) Reasons which impel trial court to exercise discretion are unimportant to court of appeals, only question for determination being whether court abused its discretion.

Ga.—Carter v. Powell, 195 S.E. 466, 57 Ga.App. 360.

Reason for rule

(1) Trial judge who sees and hears the witnesses is far better able to decide what weight should be given their testimony, and as to what is proper course to be pursued.

Pa.—Kline v. Thornton, 200 A. 88, 331 Pa. 71.

(2) The granting of a new trial does not finally dispose of a controversy.

Cal.—Townsend v. Gonzalez, App., 309 P.2d 878.

Test of abuse of discretion

(1) In determining whether discretion was abused, test is not how reviewing court might have acted under circumstances but whether trial court in performing challenged act exceeded bounds of reason.

Ariz.—Bradley v. Philhower, 299 P. 2d 648.

(2) It must appear that judgment of court is not justified and is clearly against reason and evidence and is not merely error of judgment.

Ohio.—State v. Wright, 17 N.E.2d 428, 59 Ohio App. 191, reversed on other grounds 20 N.E.2d 229, 135 Ohio St. 187.

viewing court will not lightly set aside an order granting a new trial;[80.5] rather, it is liberal in sustaining such action of the trial court,[80.10] except where the trial court has clearly abused its discretion or its ruling is plainly erroneous, especially as a matter of law.[80.15] It has also been held that the granting of a new trial is so much within the discretion of a trial court that, to warrant a reversal of the order, appellant must clearly establish error with respect to some pure, simple, and unmixed question of law,[80.20] and it must appear that the order was based wholly thereon.[80.25]

Similarly, the exercise of discretion will not be reviewed unless the trial court makes it clearly appear that the reasons set forth in its opinion are the only ones which moved it to grant a new trial,[80.30] or unless the trial judge files a certificate with the appellate court to that effect;[80.35] the statement of the trial court, in granting the motion, that it deemed a retrial necessary in the interest of justice forecloses further inquiry, where no abuse of discretion is shown.[80.40] An appellate court will not examine the validity of the reasons expressed by the trial court for granting a new trial where there was clearly a proper exercise of judicial discretion.[80.45]

The rules above set forth with respect to the review of rulings on a motion for a new trial are also applicable where the new trial or rehearing which is sought has been denied.[81] Generally, also, the

(3) "Abuse of discretion," which will authorize reversal of grant of new trial in face of motion for judgment on special verdict, connotes something more than error of law or of judgment and contemplates a view or action that no conscientious judge, acting intelligently, could honestly have taken.
Ohio.—Globe Indem. Co. v. Schmitt, 68 N.E.2d 130, 77 Ohio App. 413.

(4) Where appellants failed to show that trial court was induced by no tenable ground, supreme court could not say that trial court abused its discretion.
Neb.—Nesmith v. Clarke, 280 N.W. 429, 135 Neb. 117.

80.5 Fla.—Rollins v. Katzen, 77 So. 2d 791.

80.10 Mo.—Stroh v. Johns, 264 S.W. 2d 304—Mavrakos v. Mavrakos Candy Co., 223 S.W.2d 383, 359 Mo. 649—De Maire v. Thompson, 222 S. W.2d 93, 359 Mo. 457—Zesch v. Abrasive Co. of Philadelphia, 183 S.W.2d 140, 353 Mo. 558, 156 A.L.R. 469—Murphy v. Kroger Grocery & Baking Co., 171 S.W.2d 610, 350 Mo. 1186—Carlisle v. Tilghmon, 159 S.W.2d 663—Reichmuth v. Adler, 155 S.W.2d 181, 348 Mo. 812—Arnold v. Alton R. Co., 124 S.W.2d 1092, 343 Mo. 1049.
State ex rel. State Highway Commission v. Flynn, App., 263 S.W.2d 854—Bray v. St. Louis-San Francisco Ry. Co., App., 236 S.W.2d 758—Wormington v. City of Overland, App., 224 S.W.2d 590—Stark v. St. Louis Public Service Co., App., 211 S.W.2d 500—Schreiner v. City of St. Louis, App., 203 S.W.2d 678—Reece v. Jefferson Transp. Co., App., 160 S.W.2d 789.

Greater liberality than in reversing
Where a trial court sustains a motion, appellate court may be more liberal in upholding action of court than it would be in reversing judgment on same ground.
Mo.—Warren v. Kansas City, 258 S. W.2d 681—Tennison v. St. Louis-San Francisco Ry. Co., 228 S.W.2d 718—Venditti v. St. Louis Public Service Co., 226 S.W.2d 599, 360 Mo. 42—Teague v. Plaza Exp. Co., 205 S.W.2d 563, 356 Mo. 1186.
Hicks v. Shanabarger, App., 236 S.W.2d 49—Martin v. Martinous, App., 219 S.W.2d 667.

80.15 Mo.—Jarboe v. Kansas City Public Service Co., 220 S.W.2d 27, 359 Mo. 8.

80.20 Kan.—Bishop v. Huffman, 262 P.2d 948, 175 Kan. 270—Schroeder v. Texas Co., 219 P.2d 1063, 169 Kan. 607—Bateman v. Roller, 211 P.2d 440, 168 Kan. 111.

80.25 Okl.—Montgomery Ward & Co. v. Curtis, 155 P.2d 248, 195 Okl. 48—Kansas City Southern Ry. Co. v. Ware, 117 P.2d 123, 189 Okl. 345—Kansas City Life Ins. Co. v. Meador, 98 P.2d 20, 186 Okl. 397—Mead v. Snapp, 68 P.2d 771, 180 Okl. 214—A. & A. Taxicab Co. v. McCain, 66 P.2d 17, 179 Okl. 492—Gorton v. Manning, 65 P.2d 1211, 179 Okl. 415—Oklahoma City v. Caple, 62 P.2d 1025, 178 Okl. 296.

80.30 Pa.—Long v. Schumacher, 20 A.2d 765, 342 Pa. 356—Reese v. Pittsburgh Rys. Co., 9 A.2d 394, 336 Pa. 299—Plazak v. Allegheny Steel Co., 188 A. 130, 324 Pa. 422—Andrzejewski v. Prudential Ins. Co., 184 A. 51, 321 Pa. 543—Lawrence v. Gillespie, 151 A. 343, 300 Pa. 584.
Ellerbe v. Steinman, 58 A.2d 202, 162 Pa.Super. 440—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa.Super. 41—Lasch v. Cohn, 196 A. 581, 130 Pa.Super. 161.

Erroneous reason
Pa.—Dellacasse v. Floyd, 2 A.2d 860, 332 Pa. 218.

Reason seemingly insufficient or invalid
Pa.—Streilein v. Vogel, 69 A.2d 97, 363 Pa. 379.

Equivalent statement
Opinion of lower court that only those reasons which were directed at excessiveness of verdict had real merit was equivalent to statement that new trial was granted for such reasons alone.
Pa.—Culver v. Lehigh Valley Transit Co., 186 A. 70, 322 Pa. 503.

Limited scope of opinion insufficient as statement
Fact that opinion referred to only one question or to single point in case will not be treated as conclusive proof that point or question thus accentuated controlled entry of order appealed from.
Pa.—Mozino v. Canuso, 120 A.2d 300, 384 Pa. 220—Class v. Nachod Brewing Co. v. Giacobello, 121 A. 333, 277 Pa. 530.

Review of reasons given
Appellate court will not review order unless lower court states that it would have refused such order but for reasons distinctly set forth which, in lower court's opinion, control whole case, and, in such situation, court will review reasons given only when such reasons do not involve the consideration of oral evidence further than as to legal effect of such evidence in some isolated and all-controlling particular wherein verity of evidence is admitted.
Pa.—Bertolet v. Lanard, 30 A.2d 630, 152 Pa.Super. 37.

80.35 Pa.—Long v. Schumacher, 20 A.2d 765, 342 Pa. 356—Reese v. Pittsburgh Rys. Co., 9 A.2d 394, 336 Pa. 299.

80.40 Pa.—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa.Super. 41.

80.45 Pa.—Tupponce v. Pennsylvania R. Co., 57 A.2d 898, 358 Pa. 589.

81. Ala.—Taylor v. Brownell-O'Hear Pontiac Co., 91 So.2d 828—Wainwright v. Anderton, 119 So. 861, 218 Ala. 623—Pasquale v. Francis,

98 So. 568, 210 Ala. 590—Chenault v. Milan, 87 So. 537, 205 Ala. 310.

Lassetter v. King, 31 So.2d 586, 33 Ala.App. 204, certiorari denied 31 So.2d 588, 249 Ala. 422—Fowlkes v. Lewis, 65 So. 724, 10 Ala.App. 543.

Cal.—Placke v. Pinnell, 70 P.2d 618, 9 C.2d 260—Lucci v. United Credit & Collection Co., 31 P.2d 369, 220 C. 492—Paddon v. Paddon, 28 P.2d 669, 219 C. 665.

Dunford v. General Water Heater Corp., App., 309 P.2d 958—Long v. Newlin, 301 P.2d 271, 144 C.A.2d 509—Silver v. Schwartz, 297 P.2d 1018, 142 C.A.2d 92—Freeman v. Jergins, 271 P.2d 210, 125 C.A.2d 536—Thomasset v. Thomasset, 264 P.2d 626, 122 C.A.2d 116—In re Reihs' Estate, 227 P.2d 564, 102 C.A.2d 260, appeal dismissed Weinmann v. McGrath, 72 S.Ct. 52, 342 U.S. 804, 96 L.Ed. 609, rehearing denied 72 S.Ct. 173, 342 U.S. 889, 96 L.Ed. 667—People v. Vinson, 221 P.2d 161, 99 C.A.2d 100—Koon v. Sher, 220 P.2d 784, 98 C.A.2d 530—Rather v. City and County of San Francisco, 184 P.2d 727, 81 C.A.2d 625—Balkwill v. City of Stockton, 123 P.2d 596, 50 C.A.2d 661—Maffeo v. Holmes, 117 P.2d 948, 47 C.A.2d 292—Moore v. Franchetti, 70 P.2d 492, 22 C.A.2d 75—Strauch v. Bieloh, 60 P.2d 582, 16 C.A.2d 278—Coppock v. Pacific Gas & Electric Co., 30 P.2d 549, 137 C.A. 80—Bennington v. National Packing Co., 9 P.2d 857, 122 C.A. 313—O'Nellion v. Haynes, 9 P.2d 853, 122 C.A. 329—In re Ganes' Estate, 299 P. 550, 114 C.A. 17—Bradbury Estate Co. v. Carroll, 276 P. 394, 98 C.A. 145—Zolkover v. Pacific Electric Ry. Co., 254 P. 926, 81 C.A. 772.

Conn.—Masi v. General Ice Cream Corporation, 180 A. 455, 120 Conn. 259—Argazzi v. Reynolds, 137 A. 857, 106 Conn. 281—Flynn v. Flynn, 136 A. 383, 105 Conn. 628—Bemis v. Plant, 106 A. 764, 93 Conn. 554.

Del.—Universal Products Co. v. Emerson, 179 A. 387, 6 W.W.Harr. 553, 100 A.L.R. 956.

Fla.—Mead v. Bentley, 61 So.2d 428.

Ga.—Sumner v. Sumner, 197 S.E. 833, 186 Ga. 390—White v. White, 187 S.E. 31, 182 Ga. 774—Kimsey v. Rogers, 157 S.E. 462, 172 Ga. 175—Kinsman v. Kinsman, 133 S.E. 860, 162 Ga. 326—McGriff v. McGriff, 115 S.E. 21, 154 Ga. 560—Chambers v. Netherland, 88 S.E. 545, 145 Ga. 52—Jett v. Lord, 86 S.E. 1092, 144 Ga. 234—Spell v. Johnson, 82 S.E. 663, 142 Ga. 242.

Adams v. Worley, 75 S.E.2d 682, 87 Ga.App. 892—Saul Klenberg Co. v. Mrozinski, 50 S.E.2d 247, 78 Ga. App. 59—Gilpin v. Swainsboro Ice & Fuel Co., 44 S.E.2d 168, 75 Ga. App. 574—Wootten v. Braswell, 172 S.E. 679, 48 Ga.App. 312—Haas v. Jaffe, 163 S.E. 226, 45 Ga.App. 11—Brannen v. Riggs, 140 S.E. 515, 37 Ga.App. 356, affirmed 146 S.E. 169, 167 Ga. 493—Davis v. Jones, 129 S.E. 892, 34 Ga.App. 7—Edenfield v. Youmans, 126 S.E. 908, 33 Ga. App. 430—Heaton v. Puckett, 121 S.E. 131, 31 Ga.App. 526—Golightly v. Reeves, 119 S.E. 432, 30 Ga. App. 785—Holder v. Farmers' Exch. Bank of Stillmore, 118 S.E. 467, 30 Ga.App. 400—Grimes v. Murray, 92 S.E. 1007, 20 Ga.App. 264—Freeman v. Lyle, 88 S.E. 714, 17 Ga. App. 818—Seaboard Air Line Ry. v. Blackwell, 85 S.E. 686, 16 Ga. App. 504, reversed on other grounds 37 S.Ct. 640, 244 U.S. 310, 61 L.Ed. 1160, L.R.A.1917F 1184—Rome Scale & Mfg. Co. v. Harvey, 83 S.E. 434, 15 Ga.App. 381—Baker v. Purvis, 82 S.E. 251, 4 Ga.App. 718.

Idaho.—Sanchotena v. Tower Co., 264 P.2d 1021, 74 Idaho 541—Cook v. Saltzer, 257 P.2d 228, 74 Idaho 97—Fredricksen v. Luthy, 238 P.2d 430, 72 Idaho 164—Elliott v. Lee, 229 P.2d 1000, 71 Idaho 242—Inland Empire Refineries v. Jones, 206 P.2d 519, 69 Idaho 335—McCoy v. Krengel, 17 P.2d 547, 52 Idaho 626—Ross v. Swearingen, 225 P. 1021, 39 Idaho 35—Caravelis v. Cacavas, 220 P. 110, 38 Idaho 123.

Ind.—Beard v. Link, 141 N.E. 792, 81 Ind.App. 293.

Iowa.—Curnett v. Wolf, 57 N.W.2d 915, 244 Iowa 683—Tutt v. Smith, 212 N.W. 127, 202 Iowa 1389.

Kan.—Bateman v. Roller, 211 P.2d 440, 168 Kan. 111—Behymer v. Milgram Food Stores, 101 P.2d 912, 151 Kan. 921.

Ky.—Carr v. Brownfield, 255 S.W.2d 623—Gray v. Sawyer, 247 S.W.2d 496—Benberry v. Cole, 246 S.W.2d 1020—Crouch v. O'Banion, 174 S.W. 3, 163 Ky. 581.

La.—DeFrances v. Gauthier, 55 So. 2d 896, 220 La. 145.

White v. Morehouse Parish Police Jury, App., 95 So.2d 356.

Md.—Globe Home Imp. Co. v. McCarty, 105 A.2d 216, 204 Md. 513—Bradley v. Bradley, 91 A. 685, 123 Md. 506.

Mass.—Alden v. Norwood Arena, 124 N.E.2d 505, 332 Mass. 267—Souza v. Souza, 90 N.E.2d 572, 325 Mass. 761—Donahue v. Dal, Inc., 50 N.E. 2d 207, 314 Mass. 460—Palmer v. Wadsworth, 161 N.E. 621, 264 Mass. 18—Costello v. Hayes, 144 N.E. 368, 249 Mass. 349—M. McDonough Co. v. Lennox, 143 N.E. 346, 248 Mass. 421—Walker v. Russell, 134 N.E. 388, 240 Mass. 386—Murray v. Liebmann, 120 N.E. 79, 231 Mass. 7—Gavin v. Durden Coleman Lumber Co., 118 N.E. 897, 229 Mass. 576—Wright v. Maynard Corset Co., 118 N.E. 654, 229 Mass. 343—Raymond v. Flint, 114 N.E. 811, 225 Mass. 521.

Mich.—Kellom v. City of Ecorse, 45 N.W.2d 293, 329 Mich. 303—Manczel v. Weiss, 213 N.W. 76, 238 Mich. 178—Jolman v. Alberts, 158 N.W. 886, 192 Mich. 365—Minds v. Keyes, 155 N.W. 493, 189 Mich. 629—Perkins v. Perkins, 147 N.W. 555, 181 Mich. 166.

Minn.—Shastid v. Shue, 77 N.W.2d 273, 247 Minn. 314.

Mo.—York v. Daniels, 259 S.W.2d 109, 241 Mo.App. 809—Wiener v. Mutual Life Ins. Co. of New York, App., 170 S.W.2d 174, transferred, see, 179 S.W.2d 39, 352 Mo. 673.

Mont.—Bank of Commerce, Forsyth v. U. S. Fidelity & Guaranty Co., 194 P. 158, 58 Mont. 236.

Neb.—Felton v. Moffett, 45 N.W. 930, 29 Neb. 582.

N.H.—Ricard v. Prudential Ins. Co. of America, 173 A. 375, 87 N.H. 31, 93 A.L.R. 784.

N.J.—Locks Laboratories v. Bloomfield Molding Co., 114 A.2d 457, 35 N.J.Super. 422.

Fellerman v. Byrnes, 49 A.2d 478, 134 N.J.Law 568—Hartley v. Newark Morning Ledger Co., 46 A. 2d 777, 134 N.J.Law 217—Cook Coffee Co. v. Ewell, 24 A.2d 572, 128 N. J.Law 210—Albrecht v. Raab, 22 A. 2d 339, 127 N.J.Law 292—Heuser v. Rothenberg, 8 A.2d 391, 123 N.J. Law 319—Loughney v. Thomas, 196 A. 460, 119 N.J.Law 341.

Gulvin v. Sunshine Park, 44 A.2d 75, 137 N.J.Eq. 249.

N.C.—Crane v. Carswell, 166 S.E. 746, 203 N.C. 555—Rankin v. Oates, 112 S.E. 32, 183 N.C. 517.

N.D.—State v. Hought, 229 N.W. 371, 59 N.D. 301—Salewski v. Minneapolis, St. P. & S. S. M. Ry. Co., 181 N.W. 72, 47 N.D. 64.

Ohio.—Klarman v. Snyder, App., 123 N.E.2d 65.

Okl.—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845—Cooke v. Townley, 265 P.2d 1108—Petite v. Davis, 223 P.2d 1082, 203 Okl. 547—Parkhill Truck Co. v. Ok-Tex Drilling Co., 100 P.2d 863, 187 Okl. 50—Sinopoulo Oil Co. v. Bell, 160 P. 448, 61 Okl. 93.

Or.—Newbern v. Exley Produce Exp., Inc., 303 P.2d 231—State ex rel. Kunz v. Woodmansee, 69 P.2d 298, 156 Or. 607—Henry v. Postal Telegraph Co., 197 P. 258, 100 Or. 179.

Pa.—Braughler v. Commonwealth, 131 A.2d 341, 388 Pa. 573—Gaita v. Pamula, 122 A.2d 63, 385 Pa. 171—Koenig v. Flaherty, 117 A.2d 719, 383 Pa. 187—Pennsylvania R. Co. v. Sun Oil Co., 119 A.2d 221, 383 Pa. 537—Barrows v. Allum, 66 A. 2d 66, 361 Pa. 624—Buchanan v. Belusko, 65 A.2d 386, 361 Pa. 465—Malitovsky v. Harshaw Chemical Co., 61 A.2d 846, 360 Pa. 279—Huntzinger v. Wileman, 45 A.2d 7, 353 Pa. 274—Foley v. Reading Co., 35 A.2d 315, 348 Pa. 485—Nicholson v. Feagley, 14 A.2d 122, 339

rules are applicable and controlling whether the new trial is granted or denied as to all or only as to a part of the issues.[82]

Pa. 313—Greiner v. Commonwealth, 6 A.2d 67, 334 Pa. 299—Nark v. Horton Motor Lines, 1 A.2d 655, 331 Pa. 550—Murray v. City of Clairton, 191 A. 618, 326 Pa. 180—Dillon v. Pittsburgh Rys. Co., 188 A. 106, 324 Pa. 340—Fischer v. Commercial Nat. Bank, 184 A. 57, 321 Pa. 200—Coyne v. John Gibbons Coal Co., 172 A. 653, 314 Pa. 502—Hornick v. Bethlehem Mines Corporation, 165 A. 36, 310 Pa. 225—Casey v. Siciliano, 165 A. 1, 310 Pa. 238—Limper v. Philadelphia Electric Co., 146 A. 574, 297 Pa. 204—Moraski v. Philadelphia Rapid Transit Co., 142 A. 276, 293 Pa. 224—Hunter v. Pope, 137 A. 731, 289 Pa. 560—Kingan v. Duquesne Light Co., 135 A. 253, 287 Pa. 280—McIntyre v. Quaker City Cab Co., 129 A. 112, 283 Pa. 395—Tate-Jones & Co. v. Union Electric Steel Co., 126 A. 813, 281 Pa. 448—Ehmling v. D. L. Ward Co., 124 A. 181, 279 Pa. 527—Hawkins v. Director General of Railroads, 121 A. 46, 277 Pa. 213—Whitcomb v. City of Philadelphia, 107 A. 765, 264 Pa. 277—Camp v. Allegheny County, 106 A. 314, 263 Pa. 276—De Haas v. Pennsylvania R. Co., 104 A. 733, 261 Pa. 499—Walker v. Walker, 98 A. 890, 254 Pa. 220—First Nat. Bank of Mifflintown v. First Nat. Bank of New Kensington, 92 A. 1076, 247 Pa. 40.

Brunetto v. Ferrara, 76 A.2d 448, 167 Pa.Super. 568—Coles v. Sutphen, 75 A.2d 623, 167 Pa.Super. 457—Stadham Co. v. Century Indem. Co., 74 A.2d 511, 167 Pa.Super. 268—De Feo v. Di Bacco, 60 A.2d 597, 162 Pa.Super. 608—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa.Super. 41—Ondo v. Greek Catholic Union of Russian Brotherhoods of U. S. A., 38 A.2d 370, 155 Pa.Super. 492—Hahn v. Hahn, 4 A.2d 821, 135 Pa. Super. 39—Oakley v. Allegheny County, 193 A. 316, 128 Pa.Super. 8—Owens v. Peters, 191 A. 399, 126 Pa.Super. 501—Calvey Motor Co. v. Coyer, 184 A. 281, 121 Pa.Super. 509—Osgood Co. v. Emblem Oil Co., 168 A. 515, 111 Pa.Super. 38—Simner v. McHugh, 87 Pa.Super. 58—McCloskey v. Petersen Motors, Inc., 80 Pa.Super. 132—Swartz v. Stein & Levy, 78 Pa.Super. 515—Brasington v. McManus, 74 Pa.Super. 127—Love v. Tioga Trust Co., 71 Pa.Super. 279—Frank v. American Bond & Mortgage Co., 70 Pa. Super. 478—F. H. Groves Piano Co. v. Dalton Adding Mach. Co., 64 Pa. Super. 189—Bogh v. Wilmer & Vincent Theatre Co., 62 Pa.Super. 1.

Valentine v. Seigfried, Com.Pl., 41 Sch.Leg.Rec. 145.

R.I.—Parenteau v. Parenteau, 153 A. 872, 51 R.I. 263—Edward Wilkinson & Co. v. Universal Safety Ash Tray Co., 133 A. 658.

S.C.—Driggers v. Atlantic Coast Line R. Co., 148 S.E. 889, 151 S.C. 164, reversed on other grounds Atlantic Coast Line R. Co. v. Driggers, 49 S.Ct. 490, 279 U.S. 787, 73 L.Ed. 957—De Shields v. Insurance Co. of North America, 118 S.E. 817, 125 S.C. 457.

S.D.—State ex rel. Sievert v. Merrigan, 46 N.W.2d 909, 73 S.D. 574—Walker v. Sorenson, 265 N.W. 589, 64 S.D. 143.

Tenn.—Travis v. Bacherig, 7 Tenn. App. 638.

Tex.—Hall v. Great Nat. Lloyds, 275 S.W.2d 88, 154 Tex. 200.

Griffin v. Duty, Civ.App., 286 S.W.2d 229—Korkmas v. Womack, Civ.App., 132 S.W.2d 629, error dismissed, judgment correct—Sovereign Camp, W. O. W. v. Shires, Civ. App., 44 S.W.2d 812—Dunlap v. Adams, Civ.App., 269 S.W. 1093.

Utah.—Burton v. Zions Co-op. Mercantile Institution, 249 P.2d 514, 122 Utah 360—Moser v. Zion's Co-op. Mercantile Inst. 197 P.2d 136, 114 Utah 58—Moulton v. Staats, 27 P.2d 455, 83 Utah 197—Salt Lake Inv. Co. v. Stoutt, 180 P. 182, 54 Utah 100.

Vt.—Macauley v. Hyde, 42 A.2d 482, 114 Vt. 198—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91.

Wash.—Danz v. Shyvers, 293 P.2d 772, 48 Wash.2d 319—Feeley v. E. R. Butterworth & Sons, 259 P.2d 393, 42 Wash.2d 837—Fleenor v. Erickson, 215 P.2d 885, 35 Wash. 2d 891—Rooker v. Alaska S. S. Co., 53 P.2d 295, 185 Wash. 71—Cole v. Koeh, 38 P.2d 1053, 180 Wash. 205—Paul v. Enquist, 31 P.2d 96, 177 Wash. 226—Ohlson v. Sawbridge, 287 P. 206, 156 Wash. 430—Eyak River Packing Co. v. Parks, 269 P. 807, 148 Wash. 495—M. E. Smith & Co. v. Hanson, 234 P. 462, 133 Wash. 574—Johnson v. City of Seattle, 224 P. 1, 128 Wash. 666—Welch v. Petley, 154 P. 145, 89 Wash. 254—Pierce v. Seattle Electric Co., 138 P. 666, 78 Wash. 167, reheard 145 P. 228, 83 Wash. 141.

4 C.J. p 830 note 45—39 C.J. p 1259 note 99 [a] (1).

Trial by court

Ga.—Petkas v. Wright Co., 73 S.E.2d 224, 87 Ga.App. 189.

Question on review

(1) Generally.

Del.—Pitts v. White, 109 A.2d 786, 10 Terry 78.

N.D.—Mann v. Policyholders' Nat. Life Ins. Co., 51 N.W.2d 853, 78 N. D. 724.

(2) Supreme Court's only function, on appeal from order denying motion, is to determine whether discretion was abused.

S.D.—Johnson v. Olson, 26 N.W.2d 132, 71 S.D. 486.

(3) Inquiry of appellate court is not whether on the record a new trial apparently might have been properly granted, but whether refusal involved violation of clear legal right or manifest abuse of judicial discretion.

Minn.—Austin v. Rosecke, 61 N.W.2d 240, 240 Minn. 321—Skog v. Pomush, 17 N.W.2d 641, 219 Minn. 322—Vietor v. Costello, 279 N.W. 743, 203 Minn. 41.

(4) Question raised was whether there was an abuse of discretion, and abuse of discretion could be said to exist only when refusal became a shock to reason and justice.

N.J.—Shirk v. Walters, 59 A.2d 829, 137 N.J.Law 319.

(5) In determining question of abuse of discretion, great weight is due to conclusions of trial court.

Conn.—Lee v. Horrigan, 98 A.2d 909, 140 Conn. 232.

(6) On review, testimony will be read only to ascertain whether discretion was abused.

Pa.—Bickerton v. Tanney, 74 A.2d 760, 167 Pa.Super. 219—Holt v. Pariser, 54 A.2d 89, 161 Pa.Super. 315.

Denial of second new trial

Where a case was submitted to a jury and resulted in a verdict for plaintiff, and the trial court awarded a new trial, upon which the same result was reached, refusal of another new trial is so largely a matter of discretion in the court below that it will not be reviewed except in a clear case of abuse of discretion which was held not shown under the circumstances.

Pa.—Kirk Johnson & Co. v. Fishman, 81 Pa.Super. 576.

82. Cal.—Uhl v. Baldwin, App., 302 P.2d 841—Provost v. Worrall, 298 P.2d 726, 142 C.A.2d 367—Crandall v. McGrath, 124 P.2d 858, 51 C.A. 2d 438—Amore v. Di Resta, 13 P. 2d 986, 125 C.A. 410.

Kan.—Parker v. Allen, 233 P.2d 514, 171 Kan. 360—Brokmann v. Lawson, 232 P. 601, 117 Kan. 386.

N.J.—Robinson v. Payne, 122 A. 882, 99 N.J.Law 135.

N.C.—Campbell v. Model Steam Laundry, 130 S.E. 638, 190 N.C. 649.

Va.—Barnes v. Ashworth, 153 S.E. 711, 154 Va. 218.

Test of abuse of discretion

Abuse of discretion in limiting scope of new trial appears when

Appellate courts tend to encourage the exercise of discretion in favor of the grant of new trials, and to discourage appeals therefrom.[83] Orders granting new trials stand on a firmer foundation than orders denying them;[83.5] the reason for discriminating in favor of grants of new trials is that they are not decisive of the case, but only open the way for a reinvestigation of the entire case on its facts and merits.[83.10] Appellate courts are more liberal in sustaining an order granting a new trial than one denying it,[83.15] and an order granting a new trial is considered more favorably than one denying it,[83.20] since an order granting a new trial never finally disposes of the rights of the parties, while a denial thereof may dispose of their rights.[83.25] So, an appellate court will interfere more readily where a trial court refuses to grant a new trial than where it does grant it;[83.30] the grant of a new trial is more reluctantly interfered with than a denial thereof, and a much stronger showing is necessary to obtain a reversal where a new trial is granted than where it is denied,[84] ex-

damages are inadequate, record discloses that issue of liability is close, and other circumstances indicate that verdict was probably result of prejudice, sympathy, or compromise, or that liability issue was not actually determined.

Cal.—Rose v. Melody Lane of Wilshire, 247 P.2d 335, 39 C.2d 481—Leipert v. Honold, 247 P.2d 324, 39 C.2d 462, 29 A.L.R.2d 1185.

Black v. Kiefer, 273 P.2d 537, 127 C.A.2d 122.

83. Ill.—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill. App. 269, 285.

Pa.—Widson v. Philadelphia Rapid Transit Co., 182 A. 757, 120 Pa. Super. 350.

4 C.J. p 831 note 46.

83.5 N.D.—Crossen v. Rognlie, 68 N. W.2d 110.

Reason for rule

Order granting new trial is not decisive of case, but merely opens way for reinvestigation of entire issue on merits.

N.D.—Durick v. Winters, 296 N.W. 744, 70 N.D. 592.

83.10 N.D.—Crossen v. Rognlie, 68 N.W.2d 110.

83.15 Ariz.—Sadler v. Arizona Flour Mills Co., 121 P.2d 412, 58 Ariz. 486.

Idaho.—Sanchotena v. Tower Co., 264 P.2d 1021, 74 Idaho 541.

Mo.—Woodworth v. Kansas City Public Service Co., 274 S.W.2d 264—Girratono v. Kansas City Public Service Co., 272 S.W.2d 278—James v. La Mear, 194 S.W.2d 915—Schierloh v. Brashear Freight Lines, 148 S.W.2d 747—Reich v. Thompson, 142 S.W.2d 486, 346 Mo. 577, 129 A.L.R. 795—Castorina v. Herrmann, 104 S.W.2d 297, 340 Mo. 1026—Lamb v. Feehan, 276 S.W. 71.

In re Reichelt's Estate, App., 179 S.W.2d 119—Buchanan v. Scott County Milling Co., App., 157 S.W. 2d 810—Æolian Co. of Missouri v. Boyd, App., 138 S.W.2d 692—Pearce v. Rogers, App., 15 S.W.2d 874.

Neb.—Nesmith v. Clarke, 280 N.W. 429, 135 Neb. 117—Bonacci v. Cerra, 279 N.W. 314, 134 Neb. 588—Clausen v. Omaha Loan & Building Ass'n, 269 N.W. 517, 131 Neb. 666—De Matteo v. Lapidus, 218 N. W. 379, 116 Neb. 549.

Okl.—Levi v. Oklahoma City, 179 P. 2d 465, 198 Okl. 414.

W.Va.—Browning v. Monongahela Transp. Co., 27 S.E.2d 481, 126 W. Va. 195.

Reason for rule

Power of trial court to grant new trial is exercise of judicial discretion and may be based in part on matters not known to appellate court.

Mo.—Masters v. Sun Mfg. Co., 165 S. W.2d 701, 237 Mo.App. 240.

Rule inapplicable where reason for grant not specified

Mo.—Missouri Crooked River Backwater Levee Dist. of Ray County v. Merrifield, 218 S.W.2d 110, 358 Mo. 915.

83.20 N.D.—Felix v. Lehman, 20 N. W.2d 82, 74 N.D. 125.

83.25 Ariz.—Sadler v. Arizona Flour Mills Co., 121 P.2d 412, 58 Ariz. 486.

83.30 Iowa.—Rudolph v. Davis, 26 N.W.2d 231, 238 Iowa 474—Maland v. Tesdall, 5 N.W.2d 327, 232 Iowa 959—Hupp v. Doolittle, 285 N.W. 247, 226 Iowa 814—White v. Zell, 276 N.W. 76, 224 Iowa 359.

84. Ala.—Richardson v. Birmingham Cotton Mfg. Co., 22 So. 478, 116 Ala. 381.

Ariz.—Southern Arizona Freight Lines v. Jackson, 63 P.2d 193, 48 Ariz. 509—Huntsman v. First Nat. Bank, 243 P. 598, 29 Ariz. 574.

Cal.—Abercrombie v. Thomsen, 138 P.2d 701, 59 C.A.2d 331—Gray v. Robinson, 91 P.2d 194, 33 C.A.2d 177—Collins v. Hodgson, 42 P.2d 700, 5 C.A.2d 366.

Colo.—Clifford v. Denver, etc., R. Co., 20 P. 333, 12 Colo. 125.

Fla.—Mead v. Bentley, 61 So.2d 428—Bradley v. Associates Discount Corp., 58 So.2d 857—Poindexter v. Seaboard Air Line R. Co., 56 So.2d 905—Martin v. Stone, 51 So.2d 33—Moss v. Condict, 16 So.2d 921, 154 Fla. 153—Hart v. Held, 5 So.2d 878, 149 Fla. 33—Blue & Gray Cab Co. v. Lowe, 196 So. 425, 143 Fla. 129—Smith v. Jackson County, 183 So. 738, 134 Fla. 354—Kight v. American Eagle Fire Ins. Co. of New York, 179 So. 792, 131 Fla. 764, followed in Kight v. Star Ins. Co. of America, 179 So. 797, 131 Fla. 775—Motor Transit Co. v. Studstill, 176 So. 769, 129 Fla. 769—Gulf Coast Title Co. v. Walters, 170 So. 130, 125 Fla. 427—Woods v. Atlantic Coast Line R. Co., 130 So. 601, 100 Fla. 909—Waters Realty Co. v. Miami Tripure Water Co., 129 So. 763, 100 Fla. 221—De la Vallina v. De la Vallina, 107 So. 339, 90 Fla. 905—Cheyney v. Roberts, 81 So. 475, 77 Fla. 324—Anthony Farms Co. v. Seaboard Air Line Ry., 67 So. 913, 69 Fla. 188—Aberson v. Atlantic Coast Line R. Co., 67 So. 44, 68 Fla. 196.

Ga.—Harper v. Wilkes, 76 Ga. 106—Buchanon v. Higginbotham, 42 Ga. 198—Odom v. Nelms, 24 Ga. 412.

Idaho.—**Corpus Juris Secundum cited in** Fredricksen v. Luthy, 238 P.2d 430, 432, 72 Idaho 164—Poston v. Hollar, 132 P.2d 142, 64 Idaho 322.

Ill.—Loucks v. Pierce, 93 N.E.2d 372, 341 Ill.App. 253—Randolph v. City of Chicago, 42 N.E.2d 143, 315 Ill. App. 85—Ledferd v. Reardon, 25 N.E.2d 116, 303 Ill.App. 300—Couch v. Southern Ry. Co., 14 N.E. 2d 266, 294 Ill.App. 490—Cassens v. Tillberg, 13 N.E.2d 644, 294 Ill. App. 168—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill.App. 269, 285.

Ind.—House v. Wright, 22 Ind. 383.

Iowa.—Farmers Ins. Exchange v. Moores, 78 N.W.2d 518, 247 Iowa 1181—Westergard v. Des Moines Ry. Co., 52 N.W.2d 39, 243 Iowa 495—Burke v. Reiter, 42 N.W.2d 907, 241 Iowa 807—In re Hollis' Estate, 16 N.W.2d 599, 235 Iowa 753—Campbell v. Hale, 6 N.W.2d 128, 233 Iowa 264—Leake v. Azinger, 243 N.W. 196, 214 Iowa 927—Meyer v. Noel, 206 N.W. 290—Blakely v. Cebelka, 203 N.W. 19, 199 Iowa 946—Upton v. Hines, 185 N. W. 561, 193 Iowa 385—Clark v. City of Des Moines, 159 N.W. 213—Peterson v. Phillips Coal Co., 157 N.W. 194, 175 Iowa 223—Hydinger v. Chicago, etc., R. Co., 101 N.W. 746, 126 Iowa 222—Tathwell v.

cept where a new trial has previously been granted | in favor of the party seeking a new trial for the

Cedar Rapids, 97 N.W. 96, 122 Iowa 50—Mally v. Mally, 86 N.W. 262, 114 Iowa 309—Holman v. Omaha, etc., R., etc., Co., 81 N.W. 704, 110 Iowa 485—Moore v. Horton, 75 N. W. 195, 105 Iowa 376—Murray v. Weber, 60 N.W. 492, 92 Iowa 757—Grotte v. Schmidt, 45 N.W. 771, 80 Iowa 454—Conklin v. Dubuque, 6 N.W. 894, 54 Iowa 571—Tegeler v. Jones, 33 Iowa 234—Pickering v. Kirkpatrick, 32 Iowa 163—Shepherd v. Brenton, 15 Iowa 84—Newell v. Sanford, 10 Iowa 396—Ruble v. McDonald, 7 Iowa 90.

Kan.—Sundgren v. Leiker, 305 P.2d 843, 180 Kan. 617—Bateman v. Roller, 211 P.2d 440, 168 Kan. 111—Ireton v. Ireton, 63 P. 429, 62 Kan. 358—McCreary v. Hart, 17 P. 839, 39 Kan. 216—Missouri Pac. R. Co. v. Goodrich, 16 P. 439, 38 Kan 224—Murphy v. Hindman, 15 P. 182, 37 Kan. 267—Ragan v. James, 7 Kan. 354.

Topeka v. Smelser, 44 P. 435, 3 Kan.App. 17.

Ky.—Dawson v. Clelland, 252 S.W. 2d 694—Daniel v. Morgan, 244 S. W.2d 752—Louisville & I. Ry. Co. v. Pulliam's Adm'x, 82 S.W.2d 191, 259 Ky. 82—Grigsby v. Grigsby, 61 S.W.2d 605, 249 Ky. 727—Wilson v. Rockcastle Mining, Lumber & Oil Co., 255 S.W. 88, 200 Ky. 484—Strode v. Strode, 240 S.W. 368, 194 Ky. 665, 27 A.L.R. 313—Illinois Cent. R. Co. v. Beauchamp, 77 S.W. 1096, 25 Ky.L. 1429—Hurt v. Louisville, etc., R. Co., 76 S.W. 502, 116 Ky. 545, 25 Ky.L. 755—Jackson v. Shapard, 69 S.W. 954, 24 Ky.L. 713—Butts v. Christy, 67 S.W. 377, 23 Ky.L. 2355.

Mich.—**Corpus Juris cited in** Hoskin-Morainville Paper Co. v. Bates Valve Bag Corporation, 256 N.W. 477, 479, 268 Mich. 443.

Mo.—Guthrie v. Gillespie, 6 S W.2d 886, 319 Mo. 1137—Lamb v. Feehan, 276 S.W. 71—Fitzjohn v. St. Louis Transit Co., 81 S.W. 907, 183 Mo. 74.

Ritchie v. Ritchie, App., 173 S. W.2d 101—Bumgarner v. Ekstrum, App., 67 S.W.2d 520—Spelky v. Kissel-Skiles Co., App., 54 S.W.2d 761—Darnall v. Lyons, App., 51 S. W.2d 159—Bankers' Mortg. Co. v. Osborn, 24 S.W.2d 215, 224 Mo. App. 865—Galeener v. Derris, App., 20 S.W.2d 167—Pearce v. Rogers, App., 15 S.W.2d 874—Best v. Equitable Life Assur. Soc., App., 299 S.W. 118—Pyle v. University City, App., 279 S.W. 217—St. Louis Union Trust Co. v. Baker, App., 264 S.W. 437—Ismert-Hincke Milling Co. v. Mercurio Bros. Spaghetti Mfg. Co., App., 243 S.W. 408—Travis v. Means, App., 214 S.W. 239—Mason v. Onan, 67 Mo.App. 290—Powell v. Missouri Pac. R. Co., 59 Mo.App. 335—Ensor v. Smith, 57 Mo.App. 584.

Mont.—Garrison v. Trowbridge, 177 P.2d 464, 119 Mont. 505—Walsh v. Butte, A. & P. Ry. Co., 97 P.2d 325, 109 Mont. 456—Best v. Boyer, 37 P.2d 331, 98 Mont. 40—Maki v. Murray Hospital, 7 P.2d 228, 91 Mont. 251.

Neb.—De Matteo v. Lapidus, 218 N. W. 379, 116 Neb. 549—Weber v. Kirkendall, 63 N.W. 35, 44 Neb. 766.

N.D.—Haser v. Pape, 50 N.W.2d 240, 78 N.D. 481—Olson v. Carlson, 290 N.W. 243, 69 N.D. 732—**Corpus Juris Secundum cited in** Blum v. Standard Oil Co., 279 N.W. 764, 767, 68 N.D. 329—Kohlman v. Hyland, 219 N.W. 228, 56 N.D. 772—Pengilly v. J. I. Case Threshing Mach. Co., 91 N.W. 63, 11 N.D. 249—Gull River Lumber Co. v. Osborne McMillan Elevator Co., 69 N.W. 691, 6 N.D. 276.

Okl.—Fred Jones Co. v. Bowline, 309 P.2d 296—Negrate v. Gunter, 285 P.2d 194—Hildebrand v. Harrison, 263 P.2d 174—Armstrong v. Chickasha Cotton Oil Co., 258 P.2d 1174—Rein v. Patton, 257 P.2d 280, 208 Okl. 442—Wells v. Max T. Morgan Co., 236 P.2d 488, 205 Okl. 166—Petite v. Davis, 223 P.2d 1082, 203 Okl. 547—McCuistion v. Christian, 172 P.2d 610, 197 Okl. 441—Harper v. Pratt, 141 P.2d 562, 193 Okl. 86—Parkhill Truck Co. v. Ok-Tex Drilling Co., 100 P.2d 863, 187 Okl. 50—Stillwater Mill. Co. v. Herrley, 64 P.2d 657, 179 Okl. 133—Deaton v. Little, 62 P.2d 1018, 178 Okl. 347—Tulsa Tribune Co. v. Givens, 51 P.2d 948, 174 Okl. 631—Southwestern Cotton Oil Co. v. Sawyer, 51 P.2d 543, 175 Okl. 87—Lane v. O'Brien, 49 P.2d 171, 173 Okl. 475—Keystone Pipe & Supply Co. v. Crabtree, 35 P.2d 875, 169 Okl. 20—Billy v. Le Flore County Gas & Electric Co., 26 P.2d 149, 166 Okl. 130—City of Muskogee v. McMurry, 8 P.2d 670, 155 Okl. 203—Jarecki Mfg. Co. v. Thames, 3 P.2d 428, 151 Okl. 234—Burtschi v. Love, 231 P. 1048, 105 Okl. 97—Nale v. Herstein, 222 P. 248, 94 Okl. 263—Eldred v. Pittsburg County Ry. Co., 220 P. 351, 93 Okl. 163—McGhee v. Hurst, 217 P. 368, 91 Okl. 258—Lusk v. Wilson, 197 P. 156, 81 Okl. 152—Missouri, K. & T. Ry. Co. v. James, 159 P. 1109, 61 Okl. 1.

Or.—Muse v. Spokane, P. & S. Ry. Co., 266 P.2d 412, 200 Or. 463—Burrows v. Nash, 259 P.2d 106, 199 Or. 114—Clark v. Fazio, 230 P.2d 553, 191 Or. 522—Lampa v. Hakola, 55 P.2d 13, 152 Or. 626—Arthur v. Parish, 47 P.2d 682, 150 Or. 582—Dickson v. King, 34 P.2d 664, 147 Or. 638.

Pa.—Megargel v. Waltz, 21 Pa.Co. 633.

S.D.—Houck v. Hult, 245 N.W. 469, 60 S.D. 570—Corsica State Bank v. Heezen, 222 N.W. 671, 54 S.D. 113—Williams v. Rice, 209 N.W. 958, 50 S.D. 301—Misel v. Cottonwood Live Stock & Loan Co., 205 N.W. 663, 48 S.D. 624—Security State Bank of Beresford v. Bank of Centerville, 193 N.W. 670, 46 S.D. 440—Clifford v. Latham, 103 N.W. 642, 19 S.D. 376—Kunz v. Dinneen, 100 N. W. 165, 18 S.D. 262—Rochford v. Albaugh, 94 N.W. 701, 16 S.D. 628—Distad v. Shanklin, 75 N.W. 205, 11 S.D. 1—Gotzian v. McCollum, 65 N.W. 1068, 8 S.D. 186.

Va.—Stubbs v. Cowden, 18 S.E.2d 275, 179 Va. 190—Vaughan v. Mayo Milling Co., 102 S.E. 597, 127 Va. 148—Marshall v. Valley R. Co., 34 S.E. 455, 97 Va. 653.

Wash.—Johnson v. Howard, 275 P. 2d 736, 245 Wash.2d 433—McUne v. Fuqua, 253 P.2d 632, 42 Wash.2d 65, opinion adhered to 257 P.2d 636, 42 Wash.2d 65—Potts v. Laos, 200 P.2d 505, 31 Wash.2d 889—Sun Life Assur. Co. of Canada v. Cushman, 158 P.2d 101, 22 Wash. 2d 930—Kimball v. Moore, 140 P. 2d 498, 18 Wash.2d 643—Griffin v. Cascade Theatres Corp., 117 P. 2d 651, 10 Wash.2d 574—Bystrom v. Purkey, 97 P.2d 158, 2 Wash.2d 67—Dibley v. Peters, 93 P.2d 720, 200 Wash. 100—Mathisen v. Norton, 60 P.2d 1, 187 Wash. 240—Ahrens v. Anderson, 57 P.2d 410, 186 Wash. 182—McKay v. General Accident Fire & Life Assur. Corporation, Limited, of Perth, Scotland, 299 P. 987, 163 Wash. 92.

W.Va.—State ex rel. Harrah v. Walker, 74 S.E.2d 679, 137 W.Va. 849—Star Piano Co. v. Brockmeyer, 90 S.E. 338, 78 W.Va. 780—Wilson v. Ice, 90 S.E. 272, 73 W.Va. 672—Laidley v. Kanawha County Ct., 30 S.E. 109, 44 W.Va. 566—Reynolds v. Tompkins, 23 W.Va. 229—Miller v. Citizens' F., etc., Ins. Co., 12 W. Va. 116, 29 Am.R. 452.

Wis.—Jones v. Chicago, etc., R. Co., 5 N.W. 854, 49 Wis. 352.

Wyo.—**Corpus Juris Secundum cited** in Horvath v. Sheridan-Wyoming Coal Co., 131 P.2d 315, 318, 58 Wyo. 211—Horse Creek Conservation Dist. v. Lincoln Land Co., 92 P.2d 572, 54 Wyo. 320—Wells v. McKenzie, 62 P.2d 305, 50 Wyo. 412—Kowlak v. Tensleep Mercantile Co., 281 P. 1000, 41 Wyo. 20.

4 C.J. p 832 note 47.

"Where the court has refused to grant a new trial on account of alleged misconduct, the revision of an appellate court will be exercised more freely than where a new trial has been granted."

Mo.—Ullom v. Griffith, App., 263 S.W. 876, 880.

second time,[85] or where the order granting a new trial is made on some legal proposition which may be considered in itself.[85.5]

The discretion which the trial court may possess with respect to motions for a new trial is a legal one subject to review and revision for manifest abuse or legal error.[86] This rule applies even when a new trial is granted,[87] in spite of the rule that a grant of a new trial will be set aside only in rare instances and on very strong grounds.[87.5] The rule

Reason for rule

Trial court is allowed greater latitude in granting new trial than in denying one.

Ill.—Bergman v. Gilbert, 126 N.E.2d 736, 6 Ill.App.2d 206—Kolar v. Lightfoot, 101 N.E.2d 624, 344 Ill. App. 558.

Okl.—Shreve v. Cornell, 77 P.2d 1, 182 Okl. 193.

Tex.—Equitable Life Assur. Soc. of the U. S. v. Murdock, Civ.App., 219 S.W.2d 159, error refused no reversible error.

85. Cal.—Petroff v. Nunes, 29 P.2d 293, 136 C.A. 416.

Ga.—Smith v. State Mut. Life Ins. Co., 165 S.E. 896, 45 Ga.App. 633.

4 C.J. p 832 note 47 [f] (2).

85.5 Cal.—Cooney v. Furlong, 6 P. 388, 66 C. 520.

Gray v. Robinson, 91 P.2d 194, 33 C.A.2d 177—Whitfield v. Debrincat, 64 P.2d 960, 18 C.A.2d 730.

86. Ala.—McLeod v. Shelly Mfg., etc., Co., 19 So. 326, 108 Ala. 81.

Ariz.—Ocana v. Ray Consol. Copper Co., 194 P. 959, 22 Ariz. 112.

Cal.—Dei v. Bava, 266 P. 956, 204 C. 697—Citti v. Bava, 266 P. 954, 204 C. 136.

Fla.—Phœnix Assur. Co., Limited, of London v. Eppstein, 75 So. 537, 73 Fla. 991, L.R.A.1917F 540.

Idaho.—In re Randall's Estate, 93 P. 2d 1, 60 Idaho 419.

Iowa.—Mullong v. Mullong, 159 N.W. 994, 178 Iowa 552.

Mass.—Davis v. Boston Elevated Ry. Co., 126 N.E. 841, 235 Mass. 482.

Mo.—Ostrander v. Messmer, 289 S.W. 609, 315 Mo. 1165.

State ex rel. and to Use of Piepmeier v. Camren, 41 S.W.2d 902, 226 Mo.App. 100.

Mont.—Badboy v. Brown, 213 P. 246, 66 Mont. 307.

Neb.—Greenberg v. Fireman's Fund Ins. Co. of San Francisco, Cal., 35 N.W.2d 772, 150 Neb. 695.

N.J.—Fisch v. Manger, 130 A.2d 815, 24 N.J. 66.

N.Y.—Markel Cleaning & Dyeing Works v. Rutkin, 294 N.Y.S. 738, 250 App.Div. 820.

Okl.—Hennessey Oil & Gas Co. v. Neely, 162 P. 214, 62 Okl. 101.

S.C.—Whetsell v. Sovereign Camp, W. O. W., 198 S.E. 153, 188 S.C. 106.

S.D.—Hansen v. Boots, 168 N.W. 798, 41 S.D. 96.

Tenn.—Nash v. Mitchell, 9 Tenn.App. 134.

Tex.—Metts v. Waits, Civ.App., 286 S.W. 923—Lee v. Zundelowitz, Civ. App., 242 S.W. 279.

Vt.—Catto v. Liberty Granite Co., 141 A. 684, 101 Vt. 143.

4 C.J. p 832 note 48, p 1167 note 92—46 C.J. p 254 note 31.

Exercise of discretion without substantial reason

Mont.—Hinton v. Peterson, 169 P.2d 333, 118 Mont. 574—Badboy v. Brown, 213 P. 246, 66 Mont. 307.

87. Cal.—In re Baird's Estate, 246 P. 324, 198 C. 490.

Colo.—Crosby v. Canino, 3 P.2d 792, 89 Colo. 434, 78 A.L.R. 1202.

Fla.—Lafayette Fire Ins. Co. v. Camnitz, 149 So. 653, 111 Fla. 556—Duboise Const. Co. v. City of South Miami, 146 So. 833, 108 Fla. 362—Miami Transit Co. v. Stephens, 143 So. 325, 106 Fla. 353, followed in Segall Investment Co. v. Rosedale Delicatessen, 143 So. 441, 106 Fla. 578—Carney v. Stringfellow, 74 So. 866, 73 Fla. 700.

Idaho.—Smith v. Wallace Nat. Bank, 150 P. 21, 27 Idaho 441.

Ill.—Adamsen v. Magnelia, 280 Ill. App. 418.

Ind.—Lowry v. Indianapolis Traction and Terminal Co., 126 N.E. 223, 77 Ind.App. 138.

Iowa.—Bennett v. Ryan, 222 N.W. 16, 206 Iowa 1263—Vestal v. Thistle Coal Co., 183 N.W. 443, 191 Iowa 1112—Gregory v. Pierce, 172 N.W. 288, 186 Iowa 151.

Ky.—City of Somerset v. Guffey, 58 S.W.2d 606, 248 Ky. 415—Mott v. Wellman, 24 S.W.2d 311, 232 Ky. 594—Strode v. Strode, 240 S.W. 368, 194 Ky. 665, 27 A.L.R. 313.

Mo.—Gates v. Dr. Nichols' Sanatorium, 55 S.W.2d 424, 331 Mo. 754.

Herbert v. Hawley, App., 32 S. W.2d 1095—Adam Roth Grocery Co. v. Hotel Monticello Co., 166 S. W. 1125, 183 Mo.App. 429.

N.Y.—Garrison v. Sun Printing & Publishing Ass'n, 150 N.Y.S. 284, 164 App.Div. 737—Goldberger v. Barwess, 193 N.Y.S. 249, affirmed 199 N.Y.S. 924, 206 App.Div. 663.

N.D.—Schnell v. Northern Pac. Ry. Co., 1 N.W.2d 56, 71 N.D. 369.

Okl.—Hansen v. Cunningham, 285 P. 2d 432—Cooke v. Sinopoulo, 151 P. 2d 791, 194 Okl. 352, followed in Massey v. Sinopoulo, 151 P.2d 794, 194 Okl. 355—Jordan v. City Nat. Bank of Fort Smith, 73 P.2d 435, 181 Okl. 223—Russell v. Margo, 67 P.2d 22, 180 Okl. 24.

Pa.—Aquadro v. Crandall-McKenzie & Henderson, Inc., 128 A.2d 147, 182 Pa.Super. 435—Milstein v. Shore, 72 A.2d 158, 166 Pa.Super. 494—Blassotti v. Greensboro Gas Co., 96 Pa.Super. 162.

Utah.—Bowers v. Gray, 106 P.2d 765, 99 Utah 336.

W.Va.—Woodruff v. Gilliam, 179 S. E. 873, 116 W.Va. 101.

Wis.—McCoy v. Terhorst, 205 N.W. 420, 188 Wis. 512.

4 C.J. p 832 note 48, p 1167 note 91—19 C.J. p 1227 note 9.

Limited new trial

Order granting new trial limited to damages will be reversed when it is shown that damages awarded are inadequate, that issue of liability is close, and other circumstances indicate that verdict was probably result of prejudice, sympathy, or improper compromise.

Cal.—Cary v. Wentzel, 247 P.2d 341, 39 C.2d 491.

New trial without good reason

(1) To set aside a verdict and judgment, when there is no error in the trial, and where there is no other good reason for so doing, is abuse of discretion by the trial court, and is an erroneous ruling, which the court of appeals will correct.

Ky.—Chesapeake & O. Ry. Co. v. Salyers, 218 S.W. 474, 187 Ky. 144, 150.

(2) In determining whether there was abuse of discretion in setting aside a verdict and granting a new trial, the test is whether the court's discretion has been exercised on grounds or for reasons clearly untenable, or to an extent clearly unreasonable.

Vt.—Farr v. Fisher, 178 A. 883, 107 Vt. 331, 98 A.L.R. 926—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91.

(3) "The ordering of a retrial, for the mere purpose of correcting a matter needing no correction, but being in entire accord with the law, would be such abuse of discretion warranting setting aside the order."

Pa.—Walker v. Walker, 107 A. 219, 220, 264 Pa. 68.

General grounds

Any abuse of discretion by trial court in granting new trial on general grounds only will result in reversal.

Iowa.—Hupp v. Doolittle, 285 N.W. 247, 226 Iowa 814.

87.5 Cal.—Quinn v. Kenyon, 22 C. 82.

Sloboden v. Time Oil Co., 281 P. 2d 85, 131 C.A.2d 557—Devens v. Goldberg, 215 P.2d 935, 96 C.A.2d

that the grant of a new trial will be disturbed for manifest error or legal abuse is inapplicable in some jurisdictions by reason of statutory provisions to the effect that an order granting a first new trial can be disturbed by the appellate court only where the law and the facts absolutely demand the verdict rendered.[88]

539—Abrams v. American Fidelity & Cas. Co., 159 P.2d 62, 69 C.A.2d 426—Owings v. Gatchell, 90 P.2d 368, 32 C.A.2d 482—Shortt v. Los Angeles Gas & Electric Corp., 86 P.2d 854, 30 C.A.2d 511—Ogando v. Carquinez Grammar School Dist. of Contra Costa County, 75 P.2d 641, 24 C.A.2d 567—Prout v. Perkins, 69 P.2d 194, 21 C.A.2d 343—Bonner v. Los Angeles Examiner, 62 P.2d 427, 17 C.A.2d 458—Morgan v. Los Angeles Pac. Co., 108 P. 735, 13 C.A. 12.

88. Ga.—Azar v. Thuma, 62 S.E.2d 166, 207 Ga. 444—McDonald v. Wimpy, 46 S.E.2d 906, 203 Ga. 498—Baker v. McGarr, 1 S.E.2d 403, 187 Ga. 533—Powell v. Palmer, 198 S.E. 753, 186 Ga. 747—Brenner v. Wright, 188 S.E. 694, 183 Ga. 510—Blitch v. Wells, 179 S.E. 629, 180 Ga. 566—Medders v. Blackshear Mfg. Co., 179 S.E. 628, 180 Ga. 550—Mobley v. Bell, 171 S.E. 701, 177 Ga. 876—Smith v. Perry, 168 S.E. 770, 176 Ga. 775—Daniel v. Mitchell, 168 S.E. 12, 176 Ga. 353—Murray v. Davidson, 162 S.E. 526, 174 Ga. 213—Blakely Hardwood Lumber Co. v. Reynolds Bros. Lumber Co., 160 S.E. 775, 173 Ga. 602—Davis v. Old Dominion Trust Co., 153 S.E. 360, 170 Ga. 577—Butler v. Butler, 147 S.E. 389, 168 Ga. 272—Gunn v. Chapman, 142 S.E. 873, 166 Ga. 279—Douglas v. Hardin, 131 S.E. 896, 161 Ga. 838—Fender v. Gardner, 112 S.E. 368, 153 Ga. 460—Rowe Bros. Motor Express Co. v. Twiggs County, 110 S.E. 303, 152 Ga. 548, answers to certified questions conformed to 110 S.E 925, 28 Ga.App. 211—Smith v. Reese, 107 S.E. 331, 151 Ga. 507—Wall v. Wall, 102 S.E. 822, 150 Ga. 115—Cowart v. Strickland, 100 S.E. 447, 149 Ga. 397, 7 A.L.R. 1110—Morton v. Sherrod, 99 S.E. 291, 149 Ga. 126—Calhoun v. Arnold, 99 S.E. 35, 149 Ga. 84—Bailey v. Vitagraph-Lubin-Selig-Essanay, 94 S.E. 554, 147 Ga. 450—Shingler v. Yeates, 94 S.E. 467, 147 Ga. 339—Estill v. Estill, 94 S.E. 304, 147 Ga. 358—Yerby v. Gilham, 94 S.E. 246, 147 Ga. 342—Dublin Fertilizer Works v. Frost, 93 S.E. 895, 147 Ga. 328—Boyd v. Edenfield, 92 S.E. 645, 147 Ga. 23—Travis v. Grant, 92 S.E. 517, 147 Ga. 5—Adamson v. Adamson, 91 S.E. 684, 146 Ga. 546—Coles v. Bennett, 91 S.E. 542, 146 Ga. 496—Ledford v. Allen, 91 S.E. 121, 146 Ga. 351—Rhodes v. Williams, 89 S.E. 215, 145 Ga. 308—Peninsular Naval Stores Co. v. State, 86 S.E. 223, 144 Ga. 108—Massey v. Cleveland, 82 S.E. 136, 141 Ga. 774.

Robinson v. Modern Coach Corp., 85 S.E.2d 826, 91 Ga.App. 440—Tri-State Augusta, Inc. v. Woodward Lumber Co., 77 S.E.2d 769, 88 Ga. App. 748—Ansley v. Atlantic Coast Line R. Co., 71 S.E.2d 434, 86 Ga. App. 152—Mitchell v. Waller, 62 S.E.2d 383, 83 Ga.App. 7—Williams v. Redd, 60 S.E.2d 528, 82 Ga.App. 135—Graves v. Carter, 51 S.E.2d 862, 78 Ga.App. 563—Ash v. Higgins, 41 S.E.2d 270, 74 Ga.App. 726—Noles v. Andalusia Casket Co., 38 S.E.2d 746, 74 Ga.App. 39—Sullivan v. Dixon, 34 S.E.2d 318, 72 Ga. App. 507—Kilgore v. Williams, 15 S.E.2d 558, 65 Ga.App. 171—Geo. A. Hormel & Co. v. Ramsey, 7 S.E.2d 789, 62 Ga.App. 343—Floyd v. Sams, 2 S.E.2d 729, 59 Ga.App. 907—Walker v. McCallum, 2 S.E.2d 514, 59 Ga.App. 895—Corker v. Quick, 2 S.E.2d 157, 59 Ga.App. 649—Tyre v. Western Union Telegraph Co., 192 S.E. 650, 56 Ga.App. 401—Southern Ry. Co. v. Lee, 190 S.E. 201, 55 Ga.App. 334—Pennsylvania Lumbermen's Mut. Fire Ins. Co. v. Magid of Tallulah, 189 S.E. 552, 54 Ga.App. 881—Southern Ry. Co. v. Black, 186 S.E. 779, 53 Ga. App. 701—Waters v. Shackelford, 185 S.E. 363, 53 Ga.App. 258—Jenkins v. Brown, 183 S.E. 85, 52 Ga. App. 241—Belk v. Cook, 179 S.E. 870, 51 Ga.App. 163—Burrus Motor Co. v. Patterson-Pope Motor Co., 179 S.E. 171, 51 Ga.App. 120—Hawes v. Roles, 176 S.E. 659, 49 Ga. App. 680—Bluestein v. Amason, 174 S.E. 735, 49 Ga.App. 201—Sturr v. Southern Grocery Stores, 172 S.E. 231, 48 Ga.App. 126—Wagner v. Graves-Turner Mfg. Co., 170 S.E. 400, 47 Ga.App. 283—Jones v. Winn-Lovett Grocery Co., 170 S.E. 393, 47 Ga.App. 293—City of Jonesboro v. Watterson, 165 S.E. 762, 45 Ga. App. 731—Tanner v. Louisville & N. R. Co., 165 S.E. 761, 45 Ga.App. 734—Gledhill v. Brown, 162 S.E. 824, 44 Ga.App. 670—Durden v. Moore, 159 S.E. 135, 43 Ga.App. 423—Drake v. Ludden & Bates Southern Music House, 149 S.E. 388, 40 Ga.App. 312—Holmes v. Yalovitz, 148 S.E. 753, 40 Ga.App. 72—Dodgen v. Fowler, 147 S.E. 775, 39 Ga.App. 515—Howell v. Booth, 145 S.E. 910, 39 Ga.App. 41—Brooks v. Jackins, 142 S.E. 574, 38 Ga.App. 57—McDaniel v. Farmers' & Merchants' Bank, 142 S.E. 178, 37 Ga.App. 782—Belcher v. Land, 140 S.E. 423, 37 Ga.App. 346—Denson v. Warm Springs Banking Co., 134 S.E. 329, 35 Ga.App. 625—Riggins v. Scott, 133 S.E. 647, 35 Ga.App. 465—Levy v. Duckworth, 132 S.E. 648, 35 Ga. App. 247—Louisville & N. R. Co. v. Barksdale, 131 S.E. 298, 34 Ga.App. 812—Lovett v. Allen, 129 S.E. 897, 34 Ga.App. 385—Padgett v. Jones, 129 S.E. 109, 34 Ga.App. 244—J. E. Dunson & Bros. Co. v. Towns, 126 S.E. 896, 33 Ga.App. 572—Keiley v. Bristol, 119 S.E. 334, 30 Ga.App. 725—Everett v. Shy, 118 S. E. 577, 30 Ga.App. 383—Auld v. City of Elberton, 110 S.E. 243, 27 Ga.App. 723—Iowa City State Bank v. Stovall, 110 S.E. 25, 27 Ga.App. 821—Neal v. Mathews, 110 S.E. 24, 27 Ga.App. 806—Chambliss v. Chandler, 108 S.E. 166, 27 Ga.App. 304—Hall County v. Hulsey, 106 S. E. 798, 26 Ga.App. 603—Williams v. Rowe, 106 S.E. 299, 26 Ga.App. 391—Branson v. Townsand, 104 S. E. 17, 25 Ga.App. 647—Bellinger v. Jones, 102 S.E. 843, 25 Ga.App. 107—Atlantic Coast Line R. Co. v. Grantham, 102 S.E. 379, 25 Ga.App. 34—Carson v. Ayers, 100 S.E. 658, 24 Ga.App. 227—Wade v. Edwards, 99 S.E. 160, 23 Ga.App. 677—National Bank of Tifton v. Piland, 96 S.E. 341, 22 Ga.App. 471—Duncan v. Shackelford, 95 S.E. 760, 22 Ga. App. 220—Lane v. Smart, 94 S.E. 325, 21 Ga.App. 292—Parks v. Stevens, 94 S.E. 60, 21 Ga.App. 180—Chafin v. Tumlin, 93 S.E. 50, 20 Ga. App. 433—Ellis v. Spell, 93 S.E. 49, 20 Ga.App. 347—Hawk v. Western & A. R. Co., 93 S.E. 40, 20 Ga.App. 395—Holloway v. Silver, 92 S.E. 953, 20 Ga.App. 234—Hind v. Central Trust Co. of Macon, Ga., 91 S. E. 998, 19 Ga.App. 592—Southern Fertilizer & Chemical Co. v. Peacock, 91 S.E. 928, 19 Ga.App. 592—Cloud v. A. K. Hawkes Co., 90 S.E. 652, 18 Ga.App. 772—Southern Ry. Co. v. Sewell, 90 S.E. 94, 18 Ga. App. 544—Stalnaker v. Beach, 88 S.E. 991, 18 Ga.App. 172—Thurmond v. Allgood, 87 S.E. 1097, 17 Ga.App. 657—Callahan v. Athens Ry. & Electric Co., 87 S.E. 763, 17 Ga.App. 490—Georgia Southern & F. Ry. Co. v. Bryan, 82 S.E. 913, 15 Ga.App. 253.

Mo.—Bumgarner v. Ekstrum, App., 67 S.W.2d 520—Stewart v. Carrothers, App., 37 S.W.2d 498—Haralson v. S. S. Kresge Co., App., 261 S.W. 740—Collier v. City of Shelbyville, App., 219 S.W. 713.

4 C.J. p 832 note 47 [b].

Directed verdict

Ga.—Tifton Production Credit Ass'n v. Burkhalter Chevrolet Co., 89 S. E.2d 210, 92 Ga.App. 571—Fuller v.

If a ruling on a motion for a new trial is based on a ground which the appellate court is in as good a position to deal with as the trial court, and the ground was stated by the trial court, the appellate

Cox, 58 S.E.2d 513, 81 Ga.App. 301—Windom v. Bishop, 40 S.E.2d 102, 74 Ga.App. 433—Lawson v. Lawson, 7 S.E.2d 603, 61 Ga.App. 787.

Absence of brief of evidence adduced at trial

Ga.—Conwell v. Price, 24 S.E.2d 851, 69 Ga.App. 63.

Where a verdict was contrary to law, the principle that unless the verdict was demanded by the law and the evidence, the first grant of a new trial will not be disturbed, was inapplicable.

Ga.—Davis v. Davis, 11 S.E.2d 884, 191 Ga. 333.

Conditional grant of new trial

The rule is applicable when the grant of a new trial is conditional and the condition is not complied with.

Ga.—Skipper v. Overall, 171 S.E. 310, 47 Ga.App. 691—Ellis v. Spell, 93 S.E. 49, 20 Ga.App. 347.

Grounds of motion or of new trial

(1) In Georgia the statutory rule applies regardless of the grounds on which the motion was based or the new trial granted; nor will the appellate court determine whether the trial court was right in granting the motion on a special ground.

Ga.—Glenn v. Tankersley, 200 S.E. 709, 187 Ga. 129—Griffith v. Sellers, 153 S.E. 359, 170 Ga. 577—Silver & Goldstein v. Chapman, 129 S.E. 842, 161 Ga. 203—Ballenger v. Ballenger, 94 S.E. 237, 147 Ga. 351.

Tomlin v. Georgia Power Co., 23 S.E.2d 92, 68 Ga.App. 412—Waters v. Shackelford, 185 S.E. 363, 53 Ga.App. 258—Tanner v. Louisville & N. R. Co., 165 S.E. 761, 45 Ga.App. 734—Lee v. Loveland, 157 S.E. 707, 43 Ga.App. 5—Brooks v. Jackins, 142 S.E. 574, 38 Ga.App. 57—Sampson v. Smith, 116 S.E. 652, 29 Ga.App. 683—Aarons v. Myers, 110 S.E. 411, 27 Ga.App. 757—Robinson v. O'Bannon Co., 105 S.E. 255, 25 Ga.App. 738—Insurance Co. of State of Pennsylvania v. Eubanks, 98 S.E. 366, 23 Ga.App. 471—Central of Georgia Ry. Co. v. Macon Ry. & Light Co., 93 S.E. 170, 20 Ga.App. 548.

4 C.J. p 832 note 47 [b] (3).

(2) Accordingly, where the verdict was not absolutely demanded by the evidence, the appellate court will affirm, even though the presiding judge considered irrelevant, immaterial, and improper matter in passing on the motion.

Ga.—Mays v. Mays, 126 S.E. 299, 33 Ga.App. 335.

(3) It is immaterial even that a specific ground set out in the order is not a sufficient ground for a new trial.

Ga.—Allen v. Gershon & Ruskin, 91 S.E. 893, 19 Ga.App. 500.

(4) It is also immaterial that the order is based on insufficient ground or single ground not well taken.

Ga.—Jenkins v. Brown, 183 S.E. 85, 52 Ga.App. 241.

(5) Only question appellate court will determine is whether verdict was demanded by evidence even though judge may have in terms based grant on some special ground of motion.

Ga.—Throgmorton v. Trammell, 83 S.E.2d 256, 90 Ga.App. 433.

(6) In Missouri, however, the rule seems to apply only where the first new trial is granted on the weight of the evidence.

Mo.—Leavel v. Johnston, 232 S.W. 1064, 209 Mo.App. 197.

Verdict demanded

(1) Even the first grant of a new trial should be reversed, if the verdict as rendered was demanded.

Ga.—Moody v. Moody, 22 S.E.2d 836, 195 Ga. 13—Brenner v. Wright, 2 S.E.2d 410, 187 Ga. 770.

Greeson v. Davis, 9 S.E.2d 690, 62 Ga.App. 667—International Harvester Co. of America v. Felton, 192 S.E. 464, 56 Ga.App. 290—Republic Truck Sales Corporation v. Padgett, 118 S.E. 435, 30 Ga.App. 474—Cosmopolitan Life Ins. Co. v. Head, 98 S.E. 124, 23 Ga.App. 216—Powell v. Batchelor, 179 S.W. 751, 192 Mo.App. 67.

(2) The fact, however, that one moving for a new trial abandoned the general grounds, to the effect that the verdict was contrary to the evidence, and without evidence to support it, etc., does not make it affirmatively appear that the verdict was absolutely demanded under the law and the evidence within the rule.

Ga.—Rowe Bros. Motor Express Co. v. Twiggs County, 110 S.E. 303, 152 Ga. 548, answers to certified questions conformed to 110 S.E. 925, 28 Ga.App. 211.

(3) Where damages sued for are not liquidated, but are speculative only, and are for jury under evidence, notwithstanding evidence may demand finding that defendant is liable to plaintiff in some amount, verdict in amount found by jury is not as a matter of law demanded.

Ga.—Buchanan v. Nash, 89 S.E.2d 637, 211 Ga. 874.

Lawson v. Lawson, 7 S.E.2d 603, 61 Ga.App. 787.

Different verdict authorized

(1) This court will never interfere with the first grant of a new trial where there is any evidence at all on which a different verdict could be sustained.

Ga.—Wellbeloved v. Wellbeloved, 75 S.E.2d 424, 209 Ga. 709—Graham v. Eastman, 75 Ga. 889.

(2) Where evidence is in conflict and jury would have been authorized to render a verdict for movant, judgment granting first new trial will not be disturbed.

Ga.—Hopkins v. Brumbelow, 24 S.E. 2d 318, 195 Ga. 388.

What constitutes first new trial

(1) A first new trial, within the meaning of the rule, is the first one granted to a particular party, and hence the rule applies although two new trials have been granted if they have been granted to different parties.

Ga.—Schiefer v. Durden, 192 S.E. 388, 56 Ga.App. 167—Central of Georgia Ry. Co. v. Macon Ry. & Light Co., 93 S.E. 170, 20 Ga.App. 548—Hawk v. Western & A. R. Co., 93 S.E. 40, 20 Ga.App. 395—Elder v. Woodruff Hardware & Mfg. Co., 91 S.E. 942, 19 Ga.App. 626.

4 C.J. p 832 note 47 [b] (5).

(2) A new trial granted after trial was had after reversal of a judgment dismissing the petition on general demurrer is a first new trial, within the rule.

Ga.—Buchanan v. Nash, 89 S.E.2d 637, 211 Ga. 874—Denson v. Denson, 23 S.E. 838, 97 Ga. 359—Jenkins v. Brown, 183 S.E. 85, 52 Ga. App. 241.

(3) Where the court directed a verdict on the first trial, and the direction was reversed on review, the grant of a new trial after a verdict by the jury on the second trial without direction was the first judgment setting aside the actual finding of the jury, and was subject to the rule that the first grant of a new trial will not be disturbed, except where the verdict is demanded by the evidence, notwithstanding the second verdict was in favor of the same party and to the same effect as the first verdict.

Ga.—Morris v. Baxley Hardware Co., 149 S.E. 35, 168 Ga. 769.

Mays v. Mays, 126 S.E. 299, 33 Ga.App. 335.

(4) Where directions of the verdict in the first two trials of an action were reversed and the third trial resulted in a mistrial, the grant of a new trial, after a verdict by the jury on the fourth trial without direction, will not be disturbed unless the evidence demands the verdict.

Ga.—Mitchell v. West End Park Co., 170 S.E. 376, 177 Ga. 449.

(5) Where motion for new trial was denied, and, on appeal, judg-

court will examine the question to determine whether the reason given justified the ruling,[88.5] and where the motion is sustained for a manifestly insufficient reason, and it does not appear from the record that there was any sufficient reason for a new trial, the order will be reversed.[88.10]

An abuse of the discretion of the trial court in granting a new trial will not be presumed, but must appear from the record.[88.15] It will be presumed, however, that the trial court properly exercised its discretion in acting on a motion for a new trial,[89] and the burden of showing an abuse thereof rests on the party complaining,[90] who is required to show a clear abuse of discretion.[90.5]

In determining whether there has been an abuse of discretion the entire record should be examined.[91] The failure of the record to show a reason for granting a new trial is not sufficient to show an abuse of discretion, but the record must affirmatively show an abuse of discretion to authorize a disturbance of an order granting a new trial.[91.5]

The appellate court will not reverse merely because, upon the record before it, it comes to a different conclusion;[92] and where conflicting conclusions could be reached, the court cannot say that granting a new trial was an abuse of discretion.[93] If a new trial has been granted, the evidence will be viewed in the light most favorable to the order rather than the verdict,[94] while if the new trial has been denied the evidence will be construed most favorably in support of the verdict.[95]

The fact that the motion for a new trial is passed on by a judge other than the one who presided at the trial does not necessarily prevent the application of the above rules;[96] and a statutory rule that a first grant of a new trial will not be disturbed if the verdict is not absolutely demanded applies even though the new trial is granted by a judge other

ment was reversed on principle of law and case was remanded for trial, and on second trial verdict was returned in favor of same party and motion for new trial was granted, such granting was first grant of motion for new trial under law.
Ga.—Throgmorton v. Trammell, 83 S.E.2d 256, 90 Ga.App. 433.

(6) Where case was remanded by supreme court to trial court for additional findings of fact, because auditor erred in ruling, grant of new trial to plaintiffs, after verdict for defendants at subsequent trial, was subject to rule that first grant of a new trial will not be disturbed.
Ga.—Jones v. J. S. H. Co., 40 S.E.2d 752, 201 Ga. 611.

88.5 Kan.—Bishop v. Huffman, 262 P.2d 948, 175 Kan. 270—Bernsden v. Johnson, 255 P.2d 1033, 174 Kan. 230—Fralick v. Kansas City Public Service Co., 211 P.2d 443, 168 Kan. 134—Bateman v. Roller, 211 P.2d 440, 168 Kan. 111—In re Lightfoot's Estate, 182 P.2d 887, 163 Kan. 369—Cole v. Lloyd, 166 P.2d 577, 161 Kan. 150—Ferguson v. Kansas City Public Service Co., 156 P.2d 869, 159 Kan. 520—Denney v. Farwell, 118 P.2d 548, 154 Kan. 345.

88.10 Kan.—Fralick v. Kansas City Public Service Co., 211 P.2d 443, 168 Kan. 134—Lindh v. Crowley, 29 Kan. 756.

88.15 Ohio.—State v. Wright, 17 N.E.2d 428, 59 Ohio App. 191, reversed on other grounds 20 N.E.2d 229, 135 Ohio St. 187.

89. Ala.—Lassetter v. King, 31 So.2d 586, 33 Ala.App. 204, certiorari denied 31 So.2d 588, 249 Ala. 422.
Conn.—Oginskas v. Fredsal, 143 A.888, 108 Conn. 505.
Fla.—Ebersole v. Tepperman, 65 So.2d 564.
Mo.—Paepke v. Stadelman, 300 S.W.845, 222 Mo.App. 346.
S.C.—O'Barr v. Pioneer Life Ins. Co., 172 S.E. 769, 172 S.C. 72.
S.D.—Caldwell v. Caldwell, 207 N.W.461, 49 S.D. 514.
Vt.—Belock v. State Mut. Fire Ins. Co., 175 A. 19, 106 Vt. 435, followed in Belock v. Vermont Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 445, and Belock v. Union Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 444.
Wash.—Schirmer v. Nethercutt, 288 P. 265, 157 Wash. 172—Machenheimer v. Falknor, 276 P. 297, 151 Wash. 447.

90. Cal.—Baker v. Floto, 265 P.2d 158, 122 C.A.2d 573—Hanlon Drydock & Shipbuilding Co. v. Southern Pac. Co., 268 P. 385, 92 C.A. 230.
Iowa.—Euclid Ave. State Bank v. Nesbitt, 207 N.W. 761, 201 Iowa 506—Stromberg v. Walsh, 192 N.W.811—Seamans v. Gallup, 180 N.W.276, 190 Iowa 470—Herman & Ben Marks v. Haas, 147 N.W. 740, 166 Iowa 340.
Okl.—Compier v. Thomas, 218 P. 661, 92 Okl. 112.
Pa.—Koch v. Franklin, 172 A. 672, 315 Pa. 145.
Jury v. New York Cent. R. Co., 74 A.2d 531, 167 Pa.Super. 244.
S.C.—Sanders v. Commonwealth Life Ins. Co. of Kentucky, 132 S.E. 828, 134 S.C. 435.
S.D.—Caldwell v. Caldwell, 207 N.W.461, 49 S.D. 514.
4 C.J. p 798 note 23.

90.5 Pa.—Keane v. City of Philadelphia, 61 A.2d 834, 360 Pa. 384—Ravis v. Shehulskie, 14 A.2d 70, 339 Pa. 161—O'Farrell v. Mawson, 182 A. 538, 320 Pa. 316.
Pfordt v. Educators Beneficial Ass'n, 14 A.2d 170, 140 Pa.Super. 170.

91. Cal.—Gaster v. Hinkley, 258 P.988, 85 C.A. 55.
Kan.—Parker v. Allen, 233 P.2d 514, 171 Kan. 360.
Okl.—Oklahoma City v. Wilson, 310 P.2d 369—Hansen v. Cunningham, 285 P.2d 432—Jordan v. City Nat. Bank of Fort Smith, 73 P.2d 435, 181 Okl. 223—Russell v. Margo, 67 P.2d 22, 180 Okl. 24.

91.5 Okl.—Alexander v. Alexander, 67 P.2d 33, 179 Okl. 614.

92. Cal.—Van Ostrum v. State, App., 306 P.2d 44.
Wis.—Stockhausen v. Oehler, 211 N.W. 287, 191 Wis. 403—McCoy v. Terhorst, 205 N.W. 420, 188 Wis. 512.

93. Cal.—Gaster v. Hinkley, 258 P.988, 85 C.A. 55.
Wis.—Stockhausen v. Oehler, 211 N.W. 287, 191 Wis. 403.

94. S.D.—Gamble v. Keyes, 166 N.W. 134, 39 S.D. 592.
Vt.—**Corpus Juris Secundum** cited in Russell v. Pilger, 37 A.2d 403, 413, 113 Vt. 537.

95. Conn.—Toth v. Perry, 182 A. 464, 120 Conn. 680.

96. Ariz.—Chiricahua Ranches Co. v. State, 39 P.2d 640, 44 Ariz. 559.
Cal.—Commander Oil Co. v. Bardeen, 119 P.2d 969, 48 C.A.2d 345.
Vt.—**Corpus Juris Secundum** cited in Russell v. Pilger, 37 A.2d 403, 415, 113 Vt. 537.
4 C.J. p 833 note 50.

than the one who presided at the trial.[97] The action of a judge who did not preside may be more readily reviewed or reversed than would similar action by the presiding judge,[97.5] especially where the judge ruling on the motion is in no better position than the appellate court to pass on the matters involved and hence not accorded as wide a discretion as the presiding judge.[98]

The general rule that the grant or denial of a motion for a new trial will not be disturbed on appeal has no application where the affidavit or other evidence on which the order is made furnishes no basis for the exercise of discretion.[98.5] A trial judge's exercise of discretion as to whether to grant a new trial on grounds not presented in the motion for new trial in proper and timely manner is not reviewable on appeal.[98.10]

Failure or refusal to exercise discretion. A clear showing of the failure[98.15] or refusal[99] of the trial court to exercise its discretion in passing on a motion for a new trial may constitute a ground for reversal; but, if no motion has been made, a failure of the court to act on its own motion ordinarily will not be treated as error.[1]

§ 1620. Questions of Law

Rulings made on questions of law in passing on a motion for a new trial are subject to review; such rulings are not matters of discretion.

The grant or refusal of a new trial will be disturbed on appeal only if the trial court abused its discretion, as discussed supra § 1619, or if the record shows clearly that the trial court erred in its view of some question of law.[1.50] Such question, accord-

97. Ga.—Carr v. Carr, 121 S.E. 227, 157 Ga. 208.
Throgmorton v. Trammell, 83 S.E.2d 256, 90 Ga.App. 433—Williams v. State, 107 S.E. 620, 27 Ga.App. 224—Fairburn & Atlanta Ry. & Electric Co. v. Latham, 107 S.E. 88, 26 Ga.App. 698.

97.5 Ga.—Werk v. Big Bunker Hill Min. Corp., 17 S.E.2d 825, 193 Ga. 217.

4 C.J. p 833 note 52.

98. S.D.—**Corpus Juris Secundum cited in** Troutman v. Bock, 295 N.W. 637, 67 S.D. 569—Sands v. Cruikshank, 87 N.W. 589, 15 S.D. 142.

4 C.J. p 833 note 52.

98.5 Cal.—Kauffman v. De Mutiis, 189 P.2d 271, 31 C.2d 429.

98.10 Tex.—Bunker v. Lott, Civ. App., 282 S.W.2d 879, error refused no reversible error.

98.15 Utah.—Moser v. Zion's Co-op. Mercantile Inst., 197 P.2d 136, 114 Utah 58.

99. Ga.—Scribner v. Adams, 138 S.E. 264, 36 Ga.App. 754.

Failure to exercise discretion not shown

(1) An order refusing a new trial did not in itself indicate that the judge was dissatisfied with the verdict or failed to exercise the discretion required of him in approving or disapproving it so as to require a reversal, although while the motion was under consideration plaintiff applied for, and obtained, a reduction in the amount of the verdict after the trial judge announced that the only thing that was troubling or bothering him was the amount of the jury's verdict.

Ga.—Davis v. Jones, 129 S.E. 892, 34 Ga.App. 7.

(2) The fact that the judge, in passing on a motion for a new trial, stated that he did not feel that he should grant it as the court of appeals had reversed his decision of nonsuit on a former trial, did not require a reversal on the ground that the trial court had failed to exercise his discretion.

Ga.—Rome Scale Mfg. Co. v. Harvey, 83 S.E. 434, 15 Ga.App. 381.

1. Utah.—Foxley v. Gallagher, 185 P. 775, 55 Utah 298.

1.50 Fla.—Seaver v. Stratton, 183 So. 335, 133 Fla. 183.

Ill.—Brenton v. Sloan's United Storage & Van Co., 42 N.E.2d 945, 315 Ill.App. 278—Couch v. Southern Ry. Co., 14 N.E.2d 266, 294 Ill. App. 490—Cassens v. Tillberg, 13 N.E.2d 644, 294 Ill.App. 168—Tone v. Halsey, Stuart & Co., 3 N.E.2d 142, 286 Ill.App. 169.

Mo.—Beer v. Martel, 55 S.W.2d 482, 332 Mo. 53.
Masters v. Sun Mfg. Co., 165 S.W.2d 701, 237 Mo.App. 240.

Pa.—Cox v. Scarazzo, 44 A.2d 294, 353 Pa. 15—Kline v. Mover, 3 A.2d 920, 333 Pa. 486—Cirquitella v. C. C. Callaghan, Inc., 200 A. 588, 331 Pa. 465—Kline v. Thornton, 200 A. 88, 331 Pa. 71—Williamson v. McCracken, 199 A. 166, 330 Pa. 254—Isaac v. Davis, 194 A. 401, 327 Pa. 401—Frank v. Bayuk, 185 A. 705, 322 Pa. 282.
Ross v. Crisanti, 90 A.2d 299, 171 Pa.Super. 117—Kowalsky's Exp. Service v. Haverford Tp., 85 A.2d 884, 170 Pa.Super. 229—Thomas v. De Sabato, 80 A.2d 862, 168 Pa.Super. 586—Matovich v. Mutual Ben. Health & Accident Ass'n, 43 A.2d 648, 157 Pa.Super. 604—Standard Oil Co. of N. J. v. Graham Oil Transport Corp., 41 A.2d 414, 157 Pa.Super. 41—Ondo v. Greek Catholic Union of Russian Brotherhoods of U. S. A., 38 A.2d 370, 155 Pa.Super. 492—Bertolet v. Lanard, 30 A.2d 630, 152 Pa.Super. 37—Gerber v. Jones, 30 A.2d 534, 151 Pa.Super. 489—Ambler Nat. Bank v. Maryland Credit Finance Co., 24 A.2d 123, 147 Pa.Super. 496—Szidor v. Greek Catholic Union of Russian Brotherhoods of U. S. A., 21 A.2d 104, 145 Pa.Super. 251—Kibler v. Prudential Ins. Co. of America, 10 A.2d 916, 138 Pa.Super. 307—Dormont Motors v. Hoerr, 1 A.2d 493, 132 Pa.Super. 567.

Wash.—Johnson v. Howard, 275 P.2d 736, 245 Wash.2d 433—Hayes v. Sears, Roebuck & Co., 209 P.2d 468, 34 Wash.2d 666.

Wis.—Graff v. Hartford Acc. & Indem. Co., 44 N.W.2d 565, 258 Wis. 22—Goelz v. Knoblauch, 7 N.W.2d 420, 242 Wis. 186—Jolitz v. Fintch, 282 N.W. 87, 229 Wis. 256.

Burden of proof

(1) One who appeals from granting of new trial must show either that trial court manifestly abused its discretionary power to award a new trial or that its action was based on clear error of law.

Pa.—Jury v. New York Cent. R. Co., 74 A.2d 531, 167 Pa.Super. 244.

(2) Party complaining must clearly establish error with respect to some question of law.

Kan.—Gould v. Robinson, 309 P.2d 405, 181 Kan. 66.

Questions involving statutes

Appellate court will not review order unless whole controversy may be ended by determination of constitutionality, applicability, construction, or effect of statute, or other matter of writing, which, so far as case at hand is concerned, could not be controlled or affected by evidence outside writing itself, and in such instances record must show, not only point in question, but also governing force of point.

Pa.—Class & Nachod Brewing Co. v. Giacobello, 121 A. 333, 277 Pa. 530.

ing to some authorities, must be a pure, simple, or unmixed one;[1.55] according to other authorities the question must be one which, in the circumstances, controlled the outcome of the case,[1.60] and is certified by the trial court as the sole reason for its action.[1.65] When necessary, a reviewing court will examine the entire record to determine whether the trial court, in granting a new trial, erred on some unmixed question of law.[1.70]

When the court, in granting or refusing a new trial, rules on a question of law, such ruling is not a matter of discretion, and the ruling may, and should, be reviewed.[2] In other words, the rule that

Bertolet v. Lanard, 30 A.2d 630, 152 Pa.Super. 37.

1.55 Kan.—Sundgren v. Leiker, 305 P.2d 843, 180 Kan. 617.

Okl.—Fred Jones Co. v. Bowline, 309 P.2d 296—Every v. Every, 293 P.2d 612—Hansen v. Cunningham, 285 P.2d 432—Negrate v. Gunter, 285 P.2d 194—Stillwell v. Johnson, 272 P.2d 365—Oklahoma City v. Drinkwater, 271 P.2d 1108—Morgan v. Morgan, 268 P.2d 855—Long v. McInnch, 264 P.2d 767—Dowell, Inc. v. Layton, 261 P.2d 885—Armstrong v. Chickasha Cotton Oil Co., 258 P.2d 1174—Rein v. Patton, 257 P.2d 280, 208 Okl. 442—Bates v. Winkle, 254 P.2d 361, 208 Okl. 199—Y & Y Cab Co. v. Ford, 252 P.2d 430, 207 Okl. 663—Thompson v. Chamblee, 245 P.2d 716, 206 Okl. 602—Noble v. City of Bethany, 241 P.2d 401, 206 Okl. 122—Wells v. Max T. Morgan Co., 236 P.2d 488, 205 Okl. 166—Reyes v. Goss, 235 P.2d 950, 205 Okl. 140—Fisher v. Hopkins, 235 P.2d 944, 205 Okl. 134—St. Louis & S. F. Ry. Co. v. Grady, 233 P.2d 277, 204 Okl. 654—Downing v. Mealy, 228 P.2d 1008, 204 Okl. 247—Petite v. Davis, 223 P.2d 1082, 203 Okl. 547—Combined Mut. Cas. Co. v. Metheny, 223 P.2d 533, 203 Okl. 522—Williams v. Long Bell Lumber Co., 219 P.2d 992, 203 Okl. 250—Chicago, R. I. & P. R. Co. v. Beam, 217 P.2d 807, 203 Okl. 16—McGlone v. Landreth, 195 P.2d 268, 200 Okl. 425—Burke Grcis Co. v. Ballard, 193 P.2d 582, 200 Okl. 341—Levi v. Oklahoma City, 179 P.2d 465, 198 Okl. 414—McCulstion v. Christian, 172 P.2d 610, 197 Okl. 441—Moses v. Miller, 164 P.2d 879, 196 Okl. 294—Acme Cab Co. v. Brown, 156 P.2d 367, 195 Okl. 164—Cooke v. Sinopoulo, 151 P.2d 791, 194 Okl. 352, followed in Massey v. Sinopoulo, 151 P.2d 794, 194 Okl. 355—City of Tulsa v. Bliss, 149 P.2d 507, 194 Okl. 255—Jackson v. Cleage, 142 P.2d 111, 193 Okl. 210—Little v. Lovett, 141 P.2d 794, 193 Okl. 157—Harper v. Pratt, 141 P.2d 562, 193 Okl. 86—City of Holdenville v. Deer, 132 P.2d 928, 191 Okl. 691—Cosden Pipe Line Co. v. Lewis, 125 P.2d 969, 190 Okl. 523—R. J. Allison Co. v. Carden, 123 P.2d 679, 190 Okl. 381—Thompson v. Norwood, 117 P.2d 791, 189 Okl. 360—Gripe v. Grieves, 111 P.2d 818, 188 Okl. 565—Carpenter v. Buellesfeld, 102 P.2d 119, 187 Okl. 213—Smith v. Sims, 98 P.2d 55, 186 Okl. 364—Employers Casualty Co. v. Stephens, 90 P.2d 635, 185 Okl. 81—Hart v. Howell, 85 P.2d 401, 184 Okl. 146—Kurn v. Thompson, 80 P.2d 578, 183 Okl. 185—Shreve v. Cornell, 77 P.2d 1, 182 Okl. 193—Jordan v. City Nat. Bank of Fort Smith, 73 P.2d 435, 181 Okl. 223—Missouri, Kansas & Oklahoma Coach Lines v. Burton, 72 P.2d 385, 181 Okl. 45—Nichols Transfer & Storage Co. v. Lumpkin, 69 P.2d 640, 180 Okl. 350—Russell v. Margo, 67 P.2d 22, 180 Okl. 24—Hamel v. Hamel, 66 P.2d 937, 179 Okl. 580—Dillard v. Star Drilling Mach. Co., 66 P.2d 928, 180 Okl. 14—Deaton v. Little, 62 P.2d 1018, 178 Okl. 347—Vanhoy v. Sun Co., 56 P.2d 1189, 176 Okl. 520—Tulsa Tribune Co. v. Givens, 51 P.2d 948, 174 Okl. 631.

1.60 Okl.—Mannah v. Robinson, 188 P.2d 360, 199 Okl. 551.

Pa.—Edelson v. Ochroch, 111 A.2d 455, 380 Pa. 426.

National Carloading Corp. v. Lee, 28 A.2d 811, 151 Pa.Super. 23—Ambler Nat. Bank v. Maryland Credit Finance Co., 24 A.2d 123, 147 Pa.Super. 496.

1.65 Pa.—Davis v. Rider, 127 A.2d 108, 387 Pa. 14—Mozino v. Canuso, 120 A.2d 300, 384 Pa. 220—Harris v. Ruggles Lumber Co., 101 A.2d 917, 376 Pa. 252—Beal v. Reading Co., 87 A.2d 214, 370 Pa. 45—Foster v. Waybright, 80 A.2d 801, 367 Pa. 615—Campbell v. Philadelphia Transp. Co., 77 A.2d 437, 366 Pa. 484—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128—Hershey v. Pittsburgh & W. Va. Ry. Co., 76 A.2d 379, 366 Pa. 158—Chapple v. Sellers, 76 A.2d 172, 365 Pa. 503, 30 A.L.R.2d 1—Held v. Van Tiggelen, 72 A.2d 73, 364 Pa. 317—Lambert v. Durallium Products Corp., 72 A.2d 66, 364 Pa. 284—Tupponce v. Pennsylvania R. Co., 57 A.2d 898, 358 Pa. 589—Thomas v. Brohm, 47 A.2d 244, 354 Pa. 384—Bekelja v. James E. Strates Shows, 37 A.2d 502, 349 Pa. 442—Burton v. Morvay, 34 A.2d 489, 348 Pa. 113—Hoban v. Conroy, 32 A.2d 769, 347 Pa. 487—Werner v. Automobile Finance Co., 31 A.2d 898, 347 Pa. 217—Schonhardt v. City of Pittsburgh, 16 A.2d 421, 340 Pa. 155—Reese v. Pittsburgh Rys. Co., 9 A.2d 394, 336 Pa. 299—Girard Trust Co. v. George V. Cresson Co., 5 A.2d 221, 333 Pa. 418—Class v. Nachod Brewing Co. v. Giacobello, 121 A. 333, 277 Pa. 530.

Kiska v. Rosen, 124 A.2d 468, 181 Pa.Super. 506—Dura Seal Products Co. v. Carver, 124 A.2d 438, 181 Pa.Super. 377—Brady v. City of Philadelphia, 41 A.2d 355, 156 Pa.Super. 607—Bertolet v. Lanard, 30 A.2d 630, 152 Pa.Super. 37—German v. Riddle, 27 A.2d 680, 149 Pa.Super. 647—Spegele v. Blumfield, 182 A. 149, 120 Pa.Super. 231—Iwankow v. Colonial Life Ins. Co. of America, 181 A. 870, 120 Pa.Super. 114.

Opinion of court may be substituted for certification.

Pa.—Cusati v. Dellisanti, 31 A.2d 604, 152 Pa.Super. 223.

1.70 Okl.—Hansen v. Cunningham, 285 P.2d 432—Jordan v. City Nat. Bank of Fort Smith, 73 P.2d 435, 181 Okl. 223—Russell v. Margo, 67 P.2d 22, 180 Okl. 24.

2. Cal.—Townsend v. Gonzalez, App., 309 P.2d 878—Vertson v. City of Los Angeles, 2 P.2d 411, 116 C.A. 114.

Fla.—Motor Transit Co. v. Studstill, 176 So. 769, 129 Fla. 769—Sahlberg v. J. A. Teague Furniture Co., 130 So. 432, 100 Fla. 972—Wilhelm v. South Indian River Co., 124 So. 729, 98 Fla. 970—Lockhart v. Butt-Landstreet, 107 So. 641, 91 Fla. 497—Phillips v. Lowenstein, 107 So. 350, 91 Fla. 89.

Ill.—Kavanaugh v. Washburn, 50 N.E.2d 761, 320 Ill.App. 250, appeal denied 56 N.E.2d 420, 387 Ill. 204—**Corpus Juris Secundum cited in** Lutgert v. Schaeflein, 47 N.E.2d 359, 362, 318 Ill.App. 83.

Iowa.—Hupp v. Doolittle, 285 N.W. 247, 226 Iowa 814—Thompson v. Butler, 274 N.W. 110, 223 Iowa 1085—Manders v. Dallam, 244 N.W. 724, 215 Iowa 137—Kessel v. Hunt, 244 N.W. 714, 215 Iowa 117—In re Richardson's Estate, 208 N.W. 374, 202 Iowa 328.

Ky.—Noe v. O'Neil, 236 S.W.2d 893, 314 Ky. 641.

Mass.—Bartley v. Phillips, 57 N.E.2d 26, 317 Mass. 35.

Mo.—Schipper v. Brashear Truck Co., 132 S.W.2d 993, 125 A.L.R. 674—Macdonald v. O'Day, 5 S.W.2d 374, 319 Mo. 857.

Darnall v. Lyons, App., 51 S.W.2d 159—Davis v. Hill Bros. Veneer Co., App., 20 S.W.2d 928—Noren v. American School of Osteopathy, 3 S.W.2d 215, 223 Mo.App. 298, certiorari quashed State ex rel. Amer-

the granting of a new trial is within the trial court's discretion which will not be disturbed unless abused applies only when the discretion is exercised on the facts, and the correctness of a ruling on a question of law will be determined on appeal, independently of the judgment of the trial court.[3]

ican School of Osteopathy v. Danes, 18 S.W.2d 487, 322 Mo. 991—Scott v. Kline's, Inc., App., 284 S.W. 831—Security Sav. Bank of Chaffee v. Green, App., 281 S.W. 137—Haag v. Cohen, 229 S.W. 296, 207 Mo.App. 36—Alexander v. Allison, App., 224 S.W. 50—Lowry v. Smith, 198 S.W. 437, 199 Mo.App. 163.

N.H.—Bruton v. Leavitt Stores Corporation of New Hampshire, 179 A. 185, 87 N.H. 304.

N.M.—**Corpus Juris Secundum quoted in** In re Richter's Will, 82 P.2d 916, 920, 42 N.M. 593.

N.D.—Eddy v. Wells, 231 N.W. 785, 59 N.D. 663.

Okl.—Alexander v. Beaver, 50 P.2d 392, 174 Okl. 123—Union Nat. Bank of Okmulgee v. Jones, 4 P.2d 62, 152 Okl. 211—Seidenbach's v. A. E. Little Co., 294 P. 126, 146 Okl. 247—Hivick v. Hemme, 247 P. 692, 118 Okl. 167—Thompson v. Nickle, 229 P. 202, 105 Okl. 181, mandate and vacating order recalled 239 P. 649, 113 Okl. 44—Tiger v. McCallom, 214 P. 194, 89 Okl. 249.

Pa.—Vilsack v. Wilson, 112 A. 17, 269 Pa. 77.

Ambler Nat. Bank v. Maryland Credit Finance Co., 24 A.2d 123, 147 Pa.Super. 496—Schock v. Berry, 70 Pa.Super. 560.

Tex.—St. Louis Southwestern Ry. Co. of Texas v. Smithhart, Civ. App., 9 S.W.2d 146.

Wash.—Griffin v. Cascade Theatres Corporation, 117 P.2d 651, 10 Wash.2d 574—Bystrom v. Purkey, 97 P.2d 158, 2 Wash.2d 67—New York Life Ins. Co. v. Newport, 96 P.2d 449, 1 Wash.2d 511—Dibley v. Peters, 93 P.2d 720, 200 Wash. 100—Billias v. Panageotou, 76 P.2d 987, 193 Wash. 523—Corbaley v. Pierce County, 74 P.2d 993, 192 Wash. 688—Citizens' Nat. Bank of Los Angeles, Cal. v. Galland, 280 P. 62, 153 Wash. 669—Sutherland v. Northern Pac. Ry. Co., 214 P. 823, 124 Wash. 413—Truva v. Goodyear Tire & Rubber Co., 194 P. 386, 113 Wash. 413—Southern Alaska Canning Co. v. Smith, 194 P. 383, 115 Wash. 400—Crowl v. West Coast Steel Co., 186 P. 866, 109 Wash. 426.

Wis.—Dach v. General Casualty Co., 4 N.W.2d 170, 241 Wis. 34—Tracy v. Malmstadt, 296 N.W. 87, 236 Wis. 642—Mauch v. Chicago, M., St. P. & Pac. Ry. Co., 280 N.W. 307, 228 Wis. 322—Kramer v. Bins, 238 N.W. 407, 205 Wis. 562—Crombie v. Powers, 227 N.W. 278, 200 Wis. 299—Lange v. Olson, 202 N.W. 361, 185 Wis. 657—Westenberg v. Bhend, 179 N.W. 742, 173 Wis. 137.

4 C.J. p 833 note 53.

"Strictly speaking, the law is never a subject resting in the discretion of the trial judge; and when he errs in regard to it in his instructions to the jury, it is by no means exact to say that he has abused his discretion, but this court has repeatedly held—the most recent case being First National Bank of Birmingham v. Fidelity Title Trust Co., 97 A. 77, 251 Pa. 536—that a court can abuse its discretionary power as to the law as well as to the facts in passing upon an application for a new trial, and that when a new trial is based on a plain and palpable error of law applicable to the facts of the case, it is such an abuse of discretion as will warrant a reversal."

Pa.—President, etc., of Danboro & Plumsteadville Turnpike Road Co. v. Bucks County, 102 A. 171, 172, 258 Pa. 391.

Rebellion against supreme court ruling

Where the trial court indicates its ruling granting a new trial was based solely on a rebellion against the supreme court's ruling, a case is presented for review.

Colo.—Crosby v. Canino, 3 P.2d 792, 89 Colo. 434, 78 A.L.R. 1202.

What constitutes rulings of law

(1) The judge's statement of the reason, for granting a new trial that, after separation, inquiry was not made in the jury room, by the jurors, as to prejudicial occurrences during separation, is a ruling of law.

Mass.—Dziegiel v. Town of Westford, 174 N.E. 495, 274 Mass. 291.

(2) In an action by a vendee of land for false representations, where a motion to set aside a verdict for plaintiff was specifically based on the legal insufficiency of the representation to support an action, granting the motion necessarily involved a ruling that the representation was insufficient to support the action, and the ruling was reviewable on such question, where the plaintiff excepted.

Vt.—Nichols v. Lane, 106 A. 592, 93 Vt. 87.

(3) The rule that the court's discretion in deciding a motion to set aside the verdict cannot be reviewed on exceptions, unless the court failed to exercise its discretion or abused it, does not apply when all the evidence is before the court, and the exception is based on the ground that the verdict is contrary to the instructions of the court.

Vt.—Wellman v. Wales, 122 A. 659, 97 Vt. 245—Whitman v. Dailey, 115 A. 559, 95 Vt. 454.

(4) Where reasons assigned by trial court are clearly erroneous, no element of discretion is involved, and such order must be reviewed on appeal solely as matter of law.

Okl.—Browne v. Bassett, 126 P.2d 705, 191 Okl. 22.

(5) Trial court's statement that new trial was granted because of conviction of defendants' material witness for perjury in giving of testimony in the case was not such a ruling on a question of law as would prevent operation of statute relating to review of first grant of new trial.

Ga.—Geo. A. Hormel & Co. v. Ramsey, 7 S.E.2d 789, 62 Ga.App. 343.

(6) Appeal from order granting new trial on ground of misconstruction of provisions of policy did not involve discretion.

S.D.—Christensen v. Royal Ins. Co. of Liverpool, 272 N.W. 820, 65 S.D. 246.

Latitude of trial court

Judgment of trial judge is accorded greater latitude on question of evidence than on questions of law.

Ill.—Masters v. Central Ill. Elec. & Gas Co., 129 N.E.2d 586, 7 Ill.App. 348.

Questions of law not favored on appeal

Although appellate court is disposed to look with favor on sustaining of motion, such favor can only be extended to matters involving exercise of judicial discretion, and not to matters presenting pure questions of law and reviewable as such on appeal.

Mo.—Hall v. Martindale, App., 166 S.W.2d 594.

3. U.S.—**Corpus Juris Secundum cited in** Peterson v. John Hancock Mut. Life Ins. Co. of Boston, Mass., C.C.A.Iowa, 116 F.2d 146, 151.

Ill.—**Corpus Juris Secundum cited in** Jacobs v. Mutual Life Ins. Co. of New York, 93 N.E.2d 516, 341 Ill. App. 293—**Corpus Juris Secundum cited in** Lutgert v. Schaeflein, 47 N.E.2d 359, 362, 318 Ill.App. 83—**Corpus Juris Secundum cited in** Lepkowski v. Laukemper, 45 N.E. 2d 979, 983, 317 Ill.App. 304—**Corpus Juris cited in** Randall v. Randall, 281 Ill.App. 169, 176.

Mo.—Devine v. Wells, 254 S.W. 65, 300 Mo. 177.

Darnall v. Lyons, App., 51 S.W.2d 159—Sparkman v. Wabash R. Co., 177 S.W. 703, 191 Mo.App. 463.

N.M.—**Corpus Juris Secundum quoted in** In re Richter's Will, 82 P.2d 916, 920, 42 N.M. 593.

§ 1621. Grounds of Order Granting New Trial Not Shown

Justification for an order granting a new trial must be found in the record, where reasons are not given; when the grounds for a ruling on such a motion are not shown, it may be presumed that the court acted in the exercise of its discretion.

Where a trial court does not give a reason for granting a new trial, justification for the order must be found in the record.[3.50] In the absence of a request of either of the parties that the trial court state its reasons for sustaining a motion for a new trial, failure of the record to show a reason is not sufficient to show an abuse of discretion; in order for that to appear, the record must affirmatively show it.[3.55]

Where an order on a motion for a new trial is general in terms, so that it does not appear whether or not the ruling was based on a ground concerning which the law has invested the court with discretion, it may be assumed to have been in the exercise of discretion;[4] and where the notice of intention to move for a new trial was based on the minutes of the court as well as a bill of exceptions thereafter to be settled, it will be presumed on appeal, the record being silent as to the existence of a bill of exceptions, that the order was made on the minutes of the court, so that the burden is on appellant to show that it was not so made.[5]

An appellate court will not disturb an order granting a new trial where such order does not state the grounds or reasons therefor,[5.5] at least if there is sufficient evidence to take the case to the jury,[5.10] or if it cannot be said that the verdict was, as a matter of law, the only verdict that could have been rendered.[5.15] It has been held, however, that when the record does not show the grounds an order granting a new trial will be reversed where the verdict was supported by the evidence and the judgment on the verdict was correct.[6]

§ 1622. Grant or Denial of Motion on Particular Grounds

The general rule that the appellate court will not review or revise the trial court's exercise of its discretion in ruling on a motion for a new trial has been applied to rulings or motions based on many different grounds, including the ground that the interests of justice required the new trial or that substantial justice had not been done.

As will appear in this section and infra §§ 1623-1627, the general rule that the appellate court will not review or revise the trial court's exercise of its discretion in ruling on a motion for a new trial has been applied with respect to rulings or motions based upon many different grounds. It has been held that the general rule is especially applicable when a motion is sustained on numerous grounds or exceptions, which, taken together, may have disclosed error, although no single one was sufficient to warrant a new trial.[7]

The burden of showing that the ground upon which the court based an order for a new trial does not support it is on appellant; but, as to the other grounds of the motion, it will be presumed that the court's ruling was right until respondent shows the contrary.[8]

Interests of justice. The grant of a new trial in the interests of justice will be disturbed on appeal only in rare instances,[8.5] and only where it clearly appears that there was an abuse of discretion,[8.10]

Wash.—Barnes v. J. C. Penney Co., 70 P.2d 311, 190 Wash. 633.

Wyo.—**Corpus Juris cited in** Horse Creek Conservation Dist. v. Lincoln Land Co., 92 P.2d 572, 581, 54 Wyo. 320.

4 C.J. p 833 note 54.

3.50 Neb.—Nelson v. Wiepen, 48 N.W.2d 387, 154 Neb. 458.

3.55 Okl.—Tulsa City Lines v. Howell, 214 P.2d 255, 202 Okl. 394.

4. Ga.—Virginia Lumber Corp. v. Williamson Tie Co., 190 S.E. 202, 55 Ga.App. 410—Seaboard Air Line Ry. Co. v. Benton, 159 S.E. 717, 43 Ga.App. 495, reversed on other grounds 165 S.E. 593, 175 Ga. 491, conformed to 166 S.E. 219, 45 Ga. App. 832.

Vt.—Murray v. Nelson, 122 A. 519, 97 Vt. 101.

4 C.J. p 833 note 55.

5. Price v. Northern Pac. Ry. Co., 198 P. 439, 60 Mont. 166.

5.5 Kan.—Krehbiel v. Milford, 250 P.2d 769, 173 Kan. 642.

5.10 Wash.—Evans v. Yakima Val. Transp. Co., 239 P.2d 336, 39 Wash. 2d 841—Coppo v. Van Wieringen, 217 P.2d 294, 36 Wash.2d 120.

5.15 Wash.—Henry v. Larsen, 143 P.2d 841, 19 Wash.2d 690.

6. Idaho.—Lowe v. Long, 47 P. 93, 5 Idaho 122.

7. Iowa.—Heisdorffer v. Hammes, 42 N.W.2d 379, 241 Iowa 984—Jordan v. Schantz, 264 N.W. 259, 220 Iowa 1251—Seamans v. Gallup, 180 N.W. 276, 190 Iowa 470.

8. Mo.—Arkla Lumber & Mfg. Co. v. Henry Quellmalz Lumber & Mfg. Co., 252 S.W. 961—Kersten v. Hines, 223 S.W. 586, 283 Mo. 623.

Presumptions and burden of proof as to grounds of new trial generally see supra § 1571.

8.5 Wis.—Besser v. Hill, 271 N.W. 921, 224 Wis. 211.

Second new trial

Pa.—Kerr v. Hofer, 17 A.2d 886, 341 Pa. 47.

8.10 Iowa.—Hall v. City of West Des Moines, 62 N.W.2d 734, 245 Iowa 458.

Pa.—Rosanoff v. Duquesne University, 74 A.2d 172, 365 Pa. 121.

Stephenson v. Service Supply Corp., 63 A.2d 438, 164 Pa.Super. 31—Ellerbe v. Steinman, 58 A.2d 202, 162 Pa.Super. 440—Simpson v. Montgomery Ward & Co., 57 A.2d 571, 162 Pa.Super. 371.

Wis.—Kies v. Hopper, 19 N.W.2d 167, 247 Wis. 208—Myhre v. Hessey, 9 N.W.2d 106, 242 Wis. 638, 150 A.L.R. 889—Anderson v. Eggert, 291 N.W. 365, 234 Wis. 348—Fontaine v. Fontaine, 238 N.W. 410, 205 Wis. 570—Stockhausen v. Oehler, 211 N.W. 287, 191 Wis. 403—McCoy v. Terhorst, 205 N.W. 420, 188 Wis. 512.

since the discretion of the trial court in this matter is greater than that of an appellate court.[8.15] However, this rule does not apply where the order is based on a controlling question of law[8.20] of which the trial court took an erroneous view,[8.25] or where a verdict should have been directed for the party who prevailed with the jury.[8.30]

A grant of a new trial to promote the interests of justice will not be reversed merely because a reviewing court reaches a different conclusion on the record.[8.35]

Generally, if there are several defendants, and the record shows that the interests of justice require a new trial as to all of them, an order to that effect will not be disturbed on appeal.[8.40]

Substantial justice not done. The exercise of the inherent power of a trial court to grant a new trial on the ground that substantial justice has not been done will rarely be disturbed on appeal.[8.45]

§ 1623. —— Errors or Irregularities

Discretionary rulings on motions for a new trial based on alleged errors or irregularities at the trial will not be reviewed or revised except for an abuse of discretion and except where such rulings are not regarded as involving discretion.

The rule that the trial court's exercise of its discretion with respect to motions for new trial will not be reviewed or revised except for abuse has been applied to rulings on motions based on alleged errors or irregularities occurring before the trial,[8.60] or at the trial,[9] such as the misconduct of a party[10] or of

8.15 Iowa.—Hall v. City of West Des Moines, 62 N.W.2d 734, 245 Iowa 458.

8.20 Pa.—Rosanoff v. Duquesne University, 74 A.2d 172, 365 Pa. 121.
Questions of law generally see supra § 1620.

8.25 Pa.—Stephenson v. Service Supply Corp., 63 A.2d 438, 164 Pa. Super. 81.
Wis.—Olson v. Elliott, 15 N.W.2d 37, 245 Wis. 279—Myhre v. Hessey, 9 N.W.2d 106, 242 Wis. 638, 150 A.L.R. 889—Schmutzler v. Brandenberg, 1 N.W.2d 775, 240 Wis. 6—Huebner v. Fischer, 288 N.W. 254, 232 Wis. 600—Besser v. Hill, 271 N.W. 921, 224 Wis. 211.

8.30 Wis.—Besser v. Hill, supra.

8.35 Wis.—Anderson v. Eggert, 291 N.W. 365, 234 Wis. 348—Stockhausen v. Oehler, 211 N.W. 287, 191 Wis. 403—McCoy v. Terhorst, 205 N.W. 420, 188 Wis. 512.

8.40 Pa.—Sarne v. Baltimore & O. R. Co., 87 A.2d 264, 370 Pa. 82—Lorenz v. Caste Development Co., 81 A.2d 887, 368 Pa. 131—Held v. Van Tiggelen, 72 A.2d 73, 364 Pa. 317—Brogan v. City of Philadelphia, 29 A.2d 671, 346 Pa. 208.
Gerber v. Jones, 30 A.2d 534, 151 Pa.Super. 489.

8.45 Wash.—Cabe v. Department of Labor and Industries, 215 P.2d 400, 35 Wash.2d 695.

8.60 Mich.—Hoekstra by Hoekstra v. Byker, 45 N.W.2d 297, 329 Mich. 311.

Improper or insufficient disclosure by juror on voir dire
(1) Generally.
Cal.—People v. Thomas, 239 P.2d 914, 108 C.A.2d 832.
Ky.—Holladay v. Holladay, 172 S.W. 2d 36, 294 Ky. 540.
N.C.—Young v. Southern Mica Co. of N. C., 75 S.E.2d 795, 237 N.C. 644.
Ohio.—Pearson v. Gardner Cartage Co., 76 N.E.2d 67, 148 Ohio St. 425.
Sutfin v. Burton, 104 N.E.2d 53, 91 Ohio App. 177—Nardi v. Reliable Trucking Co., 81 N.E.2d 411, 85 Ohio App. 122—Carle v. Courtright, 43 N.E.2d 296, 69 Ohio App. 69.
(2) Where two jurors failed to disclose on voir dire that they had brought personal injury actions in the past, defendant should have been granted new trial and reviewing court would remand cause in interest of substantial justice.
Ohio.—Maggio v. City of Cleveland, 84 N.E.2d 912, 151 Ohio St. 136.
(3) Question on appeal is whether exercise of discretion by trial court was reasonably supported by record.
Mo.—Logsdon v. Duncan, 293 S.W.2d 944—Girratono v. Kansas City Public Service Co., 272 S.W.2d 278—Robbins v. Brown-Strauss Corp., 257 S.W.2d 643, 363 Mo. 1157.

9. Cal.—Head v. Logan, 102 P.2d 813, 39 C.A.2d 243.
Ga.—Cox v. Bank of Ochlochnee, 21 S.E.2d 485, 67 Ga.App. 853.
Kan.—Pasho v. Blitz, 162 P. 1161, 99 Kan. 421.
Mich.—Hoekstra by Hoekstra v. Byker, 45 N.W.2d 297, 329 Mich. 311.
Okl.—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845.
4 C.J. p 837 note 85.

Grant of new trial held reviewable
Ill.—Wettaw v. Retail Hardware Mut. Fire Ins. Co., 4 N.E.2d 885, 287 Ill.App. 284.

Error of law
Cal.—Brignoli v. Seaboard Transp. Co., 178 P.2d 445, 29 C.2d 782.
Corridan v. Rose, Zurich General Acc. & Liability Ins. Co., Intervenor, 290 P.2d 939, 137 C.A.2d 524—Dalgleish v. Holt, 237 P.2d 553, 108 C.A.2d 561—Savoia v. Moorehead, 188 P.2d 260, 83 C.A.2d 147.

Question on review
Where new trial has been ordered for error committed, whether on motion of party or court, court on appeal will determine whether error was prejudicial only in presence of exceptional circumstances showing that error was clearly not prejudicial.
Or.—Clark v. Fazio, 230 P.2d 553, 191 Or. 522.

Collapse of witness
In an action for injuries to plaintiff's wife, denial of a mistrial on the ground that the wife collapsed while the witness oath was being administered to her, resulting in prejudice to defendant, will not be disturbed, in the absence of a clear inference of prejudice.
Mich.—Jolman v. Alberts, 158 N.W. 886, 192 Mich. 365.

Evidence overlooked by court
The discretion of the trial court in granting a new trial of a case tried to the court without a jury, on the ground that evidence had been overlooked and that a fair trial was not had, will not be reversed, except for abuse thereof.
Wash.—Langley v. Devlin, 151 P. 1134, 87 Wash. 592.

10. Cal.—Chappell v. San Diego & A. Ry. Co., 258 P. 73, 201 C. 560.
Ky.—Doherty v. First Nat. Bank of Louisville, 186 S.W. 937, 170 Ky. 810.
Minn.—Hallada v. Great Northern Ry., 69 N.W.2d 673, 244 Minn. 81, certiorari denied 76 S.Ct. 119, 350 U.S. 874, 100 L.Ed. 773—Ryan v. International Harvester Co. of America, 283 N.W. 129, 204 Minn. 177.
Miss.—Pan American Petroleum Corporation v. Pate, 138 So. 349, 162 Miss. 638.
Mo.—Ullom v. Griffith, App., 263 S.W. 876.
Okl.—Martin v. Savlik, 284 P.2d 429—Bride v. Bride, 268 P. 212, 131 Okl. 176—Stekoll v. Lebow, 219 P. 899, 96 Okl. 76—Ratcliff v. Sharrock, 145 P. 802, 45 Okl. 349.

a witness;[10.5] the misconduct[11] or improper argument[12] of counsel, or error which has been commit-

Wash.—American Iron & Wire Works v. Fischer, 186 P. 877, 109 Wash. 279.
4 C.J. p 837 note 86.

Making experiments

In the absence of a showing of an abuse of discretion, the ruling of the trial court in refusing a new trial, although experiments were made by a party before the jury in the absence of the judge, is not the subject of appeal.
S.C.—Richardson v. Northwestern R. Co. of South Carolina, 117 S.E. 510, 124 S.C. 314.

Perjured testimony

(1) Generally.
Mo.—Chiodini v. Terminal R. Ass'n of St. Louis, App., 287 S.W.2d 357.
Pa.—Cooper v. Metropolitan Life Ins. Co., 186 A. 125, 323 Pa. 295, 111 A.L.R. 598.

(2) The appellate court rarely interferes with the discretion of the trial court in refusing to set aside the verdict on account of the perjured testimony of a party.
Mo.—Packer v. Chicago, M. & St. P. Ry. Co., App., 265 S.W. 119.

10.5 Minn.—Hallada v. Great Northern Ry., 69 N.W.2d 673, 244 Minn. 81, certiorari denied 76 S.Ct. 119, 350 U.S. 874, 100 L.Ed. 773.

11. Ala.—Mobile Light & R. Co. v. Gallasch, 97 So. 733, 210 Ala. 219—Thames v. Louisville & N. R. Co., 94 So. 487, 208 Ala. 255.
Cal.—Metropolitan Water Dist. of Southern California v. Adams, 116 P.2d 7, motion denied 122 P.2d 257, 19 C.2d 463—Walling v. Kimball, 110 P.2d 58, 17 C.2d 364—Lafargue v. United Railroads of San Francisco, 192 P. 538, 183 C. 720.
Sepulveda v. Ayako Ishimaru, App., 308 P.2d 809—Levy v. Martin, 241 P.2d 568, 109 C.A.2d 730—Gluckstein v. Lipsett, 209 P.2d 98, 93 C.A.2d 391—Music v. Southern Pac. Co., 204 P.2d 422, 91 C.A.2d 93—Jonte v. Key System, 201 P.2d 562, 89 C.A.2d 654—Huber v. Henry J. Kaiser Co., 162 P.2d 693, 71 C.A.2d 278—Brown v. McCuan, 132 P.2d 838, 56 C.A.2d 35—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77—Ferrario v. Conyes, 64 P.2d 975, 19 C.A.2d 58—Pandolfo v. Jackson, 55 P.2d 550, 12 C.A.2d 232—Alberts v. Lytle, 37 P.2d 705, 1 C.A.2d 682—Shannon v. Mt. Eden Nursery Co., 25 P.2d 849, 134 C.A. 591—Schlenker v. Egloff, 24 P.2d 224, 133 C.A. 393—Weaver v. Shell Oil Co., 18 P.2d 736, 129 C.A. 232—Coursault v. Schwebel, 5 P.2d 77, 118 C.A. 259—McKinney v. Red Top Cab Co., 299 P. 113, 113 C.A. 637—Mullin v. Rousseau, 297 P. 944, 112 C.A. 719—Girard v. Irvine, 275 P. 840, 97 C.A. 377.
Conn.—De Lucia v. Kneeland, 142 A. 742, 108 Conn. 191.
Ga.—Morris v. Reed, 82 S.E. 314, 14 Ga.App. 729.
Ind.—Wilson v. Smith, App., 133 N.E.2d 84—Marmon Motor Car Co. v. Schafer, 178 N.E. 863, 93 Ind. App. 588.
Iowa.—Schlueter v. Unger, 183 N.W. 446.
Mich.—Nosa v. Munising, M. & S. E. Ry. Co., 162 N.W. 970, 196 Mich. 104.
Minn.—Lee v. Lee, 80 N.W.2d 529—Patton v. Minneapolis St. Ry. Co., 77 N.W.2d 433, 247 Minn. 368—Randall v. Goodrich-Gamble Co., 70 N.W.2d 261, 244 Minn. 401—Hallada v. Great Northern Ry., 69 N.W.2d 673, 244 Minn. 81, certiorari denied 76 S.Ct. 119, 350 U.S. 874, 100 L.Ed. 773—Rom v. Calhoun, 34 N.W.2d 359, 227 Minn. 143—Brecht v. Town Board of Bergen, 235 N.W. 528, 182 Minn. 603.
Mo.—Moll v. Pollack, 8 S.W.2d 38, 319 Mo. 744.
Fledderman v. Manufacturers' Ry. Co., App., 254 S.W. 717—O'Hara v. Lamb Const. Co., App., 197 S.W. 163.
Okl.—Gaines Bros. Co. v. Phillips, 151 P.2d 933, 194 Okl. 374—Mead v. Snapp, 68 P.2d 771, 180 Okl. 214.
S.D.—Voegeli v. Schultz, 295 N.W. 493, 67 S.D. 538—Behseleck v. Andrus, 244 N.W. 268, 60 S.D. 204, 88 A.L.R. 596.
Wash.—Discargar v. City of Seattle, 191 P.2d 870, 30 Wash.2d 461—O'Neil v. Crampton, 140 P.2d 308, 18 Wash.2d 579.
4 C.J. p 837 note 87.

Improper questioning of witness

Ala.—Woodward Iron Co. v. Earley, 25 So.2d 267, 247 Ala. 556.

12. Ala.—British General Ins. Co. v. Simpson Sales Co., 93 So.2d 763, 265 Ala. 683—Taylor v. Brownell-O'Hear Pontiac Co., 91 So.2d 828, 265 Ala. 468.
Ariz.—Schmerfeld v. Hendry, 245 P.2d 420, 74 Ariz. 159—Sadler v. Arizona Flour Mills Co., 121 P.2d 412, 58 Ariz. 486.
Cal.—Jensen v. Southern Pac. Co., 276 P.2d 703, 129 C.A.2d 67—Bryant v. Tulare Ice Co., 270 P.2d 880, 125 C.A.2d 566—McKinney v. Red Top Cab Co., 299 P. 113, 113 C.A. 637.
Ill.—City of Chicago v. Chicago Title & Trust Co., 163 N.E. 17, 331 Ill. 322.
Ky.—Doherty v. First Nat. Bank of Louisville, 186 S.W. 937, 170 Ky. 810.
Minn.—Boutang v. Twin City Motor Bus Co., 80 N.W.2d 30—Beebe v. Kleidon, 65 N.W.2d 614, 242 Minn. 521—Hardy v. Anderson, 63 N.W.2d 814, 241 Minn. 478—Smith v. Barry, 17 N.W.2d 324, 219 Minn. 182—Waters v. Fiebelkorn, 13 N.W.2d 461, 216 Minn. 489—Mullen v. Devenney, 183 N.W. 350, 149 Minn. 251—Wrabek v. Suchomel, 177 N.W. 764, 145 Minn. 468—Anderson v. Canadian Northern Ry. Co., 153 N.W. 863, 130 Minn. 373.
Miss.—Pan American Petroleum Corporation v. Pate, 138 So. 349, 162 Miss. 638.
Mo.—Daniels v. Brown, 266 S.W.2d 680—Robbins v. Brown-Strauss Corp., 257 S.W.2d 643, 363 Mo. 1157—Joice v. Missouri-Kansas-Texas R. Co., 189 S.W.2d 568, 354 Mo. 439, 161 A.L.R. 383—Jones v. Kansas City, 76 S.W.2d 340, 342—Marlow v. Nafziger Baking Co., 63 S.W.2d 115, 333 Mo. 790—Lewis v. Illinois Cent. R. Co., 50 S.W.2d 122—Gettys v. American Car & Foundry Co., 16 S.W.2d 85, 322 Mo. 787—Pietzuk v. Kansas City Rys. Co., 232 S.W. 987, 289 Mo. 135.
Hancock v. Crouch, App., 267 S.W.2d 36—Jones v. Central States Oil Co., App., 170 S.W.2d 153—Chambers v. Metropolitan Life Ins. Co., 157 S.W.2d 593, 236 Mo.App. 823—Corbin v. Kansas City, C. C. & St. J. Ry. Co., App., 41 S.W.2d 832.
Okl.—St. Louis & S. F. Ry. Co. v. Grady, 233 P.2d 277, 204 Okl. 654.
Pa.—Stevenson v. Pennsylvania Sports & Enterprises, 93 A.2d 236, 372 Pa. 157.
Tex.—Emberlin v. Wichita Falls, R. & Ft. W. Ry. Co., Com.App., 284 S.W. 539.
American General Ins. Co. v. Dennis, Civ.App., 280 S.W.2d 620—Williams v. Rodocker, Civ.App., 84 S.W.2d 556—Employers' Liability Assur. Corporation v. Young, Civ. App., 34 S.W.2d 622—Federal Life Ins. Co. v. Sweeney, Civ.App., 18 S.W.2d 702.
Vt.—Russell v. Pilger, 37 A.2d 403, 113 Vt. 537.
Wis.—Sharpley v. City of Oconto, 166 N.W. 789, 167 Wis. 61.
4 C.J. p 837 note 88.

Introduction of irrelevant and prejudicial issues

Pa.—Schornig v. Speer, 24 A.2d 12, 343 Pa. 649.

Abuse of discretion

(1) Generally.
Ohio.—Maggio v. City of Cleveland, 84 N.E.2d 912, 151 Ohio St. 136.

(2) After grant of new trial on ground of counsel's improper remarks, supreme court will act where there has been abuse of discretion, which is determined by examination of remarks made, circumstances under which they were made, and precaution taken by court and counsel to remove their prejudicial effects.
Pa.—Narciso v. Mauch Chunk Tp.,

ted by counsel in failing to disclose or reveal that he represented an insurance association or company.[12.5]

The general rule has also been applied to other irregularities occurring at the trial, such as the misconduct of the jury or of a juror;[13] the want of

87 A.2d 233, 369 Pa. 549, 33 A.L.R.2d 438.

Weight of determination of trial court

(1) When trial court does not consider instances of alleged improper argument sufficient to require a new trial, supreme court will defer to trial court's opinion in these matters, unless on full examination of record it appears that improper argument was so prejudicial, inflammatory, and outside record as to affect result on the merits.

Mo.—Collins v. Cowger, 283 S.W.2d 554.

(2) In determining whether trial judge abused his discretion in refusing new trial on ground that verdict resulted from jury prejudice engendered by argument of counsel, reviewing court must bear in mind that trial judge, who was present and could see effect, prejudicial or otherwise, of argument, was in better position than reviewing court to gauge effect of argument on jury.

Mo.—Polizzi v. Nedrow, 247 S.W.2d 809.

Limits of discretion in Texas

"The decision in Robbins v. Wynne, (Com.App.) 44 S.W.(2d) 946, seems to preclude the operation of any discretion in the trial court whatever. That decision appears, in effect, to overrule Emberlin v. Wichita Falls, etc., Ry. Co., (Com.App.) 284 S.W. 539, which gave effect to the exercise of discretion. It does not seem arguable that if any improper argument must be affirmatively shown beyond a reasonable doubt to have had no prejudicial effect, there is left any room for the operation of judicial discretion on the part of the trial court. It seems to us that perhaps Robbins v. Wynne should be construed as not intended to deny the existence of all discretion, but merely to deny it in cases where the appellate court concludes that, notwithstanding efforts to render an otherwise material error immaterial, the error is clearly material in the opinion of the appellate court. In other words, the exercise of discretion is limited to a determination of whether error be material or not, and not to whether material error has in fact resulted in prejudice. In still other words, under this view the trial court in refusing a new trial exercises a discretion in determining whether improper argument is of a nature reasonably calculated to be prejudicial, the exercise of which discretion, although reviewable, is not reversible unless in the opinion of the appellate court it is clearly wrong. But, if the improper argument be clearly material, giving rise to the presumption of prejudicial effect, the court has no discretion in determining that it was in fact without prejudicial effect. No decision that the court could make upon that question would in any sense be binding upon the appellate court. . . . The trial judge in determining whether misconduct of the jury, or improper argument of counsel, be material or immaterial, should be regarded as exercising a true discretion, and the court's action should not be reversed unless the appellate court reaches the conclusion that it is clearly wrong."

Tex.—Williams v. Rodocker, Civ. App., 84 S.W.2d 556, 561.

12.5 Mo.—Mavrakos v. Mavrakos Candy Co., 223 S.W.2d 383, 359 Mo. 649.

13. Ark.—Vanhoozer v. Butler, 199 S.W. 78, 131 Ark. 404.

Cal.—Sepulveda v. Ayako Ishimaru, App., 308 P.2d 809—La Gue v. Deigaard, 291 P.2d 960, 138 C.A.2d 346—MacPherson v. West Coast Transit Co., 271 P. 509, 94 C.A. 463.

Colo.—Denver Alfalfa Milling & Products Co. v. Erickson, 239 P. 17, 77 Colo. 583.

Conn.—Bluett v. Eli Skating Club, 48 A.2d 557, 133 Conn. 99.

Ga.—Smith v. Tindol, 177 S.E. 588, 179 Ga. 801.

Ill.—Silberman v. Washington Nat. Ins. Co., 56 N.E.2d 446, 323 Ill.App. 555.

Iowa.—In re Murray's Estate, 26 N.W.2d 58, 238 Iowa 112—Lassell v. Clements, 153 N.W. 70.

Kan.—Pulkrabek v. Lampe, 293 P.2d 998, 179 Kan. 204—Kerby v. Hiesterman, 178 P.2d 194, 162 Kan. 490—Claggett v. Phillips Petroleum Co., 73 P.2d 1015, 146 Kan. 846.

Ky.—Schreiber v. Roser, 80 S.W.2d 1, 258 Ky. 340—Powell v. Louisville & N. R. Co., 189 S.W. 213, 172 Ky. 285.

Me.—Walker v. Bradford, 103 A. 15, 117 Me. 147.

Minn.—Briggs v. Chicago Great Western Ry. Co., 80 N.W.2d 625—Hillius v. Nelson Hotel Co., 247 N.W. 385, 188 Minn. 336—Newton v. Minneapolis Street Ry. Co., 243 N.W. 684, 186 Minn. 439.

Mo.—Davis v. Kansas City Public Service Co., 233 S.W.2d 669, 361 Mo. 168—Gilchrist v. Kansas City Rys. Co., 254 S.W. 161—Turnbow v. Kansas City Rys. Co., 211 S.W. 41, 277 Mo. 644.

Loughlin v. Marr-Bridger Grocer Co., App., 10 S.W.2d 75—Hoffman v. Dunham, App., 202 S.W. 429.

Neb.—Kohrt v. Hammond, 70 N.W.2d 102, 160 Neb. 347.

N.C.—Settee v. Charlotte Electric Ry. Co., 86 S.E. 1050, 170 N.C. 365.

Ohio.—In re Ohio Turnpike Commission, 131 N.E.2d 397, 164 Ohio St. 377, appeal dismissed 77 S.Ct. 51, 352 U.S. 806, 1 L.Ed.2d 39, rehearing denied 77 S.Ct. 260, 352 U.S. 945, 1 L.Ed.2d 240.

Roberts v. City of Fairborn, 141 N.E.2d 297, 102 Ohio App. 91—Krueger v. Tucker, 118 N.E.2d 224, 95 Ohio App. 150—Weaver v. Gale, App., 91 N.E.2d 808.

Okl.—Hays Trucking Co. v. Maxwell, 261 P.2d 456—Chambers v. Cunningham, 5 P.2d 378, 153 Okl. 129, 78 A.L.R. 905.

Or.—Saunders v. A. M. Williams & Co., 62 P.2d 260, 155 Or. 1—Burnett v. Weinstein, 59 P.2d 258, 154 Or. 308—Egli v. Hutton, 294 P. 347, 135 Or. 175—Mount v. Welch, 247 P. 815, 118 Or. 568.

Pa.—Shaffer v. Bahr, 57 Pa.Super. 48.

S.D.—Schoenrock v. Eib, 71 N.W.2d 82, 75 S.D. 613—Platt v. Rapid City, 291 N.W. 600, 67 S.D. 245—Sales v. Maupin, 151 N.W. 427, 35 S.D. 176, Ann.Cas.1917C 1222.

Tex.—Missouri, K. & T. Ry. Co. of Texas v. R. G. Andrews Lumber Co., Com.App., 206 S.W. 823.

Bunker v. Lott, 282 S.W.2d 879, Civ.App., error refused no reversible error—Martin v. Shell Oil Co., Civ.App., 262 S.W.2d 564—Hix v. Wirt, Civ.App., 220 S.W.2d 530, error refused no reversible error—Smith v. Houston Transit Co., Civ. App., 215 S.W.2d 187, error refused no reversible error—Collins v. Shivers, Civ.App., 167 S.W.2d 302—Texas Public Service Co. v. Mireles, Civ.App., 149 S.W.2d 298, error dismissed, judgment correct—Williams v. Rodocker, Civ.App., 84 S.W.2d 556—Texas & P. Ry. Co. v. Weatherly, Civ.App., 73 S.W.2d 957, affirmed 101 S.W.2d 217, 126 Tex. 642—Barton v. Green, Civ.App., 62 S.W.2d 193—James A. Dick Co. v. Yanez, Civ.App., 55 S.W.2d 600—Comer v. Farrell, Civ.App., 48 S.W.2d 452—Price v. Steel Const. Co., Civ.App., 36 S.W.2d 775—Bendelin v. Thompson, Civ.App., 33 S.W.2d 220—American Nat. Ins. Co. v. George, Civ.App., 22 S.W.2d 704—City of Waco v. Darnell, Civ. App., 20 S.W.2d 409, reversed on other grounds, Com.App., 35 S.W. 2d 134—Smith-Boyett Co. v. Adams, Civ.App., 16 S.W.2d 925—El Paso Electric Co. v. Collins, Civ. App., 10 S.W.2d 397, reversed on other grounds, Com.App., 23 S.W.

qualification,[14] or the existence of bias[15] or interest[16] on the part of the jury or of a particular

2d 295, rehearing denied 25 S.W.2d 807—Smith v. Irwin, Civ.App., 7 S.W.2d 926—Heid Bros. v. Bray, Civ.App., 7 S.W.2d 165—Adams v. Stark, Civ.App., 280 S.W. 1074—City of Brownsville v. Crixell, Civ.App., 275 S.W. 430—Green v. Emen, Civ.App., 270 S.W. 929—Wolf v. Wolf, Civ.App., 269 S.W. 488—Stell v. Fitch, Civ.App., 256 S.W. 650—Gray v. Stolley, Civ.App., 230 S.W. 866—Campbell v. Campbell, Civ.App., 215 S.W. 134, error refused—Jones v. Texas Electric Ry., Civ.App., 210 S.W. 749—West Lumber Co. v. Tomme, Civ.App., 203 S.W. 784, error refused—Fritsche v. Niechoy, Civ.App., 197 S.W. 1017, dismissed for want of jurisdiction—Trinity & B. V. Ry. Co. v. Geary, Civ.App., 194 S.W. 458, error refused—Galveston Electric Co. v. Hanson, Civ.App., 187 S.W. 533—Kaker v. Parrish, Civ.App., 187 S.W. 517, error refused—Fox v. Houston & T. C. Ry. Co., Civ.App., 186 S.W. 852—Virginia Fire & Marine Ins. Co. v. St. Louis Southwestern Ry. Co., Civ.App., 173 S.W. 487—City of Ft. Worth v. Charbonneau, Civ.App., 166 S.W. 387.

Utah.—Lund v. Third Judicial Dist. in and for Salt Lake County, 62 P. 2d 278, 90 Utah 433.

Vt.—Menard v. Blanchard. 92 A.2d 616, 117 Vt. 384—Hannah v. Hannah, 120 A. 886, 96 Vt. 469.

Va.—Kearns v. Hall, 91 S.E.2d 648, 197 Va. 736—Hinton v. Gallagher, 57 S.E.2d 131, 190 Va. 421—Hickerson v. Burner, 41 S.E.2d 451, 186 Va. 66—Litz v. Harman, 144 S.E. 477, 151 Va. 363.

Wash.—Kellerher v. Porter, 189 P.2d 223, 29 Wash.2d 650.

Wyo.—Stockgrowers' Bank of Wheatland v. Gray, 154 P. 593, 24 Wyo. 18.

4 C.J. p 837, note 89.

Strong case of misconduct required

It would require a very strong case of jury misconduct to warrant court of civil appeals in interfering with discretion of trial court in ruling that it did not warrant setting aside verdict.

Tex.—Prescott v. Metropolitan Life Ins. Co., Civ.App., 129 S.W.2d 821, error dismissed, judgment correct.

Quotient verdict

U.S.—U. S. v. 16,000 Acres of Land, More or Less, in LaBette County, Kan., D.C.Kan., 49 F.Supp. 645.

Ala.—Watson v. Mobile & O. R. Co., 173 So. 43, 233 Ala. 690.

Ind.—Gerlot v. Swartz, 7 N.E.2d 960, 212 Ind. 292.

Utah.—Hepworth v. Covey Bros. Amusement Co., 91 P.2d 507, 97 Utah 205.

Abuse of discretion

(1) Where the overruling of the motion for a new trial for misconduct of the jury was an abuse of discretion, the appellate court reserves the right to consider and pass upon such ruling upon appeal.

Or.—Benson v. Birch, 10 P.2d 1050, 139 Or. 459.

(2) So if, upon a consideration of the whole of the pertinent record, it is reasonably doubtful whether or not the improper conduct affected the amount of the verdict or the decision of any other material issue, the verdict should be set aside by the trial judge; and if, in such a case, a new trial is not granted, there is an abuse of discretion by the trial judge, and reversal becomes the duty of appellate courts.

Tex.—Casstevens v. Texas & P. Ry. Co., 32 S.W.2d 637, 119 Tex. 456, 73 A.L.R. 89.

St. Louis Southwestern Ry. Co. of Texas v. Lewis, Com.App., 5 S.W.2d 765, rehearing denied 10 S.W.2d 534—International-Great Northern R. Co. v. Cooper, Com.App., 1 S.W.2d 578—Moore v. Ivey, Com.App., 277 S.W. 106.

Hampton Co. v. Joyce, Civ.App., 80 S.W.2d 1066—St. Louis Southwestern Ry. Co. of Texas v. Smithhart, Civ.App., 9 S.W.2d 146—Chandler v. Wiemers, Civ.App., 4 S.W.2d 569—Stevens v. Dawley, Civ.App., 254 S.W. 810—Finlay-Tampico Oil Co. v. Robbins, Civ.App., 246 S.W. 1047—Southern Traction Co. v. Wilson, Civ.App., 241 S.W. 636, reversed on other grounds, Com.App., 254 S.W. 1104—German v. Houston & T. C. R. Co., Civ.App., 222 S.W. 662—Louisiana Western R. Co. v. White, Civ.App., 202 S.W. 794—St. Louis Southwestern Ry. Co. of Texas v. Roberts, Civ.App., 196 S.W. 1004.

(3) Where court found that foreman of jury was guilty of affirmative misconduct, but in overruling motion court did not determine prejudice or no prejudice to defendant, but instead based ruling on theory that there must be showing that misconduct influenced verdict, order overruling motion did not present exercise of such sound judicial discretion that it should not be disturbed on appeal.

Mo.—Middleton v. Kansas City Public Service Co., 152 S.W.2d 154, 348 Mo. 107.

(4) Where refusal of trial court to grant new trial, in action against railroad for injuries sustained by employee who allegedly incurred skin disease while working in defendant's shop, on ground of misconduct of juror who denied on voir dire that in his work as manufacturer of chemical products he had had any cases of dermatitis as result of working with chemicals, although he himself had skin condition, was close to abuse of discretion, and other errors were committed at trial, case would be reversed for new trial.

Fla.—Seaboard Air Line R. Co. v. Holt, 92 So.2d 169.

Hearing on affidavits

The supreme court will not ignore the discretion of the trial court in granting a new trial upon affidavits of misconduct of the jury, although the presumption in favor of the court's discretion is less strong than in matters determined upon conflicting oral testimony.

Mont.—Benjamin v. Helena Light & Ry. Co., 255 P. 20, 79 Mont. 144, 52 A.L.R. 33.

Returning verdict to clerk

Refusal to set aside a verdict returned by the jury to a deputy clerk during a noon recess, was not reviewable where it appeared that the verdict was not improperly influenced.

N.C.—Zageir v. Southern Express Co., 89 S.E. 43, 171 N.C. 692.

14. Ga.—Smith v. Tindol, 177 S.E. 588, 179 Ga. 801.

Farmers' Union Warehouse of Metter v. Boyd, 119 S.E. 542, 31 Ga. App. 104.

N.C.—Anderson v. Nichols, 123 S.E. 86, 187 N.C. 808.

Utah.—Lund v. Third Judicial Dist. in and for Salt Lake County, 62 P. 2d 278, 90 Utah 433.

Va.—Temple v. Moses, 8 S.E.2d 262, 175 Va. 320.

4 C.J. p 838 note 90.

Burden of showing abuse of discretion in denial of new trial rests on appellant whose motion has been denied.

S.C.—Smith v. Quattlebaum, 76 S.E. 2d 154, 223 S.C. 384.

Relationship to party

Discretion of the trial court in refusing a new trial for incompetency of a juror because of relationship to a party or attorney discovered after the trial will not be reviewed.

N.C.—Carter v. King, 94 S.E. 4, 174 N.C. 549.

15. Ala.—Birmingham Elec. Co. v. Yoast, 57 So.2d 103, 256 Ala. 673, 30 A.L.R.2d 907.

Ga.—Bialock v. Adams, 119 S.E. 465, 31 Ga.App. 68.

Tex.—Southern S. S. Co. v. Neeley, Civ.App., 243 S.W. 607—El Paso Electric Ry. Co. v. Gonzales, Civ. App., 207 S.W. 162.

Utah.—Lund v. Third Judicial Dist. in and for Salt Lake County, 62 P. 2d 278, 90 Utah 433.

4 C.J. p 838 note 91.

16. Ark.—Gershner v. Scott-Mayer Commn. Co., 124 S.W. 772, 93 Ark. 301.

juror; the disregard by the jury of instructions[17] or issues;[17.5] the admission of incompetent evidence;[18] the exclusion of evidence which may have been relevant to the issues involved;[19] the striking of testimony;[20] and the permitting of prejudicial cross-examination.[20.5]

Other alleged errors or irregularities to which the general rule has been applied include the trying of a case exclusively of equity jurisdiction as an action at law;[21] improperly letting a paper or document go to the jury room;[22] the directing of a verdict;[22.5] remarks or instructions of the court which may have misled the jury;[23] the refusal of

Mo.—Logsdon v. Duncan, 293 S.W.2d 944.

4 C.J. p 838 note 92.

17. Kan.—Johnson v. Combination Oil & Gas Co., 220 P. 176, 114 Kan. 519.

Mo.—Williams v. Deering Southwestern Ry., App., 204 S.W. 564.

4 C.J. p 838 note 93.

Weight accorded decision of trial court

Where trial justice had granted a new trial upon a misconception of the evidence and an erroneous belief that jury had not followed the instructions, decision was not entitled to weight usually given to decisions on such motions, and the supreme court would review the evidence from transcript alone to determine whether evidence strongly preponderated against verdict.

R.I.—Meehan v. Petroleum Heat & Power Co., 68 A.2d 77, 76 R.I. 178.

17.5 Iowa.—Hall v. City of West Des Moines, 62 N.W.2d 734, 245 Iowa 458.

18. Cal.—Gursey v. Campus Camera Shop, 219 P.2d 884, 98 C.A.2d 257—De Victoria v. Erickson, 188 P.2d 276, 83 C.A.2d 206.

Ga.—Hughes v. Weaver, 148 S.E. 12, 39 Ga.App. 597.

Idaho.—King v. Hahn, 234 P. 937, 40 Idaho 555.

Mo.—Arnold v. Alton R. Co., 124 S.W. 2d 1092, 343 Mo. 1049.

N.Y.—Bregman v. Carleton Co., 1 N.Y. S.2d 587, 253 App.Div. 831.

Pa.—Auslander v. Pennsylvania R. Co., 39 A.2d 595, 350 Pa. 473—Frank v. Bayuk, 185 A. 705, 322 Pa. 282—Reist v. Wogan, 126 A. 249, 281 Pa. 107.

Wash.—Ferris v. Todd, 215 P. 54, 124 Wash. 643.

W.Va.—Pallotto v. Cherry River Paper Co., 144 S.E. 720, 106 W.Va. 60—Vaughan v. Memorial Hospital, 136 S.E. 837, 103 W.Va. 156.

4 C.J. p 838 note 94.

"The action of a trial court in setting aside a verdict and granting a new trial for error in the admission of evidence will not be disturbed by the appellate court unless it appears that the verdict was plainly right and the error was harmless. In such instances the judgment of the trial court as to the potency of the error is regarded with peculiar weight, in view of his knowledge of the case derived from his observations of the conduct of the trial."

W.Va.—Pallotto v. Cherry River Paper Co., 144 S.E. 720, 106 W.Va. 60.

19. Iowa.—Dalbey v. Town of Irwin, 191 N.W. 119, 194 Iowa 1139.

Mo.—Ismert-Hincke Milling Co. v. Mercurio Bros. Spaghetti Mfg. Co., App., 243 S.W. 408—Galli v. Wells, 239 S.W. 894, 209 Mo.App. 460—Skirvin v. McKamey, App., 237 S.W. 858.

4 C.J. p 838 note 95.

20. Mont.—Vogt v. Baldwin, 51 P. 157, 20 Mont. 322.

20.5 Mo.—De Maire v. Thompson, 222 S.W.2d 93, 359 Mo. 457.

21. N.D.—Prondzinski v. Garbutt, 77 N.W. 1012, 8 N.D. 191.

22. Md.—Nichols v. Meyer, 115 A. 786, 139 Md. 450.

4 C.J. p 838 note 98.

Discretion not arbitrary

While the matter of refusing a new trial because of documents not introduced in evidence having been taken into the jury room and considered by the jury is largely in the discretion of the trial court, such discretion is not an arbitrary one so as to be beyond the revision of the appellate court.

Tex.—City of Ft. Worth v. Young, Civ.App., 185 S.W. 983.

22.5 Fla.—Street v. Overholzer, 58 So.2d 153.

23. Ala.—Montgomery Light & Traction Co. v. Riverside Co., 66 So. 459, 188 Ala. 380.

Cal.—Brandelius v. City and County of San Francisco, 306 P.2d 432—Sparks v. Redinger, 279 P.2d 971, 44 C.2d 121—Parker v. Womack, 230 P.2d 823, 37 C.2d 116—Mazzotta v. Los Angeles Ry. Corp., 153 P.2d 338, 25 C.2d 165—Mathers v. Riverside County, 141 P.2d 419, 22 C.2d 781—Fennessey v. Pacific Gas & Electric Co., 76 P.2d 104, 10 C.2d 538.

Bender v. Schneider, App., 308 P. 2d 527—Balthrop v. Atchison, T. & S. F. Ry. Co., 299 P.2d 341, 142 C.A.2d 823—McNamara v. San Diego Transit System, 286 P.2d 897, 135 C.A.2d 139—Hart v. Briskman, 242 P.2d 341, 110 C.A.2d 194—Copley v. Putter, 207 P.2d 876, 93 C.A. 2d 453—De Victoria v. Erickson, 188 P.2d 276, 83 C.A.2d 206—Ziesemer v. McCarty, 162 P.2d 857, 71 C. A.2d 378—Stamper v. Schemmel, 159 P.2d 66, 69 C.A.2d 449—Scott v. Renz, 154 P.2d 738, 67 C.A.2d 428—Morrison v. Jose, 135 P.2d 586, 57 C.A.2d 795—Hunton v. California Portland Cement Co., 123 P.2d 947, 50 C.A.2d 684—Jones v. Heinrich, 122 P.2d 304, 49 C.A.2d 702—Lasch v. Edgar, 116 P.2d 949, 46 C.A.2d 726—Nance v. Fresno City Lines, 113 P.2d 244, 44 C.A.2d 868—Pettigrew v. O'Donnell, 90 P.2d 93, 32 C.A.2d 502—Harveld v. Milani, 36 P.2d 393, 1 C.A.2d 157—Pozzobon v. O'Donnell, 36 P.2d 236, 1 C.A.2d 151—Manufacturers' Finance Corporation v. Pacific Wholesale Radio, 19 P.2d 1013, 130 C.A. 239—In re Mickley's Estate, 2 P.2d 193, 115 C.A. 736—Pope v. Wenisch, 293 P. 622, 109 C.A. 608—Galloway v. United Railroads of San Francisco, 232 P. 491, 69 C.A. 770.

Fla.—F E C News Co. v. Pearce, 58 So.2d 843.

Ky.—Louisville & I. Ry. Co. v. Pulliam's Adm'x, 82 S.W.2d 191, 259 Ky. 82.

Minn.—Storey v. Weinberg, 31 N.W. 2d 912, 226 Minn. 48—Flitton v. Daleki, 13 N.W.2d 477, 216 Minn. 549—Larson v. Sventek, 1 N.W.2d 608, 211 Minn. 385—Naylor v. McDonald, 241 N.W. 674, 185 Minn. 518—Hector v. Royal Indemnity Co., 234 N.W. 643, 182 Minn. 413, reargument denied 235 N.W. 675, 182 Minn. 413—Mingo v. Extrand, 230 N.W. 895, 180 Minn. 395—Sullivan v. Minneapolis St. Ry. Co., 190 N.W. 261, 153 Minn. 301—Singer v. Bossingham, 188 N.W. 155, 152 Minn. 111.

Mo.—Olsen v. Bernie's Inc., 296 S.W. 2d 3—Cooper v. 804 Grand Bldg. Corp., 257 S.W.2d 649—Rasp v. Baumbach, 223 S.W.2d 472—Hensley v. Dorr, 191 S.W.2d 663—Scudder v. St. Joseph Belt Ry. Co., 92 S.W.2d 138, 338 Mo. 492.

Schreiner v. City of St. Louis, App., 203 S.W.2d 678—Bixler v. Wagster, App., 256 S.W. 520.

N.Y.—Bregman v. Carleton Co., 1 N.Y.S.2d 587, 253 App.Div. 831.

Okl.—Hays Trucking Co. v. Maxwell, 261 P.2d 456.

Pa.—Kraft v. Carpenter, 23 A.2d 493, 343 Pa. 404—Murphy v. McGinnis, 22 A.2d 649, 343 Pa. 255—Cleveland Worsted Mills Co. v. Myers-Jolesch Co., 109 A. 662, 266 Pa. 309.

Sigel v. American Guarantee & Liability Ins. Co., 98 A.2d 376, 173 Pa.Super. 434.

Wash.—Portland-Seattle Auto Freight v. Jones, 131 P.2d 736, 15 Wash.2d

the trial court to give instructions;[24] and error in a special verdict returned by the jury.[24.5]

It is sometimes held, however, that the granting or refusal of a new trial because of error in giving or refusing instructions,[25] in admitting[25.5] or excluding[26] evidence, in selecting additional jurors,[26.5] or in depriving a party of the right to have a poll of the jury,[26.10] or because of false answers by a juror on the voir dire examination,[26.15] or the disregarding of instructions by the jury,[26.20] in-

603—Babcock v. M. & M. Const. Co., 220 P. 803, 127 Wash. 303.
W.Va.—Lunsford v. Cannon Ball Transit Co., 166 S.E. 19, 112 W.Va. 586—Levine Bros. v. Mantell, 111 S.E. 501, 90 W.Va. 166.
4 C.J. p 838 note 99.

Cautionary instruction
Mo.—Roush v. Alkire Truck Lines, 245 S.W.2d 8—Morris v. E. I. Du Pont De Nemours & Co., 173 S.W.2d 39, 351 Mo. 479.

Over-emphasis of particular issue
Mo.—Wells v. City of Jefferson, 132 S.W.2d 1006, 345 Mo. 239.

Repetition of propositions of law
Mo.—Edwards v. Business Men's Assur. Co. of America, 168 S.W.2d 82, 350 Mo. 666—Wells v. City of Jefferson, 132 S.W.2d 1006, 345 Mo. 239—Arnold v. Alton R. Co., 124 S.W.2d 1092, 343 Mo. 1049—Pearrow v. Thompson, 121 S.W.2d 811, 343 Mo. 490.

Method of fixing amount of verdict
Trial judge's conclusions that no prejudice was suffered by defendants as result of his first telling jury that only the nine jurors who were in favor of plaintiff could participate in fixing amount of verdict, because of his later telling jury that all the jurors could do so would not be disturbed on appeal, where it did not appear to be plainly wrong.
Cal.—Carlin v. Prickett, 184 P.2d 945, 81 C.A.2d 688.

Prejudice in instruction
(1) Whether and how much instruction was misleading or prejudicial because of its abstract generality was a matter peculiarly addressed to discretion of trial court.
Mo.—Rea v. Feeback, 244 S.W.2d 1017.

(2) Question of prejudicial character of error in instruction is one for trial court except for manifest abuse of discretion.
Cal.—Zollars v. Barber, 295 P.2d 561, 140 C.A.2d 502.

(3) Rules that appellate court will usually defer to findings of trial court concerning prejudicial effect of instructions and that when motion for new trial has been sustained, appellate court will be more liberal in upholding action than in reviewing judgment on same ground on appeal, do not apply where trial court has clearly abused its discretion or where its ruling is plainly erroneous, especially as matter of law.
Mo.—Osborne v. Goodman, 289 S.W.2d 68.

Rule held inapplicable
Rule requiring recognition of discretion of trial court in determining whether error in charging jury was error calculated to affect substantial rights of plaintiff moving for new trial was inapplicable, where trial court rested ruling granting such motion on grounds not related to matter of such charge.
Ala.—Lassetter v. King, 31 So.2d 588, 249 Ala. 422.

Abuse of discretion
(1) Although the appellate court hesitates to overrule the decision of the trial court in a matter involving the exercise of a discretionary power, the grant of a new trial solely for harmlessly erroneous instructions will be reversed.
Idaho.—Applebaum v. Stanton, 276 P. 47, 47 Idaho 395.

(2) Also, an order granting a new trial solely on the theory of erroneous instructions will be reversed, where the instructions are shown to be correct.
Idaho.—Rayborn v. Salmon River Canal Co., 295 P. 1001, 50 Idaho 297.
Minn.—Herberg v. Feldman, 210 N.W. 44, 168 Minn. 218.
Va.—Keeler v. Baumgardner, 171 S.E. 592, 161 Va. 507—Vaughan v. Mayo Milling Co., 102 S.E. 597, 127 Va. 148.

(3) It has been held, however, that if the trial court believed that an instruction given by it was erroneous and not in harmony with court decisions, and therefore granted a new trial, its order will not be disturbed on appeal, even though upon a strict analysis of the instruction it was found to be correct, the question being, not the correctness of the instruction, but whether the trial court abused its discretion in granting the new trial.
Iowa.—Young v. Electric Service Co. of Central City, 185 N.W. 54, 192 Iowa 655.

24. Cal.—Hunton v. California Portland Cement Co., 123 P.2d 947, 50 C.A.2d 684.
Okl.—Oklahoma City v. Tarkington, 63 P.2d 689, 178 Okl. 430—Hughes v. Chicago, etc., R. Co., 130 P. 591, 35 Okl. 482.

Requested instructions unsigned
Kan.—Kniffen v. Hercules Powder Co., 188 P.2d 980, 164 Kan. 196.

Cautionary instructions
Mo.—Morris v. E. I. Du Pont De Nemours & Co., 173 S.W.2d 39, 351 Mo. 479.

Refusal to submit question
Where the trial judge, because satisfied that his refusal to submit a special interrogatory was unfair to defendant, granted a new trial therefor, the supreme court should not interfere with his discretion.
Iowa.—Hollingshead v. Watkins, 173 N.W. 4, 186 Iowa 582.

24.5 Ohio.—Globe Indem. Co. v. Schmitt, 68 N.E.2d 130, 77 Ohio App. 413.

25. Mo.—Mendenhall v. Neyer, 149 S.W.2d 366, 347 Mo. 881—Yuronis v. Wells, 17 S.W.2d 518, 322 Mo. 1039.
Fleming v. Joseph F. McMahon Contracting Corporation, App., 45 S.W.2d 952—Hutton v. Lambardi, App., 180 S.W. 566.
N.Y.—Taylor v. Mansfield, 24 N.Y.S. 2d 520, 260 App.Div. 1058.
Okl.—Dowell, Inc. v. Layton, 261 P. 2d 885.
Wash.—Crowl v. West Coast Steel Co., 186 P. 866, 109 Wash. 426.
Wis.—Day v. Pauly, 202 N.W. 363, 186 Wis. 189—Siegl v. Watson, 195 N.W. 867, 181 Wis. 619.

Unrequested instruction
Failure to give an unrequested instruction, unwarranted by the evidence, presented an unmixed question of law, and a judgment granting a new trial therefor is reversible error.
Okl.—Thompson v. Nickle, 229 P. 202, 105 Okl. 181, mandate and vacating order recalled 239 P. 649, 113 Okl. 44.

Erroneous determination of error in instruction
Cal.—Bender v. Schneider, App., 308 P.2d 527.

25.5 Ill.—Jacobs v. Mutual Life Ins. Co. of N. Y., 93 N.E.2d 516, 341 Ill. App. 293.
S.D.—Davenport v. Firemen's Ins. Co. of Newark, N. J., 199 N.W. 203, 47 S.D. 426.

26. S.D.—Davenport v. Firemen's Ins. Co. of Newark, N. J., supra.

26.5 Okl.—City of Holdenville v. Deer, 132 P.2d 928, 191 Okl. 691.

26.10 N.J.—Weir v. Luz, 58 A.2d 550, 137 N.J.Law 361.

26.15 Kan.—Kerby v. Hiesterman, 178 P.2d 194, 162 Kan. 490.

26.20 Iowa.—Larimer v. Platte, 53 N.W.2d 262, 243 Iowa 1167.
Vt.—Cenate v. Hunter, 62 A.2d 645, 115 Vt. 402—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42.

volves no element of discretion, but only a question of law which is reviewable by the appellate court.[27]

§ 1624. —— Insufficiency of Evidence

Although they have been held subject to review, discretionary rulings on a motion for a new trial on the ground of insufficiency of the evidence to sustain the verdict, or because the verdict is contrary to the weight of the evidence, will generally not be disturbed unless there is a clear abuse of discretion.

Although it has been stated that the discretion of a trial court in granting a new trial on the ground that the verdict is contrary to the weight of the evidence is subject to review,[27.50] it is a more general rule that the discretionary action of the trial court in granting or denying a motion for a new trial based on that ground is not subject to review or revision except under the most extraordinary circumstances,[27.55] as where the power has been improvidently used,[27.60] or where there has been an abuse or withholding of discretion.[27.65] Similarly,

27. Kan.—Hiattville State Bank v. Land, 263 P. 1073, 125 Kan. 108.

Question with respect to abuse of discretion not involved on appeal
Wis.—Tracy v. Malmstadt, 296 N.W. 87, 236 Wis. 642.

27.50 Ill.—Goodman v. Motor Products Corp., 132 N.E.2d 356, 9 Ill. App.2d 57—Carter v. Geeseman, 25 N.E.2d 120, 303 Ill.App. 280—Wettaw v. Retail Hardware Mut. Fire Ins. Co., 2 N.E.2d 162, 285 Ill.App. 394.
N.J.—Annichiarico v. Mobilite, Inc., 89 A.2d 89, 19 N.J.Super. 492.

27.55 Wash.—Porter v. Chicago, M., St. P. & P. R. Co., 252 P.2d 306, 41 Wash.2d 836—Myers v. Weyerhaeuser, 85 P.2d 1091, 197 Wash. 407.

27.60 Ark.—Missouri Pac. R. Co. v. Brewer, 102 S.W.2d 538, 193 Ark. 754.

27.65 Ala.—Birmingham Electric Co. v. Bailey, 15 So.2d 465, 31 Ala.App. 275, certiorari denied 15 So.2d 469, 244 Ala. 671.
Colo.—Mooney v. Carter, 160 P.2d 390, 114 Colo. 267.
Fla.—Snider v. Bancroft Inv. Corp., 61 So.2d 184—McMillan v. Nelson, 5 So.2d 867, 149 Fla. 334.
Idaho.—Hall v. Johnson, 214 P.2d 467, 70 Idaho 190.
Ill.—Jacobson v. Central Ill. Elec. & Gas Co., 135 N.E.2d 506, 10 Ill. App.2d 528—Miller v. Interstate Bedding Co., 133 N.E.2d 773, 9 Ill. App.2d 571—Masters v. Central Ill. Elec. & Gas Co., 129 N.E.2d 586, 7 Ill.App.2d 348—Roy v. Chicago Motor Coach Co., 102 N.E.2d 752, 345 Ill.App. 296—Lauff v. Massachusetts Mut. Life Ins. Co., 2 N.E.2d 591, 284 Ill.App. 643—Lynn v. Haff, 2 N.E.2d 583, 285 Ill.App. 599—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill.App. 269, 285.
Mass.—Daddario v. City of Gloucester, 107 N.E.2d 819, 329 Mass. 297—Hartmann v. Boston Herald-Traveler Corp., 80 N.E.2d 16, 323 Mass. 56—Grower's Marketing Service v. Webster & Atlas Nat. Bank of Boston, 62 N.E.2d 225, 318 Mass. 496—Logan v. Goward, 46 N.E.2d 522, 313 Mass. 48—Petition of Graustein, 26 N.E.2d 536, 305 Mass. 571.
Mo.—Schmidt v. Allen, 303 S.W.2d 652—Andres v. Brown, 300 S.W.2d 800—Liddle v. Collins Const. Co., 283 S.W.2d 474—Dawson v. Scherff, 281 S.W.2d 825—Reger v. Nowotny, 226 S.W.2d 596—King v. Kansas City Life Ins. Co., 164 S.W.2d 458, 350 Mo. 75—Stark v. Bingaman, 223 S.W. 946—Lindsey v. Vance, 88 S.W.2d 150, 337 Mo. 1111—Riche v. City of St. Joseph, 32 S.W.2d 578, 326 Mo. 691—King v. Mann, 286 S.W. 100, 315 Mo. 318—Pietzuk v. Kansas City Rys. Co., 232 S.W. 987, 289 Mo. 135—Newell v. Boatmen's Bank, 216 S.W. 918, 279 Mo. 663.
Palmer v. Lasswell, App., 267 S.W.2d 492—Westinghouse Elec. Supply Co. v. Binger, App., 212 S.W.2d 445—Schreiner v. City of St. Louis, App., 203 S.W.2d 678—Ritzheimer v. Marshall, App., 168 S.W.2d 159—McGraw v. Farmers Fire & Lighting Mut. Ins. Co., 160 S.W.2d 845, 236 Mo.App. 1019—Smith v. Staley, App., 156 S.W.2d 766—Bledsoe v. Nickles, App., 91 S.W.2d 184—Gust v. Montgomery Ward & Co., App., 80 S.W.2d 286—Wilson v. Caulfield, App., 67 S.W. 2d 761—Wilcox v. Erwin, App., 49 S.W.2d 677—Birdsong v. Jones, 30 S.W.2d 1094, 225 Mo.App. 242—Wise v. Rubenstein, App., 24 S.W. 2d 203—Shovey v. Phillips, App., 7 S.W.2d 296—Hoyland Flour Mills Co. v. Missouri Pac. R. Co., 5 S.W. 2d 125, 222 Mo.App. 599, certiorari denied Erie R. Co. v. Hoyland Flour Mills Co., 48 S.Ct. 433, 277 U.S. 586, 72 L.Ed. 1001—Caruthersville Plumbing & Auto Co. v. Lloyd, App., 240 S.W. 838—Reardon v. White, App., 239 S.W. 162—Haag v. Cohen, 229 S.W. 296, 207 Mo.App. 36—Frame v. Kansas City, C. & S. Ry. Co., App., 209 S.W. 314—Glidewell v. Quincy, O. & K. C. R. Co., App., 204 S.W. 37—Prichard v. Connecticut Fire Ins. Co. of Hartford, Conn., App., 203 S.W. 223.
N.J.—Amado v. Malibu Dude Ranch, 98 A.2d 121, 26 N.J.Super. 445.
Cook Coffee Co. v. Ewell, 24 A.2d 572, 128 N.J.Law 210.
N.Y.—Lewis v. Krinsky, 24 N.Y.S.2d 393, 260 App.Div. 1034.
N.C.—White v. Keller, 86 S.E.2d 795, 242 N.C. 97—Guy Frye & Sons, Inc. v. Francis, 86 S.E.2d 790, 242 N.C. 107—Elizabeth City v. Hoover, 85 S.E.2d 897, 241 N.C. 569—Roberts v. Hill, 82 S.E.2d 373, 240 N.C. 373—Poniros v. Nello L. Teer Co., 72 S.E.2d 9, 236 N.C. 145—King v. Byrd, 47 S.E.2d 856, 229 N.C. 177—Wall v. Bain, 23 S.E.2d 330, 222 N.C. 375—Query v. Gate City Life Ins. Co., 11 S.E.2d 139, 218 N.C. 386—In re Escoffery, 3 S.E.2d 425, 216 N.C. 19—Evans v. Imperial Life Ins. Co., 196 S.E. 814, 213 N.C. 539—Anderson v. Holland, 184 S.E. 511, 209 N.C. 746—In re Hargrove's Will, 176 S.E. 752, 207 N.C. 280—Headen v. Metropolitan Life Ins. Co., 175 S.E. 282, 206 N.C. 860—North Carolina Joint Stock Land Bank v. Shuford, 169 S.E. 226, 204 N.C. 796—Anderson v. Morris, 166 S.E. 527, 203 N.C. 577—Goodman v. Goodman, 161 S.E. 686, 201 N.C. 808—Hardison v. Jones, 146 S.E. 804, 196 N.C. 712—Fountain Department Store v. Anderson, 126 S.E. 517, 189 N.C. 186—Alston v. District Grand Household No. 10 of the G. U. O. O. F. of North Carolina, of Household of Ruth, No. 3836, 126 S.E. 516, 189 N.C. 204—Mountain State Mica & Mining Co. v. J. E. Burleson Mica Co., 114 S.E. 754—Lanier v. Pullman Co., 105 S.E. 21, 180 N.C. 406—Forester v. Betts, 103 S.E. 210, 179 N.C. 608—Willis v. Williams, 94 S.E. 513, 174 N.C. 769—Cooper v. Clute, 93 S.E. 915, 174 N.C. 366—Pruitt v. Southern Ry. Co., 83 S.E. 350, 167 N.C. 246.
Pa.—Byers v. Vargo, 133 A.2d 163, 389 Pa. 365—Kiser v. Schlosser, 132 A.2d 344, 389 Pa. 131—Clewell v. Pummer, 131 A.2d 375, 388 Pa. 592—Robinson v. Freeborough, 131 A. 2d 96, 388 Pa. 497—Wilbert v. Pittsburgh Consolidation Coal Co., 122 A.2d 406, 385 Pa. 149—Joseph v. Rochester Motor Coach Co., 110 A. 2d 214, 380 Pa. 189—Katz v. Montague, 110 A.2d 178, 380 Pa. 273—Wexler v. Bonwit, Teller & Co. of Philadelphia, 93 A.2d 454, 372 Pa. 230—Shields v. Larry Const. Co., 88 A.2d 764, 370 Pa. 582—Aaron v.

a ruling on a motion for a new trial based on the ground of the insufficiency of the evidence to support the verdict is not subject to review or revision unless there has been an abuse or withholding of discretion.[28] Where either the insufficiency of the evidence to support the verdict, or the fact that

Strausser, 59 A.2d 910, 360 Pa. 82—Miller v. Measmer, 44 A.2d 284, 353 Pa. 18—Knickerbocker v. City of Scranton, 25 A.2d 152, 344 Pa. 317—Yago v. Pipicelli, 22 A.2d 699, 343 Pa. 222—Wilson v. Kallenbach, 2 A.2d 727, 332 Pa. 253—Billo v. Allegheny Steel Co., 195 A. 110, 328 Pa. 97—Pearson v. A. W. Funk & Co., 172 A. 674, 315 Pa. 402—Amey v. Erb, 146 A. 141, 296 Pa. 561—Pfeffer v. City of Johnstown, 135 A. 127, 287 Pa. 370—Pera v. Harrisburg Rys. Co., 126 A. 349, 281 Pa. 203—Sullivan v. Baltimore & O. R. Co., 116 A. 369, 272 Pa. 429, certiorari denied Baltimore & O. R. Co. v. Sullivan, 42 S.Ct. 272, 258 U.S. 621, 66 L.Ed. 795—Cleveland Worsted Mills Co. v. Myers-Jolesch Co., 109 A. 662, 266 Pa. 309—Walker v. Walker, 107 A. 219, 264 Pa. 68.

Barton v. Pittsburgh Rys. Co., 133 A.2d 869, 184 Pa.Super. 304—Beitch v. Mishkin, 132 A.2d 703, 184 Pa.Super. 120—Burg v. Aberman, 128 A.2d 179, 183 Pa.Super. 1—Feinstein v. Orenstein, 126 A.2d 527, 182 Pa.Super. 228—Savitz v. Gallaccio, 118 A.2d 282, 179 Pa. Super. 589—Kozemchak v. Garner, 61 A.2d 375, 163 Pa.Super. 328—Knies v. Kraftsow, 40 A.2d 122, 156 Pa.Super. 296—Bastaich v. Zivena Beneficial Society of U. S., 28 A.2d 367, 150 Pa.Super. 316—Gerovica v. Dzelalia, 27 A.2d 707, 149 Pa.Super. 601—Feigenbaum v. Prudential Ins. Co. of America, 19 A.2d 542, 144 Pa.Super. 412—Baugh v. McCallum, 14 A.2d 364, 140 Pa. Super. 276—Hahn v. Hahn, 4 A.2d 821, 135 Pa.Super. 39—Jones v. Manhattan Life Ins. Co. of New York, 4 A.2d 220, 134 Pa.Super. 437—McKown v. State Mut. Life Assur. Co. of Worcester, Mass., 191 A. 621, 127 Pa.Super. 117—Heaver v. Philadelphia Rapid Transit Co., 183 A. 110, 120 Pa.Super. 520—Solomon v. Goldstein, 182 A. 772, 120 Pa.Super. 396—Szczygielski v. Travelers' Ins. Co., 174 A. 662, 114 Pa. Super. 352—Cullen v. Hartford Accident & Indemnity Co., 164 A. 67, 108 Pa.Super. 19—Jones v. Quaker City Cab Co., 84 Pa.Super. 80.

S.C.—Scott v. Russ, 46 S.E.2d 152, 211 S.C. 526—Kilpatrick v. Brotherhood of R. R. Trainmen Ins. Dept., 42 S.E.2d 891, 210 S.C. 379—Ford v. A. A. A. Highway Express, 29 S.E.2d 760, 204 S.C. 433—Porter-Constructors v. Dixon Motor Service Co., 172 S.E. 419, 171 S.C. 396—Chesser v. Tyger River Pine Co., 152 S.E. 646, 155 S.C. 356.

Tenn.—Howell v. Wallace E. Johnson, Inc., App., 298 S.W.2d 753.

Vt.—Macauley v. Hyde, 42 A.2d 482, 114 Vt. 198—Long v. Leonard, 32 A.2d 679, 113 Vt. 258—Barber v. Stratton, 10 A.2d 211, 111 Vt. 43—Johnson v. Hardware Mut. Cas. Co., 1 A.2d 817, 109 Vt. 481—Taylor v. Mayhew, 195 A. 249, 109 Vt. 251—Paul v. Drown, 189 A. 144, 108 Vt. 458, 109 A.L.R. 1085—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Stevens v. Wright, 179 A. 213, 107 Vt. 337—Melen v. McLaughlin, 176 A. 297, 107 Vt. 111—Belock v. State Mut. Fire Ins. Co., 175 A. 19, 106 Vt. 435, followed in Belock v. Vermont Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 445, and Belock v. Union Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 444—Shedrick v. Lathrop, 172 A. 630, 106 Vt. 311—Butler v. Favereau, 166 A. 1, 105 Vt. 382—F. Chafee's Sons v. Blanchard's Estate, 165 A. 912, 105 Vt. 389—Sargent v. Robertson, 160 A. 182, 104 Vt. 412—Porter v. Fleming, 156 A. 903, 104 Vt. 76—Paska v. Saunders, 153 A. 451, 103 Vt. 204—Daniels v. Preston, 148 A. 285, 102 Vt. 337—Robinson v. Leonard, 134 A. 706, 100 Vt. 1—Temple v. Atwood, 134 A. 591, 99 Vt. 434—Wellman v. Wales, 122 A. 659, 97 Vt. 245—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Dyer v. Lalor, 109 A. 30, 94 Vt. 103—Bagley v. Cooper, 99 A. 230, 90 Vt. 576—Howton v. E. A. Strout Farm Agency, 96 A. 330, 90 Vt. 50.

Wash.—Coppo v. Van Wieringen, 217 P.2d 294, 36 Wash.2d 120—Hadley v. Simpson, 127 P.2d 260, 14 Wash. 2d 93—Leer v. Cohen, 116 P.2d 535, 10 Wash.2d 239.

Wis.—Fulkerson v. Risberg, 34 N.W. 2d 662, 253 Wis. 466.

4 C.J. p 833 note 57.

Trial by court without jury

Pa.—Bell Tel. Co. of Pa. v. Cruice, 116 A.2d 355, 178 Pa.Super. 308—Allen v. Insurance Co. of North America, 104 A.2d 191, 175 Pa. Super. 281.

Question for review

(1) Generally.

Mo.—Hendershot v. Minich, 297 S.W. 2d 403.

Ohio.—Piper v. Chaney, App., 128 N.E. 2d 456.

Wash.—Porter v. Chicago, M., St. P. & P. R. Co., 252 P.2d 306, 41 Wash. 2d 836.

(2) Court of errors and appeals cannot concern itself with weight of evidence, or substitute its judgment for that of trial judge and can only review trial judge's action for plainest abuse of discretion.

N.J.—Chiesa v. Public Service Coordinated Transport, 24 A.2d 369, 128 N.J.Law 69.

Test of abuse of discretion

(1) Where question of negligence was for jury, appellate court will not find abuse of discretion or arbitrary action on part of trial court in denying new trial, in absence of showing of passion, prejudice, or misconduct, even though appellate court, as triers of facts, might have decided case differently.

Mo.—Conser v. Atchison, T. & S. F. Ry. Co., 266 S.W.2d 587, certiorari denied 75 S.Ct. 45, 348 U.S. 828, 99 L.Ed. 653.

(2) In determining whether trial court abused discretion, serious deference is exercised by reviewing court toward lower court.

Ga.—Allen v. Southern Ins. Securities Corp., 187 S.E. 714, 54 Ga. App. 316.

28. Ala.—Goad v. Harris, 92 So. 546, 207 Ala. 357.

Pitts v. Bethea, 15 So.2d 311, 31 Ala.App. 294—International Harvester Co. of America v. Donaldson, 162 So. 566, 26 Ala.App. 502—Berkowitz v. Farrell, 95 So. 916, 19 Ala.App. 196.

Ark.—Farmer v. Smith, 300 S.W.2d 937—Greenlee v. Rolfe, 60 S.W.2d 568, 187 Ark. 1162.

Cal.—Hawk v. City of Newport Beach, 293 P.2d 48, 46 C.2d 213—Williams v. Field Transp. Co., 171 P.2d 722, 28 C.2d 696—In re Green's Estate, 154 P.2d 692, 25 C.2d 535—Hames v. Rust, 92 P.2d 1010, 14 C.2d 119—La Rue v. Barr, 282 P. 10, 208 C. 493—Buck v. Borchers, 263 P. 226, 203 C. 210—In re Sexton's Estate, 251 P. 778, 199 C. 759—In re Bell's Estate, 243 P. 423, 198 C. 32—Ching Wing v. Southern Pac. Co., 184 P. 949, 181 C. 468—In re Emerson's Estate, 148 P. 523, 170 C. 81.

De Mirjian v. Ideal Heating Corp., App., 310 P.2d 488—Crane v. Middleton, 267 P.2d 32, 123 C.A.2d 517—Cadwell v. Borough, 264 P.2d 580, 122 C.A.2d 188—Mendoza v. Enrico, 263 P.2d 70, 121 C.A.2d 392—Perry v. Fowler, 229 P.2d 46, 102 C.A.2d 808—Tremeroli v. Austin Trailer Equipment Co., 227 P.2d 923, 102 C.A.2d 464—Broderick v. Sutherland, 211 P.2d 364, 94 C.A.2d 694—Sweeley v. Leake, 197 P.2d 401, 87 C.A.2d 636—Mann v. Shipley, 181 P.2d 641, 80 C.A.2d 453—Imperial-Yuma Production Credit Ass'n v. Shields, 169 P.2d 671, 74 C.A.2d 932—Jordan v. Schrieber, 169 P.2d 394, 74 C.A.2d 800—Ewing v. Otokichi, 139 P.2d 655, 59 C.A.2d 679—Helle v. City and County of San

the verdict is contrary to the weight of the evidence | is involved, an abuse or withholding of discretion

Francisco, 129 P.2d 461, 54 Cal.App. 2d 571—Thompson v. Pioneer Laundry Co., 128 P.2d 915, 54 C.A.2d 860—Hack v. Gridley, 128 P.2d 827, 54 C.A.2d 227—Hunt v. Pacific Electric Ry. Co., 124 P.2d 89, 51 C.A. 2d 11—Bauman v. City and County of San Francisco, 108 P.2d 989, 42 C.A.2d 144—Johnston v. Johnson, 102 P.2d 374, 38 C.A.2d 700—Mortimer v. Young, 98 P.2d 1061, 37 C. A.2d 164—Kehlor v. Satterlee, 98 P.2d 759, 37 C.A.2d 116—Myers v. Moose, 98 P.2d 551, 36 C.A.2d 739—Evju v. Barbers' Union, Local 134, 96 P.2d 1020, 36 C.A.2d 86—Gallardo v. Luke, 91 P.2d 211, 33 C.A. 2d 230—Rose v. Carter, 84 P.2d 174, 29 C.A.2d 191—Belknap v. Schilling, 74 P.2d 281, 24 C.A.2d 36—Gallichotte v. California Mut. Building & Loan Ass'n, 74 P.2d 73, 23 C.A.2d 570, opinion supplemented 74 P.2d 535, 23 C.A.2d 570—Leaper v. Gandy, 71 P.2d 303, 22 C.A.2d 475—Prout v. Perkins, 69 P.2d 194, 21 C.A.2d 343—Boylan v. Pacific Coast Securities, 64 P.2d 955, 19 C.A.2d 39—Clippinger v. Reiss, 62 P.2d 418, 17 C.A.2d 604—Franklin v. Bettencourt, 60 P. 2d 1017, 16 C.A.2d 511—Ohlson v. Frazier, 39 P.2d 429, 2 C.A.2d 708—Teel v. Camden Fire Ins. Ass'n, 37 P.2d 131, 1 C.A.2d 625—Yeager v. Bray, 32 P.2d 396, 138 C.A. 328—Petroff v. Nunes, 29 P.2d 293, 136 C.A. 416—Chorn v. Pacific Gas & Electric Co., 26 P.2d 726, 135 C. A. 195—Boness v. Helphinstine, 23 P.2d 420, 132 C.A. 677—Amore v. Di Resta, 13 P.2d 986, 125 C.A. 410—Anderson v. Lum Show, 12 P.2d 1045, 124 C.A. 490—Petroff v. Nunes, 11 P.2d 648, 123 C.A. 614—Zurich Ins. Co. v. Coachella Valley Home Telephone & Telegraph Co., 5 P.2d 943, 119 C.A. 65—Montgomery v. Globe Grain & Milling Co., 293 P. 856, 109 C.A. 695—Farum v. Garrison, 293 P. 808, 110 C.A. 154—Lambert v. Kamp, 281 P. 690, 101 C.A. 388—Hanlon Drydock & Shipbuilding Co. v. Southern Pac. Co., 268 P. 385, 92 C.A. 230—Blackford v. Beckworth, 265 P. 514, 90 C.A. 37—Smart v. Spangler, 264 P. 806, 89 C.A. 351—Gaster v. Hinkley, 258 P. 988, 85 C.A. 55—Beckley v. Harris, 258 P. 428, 84 C. A. 557—Gulf Mail S. S. Co. v. W. A. Hammond S. S. Co., 227 P. 940, 67 C.A. 424—Brininstool v. Pacific Electric Ry. Co., 226 P. 410, 66 C. A. 445—American Marine Paint Co. v. Nyno Line, 205 P. 45, 56 C.A. 331—McCain v. City of Oakland, 199 P. 841, 52 C.A. 639, McNeely v. Hill, 198 P. 427, 52 C.A. 184—Daniels v. McGuire, 198 P. 421, 52 C.A. 188—Farrell v. City of Ontario, 194 P. 69, 49 C.A. 659—Karst v. Finn, 178 P. 973, 39 C.A. 869—Pacific Gas & Electric Co. v. Rollins, 164 P. 53, 32 C.A. 782—Sawyer v. McRoskey, 163 P. 336, 32 C.A. 489—Beedy v. San Mateo Hotel Co., 150 P. 810, 27 C.A. 653.

Conn.—Falleo v. Byrolly Transp. Co., 147 A. 16, 109 Conn. 500—Oginskas v. Fredsal, 143 A. 888, 108 Conn. 505—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529.

Fla.—Tidewater Const. Co. v. Monroe County, 146 So. 209, 107 Fla. 648—Miami Transit Co. v. Stephens, 143 So. 325, 106 Fla. 353, followed in Segall Investment Co. v. Rosedale Delicatessen, 143 So. 441, 106 Fla. 578—Carney v. Stringfellow, 74 So. 866, 73 Fla. 700—Anthony Farms Co. v. Seaboard Air Line Ry., 67 So. 913, 69 Fla. 188.

Ga.—Webb v. Nobles, 24 S.E.2d 27, 195 Ga. 287.

Pilot Freight Carriers v. Parks, 55 S.E.2d 746, 80 Ga.App. 137—Carter v. Powell, 195 S.E. 466, 57 Ga.App. 360—Smith v. Barr, 122 S. E. 626, 32 Ga.App. 53—Savage v. Atlantic Coast Line R. Co., 85 S.E. 675, 16 Ga.App. 537.

Idaho.—Davis v. Rogers, 236 P.2d 1006, 72 Idaho 33—Moore v. Harland, 233 P.2d 429, 71 Idaho 376—Seamons v. Davis, 201 P. 716, 34 Idaho 393.

Ill.—Warren v. Patton, 119 N.E.2d 465, 2 Ill.App.2d 173.

Iowa.—In re Murray's Estate, 26 N. W.2d 58, 238 Iowa 112—Kaldenberg v. Boyd, 194 N.W. 211, 196 Iowa 133—Larson v. Ainsworth, 169 N. W. 462, 184 Iowa 1187—Hansen v. Hough, 158 N.W. 501, 177 Iowa 93.

Kan.—Stillie v. Stillie, 223 P. 281, 115 Kan. 420—Briggs v. Havana State Bank, 191 P. 487, 107 Kan. 339—Robinson v. Campbell, 180 P. 193, 104 Kan. 509.

Ky.—National Union Fire Ins. Co. v. Forkner, 292 S.W. 765, 219 Ky. 119.

Mont.—Russell v. Sunburst Refining Co., 272 P. 998, 83 Mont. 452—Johnson v. Northern Pac. Ry. Co., 193 P. 57, 58 Mont. 411.

N.Y.—Boos v. Field, 183 N.Y.S. 482, 192 App.Div. 696.

N.D.—Hauff v. Keyes, 83 N.W.2d 414—Hoffman v. Berger, 76 N.W.2d 515—Robbins v. Robbins, 70 N.W. 2d 37—Crossen v. Rognlie, 68 N.W. 2d 110—Haser v. Pape, 50 N.W.2d 240, 78 N.D. 481—Hochstetler v. Graber, 48 N.W.2d 15, 78 N.D. 90—Krueger v. North Am. Creameries, 27 N.W.2d 240, 75 N.D. 264—Durick v. Winters, 296 N.W. 744, 70 N.D. 592—Johnson v. Patterson, 270 N.W. 97, 67 N.D. 132—Volk v. Hirning, 220 N.W. 446, 56 N.D. 937—Klasen v. Kinnischtyke, 215 N. W. 552, 55 N.D. 839—Martins v. Perkins, 213 N.W. 574, 55 N.D. 339—Kavanaugh v. Nestler, 177 N.W. 647, 45 N.D. 376—Strong v. Nelson, 174 N.W. 869, 43 N.D. 326—Skaar v. Eppeland, 159 N.W. 710, 35 N.D. 125—Skaar v. Eppeland, 159 N. W. 707, 35 N.D. 116.

Ohio.—Welker v. Union Cent. Life Ins. Co., 5 Ohio Supp. 294.

Okl.—Shreve v. Cornell, 77 P.2d 1, 182 Okl. 193—Carter Oil Co. v. Doyal, 294 P. 633, 147 Okl. 70—McBride v. O. K. Houck Piano Co., 169 P. 889, 66 Okl. 332—Walden v. Gardner, 156 P. 643, 56 Okl. 774.

R.I.—Caputo & McKendall Const. Co. v. Bellin, 155 A. 352.

S.D.—Reinschmidt v. Hirsch, 275 N.W. 356, 65 S.D. 498—Shann v. Disbrow & Co., 268 N.W. 700, 64 S.D. 528—Tripp v. First Nat. Bank, 205 N.W. 666, 48 S.D. 9—Security State Bank of Beresford v. Bank of Centerville, 193 N.W. 670, 46 S.D. 440—Frank v. Ruzicka, 189 N.W. 515, 45 S.D. 579—Palmer v. City Nat. Bank of Huron, 173 N.W. 730, 42 S.D. 204—Sternhagen v. Kozel, 167 N.W. 398, 40 S.D. 396.

Tex.—Kifuri v. Lira, Civ.App., 73 S. W.2d 891.

Wash.—System Tank Lines v. Dixon, 286 P.2d 704, 47 Wash.2d 147—Wilcoxen v. City of Seattle, 203 P.2d 658, 32 Wash.2d 734—McClintock v. Allen, 191 P.2d 679, 30 Wash.2d 272—Field v. North Coast Transp. Co., 12 P.2d 749, 168 Wash. 515—Legal Adjustment Bureau v. West Coast Const. Co., 280 P. 2, 153 Wash. 509—Christianson v. Shepherd, 255 P. 942, 143 Wash. 537—Truva v. Goodyear Tire & Rubber Co., 194 P. 386, 113 Wash. 413—Lansdown v. Huff, 174 P. 21, 103 Wash. 277—Nelson v. Washington Water Power Co., 169 P. 896, 100 Wash. 339—Armstrong v. Modern Woodmen of America, 160 P. 946, 93 Wash. 352—Hawn v. Yakima County, 160 P. 7, 93 Wash. 87—B. F. Sturtevant Co. v. Fidelity & Deposit Co. of Maryland, 158 P. 740, 92 Wash. 52, L.R.A.1917C 630.

Wis.—Paulsen v. Gundersen, 260 N. W. 448, 218 Wis. 578—Eggert v. Kullman, 234 N.W. 349, 204 Wis. 60—Edwards v. Alhambra Theatre Co., 224 N.W. 104, 198 Wis. 228—Bloomer v. Koepke, 184 N.W. 680, 175 Wis. 138.

4 C.J. p 833 note 57, p 905 note 35—55 C.J. p 1020 note 41 [a].

Quantum of verdict

Cal.—Amavisca v. City of Merced, App., 308 P.2d 380.

First grant of new trial

Cal.—Whitfield v. De Brincat, 96 P.2d 156, 35 C.A.2d 476.

Review of evidence

An appellate court will not review, compare, or evaluate evidence unless

must clearly appear before the ruling will be reviewed.[29]

there has been an abuse of discretion in granting a new trial.
Cal.—Stone v. Los Angeles County Flood Control Dist., 185 P.2d 396, 81 C.A.2d 902.

Question for review; test

(1) Generally.
Conn.—Markee v. Turner, 103 A.2d 533, 140 Conn. 701.
N.D.—Olson v. Thompson, 74 N.W.2d 432—Crossen v. Rognlie, 68 N.W.2d 110.
Wash.—White's Trucking Co. v. Kuney, 104 P.2d 587, 4 Wash.2d 623.

(2) Appellate court will merely determine whether trial court acted within its discretion when it discredited testimony presented by party opposing the motion.
Cal.—Myles v. Los Angeles Ry. Corp., 143 P.2d 972, 62 C.A.2d 14.

(3) Discretion of trial court will not be deemed to have been abused unless a decision in favor of moving party would have no substantial support in the evidence.
Cal.—Myles v. Los Angeles Ry. Corp., supra.

(4) Question was whether trial court abused its discretion in granting new trial, and not whether appellate court would have reversed jury's verdict as without evidentiary support, and appellate court must respect not jury's verdict but trial court's judgment, unless that judgment was clearly wrong.
Nev.—Pagni v. City of Sparks, 293 P.2d 421—Arrowhead Freight Lines, Limited v. White, 287 P.2d 718.

(5) To reverse order granting new trial, supreme court must be convinced that there are strong and cogent reasons for concluding that trial court was not exercising legal discretion in weighing the evidence.
N.D.—Crossen v. Rognlie, 68 N.W.2d 110.

After directed verdict

A judgment granting a new trial after a directed verdict has been returned against the party having the burden of proof will not be reversed where it may have been induced by a belief that the failure to make a prima facie case was excusable and capable of remedy.
Kan.—German American State Bank v. Goodrich, 153 P. 541, 96 Kan. 719.

29. Ala.—Proctor v. Coffey, 149 So. 838, 227 Ala. 318.
Southern Ry. Co. v. Dear, 162 So. 685, 26 Ala.App. 508—International Harvester Co. of America v. Donaldson, 162 So. 566, 26 Ala.App. 502.
Ariz.—Huntsman v. First Nat. Bank, 243 P. 598, 29 Ariz. 574.
Cal.—In re Wall's Estate, 191 P. 687, 183 C. 431—In re Bainbridge's Estate, 146 P. 427, 169 C. 166.
Thompson v. Blum's, Inc., 293 P. 2d 82, 139 C.A.2d 140—Henderson v. Drake, 258 P.2d 879, 118 C.A.2d 777—Dorsa v. MacNeil, 247 P.2d 577, 112 C.A.2d 807—McAtee v. City of Marysville, 244 P.2d 936, 111 C.A.2d 507—Reyes v. Gonzales, 242 P.2d 401, 110 C.A.2d 266—Ona v. Reachi, 233 P.2d 949, 105 C.A.2d 758—Martin v. Smith, 230 P.2d 679, 103 C.A.2d 894—Pacific Tel. & Tel. Co. v. Wellman, 219 P.2d 506, 98 C.A.2d 151—Still v. Pearson, 215 P.2d 87, 96 C.A.2d 315—Rembold v. Goodwin, 209 P.2d 402, 93 C.A.2d 605—Yost v. Johnson, 206 P.2d 13, 91 C.A.2d 849—Smith v. Ward Transp. Co., 183 P.2d 701, 81 C.A.2d 213—Vigli v. Davis, 179 P. 2d 586, 79 C.A.2d 237—Weaver v. City of Los Angeles, 46 P.2d 795, 8 C.A.2d 46—Nicholas v. Leslie, 46 P.2d 761, 7 C.A.2d 590—Fair v. Aschenbrenner, 44 P.2d 427, 6 C.A. 2d 173—Bakurjian v. Pugh, 41 P. 2d 175, 4 C.A.2d 450—Moyer v. Dresch, 38 P.2d 849, 2 C.A.2d 655—Lombard v. Swall, 37 P.2d 696, 2 C.A.2d 59—Row v. Biehl, 24 P.2d 186, 133 C.A. 263—Johnson v. Ostrom, 16 P.2d 794, 128 C.A. 38—Moseklan v. Ginsberg, 10 P.2d 525, 122 C.A. 774—Allen v. Bay Cities Transit Co., 10 P.2d 520, 122 C. A. 590—Shelton v. Ackerman, 4 P.2d 598, 117 C.A. 679—Cookson v. Fitch, 3 P.2d 27, 116 C.A. 544—Scott v. Southern Pac. Co., 280 P. 996, 100 C.A. 634—Minor v. Foote, 280 P. 197, 100 C.A. 441—Tumelty v. Peerless Stages, 274 P. 430, 96 C.A. 530—Simpson v. New York Hardware Trading Co., 266 P. 956, 91 C.A. 213—Goehring v. Rogers, 227 P. 687, 67 C.A. 253—Soto v. Globe Oil Mills, 203 P. 830, 55 C.A. 532—De Vall v. Perrin, 168 P. 584, 34 C.A. 676—Wright v. Yosemite Transp. Co., 152 P. 54, 28 C.A. 279—Colusa & H. R. Co. v. Glenn, 144 P. 993, 25 C.A. 634—Buckley v. Marin County, 144 P. 545, 25 C. A. 577—Otten v. Spreckels, 141 P. 224, 24 C.A. 251.
Conn.—Sortito v. Prudential Life Ins. Co. of America, 142 A. 808, 108 Conn. 163—Press v. Connecticut Co., 109 A. 295, 95 Conn. 45.
Fla.—Myers v. Atlantic Coast Line R. Co., 86 So.2d 792.
Ga.—Griffith v. Sellers, 153 S.E. 359, 170 Ga. 577.
Ill.—Goodman v. Motor Products Corp., 132 N.E.2d 356, 9 Ill.App.2d 57—Masters v. Central Ill. Elec. & Gas Co., 129 N.E.2d 586, 7 Ill. App.2d 348—Ashton v. Sweeney, 112 N.E.2d 183, 350 Ill.App. 135—Adamsen v. Magnelia, 280 Ill.App. 418—Gavin v. Keter, 278 Ill.App. 308—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill.App. 269, 285—Village of La Grange v. Clark, 278 Ill.App. 269—Bollin v. Galesburg Horse & Mule Co., 276 Ill.App. 256.
Iowa.—Thomas v. Illinois Cent. R. Co., 151 N.W. 387, 169 Iowa 337.
Ky.—Saxton v. Tucker, 134 S.W.2d 590, 280 Ky. 777.
Mo.—Conser v. Atchison, T. & S. F. Ry. Co., 266 S.W.2d 587, certiorari denied 75 S.Ct. 45, 348 U.S. 828, 99 L.Ed. 653—Albert J. Hoppe, Inc. v. St. Louis Public Service Co., 235 S.W.2d 347, 361 Mo. 402, 23 A.L.R. 2d 846—Bailey v. Interstate Airmotive, 219 S.W.2d 333, 358 Mo. 1121, 8 A.L.R.2d 710—Walsh v. Southwestern Bell Telephone Co., 52 S.W.2d 839, 331 Mo. 118—Gray v. Missouri Lumber & Mining Co., 177 S.W. 595.
Jiner v. Jiner, 168 S.W. 231, 182 Mo.App. 153.
Mont.—Rousselle v. Cramer, 212 P. 294, 65 Mont. 537—Slater v. Bright Hotel Co., 196 P. 152, 59 Mont. 230—Brange v. Bowen, 186 P. 680, 57 Mont. 77.
N.C.—Lanier v. Pullman Co., 105 S. E. 21, 180 N.C. 406.
N.D.—La Bree v. Dakota Tractor & Equipment Co., 295 N.W. 313, 70 N.D. 421—Ogren v. Crystal Springs School Dist., No. 29 of Kidder County, 203 N.W. 324, 52 N.D. 455—Munster v. Stoddard, 170 N.W. 871, 44 N.D. 105.
R.I.—Pepin v. Keough, 105 A. 574.
S.D.—Johnson v. Olson, 20 N.W.2d 226, 70 S.D. 617—Williams v. Rice, 209 N.W. 958, 50 S.D. 301—Sayer v. Lee, 170 N.W. 148, 41 S.D. 252—Blewitt v. Hendry, 156 N.W. 795, 37 S.D. 106.
Tex.—Williams v. Pool, Civ.App., 291 S.W. 564.
Utah.—Valiotis v. Utah-Apex Mining Co., 184 P. 802, 55 Utah 151.
Vt.—Cote v. Boise, 16 A.2d 175, 111 Vt. 343.
Wash.—Dibley v. Peters, 93 P.2d 720, 200 Wash. 100—Ahrens v. Anderson, 57 P.2d 410, 186 Wash. 182—Crescent Mfg. Co. v. Hansen, 24 P.2d 604, 174 Wash. 193—Sutherland v. Northern Pac. Ry. Co., 214 P. 823, 124 Wash. 413—Warren v. Lebam Mill & Timber Co., 207 P. 949, 121 Wash. 700.
W.Va.—Rush v. Buckles, 117 S.E. 130, 93 W.Va. 493.
Wis.—Burt v. Meunier, 32 N.W.2d 241, 252 Wis. 581—Rakowski v. Zimmerman, 149 N.W. 214, 158 Wis. 539.
4 C.J. p 834 note 58.

Gross, manifest, or unmistakable abuse

Cal.—In re Lekos' Estate, 240 P.2d 387, 102 C.A.2d 42—Devens v. Goldberg, 215 P.2d 935, 96 C.A.2d 539—Cavagnaro v. City of Napa,

The general rules stated above are especially applicable where there is an appreciable or substantial conflict in the evidence;[30] on the other hand, they

195 P.2d 25, 86 C.A.2d 517—Tarasco v. Moyers, 180 P.2d 68, 79 C.A.2d 516—Efinoff v. Shepherd, 176 P.2d 407, 77 C.A.2d 818—Abrams v. American Fidelity & Cas. Co., 159 P.2d 62, 69 C.A.2d 426—Ogando v. Carquinez Grammar School Dist. of Contra Costa County, 75 P.2d 641, 24 C.A.2d 567.

Manifest abuse

Wash.—Wilcoxen v. City of Seattle, 203 P.2d 658, 32 Wash.2d 734.

30. Ala.—National Life & Accident Ins. Co. v. Collins, 12 So.2d 353, 244 Ala. 182—Davis v. Louisville & N. R. Co., 168 So. 449, 232 Ala. 382—McCormick v. Badham, 77 So. 736, 201 Ala. 210.

Ariz.—Roman Catholic Church, Diocese of Tucson v. Keenan, 243 P. 2d 455, 74 Ariz. 20—Zevon v. Tennebaum, 240 P.2d 548, 73 Ariz. 281—Sadler v. Arizona Flour Mills Co., 121 P.2d 412, 58 Ariz. 486.

Ark.—Hall v. W. E. Cox & Sons, 154 S.W.2d 19, 202 Ark. 909—Arkansas Light & Power Co. v. City of Paragould, 225 S.W. 435, 146 Ark. 1—Wilhelm v. Collison, 202 S.W. 28, 133 Ark. 166—Clements v. W. C. Knight & Co., 188 S.W. 1173, 125 Ark. 488.

Cal.—Dempsey v. Market Street Ry. Co., 142 P.2d 929, 23 C.2d 110—Carter v. J. W. Silver Trucking Co., 47 P.2d 733, 4 C.2d 198.

Lewis v. Johnson, 282 P.2d 953, 132 C.A.2d 635—Scannell v. Schmidt, 274 P.2d 455, 128 C.A.2d 19—Davis v. Washburn, 268 P.2d 1070, 124 C.A.2d 667—Lopez v. Capiti, 250 P.2d 616, 114 C.A.2d 544—Norden v. Hartman, 245 P. 2d 3, 111 C.A.2d 751—Nelson v. Mayer, 226 P.2d 20, 101 C.A.2d 733—Pacific Tel. & Tel. Co. v. Wellman, 219 P.2d 506, 98 C.A.2d 151—Barcus v. Campbell, 204 P.2d 65, 90 C.A.2d 768—McCoy v. Yellow Cab Co. of Cal., 198 P.2d 371, 88 C.A.2d 47—Haley v. Bay Cities Transit Co., 187 P.2d 850, 82 C.A. 2d 950—Hendricks v. Pappas, 187 P.2d 436, 82 C.A.2d 774—Bayley v. Souza, 131 P.2d 584, 55 C.A.2d 776—Beal v. Dunn, 113 P.2d 242, 44 C.A.2d 785—Evju v. Barbers' Union, Local 134, 96 P.2d 1020, 36 C.A.2d 86—Union Oil Co. of California v. Hane, 94 P.2d 387, 34 C.A.2d 689—Frankini v. Bank of America Nat. Trust & Savings Ass'n, 88 P.2d 790, 31 C.A.2d 666—Anderson v. Farquhar, 63 P.2d 1163, 18 C.A.2d 392—Bonner v. Los Angeles Examiner, 62 P.2d 427, 17 C.A.2d 458—Clippinger v. Reiss, 62 P.2d 418, 17 C.A.2d 604—Beanes v. State Plumbing Supply Corp., 60 P.2d 321, 16 C.A.2d 298—Schultz v. Sussman, 45 P.2d 409, 7 C.A.2d 100—Rigall v. Lewis, 37 P.2d 97, 1 C.A.2d 737—Yeager v. Bray, 32 P.2d 396, 138 C.A. 328—In re Wood's Estate, 21 P.2d 626, 131 C.A. 465—Dow v. Southern Pac. Co., 4 P.2d 786, 118 C.A. 196—Lewis v. Southern California Edison Co., 2 P.2d 419, 116 C.A. 44—Hiraide v. Cochran, 293 P. 165, 109 C.A. 377—Weinrich v. Sacramento Valley Sugar Co., 285 P. 893, 104 C.A. 385—Springer v. Pacific Fruit Exchange, 268 P. 951, 92 C.A. 732—Brininstool v. Pacific Electric Ry. Co., 226 P. 410, 66 C. A. 445—Work v. Whittington, 214 P. 474, 61 C.A. 302—Daniels v. McGuire, 198 P. 421, 52 C.A. 188—Whitney v. Northwestern Pac. R. Co., 178 P. 326, 39 C.A. 139.

Fla.—Kight v. American Eagle Fire Ins. Co. of New York, 179 So. 792, 131 Fla. 764, followed in Kight v. Star Ins. Co. of America, 179 So. 797, 131 Fla. 775—Gibson v. Lehde, 175 So. 726, 128 Fla. 703—Beckwith v. Bailey, 161 So. 576, 119 Fla. 316—Herrin v. Avon Mfg. Co., 100 So. 174, 87 Fla. 385—Gulf Refining Co. v. Howard, 89 So. 849, 82 Fla. 27—Cheyney v. Roberts, 81 So. 475, 77 Fla. 324.

Ga.—Andrews v. Dilano, 55 S.E.2d 605, 206 Ga. 83—McCormick v. Pickett, 142 S.E. 742, 166 Ga. 192—Central of Georgia Ry. Co. v. Morgan, 89 S.E. 760, 145 Ga. 656.

Evans v. Henson, 37 S.E.2d 164, 73 Ga.App. 494—Oliver v. Head, 2 S.E.2d 716, 60 Ga.App. 13—Wilson v. McConnell, 138 S.E. 244, 36 Ga. App. 767—Williams v. Pilcher & Dillon, 121 S.E. 581, 31 Ga.App. 591—Atlantic Coast Line R. Co. v. Copeland, 118 S.E. 478, 30 Ga. App. 384—Parker v. Bridges, 95 S.E. 321, 22 Ga.App. 58.

Idaho.—Ausich v. Frank, 222 P.2d 1073, 70 Idaho 494.

Ill.—O'Malley v. Chicago Wood & Coal Co., 112 N.E.2d 358, 350 Ill. App. 261—Humbert v. Lowden, 56 N.E.2d 323, 323 Ill.App. 557—Simon v. Horan, 56 N.E.2d 147, 323 Ill. App. 527—Lutgert v. Schaeflein, 47 N.E.2d 350, 318 Ill.App. 83—Lepkowski v. Laukemper, 45 N.E. 2d 979, 317 Ill.App. 304—Carter v. Geeseman, 25 N.E.2d 120, 303 Ill.App. 280.

Iowa.—Whiting v. Cochran, 41 N.W. 2d 666, 241 Iowa 590—Brunnssen v. Parker, 291 N.W. 535, 227 Iowa 1364—Maxwell v. Iowa State Highway Commission, 271 N.W. 883, 223 Iowa 159, 118 A.L.R. 862.

Mo.—Murphy v. Kroger Grocery & Baking Co., 171 S.W.2d 610, 350 Mo. 1186—Gray v. City of Hannibal, 29 S.W.2d 710—Lord v. Delano, 188 S.W. 93.

Wormington v. City of Overland, App., 224 S.W.2d 590—Chase v. American Press Brick Co., App., 81 S.W.2d 246—Reardon v. White, App., 239 S.W. 162—Frisbie v. Scott, 201 S.W. 561, 199 Mo.App. 131—King v. Mann, App., 199 S.W. 705.

Mont.—Hicks v. Strain Bros., 92 P. 2d 763, 108 Mont. 598—State v. Anderson, 13 P.2d 228, 92 Mont. 313—Norton v. Great Northern Ry. Co., 254 P. 165, 78 Mont. 273—Gardiner v. Eclipse Grocery Co., 234 P. 490, 72 Mont. 540—Northwestern Electric Equipment Co. v. Leighton, 213 P. 1094, 66 Mont. 529—Love v. McDonnell, 211 P. 211, 65 Mont. 482—Stankey v. Citizens' Nat. Bank of Laurel, 209 P. 1054, 64 Mont. 309—McVey v. Jemison, 207 P. 633, 63 Mont. 435.

Nev.—Nevada Rock & Sand Co. v. Grich, 93 P.2d 513, 59 Nev. 345.

N.C.—Upchurch v. Buckner, 85 S.E. 2d 341, 241 N.C. 411—Carolina Coach Co. v. Central Motor Lines, 50 S.E.2d 909, 229 N.C. 650—Federal Land Bank of Columbia v. Barrow, 127 S.E. 3, 189 N.C. 303.

N.D.—Kohler v. Stephens, 24 N.W.2d 64, 74 N.D. 655—Haslam v. Babcock, 10 N.W.2d 239, 72 N.D. 581—De Rochford v. Bismarck Baking Co., 296 N.W. 188, 70 N.D. 523.

Okl.—Shreve v. Cornell, 77 P.2d 1, 182 Okl. 193.

Pa.—Kosmahl v. Emery, 110 A.2d 205, 380 Pa. 223—Elia v. Olszewski, 84 A.2d 188, 368 Pa. 578—Hoban v. Conroy, 32 A.2d 769, 347 Pa. 487—Torch v. Morelli, 119 A. 725, 276 Pa. 17—Gallagher v. Philadelphia Rapid Transit Co., 93 A. 1074, 248 Pa. 304.

S.D.—Allen v. McLain, 58 N.W.2d 232, 74 S.D. 646—Norman v. Miller, 167 N.W. 391, 40 S.D. 399—Keith v. Cottam, 166 N.W. 235, 40 S.D. 96—Western Surety Co. v. Boettcher, 165 N.W. 381, 39 S.D. 541.

Utah.—Uptown Appliance & Radio Co. v. Flint, 249 P.2d 826, 122 Utah 284—King v. Union Pac. R. Co., 212 P.2d 692, 117 Utah 40—Utah State Nat. Bank v. Livingston, 254 P. 781, 69 Utah 284.

Vt.—Temple v. Duffy, 117 A. 101, 96 Vt. 114.

Wash.—Battee v. City of Seattle, 219 P.2d 117, 36 Wash.2d 578—Coppo v. Van Wieringen, 217 P.2d 294, 36 Wash.2d 120—Dyal v. Fire Cos. Adjustment Bureau, 161 P.2d 321, 23 Wash.2d 515—Sun Life Assur. Co. of Canada v. Cushman, 158 P. 2d 101, 22 Wash.2d 930—Kimball v. Moore, 140 P.2d 498, 18 Wash.2d 643—Wood v. Hallenbarter, 122 P. 2d 798, 12 Wash.2d 576—Dibley v. Peters, 93 P.2d 720, 200 Wash.

do not apply where the facts are undisputed,[31] where the facts create a question for the jury under circumstances in which it cannot be said that a verdict, as rendered, could be contrary to the evidence,[31.5] or where only questions of law are involved.[32] There is authority for the proposition that the appellate court will review a ruling on a motion for a new trial on the ground of insufficiency of evidence where the judge granting the motion did not try the case;[33] but other authority is to the contrary effect.[33.5]

It has been said that the rule that orders granting new trials on the ground that the verdict is not supported by the evidence will be sustained as discretionary is designed to include only cases where the trial court, for reasons peculiarly within its knowledge, is justified in concluding that the ends of justice will be best served by submitting the evidence to another jury.[34] Orders granting new trials on the ground of insufficiency of the evidence stand on a firmer foundation in a reviewing court than orders denying new trials, since such orders are not decisive of the case, but only open the way to a reinvestigation of the entire case.[34.5]

With respect to the denial of a motion, the discretion of the court will usually be upheld if there

100—Ahrens v. Anderson, 57 P.2d 410, 186 Wash. 182—Kowalski v. Swanson, 34 P.2d 454, 178 Wash. 231—Huntington v. Clallam Grain Co., 27 P.2d 583, 175 Wash. 310—Epley v. Hunter, 289 P. 27, 157 Wash. 333—Panos v. Sourwine, 251 P. 883, 142 Wash. 15—Great Western Land & Improvement Co. v. Sandygren, 231 P. 793, 132 Wash. 225—Austrem v. American Sav. Bank & Trust Co., 210 P. 781, 122 Wash. 399—Carkonen v. Columbia & P. S. R. Co., 172 P. 816, 102 Wash. 11—Funk v. Horrocks, 169 P. 805, 99 Wash. 397—Independent Brewing Co. v. McCrimmon, 148 P. 787, 85 Wash. 610.

Wis.—Roskom v. Bodart, 50 N.W. 2d 451, 260 Wis. 276—Edwards v. Alhambra Theatre Co., 224 N.W. 104, 198 Wis. 228—John v. Pierce, 186 N.W. 600, 176 Wis. 220.

4 C.J. p 834 note 59.

Substantial conflict as to amount of damages

Cal.—Mortimer v. Young, 98 P.2d 1061, 37 C.A.2d 164.

Grant by judge who tried case

Cal.—Porter v. Thompson, 169 P.2d 40, 74 C.A.2d 474.

Ga.—Slate v. Atlanta Police Relief Ass'n, 97 S.E.2d 786, 95 Ga.App. 316.

Conflict of inferences from ultimate facts

An appellate court will not disturb the ruling even though only conflict consists of different inferences of ultimate facts to be deduced from uncontradicted probative facts.

Cal.—Holt v. Henry, 136 P.2d 97, 58 C.A.2d 168.

31. Ala.—Culver v. A. A. Gambill Realty Co., 107 So. 909, 21 Ala.App. 222, reheard 107 So. 914, 214 Ala. 84, certiorari denied 107 So. 917, 214 Ala. 375.

31.5 Ill.—Brenton v. Sloan's United Storage & Van Co., 42 N.E.2d 945, 315 Ill.App. 278.

32. Mo.—Smith v. Kansas City Public Service Co., 43 S.W.2d 548, 328 Mo. 979.

Okl.—Dowell, Inc. v. Layton, 261 P. 2d 885.

Pa.—Byers v. Vargo, 133 A.2d 163, 389 Pa. 365—Kiser v. Schlosser, 132 A.2d 344, 389 Pa. 131—Clewell v. Pummer, 131 A.2d 375, 388 Pa. 592—Peoples First Nat. Bank & Trust Co. v. Christ, 65 A.2d 393, 361 Pa. 423.

Bastaich v. Zivena Beneficial Society of U. S., 28 A.2d 367, 150 Pa. Super. 316.

Wis.—Burt v. Meunier, 32 N.W.2d 241, 252 Wis. 581.

Questions of law

(1) Where the evidence is fully presented to the supreme court and appellant has presented all the evidence it is possible for her to present, the question is one of law for the supreme court as to whether the evidence was sufficient for the jury.

Iowa.—Snyder v. Guthrie, 187 N.W. 953, 193 Iowa 624, 24 A.L.R. 950.

(2) Whether the court erred in granting defendant a new trial on the ground that plaintiff was contributorily negligent as a matter of law is a question of law only, where the facts were undisputed.

S.D.—Plucker v. Chicago, M. & St. P. Ry. Co., 219 N.W. 254, 52 S.D. 554.

(3) The question of whether or not the evidence introduced or offered by respondent makes a prima facie case entitling it to recover judgment against appellants or either of them is a pure question of law, where there is no conflict whatever in the evidence, and consequently no matter of discretion on the part of the lower court is involved in a ruling made by that court upon respondent's motion for a new trial.

Wash.—Citizens' Nat. Bank of Los Angeles, Cal. v. Galland, 280 P. 62, 153 Wash. 669.

(4) Where no other verdict than the one returned could be sustained under the evidence, setting the verdict aside and granting a new trial is an error of law, reviewable by the supreme court.

Wash.—Severns Motor Co. v. Hamilton, 214 P.2d 516, 35 Wash.2d 602—Mount v. Krilich, 230 P. 828, 131 Wash. 627.

(5) The rule that the court's discretion in deciding a motion to set aside the verdict cannot be reviewed on exceptions, unless the court failed to exercise its discretion or abused it, does not apply when all the evidence is before the court, and the exception is based on the ground that the verdict is wholly unsupported by the evidence.

Vt.—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Wellman v. Wales, 122 A. 659, 97 Vt. 245—Whitman v. Dailey, 115 A. 559, 95 Vt. 454.

(6) Granting a new trial on defendant's motion because the facts were not legally sufficient to support a verdict for plaintiff is not the exercise of a judicial discretion, but the determination of a legal question.

Mo.—Smith v. Kansas City Public Service Co., 43 S.W.2d 548, 328 Mo. 979.

(7) Error of law cannot, however, be predicated on the denial of a motion for a new trial because of insufficiency of the evidence to show certain facts where the question could have been, but was not, raised by a request for an instruction.

Mass.—W. R. Grace & Co. v. Shaghalian's, Inc., 146 N.E. 799, 251 Mass. 340.

33. N.D.—St. Anthony & Dakota Elevator Co. v. Martineau, 153 N.W. 416, 30 N.D. 425.

33.5 Cal.—Sweeley v. Leake, 197 P. 2d 401, 87 C.A.2d 636—Commander Oil Co. v. Bardeen, 119 P.2d 969, 48 C.A.2d 345.

34. Minn.—Hull v. Minneapolis, etc., R. Co., 133 N.W. 852, 116 Minn. 349.

34.5 N.D.—Olson v. Thompson, 74 N.W.2d 432.

is some evidence to support the verdict,[35] but not where there is a total lack of evidence to sustain part of the verdict.[36]

Where a new trial is granted on the ground of insufficiency of the evidence, the judgment of the trial court is accorded greater latitude than on questions of law,[36.5] and since an appellate court does not look with favor on finding a trial court guilty of an abuse of discretion in granting a motion,[36.10] a stronger case is required to secure a reversal than where a new trial has been denied.[37]

The action of the trial court in granting a new trial will not be disturbed where there is any substantial evidence, contradicted or uncontradicted, which will support conclusions reached by the trial court,[37.5] where there appears to be a reasonable, or even fairly debatable, justification therefor, notwithstanding the reviewing court might take a different view from that of the trial court or might not disapprove a contrary view,[37.10] or where there is evidence which would have supported a verdict[37.15] or judgment[37.20] in favor of the moving party. Furthermore, the action of the trial court will be disturbed only if the evidence palpably supports the verdict,[38] if there is no substantial evidence

35. Conn.—Flynn v. Flynn, 136 A. 383, 105 Conn. 628.
Fla.—Atlantic Coast Line R. Co. v. Levy, 67 So. 47, 68 Fla. 234.
Ga.—Weaver v. Harden, 198 S.E. 730, 186 Ga. 564—Rogers v. Rogers, 165 S.E. 87, 175 Ga. 461—Hurst v. Hurst, 123 S.E. 261, 158 Ga. 306—Clayton v. Bland, 105 S.E. 365, 150 Ga. 776—McBride v. Thornburg, 89 S.E. 329, 145 Ga. 379.
American Fidelity & Cas. Co. v. Farmer, 48 S.E.2d 122, 177 Ga.App. 166—A. A. A. Highway Exp. v. Hagler, 34 S.E.2d 462, 72 Ga.App. 519—Screven Oil Mill v. Brant, 164 S.E. 105, 45 Ga.App. 190—Hawkins v. Darby, 163 S.E. 307, 44 Ga.App. 791—Fuqua v. Livingston, 133 S.E. 639, 35 Ga.App. 487—Easterling v. Bell, 116 S.E. 50, 29 Ga.App. 465—Weeks v. Weeks, 116 S.E. 39, 29 Ga.App. 502—Brown v. Wilkes, 92 S.E. 553, 20 Ga.App. 92—Edwards v. Rider, 86 S.E. 90, 17 Ga.App. 40—First Nat. Bank v. G. T. Brooks & Co., 82 S.E. 608, 15 Ga.App. 38.
Mont.—Backer v. Parker-Morelli-Barclay Motor Co., 289 P. 571, 87 Mont. 595.
Pa.—Hardy v. Millers' Mut. Fire Ins. Ass'n of Illinois, 141 A. 623, 293 Pa. 9.
Jacob v. Coray, 88 Pa.Super. 507.
S.C.—Cannon v. Baker, 81 S.E. 478, 97 S.C. 116.
Vt.—Barclay v. Wetmore & Morse Granite Co., 110 A. 1, 94 Vt. 227.
Wash.—Karp v. Herder, 44 P.2d 808, 181 Wash. 583.
4 C.J. p 834 note 60.

36. Okl.—Hart Grocery Co. v. Hunt, 52 P.2d 66, 175 Okl. 32.
Vt.—Johnson v. Hardware Mut. Cas. Co., 1 A.2d 817, 109 Vt. 481.

36.5 Ill.—Hulke v. International Mfg. Co., 142 N.E.2d 717, 14 Ill.App.2d 5—Goodman v. Motor Products Corp., 132 N.E.2d 356, 9 Ill.App.2d 57—Warren v. Patton, 119 N.E.2d 465, 2 Ill.App.2d 173.

36.10 Ohio.—Cramer v. Mergard, 11 N.E.2d 108, 56 Ohio App. 493.

37. Ill.—Goranson v. Yellow Cab Co., 59 N.E.2d 347, 324 Ill.App. 581—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill.App. 269, 285.
W.Va.—Price Hill Colliery Co. v. Pinkney, 122 S.E. 434, 96 W.Va. 74.
4 C.J. p 834 note 61.

Limitation of rule
The general rule that it takes a stronger case to reverse an order granting, than one refusing, a new trial, must be properly confined to cases where the evidence is not only conflicting, but also where the verdict is against the weight of the evidence, and the evidence is wholly insufficient to support the verdict.
W.Va.—Price Hill Colliery Co. v. Pinkney, supra.

37.5 Cal.—Pearl v. Kaline, 188 P.2d 58, 82 C.A.2d 910.
Mo.—C. Bewes, Inc., v. Buster, 108 S.W.2d 66, 341 Mo. 578.

37.10 Cal.—Abrams v. American Fidelity & Cas. Co., 159 P.2d 62, 69 C.A.2d 426—Kehlor v. Satterlee, 98 P.2d 759, 37 C.A.2d 116—Ogando v. Carquinez Grammar School Dist. of Contra Costa County, 75 P.2d 641, 24 C.A.2d 567—Gallichotte v. California Mut. Building & Loan Ass'n, 74 P.2d 73, 23 C.A.2d 570, opinion supplemented on other grounds 74 P.2d 535, 23 C.A.2d 570.

37.15 Cal.—Jones v. City of Los Angeles, 231 P.2d 167, 104 C.A.2d 212—Naranjan Singh v. Gullett, 69 P.2d 447, 21 C.A.2d 549.

First grant of new trial
Mo.—Little v. Manufacturers Ry. Co., App., 145 S.W.2d 497.

No substantial conflict on material issues
Cal.—Brinkerhoff by Nelson v. Ferguson, 236 P.2d 588, 107 C.A.2d 175.

Question for review; test
(1) Generally.
Mo.—Lomax v. Sawtell, App., 286 S.W.2d 40.

(2) On appeal from order granting plaintiff's motion for new trial, issue was whether there was evidence which would have sustained judgment in favor of plaintiff.
Cal.—Kalfus v. Fraze, 271 P.2d 573, 126 C.A.2d 99.

(3) Test is whether or not there is any evidence that would legally substantiate and uphold verdict for moving party had jury decided for him, and measured by such test only question on review is whether trial court abused its discretionary powers.
Cal.—In re Elliot's Estate, 250 P.2d 684, 114 C.A.2d 747.

37.20 Cal.—Hawk v. City of Newport Beach, 293 P.2d 48, 46 C.2d 213—Hames v. Rust, 92 P.2d 1010, 14 C.2d 119.
Union Oil Co. of California v. Hane, 94 P.2d 387, 34 C.A.2d 689.

Conflicting evidence
Cal.—Sweeley v. Leake, 197 P.2d 401, 87 C.A.2d 636—Thompson v. Schurman, 150 P.2d 509, 65 C.A.2d 432—Commander Oil Co. v. Bardeen, 119 P.2d 969, 48 C.A.2d 345—Roma Wine Co. v. Hardware Mut. Fire Ins. Co. of Minnesota, 88 P.2d 260, 31 C.A.2d 455.

38. Ala.—German-American Wholesale Optical Co. v. Rosen, 170 So. 211, 233 Ala. 105—Conner v. Central of Georgia Ry. Co., 128 So. 789, 221 Ala. 358—Ex parte Landers, 106 So. 225, 214 Ala. 20—Acuff v. Lowe, 100 So. 761, 211 Ala. 394—G. C. Shaw & Son v. Du Bose, 76 So. 925, 200 Ala. 567.
Kent v. Lindsey, 10 So.2d 54, 26 Ala.App. 582—Mallory S. S. Co. v. Druhan, 78 So. 636, 16 Ala.App. 438.
Colo.—Mooney v. Carter, 160 P.2d 390, 114 Colo. 267.
Fla.—McMillan v. Nelson, 5 So.2d 867, 149 Fla. 334.
Ill.—Miller v. Interstate Bedding Co., 133 N.E.2d 773, 9 Ill.App.2d 571—**Corpus Juris cited in** Village of LaGrange v. Clark, 278 Ill.App. 269, 285.
Mo.—Hafner v. Miller, 252 S.W. 722, 299 Mo. 214.
Title Guaranty & Surety Co. v. Drennon, 167 S.W. 1181, 181 Mo. App. 198.
Vt.—**Corpus Juris Secundum cited in** Russell v. Pilger, 37 A.2d 403, 412, 113 Vt. 537.
4 C.J. p 834 note **62.**

to justify a result contrary to the verdict,[38.5] if no verdict for the party to whom a new trial is awarded would be allowed to stand,[39] or if it can be said as a matter of law that there is no substantial evidence to support a judgment contrary to that rendered.[39.5] Under other authorities, an order granting a new trial can be disturbed only if, under the evidence, the verdict of the jury could be reasonably arrived at by fair and intelligent men acting reasonably,[40] or the evidence adduced in behalf of the adverse party is insufficient to raise an issue for the jury.[41]

Nevertheless the discretion of the court in granting or denying a motion for a new trial for insufficiency of the evidence to support the verdict is a legal discretion, not an arbitrary one, and an abuse thereof will ordinarily constitute a ground for reversal.[42] In determining whether the trial court abused its discretion, however, the appellate court cannot weigh the testimony, as this is entirely a matter for the jury in the first instance and then for the trial court when considering the motion for a new trial,[43] but the evidence will be reviewed on appeal to determine whether the discretion exercised by the trial court was a legal and reasonable one,[43.5] and whether it was abused;[43.10] and the weight and credibility of the testimony will be reviewed only to determine whether the order of the trial court was an abuse of discretion.[43.15]

Directed verdict appropriate

Wis.—Burt v. Meunier, 32 N.W.2d 241, 252 Wis. 581.

Second grant of new trial

The power to grant a new trial on discretionary grounds is not exhausted by the first grant thereof, and a second grant of a new trial will be affirmed, when the verdict is not supported by the evidence, or is contrary to its weight, or where the evidence is weak and unsatisfactory.

Ga.—Hartis v. Central of Georgia Ry. Co., 119 S.E. 349, 30 Ga.App. 720.

38.5 Mo.—Bledsoe v. Nickles, App., 91 S.W.2d 184.

39. Cal.—McAtee v. City of Marysville, 244 P.2d 936, 111 C.A.2d 507—Porter v. Thompson, 169 P.2d 40, 74 C.A.2d 474.

Mo.—Spivack v. J. Hahn Bakery Co., 214 S.W. 166—Sutter v. Metropolitan St. Ry. Co., 188 S.W. 65—State ex rel. Atchison, T. & S. F. Ry. Co. v. Ellison, 186 S.W. 1075, 268 Mo. 225.

McGraw v. Farmers Fire & Lightning Mut. Ins. Co., 160 S.W.2d 845, 236 Mo.App. 1019—Auto Money Corp. v. Clark, 153 S.W.2d 113, 236 Mo.App. 862—Bledsoe v. Nickles, App., 91 S.W.2d 184—Shattlock Realty Co. v. Mays, App., 63 S.W.2d 429—Birdsong v. Jones, 30 S.W.2d 1094, 225 Mo.App. 242—Barth v. Boyer, App., 27 S.W.2d 499—Hoyland Flour Mills Co. v. Missouri Pac. R. Co., 5 S.W.2d 125, 222 Mo.App. 599, certiorari denied Erie R. Co. v. Hoyland Flour Mills Co., 48 S.Ct. 433, 277 U.S. 586, 72 L. Ed. 1001—Farmers' State Bank v. Miller, 300 S.W. 834, 222 Mo.App. 633—Akin v. Hull, App., 277 S.W. 962—Harris v. McQuay, App., 242 S.W. 1011—Reardon v. White, App., 239 S.W. 162—Stanton-Honig Mercantile Co. v. L. Cohen Grocer Co., App., 198 S.W. 461.

Vt.—**Corpus Juris Secundum cited in** Russell v. Pilger, 37 A.2d 403, 412, 113 Vt. 537—Belock v. State Mut. Fire Ins. Co., 175 A. 19, 106 Vt. 435, followed in Belock v. Vermont Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 445, and Belock v. Union Mut. Fire Ins. Co., 175 A. 23, 106 Vt. 444.

4 C.J. p 834 note 63.

First grant of new trial

Mo.—Bradford v. Kurn, 146 S.W.2d 644, 235 Mo.App. 1282.

Absence of substantial conflict in evidence

Cal.—Hunt v. Pacific Electric Ry. Co., 124 P.2d 89, 51 C.A.2d 11—Malloway v. Hughes, 13 P.2d 1062, 125 C.A. 573.

Joint submission of question to jury

Where mortgagee joined with insurer in submitting to jury question of insurer's liability to mortgagee, mortgagee could not urge that trial court abused its discretion in sustaining insurer's motion on ground that verdict for mortgagee was against weight of evidence.

Mo.—McGraw v. Farmers Fire & Lightning Mut. Ins. Co., 160 S.W. 2d 845, 236 Mo.App. 1019.

39.5 Cal.—McAtee v. City of Marysville, 244 P.2d 936, 111 C.A.2d 507—Reyes v. Gonzales, 242 P.2d 401, 110 C.A.2d 266—Dalgleish v. Holt, 237 P.2d 553, 108 C.A.2d 561—Martin v. Smith, 230 P.2d 679, 103 C.A. 2d 894—Kawecki v. Maguire, 217 P.2d 48, 97 C.A.2d 80—McCoy v. Yellow Cab Co. of Cal., 198 P.2d 371, 88 C.A.2d 47—Hurt v. Basalt Rock Co., 190 P.2d 240, 84 C.A.2d 81—Vigli v. Davis, 179 P.2d 586, 79 C.A.2d 237.

40. Conn.—Maroncelli v. Starkweather, 133 A. 209, 211, 104 Conn. 419.

Utah.—Moser v. Zion's Co-op. Mercantile Inst., 197 P.2d 136, 114 Utah 58.

41. Iowa.—Hart v. Stence, 257 N.W. 434, 219 Iowa 55.

Vt.—**Corpus Juris Secundum cited in** Russell v. Pilger, 37 A.2d 403, 412, 113 Vt. 537.

4 C.J. p 834 note 64.

42. Fla.—Vining v. American Bakeries Co., 159 So. 670, 118 Fla. 572—Hawley v. American Bank & Trust Co., 148 So. 521, 110 Fla. 116.

Ga.—Cotton States Seed & Fertilizer Co. v. Macon, D. & S. R. Co., 98 S. E. 108, 23 Ga.App. 206—Atlantic Coast Line R. Co. v. Williams, 94 S.E. 584, 21 Ga.App. 453.

Ill.—Necheles v. Jefferson Ice Co., 82 N.E.2d 837, 336 Ill.App. 153—Randolph v. City of Chicago, 42 N. E.2d 143, 315 Ill.App. 85.

Ky.—Gottsegen v. Wilson, 129 S.W. 2d 575, 278 Ky. 734—Strode v. Strode, 240 S.W. 368, 194 Ky. 665, 27 A.L.R. 313.

Mo.—O'Bauer v. Katz Drug Co., App., 49 S.W.2d 1065.

Nev.—Nevada Rock & Sand Co. v. Grich, 93 P.2d 513, 59 Nev. 345.

N.J.—Annichiarico v. Mobilite, Inc., 89 A.2d 89, 19 N.J.Super. 492.

N.D.—Kohlman v. Hyland, 219 N.W. 228, 56 N.D. 772.

Pa.—Wilt v. Blazier, 114 A.2d 111, 382 Pa. 143—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128.

Brotherhood of Locomotive Engineers v. Douglas, 33 A.2d 59, 152 Pa.Super. 443.

S.D.—Western Surety Co. v. Boettcher, 165 N.W. 381, 39 S.D. 541.

Wash.—Voelker v. Cleveland, 10 P.2d 561, 168 Wash. 38.

W.Va.—Flinn v. Henthorne, 173 S.E. 882, 114 W.Va. 807.

4 C.J. p 834 note 65.

43. Cal.—Myles v. Los Angeles Ry. Corp., 143 P.2d 972, 62 C.A.2d 14—Pacific Gas & Electric Co. v. Rollins, 164 P. 53, 32 C.A. 782.

43.5 N.D.—Johnson v. Patterson, 270 N.W. 97, 67 N.D. 132.

43.10 Pa.—Pendleton v. Philadelphia Transp. Co., 103 A.2d 724, 376 Pa. 598.

43.15 N.D.—Zachmeier v. Oil Exploration Co., 76 N.W.2d 533.

4 C.J. p 833 note 57 [d].

Where a motion for a new trial is granted for the insufficiency of the evidence to justify a verdict, an appellate court will not find that there has been an abuse of discretion until it has considered the entire record.[43.20]

Presumptions and burden of proof. On an appeal from an order granting a new trial for the insufficiency of the evidence to support a verdict, every presumption will be indulged in favor of the proper exercise of the discretion of the trial judge,[43.25] and appellant has the burden of proof as to an abuse of that discretion,[43.30] which burden ordinarily requires a showing that there is no evidence which would have supported a verdict for the party moving for a new trial.[43.35]

Interests of justice. An appellate court is reluctant to interfere with the conclusion of the trial court in granting a new trial on the grounds that the verdict was against the weight of the evidence and that the interests of justice require a new trial;[43.40] but the power to interfere has not been abdicated.[43.45] Accordingly, the appellate court will not disturb such ruling in the absence of a palpable abuse of discretion,[43.50] unless the case turns on a question of law,[43.55] which question has been required to be one that in the circumstances necessarily controls the outcome of the case, and is certified by the trial judge as the sole reason for his action.[43.60]

It has also been held that a grant of a new trial on these grounds will not be disturbed unless a party is entitled to the entry of judgment on the record.[43.65]

The grant of a second new trial on the evidence will be closely examined to see that the lower court wisely exercised its discretion,[44] the test in such a case being whether it is more probable that the court is correct in its holding than that the verdict of the jury is correct.[45] Since the trial judge is better able to determine whether the verdict was supported by a decided preponderance of the evidence, his judgment on the second grant of a new trial will not be disturbed on the merely mathematical contention that the greater, or an equal, number of witnesses testified for the successful party, unless the opposing testimony was manifestly weak and unsatisfactory.[45.5]

On an appeal from a second order granting a new trial after the jury reached the same conclusion as in a previous trial on the same testimony, a reviewing court is warranted in reversing the second order for a less aggravated abuse of discretion than in reversing a first order therefor.[45.10]

§ 1625. —— Newly Discovered Evidence

A discretionary ruling on a motion for a new trial because of newly discovered evidence will be reviewed or revised by an appellate court only for a clear abuse of discretion; so, denial of the motion has been upheld in such situations as where the evidence could not produce a different result.

After a trial court has exercised its discretion and granted a new trial on the ground of newly discovered evidence, its action is not looked on with either distrust or disfavor by an appellate court.[45.50] The granting, or the denial, of a motion for a new trial on the ground of newly discovered evidence

43.20 Cal.—Bonner v. Los Angeles Examiner, 62 P.2d 427, 17 C.A.2d 458.

43.25 Cal.—Crooks v. Miller, 26 P. 615, 89 C. 35.
Rose v. Carter, 84 P.2d 174, 29 C. A.2d 191—Prout v. Perkins, 69 P. 2d 194, 21 C.A.2d 343.
Presumptions as to order granting new trial generally see supra § 1568.

43.30 Cal.—Crane v. Middleton, 267 P.2d 32, 122 C.A.2d 417—Thompson v. Pioneer Laundry Co., 128 P.2d 915, 54 C.A.2d 360—Prout v. Perkins, 69 P.2d 194, 21 C.A.2d 343—Hanlon D. & S. Co. v. Southern Pac. Co., 268 P. 385, 92 C.A. 230.
Burden of proof as to order granting new trial generally see supra § 1568.

43.35 Cal.—Prout v. Perkins, 69 P. 2d 194, 21 C.A.2d 343—Hanlon D. & S. Co. v. Southern Pac. Co., 268 P. 385, 92 C.A. 230.

43.40 Pa.—Edelson v. Ochroch, 111 A.2d 455, 380 Pa. 426—Harris v. Ruggles Lumber Co., 101 A.2d 917, 376 Pa. 252—Morse Boulger Destructor Co. v. Arnoni, 101 A.2d 705, 376 Pa. 57—Bellettiere v. City of Philadelphia, 81 A.2d 857, 367 Pa. 638—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128—Frank v. W. S. Losier & Co., 64 A.2d 829, 361 Pa. 272.

43.45 Pa.—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128.

43.50 Pa.—Edelson v. Ochroch, 111 A.2d 455, 380 Pa. 426—Peoples First Nat. Bank & Trust Co. v. Christ, 65 A.2d 393, 361 Pa. 423.
Powell v. Garden Court Corp., 22 A.2d 605, 146 Pa.Super. 372.
Question on review
Where new trial was granted on ground that verdict was not sustained by sufficient evidence and in the interest of justice, sole province of supreme court was to determine whether action was an abuse of discretion.

Iowa.—Burke v. Reiter, 42 N.W.2d 907, 241 Iowa 807.

43.55 Pa.—Peoples First Nat. Bank & Trust Co. v. Christ, 65 A.2d 393, 361 Pa. 423.

43.60 Pa.—Powell v. Garden Court Corp., 22 A.2d 605, 146 Pa.Super. 372.

43.65 Pa.—Peoples First Nat. Bank & Trust Co. v. Christ, 65 A.2d 393, 361 Pa. 423.

44. Ga.—Credit Clearing House Adjustment Corporation v. Stanfield, 156 S.E. 708, 42 Ga.App. 523.

45. Wash.—McCabe v. Lindberg, 169 P. 841, 99 Wash. 430.

45.5 Ga.—Allen v. Southern Ins. Securities Corp., 187 S.E. 714, 54 Ga. App. 316.

45.10 Cal.—Bayley v. Souza, 131 P. 2d 584, 55 C.A.2d 776.

45.50 Cal.—Dasso v. Bradbury, 104 P.2d 128, 39 C.A.2d 712.

being within the discretion of the trial court, as discussed in New Trial § 201, its decision thereon will not be disturbed in the absence of a clear, manifest, or palpable abuse, or improper exercise, thereof,[46]

46. Ala.—Killian v. Webber, 54 So. 2d 634, 36 Ala.App. 254—Birmingham Elec. Co. v. Linn, 34 So.2d 715, 33 Ala.App. 486—Foster v. Rosamond, 180 So. 334, 28 Ala.App. 99, certiorari denied 180 So. 338, 235 Ala. 663.

Ariz.—Williams v. Hagans, 105 P.2d 958, 56 Ariz. 83.

Ark.—Sellers v. Harvey, 249 S.W.2d 120, 220 Ark. 541—Hunt's Dry Goods Co. v. Ridenour, 243 S.W. 2d 742, 219 Ark. 628—Karnes v. Gentry, 172 S.W.2d 424, 205 Ark. 1112—Oviatt v. Garretson, 171 S. W.2d 287, 205 Ark. 792—McNew v. Wood, 163 S.W.2d 314, 204 Ark. 530—Arkansas Amusement Corp. v. Ward, 161 S.W.2d 178, 204 Ark. 130—Missouri Pacific Transp. Co. v. Simon, 140 S.W.2d 129, 200 Ark. 430—Williams v. Bullington, 111 S.W.2d 507, 195 Ark. 253—Camden Fire Ins. Ass'n of Camden, N. J., v. Reynolds, 79 S.W.2d 54—Forsgren v. Massey, 46 S.W.2d 20, 185 Ark. 90—Northwest Arkansas Farmers' Mut. Tornado Ins. Co. v. Osborn, 22 S.W.2d 387, 180 Ark. 757—Outler v. Gladson, 3 S.W.2d 973, 176 Ark. 671—Hinkle v. Lassiter, 218 S.W. 825, 143 Ark. 223—Davie v. Sifford, 186 S.W. 83, 124 Ark. 599.

Cal.—Stanley v. Columbia Broadcasting System, 221 P.2d 73, 35 C.2d 653, 23 A.L.R.2d 216—Siemons v. Paterson, 96 P.2d 125, 14 C.2d 612—Kirschbaum v. McCarthy, 54 P. 2d 8, 5 C.2d 191—Hynes v. Jacquelin, 262 P. 719, 202 C. 681—Waer v. Waer, 207 P. 891, 189 C. 178—Maloof v. Maloof, 166 P. 330, 175 C. 571—Fresno Estate Co. v. Fiske, 157 P. 1127, 172 C. 583.

Redwood Turkey Hatchery, Inc. v. Meadowbrook Farms, App., 313 P.2d 146—Dankert v. Lamb Finance Co., App., 304 P.2d 199—Boynton v. McKales, 294 P.2d 733, 139 C.A.2d 777—Caviglia v. Jarvis, 287 P.2d 525, 135 C.A.2d 415—Pocock v. Deniz, 286 P.2d 466, 134 C.A.2d 758—Pierce v. Nash, 272 P. 2d 938, 126 C.A.2d 606—Baker v. Floto, 265 P.2d 158, 122 C.A.2d 573—Meyer v. Parobek, 259 P.2d 948, 119 C.A.2d 509—Carvalho v. Lusardi, 251 P.2d 37, 114 C.A.2d 733—Celli v. French, 237 P.2d 536, 107 C.A.2d 599—Lundy v. Lakin, 215 P.2d 61, 96 C.A.2d 221—Carpenter v. Gibson, 181 P.2d 953, 80 C.A.2d 269—Buckhantz v. R. G. Hamilton & Co., 163 P.2d 756, 71 C.A.2d 777—Baker v. Berreman, 142 P.2d 448, 61 C.A.2d 235—Brannock v. Bromley, 86 P.2d 1062, 30 C.A.2d 516—Laverne v. Dold, 61 P.2d 497, 17 C.A.2d 180—Dinning v. Zellerbach Paper Co., 59 P.2d 880, 15 C.A.2d 623—Hellman v. Bradley, 56 P.2d 607, 13 C.A.2d 159—Pandolfo v. Jackson, 55 P.2d 550, 12 C.A.2d 232—Kohlhauer v. Bronstein, 48 P.2d 994, 9 C.A.2d 166—Redwing v. Moncravie, 32 P.2d 408, 138 C.A. 432—Taylor v. Williams, App., 26 P.2d 35, 134 C.A. 643—Bennington v. National Packing Co., 9 P.2d 857, 122 C.A. 313—Spadoni v. Maggenti, 8 P.2d 874, 121 C.A. 147—O'Nash v. Booth, 4 P.2d 278, 117 C.A. 614—Scheinbaum v. Driver, 297 P. 927, 113 C.A. 150—Wessel v. Cazaretto, 293 P. 111, 109 C.A. 390—Weddington v. McCann, 285 P. 1052, 104 C.A. 474—Easom v. General Mortg. Co., 281 P. 514, 101 C.A. 186—Maddux v. Mora, 279 P. 467, 99 C.A. 695—Putnam v. Pickwick Stages, Northern Division, 276 P. 1055, 98 C.A. 268—Arena v. Bank of Italy, 251 P. 338, 80 C.A. 61—Goodwin v. Snyder, 232 P. 763, 70 C.A. 98—Rossiter v. Thompson, 226 P. 806, 66 C.A. 491—Rudin v. Luman, 199 P. 874, 53 C.A. 212—Leach v. Klein, 183 P. 703, 42 C.A. 435—Nadeau v. Lynch, 183 P. 278, 41 C.A. 755—Nave v. Graham, 174 P. 76, 37 C.A. 332—Fiori v. Agnew, 164 P. 899, 33 C.A. 284.

Colo.—Buchanan v. Burgess, 62 P.2d 465, 99 Colo. 307.

Sebold v. Rieger, 142 P. 201, 26 Colo.App. 209.

Conn.—Widman v. Kearns, 114 A. 77, 96 Conn. 254.

Ga.—Verdery v. Campbell, 46 S.E.2d 66, 203 Ga. 211—Matthews v. Grace, 34 S.E.2d 454, 199 Ga. 400—Sumner v. Sumner, 188 S.E. 515, 183 Ga. 400—Lakes v. Lakes, 156 S. E. 620, 171 Ga. 692.

Stewart v. Wilson, 88 S.E.2d 752, 92 Ga.App. 514—Grant v. State, 40 S.E.2d 406, 74 Ga.App. 493—Brand v. City of Lawrenceville, 13 S.E. 2d 214, 64 Ga.App. 357—Giles v. Poppell, 5 S.E.2d 710, 61 Ga.App. 79—Exchange Bank of Oakfield v. Cone, 89 S.E. 489, 18 Ga.App. 432—Central of Georgia Ry. Co. v. Cooper, 82 S.E. 310, 14 Ga.App. 738.

Idaho.—Friedman Bag Co. v. F. E. Baldwin & Co., 68 P.2d 43, 57 Idaho 607—Hansen v. Standard Oil Co. of California, 44 P.2d 709—Stolz v. Scott, 154 P. 982, 28 Idaho 417.

Ill.—Stocker v. Scherer, 115 N.E.2d 614, 1 Ill.2d 405.

Coby v. Turner, 133 N.E.2d 46, 9 Ill.App.2d 416.

Ind.—Bartley v. Chicago & E. I. Ry. Co., 41 N.E.2d 805, 220 Ind. 354.

Krietenstein v. Robinson, App., 129 N.E.2d 368—Koeneman v. Aldridge, 122 N.E.2d 345, 125 Ind.App. 176—Montgomery Ward & Co. v. Thalman, 93 N.E.2d 852, 120 Ind. App. 473—Wahl Co. v. Compton, 36 N.E.2d 942, 109 Ind.App. 631—Cobler v. Prudential Life Ins. Co., 31 N.E.2d 678, 108 Ind.App. 641—Hauser v. George, 195 N.E. 592, 100 Ind.App. 346—Lowry v. Indianapolis Traction & Terminal Co., 126 N.E. 223, 77 Ind.App. 138.

Iowa.—Groves v. Groves, 82 N.W.2d 124—Westergard v. Des Moines Ry. Co., 52 N.W.2d 39, 243 Iowa 495—Danner v. Cooper, 246 N.W. 223, 215 Iowa 1354—Moore v. Goldberg, 217 N.W. 877, 205 Iowa 346—Henderson v. Edwards, 183 N.W. 583, 191 Iowa 871, 16 A.L.R. 1090—Kost v. Chicago, R. I. & P. Ry. Co., 149 N.W. 851, 167 Iowa 622.

Kan.—King v. Consolidated Products Co., 157 P.2d 541, 159 Kan. 608, 158 A.L.R. 1248—Leake v. Chaddock, 283 P. 625, 129 Kan. 499—Winkler v. Korzuszkiewicz, 211 P. 124, 112 Kan. 283.

Ky.—Knuckles v. Helton, 245 S.W.2d 942—Cincinnati, N. O. & T. P. Ry. Co. v. Snow, 143 S.W.2d 863, 284 Ky. 58—Howell v. Standard Oil Co., 28 S.W.2d 3, 234 Ky. 347—Reid v. Craig, 263 S.W. 678, 204 Ky. 151.

La.—Delmel v. Etheridge, App., 198 So. 537—Goldsmith v. Unity Industrial Life Insurance & Sick Ben. Ass'n, 128 So. 182, 13 La.App. 448.

Mass.—In re White, 33 N.E.2d 969, 304 Mass. 677—Pollock v. Swartz, 29 N.E.2d 188, 302 Mass. 604—Barrett v. O'Connell, 4 N.E.2d 312, 295 Mass. 515—Nicholas v. Lewis Furniture Co., 198 N.E. 753, 292 Mass. 500—Madden v. Boston Elevated Ry., 188 N.E. 234—Ryder v. Ellis, 134 N.E. 692, 241 Mass. 50.

Mich.—Reardon v. Buck, 55 N.W.2d 847, 335 Mich. 318.

Minn.—Caballero v. Litchfield Woodworking Co., 74 N.W.2d 404, 246 Minn. 124—Austin v. Rosecke, 61 N.W.2d 240, 240 Minn. 321—Schiro v. Raymond, 54 N.W.2d 329, 237 Minn. 271—Valencia v. Markham Co-op. Ass'n, 297 N.W. 736, 210 Minn. 221—Jorstad v. Benefit Ass'n of Ry. Employees, 265 N.W. 814, 196 Minn. 568—State v. City of Eveleth, 228 N.W. 447, 179 Minn. 99—Gates v. Chicago, M. & St. P. Ry. Co., 154 N.W. 441, 131 Minn. 3—George A. Hormel Co. v. Minneapolis St. Ry. Co., 153 N.W. 867, 130 Minn. 469.

Mo.—Devine v. Wells, 254 S.W. 65, 300 Mo. 177—Gaty v. United Rys. Co. of St. Louis, 227 S.W. 1041, 286 Mo. 503—Porter v. St. Joseph Stockyards Co., 111 S.W. 1136, 213 Mo. 372.

Mo.—Deacon v. City of Ladue, App., 294 S.W.2d 616—Smith v. Smith, App., 267 S.W.2d 704—Foerstel v. St. Louis Public Service Co., App., 241 S.W.2d 792—Citizens Bank of Senath v. Johnson, App., 112 S.W. 2d 916—McKnight v. Batrick, App., 49 S.W.2d 277—Galeener v. Derris, App., 20 S.W.2d 167—McClellan v. Kansas City Public Service Co., App., 19 S.W.2d 902—Lewis v. McClellan, App., 1 S.W.2d 247—McAdams v. McAdams, App., 267 S.W. 428—Imler v. Yeager, App., 245 S. W. 200—Gerth v. Christy, App., 231 S.W. 639—Formento v. Hines, App., 225 S.W. 104—Iaser v. Nelson, 171 S.W. 6, 184 Mo.App. 426.

Mont.—Gould v. Lynn, 293 P. 968, 88 Mont. 501.

Neb.—In re Bergren's Estate, 47 N. W.2d 582, 154 Neb. 289—Hodges v. Hodges, 47 N.W.2d 361, 154 Neb. 178—Jensen v. John Hancock Mut. Life Ins. Co., 16 N.W.2d 847, 145 Neb. 409—Reinsch v. Pacific Mut. Life Ins. Co. of California, 299 N. W. 632, 140 Neb. 225—American Nat. Red Cross v. Young, 276 N.W. 194, 133 Neb. 558—Scott v. Swank, 273 N.W. 25, 132 Neb. 720—Campbell v. Slater, 254 N.W. 897—Morrill County v. Bliss, 251 N.W. 106, 125 Neb. 573—Blaha v. Chicago & N. W. Ry. Co., 230 N.W. 453, 119 Neb. 611.

N.J.—Hecky v. Fox Elizabeth Theatre Co., 164 A. 894, 11 N.J.Misc. 153.

N.C.—Guy Frye & Sons, Inc. v. Francis, 86 S.E.2d 790, 242 N.C. 107—Farris v. First Citizens Bank & Trust Co., 2 S.E.2d 363, 215 N.C. 466—Wachovia Bank & Trust Co. v. Ebert, 172 S.E. 175, 205 N.C. 651—Horton v. Seaboard Air Line Ry., 85 S.E. 218, 169 N.C. 108, affirmed Seaboard Air Line Ry. v. Horton, 36 S.Ct. 180, 239 U.S. 595, 60 L.Ed. 458—Fleming v. Washington & V. R. Co., 84 S.E. 270, 168 N.C. 248.

N.D.—Strom v. Strom, 75 N.W.2d 750—Hochstetler v. Graber, 48 N. W.2d 15, 78 N.D. 90—Haslam v. Babcock, 10 N.W.2d 239, 72 N.D. 581—Matt v. Nomland, 288 N.W. 558, 69 N.D. 552—Baird v. Kensal Light & Power Co., 246 N.W. 279, 63 N.D. 88—Standard Oil Co. v. Kennedy, 208 N.W. 555, 54 N.D. 31—Doyle v. Doyle, 202 N.W. 860, 52 N.D. 380—Pace v. North Dakota Werkmen's Compensation Bureau, 201 N.W. 348, 51 N.D. 815—Security State Bank of Strasburg v. Kramer, 198 N.W. 679, 51 N.D. 20—Farmers' State Bank of Cathay v. Jeske, 197 N.W. 854, 50 N.D. 813—Keck v. Kavanaugh, 177 N.W. 99, 45 N.D. 81—Keystone Grain Co. v. Johnson, 165 N.W. 977, 38 N.D. 562—McGregor v. Great Northern Ry. Co., 154 N.W. 261, 31 N.D. 471, Ann.Cas.1917E 141—Aylmer v. Adams, 153 N.W. 419, 30 N.D. 514.

Ohio.—State ex rel. Robinson v. Hightower, 90 N.E.2d 849, 153 Ohio St. 93—Taylor v. Ross, 83 N. E.2d 222, 150 Ohio St. 448, 10 A. L.R.2d 377—Domanski v. Woda, 6 N.E.2d 601, 132 Ohio St. 208.

Blake v. Hansley, App., 116 N.E. 2d 827.

Okl.—Brashears Transfer and Storage v. Prevett, 298 P.2d 402—Morgan v. Duncan, 287 P.2d 694—Staton v. O. K. Sprinkler Co., 280 P.2d 1016—Keenan v. Clark, 211 P. 2d 260, 202 Okl. 143—Montgomery Ward & Co. v. Curtis, 155 P.2d 248, 195 Okl. 48—Chew v. Fouts, 132 P.2d 949, 191 Okl. 665—Smith v. Rohl, 126 P.2d 61, 190 Okl. 603—R. J. Allison Co. v. Carden, 123 P. 2d 679, 190 Okl. 381—O'Hern v. Hatter, 119 P.2d 48, 189 Okl. 663—Berry v. Park, 110 P.2d 902, 188 Okl. 477—Alkire v. King, 102 P. 2d 136, 187 Okl. 296—Patteson v. Myers, 83 P.2d 846, 183 Okl. 601—Belford v. Allen, 80 P.2d 671, 183 Okl. 256—Abrams v. Neal, 78 P. 2d 1049, 182 Okl. 560—Peters v. Central Nat. Bank of Enid, 49 P. 2d 1083, 174 Okl. 329—Carter v. Bond & Bond, 49 P.2d 701, 174 Okl. 28—Missouri-Kansas-Texas R. Co. v. Embrey, 33 P.2d 481, 168 Okl. 433, certiorari denied 55 S.Ct. 119—Huffman v. Huffman, 31 P.2d 576, 168 Okl. 39—Mitchell v. Dadas, 30 P.2d 179, 167 Okl. 390—Reviere v. Payne, 26 P.2d 734, 166 Okl. 150—Berline v. Berline, 2 P.2d 1029, 151 Okl. 170—Seidenbach's v. Oliver, 293 P. 220, 146 Okl. 34—Black v. Coleman, 285 P. 983, 142 Okl. 195—Green v. Correll, 271 P. 241, 133 Okl. 94—Bride v. Bride, 268 P. 212, 131 Okl. 176—Black v. Bell, 261 P. 222, 128 Okl. 160—Summers v. Williams, 260 P. 1064, 128 Okl. 9—Smith v. Garis, 256 P. 753, 125 Okl. 106—Marland Refining Co. v. Snider, 251 P. 989, 120 Okl. 116—Cook v. Harjo, 248 P. 651, 118 Okl. 291—Lind v. Harding, 229 P. 821, 103 Okl. 265—Schaap v. Williams, 225 P. 910, 99 Okl. 21—Eisenbeis v. Crocker, 225 P. 510, 99 Okl. 30—Johnston v. Shaffer, 221 P. 748, 96 Okl. 236—Yantis v. Tate, 218 P. 810, 92 Okl. 209—Trent v. Richards, 215 P. 747, 90 Okl. 20—Lamb v. Alexander, 201 P. 519, 83 Okl. 292—Danciger v. Isaacs, 200 P. 164, 82 Okl. 263—In re Klufa's Estate, 188 P. 329, 78 Okl. 13—Eskridge v. Taylor, 182 P. 516, 75 Okl. 139—Missouri, K. & T. Ry. Co. v. Taylor, 170 P. 1148, 69 Okl. 79.

Or.—In re Gerhardus' Estate, 239 P. 829, 116 Or. 113.

Pa.—Helmig v. Rockwell Mfg. Co., 131 A.2d 622, 389 Pa. 21—Higbee v. Koziol, 117 A.2d 707, 383 Pa. 116—Brannagan v. Great Atlantic & Pacific Tea Co., 41 A.2d 869, 352 Pa. 18—Weissbach v. Price, 195 A. 21, 328 Pa. 46—Simmons-Boardman Pub. Co. v. American Boron Products Co., 128 A. 511, 282 Pa. 521—Silver v. Edelstein, 109 A. 679, 266 Pa. 531—Hunter v. Bremer, 100 A. 809, 256 Pa. 257, Ann. Cas.1918A 152—Knickerbocker Ice Co. v. Pennsylvania R. Co., 97 A. 1051, 253 Pa. 54.

Yount v. Whisner, 57 A.2d 914, 162 Pa.Super. 524—Walters v. Kapiris, 48 A.2d 35, 159 Pa.Super. 170—Fischer v. Hunsberger, 35 A. 2d 91, 153 Pa.Super. 572—Kingsdorf v. Frank Gamburg, Inc., 24 A. 2d 140, 147 Pa.Super. 84—Stewart v. Leiper, 16 A.2d 660, 142 Pa.Super. 429—Hedley v. Snipes, 188 A. 617, 124 Pa.Super. 396—Gennaro v. Philadelphia Rapid Transit Co., 97 Pa.Super. 233—Essreg v. Bronstein, 76 Pa.Super. 550—Berman v. Adams Express Co., 73 Pa.Super. 314.

Commonwealth ex rel. MacCready v. Bettinger, Quar.Sess., 46 Sch.Leg.Rec. 80.

S.C.—Edwards v. Cottingham, 171 S. E. 621, 171 S.C. 131—White v. Charleston & W. C. Ry. Co., 114 S.E. 324, 121 S.C. 215.

S.D.—Behringer v. Muchow, 30 N.W. 2d 5, 72 S.D. 80—Hathaway v. Hathaway, 24 N.W.2d 33, 71 S.D. 310—Hopkins v. Educational Mut. Ben. Ass'n, 7 N.W.2d 296, 69 S.D. 132—Cornell v. Johnson, 241 N.W. 740, 59 S.D. 617—Altfillisch v. Smith, 185 N.W. 968, 45 S.D. 68—Zarneke v. Kitzman, 183 N.W. 867, 44 S.D. 295—Whitney Loan & Trust Co. v. Brown, 172 N.W. 875, 42 S. D. 95.

Tenn.—Stepp v. Black, 14 Tenn.App. 153.

Tex.—Texas Emp. Ins. Ass'n v. Pillow, Civ.App., 268 S.W.2d 716, error refused no reversible error—Williams v. Pettigrew, Civ.App., 251 S.W.2d 183, error refused no reversible error—Goldman v. Campbell, 249 S.W.2d 633, error refused no reversible error—Texas Emp. Ins. Ass'n v. Evers, Civ.App., 242 S.W.2d 906, error refused no reversible error—Miller v. Donald, Civ.App., 235 S.W.2d 201, error refused no reversible error—Hayman v. Dowda, Civ.App., 233 S.W.2d 466—Forshagen v. Payne, Civ.App., 225 S.W.2d 229—Gowan v. Reimers, 220 S.W.2d 331, error refused no reversible error—Williams v. Southern Life & Health Ins. Co., Civ.App., 208 S. W.2d 574—McCall v. Texas Dragline Service Co., 188 S.W.2d 243, ref. w. m.—Thomas v. Johnson, Civ.App., 190 S.W.2d 849—Courreges v. System Freight Service, Civ.App., 152 S.W.2d 841—Texas Employers Ins. Ass'n v. Moser, Civ.App., 152 S.W.2d 390—Bolyard v. Toronto Pipe Line Co., Civ.App., 120 S.W.2d 960, error dismissed—Brinker v. McDonald, Civ.App., 115

S.W.2d 1185—Stinson v. Boulevard Undertaking Co., Civ.App., 91 S.W. 2d 1172—Allen v. Texas & N. O. R. Co., Civ.App., 70 S.W.2d 758—Tabet v. Kaufman, Civ.App., 67 S.W.2d 1072—Humphris v. Benedetto, Civ. App., 55 S.W.2d 862—Kelsey v. Myers, Civ.App., 29 S.W.2d 855—J. Lee Vilbig & Co. v. Lucas, Civ. App., 23 S.W.2d 516—Wright v. Stone, Civ.App., 273 S.W. 937—Peters v. Williams, Civ.App., 271 S.W. 430—Griffith v. Gohlman, Lester & Co., Civ.App., 253 S.W. 591—Ferguson v. Jackson, Civ.App., 248 S.W. 66—White v. Bell, Civ.App., 242 S. W. 1082—St. Louis Southwestern Ry. Co. of Texas v. Turner, Civ. App., 225 S.W. 383, error refused—Smith v. Folmar, Civ.App., 224 S. W. 526, dismissed for want of jurisdiction—Rooney v. Porch, Civ. App., 223 S.W. 245, reversed on other grounds Com.App., 239 S.W. 910—Woldert v. Pukli, Civ.App., 221 S. W. 1112, dismissed for want of jurisdiction—Sherrill v. Union Lumber Co., Civ.App., 207 S.W. 149—Strachbein v. Gilmer, Civ. App., 202 S.W. 332, dismissed for want of jurisdiction—Farmers' State Guaranty Bank v. Pierson, Civ.App., 201 S.W. 424—Kersh v. Matthews, Civ.App., 186 S.W. 783—Feagins v. Texas Machinery & Supply Co., Civ.App., 185 S.W. 961, error refused.

Utah.—Trimble v. Union Pacific Stages, 142 P.2d 674, 105 Utah 457—Greco v. Gentile, 53 P.2d 1155, 88 Utah 255.

Wash.—Davenport v. Taylor, 311 P. 2d 990—Skov v. MacKenzie-Richardson, Inc., 296 P.2d 521, 48 Wash.2d 710—McUne v. Fuqua, 253 P.2d 632, 42 Wash.2d 65, opinion adhered to on rehearing 257 P.2d 636, 42 Wash.2d 65—Nelson v. West Coast Dairy Co., 105 P.2d 76, 5 Wash.2d 284, 130 A.L.R. 606—Strong v. Sunset Copper Co., 114 P.2d 526, 9 Wash.2d 214, 135 A.L.R. 423—In re Rubens' Estate, 74 P. 2d 204, 192 Wash. 571—De Rosier v. Standard Oil Co. of California, 8 P.2d 296, 166 Wash. 670—Phelan v. Jones, 4 P.2d 516, 164 Wash. 640—O'Brien v. City of Seattle, 296 P. 152, 161 Wash. 25—Molitor v. Blackwell Motor Co., 191 P. 1103, 112 Wash 279—Alverson v. Hooper, 185 P. 808, 108 Wash. 510—Roe v. Snyder, 170 P. 1027, 100 Wash. 311—Sherbloom v. Faussett, 170 P. 337, 99 Wash. 680—Forsyth v. Wallace, 159 P. 696, 92 Wash. 523—Johnson v. Bank of Pasco, 138 P. 295, 78 Wash. 59.

W.Va.—Rogers v. Goforth, 2 S.E.2d 903, 121 W.Va. 239.

Wis.—In re Teasdale's Estate, 58 N. W.2d 404, 264 Wis. 1—Sweet v. Modern Woodmen of America, 172 N.W. 143, 169 Wis. 462.

Wyo.—Hardendorf v. Gafner, 84 P. 2d 719, 53 Wyo. 427.

4 C.J. p 835 note 67.

"A complaint for a new trial on the ground of newly discovered evidence, pursuant to section 589, Burns' 1914, must be regarded as a substitute for a bill in chancery. See Moore v. Coates, 35 Ohio St. 177. The trial court must determine, in the first instance, whether the proof is clear, strong, and satisfactory; whether an injustice has been done; whether the plaintiff has exercised reasonable diligence; and whether the ends of justice require that a new trial be granted. In passing on each case the trial court exercises a legal discretion, and on appeal its judgment will be reversed only for the abuse of that discretion."

Ind.—Eastern Rock Island Plow Co. v. Stout, 147 N.E. 160, 165, 84 Ind.App. 217.

"To sustain these exceptions [to the trial judge's denial of defendant's motion for new trial on the ground of newly discovered evidence] it is necessary to decide that no conscientious judge, acting intelligently, could honestly have taken the view taken by him."

Mass.—Davis v. Boston Elevated Ry. Co., 126 N.E. 841, 846, 235 Mass. 482.

Refusal to consider newly discovered evidence

Md.—B. J. Linthicum's Sons, Inc. v. Stack, 131 A.2d 721, 213 Md. 344.

Abuse of discretion amounting to manifest error of law

S.C.—Elmore v. Middlesex Mut. Fire Ins. Co., 65 S.E.2d 871, 219 S.C. 520—Johnston v. Belk-McKnight Co. of Newberry, 198 S.E. 395, 188 S.C. 149.

Question on appeal is whether trial court abused its discretion in denying or granting application.

N.D.—Peterson v. Bober, 56 N.W.2d 331, 79 N.D. 300.

Tex.—Employees Lloyds v. Schott, Civ.App., 183 S.W.2d 262, error refused—Stinson v. Boulevard Undertaking Co., Civ.App., 91 S.W.2d 1172.

Utah.—Uptown Appliance & Radio Co. v. Flint, 249 P.2d 826, 122 Utah 284—Crellin v. Thomas, 247 P.2d 264, 122 Utah 122.

Manifest miscarriage of justice

On appeal from order granting new trial appellate court cannot substitute its judgment for judgment of trial judge and, to reverse order because of an alleged abuse of discretion, it was required clearly to appear that the injury resulting from the alleged wrong was sufficiently grave to amount to a manifest miscarriage of justice.

Cal.—Dasso v. Bradbury, 104 P.2d 128, 39 C.A.2d 712.

Diligence in procuring evidence

(1) Generally.

Tex.—Dutton v. Kinsey, Civ.App., 124 S.W.2d 446.

(2) Whether newly discovered evidence could with reasonable diligence have been discovered and produced at the trial is a question for the lower court, whose ruling thereon will not be disturbed in the absence of an abuse of discretion.

Ark.—Arkansas Power & Light Co. v. Mart, 65 S.W.2d 39, 188 Ark. 264—Temple Cotton Oil Co. v. Holliday, 54 S.W.2d 304, 186 Ark. 514.

Cal.—Peterson v. Geltz, 258 P.2d 875, 118 C.A.2d 794—Bliss v. Security-First Nat. Bank of Los Angeles, 183 P.2d 312, 81 C.A.2d 50—Dinning v. Zellerbach Paper Co., 59 P.2d 880, 15 C.A.2d 623.

Ga.—Swift & Co. v. Johnson, 140 S. E. 398, 37 Ga.App. 320—Kleckley & English v. Bank of Oglethorpe, 91 S.E. 287, 19 Ga.App. 251.

Mo.—Devine v. Wells, 254 S.W. 65, 300 Mo. 177.

N.D.—Blum v. Standard Oil Co., 279 N.W. 764, 68 N.D. 329.

4 C.J. p 835 note 67 [b].

(3) Discretion is presumed to have been properly exercised and presumption must be overcome by clear want of facts before order will be disturbed.

Cal.—Brannock v. Bromley, 86 P.2d 1062, 30 C.A.2d 516.

(4) Discretion of trial judge in refusing new trial on ground of newly discovered evidence would not be interfered with where there was no affidavit of any of defendant's counsel that they did not know of existence of such evidence before trial, and that it could not have been discovered by exercise of ordinary diligence.

Ga.—May v. Lee, 197 S.E. 50, 57 Ga. App. 893.

(5) Refusal of new trial for after-discovered evidence would be affirmed where affidavit contained no averment that evidence could not have been obtained during trial by use of reasonable diligence, and there was no inherent reason apparent why evidence could not have been so obtained.

Pa.—Peters v. Colonial Life Ins. Co. of America, 193 A. 460, 128 Pa.Super. 21.

(6) Reviewing court should hesitate to disturb ruling, granting motion, on ground that due diligence to discover evidence has not been shown, where ruling has any substance whatever on which to rest.

Cal.—Baker v. Berreman, 136 P.2d 576, reversed on rehearing on other grounds 142 P.2d 448, 61 C.A. 2d 235—Brannock v. Bromley, 86 P.2d 1062, 30 C.A.2d 516.

(7) Supreme court could not hold that trial court was guilty of an

which fact is required to be clearly shown on appeal.[46.5]

The general rule has no application where the affidavit or other evidence on which the order is made furnishes no basis for the exercise of such discretion,[46.10] and, in that event, the order will be reversed.[46.20] Furthermore, the ruling of the trial court on such a motion will be interfered with where it is obvious that the discretion of the court has been abused.[47]

The denial of a motion based on newly discovered evidence has been upheld as within the discretion of the court where it was not shown that the evidence would come within the rule authorizing the court to grant a new trial because thereof;[48] where the evidence was merely cumulative;[49] where every

abuse of discretion in denying new trial on ground of lack of reasonable diligence to obtain evidence prior to trial, unless court could say from evidence as contained in record that trial judge should have believed reasonable diligence was used, and should have so concluded as a matter of law.
Okl.—Berry v. Park, 110 P.2d 902, 188 Okl. 477.

(8) Whether party made timely and diligent search for witnesses who might reasonably be expected to be in possession of evidence concerning material facts is a matter which appellate court will consider in determining whether trial court abused its discretion in granting motion.
Cal.—Dry v. City & County of San Francisco, 189 P.2d 761, 83 C.A.2d 790.

Resolution of doubt

Doubt as to the sound exercise of discretion by trial court must be resolved in favor of the ruling on a motion for a new trial for newly discovered evidence.
Mo.—McClellan v. Kansas City Public Service Co., App., 19 S.W.2d 902—Lewis v. McClellan, App., 1 S.W.2d 247—Gerth v. Christy, App., 231 S.W. 639—MacCallum v. Wilson Printing Co., App., 221 S.W. 158.

Absence of affidavits of character

Discretion would not be disturbed where there were no affidavits in support of the character of affiant expected to give newly discovered evidence.
Ga.—May v. Lee, 197 S.E. 50, 57 Ga. App. 893.

Weight and credibility of testimony

In tribunal reviewing denial of motion, weight and credibility of testimony will be considered only with view to determine whether or not order made in an inferior court, when acting within domain of discretion, was an abuse of discretion.
N.D.—Peterson v. Bober, 56 N.W.2d 331, 79 N.D. 300—Aylmer v. Adams, 153 N.W. 419, 30 N.D. 514.

46.5 Cal.—Kircher v. Atchison, T. & S. F. Ry. Co., 195 P.2d 427, 32 C.2d 176.
Teixeira v. Domingos, App., 311 P.2d 634—Kroff v. Kroff, 274 P.2d 45, 127 C.A.2d 404—Eley v. Curzon, 263 P.2d 86, 121 C.A.2d 280—In re Lucas' Estate, 235 P.2d 225, 106 C.A.2d 378.
N.D.—Peterson v. Bober, 56 N.W.2d 331, 79 N.D. 300.
Ohio.—Spence v. Commercial Motor Freight, 127 N.E.2d 427, 99 Ohio App. 143.
Tex.—Carnes v. Kay, Civ.App., 210 S.W.2d 882—Blaugrund v. Gish, Civ. App., 179 S.W.2d 257, affirmed 179 S.W.2d 266, 142 Tex. 379.

46.10 Cal.—Slemons v. Paterson, 96 P.2d 125, 14 C.2d 612.
Boynton v. McKales, 294 P.2d 733, 139 C.A.2d 777—Pierce v. Nash, 272 P.2d 938, 126 C.A.2d 606—Baker v. Berreman, 142 P.2d 448, 61 C.A.2d 235.

46.20 Cal.—Slemons v. Paterson, 96 P.2d 125, 14 C.2d 612.

47. Cal.—Gackstetter v. Market St. Ry. Co., 52 P.2d 998, 10 C.A.2d 713.
Or.—Benson v. Birch, 10 P.2d 1050, 139 Or. 459.
S.C.—McCabe v. Sloan, 191 S.E. 905, 184 S.C. 158.
Tex.—Houston Fire & Cas. Ins. Co. v. Miller, Civ.App., 237 S.W.2d 461.
Utah.—Van Dyke v. Ogden Savings Bank, 161 P. 50, 48 Utah 606.
Wyo.—Hardendorf v. Gafner, 84 P.2d 719, 53 Wyo. 427.
4 C.J. p 835 note 72.

Grant of new trial held reviewable or reversible:

(1) Where it is granted on a petition filed after the term at which judgment was rendered, in disregard of established rules of law.
Okl.—Vickers v. Phillip Carey Co., 151 P. 1023, 49 Okl. 231, L.R.A. 1916C 1155.

(2) Where the petition for new trial, based solely on the ground of newly discovered evidence, is supported by no evidence thereof.
Iowa.—Pyle v. Herring, 164 N.W. 173, 185 Iowa 646.

(3) Where the newly discovered evidence tends only to strengthen other evidence of the same kind to the same point, and is impeaching in its character, and is not such as would probably change the result if a new trial were granted.
Okl.—Vickers v. Phillip Carey Co., supra.

(4) Where the moving party knew before the trial that the alleged absent witness could be a witness, the record did not show any application for an adjournment on the ground of his absence, or any attempt to obtain his testimony by deposition or otherwise, and the most the moving party could claim was that he did not know all that such witness would testify to, and that he did not know his whereabouts.
N.Y.—Davenport v. Dewsnap, 168 N.Y.S. 613.

(5) Where there is no newly discovered evidence within statutory meaning the granting of new trial on that ground may be reversed.
Neb.—Wagner v. Loup River Public Power Dist., 33 N.W.2d 300, 150 Neb. 7.

48. Pa.—Peters v. Colonial Life Ins. Co. of America, 193 A. 460, 128 Pa. Super. 21.
Tex.—Hudgins v. Hammers, Civ.App., 178 S.W. 986.

49. Ark.—Forsgren v. Massey, 46 S.W.2d 20, 185 Ark. 90.
Cal.—Landrum v. Severin, 230 P.2d 337, 37 C.2d 24.
Irvin v. Padelford, 273 P.2d 539, 127 C.A.2d 135—Eley v. Curzon, 263 P.2d 86, 121 C.A.2d 280—Atherley v. Market St. Ry. Co., 108 P.2d 927, 42 C.A.2d 354—Chronister v. Brennan, 81 P.2d 479, 27 C.A.2d 509.
Ga.—Edenfield v. Brinson, 100 S.E. 373, 149 Ga. 377.
Samples v. Ashley, 179 S.E. 745, 51 Ga.App. 109—Andrews v. McLendon, 94 S.E. 815, 21 Ga.App. 649.
Ind.—Seaver v. Seaver, 148 N.E. 927, 83 Ind.App. 370.
La.—Watts v. Fisher Lumber Corp., App., 189 So. 301—Hill v. Taylor, App., 174 So. 196.
Mich.—Wilson v. Johnson, 161 N.W. 924, 195 Mich. 94.
Okl.—Yantis v. Tate, 218 P. 810, 92 Okl. 209.
Pa.—Hinman v. Hinman, 128 A. 654, 283 Pa. 29.
Tex.—Dutton v. Kinsey, Civ.App., 124 S.W.2d 446.
Wash.—Olson v. Seldovia Salmon Co., 152 P. 1033, 88 Wash. 225.
4 C.J. p 835 note 68.

Whether evidence is cumulative is question for sound discretion of trial judge, and exercise of such discretion will not be interfered with by the appellate court on appeal except in cases of manifest abuse.
Ind.—Hull v. Burress, 93 N.E.2d 213, 120 Ind.App. 507.

material fact alleged in the motion is contradicted by counter affidavits;[50] where the evidence, if admitted, could be used only for purposes of impeachment;[51] or where it is of a character which could not reasonably produce a different result,[52] or is not so convincing as to raise a strong presumption that a different result would be reached on a second trial.[52.5]

Only when the showing made on the motion for a new trial is of such a character as to make it manifest that the case would, or should, result differently on a retrial is an appellate court authorized to say that the discretion vested in a trial court has been abused;[52.10] hence, where the newly discovered evidence is denied by counter-affidavits, and the question whether the evidence would change the result on a new trial is debatable, the appellate court is not authorized to interfere with the discretion of the trial court in denying the motion.[52.15]

A trial court which in its discretion has seen fit to grant a new trial because of after-discovered evidence is not held to the same strictness with respect to the requirements or incidents of such evidence as is a party seeking the reversal of a refusal to grant a new trial.[52.20]

§ 1626. —— Inadequate or Excessive Damages

Unless there has been an abuse of discretion, or discretion was not exercised, the ruling of the trial court on a motion for a new trial on the ground that the damages are excessive or inadequate will not be reviewed; this rule applies where the action of the court is conditioned on the remitting of a portion of the award or on an increase thereof.

The discretion of the trial court in ruling on a motion for a new trial based on the inadequacy or excessiveness of damages is a legal one which is subject to review or reversal for clear abuse or arbitrary exercise,[53] or where it appears to the reviewing court that the damages awarded are entirely inadequate,[53.5] or where, in addition, there is a suggestion that they were a compromise between the right of recovery and the amount of damages sustained.[53.10]

50. Ga.—Ballard v. Harmon, 44 S.E. 2d 260, 202 Ga. 603—Edenfield v. Brinson, 100 S.E. 373, 149 Ga. 377. Wesley v. Lewis Bros., 127 S.E. 660, 33 Ga.App. 783—Tatum v. Waters, 120 S.E. 424, 31 Ga.App. 279—Andrews v. McLendon, 94 S.E. 815, 21 Ga.App. 649—Cohen Co. v. Brown, 94 S.E. 811, 21 Ga.App. 668—Kendrick v. Rountree, 88 S.E. 990, 18 Ga.App. 116.
Wash.—Olson v. Seldovia Salmon Co., 152 P. 1033, 88 Wash. 225.
4 C.J. p 835 note 69.

51. Cal.—Anderson v. Freis, 142 P. 2d 330, 61 C.A.2d 159—Atherley v. Market St. Ry. Co., 108 P.2d 927, 42 C.A.2d 354—Chronister v. Brennan, 81 P.2d 479, 27 C.A.2d 509—Lydon v. Beach, 264 P. 511, 89 C.A. 69.
Ga.—Edenfield v. Brinson, 100 S.E. 373, 149 Ga. 377. Samples v. Ashley, 179 S.E. 745, 51 Ga.App. 109—Andrews v. McLendon, 94 S.E. 815, 21 Ga.App. 649.
4 C.J. p 835 note 70.

52. Cal.—Ferro v. Lagomarsino, 188 P. 626, 45 C.A. 741.
Ga.—Langran v. Hodges, 4 S.E.2d 489, 60 Ga.App. 567.
Ky.—Berea Bank & Trust Co. v. Mokwa, 239 S.W. 1044, 194 Ky. 556.
Minn.—Albertson v. Albertson, 67 N. W.2d 463, 242 Minn. 212.
Mo.—Devine v. Wells, 254 S.W. 65, 300 Mo. 177. Galeener v. Derris, App., 20 S.W. 2d 167.
N.D.—Derrick v. Klein, 253 N.W. 70, 64 N.D. 438—Fisk v. Fehrs, 155 N. W. 676, 32 N.D. 119.
Okl.—Liberty Nat. Bank of Pawhuska v. Exendine, 11 P.2d 154, 156 Okl. 26.
Or.—Hanks v. Norby, 54 P.2d 836, 152 Or. 610.
Wash.—Olson v. Seldovia Salmon Co., 152 P. 1033, 88 Wash. 225.
Wis.—Toledo Scale Co. v. Colleran, 250 N.W. 377, 212 Wis. 502.
4 C.J. p 835 note 71.

Decision as to effect on result
Decision on whether evidence will effectuate a different result cannot be disturbed in absence of clear showing of abuse of discretion.
Cal.—Eley v. Curzon, 263 P.2d 86, 121 C.A.2d 280—Peterson v. Geltz, 258 P.2d 875, 118 C.A.2d 794—Bliss v. Security-First Nat. Bank of Los Angeles, 183 P.2d 312, 81 C.A.2d 50—Dinning v. Zellerbach Paper Co., 59 P.2d 880, 15 C.A.2d 623.

Effect of testimony speculative
Refusal of new trial because of after-discovered evidence would not be disturbed, where effect of testimony on new trial was entirely speculative.
Mo.—Citizens Bank of Senath v. Johnson, App., 112 S.W.2d 916.

52.5 Ind.—Sprague v. Sowash, 106 N.E.2d 471, 122 Ind.App. 519—Hull v. Burress, 93 N.E.2d 213, 120 Ind. App. 507—Teegarden v. Brown, 39 N.E.2d 793, 111 Ind.App. 159—Munson v. Quinn, 37 N.E.2d 693, 110 Ind.App. 277.

52.10 Cal.—Shivers v. Palmer, 139 P.2d 952, 59 C.A.2d 572.

52.15 Cal.—Shivers v. Palmer, 139 P.2d 952, 59 C.A.2d 572.

52.20 Pa.—Young v. Whisner, 57 A. 2d 914, 162 Pa.Super. 524—Kingsdorf v. Frank Gamburg, Inc., 24 A. 2d 140, 147 Pa.Super. 84.

53. Ky.—Paducah Traction Co. v. Walker's Adm'r, 185 S.W. 119, 169 Ky. 721.
Mo.—**Corpus Juris Secundum quoted in** Dodd v. Missouri-Kansas-Texas R. Co., 193 S.W.2d 905, 907, 354 Mo. 1205. Bente v. Finley, App., 83 S.W.2d 155.
N.Y.—Weiss v. Farson, 243 N.Y.S. 471, 230 App.Div. 738—Waldron v. City of Utica, 238 N.Y.S. 401, 228 App.Div. 37.
Pa.—Smith v. Allegheny County, 105 A.2d 137, 377 Pa. 365—Wargo v. Pittsburgh Rys. Co., 101 A.2d 638, 376 Pa. 168.
S.C.—Miller v. Atlantic Coast Line R. Co., 81 S.E.2d 335, 225 S.C. 217.
4 C.J. p 836 note 76.

In Maryland, however, the exercise by the trial court of discretion in overruling a motion for new trial will not be reviewed by the court of appeals, even though the damages awarded were grossly excessive and the verdict palpably and manifestly unjust.
Md.—Von Schlegell, Inc. v. Ford, 175 A. 589, 167 Md. 584.

53.5 Minn.—Olson v. Christiansen, 41 N.W.2d 248, 230 Minn. 198—Flaugh v. Egan Chevrolet, 279 N. W. 582, 202 Minn. 615.
Pa.—Snyder v. Nehila, 132 A.2d 355, 184 Pa.Super. 89.

53.10 Minn.—Berg v. Ullevig, 70 N. W.2d 133, 244 Minn. 390.

The action of the trial court in granting or refusing a new trial or in setting aside or refusing to set aside a verdict on the ground that the damages are not appropriate will be reviewed only if a failure to exercise discretion,[53.15] or an abuse of discretion,[54] is shown. This general rule has been applied to rulings on motions for a new trial based on the inadequacy[54.5] or the excessiveness of the damages

53.15 Vt.—Gray v. Janicki, 99 A.2d 707, 118 Vt. 49—Oligny v. Underwood, 71 A.2d 250, 116 Vt. 193—Cote v. Boise, 16 A.2d 175, 111 Vt. 343.

Discretion assumed to have been exercised

Vt.—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42.

54. Ariz.—Medlock v. Florian, 28 P. 2d 621, 42 Ariz. 558.

Ill.—Jacobson v. Umland, 52 N.E.2d 320, 321 Ill.App. 162.

Iowa.—Gilbert v. Kinnaird, 294 N.W. 272, 229 Iowa 141—Manders v. Dallam, 244 N.W. 724, 215 Iowa 137.

Kan.—Posey v. Johnson, 67 P.2d 598, 145 Kan. 742.

Ky.—Beall v. Louisville Home Telephone Co., 179 S.W. 251, 166 Ky. 345.

Mass.—Palma v. Racz, 19 N.E.2d 8, 302 Mass. 249.

Minn.—Berg v. Ullevig, 70 N.W.2d 133, 244 Minn. 390—Thiesen v. Hellermann, 64 N.W.2d 762, 242 Minn. 218—Maas v. Laursen, 18 N.W.2d 233, 219 Minn. 461, 158 A.L.R. 215—Litman v. Walso, 1 N.W.2d 391, 211 Minn. 398—Ott v. Tri-State Telephone & Telegraph Co., 149 N. W. 544, 127 Minn. 373.

Mo.—Lilly v. Boswell, 242 S.W.2d 73, 362 Mo. 444—**Corpus Juris Secundum quoted in** Dodd v. Missouri-Kansas-Texas R. Co., 193 S.W. 2d 905, 907, 354 Mo. 1205—Kelly v. Columbia Box Co., 248 S.W. 589. Walthall v. St. Louis Public Service Co., App., 66 S.W.2d 177.

Mont.—Sullivan v. City of Butte, 157 P.2d 479, 117 Mont. 215.

N.J.—Phipps v. Hulit, 24 A.2d 506, 128 N.J.Law 74.

N.Y.—Fitzgerald v. New York Cent. R. Co., 212 N.Y.S. 749, 215 App. Div. 1.

N.C.—Hinton v. Cline, 76 S.E.2d 162, 238 N.C. 136.

N.D.—Montana-Dakota Utilities Co. v. Culver, 80 N.W.2d 541.

Okl.—Henryetta Coal & Mining Co. v. O'Hara, 150 P. 1114, 50 Okl. 159.

Pa.—Duaine v. Gulf Refining Co., 131 A. 654, 285 Pa. 81.
Hinkle v. Central Trust & Savings Co., 59 Pa.Super. 283.

S.C.—Scott v. Russ, 46 S.E.2d 152, 211 S.C. 526.

Utah.—Mitchell v. Arrowhead Freight Lines, 214 P.2d 620, 117 Utah 224—Saltas v. Affleck, 105 P.2d 176, 99 Utah 381—Chatelain v. Thackeray, 100 P.2d 191, 98 Utah 525—Thomas v. Ogden Rapid Transit Co., 155 P. 436, 47 Utah 595.

Va.—American Oil Co. v. Nicholas, 157 S.E. 754, 156 Va. 1.

Wash.—McClintock v. Allen, 191 P. 2d 679, 30 Wash.2d 272—Huntington v. Clallam Grain Co., 27 P.2d 583, 175 Wash. 310—Maddock v. McNiven, 247 P. 467, 139 Wash. 412—Krulikoski v. Sparling, 144 P. 692, 82 Wash. 474—Ritter v. City of Seattle, 144 P. 61, 82 Wash. 325—Bernard v. City of North Yakima, 141 P. 1034, 80 Wash. 472.

Wis.—Reuter v. Hickman, Lauson & Diener Co., 151 N.W. 795, 160 Wis. 284, Ann.Cas.1916B 455.

4 C.J. p 836 notes 73–75.

Conflicting evidence

Wash.—Dyal v. Fire Cos. Adjustment Bureau, 161 P.2d 321, 23 Wash.2d 515.

54.5 Cal.—Odegard v. Thomason, App., 312 P.2d 23—Hughes v. Schwartz, 124 P.2d 886, 51 C.A.2d 362—Belyew v. United Parcel Service of Oakland, 122 P.2d 73, 49 C. A.2d 516—Bencich v. Market St. Ry. Co., 67 P.2d 398, 20 C.A.2d 518—Peri v. Culley, 6 P.2d 86, 119 C. A. 117—Rodriguez v. Severini, 215 P. 557, 61 C.A. 645.

Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437.

Iowa.—De Moss v. Brown Cab Co., 254 N.W. 17, 218 Iowa 77—Strayer v. O'Keefe, 210 N.W. 761, 202 Iowa 643.

Ky.—Ætna Oil Co. v. Metcalf, 183 S. W.2d 637, 298 Ky. 706.

Mass.—Palma v. Racz, 19 N.E.2d 8, 302 Mass. 249.

Minn.—Hurr v. Johnston, 65 N.W.2d 193, 242 Minn. 329—Thiesen v. Hellermann, 64 N.W.2d 762, 242 Minn. 218—Pye v. Diebold, 283 N.W. 487, 204 Minn. 319—Wright v. Engelbert, 259 N.W. 75, 193 Minn. 509.

Mo.—Hufft v. Kuhn, 277 S.W.2d 552. Jenkins v. Terminal R. Ass'n of St. Louis, App., 285 S.W.2d 12—Lang v. St. Louis Public Service Co., App., 204 S.W.2d 504—Wise v. Rubenstein, App., 24 S.W.2d 203—Berglar v. University City, App., 223 S.W. 753.

N.J.—Ruth v. Fenchel, 117 A.2d 284, 37 N.J.Super. 295, affirmed 121 A. 2d 373, 21 N.J. 171.

N.Y.—McAndrews v. Nassau County, 147 N.Y.S.2d 655, 1 A.D.2d 779.

N.C.—Blum v. Southern Ry. Co., 122 S.E. 562, 187 N.C. 640—Hoke v. Whisnant & Tilley, 94 S.E. 446, 174 N.C. 658.

Pa.—Takac v. Bamford, 88 A.2d 86, 370 Pa. 389—Bingler v. Hopper, 7 A.2d 351, 336 Pa. 58—Goodman & Theise v. Scranton Spring-Brook Water Service Co., 43 A.2d 111, 352 Pa. 488—Pretka v. Wilson, 190 A. 722, 325 Pa. 491—Schwartz v. Jaffe, 188 A. 295, 324 Pa. 324.
Snyder v. Nehila, 132 A.2d 355, 184 Pa.Super. 89—Pongratz v. Boyer, 119 A.2d 813, 180 Pa.Super. 260—Mohler v. Worley, 116 A.2d 342, 179 Pa.Super. 56—Henry v. Bulah, 110 A.2d 778, 177 Pa.Super. 399—Gibson v. Hallacher, 107 A.2d 449, 176 Pa.Super. 539—Perzak v. Coulter, 90 A.2d 256, 171 Pa.Super. 475—Barker v. Reedy, 74 A.2d 533, 167 Pa.Super. 222—Crow v. Deems, 63 A.2d 119, 163 Pa.Super. 591—Olson v. Swain, 60 A.2d 548, 163 Pa.Super. 101—Fabel v. Hazlett, 43 A.2d 373, 157 Pa.Super. 416—German v. Riddell, 27 A.2d 680, 149 Pa.Super. 647—Gettemy v. Grennan Bakeries, 21 A.2d 465, 145 Pa.Super. 405—Blickley v. Forney, 18 A.2d 82, 143 Pa.Super. 26—Patterson v. Pittsburgh Rys. Co., 7 A.2d 478, 136 Pa. Super. 432—Zamojc v. Fisher, 193 A. 315, 127 Pa.Super. 171—Larimer v. Cambria County, 191 A. 646, 126 Pa.Super. 587—Harrison v. Goldstein, 91 Pa.Super. 538—Jones v. Pennsylvania Co., 60 Pa.Super. 438.
Wholey v. Hansell, Com.Pl., 42 Del.Co. 208—Martin v. Powell, Com. Pl., 32 Del.Co. 1—Wholey v. Hansell, Com.Pl., 69 York Leg.Rec. 117—Gibson's Estate v. Hallacher, Com.Pl., 67 York Leg.Rec. 17—Monaghan v. Koch, Com.Pl., 42 Sch. Leg.Rec. 41.

Vt.—Wilford v. Salvucci, 95 A.2d 37, 117 Vt. 495, followed in 95 A.2d 41, 117 Vt. 501—Cenate v. Hunter, 62 A.2d 645, 115 Vt. 402—Dusckiewicz v. Carter, 52 A.2d 788, 115 Vt. 122—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42—Collins v. Fogg, 199 A. 251, 109 Vt. 433—Bennett v. Robertson, 169 A. 901, 106 Vt. 112.

Va.—Rawle v. McIlhenny, 177 S.E. 214, 163 Va. 735.

Wash.—Hopper v. Gallant, 282 P.2d 1049, 46 Wash.2d 552—Thornton v. Eneroth, 30 P.2d 951, 177 Wash. 1—Shead v. Riser, 239 P. 562, 136 Wash. 270—Nelson v. Pacific Coast Casualty Co., 164 P. 594, 96 Wash. 43.

4 C.J. p 836 note 73.

Question for review

(1) Only question presented on appeal from order granting motion is whether trial court abused its discretion in determining that damages were inadequate.

Cal.—Patterson v. Rowe, 247 P.2d 949, 113 C.A.2d 119.

Utah.—Chatelain v. Thackeray, 100 P.2d 191, 98 Utah 525.

awarded by the jury in its verdict.[54.10]

(2) Question before appellate court, in determining whether there was abuse of sound discretion in granting new trial for inadequacy of verdict, was not whether, in opinion of court, verdict was inadequate, but whether trial court committed gross abuse of discretion in granting new trial because verdict was inadequate.
Pa.—Gibson v. Hallacher, 107 A.2d 449, 176 Pa.Super. 539.

(3) Supreme court would determine only whether trial court abused discretion in overruling motion and would not weigh evidence.
Mo.—Waller v. Oliver, 296 S.W.2d 44—Roush v. Alkire Truck Lines, 245 S.W.2d 8.

Test of abuse of discretion

(1) In determining whether trial court improperly granted a new trial, supreme court would review evidence to determine whether discretion exercised was a legal and reasonable one, and if so found order would be sustained even though trial court would have been justified in reaching different conclusion.
N.D.—Haser v. Pape, 50 N.W.2d 240, 78 N.D. 481—Johnson v. Patterson, 270 N.W. 97, 67 N.D. 132.

(2) In order that appellate court may find abuse of discretion, evidence must compel conviction that jury was influenced by partiality, prejudice or passion, or by some misconception of law or evidence.
Pa.—Ewing v. Marsh, 101 A.2d 391, 174 Pa.Super. 589.

(3) Superior court will not declare trial court guilty of abuse of discretion unless there is a clear case of wrong or injustice which trial court should have remedied.
Pa.—Stevens v. Frank, 30 A.2d 161, 151 Pa.Super. 222.

(4) To establish an abuse of discretion in overruling motion, it must appear that discretion was exercised on grounds, or for reasons, clearly untenable to an extent clearly unreasonable.
Vt.—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42.

(5) No mere difference of opinion, but nothing short of clear conviction, compelled by evidence, that jury was influenced by partiality, passion, prejudice, or some misconception of law or evidence, will justify appellate court in declaring trial court guilty of abuse of discretion in refusing new trial, where neither evidence in particular case nor law applicable thereto furnished any definite standard for measurement of damages and jury had no other guide but pure conjecture in determining amount to be awarded.
Pa.—Paustenbaugh v. Ward Baking Co., 97 A.2d 816, 374 Pa. 418—Carpenelli v. Scranton Bus Co., 38 A.2d 44, 350 Pa. 184.

Coleman v. Pittsburgh Coal Co., 43 A.2d 540, 158 Pa.Super. 81—Palmer v. Leader Publishing Co., 7 Pa.Super. 594.

The general rules stated above apply where the

[54.10] Ala.—Montgomery City Lines v. Davis, 74 So.2d 923, 261 Ala. 491.
Ariz.—Allied Van Lines v. Parsons, 293 P.2d 430, 80 Ariz. 88.
Cal.—Sinz v. Owens, 205 P.2d 3, 33 C.2d 749, 8 A.L.R.2d 757—Krebs v. Los Angeles Ry. Corp., 61 P.2d 931, 7 C.2d 549—Scott v. Times-Mirror Co., 184 P. 672, 181 C. 345, 12 A.L.R. 1007.

Parks v. Dexter, 224 P.2d 121, 100 C.A.2d 521—Dreyer v. Cyriacks, 297 P. 35, 112 C.A. 279—Smart v. Spangler, 264 P. 806, 89 C.A. 351—Beckley v. Harris, 258 P. 428, 84 C.A. 557—Griffey v. Pacific Electric Ry. Co., 209 P. 45, 58 C.A. 509.
Colo.—Public Service Co. of Colorado v. Petty, 226 P. 297, 75 Colo. 454.
Conn.—Slabinski v. Dix, 88 A.2d 115, 138 Conn. 625—Newman v. United Motor Lines, 143 A. 844, 108 Conn. 735—Smith v. Dotolo, 121 A. 472, 99 Conn. 241.
Idaho.—Checketts v. Bowman, 220 P.2d 682, 70 Idaho 463—Asumendi v. Ferguson, 65 P.2d 713, 57 Idaho 450.
Ind.—Bangert v. Hubbard, App., 126 N.E.2d 778.
Iowa—In re Murray's Estate, 26 N.W.2d 58, 238 Iowa 112—In re Hollis' Estate, 16 N.W.2d 599, 235 Iowa 753—Rogers v. Jefferson, 285 N.W. 701, 226 Iowa 1047—Johnson v. Sioux City, 261 N.W. 536, 220 Iowa 66—Manders v. Dallam, 244 N.W. 724, 215 Iowa 137.
Ky.—Chesapeake & O. R. Co. v. Stone's Adm'r, 255 S.W. 134, 200 Ky. 502.
Mass.—Chaplain v. Dugas, 80 N.E.2d 9, 323 Mass. 91.
Minn.—Schroht v. Voll, 71 N.W.2d 843, 245 Minn. 114—Cameron v. Evans, 62 N.W.2d 793, 241 Minn. 200—Carter v. Duluth Yellow Cab Co., 212 N.W. 413, 170 Minn. 250—Johnson v. Wolf, 172 N.W. 216, 142 Minn. 352.
Mo.—**Corpus Juris Secundum cited in** Fullerton v. Atchison, T. & S. F. Ry. Co., 285 S.W.2d 572, 574—Parks v. Thompson, 253 S.W.2d 796, 363 Mo. 791—**Corpus Juris Secundum cited in** Dye v. St. Louis-San Francisco Ry. Co., 234 S.W.2d 532, 534, 361 Mo. 331—Jones v. Pennsylvania R. Co., 182 S.W.2d 157, 353 Mo. 163—Keeter v. Devoe & Raynolds, 93 S.W.2d 677, 338 Mo. 978—Dietrich v. Cape Brewery & Ice Co., 286 S.W. 38, 315 Mo. 507—Grzeskoviak v. Union Electric Light & Power Co., 252 S.W. 364, 299 Mo. 116.

Tilley v. Hendricks' Estate, App., 76 S.W.2d 754—Meeks v. Kansas City Public Service Co., App., 73 S.W.2d 337—Mabe v. Gille Mfg. Co., 271 S.W. 1023, 219 Mo.App. 234—Cobb v. American Car & Foundry Co., App., 270 S.W. 398, certiorari quashed State ex rel. American Car & Foundry Co. v. Daues, 282 S.W. 389, 313 Mo. 681—Rosemann v. United Rys. Co. of St. Louis, 194 S.W. 1088, 197 Mo.App. 337—State ex rel. O'Donnell v. Boepple, App., 184 S.W. 1166.
N.J.—Cabakov v. Thatcher, 117 A.2d 298, 37 N.J.Super. 249.

Balash v. Neri, 187 A. 168, 117 N.J.Law 120.
N.C.—Francis v. Francis, 26 S.E.2d 907, 223 N.C. 401—Waller v. Hipp, 179 S.E. 428, 208 N.C. 117.
N.D.—Montana-Dakota Utilities Co. v. Amann, 81 N.W.2d 628—Moe v. Kettwig, 68 N.W.2d 853—Emery v. Midwest Motor Exp., 54 N.W.2d 817, 79 N.D. 27—Loveland v. Nieters, 54 N.W.2d 533, 79 N.D. 1—Kohler v. Stephens, 24 N.W.2d 64, 74 N.D. 655—Neugebauer v. Anstrom, 283 N.W. 74, 68 N.D. 684—State, for Benefit of Workmen's Compensation Fund v. Northwest Nursery Co., 268 N.W. 689, 66 N.D. 704—Northwest Engineering Co. v. Gjellefald-Chapman Const. Co., 222 N.W. 621, 57 N.D. 500—Mason v. Underwood, 191 N.W. 949, 49 N.D. 243—Wagoner v. Bodal, 164 N.W. 147, 37 N.D. 594—Reid v. Ehr, 162 N.W. 903, 36 N.D. 552—Skaar v. Eppeland, 159 N.W. 710, 35 N.D. 125—Skaar v. Eppeland, 159 N.W. 707, 35 N.D. 116.
Okl.—**Corpus Juris Secundum cited in** John A. Brown Co. v. Clause, 235 P.2d 680, 683, 205 Okl. 122.
Or.—Albright v. Keats, 166 P. 758, 85 Or. 134.
Pa.—Mervine v. Commonwealth, 23 A.2d 490, 343 Pa. 437—Dzaack v. Bell Telephone Co. of Pennsylvania, 145 A. 916, 296 Pa. 385—Pfeffer v. City of Johnstown, 135 A. 127, 287 Pa. 370—Duaine v. Gulf Refining Co., 131 A. 654, 285 Pa. 81—Stevenson v. Davis, 116 A. 318, 272 Pa. 361—Scott v. Bergdoll, 113 A. 355, 270 Pa. 324—McMonagle v. Simpers, 110 A. 83, 267 Pa. 117—Knobeloch v. Pittsburgh, H., B. & N. C. Ry. Co., 109 A. 619, 266 Pa. 140—Dunlap v. Pittsburgh, H., B. & N. C. Ry. Co., 93 A. 276, 247 Pa. 230.

Sievin v. Philadelphia Rapid Transit Co., 84 Pa.Super. 407—Klekotka v. Chalfant, 82 Pa.Super. 159—Woolheater v. Mifflin Tp., 74 Pa. Super. 557.

Anstine v. Pennsylvania R. Co., Com.Pl., 50 Dauph.Co. 196, reversed on other grounds 20 A.2d 774, 342 Pa. 423.

action of the court is made to depend conditionally | on the remitting of a portion of the award,[55] or an

S.C.—Nelson v. Charleston & W. C. Ry. Co., 98 S.E.2d 798—Mock v. Atlantic Coast Line R. Co., 87 S.E.2d 830, 227 S.C. 245—Moorer v. Dowling, 58 S.E.2d 734, 216 S.C. 456—Jennings v. McCowan, 55 S.E.2d 522, 215 S.C. 404, certiorari denied Atlantic Coast Line R. Co. v. Jennings, 70 S.Ct. 494, 338 U.S. 956, 94 L.Ed. 590—Campbell v. Hall, 43 S.E.2d 129, 210 S.C. 423—Ford v. A. A. A. Highway Express, 29 S.E.2d 760, 204 S.C. 433—Ackerman v. One Mack Truck and Trailer, 8 S.E.2d 684, 191 S.C. 74—Mishoe v. Atlantic Coast Line R. Co., 197 S. E. 97, 186 S.C. 402—Leevy v. North Carolina Mut. Life Ins. Co., 191 S. E. 811, 184 S.C. 111—Holcombe v. W. N. Watson Supply Co., 171 S.E. 604, 171 S.C. 110—Payne v. Cohen, 167 S.E. 665, 168 S.C. 459—Dickson v. Inter-Carolinas Motor Bus Co., 159 S.E. 625, 161 S.C. 297—O'Neal v. Citizens' Public Service Co. of South Carolina, 154 S.E. 217, 157 S.C. 320, 70 A.L.R. 887—Chesser v. Tyger River Pine Co., 152 S.E. 646, 155 S.C. 356—Duncan v. Record Pub. Co., 143 S.E. 31, 145 S.C. 196.

S.D.—Tufty v. Sioux Transit Co., 17 N.W.2d 700, 70 S.D. 352.

Tenn.—Atlantic Coast Line R. R. v. Meeks, 208 S.W.2d 355, 30 Tenn. App. 520.

Utah.—Gould v. Mountain States Tel. & Tel. Co., 309 P.2d 802, 6 Utah 2d 187—Eleganti v. Standard Coal Co., 168 P. 266, 50 Utah 585.

Vt.—Gray v. Janicki, 99 A.2d 707, 118 Vt. 49—Oligny v. Underwood, 71 A.2d 250, 116 Vt. 193—Lancour v. Herald & Globe Ass'n, 28 A.2d 896, 112 Vt. 471—Cote v. Boise, 16 A.2d 175, 111 Vt. 343—Melen v. McLaughlin, 176 A. 297, 107 Vt. 111—Rule v. Johnson, 162 A. 383, 104 Vt. 486—Standish v. Newton, 152 A. 41, 103 Vt. 85—Shields v. Vermont Mut. Fire Ins. Co., 147 A. 352, 102 Vt. 224—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215—Jacobs v. Loyal Protective Ins. Co., 124 A. 848, 97 Vt. 516—Raymond v. Sheldon's Estate, 104 A. 106, 92 Vt. 396.

Wash.—Nagala v. Warsing, 219 P.2d 603, 36 Wash.2d 615—Fagerdahl v. North Coast Transp. Co., 28 P.2d 107, 175 Wash. 600, modified on other grounds 35 P.2d 46, 178 Wash. 482—Stimson Mill Co. v. Troxel, 193 P. 213, 113 Wash. 108.

W.Va.—Pittsburgh - Wheeling Coal Co. v. Wheeling Public Service Co., 145 S.E. 272, 106 W.Va. 206—Corns-Thomas Engineering & Construction Co. v. McDowell County Court, 115 S.E. 462, 92 W.Va. 368—Cain v. Kanawha Traction & Electric Co., 95 S.E. 88, 81 W.Va. 631.

Wis.—Blong v. Ed. Schuster & Co., 79 N.W.2d 820, 274 Wis. 237—Puhr v. Chicago & N. W. Ry. Co., 169 N. W. 305, 168 Wis. 101.

4 C.J. p 836 note 74—57 C.J. p 40 note 23.

Abuse of discretion held not shown

(1) Where an award of one hundred thousand dollars actual damages for a dog killed by defendant was held by the trial court to be grossly excessive.

Cal.—Dreyer v. Cyriacks, 297 P. 35, 112 C.A. 279.

(2) Where the trial court found that a verdict of twenty-eight thousand five hundred dollars for injuries suffered by burns from a live electric wire was excessive.

Mo.—Grzeskoviak v. Union Electric Light & Power Co., 252 S.W. 364, 299 Mo. 116.

(3) Where there was evidence to support allegations of special and general damages resulting from an automobile collision and the abstract omitted the medical testimony as to the extent and duration of the injuries, that the verdict exceeded the special damages alleged does not show abuse of discretion in allowing a new trial for inadequacy of damages.

Wash.—Thornton v. Eneroth, 30 P.2d 951, 177 Wash. 1.

Burden of proving abuse rests on party complaining of grant of new trial.

Mo.—Fullerton v. Atchison, T. & S. F. Ry. Co., 285 S.W.2d 572—Dye v. St. Louis-San Francisco Ry. Co., 234 S.W.2d 532, 361 Mo. 331.

Abuse shocking reason and justice

Abuse of discretion, in order to be available on appeal, must be such as to shock reason and justice.

N.J.—Nelson v. Eastern Air Lines, 24 A.2d 371, 128 N.J.Law 46—Cook v. Vondroan, 24 A.2d 361, 128 N.J.Law 159.

Question for review

(1) Generally.

Mo.—Nix v. Gulf, M. & O. R. Co., 240 S.W.2d 709, 362 Mo. 187.

(2) On appeal from order granting new trial on grounds that verdict of jury is excessive, appellate court considers not whether it would reach same conclusion, but whether trial judge abused his discretion.

Ky.—Perry v. City of Cumberland, 227 S.W.2d 411, 312 Ky. 375.

(3) In reviewing denial of motion, appellate court is limited to determination of whether such ruling was an abuse of discretion.

Utah.—Paul v. Kirkendall, 261 P.2d 670, 1 Utah 2d 1.

(4) Granting of new trial for excessiveness of verdict may be reviewed as question of law on allegation of abuse of discretion.

Utah.—Duffy v. Union Pac. R. Co., 218 P.2d 1080, 118 Utah 82.

Conflict in evidence

Action in granting new trial, or requiring reduction of amount as condition of denying it, will not be reversed on appeal in absence of plain showing of abuse of discretion, and, where there is material conflict of evidence with respect to extent of damage, imputation of such abuse is repelled just as though ground of order were insufficiency of evidence to justify verdict.

Cal.—Koyer v. McComber, 82 P.2d 941, 12 C.2d 175—Doolin v. Omnibus Cable Co., 57 P. 774, 125 C. 141.

Van Ostrum v. State, App., 306 P.2d 44—Strosk v. Howard Terminal Co., 277 P.2d 828, 129 C.A.2d 797.

55. Cal.—De Vall v. Perrin, 168 P. 584, 34 C.A. 676.

Conn.—Prosser v. Richman, 50 A.2d 85, 133 Conn. 253—Davidian v. Parparian, 161 A. 796, 115 Conn. 718—Conti v. Seltzer, 122 A. 561, 99 Conn. 729—Beers v. New York, N. H. & H. R. Co., 94 A. 919, 89 Conn. 711.

Mass.—W. R. Grace & Co. v. Shaghalian's, Inc., 146 N.E. 799, 251 Mass. 340—Edwards v. Willey, 105 N.E. 986, 218 Mass. 363.

Mich.—Snook v. Mt. Clemens Sugar Co., 152 N.W. 972, 186 Mich. 593.

Mo.—**Corpus Juris Secundum quoted in** Dodd v. Missouri-Kansas-Texas R. Co., 193 S.W.2d 905, 907, 354 Mo. 1205—Henderson v. Cape Trading Co., 289 S.W. 332, 316 Mo. 384.

Sofian v. Douglas, App., 295 S.W. 828.

Mont.—McRae v. Lethlean, 194 P. 1070, 59 Mont. 215.

Neb.—McCann v. Omaha & Council Bluffs Street Ry. Co., 222 N.W. 633, 117 Neb. 786.

N.J.—Sokol v. Liebstein, 87 A.2d 1, 9 N.J. 93.

Wilson v. G. R. Wood, Inc., 1 A. 2d 416, 121 N.J.Law 41.

N.Y.—Kligman v. City of New York, 117 N.Y.S.2d 436, 281 App.Div. 93.

N.D.—Halverson v. Zimmerman, 218 N.W. 862, 56 N.D. 607.

Ohio.—Larrissey v. Norwalk Truck Lines, 98 N.E.2d 419, 155 Ohio St. 207.

S.C.—Johnson v. Life Ins. Co. of Ga., 88 S.E.2d 260, 227 S.C. 351—Worrell v. South Carolina Power Co., 195 S.E. 638, 186 S.C. 306.

increasing of the award.[55.5]

It has also been held that a discretionary ruling of the trial court in ordering a new trial on the ground of either inadequacy or excessiveness of the verdict will not be disturbed if it is reasonably supported by substantial evidence.[55.10] Although it has been held that where a new trial is granted on the ground of inadequacy of a verdict, an appellate court will not interfere, in the absence of a gross abuse of discretion, it has also been held that where a new trial on such ground is denied, an appellate court will exercise even greater caution in reviewing the action of the trial court.[55.15]

An appellate court has the power to vacate any terms set by the trial court, either in addition to, or remission of, damages set by the verdict, as a condition of the grant or denial of a new trial, when they appear to be an abuse of discretion.[55.20]

§ 1627. —— Surprise, Accident, or Mistake

The determination by the trial court of the propriety of a new trial on the grounds of surprise, accident, or mistake will generally not be reviewed unless an abuse of discretion clearly appears.

The determination by the trial court, in the exercise of its discretion, that, by reason of some surprise, accident, misfortune, or mistake in the preparation for, or in the conduct of, the trial, a new trial is necessary in order to prevent a failure of justice, is not reviewable unless there has been a clear or palpable abuse of discretion.[56]

This principle has been applied where the motion was based on the absence of a party to the suit, or of counsel,[57] the misconduct of counsel,[58] an attorney's unauthorized action in consenting to the entry of judgment without the consent of his client,[58.5] the perjury of a witness[59] or the fact that

Tenn.—Pryor Brown Transfer Co. v. Gibson, 290 S.W. 33, 154 Tenn. 260, 51 A.L.R. 193.
City of Lawrenceburg v. Dyer, 11 Tenn.App. 493—P. & B. Storage & Transfer Co., Inc. v. Lane, 11 Tenn. App. 237.
Utah.—Pauly v. McCarthy, 184 P.2d 123, 109 Utah 431.
Wash.—Ticknor v. Seattle-Renton Stage Line, 247 P. 1, 139 Wash. 354, 47 A.L.R. 252.
However, in North Carolina it has been held that although, under Comp. St. § 591, the trial judge may entertain a motion to set aside a verdict and grant a new trial for excessive damages, an order over plaintiff's objection reducing the damages awarded in an action for alienation of affections and seduction, involved a matter of law or legal inference, within Const. art. 4, § 8, rather than a matter of discretion authorizing review by the supreme court.
N.C.—Hyatt v. McCoy, 140 S.E. 807, 194 N.C. 760.
Review of discretionary rulings ordering remittitur generally see supra § 1583 a (2).

Options
Unless it clearly appears that there has been abuse of judicial discretion, appellate court will not disturb determinations of trial court in fixing maximum and minimum amounts of damages in connection with options.
Wis.—Flatley v. American Auto. Ins. Co., 56 N.W.2d 523, 262 Wis. 665.

Merely reducing award
The action of the judge in merely reducing the amount of an alleged excessive award on the return of a rule to show cause was held not reviewable on error.
N.J.—Galamb v. Erie R. Co., 156 A. 128, 108 N.J.Law 7.

Question for review
(1) Generally.
Vt.—Lancour v. Herald & Globe Ass'n, 28 A.2d 396, 112 Vt. 471.
(2) Review of procedure whereby trial court requires remission of part of amount of damages awarded as condition of refusal to grant new trial is limited to determination of whether trial judge abused his discretion.
Utah.—Duffy v. Union Pac. R. Co., 218 P.2d 1080, 118 Utah 82.

55.5 N.J.—Elvin v. Public Service Coordinated Transp., 67 A.2d 889, 4 N.J.Super. 491.
N.Y.—Kligman v. City of New York, 117 N.Y.S.2d 436, 281 App.Div. 93.

55.10 Mo.—Combs v. Combs, 295 S.W.2d 78—Roush v. Alkire Truck Lines, 245 S.W.2d 8.
State ex rel. State Highway Commission v. Liddle, App., 193 S.W. 2d 625.

55.15 Pa.—Karcesky v. Laria, 114 A.2d 150, 382 Pa. 227—Paustenbaugh v. Ward Baking Co., 97 A. 2d 816, 374 Pa. 418—Carpenelli v. Scranton Bus Co., 38 A.2d 44, 350 Pa. 184.
Mawhinney v. Holtzhauer, 77 A. 2d 734, 168 Pa.Super. 283—Coleman v. Pittsburgh Coal Co., 43 A.2d 540, 158 Pa.Super. 81.

55.20 N.J.—Esposito v. Lazar, 66 A. 2d 172, 2 N.J. 257.
Wax v. Altshuler, 91 A.2d 768, 22 N.J.Super. 229.

56. Ala.—Liverpool & London & Globe Ins. Co. v. Lowe, 93 So. 765, 208 Ala. 12.
Cal.—Baker v. Berreman, 142 P.2d 448, 61 C.A.2d 235.
Colo.—Schlessman v. Brainard, 92 P.2d 749, 104 Colo. 514.
Minn.—Schiro v. Raymond, 54 N.W. 2d 329, 237 Minn. 271.
N.D.—Robbins v. Robbins, 70 N.W. 2d 37—Blackorby v. Ginther, 158 N.W. 354, 34 N.D. 248.
S.D.—Johnson v. Olson, 20 N.W.2d 226, 70 S.D. 617.
Wis.—Belmont State Bank v. Speth's Estate, 208 N.W. 945, 190 Wis. 130.
4 C.J. p 836 note 77.

Grant rarely reversed on appeal
Minn.—Sward v. Nash, 40 N.W.2d 828, 230 Minn. 100.

Question for review
Where, after verdict for plaintiff, trial judge granted a new trial on ground of mistake, question before reviewing court was whether trial judge's conclusion was an abuse of discretion.
Mass.—Farrell v. Matchett, 37 N.E.2d 247, 310 Mass. 87.

57. Ark.—Drake v. McDonald, 281 S.W. 674, 170 Ark. 919.
Kan.—Buchanan v. Fireman's Ins. Co. of Newark, N. J., 146 P. 411, 94 Kan. 132.
W.Va.—Morton v. Rock Bottom Coal Co., 112 S.E. 396, 91 W.Va. 169.
4 C.J. p 836 note 78.

58. W.Va.—Smith v. Parkersburgh Co-Op. Assoc., 37 S.E. 645, 48 W. Va. 232.

58.5 Ill.—Fessler v. Weiss, 107 N.E. 2d 795, 348 Ill.App. 21.

59. Mo.—Calvin v. Lane, App., 297 S.W.2d 572—Carson v. Hagist, App., 143 S.W.2d 355—Citizens Bank of Liberty v. Thompson, 132 S.W.2d 700, 234 Mo.App. 448—Gavin v. Forrest, App., 72 S.W.2d 177—Brand v. Herdt, App., 45 S.W.2d 878—Callison v. Eads, App., 211 S. W. 715.

Sufficiency of other evidence
The overruling of defendants' motion for a new trial on the ground of their witness' perjured testimony was held not reversible error, where

he testified at the trial contrary to expectations,[60] recantation by an important witness of his testimony at the trial,[60.5] the inability of a party to procure certain evidence,[61] or the inadvertent failure or excusable neglect to file a timely appeal.[62]

The principle has also been applied to the impossibility of making and serving a case-made,[63] the unavailability of the reporter's transcript of the trial because of his death,[63.5] or the loss of papers from the files.[64]

The discretion of the trial court in granting a new trial is, however, a judicial rather than an arbitrary one, and the exercise thereof is reviewable,[64.5] so that the denial of a motion for a new trial will be reversed where the discretion was arbitrarily exercised,[64.10] or when the facts wholly fail to make out a case of unavoidable casualty or misfortune.[65] Moreover, where an order granting a new trial is made appealable by statute, the appellate court cannot refuse to review such order on the ground that the granting thereof was within the discretion of the trial court and that it was in a better position to understand the situation than the supreme court.[66]

§ 1628. Procedure on Motion

Discretionary rulings as to procedural matters on motions for new trial will not be reviewed except for an abuse of discretion.

Discretionary rulings made by a trial court with respect to matters of procedure on motions for new trial are not subject to review except for abuse of discretion.[67] It has been so held with respect to the refusal to permit a correction of a notice of intention to move for a new trial;[68] the allowance or the refusal of amendments of a motion for a new trial;[69] the fixing of the time within which such amendments shall be made;[70] the determination of whether the issues are severable, or so inseparably pleaded as to require a new trial as to all the issues;[70.5] and the granting of an entire new trial,[70.10] or a new trial on the single issue of the amount of damages.[70.15]

the other evidence was sufficient to warrant the verdict for plaintiff.
Mo.—Gavin v. Forrest, App., 72 S.W. 2d 177.

60. Minn.—Bristol v. Schultz, 70 N. W. 872, 68 Minn. 106.
Wis.—Schlag v. Chicago, etc., R. Co., 139 N.W. 756, 152 Wis. 165.

60.5 Wash.—Skov v. MacKenzie-Richardson, Inc., 296 P.2d 521, 48 Wash.2d 710.

61. Ky.—Green v. Culver, 39 S.W. 426, 19 Ky.L. 186.

62. Wis.—Belmont State Bank v. Speth's Estate, 208 N.W. 945, 190 Wis. 130.

63. Okl.—Vogel v. Cobb, 141 P.2d 276, 193 Okl. 64, 148 A.L.R. 774—Smoot v. Mullins, 75 P.2d 179, 181 Okl. 505.
Okl.—R. & R. Motor Co. v. Kings, Inc., 36 P.2d 900, 169 Okl. 231—Whitling v. Parshall, 252 P. 395, 120 Okl. 121.

When judgment affirmed

"Unless it appears that, without fault upon his part, it was impossible to make a case-made, have it served, signed, and settled, attested by the clerk, filed in the trial court, attached to a petition in error, and filed in this court within six months from the rendition of the judgment or final order complained of, where the plaintiff in error is neither an infant, a person of unsound mind, nor imprisoned, the order of the trial court in overruling the petition for a new trial on the ground that it was impossible to make a case-made will be affirmed."
Okl.—Cousins v. Wilson, 263 P. 135, 136, 129 Okl. 21—Cherry v. Brown, 192 P. 227, 79 Okl. 215, 13 A.L.R. 92.

63.5 Cal.—Fickett v. Rauch, 187 P. 2d 402, 31 C.2d 110—Caminetti v. Edward Brown & Sons, 144 P.2d 570, 23 C.2d 511.
Lilienthal v. Hastings Clothing Co., 266 P.2d 56, 123 C.A.2d 91—Duarte v. Rivers, 202 P.2d 612, 90 C.A.2d 152—Delafield v. Searle Aero Industries, 174 P.2d 455, 76 C.A.2d 862—Smith v. Orange Belt Supply Co., 137 P.2d 845, 58 C.A.2d 848—Kroeker v. Jack, 124 P.2d 619, 51 C.A.2d 272.
Minn.—Thell v. Ramus, 72 N.W.2d 618, 245 Minn. 409.

Test of abuse of discretion

Cal.—Rambo v. Rambo, 191 P.2d 480, 84 C.A.2d 632.

64. Ala.—Ex parte Stanley, 84 So. 773, 203 Ala. 408.
4 C.J. p 837 note 82.

Reporter's notes

Iowa.—Hoover v. Mapleton, 81 N.W. 776, 110 Iowa 571.

64.5 Cal.—Fickett v. Rauch, 187 P. 2d 402, 31 C.2d 110.

64.10 La.—Succession of Robinson, 172 So. 429, 186 La. 389.

65. Ky.—Cleveland v. Couch, 21 S. W.2d 468, 231 Ky. 332.

Effect of surprise avoidable

It has been held that, where the only evidence of surprise was that defendant did not expect a witness to testify as he did and the evidence with which he proceeded to rebut this witness could have been obtained by due diligence, the granting of a motion for new trial on the ground of surprise was an abuse of discretion.
Mont.—Rand v. Kipp, 69 P. 714, 27 Mont. 138.

66. Wash.—Reeder v. Traders' Nat. Bank, 68 P. 461, 28 Wash. 139.

67. Cal.—Stockett v. Henry, 151 P. 150, 28 C.A. 45.
4 C.J. p 838 note 2.

Enlargement of time for filing motion

Defendants had right to have sufficiency of good cause for enlarging time for filing motion reviewed for an abuse of discretion, and where no cause was shown in order granting new trial there was nothing for appellate review.
Wash.—Brownlee v. Price, 307 P.2d 880.

68. Cal.—Stockett v. Henry, supra.

69. Mass.—Petition of Graustein, 26 N.E.2d 536, 305 Mass. 571—Hopcraft v. Kittredge, 37 N.E. 768, 162 Mass. 1.
4 C.J. p 838 note 3.

70. Cal.—Vilhac v. Biven, 28 C. 409.

70.5 Cal.—Crandall v. McGrath, 124 P.2d 858, 51 C.A.2d 438—Adams v. Hildebrand, 124 P.2d 80, 51 C.A.2d 117.

70.10 Mo.—Blanford v. St. Louis Public Service Co., App., 199 S.W. 2d 887.

70.15 Cal.—Wilson v. City of Long Beach, 162 P.2d 658, rehearing denied 163 P.2d 501, 71 C.A.2d 235.
N.J.—Esposito v. Lazar, 66 A.2d 172, 2 N.J. 257.
Wax v. Altshuler, 91 A.2d 768, 22 N.J.Super. 229.

Question for review

Determination by trial court of motion for new trial limited to sin-

The rule has also been applied to the refusal to hear oral testimony of a witness whose affidavit was attached to the petition for new trial;[71] the question whether, in a case of alleged misconduct by a jury, they should be brought in for examination by the trial court;[71.5] giving consideration to some matters foreign to the record in determining the motion;[71.10] requiring the moving party to support the motion by affidavits instead of by oral testimony;[72] the sufficiency of an affidavit to show proper diligence on the part of a party to obtain a witness or seek a continuance;[72.5] the refusal to hear argument;[73] and the striking of the motion from the files.[74]

Other applications of the rule include continuing[75] or refusing to continue[75.5] the motion for a new trial; dismissing the motion because of defects therein;[76] sustaining or considering the motion notwithstanding it might have been overruled because of defects in its form,[77] or because not made in time;[78] striking from the files affidavits in opposition to the motion;[79] and the question, where a verdict is excessive, whether the trial court will grant a new trial, conditioned on a failure to file a remittitur, or will set aside the verdict unconditionally.[79.5]

The general rule is also applicable to the determination of whether a party has been guilty of laches or neglect with respect to filing a brief of the evidence,[80] or securing a settlement of a statement,[81] on the motion; setting aside an order granting a new trial, and on reconsideration, overruling a motion by the other party on condition that a remittitur be accepted;[81.5] dismissal of, or refusal to dismiss, a motion because not presented or brought on for hearing with due diligence;[82] refusal to reinstate a motion after dismissal;[83] and the refusal to grant a reargument of the motion.[83.5]

In the absence of a clear showing to the contrary, it will be presumed that the discretion of the trial judge with respect to a motion for a continuance of a hearing on a motion for a new trial was not abused.[83.10]

The refusal to hear proper evidence in support of the motion, however, deprives the court of the only available means of exercising a sound discretion in determining the motion, and constitutes an error at law from which an appeal lies;[84] and a decree will be reversed when it does not fully appear that the chancellor gave due consideration to a petition for rehearing which was well grounded.[85]

f. Proceedings Following Judgment

§ 1629. In General

Unless there has been a clear abuse of discretion, the trial court's determination of incidental questions, arising in proceedings following the judgment and not involving matters of absolute right, will not be disturbed on appeal.

Unless there has been a clear abuse of discretion, the trial court's determination of incidental ques-

gle issue of damages is reviewable only for abuse of discretion.
Mo.—Williams v. Kansas City, 274 S. W.2d 261.

71. Okl.—Kline v. Kollman, 228 P. 768, 100 Okl. 160.

71.5 N.H.—Caldwell v. Yeatman, 15 A.2d 252, 91 N.H. 150.

71.10 Ohio.—Schindler v. Lieberman, App., 134 N.E.2d 180.

72. Mo.—Kansas City v. Bacon, 48 S.W. 860, 147 Mo. 259.

72.5 Cal.—Barr v. Mountjoy, 122 P. 2d 676, 50 C.A.2d 40.

73. Ala.—Crosby v. Hutchinson, 53 Ala. 5.

74. Ohio.—Greelish v. Cincinnati Traction Co., 17 Ohio App. 131.

75. Ga.—Navel v. Grannis, 72 Ga. 204.
Kan.—Place v. Kansas State Highway Commission, 255 P.2d 1004, 174 Kan. 296.

75.5 Ga.—Digsby v. Johnson, 61 S. E.2d 792, 82 Ga.App. 611.

76. Conn.—Kimball v. Cady, 1 Kirby 41.

77. Ala.—Parker v. Hayes Lumber Co., 127 So. 504, 221 Ala. 73.
4 C.J. p 838 note 8.

Failure to use statutory language
"Courts of record have inherent power, independent of the statute, to set aside and vacate their orders and judgments within the term and for common-law causes. Hence we attach no controlling importance to the fact that appellees in their motion described the verdict as contrary to the great weight of the evidence and as contrary to the preponderance of the evidence rather than as, in the language of the statute, section 9518 of the Code, not sustained by the great preponderance of the evidence." Ala.—Parker v. Hayes Lumber Co., supra.

78. Tex.—Southern S. S. Co. v. Edwards, Civ.App., 291 S.W. 335—Texas Employers' Ins. Ass'n v. Moreno, Civ.App., 260 S.W. 283, affirmed, Com.App., 277 S.W. 84.

79. Ind.—Lafayette v. Weaver, 92 Ind. 477.

79.5 Conn.—Brunetto v. Royal Exchange Assur. Co., 13 A.2d 138, 126 Conn. 569.

80. Ga.—Starke v. Hunt, 115 S.E. 505, 29 Ga.App. 397.

81. Cal.—Jansson v. National S. S. Co., 208 P. 90, 189 C. 187.

81.5 Ohio.—Armstrong v. Feldhaus, 93 N.E.2d 776, 87 Ohio App. 75.

82. Mont.—Price v. Northern Pac. Ry. Co., 198 P. 439, 60 Mont. 166.
4 C.J. p 838 note 11.

83. Ga.—Washington v. Quattlebaum, 70 S.E.2d 367, 209 Ga. 13—Fulton Grocery Co. v. Maddox, 41 S.E. 40, 114 Ga. 913.

83.5 Pa.—Meholiff v. River Transit Co., 20 A.2d 762, 342 Pa. 394.

83.10 Ga.—McKoy v. Hardy, 88 S.E. 2d 708, 92 Ga.App. 525.

84. Md.—Washington, B. & A. Electric R. Co. v. Kimmey, 118 A. 648, 141 Md. 243.

85. Fla.—Munroe v. Birdsey, 136 So. 886, 102 Fla. 544.

tions, arising in proceedings following the judgment or decree and not involving matters of absolute right, will not be disturbed by the appellate court.[86] Application of this rule has been made to decisions as to which of two records shall stand as evidence of the judgment;[87] the setting off of mutual judgments;[88] granting a certified execution;[89] amending,[90] staying,[91] recalling,[92] or quashing[93] an execution; close jail execution of a judgment;[93.5] issuance of an execution more than the statutory period after the entry of a judgment;[93.10] refusal to set aside an execution sale;[93.15] the granting of a jury issue to determine the title to property levied on under execution;[94] discovery of assets owing to a judgment debtor;[94.5] and the extent to which the court shall go in enforcing its decrees.[95]

Likewise, this rule has been applied to the terms[96] and subject matter[97] of a judicial sale, the selection of officers to conduct it,[98] and their compensation;[99] postponement of a judicial sale;[99.5] confirming or setting aside a judicial sale;[1] releas-

86. Ala.—Ex parte Hill, 158 So. 531, 229 Ala. 501, followed in Ex parte Webb, 158 So. 533, 229 Ala. 504.
Cal.—Kaplan v. Hacker, 248 P.2d 464, 113 C.A.2d 571.
Kan.—Topeka Morris Plan Co. v. Hill, 80 P.2d 1049, 148 Kan. 295.
4 C.J. p 838 note 13—34 C.J. p 683 note 38—42 C.J. p 242 notes 13, 14.

Remittitur

Review of discretionary rulings with respect to remittitur see supra § 1583 a (2).

87. N.Y.—Pendleton v. Weed, 17 N. Y. 72.

88. N.Y.—De Camp v. Thomson, 54 N.E. 11, 159 N.Y. 444, 70 Am.S.R. 570.

89. Vt.—Sartwell v. Sowles, 48 A. 11, 72 Vt. 270, 82 Am.S.R. 943.

90. Me.—Hayford v. Everett, 68 Me. 505.
4 C.J. p 838 note 16.

91. Iowa.—Brenton Bros. v. Dorr, 239 N.W. 808, 213 Iowa 725.
Pa.—Lambert v. K-Y Transp. Co., 172 A. 180, 113 Pa.Super. 82.

92. Cal.—Radonich v. Radonich, 20 P.2d 51, 130 C.A. 250.
Okl.—Oklahoma Salvage & Supply Co. v. First Nat. Bank, 251 P. 1006, 122 Okl. 128—Sautbine v. U. S. Cities Corporation, 243 P. 499, 114 Okl. 110.

93. Cal.—Radonich v. Radonich, 20 P.2d 51, 130 C.A. 250.
Ill.—See Mazor v. Handler, 208 Ill. App. 312.
4 C.J. p 838 note 17.

93.5 Vt.—Gould v. Towslee, 94 A.2d 416, 117 Vt. 452.

93.10 Cal.—Georgison v. Georgison, 275 P.2d 3, 43 C.2d 550—Di Corpo v. Di Corpo, 200 P.2d 529, 33 C.2d 195—Beccuti v. Colombo Baking Co., 132 P.2d 207, 21 C.2d 360—Butcher v. Brouwer, 132 P.2d 205, 21 C.2d 534.
Rupp v. Rupp, 276 P.2d 144, 129 C.A.2d 23—Macmillan Petroleum Corp. v. Griffin, 255 P.2d 75, 116 C. A.2d 425—Levene v. Levene, 240 P. 2d 730, 109 C.A.2d 155—Elgert v. Howe, 224 P.2d 119, 100 C.A.2d 652—Pemberton v. Pemberton, 213 P. 2d 118, 95 C.A.2d 472—Yuan v. Ping, 205 P.2d 763, 91 C.A.2d 652—James v. James, 190 P.2d 219, 84 C.A.2d 115—Southern Cal. Tel. Co. v. Damenstein, 183 P.2d 675, 81 C. A.2d 216—First Nat. Bank of Chicago v. Scully, 178 P.2d 835, 78 C. A.2d 828—Long v. Long, 173 P.2d 840, 76 C.A.2d 716—Troendle v. Clinch, 169 P.2d 55, 74 C.A.2d 480—Helvey v. Castles, 167 P.2d 492, 73 C.A.2d 667—Hull v. Santino, 156 P.2d 946, 68 C.A.2d 300—McNabb v. McNabb, 118 P.2d 869, 47 C.A.2d 623—Brown v. Newby, 103 P.2d 1018, 39 C.A.2d 615—Widener v. Hartnett, 85 P.2d 925, 30 C.A.2d 165—Greeley v. Suey Sing Benev. Ass'n, 83 P.2d 54, 28 C.A.2d 536—McClelland v. Shaw, 72 P.2d 225, 23 C.A.2d 107—Corcoran v. Duffy, 64 P.2d 735, 18 C.A.2d 658—Williams v. Goodin, 61 P.2d 507, 17 C. A.2d 62.

Conflicting affidavits

Where court's decision as to issuance of execution was based on conflicting affidavits and no abuse of discretion was shown, decision would not be disturbed on appeal.
Cal.—John P. Mills Organization v. Shawmut Corporation, 179 P.2d 570, 29 C.2d 863.
Wolfson v. Haddan, 233 P.2d 145, 105 C.A.2d 147—Shivell v. Hurd, 231 P.2d 595, 100 C.A.2d 291.

93.15 Okl.—Baldwin v. Mayor, 108 P.2d 132, 188 Okl. 272.

94. Pa.—Fidelity & Deposit Co. of Maryland v. Harton, 81 Pa.Super. 561.

94.5 S.C.—Biltrite Bldg. Co. v. Adams, 7 S.E.2d 857, 193 S.C. 142.

95. Ala.—Ex parte Hill, 158 So. 531, 229 Ala. 501, followed in Ex parte Webb, 158 So. 533, 229 Ala. 504.

96. Ala.—Hughes v. Gates, 181 So. 762, 236 Ala. 311.
Fla.—Coombes v. Wheeler, 179 So. 785, 131 Fla. 593.
Pa.—In re Funck's Estate, 16 Pa.Super. 434.
4 C.J. p 838 note 18—42 C.J. p 242 notes 13, 14.

97. Cal.—Anselmo v. Sebastiani, 26 P.2d 1, 219 C. 292.

98. W.Va.—Finnell v. Jordan, 135 S. E. 179, 102 W.Va. 339.
4 C.J. p 838 note 18 [a].

99. W.Va.—National Bank of Commerce v. Great Kanawha Orchard Co., 164 S.E. 160, 111 W.Va. 648.

99.5 Cal.—Fish v. Title Guarantee & Trust Co., 63 P.2d 294, 8 C.2d 7—Boggs v. North American Bond & Mortgage Co., 58 P.2d 918, 6 C. 2d 523.

1. Ala.—Sieben v. Torrey, 42 So.2d 621, 252 Ala. 675—Berman v. Patton, 31 So.2d 134, 249 Ala. 317—Taylor v. Wilson, 170 So. 833, 233 Ala. 182.
Ark.—Mulkey v. White, 242 S.W.2d 836, 219 Ark. 441.
Cal.—In re Isaman's Estate, 157 P.2d 872, 68 C.A.2d 755.
Fla.—Northern Inv. Corp. v. Coppock, 183 So. 635, 134 Fla. 168—Mitchell v. Mason, 79 So. 163, 75 Fla. 679, certiorari denied 39 S.Ct. 182, 248 U.S. 584, 63 L.Ed. 433.
Ill.—Blancett v. Taylor, 128 N.E.2d 916, 6 Ill.2d 434—People v. Schwartz, 73 N.E.2d 279, 397 Ill. 279—Evans v. Hunold, 65 N.E.2d 373, 393 Ill. 195—People v. Anderson, 43 N.E.2d 997, 380 Ill. 158—Sauter v. Pickrum, 26 N.E.2d 844, 373 Ill. 541—Shultz v. Milburn, 9 N.E.2d 199, 366 Ill. 400—Miller v. Miller, 163 N.E. 343, 332 Ill. 177—Worden v. Rayburn, 145 N.E. 101, 318 Ill. 495.
Chicago Title & Trust Co. v. Pietschman, 43 N.E.2d 569, 315 Ill. App. 672—Szurkus v. Szurkus, 38 N.E.2d 805, 312 Ill.App. 511—Illinois Joint Stock Land Bank of Monticello v. Conard, 6 N.E.2d 232, 288 Ill.App. 475. See Levy v. Broadway-Carmen Bldg. Corporation, 278 Ill.App. 293.
Ky.—Moore v. Waltman's Adm'x, 156 S.W.2d 100, 288 Ky. 258—Kentucky Joint Land Bank of Lexington v. Fitzpatrick, 36 S.W.2d 25, 237 Ky. 624.
Mont.—Fox v. Curry, 29 P.2d 663, 96 Mont. 212.
Neb.—Trowbridge v. Donner, 40 N. W.2d 655, 152 Neb. 206—Ehlers v. Campbell, 23 N.W.2d 727, 147 Neb. 572.

ing a purchaser from his purchase at a foreclosure sale;[2] striking off an entry of satisfaction of the judgment;[3] and fixing the time for redemption from a sale under a trust deed.[4]

Private sale. Where a private sale is authorized by statute, an appellate court will not disturb the action of the lower court unless it is shown that it abused its discretion.[4.5]

Burden of showing abuse. The complaining party has the burden of showing an abuse of discretion in proceedings following judgment.[4.10]

§ 1630. Amendment or Correction of Judgment

Unless an abuse of discretion is shown, the trial court's exercise of its discretion as to amending, correcting, or modifying a judgment will not be disturbed on appeal.

When an application to amend, correct, or modify a judgment is addressed to the discretion of the court, its action with reference thereto will not be interfered with by an appellate court unless an abuse of discretion is manifest.[5] So, unless a clear abuse of discretion is shown, the trial court's exercise of its discretion in making or refusing an order correcting a decree nunc pro tunc will not be reversed.[5.5]

Writ of error coram nobis. Unless a clear abuse of discretion is shown, an appellate court will not disturb the trial court's exercise of its discretion in determining whether a writ of error coram nobis should be granted.[5.10]

N.C.—Federal Land Bank of Baltimore v. Garman, 18 S.E.2d 182, 220 N.C. 585, applying Pennsylvania law.

N.D.—St. Paul Trust & Savings Bank v. Olson, 202 N.W. 472, 52 N.D. 315.

Okl.—Grayson v. Security Federal Savings & Loan Ass'n of Tulsa, 134 P.2d 555, 192 Okl. 149—Baker v. Smith, 131 P.2d 97, 191 Okl. 491—Streets v. Stephens, 129 P.2d 848, 191 Okl. 289—Schave v. New York Life Ins. Co., 94 P.2d 892, 185 Okl. 554—University of Tulsa v. Moores, 61 P.2d 25, 177 Okl. 548—Wyant v. Davidson & Case Lumber Co., 49 P.2d 151, 173 Okl. 474—Jorden v. Mee, 45 P.2d 502, 172 Okl. 457—Burton v. Mee, 4 P.2d 33, 152 Okl. 220—Drummond v. James, 300 P. 658, 150 Okl. 105—Millard v. Nelson, 281 P. 238, 139 Okl. 56—Whitchurch v. Doughty, 271 P. 1033, 133 Okl. 283—State v. Sutton, 259 P. 551, 127 Okl. 35—State v. Wilson, 254 P. 968, 124 Okl. 236—Lawton Mill & Elevator Co. v. Farmers' & Merchants' Bank of Cincinnati, Iowa, 234 P. 705, 109 Okl. 291—Kline v. Evans, 229 P. 427, 103 Okl. 44—Keller v. Cooper, 227 P. 102, 102 Okl. 127—In re Standwaitie's Estate, 175 P. 542, 73 Okl. 255—Duncan v. Eck, 166 P. 121, 65 Okl. 250.

Pa.—Dearnley v. Survetnick, 63 A. 2d 66, 360 Pa. 572—Miners Nat. Bank of Wilkes-Barre v. Bowman, 6 A.2d 286, 334 Pa. 534—Peoples-Pittsburgh Trust Co. v. Blickle, 199 A. 213, 330 Pa. 398—Hettler v. Shephard, 191 A. 581, 326 Pa. 165—Kline v. Kline, 188 A. 119, 324 Pa. 145—Senge, for Use of Union Trust Co. of Pittsburgh v. Border, 181 A. 509, 319 Pa. 481—Nutt v. Berlin Smokeless Coal & Clay Mining Co., 105 A. 627, 262 Pa. 417—Somerville v. Hill, 104 A. 62, 260 Pa. 477—Watkins v. Justice, 100 A. 488, 256 Pa. 87—Snyder v. Snyder, 90 A. 717, 244 Pa. 331.

First Nat. Bank v. Mount, 1 A.2d 547, 132 Pa.Super. 518.

Tex.—Emmy Dittmar Imp. Co. v. A. B. Frank Co., Civ.App., 114 S.W.2d 912, error refused.

Wash.—Williams v. Continental Securities Corp., 153 P.2d 847, 22 Wash.2d 1—John Davis Estate v. Rochelle, 42 P.2d 788, 181 Wash. 81.

4 C.J. p 838 note 19, p 839 notes 20, 21—35 C.J. p 50 notes 47, 48, p 109 note 37—42 C.J. p 242 notes 13, 14.

Abuse of discretion as to confirming or setting aside a sale is reviewable where it results in inequities.

Ill.—Pierce v. Hoyt, 260 Ill.App. 182.

W.Va.—Eakin v. Eakin, 98 S.E. 608, 83 W.Va. 512.

4 C.J. p 838 note 19 [b].

Test applied in review of discretion

In reviewing trial court's exercise of discretion, the test is whether an ordinary, reasonable, prudent judge, under all the facts and circumstances before him, would have reached the conclusion that was reached.

Ark.—Summars v. Wilson, 171 S.W. 2d 944, 205 Ark. 923.

2. N.Y.—Crocker v. Gollner, 32 N.E. 114, 135 N.Y. 662.

On motion to be relieved of purchase at judicial sale the court, in the proper exercise of its discretion, may deny or grant the application and such determination may not be reviewed by the appellate court; it is no abuse of discretion to refuse further time when it does not appear that the title may be perfected with reasonable diligence.

N.Y.—Batchelar v. Batchelar, 155 N. E. 123, 244 N.Y. 274, reargument denied 217 N.Y.S. 896, 218 App.Div. 738.

3. Pa.—Shoup v. Shoup, 54 A. 476, 205 Pa. 22.

4. Mo.—Duncan v. Home Co-Op. Co., 120 S.W. 733, 221 Mo. 315.

4.5 La.—Roy O. Martin Lumber Co. v. Strange, App., 95 So.2d 853.

4.10 Cal.—Rupp v. Rupp, 276 P.2d 144, 129 C.A.2d 23.

5. Conn.—Application of Title & Guaranty Co. of Bridgeport to Change Name to Bankers' Security Trust Co., 145 A. 151, 109 Conn. 45.

Ga.—Hall v. First Nat. Bank of Atlanta, 73 S.E.2d 252, 87 Ga.App. 142—Burger v. Dobbs, 73 S.E.2d 75, 87 Ga.App. 88—Whitlock v. Wilson, 54 S.E.2d 474, 79 Ga.App. 747—Terrell v. Clarke, 122 S.E. 718, 32 Ga.App. 39.

Kan.—Golden v. Southwestern Utilities Corporation of Delaware, 250 P. 286, 121 Kan. 793.

N.Y.—In re People v. Beha, 155 N. E. 916, 244 N.Y. 606.

Okl.—Gulf, C. & S. F. Ry. Co. v. Kellum, 261 P.2d 610—Rogers v. Sheppard, 192 P.2d 643, 200 Okl. 203—Martin v. Jones, 238 P. 458, 111 Okl. 101—Wilson v. Porter, 221 P. 713, 94 Okl. 259—Co-wok-ochee v. Chapman, 183 P. 610, 76 Okl. 1.

Tex.—Stauss v. Stauss, Civ.App., 244 S.W.2d 518.

W.Va.—Baker v. Gaskins, 36 S.E.2d 893, 128 W.Va. 427.

4 C.J. p 839 note 25—34 C.J. p 250 notes 35, 36.

Value of bonds

Ala.—Chambless v. Black, 35 So.2d 348, 250 Ala. 604.

5.5 Ark.—Brooks v. Baker, 187 S.W. 2d 169, 208 Ark. 654—Mitchell v. Federal Land Bank of St. Louis, 174 S.W.2d 671, 206 Ark. 253.

5.10 Fla.—Cole v. Walker Fertilizer Co., for Use and Benefit of Walker, 1 So.2d 864, 147 Fla. 1.

§ 1631. Vacation of Judgment

Unless an abuse of discretion is clearly shown, the trial court's exercise of its discretion in setting aside a judgment or order on its own motion, or in acting on a motion or application to open or vacate a judgment, decree, or order will not be disturbed on appeal.

The trial court's exercise of its discretionary powers with reference to setting aside a judgment or order on its own motion,[6] or in acting on a motion or application to open a judgment or order,[6.5] will not be disturbed on appeal unless an abuse of

6. Mo.—In re Henry County Mut. Burial Ass'n, App., 77 S.W.2d 124—Cherry v. Cherry, 35 S.W.2d 659, 225 Mo.App. 998.
4 C.J. p 839 note 26 [c].

After appeal has been granted, it is an unwarranted exercise of discretion for the trial court of its own motion to open or vacate a judgment.

Mo.—Dougherty v. Manhattan Rubber Mfg. Co., 29 S.W.2d 126, 325 Mo. 656.

6.5 Ariz.—Marsh v. Riskas, 236 P. 2d 746, 73 Ariz. 7.

Kan.—Epperson v. Kansas State Department of Inspections and Registrations, 78 P.2d 850, 147 Kan. 762.

N.J.—Investment Building & Loan Ass'n of Newark v. Athene Holding Co., 28 A.2d 186, 132 N.J.Eq. 309—Morris County Building & Loan Ass'n v. Walters, 198 A. 756, 123 N.J.Eq. 548—Cottrell v. Tracy, 187 A. 563, 121 N.J.Eq. 96.

Pa.—Steigleman for Use of Sciotto v. Sciotto, 130 A.2d 181, 388 Pa. 113—Ehnes v. Wagner, 130 A.2d 171, 388 Pa. 102—Berger v. Pittsburgh Auto Equipment Co., 127 A. 2d 334, 387 Pa. 61—Klein v. Mathewson, 121 A.2d 577, 384 Pa. 298—Gagnon v. Speback, 118 A.2d 744, 383 Pa. 359—Ahrens v. Goldstein, 102 A.2d 164, 376 Pa. 114—Gettier v. Friday, 99 A.2d 899, 375 Pa. 206—Com. ex rel. Chidsey v. Keystone Mut. Cas. Co., 95 A.2d 664, 373 Pa. 105, certiorari dismissed and appeal denied Haines v. Com. of Pa., 74 S.Ct. 69, 346 U.S. 852, 98 L.Ed. 367, rehearing denied 74 S.Ct. 272, 346 U.S. 917, 98 L.Ed. 412—Deviney v. Lynch, 94 A.2d 578, 372 Pa. 570—Poelcher v. Poelcher, 76 A.2d 222, 366 Pa. 3—Dearnley v. Survetnick, 63 A.2d 66, 360 Pa. 572—Stoner v. Siey System Garages, 46 A. 2d 172, 353 Pa. 532—Berkowitz v. Kass, 40 A.2d 691, 351 Pa. 263—Bekelja v. James E. Strates Shows, 37 A.2d 502, 349 Pa. 442—Machalicka v. Lukasevic, 31 A.2d 164, 346 Pa. 487—St. Clair Savings & Trust Co., for Use of Billhartz v. Hahne, 29 A.2d 21, 345 Pa. 420—Jamestown Banking Co. v. Conneaut Lake Dock & Dredge Co., 14 A.2d 325, 339 Pa. 26—Welch v. Sultez, 13 A.2d 399, 338 Pa. 533—Kweller, now for Use of Caplan v. Becker, 12 A.2d 567, 338 Pa. 169—Perri v. Perri, 6 A.2d 775, 335 Pa. 394—Keystone Bank of Spangler, Pa., v. Booth, 6 A.2d 417, 334 Pa. 545—Bonebrake v. Koons, 5 A.2d 184, 333 Pa. 443—Stoner, now for Use of Dinch, v. Wise, 200 A. 320, 331 Pa. 446—Fidelity Title & Trust Co. v. Garrett, 194 A. 398, 327 Pa. 305—Pierce, to Use of Snipes, v. Kaseman, 192 A. 105, 326 Pa. 280—Schuylkill Trust Co. v. Sobolewski, 190 A. 919, 325 Pa. 422—Sferra v. Urling, 188 A. 185, 324 Pa. 344—U. S. Savings & Trust Co. of Conemaugh to Use of Hindes v. Helsel, 188 A. 167, 325 Pa. 1—Mutual Building & Loan Ass'n of Shenandoah v. Walukiewicz, 185 A. 648, 322 Pa. 240—Mallisee v. Hawkins, 185 A. 230, 322 Pa. 58—Mielcuszny v. Rosol, 176 A. 236, 317 Pa. 91—Warren Sav. Bank & Trust Co. v. Foley, 144 A. 84, 294 Pa. 176—Massey v. Massey, 110 A. 341, 267 Pa. 239.

Lytle v. Walters, 132 A.2d 373, 184 Pa.Super. 246—Brown v. McClure Newspaper Syndicate, 130 A. 2d 721, 183 Pa.Super. 316—Philadelphia Gas Heating Co. v. Sanders, 124 A.2d 435, 181 Pa.Super. 510—Stein v. Greene, 116 A.2d 308, 178 Pa.Super. 464—Gregory v. Fassett, 116 A.2d 304, 178 Pa.Super. 599—Frigidinners, Inc. v. Branchtown Gun Club, 109 A.2d 202, 176 Pa.Super. 643—Baron v. Bernstein, 106 A.2d 668, 175 Pa.Super. 608—Kazanjian to Use of Shelengian v. Cohen, 103 A.2d 491, 175 Pa.Super. 195—Republic Fuel & Burner Co. v. Girard, 103 A.2d 484, 175 Pa. Super. 110—Ehnes v. Mang, 84 A.2d 518, 170 Pa.Super. 155—Associates Discount Corp. v. Kelly, 82 A.2d 689, 169 Pa.Super. 74—Kogen v. Horowitz, 82 A.2d 530, 169 Pa.Super. 349—Palatucci v. Woodland, 70 A.2d 674, 166 Pa.Super. 315—Thomas v. Davis, 60 A.2d 405, 163 Pa.Super. 6—Peterson v. Schultz, 58 A.2d 360, 162 Pa.Super. 469—Sugarman v. Baldini, 53 A.2d 874, 161 Pa.Super. 136—Land Title Bank & Trust Co. v. Kolker, 49 A. 2d 277, 159 Pa.Super. 529—Harper v. Quinlan, 48 A.2d 113, 159 Pa. Super. 367—Regional Agricultural Credit Corp. v. Barabas, 48 A.2d 85, 159 Pa.Super. 402—Associates Discount Corp. v. Wise, 41 A.2d 418, 156 Pa.Super. 659—Lloyd v. Jacoby, 39 A.2d 525, 156 Pa.Super. 105—Linker v. Fidelity-Philadelphia Trust Co., 28 A.2d 704, 150 Pa.Super. 440—Caromono v. Garman, 23 A.2d 92, 147 Pa.Super. 1—First Nat. Bank of Mount Holly Springs v. Cumbler, 21 A.2d 120, 145 Pa.Super. 595—Sprenger, now for Use of Stoecker, v. Litten, 15 A.2d 527, 142 Pa.Super. 194—Werner v. Deutsch, 7 A.2d 511, 135 Pa.Super. 519—Babcock Lumber Co. v. Allison, 7 A.2d 374, 136 Pa.Super. 353—Third Nat. Bank & Trust Co. of Scranton v. Tonkin, 5 A.2d 425, 135 Pa.Super. 264—Miller v. Mastrocola, 2 A.2d 550, 133 Pa.Super. 210—First Nat. Bank v. Smith, 200 A. 215, 132 Pa.Super. 73—Michaels v. Moritz, 200 A. 176, 131 Pa.Super. 426—Baker's Estate v. Woodworth, 198 A. 469, 130 Pa.Super. 452—Roper v. Scevcnik, 194 A. 333, 128 Pa.Super. 453—Planters Nut & Chocolate Co. v. Brown-Murray Co., 193 A. 381, 128 Pa.Super. 239—Philadelphia Fixture & Equipment Corp. v. Carroll, 191 A. 216, 126 Pa.Super. 454—Burger, for Use of Henderson, v. Township of Freedom, 190 A. 387, 126 Pa.Super. 128—Gardner v. Salem, 187 A. 94, 123 Pa.Super. 418—Messmer v. McLaughlin, 186 A. 286, 122 Pa.Super. 531—Newman v. Herron, 184 A. 310, 121 Pa.Super. 370.

New York Joint Stock Land Bank v. Kegercise, Com.Pl., 29 Berks Co. 296—Renschler v. Pizano, Com.Pl., 38 Lack.Jur. 157, 51 York 109, affirmed 198 A. 33, 329 Pa 249—First Nat. Bank of Greencastle v. Cashman, Com.Pl., 54 Lanc.Rev. 163—Sheaffer v. Sheaffer, Com.Pl., 45 Lanc.Rev. 613—Chylack v. Chylack, Com.Pl., 45 Sch.Leg. Rec. 51—Gapes v. Lawrenitis, 4 Sch.Leg.Rec. 403.

Discretion of courts as to opening or vacating of judgments generally see Judgments § 300.

Abuse of discretion defined

An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overriden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

Pa.—Mielcuszny v. Rosol, 176 A. 236, 317 Pa. 91.

Burger, for Use of Henderson v. Township of Freedom, 190 A. 387, 126 Pa.Super. 128.

Contention that trial court was guilty of abuse of discretion in opening judgment by confession without having read testimony was unsupported by affirmative proof.

Pa.—Lloyd v. Jacoby, 39 A.2d 525, 156 Pa.Super. 105.

discretion is clearly shown. The same principle applies where the motion or application is to set aside or vacate a judgment, decree, or order.[7]

7. Ala.—Wetzel v. Birmingham Elec. Co., 33 So.2d 882, 250 Ala. 267—Thompson v. Hill Grocery Co., 181 So. 272, 236 Ala. 66—Ex parte Lineville Nat. Bank, 116 So. 419, 217 Ala. 381.

Ariz.—Marsh v. Riskas, 236 P.2d 746, 73 Ariz. 7—Smith v. Washburn & Condon, 297 P. 879, 38 Ariz. 149—Faltis v. Colachis, 274 P. 776, 35 Ariz. 78—Garden Development Co. v. Carlaw, 263 P. 625, 33 Ariz. 232.

Ark.—Thompson v. Foote, 134 S.W.2d 11, 199 Ark. 474—Papa v. Jackson, 67 S.W.2d 187, 188 Ark. 1167—Chalkey v. Henley, 12 S.W.2d 18, 178 Ark. 635.

Cal.—Gomes v. Bragg, 255 P. 499, 201 C. 70.

In re Rouse's Estate, App., 309 P.2d 34—Olson v. Olson, App., 306 P.2d 1036—Stephens v. Baker & Baker Roofing Co., 280 P.2d 39, 130 C.A.2d 765—Sheehan v. Pioneer Lucky Strike Gold Mining Co., 54 P.2d 72, 11 C.A.2d 530—Bruskey v. Bruskey, 41 P.2d 203, 4 C.A.2d 472—Burbank v. Continental Life Ins. Co., 38 P.2d 451, 2 C.A.2d 664—Los Angeles Bond & Securities Co. v. Tyler, 7 P.2d 1052, 120 C.A. 412—Hammond Lumber Co. v. Gilkey, 7 P.2d 724, 120 C.A. 252, followed in Hammond Lumber Co. v. Stroisee, 7 P.2d 727, 120 C.A. 766—Anglo California Trust Co. v. Kelly, 272 P. 1080, 95 C.A. 390—Callaway v. Wolcott, 266 P. 574, 90 C.A. 753.

Colo.—Mountain v. Stewart, 149 P.2d 176, 112 Colo. 302—London Option Gold Min. Co. v. Dempsey, 66 P.2d 327, 100 Colo. 156.

Conn.—Connecticut Mortgage & Title Guaranty Co. v. Di Francesco, 151 A. 491, 112 Conn. 673—McCulloch v. Pittsburgh Plate Glass Co., 140 A. 114, 107 Conn. 164.

Fla.—Maule Industries, Inc. v. Seminole Rock & Sand Co., 91 So.2d 307—McKell v. Jackson, 162 So. 334, 120 Fla. 185—Kreiss Potassium Phosphate Co. v. Knight, 124 So. 751, 98 Fla. 1004—Streety v. John Deere Plow Co., 109 So. 632, 92 Fla. 210—Johnson v. Johnson, 107 So. 342, 91 Fla. 275—Alabama Hotel Co. v. J. L. Mott Iron Works, 98 So. 825, 86 Fla. 608.

Ga.—Williams v. Hall, 67 S.E.2d 237, 208 Ga. 430—Gaines v. Gaines, 150 S.E. 645, 169 Ga. 432—Tate v. Little, 82 S.E. 129, 141 Ga. 799.

Grogan v. Herrington, 54 S.E.2d 284, 79 Ga.App. 505—Landau Bros. v. Towery, 179 S.E. 647, 51 Ga.App. 118—J. S. Schofield's Sons Co. v. Vaughn, 150 S.E. 569, 40 Ga.App. 568.

Idaho.—Arnett v. Throop, 272 P.2d 308, 75 Idaho 331.

Ill.—J. B. Inderrieden Co. v. Gill, 25 N.E.2d 796, 378 Ill. 180—Village of La Grange Park v. Hess, 163 N.E. 672, 332 Ill. 236.

Dunivant v. Dunivant, 125 N.E. 2d 836, 5 Ill.App.2d 481—Vella v. Pour, 68 N.E.2d 631, 329 Ill.App. 355—Albers v. Martin, 45 N.E.2d 102, 316 Ill.App. 446—Simon v. Foyer, 17 N.E.2d 632, 297 Ill.App. 640—Hallin v. Penney, 209 Ill.App. 230—Furman v. Wieczorkowski, 202 Ill.App. 347—Geist v. Kaplan, 195 Ill.App. 299—Hulla v. Kaplan, 189 Ill.App. 61—See Hillenbrand v. Hillenbrand, 211 Ill.App. 624.

Iowa.—In re Karns, 20 N.W.2d 474, 236 Iowa 932—Bleakley v. Long, 268 N.W. 152, 222 Iowa 76—Swan v. McGowan, 231 N.W. 440, 212 Iowa 631.

Ky.—Fortney v. Mahan, 302 S.W.2d 842—Liberty Nat. Bank & Trust Co. v. Kummert, 205 S.W.2d 342, 305 Ky. 769—Duff v. Hodges' Guardian, 281 S.W. 183, 213 Ky. 392.

Mass.—Souza v. Souza, 90 N.E.2d 572, 325 Mass. 761—Brooks v. National Shawmut Bank of Boston, 84 N.E. 2d 318, 323 Mass. 677—Borst v. Young, 18 N.E.2d 544, 302 Mass. 124—Mellet v. Swan, 168 N.E. 732, 269 Mass. 173—Fairbanks v. Beard, 141 N.E. 590, 247 Mass. 8, 30 A.L.R. 698—Boston Elevated Ry. Co. v. Leighr, 135 N.E. 880, 241 Mass. 582—Ryan v. Hickey, 132 N.E. 718, 240 Mass. 46.

Mich.—Kirn v. Ioor, 253 N.W. 318, 266 Mich. 335.

Minn.—Nelson v. Auman, 13 N.W.2d 38, 216 Minn. 407—In re Holum's Estate, 229 N.W. 133, 179 Minn. 315—Stebbins v. Friend, Crosby & Co., 228 N.W. 150, 178 Minn. 549—Lincoln Securities Co. v. Poppe, Inc., 211 N.W. 470, 169 Minn. 392.

Mo.—Allen v. Fewel, 87 S.W.2d 142, 337 Mo. 955.

National City Bank of St. Louis v. Pattiz, App., 26 S.W.2d 815.

Mont.—Kosonen v. Waara, 285 P. 668, 87 Mont. 24.

Neb.—Wunrath v. People's Furniture & Carpet Co., 152 N.W. 736, 98 Neb. 342.

N.H.—Smith v. Tallman, 175 A. 857, 87 N.H. 176.

N.J.—Bowman v. Bambara, 100 A.2d 357, 28 N.J.Super. 92—In re Manfredini, 93 A.2d 623, 24 N.J.Super. 59—Wilford v. Sigmund Eisner Co., 80 A.2d 222, 13 N.J.Super. 27—R. J. Goerke Co. v. Nicolson, 69 A. 2d 326, 5 N.J.Super. 412.

Cottrell v. Tracy, 187 A. 563, 121 N.J.Law 96—Assets Development Co. v. Wall, 119 A. 10, 97 N.J.Law 468.

Morris County Building & Loan Ass'n v. Walters, 198 A. 756, 123 N.J.Eq. 548.

N.M.—Stafford v. Clouthier, 159 P. 524, 22 N.M. 157.

N.Y.—Archer v. Archer, 157 N.Y.S. 891, 171 App.Div. 549.

N.C.—Gaskins v. Lancaster, 183 S.E. 364, 209 N.C. 301.

N.D.—Doyle v. Doyle, 202 N.W. 860, 52 N.D. 380—Cross v. Hillsboro Nat. Bank, 164 N.W. 695, 38 N.D. 261.

Ohio.—Tucci v. Toomey, App., 142 N.E.2d 669—Kirby Co. v. Lewis, App., 59 N.E.2d 762—Smith v. Smith, 157 N.E. 768, 25 Ohio App. 239.

Okl.—Jaggers v. Hobbs, 176 P.2d 828, 198 Okl. 181—Le Roi Co. v. Grimes, 144 P.2d 973, 193 Okl. 430—Welden v. Home Owners Loan Corp., 141 P.2d 1010, 193 Okl. 167—Stull v. Hoehn, 126 P.2d 1007, 191 Okl. 190—Parker v. Board of Com'rs of Okmulgee County, 102 P.2d 883, 187 Okl. 311—Parker v. Board of County Com'rs of Okmulgee County, 102 P.2d 880, 187 Okl. 308—Park v. Continental Oil Co., 87 P.2d 324, 184 Okl. 314—Babb v. National Life Ass'n, 86 P. 2d 771, 184 Okl. 273—Mid-Texas Petroleum Co. v. Western Lumber & Hardware Co., 52 P.2d 15, 175 Okl. 260—Small v. White, 46 P.2d 517, 173 Okl. 83—Davis v. State, 41 P.2d 458, 170 Okl. 599—Johnson v. Bearden Plumbing & Heating Co., 38 P.2d 500, 170 Okl. 63—Vacuum Oil Co. v. Brett, 300 P. 632, 150 Okl. 153—American Inv. Co. v. Wadlington, 277 P. 583, 136 Okl. 246—Byington v. Wilhelm, 250 P. 1025, 120 Okl. 190—Eastland v. Oklahoma City, 246 P. 830, 118 Okl. 97—Wilson v. Porter, 221 P. 713, 94 Okl. 259—Ross v. Irving, 220 P. 642, 96 Okl. 124—Tidal Oil Co. v. Hudson, 219 P. 95, 95 Okl. 209—Denton v. Walker, 217 P. 386, 90 Okl. 222.

Or.—Bronn v. Soules, 11 P.2d 284, 140 Or. 308—Steeves v. Steeves, 9 P.2d 815, 139 Or. 261.

Pa.—George v. George, 178 A. 25, 318 Pa. 203—Sirant v. Solkosky, 166 A. 561, 311 Pa. 142—Helzlsouer v. Golub, 160 A. 118, 306 Pa. 474—Pine Brook Bank v. Kearney, 154 A. 365, 303 Pa. 223—Certelli v. Braum, 144 A. 403, 294 Pa. 488—Warren Sav. Bank & Trust Co. v. Foley, 144 A. 84, 294 Pa. 176—Hale v. Uhl, 143 A. 115, 293 Pa. 454—Reidlinger v. Cameron, 134 A. 418, 287 Pa. 24—Wade v. Thornton, 129 A. 637, 283 Pa. 544—Powell v. Smith, 124 A. 284, 279 Pa. 538—Tressler v. Emerick, 122 A. 229, 278 Pa. 128—Massey v. Massey, 110 A. 341, 267 Pa. 239—Stewart v. Stewart, 92 A. 319, 246 Pa. 344.

Newman v. Herron, 184 A. 310, 121 Pa.Super. 370—Kaufman v.

If such abuse of discretion is shown, the judgment, decree, or order will be reviewed and cor-

Feldman, 180 A. 101, 118 Pa.Super. 435—Nelly v. Diskin, 173 A. 735, 113 Pa.Super. 249—McCarty, to Use of Hoblitzell Nat. Bank of Hyndman v. Emerick, 170 A. 326, 111 Pa. Super. 463—Bucci v. Detroit Fire & Marine Ins. Co., 167 A. 425, 109 Pa.Super. 167—Lukac v. Morris, 164 A. 834, 108 Pa.Super. 453—Bianca v. Kaplan, 160 A. 143, 105 Pa.Super. 98—Whittaker v. Towkaneca, 86 Pa.Super. 118—Beach v. Dubifski, 86 Pa.Super. 116—Whittaker v. Towkanecs, 85 Pa.Super. 521—Schmitt v. Yuhazy, 84 Pa.Super. 76—Foos v. Pogar & Pogar, 84 Pa.Super. 54—Bates v. Kick, 83 Pa. Super. 273—Bush v. Frutchey, 83 Pa.Super. 208—Kulp v. Lehigh Valley Transit Co., 81 Pa.Super. 296—Luce v. Reed Colliery Co., 78 Pa. Super. 248—Wynn v. Duve, 74 Pa. Super. 432—Isman v. Niederman, 74 Pa.Super. 175—Salus v. Curzon, 73 Pa.Super. 170—Kuehn v. Kalisch, 72 Pa.Super. 589—Jersey Shore Trust Co. v. Gold, 72 Pa. Super. 398—Wesoky v. Jackson, 70 Pa.Super. 281—Spiess v. Mooney, 67 Pa.Super. 9.

S.C.—Brock v. Brock, 81 S.E.2d 898, 225 S.C. 261—Baggett v. Strickland, 155 S.E. 237, 155 S.C. 60—Ex parte Clark, 118 S.E. 27, 125 S.C. 34.

S.D.—Rose v. Babington, 263 N.W. 557, 64 S.D. 8—Teesdale v. National Nonpartisan League, 183 N.W. 993, 44 S.D. 325.

Tenn.—Allor v. Tillery, 7 Tenn.App. 679—Poe v. The White Company, 7 Tenn.App. 652—Duke v. Maness, 2 Tenn.App. 267.

Utah.—Warren v. Dixon Ranch Co., 260 P.2d 741.

Vt.—Mutual Life Ins. Co. v. Foster, 93 A. 258, 88 Vt. 503.

Wash.—Larson v. Department of Labor and Industries, 25 P.2d 1040, 174 Wash. 618—Arnot v. Fischer, 295 P. 1117, 161 Wash. 67—In re Churchill's Estate, 290 P. 218, 157 Wash. 640—Agricultural & Live Stock Credit Corporation v. McKenzie, 289 P. 527, 157 Wash. 597—Hendrix v. Hendrix, 172 P. 819, 101 Wash. 535.

Wis.—Toledo Scale Co. v. Colleran, 250 N.W. 377, 212 Wis. 502—In re Meek's Estate, 227 N.W. 270, 199 Wis. 602—Harder v. Davelaar, 200 N.W. 368, 184 Wis. 616.

4 C.J. p 839 notes 26, 27.

Rule applied to motions based on grounds of:

(1) Newly discovered evidence.

Ark.—Clark v. Bowen, 56 S.W.2d 1032, 186 Ark. 931.

Md.—Smith v. Lapidus, 118 A.2d 373, 208 Md. 273.

Mass.—Counelis v. Andreson, 12 N.E.2d 838, 299 Mass. 382.

N.J.—Cheel Const. Co. v. Lubben, 113 A.2d 693, 35 N.J.Super. 198.

Tex.—Kelley v. Wright, Civ.App., 184 S.W.2d 649, affirmed 188 S.W.2d 983, 144 Tex. 114.

(2) Unavoidable casualty or misfortune.

Okl.—Tippins v. Turben, 19 P.2d 605, 162 Okl. 136.

(3) Mistake, inadvertence, surprise, or excusable neglect.

Cal.—Coyne v. Krempels, 223 P.2d 244, 36 C.2d 257—Litvinuk v. Litvinuk, 156 P.2d 446, reheard 162 P.2d 8, 27 C.2d 38.

Etchepare v. Ehmke, 290 P.2d 874, 137 C.A.2d 508—Daniels v. Daniels, 288 P.2d 910, 136 C.A.2d 224—Betz v. Betz, 287 P.2d 383, 135 C.A.2d 443—In re McCrae's Estate, 284 P.2d 914, 133 C.A.2d 634—Smith v. Los Angeles Bookbinders Union No. 63, 284 P.2d 194, 133 C.A.2d 486—Nemec v. Polley, 277 P.2d 76, 129 C.A.2d 453—In re Nelson's Estate, 274 P.2d 432, 127 C.A.2d 732—Vartanian v. Croll, 256 P.2d 1022, 117 C.A.2d 639—In re Glassgold's Estate, 218 P.2d 1016, 97 C.A.2d 859—Gregory v. Gregory, 206 P.2d 1122, 92 C.A.2d 843—Keller v. Keller, 204 P.2d 361, 91 C.A.2d 39—Raines v. Damon, 201 P.2d 886, 89 C.A.2d 812—Phillips v. Cleaver, 200 P.2d 545, 89 C.A.2d 253—Armstrong v. Armstrong, 183 P.2d 901, 81 C.A.2d 316, certiorari denied 68 S.Ct. 659, 333 U.S. 842, 92 L.Ed. 1126—Pease v. City of San Diego, 169 P.2d 973, 74 C.A.2d 929—In re Rabinowitz' Estate, 155 P.2d 915, 67 C.A.2d 840—Hewins v. Walbeck, 141 P.2d 241, 60 C.A.2d 603—Clark v. Clark, 132 P.2d 527, 56 C.A.2d 324—Miller v. Lee, 125 P.2d 627, 52 C.A.2d 10—In re Bartholomew's Adoption, 84 P.2d 199, 29 C.A.2d 343—In re McCarthy's Estate, 73 P.2d 914, 23 C.A.2d 398—McCarthy v. McCarthy, 72 P.2d 255, 23 C.A.2d 151—Startzman v. Los Banos Cotton Gins, 256 P. 220, 82 C.A. 624, followed in Erreca v. Los Banos Cotton Gins, 274 P. 1041, 96 C.A. 783.

Mont.—Rieckhoff v. Woodhull, 75 P.2d 56, 106 Mont. 22.

N.J.—Cheel Const. Co. v. Lubben, 113 A.2d 693, 35 N.J.Super. 198.

N.D.—Union Storage & Transfer Co. v. Smith, 58 N.W.2d 782, 79 N.D. 605.

Or.—Reeder v. Reeder, 232 P.2d 78, 191 Or. 598—Bronn v. Soules, 11 P.2d 284, 140 Or. 308.

S.D.—Ingalls v. Arbeiter, 36 N.W.2d 669, 72 S.D. 488.

Utah.—Swauger v. Lawler, 209 P.2d 930, 116 Utah 347—Johnson v. Continental Casualty Co., 300 P. 1032, 78 Utah 18.

Wis.—State ex rel. Borgen v. Nitz, 31 N.W.2d 193, 252 Wis. 155.

(4) Negligence or mistake of counsel.

Colo.—Middleton v. Stavely, 235 P.2d 596, 124 Colo. 88.

Mont.—First State Bank of Thompson Falls v. Larsen, 233 P. 960, 72 Mont. 400.

Wyo.—McDaniel v. Hoblit, 245 P. 295, 34 Wyo. 509.

(5) Fraud or perjury.

Cal.—Vartanian v. Croll, 256 P.2d 1022, 117 C.A.2d 639.

Neb.—Wunrath v. People's Furniture & Carpet Co., 152 N.W. 736, 98 Neb. 342.

N.J.—Cheel Const. Co. v. Lubben, 113 A.2d 693, 35 N.J.Super. 198.

Okl.—Lambert v. Lambert, 245 P.2d 436, 206 Okl. 577—Commonwealth Life Ins. Co. v. Avery, 237 P.2d 433, 205 Okl. 274—Donley v. Donley, 89 P.2d 312, 184 Okl. 567.

Pa.—Friedland v. Altoona & Logan Valley Electric Ry. Co., 65 Pa.Super. 433.

Vacating during term

(1) The trial court's discretion in vacating a judgment during the term at which it was entered will not be controlled unless manifestly abused.

Ga.—Hunter v. Gillespie, 63 S.E.2d 404, 207 Ga. 574—Lawson v. Haygood, 43 S.E.2d 649, 202 Ga. 501—Cofer v. Maxwell, 41 S.E.2d 420, 201 Ga. 846—Gaines v. Gaines, 150 S.E. 645, 169 Ga. 432.

Hall v. First Nat. Bank of Atlanta, 73 S.E.2d 252, 87 Ga.App. 142—Burger v. Dobbs, 73 S.E.2d 75, 87 Ga.App. 88—Drain Tile Mach. v. McCannon, 56 S.E.2d 165, 80 Ga.App. 373—Whitlock v. Wilson, 54 S.E.2d 474, 79 Ga.App. 747—Grogan v. Deraney, 143 S.E. 912, 38 Ga.App. 287—Terrell v. Clarke, 122 S.E. 718, 32 Ga.App. 39—Golightly v. Line, 121 S.E. 878, 31 Ga. App. 550—Hardwick v. Shahan, 118 S.E. 575, 30 Ga.App. 526—Montgomery v. Bowen, 93 S.E. 111, 20 Ga.App. 493—Southern Cotton Oil Co. v. Taylor, 88 S.E. 798, 18 Ga. App. 56.

Okl.—Adams v. King, 170 P. 912, 68 Okl. 190, reversed on other grounds 173 P. 206, 68 Okl. 190.

Tex.—Adamson v. Collins, Civ.App., 286 S.W. 598.

Wyo.—McDaniel v. Hoblit, 245 P. 295, 34 Wyo. 509.

(2) Unless an abuse of discretion is shown the trial court's exercise of its authority to vacate an adjudication during term of court at which it was made will not be disturbed.

rected,[8] even in the absence of improper motives.[9] Also, a failure of the trial court to give due consideration to a well grounded motion to vacate will result in a reversal.[10] If the propriety of the order with reference to opening or vacating a judgment or order depends entirely upon legal questions and deductions from undisputed facts, the appellate court will review the case on its merits and enter judgment according to its own opinion on the matter;[11] and this is also the case where the judge passing upon the motion to vacate is not the judge before whom the case was tried, and the appellate court has before it all the evidence and facts that were before the court passing upon the motion.[12] Otherwise, however, under the general rule first above stated, the only question presented on appeal is whether or not the trial court abused its discretion,[13] and it is immaterial what action the review-

Ga.—Deen v. Baxley State Bank, 15 S.E.2d 194, 192 Ga. 300.
Methodist Episcopal Church South v. Decell, 5 S.E.2d 66, 60 Ga. App. 843, transferred, see, 1 S.E. 2d 432, 187 Ga. 526.

Ky.—Pegram v. Pegram, 219 S.W.2d 772, 310 Ky. 86—Equitable Life Assur. Soc. v. Goble, 72 S.W.2d 35, 254 Ky. 614—Gribben v. Gribben, 11 S.W.2d 998, 227 Ky. 96.

Neb.—Scotts Bluff County v. Bristol, 68 N.W.2d 197, 159 Neb. 634—Bartels v. Meyer, 285 N.W. 698, 136 Neb. 274—Holman v. Stull, 267 N.W. 149, 130 Neb. 876.

Ohio.—Miller v. Miller, App., 91 N.E. 2d 804.

Okl.—Wade v. Padberg, 283 P.2d 201—Speake v. Lawrence, 279 P.2d 926—Gulf, C. & S. F. Ry. Co. v. Kellum, 261 P.2d 610—Frey v. Glenn, 240 P.2d 1061, 206 Okl. 28—Commonwealth Life Ins. Co. v. Avery, 237 P.2d 433, 205 Okl. 274—In re Baptist General Convention of Okl., 203 P.2d 885, 201 Okl. 215—Rogers v. Sheppard, 192 P.2d 643, 200 Okl. 203—Riddle v. Cornell, 135 P.2d 41, 192 Okl. 232—Roland Union Graded School Dist. No. 1 of Sequoyah County v. Thompson, 124 P.2d 400, 190 Okl. 416—Hart v. Howell, 85 P.2d 401, 184 Okl. 146—Welborn v. Whitney, 65 P.2d 971, 179 Okl. 420—Fellows v. Owens, 62 P.2d 1215, 178 Okl. 224—Firemen's Fund Ins. Co. v. Griffin, 54 P.2d 1032, 176 Okl. 94—Harlow Pub. Co. v. Tallant, 43 P.2d 106, 171 Okl. 579—Halliburton v. Illinois Life Ins. Co., 40 P.2d 1086, 170 Okl. 360.

W.Va.—Baker v. Gaskins, 36 S.E.2d 893, 128 W.Va. 427.

(3) Reviewing courts are very liberal in sustaining the action of the trial court during term in setting aside orders and judgments.

Ohio.—Mosher v. Mutual Home & Savings Ass'n, App., 41 N.E.2d 871.

(4) While the trial court's discretion to vacate an improper order or decree will not be controlled on appeal if exercised before lapse of the term, this discretion ends with the term unless there are extraordinary circumstances from which an inference can be fairly drawn that the parties in interest knew it was intended that action on the motion be carried over.

Ark.—Wright v. Ford, 224 S.W.2d 50, 216 Ark. 55.

(5) A very strong factual situation is required to authorize a finding that the trial court abused its discretion in setting aside its judgment during the term at which it was rendered.

Ohio.—Davis v. Teachnor, App., 53 N.E.2d 208.

Controlling factor in entry of judgment

Unless fraud, deceit, collusion, or mistake was a controlling factor in entry of judgment, without which it would not have been rendered, trial court's refusal to consider motion to vacate judgment filed after expiration of term would not be disturbed on appeal.

Fla.—Zemurray v. Kilgore, 177 So. 714, 130 Fla. 317.

Verification of motion

Where more than a year had elapsed from time motion to vacate decree was filed, refusal of trial court to allow verification of such motion was held not abuse of discretion.

Ill.—Sanford v. Thompson, 74 N.E. 2d 534, 397 Ill. 353.

8. Fla.—Lewis v. Jennings, 64 So.2d 275.
Ill.—Automatic Oil Heating Co. v. Lee, 16 N.E.2d 919, 296 Ill.App. 628.
Iowa.—Scott v. Union Mut. Casualty Co., 252 N.W. 85, 217 Iowa 390.
Mass.—Borst v. Young, 18 N.E.2d 544, 302 Mass. 124—Manzi v. Carlson, 180 N.E. 134, 278 Mass. 267.
Mo.—Doughty v. Terminal R. Ass'n of St. Louis, 291 S.W.2d 119.
Okl.—State ex rel. Williams v. Smith, 59 P.2d 410, 177 Okl. 321—Horn v. Lincoln Nat. Life Ins. Co., 250 P. 74, 120 Okl. 16—Boaz v. Martin, 225 P. 516, 101 Okl. 243.
Tex.—Colburn v. Ward, Civ.App., 40 S.W.2d 878—Kentz v. Kentz, Civ. App., 209 S.W. 200.
4 C.J. p 840 note 30.

Denial of right of trial by jury

Mo.—Wagner v. Shelly, 210 S.W.2d 394, 240 Mo.App. 550.

9. Or.—Williams v. Pacific Surety Co., 139 P. 934, 70 Or. 203.

10. Fla.—Munroe v. Birdsey, 136 So. 886, 102 Fla. 544.

11. Pa.—Bonebrake v. Koons, 5 A. 2d 184, 333 Pa. 443—Sferra v. Urling, 188 A. 185, 324 Pa. 344—Mallisee v. Hawkins, 185 A. 230, 322 Pa. 58—Kline v. Fitzgerald Bros., 110 A. 348, 267 Pa. 468—Bauer v. Hill, 110 A. 346, 267 Pa. 559—State Camp of Pennsylvania of Patriotic Order, Sons of America v. Kelley, 110 A. 339, 267 Pa. 49.
Shinn v. Stemler, 45 A.2d 242, 158 Pa.Super. 350—Cronauer v. Bayer, 13 A.2d 75, 140 Pa.Super. 91.

Error or mistake of law

(1) Generally.

Cal.—Vartanian v. Croll, 256 P.2d 1022, 117 C.A.2d 639.

(2) Where the order was not vacated in the exercise of the trial court's discretion, but because of a mistake of law, the error of law can be corrected by the appellate court without disturbing the trial court's discretion.

Ohio.—Sam Savin, Inc., v. Burdsal, 22 N.E.2d 914, 61 Ohio App. 539.

12. N.D.—Westbrook v. Rice, 148 N. W. 827, 28 N.D. 324.

13. Cal.—Stephens v. Baker & Baker Roofing Co., 280 P.2d 39, 130 C.A.2d 765—McCarthy v. McCarthy, 72 P.2d 255, 23 C.A.2d 151.
Del.—Pitts v. White, 109 A.2d 786, 10 Terry 78.
Kan.—Golden v. Southwestern Utilities Corporation of Delaware, 250 P. 286, 121 Kan. 793.
Md.—Smith v. Lapidus, 118 A.2d 373, 208 Md. 273.
Okl.—Commonwealth Life Ins. Co. v. Avery, 237 P.2d 433, 205 Okl. 274.
Pa.—Klein v. Mathewson, 121 A.2d 577, 384 Pa. 298—Gagnon v. Speback, 118 A.2d 744, 383 Pa. 359—Nissenbaum v. Farley, 110 A.2d 230, 380 Pa. 257—Gettier v. Friday, 99 A.2d 899, 375 Pa. 206—Deviney v. Lynch, 94 A.2d 578, 372 Pa. 570—Poelcher v. Poelcher, 76 A. 2d 222, 366 Pa. 3—Dearnley v. Survetnick, 63 A.2d 66, 360 Pa. 572—Stoner v. Sley System Garages, 46 A.2d 172, 353 Pa. 532—Berkowitz v. Kass, 40 A.2d 691, 351 Pa. 263—Bekelja v. James E. Strates Shows, 37 A.2d 502, 349 Pa. 442—Machalicka v. Lukasevic, 31 A.2d

ing court would have taken had the application been addressed to it.[14]

If on the pleadings and proofs doubt exists as to the real justice and equity of the case, the lower court's action in opening or refusing to open a judgment will not be disturbed on appeal.[14.5] Where the judgment is set aside by the same judge who tried the case, the appellate court will affirm the action of the lower court if there is any substantial showing of excusable neglect on the part of the moving party or some unconscionable conduct on the part of the adverse party.[14.10]

What constitutes an abuse of discretion sufficient to cause the appellate court to disturb the ruling of the trial court with reference to vacating a judgment or order depends upon the circumstances of each individual case.[15] It is sometimes said that to warrant reversal of an order vacating a judgment a much stronger showing of an abuse of discretion is necessary than where the motion is denied,[16] and an appellate court listens more read-

164, 346 Pa. 487—St. Clair Savings & Trust Co., for Use of Billhartz, v. Hahne, 29 A.2d 21, 345 Pa. 420—Jamestown Banking Co. v. Conneaut Lake Dock & Dredge Co., 14 A.2d 325, 339 Pa. 26—Welch v. Sultez, 13 A.2d 399, 338 Pa. 583—Kweller, now for Use of Caplan v. Becker, 12 A.2d 567, 338 Pa. 169—Perri v. Perri, 6 A.2d 775, 335 Pa. 394—Keystone Bank of Spangler, Pa., v. Booth, 6 A.2d 417, 334 Pa. 545—Fidelity Title & Trust Co. v. Garrett, 194 A. 398, 327 Pa. 305—Pierce, to Use of Snipes v. Kaseman, 192 A. 105, 326 Pa. 280—Schuylkill Trust Co. v. Sobolewski, 190 A. 919, 325 Pa. 422—Sferra v. Urling, 188 A. 185, 324 Pa. 344—U. S. Savings & Trust Co. of Conemaugh to Use of Hindes v. Helsel, 188 A. 167, 325 Pa. 1—Mutual Building & Loan Ass'n of Shenandoah v. Walukiewicz, 185 A. 648, 322 Pa. 240—Mallisee v. Hawkins, 185 A. 230, 322 Pa. 58—Warren Sav. Bank & Trust Co. v. Foley, 144 A. 84, 294 Pa. 176—Massey v. Massey, 110 A. 341, 267 Pa. 239—Olney Bank & Trust Co. v. Gettlin, 177 A. 794, 318 Pa. 76—Newtown Title & Trust Co. v. Underwood, 177 A. 27, 317 Pa. 212—Mielcuszny v. Rosol, 176 A. 236, 317 Pa. 91—William B. Rambo Building & Loan Ass'n v. Dragone, 166 A. 888, 311 Pa. 422—Spanko v. Trisick, 160 A. 718, 307 Pa. 166—Schline v. Kine, 152 A. 845, 301 Pa. 586—Slifer v. Slifer, 133 A. 504, 286 Pa. 299—Bowman v. Berkey, 103 A. 49, 259 Pa. 327.

Philadelphia Gas Heating Co. v. Sanders, 124 A.2d 435, 181 Pa.Super. 510—Stein v. Greene, 116 A.2d 308, 178 Pa.Super. 464—Gregory v. Fassett, 116 A.2d 304, 178 Pa.Super. 599—Frigidinners, Inc. v. Branchtown Gun Club, 109 A.2d 202, 176 Pa.Super. 643—Baron v. Bernstein, 106 A.2d 668, 175 Pa.Super. 608—Kazanjian to Use of Shelengian v. Cohen, 103 A.2d 491, 175 Pa.Super. 195—Republic Fuel & Burner Co. v. Girard, 103 A.2d 484, 175 Pa. Super. 110—Ehnes v. Mang, 84 A. 2d 518, 170 Pa.Super. 155—Kogen v. Horowitz, 82 A.2d 530, 169 Pa. Super. 349—Palatucci v. Woodland, 70 A.2d 674, 166 Pa.Super. 315—Thomas v. Davis, 60 A.2d 405, 163 Pa.Super. 6—Peterson v. Schultz, 58 A.2d 360, 162 Pa.Super. 469—Sugarman v. Baldini, 53 A.2d 874, 161 Pa.Super. 136—Land Title Bank & Trust Co. v. Kolker, 49 A.2d 277, 159 Pa.Super. 529—Harper v. Quinlan, 48 A.2d 113, 159 Pa. Super. 367—Regional Agricultural Credit Corp. v. Barabas, 48 A.2d 85, 159 Pa.Super. 402—Associates Discount Corp. v. Wise, 41 A.2d 418, 156 Pa.Super. 659—Linker v. Fidelity-Philadelphia Trust Co., 28 A.2d 704, 150 Pa.Super. 440—Caromono v. Garman, 23 A.2d 92, 147 Pa.Super. 1—Sprenger, now for Use of Stoecker, v. Litten, 15 A.2d 527, 142 Pa.Super. 194—Werner v. Deutsch, 7 A.2d 511, 135 Pa.Super. 519—Babcock Lumber Co. v. Allison, 7 A.2d 374, 136 Pa.Super. 353—Third Nat. Bank & Trust Co. of Scranton, v. Tonkin, 5 A.2d 425, 135 Pa.Super. 264—Miller v. Mastrocola, 2 A.2d 550, 133 Pa.Super. 210—First Nat. Bank v. Smith, 200 A. 215, 132 Pa.Super. 73—Michaels v. Moritz, 200 A. 176, 131 Pa.Super. 426—Baker's Estate v. Woodworth, 198 A. 469, 130 Pa. Super. 452—Roper v. Scevcnik, 194 A. 333, 128 Pa.Super. 453—Planters Nut & Chocolate Co. v. Brown-Murray Co., 193 A. 381, 128 Pa. Super. 239—Burger, for Use of Henderson, v. Township of Freedom, 190 A. 387, 126 Pa.Super. 128—Gardner v. Salem, 187 A. 94, 123 Pa.Super. 418—Messmer v. McLaughlin, 186 A. 286, 122 Pa.Super. 531—Newman v. Herron, 184 A. 310, 121 Pa.Super. 370—Cramer Oil Burner Co. v. Ferguson, 89 Pa. Super. 471—Jacob v. Corey, 83 Pa. Super. 605—Bates v. Kick, 83 Pa. Super. 273—J. B. Colt Co. v. Benjamin, 72 Pa.Super. 8—Schroeder v. Hallem, 71 Pa.Super. 216—Leonard v. Warfield, 70 Pa.Super. 342—Spiess v. Mooney, 67 Pa.Super. 9.

New York Joint Stock Land Bank v. Kegercise, Com.Pl., 29 Berks Co. 296—Renschler v. Pizano, Com.Pl., 38 Lack.Jur. 157, 51 York Leg.Rec. 109, affirmed 198 A. 33, 329 Pa. 249—First Nat. Bank of Greencastle v. Cashman, Com. Pl., 54 Lanc.L.Rev. 163—Sheaffer v. Sheaffer, Com.Pl., 45 Lanc.L.Rev. 613—Chylack v. Chylack, Com.Pl., 45 Sch.Leg.Rec. 51—Gapes v. Lawrenitis, Com.Pl., 4 Sch.Leg.Rec. 403.

4 C.J. p 840 note 28.

Judgment against foreign corporation

Ariz.—Southwest Metals Co. v. Snedaker, 129 P.2d 314, 59 Ariz. 374.

14. Cal.—Watson v. Columbia Basin Dev. Co., 135 P. 511, 22 C.A. 556. Pa.—Messmer v. McLaughlin, 186 A. 286, 122 Pa.Super. 531.

14.5 Pa.—Nissenbaum v. Farley, 110 A.2d 230, 380 Pa. 257—Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co., 95 A.2d 664, 373 Pa 105, certiorari dismissed and appeal denied Haines v. Com. of Pa., 74 S.Ct. 69, 346 U.S. 852, 98 L.Ed 367, rehearing denied 74 S.Ct. 272, 346 U.S. 917, 98 L.Ed. 412—Reidlinger v. Cameron, 134 A. 418, 287 Pa. 24—Massey v. Massey, 110 A. 341, 267 Pa. 239.

Frigidinners, Inc. v. Branchtown Gun Club, 109 A.2d 202, 176 Pa.Super. 643—Lloyd v. Jacoby, 39 A.2d 525, 156 Pa.Super. 105—Philadelphia Fixture & Equipment Corp. v. Carroll, 191 A. 216, 126 Pa. Super. 454.

Renschler v. Pizano, Com.Pl., 38 Lack.Jur. 157, 51 York Leg.Rec. 109, affirmed 198 A. 33, 329 Pa. 249.

14.10 Cal.—Vartanian v. Croll, 256 P.2d 1022, 117 C.A.2d 639.

15. Okl.—Boaz v. Martin, 225 P. 516, 101 Okl. 243.

16. Okl.—Wade v. Padberg, 283 P. 2d 201—Roland Union Graded School Dist. No. 1 of Sequoyah County v. Thompson, 124 P.2d 400, 190 Okl. 416—Parker v. Board of Com'rs of Okmulgee County, 102 P.2d 883, 187 Okl. 311—Parker v. Board of Com'rs of Okmulgee County, 102 P.2d 880, 187 Okl. 308—Donley v. Donley, 89 P.2d 312, 184 Okl. 567—Fellows v. Owens, 62 P.2d 1215, 178 Okl. 224—Tippins v. Turben, 19 P.2d 605, 162 Okl. 136—Vacuum Oil Co. v. Brett, 300 P. 632, 150 Okl. 153—W. W. Bennett & Co. v. La Fayette, 271 P. 248, 133 Okl. 233.

ily,[16.5] scans more closely,[16.10] and is more prone to reverse,[16.15] where the appeal is from an order denying relief rather than one granting relief; but it is usually held that even a refusal to vacate will not be disturbed unless the abuse of discretion is clear.[17] Reviewing courts look with disfavor on a party, who, regardless of the merits of his case, attempts to take advantage of mistake, surprise, and inadvertence of his adversary.[17.5]

Presumptions. In accordance with the rule discussed supra § 1533, that an appellate court will indulge all reasonable presumptions in favor of the correctness of the judgment, order, or decree from which the appeal was taken, the trial judge cannot be presumed to have abused his discretion in opening or setting aside a judgment,[17.10] and an abuse of discretion must be made to appear by evidence before it can be found to exist by an appellate court.[17.15]

Burden of showing abuse. Ordinarily, the complaining party has the burden of showing that the trial court abused its discretion in opening and vacating, or in refusing to open and vacate, a judgment.[17.20]

§ 1632. —— Opening Default

a. In general
b. Particular applications of rules

a. In General

The trial court's exercise of its discretion in ruling on a motion or application to open or vacate a default judgment will not be disturbed on appeal unless there has been a clear abuse of discretion.

The trial court's exercise of its discretion in ruling on motions to vacate defaults and to set aside

16.5 Cal.—Litvinuk v. Litvinuk, 156 P.2d 446, reheard 162 P.2d 8, 27 C.2d 38.
Gregory v. Gregory, 206 P.2d 1122, 92 C.A.2d 343—Kent v. County Fire Ins. Co. of Philadelphia, 80 P.2d 1019, 27 C.A.2d 340.

16.10 Cal.—Hansen v. Bernstein, 242 P.2d 368, 110 C.A.2d 170—Potts v. Whitson, 125 P.2d 947, 52 C.A.2d 199—Kent v. County Fire Ins. Co. of Philadelphia, 80 P.2d 1019, 27 C.A.2d 340.

16.15 Cal.—Potts v. Whitson, 125 P. 2d 947, 52 C.A.2d 199—Kent v. County Fire Ins. Co. of Philadelphia, 80 P.2d 1019, 27 C.A.2d 340.

17. Cal.—Etchepare v. Ehmke, 290 P.2d 374, 137 C.A.2d 508—Daniels v. Daniels, 288 P.2d 910, 136 C.A.2d 224.
Conn.—Bellonio v. V. R. Thomas Mortg. Co., 149 A. 218, 111 Conn. 103.
Idaho.—Arnett v. Throop, 272 P.2d 308, 75 Idaho 331—Dellwo v. Petersen, 203 P. 472, 34 Idaho 697.
Iowa.—Bleakley v. Long, 268 N.W. 152, 222 Iowa 76.
Ky.—Wheeler v. Peters, 291 S.W. 380, 218 Ky. 308.
Minn.—Ohnstad v. Meyers, 194 N.W. 2, 155 Minn. 507.
N.J.—Cheel Const. Co. v. Lubben, 113 A.2d 693, 35 N.J.Super. 198—Bowman v. Bambara, 100 A.2d 357, 28 N.J.Super. 92.
Robinson v. Payne, 122 A. 882, 99 N.J.Law 135.
Masionis v. Romel, 138 A. 892, 101 N.J.Eq. 780.
Steelman v. Gilbert, 186 A. 47, 14 N.J.Misc. 490—Freund v. Cona, 137 A. 415, 5 N.J.Misc. 576.
Okl.—Lambert v. Lambert, 245 P.2d 436, 206 Okl. 577—Jaggers v. Hobbs, 176 P.2d 828, 198 Okl. 181—Welden v. Home Owners Loan Corp., 141 P.2d 1010, 193 Okl. 167—Park v. Continental Oil Co., 87 P. 2d 324, 184 Okl. 314—Welborn v. Whitney, 65 P.2d 971, 179 Okl. 420—Goodwin v. Scruggs, 9 P.2d 436, 156 Okl. 118—Hunter v. National Bank of Hastings, 241 P. 186, 113 Okl. 220—Eagle Loan & Investment Co. v. Turner, 241 P. 138, 113 Okl. 251.
Pa.—Ahrens v. Goldstein, 102 A.2d 164, 376 Pa. 114—Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co., 95 A.2d 664, 373 Pa. 105, certiorari dismissed and appeal denied Haines v. Com. of Pa., 74 S.Ct. 69, 346 U.S. 852, 98 L.Ed. 367, rehearing denied 74 S.Ct. 272, 346 U.S. 917, 98 L.Ed. 412—St. Clair Savings & Trust Co., for Use of Billhartz v. Hahne, 29 A.2d 21, 345 Pa. 420—Perri v. Perri, 6 A.2d 775, 335 Pa. 394—Stoner, now for Use of Dinch, v. Wise, 200 A. 320, 331 Pa. 446—Schuylkill Trust Co. v. Sobolewski, 190 A. 919, 325 Pa. 422.
Associates Discount Corp. v. Kelly, 82 A.2d 689, 169 Pa.Super. 74—Caromono v. Garman, 23 A.2d 92, 147 Pa.Super. 1—Babcock Lumber Co. v. Allison, 7 A.2d 374, 136 Pa. Super. 353—Roper v. Scevcnik, 194 A. 333, 128 Pa.Super. 453—Philadelphia Fixture & Equipment Corp. v. Carroll, 191 A. 216, 126 Pa.Super. 454—Gardner v. Salem, 187 A. 94, 123 Pa.Super. 418—Griffith v. Hamer, 173 A. 874, 113 Pa.Super. 239—Brady v. Laskowsky, 90 Pa. Super. 370—Wallace v. Shifflet, 86 Pa.Super. 327—Equitable Beneficial Association v. Scott, 82 Pa.Super. 103—Gaus v. Bleiman & Bleiman, 82 Pa.Super. 97—Graham v. Hay, 81 Pa.Super. 594—Neff v. Seidman, 80 Pa.Super. 489—Rasp v. Rasp, 79 Pa.Super, 29—Toffolo v. Marino, 77 Pa.Super. 281—Simon v. Wintgens, 75 Pa.Super. 351—Ackler v. Miller, 74 Pa.Super. 129—Ferrara v. West Jersey & Seashore R. Co., 73 Pa. Super. 505—O'Hara v. Metropolitan Life Ins. Co., 73 Pa.Super. 434—Aubel Estate v. Noe, 72 Pa.Super. 215—Dunbar v. Lutton, 72 Pa. Super. 77—Paist v. Spittall, 56 Pa. Super. 408.
S.C.—Hartford Fire Ins. Co. v. Sightler, 127 S.E. 13, 131 S.C. 241.
Tex.—Harris v. Harris, Civ.App., 230 S.W. 224.
Utah.—Warren v. Dixon Ranch Co., 260 P.2d 741.
Vt.—Bundy v. W. Shelton Swallow Co., 102 A. 1041, 92 Vt. 193.
Wash.—Lasell v. Beck, 208 P.2d 139, 34 Wash.2d 211—Stempel v. Oregon Life Ins. Co., 290 P. 222, 157 Wash. 678—Robertson v. Wise, 279 P. 106, 152 Wash. 624—Dawson v. Carstens, 167 P. 86, 98 Wash. 96.
Wis.—Fort Howard Paper Co. v. Paper Converting Mach. Co., 276 N.W. 131, 226 Wis. 143.
Discretion not abused
Where evidence submitted in support of a motion to vacate is insufficient to overcome that on which the decree is founded.
N.J.—In re Lutz, 131 A. 907, 99 N.J. Eq. 409.

17.5 Cal.—Kent v. County Fire Ins. Co. of Philadelphia, 80 P.2d 1019, 27 C.A.2d 340.

17.10 Ohio.—Casey v. Ohio State Nurses Ass'n, App., 114 N.E.2d 866.
Wyo.—Book v. Book, 141 P.2d 546, 59 Wyo. 423, 167 A.L.R. 352.

17.15 Wyo.—Book v. Book, supra.

17.20 Cal.—Moore v. Thompson, 70 P. 930, 138 C. 23.
Hover v. MacKenzie, 266 P.2d 60, 122 C.A.2d 852—Hansen v. Bernstein, 242 P.2d 368, 110 C.A.2d 170—In re McCarthy's Estate, 73 P.2d 914, 23 C.A.2d 398—Startzman v. Los Banos Cotton Gins, 256 P. 220, 82 C.A. 624, followed in Erreca v. Los Banos Cotton Gins, 274 P. 1041, 96 C.A. 783.

judgments by default is seldom disturbed.[17.50] Where the trial court is vested with discretion with respect thereto, as discussed in Judgments § 337 j (2), its ruling on a motion to open a default or to vacate or set aside a default judgment and permit a trial on the merits will not be disturbed on appeal unless it clearly appears that there has been an abuse of discretion.[18] Also, the trial court's deter-

17.50 Cal.—Bonfilio v. Ganger, 140 P.2d 861, 60 C.A.2d 405.

18. Ala.—Ex parte Smith, 62 So.2d 792, 258 Ala. 319—Ex parte Anderson, 4 So.2d 420, 242 Ala. 31—Garaca v. Lusco, 169 So. 12, 232 Ala. 573—Ex parte Doak, 66 So. 64, 188 Ala. 406.

Marshall County v. Critcher, 17 So.2d 538, 31 Ala.App. 381, reversed on other grounds 17 So.2d 540, 245 Ala. 357.

Ariz.—Marsh v. Riskas, 236 P.2d 746, 73 Ariz. 7—Thomas v. Goettl Bros. Metal Products, Inc., 258 P.2d 816, 76 Ariz. 54—Brown v. Beck, 169 P. 2d 855, 64 Ariz. 299—Swisshelm Gold Silver Co. v. Farwell, 124 P.2d 544, 59 Ariz. 162—Huff v. Flynn, 60 P.2d 931, 48 Ariz. 175—Michener v. Standard Accident Ins. Co., 47 P.2d 438, 46 Ariz. 90—Comision Monetaria v. Sonora Bank & Trust Co., 236 P. 1114, 28 Ariz. 369—Daly v. Okamura, 213 P. 389, 25 Ariz. 50—Central Bank of Willcox v. Willcox-Pima Overland Co., 188 P. 133, 21 Ariz. 314.

Ark.—Johnson v. Jett, 159 S.W.2d 78, 203 Ark. 861.

Cal.—Gudarov v. Hadjieff, 240 P.2d 621, 88 C.2d 412—Kramer v. Superior Court of State, in and for Los Angeles County, 222 P.2d 874, 36 C.2d 159—Nuckolls v. Bank of California, Nat. Ass'n, 74 P.2d 264, 10 C.2d 266, 114 A.L.R. 708—Kalson v. Percival, 20 P.2d 330, 217 C. 568—Rogers v. Schneider, 270 P. 451, 205 C. 202—Gomes v. Bragg, 255 P. 499, 201 C. 70—Waybright v. Anderson, 253 P. 148, 200 C. 374—Gorman v. California Transit Co., 248 P. 923, 199 C. 246—Pickerill v. Strain, 239 P. 323, 196 C. 683—Lynn v. Knob Hill Improvement Co., 169 P. 1009, 177 C. 56—McDonald v. McDonald, 159 P. 426, 173 C. 175.

Luther v. Foster, App., 310 P.2d 655—Gore v. Witt, App., 308 P.2d 770—Yarbrough v. Yarbrough, 301 P.2d 426, 144 C.A.2d 610—Miller v. F. M. W. Drilling Co., 295 P.2d 412, 140 C.A.2d 728—Thompson v. Goubert, 289 P.2d 887, 137 C.A.2d 153—Osborn v. Osborn, 280 P.2d 60, 131 C.A.2d 191—MacKinnis v. McHugh, 276 P.2d 51, 128 C.A.2d 774—Berset v. Berset, 272 P.2d 868, 126 C.A.2d 684—Security Truck Line v. City of Monterey, 256 P.2d 366, 117 C.A.2d 441, rehearing denied 257 P. 2d 755, 117 C.A.2d 441—Colvin v. Sibley, 255 P.2d 16, 117 C.A.2d 144—In re Strobeck's Estate, 245 P.2d 317, 111 C.A.2d 853—Schreiber v. Duncan, 244 P.2d 465, 111 C.A.2d 261—Baratti v. Baratti, 242 P.2d 22, 109 C.A.2d 917—Kester Motors v. Haddad, 240 P.2d 1011, 109 C.A. 2d 369—Lukasik v. Lukasik, 239 P. 2d 497, 108 C.A.2d 609—Reid v. Koeslag, 236 P.2d 192, 106 C.A.2d 729—Bishop v. Babcock, 221 P.2d 733, 99 C.A.2d 232—Cushing v. Cushing, 212 P.2d 54, 94 C.A.2d 950—Mercantile Collection Bureau v. Pinheiro, 191 P.2d 511, 84 C.A.2d 606—De Mattie v. Henry, 189 P.2d 774, 84 C.A.2d 15—Fickeisen v. Peebler, 174 P.2d 883, 77 C.A.2d 148—Pease v. City of San Diego, 169 P.2d 973, 74 C.A.2d 929—Elms v. Elms, 164 P.2d 936, 72 C.A.2d 508—Hadges v. Kouris, 162 P.2d 476, 71 C.A.2d 213—McMahon v. McMahon, 160 P.2d 892, 70 C.A.2d 126—Tearney v. Riddle, 149 P.2d 887, 64 C.A.2d 783—Bonfilio v. Ganger, 140 P.2d 861, 60 C.A.2d 405—Miller v. Superior Court of Colusa County, 130 P.2d 138, 55 C.A.2d 126—In re Moreland's Estate, 121 P. 2d 867, 49 C.A.2d 484—Schoenfeld v. Gerson, 120 P.2d 674, 48 C.A.2d 739—Hicks v. Sanders, 104 P.2d 549, 40 C.A.2d 211—Stub v. Harrison, 96 P.2d 979, 35 C.A.2d 685—Taecker v. Parker, 93 P.2d 197, 34 C.A.2d 143—Morgan v. Brothers of Christian Schools, 92 P.2d 925, 34 C.A.2d 14—Shively v. Kochman, 73 P.2d 637, 23 C.A.2d 420—Hayes v. Pierce, 64 P.2d 728, 18 C.A.2d 531—Bodin v. Webb, 62 P.2d 155, 17 C.A. 2d 422—Wright v. Snyder, 32 P.2d 991, 138 C.A. 495—Zuver v. General Development Co., 28 P.2d 939, 136 C.A. 411—Bole v. McAdams, 28 P.2d 431, 136 C.A. 248—Paul v. Walburn, 26 P.2d 1002, 135 C.A. 364—John A. Vaughan Corporation v. Title Insurance & Trust Co., 12 P.2d 117, 123 C.A. 709—Golish v. Feinstein, 11 P.2d 893, 123 C.A. 547—Endicott v. Southern California Cleaners and Dyers, 6 P.2d 556—U. S. v. Duesdieker, 5 P.2d 916, 118 C.A. 723—Greenamyer v. Board of Trustees of Lugo Elementary School Dist. in Los Angeles County, 2 P.2d 848, 116 C.A. 319—Dunn v. Standard Accident Ins. Co., 299 P. 575, 114 C.A. 208—Johnston v. Liffman, 287 P. 558, 105 C.A. 187—Hammond Lumber Co. v. Bloodgood, 281 P. 1101, 101 C.A. 561—Salsberry v. Julian, 277 P. 516, 98 C.A. 638, Id., 277 P. 518, opinion amended 278 P. 257, 98 C.A. 645—Weck v. Sucher, 274 P. 579, 96 C.A. 422—Anglo California Trust Co. v. Kelly, 272 P. 1080, 95 C.A. 390—Brooks v. Nelson, 272 P. 610, 95 C.A. 144—Carbondale Mach. Co. v. Eyraud, 271 P. 349, 94 C.A. 356—Essig v. Seaman, 264 P. 552, 89 C.A. 295—Noble v. Reid-Avery Co., 264 P. 341, 89 C.A. 75—Weyse v. Biedebach, 261 P. 1096, 86 C.A. 736—Shupe v. Evans, 261 P. 492, 86 C.A. 700—Corgiat v. Realty Mortg. Corporation of California, 260 P. 573, 86 C.A. 87—Cann v. Parker, 258 P. 105, 84 C.A. 379—Brennan v. Weissbaum, 245 P. 1104, 77 C.A. 120—Park v. Hillman, 224 P. 100, 67 C.A. 92—Sather v. Sather, 206 P. 476, 57 C.A. 74—Williams v. Reed, 185 P. 515, 43 C.A. 110—Stone v. McWilliams, 185 P. 478, 43 C.A. 74—Francis v. Tracey, 152 P. 62, 28 C.A. 320—Durbrow v. Chesley, 141 P. 631, 24 C.A. 416.

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Ga.—Hunter v. Gillespie, 63 S.E.2d 404, 207 Ga. 574.

Bradley v. Henderson, 193 S.E. 79, 56 Ga.App. 488—McCray v. Empire Inv. Co., 174 S.E. 219, 48 Ga. App. 841—Carr-Lee Grocery Co. v. Brannen, 167 S.E. 536, 46 Ga.App. 225—Nix v. Bassett, 123 S.E. 37, 32 Ga.App. 345—Putnam v. Coweta Fertilizer Co., 110 S.E. 746, 28 Ga. App. 212—Holmes v. First Nat Bank, 92 S.E. 298, 19 Ga.App. 810—A. W. Tedcastle & Co. v. J. T. Brewer & Co., 91 S.E. 1051, 19 Ga. App. 650—Murphy v. Chipley Home Mixture Guano Co., 91 S.E. 911, 19 Ga.App. 492—Lythgoe v. Carson, 88 S.E. 989, 18 Ga.App. 83—Hall v. Holman, 84 S.E. 174, 15 Ga.App. 659—Irvine v. Grant, 82 S.E. 819, 15 Ga.App. 269.

Idaho.—Johnson v. Noland, 308 P.2d 588—Mead v. Citizen's Auto. Inter-Insurance Exchange, 297 P.2d 1042—Orange Transp. Co. v. Taylor, 230 P.2d 689, 71 Idaho 275—Cleek v. Virginia Gold Mining & Milling Co., 122 P.2d 232, 63 Idaho 445—Nielson v. Garrett, 43 P.2d 380, 55 Idaho 240—Savage v. Stokes, 28 P.2d 900, 54 Idaho 109—Mortgage Co. Holland America v. Yost, 228 P. 282, 39 Idaho 489—Sessions v. Walker, 201 P. 709, 34 Idaho 362—Kynaston v. Thorpe, 158 P. 790, 29 Idaho 302—Nuestel v. Spokane International Ry. Co., 149 P. 462, 27 Idaho 367.

mination as to whether or not grounds for setting | aside a default are sufficiently shown to exist will

Ill.—Borman v. Oetzell, 46 N.E.2d 914, 382 Ill. 110—Farmer v. Fowler, 123 N.E. 550, 288 Ill. 494—Nitsche v. City of Chicago, 117 N.E. 500, 280 Ill. 268.

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Mass.—Kravetz v. Lipofsky, 200 N.E. 865, 294 Mass. 80—Maker v. Bouthier, 136 N.E. 255, 242 Mass. 20.

Mich.—Seifert v. Keating, 73 N.W.2d 894, 344 Mich. 456—Home Life Ins. Co. v. Cohen, 270 N.W. 256, 278 Mich. 169.

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Miss.—Manning v. Lovett, 87 So.2d 494—Southwestern Surety Ins. Co. v. Treadway, 74 So. 143, 113 Miss. 189.

Mo.—Savings Finance Corp. v. Blair, App., 280 S.W.2d 675—Butcher v. White, App., 267 S.W.2d 701—Stieferman v. Stieferman, App., 219 S.W.2d 864—Oliver v. Scott, App., 208 S.W.2d 468—Quattrochi v. Quattrochi, App., 179 S.W.2d 757—Anderson Motor Co. v. Sterling, App., 121 S.W.2d 275, opinion quashed on other grounds State ex rel. Sterling v. Shain, 129 S.W.2d 1048, 344 Mo. 891—Anspach v. Jansen, App., 78 S.W.2d 137—Williams v. Barr, App., 61 S.W.2d 420, transferred 55 S.W.2d 467—Amos James Grocery Co. v. Prichard, App., 297 S.W. 721—Boggess v. Jordan, App., 283 S.W. 57—Case v. Arky, App., 253 S.W. 484—Picher v. Hornaday, App., 202 S.W. 410—Walton v. Hurst, App., 199 S.W. 1043—Munroe v. Dougherty, 190 S.W. 1022, 196 Mo.App. 124.

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Neb.—Roberts v. Roberts, 59 N.W.2d 175, 157 Neb. 163—Benson v. General Implement Corp., 37 N.W.2d 223, 151 Neb. 234—Barney v. Platte Valley Pub. Power & Irrigation Dist., 23 N.W.2d 335, 147 Neb. 375—Lichtenberger v. Worm, 60 N.W. 93, 41 Neb. 856—Sang v. Lee, 31 N.W. 85, 20 Neb. 667.

Nev.—Schultz v. King, 228 P.2d 401, 68 Nev. 207.

N.J.—Etz v. Weinmann, 150 A. 436, 106 N.J.Eq. 209—Avidan v. Kaplan, 150 A. 3, 106 N.J.Eq. 43.

Benedetto v. Fleckenstein, 151 A. 98, 8 N.J.Misc. 590, affirmed 154 A. 769, 108 N.J.Law 184.

N.M.—Bourgeious v. Santa Fe Trail Stages, 95 P.2d 204, 43 N.M. 453—Grant v. Booker, 249 P. 1013, 31 N.M. 639.

N.Y.—Lindemann v. Lindemann, 13 N.Y.S.2d 167, 257 App.Div. 955, appeal dismissed, 22 N.E.2d 871, 281 N.Y. 676—Mead v. Consolidated Metal Spinning & Stamping Co., 204 N.Y.S. 76, 208 App.Div. 814—Rudin v. Hadrian Realty Co., 158 N.Y.S. 97, 173 App.Div. 898.

In re Miller's Will, 295 N.Y.S. 943, 162 Misc. 563, affirmed 300 N.Y.S. 798, 252 App.Div. 872.

N.D.—Moilanen v. Massill, 39 N.W.2d 7, 76 N.D. 694—Beehler v. Schantz, 1 N.W.2d 344, 71 N.D. 409—Beery v. Peterson, 225 N.W. 798, 58 N.D. 273—Mantel v. Pickle, 218 N.W. 605, 56 N.D. 568—Powell v. Bach, 217 N.W. 172, 56 N.D. 297—Mueller v. Occident Elevator Co., 212 N.W. 830, 55 N.D. 206—Foley v. Davis, 211 N.W. 818, 54 N.D. 864—First State Bank of Crosby v. Thomas, 208 N.W. 852, 54 N.D. 108—Croonquist v. Walker, 196 N.W. 108, 50 N.D. 388—Truax v. Alton, 179 N.W. 992, 46 N.D. 548—State Bank of Menagha v. O'Laughlin, 164 N.W. 135, 37 N.D. 532.

Ohio.—Kornick v. Hahn, 11 Ohio App. 388.

Fullerton v. Smythe, 34 Ohio Cir. Ct. 553, 15 Ohio Cir.Ct., N.S., 537.

Okl.—Wade v. Padberg, 283 P.2d 201—Rogers v. Sheppard, 192 P.2d 643, 200 Okl. 203—Mannah v. Robinson, 188 P.2d 360, 199 Okl. 551—Franklin v. Hunt Dry Goods Co., 123 P.2d 258, 190 Okl. 296—Illinois Electric Porcelain Co. v. B. & M. Const. Corp., 117 P.2d 106, 189 Okl. 336—State ex rel. Higgs v. Muskogee Iron Works, 103 P.2d 101, 187 Okl. 419—Woodruff v. Moore, 77 P.2d 62, 182 Okl. 120—Brockman v. Penn Mut. Life Ins. Co., 64 P.2d 1208, 179 Okl. 98—State Life Ins. Co. v. Liddell, 61 P.2d 1075, 178 Okl. 114—Sudik v. Sinclair Oil & Gas Co., 44 P.2d 954, 172 Okl. 334—Leslie v. Spencer, 42 P.2d 119, 170 Okl. 642—Standard v. Fisher, 35 P.2d 878, 169 Okl. 18—Mays v. Board of Com'rs of Creek County, 23 P.2d 664, 164 Okl. 231—Sautbine v. Jones, 18 P.2d 871, 161 Okl. 292—Boles v. MacLaren, 4 P.2d 106, 152 Okl. 265—Wheeler v. Walker, 294

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Or.—Knudson v. Jones, 305 P.2d 1061—King v. Mitchell, 214 P.2d 993, 188 Or. 434, rehearing denied 216 P.2d 269, 188 Or. 434—Merryman v. Colonial Realty Co., 120 P.2d 230, 168 Or. 12—Lester v. Irving Inv. Co., 23 P.2d 327, 143 Or. 655—Anderson v. Morse, 222 P. 1083, 110 Or. 39—Carlson v. Bankers' Discount Corporation, 215 P. 986, 107 Or. 686—Schiffman v. Robison, 195 P. 816, 99 Or. 410—Wallace v. Portland Ry., Light & Power Co., 170 P. 283, 88 Or. 219.

Pa.—Flynn v. Sievers, 132 A.2d 180, 389 Pa. 142—Texas and Block House Fish and Game Club v. Bonnell Run Hunting & Fishing Corp., 130 A.2d 508, 388 Pa. 198—Lened Homes, Inc. v. Department of Licenses and Inspections of City of Philadelphia, 123 A.2d 406, 386 Pa. 50—Morrisville Shopping Center v. Sun Ray Drug Co., 112 A.2d 183, 381 Pa. 576—Kormuth v. U. S. Steel Co., 108 A.2d 907, 379 Pa. 365, certiorari denied 75 S.Ct. 600, 349 U.S. 911, 99 L.Ed. 1246—McCune v. Gross, 105 A.2d 367, 377 Pa. 360—Downes v. Hodin, 104 A.2d 495, 377 Pa. 208—Britton v. Continental Min. & Smelting Corp., 76 A.2d 625, 366 Pa. 82—Glass v. Farmers Nat. Bank of Watsontown, 70 A.2d 356, 364 Pa. 186—Perfect Building & Loan Ass'n v. Mandel, 29 A.2d 484, 345 Pa. 616—Pinsky v. Master, 23 A.2d 727, 343 Pa. 451—Scott v. McEwing, 10 A.2d 436, 337 Pa. 273, 126 A.L.R. 367—Luzerne Nat. Bank v. Gosart, 185 A. 640, 322 Pa. 446—National Finance Corporation v. Bergdoll, 151 A. 12, 300 Pa. 540—Krall v. Lebanon Valley Savings & Loan Ass'n, 121 A. 405, 277 Pa. 440.

Stein v. Greene, 116 A.2d 308, 178 Pa.Super. 464—Colacioppo v. Holcombe, 70 A.2d 452, 166 Pa.Super. 186—Brown & Bigelow v. Borish, 67 A.2d 823, 165 Pa.Super. 308—Oppenheimer v. Shapiro, 60 A.2d 337, 163 Pa.Super. 185—Linker v. Fidelity-Philadelphia Trust Co., 28 A.2d 704, 150 Pa.Super. 440—Horning v. David, 8 A.2d 729, 137 Pa. Super. 252—Dippy v. Emerson C. Custis & Co., 176 A. 551, 116 Pa. Super. 274—Barnes v. Silveus, 173 A. 837, 114 Pa.Super. 214—Sattler v. Beehner, 86 Pa.Super. 499—Public Ledger Co. v. Kleinman, 75 Pa. Super. 345—Bechtel v. Roman Automobile Co., 73 Pa.Super. 177.

R.I.—McLeod v. Fleetwood Motor Sales, 118 A.2d 921—Holmes v. Herrick, 75 A.2d 296, 77 R.I. 330—Vitullo v. Ambrosino, 73 A.2d 764, 77 R.I. 84, 21 A.L.R.2d 861—Vingi v. Vigliotti, 6 A.2d 719, 63 R.I. 9—Hoye v. Red Top Cab Co. of Rhode Island, 150 A. 125—Borden v. Briggs, 142 A. 144, 49 R.I. 207—Nelen v. Wells, 123 A. 599, 45 R.I. 424—Milbury Atlantic Mfg. Co. v. Rocky Point Amusement Co., 118 A. 737, 44 R.I. 458.

S.C.—Pruitte v. Burns, 47 S.E.2d 785, 212 S.C. 325—Jenkins v. Jones, 38 S.E.2d 255, 208 S.C. 421—Savage v. Cannon, 30 S.E.2d 70, 204 S.C. 473—Poston v. State Highway Department, 5 S.E.2d 729, 192 S.C. 137—Baker-Jennings Hardware Co. v. Culp, 90 S.E. 26, 105 S.C. 418—Brown v. Caldwell, 84 S.E. 996, 100 S.C. 421.

S.D.—Hallickson v. Crooks, 274 N.W. 496, 65 S.D. 383—Squires v. Meade County, 239 N.W. 747, 59 S.D. 293—Dietmeier v. Ingber, 221 N.W. 51, 53 S.D. 441—Connelly v. Franklin, 210 N.W. 735, 50 S.D. 512—Johnson v. German, 184 N.W. 232, 44 S.D. 407—McConnell v. Margulies, 165 N.W. 990, 39 S.D. 563—Western Surety Co. v. Boettcher, 156 N.W. 68, 36 S.D. 583.

Tenn.—Boyd v. Merchants Delivery Co., 7 Tenn.App. 416.

Tex.—Traders & General Ins. Co. v. Burton, Civ.App., 272 S.W.2d 166, error refused no reversible error—Sunshine Bus Lines v. Craddock, Civ.App., 112 S.W.2d 248, affirmed Craddock v. Sunshine Bus Lines, 133 S.W.2d 124, 134 Tex. 388—Simpson v. Glenn, Civ.App., 103 S.W.2d 433—McCook v. Amarada Petroleum Corporation, Civ.App., 93 S.W.2d 482, error dismissed—Employer's Reinsurance Corporation v. Brock, Civ.App., 74 S.W.2d 435—Babington v. Gray, Civ.App., 71 S.W.2d 293—Briggs v. Ladd, Civ. App., 64 S.W.2d 389—Farrell v. Truett, Abernathy & Wolford, Civ. App., 60 S.W.2d 475—Homuth v. Williams, Civ.App., 42 S.W.2d 1048—Green v. Jackson, Civ.App., 42 S.W.2d 91—Federal Supply Co. v. Bailey, Civ.App., 297 S.W. 235—Sneed v. Sneed, Civ.App., 296 S. W. 643—Ætna Casualty & Surety Co. v. Austin, Civ.App., 285 S.W. 951, affirmed Austin v. Ætna Casualty & Surety Co., Com.App., 300 S.W. 638, and followed in Ætna Casualty & Surety Co. v. Austin, Civ.App., 285 S.W. 955, affirmed Austin v. Ætna Casualty & Surety Co., Com.App., 300 S.W. 639—Thomas v. Goldberg, Civ.App., 283 S.W. 230—Landers v. City of Austin, Civ.App., 278 S.W. 466—Mutual Oil Consolidated v. Beavers, Civ.App., 272 S.W. 507—Celeste State Bank v. Security Nat. Bank, Civ.App., 254 S.W. 653—Combination Fountain Co. v. Rogers, Civ.App., 186 S.W. 407.

Utah.—Naisbitt v. Herrick, 290 P. 950, 76 Utah 575.

Vt.—Greene v. Riley, 172 A. 633, 106 Vt. 319.

Wash.—Leavitt v. De Young, 263 P. 2d 592, 43 Wash.2d 701—Yeck v. Department of Labor and Industries, 176 P.2d 359, 27 Wash.2d 92—Larson v. Zabroski, 152 P.2d 154, 21 Wash.2d 572, opinion adhered to 155 P.2d 284, 21 Wash.2d 572—Roth v. Nash, 144 P.2d 271, 19 Wash.2d 731—Bishop v. Illman, 126 P.2d 582, 14 Wash.2d 13—Rule v. Somervill, 274 P. 177, 150 Wash. 605—Hurley v. Wilson, 225 P. 441, 129 Wash. 567.

Wis.—Williams v. Miles, 68 N.W.2d 451, 268 Wis. 632—Welfare Building & Loan Ass'n v. Breuer, 250 N.W. 846, 213 Wis. 107, followed in West Side Building & Loan Ass'n v. Breuer, 250 N.W. 850, West Side Building & Loan Ass'n v. Continental Discount Corporation, 250 N.W. 850, East Side Mut. Building & Loan Ass'n v. Thoreson, 250 N.W. 850, West Side Building & Loan Ass'n v. Anderson, 250 N.W. 849, East Side Mut. Building & Loan Ass'n v. Lock, 250 N.W. 849, and Mortgage Discount Co. v. Continental Discount Corporation, 250 N.W. 849—Marshall Field & Co. v. Fishkin, 192 N.W. 463, 180 Wis. 149—Sawicki v. Wulff, 172 N.W. 722, 169 Wis. 377.

4 C.J. p 840 note 33—34 C.J. p 429 note 79.

What constitutes abuse of discretion

An abuse of discretion is not merely an error of judgment, but if, in reaching a conclusion, the law is overridden or misapplied discretion is abused.

Pa.—Brown & Bigelow v. Borish, 67 A.2d 823, 165 Pa.Super. 308—Richey v. Gibboney, 34 A.2d 913, 154 Pa. Super. 1—Adelman v. John McShain, Inc., 24 A.2d 703, 148 Pa. Super. 138.

Decree or order pro confesso

(1) Trial judge's discretionary action with reference to setting aside or opening a decree or order pro confesso will not be set aside unless there is an abuse of discretion or manifest injustice has been done.

Ala.—Kendrick v. Ward, 21 So.2d 676, 246 Ala. 550, 158 A.L.R. 734—Ex parte Jones, 20 So.2d 859, 246 Ala. 433—May v. Dimick, 89 So. 374, 206 Ala. 107.

Fla.—Bongiovanni v. Spoto, 149 So. 10, 110 Fla. 461—Anderson Mill &

usually not be disturbed on appeal if it is supported by the evidence and there is no abuse of discretion.[19]

The discretion of the trial court with reference to opening default judgments is a legal one which will be reviewed and corrected if abused or improperly exercised,[20] or if the action of the court is the result of misconception or error as to the law.[21] An appellate court will generally not disturb the trial court's action in setting aside a default where there is room for doubt as to the sufficiency of the excuse for the default;[21.5] and it is only where there is no

Lumber Co. v. Clements, 134 So. 588, 101 Fla. 523—Smoak v. City of Punta Gorda, 130 So. 419, 100 Fla. 904—Johnson v. Johnson, 107 So. 342, 91 Fla. 275.

Ill.—Vella v. Pour, 68 N.E.2d 631, 329 Ill.App. 355—Bankers Bldg. v. Bishop, 61 N.E.2d 276, 326 Ill.App. 256, certiorari denied 66 S.Ct. 1352, 328 U.S. 859, 90 L.Ed. 1630.

Mich.—Mills v. McLeod, 54 N.W. 387, 94 Mich. 627.

N.J.—Investment Building & Loan Ass'n of Newark v. Athene Holding Co., 28 A.2d 186, 132 N.J.Eq. 309.

Pa.—Poelcher v. Poelcher, 76 A.2d 222, 366 Pa. 3—Stoner v. Sley System, 46 A.2d 172, 353 Pa. 532—Bekelja v. James E. Strates Shows, 37 A.2d 502, 349 Pa. 442—Mitchell v. Mitchell, 12 A.2d 16, 338 Pa. 152—Mitchell v. Mitchell, 5 A.2d 164, 333 Pa. 325—Del Franco v. Perseo, 127 A. 765, 282 Pa. 217.

Philadelphia Gas Heating Co. v. Sanders, Super., 124 A.2d 435—Frigidinners, Inc. v. Branchtown Gun Club, 109 A.2d 202, 176 Pa. Super. 643—Baron v. Bernstein, 106 A.2d 668, 175 Pa.Super. 608—Republic Fuel & Burner Co. v. Girard, 103 A.2d 484, 175 Pa.Super. 110—Land Title Bank & Trust Co. v. Kolker, 49 A.2d 277, 159 Pa.Super. 529—Lloyd v. Jacoby, 39 A.2d 525, 156 Pa.Super. 105—Werner v. Deutsch, 7 A.2d 511, 135 Pa.Super. 519—Babcock Lumber Co. v. Allison, 7 A.2d 374, 136 Pa.Super. 353—Third Nat. Bank & Trust Co. of Scranton v. Tonkin, 5 A.2d 425, 135 Pa.Super. 264—Michaels v. Moritz, 200 A. 176, 131 Pa.Super. 426—Messmer v. McLaughlin, 186 A. 286, 122 Pa.Super. 531.

Tenn.—Columbia Production Credit Ass'n v. Polk, 276 S.W.2d 737, 197 Tenn. 591—Gamble v. Waters, 274 S.W.2d 3, 197 Tenn. 470.

Huffstetter v. Stover, 65 S.W.2d 1096, 16 Tenn.App. 174.

4 C.J. p 840 note 33 [a].

(2) Appellate court, in determining whether trial court abused its discretion in vacating decree pro confesso, is interested in conclusion of trial court and not in process by which that conclusion may have been reached.

Ala.—Ex parte Jones, 20 So.2d 859, 246 Ala. 433.

19. Ariz.—Michener v. Standard Accident Ins. Co., 47 P.2d 438, 46 Ariz. 66.

Cal.—Cushing v. Cushing, 212 P.2d 54, 94 C.A.2d 950.

Idaho.—Atwood v. Northern Pac. Ry. Co., 217 P. 600, 37 Idaho 554.

Ill.—Borman v. Oetzell, 46 N.E.2d 914, 382 Ill. 110.

Iowa.—Standard Oil Co. v. Marvill, 206 N.W. 37, 201 Iowa 614.

Minn.—French v. Boosalis, 188 N.W. 570, 152 Minn. 328.

N.Y.—Yerdon v. Forbes, 108 N.Y.S.2d 27, 279 App.Div. 694.

S.D.—Jones v. Johnson, 222 N.W. 688, 54 S.D. 149.

Tex.—Dempsey v. Gibson, Civ.App., 100 S.W.2d 430.

Vt.—Fitzgerald Land & Lumber Co. v. Prouty & Miller, 98 A. 918, 90 Vt. 363.

Competing considerations considered

In determining whether trial court abused discretion in refusing to strike off default, court must contemplate competing considerations that cases be decided on their merits, that party have his day in court, that rules of practice and procedure be tools in aid of promotion of justice, that litigation be concluded finally and with reasonable dispatch, and that the dilatory shall not be rewarded at the expense of the diligent.

N.H.—Lewellyn v. Follansbee, 47 A. 2d 572, 94 N.H. 111.

Conflicting affidavits

Opening of default will not be reversed on appeal except for clear abuse of discretion where determination of trial court was made on conflicting affidavits.

Minn.—Standard Oil Co. v. King, 55 N.W.2d 710, 238 Minn. 81.

Conflicting evidence

Where the judgment rendered, permitting the opening of a default, is based on conflicting evidence, trial court's discretion will not be controlled unless manifestly abused.

Ga.—Evans v. Dennis, 46 S.E.2d 122, 203 Ga. 232.

Abuse of discretion held not shown by record

Cal.—Consolidated Mortg. Co. v. Roberts, 212 P.2d 28, 94 C.A.2d 895.

20. Ariz.—Evans v. Hallas, 167 P.2d 94, 64 Ariz. 142.

Cal.—Brill v. Fox, 297 P. 25, 211 C. 739—Bailey v. Taaffe, 29 C. 423.

Bernards v. Grey, 218 P.2d 597, 97 C.A.2d 679—Cushing v. Cushing, 212 P.2d 54, 94 C.A.2d 950—Consolidated Mortg. Co. v. Roberts, 212 P.2d 28, 94 C.A.2d 895—Elms v. Elms, 164 P.2d 936, 72 C.A.2d 508—Dunn v. Standard Accident Ins. Co., 299 P. 575, 114 C.A. 208.

Fla.—State Bank of Eau Gallie v. Raymond, 138 So. 40, 103 Fla. 649.

Idaho.—Voellmeck v. Northwestern Mut. Life Ins. Co., 92 P.2d 1076, 60 Idaho 412—Kingsbury v. Brown, 92 P.2d 1053, 60 Idaho 464, 124 A.L.R. 149.

Ill.—McMurray v. Peabody Coal Co., 118 N.E. 29, 281 Ill. 218.

Schmidt v. Stiller, 132 N.E.2d 687, 9 Ill.App.2d 415—Busser v. Noble, 131 N.E.2d 637, 8 Ill.App.2d 268.

Iowa.—Western Fruit & Candy Co. v. McFarland, 179 N.W. 57, 189 Iowa 717.

Neb.—Barney v. Platte Valley Public Power & Irr. Dist., 23 N.W.2d 335, 147 Neb. 375—Ak-Sar-Ben Exposition Co. v. Sorensen, 229 N.W. 13, 119 Neb. 358—Sang v. Lee, 31 N.W. 85, 20 Neb. 667.

N.M.—Ambrose v. Republic Mortg. Co., 34 P.2d 294, 38 N.M. 370.

N.Y.—Allen v. Fink, 207 N.Y.S. 428, 211 App.Div. 411, modified on other grounds 208 N.Y.S. 827, 213 App. Div. 845.

N.C.—Perkins v. Sykes, 63 S.E.2d 133, 233 N.C. 147—Rierson v. York, 42 S.E.2d 902, 227 N.C. 575.

N.D.—In re Tooz' Estate, 37 N.W.2d 493, 76 N.D. 492.

Or.—Snyder v. Consolidated Highway Co., Inc., 72 P.2d 932, 157 Or. 479.

Pa.—Britton v. Continental Min. & Smelting Corp., 76 A.2d 625, 366 Pa. 82—Vallish v. Rapoport, 70 A. 2d 616, 364 Pa. 25.

Tex.—Hubb-Diggs Co. v. Mitchell, Civ.App., 231 S.W. 425.

4 C.J. p 841 note 46.

21. Ala.—Western Union Telegraph Co. v. Laslie, 84 So. 864, 17 Ala. App. 303.

Cal.—Kalson v. Percival, 20 P.2d 330, 217 C. 568.

Thompson v. Goubert, 289 P.2d 887, 137 C.A.2d 153.

Md.—Kushnick v. Lake Drive Building & Loan Ass'n, 139 A. 446, 153 Md. 638.

Pa.—Fuel City Mfg. Co. v. Waynesburg Products Corporation, 112 A. 145, 268 Pa. 441.

Brown & Bigelow v. Borish, 67 A.2d 823, 165 Pa.Super. 308—Richey v. Gibboney, 34 A.2d 913, 154 Pa. Super. 1.

21.5 Cal.—Coleman v. Rankin, 37 C. 247—Bailey v. Taaffe, 29 C. 422.

reasonable basis for his order that the action of the trial judge in setting aside a default judgment will be annulled.[21.10]

Since courts universally favor a trial on the merits, no great abuse of discretion is required to warrant the reversal of an order refusing to set aside a default judgment,[21.15] and a slight abuse is sufficient.[21.20] Such being the policy of the appellate court, if the trial court has exercised its discretion to grant relief from a default judgment, the appellate court is particularly reluctant to interfere and will, before doing so, require a much stronger showing of abused discretion than where an opening of the default has been denied.[22] In the latter case the action of the lower court will be carefully and critically scanned,[23] and the appellate court may find

Fickeisen v. Peebler, 174 P.2d 883, 77 C.A. 148—Bonfilio v. Ganger, 140 P.2d 861, 60 C.A.2d 405—Schoenfeld v. Gerson, 120 P.2d 674, 48 C.A.2d 739.

21.10 Ala.—Ex parte Smith, 62 So. 2d 792, 258 Ala. 319.

21.15 Mont.—Petrol v. Petrol, 259 P. 2d 338, 127 Mont. 184—Waggoner v. Glacier Colony of Hutterites, 258 P.2d 1162, 127 Mont. 140—Nelson v. Lennon, 206 P.2d 556, 122 Mont. 506—Patterson v. Patterson, 179 P. 2d 536, 120 Mont. 127—Davis v. Hubbard, 179 P.2d 533, 120 Mont. 45—Reynolds v. Gladys Belle Oil Co., 243 P. 576, 75 Mont. 332—Brothers v. Brothers, 230 P. 60, 71 Mont. 378.

21.20 Mont.—Nelson v. Lennon, 206 P.2d 556, 122 Mont. 506—Patterson v. Patterson, 179 P.2d 536, 120 Mont. 127—Davis v. Hubbard, 179 P.2d 533, 120 Mont. 45—Madson v. Petrie Tractor & Equipment Co., 77 P.2d 1038, 106 Mont. 382—Reynolds v. Gladys Belle Oil Co., 243 P. 576, 75 Mont. 332.

22. Ariz.—Marsh v. Riskas, 236 P.2d 746, 73 Ariz. 7.

Cal.—Kramer v. Superior Court of State, in and for Los Angeles County, 222 P.2d 874, 36 C.2d 159—Benjamin v. Dalmo Mfg. Co., 190 P.2d 593, 31 C.2d 523—Kalson v. Percival, 20 P.2d 330, 217 C. 568—Gorman v. California Transit, Co., 218 P. 923, 199 C. 246—Los Angeles County v. Lewis, 177 P. 154, 179 C. 398—Jones v. Title Guarantee & Trust Co., 173 P. 586, 178 C. 375—Berri v. Rogero, 145 P. 95, 168 C. 736.

Yarbrough v. Yarbrough, 301 P. 2d 426, 144 C.A.2d 610—Thompson v. Goubert, 289 P.2d 887, 137 C.A.2d 153—Osborn v. Osborn, 280 P.2d 60, 131 C.A.2d 191—MacKinnis v. McHugh, 276 P.2d 51, 128 C.A.2d 774—De Mello v. De Mello, 268 P.2d 26, 124 C.A.2d 135—Hover v. MacKenzie, 266 P.2d 60, 122 C.A.2d 852—Vartanian v. Croll, 256 P.2d 1022, 117 C.A.2d 639—In re Strobeck's Estate, 245 P.2d 317, 111 C.A.2d 853—Kester Motors v. Haddad, 240 P.2d 1011, 109 C.A.2d 369—Reid v. Koeslag, 236 P.2d 192, 106 C.A.2d 729—Garcia v. Garcia, 233 P.2d 23, 105 C. A.2d 289—Karlein v. Karlein, 229 P.2d 831, 103 C.A.2d 496—Bishop v. Babcock, 221 P.2d 733, 99 C.A.2d 232—Bernards v. Grey, 218 P.2d 597, 97 C.A.2d 679—Friedrich v. Roland, 213 P.2d 423, 95 C.A.2d 543—Mercantile Collection Bureau v. Pinheiro, 191 P.2d 511, 84 C.A.2d 606—Armstrong v. Armstrong, 183 P.2d 901, 81 C.A.2d 316, certiorari denied 68 S.Ct. 659, 333 U.S. 842, 92 L.Ed. 1126—Hambrick v. Hambrick, 175 P.2d 269, 77 C.A.2d 372—Hadges v. Kouris, 162 P.2d 476, 71 C.A.2d 213—Hewins v. Walbeck, 141 P.2d 241, 60 C.A.2d 603—Stub v. Harrison, 96 P.2d 979, 35 C.A.2d 685—Morgan v. Brothers of Christian Schools, 92 P.2d 925, 34 C.A. 2d 14—Bodin v. Webb, 62 P.2d 155, 17 C.A.2d 425—Carbondale Mach. Co. v. Eyraud, 271 P. 349, 94 C.A. 356—Nicol v. Davis, 265 P. 867, 90 C.A. 337—Eberhart v. Salazar, 235 P. 86, 71 C.A. 336—Sofuye v. Pieters-Wheeler Seed Co., 216 P. 990, 62 C.A. 198—Alvarado v. Sunset Supper Club, 207 P. 940, 57 C.A. 640—Banse v. Wells, 186 P. 192, 44 C.A. 145—Penryn Land Co. v. Akahori, 173 P. 612, 37 C.A. 14.

Idaho.—Savage v. Stokes, 28 P.2d 900, 54 Idaho 109.

Ind.—Padol v. Home Bank & Trust Co., 27 N.E.2d 917, 108 Ind.App. 401—Falmouth State Bank v. Hayes, 185 N.E. 662, 97 Ind.App. 68—Knotts v. Tuxbury, 117 N.E. 282, 69 Ind.App. 248.

Iowa.—Newell v. Tweed, 40 N.W.2d 20, 241 Iowa 90—Craig v. Welch, 2 N.W.2d 745, 231 Iowa 1009—Allemang v. White, 298 N.W. 658, 230 Iowa 526—Chandler Mill. & Mfg. Co. v. Sinaiko, 208 N.W. 323, 201 Iowa 791.

Mo.—Oliver v. Scott, App., 208 S.W. 2d 468—Hartle v. Hartle, App., 184 S.W.2d 786—Cannon v. Nikles, 151 S.W.2d 472, 235 Mo.App. 1094—Anspach v. Jansen, App., 78 S.W.2d 137—Crown Drug Co. v. Raymond, App., 51 S.W.2d 215—Karst v. Chicago Fraternal Life Ass'n, App., 22 S.W.2d 178.

Mont.—Nelson v. Lennon, 206 P.2d 556, 122 Mont. 506—Davis v. Hubbard, 179 P.2d 533, 120 Mont. 45—Kosonen v. Waara, 285 P. 668, 87 Mont. 24—Pacific Acceptance Corporation v. McCue, 228 P. 761, 71 Mont. 99—Eder v. Bareolos, 207 P. 471, 63 Mont. 363—Beadle v. Harrison, 194 P. 134, 58 Mont. 606.

N.D.—Mollanen v. Massill, 39 N.W. 2d 7, 76 N.D. 694—In re Tooz' Estate, 37 N.W.2d 493, 76 N.D. 492—Citizens' Nat. Bank v. Branden, 126 N.W. 102, 19 N.D. 489, 27 L.R. A.,N.S., 858.

Okl.—Wade v. Padberg, 283 P.2d 201—Lane v. O'Brien, 49 P.2d 171, 173 Okl. 475—Lott v. Kansas Osage Gas Co., 281 P. 297, 139 Okl. 6—Thompson v. Hensley, 261 P. 931, 128 Okl. 139.

Or.—King v. Mitchell, 214 P.2d 993, rehearing denied 216 P.2d 269, 188 Or. 434, 16 A.L.R.2d 1128.

S.D.—Ingalls v. Arbeiter, 36 N.W. 2d 669, 72 S.D. 488.

Tex.—Combination Fountain Co. v. Rogers, Civ.App., 186 S.W. 407.

Wash.—Graham v. Yakima Stock Brokers, 72 P.2d 1041, 192 Wash. 121—Agricultural & Live Stock Credit Corp. v. McKenzie, 289 P. 527, 157 Wash. 597.

Wyo.—Barrett v. Oakley, 278 P. 538, 40 Wyo. 449.

4 C.J. p 840 note 84.

Reasons for rule

"It is the policy of the law that every cause of action should be tried upon its merits; that every party to an action shall have his day in court. Manifestly, therefore appellate courts are more inclined to reverse for a failure to set aside a judgment taken by default or on an ex parte hearing than where such judgment has been set aside and a trial on the merits granted."

Iowa.—First Nat. Bank v. Federal Reserve Bank of Chicago, 231 N.W. 453, 456, 210 Iowa 521, 69 A.L.R. 1329.

23. Cal.—Brill v. Fox, 297 P. 25, 211 C. 739—Waybright v. Anderson, 253 P. 148, 200 C. 374.

Thompson v. Goubert, 289 P.2d 887, 137 C.A.2d 153—Osborn v. Osborn, 280 P.2d 60, 131 C.A.2d 191—MacKinnis v. McHugh, 276 P.2d 51, 128 C.A.2d 774—Kester Motors v. Haddad, 240 P.2d 1011, 109 C.A. 2d 369—Karlein v. Karlein, 229 P. 2d 831, 103 C.A.2d 496—Friedrich v. Roland, 213 P.2d 423, 95 C.A.2d 543—Roehl v. Texas Co., 291 P. 262, 107 C.A. 708.

Iowa.—First Nat. Bank v. Federal Reserve Bank of Chicago, 231 N.W. 453, 210 Iowa 521, 69 A.L.R. 1329.

Mont.—Brothers v. Brothers, 230 P. 60, 71 Mont. 378.

an abuse of discretion where it would not have been found had the default been opened.[24] Notwithstanding this, there must be some showing of an abuse of discretion before a refusal to vacate a default judgment will be interfered with;[25] and, on the other hand, there may be an abuse of discretion in opening a default judgment which will cause the appellate court to reverse.[26]

The rule that courts, on a motion to vacate a default judgment, will incline towards granting relief to a party who has not had his opportunity to present his case is ordinarily applied at the trial court level,[26.5] and an appellate court will not reverse the action of the trial court in refusing to open a default judgment if it appears that all the elements were considered, merely because the trial court could have opened the default.[26.10] In order for an appellate court to overturn the trial court's exercise of its discretion in refusing to vacate a valid default judgment when a full opportunity for a fair hearing was afforded, requirements of public policy demand more than a mere statement that a person did not have his day in court.[26.15]

When a default judgment is opened, the crucial question before the appellate court is whether the action of the lower court constituted an abuse of discretion.[26.20]

Presumptions. In accordance with the rule, discussed supra § 1533, that an appellate court will indulge all reasonable presumptions in favor of the correctness of the judgment, order, or decree from which the appeal was taken, the trial judge is presumed not to have abused his discretion in setting aside a default judgment,[26.25] or a decree pro confesso.[26.30]

Burden of showing abuse. The complaining party ordinarily has the burden of showing that the trial court abused its discretion in opening or refusing to reopen a default judgment.[26.35]

Okl.—First Nat. Bank v. Kerr, 24 P.2d 985, 165 Okl. 16.

24. Mont.—Patterson v. Patterson, 179 P.2d 536, 120 Mont. 127—First Nat. Corporation v. Perrine, 43 P. 2d 1073, 99 Mont. 454—Reynolds v. Gladys Belle Oil Co., 243 P. 576, 75 Mont. 332.

25. Ala.—Brown v. Brown, 105 So. 171, 213 Ala. 339—Eminent Household of Columbian Woodmen v. Lockerd, 80 So. 412, 202 Ala. 330—Robinson v. Newton Grocery Co., 76 So. 854, 200 Ala. 528.

Cal.—Security Truck Line v. City of Monterey, 256 P.2d 366, rehearing denied 257 P.2d 755, 117 C.A.2d 441—Schreiber v. Duncan, 244 P.2d 465, 111 C.A.2d 261—Cushing v. Cushing, 212 P.2d 54, 94 C.A.2d 950—Consolidated Mortg. Co. v. Roberts, 212 P.2d 28, 94 C.A.2d 895—Handy v. Samaha, 290 P. 492, 107 C.A. 565—Nohl v. Del Norte County, 187 P. 761, 45 C.A. 306—Porter v. Bryson, 170 P. 1068, 35 C.A. 688.

Idaho.—Day v. Burnett, 224 P. 427, 38 Idaho 620—Peters v. Walker, 215 P. 845, 37 Idaho 195.

Ill.—Lengvin v. Lengvin, 239 Ill.App. 506.

Iowa.—Lawler v. Roman Catholic Mut. Protective Soc. of Iowa, 197 N.W. 633, 198 Iowa 233.

Me.—Leviston v. Standard Historical Soc., 173 A. 810, 133 Me. 77.

Mich.—McCullough v. McCullough, 153 N.W. 674, 187 Mich. 404.

Mo.—Oliver v. Scott, App., 208 S.W. 2d 468—O'Connell v. Dockery, App., 102 S.W.2d 748—Munroe v. Dougherty, 190 S.W. 1022, 196 Mo.App. 124.

N.J.—Sandford v. Wellborn, 96 A. 1018, 85 N.J.Eq. 577.

N.Y.—Haire v. Van Zorge, 52 N.Y.S. 2d 251, 268 App.Div. 1045—Lindemann v. Lindemann, 13 N.Y.S.2d 167, 257 App.Div. 955, appeal dismissed, 22 N.E.2d 871, 281 N.Y. 676—Kelly v. Eichacker, 293 N.Y.S. 489, 250 App.Div. 733.

N.C.—Allen v. McPherson, 84 S.E. 766, 168 N.C. 435.

N.D.—Madden v. Dunbar, 201 N.W. 991, 52 N.D. 74—Jesse French & Sons Piano Co. v. Getts, 192 N.W. 765, 49 N.D. 577.

Okl.—Hall v. Price, 277 P. 239, 136 Okl. 202—Kennedy v. Martin, 223 P. 652, 101 Okl. 87—Colley v. Sapp, 216 P. 454, 90 Okl. 139—New v. Elliott, 211 P. 1025, 88 Okl. 126.

Pa.—Richey v. Gibboney, 34 A.2d 913, 154 Pa.Super. 1—Horning v. David, 8 A.2d 729, 137 Pa.Super. 252—Yeier v. Scottish Union & National Ins. Co., 63 Pa.Super. 264—Colquhoun v. General Flooring & Mfg. Co., 62 Pa.Super. 85.

S.C.—Savannah Supply Co. v. Ross, 122 S.E. 772, 128 S.C. 298—Drummond v. Edwards, 120 S.E. 366, 126 S.C. 435—Jefferson Milling Co. v. Ellison, 99 S.E. 758, 112 S.C. 41—Gales v. Poe, 93 S.E. 189, 107 S.C. 482.

Tex.—Sneed v. Sneed, Civ.App., 296 S.W. 643—Texas Indemnity Ins. Co. v. Rice, Civ.App., 271 S.W. 134—Anderson v. Adams, Civ.App., 218 S.W. 552—Boyd v. Urrutia, Civ. App., 195 S.W. 341, error refused. Briggs v. State, 222 S.W. 246, 87 Tex.Cr. 473.

Vt.—Philbrick v. Johnson, 100 A. 110, 91 Vt. 270.

Wyo.—Kelly v. Eidam, 231 P. 678, 32 Wyo. 271.

Where record was silent as to why trial court refused to set aside default judgment and did not show that court refused to hear evidence supporting motion, overruling motion to vacate default judgment was not shown to be abuse of discretion.
Ohio.—Harbine v. Davis, App., 57 N.E.2d 421.

26. Cal.—Bailey v. Taaffe, 29 C. 423. Caton v. Caton, 280 P.2d 876, 131 C.A.2d 451—Bernards v. Grey, 218 P.2d 597, 97 C.A.2d 679.

Idaho.—Valley State Bank v. Post Falls Land & Water Co., 161 P. 242, 29 Idaho 587.

Discretion held abused
(1) In general.

Fla.—Lewis v. Jennings, 64 So.2d 275.

(2) Where there was no sufficient showing of mistake, inadvertence, or excusable neglect.

Idaho.—Valley State Bank v. Post Falls Land & Water Co., 161 P. 242, 29 Idaho 587.

26.5 Utah.—Warren v. Dixon Ranch Co., 260 P.2d 741.

26.10 Utah.—Warren v. Dixon Ranch Co., supra.

26.15 Utah.—Warren v. Dixon Ranch Co., supra.

26.20 Pa.—Kuntz v. Lanbar Hotel Co., 110 A.2d 249, 380 Pa. 90—Glass v. Farmers Nat. Bank of Watsontown, 70 A.2d 356, 364 Pa. 186.

26.25 Ala.—Ex parte Smith, 62 So. 2d 792, 258 Ala. 319.

Ohio.—Miller v. Smith, 12 N.E.2d 296, 57 Ohio App. 127.

26.30 Ala.—Ex parte Jones, 20 So. 2d 859, 246 Ala. 433.

26.35 Cal.—Moore v. Thompson, 70 P. 930, 138 C. 23.
Thompson v. Goubert, 289 P.2d 887, 137 C.A.2d 134—Alderman v.

Laches. An appellate court will not disturb the trial court's exercise of its discretion in denying a motion to set aside a default where the complaining party was guilty of laches.[26.40]

b. Particular Applications of Rules

The rules applicable to review of the trial court's exercise of its discretion in ruling on a motion or application to vacate or set aside a default judgment have been applied to motions based on various particular grounds.

The principles stated supra subdivision a of this section are often applied where the motion to set aside the default judgment is based on grounds enumerated by statute, such as mistake, inadvertence, surprise, or excusable neglect,[27] or unavoidable casualty or misfortune.[28]

This is illustrated by cases in which the grounds urged for setting aside the default were misapprehension of counsel for defendant based on a statement made by the latter as to the nature of the action;[29] defendant's forgetting the day appointed for trial because busy on other matters;[30] absence of counsel because engaged in a case in another court,[31] or away on a vacation;[32] failure of the secretary of defendant's attorney to file a motion;[32.5] inadvertent failure of the stenographer of defendant's counsel to file the answer where plaintiff's counsel was notified that a defense would be made;[33]

Jacobs, 274 P.2d 930, 128 C.A.2d 273—Hover v. MacKenzie, 266 P.2d 60, 122 C.A.2d 852—Schreiber v. Duncan, 244 P.2d 465, 111 C.A.2d 261—Baratti v. Baratti, 242 P.2d 22, 109 C.A.2d 917—Kester Motors v. Haddad, 240 P.2d 1011, 109 C.A.2d 369—Proulx v. De Moti, 234 P.2d 1009, 106 C.A.2d 265—Hambrick v. Hambrick, 175 P.2d 269, 77 C.A.2d 372—Bonfilio v. Ganger, 140 P.2d 861, 60 C.A.2d 405—Stub v. Harrison, 96 P.2d 979, 35 C.A.2d 685—In re McCarthy's Estate, 73 P.2d 914, 23 C.A.2d 398—Callaway v. Wolcott, 266 P. 574, 90 C.A. 753—Startzman v. Los Banos Cotton Gins, 256 P. 220, 82 C.A. 624, followed in Erreca v. Los Banos Cotton Gins, 274 P. 1041, 96 C.A. 783. Gilio v. Campbell, 250 P.2d 373, 114 C.A.2d Supp. 853.

26.40 Mich.—Detroit Trust Co. v. Sosensky, 1 N.W.2d 570, 300 Mich. 353.

27. Ariz.—Thomas v. Goettl Bros. Metal Products, Inc., 258 P.2d 816, 76 Ariz. 54—Swisshelm Gold Silver Co. v. Farwell, 124 P.2d 544, 59 Ariz. 162—Lynch v. Arizona Enterprise Mining Co., 179 P. 956, 20 Ariz. 250.

Cal.—Gudarov v. Hadjieff, 240 P.2d 621, 38 C.2d 412—Kramer v. Superior Court of State, in and for Los Angeles County, 222 P.2d 874, 36 C.2d 159—Beard v. Beard, 107 P.2d 385, 16 C.2d 645—McNeil v. Blumenthal, 81 P.2d 566, 11 C.2d 566, followed in Le Duc v. Blumenthal, 81 P.2d 567, 11 C.2d 780—Rogers v. Schneider, 270 P. 451, 205 C. 202—Winchester v. Black, 66 P. 197, 134 C. 125. Brockman v. Wagenbach, App., 313 P.2d 659—Schmitt v. Joe Morton Lumber Co., 290 P.2d 32, 137 C.A.2d 403—Thompson v. Goubert, 289 P.2d 887, 137 C.A.2d 153—Osborn v. Osborn, 280 P.2d 60, 131 C.A.2d 191—Hendrix v. Hendrix, 279 P.2d 58, 130 C.A.2d 379—Lewis v. Witcher, 277 P.2d 60, 129 C.A.2d 421—MacKinnis v. McHugh, 276 P.2d 51, 128 C.A.2d 774—Alderman v. Jacobs, 274 P.2d 930, 128 C.A.2d 273—De Mello v. De Mello, 268 P.2d 26, 124 C.A.2d 135—Daniels v. Pitman, 266 P.2d 820, 123 C.A.2d 345—Warren v. Warren, 261 P.2d 309, 120 C.A.2d 396—Vartanian v. Croll, 256 P.2d 1022, 117 C.A.2d 639—Jones v. Lindsey, 250 P.2d 153, 114 C.A.2d 239—Svistunoff v. Svistunoff, 239 P.2d 650, 108 C.A.2d 638—Proulx v. De Moti, 234 P.2d 1009, 106 C.A.2d 265—Karlein v. Karlein, 229 P.2d 831, 103 C.A.2d 496—Cushing v. Cushing, 212 P.2d 54, 94 C.A.2d 950—Consolidated Mortg. Co. v. Roberts, 212 P.2d 28, 94 C.A.2d 895—Mercantile Collection Bureau v. Pinheiro, 191 P.2d 511, 84 C.A.2d 606—Kromm v. Kromm, 191 P.2d 115, 84 C.A.2d 523—Armstrong v. Armstrong, 183 P.2d 901, 81 C.A.2d 316, certiorari denied 68 S.Ct. 659, 333 U.S. 842, 92 L.Ed. 1126—Hambrick v. Hambrick, 175 P.2d 269, 77 C.A.2d 372—Pease v. City of San Diego, 169 P.2d 973, 74 C.A.2d 929—Elms v. Elms, 164 P.2d 936, 72 C.A.2d 508—Thompson v. Sutton, 122 P.2d 975, 50 C.A.2d 272—In re Moreland's Estate, 121 P.2d 867, 49 C.A.2d 484—Flores v. Smith, 117 P.2d 712, 47 C.A.2d 253—Stub v. Harrison, 96 P.2d 979, 35 C.A.2d 685—Bodin v. Webb, 62 P.2d 155, 17 C.A.2d 425—Endicott v. Southern California Cleaners and Dyers, App., 6 P.2d 556—Cunnison v. Miller, 167 P. 890, 34 C.A. 267.

Colo.—Browning v. Potter, 271 P.2d 418, 129 Colo. 448—Carpenter-Liebhardt Fruit Co. v. Nelson, 234 P. 1067, 77 Colo. 175.

Idaho.—Newman v. Cheesman Automobile Co., 197 P. 826, 33 Idaho 685.

Ind.—Gaddie v. Holloway, App., 140 N.E.2d 766.

Iowa.—Svoboda v. Svoboda, 60 N.W.2d 859, 245 Iowa 111—Newell v. Tweed, 40 N.W.2d 20, 241 Iowa 90—Booth v. Central States Mut. Ins. Ass'n, 15 N.W.2d 893, 235 Iowa 5.

Minn.—McMahon v. Pequot Rural Telephone Co., 242 N.W. 620, 186 Minn. 141—Johnson v. Hallman, 225 N.W. 283, 177 Minn. 619.

Nev.—Schultz v. King, 228 P.2d 401, 68 Nev. 207.

N.J.—Tradesmens Nat. Bank & Trust Co. v. Cummings, 118 A.2d 80, 38 N.J.Super. 1.

N.C.—Perkins v. Sykes, 63 S.E.2d 133, 233 N.C. 147.

N.D.—Lumsden v. Michael, 63 N.W.2d 403—Miller v. Miller, 38 N.W.2d 35, 76 N.D. 558—In re Tooz' Estate, 37 N.W.2d 493, 76 N.D. 492—Chittenden & Eastman Co. v. Sell, 227 N.W. 188, 58 N.D. 664—Farmers' & Merchants' State Bank of Tolna v. Stavn, 194 N.W. 689, 49 N.D. 993.

Or.—Snyder v. Consolidated Highway Co., Inc., 72 P.2d 932, 157 Or. 479.

S.C.—Royal-Liverpool Ins. Group v. McCarthy, 91 S.E.2d 881—Marthers v. Hurst, 86 S.E.2d 581, 226 S.C. 621.

S.D.—Olson v. Advance Rumely Thresher Co., 175 N.W. 192, 42 S.D. 332.

28. Iowa.—Svoboda v. Svoboda, 60 N.W.2d 859, 245 Iowa 111—Newell v. Tweed, 40 N.W.2d 20, 241 Iowa 90—Booth v. Central States Mut. Ins. Ass'n, 15 N.W.2d 893, 235 Iowa 5—Craig v. Welch, 2 N.W.2d 745, 231 Iowa 1009.

Okl.—Mid-West Fruit Co. v. Davis, 231 P. 208, 104 Okl. 254—McAdoo v. Wessner, 206 P. 602, 86 Okl. 85.

Wyo.—Lake v. Lake, 182 P.2d 824, 63 Wyo. 375.

29. Ga.—Tower v. Ellsworth, 37 S.E. 736, 112 Ga. 460.

30. Iowa.—Evans v. Mohn, 7 N.W. 593, 55 Iowa 302.

31. Mo.—Griffin v. Veil, 56 Mo. 310. Sigaloff v. Independent Breweries Co., 128 S.W 523, 148 Mo.App. 452.

32. Pa.—Jaffe v. Cooperman, 80 A. 55, 231 Pa. 237.

32.5 Iowa.—Craig v. Welch, 2 N.W. 2d 745, 231 Iowa 1009.

33. Iowa.—Hawarden First Nat. Bank v. Brown, 77 N.W. 507.

defendant's being misled by the belief that the summons served was in a different suit;[34] failure to receive notice of suit;[35] lack of personal service;[36] defendant's failure to have the original notice translated so that he could understand it because the person serving the notice had led him to believe that the paper was simply a demand for payment;[37] defendant's making a mistake as to his remedy on account of inadvertent statements contained in an opinion of the supreme court in a former stage of the proceedings;[38] noncompliance of plaintiff's attorney with an alleged agreement to give due and timely notice to defendant's counsel of the setting of the case for trial;[39] sickness of defendant[40] or of his attorney;[40.5] other pressing business of defendant's counsel;[40.10] or bias of trial judge against defendant or his counsel.[40.15]

g. Appeal or Other Proceeding for Review

§ 1633. In General

The exercise by the trial court of its discretion as to the allowance and perfecting of appeals or other proceedings for review will not be disturbed on appeal unless there has been a manifest abuse of discretion.

While some latitude must be allowed to the appellate judge in passing on the contents of an appeal record,[40.50] the determination of what should be incorporated in the record on appeal is for the trial court.[40.55] However, the exercise by the trial court of its discretionary powers as to matters pertaining to the allowance and perfecting of appeals or other proceedings for review will not be disturbed by the appellate court in the absence of a manifest abuse of discretion or power.[41] Where an abuse of discretion[42] or an erroneous ruling of law[43] is shown, the appellate court may review and inquire into the actions of the trial court.

Application of the above principle has been made to the rulings of the trial court on an application for leave to appeal after the time therefor has expired, as considered infra § 1640; an application for leave to amend notice to the clerk to prepare papers on appeal;[44] an application for an appeal bond;[45] and the terms and conditions of an appeal bond,[46] its sufficiency,[47] or the amount[47.5] or the amend-

34. Colo.—Green v. Halsted, 238 P. 40, 77 Colo. 578.

35. Idaho.—Crane v. City of Harrison, 200 P. 892, 34 Idaho 167.
4 C.J. p 841 notes 40, 44.

36. Colo.—Perry v. Perry, 219 P. 221, 74 Colo. 106.

37. Iowa.—Sitzer v. Fenzloff, 84 N. W. 514, 112 Iowa 491.

38. Minn.—Schuler v. Wood, 84 N.W. 121, 81 Minn. 372.

39. Colo.—Wallace v. Heitler, 123 P. 954, 52 Colo. 620.
4 C.J. p 441 note 43.

40. Wis.—Rogers v. Fate, 89 N.W. 186, 113 Wis. 364.

40.5 Cal.—Schreiber v. Duncan, 244 P.2d 465, 111 C.A.2d 261.

40.10 Cal.—Schreiber v. Duncan, supra.

40.15 Mo.—Oliver v. Scott, App., 208 S.W.2d 468.

40.50 S.C.—Copeland v. Craig, 8 S.E. 2d 858, 193 S.C. 484.

40.55 Ala.—American Life Ins. Co. v. Anderson, 21 So.2d 791, 246 Ala. 588.

41. Cal.—Dr. Miles California Co. v. Bronstone, 118 P.2d 889, 47 C.A.2d 721—Walker v. Etcheverry, 101 P. 2d 709, 38 C.A.2d 611—Clemmens v. Clemmens, 57 P.2d 529, 13 C.A.2d 651—Hannon v. Goucher, 298 P. 528, 113 C.A. 539—Kammerer v. Marino, 226 P. 980, 66 C.A. 720.
Ill.—Koontz v. Public Service Co. of Northern Ill., 66 N.E.2d 490, 328 Ill.App. 587.
Kan.—Epperson v. Kansas State Department of Inspections and Registration, 78 P.2d 850, 147 Kan. 762.
Me.—Thompson v. American Agr. Chemical Co., 181 A. 829, 134 Me. 61—Inhabitants of Thomaston v. Starrett, 147 A. 427, 128 Me. 328.
Mass.—H. K. Webster Co. v. Mann, 169 N.E. 151, 269 Mass. 381—Taft v. Thomajan, 144 N.E. 228, 249 Mass. 299.
Pa.—Banks v. McClain, 40 A.2d 905, 155 Pa.Super. 512—Huron v. Schomaker, 1 A.2d 537, 132 Pa.Super. 462—Bloch Bros. v. Sol Heller's Sons, 159 A. 203, 104 Pa.Super. 483.
Tenn.—Wattenbarger v. Tullock, 271 S.W.2d 628, 197 Tenn. 279.
State v. Robertson, 5 Tenn.Civ. App. 438.
Utah.—Penman v. Elmco Corporation, 196 P.2d 984, 114 Utah 16.
4 C.J. p 841 note 47—15 C.J. p 1022 note 90 [e].

Reinstatement of appeal
Pa.—In re Kelchner's Estate, 192 A. 666, 326 Pa. 472.

Bill of review in equity
The exercise by trial court of discretion as to whether or not it will permit the filing of a bill of review in equity will not be disturbed on appeal, except for manifest abuse.
Ill.—Anderson v. Anderson, 181 N.E. 693, 349 Ill. 40.
Corcoran v. Williams, 271 Ill. App. 312—Hogg v. Eckhardt, 267 Ill.App. 506.
Md.—Hirons v. Hubbell, 142 A. 380, 153 Md. 697.
Mass.—City of Quincy v. Brooks-Skinner, Inc., 91 N.E.2d 206, 325 Mass. 406—Burt v. Hodsdon, 136 N.E. 108, 242 Mass. 302.
N.M.—Brown v. Mitchell, 119 P.2d 631, 46 N.M. 1.
W.Va.—Francois Coal Co. v. Troll Coal Co., 116 S.E. 151, 93 W.Va. 229.

42. N.D.—Smith v. Hoff, 127 N.W. 1047, 20 N.D. 419.

43. Me.—Dobson v. Chapman, 162 A. 793, 131 Me. 336.

44. Cal.—Kammerer v. Marino, 226 P. 980, 66 C.A. 720.

45. Ind.—Broden v. Thorpe Block Sav., etc., Assoc., 50 N.E. 403, 20 Ind.App. 684.

46. Cal.—Messenkop v. Duffield, 294 P. 715, 211 C. 222.
4 C.J. p 841 note 51.

47. Cal.—Messenkop v. Duffield, supra.
Mo.—State ex rel. Currier v. Falkenhainer, 223 S.W. 100, 283 Mo. 203.
4 C.J. p 841 note 51.

Sufficiency could not be raised in appellate court
La.—Jones v. Pierson, App., 200 So. 338.

47.5 Ohio.—Spencer v. News Pub. Co., App., 69 N.E.2d 232—Horvitz

ment[48] thereof.

Appeal before entry of final decree. Except where a clear and flagrant abuse of the discretion of the trial court appears, an appellate court will not review the exercise by the trial court of its discretion in granting or refusing an appeal before the entry of a final decree.[48.5]

Settlement of case. Ordinarily, the only supervision which may be exercised over a trial judge charged with the duty of settling a case on appeal is to see that it is performed.[48.10]

§ 1634. Making and Filing Bill of Exceptions, Case, or Statement

Unless discretion has been abused, the exercise by the trial court of discretion as to the making and filing of a bill of exceptions, case, or statement of facts will not be disturbed on appeal.

Unless discretion has been abused, the exercise by the trial court of discretion as to matters relating to the making and filing of a bill of exceptions, case, or statement of facts, for appeal or review, will not be disturbed on appeal.[49]

Printing of exhibits. Whether exhibits should be printed at length is a matter to be determined in the first instance by the trial judge.[49.5]

§ 1635. Supersedeas or Stay of Proceedings

Discretionary action of the trial court as to a supersedeas or stay will not be disturbed on appeal unless there has been an abuse of discretion or injustice has resulted.

The exercise by the trial court of its discretion with respect to granting, denying, or vacating a supersedeas or stay,[50] or fixing the terms and conditions of a supersedeas bond,[51] will not be interfered with on appeal unless there has been a manifest abuse of discretion or injustice has resulted.

Stay as continuance. Where the trial court stays all proceedings in the cause pending the disposition of an error, the granting of a stay is in effect a continuance and is to be determined in the discretion of the trial court.[51.5]

b. Costs and Fees

§ 1636. In General

An exercise of discretion by the trial court with respect to costs, allowances, or fees is subject to review and correction only if abuse of discretion is clearly shown.

While the granting of costs is discretionary with the trial court and is at least theoretically reviewable, appellate courts seldom concern themselves with the exercise by the lower court of its discretion in this respect.[51.50] The trial court's exercise of the dis-

v. Sours, 58 N.E.2d 405, 74 Ohio App. 467.

48. Tex.—Wilson v. New Orleans, T. & M. Ry. Co., Civ.App., 298 S.W. 300.

4 C.J. p 841 note 52.

48.5 Tenn.—Moore v. Churchwell, 181 S.W.2d 959, 27 Tenn.App. 443.

Abuse of discretion held not shown

Tenn.—Bower v. Lunney, 178 S.W.2d 91, 27 Tenn.App. 87.

48.10 N.C.—Lindsay v. Brawley, 38 S.E.2d 528, 226 N.C. 468.

49. Cal.—St. George v. Superior Court, 209 P.2d 823, 93 C.A.2d 815—Leeper v. Nielson, 137 P.2d 859, 58 C.A.2d 591—Hohnemann v. Pacific Gas & Electric Co., 88 P.2d 748, 31 C.A.2d 692—Hudgins v. Standard Oil Co. of California, 28 P.2d 433, 136 C.A. 44—Lien v. Morrill, 19 P.2d 1024, 130 C.A. 335—Weyse v. Biedebach, 261 P. 1096, 86 C.A. 728—Derr v. Busick, 218 P. 280, 63 C.A. 134.

N.Y.—Eletto v. Ziperstein, 89 N.Y.S.2d 539, 275 App.Div. 946.

N.D.—Millers' & Traders' State Bank of Minneapolis, Minn. v. National Fire Ins. Co. of Hartford, Conn., 212 N.W. 834, 55 N.D. 149.

Or.—Weinstein v. Wheeler, 257 P. 20, 127 Or. 406.

Tex.—Ziegler v. Hunt, Com.App., 280 S.W. 546.

Payne v. Allen, Civ.App., 78 S.W.2d 1018—American General Ins. Co. v. Nance, Civ.App., 60 S.W.2d 280.

Utah.—Johnson v. Continental Casualty Co., 300 P. 1032, 78 Utah 18.

Wis.—Rhodes v. Shawano Transfer Co., 41 N.W.2d 288, 256 Wis. 291.

4 C.J. p 842 note 55.

Extension of time for filing see infra § 1640.

Right to review refusal to settle bill of exceptions see supra § 890.

Abuse of discretion held not shown

Wash.—State ex rel. Simcoe Sheep Co. v. Superior Court, Yakima County, 98 P.2d 977, 2 Wash.2d 594.

49.5 N.Y.—Albans Holding Corp. v. Blum, 61 N.Y.S.2d 157, 270 App. Div. 897.

50. U.S.—Sommer v. Rotary Lift Co., C.C.A., 58 F.2d 765.

Cal.—Ott v. Gotfried, 103 P.2d 207, 39 C.A.2d 397.

Ga.—Pope v. U. S. Fidelity & Guaranty Co., 20 S.E.2d 13, 193 Ga. 769—Oliver v. Harrison, 191 S.E. 693, 184 Ga. 454.

Ill.—First Nat. Bank of Jonesboro v. Road Dist. No. 8, Union County, 65 N.E.2d 396, 328 Ill.App. 122.

Kan.—Dalton v. Hill, 219 P.2d 710, 169 Kan. 388.

La.—Saint v. Allen, 125 So. 72, 169 La. 265.

Md.—Shirk v. Soper, 124 A. 911, 144 Md. 269—Forbes v. Warfield, 100 A. 630, 130 Md. 397.

N.Y.—Application of Kaminsky, 2 N.Y.S.2d 336, 253 App.Div. 925.

Va.—Barbee v. Murphy, 141 S.E. 237, 149 Va. 406.

4 C.J. p 842 note 56.

51. Cal.—Sparling v. Sparling, 271 P. 548, 94 C.A. 593.

Fla.—Lawson v. Board of Public Instruction, Franklin County, for Use and Benefit of Alford, 154 So. 170, 114 Fla. 153—Carr v. Marion Mortg. Co., 126 So. 776, 99 Fla. 807—Holgate v. Jones, 111 So. 626, 93 Fla. 269.

Wash.—Clemson v. Best, 25 P.2d 1032, 174 Wash. 601.

4 C.J. p 842 note 56 [a].

51.5 Kan.—Dalton v. Hill, 219 P.2d 710, 169 Kan. 388.

51.50 N.Y.—In re Goldberg's Estate, 299 N.Y.S. 364, 164 Misc. 661.

Discretion held not reviewable

N.Y.—April v. April, 6 N.E.2d 43, 272 N.Y. 331, reargument and amendment of remittitur denied 7 N.E.2d 711, 273 N.Y. 598.

cretion with which it may be vested as to the award- | ing or taxation of costs,[52] or as to the limiting, divid-

Jurisdiction lies in court of appeals to pass on question of power of special term to grant an additional allowance of costs.
N.Y.—Metropolitan Sav. Bank v. Tuttle, 55 N.E.2d 852, 293 N.Y. 26.

52. U.S.—Newton v. Consolidated Gas Co. of New York, N.Y., 44 S.Ct. 481, 265 U.S. 78, 68 L.Ed. 909.
Duplate Corporation v. Triplex Safety Glass Co. of North America, C.C.A.Pa., 81 F.2d 352, modified on other grounds 56 S.Ct. 792, 298 U.S. 448, 80 L.Ed. 1274.
Ala.—Grimes v. Warren, 79 So.2d 34, 262 Ala. 427—Martin v. Carroll, 68 So.2d 721, 259 Ala. 670—Sibley v. Hutchison, 118 So. 638, 218 Ala. 440—Moore v. Blackwell, 115 So. 248, 217 Ala. 215.
Ariz.—Jones v. Queen Ins. Co., 262 P.2d 250, 76 Ariz. 212.
Ark.—Schuman v. Mosley, 248 S.W. 2d 103, 220 Ark. 426—Wilson v. Wilson, 204 S.W.2d 479, 211 Ark. 1030—Spencer v. Johns, 21 S.W.2d 961, 180 Ark. 441—Warmack v. Zingg, 16 S.W.2d 17, 179 Ark. 391—McCauley v. Arkansas Rice Growers' Co-op. Ass'n, 287 S.W. 419, 171 Ark. 1155—Ramey-Milburn Co. v. Sevick, 252 S.W. 20, 159 Ark. 358.
Cal.—Owen v. Cohen, 119 P.2d 713, 19 C.2d 147—Moss v. Underwriters' Report, 83 P.2d 503, 12 C.2d 266—Wilder v. Wilder, 7 P.2d 1032, 214 C. 783.
Russek v. Tomark Jet Components, Inc., App., 312 P.2d 737—Hagan v. Flesher, App., 311 P.2d 127—Stenzor v. Leon, 279 P.2d 802, 130 C.A.2d 729—McBride v. McBride, 213 P.2d 9, 95 C.A.2d 329—Von Goerlitz v. Turner, 150 P. 2d 278, 65 C.A.2d 425—In re Bauer's Estate, 138 P.2d 721, 59 C.A. 2d 161—Kallmeyer v. Poore, 125 P.2d 924, 52 C.A.2d 142—Murphy v. F. D. Cornell Co., 294 P. 490, 110 C.A. 452.
Colo.—Nolan v. Lantz Sanitary Laundry Co., 274 P. 931, 85 Colo. 247.
Del.—Consolidated Fisheries Co. v. Consolidated Solubles Co., 112 A.2d 30, reargument denied and opinion supplemented 113 A.2d 576.
Fla.—National Rating Bureau, Inc. v. Florida Power Corp., 94 So.2d 809—Akins v. Bethea, 33 So.2d 638, 160 Fla. 99—Wilhelm v. Adams, 136 So. 397, 102 Fla. 669—Wade v. Murrhee, 78 So. 536, 75 Fla. 494.
Ga.—Hill v. Bush, 57 S.E.2d 670, 206 Ga. 543—Walden v. S. M. Whitney Co., 38 S.E.2d 744, 201 Ga. 65—Jones v. J. S. H. Co., 35 S.E.2d 288, 199 Ga. 755—Rogers v. Taintor, 33 S.E.2d 708, 199 Ga. 192—Georgia Veneer & Package Co. v. Florida Nat. Bank, 32 S.E.2d 465, 198 Ga. 591—Edwards v. United Food Brokers, 26 S.E.2d 348, 196 Ga. 241—Board of Education of Madison County v. Fowler, 14 S.E. 2d 478, 192 Ga. 35—U. S. Fidelity & Guaranty Co. v. Clarke, 8 S.E. 2d 52, 190 Ga. 46—Hicks v. Atlanta Trust Co., 200 S.E. 301, 187 Ga. 314—Coppedge v. Allen, 177 S. E. 704, 179 Ga. 870—Grizzard v. Ford, 146 S.E. 126, 167 Ga. 531—Capital City Tobacco Co. v. Anderson, 75 S.E. 1040, 138 Ga. 667.
Ill.—Davis v. Huguenor, 97 N.E.2d 295, 408 Ill. 468, 23 A.L.R.2d 931—Hockersmith v. Cox, 95 N.E.2d 464, 407 Ill. 321—Cahill v. Cahill, 84 N. E.2d 380, 402 Ill. 416—Fleming v. Dillon, 18 N.E.2d 910, 370 Ill. 325, 120 A.L.R. 1218—Drexel State Bank of Chicago v. O'Donnell, 176 N.E. 348, 344 Ill. 173—Merle v. Beifeld, 114 N.E. 369, 275 Ill. 594.
Firemen's Ins. Co. of Newark, N. J. v. Newell, 135 N.E.2d 116, 10 Ill.App. 371—Sauvage v. Gallaway, 80 N.E.2d 553, 335 Ill.App. 35—St. Boniface Building & Loan Ass'n v. Demopoulos, 24 N.E.2d 171, 302 Ill.App. 614—Atkinson v. McKeogh's Estate, 1 N.E.2d 267, 284 Ill.App. 85. See Van Tieghem v. Sushenka, 254 Ill.App. 409—Schuster v. Elsner, 250 Ill.App. 192—Jentink v. Lake County, 244 Ill. App. 370—Babcock v. Farwell, 199 Ill.App. 512—Soucy v. Rothschild, 199 Ill.App. 251.
Iowa.—Livingston v. Davis, 50 N.W. 2d 592, 243 Iowa 21, 27 A.L.R.2d 1237—McGarry v. Mathis, 282 N.W. 786, 226 Iowa 37—Hart v. Delphey, 190 N.W. 14, 194 Iowa 692.
Ky.—Gabbard v. Truett, 283 S.W.2d 833—Johnson v. Johnson, 273 S. W.2d 558—Maryland Cas. Co. v. Lewis, 124 S.W.2d 48, 276 Ky. 263—Chenault v. Southern Trust Co., 53 S.W.2d 369, 245 Ky. 305.
Me.—Robinson v. Chase, 98 A. 483, 115 Me. 165.
Mass.—Harvard Trust Co. v. Attorney General of U. S., 106 N.E. 2d 269, 329 Mass. 79—Barnes v. City of Springfield, 173 N.E. 925, 273 Mass. 283.
Miss.—United Press Ass'n v. McComb Broadcasting Corp., 28 So.2d 575, 201 Miss. 68, suggestion of error overruled 30 So.2d 511, 201 Miss. 68.
Mo.—Clancy v. Herman C. G. Luyties Realty Co., 10 S.W.2d 914, 321 Mo. 282.
Amitin v. Izard, App., 262 S.W.2d 353—Tracy v. Martin, App., 239 S. W.2d 567, quashed on other grounds 249 S.W.2d 321, 363 Mo. 108—Oldham v. McKay, 138 S.W.2d 735, 235 Mo.App. 348—Griffin v. Arney, App., 12 S.W.2d 95—Rookery Realty Loan, Inv. & Bldg. Co. v. Johnson, App., 251 S.W. 741.
Neb.—Farmers Union Fidelity Ins. Co. v. Farmers Union Co-op. Ins. Co., 26 N.W.2d 122, 147 Neb. 1093—Wilcox v. Halligan, 4 N.W.2d 750, 141 Neb. 643—In re Nielsen's Estate, 280 N.W. 246, 135 Neb. 110.
N.J.—Johnson v. Johnson, 66 A.2d 557, 4 N.J.Super. 172.
Dolan Dining Co. v. Cooks' and Assistants' Union, Local No. 399, A. F. of L., 15 A.2d 453, 128 N.J.Eq. 210.
N.M.—Montgomery v. Karavas, 114 P. 2d 776, 45 N.M. 287.
N.Y.—Metropolitan Sav. Bank v. Tuttle, 55 N.E.2d 852, 293 N.Y. 26—Dudley v. Perkins, 139 N.E. 570, 235 N.Y. 448—Barnes v. Midland Railroad Terminal Co., 112 N.E. 926, 218 N.Y. 91.
Williamson v. Barker, Rose & Clinton Co., 168 N.Y.S. 125, 180 App.Div. 807—Moore v. Le Maire, 154 N.Y.S. 822, 169 App.Div. 154—In re Richmond, 71 N.Y.S. 795, 63 App.Div. 488.
N.C.—Kluttz v. Allison, 199 S.E. 395, 214 N.C. 379.
Ohio.—Friedman v. Cincinnati Local Joint Executive Bd. of Hotel & Restaurant Emp. Intern. Alliance & Bartenders Intern. League of America, 90 N.E.2d 447, 86 Ohio App. 189.
Okl.—Rodesney v. Hall, 307 P.2d 130—Hurst v. Brown, 266 P.2d 438—Bosworth v. Eason Oil Co., 213 P.2d 548, 202 Okl. 359—Midland Savings & Loan Co. v. Carpenter, 40 P.2d 1052, 170 Okl. 539.
Or.—Turner v. McDaniel, 243 P.2d 273, 194 Or. 595—Cockerham v. Fist Nat. Bank, 297 P. 363, 136 Or. 176.
Pa.—Gordon v. Hartford Sterling Co., 38 A.2d 229, 350 Pa. 277—Mead v. Sherwin, 118 A. 731, 275 Pa. 146.
Fitzpatrick v. Fitzpatrick, 124 A. 2d 709, 181 Pa.Super. 581—Fife v. Great Atlantic & Pac. Tea Co., 82 A.2d 271, 169 Pa.Super. 110—Appeal of Rowland, 187 A. 282, 123 Pa.Super. 447—Melown v. Penn Real Estate Co., 183 A. 669, 121 Pa.Super. 209—Miller v. Miller, 179 A. 251, 118 Pa.Super. 45—Home Protective Savings & Loan Ass'n v. McCarter, 68 Pa.Super. 120.
R.I.—Horowitz v. LeLacheure, 101 A. 2d 483, 81 R.I. 235.
S.C.—South Orange Trust Co. v. Conner, 89 S.E.2d 372, 228 S.C. 218—South Carolina Nat. Bank of Charleston v. May, 44 S.E.2d 836, 211 S.C. 290—Ex parte Miller, 5 S.E.2d 865, 192 S.C. 164—Cauthen v. Cauthen, 62 S.E. 319, 81 S.C. 313.
Tenn.—Ezell v. Hake, 198 S.W.2d 809, 184 Tenn. 319—Woodard v. Metropolitan Life Ins. Co., 24 S.W. 2d 888, 160 Tenn. 325—Savage v. Neal, 268 S.W. 375, 151 Tenn. 70.

ing, or apportioning thereof,[53] or the granting of | fees or allowances,[54] or in allowing or refusing an

Black v. Pettigrew, 270 S.W.2d 196, 38 Tenn.App. 1—Young v. Jones, 255 S.W.2d 703, 36 Tenn. App. 333—Branstetter v. Poynter, 222 S.W.2d 214, 32 Tenn.App. 189—Walsh v. Rose, 193 S.W.2d 118, 29 Tenn.App. 78—American Bank & Trust Co. v. Lebanon Bank & Trust Co., 192 S.W.2d 245, 28 Tenn.App. 618—Hawkins v. Spicer, 101 S.W. 2d 151, 20 Tenn.App. 528—Smith v. Blount, 66 S.W.2d 1011, 17 Tenn. App. 229—Harkins v. Wells, 13 Tenn.App. 299—Conatser v. Reagan, 7 Tenn.App. 450—Crosby Milling Co. v. Grant, 7 Tenn.App. 162—Griffiths v. Ogle, 6 Tenn.App. 695—Hughes v. Herrin, 6 Tenn.App. 604—Lewis v. Koehn, 5 Tenn.App. 530.

Tex.—J. I. Case Threshing Mach. Co. v. Manes, Com.App., 254 S.W. 929. Paschall v. Renshaw, Civ.App., 142 S.W.2d 717—Hays v. Spangenberg, Civ.App., 94 S.W.2d 899—McGrady v. Clary, Civ.App., 247 S. W. 1099—Hines v. Meador, Civ. App., 193 S.W. 1111, error refused.

Utah.—Hirsh v. Ogden Furniture & Carpet Co., 172 P. 318, 51 Utah 558—Smith v. Gilbert, 164 P. 1026, 49 Utah 510.

Va.—City of Richmond v. Henrico County, 41 S.E.2d 35, 185 Va. 859—Gilmer v. Fleenor, 144 S.E. 458, 151 Va. 117—Goins v. Garber, 108 S.E. 868, 131 Va. 59.

Wash.—Sibbald v. Chehalis Savings & Loan Ass'n, 107 P.2d 333, 6 Wash. 2d 203—Hirsch v. Consolidated Films Corporation, 236 P. 279, 134 Wash. 682—Cannon Hill Co. v. Moore, 170 P. 551, 100 Wash. 247.

W.Va.—Turner v. Theiss, 38 S.E.2d 369, 129 W.Va. 23—Burdette v. Campbell, 30 S.E.2d 713, 126 W.Va. 591—Sims v. Homeseeker Fire Ins. Co., 199 S.E. 69, 120 W.Va. 459—Davis v. Bsharah, 163 S.E. 19, 111 W.Va. 500—Hannah v. Wilson Lumber Co., 114 S.E. 506, 92 W.Va. 104—Coffman v. Viquesney, 84 S.E. 1069, 76 W.Va. 84.

Wis.—Spengler v. Hahn, 70 N.W. 466, 95 Wis. 472.

4 C.J. p 842 note 58—6 C.J. p 372 note 16 [c]—15 C.J. p 27 note 75, p 34 note 48.

Discretion of trial court in awarding costs in equity suit see Costs § 10.

"An 'improper' exercise of discretion appears when the record, after indulging all fair intendments in favor of the ruling, discloses the taxation of costs was unjust and unfair."

Ala.—Lucas v. Lucas, 64 So.2d 70, 74, 258 Ala. 515—Dozier v. Payne, 14 So.2d 376, 377, 244 Ala. 476.

More favorable character of judgment offered by defendant

Where, by reason of statute, an offer of judgment by defendant will prevent the recovery of costs unless the judgment recovered is more favorable than that offered, the trial court's discretionary determination of whether the judgment recovered is more favorable than that offered will not be disturbed in the absence of abuse.

Nev.—Herring-Hall-Marvin Safe Co. v. Balliet, 190 P. 76, 44 Nev. 94.

Stay of proceedings until payment of costs

The trial court's discretion as to whether the case shall proceed to trial before plaintiff has paid costs assessed against him will not be reviewed unless clearly abused.

Fla.—State ex rel. Larkin v. Bird, 199 So. 758, 145 Fla. 477.

Ind.—Kokomo, F. & W. Traction Co. v. Kokomo Trust Co., 137 N.E. 763, 193 Ind. 219—Lake Agricultural Co. v. Brown, 114 N.E. 755, 186 Ind. 30.

Md.—Zalis v. Walter, 28 A.2d 849, 181 Md. 662—Brinsfield v. Howeth, 68 A. 566, 107 Md. 278.

Mo.—Osborne v. Wells, 249 S.W. 705, 213 Mo.App. 319.

Ohio.—State v. Manton, 11 Ohio App. 364.

Abuse of discretion held not shown

Ala.—Thompson v. Bryant, 38 So.2d 590, 251 Ala. 566.

Cal.—Erskine v. Upham, 132 P.2d 219, 56 C.A.2d 235.

Ga.—Biggers v. Noland, 166 S.E. 645, 175 Ga. 874.

Mass.—Cohen v. Levy, 117 N.E. 637, 228 Mass. 383.

Or.—Keller v. Gibson Packing Co., 257 P.2d 621, 198 Or. 510.

Tenn.—Abernathy v. Adams, 218 S. W.2d 747, 31 Tenn.App. 559—Greene County Union Bank v. Miller, 75 S.W.2d 49, 18 Tenn.App. 239.

Utah.—Decorso v. Thomas, 50 P.2d 951, 89 Utah 160, rehearing denied 57 P.2d 1406, 89 Utah 179—Salisbury v. Rockport Irr. Co., 7 P.2d 291, 79 Utah 398.

Wash.—Barnett v. Cobb, 250 P. 57, 140 Wash. 538.

Wis.—Dougan v. H. J. Grell Co., 182 N.W. 350, 174 Wis. 17.

53. Ala.—Winkles v. Powell, 55 So. 536, 173 Ala. 46.

Ark.—Driver v. J. T. Fargason Co., 295 S.W. 35, 174 Ark. 114.

Cal.—Baldwin v. Baldwin, 187 P.2d 429, 82 C.A.2d 851.

Del.—Meade v. Pacific Gamble Robinson Co., 58 A.2d 415, 30 Del.Ch. 509.

Fla.—Akins v. Bethea, 33 So.2d 638, 160 Fla. 99.

Ga.—Giles v. Peachtree Pantries, 74 S.E.2d 545, 209 Ga. 536—Jones v. J. S. H. Co., 40 S.E.2d 752, 201 Ga. 611—Hicks v. Atlanta Trust Co., 200 S.E. 301, 187 Ga. 314—Wofford Oil Co. v. City of Atlanta, 188 S.E. 691, 183 Ga. 492.

Iowa.—Shaw v. Binder, 198 N.W. 492.

Miss.—Butler Mercantile Co. v. Cruise, 166 So. 325, 175 Miss. 200.

Mo.—Godwin v. Graham, 228 S.W.2d 789, 360 Mo. 418—Mechanics' American Nat. Bank of St. Louis v. Rowell, 182 S.W. 989.

Ohio.—Brown v. Bray, 16 Ohio Cir. Ct.,N.S., 165.

Okl.—Le Compte v. Jones, 275 P. 634, 136 Okl. 1.

4 C.J. p 842 note 60.

54. U.S.—Newton v. Consolidated Gas Co. of New York, N.Y., 42 S. Ct. 438, 259 U.S. 101, 66 L.Ed. 844.

Cal.—Puppo v. Larosa, 230 P. 440, 194 C. 721—In re Duffill's Estate, 206 P. 42, 188 C. 536.

People v. Thompson, 43 P.2d 606, 5 C.A.2d 668.

Fla.—W. & W. Corporation v. Feit, 134 So. 57, 101 Fla. 1091.

Mass.—Harvard Trust Co. v. Attorney General of U. S., 106 N.E.2d 269, 329 Mass. 79.

Mich.—Reichert v. Metropolitan Trust Co., 253 N.W. 313, 266 Mich. 322.

Mo.—Hoffman v. Mechanics-American Nat. Bank of St. Louis, App., 287 S.W. 874.

Mont.—Peterson v. Fugle, 31 P.2d 1030, 96 Mont. 537.

N.Y.—Metropolitan Sav. Bank v. Tuttle, 55 N.E.2d 852, 293 N.Y. 26—Dudley v. Perkins, 139 N.E. 570, 235 N.Y. 448—MacDonnell v. Buffalo Loan, Trust & Safe Deposit Co., 85 S.E. 801, 193 N.Y. 92.

Moore v. Le Maire, 154 N.Y.S. 822, 169 App.Div. 154.

Tenn.—Morton v. Hancock County, 30 S.W.2d 250, 161 Tenn. 324.

Wash.—In re Peterson's Estate, 123 P.2d 733, 12 Wash.2d 686.

4 C.J. p 842 notes 58, 59.

Review of discretionary orders with respect to support and counsel fees in actions for separate maintenance see Husband and Wife § 628 a (2).

Rule applied to fees allowed to:

(1) Appraiser.

Cal.—Zeibak v. Nasser, 82 P.2d 375, 12 C.2d 1.

(2) Attorneys.

Ala.—Ingalls v. Hare, 96 So.2d 266—Mims v. Alabama Power Co., 77 So. 2d 648, 262 Ala. 121—King v. Keith, 60 So.2d 47, 257 Ala. 463—Broughton v. Nance, 14 So.2d 505, 244 Ala. 499—Latimer v. Milford, 1 So.2d 649, 241 Ala. 147—Matthews v. Lytle, 124 So. 197, 220 Ala. 78.

Ariz.—Jones v. Queen Ins. Co., 262 P.2d 250, 76 Ariz. 212.

Ark.—Douglas v. Jones, 179 S.W.2d 181, 207 Ark. 62.

Cal.—Warner v. Warner, 215 P.2d 20, 34 C.2d 838—Hedden v. Waldeck, 72 P.2d 114, 9 C.2d 631—Wilder v. Wilder, 7 P.2d 1032, 214 C. 783—In re Duffill's Estate, 206 P. 42, 188 C. 536—Baker v. Ellers' Music Co., 166 P. 1006, 175 C. 652.

Hicks v. Whelan Drug Co., 280 P.2d 104, 131 C.A.2d 110—In re Vokal's Estate, 263 P.2d 64, 121 C.A.2d 252—Hardy v. Hardy, 255 P.2d 85, 117 C.A.2d 86—Smith v. Smith, 251 P.2d 720, 115 C.A.2d 92—Kopasz v. Kopasz, 237 P.2d 284, 107 C.A.2d 308—Larsen v. Larsen, 226 P.2d 650, 101 C.A.2d 862—McBride v. McBride, 213 P.2d 9, 95 C.A.2d 329—Mann v. Mann, 172 P. 2d 369, 76 C.A.2d 32—Biaggi v. Sawyer, 170 P.2d 678, 75 C.A.2d 105—Crocker v. Crocker First Nat. Bank of San Francisco, 141 P.2d 482, 60 C.A.2d 725—Mayock v. Splane, 132 P.2d 827, 56 C.A.2d 563—Sattinger v. Golden State Glass Corp., 127 P.2d 653, 53 C.A.2d 130—Palm Springs-La Quinta Development Co. v. Kieberk Corp., 115 P.2d 548, 46 C.A.2d 234—Bank of America Nat. Trust & Savings Ass'n v. West End Chemical Co., 100 P.2d 318, 37 C.A.2d 685—Benjamin Moore & Co. v. O'Grady, 50 P.2d 847, 9 C.A.2d 695—People v. Thompson, 43 P.2d 606, 5 C.A.2d 668—City of Los Angeles v. Los Angeles-Invo Farms Co., 25 P.2d 224, 134 C.A. 268—Bongiovanni v. Fickett, 10 P.2d 539, 122 C.A. 538—Deberry v. Cavalier, 297 P. 611, 113 C.A. 30—Dozier v. Hillman, 287 P. 116, 105 C.A. 127—Johnston v. Murphy, 172 P. 616, 36 C.A. 469.

Conn.—Hotchkiss v. Hotchkiss, 123 A.2d 174, 143 Conn. 443.

Fla.—Esch v. Forster, 168 So. 229, 123 Fla. 905—Stadler v. Miami Bank & Trust Co., 132 So. 648, 100 Fla. 1658—National Union Fire Ins. Co. of Pittsburg, Pa. v. Cone, 85 So. 913, 80 Fla. 265.

Hawaii.—In re Guardianship of Crowell, 27 Hawaii 439.

Ill.—Goldstein v. Handley, 60 N.E. 2d 851, 390 Ill. 118—Norton v. Jordan, 196 N.E. 475, 360 Ill. 419.

Chicago Title & Trust Co. v. American Trust & Safe Deposit Co., 2 N.E.2d 576, 284 Ill.App. 647.

Ind.—Dunn v. Deitschel, 169 N.E. 529, 204 Ind. 269.

Iowa.—Smith v. Scobee, 42 N.W.2d 589, 241 Iowa 723.

Ky.—Whaley v. Whaley, 158 S.W.2d 416, 289 Ky. 241.

La.—Hillard v. Hillard, 73 So.2d 442, 225 La. 507—Hardy v. Commercial Standard Ins. Co., 134 So. 407, 172 La. 500—Duplantis v. Barrow, 116 So. 568, 165 La. 1091.

Lang v. Jersey Gold Creameries, App., 172 So. 389.

Md.—Danziger v. Danziger, 118 A.2d 653, 208 Md. 469—Plakatoris v. Bainder, 103 A.2d 839, 204 Md. 223.

Mass.—Carlson v. Revere Beach County Fair & Musical Ry. Co., 116 N.E. 409, 227 Mass. 291.

Mich.—Hughes v. Dungy, 63 N.W.2d 422, 339 Mich. 348—Reichert v. Metropolitan Trust Co., 253 N.W. 313, 266 Mich. 322—Horvath v. Vasvary, 224 N.W. 365, 246 Mich. 231.

Minn.—Proctor & Gamble Distributing Co. v. Valet Dry Cleaners & Launderers, 213 N.W. 550, 171 Minn. 113.

Miss.—Fidelity & Deposit Co. of Maryland v. Wilkinson County, 69 So. 865, 109 Miss. 879.

Mo.—Flynn v. First Nat. Safe Deposit Co., 284 S.W.2d 593.

State ex rel. Gnekow v. U. S. Fidelity & Guaranty Co., App., 150 S.W.2d 581.

Mont.—Luebben v. Metlen, 100 P.2d 935, 110 Mont. 350—Heater v. Boston Montana Corporation, 244 P. 501, 75 Mont. 532.

Neb.—Mabry v. Mudd, 272 N.W. 574, 132 Neb. 610—In re Bliss, 243 N. W. 877, 123 Neb. 620.

Nev.—Peccole v. Luce & Goodfellow, 212 P.2d 718, 66 Nev. 360.

N.J.—Farley v. Manning, 73 A.2d 551, 4 N.J. 571—Morrissey v. Morrissey, 64 A.2d 209, 1 N.J. 448, 12 A. L.R.2d 378.

In re Bloomer's Estate, 129 A. 2d 35, 43 N.J.Super. 414—Long v. Mertz, 91 A.2d 341, 21 N.J.Super. 401—Johnson v. Johnson, 66 A.2d 557, 4 N.J.Super. 172.

Grossman v. Grossman, 61 A.2d 152, 142 N.J.Eq. 714—Dolan Dining Co. v. Cooks' and Assistants' Union, Local No. 399, A. F. of L., 15 A.2d 453, 128 N.J.Eq. 210—Lane v. Rushmore, 11 A.2d 91, 127 N.J.Eq. 23—Barr v. Borough of Belmar, 179 A. 31, 118 N.J.Eq. 279—Grunstra v. New-Ark Petroleum Corporation, 162 A. 746, 111 N.J.Eq. 451.

N.M.—Elsea v. Broome Furniture Co., 143 P.2d 572, 47 N.M. 356—Montgomery v. Karavas, 114 P.2d 776, 45 N.M. 287—Hobbs v. Morrison Supply Co., 73 P.2d 325, 41 N.M. 644.

N.C.—Fogartie v. Fogartie, 72 S.E.2d 226, 236 N.C. 188—Cunningham v. Cunningham, 65 S.E.2d 375, 234 N. C. 1—Eggleston v. Eggleston, 47 S.E.2d 243, 228 N.C. 668—Oldham v. Oldham, 35 S.E.2d 332, 225 N.C. 476—Hood ex rel. North Carolina Bank & Trust Co. v. Cheshire, 189 S.E. 189, 211 N.C. 103.

Ohio.—Foureman v. Foureman, 80 N. E.2d 266, 82 Ohio App. 380—Hudson v. Hoster, App., 47 N.E.2d 895—Fifth-Third Union Trust Co. v. Davis, 10 N.E.2d 4, 55 Ohio App. 377.

Okl.—Murray v. Eagle, 300 P.2d 652—Miller v. Burkett, 130 P.2d 996, 191 Okl. 521.

Or.—Taylor v. Taylor, 140 P. 999, 70 Or. 510.

Pa.—Springfield Tp. v. Indemnity Ins. Co. of America, 64 A.2d 761, 361 Pa. 461—In re Ward's Estate, 38 A.2d 50, 350 Pa. 144—In re Davidson's Estate, 6 A.2d 73, 334 Pa. 389—In re Rambo's Estate, 193 A. 1, 327 Pa. 258.

Fitzpatrick v. Fitzpatrick, 124 A. 2d 709, 181 Pa.Super. 581—In re Barth's Estate, 84 A.2d 256, 170 Pa.Super. 163—In re Jones' Estate, 60 A.2d 366, 163 Pa.Super. 129—In re Breen's Estate, 27 A.2d 459, 149 Pa.Super. 319—Miller v. Kennedy, 200 A. 173, 131 Pa.Super. 543.

R.I.—Horowitz v. LeLacheure, 101 A.2d 483, 81 R.I. 235—Gartner v. Gartner, 89 A.2d 368, 79 R.I. 399.

S.C.—Watson v. Little, 93 S.E.2d 645, 229 S.C. 486.

Tenn.—Vanhooser v. Cunningham, 146 S.W.2d 840, 24 Tenn.App. 480—Riley v. Riley, 9 Tenn.App. 643.

Tex.—Murray v. Bankers Life Co., Civ.App., 299 S.W.2d 730, error refused—Murray v. Powell, Civ.App., 153 S.W.2d 347—Hirsch v. Dearing, Civ.App., 151 S.W.2d 949—American Nat. Ins. Co. v. Points, Civ. App., 131 S.W.2d 983, error dismissed, judgment correct—Baber v. Galbraith, Civ.App., 186 S.W. 345, error refused.

Utah.—In re Smith's Estate, 162 P. 2d 105, 108 Utah 537.

Wash.—Daloia v. Boyd, 133 P.2d 950, 16 Wash.2d 439—Tucker v. Mehlhorn, 248 P. 376, 140 Wash. 283—In re Geissler's Estate, 187 P. 711, 110 Wash. 14.

W.Va.—Sims v. Homeseeker Fire Ins. Co., 199 S.E. 69, 120 W.Va. 459—Stannard Supply Co. v. Delmar Coal Co., 174 S.E. 319, 114 W. Va. 465.

4 C.J. p 842 note 58 [a] (1)—15 C.J. p 117 note 24.

(3) Auditors.

Ga.—Jones v. J. S. H. Co., 40 S.E. 2d 752, 201 Ga. 611—Hicks v. Atlanta Trust Co., 200 S.E. 301, 187 Ga. 314—Loveless v. McCollum, 196 S.E. 428, 185 Ga. 751—Fitzpatrick v. McGregor, 65 S.E. 859, 133 Ga. 332, 25 L.R.A.,N.S., 50.

Tex.—McGrew v. Britton, Civ.App., 206 S.W.2d 836, error refused no reversible error.

(4) Expert witnesses.

Del.—Consolidated Fisheries Co. v. Consolidated Solubles Co., 112 A. 2d 30, reargument denied and opinion supplemented 113 A.2d 576.

La.—Hare v. New Amsterdam Cas. Co., App., 1 So.2d 439—Payne v. Prestridge, 183 So. 512, 16 La.App. 479.

Minn.—Senneka v. Bickle, 271 N.W. 813, 199 Minn. 345.

(5) Guardians ad litem.

Ala.—Lucas v. Lucas, 64 So.2d 70, 258 Ala. 515.

appeal on a pauper's affidavit without the payment of costs,[54.5] will not be interfered with on appeal unless an abuse of discretion is clearly shown.

On a showing of such abuse, the action of the lower court is subject to review and correction by the appellate court;[55] and the taxation of costs in equity may be varied on appeal as the justice of the case may require.[55.5] If the trial court's action is not the result of an exercise of discretion, but is due to mistake or error of law,[56] or violation of some principle of law,[56.5] it is subject to reversal. An appellate court will not set aside an award of attorney's fees made by the trial court merely because the reviewing court would have allowed more or less than the trial court awarded.[56.10]

Matter of law. Except on an abuse of discretion by the trial judge, the question whether counsel fees should be allowed does not become a matter of law for the determination of an appellate court.[56.15]

§ 1637. Security for Costs

Unless an abuse of discretion is shown, an appellate court will not disturb the exercise by the trial court of its discretion as to security for costs.

In the absence of an abuse of discretion, an appellate court will not interfere with the exercise by the trial court of its discretionary power to determine whether plaintiff should be required to give security,[57] or additional security,[58] for costs; the

Ill.—Alford v. Bennett, 117 N.E. 89, 279 Ill. 375.

Tex.—Texas Employers' Ins. Ass'n v. Storey, Civ.App., 7 S.W.2d 913, affirmed, Com.App., 17 S.W.2d 458.

(6) Master in partition.

Pa.—Miller v. Kennedy, 200 A. 173, 131 Pa.Super. 543.

(7) Receivers.

Md.—Great Nat. Ins. Co. of Washington, D. C. v. Empire Fire Ins. Co., 170 A. 165, 165 Md. 510.

N.C.—Hood ex rel. North Carolina Bank & Trust Co. v. Cheshire, 189 S.E. 189, 211 N.C. 103.

(8) Trustee of trust indenture.

Ill.—Kudela v. Northwestern Securities Co., 43 N.E.2d 192, 315 Ill.App. 492.

Excessive allowance of fees will be reversed.

Fla.—R. E. L. McCaskill Co. v. Dekle, 102 So. 252, 88 Fla. 285.

54.5 La.—Howard v. Western Auto Supply Co., App., 192 So. 137—Singleton v. First Nat. Life Ins. Co., App., 157 So. 620—Nemarich v. Star Checker Cab Co., App., 150 So. 862.

Tex.—McAfee v. Shirley, Civ.App., 140 S.W.2d 932—Huff v. Reid, Civ. App., 109 S.W.2d 212, error dismissed—Heard v. Pearman, Civ. App., 275 S.W. 271.

55. Ala.—Martin v. Carroll, 68 So. 2d 721, 259 Ala. 670—Dozier v. Payne, 14 So.2d 376, 244 Ala. 476—Sibley v. Hutchison, 118 So. 638, 218 Ala. 440—Porter v. Henderson, 86 So. 531, 204 Ala. 564—Wootten v. Vaughn, 81 So. 660, 202 Ala. 684—Manning v. Carter, 77 So. 744, 201 Ala. 218.

Ark.—Jones v. Adkins, 280 S.W. 389, 170 Ark. 298—Penix v. Pumphrey, 188 S.W. 816, 125 Ark. 332.

Cal.—Tayian v. Yeretzian, 208 P. 985, 58 C.A. 466.

Ill.—Firemen's Ins. Co. of Newark, N. J. v. Newell, 135 N.E.2d 116, 10 Ill.App.2d 371.

La.—Sessum v. Hemperley, App., 83 So.2d 546.

Md.—Spencer v. McMullen, 81 A.2d 237, 198 Md. 90—Sullivan v. Doyle, 67 A.2d 246, 193 Md. 421.

Miss.—Canton v. Ross, 128 So. 560, 157 Miss. 788.

Mo.—Bush v. Norman, 226 S.W. 1028, 205 Mo.App. 674.

Neb.—Mabry v. Mudd, 272 N.W. 574, 132 Neb. 610.

N.Y.—In re Watson's Will, 267 N.Y. S. 373, 149 Misc. 235, reversed on other grounds 271 N.Y.S. 329, 241 App.Div. 842, affirmed In re U. S. Trust Co. of New York, 191 N.E. 632, 264 N.Y. 697.

N.C.—Hood ex rel. North Carolina Bank & Trust Co. v. Cheshire, 189 S.E. 189, 211 N.C. 103.

Okl.—Murray v. Eagle, 300 P.2d 652.

Tenn.—Snapp v. Purcell, 13 Lea 693.

Young v. Jones, 255 S.W.2d 703, 36 Tenn.App. 333—McDowell v. Rees, 122 S.W.2d 839, 22 Tenn.App. 336.

Tex.—J. I. Case Threshing Mach. Co. v. Manes, Com.App., 254 S.W. 929.

Wis.—Spengler v. Hahn, 70 N.W. 466, 95 Wis. 472.

"The result, in an assessment of costs wherein the general rule is departed from, when examined in the light of all the circumstances, must embody some justification in equity and good conscience, otherwise there is a manifest abuse of discretion which warrants the intervention of an appellate court."

Mo.—Oldham v. McKay, 138 S.W.2d 735, 739, 235 Mo.App. 348.

Question of alleged excessiveness of service charge allowed master in chancery and amount allowed plaintiff for expenses of his stenographer was proper one for consideration by appellate court.

Ill.—Soft-Lite Lens Co. v. Ritholz, 21 N.E.2d 835, 301 Ill.App. 100.

55.5 Ala.—Plateau Community Ass'n v. Green, 10 So.2d 860, 243 Ala. 531—Manning v. Carter, 77 So. 744, 201 Ala. 218—Hunt v. Lewin, 4 Stew. & P. 138.

56. N.Y.—Holloway v. Frensdorf, 171 N.Y.S. 22, 183 App.Div. 579.

Pa.—Fife v. Great Atlantic & Pac. Tea Co., 82 A.2d 271, 169 Pa.Super. 110.

56.5 S.C.—Fischer v. Bennett, 25 S. E.2d 746, 202 S.C. 534—Ex parte Miller, 5 S.E.2d 865, 192 S.C. 164—Cauthen v. Cauthen, 62 S.E. 319, 81 S.C. 313.

56.10 Tex.—Hirsch v. Dearing, Civ. App., 151 S.W.2d 949.

56.15 N.C.—Phillips v. Phillips, 25 S.E.2d 848, 223 N.C. 279.

57. Colo.—Fleming v. Breitner, 215 P. 133, 73 Colo. 250.

La.—Nemarich v. Star Checker Cab Co., App., 150 So. 862.

Mich.—In re Ford's Estate, 63 N.W. 2d 417, 339 Mich. 339—Balahoski v. Dunham, 219 N.W. 597, 243 Mich. 70—Goodenough v. Burton, 109 N. W. 52, 146 Mich. 50.

Tenn.—Presson v. Lockhart, 8 Tenn. Civ.App. 283.

Tex.—McAfee v. Shirley, Civ.App., 140 S.W.2d 932—Tips v. Barneburg, Civ.App., 11 S.W.2d 187—Heard v. Pearman, Civ.App., 275 S. W. 271.

Utah.—Forbes v. Delta Land & Water Co., 193 P. 1097, 57 Utah 200.

15 C.J. p 220 notes 72, 73.

Poverty affidavit

Appellate court will not disturb exercise by trial court of its discretion in allowing, or refusing to dismiss for failure to give, security for costs, where party filed poverty affidavit, and abuse of discretion was not shown.

Kan.—Martin v. Stillie, 281 P. 925, 129 Kan. 19, 68 A.L.R. 415, adhered to 286 P. 394, 130 Kan. 299.

La.—Howard v. Western Auto Supply Co., App. 192 So. 137—Singleton v. First Nat. Life Ins. Co., App., 157 So. 620—State ex rel. Gentry v. Stephens as Judge, 2 La. App. 460.

58. Ill.—Ball v. Bruce, 27 Ill. 332.

N.C.—Adams v. Reeves, 76 N.C. 412—Jones v. Cox, 46 N.C. 373.

15 C.J. p 224 notes 51-56.

amount,[59] or sufficiency,[60] of the security; or in vacating an order allowing a person to sue as a poor person.[61] If, however, there are no circumstances justifying the trial court in exercising its discretion by requiring plaintiff to give security for costs, after defendants have waived their right to security by failing to move therefor promptly, the order requiring such security is subject to review and correction.[62]

i. Miscellaneous Matters

§ 1638. Enforcement of Rules of Court

The discretion of the trial court as to the construction, application, or enforcement of its own rules is not reviewable except for manifest abuse.

Except in cases where it is manifest that there has been an abuse of discretion, the exercise, by a trial court, of its discretion with respect to the construction, interpretation, application, or enforcement of its own rules will not be disturbed on appeal;[63] and it has been held that, although the court should generally uphold and give effect to its own rules, yet if in furtherance of justice it elects to ignore such rules a judgment will not be reversed on that account.[64] Under other authority, where the court wholly disregards its rules for no apparent reason, the reviewing court will uphold and apply them.[65]

Whether or not a waiver by counsel of the requirements of rules shall be recognized is a nonreviewable matter within the discretion of the court.[66]

§ 1639. Imposition of Terms

Except where a palpable abuse of discretion is shown, the imposition of terms as a condition to the discretionary granting of a motion is generally not reviewable.

When the granting or refusing of a motion is largely a matter of discretion, the imposition, by the trial court, of terms as a condition to granting the motion is also a matter of discretion and is not reviewable except for palpable abuse of discretion.[67] This principle has been applied on motions to amend pleadings[68] or file supplemental pleadings,[69]

59. Iowa.—Miller v. McCutchan, 184 N.W. 387, 192 Iowa 1209.

60. N.C.—Gainey v. Godwin, 88 S.E. 230, 171 N.C. 754.

61. N.Y.—Young v. Nassau Electric Co., 54 N.Y.S. 600, 34 App.Div. 126.

62. N.Y.—U. S. v. Bangs, 118 N.Y.S. 936, 134 App.Div. 215.

63. Ga.—Universal Match Corp. v. Hendricks, 94 S.E.2d 117, 94 Ga. App. 251.
Ill.—City of Chicago v. Willoughby, 128 N.E. 497, 294 Ill. 327.
Mo.—Merritt v. Kansas City, App., 46 S.W.2d 275.
N.J.—Larky v. Larky, 103 A. 177, 88 N.J.Eq. 591.
Ohio.—Joshua v. Joshua, App., 87 N. E.2d 106.
Okl.—McAleer v. Waddell-O'Brien Motor Co., 231 P. 480, 105 Okl. 35.
Pa.—Dellacasse v. Floyd, 2 A.2d 860, 332 Pa. 218—Blessing v. Philadelphia Rapid Transit Co., 188 A. 573, 325 Pa. 12—School Dist. of Haverford Tp., to Use of Tedesco v. Herzog, 171 A. 455, 314 Pa. 161—Rader v. Keiper, 132 A. 824, 285 Pa. 579—Bethlehem Steel Co. v. Topliss, 94 A. 1099, 249 Pa. 417.
Germ v. Price, 104 A.2d 166, 175 Pa.Super. 286—Merchants Nat. Bank of Butler, to Use of Stein's Estate v. Smulovitz, 48 A.2d 57, 159 Pa.Super. 253—Frank C. Snedaker & Co. v. Wayne Title & Trust Co., 20 A.2d 819, 145 Pa.Super. 65—New Castle Metal Products Co. v. Campbell, 200 A. 118, 131 Pa.Super. 367—Babis v. New York Extract Co., 181 A. 846, 120 Pa.Super. 73—Jennings v. Yanovitz, 175 A. 721, 115 Pa.Super. 427—Solomon v. Ford, 164 A. 92, 108 Pa.Super. 43—In re Road in Hampton Tp., 72 Pa.Super. 484.
Nicholson v. Chevrolet Motor Co., 31 Luz.Leg.Reg. 239—Williams v. Chevrolet Motor Co., 31 Luz.Leg. Reg. 237.
Tenn.—Hilton v. Johnson City General Hospital, 26 S.W.2d 626, 160 Tenn. 535.
Tex.—Harris v. Wheeler, Civ.App., 255 S.W. 206, reversed on other grounds, Com.App., 267 S.W. 465.
Wash.—Spokane Savings & Loan Soc. v. Liliopoulos, 294 P. 561, 160 Wash. 71—Hub Mercantile Co. v. Stingle, 206 P. 567, 119 Wash. 607.
W.Va.—Wagner v. Edgington Coal Co., 130 S.E. 94, 100 W.Va. 117.
4 C.J. p 810 note 50.
"Courts are the best exponents of their own rules; and the construction and application of such rules by the courts adopting and promulgating them will not be disturbed by the appellate court, unless the construction placed thereon is inconsistent with their language, or clearly in conflict with their true spirit and meaning, or violative of some organic or statutory law."
W.Va.—Wagner v. Edgington Coal Co., 130 S.E. 94, 100 W.Va. 117.
Construction sustaining discretion
District and county court rules, distinguishing between original and supplemental pleadings, and amendments thereto, should be construed and applied to sustain rather than overturn the discretion of the court primarily administering them.
Tex.—Glenn v. Dallas County Bois D'Arc Island Levee Dist., 268 S.W. 452, 114 Tex. 325, answer to certified questions conformed to, Civ. App., 275 S.W. 137, reheard 282 S. W. 339, reversed on other grounds Dallas County Bois D'Arc Island Levee Dist. v. Glenn, Com.App., 288 S.W. 165.

64. Kan.—Dolan v. Stone, 65 P. 641, 63 Kan. 450.
Mo.—Kuh v. Garvin, 28 S.W. 847, 125 Mo. 547.
4 C.J. p 810 note 51.

65. Pa.—Donoghue v. O'Kane, 55 Pa. Super. 11.
Trocasso v. Lauter Co., Com.Pl., 26 North.Co. 251.
4 C.J. p 810 note 52.

66. Nev.—Caples v. Central Pac. R. Co., 6 Nev. 265.

67. Wis.—Crombie v. Immel Const. Co., 220 N.W. 186, 196 Wis. 319.
4 C.J. p 806 note 6.

68. Wis.—Crombie v. Immel Const. Co., supra.
4 C.J. p 806 note 7.

69. Cal.—Cummings v. Cummings, 275 P. 245, 97 C.A. 144.

for continuances,[70] to set aside defaults,[71] to obtain a new trial,[72] to procure an order requiring an undertaking to secure any judgment rendered on a new trial,[73] to obtain the grant[74] or dissolution[75] of an injunction, to appoint a surveyor in a boundary line dispute,[76] and to amend the statement of confession or judgment.[77]

However, the rule is not absolute, nor is the discretion arbitrary so as to prevent a review in a proper case.[78]

§ 1640. Extension of Time and Proceedings Nunc Pro Tunc

The exercise by the trial court of its discretion as to extending the time within which an act or proceeding in an action or special proceeding must be taken, or in allowing or denying proceedings nunc pro tunc, is reviewable only where such discretion is abused.

The exercise by the trial court of its discretion as to extending the time within which an act or proceeding in an action or special proceeding must be taken will not be disturbed on appeal except where an abuse of discretion clearly appears.[78.50] So, the allowance of, or a refusal to allow, an extension of time in which to plead,[79] to amend pleadings,[80] to verify a pleading,[80.5] to file motions or demurrers,[80.10] to take testimony,[81] or to do other acts in the course of a trial,[82] or the allowance of, or

70. Wis.—Hawkins v. Northwestern Union R. Co., 34 Wis. 302.
4 C.J. p 806 note 8.

71. Cal.—Nicoll v. Weldon, 63 P. 63, 130 C. 666.
4 C.J. p 806 note 9.

72. W.Va.—Garber v. Blatchley, 41 S.E. 222, 51 W.Va. 147.
4 C.J. p 806 note 11.
Requiring remittitur see supra § 1626.

73. N.Y.—Hornthal v. Finelite, 29 N.Y.S. 686, 9 Misc. 724.

74. Ga.—Jordan v. Gaulden, 73 Ga. 191.

75. Pa.—Smith v. Blanchard, 116 A. 667, 273 Pa. 158.

76. Tex.—Garza County v. Lynn County, Civ.App., 42 S.W.2d 627, reversed on other grounds Lynn County v. Garza County, Com.App., 58 S.W.2d 24.

77. N.Y.—Symson v. Selheimer, 12 N.E. 31, 105 N.Y. 660.

78. Wash.—Pringle v. Pringle, 104 P. 135, 136, 55 Wash. 93.
"While at common law, and the accepted practice of our courts, the court has the right to impose terms, it has never been held to be the law that terms that were oppressive or unjust could be imposed at the will of the court."
Wash.—Pringle v. Pringle, supra.

78.50 S.D.—Antonen v. Swanson, 48 N.W.2d 161, 74 S.D. 1, 28 A.L.R.2d 1.
Wis.—Town of Greenfield v. City of Milwaukee, 47 N.W.2d 291, 259 Wis. 101—Banking Commission of Wisconsin v. Flanagan, 289 N.W. 647, 233 Wis. 405.

79. Ala.—Street v. Browning, 87 So. 527, 205 Ala. 110.
Cal.—Lewith v. Rehmke, 20 P.2d 687, 217 C. 563.
Fla.—State v. Sarasota County, 159 So. 797, 118 Fla. 629.
Ill.—Farmer v. Fowler, 123 N.E. 550, 288 Ill. 494.
Kan.—Croner v. Keefer, 173 P. 282, 103 Kan. 204.
Ky.—Moffitt v. Asher, 302 S.W.2d 102—Owenton Warehouse & Realty Co. v. Miner's Ex'r, 280 S.W. 148, 212 Ky. 844.
Mo.—Reeves v. Dictograph Products Co., App., 147 S.W.2d 162.
N.C.—City of Washington v. Hodges, 156 S.E. 912, 200 N.C. 364—Oettinger v. Hill Live Stock Co., 86 S.E. 957, 170 N.C. 152—Empire Mfg. Co. v. Spruill, 86 S.E. 522, 169 N.C. 618.
Okl.—Owens v. Lynch, 297 P. 223, 147 Okl. 298—Continental Supply Co. v. Smith, 241 P. 770, 115 Okl. 46—Carignano v. Box, 223 P. 673, 97 Okl. 184—Wallace v. Merfeld, 219 P. 702, 95 Okl. 296—Southern Surety Co. v. Jones, 214 P. 727, 90 Okl. 285—Funnell v. Conrad, 176 P. 904, 74 Okl. 29—City of Lawton v. Kelly, 162 P. 1081, 62 Okl. 291—Peck v. First Nat. Bank, 150 P. 1039, 50 Okl. 252.
S.C.—Board of Directors of Theological Seminary v. Lowrance, 119 S.E. 383, 126 S.C. 89.
S.D.—Antonen v. Swanson, 48 N.W.2d 161, 74 S.D. 1, 28 A.L.R.2d 1—Chamberlain Sanitarium & Benevolent Ass'n of Seventh Day Adventists v. American Railway Express Co., 181 N.W. 841, 43 S.D. 604.
Utah.—Sharp v. Canakis Gianulakis, 225 P. 337, 63 Utah 249.
Va.—Chapman v. Delk, 16 S.E.2d 379, 178 Va. 113—Roanoke Mortg. Co. v. Henritze, 144 S.E. 430, 151 Va. 220—Thacker v. Hubard & Appleby, 94 S.E. 929, 122 Va. 379.
4 C.J. p 811 note 54.

Effect of court rule

Supreme court rule requiring replies to be filed within twenty days after last day allowed for filing of answers does not affect rule that granting of time to plead will not be reviewed on appeal except for abuse of discretion.
Ill.—Conour v. Zimmerly, 9 N.E.2d 61, 290 Ill.App. 546.

Plea in abatement

Ala.—Webster v. Talley, 37 So.2d 190, 251 Ala. 336—Ex parte Union Planters Nat. Bank & Trust Co. of Memphis, Tenn., 31 So.2d 596, 249 Ala. 461.

80. N.C.—Gold v. Maxwell, 90 S.E. 115, 172 N.C. 149.
4 C.J. p 811 note 54.

80.5 Ind.—Workman v. Workman, 46 N.E.2d 718, 113 Ind.App. 245.

80.10 Kan.—Owens v. Deutch, 137 P.2d 181, 156 Kan. 779—Fleming v. Campbell, 69 P.2d 718, 146 Kan. 294—Sheldon v. Board of Education of City of Lawrence, 4 P.2d 430, 134 Kan. 135.

81. Fla.—E. B. Elliott Co. v. Elliott, 188 So. 89, 137 Fla. 456—Robins v. Jones, 132 So. 840, 101 Fla. 1086—Demos v. Walker, 126 So. 305, 99 Fla. 302—Zetterlund v. Stratton, 106 So. 79, 90 Fla. 435—Converse v. Converse, 88 So. 609, 81 Fla. 671—Rausch v. Equitable Life Assur. Soc. of the United States, 82 So. 295, 77 Fla. 846—O'Gara v. Hancock, 79 So. 167, 76 Fla. 1—Thompson v. Thompson, 78 So. 424, 75 Fla. 325—Manassee v. Dutton Bank, 70 So. 363, 70 Fla. 427.
4 C.J. p 811 note 54.

82. R.I.—National Casket Co. v. Montgomery, 158 A. 723, 52 R.I. 158.
4 C.J. p 811 note 54.

Entry of writ

The lower court's exercise of its discretion as to allowing its entry of a writ by mistake not properly entered will be sustained, unless abuse of discretion appears.
R.I.—National Casket Co. v. Montgomery, 158 A. 723, 52 R.I. 158.

Filing cost bill

An appellate court will reverse the granting or denying of a motion to extend the time within which a cost bill may be filed, only in case of the trial court's plain abuse of discretion.
Cal.—Soda v. Marriott, 20 P.2d 758, 130 C.A. 589.

refusal to allow, proceedings nunc pro tunc,[83] when within the discretion of the trial court, will be reviewed only in case of an abuse of power.

The same rule applies with respect to the grant or denial of an extension of time in which to appeal,[84] or to file or settle a case,[85] a statement of facts,[86] a bill of exceptions,[87] an assignment of error,[87.5] or a transcript.[88]

Where, however, it is plainly made to appear that there has been an abuse of the judicial discretion, it is the duty of the appellate court to interpose and correct it;[89] and if the trial judge's jurisdiction to sign bills of exceptions has terminated by lapse of time, his action in that respect may be reviewed.[90] Where an order vacating an ex parte order extending the time within which defendant might settle a bill of exceptions was made as a result of an erroneous view of the law, defendant is entitled to a reversal of the vacating order without establishing an abuse of discretion.[90.5]

Payment of estimated cost of printing

N.H.—Hall v. Merrimack Mut. Fire Ins. Co., 13 A.2d 157, 91 N.H. 6.

83. Mo.—Ramsey v. City of Poplar Bluff, App., 286 S.W. 159.
Or.—Grover v. Hawthorne, 116 P. 100, 121 P. 804, 62 Or. 65.
4 C.J. p 811 note 54, p 839 note 25 [b].

Correction of record

The exercise of discretion in the making or denying of an order nunc pro tunc correcting a record is not revisable by the appellate court in the absence of a manifest abuse of the power.

Mo.—Ramsey v. City of Poplar Bluff, App., 286 S.W. 159.
4 C.J. p 841 note 53.

84. Conn.—La Croix v. Donovan, 117 A. 1, 97 Conn. 414.
Mich.—In re Tonnelier's Estate, 10 N.W.2d 838, 306 Mich. 229—In re Miner's Estate, 166 N.W. 882, 201 Mich. 115—Clark v. Berrien, Circuit Judge, 160 N.W. 409, 194 Mich. 180.
Wis.—In re Loewenbach's Will, 246 N.W. 332, 210 Wis. 253—In re Schilling's Will, 237 N.W. 130, 205 Wis. 279.
4 C.J. p 811 note 54 [l], p 841 note 48.

Person aggrieved by act of county court

(1) In general.

Wis.—In re Steuber's Estate, 71 N.W.2d 272, 270 Wis. 426—In re Blahnik's Estate, 285 N.W. 421, 231 Wis. 101.

(2) Where nothing in record indicated that aggrieved party was, as a matter of law, without fault in failing to appeal within time allowed, and there was no showing of excuse in petition or in record, appellate court would not disturb refusal of county court to allow appeal.

Wis.—In re Blahnik's Estate, supra.

85. Minn.—State v. Stolberg, 150 N.W. 924, 128 Minn. 537.
N.D.—Millers' & Traders' State Bank of Minneapolis, Minn. v. National Fire Ins. Co. of Hartford, Conn., 212 N.W. 834, 55 N.D. 149—Sharon Milling Co. v. Galde, 211 N.W. 589, 54 N.D. 817.
Okl.—State Exch. Bank of Elk City v. National Bank of Commerce of St. Louis, Mo., 169 P. 482, 70 Okl. 220.
4 C.J. p 811 note 54 [l], p 842 note 55.

86. Tex.—Rankin v. Nash-Texas Co., Civ.App., 58 S.W.2d 902—Gerneth v. Galbraith-Foxworth Lumber Co., Civ.App., 6 S.W.2d 215.
Wash.—Loveless v. City of Chehalis, 233 P. 301, 133 Wash. 33.
4 C.J. p 811 note 54 [l], p 842 note 55.

87. Cal.—California Nat. Bank of Sacramento v. El Dorado Lime & Minerals Co., 253 P. 704, 200 C. 452.
Schmidt v. Schmidt, 114 P.2d 702, 45 C.A.2d 730—Willett v. Schmeiser Mfg. Co., 251 P. 932, 80 C.A. 337—Jones v. Southern Pac. Co., 236 P. 336, 71 C.A. 773—Horne v. Standard Auto Sales Co., 216 P. 970, 62 C.A. 478—Lobree v. L. E. White Lumber Co., 197 P. 138, 51 C.A. 483—Howell v. Pedersen, 181 P. 674, 41 C.A. 45.
Mich.—Reynick v. Snow, 178 N.W. 40, 210 Mich. 563.
Mont.—Barcus v. Portland Cattle Loan Co., 207 P.2d 565, 122 Mont. 534.
Neb.—Neighbors & Danielson v. West Nebraska Methodist Hospital, 74 N.W.2d 854, 162 Neb. 33.
Wis.—Miller v. Belanger, 81 N.W.2d 545, 275 Wis. 187—In re Stanley's Will, 280 N.W. 685, 228 Wis. 530.
4 C.J. p 811 note 54 [l], p 842 note 55.

87.5 S.D.—Antonen v. Swanson, 48 N.W.2d 161, 74 S.D. 1, 28 A.L.R. 2d 1.

88. Ark.—Graham v. Drainage Dist. No. 11 of Jackson County, 255 S.W. 883, 161 Ark. 38.
Cal.—Shutz v. Western Wholesale Liquor Distributors, 76 P.2d 135, 24 C.A.2d 659.
S.D.—Antonen v. Swanson, 48 N.W. 2d 161, 74 S.D. 1, 28 A.L.R.2d 1.
4 C.J. p 811 note 54 [l].

89. Fla.—Capehart v. Farmers' Bank & Trust Co., 94 So. 864, 84 Fla. 690.
S.D.—First Nat. Bank v. Wollmann, 213 N.W. 15, 51 S.D. 257—Fuller v. Anderson, 210 N.W. 992, 50 S.D. 568.

Extending time for testimony

Where repeated orders are made upon a mere ex parte motion of counsel with no showing of special cause for an extension of time for taking testimony in a chancery cause, as is expressly required by Equity Rules, rule 71, such orders will be reversed for appropriate procedure.

Fla.—Capehart v. Farmers' Bank & Trust Co., 94 So. 864, 84 Fla. 690.

Notice of intention to move for new trial

The court's power to extend the time or fix a new time for serving a notice of intention to move for a new trial is not arbitrary, and may be exercised only upon good cause shown, and its discretion in the use thereof is subject to review.

S.D.—First Nat. Bank v. Wollmann, 213 N.W. 15, 51 S.D. 257—Fuller v. Anderson, 210 N.W. 992, 50 S.D. 568.

Serving case on appeal

While the appellate court is loath to interfere in a matter involving the exercise of the trial court's discretion, yet where plaintiff, who recovered judgment, was in no wise prejudiced by the delay, it was held that an order denying defendant's motion to vacate a default in serving case on appeal should be reversed, it appearing that defendant's attorney who had no clerk, was engaged either in trial or appeal work on almost every week day during the month in which case on appeal was to be served.

N.Y.—Hicks v. Davis, 178 N.Y.S. 141.

90. Md.—Wegefarth v. Weissner, 106 A. 854, 132 Md. 595.

90.5 Wis.—Briggson v. City of Viroqua, 58 N.W.2d 543, 264 Wis. 40.

Sufficiency of pleading. Before a court can be convicted of an abuse of discretion in refusing to permit a purported reply to be filed out of time, it should at least appear that the reply offered is sufficient in law to perform the office of that pleading.[90.10]

§ 1641. Form of Opinion

The form of the opinion of the trial court is not reviewable.

The form in which a trial court shall express its opinion is a matter to be settled by it and is not reviewable by an appellate court.[91]

G. QUESTIONS OF FACT, VERDICTS, AND FINDINGS

1. In General

§ 1642. In General

a. Action at law
b. In equity suit
c. Effect of statutory provisions
d. Mixed questions of law and fact

a. Action at Law

As a general rule, an appellate court will not determine questions of fact in actions at law, but it may consider the sufficiency of the evidence to support or warrant the action of the lower court.

An appellate court is generally limited to the correction of errors of law, and in the absence of constitutional or statutory provisions to the contrary, and except for the purposes and to the extent hereinafter discussed in §§ 1643–1674, questions of fact in actions at law are to be tried and determined in the court of original jurisdiction, and not in an appellate court exercising strictly the functions of a court of review.[92] The probative force of evidence is for the consideration of the triers of the facts

90.10 Mo.—McIntosh v. Foulke, 228 S.W.2d 757, 360 Mo. 481.

91. N.Y.—Smith v. Rathbun, 88 N. Y. 660.

92. Ala.—Franklin Fire Ins. Co. of Philadelphia, Pa v. Slaton, 183 So. 865, 236 Ala. 565—Alabama Power Co. v. Jones, 130 So. 224, 221 Ala. 573—Fleming v. Moore, 105 So. 679, 213 Ala. 592—Birmingham News Co. v. Barron G. Collier, Inc., 103 So. 839, 212 Ala. 655—Windham v. Hydrick, 72 So. 403, 197 Ala. 125.

Tennessee Coal, Iron & R. Co. v. Pope, 107 So. 735, 21 Ala.App. 183, certiorari denied 107 So. 736, 214 Ala. 383.

Ariz.—Gilliland v. Rodriquez, 268 P. 2d 334, 77 Ariz. 163—Solana Land Co. v. National Realty Co., 267 P. 2d 895, 77 Ariz. 120—Hansen v. Oakley, 263 P.2d 807, 76 Ariz. 307—Brandes v. Mitterling, 196 P.2d 464, 67 Ariz. 349—Thornburg v. Frye, 36 P.2d 548, 44 Ariz. 282—Spain v. Griffith, 25 P.2d 551, 42 Ariz. 304—California State Life Ins. Co. v. Fuqua, 10 P.2d 958, 40 Ariz. 148—Jackson v. Griffin, 4 P. 2d 900, 39 Ariz. 183—First Nat. Bank v. Osborne, 4 P.2d 384, 39 Ariz. 107—Garden Development Co. v. Warren Ranch, 276 P. 839, 35 Ariz. 254—Inspiration Consol. Copper Co. v. Conwell, 190 P. 88, 21 Ariz. 480.

Ark.—Harris v. Starr, 288 S.W.2d 332—Sims v. Morris, 245 S.W.2d 829, 220 Ark. 1—Hood v. Sovereign Camp, W. O. W., 69 S.W.2d 880, 188 Ark. 1048—E. L. Bruce Co. v. Leake, 3 S.W.2d 988, 176 Ark. 705.

Cal.—Highland Realty Co. v. City of San Rafael, 298 P.2d 15, 46 C.2d 669—Bailey v. Los Angeles County, 293 P.2d 449, 46 C.2d 132—Golding v. R. K. O. Pictures, 221 P.2d 95, 35 C.2d 690—Salomon v. Meyer, 32 P.2d 631, 1 C.2d 11—Raphael v. Moares, 21 P.2d 951, 218 C. 173—McCormick v. Great Western Power Co. of California, 8 P.2d 145, 214 C. 658, 81 A.L.R. 678—Sheets v. Southern Pac. Co., 299 P. 71, 212 C. 509—Hugill v. Keene, 268 P. 624, 204 C. 381—Ellis v. Jeans, 26 C. 272.

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Okl.—Ray F. Fischer Co. v. Loeffler-Green Supply Co., 289 P.2d 139—Kohler v. Campbell, 258 P.2d 1178—City of Shawnee v. Faulkner, 240 P.2d 100, 205 Okl. 647—Kelly v. Cann, 136 P.2d 896, 192 Okl. 446—Marland Refining Co. v. Snider, 257 P. 797, 125 Okl. 260—Cales v. Harpole, 248 P. 614, 118 Okl. 298—McCrary v. Scott, 241 P. 774, 113 Okl. 262—Smith v. Ferguson, 221 P. 447, 96 Okl. 150—Modern Woodmen of America v. Broskay, 218 P. 690, 95 Okl. 135—State v. Bowling, 213 P. 745, 89 Okl. 9—McDonald v. Strawn, 190 P. 558, 78 Okl. 271—Town of Watonga v. Morrison, 189 P. 737, 78 Okl. 74.

Or.—Smith v. Owen, 300 P.2d 423—Hefford v. Metropolitan Life Ins. Co., 144 P.2d 695, 173 Or. 353—Lovett v. Gill, 20 P.2d 1070, 142 Or. 534—Emmons v. Skaggs, 4 P. 2d 1115, 138 Or. 70—Bevin v. Oregon-Washington R. & Nav. Co., 298 P. 204, 136 Or. 18, certiorari denied Oregon-Washington R. & Nav. Co. v. Bevin, 52 S.Ct. 21, 284 U.S. 639, 76 L.Ed. 543—Baker v. State Industrial Accident Commission, 274 P. 905, 128 Or. 369—Pierce v. Northern Pac. Ry. Co., 271 P. 976, 127 Or. 461, 62 A.L.R. 644—Noble v. Sears, 257 P. 809, 122 Or. 162—Cooper v. North Coast Power Co., 244 P. 671, 117 Or. 384—Cooper v. North Coast Power Co., 244 P. 665, 117 Or. 652, rehearing denied 245 P. 317, 117 Or. 652—Everson v. Phelps, 239 P. 102, 115 Or. 523—First Nat. Bank v. Anderson, 228 P. 929, 112 Or. 167—Tillamook County v. Johnson, 190 P. 159, 96 Or. 623, 10 A.L.R. 448—Olds v. Hines, 188 P. 716, 95 Or. 580.

Pa.—Woldow v. Dever, 97 A.2d 777, 374 Pa. 370—Percy A. Brown & Co. v. Raub, 54 A.2d 35, 357 Pa. 271—Schlichtkrull v. Mellon-Pollock Oil Co., 152 A. 832, 301 Pa. 560—Fidelity-Philadelphia Trust Co. v. Lehigh Valley Coal Co., 143 A. 474, 294 Pa. 47—First Nat. Bank v. Cattle Bros. Corporation, 131 A. 731, 285 Pa. 202—Patterson v. Pennsylvania R. Co., 131 A. 484, 284 Pa. 577, certiorari denied Pennsylvania R. Co. v. Patterson, 46 S.Ct. 349, 270 U.S. 649, 70 L.Ed. 780—In re Gongaware's Estate, 109 A. 276, 265 Pa. 512.

Tallman v. Florey, 115 A.2d 752, 172 Pa.Super. 354—Mack v. Reading Co., 98 A.2d 399, 173 Pa.Super. 296, affirmed 103 A.2d 749, 377 Pa. 135—Reader v. May-Stern & Co., 7 A.2d 379, 136 Pa.Super. 359—In re Diskin's Estate, 161 A. 893, 105 Pa.Super. 519—Commonwealth v. Brown, 58 Pa.Super. 300.

Farley v. Johnstown Coal & Coke Co., Com.Pl., 17 Cambria 185—Fisher v. Knauss, Com.Pl., 51 Sch.Leg. Rec. 89.

S.C.—Fogle v. Void, 74 S.E.2d 358, 223 S.C. 83—Whisenhunt v. Atlantic Coast Line R. Co., 10 S.E.2d 305, 195 S.C. 213—Tucker v. Pure Oil Co. of Carolinas, 3 S.E.2d 547, 191 S.C. 60—Worrell v. South Carolina Power Co., 195 S.E. 638, 186 S.C. 306—Simmons Mfg. Co. v. Whitton Automotive Parts Co., 141 S.E. 363, 143 S.C. 152—Sanders v. Commonwealth Life Ins. Co. of Kentucky, 132 S.E. 828, 134 S.C. 435—Medlin v. Vanderbilt, 130 S.E. 893, 133 S.C. 256—Duncan v. Clement, 126 S.E. 752, 131 S.C. 75—Bolch v. Smith, 119 S.E. 909, 126 S.C. 338—Appeal of Lucas Bank, 119 S.E. 18, 125 S.C. 446—Frady v. Ivester, 110 S.E. 135, 118 S.C. 195—Newton v. Bennett, 96 S.E. 620, 111 S.C. 1—State v. Mappus, 92 S.E. 1053, 107 S.C. 345—Metz v. Metz, 91 S.E. 864, 106 S.C. 514.

S.D.—Shearn v. Anderson, 48 N.W.2d 821, 74 S.D. 41—West v. Hanley, 45 N.W.2d 455, 73 S.D. 540—Midwest Oil Co. v. City of Aberdeen, 10 N. W.2d 701, 69 S.D. 343.

Tenn.—Caldwell v. Hodges, 77 S.W.2d 817, 18 Tenn.App. 355—Bradley County Farm Bureau v. Epperson, 73 S.W.2d 1116, 18 Tenn.App. 131.

Tex.—Releford v. Reserve Life Ins. Co., 276 S.W.2d 517, 154 Tex. 228—Cavanaugh v. Davis, 235 S.W.2d 972, 149 Tex. 573—Chicago, R. I. & G. Ry. Co. v. Harris, 24 S.W.2d 385, 119 Tex. 65—National Compress Co. v. Hamlin, 269 S.W. 1024, 114 Tex. 375—Post v. State, 171 S. W. 707, 106 Tex. 500.

Smith v. Ferrell, Com.App., 44 S.W.2d 962.

Lands v. York Oil Corp., Civ. App., 280 S.W.2d 628, error refused no reversible error—Weidel v. Hofmann, Civ.App., 269 S.W.2d 945, error refused no reversible error—Texas & N. O. R. Co. v. Foster, Civ.App., 266 S.W.2d 206, error refused no reversible error—Brown v. Moss, Civ.App., 265 S.W.2d 613, error refused no reversible error—Red River Valley Pub. Co. v. Bridges, Civ.App., 254 S.W.2d 854, error refused no reversible error—Burkett v. Slauson, Civ.App., 235 S.W.2d 505, reversed on other grounds 237 S.W.2d 253, 150 Tex. 69—Mason v. University of the South, Civ.App., 212 S.W.2d 854, error refused no reversible error—Sweatt v. Painter, Civ.App., 210 S. W.2d 442, reversed on other grounds 70 S.Ct. 848, 339 U.S. 629, 94 L.Ed. 1114, rehearing denied 70 S.Ct. 13, 340 U.S. 846, 95 L.Ed. 620—Somerville v. Smith, Civ.App., 200 S.W.2d 242—Texas Employers' Ins. Ass'n v. Drayton, Civ.App., 173 S.W.2d 782, error refused—Hartford Accident & Indemnity Co. v. Stanley, Civ.App., 148 S.W.2d 856, error dismissed, judgment correct—Metropolitan Casualty Ins. Co. of New York v. Texas Sand & Gravel Co., Civ.App., 68 S.W.2d 551—Sovereign Camp, W. O. W., v. Derrick, Civ.App., 64 S.W.2d 982—Gulf, C. & S. F. Ry. Co. v. Hitt, Civ.App., 60 S.W.2d 864—Hamilton v. Maroney, Civ.App., 57 S.W.2d 1125—Postal Indemnity Co. v. Rutherford, Civ.App., 49 S.W.2d 1115—Hammonds v. Flewellen, Civ.App., 48 S. W.2d 813—San Antonio Machine & Supply Co. v. Kinard, Civ.App., 47 S.W.2d 877—Temple Lumber Co. v. Kirby Lumber Co., Civ.App., 42 S. W.2d 1070, reversed on other grounds Kirby Lumber Co. v. Temple Lumber Co., 83 S.W.2d 638, 125 Tex. 294—Dallas Ry. & Terminal Co. v. Garner, Civ.App., 42 S.W.2d 665, reversed on other grounds, Com.App., 63 S.W.2d 542—Dial v. Martin, Civ.App., 37 S.W.2d 166, reversed on other grounds Martin v. Dial, Com.App., 57 S.W.2d 75, 89 A.L.R. 571—Jones v. Gibson, Civ. App., 18 S.W.2d 744—Southern Surety Co. v. Solomon, Civ.App., 4 S.W.2d 599—Chicago, R. I. & G. Ry. Co. v. Abdou, Civ.App., 1 S.W.2d 493—St. Louis Southwestern Ry. Co. of Texas v. Lewis, Civ.App., 297 S.W. 896, reversed on other grounds, Com.App., 5 S.W.2d 765, and rehearing denied 10 S.W.2d 534—Dallas Oil & Refining Co. v. Washington Cotton Oil Co., Civ. App., 283 S.W. 345—Humble Oil & Refining Co. v. Martarana, Civ. App., 272 S.W. 299—Jester v. Lan-

in the court below, and the appellate court ordinarily | cannot consider the weight of evidence.[93]

caster, Civ.App., 266 S.W. 1102—Yoakum Mill & Elevator Co. v. Byars, Civ.App., 262 S.W. 226—Texas Drug Co. v. Cadwell, Civ.App., 237 S.W. 968, error refused—Weil v. Miller, Civ.App., 215 S.W. 142, dismissed for want of jurisdiction—El Paso Electric Ry. Co. v. Carruth, Civ.App., 208 S.W. 984, reversed on other grounds El Paso & Juarez Traction Co. v. Carruth, Com.App., 255 S.W. 159—Western Union Telegraph Co. v. Golden, Civ.App., 201 S.W. 1080—Wheelock v. Mayfield, Civ.App., 197 S.W. 475—Clegg v. Temple Lumber Co., Civ.App., 195 S.W. 646, affirmed, Com.App., 222 S.W. 971.

Utah.—Garrett Freight Lines v. Cornwall, 232 P.2d 786, 120 Utah 175—Jespersen v. Deseret News Pub. Co., 225 P.2d 1050, 119 Utah 235—Sine v. Salt Lake Transp. Co., 147 P.2d 875, 106 Utah 289—Angerman Co. v. Edgemon, 290 P. 169, 76 Utah 394, 79 A.L.R. 40—Robinson v. Thomas, 286 P. 625, 75 Utah 446—In re Yowell's Estate, 285 P. 285, 75 Utah 312—Knight v. Wessler, 248 P. 132, 67 Utah 354—Sierra Nevada Mill Co. v. Keith O'Brien Co., 156 P. 943, 48 Utah 12.

Vt.—Avery v. Bender, 126 A.2d 99, 119 Vt. 313—Nelson v. State Highway Board, 1 A.2d 689, 110 Vt. 44, 118 A.L.R. 915—Reed v. Whitham, 181 A. 129, 107 Vt. 482—Partridge v. Cole, 127 A. 653, 98 Vt. 373—Bennington County v. Town of Manchester, 90 A. 502, 87 Vt. 555.

Va.—Norfolk Southern R. Co. v. Lewis, 141 S.E. 228, 149 Va. 318—Davis v. McCall, 113 S.E. 835, 133 Va. 487.

Wash.—Davidson v. Huerby, 100 P. 2d 1035, 3 Wash.2d 460—Clancy v. Tremblay, 285 P. 453, 155 Wash. 558—Cordes v. Guy Inv. Co., 262 P. 131, 146 Wash. 143.

W.Va.—Pritt v. West Virginia Northern R. Co., 51 S.E.2d 105, 132 W. Va. 184, 6 A.L.R.2d 562, certiorari denied West Virginia Northern R. Co. v. Pritt, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113—Aliff v. Berryman, 160 S.E. 864, 111 W.Va. 103.

Wis.—Shy v. Industrial Salvage Material Co., 58 N.W.2d 452, 264 Wis. 118—Plainse v. Engle, 56 N.W.2d 89, 262 Wis. 506, modified on other grounds 57 N.W.2d 586, 262 Wis. 506—Boldig v. Urban Telephone Co., 271 N.W. 88, 224 Wis. 93—Chevinskas v. Wilcox, 250 N.W. 881, 212 Wis. 554.

Wyo.—H K D Homesite Co. v. Board of County Com'rs of Laramie County, 240 P.2d 885, 69 Wyo. 236—In re Johnston's Estate, 181 P. 2d 611, 68 Wyo. 332—Havens v. Irvine, 157 P.2d 570, 61 Wyo. 309, rehearing denied 159 P.2d 366, 61 Wyo. 309, 348—Branson v. Roelofsz, 70 P.2d 589, 52 Wyo. 101—Ramsay v. Gottsche, 69 P.2d 535, 51 Wyo. 516.

2 C.J. p 1295 note 62—4 C.J. p 843 note 65—8 C.J. p 1088 note 75—26 C.J. p 572 notes 53-56—27 C.J. p 392 note 34, p 868 note 94—31 C.J. p 352 note 51—32 C.J. p 793 note 30—33 C.J. p 145 note 9—37 C.J. p 113 note 2—40 C.J. p 515 note 26, p 516 notes 29, 30—42 C.J. p 1288 note 35 [b].

What are questions of law or fact see supra § 1454.

Review of decision of intermediate court see infra §§ 1818-1820.

Facts admitted by the pleadings and those established by the evidence are of equal importance.

Wash.—National Surety Co. v. Petersen, 283 P. 668, 155 Wash. 113.

Technical medical terms

Reviewing court, in the absence of assistance from the record, would not interpret technical medical terms.

Mass.—Kiley v. Dervin, 50 N.E.2d 393, 314 Mass. 478.

Good faith of counsel in urging proposition of law is primarily for trial court to determine on motion for mistrial, or on motion for new trial.

Cal.—Davis v. Franson, 296 P.2d 600, 141 C.A.2d 263.

93. Ala.—Nashville Bridge Co. v. Honeycutt, 20 So.2d 599, 246 Ala. 319.

Ariz.—Bank of Ariz. v. Harrington, 248 P.2d 859, 74 Ariz. 297—Peters v. Macchiaroli, 243 P.2d 777, 74 Ariz. 62—Hamilton v. McDaniel, 227 P.2d 755, 71 Ariz. 371—Hillman v. Busselle, 185 P.2d 311, 66 Ariz. 139—Painter v. Freije, 176 P.2d 690, 65 Ariz. 153—Dunseath v. Tucson Golf & Country Club, 74 P.2d 43, 51 Ariz. 14—Korrick v. Robinson, 180 P. 446, 20 Ariz. 323.

Ark.—**Corpus Juris quoted in** Greenlee v. Rolfe, 60 S.W.2d 568, 571, 187 Ark. 1162—Missouri Pac. R. Co. v. L. B. Stone Grocery Co., 259 S. W. 728, 163 Ark. 247—Duff v. Ayers, 246 S.W. 508, 156 Ark. 17—Missouri Pac. R. Co. v. Berry, 241 S.W. 888, 154 Ark. 210—Currie v. Nation, 228 S.W. 388, 148 Ark. 654—Cady v. Pack, 205 S.W. 819, 135 Ark. 445—Oates v. Cypress Creek Drainage Dist., 205 S.W. 293, 135 Ark. 149—Keck v. Daniels, 202 S. W. 825, 133 Ark. 599—Moore v. Thomas, 200 S.W. 790, 132 Ark. 97—St. Louis, I. M. & S. R. Co. v. Hairston, 188 S.W. 838, 125 Ark. 314.

Cal.—Thompson v. City of Long Beach, 259 P.2d 649, 41 C.A.2d 235—Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church, 245 P.2d 481, 39 C.2d 121, certiorari denied 73 S.Ct. 826, 345 U.S. 938, 97 L.Ed. 1365—Pewitt v. Riley, 163 P.2d 873, 27 C.2d 310—Medico-Dental Bldg. Co. of Los Angeles v. Horton & Converse, 132 P.2d 457, 21 C.2d 411—Dell v. Ermolieff v. R. K. O. Radio Pictures, 122 P.2d 3, 19 C.2d 543—Bellon v. Silver Gate Theatres, 47 P.2d 462, 4 C.2d 1—Crawford v. Southern Pac. Co., 45 P.2d 183, 3 C.2d 427—Oliver v. Robnett, 210 P. 408, 190 C. 51—McCully v. McArthur, 201 P. 323, 187 C. 194—Runkle v. Southern Pac. Milling Co., 195 P. 398, 184 C. 714, 16 A.L.R. 275—Fay v. Mathewson, 180 P. 939, 179 C. 318—Union Colonization Co. v. Madera Canal & Irrigation Co., 178 P. 957, 179 C. 774—Diamond v. Weyerhaeuser, 174 P. 38, 178 C. 540—In re Jepson's Estate, 172 P. 1107, 178 C. 257—Cox v. Schnerr, 156 P. 509, 172 C. 371—Poggi v. Scott, 139 P. 815, 167 C. 372.

Safina v. Safeway Stores, Inc., App., 309 P.2d 470—Bolen v. Parks, App., 308 P.2d 521—In re Behr's Estate, App., 307 P.2d 937—Gottloeb v. Melrose Health Baths, App., 306 P.2d 568—Smith v. American Sur. Co. of N. Y., App., 306 P.2d 489—Clark v. Redlich, App., 305 P.2d 239—Butler v. Holman, App., 303 P.2d 573, certiorari denied Holman v. Butler, 77 S.Ct. 718, 353 U.S. 930, 1 L.Ed.2d 723—Uhl v. Baldwin, App., 302 P.2d 841—Salmons v. Jameson, 301 P.2d 431, 144 C.A.2d 698—Doran v. Dreyer, 299 P.2d 661, 143 C.A.2d 289—Ferrier v. Commercial Steel Corp., 298 P.2d 555, 142 C.A.2d 424—Bennett v. Phelps, 289 P.2d 36, 136 C.A.2d 645—Zellers v. State, 285 P.2d 962, 134 C.A.2d 270—Reid & Sibell, Inc. v. Gilmore & Edwards Co., 285 P. 2d 364, 134 C.A.2d 60—Herron v. Pacific Elec. Ry. Co., 285 P.2d 77, 134 C.A.2d 199—Carruthers v. Cunha, 283 P.2d 384, 133 C.A.2d 91—Fifield v. Greeley, 282 P.2d 552, 132 C.A.2d 512—Pierce v. Black, 280 P.2d 913, 131 C.A.2d 521—Korry of Cal. v. Lefkowitz, 280 P.2d 910, 131 C.A.2d 389—Simon v. Bemis Bro. Bag Co., 280 P.2d 528, 131 C.A.2d 378—Bittick v. Brown, 277 P.2d 934, 130 C.A.2d 47—Stafford-Lewis v. Wain, 276 P.2d 157, 128 C.A.2d 614—Lewis v. Union Pac. R. Co., 273 P.2d 706, 127 C.A.2d 280—Murphy v. Ablow, 268 P.2d 80, 123 C. A.2d 853—Empire Steel Bldg. Co. v. Harvey Mach. Co., 265 P.2d 32, 122 C.A.2d 411—Postier v. Landau, 262 P.2d 565, 121 C.A.2d 98—In re Noonan's Estate, 260 P.2d 247, 119 C.A.2d 831—Fruit Machinery Co. v.

Similar expressions of the general principle stated | are that questions of fact determined below will not

F. M. Ball & Co., 258 P.2d 852, 118 C.A.2d 748—Sukiasian v. Shakarian, 252 P.2d 956, 115 C.A.2d 798—Ballan v. Rainey, 251 P.2d 731, 115 C.A.2d 11—Lobdell v. Miller, 250 P.2d 357, 114 C.A.2d 328—Moran v. Bromley, 246 P.2d 1001, 112 C.A.2d 520—Shivers v. Van Lobensels, 240 P.2d 635, 109 C.A.2d 286—Hanna v. O'Connor, 236 P.2d 181, 106 C.A.2d 760—Heasley v. Bevilacqua, 223 P. 2d 274, 100 C.A.2d 155—Stafford v. Groff, 221 P.2d 246, 99 C.A.2d 67—Langer v. Langer, 194 P.2d 81, 85 C.A.2d 806—Blackwell v. Blackwell, 193 P.2d 75, 85 C.A.2d 403—Balasco v. Chick, 192 P.2d 76, 84 C.A.2d 802—Baines v. Zuieback, 191 P.2d 67, 84 C.A.2d 483—Sooy v. Kunde, 181 P.2d 758, 80 C.A.2d 347—Bedford Inv. Co. v. Folb, 180 P.2d 361, 79 C.A.2d 363—Seidenberg v. George, 172 P.2d 891, 76 C.A.2d 306—People v. Corlett, 153 P.2d 964, 67 C.A.2d 33—In re Mathie's Estate, 149 P.2d 485, 64 C.A.2d 767—Vosburgh v. Meda, 143 P.2d 41, 61 C.A.2d 396—Leenders v. California Hawaiian Sugar Refining Corp., 139 P.2d 987, 59 C.A.2d 752—Johnson v. Bimini Hot Springs, 133 P.2d 650, 56 C.A.2d 892—Luisi v. Coviello, 132 P.2d 531, 56 C.A.2d 467 Hjorth, 125 P.2d 505, 51 C.A.2d 576—County First Nat. Bank of Santa Cruz v. Coast Dairies & Land Co., 115 P.2d 988, 46 C.A.2d 355—Thomas v. City of Bayshore, 96 P.2d 389, 35 C.A.2d 650—Healy v. Yellow Cab Co. of California, 90 P.2d 116, 32 C.A.2d 479—Smith v. Schumacker, 85 P.2d 967, 30 C.A.2d 251, certiorari denied 59 S.Ct. 1046, 307 U.S. 646, 83 L.Ed. 1526—Jolley v. Clemens, 82 P.2d 51, 28 C.A.2d 55—Takahashi v. White Truck & Transfer Co., 59 P.2d 161, 15 C.A. 2d 107—Norton v. Central Surety & Insurance Co., 51 P.2d 113, 9 C. A.2d 598—Urbano v. Market St. Ry. Co., 46 P.2d 817, 8 C.A.2d 22—Nicholas v. Leslie, 46 P.2d 761, 7 C.A.2d 590—Maus v. Scavenger Protective Ass'n, 39 P.2d 209, 2 C.A.2d 624—White v. Kretz Bros., 10 P.2d 198, 122 C.A. 197—McGlothin v. City and County of San Francisco, 10 P.2d 116, 122 C.A. 324—Anderson v. Dahl, 8 P.2d 883, 121 C.A. 198—Vaca v. Southern Pac. Co., 267 P. 346, 91 C.A. 470—Truman v. Sutter-Butte Canal Co., 244 P. 923, 76 C.A. 293—Rodetsky v. Nerney, 237 P. 791, 72 C.A. 545—Cummings v. Eiszler, 232 P. 723, 70 C.A. 67—Pellaton v. Brunski, 231 P. 583, 69 C. A. 301—Stewart v. Erskine-Bolst, 226 P. 644, 66 C.A. 461—Goodwin v. Pfunder, 225 P. 480, 66 C.A. 128—Tietke v. Forrest, 221 P. 681, 64 C.A. 364—Jackson v. Clover, 213 P. 507, 60 C.A. 641—Wilcox v. Hardisty, 212 P. 633, 60 C.A. 206—Hooke v. Great Western Lumber Co., 202 P. 492, 54 C.A. 681—Bruno v. Severini, 196 P. 501, 51 C.A. 163—Duff v. Anderson, 195 P. 445, 50 C.A. 397—Holroyd v. Gray Taxi Co., 179 P. 709, 39 C.A. 693—Guderitz v. Broadway Bros., 177 P. 859, 39 C.A. 48—People v. Dillman, 174 P. 951, 37 C.A. 415—Mauchle v. Panama-Pacific International Exposition Co., 174 P. 400, 37 C.A. 715.

Colo.—Denver Nat. Bank v. McLagan, 298 P.2d 386, 133 Colo. 487—Millington v. Hiedloff, 45 P.2d 937, 96 Colo. 581—Reahard v. Miller, 179 P. 157, 66 Colo. 80—Baldwin v. Scott, 173 P. 716, 65 Colo. 53.

Conn.—Giambartolomei v. Rocky De Carlo & Sons, Inc., 123 A.2d 760, 143 Conn. 468—Hartford-Connecticut Trust Co. v. Putnam Phalanx, 88 A.2d 393, 138 Conn. 695—Ely v. Mason, 115 A. 479, 97 Conn. 38.

Fla.—Goldfarb v. Robertson, 82 So. 2d 504—Povia v. Melvin, 66 So.2d 494—Stevens v. Tampa Electric Co., 88 So. 303, 81 Fla. 512.

Ga.—Tomlin v. Bickerstaff, 68 S.E.2d 224, 85 Ga.App. 48—Hudgins Contracting Co. v. Smith, 188 S.E. 732, 54 Ga.App. 687—J. R. Watkins Co. v. Mims, 132 S.E. 241, 35 Ga. App. 170—Crutchfield v. Green, 103 S.E. 473, 25 Ga.App. 383—Smiley v. Twitty, 101 S.E. 584, 24 Ga.App. 629—Adams v. Elbert County, 100 S.E. 232, 24 Ga.App. 176—Collins v. Broom, 94 S.E. 645, 21 Ga.App. 420—Flemington, H. & W. R. R. v. Southern Iron & Equipment Co., 94 S.E. 644, 21 Ga.App. 470—Bean v. Leggett, 93 S.E. 235, 20 Ga.App. 737—Cook v. McMurria, 91 S.E. 785, 19 Ga.App. 491.

Hawaii.—Hewahewa v. Lalakea, 27 Hawaii 544.

Ill.—Bowman v. Illinois Cent. R. Co., 142 N.E.2d 104, 11 Ill.2d 186—Duffy v. Cortesi, 119 N.E.2d 241, 2 Ill.2d 511—Phillabaum v. Lake Erie & W. R. Co., 145 N.E. 806, 315 Ill. 131—Gale v. Mundy, 124 S.E. 390, 289 Ill. 142—Lesczauskis v. Downs, 121 N.E. 590, 286 Ill. 281—Western Electric Co. v. Industrial Commission of Illinois, 120 N.E. 774, 285 Ill. 279—Hinchliffe v. Weing Teaming Co., 113 N.E. 707, 274 Ill. 417.

Parrucci v. Kruse, 138 N.E.2d 91, 12 Ill.App.2d 30—Hectus v. Chicago Transit Authority, 122 N.E.2d 587, 3 Ill.App.2d 439—Bonnier v. Chicago, B. & Q. R. Co., 113 N.E.2d 615, 351 Ill.App. 34, reversed on other grounds 119 N.E. 254, 2 Ill. 2d 606, certiorari denied Chicago, B. & Q. R. Co. v. Bonnier, 75 S.Ct. 53, 348 U.S. 830, 99 L.Ed. 655—Gariepy v. Chicago Service Parking Co., 112 N.E.2d 924, 350 Ill. App. 320—Parker v. Illinois Terminal R. Co., 104 N.E.2d 119, 345 Ill.App. 604—Arndt v. Arndt, 82 N. E.2d 908, 336 Ill.App. 65—Jung v. Dixie Greyhound Lines, 68 N.E.2d 627, 329 Ill.App. 361—Kanne v. Metropolitan Life Ins. Co., 34 N. E.2d 732, 310 Ill.App. 524—Franko v. Crosby, 278 Ill.App. 416—Chesney v. Union Pac. Ry. Co., 209 Ill.App. 494.

Ind.—New York Cent. R. Co. v. Milhiser, 106 N.E.2d 453, 231 Ind. 180, rehearing denied 108 N.E.2d 57, 231 Ind. 180—Illinois Cent. R. Co. v. Public Service Commission, 75 N.E.2d 900, 225 Ind. 643—Baltimore & O. R. Co. v. Reyher, 24 N. E.2d 284, 216 Ind. 545—Wilson v. Rollings, 14 N.E.2d 905, 214 Ind. 155—Hitt v. Carr, 162 N.E. 409, 201 Ind. 17—Glick v. Hunter, 129 N.E. 232, 190 Ind. 51—Jackson v. Rutledge, 122 N.E. 579, 188 Ind. 415—Indiana Harbor Belt R. Co. v. Public Service Commission of Indiana, 121 N.E. 540, 187 Ind. 660—Oilar v. Oilar, 120 N.E. 705, 188 Ind. 125—Clark v. Clark, 118 N.E. 123, 187 Ind. 25.

Gates v. Petri, App., 143 N.E.2d 293—Arrow Petroleum Co. v. Ames, App., 142 N.E.2d 479—Burks v. Walters, App., 141 N.E.2d 872—Sims Motor Transport Lines v. Davis, 130 N.E.2d 82, 126 Ind.App. 344—Thompson v. Dyar, 130 N.E.2d 52, 126 Ind.App. 70—Miller v. Schmidt, 110 N.E.2d 347, 123 Ind. App. 379—Bybee v. Brooks, 106 N. E.2d 693, 123 Ind.App. 129—Urban v. Reents, 106 N.E.2d 399, 122 Ind. App. 489—Holder v. Smith, 105 N.E.2d 177, 122 Ind.App. 371—Hiatt v. Trucking, Inc., 103 N.E.2d 915, 122 Ind.App. 411—Kostas v. Zaracostas, 75 N.E.2d 423, 118 Ind.App. 425—Indianapolis Rys. v. Williams, 59 N.E.2d 586, 115 Ind.App. 383—Goodwin v. Schwartz, 59 N.E.2d 363, 115 Ind.App. 422—Switzer v. Armantrout, 19 N.E.2d 858, 106 Ind. App. 468—Artificial Ice & Cold Storage Co. v. Martin, 198 N.E. 446, 102 Ind.App. 74—Lewin v. Moll, 186 N.E. 905, 98 Ind.App. 1—Wolfeld v. Hanika, 179 N.E. 178, 95 Ind.App. 44—In re Green's Guardianship, 175 N.E. 258, 92 Ind.App. 314—Shea v. People's Coal & Cement Co., 161 N.E. 849, 93 Ind.App. 302—Reitemeier v. Linard, 150 N.E. 797, 90 Ind.App. 363—Baltimore & O. R. Co. v. Applegate, 150 N.E. 794, denying rehearing 149 N.E. 651, 84 Ind.App. 192—Gwinn v. Hobbs, 144 N.E. 648, 83 Ind.App. 263—Gwinn v. Hobbs, 141 N.E. 812, 83 Ind.App. 263—Jones v. Pressel, 128 N.E. 657, 75 Ind.App. 15—West v. Davis, 127 N.E. 806, 73 Ind.App. 649—Indiana Board & Filler Co. v. White, 124 N.E. 767, 72 Ind.App. 616—Massachusetts Bonding & Ins. Co. v.

Free, 124 N.E. 716, 71 Ind.App. 275—Scottish Union & National Ins. Co. v. B. E. Linkenhelt & Co., 121 N.E. 373, 70 Ind.App. 324—Workman v. Rhodes, 117 N.E. 526, 65 Ind.App. 413—Pittsburgh, C., C. & St. L. Ry. Co. v. Kephert, 112 N.E. 251, 61 Ind.App. 621—Aultman & Taylor Machinery Co. v. Shell, 111 N.E. 445, 61 Ind.App. 19—Reed v. Robbins, 108 N.E. 780, 58 Ind.App. 659—State Exchange Bank v. Paul, 108 N.E. 532, 58 Ind.App. 487.

Iowa.—Marxen v. Meredith, 69 N.W. 2d 399, 246 Iowa 1173—Cable v. Fullerton Lumber Co., 49 N.W.2d 530, 242 Iowa 1076—Seibel v. Fisher, 239 N.W. 34, 213 Iowa 388—Appleby v. Cass, 234 N.W. 477, 211 Iowa 1145—Butler & Henry v. Taylor, 192 N.W. 851—Grohe v. Jackson, 192 N.W. 808, 195 Iowa 705—C. G. Morris & Co. v. Saar, 191 N.W. 793—Cummings v. Railway Mail Ass'n, 177 N.W. 466, 190 Iowa 348—Stukas v. Warfield, Pratt, Howell Co., 175 N.W. 81, 188 Iowa 878—Heiman v. Felder, 160 N.W. 234, 178 Iowa 740—In re Pauly's Estate, 156 N.W. 355, 174 Iowa 122—Youtsey v. Lemley, 151 N.W. 491, 169 Iowa 401.

Kan.—Pattimore v. Davis, 305 P. 2d 835, 180 Kan. 534—McCrary v. McCrary, 293 P.2d 995, 179 Kan. 210—Killey v. Mayes, 290 P.2d 837, 178 Kan. 628—In re Jones' Estate, 257 P.2d 116, 174 Kan. 506—Pankey v. Wyandotte Cab, Inc., 254 P.2d 305, 174 Kan. 17—Bradbury v. Wise, 208 P.2d 209, 167 Kan. 737—Rickel v. Chicago, B. & Q. R. Co., 196 P.2d 243, 165 Kan. 503—Pearcy v. Williams, 183 P.2d 243, 163 Kan. 439—In re Johnson's Estate, 125 P.2d 352, 155 Kan. 437—**Corpus Juris Secundum cited in** Harris v. Board of Com'rs, 101 P.2d 898, 899, 151 Kan. 946—Schaefer v. Arkansas Valley Interurban Ry. Co., 179 P. 323, 104 Kan. 394, rehearing denied 181 P. 118, 104 Kan. 740—Smith v. Bush, 169 P. 217, 102 Kan. 150.

Ky.—Keen v. Osborne, 215 S.W. 798, 185 Ky. 647—James v. Davis, 189 S.W. 440, 172 Ky. 381.

La.—Highland Lumber & Supply Co. v. Young, App., 38 So.2d 638.

Me.—Day v. Scribner, 142 A. 727, 127 Me. 187.

Md.—Krug v. Mills, 152 A. 493, 159 Md. 670—United Rys. & Electric Co. of Baltimore v. Perkins, 136 A. 50, 152 Md. 105—State v. Washington, B. & A. Electric R. Co., 131 A. 822, 149 Md. 443—Penn Oil Co. v. Triangle Petroleum & Gasoline Co., 111 A. 482, 136 Md. 559.

Mass.—Ex parte Tardiff, 103 N.E.2d 265, 328 Mass. 265—New England Trust Co. v. Commissioner of Corporations and Taxation, 53 N.E.2d 1001, 315 Mass. 639—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—City of Cambridge v. Town of West Springfield, 20 N.E. 2d 432, 303 Mass. 63—Exchange Realty Co. v. Bines, 18 N.E.2d 425, 302 Mass. 93—Herman v. Sadolf, 2 N.E.2d 201, 294 Mass. 358—Lennon v. Cohen, 163 N.E. 63, 264 Mass. 414—McDonough v. Vozzela, 142 N.E. 831, 247 Mass. 552—In re De Propper, 128 N.E. 785, 236 Mass. 500—Carr v. Inhabitants of Town of Dighton, 118 N.E. 525, 229 Mass. 304—Vahey v. Boston Elevated Ry. Co., 111 N.E. 40, 222 Mass. 374.

Mich.—In re Granville's Estate, 76 N.W.2d 827, 345 Mich. 495.

Minn.—Anderson v. Farwell, Ozmun, Kirk & Co., 14 N.W.2d 311, 217 Minn. 110.

Mo.—Capra v. Phillips Inv. Co., 302 S.W.2d 924—Huffman v. Mercer, 295 S.W.2d 27—Hart-Bartlett-Sturtevant Grain Co. v. Ætna Ins. Co., 293 S.W.2d 913—Amos v. Southern Ry. Co., 273 S.W.2d 155—Gaddy v. Skelly Oil Co., 259 S.W. 2d 844, 364 Mo. 143—Sanderson v. McManus, 252 S.W.2d 351—Steckdaub v. Sparks, 231 S.W.2d 160—Coghlan v. Trumbo, 179 S.W.2d 705—Kapros v. Pierce Oil Corp., 25 S.W.2d 777, 324 Mo. 992, 78 A. L.R. 722—Craig v. Rhodes, 298 S. W. 756—Scheipers v. Missouri Pac. R. Co., 298 S.W. 51—Gerber v. Kansas City, 277 S.W. 562, 311 Mo. 49—State ex rel. Missouri Gas & Electric Service Co. v. Trimble, 271 S.W. 43, 307 Mo. 536—Railsback v. Bowers, 257 S.W. 119—State ex rel. Thompson ex rel. Pugh v. Bright, 250 S.W. 599, 298 Mo. 335—Ray v. Walker, 240 S.W. 187, 293 Mo. 447—Schneider v. St. Joseph Ry., Light, Heat & Power Co., 238 S.W. 468—Jackman v. St. Louis & H. Ry. Co., 231 S.W. 978—Miller v. Schaff, 228 S.W. 488, petition dismissed Schaff v. Miller, 42 S.Ct. 53, 257 U.S. 651, 66 L.Ed. 417—Daniel v. Pryor, 227 S.W. 102—St. Louis Union Trust Co. v. Hill, 223 S.W. 434, 283 Mo. 278—Buckhorn v. Greenwood, 208 S.W. 59—Britt v. Crebo, 199 S.W. 154, 293 Mo. 447—Reid v. St. Louis & S. F. R. Co., 187 S.W. 15—Thomasson v. Hunt, 185 S.W. 165—Patrum v. St. Louis & S. F. R. Co., 168 S.W. 622, 259 Mo. 109.

Deig v. General Ins. Co. of America, App., 301 S.W.2d 409—Paine v. Albany Ins. Co., App., 299 S.W.2d 897—Blair v. Hamilton, App., 297 S.W.2d 14—Baird v. Ellsworth Realty Co., App., 265 S.W.2d 770—In re Stein's Estate, App., 177 S.W. 2d 678—Hill v. Stealey, App., 153 S.W.2d 813—Carter v. Casey, App., 153 S.W.2d 744—Transamerican Freight Lines v. Marcrome Art Marble Co., 150 S.W.2d 547, 236 Mo. App. 272—Spears v. DeClue, App., 149 S.W.2d 461—Borgstede v. G. H. Wetterau & Sons Grocery Co., App., 116 S.W.2d 179—Krueger v. Krueger, App., 107 S.W.2d 967—Garvin v. Union Mut. Life Ins. Co., App., 79 S.W.2d 496—Otto v. Metropolitan Life Ins. Co., App., 72 S.W.2d 811—Bank of Darlington v. Atwood, App., 36 S.W.2d 429, motion overruled, App., 47 S.W.2d 1097—In re Van Fossen, App., 13 S. W.2d 1076—Montgomery v. College Mound Sec. Trust Co., App., 10 S.W.2d 971—Raleigh v. Raleigh, App., 5 S.W.2d 689—Moon v. Craft, App., 297 S.W. 158—Jones v. Schultz, App., 295 S.W. 477—J. B. Colt Co. v. Young, App., 294 S.W. 450—Moseley-Comstock Realty Co. v. McClelland, App., 294 S.W. 103—Hill v. Jackson, 290 S.W. 1012, 220 Mo.App. 1302—Johnson v. Atchison, T. & S. F. Ry. Co., App., 290 S.W. 462—Markowitz v. Markowitz, App., 290 S.W. 119—Gray v. Willard, App., 288 S.W. 798—Belt v. Belt, 288 S.W. 100, 224 Mo.App. 780—Bertig Mercantile Co. v. Williams, App., 286 S.W. 150—Shaffer v. American Ry Express Co., App., 282 S.W. 725—Fraker v. Calvey's Estate, App., 259 S.W. 509—Noland v. Morris & Co., 248 S.W. 627, 212 Mo.App. 1—Schultz v. Upshaw, App., 237 S.W. 829—Globe & Rutgers Fire Ins Co. of New York v. Adams, App., 230 S.W. 345—Terry v. Kansas City Rys. Co., App., 228 S.W. 885—Zackwik v. Hanover Fire Ins. Co., App., 225 S.W. 135—Duffy v. Kansas City Rys. Co., App., 217 S.W. 883—Sooby v. Postal Telegraph-Cable Co., App., 217 S.W 877—Robertson v. Kochtitzky, App., 217 S.W. 543—Sentney Wholesale Grocery Co. v. Thompson, App., 216 S.W. 780—Ceresia v. St. Giuseppe Mut. Aid Working Men's Ass'n, App., 211 S.W. 81—Eidson v. Metropolitan St. Ry. Co., App., 209 S.W. 575—Cedarland v. Thompson, 209 S.W. 554, 200 Mo. App. 618—Stag Mining Co. v. Missouri Fidelity & Casualty Co., App., 209 S.W. 321—Pabst Brewing Co. v. Laitner, App., 208 S.W. 487—Dubinsky v. Hartford Fire Ins. Co. of Hartford, Conn., App., 196 S. W. 1045—Willis v. Reed, App., 190 S.W. 377—Smith v. Mallory, App., 188 S.W. 934—De Wolff v. Morino, App., 187 S.W. 620—Adam Roth Grocery Co. v. Hotel Monticello Co., 166 S.W. 1125, 183 Mo.App. 429.

Mont.—Doane v. Marquisee, 206 P. 426, 63 Mont. 166—Koch v. Rhodes, 188 P. 933, 57 Mont. 447.

Neb.—Conley v. Hays, 45 N.W.2d 900, 153 Neb. 733—Teresi v. Filley, 21 N.W.2d 699, 146 Neb. 797.

N.H.—Pettee v. Omega Chapter of Alpha Gamma Rho, 170 A. 1, 86 N. H. 419, reheard 171 A. 441, 86 N.H.

419—Stinson v. Maine Cent. R. Co., 128 A. 562, 81 N.H. 473—Albee v. Osgood, 105 A. 1, 79 N.H. 89—Hill v. Carr, 101 A. 525, 78 N.H. 458—Huntington v. Ramsden, 92 A. 336, 77 N.H. 376.

N.J.—Salsbury v. Boro Busses Corporation, 7 A.2d 822, 123 N.J.Law 8, affirmed 11 A.2d 261, 124 N.J. Law 131—Katchen v. Hill, 199 A. 371, 120 N.J.Law 275—Zochowski v. Zukowski, 176 A. 364, 114 N.J. Law 437—Uslan v. Bowen, 169 A. 690, 112 N.J.Law 98—Hunke v. Hunke, 137 A. 419, 103 N.J.Law 645—Stickle v. Vreeland, 123 A. 753, 99 N.J.Law 468—Martin v. De Young, 122 A. 813, 99 N.J.Law 284—Osbun v. De Young, 122 A. 809, 99 N.J.Law 204—Boyle v. Manufacturers' Liability Ins. Co., 115 A. 383, 96 N.J.Law 380, affirmed 117 A. 925, 97 N.J.Law 561—Costello v. Director General of Railroads, 112 A. 861, 95 N.J.Law 538—Smith v. Brunswick Laundry Co., 108 A. 184, 93 N.J.Law 436—Bingham v. Schindel, 105 A. 727, 92 N.J.Law 502.

Benkhardt v. National Asbestos Mfg. Co., 140 A. 888, 6 N.J.Misc 294—Bozza v. Leonardis, 131 A. 887, 3 N.J.Misc. 1186—Wieson v. Automobile Ins. Co. of Hartford, Conn., 126 A. 652, 2 N.J.Misc. 1129, affirmed 130 A. 921, 102 N.J.Law 229.

N.M.—Chesher v. Shafter Lake Clay Co., 115 P.2d 636, 45 N.M. 419.

N.Y.—Godley v. Crandall & Godley Co., 105 N.E. 818, 212 N.Y. 121, L.R.A.1915D 632.

Bartlett v. Mt. Zion Baptist Church of Port Chester, 113 N.Y.S.2d 221, 280 App.Div. 798, appeal denied 113 N.Y.S.2d 776, 280 App. Div. 828—Robison v. Lockridge, 244 N.Y.S. 663, 230 App.Div. 389.

N.C.—Bruce v. O'Neal Flying Service, 56 S.E.2d 560, 231 N.C. 181, 12 A.L.R.2d 647—Cummins v. Southern Fruit Co., 36 S.E.2d 11, 225 N.C. 625—In re Brown's Will, 140 S.E. 192, 194 N.C. 583—Carden v. Sons and Daughters of Liberty, 102 S.E. 610, 179 N.C. 399—Goodrich v. Matthews, 98 S.E. 529, 177 N.C. 198.

Ohio.—Schofield v. Cleveland Trust Co., 78 N.E.2d 167, 149 Ohio St. 133—Bellish v. C. I. T. Corp., 50 N.E.2d 147, 142 Ohio St. 36—Unger v. Ohio State Dental Board, 49 N. E.2d 932, 142 Ohio St. 67, certiorari denied 64 S.Ct. 436, 320 U.S. 804, 88 L.Ed. 486—Ayres v. Cook, 43 N.E.2d 287, 140 Ohio St. 281—State ex rel. Kobelt v. Baker, 29 N.E.2d 960, 137 Ohio St. 337—Scovanner v. Toelke, 163 N.E. 493, 119 Oho St. 256—Cleveland Produce Co. v. Dennert, 135 N.E. 531, 104 Ohio St. 149.

Fowler v. Young, 65 N.E.2d 399, 77 Ohio App. 20—In re Emswiler's Estate, App., 38 N.E.2d 917.

In re Kolb's Estate, 22 Ohio N.P., N.S., 348.

Okl.—Yellow Transit Freight Lines, Inc. v. Allred, 302 P.2d 985—Leatherman v. Freeman, 266 P.2d 473—Haggard v. Collins, 263 P.2d 192—Oklahoma Transp. Co. v. Mitchell, 243 P.2d 350, 206 Okl. 295—Pallady v. Taylor, 242 P.2d 444, 206 Okl. 193—Prudential Fire Ins. Co. v. Stanley, 131 P.2d 88, 191 Okl. 506—Hale v. City of Cushing, 127 P.2d 818, 191 Okl. 137—Defenbaugh v. Purcell, 127 P.2d 207, 191 Okl. 192—Magnolia Petroleum Co. v. Norton, 116 P.2d 893, 189 Okl. 252—Retail Merchants Ass'n and Associated Retail Credit Men of Tulsa v. Peterman, 99 P.2d 130, 186 Okl. 560—Bass, Maxwell & Co. v. Independent Gin Co., 282 P. 635, 140 Okl. 80—Beams v. Step, 244 P. 775, 116 Okl. 291—Key v. Hill, 219 P. P. 308, 93 Okl. 64—Loomer v. Walker, 157 P. 1055, 59 Okl. 44—Cavanagh v. Johannessen, 156 P. 289, 57 Okl. 149—Hammett v. State, 141 P. 419, 42 Okl. 384, Ann.Cas. 1916D 1148.

Or.—Steele v. Hemmers, 40 P.2d 1022, 149 Or. 381—Holland v. Hartwig, 24 P.2d 1023, 145 Or. 6—Wood v. Young, 271 P. 734, 127 Or. 235—In re McLain's Estate, 270 P. 534, 126 Or. 456—Watt v. Associated Oil Co., 260 P. 1012, 123 Or. 50—In re Gerhardus' Estate, 239 P. 829, 116 Or. 113—Pitts v. Crane, 236 P. 475, 114 Or. 593—Maeder Steel Products Co. v. Zanello, 220 P. 155, 109 Or. 562—Carty v. McMenamin, 216 P. 228, 108 Or. 489—Reed v. National Hospital Ass'n, 212 P. 537, 106 Or. 471—Bessler v. Powder River Gold Dredging Co., 187 P. 621, 95 Or. 271—Pennock v. Sharp, 185 P. 911, 94 Or. 520—Joyner v. Crown Willamette Paper Co., 185 P. 299, 94 Or. 207—Fuller v. Oregon-Washington R. & Nav. Co., 181 P. 338, 93 Or. 160, rehearing denied 181 P. 991, 93 Or. 160, certiorari denied Oregon-Washington R. & Nav. Co. v. Fuller, 40 S.Ct. 56, 251 U.S. 551, 64 L.Ed. 410—Franconi v. Graham, 174 P. 548, 89 Or. 619—Warren v. Dinwoodie, 171 P. 1175, 88 Or. 342—Riddle State Bank v. Link, 153 P. 1192, 78 Or. 498—City of Eugene v. Lowell, 143 P. 903, 72 Or. 237.

Pa.—Glen Alden Coal Co. v. Schuylkill County Com'rs, 27 A.2d 239, 345 Pa. 159.

Rosine v. Gerlach, 98 A.2d 436, 173 Pa.Super. 240—Glessner v. Security-Peoples Trust Co., 72 A.2d 817, 166 Pa.Super. 566.

Aponikas v. Skrypkun, Com.Pl., 5 Sch.Reg. 1.

S.C.—Coffee v. Anderson County, 80 S.E.2d 51, 224 S.C. 477—Gibbs v. Atlantic Coast Line R. Co., 70 S.E. 2d 238, 221 S.C. 243—Charles v. Texas Co., 18 S.E.2d 719, 199 S.C. 156—Neal v. Southern Ry., Carolina Division, 160 S.E. 837, 162 S. C. 288, certiorari denied Southern Railway-Carolina Division v. Neal, 52 S.Ct. 9, 284 U.S. 621, 76 L.Ed. 530—Gladden v. Keistler, 140 S.E. 161, 141 S.C. 524—Dreher v. Columbia Mills Co., 98 S.E. 194, 111 S.C. 457—Wix v. Columbia Mills Co., 96 S.E. 616, 110 S.C. 377—Ragin v. Northwestern R. Co. of South Carolina, 93 S.E. 860, 108 S.C. 171—Case v. Atlanta & C. A. L. Ry., 92 S.E. 472, 107 S.C. 216—Farmers' & Merchants' Bank v. Rivers, 87 S.E. 438, 103 S.C. 84.

S.D.—Johnston v. Eriksson, 23 N.W. 2d 799, 71 S.D. 268.

Tenn.—Storie v. Taylor Supply Co., 228 S.W.2d 94, 190 Tenn. 149.

American Nat. Ins. Co. v. Smith, 74 S.W.2d 1078, 18 Tenn.App. 222—Coalfield Coal Co. v. Mellhorn, 2 Tenn.App. 219—Baskett v. Chuckey, Banking Co., 2 Tenn.App. 31—Collins v. Desmond, 1 Tenn.App. 54—Reed v. Hutton & Long, 1 Tenn. App. 36.

Tex.—Texas Co. v. Ramsower, Com. App., 7 S.W.2d 872, rehearing denied 10 S.W.2d 537—Texas Employers' Ins. Ass'n v. Herring, Com. App., 280 S.W. 740.

Henwood v. Polis & Hagan, Civ. App., 231 S.W.2d 720—Walston v. Mabry, Civ.App., 225 S.W.2d 1014—Benson v. Missouri, K. & T. R. Co., Civ.App., 200 S.W.2d 233, error refused no reversible error, certiorari denied 68 S.Ct. 206, 332 U.S. 830, 92 L.Ed. 403—Greenspun v. Greenspun, Civ.App., 194 S.W.2d 134, affirmed 198 S.W.2d 82, 145 Tex. 374—San Antonio, U. & G. R. Co. v. Clarke & Keller, Civ.App., 81 S.W.2d 113—Goodwin v. Abilene State Bank, Civ.App., 294 S.W. 883—Reclamation Co. v. Simmons, Civ.App., 293 S W. 194—Tyler County State Bank v. Shivers, Civ.App., 281 S.W. 264, affirmed Com.App., 6 S.W.2d 108—Babb v. Patterson, Civ.App., 242 S.W. 538—Texas Lumber & Loan Co. v. Green Bros., Civ.App., 211 S.W. 352—Texas Lumber & Loan Co. v. First Nat. Bank, Civ.App., 209 S.W. 811—Bay Lumber Co. v. Snelling, Civ.App., 205 S.W. 763—Texas & P. Ry. Co. v. Schelb, Civ.App., 196 S W. 881, error refused—Derry v. Harty, Civ.App., 187 S.W. 343—Southern Kansas Ry. Co. of Texas v. Barnes, Civ.App., 173 S.W. 880.

Utah.—Peek v. Bailey, 195 P. 206, 57 Utah 546—Valiotis v. Utah-Apex Mining Co., 184 P. 802, 55 Utah 151—Wooton v. Dragon Consol. Mining Co., 181 P. 593, 54 Utah 459—Russell v. Borden's Condensed Milk Co. of Utah, 174 P. 633, 53 Utah 457—Pratt v. Utah Light & Traction Co., 169 P. 868, 57 Utah 7.

Vt.—Stetson v. Davidson, 126 A.2d 921—Petition of Stowell, 125 A.2d

be disturbed on appeal where the evidence is conflicting,[94] where there was evidence sufficient to go

807, 119 Vt. 298—Bonneau v. Russell, 85 A.2d 569, 117 Vt. 134—Griswold v. Metropolitan Life Ins. Co., 180 A. 649, 107 Vt. 367—Perkins v. Vermont Hydro-Electric Corporation, 177 A. 631, 106 Vt. 367—Pocket v. Almon, 96 A. 421, 90 Vt. 10.

Va.—P. Lorillard Co. v. Clay, 104 S. E. 384, 127 Va. 734—Bashford v. Rosenbaum Hardware Co., 90 S.E. 625, 120 Va. 1—Virginia Ry. Co. v. Bell, 87 S.E. 570, 118 Va. 492.

Wash.—Nawrocki v. Cole, 249 P.2d 969, 41 Wash.2d 474, 35 A.L.R.2d 799—Westfield v. Marble, 173 P. 1090, 103 Wash. 213—Peterson v. Chess, 159 P. 894, 92 Wash. 682.

Wis.—Ruby v. Farmers Mut. Auto. Ins. Co., 79 N.W.2d 644, 274 Wis. 158—Shaver v. Davis, 185 N.W. 227, 175 Wis. 592.

4 C.J. p 844 note 66.

Preponderance of evidence is not question for appellate court.

Ark.—Dudley v. Adams, 298 S.W.2d 701—Williams v. Cooper, 273 S.W. 2d 15, 224 Ark. 317.

Cal.—Hansen v. Bear Film Co., 168 P.2d 946, 28 C.2d 154—Roesch v. De Mota, 150 P.2d 422, 24 C.2d 563.

Sturm v. Sturm, 291 P.2d 527, 138 C.A.2d 25—Bardin v. Case, 221 P.2d 292, 99 C.A.2d 137—Stewart v. Kaplan, 202 P.2d 1061, 90 C.A.2d 453—Cox v. Cox, 187 P.2d 23, 82 C.A.2d 867—Davis v. City and County of San Francisco, 114 P.2d 359, 45 C.A.2d 443.

Del.—Bennett v. Barber, 79 A.2d 363, 7 Terry 132.

Ill.—Le Menager v. Northwestern Steel & Wire Co., 22 N.E.2d 710, 301 Ill.App. 260.

Iowa.—Twohey v. Brown, 66 N.W.2d 870, 246 Iowa 114.

Mo.—Slack v. Kansas City Gas Co., 120 S.W.2d 70, 233 Mo.App. 306.

Tenn.—Frederick for Use and Benefit of Polk v. New England Fire Ins. Co., 259 S.W.2d 879, 36 Tenn.App. 587—Campbell v. Campbell, 199 S. W.2d 931, 29 Tenn.App. 651—St. John v. Bratton, 150 S.W.2d 727, 25 Tenn.App. 64.

Tex.—Buss v. Robison, Civ.App., 255 S.W.2d 339, error refused no reversible error.

Utah.—Horsley v. Robinson, 186 P. 2d 592, 112 Utah 227.

Wash.—Arthurs v. National Postal Transport Ass'n, 304 P.2d 685—Ehman v. Department of Labor and Industries, 206 P.2d 787, 33 Wash. 2d 584.

Rule is usually applied in contested cases in the trial court where the facts on which the verdict and judgment rest are stated pro and con, and the jury or court trying the case have confronted the witnesses and observed their manner of testifying and have passed on their credibility.

Tex.—Saner-Ragley Lumber Co. v. Spivey, Civ.App., 255 S.W. 193, modified on other grounds Spivey v. Saner-Ragley Lumber Co., Com. App., 284 S.W. 210.

Absence of consistency in deposition

Mo.—Masson v. Metropolitan Life Ins. Co., 36 S.W.2d 118, 225 Mo. App. 925.

Difficulty of obtaining positive proof

In estimating the probative value of evidence, the appellate court will consider the difficulty of obtaining positive proof.

Mo.—Scott v. American Zinc, Lead & Smelting Co., 173 S.W. 23, 187 Mo. App. 344.

Silence of witness

The weight to be given the silence of a witness and the contention that an answer will incriminate is for the tribunal conducting the trial.

U.S.—U. S. ex rel. Vajtauer v. Commissioner of Immigration at Port of New York, N.Y., 47 S.Ct. 302, 273 U.S. 103, 71 L.Ed. 560.

Presumptions as to weight of evidence

Code sections, providing that oral admissions of a party should be viewed with caution, that weak evidence offered, when party has power to offer stronger evidence, should be viewed with distrust, and stating presumption that willfully suppressed evidence, if produced, would be adverse, and presumption that higher evidence would be adverse if inferior evidence is produced, are ordinarily used as a guide for trier of facts and are not considered by appellate courts, except when there is no substantial evidence to support a judgment.

Cal.—Moore v. Spremo, 164 P.2d 540, 72 C.A.2d 324.

94. Ariz.—Todaro v. Gardner, 231 P.2d 435, 72 Ariz. 87—Rogers v. Greer, 219 P.2d 760, 70 Ariz. 264.

Cal.—Martin School of Aviation, Inc. v. Bank of America Nat. Trust & Sav. Ass'n, 312 P.2d 251—Herbert v. Lankershim, 71 P.2d 220, 9 C.2d 409—Thomas Haverty Co. v. Jones, 197 P. 105, 185 C. 285.

Aguirre v. Fish and Game Commission, App., 311 P.2d 903—Wilson v. Foley, App., 309 P.2d 97—Prince v. Varona, 301 P.2d 512, 144 C.A.2d 673—Fry v. Bank of America Nat. Trust & Sav. Ass'n, 298 P.2d 34, 142 C.A.2d 150—Allen v. Shaver, 289 P.2d 255, 136 C.A.2d 621—See v. Grandview Gardens, 289 P.2d 48, 136 C.A.2d 618—In re Reed's Estate, 282 P.2d 935, 132 C.A.2d 732—Squillante v. Barr, 280 P.2d 216, 131 C.A.2d 175—Stafford-Lewis v. Wain, 276 P.2d 157, 128 C.A.2d 614—Gillespie v. Ornsby, 272 P.2d 949, 126 C.A.2d 513—Baker v. Floto, 265 P.2d 158, 122 C.A.2d 573—Kruckow v. Lesser, 244 P.2d 19, 111 C.A.2d 198—Curtis v. Pacific Elec. Ry. Co., 223 P.2d 52, 100 C. A.2d 112—Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778—Sanchez v. Torquemada, 214 P.2d 48, 96 C.A.2d 26—Faust v. Faust, 204 P.2d 906, 91 C.A.2d 304—Patin v. Tersip, 200 P. 2d 205, 89 C.A.2d 135—Holmes v. Southern Cal. Edison Co., 177 P.2d 32, 78 C.A.2d 43—Belletich v. Pollock, 171 P.2d 57, 75 C.A.2d 142—Green v. Pedigo, 170 P.2d 999, 75 C.A.2d 300—Peck v. Howard, 167 P.2d 753, 73 C.A.2d 308—McDougall v. Morrison, 130 P.2d 149, 55 C.A.2d 92—Vitruvian Corp. v. Laubisch, 121 P.2d 784, 49 C.A.2d 360—Holwick v. Walker, 45 P.2d 374, 6 C.A. 2d 669—Barthelmess v. Cavalier, 38 P.2d 484, 2 C.A.2d 477—Hughes v. Quackenbush, 37 P.2d 99, 1 C.A.2d 349—Pascoe v. Payne, 12 P.2d 1091, 124 C.A. 528—Dicker v. Italo-American Oil Corporation, 6 P.2d 550, 119 C.A. 451—Favali v. Richardson, 285 P. 1062, 104 C.A. 301—Brichetto v. Raney, 245 P. 235, 76 C.A. 232—Jackson v. Clover, 213 P. 507, 60 C.A. 641—Smith v. F. L. Moore Motor Truck Co., 176 P. 367, 35 C.A. 430.

Mastrofini v. Swanson, 250 P.2d 764, 114 C.A.2d Supp. 848.

Colo.—Barth v. Powell, 254 P.2d 428, 127 Colo. 78—Hassler v. Fountain Mut. Irr. Co., 26 P.2d 103, 93 Colo. 246.

Conn.—Zullo v. Zullo, 117 A.2d 838, 142 Conn. 695.

Fla.—Exchange Nat. Bank of Winter Haven v. Smith, 4 So.2d 675, 148 Fla. 473.

Idaho.—Dunclick, Inc. v. Utah-Idaho Concrete Pipe Co., 295 P.2d 700, 77 Idaho 499—Lisenby v. Intermountain State Bank, 190 P. 355, 33 Idaho 101.

Ill.—Compton v. School Directors of Dist. No. 14, 131 N.E.2d 544, 8 Ill. App.2d 243.

Ind.—State ex rel. Roberts v. Graham, 110 N.E.2d 855, 231 Ind. 680—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163—Edwards v. Hudson, 14 N.E.2d 705, 214 Ind. 120.

Armstrong Cork Co. v. Maar, 111 N.E.2d 82, 124 Ind.App. 105, rehearing denied 112 N.E.2d 240, 124 Ind.App. 106.

Iowa.—Creamery Package Mfg. Co. v. Union Bank, 69 N.W. 676, 100 Iowa 370.

Kan.—Arnette v. Arnette, 178 P.2d 1019, 162 Kan. 677.

Ky.—Hagedorn v. Scott, 15 S.W.2d 479, 228 Ky. 582.

to the jury,[95] where the evidence supports the action of the court below,[96] where the determination of the facts would support an action of the court below in either one of two ways,[97] and where no injustice appears;[98] and the rule applies notwithstanding a finding of fact is apparently against the weight or preponderance of the evidence,[99] that different minds might arrive at opposite conclusions on a consideration of the evidence,[1] or that a mere

Miss.—Cowart v. Pearl River Tung Co., 67 So.2d 356, 218 Miss. 472—Campbell v. Willard, 39 So.2d 483, 205 Miss. 783.
Mo.—Kansas City v. O'Donnell, App., 296 S.W.2d 914—Carlson v. Kansas City, Clay County & St. Joseph Auto Transit Co., 282 S.W. 1037, 221 Mo.App. 537—Haines v. Chicago, R. I. & P. Ry. Co., 185 S.W. 1187, 193 Mo.App. 453.
Mont.—Hage v. Orton, 175 P.2d 174, 119 Mont. 419—Batchoff v. Craney, 172 P.2d 308, 119 Mont. 157.
Neb.—Mainelli v. Neuhaus, 59 N.W. 2d 607, 157 Neb. 392—Garbark v. Newman, 51 N.W.2d 315, 155 Neb. 188.
N.Y.—Altschuller v. Bressler, 46 N.E. 2d 886, 289 N.Y. 463—Hennessy v. Walker, 17 N.E.2d 782, 279 N.Y. 94, 119 A.L.R. 1029.
Lutz v. Ey, 3 E.D.Smith 621, 3 Abb.Pr. 475.
Ohio.—State ex rel. Puehler v. Board of Education of Fulton County School Dist., 16 N.E.2d 422, 134 Ohio St. 280.
Okl.—Equitable Life Assur. Soc. of U. S. v. Neale, 258 P.2d 654—Wood Oil Co. v. Washington, 184 P.2d 116, 199 Okl. 115—Nelson v. Peterman, 249 P. 333, 119 Okl. 125.
Or.—Fish v. Southern Pac. Co., 143 P.2d 917, 173 Or. 294, rehearing denied 145 P.2d 991, 173 Or. 294—Stancliffe v. Corn, 114 P.2d 1014, 166 Or. 672—Rosetto v. Miller, 252 P. 707, 120 Or. 490.
Pa.—Appeal of Borough of Irwin, 90 A.2d 365, 171 Pa.Super. 256.
S.C.—Field v. Gregory, 94 S.E.2d 15, 230 S.C. 39.
Tenn.—Spivey v. St. Thomas Hospital, 211 S.W.2d 450, 31 Tenn.App. 12.
Tex.—Post v. State, 171 S.W. 707, 106 Tex. 500.
Panhandle Const. Co. v. City of Spearman, Civ.App., 89 S.W.2d 1053.
Utah.—Hinkson v. Bonanni, 205 P.2d 242, 115 Utah 376.
Va.—Dalby v. Shannon & Florence, 124 S.E. 186, 139 Va. 488.
Wis.—Spiegel v. Silver Lake Beach Enterprises, Inc., 80 N.W.2d 401, 274 Wis. 439.
Wyo.—Hancock v. Johnson, 244 P.2d 285, 69 Wyo. 503.
4 C.J. p 844 note 68—27 C.J. p 868 note 94 [c]—55 C.J. p 1020 note 41.

Court will determine whether evidence is conflicting
Cal.—Herbert v. Lankershim, 71 P.2d 220, 9 C.2d 409.

Where construction of language in a comprehensive liability policy was one of fact, any reasonable construction by lower court would be upheld under general rules applicable to conflicting evidence.
Cal.—Cal-Farm Ins. Co. v. Boisseranc, App., 312 P.2d 401.

95. Md.—Singer Const. Co. v. Goldsborough, 128 A. 754, 147 Md. 628.
Mich.—Patterson v. Thatcher, 263 N. W. 882, 273 Mich. 597.
Mo.—Rodefer v. Grange Mut. Ins. Co. of Lewis County, App., 91 S.W.2d 112.
N.C.—Hinton v. West, 178 S.E. 356, 207 N.C. 708.
Tex.—Staha v. Mitchell, Civ.App., 294 S.W.2d 906.
4 C.J. p 844 note 70.

Weight of evidence may be passed on to determine whether there was any evidence to take the case to the jury.
Mo.—Zimmerman v. Kansas City Public Service Co., 41 S.W.2d 579, 226 Mo.App. 369.

96. Conn.—Wetstone v. Cantor, 127 A.2d 70, 144 Conn. 77.
Ga.—First Joint Stock Land Bank of Montgomery v. Sasser, 195 S.E. 143, 185 Ga. 417.
Ill.—Bartolucci v. Falleti, 46 N.E.2d 980, 382 Ill. 168—Grubb v. Illinois Terminal Co., 8 N.E.2d 934, 366 Ill. 330—Toombs v. Lewis, 199 N.E. 127, 362 Ill. 181, conformed to 3 N.E.2d 527, 285 Ill.App. 603.
Little v. Illinois Terminal R. Co., 50 N.E.2d 123, 320 Ill.App. 163.
Ind.—Clapham v. City of Huntington, 32 N.E.2d 118, 109 Ind.App. 244—Fayette Lumber Co. v. Faught, 5 N.E.2d 132, 102 Ind.App. 686.
Kan.—Smith v. Harris, 311 P.2d 325, 181 Kan. 237—In re Bradley's Estate, 297 P.2d 180, 179 Kan. 539.
Neb.—Male v. Dahlgrin, 92 N.W. 632, 66 Neb. 524.
Minn.—Otto B. Ashbach & Sons, Inc. v. State, 78 N.W.2d 446, 247 Minn. 573—Erickson v. Turnquist, 77 N. W.2d 740, 247 Minn. 529.
N.J.—Fratello v. City of Newark, 42 A.2d 260, 133 N.J.Law 10—Schwartz & Nagle, Inc. v. Langar Transp. Corp., 37 A.2d 75, 131 N.J. Law 598—David MacGregor Co. v. Breibart, 33 A.2d 605, 130 N.J.Law 428—Pilgrim Co. v. Rosenblum, 32 A.2d 453, 130 N.J.Law 220—Barnes v. Browell Bus Co., 32 A.2d 286, 130 N.J.Law 192—Bacharach v. Mitnick, 3 A.2d 92, 121 N.J.Law 401—Sansone v. Selvaggi, 2 A.2d 355, 121 N.J.Law 274—Siccardi v. Caruso, 198 A. 370, 120 N.J.Law 111—Boyle v. Baldowski, 188 A. 233, 117 N.J.Law 320—Eckman v. Beihl, 184 A. 430, 116 N.J.Law 308.
Wyo.—Arnold v. Jennings, 296 P.2d 989.

Negative verdict or decision cannot be attacked on the ground that there is a lack of evidence to sustain the verdict or decision.
Ind.—Glass v. Bailey, 118 N.E.2d 800, 233 Ind. 266—Pokraka v. Lummus Co., 104 N.E.2d 669, 230 Ind. 523—Wilson v. Rollings, 14 N.E.2d 905, 214 Ind. 155.
Wherry v. Backelman, 130 N.E.2d 777, 126 Ind.App. 136—Parks v. Koser, 126 N.E.2d 785, 125 Ind.App. 585—Himelstein Bros. v. Texas Co., 125 N.E.2d 820, 125 Ind.App. 448—Leckrone v. Lawler, 118 N.E. 2d 381, 125 Ind.App. 35—Harvey v. Johnson School Tp. of Clinton County, 117 N.E.2d 279, 124 Ind. App. 602, rehearing denied 118 N.E. 2d 375, 124 Ind.App. 602.

97. Cal.—Boness v. Richardson Mineral Springs, 296 P.2d 581, 141 C.A. 2d 251—Cucuk v. Payne, 296 P.2d 7, 140 C.A 2d 881—Edwards v. Modoc County Bank, 27 P.2d 797, 135 C.A. 550.
4 C.J. p 844 note 72.

98. La.—Delmonico v. Trizzinie, 10 La. 401.

99. Ark.—Beasley v. Poindexter, 299 S.W. 43, 175 Ark. 1169.
4 C.J. p 845 note 77.

1. Cal.—Hobart v. Hobart Estate Co., 159 P.2d 958, 26 C.2d 412—Irelan-Yuba Gold Quartz Min. Co. v. Pacific Gas & Electric Co., 116 P. 2d 611, 18 C.2d 557—Taylor v. Oakland Scavenger Co., 110 P.2d 1044, 17 C.2d 594—Webster v. Board of Dental Examiners of California, 110 P.2d 992, 17 C.2d 534—Lindemann v. San Joaquin Cotton Oil Co., 55 P.2d 870, 5 C.2d 480.
Williams v. San Diego Unified School Dist., 299 P.2d 916, 143 C. A.2d 564—Atherley v. MacDonald, Young & Nelson, Inc., 298 P.2d 700, 142 C.A.2d 575—Parnell v. Stanfield, 288 P.2d 118, 135 C.A.2d 804—Pores v. Purity Milk Co., 287 P.2d 169, 135 C.A.2d 305—Moran v. Bromley, 246 P.2d 1001, 112 C.A.2d 520—Kirack v. City of Eureka, 158 P.2d 270, 69 C.A.2d 134—Hinds v. Wheadon, 154 P.2d 720, 67 C.A.2d 456—Callaghy v. Mosle, 153 P.2d 91, 66 C.A.2d 788—In re Walsh's Estate, 152 P.2d 750, 66 C.A.2d 704—Welsh v. Mercy Hospital, 151 P. 2d 17, 65 C.A.2d 473—Locke v. Red

difference of opinion between the reviewing court and the trial judge or the jury regarding the weight of evidence exists;[2] and the reviewing court will not search the record to determine conflicting claims,[3] or which of conflicting theories is correct.[4]

Where there is any admissible or competent substantial evidence on the whole record[5] or reasonable

River Lumber Co., 150 P.2d 506, 65 C.A.2d 322—Lorraine v. City of Los Angeles, 130 P.2d 140, 55 C.A. 2d 127—Hall v. Bakersfield Community Hotel Corp., 125 P.2d 889, 52 C.A.2d 158—Chichester v. Mason, 111 P.2d 362, 43 C.A.2d 577—Beck v. Sirota, 109 P.2d 419, 42 C. A.2d 551—Bank of America Nat. Trust & Savings Ass'n v. Perry, 106 P.2d 53, 41 C.A.2d 133—Mundt v. Connecticut General Life Ins. Co., 95 P.2d 966, 35 C.A.2d 416—Connor v. Owen, 82 P.2d 1114, 28 C.A.2d 591—Chronister v. Brennan, 81 P.2d 479, 27 C.A.2d 509—Wilton v. Clarke, 80 P.2d 141, 27 C.A.2d 1—Schuerman v. Pacific Freight Lines, 80 P.2d 140, 27 C.A.2d 41—Savelli v. Simon, 77 P.2d 486, 25 C.A.2d 365—Sitkei v. Ralphs Grocery Co., 77 P.2d 311, 25 C.A.2d 294—Toms v. Mercantile Arcade Realty Corp., 76 P.2d 153, 24 C.A. 2d 700—Washko v. Stewart, 67 P. 2d 144, 20 C.A.2d 347—Central Bank of Oakland v. Wells Fargo Bank & Union Trust Co., 64 P.2d 465, 18 C.A.2d 559, hearing denied 65 P.2d 1301, 18 C.A.2d 559—Lagar v. Erickson, 56 P.2d 1287, 13 C.A. 2d 365—Cressey v. City of Los Angeles, 53 P.2d 172, 10 C.A.2d 745—Sander v. Los Angeles Ry. Corporation, 175 P. 901, 38 C.A. 222.

People v. Miller, 300 P.2d 760, 143 C.A.2d Supp. 843.

Conn.—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204.

D.C.—Capital View Realty Co. v. Cohen, Mun.App., 124 A.2d 853—Palmer v. Garves, Mun.App., 123 A.2d 611.

Idaho.—Wagoner v. Jeffery, 162 P.2d 400, 66 Idaho 455—Chatterton v. Luker, 158 P.2d 809, 66 Idaho 242—Nelson v. Altizer, 144 P.2d 1009, 65 Idaho 428—Smith v. Clearwater County, 143 P.2d 561, 65 Idaho 271—In re Randall's Estate, 70 P.2d 389, 58 Idaho 143.

Ill.—Foster v. Union Starch & Refining Co., 137 N.E.2d 499, 11 Ill. App.2d 346—Santiemmo v. Days Transfer, Inc., 133 N.E.2d 539, 9 Ill.App.2d 487—Seybold v. Zimmerman, 13 N.E.2d 675, 294 Ill.App. 138.

Ind.—Review Board of Unemployment Compensation Division of Department of Treasury v. Mammoth Life & Accident Ins. Co., 42 N.E. 2d 379, 111 Ind.App. 660.

Iowa.—Schenk v. Moore, 286 N.W. 445, 226 Iowa 1313—Finley v. Lowden, 277 N.W. 487, 224 Iowa 999.

Ky.—Cornett-Lewis Coal Co. v. Eversole, 190 S.W.2d 873, 301 Ky. 70—Schuster v. Caldwell, 134 S.W.2d 624, 280 Ky. 802.

Mass.—Cook v. Farm Service Stores, 17 N.E.2d 890, 301 Mass. 564.

Mich.—Rockford Paper Mills v. City of Rockford, 18 N.W.2d 379, 311 Mich. 100.

Minn.—Shastid v. Shue, 77 N.W.2d 273, 247 Minn. 314—Bicanic v. J. C. Campbell Co., 19 N.W.2d 7, 220 Minn. 107, followed in Czupiy v. North Star Timber Co., 19 N.W.2d 11, 220 Minn. 116, and 20 N.W.2d 885, 220 Minn. 115, certiorari denied 66 S.Ct. 805, 327 U.S. 787, 90 L.Ed. 1014.

Mont.—Wills v. Midland Nat. Life Ins. Co., 91 P.2d 695, 108 Mont. 536—Dalbey v. Equitable Life Assur. Soc. of U. S., 74 P.2d 432, 105 Mont. 587.

Ohio.—Hellebush v. Tischbein Apothecaries, 6 N.E.2d 584, 54 Ohio App. 162.

Tex.—Ruebeck v. Hunt, 176 S.W.2d 738, 142 Tex. 167, 150 A.L.R. 775.

City of Fort Worth v. Lee, Civ. App., 182 S.W.2d 831, affirmed 186 S.W.2d 954, 143 Tex. 551, 159 A.L. R. 125—Southern Alkali Corp. v. Dismukes, Civ.App., 104 S.W.2d 185, error dismissed.

Wash.—Bilski v. Department of Labor and Industries, 113 P.2d 62, 8 Wash.2d 594.

4 C.J. p 845 note 78.

2. Cal.—Lobdell v. Miller, 250 P.2d 357, 114 C.A.2d 328.

Ill.—Parrucci v. Kruse, 138 N.E.2d 91, 12 Ill.App.2d 30—McCary v. Wilson, 137 N.E.2d 867, 11 Ill.App. 2d 580—Beverly v. Central Ill. Elec. & Gas Co., 124 N.E.2d 669, 5 Ill. App.2d 27.

Minn.—Finch v. W. R. Roach Co., 1 N.W.2d 46, 299 Mich. 703—Finch v. W. R. Roach Co., 295 N.W. 324, 295 Mich. 589.

Mo.—Vosburg v. Smith, App., 272 S. W.2d 297.

Mont.—Hier v. Farmers Mut. Fire Ins. Co., 67 P.2d 831, 104 Mont. 471, 110 A.L.R. 1051.

Neb.—Missouri Pac. R. Co. v. Palmer, 76 N.W. 169, 55 Neb. 559.

N.C.—Sisson v. Royster, 45 S.E.2d 351, 228 N.C. 298.

S.D.—Counts v. Kary, 297 N.W. 442, 67 S.D. 607—Rhode v. Farup, 293 N.W. 632, 67 S.D. 437—Stoefen v. Brooks, 287 N.W. 330, 66 S.D. 587.

Wis.—First Nat. Bank & Trust Co. of Racine v. S. C. Johnson & Sons, 59 N.W.2d 445, 264 Wis. 404.

3. Cal.—Bradley v. Osborn, 194 P. 2d 53, 86 C.A.2d 18.

Ind.—Humphrey v. Pleasure Park Co., 187 N.E. 682, 97 Ind.App. 592.

4. Ill.—O'Brien v. Chicago & N. W. Ry. Co., 68 N.E.2d 638, 329 Ill.App. 382.

Iowa.—Martin v. Bankers' Life Co. of Des Moines, 250 N.W. 220, 216 Iowa 1022.

5. Ark.—Reed v. Baldwin, 92 S.W. 2d 392, 192 Ark. 491—Texas & Pac. Ry. Co. v. Stephens, 90 S.W.2d 978, 192 Ark. 115—St. Paul Fire & Marine Ins. Co. v. McElvaney, 300 S. W. 448, 175 Ark. 1170.

Cal.—Martin School of Aviation, Inc. v. Bank of America Nat. Trust & Sav. Ass'n, 312 P.2d 251—Primm v. Primm, 299 P.2d 231, 46 C.2d 690—Bellon v. Silver Gate Theatres, 47 P.2d 462, 4 C.2d 1—Crawford v. Southern Pac. Co., 45 P.2d 183, 3 C. 2d 427—Commercial Union Assur. Co. v. Pacific Gas & Electric Co., 31 P.2d 793, 220 C. 515.

Negvesky v. Alston, App., 312 P.2d 728—De Spirito v. Andrews, App., 311 P.2d 173—Garrick v. J. M. P., Inc., App., 309 P.2d 896—Gardner v. Rubin, App., 308 P.2d 892—Ivancovich v. Sullivan, App., 307 P.2d 989—Greenblatt v. State Bd. of Equalization, App., 307 P.2d 379—New v. New, App., 306 P.2d 987—Fiske v. State Personnel Bd., App., 305 P.2d 889—In re Moore's Estate, 300 P.2d 110, 143 C.A.2d 64—Olson v. Watson, 300 P.2d 35, 143 C.A.2d 343—In re Harvey's Estate, App., 299 P.2d 712, 143 C.A.2d 368—Doran v. Dreyer, 299 P.2d 661, 143 C.A.2d 289—Redsted v. Weiss, 167 P.2d 725, 73 C.A.2d 889—Cornell v. Hearst Sunical Land & Packing Corp., 131 P.2d 404, 55 C.A.2d 708—Kobida v. Hinkelmann, 127 P.2d 657, 53 C.A.2d 186—Hiltbrand v. Hiltbrand, 56 P.2d 1292, 13 C.A.2d 330—Melvin v. Mortgage Guarantee Co., 51 P.2d 167, 10 C.A.2d 69—Crestetto v. Lang Transp. Corporation, 48 P.2d 1010, 9 C.A.2d 208—Stewart v. Langer, 48 P.2d 758, 9 C.A.2d 60—Urbano v. Market St. Ry. Co., 46 P.2d 817, 8 C.A.2d 22—Moiola v. Paggi, 42 P.2d 331, 5 C.A.2d 279—Stuart v. Preston, 38 P.2d 155, 2 C.A.2d 310, rehearing denied 39 P.2d 441, 2 C.A.2d 310—Trowbridge v. Briggs, 35 P.2d 426, 140 C.A. 554—Marshall v. Smith, 21 P.2d 117, 131 C.A. 258—O'Hair v. California Prune & Apricot Growers' Ass'n, 20 P.2d 375, 130 C.A. 673—Himes v. Daniel, 15 P.2d 791, 127 C.A. 327—Hughes v. Atchison, T. & S. F. Ry. Co., 8 P.2d 853, 121 C.A. 271—Comstock v. Morse, 290 P. 108, 107 C.A. 71—Cossins v. Hershel California Fruit Products Co., 284 P. 1038, 103 C.A.

524—Blair v. Guarantee Title Co. of Long Beach, 284 P. 719, 103 C.A. 260—Mercantile Inv. Co. v. How, 278 P. 243, 99 C.A. 182—Migala v. Dakin, 277 P. 898, 99 C.A. 60—Linnard v. Sonnenschein, 272 P. 315, 94 C.A. 729—Los Angeles City High School Dist. of Los Angeles County v. Kennard, 271 P. 342, 94 C.A. 450—Andreen v. Escondido Citrus Union, 269 P. 556, 93 C.A. 182—Ching Wing v. Kishi, 268 P. 483, 92 C.A. 495—Taylor v. U. S. Fidelity & Guaranty Co., 260 P. 898, 86 C.A. 382—Ricks v. Adorni, 260 P. 815, 86 C.A. 284—Gaster v. Hinkley, 258 P. 988, 85 C.A. 55—Urton v. Ousdal, 257 P. 584, 84 C.A. 211—Spreckels v. City and County of San Francisco, 244 P. 919, 76 C. A. 267—J. & H. Goodwin, Limited, v. Franich, 174 P. 83, 37 C.A. 493.

Colo.—Hassler v. Fountain Mut. Irr. Co., 26 P.2d 102, 93 Colo. 246.

Conn.—Henry v. Bacon, 124 A.2d 913, 143 Conn. 648.

D.C.—Savage v. Grajek, Mun.App., 130 A.2d 589—Geier v. Laughlin, Mun.App., 129 A.2d 401.

Fla.—In re Alkire's Estate, 198 So. 475, 142 Fla. 862, 144 Fla. 606.

Idaho.—Watkins v. Mountain Home Co-operative Irr. Co., 197 P. 247, 33 Idaho 623.

Ind.—Heckman v. Heckman, 134 N.E. 2d 695.

Iowa.—Jackson Wholesale Florists v. Schappaugh Floral, 70 N.W.2d 154, 246 Iowa 1189.

Kan.—Crawford Mfg. Co. v. State Commission of Revenue and Taxation, 304 P.2d 504, 180 Kan. 352—Hoover v. Hopkins, 251 P. 411, 122 Kan. 65.

Ky.—Wacker v. Wacker, 129 S.W.2d 1043, 279 Ky. 19.

La.—Garbarino v. B. & R. Transfer Co., App., 20 So.2d 625—Baker v. Travelers Ins. Co., App., 13 So.2d 758—Kohlman v. Jefferson Bottling Co., App., 192 So. 113—Jones v. American Mut. Liability Ins. Co., App., 185 So. 509, rehcard 189 So. 169—Weaks Supply Co. v. Gulf Refining Co., App., 180 So. 883—Hennen v. Louisiana Highway Commission, App., 178 So. 654—Serpas v. Collard Motors, App., 178 So. 261.

Me.—Reed v. Central Maine Power Co., 172 A. 823, 132 Me. 476.

Mich.—Gibbons v. Delto Contracting Co., 4 N.W.2d 39, 301 Mich. 638—Patterson v. Thatcher, 263 N.W. 882, 273 Mich. 597.

Miss.—Faulkner v. Middleton, 190 So. 910, 186 Miss. 355—Thomas v. Williamson, 187 So. 220, 185 Miss. 83.

Mo.—Huffman v. Mercer, 295 S.W.2d 27—Baker v. Brown's Estate, 294 S.W.2d 22—Draper v. Louisville & N. R. Co., 156 S.W.2d 626, 348 Mo. 886—Clark v. Commerce Trust Co., 62 S.W.2d 874, 333 Mo. 243—Payne v. Reed, 59 S.W.2d 43, 332 Mo. 343—Bowers v. Kansas City Public Service Co., 41 S.W.2d 810, 328 Mo. 770—Kapros v. Pierce Oil Corp., 25 S.W.2d 777, 324 Mo. 992, 78 A.L.R. 722—Moll v. Pollack, 8 S.W.2d 38, 319 Mo. 744.

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N.M.—Fair v. Morrow, 52 P.2d 612, 40 N.M. 11—Garvin v. Gordon, 14 P.2d 264, 36 N.M. 304.

N.Y.—Monetary Service Corp. v. Kroll, 294 N.Y.S. 513, 250 App.Div. 832.

N.C.—Bank of Beaufort v. Commercial Nat. Bank of Raleigh, 176 S.E. 734, 207 N.C. 216.

Okl.—Hartsell v. Davis, 53 P.2d 261, 175 Okl. 446—Arnold v. Adams, 294 P. 142, 147 Okl. 57.

Or.—Portland Mortg. Co. v. Elder, 53 P.2d 1045, 152 Or. 406—Northwest Auto Co. v. Reo Motorcar Co., 257 P. 10, 121 Or. 658.

Pa.—Merchants' Warehouse Co. v. Hitchler, 7 A.2d 455, 335 Pa. 465.

Burns v. Elliott-Lewis Electrical Co., 179 A. 47, 118 Pa.Super. 243—Jones v. Baltimore & O. R. Co., 165 A. 260, 108 Pa.Super. 404.

Tenn.—City of Chattanooga v. Rogers, 299 S.W.2d 660.

City of Knoxville v. Peebles, 87 S.W.2d 1022, 19 Tenn.App. 340.

Tex.—National Life & Accident Co. v. Dickinson, Civ.App., 115 S.W.2d 1180, error dismissed—Texas & N. O. R. Co. v. Warden, Civ.App., 107 S.W.2d 451, error dismissed—Security State Bank of Pearsall v. Cunningham, Civ.App., 296 S.W. 678.

Utah.—Walker Bros., Bankers v. Intermountain Milling Co., 237 P. 228, 65 Utah 340.

Wash.—Burson v. Blackwell, 52 P. 2d 351, 184 Wash. 669—Smith v. City of Seattle, 35 P.2d 27, 178 Wash. 477—Gough v. Smalley, 294 P. 1007, 160 Wash. 193—Pylate v. Hadman, 275 P. 559, 151 Wash. 245—Hoptowit v. Brown, 198 P. 370, 115 Wash. 661.

Wis.—Spiegel v. Silver Lake Beach Enterprises, Inc., 80 N.W.2d 401, 274 Wis. 439—Hoefer v. Last, 266 N.W. 196, 221 Wis. 102—Borg v. Downing, 266 N.W. 182, 221 Wis. 463.

Wyo.—Peterson v. Johnson, 28 P.2d 487, 46 Wyo. 473, 91 A.L.R. 723.

Evidence erroneously stricken

In civil actions, reviewing court may properly consider evidence erroneously stricken by trial court on motion of appellant in determining whether evidence is sufficient to support determination of trial court.

Cal.—People v. Newman, 148 P.2d 4, 24 C.2d 168, 152 A.L.R. 365.

Incompetent evidence

(1) In determining whether findings are supported by evidence, appellate court will not consider whether supporting evidence admitted at trial without objection is either incompetent or hearsay.

Cal.—Weiss v. Bank of America Nat. Trust & Savings Ass'n, 135 P.2d 584, 57 C.A.2d 892.

(2) In suit for return of purchase price of realty on ground of plaintiff's mental incompetence to make purchase, where opinion of specialist who examined plaintiff was based substantially on rejected testimony as to what plaintiff told witness through an interpreter and what witness learned of history of plaintiff's condition from any source, his testimony must also be considered by supreme court as having been stricken in determining sufficiency of evidence to sustain finding of plaintiff's mental incompetence by superior court.

N.H.—Oullette v. Ledoux, 30 A.2d 13, 92 N.H. 302.

(3) In determining the sufficiency of evidence to sustain a verdict, district court of appeal must consider incompetent evidence introduced by the party, who on appeal was asserting that evidence was insufficient.

Cal.—Cox v. City of Los Angeles, 223 P.2d 868, 100 C.A.2d 378.

Interested and disinterested witnesses

In determining sufficiency of evidence to sustain verdict, reviewing court should not disregard testimony of interested witnesses and look to that of disinterested witnesses.

Ill.—Cochran v. Koller, 33 N.E.2d 910, 310 Ill.App. 91.

Hearsay evidence tending to prove a material fact, if admitted without objection, may sustain a finding of the existence of that fact; the probative force of the evidence being for the trial tribunal vested with the function of ascertaining facts.

Neb.—Maul v. Iowa-Nebraska Light & Power Co., 288 N.W. 532, 137 Neb. 128, modified on other grounds

inference therefrom[6] to support the fact determined in the lower court, the fact so determined will not

and rehearing denied 289 N.W. 767, 137 Neb. 128.

In determining what witness has testified to, court must look to his entire testimony.

Va.—Tignor v. Virginia Electric & Power Co., 184 S.E. 234, 166 Va. 284.

Irrelevant evidence disregarded

Tex.—Foster v. Patton, Civ.App., 104 S.W.2d 944, error dismissed.

6. Ala.—Vickers v. McNeal, 7 So. 2d 858, 242 Ala. 652—Randle v. Dumas, 157 So. 218, 229 Ala. 396—Baker v. Baker, 124 So. 740, 220 Ala. 201.

Ariz.—Guarantee Title & Trust Co. v. Babbitt Bros. Trading Co., 53 P. 2d 734, 47 Ariz. 47—Collins v. Collins, 52 P.2d 1169, 46 Ariz. 485—Equitable Life Assur. Soc. of U. S. v. De Johnson, 286 P. 817, 36 Ariz. 428—Moeur v. Anchor Trust Co. of Wichita, 274 P. 1047, 35 Ariz. 143—Moeur v. Anchor Trust Co. of Wichita, 274 P. 1047, 35 Ariz. 142—Moeur v. Farm Builders' Corporation, 274 P. 1043, 35 Ariz. 130.

Cal.—Arellano v. City of Burbank, 89 P.2d 113, 13 C.2d 248—Knapp v. Bergman, 55 P.2d 218, 5 C.2d 368—Stewart v. Wagenbach, 47 P.2d 267, 3 C.2d 755—Lemm v. Stillwater Land & Cattle Co., 19 P.2d 785, 217 C. 474—Henkel v. J. J. Henkel Co., 298 P. 28, 212 C. 288—In re Ross' Estate, 250 P. 676, 199 C. 641—Aronson & Co. v. Pearson, 249 P. 191, 199 C. 295—Keena v. United Railroads of San Francisco, 239 P. 1061, 197 C. 148—Wilbur v. Wilbur, 239 P. 332, 197 C. 1—In re Berry's Estate, 233 P. 330, 195 C. 354—Hotaling v. Hotaling, 224 P. 455, 193 C. 368, 56 A.L.R. 734—Tartar v. Industrial Accident Commission of State of California, 218 P. 39, 191 C. 703—Mah See v. North American Acc. Ins. Co. of Chicago, Ill., 213 P. 42, 190 C. 421—Rideout v. City of Los Angeles, 197 P. 74, 185 C. 426—Gates v. Pendleton, 195 P. 664, 184 C. 797—Rossini v. St. Paul Fire & Marine Ins. Co. of St. Paul, Minn., 188 P. 564, 182 C. 415—Waite v. San Fernando Pub. Co., 173 P. 591, 178 C. 303—Hallidie v. First Federal Trust Co., 171 P. 431, 177 C. 600—Mercantile Trust Co. of San Francisco v. Sunset Road Oil Co., 168 P. 1033, 176 C. 451—Northwestern Portland Cement Co. v. Atlantic Portland Cement Co., 163 P. 47, 174 C. 308—Ryder v. Bamberger, 158 P. 753, 172 C. 791. Southern California Gas Co. v. Goss, App., 308 P.2d 41—Uhl v. Baldwin, App., 302 P.2d 841—San Gabriel Val. Ready-Mixt v. Casillas, 298 P.2d 76, 142 C.A.2d 137—Donlon v. Donlon, 295 P.2d 51, 140 C.A.2d 428—In re Bould's Estate, 287 P.2d 8, 135 C.A.2d 260, hearing denied 289 P.2d 15, 135 C.A.2d 260—Pierce v. Black, 280 P.2d 913, 131 C.A.2d 521—In re Cummins' Estate, 280 P.2d 128, 130 C.A.2d 821—Snokelberg v. Crecelius, 280 P.2d 109, 131 C.A.2d 136—Axell v. Axell, 250 P.2d 182, 114 C.A.2d 248—Wallace v. Sinclair, 250 P.2d 154, 114 C.A.2d 220—Correia v. Van Camp Sea Food Co., 248 P.2d 81, 113 C.A.2d 71—LeFiell v. LeFiell, 239 P.2d 61, 108 C.A.2d 321—Gall v. Union Ice Co., 239 P.2d 48, 108 C.A.2d 303—Percin v. Easley, 238 P.2d 1025, 108 C.A.2d 510—K. & M., Inc. v. LeCuyer, 238 P.2d 28, 107 C.A.2d 710, followed in 238 P.2d 33, 107 C.A.2d 845—Turknette v. Turknette, 223 P.2d 495, 100 C.A.2d 271—Saphire v. Los Angeles Transit Lines, 222 P.2d 956, 99 C.A.2d 880—Cohen v. Hunter, 222 P.2d 93, 99 C.A.2d 464—Lewis v. Southern Pac. Co., 220 P.2d 431, 98 C.A.2d 358—Department of Social Welfare of Cal. v. Machado, 220 P.2d 411, 98 C.A.2d 364—Ahern v. S. H. Kress & Co., 218 P.2d 108, 97 C.A.2d 690—Swayze v. Swayze, 217 P.2d 122, 97 C.A.2d 89—Rogers v. Rogers, 195 P.2d 890, 86 C.A.2d 817—Caperton v. Mast, 192 P.2d 467, 85 C.A. 2d 157—Hetherington v. Crossley Transp. Co., 191 P.2d 463, 84 C.A.2d 722—Brainard v. Brainard, 186 P. 2d 990, 82 C.A.2d 478—Lagares v. Kappas, 186 P.2d 471, 82 C.A.2d 569—Swales v. Barr, 188 P.2d 516, 83 C.A.2d 291—Jensen v. Friedman, 179 P.2d 855, 79 C.A.2d 494—Barham v. Khoury, 177 P.2d 579, 78 C. A.2d 204—Le Blanc v. Browne, 177 P.2d 347, 78 C.A.2d 63—Givens v. 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Burnett v. Reyes, 256 P.2d 91, 118 C.A.2d Supp. 915—Mastrofini v. Gregory Elec. Co., 253 P.2d 537, 116 C.A.2d Supp. 915—Mastrofini v. Swanson, 250 P.2d 764, 114 C.A.2d Supp. 848.

Colo.—Ireland v. Henrylyn Irr. Dist., 160 P.2d 364, 113 Colo. 555—City of Colorado Springs v. Colburn, 81 P.2d 397, 102 Colo. 483—Service v. West, 153 P. 446, 60 Colo. 366.

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D.C.—Nationwide Mut. Ins. Co. v. Burka, Mun.App., 134 A.2d 89—De Bobula v. Winston, Mun.App., 57 A.2d 742—Turner v. National Hospitalization, Mun.App., 52 A.2d 274—Schwartzbach v. Thompson, Mun.App., 33 A.2d 624.

Fla.—Brenner v. Smullian, 84 So.2d 44, followed in Brenner v. Tropical Glass & Mirror Co., 84 So.2d 49—Holstun v. Embry, 169 So. 400, 124 Fla. 554.

Ga.—Adler v. Adler, 61 S.E.2d 824, 207 Ga. 394—Thompson v. Mitchell, 16 S.E.2d 540, 192 Ga. 750.

Idaho.—Jensen v. Chandler, 291 P.2d 1116, 77 Idaho 303—Conley v. Amalgamated Sugar Co., 263 P.2d 705, 74 Idaho 416.

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Cruz v. Gulf, M. & O. R. Co., 129 N.E.2d 272, 7 Ill.App.2d 209—Beverly v. Central Ill. Elec. & Gas Co., 124 N.E.2d 669, 5 Ill.App.2d 27.

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Iowa.—Anderson v. Elliott, 57 N.W.2d 792, 244 Iowa 670.

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Neb.—Bendfeldt v. Lewis, 30 N.W.2d 293, 149 Neb. 107—Batth v. Metropolitan Life Ins. Co., 290 N.W. 902, 137 Neb. 676.

Nev.—Garaventa v. Gardella, 169 P. 2d 540, 63 Nev. 304.

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N.J.—Levine v. Bochiaro, 59 A.2d 224, 137 N.J.Law 215—Schnitzer v. Lanzara, 180 A. 234, 115 N.J.Law 332—Portley v. Hudson & M. R. Co., 172 A. 384, 113 N.J.Law 13—Portley v. Hudson & M. R. Co., 168 A. 184, 111 N.J.Law 204.

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N.M.—Gauvey v. Hawkins, 296 P.2d 302, 61 N.M. 131—Rasmussen v. Martin, 289 P.2d 327, 60 N.M. 180—Archuleta v. Velasquez, 287 P.2d 989, 60 N.M. 97—Perkins v. Drury, 258 P.2d 379, 57 N.M. 269—Pentecost v. Hudson, 252 P.2d 511, 57 N.M. 7—Little v. Johnson, 242 P. 2d 1000, 56 N.M. 232—Reid v. Brown, 240 P.2d 213, 56 N.M. 65—Adams v. Cox, 234 P.2d 1043, 55 N.M. 444—Ortega v. Koury, 227 P. 2d 941, 55 N.M. 142—Hugh K. Gale Post No. 2182 Veterans of Foreign Wars, of Farmington v. Norris, 201 P.2d 777, 53 N.M. 58—Erb v. Hawks, 194 P.2d 266, 52 N.M. 166—Valdez v. Salazar, 107 P.2d 862, 45 N.M. 1—Lopez v. Townsend, 82 P. 2d 921, 42 N.M. 601—Arias v. Springer, 78 P.2d 153, 42 N.M. 350—Fair v. Morrow, 52 P.2d 612, 40 N.M. 11.

N.C.—Gossett v. Metropolitan Life Ins. Co., 179 S.E. 438, 208 N.C. 152—Lynn v. Pinehurst Silk Mills, 179 S.E. 11, 208 N.C. 7.

Ohio.—In re Rees' Estate, App., 85 N.E.2d 563.

Okl.—Kansas City Southern Ry. Co. v. Martin, 293 P.2d 600—Juckes v. Rogers, 246 P.2d 335, 206 Okl. 663—Grand Distributing Co. v. Adams, 244 P.2d 571, 206 Okl. 451—Tankersley Inv. Co. v. Tankersley Inv. Co. ex rel. Tankersley, 210 P.2d 167, 202 Okl. 51—State v. Wm. Cameron & Co., 294 P. 104, 147 Okl. 1—Farmers' State Bank of Newkirk v. Hess, 280 P. 305, 138 Okl. 190, 66 A.L.R. 894—Waddle v. Stafford, 230 P. 855, 104 Okl. 192.

Or.—Ritter v. Sivils, 293 P.2d 211, 206 Or. 410—Smith v. Industrial Hospital Ass'n, 242 P.2d 592, 194 Or. 525—Edvalson v. Swick, 227 P. 2d 183, 190 Or. 473—In re Newman's Will, 213 P.2d 137, 187 Or. 641—Sexton v. Kelly, 200 P.2d 950, 185 Or. 1—Pond v. Jantzen Knitting Mills, 190 P.2d 141, 183 Or. 256—Adskim v. Oregon-Washington R. & Nav. Co., 294 P. 605, 134 Or. 574—Sig C. Mayer & Co. v. Smith, 230 P. 355, 112 Or. 559—Johnson v. Homestead-Iron Dyke Mines Co., 193 P. 1036, 98 Or. 318—Dolph v. Speckart, 186 P. 32, 94 Or. 550—Ulbrand v. Smith, 178 P. 597, 91 Or. 206.

Pa.—Bragdon v. Pittsburgh Rys. Co., 100 A.2d 378, 375 Pa. 307—Commonwealth v. Emerick, 96 A.2d

inferences to be drawn from the evidence, and where the evidence is susceptible to different inferences, the appellate court cannot substitute its own deductions for those made in the lower court.[7.5]

870, 373 Pa. 388—Ashcraft v. C. G. Hussey & Co., 58 A.2d 170, 359 Pa. 129—Appeal of Berberian, 41 A.2d 670, 351 Pa. 475—In re Anderle, 39 A.2d 829, 350 Pa. 589—Pennsylvania R. Co. v. Driscoll, 9 A.2d 621, 336 Pa. 310.

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S.D.—Peters v. Hoisington, 37 N. W.2d 410, 72 S.D. 542, opinion adhered to 39 N.W.2d 667, 73 S.D. 144.

Tenn.—D. M. Rose & Co. v. Snyder, 206 S.W.2d 897, 185 Tenn. 499.

Arnold v. Wiley, App., 284 S.W. 2d 296—City of Columbia v. Lentz, App., 282 S.W.2d 788—Noe v. Talley, 274 S.W.2d 367, 38 Tenn.App. 342—Rural Ed. Ass'n v. Anderson, 261 S.W.2d 151, 37 Tenn.App. 209—Central Truckaway System v. Waltner, 253 S.W.2d 985, 36 Tenn. App. 202—City Water Co. v. Butler, 251 S.W.2d 433, 36 Tenn.App. 55—Short Way Lines v. Thomas, 241 S.W.2d 875, 34 Tenn.App. 641—Cherry v. Sampson, 232 S.W.2d 610, 34 Tenn.App. 29—Newark Fire Ins. Co. v. Martineau, 170 S.W.2d 927, 26 Tenn.App. 261—Nashville, C. & St. L. Ry. v. Sutton, 104 S.W.2d 834, 21 Tenn.App. 31—City of Knoxville v. Peebles, 87 S.W.2d 1022, 19 Tenn.App. 340—Claxton v. Claxton, 64 S.W.2d 854, 16 Tenn. App. 399.

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City of Bryan v. Jenkins, Civ. App., 247 S.W.2d 925, error refused no reversible error—Pickens v. Harrison, Civ.App., 246 S.W.2d 316, affirmed 252 S.W.2d 575, 151 Tex. 562—Capitol Steel & Iron Co. v. Henderson, Civ.App., 239 S.W.2d 851—McElwee v. Mfrs. Cas. Ins. Co., Civ.App., 221 S.W.2d 381, error refused no reversible error—Highway Ins. Underwriters v. Lufkin-Beaumont Motor Coaches, Civ. App., 215 S.W.2d 904, error refused no reversible error—Walker v. Citizens Nat. Bank of Waco, Civ.App., 212 S.W.2d 203, error refused no reversible error—Greenspun v. Greenspun, Civ.App., 211 S.W.2d 977, error refused no reversible error—Thompson v. Clement, Civ. App., 202 S.W.2d 341, error refused no reversible error—Central Motor Co. v. Roberson, Civ.App., 139 S.W. 2d 287—Waring v. Lockett, Civ. App., 118 S.W.2d 1000, error dismissed—South Texas Cotton Oil Co. v. Baugh, Civ.App., 68 S.W.2d 539.

Utah.—Green v. Equitable Life Assur. Soc. of the U. S., 284 P.2d 695, 3 Utah 2d 375—Gibbons & Reed Co. v. Guthrie, 256 P.2d 706—Penman v. Eimco Corp., 196 P.2d 984, 114 Utah 16—Jackson v. Jackson, 192 P.2d 397, 113 Utah 249—Dahnken v. George Romney & Sons Co., 184 P. 2d 211, 111 Utah 471.

Va.—Esso Standard Oil Co. v. Stewart, 59 S.E.2d 67, 190 Va. 949, 18 A.L.R.2d 1319—Virginia Transit Co. v. Durham, 59 S.E.2d 58, 190 Va. 979—F. A. Rausch & Co. v. Graham Mfg. Corporation, 134 S.E. 692, 145 Va. 681.

Wash.—Sevener v. Northwest Tractor & Equipment Corp., 247 P.2d 237, 41 Wash.2d 237—Fleming v. Buerkli, 293 P. 462, 159 Wash. 460—Wheatman v. R. Hoe & Co., 290 P. 853, 158 Wash. 232.

Wis.—Olson v. Williams, 70 N.W.2d 10, 270 Wis. 57—Throm v. Koepke Sand & Gravel Co., 51 N.W.2d 49, 260 Wis. 479—Basche v. Vanden Heuvel, 50 N.W.2d 383, 260 Wis. 169—Better Properties v. Kocher, 1 N.W.2d 157, 239 Wis. 294—Banking Commission v. First Wisconsin Nat. Bank of Milwaukee, 290 N.W. 735, 234 Wis. 60—Jensen v. Jensen, 279 N.W. 628, 228 Wis. 77—Kramer v. Chicago, M., St. P. & P. R. Co., 275 N.W. 113, 226 Wis. 118—Groh v. W. O. Krahn, Inc., 271 N.W. 374, 223 Wis. 662—McCaffrey v. Minneapolis, St. P. & S. S. M. R. Co., 267 N.W. 326, 222 Wis. 311, mandate modified on other grounds 268 N.W. 872, 222 Wis. 311—Hoefer v. Last, 266 N.W. 196, 221 Wis. 102—Borg v. Downing, 266 N.W. 182, 221 Wis. 463.

4 C.J. p 844 note 69.

The definite must prevail over the indefinite in determining whether there was substantial evidence in favor of plaintiff's theory.

Mo.—Mullen v. Lowden, 124 S.W.2d 1152, 344 Mo. 40.

7.5 Ariz.—Borrow v. El Dorado Lodge, 252 P.2d 791, 75 Ariz. 139, opinion supplemented 254 P.2d 1027, 75 Ariz. 218—DeSantis v. Dixon, 236 P.2d 38, 72 Ariz. 345—Witt Ice & Gas Co. v. Bedway, 231 P.2d 952, 72 Ariz. 152—Stewart v. Schnepf, 158 P.2d 529, 62 Ariz. 440—Apache Ry. Co. v. Shumway, 158 P.2d 142, 62 Ariz. 359, 159 A.L.R. 857—Daily Mines Co. v. Control Mines, 124 P. 2d 324, 59 Ariz. 138—Kenton v. Wood, 107 P.2d 380, 56 Ariz. 325—Egeland v. Jewell, 69 P.2d 804, 50 Ariz. 140—Collins v. Collins, 52 P. 2d 1169, 46 Ariz. 485.

Ark.—Morrison-Knudsen Co. v. Lea, 186 S.W.2d 429, 208 Ark. 260.

Cal.—Primm v. Primm, 299 P.2d 231, 46 C.2d 690—Scovill Mfg. Co. v. Skaggs Pay Less Drug Stores, 291 P.2d 936, 45 C.2d 881—Callahan v. Gray, 279 P.2d 963, 44 C.2d 107—Thompson v. City of Long Beach, 259 P.2d 649, 41 C.2d 235—Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church, 245 P.2d 481, 39 C.2d 121, certiorari denied 73 S.Ct. 828, 345 U.S. 938, 97 L.Ed. 1365—Kelley v. Upshaw, 246 P.2d 23, 39 C.2d 179—Pfingsten v. Westenhaver, 244 P. 2d 395, 39 C.2d 12—Potter v. Pacific Coast Lumber Co. of Cal., 234 P.2d 16, 37 C.2d 592—Scheff v. Roberts, 215 P.2d 925, 35 C.2d 10—Dillard v. McKnight, 209 P.2d 387, 34 C.2d 209, 11 A.L.R.2d 835—Nichols v. Mitchell, 197 P.2d 550, 32 C.2d 598—Moran v. State Bd. of Medical Examiners of Dept. of Professional and Vocational Standards of Cal., 196 P.2d 20, 32 C.2d 301—Vice v. Thacker, 180 P.2d 4, 30 C.2d 84—Eastlick v. City of Los Angeles, 177 P.2d 558, 29 C.2d 661, 170 A.L.R. 225—Brooks v. Metropolitan Life Ins. Co., 163 P.2d 689, 27 C.2d 305—In re Bristol's Estate, 143 P. 2d 689, 23 C.2d 221—Peri v. Los Angeles Junction Ry., 137 P.2d 441, 22 C.2d 111—Medico-Dental Bldg. Co. of Los Angeles v. Horton & Converse, 132 P.2d 457, 21 C.2d 411—Campbell v. Birch, 122 P.2d 902, 19 C.2d 778—Juchert v. California Water Service Co., 106 P.2d 886, 16 C.2d 500—Hamilton v. Pacific Electric Ry. Co., 86 P.2d 829, 12 C.2d 598—Raggio v. Mallory, 76 P.2d 660, 10 C.2d 723—Hartman Ranch Co. v. Associated Oil Co., 73 P.2d 1163, 10 C.2d 222—Stasulat v. Pacific Gas & Electric Co., 67 P. 2d 678, 8 C.2d 631—Woodward v. Metropolitan Life Ins. Co., 65 P.2d 353, 8 C.2d 361—Knapp v. Bergman, 55 P.2d 218, 5 C.2d 368.

Tymkowicz v. San Jose Unified School Dist., App., 312 P.2d 388—Beksinski v. Beksinski, App., 312 P.2d 268—City of Menlo Park v. Artino, App., 311 P.2d 135—Sneed v. Kanelos, App., 310 P.2d 706—Zillmer v. Bickert, App., 310 P.2d 75—Garrick v. J. M. P., Inc., App., 309 P.2d 896—Wilson v. Foley, App., 309 P.2d 97—Gardner v. Rubin, App., 308 P.2d 892—Bolen v. Parks, App., 308 P.2d 521—Greenblatt v. State Bd. of Equalization, App., 307 P.2d 379—Vind v. Asamblea Apostolica De La Feen Christo Jesus, App., 307 P.2d 85—Zinn v. Ex-Cell-O Corp., App., 306 P.2d 1017—New v. New, App., 306 P.2d

The appellate court may examine the evidence to determine whether or not it is sufficient to warrant

987—Faus v. Pacific Elec. Ry. Co., App., 303 P.2d 814—Prince v. Varona, 301 P.2d 512, 144 C.A.2d 673—In re Moore's Estate, 300 P.2d 110, 143 C.A.2d 64—In re Miller's Estate, 299 P.2d 1005, 143 C.A.2d 544—In re Harvey's Estate, 299 P. 2d 712, 143 C.A.2d 368—Doran v. Dreyer, 299 P.2d 661, 143 C.A.2d 289—Sears, Roebuck & Co. v. Blade, 294 P.2d 140, 139 C.A.2d 580—Moore v. Ruth, 292 P.2d 939, 139 C.A.2d 70—Owens v. White Memorial Hospital, 292 P.2d 288, 138 C.A.2d 634—Martyn v. Leslie, 290 P.2d 58, 137 C.A.2d 41—Clewett v. Clewett, 289 P.2d 512, 136 C.A.2d 913—Pacific Concrete Products Corp. v. Dimmick, 289 P.2d 501, 136 C.A.2d 834—Allen v. Shaver, 289 P.2d 255, 136 C.A.2d 621—In re Tillman's Estate, 288 P.2d 892, 136 C.A.2d 313—Drake v. Mash, 288 P.2d 594, 136 C. A.2d 410—Johnson v. Comptoir Franco Belge D'Exportation Des Tubes D'Acier, 288 P.2d 151, 135 C. A.2d 683—Nelson Val Bldg. Co. v. Morrisey, 288 P.2d 135, 135 C.A.2d 738—In re Bould's Estate, 287 P. 2d 8, 135 C.A.2d 260, hearing denied 289 P.2d 15, 135 C.A.2d 260—Agnew v. City of Los Angeles, 286 P.2d 556, 134 C.A.2d 433—Associated Lathing & Plastering Co. v. Louis C. Dunn, Inc., 286 P.2d 825, 135 C.A.2d 40—Hayden v. Hatch, 286 P.2d 541, 134 C.A.2d 765—Zellers v. State, 285 P.2d 962, 134 C.A. 2d 270—Linehan v. Linehan, 285 P.2d 326, 134 C.A.2d 250—Herron v. Pacific Elec. Ry. Co., 285 P.2d 77, 134 C.A.2d 199—Caron v. Andrew, 284 P.2d 550, 133 C.A.2d 412—In re Reed's Estate, 282 P.2d 935, 132 C.A.2d 732—Fellner v. Steinbaum, 282 P.2d 584, 132 C.A.2d 509—Korry of Cal. v. Lefkowitz, 280 P.2d 910, 131 C.A.2d 389—Monastero v. Los Angeles Transit Co., 280 P.2d 187, 131 C.A.2d 156—Hessell v. Healey, 280 P.2d 124, 131 C. A.2d 144—Snokelberg v. Crecelius, 280 P.2d 109, 131 C.A.2d 136—Wilson v. Grey, 280 P.2d 29, 131 C.A.2d 58—Carson v. Vinding, 279 P.2d 604, 130 C.A.2d 652—Douglass v. Douglass, 279 P.2d 556, 130 C.A.2d 609—Bohn v. Watson, 278 P.2d 454, 130 C.A.2d 24—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Orange County Mach. Works v. Republic Heater Corp., 277 P.2d 461, 129 C.A.2d 542—Scott v. Staggs, 276 P.2d 605, 129 C.A.2d 54—Stafford-Lewis v. Wain, 276 P.2d 157, 128 C.A.2d 614—Payne v. Bank of America Nat. Trust & Sav. Ass'n, 275 P.2d 128, 128 C.A.2d 295—Epley v. Hiller, 274 P.2d 696, 128 C.A.2d 100—Dawson v. Williams, 273 P.2d 75, 127 C.A.2d 38—Gillespie v. Ormsby, 272 P.2d 949, 126 C.A.2d 513—Lauder v. Wright Inv. Co., 271 P.2d 970, 126 C.A.2d 147—McIntyre v. Doe and Roe, 270 P. 2d 21, 125 C.A.2d 285—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Emden v. Verdi, 269 P.2d 47, 124 C.A.2d 555—Mattoon v. Steiff, 266 P.2d 920, 123 C.A.2d 512—Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7—Melickian v. Halstead, 263 P.2d 652, 121 C.A.2d 469—Piazza v. Heidlebaugh, 262 P.2d 36, 120 C.A.2d 783—Massow v. Gianaclis, 260 P.2d 655, 120 C.A.2d 24—Upper v. Suffern, App., 259 P. 2d 988, hearing dismissed—Mariani v. Steele, 259 P.2d 487, 119 C.A.2d 478—Braden v. Lewis, 259 P.2d 16, 119 C.A.2d 84—Correa v. Quality Motor Co., 257 P.2d 738, 118 C.A.2d 246—Industrial Indem. Co. v. Golden State Co., 256 P.2d 677, 117 C. A.2d 519—Petition of Jost, 256 P. 2d 71, 117 C.A.2d 379, reversed on other grounds Jost v. U. S., 74 S. Ct. 427, 347 U.S. 901, 98 L.Ed. 1061—Ervin v. City of Los Angeles, 256 P.2d 25, 117 C.A.2d 303—Maslow v. Maslow, 255 P.2d 65, 117 C. A.2d 237—People v. One 1950 Studebaker Commander Convertible Coupe, 253 P.2d 748, 116 C.A.2d 412—Richards v. Plumbe, 253 P.2d 126, 116 C.A.2d 132—Sukiasian v. Shakarian, 252 P.2d 956, 115 C.A. 2d 798—Hartzell v. Myall, 252 P. 2d 676, 115 C.A.2d 670—Stone v. Walsworth, 252 P.2d 39, 115 C.A. 2d 369—Aboudara v. City and County of San Francisco, 251 P.2d 32, 114 C.A.2d 630—Shammas v. Boyett, 249 P.2d 880, 114 C.A.2d 139—King v. Hawley, 248 P.2d 491, 113 C.A.2d 534—Bassett v. Crisp, 248 P.2d 171, 113 C.A.2d 295—Correia v. Van Camp Sea Food Co., 248 P.2d 81, 113 C.A.2d 71—Katz v. Wahrhaftig, 248 P.2d 32, 113 C.A.2d 447—Jansen v. Southern Pac. Co., 247 P.2d 581, 112 C.A.2d 833—Moran v. Bromley, 246 P.2d 1001, 112 C.A.2d 520—Mattox v. Isley, 245 P.2d 664, 111 C.A.2d 774—Pacific Atlantic Wine v. Duccini, 245 P.2d 622, 111 C.A.2d 957—Harris v. Los Angeles Transit Lines, 245 P.2d 35, 111 C.A.2d 593—James v. American Buslines, 244 P.2d 503, 111 C.A.2d 273—Nellis v. Massey, 239 P.2d 509, 108 C.A.2d 724—In re Rugani's Estate, 239 P.2d 500, 108 C.A.2d 624—Peterson v. Millman, 238 P.2d 117, 108 C.A.2d 41—Murphy v. Lake County, 234 P.2d 712, 106 C.A.2d 61—Feigin v. Kutchor, 234 P.2d 264, 105 C.A.2d 744—Niblack v. Atchison, T. & S. F. Ry. Co., 234 P.2d 208, 105 C.A.2d 847—Tedder v. Johnson, 234 P.2d 149, 105 C. A.2d 734—Wood v. Shipp, 233 P.2d 193, 105 C.A.2d 335—Bogart v. Board of Medical Examiners, 233 P.2d 100, 105 C.A.2d 250—U. S. Credit Bureau v. Sanders, 230 P.2d 849, 103 C.A.2d 806—Shavarsh Chuchian v. Metropolitan Life Ins. Co., 230 P.2d 381, 103 C.A.2d 760—Edgar v. Bank of America Nat. Trust & Sav. Ass'n, 228 P.2d 21, 102 C.A.2d 700—Pope v. Pope, 227 P.2d 867, 102 C.A.2d 353—Hollingum v. Moore, 227 P.2d 845, 102 C.A. 2d 509—In re Fritz's Estate, 227 P.2d 539, 102 C.A.2d 385—In re Frank's Estate, 226 P.2d 767, 102 C.A.2d 126—Johnson Trade v. Frimmersdorf, 224 P.2d 771, 100 C.A.2d 719—Barthorpe v. Brown, 223 P.2d 884, 100 C.A.2d 474—Combs v. Ritter, 223 P.2d 505, 100 C.A.2d 315—Curtis v. Pacific Elec. Ry. Co., 223 P.2d 52, 100 C.A.2d 112—Cohen v. Hunter, 222 P.2d 93, 99 C.A.2d 64—Maganini v. Quinn, 221 P.2d 241, 99 C.A.2d 1—In re Becker's Estate, 220 P.2d 766, 98 C.A.2d 574—Department of Social Welfare of Cal. v. Machado, 220 P.2d 411, 98 C.A.2d 364—La Jolla Casa de Manana v. Hopkins, 219 P.2d 871, 98 C.A.2d 339—Quindt v. Kilpatrick, 216 P. 2d 481, 96 C.A.2d 824—Lewis v. Constitution Life Co. of America, 215 P.2d 55, 96 C.A.2d 191—Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778—Lenk v. Spezia, 213 P.2d 47, 95 C. A.2d 296—Candido v. California Employment Stabilization Commission, 212 P.2d 558, 95 C.A.2d 338—Stuck v. Board of Medical Examiners of State, 211 P.2d 389, 94 C. A.2d 751—In re Reynolds' Estate, 211 P.2d 608, 94 C.A.2d 851—Goldring v. Goldring, 211 P.2d 342, 94 C.A.2d 643—Kazanjian v. Pacific Greyhound Lines, 206 P.2d 887, 92 C.A.2d 210—Paramount Pictures v. Clark, 209 P.2d 968, 93 C.A.2d 768, certiorari denied McGrath v. Paramount Pictures, 70 S.Ct. 838, 339 U.S. 956, 94 L.Ed. 1366, and Sparling v. Paramount Pictures, 70 S. Ct. 839, 339 U.S. 953, 94 L.Ed. 1366—Biggs v. Tourtas, 206 P.2d 871, 92 C.A.2d 316—Warren v. City of Los Angeles, 205 P.2d 719, 91 C.A. 2d 678—Hill v. Hill, 205 P.2d 676, 91 C.A.2d 592—Garcia v. Heaton, 203 P.2d 560, 90 C.A.2d 591—Export Leaf Tobacco Co. v. Los Angeles County, 202 P.2d 622, 89 C. A.2d 909—Kirman v. Borzage, 202 P.2d 303, 89 C.A.2d 898—Hupfeld v. Wadley, 200 P.2d 564, 89 C.A.2d 171—In re Holmes' Estate, 198 P. 2d 708, 88 C.A.2d 360—Luis v. Cavin, 198 P.2d 563, 88 C.A.2d 107—Broderick v. Torresan, 198 P.2d 75, 88 C.A.2d 18—Foster v. A. P. Jacobs & Associates, 193 P.2d 971, 85 C.A.2d 746—Khoury v. Barham, 192 P.2d 823, 85 C.A.2d 202—Balasco v. Chick, 192 P.2d 76, 84 C.A.2d 802—Siegell v. York, 191 P.2d 50, 84 C.A.2d 383—Jacoby v. Johnson, 190 P.2d 243, 84 C.A.2d 271—Bowman v. Victor, 189 P.2d 876, 82 C.A. 2d 693—Swales v. Barr, 188 P.2d

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City and County of San Francisco, 169 P.2d 425, 74 C.A.2d 742—Mayers v. Alexander, 167 P.2d 818, 78 C.A.2d 752—Harms v. Reed, 167 P.2d 747, 73 C.A.2d 853—Flemmer v. Monckton, 166 P.2d 380, 73 C.A.2d 271—Roselip v. Raisch, 166 P.2d 340, 73 C.A.2d 125—Southern Cal. Freight Lines v. State Bd. of Equalization, 163 P.2d 776, 72 C.A.2d 26—Buckhantz v. R. G. Hamilton & Co., 163 P.2d 756, 71 C.A.2d 777—Bruce v. Bruce, 163 P.2d 95, 71 C.A.2d 641—Kosloskye v. Cis, 160 P.2d 565, 70 C.A.2d 174—In re Walsh's Estate, 152 P.2d 750, 66 C.A.2d 704—Millsap v. National Funding Corp., 152 P.2d 634, 66 C.A.2d 658—Horn v. Klatt, 151 P.2d 149, 65 C.A.2d 510—Hill v. Fowble, 149 P.2d 862, 65 C.A.2d 25—Laherty v. Connell, 148 P.2d 895, 64 C.A.2d 355—Levin v. Martin, 148 P.2d 717, 64 C.A.2d 326—Banducci v. Banducci, 147 P.2d 73, 63 C.A.2d 600—Sherman v. Frank, 146 P.2d 704, 63 C.A.2d 278—Dolinar v. Pedone, 146 P.2d 237, 63 C.A.2d 169—Pierce v. Pierce, 143 P.2d 948, 61 C.A.2d 694—Dawson v. Boyd, 143 P.2d 373, 61 C.A.2d 471—Fewell v. Shamgochian, 143 P.2d 370, 61 C.A.2d 495—Vosburgh v. Meda, 143 P.2d 41, 61 C.A.2d 396—Willett v. Department of Water and Power of City of Los Angeles, 141 P.2d 906, 60 C.A.2d 822—Dorfer v. Delucchi, 141 P.2d 905, 61 C.A.2d 63—Kirkpatrick v. Towers, 140 P.2d 681, 60 C.A.2d 251—O'Brien v. Schellberg, 140 P.2d 159, 59 C.A.2d 764—Poe v. Lawrence, 140 P.2d 136, 60 C.A.2d 125—Airola v. Gorham, 133 P.2d 78, 56 C.A.2d 42—Morrison v. Landers, 133 P.2d 34, 56 C.A.2d 607—Signorelli v. Miller, 130 P.2d 730, 55 C.A.2d 538—High v. Pacific Gas & Electric Co., 126 P.2d 911, 52 C.A.2d 701, rehearing denied 127 P.2d 588, 52 C.A.2d 701—Landegren v. Quilici, 126 P.2d 141, 52 C.A.2d 218—Williamson v. Kinney, 125 P.2d 920, 52 C.A.2d 98—Hall v. Bakersfield Community Hotel Corp., 125 P.2d 889, 52 C.A.2d 158—Maaskant v. Matsui, 123 P.2d 853, 50 C.A.2d 819—Lindsey v. De Vaux, 123 P.2d 144, 50 C.A.2d 445—Travelers Fire Ins. Co. v. Brock & Co., 118 P.2d 25, 47 C.A.2d 387—Lincoln v. Averill, 117 P.2d 913, 47 C.A.2d 335—Reiss v. Reiss, 114 P.2d 718, 45 C.A.2d 740—Coca Cola Bottling Co. v. Feliciano, 114 P.2d 604, 45 C.A.2d 680—Cragun v. Krossoff, 114 P.2d 431, 45 C.A.2d 480—Marcart v. San Joaquin Building & Loan Ass'n, 114 P.2d 395, 45 C.A.2d 395—Security-First Nat. Bank of Los Angeles v. Bruder, 113 P.2d 3, 44 C.A.2d 767—Cook v. Huntley, 112 P.2d 889, 44 C.A.2d 635—Pacheco v. Clark, 112 P.2d 67, 44 C.A.2d 147—Cooper v. Southern Pac. Co., 111 P.2d 689, 43 C.A.2d 693—Kellis v. Livingston, 111 P.2d 453, 43 C.A.2d 556—Redmond v. City of Burbank, 111 P.2d 375, 43 C.A.2d 711—Chichester v. Mason, 111 P.2d 362, 43 C.A.2d 453—Fischer v. Keen, 110 P.2d 693, 43 C.A.2d 244—Olivero v. Rosano, 109 P.2d 976, 42 C.A.2d 740—General Petroleum Corp. of California v. City of Los Angeles, 109 P.2d 754, 42 C.A.2d 591—Beck v. Sirota, 109 P.2d 419, 42 C.A.2d 551—In re Kenyon's Estate, 109 P.2d 38, 42 C.A.2d 423—In re Winzeler's Estate, 108 P.2d 720, 42 C.A.2d 246—Wilmot v. Golden Gate Inv. Co., 107 P.2d 263, 41 C.A.2d 664—Walsh v. Parker, 106 P.2d 925, 41 C.A.2d 435—Morton v. Manhattan Lunch Co., 106 P.2d 212, 41 C.A.2d 70—Barsoom v. City of Reedley, 101 P.2d 743, 38 C.A.2d 413—Morse v. Custis, 101 P.2d 702, 38 C.A.2d 573—Church v. Payne, 97 P.2d 819, 36 C.A.2d 382—Sherman v. Southern Pac. Co., 93 P.2d 812, 34 C.A.2d 490, certiorari denied 60 S.Ct. 610, 309 U.S. 669, 84 L.Ed. 1015—Barsha v. Metro-Goldwyn-Mayer, 90 P.2d 371, 32 C.A.2d 556—Healy v. Yellow Cab Co. of California, 90 P.2d 116, 32 C.A.2d 479—Lind v. Baker, 88 P.2d 777, 31 C.A.2d 631—Jensen v. Berris, 88 P.2d 220, 31 C.A.2d 537—Morrow v. Coast Land Co., 84 P.2d 301, 29 C.A.2d 92—In re Lissner's Estate, 81 P.2d 448, 27 C.A.2d 570—In re Barrow's Estate, 80 P.2d 1006, 27 C.A.2d 402—In re Trelut's Estate, 80 P.2d 147, 26 C.A.2d 717—Cannon v. Kemper, 73 P.2d 268, 23 C.A.2d 239—Nelson v. Sweitzer, 71 P.2d 85, 22 C.A. 382—Boens v. Bennett, 67 P.2d 715, 20 C.A.2d 477—Citizens State Bank of Long Beach v. Gentry, 67 P.2d 364, 20 C.A.2d 415—Washko v. Stewart, 67 P.2d 144, 20 C.A.2d 347—Hales v. Snowden, 65 P.2d 847, 19 C.A.2d 366, certiorari denied Colyear v. Hales, 58 S.Ct. 34, 302 U.S. 715, 82 L.Ed. 552—Duncan v. J. H. Corder & Son, 62 P.2d 1387, 18 C.A.2d 77—Cleveland v. Edwards' Estate, 60 P.2d 540, 16 C.A.2d 388—Downing v. Southern Pac. Co., 59 P.2d 578, 15 C.A.2d 246—Lufkin v. Patten-Blinn Lumber Co., 59 P.2d 414, 15 C.A.2d 259—Venable v. Norton, 58 P.2d 695, 14 C.A.2d 544—Marion Machine Foundry & Supply Co. v. Gould, 57 P.2d 275, 15 C.A.2d 716—Noble v. Key System, 51 P.2d 887, 10 C.A.2d 132—Abrams v. Hubert, 51 P.2d 884, 10 C.A.2d 404—Burnett v. Reyes, 256 P.2d 91, 118 C.A.2d Supp. 878.

Colo.—Book v. Paddock, 267 P.2d 247, 129 Colo. 84—Oriental Refining Co. v. Hallenbeck, 240 P.2d 913, 125 Colo. 77—Gonzales v. Chinn, 214 P.2d 371, 121 Colo. 126—C. A. Jackson, Inc. v. Wilhelm, 102 P.2d 731, 106 Colo. 140—Bagley v. Lumbermens Mut. Casualty Co., 62 P.2d 469, 99 Colo. 300.

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Del.—Turner v. Vineyard, 89 A.2d 177, 7 Terry 138.

D.C.—U. S. v. Ingalls, 114 F.2d 839, 72 App.D.C. 383.

Aetna Cas. & Sur. Co. v. Smith, Mun.App., 127 A.2d 556—McDonald v. Stone, Mun.App., 86 A.2d 624—Service Parking Corp. v. Trans-Lux Radio City Corp., Mun.App., 47 A.2d 400.

Fla.—City of Williston v. Cribbs, 82 So.2d 150—National Sur. Corp. v. Windham, 74 So.2d 549—Atlantic Coast Line R. Co. v. Gary, 57 So.2d 10.

Idaho.—Sellars v. Sellars, 248 P.2d 1063, 73 Idaho 163—Snyder v. Bock, 204 P.2d 1010, 69 Idaho 168—Cogswell v. C. C. Anderson Stores Co., 192 P.2d 383, 68 Idaho 205—Fenton v. King Hill Irr. Dist., 186 P.2d 477, 67 Idaho 456—Smith v. University of Idaho, 170 P.2d 404, 67 Idaho 22—Kirk v. Schultz, 119 P.2d 266, 63 Idaho 278.

Ill.—Lindroth v. Walgreen Co., 94 N.E.2d 847, 407 Ill. 121.

Vander Beke v. Stone, 142 N.E.2d 814, 14 Ill.App.2d 109—Niman v. Pecatonica Livestock Exchange, Inc., 141 N.E.2d 327, 13 Ill.App.2d 144—Dixon v. Montgomery Ward &

Co., 132 N.E.2d 20, 8 Ill.App.2d 552—Stalkoff v. Illinois Terminal R. Co., 131 N.E.2d 818, 8 Ill.App.2d 549—Cloudman v. Beffa, 129 N.E.2d 286, 7 Ill.App.2d 276—King v. Mid-State Freight Lines, 126 N.E.2d 868, 6 Ill.App.2d 159—Hectus v. Chicago Transit Authority, 122 N.E.2d 587, 3 Ill.App.2d 439—Sourian v. Jones, 112 N.E.2d 920, 350 Ill.App. 365—Wolters v. Venhaus, 112 N.E.2d 747, 350 Ill.App. 322—Letz v. World Ins. Co., 84 N.E.2d 678, 336 Ill.App. 489—Zahn v. Muscarello, 83 N.E.2d 504, 336 Ill.App. 188—Weaver v. Sprague, 71 N.E.2d 106, 330 Ill.App. 331—Popp v. Terminal R. Ass'n of St. Louis, 45 N.E.2d 298, 316 Ill. App. 670.

Ind.—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163—Baltimore & O. R. Co. v. Reyher, 24 N.E.2d 284, 216 Ind. 545.

Guraly v. Tenta, 132 N.E.2d 725, 126 Ind.App. 527—Haynes v. Brown, 88 N.E.2d 795, 120 Ind.App. 184—Bulen v. Pendleton Banking Co., 78 N.E.2d 449, 118 Ind.App. 21—New York Cent. R. Co. v. Pinnell, 40 N.E.2d 988, 112 Ind.App. 116—Western & Southern Life Ins. Co. v. Kerger, 36 N.E.2d 965, 111 Ind. App. 297—Clapham v. City of Huntington, 32 N.E.2d 118, 109 Ind. App. 244—Murray Envelope Corp. v. Kunderd, 13 N.E.2d 329, 105 Ind. App. 215—City of Gary v. Wilson, 8 N.E.2d 109, 103 Ind.App. 376—Abrams v. Silver, 1 N.E.2d 286, 102 Ind.App. 97.

Iowa.—Home Ins. Co., N. Y., v. Fidelity-Phenix Fire Ins. Co., 279 N. W. 425, 225 Iowa 36.

Kan.—Hammargren v. Montgomery Ward & Co., 241 P.2d 1192, 172 Kan. 484—In re Gereke's Estate, 195 P. 2d 323, 165 Kan. 249—Brothers v. Adams, 107 P.2d 757, 152 Kan. 675.

Ky.—McGraw's Adm'r (Lee) v. McGraw's Adm'r (Davidson), 169 S. W.2d 840, 293 Ky. 722.

Me.—Saco Dairy Co. v. Norton, 35 A. 2d 857, 140 Me. 204, 150 A.L.R. 1299—Eaton v. Marcelle, 29 A.2d 162, 139 Me. 256—Frye v. Kenney, 3 A. 2d 433, 136 Me. 112.

Mass.—Loftus v. Lauf, 108 N.E.2d 533, 329 Mass. 374—Carpenter v. Young Men's Christian Ass'n, 86 N.E.2d 634, 324 Mass. 365—Goddard v. Dupree, 76 N.E.2d 643, 332 Mass. 247—Campanale v. General Ice Cream Corp., 49 N.E.2d 1018, 314 Mass. 387—Memishian v. Phipps, 42 N.E. 277, 311 Mass. 521—Cook v. Farm Service Stores, 17 N.E.2d 890, 301 Mass. 564—Howard v. Malden Sav. Bank, 15 N.E.2d 233, 300 Mass. 208.

Mich.—Bramer v. Ames, 61 N.W.2d 160, 338 Mich. 226—In re Karch's Estate, 18 N.W.2d 410, 311 Mich. 158—Detroit Trust Co. v. Hartwick, 270 N.W. 249, 278 Mich. 139.

Minn.—Appeal of Iverson, 81 N.W.2d 701—Zuber v. Northern Pac. Ry. Co., 74 N.W.2d 641, 246 Minn. 157—Heise v. J. R. Clark Co., 71 N.W.2d 818, 245 Minn. 179—Derrick v. Drolson Co., 69 N.W.2d 124, 244 Minn. 144—Westling v. Holm, 58 N.W.2d 252, 239 Minn. 191—Delyea v. Goossen, 32 N.W.2d 179, 226 Minn. 91—Village of Minnesota v. Fairbanks, Morse & Co., 31 N.W.2d 920, 226 Minn. 1.

Miss.—Stroud v. Loper, 198 So. 46, 190 Miss. 168—Malvezzi v. Gully, 193 So. 42, 189 Miss. 20, suggestion of error overruled 193 So. 926, 189 Miss. 20.

Mo.—Wiser v. Missouri Pac. R. Co., 301 S.W.2d 37—Dunn v. Terminal R. Ass'n of St. Louis, 285 S.W.2d 701—Winters v. Terminal R. Ass'n of St. Louis, 252 S.W.2d 380, 363 Mo. 606—C. Bewes, Inc., v. Buster, 108 S.W.2d 66, 341 Mo. 578.

Union-May-Stern Co. v. Industrial Commission of Mo., App., 273 S.W.2d 766—Bray v. St. Louis-San Francisco Ry. Co., App., 259 S.W.2d 132—Fyock v. Riales, App., 251 S.W.2d 102—Bray v. St. Louis-San Francisco Ry. Co., App., 236 S.W.2d 758—Johnson v. Thompson, App., 236 S.W.2d 1—Whitaker v. Terminal R. Ass'n of St. Louis, App., 224 S.W.2d 606—Meyer v. Industrial Commission of Mo., 223 S.W.2d 835, 240 Mo.App. 1022—Barker v. Silverforb, App., 201 S.W.2d 408—Kenney v. Henson, App., 107 S.W. 2d 947.

Neb.—Wright v. Lincoln City Lines, Inc., 81 N.W.2d 170, 163 Neb. 679—Dischner v. Loup River Public Power Dist., 25 N.W.2d 813, 147 Neb. 949.

N.H.—Charles I. Hosmer, Inc. v. L. P. Federico & Son, 199 A. 567, 89 N.H. 378.

N.J.—Hager v. Weber, 81 A.2d 155, 7 N.J. 201.

Ristan v. Frantzen, 97 A.2d 726, 26 N.J.Super. 225, affirmed 102 A.2d 614, 14 N.J. 455—Becker v. Union City, 85 A.2d 539, 17 N.J.Super. 217—Taylor v. Public Service Interstate Transp. Co., 80 A.2d 220, 13 N.J.Super. 125—Crespo v. Lipschutz, 78 A.2d 115, 11 N.J.Super. 64—Legg v. Overbeck, 53 A.2d 316, 135 N.J.Law 544—Continental Purchasing Co. v. Norelli, 48 A.2d 816, 135 N.J.Law 93—Stockhold v. Jackson Tp., 55 A.2d 241, 136 N.J.Law 264—Giles v. W. E. Beverage Corp., 46 A.2d 728, 134 N.J.Law 234—Everson v. Board of Ed. of Ewing Tp., 44 A.2d 333, 133 N.J.Law 350, affirmed 67 S.Ct. 504, 330 U.S. 1, 91 L.Ed. 711, rehearing denied 67 S.Ct. 962, 330 U.S. 855, 91 L.Ed. 1297—Salosky v. City of Garfield, 39 A.2d 70, 132 N.J.Law 144—Goldwyn v. Coast Cities Coaches, 30 A.2d 295, 129 N.J.Law 501—Dennis v. Thermoid Co., 25 A.2d 886, 128 N.J.Law 303—Grotsky v. Charles Grotsky, Inc., 12 A.2d 856, 124 N.J.Law 572—Spalt v. Eaton, 192 A. 576, 118 N. J.Law 327, affirmed 196 A. 736, 119 N.J.Law 343—Weigel v. Weigel, 187 A. 182, 117 N.J.Law 177.

Zulinsky v. Greenblat, 184 A. 806, 14 N.J.Misc. 345, affirmed 189 A. 51, 117 N.J.Law 526.

N.M.—Adams v. Cox, 234 P.2d 1043, 55 N.M. 444—Chavez v. Gutierrez, 213 P.2d 597, 54 N.M. 76—Hogsett v. Hanna, 63 P.2d 540, 41 N.M. 22.

N.Y.—Duane Jones Co. v. Burke, 117 N.E.2d 237, 306 N.Y. 172.

Hellman v. Hoffman Motor Car Co., 163 N.Y.S.2d 879—Lambert v. Pennsylvania R. Co., 109 N.Y.S.2d 855.

N.C.—Swink v. Horn, 40 S.E.2d 353, 226 N.C. 713.

Ohio.—Hurt v. Charles J. Rogers Transp. Co., 130 N.E.2d 820, 164 Ohio St. 329—Markley v. Hudson, 54 N.E.2d 304, 143 Ohio St. 163.

O'Keefe v. Jones, App., 114 N.E. 2d 277—Shaman v. Roberts, 94 N.E. 2d 630, 87 Ohio App. 328—In re Burdette, 83 N.E.2d 813, 83 Ohio App. 368—Breithaupt v. McGinnis, 73 N.E.2d 230, 79 Ohio App. 305.

Okl.—Mann v. Welch, 257 P.2d 1074, 208 Okl. 580.

Or.—Willamette Tug & Barge Co. v. Commercial Dispatching Corp., 178 P.2d 698, 180 Or. 657—Credit Service Co. v. Finne, 90 P.2d 743, 162 Or. 466—Pacific Wool Growers v. Draper & Co., 73 P.2d 1391, 158 Or. 1.

S.C.—Brown v. Crandall, 61 S.E.2d 761, 218 S.C. 124—McGee v. Clearwater Mfg. Co., 53 S.E.2d 393, 214 S.C. 495—Dill v. Lumbermen's Mut. Ins. Co., 50 S.E.2d 923, 213 S.C. 593.

S.D.—Midwest Oil Co. v. City of Aberdeen, 10 N.W.2d 701, 69 S.D. 343.

Tenn.—Ætna Life Ins. Co. of Hartford, Conn. v. Bidwell, 241 S.W.2d 595, 192 Tenn. 627.

Tex.—Benoit v. Wilson, 239 S.W.2d 792, 150 Tex. 273.

Hardin v. State, Civ.App., 254 S.W.2d 898—Mallam v. Trans-Texas Airways, Civ.App., 227 S.W.2d 344—Dallas Ry. & Terminal Co. v. Graham, Civ.App., 185 S.W.2d 180—Duke v. Houston Oil Co. of Texas, Civ.App., 128 S.W.2d 480, error dismissed, judgment correct.

Utah.—Ray v. Consolidated Freightways, 289 P.2d 196, 4 Utah 2d 137.

Vt.—In re Moody's Estate, 49 A.2d 562, 115 Vt. 1, certiorari denied Perry v. Wheeler, 67 S.Ct. 1201, 331 U.S. 814, 91 L.Ed. 1833.

Wash.—Reeder v. Western Gas & Power Co., 256 P.2d 825, 42 Wash. 2d 542.

Wis.—In re Fuller's Estate, 81 N.W. 2d 64, 275 Wis. 1—Bush v. Mahlkuch, 75 N.W.2d 283, 272 Wis. 246—Wisconsin Employment Relations Bd. v. United Automobile, Air-

or support the factual determinations made in the lower court,[7.50] and may set aside a determination which appears to be clearly erroneous,[8] as where it is not sustained by the evidence,[9] or is flagrantly or

craft and Agricultural Implement Workers, 74 N.W.2d 205, 271 Wis. 556—Schaff v. Hipke, 70 N.W. 2d 18, 270 Wis. 30—Eliason v. Northland Greyhound Bus Lines, 57 N.W.2d 675, 263 Wis. 435—Blatz Brewing Co. v. Richardson & Richardson, 15 N.W.2d 819, 245 Wis. 567.

Wyo.—Hench v. Robinson, 291 P.2d 417—Johnston v. Vukelic, 213 P.2d 925, 67 Wyo. 1—White v. Maverick Production Co., 182 P.2d 818, 63 Wyo. 452—Rienecker v. Lampman, 96 P.2d 561, 55 Wyo. 159.

Inference based on circumstantial evidence

The rule is not that for an inference to be established by circumstantial evidence it must be the only inference which can fairly or reasonably be drawn from the circumstances relied on, or that if other inferences may reasonably be drawn from the facts in evidence, the evidence does not support the inference sought to be deduced from it, the principle being more applicable as a rule to guide a jury in its deliberations on the facts than it is as a rule to guide the appellate court in passing on the sufficiency of the evidence.

Cal.—Juchert v. California Water Service Co., 106 P.2d 886, 16 C.2d 500.

Hall v. Bakersfield Community Hotel Corp., 125 P.2d 889, 52 C.A.2d 158.

As "inference" is result of reason, an unreasonable result cannot be transformed into an inference within statute.

Or.—Bunnell v. Parelius, 111 P.2d 88, 166 Or. 174.

7.50 Ala.—Valley Coal & Lumber Co. v. Hopkins, 27 So.2d 700, 32 Ala. App. 522, certiorari denied 27 So.2d 703, 248 Ala. 371.

Ariz.—In re Walters' Estate, 267 P.2d 896, 77 Ariz. 122.

Cal.—Weitzenkorn v. Lesser, 256 P.2d 947, 40 C.2d 778.

Aitkenhead v. City and County of San Francisco, App., 309 P.2d 57—Ellis v. Geiger, 233 P.2d 166, 105 C.A.2d 415—In re Russell's Estate, 182 P.2d 318, 80 C.A.2d 711.

Conn.—Rogoff v. Southern New England Contractors Supply Co., 31 A. 2d 29, 129 Conn. 687.

Ill.—Gould v. Gould, 97 N.E.2d 826, 408 Ill. 526.

Carey v. Metropolitan Life Ins. Co., 27 N.E.2d 634, 305 Ill.App. 308.

Ind.—Smith v. Hotel Antlers Co., App., 133 N.E.2d 89—McCoy v. Farm Bureau Mut. Ins. Co. of Ind., 111 N.E.2d 728, 123 Ind.App. 424—Heeter v. Fleming, 67 N.E.2d 317, 116 Ind.App. 644.

Mo.—Gaddy v. Skelly Oil Co., 259 S.W.2d 844, 364 Mo. 143—Reeves v. Thompson, 211 S.W.2d 23, 357 Mo. 847—Edinger v. Kratzer, 175 S.W. 2d 807—Evans v. Massman Const. Co., 122 S.W.2d 924, 343 Mo. 632.

Hunter v. Karchmer, App., 285 S.W.2d 918—Galentine v. Borglum, 150 S.W.2d 1088, 235 Mo.App. 1141—Soderstrom v. Missouri Pac. R. Co., App., 141 S.W.2d 73.

Neb.—Ottersberg v. Holz, 66 N.W.2d 571, 159 Neb. 239.

N.Y.—Trickey v. J. M. Pitkin & Co., 291 N.Y.S. 430, 249 App.Div. 707.

Pa.—Badler v. L. Gillarde Sons Co., 127 A.2d 680, 387 Pa. 266—Appeal of Handwerk, 35 A.2d 289, 348 Pa. 263.

Mocan v. Nejak, 190 A. 208, 126 Pa.Super. 149.

Mazurkevich v. Philadelphia & Reading Coal & Iron Co., Com.Pl., 21 Northumb.Leg.J. 85.

S.C.—Odom v. Weathersbee, 81 S.E. 2d 788, 225 S.C. 253.

Tex.—Texas Emp. Ins. Ass'n v. Rollins, Civ.App., 257 S.W.2d 851.

Va.—Hinton v. Gallagher, 57 S.E.2d 131, 190 Va. 421.

The power to review decisions carries power to revise, reverse, or remand decisions which the court believes to be contrary to the evidence.

Mont.—In re Bragg's Estate, 76 P.2d 57, 106 Mont. 132.

Facts established by pleadings

Rule that supreme court could examine evidence to determine legal question of whether there was any evidence to support judgment applied to facts established by pleadings as well as by evidence.

Nev.—Richards v. Steele, 100 P.2d 72, 60 Nev. 66.

8. Ala.—Mobile City Lines v. Alexander, 30 So.2d 4, 249 Ala. 107.

Lamar Life Ins. Co. v. Kemp, 1 So.2d 760, 30 Ala.App. 138—Norris v. Neely, 180 So. 124, 28 Ala.App. 171.

Cal.—Crawford v. Southern Pac. Co., 45 P.2d 183, 3 C.2d 427.

Ventimiglia v. Hodgen, 247 P.2d 123, 112 C.A.2d 658.

La.—Second Church of Christ, Scientist v. Spencer, 88 So.2d 810, 230 La. 432—Ferguson v. Belcher and Son, 88 So.2d 806, 230 La. 422—Brewer v. Foshee, 179 So. 87, 189 La. 220.

Broussard v. Janin, App., 62 So. 2d 197—Craton v. Inabnett, App., 62 So.2d 129—Kusin v. Miller, App., 199 So. 457—Gaubert v. Ed. E. Hebert Co., App., 174 So. 716—Russell v. Celentano, 5 La.App. 537.

Md.—Shapiro v. Marcus, 124 A.2d 846, 211 Md. 83.

Neb.—Laflin v. State Bd. of Equalization & Assessment, 56 N.W.2d 469, 156 Neb. 427.

N.J.—Borzi v. Steers, 186 A. 723, 14 N.J.Misc. 553.

Pa.—Nugent v. Joerger, 127 A.2d 697, 387 Pa. 330.

Tex.—Purvis v. Morehead, Civ.App., 304 S.W.2d 221—Day v. Grayson County State Bank, Civ.App., 153 S.W.2d 599—South Texas Cotton Oil Co. v. Baugh, Civ.App., 68 S.W. 2d 539—Baker v. Crooms, Civ.App., 262 S.W. 104.

4 C.J. p 844 note 74.

Where a miscarriage of justice is apparent, the evidence may be scrutinized more carefully by an appellate court, and when the evidence relates to declarations or oral admissions of a party it will be received with caution as required by statute.

Cal.—Ferrari v. Mambretti, 136 P.2d 326, 58 C.A.2d 318.

9. Ark.—Arkansas Power & Light Co. v. Decker, 17 S.W.2d 293, 179 Ark. 592.

Cal.—Remillard Brick Co. v. Dandini, 220 P.2d 927, 98 C.A.2d 617—Stransky v. Calian, 253 P. 960, 81 C.A. 476.

Fla.—City of Tampa v. Easton, 198 So. 753, 145 Fla. 188.

Ill.—Panella v. Well-McLain, 67 N.E. 2d 699, 329 Ill.App. 240.

Miss.—Great Atlantic & Pacific Tea Co. v. Davis, 171 So. 550, 177 Miss. 562.

Mo.—Johnson v. Lea, App., 229 S.W. 2d 717—Byrd v. Town of Wardell, App., 176 S.W.2d 840.

Tex.—New Birmingham Development Co. v. B. F. Brooks Const. Co., Civ. App., 292 S.W. 1114.

Wis.—Corwin v. Salter, 216 N.W. 653, 194 Wis. 333.

4 C.J. p 845 note 80.

Burden of proof

(1) Whether the trial court acted on the requisite degree of proof will be determined by the reviewing court.

Ohio.—Frate v. Rimenik, 152 N.E. 14, 115 Ohio St. 11.

(2) The reviewing court is confined to a comprehensive review of all the evidence with respect to the burden of proof.

Mich.—Patterson v. Thatcher, 263 N.W. 882, 273 Mich. 597.

Lack of substantial legal evidence.

Cal.—Doty v. Woodruff, 8 P.2d 234, 120 C.A. 739.

Ind.—Artificial Ice & Cold Storage Co. v. Martin, App., 198 N.E. 446.

Mo.—State on inf. Bellamy, ex rel. Harris v. Menengall, 270 S.W. 101, 307 Mo. 447.

Tex.—New Birmingham Development Co. v. B. F. Brooks Const. Co., Civ. App., 292 S.W. 1114.

manifestly against the weight of the evidence;[10] where the evidence merely suggests a mere possibility or suspicion,[11] is contrary to nature or physical laws,[12] is unworthy of belief,[13] or is insufficient as a

Va.—Perry v. Dixie Guano Co., 9 S.E.2d 302, 175 Va. 426.

Supplementing omission

Where counsel claimed that cross-examination was proper, in that the fact had been brought out on direct examination, and it did not appear in the finding whether the matter had been opened on direct examination, the evidence might be inspected by the reviewing tribunal to supplement such omission.

Conn.—Gustafson v. City of Meriden, 131 A. 437, 103 Conn. 598.

10. Ala.—Brown Service Ins. Co. v. Childs, 38 So.2d 737, 34 Ala.App. 128, certiorari denied 38 So.2d 741, 251 Ala. 660.

Cal.—Fuchalin v. Hayes, 160 P.2d 50, 70 C.A.2d 16—Demmon v. Smith, 136 P.2d 660, 58 C.A.2d 425—Breland v. Taylor Engineering & Mfg. Co., 126 P.2d 455, 52 C.A.2d 415—Colomobo v. Axelrod, 114 P.2d 425, 45 C.A.2d 439—Cooper v. Southern Pac. Co., 111 P.2d 689, 43 C.A.2d 693—Downing v. Southern Pac. Co., 59 P.2d 578, 15 C.A.2d 246.

Ill.—Mabee v. Sutliff & Case Co., 88 N.E.2d 12, 404 Ill. 27—Shaw v. Courtney, 53 N.E.2d 432, 385 Ill. 559—Chicago, R. I. & P. Ry. Co. v. Benson, 185 N.E. 244, 352 Ill. 195, certiorari denied Chicago, R. I. & P. Ry. Co. v. Benson, 54 S.Ct. 53, 290 U.S. 636, 78 L.Ed. 553.

Duffy v. Cortesi, 113 N.E.2d 173, 350 Ill.App. 498, reversed in part on other grounds and affirmed in part 119 N.E.2d 241, 2 Ill.2d 511—Hartford Acc. & Indem. Co. v. Mutual Trucking Co., 96 N.E.2d 105, 342 Ill. App. 174—Bliss v. Knapp, 72 N.E.2d 566, 331 Ill.App. 45—Brosh v. Harrison, 69 N.E.2d 355, 329 Ill.App. 511—Bell v. McMullen, 63 N.E.2d 523, 327 Ill.App. 12—Kutrzeba v. Solewski, 37 N.E.2d 370, 311 Ill.App. 603—Rocca v. Metropolitan Life Ins. Co., 21 N.E.2d 849, 300 Ill.App. 592.

Ind.—Cushman Motor Delivery Co. v. McCabe, 36 N.E.2d 769, 219 Ind. 156.

Grand Trunk Western R. Co. v. Briggs, 42 N.E.2d 367, 112 Ind.App. 360.

Kan.—Higley v. Ringle, 45 P. 619, 57 Kan. 222.

Ky.—Myers Bros. v. Jones, 79 S.W.2d 961, 258 Ky. 326—Duff v. May, 54 S.W.2d 4, 245 Ky. 709—North Jellico Coal Co. v. Stewart, 191 S. W. 451, 173 Ky. 745.

Mich.—O'Brien v. Wahl, 56 N.W.2d 279, 335 Mich. 601—Olchefsky v. Mercier, Bryant, Larkins Brick Co., 215 N.W. 317, 240 Mich. 536—Dows v. Schuh, 172 N.W. 418, 206 Mich. 133.

Ohio.—Matthis v. Youngstown Municipal Ry. Co., 42 N.E.2d 754, 140 Ohio St. 164.

Okl.—O'Balliet v. Lillard, 238 P.2d 798, 205 Okl. 467—Von Stilli v. Young, 219 P.2d 224, 303 Okl. 86.

R.I.—Barlik v. United Electric Rys. Co., 198 A. 359, 60 R.I. 285.

Tex.—In re King's Estate, 244 S.W.2d 660, 150 Tex. 662—Wilson v. Wilson, 201 S.W.2d 226, 145 Tex. 607.

Kitchens v. Gulf States Marine & Min. Co., Civ.App., 294 S.W.2d 193, error refused no reversible error—Rippeteau v. Rippeteau, Civ. App., 287 S.W.2d 238—Chantly v. Chrystal, Civ.App., 274 S.W.2d 765, error dismissed—Hambrick Consol. v. Walker, Civ.App., 269 S.W.2d 923—Dyer v. Sterett, Civ.App., 248 S. W.2d 234, error refused no reversible error.

Utah.—Cottrell v. Grand Union Tea Co., 299 P.2d 622, 5 Utah 2d 187.

4 C.J. p 845 notes 75, 81.

11. Or.—Schneider v. Tapfer, 180 P. 107, 92 Or. 520.

12. Cal.—Anderson v. Joseph, 288 P.2d 524, 136 C.A.2d 382—Jones v. Jones, 286 P.2d 908, 135 C.A.2d 52—Postier v. Landau, 262 P.2d 565, 121 C.A.2d 98—Austin v. Newton, 189 P. 471, 46 C.A. 493.

La.—Broughton v. T. S. C. Motor Freight Lines, 8 So.2d 76, 200 La. 421.

Mo.—Enyart v. Santa Fe Trail Transp. Co., 241 S.W.2d 268.

Ray v. Wabash Ry. Co., App., 232 S.W. 268—Greer v. McCrory, App., 192 S.W.2d 431, reversed in part on other grounds and affirmed in part 197 S.W.2d 669, 355 Mo. 706, 168 A.L.R. 929.

Pa.—Radziemenski v. Baltimore & O. R. Co., 128 A. 735, 283 Pa. 182—Horen v. Davis, 118 A. 22, 274 Pa. 244—Fuher v. Westmoreland Coal Co., 116 A. 61, 272 Pa. 14.

S.D.—Ulrikson v. Chicago, M., St. P. & P. Ry. Co., 268 N.W. 369, 64 S. D. 476.

Tex.—Blum Milling Co. v. Moore-Seaver Grain Co., Com.App., 277 S. W. 78.

Vt.—Ferris v. Patch, 126 A.2d 114, 119 Vt. 274.

Consistency with physical facts and laws of science

(1) It cannot be laid down as a rule of law that plaintiff in a personal injury case cannot recover unless the appellate court can see that every detail of the accident as testified to by plaintiff and his witnesses is consistent with admitted physical facts and laws of science.

Cal.—Austin v. Newton, 189 P. 471, 46 C.A. 493.

(2) In passing on the objection that the verdict for plaintiff is not supported by the evidence because plaintiff's testimony was contrary to the physical facts, the appellate court need examine only plaintiff's evidence, together with the physical facts disclosed.

Mo.—Young v. Dunlap, 190 S.W. 1041, 195 Mo.App. 119.

(3) Attempted demonstration according to law of physics of impossibility of collision between defendant's taxicab and plaintiff's motorcycle occurring in manner testified to by plaintiff's witnesses, which involved acceptance as absolutely accurate testimony of other witnesses as to speed, distances, and relative positions, would not be considered on appeal.

Ill.—Manzeske v. Yellow Cab Co., 54 N.E.2d 239, 322 Ill.App. 280.

(4) On appeal from judgment for plaintiff, plaintiff's testimony that he was driving along the highway when he was struck at night by defendant's automobile would not be disregarded on the ground that had plaintiff been sitting on the seat of his automobile when it was struck, his body would have been crushed and that he suffered no such injuries, where it is just as reasonable to assume that plaintiff was thrown off the seat by the first impulse of the impact.

Cal.—Mahar v. Mackay, 132 P.2d 42, 55 C.A.2d 869.

(5) Appellate courts are reluctant to hold that so-called natural laws must take precedence over testimony of apparently credible witness.

Cal.—Butticci v. Schindel Furniture Co., App., 313 P.2d 62.

Appellate court will not indulge in lengthy and dubious computations to determine that there is a physical impossibility of truth of the evidence supporting the verdict.

Cal.—Turner v. Clennell, 50 P.2d 851, 9 C.A.2d 736.

Undisputed evidence of physical facts cannot be ignored.

Cal.—Chase v. Jonkey, 55 P.2d 1229, 12 C.A.2d 365.

Vt.—Izor v. Brigham, 17 A.2d 236, 111 Vt. 438.

13. Cal.—Crabtree v. Western Pac. R. Co., 90 P.2d 835, 33 C.A.2d 35—People v. Dillman, 174 P. 951, 37 C.A. 415.

Ky.—Sandy Valley & E. Ry. Co. v. Hughes, 205 S.W. 607, 181 Ky. 558.

Mo.—Carson v. Hagist, App., 143 S.W. 2d 355.

Ohio.—Schaefer v. Cincinnati St. Ry. Co., 62 N.E.2d 102, 75 Ohio App. 288.

matter of law;[14] where it clearly appears that material evidence has been disregarded;[15] where there is an entire lack of evidence either direct or inferential;[16] or where the findings of fact were manifestly influenced by an error of law.[16.5] The appellate court may examine the evidence where such examination is necessary to form a basis for a decision of questions of law on appeal.[17]

It has been held that the reviewing court is not bound by facts determined in the lower court based on uncontradicted[18] or documentary evidence and

Inherently improbable testimony

(1) An appellate court may disregard evidence as inherently impossible.

Me.—Parker v. Knox, 87 A.2d 663, 147 Me. 396—Alpert v. Alpert, 49 A.2d 911, 142 Me. 260.

(2) Evidence that is inherently improbable may be disregarded by reviewing court, but, to warrant such action, there must exist a physical impossibility that such evidence is true or its falsity must be apparent without any resort to inferences or deductions.

Cal.—Postier v. Landau, 262 P.2d 565, 121 C.A.2d 98—Trancoso v. Trancoso, 216 P.2d 172, 96 C.A.2d 797—Pierce v. Pierce, 143 P.2d 948, 61 C.A.2d 694—Poe v. Lawrence, 140 P.2d 136, 60 C.A.2d 125—Lufkin v. Patten-Blinn Lumber Co., 59 P.2d 414, 15 C.A.2d 259—Marion Machine, Foundry & Supply Co. v. Gould, 57 P.2d 275, 15 C.A.2d 716.

(3) Testimony is not inherently improbable, so as to warrant its rejection by reviewing court, unless things related or described by witness could not have occurred.

Cal.—Postier v. Landau, 262 P.2d 565, 121 C.A.2d 98.

(4) Mere fact that admitted circumstances make story of witnesses seem improbable, will not justify reversal by an appellate tribunal on ground that verdict is contrary to the evidence.

Cal.—Postier v. Landau, supra.

(5) The reviewing court cannot reject testimony as improbable unless it is contrary to some natural law.

Ill.—Ziraldo v. W. J. Lynch Co., 6 N.E.2d 125, 365 Ill. 197.

Thomason v. Chicago Motor Coach Co., 10 N.E.2d 714, 292 Ill. App. 104.

14. Cal.—Peterson v. Cruickshank, 300 P.2d 915, 144 C.A.2d 148—Adams v. Dow Hotel, 76 P.2d 210, 25 C.A.2d 51—Chase v. Thomas, App., 46 P.2d 200, 7 C.A.2d 440—Stransky v. Callan, 253 P. 960, 81 C.A. 476.

Minn.—Smith v. Gray Motor Co., 210 N.W. 618, 169 Minn. 45.

Ohio.—Matthis v. Youngstown Municipal Ry. Co., 42 N.E.2d 754, 140 Ohio St. 164.

S.C.—Harrison v. Lanoway, 52 S.E.2d 264, 214 S.C. 294.

15. N.Y.—H. Krantz Mfg. Co. v. Gould Storage Battery Co., 82 N. Y.S. 474, 83 App.Div. 133.

16. Ariz.—Equitable Life Assur. Soc. of U. S. v. De Johnson, 286 P. 817, 36 Ariz. 428.

Nev.—Sweet v. Sweet, 243 P. 817, 49 Nev. 254.

4 C.J. p 845 note 76.

16.5 S.C.—Thompson v. Ford Motor Co., 21 S.E.2d 34, 200 S.C. 393.

17. Mass.—Jones v. Clark, 172 N.E. 250, 272 Mass. 146.

18. Ark.—Tarvin v. Road Improvement Dist. No. 1, of Perry County, 209 S.W. 81, 137 Ark. 354.

Cal.—Isenberg v. California Employment Stabilization Commission, 180 P.2d 11, 30 C.2d 34.

James v. American Buslines, 244 P.2d 503, 111 C.A.2d 273—Huetter v. Andrews, 204 P.2d 655, 91 C.A.2d 142—Collas v. Pasadena City Lines, 200 P.2d 77, 89 C.A.2d 93—Mahar v. Mackay, 132 P.2d 42, 55 C.A.2d 869—Chase v. Jonkey, 55 P.2d 1229, 12 C.A.2d 365—Gaston v. Hisashi Tsuruda, 43 P.2d 355, 5 C.A.2d 639.

Ind.—Hinds v. McNair, 129 N.E.2d 553—Property Owners, Inc. v. City of Anderson, 107 N.E.2d 3, 231 Ind. 78—New York Cent. R. Co. v. Milhiser, 106 N.E.2d 453, 231 Ind. 180, rehearing denied 108 N.E.2d 57, 231 Ind. 180—Pokraka v. Lummus Co., 104 N.E.2d 669, 230 Ind. 523—State ex rel. Flaugher v. Rogers, 77 N.E. 2d 594, 226 Ind. 32—Rowe v. Johnson, 60 N.E.2d 529, 223 Ind. 289.

Clapham v. City of Huntington, 32 N.E.2d 118, 109 Ind.App. 244—Smith v. Hotel Antlers Co., App., 133 N.E.2d 89—Tate v. West, 94 N.E.2d 371, 120 Ind.App. 519—Theo. Losche & Sons v. Chas. Williams & Associates, 78 N.E.2d 447, 118 Ind. App. 392—Easton v. Board of Com'rs of Lawrence County, 75 N. E.2d 169, 117 Ind.App. 616—D. Graff & Sons v. Williams, 61 N.E.2d 72, 115 Ind.App. 597—Southern Surety Co. v. State, 128 N.E. 622, 74 Ind.App. 31.

Ky.—Toppass v. Perkins' Adm'x, 104 S.W.2d 423, 268 Ky. 186—Ætna Ins. Co. of Hartford, Conn., v. Eblen, 99 S.W.2d 710, 266 Ky. 548.

La.—Broughton v. T. S. C. Motor Freight Lines, 8 So.2d 76, 200 La. 421.

Mass.—Boyle v. Owens, 93 N.E.2d 404, 326 Mass. 163—Bankers' Trust Co. v. Dockham, 181 N.E. 174, 279 Mass. 199.

Mont.—Yale Oil Corporation v. Plentywood Farmers' Oil Co., 41 P.2d 10, 98 Mont. 582—In re Wadsworth's Estate, 11 P.2d 788, 92 Mont. 135.

N.J.—Higgins v. Goerke-Krich Co., 103 A. 37, 91 N.J.Law 464, affirmed 106 A. 394, 92 N.J.Law 424.

Pa.—In re Publicker's Estate, 123 A. 2d 655, 385 Pa. 403—Sansom House Enterprises v. Waiters & Waitresses Union, Local 301, AFL, 115 A.2d 746, 382 Pa. 476, certiorari denied 76 S.Ct. 155, 350 U.S. 896, 100 L.Ed. 788—Philadelphia Transp. Co. v. Philadelphia Suburban Transp. Co., 115 A.2d 233, 382 Pa. 365—In re Jury's Estate, 112 A.2d 634, 381 Pa. 169—Kalyvas v. Kalyvas, 89 A.2d 819, 371 Pa. 371—Andrikanics v. Andrikanics, 89 A.2d 792, 371 Pa. 222—Bechtold v. Coleman Realty Co., 79 A.2d 661, 367 Pa. 208—Vallish v. Rapoport, 70 A.2d 616, 364 Pa. 25—In re Noonan's Estate, 63 A.2d 80, 361 Pa. 26—In re Quein's Estate, 62 A.2d 909, 361 Pa. 133—Brooks v. Conston, 51 A.2d 684, 356 Pa. 69—In re Davies' Estate, 137 A. 728, 289 Pa. 579.

Holden v. Moser, 103 A.2d 464, 175 Pa.Super. 206.

R.I.—Matarese v. Matarese, 105 A. 2d 475—Santos v. Santos, 90 A.2d 771, 80 R.I. 5—Wilson v. Ollman, 60 A.2d 728, 74 R.I. 358—Correia v. McCormick, 154 A. 276, 51 R.I. 301.

Tenn.—Gordon's Transports, Inc. v. Bailey, App., 294 S.W.2d 313—Eckard's, Inc. v. McGhee, 86 S.W.2d 570, 19 Tenn.App. 277.

Tex.—Fort Worth & D. C. Ry. Co. v. Gifford, Civ.App., 244 S.W.2d 848, reversed on other grounds Gifford v. Fort Worth & D. C. Ry. Co., 249 S.W.2d 190, 151 Tex. 282—Lange v. Houston Bank & Trust Co., Civ. App., 194 S.W.2d 797, error refused no reversible error.

Va.—Boston v. Shackelford, 175 S.E. 625, 162 Va. 733.

Wash.—W. L. Reid Co. v. M-B Contracting Co., 285 P.2d 121, 46 Wash. 2d 784—Meyer v. Strom, 226 P.2d 218, 37 Wash.2d 818.

Wyo.—Johnston v. Vukelic, 213 P.2d 925, 67 Wyo. 1.

4 C.J. p 845 note 82.

Inferences

(1) Appellate court may draw its own inferences from undisputed facts.

R.I.—Desforge v. American-British Home Bldg. Ass'n, 33 A.2d 203, 69 R.I. 366—Levy v. Zura, 199 A. 291, 60 R.I. 399—Greene v. Rhode Island Hospital Trust Co., 197 A. 464, 60 R.I. 184—Royal Plan v. Reliable Auto Finance Corp., 195 A. 510, 59

the inferences to be drawn therefrom;[19] but great weight should be given on appeal to the undisputed facts and the probabilities,[20] and it has been said that uncontradicted evidence must be taken as true.[21]

In so far as it is the duty of the appellate court to take judicial notice of ultimate facts or conclusions to be drawn from the record, it must consider the evidence,[22] and may draw the necessary inferences arising therefrom,[23] but not inferences not justified or unnecessary.[24] An appellate court in passing on the sufficiency of evidence to sustain facts found below must not pass beyond the field of probabilities into that of conjecture.[25] The court on appeal may

R.I. 393—John Hancock Mut. Life Ins. Co., v. Hutchins, 195 A. 482, 59 R.I. 376—People's Sav. Bank in Providence v. Rynn, 190 A. 440, 57 R.I. 411.

(2) The reasonableness of a conclusion from undisputed facts is to be tested by the inherent soundness or reasonableness of the conclusion itself, and an appellate court must decide the question for itself.

Tex.—Gulf, C. & S. F. R. Co. v. Gaddis, Com.App., 208 S.W. 895.

(3) Finding based on inferences from uncontroverted facts has not the weight in an appellate court of a finding of fact.

U.S.—Bianchi v. Vere, C.A.Puerto Rico, 17 F.2d 22, certiorari denied Vere v. Bianchi, 47 S.Ct. 765, 274 U.S. 752, 71 L.Ed. 1333.

Fla.—Holland v. Gross, 89 So.2d 255.

Pa.—Eways v. Reading Parking Authority, 124 A.2d 92, 385 Pa. 592.

19. Cal.—State v. Agostini, 294 P. 2d 769, 139 C.A.2d 909.

Colo.—State v. Grooms, 133 P.2d 379, 110 Colo. 264.

D.C.—Rogers v. Cox, Mun.App., 75 A. 2d 776.

Mass.—Lowell v. City of Boston, 79 N.E.2d 713, 322 Mass. 709, appeal dismissed, Pierce v. City of Boston, 69 S.Ct. 84, 335 U.S. 849, 93 L.Ed. 398—Bankers' Trust Co. v. Dockham, 181 N.E. 174, 279 Mass. 199.

Tex.—In re Fowler's Estate, Civ. App., 87 S.W.2d 896.

Conflict between oral and documentary evidence

Where there was substantial conflict between documentary and oral evidence in will contest, oral evidence could not be disregarded and documentary evidence alone considered on appeal.

Kan.—Gilpin v. Burch, 65 P.2d 308, 145 Kan. 224.

20. N.D.—Yocum v. Chisman, 168 N. W. 621, 40 N.D. 160.

Conclusion drawn from facts

Where the facts are undisputed in the record, the supreme court need only inquire whether as a matter of law, the conclusion drawn by the trial court from these facts is justified.

Iowa.—In re Mathews' Estate, 12 N. W.2d 162, 234 Iowa 188.

21. Ky.—Ralston v. Dossey, 157 S. W.2d 739, 280 Ky. 40—Gibson v. Womack, 291 S.W. 1021, 218 Ky. 626, 51 A.L.R. 773.

Tex.—Nagel v. Taylor, Civ.App., 275 S.W.2d 561, error dismissed.

In South Dakota, where there is practically no conflict of evidence as to material facts, adjudication of the question depends on the application of the law to those facts.

S.D.—Mittet v. Home Ins. Co., 207 N.W. 49, 49 S.D. 319.

22. Ariz.—Alabam Freight Lines v. Phoenix Bakery, 166 P.2d 816, 64 Ariz. 101.

La.—Lewis v. Audubon Ins. Co., App., 62 So.2d 850.

Mo.—Kapros v. Pierce Oil Corporation, 25 S.W.2d 777, 324 Mo. 992, 78 A.L.R. 722.

Tex.—Henderson v. Henderson, Civ. App., 236 S.W.2d 154.

Whether facts found are supported by the evidence involves not the weight or preponderance of the evidence, but the existence of substantial, supporting legal evidence.

Cal.—Dam v. Bond, 251 P. 818, 80 C.A. 342.

In reviewing the sufficiency of the evidence, technically incompetent evidence must be given as much weight as if competent.

Cal.—Yule v. Miller, 252 P. 733, 80 C.A. 609.

Construction

The court will construe the testimony of witnesses according to the common vernacular.

Miss.—Holmes v. Ford, 176 So. 524, 179 Miss. 673.

Declarations or oral admissions of a party will be reviewed with caution on appeal.

Cal.—Ventimiglia v. Hodgen, 247 P. 2d 123, 112 C.A.2d 658.

Interest of witness

Ill.—McCormack v. Friel, 63 N.E.2d 784, 327 Ill.App. 208.

23. Ala.—City of Anniston v. Oliver, 185 So. 187, 28 Ala.App. 390.

Cal.—Ervin v. City of Los Angeles, 256 P.2d 25, 117 C.A.2d 303—Webster v. Mountain Monarch Gold Mining Co., 44 P.2d 646, 6 C.A.2d 450—Comer v. Los Angeles Ry. Corporation, 272 P. 1100, 95 C.A. 545—Brown v. Shroeder, 263 P. 325, 88 C.A. 192.

Md.—Masters v. Masters, 89 A.2d 576, 200 Md. 318.

Mass.—Mellon Nat. Bank & Trust Co. v. Commissioner of Corporations and Taxation, 100 N.E.2d 370, 327 Mass. 631—General Acc. Fire & Life Assur. Corp. v. Brow, 98 N.E.2d 608, 327 Mass. 225—Farrington v. Boston Safe Deposit & Trust Co., 181 N.E. 779, 280 Mass. 121—Metropoulos v. MacPherson, 135 N.E. 693, 241 Mass. 491—Boston & N. St. Ry. Co. v. Goodell, 124 N.E. 260, 233 Mass. 428.

Mich.—Detroit Piston Ring Co. v. Wayne County & Home Sav. Bank, 233 N.W. 185, 252 Mich. 163, 75 A. L.R. 1273.

Mo.—Kapros v. Pierce Oil Corporation, 25 S.W.2d 777, 324 Mo. 992, 78 A.L.R. 722.

Wallen v. Mississippi River & B. T. Ry. Co., App., 267 S.W. 12.

N.Y.—GaNun v. Palmer, 111 N.E. 223, 216 N.Y. 603.

Ohio.—Glasco v. Mendelman, 56 N.E. 2d 210, 143 Ohio St. 649.

Tex.—Nations v. Lindley, Civ.App., 275 S.W. 163.

24. Cal.—Sargent v. Shumaker, 223 P. 464, 193 C. 122.

Johnson v. Western Air Express Corp., 114 P.2d 688, 45 C.A.2d 614—Payne v. Callahan, 99 P.2d 1050, 37 C.A.2d 503.

Mo.—Davidson v. Missouri Orpheum Corp., 161 S.W.2d 707, 236 Mo.App. 1025.

N.Y.—Sundstrom v. State, 106 N.E. 924, 213 N.Y. 68.

Utah.—Osmond v. Osmond, 224 P. 882, 63 Utah 240.

Appellate court will respect opinion evidence of foreign law only if comprised of reasonable inferences.

N.Y.—Petrogradsky Mejdunarodny Kommerchesky Bank v. National City Bank of New York, 170 N.E. 479, 253 N.Y. 23, certiorari denied National City Bank of New York v. Petrogradsky Mejdunarodny Kommerchesky Bank, 51 S.Ct. 82, 282 U.S. 878, 75 L.Ed. 775, reargument denied Petrogradsky Mejdunarodny Kommerchesky Bank v. National City Bank of New York, 173 N.E. 867, 254 N.Y. 563.

25. Cal.—Showalter v. Western Pac. R. Co., 106 P.2d 895, 16 C.2d 460.

McManus v. Allan, 89 P.2d 690, 32 C.A.2d 275—Cooper v. Stevens, 62 P.2d 763, 17 C.A.2d 746—Walker v. Department of Public Works of California, 291 P. 907, 108 C.A. 508.

Colo.—Moedy v. Moedy, 276 P.2d 563, 130 Colo. 464.

Ill.—Chidley v. Bray, 210 Ill.App. 394.

consider any evidence before the trial court tending to show the situation and circumstances at the time of the alleged transactions.[26]

As a general rule, in reviewing determinations of fact made in the lower court, only the evidence and the inferences favorable to the successful party will be considered.[27]

Mich.—Schwaderer v. Huron-Clinton Metropolitan Authority, 45 N.W.2d 279, 329 Mich. 258.

Pa.—Reagan v. Reading Co., 190 A. 412, 126 Pa.Super. 175.

Tex.—American Surety Co. of New York v. Austin, Com.App., 17 S.W. 2d 777—Austin v. Neiman, Com. App., 14 S.W.2d 794.

Va.—Southern Ry. Co. v. Mays, 63 S.E.2d 720, 192 Va. 68, certiorari denied Mays v. Southern Ry. Co., 72 S.Ct. 60, 342 U.S. 836, 96 L.Ed. 632—Virginia Electric & Power Co. v. Bennett, 159 S.E. 93, 156 Va. 910.

26. Ind.—Bankers' Surety Co. v. German Investment & Securities Co., 126 N.E. 6, 189 Ind. 311.

Mass.—Peace v. Gabourel, 19 N.E.2d 49, 302 Mass. 313.

Knowledge of human nature

(1) In arriving at the truth as disclosed by record, reviewing court must consider acts and conduct of parties in light of knowledge of court of human nature.

Ky.—Meade v. Ward, 113 S.W.2d 459, 271 Ky. 844.

(2) A reviewing court, in determining whether a judgment is reasonably and substantially sustained by evidence, must analyze evidence in light of reason and give consideration to motives which tend to influence or prompt human action.

Wyo.—Goldberg v. Miller, 93 P.2d 947, 54 Wyo. 485, rehearing denied 96 P.2d 570, 54 Wyo. 485.

27. Ala.—Southern States Life Ins. Co. v. Allan, App., 87 So.2d 439.

Ark.—Shultz v. Young, 169 S.W.2d 648, 205 Ark. 533—American Republic Ins. Co. v. Burks, 167 S.W. 2d 885, 205 Ark. 160—Harmon v. Ward, 149 S.W.2d 575, 202 Ark. 54—New York Life Ins. Co. v. Weeks, 148 S.W.2d 330, 201 Ark. 1160—Missouri Pacific Transp. Co. v. Sacker, 138 S.W.2d 371, 200 Ark. 92—Southwestern Transp. Co. v. Chambliss, 125 S.W.2d 123, 197 Ark. 865—Missouri Pac. R. Co. v. Hampton, 112 S.W.2d 428, 195 Ark. 335—Mutual Life Ins. Co. of New York v. Springer, 104 S.W.2d 195, 193 Ark. 990—Smith v. Arkansas Power & Light Co., 86 S.W.2d 411, 191 Ark. 389—Baldwin v. Wingfield, 85 S.W.2d 689, 191 Ark. 129.

Cal.—Bell-Brook Dairies v. Bryant, 218 P.2d 1, 35 C.2d 404—Lindemann v. San Joaquin Cotton Oil Co., 55 P.2d 870, 5 C.2d 480—Bank of Italy v. Cadenasso, 270 P. 931, 206 C. 428, adopted 274 P. 536, 206 C. 428—Meisner v. McIntosh, 269 P. 612, 205 C. 11.

Zinn v. Ex-Cell-O Corp., App., 306 P.2d 1017—Gottloeb v. Melrose Health Baths, App., 306 P.2d 568—Clark v. Redlich, App., 305 P.2d 239—Clinkscale v. Germershausen, App., 302 P.2d 23—In re Moore's Estate, App., 300 P.2d 110, 143 C.A. 2d 64—Gray v. Rheem Mfg. Co., 299 P.2d 900, 143 C.A.2d 537—Bank of America Nat. Trust & Sav. Ass'n v. Beard, 290 P.2d 87, 137 C.A.2d 405—Williams v. Barnett, 287 P.2d 789, 135 C.A.2d 607—Robinson v. Tanovitz, 284 P.2d 148, 133 C.A.2d 424—Ogden v. Title Ins. & Trust Co., 276 P.2d 146, 129 C.A.2d 26—Guerra v. Balestrieri, 274 P.2d 443, 127 C.A.2d 511—Kuehn v. Lowthian, 269 P.2d 666, 124 C.A.2d 867—Sampson v. Sapoznik, 269 P.2d 205, 124 C.A.2d 704—Harris v. Lee, 266 P.2d 534, 123 C.A.2d 177—Moore v. Day, 266 P.2d 51, 123 C.A.2d 134—Kane v. Sklar, 265 P.2d 29, 122 C.A.2d 480—Frank v. Dominick, 264 P.2d 161, 122 C.A.2d 45—Kirsch v. Kirsch, 259 P.2d 444, 119 C.A.2d 271—Wolfson v. Beatty, 257 P.2d 1017, 118 C.A.2d 392—Ervin v. City of Los Angeles, 256 P.2d 25, 117 C.A.2d 303—Stamler v. Kissinger, 251 P.2d 709, 115 C.A.2d 171—Agnew v. Foell, 248 P.2d 758, 113 C.A. 2d 575—Aumont v. Nebenzal, 244 P.2d 461, 111 C.A.2d 277—Anderson v. Wagnon, 242 P.2d 915, 110 C.A.2d 862—DeRosier v. Vierra, 240 P.2d 660, 109 C.A.2d 291—LeFiell v. LeFiell, 239 P.2d 61, 108 C.A.2d 321—In re Durham's Estate, 238 P.2d 1061, 108 C.A.2d 154—K. & M., Inc. v. LeCuyer, 238 P.2d 28, 107 C.A.2d 710, followed in 238 P.2d 33, 107 C.A.2d 845—Baker v. Curtis, 234 P. 2d 153, 105 C.A.2d 663—Ellis v. Geiger, 233 P.2d 166, 105 C.A.2d 415—Sidney v. Martin Iron Works, 233 P.2d 128, 105 C.A.2d 295—Mucci v. Winter, 230 P.2d 22, 103 C.A.2d 627—Tomblinson v. Nobile, 229 P.2d 97, 103 C.A.2d 266—Mohamed Hosi v. La Vey, 228 P.2d 35, 102 C.A.2d 599—Bowden v. Heaton, 222 P.2d 247, 99 C.A.2d 734—Centers v. Dollar Markets, 222 P.2d 136, 99 C.A.2d 534—H. Y. Minami & Sons v. State Bd. of Equalization, 217 P.2d 729, 97 C.A.2d 327—Terry v. Schwartz, 217 P.2d 686, 97 C.A.2d 465—Allstate Ins. Co. v. Miller, 216 P.2d 565, 96 C.A.2d 778—Ridgway v. Ridgway, 212 P.2d 6, 95 C.A.2d 46—Lyon v. City of Long Beach, 207 P.2d 73, 92 C.A.2d 472—Biggs v. Tourtas, 206 P.2d 871, 92 C.A.2d 316—Wilson v. Sampson, 205 P.2d 753, 91 C.A.2d 453—McNulty v. Copp, 205 P.2d 425, 91 C.A.2d 434—Silver v. Shemanski, 201 P.2d 418, 89 C.A.2d 520—Columbia Pictures Corp. v. DeToth, 197 P.2d 580, 87 C.A.2d 620—Rosenfield v. Vosper, 195 P.2d 530, 86 C.A.2d 687—Andrews v. Andrews, 186 P.2d 744, 82 C.A.2d 521—McKinley v. Southern Pac. Co., 181 P.2d 899, 80 C.A.2d 301—Perry v. City of San Diego, 181 P.2d 98, 80 C.A.2d 166—Lewis v. Silveira, 179 P.2d 829, 79 C.A.2d 489—Thompson v. Machado, 178 P. 2d 838, 78 C.A.2d 870—La Malfa v. Piombo Bros., 161 P.2d 964, 70 C. A.2d 810—California Employment Commission v. Sutton, 158 P.2d 949, 69 C.A.2d 181—Drury v. Hagerstrom, 157 P.2d 878, 68 C.A.2d 742—White v. Waters, 157 P.2d 434, 68 C.A.2d 517—Potasz v. Potasz, 155 P.2d 895, 68 C.A.2d 20—Rogers v. Mulkey, 147 P.2d 62, 63 C.A.2d 567—Huston v. Schohr, 146 P.2d 730, 63 C.A.2d 267—Singh v. Furuta, 139 P.2d 664, 59 C.A.2d 695—Porter v. Signal Trucking Service, 138 P.2d 753, 59 C.A.2d 289—Gaine v. Austin, 136 P.2d 584, 58 C.A.2d 250—Weiss v. Bank of America Nat. Trust & Savings Ass'n, 135 P.2d 584, 57 C.A.2d 892—Morris v. George, 135 P.2d 195, 57 C.A.2d 665—Megee v. Fasulis, 134 P.2d 815, 57 C.A.2d 275—Primm v. Market St. Ry. Co., 132 P.2d 842, 56 C.A.2d 480—Mahar v. Mackay, 132 P.2d 42, 55 C.A.2d 869—In re Stahl's Estate, 129 P.2d 475, 54 C.A.2d 565—Macaulay v. Booth, 128 P.2d 386, 53 C.A.2d 757—Luiz v. Queen of Angels Hospital, 127 P.2d 966, 53 C.A.2d 310—King v. San Jose Keystone Mining Co., 127 P.2d 286, 53 C.A.2d 40—Zuerin v. Riverside Cement Co., 126 P.2d 920, 52 C.A. 2d 715—Matsuda v. Luond, 126 P.2d 359, 52 C.A. 453—Thompson v. Steveson, 126 P.2d 127, 52 C.A.2d 250—Lindsey v. De Vaux, 123 P.2d 144, 50 C.A.2d 445—Jones v. Yuma Motor Freight Terminal, 114 P.2d 438, 45 C.A.2d 497—Bigelow v. City of Ontario, 99 P.2d 298, 37 C.A.2d 198—In re McConkey's Estate, 92 P.2d 456, 33 C.A.2d 554—Crawford v. Marysville Fuel Co., 90 P.2d 864, 33 C.A.2d 73—Washko v. Stewart, 67 P.2d 151, 20 C.A.2d 345—Raymond v. Staples, App., 66 P.2d 153—Abrams v. Hubert, 51 P.2d 884, 10 C.A.2d 104—Setsuko Nitta v. Haslam, 33 P.2d 678, 138 C.A. 736—Wickman v. Lowenstein, 28 P.2d 681, 136 C.A. 279—La Mar v. La Mar, 28 P.2d 63, 135 C.A. 693—Moore v. Re, 22 P.2d 45, 131 C.A. 557—Coats v. Hathorn, 8 P.2d 1038, 121 C.A. 257—Bedford v. Pacific

b. In Equity Suit

In equity cases the general rule is that the appellate court may review the facts.

As elsewhere discussed in this Title supra § 1526 and infra §§ 1655, 1662, suits in equity are tried de novo on appeal on the entire record and all of

Structural Welding Corporation, 8 P.2d 558, 121 C.A. 162—Newport Bay Dredging Co. v. Helm, 7 P.2d 1039, 120 C.A. 127—Rasmussen v. Pacific Fruit Exchange, 295 P. 538, 111 C.A. 346—Sinsbaugh v. Clark, 294 P. 462, 110 C.A. 340—Vandiveer v. Charters, 294 P. 440, 110 C.A. 347—Bethurum v. Krumm, 292 P. 287, 109 C.A. 51—Sites v. Howrey, 291 P. 597, 108 C.A. 348—Briggs v. Jess Mead, Inc., 270 P. 263, 93 C.A. 666—Desmond v. Standard Bond & Mortgage Co., 266 P. 1005, 91 C.A. 201—Schleif v. Grigsby, 263 P. 255, 88 C.A. 174—Keyes v. Nims, 184 P. 695, 43 C.A. 1.

Mastrofini v. Swanson, 250 P.2d 764, 114 C.A.2d Supp. 848.

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Tex.—Biggers v. Continental Bus System, Inc., 303 S.W.2d 359—Triangle Motors of Dallas v. Richmond, 258 S.W.2d 60, 152 Tex. 354—Renfro Drug Co. v. Lewis, 235 S.W.2d 609, 149 Tex. 507, 23 A.L.R.2d 1114—Cartwright v. Canode, 171 S.W. 696, 106 Tex. 502.

Jackson v. Watson, Com.App., 10 S.W.2d 977—Austin v. Cochran, Com.App., 2 S.W.2d 831—Galveston, H. & S. A. Ry. Co. v. American Grocery Co., Com.App., 25 S.W. 588, affirmed Galveston, H. & S. A. Ry. Co. v. American Grocery Co., 36 S.W.2d 985, 122 Tex. 1, certiorari granted Galveston Wharf Co. v. Galveston, H. & S. A. Ry. Co., 52 S.Ct. 41, 284 U.S. 608, 76 L.Ed. 521, affirmed 52 S.Ct. 342, 285 U.S. 127, 76 L.Ed. 659.

Cook v. Hamer, Civ.App., 302 S.W.2d 680—Big Three Welding Equipment Co. v. Reeh, Civ.App., 301 S.W.2d 504—Womacks v. Horne, Civ.App., 300 S.W.2d 765—Sampson v. Vernon Law Book Co., Civ.App., 295 S.W.2d 429—Stanley v. Stanley, Civ.App., 294 S.W.2d 132, error refused no reversible error—Heidt Bros. Trucks v. McCollum, Civ.App., 293 S.W.2d 214—Thompson v. Gibson, Civ.App., 290 S.W.2d 305, reversed on other grounds, Sup., 298 S.W.2d 97—Walton v. Luther Transfer & Storage Co., 286 S.W.2d 280, affirmed, Sup., 296 S.W.2d 750—Wynn v. Mendoza, Civ.App., 287 S.W.2d 217, error refused no reversible error—Hassell v. Pruner, Civ.App., 286 S.W. 2d 266, error refused no reversible error—Porter v. Puryear, Civ.App., 278 S.W.2d 595, error refused no reversible error—Beauchamp v. Nichols, Civ.App., 278 S.W.2d 535—Texas & P. Ry. Co. v. Midkiff, Civ. App., 275 S.W.2d 841—Johnson-Sampson Const. Co. v. W & W Waterproofing Co., Civ.App., 274 S. W.2d 926, error refused no reversible error—Murray v. Slater, Civ. App., 274 S.W.2d 921—Castro Co-op. Gin Co. v. Harrison, Civ.App., 272 S.W.2d 538—Griffin v. Griffin, Civ.App., 271 S.W.2d 714—Womack v. Hazelwood, Civ.App., 271 S.W. 2d 699, refused no reversible error—Michalak v. Dzierzanowski, Civ.App., 270 S.W.2d 276—Magana v. Cheverere, Civ.App., 269 S.W.2d 934—Rice v. Thompson, Civ.App., 268 S.W.2d 481, error refused no reversible error—Truelove v. Truelove, Civ.App., 266 S.W.2d 491, error refused—Poynor v. Varner, Civ.App., 266 S.W.2d 462—Reynolds v. Crudgington, Civ.App., 266 S.W. 2d 430—Brown v. Moss, Civ.App., 265 S.W.2d 613, error refused no reversible error—Borho v. Austin Laundry & Dry Cleaning Co., Civ. App., 260 S.W.2d 110, error refused no reversible error—Munn v. Riggs, Civ.App., 257 S.W.2d 714—Pharr v. Coldeway, Civ.App., 256 S. W.2d 917—Anderson Furniture Co. v. Roden, Civ.App., 255 S.W.2d 345, error refused no reversible error—Buss v. Robison, Civ.App., 255 S. W.2d 339, error refused no reversible error—Hughes v. Trimble, Civ. App., 254 S.W.2d 420, error refused no reversible error—S. H. Kress & Co. v. Selph, Civ.App., 250 S.W.2d 883, error refused no reversible error—Daniel v. Watson, Civ.App., 249 S.W.2d 281—Bradshaw v. Holmes, Civ.App., 246 S.W.2d 296, error refused no reversible error—Greer v. Newton, Civ.App., 245 S. W.2d 299—Dallas Ry. & Terminal Co. v. Bailey, Civ.App., 245 S.W.2d 275, reversed on other grounds 250 S.W.2d 379, 151 Tex. 359—Edgar v. Schmidt, Civ.App., 243 S.W.2d 414—Cole v. Waite, Civ.App., 242 S. W.2d 936, affirmed 246 S.W.2d 849, 151 Tex. 175—Capitol Steel & Iron Co. v. Henderson, Civ.App., 239 S. W.2d 851—H. L. Butler & Son v. Walpole, Civ.App., 239 S.W.2d 653, error refused no reversible error—Snyder v. Johnson, Civ.App., 237 S.W.2d 740, mandamus granted—Friendship Baptist Dist. Ass'n v. Johnson, Civ.App., 230 S.W.2d 598, error refused no reversible error—Beckham v. Mayes, Civ.App., 229 S.W.2d 636—McClure v. McClure, Civ.App., 228 S.W.2d 362—Orr v. Orr, Civ.App., 226 S.W.2d 172—Walston v. Mabry, Civ.App., 225 S.W.2d 1014—Springall v. Fredericksburg Hospital & Clinic, Civ. App., 225 S.W.2d 232—Highway Ins. Underwriters v. Roberts, Civ. App., 224 S.W.2d 903, error refused no reversible error—Steinke v. Schmid, Civ.App., 223 S.W.2d 955—First Nat. Bank in Dalhart v. Flack, Civ.App., 222 S.W.2d 455, reversed on other grounds Flack v. First Nat. Bank in Dalhart, 226 S. W.2d 628, 148 Tex. 495—Hughes v. Hughes, Civ.App., 221 S.W.2d 1003—First Baptist Church of San Marcos, Colored, v. Giles, Civ.App., 219 S.W.2d 498, error refused no reversible error—Chesshir v. Nall, Civ.App., 218 S.W.2d 248, error refused no reversible error—Commercial Standard Ins. Co. v. Gruver, Civ.App., 217 S.W.2d 95, error dismissed—Keeton v. Gillam Soap Works, Civ.App., 215 S.W.2d 675, error refused no reversible error—Spraggins v. Smith, Civ.App., 214 S.W.2d 815—Byars v. Johnson, Civ. App., 213 S.W.2d 294, error refused no reversible error—American Water Co. v. Bunge, Civ.App., 213 S.W. 2d 93, error refused no reversible error—Fulford v. Heath, Civ.App., 212 S.W.2d 649, error refused no reversible error—Walker v. Citizens Nat. Bank of Waco, Civ.App., 212 S. W.2d 203, error refused no reversible error—St. John's Regular Baptist Ass'n v. Long, Civ.App., 211 S. W.2d 607, error refused no reversible error—McLean v. McCollum, Civ.App., 209 S.W.2d 959, error refused no reversible error—American Cas. & Life Co. v. Gueringer, Civ.App., 205 S.W.2d 423—McWhirter v. Morrow, Civ.App., 203 S.W.2d 317—Henwood v. Neal, Civ.App., 198 S.W.2d 125—Boston Ins. Co. v. Rainwater, Civ.App., 197 S.W.2d 118—Howard v. Sears, Civ.App., 196 S. W.2d 105—Quinn v. Wilkerson, Civ. App., 195 S.W.2d 399—Antwine v. Reed, Civ.App., 194 S.W.2d 614, reversed on other grounds 199 S.W.2d 482, 145 Tex. 521—Greenspun v.

Greenspun, Civ.App., 194 S.W.2d 134, affirmed 198 S.W.2d 82, 145 Tex. 374—Ramseur v. Hudson, Civ. App., 190 S.W.2d 576—Barrick v. Gillette, Civ.App., 187 S.W.2d 683, refused for want of merit—Fruth v. Gaston, Civ.App., 187 S.W.2d 581, refused for want of merit—Federal Underwriters Exchange v. Hinkle, Civ.App., 187 S.W.2d 122, error refused—Texas Prudential Ins. Co. v. Knighten, Civ.App., 186 S.W. 2d 843—Chapman v. Evans, Civ. App., 186 S.W.2d 827, refused for want of merit—Webb v. Webb, Civ.App., 184 S.W.2d 153, error refused—James v. Missouri-Kansas-Texas R. Co. of Texas, Civ.App., 182 S.W.2d 921, error refused—Roswurm v. Sinclair Prairie Oil Co., Civ.App., 181 S.W.2d 736, error refused—City of Denton v. White, Civ.App., 179 S.W.2d 834, error refused—Koen v. Gardner, Civ.App., 178 S.W.2d 173—Porizky v. Olinger, Civ.App., 177 S.W.2d 995—Wichita Valley R. Co. v. Durrett, Civ.App., 174 S.W.2d 329, error refused—Texas Electric Ry. Co. v. Wooten, Civ. App., 173 S.W.2d 463, error refused —Dotson v. Braswell, Civ.App., 172 S.W.2d 985, error refused—Shield Co. v. Cartwright, Civ.App., 172 S. W.2d 108, affirmed 177 S.W.2d 954, 142 Tex. 324—Cohen v. Cohen, Civ. App., 171 S.W.2d 908—Higginbotham Bros. & Co. v. Callaway, Civ. App., 170 S.W.2d 333—Baker v. Baker, Civ.App., 169 S.W.2d 1016, reversed on other grounds 183 S.W. 2d 724, 143 Tex. 191—Graham v. Hollandsworth Drilling Co., Civ. App., 169 S.W.2d 1001, error refused—Safeway Stores of Texas v. Webb, Civ.App., 164 S.W.2d 808, error refused—Lozano v. De Martinez, Civ.App., 164 S.W.2d 196, error refused—Biscoe v. Price, Civ. App., 164 S.W.2d 67, reversed on other grounds 170 S.W.2d 729, 141 Tex. 159—American General Ins. Co. v. Smith, Civ.App., 163 S.W.2d 849, error refused—Kimbell Milling Co. v. Greene, Civ.App., 162 S.W. 2d 991, affirmed 170 S.W.2d 191, 141 Tex. 84—Graves v. Guaranty Bond State Bank, Civ.App., 161 S. W.2d 118—Texas Life Ins. Co. v. Sharp, Civ.App., 159 S.W.2d 951, error refused—Barrington v. City of Sherman, Civ.App., 155 S.W.2d 1008, error refused—Booth v. Chadwick, Civ.App., 154 S.W.2d 268, error refused—Hranicky v. Trojanowsky, Civ.App., 153 S.W.2d 649, error refused—Miller v. Rhodius, Civ.App., 153 S.W.2d 491, error refused—Larson v. Sterling Mut. Life Ins. Co., Civ.App., 153 S.W.2d 177, error dismissed—Price v. Humble Oil & Refining Co., Civ. App., 152 S.W.2d 804, error refused —Southland Life Ins. Co. v. White, Civ.App., 149 S.W.2d 218—Higgins v. Standard Lloyds, Civ.App., 149 S.W.2d 143, error dismissed—Texas Power and Light Co. v. Doering Hotel Co., Civ.App., 147 S.W.2d 897, affirmed 162 S.W.2d 938, 139 Tex. 351—Lone Star Gas Co. v. Bradford, Civ.App., 147 S.W.2d 547, error dismissed, judgment correct—Strickler v. International Harvester Co., Civ.App., 141 S.W.2d 989, error dismissed, judgment correct —Noska v. Mills, Civ.App., 141 S. W.2d 429—Hoerster v. Wilke, Civ. App., 140 S.W.2d 952, affirmed 158 S.W.2d 288, 138 Tex. 263—American Mut. Liability Ins. Co. v. Wedgeworth, Civ.App., 140 S.W.2d 213, error dismissed, judgment correct—Barlow v. Barlow, Civ.App., 139 S.W.2d 139—Fertsch v. White, Civ.App., 138 S.W.2d 195—Texas Indemnity Ins. Co. v. Staggs, Civ. App., 138 S.W.2d 174, error dismissed by agreement—Hidalgo County Bank & Trust Co. v. Goodwin, Civ. App., 137 S.W.2d 161, error dismissed, judgment correct—Dallas Joint Stock Land Bank of Dallas v. Harrison, Civ.App., 135 S.W.2d 573, reversed on other grounds 156 S.W.2d 963, 138 Tex. 84—Cardinal v. Cardinal, Civ.App., 131 S.W.2d 1005, error dismissed—Sullivan v. Trammell, Civ.App., 130 S.W.2d 310, error dismissed, judgment correct—Tunnell v. Van School Dist. No. 53, Civ.App., 129 S.W.2d 825, error dismissed, judgment correct—Schmidt v. Greenwade, Civ.App., 129 S.W.2d 324—International-Great Northern R. Co. v. Acker, Civ.App., 128 S.W.2d 506, error dismissed, judgment correct —Jefferson Standard Life Ins. Co. v. Curfman, Civ.App., 127 S.W.2d 567 error dismissed—Burrage v. Red Arrow Taxi Co., Civ.App., 123 S.W.2d 731—Evans v. Dr. Pepper Bottling Co., Civ.App., 123 S.W.2d 706—Upton v. Dolsby, Civ.App., 119 S.W.2d 571, error dismissed—Fidelity & Deposit Co. of Maryland v. First Nat. Bank, Civ.App., 113 S.W.2d 622, error dismissed—Williams v. Russell, Civ.App., 112 S.W.2d 264—Exporters & Traders Compress & Warehouse Co. v. Steele, Civ.App., 111 S.W.2d 867—Merchants Bldg. Corp. v. Adler, Civ.App., 110 S.W.2d 978, error dismissed—Buenrostro v. American Nat. Ins. Co., Civ.App., 105 S.W.2d 393—McVeigh v. International Travelers Assur. Co., Civ.App., 101 S.W.2d 644, error dismissed—National Life & Accident Ins. Co. v. Burden, Civ.App., 101 S.W.2d 292, error dismissed—Baptist Missionary and Educational Convention of Texas v. Grand Lodge Colored K. P. of Texas, Civ.App., 97 S.W.2d 985, error refused—American Nat. Ins. Co. v. Garrison, Civ.App., 97 S.W.2d 534, error dismissed—Johnson v. Phillips Petroleum Co., Civ. App., 93 S.W.2d 556—Ross v. Houston Oil Fields Ass'n, Civ.App., 88 S.W.2d 586, error dismissed—West v. Cashin, Civ.App., 83 S.W.2d 1001, error dismissed—Hale v. Corbin, Civ.App., 83 S.W.2d 726—Coggin v. Bursom, Civ.App., 70 S.W.2d 338—Ehrig v. Garlin, Civ.App., 63 S.W. 2d 898—Texas Utilities Co. v. West, Civ.App., 59 S.W.2d 459—Texas & N. O. R. Co. v. Owens, Civ.App., 54 S.W.2d 848—Johnson v. Weed, Civ.App., 52 S.W.2d 917 —Texas & P. Ry. Co. v. Gillette, Civ.App., 50 S.W.2d 901, reversed on other grounds, Com.App., 83 S. W.2d 307—King v. Sieber, Civ.App., 50 S.W.2d 473—Guthrie v. Country Club Estates Co., Civ.App., 46 S.W.2d 746—Railway Express Agency v. Bannister, Civ.App., 46 S.W.2d 372—Cox v. Bankers' Guaranty Life Co., Civ.App., 45 S.W.2d 390—Gonzales v. Word, Civ.App., 45 S.W.2d 305—Brown v. Hart, Civ.App., 43 S.W.2d 274—El Paso Electric Co. v. Leeper, Civ.App., 42 S.W.2d 863, reversed on other grounds, Com.App., 60 S.W.2d 187 —Ft. Worth & D. C. Ry. Co. v. Jenkins, Civ.App., 42 S.W.2d 267—Lincoln v. Stone, Civ.App., 42 S. W.2d 128, reversed on other grounds, Com.App., 59 S.W.2d 100 —Jones v. Jones, Civ.App., 41 S.W. 2d 496—Commercial Standard Ins. Co. v. McGee, Civ.App., 40 S.W.2d 1105—Kuykendall v. Johnson Funeral Parlor, Civ.App., 38 S.W.2d 601—Texas Employers' Ins. Ass'n v. Sloan, Civ.App., 36 S.W.2d 319—Massoud v. Attel, Civ.App., 32 S. W.2d 225—United Fidelity Life Ins. Co. v. Adair, Civ.App., 29 S.W.2d 940, affirmed, Com.App., 29 S.W.2d 944—Farmers' Gin Co. v. Smith, Civ.App., 28 S.W.2d 839—Willis & Conner v. Turner, Civ.App., 25 S.W. 2d 642—Evrage v. Lane, Civ.App., 21 S.W.2d 594—Gattis v. Kirk, Civ. App., 12 S.W.2d 589—Buck v. De Shazo, Civ.App., 5 S.W.2d 878—Pandem Oil Corporation v. McKinney, Civ.App., 3 S.W.2d 466—Buchanan v. Davis, Civ.App., 300 S.W. 985, affirmed, Com.App., 12 S.W.2d 978, and rehearing denied 15 S.W.2d 562—San Antonio Machine & Supply Co. v. Central Texas Power & Transmission Co., Civ. App., 295 S.W. 229—Easterling v. Simmons, Civ.App., 293 S.W. 690—Parkey v. Lawrence, Civ.App., 284 S.W. 283—Fort Worth Mut. Benev. Ass'n v. Jennings, Civ.App., 283 S.W. 910—Dallas Ry. Co. v. Hallum, Civ.App., 276 S.W. 460—Margules v. Terry, Civ.App., 273 S.W. 690—First Texas Prudential Ins. Co. v. Sorley, Civ.App., 272 S.W. 346—Dirr v. San Antonio & A. P. Ry. Co., Civ.App., 260 S.W. 1108—Littlefield State Bank v. Moore, Civ.App., 257 S.W. 1007—Johnson v. Bellrose, Civ.App., 240 S.W. 1116, dismissed for want of jurisdiction —W. T. Rawleigh Co. v. Smith, Civ.App., 231 S.W. 799.

Utah.—Toomer's Estate v. Union Pac. R. Co., 239 P.2d 163, 121 Utah 37—Gray v. Gray, 160 P.2d 432, 108 Utah 388—Sine v. Salt Lake Transp. Co., 147 P.2d 875, 106 Utah 289—Abbot v. Peter, 143 P.2d 606, 105 Utah 499—Ercanbrack v. Ellison, 134 P.2d 177, 103 Utah 138—Jensen v. Logan City, 83 P.2d 311, 96 Utah 53, affirmed 88 P.2d 459, 96 Utah 522—Sullivan v. Evans-Morris-Whitney Co., 180 P. 435, 54 Utah 293.

Va.—McDowell, by Gravatt, v. Dye, 69 S.E.2d 459, 193 Va. 390—Nosay v. Owens, 68 S.E.2d 531, 193 Va. 343—Woodmen of World Life Ins. Soc. v. Grant, 38 S.E.2d 450, 185 Va. 288.

Vt.—Reid v. Abbiati, 32 A.2d 133, 113 Vt. 233—Sargent v. Robertson, 160 A. 182, 104 Vt. 412—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91.

Va.—Virginia Stage Lines v. Duff, 39 S.E.2d 634, 185 Va. 592—Ritholz v. Commonwealth, 35 S.E.2d 210, 184 Va. 339—Luck v. Rice, 29 S.E.2d 238, 182 Va. 373—Chesapeake & O. Ry. Co. v. Folkes, 18 S.E.2d 309, 179 Va. 60—Greenleaf v. Richards, 16 S.E.2d 374, 178 Va. 40—Garrison v. Burns, 16 S.E.2d 306, 178 Va. 1—City of Norfolk v. Hall, 9 S.E.2d 356, 175 Va. 545—Reed v. Church, 8 S.E.2d 285, 175 Va. 284—Bristow v. Brauer, 7 S.E.2d 93, 175 Va. 118—Yeary v. Holbrook, 198 S.E. 441, 171 Va. 266—Commonwealth Public Service Corp. v. Town of Bluefield, 187 S.E. 521, 167 Va. 82—Margiotta v. Aycock, 174 S.E. 831, 162 Va. 557—Catron v. Birchfield, 165 S.E. 499, 159 Va. 60.

Wash.—Pasero v. Tacoma Transit Co., 211 P.2d 160, 35 Wash.2d 97—Shultes v. Halpin, 205 P.2d 1201, 33 Wash.2d 294—Browning v. Bremerton-Charleston Transit Co., 183 P.2d 1005, 28 Wash.2d 713—Cummins v. Dufault, 139 P.2d 308, 18 Wash.2d 274—McFarland v. Commercial Boiler Works, 116 P.2d 288, 10 Wash.2d 81—Bilski v. Department of Labor and Industries, 113 P.2d 62, 8 Wash.2d 594—Wylie v. Stewart, 84 P.2d 1004, 197 Wash. 215—Burson v. Blackwell, 52 P.2d 351, 184 Wash. 669—Adams v. Anderson & Middleton Lumber Co, 214 P. 835, 124 Wash. 356, modified on other grounds 221 P. 993, 127 Wash. 678—Aurelio v. Puget Sound Electric Ry., 141 P. 1030, 80 Wash. 480.

Wis.—Blong v. Ed. Schuster & Co., 79 N.W.2d 820, 274 Wis. 237—Vidakovic v. Campbell, 79 N.W.2d 806, 274 Wis. 168—Brice v. Milwaukee Auto. Ins. Co., 76 N.W.2d 337, 272 Wis. 520—Sturm v. Simpson's Garment Co., 74 N.W.2d 137, 271 Wis. 587—Heibel v. Voth, 73 N.W.2d 421, 271 Wis. 350—Commerce Ins. Co. v. Badger Paint & Hardware Stores, 60 N.W.2d 742, 265 Wis. 174—Sonnenberg v. Hardware Mut. Cas. Co., 38 N.W.2d 491, 255 Wis. 261—Hicks v. Chicago & N. W. Ry. Co., 255 N.W. 73, 215 Wis. 462—Felix v. Soderberg, 240 N.W. 836, 207 Wis. 76.

Wyo.—Trails Motors, Inc. v. First Nat. Bank of Laramie, 301 P.2d 775—Wilcox v. Herbst, 295 P.2d 755—Smith v. Lewis, 291 P.2d 804—Watson v. Klindt, 280 P.2d 282, 73 Wyo. 402—Lasich v. Wimpenney, 278 P.2d 807, 73 Wyo. 345—Holbrook v. Continental Oil Co., 278 P.2d 798, 73 Wyo. 321—Tompkins v. Byrtus, 267 P.2d 753, 72 Wyo. 537—Ruegamer v. Rocky Mountain Cementers, Inc., 263 P.2d 146, 72 Wyo. 258—Metcalfe v. Winchester, 262 P.2d 404, 72 Wyo. 142—Stauffer v. Johnson, 259 P.2d 753, 71 Wyo. 386—Durante v. Consumers Filling Station Co. of Cheyenne, 257 P.2d 347, 71 Wyo. 271—Hancock v. Johnson, 244 P.2d 285, 69 Wyo. 503—Tauer v. Williams, 242 P.2d 518, 69 Wyo. 388—Meyer v. Culley, 241 P.2d 87, 69 Wyo. 285—Grantham v. Union Pac. Coal Co., 239 P.2d 220, 69 Wyo. 199—Dawson, Corbett & Shelp v. Lieurance & Canfield Const. Co., 235 P.2d 457, 68 Wyo. 465—Russell v. Curran, 206 P.2d 1159, 66 Wyo. 173—Wyoming Abstract & Title Co. v. Wallick, 196 P.2d 384, 64 Wyo. 458—Dudley v. Montgomery Ward & Co., 192 P.2d 617, 64 Wyo. 357—Parker v. Belle Fourche Bentonite Products Co., 189 P.2d 882, 64 Wyo. 269—Scoggin v. Miller, 189 P.2d 677, 64 Wyo. 206—Kaan v. Kuhn, 187 P.2d 138, 64 Wyo. 158—Dulaney v. Jensen, 181 P.2d 605, 63 Wyo. 313—Jacoby v. Town of City of Gillette, 174 P.2d 505, 62 Wyo. 487, 169 A.L.R. 502, rehearing denied 177 P.2d 204, 62 Wyo. 487—Willis v. Willis, 49 P.2d 670, 48 Wyo. 403.

4 C.J. p 844 note 67.

Accepted as true

Mo.—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180.

N.H.—Zwiercan v. International Shoe Co., 176 A. 286, 87 N.H. 196.

Pa.—Scalet v. Bell Telephone Co. of Pennsylvania, 140 A. 141, 291 Pa. 451.

Tenn.—American Tobacco Co. v. Zoller, 6 Tenn.App. 390.

Tex.—Moser v. McLemore, Civ.App., 266 S.W.2d 253—Ruberoid Co. v. Scott, Civ.App., 249 S.W.2d 256—Newton v. Gardner, Civ.App., 225 S.W.2d 598, error refused no reversible error—Nonken v. Bexar County, Civ.App., 221 S.W.2d 370, error refused no reversible error—Great Atlantic & Pacific Tea Co. v. Athens Lodge No. 165, A. F. & A. M., 207 S.W.2d 217, error refused no reversible error—Bass v. Ware, Civ.App., 203 S.W.2d 1001, error refused no reversible error—Santos v. Morgan, Civ.App., 195 S.W.2d 927, error refused no reversible error—Jones v. Jones, Civ.App., 41 S.W.2d 496.

Va.—Garst v. Obenchain, 85 S.E.2d 207, 196 Va. 664—Virginia Electric & Power Co. v. Thomas, 23 S.E.2d 148, 180 Va. 292.

W.Va.—Divita v. Atlantic Trucking Co., 40 S.E.2d 324, 129 W.Va. 267.

Wyo.—Johnson v. Johnson, 229 P.2d 918, 68 Wyo. 61.

Considering evidence as a whole

The evidence must be considered as a whole by the appellate court.

Cal.—Camp v. Matich, 197 P.2d 345, 87 C.A.2d 660—Ferro v. Lagomarsino, 188 P. 626, 45 C.A. 741.

Colo.—Boyd v. Boyd, 189 P. 608, 68 Colo. 293.

Ga.—Columbia Fire Ins. Co. of Dayton, Ohio, v. Tatum, 167 S.E. 911, 46 Ga.App. 475.

Ind.—Eastern Rock Island Plow Co. v. Stout, 147 N.E. 160, 84 Ind.App. 217.

Ky.—Life & Casualty Co. of Tennessee v. Gream, 68 S.W.2d 402, 252 Ky. 801.

Mo.—Horn v. Rhoads, 296 S.W. 389, 317 Mo. 572.

Banks v. Empire Dist. Electric Co., App., 4 S.W.2d 875.

Okl.—City of Pawhuska v. Button, 251 P. 1001, 123 Okl. 61.

Tex.—McGhee v. Arbuckle, Civ.App., 229 S.W.2d 862—Galveston, H. & S. A. Ry. Co. v. Freeman, Civ.App., 273 S.W. 979, reversed on other grounds Freeman v. Galveston, H. & S. A. Ry. Co., Com.App., 285 S. W. 607, rehearing denied 287 S.W. 902.

Vt.—People's Nat. Bank v. Brunelle, 140 A. 160, 101 Vt. 42—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91.

Va.—Old Dominion Transp. Co. v. Hamilton, 131 S.E. 850, 146 Va. 594, 46 A.L.R. 186.

Defendant's evidence tending to sustain plaintiff's cause of action may be considered where defendant does not appeal from judgment overruling his demurrer to plaintiff's evidence but later appeals generally from adverse judgment.

Kan.—Linscott v. Hughbanks, 37 P. 2d 26, 140 Kan. 353.

Witness called by prevailing party

A plaintiff is not bound by testimony elicited from defendant when defendant has been called as witness under code section permitting examination of adversary as on cross-examination.

Cal.—Anthony v. Hobbie, 155 P.2d 826, 25 C.2d 814.

Evidence viewed favorably to prevailing party

Evidence must be considered in its aspects most favorable to prevailing party.

the evidence, except when, and to the extent that, this practice may have been changed by statute.[28] The court on appeal may, in a proper case, draw its own inferences from the testimony,[29] and in weighing the evidence give consideration to appropriate presumptions of law.[30]

c. Effect of Statutory Provisions

Appellate courts, particularly intermediate appellate courts, may be charged by constitutional or statutory provisions with the power or duty to examine the evidence and findings.

The extent of review often depends on the various constitutional or statutory provisions regulating the general powers and duties of appellate courts and appellate proceedings, as well as on the consideration of the inherent nature of the appellate tribunal as distinguished from that of the trial court, where greater opportunities are had for weighing the evidence;[31] and appellate courts, which are in most instances courts of intermediate appellate jurisdiction, are in some jurisdictions authorized and charged with the duty of examining the evidence and findings, on proper exceptions reserved.[32]

Cal.—Woock v. Schlink, 183 P.2d 46, 81 C.A.2d 42.
Tex.—Reed v. Markland, Civ.App., 173 S.W.2d 346, error refused.
Va.—Doerr v. Barnes, 94 S.E.2d 271, 198 Va. 306.

Evidence on behalf of defendant, which was evidently rejected by the jury in rendering a verdict for plaintiff, cannot be considered by the reviewing court except in so far as it may be material to questions of law arising on the instructions.
Va.—Payne v. Brown, 112 S.E. 833, 133 Va. 222.

Admissions

(1) Plaintiff cannot ignore his own unequivocal assertions and rely on selected portions of defendant's testimony which was at variance with his own account of accident.
N.H.—Sarkise v. Boston & M. R. R., 186 A. 332, 88 N.H. 178.

(2) On appeal by defendant from judgment for plaintiff, it was duty of supreme court to deem that admissions made by defendant were still a part of the evidence, notwithstanding explanation by defendant's agent who made the admissions.
Or.—Dunning v. Northwestern Elec. Co., 206 P.2d 1177, 186 Or. 379.

Qualification of rule

Rule according to plaintiff the most favorable view of evidence applies only in case of conflict in evidence purporting in its entirety to be vouched for as credible evidence, and not where plaintiff's witness before leaving stand repudiates inconsistencies in testimony and finally stands on but one version of the facts.
Mo.—Feeherty v. Sullivan, App., 129 S.W.2d 926.

28. Proper extent of the curtilage to which a mechanic's lien may attach is a matter of fact to be determined by a justice of the supreme court, whose decision cannot be reviewed in the court of errors and appeals on a writ of error unless erroneous in point of law.
N.J.—American Brick, etc., Co. v. Drinkhouse, 36 A. 1034, 59 N.J.Law 462.

29. In equity case where the decision depends on the proper inferences to be drawn from the testimony, not in substantial conflict, and the governing principles of law, and all evidence is reported, the supreme court must draw its own inferences.
Mass.—Newburyport Soc. for Relief of Aged Women v. Noyes, 192 N.E. 54, 287 Mass. 530.

30. Distribution of wife's estate as community property

In weighing the evidence on appeal from an order directing distribution of wife's estate as community property, consideration must be given to all presumptions of law affecting the acquisition or the possession of property by the spouse during coverture, and the increase thereof, as well as property found in the possession of the survivor, in the light of attendant circumstances.
Cal.—In re Jolly's Estate, 238 P. 353, 196 C. 547.

31. Cal.—Webb v. Tischauser, 264 P. 526, 89 C.A. 267—Snyder v. Miller, 157 P. 22, 29 C.A. 566.
Mont.—In re Colbert's Estate, 153 P. 1022, 51 Mont. 455.
N.H.—Saloshin v. Houle, 155 A. 47, 85 N.H. 126.
Ohio.—Wilgus v. Arthur, 53 N.E.2d 197, 72 Ohio App. 511.
Va.—Tignor v. Virginia Electric & Power Co., 184 S.E. 234, 166 Va. 284—Lough v. Price, 172 S.E. 269, 161 Va. 811.
4 C.J. p 845 note 85.

Count dismissed

Cal.—Tracy v. Brecht, App., 39 P.2d 498, 3 C.A.2d 105.

Louisiana appellate courts

(1) Consideration of questions of fact, as well as of law, is the prerogative of the appellate courts.
U.S.—Booth v. Home Indem. Co., C.A. La., 244 F.2d 568.
La.—Crawford v. Bullock, 25 So.2d 226, 209 La. 552—Wylie v. Shreveport Rys. Co., 145 So. 513, 176 La. 193—Lorance v. Smith, 138 So. 871, 173 La. 883—White v. White, 109 So. 399, 161 La. 718—Brown v. Louisiana Ry. & Nav. Co., 86 So. 281, 147 La. 829.

Esteve v. Continental Southern Lines, App., 83 So.2d 404—Wooten v. Thompson, App., 69 So.2d 557—Green v. McDade, App., 17 So.2d 637—O'Conner v. Massachusetts Bonding & Insurance Co., App., 2 So.2d 234—Williamson v. Enterprise Brick Co., App., 178 So. 197, set aside on other grounds 182 So. 556, 190 La. 415—Link v. Shreveport Rys. Co., App., 153 So. 77.

(2) Appellate courts will defer largely to the judgment of the trial court when conflicting testimony cannot be reconciled on any theory other than perjury.
La.—Ford v. Ford, 76 So. 622, 142 La. 235.

In Michigan, under Judicature Act c 18 § 15, a finding of fact, in an action tried to the court, must be reviewed, where the assignment of error of the unsuccessful party complained that the court erred in its finding, etc.
Mich.—American Ins. Co. of Newark, N. J., v. Martinek, 168 N.W. 982, 203 Mich. 108.

In Missouri

(1) Rev.St.1919 § 1444, authorizing review of the evidence on appeal, does not authorize it on writ of error, and a subsequent amendment of the statute (L.[1921] p 195) to permit such review on writ of error does not indicate a legislative construction that the original act applied to writs of error, but rather a contrary construction.
Mo.—Higdon v. Ming, App., 236 S.W. 384.

(2) The amendment cannot be given retroactive effect, and does not authorize review of such evidence under writ of error pending in the appellate court when the amending act took effect.
Mo.—Higdon v. Ming, supra.

(3) Statutes authorizing granting of a new trial, on weight of evidence as well as other grounds, do not restrict such action to trial courts.
Mo.—King v. Kansas City Life Ins. Co., 164 S.W.2d 458, 350 Mo. 75.

32. Ill.—Gottschalk Const. Co. v. Carlson, 253 Ill.App. 520.

d. Mixed Questions of Law and Fact

As a general rule, the reviewability of mixed questions of law and fact stand on the same footing as do pure questions of fact.

As a general rule, mixed questions of law and fact stand on the same footing as pure questions of fact and are not subject to review by an appellate

Ohio.—Werner v. Rowley, 193 N.E. 623, 129 Ohio St. 15—Geauga Lake Improvement Ass'n v. Lozier, 182 N.E. 489, 125 Ohio St. 565.

S.C.—Dingle v. Northwestern R. Co. of South Carolina, 99 S.E. 828, 112 S.C. 390.

Utah.—Jensen v. Birch Creek Ranch Co., 289 P. 1097, 76 Utah 356.

4 C.J. p 845 note 86.

In Illinois

(1) The rule that the supreme court will not pass on fact questions in common-law cases does not apply in the appellate court.

Ill.—Reynolds v. Alton, G. & St. L. Traction Co., 112 N.E. 668, 273 Ill. 207.

Sampson v. Marra, 98 N.E.2d 523, 343 Ill.App. 245—Dickinson v. Rockford Van Orman Hotel Co., 63 N.E.2d 257, 326 Ill.App. 686—Saltsman v. Springfield Life Ins. Co., 254 Ill.App. 440.

(2) If, however, an appellate court finds the facts in controversy to be the same as found by the trial court, it must affirm the judgment, in the absence of erroneous rulings on questions of law.

Ill.—Abdill v. Abdill, 126 N.E. 543, 292 Ill. 231.

(3) The right of appellate court to review evidence and grant a new trial is not a constitutional one, but is statutory, and subject to the control of the general assembly.

Ill.—Liska v. Chicago Rys. Co., 149 N.E. 469, 318 Ill. 570.

4 C.J. p 845 note 86 [b].

(4) Injured employee having brought action in state court to recover under Federal Employers' Liability Act must prosecute action in accordance with modes of procedure of state court, which give appellate court authority to weigh the evidence to determine whether the verdict should stand or whether it should be set aside and the cause retried.

Ill.—Parthun v. Elgin, J. & E. Ry. Co., 60 N.E.2d 464, 325 Ill.App. 408.

In New Jersey

(1) Under present judicial article of constitution providing that supreme court and appellate division of the superior court may exercise "such original jurisdiction as may be necessary to the complete determination of any cause on review," appellate review of matters of fact as well as of law is authorized and limitations on review under the common law writ of error no longer obtain.

N.J.—Colacurcio Contracting Corp. v. Weiss, 119 A.2d 449, 20 N.J. 258.

(2) Where the controversial issue is essentially factual, the superior court, appellate division, is empowered to review the evidence and make its own findings if, in its judgment, the interest of justice so requires.

N.J.—Pratico v. Rhodes, 108 A.2d 97, 32 N.J.Super. 178, reversed on other grounds 111 A.2d 399, 17 N.J. 328—Coles v. Osback, 92 A.2d 35, 22 N.J.Super. 358—Goldman v. Shapiro, 84 A.2d 628, 16 N.J.Super. 324—De Baro v. Gabryelski, 81 A.2d 392, 14 N.J.Super. 50—Series Publishers v. Greene, 75 A.2d 549, 9 N.J.Super. 166—Foster v. Till, 71 A.2d 146, 6 N.J.Super. 259.

(3) Although superior court, appellate division, is empowered to review evidence relating to facts in cases involving breach of contract, particularly where controversial issue is essentially factual, and make its own independent findings, court is not disposed on appeal to overthrow conclusions of trier of facts unless it is conviction of court that such conclusions are so manifestly unsupported by, or discordant with, competent, relevant and reasonably credible evidence as to offend interests of justice.

N.J.—Koolvent Aluminum Awning Co. of N. J. v. Sperling, 84 A.2d 762, 16 N.J.Super. 444.

In New York

(1) The court of appeals reviews findings of fact.

N.Y.—O'Neill v. O'Hara, 172 N.E. 464, 254 N.Y. 186. But see Fitzpatrick v. International Ry. Co., 169 N.E. 112, 252 N.Y. 127, 68 A.L.R. 801.

(2) The appellate division may examine the facts.

N.Y.—Madison County Trust & Deposit Co. v. Smith, 182 N.E. 12, 259 N.Y. 348, motion granted 184 N.E. 95, 260 N.Y. 567—Getty v. Roger Williams Silver Co., 116 N.E. 381, 221 N.Y. 34—Larkin v. New York Telephone Co., 114 N.E. 1043, 220 N.Y. 27—In re McMillan's Estate, 112 N.E. 573, 218 N.Y. 64.

United Baking Co. v. Bakery and Confectionery Workers' Union, Local 221, 14 N.Y.S.2d 74, 257 App. Div. 501—B. Altman & Co. v. Durland, 173 N.Y.S. 62, 185 App.Div. 114.

4 C.J. p 845 note 86 [c].

(3) However broad may be statutory grant of power to appellate division to determine an appeal on merits both as to matters of law and fact, power of appellate division to reverse a finding of fact can be exercised only in accordance with general rules of law regulating appeals to that court.

N.Y.—People ex rel. MacCracken v. Miller, 50 N.E.2d 542, 291 N.Y. 55.

In Rhode Island

(1) Errors of fact can be reviewed only by the procedure provided by statute therefor.

R.I.—Budlong v. District Court of Sixth Judicial Dist., 132 A. 613, 47 R.I. 232.

(2) On the death of the trial judge before a motion for a new trial was passed on, the supreme court has the duty to weigh the evidence.

R.I.—Willett v. Slocum, 131 A. 545, 47 R.I. 136.

In South Dakota the sufficiency of facts proved, apparent from the trial record, may always be reviewed on proper exceptions and assignments of error.

S.D.—Stianson v. Stianson, 167 N.W. 237, 40 S.D. 322, 6 A.L.R. 280.

In Texas

(1) Appellate jurisdiction of supreme court does not extend to fact questions, such as sufficiency of evidence.

Tex.—Dargan v. Keystone Mills Co., 86 S.W.2d 627, 126 Tex. 80—Anderson, Clayton & Co. v. State ex rel. Allred, 62 S.W.2d 107, 122 Tex. 530.

(2) The commission of appeals has no jurisdiction to weigh evidence, which is a question of fact.

Tex.—Hassell v. Brotherhood of Locomotive Firemen and Enginemen, Com.App., 87 S.W.2d 468—Crawford v. El Paso Sash & Door Co., Com.App., 289 S.W. 994.

(3) It has been held, however, that the supreme court may pass on fact questions if they are before it in such a way as to be clearly within its jurisdiction.

Tex.—Steere v. Stockyards Nat. Bank, 258 S.W. 1042, 113 Tex. 387.

(4) The court of civil appeals may reverse for insufficiency of evidence to support the verdict.

Tex.—Gray v. Kaliski, Com.App., 45 S.W.2d 157, rehearing denied Gray v. Kaliski, Com.App., 47 S.W.2d 276—Belser v. Herman Hale Lumber Co., Com.App., 41 S.W.2d 208—Phillips v. Texas & P. Ry. Co., Com.App., 296 S.W. 877—Turner & Clayton v. Schackelford, Com.App., 288 S.W. 815—Wisdom v. Chicago, R. I. & G. Ry. Co., Com.App., 231 S.W. 344.

Specia v. Specia, Civ.App., 292 S.W.2d 813, error refused no reversible error—Nesbit v. Dallas Bank & Trust Co., Civ.App., 82 S.W.2d

court.[33] There are, however, decisions which maintain the contrary doctrine.[34]

§ 1643. Questions of Fact on Motions or Other Interlocutory or Special Proceedings Generally

A determination of fact questions by the court, in the course of a cause, of motions or of other special proceedings will not be disturbed on appeal if the evidence is conflicting or there is evidence to sustain the finding.

When the determination of questions in the course of a cause, of motions or of other special proceedings depends on facts laid before the court, its decision is ordinarily governed by the same rules relating to findings of fact generally, as discussed supra § 1642. If the evidence is conflicting or there is evidence to sustain the findings the appellate court will not interfere[35] unless the finding is clearly erroneous, or so clearly against the evidence or the great weight thereof as to be manifestly wrong.[36] The

692—Hutson v. Clark, Civ.App., 3 S.W.2d 484.

(5) Question whether verdict is so contrary to overwhelming weight of all evidence as to be clearly wrong and unjust requires court of civil appeals, in exercise of its powers under constitution and rules of procedure, to consider and weigh all evidence in case and to set aside verdict and remand cause for new trial, if it concludes that verdict is against weight and preponderance of evidence and is manifestly unjust, and such action is to be taken regardless of whether record contains some evidence of probative force in support of verdict; and this rule applies to nonjury cases as well as jury cases.
Tex.—Wilkie v. Dean, Civ.App., 289 S.W.2d 402, error refused no reversible error.

(6) Jurisdiction of the courts of civil appeals to review entire record and to set aside fact findings of jury can be invoked only when issues of fact have been submitted to, and determined by, a jury.
Tex.—Singleton v. Carmichael, Civ. App., 271 S.W.2d 324, error refused no reversible error.

In Washington the supreme court has jurisdiction to review a judgment on the evidence only when the evidence is brought before it in the manner provided by statute.
Wash.—Lamb-Davis Lumber Co. v. Stowell, 181 P. 520, 107 Wash. 212.

33. Cal.—Chapman v. Edwards, 24 P.2d 211, 133 C.A. 72.
Colo.—Doss v. Doss, 236 P. 129, 77 Colo. 262—Cook v. Cook, 221 P. 883, 74 Colo. 339.
Conn.—Allen v. Benjamin Motors, 142 A. 405, 108 Conn. 732.
Mont.—Hayes v. Moffatt, 271 P. 433, 83 Mont. 214.
N.J.—Nygren v. Board of Chosen Freeholders of Hudson County, 90 A. 1111, 86 N.J.Law 364—Webster v. Board of Chosen Freeholders of Hudson County, 90 A. 1110, 86 N. J.Law 256.
N.M.—Casna v. White, 29 P.2d 488, 38 N.M. 183.
Tex.—Lamm & Co. v. Brannon, Civ. App., 244 S.W. 256.

In Illinois

(1) The finding of the trial court or of the intermediate appellate court as to mixed questions of law and fact is final and cannot be reviewed.
Ill.—Federal Motor Truck Co. v. Cook, 167 N.E. 114, 335 Ill. 500.
4 C.J. p 648 note 33.

(2) A jury verdict, which rests on a decision as to the law as well as fact, cannot have the force of a decision on controverted questions of fact.
Ill.—Hancock v. National Council of The Knights and Ladies of Security, 135 N.E. 33, 303 Ill. 66.

In Indiana, applicable legal rules, as well as evidence, must be considered, where the record does not show whether a ruling sustaining defendants' motion for finding was based on an insufficiency of plaintiffs' evidence or rule of law.
Ind.—Abernathy v. McCoy, 154 N.E. 682, 91 Ind.App. 574.
4 C.J. p 649 note 34.

34. Conn.—Martin Tire & Rubber Co. v. Kelly Tire & Rubber Co., 122 A. 102, 99 Conn. 396.

35. Ariz.—Comision Monetaria v. Sonora Bank & Trust Co., 236 P. 1114, 28 Ariz. 369.
Ark.—Graves v. Cowan, 43 Ark. 134.
Cal.—Scarpa v. Scarpa, 180 P. 637, 40 C.A. 345.
Colo.—Baker v. Riley, 31 P. 392, 2 Colo.App. 478.
Ga.—Taylor v. Nix, 195 S.E. 416, 185 Ga. 536—Shackelford v. Lavender, 107 S.E. 586, 151 Ga. 480.
Ind.—Lowe v. Swafford, 199 N.E. 709, 209 Ind. 514—Hoag v. Jeffers, 159 N.E. 753, 201 Ind. 249.
Mass.—Brodrick v. O'Connor, 171 N. E. 479, 271 Mass. 240.
Mo.—Hurley v. Universal Clay Co., 213 S.W. 28, 278 Mo. 408.
Haines v. Jeffrey Mfg. Co., App., 31 S.W.2d 269.
Mont.—In re Harper's Estate, 40 P. 2d 51—Robinson v. Cole, 126 P. 850, 46 Mont. 140.
N.H.—Le Page v. St. Johnsbury Trucking Co., 80 A.2d 148, 97 N.H. 46—Wilcomb v. Dustin, 131 A. 596, 82 N.H. 180—Lariviere v. Stratton, 120 A. 846, 81 N.H. 17.
N.D.—McFadden v. Jenkins, 169 N.W. 151, 40 N.D. 422.
Ohio.—**Corpus Juris Secundum cited in** Wilgus v. Arthur, 53 N.E.2d 197, 202, 72 Ohio App. 511.
Okl.—Kennedy v. Martin, 223 P. 652, 101 Okl. 87—American Surety Co. v. Williams, 173 P. 1132, 70 Okl. 222.
Puerto Rico.—Vicens v. Cruz, 20 Puerto Rico 179.
Tex.—Shaw v. Etheridge, Civ.App., 15 S.W.2d 722—Richardson v. McCloskey, Civ.App., 261 S.W. 801, reversed on other grounds, Com. App., 276 S.W. 680.
Vt.—Towle v. Richardson, 20 A. 925, 63 Vt. 96.
4 C.J. p 845 note 87.

Conduct of counsel

(1) The justice who presides at the trial properly decides whether erroneous conduct of counsel has been corrected.
N.H.—Wilcomb v. Dustin, 131 A. 596, 82 N.H. 180.

(2) The supreme court is reluctant to reverse because of counsel's remarks in argument, where there is a controversy as to what was said, and the trial court has found against the complaining party.
Iowa.—Iowa Windmill & Pump Co. v. Tobin, 195 N.W. 989.

Nunc pro tunc order

(1) The reviewing court will not disturb a ruling directing or refusing to direct a nunc pro tunc entry, if sustained by any substantial evidence.
Cal.—Smith v. Smith, 251 P.2d 720, 115 C.A.2d 92.
Ind.—Platis v. Gary State Bank, 17 N.E.2d 486, 105 Ind.App. 690—Freestone v. State, 176 N.E. 877, 98 Ind.App. 523.

(2) Findings of fact of the trial court determining an application for a nunc pro tunc order will not be disturbed on appeal if reasonably supported by competent evidence.
Okl.—In re Peter's Estate, 51 P.2d 272, 175 Okl. 90.

(3) A finding by the trial court, on motion to set aside a nunc pro tunc order, that motion for new trial was not filed during term, is conclusive on appeal.
Ark.—Allen v. Francis, 287 S.W. 182, 171 Ark. 1187.

36. Ariz.—Comision Monetaria v. Sonora Bank & Trust Co., 236 P. 1114, 28 Ariz. 369.

findings will not be interfered with, although the evidence leaves the facts[37] or conclusion of the lower court[37.5] in doubt. On the other hand, in some jurisdictions the findings of fact and conclusions of law made by the trial court after a hearing on a motion and without a trial on the merits are not binding on appeal.[37.10]

Applications of rule. The foregoing principles have been applied in respect of findings in proceedings preliminary to trial;[38] findings on motion for change of venue and orders granting or denying the motion;[39] findings on motion to require security

N.D.—Macfadden v. Jenkins, 169 N. W. 151, 40 N.D. 422.
Ohio.—Hudson v. Hoster, App., 47 N.E.2d 895.
Okl.—Bruner v. Eaton, 249 P. 734, 121 Okl. 209.
Tex.—Brown County Farmers' Ass'n v. Held Bros., Civ.App., 37 S.W.2d 1067.
4 C.J. p 846 note 88.

In a special proceeding involving accounting, the trial court's finding of fact, while not conclusive, should be given great weight, and not disregarded unless it is plainly erroneous.
N.D.—Macfadden v. Jenkins, 169 N. W. 151, 40 N.D. 422.

Legal effect of evidence
The appellate court's review of a county court's action in denying a pauper's appeal is limited to the legal effect of the facts found by the county judge.
Tex.—Taliaferro v. Hale, Civ.App., 47 S.W.2d 340.

37. Kan.—Johnson v. Hutcherson, 207 P. 207, 111 Kan. 260.
4 C.J. p 846 note 89.

Even if evidence admitted be incompetent, it is a question of fact for the trial court whether justice requires the trial to be stopped and a mistrial directed.
N.H.—Herschensohn v. Weisman, 119 A. 705, 80 N.H. 557, 28 A.L.R. 514

37.5 Pa.—Sprenger, now for Use of Stoecker v. Litten, 15 A.2d 527, 142 Pa.Super. 194.

37.10 Kan.—Neiman v. Common School Dist. No. 95, Butler County, 232 P.2d 422, 171 Kan. 237.

38. Ala.—Eidson v. McDaniel, 114 So. 204, 216 Ala. 610.
Ark.—Shephard v. Hopson, 86 S.W. 2d 30, 191 Ark. 284.
Cal.—Richert v. Benson Lumber Co., 34 P.2d 840, 139 C.A. 671—Smith v. Pickwick Stages System, 297 P. 940, 113 C.A. 118—Mitchell v. Kim, 183 P. 368, 42 C.A. 111.
Fla.—Gracy v. Fielding, 91 So. 373, 83 Fla. 386.
Ind.—Cooper v. Cooper, 12 N.E.2d 244, 213 Ind. 221.
Mich.—Newman v. Hunt, 183 N.W. 745, 215 Mich. 185.
Miss.—McCune v. Commercial Pub. Co., 114 So. 268, 148 Miss. 164.
N.H.—Yeaton v. Skillings, 125 A.2d 923, 100 N.H. 316—Kusky v. Laderbush, 74 A.2d 546, 96 N.H. 286, 21 A.L.R.2d 536.
N.J.—Bayles v. Eaton, 156 A. 442, 108 N.J.Law 172.
N.Y.—Dwan v. Massarene, 192 N.Y.S. 577, 199 App.Div. 872.
Lopez v. Horjoc Realty Co., 51 N.Y.S.2d 416.
Okl.—Sherrill v. Renfrow, 250 P. 515, 120 Okl. 89.
R.I.—Guarantee Food Co. v. Burke, 113 A. 789, 43 R.I. 535, motion denied 114 A. 401.
S.C.—Ex parte Drummond, 112 S.E. 824, 120 S.C. 151.
4 C.J. p 846 note 90.

Dismissal as party defendant
In suit against alleged owner of motor vehicle from which operator of vehicle was dropped as a party defendant, whether plaintiffs had exercised due diligence in efforts to find and serve operator with summons was a question for trial court under conflicting evidence.
Cal.—Harrington v. Evans, 221 P.2d 696, 99 C.A.2d 269.

Special appearance
Facts found by trial court sustaining his ruling on special appearance were binding on the parties to the appeal if supported by competent evidence.
N.C.—Davis v. Martini, 64 S.E.2d 1, 233 N.C. 351.

39. Ark.—Mosley v. Mohawk Lumber Co., 183 S.W. 187, 122 Ark. 227.
Cal.—Harris v. Pacific Mut. Life Ins. Co. of California, 57 P.2d 1299, 6 C.2d 384—Gordon v. Perkins, 263 P. 231, 203 C. 183.
Hamilton v. Kyle & Co., 294 P.2d 57, 139 C.A.2d 766—E. C. Livingston Co. v. Blythe Alfalfa Growers Ass'n, 293 P.2d 96, 139 C.A.2d 161—Benjamin v. Benjamin, 275 P.2d 43, 128 C.A.2d 367—Gottesfeld v. Richmaid Ice Cream Co., 252 P.2d 973, 115 C.A.2d 854—Delno v. Market St. Ry. Co., 147 P.2d 67, 63 C.A.2d 489—Taff v. Goodman, 107 P.2d 431, 41 C.A.2d 771—Sanborn v. Pomona Pump Co., 21 P.2d 124, 131 C.A. 241—Thommes v. Thommes, 17 P.2d 1030, 128 C.A. 632—Pacific Coast Automobile Ass'n v. Ahlf, 300 P. 841, 115 C.A. 21—Gas Appliance Sales Co. v. W. B. Bastian Mfg., 262 P. 452, 81 C.A. 301—Sourbis v. Rhodes, 194 P. 521, 50 C.A. 98—Strauss v. Mowry, 158 P. 341, 30 C.A. 305—Smilie v. Smilie, 141 P. 829, 24 C.A. 420.
Colo.—People v. District Court of Third Judicial Dist., 152 P. 164, 60 Colo. 42—People v. District Court of Third Judicial Dist., 152 P. 149, 60 Colo. 1.
Ky.—Pierce v. Crisp, 102 S.W.2d 386, 267 Ky. 420.
Minn.—State v. District Court of Scott County, 235 N.W. 629, 183 Minn. 100—Hubbard Milling Co. v. Grover, 153 N.W. 266, 130 Minn. 103.
N.C.—Flythe v. Wilson, 41 S.E.2d 751, 227 N.C. 230—Jones v. Elks, 16 S.E.2d 329, 220 N.C. 39—Howard v. Queen City Coach Co., 193 S.E. 138, 212 N.C. 201.
N.D.—Farmers' State Bank of Harvey v. Hager, 225 N.W. 128, 58 N.D. 62.
S.C.—Belger v. Caldwell, 98 S.E.2d 758—Gregory v. Powell, 33 S.E.2d 629, 206 S.C. 261—Willis v. Industrial Life & Health Ins. Co. of Atlanta, Ga., 6 S.E.2d 706, 192 S.C. 304.
Wash.—State ex rel. Anacortes Veneer v. O'Phelan, 160 P.2d 515, 23 Wash.2d 142.
4 C.J. p 846 note 91.

Place of execution or performance of contract
Cal.—Credit Bureau of San Diego v. Clark, 220 P.2d 596, 98 C.A.2d 479—Gallo v. Boyle Mfg. Co., 94 P.2d 1010, 35 C.A.2d 168—Gas Appliance Sales Co. v. W. B. Bastian Mfg. Co., 262 P. 452, 81 C.A. 301.

Sustaining or denying plea of privilege
Tex.—Banks v. Collins, 257 S.W.2d 97, 152 Tex. 265, answer to certified question conformed to, Civ.App., 258 S.W.2d 348—Compton v. Elliott, 88 S.W.2d 91, 126 Tex. 232.
Lary v. American Indem. Co., Civ.App., 297 S.W.2d 357—Mitchell v. Weatherford, Civ.App., 282 S.W. 2d 727—John F. Buckner & Sons v. Allen, Civ.App., 272 S.W.2d 929, error dismissed—Smith v. Roberts, Civ.App., 265 S.W.2d 915—Couch v. Schley, Civ.App., 255 S.W.2d 885—Gorbett Bros. Welding Co. v. Malone, Civ.App., 254 S.W.2d 848—Davenport v. Harry Payne Motors, Inc., Civ.App., 247 S.W.2d 452—Davenport v. Cabell's, Inc., Civ. App., 239 S.W.2d 833—Gaford v. Arnold, Civ.App., 238 S.W.2d 225—Texas Emp. Ins. Ass'n v. Shelton, Civ.App., 237 S.W.2d 719—Texan Development Co. v. Hodges, Civ. App., 237 S.W.2d 436—Snyder v. Johnson, Civ.App., 237 S.W.2d 740, mandamus granted—McElyea v. Bowles, Civ.App., 233 S.W.2d 482—Bracken v. Osborne, Civ.App., 226 S.W.2d 261—Hill v. Connors, Civ.

for costs;[40] findings on motion for order or publication of summons;[41] findings on motion to set aside service of process;[42] findings as to the competency or incompetency of jurors;[43] findings as to the misconduct or separation of jurors;[44] findings as to the existence or nonexistence of a stipulation between attorneys,[45] as to terms of such a stipulation,[46] or as to orders setting aside or refusing to

App., 219 S.W.2d 587—Suit v. Taylor, Civ.App., 218 S.W.2d 243—Medford v. First Nat. Bank of Evant, Civ.App., 212 S.W.2d 485—Douglass v. Flintkote Co., Civ.App., 207 S.W. 2d 635—Stripling v. Hoing, Civ. App., 203 S.W.2d 1016—Nielson v. Jackson, Civ.App., 200 S.W.2d 831 —Van Zandt v. Schell, Civ.App., 200 S.W.2d 725—Taylor Const. Co. v. Cynch, Civ.App., 196 S.W.2d 700 —Rasberry v. Jones, Civ.App., 195 S.W.2d 947—Goldman v. Lopez, Civ.App., 193 S.W.2d 284—Davis v. United Gas Corp., Civ.App., 191 S. W.2d 685—Cisneros v. Thompson, Civ.App., 189 S.W.2d 67—Rogers v. Fort Worth Poultry & Egg Co., Civ.App., 185 S.W.2d 165—Page v. Kilgore, Civ.App., 181 S.W.2d 730 —Clay v. Moore, Civ.App., 175 S.W. 2d 433—Forester v. Foreman, Civ. App., 171 S.W.2d 190—Burton v. Roberson, Civ.App., 140 S.W.2d 310 —Williams & Davis Boiler & Welding Co. v. Wilder, Civ.App., 131 S. W.2d 697—Sisco v. Sklar, Civ.App., 113 S.W.2d 999—Metzger Dairies v. Wharton, Civ.App., 113 S.W.2d 675 —Taylor v. Fort Worth Poultry & Egg Co., Civ.App., 112 S.W.2d 292, error dismissed—Ex parte Head, Civ.App., 102 S.W.2d 1101—Ferguson Seed Farms v. Fort Worth & D. S. P. Ry. Co., Civ.App., 100 S.W. 2d 177, error dismissed—Weber v. Reagan, Civ.App., 91 S.W.2d 409, error dismissed—Thomas v. Plainview Cotton Oil Co., Civ.App., 48 S.W.2d 745—Fagg v. Benners, Civ.App., 47 S.W.2d 872—Texas Portland Cement Co. v. Carsey, Civ. App., 3 S.W.2d 930—Henderson v. Lambert, Civ.App., 293 S.W. 671— Sibley v. Sheerin, Civ.App., 287 S. W. 58—Miller v. Flynn, Civ.App., 279 S.W. 879—Ulrich v. Krueger, Civ.App., 272 S.W. 824—Iola State Bank v. Mosley, Civ.App., 259 S.W. 227—Wrenn v. Brooks, Civ.App., 257 S.W. 299—Jordan v. West Texas Gin Co., Civ.App., 242 S.W. 542— Kelly v. Britton, Civ.App., 240 S. W. 1114—Grainger v. Gottlieb, Civ. App., 234 S.W. 604—Baldwin v. Baldwin, Civ.App., 233 S.W. 130, error refused—Lummus Cotton Gin Sales Co. v. Mills, Civ.App., 233 S.W. 126—Lakeside Irr. Co. v. W. C. Hedrick Const. Co., Civ.App., 230 S.W. 1057—Rutledge v. Evans, Civ. App., 219 S.W. 218, error dismissed Izaguirre v. Evans, Com.App., 249 S.W. 187.

Weight given affidavit

In a contest between a husband and his wife's daughter over the distribution of property on the wife's death, the weight to be accorded the husband's affidavit for change of venue in the wife's divorce suit alleging that the suit did not affect real property in a county other than that of his residence was for the trial court.

Nev.—In re Wilson's Estate, 56 P.2d 1207, 56 Nev. 500.

40. Cal.—Wall v. Hunter, 207 P. 934, 57 C.A. 759.
4 C.J. p 846 note 92.

41. N.D.—Pillsbury v. Streeter, 107 N.W. 40, 15 N.D. 174.

Diligence

If facts set forth in affidavit for publication of summons have a legal tendency to show that defendant cannot be found after exercise of diligence, judge's decision that affidavit shows diligence to his satisfaction is to be regarded with the same effect as his decision on any other matter of fact.

Cal.—Vorburg v. Vorburg, 117 P.2d 875, 18 C.2d 794.

42. Ark.—**Corpus Juris Secundum cited in** Whitton v. Arnold, 253 S. W.2d 364, 366, 221 Ark. 209.

Cal.—Roehl v. Texas Co., 291 P. 255, 107 C.A. 691.

Ga.—District Grand Lodge No. 18, Grand United Order of Odd Fellows of America, Jurisdiction of Georgia v. Fortune, 101 S.E. 314, 24 Ga.App. 315.

Mich.—Reaume & Silloway v. Tetzlaff, 23 N.W.2d 219, 315 Mich. 95.

Mo.—Morris v. Dowell, App., 205 S. W. 229.

N.M.—Fisher v. Terrell, 187 P.2d 387, 51 N.M. 427.

N.C.—Bangle v. Webb, 17 S.E.2d 613, 220 N.C. 423—Parris v. H. G. Fischer & Co., 13 S.E.2d 540, 219 N.C. 292 —Crabtree v. Burroughs-White Chevrolet Sales Co., 9 S.E.2d 23, 217 N.C. 587—Tinker v. Rice Motors, 150 S.E. 701, 198 N.C. 73.

S.C.—Sanders v. Columbian Protective Ass'n of Binghampton, N. Y., 37 S.E.2d 533, 208 S.C. 152—Miller v. Boyle Const. Co., 17 S.E.2d 312, 198 S.C. 166—State v. Connecticut General Life Ins. Co. of Hartford, Conn., 167 S.E. 833, 168 S.C. 516— Singletary v. Humphrey-Coker Seed Co., 143 S.E. 269, 145 S.C. 539— Murchison Nat. Bank v. Reynolds, 121 S.E. 673, 127 S.C. 528—Bass v. American Products Export & Import Corporation, 117 S.E. 594, 124 S.C. 346, 30 A.L.R. 168.
4 C.J. p 846 note 94.

43. Ala.—Van Derslice v. Merchants' Bank, 104 So. 662, 213 Ala. 237.

Ga.—Commercial Credit Co. v. S. E. S. Motor Co., 134 S.E. 180, 35 Ga. App. 563.

Kan.—Bailey v. McLeod, 56 P.2d 460, 143 Kan. 638—Schmana v. Swift & Co., 214 P. 567, 113 Kan. 340— Howard v. Marshall Motor Co., 190 P. 11, 106 Kan. 775.

Mo.—Shore v. Dunham, App., 178 S. W. 900.

N.H.—Hazen v. P. H. Rice Corp., 2 A.2d 449, 89 N.H. 522.

Vt.—Garvey v. Michaud, 184 A. 712, 108 Vt. 226.
4 C.J. p 846 note 95.

Indifference of prospective juror

was matter of fact to be determined by judge, whose decision was final unless vitiated by error of law.

Mass.—Commonwealth v. Sherman, 2 N.E.2d 477, 294 Mass. 379.

Juror's false answers

The trial court's findings on affidavits and counter-affidavits respecting a juror's false answers on voir dire will not be disturbed.

Ind.—Judah v. Goldsmith, 164 N.E. 496, 90 Ind.App. 81.

Question on appeal

Where the trial judge refused to set aside verdict and judgment on the ground that one juror was not impartial, the question before the reviewing court is not whether the testimony would support a finding of prejudice on the part of the juror, but whether it so conclusively established its existence that the court could hold as a matter of law and contrary to the trial court's finding that the juror was disqualified.

Tex.—Huff v. Huff, Civ.App., 72 S.W. 2d 675.

44. Ariz.—Perley v. Goar, 195 P. 532, 22 Ariz. 146.

Md.—Rent-A-Car Co. v. Globe & Rutgers Fire Ins. Co., 163 A. 702, 163 Md. 401, 86 A.L.R. 922.

Tex.—Railway Exp. Agency v. Gray, Civ.App., 211 S.W.2d 1013, error refused no reversible error—Dallas Railway & Terminal Co. v. Horton, Civ.App., 119 S.W.2d 122, error dismissed.

45. Colo.—Wallace v. Heipler, 123 P. 954, 52 Colo. 620.

Authority to enter into stipulation

Cal.—Redsted v. Weiss, 163 P.2d 105, 71 C.A.2d 660.

46. Kan.—Weaver v. Lock, 4 P. 1039, 4 Kan.App. 335.

N.Y.—Jones v. Merchants' Nat. Bank, 1 N.Y.S. 578, 48 Hun 620, appeal dismissed 21 N.E. 672, 113 N.Y. 629, 2 Silv.App. 156.

set aside stipulations for settlement;[46.5] findings as to whether the trial judge is disqualified to hear the case;[47] findings as to jurisdiction or lack of jurisdiction;[47.5] findings on motion for continuance;[48] findings relating to orders granting or denying a motion to dismiss a case for want of prosecution[48.5] or findings on motion to rescind an order dismissing a case for want of prosecution;[49] findings on motion to dismiss an action as being groundless, vexatious, and harassing;[49.5] findings as to whether or not a parol admission was made by counsel during the progress of the trial;[50] findings relating to provisional remedies such as garnishment proceedings,[51] sequestration proceedings,[52] orders granting or refusing or dissolving or refusing to dissolve, attachments,[53] and orders granting or denying, or dissolving or refusing to dissolve or continuing, injunctions[54] appointing or refusing to ap-

46.5 Minn.—Keller v. Wolf, 58 N.W. 2d 891, 239 Minn. 397.

47. Cal.—In re Weber's Estate, 247 P.2d 939, 113 C.A.2d 160—Ryan v. Welte, 198 P.2d 351, 87 C.A.2d 888.
Ga.—Jones v. McElreath, 146 S.E. 734, 167 Ga. 833.
4 C.J. p 846 note 98.

47.5 Ariz.—Hulsey v. LaMance, 242 P.2d 554, 73 Ariz. 430.
S.C.—Hoffman v. D. Landreth Seed Co., 66 S.E.2d 813, 220 S.C. 193—Industrial Equipment Co. v. Frank G. Hough Co., 61 S.E.2d 884, 218 S.C. 169.

48. Idaho.—Blaine County Nat. Bank v. Timmerman, 245 P. 389, 42 Idaho 338.
Tex.—Zachary v. Overton, Civ.App., 157 S.W.2d 405, error refused.
4 C.J. p 846 note 99.

48.5 Cal.—Neustadt v. Superior Court of State, In and For City and County of San Francisco, 247 P.2d 569, 112 C.A.2d 825.

Reasonable opportunity
Determination of trial court as to whether plaintiff has had a reasonable opportunity to bring case to trial within five years, as required by statute, will not be disturbed on appeal if there is substantial evidence to support it.
Cal.—Ojeda v. Municipal Court of City and County of San Francisco, 166 P.2d 49, 73 C.A.2d 226.

49. S.C.—Bond v. Corbin, 47 S.E. 374, 68 S.C. 294.

49.5 Cal.—Cunha v. Anglo California Nat. Bank of San Francisco, 93 P. 2d 572, 34 C.A.2d 383.

50. Ala.—Price v. Branch Bank, 17 Ala. 374.
4 C.J. p 846 note 3.

51. Iowa.—Rickel v. Kladivo, 219 N. W. 484—Iowa State Bank v. Iwed, 200 N.W. 231, 198 Iowa 700.
Mich.—Lyon v. Baldwin, 160 N.W. 428, 194 Mich. 118, L.R.A.1917C 148.
Okl.—Cooper v. Cooper, 170 P.2d 242, 197 Okl. 232—Riley v. Riley, 88 P. 2d 358, 184 Okl. 473—Jackson v. First Nat. Bank, 35 P.2d 446, 168 Okl. 629—Constantin Refining Co. v. Thompson-Munro-Robins Chemical Co., 298 P. 617, 149 Okl. 276—Brennan v. Moore, 221 P. 40, 93 Okl. 294.
Tex.—First Nat. Bank v. San Jacinto Trust Co., Civ.App., 82 S.W.2d 706.

Judgment for intervener in proceeding in garnishment in aid of execution claiming specific part of, or interest in, funds in garnishee's hands will not be reversed, where uncontradicted evidence shows that particular amount claimed by intervener was derived from sale of property belonging to intervener.
Okl.—Prusa v. Hejduk, 145 P.2d 425, 193 Okl. 512.

52. La.—Rene Implement Co. v. Perrin, App., 178 So. 181.
Tex.—Southern Surety Co. v. Adams, 34 S.W.2d 789, 119 Tex. 489.

53. Ark.—Metcalf v. Jelks, 8 S.W. 2d 462, 177 Ark. 1023.
Cal.—Nichols v. Davis, 143 P. 758, 168 C. 570.
Asamen v. Thompson, 131 P.2d 839, 55 C.A.2d 657—Runkle v. Lane, 105 P.2d 373, 40 C.A.2d 654—Investment Registry of America v. Moore, 218 P. 595, 63 C.A. 327.
Iowa.—Bell v. Courteen Seed Co. of Milwaukee, Wis., 196 N.W. 1006, 197 Iowa 120.
Minn.—Reiling v. Wood, 279 N.W. 579, 202 Minn. 576—Callanan v. Callanan, 248 N.W. 45, 188 Minn. 609—Phillips Petroleum Co. v. Jacobson, 234 N.W. 11, 182 Minn. 237—Kuske v. Jevne, 218 N.W. 99, 173 Minn. 584, followed in Canby Hereford Farms Co. v. Lende, 220 N.W. 435, 175 Minn. 614—Saari v. Palmu, 185 N.W. 965, 151 Minn. 553—Stockhaus v. Lind, 183 N.W. 844, 149 Minn. 423—Hurni v. Johnson, 177 N.W. 942, 146 Minn. 99—Sweeney v. McMahon, 177 N.W. 361, 145 Minn. 334.
Neb.—First State Bank of Crete v. Yoho, 193 N.W. 746, 110 Neb. 387—Fremont Brewing Co. v. Pekarek, 95 N.W. 12, 4 Neb.(Unoff.) 531.
N.J.—Kahn & Feldman v. United Piece Dye Works, 7 A.2d 793, 123 N.J.Law 18, affirmed 12 A.2d 384, 124 N.J.Law 372.
N.Y.—Dicoa Co. v. Kokomo Sanitary Pottery Corp., 291 N.Y.S. 422, 249 App.Div. 645.
N.C.—Farmers' Federation v. Lockman, 150 S.E. 673, 198 N.C. 77—Bizzell v. Mitchell, 142 S.E. 706, 195 N.C. 484—Kerr Grain & Hay Co. v. Marion Cash Feed Co., 103 S. E. 375, 179 N.C. 654.
N.D.—Baird v. Irvine, 237 N.W. 833, 61 N.D. 319—Page v. Steinke, 236 N.W. 261, 60 N.D. 685.
Ohio.—Harrison v. King, 9 Ohio St. 388.
Doddridge v. Starks, App., 34 N. E.2d 816.
Okl.—State v. Carson, 269 P. 292, 131 Okl. 289—First Nat. Bank v. Burnett, 254 P. 95, 122 Okl. 255—Antrim Lumber Co. v. Hazel, 246 P. 476, 118 Okl. 71—Security Nat. Bank of Oklahoma City v. Martin, 241 P. 812, 113 Okl. 295.
Pa.—Schueck v. Freeman, 55 Pa.Super. 38—Steinman v. Kreider, 48 Pa.Super. 412.
R.I.—Moschetti v. De Cubellis, 20 A. 2d 253, 66 R.I. 463.
S.C.—Ross v. Eddins, 196 S.E. 375, 187 S.C. 29—Moore v. McElrath, 122 S.E. 874, 128 S.C. 392—J. W. Copeland Co. v. Brown, 87 S.E. 1002, 103 S.C. 177.
S.D.—Citizens' Nat. Bank of Sisseton v. Miller, 199 N.W. 965, 47 S. D. 548.
Wash.—Hazeltine v. Lyle, 27 P.2d 716.
Wis.—Davidson v. Hackett, 5 N.W. 459, 49 Wis. 186.
Wyo.—C. D. Smith Drug Co. v. Cooper Drug Co., 40 P. 979, 42 P. 213, 5 Wyo. 510.
4 C.J. p 846 note 3.

Approved findings by clerk
After affirmance by the superior court, the facts as found by clerk on motion to vacate attachment are not reviewable, if supported by evidence.
N.C.—Brann v. Hanes, 140 S.E. 292, 194 N.C. 571.

54. Cal.—American Automobile Ass'n v. American Automobile Owners' Ass'n, 13 P.2d 707, 216 C. 125, 83 A.L.R. 699.
Travers v. Sime, 222 P.2d 333, 99 C.A.2d 599—Jenkins v. Zimmerman, 246 P. 563, 77 C.A. 341.
Fla.—Lightsey v. Washington Park Properties, 112 So. 555, 93 Fla. 531.
Ga.—Byrd v. Wells, 11 S.E.2d 887, 191 Ga. 265—Marion County v. McCorkle, 200 S.E. 285, 187 Ga. 312—City of Camilla v. Cochran, 128 S.E. 194, 160 Ga. 424—Cook v. Dixon, 114 S. E. 429, 154 Ga. 373—Roberts v. Strickland, 112 S.E. 560, 153 Ga. 529.
Ind.—State ex rel. Bd. of Medical Registration & Examination v.

point a receiver,[55] or denying or vacating an order of arrest;[56] and to motions for judgment non obstante veredicto.[57]

Henry, 97 N.E.2d 487, 229 Ind. 219—Wise v. Curdes, 40 N.E.2d 122, 219 Ind. 606—Weis v. Cox, 185 N.E. 631, 205 Ind. 43.

Minn.—Hotel & Restaurant Emp. Union, Local No. 556-C, v. Tzakis, 33 N.W.2d 859, 227 Minn. 32.

Mo.—Brown v. Curtin, 52 S.W.2d 387, 330 Mo. 1156.

Mo.—Henninger v. Board of Chosen Freeholders of Bergen County, 64 A.2d 365, 2 N.J.Super. 1, affirmed 68 A.2d 833, 3 N.J. 68.

N.Y.—Jochum Bros. v. Ridgewood Pie-Baking Co., 206 N.Y.S. 252, 210 App.Div. 428.

Okl.—Superior Oil Corporation v. International Ass'n of Oil Field, Gas Well and Refinery Workers of America, Local No. 209, 56 P.2d 122, 176 Okl. 444—Hayes v. Dalke, 1 P.2d 642, 150 Okl. 251—Simpkins v. Curtiss, 243 P. 188, 116 Okl. 104.

Tex.—Bradford v. Moseley, Com. App., 223 S.W. 171.

Hunt v. Clifford H. Brown & Co., Civ.App., 239 S.W.2d 178—Blocker v. Lawrence, Civ.App., 233 S.W.2d 457—Frank v. Weiner, Civ.App., 229 S.W.2d 186—Huston v. Throckmorton County, Civ.App., 215 S.W.2d 387—International Ass'n of Carpenters and Joiners of America, Local 213, A. F. of L., v. Sharp, Civ.App., 202 S.W.2d 506—Perry v. Stringfellow, Civ.App., 113 S.W.2d 1012, reversed on other grounds 134 S.W.2d 1031, 134 Tex. 328—Hutchison v. Ross, Civ.App., 89 S.W.2d 495—Kilburn v. Childers, Civ.App., 86 S.W.2d 832—Grant v. Grant, Civ.App., 286 S.W. 647—Terry v. Crossby, Civ.App., 264 S.W. 718—American Rio Grande Land & Irrigation Co. v. Karle, Civ.App., 237 S.W. 358, error dismissed—Cooks', Waiters' & Waitresses' Union, No. 399 v. Theoharis, Civ.App., 228 S.W. 984—Oil Lease & Royalty Syndicate v. Beeler, Civ.App., 217 S.W. 1054, error refused.

Wash.—Pacific Coast Coal Co. v. District No. 10, United Mine Workers of America, 210 P. 953, 122 Wash. 423.

4 C.J. p 846 note 4.

Great weight

The decision of the justice in an injunction suit on a controverted question of fact was entitled to great weight.

R.I.—Sahagian v. Sahagian, 137 A. 221, 48 R.I. 267.

Injunction bond

The chancellor's order increasing an injunction bond from three hundred dollars to five hundred dollars cannot be disturbed on appeal, in the absence of proof contradicting a sworn motion that the expense of the suit would exceed one thousand dollars.

Ala.—Wiegand v. Alabama Power Co., 127 So. 206, 220 Ala. 620.

Refusing damages

On dissolution of a temporary injunction, enjoining the erection of a structure, refusing damages for the cost of removing and rebuilding a trestle is not, under the circumstances, so clearly against the preponderance of evidence as to warrant reversal.

Wis.—Muscoda Bridge Co. v. Worden-Allen Co., 239 N.W. 649, 207 Wis. 22, rehearing denied 240 N.W. 802, 207 Wis. 22.

Violation of injunction

Whether defendant violated an injunction decree enjoining interference with the natural flow of surface water was for the trial judge.

Mich.—Anderson v. Rice, 244 N.W. 182, 259 Mich. 626.

55. Cal.—Moore v. Oberg, 142 P.2d 443, 61 C.A.2d 216—McCarthy v. Kurkjian, 232 P. 161, 69 C.A. 682—Fox v. Flood, 187 P. 68, 44 C.A. 786.

Fla.—Douglas Properties v. Stix, 159 So. 1, 118 Fla. 354—Masser v. London Operating Co., 145 So. 72, 106 Fla. 474.

Ind.—McKinley v. Long, 88 N.E.2d 382, 227 Ind. 639, 23 A.L.R.2d 577—Lowe v. Swafford, 199 N.E. 709, 209 Ind. 514, 103 A.L.R. 1222—Hammond Theatrical Co. v. Gregory, 194 N.E. 631, 208 Ind. 31.

Mo.—Johnston v. Dickerson, 127 S.W.2d 64, 233 Mo.App. 762.

Okl.—Smoot v. Barker, 153 P.2d 227, 194 Okl. 540.

Pa.—Baur v. Abbott, 10 A.2d 5, 337 Pa. 33.

Utah.—Walker Bros., Bankers, v. Intermountain Milling Co., 237 P. 228, 65 Utah 340.

4 C.J. p 847 note 5.

Confirming report

Where the questions involved are largely questions of fact, and the court on appeal cannot say on the testimony that error is clearly shown in the action of the trial court confirming the receiver's report, the judgment will be affirmed.

R.I.—Sayer v. Clark, Sayer & Wall, 115 A. 568.

No issues of fact made by pleadings

Orders made on the hearing of motions, as for the appointment of receivers, in which no issues of fact are made by pleadings are not subject to review on weight of the evidence.

Ohio.—Wilgus v. Arthur, 53 N.E.2d 197, 72 Ohio App. 511.

56. N.Y.—Clarke v. Lourie, 82 N.Y. 580.

4 C.J. p 847 note 6.

57. Cal.—Parker v. James E. Granger, Inc., 52 P.2d 226, 4 C.2d 668, appeal dismissed and certiorari denied 56 S.Ct. 958, 298 U.S. 644, 80 L.Ed. 1375.

Davidson v. Long Beach Pleasure Pier Co., 221 P.2d 1005, 99 C.A.2d 384—Johnson v. Marquis, 209 P.2d 63, 93 C.A.2d 341—Shannon v. Thomas, 134 P.2d 522, 57 C.A.2d 187.

Ill.—Mitchell v. Van Scoyk, 115 N.E. 2d 226, 1 Ill.2d 160—Lindroth v. Walgreen Co., 94 N.E.2d 847, 407 Ill. 121—Hughes v. Bandy, 87 N.E. 2d 855, 404 Ill. 74—Hunt v. Vermilion County Children's Home, 44 N.E.2d 609, 381 Ill. 29.

Goodman v. Motor Products Corp., 132 N.E.2d 356, 9 Ill.App.2d 57—Farr v. Chicago & E. I. R. Co., 131 N.E.2d 120, 8 Ill.App.2d 168—Masters v. Central Ill. Elec. & Gas Co., 129 N.E.2d 586, 7 Ill.App.2d 348—King v. Mid-State Freight Lines, 126 N.E.2d 868, 6 Ill.App.2d 159—Thomas v. Douglas, 117 N.E. 2d 417, 1 Ill.App.2d 261—Yates v. Bankers Life & Cas. Co., 107 N.E. 2d 50, 347 Ill.App. 461, reversed on other grounds 111 N.E.2d 516, 415 Ill. 16—Whalen v. Sidney Wanzer & Sons, 99 N.E.2d 583, 343 Ill.App. 486—Emmick v. Baltimore & O. R. Co., 88 N.E.2d 739, 339 Ill.App. 147, certiorari denied 71 S.Ct. 43, 340 U.S. 831, 95 L.Ed. 611—McKay Engineering & Const. Co. v. Sanitary Dist. of Chicago, 81 N.E.2d 268, 335 Ill.App. 224—Levy v. City of Chicago, 73 N.E.2d 643, 331 Ill.App. 612—Arado v. Epstein, 55 N.E.2d 561, 323 Ill.App. 194—Gill v. Lewin, 53 N.E.2d 336, 321 Ill.App. 633—Kanne v. Metropolitan Life Ins. Co., 34 N.E.2d 732, 310 Ill.App. 524.

Iowa.—Kellogg v. Rhodes, 4 N.W.2d 412, 231 Iowa 1340.

Minn.—Volding v. Harnish, 51 N.W. 2d 658, 236 Minn. 71.

Ohio.—McNees v. Cincinnati St. Ry. Co., 89 N.E.2d 138, 152 Ohio St. 269.

Heath v. Standard Oil Co., App., 112 N.E.2d 405—Jolley v. Martin Bros. Box Co., 99 N.E.2d 672, 89 Ohio App. 372—Reed v. Pearl Assur. Co., 80 N.E.2d 232, 82 Ohio App. 293.

Pa.—Pantuso v. Pittsburgh Motor Coach Co., 62 A.2d 56, 360 Pa. 464—Connelly v. Kaufmann & Baer Co., 37 A.2d 125, 349 Pa. 261, 152 A.L.R. 555.

Tex.—Texas Emp. Ins. Ass'n v. Knipe, 239 S.W.2d 1006, 150 Tex. 313.

Dallas Ry. & Terminal Co. v. Bailey, Civ.App., 245 S.W.2d 275, reversed 250 S.W.2d 379, 151 Tex. 359—Wilt v. Kellogg, Civ.App., 99

However, it is the rule in some jurisdictions that in cases where a preliminary restraining order had been issued and the lower court determined on its continuance or dissolution, the appellate court is not concluded by the findings of the trial judge but has the power to determine for itself the facts on which the decision will properly be made to depend,[58] but even in such a case the reviewing court may refuse to disturb the findings where there is evidence to support them.[59] Likewise, in some jurisdictions the appellate court is not bound by the findings of the trial court on appeal from an order appointing a receiver.[59.5]

The general rule applies as well in proceedings relating to judgment,[60] as findings and orders, setting aside or refusing to set aside default judgments[61]

S.W.2d 664, affirmed 122 S.W.2d 1051, 132 Tex. 345.
Wash.—Mitchell v. Rogers, 225 P.2d 1074, 37 Wash.2d 630—Ebding v. Foster, 209 P.2d 367, 34 Wash.2d 539—Pierce v. Pacific Mut. Life Ins. Co. of California, 109 P.2d 322, 7 Wash.2d 151.

58. N.C.—Arey v. Lemons, 61 S.E.2d 596, 232 N.C. 531—Mullen v. Town of Louisburg, 33 S.E.2d 484, 225 N.C. 53—Whitford v. North Carolina Joint Stock Land Bank of Durham, 176 S.E. 740, 207 N.C. 229—Johnston v. Garrett, 130 S.E. 835, 190 N.C. 835—Howard v. County Board of Education of Catawba County, 127 S.E. 704, 189 N.C. 675—Tobacco Growers' Co-op. Ass'n v. Patterson, 121 S.E. 631, 187 N.C. 252—Tobacco Growers' Co-op. Ass'n v. Battle, 121 S.E. 629, 187 N.C. 260—Plott v. Board of Com'rs of Haywood County, 121 S.E. 190, 187 N.C. 125—Lee v. Town of Waynesville, 115 S.E. 51, 184 N.C. 565.

Burden on appellant

The supreme court on appeal in an injunction proceeding, may review findings of fact, but appellant has the burden to assign and show error.
N.C.—General Talking Pictures Corporation v. Electrical Research Products, 159 S.E. 19, 201 N.C. 143.

Hearing by appellate judges

Under a statute permitting an application to an appellate judge for a temporary injunction after refusal by the circuit court the determination of a motion heard before members of the court of appeals is not necessarily binding on the court of appeals.
Ky.—Erlanger Kennel Club v. Daugherty, 281 S.W. 826, 213 Ky. 648, affirmed Smith v. Commonwealth of Kentucky, 48 S.Ct. 158, 275 U.S. 509, 72 L.Ed. 398.

Mixed law and fact

On appeal from an order continuing a temporary restraining order, the court is not concluded by facts as found by the trial judge, notwithstanding such findings are intermingled with conclusions of law.
N.C.—Causey v. Guilford County, 135 S.E. 40, 192 N.C. 298.

59. N.C.—Hugh MacRae & Co. v. Shew, 17 S.E.2d 664, 220 N.C. 516—Banner v. Carolina Button Corporation, 184 S.E. 508, 209 N.C. 697—Surratt v. Dennis, 155 S.E. 865, 199 N.C. 757.

Not conclusive but presumptively correct

The facts found by the judge from affidavits on the hearing of the motion that the temporary restraining order be dissolved are not conclusive on plaintiff's appeal, they are however presumed to be correct, and where supported by the evidence they will not be disturbed.
N.C.—Board of Health of Buncombe County v. Lewis, 146 S.E. 592, 196 N.C. 641.

59.5 N.C.—Sinclair v. Moore Cent. R. Co., 45 S.E.2d 555, 228 N.C. 389.

60. Ark.—O. O. Scroggin & Co. v. Merrick, 5 S.W.2d 344, 176 Ark. 1205—Halliday v. Fenton, 260 S.W. 961, 164 Ark. 11.
Cal.—Waybright v. Anderson, 253 P. 148, 200 C. 374.
Brown v. De Ward & Sons, 278 P. 257, 99 C.A. 222—Cresta v. Ocean Shore R. Co., 206 P. 460, 56 C.A. 687.
Ind.—Hoag v. Jeffers, 159 N.E. 753, 201 Ind. 249.
Iowa.—Evans v. Herbranson, 41 N.W.2d 113, 241 Iowa 268, 15 A.L.R.2d 925—Seth Sciders, Inc. v. Adel Clay Products Co., 255 N.W. 656, 218 Iowa 612.
Kan.—Hart v. Hart, 161 P. 585, 98 Kan. 745.
Mo.—Cooper v. Armour & Co., 15 S.W.2d 946, 222 Mo.App. 1176—In re Fulsome's Estate, App., 193 S.W. 618.
N.H.—Lavigne v. Lavigne, 119 A. 869, 80 N.H. 559.
N.C.—Hertford Livestock & Supply Co. v. Roberson, 96 S.E.2d 734, 245 N.C. 588—Coker v. Coker, 31 S.E.2d 364, 224 N.C. 450—Clayton v. Adams, 175 S.E. 185, 206 N.C. 920.
Okl.—Fellows v. Owens, 62 P.2d 1215, 178 Okl. 224—Heiny v. Sommers, 268 P. 287, 131 Okl. 214.
Pa.—Tabas v. Robinson, 116 A. 802, 273 Pa. 164.
Kaufman v. Feldman, 180 A. 101, 118 Pa.Super. 435—Luce v. Reed Colliery Co., 78 Pa.Super. 248.
S.D.—Purinton v. Purinton, 169 N.W. 236, 41 S.D. 125.
4 C.J. p 847 note 7.

Correcting record

(1) Evidence required to satisfy the court regarding what was the real order of the court, and what was proper entry on the minutes, must rest with the court in correcting the record to speak the truth.
Cal.—King v. Emerson, 288 P. 1099, 110 C.A. 414, adopted 294 P. 768, 110 C.A. 414.

(2) Finding by trial court on conflicting evidence that a clerical error exists with respect to a judgment, and the nature thereof, is conclusive.
Cal.—Bastajian v. Brown, 120 P.2d 9, 19 C.2d 209.
Meyer v. Porath, 248 P.2d 984, 113 C.A.2d 808—In re Remick's Estate, 170 P.2d 96, 75 C.A.2d 24.

Extrinsic evidence

Cal.—In re Rouse's Estate, App., 309 P.2d 34—Goodrich v. Edgeworth, 294 P.2d 1037, 140 C.A.2d 224.

Summary judgment

Cal.—Coyne v. Krempels, 223 P.2d 244, 36 C.2d 257.
N.Y.—Krauss v. Central Ins. Co. of Baltimore, 40 N.Y.S.2d 736.

61. Ala.—Gray v. Handy, 86 So. 548, 204 Ala. 559.
Ariz.—Turbeville v. McCarrell, 30 P.2d 496, 43 Ariz. 236.
Ark.—McElroy v. Underwood, 281 S.W. 368, 170 Ark. 794.
Cal.—Penland v. Goodman, 111 P.2d 913, 44 C.A.2d 14—Morgan v. Brothers of Christian Schools, 92 P.2d 925, 34 C.A.2d 14—Stahler v. Seaboard Mortg. Corporation, 48 P.2d 993, 9 C.A.2d 115—Sheffler v. Hutchings, 13 P.2d 527, 124 C.A. 760—Taranto v. Dick, 6 P.2d 334, 119 C.A. 161—Jones v. Moers, 266 P. 821, 91 C.A. 65—Corgiat v. Realty Mortg. Corporation of California, 260 P. 573, 86 C.A. 37—Nelsen v. Joseph, 248 P. 754, 78 C.A. 743—Smith v. Questa, 207 P. 1036, 58 C.A. 1—Mader v. Christie, 198 P. 45, 52 C.A. 138.
Idaho.—Thomas v. Stevens, 300 P.2d 811.
Ind.—Walsh v. H. P. Wasson & Co., 13 N.E.2d 696, 213 Ind. 556—Hoag v. Jeffers, 159 N.E. 753, 201 Ind. 249.
Swartz v. Swartz, 101 N.E.2d 822, 121 Ind.App. 635—Haley v. Burke-Cadilac Co., 170 N.E. 791, 91 Ind.App. 603—National Fire Ins. Co. of Hartford, Conn., v. Burton, 168 N.E. 37, 91 Ind.App. 196—Ayrshire Coal Co. v. Thurman, 127 N.E. 810, 128 N.E. 764, 73 Ind. App. 578—Hartford Fire Ins. Co.

or consent judgments,[61.5] or to open a confessed judgment;[62] to findings on proceedings after judgment,[63] such as findings on a motion to tax costs,[64]

of Hartford, Conn., v. Applebaum, 125 N.E. 237, 71 Ind.App. 514—Daub v. Van Lundy, 118 N.E. 140, 67 Ind.App. 468.
Iowa.—Standard Oil Co. v. Marvill, 206 N.W. 37, 201 Iowa 614—Allen v. Toucheo, 177 N.W. 459, 188 Iowa 1175.
Kan.—Kircher v. Kircher, 207 P. 779, 111 Kan. 551.
Mass.—Mercadante v. Aldorasi, 4 N.E.2d 443, 295 Mass. 596.
Minn.—Industrial Loan & Thrift Corp. v. Swanson, 26 N.W.2d 625, 223 Minn. 346, 171 A.L.R. 244—Peterson v. Bengston, 207 N.W. 20, 166 Minn. 494.
Mo.—McFarland v. Lasswell, App., 282 S.W. 447.
Mont.—Morehouse v. Bynum, 152 P. 477, 51 Mont. 289.
N.C.—Rich v. Norfolk Southern Ry. Co., 92 S.E.2d 768, 244 N.C. 175—Moore v. Deal, 79 S.E.2d 507, 239 N.C. 224—Perkins v. Sykes, 63 S.E.2d 133, 233 N.C. 147—Van Hanford v. McSwain, 53 S.E.2d 84, 230 N.C. 229—Rierson v. York, 42 S.E.2d 902, 227 N.C. 575—Gunter v. Dowdy, 31 S.E.2d 524, 224 N.C. 522—Godwin v. Brickhouse, 16 S.E.2d 403, 220 N.C. 40—Fellos v. Allen, 162 S.E. 905, 202 N.C. 375—Foster v. Allison Corporation, 131 S.E. 648, 191 N.C. 166, 44 A.L.R. 610—Jones-Onslow Land Co. v. Wooten, 98 S.E. 706, 177 N.C. 248.
Okl.—Runyan v. Hecker, 66 P.2d 1072, 179 Okl. 595.
Pa.—Jennings v. Yanovitz, 175 A. 721, 115 Pa.Super. 427.
Vt.—Estey v. Leveille, 128 A.2d 319.
Wash.—Morgan v. Stag Lumber Co., 214 P. 15, 124 Wash. 223.
Wyo.—James v. Lederer-Strauss & Co., 233 P. 137, 32 Wyo. 377.
4 C.J. p 847 note 8.

Credibility of affiants who have executed affidavits supporting motion to set aside default judgment and weight of evidence adduced are questions exclusively for trial court.
Cal.—In re McCarthy's Estate, 73 P.2d 914, 23 C.A.2d 398.
Ky.—Keehner v. Burchnell, 207 S.W. 2d 30, 306 Ky. 556.

Findings of fact by clerk of the superior court in setting aside default judgment, supported by evidence, are conclusive on appeal.
N.C.—Helderman v. Hartsell Mills Co., 135 S.E. 627, 192 N.C. 626.

Legal conclusion from facts
On appeal from an order setting aside a default judgment, the findings of fact of the trial judge are conclusive, but not his determination that such facts show excusable neglect.
N.C.—Pierce v. Eller, 83 S.E. 758, 167 N.C. 672.

61.5 Ind.—Dearing v. Speedway Realty Co., 40 N.E.2d 414, 111 Ind. App. 585.
N.C.—Ledford v. Ledford, 49 S.E.2d 794, 229 N.C. 373.

62. Ill.—Plonsker v. Sider, 2 N.E.2d 382, 285 Ill.App. 583.
Pa.—Fox v. Loller, 78 A. 1133, 229 Pa. 539.
Duffy v. Kaufman, 18 Pa.Super. 362.

63. Cal.—McCarty v. Wilson, 193 P. 578, 184 C. 194.
Maguire v. Corbett, 259 P.2d 507, 119 C.A.2d 244—Meyer v. Meyer, 251 P.2d 335, 115 C.A.2d 48—Argue v. Wilson, 40 P.2d 297, 3 C.A.2d 645—Lien v. Morrill, 19 P.2d 1024, 130 C.A. 335—People's Ditch Co. v. Foothill Irr. Dist., 11 P.2d 86, 123 C.A. 257—Salter v. Lombardi, 3 P.2d 38, 116 C.A. 602—Hannon v. Goucher, 298 P. 528, 113 C.A. 539—Dern v. Dein, 207 P. 914, 57 C.A. 611.
Ga.—Webb v. Deadwyler, 99 S.E. 888, 149 Ga. 220.
Corker v. Atlanta Rubber Stamp & Stencil Works, 82 S.E. 783, 15 Ga.App. 136.
Kan.—Eastman v. Morrow, 23 P.2d 595, 138 Kan. 26.
Mass.—Walsh v. Feinstein, 175 N.E. 102, 274 Mass. 597—Day v. McClellan, 128 N.E. 412, 236 Mass. 330—Griffin v. Griffin, 110 N.E. 296, 222 Mass. 218.
Mo.—Inzerillo v. Chicago, B. & Q. R. Co., 35 S.W.2d 44, 225 Mo.App. 1213—Hoffman Bros. Piano Co. v. Morris, 177 S.W. 320, 190 Mo.App. 383.
N.Y.—Gundersen v. Great Atlantic & Pacific Tea Co., 271 N.Y.S. 322, 241 App.Div. 873.
Okl.—Crosby v. Fred F. Fox Co., 233 P.2d 974, 204 Okl. 691—Rand v. Nash, 51 P.2d 296, 174 Okl. 525—Grant v. Mathis, 220 P. 331, 96 Okl. 65.
Pa.—Marshall v. Levy, 64 Pa.Super. 90.
Tex.—Mays & Mays v. Flattery, Civ. App., 252 S.W. 860.
4 C.J. p 847 note 10.

Bill of exceptions
Findings of trial court that defendant failed to give notice to plaintiff of filing of bill of exceptions and that plaintiff did not waive notice could not be set aside, where facts did not require a finding of waiver as a matter of law.
Mass.—Jordan Marsh Co. v. Barry, 3 N.E.2d 792, 295 Mass. 210.

Certified execution
Awarding of certified execution is so far a question of fact and matter of discretion that finding of malice is not revisable if there is any evidence to support it.
Vt.—Judd v. Challoux, 39 A.2d 357, 114 Vt. 1—Domina v. Pratt, 13 A.2d 198, 111 Vt. 166, followed in 13 A.2d 204, 111 Vt. 178—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351.

Commissioner's finding
Where the record of the commissioner, appointed to take testimony concerning sufficiency of sureties on an appeal bond for fifty thousand dollars, did not disclose substantial error in his finding that the net worth of sureties above exemptions was twenty-seven thousand eight hundred and ten dollars, the supreme court was not justified in overruling the findings and holding that the circuit clerk acted arbitrarily in refusing to approve the bond.
Mo.—State ex rel. Thompson v. Myers, 260 S.W. 452.

Costs of appeal or security therefor
(1) On application for further security on appeal, order of judge who heard testimony and was in possession to evaluate it would not be disturbed.
N.J.—Grimbiles v. Stelling, 15 A.2d 57, 19 N.J.Misc. 119.

(2) Where there is a substantial controversy in the testimony concerning question of whether appellant is able to pay costs of appeal or give security therefor, weight of the testimony, and conclusions to be drawn from it, rests with trial court, and his conclusions will not be disturbed by a reviewing court.
Tex.—McAfee v. Shirley, Civ.App., 140 S.W.2d 932.

Reasonable or due diligence
Whether judgment creditor exercised due diligence during first five years after entry of judgment to discover leviable property of judgment debtor is a question for trial court.
Cal.—Rupp v. Rupp, 276 P.2d 144, 129 C.A.2d 23—Tucker v. Wilcox, 199 P.2d 24, 88 C.A.2d 599—James v. James, 190 P.2d 219, 84 C.A.2d 115.

Satisfaction of judgment
The circuit court's finding on the question of payment and satisfaction of judgment arising on motion to quash execution is conclusive on appeal.
Ark.—Hargis v. Jordan, 45 S.W.2d 525, 184 Ark. 1136.

64. Mo.—Curtis v. Stix-Baer & Fuller Dry Goods Co., 162 S.W. 1049, 179 Mo.App. 578.
Mont.—Gahagan v. Gugler, 52 P.2d 150, 100 Mont. 599.

Reasonableness of the cost of a map prepared for use in defending an action is conclusively determined as a matter of fact by the lower court.

or on allowance as to attorney's fees,[65] or findings on a motion for a new trial;[66] and to findings and orders in proceedings relating to judicial sales.[67]

Where conflicting affidavits are introduced in support of a motion to vacate an award, the action of the court in deciding the motion is, as a general rule, not reviewable on appeal.[68] The determination of questions of fact by the court or jury in awarding dower,[69] or by the commission in assigning it,[70] will not ordinarily be disturbed on appeal unless it is without testimony to support it or against the manifest weight of the evidence. It has been held, however, that the appellate court may weigh the evidence on appeal from a judgment overruling a motion to set aside the satisfaction of an alimony judgment, such a proceeding, although at law, being in the nature of an exercise of equitable jurisdiction.[71]

Based on documentary evidence. While it seems to be the general rule that a determination by the trial court based on conflicting affidavits will not be disturbed on appeal,[72] still it has been held that

Mont.—Jeffers v. Montana Power Co., 217 P. 652, 68 Mont. 114.

65. Ark.—John M. Parker & Son v. Boyce, 63 S.W.2d 844, 187 Ark. 1054.
Fla.—Deauville Corp. v. Blount, 34 So.2d 537, 160 Fla. 268.
Ind.—Quail v. Banta, 48 N.E.2d 841, 113 Ind.App. 664.
Mo.—Farasy v. Hindert, App., 110 S.W.2d 785.
N.Y.—Drivas v. Lekas, 54 N.E.2d 365, 292 N.Y. 204, motion denied 56 N.E.2d 123, 292 N.Y. 718.
Okl.—White v. Van Leuven, 293 P. 1014, 146 Okl. 160.
Utah.—Murray v. Hays, 169 P. 264, 51 Utah 211.
Wis.—In re Marotz' Estate, 56 N.W. 2d 856, 263 Wis. 99.

Great weight

Work done by counsel was under eyes of trial judge, whose opinion as to value of services of counsel was entitled to great weight.
La.—Douglas Public Service Corp. v. Leon, 200 So. 21, 196 La. 735.

66. Cal.—Kehlor v. Satterlee, 98 P. 2d 759, 37 C.A.2d 116—Huckaby v. Northam, 228 P. 717, 68 C.A. 83.
Ind.—I. Duffey & Son Co. v. Buroker, 8 N.E.2d 111, 103 Ind.App. 397.
Mass.—Bruns v. Jordan Marsh Co., 26 N.E.2d 368, 305 Mass. 437.
Minn.—Visneski v. Visneski, 17 N.W.2d 313, 219 Minn. 217.

67. Cal.—In re Isaman's Estate, 157 P.2d 872, 68 C.A.2d 755.
Iowa.—Rudolph v. Davis, 26 N.W.2d 231, 238 Iowa 474.
Okl.—Baldwin v. Mayor, 108 P.2d 132, 188 Okl. 272.
S.C.—Hunt v. Hunt, 106 S.E. 767, 116 S.C. 1.
W.Va.—State v. Hatfield, 67 S.E.2d 529, 136 W.Va. 342.
4 C.J. p 847 note 11—35 C.J. p 50 note 52.

68. Cal.—Manson v. Wilcox, 73 P. 1004, 140 C. 206.
Ind.—Deford v. Deford, 19 N.E. 530, 116 Ind. 523.

69. Mo.—Roberts v. Walker, 14 S.W. 631, 101 Mo. 597.
S.C.—Brooks v. McMeekin, 15 S.E. 1019, 37 S.C. 285.

70. N.H.—Doughty v. Little, 61 N.H. 365, overruling Morrill v. Morrill, 5 N.H. 329.

71. Mo.—Kelley v. Kelley, App., 290 S.W. 624.

72. Cal.—Nathanson v. Murphy, App., 305 P.2d 710—Daniels v. Pitman, 266 P.2d 820, 123 C.A.2d 345—Churchill v. White, 259 P.2d 974, 119 C.A.2d 503—Hayutin v. Rudnick, 251 P.2d 707, 115 C.A.2d 138—Jones v. Lindsey, 250 P.2d 153, 114 C.A.2d 237—Baratti v. Baratti, 242 P.2d 22, 109 C.A.2d 917—Reid v. Koeslag, 236 P.2d 192, 106 C.A.2d 729—Carruthers v. Crown Products Co., 200 P.2d 819, 89 C.A.2d 326—Carnation Co. v. El Rey Cheese Co., 200 P.2d 19, 88 C.A.2d 857—Fickeisen v. Peebler, 174 P.2d 883, 77 C.A.2d 148—Rench v. Harris, 172 P.2d 576, 76 C.A.2d 113—Harbinson v. Affeldt, 171 P. 2d 474, 75 C.A.2d 499—Hadges v. Kouris, 162 P.2d 476, 71 C.A.2d 213—Pratt v. Robert S. Odell & Co., 146 P.2d 504, 63 C.A.2d 78—California Collection Agency v. Fontana, 143 P.2d 507, 61 C.A.2d 648—Cooper v. Deon, 137 P.2d 733, 58 C.A.2d 789—Penland v. Goodman, 111 P.2d 913, 44 C.A.2d 14—Howland v. Howland, 108 P.2d 41, 42 C.A.2d 4—Hubbard v. Mt. Raymond Mining Co., 92 P.2d 411, 33 C.A.2d 474, hearing denied 93 P.2d 95, 33 C.A.2d 474—Modine v. Modine, 10 P.2d 776, 123 C.A. 67—Morton v. Kohler & Chase, 233 P. 415, 70 C.A. 458—Anderson v. Anderson, 206 P. 463, 56 C.A. 697—Davies v. Ramsdell, 183 P. 702, 40 C.A. 432—Doyle v. Bradshaw, 183 P. 185, 41 C.A. 247.
Ind.—Consumers' Co. v. Ruble, 122 N.E. 607, 69 Ind.App. 617.
Iowa.—Rivers v. Metropolitan Life Ins. Co. of New York, 6 N.W.2d 3, 232 Iowa 687—McCabe v. Fluckinger, 172 N.W. 444, 186 Iowa 1351.
Minn.—Mason v. MacNeil, 243 N.W. 129, 186 Minn. 278—McKinley v. Northern Boom Co., 149 N.W. 295, 127 Minn. 212.
Mont.—Gahagan v. Gugler, 52 P.2d 150, 100 Mont. 599.
R.I.—Moschetti v. DeCubellis, 20 A. 2d 253, 66 R.I. 463.
S.D.—Heitman v. Gross, 19 N.W.2d 508, 70 S.D. 510.
Wyo.—Clarke v. Shoshoni Lumber Co., 224 P. 845, 31 Wyo. 205, error dismissed 48 S.Ct. 302, 276 U.S. 595, 72 L.Ed. 722.
4 C.J. p 845 note 87 [c].

No conflict

(1) Where affidavits for opening default alleged that plaintiff and his attorney agreed against trial on a certain day, and plaintiff attorney made a like affidavit, plaintiff's affidavit to the contrary as to his personal agreement did not present such a conflict as to make the finding of the trial court conclusive, the matters denied not being material.
Ind.—Dennis v. Scanlon, 118 N.E. 370, 66 Ind.App. 453.

(2) However, in the absence of substantial conflict in the evidence, an erroneous conclusion of the trial court from the affidavits on file as respects venue will be reversed on appeal.
Cal.—Sherman v. Reynolds, 256 P. 846, 83 C.A. 403.

(3) Where affidavit in support of motion to strike certain defenses as sham and as tending to prejudice a fair trial of action was uncontradicted, appellate court was required to affirm order granting motion.
N.Y.—Stafford v. John W. Cowper Co., 9 N.Y.S.2d 109, second case, 256 App.Div. 894.

Until there is a clear showing of error in the trial court's ruling adverse to defendant on conflicting affidavits on his motion to set aside a default and judgment against him, the supreme court cannot disturb it.
Iowa.—McCabe v. Fluckinger, 172 N. W. 444, 186 Iowa 1351.

Weight

(1) Ruling of trial court on issues of fact raised by conflicting affidavits is entitled, on appeal, to the same weight as a finding on conflicting evidence as to issues of fact.
Cal.—Hagan v. Gilbert, 189 P.2d 548, 83 C.A.2d 570.
Idaho.—Jarvis v. Hamilton, 246 P. 2d 216, 73 Idaho 131, 33 A.L.R.2d 910.

where the findings of fact by the trial court were made on documentary evidence the rule that the trial judge is better able to weigh the evidence than the appellate court does not apply,[73] and hence, where the reviewing court has all of the papers on which a finding was made, it has been held that it will properly examine them and be governed by the facts thereby disclosed.[74]

The general rule applies where there is either oral or written evidence,[74.5] although the foundation for the general rule is less substantial where all the evidence is documentary than where the determination comes from witnesses whom the trial court sees and hears.[74.10]

§ 1644. Competency of Witnesses and Admissibility of Evidence

The determination by the trial court of preliminary fact questions on which the competency of witnesses or admissibility of evidence depends is generally final.

The determination by the trial court of preliminary questions of fact on which depends the competency of witnesses to testify[75] or the admissibility of evidence[76] is as a general rule final. The decision

(3) Although defendant foreign corporation's motion to quash service on its claimed agents, on the ground that none of them was such, was heard on affidavits, some weight should be given to the finding of the trial court.

Iowa.—State v. Bitter Root Valley Irr. Co., 169 N.W. 776, 185 Iowa 60.

73. S.D.—Royal Union Life Ins. Co. v. Boynton, 222 N.W. 596, 54 S.D. 85.

74. Idaho.—Wallace v. Perry, 257 P.2d 231, 74 Idaho 86—Stoner v. Turner, 247 P.2d 469, 73 Idaho 117—Perry v. Perkins, 245 P.2d 405, 73 Idaho 4, followed in 245 P.2d 410, 73 Idaho 13—Curtis v. Siebrand Bros. Circus & Carnival Co., 194 P.2d 281, 68 Idaho 285—Cleek v. Virginia Gold Mining & Milling Co., 122 P.2d 232, 63 Idaho 445—Boise Flying Service v. General Motors Acceptance Corporation, 36 P.2d 813, 55 Idaho 5—Kynaston v. Thorpe, 158 P. 790, 29 Idaho 302.

Or.—King v. Mitchell, 214 P.2d 993, 188 Or. 434, 16 A.L.R.2d 1128, rehearing denied 216 P.2d 269, 188 Or. 434, 16 A.L.R.2d 1128.

74.5 Cal.—Greenwell v. Caro, 249 P. 2d 573, 114 C.A.2d 35—Denna v. Red River Lumber Co., 117 P.2d 689, 47 C.A.2d 235.

Minn.—Albert v. Edgewater Beach Bldg. Corporation, 15 N.W.2d 460, 218 Minn. 20.

74.10 Minn.—Holtberg v. Bommersbach, 52 N.W.2d 766, 236 Minn. 335—Murtha v. Olson, 21 N.W.2d 607, 221 Minn. 240.

75. Cal.—American Trust Co. v. Fitzmaurice, 280 P.2d 545, 131 C. A.2d 382.

Ga.—Cooper v. Simmons, 177 S.E. 263, 50 Ga.App. 130—Grimes v. Murray, 92 S.E. 1007, 20 Ga.App. 264.

Ill.—See Born v. Schrieber, 199 Ill. App. 101.

Mass.—Boston Safe Deposit & Trust Co. v. Bacon, 118 N.E. 906, 229 Mass. 585.

Mo.—Tillman v. City of Carthage, 247 S.W. 992, 297 Mo. 74.

N.J.—Jersey Discount Co. v. Ætna Ins. Co., 17 A.2d 784, 126 N.J.Law 106.

Pa.—Commonwealth v. O'Donnell, Com.Pl., 27 North.Co. 52.

Tex.—O'Brien v. First State Bank & Trust Co. of Taylor, Civ.App., 241 S.W. 556.

Vt.—Houghton v. Grimes, 151 A. 642, 103 Vt. 54—Capital Garage Co. v. Powell, 122 A. 423, 97 Vt. 204, petition dismissed 123 A. 200, 97 Vt. 328—Heffion v. Cashman, 103 A. 1023, 92 Vt. 323.

Wis.—Paulsen v. Gundersen, 260 N. W. 448—Pawlak v. Pelkey, 167 N. W. 427, 167 Wis. 367.

4 C.J. p 847 note 12.

76. Ala.—Mallory S. S. Co. v. Druhan, 84 So. 874, 17 Ala.App. 365.

Cal.—Basye v. Craft's Golden State Shows, 111 P.2d 746, 43 C.A.2d 782—Creighton v. Creighton, 43 P. 2d 1104, 6 C.A.2d 270.

Conn.—Williams v. Perrotta, 111 A. 843, 95 Conn. 529.

Ind.—Ross v. Griswold, 128 N.E. 933, 75 Ind.App. 182.

Mass.—Starks v. O'Hara, 165 N.E. 127, 266 Mass. 310.

Minn.—Young v. Yeates, 201 N.W. 421, 161 Minn. 278.

N.H.—Eames v. Southern New Hampshire Hydro-Electric Corporation, 159 A. 128, 85 N.H. 379—Duncan v. Derry Electric Co., 127 A. 700, 81 N.H. 398—Dunklee v. Prior, 116 A. 138, 80 N.H. 270—Pope v. Boston & M. R. R., 104 A. 403, 79 N.H. 52.

N.J.—National Spun Silk Co. v. Peerless Silk Mills Corporation, 116 A. 711, 97 N.J.Law 190.

N.D.—Geier v. Tjaden, 74 N.W.2d 361.

Tenn.—Continental Casualty Co. v. Nashville & American Trust Co., 61 S.W.2d 461, 166 Tenn. 342.

Wash.—Wade v. City of Tacoma, 230 P. 99, 131 Wash. 245—Inashima v. Wardall, 224 P. 379, 128 Wash. 617.

Wis.—Lambrecht v. Holsaple, 160 N. W. 168, 164 Wis. 465.

4 C.J. p 847 note 13.

Agency

(1) The decision of a trial court on a preliminary question of agency, with respect to admissibility of his declarations in evidence, is ordinarily not reviewable.

Vt.—Ellie J. Gomez & Co. v. Hartwell, 122 A. 461, 97 Vt. 147.

(2) Where the son of defendant had nothing to do with the drilling of the well after the contract was signed by defendant, what was said by plaintiff's agent to him thereafter as to the time of its completion was incompetent to bind defendant, unless the son was agent for him, it being for the judge to decide, as a preliminary matter, whether agency was made out sufficiently, and his decision will not be disturbed, unless clearly wrong.

Mass.—Gray v. Currier, 147 N.E. 567, 252 Mass. 78.

Cause of action

In action against executors for amount of mortgage indebtedness, assumed by testator under deed conveying mortgaged land, located in Florida, to him, competency of evidence offered to establish cause of action is question for trial court, if it appears at trial that defendants are not liable to plaintiff under substantive law of such state.

Mass.—Alropa Corp. v. Bloom, 42 N. E.2d 269, 311 Mass. 442.

Competency of author of statement

The question whether one who had been committed to an insane asylum and not yet discharged had recovered his mental faculties when he made a statement offered in evidence against him was one of fact for the trial court to determine.

Tex.—West Lumber Co. v. Henderson, Civ.App., 238 S.W. 710, modified on other grounds, Com.App., 252 S.W. 1044.

Opinion evidence

Whether opinion evidence should be received is primarily an issue to be passed on by the trial court, the question in the appellate court being whether a reasonable man could find as the trial judge did.

Vt.—Gardner v. Commercial Mach. Co., 111 A. 317, 79 N.H. 452—Ray-

of the trial court will be upheld where there is evidence to sustain its findings,[77] although conflicting,[78] or unless the findings are manifestly against the weight of the evidence[79] or clearly erroneous,[80] or founded on an error of law,[81] or unless the trial court has palpably abused its discretion.[82]

This rule has been applied in respect of questions of fact relating to the competency of a witness to testify as an expert,[83] the competency of a nonex-

mond v. Sheldon's Estate, 104 A. 106, 92 Vt. 396.

Refusal to reopen the case for the introduction of additional evidence on the ground that justice did not require a consideration of the proffered evidence is not subject to review on exceptions, the question being one of fact for the trial court.

N.H.—Manchester Amusement Co. v. Conn, 119 A. 69, 80 N.H. 455.

Similarity of conditions

(1) Whether there was such similarity of conditions as to make evidence of a prior accident of assistance to jury is for the trial justice.

Conn.—Wilkins v. G. Fox & Co., 7 A.2d 434, 125 Conn. 738.

N.H.—Lovett v. Manchester St. Ry., 159 A. 132, 85 N.H. 345.

(2) However, it has also been held that where insurer denied liability on ground that death of insured was result of suicide and not accidental, and beneficiary sought to introduce evidence of certain tests tending to show that insured could not have fired the gun himself, appellate court on review, was required to determine whether the conditions under which the tests were made were so similar in all essential particulars to those originally existing that the results thereof would have probative force.

Ill.—Downing v. Metropolitan Life Ins. Co., 41 N.E.2d 297, 314 Ill. App. 222.

Statutory exception

Under Pub St.1901, c 224 § 17, relating to evidence admissible on transactions with deceased persons, the ruling as to excluding plaintiff's testimony, including the proposition that it did not clearly appear that an injustice would be done thereby, may be excepted to and revised.

N.H.—Gosselin v. Griffin, 111 A. 854, 79 N.H. 510.

77. Ala.—Mallory S. S. Co. v. Druhal, 84 So. 874, 17 Ala.App. 365.
Cal.—Waring v. Pitcher, 27 P.2d 397, 135 C.A. 493.
Ga.—Dorminy v. Russell, 186 S.E. 679, 182 Ga. 635.
Ind.—Ross v. Griswold, 128 N.E. 933, 75 Ind.App. 182.
Mass.—Arena v. John P. Squire Co., 73 N.E.2d 836, 321 Mass. 423.
Minn.—Young v. Yeates, 201 N.W. 421, 161 Minn. 278.
N.H.—Ricker v. Mathews, 53 A.2d 196, 94 N.H. 313, 171 A.L.R. 296—Eames v. Southern New Hampshire Hydro-Electric Corp., 159 A. 128, 85 N.H. 379—Duncan v. Derry Electric Co., 127 A. 700, 81 N.H. 398—Morrison v. Noone, 103 A. 309, 78 N.H. 549.
N.J.—Schnoor v. Palisades Realty & Amusement Co., 172 A. 43, 112 N.J.Law 506—Farrell v. New Jersey Power & Light Co., 170 A. 25, 111 N.J.Law 526—Holden v. Rolff, 166 A. 201, 110 N.J.Law 499—In re Morris & Cummings Dredging Co., 119 A. 308, 96 N.J.Law 248.
Barenson v. Zaritsky, 167 A. 671, 11 N.J.Misc. 530—Fitzhugh v. Petruzzo, 137 A. 817, 5 N.J.Misc. 669.
N.Y.—Masoco v. Schaaf, 254 N.Y.S. 439, 234 App.Div. 181.
N.C.—State v. Cofer, 172 S.E. 176, 205 N.C. 653—Nance v. Merchants' Fertilizer & Phosphate Co., 158 S.E. 486, 200 N.C. 702.
Or.—City of La Grande v. Rumelhart, 246 P. 707, 118 Or. 166.
Vt.—Davis v. Raymond, 152 A. 806, 103 Vt. 195—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215.
4 C.J. p 848 note 27.

78. Colo.—Donley v. Bailey, 110 P. 65, 48 Colo. 373.
Conn.—Shuchat v. Town of Stratford, 7 A.2d 387, 125 Conn. 566.

79. Wis.—Kressen v. Chicago & N. W. Ry. Co., 215 N.W. 908, 194 Wis. 480.
4 C.J. p 848 note 29.

80. Mass.—Kelley v. Jordan Marsh Co., 179 N.E. 299, 278 Mass. 101—Boutlier v. City of Malden, 116 N. E. 251, 226 Mass. 479, Ann.Cas. 1918C 910.
N.C.—Rangely v. Harris, 81 S.E. 346, 165 N.C. 358.
Vt.—Leblanc v. Deslandes, 90 A.2d 802, 117 Vt. 248—Capital Garage Co. v. Powell, 122 A. 423, 97 Vt. 204, petition dismissed 123 A. 200, 97 Vt. 328.
4 C.J. p 848 note 30.

Clear and manifest error

Conn.—Shuchat v. Town of Stratford, 7 A.2d 387, 125 Conn. 566—Kryger v. Panaszy, 195 A. 795, 123 Conn. 353.

81. Mass.—Cummings v. Moore, 25 N.E.2d 221, 305 Mass. 105—Kelley v. Jordan Marsh Co., 179 N.E. 299, 278 Mass. 101—Old Silver Beach Corp. v. Town of Falmouth, 165 N. E. 1, 266 Mass. 224.
N.J.—Farrell v. New Jersey Power & Light Co., 170 A. 25, 111 N.J. Law 525.
N.C.—Rangely v. Harris, 81 S.E. 346, 165 N.C. 358.
Vt.—Leblanc v. Deslandes, 90 A.2d 802, 117 Vt. 248.

82. See supra § 1604.

83. Cal.—Johnson Trade v. Frimmersdorf, 224 P.2d 771, 100 C.A. 2d 719—Johnson v. Western Air Express Corp., 114 P.2d 688, 45 C. A.2d 614—Krogh Mfg. Co. v. Churchill, 191 P. 74, 47 C.A. 785.
Colo.—City and County of Denver v. Lyttle, 103 P.2d 1, 106 Colo. 157.
Fla.—Fred Howland, Inc., v. Morris, 196 So. 472, 143 Fla. 189, 128 A.L. R. 1013—Foster v. Thornton, 170 So. 459, 125 Fla. 699.
Iowa.—Martin v. Bankers' Life Co. of Des Moines, 250 N.W. 220, 216 Iowa 1022.
Me.—Hunter v. Totman, 80 A.2d 401, 146 Me. 259.
Mass.—Mazukna v. Powers, 130 N.E. 2d 579, 333 Mass. 331—Rubin v. Town of Arlington, 99 N.E.2d 30, 327 Mass. 382—Sacks v. McKane, 183 N.E. 140, 281 Mass. 11—Old Silver Beach Corporation v. Town of Falmouth, 165 N.E. 1, 266 Mass. 224—Boutlier v. City of Malden, 116 N.E. 251, 226 Mass. 479, Ann. Cas.1918C 910.
Minn.—Albert Lea Ice & Fuel Co. v. U. S. Fire Ins. Co., 58 N.W.2d 614, 239 Minn. 198—Koenigs v. Thome, 31 N.W.2d 534, 226 Minn. 14.
N.H.—Eames v. Southern New Hampshire Hydro-Electric Corporation, 159 A. 128, 85 N.H. 379—Morrison v. Noone, 103 A. 309, 78 N.H. 549.
N.J.—Appeal of City of Newark, 117 A.2d 156, 37 N.J.Super. 175.
State Highway Com'r v. National Fireproofing Corp., 22 A.2d 268, 127 N.J.Law 346—Chmiel v. Yatsko, 13 A.2d 219, 124 N.J.Law 508—Maisto v. Maisto, 8 A.2d 810, 123 N.J.Law 401, affirmed 12 A.2d 890, 124 N.J.Law 565—Schnoor v. Palisades Realty & Amusement Co., 172 A. 43, 112 N.J.Law 506—Farrell v. New Jersey Power & Light Co., 170 A. 25, 111 N.J.Law 526—Holden v. Rolff, 166 A. 201, 110 N. J.Law 499—Perth Amboy Dry Dock Co. v. Crawford, 135 A. 897, 103 N.J.Law 440—In re Morris & Cummings Dredging Co., 119 A. 308, 96 N.J.Law 248.
Barenson v. Zaritsky, 167 A. 671, 11 N.J.Misc. 530—Fitzhugh v. Petruzzo, 137 A. 817, 5 N.J.Misc. 669.
N.Y.—Masocco v. Schaaf, 254 N.Y.S. 439, 234 App.Div. 181.
N.C.—Hunt v. Wooten, 76 S.E.2d 326, 238 N.C. 42—State v. Cofer, 172 S. E. 176, 205 N.C. 653—Nance v. Merchants' Fertilizer & Phosphate

pert witness to testify as to the mental condition of a person,[84] the competency of a child to testify as a witness,[85] or whether a witness is incompetent to testify on the ground of interest.[86] It has also been applied to the court's determination as to whether a witness' testimony is hearsay,[87] whether evidence is admissible as part of the gestæ,[88] whether evidence is admissible as a dying declaration,[88.5] whether a statement is privileged,[89] whether there was such doubtful proof of the genuineness of a signature as to authorize a resort to comparison of the handwriting,[90] whether an exhibit was identified sufficiently or properly preserved,[91] whether evidence should be excluded on the ground of remoteness,[92] whether or not a statement of a party is an offer of compromise or settlement,[93] whether an experiment has a tendency to aid rather than to confuse the jury in the determination of an issue,[94] whether a witness' recollection has been refreshed by a memorandum used by him,[95] whether a sufficient foundation has been laid for the introduction of certain evidence,[96] such as photographs,

Co., 158 S.E. 486, 200 N.C. 702—Rangely v. Harris, 81 S.E. 346, 165 N.C. 358.

Or.—City of La Grande v. Rumelhart, 246 P. 707, 118 Or. 166.

Utah.—Battle Creek Bread Wrapping Mach. Co. v. Paramount Baking Co., 39 P.2d 323, 88 Utah 67.

Vt.—Teitle v. London & Lancashire Ins. Co., 73 A.2d 300, 116 Vt. 228—Purington v. Newton, 49 A.2d 98, 114 Vt. 490—Macauley v. Hyde, 42 A.2d 482, 114 Vt. 198—Labounty v. Lafleur, 32 A.2d 124, 113 Vt. 226—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215.

4 C.J. p 847 note 14.

Expert opinion may be so unreasonable because the grounds upon which it rests are unreasonable as to make it an error of law for the court to base its decision upon the opinion.

Conn.—Driscoll v. Jewell Belting Co., 114 A. 109, 96 Conn. 295.

84. Ala.—Johnston v. Johnston, 57 So. 450, 174 Ala. 220.

Wis.—Hempton v. State, 86 N.W. 596, 111 Wis. 127.

85. Kan.—Devine v. Heckman, 245 P. 1037, 121 Kan. 22.

N.H.—Goy v. Director General of Railroads, 111 A. 855, 79 N.H. 512.

N.J.—Hare v. Pennell, 117 A.2d 637, 37 N.J.Super. 558.

Carlotz v. Gavin, 42 A.2d 461, 133 N.J.Law 61.

4 C.J. p 847 note 16.

86. N.H.—Chagnon v. Perkins, 189 A. 351, 88 N.H. 362—Wright v. Davis, 57 A. 335, 72 N.H. 448.

87. Ark.—Bank of Midland v. Harris, 170 S.W. 67, 114 Ark. 344, Ann. Cas.1916B 1255.

4 C.J. p 847 note 18.

Appellate court could not conjecture that a witness' knowledge was founded upon hearsay testimony, where the witness testified that he had knowledge.

N.J.—Giovinazzi v. Serra, 149 A. 117, 8 N.J.Misc. 120.

Conspiracy

Statements by third person to witness concerning litigant are admissible only if a conspiracy existed between third person and litigant and third person's statements were made during course of conspiracy, existence of which conspiracy is a preliminary question of fact to be determined by trial judge whose decision is conclusive unless record shows error of law with respect to preliminary inquiry.

Mass.—Runels v. Lowell Sun Co., 62 N.E.2d 121, 318 Mass. 466.

88. Minn.—Noesen v. Minneapolis, St. P. & S. S. M. Ry. Co., 283 N.W. 246, 204 Minn. 233.

S.D.—Hjermstad v. Petroleum Carriers, 53 N.W.2d 839, 74 S.D. 406.

Tex.—Federal Life Ins. Co. v. Herring, Civ.App., 269 S.W. 255, affirmed Herring v. Federal Life Ins. Co., Com.App., 280 S.W. 742.

Wis.—Davis v. Fay, 61 N.W.2d 885, 265 Wis. 426—Kressin v. Chicago & N. W. Ry. Co., 215 N.W. 908, 194 Wis. 480.

4 C.J. p 847 note 19.

88.5 Mo.—Johnson v. Southern Ry. Co., 175 S.W.2d 802, 351 Mo. 1110.

89. Cal.—Holm v. Superior Court In and For City and County of San Francisco, 267 P.2d 1025, 42 C.2d 500, rehearing denied 268 P.2d 722, 42 C.2d 500.

4 C.J. p 847 note 22.

90. Mass.—Davis v. Meenan, 169 N. E. 145, 270 Mass. 313.

4 C.J. p 848 note 23.

Verity of standard

Decision of the trial judge that a writing offered as a standard of comparison is the handwriting of the purported writer will not be disturbed unless obviously wrong.

Mass.—Taylor-Wharton Iron & Steel Co. v. Earnshaw, 156 N.E. 855, 259 Mass. 554.

91. Ark.—Coca-Cola Bottling Co. v. Hill, 90 S.W.2d 210, 192 Ark. 154.

92. N.H.—Merchants Mut. Casualty Co. v. Smith, 17 A.2d 88, 91 N.H. 204—Duncan v. Derry Electric Co., 127 A. 700, 81 N.H. 398.

Vt.—Miller v. Belville, 126 A. 590, 98 Vt. 243.

4 C.J. p 848 note 24.

93. Me.—Lyle v. Bangor & A. R. Co., 110 A.2d 584, 150 Me. 327—Hunter v. Totman, 80 A.2d 401, 146 Me. 259.

Mass.—Calvin Hosmer, Stolte Co. v. Paramount Cone Co., Mass., 189 N. E. 192, 289 Mass. 278.

4 C.J. p 848 note 25.

94. N.H.—Healey v. Bartlett, 59 A. 617, 73 N.H. 110, 6 Ann.Cas. 413.

95. Conn.—Neff v. Neff, 114 A. 126, 96 Conn. 273.

96. Ariz.—Broderick v. Coppinger, 14 P.2d 714, 40 Ariz. 524.

Cal.—Ducat v. Goldner, 175 P.2d 914, 77 C.A.2d 332—Egan v. Bishop, 47 P.2d 500, 8 C.A.2d 119.

Mass.—Kelley v. Jordan Marsh Co., 179 N.E. 299, 278 Mass. 101—McGrath v. Fash, 139 N.E. 303, 244 Mass. 327.

Minn.—Schoonover v. Prudential Ins. Co. of America, 245 N.W. 476, 187 Minn. 343—Brodsky v. Brodsky, 215 N.W. 181, 172 Minn. 250—Kline v. Byram, 214 N.W. 890, 172 Minn. 284.

Records made and kept in the usual course of business being admissible in evidence, the sufficiency of foundation for their admission is for the trial court's determination.

Mass.—McGaffigan v. Kennedy, 18 N. E.2d 344, 302 Mass. 12.

Minn.—Schoonover v. Prudential Ins. Co. of America, 245 N.W. 476, 187 Minn. 343.

N.H.—Williams v. Williams, 182 A. 172, 87 N.H. 430—Lebrun v. Boston & M. R. R., 142 A. 128, 83 N.H. 293.

Impeachment evidence

Ohio.—Kunkel v. Cincinnati St. Ry. Co., 80 N.E.2d 442, 82 Ohio App. 341.

Testimony of deceased or absent witness

(1) Whether a sufficient predicate was laid for the introduction of testimony of absent witnesses given on a former trial of the case was primarily for trial judge.

Ala.—Liverpool & London & Globe Ins. Co. v. Dickinson, 13 So.2d 570, 244 Ala. 381.

(2) Determination of question whether interest and motive existed for cross-examination at former trial of witness since deceased so as to render admissible such witness' testimony in subsequent action involving same issue is for trial court on

models, maps, sketches,[97] or letters,[97.5] or for the admission of secondary evidence.[98]

On the other hand, the determination of a preliminary question of fact on which depends the competency of witnesses or the admissibility of evidence must be set aside where it is clearly shown to be erroneous in matter of law and prejudicial to appellant,[99] where there is no evidence to support it,[1] or where it is against the evidence.[2] It has also been held that the decision of the trial judge as to the qualification of a witness as an expert is reviewable on appeal where all of the evidence on such issue is contained in the bill of exceptions,[3] or where the facts on which the decision of the question depended were undisputed so that the question became one of law.[3.5] Also, in some jurisdictions the determination of whether proof of the loss or destruction of a written instrument is sufficient to render secondary evidence of the contents admissible is reviewable.[3.10]

Procedure in admission. The action of the court in permitting a witness to testify in rebuttal, relating as it does to matters of procedure, is final on appeal as against the objection that such testimony was not in rebuttal.[4]

§ 1645. Credibility of Witnesses

As a general rule the reviewing court will not pass on the credibility of witnesses.

The appellate court will not pass on the credibility of witnesses[5] which is a question solely for the de-

inspection of record of former trial, but ruling is subject to review where it appears to have been erroneous or founded on error in law.
Vt.—Proulx v. Parrow, 56 A.2d 623, 115 Vt. 232.

97. Cal.—City of Oakland v. Wheeler, 168 P. 23, 34 C.A. 442.
Me.—Penley v. Teague & Harlow Co., 140 A. 374, 126 Me. 583.
Okl.—Provident Life & Accident Ins. Co. of Chattanooga, Tenn., v. Everett, 61 P.2d 679, 177 Okl. 588.
Vt.—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107—Massari v. Bolognani, 162 A. 364, 104 Vt. 474—Dent v. Bellows Falls & S. R. St. Ry. Co., 116 A. 83, 95 Vt. 523.
4 C.J. p 847 note 21.

97.5 Cal.—Chaplin v. Sullivan, 155 P.2d 368, 67 C.A.2d 728.
Ohio.—Sullivan v. Sullivan, 31 N.E. 2d 165, 66 Ohio App. 315.

98. Ala.—J. R. Watkins Co. v. Goggans, 5 So.2d 472, 242 Ala. 222—Agee v. Messer-Moore Ins. & Real Estate Co., 51 So. 829, 165 Ala. 291.
Cal.—Wolf v. Donahue, 273 P. 547, 206 C. 213.
Hausen v. Goldman, 267 P.2d 852, 124 C.A.2d 25—Cotton v. Hudson, 110 P.2d 70, 42 C.A.2d 812—White v. White, 102 P.2d 432, 39 C.A.2d 57—Waring v. Pitcher, 27 P.2d 397, 135 C.A. 493.
Colo.—Schwalbe v. Postle, 249 P. 495, 80 Colo. 1.
Idaho.—Marshall-Wells Co. v. Kramlich, 267 P. 611, 46 Idaho 355.
Ind.—Kanouse v. Ballard, 145 N.E. 441, 82 Ind.App. 164.
N.Y.—Bromley v. Molinar, 39 N.Y.S. 2d 424, 179 Misc. 713.
Harmon v. Matthews, 27 N.Y.S. 2d 656.
N.C.—McMahan v. Carolina Spruce Co., 105 S.E. 439, 180 N.C. 636.
Okl.—Choctaw Lumber Co. v. Waldock, 190 P. 866, 78 Okl. 232—Marker v. Gillam, 154 P. 351, 54 Okl. 766.
Pa.—In re Greggerson's Estate, 25 A. 2d 711, 344 Pa. 498—Adamczuk v. Holloway, 13 A.2d 2, 338 Pa. 263.
Tenn.—Tennessee Barium Corp. v. Williams, 133 S.W.2d 1015, 23 Tenn. App. 398.
4 C.J. p 847 note 20.

Sufficiency of notice to produce a written instrument is a preliminary fact question for the trial court, whose determination will not be disturbed unless improper and injury is shown.
Miss.—Ætna Life Ins. Co. v. Thomas, 144 So. 50, 166 Miss. 53, suggestion of error overruled 146 So. 134, 166 Miss. 53.

99. Colo.—Germania L. Ins. Co. v. Ross-Lewin, 51 P. 488, 24 Colo. 43, 65 Am.S.R. 215.

1. Vt.—Ellie J. Gomez & Co. v. Hartwell, 122 A. 461, 97 Vt. 147.
4 C.J. p 848 note 33.

2. Vt.—Ellie J. Gomez & Co. v. Hartwell, supra.
4 C.J. p 848 note 34.

3. Mass.—Shaw v. Keown & McEvoy, 137 N.E. 258, 243 Mass. 221.

3.5 Mass.—Martin v. Boston, etc., R. Co., 91 N.E. 159, 205 Mass. 16.

3.10 Tex.—Massie v. Hutcheson, Civ. App., 296 S.W. 939.

Loss or destruction of deed
The trial court's determination of whether proof of a deed's loss or destruction is sufficient to render secondary evidence of the contents admissible is reviewable, particularly in respect of the court's discretion in determining whether or not a deed was destroyed or lost accidentally or innocently or destroyed with fraudulent intent or design.
Mass.—Massie v. Hutcheson, supra.

4. N.H.—Reynolds v. Maine Mfg. Co., 128 A. 329, 81 N.H. 421.

5. Ala.—Birmingham Elec. Co. v. Linn, 34 So.2d 715, 33 Ala.App. 486.
Ariz.—Haas v. Morrow, 97 P.2d 204, 54 Ariz. 455.
Ark.—Portman v. State ex rel. Wood, 162 S.W.2d 67, 204 Ark. 349—State Highway Commission v. Jelks, 159 S.W.2d 465, 203 Ark. 878—Lloyd v. James, 128 S.W.2d 1019, 198 Ark. 255—Williams v. Dawson, 46 S.W.2d 634, 185 Ark. 1190—St. Paul Fire & Marine Ins. Co. v. McElvaney, 300 S.W. 448, 175 Ark. 1170.
Cal.—In re Russell's Estate, 210 P. 249, 189 C. 759.
Bolen v. Parks, App., 308 P.2d 521—Butler v. Holman, App., 303 P.2d 573—Olson v. Watson, 300 P. 2d 35, 143 C.A.2d 343—Jones v. Shears, 299 P.2d 986, 143 C.A.2d 360—Cucuk v. Payne, 296 P.2d 7, 140 C.A.2d 881—Mast v. State Bd. of Optometry, 293 P.2d 148, 139 C.A. 2d 78—Rathburn v. Rathburn, 292 P.2d 274, 138 C.A.2d 568—Sturm v. Sturm, 291 P.2d 527, 138 C.A.2d 25—Linehan v. Linehan, 285 P.2d 326, 134 C.A.2d 250—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Lauder v. Wright Inv. Co., 271 P.2d 970, 126 C.A.2d 146—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Olcese v. Davis, 268 P.2d 175, 124 C.A.2d 58—Rousseau v. Hurtado, 265 P.2d 580, 122 C.A.2d 705, certiorari denied 75 S.Ct. 64, 348 U.S. 843, 99 L.Ed. 664, rehearing denied 75 S.Ct. 209, 348 U.S. 890, 99 L.Ed. 700—Sukiasian v. Shakarian, 252 P.2d 956, 115 C.A.2d 798—Lobdell v. Miller, 250 P.2d 357, 114 C.A.2d 328—Moran v. Bromley, 246 P.2d 1001, 112 C.A.2d 520—Kilstrom v. Bronnenberg, 242 P. 2d 65, 110 C.A.2d 62—Bazzoli v. Nance's Sanitarium, 240 P.2d 672, 109 C.A.2d 232—West v. Stainback, 240 P.2d 366, 108 C.A.2d 806—Nellis v. Massey, 239 P.2d 509, 108 C. A.2d 724—Raich v. Schwartz, 237 P.2d 68, 107 C.A.2d 364—Karas v. Karas, 236 P.2d 415, 107 C.A.2d 135—Hanna v. O'Connor, 236 P.2d 181, 106 C.A.2d 760—Ona v. Reachi, 233 P.2d 949, 105 C.A.2d 758—Lipton v. Johansen, 233 P.2d 648, 105 C.A. 2d 363—Maganini v. Quinn, 221 P. 2d 241, 99 C.A.2d 1—Constantine v.

City of Sunnyvale, 204 P.2d 922, 91 C.A.2d 278—Stewart v. Kaplan, 202 P.2d 1061, 90 C.A.2d 453—Stark v. Yellow Cab Co., 202 P.2d 802, 90 C.A.2d 217—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925—Nichols v. Mitchell, 197 P.2d 550, 82 C.A.2d 598—Foshee v. Wolters, 195 P.2d 930, 86 C.A.2d 766—Balasco v. Chick, 192 P.2d 76, 84 C.A.2d 802—Universal Ins. Co. v. Manhattan Motor Line, 186 P.2d 437, 82 C.A.2d 425—Holmes v. Southern Cal. Edison Co., 177 P.2d 82, 78 C.A.2d 43—People v. One 1940 Chrysler Engine No. C-28-10132, 175 P.2d 585, 77 C.A.2d 306—Tomas v. Vaughn, 146 P.2d 499, 63 C.A.2d 188—Nichols v. Southern Pac. Co., 136 P.2d 332, 58 C.A.2d 91—Shannon v. Thomas, 134 P.2d 522, 57 C.A.2d 187—Kalkruth v. Resort Properties, 134 P.2d 513, 57 C.A.2d 146—George v. Soares, 128 P.2d 377, 54 C.A.2d 29—Mirich v. Balsinger, 127 P.2d 639, 53 C.A.2d 103—Eastman v. Atchison, T. & S. F. Ry. Co., 125 P.2d 564, 51 C.A.2d 653—Kersten v. Young, 125 P.2d 501, 52 C.A.2d 1—Brown v. Oxtoby, 114 P.2d 622, 45 C.A.2d 702—In re Braue's Estate, 114 P.2d 386, 45 C.A.2d 502—Smith v. Smith, 109 P.2d 739, 42 C.A.2d 652—Taylor v. Industrial Accident Commission, 100 P.2d 511, 38 C.A.2d 75—Feldmeier v. Mortgage Securities of Santa Barbara, 93 P.2d 593, 34 C.A.2d 201—Darr v. Clevelin Realty Corporation, 92 P.2d 475, 33 C.A.2d 500—Jack v. Wong Shee, 92 P.2d 449, 33 C.A.2d 402—Knecht v. Lombardo, 91 P.2d 917, 33 C.A.2d 447—Hughes v. Quackenbush, 37 P.2d 99, 1 C.A.2d 349—Meddaugh v. Stroup, 21 P.2d 138, 131 C.A. 304—Gray v. Craig, 15 P.2d 762, 127 C.A. 374, rehearing denied 16 P.2d 798, 127 C.A. 374, and certiorari denied 53 S.Ct. 688, 289 U.S. 744, 77 L.Ed. 1491—Siskin v. Dembroff, 9 P.2d 908, 121 C.A. 730—Pugh v. Dawson, 273 P. 39, 95 C.A. 505—Melrose v. Cooley, 196 P. 105, 50 C.A. 768—Sellars v. Southern Pac. Co., 166 P. 599, 33 C.A. 701—Alden v. Mayfield, 166 P. 382, 33 C.A. 724.

Bartholomew v. Heyman Properties, 281 P.2d 921, 132 C.A.2d Supp. 889—Burnett v. Reyes, 256 P.2d 91, 118 C.A.2d Supp. 878—Mastrofini v. Swanson, 250 P.2d 764, 114 C.A.2d Supp. 848.

Colo.—Seifried v. Mosher, 268 P.2d 411, 129 Colo. 156.

Conn.—Broderick v. Shea, 124 A.2d 229, 143 Conn. 590—Ball v. Town of Branford, 110 A.2d 459, 142 Conn. 13—Hartford-Connecticut Trust Co. v. Putnam Phalanx, 88 A.2d 393, 138 Conn. 695—Hanson v. Carroll, 52 A.2d 700, 133 Conn. 505.

Fla.—Mese v. Dade Tire Co., 95 So. 2d 587.

Idaho.—Crenshaw v. Crenshaw, 199 P.2d 264, 68 Idaho 470.

Ill.—Schneiderman v. Interstate Transit Lines, 69 N.E.2d 293, 394 Ill. 569—Phillabaum v. Lake Erie & W. R. Co., 145 N.E. 806, 315 Ill. 131.

Manion v. Chicago, R. I. & P. Ry. Co., 138 N.E.2d 98, 12 Ill.App. 2d 1—McNurney v. Pointer, 124 N.E.2d 595, 5 Ill.App.2d 237—In re Niehaus' Estate, 94 N.E.2d 525, 341 Ill.App. 454—Rubin v. Wolfson, 71 N.E.2d 923, 330 Ill.App. 612.

Ind.—Kraus v. Kraus, 132 N.E.2d 608—Robertson Bros. Dept. Store v. Stanley, 90 N.E.2d 809, 228 Ind. 372—Indiana Ins. Co. v. Handlon, 24 N.E.2d 1003, 216 Ind. 442—Keltner v. Patton, 185 N.E. 270, 204 Ind. 550—Indiana Harbor Belt R. Co. v. Public Service Commission of Indiana, 121 N.E. 540, 187 Ind. 660—Clark v. Clark, 118 N.E. 123, 187 Ind. 25.

Pohlman v. Perry, 103 N.E.2d 911, 122 Ind.App. 222—Wagner v. Sober, Inc., 86 N.E.2d 719, 119 Ind. App. 617, rehearing denied 87 N.E.2d 888, 119 Ind.App. 617—Goldberg v. Britton, 84 N.E.2d 201, 119 Ind.App. 90—Lincoln Nat. Life Ins. Co. v. Sobel, 37 N.E.2d 698, 110 Ind.App. 331—Action v. Lowery, 34 N.E.2d 972, 109 Ind.App. 581—Pennsylvania R. Co. v. Lytle, 34 N.E.2d 939, 109 Ind.App. 318—Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Parker, 34 N.E.2d 190, 110 Ind.App. 1, petition overruled 37 N.E.2d 5, 110 Ind.App. 1.

Iowa.—Miller v. King, 39 N.W.2d 307, 240 Iowa 1336—C. G. Morris & Co. v. Saar, 191 N.W. 793—McElfresh v. McElfresh, 173 N.W. 259, 186 Iowa 994—Blake v. City of Bedford, 151 N.W. 74, 170 Iowa 128.

Kan.—In re Good's Estate, 266 P.2d 719, 175 Kan. 576—Marshall v. Anderson, 216 P.2d 812, 169 Kan. 41, opinion adhered to 220 P.2d 187, 169 Kan. 534—Copenhaver v. Sykes, 160 P.2d 235, 160 Kan. 238—Mann v. Staatz, 133 P.2d 103, 156 Kan. 275—State ex rel. Kansas State Board of Medical Registration and Examination v. Martin, 130 P.2d 601, 155 Kan. 801.

Ky.—Kentucky & W. Va. Power Co. v. Kilburn, 201 S.W.2d 896, 304 Ky. 635—Goff v. Blackburn, 299 S.W. 164, 221 Ky. 550.

La.—Hello World Broadcasting Corporation v. International Broadcasting Corporation, App., 164 So. 447—Howell v. Titus, 7 La.App. 228—Cole v. Zeigler, 1 La.App. 127.

Md.—State v. Washington, B. & A. Electric R. Co., 131 A. 822, 149 Md. 443—Jones Holloware Co. v. Hawkins, 97 A. 865, 128 Md. 160.

Mass.—Holton v. Boston Elevated Ry. Co., 21 N.E.2d 251, 303 Mass. 242—Commissioner of Banks v. Cosmopolitan Trust Co., 148 N.E. 609, 253 Mass. 205, 41 A.L.R. 658—Eaton v. Globe & Rutgers Fire Ins. Co., 116 N.E. 536, 227 Mass. 354—Vahey v. Boston Elevated Ry. Co., 111 N.E. 40, 222 Mass. 374.

Mich.—Porter v. East Jordan Realty Co., 177 N.W. 987, 210 Mich. 398, 11 A.L.R. 963—McKay v. Detroit United Ry., 161 N.W. 820, 195 Mich. 88.

Minn.—Carpenter v. Birkholm, 65 N.W.2d 250, 242 Minn. 379—Van Tassel v. Patterson, 50 N.W.2d 113, 235 Minn. 152—Williams v. Jayne, 299 N.W. 853, 210 Minn. 594.

Mo.—Hebenheimer v. City of St. Louis, 189 S.W. 1180, 269 Mo. 92.

Vosburg v. Smith, App., 272 S.W.2d 297—Colley v. Cox, App., 266 S.W.2d 778—Webb v. Dillard, App., 198 S.W.2d 235—Algrecht v. Piper, App., 164 S.W.2d 105—Van Houten v. Kansas City Public Service Co., 122 S.W.2d 868, 233 Mo.App. 423—Martin v. Bulgin, App., 111 S.W.2d 963—Krueger v. Krueger, App., 107 S.W.2d 967—People's Bank of Holcomb v. Pritchard, App., 79 S.W.2d 781—Hunter v. Hays, App., 36 S.W.2d 957—Reed v. Blue Jay Coal & Mining Co., App., 287 S.W. 852—Sooby v. Postal Telegraph-Cable Co., App., 217 S.W. 877.

Mont.—Dockins v. Dockins, 266 P. 398, 82 Mont. 218—Anderson v. Missoula St. Ry. Co., 167 P. 841, 54 Mont. 83.

Neb.—Albers v. Ziegler, 37 N.W.2d 590, 151 Neb. 408.

N.J.—Wilkinson v. Walsh, 178 A. 721, 115 N.J.Law 243—Stickle v. Vreeland, 123 A. 753, 99 N.J.Law 468—Martin v. De Young, 122 A. 813, 99 N.J.Law 284—Osbun v. De Young, 122 A. 809, 99 N.J.Law 204—Costello v. Director General of Railroads, 112 A. 861, 95 N.J.Law 538.

N.M.—Pavletich v. Pavletich, 174 P.2d 826, 50 N.M. 224.

N.Y.—In re McMillan's Estate, 112 N.E. 573, 218 N.Y. 64.

Ohio.—**Corpus Juris Secundum quoted at length in** In re Lieberman, 125 N.E.2d 328, 330, 163 Ohio St. 35.

Poet v. Rosinski, App., 102 N.E.2d 19, appeal dismissed In re Poet, 99 N.E.2d 320, 155 Ohio St. 510—Russell v. Penn Mut. Life Ins. Co., 41 N.E.2d 251, 70 Ohio App. 113.

Okl.—National Life & Accident Ins. Co. v. Robertson, 68 P.2d 796, 180 Okl. 265—Sabin v. Midland Savings & Loan Co., 61 P.2d 1091, 178 Okl. 52—Beams v. Step, 244 P. 775, 116 Okl. 291.

Or.—Sexton v. Kelly, 200 P.2d 950, 185 Or. 1—Porter Const. Co. v. Berry, 298 P. 179, 136 Or. 80—Franconi v. Graham, 174 P. 548, 89 Or. 619.

termination of the jury.[6] Further, the appellate court will not pass on the credibility of witnesses

Pa.—Commonwealth ex rel. Krotser v. Fasnacht, 106 A.2d 884, 176 Pa. Super. 279—Rosine v. Gerlach, 98 A.2d 436, 173 Pa.Super. 240—Welsh v. May, 98 A.2d 426, 173 Pa. Super. 618—Appeal of Borough of Irwin, 90 A.2d 365, 171 Pa.Super. 256—Kirby v. Carnegie-Illinois Steel Corp., 21 A.2d 123, 145 Pa. Super. 121—In re Mays' Estate, 15 A.2d 569, 141 Pa.Super. 479—Botko v. National Slovak Soc. of U. S. A., 186 A. 758, 122 Pa.Super. 603—Engle v. Stayman, 86 Pa.Super. 529.

R.I.—Goodwill Advertising Co. v. Elmwood Amusement Corp., 133 A. 2d 644—Kennedy v. New England Bakery, 95 A.2d 454, 80 R.I. 224—Passarelli v. Boragini, 68 A.2d 74, 76 R.I. 60—Kent v. Draper Soap Co., 63 A.2d 571, 75 R.I. 30.

S.C.—Gibbs v. Atlantic Coast Line R. Co., 70 S.E.2d 238, 221 S.C. 243—Flowers v. South Carolina State Highway Dept., 34 S.E.2d 769, 206 S.C. 454—Riser v. Industrial Life & Health Ins. Co., 184 S.E. 148, 179 S.C. 437—Fowler v. New York Life Ins. Co., 91 S.E. 1043, 107 S.C. 21—Bell v. Bell, 87 S.E. 540, 103 S.C. 95.

S.D.—Chicago, B. & Q. R. Co. v. Wheaton, 80 N.W.2d 868—Johnson v. Olson, 26 N.W.2d 132, 71 S.D. 486.

Tenn.—McAmis v. Carlisle, App., 300 S.W.2d 59—Radnor Water Co. v. Draughon, 89 S.W.2d 186, 19 Tenn.App. 371.

Tex.—Gurley v. Pilgrim Oil Co., Com.App., 285 S.W. 283.

Prater v. Holbrook, Civ.App., 251 S.W.2d 547—Dyer v. Sterett, Civ. App., 248 S.W.2d 234, error refused no reversible error—Burrage v. Red Arrow Taxi Co., Civ.App., 123 S.W.2d 731—Hughes v. Jones, Civ. App., 94 S.W.2d 534—Jenness v. Seidl, Civ.App., 35 S.W.2d 269—Jackson v. Willis, Civ.App., 23 S.W.2d 827—Texas & N. O. R. Co. v. Jones, Civ.App., 201 S.W. 1085—Missouri, K. & T. Ry. Co. of Texas v. Storey, Civ.App., 195 S. W. 350.

Utah.—Gittens v. Lundberg, 284 P.2d 1115, 3 Utah 2d 392—Jensen v. Logan City, 83 P.2d 311, 96 Utah 53, reheard 88 P.2d 459, 96 Utah 522—Colemere v. Layton, 22 P.2d 218, 82 Utah 142—Peek v. Bailey, 195 P. 206, 57 Utah 546.

Vt.—Stetson v. Davidson, 126 A.2d 921—Anton v. Fidelity & Cas. Co. of N. Y., 91 A.2d 697, 117 Vt. 300—Melen v. McLaughlin, 176 A. 297, 107 Vt. 111.

Va.—Virginian Ry. Co. v. Bell, 87 S.E. 570, 118 Va. 492.

Wash.—Johnson v. Harvey, 268 P.2d 662, 44 Wash.2d 455—Campbell v. Campbell, 263 P. 957, 146 Wash. 478.

Wis.—Ruby v. Farmers Mut. Auto. Ins. Co., 79 N.W.2d 644, 274 Wis. 158—In re Eannelli's Estate, 63 N. W.2d 108, 266 Wis. 257—Timm v. State, 54 N.W.2d 46, 262 Wis. 162.

Wyo.—Eblen v. Eblen, 234 P.2d 434, 68 Wyo. 353—Long v. Forbes, 136 P.2d 242, 58 Wyo. 533—**Corpus Juris Secundum cited in** Corson v. Wilson, 108 P.2d 260, 262, 56 Wyo. 218—Quealy Land & Livestock Co. v. George, 66 P.2d 1045, 51 Wyo. 93—Wettlin v. Jones, 234 P. 515, 32 Wyo. 446, rehearing denied 236 P. 246, 247, 32 Wyo. 446.

Court of appeals will not consider personal qualities of witnesses or parties to the transaction, except in so far as they become matters of proof presented in the record.

Ky.—Thomas v. Siddens, 88 S.W. 2d 277, 261 Ky. 613.

Personal beliefs or feelings of members of appellate court may not be projected into case as to witnesses' credibility.

Ind.—Hinds v. McNair, 129 N.E.2d 553.

6. Ala.—Sorsby v. Wilkerson, 89 So. 657, 206 Ala. 190—Locomotive Engineers' Mut. Life & Accident Ins. Ass'n v. Hughes, 80 So. 850, 202 Ala. 466—Windham v. Hydrick, 72 So. 403, 197 Ala. 125.

William E. Harden, Inc., v. Harden, 197 So. 94, 29 Ala.App. 411—National Life & Accident Ins. Co. v. Cummings, 172 So. 353, 27 Ala. App. 355—Louisville & N. R. Co. v. Ganter, 77 So. 917, 16 Ala.App. 323.

Ariz.—Tom Reed Gold Mines Co. v. Brady, 117 P.2d 484, 58 Ariz. 44—Sovereign Camp, W. O. W., v. Sandoval, 54 P.2d 557, 47 Ariz. 167—Medlock v. Florian, 28 P.2d 621, 42 Ariz. 558—**Corpus Juris cited in** Inter-State Fidelity Building & Loan Ass'n v. Hollis, 17 P. 2d 1101, 1102, 41 Ariz. 295.

Ark.—Parker v. Jones, 253 S.W.2d 342, 221 Ark. 378—Lanier v. Trammell, 180 S.W.2d 818, 207 Ark. 372—Home Ins. Co. of New York v. Williams, 145 S.W.2d 743, 201 Ark. 460—Arkansas Motor Coaches v. Williams, 116 S.W.2d 585, 196 Ark. 48—Kansas City Southern Ry. Co. v. Larsen, 114 S.W.2d 1081, 195 Ark. 808, certiorari denied 59 S. Ct. 82, 305 U.S. 621, 83 L.Ed. 397—Jonesboro Coca-Cola Bottling Co. v. Holt, 110 S.W.2d 535, 194 Ark. 992—Missouri Pac. R. Co. v. Huffman, 108 S.W.2d 479, 194 Ark. 456—Standard Oil Co. of Louisiana v. Hodges, 103 S.W.2d 927, 193 Ark. 899—Kroger Grocery & Baking Co. v. Melton, 102 S.W.2d 859, 193 Ark. 494—Metropolitan Life Ins. Co. v. Pope, 97 S.W.2d 915, 193 Ark. 139—Reserve Loan Life Ins. Co. v. Compton, 82 S.W.2d 537, 190 Ark. 1039—Browne v. Dugan, 74 S.W. 2d 640—Chicago, R. I. & P. Ry. Co. v. Britt, 74 S.W.2d 398—Arkansas Power & Light Co. v. Kennedy, 70 S.W.2d 506—Greenlee v. Rolfe, 60 S.W.2d 568, 187 Ark. 1162—Mitchell v. Hammett, 60 S.W. 2d 559, 187 Ark. 1163—Missouri Pac. R. Co. v. Rodden, 59 S.W.2d 599, 187 Ark. 321—New Home Sewing Mach. Co. v. Westmoreland, 38 S.W.2d 314, 183 Ark. 769—St. Louis-San Francisco Ry. Co. v. Bishop, 33 S.W.2d 383, 182 Ark. 763, certiorari denied 51 S.Ct. 647, 283 U.S. 854, 75 L.Ed. 1461—Norton v. Burnett, 29 S.W.2d 683, 181 Ark. 1132—Federal Compress & Warehouse Co. v. Parrott, 28 S.W. 2d 728, 181 Ark. 946—Gaster v. Hicks, 25 S.W.2d 760, 181 Ark. 299—St. Louis-San Francisco Ry. Co. v. Burford, 22 S.W.2d 378, 180 Ark. 562—Laflin v. Brooks, 22 S.W.2d 169, 180 Ark. 1167—Arkansas Drilling Co. v. Gross, 17 S.W.2d 889, 179 Ark. 631—Missouri Pac. R. Co. v. Juneau, 10 S. W.2d 867, 178 Ark. 417—Southwestern Bell Telephone Co. v. McAdoo, 10 S.W.2d 503, 178 Ark. 111—Stroop v. Black Springs Lumber Co., 9 S.W.2d 558, 177 Ark. 1195—Bankers' Fire Ins. Co. v. Williams, 5 S.W.2d 916, 176 Ark. 1188—Palatine Ins. Co. v. McFadden, 280 S.W. 629, 170 Ark. 1194—Globe & Rutgers Fire Ins. Co. v. Horner, 265 S.W. 351, 166 Ark. 102—Home Life & Accident Co. v. Scheuer, 258 S.W. 648, 162 Ark. 600—Gates v. Ritchie, 258 S.W. 397, 162 Ark. 484—Fowler v. Hammett, 258 S.W. 392, 162 Ark. 307—Farmers' Club Co. v. Emmerson Mercantile Co., 241 S.W. 372, 153 Ark. 614—Currie v. Nation, 228 S.W. 388, 148 Ark. 654—Yazoo & M. V. R. Co. v. Hill, 216 S.W. 1054, 141 Ark. 378—Moore v. Thomas, 200 S.W. 790, 132 Ark. 97—St. Louis Southwestern Ry. Co. v. Aydelott, 194 S.W. 873, 128 Ark. 479—Shearer v. Farmers' & Merchants' Bank, 182 S.W. 262, 121 Ark. 599—Kimbro v. Wells, 180 S.W. 342, 121 Ark. 45.

Cal.—Pfingsten v. Westenhaver, 244 P.2d 395, 39 C.2d 12—Peri v. Los Angeles Junction Ry., 137 P.2d 441, 22 C.2d 111—Bellandi v. Park Sanitarium Ass'n, 6 P.2d 508, 214 C. 472—Bennett v. Chanslor & Lyon Co., 266 P. 803, 204 C. 101.

De Felice v. Tabor, App., 308 P. 2d 377—New v. New, App., 306 P. 2d 987—Smith v. American Sur. of N. Y., App., 306 P.2d 489—In re Harvey's Estate, 299 P.2d 712, 143 C.A.2d 368—Boness v. Richardson Mineral Springs, 296 P.2d 581, 141

C.A.2d 251—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Shiya v. Reviea, 264 P.2d 190, 122 C.A.2d 155—Whiteside v. United Theatres, 235 P.2d 261, 106 C.A.2d 471—Shapiro v. Equitable Life Assur. Soc. of U. S., 172 P.2d 725, 76 C.A.2d 75—Ferrari v. Mambretti, 136 P.2d 326, 58 C.A.2d 318—Metz v. Southern Pac. Co., 124 P.2d 670, 51 C.A.2d 260—Hopkins v. Pacific Electric Ry. Co., App., 118 P.2d 872—Harmon v. San Joaquin Light & Power Corporation, 98 P.2d 1064, 37 C.A.2d 169—Crabtree v. Western Pac. R. Co., 90 P.2d 835, 33 C.A.2d 35—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054—Moeller v. Market Street Ry. Co., 81 P.2d 475, 27 C.A.2d 562—Manuel v. Calistoga Vineyard Co., 61 P.2d 1204, 17 C.A.2d 377—Gackstetter v. Market St. Ry. Co., 52 P.2d 998, 10 C.A.2d 713—Stuart v. Preston, 38 P.2d 155, 2 C.A.2d 310, rehearing denied 39 P.2d 441, 2 C.A.2d 310—Manwell v. Board of Home Missions and Church Extension of Methodist Episcopal Church, 10 P.2d 787, 122 C.A. 599—King v. Wilson, 2 P.2d 833, 116 C.A. 191—Winning v. Board of Dental Examiners, 300 P. 866, 114 C.A. 658—Yoshie Maeda v. Sierra Nevada Life & Casualty Co., 292 P. 987, 109 C.A. 271—Lemka v. Nauman, 284 P. 1062, 103 C.A. 757—Brandes v. Rucker-Fuller Desk Co., 282 P. 1009, 102 C.A. 221—Perry v. A. Paladini, Inc., 264 P. 580, 89 C.A. 275—Gaster v. Hinkley, 258 P. 988, 85 C.A. 55—Whitnack v. Ellsworthy, 218 P. 631, 63 C.A. 411—Korkman v. Hanlon Dry Dock & Shipbuilding Co., 199 P. 880, 53 C.A. 147.

Colo.—Edwards v. Quackenbush, 149 P.2d 809, 112 Colo. 337—Klipfel v. Bowes, 120 P.2d 959, 108 Colo. 583—Hollenbeck v. People, for Use of Churchill, 37 P.2d 387, 95 Colo. 493—Aspergren v. Younker, 223 P. 62, 74 Colo. 511—Baldwin v. Scott, 173 P. 716, 65 Colo. 53.

Conn.—Crane v. Manchester, 123 A.2d 752, 143 Conn. 498—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204—Sanderson v. Bob's Coaster Corp., 54 A.2d 270, 133 Conn. 677—Koops v. Gregg, 32 A.2d 653, 130 Conn. 185—Caldwell v. Danforth, 200 A. 577, 124 Conn. 468—Flynn v. Flynn, 136 A. 383, 105 Conn. 628—Phillips v. Winchester, 122 A. 792, 100 Conn. 12.

Fla.—Povia v. Melvin, 66 So.2d 494—Wilson v. Maddox, 121 So. 805, 97 Fla. 489.

Ga.—Edwards v. Watkins, 184 S.E. 437, 52 Ga.App. 684.

Idaho.—Gordon v. Sunshine Mining Co., 252 P. 870, 43 Idaho 439.

Ill.—Hinchliffe v. Wenig Teaming Co., 113 N.E. 707, 274 Ill. 417.

Ignjatovic v. Ignjatovic, 134 N.E.2d 629, 10 Ill.App.2d 336—Dixon v. Montgomery Ward & Co., 132 N.E.2d 20, 8 Ill.App.2d 552—Griggas v. Clauson, 128 N.E.2d 363, 6 Ill.App.2d 412—Isenhart v. Seibert, 127 N.E.2d 469, 6 Ill.App.2d 220—Bradshaw v. City of East St. Louis, 122 N.E.2d 43, 3 Ill.App.2d 300—Getzendaner v. Erbstein, 118 N.E.2d 64, 2 Ill.App.2d 45—Allen v. Chicago Transit Authority, 114 N.E.2d 468, 351 Ill.App. 194—De Mont v. Mertes, 113 N.E.2d 487, 350 Ill.App. 590—Wolters v. Venhaus, 112 N.E.2d 747, 350 Ill.App. 322—Haberer v. Moorman Mfg. Co., 94 N.E.2d 611, 341 Ill.App. 521—Wilson v. Terminal R. Ass'n of St. Louis, 77 N.E.2d 429, 333 Ill.App. 256—Rehnbloom v. City of Berwyn, 68 N.E.2d 479, 329 Ill.App. 327—Howard v. Baltimore & O. C. T. R. Co., 63 N.E.2d 774, 327 Ill.App. 83—Antosz v. Goss Motors, 35 N.E.2d 688, 311 Ill.App. 254, appeal dismissed 39 N.E.2d 322, 378 Ill. 608—Goad v. Obernagel, 23 N.E.2d 800, 302 Ill.App. 370—Seybold v. Zimmerman, 13 N.E.2d 675, 294 Ill.App. 138—Green v. Ryan, 242 Ill.App. 466—Hayden v. Miller, 205 Ill.App. 147.

Ind.—Hinds v. McNair, 129 N.E.2d 553—F. W. Woolworth Co. v. Moore, 48 N.E.2d 644, 221 Ind. 490.

Gates v. Petri, App., 143 N.E.2d 293—Federal Life Ins. Co. v. Relias, 185 N.E. 319, 99 Ind.App. 115—Baltimore & O. R. Co. v. Faubion, 170 N.E. 94, 92 Ind.App. 592—Indiana Board & Filler Co. v. White, 124 N.E. 767, 72 Ind.App. 616—Patton v. Cooper, 119 N.E. 31, 67 Ind.App. 664—Daywitt v. Daywitt, 114 N.E. 694, 63 Ind.App. 444.

Iowa.—Ross v. Automobile Ins. Co. of Hartford, Conn., 292 N.W. 813, 228 Iowa 668—Reid v. Brooke, 266 N.W. 477, 221 Iowa 808—Babendure v. Baker, 253 N.W. 834, 218 Iowa 31—Butler & Henry v. Taylor, 192 N.W. 851—Sheehy v. Nordyke, 188 N.W. 882—Schmidt v. Schumacher, 179 N.W. 846, 190 Iowa 1—Wiley v. Fleck, 178 N.W. 410, 189 Iowa 614—Eason v. Des Moines Electric Co., 175 N.W. 945, 188 Iowa 43—Noyes v. Des Moines Club, 170 N.W. 461, 186 Iowa 378, 3 A.L.R. 605—In re Pauly's Estate, 156 N.W. 355, 174 Iowa 122.

Kan.—Stephenson v. Wallis, 311 P.2d 355, 181 Kan. 254—Smith v. Wichita Transp. Corp., 293 P.2d 242, 179 Kan. 8—Atkins v. Morton, 191 P.2d 909, 164 Kan. 626—Killough v. Swift & Co. Fertilizer Works, 114 P.2d 831, 154 Kan. 113—Fulton v. Farmers' Nat. Bank, 253 P. 561, 123 Kan. 1.

Ky.—Cooperative Seed & Farm Supply Service v. White, 243 S.W.2d 663—Roland v. Murray, 239 S.W.2d 967—Kentucky & West Virginia Power Co. v. Elliott, 220 S.W.2d 964, 310 Ky. 496—Cross v. Clark, 213 S.W.2d 443, 308 Ky. 18—Glass v. Bryant, 194 S.W.2d 390, 302 Ky. 226—Silver Fleet Motor Express v. Casey, 155 S.W.2d 868, 288 Ky. 233—Walden v. Adams, 100 S.W.2d 827, 267 Ky. 8—Breslin v. Blair, 60 S.W.2d 337, 249 Ky. 178—Allender Co. v. Browning's Adm'x, 46 S.W.2d 116, 242 Ky. 273—Federal Union Ins. Co. v. Griffin, 45 S.W.2d 8, 241 Ky. 771—Gayheart v. Smith, 42 S.W.2d 877, 240 Ky. 596—Rader v. Goe, 39 S.W.2d 486, 239 Ky. 288—Edwards v. Druien, 32 S.W.2d 411, 235 Ky. 835—Sharp v. Rawls, 28 S.W.2d 493, 234 Ky. 438—Keen v. Osborne, 215 S.W. 798, 185 Ky. 647—Hill's Adm'x v. North America Acc. Ins. Co., 215 S.W. 428, 185 Ky. 520, 186 Ky. 273—Louisville & N. R. Co. v. Mink, 201 S.W. 16, 179 Ky. 625.

La.—Selser v. Revol, 93 So. 675, 152 La. 447—Continental Bank & Trust Co. v. Sacks, 92 So. 747, 152 La. 97—Breen v. Walters, 91 So. 50, 150 La. 578.

Norman v. State, App., 69 So.2d 120, reversed on other grounds 80 So.2d 858, 227 La. 904—Hardie v. Allen, App., 50 So.2d 74—Crutti v. New Orleans Public Service, 4 La. App. 472.

Me.—Fotter v. Butler, 75 A.2d 160, 145 Me. 266—Gagnon v. Beane, 168 A. 809, 132 Me. 189—Shaw v. McKenzie, 160 A. 911, 131 Me. 248—Richards v. Maine Cent. R. Co., 133 A. 911, 125 Me. 347—American Mut. Liability Ins. Co. v. Witham, 127 A. 719, 124 Me. 240.

Md.—Industrial Service Co. v. State, to Use of Bryant, 6 A.2d 372, 176 Md. 625—Peninsula Produce Exch. v. American Ry. Express Co., 128 A. 403, 147 Md. 424—Baltimore & O. R. Co. v. Branson, 98 A. 225, 128 Md. 678, reversed on other grounds 37 S.Ct. 244, 242 U.S. 623, 61 L.Ed. 534.

Mass.—Sawyer v. Pulsifer, 161 N.E. 596, 263 Mass. 500—Hoffman v. Liberty Motors Co., 125 N.E. 845, 234 Mass. 437—Riley v. Brusendorff, 115 N.E. 311, 226 Mass. 310.

Mich.—Bramer v. Ames, 61 N.W.2d 160, 338 Mich. 226—Anderson v. Conterio, 5 N.W.2d 572, 303 Mich. 75—Haszczyn v. Detroit Creamery Co., 275 N.W. 211, 281 Mich. 467—Houseman v. Karicofe, 167 N.W. 964, 201 Mich. 420—Faulkner v. Parish Mfg. Co., 166 N.W. 954, 201 Mich. 182.

Minn.—Shastid v. Shue, 77 N.W.2d 273, 247 Minn. 314—Sorlie v. Thomas, 51 N.W.2d 592, 235 Minn. 509—Shockman v. Union Transfer Co., 19 N.W.2d 812, 220 Minn. 334—Faulkner v. Middleton, 188 So. 565, 186 Miss. 355, suggestion of error overruled 190 So. 910, 186 Miss. 355.

Mo.—Thompson v. Healzer Cartage Co., 287 S.W.2d 791—Mullis v.

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which is question for the trial court in cases tried | without a jury,[7] or a master, auditor, or referee

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before whom the witness testified.[8] The reason is | that the judge or the jury who see and hear the

Co. v. Thorp Springs Christian College, Civ.App., 41 S.W.2d 482—Mueller v. Bobbitt, Civ.App., 41 S.W.2d 466—Walker County Lumber Co. v. Sweet, Civ.App., 40 S.W.2d 225—Kretzschmar v. Christensen, Civ.App., 37 S.W.2d 844—Boykin v. Black, Civ.App., 31 S.W.2d 501—Lawson-Richards, Inc. v. Blalock Lumber Co., Civ.App., 30 S.W.2d 797—Kelsey v. Myers, Civ.App., 29 S.W.2d 855—National Grand Lodge, Loyal Friends of America Benev. Ass'n v. Wilson, Civ.App., 6 S.W.2d 206—Miller v. Flynn, Civ.App., 279 S.W. 879—Gurley v. Pilgrim Oil Co., Civ. App., 275 S.W. 295, affirmed, Com. App., 285 S.W. 283—Owen Refining Co. v. Schweitzer, Civ.App., 275 S.W. 232—Stripling v. Southwestern Bell Telephone Co., Civ.App., 256 S.W. 630—Farias v. Salas, Civ. App., 244 S.W. 1115—Richardson v. McCloskey, Civ.App., 228 S.W. 323, dismissed for want of jurisdiction—Campbell v. Turley, Civ.App., 224 S.W. 528—Williford v. Simpson, Civ.App., 217 S.W. 191—Spivey v. Hooks, Civ.App., 216 S.W. 486—San Jacinto Life Ins. Co. v. Boyd, Civ.App., 214 S.W. 482—Currie v. Glasscock County, Civ.App., 212 S.W. 533—Brannan v. First State Bank of Comanche, Civ.App., 211 S.W. 945—Texas Lumber & Loan Co. v. Green Bros., Civ.App., 211 S.W. 352—Kennedy v. Kennedy, Civ.App., 210 S.W. 581, error refused—Texas Lumber & Loan Co. v. First Nat. Bank, Civ.App., 209 S.W. 811—Burkitt v. Moxley, Civ. App., 206 S.W. 373—Brown v. First State Bank of Weimar, Civ.App., 199 S.W. 895, dismissed for want of jurisdiction—Rossetti v. Benavides, Civ.App., 195 S.W. 208, error refused—Turner v. Ontiberos, Civ. App., 193 S.W. 1089, error refused—Boerger v. Vandegrift, Civ. App., 188 S.W. 948—Derry v. Harty, Civ.App., 187 S.W. 343—Emery v. Barfield, Civ.App., 183 S.W. 386.

Utah.—Chamberlain v. Montgomery, 261 P.2d 942, 1 Utah 2d 31—Decorso v. Booth, 91 P.2d 449, 97 Utah 163—Harper v. Tri-State Motors, 58 P.2d 18, 90 Utah 212, amended on other grounds and rehearing denied 63 P.2d 1056, 90 Utah 226—Wood v. Akridge, 36 P. 2d 804, 84 Utah 468—Wasatch Livestock Loan Co. v. Lewis & Sharp, 35 P.2d 835, 84 Utah 347—Colemere v. Layton, 22 P.2d 218, 82 Utah 142—Brooks v. Scoville, 17 P.2d 218, 81 Utah 163—Flinders v. Hunter, 208 P. 526, 60 Utah 314, 28 A.L.R. 886—James v. Jensen, 167 P. 827, 50 Utah 485.

Vt.—City of Montpelier v. Bennett, 125 A.2d 779, 119 Vt. 228—Town of Randolph v. Ketchum, 94 A.2d 410, 117 Vt. 468—Hayden v. Lavallee, 75 A.2d 690, 116 Vt. 340—Jeffords v. Poor, 55 A.2d 605, 115 Vt. 147—Guibord v. Guibord, 44 A.2d 158, 114 Vt. 278—Turner v. Bragg, 35 A.2d 356, 113 Vt. 393—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107—Putnam v. Woodard, 10 A.2d 186, 111 Vt. 39—Utley v. Town School Dist. of Woodbury, 9 A.2d 117, 110 Vt. 522—Crawford v. Bromley, 182 A. 180, 108 Vt. 51—Right Printing Co. v. Stevens, 179 A. 209, 107 Vt. 359—White River Chair Co. v. Connecticut River Power Co. of New Hampshire, 162 A. 859, 105 Vt. 24.

Va.—Williams v. Williams, 66 S.E.2d 500, 192 Va. 787—Sutton v. Menges, 44 S.E.2d 414, 186 Va. 805—Cross v. Grimes, 37 S.E.2d 1, 184 Va. 926—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203—W. T. Grant Co. v. Owens, 141 S.E. 860, 149 Va. 906—James River & Kanawha Power Co. v. Old Dominion Iron & Steel Corporation, 122 S.E. 344, 138 Va. 461.

Wash.—Workman v. Bryce, 310 P.2d 228—Carson v. Mills, 304 P.2d 712—Unosawa v. Wright, 270 P.2d 975, 44 Wash.2d 777—McDonald v. Wockner, 267 P.2d 97, 44 Wash.2d 261—Foster v. Nelson, 241 P.2d 923, 40 Wash.2d 924—Dragos v. Piese, 236 P.2d 1037, 39 Wash.2d 521—In re Martinson's Estate, 190 P.2d 96, 29 Wash.2d 912—Anderson v. Kurrell, 182 P.2d 1, 28 Wash. 2d 227—Brown v. Mead, 154 P.2d 283, 22 Wash.2d 60—Davis v. Browne, 147 P.2d 263, 20 Wash.2d 219—Daloia v. Boyd, 133 P.2d 950, 16 Wash.2d 439—McKevitt v. Golden Age Breweries, 126 P.2d 1077, 14 Wash.2d 50—Fasce v. Clark, 121 P.2d 357, 12 Wash.2d 800—Speckert v. Bunker Hill Arizona Mining Co., 106 P.2d 602, 6 Wash.2d 39, 131 A.L.R. 125—Lofthus v. Cumming, 87 P.2d 283, 198 Wash. 115—L. J. Dowell, Inc., v. United Pacific Casualty Ins. Co., 72 P.2d 296, 191 Wash. 666—Barovic v. Constanti, 48 P.2d 257, 183 Wash. 60—Sheffield Co. v. R. Hoe & Co., 23 P.2d 876, 173 Wash. 489—Fireman's Fund Ins. Co. v. Smith, 16 P.2d 202, 170 Wash. 207—Byrne v. Paulson, 287 P. 891, 156 Wash. 634—Westfield v. Marble, 173 P. 1090, 103 Wash. 213—Scouse v. Alaska & Yakima Inv. Co., 161 P. 1189, 94 Wash. 250, reheard 166 P. 777, 97 Wash. 701—Stewart v. Stewart, 147 P. 1157, 85 Wash. 202.

Wis.—In re Fuller's Estate, 81 N.W.2d 64, 275 Wis. 1—Simhiser v. Farber, 71 N.W.2d 412, 270 Wis. 420—Pelikan v. Russell, 69 N.W. 2d 567, 269 Wis. 364—Herzing v. Hess, 58 N.W.2d 430, 263 Wis. 617—Kaestner v. Preferred Acc. Ins. Co., 42 N.W.2d 260, 257 Wis. 6—Schield v. Forbes, 41 N.W.2d 297, 256 Wis. 366—In re Hatten's Estate, 288 N.W. 278, 233 Wis. 199—In re Kalskop's Will, 282 N.W. 587, 229 Wis. 356, 119 A.L.R. 1099—In re Draper's Estate, 203 N.W. 358, 187 Wis. 342.

Wyo.—Hench v. Robinson, 291 P.2d 417—Nick v. John, 157 P.2d 563, 61 Wyo. 290—Wallis v. Nauman, 157 P.2d 285, 61 Wyo. 231—Laverents v. Gattis, 150 P.2d 867, 60 Wyo. 285—Horton v. Colbron, 150 P.2d 315, 60 Wyo. 263—State v. Luckuck, 10 P.2d 968, 44 Wyo. 218—Gould v. James, 299 P. 275, 43 Wyo. 161—Boyle v. Mountford, 270 P. 537, 39 Wyo. 141—Farmers' State Bank of Riverton v. Northern Trust Co., 270 P. 163, 39 Wyo. 46.

4 C.J. p 848 note 36.

Although the case was triable de novo in the appellate court, the credibility of a party as a witness was for the trial judge.

Mo.—Yardley v. Caruthersville Motor Co., 35 S.W.2d 971, 225 Mo.App. 321.

Motion for new trial

(1) It is peculiar province of trial judge, on motion for new trial, to pass on credibility of witnesses.

Cal.—Ona v. Reachi, 233 P.2d 949, 105 C.A.2d 758.

Mo.—Thompson v. Healzer Cartage Co., 287 S.W.2d 791.

Calvin v. Lane, App., 297 S.W.2d 572—Kasten v. St. Louis Public Service Co., App., 231 S.W.2d 252.

(2) Credibility of the testimony of jurors as to their misunderstanding of certain evidence, and as to the action of the court stenographer in reading testimony to them, as well as the testimony of the stenographer, was for the trial judge on the hearing of a motion for new trial.

Tex.—Rogers v. Ilseng, Civ.App., 255 S.W. 787.

8. Ill.—Kasbohm v. Miller, 9 N.E.2d 216, 366 Ill. 484.

Gottschalk Const. Co. v. Carlson, 253 Ill.App. 520.

Mass.—Rudnick v. Greenfield, 179 N.E. 591, 278 Mass. 138—Heftye v. Kelley, 160 N.E. 426, 262 Mass. 573.

Mo.—Neville v. D'Oench, 34 S.W.2d 491, 327 Mo. 34.

N.Y.—In re Berardini's Will, 264 N.Y.S. 479, 238 App.Div. 433, affirmed In re Berardini, 189 N.E. 730, 263 N.Y. 627.

Pa.—Caplan v. Caplan, 102 A.2d 198, 174 Pa.Super. 583—Weber v. Weber, 39 A.2d 144, 156 Pa.Super. 6.

In re Jones' Estate, 58 Pa.Dist. & Co. 595.

4 C.J. p 849 note 37.

Credibility of witnesses as a question for the chancellor see infra § 1663.

witnesses testify and who observe their demeanor and appearance on the witness stand are in a better position to determine the credibility of the witnesses than the appellate court is by reading their evidence as it appears in the record.[9]

9. McLeod v. Willard, 60 So.2d 692, 257 Ala. 672.

Ark.—May v. Alsobrook, 253 S.W.2d 29, 221 Ark. 293.

Cal.—Pores v. Purity Milk Co., 287 P.2d 169, 135 C.A.2d 305—Ogulin v. Jeffries, 263 P.2d 75, 121 C.A.2d 211—Anderson v. Torrey, 234 P.2d 142, 105 C.A.2d 671—Smythe v. Schacht, 209 P.2d 114, 93 C.A.2d 315—Wilson v. Sampson, 205 P.2d 753, 91 C.A.2d 453—Sweet v. Los Angeles Ry. Co., 179 P.2d 824, 79 C.A.2d 195—Silva v. Kavert, 292 P. 1089, 109 C.A. 386.

Colo.—Pleasant Valley & Lake Canal Co. v. Maxwell, 23 P.2d 948, 93 Colo. 73.

Conn.—Clark v. Connecticut Co., 44 A.2d 706, 132 Conn. 400.

Idaho.—McMillan v. McMillan, 245 P. 98, 42 Idaho 270.

Ill.—Arliskas v. Arliskas, 175 N.E. 6, 343 Ill. 112—Struve v. Tatge, 120 N.E. 549, 285 Ill. 103.

Lano v. Yellow Cab Co., 140 N.E. 2d 370, 12 Ill.App. 2d 555—Gagliardi v. Abrahams, 109 N.E.2d 926, 349 Ill.App. 160—Vack v. Benjamin, 108 N.E.2d 499, 348 Ill.App. 131—Hood Const. Corp. v. Clark-Randolph Property, 107 N.E.2d 37, 347 Ill.App. 432—Weisbart v. Berezin, 105 N.E.2d 814, 347 Ill.App. 13—Kohut v. Cowel, 96 N.E.2d 649, 342 Ill.App. 447—McDermott v. Morton, 96 N.E.2d 633, 342 Ill. App. 446—In re Niehaus' Estate, 94 N.E.2d 525, 341 Ill.App. 454—Handrich v. Handrich, 89 N.E.2d 191, 339 Ill.App. 151—Rafferty v. Rafferty, 85 N.E.2d 845, 337 Ill. App. 277—Schneiderman v. Interstate Transit Lines, 72 N.E.2d 705, 331 Ill.App. 143, affirmed 81 N.E. 2d 861, 401 Ill. 172—Brady v. Metropolitan Life Ins. Co., 72 N.E. 2d 629, 331 Ill.App. 114—Buehler v. Buehler, 67 N.E.2d 708, 329 Ill. 239—Humbert v. Lowden, 56 N.E. 2d 323, 323 Ill.App. 557—Schmidt v. Anderson, 21 N.E.2d 825, 301 Ill.App. 28—Eagleton v. Barnett, 210 Ill.App. 452—Skruzewski v. Rybarczyk, 210 Ill.App. 180—Kime v. Kime, 196 Ill.App. 344.

Ind.—Kraus v. Kraus, 132 N.E.2d 608—State ex rel. Roberts v. Graham, 110 N.E.2d 855, 231 Ind. 680.

Iowa.—McKey-Fansher Co. v. Rowen, 5 N.W.2d 911, 232 Iowa 660—Jorgensen v. Allied Mut. Casualty Co., 5 N.W.2d 167, 232 Iowa 156—Craig v. Welch, 2 N.W.2d 745, 231 Iowa 1009—Bates v. Zehnpfennig, 262 N.W. 141, 220 Iowa 164—Bowman-Boyer Co. v. Burgett, 192 N. W. 795, 195 Iowa 674—Goodman v. First Nat. Bank, 187 N.W. 441—Asbach v. Chicago, etc., R. Co., 53 N.W. 90, 86 Iowa 101.

Ky.—McIntosh v. Breeding, 286 S.W. 2d 914.

La.—Barlotta v. Walker, 65 So.2d 122, 223 La. 157—Strauss v. Insurance Co. of North America, 102 So. 861, 157 La. 661.

Roux v. Attardo, App., 93 So.2d 332.

Md.—Rolling Inn, Inc. v. Iula, 130 A.2d 758, 212 Md. 596—Seybolt v. Baber, 97 A.2d 907, 203 Md. 20—Bowie v. Martin, 85 A.2d 786, 199 Md. 58—Harp v. Harp, 84 A.2d 895, 198 Md. 485—Appel v. Hupfield, 84 A.2d 94, 198 Md. 374.

Mass.—Goddard v. Dupree, 76 N.E. 2d 643, 322 Mass. 247.

Mich.—In re Granville's Estate, 76 N.W.2d 827, 345 Mich. 495—Reeves v. Reeves, 55 N.W.2d 793, 335 Mich. 193—Vanden Bogert v. May, 55 N. W.2d 115, 334 Mich. 606—Burton v. Burton, 51 N.W.2d 297, 332 Mich. 326—Fractional School Dist. No. 4 of Golden Tp., Oceana County v. Hedlund, 47 N.W.2d 19, 330 Mich. 73—Hall v. Horak, 44 N.W.2d 848, 329 Mich. 16—Northwest Home Owners Ass'n v. City of Detroit, 299 N.W. 740, 298 Mich. 622—Labeikes v. Warner, 244 N.W. 146, 259 Mich. 512.

Minn.—In re Palmer's Estate, 57 N. W.2d 409, 238 Minn. 549.

Mo.—Turner v. Mitchell, 297 S.W.2d 458—Herrold v. Hart, 290 S.W.2d 49—Peine v. Sater, 289 S.W.2d 101—Capps v. Adamson, 242 S.W.2d 556, 362 Mo. 539—Williams v. Diederich, 223 S.W.2d 402, 359 Mo. 683—Bertram v. Kempster, 216 S. W.2d 494—Costello v. Moore, 211 S.W.2d 921, 357 Mo. 972—Beach v. Beach, 207 S.W.2d 481—Barlow v. Scott, 85 S.W.2d 504.

H. & H. Mfg. Co. v. Cimarron Ins. Co., App., 302 S.W.2d 39—Browder v. Milla, App., 296 S.W. 2d 502—Cook v. Bolin, App., 296 S.W.2d 181—Light v. Light, App., 296 S.W.2d 145—Stewart v. Droste, App., 294 S.W.2d 600—Atkinson v. Smothers, App., 291 S.W.2d 645—Sapp v. Garrett, App., 284 S.W.2d 49—Wood v. John Hancock Mut. Life Ins. Co., App., 241 S.W.2d 802.

Mont.—Dahlberg v. Lannen, 274 P. 151, 84 Mont. 68.

Neb.—Northwestern State Bank of Hay Springs v. Hanks, 225 N.W. 119, 118 Neb. 442.

N.H.—Hahn v. Hemenway, 72 A.2d 463, 96 N.H. 214—Employers Liability Assur. Corp. v. Sweatt, 57 A.2d 157, 95 N.H. 31.

N.J.—New Jersey Highway Authority v. J. & F. Holding Co., 123 A. 2d 25, 40 N.J.Super. 309—Turro v. Turro, 120 A.2d 52, 38 N.J.Super. 535—Dacunzo v. Edgye, 111 A.2d 88, 33 N.J.Super. 504, affirmed 117 A.2d 508, 19 N.J. 443—Pratico v. Rhodes, 108 A.2d 97, 32 N.J.Super. 178, reversed on other grounds 111 A.2d 399, 17 N.J. 328—Peterson v. Hartford Acc. & Indem. Co., 107 A.2d 668, 32 N.J.Super. 23—Fruzynski v. Radler, 93 A.2d 35, 23 N. J.Super. 274—Vezzetti v. Shields, 92 A.2d 28, 22 N.J.Super. 397—Clayton v. Jersey Central Power & Light Co., 89 A.2d 61, 19 N.J. Super. 546—Donnelly v. Donnelly, 80 A.2d 566, 13 N.J.Super. 436—Dale v. Dale, 80 A.2d 234, 13 N.J. Super. 59—Capone v. Norton, 78 A. 2d 126, 11 N.J.Super. 189, affirmed 83 A.2d 710, 8 N.J. 54—Thomas v. Hudson & Manhatten R. Co., 68 A. 2d 414, 5 N.J.Super. 61—Williams v. De Fabio, 65 A.2d 858, 3 N.J. Super. 182.

N.Y.—Smith v. Smith, 7 N.E.2d 272, 273 N.Y. 380.

Barnet v. Cannizzaro, 160 N.Y.S. 2d 329, 3 A.D.2d 745—Mercer Tube & Mfg. Co. v. American Zinc Sales Co., 17 N.Y.S.2d 132, 258 App.Div. 506, affirmed 30 N.E.2d 491, 284 N. Y. 636.

Solomon v. Solomon, 75 N.Y.S.2d 225, 191 Misc. 80—In re Burdak's Estate, 19 N.Y.S.2d 451, 173 Misc. 839.

Dominico v. Dominico, 57 N.Y.S. 2d 79—Anonymous v. Anonymous, 22 N.Y.S.2d 432.

N.D.—Little v. Burleigh County, 82 N.W.2d 603—Zimmerman v. Kitzan, 65 N.W.2d 462.

Ohio.—Ruff v. Brown, 129 N.E.2d 389, 98 Ohio App. 326.

Or.—Dakin v. Dakin, 251 P.2d 462, 197 Or. 69.

Pa.—Van Sholack v. U. S. Liability Ins. Co., 133 A.2d 509, 390 Pa. 27—Lapayowker v. Lincoln College Preparatory School, Inc., 125 A.2d 451, 386 Pa. 167—Commonwealth ex rel. Harry v. Eastridge, 97 A. 2d 350, 374 Pa. 172—Weiss v. First Nat. Bank, 184 A. 451, 321 Pa. 365.

R.I.—Vitullo v. Ambrosino, 82 A.2d 404, 78 R.I. 354—Pelkey v. Spires, 73 A.2d 773, 77 R.I. 112—Kiernan v. Brennan, 53 A.2d 926, 73 R.I. 229—Lovegrove v. Rogers, 37 A. 2d 472, 70 R.I. 83—Greene v. Rhode Island Hospital Trust Co., 197 A. 464, 60 R.I. 184—Mediros v. Arter, 129 A. 602, 47 R.I. 35.

S.C.—Twitty v. Harrison, 94 S.E.2d 879.

Tex.—Allen v. Allen, Civ.App., 284 S.W.2d 774, error dismissed—Texas Cotton Growers Ass'n v. Guffey, Civ.App., 131 S.W.2d 771, error dismissed—Galveston Truck Line

The rule has been applied where the testimony of | the witnesses was conflicting;[10] where an attempt

Corp. v. Moore, Civ.App., 107 S.W. 2d 426, error dismissed.

Utah.—Green v. Equitable Life Assur. Soc. of the U. S., 284 P.2d 695, 3 Utah 2d 375—American Scale Mfg. Co. v. Zee, 235 P.2d 361, 120 Utah 402—Reimann v. Baum, 203 P.2d 387, 115 Utah 147—Wilcox v. Cloward, 56 P.2d 1, 88 Utah 503—Zuniga v. Evans, 48 P.2d 513, 87 Utah 198.

Va.—Pretlow v. Hopkins, 30 S.E.2d 557, 182 Va. 826.

Wash.—Bosscher v. Leenders, 301 P. 2d 1080—Revier v. Revier, 292 P.2d 861, 48 Wash.2d 231—Hoyt v. Hoyt, 281 P.2d 856, 46 Wash.2d 373—In re Mikelson's Estate, 247 P.2d 540, 41 Wash.2d 97—Mertens v. Mertens, 227 P.2d 724, 38 Wash.2d 55—Forbus v. Knight, 163 P.2d 822, 24 Wash.2d 297—Tutewiler v. Shannon, 111 P.2d 215, 8 Wash.2d 23—Income Investors v. Shelton, 101 P.2d 973, 3 Wash.2d 599—Bohlke v. Wright, 93 P.2d 321, 200 Wash. 374—Oium v. Fillion, 223 P. 1060, 129 Wash. 37.

Wis.—Kies v. Hopper, 19 N.W.2d 167, 247 Wis. 208.

4 C.J. p 849 note 38.

10. Ala.—Buell v. Miller, 141 So. 223, 224 Ala. 566.

Ala.—Cousins v. Harrison, 30 So.2d 393, 33 Ala.App. 37, certiorari denied 30 So.2d 396, 249 Ala. 153.

Ariz.—Gillespie Land & Irr. Co. v. Jones, 164 P.2d 456, 63 Ariz. 535.

Ark.—St. Louis Southwestern Ry. Co. v. Holwerk, 163 S.W.2d 175, 204 Ark. 587—Arkansas Power & Light Co. v. Thompson, 120 S.W.2d 709, 196 Ark. 1012—Armour & Co. v. Rose, 36 S.W.2d 70, 183 Ark. 413.

Cal.—Williams v. General Ins. Co. of America, 63 P.2d 289, 8 C.2d 1.

Savarese v. State Farm Mut. Auto. Ins. Co., App., 310 P.2d 142—Southern California Gas Co. v. Goss, App., 308 P.2d 41—Ivancovich v. Sullivan, App., 307 P.2d 989—Donlon v. Donlon, 295 P.2d 51, 140 C.A.2d 428—Brogdon v. Graham, 242 P.2d 76, 110 C.A.2d 106—Kuhn v. Gottfried, 229 P.2d 137, 103 C.A.2d 80—Petersen v. Dynes, 228 P.2d 616, 103 C.A.2d 5—Johnson Trade v. Frimmersdorf, 224 P. 2d 771, 100 C.A.2d 719—Rakow v. Innes Co., 215 P.2d 111, 96 C.A. 2d 278—Carman v. Athearn, 175 P.2d 926, 77 C.A.2d 585—Sinnock v. Young, 142 P.2d 85, 61 C.A.2d 130—Jones v. Re-Mine Oil Co., 119 P.2d 219, 47 C.A.2d 832—Merion v. Schnitzlein, 19 P.2d 244, 129 C.A. 721—Clendenin v. Benson, 4 P.2d 616, 117 C.A. 674—Pedrow v. Federoff, 247 P. 212, 77 C.A. 164—Campbell v. Hanford, 227 P. 234, 67 C.A. 155—Bellone v. Kleinau, 201 P. 977, 54 C.A. 428—Hironymous v. Hiatt, 199 P. 850, 52 C.A. 727.

Kelly v. Kelly, 270 P.2d 947, 125 C.A.2d Supp. 892.

Colo.—Book v. Paddock, 267 P.2d 247, 129 Colo. 84—Murray v. Newmyer, 182 P. 888, 66 Colo. 459.

Fla.—Peterson v. Hancock, 1 So.2d 255, 146 Fla. 410.

Ga.—Rocker v. De Loach, 173 S.E. 709, 178 Ga. 480.

Faulkner v. Brown, 89 S.E.2d 583, 92 Ga.App. 602.

Idaho.—Sellars v. Sellars, 248 P.2d 1063, 73 Idaho 163.

Ill.—Welch v. Laux, 142 N.E.2d 752, 13 Ill.App.2d 571—Spiker v. Christeson, 140 N.E.2d 302, 12 Ill.App. 557—Veselich v. Lichtsinn, 135 N. E.2d 823, 11 Ill.App.2d 372—Rosensweig v. Karras, 96 N.E.2d 103, 342 Ill.App. 204—Handrich v. Handrich, 89 N.E.2d 191, 339 Ill.App. 151—Adams v. Elgin & Belvidere Electric Co., 204 Ill.App. 1.

Ind.—Kraus v. Kraus, 132 N.E.2d 608—Hummel v. New York Cent. R. Co., 66 N.E.2d 901, 117 Ind.App. 22—Lowman v. Lowman, 33 N.E.2d 780, 109 Ind.App. 163—Carpenter v. Carpenter, 27 N.E.2d 889, 108 Ind. App. 221.

Iowa.—Pickerell v. Griffith, 29 N.W. 2d 588, 238 Iowa 1151—Frame v. Wright, 9 N.W.2d 364, 233 Iowa 394, 147 A.L.R. 1154.

Kan.—Knoche v. Meyer Sanitary Milk Co., 280 P.2d 605, 177 Kan. 423—In re Greenleaf's Estate, 217 P.2d 275, 169 Kan. 22—Atkins v. Morton, 191 P.2d 909, 164 Kan. 626—Goldy v. Commonwealth, 159 S.W. 2d 989, 289 Ky. 613—McGraw v. Ayers, 58 S.W.2d 378, 248 Ky. 166—Edwards v. Druien, 32 S.W.2d 411, 235 Ky. 835—Bobich v. Dackow, 18 S.W.2d 280, 229 Ky. 830—Breathitt County v. Turner, 4 S.W.2d 695, 223 Ky. 727—Security Finance Co. v. A. L. Cook & Son, 3 S.W.2d 187, 223 Ky. 124—Walker v. Hester, 198 S.W. 912, 178 Ky. 342.

La.—Roux v. Attardo, App., 93 So. 2d 332—Svendson & Young Ins. Agency v. Binning, App., 48 So.2d 689—Anderson v. City of Monroe, App., 2 So.2d 499.

Mass.—Beals v. Magaw, 136 N.E. 156, 242 Mass. 328—Dennis v. Clyde, New England & Southern Lines, 118 N.E. 903, 229 Mass. 502.

Mich.—Battle Creek Food Co. v. Kirkland, 299 N.W. 167, 298 Mich. 515—Schaffner v. Clark, 281 N.W. 328, 285 Mich. 564.

Minn.—Burman v. Burman, 40 N.W. 2d 902, 230 Minn. 75—Cohen v. Steinke, 26 N.W.2d 843, 223 Minn. 292—Dittrich v. Brown County, 9 N.W.2d 510, 215 Minn. 234—McCusky v. Kuhlman, 179 N.W. 1000, 147 Minn. 460.

Mo.—Browder v. Milla, App., 296 S. W.2d 502—Clemens v. Clemens, App., 238 S.W.2d 47—White v. Foster, App., 194 S.W.2d 723—Armstrong v. Armstrong, App., 185 S. W.2d 845—Spallo v. Royal Ins. Co., Limited, of Liverpool, App., 125 S.W.2d 967—Cantor v. Insurance Co. of North America, App., 285 S.W. 803—Missouri Gas & Electric Service Co. v. Rea & Page Milling Co., 279 S.W. 727, 220 Mo.App. 1067—Gilbert v. Mississippi River & B. T. R. Co., App., 226 S.W. 263—Crain v. McKinley, App., 222 S.W. 495.

Mont.—Dockins v. Dockins, 266 P. 398, 82 Mont. 218.

N.M.—Greene v. Esquibel, 272 P.2d 330, 58 N.M. 429.

N.Y.—Flamer v. City of Yonkers, 127 N.E.2d 838, 309 N.Y. 114—Kelly v. Watson Elevator Co., 127 N.E.2d 802, 309 N.Y. 49.

Lorenzo v. Lorenzo, 50 N.Y.S.2d 191, 183 Misc. 46.

Okl.—Plumer v. Pearce, 257 P.2d 813, 208 Okl. 526—Grigg v. Federal Deposit Ins. Corp., 257 P.2d 290, 208 Okl. 419—Humphreys v. Day, 254 P.2d 996, 208 Okl. 223—Strahm v. Murry, 199 P.2d 603, 300 Okl. 640—Graff v. Holliday, 45 P.2d 1065, 172 Okl. 503—Muskogee Electric Traction Co. v. Cooper, 193 P. 39, 79 Okl. 271.

Or.—Walker v. Fireman's Fund Ins. Co., 234 P. 542, 114 Or. 545.

Pa.—Olwell v. Rapp, 181 A. 456, 119 Pa.Super. 576—Jamieson v. Pittsburgh Rys. Co., 163 A. 292, 309 Pa. 197—Dreese v. Brown, 137 A. 864, 290 Pa. 63.

Highton v. Pennsylvania R. Co., 1 A.2d 568, 132 Pa.Super. 559—Beach v. Dubifski, 85 Pa.Super. 519.

R.I.—Loughran v. DelSanto, 85 A.2d 66, 79 R.I. 150—People's Sav. Bank in Providence v. Small, 13 A.2d 814, 65 R.I. 149.

S.D.—State ex rel. Helgerson v. Riiff, 44 N.W.2d 126, 73 S.D. 467.

Tenn.—Early v. Street, 241 S.W.2d 531, 192 Tenn. 463.

City of Knoxville v. Horne, 120 S.W.2d 964, 22 Tenn.App. 192.

Tex.—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error—Etter v. Von Sternberg, Civ.App., 244 S.W.2d 321, error refused no reversible error—Bonner v. Oliver, Civ.App., 219 S. W.2d 136, error refused no reversible error—Molter v. Madden, Civ. App., 207 S.W.2d 984—Sawyer v. Bezner, Civ.App., 204 S.W.2d 19, error refused no reversible error—Wilson v. Wilson, Civ.App., 200 S. W.2d 258, affirmed in part and reversed in part on other grounds 201 S.W.2d 226, 145 Tex. 607—Mortensen v. Mortensen, Civ.App., 186 S.W.2d 297—Glenn v. Glenn, Civ.

was made to impeach a witness;[11] where the testimony of a witness contains contradictory or inconsistent statements,[12] or differs from statements

App., 183 S.W.2d 231—Cox v. City of Fort Worth, Civ.App., 102 S.W. 2d 504, error dismissed—San Antonio Public Service Co. v. Henry, Civ.App., 102 S.W.2d 479—Tabor v. Zavala County Bank, Civ.App., 90 S.W.2d 650, error dismissed—Heidenheimer v. Higginbotham-Bartlett Co., Civ.App., 53 S.W.2d 644—Perkins v. Norris, Civ.App., 25 S.W.2d 979—Wonderful Workers of the World v. Woods, Civ. App., 297 S.W. 232—St. Louis, B. & M. Ry. Co. v. Knight, Civ.App., 295 S.W. 945—Galveston, H. & S. A. Ry. Co. v. Easton, Civ.App., 257 S.W. 924—American Automobile Ins. Co. v. Struwe, Civ.App., 218 S. W. 534, error refused—Leahy v. Timon, Civ.App., 204 S.W. 1029, affirmed 215 S.W. 951, 1T0 Tex. 73 —Walter v. Rowland, Civ.App., 189 S.W. 981, error refused.

Vt.—Gomez v. Lawson, 166 A. 14, 105 Vt. 353.

Va.—Turner v. Brenner, 121 S.E. 510, 138 Va. 232.

W.Va.—Nesben v. Jackson, 109 S.E. 489, 89 W.Va. 470.

4 C.J. p 849 note 39.

Acceptance and rejection of credibility of different witnesses

(1) Trier of facts may believe testimony of one witness and disbelieve that of another or any number of others, and determination in that regard is final.

Cal.—Ideal Packing Co. v. Brice, 282 P.2d 957, 132 C.A.2d 582.

Mich.—Payne v. Dearborn Nat. Cas. Co., 43 N.W.2d 316, 328 Mich. 173.

Mo.—Dallmeyer v. Dallmeyer, 274 S. W.2d 250—Collins v. Shive, 261 S. W.2d 58.

Krueger v. Fitzpatrick, App., 229 S.W.2d 255—Fitzgerald v. Schaefer, App., 216 S.W.2d 939.

Mont.—Batchoff v. Craney, 172 P.2d 308, 119 Mont. 157.

Nev.—Carlson v. McCall, 271 P.2d 1002, 70 Nev. 437—State ex rel. Department of Highways v. Pinson, 207 P.2d 1105, 66 Nev. 227.

Pa.—Bliss v. Bliss, 75 A.2d 1, 167 Pa. Super. 252.

Utah.—Shoemaker v. Floor, 217 P.2d 382, 117 Utah 434.

(2) Where conflicting testimony of two litigants is not otherwise corroborated, the appellate court is guided by the chancellor's decision as to which witness to believe.

Ark.—Cowan v. Powell, 243 S.W.2d 373, 219 Ark. 498—Leftwich v. Cash Lumber Co., 217 S.W.2d 357, 214 Ark. 586.

(3) Reviewing court was not required to accept credibility of plaintiff's witnesses and reject credibility of defendant's witnesses because of fact that trial court, by implication, must necessarily have done this.

La.—Baker v. Travelers Ins. Co., App., 13 So.2d 758.

11. Cal.—Rench v. McMullen, 187 P. 2d 111, 82 C.A.2d 872—Hansen v. Bear Film Co., 168 P.2d 946, 28 C. A.2d 154—Matthews v. Atchison, T. & S. F. Ry. Co., 129 P.2d 435, 54 C.A.2d 549—McEwan v. Bryson, 6 P.2d 271, 119 C.A. 219—Carr v. Anderson, 288 P. 117, 105 C.A. 570.

Iowa.—Hess v. Dicks, 184 N.W. 742, 192 Iowa 378.

La.—Thoman v. Deliberto, 136 So. 904, 17 La.App. 574.

Mont.—Osnes Livestock Co. v. Warren, 62 P.2d 206, 103 Mont. 284.

N.J.—Hanrahan v. Elizabeth-Union-Hillside-Irvington Line, 167 A. 676, 11 N.J.Misc. 665.

Okl.—In re Smith's Estate, 172 P.2d 328, 197 Okl. 405.

Va.—Royal Indemnity Co. v. Hook, 157 S.E. 414, 155 Va. 956—Davenport v. Kendrick, 139 S.E. 295, 148 Va. 479.

4 C.J. p 849 note 40.

Adverse comment

Decision of trial court will not be disturbed on appeal by reason of appellants' adverse comment on respondent's witnesses.

Cal.—Cherry v. Hayden, 223 P.2d 878, 100 C.A.2d 416.

12. Ala.—Benoit Coal Mining Co. v. Moore, 109 So. 878, 215 Ala. 220.

Ark.—Missouri Pac. R. Co. v. McKamey, 171 S.W.2d 932, 205 Ark. 907—Arkansas Power & Light Co. v. Kennedy, 70 S.W.2d 506, 189 Ark. 95—Fair Store No. 32 v. Hadley Milling Co., 229 S.W. 727, 148 Ark. 209.

Cal.—Thompson v. City of Long Beach, 259 P.2d 649, 41 C.2d 235. Muller v. Barnes, 294 P.2d 505, 139 C.A.2d 847—Moore v. Ruth, 292 P.2d 939, 139 C.A.2d 70—Scott v. Staggs, 276 P.2d 605, 129 C.A.2d 54 —Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7—Postier v. Landau, 262 P.2d 565, 121 C.A.2d 98—Sukiasian v. Shakarian, 252 P. 2d 956, 115 C.A.2d 798—Shavarsh Chuchian v. Metropolitan Life Ins. Co., 230 P.2d 381, 103 C.A.2d 760 —Jordan v. O'Connor, 222 P.2d 322, 99 C.A.2d 632—Angus v. Roth, 220 P.2d 429, 98 C.A.2d 672—Trancoso v. Trancoso, 216 P.2d 172, 96 C.A.2d 797—Peterson v. Peterson, 168 P.2d 474, 74 C.A.2d 312—In re Skinner's Estate, 151 P.2d 31, 65 C.A.2d 528—Kennington v. Neff, 122 P.2d 58, 49 C.A.2d 692—Jones v. Re-Mine Oil Co., 119 P.2d 219, 47 C.A.2d 832—Hodges v. McCullom, 117 P.2d 44, 47 C.A.2d 41—Bushey v. Union Oil Co. of California, 56 P.2d 1272, 13 C.A.2d 350—Hale v. Harbor Petroleum Corporation, 33 P.2d 1039, 139 C.A. 455—Miller v. Schimming, 18 P.2d 357, 129 C.A. 171—Van Derhoof v. Chambon, 8 P.2d 925, 121 C.A. 118—Farmers' Bank of Camarillo v. Goodrich, 266 P. 550, 90 C.A. 717—Davis v. Tanner, 262 P. 1106, 88 C.A. 67—Dowd v. Joyce, 259 P. 368, 85 C.A. 377 —Pedrow v. Federoff, 247 P. 212, 77 C.A. 164—Producers' Fruit Co. of California v. Goddard, 243 P. 686, 75 C.A. 737—Correa v. Davis, 230 P. 984, 69 C.A. 180—Rudin v. Luman, 199 P. 874, 53 C.A. 212— Firth v. Southern Pac. Co., 186 P. 815, 44 C.A. 511—Adams v. Pletsch, 181 P. 391, 40 C.A. 641—Smith v. F. L. Moore Motor Truck Co., 176 P. 367, 38 C.A. 430.

Ga.—Sherman v. Stephens, 118 S.E. 567, 30 Ga.App. 509.

Ill.—Northern Trust Co. v. City of Chicago, 123 N.E.2d 330, 4 Ill.2d 432—Eleopoulos v. City of Chicago, 120 N.E.2d 555, 3 Ill.2d 247 —Wynekoop v. Wynekoop, 95 N.E. 2d 457, 407 Ill. 219.

Goodman v. Motor Products Corp., 132 N.E.2d 356, 9 Ill.App. 2d 57—McGuire v. Purcell, 129 N. E.2d 598, 7 Ill.App.2d 407—Sims v. Chicago Transit Authority, 129 N. E.2d 23, 7 Ill.App.2d 21—In re Adams' Estate, 108 N.E.2d 32, 348 Ill.App. 115—Scott v. Chicago Transit Authority, 105 N.E.2d 922, 347 Ill.App. 76.

Ind.—Kraus v. Kraus, 132 N.E.2d 608.

Wagner v. Sober, Inc., 86 N.E.2d 719, 119 Ind.App. 617, rehearing denied 87 N.E.2d 888, 119 Ind.App. 617—Hummel v. New York Cent. R. Co., 66 N.E.2d 901, 117 Ind App. 22—Fisher v. Mossman-Yarnelle Co., 13 N.E.2d 343, 105 Ind.App. 22.

Iowa.—Twohey v. Brown, 66 N.W.2d 870, 246 Iowa 114.

Kan.—Dimmock v. Ploeger, 264 P. 1044, 125 Kan. 461.

Mass.—Berman v. Coakley, 153 N.E. 463, 257 Mass. 159.

Mich.—Grimes v. King, 18 N.W.2d 870, 311 Mich. 399—Powers v. Superior Sand & Gravel Co., 206 N. W. 308, 233 Mich. 20—Emery v. Ocean Acc. Guarantee Co., 176 N. W. 566, 209 Mich. 295.

Minn.—Dittrich v. Brown County, 9 N.W.2d 510, 215 Minn. 234.

Mo.—Balch v. Whitney, 273 S.W.2d 497.

Stewart v. American Ry. Express Co., App., 18 S.W.2d 520—Bahl v. Miles, 6 S.W.2d 661, 222 Mo.App. 984—Keith v. Kansas City Rys. Co., App., 231 S.W. 1046—Joyce v. St. Paul Fire & Marine Ins. Co., App., 211 S.W. 390—Wood v. Bichler Mfg. Co., App., 208 S.W. 481.

made by him prior to the trial[13] or from testimony given by him at a former trial,[14] or is vague;[15] or where there were circumstances casting grave doubt on the veracity of the witness,[16] although not direct-

Mont.—Currie v. Langston, 16 P.2d 708, 92 Mont. 570—In re McCue, 261 P. 341, 80 Mont. 537.
N.J.—Gindin v. Baron, 83 A.2d 790, 16 N.J.Super. 1.
N.M.—Banes Agency v. Chino, 291 P.2d 328, 60 N.M. 297—Rice v. First Nat. Bank in Albuquerque, 171 P. 2d 318, 50 N.M. 99.
N.Y.—Barnet v. Cannizzaro, 160 N.Y. S.2d 329, 3 A.D.2d 745.
Ohio.—Green v. Drungold, App., 101 N.E.2d 906.
Or.—Abraham v. Mack, 278 P. 972, 130 Or. 32.
Pa.—Hecht v. Mileston & Philadelphia Rapid Transit Co., 100 Pa. Super. 298.
S.C.—Wessinger v. Duncan, 102 S.E. 6, 113 S.C. 205.
Tex.—Henwood v. Neal, Civ.App., 198 S.W.2d 125—Kimbell Milling Co. v. Greene, Civ.App., 162 S.W.2d 991, affirmed 170 S.W.2d 191, 141 Tex. 84.
Va.—Richmond Oil Equipment Co. v. W. T. Holt, Inc., 53 S.E.2d 11, 189 Va. 334.
Wis.—Hudson v. Gleason, 177 N.W. 14, 171 Wis. 238.
Wyo.—Bissinger & Co. v. Weiss, 195 P. 527, 27 Wyo. 262—Caswell v. Ross, 188 P. 977, 27 Wyo. 1.
4 C.J. p 849 note 41.

Incoherency or inconsistency in testimony goes to the witness' credit, and testimony which is very incoherent or inconsistent should be considered with great caution by the jury; but the court of appeals cannot hold as a matter of law that testimony of one not a party has no probative value merely because self-contradictory.
Ga.—Howard v. Georgia Power Co., 176 S.E. 69, 49 Ga.App. 420.

Partial variances in the testimony of different witnesses, on minute and collateral points, are of little importance unless they are of too prominent and striking a nature to be ascribed to mere inadvertence, inattention or defect of memory.
Ill.—Holland v. Chicago Transit Authority, 84 N.E.2d 861, 337 Ill.App. 100.

Motion for new trial

Contradictions in plaintiff's testimony were for consideration by trial court on plaintiff's motion for new trial after jury's verdict for defendants, not by appellate court, on appeal from order granting such motion.
Cal.—Mytinger v. Weir, 115 P.2d 18, 45 C.A.2d 698.

Rejection or acceptance of part

(1) Trier of facts may credit the whole of witness' testimony, or any part of it, which appears to them to be convincing, and reject so much of it as in their judgment is unworthy of credit.
Cal.—Chan v. Title Ins. & Trust Co., 246 P.2d 632, 39 C.2d 253.
Kalfus v. Fraze, 288 P.2d 967, 136 C.A.2d 415—High v. Pacific Gas & Electric Co., 126 P.2d 911, 52 C. A.2d 701, rehearing denied 127 P.2d 588, 52 C.A.2d 701.
Conn.—Clark v. Haggard, 109 A.2d 358, 141 Conn. 668—Neville v. Yaknunas, 46 A.2d 342, 132 Conn. 627.
Neb.—Kraemer v. New York Life Ins. Co., 278 N.W. 886, 134 Neb. 445.
Nev.—Carlson v. McCall, 271 P.2d 1002, 70 Nev. 437.
Utah.—American Scale Mfg. Co. v. Zee, 235 P.2d 361, 120 Utah 402.
Vt.—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471.
Wyo.—Macy v. Billings, 289 P.2d 422, 74 Wyo. 404.

(2) The rule that a witness false in one part of his testimony is to be distrusted in others merely means that his entire testimony may be rejected for such reason, not that the fact trier may not believe other parts of testimony, and cannot be invoked in the appellate court on review of facts.
Cal.—Pedrow v. Federoff, 247 P. 212, 77 C.A. 164.
S.C.—James v. Mickey, 2 S.E. 130, 26 S.C. 270.

(3) Offer of forged documents in evidence for minors, suing by their mother as next friend to establish their rights of inheritance as the testator's illegitimate sons, is not such fraud as to require the supreme court to disbelieve all of plaintiffs' testimony, even if it rendered the mother unworthy of credit, where the remaining evidence strongly corroborated the main facts to which she testified.
N.M.—Sanchez v. Torres, 37 P.2d 805, 38 N.M. 556.

Uncorroborated and contradicted

That the jury accepted defendant's uncorroborated and contradicted testimony constituted no ground for reversal.
Cal.—Placentia Co-op. Orange Growers' Ass'n v. Henning, 5 P.2d 444, 118 C.A. 487.

13. Cal.—Williams v. General Ins. Co. of America, 63 P.2d 289, 8 C.2d 1—Aronson & Co. v. Pearson, 249 P. 191, 199 C. 295.
In re Pelton's Estate, 295 P.2d 483, 140 C.A.2d 512—Geller v. Anolik, 273 P.2d 29, 127 C.A.2d 21—Matthews v. Atchison, T. & S. F. Ry. Co., 129 P.2d 435, 54 C.A.2d 549—Kennington v. Neff, 122 P.2d 58, 49 C.A.2d 692—Goodman v. Meyers, 122 P.2d 929, 50 C.A.2d 356—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054—Bitsekas v. Parechanian, 226 P. 974, 67 C.A. 148.
La.—Boswell v. Toye Bros. Yellow Cab Co., App., 15 So.2d 400.
N.H.—Blaisdell v. Young, 6 A.2d 441, 90 N.H. 185.
Wash.—Keller v. City of Seattle, 94 P.2d 184, 200 Wash. 573—Hilliard v. United Pacific Casualty Ins. Co., 81 P.2d 513, 195 Wash. 478.
Wis.—In re Goodyear's Estate, 181 N.W. 293, 173 Wis. 363.
4 C.J. p 849 note 42.

14. Ariz.—Southern Pac. Co. v. Gastelum, 297 P. 875, 38 Ariz. 127.
Iowa.—Shuck v. Conway, 186 N.W. 858.
Okl.—J. W. Crowdus Drug Co. v. Van Doren, 248 P. 319, 119 Okl. 55.
Va.—Nuttall v. Lankford, 43 S.E.2d 37, 186 Va. 532.
Wash.—Ballard v. Yellow Cab Co., 145 P.2d 1019, 20 Wash.2d 67.
4 C.J. p 849 note 43.

Caution would be used in testing evidence on appeal where some of it was modified when attention of witnesses was called to statements on previous trial.
Md.—Shafer v. State, for Use of Sundergill, 189 A. 273, 171 Md. 506.

Irreconcilable conflict in plaintiff's testimony on different trials is a matter for the jury not justifying the appellate division in determining when he told the truth.
N.Y.—Cannon v. Fargo, 118 N.E. 796, 222 N.Y. 321.

15. Conn.—Fox v. Schaeffer, 41 A. 2d 46, 131 Conn. 439, 157 A.L.R. 132.
Mo.—Armstrong v. Croy, App., 176 S.W.2d 852—Ertel v. Warren, 138 S.W. 694, 157 Mo.App. 592.

16. Cal.—In re Pelton's Estate, 295 P.2d 483, 140 C.A.2d 512—In re Reed's Estate, 282 P.2d 935, 132 C. A.2d 732—Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7—Postier v. Landau, 262 P.2d 565, 121 C.A.2d 98—Garfinkle v. Montgomery, 248 P.2d 52, 113 C. A.2d 149—Trancoso v. Trancoso, 216 P.2d 172, 96 C.A.2d 797—Dandini v. Dandini, 186 P.2d 41, 82 C.A.2d 263—Mayers v. Alexander, 167 P.2d 818, 73 C.A.2d 752.
La.—Fradella v. Texas & N. O. R. Co., App., 86 So.2d 414.
Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—Berman v. Coakley, 153 N.E. 463, 257 Mass. 159.
R.I.—Passarelli v. Boragini, 68 A.2d 74, 76 R.I. 60.
Tex.—Texas Cotton Growers Ass'n v. McGuffey, Civ.App., 131 S.W.2d 771, error dismissed.
4 C.J. p 849 note 45.

ly contradicted.[17] It has been held that the rule is applicable whether the witness testified orally or largely by affidavit;[18] on the other hand it has been held inapplicable as to evidence of a witness brought into the case by affidavit or deposition alone, where such papers are before the appellate court.[19]

Nevertheless, while granting uniform adherence to the rule that appellate courts will not weigh evidence or pass on the credibility of witnesses, the rule does not require courts to accord probative value to that which is so palpably false or absurd that no reasonable mind would give it any credence; and it is within the province of the reviewing court to ascertain whether or not testimony has any evidentiary strength, and to cast it aside if found to be inherently false.[20]

Credibility of improbable or implausible testimony was for trier of facts and not appellate court.
Cal.—Crabtree v. Western Pac. R. Co., 90 P.2d 835, 33 C.A.2d 35.
Mich.—Ottaway v. Gutman, 174 N.W. 127, 207 Mich. 393.
Minn.—Golob v. Buckingham Hotel, 69 N.W.2d 636, 244 Minn. 301.
Vt.—Loeb v. Loeb, 114 A.2d 518, 118 Vt. 474—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292.

Conduct on cross-examination
If plaintiff's witness in answer to a cross question conducted himself in a manner to be criticized, the action was for the jury's consideration.
Mo.—Vanausdol v. Bank of Odessa, 5 S.W.2d 109, 222 Mo.App. 91.

Improbability for jury
The determination of what circumstances render uncontradicted testimony inherently improbable so as to warrant rejection rests primarily with the jury.
Cal.—Cowan v. Hill, 293 P. 871, 109 C.A. 656.

17. Cal.—Maslow v. Maslow, 255 P. 2d 65, 117 C.A.2d 237—Jewell v. Bell, 8 P.2d 223, 120 C.A. 682.
Conn.—Savings Bank of New London v. Santaniello, 33 A.2d 126, 130 Conn. 206.
Mo.—Combs v. Combs, 284 S.W.2d 423—Chostner v. Schrock, 252 S.W. 381.
4 C.J. p 849 note 46.

Existence of any rational ground
Trier of facts are free to disbelieve witness' testimony, even though uncontradicted, if any rational ground existed for doing so.
Cal.—Harlow v. United Title Guaranty Co., 303 P.2d 16—Wahyou v. Ostrovsky, 267 P.2d 387, 123 C.A.2d 722—Purviance v. Shostak, 202 P. 2d 755, 90 C.A.2d 295—Shapiro v. Equitable Life Assur. Soc. of U. S., 172 P.2d 725, 76 C.A.2d 75.

18. Cal.—Petition of Jost, 256 P.2d 71, 117 C.A.2d 379, reversed on other grounds Jost v. U. S., 74 S.Ct. 427, 347 U.S. 901, 98 L.Ed. 1061—Consolidated Produce Co. v. Pieper, 224 P.2d 409, 100 C.A.2d 631.
Mass.—MacAusland v. Fuller, 118 N. E. 655, 229 Mass. 316.
Wis.—Adolph Coors Co. v. Pursel, 26 N.W.2d 550, 250 Wis. 174.
4 C.J. p 849 note 48.

All oral
Credibility of witnesses was for trier of facts where all testimony was oral.
Mass.—O'Donnell v. Commissioner of Corporations and Taxation, 60 N. E.2d 11, 317 Mass. 664—New England Trust Co. v. Commissioner of Corporations and Taxation, 53 N. E.2d 1001, 315 Mass. 639—Spiegel v. Beacon Participations, 8 N.E. 2d 895, 297 Mass. 398.
Mo.—Gardine v. Cottey, 230 S.W.2d 731, 360 Mo. 681, 18 A.L.R.2d 1100—Sugent v. Arnold's Estate, 101 S.W. 2d 715, 340 Mo. 603—Daggs v. McDermott, 34 S.W.2d 46, 327 Mo. 73.
M. F. A. Mut. Ins. Co. v. Quinn, App., 259 S.W.2d 854—Tuller v. Railway Exp. Agency, App., 235 S.W.2d 404—Williamson v. National Garage Co., App., 203 S.W.2d 126.
Pa.—Mack v. Reading Co., 98 A.2d 399, 173 Pa.Super. 296, affirmed 103 A.2d 749, 377 Pa. 135.

As matter of law
Where the credibility of oral testimony rests with the trial court, it can rarely be held as a matter of law that the party having burden of proof has maintained his case.
Mass.—Winchester v. Missin, 180 N. E. 215, 278 Mass. 427.

19. La.—Quaintance v. Cook, App., 92 So.2d 504.
Mo.—Barr v. Snyder, 294 S.W.2d 4—Proffit v. Houseworth, 231 S.W.2d 612, 360 Mo. 947.
Schoen v. Lange, App., 256 S.W. 2d 277.
N.Y.—Herring-Curtiss Co. v. Curtiss, 227 N.Y.S. 489, 223 App.Div. 101.
Tex.—Lloyds Cas. Insurer v. Shafer, Civ.App., 267 S.W.2d 588, error refused no reversible error—Texas & N. O. R. Co. v. Hellen, Civ.App., 47 S.W.2d 1112.

On documents
A chancellors' findings as to the credibility of witnesses may be reversed on appeal as erroneous, where based on evidence which, as to the principal issue, is chiefly documentary and opinion evidence, and the original documents are certified to the appellate court and where from such evidence it is apparent that the decree is palpably erroneous.
Ill.—Lyon v. Oliver, 227 Ill.App. 511, reversed on other grounds 147 N. E. 251, 316 Ill. 292.

20. Ala.—Fidelity-Phenix Fire Ins. Co. of New York v. Murphy, 166 So. 604, 231 Ala. 680, certiorari denied 57 S.Ct. 19, 299 U.S. 557, 81 L.Ed. 410.
Central of Georgia Ry. Co. v. Gholston, 129 So. 705, 24 Ala.App. 18.
Cal.—Kircher v. Atchison, T. & S. F. Ry. Co., 195 P.2d 427, 32 C.2d 176.
Caldwell v. Farley, 285 P.2d 294, 134 C.A.2d 196—Bates v. United Const. Co., 253 P. 328, 81 C.A. 295—Porterfield v. City of Modesto, 159 P. 205, 30 C.A. 598.
Snyder v. Swenson, Super., 311 P.2d 644.
Ga.—Central of Georgia Ry. Co. v. Summers, 129 S.E. 659, 34 Ga.App. 340.
Ind.—Indian Creek Coal & Mining Co. v. Hebert, 131 N.E. 422, 76 Ind.App. 108.
Iowa.—Webber v. Harrison County Farmers Mut. Fire & Lightning Ins. Ass'n, 288 N.W. 868, 227 Iowa 793.
Ky.—Cable v. McCoun, 126 S.W.2d 818, 277 Ky. 410.
La.—McLain v. National Mut. Cas. Co., App., 28 So.2d 680—Graham v. Gordon, App., 148 So. 105—Labostrie v. Weber, 130 So. 885, 15 La.App. 241.
Mich.—Thompson v. Hurson, 167 N. W. 926, 201 Mich. 685.
Mo.—Kilbourn v. Kilbourn, 190 S.W. 2d 206, 354 Mo. 17.
Corpus Juris Secundum cited in Carson v. Hagist, App., 143 S.W. 2d 355, 359.
Mont.—Jeffrey v. Trouse, 50 P.2d 872, 100 Mont. 538—Fousek v. De Forest, 4 P.2d 472, 90 Mont. 448—Piersky v. Hocking, 292 P. 725, 88 Mont. 358—Parchen v. Chessman, 164 P. 531, 53 Mont. 430.
N.H.—LaPlante v. Rousseau, 18 A.2d 777, 91 N.H. 330.
N.Y.—Zuco v. Funt, 54 N.E.2d 365, 292 N.Y. 201.
H. H. W. Const. Co. v. Daniels, 86 N.Y.S.2d 894, 275 App.Div. 32—Soma v. Handrulis, 299 N.Y.S. 850, 252 App.Div. 332, reversed on other grounds 14 N.E.2d 46, 277 N.Y. 223, reargument denied 15 N.E.2d 71, 278 N.Y. 481.
Or.—Selman v. Shirley, 91 P.2d 312, 161 Or. 582, 124 A.L.R. 16.
Pa.—Coleman v. Patton, 84 Pa.Super. 555.

S.D.—Kenobbie v. Krause, 295 N.W. 646, 67 S.D. 574.
Va.—Richmond-Washington Motor Coaches v. Austin, 152 S.E. 357, 154 Va. 148.
4 C.J. p 849 note 49.

Credibility considered

(1) The supreme court would give little credence to testimony of complainant who in the original bill sought to set aside a deed to his son and daughter-in-law upon the theory of fraud, and in an amended bill sought relief on the theory that the deed was conveyed in consideration of support, where the alleged facts of the amended bill were known to complainant at the time of filing of the original bill which was denied by answer.
Ill.—Stasch v. Stasch, 189 N.E. 891, 355 Ill. 581.

(2) Where visibility was poor, the appellate court could not say that a truck driver's testimony that he looked and could not see an approaching freight car was false, nor that, if the driver looked around the curtain, he would have discovered the danger.
Cal.—Sheets v. Southern Pac. Co., 299 P. 71, 212 C. 509.

(3) Where defendant real estate broker, charged with fraud in the matter of a contract for an exchange of real property, denied in his answer that the person who held the title to the property for which complainant contracted to exchange his property was a mere dummy for defendant, and further denied that any such admission was made by him on the hearing of a previous suit against defendant for specific performance, much credence cannot, on defendant's appeal from a decree for complainant, be placed on defendant's testimony that, prior to the signing of the contract for the exchange, he told complainant that he (defendant) was the actual owner of the property which complainant was to receive.
Ill.—Brdar v. Kamenjarin, 269 Ill. App. 351.

(4) Appellate court will not deny credence to testimony merely because such testimony was given by a witness friendly to, or called by, one of the parties.
La.—Buckalew v. Brockner, App., 11 So.2d 720.
N.J.—James v. Federal Ins. Co., 73 A.2d 720, 5 N.J. 21.

(5) Where two days after hearing of cause in supreme court appellant addressed letter to each of the five judges who heard the appeal wherein appellant claimed to have been unfairly treated by the trial judge, criticised the conduct of the case by his attorneys, stated, as facts, matters not appearing of record and attempted to demonstrate by argument that he had been damaged, the attempt of appellant to thus surreptitiously secure an unfair advantage in the supreme court affected his credibility and impaired weight of testimony he gave on his own behalf in the court below.
Wash.—Tyree v. Gosa, 119 P.2d 926, 11 Wash.2d 572.

Contradiction by physical or incontrovertible facts

(1) Appellate court will give credence to testimony accepted by trier of facts, unless physical facts or incontrovertible facts refute or contradict such testimony.
Ark.—American Republic Life Ins. Co. v. Presson, 227 S.W.2d 969, 216 Ark. 771.
La.—Biaggini v. Toye Bros. Yellow Cab Co., App., 163 So. 780.
Ohio.—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87.

(2) So, where a witness' testimony is corroborated by the physical facts and, in some instances, by the testimony of defendant, appellate court is unable to say that witness' testimony is unreasonable.
La.—Pancoast v. Cooperative Cab Co., App., 37 So.2d 452—Wise v. Villere Coal Co., App., 11 So.2d 419, rehearing refused 11 So.2d 657—Tassin v. Downs, App., 190 So. 232.

(3) However, in an action for injuries in an automobile accident, a verdict for plaintiff would be sustained notwithstanding inconsistencies with admitted physical facts, where the accident could have been caused by the negligent act complained of.
Cal.—Hughes v. Quackenbush, 37 P. 2d 99, 1 C.A.2d 349.

Impossible or improbable testimony

(1) Appellate courts are not vested with authority to pass on credibility of witnesses unless their testimony amounts to an assertion of the impossible or inherent improbability.
Cal.—Sherman v. Panno, 277 P.2d 80, 129 C.A.2d 375—Gilmore v. Hoffman, 266 P.2d 833, 123 C.A.2d 313—Shiya v. Reviea, 264 P.2d 190, 122 C.A.2d 155—Schouten v. Crawford, 257 P.2d 88, 118 C.A.2d 59—Romero v. Eustace, 225 P.2d 235, 101 C.A. 253—Cirimele v. Lucchesi, 223 P.2d 681, 100 C.A.2d 371—Dandini v. Dandini, 186 P.2d 41, 82 C.A.2d 263—Wilcox v. Sway, 160 P.2d 154, 69 C.A.2d 560—Hershey v. Laswell, 146 P.2d 509, 63 C.A. 2d 219—Goodman v. Meyers, 122 P.2d 929, 50 C.A.2d 356—Noland v. Noland, 113 P.2d 11, 44 C.A.2d 780—In re Gill's Estate, 58 P.2d 734, 14 C.A.2d 526—Gackstetter v. Market St. Ry. Co., 52 P.2d 998, 10 C. A.2d 713.

Cragin v. Brown, 286 P.2d 592, 134 C.A.2d Supp. 883.
Ga.—Griffin v. Ross, 91 S.E.2d 815, 93 Ga.App. 407—Hayslip v. Liberty Mut. Ins. Co., 34 S.E.2d 319, 72 Ga. App. 509.
Mont.—Hankins v. Waitt, 189 P.2d 666, 120 Mont. 596.

(2) To warrant rejection of statements given by witness who has been believed by trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.
Cal.—De Felice v. Tabor, App., 308 P.2d 377—New v. New, App., 306 P.2d 987—In re Moore's Estate, 300 P.2d 110, 143 C.A.2d 64—In re Reed's Estate, 282 P.2d 935, 132 C.A.2d 732—Kahn v. Lischner, 275 P.2d 539, 128 C.A.2d 480—Murphy v. Ablow, 268 P.2d 80, 123 C.A.2d 853—Industrial Indem. Co. v. Industrial Acc. Commission, 252 P.2d 649, 115 C.A.2d 684—Dandini v. Dandini, 186 P.2d 41, 82 C.A.2d 263—Marion Machine, Foundry & Supply Co. v. Gould, 57 P.2d 275, 15 C.A.2d 716.

(3) Fact that it was highly improbable that accident occurred as plaintiff testified it did, did not authorize reviewing court to reject plaintiff's version of accident.
Tenn.—Dixon Stave & Heading Co. v. Archer, App., 291 S.W.2d 603—DeRossett v. Malone, 239 S.W.2d 366, 34 Tenn.App. 451.

(4) Testimony held impossible or inherently improbable.
Mont.—Sullivan v. Northern Pac. Ry. Co., 94 P.2d 651, 109 Mont. 93.

(5) Testimony held not impossible or inherently improbable.
Cal.—Henson v. Planka, 204 P.2d 622, 91 C.A.2d 139—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A. 2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054.
Mass.—Campbell v. Ashler, 70 N.E. 2d 302, 320 Mass. 475.

Perjury or clear mistake

(1) On appeal, appellate court is not bound to believe a mere witness in a case when it appears from conclusive physical facts or otherwise patently that such witness is either perjured or clearly mistaken.
Ariz.—Motors Ins. Corp. v. Rhoton, 236 P.2d 739, 72 Ariz. 416—Cope v. Southern Pac. Co., 185 P.2d 772, 66 Ariz. 197.

(2) It is duty of appellate court not to seek perjury in witnesses' testimony, but to endeavor to harmonize apparent inconsistencies in their statements.
Cal.—Dickinson v. Pacific Greyhound Lines, 131 P.2d 401, 55 C.A.2d 824.

(3) Reversal of a judgment on the ground of asserted perjury cannot be ordered except in those cases where the testimony is such as to shock the moral sense of the court, and the testimony must be incredible.
Cal.—Hicks v. Ocean Shore R. R., 117 P.2d 850, 18 C.2d 773.

The reviewing court will not give much credence to the testimony of a witness who prevaricates in open court and who is defiant in refusing to give answers.[20.5] On the other hand, the reviewing court cannot control a finding or conclusion denying credence, unless it appears that there are no matters or circumstances which impair the accuracy of the testimony.[20.10] Furthermore, the appellate court is not bound by the findings of the trial court where there appears to be no serious question of credibility or veracity which should be left to its better determination.[20.15]

Silence or evasiveness. It has been held that the appellate court has the same right to draw conclusions from the silence or evasiveness of witnesses as has the trial court.[21]

Interested witnesses. The jury, or trial court in the absence of a jury, is the exclusive judge of the credibility of an interested or biased witness,[22] and

Testimony incredible

(1) An appellate court is not required to accept testimony of a witness which is incredible or inherently incredible.

Ind.—Indian Creek Coal & Mining Co. v. Hebert, 131 N.E. 422, 76 Ind. App. 108.

Va.—Bell v. Kenney, 23 S.E.2d 781, 181 Va. 24.

(2) Contradictions and inconsistencies in defendant's testimony do not stamp testimony as inherently incredible.

Cal.—Jones v. Re-Mine Oil Co., 119 P.2d 219, 47 C.A.2d 832.

(3) Appellate court will seldom declare testimony incredible which the trial court has considered credible.

Wis.—Auer v. Johnson, 45 N.W.2d 696, 258 Wis. 223—George M. Danke Co. v. Marten, 255 N.W. 121, 215 Wis. 470.

(4) Although a witness who is found to testify falsely in something material may be disbelieved entirely, rule is not of such compulsion as to negative as incredible that which trier of facts finds to be true.

N.Y.—Bergman v. Greenwich Sav. Bank, 74 N.Y.S.2d 638.

(5) Testimony held not incredible or inherently incredible.

Va.—Bell v. Kenney, 23 S.E.2d 781, 181 Va. 24.

W.Va.—Reall v. Deiriggi, 34 S.E.2d 253, 127 W.Va. 662.

Uncontradicted evidence

(1) Uncontradicted testimony will be accepted as true by appellate court.

Colo.—McMillan v. Keck, 260 P. 1079, 82 Colo. 434.

La.—Ehtor v. Parish, App., 86 So.2d 543.

Md.—Cooke v. Real Estate Trust Co., 22 A.2d 554, 180 Md. 133.

Tenn.—Acuff v. Allen, 191 S.W.2d 196, 28 Tenn.App. 451.

Tex.—Proffitt v. Providence Washington Ins. Co., Civ.App., 234 S.W. 2d 894, affirmed Providence Washington Ins. Co. v. Proffitt, 239 S.W. 2d 379, 150 Tex. 207.

(2) Appellate courts, without sufficient reason, will not permit uncontradicted testimony of a witness to be discarded or disregarded arbitrarily or capriciously.

Cal.—Watwood v. Steur, 201 P.2d 460, 89 C.A.2d 620—Barth v. Adelstein, 152 P.2d 498, 66 C.A.2d 406—Burdock v. Wittich, 116 P.2d 90, 46 C.A.2d 456.

Tenn.—Frank v. Wright, 205 S.W. 434, 140 Tenn. 535.

(3) The testimony of unimpeached witnesses will not be lightly waived aside as impossible or incredible.

Ark.—Alldread v. Mills, 199 S.W.2d 571, 211 Ark. 99.

20.5 Mich.—Ziontz v. Ziontz, 36 N. W.2d 882, 324 Mich. 155.

20.10 Cal.—In re Tillman's Estate, 288 P.2d 892, 136 C.A.2d 313—Perske v. Perske, 271 P.2d 528, 125 C.A.2d 795—Wagner v. Trout, 268 P.2d 537, 124 C.A.2d 248—Boies v. Wylie, 248 P.2d 76, 113 C.A.2d 243—La Jolla Casa de Manana v. Hopkins, 219 P.2d 871, 98 C.A.2d 339—People v. Frankenthal, 204 P.2d 614, 91 C.A.2d 189.

N.M.—Waters v. Blocksom, 258 P.2d 1135, 57 N.M. 368.

"Capricious disbelief" by trier of fact sufficient to justify overturning finding on appeal is willful deliberate disbelief of apparently trustworthy witness whose testimony one of ordinary intelligence could not possibly challenge, and disbelief must be so flagrant as to be repugnant to a man of reasonable intelligence.

Pa.—Hegele v. Unemployment Compensation Bd. of Review, 74 A.2d 773, 167 Pa.Super. 348—Silver v. Unemployment Compensation Bd. of Review, 74 A.2d 772, 167 Pa. Super. 345.

20.15 Iowa.—Else v. Fremont Methodist Church, 73 N.W.2d 50, 247 Iowa 127.

21. U.S.—U. S. v. Mammoth Oil Co., C.C.A.Wyo., 14 F.2d 705, affirmed Mammoth Oil Co. v. U. S., 48 S. Ct. 1, 275 U.S. 13, 72 L.Ed. 137.

22. Cal.—Ermolieff v. R. K. O. Radio Pictures, 122 P.2d 3, 19 C.2d 543. Manwell v. Board of Home Missions and Church Extension of M. E. Church, 10 P.2d 787, 122 C.A. 599—People v. Arcega, 193 P. 264, 49 C.A. 239.

Mass.—Dorchester Sav. Bank v. Tate, 32 N.E.2d 219, 308 Mass. 436.

Mich.—Betker v. Ide, 55 N.W.2d 835, 335 Mich. 291.

Minn.—Rebne v. Rebne, 13 N.W.2d 18, 216 Minn. 379.

N.J.—In re Gutman, 91 A.2d 615, 21 N.J.Super. 579.

Tex.—Briscoe v. Bright's Adm'r, Com. App., 231 S.W. 1082—Texas & N. O. R. Co. v. Gericke, Com.App., 231 S.W. 745.

Reed v. Yonker, Civ.App., 237 S. W.2d 360—House v. House, Civ. App., 222 S.W.2d 337—Texas Cotton Growers Ass'n v. McGuffey, Civ.App., 131 S.W.2d 771, error dismissed—Sneed v. Ellison, Civ. App., 116 S.W.2d 864, error dismissed—White House Lumber Co. v. Denny, Civ.App., 75 S.W.2d 709.

Vt.—Barilone Sons Const. Co. v. Reynolds, 199 A. 259, 109 Vt. 436.

Va.—Craddock Lumber Co. v. Jenkins, 97 S.E. 817, 124 Va. 167.

Wash.—Hilliard v. United Pacific Casualty Ins. Co., 81 P.2d 513, 195 Wash. 478.

Although uncontradicted

Credibility of interested witnesses even though their testimony is uncontradicted when contradiction is impossible and its truthfulness or accuracy open to a reasonable doubt is exclusively for the jury.

N.Y.—Mercatante v. City of New York, 142 N.Y.S.2d 473, 286 App. Div. 265, reargument and appeal denied 144 N.Y.S.2d 914, 286 App. Div. 964.

Determination of interest

(1) It is the function of the jury to determine whether the witnesses were interested or disinterested and the amount of weight which should be given to their testimony.

Ill.—Krug v. Armour & Co., 80 N.E. 2d 386, 335 Ill.App. 222.

(2) It has been held that the rule that competency of witness cannot be raised for first time in appellate court does not prevent such court from giving proper consideration to interest of witness in weighing his evidence.

Ill.—In re Teehan's Estate, 4 N.E. 2d 513, 287 Ill.App. 58.

Disregarding biased witness

The jury determines the credibility of the witnesses, and they may disregard the testimony of an unimpeached and uncontradicted witness

it has been said that, as a general rule, the appellate court cannot reverse and render judgment on the testimony of an interested witness alone.[23]

Opinion testimony. The credibility of expert and nonexpert witnesses giving opinion testimony is generally considered to be for the fact-finding body and not for the reviewing court.[24] However, the court will, under particular circumstances, reëxamine expert testimony.[25] Thus, the reviewing court is not bound by the conclusions of a witness who does not give the facts supporting such conclusion, especially when it is one bearing on, controlling, or determining the ultimate question in the case.[26] Furthermore, it has been held that a judge of the appellate court is not bound by the expert evidence in a case below as to the reasonableness of attorney's fees.[27]

In equity cases, although the entire record comes up for determination de novo, the appellate court will, if possible, defer to the determination of the chancellor or trial judge on matters affecting the credibility of witnesses who appeared before him.[28]

because of interest or bias shown by the witness or because the manner of testifying raises a doubt as to the truth, so that such evidence does not warrant a conclusion by appellate court contrary to the verdict.
Tex.—Pope v. Beauchamp, 219 S.W. 447, 110 Tex. 271.

Jury question
In an action by a buyer to recover oil well drilling equipment from contractors foreclosing a lien thereon for a claim against the seller, the judgment would not be reversed and rendered for the buyer on appeal because of error in excluding testimony of the seller and his wife that the contractors' debt had been paid, since they were interested witnesses whose testimony presented a jury question.
Tex.—White House Lumber Co. v. Denny, Civ.App., 75 S.W.2d 709.

23. Tex.—Dallas Trust & Savings Bank v. Pickett, Civ.App., 59 S.W. 2d 1090.
Setting aside verdict as contrary to direct, positive, and unimpeached evidence of witness see infra § 1649.

24. Ariz.—Atchison, T. & S. F. Ry. Co. v. France, 94 P.2d 434, 54 Ariz. 140.
Ark.—Unionaid Life Ins. Co. v. Bank of Lincoln, 83 S.W.2d 545, 191 Ark. 78.
Cal.—Allen v. California Water & Tel. Co., 176 P.2d 8, 29 C.2d 466—Universal Sales Corporation v. California Press Mfg. Co., 128 P.2d 665, 20 C.2d 751.
Ona v. Reachi, 233 P.2d 949, 105 C.A.2d 758—Amaral v. United Ben. Life Ins. Co., 168 P.2d 70, 74 C.A.2d 185—Mayers v. Alexander, 167 P.2d 818, 73 C.A.2d 752—Katz v. Enos, 156 P.2d 461, 68 C.A.2d 266—Maryland Casualty Co. v. Industrial Accident Commission, 148 P.2d 95, 64 C.A.2d 162—Ross v. Hieronymus, 37 P.2d 837, 2 C.A.2d 258—National Automobile Ins. Co. v. Industrial Accident Commission of California, 22 P.2d 568, 132 C.A. 373.
Iowa.—Martin v. Bankers' Life Co. of Des Moines, 250 N.W. 220, 216 Iowa 1022.
Kan.—Smith v. Salthouse, 76 P.2d 836, 147 Kan. 354.
Ky.—Whinery v. Crawford, 116 S.W. 2d 631, 273 Ky. 325.
La.—Succession of Vance, 179 So. 72, 189 La. 176.
Minn.—Oliver Iron Min. Co. v. Commissioner of Taxation, 76 N.W.2d 107, 247 Minn. 6—Dittrich v. Brown County, 9 N.W.2d 510, 215 Minn. 234.
Mo.—Daniels v. Brown, 266 S.W.2d 680.
N.D.—Klundt v. Pfeifle, 41 N.W.2d 416, 77 N.D. 132.
Pa.—Jackson & Perkins Co. v. Mushroom Transp. Co., 41 A.2d 635, 351 Pa. 583, certiorari denied 66 S.Ct. 42, 326 U.S. 733, 90 L.Ed. 427—Bowles v. City of Pittsburgh, 20 A.2d 783, 343 Pa. 39.
S.D.—Security Nat. Bank of Alexandria v. Kerkhoff, 230 N.W. 759, 57 S.D. 70.
Tex.—In re Finkelstein's Estate, Civ. App., 61 S.W.2d 590.
4 C.J. p 849 note 47.

25. Cal.—Southern Pac. Co. v. City of Los Angeles, 55 P.2d 847, 5 C.2d 545.
Iowa.—Schmidt v. Hayden, 219 N.W. 399, 205 Iowa 1369.

Aqueduct construction
In an action for damages caused by the breaking of a municipal aqueduct, opinion evidence of the city's experts that the aqueduct was constructed according to standard engineering practice was not conclusive on the appellate court, it being both proper and essential to examine opinions in the light of physical circumstances and prior history of the area involved.
Cal.—Southern Pac. Co. v. City of Los Angeles, 55 P.2d 847, 5 C.2d 545.

26. Iowa.—Schmidt v. Hayden, 219 N.W. 399, 205 Iowa 1369.

27. U.S.—Federal Oil Marketing Corporation v. Cravens, C.C.A.Ark., 46 F.2d 938.

28. Ark.—Akins v. Heiden, 7 S.W.2d 15, 177 Ark. 392.
Cal.—Leydecker v. Warren, 288 P.2d 51, 135 C.A.2d 484.
Fla.—Joyner v. Bernard, 6 So.2d 533, 148 Fla. 649.
Ill.—Elder v. Clarke, 52 N.E.2d 778, 385 Ill. 335—Sohio Corp. v. Gudder, 32 N.E.2d 148, 375 Ill. 622.
Manley v. Geng, 128 N.E.2d 641, 7 Ill.App.2d 6—Durbin v. Durbin, 42 N.E.2d 964, 315 Ill.App. 238.
Iowa.—Storck v. Pascoe, 72 N.W.2d 467, 247 Iowa 54.
Ky.—McCoy v. Arena, 174 S.W.2d 726, 295 Ky. 403—Taylor v. Taylor, 109 S.W.2d 570, 270 Ky. 203—Buttermore v. Pope-Cawood Lumber & Supply Co., 106 S.W.2d 632, 269 Ky. 218—Shrader v. Porter, 276 S.W. 115, 210 Ky. 429—Rice v. McNeill, 220 S.W. 724, 187 Ky. 726.
Md.—Hokemeyer v. Hokemeyer, 71 A. 2d 15, 194 Md. 223—Krauss v. Litman, 69 A.2d 781, 194 Md. 36—Carozza Corp. v. Silver Hill Sand & Gravel Co., 53 A.2d 27, 188 Md. 396.
Mich.—Werner v. Jaruga, 295 N.W. 335, 295 Mich. 617—Gear Grinding Mach. Co. v. Stuber, 276 N.W. 514, 282 Mich. 455—Hillier v. Carpenter, 183 N.W. 758, 215 Mich. 259.
Miss.—Malouf v. Gully, 1 So.2d 230.
Mo.—Swon v. Huddleston, 282 S.W.2d 18—Warford v. Smoot, 237 S.W.2d 184, 361 Mo. 879—Holland v. Martin, 198 S.W.2d 16, 355 Mo. 767—Hauschild v. Davis, 183 S.W.2d 66—Zumwalt v. Forbis, 163 S.W.2d 574, 349 Mo. 752—Ulrich v. Zimmerman, 163 S.W.2d 567, 349 Mo. 772—Schneider v. Schneider, 161 S.W.2d 650—Ver Standig v. St. Louis Union Trust Co., 129 S.W.2d 905, 344 Mo. 880—Conrad v. Diehl, 129 S.W.2d 870, 344 Mo. 811—Ætna Ins. Co. v. O'Malley, 124 S.W.2d 1164, 343 Mo. 1232—Dreyer v. Videmschek, 123 S.W.2d 63—Suhre v. Busch, 123 S.W.2d 8, 343 Mo. 679—Kingston v. Mitchell, 117 S.W.2d 226—Pelkert v. Repple, 114 S.W.2d 999, 342 Mo. 274—Long v. Von Erdmannsdorff, 111 S.W.2d 37—Little v. Mettee, 93 S.W.2d 1000, 338 Mo. 1223—Keener v. Williams, 271 S.W. 489, 307 Mo. 682.
Maas v. Dreckshage, App., 244 S.W.2d 397—Hecker v. Putney, App., 196 S.W.2d 442—Gordon v. Raymond, App., 186 S.W.2d 849—Wallich v. Glenos, App., 152 S.W.2d 679—Mozingo v. Mozingo, App., 149 S.W.2d 897—Prudential Ins. Co. of America v. Sheehan, App., 133 S.W.

Where the case was tried without a jury and, therefore, was considered on appeal as a suit of an equitable nature, due regard will be given to the opportunity of the trial court to judge the credibility of witnesses.[28.5]

The rule that the court may disturb the conclusion of the trial court as to the credibility of a witness whose testimony is manifestly erroneous does not apply in all of its force where a party is estopped to claim that the witness is unworthy of credit because of having called him as his own witness.[29]

§ 1646. Number of Witnesses

An appellate court will not disturb a verdict or finding merely because the testimony of a majority of the witnesses is against it.

A verdict or finding will not be disturbed on appeal, although the testimony of a majority of the witnesses is against it, at least, if the circumstances do not render improbable the truth of the supporting testimony.[30] This circumstance does not necessarily

2d 1060—Burroughs v. Lasswell, App., 108 S.W.2d 705—Wright v. Logan, App., 25 S.W.2d 799—Tracy v. Cunningham, App., 20 S.W.2d 944—City Trust Co. v. Cunningham, 20 S.W.2d 930, 223 Mo.App. 896.

Okl.—Hitt v. Hitt, 258 P.2d 599—Ewing v. Trawick, 256 P.2d 182, 208 Okl. 311—McAfee v. Harden, 71 P.2d 463, 180 Okl. 546.

Pa.—Leister v. Miller, 103 A.2d 656, 376 Pa. 452—Manstein v. Manstein, 85 A.2d 150, 369 Pa. 252—Kees v. Green, 75 A.2d 602, 365 Pa. 368—In re De Maio's Estate, 70 A.2d 339, 363 Pa. 559—Hofford v. Roth, 59 A.2d 57, 359 Pa. 275—Ringer v. Finfrock, 17 A.2d 348, 340 Pa. 458. Tonkin v. Tonkin, 94 A.2d 192, 172 Pa.Super. 552—Popilock v. Piernikoski, 56 A.2d 326, 161 Pa. Super. 587—Werner v. Deutsch, 7 A.2d 511, 135 Pa.Super. 519—Mutual Life Ins. Co. of New York v. Bamford, 200 A. 907, 132 Pa.Super. 255—Michaels v. Moritz, 200 A. 176, 131 Pa.Super. 426.

R.I.—Comella v. Comella, 27 A.2d 348, 68 R.I. 275.

Tenn.—Allen v. Goldstein, App., 291 S.W.2d 596.

Vt.—Boyd v. Town of Hartford, 28 A.2d 411, 112 Vt. 503.

W.Va.—Mullens v. Lilly, 13 S.E.2d 634, 123 W.Va. 182.

Great weight accorded chancellor's findings dependent on credibility of witnesses see infra § 1663.

In an application for injunction the trial court is the judge of the credibility of the witnesses.

Tex.—Winfield v. State, Civ.App., 231 S.W.2d 896—International Ass'n of Carpenters and Joiners of America, Local 213, A. F. of L., v. Sharp, Civ.App., 202 S.W.2d 506—Terry v. Crosswy, Civ.App., 264 S.W. 718.

Credibility considered

On appeal in a chancery case, reviewing court will not substitute its judgment as to credibility of witnesses where there is nothing such as documentary evidence, self-contradiction, or irreconcilable impeachment, or testimony to the contrary of which court should take judicial notice or matter to overcome the presumption of correctness of the judgment.

Tenn.—Hall v. Britton, App., 292 S.W.2d 524.

Credibility not involved

Court of appeals may determine whether witnesses were mistaken, as found by chancellor on testimony in record, their credibility not being involved.

Md.—Wright v. Rever, 136 A. 61, 151 Md. 558.

Peculiarly for trial judge

In equity cases, the credibility of witnesses is peculiarly for the trial judge and his judgment on facts is not disturbed where the mind is left in doubt as to the truth.

Ky.—Amick v. Huffman, 290 S.W. 506, 217 Ky. 642—Larimore v. Perkinson, 271 S.W. 69, 208 Ky. 382—Carter Oil Co. v. Mottley, 262 S.W. 264, 203 Ky. 281.

Mass.—Inhabitants of Town of Wayland v. Child, 157 N.E. 615, 260 Mass. 469.

Okl.—Stone v. Easter, 219 P. 653, 93 Okl. 68.

28.5 Mo.—Emery v. Brown Shoe Co., 287 S.W.2d 761—Erickson v. Greub, 287 S.W.2d 873—Barker v. Allen, 273 S.W.2d 191—Scott v. Kempland, 264 S.W.2d 349—Cross v. Gimlin, 256 S.W.2d 812—Faire v. Burke, 252 S.W.2d 289, 363 Mo. 562—Martin v. Lewis, 244 S.W.2d 87—Roberts v. Murray, 232 S.W.2d 540—Cosentino v. Heffelfinger, 229 S.W.2d 546, 360 Mo. 535—Lowther v. Hays, 225 S.W.2d 708—Durham v. Bill Sullivan Chevrolet Co., 213 S.W.2d 968—In re Jamison's Estate, 202 S.W. 2d 879—Hart v. T. L. Wright Lumber Co., 196 S.W.2d 272, 355 Mo. 397.

Pappas v. Pappas, App., 294 S.W. 2d 605—Miceli v. Williams, App., 293 S.W.2d 136—Staples v. O'Reilly, App., 288 S.W.2d 670—Payne v. White, App., 288 S.W.2d 6—Opperman v. LaBrot, App., 283 S.W.2d 902—United Farm Agency v. Cook, App., 283 S.W.2d 6—E. C. Robinson Lumber Co. v. Lowrey, App., 276 S.W.2d 636—Kraft v. Armentrout, App., 275 S.W.2d 402—Forbis v. Forbis, App., 274 S.W.2d 800—Wilson v. White, App., 272 S.W.2d 1—Smith v. Githens, App., 271 S.W.2d 374—Emerson v. Treadway, App., 270 S.W.2d 614—Denton v. Mitchell, App., 262 S.W.2d 639—Chamberlain v. Mutual Ben. Health & Acc. Ass'n, App., 260 S.W.2d 790—Cockrill v. Buchanan, App., 259 S.W.2d 696—Davidson v. Fisher, App., 258 S.W.2d 297—Roper v. Clanton, App., 258 S.W.2d 283—Universal C. I. T. Credit Corp. v. Taylor, App., 256 S.W.2d 303—Coats v. Sandhofer, App., 248 S.W. 2d 455—Werner v. Welsh Co., App., 247 S.W.2d 311—Elswirth Const. & Equipment Co. v. Glens Falls Ins. Co., 240 S.W.2d 973, 241 Mo.App. 713—McKeown v. John-Nooter Boiler Works Co., App., 237 S.W. 2d 217—Wyatt v. Hughes, App., 236 S.W.2d 371—Blanke v. American Life & Acc. Ins. Co., App., 230 S.W.2d 134—In re Priest's Estate, App., 227 S.W.2d 474—Loeb v. Viviano, App., 202 S.W.2d 528—Mound City Finance Co. v. Frank, 199 S. W.2d 902, 239 Mo.App. 807—Dell-Wood Tires v. Riss & Co., App., 198 S.W.2d 347.

29. U.S.—Harold Lloyd Corporation v. Witwer, C.C.A.Cal., 65 F.2d 1, certiorari dismissed, Witwer v. Harold Lloyd Corporation, 54 S.Ct. 94, 78 L.Ed. 1507.

30. Cal.—Beck v. Sirota, 109 P.2d 419, 42 C.A.2d 551—McLennan v. Holder, 36 P.2d 448, 1 C.A.2d 305—Johnson v. Risdon, 265 P. 505, 89 C.A. 768.

Ill.—Moudy v. New York, C. & St. L. R. Co., 46 N.E.2d 180, 317 Ill. App. 154, reversed on other grounds 53 N.E.2d 406, 385 Ill. 446—Hellwig v. Lomelino, 33 N.E.2d 174, 309 Ill.App. 369.

Ky.—Norfolk & W. Ry. Co. v. Hensley's Adm'r, 67 S.W.2d 11, 252 Ky. 223—McElroy v. Yowell, 200 S.W. 499, 179 Ky. 272—Morton v. Sanders, 200 S.W. 24, 178 Ky. 836—Cincinnati, N. O. & T. P. Ry. Co. v. Goode, 183 S.W. 264, 169 Ky. 102, error dismissed 38 S.Ct. 345, 245 U.S. 681, 62 L.Ed. 544—Muller v. Swann, 175 S.W. 15, 164 Ky. 159.

Mass.—Gaffney v. Bay State St. Ry. Co., 109 N.E. 361, 221 Mass. 457.

Minn.—Clark v. Chicago & N. W. Ry. Co., 33 N.W.2d 484, 226 Minn. 375.

Miss.—Universal Truck Loading Co. v. Taylor, 172 So. 756, 178 Miss. 143.

Mo.—Gaddy v. Skelly Oil Co., 259

render the verdict or finding against the weight of evidence.[31] If the rule were otherwise, it has been said that "every case would depend upon which side could obtain the greater number of witnesses,"[32] and the opinion of the reviewing court would be substituted for that of a tribunal established by law for the purpose of arriving at the facts.[33]

It has been held, however, that, if testimony of the party on whom rests the general burden of proof is overwhelmingly outweighed as to the number of credible witnesses opposed to his testimony, verdict for him may be set aside;[34] and it seems that a verdict against the numerical weight of testimony may be set aside, when such weight is supported by circumstances.[35]

2. Verdicts

§ 1647. Conclusiveness in General

a. In general
b. When reviewable

a. In General

Generally, the appellate court cannot invade the province of the jury with respect to determining the facts, and the verdict of the jury as dependent on the evidence is ordinarily taken as conclusive on the appellate court.

As a general rule, the jury and not the appellate court determines the facts of the case,[35.50] and the appellate court cannot invade the province of the jury in this respect.[35.55] Akin to, and perhaps growing out of, the rule requiring the reviewing court on appeal to take the view of the evidence most favorable to the verdict, and give to it the strongest probative force of which it will admit, as stated supra § 1562(4), is the rule more broadly stated, but subject without doubt to the qualifications indicated hereinafter, that ordinarily on appeal the verdict or findings of a jury will be taken as conclusive and will not be reviewed in the appellate court,[36] in the absence of errors of law which have

S.W.2d 844, 364 Mo. 143—Aly v. Terminal R. Ass'n of St. Louis, 119 S.W.2d 363, 342 Mo. 1116, certiorari denied 59 S.Ct. 251, 305 U.S. 655, 83 L.Ed. 424.
Tex.—Koch v. Noster, Civ.App., 182 S.W. 372.
Wash.—Galbraith v. Devlin, 148 P. 589, 85 Wash. 482.
4 C.J. p 907 note 55.

31. Ala.—Birmingham Macaroni Co. v. Tadrick, 88 So. 858, 205 Ala. 540.
Ky.—Baker's Adm'r v. Frederick, 243 S.W.2d 921—Roland v. Murray, 239 S.W.2d 967—Cloversplint Coal Co. v. Blair, 151 S.W.2d 1052, 287 Ky. 158—Johnson v. Chesapeake & O. Ry. Co., 83 S.W.2d 521, 259 Ky. 789—La Fontaine v. Mitchell, 284 S.W. 1022, 215 Ky. 184.
Mich.—Rossien v. Berry, 9 N.W.2d 895, 305 Mich. 693—Dewey v. Perkins, 295 N.W. 333, 295 Mich. 611.
N.J.—Knapp v. Seton Inn, Inc., 68 A. 2d 770, 5 N.J.Super. 226.
Pa.—Anderson v. Pittsburgh Rys. Co., 96 A. 1051, 251 Pa. 517.
Tex.—Ohlen v. Hagar, Civ.App., 212 S.W.2d 253, error refused no reversible error.
4 C.J. p 907 note 56.
Trial court findings against numerical weight of testimony as not against weight of evidence see infra § 1658.

Jury may believe a minority of the witnesses, and a verdict based upon the testimony of such minority will not be disturbed.
Ky.—Johnson v. Chesapeake & O. Ry. Co., 83 S.W.2d 521, 259 Ky. 789.

32. Ky.—Eby v. Norris, 128 S.W. 878, 138 Ky. 578.

33. Ky.—Cincinnati Tobacco Warehouse Co. v. Garvey, 128 S.W. 86.
4 C.J. p 907 note 58.

34. Mich.—Patterson v. Thatcher, 263 N.W. 882, 273 Mich. 597.
Pa.—Mead v. Conroe, 8 A. 374, 113 Pa. 220.
4 C.J. p 907 note 59.

35. Ky.—Louisville Water Co. v. Williams, 131 S.W. 10, 140 Ky. 320.

35.50 Ark.—Missouri Pac. Transp. Co. v. Jones, 122 S.W.2d 613, 197 Ark. 79.
Cal.—Palmer v. Wahler, 285 P.2d 8, 133 C.A.2d 705—In re Jenkins' Estate, 242 P.2d 107, 110 C.A.2d 98—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334.
Conn.—Sanderson v. Bob's Coaster Corp., 54 A.2d 270, 133 Conn. 677.
Ill.—Davies v. Carstensen Freight Lines, 121 N.E.2d 335, 3 Ill.App.2d 222—Ohlweiler v. Central Engineering Co., 109 N.E.2d 232, 348 Ill. App. 246.
Ind.—Gates v. Petri, App., 143 N.E.2d 293.
Ky.—Wood v. Wood, 264 S.W.2d 260.
La.—Norman v. State, App., 69 So.2d 120, reversed on other grounds 80 So.2d 858, 227 La. 904.
Mo.—Ross v. Pendergast, 182 S.W.2d 307, 353 Mo. 300.
Okl.—Shell Pipe Line Corp. v. Curtis, 287 P.2d 681.
Pa.—Malanchuk v. St. Mary's Greek Catholic Church of McKees Rocks, 9 A.2d 350, 336 Pa. 385.
Tenn.—Memphis Casting Works v. Bearings & Transmission Co., 243 S.W.2d 145, 35 Tenn.App. 164.

Parol testimony
Reviewing court may not consider sufficiency of parol testimony to support verdict in defendant's favor.
Mo.—Connole v. East St. Louis & S. Ry. Co., 102 S.W.2d 581, 340 Mo. 690.

Contradictory findings
Court of civil appeals cannot select one set of jury findings and eliminate contradictory set of findings and render judgment thereon.
Tex.—Maryland Cas. Co. v. Howie, Civ.App., 94 S.W.2d 220, error dismissed.

35.55 Colo.—Ætna Life Ins. Co. v. Mason, 114 P.2d 562, 108 Colo. 159.
Ill.—Wilson v. Terminal R. Ass'n of St. Louis, 77 N.E.2d 429, 333 Ill. App. 256.
Ky.—Illinois Cent. R. Co. v. Wallis, 152 S.W.2d 288, 287 Ky. 88.
Mont.—Gilmore v. Mulvihill, 98 P.2d 335, 109 Mont. 601.
Or.—Fischer v. Howard, 271 P.2d 1059, 201 Or. 426.
Tex.—Allstate Ins. Co. v. Lay, Civ. App., 265 S.W.2d 203.

While the "scintilla rule" has been abolished, the court of appeals will not constitute itself trier of facts thereby usurping the province of the jury.
Ky.—High Splint Coal Co. v. Cowans, 155 S.W.2d 488, 288 Ky. 66.

36. Ala.—Carraway v. Graham, 118 So. 807, 218 Ala. 453—Gilchrist-Fordney Co. v. Bearry, 98 So. 478, 210 Ala. 472—Hood & Wheeler Furniture Co. v. Royal, 76 So. 965, 200 Ala. 607.
Ætna Life Ins. Co. of Hartford, Conn., v. Thomas, 5 So.2d 835, 30

Ala.App. 307, certiorari denied 5 So. 2d 838, 242 Ala. 275—American Home Building & Loan Ass'n v. Long, 129 So. 793, 24 Ala.App. 34.

Ariz.—Ross v. Clark, 274 P. 639, 35 Ariz. 60—Redewill v. Matzenauer, 255 P. 486, 32 Ariz. 13.

Ark.—Service Fire Ins. Co. v. Payne, 236 S.W.2d 1020, 218 Ark. 499—Sykes v. Carmack, 202 S.W.2d 761, 211 Ark. 828—Motsinger v. Walker, 168 S.W.2d 385, 205 Ark. 236—Cunningham v. Davis, 159 S.W.2d 751, 203 Ark. 982—Dunklin v. Watkins, 151 S.W.2d 978, 202 Ark. 602—Missouri P. R. Co. v. Howell, 132 S.W.2d 176, 198 Ark. 956—Herndon v. Pulaski County, 117 S.W.2d 1051, 196 Ark. 284, certiorari denied 59 S.Ct. 148, 305 U.S. 642, 83 L.Ed. 414—American Equitable Assur. Co. of New York v. Showers, 113 S.W.2d 91, 195 Ark. 521—Hutson Motor Co. v. Lake, 98 S.W.2d 947, 193 Ark. 200—Sinclair Refining Co. v. Fuller, 79 S.W.2d 736, 190 Ark. 426—Browne v. Dugan, 74 S.W.2d 640, 189 Ark. 551—Metropolitan Life Ins. Co. v. Harper, 70 S.W.2d 1042, 189 Ark. 170—Minich v. Bass, 70 S.W.2d 1039, 189 Ark. 1171—Heard v. Griffin, 66 S.W.2d 1060, 188 Ark. 235—General Talking Pictures Corporation v. Shea, 61 S.W. 2d 430, 187 Ark. 568—**Corpus Juris quoted in** Greenlee v. Rolfe, 60 S.W.2d 568, 571, 187 Ark. 1162—Colum v. Imboden, 50 S.W.2d 235, 185 Ark. 890—McGraw v. Miller, 44 S.W.2d 366, 184 Ark. 916—Missouri Pac. R. Co. v. Miller, 41 S.W.2d 971, 184 Ark. 61, certiorari denied 52 S.Ct. 210, 284 U.S. 688, 76 L.Ed. 580—Chastain v. Hall, 33 S.W.2d 45, 182 Ark. 920—Bank of Magazine v. Friddle, 14 S.W.2d 238, 179 Ark. 53—Southwestern Bell Telephone Co. v. McAdoo, 10 S.W. 2d 503, 178 Ark. 111—Kelley v. Alexander Lumber Co., 4 S.W.2d 523, 176 Ark. 1204—Western Union Telegraph Co. v. Ft. Smith Body Co., 3 S.W.2d 345, 176 Ark. 495, 57 A.L.R. 39—Louisiana & N. R. Co. v. Wm. R. Moore Dry Goods Co., 2 S.W.2d 1113, 176 Ark. 341—American Ry. Express Co. v. H. Rouw Co., 294 S.W. 401, 173 Ark. 810—Modern Woodmen of America v. Whitaker, 293 S.W. 1045, 173 Ark. 921—Johnson v. Arkansas Foundry Co., 292 S.W. 373, 173 Ark. 1181—Kansas City Southern Ry. Co. v. H. Rouw Co., 288 S.W. 901, 172 Ark. 273—Flannigan v. Beavers, 287 S.W. 755, 172 Ark. 28—Myers v. Centers, 287 S.W. 189, 171 Ark. 1005—Beeson-Moore Stave Co. v. Gosney, 286 S.W. 810, 171 Ark. 1187—Ellisville Lumber Co. v. First Nat. Bank, 284 S.W. 724, 171 Ark. 469—Dyke v. Magdalena, 283 S.W. 374, 171 Ark. 225—Central Coal & Coke Co. v. Porter, 280 S. W. 12, 170 Ark. 498—School Dist. No. 21 v. Hudson, 277 S.W. 18, 169 Ark. 938—Gideon v. Blackwell, 266 S.W. 274, 167 Ark. 677—Johnson v. American Bank of Commerce & Trust Co., 261 S.W. 630, 164 Ark. 301—Cartwright v. Dennis, 260 S. W. 424, 163 Ark. 503—Security Life Ins. Co. v. Frizzell, 255 S.W. 316, 161 Ark. 666—Williams v. Robinson, 250 S.W. 14, 158 Ark. 327, 28 A.L.R. 734—Covill v. Gerschmay, 224 S.W. 609, 145 Ark. 269—Maloney v. Merchants' Bank of Vandervoort, 217 S.W. 782, 141 Ark. 578—Faulkner v. Crawford, 177 S. W. 35, 119 Ark. 6—Richardson v. Cohen, 167 S.W. 83, 113 Ark. 598.

Cal.—Lindemann v. San Joaquin Cotton Oil Co., 55 P.2d 870, 5 C.2d 480—Wright v. L. W. Wilson Co., 299 P. 521, 212 C. 569—Hind v. Oriental Products Co., 235 P. 438, 195 C. 655—Haines v. Fewkes, 213 P. 490, 190 C. 477—Burge v. Albany Nurseries, 168 P. 343, 176 C. 313—Barrett v. Metropolitan Contracting Co., 155 P. 645, 172 C. 116.

Howard v. Bartolotti, App., 302 P.2d 36—Davis v. Franson, 296 P.2d 600, 141 C.A.2d 263—Karr v. Sherer, 283 P.2d 376, 132 C.A.2d 835—In re Cummins' Estate, 280 P.2d 128, 130 C.A.2d 821—Thomas v. Laguna, 248 P.2d 929, 113 C.A. 2d 657—Grasso v. Cunial, 235 P.2d 32, 106 C.A.2d 294—Wilkerson v. Brown, 190 P.2d 958, 84 C.A.2d 401—Krobitzsch v. Middleton, 165 P.2d 729, 72 C.A.2d 804—Nevada Irr. Dist. v. Jones, 158 P.2d 973, 69 C. A.2d 262—Roynon v. Battin, 132 P.2d 266, 55 C.A.2d 861—Hill v. New York Life Ins. Co., 101 P.2d 752, 38 C.A.2d 627—Oswald v. H. G. Chaffee Warehouse Co., 84 P.2d 164, 29 C.A.2d 233—In re Trelut's Estate, 80 P.2d 147, 26 C.A.2d 717—Foothill Ditch Co. v. Wallace Ranch Water Co., 78 P.2d 215, 25 C.A.2d 555, appeal dismissed 59 S. Ct. 54, 305 U.S. 664, 83 L.Ed. 431—Scott v. Flanagan, 57 P.2d 1382, 14 C.A.2d 105—De Luca v. Red Salmon Canning Co., 37 P.2d 704, 2 C.A.2d 124—Rasic v. Schultheiss, 9 P.2d 550, 121 C.A. 560—Hughes v. Atchison, T. & S. F. Ry. Co., 8 P.2d 853, 121 C.A. 271—Day v. Laguna Land & Water Co., 1 P.2d 448, 115 C.A. 221—Lindsey v. Pacific Electric Ry. Co., 296 P. 131, 111 C.A. 482—Nelson v. Parker, 286 P. 1078, 104 C.A. 770—Flynn v. Bledsoe Co., 267 P. 887, 92 C.A. 145—Lang v. McKinney Blueprint Paper Co., 266 P. 616, 91 C.A. 34—Sherman v. Kirkpatrick, 256 P. 570, 83 C.A. 307—American Marine Paint Co. v. Nyno Line, 233 P. 366, 70 C.A. 415—Ricioli v. Lynch, 223 P. 88, 65 C.A. 53—Brown v. Beck, 220 P. 14, 63 C.A. 686—Burns v. Jackson, 211 P. 821, 59 C.A. 662—Sessions v. Pacific Improvement Co., 206 P. 653, 57 C.A. 1—Scherrer v. Southern Pac. Co., 183 P. 250, 41 C.A. 793—McClure v. Southern Pac. Co., 183 P. 248, 41 C.A. 652—Ventura Mfg. & Implement Co. v. Warfield, 174 P. 382, 37 C.A. 147—Merrill v. Kohlberg, 155 P. 824, 29 C.A. 382—King v. Green, 94 P. 777, 7 C.A. 473.

Colo.—Foster v. Howell, 220 P.2d 717, 122 Colo. 64—Mentzer v. Mentzer, 209 P.2d 920, 120 Colo. 412—Public Service Co. of Colorado v. Williams, 270 P. 659, 84 Colo. 342—Barr v. Henson, 263 P. 713, 83 Colo. 204—Trinidad Creamery Co. v. McDonald, 259 P. 1028, 82 Colo. 328—Cooper v. Newmyer, 250 P. 559, 80 Colo. 246—Pawnee Farmers' Elevator Co. v. Powell, 227 P. 836, 76 Colo. 1, 37 A.L.R. 6—Western Light & Power Co. v. Poor, 194 P. 613, 69 Colo. 380—Keeler v. Baker, 165 P. 760, 63 Colo. 350.

Conn.—Reboni v. Case Bros., Inc., 78 A.2d 887, 137 Conn. 501—Grzys v. Connecticut Co., 198 A. 259, 123 Conn. 605—Lessinger v. Miller, 152 A. 72, 112 Conn. 679—Hoyt v. Connecticut Co., 139 A. 647, 107 Conn. 160—Kolensky v. De Francesco, 129 A. 777, 102 Conn. 660—Russell v. Vergason, 111 A. 625, 95 Conn. 431.

D.C.—O'Dea v. Clark, 46 App.D.C. 274.

Sachs v. Eller, Mun.App., 89 A.2d 644.

Fla.—First Nat. Bank of Leesburg v. Huey, 5 So.2d 689, 149 Fla. 306—Alhambra Groves v. Cody, 126 So. 749, 99 Fla. 448—Daughtry v. Davis, 89 So. 255, 81 Fla. 644—Sovereign Camp., Woodmen of the World v. Mixon, 84 So. 171, 79 Fla. 420.

Ga.—Frick v. Horne, 25 S.E. 315, 97 Ga. 353.

Weathers Bros. Transfer Co. v. Jarrell, 33 S.E.2d 805, 72 Ga.App. 317—Beaver v. Magid, 192 S.E. 497, 56 Ga.App. 272—Kinney v. Turnipseed, 164 S.E. 225, 45 Ga.App. 269—Central of Georgia Ry. Co. v. Jones, 159 S.E. 613, 43 Ga.App. 507—La Grange Lumber & Supply Co. v. Gandy Electric Co., 154 S.E. 704, 41 Ga.App. 791—Melton v. Davis, 152 S.E. 602, 41 Ga.App. 230—Life & Casualty Ins. Co. of Tennessee v. Burkett, 144 S.E. 29, 38 Ga.App. 328—McKinney v. Chapman, 139 S. E. 98, 37 Ga.App. 174—Yeomans v. Beasley, 137 S.E. 131, 36 Ga.App. 467—Creswell v. Williams, 97 S.E. 869, 23 Ga.App. 190—Stone Mountain Granite Corp. v. Patrick, 91 S. E. 286, 19 Ga.App. 269—Whitehead v. Arnold, 91 S.E. 234, 19 Ga.App. 143.

Idaho.—Hample v. McKinney, 281 P. 1, 48 Idaho 221—McAlinden v. St. Maries Hospital Ass'n, 156 P. 115, 28 Idaho 657.

Ill.—Westinghouse Elec. Elevator Co. v. La Salle Monroe Bldg. Corp., 70 N.E.2d 604, 395 Ill. 429—Shannon

v. Nightingale, 151 N.E. 573, 321 Ill. 168.

McCary v. Wilson, 187 N.E.2d 867, 11 Ill.App.2d 580—Jackson v. Fisher, 93 N.E.2d 438, 341 Ill.App. 311—Goodrich v. Sprague, 42 N.E. 2d 337, 314 Ill.App. 671—Smithers v. Henriquez, 4 N.E.2d 793, 287 Ill.App. 95, affirmed 15 N.E.2d 499, 368 Ill. 588—Adamsen v. Magnelia, 3 N.E.2d 708, 286 Ill.App. 412—Leeper v. Gay, 253 Ill.App. 176—Chicago, R. I. & P. R. Co. v. North American Cold Storage Co., 244 Ill. App. 522—Hasterlik v. New Jersey Fidelity & Plate Glass Ins. Co., 229 Ill.App. 604—Skinner v. Illinois Third Vein Coal Co., 225 Ill.App. 158—Voorhees v. Chicago & A. R. Co., 215 Ill.App. 531—Lehigh Valley Coal Sales Co. v. Kuecken, 194 Ill.App. 511—Deming v. Prudential Ins. Co. of America, 190 Ill.App. 604—Hutton v. Forest City Life Ins. Co., 190 Ill.App. 476. See Kesner v. Faroll, 268 Ill.App. 531.

Ind.—Deep Vein Coal Co. v. Dowdle, 66 N.E.2d 598, 224 Ind. 244—Rowe v. Johnson, 60 N.E.2d 529, 223 Ind. 289—Union Traction Co. of Indiana v. Gaunt, 135 N.E. 486, 193 Ind. 109—Union Traction Co. of Indiana v. Haworth, 115 N.E. 753, 187 Ind. 451, rehearing denied 119 N.E. 869, 187 Ind. 451—Citizens' Bank of Michigan City v. Opperman, 115 N.E. 55, 188 Ind. 212, certiorari denied 38 S.Ct. 424, 246 U.S. 673, 62 L.Ed. 932, and error dismissed 39 S. Ct. 330, 249 U.S. 448, 63 L.Ed. 701.

Rickner v. Haller, 116 N.E.2d 525, 124 Ind.App. 369—Chicago & Calumet Dist. Transit Co. v. Vidinghoff, 103 N.E.2d 460, 122 Ind.App. 395, rehearing denied 104 N.E.2d 405, 122 Ind.App. 395—Scoopmire v. Taflinger, 52 N.E.2d 728, 114 Ind. App. 419—Guardian Life Ins. Co. of America v. Barry, 32 N.E.2d 599, 109 Ind.App. 286—Allied Coal & Material Co. v. Moore, 157 N.E. 55, 88 Ind.App. 253—City of Linton v. Maddox, 130 N.E. 810, 75 Ind.App. 449—Walker Hospital v. Pulley, 127 N.E. 559, 74 Ind.App. 659, rehearing denied 128 N.E. 933, 74 Ind. App. 659—Scottish Union & National Ins. Co. v. B. E. Linkenhelt & Co., 121 N.E. 373, 70 Ind.App. 324—Kluge v. Ries, 117 N.E. 262, 66 Ind.App. 610.

Iowa.—Cutler v. State, 278 N.W. 327, 224 Iowa 686—Albert v. Maher Bros. Transfer Co., 243 N.W. 561, 215 Iowa 197—Jones v. Southern Surety Co., 230 N.W. 381, 210 Iowa 61—Starry v. Starry & Lynch, 225 N.W. 268, 208 Iowa 228—First Nat. Bank v. Schram, 211 N.W. 405, 202 Iowa 791—Carlson v. Meusberger, 204 N.W. 432, 200 Iowa 65—Kusser v. Sioux City Horse & Mule Co., 200 N.W. 404, 199 Iowa 200—Mooney v. Canier, 197 N.W. 625, 198 Iowa 251—Fahey v. Ancient Order of United Workmen, 195 N.W. 220—Stegemann v. Paulsen, 190 N.W. 929, 194 Iowa 1314—Dickson v. Yates, 188 N.W. 948, 194 Iowa 910, 27 A.L.R. 533—Thompson v. Belmond Telephone Co., 162 N.W. 612, 179 Iowa 1242—Dunning v. Burt, 162 N.W. 23, 180 Iowa 754—Hoyer v. Good, 161 N.W. 691, 182 Iowa 148—Hunter v. Burlington, etc., R. Co., 51 N.W. 64, 84 Iowa 605.

Kan.—Hodgson v. Mutual Ben. Health & Accident Ass'n, 112 P.2d 121, 153 Kan. 511—Brotton v. Dawson, 19 P.2d 467, 137 Kan. 44—Security Nat. Bank v. West, 243 P. 1014, 120 Kan. 434, rehearing denied 244 P. 1036, 120 Kan. 613—De Good v. Wildman, 239 P. 748, 119 Kan. 292—Hayslip v. Great American Life Ins. Co., 210 P. 188, 112 Kan. 189—Holcomb v. Clifton Tp., Wilson County, 169 P. 211, 102 Kan. 44—Hladky v. Hladky, 160 P. 992, 99 Kan. 128—Danciger v. Cooley, 157 P. 453, 98 Kan. 38, rehearing denied 158 P. 1119, 98 Kan. 484.

Ky.—Lewallen v. Davenport, 255 S. W.2d 16—McCoy v. Kilgore's Adm'r, 209 S.W.2d 66, 306 Ky. 678—Parsons v. Gibbs, 151 S.W.2d 415, 286 Ky. 488—Rust v. City of Newport, 145 S.W.2d 511, 284 Ky. 567—Barnett v. Gilbert, 133 S.W.2d 529, 280 Ky. 402—Roederer v. Schmitt, 80 S.W.2d 35, 258 Ky. 398—Eastern Kentucky Home Telephone Co. v. Charles, 282 S.W. 776, 214 Ky. 97—Tandy v. Farmers' Deposit Bank of Wheatley, 269 S.W. 718, 207 Ky. 538—Berry v. Hale, 227 S.W. 793, 190 Ky. 510—Kentucky & T. Ry. Co. v. West, 169 S.W. 728, 160 Ky. 280.

Lowe v. Erleinson, 11 Ky.Op. 57.

La.—Fuge v. New Orleans Ry. & Light Co., 73 So. 689, 140 La. 582.

Thrash v. Continental Casualty Co., App., 6 So.2d 75—Johnson v. Fabacher, App., 175 So. 129—Louisiana Electric Co. v. Mouton, 7 La.App. 421—Campbell v. Haas, 4 La.App. 435.

Me.—Donovan v. Sweetser, 196 A. 767, 135 Me. 349—Cone v. Baldwin, 164 A. 742, 132 Me. 484—Esponette v. Wiseman, 155 A. 650, 130 Me. 297—Leventhal v. Lazarovitch, 142 A. 781, 127 Me. 222—Raymond v. Eldred, 140 A. 608, 127 Me. 11—Burke v. Langlois, 139 A. 675, 126 Me. 498—Devereaux Co. v. Silsby, 99 A. 372, 115 Me. 556.

Md.—Safeway Stores, Inc. v. Barrack, 122 A.2d 457, 210 Md. 168—Graff v. Davidson Transfer & Storage Co., 65 A.2d 566, 192 Md. 632—Berman v. Brown, 141 A. 498, 154 Md. 698—Forest Hill Permanent Bldg. Ass'n of Harford County v. Fisher, 118 A. 164, 140 Md. 666.

Mass.—Libby v. Smith, 200 N.E. 369, 293 Mass. 465.

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Williams & Stephens v. Belo, Com.App., 41 S.W.2d 22—Haynes v. Taylor, Com.App., 35 S.W.2d 104, rehearing denied Haynes v. Taylor, 38 S.W.2d 1101—Pounds v. Minter, Com.App., 13 S.W.2d 351—Texas Electric Ry. v. Reese, Com.App., 280 S.W. 179—Dolen v. Lobit, Com. App., 262 S.W. 731.

Flanigan v. Texas & P. Ry. Co., Civ.App., 273 S.W.2d 110, error refused no reversible error—Shepard v. Outley, Civ.App., 256 S.W.2d 652—J. M. English Truck Line, Inc. v. Fritsch, Civ.App., 255 S.W.2d 597, error refused no reversible error—Dyer v. Sterett, Civ.App., 248 S.W.2d 234, error refused no reversible error—Talley Transfer Co. v. Cones, Civ.App., 216 S.W.2d 604, error refused no reversible error—Hammond v. Hammond, Civ.App., 210 S.W.2d 829, error dismissed—Reserve Petroleum Co. v. Hodge, Civ.App., 209 S.W.2d 220, reversed on other grounds 213 S.W.2d 456, 147 Tex. 115, 7 A.L.R.2d 288—Kunkel v. Red River Nat. Bank in Clarksville, Civ.App., 202 S.W.2d 962, error refused—Gambill v. Snow, Civ.App., 189 S.W.2d 33, refused for want of merit—Socony-Vacuum Oil Co. v. Premeaux, Civ. App., 187 S.W.2d 690, affirmed in part and reversed in part on other grounds 192 S.W.2d 138, 144 Tex. 558—Shields v. Dunlap, Civ.App., 174 S.W.2d 642—Pool v. Sneed, Civ. App., 173 S.W.2d 768, error refused—Southland Life Ins. Co. v. Barrett, Civ.App., 172 S.W.2d 997, error refused—McWhorter v. Humphreys, Civ.App., 161 S.W.2d 304, error refused—Wixom v. Bowers, Civ.App., 152 S.W.2d 896, error refused—Smith v. Lynn, Civ.App., 152 S.W.2d 838—Boone v. Henry, Civ.App., 151 S.W.2d 323—Baxter v. Crow, Civ.App., 133 S.W.2d 187, error dismissed, judgment correct—Brotherhood of Railroad Trainmen v. Hayes, Civ.App., 130 S.W.2d 1078, error dismissed, judgment correct—Page v. Hart, Civ.App., 124 S.W.2d 399—Coyel v. Mortgage Bond Co. of New York, Civ.App., 124 S.W.2d 204—Preibisch v. Lay, Civ.App., 122 S.W.2d 670—Croft v. H. M. Cohen Lumber & Building Co., Civ.App., 107 S.W.2d 1040, error dismissed—Commercial Standard Ins. Co. v. Harper, Civ.App., 69 S.W.2d 820, reversed on other grounds 103 S.W.2d 143, 129 Tex. 249, 110 A.L.R. 524—Sullivan v. O'Brien, Civ.App., 85 S.W.2d 1106—Headrick v. Roach, Civ.App., 72 S.W.2d 614—Commercial Standard Ins. Co. v. Harper, Civ.App., 69 S. W.2d 820—Girard Fire & Marine Ins. Co. v. Koenigsberg, Civ.App., 65 S.W.2d 783—Texas Indemnity Ins. Co. v. Perdue, Civ.App., 64 S. W.2d 386—American Nat. Ins. Co. v. Park, Civ.App., 55 S.W.2d 1088—First Texas Prudential Ins. Co. v. Applewhite, Civ.App., 51 S.W.2d 1076—Stockwell v. Snyder, Civ. App., 51 S.W.2d 812, reversed on other grounds, 84 S.W.2d 705, 126 Tex. 6—Hackel v. Ford, Civ.App., 48 S.W.2d 807, reversed on other grounds Ford v. Hackel, 77 S.W.2d 1043, 124 Tex. 402—Comer v. Farrell, Civ.App., 48 S.W.2d 452—Wichita County v. Raley, Civ.App., 46 S.W.2d 728, modified on other grounds Raley v. Wichita County, 72 S.W.2d 577, 123 Tex. 494—Kroeger v. Risher, Civ.App., 38 S.W.2d 1105—Bridgeport Mach. Co. v. Geers, Civ.App., 36 S.W.2d 1047—Irvin v. Drake, Civ.App., 16 S.W. 2d 900—Witte v. Barry, Civ.App., 16 S.W.2d 548—Broun v. Shannon, Civ.App., 11 S.W.2d 540—McDade v. Girardey, Civ.App., 5 S.W.2d 785—West Texas Utilities Co. v. Klemstein, Civ.App., 3 S.W.2d 882—American Nat. Ins. Co. v. Bailey, Civ.App., 3 S.W.2d 539—Gomez v. Vanlandingham, Civ.App., 300 S.W. 145—St. Louis, S. F. & T. Ry. Co. v. Allen, Civ.App., 296 S.W. 950—W. J. Stevens Co. v. Novice State Bank, Civ.App., 294 S.W. 256, reversed on other grounds, Com.App., 2 S.W.2d 419—Sinclair Oil & Gas Co. v. Bryan, Civ.App., 291 S.W. 692—Long v. Harmon, Civ.App., 270 S.W. 583—Galveston, H. & S. A. Ry. Co. v. Duty, Civ.App., 267 S.W. 744, affirmed, Com.App., 277 S.W. 1057—Lancaster v. Bush, Civ.App., 267 S.W. 339—First Nat. Bank v. Price, Civ.App., 262 S.W. 797—Orange & N. W. R. Co. v. Tatum, Civ.App., 261 S.W. 421—Dilworth v. Buchanan, Civ.App., 260 S.W. 279—Joffre v. Mynatt, Civ.App., 240 S.W. 319—George v. Thompson, Civ.App., 211 S.W. 835, dismissed for want of jurisdiction—Robinson v. Galveston, H. & S. A. Ry. Co., Civ.App., 203 S.W. 395—Texas & N. O. R. Co. v. Tillman, Civ. App., 197 S.W. 1128, error refused—San Antonio & A. P. Ry. Co. v. Mosel, Civ.App., 195 S.W. 621, error refused—White v. Barrow, Civ. App., 182 S.W. 1154.

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lantic Greyhound Corp., 43 S.E.2d 872, 186 Va. 726—Dickens v. Goode, 42 S.E.2d 863, 186 Va. 388—Myers v. Hancock, 39 S.E.2d 246, 185 Va. 454—Norfolk & P. B. L. R. Co. v. Jones, 32 S.E.2d 720, 183 Va. 536—Third Buckingham Community v. Anderson, 17 S.E.2d 433, 178 Va. 478—Thornton v. Downes, 14 S.E. 2d 345, 177 Va. 451—Miller v. Jones, 6 S.E.2d 607, 174 Va. 336—Franklin Fire Ins. Co. v. Bolling, 3 S.E.2d 182, 173 Va. 228—Gross v. Citizens Mut. Bldg. Ass'n, 190 S.E. 298, 168 Va. 119 — Richmond-Washington Motor Coaches v. Austin, 152 S. E. 357, 154 Va. 148—Louisville & N. R. Co. v. Saltzer, 144 S.E. 456, 151 Va. 165—W. T. Grant Co. v. Owens, 141 S.E. 860, 149 Va. 906—Newsoms v. Commercial Casualty Ins. Co., 137 S.E. 456, 147 Va. 471, 52 A.L.R. 363—John E. Hughes Co. v. Shaw, 137 S.E. 370, 147 Va. 409—Hopkins v. Le Cato, 128 S.E. 55, 142 Va. 769—Washington & Old Dominion Ry. v. Weakley, 125 S.E. 672, 140 Va. 796—Southern Ry. Co. v. Leake, 125 S.E. 314, 140 Va. 438—E. I. Dupont De Nemours & Co. v. Taylor, 98 S.E. 866, 124 Va. 750.

Wash.—Washington Chocolate Co. v. Canterbury Candy Makers, 138 P 2d 195, 18 Wash.2d 79—Easton v. Chaffee, 132 P.2d 1006, 16 Wash.2d 183—Wylie v. Stewart, 84 P.2d 1004, 197 Wash. 215—Poll v. Second Seattle Real Estate Associates, 82 P.2d 167, 196 Wash. 107—Carlson v. P. F. Collier & Son Corporation, 67 P.2d 842, 190 Wash. 301—Dioguardi v. Haddow, 8 P.2d 978, 167 Wash. 62—Blaine v. Darwin, 295 P. 131, 160 Wash. 327—Schmit v. Campbell, 249 P. 487, 140 Wash. 376—Paton v. Edwards, 238 P. 913, 136 Wash. 111—Collins v. Harris, 227 P. 508, 130 Wash. 394—Hansen v. Dodwell Dock & Warehouse Co., 170 P. 346, 100 Wash. 46, L.R.A. 1918C 925—Gray v. Hickey, 166 P. 625, 97 Wash. 278—Gardner v. Frederick, 165 P. 85, 96 Wash. 324—Lipsett v. Dettering, 162 P. 1007, 94 Wash. 629—Casady v. Anderson, 155 P. 1067, 90 Wash. 296.

W.Va.—Thiry v. Banner Window Glass Co., 93 S.E. 958, 81 W.Va. 39, L.R.A.1918B 1048.

Wis.—Starry v. E. W. Wylie Co., 64 N.W.2d 833, 267 Wis. 258—Lofgren v. Preferred Acc. Ins. Co., 41 N.W. 2d 599, 256 Wis. 492—In re Langer's Estate, 11 N.W.2d 185, 243 Wis. 561—Juneau Store Co. v. Badger Mut. Fire Ins. Co., 257 N.W. 144, 216 Wis. 342—Hammer v. Minneapolis, St. P. & S. S. M. Ry. Co., 255 N.W. 124, 216 Wis. 7—Bent v Jonet, 252 N.W. 290, 213 Wis. 635, 126 A.L.R. 1245—Meyer v. Niedhoefer & Co., 251 N.W. 237, 213 Wis. 389—Engebrecht v. Bradley, 247 N.W. 451, 211 Wis. 1—Litel v. First Nat. Bank, 220 N.W. 651, 196 Wis. 625—Nelson v. Newell, 217 N.W. 723, 195 Wis. 572—Wills v. Wisconsin-Minnesota Light & Power Co., 205 N.W. 556, 187 Wis. 626—Tigerton Lumber Co. v. Holt Hardwood Co., 192 N.W. 73, 180 Wis. 197—Futopolus v. Midland Casualty Co., 182 N.W. 845, 174 Wis. 208—Smith v. Illinois Cent. R. Co., 155 N.W. 933, 163 Wis. 120.

Wyo.—Nelson v. Johnson, 150 P. 762, 23 Wyo. 319.

4 C.J. p 850 note 51—8 C.J. p 1088 note 75 [a] (3)—41 C.J. p 74 note 50 [d]—42 C.J. p 874 note 22, p 1288 note 35 [a]—52 C.J. p 534 note 20—57 C.J. p 980 note 92.

Plaintiff as witness

(1) Fact that plaintiff relied solely on his own testimony to support his contention did not per se render evidence insufficient as matter of law to support verdict for plaintiff, there being nothing in record to suggest that in accepting plaintiff's testimony jury were actuated by passion or prejudice or considerations outside the evidence.

Fla.—Atlantic Coast Line R. Co. v. McIntosh, 198 So. 92, 144 Fla. 356.

(2) Plaintiff's failure to take witness stand did not require reversal of judgment for plaintiff for injuries, where the injuries admittedly affected plaintiff's mind and speech mechanism.

N.Y.—Witkin v. Charles D. Beckwith, Inc., 264 N.Y.S. 160, 238 App.Div. 328, affirmed 189 N.E. 697, 263 N.Y. 560.

Fact that testimony strongly tends to support the contentions of defendant is no ground for reversing a judgment for plaintiff, since the jury may not have believed such testimony.

Mass.—Hilden v. Naylor, 111 N.E. 848, 223 Mass. 290.

Answers to interrogatories

(1) Jury's answers to interrogatories must be accepted by appellate court where it cannot say from reading of record that answers are untrue.

Ind.—Federal Life Ins. Co. v. Relias, 185 N.E. 319, 99 Ind.App. 115.

(2) Where there is real or apparent discrepancy in jury's answers to special questions, reviewing court has duty to examine answers and general verdict with view of harmonizing them.

Kan.—Sluss v. Brown-Crummer Inv. Co., 64 P.2d 23, 145 Kan. 12.

Jury's finding pursuant to instructions requested by both parties is conclusive on appeal.

Ark.—Pyramid Life Ins. Co. v. Belmont, 7 S.W.2d 32, 177 Ark. 564.

Where findings of fact are based on records of former proceedings in the district court, there can be no question concerning the facts.

Utah.—Franklin v. Thatcher, 178 P. 922, 53 Utah 397.

Speculation

Appellate court has not the power or insight to analyze and speculate on the processes by which the jury arrive at their conclusions.

Iowa.—Hanna v. Central States Electric Co., 232 N.W. 421, 210 Iowa 864.

Tex.—City Transp. Co. of Dallas v. Vatsures, Civ.App., 278 S.W.2d 373, error dismissed—Hopkins v. Gunter Hotel Corp., Civ.App., 147 S.W. 2d 973, error dismissed, judgment correct.

Time for deliberation

Ordinarily, time consumed by jury in its deliberation is no criterion in determining merits of case especially if issue is narrow and simple one.

R.I.—Mahoney v. Smith, 78 A.2d 798, 78 R.I. 56.

In absence of motion for new trial

Where plaintiffs made no motion for new trial after unanimous verdict for defendant, so that supreme court has not the benefit of trial judge's views, great weight must be given to the jury's conclusions.

La.—Mequet v. Algiers Mfg. Co., 84 So. 904, 147 La. 364.

Rule relaxed

Appellate court will scrutinize a verdict more critically and interfere more readily where the result is to deprive the owner of the control of his property than in any other case.

Iowa.—Zander v. Cahow, 206 N.W. 90, 200 Iowa 1258.

Acceptance of appellee's evidence

(1) On appeal, appellee's version of facts is accepted.

Ind.—F. W. Woolworth Co. v. Moore, 48 N.E.2d 644, 221 Ind. 490—Craig v. Citizens Trust Co., 26 N.E.2d 1006, 217 Ind. 434.

Ky.—Ashland Dry Goods Co. v. Wages, 195 S.W.2d 312, 302 Ky. 577.

Tex.—Sellman v. American Nat. Ins. Co., Civ.App., 281 S.W.2d 150, error dismissed—Thornton v. Downes, 14 S.E.2d 345, 177 Va. 451.

(2) Appellate court must reject all evidence favorable to appellant and consider only the facts tending to sustain the verdict, and, if the verdict has been arrived at in an honest and impartial effort to reach the truth, cannot set it aside.

Cal.—Koon v. Sher, 220 P.2d 784, 98 C.A.2d 530.

Ind.—Northwestern Transit v. Wagner, 61 N.E.2d 591, 223 Ind. 447.

Tex.—Farmers' and Merchants' Gin Co. v. Simmons, Civ.App., 178 S.W. 621.

(3) In determining sufficiency of evidence to support a jury finding, appellate court will disregard evidence tending to support a conclusion contrary to the finding where such evidence is contradicted either directly or by inference, or if, when viewed in light of record of the case,

been committed by the trial court[37] prejudicial to the complaining party.[38]

Generally, the function of the court on appeal, with respect to findings of fact by a jury, is to determine whether there is credible evidence fairly tending to support the verdict,[38.5] and the court is with-

it possesses inherent infirmities which destroy its probative value, but testimony of a disinterested unimpeached witness may not be wholly disregarded where such testimony contains no inconsistencies, is uncontradicted, and not improbable.

Tex.—Houston Fire & Casualty Ins. Co. v. Biber, Civ.App., 146 S.W.2d 442, error dismissed, judgment correct.

(4) In determining sufficiency of evidence to sustain verdict for plaintiff on appeal by defendant, which introduced evidence after denial of its motion for directed verdict at close of plaintiff's evidence in chief, supreme court must look to whole evidence, not merely that offered by plaintiff, and accept as true all facts and proper inferences therefrom calculated to sustain verdict.

Ind.—Indiana Ins. Co. v. Handlon, 24 N.E.2d 1003, 216 Ind. 442.

Based on circumstantial evidence

(1) Notwithstanding the verdict in an action for contamination of plaintiff's well by sewage which escaped from alleged defective tile joints in a city sewer must necessarily rest on circumstantial evidence, that is no reason for disturbing it.

Iowa.—Hemminger v. City of Des Moines, 203 N.W. 822, 199 Iowa 1302.

(2) Before the appellate court will sustain a verdict for plaintiff, supported solely by circumstantial evidence, the circumstances shown must tend, in an appreciable degree, to establish plaintiff's theory.

Ga.—Radcliffe v. Maddox, 165 S.E. 841, 45 Ga.App. 676.

(3) A judgment on jury's verdict, reasonably sustained by circumstantial evidence and reasonable inferences therefrom, will not be set aside on appeal.

Okl.—Thompson v. Vanpool, 210 P.2d 370, 202 Okl. 92.

Tex.—Barry v. Patterson, Civ.App., 225 S.W.2d 864.

Based on opinion evidence

(1) Where a verdict based on opinion evidence does not commend itself to the court as reasonable or sound, it will not be given the weight accorded to a verdict resting upon inferences drawn from facts, as distinguished from mere opinions.

Wis.—Krueger v. Chase, 177 N.W. 510, 172 Wis. 163.

(2) A verdict based on witnesses' opinions is not accorded the same sanctity as a verdict based on facts, which will rarely be disturbed.

Ky.—Kentucky Hydroelectric Co. v. Reister, 287 S.W. 357, 216 Ky. 303.

Dispute as to signature

As the members of an appellate court cannot be tested as to their qualification to pass, as experts, upon a disputed signature, they cannot determine, from a comparison of writings, that the finding of the jury that a disputed signature was not that of defendant was unauthorized.

Mo.—Sturdivant Bank v. Wright, 168 S.W. 355, 184 Mo.App. 164.

Bona fides of transaction

Jury findings on the bona fides of transaction cannot be disturbed by the appellate court on general grounds only.

Ga.—Rogers v. Hardin, 140 S.E. 399, 37 Ga.App. 407.

4 C.J. p 850 note 51 [g].

37. Conn.—Rolston v. Pratt, 126 A. 841, 101 Conn. 490.

Ga.—Wells v. McMahon, 106 S.E. 297, 26 Ga.App. 397.

Ill.—Bollenbach v. Bloomenthal, 255 Ill.App. 305, reversed on other grounds 173 N.E. 670, 341 Ill. 539. See Corn Belt Lumber Co. v. Doty, 212 Ill.App. 521.

Ind.—Wagoner v. Rose, 193 N.E. 108, 100 Ind.App. 192.

Mo.—Cullen v. Atchison County, 268 S.W. 93.

State Bank of Sarcoxie v. Harp, App., 282 S.W. 737.

Ohio.—Cincinnati Auto Body Co. v. Auto Sun Products Co., 153 N.E. 127, 21 Ohio App. 251.

S.C.—Barrett v. Texas Co., 176 S.E. 874, 174 S.C. 45—Johnson v. Atlantic Coast Line R. Co., 140 S.E. 443, 142 S.C. 125.

Tex.—San Antonio & A. P. Ry. Co. v. Mason, Civ.App., 289 S.W. 1027—Breckenridge Ice & Cold Storage Co. v. Hutchens, Civ.App., 260 S.W. 684.

Va.—Bryant v. Fox's Adm'r, 116 S.E. 459, 135 Va. 296.

Only concern of appellate court relative to verdict is whether the judge, in the trial of the cause, committed an error of law.

Ind.—Keltner v. Patton, 185 N.E. 270, 204 Ind. 550.

Okl.—State v. Bowling, 213 P. 745, 89 Okl. 9.

S.C.—Duncan v. Record Pub. Co., 143 S.E. 31, 145 S.C. 196.

Wash.—Bond v. Ovens, 147 P.2d 514, 20 Wash.2d 354.

Wyo.—Vissenberg v. Bresnahen, 203 P.2d 966, 65 Wyo. 367.

38. Ky.—Chesapeake & O. Ry. Co. v. Wadsworth Electric Mfg. Co., 29 S.W.2d 650, 234 Ky. 645—McLain v. Burdette, 192 S.W. 648, 174 Ky. 592.

Miss.—Colvin v. Robertson, 78 So.2d 898, 223 Miss. 717.

Mo.—Winkler v. Pittsburgh, C., C. & St. L. R. Co., 10 S.W.2d 649, 321 Mo. 27.

Slyman v. Simon, 48 S.W.2d 140, 226 Mo.App. 1000—Genta v. Ross, 37 S.W.2d 969, 225 Mo.App. 673—Reugsegger v. Chicago Great Western R. Co., 29 S.W.2d 221, 225 Mo. App. 211.

Neb.—Keiserman v. Lydon, 44 N.W. 2d 513, 153 Neb. 279.

Nev.—Harrah v. Home Furniture, Inc., 214 P.2d 1016, 67 Nev. 114.

N.C.—McCorkle v. Beaty, 38 S.E.2d 102, 226 N.C. 338.

Okl.—Liberty Plan Co. v. Smith, 220 P.2d 239, 203 Okl. 324—First Nat. Bank v. Clark, 219 P. 370, 93 Okl. 23.

Or.—McCulley v. Homestead Bakery, 18 P.2d 226, 141 Or. 460.

S.C.—Liquid Carbonic Co. v. Coclin, 159 S.E. 461, 161 S.C. 40.

Wis.—Hanes v. Hermsen, 236 N.W. 646, 205 Wis. 16.

38.5 Ark.—St. Paul Fire & Marine Ins. Co. v. Martin, 165 S.W.2d 606, 204 Ark. xviii—Western Union Telegraph Co. v. Byrd, 122 S.W.2d 569, 197 Ark. 152.

Ind.—Treesh v. DeVeny, 64 N.E.2d 41, 116 Ind.App. 305—Johnnie J. Jones Exposition v. Terry, 63 N.E.2d 159, 116 Ind.App. 189.

Minn.—Hentges v. Schuttler, 77 N.W. 2d 743, 247 Minn. 380.

Mo.—Quisenberry v. Stewart, 219 S.W. 625.

Shepard v. Duncan, App., 208 S. W. 127.

Ohio.—Housh v. Peth, App., 135 N.E. 2d 440, affirmed 133 N.E.2d 340, 165 Ohio St. 35.

Tex.—American Nat. Ins. Co. v. Frankel, Civ.App., 199 S.W. 1132.

Wis.—Olson v. Milwaukee Auto Ins. Co., 62 N.W.2d 549, 266 Wis. 106, mandate modified on other grounds 63 N.W.2d 740, 266 Wis. 106—Throm v. Koepke Sand & Gravel Co., 51 N.W.2d 49, 260 Wis. 479—Basche v. Vanden Heuvel, 50 N.W. 2d 383, 260 Wis. 169.

Other statements of function

(1) It is not the province of the supreme court to weigh the probative force and effect of the evidence, and the only matter open for review is the question whether or not there is substantial evidence to support the verdict and judgment.

Ariz.—Moore v. Blackstone, 180 P. 526, 20 Ariz. 328.

Ark.—A. S. Barboro & Co. v. James, 168 S.W.2d 202, 205 Ark. 53.

Cal.—Gall v. Union Ice Co., 239 P.2d 48, 108 C.A.2d 303.

Kan.—Marshall v. Anderson, 216 P.2d

out power to substitute its judgment of the facts for that of the jury.[38.10] A verdict may, however, be set aside on appeal where the evidence is clearly insufficient as a matter of law, as discussed in subdivision b of this section; and in some jurisdictions appellate courts, in a measure, not only examine the evidence, but determine on its weight and sufficiency, the duty of passing on the facts as such being confined to certain courts of intermediate appellate jurisdiction in several of the states, and their power to reverse on the facts is not confined to cases where there is no evidence to support the verdict.[39]

The general rule as to the conclusiveness on appeal of a verdict or finding supported by evidence has been stated by the courts in many different forms.[39.5]

812, 169 Kan. 41, opinion adhered to 220 P.2d 187, 169 Kan. 534.
Ky.—Hilsenrad v. Bowling, 166 S.W. 2d 847, 292 Ky. 368—Smith v. Dunning, 122 S.W.2d 781, 275 Ky. 733—Pfuelb v. Pfuelb, 122 S.W.2d 128, 275 Ky. 588.
Mo.—Abresch v. Schultz, App., 216 S.W.2d 134.
Or.—Burgdorfer v. Thielemann, 55 P.2d 1122, 153 Or. 354, 104 A.L.R. 1407.
Wash.—Champneys v. Irwin, 180 P. 405, 106 Wash. 438.

(2) Under statute the supreme court of appeals, in determining whether to sustain a verdict approved by a judgment, is to ascertain whether the judgment is plainly wrong or without evidence to support it.
Va.—Virginia Stage Lines v. Duff, 39 S.E.2d 634, 185 Va. 592—Orndorff v. Howell, 25 S.E.2d 327, 181 Va. 383.

(3) Under some statutory provisions, the utmost that can be required of the appellate court is to determine whether there is evidence tending fairly to prove the oral contract on which plaintiff has recovered a verdict.
Ind.—Outing Kumfy-Kab Co. v. Ivey, 125 N.E. 234, 74 Ind.App. 286.

38.10 U.S.—New York, O. & W. Ry. Co. v. Jones, C.C.A.Pa., 66 F.2d 556, certiorari denied 54 S.Ct. 123, 290 U.S. 687, 78 L.Ed. 592.
Ark.—Alldread v. Mills, 199 S.W.2d 571, 211 Ark. 99.
Cal.—Asamen v. Thompson, 131 P.2d 841, 55 C.A.2d 661—Shahabian v. Najarian, 58 P.2d 396, 14 C.A.2d 435—Coughman v. Harman, 26 P.2d 851, 135 C.A. 49.
Fla.—Toll v. Waters, 189 So. 393, 138 Fla. 349—Alford v. Barnett Nat. Bank of Jacksonville, 188 So. 322, 137 Fla. 564.
Ill.—Smith v. Bregstone's, Inc., 143 N.E.2d 79, 14 Ill.App.2d 115—Bliss v. Knapp, 72 N.E.2d 566, 331 Ill. App. 45.
Iowa.—Ballard v. Ballard, 285 N.W. 165, 226 Iowa 699—Rabenold v. Hutt, 283 N.W. 865, 226 Iowa 321.
Kan.—Will v. Hughes, 238 P.2d 478, 172 Kan. 45.
Me.—Stinson v. Bridges, 129 A.2d 203.
Mich.—Molitor v. Burns, 28 N.W.2d 106, 313 Mich. 261.
Miss.—New Orleans & Northeastern R. Co. v. Lewis, 58 So.2d 486, 214 Miss. 163.
N.J.—Mead v. Wiley Methodist Episcopal Church, 93 A.2d 9, 23 N. J. Super. 342—Sotak v. Pennsylvania R. Co., 80 A.2d 215, 13 N.J. Super. 130, reversed on other grounds Jelinek v. Sotak, 86 A.2d 684, 9 N.J. 19.
Okl.—Denco Bus Lines v. Hargis, 229 P.2d 560, 204 Okl. 339.
Or.—Smith v. Williams, 205 P.2d 566, 186 Or. 155—Parker v. Pettit, 138 P.2d 592, 171 Or. 481.
S.C.—Boykin v. State Highway Department of South Carolina, 169 S.E. 173, 169 S.C. 432.
Tex.—Happ v. Happ, Civ.App., 160 S.W.2d 227, error refused.
Tex.—Edmondson v. Carroll, Civ. App., 134 S.W.2d 378, error dismissed, judgment correct—Sherman v. Sipper, Civ.App., 129 S.W. 2d 458, reversed on other grounds 152 S.W.2d 319, 137 Tex. 85, 137 A.L.R. 263—Fort Worth Hotel Co. v. Waggoman, Civ.App., 126 S.W. 2d 578, error dismissed, judgment correct.

Better qualification

(1) Jurors who have been privileged to observe the witnesses and to mark their demeanor on direct and cross-examination and under questioning of the court are better qualified to separate truth from falsity than are judges who later examine the record for errors.
Ark.—Hurst v. Bar Rules Committee of Arkansas, 155 S.W.2d 697, 202 Ark. 1101—St. Louis Southwestern Ry. Co. v. Braswell, 127 S.W.2d 637, 198 Ark. 143.
Wash.—Peterson v. Department of Labor and Industries, 157 P.2d 298, 22 Wash.2d 647.

(2) Where the jury had viewed the premises involved by consent of parties, supreme court would not determine, from the reported evidence alone, that the verdict was not supported by the evidence.
Ga.—Rogers v. Western & Atlantic R. R., 74 S.E.2d 87, 209 Ga. 450.

(3) A jury's verdict-view of facts is entitled to an even higher degree of appellate respect than is a judge's verdict-view of the same facts, learned though the judge may be in law.
Mich.—Schneider v. Pomerville, 31 N.W.2d 405, 348 Mich. 49.

39. Ill.—Welch v. Chicago City Ry. Co., 195 Ill.App. 146.
La.—Brown v. Louisiana Ry. & Nav. Co., 86 So. 281, 147 La. 829.
Ohio.—Woolson v. Hessing, 20 Ohio Cir.Ct.,N.S., 583.
Tex.—Hall v. McClesky, Civ.App., 228 S.W. 1004.
Va.—Margiotta v. Aycock, 174 S.E. 831, 162 Va. 557.
4 C.J. p 851 note 52.

It is function of appellate court to determine whether the jury was within its province in ruling as it did under the law and the evidence.
Iowa.—Hanna v. Central States Electric Co., 232 N.W. 421, 210 Iowa 864.

Verdict of a jury creates no absolute right, but a verdict is subject to appellate review.
Fla.—State v. Ætna Casualty & Surety Co., 92 So. 871, 84 Fla. 123, 24 A.L.R. 1262.

Caution in review

Power of appellate court to reverse the judgment solely on the evidence should be exercised cautiously and with discrimination.
Conn.—Gondek v. Pliska, 67 A.2d 552, 135 Conn. 610.
Fla.—308 East 79th St. Corporation v. Favorite, 149 So. 625, 111 Fla. 234.

Jury's finding of genuineness of signatures and alteration of instruments is all that will be determined.
Kan.—Converse v. Watts, 275 P. 181, 127 Kan. 673.

39.5 Ill.—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App. 2d 388—Duffy v. Cortesi, 113 N.E. 2d 173, 350 Ill.App. 498, affirmed in part and reversed in part on other grounds 119 N.E.2d 241, 2 Ill.2d 511—Walter v. City of Rockford, 74 N.E.2d 903, 332 Ill.App. 243.
Ind.—Hinds v. McNair, 129 N.E.2d 553.
Mo.—Bray v. St. Louis-San Francisco Ry. Co., Civ.App., 259 S.W.2d 132—Purdy v. Moore, App., 224 S. W.2d 838.
Mont.—Hill v. Haller, 90 P.2d 977, 108 Mont. 251.
Or.—Birks v. East Side Transfer Co., 241 P.2d 120, 194 Or. 7.
Tex.—Jones v. Sun Oil Co., Civ.App., 110 S.W.2d 80, error refused.
Wis.—Wagner v. Peiffer, 49 N.W.2d 739, 259 Wis. 566, followed in 49 N.W.2d 747, 259 Wis. 583.

Thus, it has been variously stated, either directly or in effect, that the verdict or the findings of the jury will not be disturbed or will be taken as conclusive: Where the case was properly submitted to the jury and where no errors were committed in the rulings or in the instructions of the trial court;[40]

Particular statements

(1) A judgment on facts will not be disturbed on appeal unless all competent and credible evidence constrains a different conclusion.

Kan.—In re Ward's Estate, 285 P.2d 1081, 178 Kan. 366.

(2) A jury's verdict should not be overturned by appellate court, unless good legal reason therefor is shown.

Ala.—Montgomery City Lines v. Hawes, 20 So.2d 536, 31 Ala.App. 564, certiorari denied 20 So.2d 541, 246 Ala. 287—Lamar Life Ins. Co. v. Kemp, 1 So.2d 760, 30 Ala.App. 138.

(3) It is not duty of supreme court to disturb jury's verdict unless jury was influenced by some matter not appearing in record.

Fla.—Fort Orange Co. v. O'Neal, 189 So. 685, 138 Fla. 325.

(4) A verdict may be set aside only where it is not possible to frame a judgment in accordance therewith when and as construed with the pleadings.

Ga.—Calhoun v. Babcock Bros. Lumber Co., 30 S.E.2d 872, 198 Ga. 74.

(5) Unless finding is arbitrary, it will not be disturbed as contrary to evidence.

Ark.—Old American Ins. Co. v. Hartsell, 4 S.W.2d 25, 176 Ark. 666.

(6) Argumentative exceptions, based on facts submitted to, and decided by, jury, must be overruled by supreme court.

S.C.—Porter-Constructors v. Dixon Motor Service Co., 172 S.E. 419, 171 S.C. 396.

(7) The verdict determines the facts and precludes consideration of them on appeal except in their relation to the course of the trial.

Ark.—Coca-Cola Bottling Co. v. Jenkins, 82 S.W.2d 15, 190 Ark. 930.

(8) The court of appeals does not have as much discretion as the trial court in setting aside verdicts and granting new trials.

Ga.—Candler v. Smith, 179 S.E. 395, 50 Ga.App. 667.

40. U.S.—Travelers' Ins. Co. v. Schenkel, C.C.A.Mo., 35 F.2d 611, rehearing denied 37 F.2d 254.

Ark.—Baldwin v. Wingfield, 85 S.W. 2d 689, 191 Ark. 129—Duff v. Ayers, 246 S.W. 508, 156 Ark. 17.

Cal.—Lozano v. Pacific Gas & Elec. Co., 161 P.2d 74, 70 C.A.2d 415.

Colo.—Lamborn v. Kirkpatrick, 50 P. 2d 542, 97 Colo. 421—Lengel v. Herron, 280 P. 878, 86 Colo. 236.

Conn.—Bettilyon v. C. E. Smith & Son, 112 A. 649, 96 Conn. 16.

Ill.—Partridge v. Enterprise Transfer Co., 30 N.E.2d 947, 307 Ill.App. 386—Sparta Produce Exch. v. Wilson & Co., 223 Ill.App. 126.

Iowa.—Reardon v. Hermansen, 275 N. W. 6, 223 Iowa 1207—Crow v. Casady, 182 N.W. 884, 191 Iowa 1357—Stilwell v. Stilwell, 172 N.W. 177, 186 Iowa 177.

Ky.—Shaheen v. Dorsey, 270 S.W. 452, 208 Ky. 89—Kentucky Distilleries & Warehouse Co. v. Johnson, 237 S.W. 3, 198 Ky. 669.

Mich.—Tanis v. Eding, 273 N.W. 761, 280 Mich. 440.

Mo.—Allen v. Kraus, 215 S.W.2d 739, 358 Mo. 520.

White v. Meiderhoff, App., 281 S.W. 98—Deppe v. National Council Junior Order United American Mechanics, App., 220 S.W. 974.

Neb.—Jacobsen v. Poland, 80 N.W. 2d 891, 163 Neb. 590.

N.J.—Martin v. City of Asbury Park, 168 A. 612, 111 N.J.Law 364.

N.Y.—Butler v. Crandall, 37 N.Y.S. 2d 797, 265 App.Div. 890, reargument denied 41 N.Y.S.2d 224, 266 App.Div. 700.

Pardee v. Prudential Ins. Co. of America, 14 N.Y.S.2d 736, 171 Misc. 981—Keenan v. Lawyers Mortgage Co., 300 N.Y.S. 1207, 165 Misc. 869, reversed on other grounds 5 N.Y.S. 2d 18, 254 App.Div. 348, affirmed 19 N.E.2d 925, 280 N.Y. 525.

N.C.—Morris v. Wrape, 64 S.E.2d 420, 233 N.C. 462—Nichols v. Wachovia Bank & Trust Co., 56 S.E.2d 429, 231 N.C. 158—Martin v. Currie, 53 S.E.2d 447, 230 N.C. 511—Abrams v. Metropolitan Life Ins. Co., 27 S.E.2d 148, 223 N.C. 500, rehearing denied 29 S.E.2d 130, 224 N.C. 1—Pruden v. National Accident & Health Ins. Co., 4 S.E.2d 317, 216 N.C. 792—C. C. Disher Chevrolet Co. v. Johnson, 194 S.E. 480, 212 N.C. 835—Thomas v. Raleigh-Charlotte Bus Line, 139 S.E. 701, 194 N.C. 798—Watt v. Shapleigh Hardware Co., 100 S.E. 881, 178 N.C. 659.

Okl.—McBroom v. Meyer, 303 P.2d 303—Krieger v. Marshall, 292 P. 2d 379—Globe & Rutgers Fire Ins. Co. v. Roysden, 258 P.2d 644, 208 Okl. 660—City of Shawnee v. Faulkner, 240 P.2d 100, 205 Okl. 647—Stauffer v. Lane, 49 P.2d 71, 173 Okl. 322—Chickasha Compress Co. v. Southern Burner Co., 14 P.2d 367, 159 Okl. 107—Selby v. Swindler, 254 P. 4, 124 Okl. 131—Rose v. First Nat. Bank, 219 P. 715, 93 Okl. 120—West v. Oakey, 202 P. 318, 84 Okl. 59.

Pa.—Andrews v. Pennsylvania R. Co., 11 A.2d 145, 337 Pa. 258—Keller v. New Jersey Fidelity & Plate Glass Ins. Co., 159 A. 40, 306 Pa. 124.

Tex.—Burleson v. Morse, Civ.App., 172 S.W.2d 361, error refused—Jackson v. Cooper, Civ.App., 151 S.W.2d 951, error dismissed, judgment correct—Casualty Reciprocal Exchange v. Bryan, Civ.App., 101 S.W.2d 895.

Va.—Lucas v. Craft, 170 S.E. 836, 161 Va. 228—Etheridge v. Norfolk Southern R. Co., 129 S.E. 680, 143 Va. 789.

Wash.—Nearhoff v. Rucker, 287 P. 658, 156 Wash. 621—Burton-Page Co. v. Anderson, 269 P. 817, 148 Wash. 506.

W.Va.—Colien v. Matz, 116 S.E. 712, 93 W.Va. 124.

Wis.—Swiergul v. Town of Suamico, 235 N.W. 548, 204 Wis. 114.

4 C.J. p 851 note 53.

Fact questions properly and fairly submitted

(1) Jury's verdict on fact question properly submitted is conclusive.

U.S.—Robinette v. Sidener, C.C.A. Kan., 33 F.2d 37.

Ginsberg v. Delaware, L. & W. R. Co., C.C.A.N.J., 296 F. 439—Griggs v. Nadeau, Minn., 250 F. 781, 163 C.C.A. 113—U. S. v. Delaware, L. & W. R. Co., N.Y., 218 F. 608, 134 C.C.A. 366.

Ala.—Alexander v. Fountain, 70 So. 669, 195 Ala. 3.

Ark.—Petty v. Ozark Grocer Co., 61 S.W.2d 60, 187 Ark. 595—Martin v. Street Improvement Dist. No. 349, 21 S.W.2d 430, 180 Ark. 298—Blume v. Lightle, 10 S.W.2d 45, 177 Ark. 1134—Jordan v. Hargis, 246 S.W. 476, 156 Ark. 408—Barnett v. McClain, 240 S.W. 415, 153 Ark. 325—Pierce Oil Corporation v. Taylor, 227 S.W. 420, 147 Ark. 100—Truman Cooperage Co. v. Crye, 209 S.W. 278, 137 Ark. 293—O'Leary v. Keith, 203 S.W. 38, 134 Ark. 36—Three States Lumber Co. v. Moore, 201 S.W. 508, 132 Ark. 371—W. T. Rawleigh Co. v. Thurman, 197 S.W. 1154, 131 Ark. 593.

Cal.—Bennett v. Hardy, 291 P. 903, 108 C.A. 473.

Colo.—City and County of Denver v. Hudson, 12 P.2d 344, 91 Colo. 87—Lengel v. Herron, 280 P. 878, 86 Colo. 236.

Post v. Lang, 147 P. 441, 27 Colo.App. 225.

D.C.—U. S. ex rel. Smith v. Stewart, 2 F.2d 936, 55 App.D.C. 134—Columbia Aid Ass'n v. Sprague, 271 F. 381, 50 App.D.C. 307.

Ga.—Ponder v. Grant, 85 S.E. 929, 16 Ga.App. 629.

Idaho.—Commercial Credit Co. v. Erum, 273 P. 759, 47 Idaho 215.

Ill.—Kanter v. Finkelstein, 183 Ill. App. 348.

where substantial justice appears to have been done;[41] where the case is extremely close on the facts and the right of plaintiff to recover not very doubtful;[42] where the verdict is sustained by the preponderance of the evidence[43] or abundantly supported by positive evidence;[44] where the evidence justifies the finding or verdict;[45] or where the ver-

Iowa.—Roundy & McMurray Co. v. Nicholson Produce Co., 147 N.W. 305, 166 Iowa 39.
Kan.—Underhill v. Motes, 165 P.2d 218, 160 Kan. 679—First Nat. Bank & Trust Co. of Oklahoma City, Okl. v. Morganroth, 300 P. 1061, 133 Kan. 474—Atchison, T. & S. F. Ry. Co. v. Bowman, 147 P. 813, 95 Kan. 5.
Ky.—Nichols v. Harvey & Hancock, 266 S.W. 870, 206 Ky. 112.
Mich.—Haara v. Vreeland, 236 N.W. 836, 254 Mich. 462.
Mo.—Pashea v. Terminal R. Ass'n of St. Louis, 165 S.W.2d 691, 350 Mo. 132, certiorari denied 63 S.Ct. 664, 318 U.S. 763, 87 L.Ed. 1135—Nichols v. Thompson, 181 S.W. 385—Diamond v. Missouri Pac. Ry. Co., 181 S.W. 12.
Jackson v. Missouri Pac. Ry. Co., 42 S.W.2d 932, 226 Mo.App. 29—Nash v. Breeden, App., 24 S.W.2d 707—Privitt v. Jewett, App., 225 S.W. 127—Heck v. Watkins, App., 183 S.W. 351—Sterling v. Parker-Washington Co., 170 S.W. 1156, 185 Mo.App. 192.
Neb.—Carpenter v. Sun Indemnity Co., 293 N.W. 400, 138 Neb. 552—Dougherty v. Omaha & C. B. St. Ry. Co., 203 N.W. 538, 113 Neb. 356.
N.Y.—Ozark Cooperage & Lumber Co. v. Kimont, 156 N.Y.S. 849, 171 App. Div. 48.
N.C.—Security Finance Co. v. Robinson, 160 S.E. 890, 201 N.C. 837—Stoffer v. Griffin, 129 S.E. 804, 190 N.C. 869—Bumgarner v. Rice, 83 S. E. 803.
Ohio.—Denison Coal & Supply Co. v. Bartelheim, 171 N.E. 835, 122 Ohio St. 374.
Okl.—National Life & Acc. Ins. Co. v. Cudjo, 304 P.2d 322—Sisler v. Sapulpa Industrial Finance Corporation, 45 P.2d 91, 172 Okl. 207—Shawnee Nat. Bank v. Perry, 276 P. 230, 136 Okl. 60—Waddle v. Stafford, 230 P. 855, 104 Okl. 192.
Or.—Mathews v. City of La Grande, 299 P. 999, 136 Or. 426—Fuller v. Oregon-Washington R. & Nav. Co., 181 P. 991, 93 Or. 160, certiorari denied Oregon-Washington R. & Nav. Co. v. Fuller, 40 S.Ct. 56, 251 U.S. 551, 64 L.Ed. 410.
Pa.—Carey v. Pennsylvania Transfer Co. of Pittsburgh, 160 A. 705, 307 Pa. 170—Jones v. Pittsburgh Mercantile Co., 145 A. 80, 295 Pa. 219—Martin v. Borough of West Liberty, 90 A. 366, 243 Pa. 500.
Minnenberg v. Rash, 79 Pa.Super. 349.
S.C.—Brooker v. Silverthorne, 99 S. E. 350, 111 S.C. 553, 5 A.L.R. 1283.
Tex.—Lasater v. Lopez, 217 S.W. 373, 110 Tex. 179.
Fort Worth & D. C. Ry. Co. v. Armitage, Civ.App., 39 S.W.2d 108—Matthews v. Kirkland, Civ. App., 186 S.W. 423, error refused—Smith v. Webb, Civ.App., 181 S.W. 814.
Va.—Frieden v. Cluett, Peabody & Co., 128 S.E. 61, 142 Va. 738—Trauerman v. Oliver's Adm'r, 99 S.E. 647, 125 Va. 458—Norfolk & W. Ry. Co. v. Whitehurst, 99 S.E. 568, 125 Va. 260—Scott v. Doughty, 97 S.E. 802, 124 Va. 358—City of Portsmouth v. Jobson, 89 S.E. 127, 119 Va. 195—National Union Fire Ins. Co. v. Burkholder, 83 S.E. 404, 116 Va. 942.
Wash.—Pellerin v. Washington Veneer Co., 2 P.2d 658, 163 Wash. 555—Woods v. Greenblatt, 1 P.2d 880, 163 Wash. 433—Jones v. Wiese, 153 P. 330, 88 Wash. 356.
W.Va.—Mudd v. Cline Ice Cream Co., 131 S.E. 865, 101 W.Va. 11—Cohen v. Matz, 116 S.E. 712, 93 W.Va. 124.
Wis.—Pauloni v. Simmons Mfg. Co., 151 N.W. 265, 160 Wis. 211.

(2) Where a case has been fairly submitted, and the verdict fairly rendered, it will not be interfered with unless manifest wrong or injustice has been done, or the verdict is plainly not warranted by the evidence.
Me.—Mayo v. Purinton, 94 A. 935, 113 Me. 452.
Neb.—Kunkel v. Cohagen, 39 N.W.2d 609, 151 Neb. 774—Keyser v. Allen, 31 N.W.2d 309, 149 Neb. 449—Live Stock Nat. Bank v. Bragonier, 153 N.W. 504, 98 Neb. 506—Wenquist v. Omaha & C. B. St. Ry. Co., 150 N.W. 637, 97 Neb. 554—Norman v. Kusel, 150 N.W. 201, 97 Neb. 400.
Okl.—Silverwood v. Carpenter, 152 P. 381, 51 Okl. 745.
Tex.—Carpenter v. Waxahachie Cotton Warehouse, Civ.App., 162 S.W. 2d 139, error refused—Slaughter v. Crisman & Nesbit, Civ.App., 178 S.W. 1—Shaw v. Garrison, Civ. App., 174 S.W. 942.
Vt.—Newton's Adm'x v. American Car Sprinkler Co., 90 A. 583, 87 Vt. 546.
Va.—Humphreys v. Baird, 90 S.E.2d 796, 197 Va. 667.

Absence of complaint

(1) Where all material facts at issue were submitted to the jury in charge of which no complaint was made, the jury's verdict was conclusive.
N.Y.—Koczenasz v. Lehigh Portland Cement Co., 169 N.Y.S. 366, 182 App.Div. 287.
Pa.—Ott v. Ott, 166 A. 556, 311 Pa. 130.

(2) Where appellant does not complain of the form of the court's instructions, the supreme court must dispose of the questions presented for review upon appellee's theory of the facts and as found by the jury.
Iowa.—Bankers' Loan & Trust Co. v. First Nat. Bank, 181 N.W. 791, 191 Iowa 119.
4 C.J. p 851 note 53 [c].

Instructions as whole proper

Verdict based on evidence will not be disturbed because of insufficiency of a single instruction, where instructions as a whole correctly state the law.
Okl.—Southern Drilling Co. v. McKee, 42 P.2d 265, 171 Okl. 409.

41. Ill.—Reed v. Alton Water Co., 22 N.E.2d 395, 301 Ill.App. 219.
Okl.—Clanton v. Chrisman, 51 P.2d 748, 174 Okl. 425—Rose v. First Nat. Bank, 219 P. 715, 93 Okl. 120.
Tex.—Ramsey v. Evans, Civ.App., 228 S.W. 356.
4 C.J. p 851 note 54.

42. Ill.—Chicago, etc., R. Co. v. Adler, 21 N.E. 846, 129 Ill. 335.
Okl.—Wood v. Thompson, 248 P.2d 606, 207 Okl. 153.

43. Me.—Metrinko v. Witherell, 188 A. 213, 134 Me. 483.
Mich.—Hamilton v. Deinzer, 122 N.W. 104, 157 Mich. 484.
Pa.—Rosenfeld v. Stauffer, 182 A. 714, 121 Pa.Super. 103.
Tex.—Long v. Surls, Civ.App., 275 S.W.2d 728, error refused no reversible error.
4 C.J. p 852 note 55.

44. Ala.—Guy v. Lancaster, 34 So. 2d 499, 250 Ala. 287.
Ga.—McGill v. Dowman, 24 S.E.2d 195, 195 Ga. 357.
Ky.—Wright v. Elkhorn Consolidation Coal & Coke Co., 206 S.W. 634, 182 Ky. 423.
Mo.—Schroeder v. Wells, App., 277 S. W. 578.
Tex.—White Point Oil & Gas Co. v. Dunn, Civ.App., 18 S.W.2d 267.

45. Conn.—Mongillo v. New England Banana Co., 160 A. 433, 115 Conn. 112.
Fla.—Motor Transit Co. v. Driver, 162 So. 883, 120 Fla. 293—J. I. Case Threshing Mach. Co. v. Rowell, 146 So. 899, 109 Fla. 90.
Ga.—Roberts v. Southern Grocery Co., 81 S.E. 869, 141 Ga. 611.
Dodge v. Huggins, 9 S.E.2d 844, 62 Ga.App. 724—Butler v. Chajage's, 6 S.E.2d 129, 61 Ga.App. 184—Nicholson Live Stock Co. v.

dict is not against the weight of the evidence.[46]

Likewise, the appellate court will not interfere with the fact determination of the jury where there is evidence to support the verdict,[47] and such evi-

Crumley-Sharp Hardware Co., 133 S.E. 272, 35 Ga.App. 426.

Ky.—Denny v. Darraugh, 279 S.W. 1069, 212 Ky. 655—Wagers v. Black, 279 S.W. 342, 212 Ky. 361.

Me.—Archibald v. Queen Ins. Co., 99 A. 771, 115 Me. 564.

Minn.—Bergren v. Nelson, 205 N.W. 276, 164 Minn. 414—Josie v. A. C. Winnor & Co., 205 N.W. 63, 164 Minn. 523.

Neb.—Bailey v. Lund, 278 N.W. 506, 134 Neb. 319.

N.C.—Carolina Standard Corp. v. Dockery, 50 S.E.2d 310, 229 N.C. 796—Barnhardt v. East Ave. Drug Co., 104 S.E. 890, 180 N.C. 436.

Okl.—Kemp v. Strnad, 268 P.2d 255.

Pa.—Sharpless Specialty Co. v. Wilson & Co. of New York, 124 A. 172, 279 Pa. 539.

Wehler v. Glatfelter, Com.Pl., 69 York Leg.Rec. 189.

Va.—City of Charlottesville v. Jones, 97 S.E. 316, 123 Va. 682.

Wis.—Suschnick v. Underwriters Casualty Co., 248 N.W. 477, 211 Wis. 474, followed in Cater v. Underwriters Casualty Co., 248 N.W. 481, 211 Wis. 484, and Hoenisch v. Underwriters Casualty Co., 248 N.W. 481, 211 Wis. 483—White v. Perry, 209 N.W. 706, 190 Wis. 497.

52 C.J. p 534 note 27.

Correctness of jury's finding is to be tested by the prima facie strength of the evidence.

Tex.—Security Motor Co. v. Chestnut, Civ.App., 244 S.W. 385.

46. Ky.—Yorkshire Ins. Co., Limited, of York, England v. Bryan, 60 S.W.2d 120, 248 Ky. 847.

52 C.J. p 534 note 31.

47. Ala.—Union Central Life Ins. Co. v. Guffin, 167 So. 321, 232 Ala. 254.

Ariz.—Atchison, T. & S. F. R. Co. v. Hicks, 165 P.2d 167, 64 Ariz. 15.

Ark.—Oviatt v. Garretson, 171 S.W. 2d 287, 205 Ark. 792—Hood v. Hinds, 130 S.W.2d 711, 198 Ark. 678—Barnett v. Bank of Malvern, 39 S.W.2d 1014, 183 Ark. 1030—Hyaldhal v. Alphin, 9 S.W.2d 13, 177 Ark. 1194.

Cal.—Jordan v. Great Western Motorways, 2 P.2d 786, 213 C. 606—Mappin v. Atchison, T. & S. F. Ry. Co., 247 P. 911, 198 C. 733, 49 A. L.R. 1330, certiorari denied Atchison, T. & S. F. R. Co. v. Mappin, 47 S.Ct. 239, 273 U.S. 729, 71 L.Ed. 862.

Severin v. Cox, 231 P.2d 134, 104 C.A.2d 331—Heasley v. Bevilacqua, 223 P.2d 274, 100 C.A.2d 155—Scott v. Sheedy, 102 P.2d 575, 39 C.A.2d 96—Day v. General Petroleum Corp., 89 P.2d 718, 32 C.A. 2d 220—Heglin v. F. C. B. A. Market, 161 P.2d 976, 70 C.A.2d 803—Diel v. Baxter, 136 P.2d 789, 58 C.A. 2d 383—Casselman v. Hartford Accident & Indemnity Co., 98 P.2d 539, 36 C.A.2d 700—Skulte v. Ahern, 71 P.2d 340, 22 C.A.2d 460—Malone v. Red Top Cab Co. of Los Angeles, 60 P.2d 543, 16 C.A.2d 268—Coppock v. Pacific Gas & Electric Co., 30 P.2d 549, 137 C.A. 80—Harju v. Market St. Ry. Co., 299 P. 788, 114 C.A. 138—Brooks v. City and County of San Francisco, 295 P. 344, 111 C.A. 254—Cassinelli v. Bennen, 294 P. 748, 110 C.A. 722—England v. Lyon Fireproof Storage Co., 271 P. 532, 94 C.A. 562—Mitchell v. Excelsior Water & Mining Co., 182 P. 326, 41 C.A. 240.

Colo.—Hilburger v. Hilburger, 135 P.2d 138, 110 Colo. 409—Scott v. Gilmore, 192 P. 497, 68 Colo. 590.

Conn.—Szivos v. Leonard, 155 A. 637, 113 Conn. 522—Spicer v. Hincks, 155 A. 508, 113 Conn. 366, 76 A.L.R. 1519.

D.C.—Weingarden v. Hughes, Mun. App., 108 A.2d 157.

Fla.—Purinton v. Zimmanck, 170 So. 168, 125 Fla. 815—Holstun v. Embry, 169 So. 400, 124 Fla. 554.

Ga.—Steinmetz v. Chambley, 83 S.E. 2d 318, 90 Ga.App. 519—Arrington v. Hinesley, 52 S.E.2d 533, 78 Ga. App. 810—Metropolitan Life Ins. Co. v. Crowder, 31 S.E.2d 618, 71 Ga.App. 612—Campbell v. Tatum, 30 S.E.2d 56, 71 Ga.App. 58—Atlanta & W. P. R. Co. v. Twedell, 29 S.E.2d 668, 70 Ga.App. 812—Life & Cas. Ins. Co. of Tennessee v. Higdon, 21 S.E.2d 270, 67 Ga. App. 679—Malleable Iron Range Co. v. Caffey, 13 S.E.2d 722, 64 Ga. App. 497—Butler v. State, 10 S.E. 2d 719, 63 Ga.App. 253—Purvis v. State, 10 S.E.2d 716, 63 Ga.App. 252—Southern Life Ins. Co. of Georgia v. White, 3 S.E.2d 849, 60 Ga.App. 414—American Casualty Co. v. Cohen, 151 S.E. 56, 40 Ga. App. 593—Harris v. Rood, 135 S. E. 492, 36 Ga.App. 22—Vesta Accumulator Co. v. Douglas, 135 S.E. 447, 36 Ga.App. 81—Bank of Waynesboro v. Herrington, 123 S. E. 750, 32 Ga.App. 403—Dyer v. Beasley, 120 S.E. 638, 31 Ga.App. 276—Lynch v. Atlanta Nat. Bank, 114 S.E. 363, 29 Ga.App. 141—Lovejoy v. Lamar, 103 S.E. 471, 25 Ga.App. 414—Metropolitan Life Ins. Co. v. Hand, 102 S.E. 647, 25 Ga.App. 90—Barrett v. Maynard, 100 S.E. 779, 24 Ga.App. 298—Central of Georgia Ry. Co. v. Trammell, 97 S.E. 461, 23 Ga.App. 25—McWhorter v. Swilley, 95 S.E. 720, 22 Ga.App. 210—Moore v. Garrett, 93 S.E. 112, 20 Ga.App. 474—Floyd County v. Oswalt, 92 S.E. 944, 20 Ga.App. 200—Rowland v. Beasley, 92 S.E. 287, 19 Ga.App. 808—Seaboard Air Line Ry. v. McDonald, 91 S.E. 1053, 19 Ga.App. 627—Unity Cotton Mills v. Hasty & Strickland, 91 S.E. 915, 19 Ga. App. 588.

Idaho.—Hard v. Spokane International Ry. Co., 238 P. 891, 41 Idaho 285—Schuppenies v. Oregon Short Line R. Co., 225 P. 501, 38 Idaho 672.

Ill.—Allendorf v. Elgin, J. & E. Ry. Co., 133 N.E.2d 288, 8 Ill.2d 164, certiorari denied 77 S.Ct. 49, 352 U.S. 833, 1 L.Ed.2d 53, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170—Pollock v. Connecticut Fire Ins. Co. of Hartford, 199 N.E. 816, 362 Ill. 313.

Moore v. Schoen, 40 N.E.2d 562, 313 Ill.App. 367—Boal v. City of Chicago, 23 N.E.2d 237, 301 Ill. App. 536—Ames v. Armour & Co., 257 Ill.App. 449—Witwer v. Curry, 206 Ill.App. 318.

Ind.—Union Traction Co. of Indiana v. Guant, 135 N.E. 486, 193 Ind. 109—Davis v. Babb, 125 N.E. 403, 190 Ind. 173—Chicago & E. R. Co. v. Steele, 118 N.E. 824, 187 Ind. 358, rehearing denied 119 N.E. 483, 187 Ind. 358.

Young v. Mader, 14 N.E.2d 329, 105 Ind.App. 532—Fletcher Trust Co. v. Hauser, 11 N.E.2d 1012, 105 Ind.App. 281—Hesler v. Lowe, App., 187 N.E. 213, 98 Ind.App. 168—Cook & Bernheimer Co. v. Hagedorn, 131 N.E. 788, 82 Ind. App. 444—Consumers' Co. v. Ruble, 122 N.E. 607, 69 Ind.App. 617.

Iowa.—In re Roberts' Estate, 3 N.W. 2d 161, 231 Iowa 1088—Reynolds v. Skelly Oil Co., 287 N.W. 823, 227 Iowa 163—Gardner v. Marquis, 275 N.W. 493, 224 Iowa 458—Moats v. Strange Bros. Hide Co., 170 N.W. 456, 185 Iowa 356.

Kan.—Hale v. Ziegler, 303 P.2d 190, 180 Kan. 249—Gartner v. Missimer, 290 P.2d 827, 178 Kan. 566—Henderson v. Deckert, 162 P.2d 88, 160 Kan. 386—Maynard v. Schulte, 239 P. 770, 119 Kan. 391—Elliott v. Watts, 213 P. 665, 113 Kan. 129—Dempster v. Edwards, 210 P. 1091, 112 Kan. 294—Brecheisen v. Clark, 176 P. 137, 103 Kan. 662.

Ky.—J. N. Youngblood Truck Lines v. Hatfield, 201 S.W.2d 567, 304 Ky. 600—Combs v. Stewart, 190 S.W.2d 861, 301 Ky. 50—Clifton v. McMakin, 157 S.W.2d 85, 288 Ky. 806—Roederer v. Schmitt, 80 S.W. 2d 35, 258 Ky. 398—Union Light, Heat & Power Co. v. Heving, 62 S. W.2d 789, 250 Ky. 223—R. B. Tyler Co. v. Curd, 42 S.W.2d 298, 240 Ky. 253—Globe & Rutgers Fire Ins. Co. v. Frankfort Distillery, 11 S.W.2d 968, 226 Ky. 706.

La.—Harrell v. Gondolf, 6 La.App. 50.

Me.—Clifford L. Swan Co. v. Cook, 55 A.2d 878, 143 Me. 109—Christian v. Pomeroy, 168 A. 876, 132 Me. 209—Leventhal v. Lazarovitch, 142 A. 781, 127 Me. 222—Jewett v. Quincy Mut. Fire Ins. Co., 132 A. 523, 125 Me. 234.

Md.—Howard County Com'rs v. Matthews, 127 A. 118, 146 Md. 553.

Mich.—Lutz v. Hill-Diesel Engine Co., 237 N.W. 546, 255 Mich. 98.

Minn.—Arvidson v. Slater, 237 N.W. 12, 183 Minn. 446—Hall v. Johnson, 229 N.W. 867, 179 Minn. 428.

Mo.—Kraus v. Kansas City Public Service Co., 269 S.W.2d 743—Johnson v. Hurck Delivery Service, 187 S.W.2d 200, 353 Mo. 1207—Schneider v. Dubinsky Realty Co., 127 S.W.2d 691, 344 Mo. 654—Franklin Bank v. St. Louis Car Co., 9 S.W.2d 901, 321 Mo. 199, 60 A.L.R. 639—Chilton v. Nickey, 169 S.W. 978, 261 Mo. 232.

Spears v. Schantz, 246 S.W.2d 399, 241 Mo.App. 879—Slack v. Kansas City Gas Co., 120 S.W.2d 70, 233 Mo.App. 306—Taylor v. Sesler, App., 113 S.W.2d 812—White v. McCoy Land Co., 87 S.W.2d 672, 229 Mo.App. 1019, affirmed White v. Scarritt, 111 S.W.2d 18, 341 Mo. 1004—Becker v. National Refining Co., App., 50 S.W.2d 670—Seibel v. Crim, App., 7 S.W.2d 302—People's Bank of Glasgow v. Yager, App., 6 S.W.2d 633—Schuler v. Metropolitan Life Ins. Co., 176 S.W. 274, 191 Mo.App. 52.

Mont.—Metcalf v. Barnard-Curtiss Co., 180 P.2d 263, 120 Mont. 50.

Neb.—Bolser v. Fidelity-Phenix Fire Ins. Co., 242 N.W. 261, 123 Neb. 92.

Nev.—W. M. Barnett Bank v. Chiatovich, 232 P. 206, 48 Nev. 319.

N.J.—Barber v. Vaccaro, 108 A.2d 869, 32 N.J.Super. 573.

Spence v. Maier, 59 A.2d 609, 137 N.J.Law 284, affirmed 61 A.2d 590, 1 N.J. 36—Blais v. American Grocery Co., 29 A.2d 317, 129 N.J. Law 274—Lewis v. V. La Rosa & Sons, 26 A.2d 879, 128 N.J.Law 474—Fortunato v. Cicalese, 108 A. 183, 93 N.J.Law 461.

Arthur Collier Realty Co. v. Gottlieb, 131 A. 91, 3 N.J.Misc. 1127, affirmed 133 A. 918, 102 N.J. Law 713.

N.Y.—Peck v. Independent Automobile Forwarding Corp., 8 N.Y.S. 2d 754, 256 App.Div. 859, affirmed 21 N.E.2d 215, 280 N.Y. 728.

N.C.—Beeson Hardware Co. v. Burtner, 155 S.E. 733, 199 N.C. 743.

N.D.—Schaff v. Kennelly, 61 N.W.2d 538—Reservation Motor Corp. v. Mayer, 43 N.W.2d 537, 77 N.D. 431—Newton v. Gretter, 236 N.W. 254, 60 N.D. 635.

Okl.—Martin v. Arnold, 247 P.2d 517, 207 Okl. 69—Lea v. American Nat. Bank of Pryor Creek, 186 P.2d 321, 199 Okl. 350—Securities Acceptance Corporation v. Parkinson, 126 P.2d 693, 190 Okl. 652—Greene v. Kinley, 116 P.2d 887, 189 Okl. 266—Oklahoma City General Hospital v. Weathers, 294 P. 98, 147 Okl. 25—Illinois Oil Co. v. Pender, 277 P. 1026, 137 Okl. 82—Mathis v. Guaranty Nat. Bank of Porum, 231 P. 500, 105 Okl. 69—First Nat. Bank v. Brown, 162 P. 454, 62 Okl. 112—Bartlesville Zinc Co. v. Prince, 158 P. 627, 59 Okl. 141.

Or.—Nickson v. Oregon-American Lumber Co., 271 P. 986, 127 Or. 326—Goldstein v. Robert Dollar Co., 270 P. 903, 127 Or. 29—Clarke v. Ward & Obenchain, 158 P. 277, 81 Or. 70.

Pa.—McKim v. Philadelphia Transp. Co., 72 A.2d 122, 364 Pa. 237—Scholl v. Philadelphia Suburban Transp. Co., 51 A.2d 732, 356 Pa. 217—Kulka v. Nemirovsky, 170 A. 261, 314 Pa. 134—Rose v. Cauffiel, 169 A. 80, 313 Pa. 308—Danville Stove & Mfg. Co. v. Foster, 159 A. 867, 306 Pa. 391—Pennsylvania Trust Co. of Pittsburgh v. Schenecker, 137 A. 272, 289 Pa. 277—Listie Coal Co. v. Farmers' National Bank of Somerset, 135 A. 105, 287 Pa. 337.

Rosenfeld v. Stauffer, 182 A. 714, 121 Pa.Super. 103—Czayka v. Danalowicz, 89 Pa.Super. 476—Beaver v. Creevey, 85 Pa.Super. 436—Hertzog v. Hertzog, 63 Pa. Super. 328.

Weideman Co. v. Bartnikowski, Com.Pl., 20 Erie Co. 40.

S.C.—Wells v. Sumter Trust Co., 117 S.E. 519, 124 S.C. 244—Boyleston v. Seaboard Air Line Ry. Co., 106 S.E. 777, 115 S.C. 530.

Tenn.—Hammond v. Herbert Hood Co., 221 S.W.2d 98, 31 Tenn.App. 683—Faulk v. McPherson, 182 S.W. 2d 130, 27 Tenn.App. 506—Nashville, C. & S. L. Ry. v. Reeves, 157 S.W.2d 851, 25 Tenn.App. 359—Tinin v. Siner, 9 Tenn.App. 252—Southern Ry. Co. v. Black Diamond Collieries, Inc., 9 Tenn.App. 225.

Tex.—Wilson v. Hagins, 295 S.W. 922, 116 Tex. 538.

Dyess v. Davey Tree Expert Co., Com.App., 44 S.W.2d 911.

Bradley v. Harris, Civ.App., 300 S.W.2d 335—Graham v. Howard, Civ.App., 249 S.W.2d 639—Meadolake Foods v. Estes, Civ.App., 218 S.W.2d 862, error refused 219 S.W. 2d 441, 148 Tex. 13—Zimmerman v. Hall, Civ.App., 213 S.W.2d 89, error refused no reversible error—Henwood v. Neal, Civ.App., 198 S. W.2d 125—Hays v. Nabours, Civ. App., 193 S.W.2d 893, error refused no reversible error—Menefee v. Gulf, C. & S. F. Ry. Co., Civ.App., 181 S.W.2d 287, error refused—Dallas Railway & Terminal Co. v. Hendricks, Civ.App., 154 S.W.2d 899, reversed on other grounds 166 S.W.2d 116, 140 Tex. 93—Tillison v. Griffin, Civ.App., 148 S.W.2d 873—Simmons v. Weis, Civ.App., 131 S. W.2d 103—Humble Oil & Refining Co. v. Railroad Commission, Civ. App., 112 S.W.2d 222, error dismissed—Bilbrey v. Gentle, Civ. App., 107 S.W.2d 597, error dismissed—St. Louis, B. & M. Ry. Co. v. Brack, Civ.App., 102 S.W.2d 261—Southwest Gas Co. v. Doney, Civ. App., 99 S.W.2d 1107, error dismissed—W. L. Moody Cotton Co. v. Hervey, Civ.App., 97 S.W.2d 275, error dismissed—Texas & P. Ry. Co. v. Weatherly, Civ.App., 73 S. W.2d 957, affirmed 101 S.W.2d 217, 128 Tex. 642—Sullivan v. O'Brien, Civ.App., 85 S.W.2d 1106—Phoenix Ins. Co. of London v. Stobaugh, Civ.App., 62 S.W.2d 678—Commerce Securities Corporation v. Hays, Civ.App., 60 S.W.2d 335—Young v. Kansas City, M. & O. Ry. Co., Civ. App., 53 S.W.2d 829—Humble Oil & Refining Co. v. Robertson, Civ. App., 48 S.W.2d 713, reversed on other grounds 76 S.W.2d 132, 124 Tex. 163—Carlile v. Harris, Civ. App., 38 S.W.2d 622—Kuykendall v. Johnson Funeral Parlor, Civ.App., 38 S.W.2d 601—Houston E. & W. T. Ry. Co. v. Southern Pine Lumber Co., Civ.App., 38 S.W.2d 156—Kent v. National Supply Co. of Texas, Civ.App., 36 S.W.2d 811—Wiseman v. Siegel, Civ.App., 27 S.W.2d 642—Willis & Conner v. Turner, Civ. App., 25 S.W.2d 642—National Rys. of Mexico v. Escontrias, Civ.App., 19 S.W.2d 75—Humble Pipe Line Co. v. Spivey, Civ.App., 13 S.W.2d 481—Zurich General Accident & Liability Ins. Co. v. Wood, Civ. App., 10 S.W.2d 760—Norwich Union Indemnity Co. v. Rollins, Civ. App., 8 S.W.2d 699—Standard Acc. Ins. Co. v. Williams, Civ.App., 4 S.W.2d 1023, affirmed, Com.App., 14 S.W.2d 1015—American Citizens' Labor & Protective Institution v. Bandy, Civ.App., 2 S.W.2d 977—New Amsterdam Casualty Co. v. Harrington, Civ.App., 283 S.W. 261, reversed on other grounds, Com. App., 290 S.W. 726—Mansfield v. Rigsby, Civ.App., 273 S.W. 290—Houston & T. C. Ry. Co. v. Claybrook, Civ.App., 271 S.W. 195—Mann v. Wright, Civ.App., 269 S. W. 222—Texas Electric Ry. v. Worthy, Civ.App., 250 S.W. 710—St. Louis, B. & M. Ry. Co. v. Price, Civ.App., 244 S.W. 642, affirmed, Com.App., 269 S.W. 422—Alexander v. Walker, Civ.App., 239 S.W. 309, dismissed for want of jurisdiction—Selz, Schwab & Co. v. Shipman, Civ.App., 230 S.W. 842—Producers' Oil Co. v. State, Civ. App., 213 S.W. 349—San Antonio, U. & G. R. Co. v. Dawson, Civ.App., 201 S.W. 247, error refused—Galveston, H. & S. A. Ry. Co. v. Miller, Civ.App., 192 S.W. 593, error

dence is legal and competent;[47.5] where there is | material evidence to support the verdict;[48] or where

refused—Houston Belt & T. Ry. Co. v. Price, Civ.App., 192 S.W. 359, error refused.

Utah.—Henrie v. Rocky Mountain Packing Corp., 202 P.2d 727, 113 Utah 444.

Va.—Lloyd v. Andrews, 63 S.E.2d 734, 192 Va. 41—Atlantic Coast Line R. Co. v. Clements, 36 S.E.2d 553, 184 Va. 656—Housing Authority of City of Bristol v. East Tennessee Light & Power Co., 31 S.E.2d 273, 183 Va. 64—Glascock v. James, 32 S.E.2d 734, 183 Va. 561—Wood Towing Corp. v. West, 23 S.E.2d 789, 181 Va. 151—Powers v. Powers, 3 S.E.2d 162, 174 Va. 164—Texas Co. v. Zeigler, 14 S.E.2d 704, 177 Va. 557—Norfolk & W. Ry. Co. v. Wellons' Adm'r, 154 S.E. 575, 155 Va. 218—Doughty v. Thornton, 145 S.E. 249, 151 Va. 785—Stanley v. Tomlin, 129 S.E. 379, 143 Va. 187—Walker v. Gateway Milling Co., 92 S.E. 826, 121 Va. 217.

Wash.—Smith v. Mucklestone, 289 P. 526, 157 Wash. 699—Williams v. Johnson, 256 P. 1029, 144 Wash. 85—Kubey v. Travelers' Protective Ass'n of America, 187 P. 335, 109 Wash. 453.

Wis.—Wittig v. Kepler, 82 N.W.2d 341, 275 Wis. 415—Nellis v. Chicago, M., St. P. & P. R. Co., 236 N. W. 668, 205 Wis. 397, certiorari denied Chicago, M., St. P. & P. R. Co. v. Nellis, 52 S.Ct. 393, 285 U.S. 543, 76 L.Ed. 935—Nelson v. Ziegler, 220 N.W. 194, 196 Wis. 426—Zemlicka v. Mississippi Valley Public Service Co., 213 N.W. 666, 193 Wis. 105—Karshian v. Milwaukee Electric Ry. & Light Co., 212 N.W. 643, 192 Wis. 269—Knecht v. Kenyon, 192 N.W. 82, 179 Wis. 523—Gist v. Johnson-Carey Co., 147 N.W. 1079, 158 Wis. 188, Ann.Cas. 1916E 460.

10 C.J. p 798 note 83—19 C.J. p 1226 note 95—27 C.J. p 868 note 94 [b]—51 C.J. p 285 note 8—55 C.J. p 866 note 88—63 C.J. p 1206 note 94—71 C.J. p 161 note 76.

There is "evidence to support a verdict" if jury could have rendered verdict after discarding all adverse evidence and giving full credit to all evidence favorable to successful party, and indulging every legitimate conclusion that is favorable to him.

Tex.—Aetna Cas. & Sur. Co. v. Dickinson, Civ.App., 266 S.W.2d 427—Ballard v. Ballard, Civ.App., 258 S.W.2d 355—Texas City Terminal Ry. Co. v. McLemore, Civ.App., 225 S.W.2d 1007, error refused no reversible error—Continental Fire & Cas. Ins. Corp. v. Drummond, Civ. App., 220 S.W.2d 922, error refused no reversible error—Baker v. Mays & Mays, Civ.App., 199 S.W.2d 279, error dismissed—Fort Worth Hotel Co. v. Waggonman, Civ.App., 126 S.W.2d 578, error dismissed, judgment correct.

It is not the province of the superior court to pass on facts beyond seeing that there is evidence to support the verdict.

Pa.—Cullen v. Hartford Accident & Indemnity Co., 164 A. 67, 108 Pa. Super. 19.

Improbability alone is not sufficient ground for holding a fact not proved where it is supported by competent and apparently credible testimony.

Ark.—Missouri Pac. R. Co. v. Hancock, 113 S.W.2d 489, 195 Ark. 414.

47.5 Colo.—Waters v. Culver, 275 P. 2d 936, 130 Colo. 360—Book v. Paddock, 267 P.2d 247, 129 Colo. 84—Goll v. Fowler, 238 P.2d 187, 124 Colo. 404—Alden Sign Co. v. Roblee, 217 P.2d 867, 121 Colo. 422.

Iowa.—Young v. Blue Line Storage Co., 44 N.W.2d 391, 242 Iowa 125.

Mich.—Montgomery Ward & Co. v. Williams, 47 N.W.2d 607, 330 Mich. 275—Nantico v. Matuszak, 34 N.W. 2d 506, 322 Mich. 644.

Neb.—Rossmiller v. Becker, 61 N.W. 2d 393, 157 Neb. 756.

N.J.—Barber v. Vaccaro, 108 A.2d 869, 32 N.J.Super. 573.

Okl.—Shell Pipe Line Corp. v. Curtis, 287 P.2d 681—Bolding v. Clanton, 285 P.2d 213—Williams v. Williams, 274 P.2d 359—Oklahoma Natural Gas Co. v. Colvert, 260 P. 2d 1076—Tulsa Fruit Co. v. Lucas, 254 P.2d 788, 208 Okl. 166—Kemp v. Taylor, 250 P.2d 29, 207 Okl. 458—Jackson v. Veach, 237 P.2d 899, 205 Okl. 329—Pact Gas Co. v. Baker, 218 P.2d 912, 203 Okl. 124—Pollock Stores Co. v. Draper, 215 P.2d 843, 202 Okl. 546—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Oklahoma Ry. Co. v. Austin, 207 P.2d 769, 201 Okl. 567—Fidelity & Cas. Co. of N. Y. v. Yellow Cab Transit Co., 173 P.2d 432, 197 Okl. 581—Wilson v. Williams, 169 P.2d 305, 197 Okl. 191—Muzny v. Holland, 146 P.2d 292, 193 Okl. 695—Culver v. Bayliss, 141 P.2d 578, 193 Okl. 123—Latson v. McCollom, 134 P.2d 130, 192 Okl. 48—Atchison, T. & S. F. Ry. Co. v. Howard, 98 P.2d 914, 186 Okl. 446—Buffington v. Hughes, 86 P.2d 336, 184 Okl. 169—McClellan v. Palmer, 86 P.2d 325, 184 Okl. 216—Miller v. Troy Laundry Machinery Co., 84 P.2d 627, 183 Okl. 626—Mid-Continent Petroleum Corp. v. Fisher, 84 P.2d 22, 183 Okl. 638—Adair v. Moore, 83 P.2d 813, 163 Okl. 563—Shell Pipe Line Corp. v. Freeman, 62 P. 2d 1177, 178 Okl. 361—Maxey v. Peyton, 62 P.2d 1021, 178 Okl. 317—Firestone Tire & Rubber Co. v. Sheets, 62 P.2d 91, 178 Okl. 191—General American Life Ins. Co. v. Bryson, 61 P.2d 1094, 178 Okl. 142—Johnson Oil Refining Co. of Illinois v. Elledge, 53 P.2d 543, 175 Okl. 496—Pate v. Specht, 53 P.2d 239, 175 Okl. 318—North American Car Corporation v. Green, 52 P.2d 798, 175 Okl. 136—National Aid Life Ass'n v. Long, 51 P.2d 814, 175 Okl. 150.

Pa.—Jacobs v. McKelvey, 197 A. 494, 130 Pa.Super. 417.

S.C.—Long v. Carolina Baking Co., 8 S.E.2d 326, 193 S.C. 225.

Tex.—State v. Gulf Oil Corp., Civ. App., 264 S.W.2d 743, error refused no reversible error—Dixie Fire Ins. Co. v. McAdams, Civ.App., 235 S. W.2d 207, error dismissed—Barry v. Patterson, Civ.App., 225 S.W.2d 864—Washington Nat. Ins. Co. v. Strode Funeral Home, Civ.App., 199 S.W.2d 219, error dismissed.

Utah.—Wyatt v. Baughman, 239 P.2d 193, 121 Utah 98—Williams v. Ogden Union Ry. & Depot Co., 230 P.2d 315, 119 Utah 529.

Va.—Dozier v. Morrisette, 92 S.E.2d 366, 198 Va. 37—Daniels v. C. I. Whitten Transfer Co., 84 S.E.2d 528, 196 Va. 537—A. N. Campbell & Co. v. Messenger, 199 S.E. 511, 171 Va. 374.

48. Cal.—Ellis v. Owen Roofing Co., 43 P.2d 558, 6 C.A.2d 25—Coats v. Hathorn, 8 P.2d 1038, 121 C.A. 257.

Minn.—Underdahl v. Minneapolis St Ry. Co., 259 N.W. 78, 193 Minn. 548.

Okl.—Batts v. Carter, 312 P.2d 472.

Or.—Noble v. Sears, 257 P. 809, 122 Or. 162.

Tenn.—McAmis v. Carlisle, App., 300 S.W.2d 59—Finks v. Gillum, 273 S. W.2d 722, 38 Tenn.App. 304—Lackey v. Metropolitan Life Ins. Co., 174 S.W.2d 575, 26 Tenn.App. 564—Mutual Life Ins. Co. of New York v. McDonald, 150 S.W.2d 715, 25 Tenn.App. 50—Kitzmiller v. Life & Casualty Ins. Co., 132 S.W.2d 641, 23 Tenn.App. 345—Municipal Paving & Construction Co. v. Hunt, 123 S.W.2d 843, 22 Tenn.App. 380—Winfree v. Coca-Cola Bottling Works, 103 S.W.2d 33, 20 Tenn.App. 615—Mason v. James, 89 S.W.2d 910, 19 Tenn.App. 479—Ray v. Crain, 80 S.W.2d 113, 18 Tenn.App. 603—Stewart v. Crook Sanatorium, 69 S.W.2d 259, 17 Tenn.App. 589—Breeden v. Hurley, 13 Tenn.App. 599—Quigley v. Askew, 12 Tenn. App. 298—Barton v. Wexler, 10 Tenn.App. 19—Brown v. Fuqua, 9 Tenn.App. 22—Washer v. Balton & Son, 4 Tenn.App. 67—Yellow Cab Co. v. Maloaf, 3 Tenn.App. 11—Carter v. Fritts, 2 Tenn.App. 410.

Tex.—Rayburn v. Giles, Civ.App., 182 S.W.2d 9, error refused—Westerfeld v. Stout, Civ.App., 129 S.W. 2d 478, error dismissed, judgment correct—Burks v. Dallas Ry. &

there is sufficient evidence to support the verdict.[49] | In this respect, the evidence relied on must be

Terminal Co., Civ.App., 116 S.W.2d 884—Fest v. Williams, Civ.App., 89 S.W.2d 1072—Texas Vegetable Union v. Obets, Civ.App., 4 S.W.2d 1058—King v. Guerra, Civ.App., 1 S.W.2d 373, motion granted 13 S.W. 2d 908—Texas Pipe Line Co. v. Huddleston, Civ.App., 274 S.W. 168—James v. James, Civ.App., 253 S. W. 1112—Northern Texas Traction Co. v. Southern Surety Co., Civ. App., 250 S.W. 229.

Any material evidence

Tenn.—Hime v. Sullivan, 221 S.W.2d 893, 188 Tenn. 605.

White v. Seier, 264 S.W.2d 241, 37 Tenn.App. 437—Vest v. Bitner, 241 S.W.2d 438, 34 Tenn.App. 575—Southern Ry. Co. v. Varnell, 232 S.W.2d 406, 33 Tenn.App. 550.

Lack of material evidence not contended

The assignment that the verdict was contrary to the law and the evidence could not be considered on appeal in error where it was not contended that there was no material evidence supporting the verdict.

Tenn.—Highsaw v. Creech, 69 S.W. 2d 249, 17 Tenn.App. 573.

49. Ala.—Trammell v. Robinson, 37 So.2d 142, 34 Ala.App. 91.

Ariz.—Sovereign Camp, W. O. W. v. Sandoval, 54 P.2d 557, 47 Ariz. 167—Brethour v. Clack, 250 P. 254, 31 Ariz. 24—Swansea Lease, Inc., v. Willison, 238 P. 389, 28 Ariz. 581.

Ark.—Yarbrough v. Alston, 188 S.W. 2d 621, 208 Ark. 1106—Shewmake v. Shifflett, 171 S.W.2d 309, 205 Ark. 875—Home Life Ins. Co. v. Ward, 75 S.W.2d 379, 189 Ark. 793, followed in 75 S.W.2d 381, 189 Ark. 1171—Metropolitan Life Ins. Co. v. Minton, 66 S.W.2d 627, 188 Ark. 456—Missouri Pac. R. Co. v. Freeman, 59 S.W.2d 28, 187 Ark. 1163—Haraway v. Mance, 56 S.W.2d 1023, 186 Ark. 971—Arrington v. Ladd, 56 S. W.2d 166, 186 Ark. 761—National Life & Accident Ins. Co. v. Brim, 54 S.W.2d 990, 186 Ark. 684—McGuire & Cavender v. Robertson, 32 S.W.2d 624, 182 Ark. 759—H. H. Hall Const. Co. v. McLeod, 15 S.W. 2d 405, 179 Ark. 303—Sakaba Oil Corporation v. Parish, 299 S.W. 1016, 175 Ark. 618—William W. Cohen & Co. v. Austin, 290 S.W. 579, 172 Ark. 723—Western Assur. Co. v. White, 286 S.W. 804, 171 Ark. 733, 48 A.L.R. 349—Stroud v. Henderson, 284 S.W. 45, 171 Ark. 338—Prudential Ins. Co. of America v. Williams, 168 S.W. 1114, 113 Ark. 373.

Cal.—Stanley v. Columbia Broadcasting System, 221 P.2d 73, 35 C.2d 653, 23 A.L.R.2d 216.

Cavagnaro v. City of Napa, 195 P.2d 25, 86 C.A.2d 517—Clark v. Metropolitan Life Ins. Co., 118 P.2d 919, 47 C.A.2d 773—Stoddard v. Roberts Public Markets, 80 P.2d 519, 27 C.A.2d 166—Parrett v. Carothers, 53 P.2d 1023, 11 C.A.2d 222—Sim v. Weeks, 45 P.2d 350, 7 C.A.2d 28—Pascoe v. Payne, 12 P. 2d 1091, 124 C.A. 528—Salvo v. Market St. Ry. Co., 2 P.2d 585, 116 C.A. 339—Laiblin v. San Joaquin Agr. Corporation, 213 P. 529, 60 C.A. 516.

Colo.—Campbell v. Trate, 149 P.2d 380, 112 Colo. 265—Great American Ins. Co., New York v. Scott, 299 P. 1051, 89 Colo. 99—Brown v. Criswell, 264 P. 1091, 83 Colo. 313—Rio Grande Southern R. Co. v. Campbell, 176 P. 275, 65 Colo. 217.

D.C.—Stern Equipment Co. v. Day, Mun.App., 124 A.2d 851—Sachs v. Eller, Mun.App., 89 A.2d 644.

Fla.—Strickland v. Coe, 185 So. 616, 135 Fla. 693—Miami Jockey Club v. Lillias Piper, Inc., 155 So. 806, 115 Fla. 612—Toemmes v. Proctor, 136 So. 622, 102 Fla. 918—City of Jacksonville Beach v. Jones, 133 So. 562, 101 Fla. 96, followed in City of Jacksonville Beach v. Keller, 135 So. 530, 102 Fla. 273—Atlantic Coast Line R. Co. v. Hamlett, 89 So. 337, 81 Fla. 872—Varga v. Marcus Conant Co., 89 So. 126, 81 Fla. 780—People's Nat. Bank of Orlando v. Magruder, 81 So. 440, 77 Fla. 235.

Ga.—Jones v. Dean, 3 S.E.2d 894, 188 Ga. 319.

Carroll v. Aiken, 37 S.E.2d 158, 73 Ga.App. 470—Young v. Lewis, 29 S.E.2d 267, 70 Ga.App. 627—Western & Atlantic R. R. v. Mathis, 10 S.E.2d 457, 63 Ga.App. 172—Perry v. State, 6 S.E.2d 792, 61 Ga. App. 588—Cooper v. Parks, 88 S.E. 409, 17 Ga.App. 744.

Idaho.—Mitchell v. Atwood, 47 P.2d 680, 55 Idaho 772—Bicandi v. Boise Payette Lumber Co., 44 P.2d 1103, 55 Idaho 543—Lightner v. Russel & Pugh Lumber Co., 17 P.2d 349, 52 Idaho 616—Independent Gas & Oil Co. v. T. B. Smith Co., 10 P.2d 317, 51 Idaho 710.

Ill.—Philpott v. Parham, 44 N.E.2d 934, 316 Ill.App. 278.

Ind.—Sheets v. Voland, 119 N.E.2d 325, 124 Ind.App. 695—Coca Cola Bottling Works of Evansville v. Williams, 37 N.E.2d 702, 111 Ind. App. 502—Wahl Co. v. Compton, 36 N.E.2d 942, 109 Ind.App. 631—Beiser v. Kerr, 20 N.E.2d 666, 107 Ind.App. 1—Borenstein v. Uhl, 20 N.E.2d 189, 107 Ind.App. 67—Marion County Const. Co. v. Kimberlin, 184 N.E. 574, 96 Ind.App. 145—Frankfort Marine, Accident & Plate Glass Ins. Co. v. Lafayette Telephone Co., 129 N.E. 329, 79 Ind. App. 663—Indianapolis & Cincinnati Traction Co. v. Helms, 121 N. E. 279, 70 Ind.App. 137—Roper v. Cannel City Oil Co., 121 N.E. 96, 68 Ind.App. 637.

Iowa.—Sparks v. Flesher, 252 N.W. 529, 217 Iowa 1086.

Kan.—Ellis-Swonger Motor Co. v. Watt, 264 P. 737, 125 Kan. 530—Stafford v. Hayes, 216 P. 270, 113 Kan. 621.

Ky.—Cincinnati, N. & C. Ry. Co. v. Henneberry, 253 S.W.2d 7—Davis v. Rose, 129 S.W.2d 530, 278 Ky. 752—Jefferson Standard Life Ins. Co. v. Myers, 75 S.W.2d 1095, 256 Ky. 174—Poston v. Board of Education of Colored Graded Common School Dist. of Princeton, 287 S. W. 973, 216 Ky. 525—Cross v. Clinton County, 217 S.W. 362, 186 Ky. 505.

Mass.—Holton v. Boston Elevated Ry. Co., 21 N.E.2d 251, 303 Mass. 242.

Mich.—Baldwin v. Nall, 34 N.W.2d 539, 323 Mich. 25.

Miss.—Garrison v. Dennis, 7 So.2d 517—Gibson v. State, 199 So. 76—F. W. Woolworth Co. v. Volking, 100 So. 3, 135 Miss. 410.

Mo.—Winters v. Terminal R. Ass'n of St. Louis, 252 S.W.2d 380, 363 Mo. 606—Gates v. Dr. Nichols' Sanatorium, 55 S.W.2d 424, 331 Mo. 754.

O'Connor v. Egan, App., 274 S. W.2d 334—Grant v. North America Ben. Corporation of Springfield, Ill., 8 S.W.2d 1043, 223 Mo.App. 104.

Neb.—Hickey v. Omaha & Council Bluffs St. Ry. Co., 1 N.W.2d 304, 140 Neb. 665—Schindler v. Mulhair, 273 N.W. 217, 132 Neb. 809—Fisk Tire Co. v. Hastings Warehouse & Storage Co., 268 N.W. 86, 131 Neb. 401—Queen Incubator Co. v. Byers, 195 N.W. 460, 110 Neb. 852.

N.J.—Sperr v. Birch, 106 A. 819, 93 N.J.Law 252.

N.Y.—Jackson v. Brown & Kleinhenz, 284 N.Y.S. 44, 246 App.Div. 445, reversed on other grounds 7 N.E.2d 265, 273 N.Y. 365.

Ohio.—City of Delaware v. Metropolitan Construction Co., 21 Ohio Cir.Ct.,N.S., 137—Cincinnati, H. & D. R. Co. v. Buxton, 20 Ohio Cir. Ct.,N.S., 22.

Okl.—Skelly Oil Co. v. Funk, 174 P. 2d 241, 197 Okl. 659—Baker v. Heiliger, 156 P.2d 592, 195 Okl. 206—Rittenhouse v. Johnson, 17 P.2d 457, 161 Okl. 169—Stout v. Idlett, 16 P.2d 1088, 161 Okl. 23—St. Louis-San Francisco Ry. Co. v. Holt, 11 P.2d 761, 156 Okl. 135, certiorari denied 53 S.Ct. 16, 287 U.S. 613, 77 L.Ed. 533—Wolverton v. Morgan, 269 P. 314, 132 Okl. 55—Midland Valley R. Co. v. Price, 260 P. 26, 127 Okl. 106—Packard Oklahoma Motor Co. v. Funk, 245 P. 571, 117 Okl. 96—Purdy v. Foster, 234 P. 760, 109 Okl. 57—Buffalo

credible and must fairly sustain the verdict or finding.[49.5] So, also, a determination of fact will not be disturbed in the appellate court where the evidence on which the verdict was founded was sufficient to warrant its submission to the jury;[50] where there is "ample evidence" to support the verdict or the

Farmers' Co-op. Elevator Co. v. Harmon, 218 P. 698, 95 Okl. 138.

Or.—Grammer v. Wiggins-Meyer S. S. Co., 270 P. 759, 126 Or. 694—Pennick v. American Nat. Bank, 268 P. 1012, 126 Or. 615—Davis v. Bush & Lane Piano Co., 265 P. 417, 124 Or. 585.

Pa.—Smith v. Kingsley, 200 A. 11, 331 Pa. 10—Rosenthal v. Radetsky, 171 A. 567, 314 Pa. 255—Lukens v. Wharton Ave. Baptist Church, 145 A. 587, 296 Pa. 1.

Dougherty v. Brandt, 186 A. 419, 122 Pa.Super. 410—Baker v. Bloom, 92 Pa.Super. 547—Yearsley Co. v. Lindsay, 83 Pa.Super. 29—Potter v. Lehigh Valley R. Co., 80 Pa.Super. 237.

Beverlin v. Ensminger, 30 Pa. Dist. 689.

S.D.—Schumacher v. Storberg, 7 N.W.2d 141, 69 S.D. 103—Kamp v. Madison, 161 N.W. 809, 38 S.D. 432.

Tenn.—International Corp. v. Wood, 8 Tenn.Civ.App. 10.

Tennessee Central Ry. Co. v. Melvin, 5 Tenn.App. 85.

Tex.—Stegall v. Missouri-Kansas-Texas R. Co. of Texas, Com.App., 25 S.W.2d 327.

Hassell v. Pruner, Civ.App., 286 S.W.2d 266, error refused no reversible error—Truelove v. Truelove, Civ.App., 266 S.W.2d 491, error refused—Liberty Mut. Ins. Co. v. Connell, Civ.App., 250 S.W.2d 400, error refused no reversible error—Fain v. Balken, Civ.App., 214 S.W.2d 869—Merriman v. Lary, Civ.App., 205 S.W.2d 100, error refused no reversible error—Hawkins v. Rudso Oil & Gas Co., Civ.App., 187 S.W.2d 230, refused for want of merit—Spoor v. Gulf Bitulithic Co., Civ.App., 172 S.W.2d 377, error refused—Vaughan v. Kiesling, Civ.App., 150 S.W.2d 435, error dismissed, judgment correct—Lawndale Ave. Baptist Church v. Payne, Civ.App., 103 S.W.2d 1021, error dismissed—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072—Texas & N. O. R. Co. v. Kveton, Civ.App., 75 S.W.2d 118—Ullman, Stern & Krausse v. Colson, Civ.App., 58 S.W.2d 1039—Daggett v. Corn, Civ.App., 54 S.W.2d 1098—American Life Ins. Co. v. Moynahan, Civ.App., 36 S.W.2d 555—Evans v. Hartman, Civ.App., 286 S.W. 326—Texas & N. O. R. Co. v. Shaw, Civ.App., 284 S.W. 600—Tabet v. Tabet, Civ.App., 282 S.W. 947—Lawless v. Ellis, Civ.App., 281 S.W. 1090—Gulf, C. & S. F. Ry. Co. v. Locker, Civ.App., 264 S.W. 595, reversed on other grounds, Com.App., 273 S.W. 831—Thomason v. Funderburk, Civ.App., 254 S.W. 400—Williams v. Craig, Civ.App., 252 S.W. 876—Exporters' & Traders' Compress & Warehouse Co. v. Spivey, Civ.App., 249 S.W. 1086—Jacobsen v. Van Syckel, Civ.App., 248 S.W. 124—North American Accident Ins. Co. v. Miller, Civ.App., 193 S.W. 750, error refused.

Utah.—Haycraft v. Adams, 24 P.2d 1110, 82 Utah 347.

Va.—Crew v. Nelson, 49 S.E.2d 326, 188 Va. 108—Wright v. Viar, 174 S.E. 766, 162 Va. 510—Virginian Ry. Co. v. Hillsman, 173 S.E. 503, 162 Va. 359.

Wash.—Braack v. Bailey, 200 P.2d 525, 32 Wash.2d 60—Simmons v. Kalin, 116 P.2d 840, 10 Wash.2d 409—Read v. School Dist. No. 211 of Lewis County, 110 P.2d 179, 7 Wash.2d 502—Perren v. Press, 81 P.2d 867, 196 Wash. 14—Vercruysse v. Cascade Laundry Co., 74 P.2d 920, 193 Wash. 184.

W.Va.—Gilmore v. Huntington Cab Co., 21 S.E.2d 137, 124 W.Va. 469.

4 C.J. p 852 note 56—38 C.J. p 1190 note 19—52 C.J. p 780 note 97.

Sufficient competent evidence

Neb.—Willoughby v. Swett, 34 N.W.2d 287, 150 Neb. 258—Torres v. Bollman, 32 N.W.2d 642, 149 Neb. 762—Blanchard v. Lawson, 27 N.W.2d 217, 148 Neb. 299—Pruitt v. Lincoln City Lines, 22 N.W.2d 651, 147 Neb. 204.

Legal evidence

Evidence to support a verdict within constitutional provision must be legal evidence and must tend to prove every material fact as to which the prevailing party has the burden.

Or.—Powder Valley State Bank v. Hudelson, 144 P. 494, 74 Or. 191—Beaver v. Mason, Ehrman & Co., 143 P. 1000, 73 Or. 36.

49.5 Va.—Malbon v. Davis, 40 S.E.2d 183, 124 Va. 748.

50. Ariz.—Wiser v. Copeland, 203 P. 565, 23 Ariz. 325.

Ark.—Order Railway Conductors of America v. Skinner, 77 S.W.2d 793, 190 Ark. 116—New York Life Ins. Co. v. Parker, 64 S.W.2d 556, 188 Ark. 39—Dixie Bauxite Co. v. Webb, 63 S.W.2d 634, 187 Ark. 1024—Lummus Cotton Gin Co. v. Daggett, 40 S.W.2d 769, 184 Ark. 116—St. Louis-San Francisco Ry. Co. v. Whitfield, 245 S.W. 323, 155 Ark. 560.

Cal.—Forbis v. Holzman, 55 P.2d 201, 5 C.2d 407—Newman v. E. E. Overholtzer Sons' Co., 190 P. 175, 182 C. 778.

Krohn v. Patrick, 55 P.2d 301, 12 C.A.2d 339—Langford v. Kosterlitz, 290 P. 80, 107 C.A. 175.

Colo.—Squire v. Hill, 66 P.2d 822, 100 Colo. 226.

Conn.—Trasacco v. New York, N. H. & H. R. Co., 155 A. 493, 113 Conn. 355.

Ill.—Rehthaler v. Crane Co., 218 Ill. App. 267—Welch v. Chicago City Ry. Co., 195 Ill.App. 146.

Ind.—Hamling v. Hildebrandt, 81 N.E.2d 603, 119 Ind.App. 22—City of Linton v. Jones, 130 N.E. 541, 75 Ind.App. 320.

Iowa.—Shadduck v. Chicago, M., St. P. & P. R. Co., 252 N.W. 772, 218 Iowa 281—Trousdale v. Burkhardt, 224 N.W. 93, 207 Iowa 1133—Sweet v. Security Sav. Bank of Perry, 205 N.W. 470, 200 Iowa 895—Transport Truck & Auto Co. v. Iowa Mut. Ins. Co. of De Witt, 198 N.W. 658, 197 Iowa 1297.

Kan.—Blakeslee v. Morgan, 235 P. 1042, 118 Kan. 486.

Ky.—Clover Splint Coal Co. v. Lorenz, 110 S.W.2d 457, 270 Ky. 676—John Hancock Mut. Life Ins. Co. v. Cave, 40 S.W.2d 1004, 240 Ky. 56, 79 A.L.R. 848—Jackson v. Dixon, 248 S.W. 190, 197 Ky. 763.

Mich.—Sweeney v. Adam Groth Co., 257 N.W. 855, 269 Mich. 436.

Mo.—Brown v. Holman, 286 S.W. 36, 315 Mo. 478.

Colley v. Cox, App., 266 S.W.2d 778.

N.C.—Debnam v. Rouse, 160 S.E. 471, 201 N.C. 459—Wharton v. New York Life Ins. Co., 100 S.E. 266, 178 N.C. 135—Southerland v. Brown, 96 S.E. 946, 176 N.C. 187.

N.D.—Harmon v. Haas, 241 N.W. 70, 61 N.D. 772, 80 A.L.R. 1131.

Or.—De Vol v. Citizens' Bank, 233 P. 1008, 113 Or. 595—Schmidt v. Wirth, 195 P. 375, 99 Or. 261.

Pa.—Ritter v. Northwestern Mut. Life Ins. Co., 171 A. 560, 314 Pa. 265.

S.C.—Bradford v. F. W. Woolworth Co., 140 S.E. 105, 141 S.C. 453.

S.D.—Bower v. Nunemaker, 195 N.W. 506, 46 S.D. 607.

Tenn.—Nohsey & Schwab v. Slover, 14 Tenn.App. 42—Nashville Ry. & Light Co. v. Mitchell, 7 Tenn.App. 690.

Tex.—St. Louis, S. F. & T. Ry. Co. v. Morgan, Com.App., 239 S.W. 607.

National Standard Life Ins. Co. v. Fleming, Civ.App., 67 S.W.2d 331—Seaton v. White, Civ.App., 50 S.W.2d 874—Stehling v. Johnston, Civ.App., 32 S.W.2d 696—Commercial Bank & Trust Co. v. Buntain, Civ.App., 278 S.W. 503—Business Men's Assur. Co. of America v. Bradley, Civ.App., 275 S.W. 622—

verdict is amply supported by the evidence;[51] or where there is some evidence to support the verdict.[52]

Payne v. Smith, Civ.App., 266 S.W. 441—Citizens' Guaranty State Bank of Hutchins v. National Surety Co., Civ.App., 242 S.W. 488, affirmed, Com.App., 258 S.W. 468—Antone v. Cowan, Civ.App., 202 S.W. 814—Garner v. Brown, Civ.App., 200 S. W. 1161.

Va.—Burrell v. Burrell, 70 S.E.2d 316, 193 Va. 594—Baptist v. Slate, 173 S.E. 512, 162 Va. 1—Sims v. Capper, 112 S.E. 676, 133 Va. 278.

Wash.—Phelan v. Jones, 4 P.2d 516, 164 Wash. 640—Henson v. First Security & Loan Co., 2 P.2d 85, 164 Wash. 198—Parker v. Pantages Theater Co., 254 P. 1083, 143 Wash. 176—Coleman v. Coleman, 203 P. 39, 118 Wash. 700.

Wis.—Feelyater v. Chicago, M. & St. P. Ry. Co., 190 N.W. 193, 178 Wis. 362—Isgro v. Plankinton Packing Co., 186 N.W. 606, 176 Wis. 507.

4 C.J. p 852 note 57—46 C.J. p 631 note 33.

On the other hand, it has been said that the evidence is sufficient to take the issue to the jury does not relieve the appellate court from determining on the whole evidence whether the verdict should stand.

Ala.—Furst v. Shows, 116 So. 149, 217 Ala. 297.

Court merely determines, in reviewing sufficiency of the evidence to support the verdict, whether the evidence was sufficient to go to the jury.

Md.—Havre De Grace Fireworks Co. v. Howe, 110 A.2d 666, 206 Md. 158.

Tex.—Beadle v. McCrabb, Civ.App., 199 S.W. 355, error refused.

51. Cal.—Dewhirst v. Leopold, 229 P. 30, 194 C. 424.

Lloyd v. Kleefisch, 120 P.2d 97, 48 C.A.2d 408—Hilliard v. Fabricius, 51 P.2d 1134, 10 C.A.2d 348—Yokohama Specie Bank v. Trans-Oceanic Co., 202 P. 346, 54 C.A. 533.

Colo.—Montgomery Ward & Co. v. Reich, 282 P.2d 1091, 131 Colo. 407.

Fla.—Handel v. Rudnick, 78 So.2d 709—Upton v. Hutchison, 46 So.2d 20—Union Bus Co. v. Matthews, 192 So. 811, 141 Fla. 99—Magee v. Friedricksen, 109 So. 197, 91 Fla. 1078—Tampa Bay Apartment Hotel Co. v. Monrose, 75 So. 30, 73 Fla. 894.

Ga.—Warren v. Vanderbilt Advertising, 8 S.E.2d 795, 62 Ga.App. 572.

Idaho.—Big Springs Land & Live Stock Co. v. Beck, 263 P. 477, 45 Idaho 509.

Ill.—Evans v. McDavid, 117 N.E.2d 797, 1 Ill.App.2d 423—Blachek v. City Ice & Fuel Co., 35 N.E.2d 416, 311 Ill.App. 1.

Ind.—Prudential Ins. Co. of America v. Girton, 12 N.E.2d 379, 105 Ind.App. 52.

Kan.—Noon v. Withington, 214 P. 107, 113 Kan. 367.

Ky.—Miller v. Plumbers Supply Co., 122 S.W.2d 477, 275 Ky. 647.

Miss.—Y. D. Lumber Co. v. Aycock, 40 So.2d 551, suggestion of error overruled 41 So.2d 35—Westbrook v. Corneil, 23 So.2d 753, 199 Miss. 118.

N.Y.—Sahoff Corporation v. William B. May Co. Real Estate, 15 N.Y.S. 2d 795, 258 App.Div. 157, reargument denied 16 N.Y.S.2d 1016, 258 App.Div. 877.

N.C.—Raulf v. Elizabeth City Electric Light & Power Co., 97 S.E. 236, 176 N.C. 691.

Okl.—Oklahoma Transp. Co. v. Seminole Lodge No. 430, I. O. O. F., 217 P.2d 164, 202 Okl. 622—Herndon v. Board of Com'rs in and for Pontotoc County, 11 P.2d 939, 158 Okl. 14.

Pa.—Baiz v. Atlantic Refining Co., 170 A. 268, 314 Pa. 17.

Tex.—Douglas Oil Co. v. State (California Case), 61 S.W.2d 807, 122 Tex. 377.

McCormick v. Rugeley, Civ.App., 253 S.W.2d 57, error refused no reversible error—Friend in Need Ben. Ass'n v. Hardin, Civ.App., 88 S.W. 2d 1103—Texas Co. v. Brown, Civ. App., 82 S.W.2d 1101, error dismissed—Bankers' Mortg. Co. v. Baxter, Civ.App., 66 S.W.2d 408—Billingsley v. Abbott, Civ.App., 274 S.W. 298—State v. Texas Pac. Coal & Oil Co., Civ.App., 236 S.W. 1021.

Utah.—Arellano v. Western Pac. R. Co., 298 P.2d 527, 5 Utah 2d 146—Taylor v. Weber County, 293 P.2d 925, 4 Utah 2d 328.

Wis.—Martell v. Kutcher, 216 N.W. 522, 195 Wis. 19—Werner v. Yellow Cab Co., 188 N.W. 77, 177 Wis. 592.

52. Ark.—Harper v. Dees, 214 S.W. 2d 788, 214 Ark. 111.

Cal.—Dallas v. De Yoe, 200 P. 361, 53 C.A. 452.

Colo.—Jones v. Panak, 268 P. 535, 84 Colo. 62—Louden Irrigating Canal & Reservoir Co. v. Neville, 227 P. 562, 75 Colo. 536.

Ga.—Calhoun v. Babcock Bros. Lumber Co., 30 S.E.2d 872, 198 Ga. 74.

Jones v. Dupree, 93 S.E.2d 191, 93 Ga.App. 830—State Farm Mut. Auto. Ins. Co. v. Henderson, 59 S.E. 2d 319, 81 Ga.App. 541—West Lumber Co. v. Castleberry, 45 S.E.2d 67, 76 Ga.App. 9—Sapp v. Sapp, 177 S.E. 265, 30 Ga.App. 145—Otwell v. Thompson, 148 S.E. 302, 39 Ga. App. 706—Ryan v. Richardson, 143 S.E. 781, 38 Ga.App. 274—Southern Ry. Co. v. Wessinger, 124 S.E. 100, 32 Ga.App. 551—Bennett v. Watson, 120 S.E. 802, 31 Ga.App. 367—Davis v. Thompson, 119 S.E. 222, 30 Ga.App. 650—Tanner v. People's Bank of Carrollton, 91 S. E. 437, 19 Ga.App. 339—Betenbo v. Brooks & Tabor, 88 S.E. 411, 17 Ga.App. 754.

Ill.—Parker v. Illinois Terminal R. Co., 104 N.E.2d 119, 345 Ill.App. 604—Moats v. Moore, 199 Ill.App. 270.

Ind.—Love v. Harris, App., 143 N.E. 2d 450—Sims Motor Transport Lines v. Davis, 130 N.E.2d 82, 126 Ind.App. 344—Armstrong Cork Co. v. Maar, 111 N.E.2d 82, 124 Ind. App. 105, rehearing denied 112 N.E. 2d 240, 124 Ind.App. 105—Workman v. Workman, 46 N.E.2d 718, 113 Ind.App. 245—Griffith v. Thrall, 29 N.E.2d 345, 109 Ind.App. 141—Michalik v. Pazdur, 13 N.E.2d 870, 105 Ind.App. 325—Gaines v. Taylor, 185 N.E. 297, 96 Ind.App. 378—Indiana Limestone Co. v. Murphy, 177 N.E. 350, 93 Ind.App. 76—City of Indianapolis v. Moss, 128 N.E. 857, 74 Ind.App. 129—Spickelmeir v. Hartman, 123 N.E. 232, 72 Ind.App. 207—Meridian Life & Trust Co. v. Hay, 118 N.E. 147, 69 Ind.App. 226.

Kan.—Frederick v. Neiberline, 230 P. 75, 117 Kan. 94—Drysdale v. Wetz, 171 P. 8, 102 Kan. 422.

Me.—Pratt v. O'Hara, 190 A. 622, 135 Me. 123.

Mass.—Leavitt v. Wintman, 125 N.E. 390, 234 Mass. 248.

Mich.—Maki v. Commonwealth Ins. Co. of New York, 205 N.W. 83, 232 Mich. 295.

Mo.—McDaniels v. Cutburth, 270 S. W. 353.

May v. Avansino, App., 185 S. W. 1178.

Neb.—Utilities Ins. Co. v. Stuart, 278 N.W. 827, 134 Neb. 413.

N.Y.—Newhall v. McCann, 196 N.E. 302, 267 N.Y. 394.

Ohio.—Betras v. G. M. McKelvey Co., 76 N.E.2d 280, 148 Ohio St. 523—F. W. Woolworth Co. v. Kinney, 169 N.E. 562, 121 Ohio St. 462.

Cleveland Worsted Mills Co. v. Coates, 26 Ohio Cir.Ct.,N.S., 353.

Okl.—Boswell v. Shawnee Production Credit Ass'n, 77 P.2d 740, 182 Okl. 302—Tway v. Hartman, 75 P.2d 893, 181 Okl. 608—American Nat. Bank v. Jorden, 254 P. 706, 123 Okl. 151—Woods v. Sand Springs Ry. Co., 254 P. 703, 124 Okl. 34—McQueen Gin Co. v. Crenshaw, 254 P. 496, 123 Okl. 186—Schneider v. Alles, 254 P. 79, 124 Okl. 123—Youngblood v. Roake, 253 P. 1017, 124 Okl. 84—Great American Ins. Co. v. Williams, 251 P. 1012, 123 Okl. 206—City of Pawhuska v. Button, 251 P. 1001, 123 Okl. 61—Gallemore v. Buzzard, 224 P. 293, 98 Okl. 104—Stephens v. Otey, 219

According to many decisions, where the verdict is supported by substantial evidence,[53] or any sub-

P. 366, 93 Okl. 36—Cavanagh v. Johannessen, 156 P. 289, 57 Okl. 149.

Or.—Ramsdell v. Frederick, 285 P. 219, 132 Or. 161—Eaid v. National Casualty Co., 259 P. 902, 122 Or. 547—Malloy v. Marshall-Wells Hardware Co., 175 P. 659, 90 Or. 303, rehearing denied 176 P. 589, 90 Or. 303.

Pa.—Cassler v. Cassler, 144 A. 88, 294 Pa. 197.

Tenn.—Martin v. Wahl, 66 S.W.2d 608, 17 Tenn.App. 192—Tanner v. Independent Life Ins. Co., 7 Tenn. App. 312.

Tex.—Singer v. Singer, 237 S.W.2d 600, 150 Tex. 115.

Texas Employers' Ins. Ass'n v. Shilling, Com.App., 289 S.W. 996—Chapman v. Kellogg, Com.App., 252 S.W. 151.

U. S. Fidelity & Guaranty Co. v. Carr, Civ.App., 242 S.W.2d 224, error refused—McClure v. McClure, Civ.App., 228 S.W.2d 362—Ragan v. Mosher, Civ.App., 225 S.W.2d 438—McCasland v. Henwood, Civ.App., 213 S.W.2d 555, error refused no reversible error—Mortensen v. Mortensen, Civ.App., 186 S.W.2d 297—Glenn v. Glenn, Civ.App., 183 S.W.2d 231—State v. Crystal Club, Civ.App., 177 S.W.2d 110—Texas Employers Ins. Ass'n v. Booth, 113 S.W.2d 231, reversed on other grounds Booth v. Texas Employers Ins. Ass'n, 123 S.W.2d 322, 132 Tex. 237—Massie v. City of Floydada, Civ.App., 112 S.W.2d 243—Coleman v. Rollo, Civ.App., 50 S.W.2d 391—Mueller v. Landa, Civ.App., 27 S.W.2d 844—Eastland County v. Davisson, Civ.App., 290 S.W. 196, reversed on other grounds, Com.App., 298 S.W. 268—Ross v. Reynolds Cattle Co., Civ. App., 254 S.W. 214—Daniel v. Irwin, Civ.App., 250 S.W. 254.

Wash.—Vercruysse v. Cascade Laundry Co., 74 P.2d 920, 193 Wash. 184.

Wis.—Mayer v. Boynton Cab Co., 66 N.W.2d 136, 267 Wis. 486—Flanagan's Estate v. Flanagan's Estate, 173 N.W. 297, 169 Wis. 537.

4 C.J. p 853 note 58—9 C.J. p 871 note 10.

Little evidence needed

(1) Where the successor to the director general of railroads claimed, on appeal from a judgment for plaintiff in an action for delay and negligent handling of cattle, that there was no evidence that the carrier received the cattle, but the fact, easily disproved, was not disproved, little evidence is required to uphold the verdict and judgment.

Tex.—Gulf, C. & S. F. Ry. Co. v. Bostick, Civ.App., 233 S.W. 112.

(2) While neither expert witness nor the jurors may be permitted to conjecture as to what may possibly ensue from a given state of facts, and the witness must be confined, and verdict based on reasonable probabilities, it is the jury's province to pass on the facts and the witnesses' credibility, and the appellate court cannot disturb the finding, however slight the probative force of the testimony in its support may have.

Tex.—Texas Employers' Ins. Ass'n v. Jimenez, Civ.App., 267 S.W. 752.

Verdict supported to any appreciable degree

In a case where plaintiff's evidence to any appreciable degree supports the verdict of a jury on the question of negligence, the supreme court of appeals will not disturb the verdict on the ground that no negligence has been shown on the part of defendant.

W.Va.—Kidwell v. Norfolk & W. Ry. Co., 117 S.E. 781, 94 W.Va. 131.

Evidence disregarded by jury will be ignored by the supreme court.

Ark.—De Queen & E. R. Co. v. Dye, 58 S.W.2d 955, 187 Ark. 219.

Evidence excluded from the jury cannot be considered in determining whether the jury's finding is supported by the evidence.

Mich.—Emery v. Ford, 207 N.W. 856, 234 Mich. 11.

Disparity

The jury are the arbiters of fact questions, and because losing party introduces more evidence than prevailing party will not invalidate a verdict if there is some competent evidence to support jury's finding.

Ga.—Southern Ry. Co. v. Lunsford, 194 S.E. 602, 57 Ga.App. 53, certiorari denied 59 S.Ct. 78, 305 U.S. 619, 83 L.Ed. 395.

When rule inapplicable

(1) Although a verdict will not be disturbed where there is some evidence tending to support it, that rule does not apply where verdict is opposed to undisputed physical facts.

Neb.—Parish v. County Fire Ins. Co., 279 N.W. 170, 134 Neb. 563, 126 A. L.R. 703.

(2) The rule of the foregoing case does not apply where there is a reasonable dispute as to the pertinent physical facts.

Neb.—Hill v. Interstate Transit Lines, 288 N.W. 508, 137 Neb. 110.

53. Ala.—Williams v. North Alabama Exp., 83 So.2d 330, 263 Ala. 581.

Vaughn v. Whiteside, 143 So. 470, 25 Ala.App. 165, certiorari denied 143 So. 471, 225 Ala. 442.

Ariz.—Atchison, T. & S. F. R. Co. v. Hicks, 165 P.2d 167, 64 Ariz. 15—Haas v. Morrow, 97 P.2d 204, 54 Ariz. 455—Huntsman v. First Nat. Bank of El Paso, Tex., 243 P. 598, 29 Ariz. 574—Mosher v. Williams, 212 P. 498, 25 Ariz. 46.

Ark.—Reddell v. Norton, 285 S.W.2d 328, 225 Ark. 643—Bridgforth v. Vandiver, 284 S.W.2d 623, 225 Ark. 702—Hammond v. Peden, 278 S.W. 2d 96, 224 Ark. 1053—Auto Transports v. May, 275 S.W.2d 767, 224 Ark. 704—Arkansas Western Ry. Co. v. Currier, 270 S.W.2d 932, 223 Ark. 946—Fontaine v. Wofford, 269 S.W.2d 309, 223 Ark. 873—Slatton v. Hill, 251 S.W.2d 123, 220 Ark. 858—Chicago, R. I. & P. R. Co. v. Sparks, 248 S.W.2d 371, 220 Ark. 412—Barrett v. Fort Smith Structural Steel Co., 246 S.W.2d 414, 220 Ark. 114—Sims v. Morris, 245 S.W. 2d 829, 220 Ark. 1—Person v. Miller Levee Dist. No. 2, 237 S.W.2d 38, 218 Ark. 86—Ætna Life Ins. Co. v. Lemay, 236 S.W.2d 85, 218 Ark. 328—United Van Lines v. Haley, 218 S.W.2d 715, 214 Ark. 938—Boyd v. Fulton, 206 S.W.2d 753, 212 Ark. 555—Chicago, R. I. & P. Ry. Co. v. King, 197 S.W.2d 931, 210 Ark. 872—Marshall v. Casper, 193 S.W.2d 479, 209 Ark. 876—Johnson v. Swanson, 189 S.W.2d 803, 209 Ark. 144—Albert v. Morris, 187 S. W. 909, 208 Ark. 808—St. Louis Southwestern Ry. Co. v. Stone, 187 S.W.2d 903, 208 Ark. 858—Holimon v. Rice, 185 S.W.2d 927, 208 Ark. 279—Southern Acid & Sulphur Co. v. Childs, 184 S.W.2d 586, 207 Ark. 1109—Ward v. Walker, 178 S.W.2d 62, 206 Ark. 988—Sharpe v. Hunt, 174 S.W.2d 678, 206 Ark. 265—Sturgis v. Hardcastle, 174 S.W.2d 565, 206 Ark. 240—Jelks v. Rogers, 165 S.W.2d 258, 204 Ark. 877—St. Louis-Southwestern Ry. Co. v. Holwerk, 163 S.W.2d 175, 204 Ark. 587—Wright v. McDaniel, 159 S.W.2d 737, 203 Ark. 992—Arkansas-Louisiana Gas Co. v. Campbell, 156 S. W.2d 255, 203 Ark. 307—Milwaukee Mechanics Ins. Co. v. Brown, 150 S.W.2d 945, 202 Ark. 537—Harmon v. Ward, 149 S.W.2d 575, 202 Ark. 54—Harmon v. Harrison, 147 S.W. 2d 739, 201 Ark. 988—W. T. Rawleigh Co. v. Castleberry, 147 S.W. 2d 734, 201 Ark. 980—D. F. Jones Const. Co. v. Mize, 146 S.W.2d 709, 201 Ark. 702—National Life & Accident Ins. Co. v. Jones, 144 S.W. 2d 1085, 201 Ark. 1186—Arkmo Lumber Co. v. Luckett, 143 S.W. 2d 1107, 201 Ark. 140—Missouri Pac. Transp. Co. v. Sacker, 138 S. W.2d 371, 200 Ark. 92—Commercial Credit Co. v. Childs, 137 S.W.2d 260, 199 Ark. 1073, 128 A.L.R. 726—D. F. Jones Const. Co. v. Fooks, 136 S.W.2d 487, 199 Ark. 861, 126 A.L.R. 1255—Missouri Pacific Transp. Co. v. Porter, 134 S.W.2d 513, 199 Ark. 225—Missouri Pac. Transp. Co. v. George, 133 S.W.2d 37, 198 Ark. 1110—Missouri P. R. Co. v. Howell, 132 S.W.2d 176, 198 Ark. 956—St. Louis-San Francisco

Ry. Co. v. Herndon, 129 S.W.2d 954, 198 Ark. 465—Lloyd v. James, 128 S.W.2d 1019, 198 Ark. 255—Missouri Pac. R. Co. v. Lemons, 127 S.W.2d 120, 198 Ark. 1—McCarroll Agency v. Protectory for Boys under Care of Franciscan Bros. of Cincinnati, Ohio, 124 S.W.2d 816, 197 Ark. 534—Missouri Pac. Transp. Co. v. Jones, 122 S.W.2d 613, 197 Ark. 79—Omohundro v. Fly, 122 S.W.2d 541, 197 Ark. 207—St. Louis-San Francisco Ry. Co. v. Hill, 121 S.W.2d 869, 197 Ark. 53—Powell Bros. Truck Lines v. Barnett, 121 S.W.2d 116, 196 Ark. 1082—Missouri Pac. R. Co. v. Manion, 120 S.W.2d 715, 196 Ark. 981—Arkansas Power & Light Co. v. Richenback, 119 S.W.2d 515, 196 Ark. 620—Elkins v. Nelson, 118 S.W.2d 287, 196 Ark. 209—Missouri Pac. R. Co. v. Barron, 117 S.W.2d 287, 196 Ark. 244—Arkansas Motor Coaches v. Williams, 116 S.W.2d 585, 196 Ark. 48—Kansas City Southern Ry. Co. v. Larsen, 114 S.W.2d 1081, 195 Ark. 808, certiorari denied 59 S.Ct. 82, 305 U.S. 621, 83 L.Ed. 397—Missouri Pac. R. Co. v. Hancock, 113 S.W.2d 489, 195 Ark. 414—St. Louis-San Francisco Ry. Co. v. Fowler, 111 S.W.2d 546, 195 Ark. 122—Humphries v. Kendall, 111 S.W.2d 492, 195 Ark. 45—Zurich General Accident & Liability Ins. Co. v. Simms Co., 109 S.W.2d 933, 194 Ark. 676—St. Louis-San Francisco Ry. Co. v. Brunner, 104 S.W.2d 214, 193 Ark. 937—Kelley v. Sparks, 102 S.W.2d 838, 193 Ark. 811—Chicago, R. I. & P. Ry. Co. v. Manus, 100 S.W.2d 258, 193 Ark. 397—Missouri Pac. R. Co. v. Slatton, 100 S.W.2d 86, 193 Ark. 356—Metropolitan Life Ins. Co. v. Pope, 97 S.W.2d 915, 193 Ark. 139—Wohlfeld v. Henley, 93 S.W.2d 1247, 192 Ark. 650—Baldwin v. Compton, 92 S.W.2d 845, 192 Ark. 503—Kentucky Home Life Ins. Co. v. Mosley, 89 S.W.2d 744, 191 Ark. 1146—May v. Sharp, 89 S.W.2d 735, 191 Ark. 1142—Manhattan Const. Co. v. Atkisson, 88 S.W.2d 819, 191 Ark. 920—George v. George, 88 S.W.2d 71, 191 Ark. 799—Coca-Cola Bottling Co. of Arkansas v. McNeece, 87 S.W.2d 38—Mathis v. Magers, 86 S.W.2d 171, 191 Ark. 373—Baldwin v. Wingfield, 85 S.W.2d 689, 191 Ark. 129—Brandon Tie & Lumber Co. v. Osborn, 83 S.W.2d 530, 191 Ark. 145—Southwestern Bell Telephone Co. v. Balesh, 76 S.W.2d 291, 189 Ark. 1085—Harvell v. Matthews, 72 S.W.2d 214, 189 Ark. 356—Equitable Life Assur. Soc. of U. S. v. Felton, 71 S.W.2d 1049, 189 Ark. 318—Equitable Life Assur. Soc. of U. S. v. Pool, 71 S.W.2d 455, 189 Ark. 101—Dodd v. Dodd, 70 S.W.2d 850, 189 Ark. 1171—Prudential Ins. Co. of America v. Lane, 70 S.W.2d 43, 189 Ark. 7—Arkansas General Utilities Co. v. Shipman, 67 S.W.2d 178, 188 Ark. 681—Palmer v. Folsom, 66 S.W.2d 1063, 188 Ark. 1167—Crown Coach Co. v. Reed, 65 S.W.2d 1073, 188 Ark. 1167—Arkansas Power & Light Co. v. Boyd, 65 S.W.2d 919, 188 Ark. 254—Arkansas Power & Light Co. v. Mart, 65 S.W.2d 39, 188 Ark. 202—Missouri Pac. R. Co. v. Sellers, 65 S.W.2d 14, 188 Ark. 218—Swift & Co. v. Russell, 63 S.W.2d 279, 188 Ark. 17—Dollins Sign & Advertising Co. v. Smith, 62 S.W.2d 978, 187 Ark. 1162—Hough v. 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Miss.—Continental Casualty Co. v. Garrett, 161 So. 753, 173 Miss. 676—National Box Co. v. Bradley, 157 So. 91, 171 Miss. 15—McLemore & McArthur v. Rogers, 152 So. 883, 169 Miss. 650—S. H. Kress & Co. v. Sharp, 126 So. 650, 156 Miss. 693, 68 A.L.R. 167.

Mo.—Sederquist v. Chicago, R. I. & P. R. Co., 268 S.W.2d 861, 364 Mo. 820—Lansford v. Southwest Lime Co., 266 S.W.2d 564—Machens v. Machens, 263 S.W.2d 724—Gaddy v. Skelly Oil Co., 259 S.W.2d 844, 364 Mo. 143—Higgins v. Terminal R. R. Ass'n of St. Louis, 241 S.W.2d 380, 362 Mo. 264—Conner v. Neiswender, 232 S.W.2d 469, 360 Mo. 1074—Jones v. Chicago, B. & Q. R. Co., 125 S.W.2d 5, 343 Mo. 1104—Rexford v. Philippi, 84 S.W.2d 628, 337 Mo. 389—Carpenter v. Wabash Ry. Co., 71 S.W.2d 1071, 335 Mo. 130—Simmons v. Kansas City Jockey Club, 66 S.W.2d 119, 334 Mo. 99—Clark v. Commerce Trust Co., 62 S.W.2d 874, 333 Mo. 243—Cullen v. Johnson, 29 S.W.2d 39, 325 Mo. 253—Berry v. St. Louis-San Francisco Ry. Co., 26 S.W.2d 988, 324 Mo. 775, certiorari denied St. Louis-San Francisco Ry. Co. v. Berry, 50 S.Ct. 464, 281 U.S. 765, 74 L.Ed. 1173—Thompson v. Quincy, O. & K. C. R. Co., 18 S.W.2d 401—Bachman v. Quincy, O. & K. C. R. Co., 274 S.W. 764, 310 Mo. 48—King v. Missouri Pac. R. Co., 263 S.W. 828—Cowan v. Young, 220 S.W. 869, 282 Mo. 36—Titus v. Delano, 210 S. W. 44—State ex rel. Mechanics'-American Nat. Bank v. Sturgis, 208 S.W. 458, 276 Mo. 559—Minium v. Solel, 183 S.W. 1037—Thompson v. St. Louis Southwestern Ry. Co., 183 S.W. 631.

Moore v. St. Louis Southwestern Ry. Co., App., 301 S.W.2d 395—Hunter v. Karchmer, App., 285 S.W. 2d 918—Atkinson v. Coca-Cola Bottling Co., App., 275 S.W.2d 41—Vosburg v. Smith, App., 272 S.W. 2d 297—Walton v. Van Camp, App., 271 S.W.2d 53—Union Service Co. v. Lyons, 240 S.W.2d 153, 241 Mo. App. 611—Johnson v. Thompson, App., 236 S.W.2d 1—Keyton v. Missouri-Kansas-Texas R. R., App., 224 S.W.2d 616—In re Clark's Estate, 213 S.W.2d 645—State ex rel. Payne v. Wilson, App., 207 S.W.2d 785—Murray v. St. Louis Public Service Co., App., 201 S.W.2d 775—Martin v. Graham Ship-By-Truck Co., App., 176 S.W.2d 842—Wiener v. Mutual Life Ins. Co. of New York, App., 170 S.W.2d 174, transferred, see 179 S.W.2d 39, 352 Mo. 673—Ashenford v. L. Yukon & Sons Produce Co., 172 S.W.2d 881, 237 Mo.App. 1241—United Terminals & Forwarding Co. v. Hunter, App., 167 S.W.2d 672—Albrecht v. Piper, App., 164 S.W.2d 105—Foster v. Kurn, 163 S.W.2d 133, 236 Mo.App. 1149—Lanowah Inv. Co. v. John Hancock Mut. Life Ins. Co., 162 S.W.2d 307, 236 Mo.App. 1062—Buhrmester v. Independent Plumbing & Heating Supply Co., App., 151 S.W.2d 509—Alleger v. School Dist. No. 16, Newton County, App., 142 S.W.2d 660—Stewart v. Carleton Bldg. Co., App., 138 S.W.2d 720—McCutchan v. Kansas City Life Ins. Co. of Kansas City, Mo., App., 122 S.W.2d 59—Ray Realty Co. v. Holtzman, 119 S.W.2d 981, 234 Mo. App. 802—Gannaway v. Pitcairn, App., 109 S.W.2d 78—Hurst v. Montgomery Ward & Co., App., 107 S.W.2d 183—Nichols v. Thomas, 96 S.W.2d 1055, 231 Mo.App. 212—Power v. Frischer, App., 87 S.W. 2d 692—Gay v. Kansas City Public Service Co., App., 77 S.W.2d 133—Wood v. Kansas City Life Ins. Co., App., 75 S.W.2d 412—Chambers v. Chambers, App., 74 S.W.2d 104—Fenton v. Hart, App., 73 S.W.2d 1034—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180—Rice v. Lammers, App., 65 S. W.2d 151—State ex rel. State Highway Commission v. Southern Securities Co., App., 60 S.W.2d 632—Grantham v. Turner, App., 52 S. W.2d 223—Zimmerman v. Kansas City Public Service Co., 41 S.W.2d 579, 226 Mo.App. 369—Hicks v. Missouri Pac. R. Co., 40 S.W.2d 512, 225 Mo.App. 1053, 226 Mo.App. 362—Union House Furnishing Co. v. Woods, App., 39 S.W.2d 448—Friedman v. Maryland Casualty Co., App., 21 S.W.2d 880—Gorman v. A. R. Jackson Kansas City Showcase Works Co., App., 19 S.W.2d 559—Mitchell v. Smith, 14 S.W.2d 46, 223 Mo.App. 463—Broyles v. Byrne, App., 13 S.W.2d 560—Dickes v. Bookman, App., 6 S.W.2d 981—Renfro v. Lazerine, App., 298 S.W. 1067—Campbell v. Myers, 287 S.W. 842, 221 Mo.App. 858—Culver v. Minden Coal Co., App., 286 S.W. 745—Cooley v. Davis, 286 S.W. 412, 221 Mo.App. 748—Bertig Mercantile Co. v. Williams, App., 286 S. W. 150—Universal Paper Products Co. v. R. E. Funsten Co., App., 285 S.W. 516, quashed on other grounds State ex rel. R. E. Funsten Co. v. Becker, 1 S.W.2d 103, 318 Mo. 516, conformed to, App., 6 S.W.2d 1020—Haack v. Hammer, 283 S.W. 741, 221 Mo.App. 380—Crist v. Massachusetts Bonding & Insurance Co., 282 S.W. 64, 221 Mo.App. 460—Williams v. American Exchange Bank, 280 S.W. 720, 222 Mo.App. 483—Smith v. Brougher, App., 274 S.W. 532—Porter v. Porter, App., 258 S.W. 76—Pool v. Wilkinson, 257 S.W. 182, 216 Mo.App. 164—Campbell v. Chicago, B. & Q. R. Co., 245 S.W. 58, 211 Mo.App. 331—Coyne v. Golland, App., 243 S.W. 376—Nash v. St. Joseph Gas Co., App., 234 S.W. 360—Dunham v. Scafe, 226 S.W. 963, 207 Mo.App. 511—Schwabe v. Estes, 218 S.W. 908, 202 Mo.App. 372—Berthold & Jennings Lumber Co. v. Texas Hardwood Lumber Co., App., 209 S.W. 591—Forlow v. Athletic Mining &

Smelting Co., App., 209 S.W. 117—Surbeck v. Surbeck, App., 208 S.W. 645—Johnson v. Kansas City Southern Ry. Co., App., 200 S.W. 685—Warrington v. Byrd, App., 181 S.W. 1079.

Mont.—Roberts State Bank v. O'Rourke, 191 P.2d 321, 121 Mont. 228—Butler v. Paradise Val. Irr. Dist., 160 P.2d 481, 117 Mont. 563—Cash v. Knapp, 113 P.2d 343, 112 Mont. 101—Gilmore v. Mulvihill, 98 P.2d 335, 109 Mont. 601—Jensen v. Cloud, 88 P.2d 36, 107 Mont. 593—Kingsland v. Metropolitan Life Ins. Co., 37 P.2d 335, 97 Mont. 558—Heckaman v. Northern Pac. Ry. Co., 20 P.2d 258, 93 Mont. 363—McNair v. Berger, 15 P.2d 834, 92 Mont. 441—In re Bright's Estate, 300 P. 229, 89 Mont. 394—McCloskey v. City of Butte, 253 P. 267, 78 Mont. 180—Kelly v. Kipp, 250 P. 819, 77 Mont. 110—Solberg v. Sunburst Oil & Gas Co., 246 P. 168, 76 Mont. 254—O'Neill v. Montana Elevator Co., 211 P. 222, 65 Mont. 259.

Neb.—Coryell v. Robinson Outdoor Advertising Co., 2 N.W.2d 106, 140 Neb. 855—Dworak v. Shire, 253 N. W. 655, 126 Neb. 474.

Nev.—J. C. Penney Co. v. Gravelle, 155 P.2d 477, 62 Nev. 434—Pershing Quicksilver Co. v. Thiers, 152 P.2d 432, 62 Nev. 382—Deiss v. Southern Pac. Co., 53 P.2d 332, 56 Nev. 151.

N.M.—Brown v. Cooley, 247 P.2d 868, 56 N.M. 630—Flippo v. Martin, 200 P.2d 366, 52 N.M. 402—Stevens v. Mitchell, 186 P.2d 386, 51 N.M. 411—Bunton v. Hull, 177 P.2d 168, 51 N.M. 5—Bell v. Carter Tobacco Co., 71 P.2d 683, 41 N.M. 513—Summerford v. Sovereign Camp, W. O. W., 59 P.2d 893, 40 N.M. 330—Tharp v. Massengill, 28 P.2d 502, 38 N.M. 58—Rheinboldt v. Fuston, 278 P. 361, 34 N.M. 146—Talley v. Greear, 275 P. 378, 34 N.M. 26.

N.Y.—Whipple v. Serafini Const. Co., 30 N.Y.S.2d 961, 263 App.Div. 760.

N.C.—Womack v. Federal Life Ins. Co., 174 S.E. 313, 206 N.C. 445.

Ohio.—Bartlebaugh v. Pennsylvania R. Co., App., 78 N.E.2d 410, appeal dismissed 79 N.E.2d 912, 149 Ohio St. 585, modified on other grounds 82 N.E.2d 853, 150 Ohio St. 387—Graham & Wagner v. Ridge, 179 N.E. 693, 41 Ohio App. 288—Great Atlantic & Pacific Tea Co. v. Davis, 167 N.E. 613, 32 Ohio App. 100—Cleveland Ry. Co. v. Mueller, 166 N.E. 391, 31 Ohio App. 488—Cleveland Ry. Co. v. Duralia, 165 N.E. 358, 30 Ohio App. 389.

Okl.—Mid-Continent Petroleum Corp. v. Jamison, 171 P.2d 976, 197 Okl. 387—Marrs v. Richardson, 87 P. 2d 131, 184 Okl. 342—Sisters of the Sorrowful Mother v. Zeidler, 82 S.W.2d 996, 183 Okl. 454—J. C. Penny Co. v. Forrest, 80 P.2d 640, 183 Okl. 106—Home Mut. Life Ass'n v. Hodges, 80 P.2d 278, 183 Okl. 104—Dunigan v. Greenan, 79 P.2d 599, 182 Okl. 618—Cave v. Wall, 78 P.2d 407, 182 Okl. 461—Oklahoma City v. Hayden, 37 P.2d 642, 169 Okl. 502—Oil Reclaiming Co. v. Reagin, 37 P.2d 289, 169 Okl. 505—Roush v. Crawford, 30 P.2d 917—Messick v. Johnson, 30 P.2d 176, 167 Okl. 463—Lone Star Gas Co. v. Burk, 20 P.2d 170, 162 Okl. 259—Bailey v. Magnolia Petroleum Co., 19 P.2d 373, 162 Okl. 113—Stevens v. Dewey, 19 P.2d 371, 162 Okl. 112—Big Twelve Oil & Gas Co. v. Eco, 14 P.2d 377, 159 Okl. 110—Woods v. Davis, 7 P.2d 905, 155 Okl. 6—Higbee v. Owens, 7 P.2d 854, 155 Okl. 93—Gladstein v. Pritchett, 4 P.2d 111, 152 Okl. 280—Black v. Parisho, 3 P.2d 673, 152 Okl. 70—Adams v. Small, 3 P.2d 661, 151 Okl. 244—Prudential Ins. Co. of America v. Singletary, 3 P. 2d 657, 151 Okl. 301—White v. Hughes, 292 P. 37, 145 Okl. 192—Standard Accident Ins. Co. v. Baker, 291 P. 962, 145 Okl. 100—Wilson & Co. v. Russell, 290 P. 1106, 144 Okl. 284—Emery v. McCary, 289 P. 703, 144 Okl. 56—Witt v. Reed, 289 P. 291, 144 Okl. 120—Western States Oil & Land Co. v. Helm, 288 P. 964, 143 Okl. 206—California Ins. Co. v. Security State Bank of Miami, Okl., 277 P. 591, 136 Okl. 271—Allen v. Oklahoma State Bank of Enid, 270 P. 838, 133 Okl. 14.

Or.—Perry v. Thomas, 253 P.2d 299, 197 Or. 374—Tomasek v. State, 248 P.2d 703, 196 Or. 120—Dunning v. Northwestern Elec. Co., 199 P.2d 648, 186 Or. 379, reheard 206 P.2d 1177, 186 Or. 379—Clemens v. Smith, 134 P.2d 424, 170 Or. 400—Armstrong v. State Industrial Accident Commission, 31 P.2d 186, 146 Or. 569—Smith v. Reigleman, 23 P.2d 129, 143 Or. 463—Imperial Laundry Co. v. Allen, 20 P.2d 217, 143 Or. 71—Shafer v. Ekstrand, 14 P.2d 287, 140 Or. 582—Porter Const. Co. v. Berry, 298 P. 179, 136 Or. 80—Goldfoot v. Lofgren, 296 P. 843, 135 Or. 533—Eaid v. National Casualty Co., 259 P. 902, 122 Or. 547—Richardson v. Portland Trackless Car Co., 233 P. 540, 113 Or. 544—Miller Lumber Co. v. Davis, 185 P. 462, 94 Or. 507, rehearing denied 185 P. 1107, 94 Or. 507.

Pa.—Industrial Rayon Corporation v. Clifton Yarn Mills, 165 A. 385, 310 Pa. 322.

Gower v. Harakal, 198 A. 923, 131 Pa.Super. 185—Madden v. Great Atlantic & Pacific Tea Co., 162 A. 687, 106 Pa.Super. 474.

S.C.—State v. Tompkins, 158 S.E. 836, 160 S.C. 470.

S.D.—Schuetzle v. Nash-Finch Co., 38 N.W.2d 137, 72 S.D. 588—Nelson v. City of Sioux Falls, 292 N.W. 868, 67 S.D. 320—Warren v. Temte, 221 N.W. 93, 53 S.D. 491—Lowe v. Heimer, 210 N.W. 737, 50 S.D. 516.

Tenn.—Tallent v. Fox, 141 S.W.2d 485, 24 Tenn.App. 96—National Life & Accident Ins. Co. v. Yates, 64 S.W.2d 524, 16 Tenn.App. 344—Union Traction Co. v. Gwaltney, 1 Tenn.App. 612—Maddox v. Cone, 1 Tenn.App. 534—Whitfield v. Loveless, 1 Tenn.App. 377—Goens v. Jones, 1 Tenn.App. 294—Stephens v. Mason, 1 Tenn.App. 246—Elbinger Shoe Co. v. Thomas, 1 Tenn.App. 161—Davis v. Farris, 1 Tenn.App. 144—Tennessee Railway Co. v. Riddle Coal Co., 1 Tenn. App. 129—Chicago, M. & G. R. Co. v. Wheeler, 1 Tenn.App. 100—Stacy v. Keller, 1 Tenn.App. 80.

Tex.—American Surety Co. of New York v. Austin, Com.App., 17 S. W.2d 777.

Hyde Corp. v. Huffines, Civ.App., 303 S.W.2d 865—Beckham v. Mayes, Civ.App., 229 S.W.2d 636—Belt v. Texas Co., Civ.App., 204 S.W.2d 653, error refused no reversible error—Davidson v. Whitaker, Civ.App., 196 S.W.2d 57, error refused no reversible error—Employers' Liability Assur. Corp. v. Kolp, Civ.App., 149 S.W.2d 209, error dismissed, judgment correct—Pippin v. Holland, Civ.App., 146 S.W.2d 266—Phipps v. American Nat. Ins. Co., Civ.App., 116 S.W.2d 800, error dismissed—The Praetorians v. Thompson, Civ.App., 79 S.W.2d 886—Texas & P. Ry. Co. v. Weatherly, Civ.App., 73 S.W.2d 957—Daniel v. Cook, Civ.App., 70 S.W.2d 1024—Robinson v. Randall, Civ.App., 69 S.W.2d 184—Weiss v. Mitchell, Civ.App., 58 S.W.2d 165—Stockwell v. Snyder, Civ.App., 51 S.W.2d 812, reversed on other grounds 84 S.W.2d 705, 126 Tex. 6—Weiss v. Gaines, Civ.App., 51 S.W.2d 428, set aside on other grounds 81 S.W.2d 39, 125 Tex. 106—Gossett v. Harris, Civ.App., 48 S.W.2d 739—Weeks v. Lipp, Civ. App., 48 S.W.2d 716—Humble Oil & Refining Co. v. Ooley, Civ.App., 46 S.W.2d 1038—Norwich Union Indemnity Co. v. Wilson, Civ.App., 43 S.W.2d 473, modified on other grounds, Com.App., 67 S.W.2d 225—Hulsey v. Hulsey, Civ.App., 42 S. W.2d 179—Wallace v. Johnson, Civ.App., 39 S.W.2d 140—Dickinson v. Sanders, Civ.App., 39 S.W. 2d 102—First Nat. Bank v. Citizens' Nat. Bank of Lubbock, Civ. App., 38 S.W.2d 648—Fuller v. Security Union Ins. Co., Civ.App., 37 S.W.2d 235—Boozer v. Smith, Civ. App., 36 S.W.2d 1064—St. Louis Southwestern Ry. Co. of Texas v. Larkin, Civ.App., 34 S.W.2d 693—Donigan v. Policek, Civ.App., 34 S.W.2d 375—Great Atlantic & Pacific Tea Co. v. Logan, Civ.App., 33 S.W.2d 470—U. S. Fidelity & Guaranty Co. v. Brandon, Civ.App., 31

stantial evidence,[53.5] and such substantial evidence | or testimony is not inherently improbable,[54] it will

S.W.2d 846—Flynn v. Citizens' Nat. Bank of Waco, Civ.App., 31 S.W.2d 485—New Century Mfg. Co. v. Scheurer, Civ.App., 30 S.W.2d 388, reversed on other grounds, Com. App., 45 S.W.2d 560—Independence Indemnity Co. v. White, Civ.App., 10 S.W.2d 263, reversed on other grounds, Com.App., 27 S.W.2d 529—Hollick v. Boyett, Civ.App., 6 S.W.2d 231—Texas Ranger Producing & Refining Co. v. Witt, Civ.App., 256 S.W. 984.

Utah.—Gibson v. Equitable Life Assur. Soc. of U. S., 36 P.2d 105, 84 Utah 452—State Bank of Beaver County v. Hollingshead, 25 P.2d 612, 82 Utah 416—Jenkins v. Stephens, 262 P. 274, 71 Utah 15—Geary v. Cain, 255 P. 416, 69 Utah 340—Sutton v. Otis Elevator Co., 249 P. 437, 68 Utah 85—Rampton v. Cole, 172 P. 477, 52 Utah 36—In re Hansen's Will, 167 P. 256, 50 Utah 207—Martindale v. Oregon Short Line R. Co., 160 P. 275, 48 Utah 464.

Va.—Sawyer v. Blankenship, 169 S.E. 551, 160 Va. 651—Hancock v. Anderson, 168 S.E. 465, 160 Va. 245—Hancock v. Anderson, 168 S.E. 458, 160 Va. 225.

Wash.—Gourley v. Hatten, 84 P.2d 1014, 197 Wash. 305—McGrady v. Brink, 81 P.2d 800, 195 Wash. 626—Boyd v. Cole, 63 P.2d 931, 189 Wash. 81—Lyle v. Ginnold, 24 P.2d 449, 174 Wash. 104—Taylor v. Kitsap County Transp. Co., 290 P. 996, 158 Wash. 404—Jones v. New York Life Ins. Co., 290 P. 333, 158 Wash. 12—Trotter v. Bullock, 269 P. 825, 148 Wash. 516—Janovich v. Northwestern Herring Co., 267 P. 37, 147 Wash. 619—Mensik v. Cascade Timber Co., 265 P. 1084, 147 Wash. 350—Peterson v. Hansen, 260 P. 1074, 145 Wash. 582—Valsuano v. Mozzone, 253 P. 636, 142 Wash. 699—Ziomko v. Puget Sound Electric Ry., 192 P. 1009, 112 Wash. 426.

W.Va.—Wellman v. Holston Hardwood Co., 159 S.E. 561, 110 W.Va. 544.

Wis.—Reichert v. Rex Accessories Co., 279 N.W. 645, 228 Wis. 425.

Wyo.—U. S. Fidelity & Guaranty Co. v. Cook, 5 P.2d 294, 43 Wyo. 356.

4 C.J. p 853 note 59—19 C.J. p 1227 note 4.

Verdict for defendant or plaintiff

The rule applies with equal force to verdicts in favor of a defendant as well as to those in favor of a plaintiff.

Cal.—Percin v. Easley, 238 P.2d 1025, 108 C.A.2d 510.

Ill.—Seeden v. Kolarik, 112 N.E.2d 514, 350 Ill.App. 238.

Some substantial evidence

Cal.—Crow v. Bank of America Nat. Trust & Sav. Ass'n, 212 P.2d 624, 95 C.A.2d 430.

Fact that the verdict is not consistent with either theory of the case is not ground for reversal where it is supported by substantial testimony.

Ark.—Kansas City Fibre Box Co. v. F. Burkart Mfg. Co., 44 S.W.2d 325, 184 Ark. 704—Powers v. Wood Parts Corporation, 44 S.W.2d 324, 184 Ark. 1032—Atkinson v. Reynolds, 43 S.W.2d 1093, 184 Ark. 1193.

N.M.—Anderson v. Beadle, 5 P.2d 528, 35 N.M. 654.

53.5 Ariz.—Sanders v. Beckwith, 283 P.2d 235, 79 Ariz. 67—Stallcup v. Coscarart, 282 P.2d 791, 79 Ariz. 42—Food Jobbers, Inc. v. Ellis, 251 P.2d 651, 75 Ariz. 49—Curlee v. Morris, 231 P.2d 752, 72 Ariz. 125—Garlington v. McLaughlin, 104 P.2d 169, 56 Ariz. 37.

Ark.—Stegall v. Rumph, 303 S.W.2d 571—Dardanelle Water Co. v. Hamilton, 296 S.W.2d 416—Vogler v. O'Neal, 295 S.W.2d 629—Bockman v. World Ins. Co., 268 S.W.2d 1, 223 Ark. 665—Capital Transp. Co. v. Howard, 229 S.W.2d 998, 217 Ark. 333—Marshall v. Snyder, 190 S.W.2d 291, 209 Ark. 216—Chicago, R. I. & P. Ry. Co. v. Houston, 189 S.W.2d 904, 209 Ark. 217—Lanier v. Trammell, 180 S.W.2d 818, 207 Ark. 372—Bastian-Blessing Co. v. Stroope, 155 S.W.2d 892, 203 Ark. 116—Hot Springs St. Ry. Co. v. Hill, 128 S.W.2d 369, 198 Ark. 319—Metropolitan Life Ins. Co. v. Williams, 125 S.W.2d 441, 197 Ark. 883—Mutual Life Ins. Co. of New York v. Springer, 104 S.W.2d 195, 193 Ark. 990—Baldwin v. Compton, 92 S.W.2d 845, 192 Ark. 503—Kentucky Home Life Ins. Co. v. Mosley, 89 S.W.2d 744, 181 Ark. 1146—May v. Sharp, 89 S.W.2d 735, 191 Ark. 1142—George v. George, 88 S.W.2d 71, 191 Ark. 799.

Cal.—Elkind v. Woodward, App., 313 P.2d 66—Kaichen v. Showers, 304 P.2d 137, 146 C.A.2d 804—Eggleston v. Liberty Mut. Ins. Co., 300 P.2d 867, 144 C.A.2d 302—Darnold v. Voges, 300 P.2d 255, 143 C.A.2d 230—Davis v. Franson, 296 P.2d 600, 141 C.A.2d 263—Owens v. White Memorial Hospital, 292 P.2d 288, 138 C.A.2d 634—Clewett v. Clewett, 289 P.2d 512, 136 C.A.2d 913—Allen v. Shaver, 289 P.2d 255, 136 C.A.2d 621—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Fulton v. Huguet, 248 P.2d 954, 113 C.A.2d 692—Dodds v. Stellar, 175 P.2d 607, 77 C.A.2d 411.

Fla.—Mitchell v. Tucker, 188 So. 573, 137 Fla. 720.

Idaho.—Shepard v. Smith, 263 P.2d 985, 74 Idaho 459.

Mo.—Evans v. Massman Const. Co., 122 S.W.2d 924, 343 Mo. 632.

Hofstatter v. Johnson, App., 208 S.W.2d 924.

Ohio.—Shotwell v. Industrial Commission, 26 N.E.2d 221, 63 Ohio App. 240.

Tenn.—City of Columbia v. Lentz, App., 282 S.W.2d 787—Trentham v. Headrick, 245 S.W.2d 632, 35 Tenn. App. 330.

Utah.—Seybold v. Union Pac. R. Co., 239 P.2d 174, 121 Utah 61.

Wash.—Hagstrom v. Limbeck, 130 P.2d 895, 15 Wash.2d 399—Scholz v. Leuer, 109 P.2d 294, 7 Wash.2d 76.

54. Cal.—Mayers v. Alexander, 167 P.2d 818, 73 C.A.2d 752—Wade v. Thorsen, 43 P.2d 592, 5 C.A.2d 706—Mitchell v. Excelsior Water & Mining Co., 182 P. 326, 41 C.A. 240.

Tex.—San Antonio Public Service Co. v. Henry, Civ.App., 102 S.W.2d 479.

4 C.J. p 853 note 60.

Evidence not incredible

(1) Proof of the physical condition of motor vehicles after a collision was held not so inconsistent with plaintiff's explanation of the collision as to the positions of the vehicles just before the collision as to justify setting aside the verdict on the ground that statements by witnesses were wholly incredible.

Wis.—Stewart v. Meyer, 247 N.W. 316, 211 Wis. 347.

(2) A buyer's testimony that the seller's salesman agreed to return and conduct an advertising campaign to sell insecticide could not be disregarded by the court as obviously incredible.

Ark.—Wizard, Inc., v. Feldman, 49 S.W.2d 361, 185 Ark. 752.

Physical facts

(1) To justify setting aside the verdict, it is not enough that the physical facts support one claim more strongly than the other, but the physical facts must be such as to render the evidence supporting the opposite claim incredible.

Wis.—Stewart v. Meyer, 247 N.W. 316, 211 Wis. 347.

(2) A verdict in favor of plaintiff on substantial evidence which, if believed, warranted a verdict for plaintiff, could not be interfered with on ground that testimony was contrary to physical laws and facts of common knowledge.

Mo.—McNicholas v. Continental Baking Co., App., 112 S.W.2d 849.

(3) Where there is a reasonable dispute as to pertinent physical facts of a case, conclusions to be drawn therefrom are for the jury, and a verdict based thereon will not be disturbed unless clearly wrong.

not be disturbed on appeal; and under this rule, evidence which will convince reasonable men of its truth is substantial evidence in support of the verdict, while evidence is not substantial if all reasonable men must conclude that it does not establish the case.[54.5] Moreover, the court will not review the evidence, on appeal, where the verdict is reasonably supported by the evidence;[55] where the ver-

Neb.—Moore v. Krejci, 297 N.W. 913, 139 Neb. 562.

(4) Verdicts would not be set aside as contrary to the established physical facts, where the "physical facts" on which plaintiffs relied were not definitely established and plaintiffs' contentions with respect thereto were based either on assumptions not supported by the evidence, or on a view of the evidence, which the jury did not accept.

R.I.—McAllister v. Chase, 13 A.2d 690, 65 R.I. 122.

Unusual circumstances

Although a reviewing court will not uphold a judgment or verdict based on evidence inherently improbable, testimony, which merely discloses unusual circumstances, does not come within that category.

Cal.—De Felice v. Tabor, App., 308 P.2d 377—New v. New, App., 306 P.2d 987.

54.5 Mont.—Adami v. Murphy, 164 P.2d 150, 118 Mont. 172—Coolidge v. Meagher, 46 P.2d 684, 100 Mont. 172—Morton v. Mooney, 33 P.2d 262, 97 Mont. 1.

Wash.—Rettinger v. Bresnahan, 257 P.2d 633, 42 Wash.2d 631.

Other meanings

(1) Generally, any "reasonable evidence" will be regarded as "substantial evidence" supporting a verdict.

Ark.—Missouri Pac. R. Co. v. Hancock, 113 S.W.2d 489, 195 Ark. 414.

(2) "Substantial evidence" means also "competent evidence."

Mo.—Mississippi Valley Trust Co. v. Begley, 275 S.W. 540, 310 Mo. 287.

(3) "Substantial evidence" does not necessarily mean direct evidence, and a fact may be proved by circumstances.

Ark.—Arkmo Lumber Co. v. Luckett, 143 S.W.2d 1107, 201 Ark. 140.

(4) The uncorroborated testimony of a litigant in whose favor a verdict is rendered is substantial within rule that a verdict supported by "substantial evidence" must be approved by the supreme court.

Ark.—Ocker v. Nix, 155 S.W.2d 58, 202 Ark. 1064.

(5) Where the testimony relates to matters, situations, and conditions which might or might not have existed, the evidence in regard thereto is of a substantial character, and, if believed by the jury, is sufficient to support the verdict.

Ark.—Fair Store No. 32 v. Hadley Milling Co., 229 S.W. 727, 148 Ark. 209.

55. Ariz.—E. A. Tovrea & Co. v. Yutich, 206 P. 595, 24 Ariz. 41.

Ark.—Dermott Grocery & Commission Co. of Eudora v. Meyer, 101 S.W.2d 443, 193 Ark. 591—Camden Fire Ins. Ass'n of Camden, N. J. v. Reynolds, 79 S.W.2d 54, 190 Ark. 390—Greenlee v. Rolfe, 60 S.W. 2d 568, 187 Ark. 1162—Mitchell v. Hammett, 60 S.W.2d 559, 187 Ark. 1163—Beasley v. Poindexter, 299 S.W. 43, 175 Ark. 1169—McKee v. Legion Oil & Gas Co., 273 S.W. 363, 168 Ark. 1167—Bauer v. North Arkansas Highway Improvement Dist. No. 1, 270 S.W. 533, 168 Ark. 220, 38 A.L.R. 1507—Batton v. Jones, 268 S.W. 857, 167 Ark. 478—State v. Red Oak Trust & Savings Bank, 267 S.W. 566, 167 Ark. 234—Great Western Land Co. v. Barker, 262 S.W. 650, 164 Ark. 587—Ætna Casualty & Surety Co. v. Henslee, 260 S.W. 414, 163 Ark. 492—Dubisson & Goodrich v. McMillin, 259 S. W. 400, 163 Ark. 186—Home Life & Accident Co. v. Scheuer, 258 S.W. 648, 162 Ark. 600—Gates v. Ritchie, 258 S.W. 397, 162 Ark. 484—Mitchell v. Williams, 257 S.W. 369, 162 Ark. 36—Central Coal & Coke Co. v. Lockhart, 256 S.W. 37, 161 Ark. 97—Halliburton v. Cannon, 254 S. W. 687, 160 Ark. 428—Firemen's Ins. Co. of Newark v. Rye, 254 S. W. 465, 160 Ark. 212—Corning Roller Mills Co. v. William Kelly Milling Co., 250 S.W. 895, 159 Ark. 1—St. Louis-San Francisco Ry. Co. v. Gray, 250 S.W. 37, 158 Ark. 369—American Hardwood Lumber Co. v. Bynum, 250 S.W. 22, 158 Ark. 639—Parker v. Stephens, 247 S.W. 393, 157 Ark. 89—Arkansas Land & Lumber Co. v. Cooper, 245 S.W. 192, 156 Ark. 58—Farmers' Club Co. v. Emmerson Mercantile Co., 241 S.W. 372, 153 Ark. 614—Olsen v. People's Sav. Bank, 239 S.W. 13, 158 Ark. 643—King v. Wilkerson, 235 S.W. 803, 149 Ark. 670—Terry Dairy Co. v. Parker, 223 S.W. 6, 144 Ark. 401—Hines v. Rice, 218 S.W. 851, 142 Ark. 159—Arkansas Anthracite Coal & Land Co. v. Dunlap, 218 S.W. 839, 142 Ark. 358—Childs v. Neal, 211 S.W. 660, 138 Ark. 578—St. Louis-San Francisco Ry. Co. v. Stewart, 207 S.W. 440, 137 Ark. 6—Paine Webber & Co. v. Arkansas & Arizona Copper Co., 206 S.W. 447, 136 Ark. 385—Metropolitan Casualty Ins. Co. v. Chambers, 206 S.W. 64, 136 Ark. 84—J. W. Wheeler & Co. v. Fitzpatrick, 205 S.W. 302, 135 Ark. 117—Jones v. Bank of Commerce of Fort Smith, 199 S.W. 103, 131 Ark. 362—Dixie Cotton Oil Mill Co. v. Black, 197 S.W. 1176, 131 Ark. 593—Sterling Anthracite Coal Co. v. Strope, 197 S.W. 858, 130 Ark. 435—Yazoo & M. V. R. Co. v. Jackson, 196 S.W. 474, 130 Ark. 34—Harris v. Bush, 196 S.W. 471, 129 Ark. 369—St. Louis S. W. Ry. Co. v. McLaughlin, 196 S.W. 460, 129 Ark. 377—Triplett v. Wesson, 193 S.W. 537, 128 Ark. 233—Westchester Fire Ins. Co. v. Smith, 193 S.W. 275, 128 Ark. 92—McDaniel v. Jonesboro Trust Co., 191 S.W. 916, 127 Ark. 61—Jaggers v. Graham, 191 S.W. 233, 126 Ark. 605—National Life & Accident Ins. Co. v. Langford, 185 S.W. 266, 123 Ark. 619.

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Myers, 229 P. 563, 103 Okl. 175—White v. Johnson, 229 P. 539, 103 Okl. 88—Paris v. O'Harro, 229 P. 161, 100 Okl. 264—Holman v. Lozier, 227 P. 886, 100 Okl. 128—Paulsen v. Hourigan, 227 P. 821, 100 Okl. 53—Russell Jobbers' Mills v. Dill-Crossett, 227 P. 126, 102 Okl. 134—Livingston v. Brown, 227 P. 124, 100 Okl. 17—Bain v. Wolfenbarger, 227 P. 108, 100 Okl. 92—Smith Motor Co. v. Button, 227 P. 95, 100 Okl. 14—State Guaranty Bank of Okeene v. Doerfler, 226 P. 1054, 99 Okl. 258—Rosenfield v. Nelson, 226 P. 1032, 102 Okl. 81—La Salle v. Pearson, 225 P. 355, 98 Okl. 287—Jabara v. Elbinger Shoe Mfg. Co., 224 P. 333, 98 Okl. 85—Beren v. Horton, 224 P. 174, 98 Okl. 88—Hemme v. Quapaw Supply Co., 223 P. 678, 97 Okl. 296—Nelson v. Bradfield, 223 P. 380, 97 Okl. 259—City of Shawnee v. Roush, 223 P. 354, 101 Okl. 60—Hopkins v. National Bank of Commerce, 223 P. 347, 101 Okl. 82—Phillips v. Bremicker, 223 P. 343, 97 Okl. 195—Charley v. Norvell, 221 P. 255, 97 Okl. 114—Schaff v. Hudgins, 221 P. 90, 96 Okl. 173, certiorari denied 44 S.Ct. 454, 264 U.S. 595, 68 L.Ed. 867—Wetzel v. Rixse, 220 P. 607, 93 Okl. 216—Rapp v. Hicks, 220 P. 465, 93 Okl. 182—Kansas City Southern Ry. Co. v. Keffer, 220 P. 361, 96 Okl. 63—Chickasaw Refining Co. v. Pruitt, 219 P. 710, 93 Okl. 99—Jeffries v. Colton, 219 P. 97, 92 Okl. 270—Yantis v. Tate, 218 P. 810, 92 Okl. 209—Craig & Wall v. Plummer, 217 P. 172, 91 Okl. 193—Cherry v. Watson, 211 P. 79, 88 Okl. 54—Townsend v. Babb, 209 P. 735, 87 Okl. 195—Tulsa Entertainment Co. v. Greenlees, 205 P. 179, 85 Okl. 113, 22 A.L.R. 602—Vogel Bros. & Co. v. Bastin, 203 P. 219, 84 Okl. 273—Sand Springs Ry. Co. v. Smith, 203 P. 207, 84 Okl. 211—West v. Oakey, 202 P. 318, 84 Okl. 59—Young v. Eaton, 198 P. 857, 82 Okl. 166—Lusk v. Bandy, 184 P. 144, 76 Okl. 108—Carden v. Humble, 184 P. 104, 76 Okl. 165—Missouri, K. & T. Ry. Co. v. Williamson, 180 P. 961, 75 Okl. 36—St. Paul Fire & Marine Ins. Co. of St. Paul, Minn. v. Robison, 180 P. 702, 72 Okl. 269—Lauderdale v. O'Neill, 177 P. 113, 74 Okl. 119—Strong v. Day, 176 P. 401, 73 Okl. 291—State Nat. Bank of Shawnee v. Williamson, 173 P. 445, 70 Okl. 111—Oklahoma State Bank of Caddo v. Airington, 172 P. 462, 68 Okl. 160—Incorporated Town of Comanche v. Works, 172 P. 60, 69 Okl. 244—Modern Woodmen of America v. Terry, 171 P. 720, 69 Okl. 191—Incorporated Town of Sallisaw v. Chappelle, 171 P. 22, 67 Okl. 307—Adams v. King, 170 P. 912, 68 Okl. 190, reversed on other grounds 173 P. 206, 68 Okl. 190—Baker v. Dorsson, 169 P. 1071, 67 Okl. 214—Egan v. First Nat. Bank of Tulsa, 169 P. 621, 67 Okl. 168, L.R.A.1918C 145—Clark v. Buff, 169 P. 619, 69 Okl. 8—American Nat. Bank v. Stapleton, 169 P. 494, 67 Okl. 146—Bank

dict is sustainable on any reasonable theory;[56] where the evidence would sustain a verdict for either par-

v. Humphreys, 168 P. 410, 66 Okl. 186—Kinney v. Williams, 168 P. 196, 66 Okl. 167—Bartlesville Zinc Co. v. James, 166 P. 1054, 66 Okl. 24—Kondos v. Mouser, 166 P. 707, 64 Okl. 168—Critser v. Steeley, 162 P. 795, 62 Okl. 203—Hourigan v. Home State Bank, 162 P. 699, 62 Okl. 199—Frazier Brick Co. v. Herber, 162 P. 205, 62 Okl. 96—Eoff v. Alexander, 161 P. 807, 62 Okl. 12—Midland Valley R. Co. v. Rippe, 161 P. 233, 61 Okl. 314—First Nat. Bank v. Lewis, 161 P. 175, 61 Okl. 247—Berryhill v. Thrailkill, 160 P. 874, 61 Okl. 235—Kapp v. Levyson, 160 P. 457, 58 Okl. 651—Selby v. Lindstrom, 158 P. 1127, 59 Okl. 227—Stonebaker v. Ault, 158 P. 570, 59 Okl. 189—Swaydan v. Ellis, 158 P. 434, 59 Okl. 175—Fullerton-Stuart Lumber Co. v. Badger, 158 P. 376, 59 Okl. 135—Reynolds v. Ryan, 157 P. 933, 59 Okl. 120—Futoransky v. Pope, 157 P. 905, 57 Okl. 755, L.R.A.1916F 548—Madill Oil & Cotton Co. v. Davidson, 157 P. 354, 59 Okl. 31—Barry v. Kniseley, 155 P. 1168, 56 Okl. 324—Moorehead v. Daniels, 153 P. 623, 57 Okl. 298.

Or.—Donis v. Sawyer Service, 21 P. 2d 776, 143 Or. 433—Coates v. Slusher, 222 P. 311, 109 Or. 612—In re Sturtevant's Estate, 180 P. 595, 92 Or. 269—West v. Kern, 171 P. 413, 88 Or. 247, L.R.A.1918D 920, affirmed 171 P. 1050, 88 Or. 247, L.R.A.1918D 920.

Pa.—Litwinavage v. Schuylkill Ry. Co., 124 A. 293, 280 Pa. 53.

Colonial Iron Co. v. Workman & Trattner, 81 Pa.Super. 51—Walter v. Graham, 80 Pa.Super. 518—Rabinovitz v. Goodman, 73 Pa.Super. 458.

S.D.—Polluck v. Minneapolis & St. L. R. Co., 186 N.W. 830, 45 S.D. 210.

Tenn.—Power Packing Co. v. Borum, 8 Tenn.App. 162.

Tex.—Jones v. Scott, Civ.App., 266 S.W.2d 534, error refused no reversible error—Oliver v. Corzelius, Civ.App., 223 S.W.2d 271, error dismissed—Brotherhood of Locomotive Firemen and Enginemen v. Raney, Civ.App., 101 S.W.2d 863, error dismissed—Renfro Drug Co. v. Jackson, Civ.App., 81 S.W.2d 101—Manning v. Standard Oil Co. of Kansas, Civ.App., 67 S.W.2d 919—Commercial Casualty Ins. Co. v. Hamrick, Civ.App., 60 S.W.2d 247—Dallas Trust & Savings Bank v. Pickett, Civ.App., 59 S.W.2d 1090—Zachry v. Moody, Civ.App., 59 S.W.2d 846—McLain v. Guinn, Civ. App., 4 S.W.2d 121—Witherspoon v. Green, Civ.App., 274 S.W. 170—Lambert v. Lancaster, Civ.App., 259 S.W. 270—Blackman v. Crandell, Civ.App., 258 S.W. 1073—Planters' State Bank v. Creekmore, Civ.App., 257 S.W. 694—Strickel v. Brownfield State Bank, Civ.App., 257 S.W. 678—Davis v. Hagan, Civ.App., 255 S.W. 484—Merchants' Nat. Bank v. Voudouris, Civ.App., 248 S.W. 810—Rhodes v. Livesay, Civ.App., 245 S.W. 738—Jackson v. Wallace, Civ. App., 239 S.W. 698, affirmed, Com. App., 252 S.W. 745—Texas Drug Co. v. Cadwell, Civ.App., 237 S.W. 968, error refused—Lewis v. Kelly, Civ.App., 233 S.W. 993, dismissed for want of jurisdiction—Kollaer v. Puckett, Civ.App., 232 S.W. 914, dismissed for want of jurisdiction—United Sav. Bank v. Castro, Civ. App., 230 S.W. 223, dismissed for want of jurisdiction—St. Louis, S. F. & T. Ry. Co. v. Reichert, Civ. App., 227 S.W. 550, error refused—Arminger v. City Nat. Bank of Paris, Civ.App., 226 S.W. 707—Pawloskey v. Kusch, Civ.App., 223 S.W. 496—Pfluger v. Schoen, Civ. App., 221 S.W. 1090, dismissed for want of jurisdiction—Huston v. Scarborough, Civ.App., 221 S.W. 703—Hagar v. Adams, Civ.App., 220 S.W. 592—Panhandle & S. F. Ry. Co. v. Arnett, Civ.App., 219 S.W. 232, dismissed for want of jurisdiction—Bradshaw v. Brown, Civ.App., 218 S.W. 1071, dismissed for want of jurisdiction—St. Louis Southwestern Ry. Co. v. W. L. Richards & Co., Civ.App., 217 S.W. 1116—Kansas City, M. & O. Ry. Co. v. Blackstone & Slaughter, Civ. App., 217 S.W. 208, rehearing refused 218 S.W. 552, error refused—Clardy v. American Trust & Savings Bank, Civ.App., 208 S.W. 990, error refused—Stark v. Staffen, Civ.App., 208 S.W. 695—MacDonald v. Ayers, Civ.App., 207 S.W. 686, error refused—Estes v. Ferguson, Civ.App., 203 S.W. 941—West Lumber Co. v. Tomme, Civ.App., 203 S.W. 784, error refused—Hudson v. Salley, Civ.App., 201 S.W. 665—Hughes v. Hughes, Civ.App., 191 S.W. 742, affirmed, Com.App., 221 S.W. 970—Houston Belt & Terminal Ry. Co. v. Hardin Lumber Co., Civ.App., 189 S.W. 518, error refused—Kersh v. Matthews, Civ. App., 186 S.W. 783—Zavalla Land & Water Co. v. Tolbert, Civ.App., 184 S.W. 523, error refused—Texas & P. Ry. Co. v. Marrujo, Civ.App., 172 S.W. 588—St. Louis Southwestern Ry. Co. of Texas v. Evans, Civ. App., 166 S.W. 702.

Utah.—Winchester v. Egan Farm Service, 288 P.2d 790, 4 Utah 2d 129—Jackson v. James, 89 P.2d 235, 97 Utah 41—Jenkins v. Stephens, 231 P. 112, 64 Utah 307—Booth v. Nelson, 211 P. 985, 61 Utah 239—Jensen v. Oregon Short Line R. Co., 204 P. 101, 59 Utah 367—Tremelling v. Southern Pac. Co., 170 P. 80, 51 Utah 189—Wrathall v. Miller, 169 P. 946, 51 Utah 218—Dee v. San Pedro, L. A. & S. L. R. Co., 167 P. 246, 50 Utah 167—Grosteit v. Miller, 160 P. 769, 48 Utah 511—Reese v. Qualtrough, 156 P. 955, 48 Utah 23, 14 A.L.R. 94—Shay v. Union Pac. R. Co., 153 P. 31, 47 Utah 252.

Va.—Ropp v. Stevens, 154 S.E. 553, 155 Va. 304—Stanley v. Tomlin, 129 S.E. 379, 143 Va. 187.

Wash.—Sanders v. Pinney, 174 P. 471, 103 Wash. 162—Stanton v. Zercher, 172 P. 559, 101 Wash. 383—Tribble v. Yakima Valley Transp. Co., 171 P. 544, 100 Wash. 589.

Wis.—Mitchell v. Raymond, 195 N.W. 855, 181 Wis. 591—Wagner v. Larsen, 182 N.W. 336, 174 Wis. 26—Campbell v. Germania Fire Ins. Co. of New York, 158 N.W. 63, 163 Wis. 329.

4 C.J. p 853 note 61—52 C.J. p 153 note 75.

What constitutes

(1) The clause, "evidence reasonably tending to support verdict," means evidence that is competent, relevant, and material, and which to a rational and an impartial mind naturally leads, or involuntarily tends to lead, to a conclusion for which there is a valid, just, and substantial reason.

Okl.—Kelly v. Oliver Farm Equipment Sales Co., 36 P.2d 888, 169 Okl. 269.

(2) The clause, "where there is evidence reasonably tending to support a verdict," means competent, relevant, and material evidence which to a rational and an impartial mind naturally leads to a verdict for which there is a just and substantial reason, and not one based upon unfounded suspicion or which is the result of mere chimerical conjecture.

Okl.—Tate v. Coalgate State Bank, 180 P. 687, 72 Okl. 276.

Where there is evidence tending to support the verdict, the reviewing court will not set it aside.

Okl.—Gulf, C. & S. F. Ry. Co. v. Rutledge, 47 P.2d 83, 173 Okl. 245.

4 C.J. p 853 note 61 [b].

Court will determine, when reviewing the sufficiency of the evidence to sustain the verdict, only whether there is evidence fairly tending to support the verdict.

Ind.—Nordyke & Marmon Co. v. Whitehead, 106 N.E. 867, 183 Ind. 7.

Mo.—Gillespie v. Bank of Chillicothe, App., 181 S.W. 1198.

Fair and reasonable amount of evidence

Cal.—Wright v. Vaughn, 294 P.2d 951, 140 C.A.2d 170.

56. Ariz.—Pioneer Constructors v. Symes, 267 P.2d 740, 77 Ariz. 107.

Cal.—Clement v. State Reclamation

ty;[57] where the verdict or findings are supported by the inferences reasonably deducible from the facts proved;[58] or where the evidence is such that reasonable minds may differ in their conclusions;[59]

Bd., Sacramento San Joaquin Drainage Dist., 220 P.2d 897, 35 C.2d 628—Rocha v. Garcia, 263 P. 238, 203 C. 167.

Carruthers v. Cunha, 283 P.2d 384, 133 C.A.2d 91—Correia v. Van Camp Sea Food Co., 248 P.2d 81, 113 C.A.2d 71—Andrade v. Newhouse, 128 P.2d 927, 54 C.A.2d 339.

Fla.—Cormier v. Williams, 4 So.2d 525, 148 Fla. 201.

Ga.—Bland v. Davison-Paxon Co., 64 S.E.2d 350, 83 Ga.App. 468—Bradley v. Duggar, 95 S.E. 996, 22 Ga.App. 386—Sikes v. Bradley, 93 S.E. 111, 20 Ga.App. 470.

Ind.—Pfisterer v. Key, 33 N.E.2d 330, 218 Ind. 521.

Lee Bros. v. Jones, 54 N.E.2d 108, 114 Ind.App. 688.

Iowa.—In re Swain's Estate, 174 N. W. 493, 189 Iowa 28.

Me.—Wyman v. Shibley, 72 A.2d 450, 145 Me. 391—Phillips v. Cummings, 138 A. 867, 126 Me. 603.

Mass.—Margeson v. Town Taxi, 165 N.E. 20, 266 Mass. 192—Thompson v. Boston Elevated Ry. Co., 116 N. E. 810, 227 Mass. 407.

Minn.—Fulsom v. Egner, 79 N.W.2d 25, 248 Minn. 156—Siemers v. United Ben. Life Ins. Co., 75 N.W. 2d 605, 246 Minn. 459—Heise v. J. R. Clark Co., 71 N.W.2d 818, 245 Minn. 179—Garbush v. New York Life Ins. Co., 214 N.W. 795, 172 Minn. 98—Hetager v. Morgan, 210 N.W. 390, 168 Minn. 491, petition denied 210 N.W. 864, 168 Minn. 491.

Mo.—De Clue v. Missouri Pac. R. Co., 264 S.W. 992—Montague v. Missouri & K. I. R. Co., 264 S.W. 813, 305 Mo. 269.

Mont.—Kelly v. Kipp, 250 P. 819, 77 Mont. 110.

Okl.—Regier v. Hutchins, 298 P.2d 777—Carver Chiropractic College v. Armstrong, 229 P. 641, 103 Okl. 123—Sapulpa Electric Interurban Ry. Co. v. Broome, 219 P. 289, 93 Okl. 115.

Tex.—Hamilton Compress Co. v. Lawson, Civ.App., 175 S.W. 474.

Rule applicable to testimony with respect to physical facts

Cal.—Gardini v. Arakelian, 64 P.2d 181, 18 C.A.2d 424.

No other verdict possible

Rule that a judgment will not be reversed on appeal if there is substantial evidence to support verdict on any theory on which verdict might have been reached applies to case in which no other verdict is possible as a matter of law.

Cal.—Clement v. State Reclamation Bd., Sacramento San Joaquin Drainage Dist., 220 P.2d 897, 35 C. 2d 628.

Alternate theories

(1) Where the jury's verdict could have been based on either of two theories, the appellate courts will not look behind the verdict to ascertain the theory adopted by the jury.

Cal.—Schultheiss v. Los Angeles Ry. Corporation, 54 P.2d 49, 11 C.A.2d 525.

(2) It has been held, however, that evidence is insufficient to sustain verdict on any one of several theories on which issue of fact is submitted to jury, verdict must be set aside where it is impossible to determine on which theory verdict is based, unless it conclusively appears that verdict is right as matter of law on one or more of such theories.

Minn.—Anderson v. Birkeland, 38 N. W.2d 215, 229 Minn. 77.

57. Ark.—Sealy Mattress Co. v. Southern Cotton Oil Co., 268 S.W. 611, 167 Ark. 405—Washa v. Harris, 266 S.W. 944, 167 Ark. 186—Stuart v. Bandy, 254 S.W. 535, 161 Ark. 666—E. O. Barnett Bros. v. Porter, 203 S.W. 842, 134 Ark. 268.

Cal.—Vaughn v. Jonas, 191 P.2d 432, 31 C.2d 587.

Hepner v. Libby, McNeill & Libby, 300 P. 830, 114 C.A. 747—Weaver v. Carter, 152 P. 323, 28 C.A. 241—Tomasini v. Smith, 146 P. 691, 26 C.A. 227.

Colo.—Rosenthal v. Citizens State Bank of Cortez, 266 P.2d 767, 129 Colo. 35.

Iowa.—Reardon v. Hermansen, 275 N.W. 6, 223 Iowa 1207.

Ky.—Cain v. Jones, 95 S.W.2d 1093, 265 Ky. 89—Moss v. Mittel, 69 S.W. 2d 1046, 253 Ky. 504—Price Bros. v. City of Dawson Springs, 227 S.W. 470, 190 Ky. 349—Keyser v. Damron, 167 S.W. 381, 159 Ky. 444.

Minn.—Delyea v. Goosen, 32 N.W.2d 179, 226 Minn. 91—In re Forsythe's Estate, 22 N.W.2d 19, 221 Minn. 303, 167 A.L.R. 1—Warren v. Merchants Investment & Loan Corporation of St. Paul, 14 N.W.2d 450, 217 Minn. 445—Becker County Nat. Bank v. Miller, 9 N.W.2d 923, 215 Minn. 336—Walsh v. Dahl, 261 N. W. 476, 195 Minn. 36—Gunderson v. Minneapolis St. Ry. Co., 148 N.W. 61, 126 Minn. 168.

Miss.—Magnolia Textiles v. Gillis, 41 So.2d 6, 206 Miss. 797.

Mo.—Thompson v. Business Men's Acc. Ass'n of America, App., 231 S.W. 1049—Smith v. Smith, 175 S. W. 236, 189 Mo.App. 133.

Okl.—Harjo v. Hall, 79 P.2d 586, 183 Okl. 15.

Pa.—Pennsylvania R. Co. v. Roydhouse, 110 A. 277, 267 Pa. 368.

Fell v. Aull, 58 Pa.Super. 498.

Glassmeyer v. Kessler, Inc., Com. Pl., 47 Mun.L.R. 133.

S.D.—Knutsen v. Dilger, 253 N.W. 459, 62 S.D. 474—Pinches v. New Farmers' Grain Co., 217 N.W. 190, 52 S.D. 198.

Tex.—National Ben Franklin Fire Ins. Co. v. Thompson, Civ.App., 220 S.W. 796, dismissed for want of jurisdiction—Fire Ass'n of Philadelphia v. Thompson, Civ.App., 220 S.W. 795, dismissed for want of jurisdiction.

Va.—Virginia Electric & Power Co. v. Evich, 146 S.E. 265, 152 Va. 236.

Wis.—J. F. Rappell Co. v. City of Manitowoc, 195 N.W. 899, 182 Wis. 141.

4 C.J. p 853 note 62.

58. Ariz.—Atchison, T. & S. F. R. Co. v. Hicks, 165 P.2d 167, 64 Ariz. 15.

Cal.—Gray v. Southern Pac. Co., 145 P.2d 561, 23 C.2d 632—Basch v. Bank of America Nat. Trust & Savings Ass'n, 139 P.2d 1, 22 C.2d 316.

Casper v. City of Los Angeles, 295 P.2d 452, 140 C.A.2d 433—Cohen v. Hunter, 222 P.2d 93, 99 C.A. 2d 464—Hilbert v. Olney, 61 P.2d 941, 17 C.A.2d 135.

Ga.—Atkinson v. Brantley, 82 S.E. 773, 15 Ga.App. 129.

Ind.—Federal Life Ins. Co. v. Sayre, 142 N.E. 223, 195 Ind. 7, followed in Federal Life Ins. Co. v. Harding, 166 N.E. 926, 201 Ind. 704.

Junior Toy Corp. v. Novak, 21 N. E.2d 445, 107 Ind.App. 427—Mid Continent Petroleum Corporation v. Weaver, 5 N.E.2d 146, 103 Ind. App. 96—Prudential Insurance Co. of America v. Martin, 196 N.E. 125, 101 Ind.App. 320—National Life Ins. Co v. Headrick, 112 N.E. 559, 63 Ind.App. 54.

N.J.—Bowen v Healy's Inc., 197 A. 655, 16 N.J Misc. 113, appeal dismissed Fisher v. Healy's Special Tours, 1 A.2d 848, 121 N.J.Law 198.

Tex.—Michaelson v. Green, Civ.App., 85 S.W.2d 1116, error dismissed.

Va.—Davis v. Rodgers, 124 S.E. 408, 139 Va. 618.

4 C.J. p 853 note 63—19 C.J. p 1227 note 5.

59. Cal.—Hunt v. United Bank & Trust Co., 291 P. 184, 210 C. 108—Minter v. San Diego Consolidated Gas & Electric Co., 182 P. 749, 180 C. 723.

Cal.—Aboudara v. City and County of San Francisco, 251 P.2d 32, 114 C.A.2d 630—Lejeune v. General Petroleum Corporation of California, 18 P.2d 429, 128 C.A. 404—Randolph v. Hunt, 183 P. 358, 41 C.A. 739.

Fla.—Southern Utilities Co. v. Matthews, 93 So. 188, 84 Fla. 30.

Ind.—Hiatt v. Trucking, Inc., 103 N. E.2d 915, 122 Ind.App. 411—Bright

and a verdict should not be overthrown merely because the jury might rationally have decided otherwise, or would have been authorized to return a different verdict.[59.5]

It has also been said that the judgment of the jury on the facts will not be disturbed on appeal where reasonable men might have found the verdict from the evidence;[60] where the findings were not such as could not have been reached by reasonable men;[61] where the reviewing court cannot say from the entire testimony that intelligent men could not have honestly arrived at the same conclusion;[62] where the evidence does not so preponderate against the verdict as to show that the jury were not governed by the evidence;[63] where the evidence introduced by the prevailing party is worthy of belief on any reasonable view of it, and is neither intrinsically improbable nor uncorroborated;[64] or where the evidence is such as to leave the mind in doubt.[65]

Nat. Bank of Flora v. Hartman, 109 N.E. 846, 61 Ind.App. 440.
Iowa.—Carpenter v. Loetscher-Jaeger Mfg. Co., 157 N.W. 938, 178 Iowa 320—Fisher v. Cedar Rapids & M. C. Ry. Co., 157 N.W. 860, 177 Iowa 406—Fisher v. Elliston, 156 N. W. 422, 174 Iowa 364.
Me.—Banks v. Adams, 195 A. 206, 135 Me. 270—Estey v. Whitney, 90 A. 1093, 112 Me. 131.
Minn.—Delyea v. Goossen, 32 N.W.2d 179, 226 Minn. 91.
Miss.—Fraternal Aid Union v. Whitehead, 87 So. 453, 125 Miss. 153, motion overruled 88 So. 274, 125 Miss. 661.
Mo.—Younkman v. Missouri Pac. R. Co., 304 S.W.2d 19.
Gilkey v. Sovereign Camp of Woodmen of the World, App., 178 S.W. 875.
Neb.—Showers v. A. H. Jones Co., 253 N.W. 902, 126 Neb. 604.
N.D.—Larson v. Russell, 176 N.W. 998, 45 N.D. 33.
Ohio.—Schwarz v. City of Cincinnati, 9 N.E.2d 3, 55 Ohio App. 123.
Crawford v. Merrell, 25 Ohio Cir.Ct.,N.S., 537.
Okl.—Magnolia Petroleum Co. v. Angelly, 306 P.2d 309—Wolverine Oil Co. v. Kingsbury, 168 P. 1021, 66 Okl. 271.
S.C.—Parnell v. Carolina Coca-Cola Bottling Co., 98 S.E.2d 834.
Tenn.—Morristown Lincoln-Mercury, Inc. v. Roy N. Lotspeich Pub. Co., App., 298 S.W.2d 788.
Tex.—Simmons & Simmons Const. Co. v. Rea, 286 S.W.2d 415.
Lackey v. Moffett, Civ.App., 172 S.W.2d 715—Bradshaw v. Brown, Civ.App., 218 S.W. 1071, dismissed for want of jurisdiction.
Wash.—Skarlatos v. Brice, 164 P. 939, 96 Wash. 205.
4 C.J. p 854 note 64—52 C.J. p 534 note 21.

59.5 Cal.—Nelson v. Malcolm, 53 P. 2d 1014, 11 C.A.2d 352.
Ga.—Scott v. Gillis, 43 S.E.2d 95, 202 Ga. 220.
Hight v. Steely, 70 S.E.2d 886, 86 Ga.App. 137.
Ill.—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App. 2d 388.
N.J.—Barber v. Vaccaro, 108 A.2d 869, 32 N.J.Super. 573—Syle v. Freedley, 99 A.2d 541, 27 N.J.Super. 461.

60. Colo.—Vallery v. Barrett, 167 P. 979, 63 Colo. 548.
Conn.—Giambartolomei v. Rocky De Carlo & Sons, Inc., 123 A.2d 760, 143 Conn. 468—Feir v. Town and City of Hartford, 106 A.2d 723, 141 Conn. 459—Murphy v. Linsky, 109 A. 412, 94 Conn. 475.
Fla.—Saucer v. City of West Palm Beach, 21 So.2d 452, 155 Fla. 659—Western Union Telegraph Co. v. Thomas, 190 So. 878, 139 Fla. 474—Panama City v. Eytchison, 184 So. 490, 134 Fla. 833—Jennings v. Pope, 136 So. 471, 101 Fla. 1476.
Ga.—Polk v. D. B. Benton's Sons, 128 S.E. 923, 34 Ga.App. 187.
Ky.—John R. Coppin Co. v. Richards, 231 S.W. 229, 191 Ky. 720.
Mo.—Ball v. Grismore, 239 S.W. 524, 210 Mo.App. 16.
Tex.—Norris Bros. v. Mattinson, Civ. App., 145 S.W.2d 204.
Wis.—Bentson v. Brown, 203 N.W. 380, 186 Wis. 629, 38 A.L.R. 1417.
4 C.J. p 854 note 65.

61. Cal.—Weintraub v. Soronow, 1 P.2d 28, 115 C.A. 145.
N.Y.—Rapant v. Ogsbury, 109 N.Y.S. 2d 737, 279 App.Div. 298.
52 C.J. p 534 note 28.

62. Cal.—In re Comino's Estate, 131 P.2d 599, 55 C.A.2d 806.
Conn.—Taylor v. Corkey, 111 A.2d 925, 142 Conn. 150.
Me.—Estey v. Whitney, 90 A. 1093, 112 Me. 131.
Pa.—Horner v. Penn Fruit Co., 82 A. 2d 313, 169 Pa.Super. 473.
Tex.—Domenico v. El Paso Electric R. Co., Civ.App., 90 S.W. 60.

63. Fla.—Florida East Coast R. Co. v. Hayes, 64 So. 274, 66 Fla. 589.

64. Ark.—Alldread v. Mills, 199 S. W.2d 571, 211 Ark. 99.
Wis.—Collins v. Jamesville, 94 N.W. 309, 117 Wis. 415.

Similar statements

(1) The appellate court will not set aside the jury's finding if evidence in the most favorable aspect sustains it.
Tex.—Manning v. Goolsby, Civ.App., 292 S.W. 589.

(2) The jury's findings in plaintiff's favor should be sustained if, discarding all adverse evidence and giving credit to all evidence favorable to plaintiff and indulging every legitimate conclusion favorable to plaintiff, the jury might properly have found for plaintiff.
Tex.—Texas Prudential Ins. Co. v. Knighten, Civ.App., 186 S.W.2d 843—Young v. Fitts, Civ.App., 183 S. W.2d 186, error refused—Texas Indemnity Ins. Co. v. Staggs, Civ. App., 138 S.W.2d 174, error dismissed by agreement—Love v. Eastham, Civ.App., 132 S.W.2d 292, reversed on other grounds 154 S. W.2d 623, 137 Tex. 462—Jefferson Standard Life Ins. Co. v. Curfman, Civ.App., 127 S.W.2d 567, error dismissed—Lehman v. Barry, Civ. App., 126 S.W.2d 499, error dismissed, judgment correct—Greenway v. Great Atlantic & Pacific Tea Co., Civ.App., 114 S.W.2d 435—Chicago, R. I. & G. Ry. Co. v. Frederick, Civ. App., 74 S.W.2d 275.

(3) Where evidence favorable to the successful party, when considered alone, sustains the verdict, appellate court on appeal will not reverse the judgment on the evidence.
Ind.—Beardslee Chandelier Mfg. Co. v. Evans, 181 N.E. 162, 94 Ind.App. 446.

65. Ala.—Ray v. Richardson, 36 So. 2d 89, 250 Ala. 705.
Iowa.—Prall v. Des Moines City Ry. Co., 202 N.W. 765.
Va.—Virginia Electric & Power Co. v. Wright, 196 S.E. 580, 170 Va. 442.
4 C.J. p 854 note 69.

Mere doubt, where a question is properly submitted in the court below, as to whether the jury decided properly, is insufficient to justify reversal.
La.—Knox Glass Bottle Co. v. Golden Gate Liquor Co., App., 174 So. 684.
Nev.—Deiss v. Southern Pac. Co., 53 P.2d 332, 56 Nev. 151.
Va.—City of Richmond v. McCormack, 91 S.E. 767, 120 Va. 552.

Rule guiding jury inapplicable to appellate court

The principle of law that, if the probabilities are equally balanced on the issue whether the accident involved was produced by a cause for which defendant was responsible, plaintiff must fail is more applicable to guide the jury in its deliberations

Another formulation of the rule is that the appellate court may not interfere with the jury's determination of fact where there is any evidence,[66] and where such evidence as presented by the respec-

on the facts than as a rule to guide the appellate court as to the sufficiency of evidence.

Cal.—Ross v. San Francisco-Oakland Terminal Rys. Co., 191 P. 703, 47 C.A. 753.

Fact that admitted circumstances make the witness' story seem improbable will not justify a reversal on the ground that the verdict is contrary to the evidence.

Cal.—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255—Marston v. Pickwick Stages, 248 P. 930, 78 C.A. 526.

66. U.S.—Hallenbeck - Hungerford Realty Corp. v. John I. Devlin Co., N.Y., 228 F. 661, 143 C.C.A. 183.

Ala.—American Ins. Co. v. Millican, 153 So. 448, 26 Ala.App. 31, certiorari denied 153 So. 454, 228 Ala. 357.

Ariz.—Welker v. Mishkin, 251 P. 891, 31 Ariz. 239—Durazo v. Ayers, 188 P. 868, 21 Ariz. 373—Brutinel v. Nygren, 154 P. 1042, 17 Ariz. 491, L.R.A.1918F 713—Crane v. Franklin, 154 P. 1036, 17 Ariz. 476.

Ark.—Ætna Life Ins. Co. v. Spencer, 32 S.W.2d 310, 182 Ark. 496—Hill v. Newell, 32 S.W.2d 174, 182 Ark. 1185—Bailey v. Fenter, 5 S.W.2d 291, 176 Ark. 1075—Missouri Pac. R. Co. v. Bennett, 4 S.W.2d 22, 176 Ark. 802—Jones v. Reed, 3 S.W.2d 979, 176 Ark. 1204—Sharp v. West, 3 S.W.2d 692, 176 Ark. 616—Galion Iron Works & Mfg. Co. v. Otto V. Martin Const. Co., 3 S.W.2d 310, 176 Ark. 448—Cannon v. Hope Fertilizer Co., 2 S.W.2d 1100, 176 Ark. 435—Graysonia, N. & A. R. Co. v. Alexander, 2 S.W.2d 47, 176 Ark. 1204—Poinsett Lumber & Mfg. Co. v. Duncan, 300 S.W. 400, 175 Ark. 777—Lane Motor Co. v. Lowery, 291 S.W. 805, 173 Ark. 1181—Stroud v. Henderson, 284 S.W. 45, 171 Ark. 338—Langston v. Hughes, 280 S.W. 374, 170 Ark. 272—Martin v. Martin, 272 S.W. 660, 168 Ark. 1168—Huggins v. Smith, 216 S.W. 1, 141 Ark. 87—Moore v. Thomas, 200 S. W. 790, 132 Ark. 97—Pugsley v. Tyler, 197 S.W. 1177, 130 Ark. 491—Barrett v. Berryman, 193 S.W. 95, 127 Ark. 609—Mason v. Bowen, 183 S.W. 973, 122 Ark. 407—Brown v. Norred, 182 S.W. 537, 122 Ark. 100—National Fruit Products Co. v. Garrett, 181 S.W. 926, 121 Ark. 570—Metropolitan Discount Co. v. Fondren, 180 S.W. 975, 121 Ark. 250—National Americans v. Ritch, 180 S.W. 488, 121 Ark. 185—Lee Wilson & Co. v. Morgan, 180 S.W. 469, 121 Ark. 633—Osborne v. Hittson, 176 S.W. 318, 118 Ark. 349—Fidelity-Phenix Fire Ins. Co. v. Friedman, 174 S.W. 215, 117 Ark. 71—Long v. Fritts, 170 S.W. 224, 114 Ark. 574—Brotherhood of Locomotive Firemen and Enginemen v. Cole's Estate, 168 S.W. 1073, 113 Ark. 400—Aluminum Cooking Utensil Co. v. Chastain, 167 S.W. 495, 113 Ark. 31.

Cal.—Pfingsten v. Westenhaver, 244 P.2d 395, 39 C.2d 12—Johnstone v. Morris, 292 P. 970, 210 C. 580—Kelley v. Hodge Transp. System, 242 P. 76, 197 C. 598—Boa v. San Francisco-Oakland Terminal Rys., 187 P. 2, 182 C. 93.

Pearson v. Whitworth, 171 P.2d 745, 75 C.A.2d 751—Ketelhut v. Gunther, 279 P. 1083, 100 C.A. 409—Potter v. Driver, 275 P. 526, 97 C.A. 311—Pontecorvo v. Clark, 272 P. 591, 95 C.A. 162—Ley v. Bishopp, 263 P. 369, 88 C.A. 313—Bowden v. Herberger, 191 P. 32, 47 C.A. 555—Hilborn v. Soale, 155 P. 130, 29 C. A. 309—McNutt v. Pabst, 143 P. 77, 25 C.A. 177.

Colo.—Westchester Fire Ins. Co. of New York v. Schuricht, 279 P. 719, 86 Colo. 229—Order of Railway Conductors v. Jones, 239 P. 882, 78 Colo. 80—Public Service Co. of Colorado v. Petty, 226 P. 297, 75 Colo. 454—Strauss v. Austgen, 184 P. 299, 67 Colo. 207.

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Conn.—Falleo v. Byrolly Transp. Co., 147 A. 16, 109 Conn. 500.

Fla.—Florida East Coast Ry. Co. v. Knowles, 67 So. 122, 68 Fla. 400—Logan Coal & Supply Co. v. Hasty, 67 So. 72, 68 Fla. 539.

Ga.—Lockwood v. Daniel, 22 S.E.2d 85, 194 Ga. 544—Athens Apartment Corporation v. Hill, 119 S.E. 631, 156 Ga. 437—Knight v. Brown, 102 S.E. 825, 150 Ga. 98.

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ber Co. v. Consolidated Adjustment Co., 191 Ill.App. 582.

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Neb.—Stewart v. Weiner, 198 N.W. 159, 111 Neb. 797—Muller v. Pratt, 187 N.W. 902, 108 Neb. 473—Sternad v. Omaha & C. B. St. Ry. Co., 177 N.W. 738, 104 Neb. 460.

Nev.—Ryan v. Manhattan Big Four Mining Co., 145 P. 907, 38 Nev. 92.

N.J.—Reardon v. Delaware, L. & W. R. Co., 147 A. 544, 106 N.J.Law 172, certiorari denied Delaware, L. &

W. R. Co. v. Reardon, 50 S.Ct. 239, 281 U.S. 724, 74 L.Ed. 1142—D & L Oil Station Co. v. Foltzer, 144 A. 805, 105 N.J.Law 391—Schopper v. Kretszschmar, 95 A. 572, 88 N.J. Law 386.

N.M.—Davis & Carruth v. Valley Mercantile & Banking Co., 265 P. 35, 33 N.M. 295—First Nat. Bank v. Bonner, 196 P. 174, 27 N.M. 65—First Nat. Bank of Flida v. George, 190 P. 1026, 26 N.M. 176—Trauer v. Meyers, 147 P. 458, 19 N.M. 490—James v. Hood, 142 P. 162, 19 N.M. 234.

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tive parties and appearing in record is legal and | competent,[67] is credible,[68] and possesses probative

Carey Co., 147 N.W. 1079, 158 Wis. 188, Ann.Cas.1916E 460—Mayhew v. Wisconsin Zinc Co., 147 N.W. 1035, 158 Wis. 112.

4 C.J. p 854 note 70—26 C.J. p 572 note 54—33 C.J. p 145 note 10—36 C.J. p 458 note 64—43 C.J. p 1824 note 51—52 C.J. p 153 note 75, p 174 note 13, p 756 note 96.

67. Del.—Turner v. Vineyard, 80 A. 2d 177, 7 Terry 138.

Ga.—Greenway v. Sloan, 88 S.E.2d 366, 211 Ga. 775.

Fulcher v. Fulcher, 43 S.E.2d 588, 75 Ga.App. 480.

Idaho.—Osier v. Consumers' Co., 239 P. 735, 41 Idaho 268.

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Mo.—Sweany v. Wabash Ry. Co., App., 80 S.W.2d 216.

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Tex.—Texas Bus Lines v. Whatley, Civ.App., 210 S.W.2d 626, error refused no reversible error—Stolle v. Kanetzky, Civ.App., 259 S.W. 657—Houston Oil Co. of Texas v. Jones, Civ.App., 184 S.W. 611, error refused 198 S.W. 290, 109 Tex. 89.

Wash.—Gabrielsen v. City of Seattle, 272 P. 723, 150 Wash. 157, 63 A.L.R. 200, affirmed 278 P. 1071, 152 Wash. 700, 63 A.L.R. 200—Lindblom v. Hazel Mill Co., 157 P. 998, 91 Wash. 333.

Wyo.—Tyler v. Jensen, 295 P.2d 742.

4 C.J. p 854 note 71—54 C.J. p 605 note 80.

68. Tenn.—Callahan v. Town of Middleton, App., 292 S.W.2d 501—McKamey v. Andrews, App., 289 S. W.2d 704.

Tex.—Collins v. Davenport, Civ.App., 192 S.W.2d 291.

Va.—Anchor Motor Freight, Inc., of Del. v. Paul, 95 S.E.2d 179, 198 Va. 480—Carroll v. Miller, 9 S.E.2d 322, 175 Va. 388.

Wis.—Pedek v. Wegemann, 81 N.W. 2d 49, 275 Wis. 57—Kanzenbach v. S. C. Johnson & Son, Inc., 79 N.W. 2d 249, 273 Wis. 621—Neuenschwander v. Hornof, 78 N.W.2d 770, 273 Wis. 471—Bush v. Mahlkuch, 75 N.W.2d 283, 272 Wis. 246—Paul v. Hodd, 73 N.W.2d 412, 271 Wis. 278—Auster v. Zaspel, 71 N. W.2d 417, 270 Wis. 368—Home Sav. Bank v. Gertenbach, 71 N.W.2d 347, 270 Wis. 386, opinion adhered to 72 N.W.2d 697—Neinfeldt v. Schultz, 68 N.W.2d 452, 269 Wis. 37—Kalish v. Milwaukee & Suburban Transport Corp., 67 N.W.2d 868, 268 Wis. 492—Smith v. Benjamin, 53 N.W.2d 619, 261 Wis. 548—Mossak v. Pfost, 44 N.W.2d 922, 258 Wis. 73—Hamm v. Miller, 40 N.W.2d 387, 256 Wis. 192—Schlewitz v. London & Lancashire Indem. Co. of America, 38 N.W.2d 700, 255 Wis. 296—Garrity v. Davis, 37 N.W.2d 844, 255 Wis. 1—Van Galder v. Snyder, 35 N.W.2d 187, 254 Wis. 120—O'Leary v. Buhrow, 25 N.W.2d 449, 249 Wis. 559—Haight v. Luedtke, 1 N.W.2d 882, 239 Wis. 389—Fawcett v. Gallery, 265 N.W. 667, 221 Wis. 195—Tomlin v. Chicago, M., St. P. & P. Ry. Co., 265 N.W. 72, 220 Wis. 325—Tomlin v. Chicago, M., St. P. Ry. Co., 265 N.W. 72, 220 Wis. 325—Brothers v. Berg, 254 N.W. 384, 214 Wis. 661—McKee v. Oconto Nat. Bank,

force,[69] which reasonably supports or tends to support the verdict;[70] where there is any evidence

248 N.W. 404, 212 Wis. 351—Bentson v. Brown, 203 N.W. 380, 186 Wis. 629, 38 A.L.R. 1417—Latta v. Fidelity-Phœnix Fire Ins. Co., 202 N.W. 299, 186 Wis. 116—Naus v. Chicago & M. Electric Ry. Co., 201 N.W. 281, 185 Wis. 178—Avery Co. v. Milwaukee Electric Ry. & Light Co., 188 N.W. 649, 177 Wis. 484.

Exceptions

Findings of jury, unless contrary to physical laws, ordinary human experience, or all reasonable inferences, must stand if there is any credible evidence to sustain them.

Wis.—Grant v. Christensen, 39 N.W. 2d 453, 255 Wis. 495.

69. Ind.—Ludwick v. Banet, 124 N.E.2d 214, 125 Ind.App. 465.

Ky.—Moll Co. v. Holstner, 67 S.W.2d 1, 252 Ky. 249.

Tex.—City of Amarillo v. Attebury, Civ.App., 303 S.W.2d 804—Golden State Mut. Life Ins. Co. v. Hayes, Civ.App., 301 S.W.2d 147, error refused no reversible error—American Cas. & Life Ins. Co. v. Hastings, Civ.App., 300 S.W.2d 754, error refused no reversible error—Purvin v. Lee, Civ.App., 300 S.W.2d 339—Texas Prudential Ins. Co. v. Dillard, Civ.App., 297 S.W.2d 265, error granted—Burba v. Lary, Civ.App., 296 S.W.2d 797, error refused no reversible error—Lamoyne v. Parks, Civ.App., 295 S.W.2d 917, error refused no reversible error—Simpson v. McCain, Civ.App., 295 S.W.2d 258—ICT Ins. Co. v. Gunn, Civ.App., 294 S.W.2d 435, error refused no reversible error—Valentine v. Colley, Civ.App., 294 S.W.2d 308—Moser v. John F. Buckner & Sons, Civ.App., 292 S.W.2d 668, error refused no reversible error—Alexander v. Appell Drilling Co., Civ.App., 290 S.W.2d 377, error refused no reversible error—Griswold v. Citizens Nat. Bank in Waxahachie, Civ.App., 285 S.W.2d 791, error refused no reversible error—Johnson-Sampson Const. Co. v. W & W Waterproofing Co., Civ.App., 274 S.W.2d 926—Allen v. De Winne, Civ.App., 268 S.W.2d 677, modified on other grounds De Winne v. Allen, 277 S.W.2d 95—Anchor Cas. Co. v. Beeler, Civ.App., 245 S.W.2d 303, error refused no reversible error—Green v. Gilbert, Civ.App., 237 S.W.2d 1010, reversed on other grounds Gilbert v. Green, 242 S.W.2d 879, 150 Tex. 521—Steinke v. Schmid, Civ.App., 223 S.W.2d 955—Thompson v. Brown, Civ.App., 222 S.W.2d 442—Continental Fire & Cas. Ins. Corp. v. Drummond, Civ.App., 220 S.W.2d 922, error refused no reversible error—Commercial Standard Ins. Co. v. Gruver, Civ.App., 217 S.W.2d 95, error dismissed—National Cas. Co. v. Hampton, Civ.App., 216 S.W.2d 614, error refused no reversible error—McLean v. McCollum, Civ.App., 209 S.W.2d 959, error refused no reversible error—Jakovich v. Nass, Civ.App., 185 S.W.2d 473—Stovall v. Whatley, Civ.App., 183 S.W.2d 672—Koen v. Gardner, Civ.App., 178 S.W.2d 173—Mason v. Downs, Civ.App., 168 S.W.2d 520, error refused—Alagood v. Coca Cola Bottling Co., Civ.App., 135 S.W.2d 1056, error dismissed, judgment correct—National Life & Accident Ins. Co. v. Burden, Civ.App., 101 S.W.2d 202, error dismissed—Miller v. Panhandle & S. F. Ry. Co., Civ.App., 35 S.W.2d 194.

4 C.J. p 854 note 72.

70. Ga.—Cone v. Wall, 139 S.E. 2, 164 Ga. 445.

Kan.—Koch v. Suttle, 306 P.2d 123, 180 Kan. 603—Taggart v. Yellow Cab Co. of Wichita, 131 P.2d 924, 156 Kan. 88.

Ky.—Pacific Mut. Life Ins. Co. v. Cash, 6 S.W.2d 239, 224 Ky. 292.

Me.—McCollister v. McCollister, 138 A. 472, 126 Me. 318.

Mo.—Dieterman v. Springfield Traction Co., App., 26 S.W.2d 866—Biondi v. Central Coal & Coke Co., App., 297 S.W. 171, affirmed 9 S.W.2d 596, 320 Mo. 1130.

N.J.—Multiplex Concrete Co. v. Public Service Ry. Co., 138 A. 465, 5 N.J.Misc. 835.

Okl.—Matofsky v. Bishop's Restaurants, Inc., 312 P.2d 446—Conliff v. Hall, 305 P.2d 1041—Berg v. Bryant, 305 P.2d 517—Great Atlantic & Pacific Tea Co. v. Mullen, 301 P.2d 217—Wat Henry Pontiac, Inc. v. Pitcock, 301 P.2d 203—Dippel v. Murr, 296 P.2d 169—Gaffney v. Jordan, 295 P.2d 1059—Duncan Bros. v. Robinson, 294 P.2d 822—Wiggins v. Sterne, 293 P.2d 603—Miller v. Dittmeier, 290 P.2d 765—City of Hartshorne v. Carlomango, 287 P.2d 696—Shell Pipe Line Corp. v. Curtis, 287 P.2d 681—Elk City v. Rice, 286 P.2d 275—Gulf, C. & S. F. Ry. Co. v. Blanton, 284 P.2d 736—Ellison v. Walker, 281 P.2d 931—Otis Elevator Co. v. Melott, 281 P.2d 408—Kennedy v. Deckard, 278 P.2d 843—Godlin v. Hockett, 272 P.2d 389—Oklahoma Natural Gas Co. v. Walker, 269 P.2d 327—St. Louis-S. F. Ry. Co. v. Van Hoy, 268 P.2d 582—McElroy v. Frost, 268 P.2d 273—Foor Engineering Co. v. Gossett, 267 P.2d 558—Jones v. Eppler, 266 P.2d 451—Cooke v. Townley, 265 P.2d 1108—Jackson v. Gifford, 264 P.2d 313—Chicago, R. I. & P. R. Co. v. McDougal, 262 P.2d 884—Deep Rock Oil Corp. v. Micco, 262 P.2d 451—Hazelrigg Trucking Co. v. Duvall, 261 P.2d 204—Carter v. Gundy, 259 P.2d 528—Kohler v. Campbell, 258 P.2d 1178—Independent-Eastern Torpedo Co. v. Price, 258 P.2d 189, 208 Okl. 633—Oklahoma Natural Gas Co. v. Pickett, 258 P.2d 186, 208 Okl. 671—Bredouw v. Wilson, 256 P.2d 421, 208 Okl. 393—Oklahoma Coca-Cola Bottling Co. v. Dillard, 253 P.2d 847, 208 Okl. 126—Public Service Co. v. Sonagerra, 253 P.2d 169, 208 Okl. 95—National Ben Franklin Fire Ins. Co. v. Short, 252 P.2d 495, 207 Okl. 673—Rochester Am. Ins. Co. v. Short, 252 P.2d 490, 207 Okl. 669—Beam v. Green, 252 P.2d 444, 208 Okl. 10—Enid Transfer & Storage Co. v. Mollenhauer, 251 P.2d 1068, 207 Okl. 654—Cravens v. Hughes, 250 P.2d 877, 207 Okl. 503—George v. Greer, 250 P.2d 858, 207 Okl. 494—Stiers v. Mayhall, 248 P.2d 1047, 207 Okl. 219—City of McAlester v. Malone, 243 P.2d 667, 206 Okl. 348—Richardson v. Butler, 240 P.2d 1058, 206 Okl. 79—Chapman v. Koenig, 238 P.2d 357, 205 Okl. 402—Employers Cas. Co. v. Barnett, 235 P.2d 685, 205 Okl. 73—Green v. Smith, 232 P.2d 406, 204 Okl. 595—Freeman v. Wright, 231 P.2d 675, 204 Okl. 497—Kizziar v. Pierce, 226 P.2d 941, 204 Okl. 51—Mid-Continent Pipe Line Co. v. Price, 225 P.2d 176, 203 Okl. 626—Newton v. Paul, 224 P.2d 265, 203 Okl. 556—U. S. Fidelity & Guaranty Co. v. Dowdy, 219 P.2d 215, 203 Okl. 207—Eden v. Vloedman, 214 P.2d 930, 202 Okl. 462—Stanley v. Sweet, 214 P.2d 906, 202 Okl. 4—Whitlatch v. Maupin, 210 P.2d 782, 202 Okl. 137—Oklahoma Ry. Co. v. Ivery, 204 P.2d 978, 201 Okl. 245—O'Banion v. Morris Plan Indus. Bank, 204 P.2d 872, 201 Okl. 256—Dick v. Essary, 203 P.2d 715, 201 Okl. 196—Rose v. Oehme, 192 P.2d 641, 200 Okl. 207—Kelley-Webb Realty Co. v. Allen, 187 P.2d 986, 199 Okl. 503—Lawson v. Stemmons, 185 P.2d 940, 199 Okl. 335—Bunch v. Perkins, 180 P.2d 664, 198 Okl. 517—Burke v. First Nat. Bank of Yukon, 168 P.2d 285, 197 Okl. 52—Oklahoma Tax Commission v. Price, 167 P.2d 873, 197 Okl. 1—King v. Davis, 164 P.2d 639, 196 Okl. 277—Sebranek v. Krivohlanek, 163 P.2d 530, 196 Okl. 132—Magnolia Pipe Line Co. v. Brown, 157 P.2d 184, 195 Okl. 345—Smoot v. Anthony, 138 P.2d 547, 192 Okl. 605—Wineland v. Jones, 134 P.2d 578, 192 Okl. 147—United Tire & Investment Co. v. Trone, 113 P.2d 977, 189 Okl. 120—Adkins v. George, 83 P.2d 818, 183 Okl. 591—Boswell v. Shawnee Production Credit Ass'n, 77 P.2d 740, 182 Okl. 302—Townsend v. Cotten, 68 P.2d 790, 180 Okl. 128—Metropolitan Life Ins. Co. v. Golden, 68 P.2d

which, if believed by the jury, is legally sufficient, or might reasonably tend to support the verdict or

516, 180 Okl. 164—Guaranty State Bank of Texola v. Rutledge, 64 P. 2d 650, 179 Okl. 85—Empire Oil & Refining Co. v. Rawlings, 62 P.2d 1253, 178 Okl. 391—Sinclair Refining Co. v. Shaffer, 61 P.2d 571, 177 Okl. 610—Singer Sewing Mach. Co. v. Riley, 61 P.2d 235, 177 Okl. 558—Fidelity & Guaranty Fire Corporation v. Tindale, 61 P.2d 220, 177 Okl. 556—Roberts v. Callis, 58 P.2d 1232, 177 Okl. 359—St. Louis-San Francisco Ry. Co. v. Williams, 56 P.2d 815, 176 Okl. 465—Most Worshipful St. John Grand Lodge of Ancient Free and Accepted Masons of Oklahoma v. Carter, 55 P. 2d 1002, 175 Okl. 490—Warner v. City of Guymon, 55 P.2d 969, 176 Okl. 419—Petroleum Pipeline Co. v. Lundy, 55 P.2d 963, 176 Okl. 319—Duncan Life & Accident Ass'n v. Foster, 55 P.2d 434, 176 Okl. 330—Farmers Nat. Bank of Sulphur v. Bell, 54 P.2d 1072, 176 Okl. 174—Evans v. Cooper, 54 P.2d 368, 176 Okl. 41—Mudge Oil Co. v. Swanson, 54 P.2d 345, 176 Okl. 13—Madden v. Tilly, 54 P.2d 161, 175 Okl. 589—Johnson Oil Refining Co. of Illinois v. Elledge, 53 P.2d 543, 175 Okl. 496—Pate v. Specht, 53 P. 2d 239, 175 Okl. 318—North American Car Corporation v. Green, 52 P.2d 798, 175 Okl. 136—Sims v. First Nat. Bank, 51 P.2d 820, 175 Okl. 180—National Aid Life Ass'n v. Long, 51 P.2d 814, 175 Okl. 150—Anderson v. Scanlon, 50 P.2d 615, 174 Okl. 419—Queen Ins. Co. of America v. Baker, 50 P.2d 371, 174 Okl. 273—Hockstein v. Lewis, 50 P.2d 306, 174 Okl. 126—Shabino v. Dolese Bros. Co., 49 P.2d 686, 174 Okl. 69—Lazzell v. Harvey, 49 P. 2d 519, 174 Okl. 86—Stauffer v. Lane, 49 P.2d 71, 173 Okl. 322—St. Louis-San Francisco Ry. Co. v. Pufahl, 45 P.2d 733, 172 Okl. 452—St. Louis-San Francisco Ry. Co. v. Pufahl, 45 P.2d 729, 172 Okl. 449—Douglass v. Maloy, 45 P.2d 126, 173 Okl. 253—Liberty Nat. Bank of Weatherford v. Brommer, 45 P. 2d 85, 172 Okl. 244—Antrim Lumber Co. v. Neal, 44 P.2d 939—National Life & Accident Ins. Co. v. Barker, 42 P.2d 542, 171 Okl. 350—Ætna Ins. Co. v. Bennett, 42 P.2d 536, 171 Okl. 232—Dawson v. Cobb, 42 P.2d 269, 171 Okl. 296—Schiefer v. Wilson, 42 P.2d 263, 171 Okl. 119—Oklaken Oil Co. v. Garrett, 42 P.2d 114, 171 Okl. 111—L. O. & H. L. Street v. Arnold, 40 P.2d 1050, 170 Okl. 389—American Nat. Bank of Pawhuska, Okl. v. Hashbarger, 40 P.2d 1028, 170 Okl. 454—Martin v. McCune, 39 P.2d 978, 170 Okl. 196—Phillips Petroleum Co. v. Dale, 39 P.2d 546, 170 Okl. 267—Missouri Motor Distributing Co. v. Barker, 39 P.2d 544, 170 Okl. 1183—National Life & Accident Ins. Co. v. Ware, 37 P.2d 905, 169 Okl. 618—Willson v. Phillips, 36 P.2d 748, 169 Okl. 268—U. S. Fidelity & Guaranty Co. v. State ex rel. Shull, 36 P.2d 47, 169 Okl. 59—National Life & Accident Ins. Co. v. Ford, 36 P.2d 25, 169 Okl. 102—Nelson v. Longmire, 36 P.2d 12, 169 Okl. 80—Nichlos v. Hanbury-Russell Supply Co., 33 P.2d 198, 168 Okl. 371—Guarantee Abstract & Insurance Co. v. Moore, 26 P.2d 913, 166 Okl. 182—Grayson v. Brown, 26 P. 2d 204, 166 Okl. 43—Bank of Union v. Boggs, 17 P.2d 958, 161 Okl. 169—Yellow Taxicab & Baggage Co. v. Pettyjohn, 11 P.2d 487, 157 Okl. 232—Govan v. McCord, 11 P.2d 141, 155 Okl. 278—Schuster v. McDaniel, 10 P.2d 391, 156 Okl. 233—Jackson v. Hedlund, 10 P.2d 385, 157 Okl. 14—Advance Rumely Thresher Co. v. Alexander, 9 P.2d 934, 156 Okl. 150—Dixie Motor Coach Corporation v. Johnson, 9 P.2d 5, 155 Okl. 240—Manglesdorf Seed Co. v. Pauls Valley Grain & Seed Co., 8 P.2d 1100, 155 Okl. 270—Roxana Petroleum Corporation v. City of Pawnee, 7 P.2d 663, 155 Okl. 141—Cherry v. Boyles, 6 P.2d 1049, 151 Okl. 135—Jefferson Standard Life Ins. Co. v. Poulter, 6 P.2d 665, 154 Okl. 86—Chambers v. Cunningham, 5 P.2d 378, 153 Okl. 129—Alles & Boon v. Grubbs, 298 P. 1049, 148 Okl. 301—St. Louis-San Francisco Ry. Co. v. Holleyman, 297 P. 268, 148 Okl. 87—Lowe v. First Nat. Bank, 288 P. 283, 143 Okl. 134—Bristow v. Bristow, 282 P. 154, 140 Okl. 8—State v. Buchanan, 282 P. 125, 140 Okl. 12—U. S. Fire Ins. Co. v. Whitchurch, 280 P. 834, 138 Okl. 182—Fullerton v. Goodwin, 280 P. 804, 138 Okl. 176—Maney v. Dugger, 280 P. 790, 138 Okl. 256—Thompson v. Martin, 280 P. 589, 138 Okl. 138—Campbell v. Rogers, 280 P. 407, 138 Okl. 50—Gunter v. Sartin, 278 P. 626, 137 Okl. 164—Alkire v. Acuff, 272 P. 405, 134 Okl. 43—Atchison, T. & S. F. Ry. Co. v. Krow, 270 P. 15, 132 Okl. 281—Insurance Co. of North America v. Koller, 268 P. 197, 131 Okl. 238—Ponca City Milling Co. v. Krow, 267 P. 629, 131 Okl. 98—Colby v. Dodson, 267 P. 618, 131 Okl. 77—Howard v. St. John's Grand Lodge, A. F. & A. M., 267 P. 476, 130 Okl. 300—Mayhue v. Born, 267 P. 256, 130 Okl. 252—Bayers v. Gamblin, 265 P. 650, 130 Okl. 82—Carter v. Binder, 261 P. 139, 128 Okl. 45—J. B. Colt Co. v. Koehn, 260 P. 1060, 128 Okl. 39—Wagner v. Davidson, 260 P. 37, 127 Okl. 199—Niagara Fire Ins. Co. v. Flowers, 259 P. 840, 127 Okl. 137—Stewart v. Ludlow, 259 P. 835, 127 Okl. 144—Security Nat. Bank of Tulsa v. Cain, 259 P. 572, 126 Okl. 202—Perry v. Myers, 259 P. 556, 127 Okl. 27—Norris v. Hare, 259 P. 532, 126 Okl. 214—Spring v. Major, 259 P. 125, 126 Okl. 150—Missouri Pac. R. Co. v. Fleak, 258 P. 260, 124 Okl. 213—Oklahoma Aid Ass'n v. Thomas, 256 P. 719, 125 Okl. 190—Harris v. Graham, 255 P. 710, 124 Okl. 196—Collinson v. Barton, 253 P. 481, 122 Okl. 194—Westchester Fire Ins. Co. v. McDonald, 253 P. 287, 123 Okl. 289—Haley v. Bowman, 251 P. 1046, 123 Okl. 48—Chicago, R. I. & P. Ry. Co. v. Great Western Oil Co., 250 P. 776, 120 Okl. 150—Washita River Oil Corporation v. Dutro, 250 P. 488, 120 Okl. 69—City of Picher v. Barrett, 249 P. 739, 120 Okl. 66—Cales v. Marshall, 249 P. 723, 119 Okl. 360—Stockwell v. Gee, 249 P. 389, 121 Okl. 207—St. Louis-San Francisco Ry. Co. v. Edwards, 248 P. 598, 119 Okl. 84—Nowlan v. Harner Oil Co., 246 P. 842, 118 Okl. 96—Goerlitz v. American Linseed Co., 246 P. 240, 117 Okl. 299—One Ford Coupe v. State, 245 P. 652, 117 Okl. 147—Whitehead v. Gormley, 245 P. 562, 116 Okl. 287, 47 A.L.R. 171—Keaton v. Taylor, 245 P. 56, 114 Okl. 167—First State Bank of Inola v. Dickerson, 245 P. 54, 119 Okl. 103—City of Pawhuska v. Black, 244 P. 1114, 117 Okl. 108—Calhoun Oil Syndicate v. Atlas Supply Co., 244 P. 770, 117 Okl. 6—Eagle Loan & Investment Co. v. Starks, 243 P. 723, 116 Okl. 149—Barton v. Oklahoma, K. & M. Ry. Co., 243 P. 172, 116 Okl. 62—Harris v. Grimstead, 242 P. 154, 112 Okl. 59—Shaw-Spears Gin Co. v. Apache Cotton Oil & Mfg. Co., 240 P. 732, 112 Okl. 202—Foster Oil Co. v. Rogers, 238 P. 435, 111 Okl. 103—Lindsay State Bank v. Forbis, 235 P. 470, 108 Okl. 126—Security Ins. Co. v. Baldwin, 234 P. 348, 109 Okl. 139—St. Louis-San Francisco Ry. Co. v. Stitt, 233 P. 1073, 108 Okl. 42, certiorari denied 45 S.Ct. 636, 268 U.S. 700, 69 L.Ed. 1164—Chicago, R. I. & P. Ry. Co. v. Cheek, 231 P. 1078, 105 Okl. 91—Florence v. Russell, 231 P. 301, 105 Okl. 20—Beidleman v. Barry, 231 P. 276, 104 Okl. 288—Kinghan v. Capps, 229 P. 224, 100 Okl. 269—Arbuthnot v. Boren, 225 P. 965, 102 Okl. 21—Pierce Oil Corporation v. Mitchell, 225 P. 937, 99 Okl. 148—T-B Gasoline Co. v. Boring, 225 P. 902, 99 Okl. 61—McFadden v. Paulson, 225 P. 528, 98 Okl. 298—Rosendahl v. Shipman, 224 P. 165, 98 Okl. 25—Carignano v. Box, 223 P. 673, 97 Okl. 184—Parker v. Luse, 223 P. 122, 97 Okl. 101—Chicago, R. I. & P. Ry. Co. v. Lawton Grain Co., 221 P. 1013, 94 Okl. 289—Cutshall v. Yates, 219 P. 343, 95 Okl. 277—Key v. Hill, 219 P. 308, 93

findings of fact of the jury;[71] or where the trial court would not have been justified in directing a different verdict.[72] However, the rule against disturbing a verdict if there is any evidence tending to support it must not be given too literal, technical, and strict an interpretation, and, for the verdict to stand, there must be in the record such competent evidence that, if uncontradicted and unimpeached, it will constitute prima facie proof of every fact essential to the cause of action or defense on which the verdict is based.[72.5]

It is also stated that the verdict will not be disturbed on appeal, although the evidence in support of it is vague, weak, or unsatisfactory;[73] and that the

Okl. 64—Livingston Oil Corporation v. Shefts, 219 P. 101, 92 Okl. 292—West v. Fondren, 218 P. 1080, 92 Okl. 239—Mid-Co. Gasoline Co. v. Back, 217 P. 1041, 95 Okl. 29—Columbia Carbon & Ribbon Co. v. White, 217 P. 420, 91 Okl. 218—Hapgood v. Vickery, 217 P. 356, 95 Okl. 181—Sovereign Camp W. O. W. v. Chaffer, 217 P. 353, 92 Okl. 41—Kugler v. White, 216 P. 903, 91 Okl. 130—Hale v. Streeter, 216 P. 154, 91 Okl. 107—Carson v. Harrod, 215 P. 929, 91 Okl. 62—Melton v. Hunnicutt, 213 P. 879, 89 Okl. 91—Hughes v. Senter, 212 P. 311, 88 Okl. 191—Neary v. Etenburn, 209 P. 649, 87 Okl. 259—Leforce v. Cooper, 208 P. 795, 87 Okl. 9—Snouffer v. First Nat. Bank, 207 P. 452, 86 Okl. 190—Oklahoma, K. & M. Ry. Co. v. Hurst, 207 P. 86, 86 Okl. 177—Lawton Refining Co. v. Hollister, 205 P. 506, 86 Okl. 13—Harn v. Smith, 204 P. 642, 85 Okl. 137—National Candy Co. v. Alton Mercantile Co., 204 P. 283, 85 Okl. 42—People's Nat. Bank of Kingfisher v. Rickords, 204 P. 130, 85 Okl. 9—Norris v. Hibler, 201 P. 495, 83 Okl. 197—Jackson v. Darden, 200 P. 223, 82 Okl. 256—Meyers v. Caruthers, 200 P. 212, 83 Okl. 131—Smith v. Williams, 200 P. 194, 82 Okl. 258—Sharum v. Sharum, 200 P. 176, 82 Okl. 266—Danciger v. Isaac, 200 P. 164, 82 Okl. 263—Epps v. Ellison, 200 P. 160, 82 Okl. 224—Sand Springs Park v. Schrader, 198 P. 983, 82 Okl. 244, 22 A.L.R. 593—Continental Refining Co. v. Helton, 198 P. 575, 82 Okl. 122—Garrison Coal Co. v. Semple, 198 P. 497, 82 Okl. 60—Brockhaus v. Heaton, 198 P. 488, 81 Okl. 294—Wilson v. Moran, 197 P. 1051, 82 Okl. 34—Fairbanks, Morse & Co. v. Miller, 195 P. 1083, 80 Okl. 265—Elson v. Walker, 195 P. 899, 80 Okl. 237—Conley v. Jones, 195 P. 489, 80 Okl. 247—City of Tulsa v. Wells, 191 P. 186, 79 Okl. 39—Thornburgh v. Haun, 190 P. 1083, 79 Okl. 103—Alamo Nat. Bank of San Antonio v. Dawson Produce Co., 190 P. 393, 78 Okl. 235—Lonsdale Grain Co. v. Johnston, 189 P. 359, 78 Okl. 174—Shawver v. Williamson-Halsell-Frazier Co., 189 P. 188, 78 Okl. 198—Terrell Co. v. Davis, 188 P. 676, 77 Okl. 302—First Nat. Bank v. Atchison, T. & S. F. Ry. Co., 186 P. 1086, 77 Okl. 93—Wallingford v. Alcorn, 183 P. 726, 75 Okl. 295—Edward C. Plume Co. v. Bankston, 182 P. 677, 75 Okl. 157—Dickinson v. Perry, 181 P. 504, 75 Okl. 25—McCoy v. Wosika, 180 P. 967, 75 Okl. 3—Bunker v. Harding, 174 P. 749, 70 Okl. 263—Baker-Hanna-Blake Co. v. Paynter-McVicker Grocery Co., 174 P. 265, 73 Okl. 22—Oaks v. Samples, 157 P. 739, 57 Okl. 660.

Tenn.—Foster & Creighton Co. v. Hale, 222 S.W.2d 222, 32 Tenn.App. 208.

Tex.—Williams v. Roney, Civ.App., 275 S.W.2d 537, error refused no reversible error—J. M. Radford Grocery Co. v. Jamison, Civ.App., 282 S.W. 278.

Wis.—Froemming v. Amity Leather Products Co., 80 N.W.2d 228, 274 Wis. 181.

To sustain verdict on appeal, the evidence must amount to something more than inferences, and must be legally of a probative force, mere detached statements of witnesses which may positively furnish an argumentative basis not being controlling, and a jury is not authorized to arbitrarily reject testimony that is unimpeachable and without suspicion.

Tex.—Chicago, R. I. & G. Ry. Co. v. Wisdom, Civ.App., 216 S.W. 241, reversed on other grounds Wisdom v. Chicago, R. I. & G. R. Co., Com.App., 231 S.W. 344.

71. Ala.—Union Central Life Ins. Co. v. Guffin, 167 So. 321, 232 Ala. 254.

Okl.—Whitney v. Douglas, 307 P.2d 154—Magnolia Petroleum Co. v. Angelly, 306 P.2d 309—Casualty Reciprocal Exchange v. Sutfin, 166 P. 2d 434, 196 Okl. 567—Wray v. Ferris, 103 P.2d 942, 187 Okl. 428, 128 A.L.R. 1079—Malernee Oil Co. v. Kerns, 102 P.2d 836, 187 Okl. 276—Madden v. Tilly, 54 P.2d 161, 175 Okl. 589—Incorporated Town of Wetumka v. Burke, 211 P. 522, 88 Okl. 186—Allen v. Shepherd, 169 P. 1115, 69 Okl. 47.

Tex.—Pendell v. Apodaca, Civ.App., 221 S.W. 682.

39 C.J. p 1259 note 2, p 1260 notes 3–15.

72. S.D.—Mundon v. Greenameyer, 184 N.W. 257, 44 S.D. 440.

Tex.—Four States Grocery Co. v. Gray, Civ.App., 97 S.W.2d 355, error dismissed.

4 C.J. p 854 note 73.

Verdict for defendant would not be disturbed on appeal where from record trial court should have directed such verdict.

Mo.—Adams v. Othenin's Estate, 161 S.W.2d 415.

72.5 Okl.—Modern Woodmen of America v. Michelin, 225 P. 163, 101 Okl. 217, 36 A.L.R. 971.

When rule inapplicable

Tex.—In re King's Estate, 244 S.W.2d 660, 150 Tex. 662.

73. Ind.—Moorman Mfg. Co. v. Keller, 184 N.E. 913, 98 Ind.App. 607—Robinson v. Van Camp, 135 N.E. 580, 79 Ind.App. 382—Seibold v. Welch, 135 N.E. 258, 78 Ind.App. 238—Hutchinson v. Hutchinson, 132 N.E. 598, 76 Ind.App. 494.

4 C.J. p 854 note 74.

Meager evidence

Mich.—Armstrong v. Woodland Mut. Fire Ins. Co., 70 N.W.2d 786, 342 Mich. 666.

Evidence not especially persuasive

Pa.—Ebbert v. Philadelphia Electric Co., 198 A. 323, 330 Pa. 257.

More than scintilla evidence

(1) Where there is more than a scintilla of evidence to support plaintiff's case, appellate court cannot interfere with verdict.

Iowa.—American Express Co. v. Des Moines Nat. Bank, 152 N.W. 625, 177 Iowa 478.

Ky.—Zeitz v. Foley, 264 S.W.2d 267—Ætna Life Ins. Co. v. Shemwell, 116 S.W.2d 328, 273 Ky. 264.

Mass.—Pajak v. Chicopee Mfg. Corporation, 141 N.E. 112, 246 Mass. 439.

Wash.—Rettinger v. Bresnahan, 257 P.2d 633, 42 Wash.2d 631.

4 C.J. p 854 note 74 [a].

(2) However, a mere suspicion or scintilla of evidence is not sufficient to authorize an appellate court to uphold a verdict based on such evidence.

Tex.—Perkins v. Lightfoot, Civ.App., 10 S.W.2d 1030—Advance-Rumely Thresher Co. v. Moss, Civ.App., 213 S.W. 690, error refused—Blumenthal v. Nussbaum, Civ.App., 195 S.W. 275, affirmed Nussbaum v. Blumenthal, Com.App., 221 S.W. 944.

(3) In many jurisdictions, the court has discarded the scintilla of evidence doctrine, and evidence sufficient to support a verdict must be substantial.

reviewing court cannot set aside a verdict or finding unless it can say on the whole evidence that it is the result of bias, prejudice, passion, corruption,[74]

Tenn.—Tallent v. Fox, 141 S.W.2d 485, 24 Tenn.App. 96.

Wash.—Adams v. Anderson & Middleton Lumber Co., 214 P. 835, 124 Wash. 356, modified on other grounds 221 P. 993, 127 Wash. 993.

(4) There are broad statements, however, to the effect that if there is a "scintilla" of relevant competent evidence to uphold the verdict of a jury, supreme court cannot interfere with the verdict.

S.C.—Stanton v. Yarborough, 18 S.E.2d 326, 198 S.C. 445.

Evidence meaningless to appellate court

On appeal from a judgment in an automobile collision case, the verdict would not be disturbed as not being sustained by the evidence where the evidence in the record was so indefinite and uncertain as to be practically meaningless to the appellate court, but which evidence probably was fully understood by the jury.

Ind.—Hoeppner v. Saltzgaber, 200 N.E. 458, 102 Ind.App. 458.

Fact that doubt exists as to whether the evidence supports the verdict does not alone justify reversal.

Nev.—Deiss v. Southern Pac. Co., 53 P.2d 332, 56 Nev. 169.

W.Va.—Sigmon v. Mundy, 25 S.E.2d 636, 125 W.Va. 591.

74. Colo.—Maloney v. Jussel, 241 P.2d 862, 125 Colo. 125.

Conn.—Martino v. Palladino, 123 A.2d 872, 143 Conn. 547—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204—Coner v. Chittenden, 163 A. 472, 116 Conn. 78—Ott v. Connecticut Co., 101 A. 485, 92 Conn. 85.

Fla.—Loftin v. Wilson, 67 So.2d 185—Wheeler v. Yellow Cab Co. of Orlando, 66 So.2d 501—Motes v. Crosby, 65 So.2d 478.

Ill.—Kahn v. James Burton Co., 126 N.E.2d 836, 5 Ill.2d 614.

Santiemmo v. Days Transfer, Inc., 133 N.E.2d 539, 9 Ill.App.2d 487—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App.2d 388.

Iowa.—Smith v. Blakesburg Savings Bank, 164 N.W. 762, 182 Iowa 1190.

Me.—Parker v. Knox, 87 A.2d 663, 147 Me. 396—London v. Smart, 143 A. 466, 127 Me. 377.

Mich.—Lee v. McCormick, 271 N.W. 579, 279 Mich. 120—Daleiden v. Stevens, 209 N.W. 94, 235 Mich. 111.

Mo.—Keener v. Missouri Pac. R. Co., App., 269 S.W. 635.

Neb.—Borcherding v. Eklund, 55 N.W.2d 643, 156 Neb. 196—Burge v. C. F. Adams Co., 151 N.W. 949, 98 Neb. 4.

N.J.—Roether v. Pearson, 116 A.2d 529, 36 N.J.Super. 465—Wax v. Altshuler, 91 A.2d 768, 22 N.J.Super. 229—Clayton v. Jersey Central Power & Light Co., 89 A.2d 61, 19 N.J.Super. 546—Rapp v. Public Service Coordinated Transport, 83 A.2d 355, 15 N.J.Super. 305, affirmed 86 A.2d 676, 9 N.J. 11—Roberts v. Geo. M. Brewster & Son, 80 A.2d 638, 13 N.J.Super. 462—Mazzi v. Stein, 77 A.2d 287, 10 N.J.Super. 446—Vadurro v. Yellow Cab Co. of Camden, 73 A.2d 749, 8 N.J.Super. 208, affirmed 77 A.2d 459, 6 N.J. 102—Van Riper v. Philip Carey Mfg. Co., 69 A.2d 755, 6 N.J.Super. 21.

Crawn v. Yanavok, 169 A. 282, 11 N.J.Misc. 859—Kasiski v. Central Power & Light Co., 132 A. 201, 4 N.J.Misc. 130.

N.Y.—Franklin v. Marsh, 218 N.Y.S. 155, 218 App.Div. 220—Bergoff v. Park Row Bazaar, 185 N.Y.S. 866—Cohen v. Goldberg, 176 N.Y.S. 18.

Ohio.—Central Community Chautauqua System v. Rentschler, 166 N.E. 698, 31 Ohio App. 525.

Okl.—Parkhill Trucking Co. v. Hopper, 256 P.2d 810, 208 Okl. 429.

Tex.—Dyer v. Sterett, Civ.App., 248 S.W.2d 234, error refused, no reversible error—Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351—First Nat. Bank v. Hardtt, Civ.App., 204 S.W. 712, error refused.

Va.—Director General of Railroads v. Lucas, 107 S.E. 675, 130 Va. 212. 4 C.J. p 854 note 75.

What constitutes

(1) To reverse a judgment on the ground that the jury was moved by prejudice, the facts and circumstances ought to justify no other conclusion.

Mo.—Brown v. City of Carthage, 175 S.W. 300, 189 Mo.App. 333.

(2) Reviewing court was not authorized to reverse judgment on ground that the conditions presented a picture which might have touched the sympathies of the jury and that this might have been heightened by presentation of case.

Va.—American Tobacco Co. v. Harrison, 27 S.E.2d 181, 181 Va. 800.

Passion or prejudice not shown

(1) Fact that the jury made a mistake in one of their findings, which was corrected by the court, is not sufficient to show that the verdict was given under the influence of passion and prejudice.

Kan.—Priddy-Maer Elevator Co. v. Wenzel, 243 P. 1016, 120 Kan. 423.

(2) Jury's action in finding all issues for defendants and allowing them the full amount of their counterclaim cannot be construed as indication of prejudice.

Mo.—Wolfinbarger v. Metcalf, App., 282 S.W. 749.

(3) Fact that the jury accepted evidence of defendant does not show passion or prejudice requiring reversal.

Wash.—Independent Order of Foresters v. Bonner, 145 P. 987, 84 Wash. 13.

(4) In an action against a municipal contractor and servant in charge of work for damages to adjacent property, that the testimony may have been stronger against the servant than against the principal contractor, and that the jury found for the servant, did not show passion or prejudice vitiating the verdict against the contractor.

Wash.—Curtis v. Puget Sound Bridge & Dredging Co., 233 P. 936, 133 Wash. 323.

(5) Where a verdict is sought to be set aside on the ground of passion and prejudice, there must be something to show that it was actuated by passion or prejudice; something more than a conclusion or imaginary condition; and the verdict will not be set aside unless there is some fact, circumstance, incident, or action presented and before the jury which should not have been presented, or, if it should have been presented was presented in an unwarranted, unlawful, and prejudicial manner, or in a way likely to cause bias and prejudice to arise in minds of the jury.

N.D.—York v. General Utility Corporation, 176 N.W. 352, 44 N.D. 51.

(6) In an action for personal injury alleged to have been sustained when a swinging car door struck plaintiff and threw him under trucks, a verdict for plaintiff was not influenced by prejudice, mistake, bias, or passion in view of evidence as far as liability was concerned.

Me.—Hatch v. Portland Terminal Co., 131 A. 5, 125 Me. 96.

(7) Other circumstances held not to show passion or prejudice warranting disturbance of verdict or finding.

Cal.—Eggleston v. Liberty Mut. Ins. Co., App., 300 P.2d 867.

Fla.—Snider v. Bancroft Inv. Corp., 61 So.2d 184.

Ill.—Rhynders v. McCaw, 109 N.E.2d 257, 348 Ill.App. 387.

Kan.—Birt v. Drillers Gas Co., 279 P.2d 280, 177 Kan. 299.

Mich.—Larsen v. Stiller, 73 N.W.2d 865, 344 Mich. 279.

Mo.—Pinter v. Gulf, M. & O. R. Co., 245 S.W.2d 88, 362 Mo. 887.

Doty v. Fisher, App., 200 S.W.2d 534—Greer v. McCrory, App., 192 S.W.2d 431, affirmed in part and reversed in part on other grounds 197 S.W.2d 669—Brooks v. City of

or mistake,[75] or is unconscionable or clearly and manifestly against right and justice,[76] or could not have been reached by reasonable men.[77] Also, the determination of the jury will not be interfered with unless the complaining party has been deprived of some substantial right;[78] unless under the testimony no recovery could be had on the facts shown in any view which could properly be taken of them;[79] unless the evidence with all the inferences deducible therefrom is insufficient to sustain the verdict;[80] unless the findings are irreconcilable with each other or with the general verdict;[81] unless there is no evidence to support the verdict or unless the verdict is contrary to the evidence,[82] or is unwarranted by the

Ste. Genevieve, App., 164 S.W.2d 164.
N.J.—Petrone v. Margolis, 89 A.2d 476, 20 N.J.Super. 180—Gindin v. Baron, 83 A.2d 790, 16 N.J.Super. 1.
N.D.—Hochstetler v. Graber, 48 N.W. 2d 15, 78 N.D. 90.
Ohio.—English v. Aubry, 103 N.E.2d 828, 90 Ohio App. 121.
Okl.—Magnolia Petroleum Co. v Angelly, 306 P.2d 309.
S.C.—Thomas v. Atlantic Coast Line R. Co., 71 S.E.2d 403, 221 S.C. 462.
Tenn.—Evans v. Bryan, 145 S.W.2d 557, 24 Tenn.App. 405.
Tex.—Gillock v. Texas & P. Ry. Co., Civ.App., 302 S.W.2d 717—Tower Contracting Co. v. Flores, Civ.App., 294 S.W.2d 266, error granted.
Vt.—Gray v. Janicki, 99 A.2d 707, 118 Vt. 49.
Wash.—Kramer v. Portland-Seattle Auto Freight, Inc., 261 P.2d 692, 43 Wash.2d 386—Russell v. City of Grandview, 236 P.2d 1061, 39 Wash. 2d 551.

75. Conn.—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204.
Fla.—Wheeler v. Yellow Cab Co. of Orlando, 66 So.2d 501—Motes v. Crosby, 65 So.2d 478.
Me.—Parker v. Knox, 87 A.2d 663, 147 Me. 396.
Mo.—Keener v. Missouri Pac. R. Co., App., 269 S.W. 635.
Neb.—Burge v. C. F. Adams Co., 151 N.W. 949, 98 Neb. 4.
N.J.—Vadurro v. Yellow Cab Co. of Camden, 73 A.2d 749, 8 N.J.Super. 208, affirmed 77 A.2d 459, 6 N.J. 102—Van Riper v. Philip Carey Mfg. Co., 69 A.2d 755, 6 N.J.Super. 21.
Crawn v. Yanavok, 169 A. 282, 11 N.J.Misc. 859—Kasiski v. Central Power & Light Co., 132 A. 201, 4 N.J.Misc. 130.
N.Y.—Bergoff v. Park Row Bazaar, 185 N.Y.S. 866.
Ohio.—Central Community Chautauqua System v. Rentschler, 166 N.E. 698, 31 Ohio App. 525.
Va.—Director General of Railroads v. Lucas, 107 S.E. 675, 130 Va. 212.
4 C.J. p 855 note 76.

76. Ala.—Morgan Plan Co. v. Beverly, 51 So.2d 177, 35 Ala.App. 563, certiorari dismissed 51 So.2d 179, 255 Ala. 235.
Cal.—Eggleston v. Liberty Mut. Ins. Co., App., 300 P.2d 867.
Mo.—Mack v. Acacia Mut. Life Ass'n, App., 65 S.W.2d 1045—Eckery v. Byng, App., 45 S.W.2d 924—Saunders v. Englehart, App., 273 S.W. 157.
Ohio.—Moore v. S. L. Grundstein & Sons, App., 125 N.E.2d 742—Smith-Kasson Co. v. Dirr, 180 N.E. 197, 41 Ohio App. 385.
Tex.—Thompson v. Quarles, Civ.App., 297 S.W.2d 321, error refused no reversible error—Dyer v. Sterett, Civ.App., 248 S.W.2d 234, error refused no reversible error—Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351—Galveston, H. & S. A. Ry. Co. v. Wiemar, Civ.App., 3 S.W.2d 874—Smith v. McDowell, Civ.App., 240 S.W. 563.
Va.—Chappell v. White, 36 S.E.2d 524, 183 Va. 810—Parsons v. Parker, 170 S.E. 1, 160 Va. 810.
W.Va.—Stenger v. Hope Natural Gas Co., 90 S.E.2d 261—Cohen v. Matz, 116 S.E. 712, 93 W.Va. 124.
52 C.J. p 534 note 32.

77. Conn.—Anderson v. Colucci, 175 A. 681, 119 Conn. 241—Hartford-Connecticut Trust Co. v. Slater, 159 A. 578, 114 Conn. 603.
Fla.—Parrish v. Clark, 145 So. 848, 107 Fla. 598.
Ill.—Trust Co. of Chicago v. Baltimore & O. R. Co., 42 N.E.2d 883, 315 Ill.App. 209.
Minn.—Armstrong v. Minneapolis A. & C. R. Ry. Co., 191 N.W. 47, 153 Minn. 374.
Mo.—Cluck v. Abe, 40 S.W.2d 558, 328 Mo. 81.
Miller v. Dunham, App., 186 S. W. 29.
N.D.—Chambers v. Minneapolis, St. P. & S. S. M. Ry. Co., 163 N.W. 824, 37 N.D. 377, Ann.Cas.1918C 954.
Pa.—Gaita v. Pamula, 122 A.2d 63, 385 Pa. 171—Cover v. Hershey Transit Co., 139 A. 266, 290 Pa. 551.
Jacobson v. George B. Newton Coal Co., 170 A. 322, 112 Pa.Super. 138.
4 C.J. p 855 note 77.

78. Okl.—Big Twelve Oil & Gas Co. v. Eco, 14 P.2d 377, 159 Okl. 110.

79. Ala.—Great Atlantic & Pacific Tea Co. v. Keltner, 191 So. 633, 29 Ala.App. 5, certiorari denied 191 So. 640, 238 Ala. 462.
Ark.—Guardian Life Ins. Co. v. Dixon, 240 S.W. 25, 152 Ark. 597.
Cal.—Clinkscale v. Germershausen, App., 302 P.2d 23—Quiroga v. Southern Pac. Co., 278 P.2d 80, 130 C.A.2d 93.
Tex.—Fort Worth Mut. Benev. Ass'n v. Jennings, Civ.App., 283 S.W. 910—Galveston, H. & S. A. Ry. Co. v. Price, Civ.App., 222 S.W. 628, reversed on other grounds Com.App., 240 S.W. 524, rehearing denied.
W.Va.—Cohen v. Matz, 116 S.E. 712, 93 W.Va. 124.
4 C.J. p 855 note 78.

Uncontradicted and unimpeached testimony tending to establish claim of party having burden of proof is not sufficient to reverse finding of jury unless it covers and reaches all necessary points to complete showing of right to recover.
Kan.—In re Erwin's Estate, 228 P. 2d 739, 170 Kan. 728.

80. Cal.—Kuehn v. Lowthian, 269 P. 2d 666, 124 C.A.2d 867—Paul v. Key System, 180 P.2d 940, 80 C.A.2d 21—Kroijer v. Jenkins, 6 P.2d 96, 119 C.A. 175.
Ill.—Connelly v. Schutte, 79 N.E.2d 79, 334 Ill.App. 227—Lazarus v. Friel, 73 N.E.2d 647, 331 Ill.App. 552—Savaiano v. Twelfth St. Store, 70 N.E.2d 744, 330 Ill.App. 248—Kulikowski v. Roth, 69 N.E.2d 726, 330 Ill.App. 13.
Me.—Dougherty v. Maine Cent. R. Co., 132 A. 209, 125 Me. 160.
Wis.—Sheehan v. Lewis, 260 N.W. 633, 218 Wis. 588.
4 C.J. p 855 note 79.

81. Ind.—Flagg v. Russell, 166 N.E. 672, 87 Ind.App. 110.
Tex.—Rankin v. Joe D. Hughes, Inc., Civ.App., 161 S.W.2d 883, error refused.

82. Ark.—North American Union v. Johnson, 219 S.W. 769, 142 Ark. 378.
Cal.—Peterson v. Cruickshank, App., 300 P.2d 915—Zainudin v. Meizel, 259 P.2d 460, 119 C.A.2d 265—Correia v. Van Camp Sea Food Co., 248 P.2d 81, 113 C.A.2d 71—Kinkle v. Fruit Growers Supply Co., 146 P.2d 8, 63 C.A.2d 102—McConnell v. Quinn, 236 P. 200, 71 C.A. 671—Valentini v. Gobbi, 212 P. 718, 60 C. A. 289.
Conn.—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204.
Fla.—Seaboard Air Line R. Co. v. Strickland, 80 So.2d 914, reversed on other grounds 76 S.Ct. 157, 350 U.S. 893, 100 L.Ed. 786.
Ga.—Gledhill v. Brown, 162 S.E. 824, 44 Ga.App. 670.
Ill.—Roe v. Roe, 145 N.E. 804, 315 Ill. 120—Kusturin v. Chicago & A. R. Co., 122 N.E. 512, 287 Ill. 306.
King v. Ryman, 125 N.E.2d 840, 5 Ill.App.2d 484—Radcliff v. Hang-

evidence;[83] or unless the verdict or finding is | clearly or manifestly wrong.[84]

er, 239 Ill.App. 292—Bassham v. Chicago, I. & L. Ry. Co., 214 Ill. App. 74.

Ind.—Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 481—Polk Sanitary Milk Co. v. Berry, 17 N.E.2d 860, 106 Ind.App. 29—Stimson v. Krueger, 114 N.E. 885, 63 Ind.App. 567.

Kan.—Mehl v. Carter, 237 P.2d 240, 171 Kan. 597.

Ky.—Southern Mining Co. v. Saylor, 95 S.W.2d 236, 264 Ky. 655—Commercial Union Assur. Co. v. Howard, 76 S.W.2d 246, 256 Ky. 363—Monongahela River Consol. Coal & Coke Co. v. Lancaster's Adm'r, 183 S.W. 258, 169 Ky. 24—Miller's Adm'r v. Ewing, 174 S.W. 22, 163 Ky. 401.

Me.—Wyman v. Shibley, 72 A.2d 450, 145 Me. 391—McCarthy v. Mason, 171 A. 256, 132 Me. 347.

Mo.—Deig v. General Ins. of America, App., 301 S.W.2d 409—Moore v. St. Louis Southwestern Ry. Co., App., 301 S.W.2d 395—Blair v. Hamilton, App., 297 S.W.2d 14—Spears v. Schantz, 246 S.W.2d 399, 241 Mo. App. 879—Moore v. Washington Life & Accident Ins. Co., App., 58 S.W.2d 763—Katz v. Union Cent. Life Ins. Co., 44 S.W.2d 250, 226 Mo.App. 618—Anderson v. White, 235 S.W. 834, 210 Mo.App. 275—Raifeisen v. Young, 167 S.W. 648, 183 Mo.App. 508.

Neb.—Stolting v. Everett, 51 N.W. 2d 603, 155 Neb. 292.

N.J.—Conlen v. Lemmerman, 93 A. 722, 87 N.J.Law 84.

N.Y.—City of New York v. Wilson & Co., 15 N.E.2d 408, 278 N.Y. 86, reargument denied 16 N.E.2d 850, 278 N.Y. 702.

Miller v. Gonzalez, 156 N.Y.S.2d 775—Cohen v. Goldberg, 176 N.Y. S. 18.

N.C.—Tucker v. Bank of Ashe, 167 S. E. 495, 204 N.C. 120—Hulin v. Western Union Telegraph Co., 117 S.E. 588, 185 N.C. 470.

Ohio.—City of Delaware v. Metropolitan Construction Co., 21 Ohio Cir.Ct.,N.S., 137.

Okl.—One Chevrolet Coach Automobile v. State, 43 P.2d 774, 171 Okl. 545.

Or.—Johnson v. Hoffman, 284 P. 567, 132 Or. 46—Robertson v. State Industrial Accident Commission, 235 P. 684, 114 Or. 394—Call v. Linn, 228 P. 127, 112 Or. 1.

R.I.—Della Posta v. Rand Exp. Freight Lines, Inc., 133 A.2d 775—Hale v. E. Pulver Cook, Inc., 189 A. 841, 57 R.I. 323.

S.C.—Steele v. Atlantic Coast Line R. Co., 87 S.E. 639, 103 S.C. 102—J. S. Pinkussohn Cigar Co. v. Clyde S. S. Co., 85 S.E. 1060, 101 S.C. 429.

S.D.—Kadlec v. Langlois, 244 N.W. 96, 60 S.D. 174.

Tex.—Johnson-Sampson Const. Co. v. W & W Waterproofing Co., Civ.App., 274 S.W.2d 926, error refused no reversible error—McLean v. McCollum, Civ.App., 209 S.W.2d 959, error refused no reversible error—Mills v. Browning, Civ.App., 59 S.W.2d 219—St. Louis Southwestern Ry. Co. of Texas v. Moore, Civ.App., 269 S.W. 191—Sanger v. Futch, Civ.App., 208 S. W. 681, error refused—French v. De Moss, Civ.App., 180 S.W. 1105.

Utah.—Reynolds v. W. W. Clyde & Co., 298 P.2d 530, 5 Utah 2d 151—Miller v. New York Life Ins. Co., 37 P.2d 547, 84 Utah 539—Carter v. Standard Acc. Ins. Co., 238 P. 259, 65 Utah 465.

Va.—Humphreys v. Baird, 90 S.E.2d 796, 197 Va. 667—Hebner v. Sullivan, 72 S.E.2d 689, 194 Va. 259—Hooker v. Hancock, 49 S.E.2d 711, 188 Va. 345—Harrison v. Provident Relief Ass'n of Washington, D. C., 126 S.E. 696, 141 Va. 659, 40 A.L.R. 616.

Wash.—Sigurdson v. City of Seattle, 292 P.2d 214, 48 Wash.2d 155—Arnold v. Sanstol, 260 P.2d 327, 43 Wash.2d 94—Walters v. City of Seattle, 167 P. 124, 97 Wash. 657.

W.Va.—Guyandotte Coal Co. v. Virginian Electric & Machine Works, 118 S.E. 512, 94 W.Va. 300.

Wis.—Rosenbluth v. State, 269 N.W. 292, 222 Wis. 623—McKnelly v. Brotherhood of American Yeomen, 152 N.W. 169, 160 Wis. 514.

4 C.J. p 855 note 80—39 C.J. p 1261 note 16.

Similar statements of rule

(1) In general.

Fla.—Nelson v. State ex rel. Quigg, 23 So.2d 136, 156 Fla. 189, certiorari denied 66 S.Ct. 809, 327 U.S. 790, 90 L.Ed. 1016.

Okl.—Union Transp. Co. v. Lamb, 123 P.2d 660, 190 Okl. 327.

(2) Determination arrived at by the jury cannot be disturbed unless appellate court can say as a matter of law that it rests on no substantial evidence at all.

Cal.—Slovick v. James I. Barnes Const. Co., App., 298 P.2d 923—Cunningham v. Coca-Cola Bottling Co. of Los Angeles, 198 P.2d 333, 87 C.A.2d 106.

Fla.—W. H. Clark Fruit Co. v. Bounds, 58 So.2d 552—Smith v. Biscayne Park Estates, 42 So.2d 442.

(3) Unless record discloses complete lack of evidence on element necessary to sustain verdict, it will not be disturbed on appeal.

Ill.—Allendorf v. Elgin, J. & E. Ry. Co., 133 N.E.2d 288, 8 Ill.2d 164, certiorari denied Elgin, J. and E. Ry. Co. v. Allendorf, 77 S.Ct. 49, 352 U.S. 833, 1 L.Ed.2d 53, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170.

Ind.—Shell Petroleum Corporation v. Earnest, 187 N.E. 211, 97 Ind.App. 483.

Mo.—Siegel v. Ellis, 288 S.W.2d 932—Cummings v. Illinois Cent. R. Co., 269 S.W.2d 111, 364 Mo. 868—Hatfield v. Thompson, 252 S.W.2d 534.

Atkinson v. Coca-Cola Bottling Co., App., 275 S.W.2d 41—O'Connor v. Egan, App., 274 S.W.2d 334—Walton v. Van Camp, App., 271 S.W.2d 53—Bray v. St. Louis-San Francisco Ry. Co., App., 259 S.W.2d 132—Union Service Co. v. Lyons, 240 S.W.2d 153, 241 Mo.App. 611.

Okl.—Chicago, R. I. & P. R. Co. v. Wright, 278 P.2d 830, certiorari denied 75 S.Ct. 581, 349 U.S. 905, 99 L.Ed. 1241.

83. Ill.—Allendorf v. Elgin, J. & E Ry. Co., 133 N.E.2d 288, 8 Ill.2d 164, certiorari denied 77 S.Ct. 49, 352 U.S. 833, 1 L.Ed.2d 53, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170.

Miss.—Tri-State Transit Co. v. Moore, 196 So. 231, 188 Miss. 722.

Okl.—Givens v. Western Paving Co., 261 P.2d 450—Chicago, R. I. & P. Ry. Co. v. Gilmore, 152 P. 1096, 52 Okl. 296.

Utah.—Cottrell v. Grand Union Tea Co., 299 P.2d 622, 5 Utah 2d 187.

Va.—American Tobacco Co. v. Harrison, 27 S.E.2d 181, 181 Va. 800.

W.Va.—Stenger v. Hope Natural Gas Co., 90 S.E.2d 261.

Verdict based on opinion evidence will not be disturbed, although the court may not have actual scientific knowledge sufficient to enable it to affirm that the verdict predicated on an inference from proved basic facts, is correct, unless it clearly appears unwarranted.

Okl.—Chicago, R. I. & P. Ry. Co. v. Gilmore, 152 P. 1096, 52 Okl. 296.

84. Ala.—English v. Jacobs, 82 So. 2d 542, 263 Ala. 376—Killian v. Everett, 79 So.2d 17, 262 Ala. 434—Ray v. Richardson, 36 So.2d 89, 250 Ala. 705—Watkins v. Potts, 122 So. 416, 219 Ala. 427, 65 A.L.R. 1097—Atlantic Coast Line R. Co. v. Burkett, 92 So. 456, 207 Ala. 344—Adams Hardware Co. v. Wimbish, 78 So. 902, 201 Ala. 548.

Cal.—Pearson v. Tide Water Associated Oil Co., App., 223 P.2d 669.

Conn.—Annunziato v. Gu-Ta, Inc., 179 A. 651, 120 Conn. 114—Russo v. McAviney, 112 A. 657, 96 Conn. 21.

D.C.—Capital View Realty Co. v. Cohen, Mun.App., 124 A.2d 853.

Fla.—Motes v. Crosby, 65 So.2d 478—Metropolitan Life Ins. Co. v. Jenkins, 12 So.2d 374, 152 Fla.

In determining the applicability of the rule that | a verdict which is within the range of the evidence

486—Wm. G. Roe & Co. v. Archer, 192 So. 402, 140 Fla. 841—Greiper v. Coburn, 190 So. 902, 139 Fla. 293—Mathers v. Botsford, 97 So. 282, 86 Fla. 40, 32 A.L.R. 881—McClellan v. Wood, 83 So. 295, 78 Fla. 407—Johns v. Bowden, 73 So. 603, 72 Fla. 530—City of Jacksonville v. Glover, 69 So. 20, 69 Fla. 701—Bagdad Land & Lumber Co. v. Poston, 68 So. 180, 69 Fla. 340—Georgia Southern & F. Ry. Co. v. Ruff, 67 So. 575, 69 Fla. 93—Welles v. Bryant, 66 So. 562, 68 Fla. 113.

Ga.—Miller v. Central of Georgia Ry. Co., 87 S.E. 303, 16 Ga.App. 855—Georgia Ry. & Power Co. v. Flury, 86 S.E. 403, 17 Ga.App. 216.

Idaho.—Dawson v. Salt Lake Hardware Co., 136 P.2d 733, 64 Idaho 666—Metz v. Hawkins, 133 P.2d 721, 64 Idaho 386.

Ill.—Thomas v. Smith, 137 N.E.2d 117, 11 Ill.App.2d 310—Hudson v. Leverenz, 132 N.E.2d 427, 9 Ill. App.2d 96, reversed on other grounds 139 N.E.2d 255, 10 Ill.App. 2d 87—Wilkins v. Benevolent Protective Order of Elks, Lodge No. 623, 125 N.E.2d 549, 5 Ill.App.2d 370—Warnes v. Champaign County Seed Co., 124 N.E.2d 695, 5 Ill. App.2d 151—Wallis v. Villanti, 120 N.E.2d 76, 2 Ill.App.2d 446—Allen v. Byers, 117 N.E.2d 709, 1 Ill.App. 2d 422—Fisher v. Illinois Terminal R. Co., 113 N.E.2d 344, 350 Ill. App. 555—Ritgers v. City of Gillespie, 113 N.E.2d 215, 350 Ill. App. 485—Bell v. Highland, 113 N. E.2d 79, 350 Ill.App. 501—Corn Belt Lumber Co. v. Doty, 212 Ill. App. 521—Welch v. Chicago City Ry. Co., 195 Ill.App. 146.

Ky.—City of Paducah v. Brunnhoper, 135 S.W.2d 413, 281 Ky. 177—Illinois Cent. R. Co. v. Roark's Adm'r, 58 S.W.2d 648, 248 Ky. 398—Consolidation Coal Co. v. Potter, 206 S.W. 776, 182 Ky. 562.

Chicago, St. L. & N. O. R. Co. v. Coffee, 13 Ky.Op. 823—Urso v. Unverzagt, 11 Ky.Op. 46.

La.—Burt v. Burt, 107 So. 234, 160 La. 387.

Cush v. Griffin, App., 95 So.2d 860—Carlson v. Fidelity Mut. Ins. Co., App., 88 So.2d 461—Cooper v. Boudreaux, App., 80 So.2d 873—Norman v. State, App., 69 So.2d 120, reversed on other grounds 80 So.2d 858, 227 La. 904—Norman v. State, App., 69 So.2d 120, reversed on other grounds 80 So.2d 858, 227 La. 904—Smith v. Clemmons, App., 48 So.2d 813, followed in 48 So.2d 817—Matthews v. New Orleans Terminal Co., App., 45 So.2d 547—Flowers v. Morris, App., 43 So.2d 917—Pouncy v. Temple, Royal Indem. Co., App., 41 So.2d 139—Olivier v. Williams, App., 30 So.2d 167—Soldano v. New York Life Ins. Co., App., 196 So. 521—Johnson v. Fabacher, App., 175 So. 129—Builliard v. New Orleans Terminal Co., App., 174 So. 659—Cimo v. Karstendiek, 173 So. 548—Jumonville v. Frey's Inc., App., 173 So. 227—Hill v. Louisiana Coca-Cola Bottling Co., App., 170 So. 45—Kahn v. Shreveport Rys. Co., App., 161 So. 636—Bosarge v. Spiess & Co., App., 145 So. 21—Burrage v. Gill, 130 So. 857, 15 La. App. 126—Girard v. Illinois Cent. R. Co., 3 La.App. 748.

Me.—Michaud v. Taylor, 27 A.2d 820, 139 Me. 124—McLelland v. Morrison, 21 A.2d 711, 138 Me. 68—Tibbetts v. Dunton, 174 A. 453, 133 Me. 128—Young v. Potter, 174 A. 387, 133 Me. 104—London v. Smart, 143 A. 466, 127 Me. 377—Gerard v. Lewiston, A. & W. St. Ry., 104 A. 66, 117 Me. 563—Mitchell v. Cotreau, 96 A. 836, 114 Me. 554.

Miss.—Jackson City Lines v. Harkins, 38 So.2d 102, 204 Miss. 707.

Mo.—Clark v. Powell, 175 S.W.2d 842, 351 Mo. 1121.

Roark v. Dawson, App., 122 S. W.2d 376—Palmer v. Moyers, App., 298 S.W. 101—Boyles v. Burnett, 249 S.W. 719, 213 Mo.App. 288—Stone v. Security Life Ins. Co., 226 S.W. 619, 205 Mo.App. 597—Roberts v. City of St. Joseph, App., 185 S.W. 1197.

Neb.—Wright v. Lincoln City Lines, Inc., 81 N.W.2d 170, 163 Neb. 679—Hampton v. Struve, 70 N.W.2d 74, 160 Neb. 305—Borcherding v. Eklund, 55 N.W.2d 643, 156 Neb. 196—Stolting v. Everett, 51 N.W. 2d 603, 155 Neb. 292—Danner v. Walters, 48 N.W.2d 635, 154 Neb. 506—Kunkel v. Cohagen, 39 N.W.2d 609, 151 Neb. 774—Keyser v. Allen, 31 N.W.2d 309, 149 Neb. 449—Stroud v. Payne, 247 N.W. 595, 124 Neb. 612—Young v. Chicago, B. & Q. R. Co., 194 N.W. 450, 110 Neb. 452—Lammers v. Carstensen, 191 N.W. 670, 109 Neb. 475—Simpson v. Omaha & C. B. St. Ry. Co., 186 N.W. 1001, 107 Neb. 779—Carpenter v. Bennett, 185 N.W. 999, 107 Neb. 304—Caniglia v. Vacanti, 184 N.W. 813, 106 Neb. 793—Anderson v. Union Pac. R. Co., 181 N.W. 864, 105 Neb. 759—Brown v. Omaha & C. B. St. Ry. Co., 153 N.W. 588, 98 Neb. 613—Shimick v. Cudahy Packing Co., 153 N.W. 502, 98 Neb. 412—Davis v. Manning, 150 N.W. 1019, 97 Neb. 658, reversed on other grounds 154 N.W. 239, 98 Neb. 707—Nofsinger v. Paup, 150 N.W. 1005, 97 Neb. 599.

N.J.—Max v. Max, 10 A.2d 163, 123 N.J.Law 580, affirmed 15 A.2d 616, 125 N.J.Law 271.

De Risio v. Weiler, 146 A. 687, 7 N.J.Misc. 645.

N.C.—Sawyer v. Coppersmith, 4 S.E. 2d 318, 216 N.C. 793.

Ohio.—Stephens v. Village of Trotwood, App., 53 N.E.2d 647, opinion supplemented 53 N.E.2d 650—McDowell v. Larson, 3 Ohio App. 150.

Okl.—City of Tulsa v. Caudle, 141 P.2d 107, 193 Okl. 6—McLaughlin v. Union Transp. Co., 57 P.2d 868, 177 Okl. 115—Gregory v. State, 258 P. 902, 126 Okl. 117—Schaff v. Hudgins, 221 P. 90, 96 Okl. 173, certiorari denied 44 S.Ct. 454, 264 U.S. 595, 68 L.Ed. 867.

Pa.—Ligo v. Dodson, 151 A. 694, 301 Pa. 124.

Stark v. Lardin, 1 A.2d 784, 133 Pa.Super. 96—Nichols v. Kreinson, 160 A. 135, 105 Pa.Super. 85.

Burgard v. York City Retirement, Com.Pl., 69 York Leg.Rec. 182.

Tex.—Damon v. State, Com.App., 52 S.W.2d 368.

Dyer v. Sterett, Civ.App., 248 S.W.2d 234, error refused, no reversible error—Smith v. Little, Civ. App., 217 S.W.2d 881, error refused no reversible error—McLean v. McCollum, Civ.App., 209 S.W.2d 959, error refused no reversible error—Bigelow v. Rupp, Civ.App., 192 S.W.2d 791, error refused no reversible error—Siegel v. Hood, Civ.App., 119 S.W.2d 120, error dismissed—National Life & Accident Ins. Co. v. Casillas, Civ.App., 63 S.W.2d 396—Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351—North American Accident Ass'n v. Adams, Civ.App., 32 S.W.2d 525—Galloway v. King, Civ.App., 272 S.W. 807, reversed on other grounds King v. Galloway, Com.App., 284 S.W. 942—Neill v. Pryor, Civ.App., 222 S.W. 296.

Utah.—Stam v. Ogden Packing & Provision Co., 177 P. 218, 53 Utah 248.

Va.—Hooker v. Hancock, 49 S.E.2d 711, 188 Va. 345—Sutton v. Menges, 44 S.E.2d 414, 186 Va. 805—Sheckler v. Anderson, 29 S.E.2d 867, 182 Va. 701—Noland v. Fowler, 18 S.E.2d 251, 179 Va. 19—Chenman v. Paxson's Adm'r, 195 S.E. 492, 170 Va. 6—Commonwealth Public Service Corp. v. Town of Bluefield, 187 S.E. 521, 167 Va. 82—Virginia Electric & Power Co. v. Ford, 186 S.E. 84, 166 Va. 619—Virginia Electric & Power Co. v. Morgan's Adm'r, 173 S.E. 373, 162 Va. 123—Price v. Burton, 154 S.E. 499, 155 Va. 229—Peninsula Produce Exchange v. Upshur, 140 S.E. 651, 149 Va. 639—Varner's Ex'rs v. White, 140 S.E. 128, 149 Va. 177—Carter v. Washington & O. D. Ry., 95 S.E. 464, 122 Va. 458.

W.Va.—Stenger v. Hope Natural Gas Co., 90 S.E.2d 261—Wilson v. Ed-

should not be disturbed, each case must stand by itself;[84.5] and the appellate court in estimating the probative value of evidence may consider the difficulty of securing positive proof under the circumstances of the particular case.[85] In considering the question of the sufficiency of the evidence to support the verdict of the jury on a particular issue, the appellate court should consider the entire evidence unaffected by the conclusion of the jury on other independent issues.[85.5]

Conclusion to contrary by appellate court. As a general rule, the fact that the verdict is opposed to the opinion of the reviewing court, which if it had sat as a jury in the case would have come to the opposite conclusion, furnishes no ground for setting aside a verdict otherwise sustainable under the rules aforesaid.[86] As otherwise expressed, it is imma-

wards, 77 S.E.2d 164, 138 W.Va. 613—Thrasher v. Amere Gas Utilities Co., 75 S.E.2d 376, 138 W.Va. 166, appeal dismissed A. G. U. Co. v. Public Service Commission of State of W. Va., 74 S.Ct. 478, 347 U.S. 910, 98 L.Ed. 1067—Griffith v. American Coal Co. of Allegheny County, 88 S.E. 595, 78 W.Va. 34.

Wis.—Tomlin v. Chicago, M., St. P. & P. Ry. Co., 265 N.W. 72, 220 Wis. 325—Bell v. Milwaukee Electric Ry. & Light Co., 172 N.W. 791, 169 Wis. 408—Winke v. Olson, 160 N.W. 164, 164 Wis. 427.

4 C.J. p 855 note 81.

84.5 Ill.—St. Clair County Housing Authority v. Quirin, 39 N.E.2d 363, 379 Ill. 52.

85. Mo.—Scott v. American Zinc, etc., Co., 173 S.W. 23, 187 Mo.App. 344.

85.5 Tex.—Bigby v. Granfus, Civ. App., 303 S.W.2d 523—Page v. Lockley, Civ.App., 176 S.W.2d 991, reversed on other grounds 180 S. W.2d 616—Gulf Brewing Co. v. Goodwin, Civ.App., 135 S.W.2d 812, error dismissed, judgment correct.

Basis of judgment

A jury's finding on some element of ground of recovery or defense constituting no part of basis of judgment challenged on appeal may not be appropriated and made conclusive on some other ground which does constitute basis of such judgment, as issues must be separately submitted and found.

Tex.—Dotson v. Braswell, Civ.App., 172 S.W.2d 985, error refused.

86. U.S.—Senko v. La Crosse Dredging Corp., Ill., 77 S.Ct. 415, 352 U.S. 370, 1 L.Ed.2d 404, rehearing denied 77 S.Ct. 716, 353 U.S. 931, 1 L.Ed.2d 724.

Ala.—Southern Ry. Co. v. Smith 128 So. 228, 221 Ala. 273—Huckaba v. Hill, 96 So. 569, 209 Ala. 466—Birmingham Waterworks Co. v. Justice, 86 So. 389, 204 Ala. 547.

Ariz.—Richfield Oil Co. v. Estes, 98 P.2d 851, 55 Ariz. 81.

Ark.—McDaniel v. Johnson, 278 S. W.2d 657, 225 Ark. 6—Consolidated Indemnity Ins. Co. v. Dean, 68 S.W.2d 460, 188 Ark. 835—Metropolitan Life Ins. Co. v. Gregory, 67 S.W.2d 602, 188 Ark. 516—National Ben. Life Ins. Co. v. Pitts, 30 S.W.2d 853, 181 Ark. 1146—Missouri Pac. R. Co. v. Juneau, 10 S.W.2d 867, 178 Ark. 417—Jones v. Hunter, 189 S.W. 1068, 126 Ark. 300.

Cal.—Gibson v. Kennedy Extension Gold Mining Co., 156 P. 56, 172 C. 294.

Rose v. San Diego Electric Ry. Co., 24 P.2d 838, 133 C.A. 646—Kellner v. Witte, 23 P.2d 1045, 133 C.A. 231—Sites v. Howrey, 291 P. 597, 108 C.A. 348—Heep v. Bohan, 243 P. 71, 75 C.A. 664—Lutge v. Dubuque Fire & Marine Ins. Co., 181 P. 235, 40 C.A. 658.

Colo.—Brown v. Criswell, 264 P. 1091, 83 Colo. 313—School Dist. No. 1 in City and County of Denver v. Kenney, 236 P. 1012, 77 Colo. 429—Denver City Tramway Co. v. Brown, 143 P. 364, 57 Colo. 484.

Conn.—Toth v. Perry, 182 A. 464, 120 Conn. 680.

Fla.—First State Bank of Fort Meade v. Singletary, 169 So. 407, 124 Fla. 770.

Idaho.—Nelson v. Inland Motor Freight Co., 92 P.2d 790, 60 Idaho 443.

Ill.—Smith v. Bregstone's, Inc., 143 N.E.2d 79, 144 Ill.App.2d 115—Berg v. Michell, 196 Ill.App. 509—Schneeweisz v. Illinois Cent. R. Co., 196 Ill.App. 248.

Iowa.—Axen v. Missouri State Life Ins. Co. of St. Louis, Mo., 213 N.W. 247, 203 Iowa 555—Grimes Sav. Bank v. Pilmer, 202 N.W. 436—Rogers v. Wolf, 191 N.W. 801, 195 Iowa 153—First Nat. Bank v. Royal Indemnity Co., 186 N.W. 934, 193 Iowa 221—Crow v. Casady, 182 N. W. 884, 191 Iowa 1357—Beh v. Van Ness, 180 N.W. 292, 190 Iowa 151.

Ky.—Louisville & N. R. Co. v. Moore's Adm'r, 166 S.W.2d 68, 292 Ky. 223—Castle v. McGaffee, 154 S.W.2d 241, 287 Ky. 561—Breslin v. Blair, 60 S.W.2d 337, 249 Ky. 178—S. L. Crook Corporation v. Blackburn, 59 S.W.2d 1, 248 Ky. 543—City of Newport v. Schmidt, 231 S.W. 54, 191 Ky. 585—Louisville & N. R. Co. v. Mitchell, 191 S.W. 465, 173 Ky. 622—Cincinnati, N. O. & T. P. Ry. Co. v. Goode, 183 S.W. 264, 169 Ky. 102, error dismissed 38 S.Ct. 345, 245 U. S. 681, 62 L.Ed. 544—Interstate Coal Co. v. Shelton, 169 N.W. 546, 160 Ky. 40.

Me.—Hatch v. Dutch, 94 A. 487, 113 Me. 405.

Mich.—Armstrong v. Woodland Mut. Fire Ins. Co., 70 N.W.2d 786, 342 Mich. 666—Veley v. Burt, 218 N.W. 801, 242 Mich. 253.

Minn.—Greene v. Freeman, 217 N.W. 485, 173 Minn. 622.

Mo.—Clark v. City of Springfield, App., 241 S.W.2d 100—Hillhouse v. Thompson, 240 S.W.2d 224, 241 Mo.App. 859, reversed on other grounds 243 S.W.2d 531, 362 Mo. 700—Brooks v. City of Ste. Genevieve, App., 164 S.W.2d 164—Wooldridge v. Hopkins, 278 S.W. 1081, 220 Mo.App. 1034—Train v. Atchison, T. & S. F. Ry. Co., 253 S.W. 497, 214 Mo.App. 354.

Mont.—Simpson v. Miller, 34 P.2d 528, 97 Mont. 328—Stillinger v. Kelly, 214 P. 66, 66 Mont. 441.

Neb.—Myers v. Platte Val. Public Power & Irr. Dist., 67 N.W.2d 739, 159 Neb. 493—Heiden v. Loup River Public Power Dist., 298 N. W. 736, 139 Neb. 754—Watson v. Miller, 267 N.W. 230, 131 Neb. 74.

N.J.—Barber v. Vaccaro, 108 A.2d 869, 32 N.J.Super. 573—Syle v. Freedley, 99 A.2d 541, 27 N.J.Super. 461.

Palmer v. Tomlin, 141 A. 2, 104 N.J.Law 215—Briggs v. Public Service Ry. Co., 102 A. 382, 91 N. J.Law 1.

N.Y.—In re Spang's Will, 188 N.Y.S. 754, 197 App.Div. 310—Rice v. H. P. Cummings Const. Co., 155 N.Y.S. 766, 169 App.Div. 832, affirmed 115 N.E. 1050, 220 N.Y. 564.

Ohio.—Jaynes v. Vetel, App., 80 N.E. 2d 621—Pickering v. Peskind, 183 N.E. 301, 43 Ohio App. 401—Cohen v. Smith, 159 N.E. 329, 26 Ohio App. 32—Dime Sav. Bank of Canton v. Morton, 157 N.E. 825, 25 Ohio App. 157—Frost v. O'Kross, 153 N. E. 879, 22 Ohio App. 174—Mutual Life Ins. Co. of New York v. Long, 12 Ohio App. 252.

Cleveland & Southwestern Tract. Co. v. Garnett, 18 Ohio Cir.Ct., N.S., 215.

Okl.—Reviere v. Payne, 26 P.2d 734, 166 Okl. 150—American Fidelity Co. of Montpelier, Vt. v. Echols, 155 P. 1160, 56 Okl. 228, L.R.A. 1916D 1176.

Pa.—Hamilton v. Hopkins, 93 A. 615, 247 Pa. 499.

Beverlin v. Ensminger, 30 Pa. Dist. 689.

terial that the appellate court might draw an inference to the contrary from the evidence or feel that another conclusion is more reasonable;[86.5] and where there is substantial evidence to support the verdict the court will not interfere therewith, although the court is in doubt as to the ultimate facts,[86.10] or is of the opinion that the verdict is against the preponderance of the evidence.[86.15]

Written evidence. In a number of cases a limitation is recognized to the effect that, where the evidence is all in writing, as for instance in affidavits or depositions, the general rule that the verdict of the jury will be taken as conclusive does not apply, and the reviewing court will weigh the evidence on the theory that the reviewing court considers itself equally competent with a jury to consider written evidence.[87]

Application of rule to particular actions and elements of liability. The general rule that the verdict of a jury, supported by adequate evidence, is con-

S.C.—Cartwright v. Herald Pub. Co., 68 S.E.2d 415, 220 S.C. 492.
S.D.—Barker v. Coats, 168 N.W. 797, 41 S.D. 45.
Tenn.—Wilson v. Gadd, 4 Tenn.App. 582.
Tex.—Chicago, R. I. & G. Ry. Co. v. Carter, Com.App., 261 S.W. 135.
Jinks v. Whitaker, Civ.App., 195 S.W.2d 814, error refused no reversible error 198 S.W.2d 85, 145 Tex. 318—Perry v. Citizens Life Ins. Co., Civ.App., 163 S.W.2d 743—Washington Nat. Ins. Co. v. Anderson, Civ.App., 94 S.W.2d 263, error dismissed—Early v. Isaacson, Civ.App., 31 S.W.2d 515—El Paso Land Improvement Co. v. Crawford, Civ.App., 280 S.W. 914, reversed on other grounds, Com.App., 292 S.W. 518—White v. Bell, Civ. App., 242 S.W. 1082—Southwestern Portland Cement Co. v. Bustillos, Civ.App., 216 S.W. 268, dismissed for want of jurisdiction—Western Assur. Co. v. Hillyer-Deutsch-Jarratt Co., Civ.App., 167 S.W. 816.
Utah.—Wilson v. Oldroyd, 267 P.2d 759, 1 Utah 2d 362.
Va.—Lawson v. Southwestern Voluntary Ass'n, 191 S.E. 648, 168 Va. 294—Sydnor & Hundley v. Bonifant, 164 S.E. 403, 158 Va. 703—Bernstein v. Bord, 132 S.E. 698, 146 Va. 670—City of Norfolk v. Anthony, 86 S.E. 68, 117 Va. 777.
Wash.—Sandanger v. Carlisle Packing Co., 192 P. 1005, 112 Wash. 480, certiorari granted Carlisle Packing Co. v. Sandanger, 41 S.Ct. 320, 254 U.S. 628, 65 L.Ed. 446—Sibley v. Stetson & Post Lumber Co., 188 P. 389, 110 Wash. 204.
W.Va.—Dangerfield v. Akers, 33 S.E. 2d 140, 127 W.Va. 409.
Wis.—Sullivan v. Lutz, 194 N.W. 25, 181 Wis. 61.
4 C.J. p 855 note 82.

"The guiding principle for an appellate court is not what it may think the jury ought to have done, or what such court may think it would have done had it been sitting as a jury in the case, but whether as reasonable men the jury could have found such verdict from the evidence adduced."
Fla.—Pensacola Electric Co. v. Bissett, 52 So. 367, 59 Fla. 360.
4 C.J. p 856 note 83.

86.5 Ark.—Oviatt v. Garretson, 171 S.W.2d 287, 205 Ark. 792—Lloyd v. James, 128 S.W.2d 1019, 198 Ark. 255—Missouri Pac. R. Co. v. Dotson, 111 S.W.2d 566, 195 Ark. 286.
Cal.—Correia v. Van Camp Sea Food Co., 248 P.2d 81, 113 C.A.2d 71.
Colo.—Seifried v. Mosher, 268 P.2d 411, 129 Colo. 156—Bolten v. Gates, 100 P.2d 145, 105 Colo. 571.
Conn.—Toth v. Perry, 182 A. 464, 120 Conn. 680.
Ill.—Allendorf v. Elgin, J. & E. Ry. Co., 133 N.E.2d 288, 8 Ill.2d 164, certiorari denied Elgin, J. and E. Ry. Co. v. Allendorf, 77 S.Ct. 49, 352 U.S. 833, 1 L.Ed.2d 53, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170.
Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App. 2d 388—Smith v. Carter, 23 N.E.2d 738, 302 Ill.App. 235.
Iowa.—Malcor v. Johnson, 273 N.W. 145, 223 Iowa 644.
Mich.—In re Yokom's Estate, 38 N.W. 2d 909, 325 Mich. 472—Gleason v. Hanafin, 13 N.W.2d 196, 308 Mich. 1.
Mo.—Nance v. Atchison, T. & S. F. Ry. Co., 232 S.W.2d 547, 360 Mo. 980—Ford v. Louisville & N. R. Co., 196 S.W.2d 163, 355 Mo. 362.
Vosburg v. Smith, App., 272 S. W.2d 297—White v. Barkovitz, App., 254 S.W.2d 291—Spears v. Schantz, 246 S.W.2d 399, 241 Mo. App. 879.
N.H.—O'Brien v. Public Service Co., 58 A.2d 507, 95 N.H. 79.
N.J.—Barber v. Vaccaro, 108 A.2d 869, 32 N.J.Super. 573—Syle v. Freedley, 99 A.2d 541, 27 N.J. Super. 461.
Tex.—Missouri-Kansas-Texas R. Co. of Tex. v. Crouch, Civ.App., 273 S. W.2d 466—Dyer v. Sterett, Civ. App., 248 S.W.2d 234, error refused no reversible error—Hairrell v. Texas Prudential Ins. Co., Civ. App., 203 S.W.2d 689—Kansas City Southern Ry. Co. v. Chandler, Civ. App., 192 S.W.2d 304, refused no reversible error.
Va.—Barnes v. Bess, 197 S.E. 403, 171 Va. 1.
Wash.—Roellich v. Department of Labor and Industries, 148 P.2d 957, 20 Wash.2d 674.

86.10 Mich.—Weeks v. Hyatt, 78 N. W.2d 260, 346 Mich. 479—Pulford v. Mouw, 272 N.W. 713, 279 Mich. 376.

86.15 Ark.—St. Louis-San Francisco Ry. Co. v. Herndon, 129 S.W.2d 954, 198 Ark. 465—Lloyd v. James, 128 S.W.2d 1019, 198 Ark. 255—Missouri Pac. R. Co. v. Mitchell, 122 S.W.2d 544, 197 Ark. 400—Missouri Pac. R. Co. v. Henderson, 110 S.W.2d 516, 194 Ark. 884—Chicago, R. I. & P. Ry. Co. v. Manus, 100 S.W.2d 258, 193 Ark. 397.
Cal.—Clinkscale v. Germershausen, App., 302 P.2d 23—Boness v. Richardson Mineral Springs, 296 P.2d 581, 141 C.A.2d 251—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Freeland v. Jewel Tea Co., 258 P.2d 1032, 118 C.A.2d 764.

87. Colo.—Wright v. Forsyth, 243 P. 1108, 79 Colo. 71.
Morrison v. McCluer, 148 P. 880, 27 Colo.App. 264.
Tex.—Kerr v. State, Civ.App., 205 S. W. 474, rehearing denied 206 S.W. 363—State Mut. Life Ins. Co. of Rome, Ga., v. Long, Civ.App., 178 S.W. 778.
4 C.J. p 856 note 84.

View apparently to the contrary
Although all the evidence is the written testimony of a witness, who had died before the trial, the rule that, if there is any substantial evidence to sustain the verdict, it cannot be reviewed on appeal, obtains.
Mo.—Remick v. American Ins. Co. of Newark, App., 195 S.W. 1049.

Rule held inapplicable
Supreme court would not grant a new trial in action on ground that testimony of plaintiff and his mother was taken by depositions and jury did not hear and see the witnesses, even though rule permitting supreme court to determine questions of fact when fact-finding body has not seen or heard the witnesses were to extend to a jury finding, where plaintiff's case depended not merely on his own and his mother's depositions, but also on testimony given in open court by his brother and son.
Pa.—Grollman v. Metropolitan Life Ins. Co., 198 A. 10, 329 Pa. 270.

clusive on appeal applies to all civil actions,[87.2] including actions ex contractu,[87.4] suits based on insurance policies,[87.6] and actions in tort.[87.8] So, the rule and its limitations apply in negligence actions, including personal injury cases, death actions, and motor vehicle cases.[87.10] It follows that the appel-

87.2 Okl.—State ex rel. Brown v. Board of Education of Independent School Dist. "A," City of Anadarko, 152 P.2d 262, 194 Okl. 411.

87.4 Ala.—Homewood Dairy Products Co. v. Robinson, 48 So.2d 28, 254 Ala. 197, 22 A.L.R.2d 1059.
Ark.—Wood v. Smith, 275 S.W.2d 1, 224 Ark. 589.
Cal.—Potter v. Pacific Coast Lumber Co. of Cal., 234 P.2d 16, 37 C.2d 592.
Moore v. Satir, 207 P.2d 835, 92 C.A.2d 809.
Colo.—Reese v. McVittie, 200 P.2d 390, 119 Colo. 29.
D.C.—Ostrower v. Gichner, Inc., Mun. App., 120 A.2d 688.
Fla.—Edwards v. Doherty, 74 So.2d 686.
Ga.—Mendenhall v. Nalley, 59 S.E.2d 283, 81 Ga.App. 517.
Ind.—Mid-Continent Petroleum Corp. v. Starnes, 8 N.E.2d 411, 104 Ind. App. 190—Wolf v. Stickler, 8 N.E. 2d 98, 104 Ind.App. 395.
Kan.—Novascone v. Knott, 276 P.2d 332, 177 Kan. 86—Smith v. Reasor, 252 P.2d 627, 173 Kan. 876.
Mass.—Libby v. Smith, 200 N.E. 369, 293 Mass. 465.
Mo.—Guinn Inv. Co. v. Farmers Elevator Co., App., 156 S.W.2d 62—Schaeffer v. Reineke, App., 121 S. W.2d 213.
N.Y.—Reno v. Pfeil Cooperage, 15 N. Y.S.2d 633, 258 App.Div. 849.
Okl.—Foor Engineering Co. v. Gossett, 267 P.2d 558—Shelden v. Shinn, 239 P.2d 803, 206 Okl. 69—Bock v. Sypert, 239 P.2d 398, 205 Okl. 504—Home State Bank of Hobart v. Sullins, 178 P.2d 86, 198 Okl. 314—Finnegan v. Bays, 78 P. 2d 1062, 182 Okl. 548—Boswell v. Simpson, 76 P.2d 266, 182 Okl. 84—Tulsa Industrial Loan & Investment Co. v. Donaldson, 71 P.2d 720, 180 Okl. 572—Southwest Battery Corp. v. Mann, 66 P.2d 509, 179 Okl. 463—Mondie v. General Motors Acceptance Corp., 63 P.2d 708, 178 Okl. 584—Levy v. Tharrington, 62 P.2d 641, 178 Okl. 276.
Pa.—Harman v. Chambers, 57 A.2d 842, 358 Pa. 516.
Saul v. Kennedy, Com.Pl., 31 Berks Co. 308.
Tex.—Bradshaw v. McDonald, 216 S. W.2d 972, 147 Tex. 455.
Ginther v. Southwest Workover Co., Civ.App., 286 S.W.2d 291—Miller v. Latham, Civ.App., 276 S.W. 2d 858, error refused no reversible error—Dallas Hotel Co. v. Lackey, Civ.App., 203 S.W.2d 557, error refused no reversible error—Raynes v. Germany, Civ.App., 144 S.W.2d 981—McAllister v. City of Frost, Civ.App., 131 S.W.2d 975, error dismissed, judgment correct—Duncan v. Stevenson, Civ.App., 120 S.W. 2d 305—Hodges v. Cole, Civ.App., 117 S.W.2d 822—Texas & N. O. R. Co. v. Dingfelds & Balish, Civ.App., 114 S.W.2d 666, affirmed 133 S.W.2d 967, 134 Tex. 156.
Utah.—Patterson v. Blair, 257 P.2d 944.

87.6 Ark.—Orient Ins. Co. v. Cox, 238 S.W.2d 757, 218 Ark. 804, 26 A.L.R. 2d 799—American United Life Ins. Co. v. Goodman, 146 S.W.2d 907, 201 Ark. 634—Sovereign Camp, W. O. W., v. Sams, 108 S.W.2d 1089, 194 Ark. 557.
Cal.—Clark v. Metropolitan Life Ins. Co., 118 P.2d 919, 47 C.A.2d 773.
Ga.—Life & Cas. Ins. Co. of Tenn. v. Freemon, 56 S.E.2d 303, 80 Ga.App. 443.
Ill.—Pollock v. Connecticut Fire Ins. Co. of Hartford, 199 N.E. 816, 362 Ill. 313.
Ind.—Guardian Life Ins. Co. of America v. Barry, 32 N.E.2d 599, 109 Ind. App. 286—Prudential Ins. Co. of America v. Girton, 12 N.E.2d 379, 105 Ind.App. 52.
Kan.—Stafford v. Fidelity Hail Ins. Co., 173 P.2d 1022, 162 Kan. 75—Frazier v. Royal Life & Casualty Ass'n, 148 P.2d 503, 158 Kan. 533.
Ky.—Kentucky Farm Bureau Mut. Ins. Co. v. Norsworthy, 283 S.W.2d 374—Sovereign Camp, W. O. W., v. Alcock, 117 S.W.2d 938, 273 Ky. 734.
Mo.—Pettit v. United Benefit Life Ins. Co., App., 277 S.W.2d 857—Evans v. Great Northern Life Ins. Co., 167 S.W.2d 118, 237 Mo.App. 317—Volz v. Travelers Ins. Co., App., 161 S.W.2d 985—Roberts v. Woodmen Accident Co., 129 S.W.2d 1053, 233 Mo.App. 1058—Belsky v. Metropolitan Life Ins. Co., App., 124 S.W.2d 508—Fields v. Equitable Life Assur. Soc. of U. S., App., 118 S.W.2d 521—Williams v. American Life & Accident Ins. Co., App., 112 S.W.2d 909—Albert v. Metropolitan Life Ins. Co., App., 95 S.W. 2d 343.
Neb.—Carpenter v. Sun Indemnity Co., 293 N.W. 400, 138 Neb. 552.
N.D.—Svihovec v. Woodmen Accident Co., 285 N.W. 447, 69 N.D. 259.
Okl.—Bankers Sec. Life Ins. Co. v. Townsend, 292 P.2d 421—Provident Life & Accident Ins. Co. of Chattanooga, Tenn., v. Henson, 101 P. 2d 838, 187 Okl. 150—Prudential Ins. Co. of America v. Zak, 94 P.2d 889, 185 Okl. 556—Metropolitan Life Ins. Co. v. Richter, 78 P.2d 310, 182 Okl. 448—Metropolitan Life Ins. Co. v. Richter, 78 P.2d 307, 182 Okl. 446—American Nat. Ins. Co. v. Story, 63 P.2d 33, 178 Okl. 519.
Pa.—Heffron v. Prudential Ins. Co. of America, 19 A.2d 556, 144 Pa. Super. 307.
Tenn.—Henderson v. New York Life Ins. Co., 250 S.W.2d 11, 194 Tenn. 46.
Tex.—Casstevens v. Texas Standard Life Ins. Co., 155 S.W.2d 916, 137 Tex. 615.
De Borde v. Bryan, Civ.App., 253 S.W.2d 63, error refused no reversible error—Universal Life & Acc. Ins. Co. v. Steger, Civ.App., 153 S. W.2d 242—Gulf States Security Life Ins. Co. v. Edwards, Civ.App., 109 S.W.2d 1125, error dismissed—Union Life Ins. Co. v. Morris, Civ. App., 107 S.W.2d 1035.
Utah.—Bucher v. Equitable Life Assur. Soc. of U. S., 63 P.2d 604, 91 Utah 179—Ralston v. Metropolitan Life Ins. Co., 62 P.2d 1119, 90 Utah 496.
Wis.—Ruby v. Farmers Mut. Auto. Ins. Co., 79 N.W.2d 644, 274 Wis. 158.

87.8 Ala.—Frost v. Johnson, 54 So. 2d 897, 256 Ala. 383.
Colo.—Foster v. Howell, 220 P.2d 717, 122 Colo. 64—Lounder v. Jacobs, 205 P.2d 236, 119 Colo. 511.
Md.—Stannard v. McCool, 84 A.2d 862, 198 Md. 609.
Miss.—Hawkins v. Stringer, 38 So. 2d 454, 205 Miss. 121.
Mo.—Rauch v. Gas Service Co., App., 235 S.W.2d 420.
N.C.—Lassiter v. Greensboro-Fayetteville Bus Line, 5 S.E.2d 314, 216 N.C. 803.
Okl.—Ellison v. Walker, 281 P.2d 931—Kohler v. Campbell, 258 P.2d 1178—Portable Drilling Corp. v. Guinn, 226 P.2d 923, 204 Okl. 68—Argo Oil Co. v. Snouffer, 52 P.2d 803, 175 Okl. 382.
S.C.—Childers v. Judson Mills Store Co., 200 S.E. 770, 189 S.C. 224.
Tenn.—Smith v. Sloan, 225 S.W.2d 539, 189 Tenn. 368, rehearing denied 227 S.W.2d 2, 189 Tenn. 368—Jackson v. B. Lowenstein & Bros., 136 S.W.2d 495, 175 Tenn. 535.
Mitchell v. Farr, 222 S.W.2d 218, 32 Tenn.App. 200—Palmer v. Dehn, 198 S.W.2d 827, 29 Tenn.App. 597—Little Stores v. Isenberg, 172 S.W. 2d 13, 26 Tenn.App. 357.

87.10 Ariz.—Pacific Emp. Ins. Co. v. Morris, 275 P.2d 389, 78 Ariz. 24—Standard Oil Co. of California v. Shields, 119 P.2d 116, 58 Ariz. 239.
Ark.—Alldread v. Mills, 199 S.W.2d 571, 211 Ark. 99—Missouri Pac. R. Co. v. Eubanks, 139 S.W.2d 413, 200 Ark. 483—Railway Express Agency v. Gee, 125 S.W.2d 802, 197 Ark.

925—Albritton v. C. M. Ferguson & Son, 122 S.W.2d 620, 197 Ark. 436—McCord v. Bailey, 114 S.W.2d 840, 195 Ark. 862—Safeway Cab & Storage Co. v. Hamilton, 112 S.W.2d 973, 196 Ark. 1179.

Cal.—Shattuck v. St. Francis Hotel and Apartments, 60 P.2d 855, 7 C. 2d 358.

De Armond v. Turner, 297 P.2d 57, 141 C.A.2d 574—Zelayeta v. Pacific Greyhound Lines, 232 P.2d 572, 104 C.A.2d 716—Butcher v. Queen City Iron & Metal Co., 221 P.2d 265, 99 C.A.2d 25—Small v. Transcontinental & Western Air, 216 P.2d 36, 96 C.A.2d 408—Warren v. City of Los Angeles, 205 P. 2d 719, 91 C.A.2d 678—Thompson v. Held, 183 P.2d 711, 81 C.A.2d 275—Edwards v. McCormick, 181 P.2d 58, 79 C.A.2d 800—Tuderios v. Hertz Drivurself Stations, 160 P. 2d 554, 70 C.A.2d 192—Collier v. Los Angeles Ry. Co., 140 P.2d 206, 60 C.A.2d 169—Taylor v. Pacific Gas & Electric Co., 134 P.2d 12, 57 C.A.2d 11—Scaletta v. Silva, 126 P.2d 898, 52 C.A.2d 730—Thomas v. Studio Amusements, 123 P.2d 552, 50 C.A.2d 538—Johnson v. Western Air Express Corp., 114 P. 2d 688, 45 C.A.2d 614—Hamm v. San Joaquin & Kings River Canal Co., 111 P.2d 940, 44 C.A.2d 47—Montanya v. Brown, 88 P.2d 745, 31 C.A.2d 642—Jolley v. Clemens, 82 P.2d 51, 28 C.A.2d 55—Akers v. Cowan, 80 P.2d 143, 26 C.A.2d 694—Reichle v. Hazle, 71 P.2d 849, 22 C. A.2d 543—Von Arx v. City of Burlingame, 60 P.2d 305, 16 C.A.2d 29—White v. Barker Bros., 55 P.2d 248, 12 C.A.2d 164.

Conn.—Koops v. Gregg, 32 A.2d 653, 130 Conn. 185.

D.C.—Meyer v. Capital Transit Co., Mun.App., 32 A.2d 392.

Fla.—Glasser v. Leary, 67 So.2d 683—Margaret Ann Super Markets v. Scholl, 34 So.2d 238, 159 Fla. 748—Miami Transit Co. v. Karses, 200 So. 372, 146 Fla. 163.

Ga.—Grant v. McKiernan, 60 S.E.2d 794, 82 Ga.App. 82.

Ill.—Black v. White, 140 N.E.2d 736, 13 Ill.App.2d 134—Parrucci v. Kruse, 138 N.E.2d 91, 12 Ill.App.2d 30—Askey v. Kneubuehl, 120 N.E. 2d 57, 2 Ill.App.2d 601—Gillespie v. Sanitary Dist. of Chicago, 43 N.E. 2d 141, 315 Ill.App. 405—Herb v. Pitcairn, 29 N.E.2d 543, 306 Ill. App. 583, reversed on other grounds 36 N.E.2d 555, 377 Ill. 405.

Ind.—Lawson v. Cole, 115 N.E.2d 134, 124 Ind.App. 89—Wagner v. Sober, Inc., 86 N.E.2d 719, 119 Ind. App. 617, rehearing denied 87 N.E. 2d 888, 119 Ind.App. 617—D. Graff & Sons v. Williams, 61 N.E.2d 72, 115 Ind.App. 597—Conner v. Jones, 59 N.E.2d 577, 115 Ind.App. 660, rehearing denied 60 N.E.2d 534, 115 Ind.App. 660—Superior Meat Products v. Holloway, 48 N.E.2d 83, 113 Ind.App. 320.

Iowa.—Staples v. City of Spencer, 271 N.W. 200, 222 Iowa 1241.

Kan.—West v. Lear, 205 P.2d 910, 167 Kan. 222—Blankenship v. Kansas City, 135 P.2d 538, 156 Kan. 607—Taggart v. Yellow Cab Co. of Wichita, 131 P.2d 924, 156 Kan. 88—Duncan v. Branson, 110 P.2d 789, 153 Kan. 344.

La.—Macomber v. De Bardeleben Coal Co., 8 So.2d 624, 200 La. 633, certiorari denied De Bardeleben Coal Co. v. Macomber, 63 S.Ct. 61, 317 U.S. 661, 87 L.Ed. 532.

Roux v. Attardo, App., 93 So.2d 332.

Md.—Charlton Bros. Transp. Co. v. Garrettson, 51 A.2d 642, 188 Md. 85.

Mich.—Skrzycki v. Ritchie, 53 N.W. 2d 305, 333 Mich. 480—Wright v. Barron, 28 N.W.2d 278, 318 Mich. 409—Rule v. Giuglio, 7 N.W.2d 227, 304 Mich. 73, 145 A.L.R. 537—Sorenson v. Wegert, 3 N.W.2d 857, 301 Mich. 497—Cleven v. Griffin, 298 N.W. 482, 298 Mich. 139—Ehlers v. Barbeau, 289 N.W. 241, 291 Mich. 528—Guscinski v. Kenzie, 275 N.W. 820, 282 Mich. 204—Bates v. Franson, 267 N.W. 595, 276 Mich. 79.

Minn.—Fortier v. Newman, 78 N.W. 2d 382, 248 Minn. 69.

Miss.—Horn v. Guthrie, 21 So.2d 813—Gulf & S. I. R. Co. v. Bond, 179 So. 355, 181 Miss. 254, modified on other grounds 181 So. 741, 181 Miss. 254.

Mo.—Clark v. McKeone, 234 S.W.2d 574—Steckdaub v. Sparks, 231 S. W.2d 160—Mooney v. Terminal R. Ass'n of St. Louis, 186 S.W.2d 450, 353 Mo. 1080, certiorari denied 66 S.Ct. 28, 326 U.S. 723, 90 L.Ed. 428—Becker v. Aschen, 131 S.W.2d 533, 344 Mo. 1107.

Hillhouse v. Thompson, App., 240 S.W.2d 224, reversed on other grounds 243 S.W.2d 531, 362 Mo. 700—Simon v. Terminal R. Ass'n of St. Louis, App., 237 S.W.2d 244—Niedner v. Wabash R. Co., App., 219 S.W.2d 886—Barker v. Silverforb, App., 201 S.W.2d 408—Brooks v. City of Ste. Genevieve, App., 164 S.W.2d 164—Boyer v. Baldwin, App., 106 S.W.2d 21, opinion quashed on other grounds State ex rel. Baldwin v. Shain, 125 S.W.2d 41.

Mont.—Baatz v. Noble, 69 P.2d 579, 105 Mont. 59.

Neb.—Swinford v. Finck, 299 N.W. 227, 139 Neb. 886.

Nev.—Southern Pac. Co. v. Huyck, 128 P.2d 849, 61 Nev. 365.

N.J.—Gordon v. General Launderers, 18 A.2d 719, 126 N.J.Law 78.

N.M.—Bradley v. Johnson, 292 P.2d 325, 60 N.M. 453.

N.Y.—Patrick v. Rochester Transit Corp., 112 N.Y.S.2d 517, 279 App. Div. 1138, followed in 113 N.Y.S.2d 469, 279 App.Div. 1138—Gould v. Unadilla Valley Ry. Co., 105 N.Y.S. 2d 650, 278 App.Div. 998—McDonald v. Carpenter, 92 N.Y.S.2d 588, 276 App.Div. 791—Beach v. Leland, 71 N.Y.S.2d 564, 272 App.Div. 971—Owen v. Short, 70 N.Y.S.2d 163, 272 App.Div. 859—Korutz v. Central Market, 51 N.Y.S.2d 529, 268 App.Div. 941, affirmed 62 N.E.2d 233, 294 N.Y. 787—Marini v. City of New York, 35 N.Y.S.2d 507, 264 App.Div. 879—Liebman v. New York Telephone Co., 25 N.Y.S.2d 846, 261 App.Div. 967, reargument denied 28 N.Y.S.2d 157, 262 App. Div. 747—Griffing v. Town of Brookhaven, 24 N.Y.S.2d 365, 260 App.Div. 1041, reargument denied 28 N.Y.S.2d 712, 261 App.Div. 910—Ryan v. New York Cent. R. Co., 23 N.Y.S.2d 924, 260 App.Div. 770—Hutchek v. Gehrig, 23 N.Y.S.2d 590, 260 App.Div. 950, appeal denied 25 N.Y.S.2d 998, 261 App.Div. 827, appeal denied—Carey v. Nelson, 18 N.Y.S.2d 377, 259 App.Div. 764—Van Amburgh v. Adams, 18 N.Y.S.2d 95, 258 App.Div. 1090—Treacy v. F. W. Woolworth Co., 18 N.Y.S.2d 18, 258 App.Div. 1084, reargument denied 19 N.Y.S.2d 771, 259 App.Div. 818—Myles v. Reddy, 17 N.Y.S.2d 657, first case, 258 App. Div. 1062—MacClelland v. Swift & Co., 15 N.Y.S.2d 934, 258 App.Div. 815—La Belle v. Kazyaka, 15 N.Y. S.2d 645, 258 App.Div. 840—Bals v. Champlain Coach Lines, 15 N.Y.S. 2d 281, 258 App.Div. 722—Schmidt v. New York Telephone Co., 14 N. Y.S.2d 708, 258 App.Div. 767, reargument denied 15 N.Y.S.2d 815, 258 App.Div. 821, appeal denied—Rosenfeld v. G. X. Matthews Co., Inc., 9 N.Y.S.2d 858, 256 App.Div. 937, affirmed 27 N.E.2d 43, 282 N.Y. 755—Sprague v. Buell, 9 N.Y.S.2d 87, 256 App.Div. 893, followed in Hibbard v. Buell, 9 N.Y.S.2d 87, 256 App.Div. 893—Sontag v. Daniels & Kennedy, 8 N.Y.S.2d 553, 255 App. Div. 1012.

N.C.—White v. Coulbourn, 4 S.E.2d 449, 216 N.C. 799—Croom v. Petty, 2 S.E.2d 374, 215 N.C. 465.

Ohio.—Schwer v. New York, C. & St. L. R. Co., 117 N.E.2d 696, 161 Ohio St. 15.

Collins v. Zimmerman, App., 57 N.E.2d 245.

Okl.—Dumas v. Wagoner, 304 P.2d 991—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Clanton v. Chrisman, 51 P.2d 748, 174 Okl. 425.

Pa.—Zurcher v. Pittsburgh Rys. Co., 44 A.2d 581, 353 Pa. 212—Stopyra v. Ward Baking Co., 182 A. 361, 320 Pa. 260.

Reese v. Herr, 4 A.2d 195, 134 Pa.Super. 34.

Potter Title and Trust Co. v. Young, Com.Pl., 33 West.L.J. 57, affirmed 80 A.2d 76, 367 Pa. 239.

late court is bound by, and ordinarily will not disturb, a verdict or finding by the jury on the question of negligence,[87.12] or a verdict or finding of a jury with

R.I.—McAllister v. Chase, 13 A.2d 690, 65 R.I. 122.

S.C.—Rosamond v. Lucas-Kidd Motor Co., 189 S.E. 641, 182 S.C. 331.

Tenn.—Jackson v. B. Lowenstein & Bros., 136 S.W.2d 495, 175 Tenn. 535.

Olson v. Sharpe, 259 S.W.2d 867, 36 Tenn.App. 557—Nashville, C. & St. L. Ry. v. Hines, 94 S.W.2d 397, 20 Tenn.App. 1—Haire v. American Trust & Banking Co., 94 S.W.2d 59, 19 Tenn.App. 656.

Tex.—Buss v. Robison, Civ.App., 255 S.W.2d 339, error refused no reversible error—Miller v. Permenter, Civ.App., 234 S.W.2d 459, error refused no reversible error—Henwood v. Gilliam, Civ.App., 207 S.W.2d 904, error refused—Thompson v. Clement, Civ.App., 202 S.W.2d 341, error refused no reversible error—Phillips Petroleum Co. v. Thomas, Civ.App., 167 S.W.2d 571, error refused—Houston Packing Co. v. Benson, Civ.App., 114 S.W.2d 429—Paschall v. Gulf, C. & S. F. Ry. Co., Civ.App., 100 S.W.2d 183, modified on other grounds Campbell v. Paschall, 121 S.W.2d 593, 132 Tex. 226.

Va.—Butler v. Greenwood, 23 S.E.2d 217, 180 Va. 456—Virginia Electric & Power Co. v. Wright, 196 S.E. 580, 170 Va. 442—Yellow Cab Co. of Virginia v. Gulley, 194 S.E. 683, 169 Va. 611—Kent v. Miller, 189 S.E. 332, 167 Va. 422.

Wash.—Poling v. Charbonneau Packing Corp., 278 P.2d 375, 45 Wash.2d 845.

W.Va.—Riley v. West Virginia Northern R. Co., 51 S.E.2d 119, 132 W.Va. 208, certiorari denied West Virginia Northern R. Co. v. Riley, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113.

Wis.—Schiro v. Oriental Realty Co., 76 N.W.2d 355, 272 Wis. 537—Peurala v. Hurley, 46 N.W.2d 855, 258 Wis. 592—Prunty v. Vandenberg, 44 N.W.2d 246, 257 Wis. 469—Quinnell v. Bowen, 16 N.W.2d 415, 246 Wis. 16—Du Bois v. Johnson, 298 N.W. 590, 238 Wis. 161—Baird v. Edmonds, 276 N.W. 306, 226 Wis. 209.

Not lightly disregarded

The jury's determination of questions of fact in a personal injury action should not be lightly disregarded on appeal.

La.—Alford v. Lyons, 124 So. 690, 11 La.App. 670.

Absence of witness

In a personal injury action, failure of plaintiff to call as a witness in her behalf a physician who had treated her, and had been discharged as unsatisfactory, is not grounds for reversing judgment for her which was abundantly supported by positive testimony.

Mo.—Schroeder v. Wells, App., 277 S.W. 578.

Contradiction by physical facts

Where testimony of a witness in a civil action for personal injuries, tried to a jury, is contradicted and shown by physical facts in evidence to be impossible or false, verdict of jury based on such testimony should not be permitted to stand; but where there is other evidence not so affected by the physical facts, and which reasonably supports the finding of jury, verdict and judgment based thereon will not be disturbed on appeal.

Okl.—Oklahoma Ry. Co. v. Ivery, 204 P.2d 978, 201 Okl. 245.

Verdict held not result of passion, prejudice, or mistake

Mo.—Roberts v. Carter, App., 234 S.W.2d 324.

Neb.—Hamilton v. Omaha & Council Bluffs St. Ry. Co., 41 N.W.2d 139, 152 Neb. 328.

N.J.—Mazzi v. Stein, 77 A.2d 287, 10 N.J.Super. 446.

Wis.—Pietsch v. Groholski, 38 N.W.2d 500, 255 Wis. 302.

87.12 Ala.—Austin v. Tennessee Biscuit Co., 52 So.2d 190, 255 Ala. 573.

Ariz.—City of Phœnix v. Weedon, 226 P.2d 157, 71 Ariz. 259—Dennis v. Stukey, 294 P. 276, 37 Ariz. 299, rehearing denied 295 P. 971, 37 Ariz. 510.

Ark.—St. Louis S. F. Ry. Co. v. Perryman, 211 S.W.2d 647, 213 Ark. 550—Missouri Pac. R. Co. v. Jones, 162 S.W.2d 38, 204 Ark. 278—Harmon v. Ward, 149 S.W.2d 575, 202 Ark. 54—Bradley Lumber Co. of Arkansas v. Clanton, 147 S.W.2d 14, 201 Ark. 657—Jonesboro Coca-Cola Bottling Co. v. Holt, 110 S.W.2d 535, 194 Ark. 992—Missouri Pac. R. Co. v. Hinkle, 109 S.W.2d 433, 194 Ark. 751—Magnolia Petroleum Co. v. Saunders, 104 S.W.2d 1062, 193 Ark. 1080—Richards v. McCall, 58 S.W.2d 432, 187 Ark. 61—Wisconsin & Arkansas Lumber Co. v. Scott, 267 S.W. 780, 167 Ark. 84.

Cal.—Rose v. Melody Lane of Wilshire, 247 P.2d 335, 39 C.2d 481—Dingman v. A. F. Mattock Co., 104 P.2d 26, 15 C.2d 622—De Graf v. Anglo California Nat. Bank of San Francisco, 92 P.2d 899, 14 C.2d 87—Bellman v. San Francisco High School Dist., 73 P.2d 596, reheard 81 P.2d 894, 11 C.2d 576.

Bergan v. Ormsby, 281 P.2d 70, 131 C.A.2d 505—Pierce v. Black, 280 P.2d 913, 131 C.A.2d 521—Squillante v. Barr, 280 P.2d 216, 131 C.A.2d 175—Curland v. Los Angeles County Fair Ass'n, 258 P.2d 1063, 118 C.A.2d 691—Anderson v. San Joaquin County, 244 P.2d 75, 110 C.A.2d 703—Shivers v. Van Lobensels, 240 P.2d 635, 109 C.A.2d 286—Huyck v. Merritt, 240 P.2d 1, 108 C.A.2d 775—Fedler v. Hygelund, 235 P.2d 247, 106 C.A.2d 480—Flannery v. Koch, 228 P.2d 580, 103 C.A.2d 55—Howell v. Ducommon Metals & Supply Co., 225 P.2d 293, 101 C.A.2d 163—Butcher v. Queen City Iron & Metal Co., 221 P.2d 265, 99 C.A.2d 25—Cracolice v. Kramer, 221 P.2d 237, 99 C.A.2d 132—Ferrell v. Matranga, 207 P.2d 654, 92 C.A.2d 620—Warren v. City of Los Angeles, 205 P.2d 719, 91 C.A.2d 678—Collas v. Pasadena City Lines, 200 P.2d 77, 89 C.A.2d 93—Blythe v. City and County of San Francisco, 188 P.2d 40, 83 C.A.2d 125—Carpenter v. Gibson, 181 P.2d 953, 80 C.A.2d 269—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Alward v. Paola, 179 P.2d 5, 79 C.A.2d 1—Dougherty v. Lee, 168 P.2d 54, 74 C.A.2d 132—Weaver v. Landis, 151 P.2d 884, 66 C.A.2d 34—Megee v. Fasulis, 150 P.2d 281, 65 C.A.2d 94—McDevitt v. Rogers, 136 P.2d 323, 58 C.A.2d 307—Sanson v. Ross-Loos Medical Group, 134 P.2d 927, 57 C.A.2d 549—Bradley v. Pacific Employers Ins. Co., 127 P.2d 1007, 53 C.A.2d 619—Zwerin v. Riverside Cement Co., 126 P.2d 920, 52 C.A.2d 715—Hopkins v. Pacific Electric Ry. Co., App., 118 P.2d 872—Bigelow v. City of Ontario, 99 P.2d 298, 37 C.A.2d 198—Joseph v. Vogt, 95 P.2d 947, 35 C.A.2d 439—Purcell v. Goldberg, 93 P.2d 578, 34 C.A.2d 344—Sills v. Forbes, 91 P.2d 246, 33 C.A.2d 219—King v. Schumacher, 89 P.2d 466, 32 C.A.2d 172, certiorari denied 60 S.Ct. 123, 308 U.S. 593, 84 L.Ed. 496—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054—Sassano v. Roullard, 81 P.2d 213, 27 C.A.2d 372—Du Bois v. Owen, 60 P.2d 1019, 16 C.A.2d 552—Ross v. Bay City Transit Co., 56 P.2d 247, 12 C.A.2d 639—Kapper v. Harris, 52 P.2d 569, 10 C.A.2d 630—Wattson v. Dillon, App., 48 P.2d 143, affirmed 56 P.2d 220, 6 C.2d 33—Sinsabaugh v. Clark, 294 P. 462, 110 C.A. 340—Depaoli v. Claus, 293 P. 881, 110 C.A. 145—Enos v. Norton, 292 P. 276, 109 C.A. 19—Wyscur v. Davis, 209 P. 213, 58 C.A. 598.

Colo.—Landis v. McGowan, 165 P.2d 180, 114 Colo. 355—Leonard v. Bauer, 149 P.2d 376, 112 Colo. 247—Fogarty v. M. J. Beuchler & Son, 199 A. 550, 124 Conn. 325—Belledeau v. Connecticut Co., 149 A. 127, 110 Conn. 625, followed in Cava-

naugh v. Connecticut Co., 149 A. 131, 110 Conn. 698.

Fla.—Smith v. Cobb, 61 So.2d 378—S. A. Lynch Corp. v. Smith, 53 So.2d 532.

Ga.—Simmons v. Peek, 82 S.E.2d 23, 90 Ga.App. 146—Gatewood v. Vaughn, 72 S.E.2d 728, 86 Ga.App. 823—Lorig v. Brunson, 66 S.E.2d 268, 84 Ga.App. 558—Russell v. Bass, 62 S.E.2d 456, 82 Ga.App. 659—Southern Ry. Co. v. Blanton, 192 S.E. 437, 56 Ga.App. 232—Meriwether County v. Gilbert, 156 S.E. 472, 42 Ga.App. 500.

Idaho.—Graham v. Milsap, 290 P.2d 744, 77 Idaho 179—Bates v. Siebrand Bros. Circus & Carnival, 231 P.2d 747, 71 Idaho 318—Simmons v. Trowbridge, 202 P.2d 1085, 69 Idaho 79—Cogswell v. C. C. Anderson Stores Co., 192 P.2d 383, 68 Idaho 205—O'Connor v. Meyer, 154 P.2d 174, 66 Idaho 15—Nelson v. Inland Motor Freight Co., 92 P.2d 790, 60 Idaho 443.

Ill.—Bonnier v. Chicago, B. & Q. R. Co., 119 N.E.2d 254, 2 Ill.2d 606, certiorari denied Chicago, B. & Q. R. Co. v. Bonnier, 75 S.Ct. 53, 348 U.S. 830, 99 L.Ed. 655—Walden v. Chicago & N. W. Ry. Co., 104 N.E.2d 240, 411 Ill. 378.

Hulke v. International Mfg. Co., 142 N.E.2d 717, 14 Ill.App.2d 5—Parker v. Illinois Terminal R. Co., 104 N.E.2d 119, 345 Ill.App. 604—Rothfield v. St. Louis Bath House Corp., 86 N.E.2d 897, 338 Ill.App. 200—Peterson v. Hendrickson, 81 N.E.2d 266, 335 Ill.App. 223—W. C. Norris Mfg. Co. v. Baltimore & O. R. Co., 77 N.E.2d 434, 333 Ill.App. 247—Hayes v. New York Cent. R. Co., 67 N.E.2d 215, 328 Ill.App. 631—Gore v. O'Keefe Bros. Co., 280 Ill.App. 163—Bremer v. Lake Erie & W. R. Co., 234 Ill.App. 105, affirmed 148 N.E. 862, 318 Ill. 11, 41 A.L.R. 1345.

Ind.—Danner v. Marquiss, 33 N.E.2d 511, 218 Ind. 441.

Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 481.

Iowa.—Traynor v. Keefe Const. Co., 202 N.W. 218, 199 Iowa 575.

Kan.—Isle v. Kaw Transport Co., 152 P.2d 827, 159 Kan. 110—Fishburn v. International Harvester Co., 138 P.2d 471, 157 Kan. 43—McKenzie v. Ruggles Const. Co., 284 P. 407, 129 Kan. 759.

La.—Boylan v. New Orleans Ry. & Light Co., 71 So. 360, 139 La. 185, Ann.Cas.1918A 287.

Washington Fire & Marine Ins. Co. v. Bradford, App., 96 So.2d 332—Rachal v. Texas & P. Ry. Co., App., 61 So.2d 525—Bosarge v. Spiess & Co., App., 145 So. 21.

Me.—Robbins v. Carter, 72 A.2d 453, 145 Me. 392—Chaisson v. Williams, 156 A. 154, 130 Me. 341.

Mass.—Boyd v. Boston Elevated Ry. Co., 112 N.E. 607, 224 Mass. 199.

Mich.—Wright v. Barron, 28 N.W.2d 278, 318 Mich. 409—Grand Trunk Western R. Co. v. Lovejoy, 7 N.W. 2d 212, 304 Mich. 35.

Minn.—Skinner v. Neubauer, 74 N.W. 2d 656, 246 Minn. 291—Hagsten v. Simberg, 44 N.W.2d 611, 232 Minn. 160—Hanse v. St. Paul City Ry. Co., 14 N.W.2d 473, 217 Minn. 432—Olson v. Thake, 300 N.W. 602, 211 Minn. 231—Norling v. Stempf, 293 N.W. 250, 208 Minn. 143—Smith v. Ostrov, 292 N.W. 745, 208 Minn. 77—Zeuli v. Foote, Schulze & Co., 153 N.W. 310, 130 Minn. 184.

Miss.—Supreme Instruments Corporation v. Lehr, 1 So.2d 242, 190 Miss. 600—Adams v. Hicks, 178 So. 484, 181 Miss. 165.

Mo.—Thompson v. Thompson, 240 S. W.2d 137, 362 Mo. 73—Ford v. Wabash Ry. Co., 300 S.W. 769, 318 Mo. 723—Morton v. Southwestern Telegraph & Telephone Co., 217 S.W. 831, 280 Mo. 360.

Fuzzell v. Williams, App., 288 S. W.2d 372—Wilkey v. Rouse Const. Co., 28 S.W.2d 674, 224 Mo.App. 495—Boone v. City of St. Joseph, App., 1 S.W.2d 227.

Mont.—Tiddy v. City of Butte, 65 P. 2d 605, 104 Mont. 202.

Neb.—Ulrich v. Batchelder, 10 N.W. 2d 637, 143 Neb. 697—Bonacci v. Cerra, 279 N.W. 173, 134 Neb. 476—Potach v. Hrauda, 271 N.W. 795, 132 Neb. 288.

N.H.—O'Brien v. Public Service Co., 58 A.2d 507, 95 N.H. 79.

N.J.—Mormelo v. Deakman-Well Co., 69 A.2d 212, 5 N.J.Super. 352.

N.M.—Tuso v. Markey, 294 P.2d 1102, 61 N.M. 77—Madsen v. Read, 273 P. 2d 845, 58 N.M. 567—Chandler v. Battenfield, 233 P.2d 1047, 55 N.M. 361—Mares v. New Mexico Public Service Co., 82 P.2d 257, 42 N.M. 473.

N.Y.—Davis v. Long Island R. Co., 95 N.E.2d 700, 301 N.Y. 450—Tapley v. Ross Theatre Corporation, 9 N. E.2d 812, 275 N.Y. 144.

Baillargeon v. Jacques, 88 N.Y.S. 2d 357, 275 App.Div. 870, motion denied 87 N.E.2d 685, 299 N.Y. 792—De Rosa v. Binghamton Taxicab Co., 44 N.Y.S.2d 664, 266 App.Div. 1044—Smarsch v. Bayonne-Staten Island Ferries, 32 N.Y.S.2d 564, 263 App.Div. 901—Pizzurro v. Hackett, 32 N.Y.S.2d 516, 263 App.Div. 900—Burlingame Motors Corp. v. Thurber, 31 N.Y.S.2d 223, 263 App.Div. 781, reargument denied Shields v. Thurber, 32 N.Y.S.2d 806, 263 App. Div. 909—Levy v. City of New York, 13 N.Y.S.2d 118, 257 App.Div. 966—Cunningham v. Woolco Realty Corp., 9 N.Y.S.2d 473, 256 App.Div. 842—Heyen v. Radio City, 292 N.Y. S. 531, 249 App.Div. 913—Mattison v. Bawtinhimer, 280 N.Y.S. 624, 244 App.Div. 673—Vollstedt v. Joseph A. Mollar, Inc., 265 N.Y.S. 552, 238 App.Div. 705.

N.C.—De Weese v. Belk's Dept. Store, 63 S.E.2d 538, 233 N.C. 281—Robinson v. Biltmore Dairy Farms, 193 S.E. 731, 212 N.C. 834—Saunders v. Fearing, 192 S.E. 684, 212 N.C. 832—Garrett v. Holland Furnace Co., 191 S.E. 510, 211 N.C. 746.

N.D.—Skramstad v. Miller, 49 N.W.2d 652, 78 N.D. 450—Schultz v. Winston & Newell Co., 283 N.W. 69, 68 N.D. 674.

Ohio.—Mills v. City of Cleveland, 117 N.E.2d 471, 97 Ohio App. 78.

Okl.—Berg v. Bryant, 305 P.2d 517—Duncan Bros. v. Robinson, 294 P. 2d 822—Hayes v. Kay, 290 P.2d 411—Elam v. Loyd, 204 P.2d 280, 201 Okl. 222—Maloney v. Wallis, 151 P. 2d 789, 194 Okl. 364—Coker v. Moose, 68 P.2d 504, 180 Okl. 234.

Or.—Fisher v. Reilly, 294 P.2d 615, 207 Or. 7—Cook v. Kinzua Pine Mills Co., 293 P.2d 717, 207 Or. 34—Parker v. Pettit, 138 P.2d 592, 171 Or. 481—Bennett v. City of Portland, 265 P. 433, 124 Or. 691—Vale v. Campbell, 263 P. 400, 123 Or. 632.

Pa.—Smith v. Wistar, 194 A. 486, 327 Pa. 419—Rosemiller v. Biswanger, 182 A. 383, 320 Pa. 259—Harkin v. Toy, 122 A. 174, 278 Pa. 24.

Woodring v. City of Easton, 164 A. 921, 108 Pa.Super. 431—Girard Coal Co. v. Finnessey, 97 Pa.Super. 341.

Clayton v. McAlpin, 32 Pa.Dist. & Co. 464.

Bekelja v. James E. Strates Shows, Inc., 53 Dauph.Co. 141—Cahall v. Shea, Com.Pl., 34 Del.Co. 374—Phillips v Aronimink Transp. Co., Com.Pl., 28 Del.Co. 467.

S.D.—Grant v. Matson, 3 N.W.2d 118, 68 S.D. 402.

Tenn.—Simpkins v. Manners, 236 S. W.2d 984, 34 Tenn.App. 244—Nashville, C. & St. L. Ry. v. Hines, 94 S. W.2d 397, 20 Tenn.App. 1.

Tex.—Horton & Horton v. House, Com.App., 29 S.W.2d 984—Galveston, H. & S. A. Ry. Co. v. Price, Com.App., 240 S.W. 524, rehearing denied.

Brown v. Panhandle & Santa Fe Ry. Co., Civ.App., 294 S.W.2d 223, error refused no reversible error—Texas & P. Ry. Co. v. Midkiff, Civ. App., 275 S.W.2d 841—Socony-Vacuum Oil Co. v. Aderhold, Civ.App., 230 S.W.2d 834, affirmed in part and reformed in part on other grounds 240 S.W.2d 751, 150 Tex. 292—Texas Bus Lines v. Whatley, Civ.App., 210 S.W.2d 626, error refused no reversible error—Texas & P. Ry. Co. v. Day, Civ.App., 193 S.W.2d 722, reversed on other grounds 197 S.W.2d 332, 145 Tex. 277—Gulf, C. & S. F. Ry. Co. v. Bouchillon, Civ. App., 186 S.W.2d 1006, refused for want of merit—Dallas Ry. & Terminal Co. v. Glenn, Civ.App., 144 S.W.2d 961, error dismissed, judgment correct—Lewis v. Martin, Civ. App., 120 S.W.2d 910, error refused

respect to last clear chance,[87.14] willful or wanton misconduct,[87.16] or comparative negligence as between plaintiff and defendant,[87.18] although verdicts finding negligence are as much the subjects of review in the appellate court as verdicts for any other cause of action;[87.20] and in order to support a finding of negligence, the record must disclose substantial evidence which tends to prove negligence or facts from which an inference of negligence may reasonably be drawn.[87.22]

Likewise, the general rule precluding interference by the appellate court with a fact determination of the jury supported by evidence applies with respect to findings as to scope or course of employment,[87.24] proximate cause,[87.26] with regard to assumption of

—Paschall v. Gulf, C. & S. F. Ry. Co., Civ.App., 100 S.W.2d 183, modified Campbell v. Paschall, 121 S.W. 2d 593, 132 Tex. 226—Mays v. Smith, Civ.App., 95 S.W.2d 1342, error dismissed—Texas & P. Ry. Co. v. Jenkins, Civ.App., 26 S.W.2d 305—Veazey v. Galveston, H. & S. A. Ry. Co., Civ.App., 290 S.W. 283—Crews v. Schaff, Civ.App., 250 S.W. 749—North Texas Gas Co. v. Young, Civ.App., 220 S.W. 254, dismissed for want of jurisdiction.

Utah.—Wooton v. Dragon Consol. Mining Co., 181 P. 593, 54 Utah 459.

Va.—Rives v. Bolling, 21 S.E.2d 775, 180 Va. 124—Miller v. Jones, 6 S.E. 2d 607, 174 Va. 336—Southern Ry. Co. v. Giles, 192 S.E. 772, 169 Va. 218—Jones v. Virginia Electric & Power Co., 151 S.E. 133, 153 Va. 704—Roberts v. Southern Ry. Co., 145 S.E. 255, 151 Va. 815—Atlantic Coast Line R. Co. v. Wheeler, 132 S.E. 517, 147 Va. 1, reheard 136 S.E. 570, 147 Va. 1.

Wash.—Fay v. Allied Stores Corp., 262 P.2d 189, 43 Wash.2d 512—Grapp v. Peterson, 168 P.2d 400, 25 Wash.2d 44—Hauswirth v. Pom-Arleau, 119 P.2d 674, 11 Wash.2d 354—Davidson v. Huerby, 100 P.2d 1035, 3 Wash.2d 460—Blessing v. Camas Prarie R. Co., 100 P.2d 416, 3 Wash.2d 266—Cushman v. Standard Oil Co. of California, 260 P. 996, 145 Wash. 481.

W.Va.—Stone v. Rudolph, 32 S.E.2d 742, 127 W.Va. 335—Webb v. Brown & Williamson Tobacco Co., 2 S.E.2d 898, 121 W.Va. 115.

Wis.—Wells v. Dairyland Mut. Ins. Co., 80 N.W.2d 380, 274 Wis. 505—Carlsen v. Hardware Mut. Cas. Co., 39 N.W.2d 442, 255 Wis. 407.

4 C.J. p 850 note 51 [b]—43 C.J. p 1324 note 51 [a].

Legal weight

There is no distinction as a matter of law in legal weight to be given to finding of negligence per se as distinguished from finding of negligence by jury.

Ga.—Tyson v. Shoemaker, 65 S.E.2d 163, 208 Ga. 28.

Act not pleaded

In determining whether there was legal evidence to support the verdict, the supreme court can consider no negligent act other than those pleaded.

Or.—Martini v. Oregon-Washington R. & Nav. Co., 144 P. 104, 78 Or. 283.

Proximate cause

In determining on appeal whether a negligent act is proximate cause of an injury, only facts will be considered, and findings that defendant was negligent and exonerating plaintiff from contributory negligence will be given no weight.

Tex.—Springall v. Fredericksburg Hospital & Clinic, Civ.App., 225 S. W.2d 232.

87.14 D.C.—Amdur v. Jacobsen, 18 F.2d 831, 57 App.D.C. 181.

Va.—Slate v. Saul, 40 S.E.2d 171, 185 Va. 700.

4 C.J. p 850 note 51 [d].

87.16 Ill.—Aldridge v. Morris, 86 N. E.2d 143, 337 Ill.App. 369—Pittman v. Duggan, 84 N.E.2d 701, 336 Ill. App. 502—Baumgardner v. Boyer, 51 N.E.2d 784, 320 Ill.App. 438.

Or.—Cook v. Kinzua Pine Mills Co., 293 P.2d 717, 207 Or. 34.

87.18 W.Va.—Tawney v. Kirkhart, 44 S.E.2d 634, 130 W.Va. 550.

Wis.—Paulson v. Madison Newspapers, Inc., 80 N.W.2d 421, 274 Wis. 355—Stevens v. Farmers Mut. Auto. Ins. Co., 66 N.W.2d 668, 268 Wis. 25—Quady v. Sickl, 51 N.W. 2d 3, 260 Wis. 348, rehearing denied 52 N.W.2d 134, 260 Wis. 348—Crawley v. Hill, 34 N.W.2d 123, 253 Wis. 294.

It is only in an exceptional case that the supreme court will disturb a comparison of negligence made by a jury.

Wis.—Wells v. Dairyland Mut. Ins. Co., 80 N.W.2d 380, 274 Wis. 505—Home Fire & Marine Ins. Co. v. Farmers Mut. Auto. Ins. Co., 79 N. W.2d 834, 274 Wis. 210.

87.20 N.Y.—Ernst v. Hudson River R. Co., 24 How.Pr. 97, 104.

87.22 Ohio.—Hetrick v. Marion-Reserve Power Co., 48 N.E.2d 103, 141 Ohio St. 347.

87.24 Ark.—Fooks v. Williams, 168 S.W.2d 193, 205 Ark. 119.

Cal.—Tarasco v. Moyers, 185 P.2d 86, 81 C.A.2d 804—Gayton v. Pacific Fruit Express Co., 15 P.2d 217, 217 C.A. 50.

Conn.—De Nezzo v. General Baking Co., 138 A. 127, 106 Conn. 396.

Ind.—Great American Tea Co. v. Van Buren, 38 N.E.2d 580, 218 Ind. 462. Van Drake v. Thomas, 38 N.E.2d 878, 110 Ind.App. 586.

Okl.—Anthony v. Colvin, 130 P.2d 819, 191 Okl. 476, rehearing denied 145 P.2d 384, 191 Okl. 476.

87.26 Cal.—Barbieri v. Law, 287 P. 464, 209 C. 429.

Hawke v. Burns, 294 P.2d 1008, 140 C.A.2d 158—Khan v. Southern Pac. Co., 282 P.2d 78, 132 C.A.2d 410—Shivers v. Van Lobensels, 240 P.2d 635, 109 C.A.2d 286—Jones v. Harris, 231 P.2d 561, 104 C.A.2d 347—Flannery v. Koch, 228 P.2d 580, 103 C.A.2d 55—Blythe v. City and County of San Francisco, 188 P.2d 40, 83 C.A.2d 125—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Murphy v. St. Claire Brewing Co., 107 P.2d 273, 41 C.A.2d 535—Du Bois v. Owen, 60 P.2d 1019, 16 C.A. 2d 552—Ross v. Bay City Transit Co., 56 P.2d 247, 12 C.A.2d 639—Moore v. Re, 22 P.2d 45, 131 C.A. 557—Hofstedt v. Southern Pac. Co., App., 1 P.2d 470—Sinsabaugh v. Clark, 294 P. 462, 110 C.A. 340—Olden v. Babicora Development Co., 290 P. 1062, 107 C.A. 399—Wong Kit v. Crescent Creamery Co., 262 P. 481, 87 C.A. 563.

Ga.—Gatewood v. Vaughn, 72 S.E. 2d 728, 86 Ga.App. 823—Lorig v. Brunson, 66 S.E.2d 268, 84 Ga.App. 558—Meriwether County v. Gilbert, 156 S.E. 472, 42 Ga.App. 500.

Ind.—Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 481.

Kan.—Baker v. Western Cas. & Sur. Co., 190 P.2d 850, 164 Kan. 376.

Mo.—Mooney v. Terminal R. Ass'n of St. Louis, 186 S.W.2d 450, 353 Mo. 1080, certiorari denied 66 S.Ct. 28, 326 U.S. 723, 90 L.Ed. 428—Foster v. Kansas City, C., C. & S. J. Ry. Co., 26 S.W.2d 770, 325 Mo. 18.

Grotjan v. Thompson, App., 140 S.W.2d 706—Wilkey v. Rouse Const. Co., 28 S.W.2d 674, 224 Mo. App. 495.

N.Y.—Smith v. Board of Education of Van Hornesville Central School, Dist. No. 1, Town of Stark, 8 N.Y. S.2d 694, 255 App.Div. 924.

Ohio.—Marmorstein v. Schuck, 163 N.E. 218, 29 Ohio App. 145.

Or.—Kukacka v. Rock, 61 P.2d 297, 154 Or. 542.

risk in actions based on negligence,[87.28] or as to contributory negligence;[87.30] and in order to estab-

Tex.—Missouri-Kansas-Texas R. Co. v. Evans, 250 S.W.2d 385, 151 Tex. 340.

Miller v. Tilton, Civ.App., 289 S.W.2d 426—Texas & P. Ry. Co. v. Midkiff, Civ.App., 275 S.W.2d 841—Gulf, C. & S. F. Ry. Co. v. Bouchillon, Civ.App., 186 S.W.2d 1006, refused for want of merit—Akers v. Epperson, Civ.App., 172 S.W.2d 512, certified question answered 171 S.W.2d 483, 141 Tex. 189, 156 A.L.R. 1028—El Paso Electric Co. v. Gregston, Civ.App., 170 S.W.2d 515—Luck v. Buffalo Lakes, Civ.App., 144 S.W.2d 672, error dismissed, judgment correct—S. Blickman, Inc., v. Chilton, Civ.App., 114 S.W.2d 646—North American Accident Ass'n v. Adams, Civ.App., 32 S.W.2d 525—Lanius v. Panhandle & S. F. Ry. Co., Civ.App., 7 S.W.2d 1099.

Wash.—Lund v. Western Union Telegraph Co., 74 P.2d 220, 192 Wash. 579.

W.Va.—Wilson v. Edwards, 77 S.E.2d 164, 138 W.Va. 613.

87.28 Ark.—Bradley Lumber Co. of Arkansas v. Clanton, 147 S.W.2d 14, 201 Ark. 657—Houston Oil Co. of Texas v. Phillips, 39 S.W.2d 702, 183 Ark. 1004.

Cal.—Thomas v. Southern Pac. Co., 2 P.2d 544, 116 C.A. 126, certiorari denied Southern Pac. Co. v. Thomas, 52 S.Ct. 265, 284 U.S. 689, 76 L.Ed. 582.

Mo.—Kidd v. Chicago, R. I. & P. Ry. Co., 274 S.W. 1079, 310 Mo. 1, certiorari denied Chicago, R. I. & P. Ry. Co. v. Kidd, 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424.

Okl.—Public Service Co. v. Sonagerra, 253 P.2d 169, 208 Okl. 95—City of Shawnee v. Faulkner, 240 P.2d 100, 205 Okl. 647—Alexander v. Beaver, 50 P.2d 392, 174 Okl. 123—Tankersley v. Ferrin, 238 P. 853, 113 Okl. 68—St. Louis-San Francisco Ry. Co. v. Wheeler, 235 P. 498, 108 Okl. 139—St. Louis-San Francisco Ry. Co. v. Rundell, 235 P. 491, 108 Okl. 132—Davis v. Hagen, 233 P. 671, 106 Okl. 167—Wichita Falls & N. W. Ry. Co. v. Groves, 196 P. 677, 81 Okl. 34.

Wis.—Zoellner v. Kaiser, 296 N.W. 611, 237 Wis. 299.

4 C.J. p 850 note 51 [e].

87.30 U.S.—Chicago & E. I. Ry. Co. v. Divine, C.C.A.Ind., 39 F.2d 537, certiorari denied 50 S.Ct. 464, 281 U.S. 765, 74 L.Ed. 1173.

Ariz.—Scott v. Scott, 252 P.2d 571, 75 Ariz. 116—Thornburg v. Elgas, 228 P.2d 448, 71 Ariz. 400—City of Phœnix v. Weedon, 226 P.2d 157, 71 Ariz. 259—City of Phœnix v. Mullen, 174 P.2d 422, 65 Ariz. 70—Campbell v. English, 110 P.2d 219, 56 Ariz. 549—S. A. Gerrard Co. v. Couch, 29 P.2d 151, 43 Ariz. 57.

Ark.—Jonesboro Coca-Cola Bottling Co. v. Holt, 110 S.W.2d 535, 194 Ark. 992—Richards v. McCall, 58 S.W.2d 432, 187 Ark. 61.

Cal.—Hudson v. Rainville, 297 P.2d 434, 46 C.2d 474—Oettinger v. Stewart, 148 P.2d 19, 24 C.2d 133, 156 A.L.R. 1221—Dingman v. A. F. Mattock Co., 104 P.2d 26, 15 C.2d 622—Lindemann v. San Joaquin Cotton Oil Co., 55 P.2d 870, 5 C.2d 480—Gerdes v. Pacific Gas & Electric Co., 27 P.2d 365, 219 C. 459, 90 A.L.R. 1071.

Hawke v. Burns, 294 P.2d 1008, 140 C.A.2d 158—Powell v. Bartmess, 294 P.2d 150, 139 C.A.2d 394—Mendelson v. Peton, 287 P.2d 378, 135 C.A.2d 390—Pierce v. Black, 280 P.2d 913, 131 C.A.2d 521—Squillante v. Barr, 280 P.2d 216, 131 C.A.2d 175—Bady v. Detwiler, 273 P.2d 941, 127 C.A.2d 321—Cohen v. Hunter, 222 P.2d 93, 99 C.A.2d 464—Butcher v. Queen City Iron & Metal Co., 221 P.2d 265, 99 C.A.2d 25—Fresno City Lines v. Herman, 217 P.2d 987, 97 C.A.2d 366—Rios v. Bennett, 200 P.2d 73, 88 C.A.2d 919—Salsberry v. Smith, 192 P.2d 73, 85 C.A.2d 122—Blythe v. City and County of San Francisco, 188 P.2d 40, 83 C.A.2d 125—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Le Blanc v. Browne, 177 P.2d 347, 78 C.A.2d 63—Freeman v. Nickerson, 174 P.2d 688, 77 C.A.2d 40—Foerster v. Direito, 170 P.2d 986, 75 C.A.2d 323—Tuderios v. Hertz Drivurself Stations, 160 P.2d 554, 70 C.A.2d 192—McSweeney v. East Bay Transit Co., 141 P.2d 787, 60 C.A.2d 807—Mahar v. Mackay, 132 P.2d 42, 55 C.A.2d 869—Williams v. Layne, 127 P.2d 582, 53 C.A.2d 81—Scaletta v. Silva, 126 P.2d 898, 52 C.A.2d 730—Hall v. Bakersfield Community Hotel Corp., 125 P.2d 889, 52 C.A.2d 158—Callison v. Dondero, 124 P.2d 852, 51 C.A.2d 403—Costerisan v. Los Angeles Ry. Corp., 122 P.2d 598, 50 C.A.2d 143—McNown v. Pacific Freight Lines, 122 P.2d 582, 50 C.A.2d 221—Hontou v. Orvis, 109 P.2d 395, 42 C.A.2d 585—Hall v. Kaufman, 99 P.2d 339, 37 C.A.2d 264—Naudack v. Canini, 85 P.2d 510, 29 C.A.2d 687—Sassano v. Roullard, 81 P.2d 213, 27 C.A.2d 372—Reeves v. Lapinta, 78 P.2d 465, 25 C.A.2d 680—Mitrovitch v. Graves, 78 P.2d 227, 25 C.A.2d 649—Reichle v. Hazie, 71 P.2d 849, 22 C.A.2d 543—Brush v. Kurstin, 53 P.2d 777, 11 C.A.2d 258—Kapper v. Harris, 52 P.2d 569, 10 C.A.2d 630—Switzer v. Mullally, 46 P.2d 215, 7 C.A.2d 444—Enos v. Norton, 292 P. 276, 109 C.A. 19—Cherry v. Delaney, 290 P. 895, 107 C.A. 655—Neilson v. Walker, 286 P. 1091, 105 C.A. 23—Swartz v. Acme Express & Drayage Co., 283 P. 358, 102 C.A. 615—Brush v. Pacific Electric Ry. Co., 208 P. 997, 58 C.A. 501.

Fla.—Smith v. Cobb, 61 So.2d 378—S. A. Lynch Corp. v. Smith, 53 So. 2d 532.

Ga.—Western & Atlantic R. R. v. Mathis, 10 S.E.2d 457, 63 Ga.App. 172—Carter v. Powell, 195 S.E. 466, 57 Ga.App. 360—Meriwether County v. Gilbert, 156 S.E. 472, 42 Ga. App. 500.

Idaho.—Bates v. Siebrand Bros. Circus & Carnival, 231 P.2d 747, 71 Idaho 318—Simmons v. Trowbridge, 202 P.2d 1085, 69 Idaho 79.

Ill.—Illinois Transit Lines v. Packer City Transit Lines, 132 N.E.2d 433, 9 Ill.App.2d 161—Ritgers v. City of Gillespie, 113 N.E.2d 215, 350 Ill.App. 485—Peterson v. Hendrickson, 81 N.E.2d 266, 335 Ill.App. 223—W. C. Norris Mfg. v. Baltimore & O. R. Co., 77 N.E.2d 434, 333 Ill. App. 247—Moser v. East St. Louis & Interurban Water Co., 62 N.E.2d 558, 326 Ill.App. 542—Opat v. City of Chicago, 30 N.E.2d 940, 307 Ill. App. 671—Brett v. Century Petroleums, 23 N.E.2d 359, 302 Ill.App. 99—Gore v. O'Keefe Bros. Co., 280 Ill.App. 163—Brant v. Chicago & A. R. Co., 214 Ill.App. 126, affirmed 128 N.E. 732, 294 Ill. 606.

Ind.—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163—Michigan City v. Werner, 114 N.E. 636, 186 Ind. 149.

Chicago & E. I. R. Co. v. Alexander, 125 N.E.2d 171, 126 Ind.App. 75—Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 481—McKinnon v. Parrill, 38 N.E.2d 1008, 111 Ind. App. 343—Chicago & Erie R. Co. v. Patterson, 34 N.E.2d 960, 110 Ind.App. 94—Denmure v. Bray, 27 N.E.2d 135, 108 Ind.App. 60—Coats v. Strawmeyer, 21 N.E.2d 433, 107 Ind.App. 102.

Kan.—Schumock v. Meerian, 259 P. 2d 173, 175 Kan. 8—Baker v. Western Cas. & Sur. Co., 190 P.2d 850, 164 Kan. 376.

Ky.—Standard Elkhorn Coal Co. v. Davis, 2 S.W.2d 670, 222 Ky. 773.

Me.—Robbins v. Carter, 72 A.2d 453, 145 Me. 392.

Md.—East Coast Freight Lines v. Mayor and City Council of Baltimore, 58 A.2d 290, 190 Md. 256, 2 A.L.R.2d 386.

Mass.—Boyd v. Boston Elevated Ry. Co., 112 N.E. 607, 224 Mass. 199.

Minn.—Skinner v. Neubauer, 74 N.W. 2d 656, 246 Minn. 291—Blaske v. Northern Pac. Ry. Co., 37 N.W.2d 758, 228 Minn. 444—Hanse v. St. Paul City Ry. Co., 14 N.W.2d 473, 217 Minn. 432—Dennis v. Coleman's Parking & Greasing Stations, 2 N. W.2d 33, 211 Minn. 597.

Miss.—Standard Oil Co. v. Crane, 23 So.2d 297, 199 Miss. 69.

lish contributory negligence as against the verdict, the appellate court must be able to say that there is no substantial conflict in the evidence, and that all reasonable men could draw only the inference that plaintiff's negligence proximately contributed to his injury.[87.32] Also, the verdict or finding of the jury ordinarily is conclusive as to nature and extent of injury or damage,[87.34] with respect

Mo.—Hamilton v. Patton Creamery Co., 222 S.W.2d 713, 359 Mo. 526.
Finley v. Illinois Cent. R. Co., App., 251 S.W.2d 713—Hopkins v. Kurn, App., 164 S.W.2d 207, reversed on other grounds 171 S.W. 2d 625, 351 Mo. 41, 149 A.L.R. 762—Foster v. Kurn, 133 S.W.2d 1114, 234 Mo.App. 909—Vaughn v. Mountain Grove Creamery, Ice & Electric Co., App., 275 S.W. 592, quashed in part State ex rel. Mountain Grove Creamery, Ice & Electric Co. v. Cox, 286 S.W. 368, 315 Mo. 619.

Mont.—Maynard v. City of Helena, 160 P.2d 484, 117 Mont. 402—Tiddy v. City of Butte, 65 P.2d 605, 104 Mont. 202.

N.H.—Carr v. Orrill, 166 A. 270, 86 N.H. 226.

N.M.—Chandler v. Battenfield, 233 P.2d 1047, 55 N.M. 361.

N.Y.—Baillargeon v. Jacques, 88 N. Y.S.2d 357, 275 App.Div. 870, motion denied 87 N.E.2d 685, 299 N.Y. 792—Smith v. Board of Education of Van Hornesville Central School, Dist. No. 1, Town of Stark, 8 N.Y. S.2d 694, 255 App.Div. 924—Mattison v. Bawtinhimer, 280 N.Y.S. 624, 244 App.Div. 673—Vollstedt v. Joseph A. Mollar, Inc., 265 N.Y. S. 552, 238 App.Div. 705—Ryan v. New York Cent. R. Co., 207 N.Y.S. 200, 210 App.Div. 623.

N.C.—La Prade v. North Carolina R. Co., 56 S.E.2d 597, 231 N.C. 343.

N.D.—Schultz v. Winston & Newell Co., 283 N.W. 69, 68 N.D. 674.

Okl.—Croft v. Dodson, 310 P.2d 375—Hayes v. Kay, 290 P.2d 411—Rowley v. Foster, 255 P.2d 501, 208 Okl. 284—Public Service Co. v. Sonagerra, 253 P.2d 169, 208 Okl. 95—City of Shawnee v. Faulkner, 240 P.2d 100, 205 Okl. 647—Elam v. Loyd, 204 P.2d 280, 201 Okl. 222—Tindall Motor Co. v. Mankin, 86 P.2d 625, 184 Okl. 231—Meiling v. Michael, 78 P.2d 704, 182 Okl. 508—Fay v. Brewer, 75 P.2d 425, 181 Okl. 554—St. Louis-San Francisco Ry. Co. v. Williams, 56 P.2d 815, 176 Okl. 465—Alexander v. Beaver, 50 P.2d 392, 174 Okl. 123—Tankersley v. Ferrin, 238 P. 853, 113 Okl. 68—St. Louis-San Francisco Ry. Co. v. Wheeler, 235 P. 498, 108 Okl. 139—St. Louis-San Francisco Ry. Co. v. Rundell, 235 P. 491, 108 Okl. 132—Davis v. Hagen, 233 P. 671, 106 Okl. 167—Waddle v. Stafford, 230 P. 855, 104 Okl. 192—Pierce Oil Corporation v. Puckett, 226 P. 364, 99 Okl. 228—Wichita Falls & N. W. Ry. Co. v. Graves, 196 P. 677, 81 Okl. 34.

Pa.—Pinto v. Bell Fruit Co., 24 A.2d 768, 148 Pa.Super. 132—Lewin v. Freihofer Baking Co., 176 A. 58, 115 Pa.Super. 558.

S.D.—Descombaz v. Klock, 235 N.W. 502, 58 S.D. 173, reheard 240 N.W. 495, 59 S.D. 461.

Tenn.—Walters v. Staton, 111 S.W. 2d 381, 21 Tenn.App. 401.

Tex.—Galveston, H. & S. A. Ry. Co. v. Duty, Com.App., 277 S.W. 1057.
Brown v. Panhandle & Santa Fe Ry. Co., Civ.App., 294 S.W.2d 223, error refused no reversible error—Texas & N. O. R. Co. v. Ozuna, Civ.App., 266 S.W.2d 896, error refused no reversible error—Phillips Petroleum Co. v. Thomas, Civ. App., 167 S.W.2d 571, error refused—Heldenfels v. Montgomery, Civ. App., 157 S.W.2d 998, error dismissed—Aranda v. Texas & N. O. R. Co., Civ.App., 140 S.W.2d 236, error dismissed, judgment correct—City of Wichita Falls v. Crummer, Civ.App., 71 S.W.2d 583—Galveston, H. & S. A. Ry. Co. v. McCrorey, Civ.App., 10 S.W.2d 1021, reversed on other grounds, Com. App., 23 S.W.2d 691—El Paso Electric Co. v. Perkins, Civ.App., 292 S.W. 935—Gulf, C. & S. F. Ry. Co. v. Hector, Civ.App., 283 S.W. 562—Kansas City, M. & O. Ry. Co. of Texas v. Finke, Civ.App., 190 S.W. 1143, certiorari denied 38 S.Ct. 13, 245 U.S. 656, 62 L.Ed. 534—Texas & N. O. R. Co. v. Cunningham, Civ. App., 168 S.W. 428.

Utah.—Schlatter v. McCarthy, 196 P.2d 968, 113 Utah 543, rehearing denied 198 P.2d 473, 113 Utah 560.

Vt.—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42—Taylor v. Mayhew, 195 A. 249, 109 Vt. 251.

Va.—Dodd v. Coakley, 79 S.E.2d 648, 195 Va. 554—Edgerton v. Norfolk Southern Bus Corp., 47 S.E.2d 409, 187 Va. 642—Slate v. Saul, 40 S.E. 2d 171, 185 Va. 700—Miller v. Jones, 6 S.E.2d 607, 174 Va. 336—Stratton v. Bergman, 192 S.E. 813, 169 Va. 249—Filer v. McNair, 163 S.E. 335, 158 Va. 88—Atlantic Coast Line R. Co. v. Wheeler, 132 S.E. 517, 147 Va. 1, reheard 136 S.E. 570, 147 Va. 1—Clinchfield Coal Corp. v. Ray, 93 S.E. 601, 121 Va. 318.

Wash.—Johnson v. Watson, 120 P.2d 515, 11 Wash.2d 690—Richardson v. Pacific Power & Light Co., 118 P.2d 985, 11 Wash.2d 288—Flaumer v. Samuels, 104 P.2d 484, 4 Wash.2d 609.

W.Va.—Tawney v. Kirkhart, 44 S.E. 2d 634, 130 W.Va. 550—Stone v. Rudolph, 32 S.E.2d 742, 127 W.Va. 335.

Wis.—Carlsen v. Hardware Mut. Cas. Co., 39 N.W.2d 442, 255 Wis. 407.

4 C.J. p 850 note 51 [c]—43 C.J. p 1324 note 51 [a] (1).

Evidence at close of case

In determining whether plaintiff was guilty of contributory negligence as a matter of law, the appellate court must look to the evidence at the close of the whole case.

Mo.—Epstein v. Wells, App., 284 S. W. 845.

Court yields to jury

Where the court on appeal, as triers of fact, might entertain doubts as to whether the conduct of deceased in passing in front of defendant's engine in going over a public crossing was excusable, it will yield to the judgment of the jury.

Utah.—Malizia v. Oregon Short Line R. Co., 178 P. 756, 53 Utah 122.

Constitutional provision that contributory negligence and assumption of risk are jury questions is not merely declaratory of the common law, but requires that defense of contributory negligence as to questions of fact in all cases whatsoever shall at all times be left to the jury, and the finding of the jury on such defense is conclusive on the court.

Okl.—C. R. Anthony Co. v. Williams, 94 P.2d 836, 185 Okl. 564.

Assessment of contributory negligence

In action for damages for death, fact that the case was proper for the jury to assess plaintiff's contributory negligence did not prevent the supreme court review of the action of the jury in that respect.

Miss.—Boroughs v. Oliver, 85 So.2d 191.

87.32 Cal.—Bellon v. Silver Gate Theatres, 47 P.2d 462, 1 C.2d 1.
Urbano v. Market St. Ry. Co., 46 P.2d 817, 2 C.A.2d 22.

To justify reversal of judgment for plaintiff in an action for personal injuries on the ground that plaintiff was contributorily negligent as a matter of law, contributory negligence must appear conclusively.

Ind.—Smith v. Mills, 185 N.E. 327, 98 Ind.App. 543.

87.34 Ark.—Harmon v. Ward, 149 S.W.2d 575, 202 Ark. 54.

Cal.—Harmon v. San Joaquin Light & Power Corp., 98 P.2d 1064, 37 C.A.2d 169.

Md.—United Rys. & Electric Co. of Baltimore v. Phillips, 99 A. 355, 129 Md. 328, L.R.A.1917C 384.

Mo.—Combs v. Combs, 284 S.W.2d 423.

to matters of fraud,[87.36] and waiver and estoppel.[87.38]

b. When Reviewable

Although the verdict or finding of a jury ordinarily is conclusive on appeal, the action of the jury is broadly subject to control of the appellate court, and it may set aside the conclusion reached by the jury if against the undisputed evidence or if unsupported by the evidence.

Notwithstanding that the verdict or finding of a jury ordinarily is conclusive on appeal, the action of the jury is broadly subject to control of the appellate court,[87.60] and the power of the jury to render verdicts transgressing well-established principles of law must be limited.[87.65] Accordingly, where the evidence in a case, or on a material point, is undisputed, its legal effect presents a question of law and not of fact, and the verdict is subject to review,[88] and the conclusion therein reached may be set aside if against the evidence.[89] So it is

Okl.—Duncan Bros. v. Robinson, 294 P.2d 822.

87.36 Ark.—Union Life Ins. Co. v. Evans, 101 S.W.2d 778, 193 Ark. 627—Unionaid Life Ins. Co. v. Harkey, 58 S.W.2d 422, 187 Ark. 87—Springfield Mut. Ass'n v. Atnip, 279 S.W. 15, 169 Ark. 968.
Fla.—Casey v. Welch, 50 So.2d 124.
Ill.—Gurley v. Massac County Mutual Relief Ass'n, 186 Ill.App. 492.
Iowa.—Bean v. Bickley, 174 N.W. 675, 187 Iowa 689.
La.—Hardie v. Allen, App., 50 So.2d 74.
Mo.—Tate v. School Dist. No. 11 of Gentry County, 23 S.W.2d 1013, 324 Mo. 477, 70 A.L.R. 771—Vette v. Hackman, 237 S.W. 802, 292 Mo. 138—Thompson v. Lyons, 220 S.W. 942, 281 Mo. 430.
Burston v Fennewald, 2 S.W. 2d 824, 222 Mo.App. 128.
Mont.—Truzzolino Food Products Co. v. F. W. Woolworth Co., 91 P.2d 415, 108 Mont. 408.
N.Y.—Shurter v. Bailey, 33 N.Y.S. 2d 620, 263 App.Div. 1025.
N.C.—Sharp v. Tatham, 170 S.E. 654, 205 N.C. 827—Flythe v. Lassiter, 153 S.E. 844, 199 N.C. 804.
Okl.—Helms v. Bulington, 70 P.2d 65, 180 Okl. 390.
Or.—Snow v. Tompkins, 286 P.2d 119, 205 Or. 60—Simmons v. Washington Fidelity Nat. Ins. Co., 13 P.2d 366, 140 Or. 164—Obermeier v. Mortgage Co. Holland-America, 259 P. 1064, 123 Or. 469, modified on other grounds 260 P. 1099, 123 Or. 469, costs retaxed 262 P. 261, 123 Or. 469.
Tex.—Garcia v. Garcia, Civ.App., 4 S.W.2d 257.
Va.—Ferries Co. v. Brown, 92 S.E. 813, 121 Va. 13.
4 C.J. p 850 note 51 [a].

87.38 Cal.—Huttlinger v. Far West Enterprises, 281 P.2d 554, 131 C.A. 2d 808.
Tex.—Hickman v. Cooper, Civ.App., 210 S.W.2d 858, error refused no reversible error.

87.60 W.Va.—Burk v. Huntington Development & Gas Co., 58 S.E. 2d 574, 133 W.Va. 817.

Not conclusive in all cases

Although great weight should be given on appeal to jury findings on questions of fact, they are not to be treated as conclusive in all cases.
Tex.—American Nat. Ins. Co. v. Walker, Civ.App., 256 S.W. 950.

Authorized review

Jury verdicts are not final as against authorized judicial review.
Fla.—Nelson v. McMillan, 10 So.2d 565, 151 Fla. 847.

Jury are not sole judge of sufficiency of evidence to sustain verdict, and power to review jury's conclusions in civil action at law is vested in trial court in first instance and in supreme court on appeal.
Ala.—Piedmont Fire Ins. Co. v. Tierce, 17 So.2d 133, 245 Ala. 415—Franklin Fire Ins. Co. v. Slaton, 200 So. 564, 240 Ala. 560.

87.65 Okl.—Sinclair Refining Co. v. Roberts, 206 P.2d 193, 201 Okl. 358.

88. Ariz.—Hansen v. Oakley, 263 P. 2d 807, 76 Ariz. 307—In re O'Connor's Estate, 246 P.2d 1063, 74 Ariz. 248.
Ill.—France v. Citizens Cas. Co. of N. Y., 79 N.E.2d 28, 400 Ill. 55—Mahlstedt v. Ideal Lighting Co., 110 N.E. 795, 271 Ill. 154, Ann.Cas. 1917D 209.
Ohio.—Martin Baking Co. v. Tompkinson, 161 N.E. 288, 27 Ohio App. 355.
Or.—**Corpus Juris Secundum cited in** In re Richter's Estate, 181 P.2d 133, 135, 181 Or. 360, rehearing denied 182 P.2d 378, 181 Or. 360.
Wis.—Bahlert v. Chicago, M. & St. P. Ry. Co., 185 N.W. 515, 175 Wis. 481.
4 C.J. p 856 note 85.

Other statements of rule

(1) While it is the duty of the trial court and of the supreme court to sustain the verdict of the jury, where there is a controversy as to the facts, it is equally the duty of both courts to declare the law on undisputed facts.
Wis.—Twist v. Minneapolis, St. P. & S. S. M. Ry. Co., 190 N.W. 449, 178 Wis. 513.

(2) The reviewing court cannot say as a matter of law that one upon whom the burden of proof rests has discharged it merely because the testimony he offered was not contradicted.
Md.—Pennsylvania R. Co. v. Stallings, 170 A. 163, 165 Md. 615.

Mixed questions of law and fact

The appellate court, in a decision of mixed questions of law and fact, is not precluded from reaching a different conclusion from that of the trial court as to ultimate fact, because there is no contradiction in the testimony.
Ill.—Shannon v. Nightingale, 151 N. E. 573, 321 Ill. 168.

In nature of demurrer to evidence

Verdict may not be set aside, as contrary to the evidence, unless it is plainly so, or without evidence to support it, and in determining that question the case must be viewed as on a demurrer to the evidence, unless that rule would work an injustice.
Va.—Norfolk & W. Ry. Co. v. T. W. Thayer Co., 119 S.E. 107, 137 Va. 294.

Where motion for new trial complains of verdict as against evidence, the court will review the sufficiency of the evidence as a whole in the light of the verdict.
Ga.—Rubin v. Hardin, 159 S.E. 711, 173 Ga. 127.

Issue as to negligence

Kan.—In re Erwin's Estate, 228 P. 2d 739, 170 Kan. 728.

89. Cal.—Osgood v. City of San Diego, 62 P.2d 195, 17 C.A.2d 345—Rice v. Smith, 24 P.2d 369, 133 C.A. 403.
Ill.—Mabel v. Cleveland, C., C. & St. Louis R. Co., 264 Ill.App. 532.
Ind.—Arlington v. Brown, 73 N.E.2d 774, 117 Ind.App. 535.
N.Y.—Zehmisch v. Enduro Sandwich Shoppe, 15 N.Y.S.2d 331, 258 App. Div. 755.
Myers v. Dock Contractor Co., 157 N.Y.S. 291, 93 Misc. 503.
Ohio.—Cincinnati Traction Co. v. Harry Luebkert, 20 Ohio Cir.Ct., N.S., 26.
Or.—Judson v. Bee Hive Auto Service Co., 297 P. 1050, 136 Or. 1, 74 A.L.R. 944.
Pa.—Rex v. Lehigh Valley Transit Co., 177 A. 226, 116 Pa.Super. 603.
Tex.—Greenspun v. Greenspun, Civ. App., 194 S.W.2d 134, affirmed 198 S.W.2d 82, 145 Tex. 374.

for the reviewing court to decide whether there is any evidence in support of the verdict,[90] and where there is no legal or competent evidence in support of a verdict, the reviewing court will set it aside.[91] The rule that a verdict will not be disturbed where the evidence tends to support it does not embrace a case where a verdict has been rendered in favor of plaintiff in an action and the record shows an entire absence of evidence supporting, or tending to support, some material and indispensable fact neces-

Wis.—Zenner v. Chicago, St. P., M. & O. Ry. Co., 262 N.W. 581, 219 Wis. 124.
4 C.J. p 856 note 86.

Finding as to fraud
N.C.—Goins v. McLoud, 58 S.E.2d 634, 231 N.C. 655.

Gross negligence
Va.—Stubbs v. Parker, 198 S.E. 363, 169 Va. 676—Stubbs v. Parker, 192 S.E. 820, 169 Va. 676, opinion adhered to 195 S.E. 688, 927, 169 Va. 676.

Contributory negligence
Pa.—Knoble v. Ritter, 20 A.2d 848, 145 Pa.Super. 149.

Determination as to proximate cause
Pa.—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128.

Relative negligence of parties
Wis.—Glendenning Motorways v. Green Bay & W. R. Co., 39 N.W. 2d 694, 256 Wis. 69.

90. Ark.—White & Black Rivers Bridge Co. v. Vaughan, 36 S.W.2d 672, 183 Ark. 450.
Cal.—Burtis v. Universal Pictures Co., 256 P.2d 933, 40 C.2d 823.
Osgood v. City of San Diego, 62 P.2d 195, 17 C.A.2d 345.
Ga.—**Corpus Juris Secundum cited in** Simmons Co. v. Hardin, 43 S.E.2d 553, 556, 75 Ga.App. 420.
Iowa.—Geddes v. McElroy, 154 N.W. 320, 171 Iowa 633.
Miss.—Davis v. McDonald, 178 So. 467, 180 Miss. 780.
Mo.—State ex rel. State Highway Commission v. Lindley, 96 S.W.2d 1065, record quashed and cause remanded State ex rel. State Highway Commission of Missouri v. Shain, 102 S.W.2d 666, 340 Mo. 802, conformed to State ex rel. State Highway Commission v. Lindley, 113 S.W.2d 132, 232 Mo. App. 831.
Neb.—In re Gunderman's Estate, 168 N.W. 359, 102 Neb. 590.
Or.—Watt v. Associated Oil Co., 260 P. 1012, 123 Or. 50.
Pa.—Snyder v. Markitell, 52 A.2d 186, 356 Pa. 391.
Tex.—Porter v. Puryear, Civ.App., 278 S.W.2d 595—St. Louis, B. & M. Ry. Co. v. Texas Mexican Ry. Co., Civ.App., 181 S.W.2d 895, error refused, reversed on other grounds 66 S.Ct. 937, 328 U.S. 134, 90 L.Ed. 1132.
W.Va.—Burk v. Huntington Development & Gas Co., 58 S.E.2d 574, 133 W.Va. 817—**Corpus Juris Secundum cited in** Beckley Nat. Exchange Bank v. Provident Life & Accident Ins. Co., 2 S.E.2d 256, 257, 121 W.Va. 152.
Wyo.—Montgomery Ward & Co. v. Arbogast, 81 P.2d 885, 53 Wyo. 275.

Where defendant contends that no case was made for the jury, the appellate court will ascertain what plaintiff's evidence tended to prove.
Mo.—Yates v. House Wrecking Co., App., 195 S.W. 549.

Existence of substantial evidence
Cal.—Herbert v. Lankershim, 71 P. 2d 220, 9 C.2d 409.

Notwithstanding statute providing that judgment shall not be set aside unless judgment appears from evidence to be plainly wrong or without evidence to support it, the evidence relied on must fairly sustain the verdict.
Va.—Ramey v. Ramey, 25 S.E.2d 264, 181 Va. 377.

91. Cal.—Humphry v. Safeway Stores, 41 P.2d 208, 4 C.A.2d 589.
Colo.—Willis v. Chase, 240 P.2d 912, 125 Colo. 115.
Fla.—City of Miami v. Saunders, 10 So.2d 326, 151 Fla. 699—Howard v. Sheffield, 74 So. 488, 73 Fla. 358.
Ill.—Corcoran v. City of Chicago, 27 N.E.2d 451, 373 Ill. 567, appeal dismissed 61 S.Ct. 45, 311 U.S. 610, 85 L.Ed. 386, rehearing denied 61 S.Ct. 132, 311 U.S. 727, 85 L.Ed. 473.
Groenebeld v. Chicago City Ry. Co., 192 Ill.App. 62.
Ind.—Automobile Underwriters v. Rich, 53 N.E.2d 775, 222 Ind. 384—Grevenstuk v. Hubeny, 24 N.E.2d 924, 216 Ind. 379.
Quail v. Banta, 48 N.E.2d 841, 113 Ind.App. 664—Michalik v. Pazdur, 13 N.E.2d 870, 105 Ind.App. 325—Pierson v. Simmons, 12 N.E.2d 369, 104 Ind.App. 521.
Ky.—Commercial Union Assur. Co. v. Howard, 76 S.W.2d 246, 256 Ky. 363.
Ryan v. Kanella, 13 Ky.Op. 740.
Mich.—Balogh v. Supreme Forest Woodmen Circle, 280 N.W. 83, 284 Mich. 700.
Mo.—Huddleston v. Ozark Acceptance Corp., App., 125 S.W.2d 81.
Neb.—First Bank of Ulysses v. Birkel, 207 N.W. 500, 114 Neb. 318.
N.Y.—Kaupferstein v. Brooklyn Edison Co., 43 N.Y.S.2d 23, 266 App. Div. 879, affirmed 54 N.E.2d 686, 292 N.Y. 561—Locicero v. Messina, 267 N.Y.S. 901, 239 App.Div. 635—Schimmel v. Troy Waste Mfg. Co., 173 N.Y.S. 143, 185 App.Div. 356.
Ohio.—McGill v. Weber, 20 Ohio Cir. Ct.,N.S., 450.
Okl.—Bob Harper Finance Co. v. Lester, 246 P.2d 362, 206 Okl. 684—Grand Distributing Co. v. Adams, 244 P.2d 571, 206 Okl. 451—National Aid Life Ins. Co. v. Honea, 202 P.2d 221, 201 Okl. 41—Shell Oil Co. v. Blubaugh, 185 P.2d 959, 199 Okl. 353—State ex rel. Williamson v. Knight, 137 P.2d 894, 192 Okl. 573—Atchison, T. & S. F. Ry. Co. v. Howard, 98 P.2d 914, 186 Okl. 446—Riddle v. Garner, 52 P.2d 837, 175 Okl. 325—Gulf, C. & S. F. Ry. Co. v. Rutledge, 47 P. 2d 83, 173 Okl. 245—Smith v. Graham, 253 P. 55, 123 Okl. 258—Purcell Wholesale Grocery v. Lykins, 250 P. 784, 120 Okl. 257—Kawfield Oil Co. v. Warner, 247 P. 969, 118 Okl. 271.
Or.—Beaver v. Mason, Ehrman & Co., 143 P. 1000, 73 Or. 36.
Tex.—Thompson v. Tippit, Civ.App., 300 S.W.2d 351, error refused no reversible error—Dewhurst v. South Tex. Rendering Co., Civ. App., 232 S.W.2d 135, error refused no reversible error.
Va.—Chesapeake Western Ry. v. Shiflett's Adm'x, 86 S.E. 860, 118 Va. 63.
4 C.J. p 856 note 88—39 C.J. p 1259 note 2 [a].

Based solely on evidence erroneously admitted
(1) A verdict supported only by evidence erroneously admitted over objections that it was incompetent, under statute, will be reversed.
N.Y.—Titus v. Spencer, 151 N.Y.S. 515.

(2) Where the verdict for insurer was based solely on hearsay evidence concerning the whereabouts of insured alleged to have been absent for seven years, the judgment based thereon must be reversed.
Tex.—Soria v. American Nat. Ins. Co., Civ.App., 57 S.W.2d 321.

Where the evidence does not justify submission of an issue, the jury's finding thereon does not bind the reviewing court.
Tex.—Thweatt v. Ocean Accident & Guarantee Corporation, Civ.App., 62 S.W.2d 250.

Where only one reasonable inference can be drawn from undisputed facts a jury's contrary verdict is immaterial.
Tex.—Independent Lumber Co. v. Gulf State Bank, Civ.App., 299 S. W. 939.
4 C.J. p 856 note 88 [h].

sary to be proved by him to justify the rendition of a verdict in his favor.[92]

Further it has been held that, where the verdict is manifestly against the evidence, the judgment will be reversed notwithstanding the trial court had refused to set aside the verdict.[93] So also the verdict or findings will not be permitted to stand where they are directly contradictory of, or irreconcilable with, the evidence[94] or rest only on speculation and conjecture;[95] or where the verdict is un-

92. Fla.—Florida East Coast Ry. Co. v. Wright, 118 So. 916, 96 Fla. 656.
Ind.—Bangert v. Hubbard, App., 126 N.E.2d 778, transfer denied, Sup., 143 N.E.2d 285—Hamilton v. Cooley, 184 N.E. 568, 187 N.E. 762, 99 Ind.App. 1.
Kan.—Sheftel v. Kansas City Public Service Co., 19 P.2d 434, 137 Kan. 79.
N.Y.—Fusco v. Metropolitan Life Ins. Co., 35 N.Y.S.2d 551, 264 App.Div. 876, reargument denied 37 N.Y.S. 2d 844, 265 App.Div. 823—Macaluso v. Fresh Air Recreation Co., 35 N.Y.S.2d 301, 264 App.Div. 862, appeal dismissed 50 N.E.2d 1020, 291 N.Y. 637.
Wagar v. National Casualty Co., 16 N.Y.S.2d 341.
N.C.—Adams v. Blue Bird Taxis, 190 S.E. 471, 211 N.C. 324.
Ohio.—Levine v. McFarlin, 4 N.E.2d 927, 53 Ohio App. 304.
Okl.—Dawson v. Matlock, 277 P. 269, 136 Okl. 218.
4 C.J. p 856 note 88 [d], p 857 note 89.

93. Idaho.—Work v. Kinney, 63 P. 596, 7 Idaho 460.
4 C.J. p 857 note 90.

94. Minn.—Price v. Mackner, 58 N. W.2d 260, 239 Minn. 119.
Neb.—Calnon v. Fidelity Phenix Fire Ins Co., 205 N.W. 942, 114 Neb. 53, modified on other grounds 207 N. W. 528, 114 Neb. 53.
N.Y.—Phillips v. Yarter, 156 N.Y.S. 875, 172 App.Div. 912.
Ohio.—Nau Grain Co. of Lippincott v. Britton, App., 106 N.E.2d 583.
McGill v. Weber, 20 Ohio Cir.Ct., N.S., 450.
Tex.—National Life & Accident Ins. Co. v. Langston, Civ.App., 42 S.W. 2d 1037—Walton v. Lopez, Civ.App., 252 S.W. 864—St. Louis Southwestern Ry. Co. of Texas v. Sterling, Civ.App., 178 S.W. 665.
Utah.—O'Brien v. Alston, 213 P. 791, 61 Utah 368.
Va.—Nelson v. Liggan, 53 S.E.2d 798, 189 Va. 637, opinion adhered to 56 S.E.2d 54, 190 Va. 213—Johnson v. Richmond, F. & P. R. Co., 169 S.E. 603, 160 Va. 766.
Wash.—Crescent Mfg. Co. v. Hansen, 24 P.2d 604, 174 Wash. 193.
W.Va.—Santy v. Commercial Casualty Ins. Co., 164 S.E. 407, 112 W.Va. 376.
Wis.—Hammer v. Minneapolis, St. P. & S. S. M. Ry. Co., 255 N.W. 124, 216 Wis. 7.
4 C.J. p 857 note 91—71 C.J. p 160 note 70.

Negligence
N.Y.—Dovicsak v. Garafano Const. Co., 52 N.Y.S.2d 485, 268 App.Div. 1033, appeal denied 53 N.Y.S.2d 467, 269 App.Div. 664.

Contributory negligence
When it clearly appears that plaintiff's contributory negligence caused the injury, a verdict awarding damages should be set aside.
Fla.—Co-operative Sanitary Baking Co. v. Shields, 70 So. 934, 71 Fla. 110.

Opposed to physical evidence
A verdict will not be allowed to stand when physical facts demonstrate the evidence to be untrue.
Mo.—Christman v. Hickman, 37 S.W. 2d 672, 225 Mo.App. 828.
Pa.—Miller v. Pennsylvania R. Co., 149 A. 85, 299 Pa. 63.
Va.—Norfolk & W. Ry. Co. v. Strickler, 86 S.E. 824, 118 Va. 153.
W.Va.—Keller v. Norfolk & W. Ry. Co., 156 S.E. 50, 109 W.Va. 522.
4 C.J. p 857 note 91 [a].

Documentary evidence
Where a prima facie case is squarely met with undisputed documentary evidence, an appellate court may reverse a judgment so out of harmony with the facts so established.
Mo.—Citizens Bank of Liberty v. Thompson, 132 S.W.2d 700, 234 Mo. App. 448.

95. Ala.—National Life & Accident Ins. Co. v. Cummings, 172 So. 353, 27 Ala.App. 355.
Ark.—Brewer v. Thomason, 219 S.W. 2d 758, 215 Ark. 164—Douglas v. Franks, 206 S.W.2d 11, 212 Ark. 426—Jonesboro Coca-Cola Bottling Co. v. Hambrooke, 175 S.W.2d 387, 206 Ark. 385—Magnolia Petroleum Co. v. Bell, 55 S.W.2d 782, 186 Ark. 723—Missouri Pac. R. Co. v. Remel, 48 S.W.2d 548, 185 Ark. 598, certiorari denied 53 S.Ct. 85, 287 U.S. 634, 77 L.Ed. 550.
Cal.—Gray v. Carter, 224 P.2d 28, 100 C.A.2d 642.
Ind.—Equitable Life Assur. Soc. of the U. S. v. Campbell, 150 N.E. 31, 85 Ind.App. 450, rehearing denied 151 N.E. 682, 85 Ind.App. 450.
Iowa.—Roggensack v. Winona Monument Co., 233 N.W. 493, 211 Iowa 1307.
Mich.—Wyatt v. Chosay, 48 N.W.2d 195, 330 Mich. 661.
Minn.—Clark v. Chicago & N. W. Ry. Co., 33 N.W.2d 484, 226 Minn. 375.
Miss.—Masonite Corporation v. Dennis, 168 So. 613, 175 Miss. 855.
Mo.—Cottonwood Fibre Co. v. Thompson, 225 S.W.2d 702, 359 Mo. 1062—Sparks v. Auslander, 182 S.W.2d 167, 353 Mo. 177—Seago v. New York Cent. R. Co., 164 S.W.2d 336, 349 Mo. 1249, 147 A.L.R. 372—Evans v. Massman Const. Co., 122 S.W.2d 924, 343 Mo. 632—Markley v. Kansas City Southern Ry. Co., 90 S.W.2d 409, 338 Mo. 436.
White v. Kansas City Public Service Co., 193 S.W.2d 60, 239 Mo. App. 571—Maybee v. Missouri Orpheum Corp., 181 S.W.2d 771, 238 Mo.App. 537—Bibb v. Grady, App., 231 S.W. 1020.
Mont.—Fabert v. Northern Pac. Ry. Co., 251 P. 546, 77 Mont. 446.
Neb.—Burchmore v. H. M. Byllesby & Co., 1 N.W.2d 327, 140 Neb. 603.
N.H.—Perkins v. Nashua Mfg. Co., 16 A.2d 700, 91 N.H. 211.
N.Y.—Baudenbach v. Schwerdtfeger, 230 N.Y.S. 640, 224 App.Div. 314, dismissed 166 N.E. 322, 250 N.Y. 555.
Ohio.—Boles v. Montgomery Ward & Co., 92 N.E.2d 9, 153 Ohio St. 381.
Vogus v. Chase, 112 N.E.2d 349, 93 Ohio App. 164.
Okl.—Sinclair Refining Co. v. Roberts, 206 P.2d 193, 201 Okl. 358—Shell Petroleum Corp. v. Voss, 126 P.2d 540, 190 Okl. 675—Phillips Petroleum Co. v. Davis, 77 P.2d 1147, 182 Okl. 397—Mackey v. Jarvis, 69 P.2d 662, 180 Okl. 404.
Or.—Whelpley v. Frye, 263 P.2d 295, 199 Or. 530—Peterson v. Wright, 191 P.2d 645, 183 Or. 223—Credit Service Co. v. Finne, 90 P.2d 743, 162 Or. 466.
Pa.—Yuhasz v. Autenreith's Dollar Stores, 72 A.2d 145, 166 Pa.Super. 408—Russo v. Metropolitan Life Ins. Co., 24 A.2d 167, 147 Pa.Super. 210.
R.I.—Grande v. Boston Mut. Life Ins. Co., 193 A. 516, 58 R.I. 502.
S.C.—Jester v. Southern Ry. Co., 29 S.E.2d 768, 204 S.C. 395, 156 A.L.R. 632, certiorari denied 65 S.Ct. 44, 323 U.S. 716, 89 L.Ed. 576.
Tex.—Texas Consol. Oils v. Hartwell, Civ.App., 240 S.W.2d 324, mandamus overruled—Rouse v. Milnar, Civ.App., 63 S.W.2d 1093—State Line Oil & Gas Co. v. Thomas, Civ. App., 35 S.W.2d 746—Miller v. Panhandle & S. F. Ry. Co., Civ.App., 35 S.W.2d 194—Blackwell v. Ship Channel Development Co., Civ.App., 264 S.W. 223.
W.Va.—La Bris v. Western Nat. Ins. Co., 59 S.E.2d 236, 133 W.Va. 731.
Wis.—Vogelsburg v. Mason & Hanger Co., 26 N.W.2d 678, 250 Wis. 242—Walraven v. Sprague, Warner &

supported by the evidence;[96] and a similar rule ap- | plies where the verdict is not supported or sustained

Co., 292 N.W. 883, 235 Wis. 259—Ennis v. Milwaukee Electric Ry. & Light Co., 232 N.W. 540, 202 Wis. 277.

4 C.J. p 856 note 88 [e].

What constitutes

A verdict is based on speculation when, after considering all the evidence favorable to plaintiff together with all inferences to be reasonably drawn therefrom, and excluding all evidence favorable to the defendant, all unprejudiced minds must agree, from the facts and circumstances in evidence, that any one of several conclusions consistent with nonliability of defendant may as reasonably be drawn therefrom as is the conclusion of liability under plaintiff's theory of the case.

Mo.—Peak v. Judd, App., 278 S.W. 1044.

Okl.—Hepner v. Quapaw Gas Co., 217 P. 438, 92 Okl. 9.

Sound basis

The decision reached by triers of facts must have a sound basis and be arrived at by a logical process in order to be accepted as final in a last court of resort.

Me.—Arnst v. Estes, 8 A.2d 201, 136 Me. 272.

Probability

A verdict, although treated with great respect, has no force to convert a possibility into a probability.

Miss.—Yazoo & M. V. R. Co. v. Skaggs, 179 So. 274, 181 Miss. 150.

Negligence

Reviewing court cannot permit the jury to guess on question of negligence of defendant, although legitimate inferences may be drawn from the established facts.

Mich.—In re Miller's Estate, 2 N.W. 2d 888, 300 Mich. 703—Poundstone v. Niles Creamery, 292 N.W. 367, 293 Mich. 455.

More than one cause of accident

(1) A verdict for damages cannot be sustained in a malpractice action, where the proof disclosed that one of several causes might have produced the result complained of.

N.D.—McDonnell v. Monteith, 231 N.W. 854, 59 N.D. 750.

(2) A general verdict for plaintiff cannot stand if it is as probable that the derailment was caused by hitting a dog as because the brakes were defective.

N.Y.—Boyer v. Lehigh Valley R. Co., 251 N.Y.S. 257, 233 App.Div. 150.

96. Ark.—Coca-Cola Bottling Co. of Arkansas v. Eudy, 100 S.W.2d 683, 193 Ark. 436—Platt v. Owens, 35 S.W.2d 358, 183 Ark. 261.

Cal.—Blunk v. Atchison, T. & S. F. Ry. Co., 217 P.2d 494, 97 C.A.2d 229—Randleman v. Boeres, 270 P. 374, 93 C.A. 745—Fleming v. Law, 151 P. 385, 28 C.A. 110.

Conn.—Dupuis v. Dupuis, 122 A. 904, 100 Conn. 96.

Fla.—Citizens Ins. Co. of N. J. v. Harris, 40 So.2d 775—Inter-County Telephone & Telegraph Co. v. Bozarth, 117 So. 107, 95 Fla. 939—Butterweck v. Peffer, 81 So. 106, 77 Fla. 152—Henry v. Cockcroft, 80 So. 313, 76 Fla. 532—Stowers v. McGriff, 70 So. 23, 70 Fla. 263.

Idaho.—Clarke v. Blackfoot Waterworks, 228 P. 326, 39 Idaho 304 Studebaker Bros. Co. of Utah v. Harbert, 207 P. 587, 35 Idaho 490—Harker v. Seawell, 206 P. 812, 35 Idaho 457—Spencer v. John, 197 P. 827, 33 Idaho 717.

Ill.—Bilhorn v. Richardson, 11 N.E. 2d 241, 292 Ill.App. 639.

Ind.—Pennsylvania R. Co. v. Johnson, 169 N.E. 358, 91 Ind.App. 412.

Ky.—Commercial Union Assur. Co. v. Howard, 76 S.W.2d 246, 256 Ky. 363.

Mich.—Cummins v. John Hancock Mut. Life Ins. Co., 60 N.W.2d 490, 337 Mich. 629.

Minn.—Jacobson v. Brasie Motor Car Co., 157 N.W. 645, 132 Minn. 417.

Miss.—Bankston v. McKnight, 103 So. 807, 139 Miss. 116.

Mo.—Garner v. Drainage Dist. No. 1, Reformed, App., 181 S.W. 587.

Mont.—Adami v. Murphy, 164 P.2d 150, 118 Mont. 172—General Fire Extinguisher Co. v. Northwestern Auto Supply Co., 211 P. 308, 65 Mont. 371—First State Bank of Thompson Falls v. Larsen, 211 P. 214, 65 Mont. 404.

Neb.—Strilka v. Margolin, 204 N.W. 515, 113 Neb. 751.

N.Y.—Kawczynski v. Prudential Ins. Co. of America, 279 N.Y.S. 270, 244 App.Div. 759.

Dunn v. Murray, 33 N.Y.S.2d 721, reversed without opinion 36 N.Y.S. 2d 421, 264 App.Div. 847.

N.C.—Farfour v. Fahad, 199 S.E. 521, 214 N.C. 281.

N.D.—Hemmi v. Shaw, 169 N.W. 32, 40 N.D. 539.

Ohio.—McCombs v. Landes, 171 N.E. 862, 35 Ohio App. 164.

Okl.—Macsas v. Fishencord, 124 P.2d 388, 190 Okl. 407—McClendon v. Kennedy, 77 P.2d 15, 182 Okl. 153—Mid-Continent Life Ins. Co. v. Freeman, 74 P.2d 1163, 181 Okl. 355—Federal Intermediate Credit Bank of Wichita v. Shane, 299 P. 435, 148 Okl. 250—Mutual Oil Co. v. Roach, 243 P. 504, 116 Okl. 106—Robb v. Moffett, 239 P. 674, 112 Okl. 20—Moses v. Harris, 237 P. 591, 111 Okl. 54—Oklahoma Union Ry. Co. v. Houk, 235 P. 499, 109 Okl. 187—Chicago, R. I. & P. Ry. Co. v. Long, 227 P. 389, 99 Okl. 276—Grant-Sprague Lumber Co. v. First Nat. Bank, 227 P. 104, 100 Okl. 73—Skelly Oil Co. v. Pruitt & McCrory, 221 P. 709, 94 Okl. 232—McGraw v. Hildebrant, 214 P. 688, 89 Okl. 140—Sapp v. Hartford Fire & Marine Ins. Co., 206 P. 814, 86 Okl. 87—Kansas City Southern Ry. Co. v. Langley, 160 P. 451, 62 Okl. 49—C. D. Osborne & Co. v. White, 154 P. 653, 54 Okl. 733—Kansas City Southern Ry. Co. v. Henderson, 153 P. 872, 54 Okl. 320.

Pa.—Kervin v. Gale, 73 Pa.Super. 557.

Tex.—Hom Holmes v. American General Ins. Co., Civ.App., 263 S.W.2d 615—Panhandle & Santa Fe Ry. Co. v. Karr, Civ.App., 257 S.W.2d 486, affirmed Karr v. Panhandle & Santa Fe Ry. Co., 262 S.W.2d 925, 153 Tex. 25—James v. Davis, Civ.App., 150 S.W.2d 326, error dismissed, judgment correct—Holmes v. Houston, Civ.App., 241 S.W. 1039—McIntosh v. Atchison, T. & S. F. Ry. Co., Civ.App., 192 S.W. 285—Blair & Hughes Co. v. Watkins & Kelley, Civ.App., 179 S.W. 530.

Utah.—Verdi v. Helper State Bank, 196 P. 225, 57 Utah 502, 15 A.L.R. 641—Cobb v. Hartenstein, 152 P. 424, 47 Utah 174.

Vt.—French v. Whelden, 99 A. 232, 91 Vt. 64.

Va.—Butler v. Parrocha, 43 S.E.2d 1, 186 Va. 426—Atlantic Coast Line R. Co. v. Clements, 36 S.E.2d 553, 184 Va. 656.

Wash.—Turner v. Good, 8 P.2d 414, 167 Wash. 27—McKenney v. Phœnix Mut. Life Ins. Co. of Hartford, Conn., 244 P. 560, 138 Wash. 315.

W.Va.—Hurt v. Gwinn, 95 S.E.2d 248—Muldoon v. Kepner, 91 S.E.2d 727—Stenger v. Hope Natural Gas Co., 90 S.E.2d 261—Thompson v. Norfolk & W. Ry. Co., 182 S.E. 880, 116 W.Va. 705—Hager v. Standard Island Creek Coal Co., 155 S.E. 540, 109 W.Va. 490—Great Eastern Refining Corporation v. Shank, 127 S. E. 922, 99 W.Va. 101—Jones v. Kessler, 126 S.E. 344, 98 W.Va. 1—Minotti v. Brune, 118 S.E. 149, 94 W.Va. 181.

Wis.—Zenner v. Chicago, St. P., M. & O. Ry. Co., 262 N.W. 581, 219 Wis. 124.

52 C.J. p 757 note 1—55 C.J. p 1152 note 13—62 C.J. p 224 note 63.

Verdict must be based on the evidence

Me.—Ward v. Maine Cent. R. Co., 163 A. 273, 131 Me. 396.

Cal.—Wilson v. City & County of San Francisco, 235 P.2d 81, 106 C. A.2d 440.

Ill.—Stefan v. Elgin, J. & E. R. Co., 120 N.E.2d 52, 2 Ill.App.2d 300.

Pa.—Catalano v. Prudential Ins. Co. of America, 28 A.2d 349, 150 Pa. Super. 331.

Va.—Shelton v. Detamore, 93 S.E.2d 314, 198 Va. 220.

by substantial evidence,[96.5] or by any evidence,[97] or is not sustained by any reasonable hypothesis based on the facts proved;[98] or where the evidence is clearly insufficient as a matter of law.[99]

The appellate court may reverse or set aside the fact determination of the jury where the verdict or finding is clearly wrong;[99.5] where the deductions drawn from the evidence by the jury are clearly

Several defendants

Where the verdict was general and under one version of the evidence there would be no evidence to sustain the verdict as to certain defendants, the judgment against such defendants was reversed.

N.Y.—Tryon v. Willbank, 255 N.Y.S. 27, 234 App.Div. 335.

96.5 Ark.—St. Louis-San Francisco Ry. Co. v. Thurman, 213 S.W.2d 362, 213 Ark. 840—Missouri Pac. R. Co. v. Boyd, 106 S.W.2d 165, 194 Ark. 121.

Cal.—Golding v. R. K. O. Pictures, 221 P.2d 95, 35 C.2d 690.

Fla.—Miami Transit Co. v. Dalton, 23 So.2d 572, 156 Fla. 485.

Kan.—In re Erwin's Estate, 228 P. 2d 739, 170 Kan. 728.

Mo.—Steckdaub v. Sparks, 231 S.W. 2d 160—Evans v. Massman Const. Co., 122 S.W.2d 924, 343 Mo. 632.

Mason v. Down Town Garage Co., 53 S.W.2d 409, 227 Mo.App. 297.

Wash.—Webber v. Park Auto Transp. Co., 244 P. 718, 138 Wash. 325, 47 A.L.R. 590.

97. Ariz.—Spain v. Griffith, 25 P.2d 551, 42 Ariz. 304.

Colo.—Lockard v. Ware, 157 P. 1165, 61 Colo. 354.

Ga.—J. R. Watkins Co. v. Strickland, 93 S.E.2d 171, 93 Ga.App. 859.

Ill.—Wolters v. Venhaus, 112 N.E.2d 747, 350 Ill.App. 322.

Kan.—Ewing v. Edwards, 36 P.2d 1021, 140 Kan. 325.

Miss.—Payne v. Wynne, 88 So. 705, 126 Miss. 271.

Okl.—Rabinovitz v. Taylor, 106 P.2d 827, 188 Okl. 84—Johnson v. Caldwell, 71 P.2d 620, 180 Okl. 470—First Nat. Bank v. Daugherty, 250 P. 796, 122 Okl. 47—Cook v. First Nat. Bank, 236 P. 883, 110 Okl. 111—Davis v. Howe, 226 P. 316, 99 Okl. 118—Chicago, R. I. & P. Ry. Co. v. Pedigo, 226 P. 72, 102 Okl. 72—Kanotex Refining Co. v. Bonifield, 183 P. 971, 74 Okl. 304—Tate v. Coalgate State Bank, 180 P. 687, 72 Okl. 276—American Nat. Bank v. Stapleton, 169 P. 494, 67 Okl. 146—State v. Lonewolf, 163 P. 532, 63 Okl. 166.

Or.—Camirand v. De Lude, 264 P. 355, 124 Or. 189—J. W. Leavitt & Co. v. Dimick, 168 P. 292, 86 Or. 278.

Tex.—National Life & Accident Ins. Co. v. Langston, Civ.App., 42 S.W. 2d 1037.

Va.—Nelson v. Liggan, 53 S.E.2d 798, 189 Va. 637, opinion adhered to 56 S.E.2d 54, 190 Va. 213—Huff v. Huff, 129 S.E. 219, 143 Va. 46.

48 C.J. p 1156 note 31—52 C.J. p 154 note 78.

Absence of evidence reasonably tending to support verdict

Okl.—Indian Territory Illuminating Oil Co. v. Henning, 66 P.2d 83, 179 Okl. 462—Minnehoma Oil & Gas Co. v. Johnson, 282 P. 303, 139 Okl. 284—Lind v. Smith, 262 P. 663, 128 Okl. 292—Hamm v. Caldwell, 231 P. 872, 105 Okl. 81—McKinney v. Biggs, 220 P. 459, 96 Okl. 266—Lindsay State Bank v. Cornelius, 185 P. 97, 76 Okl. 273.

98. Ark.—Brotherhood of Maintenance of Way Employees v. Page, 123 S.W.2d 536, 197 Ark. 498.

Fla.—Jacksonville Coach Co. v. Early, 78 So.2d 369.

N.Y.—Ganz v. Hi-Line Co., 104 N.Y. S.2d 11, 278 App.Div. 761.

Okl.—Sinclair Refining Co. v. Roberts, 206 P.2d 193, 201 Okl. 358—Hart Grocery Co. v. Hunt, 52 P. 2d 66, 175 Okl. 32—Alexander Drug Co. v. Whitaker, 293 P. 264, 146 Okl. 61—Mid-Continent Life Ins. Co. v. Walker, 260 P. 1109, 128 Okl. 75—State v. School Dist. No. 35 of Okmulgee County, 246 P. 842, 114 Okl. 297—Dimmers v. Regan, 174 P. 742, 68 Okl. 322.

Tex.—Southwest Dairy Products Co. v. Littrell, Civ.App., 143 S.W.2d 93.

99. Ala.—Southern Ry. Co. v. Melton, 198 So. 588, 240 Ala. 244.

Cal.—Huckaby v. Northam, 171 P. 1083, 35 C.A. 775.

Ga.—Southern Ry. Co. v. Blanton, 192 S.E. 437, 56 Ga.App. 232.

La.—Green v. Rasch, App., 172 So. 796.

Mich.—Tavener v. Elk Rapids Rural Agr. School Dist., 67 N.W.2d 136, 341 Mich. 244.

Mo.—Hutchison v. Thompson, 175 S. W.2d 903.

N.Y.—Simpson v. State, 77 N.Y.S.2d 760, 192 Misc. 49, affirmed 92 N.Y.S. 2d 400, 275 App.Div. 1065.

Pa.—In re Olshefski's Estate, 11 A. 2d 487, 337 Pa. 420.

Tex.—Sells Petroleum v. Victory Swabbing Co., Civ.App., 209 S.W.2d 199—Helmerich-Payne, Inc., v. Debus, Civ.App., 148 S.W.2d 243—Jax Beer Co. v. Tucker, Civ.App., 146 S.W.2d 436, error dismissed, judgment correct—Traders & General Ins. Co. v. Keahey, Civ.App., 119 S.W.2d 618, error dismissed—Worth Food Markets v. Le Baume, Civ. App., 112 S.W.2d 1089, error dismissed.

W.Va.—Dorsey v. Prudential Ins. Co. of America, 19 S.E.2d 152, 124 W. Va. 100.

Wis.—Hephner v. Wolf, 52 N.W.2d 390, 261 Wis. 191.

99.5 Ala.—Kelly v. Kelly, 24 So.2d 265, 247 Ala. 316—American Nat. Bank & Trust Co. v. Powell, 178 So. 21, 235 Ala. 236.

Fla.—Miami Transit Co. v. Dalton, 23 So.2d 572, 156 Fla. 485.

Ga.—Espy v. Preston, 34 S.E.2d 705, 199 Ga. 608.

Idaho.—O'Connor v. Meyer, 154 P.2d 174, 66 Idaho 15.

La.—Roberts v. Radalec, Inc., 64 So. 2d 189, 222 La. 831.

State ex rel. Burns v. Fornea, App., 82 So.2d 463—Malbreaugh v. City of Baton Rouge, App., 68 So. 2d 619—Gordon v. Pittman, App., 61 So.2d 609—Thrash v. Continental Casualty Co., App., 6 So.2d 75—Macomber v. De Bardeleben Coal Co., App., 4 So.2d 483, vacated on other grounds 8 So.2d 624, 200 La. 633, certiorari denied 63 S.Ct. 61, 317 U.S. 661, 87 L.Ed. 532.

Me.—Banks v. Adams, 195 A. 206, 135 Me. 270.

Mo.—Zamora v. Woodmen of the World Life Ins. Soc., App., 157 S. W.2d 601.

Tex.—Houseman v. Decuir, Civ.App., 281 S.W.2d 103, reversed on other grounds, Sup., 283 S.W.2d 732—Holmes v. American General Ins. Co., Civ.App., 263 S.W.2d 615—Texas Emp. Ins. Ass'n v. Foreman, Civ.App., 262 S.W.2d 248.

Va.—Sligo Parkway Apartments v. Landscape Engineering Co., 94 S.E. 2d 208, 198 Va. 349—Whichard v. Nee, 72 S.E.2d 365, 194 Va. 83—Atlantic Coast Line R. Co. v. Clements, 36 S.E.2d 553, 184 Va. 656—Virginia Electric & Power Co. v. Thomas, 23 S.E.2d 148, 180 Va. 292—Smith v. Turner, 16 S.E.2d 370, 178 Va. 172, 136 A.L.R. 1251—Hawkins v. Brickhouse, 199 S.E. 482, 172 Va. 1.

Wis.—Calhoun v. Western Cas. & Sur. Co., 49 N.W.2d 911, 260 Wis. 34.

Comparative negligence

Supreme court can disturb jury's findings as to percentages of negligence attributable to respective parties, where percentages found are grossly disproportionate.

Wis.—Gauthier v. Carbonneau, 277 N.W. 135, 226 Wis. 527.

erroneous,[1] or such as a jury reasonably viewing the evidence could not properly find;[2] where the verdict is clearly contrary to law,[3] or is against the law as applied to the facts found,[4] against admissions,[5] or contrary to the instructions of the court;[6] or where the verdict is obviously based on prejudiced testimony.[7] Likewise, a verdict or finding may be set aside on appeal where it is the result of passion and prejudice,[8] or mistake,[9] is based solely on the testimony of a self-confessed felon,[10] or on evidence in flat contradiction of recognized physical laws or at variance with physical facts,[11] or is

1. Ala.—Furst v. Shows, 116 So. 149, 217 Ala. 297.
La.—Lewis v. Louisiana & N. W. R. Co., 2 La.App. 176.
Tex.—Gulf, C. & S. F. Ry. Co. v. Russell, Com.App., 82 S.W.2d 948.
Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351.
Va.—Virginia Electric & Power Co. v. Courtney, 27 S.E.2d 917, 182 Va. 175.
4 C.J. p 857 note 92.

2. Cal.—Pietrofitta v. Southern Pac. Co., 290 P. 597, 107 C.A. 575.
Conn.—Wells v. Radville, 153 A. 154, 112 Conn. 459.
Iowa.—Stilwell v. Stilwell, 172 N.W. 177, 186 Iowa 177.
Ky.—John R. Coppin Co. v. Richards, 231 S.W. 229, 191 Ky. 720.
Minn.—Schendel v. Chicago, M. & St. P. Ry. Co., 232 N.W. 629, 181 Minn. 395.
Okl.—Missouri, K. & T. Ry. Co. v. Beatty, 32 P.2d 892, 168 Okl. 254—Morris v. Purcell Bank & Trust Co. of Purcell, 204 P. 436, 85 Okl. 45—Pahlka v. Chicago, R. I. & P. Ry. Co., 161 P. 544, 62 Okl. 223—Earley v. Johnson, 160 P. 482, 58 Okl. 466.
Or.—Morser v. Southern Pac. Co., 262 P. 252, 124 Or. 384.
Tex.—O'Fiel v. Redell, Civ.App., 298 S.W. 142, affirmed Reddell v. O'Fiel, Com.App., 6 S.W.2d 92—Texas & N. O. Ry. Co. v. Wagner, Civ.App., 224 S.W. 377.
Va.—Town of Big Stone Gap v. Johnson, 35 S.E.2d 71, 184 Va. 375.
4 C.J. p 857 note 93.

Focal point of judicial review of a jury finding is the reasonableness of the particular inference or conclusion drawn by the jury.
Va.—Edgerton v. Norfolk Southern Bus Corp., 47 S.E.2d 409, 187 Va. 642.

3. Conn.—Sanderson v. Bob's Coaster Corp., 54 A.2d 270, 133 Conn. 677.
Fla.—Co-operative Sanitary Baking Co. v. Shields, 70 So. 934, 71 Fla. 110—Wauchula Mfg. & Timber Co. v. Jackson, 70 So. 599, 70 Fla. 596.
Ind.—Gamble v. Lewis, 85 N.E.2d 629, 227 Ind. 455.
Mo.—Clark v. Atchison & Eastern Bridge Co., 62 S.W.2d 1079, 333 Mo. 721, certiorari denied Atchison & Eastern Bridge Co. v. Clark, 54 S. Ct. 229, 290 U.S. 701, 78 L.Ed. 603.
Kube v. Northwestern Coal & Mining Co., App., 209 S.W. 614.
Va.—American Legion, Department of Virginia v. William Byrd Press, 190 S.E. 140, 168 Va. 1—Braswell v. Virginia Electric & Power Co., 173 S.E. 365, 162 Va. 27.

4. Colo.—Atkinson v. Ives, 255 P.2d 749, 127 Colo. 243.
Va.—Portsmouth v. Houseman, 65 S. E. 11, 109 Va. 554.
Wis.—Foemmel v. Mueller, 38 N.W. 2d 510, 255 Wis. 277.

A "verdict which is contrary to law" is one which is contrary to the principles of law as applied to the facts which the jury were called on to try and contrary to the principles of law which should govern the cause.
Ind.—Piepho v. Gesse, 18 N.E.2d 468, 106 Ind.App. 450—Marion County Const. Co. v. Kimberlin, 184 N.E. 574, 96 Ind.App. 145.

Where, in trying equitable issues in a case, the court makes findings of fact which are necessarily in conflict with the verdict of the jury on an issue of damages in the same case, and the evidence clearly supports the court's findings, the verdict should be set aside, in so far as it conflicts.
Idaho.—Burrus v. Edward Rutledge Timber Co., 202 P. 1067, 34 Idaho 606.

5. Tex.—Huey & Philp Hardware Co. v. McNeil, Civ.App., 111 S.W. 2d 1205, error dismissed.
Va.—Preston v. Otey, 14 S.E. 68, 88 Va. 491.
4 C.J. p 857 note 95.

6. Wis.—Murphy v. Lachmund Lumber & Coal Co., 215 N.W. 822, 194 Wis. 119.
4 C.J. p 857 note 97.

7. Wis.—Loehr v. Dickson, 138 N.W. 61, 1128, 139 N.W. 407, 151 Wis. 469.
4 C.J. p 857 note 96.

8. Ala.—Shelton v. Hacelip, 74 So. 950, 199 Ala. 535—Southern Ry. Co. v. Grady, 68 So. 346, 192 Ala. 515.
Ariz.—Inter-State Fidelity Building & Loan Ass'n v. Hollis, 17 P.2d 1101, 41 Ariz. 295.
Cal.—Strosk v. Howard Terminal Co., 277 P.2d 828, 129 C.A.2d 797.
Conn.—Nichols v. Nichols, 13 A.2d 591, 126 Conn. 614.
Ky.—Commercial Union Assur. Co. v. Howard, 76 S.W.2d 246, 256 Ky. 363.
Mo.—Trent v. Barber, App., 56 S.W. 2d 151—Prospect News Printing Co. v. Swindle, App., 15 S.W.2d 922—Traw v. Heydt, App., 216 S.W. 1009.
Neb.—Trute v. Holden, 225 N.W. 238, 118 Neb. 449.
N.J.—Harpell v. Public Service Coordinated Transport, 120 A.2d 43, 20 N.J. 309.
Syle v. Freedley, 99 A.2d 541, 27 N.J.Super. 461.
N.Y.—Nocero v. Denitto, 208 N.Y.S. 601, 212 App.Div. 363.
Ohio.—Toledo, C. & O. R. R. Co. v. Miller, 132 N.E. 156, 103 Ohio St. 17.
Tex.—Wichita Valley Ry. Co. v. Williams, 288 S.W. 425, 116 Tex. 253.
Chicago, R. I. & G. Ry. Co. v. Johnson, Civ.App., 224 S.W. 277.

9. N.J.—Harpell v. Public Service Co-ordinated Transport, 120 A.2d 43, 20 N.J. 309.
De Ponte v. Mutual Contracting Co., 86 A.2d 785, 18 N.J.Super. 142.
N.Y.—Convissar v. Frank, 19 N.Y.S. 2d 70, 259 App.Div. 828.
Ohio.—Hayes v. Halle, 155 N.E. 493, 23 Ohio App. 522.

10. Ky.—Allen v. Young, 6 T.B.Mon. 136, 17 Am.D. 130.

11. Ark.—Alldread v. Mills, 199 S. W.2d 571, 211 Ark. 99—Metropolitan Life Ins. Co. v. Graves, 143 S. W.2d 1102, 201 Ark. 189—Missouri Pac. R. Co. v. Hancock, 113 S.W. 2d 489, 195 Ark. 414—Murphy v. Murphy, 222 S.W. 721, 144 Ark. 429.
Cal.—In re Teed's Estate, 247 P.2d 54, 112 C.A.2d 638—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255—Wade v. Thorsen, 43 P.2d 592, 5 C.A.2d 706.
Ky.—Silver Fleet Motor Express v. Wilson, 165 S.W.2d 51, 291 Ky. 515.
Minn.—Price v. Mackner, 58 N.W.2d 260, 239 Minn. 119.
Mo.—Schlemmer v. McGee, 185 S.W. 2d 806.
Citizens Bank of Liberty v. Thompson, 132 S.W.2d 700, 234 Mo. App. 448—Pelster v. Shamrod Boiler Co., App., 268 S.W. 890.
Mont.—Sullivan v. Northern Pac. Ry. Co., 94 P.2d 651, 109 Mont. 93.
Neb.—Moore v. Krejci, 297 N.W. 913, 139 Neb. 562—Elwood v. Schlank, 252 N.W. 828—Dodds v. Omaha & C. B. St. Ry. Co., 178 N.W. 258, 104 Neb. 692.
Okl.—Oklahoma Ry. Co. v. Ivery, 204 P.2d 978, 201 Okl. 245.
Pa.—Bernardi v. Pennsylvania R. Co., 195 A. 38, 328 Pa. 373.
Tex.—Dixie Motor Coach Corporation v. Fry, Civ.App., 177 S.W.2d

otherwise inherently incredible or improbable;[12] where it is apparent that the verdict may have been brought about by some error of law on the part of the court;[13] or where substantial justice has not been done.[14]

§ 1648. On Conflicting Evidence

a. In general
b. Limitations of rule

a. In General

Generally, the responsibility of determining disputed questions of fact rests with the jury, and not with the reviewing court, and a verdict based on conflicting evidence will not ordinarily be disturbed by the appellate court.

As a general rule, the responsibility of determining disputed questions of fact rests with the jury, and not with the reviewing court,[14.50] and it is not

992, reversed on other grounds 180 S.W.2d 135, 142 Tex. 589—Griffin v. Linn, Civ.App., 3 S.W.2d 148.
Va.—John T. Griffin Truck Corporation v. Smith, 142 S.E. 385, 150 Va. 95.
W.Va.—Keller v. Norfolk & W. Ry. Co., 170 S.E. 187, 113 W.Va. 910.
Wis.—Nitka v. Van Camp, 40 N.W.2d 570, 256 Wis. 119—Schulz v. General Casualty Co., 288 N.W. 803, 233 Wis. 118—Sheehan v. Lewis, 260 N.W. 633, 218 Wis. 588—Latta v. Fidelity-Phœnix Fire Ins. Co., 202 N.W. 299, 186 Wis. 116.
4 C.J. p 857 note 99.

Physical facts considered

The reviewing court, in determining sufficiency of evidence to warrant a verdict for plaintiff, although considering evidence in light most favorable to plaintiff, could not ignore undisputed physical facts shown by the record, or accept the testimony of plaintiff which was inconsistent with such physical facts.
Vt.—Hastings v. Murray, 20 A.2d 107, 112 Vt. 37—Craig v. Parkhurst, 18 A.2d 173, 111 Vt. 486.

Contrary to laws of nature or the like

Only where the facts proved in evidence are contrary to some well-known law of nature, mathematics, or the like, is it demonstrated beyond controversy that the verdict is based on what is untrue, and cannot be true; in such cases the court will declare as matter of law that the testimony is not legally sufficient to warrant the verdict.
Ark.—Fair Store No. 32 v. Hadley Milling Co., 229 S.W. 727, 148 Ark. 209.

12. Ariz.—Inter-State Fidelity Building & Loan Ass'n v. Hollis, 17 P. 2d 1101, 41 Ariz. 295.
Ark.—Missouri Pac. R. Co. v. Hancock, 113 S.W.2d 489, 195 Ark. 414.
Cal.—Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7—Schouten v. Crawford, 257 P.2d 88, 118 C.A.2d 59—High v. Pacific Gas & Electric Co., 126 P.2d 911, 52 C.A. 2d 701, rehearing denied 127 P.2d 588, 52 C.A.2d 701—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255.
Ill.—Orban v. Stoll, 66 N.E.2d 316, 328 Ill.App. 398.
Me.—Turcotte v. Dunning, 171 A. 908, 132 Me. 417—Page v. Moulton, 141 A. 183, 127 Me. 80.
Miss.—Teche Lines v. Bounds, 179 So. 747, 182 Miss. 638.
Mo.—Cooley v. Davis, 286 S.W. 412, 221 Mo.App. 748.
Mont.—Sullivan v. Northern Pac. Ry. Co., 94 P.2d 651, 109 Mont. 93.
Tex.—Galveston, H. & S. A. Ry. Co. v. Wiemar, Civ.App., 3 S.W.2d 874.
Wis.—Latta v. Fidelity-Phœnix Fire Ins. Co., 202 N.W. 299, 186 Wis. 116.

Inconsistencies in plaintiff's testimony did not bring the case within the rule that a verdict based on testimony inherently improbable may be set aside.
Mo.—Shannon v. People's Motorbus Co. of St. Louis, App., 20 S.W.2d 580.

Physical impossibility not necessary

The supreme court's authority to reverse a case for insufficiency of evidence is not limited to cases where evidence supporting the verdict is conceded to be a physical impossibility.
Ariz.—Inter-State Fidelity Building & Loan Ass'n v. Hollis, 17 P.2d 1101, 41 Ariz. 295.

Evidence not improbable

Testimony in an action for injuries resulting from a collision was held not so inherently improbable as to require reversal.
Cal.—Neilson v. Houle, 254 P. 891, 200 C. 726.

13. Ark.—Collier Commission Co. v. Wright, 264 S.W. 942, 165 Ark. 338.
Wash.—Heggen v. City of Seattle, 288 P.2d 830, 47 Wash.2d 576.
4 C.J. p 857 note 1.

Insufficiency of instructions

(1) The jury's finding on an issue not submitted under correct instruction is not conclusive.
Ark.—Collier Commission Co. v. Wright, 264 S.W. 942, 165 Ark. 338.

(2) In an action for injuries to a street car passenger, a verdict for defendant is entitled to but little weight when the charge was in the most general terms, failed to define the duties of the carrier to the passenger, and erroneously instructed that the burden of proof was on the passenger.
La.—Hopkins v. New Orleans Ry. & Light Co., 90 So. 512, 150 La. 61, 19 A.L.R. 1362.
4 C.J. p 857 note 1 [a].

14. Ariz.—Huntsman v. First Nat. Bank, 243 P. 598, 29 Ariz. 574.
Mo.—Greer v. McCrory, App., 192 S. W.2d 431, affirmed in part and reversed in part on other grounds 197 S.W.2d 669, 355 Mo. 706.
Tex.—Harris v. Interstate Lumber Co., Civ.App., 303 S.W.2d 950.

14.50 Ark.—Harrison v. Kelly, 206 S.W.2d 184, 212 Ark. 447—Home Life & Accident Co. v. Scheuer, 258 S.W. 648, 162 Ark. 600.
Cal.—Cucuk v. Payne, 296 P.2d 7, 140 C.A.2d 881.
Mo.—Eisenbarth v. Powell Bros. Truck Lines, 161 S.W.2d 263.
Neb.—Jacobsen v. Poland, 80 N.W.2d 891, 163 Neb. 590.
Okl.—Clark v. Addison, 311 P.2d 256.
Pa.—Hardy v. Millers' Mut. Fire Ins. Ass'n of Illinois, 141 A. 623, 293 Pa. 9.
Tex.—Mollinary v. Karam, Civ.App., 257 S.W.2d 886—Mortenson v. Mortenson, Civ.App., 186 S.W.2d 297—Glenn v. Glenn, Civ.App., 183 S. W.2d 231—McCarty v. Hogan, Civ. App., 121 S.W.2d 499, error dismissed.
W.Va.—Crowl v. Buckhannon & N. R. Co., 114 S.E. 521, 92 W.Va. 188.

Reconciliation of disputed facts is for jury, not the appellate court.
Tex.—McClure v. McClure, Civ.App., 228 S.W.2d 362—Highway Ins. Underwriters v. Roberts, Civ.App., 224 S.W.2d 903, error refused no reversible error—Meadolake Foods v. Estes, Civ.App., 218 S.W.2d 862, error refused 219 S.W.2d 441, 148 Tex. 13—Whitten v. Dethloff, Civ. App., 214 S.W.2d 480—Dismukes v. Gilmer, Civ.App., 286 S.W. 495.

Conflict between witnesses for same party

(1) Rule that true deduction from conflicting testimony is a problem for jury and not reviewing court applies to conflict between witnesses for the same party.
Cal.—Hagy v. Allied Chemical & Dye Corp., 265 P.2d 86, 122 C.A.2d 361.

(2) It was for jury and trial court to say which of plaintiff's inconsistent statements made while testifying in his own behalf were true.

the province of the appellate court to weigh the evidence where it is conflicting.[15] The rule, as more broadly stated in most jurisdictions, is that the verdict or findings of a jury rendered on the trial of a cause will not be disturbed by a reviewing court where the evidence is conflicting[16] and the case has

Ariz.—Dunseath v. Tucson Golf & Country Club, 74 P.2d 43, 51 Ariz. 14.

15. Ala.—Kurn v. Counts, 22 So.2d 725, 247 Ala. 129.
Ariz.—Haas v. Morrow, 97 P.2d 204, 54 Ariz. 455.
Ark.—Stroud v. Henderson, 284 S.W. 45, 171 Ark. 338.
Cal.—Morris v. Standard Oil Co., 205 P. 1073, 188 C. 468.
Figlia v. Wisner, App., 309 P.2d 832—Fillmore v. Reilly, 82 P.2d 739, 28 C.A.2d 460.
Fla.—Watson v. Gallagher, App., 96 So.2d 472.
Ga.—Johnson v. Mary-Leila Cotton Mills, 116 S.E. 609, 155 Ga. 344.
Ill.—Smith v. Rutledge, 163 N.E. 544, 332 Ill. 150, 61 A.L.R. 273.
Manion v. Chicago, R. I. & P. Ry. Co., 138 N.E.2d 98, 12 Ill.App. 2d 1—Oswald v. Grand Trunk Western Ry. Co., 283 Ill.App. 86.
Ind.—Indiana Ins. Co. v. Handlon, 24 N.E.2d 1003, 216 Ind. 442—Continental Nat. Bank of Indianapolis v. Discount & Deposit State Bank of Kentland, 157 N.E. 433, 199 Ind. 290—Cleveland, C., C. & St. L. Ry. Co. v. Baker, 128 N.E. 836, 190 Ind. 633.
Hall v. State ex rel. Freeman, 52 N.E.2d 370, 114 Ind.App. 328—Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Parker, 34 N.E.2d 190, 110 Ind.App. 1, petition overruled 37 N.E.2d 5, 110 Ind.App. 1—Chicago & E. I. Ry. Co. v. Latta, 166 N.E. 297, 91 Ind.App. 102.
Iowa.—Pickerell v. Griffith, 29 N.W. 2d 588, 238 Iowa 1151—Deiling v. Des Moines Ry. Co., 251 N.W. 622, 217 Iowa 687.
Kan.—Mitchell v. Dawson, 191 P.2d 913, 164 Kan. 630.
Miss.—Eastman Gardiner & Co. v. Sumrall, 133 So. 212, 160 Miss. 792.
Mo.—Royal v. Thompson, 212 S.W.2d 921.
Young v. Kansas City Public Service Co., App., 255 S.W.2d 113—O'Donnell v. St. Louis Public Service Co., App., 246 S.W.2d 539—Little v. Kansas City, 197 S.W.2d 1005, 239 Mo.App. 1007—Albrecht v. Piper, App., 164 S.W.2d 105—Burston v. Fennewald, 2 S.W.2d 824, 222 Mo.App. 128.
Neb.—Shields v. Buffalo County, 71 N.W.2d 701, 161 Neb. 34—Barnes v. Davitt, 71 N.W.2d 107, 160 Neb. 595—Snyder v. Farmers Irr. Dist., 61 N.W.2d 557, 157 Neb. 771—James v. Hogan, 47 N.W.2d 847, 154 Neb. 306, modified on other grounds 48 N.W.2d 756, 154 Neb. 640—Bolio v. Scholting, 41 N.W.2d 913, 152 Neb. 588.
N.M.—Snodgrass v. Turner Tourist Hotels, 109 P.2d 775, 45 N.M. 50.
Okl.—Shell Pipe Line Corp. v. Curtis, 287 P.2d 681—Oklahoma Ry. Co. v. Hankins, 249 P.2d 997, 207 Okl. 374—Stiers v. Mayhall, 248 P.2d 1047, 207 Okl. 219—Oklahoma Ry. Co. v. Hentzen, 194 P.2d 847, 200 Okl. 364—Malernee v. Blaylock, 92 P.2d 354, 185 Okl. 383—McClendon v. Kennedy, 77 P.2d 15, 182 Okl. 153—Champlin Refining Co. v. Allen, 62 P.2d 623, 178 Okl. 101—Mudge Oil Co. v. Swanson, 54 P.2d 345, 176 Okl. 13—Campbell v. Rogers, 280 P. 407, 138 Okl. 50—St. Louis-San Francisco Ry. Co. v. Russell, 266 P. 763, 130 Okl. 237.
Pa.—Kimble v. Mackintosh Hemphill Co., 59 A.2d 68, 359 Pa. 461—Canon v. Pennsylvania Trust Co., 158 A. 173, 305 Pa. 422.
S.C.—Field v. Gregory, 94 S.E.2d 15, 230 S.C. 39.
Tex.—Abramson v. Davenport, Civ. App., 269 S.W.2d 833, error refused no reversible error—Meeker v. Teer, Civ.App., 122 S.W.2d 338, error dismissed.
Utah.—Parker v. Bamberger, 116 P. 2d 425, 100 Utah 361—McLaughlin v. Chief Consol. Mining Co., 220 P. 726, 62 Utah 532.
52 C.J. p 174 note 12.

Contradiction of plaintiff's evidence, in an action for damages by nuisance, may be considered on defendant's appeal; the main question of liability being one of degree.
Utah.—Dahl v. Utah Oil Refining Co., 262 P. 269, 71 Utah 1.

Probabilities

Court cannot substitute its judgment as to probabilities for that of jury where evidence is conflicting.
Ariz.—Standard Oil Co. of California v. Shields, 119 P.2d 116, 58 Ariz. 239.

16. Ala.—Pritchett v. Pritchett, 74 So.2d 920, 261 Ala. 536—Alabama Credit Corp. v. Higgins, 36 So.2d 227, 251 Ala. 17—Little v. Sugg, 8 So.2d 866, 243 Ala. 196—Ensley Holding Co. v. Kelley, 158 So. 896, 229 Ala. 650—Grand Lodge, K. P. of North America v. Archibald, 151 So. 454, 227 Ala. 595—Benefit Ass'n of Railway Employees v. Armbruster, 140 So. 356, 224 Ala. 302—Phillips v. Ashworth, 124 So. 519, 220 Ala. 237—Shadix v. Brown, 113 So. 581, 216 Ala. 516—Cox v. Thomas, 113 So. 261, 216 Ala. 282—Franklin v. Argyro, 100 So. 811, 211 Ala. 506—Jackson Lumber Co. v. Trammell, 74 So. 469, 199 Ala. 536—Hanks v. Everett, 122 So. 700, 23 Ala.App. 190, certiorari denied 122 So. 701, 219 Ala. 494.
Berry v. Barksdale, 1 So.2d 758, 30 Ala.App. 134—Alabama Coca-Cola Botting Co. v. Causey, 180 So. 588, 28 Ala.App. 115, certiorari denied 180 So. 590, 235 Ala. 570.
Ariz.—Anglin v. Nichols, 297 P.2d 932, 80 Ariz. 346—Tom Reed Gold Mines Co. v. Brady, 117 P.2d 484, 58 Ariz. 44—Posner v. New York Life Ins. Co., 106 P.2d 488, 56 Ariz. 202—Williams v. Hagans, 105 P.2d 958, 56 Ariz. 83—Tom Reed Gold Mines Co. v. Brady, 99 P.2d 97, 55 Ariz. 133, 127 A.L.R. 905—Seiler v. Whiting, 84 P.2d 452, 52 Ariz. 542—Palmer v. Kelly, 79 P.2d 344, 52 Ariz. 98—Wolff v. First Nat. Bank, 53 P.2d 1077, 47 Ariz. 97—Moreno v. Russell, 53 P.2d 411, 47 Ariz. 38—Fisher v. Pendergast, 49 P.2d 1003, 46 Ariz. 242—Gillespie Land & Irrigation Co. v. Hamilton, 29 P.2d 158, 43 Ariz. 102—Noel v. Ostlie, 22 P.2d 831, 42 Ariz. 113—Pacific Mut. Life Ins. Co. of California v. Young, 9 P.2d 188, 40 Ariz. 1—Fike v. Grant, 8 P.2d 242, 39 Ariz. 549—Hatchimonji v. Homes, 3 P.2d 271, 38 Ariz. 535—Ren v. Jones, 1 P.2d 110, 38 Ariz. 476—Pickwick Stages Corporation v. Gil, 296 P. 269, 38 Ariz. 7—Union Auto Transp. Co. v. Mattingly, 278 P. 368, 35 Ariz. 373—Seaside Nat. Bank v. Allen, 277 P. 68, 35 Ariz. 302—Central Copper Co. v. Klefisch, 270 P. 629, 34 Ariz. 230—Rio Grande Oil Co. v. Upton Oil Co., 266 P. 3, 33 Ariz. 474—Mineral Basin Copper Co. v. Standish, 250 P. 364, 31 Ariz. 65—Clack v. Brethour, 250 P. 253, 31 Ariz. 21—Gila Water Co. v. Gila Land & Cattle Co., 249 P. 751, 30 Ariz. 569—Atchison, T. & S. F. Ry. Co. v. Gutierrez, 249 P. 66, 30 Ariz. 491—Perazzo v. Ortega, 241 P. 518, 29 Ariz. 334—Consolidated Nat. Bank of Tucson v. Cunningham, 238 P. 332, 28 Ariz. 518—Bartlett-Heard Land & Cattle Co. v. Harris, 238 P. 327, 28 Ariz. 497—Maryland Casualty Co. v. Sweek, 236 P. 720, 28 Ariz. 258—Price & Price Inv. Co. v. McGrath, 222 P. 714, 26 Ariz. 110—City of Bisbee v. Thomas, 212 P. 190, 24 Ariz. 614—Pacific Gas & Electric Co. v. Almanzo, 198 P. 457, 22 Ariz. 431—Gordon v. Brewer, 189 P. 243, 21 Ariz. 402—Durazo v. Ayers, 188 P. 868, 21 Ariz. 373—Southern Pac. Co. v. Thomas, 188 P. 268, 21 Ariz. 355, certiorari denied 41 S.Ct. 447, 255 U.S. 576, 65 L.Ed. 793—Benton v. Regeser, 179 P. 966, 20 Ariz. 273—Costello v. Cunningham, 172 P. 664, 19 Ariz. 512.
Ark.—Union Life Ins. Co. v. Pritchett, 190 S.W.2d 968, 209 Ark. 487—Harvey v. Kirk, 168 S.W.2d 827, 205

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kis v. Keyt, 186 Ill.App. 279. See Ford v. Ford, 192 Ill.App. 12.

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Miss.—**Corpus Juris Secundum cited in** Faulkner v. Middleton, 190 So. 910, 911, 186 Miss. 355—Saenger Theatres Corp. v. Herndon, 178 So. 86, 180 Miss. 791—Goodyear Yellow Pine Co. v. Anderson, 157 So. 700, 171 Miss. 530—Ætna Ins. Co. v. Lester, 154 So. 706, 170 Miss. 353—Illinois Cent. R. Co. v. Ray, 148 So. 233, 165 Miss. 885—Greer v. Pierce, 147 So. 303, 167 Miss. 65—Hartford Fire Ins. Co. v. Williams, 145 So. 94, 165 Miss. 233—Gillespie v. Doty, 135 So. 211, 160 Miss. 684—Stevens v. Locke, 125 So. 529, 156 Miss. 182—Stokes v. Adams-Newell Lumber Co., 118 So. 441, 151 Miss. 711—Sackler v. Slade, 114 So. 396, 148 Miss. 575—Gunter v. Yazoo & M. V. R. Co., 111 So. 105, 145 Miss. 475—Ayers v. Tonkel, 103 So. 361, 138 Miss. 712—Louisville & N. R. Co. v. Jones, 98 So. 230, 134 Miss. 53—City of Hattiesburg v. Beverly, 86 So. 590, 123 Miss. 759—Letow v. U. S. Fidelity & Guaranty Co., 83 So. 81, 120 Miss. 763—Estes v. Jones, 80 So. 526, 119 Miss. 142—Mardis v. Yazoo & M. V. R. Co., 76 So. 640, 115 Miss. 734.

Mo.—Huffman v. Mercer, 295 S.W. 2d 27—Smith v. Thompson, 142 S. W.2d 70, 346 Mo. 502—Evans v. Atchison, T. & S. F. Ry. Co., 131 S.W.2d 604, 345 Mo. 147—Chostner v. Schrock, 64 S.W.2d 664—Rose v. Missouri Dist. Telegraph Co., 43 S.W.2d 562, 328 Mo. 1009, 81 A.L.R. 400—Manley v. Wells, 292 S.W. 67—Beal v. Chicago, B. & Q. R. Co., 285 S.W. 482—Shaw v. Chicago & A. R. Co., 282 S.W. 416, 314 Mo. 123—Nahorski v. St. Louis Electric Terminal Rys. Co., 271 S.W. 749—Jackman v. St. Louis & H. Ry. Co., 231 S.W. 978—Holman v. Clark, 198 S.W. 868, 272 Mo. 266—Moyer v. Chicago & A. R. Co., 198 S.W. 839—Southern Iron & Equipment Co. v. Smith, 192 S.W. 754—Mullins v. Kansas City, 188 S.W. 193, 268 Mo. 444—Miller v. Busey, 186 S.W. 983.

Henneke v. Gasconade Power Co., 152 S.W.2d 667, 236 Mo.App. 100—Wissmann v. Pearline, 135 S.W.2d 1, 235 Mo.App. 314—Ozias v. South

Side Bank of Kansas City, App., 128 S.W.2d 288—Evans v. Massman Const. Co., 115 S.W.2d 163, 232 Mo. App. 1105, reversed on other grounds 122 S.W.2d 924, 343 Mo. 632—Moutria v. East St. Louis Ry. Co., App., 76 S.W.2d 427—Whipple v. Edward Aaron, Inc., App., 74 S.W.2d 1089—Jones v. McGinley Land Co., App., 74 S.W.2d 853—Æolian Co. of Missouri v. Boyd, App., 65 S.W.2d 111—Francis v. Garner, App., 56 S.W.2d 158—Cook v. Harrington, App., 54 S.W.2d 436—McCoy v. Home Oil & Gas Co., App., 48 S.W.2d 113—English v. Sahlender, App., 47 S.W.2d 150—Gambling v. Missouri Pac. R. Co., App., 40 S.W.2d 766—Robinson v. Chicago, B. & Q. R. Co., App., 38 S.W.2d 514—Rose v. Western Union Telegraph Co., App., 38 S.W.2d 483—Thayer v. Palen, 34 S.W.2d 536, 224 Mo.App. 1088—Carney v. Eubanks, App., 31 S.W.2d 552—Gardenhire v. St. Louis-San Francisco R. Co., 31 S.W.2d 113, 224 Mo.App. 586—Nearns v. Danner, 31 S.W.2d 102, 224 Mo.App. 629—Dorf v. Harter, App., 30 S.W.2d 645—Haverstick v. Brookshire, App., 28 S.W.2d 432—Elmer v. Rubenstein, App., 24 S.W.2d 657—Estes v. Kansas City, C. C. & St. J. Ry. Co., App., 23 S.W.2d 193—Davis v. Biles, App., 21 S.W.2d 201—Glaves v. Old Gem Catering Co., App., 18 S.W.2d 564—La Forge Undertaking Co. v. Bader, App., 15 S.W.2d 945—Prospect News Printing Co. v. Swindle, App., 15 S.W.2d 922—Farmers' Nat. Bank v. Haning, App., 10 S.W.2d 351—People's Bank of Glasgow v. Yager, App., 6 S.W.2d 633—Vardell v. W. F. Shelton, Jr., Store Co., App., 4 S.W.2d 478—Dillard v. Justus, 3 S.W.2d 392, 222 Mo.App. 362—Calkins v. Engle, 300 S.W. 997, 221 Mo.App. 1173—Davis v. Culmer, 295 S.W. 803, 221 Mo. App. 1037—Guldner v. International Shoe Co., App., 293 S.W. 428—Carson v. Missouri, K. & T. R. Co., App., 292 S.W. 1069—Mackey v. Home Ins. Co. of New York, App., 284 S.W. 161—Crawford v. Dahlenberg, 283 S.W. 65, 221 Mo.App. 600—Wolfinbarger v. Metcalf, App., 282 S.W. 749—Lorenz v. Morney, 282 S.W. 59, 221 Mo.App. 409—McKeon v. National Casualty Co., 270 S.W. 707, 216 Mo.App. 507—Stipel v. Piggott, 269 S.W. 942, 219 Mo. App. 222—N. W. Helm Feed & Coal Co. v. Butler County Milling Co., 269 S.W. 630, 218 Mo.App. 290—Wellington v. Con P. Curran Printing Co., 268 S.W. 396, 216 Mo.App. 358—Scott v. Scott, App., 265 S.W. 864—Lowther v. St. Louis-San Francisco Ry. Co., 261 S.W. 702, 214 Mo.App. 293—Langley v. Federal Lead Co., App., 261 S.W. 688—Flynn v. Burgess, App., 259 S.W. 147—Herberth v. Turner, App., 255 S.W. 939—Williams v. Barnes, App., 253 S.W. 807—Sample v. Reinhard, App., 253 S.W. 180—Reitz v. Oglebay, 251 S.W. 771, 213 Mo.App. 611—West v. Duncan, App., 249 S.W. 127—Springgate v. United Rys. Co. of St. Louis, App., 249 S.W. 122—Howard & Brown Realty Co. v. Berman, 245 S.W. 606, 212 Mo.App. 401—Fink v. Schmidt, App., 245 S.W. 566—Mitchell v. Wayland, App., 243 S. W. 275—Shepard v. People's Storage & Transfer Co., App., 243 S. W. 193—Holmes v. Protected Home Circle, 204 S.W. 202, 199 Mo.App. 528—Kinsolving v. Kinsolving, App., 194 S.W. 530—Deiss v. Kasselmann, App., 189 S.W. 824—Toberman, Mackey & Co. v. Gidley, App., 187 S.W. 593—Brim v. Alexander, App., 186 S.W. 544—Hellriegel v. Dunham, 179 S.W. 763, 192 Mo. App. 43.

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Nev.—Nelson v. Smith, 176 P. 261, 42 Nev. 302, rehearing denied 178 P. 625, 42 Nev. 302.

N.H.—Levasseur v. Killam, 120 A. 431, 80 N.H. 562.

N.J.—Burkhardt v. Whalen, 151 A. 94, 8 N.J.Misc. 583—Abbruzzese v. Gaynor, 147 A. 115, 7 N.J.Misc. 673—Hart v. Brusnahan, 137 A. 845, 5 N.J.Misc. 469.

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N.Y.—Metzroth v. City of New York, 150 N.E. 519, 241 N.Y. 470, motion granted 152 N.E. 431, 242 N.Y. 570—Shirley v. Larkin Co., 145 N.E. 751, 239 N.Y. 94.

Boice v. Griffin, 50 N.Y.S.2d 338, 268 App.Div. 843—Van Buren v. Gandee, 23 N.Y.S.2d 522, 260 App. Div. 980, reargument denied 25 N. Y.S.2d 1010, 261 App.Div. 852, appeal denied 32 N.E.2d 836, 285 N.Y. 855—Balducci v. Panagiotou, 10 N.Y.S.2d 284, 256 App.Div. 1009—Witkin v. Charles D. Beckwith, Inc., 264 N.Y.S. 160, 238 App.Div. 328, affirmed 189 N.E. 697, 263 N.Y. 560—Winkelman v. Winkelman, 203 N.Y.S. 63, 208 App.Div. 68—Duncan v. Wohl, South & Co., 195 N.Y.S. 381, 201 App.Div. 737—Handal v. Spechler, 194 N.Y.S. 216, 201 App.Div. 278—E. A. Strout Farm Agency v. Gladstone, 179 N.Y.S. 350, 190 App. Div. 68.

Ajax Tool Co. v. National Tool Co., 199 N.Y.S. 163, 120 Misc. 603.

Eclipse Embroidery Works v. J. T. Murray & Co., 168 N.Y.S. 620.

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N.D.—Schnoor v. Meinecke, 40 N.W. 2d 803, 17 N.D. 96—**Corpus Juris Secundum cited in** State v. Shepard, 277 N.W. 315, 317, 68 N.D. 143—Griffin v. Implement Dealers' Mut. Fire Ins. Co., 250 N.W. 780, 64 N.D. 146—Jaszkowiak v. Refling, 245 N.W. 817, 62 N.D. 601—Schulkey v. Brown, 230 N.W. 6, 59 N.D. 345—Kraft v. Martell, 225 N.W. 79, 58 N.D. 58—Hampton v. Ross, 217 N.W. 845, 56 N.D. 423—Grewer v. Schafer, 197 N.W. 596, 50 N.D. 642—Branthover v. Monarch Elevator Co., 173 N.W. 455, 42 N.D. 330—Blackorby v. Ginther, 158 N. W. 354, 34 N.D. 248.

Ohio.—Kuhn v. Campbell, 161 N.E. 25, 118 Ohio St. 392—Bank of Buffalo v. Wendel, 125 N.E. 111, 100 Ohio St. 47.

Trinity Motors, Inc. v. De Blasio, App., 140 N.E.2d 423—Hooks v. Metcalf, App., 91 N.E.2d 697—Jaynes v. Vetel, App., 80 N.E.2d 621—Smith v. Brane, App., 61 N.E.2d 908—Leibovitz v. Central Nat. Bank, 60 N.E.2d 727, 75 Ohio App. 25—Kaiser v. Whetstone, App., 35 N.E. 2d 465—Metal Forms Corporation v. Clemans, 177 N.E. 517, 39 Ohio App. 324—Pollock v. Reitz, 176 N.E. 478, 38 Ohio App. 487—Tesar Motor Truck Co. v. Kramer, 164 N.E. 768, 30 Ohio App. 456—Ashdown v. Tresise, 160 N.E. 502, 26 Ohio App. 575, affirmed Tresise v. Ashdown, 160 N.E. 898, 118 Ohio St. 307, 58 A.L.R. 1476—Cohen v. Smith, 159 N.E. 329, 26 Ohio App. 32—Dime Sav. Bank of Canton v. Morton, 157 N.E. 825, 25 Ohio App. 157—Arnold v. Wylie, 157 N.E. 571, 25 Ohio App. 10—Kinsel v. Gross, 155 N.E. 703, 23 Ohio App. 532—Moeskops v. Bodman, 155 N.E. 566, 23 Ohio App. 176—O'Day v. Shouvlin, 17 Ohio App. 62, affirmed 136 N.E. 289, 104 Ohio St. 519, 25 A. L.R. 980.

Neave Building Co. v. Roudebush, 26 Ohio Cir.Ct., N.S., 229—Odenbaugh v. Homberger, 35 Ohio Cir.Ct. 331—Massillon Iron & Steel Co. v. Wiegand, 34 Ohio Cir.Ct. 556.

Ironton Garage Co. v. McKee, 20 Ohio N.P.,N.S., 251.

Okl.—Shelden v. Shinn, 239 P.2d 803, 206 Okl. 69—Raimer v. Donelson, 199 P.2d 1018, 200 Okl. 695—Hofstra v. Great Northern Life Ins. Co. of Milwaukee, Wis., 174 P.2d 366, 197 Okl. 688—Griffin v. Johnson, 172 P.2d 969, 197 Okl. 549—Kansas, Oklahoma & Gulf Ry. Co. v. Pruitt, 128 P.2d 231, 191 Okl. 131—Modern Motors v. Elkins, 113 P.2d 969, 189 Okl. 134—Chicago, R. I. & P. Ry. Co. v. Richerson, 94 P.2d 934, 185 Okl. 560—Midland Valley R. Co. v. Abbott, 89 P.2d 309, 184 Okl. 594—Shiflett v. Wright, 86 P.2d 314, 184 Okl. 188—Hyde Const. Co. v. Stevenson, 72 P.2d 354, 181 Okl. 8—National Benev. Soc. v. Russell, 71 P.2d 631, 180 Okl. 494—National Sec. Fire Ins. Co. of Omaha, Neb., v. Boatman, 71 P.2d 624, 180 Okl. 492—Metropolitan Casualty Ins. Co. of New York v. Heard, 63 P.2d 720, 178 Okl. 461—Mudge Oil Co. v. Swanson, 54 P. 2d 345, 176 Okl. 13—North American Car Corporation v. Green, 52 P.2d 798, 175 Okl. 136—Illinois Bankers Life Ass'n v. Hardy, 51 P. 2d 292, 174 Okl. 326—Gloeckler v. 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Red Arrow Taxi Co., Civ.App., 123 S.W.2d 731—Larnce v. Massachusetts Bonding & Insurance Co., Civ.App., 121 S.W.2d 392, error dismissed—Jones v. Howell, Civ.App., 107 S.W.2d 661—United Artists Corp. v. Stinnett, Civ.App., 101 S.W.2d 300—Jefferson Standard Life Ins. Co. v. Lindsey, Civ.App., 94 S.W.2d 549, error dismissed—Seinsheimer v. Burkhart, Civ.App., 93 S.W.2d 1231, modified on other grounds 122 S.W.2d 1063, 132 Tex. 336—Jernigan v. Peyton Packing Co., Civ.App., 82 S.W.2d 1063—Southland Greyhound Lines v. Ashby, Civ.App., 80 S.W.2d 445—Canadian Mill & Elevator Co. v. King, Civ.App., 79 S.W.2d 876—Austin Bridge Co. v. Shaw, Civ.App., 73 S.W.2d 547—Shaw v. Warren, Civ.App., 68 S.W.2d 588—Corbett-Arthur Inv. Co. v. Blair, Civ.App., 68 S.W.2d 271—National Newspaper Enterprises v. Chitwood, Civ.App., 68 S.W.2d 264—Radford v. Ellis, Civ.App., 64 S.W.2d 1033—Woods v. Haefer, Civ.App., 63 S.W.2d 891—Hines v. Chaddick, Civ.App., 63 S.W.2d 263—Dave Lehr, Inc., v. 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Utah.—Lee v. New York Life Ins. Co., 82 P.2d 178, 95 Utah 445—Walkenhorst v. Kesler, 67 P.2d 654, 92 Utah 312—Fudge v. Downing, 27 P.2d 33, 83 Utah 101—Workman Motor Co. v. Pacific Finance Corporation, 26 P.2d 961, 83 Utah 19—In re Dong Ling Hing's Estate, 2 P.2d 902, 78 Utah 324—Winegar v. Oregon Short Line R. Co., 298 P. 948, 77 Utah 594—Evans v. Denver & R. G. W. R. R. Co., 278 P. 809, 74 Utah 201—Dahl v. Utah Oil Refining Co., 262 P. 269, 71 Utah 1—McLaughlin v. Chief Consol. Mining Co., 220 P. 726, 62 Utah 532—Ferguson v. Robertson, 197 P. 225, 58 Utah 46—Connell v. Oregon Short Line R. Co., 168 P. 337, 51 Utah 20—Board of Education of Salt Lake City v. Wright-Osborn Co., 164 P. 1033, 48 Utah 453—P. A. Sorensen Co. v. Denver & R. G. R. Co., 164 P. 1020, 49 Utah 548—Withrow v. Mystic Toilers, 161 P. 1126, 49 Utah 177—Stephens Ranch & Live Stock Co. v. Union Pac. R. Co., 161 P. 459, 48 Utah 528.

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Va.—Price v. Francis, 35 S.E.2d 823, 184 Va. 484—Norfolk & P. B. L. R. Co. v. Jones, 32 S.E.2d 720, 183 Va. 536—Hagaman v. Vanacore, 28 S.E.2d 633, 182 Va. 312—Ellis v. New Amsterdam Casualty Co., 194 S.E. 687, 169 Va. 620—Traylor v. Atlantic Greyhound Lines, 184 S.E. 188, 166 Va. 295—Jewel Tea Co. v. Phelps, 183 S.E. 433, 165 Va. 596—Garrett v. Hammack, 173 S.E. 535, 162 Va. 42—Keeler v. Baumgardner, 171 S.E. 592, 161 Va. 507—Virginian Ry. Co. v. Green, 169 S.E. 570, 160 Va. 838—Chandler v. Satchell, 168 S.E. 744, 160 Va. 160—Gaines v. Campbell, 166 S.E. 704, 159 Va. 504—White v. Alleghany Mountain Corporation, 165 S.E. 505, 159 Va. 394—Roanoke Railway & Electric Co. v. Virginian Ry. Co., 165 S.E. 398, 159 Va. 289—Baise v. Hollifield, 164 S.E. 657, 158 Va. 498—Baise v. Warren, 164 S.E. 655, 158 Va. 505—Wilkins v. Davis, 164 S.E. 649, 158 Va. 763—Chesapeake Ferry Co. v. Cummings, 164 S.E. 281, 158 Va. 33, 82 A.L.R. 790—C. D. Kenny Co. v. Solomon, 163 S.E. 97, 158 Va. 25—Sanitary Grocery Co. v. Wright, 163 S.E. 86, 158 Va. 312—Ball v. Witten, 154 S.E. 547, 155 Va. 40—Price v. Burton, 154 S.E. 499, 155 Va. 329—Heldreth v. Moore, 149 S.E. 473, 153 Va. 156—Southern Ry. Co. v. Johnson, 146 S.E. 363, 151 Va. 345—Daily v. Rucker, 144 S.E. 466, 151 Va. 72—Jordan v. Melville Shoe Corporation, 142 S.E. 387, 150 Va. 101—Virginia Electric & Power Co. v. Wynne, 141 S.E. 829, 149 Va. 882—Virginia Ry. Co. v. London, 139 S.E. 328, 148 Va. 699—Kelly v. Schneller, 139 S.E. 275, 148 Va. 573—Barton v. Camden, 137 S.E. 465, 147 Va. 263—Southern Ry. Co. v. Neal, 135 S.E. 703, 146 Va. 229—Chesapeake & O. Ry. Co. v. Steele's Adm'x, 135 S.E. 677, 146 Va. 22—F. A. Rausch & Co. v. Graham Mfg. Corporation, 134 S.E. 692, 145 Va. 681—Trant Motor Co. v. Jordan, 133 S.E. 657, 145 Va. 334—Lavenstein v. Maile, 132 S.E. 844, 146 Va. 789—Arkla Lumber & Mfg. Co. v. West Virginia Timber Co., 132 S.E. 840, 146 Va. 641—W. B. Bassett & Co. v. Wood, 132 S.E. 700, 146 Va. 654—Bernstein v. Vord, 132 S.E. 698, 146 Va. 670—Munger v. Cox, 132 S.E. 687, 146 Va. 574—Virginia Ry. & Power Co. v. Taylor, 132 S.E. 334, 144 Va. 496—L. J. Upton & Co. v. Atlantic Coast Line R. Co., 131 S.E. 827, 146 Va. 475—Phillips & Neal v. Baker, 131 S.E. 129, 144 Va. 138—Virginia Ry. & Power Co. v. Leland, 129 S.E. 700, 143 Va. 920—Doswell v. Thompson, 129 S.E. 684, 143 Va. 777—Guntner v. Hughes, 129 S.E. 239, 143 Va. 36—National Fire Proofing Co. v. Bickford, 126 S.E. 668, 141 Va. 706—Spandorfer v. Cooper, 126 S.E. 558, 141 Va. 792—F. A. Rausch & Co. v. Graham Mfg. Corporation, 124 S.E. 427, 139 Va. 502, modified on other grounds 126 S.E. 2, 140 Va. 445—Thurston v. Woodward, 123 S.E. 366, 139 Va. 315—Ashby v. Virginia Ry. & Power Co., 122 S.E. 104, 138 Va. 310—Norfolk & W. Ry. Co. v. T. W. Thayer Co., 119 S.E. 107, 137 Va. 294—Mahone v. Miller, 118 S.E. 86, 136 Va. 346—Washington & O. D. Ry. v. Thompson, 118 S.E. 76, 136 Va. 597—Ott v. Perrow, 117 S.E. 831, 136 Va. 410—Eastern Coal & Export Corporation v. Norfolk & W. Ry. Co., 113 S.E. 857, 133 Va. 525—Appalachian Power Co. v. Hale, 113 S.E. 711, 133 Va. 416—Deitz v. Whyte, 109 S.E. 212, 131 Va. 19—Tucker Sanatorium v. Cohen, 106 S.E. 355, 129 Va. 576, 22 A.L.R. 315—Bradshaw v. Booth, 105 S.E. 555, 129 Va. 19—Town of Farmville v. Wells, 103 S.E. 596, 127 Va. 528—Upton & Walker v. R. D. Holloway & Co., 102 S.E. 54, 126 Va. 657—Ely v. Gray, 100 S.E. 660, 125 Va. 708—Eichelbaum v. Klaff, 99 S.E. 721, 125 Va. 98—Virginia Talc & Soapstone Co. v. Hurkamp, 98 S.E. 681, 124 Va. 721—Washington & O. D. Ry. v. Warner, 97 S.E. 799, 124 Va. 452—Ætna Ins. Co. v. Aston, 96 S.E. 772, 123 Va. 327—Hunter v. Burroughs, 96 S.E. 360, 123 Va. 113—Virginia Iron, Coal & Coke Co. v. Prophet's Adm'r, 93 S.E. 590, 121 Va. 685—Norfolk Hosiery & Underwear Mills Co. v. Westheimer, 92 S.E. 922, 121 Va. 130—Bohannon-King & Co. v. Vellines, 91 S.E. 621, 120 Va. 428—Millboro Lumber Co. v. Donald, 90 S.E. 618, 120 Va. 150—Norfolk & W. Ry. Co. v. Parrish, 89 S.E. 923, 119 Va. 670—Chesapeake & O. Ry. Co. v. Tinsley, 89 S.E. 860, 119 Va. 423—Peele v. Bright, 89 S.E. 238, 119 Va. 182—Carpenter v. Smithey, 88 S.E. 321, 118 Va. 533—Kanter v. M. Hofheimer & Co., 88 S.E. 60, 118 Va. 625.

Wash.—Harris v. Holroyd, 207 P.2d 765, 33 Wash.2d 915—Schneider v. Noel, 160 P.2d 1002, 23 Wash.2d 388—Lewis v. Bertero, 77 P.2d 786, 194 Wash. 186—Helf v. Hansen & Keller Truck Co., 9 P.2d 110, 167 Wash. 206—Raspperry v. Yeaman, 6 P.2d 1114, 166 Wash. 353—Kraettli v. North Coast Transp. Co., 6 P.2d 609, 166 Wash. 186, 80 A.L.R. 1520—Nicholson v. Postal Telegraph Cable Co. of Washington, 299 P. 397, 162 Wash. 603—De Vore v. Longview Public Service Co., 298 P. 717, 162 Wash. 338—Samuelson v. Taylor, 295 P. 113, 160 Wash. 369—Bryant v. Hartford Eastern Ry. Co., 290 P. 874, 158 Wash. 389—Lloyd v. Mowery, 290 P. 710, 158 Wash. 341—Skates v. Conniff, 280 P. 15, 153 Wash. 538—Kelley v. Cohen, 277 P. 74, 152 Wash. 1—Loundry v. Lillie, 270 P. 1029, 149 Wash. 316—Lung v. Washington Water Power Co., 258 P. 832, 144 Wash. 676—National Ass'n of Creditors v. Menish, 257 P. 241, 144 Wash. 150—Lally v. Reilly, 255 P. 923, 143 Wash. 522—Wimmer v. Parsons, 251 P. 868, 141 Wash. 422—Jacquot v. Farmers' Straw Gas Producers Co., 249 P. 984, 140 Wash. 482—Nelson v. Smith, 248 P. 798, 140 Wash. 293—Waddell v. Roberts, 246 P. 755, 139 Wash. 273—Cunningham v. Zane, 245 P. 913, 139 Wash. 176—Reynolds v. International Stevedoring Co., 245 P. 1, 138 Wash. 690—Nicolle v. United Auto Transp. Co., 244 P. 127, 138 Wash. 48—Hadley v. Arms & Scott, 241 P. 26, 136 Wash. 632—Wheeler v. Yoakam, 239 P. 557, 136 Wash. 216—McGinnis v. Keylon, 238 P. 631, 136 Wash. 588—U'Ren v. Falls City Mill & Feed Co., 235 P. 2, 134 Wash. 128—Fox v. Anderson, 220 P. 771, 127 Wash. 251—Leibold v. Grosenbaugh, 218 P. 258, 126 Wash. 502—Jones v. Harris, 210 P. 22, 122 Wash. 69—Lofthus v. Navy Yard City Mill Co., 207 P. 953, 121 Wash. 74—Domke v. Ernst Bros. & Farnham, 207 P. 1, 120 Wash. 358—W.

J. Jahn & Co. v. Yakima Produce & Trading Co., 206 P. 944, 120 Wash. 164—Sunnyside Land & Investment Co. v. Bernier, 205 P. 1041, 119 Wash. 386, 20 A.L.R. 1261—Estes v. Babcock, 205 P. 12, 119 Wash. 270—Carlson v. Herbert, 203 P. 30, 118 Wash. 82—Shelley v. Norman, 195 P. 243, 114 Wash. 381—Bayers v. Barry, 194 P. 993, 114 Wash. 252—Deweese v. Charles C. Moore & Co., 193 P. 702, 113 Wash. 233—Seal v. Long, 192 P. 896, 112 Wash. 370—Olson v. Clark, 191 P. 810, 111 Wash. 691—Clark Lloyd Lumber Co. v. Puget Sound & C. Ry. Co., 190 P. 226, 111 Wash. 232—Johnson v. Pearson, 186 P. 667, 109 Wash. 147—Anderson v. Rucker Bros., 183 P. 70, 107 Wash. 595, 8 A.L.R. 544, affirmed 186 P. 293, 107 Wash. 595, 8 A.L.R. 544—Coldeen v. Reid, 182 P. 599, 107 Wash. 508—Swafford v. Levine, 181 P. 682, 107 Wash. 363—Cramer v. Cramer, 180 P. 915, 106 Wash. 681—Carlin v. Draper, 175 P. 571, 104 Wash. 29—Smith Sand & Gravel Co. v. Corbin, 173 P. 16, 102 Wash. 306—Singer v. Metz Co., 171 P. 1032, 101 Wash. 67—Kennedy v. Burr, 171 P. 1022, 101 Wash. 61—Andreopulos v. Peresteredes, 163 P. 770, 95 Wash. 282—Gasch v. Rounds, 160 P. 962, 93 Wash. 317—Kennedy v. Meilicke Calculator Co., 155 P. 1043, 90 Wash. 238.

W.Va.—Hartley v. Crede, 82 S.E.2d 672—Frederick v. Stump, 67 S.E. 2d 613, 136 W.Va. 350—Franklin v. Pence, 36 S.E.2d 505, 128 W.Va. 353—Miller v. Blue Ridge Transp. Co., 15 S.E.2d 400, 123 W.Va. 428—Aliff v. Berryman, 160 S.E. 864, 111 W.Va. 103—Cabell v. Standard Oil Co. of New Jersey, 159 S.E. 49, 110 W.Va. 609—Fischer v. Clark, 158 S.E. 504, 110 W.Va. 420—Goodwill v. Morton Motor Co., 152 S.E. 864, 109 W.Va. 65—Burner v. Smith Coal Co., 147 S.E. 545, 107 W.Va. 158—Simms v. Chambers, 141 S.E. 788, 105 W.Va. 171—Zirkle v. Three Forks Coal Co., 138 S.E. 371, 103 W. Va. 614—Denoff v. Fama, 135 S.E. 578, 102 W.Va. 494—Wilson v. West Virginia Amusement Co., 128 S.E. 381, 99 W.Va. 290—Knight v. Chesapeake Coal Co., 128 S.E. 318, 99 W. Va. 261—Wingo Mining Co. v. Flanagan Coal Sales Co., 115 S.E. 839, 93 W.Va. 76—Crowl v. Buckhannon & N. R. Co., 114 S.E. 521, 92 W.Va. 188—Prager v. City of Wheeling, 114 S.E. 155, 91 W.Va. 397—Smith v. Baker, 112 S.E. 174, 91 W.Va. 81—Mineral Ridge Mfg. Co. v. Smith, 91 S.E. 817, 79 W.Va. 736.

Wis.—Walter v. Baum, 274 N.W. 153, 225 Wis. 312—Manitowoc Trust Co. v. Bouril, 265 N.W. 572, 220 Wis. 627—Nimz v. Fullerton Lumber Co., 247 N.W. 338, 211 Wis. 36—Lynch v. Chicago, M., St. P. & P. R. Co., 240 N.W. 794, 207 Wis. 111—Suta v. Chicago & N. W. Ry. Co., 284 N.W. 715, 208 Wis. 532—Finkelstein v. Majestic Realty Corporation, 224 N.W. 743, 198 Wis. 527—Litel v. First Nat. Bank, 220 N. W. 651, 196 Wis. 625—Coad v. O'Brien, 212 N.W. 654, 193 Wis. 6—Greenberg Realty Co. v. Cream City Roofing & Paint Mfg. Co., 197 N.W. 815, 183 Wis. 259—Eckel v. Westbrook Tank Line Co., 193 N.W. 1006, 181 Wis. 46—Boguslawski v. Mitchell Street State Bank, 192 N. W. 1001, 180 Wis. 295—Heal v. Stoll, 185 N.W. 242, 176 Wis. 137—Behling v. Wisconsin Bridge & Iron Co., 149 N.W. 484, 158 Wis. 584.

Wyo.—**Corpus Juris Secundum quoted in** Tompkins v. Byrtus, 267 P.2d 753, 755, 72 Wyo. 537—Desmond v. Snyder, 174 P.2d 139, 62 Wyo. 478—**Corpus Juris Secundum cited in** Smith v. Beard, 110 P.2d 260, 265, 56 Wyo. 375—Hildebrand v. Chicago, B. & Q. R. R., 13 P.2d 1081, 44 Wyo. 488, reheard 17 P.2d 651, 45 Wyo. 175—Montgomery v. Empey, 253 P. 17, 36 Wyo. 37—Murphy v. W. & W. Live Stock Co., 187 P. 187, 26 Wyo. 455, rehearing denied 189 P. 857, 26 Wyo. 455.

4 C.J. p 858 note 3—9 C.J. p 664 note 92—13 C.J. p 789 note 39—23 C.J. p 609 note 51—27 C.J. p 868 note 94 [c] (2)—29 C.J. p 725 note 26—34 C.J. p 1124 note 30—36 C.J. p 458 note 65—37 C.J. p 1260 note 44—39 C.J. p 214 note 84, p 1369 note 89 [a]—45 C.J. p 360 note 14—47 C.J. p 770 note 22—48 C.J. p 1156 note 30—52 C.J. p 153 note 75, p 534 note 23, p 756 note 96 [a]—57 C.J. p 1095 note 8—62 C.J. p 223 note 61.

Substantial conflict

(1) The appellate court will not disturb a verdict on appeal where evidence is in substantial conflict.

Cal.—Cohan v. Brodie, 134 P.2d 498, 57 C.A.2d 307—Davis v. Duncan, 112 P.2d 300, 44 C.A.2d 280—Hammer v. Boring, 62 P.2d 378, 17 C.A. 2d 598—Silva v. Kavert, 292 P. 1089, 109 C.A. 386—Mast v. Claxton, 290 P. 48, 107 C.A. 59—Collom v. Bloch, 232 P. 486, 70 C.A. 33—Countryman v. California Trona Co., 170 P. 1069, 35 C.A. 728—De Liere v. Goldberg, Bowen & Co., 159 P. 197, 30 C.A. 612.

Neb.—Metcalfe v. Chicago, R. I. & P. Ry. Co., 172 N.W. 246, 103 Neb. 431.

Ohio.—Industrial Commission of Ohio v. Mounjoy, 173 N.E. 263, 36 Ohio App. 476.

Tex.—King v. Riney, Civ.App., 32 S. W.2d 278.

Utah.—Dimmick v. Utah Fuel Co., 164 P. 872, 49 Utah 430.

Wash.—Rettinger v. Bresnahan, 257 P.2d 633, 42 Wash.2d 631.

W.Va.—Frampton v. Consolidated Bus Lines, 62 S.E.2d 126, 134 W.Va. 815—Malone Elkhorn Coal Co. v. Tildesley Coal Co., 123 S.E. 679, 96 W.Va. 682.

(2) The conflict must be substantial.

Cal.—Shiya v. Review, 264 P.2d 190, 122 C.A.2d 155—Christopher v. City of Los Angeles, 56 P.2d 539, 13 C.A. 2d 118—Speidel v. Lacer, 38 P.2d 477, 2 C.A.2d 528.

(3) Where reasonable minds viewing the evidence in a case dispassionately may fairly entertain a difference of opinion on it, the conflict in the evidence is substantial and the verdict will not be disturbed on appeal.

Cal.—Christopher v. City of Los Angeles, supra.

Evidence not supplied by verdict

While the jury's verdict for plaintiff resolves all questions on conflicting evidence in favor of plaintiff, it does not supply the evidence.

S.D.—Pyne v. Risager, 203 N.W. 994, 48 S.D. 265.

Expert testimony

A verdict on conflicting evidence of experts, where there are no controlling inconsistent facts or circumstances, will not be disturbed.

Tex.—Fidelity & Casualty Co. v. Joiner, Civ.App., 178 S.W. 806.

4 C.J. p 858 note 3 [b].

Failure of prevailing party to call witness presumably favorable to him does not require reversal of judgment based on conflicting evidence and inferences therefrom.

Idaho.—Gem State Sales Co. v. Rudin Bros., 41 P.2d 614, 55 Idaho 299.

Implied finding of the jury from conflicting evidence is conclusive on appeal.

Cal.—Caine v. Briscoe, 248 P. 774, 78 C.A. 660—Butler v. Cornell, 243 P. 701, 75 C.A. 692.

Presumption will raise a conflict sufficient to support a finding made in accordance therewith, even though there is evidence to the contrary.

Cal.—Grantham v. Ordway, 182 P. 73, 40 C.A. 758.

Prima facie case

If plaintiff made out a prima facie case and there was a conflict in the evidence, the jury's finding for plaintiff is conclusive.

Iowa.—Crozier v. U. S. Railroad Administration, 181 N.W. 695.

Verdict against one on whom burden of proof rested cannot be disturbed by the appellate court where evidence is conflicting.

Ark.—Smith v. Continental Casualty Co., 29 S.W.2d 279, 181 Ark. 1072.

No motion for new trial

Where the evidence was in conflict and no motion for new trial was made in the trial court, the verdict supported by a scintilla of evidence could not be disturbed on appeal.

Ala.—Draughon's Business College v. Battles, 68 So.2d 58, 37 Ala.App. 24,

been fairly submitted to the jury under proper instructions;[17] and this is so even though the verdict or findings may appear to be against the weight or preponderance of the evidence.[18] The reviewing court, it is said, will not substitute its judgment as to the weight of conflicting testimony for that of the jury, on whom the duty of determination was properly placed.[19] In this respect, evidence, to raise

certiorari denied 68 So.2d 62, 259 Ala. 618—Glenn v. Blackman, 35 So. 2d 698, 33 Ala.App. 571, certiorari denied 35 So.2d 702, 250 Ala. 664.

Statute of limitations

In an action for fraudulent representations in a sale of oil property, conflicting evidence as to whether the statute of limitations had run did not permit disturbance on appeal of verdict for plaintiff.

Okl.—Hall v. Smith, 259 P. 537, 126 Okl. 206.

17. Ariz.—Lemke v. Gardner, 179 P. 2d 788, 65 Ariz. 303—Keefe v. Jacobo, 54 P.2d 270, 47 Ariz. 162.
Ark.—Lindley v. Frankel, 150 S.W.2d 962, 202 Ark. 515—Ætna Life Ins. Co. v. Dewberry, 59 S.W.2d 607, 187 Ark. 278—Edgin v. Talley, 276 S.W. 591, 169 Ark. 662, 42 A.L.R. 1194.
Colo.—Book v. Paddock, 267 P.2d 247, 129 Colo. 84—Goldblatt v. Chase, 216 P.2d 435, 121 Colo. 355—Guardian Life Ins. Co. of America v. Kortz, 125 P.2d 640, 109 Colo. 331—Forsythe v. McCarthy, 57 P.2d 1, 98 Colo. 399.
Fla.—Peninsular Telephone Co. v. Marks, 198 So. 330, 144 Fla. 652.
Ga.—Baker v. Sappington, 84 S.E. 592, 16 Ga.App. 94.
Ill.—Finley v. Federal Life Ins. Co., 211 Ill.App. 66.
Iowa.—Aldine Trust Co. v. National Ben. Accident Ass'n, 268 N.W. 507, 222 Iowa 20.
Ky.—Black v. Bishop, 207 S.W.2d 22, 306 Ky. 524—City of Paducah v. Brunnhoper, 135 S.W.2d 413, 281 Ky. 177—Davis' Ex'r v. Laughlin, 133 S.W.2d 544, 280 Ky. 422.
Mich.—City of Detroit v. Porath, 260 N.W. 114, 271 Mich. 42.
Miss.—Magnolia Miss Dress Co. v. Zorn, 36 So.2d 795, 204 Miss. 1.
Mo.—Ridenour v. International Harvester Co. of America, App., 205 S.W. 881.
Neb.—Clute v. Mach, 45 N.W.2d 897, 153 Neb. 772—Trask v. Klein, 34 N.W.2d 396, 150 Neb. 316—Vandeweg v. Olson, 183 N.W. 90, 106 Neb. 211.
N.C.—Hopkins v. Colonial Stores, 29 S.E.2d 455, 224 N.C. 137—Coble v. Legg, 106 S.E. 564, 181 N.C. 499.
N.D.—Long v. People's Dept. Store, 74 N.W.2d 80—**Corpus Juris Secundum cited in State v. Shepard, 277** N.W. 315, 317, 68 N.D. 143.
Ohio.—Goosmann v. Hitchcock, 118 N.E.2d 680, 95 Ohio App. 247.
Okl.—Gaines Bros. Co. v. Phillips, 151 P.2d 933, 194 Okl. 374—Denham v. Hill, 109 P.2d 491, 188 Okl. 347—**Universal Credit Co. v. McBrayer,** 55 P.2d 1008, 176 Okl. 402—Calhoma Oil Syndicate v. Atlas Supply Co., 244 P. 770, 117 Okl. 6—Shelby Mills v. Nelms, 241 P. 186, 115 Okl. 34—St. Louis-San Francisco Ry. Co. v. Teel, 198 P. 78, 82 Okl. 31—Muskogee Electric Traction Co. v. Cooper, 193 P. 39, 79 Okl. 271.
Pa.—Girsh v. Rolland, 131 A. 723, 285 Pa. 141.
Williams v. Stern, 40 A.2d 101, 156 Pa.Super. 250—Czudick v. Sacks, 71 Pa.Super. 224—Pittsburgh, W. & S. R. Co. v. Blair, 67 Pa.Super. 323—Zillic v. Minnich, 67 Pa.Super. 122.
S.D.—Rehder v. Hansen, 184 N.W. 241, 44 S.D. 520.
Tex.—Steger v. Greer, Civ.App., 228 S.W. 304, dismissed for want of jurisdiction.
Va.—Crowell v. Duncan, 134 S.E. 576, 145 Va. 489, 50 A.L.R. 1425—Wood v. Atlantic Coast Realty Co., 115 S.E. 555, 135 Va. 195—Smyth Bros.-McCleary-McClellan Co. v. Beresford, 104 S.E. 371, 128 Va. 137—Turner v. Richmond & R. R. Ry. Co., 92 S.E. 841, 121 Va. 194.
52 C.J. p 534 note 25.

18. Ark.—St. Louis-Southwestern Ry. Co. v. Holwerk, 163 S.W.2d 175, 204 Ark. 587—State Highway Commission v. Jelks, 159 S.W.2d 465, 203 Ark. 878—Armour & Co. v. Rose, 36 S.W.2d 70, 183 Ark. 413—Arkansas Power & Light Co. v. Orr, 11 S.W.2d 761, 178 Ark. 329—Old American Ins. Co. v. Jackson, 292 S.W. 380, 173 Ark. 424—Missouri Pac. R. Co. v. Curcio, 261 S.W. 896, 164 Ark. 350—Westbrook Grain & Milling Co. v. Johnson, 203 S.W. 1032, 134 Ark. 300—Williams v. Williams, 166 S.W. 552, 112 Ark. 507.
Ga.—Taylor v. Johnson, 89 S.E. 77, 18 Ga.App. 161.
Idaho.—Swanstrom v. Frost, 140 P. 1105, 26 Idaho 79.
Ill.—Roller v. Kurtz, 129 N.E.2d 693, 6 Ill.2d 618.
Borrowdale v. Sugarman, 123 N.E.2d 854, 4 Ill.App.2d 164—Scott v. Chicago Transit Authority, 105 N.E.2d 922, 347 Ill.App. 76—Silberman v. Washington Nat. Ins. Co., 69 N.E.2d 519, 329 Ill.App. 448—Roth v. Fleck, 242 Ill.App. 396—People v. Egan, 241 Ill.App. 189.
Ind.—Van Spanje v. Hostettler, 119 N.E. 725, 68 Ind.App. 518.
Ky.—Fono v. Hinton, 230 S.W.2d 906, 313 Ky. 213—Tipton v. Bolan, 224 S.W.2d 431, 311 Ky. 465—Thomson v. Coleman, 293 S.W. 1089, 219 Ky. 524.
Neb.—Hanika v. Lincoln Traction Co., 153 N.W. 568, 98 Neb. 583.
Tex.—Whitten v. Dethloff, Civ.App., 214 S.W.2d 480—Sovereign Camp, Woodmen of the World, v. Martin, Civ.App., 211 S.W. 270.
Va.—Burrell v. Burrell, 70 S.E.2d 316, 193 Va. 594.
Wash.—Cormier v. H. H. Martin Lumber Co., 167 P. 1105, 98 Wash. 463.

Other statement of rule

Verdict on conflicting evidence cannot be set aside by supreme court as being against preponderance of evidence.

Ark.—Reader R. R. v. Sanders, 90 S.W.2d 762, 192 Ark. 28.

19. Ala.—Barber Pure Milk Co. v. Holmes, 84 So.2d 345, 264 Ala. 45.
Ark.—Missouri Pac. R. Co. v. Sims, 120 S.W.2d 1009, 196 Ark. 1042.
Cal.—Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 9 C.2d 751.
Kelly v. David D. Bohannon Organization, 260 P.2d 646, 119 C.A.2d 787—Peterson v. General Geophysical Co., App., 185 P.2d 56—McNear v. Pacific Greyhound Lines, 146 P. 2d 34, 63 C.A.2d 11—Nielsen v. E. Gottschalk & Co., 246 P. 1086, 77 C.A. 481.
Conn.—Castaldo v. D'Eramo, 98 A.2d 664, 140 Conn. 88.
Fla.—MacGregor v. Sachs, 57 So.2d 426—Glass v. Parrish, 51 So.2d 717—City of Miami v. Williams, 40 So.2d 205.
Ill.—Geraghty v. Burr Oak Lanes, 125 N.E.2d 47, 5 Ill.2d 153.
Koch v. Lemmerman, 139 N.E. 2d 806, 12 Ill.App.2d 237—Parucci v. Kruse, 138 N.E.2d 91, 12 Ill. App.2d 30—Veselich v. Lichtsinn, 135 N.E.2d 823, 11 Ill.App.2d 372—Sims v. Chicago Transit Authority, 129 N.E.2d 23, 7 Ill.App.2d 21—Griggas v. Clauson, 128 N.E.2d 363, 6 Ill.App.2d 412—Lane v. Estep, 96 N.E.2d 837, 342 Ill.App. 452—Williams v. Alton Water Co., 49 N.E.2d 307, 319 Ill.App. 522—Adams v. Chicago & E. R. Co., 41 N.E.2d 991, 314 Ill.App. 404—Martin v. Village of Patoka, 27 N.E.2d 866, 305 Ill.App. 51—Mueth v. Jaska, 23 N. E.2d 805, 302 Ill.App. 289—Davis v. East St. Louis & S. Ry. Co., 9 N. E.2d 254, 290 Ill.App. 540.
Ind.—N. O. Nelson Mfg. Corp. v. Dickson, 53 N.E.2d 640, 114 Ind. App. 668—Mutual Life Ins. Co. of New York v. Jay, 44 N.E.2d 1020, 112 Ind.App. 383—Gary Rys. Co. v. Michael, 34 N.E.2d 159, 109 Ind. App. 672—City of Martinsville v. Winscott, 25 N.E.2d 283, 107 Ind. App. 475—Polk Sanitary Milk Co.

a "conflict" preventing the disturbance of a verdict on appeal, must present a fair and reasonable ground for a difference of opinion,[19.5] and in determining whether there is a conflict in the evidence, a mere conflict in words is not sufficient, but, with respect to appellate review, the contrary evidence must be of a substantial character such as reasonably supports the judgment as applied to the peculiar facts of the case.[19.10]

The general rule as to the power of an appellate court to review a verdict or findings based on conflicting evidence has been stated in numerous different forms.[19.15] So the rule has been enunciated that the finding or verdict of a jury, on conflicting evidence, ordinarily is conclusive on appeal,[19.20] that it is the function or duty of the jury, and not the appellate court, to weigh conflicting evidence,[19.25] that conflicts in the evidence are addressed to the

v. Berry, 17 N.E.2d 860, 106 Ind. App. 29—Alexander v. Pate, 14 N.E.2d 328, 105 Ind.App. 219—Oliver Farm Equipment Sales Co. v. Bogard, 199 N.E. 161, 102 Ind.App. 119.

Kan.—Harris v. Board of Com'rs of Wyandotte County, 101 P.2d 898, 151 Kan. 946.

Mont.—Stevens v. City of Butte, 85 P.2d 339, 107 Mont. 354.

N.Y.—Berkman v. Friedman, 174 N.Y.S. 163, 105 Misc. 350.

Okl.—Stiers v. Mayhall, 248 P.2d 1047, 207 Okl. 219—Shell Petroleum Corp. v. Voss, 126 P.2d 540, 190 Okl. 675—Atchison, T. & S. F. Ry. Co. v. Howard, 98 P.2d 914, 186 Okl. 446—In re Morrison, 54 P.2d 198, 176 Okl. 55—North American Car Corp. v. Green, 52 P.2d 798, 175 Okl. 136—Phillips Petroleum Co. v. Widick, 52 P.2d 773, 175 Okl. 376.

Or.—Bratt v. Smith, 175 P.2d 444, 180 Or. 50—Clemens v. Smith, 134 P.2d 424, 170 Or. 400—Kiddle v. Schnitzer, 117 P.2d 983, 167 Or. 316.

Tex.—Holmes v. American General Ins. Co., Civ.App., 263 S.W.2d 615—Milburn v. Athans, Civ.App., 190 S.W.2d 388, error dismissed—Peerless Oil & Gas Co. v. Teas, Civ. App., 138 S.W.2d 637, affirmed 158 S.W.2d 758, 138 Tex. 301—United Sav. Bank of Detroit v. Frazier, Civ.App., 116 S.W.2d 933, error dismissed.

4 C.J. p 859 note 4.

Jury verdict as to a disputed fact question has more weight in a case involving the merits than the finding of the trial judge.

La.—State ex rel. Levee v. Carruth, App., 149 So. 311, annulled on other grounds Putnam & Norman v. Levee, 153 So. 685, 179 La. 180.

19.5 Cal.—Hughes v. Atchison, T. & S. F. Ry. Co., 8 P.2d 853, 121 C.A. 271.

Fair presumption of truth

Evidence to be sufficient to support a verdict must be reasonable and so consistent with the circumstances and probabilities as to raise a fair presumption of its truth, and a mere contradiction in the testimony of two witnesses is insufficient to constitute a conflict of evidence.

Me.—Hall v. Cumberland County Power & Light Co., 123 A. 418, 123 Me. 202.

Substantial conflict

Where reasonable minds viewing evidence in case dispassionately may fairly entertain difference of opinion on it, conflict in evidence is substantial and verdict will not be disturbed on appeal.

Cal.—Christopher v. City of Los Angeles, 56 P.2d 539, 13 C.A.2d 118.

19.10 Cal.—Herbert v. Lankershim, 71 P.2d 220, 9 C.2d 409.

Hall v. Osell, 228 P.2d 293, 102 C.A.2d 849—Christopher v. City of Los Angeles, 56 P.2d 539, 13 C.A. 2d 118.

Wyo.—Goldberg v. Miller, 93 P.2d 947, 54 Wyo. 485, rehearing denied 96 P.2d 570, 54 Wyo. 485—Montgomery Ward & Co. v. Arbogast, 81 P.2d 885, 53 Wyo. 275.

19.15 Ind.—Heeter v. Fleming, 67 N.E.2d 317, 116 Ind.App. 644.

Mich.—Weintraub v. H. B. Earhart, Inc., 263 N.W. 765, 273 Mich. 668.

Mo.—Duke v. Brown Transfer & Storage Co., App., 133 S.W.2d 697.

Okl.—Fike v. Peters, 52 P.2d 700, 175 Okl. 334.

Responding to merits

Reviewing court must be convinced that finding of trial justice without a jury on conflicting testimony does not respond to the real merits or fails to do substantial justice, before court can disturb such finding.

R.I.—Urquhart v. Marty, 200 A. 456, 61 R.I. 102.

19.20 Ark.—Providence Washington Ins. Co. v. Eagle Milling Co., 219 S.W.2d 233, 214 Ark. 918—M. K. Goetz Brewing Co. v. Hill, 199 S.W.2d 959, 210 Ark. 1050—Myers v. Bushmiaer, 145 S.W.2d 722, 201 Ark. 564.

Cal.—Stott v. Johnston, 229 P.2d 348, 36 C.2d 864, 28 A.L.R.2d 580—Mantonya v. Bratlie, 199 P.2d 677, 33 C.2d 120.

Karr v. Sherer, 283 P.2d 376, 132 C.A.2d 835—Horrell v. Santa Fe Tank & Tower Co., 254 P.2d 893, 117 C.A.2d 114—Lovelady v. Sacramento City Lines, 226 P.2d 722, 102 C.A.2d 28—Shook v. Beals, 217 P.2d 56, 96 C.A.2d 963, 18 A.L.R.2d 919.

Colo.—Hadden v. Gateway West Pub. Co., 273 P.2d 733, 130 Colo. 73—Klipfel v. Bowes, 120 P.2d 959, 108 Colo. 583.

Ind.—Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Parker, 37 N.E. 2d 5, 110 Ind.App. 1.

Kan.—Davis v. Kansas Electric Power Co., 152 P.2d 806, 159 Kan. 97—Rasing v. Healzer, 142 P.2d 832, 157 Kan. 516.

Minn.—Blume v. Ballis, 291 N.W. 906, 207 Minn. 393.

Miss.—Gee v. Rimmer, 195 So. 342, 188 Miss. 460.

Mo.—E. F. Drew & Co. v. Brooks Supply Co., App., 243 S.W.2d 621—Joyner v. Kimmell, App., 217 S.W. 2d 724—McManus v. Farmers Mut. Hail Ins. Co. of Mo., 203 S.W.2d 107, 239 Mo.App. 882—Harley v. Webb, App., 153 S.W.2d 796.

Okl.—Shamblin v. Shamblin, 241 P.2d 941, 206 Okl. 133—Ronspiez v. Chambers, 226 P.2d 388, 203 Okl. 664—Leal v. Blackwell, 206 P.2d 199, 201 Okl. 388.

Tenn.—Mitchell v. Farr, 222 S.W.2d 218, 32 Tenn.App. 200.

Tex.—Michalak v. Dzierzanowski, Civ.App., 270 S.W.2d 276—Lynn v. Haecker, Civ.App., 244 S.W.2d 539—Potka v. Potka, Civ.App., 205 S.W.2d 51, error refused no reversible error.

Va.—Burke v. Scott, 63 S.E.2d 740, 192 Va. 16—Turpin v. Branaman, 58 S.E.2d 63, 190 Va. 818—Virginia Transit Co. v. James, 49 S.E.2d 285, 188 Va. 135.

W.Va.—Kelly v. Checker White Cab, 50 S.E.2d 888, 131 W.Va. 816.

19.25 Cal.—Clement v. State Reclamation Bd., Sacramento San Joaquin Drainage Dist., 220 P.2d 897, 35 C.2d 628—Adkins v. Brett, 193 P. 251, 184 C. 252.

Halbert v. Berlinger, 273 P.2d 274, 127 C.A.2d 6—Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7.

Ga.—Crawford v. Gale, 49 S.E.2d 905, 204 Ga. 448.

Ill.—Mayberry v. Cage, 54 N.E.2d 619, 322 Ill.App. 655.

Kan.—Atkins v. Morton, 191 P.2d 909, 164 Kan. 626—Wilhite v. Mason, 170 P. 814, 102 Kan. 461.

N.Y.—Flamer v. City of Yonkers, 127 N.E.2d 838, 309 N.Y. 114.

Okl.—Hazelrigg Trucking Co. v. Duvall, 261 P.2d 204—K. C. Oil Co. v. Harvest Oil & Gas Co., 194 P. 228, 80 Okl. 61.

Va.—Anchor Motor Freight, Inc., of Del. v. Paul, 95 S.E.2d 179, 198 Va. 480.

jury, rather than to the appellate court,[19.30] and that the verdict of the jury resolves all disputed fact questions in favor of the successful party.[19.35] It has also been stated that the appellate court will not weigh conflicting evidence, but only determine whether there is evidence to support the verdict,[19.40] and that the court on appeal can weigh conflicting evidence only to ascertain that the verdict has support in the evidence.[19.45]

In the absence of legal error, as in the giving of instructions or in rulings made at the trial, a verdict will not be disturbed because of a conflict in the evidence;[20] and it has been held that this rule is

Wash.—Heitmiller v. Prall, 184 P. 334, 108 Wash. 382.

19.30 Cal.—Duprey v. Shane, 249 P. 2d 8, 39 C.2d 781.
Hickenbottom v. Jeppesen, 300 P.2d 689, 144 C.A.2d 115—Bennett v. Chandler, 126 P.2d 173, 52 C.A. 2d 255—Eastman v. Atchison, T. & S. F. R. Co., 125 P.2d 564, 51 C.A. 2d 653—Clark v. Metropolitan Life Ins. Co., 118 P.2d 919, 47 C.A.2d 773—Hopkins v. Pacific Electric Ry. Co., App., 118 P.2d 872—Arundel v. Turk, 60 P.2d 486, 16 C.A.2d 293—Hawkinson v. Scholz, 57 P.2d 945, 13 C.A.2d 687—Sinsbaugh v. Clark, 294 P. 462, 110 C.A. 340.

Conn.—Castaldo v. D'Eramo, 98 A.2d 664, 140 Conn. 88.

Ga.—Dumas v. Abercrombie, 85 S.E. 2d 50, 91 Ga.App. 178—Commercial Bank of Crawford v. Pharr, 43 S. E.2d 439, 75 Ga.App. 364—Clay v. Howington, 41 S.E.2d 571, 74 Ga. App. 794.

Iowa.—Casey v. Hansen, 26 N.W.2d 50, 238 Iowa 62.

Ky.—Freckman v. Taylor, 214 S.W. 2d 399, 308 Ky. 326.

Minn.—Georgopolis v. George, 54 N. W.2d 137, 237 Minn. 176.

Mo.—Colley v. Cox, App., 266 S.W.2d 778.

Mont.—Perkins v. Glacier Dairy, 239 P.2d 531, 125 Mont. 453.

N.Y.—Kelly v. Watson Elevator Co., 127 N.E.2d 802, 309 N.Y. 49.

Tex.—Hubbard v. Harris County Flood Control Dist., Civ.App., 286 S.W.2d 285, error refused no reversible error—Green v. Gilbert, Civ.App., 237 S.W.2d 1010, reversed on other grounds Gilbert v. Green, 242 S.W.2d 879, 150 Tex. 521—Insurance Co. of North America v. Cangelosi, Civ.App., 217 S.W.2d 888—Quinn v. Wilkerson, Civ.App., 195 S.W.2d 399.

Va.—Commonwealth Public Service Corp. v. Town of Bluefield, 187 S. E. 521, 167 Va. 82.

W.Va.—Workman v. Wynne, 94 S.E. 2d 665—Davis v. Sargent, 78 S.E. 2d 217, 138 W.Va. 861.

19.35 Ariz.—Eagle-Picher Mining & Smelting Co. v. Meyer, 204 P.2d 171, 68 Ariz. 214.

Ark.—Holimon v. Rice, 185 S.W.2d 927, 208 Ark. 279—Missouri Pac. R. Co. v. Hampton, 112 S.W.2d 428, 195 Ark. 335.

Conn.—Garber v. Goldstein, 102 A. 605, 92 Conn. 226.

Fla.—Woods-Hoskins-Young Co. v. Stone & Baker Const. Co., 114 So. 366, 94 Fla. 586.

Ind.—Kelley v. Dickerson, 13 N.E.2d 535, 213 Ind. 624—Wilson v. Reynolds, 13 N.E.2d 218, 213 Ind. 436.

Mich.—Card v. Nemecek, 50 N.W.2d 176, 331 Mich. 614.

Miss.—Sansing v. Thomas, 52 So.2d 478, 211 Miss. 727.

Mo.—Kansas City Stock Yards Co. v. A. Reich & Sons, 250 S.W.2d 692.
Waltermire v. Stuart, App., 222 S.W.2d 945—Hinson v. Morris, App., 298 S.W. 254.

Mont.—Smith v. Armstrong, 198 P. 2d 795, 121 Mont. 377—Koppang v. Sevier, 75 P.2d 790, 106 Mont. 79.

N.Y.—Merwin v. City of Utica, 158 N.Y.S. 257, 172 App.Div. 51.

Okl.—Pine v. Independent Natural Gas Co., 74 P.2d 935, 181 Okl. 495.

Pa.—Smith v. Shallcross, 69 A.2d 156, 165 Pa.Super. 472.

S.D.—Miller v. Johnson, 207 N.W. 478, 49 S.D. 506.

Tenn.—Tevis v. Proctor & Gamble Distributing Co., 113 S.W.2d 64, 21 Tenn.App. 494—Taylor v. Taylor, 14 Tenn.App. 101.

Va.—Hickerson v. Burner, 41 S.E.2d 451, 186 Va. 66—Woodmen of World Life Ins. Soc. v. Grant, 38 S.E.2d 450, 185 Va. 288—Metropolitan Life Ins. Co. v. Johnson, 2 S.E.2d 288, 172 Va. 506—Lawson v. Southwestern Voluntary Ass'n, 191 S.E. 648, 168 Va. 294—Wilkins v. Davis, 164 S.E. 649, 158 Va. 763—Turner v. Brenner, 121 S.E. 510, 138 Va. 232—Perkins v. Director General of Railroads, 112 S.E. 839, 133 Va. 242.

19.40 Cal.—Hall v. Osell, 228 P.2d 293, 102 C.A.2d 849.

Ind.—Lewis v. Young, 180 N.E. 692, 95 Ind.App. 152.

Mont.—Reynolds v. Trbovich, Inc., 210 P.2d 634, 123 Mont. 224.

Neb.—Dyer v. Ilg, 57 N.W.2d 84, 156 Neb. 568.

Or.—Phillips v. Colfax Co., 245 P.2d 893, 195 Or. 285—Fish v. Southern Pac. Co., 143 P.2d 917, 173 Or. 294, rehearing denied 145 P.2d 991, 173 Or. 294.

Wash.—Parrish v. Ash, 203 P.2d 330, 32 Wash.2d 637.

Similar statements of rule
(1) The appellate court decides sufficiency of evidence and not its conflicting character.

Colo.—Takamine v. Hirschfeld, 256 P. 313, 81 Colo. 501.
(2) Where there was a conflict in the evidence as to whether defendant instituted the prosecution of plaintiff after full statement of facts to counsel, the only issue in error proceeding is whether judgment for plaintiff is against the weight of evidence.

Ohio.—Frost v. O'Kross, 153 N.E. 879, 22 Ohio App. 174.

Finding as against weight of evidence
Although bound by a jury verdict or finding of fact upon conflicting evidence and prohibited from disturbing it on the ground of insufficiency of evidence, the appellate court has jurisdiction, in their conclusion of fact, to determine whether or not such a finding or verdict is against the weight of the evidence, and for that reason not adopted.

Tex.—Tucker v. Adkins, Civ.App., 76 S.W.2d 815.

19.45 Ark.—Turner v. Coats, 227 S. W. 982, 148 Ark. 654—Hines v. Helena Cotton Oil Co., 227 S.W. 418, 147 Ark. 328—Harris v. Ring, 190 S.W. 560, 126 Ark. 627—Brown v. Morrow, 187 S.W. 449, 124 Ark. 480.

Kan.—Glenn v. St. Louis & S. F. R. Co., 145 P. 865, 94 Kan. 83.

Ky.—Quarles v. Denning, 191 S.W. 493, 173 Ky. 792—Cincinnati, N. O. & T. P. Ry. Co. v. McQuaid, 189 S. W. 423, 172 Ky. 495.

Mo.—McCormick v. United Rys. Co. of St. Louis, 238 S.W. 579—Eyler v. Edina Light Co., 237 S.W. 545—Koslove v. Dittmeier, 203 S.W. 499—Shelton v. Chicago, M. & St. P. Ry. Co., 190 S.W. 46.
O'Connor v. St. Louis American League Baseball Co., 181 S.W. 1167, 193 Mo.App. 167.

Okl.—Gilbaugh v. Rose, 239 P.2d 406, 205 Okl. 508—Smith v. Gillis, 151 P. 869, 51 Okl. 134.

Tex.—State v. Dickey, Civ.App., 158 S.W.2d 844, error refused—Universal Life & Accident Ins. Co. v. Nanes, Civ.App., 92 S.W.2d 473, error dismissed—Houston Electric Co. v. Schmidt, Civ.App., 203 S.W. 617, error refused—Crosby v. Stevens, Civ.App., 184 S.W. 705, dismissed for want of jurisdiction.

20. Ala.—Southern Bitulithic Co. v. Perrine, 67 So. 601, 191 Ala. 411—Henderson v. Planters' & Merchants' Bank of Ozark, 66 So. 473, 188 Ala. 584—Helms v. Central of Georgia Ry. Co., 66 So. 479, 188 Ala. 393.

not affected by the fact that some of the evidence was in the form of depositions so long as the more

Bethea-Starr Packing & Shipping Co. v. Douglass, 68 So. 515, 12 Ala. App. 561.

Ark.—Hinton v. Martin, 236 S.W. 267, 151 Ark. 343—Frolich v. Hicks, 222 S.W. 373, 143 Ark. 565—Williams Lumber Co. v. Dudley & Healan, 222 S.W. 358, 144 Ark. 335—Hallbrooks v. Rosser, 221 S.W. 483, 143 Ark. 559—Farmers' Mut. Fire Ins. Ass'n v. Hodges, 219 S.W. 13, 142 Ark. 577—Hines v. Reynolds, 218 S.W. 375, 144 Ark. 642—Wofford v. De Queen Real Estate Co., 216 S.W. 710, 141 Ark. 310—Edwards v. Harris, 212 S.W. 89, 138 Ark. 613—Kansas City Southern Ry. Co. v. Ft. Smith Compress Co., 210 S.W. 147, 138 Ark. 1—Chicago Mill & Lumber Co. v. Bryeans, 209 S.W. 69, 137 Ark. 341—De Queen & E. R. Co. v. Pigue, 205 S.W. 888, 135 Ark. 499—Chicago, R. I. & P. Ry. Co. v. Isom, 203 S.W. 271, 136 Ark. 624—Horton v. Huddleston, 200 S.W. 1003, 132 Ark. 396—American Cent. Fire Ins. Co. v. Arndt, 195 S.W. 1075, 129 Ark. 309—American Life Ass'n of Campbell, Mo. v. Howard, 194 S.W. 253, 128 Ark. 640—Georgia Marble Finishing Works v. Minor, 193 S.W. 498, 128 Ark. 124—School District No. 69 of Yell County v. Hundrey, 191 S.W. 238, 126 Ark. 622—Russell v. Russell, 185 S.W. 289, 123 Ark. 619—Royal Ins. Co. of Liverpool v. Morgan, 183 S.W. 198, 122 Ark. 243—St. Louis, I. M. & S. R. Co. v. Duncan, 177 S.W. 1132, 119 Ark. 287—Kilpatrick v. Rowan, 177 S.W. 893, 119 Ark. 175—Bliss-Cook Oak Co. v. Mormon, 176 S.W. 305, 118 Ark. 601—Matteson v. Mitchell & McIntosh, 176 S.W. 142, 118 Ark. 601—Steen v. Sirrine, 175 S.W. 395, 118 Ark. 601—Surridge v. Ellis, 174 S. W. 537, 117 Ark. 223—St. Louis, I. M. & S. Ry. Co. v. Gibson, 168 S.W. 1129, 113 Ark. 417.

Cal.—Realty Bonds & Finance Co. v. Point Richmond Canal & Land Co., 152 P. 433, 171 C. 238—Fritz v. Mills, 150 P. 375, 170 C. 449—Bidwell v. Los Angeles & S. D. B. Ry. Co., 148 P. 197, 169 C. 780—Thayer v. Tyler, 147 P. 979, 169 C. 671—In re Cowell's Estate, 146 P. 425, 169 C. 156—United Iron Works v. Outer Harbor Dock & Wharf Co., 141 P. 917, 168 C. 81.

Meier v. Golden State Auto Tour Corporation, 195 P. 290, 50 C.A. 277—Simon v. McCoy, 153 P. 406, 28 C.A. 523—Lund v. Atchison, T. & S. F. Ry. Co., 152 P. 316, 28 C. A. 324—Neff v. Mattern, 151 P. 382, 28 C.A. 99—McCampbell v. Obear, 148 P. 942, 27 C.A. 97—Rich v. Smith, 148 P. 545, 26 C.A. 775—Arens v. United Railroads of San Francisco, 145 P. 163, 25 C.A. 714.

Colo.—Barlow v. North Sterling Irr. Dist., 277 P. 469, 85 Colo. 488, followed in Maggard v. North Sterling Irr. Dist., 277 P. 470, 85 Colo. 491—Brotherhood of Locomotive Firemen & Enginemen v. McHenry, 154 P. 276, 60 Colo. 477—Atkinson v. Colorado Title & Trust Co., 151 P. 457, 59 Colo. 528—Florence & C. C. R. Co. v. Kerr, 151 P. 439, 59 Colo. 539—Head Camp, Pacific Jurisdiction, Woodmen of the World v. Bohanna, 151 P. 428, 59 Colo. 545—Denver & R. G. R. Co. v. A. Peterson Grocery Co., 147 P. 663, 59 Colo. 125.

Lancaster v. Coale, 150 P. 821, 27 Colo.App. 495—Hebert v. Patrick, 146 P. 190, 27 Colo.App. 204—Parkdale Fuel Co. v. Taylor, 144 P. 1138, 26 Colo.App. 304—Clark v. Aldenhoven, 143 P. 267, 26 Colo.App. 501.

Fla.—Thomas v. Hayter, 86 So. 573, 80 Fla. 649—Clark v. United Grocery Co., 68 So. 766, 69 Fla. 624—Waters v. Southern Asphalt & Construction Co., 65 So. 457, 67 Fla. 440.

Ga.—De Vane v. Rentz, 123 S.E. 867, 158 Ga. 530.

Railway Exp. Agency v. Southern Gas Co., 65 S.E.2d 61, 83 Ga.App. 808—Willoughby v. Bank of Monroe, App., 171 S.E. 772, 48 Ga.App. 6—McKinney v. Chapman, 139 S.E. 98, 37 Ga.App. 174—Reynolds v. Starks, 85 S.E. 950, 16 Ga.App. 606—Harvel v. Atlantic Coast Line R. Co., 85 S.E. 681, 16 Ga.App. 471—Mathewson v. Shewmake, 84 S.E. 174, 15 Ga.App. 706—Williams-Thompson Co. v. Marshburn, 84 S. E. 90, 15 Ga.App. 614—Kennedy v. Smith, 82 S.E. 155, 14 Ga.App. 644.

Idaho.—Goldensmith v. Snowstorm Mining Co., 154 P. 968, 28 Idaho 403—Price v. North American Accident Ins. Co., 152 P. 805, 28 Idaho 136—Graham v. Cœur d'Alene & St. Joe Transp. Co., 149 P. 509, 27 Idaho 454—Woodland v. Portneuf Marsh Valley Irr. Co., 146 P. 1106, 26 Idaho 789—Montgomery v. Gray, 144 P. 646, 26 Idaho 583.

Ill.—Monroe v. Wear, 276 Ill.App. 570—Avey v. Medaris, 272 Ill.App. 207—Bank of Sandoval v. First Nat. Bank of Sandoval, 216 Ill.App. 571—Frink v. Amstadt, 201 Ill.App. 419—Matheny v. Lees, 193 Ill.App. 503—Coutrakon v. Passow & Sons, 193 Ill.App. 447—Parks v. Western, 193 Ill.App. 284—Continental & Commercial Trust & Savings Bank v. Illinois Terra Cotta Lumber Co., 192 Ill.App. 629—Phelan v. De Kalb Wagon Co., 192 Ill.App. 519—Joice v. Norman, 192 Ill.App. 285—Wright v. Olson, 191 Ill.App. 272—Teegarden v. Supreme Tribe of Ben Hur, 190 Ill.App. 474—Pirola v. Fladmark, 190 Ill.App. 57—Foster v. Swanson, 189 Ill.App. 344—Hanlon v. Dunne, 189 Ill.App. 123—Danskin v. Denny, 188 Ill.App. 267—Bills v. Cooling, 187 Ill.App. 642—Miller v. Liljerstrom, 186 Ill. App. 275—Ungar v. Snydacker, 186 Ill.App. 91—Doak v. Rhoads, 185 Ill.App. 88—Gough v. Bensinger, 183 Ill.App. 234.

Ind.—Harmon v. Brown, 109 N.E. 212, 183 Ind. 535—Southern Products Co. v. Franklin Coil Hoop Co., 106 N.E. 872, 183 Ind. 123.

Roach v. Cumberland Bank, 111 N.E. 320, 60 Ind.App. 547—Nicholson v. Smith, 110 N.E. 1007, 60 Ind.App. 385—Public Utilities Co. v. Cosby, 110 N.E. 576, 60 Ind.App. 252—Hitt v. Carr, 109 N.E. 456, 62 Ind.App. 80—Dunton v. Howell, 109 N.E. 418, 60 Ind.App. 183—McCarty v. Williams, 108 N.E. 370, 58 Ind. App. 440—German Fire Ins. Co. v. Zonker, 108 N.E. 160, 57 Ind.App. 696—Buchanan v. Caine, 105 N.E. 885, 57 Ind.App. 274—Chicago, S. B. & N. I. Ry. Co. v. Ness, 105 N.E. 250, 56 Ind.App. 285.

Iowa.—Hanson v. Jeffries, 186 N.W. 419—Handlan-Buck Mfg. Co. v. Waterloo Drop Forge Co., 155 N. W. 802, 173 Iowa 452—Keen v. Continental Casualty Co., 154 N.W. 409, 175 Iowa 513—Geddes v. McElroy, 154 N.W. 320, 171 Iowa 633—Gogerty Bros. v. Crosby, 153 N.W. 154—Maine v. Rittenmeyer, 151 N.W. 499, 169 Iowa 675—Waltham Piano Co. v. Lindholm Furniture Co., 150 N.W. 1040, 168 Iowa 728—Whinnery v. Cundiff, 150 N.W. 659—Dugger v. Kelly, 150 N.W. 27, 168 Iowa 129—McMullen v. Harris, 147 N.W. 164, 165 Iowa 703.

Kan.—Samuel v. Thomas, 149 P. 395, 95 Kan. 742—Hager v. Foale, 148 P. 737, 95 Kan. 361—Allen v. Snodgrass, 148 P. 636, 95 Kan. 386—Newton v. New York Life Ins. Co., 148 P. 619, 95 Kan. 427—Horine v. Hammond, 146 P. 1144, 94 Kan. 579.

Ky.—Hardrick v. Southeastern Greyhound Lines, 208 S.W.2d 733, 306 Ky. 579—Cook v. Gillespie, 82 S. W.2d 347, 259 Ky. 281—Sympson Bros. Coal Co. v. Coomes, 58 S.W. 2d 594, 248 Ky. 324—Hawkins v. E. L. Welch Co., 225 S.W. 1061, 189 Ky. 711—Ham v. Hord, 224 S. W. 868, 189 Ky. 317—Morton v. Sanders, 200 S.W. 24, 178 Ky. 836—Jett v. Jett, 188 S.W. 669, 171 Ky. 548—Forestal v. National Surety Co., 182 S.W. 614, 168 Ky. 552—Le Moyne v. Neal, 181 S.W. 1119, 168 Ky. 292—Joiner v. Pryor, 177 S.W. 253, 165 Ky. 504—Ditto v. Hopkins, 175 S.W. 658, 164 Ky. 412—Louisville & N. R. Co. v. Stewart's Adm'x, 174 S.W. 744, 163 Ky. 823, affirmed Louisville & N. R. Co. v. Stewart, 36 S.Ct. 586, 241 U.S. 261, 60 L.Ed. 989—Yandell v. Anderson & Spilman, 174 S.W. 481, 163 Ky.

702—Middleton v. Potts, 174 S.W. 9, 163 Ky. 550—Cincinnati, N. O. & T. P. Ry. Co. v. Goldston, 173 S.W. 161, 163 Ky. 42—Hatchett v. Blacketer, 172 S.W. 533, 162 Ky. 266—East Tennessee Telephone Co. v. Jeffries, 169 S.W. 825, 160 Ky. 482—Chesapeake & O. Ry. Co. v. Kelly's Adm'x, 169 S.W. 736, 160 Ky. 296, rehearing denied 171 S.W. 185, 161 Ky. 655, and reversed on other grounds Chesapeake & O. Ry. Co. v. Kelly, 36 S.Ct. 630, 241 U.S. 485, 60 L.Ed. 1117—Stewart & Whitesides v. Makin, 169 S.W. 469, 159 Ky. 727—Kincaid v. Bull, 167 S.W. 903, 159 Ky. 527.

La.—Brooks v. Broussard, 67 So. 65, 136 La. 380.

Me.—Stewart v. Gilbert, 96 A. 742, 114 Me. 551—Dickey v. Bartlett, 96 A. 738, 114 Me. 435—Maxim v. Francis, 95 A. 786, 114 Me. 547—Strickland v. Peerless Casualty Co., 93 A. 356, 113 Me. 566—Noyes v. Cushnoc Paper Co., 93 A. 291, 113 Me. 565—Everett v. Hopkins, 92 A. 515, 112 Me. 561—Quint v. Foss, 91 A. 785, 112 Me. 559—Reid v. Eastern S. S. Co., 90 A. 609, 112 Me. 34.

Md.—Gore v. Jarrett, 64 A.2d 550, 192 Md. 513.

Mich.—Rich v. Daily Creamery Co., 6 N.W.2d 539, 303 Mich. 344—Lesher v. Brosteau, 213 N.W. 163, 238 Mich. 189—Gungrich v. Anderson, 155 N.W. 379, 189 Mich. 144.

Minn.—Meyer v. Saterbak, 150 N.W. 901, 128 Minn. 304—Bragg & Co. v. Johnson, 150 N.W. 223, 128 Minn. 64—Anderson v. Peterson, 147 N. W. 426, 125 Minn. 534.

Miss.—Gulf, M. & N. R. Co. v. Seymour, 114 So. 35, 148 Miss. 456—Mobile & O. R. Co. v. Campbell, 75 So. 554, 114 Miss. 803—Sovereign Camp Woodmen of the World v. McDonald, 68 So. 74, 109 Miss. 167.

Mo.—Aly v. Terminal R. R. Ass'n of St. Louis, 78 S.W.2d 851, 336 Mo. 340—Rodgers v. Travelers' Ins. Co., 278 S.W. 368, 311 Mo. 249—Norton v. Kowazek, 235 S.W. 1063—Morrow v. Franklin, 233 S.W. 224, 289 Mo. 549—Hollinghausen v. Ade, 233 S. W. 39, 289 Mo. 362—City of Kennett v. Katz Const. Co., 202 S.W. 558, 273 Mo. 279—Fay v. Ætna Life Ins. Co., 187 S.W. 861, 268 Mo. 373—Tawney v. United Rys. Co. of St. Louis, 172 S.W. 8, 262 Mo. 602.

Brown v. Farmer Motor Co., App., 17 S.W.2d 615—Schindler v. Producers' Grain Co., App., 237 S.W. 124—Bloss v. Aurora Milling Co., 229 S.W. 833, 207 Mo.App. 402—Ketchum v. City of Monett, 226 S. W. 976, 205 Mo.App. 402—Wilkerson v. St. Louis Southwestern Ry. Co., App., 224 S.W. 72—Peters v. Kansas City Rys. Co., 224 S.W. 25, 204 Mo.App. 197—Grote v. Hussmann, 223 S.W. 129, 204 Mo.App. 466—Beck v. Coffeen, App., 222 S. W. 491—Deppe v. National Council Junior Order United American Mechanics, App., 220 S.W. 974—Harmon v. Irwin, App., 219 S.W. 392—Sullivan v. Hines, App., 218 S.W. 406—Dysart v. Murphy, App., 215 S.W. 752—Williams v. Powell, App., 209 S.W. 607—Plummer v. Ford, App., 208 S.W. 489—Murray v. Farmers' & Merchants' Bank, App., 206 S.W. 577—International Harvester Co. of America v. Capps, App., 205 S.W. 252—Nichols & Shepard Co. v. Stokes, App., 196 S. W. 1075—Grayson v. Grayson, App., 190 S.W. 930—Witham v. Lusk, App., 190 S.W. 403—Allen v. Forschler, App., 189 S.W. 636—O'Toole v. Loewenstein, App., 188 S.W. 1123—Scott v. Boeckeler Lumber Co., App., 186 S.W. 1104—Criswell v. Selecman, App., 185 S.W. 1145—Flowerree v. Thornberry, App., 183 S.W. 359—Cohen v. St. Louis Merchants' Bridge Terminal Ry. Co., 181 S.W. 1080, 193 Mo.App. 69—Mercer v. Lowery, 181 S.W. 1050, 193 Mo.App. 106—Second Baptist Church v. Beechman, App., 180 S. W. 1065—Hutton v. Lambardi, App., 180 S.W. 566—Blair Horse & Mule Co. v. St. Joseph & G. I. Ry. Co., App., 180 S.W. 412—Rourke v. Holmes St. Ry. Co., App., 177 S.W. 1102, retransferred, see 181 S.W. 77—Matthews v. Central Coal & Coke Co., App., 177 S.W. 650—Riggio v. Fidelity-Phenix Fire Ins. Co., 176 S.W. 280, 190 Mo.App. 592—Gillogly v. Dunham, 174 S.W. 118, 187 Mo.App. 551—Runyan v. Marceline Coal & Mining Co., 172 S.W. 1165, 186 Mo.App. 707—First Nat. Realty & Loan Co. v. Mason, 171 S.W. 971, 185 Mo.App. 37—Iaser v. Nelson, 171 S.W. 6, 184 Mo.App. 426—Mann v. Weiss, 170 S.W. 355, 185 Mo.App. 335—Vannest v. Missouri, K. & T. Ry. Co., 168 S.W. 782, 181 Mo.App. 373—Johnston v. United Rys. Co. of City of St. Louis, 166 S.W. 1105, 183 Mo.App. 402—Love v. Scott, 166 S.W. 859, 179 Mo.App. 351.

Mont.—Smith v. Barnes, 149 P. 963, 51 Mont. 202, Ann.Cas.1917D 330—Edwards v. Plains Light & Water Co., 143 P. 962, 49 Mont. 535.

Neb.—In re Pott's Estate, 14 N.W. 2d 323, 144 Neb. 729—Miller v. Crosson, 277 N.W. 796, 133 Neb. 892—Britt v. Omaha Concrete Stone Co., 156 N.W. 497, 99 Neb. 300—Krieger v. Von Busch, 152 N.W. 544, 98 Neb. 318—Wynegar v. Dobson, 152 N.W. 543, 98 Neb. 310—Koltermann v. Chilvers, 151 N.W. 174, 97 Neb. 673—Fourth Nat. Bank v. Rutherford, 151 N.W. 158, 97 Neb. 697—Langdon v. Whitnell, 149 N.W. 781, 97 Neb. 335—Kohl v. Munson, 149 N.W. 314, 97 Neb. 170—De Noon v. Lincoln Traction Co., 149 N.W. 48, 97 Neb. 1—Smith v. Royal Highlanders, 148 N.W. 952, 96 Neb. 790—Rawlins v. Meyers, 148 N.W. 915, 96 Neb. 819—Johnson v. Larson, 147 N.W. 476, 96 Neb. 193—Bursow v. Doerr, 147 N.W. 474, 96 Neb. 219, Ann.Cas.1916C 248.

Nev.—Herring-Hall-Marvin Safe Co. v. Balliet, 145 P. 941, 38 Nev. 164—Knock v. Tonopah & G. R. Co., 145 P. 939, 38 Nev. 143, L.R.A.1915F 3—Torp v. Clemons, 142 P. 1115, 37 Nev. 474.

N.M.—Greene v. Esquibel, 272 P.2d 330, 58 N.M. 429—Grates v. Garcia, 148 P. 493, 20 N.M. 158.

N.Y.—Boyarsky v. G. A. Zimmerman Corporation, 270 N.Y.S. 134, 240 App.Div. 361—Abelman v. Indelli & Conforti Co., 156 N.Y.S. 401, 170 App.Div. 740.

N.C.—In re McGowan's Will, 70 S.E. 2d 189, 235 N.C. 404—Landis v. Gittlin, 50 S.E.2d 298, 229 N.C. 521—Lechler v. Precision Gear & Machine Co., 199 S.E. 602, 214 N.C. 842—Lewis v. Frye, 175 S.E. 717, 207 N.C. 852—Banks v. National Accident & Health Ins. Co., 168 S. E. 515, 204 N.C. 782—Elmore v. Dudley Shoals Cotton Mills Co., 153 S.E. 629, 199 N.C. 803—Currie v. Colconda Mining Co., 87 S.E. 523—Mullis v. Metropolitan Life Ins. Co., 86 S.E. 1037—Morrow Bros. & Hearth Co. v. Starr, 86 S.E. 1037, 170 N.C. 671.

N.D.—Morris v. Minneapolis, St. P. & S. S. M. Ry. Co., 155 N.W. 861, 32 N.D. 366—Montana Eastern Ry. Co. v. Lebeck, 155 N.W. 648, 32 N. D. 162.

Ohio.—Cincinnati Traction Co. v. Dannefelser, 3 Ohio App. 220, 35 Ohio Cir.Ct. 622, affirmed 112 N.E. 1081, 92 Ohio St. 524.

Okl.—Chicago, R. I. & P. Ry. Co. v. Brown, 154 P. 1161, 55 Okl. 173—Webster v. Robinson, 152 P. 588, 52 Okl. 26—Sampson v. Mason, 152 P. 100, 51 Okl. 535—Harrell v. Scott, 151 P. 1169, 51 Okl. 373—Clark v. Hill, 151 P. 614, 51 Okl. 268—McFarland v. T. W. Lanier & Bros., 150 P. 1097, 50 Okl. 336—Chicago, R. I. & P. Ry. Co. v. Carden, 149 P. 127, 46 Okl. 557—McCammon v. Jenkins, 145 P. 1163, 44 Okl. 612—Turner v. Maxey, 144 P. 1064, 45 Okl. 125—Wesley v. Diamond, 144 P. 1041, 44 Okl. 484—Gast v. Barnes, 143 P. 856, 44 Okl. 107—Board of Com'rs of Woodward County v. Thyfault, 141 P. 409, 43 Okl. 82.

Or.—Dickerson v. Eastern & Western Lumber Co., 155 P. 175, 79 Or. 281—Spain v. Oregon-Washington R. & Nav. Co., 153 P. 470, 78 Or. 355, Ann.Cas.1917E 1104—Weber v. Richardson, 147 P. 522, 76 Or. 286, modified on other grounds 147 P. 1199, 76 Or. 286.

Pa.—Nill v. Vilsack, 93 A. 622, 247 Pa. 487—Walthers v. Borough of McKees Rocks, 93 A. 493, 247 Pa. 462.

Turner v. G. C. Murphy Co., 61 Pa.Super. 350.

material part of the evidence was oral testimony.[21] | The fact that some of the evidence for the prevail-

R.I.—Rutledge v. Hand, 95 A. 569—Premium Tea Co. v. Plainfield, 94 A. 258—Howarth v. Rhode Island Malleable Iron Works, 94 A. 258—National Cash Register Co. v. Brainson, 93 A. 645, 37 R.I. 462—Donahue v. A. C. Titus Co., 93 A. 644—Moore v. Woonsocket St. Ry. Co., 92 A. 980.

S.C.—Wylie v. United States Health & Accident Ins. Co., 82 S.E. 402, 98 S.C. 273.

S.D.—Davis v. Davis, 154 N.W. 799, 36 S.D. 336—Barnard v. Tidrick, 152 N.W. 690, 35 S.D. 403.

Tenn.—Hines v. Partridge, 231 S.W. 16, 144 Tenn. 219—Continental Ins. Co. v. Schulman, 205 S.W. 315, 140 Tenn. 481.

Tex.—Home Inv. Co. v. Strange, 195 S.W. 849, 109 Tex. 342, modified on other grounds 204 S.W. 314, 109 Tex. 342, reformed 207 S.W. 307, 109 Tex. 342.

Waggoner v. Zundelowitz, Com. App., 231 S.W. 721.

Universal Life & Accident Ins. Co. v. Nanes, Civ.App., 92 S.W.2d 473, error dismissed—Forbess v. Elliott, Civ.App., 230 S.W. 888—Gray v. Stolley, Civ.App., 230 S.W. 866—Wright v. Schaff, Civ.App., 228 S.W. 333—Sovereign Camp, W. O. W., v. Hay, Civ.App., 227 S.W. 1111—Wells v. Scales, Civ.App., 222 S.W. 303—Muir v. Stevens, Civ. App., 221 S.W. 1119, dismissed for want of jurisdiction—Cobb & Gregory v. Lanier, Civ.App., 221 S.W. 990, dismissed for want of jurisdiction—Sutherland v. Citizens' State Bank, Civ.App., 220 S.W. 115—Du Bois v. Tyler, Civ.App., 219 S.W. 900—Prince v. Yarborough, Civ.App., 217 S.W. 211—Miller v. Banders Independent Telephone Co., Civ.App., 216 S.W. 1113—Texas Electric Ry. v. Williams, Civ. App., 213 S.W. 730—Smith v. Smith, Civ.App., 213 S.W. 273, error refused—Lancaster & Wight v. Allen, Civ.App., 207 S.W. 984, reversed on other grounds 217 S.W. 1032, 110 Tex. 213—Falfurrias Mercantile Co. v. Citizens' State Bank, Civ.App., 207 S.W. 568—Rouser v. Wright, Civ.App., 205 S.W. 849, error refused—Askew v. Bruner, Civ.App., 205 S.W. 152—Missouri, K. & T. Ry. Co. of Texas v. Patterson, Civ.App., 204 S.W. 1026, reversed on other grounds, Com. App., 228 S.W. 119—Smith v. Thompson, Civ.App., 201 S.W. 220—Aycock v. McQuerry, Civ.App., 200 S.W. 873, error refused—Texas & P. Ry. Co. v. Thorp, Civ.App., 198 S.W. 335—Rosborough v. Cerveni, Civ.App., 197 S.W. 319—Crafts v. McAllen, Civ.App., 196 S.W. 729, error refused—West Lumber Co. v. C. R. Cummings Export Co., Civ.App., 196 S.W. 546, error refused—Calloway v. Booe & Collier, Civ.App., 195 S.W. 1174, error refused—St. Louis Southwestern Ry. Co. of Texas v. Preston, Civ.App., 194 S.W. 1128, affirmed, Com.App., 228 S.W. 928—Boynton Lumber Co. v. Houston Oil Co. of Texas, Civ.App., 189 S.W. 749, dismissed for want of jurisdiction—Townsend v. Pilgrim, Civ. App., 187 S.W. 1021—White v. Peters, Civ.App., 185 S.W. 659, error refused—Newman v. Davis, Civ.App., 184 S.W. 1078, dismissed for want of jurisdiction—Behles v. Blum, Civ.App., 182 S.W. 386—Texas & N. O. R. Co. v. Turner, Civ.App., 182 S.W. 357—Lucas v. Harrison, Civ.App., 182 S.W. 74—Hughes v. Butler, Civ.App., 179 S.W. 443—Hughes v. Colbert, Civ. App., 179 S.W. 443—Gibson v. Dickson, Civ.App., 178 S.W. 44—Lone Star Canal Co. v. Broussard, Civ.App., 176 S.W. 649—Houston, E. & W. T. Ry. Co. v. Houston Packing Co., Civ.App., 176 S.W. 63—Smith v. Guerre, Civ.App., 175 S.W. 1093—Knight v. England, Civ. App., 175 S.W. 480—Houston & T. C. R. Co. v. Bukowsky, Civ.App., 175 S.W. 477—Thompson v. Pennington, Civ.App., 174 S.W. 944—Glover v. Phillips, Civ.App., 174 S.W. 657—Citizens' State Bank v. McShan, Civ.App., 172 S.W. 565—Elliott v. Clark, Civ.App., 172 S.W. 560—Memphis Cotton Oil Co. v. Gardner, Civ.App., 171 S.W. 1082—Murray Gin Co. v. Putnam, Civ. App., 170 S.W. 806, reversed on other grounds, Com.App., 210 S.W. 506—Old River Rice Irr. Co. v. Stubbs, Civ.App., 168 S.W. 28—Clemmons v. Johnson, Civ.App., 167 S.W. 1103.

Utah.—McFarlane v. Winters, 155 P. 437, 47 Utah 598, L.R.A.1916D 618—Boyd v. Topham, 152 P. 1185, 47 Utah 224—Hunt v. P. J. Moran, Inc., 150 P. 953, 46 Utah 388—Brostrom v. Lynch-Cannon Engineering Co., 148 P. 423, 46 Utah 103—Denver & R. G. R. Co. v. Bolognese, 143 P. 129, 45 Utah 65.

Va.—Burton v. Oldfield, 79 S.E. 660, 195 Va. 544—Johnson v. Kellam, 175 S.E. 634, 162 Va. 757—Litz v. Harman, 144 S.E. 477, 151 Va. 363—Boyd, Higgins & Goforth v. Mahone, 128 S.E. 259, 142 Va. 690—Atlantic Coast Line R. Co. v. Tyler, 98 S.E. 641, 124 Va. 484—Stewart & Quinn v. Rogers & Defrees, 86 S.E. 161, 117 Va. 836—Norfolk & P. B. L. R. Co. v. Sturgis, 85 S.E. 572, 117 Va. 532.

Wash.—Mathias v. Eichelberger, 45 P.2d 619, 182 Wash. 185—Donaldson v. Great Northern Ry. Co., 154 P. 133, 89 Wash. 161, affirmed 38 S. Ct. 230, 246 U.S. 121, 62 L.Ed. 616—First Nat. Bank v. Conway, 151 P. 1129, 87 Wash. 506—Parker v. Washington Tug & Barge Co., 148 P. 896, 85 Wash. 575—Bunck v. McAulay, 147 P. 33, 84 Wash. 473—S. Yamamoto v. Puget Sound Lumber Co., 146 P. 861, 84 Wash. 411—Kieburtz v. City of Seattle, 146 P. 400, 84 Wash. 196—Independent Order of Foresters v. Bonner, 145 P. 987, 84 Wash. 13—Dishman v. Strom, 145 P. 186, 83 Wash. 230—Fitzpatrick v. Newland, 142 P. 867, 81 Wash. 401—Woodard v. Cline Lumber Co., 142 P. 475, 81 Wash. 85—Switzer v. Sherwood, 141 P. 181, 80 Wash. 19, Ann.Cas. 1917A 216—Edward Thompson Co. v. Murphine, 140 P. 1073, 79 Wash. 672.

W.Va.—Morris v. Nelson, 68 S.E.2d 9, 136 W.Va. 722—Wine v. City Lines of West Virginia, 62 S.E.2d 260, 134 W.Va. 889—Davis v. Pugh, 57 S.E.2d 9, 133 W.Va. 569—Madden v. Stockmans Bank of Harman, 11 S.E.2d 530, 122 W.Va. 506—Golden v. Salkeld Coal Co., 132 S.E. 751, 101 W.Va. 341—Howes v. Baltimore & O. R. Co., 87 S.E. 456, 77 W.Va. 362—Cheeks v. Virginia-Pocahontas Coal Co., 82 S.E. 756, 74 W.Va. 553.

Wis.—Smith v. Illinois Cent. R. Co., 155 N.W. 933, 162 Wis. 120—Banaszek v. F. Mayer Boot & Shoe Co., 154 N.W. 637, 161 Wis. 404—Murphy v. Baldwin, 150 N.W. 957, 159 Wis. 567—Berger-Crittenden Co. v. Chicago, M. & St. P. Ry. Co., 150 N.W. 496, 159 Wis. 256—W. T. Raleigh Medical Co. v. Stroud, 148 N. W. 875, 158 Wis. 354.

Wyo.—Hanson v. Shelburne, 153 P. 899, 23 Wyo. 445.

4 C.J. p 859 note 5—23 C.J. p 39 note 45.

Prejudicial error

Where prejudicial error is not shown by record, verdict on conflicting evidence will not be disturbed on appeal.

Mo.—Joice v. Missouri-Kansas-Texas R. Co., 189 S.W.2d 568, 354 Mo. 439, 161 A.L.R. 383.

Neb.—Ingersoll v. Sullivan, 18 N.W. 2d 119, 145 Neb. 761.

N.C.—McNeill v. Sutherland, 6 S.E. 2d 496, 216 N.C. 806—Hill v. Duke Power Co., 2 S.E.2d 857, 215 N.C. 797—Rooks v. Bruce, 195 S.E. 26, 213 N.C. 58.

W.Va.—Otte v. Miller, 24 S.E.2d 90, 125 W.Va. 317.

If instructions substantially state law of case.

Ky.—Murphey's Ex'x v. Clinkinger, 50 S.W.2d 942, 244 Ky. 336.

21. Colo.—Lathrop v. Tracy, 51 P. 486, 24 Colo. 382, 65 Am.S.R. 229.

ing party is of negative character does not require reversal.[21.5]

Where there is sufficient evidence to support the verdict, the reviewing court will not weigh conflicting evidence,[21.10] or reverse the judgment because the evidence is conflicting.[22] Where the evidence is sufficient to take the case to the jury, a verdict based on conflicting evidence is conclusive.[23]

Where there is some evidence to support the verdict, it will not be disturbed on appeal, although the evidence is conflicting.[24]

21.5 Idaho.—Gem State Sales Co. v. Rudin Bros., 41 P.2d 614, 55 Idaho 299.
Ill.—Medearis v. Balenseifen, 205 Ill. App. 142—Pixley v. Swail, 194 Ill. App. 151.
Ky.—Hutcherson v. Louisville & N. R. Co., 57 S.W.2d 12, 247 Ky. 317—Johnson v. Taylor, 53 S.W.2d 550, 245 Ky. 247—Louisville & N. R. Co. v. Scarbrough, 270 S.W. 494, 208 Ky. 79.
Mich.—Cagney v. Checker Cab Mfg. Corporation, 224 N.W. 416, 246 Mich. 113.
Okl.—Buchanan v. Heeney, 30 P.2d 165, 167 Okl. 450—McAlester-Edwards Coal Co. v. Stephenson, 260 P. 78, 126 Okl. 219—Bruce v. McIntosh, 159 P. 261, 57 Okl. 774.
W.Va.—Bartlett v. Baltimore & O. R. Co., 99 S.E. 322, 84 W.Va. 120.

21.10 Ind.—Gerlot v. Swartz, 7 N.E. 2d 960, 212 Ind. 292.
Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121.
Neb.—Major v. Harrison, 272 N.W. 201, 132 Neb. 363.
Tex.—Giles v. Kretzmeier, Civ.App., 239 S.W.2d 706, error refused no reversible error—McCrory's Stores Corp. v. Murphy, Civ.App., 164 S.W.2d 735, error refused.

22. Ariz.—Inspiration Consol. Copper Co. v. Conwell, 190 P. 88, 21 Ariz. 480.
Ark.—Wasson v. Phillips, 79 S.W.2d 264, 190 Ark. 417—Glens Falls Ins. Co. v. Jenkins, 277 S.W. 541, 169 Ark. 1015—Armour & Co. v. Drury, 226 S.W. 133, 146 Ark. 310—Franks v. Rogers, 245 S.W. 311, 156 Ark. 120.
Cal.—Ogulin v. Jeffries, 262 P.2d 75, 121 C.A.2d 211—Griffoul v. Seeman, 215 P.2d 59, 96 C.A.2d 313—Seals v. Jubas, 210 P.2d 521, 94 C.A.2d 313—Taylor v. Williams, 26 P.2d 35, 134 C.A. 643—Alvernaz v. H. P. Garin Co., 16 P.2d 683, 127 C.A. 681—Bennett v. Central California Traction Co., 1 P.2d 47, 115 C.A. 1.
Fla.—Metropolitan Life Ins. Co. v. Main, 107 So. 440, 90 Fla. 1—Daughtry v. Davis, 89 So. 255, 81 Fla. 644.
Ga.—Chambers v. Bank of Villa Rica, 192 S.E. 638, 56 Ga.App. 406.
Idaho.—Higgins v. Belson, 168 P.2d 813, 66 Idaho 736—Jones v. Mikesh, 95 P.2d 575, 60 Idaho 680—Harp v. Stonebraker, 65 P.2d 766, 57 Idaho 434—First Nat. Bank v. Doschades, 279 P. 416, 47 Idaho 661, 65 A.L.R. 900—Pierce v. Caldwell, 261 P. 671, 45 Idaho 288—Morton v. Whitson, 260 P. 426, 45 Idaho 28—Labonte v. Davidson, 175 P. 588, 31 Idaho 644.
Ill.—Bundy v. West, 130 N.E. 709, 297 Ill. 238.
Raimondi v. Ziffrin Truck Lines, 70 N.E.2d 221, 329 Ill.App. 650—Russell v. Consolidated Forwarding Corp., 62 N.E.2d 44, 327 Ill.App. 204—Mortvedt v. Western Austin Co., 50 N.E.2d 764, 320 Ill.App. 337—Trust Co. of Chicago v. Ancateau, 46 N.E.2d 125, 317 Ill.App. 186—Rogers v. Smith, 227 Ill.App. 70—Smorawski v. Chicago City Ry. Co., 211 Ill.App. 557—Wentworth v. Chicago City Ry. Co., 210 Ill.App. 116—Greek-American Sponge Co. v. Van Buren, 208 Ill.App. 254.
Ind.—Dannhauer v. Young, 122 N.E. 589, 73 Ind.App. 651.
Iowa.—Guy v. Payne, 191 N.W. 991, 195 Iowa 1045.
La.—Norman v. State, App., 69 So.2d 120, reversed on other grounds 80 So.2d 858, 227 La. 904.
Me.—Sears v. Pomeroy, 139 A. 460, 126 Me. 605.
Mich.—Mellinger v. Prudential Ins. Co., 34 N.W.2d 450, 322 Mich. 596.
Minn.—State Bank of Brooten v. Forney, 219 N.W. 546, 174 Minn. 402.
Neb.—Baney v. Chicago, B. & Q. R. Co., 218 N.W. 424, 116 Neb. 615—Johnson v. Samuelson, 216 N.W. 810, 116 Neb. 297—Roos v. Klump, 167 N.W. 209, 102 Neb. 338.
N.J.—Mead v. Wiley Methodist Episcopal Church, 93 A.2d 9, 23 N.J.Super. 342.
N.Y.—Painter v. Fletcher, 178 N.Y.S. 266, 189 App.Div. 165, dismissal denied 127 N.E. 917, 228 N.Y. 578.
N.D.—Moe v. Kettwig, 68 N.W.2d 853—Hochstetler v. Graber, 48 N.W. 2d 15, 78 N.D. 90—Haslam v. Babcock, 1 N.W.2d 335, 71 N.D. 363.
Okl.—Mingenback v. Howell, 238 P. 2d 1093, 205 Okl. 475—Finch v. Devanney, 240 P. 79, 113 Okl. 147—Boorigie Bros. v. Quinn-Barry Tea and Coffee Co., 176 P. 391, 73 Okl. 296.
S.D.—Ericson v. Ebsen, 216 N.W. 860, 52 S.D. 97.
Tex.—Alagood v. Coca Cola Bottling Co., Civ.App., 135 S.W.2d 1056, error dismissed, judgment correct—International-Great Northern R. Co. v. Hall, Civ.App., 70 S.W.2d 1025—Bachman v. Nichols, Civ. App., 48 S.W.2d 375—Marshall v. White, Civ.App., 41 S.W.2d 87—St. Louis, S. F. & T. Ry. Co. v. Carter, Civ.App., 275 S.W. 224.
Va.—Southern Ry. Co. v. Berry, 1 S.E.2d 261, 172 Va. 266—Watson v. Coles, 195 S.E. 506, 170 Va. 141.
Wash.—Mayer Lifeboat Co. v. Isaacson Co. Iron Works, 212 P. 1054, 123 Wash. 566.
W.Va.—State ex rel. Mullins v. McClung, 17 S.E.2d 621, 123 W.Va. 682.
4 C.J. p 859 note 7—33 C.J. p 655 note 71 [a] (2)—55 C.J. p 1152 note 12—62 C.J. p 223 note 62—66 C.J. p 1576 note 51—71 C.J. p 160 note 68.

Comparative weight of evidence has been held material, where the question is whether the evidence is sufficient to support the verdict.
Ariz.—Perazzo v. Ortega, 256 P. 503, 32 Ariz. 154.

23. Ark.—East v. Woodruff, 193 S.W. 2d 664, 209 Ark. 1046.
Cal.—Baldarachi v. Leach, 186 P. 1060, 44 C.A. 603.

24. Ala.—Peerson v. Johnson & Johnson, 96 So. 136, 209 Ala. 259.
Ark.—Jonesboro Coca-Cola Bottling Co. v. Holt, 110 S.W.2d 535, 194 Ark. 992—Brown Bros. & Carnahan v. Smiley, 244 S.W. 351, 158 Ark. 640.
Cal.—Wiezorek v. Ferris, 167 P. 234, 176 C. 353.
In re Busteed's Estate, 232 P.2d 881, 105 C.A.2d 14—Macal Imp. Co. v. Hoskins, 229 P.2d 461, 103 C.A. 2d 347—Thompson v. B. F. Goodrich Co., 120 P.2d 693, 48 C.A.2d 723—Elliott v. Market St. Ry. Co., 40 P.2d 547, 4 C.A.2d 292—Speidel v. Lacer, 38 P.2d 477, 2 C.A.2d 528.
Colo.—Abrams v. Colwell, 277 P. 304, 85 Colo. 492—Head Camp, Pacific Jurisdiction, W. O. W. v. Clapp, 211 P. 384, 72 Colo. 369.
Ga.—Citizens & Southern Bank of Thomaston v. Barron, 181 S.E. 859, 181 Ga. 351.
Mendenhall v. Nalley, 59 S.E.2d 283, 81 Ga.App. 517—Upchurch v. Upchurch, 45 S.E.2d 855, 76 Ga. App. 215—Hamby v. Crisp, 172 S.E. 842, 48 Ga.App. 418—Adams v. Few, 131 S.E. 187, 34 Ga.App. 772—Payne v. Demott, 106 S.E. 9, 26 Ga.App. 314.
Idaho.—Gifford v. Goitia, 245 P. 933, 42 Idaho 408—Powelson v. Kinney, 234 P. 935, 40 Idaho 565—Chapman v. Rivas, 229 P. 745, 39 Idaho 718—Mahaffey v. Carlson, 228 P. 793, 39 Idaho 162—Bafus v. Peeper, 194 P. 96, 33 Idaho 324—Wright v. Stewart, 185 P. 69, 32 Idaho 490—Raft River Land & Live Stock Co. v.

Where there is ample or substantial evidence supporting a verdict based on conflicting evidence, it is conclusive on the appellate court.[25] *Where a verdict is sustained by a preponderance*

Laird, 168 P. 1074, 30 Idaho 804—Ross v. Kerr, 167 P. 654, 30 Idaho 492.

Ill.—Hopkins v. Hopkins, 77 N.E.2d 43, 399 Ill. 160.

Fallen v. Rauguth, 253 Ill.App. 328—Rosenston v. Rosenston, 230 Ill.App. 159—Poland v. Supreme Tribe of Ben Hur, 211 Ill.App. 176—Harroun v. Benton, 197 Ill.App. 138—Smith v. Kewanee Light & Power Co., 196 Ill.App. 118.

Ind.—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62—Cleveland, C., C. & St. L. Ry. Co. v. Baker, 128 N.E. 836, 190 Ind. 633.

Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121—First Nat. Bank v. Gibbs, 141 N.E. 264, 84 Ind.App. 491—Steckbeck v. Worman, 125 N.E. 418, 71 Ind.App. 666—King Piano Co. v. Brant, 123 N.E. 727, 70 Ind.App. 643.

Iowa.—McDonald v. Webb, 271 N.W. 521, 222 Iowa 1402—McCord v. Mitchell, 165 N.W. 453, 182 Iowa 196.

Kan.—Siegrist v. Wheeler, 286 P.2d 169, 178 Kan. 286—Hughes v. Vossler, 211 P. 123, 112 Kan. 466.

Ky.—Kentucky Beaver Collieries v. Mellon & Smith, 254 S.W. 421, 200 Ky. 198.

La.—Antoine v. Saxton Hardware Co., 121 So. 371, 10 La.App. 427.

Md.—Peninsula Produce Exch. v. American Ry. Express Co., 128 A. 403, 147 Md. 424.

Mich.—Cox v. Railway Conductors' Co-operative Protective Ass'n, 160 N.W. 608, 194 Mich. 213.

Mont.—Klus v. Lamire, 230 P. 364, 71 Mont. 445—Independent Milk & Cream Co. v. Ætna Life Ins. Co., 216 P. 1109, 68 Mont. 152—Matoole v. Sullivan, 177 P. 254, 55 Mont. 363.

Neb.—Brown & Bigelow v. Gordon, 41 N.W.2d 382, 152 Neb. 463—Edwards v. Hastings Distributing Co., 186 N.W. 980, 107 Neb. 621—Bailey v. Hurtt, 165 N.W. 147, 101 Neb. 823.

N.J.—Imbeninato v. Mendl, 105 A. 791, 92 N.J.Law 516.

N.D.—Gardner v. Lindeman, 169 N.W. 807, 41 N.D. 25—Senn v. Steffan, 164 N.W. 102, 37 N.D. 491.

Okl.—Mercer & Co. v. Port, 56 P.2d 352, 176 Okl. 589—Caldwell v. Carpenter, 234 P. 767, 109 Okl. 63—Shipley v. Thompson, 234 P. 717, 106 Okl. 41—Kunkel v. Rattray, 231 P. 541, 110 Okl. 289—Stout v. Mott, 231 P. 532, 105 Okl. 74—Teer v. Mueller, 231 P. 274, 105 Okl. 32—Youngblood v. Jackson, 229 P. 585, 104 Okl. 302—Kallmeyer v. Garland, 229 P. 166, 100 Okl. 225—Maupin v. Binnion, 227 P. 890, 100 Okl. 32—McLaughlin v. Lagers, 225 P. 920, 99 Okl. 155—Mitchelson v. Commercial Investment Trust, 222 P. 663, 97 Okl. 98—Sharp v. Pawhuska Ice Co., 217 P. 214, 90 Okl. 211—Pickard v. Mascho, 213 P. 848, 89 Okl. 125—Thompson v. Hashbarger, 210 P. 922, 87 Okl. 267—Hays v. Azbill, 184 P. 945, 76 Okl. 313—Hartford Fire Ins. Co. v. Sullivan, 179 P. 24, 74 Okl. 241—Armstrong v. Jenkins, 170 P. 215, 67 Okl. 217—Deming Inv. Co. v. McGrady, 157 P. 734, 59 Okl. 27—Chicago, R. I. & P. Ry. Co. v. Crider, 153 P. 63, 52 Okl. 487.

Or.—West v. Jaloff, 232 P. 642, 113 Or. 184, 36 A.L.R. 1391—McCauley v. The Willamette, 215 P. 892, 109 Or. 131—Southern Oregon Orchards Co. v. Bakke, 210 P. 858, 106 Or. 20—Bank of Kenton v. Preble, 170 P. 302, 87 Or. 230.

Tex.—Clark v. National Life & Acc. Ins. Co., 200 S.W.2d 820, 145 Tex. 575.

Alexander v. Appell Drilling Co., Civ.App., 290 S.W.2d 377, error refused no reversible error—Safeway Stores of Texas v. Webb, Civ. App., 164 S.W.2d 868, error refused—Bantuelle v. Evans, Civ.App., 139 S.W.2d 283—Stobaugh v. Phoenix Assur. Co., Limited, of London, Civ.App., 121 S.W.2d 1044—Panhandle & S. F. Ry. Co. v. Brown, Civ.App., 74 S.W.2d 531—Wallace v. Johnson, Civ.App., 39 S.W.2d 140—Fields Sewerage Co. v. Bishop, Civ.App., 30 S.W.2d 412—Clem v. Forbess, Civ.App., 10 S.W.2d 223—Northern Assur. Co. v. Lawrence, Civ.App., 278 S.W. 476—R. B. George Machinery Co. v. Spearman, Civ.App., 273 S.W. 640—Stephens v. House, Civ.App., 257 S.W. 585, conforming to answers to certified questions 248 S.W. 30, 112 Tex. 459—Hubb-Diggs Co. v. Mitchell, Civ.App., 256 S.W. 702—Chapman v. Witherspoon, Civ.App., 192 S.W. 281.

Va.—Barnard Bus Lines v. Weeks, 158 S.E. 870, 156 Va. 465—Norfolk & W. Ry. Co. v. Nottingham & Wrenn, 124 S.E. 398, 139 Va. 748—Morris & Co. v. Alvis, 121 S.E. 145, 138 Va. 149—Albert v. Holt, 119 S.E. 120, 137 Va. 5—Appalachian Power Co. v. Burress, 113 S.E. 744, 133 Va. 412.

Wash.—Laing v. First Nat. Bank, 244 P. 679, 138 Wash. 227.

Wis.—Koniecko v. Huffman, 60 N.W. 2d 729, 265 Wis. 79, rehearing denied 61 N.W.2d 880, 265 Wis. 79.

4 C.J. p 859 note 8—9 C.J. p 295 note 66—51 C.J. p 1252 note 86.

Any competent evidence

Colo.—Beatty v. Stir, 115 P.2d 644, 108 Colo. 253—Crews-Beggs Dry Goods Co. v. Boyle, 51 P.2d 1026, 97 Colo. 568.

Ga.—Stembridge v. Sloan, 21 S.E.2d 531, 67 Ga.App. 686.

Ind.—State ex rel. Winslow v. Fisher, 37 N.E.2d 280, 109 Ind.App. 644—Stacker v. Huff, 37 N.E.2d 4, 109 Ind.App. 668—Western & Southern Life Ins. Co. v. Kerger, 36 N.E.2d 965, 111 Ind.App. 297.

Okl.—Estes v. Douglass, 99 P.2d 117, 186 Okl. 546—Cities Service Gas Co. v. Eggers, 98 P.2d 1114, 186 Okl. 466, 126 A.L.R. 1278.

Inferences

Where inferences must be drawn from conflicting evidence and there is any credible evidence to support the inference drawn by jury, their finding must be upheld.

Wis.—Bush v. Mahlkuch, 75 N.W.2d 283, 272 Wis. 246—Eliason v. Northland Greyhound Bus Lines, 57 N.W.2d 675, 263 Wis. 435.

Evidence of probative value

Where conflicts in evidence were present on every issue in the case, the question was one of credibility of witnesses and the weight to be given their evidence and was determinable by the jury whose verdict should not be disturbed, where there was evidence of probative value to sustain the jury's finding.

Ky.—Inter-Southern Life Ins. Co. v. Cochran, 83 S.W.2d 11, 259 Ky. 677.

Tex.—Hill v. Moore, Civ.App., 278 S.W.2d 472.

Inconsistencies in plaintiff's testimony did not take the case out of the rule that, where the evidence is conflicting, and there is some evidence to sustain the verdict, the court will not be disturbed.

Ind.—Miller v. Rayburn, 117 N.E. 879, 67 Ind.App. 564.

Cause of accident

Where the evidence is confused and conflicting as to the cause of the accident and there is evidence to support it, the judgment of the district court in favor of defendant will not be disturbed.

La.—Romano v. Seidel Furniture Mfg. Co., 38 So. 409, 114 La. 432.

25. Ariz.—Chernov v. Sandell, 206 P. 2d 348, 68 Ariz. 327—Atlantic Commission Co. v. Noe, 53 P.2d 1088, 47 Ariz. 123—Kjerschow v. Daggs, 207 P. 1089, 24 Ariz. 207.

Ark.—Hoffman v. Epperson, 193 S.W. 2d 1008, 210 Ark. 37—Aluminum Ore Co. v. George, 186 S.W.2d 656, 208 Ark. 419—Wright v. McDaniel, 159 S.W.2d 737, 203 Ark. 992—Lewis v. Shackleford, 157 S.W.2d 509, 203 Ark. 500—Missouri Pac. Transp. Co. v. Talley, 136 S.W.2d 688, 199 Ark. 835, certiorari dismissed 61 S.Ct. 5, 311 U.S. 722, 85

of the evidence, or is not against the preponderance of the evidence, it will not be disturbed on appeal, where the verdict was based on conflicting evidence.[26]

L.Ed. 470—Missouri Pac. Transp. Co. v. Robinson, 86 S.W.2d 913, 191 Ark. 428—Simpson v. Anderson, 80 S.W.2d 65, 190 Ark. 1178—Atlas Life Ins. Co. of Tulsa, Okl., v. Wells, 63 S.W.2d 533, 187 Ark. 979—Rice & Holiman v. Henderson, 35 S.W.2d 1016, 183 Ark. 355—St. Louis-San Francisco Ry. Co. v. Bishop, 33 S.W.2d 388, 182 Ark. 763, certiorari denied 51 S.Ct. 647, 283 U.S. 854, 75 L.Ed. 355, 1461—White Co. v. J. E. Thompson Motor Express Co., 29 S.W.2d 674, 181 Ark. 1147, 182 Ark. 71—Laflin v. Interstate Const. Co., 29 S.W.2d 280, 181 Ark. 1110—Roath v. City of North Little Rock, 28 S.W.2d 67, 181 Ark. 1146—C. M. Gooch Lumber Co. v. Lane, 4 S.W.2d 512, 176 Ark. 1204—St. Louis-San Francisco Ry. Co. v. Young, 299 S.W. 750, 175 Ark. 487—Davis v. Falls, 288 S.W. 723, 172 Ark. 314—Emerson v. E. A. Strout Farm Agency, 256 S.W. 61, 161 Ark. 378—Payne v. Orton, 234 S.W. 469, 150 Ark. 307—St. Louis, I. M. & S. R. Co. v. Ward, 168 S.W. 573, 113 Ark. 598.

Cal.—O'Banion v. Borba, 195 P.2d 10, 32 C.2d 145—Rice v. California Lutheran Hospital, 163 P.2d 860, 27 C.2d 296—Herbert v. Lankershim, 71 P.2d 220, 9 C.2d 409—Dewhirst v. Leopold, 229 P. 30, 194 C. 424.

Tymkowicz v. San Jose Unified School Dist., App., 312 P.2d 388—Kaichen v. Showers, 304 P.2d 137, 146 C.A.2d 804—Allen v. Shaver, 289 P.2d 255, 136 C.A.2d 621—Percin v. Easley, 238 P.2d 1025, 108 C.A.2d 510—Lewy v. Atchison, T. & S. F. Ry. Co., 194 P.2d 77, 86 C.A.2d 118—Cleverdon v. Gray, 145 P.2d 95, 62 C.A.2d 612—Andrade v. Newhouse, 128 P.2d 927, 54 C.A.2d 339—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255—Turner v. Lischner, 126 P.2d 156, 52 C.A.2d 273—People v. Lang Transp. Corp., 110 P.2d 464, 43 C.A.2d 134—Bigelow v. City of Ontario, 99 P.2d 298, 37 C.A.2d 198—Myers v. Moose, 98 P.2d 551, 36 C.A.2d 739—Rhoads v. Studley, 59 P.2d 1082, 15 C.A.2d 726—Green v. Stewart, 289 P. 940, 106 C.A. 518—Davis v. Tanner, 262 P. 1106, 88 C.A. 67—Schropshire v. Pickwick Stages, Northern Division, 258 P. 1107, 85 C.A. 216, followed in Crosby v. Pickwick Stages, Northern Division, 264 P. 346, 88 C.A. 799—Bearce v. Davis, 176 P. 62, 38 C.A. 274.

Fla.—Atlantic Coast Line R. Co. v. Johnston, 74 So.2d 689—Kilgore v. Hudson, 15 So.2d 606, 153 Fla. 715—Niven v. Prudential Properties, 159 So. 866, 118 Fla. 134.

Watson v. Gallagher, App., 96 So. 2d 472.

Hawaii.—Reynolds v. Van Culin, 36 Hawaii 556.

Idaho.—Montgomery Ward & Co. v. V-I Oil Co., 301 P.2d 1106—Litalien v. Tuthill, 272 P.2d 311, 75 Idaho 335—Koehler v. Stenerson, 260 P. 2d 1101, 74 Idaho 281—Moore v. Harland, 233 P.2d 429, 71 Idaho 376—Clark v. Alloway, 170 P.2d 425, 67 Idaho 32—Boomer v. Isley, 290 P. 405, 49 Idaho 666—Hooker v. Schuler, 260 P. 1027, 45 Idaho 83.

Iowa.—Schoonover v. Fleming, 32 N. W.2d 99, 239 Iowa 539—Farr v. Mackie Motors Co., 186 N.W. 52, 193 Iowa 954.

Kan.—Stephenson v. Wallis, 311 P.2d 355, 181 Kan. 254—Raney v. Mooney, 18 P.2d 133, 136 Kan. 787—Dunn v. Madden, 197 P. 1116, 109 Kan. 94.

Ky.—Senters v. Elkhorn & Jellico Coal Co., 145 S.W.2d 848, 284 Ky. 667—Jewell v. Janes, 36 S.W.2d 875, 238 Ky. 63—Town of Wingo v. Rhodes, 28 S.W.2d 465, 234 Ky. 385.

Me.—Cyr v. Landry, 95 A. 883, 114 Me. 188.

Minn.—McKenzie v. Minneapolis Police Relief Ass'n, 232 N.W. 797, 181 Minn. 444.

Miss.—New Orleans & N. E. R. Co. v. Ward, 96 So. 401, 132 Miss. 462.

Mo.—Dunn Oil Development Co., 1 S.W.2d 127, 318 Mo. 139.

Johnson v. Lea, App., 229 S.W. 2d 717—Ashenford v. L. Yukon & Sons Produce Co., 172 S.W.2d 881, 237 Mo.App. 1241—Sherwood v. Clarksdale Bank, App., 155 S.W.2d 527—Morris v. Washington Nat. Ins. Co., App., 90 S.W.2d 138—Paetz v. London Guarantee & Accident Co., Limited, of London, England, App., 71 S.W.2d 826—Millhouser v. Kansas City Public Service Co., App., 71 S.W.2d 160.

Mont.—Holden v. Varner, 272 P.2d 1008, 128 Mont. 211—Reynolds v. Trbovich, Inc., 210 P.2d 634, 123 Mont. 224—Adami v. Murphy, 164 P.2d 150, 118 Mont. 172—Inkret v. Chicago, M., St. P. & P. R. Co., 86 P.2d 12, 107 Mont. 394—Chancellor v. Hines Motor Supply Co., 69 P.2d 764, 104 Mont. 603—Barrett v. McHattie, 59 P.2d 794, 102 Mont. 473—Coolidge v. Meagher, 46 P.2d 684, 100 Mont. 172—Morton v. Mooney, 33 P.2d 262, 97 Mont. 1—Staff v. Montana Petroleum Co., 291 P. 1042, 88 Mont. 145—Cuckovich v. Buckovich, 264 P. 930, 82 Mont. 1—Carey v. Guest, 258 P. 236, 78 Mont. 415—Kamboris v. Chicago, M. & St. P. Ry. Co., 203 P. 859, 62 Mont. 88.

Neb.—Dyer v. Ilg, 57 N.W.2d 84, 156 Neb. 568—Willoughby v. Swett, 34 N.W.2d 287, 150 Neb. 258.

N.D.—Rickel v. Sherman, 158 N.W. 266, 34 N.D. 298.

Ohio.—Cushman Motor Delivery Co. v. Smith, 1 N.E.2d 628, 51 Ohio App. 421—Dime Sav. Bank of Canton v. Morton, 157 N.E. 825, 25 Ohio App. 157.

Okl.—Thomas v. Mathis, 72 P.2d 484, 181 Okl. 1—Argo Oil Co. v. Snouffer, 52 P.2d 803, 175 Okl. 382.

Or.—Schweiger v. Solbeck, 230 P.2d 195, 191 Or. 454, 29 A.L.R.2d 435—Fink v. Prudential Ins. Co. of America, 90 P.2d 762, 162 Or. 37—Wilson v. Steel Tank & Pipe Co. of Oregon, 52 P.2d 1120, 152 Or. 386—Hornshuh v. Alldredge, 41 P. 2d 423, 149 Or. 419—Stacey v. State Industrial Accident Commission, 26 P.2d 1092, 145 Or. 195.

Pa.—Summers v. Prudential Ins. Co. of America, 179 A. 78, 319 Pa. 270.

Tenn.—Montesi v. Patton, 10 Tenn. App. 455.

Tex.—LeMay v. Young, Civ.App., 217 S.W.2d 862—Whitten v. Dethloff, Civ.App., 214 S.W.2d 480—Straffus v. Barclay, Civ.App., 214 S.W.2d 826, affirmed 219 S.W.2d 65, 147 Tex. 600—McAllister v. City of Frost, Civ.App., 131 S.W.2d 975, error dismissed, judgment correct—Hearne Sand & Gravel Co. v. McKinney, Civ.App., 106 S.W.2d 1099—Producers' Refining Co. v. Frazier, Civ.App., 283 S.W. 880—Texas Midland R. Co. v. Truss, Civ. App., 186 S.W. 249, error refused.

Wash.—Murphy v. Calispel Duck Club, 300 P. 1060, 163 Wash. 366—Smith v. Saulsberry, 288 P. 927, 157 Wash. 270—Lew Wong v. Wicklund, 233 P. 304, 133 Wash. 93.

W.Va.—Carper v. Montgomery Ward & Co., 9 S.E.2d 133, 122 W.Va. 318.

Wyo.—Wyoming Cent. Irr. Co. v. Laporte, 182 P. 485, 26 Wyo. 249.

Limits of appellate court's power

When the verdict is attacked for insufficiency of evidence, the supreme court's power begins and ends with inquiry whether substantial evidence contradicted or uncontradicted, in and of itself, supports the verdict, and, if conflicting on any material point, the jury are assumed to have resolved the conflict in favor of the prevailing party.

Cal.—Treadwell v. Nickel, 228 P. 25, 194 C. 243.

Unless there is no substantial evidence sustaining the verdict, the appellate court cannot set it aside.

Cal.—Reed v. Stroh, 128 P.2d 829, 54 C.A.2d 183.

Or.—Watt v. Associated Oil Co., 260 P. 1012, 123 Or. 50.

26. Wis.—Gunsten v. Green, 141 N. W. 239, 153 Wis. 413.
4 C.J. p 859 note 9.

If competent evidence reasonably tends to support a verdict based on conflicting evidence, it will not be disturbed on appeal.[27]

The fact that the appellate court would have reached a different conclusion had the judges thereof sat on the jury, or that they are of the opinion

27. Ariz.—Young Mines Co. v. Citizens' State Bank, 296 P. 247, 37 Ariz. 521—Arizona Cotton Oil Co. v. Thompson, 245 P. 673, 30 Ariz. 204.

Cal.—Bellandi v. Park Sanitarium Ass'n, 6 P.2d 508, 214 C. 472.
Abos v. Martyn, 88 P.2d 797, 31 C.A.2d 705.

Colo.—Crews-Beggs Dry Goods Co. v. Bayle, 51 P.2d 1026, 97 Colo. 568.

Fla.—Usher Garage & Taxi Service v. Zander, 40 So.2d 575.

Ga.—Piedmont Hospital v. Anderson, 16 S.E.2d 90, 65 Ga.App. 491.

Ind.—Board of Com'rs of Decatur County v. Greensburg Times, 19 N.E.2d 459, 215 Ind. 471, rehearing denied 20 N.E.2d 647, 215 Ind. 471.
Prudential Ins. Co. of America v. Bidwell, 8 N.E.2d 123, 103 Ind.App. 386—Bechstein v. Sayler, 179 N.E. 581, 93 Ind.App. 686—Hines v. Rollins, 179 N.E. 183, 97 Ind.App. 251—Smith v. Weston, 113 N.E. 757, 63 Ind.App. 268—Pence v. Pence, 113 N.E. 751, 62 Ind.App. 679.

Kan.—Massey-Harris Co. v. Horn, 294 P. 666, 132 Kan. 206.

Me.—Morton Motor Co. v. Pillsbury, 141 A. 185, 127 Me. 85.

Minn.—Hall v. Minneapolis St. Ry. Co., 26 N.W.2d 178, 223 Minn. 243.

Miss.—Yazoo & M. R. Co. v. Pittman, 153 So. 382, 169 Miss. 667.

Mo.—Ormsby v. A. B. C. Fireproof Warehouse Co., 253 S.W. 491, 214 Mo.App. 336.

Neb.—Nevin v. Chicago & N. W. R. Co., 187 N.W. 883, 108 Neb. 317.

Okl.—Metcalf v. Bingaman, 294 P.2d 569—Sisler v. Smith, 267 P.2d 1081—Haggard v. Collins, 263 P.2d 192—George v. Greer, 250 P.2d 858, 207 Okl. 494—Tollett v. Clay, 249 P.2d 412, 207 Okl. 283—Midland Valley R. Co. v. Lowery, 248 P.2d 1042, 207 Okl. 227—Woodward Co-op. Elevator Ass'n v. Johnson, 248 P.2d 1002, 207 Okl. 217—Evans v. Brubaker, 247 P.2d 511, 207 Okl. 42—Aghajan v. Marshall, 247 P.2d 510, 207 Okl. 40—Oklahoma Transp. Co. v. Mitchell, 243 P.2d 350, 206 Okl. 295—Barnes v. Ross, 241 P.2d 397, 206 Okl. 104—Winters v. Catlett, 238 P.2d 314, 205 Okl. 377—Fletcher v. Millward, 228 P.2d 370, 204 Okl. 177—Harmon v. Metcalfe, 226 P.2d 979, 204 Okl. 79—Wat Henry Pontiac Co. v. Bradley, 210 P.2d 348, 202 Okl. 82—Denver Producing & Refining Co. v. Meeker, 188 P.2d 858, 199 Okl. 588—St. Paul Fire & Marine Ins. Co. v. Creach, 186 P.2d 641, 199 Okl. 372—Rowe v. Oklahoma Ry. Co., 185 P.2d 194, 199 Okl. 243—Ille v. Travis Oil Corp., 164 P.2d 998, 196 Okl. 332—Eastern Machinery Co. v. Conroy, 155 P.2d 521, 195 Okl. 37—First Nat. Bank in Pawhuska v. Lewis, 146 P.2d 840, 193 Okl. 678—Thompson v. Cooper, 135 P.2d 49, 192 Okl. 237, followed in 135 P.2d 52, 192 Okl. 237—Fisher v. Millspaugh, 134 P.2d 579, 192 Okl. 127—Tri-State Casualty Ins. Co. v. McDuff, 134 P.2d 342, 192 Okl. 105—Mitchell v. McMullen Motor Service, 132 P.2d 333, 191 Okl. 612—Gulf Refining Co. v. Carruthers, 120 P.2d 991, 190 Okl. 61—Walker v. Oklahoma Natural Gas Co., 107 P.2d 997, 188 Okl. 241—Maryland Casualty Co. v. Tucker, 96 P.2d 80, 186 Okl. 16—Russell v. Davison, 89 P.2d 352, 184 Okl. 606, 121 A.L.R. 1063—Oklahoma City v. Collins-Dietz-Morris Co., 79 P.2d 791, 183 Okl. 264—Abrams v. Neal, 78 P.2d 1049, 182 Okl. 560—Colpitt v. Smith, 71 P.2d 711, 180 Okl. 627—Binding-Stevens Seed Co. v. Petris, 67 P.2d 956, 180 Okl. 95—Abrams v. Neal, 66 P.2d 922, 179 Okl. 559—Y. & Y. Operating Co. v. Pugh, 65 P.2d 186, 179 Okl. 198—Dixon v. Hawkins, 62 P.2d 251, 178 Okl. 250—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Milam v. Hood, 60 P.2d 769, 177 Okl. 470—Empire Pipeline Co. v. Dowdy, 60 P.2d 757, 177 Okl. 386—McMichael v. Price, 58 P.2d 549, 177 Okl. 186—In re Morrison, 54 P.2d 198, 176 Okl. 55—Pine v. Independent Natural Gas Co., 52 P.2d 1051—Phillips Petroleum Co. v. Widick, 52 P.2d 773, 175 Okl. 376—Fike v. Peters, 52 P.2d 700, 175 Okl. 334—Tri-State Supply Co. v. Rodgers, 52 P.2d 39, 174 Okl. 628—United Ben. Life Ins. Co. v. Knapp, 51 P.2d 963, 175 Okl. 25—Alexander v. Beaver, 50 P.2d 392, 174 Okl. 123—Malernee v. Driebelbis, 46 P.2d 911, 173 Okl. 68—Haunstein v. McCalister, 46 P.2d 552, 172 Okl. 613—Sautbine v. C. I. T. Corporation, 45 P.2d 764, 172 Okl. 526—Berry v. Wray, 45 P.2d 492, 172 Okl. 459—Kelly v. Oliver Farm Equipment Sales Co., 36 P.2d 888, 169 Okl. 269—Enghlin v. Pittsburg County Ry. Co., 36 P.2d 32, 169 Okl. 106, 94 A.L.R. 1180—Grant v. Harris, 33 P.2d 618, 168 Okl. 438—Le Bow v. Tague, 25 P.2d 1101, 166 Okl. 7—Shoemaker v. Gilstrap, 18 P.2d 1051, 162 Okl. 299—Whitney v. Miller, 13 P.2d 110, 158 Okl. 294—Hodges v. Armstrong, 4 P.2d 735, 153 Okl. 11—Farmers' Union Co-op. Gin v. Hollis, 2 P.2d 951, 151 Okl. 134—Haltom v. Chew, 1 P.2d 365, 150 Okl. 214—Greenback v. Cooper, 280 P. 466, 138 Okl. 56—Greenback v. Wood, 280 P. 466, 138 Okl. 55—Greenback v. Wood, 280 P. 464, 138 Okl. 53—Carroll v. First Nat. Bank 270 P. 81, 132 Okl. 248—St. Louis-San Francisco Ry. Co. v. Russell, 266 P. 763, 130 Okl. 237—Federal Nat. Bank v. McDonald, 263 P. 105, 129 Okl. 75—School Dist. No. 62, Carter County v. Morgan, 260 P. 46, 127 Okl. 192—Oklahoma State Bank of Ochelata v. Ward, 259 P. 644, 127 Okl. 45—Hall v. Smith, 259 P. 537, 126 Okl. 206—Blumenfeld v. Mann, 258 P. 918, 126 Okl. 64—Geeslin v. Farney, 254 P. 45, 124 Okl. 120—Kelley v. McKay, 251 P. 82, 120 Okl. 215—Oklahoma Union Ry. Co. v. Rigsby, 250 P. 1001, 122 Okl. 113—Marshik v. Farmers' Union Co-op. Exchange, 250 P. 136, 123 Okl. 76—Sharum v. Sharum, 247 P. 97, 121 Okl. 53—Federal Nat. Bank v. Wilhelm, 246 P. 478, 118 Okl. 23—Tidal Refining Co. v. Charles E. Knox Oil Co., 243 P. 150, 116 Okl. 1—Board v. State, 242 P. 522, 117 Okl. 10—Dempsey Oil & Gas Co. v. Citizens' Nat. Bank, 235 P. 1104, 110 Okl. 39—Curry v. Jeter, 235 P. 188, 109 Okl. 200—Oklahoma Union Ry. Co. v. Mitchell, 231 P. 1062, 105 Okl. 152—Stekoll v. Lebow, 219 P. 899, 96 Okl. 76—Berquist v. Thomas, 207 P. 964, 86 Okl. 214—Knights and Daughters of Tabor and Jurisdiction v. Chestnut, 200 P. 148, 82 Okl. 192—Billings v. Porterfield, 198 P. 94, 81 Okl. 218—Byers v. Brisley, 198 P. 90, 81 Okl. 215—Collins Cotton Co. v. Wooten-Burton Sales Co., 196 P. 681, 81 Okl. 67—Muskogee Electric Traction Co. v. Wimmer, 194 P. 107, 80 Okl. 11—Ætna Building & Loan Ass'n v. McCarty, 189 P. 357, 78 Okl. 187—Lauderdale v. O'Neill, 177 P. 113, 74 Okl. 119—Peters Branch of International Shoe Co. v. Blake, 176 P. 892, 74 Okl. 97.

Or.—Crowder v. Yovovich, 164 P. 576, 84 Or. 41.

Pa.—Louch v. Longnecker, Com.Pl., 28 Erie Co. 206—Schlegel v. Wagner, Com.Pl., 18 Leh.L.J. 3.

S.D.—Morrow v. Quinn-Shepherdson Co., 205 N.W. 38, 48 S.D. 477.

Tenn.—Dickson v. Davidson County, 188 S.W.2d 114, 28 Tenn.App. 210.

Tex.—Texas Prudential Ins. Co. v. Dillard, Civ.App., 297 S.W.2d 265, error refused—National Life & Acc. Ins. Co. v. Clark, Civ.App., 279 S.W.2d 134, error refused no reversible error—Thompson v. Brown, Civ.App., 222 S.W.2d 442—Goree v. Hansen, Civ.App., 214 S.W.2d 824—Ætna Ins. Co. v. English, Civ.App., 204 S.W.2d 850.

that the verdict is against the preponderance of the evidence, will not warrant the setting aside of a verdict based on conflicting evidence.[28]

Where the evidence is fairly evenly balanced, or would warrant a verdict for either party, the reviewing court will not set aside a verdict based on conflicting evidence.[29]

Unless reasonable minds could not reasonably have reached a verdict, based on conflicting evidence, it is conclusive on the appellate court.[30]

28. Ala.—Faust v. Miller, 72 So.2d 294, 260 Ala. 665.
Ark.—Hutcheson v. Clapp, 226 S.W. 2d 546, 216 Ark. 517—**Corpus Juris quoted in** Missouri Pac. Transp. Co. v. Bell, 122 S.W.2d 958, 962, 197 Ark. 250—Western Union Telegraph Co. v. Byrd, 122 S.W.2d 569, 197 Ark. 152—**Corpus Juris cited in** Missouri Pac. R. Co. v. Hancock, 113 S.W.2d 489, 497, 195 Ark. 414—**Corpus Juris cited in** Missouri Pac. R. Co. v. Hampton, 112 P.2d 428, 432, 195 Ark. 335—**Corpus Juris quoted in** Humphries v. Kendall, 111 S.W.2d 492, 499, 195 Ark. 45—**Corpus Juris quoted in** Jonesboro Coca-Cola Bottling Co. v. Holt, 110 S.W.2d 535, 538, 194 Ark. 992—**Corpus Juris quoted in** Mutual Life Ins. Co. of New York v. Springer, 104 S.W.2d 195, 197, 193 Ark. 990—Missouri Pac. R. Co. v. Creekmore, 102 S.W.2d 553, 193 Ark. 722—**Corpus Juris quoted in** Manhattan Const. Co. v. Atkisson, 88 S.W. 2d 819, 822, 191 Ark. 920—**Corpus Juris quoted in** Baldwin v. Wingfield, 85 S.W.2d 689, 692, 191 Ark. 129—Roark Transp. v. Sneed, 68 S.W.2d 996, 188 Ark. 928—Missouri Pac. R. Co. v. Bennings, 53 S.W.2d 599, 186 Ark. 303—Oil Fields Corporation v. Hess, 53 S.W.2d 444, 186 Ark. 241—Arkansas Natural Gas Corporation v. Childress, 53 S.W. 2d 6, 186 Ark. 1197.
Ill.—Parrucci v. Kruse, 138 N.E.2d 91, 12 Ill.App.2d 30.
Iowa.—Bokelman's Will v. Smith, 159 N.W. 975.
Ky.—Read v. Carter, 98 S.W.2d 464, 266 Ky. 346—American Mut. Liability Ins. Co. v. Hartman, 72 S.W. 2d 429, 254 Ky. 712—Louisville & N. R. Co. v. Conn, 200 S.W. 952, 179 Ky. 478.
Mich.—Williams v. Grand Trunk Western R. Co., 73 N.W.2d 455, 344 Mich. 84—Steudle v. Yellow and Checker Cab & Transfer Co., 282 N. W. 879, 287 Mich. 1—Porth v. Cadillac Motor Car Co., 176 N.W. 554, 209 Mich. 89.
Minn.—Hardy v. Anderson, 63 N.W. 2d 814, 241 Minn. 478.
Mo.—Clark v. City of Springfield, App., 241 S.W.2d 100—Goodman v. Nichols, 188 S.W.2d 666, 238 Mo. App. 802.
Mont.—Davis v. Freisheimer, 219 P. 236, 68 Mont. 322.
Neb.—Dohner v. Barr, 158 N.W. 965, 100 Neb. 172—Johnson v. Lane, 158 N.W. 943, 100 Neb. 177.
N.J.—Dolid v. Leatherkraft Corp., 126 A.2d 617, 39 N.J.Super. 194.
Glaser v. B. V. D. Sales Corporation, 170 A. 49, 112 N.J.Law 179—Lembeck v. Harms, 118 A. 537, 98 N.J.Law 95.
Manasquan Fish Co. v. Pennsylvania R. Co., 133 A. 865, 4 N.J. Misc. 621.
Ohio.—Arnold v. Wylie, 157 N.E. 571, 25 Ohio App. 10.
Okl.—Chortney v. Curry, 225 P. 950, 99 Okl. 69.
R.I.—Buttera v. Rhode Island Co., 110 A. 71.
S.C.—Souba v. Life Ins. Co. of Virginia, 197 S.E. 826, 187 S.C. 311.
Tex.—National Life & Acc. Ins. Co. v. Clark, Civ.App., 279 S.W.2d 134, error refused no reversible error—Steinke v. Schmid, Civ.App., 223 S. W.2d 955—Pacific Emp. Ins. Co. v. Gage, Civ.App., 199 S.W.2d 537, error refused no reversible error—Baker v. Mays & Mays, Civ.App., 199 S.W.2d 279, error dismissed—Cross v. White, Civ.App., 112 S.W. 2d 502, affirmed 132 S.W.2d 580, 134 Tex. 91—Universal Life & Accident Ins. Co. v. Nanes, Civ.App., 92 S.W. 2d 473, error dismissed—Southern Traction Co. v. Jones, Civ.App., 209 S.W. 457—Hudgins v. Hammers, Civ.App., 178 S.W. 986—Just v. Herry, Civ.App., 174 S.W. 1012.
Va.—Davis v. McCall, 113 S.E. 835, 133 Va. 487.
Wash.—Lund v. Griffiths & Sprague Stevedoring Co., 183 P. 123, 108 Wash. 220.
Wyo.—Worland v. Davis, 223 P. 227, 31 Wyo. 108.
4 C.J. p 860 note 10.

Burden on appellant to show that judgment complained of is erroneous is not discharged in a case involving only a question of fact by pointing out that the evidence is conflicting and that the trial judge or jury might have reached a different conclusion.
La.—Grau v. Consolidated Dredging & Mfg. Co., 110 So. 202, 162 La. 205.

Usury verdict
Neb.—Klostermann v. Olcott, 41 N.W. 250, 25 Neb. 382.

29. Ariz.—Inter-State Fidelity Building & Loan Ass'n v. Hollis, 17 P.2d 1101, 41 Ariz. 295—Sovereign Camp, W. O. W. v. Madrigal, 12 P.2d 615, 40 Ariz. 396—Equitable Life Assur. Soc. of U. S. v. De Johnson, 286 P. 817, 36 Ariz. 428.
Ark.—Missouri Pac. R. Co. v. Wood, 263 S.W. 964, 165 Ark. 240.
Cal.—Stein v. Lacassie, 207 P. 886, 189 C. 113.
Gackstetter v. Market St. Ry. Co., 52 P.2d 998, 10 C.A.2d 713—Thompson v. M. K. & T. Oil Co., 42 P.2d 374, 5 C.A.2d 117.
Ill.—Linehan v. Morton, 221 Ill.App. 70—Devine v. City of Chicago, 213 Ill.App. 299.
Ky.—Fahrenholtz v. Loomis, 132 S. W.2d 307, 280 Ky. 9—Johnson v. Taylor, 53 S.W.2d 550, 245 Ky. 247—Marshall v. Glover, 226 S.W. 398, 190 Ky. 113—Burley Tobacco Co. v. Young, 202 S.W. 870, 180 Ky. 464.
Mich.—Compton v. Fisher-McCall, Inc., 299 N.W. 750, 298 Mich. 648.
N.J.—Erie R. Co. v. S. J. Groves & Sons Co., 176 A. 377, 114 N.J.Law 216.
Okl.—Dewine Electric Co. v. Riker, 16 P.2d 97, 160 Okl. 278.
Tex.—Traders & General Ins. Co. v. Scott, Civ.App., 189 S.W.2d 633, refused for want of merit—Century Indemnity Co. v. Carnes, Civ.App., 138 S.W.2d 555, error dismissed, judgment correct—McCarty v. Hogan, Civ.App., 121 S.W.2d 499, error dismissed—National Life Ass'n of Des Moines, Iowa, v. Gorman, Civ.App., 250 S.W. 1064.
Va.—Tucker Sanatorium v. Coehn, 106 S.E. 355, 129 Va. 576, 22 A.L.R. 315.
Wash.—Sundstrom v. Puget Sound Traction, Light & Power Co., 156 P. 828, 90 Wash. 640.
4 C.J. p 860 note 11.

That evidence will sustain finding contrary to that of jury affords no sufficient reason for interfering therewith, if there is evidence to sustain such finding.
Tex.—Schaff v. Johnson, Civ.App., 267 S.W. 737.

Distinguished from rule in trial court
The rule that, where the evidence of payment is equally balanced, plaintiff is entitled to recover is a proper instruction to give the jury, but is inapplicable on appeal, the rule then being that on conflicting evidence the verdict of the jury on the issue of payment will not be disturbed.
Wash.—First International Bank of South Bend v. Olsen, 202 P. 268, 117 Wash. 663.

30. Ariz.—Standard Oil Co. of California v. Shields, 119 P.2d 116, 58 Ariz. 239.
Ark.—Fraternal Aid Union v. High, 201 S.W. 824, 132 Ark. 538.
Cal.—Courviosier v. Burger, 215 P. 93, 61 C.A. 470.
Colo.—Colorado Springs & I. Ry. Co. v. Kelley, 176 P. 307, 65 Colo. 246.

Prejudice, partiality, or misconduct. The reviewing court will not disturb a verdict based on conflicting evidence where there is nothing to show that the verdict was the result of prejudice, partiality, or misconduct on the part of the jury.[31]

Where honest difference of opinion possible. Where the evidence as to the existence of the facts in issue is conflicting and of such a character that fair-minded men might honestly differ as to the result thereof, the verdict of the jury is conclusive on appeal.[32]

Unless clearly wrong, or flagrantly against the weight of the evidence, a verdict based on conflicting evidence will not be disturbed on appeal.[33] A

Conn.—Andrews v. Armour & Co., 178 A. 359, 119 Conn. 651—Riordan v. Gouin, 175 A. 686, 119 Conn. 235—Peterson v. Connecticut Co., 164 A. 637, 116 Conn. 237—Coner v. Chittenden, 163 A. 472, 116 Conn. 78—Onofrey v. Resnik, 124 A. 401, 100 Conn. 748.

Ill.—Shearer v. Aurora, E. & C. R. Co., 200 Ill.App. 225.

Me.—Susi v. Diamond Match Co., 158 A. 698, 131 Me. 487.

Minn.—Kelley v. Chicago, B. & Q. R. Co., 170 N.W. 886, 142 Minn. 44.

Va.—Roanoke Ry. & Electric Co. v. Loving, 119 S.E. 82, 137 Va. 331.

31. Cal.—Fry v. Bank of America Nat. Trust & Sav. Ass'n, 298 P.2d 34, 142 C.A.2d 150.

Conn.—Richard v. New York, N. H. & H. R. Co., 132 A. 451, 104 Conn. 229—Press v. Connecticut Co., 109 A. 295, 95 Conn. 45—Easton v. Connecticut Co., 91 A. 644, 88 Conn. 494.

Fla.—Crosby v. Donaldson, 116 So. 231, 95 Fla. 365—Daughtry v. Davis, 89 So. 255, 81 Fla. 644.

Ill.—Swenson v. City of Aurora, 196 Ill.App. 83—Kirk v. Meinshausen, 192 Ill.App. 522.

Iowa.—Farr v. Mackie Motors Co., 186 N.W. 52, 193 Iowa 954.

Ky.—McGraw v. Ayers, 58 S.W.2d 378, 248 Ky. 166—Hutcherson v. Louisville & N. R. Co., 57 S.W.2d 12, 247 Ky. 317—Connelly v. Cincinnati, N. O. & T. P. Ry. Co., 224 S.W. 670, 189 Ky. 123—Cincinnati, N. O. & T. P. Ry. Co. v. Clarke, 185 S.W. 94, 169 Ky. 662—Castleman v. Littrell, 181 S.W. 336, 167 Ky. 736—Shelby v. Grabble, 179 S.W. 1, 166 Ky. 226—Denney v. Abbott, 173 S.W. 1159, 163 Ky. 499—Jellico Coal Mining Co. v. Walls, 170 S. W. 19, 160 Ky. 730.

Me.—Giles v. Putnam, 104 A.2d 534, 150 Me. 104—Sanders Engineering Co. v. Small, 102 A. 36, 116 Me. 509—Leavitt v. Seaney, 93 A. 46, 113 Me. 119.

N.J.—Wasker v. G. R. Wood, Inc., 176 A. 171, 114 N.J.Law 266—Hamm v. Rockwood Sprinkler Co., 97 A. 730, 88 N.J.Law 564.

Manasquan Fish Co. v. Pennsylvania R. Co., 133 A. 865, 4 N. J.Misc. 621.

N.Y.—General Automobile Supply Co. v. Rockwell, 162 N.Y.S. 210.

Tex.—American Ry. Express Co. v. Truede, Civ.App., 246 S.W. 1088—Lobit v. Marcoulides, Civ.App., 225 S.W. 757, error refused.

Va.—American Tobacco Co. v. Harrison, 27 S.E.2d 181, 181 Va. 800.

Wash.—Wood & Iverson v. Wilson, 248 P. 68, 140 Wash. 61.

W.Va.—Hill v. Norton, 82 S.E. 863, 74 W.Va. 428, Ann.Cas.1917D 489.

4 C.J. p 860 note 12.

Evidence strongly against verdict

The verdict of a jury, based on conflicting evidence, will not be set aside, unless the evidence so strongly preponderates against the verdict as to indicate that the jury were moved by passion, prejudice, or some other improper influence.

Tex.—State v. Dickey, Civ.App., 158 S.W.2d 844, error refused—Houston Natural Gas Co. v. Kluck, Civ.App., 154 S.W.2d 504, affirmed 163 S.W. 2d 618, 139 Tex. 491—Aranda v. Texas & N. O. R. Co., Civ.App., 140 S.W.2d 235, error dismissed, judgment correct—Bradford v. Manney, Civ.App., 133 S.W.2d 601, error dismissed—Foley Bros. Dry Goods Co. v. Settegast, Civ.App., 133 S.W.2d 228, error refused.

W.Va.—Belcher v. King, 123 S.E. 398, 96 W.Va. 562—Davis v. Lawrence Oil & Gas Co., 117 S.E. 692, 94 W. Va. 73, 30 A.L.R. 163—McCullough v. Clark, 106 S.E. 61, 88 W.Va. 22—Ayers v. Eads, 100 S.E. 404, 84 W.Va. 555.

32. Ariz.—Meyer v. Killingsworth, 238 P.2d 1097, 73 Ariz. 143—City of Phœnix v. Green, 66 P.2d 1041, 49 Ariz. 376.

Ark.—Home Mut. Ben. Ass'n v. Rowland, 244 S.W. 719, 155 Ark. 450, 28 A.L.R. 86.

Cal.—Palmer v. City of Long Beach, 199 P.2d 952, 33 C.2d 134.

Nederveld v. Bohlander Trucking Co., 126 P.2d 657, 52 C.A.2d 539—Willis v. San Bernardino Lumber & Box Co., 256 P. 224, 82 C.A. 751.

Conn.—Bhallieu v. Horschowski, 112 A. 263, 95 Conn. 694.

Ill.—Parucci v. Kruse, 138 N.E.2d 91, 12 Ill.App.2d 30.

Ind.—Liberal Life Assur. Co. of Indiana v. Cook, 118 N.E. 586, 66 Ind. App. 599.

Iowa.—Brossard v. Chicago, M. & St. P. Ry. Co., 149 N.W. 915, 167 Iowa 703.

Ky.—Equitable Life Assur. Soc. of U. S. v. Obertate, 109 S.W.2d 1206, 270 Ky. 518.

Mont.—Barry v. City of Butte, 142 P. 2d 571, 115 Mont. 234.

Neb.—Dyer v. Ilg, 57 N.W.2d 84, 156 Neb. 568—Dischner v. Loup River Public Power Dist., 25 N.W.2d 813, 147 Neb. 949—Sharp v. Chicago, B. & Q. R. Co., 193 N.W. 150, 110 Neb. 34.

N.D.—Killmer v. Duchscherer, 72 N.W.2d 650—Moe v. Kettwig, 68 N. W.2d 853—Clark v. Josephson, 66 N.W.2d 539—Jacobs v. Bever, 55 N.W.2d 512, 79 N.D. 168.

Ohio.—Duff v. Corn, 87 N.E.2d 731, 84 Ohio App. 403—Crawford v. Merrell, 5 Ohio App. 146.

Okl.—Oppenheim v. Barnes, 144 P.2d 446, 193 Okl. 236—Metropolitan Life Ins. Co. v. Keith, 105 P.2d 528, 187 Okl. 684—Craig & Wall v. Plummer, 217 P. 172, 91 Okl. 193.

R.I.—Fainardi v. Pausata, 126 A. 865—Wells v. Chase, 119 A. 161, 44 R.I. 492—Powell v. Gallivan, 118 A. 769, 44 R.I. 453.

Tenn.—Woodmen of the World v. Mankin, 5 Tenn.App. 188.

Tex.—Walker-Smith Co. v. Whaley, Civ.App., 185 S.W.2d 614—Young v. Fitts, Civ.App., 183 S.W.2d 186, error refused—Ray v. Metzger, Civ. App., 165 S.W.2d 207, affirmed 172 S.W.2d 480, 141 Tex. 372.

Va.—Briston v. Brauer, 7 S.E.2d 93, 175 Va. 118—Lynchburg Traction & Light Co. v. Gordon, 96 S.E. 195, 123 Va. 198—Saunders v. Southern Ry. Co., 84 S.E. 650, 117 Va. 396.

4 C.J. p 860 note 13—45 C.J. p 1370 note 3.

33. Ala.—Birmingham Electric Co. v. Lawson, 194 So. 659, 239 Ala. 236—Sorsby v. Wilkerson, 89 So. 657, 206 Ala. 190.

Cal.—Fugelsang v. Steiner, 1 P.2d 553, 115 C.A. 167.

Colo.—Grondenberg v. Baylies, 234 P. 1064, 77 Colo. 163—Denver Auto Goods Co. v. Peerless Radiator Co., 163 P. 855, 62 Colo. 549.

Conn.—Sinkus v. Stein, 152 A. 135, 112 Conn. 677.

Fla.—Shows v. Lee, 194 So. 221, 141 Fla. 857—Toll v. Waters, 189 So. 393, 138 Fla. 349—Tampa Electric Co. v. Lyons, 185 So. 830, 136 Fla. 14—State ex rel. Foster v. Anders, 184 So. 515, 135 Fla. 59, rehearing denied 185 So. 321, 135 Fla. 641—Germak v. Florida East Coast Ry. Co., 117 So. 391, 95 Fla. 991—Seaboard Air Line Ry. v. Callan, 74 So. 799, 73 Fla. 688.

Ga.—Empire State Jewelry Co. v. Grant Jewelry Co., 91 S.E. 214, 19 Ga.App. 125.

Ill.—City of Monticello v. Le Crone, 111 N.E.2d 338, 414 Ill. 550—City of Belleville v. Mitchell, 112 N.E. 368, 273 Ill. 136.

Spiker v. Christeson, 140 N.E.2d 302, 12 Ill.App.2d 557—Veselich v. Lichtsinn, 135 N.E.2d 823, 11 Ill. App.2d 372—Henderson v. Shives, 135 N.E.2d 186, 10 Ill.App.2d 475—Coby v. Turner, 133 N.E.2d 46, 9 Ill.App.2d 416—Borst v. Langsdale, 130 N.E.2d 520, 8 Ill.App.2d 88—Stocco v. Buttenbender, 128 N.E.2d 615, 7 Ill.App.2d 20—Griggas v. Clauson, 128 N.E.2d 363, 6 Ill.App. 2d 412—Hanck v. Ruan Transport Corp., 122 N.E.2d 445, 3 Ill.App.2d 372—Scheske v. Wiechert, 119 N.E. 2d 508, 2 Ill.App.2d 331—Thomas v. Meyer, 101 N.E.2d 626, 345 Ill. App. 84—Greenwald v. Lidsker, 85 N.E.2d 467, 337 Ill.App. 654—Denny v. Dorr, 78 N.E.2d 114, 333 Ill.App. 581—Brady v. Illinois Agr. Mut. Ins. Co., 60 N.E.2d 108, 325 Ill.App. 336—Philpott v. Parham, 44 N.E.2d 934, 316 Ill.App. 278—Bryant v. Taylor, 40 N.E.2d 545, 313 Ill.App. 650—Ferguson v. City of Springfield, 37 N.E.2d 563, 311 Ill.App. 655—Carrall v. Krause, 15 N.E.2d 323, 295 Ill.App. 552—Capner v. Holbrook, 273 Ill.App. 199—Bouslough v. Schumacher, 270 Ill.App. 79—Johnson v. Mutual Trust Life Ins. Co., 269 Ill.App. 471—Humphreys v. East St. Louis & Suburban Ry. Co., 253 Ill.App. 450—Dowling v. MacLean Drug Co., 248 Ill.App. 270—Grosch v. Mendota Nat. Bank, 239 Ill.App. 515—Associated Furniture Manufacturers v. Leader House Furniture Co., 224 Ill.App. 597—Mandelkow v. Meyer, 219 Ill.App. 286—McLeod v. Alexander, 211 Ill.App. 485—Newman v. Union Pac. R. Co., 210 Ill.App. 13—Schenck v. Midland Lumber Co., 208 Ill.App. 10—Cheatham v. East St. Louis Ry. Co., 206 Ill.App. 237—Dawson v. East St. Louis & Suburban Ry. Co., 206 Ill.App. 234—Toledo, St. L. & W. R. Co. v. East St. Louis & Surburban Ry Co., 206 Ill. App. 216—Hatzenbuehler v. Illinois Cent. R. Co., 206 Ill.App. 114—Kleiman v. Chicago & N. W. Ry. Co., 205 Ill.App. 343—Volin v. St. Louis & O'Fallon Coal Co., 203 Ill.App. 126—Powell v. Alton & S. R. R., 203 Ill.App. 60—Tarjan v. Regelin, 202 Ill.App. 320—Akers v. Cleveland, C., C. & St. L. Ry. Co., 201 Ill.App. 14—Harroun v. Benton, 197 Ill.App. 138—Healy v. Chicago City Ry. Co., 196 Ill.App. 1—Jennings v. Baltimore & O. R. Co., 195 Ill.App. 543—Standard Brewery v. Lynch, 195 Ill. App. 445—Killham v. Chaloupka, 195 Ill.App. 182—Novy v. Louis B. Rysdon Co., 195 Ill.App. 142—Kennedy v. City of Chicago, 195 Ill. App. 58.

Iowa.—Lemke v. Ady, 159 N.W. 1011.

Ky.—Alcorn v. Alcorn, 129 S.W.2d 520, 279 Ky. 1—Walden v. Adams, 100 S.W.2d 827, 267 Ky. 8—Jefferson Standard Life Ins. Co. v. Hurt, 72 S.W.2d 20, 254 Ky. 603—Moss v. Mittel, 69 S.W.2d 1046, 253 Ky. 504—Huber v. Kerrick, 65 S.W.2d 449, 251 Ky. 439—Canewood Oil Co v. Cox, 63 S.W.2d 945, 250 Ky. 800—Breslin v. Blair, 60 S.W.2d 337, 249 Ky. 178—Johnson v. Taylor, 53 S.W.2d 550, 245 Ky. 247—Barren Fork Coal Co. v. Cogar Grain & Coal Co., 8 S.W.2d 399, 225 Ky. 270—Modern Woodmen of America v. Sheilds, 261 S.W. 594, 202 Ky. 795—Morgan v. Moore's Ex'x, 255 S.W. 540, 200 Ky. 684—Connelly v. Cincinnati, N. O. & T. P. Ry. Co., 224 S.W. 670, 189 Ky. 123—Huff v. Woosley, 212 S.W. 597, 184 Ky. 605—McDermott v. Louisville & N. R. Co., 206 S.W. 6, 182 Ky. 22.

La.—McDonald v. Texas & P. Ry. Co., 75 So. 663, 141 La. 732—Lyons v. New Orleans, T. & M. Ry. Co., 74 So. 584, 141 La. 24.

Landry v. Hill, App., 94 So.2d 308.

Me.—Josselyn v. Dearborn, 62 A.2d 174, 143 Me. 328—Arnst v. Estes, 8 A.2d 201, 136 Me. 272—Gilman v. F. O. Bailey Carriage Co., 141 A. 321, 127 Me. 91—Maine Mill Supply Co. v. Finkelman, 101 A. 833, 116 Me. 508—Varney v. McCluskey, 100 A. 12, 115 Me. 565—Talbot v. Locke, 98 A. 939, 115 Me. 554—First Nat. Bank v. Blake, 93 A. 840, 113 Me. 313.

Mich.—Rich v. Daily Creamery Co., 6 N.W.2d 539, 303 Mich. 344—Baba v. Mutual Ben. Health & Accident Ass'n, 273 N.W. 795, 280 Mich. 531—Weintraub v. H. B. Earhart, Inc., 263 N.W. 765, 273 Mich. 668—Page v. Stanley, 218 N.W. 673, 242 Mich. 326.

Minn.—Skar v. McKenney, 160 N.W. 247, 135 Minn. 477.

Miss.—Lynch v. American Slicing Mach. Co., 32 So.2d 546, 202 Miss. 515.

Mo.—American Union Trust Co. v. Never Break Range Co., 190 S.W. 1045, 196 Mo.App. 206.

Neb.—Bezdek v. Patrick, 82 N.W.2d 583, 164 Neb. 398—Burhoop v. Brackhan, 82 N.W.2d 557, 164 Neb. 382—State v. Hohensee, 82 N.W.2d 554, 164 Neb. 476—Johnson v. Nathan, 73 N.W.2d 398, 161 Neb. 399—Griess v. Borchers, 72 N.W. 2d 820, 161 Neb. 217—Greyhound Corp. v. Lyman-Richey Sand & Gravel Corp., 72 N.W.2d 669, 161 Neb. 152—Shields v. Buffalo County, 71 N.W.2d 701, 161 Neb. 84—Kohrt v. Hammond, 70 N.W.2d 102, 160 Neb. 347—Welstead v. Jim Ryan Const. Co., 69 N.W.2d 308, 160 Neb. 87—Granger v. Byrne, 69 N.W.2d 293, 160 Neb. 10—Myers v. Platte Val. Public Power & Irr. Dist., 67 N.W.2d 739, 159 Neb. 493—Anderson v. Nelsen, 65 N.W.2d 149, 159 Neb. 43—Grant v. Williams, 62 N.W.2d 532, 158 Neb. 107—Snyder v. Farmers Irr. Dist., 61 N.W.2d 557, 157 Neb. 771—Dyer v. Ilg, 57 N.W.2d 84, 156 Neb. 568—Klinginsmith v. Allen, 53 N.W.2d 77, 155 Neb. 674—Medelman v. Stanton-Pilger Drainage Dist., 52 N.W.2d 328, 155 Neb. 518—James v. Hogan, 47 N.W. 2d 847, 154 Neb. 306, modified on other grounds 48 N.W.2d 756, 154 Neb. 640—Bolio v. Scholting, 41 N. W.2d 913, 152 Neb. 588—Heusser v. McAtee, 39 N.W.2d 802, 151 Neb. 828—Little v. Loup River Public Power Dist., 36 N.W.2d 261, 150 Neb. 864, 7 A.L.R.2d 355—Webber v. City of Scottsbluff, 35 N.W.2d 110, 150 Neb. 446—Remmenga v. Selk, 34 N.W.2d 757, 150 Neb. 401—In re Renter's Estate, 29 N.W.2d 466, 148 Neb. 776—Arman v. Structiform Engineering Co., 24 N.W.2d 723, 147 Neb. 658—Pruitt v. Lincoln City Lines, 22 N.W.2d 651, 147 Neb. 204—Krska v. Sarpy County, 14 N.W.2d 194, 144 Neb. 613—Langdon v. Loup River Public Power Dist., 13 N.W.2d 168, 144 Neb. 325—McCown v. Schram, 298 N.W. 681, 139 Neb. 738—Porterfield v. Buffalo County Public Power Dist., 295 N. W. 379, 138 Neb. 720—Carnes v. Deklotz, 291 N.W. 490, 137 Neb. 787—Whittaker v. Omaha & C. B. St. Ry. Co., 291 N.W. 275, 137 Neb. 800—Spangler v. Brown, 289 N.W. 839, 137 Neb. 510—Burry v. Interstate Transit Lines, 287 N.W. 66, 136 Neb. 695—Hahn v. Doyle, 286 N.W. 389, 136 Neb. 469—Thomas v. Fundum, 283 N.W. 839, 135 Neb. 728—Dederman v. Summers, 282 N.W. 261, 135 Neb. 453—Laux v. Batterman, 281 N.W. 799, 135 Neb. 386—Kraemer v. New York Life Ins. Co., 278 N.W. 886, 134 Neb. 446—Schindler v. Mulhair, 273 N.W. 217, 132 Neb. 809—Potach v. Hrauda, 271 N.W. 795, 132 Neb. 288—Parkert v. Department of Public Works, 267 N.W. 925, 131 Neb. 346—Harrell v. People's City Mission Home, 267 N.W. 344, 131 Neb. 138—Swain v. Cogswell, 266 N.W. 581, 130 Neb. 709—Boehler v. Kraay, 264 N.W. 745, 130 Neb. 233—Scott v. New England Mut. Life Ins. Co., 260 N.W. 377, 128 Neb. 867—Tidd v. Stull, 259 N.W. 369, 128 Neb. 506—In re Alexander's Estate, 258 N. W. 655, 128 Neb. 334—First Nat. Bank v. Guenther, 252 N.W. 395, 125 Neb. 807—Lyons v. Joseph, 246 N.W. 859, 124 Neb. 442—Faulhaber v. Griswold, 246 N.W. 727, 124 Neb. 357—Yant Const. Co. v. Village of Campbell, 243 N.W. 77, 123 Neb. 360—Bolser v. Fidelity-Phenix Fire Ins. Co., 242 N.W. 261, 123 Neb. 92—Reams v. Clopine, 236 N.W. 158, 121 Neb. 86—Rose v. Chicago & N. W. R. Co., 197 N.W. 952, 111 Neb. 783—Gibson v. Glens Falls Ins. Co.,

mere preponderance the other way will not require the verdict to be set aside,[34] but the preponderance must leave no substantial doubt that the verdict was wrong and unjust.[35]

Contrary to physical facts. Where the evidence is conflicting and no prejudice or misconduct on the part of the jury is shown, the verdict will not be disturbed unless contrary to the physical facts.[36]

197 N.W. 950, 111 Neb. 827—Bryan v. Manchester, 197 N.W. 425, 111 Neb. 748—Pricer v. Lincoln Gas & Electric Light Co., 196 N.W. 150, 111 Neb. 209—Edbrooke v. First Nat. Bank, 193 N.W. 158, 110 Neb. 134—Ross v. Omaha & C. B. St. Ry. Co., 192 N.W. 507, 109 Neb. 823—Vasko v. Hermansky, 191 N.W. 702, 109 Neb. 563—Campbell v. Lincoln Traction Co., 188 N.W. 225, 108 Neb. 648—Hungerford v. Messler, 187 N.W. 82, 107 Neb. 862—Carson v. Greeley, 187 N.W. 47, 107 Neb. 609—Trumble v. Leavitt, 187 N.W. 45, 108 Neb. 65—Dailey v. Sovereign Camp, W. O. W., 184 N.W. 920, 106 Neb. 767—Livingston v. Omaha & C. B. St. Ry. Co., 175 N.W. 662, 104 Neb. 118—Hunter v. Weiner, 172 N.W. 521, 103 Neb. 538—Novak v. Omaha & L. Ry. & Light Co., 170 N.W. 831, 103 Neb. 176—Watkins v. Union Pac. R. Co., 170 N.W. 358, 103 Neb. 75—Shimerda v. Nebraska Serum Co., 169 N. W. 785, 102 Neb. 812—Plath v. Brunken, 167 N.W. 567, 102 Neb. 467—Jackson v. Omaha & Council Bluffs St. Ry. Co., 163 N.W. 838, 101 Neb. 456—Ryba v. Swift & Co., 162 N.W. 630, 101 Neb. 216—Taylor v. Keneston, 161 N.W. 175, 100 Neb. 730—Shapiro v. Omaha & C. B. St. Ry. Co., 160 N.W. 886, 100 Neb. 452—Mundy v. Meyer, 159 N.W. 404, 100 Neb. 296—Hampton v. Lincoln Traction Co., 154 N.W. 716, 98 Neb. 839—Yearsley v. Ingram, 153 N.W. 571, 98 Neb. 539—Neal v. Missouri Pac. Ry. Co., 153 N.W. 492, 98 Neb. 460—Foss v. Hazen, 152 N.W. 559, 98 Neb. 325—Sinclair v. Dunning, 152 N.W. 313, 98 Neb. 115—Copeland v. Omaha & C. B. St. R. Co., 151 N.W. 947, 98 Neb. 42—Henry v. City of Lincoln, 151 N.W. 933, 97 Neb. 865—Haar v. Howard, 151 N. W. 300, 97 Neb. 761—Olson v. Farnsworth, 150 N.W. 260, 97 Neb. 407—Williams v. Western Travelers' Accident Ass'n, 149 N.W. 822, 97 Neb. 352—Haight v. Omaha & C. B. St. R. Co., 149 N.W. 778, 97 Neb. 293, reheard 154 N.W. 836, 99 Neb. 56—Weber v. Towle, 149 N.W. 406, 97 Neb. 233.

Nev.—Cram v. Wes Durston, Inc., 237 P.2d 209, 68 Nev. 503—Hotels El Rancho v. Pray, 187 P.2d 568, 64 Nev. 591.

N.J.—Leary v. West Jersey & S. R. Co., 146 A. 359, 1 N.J.Misc. 549.

N.Y.—Wanamaker v. Schultz, 206 N. Y.S. 209, 123 Misc. 670—Meyer v. Kahnweiler, 162 N.Y.S. 1038, 98 Misc. 184.

Burke v. Aronson, 162 N.Y.S. 722.

Ohio.—Continental Baking Co. v. Pennsylvania R. Co., 96 N.E.2d 258, 87 Ohio App. 505—Telling Belle Vernon Co. v. Krenz, 171 N.E. 357, 34 Ohio App. 499—Community Traction Co. v. Wandtke, 167 N.E. 701, 32 Ohio App. 207—Smith v. Ward, 166 N.E. 396, 32 Ohio App. 177—Cleveland Akron Bag Co. v. Rodatt, 159 N.E. 105, 26 Ohio App. 233.

Discount & Deposit State Bank v. Litt, 26 Ohio Cir.Ct.,N.S., 145.

Okl.—Latson v. McCollom, 134 P.2d 130, 192 Okl. 48—Patrick v. Siliskis, 222 P. 543, 105 Okl. 51—Phœnix Ins. Co. of Hartford v. Newell, 159 P. 1127, 60 Okl. 207.

R.I.—Labonte v. Alvernaz, 132 A. 733—Sayles v. Sayles, 100 A. 246.

S.D.—Heenan v. South Dakota Provision Co., 161 N.W. 191, 38 S.D. 292.

Tex.—Barry v. Patterson, Civ.App., 225 S.W.2d 864—Howard v. Sears, Civ.App., 196 S.W.2d 105—Pure Foods Products v. Gibson, Civ.App., 118 S.W.2d 925, error dismissed—Parks v. Missouri, K. & T. R. Co. of Texas, Civ.App., 19 S.W.2d 373—Onstatt v. Crain, Civ.App., 282 S.W. 666—Burney v. Burney, Civ. App., 261 S.W. 182—Kuehn v. Kuehn, Civ.App., 259 S.W. 290—Grimes v. Tracy-Maysfield Oil & Gas Co., Civ.App., 257 S.W. 636—Burleson v. Graves, 255 S.W. 1013.

Utah.—Utah Lake Irr. Co. v. Jensen, 161 P. 677, 49 Utah 19.

Va.—Leo Butler Co. v. Wilbun, 64 S. E.2d 738, 192 Va. 263—Barnes v. Bess, 197 S.E. 403, 171 Va. 1.

W.Va.—Butcher v. Stull, 82 S.E.2d 278—Mills v. Miller, 64 S.E.2d 111, 135 W.Va. 627—Davis v. Pugh, 57 S.E.2d 9, 133 W.Va. 569—State, for Use of Stout, v. Rogers, 52 S.E.2d 678, 132 W.Va. 548—Yuncke v. Welker, 36 S.E.2d 410, 128 W.Va. 299—Dangerfield v. Akers, 33 S.E. 2d 140, 127 W.Va. 409—Horchler v. Van Zandt, 199 S.E. 65, 120 W. Va. 452—Ware v. Hays, 195 S.E. 265, 119 W.Va. 585—Stephens v. Bartlett, 191 S.E. 550, 118 W.Va. 421—Damron v. Ohio Valley Electric Ry. Co., 188 S.E. 126, 117 W.Va. 725—Kaufman v. Charleston Transit Co., 186 S.E. 617, 117 W.Va. 591—Aliff v. Berryman, 160 S.E. 864, 111 W.Va. 103—Hohmann v. Wetzel County Court, 156 S.E. 86, 109 W.Va. 734—Thomas v. Jones, 141 S.E. 434, 105 W.Va. 46—Reed v. Polstein, 132 S.E. 738, 101 W.Va. 404—Wilson v. McCoy, 103 S.E. 42, 86 W.Va. 103—Zuplkoff v. Charleston Nat. Bank, 88 S.E. 116, 77 W. Va. 621—Stewart v. Parr, 82 S.E. 259, 74 W.Va. 327—Carnefix v. Kanawha & M. R. Co., 82 S.E. 219, 73 W.Va. 534—Ireland v. Smith, 81 S. E. 542, 73 W.Va. 755.

Wyo.—Meyer v. Culley, 241 P.2d 87, 69 Wyo. 285—Goldberg v. Miller, 93 P.2d 947, 54 Wyo. 485, rehearing denied 96 P.2d 570, 54 Wyo. 485.

4 C.J. p 860 note 14—19 C.J. p 1226 notes 99-2—45 C.J. p 360 note 15.

Fact not opinion

Where the evidence conflicts, the reviewing court can reverse only when, as a matter of law and not as a matter of the court's opinion, judgment is against the weight of the evidence.

Ohio.—Twin Dry Cell Battery Co. v. W. P. Southworth Co., 154 N.E. 58, 22 Ohio App. 450.

Unless clearly against right and justice, a verdict upon conflicting evidence will not be set aside.

W.Va.—Dunn v. Prindle, 94 S.E. 28, 81 W.Va. 123.

What constitutes

The court of appeals will not reverse judgment as flagrantly against the evidence, unless testimony for the unsuccessful party, together with the circumstances, overturns a prima facie case, or the evidence of the successful party is impaired by impeachment.

Ky.—Louisville & N. R. Co. v. Curtis' Adm'r, 25 S.W.2d 398, 233 Ky. 276.

34. Ky.—Southeastern Greyhound Lines v. Klatt, 189 S.W.2d 731, 300 Ky. 505—Bennett v. Louisville R. Co., 90 S.W. 1052, 122 Ky. 59, 28 Ky.L. 998, 121 Am.S.R. 453, 4 L.R. A.,N.S., 558.

Tex.—Universal Life & Accident Ins. Co. v. Nanes, Civ.App., 92 S.W. 2d 473, error dismissed.

Wis.—Lutzenberger v. Milwaukee Electric Railway & Light Co., 271 N.W. 409, 224 Wis. 44.

4 C.J. p 861 note 15.

35. Ala.—Alabama Midland R. Co. v. Johnson, 26 So. 160, 123 Ala. 197.

36. U.S.—**Corpus Juris Secundum cited in** Teche Lines v. Boyette, C. C.A.Miss., 111 F.2d 579, 580.

Ariz.—Standard Oil Co. of California v. Shields, 119 P.2d 116, 58 Ariz. 239.

Ark.—**Corpus Juris cited in** Newsom v. Glaze, 219 S.W.2d 232, 215 Ark. 40.

Conn.—Richard v. New York, N. H. & H. R. Co., 132 A. 451, 104 Conn. 229.

Mo.—Shelton v. Rudd, App., 242 S.W. 151.

Application of rule to particular actions and issues. The general rule that the verdict or findings of a jury based on conflicting evidence ordinarily will not be disturbed on appeal unless clearly wrong, or manifestly against the weight of the evidence, has been applied in actions ex contractu generally,[36.5] in actions involving insurance policies,[36.10] and in actions in tort;[36.15] and the rule applies as to find-

N.M.—Johnson v. Mercantile Ins. Co. of America, 133 P.2d 708, 47 N.M. 47.
Va.—Atlantic Coast Line R. Co. v. Newton, 87 S.E. 618, 118 Va. 222.
Wash.—Hartnett v. Standard Furniture Co., 299 P. 408, 162 Wash. 655—Tooker v. Perkins, 150 P. 1138, 86 Wash. 567.
W.Va.—McClain v. Marietta Torpedo Co., 100 S.E. 87, 84 W.Va. 139.
Wis.—Cameron v. Union Automobile Ins. Co., 246 N.W. 420, 210 Wis. 659, rehearing denied 247 N.W. 453, 210 Wis. 659.
4 C.J. p 861 note 17.

36.5 Ark.—Vickers v. Ripley, 295 S.W.2d 309—Rider v. McElroy, 146 S.W.2d 917, 201 Ark. 794—Moss Tie & Timber Co. v. Blair, 138 S.W.2d 781, 200 Ark. 1190.
Cal.—Dickenson v. Samples, 231 P.2d 530, 104 C.A.2d 311—Goad v. Rogers, 229 P.2d 791, 103 Cal.App.2d 294—Banducci v. Frank T. Hickey, Inc., 209 P.2d 398, 93 C.A.2d 658—Raine v. Spreckels, 174 P.2d 857, 77 C.A.2d 117—Atkinson v. Zarevich, 80 P.2d 110, 26 C.A.2d 590.
Colo.—Jensen v. Bohm Memorial Co., 66 P.2d 1273, 100 Colo. 262.
Ga.—Walker v. Smith, 74 S.E.2d 374, 87 Ga.App. 517—W. C. Caye & Co. v. Manning, 15 S.E.2d 831, 65 Ga. App. 283.
Ill.—Paley v. Darlene Juniors, 89 N.E.2d 194, 339 Ill.App. 167—Selimos v. Marinos, 54 N.E.2d 836, 323 Ill. App. 144—Roberts v. Lane, 36 N.E. 2d 846, 311 Ill.App. 541—Poor v. Hopper, 29 N.E.2d 677, 306 Ill.App. 626.
Ind.—Meeker v. Decker, 10 N.E.2d 416, 104 Ind.App. 594.
Iowa.—Hoffman v. Jones, 294 N.W. 588, 229 Iowa 333.
Kan.—Western Kansas Oil & Refining Corp. v. Harris, 76 P.2d 765, 147 Kan. 307.
Ky.—Peoples Sav. Bank v. Overstreet, 223 S.W.2d 370, 311 Ky. 35.
Mich.—Moss v. Shreve, 270 N.W. 826, 278 Mich. 665.
Mo.—Papen v. Friedmeyer, App., 255 S.W.2d 841—Rose v. Knobelock, App., 194 S.W.2d 943.
N.Y.—Green-Kriegsman Paper Co. v. Bischoff, 86 N.Y.S.2d 877, 275 App. Div. 693.
N.C.—McLamb v. Dawson, 94 S.E.2d 590, 244 N.C. 626—Bailey v. McCotter, 36 S.E.2d 918, 226 N.C. 160—Highsmith v. Ewing, 9 S.E.2d 506, 217 N.C. 797—Service Insurance & Realty Co. v. Giles, 9 S.E.2d 370, 217 N.C. 796—Bernard's Tobacco Warehouse v. Willis, 198 S.E. 636, 214 N.C. 826.
Okl.—Mizel v. Brown, 231 P.2d 661, 204 Okl. 491—Skelly Oil Co. v. Funk, 174 P.2d 241, 197 Okl. 659—Anderson v. Hill, 164 P.2d 623, 196 Okl. 304—Baker v. Heiliger, 156 P. 2d 592, 195 Okl. 206—Smith Bros. Drilling Co. v. Klintworth, 155 P. 2d 235, 195 Okl. 13—Latson v. McCollom, 134 P.2d 130, 192 Okl. 48—Farmers State Bank v. Bush, 124 P.2d 385, 190 Okl. 405—W. E. Titus Radio Corp. v. Richards, 121 P.2d 579, 190 Okl. 125—Bickley v. Parks, 89 P.2d 936, 185 Okl. 74—McClellan v. Palmer, 86 P.2d 325, 184 Okl. 216—Brazelton's Wholesale Cleaners & Dyers v. Cash, 78 P.2d 810, 182 Okl. 493—Champlin Refining Co. v. Allen, 62 P.2d 623, 178 Okl. 101—Mercer & Co. v. Port, 56 P.2d 352, 176 Okl. 589.
Pa.—Wheaton v. Rubin, 57 A.2d 589, 162 Pa.Super. 320.
Tenn.—Jackson v. Parsley, 122 S.W. 2d 427, 173 Tenn. 650.
Tex.—Hoerster v. Wilke, Civ.App., 140 S.W.2d 952, affirmed 158 S.W.2d 288, 138 Tex. 263.
Utah.—Hodges v. Smoot, 125 P.2d 419, 102 Utah 90.
Vt.—Richardson v. Persons, 77 A.2d 842, 116 Vt. 413.
Va.—Van Duyn v. Matthews, 24 S.E. 2d 442, 181 Va. 256.
Wash.—Keen v. O'Rourke, 290 P.2d 976, 48 Wash.2d 1—Johnston v. Owens, 153 P.2d 879, 21 Wash.2d 892.

36.10 Ark.—Union Life Ins. Co. v. Johnson, 133 S.W.2d 841, 199 Ark. 241—Ætna Life Ins. Co. v. Sanders, 93 S.W.2d 141, 192 Ark. 590.
Cal.—Wright v. Farmers Automobile Inter-Insurance Exchange, 102 P. 2d 352, 39 C.A.2d 70—Kahn v. Commercial Union Fire Ins. Co. of New York, 60 P.2d 177, 16 C.A.2d 42.
Fla.—Hartford Fire Ins. Co. v. Cromartie, 189 So. 717, 138 Fla. 483—Massachusetts Bonding & Insurance Co. v. Williams, 167 So. 12, 123 Fla. 560—Mutual Life Ins. Co. of New York v. Johnson, 166 So. 442, 122 Fla. 567.
Ind.—Sun Life Assur. Co. of Canada v. Darnell, 20 N.E.2d 680, 107 Ind. App. 204.
Mo.—Beimdiek v. New York Life Ins. Co., App., 183 S.W.2d 379.
Neb.—Greenberg v. Fireman's Fund Ins. Co. of San Francisco, Cal., 35 N.W.2d 772, 150 Neb. 695.
N.Y.—Zakarin v. Maryland Casualty Co., 24 N.Y.S.2d 430, 261 App.Div. 851.
Tex.—Universal Life & Acc. Ins. Co. v. Steger, Civ.App., 153 S.W.2d 242—Border State Life Ins. Co. v. Noble, Civ.App., 138 S.W.2d 119, error dismissed, judgment correct—W. O. W. Life Ins. Soc. v. Dickson, Civ.App., 133 S.W.2d 243, error dismissed, judgment correct—Grand Lodge Free and Accepted Masons of Texas v. Walker, Civ.App., 110 S.W.2d 945—Home Ben. Ass'n v. Griffin, Civ.App., 98 S.W.2d 862.
Va.—State Farm Mut. Automobile Ins. Co. v. Wright, 3 S.E.2d 187, 173 Va. 261—Metropolitan Life Ins. Co. v. Johnson, 2 S.E.2d 288, 172 Va. 506.

Refusal to direct verdict

Where evidence was conflicting as to whether insured was a confirmed drunkard when he took out life policy, a refusal to direct verdict for insurer will not be disturbed.
S.C.—Fowler v. New York Life Ins. Co., 91 S.E. 1043, 107 S.C. 21.

36.15 Ark.—Lanier v. Trammell, 180 S.W.2d 818, 207 Ark. 372—Lewis v. Shackleford, 157 S.W.2d 509, 203 Ark. 500.
Cal.—Kalfus v. Fraze, 288 P.2d 967, 136 C.A.2d 415—Helms v. Thomas, 260 P.2d 1016, 120 C.A.2d 265—Grant v. Scott, 251 P.2d 25, 114 C.A.2d 728—Murray v. San Leandro Rock Co., 245 P.2d 347, 111 C.A.2d 641—Niblack v. Atchison, T. & S. F. Ry. Co., 234 P.2d 208, 105 C.A. 2d 847—Ferguson v. Nakahara, 110 P.2d 1091, 43 C.A.2d 435—People v. Lang Transp. Corporation, 110 P.2d 464, 43 C.A.2d 134—Beattie v. Milliken, 54 P.2d 1151, 11 C.A. 2d 686—Arundel v. Turk, 60 P.2d 486, 16 C.A.2d 293—Scott v. Flanagan, 57 P.2d 1382, 14 C.A.2d 105.
Conn.—Brock v. Waldron, 14 A.2d 713, 127 Conn. 79—Bowen v. Hartford Accident & Indemnity Co., 191 A. 530, 122 Conn. 621.
Ga.—Mullinax v. Turner, 62 S.E.2d 398, 83 Ga.App. 1—Pollard v. Balon, 6 S.E.2d 400, 61 Ga.App. 406.
Ill.—Corrado v. Calumet Engineering Co., 119 N.E.2d 471, 2 Ill.App.2d 524—Hall v. Flavin, 110 N.E.2d 673, 349 Ill.App. 392—Smith v. Illinois Cent. R. Co., 99 N.E.2d 717, 343 Ill.App. 593—Simon v. Kaplan, 52 N.E.2d 832, 321 Ill.App. 203—Stein v. Cummings, 49 N.E.2d 868, 319 Ill.App. 646—McCaughan v. Boswell, 40 N.E.2d 557, 313 Ill.App. 651—Fugett v. Murray, 35 N.E.2d 946, 311 Ill.App. 323—Partridge v. Enterprise Transfer Co., 30 N.E.2d 947, 307 Ill.App. 386—Lanes v. Duffy, 22 N.E.2d 476, 301 Ill.App. 627—Gregory v. Merriam, 14 N.E. 2d 268, 294 Ill.App. 483—Sommer v. Dexter, 9 N.E.2d 440, 291 Ill. App. 77.
Ind.—Pixley v. Catey, 1 N.E.2d 658, 102 Ind.App. 213.

ings of fact with respect to assumption of risk,[36.20] contributory negligence,[36.25] fraud or false representations,[36.30] negligence,[36.35] proximate cause of

Ky.—Baker's Adm'r v. Frederick, 243 S.W.2d 921—Commonwealth v. Webb, 216 S.W.2d 893, 309 Ky. 93—Southeastern Greyhound Lines v. Klatt, 189 S.W.2d 731, 300 Ky. 505—Smith v. Dunning, 122 S.W.2d 781, 275 Ky. 733.

La.—Soldano v. New York Life Ins. Co., App., 196 So. 521.

Mich.—Rich v. Daily Creamery Co., 296 N.W. 253, 296 Mich. 270, 134 A.L.R. 232—Tinkler v. Richter, 295 N.W. 201, 295 Mich. 396.

Minn.—Raiche v. Martin, 56 N.W.2d 625, 238 Minn. 230.

Miss.—Trotter v. Staggers, 28 So.2d 237, 201 Miss. 9—Virginia-Carolina Chemical Co. v. Jefferson, 192 So. 306, 186 Miss. 861.

Mo.—Nichols v. Bresnahan, 212 S.W. 2d 570, 357 Mo. 1126.

State ex rel. Patterson v. Collins, App., 172 S.W.2d 284—Capps v. Beene, App., 162 S.W.2d 80.

N.J.—Gindin v. Baron, 83 A.2d 790, 16 N.J.Super. 1.

N.Y.—Hennessy v. Walker, 17 N.E. 2d 782, 279 N.Y. 94, 119 A.L.R. 1029.

N.C.—Sandlin v. Jarman, 193 S.E. 707, 212 N.C. 833.

N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834—Ostmo v. Tennyson, 296 N.W. 541, 70 N.D. 558.

Ohio.—Feher v. Motor Exp., App., 68 N.E.2d 140.

Okl.—Woodson v. Huey, 261 P.2d 199—Oklahoma Ry. Co. v. Hankins, 249 P.2d 997, 207 Okl. 374—R & S Auto Service v. McGill, 238 P.2d 1089, 205 Okl. 495—Cooper v. McMurry, 149 P.2d 330, 194 Okl. 241—Malernee v. Blaylock, 92 P.2d 354, 185 Okl. 383—Seifried v. Bash, 84 P.2d 34, 183 Okl. 641—Maxey v. Payton, 62 P.2d 1021, 178 Okl. 317.

Tenn.—Chattanooga Gas Co. v. Underwood, 270 S.W.2d 652, 38 Tenn. App. 142—East Tennessee Natural Gas Co. v. Peltz, 270 S.W.2d 591, 38 Tenn.App. 100—White v. Seier, 264 S.W.2d 241, 37 Tenn.App. 437—Vest v. Bitner, 241 S.W.2d 438, 34 Tenn.App. 575—Central Produce Co. v. General Cab Co. of Nashville, 129 S.W.2d 1117, 23 Tenn.App. 209.

Tex.—Liberty Film Lines v. Porter, 146 S.W.2d 982, 136 Tex. 49.

Freeman v. Great Atlantic & Pacific Tea Co., Civ.App., 135 S.W.2d 267, error refused—Texas Cab Co. v. Patton, Civ.App., 125 S.W.2d 411—Joplin v. South Texas Coaches, Civ.App., 119 S.W.2d 1060—Magnolia Petroleum Co. v. Owen, Civ. App., 101 S.W.2d 354, error dismissed.

Va.—House v. Hall, 29 S.E.2d 844, 182 Va. 645—Butler v. Greenwood, 23 S.E.2d 217, 180 Va. 456—Virginia Electric & Power Co. v. Wright, 196 S.E. 580, 170 Va. 442—Stallard v. Atlantic Greyhound Lines, 192 S.E. 800, 169 Va. 223.

Wash.—Brazier v. Betts, 113 P.2d 34, 8 Wash.2d 549.

W.Va.—Morris v. City of Wheeling, 82 S.E.2d 536.

Wis.—Manitowoc Trust Co. v. Bouril, 265 N.W. 572, 220 Wis. 627.

Wyo.—Brown v. Wyoming Butane Gas Co., 205 P.2d 116, 66 Wyo. 67.

Testimony of appellant ignored

On defendants' appeal to the court of civil appeals from an adverse judgment in a suit for malicious prosecution, testimony brought forward from the records of criminal trials which was adverse to plaintiff's testimony could not be given effect.

Tex.—Sullivan v. O'Brien, Civ.App., 85 S.W.2d 1106.

36.20 Cal.—Woodward v. Southern Pac. Co., 94 P.2d 1028, 35 C.A.2d 130, certiorari denied 60 S.Ct. 614, 309 U.S. 670, 84 L.Ed. 1016.

Colo.—Vallery v. Barrett, 167 P. 979, 63 Colo. 548.

Idaho.—Girany v. Oregon Short Line R. Co., 58 P.2d 841, 56 Idaho 740.

Mo.—Pearson Elevator Co. v. Missouri-Kansas-Texas Ry. Co., 80 S.W.2d 137, 336 Mo. 583.

Neb.—Kibler v. Davis, 192 N.W. 732, 109 Neb. 837—Morris v. Missouri Pac. R. Co., 187 N.W. 130, 107 Neb. 788.

N.D.—Bailey v. Davis, 193 N.W. 658, 49 N.D. 838.

Knowledge of danger

Before reviewing court can say that party has assumed risk from which injury occurred, evidence must be without substantial conflict with respect to matter of knowledge or means of knowledge of the existing danger, or that such danger was obvious.

Cal.—Kersten v. Young, 125 P.2d 501, 52 C.A.2d 1—Wilmot v. Golden Gate Inv. Co., 107 P.2d 263, 41 C.A.2d 664.

36.25 Ark.—Cohen v. Ramey, 147 S.W.2d 338, 201 Ark. 713—Delamar & Allison v. Ward, 41 S.W.2d 760, 184 Ark. 82.

Cal.—Shields v. King, 277 P. 1043, 207 C. 275—Thompson v. Fitzgerald, 271 P. 1072, 205 C. 563—Dulanty v. Smith, 265 P. 814, 203 C. 621—Schroeder v. Baumgarteker, 262 P. 740, 202 C. 626.

Squillante v. Barr, 280 P.2d 216, 131 C.A.2d 175—Music v. Southern Pac. Co., 264 P.2d 422, 91 C.A.2d 93—Miller v. Pacific Constructors, 157 P.2d 57, 68 C.A.2d 529—Cooper v. Southern Pac. Co., 111 P.2d 689, 43 C.A.2d 693—Burke v. John E. Marshall, Inc., 108 P.2d 738, 42 C.A.2d 195—Woodward v. Southern Pac. Co., 94 P.2d 1028, 35 C.A.2d 130, certiorari denied 60 S.Ct. 614, 309 U.S. 670, 84 L.Ed. 1016—Mounts v. Tzugares, 49 P.2d 883, 9 C.A.2d 327—Moreno v. Rossi, 290 P. 481, 107 C.A. 569—Hasty v. Trevillian, 283 P. 148, 102 C.A. 405—Milner v. Toliver, 261 P. 1069, 87 C.A. 38.

Colo.—Krohn v. Colorado Springs & I. Ry. Co., 199 P. 88, 70 Colo. 243—Vallery v. Barrett, 167 P. 979, 63 Colo. 548.

Fla.—Tampa Transit Lines v. Chapman, 15 So.2d 908, 153 Fla. 826.

Iowa.—Lonnecker v. Van Patten, 179 N.W. 432.

Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142.

Ky.—Ward v. Martin, 147 S.W.2d 1027, 285 Ky. 337—Paust v. Whiteside Bakery Co., 299 S.W. 176, 221 Ky. 505—Bradley v. Clarke, 293 S.W. 1082, 219 Ky. 438.

Me.—Hatch v. Portland Terminal Co., 131 A. 5, 125 Me. 96.

Mich.—Swift v. Kenbeek, 286 N.W. 658, 289 Mich. 391.

Tenn.—Shook v. Simmons, 137 S.W. 2d 332, 23 Tenn.App. 685—Patillo v. Gambill, 124 S.W.2d 272, 22 Tenn. App. 485.

Tex.—Hom-Ond Food Stores v. Voigt, Civ.App., 115 S.W.2d 981, error dismissed.

Utah.—Roach v. Kyremes, 211 P.2d 181, 116 Utah 405—Chatelain v. Thackeray, 100 P.2d 191, 98 Utah 525.

Va.—Whipple v. Booth, 154 S.E. 545, 155 Va. 413—Roanoke Ry. & Electric Co. v. Loving, 119 S.E. 82, 137 Va. 331.

Wash.—Hauswirth v. Pom-Arleau, 119 P.2d 674, 11 Wash.2d 354—Doty v. Albers Bros. Milling Co., 212 P. 1053, 123 Wash. 669.

W.Va.—Davis v. Sargent, 78 S.E.2d 217, 138 W.Va. 861—Haney v. Town of Rainelle, 25 S.E.2d 207, 125 W. Va. 397.

36.30 Cal.—Flint v. Giguiere, 195 P. 85, 50 C.A. 314.

Colo.—Emley v. Tenenbone, 255 P. 627, 81 Colo. 399.

Minn.—Caskey v. Lewandowski, 46 N.W.2d 865, 233 Minn. 334.

Tex.—Scales v. Lindsay, Civ.App., 43 S.W.2d 286.

Wash.—Lanz v. Hocum, 290 P. 706, 158 Wash. 58.

W.Va.—Huff v. Equitable Life Ins. Co. of District of Columbia, 98 S.E. 203, 83 W.Va. 263.

Wis.—Fehrer v. Midland Casualty Co., 190 N.W. 910, 179 Wis. 431.

36.35 Ark.—Coca-Cola Bottling Co. of Southwest Arkansas v. Carter, 154 S.W.2d 824, 202 Ark. 1026—Kearns v. Steinkamp, 45 S.W.2d 519, 184 Ark. 1177—Plunkett-Jar-

damage or injury to person or property,[36.40] scope of employment,[36.45] nature and extent of injuries or damage,[36.50] insanity,[36.55] and usury.[36.60]

b. Limitations of Rule

A verdict or finding may be set aside on appeal, notwithstanding it is based on conflicting evidence, where it is clearly wrong or against the overwhelming preponderance of the evidence.

The appellate court must reverse the judgment below if the verdict and finding of the jury are clearly wrong, although the record presents a sub-

rell Grocer Co. v. Johnson, 206 S. W. 677, 137 Ark. 615.

Cal.—Krause v. Rarity, 293 P. 62, 210 C. 644, 77 A.L.R. 1327—Ahern v. Livermore Union High School Dist. of Alameda County, 284 P. 1105, 208 C. 770—Thompson v. Fitzgerald, 271 P. 1072, 205 C. 563—Dulanty v. Smith, 265 P. 814, 203 C. 621.

Merlino v. Southern Pac. Co., 281 P.2d 583, 132 C.A.2d 58—Sortino v. Loneoak, 153 P.2d 428, 66 C.A.2d 876—Eastman v. Atchison, T. & S. F. R. Co., 125 P.2d 564, 51 C.A.2d 653—Shearer v. Pacific Gas & Electric Co., 110 P.2d 690, 43 C.A.2d 306—Henry v. Garden Grove Union High School Dist. of Orange County, 7 P.2d 192, 119 C.A. 638—Rayl v. Syndicate Bldg. Co., 5 P.2d 476, 118 C.A. 396—Nelson v. Parker, 286 P. 1078, 104 C.A. 770—Rock v. Orlando, 280 P. 377, 100 C.A. 498—Marshall v. American Meter Co., 277 P. 894, 98 C.A. 759—Milner v. Toliver, 261 P. 1069, 87 C.A. 38—Norton v. Houlette, 258 P. 1104, 85 C.A. 233.

D.C.—Collier v. Young, Mun.App., 94 A.2d 645.

Fla.—Crosby v. Donaldson, 116 So. 231, 95 Fla. 365—Atlanta & St. A. B. Ry. Co. v. Welch, 95 So. 570, 85 Fla. 203.

Idaho.—Jones v. Mikesh, 95 P.2d 575, 60 Idaho 680.

Ill.—Bracher v. Illinois Terminal R. Co., 125 N.E.2d 687, 5 Ill.App.2d 375—Wilson v. Superb Cleaning & Dyeing Corp., 61 N.E.2d 773, 326 Ill.App. 262—Matheis v. Aharonian, 57 N.E.2d 140, 324 Ill.App. 82—Mugaviro v. Chicago, B. & Q. R. Co., 239 Ill.App. 544—Felau v. Lake Sand Co., 210 Ill.App. 244—Osberg v. Cudahy Packing Co., 198 Ill.App. 551—Bell v. East St. Louis & S. Ry. Co., 197 Ill.App. 83.

Ind.—Gerlot v. Swartz, 7 N.E.2d 960, 212 Ind. 292.

Iowa.—Usher v. Stafford, 288 N.W. 432, 227 Iowa 443—Hartman v. Lee, 272 N.W. 140, 223 Iowa 32—Lonnecker v. Van Patten, 179 N.W. 432.

Kan.—Atkins v. Morton, 191 P.2d 909, 164 Kan. 626.

Ky.—Ward v. Martin, 147 S.W.2d 1027, 285 Ky. 337—Paust v. Whiteside Bakery Co., 299 S.W. 176, 221 Ky. 505—Reo Bus Lines Co. v. Dickey, 292 S.W. 791, 219 Ky. 307—Louisville & N. R. Co. v. Treanor's Adm'r, 200 S.W. 634, 179 Ky. 337.

La.—Jerolleman v. New Orleans Terminal Co., 74 So. 186, 140 La. 895.

Me.—Hatch v. Portland Terminal Co., 131 A. 5, 125 Me. 96.

Miss.—C. & R. Stores v. Scarborough, 196 So. 650, 189 Miss. 872.

Mo.—Chenoweth v. McBurney, 224 S. W.2d 114, 359 Mo. 890—Schonlau v. Terminal R. Ass'n of St. Louis, 212 S.W.2d 420, 357 Mo. 1108—Karte v. J. R. Brockman Mfg. Co., 247 S.W. 417.

Chilton v. Ralls, 286 S.W. 718, 220 Mo.App. 355—Jones v. Queen City Woodworks & Lumber Co., App., 239 S.W. 532—Brooks v. Harris, App., 207 S.W. 293—Hawkins v. City of Springfield, 186 S.W. 576, 194 Mo.App. 151.

Neb.—James v. Krebek, 7 N.W.2d 637, 142 Neb. 757—Johnk v. Scanlon, 285 N.W. 488, 136 Neb. 187.

N.C.—Hodgin v. North Carolina Public Service Co., 102 S.E. 748, 179 N. C. 449.

Okl.—Shoemaker v. Gilstrap, 18 P.2d 1051, 162 Okl. 299.

Pa.—Lynch's Estate v. Letterman, Com.Pl., 29 Erie Co. 52.

S.C.—Gleaton v. Southern Ry. Co., 38 S.E.2d 710, 208 S.C. 507.

Tex.—Chapman v. Evans, Civ.App., 186 S.W.2d 827, refused for want of merit—Safeway Stores of Texas v. Webb, Civ.App., 164 S.W.2d 868, error refused—Houston Electric Co. v. McNatt, Civ.App., 297 S.W. 628, affirmed, Com.App., 11 S.W.2d 303—St. Louis Southwestern Ry. Co. of Texas v. Wilbanks, Civ.App., 262 S.W. 187.

Va.—Jewel Tea Co. v. Phelps, 183 S. E. 433, 165 Va. 596—Southern Ry. Co. v. May, 137 S.E. 493, 147 Va. 542—Roanoke Ry. & Electric Co. v. Loving, 119 S.E. 82, 137 Va. 331.

Wash.—Nelson v. Booth Fisheries Co., 6 P.2d 388, 165 Wash. 521—Doty v. Albers Bros. Milling Co., 212 P. 1053, 123 Wash. 669.

W.Va.—Davis v. Sargent, 78 S.E.2d 217, 138 W.Va. 861—St. Clair v. Jaco, 120 S.E. 188, 95 W.Va. 5.

Wis.—Kuklinski v. Dibelius, 66 N.W. 2d 169, 267 Wis. 378.

45 C.J. p 1370 note 2.

Augmentation of injury

The rule that the verdict of the jury on conflicting evidence concerning alleged negligence is conclusive applies even though the conflict is confined to the question of defendant's responsibility for the augmentation of plaintiff's injury, it appearing from the evidence that in other respects defendant was without fault.

N.Y.—Bernhard v. Rensselaer, etc., R. Co., 1 Abb.Dec. 131.

36.40 Ala.—Strickland v. Davis, 128 So. 233, 221 Ala. 247.

Ariz.—Tucson Rapid Transit Co. v. Rubiaz, 187 P. 568, 21 Ariz. 221.

Ark.—Mooney v. Tillery, 47 S.W.2d 1087, 185 Ark. 457—Andrews v. Bloom, 29 S.W.2d 284, 181 Ark. 1061—St. Louis Southwestern Ry. Co. v Jones, 292 S.W. 662, 173 Ark. 455.

Cal.—Dowe v. O'Neill, 8 P.2d 1046, 121 C.A. 450—Bezera v. Associated Oil Co., 3 P.2d 622, 117 C.A. 139.

Ind.—Vogel v. Ridens, 44 N.E.2d 238, 112 Ind.App. 493.

Ky.—Cook v. Gillespie, 82 S.W.2d 347, 259 Ky. 281.

Miss.—Green v. Everson, 106 So. 265, 141 Miss. 129.

Mont.—Freisheimer v. Missoula Creamery Co., 210 P. 329, 64 Mont. 443.

S.D.—Breen v. Kreen, 225 N.W. 223, 55 S.D. 150.

Tex.—Biggers v. Continental Bus System, Inc., 303 S.W.2d 359—Liberty Film Lines v. Porter, 146 S.W. 2d 982, 136 Tex. 49.

Safeway Stores of Texas v. Webb, Civ.App., 164 S.W.2d 868, error refused—Hom-Ond Food Stores v. Voigt, Civ.App., 115 S.W.2d 981, error dismissed.

36.45 Cal.—Day v. General Petroleum Corporation, 89 P.2d 718, 32 C.A.2d 220.

Okl.—City of Ardmore v. Hill, 293 P. 554, 146 Okl. 200.

36.50 Cal.—Shearer v. Pacific Gas & Electric Co., 110 P.2d 690, 43 C.A. 2d 306—Cordi v. Garcia, 102 P.2d 820, 39 C.A.2d 189.

Conn.—Chesley v. Banks, 55 A.2d 868, 134 Conn. 146—Burke v. Hartford Steam Boiler Inspection & Ins. Co., 48 A.2d 372, 133 Conn. 162.

Mont.—Batchoff v. Crancy, 172 P.2d 308, 119 Mont. 157.

Pa.—Stevens v. Frank, 30 A.2d 161, 151 Pa.Super. 222.

Tex.—Fry v. Dixie Motor Coach Corporation, 180 S.W.2d 135, 142 Tex. 589.

36.55 N.C.—Rhyne v. Jefferson Standard Life Ins. Co., 154 S.E. 749, 199 N.C. 419.

36.60 Fla.—Brown v. Banning, 71 So. 327, 71 Fla. 208.

Okl.—United Tire & Investment Co. v. Trone, 113 P.2d 977, 189 Okl. 120.

66 C.J. p 314 note 46.

stantial conflict in the evidence, notwithstanding the general rule that a verdict on conflicting evidence will not be disturbed.[36.80] So it has been held that the reviewing court will nevertheless reverse a verdict on conflicting evidence where the evidence overwhelmingly preponderates against the verdict,[37] where not reasonably supported by evidence,[38] where the evidence in support of the verdict is in itself incredible,[39] or where the verdict is unexplainable on any possible hypothesis.[40] Also, the general rule has no application where there is no conflict of the evidence in any essential particular;[41] nor has the rule any application unless the conflict is real and substantial,[42] not fanciful or fictitious nor mere pretense,[43] mere conclusions not serving to meet the definition of substantial or any evidence as against positive direct evidence of a fact.[44] It is not sufficient that there is some evidence supporting the verdict if it is so weak and inconclusive as not to raise a substantial conflict with that produced against it;[45] nor is it sufficient that the conflict should be in respect of some matter or question which, on all the proof, is shown to be immaterial,[46] or not to be the controlling question which governs the right of recovery.[47]

§ 1649. Against Weight of Evidence

An appellate court generally will not weigh the evidence on which the verdict of the trial court is based, and it will not disturb the verdict as against the weight of the evidence unless it is clearly and manifestly contrary to the weight of evidence.

It is generally neither the duty nor the right of a reviewing court to weigh the evidence or consider its weight,[48] and a verdict based on the weight of the

36.80 Nev.—Lamb v. Lamb, 65 P.2d 872, 57 Nev. 421.

37. Ark.—Jamison v. Spivey, 125 S.W.2d 453, 197 Ark. 698.
Conn.—Devileskis v. Shea, 147 A. 8, 109 Conn. 526.
Ind.—Chicago, L. S. & S. B. Ry. Co. v. Wesolowski, 122 N.E. 781, 70 Ind.App. 5.
N.Y.—Rice v. H. P. Cummings Const. Co., 149 N.Y.S. 759, 164 App.Div. 376—Cohn v. Tanner Motor Car Co., 147 N.Y.S. 574, 163 App.Div. 883.
Okl.—**Corpus Juris Secundum cited in** Hazelrigg Trucking Co. v. Duval, 261 P.2d 204, 209.
4 C.J. p 861 note 18—39 C.J. p 214 note 84 [a].

38. Ariz.—Owl Drug Co. v. Crandall, 80 P.2d 952, 52 Ariz. 322, 120 A.L.R. 1521.
Okl.—Miami Packing Co. v. Davis, 33 P.2d 621, 168 Okl. 468.

39. Wis.—Kurath v. Gove Auto Co., 135 N.W. 752, 149 Wis. 390.

Contrary to common knowledge
Where evidence is conflicting, jury's finding thereon will not be disturbed on appeal, but where testimony relied on as constituting a conflict is patently contrary to common knowledge and human experience, appellate courts are not required to accept it as sustaining a verdict.
Tex.—Barboza v. Service Mut. Ins. Co. of Texas, Civ.App., 125 S.W.2d 1095, error dismissed, judgment correct.

40. N.Y.—De Marco v. Schubert Piano Co., 123 N.Y.S. 1072.

41. Colo.—Brown v. Driverless Car Co., 280 P. 488, 86 Colo. 216.

42. Cal.—Elliott v. Market St. Ry. Co., 40 P.2d 547, 4 C.A.2d 292—Hughes v. Atchison, T. & S. F. Ry. Co., 8 P.2d 853, 121 C.A. 271.
4 C.J. p 861 note 21.

What constitutes
Before a verdict is conclusive on appeal, the conflict in the evidence must be real and substantial and of such character that reasonable minds viewing it dispassionately might fairly entertain a difference of opinion on it.
Cal.—Elliott v. Market St. Ry. Co., 40 P.2d 547, 4 C.A.2d 292.

43. Cal.—Elliott v. Market St. Ry. Co., supra.

44. Cal.—Elliott v. Market St. Ry. Co., supra.

45. R.I.—Hehir v. Rhode Island Co., 58 A. 246, 26 R.I. 30.
4 C.J. p 861 note 21.

46. S.D.—Vienna First Nat. Bank v. Engebretson, 132 N.W. 786, 28 S.D. 185.
4 C.J. p 861 note 22.

47. Idaho.—Breshears v. Callender, 131 P. 15, 23 Idaho 348.

48. Ala.—Mobile City Lines, Inc. v. Hardy, 86 So.2d 393, 264 Ala. 247—Ditsch v. Baggett Transp. Co., 61 So.2d 98, 258 Ala. 26—Thomas v. Rogers, 53 So.2d 736, 256 Ala. 53—Smith v. Smith, 48 So.2d 546, 254 Ala. 404.
Lamar Life Ins. Co. v. Kemp, 1 So.2d 760, 30 Ala.App. 138—Louisville & N. R. Co. v. Atkinson, 104 So. 835, 20 Ala.App. 620, certiorari denied Ex parte Louisville & N. R. Co., 104 So. 837, 213 Ala. 333.
Ariz.—Schmerfeld v. Hendry, 245 P.2d 420, 74 Ariz. 159—Tom Reed Gold Mines Co. v. Brady, 117 P.2d 484, 58 Ariz. 44—Central Copper Co. v. Klefisch, 270 P. 629, 34 Ariz. 230—Peppers Fruit Co. v. Curry, 226 P. 1089, 26 Ariz. 506.
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Neb.—Wallace v. Insurance Co. of North America, 75 N.W.2d 549, 162 Neb. 172—Shields v. Buffalo County, 71 N.W.2d 701, 161 Neb. 34—Snyder v. Farmers Irr. Dist., 61 N.W.2d 557, 157 Neb. 771—Dyer v. Ilg, 57 N.W.2d 84, 156 Neb. 568—James v. Hogan, 47 N.W.2d 847, 154 Neb. 306, modified on other grounds 48 N.W.2d 756, 154 Neb. 640—Conley v. Hays, 45 N.W.2d 900, 153 Neb. 733—Bolio v. Scholting, 41 N.W.2d 913, 152 Neb. 588—Bosteder v. Duling, 219 N.W. 896, 117 Neb. 154.

N.H.—Hussey v. Boston & M. R. R., 133 A. 9, 82 N.H. 236.

N.J.—Brendel v. Public Service Elec. & Gas Co., 101 A.2d 56, 28 N.J.Super. 500—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499—Gorczynski v. Public Service Interstate Transp. Co., 68 A.2d 631, 5 N.J.Super. 191.

Reynolds v. Sun Ray Drug Co., 52 A.2d 666, 135 N.J.Law 475—Bayer v. Cosmillo, 45 A.2d 821, 134 N.J.Law 25—Lilley v. Florence Pipe Foundry & Machine Co., 1 A.2d 450, 121 N.J.Law 147—Frankowski v. Lawrence Motor Car Co., 176 A. 397, 114 N.J.Law 326—Potter v. Pennsylvania R. Co., 174 A. 734, 113 N.J.Law 441—Rickel v. Stockman, 168 A. 467, 111 N.J.Law 294—Brown v. Lasseff, 168 A. 294, 111 N.J.Law 235—Runyon v. Monarch Accident Ins. Co., 158 A. 530, 108 N.J.Law 489—Sussman v. Sussman, 156 A. 496, 108 N.J.Law 384—Haines v. Baker, 153 A. 614, 108 N.J.Law 190—Bennett v. Pillion, 144 A. 601, 105 N.J.Law 359—Burket v. Ellis, 143 A. 347, 105 N.J.Law 560—Auer v. Sinclair Refining Co., 137 A. 555, 103 N.J.Law 372, 54 A.L.R. 623—Woodward v. Harden, 131 A. 62, 102 N.J.Law 31—Van Sciver v. Public Service Ry. Co., 114 A. 146, 96 N.J.Law 13—Savino v. Goldberg, 106 A. 815, 92 N.J. Law 617—Churchill v. Stephens, 102 A. 657, 91 N.J.Law 195.

Kingsley v. Welcher, 185 A. 531, 14 N.J.Misc. 428—Zulinsky v. Greenblat, 184 A. 806, 14 N.J.Misc. 345, affirmed 189 A. 51, 117 N.J.Law 526—Gordon v. Rollo Transit Corporation, 167 A. 865, 11 N.J.Misc. 689—Pleet v. Katchen, 165 A. 875, 11 N.J.Misc. 341—Vitolo v. Nicotera Loan Co., 160 A. 89, 10 N.J. Misc. 624—Leach v. People's Fire Ins. Co., 155 A. 773, 9 N.J.Misc. 909—Condra v. New Jersey & S. I. Ferry Co., 154 A. 748, 9 N.J.Misc. 529—Runyon v. Commonwealth Casualty Co., 154 A. 397, 9 N.J. Misc. 487, reversed on other grounds 160 A. 402, 109 N.J.Law 238—Bailey v. Fortugno, 151 A. 484, 8 N.J.Misc. 739—Lorgan v. Palmer, 149 A. 345, 8 N.J.Misc. 205—Boice-Runyon Co. v. Dillon, 143 A. 217, 6 N.J.Misc. 961—Alson-Garner v. Jennette, 139 A. 221, 5 N.J.Misc. 957—Cordery v. American Express Co., 137 A. 719, 5 N.J. Misc. 600, affirmed 140 A. 416, 104 N.J.Law 434—Application of Board of Recreation Com'rs of West New York, 132 A. 244, 4 N.J.Misc. 145.

N.M.—Miller v. Marsh, 201 P.2d 341, 53 N.M. 5.

N.Y.—Shaw v. Roovers Bros., 45 N.E.2d 905, 289 N.Y. 348, motions denied 49 N.E.2d 622, 290 N.Y. 662.

Merritt v. Newman, 46 N.Y.S.2d 34, 267 App.Div. 855, appeal denied 49 N.Y.S.2d 270, 267 App.Div. 1034.

N.C.—Vincent v. Woody, 76 S.E.2d 356, 238 N.C. 118—Brittain v. Atlantic & Y. Ry. Co., 9 S.E.2d 416, 217 N.C. 737—City of Durham v. Lawrence, 200 S.E. 880, 215 N.C. 75—Fry v. Southern Public Utilities Co., 111 S.E. 354, 183 N.C. 281—Danville Lumber & Mfg. Co. v. Gallivan Bldg. Co., 97 S.E. 718, 177 N.C. 103.

Ohio.—Hoffman v. Wagner, 77 N.E. 2d 467, 149 Ohio St. 50—Matthews v. State Mortg. & Inv. Co., 164 N. E. 418, 119 Ohio St. 419—Chicago Ornamental Iron Co. v. Rook, 112 N.E. 589, 93 Ohio St. 15.

Rubaszny v. Rubaszny, App., 70 N.E.2d 905—Miesmer v. Dillin, 43 N.E.2d 305, 69 Ohio App. 197—Rogers v. French Bros.-Bauer Co., 166 N.E. 427, 31 Ohio App. 77—Ungerleider v. Ewers, 153 N.E. 191, 20 Ohio App. 79—Pennsylvania Co. v. Ireton Bros. Co., 9 Ohio App. 243.

Okl.—Oklahoma Ry. Co. v. Benson, 257 P.2d 1084, 208 Okl. 588—Poston v. Alexander, 132 P.2d 343, 191 Okl. 653—Acidoil Co. v. Mitchell, 130 P. 2d 993, 191 Okl. 532—Town of Sentinel v. Boggs, 61 P.2d 654, 177 Okl. 623—Missouri Pac. R. Co. v. Booker, 239 P. 222, 111 Okl. 230.

Or.—Celorie v. Roberts Bros., Inc., 276 P.2d 416, 202 Or. 671—Fish v. Southern Pac. Co., 145 P.2d 991, 173 Or. 294—Hill v. Wood, 19 P.2d 89, 142 Or. 143—Adskim v. Oregon-Washington R. & Nav. Co., 294 P. 605, 134 Or. 574—Newkirk v. Oregon-Washington R. & Nav. Co., 273 P. 707, 128 Or. 28, 72 A.L.R. 530—Johnson v. Oregon Stevedoring Co., 270 P. 772, 128 Or. 121—Butler v. City of McMinnville, 268 P. 760, 126 Or. 56, 59 A.L.R. 381—Simmons v. Friede Inv. Co., 266 P. 910, 125 Or. 300—Nickson v. Oregon-American Lumber Co., 266 P. 254, 127 Or. 326, reheard 271 P. 986, 127 Or. 326—Mercer v. Parker, 262 P. 948, 124 Or. 89—Borg v. Utah Const. Co., 242 P. 600, 117 Or. 22—Schneider v. Tapfer, 180 P. 107, 92 Or. 520—Rothschild Bros. v. Kennedy, 169 P. 102, 86 Or. 566.

Pa.—Kimble v. Mackintosh Hemphill Co., 59 A.2d 68, 359 Pa. 461—Bowles v. City of Pittsburgh, 20 A.2d 783, 343 Pa. 39—Sakach v. Antonoplos, 148 A. 58, 298 Pa. 130.

Highton v. Pennsylvania R. Co., 1 A.2d 568, 132 Pa.Super. 559.

R.I.—Kent v. Draper Soap Co., 63 A. 2d 571, 75 R.I. 30.

S.C.—Parnell v. Carolina Coca-Cola Bottling Co., 98 S.E.2d 834—Hook v. U. S. Fire Ins. Co., 2 S.E.2d 531, 190 S.C. 139—Riser v. Industrial Life & Health Ins. Co., 184 S.E. 148, 179 S.C. 437—Lawrence v. Southern Ry.-Carolina Division, 167 S.E. 839, 169 S.C. 1—Duncan v. Record Pub. Co., 143 S.E. 31, 145 S. C. 196—Dickson v. Girard Fire & Marine Ins. Co. of Philadelphia, 142 S.E. 348, 144 S.C. 183—Union Bleaching & Finishing Co. v. Barker Fuel Co., 117 S.E. 735, 124 S.C. 458—Williams v. Charleston & W. C. Ry. Co., 113 S.E. 300, certiorari denied Charleston & Western Caro-

lina Ry. Co. v. Williams, 42 S.Ct. 591, 259 U.S. 589, 66 L.Ed. 1078—Hilton v. New Jersey Ins. Co., 112 S.E. 825, 120 S.C. 148—McMeekin v. Walker Electric & Plumbing Co., 103 S.E. 590, 114 S.C. 346—Thompson v. Atlantic Coast Line R. Co., 102 S.E. 11, 113 S.C. 261—Hogg v. Mutual Life Ins. Co. of New York, 88 S.E. 102, 104 S.C. 484.

S.D.—Pooley v. Leith, 255 N.W. 153, 62 S.D. 554.

Tenn.—National Life & Acc. Ins. Co. v. Eddings, 221 S.W.2d 695, 188 Tenn. 512.

McAmis v. Carlisle, App., 300 S.W.2d 59—Kunk v. Howell, App., 289 S.W.2d 874—Accident & Cas. Ins. Co. v. Lasater, 222 S.W.2d 202, 32 Tenn.App. 161—Yellow Bus Line v. Brenner, 213 S.W.2d 626, 31 Tenn.App. 209—Waller v. Skeleton, 212 S.W.2d 690, 31 Tenn.App. 103, certiorari denied 211 S.W.2d 445, 186 Tenn. 433—Lackey v. Metropolitan Life Ins. Co., 174 S.W.2d 575, 26 Tenn.App. 564—Havron v. Page, 157 S.W.2d 856, 25 Tenn.App. 367—Town of Dickson v. Stephens, 96 S.W.2d 201, 20 Tenn.App. 195—Standard Life Ins. Co. of the South v. Strong, 89 S.W.2d 367, 19 Tenn. App. 404—Bradley County Farm Bureau v. Epperson, 73 S.W.2d 1116, 18 Tenn.App. 131—Murray v. Patterson, 72 S.W.2d 558, 18 Tenn.App. 30—National Life & Accident Ins. Co. v. Yates, 64 S.W.2d 524, 16 Tenn.App. 344.

Tex.—Texas & N. O. R. Co. v. Krasoff, 191 S.W.2d 1, 144 Tex. 436.

Blum Milling Co. v. Moore-Seaver Grain Co., Com.App., 277 S.W. 78—Hanes v. Hanes, Com.App., 239 S.W. 190—Roberts v. Wichita Southern Life Ins. Co., Com.App., 221 S.W. 268.

Travelers Ins. Co. v. Carter, Civ. App., 298 S.W.2d 231, error refused no reversible error—State v. Arkansas Fuel Oil Co., Civ.App., 268 S.W.2d 311, reversed on other grounds, Sup., 280 S.W.2d 723—Somerville v. Smith, Civ.App., 200 S.W.2d 242—Henwood v. Neal, Civ. App., 198 S.W.2d 125—McAllister v. City of Frost, 131 S.W.2d 975, error dismissed, judgment correct—Burrage v. Red Arrow Taxi Co., Civ. App., 123 S.W.2d 731—Johnson v. Durst, Civ.App., 115 S.W.2d 1000, error dismissed—Thames v. Culwell Packing Co., Civ.App., 114 S.W.2d 664—Parker v. Mather, Civ. App., 59 S.W.2d 961—Panhandle & S. F. Ry. Co. v. Willoughby, Civ. App., 58 S.W.2d 563—King v. Sieber, Civ.App., 50 S.W.2d 473—Proctor v. Miller, Civ.App., 273 S.W. 327—Gray v. Allen, Civ.App., 269 S.W. 510—Houston, E. & W. T. Ry. Co. v. Lavine, Civ.App., 255 S.W. 448, appeal dismissed, Com.App., 267 S. W. 1114—Lewis v. Kelly, Civ.App., 233 S.W. 993, dismissed for want of jurisdiction—Baker v. Grace, Civ.App., 213 S.W. 299, error refused—Kirby Lumber Co. v. Hardy, Civ.App., 196 S.W 211, dismissed by agreement—Thatcher v. Matthews, Civ.App., 183 S.W. 810.

Utah.—Moss v. Taylor, 273 P. 515, 73 Utah 277—Peterson v. Richards, 272 P. 229, 73 Utah 59—Campbell v. Los Angeles & S. L. R. Co., 263 P. 495, 71 Utah 173—Byram v. Payne, 201 P. 401, 58 Utah 536, 18 A.L.R. 1110—Bednarek v. Brotherhood of American Yeomen, 157 P. 884, 48 Utah 67—Scott v. Austin, 152 P. 1178, 47 Utah 248.

Vt.—Northern Trust Co. v. Perry, 168 A. 710, 105 Vt. 524—Enos v. Owens Slate Co., 160 A. 185, 104 Vt. 329—Sharby v. Town of Fletcher, 127 A. 300, 98 Vt. 273—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Va.—Waynick v. Walrond, 154 S.E. 522, 155 Va. 400, 70 A.L.R. 1014—Petherbridge v. Princess Anne County, 116 S.E. 359, 136 Va. 54.

Wash.—Heggen v. City of Seattle, 288 P.2d 830, 47 Wash.2d 576—Johnson v. Department of Labor and Industries of the State of Wash., 281 P.2d 994, 46 Wash.2d 463—Melton v. United Retail Merchants of Spokane, 163 P.2d 619, 24 Wash.2d 145—Skeels v. Davidson, 139 P.2d 301, 18 Wash.2d 358, 149 A.L.R. 225—Samuelson v. Taylor, 295 P. 113, 160 Wash. 369.

W.Va.—Wingo Mining Co. v. Flanagan Coal Sales Co., 115 S.E. 839, 93 W.Va. 76.

52 C.J. p 174 note 14.

Function of trial court

(1) The granting of a new trial inter alia because the verdict is against the weight of evidence is a function of the trial court.

Pa.—Weiss v. London Guarantee & Accident Co., Limited, of London, 132 A. 120, 285 Pa. 251.

(2) The failure of trial court to perform its duty and set aside a verdict where the preponderance of the evidence is contrary to it does not authorize usurpation of such duty by appellate court.

Ark.—Missouri Pacific Transp. Co. v. Sharp, 108 S.W.2d 579, 194 Ark. 405.

Assignment going only to the weight or preponderance of evidence could not be considered by the court of appeals on an appeal in error.

Tenn.—Duncan v. Mahaffa, 177 S.W. 2d 28, 26 Tenn.App. 696—Wilson v. Moudy, 123 S.W.2d 828, 22 Tenn. App. 356—Atlantic Ice & Coal Co. v. Cameron, 94 S.W.2d 72, 19 Tenn. App. 675—Nashville Gas & Heating Co. v. Phillips, 69 S.W.2d 914, 17 Tenn.App. 648—Hager v. Hager, 66 S.W.2d 250, 17 Tenn.App. 143—Bealafelt v. Hicks, 13 Tenn.App. 18—Adamant Stone & Roofing Co. v. Vaughn, 7 Tenn.App. 170.

Tex.—San Antonio Public Service Co. v. Fraser, Civ.App., 70 S.W.2d 232.

Effect of evidence

Where the evidence in all material ways points in the same direction, and the question is not its truth or weight, but its effect, the jury's verdict is not binding on the supreme court.

Ariz.—U. S. Smelting, Refining & Mining Exploration Co. v. Wallapai Mining & Development Co., 230 P. 1109, 27 Ariz. 126.

If the conclusion is dependent on the weight of the testimony, the verdict of the jury is final and conclusive on the appellate court.

Va.—Wilkins v. Davis, 164 S.E. 649, 158 Va. 763.

Probative force of testimony may not be rejudged by the reviewing court.

Ky.—Lawson's Adm'r v. Brandenburg, 41 S.W.2d 201, 240 Ky. 68—Rader v. Goe, 39 S.W.2d 486, 239 Ky. 288.

Probability of evidence for jury

(1) The court of appeals could not sustain a contention in a law case that evidence was unbelievable because of the improbability of its truth and opposing evidence showing its physical impossibility, since the matter of determining the credibility of witnesses and resolving disputed questions of fact was for the jury.

Mo.—Lawson v. East St. Louis Ry. Co., App., 76 S.W.2d 454.

(2) Testimony wholly at variance with physical facts and inherently unbelievable and impossible cannot be considered by a reviewing court.

Mo.—Lawson v. East St. Louis Ry. Co., supra.

Sufficiency of evidence

(1) There is a material difference between a question presented, as to whether the evidence was sufficient to raise the issue for the jury, and a question not presented, as to whether the verdict is so against weight of evidence as to be clearly wrong, but the appellate court can determine only the former.

Tex.—Houston Printing Co. v. Jones, Civ.App., 282 S.W. 854.

(2) Where sufficiency of evidence to support verdict is raised appellate court will not reverse unless evidence preponderates in opposite direction.

Mich.—Winslow v. Veterans of Foreign Wars National Home, 44 N.W.2d 19, 328 Mich. 488.

What constitutes a preponderance of the evidence is ordinarily a question for the jury.

Ark.—Bockman v. World Ins. Co., 268 S.W.2d 1, 223 Ark. 665—Ball v. Independence County, 217 S.W.2d 913, 214 Ark. 694.

Tex.—Fagg v. Benners, Civ.App., 47 S.W.2d 872.

Where disputed issues of fact appear, the evidence leaves the conclusion for the jury and does not pre-

evidence ordinarily will be regarded as conclusive, or will not be disturbed.[48.5] The only concern of the appellate court when a verdict or finding is attacked as being contrary to the weight of the evidence is whether the evidence supports the verdict or finding,[48.10] and a reviewing court may not interfere with a verdict merely because it appears to be against the weight or preponderance of the evidence.[49]

sent a case of a verdict plainly and palpably contrary to the preponderance of proof.

Ala.—O'Neal v. Turner, 158 So. 801, 230 Ala. 24.

Where the evidence makes an issue for the jury, the appellate court has no concern with the question of the weight of the evidence.

Mo.—Conner v. Neiswender, 232 S.W. 2d 469, 360 Mo. 1074.

Brummer v. National Life & Accident Ins. Co., App., 59 S.W.2d 781.

Pa.—Teel v. Erie Coach Co., Com.Pl., 21 Erie Co. 82.

Tex.—Crook v. Studdard, Civ.App., 101 S.W.2d 1068.

Raised by rule to show cause

(1) Question as to whether verdict is contrary to weight of evidence can be raised only on rule to show cause.

N.J.—Condra v. New Jersey & S. I. Ferry Co., 154 A. 748, 9 N.J.Misc. 529.

(2) An objection that the verdict is against the weight of evidence is cognizable only on a rule to show cause in the trial court.

N.J.—Ratz v. Hillside Bus Owners' Ass'n, 135 A. 884, 103 N.J.Law 502.

Where cross complaints were interposed by defendant in personal injury action, appellate court would be required to weigh factual delinquencies of the parties involved.

N.Y.—McFall v. Compagnie Maritime Belge, 304 N.Y. 314, 107 N.E.2d 463, 470.

Olivia v. Gouze, 140 N.Y.S.2d 438, 285 App.Div. 762, affirmed 153 N.Y. S.2d 71, 1 N.Y.2d 811, 135 N.E.2d 602—Tipaldi v. Riverside Memorial Chapel, 273 App.Div. 414, 78 N.Y.S. 2d 12, affirmed 82 N.E.2d 585, 298 N.Y. 686.

48.5 Ariz.—Perazzo v. Ortega, 256 P. 503, 32 Ariz. 154.

Ark.—Missouri Pac. R. Co. v. Davis, 125 S.W.2d 785, 197 Ark. 830.

Ind.—City of Terre Haute v. Webster, 40 N.E.2d 972, 112 Ind.App. 101—City of Columbus v. Goodnow, 168 N.E. 191, 91 Ind.App. 6, rehearing denied and modified on other grounds 169 N.E. 885, 91 Ind.App. 6.

N.Y.—Beach v. Richtmyer, 90 N.Y.S. 2d 332, 275 App.Div. 466.

N.C.—Chestnutt v. Durham, 29 S.E. 2d 339, 224 N.C. 149.

Tex.—El Paso Electric Co. v. Whitenack, Com.App., 1 S.W.2d 594.

Va.—Virginian Ry. Co. v. London, 139 S.E. 328, 148 Va. 699.

48.10 Ark.—Gazette Pub. Co. v. Jones, 216 S.W.2d 801, 214 Ark. 485—McKee v. Legion Oil & Gas Co., 273 S.W. 363, 168 Ark. 1167—Oyler v. Semple, 260 S.W. 744, 163 Ark. 620.

Cal.—Mohn v. Tingley, 217 P. 733, 191 C. 470.

Smith v. Kiger, 43 P.2d 565, 5 C.A.2d 608—Turner v. Whittel, 38 P.2d 835, 2 C.A.2d 585.

Hawaii.—Kametani v. Okuhama, 38 Hawaii 458.

Ill.—Lauer v. Elgin, J. & E. Ry. Co., 27 N.E.2d 315, 305 Ill.App. 200—Edwall v. Chicago, R. I. & P. Ry. Co., 208 Ill.App. 489.

Ind.—Borenstein v. Uhl, 20 N.E.2d 189, 107 Ind.App. 67.

Iowa.—Nelson v. Hedin, 169 N.W. 37, 184 Iowa 657.

Kan.—West v. Lear, 205 P.2d 910, 167 Kan. 222—Collins v. Morris, 155 P. 51, 97 Kan. 264.

Md.—Weil v. Lambert, 37 A.2d 312, 183 Md. 233.

Mo.—Odell v. St. Louis-San Francisco Ry. Co., App., 281 S.W. 456—Wagner Motor Co. v. Spain, App., 278 S.W. 805.

N.H.—Benoit v. Perkins, 104 A. 254, 79 N.H. 11.

Or.—Stool v. Southern Pac. Co., 172 P. 101, 88 Or. 350.

Tex.—Worley v. International Travelers Assur. Co., Civ.App., 110 S.W. 2d 1202, error dismissed.

Wash.—Kritzer v. Moffat, 240 P. 355, 136 Wash. 410, 44 A.L.R. 681.

49. U.S.—Duncan v. Montgomery Ward & Co., C.C.A.Ark., 108 F.2d 848, motion denied 60 S.Ct. 1073, 310 U.S. 612, 84 L.Ed. 1389, modified on other grounds 61 S.Ct. 189, 311 U.S. 243, 85 L.Ed. 147.

Ala.—Firestone Tire & Rubber Co. v. Nixon, 87 So.2d 829, 264 Ala. 433—Mercury Freight Lines, Inc. v. Pharo, 87 So.2d 642, 264 Ala. 322—Wayne Pump Co. v. Harrison, 23 So.2d 392, 247 Ala. 186—Bates v. Chilton County, 13 So.2d 186, 244 Ala. 297—Streetman v. Bowdon, 194 So. 831, 239 Ala. 359—Standard Oil Co. v. Myers, 169 So. 312, 232 Ala. 662—Birmingham Ry., Light & Power Co. v. Sprague, 72 So. 96, 196 Ala. 148.

Ariz.—Lundberg v. Bolon, 194 P.2d 454, 67 Ariz. 259—Atchison, T. & S. F. Ry. Co. v. France, 94 P.2d 434, 54 Ariz. 140.

Ark.—State Highway Commission v. Jelks, 159 S.W.2d 465, 203 Ark. 878—Missouri Pac. R. Co. v. Kagy, 143 S.W.2d 1095, 201 Ark. 150—St. Louis-San Francisco Ry. Co. v. Herndon, 129 S.W.2d 954, 198 Ark. 465—Missouri Pac. R. Co. v. Huffman, 108 S.W.2d 479, 194 Ark. 456—Chicago, R. I. & P. Ry. Co. v. Britt, 74 S.W.2d 398, 189 Ark. 571—Walker v. Grant, 70 S.W.2d 39, 189 Ark. 1172—Mitchell v. Hammett, 60 S.W.2d 559, 187 Ark. 1163—Armour & Co. v. Rose, 36 S.W.2d 70, 183 Ark. 413—Standard Oil Co. of Louisiana v. Gill, 297 S.W. 1020, 174 Ark. 1180—Lisko v. Uhren, 196 S.W. 816, 130 Ark. 111—Missouri & N. A. R. Co. v. Johnson, 171 S.W. 478, 115 Ark. 448.

Cal.—Olsen v. Standard Oil Co., 204 P. 393, 188 C. 20.

Matthews v. Atchison, T. & S. F. Ry. Co., 129 P.2d 435, 54 C.A.2d 549—Harmon v. San Joaquin Light & Power Corp., 98 P.2d 1064, 37 C.A. 2d 169—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054—Switzler v. Atchison, T. & S. F. Ry. Co., 285 P. 918, 104 C.A. 138.

Colo.—Thompson v. Davis, 184 P.2d 133, 117 Colo. 82.

Conn.—Caldwell v. Danforth, 200 A. 577, 124 Conn. 468—Richard v. New York, N. H. & H. R. Co., 132 A. 451, 104 Conn. 229.

Fla.—City of Miami v. Miner, 169 So. 609, 124 Fla. 684.

Ga.—Smoky Mountain Stages v. Wright, 8 S.E.2d 453, 62 Ga.App. 121—Hester v. Dreyer & Hinson, 92 S.E. 299, 19 Ga.App. 816—Graham v. Owens, 89 S.E. 304, 18 Ga.App. 284.

Ill.—Butler v. Whiteman, 196 Ill.App. 320.

Ind.—Gradeless v. Gradeless, 49 N.E. 2d 398, 114 Ind.App. 10—Gaines v. Taylor, 185 N.E. 297, 96 Ind.App. 378.

Iowa.—Darst v. Ft. Dodge, D. M. & S. Ry. Co., 191 N.W. 288, 194 Iowa 1145.

Ky.—Pearl Packing Co. v. Ransdell, 148 S.W.2d 350, 285 Ky. 456—Hartford Fire Ins. Co. v. Webb, 135 S.W.2d 883, 281 Ky. 276—Louisville Ry. Co. v. Lowe, 133 S.W.2d 742, 280 Ky. 465—Hazelwood v. Woodward, 126 S.W.2d 857, 277 Ky. 447—Smith v. Dunning, 122 S.W.2d 781, 275 Ky. 733—Scanlon Thompson Coal Co. v. Lick Branch Coal Co., 47 S.W.2d 1007, 243 Ky. 100—Kentucky Traction & Terminal Co. v. Roman's Guardian, 23 S.W.2d 272, 232 Ky. 285—General Const. Co. v. Ford, 277 S.W. 313, 211 Ky. 158.

Mich.—Michigan Fire & Marine Ins. Co. v. Pretty Lake Vacation Camp, 25 N.W.2d 166, 316 Mich. 197—McConville v. Remington Rand, 270 N.W. 701, 278 Mich. 338.

As otherwise expressed, a verdict will not be set aside because against the weight of the evidence where there is some competent evidence to support it,[50] or where it is supported by sufficient or sub-

Minn.—Froden v. Ranzenberger, 41 N.W.2d 807, 230 Minn. 366—Solosky v. J. A. Johnson Co., 27 N.W.2d 282, 223 Minn. 390—Wendt v. Bowman & Libby, 148 N.W. 568, 126 Minn. 509.

Mo.—Kerstner v. Vorweg, 32 S.W. 298, 130 Mo. 196.

State ex rel. State Highway Commission v. Hoffmann, App., 132 S.W.2d 27—Killam v. Travelers Protective Ass'n of America, App., 127 S.W.2d 772—Gannaway v. Pitcairn, App., 109 S.W.2d 78—Jones v. Chicago, B. & Q. R. Co., App., 100 S.W.2d 617, reversed on other grounds 125 S.W.2d 5, 343 Mo. 1104—Hasenjaeger v. Missouri-Kansas-Texas R. Co., 53 S.W.2d 1083, 227 Mo.App. 413—Christman v. Hickman, 37 S.W.2d 672, 225 Mo.App. 828—Haverstick v. Brookshire, App., 28 S.W.2d 432—Berkbigler v. Scott County Milling Co., App., 275 S.W. 599—Roach v. Kansas City Rys. Co., App., 228 S.W. 520—Abernathy v. Missouri Pac. R. Co., App., 217 S.W. 568—Tucker v. Carter, App., 211 S.W. 138—Neeley v. Snyder, App., 193 S.W. 610.

N.H.—Shea v. City of Manchester, 3 A.2d 103, 89 N.H. 547.

N.J.—Gindin v. Baron, 83 A.2d 790, 16 N.J.Super. 1.

Spill v Stoeckert, 15 A.2d 773, 125 N.J.Law 382—Lilley v. Florence Pipe Foundry & Machine Co., 1 A.2d 450, 121 N.J.Law 147—A. Makray, Inc., v. McCullough, 135 A. 815, 103 N.J.Law 346—Davis v. Tallon, 103 A. 236, 91 N.J.Law 618.

Kantor v. Guarantee Building & Loan Ass'n of City of Newark, 154 A. 237, 9 N.J.Misc. 397, affirmed 160 A. 573, 109 N.J.Law 152.

N.Y.—Klumpp v. New York Cent. R. Co., 166 N.Y.S. 333, 179 App.Div. 279, affirmed 123 N.E. 874, 226 N.Y. 666.

Ohio.—Bouslough v. Shingledecker, 125 N.E.2d 885, 97 Ohio App. 329—Slamey v. City Material Co., 165 N.E. 55, 30 Ohio App. 435—Hamilton v. Ohio Contract Purchase Co., 155 N.E. 700, 23 Ohio App. 445—Ohio Electric Ry. Co. v. Burkham, 7 Ohio App. 434.

Fairbanks, Morse & Co. v. Snook-Veith Lumber Co., 26 Ohio Cir.Ct., N.S., 449—Discount & Deposit State Bank v. Litt, 26 Ohio Cir.Ct., N.S., 145—Evans v. Vaughan, 20 Ohio Cir.Ct.,N.S., 425.

Cress v. Stark, 14 Ohio N.P., N.S., 545—Cincinnati Traction Co. v. Wooley, 4 Ohio N.P.,N.S., 122.

Pa.—Hegarty v. Berger, 155 A. 484, 304 Pa. 221—Pfeffer v. City of Johnstown, 135 A. 127, 287 Pa. 370—Saxman v. McCormick, 122 A. 296, 278 Pa. 268.

Baugh v. McCallum, 14 A.2d 364, 140 Pa.Super. 276—Hahn v. Hahn, 4 A.2d 821, 135 Pa.Super. 39—McCray v. Pittsburgh Rys. Co., 200 A. 717, 132 Pa.Super. 386.

R.I.—Raleigh v. Fitzpatrick, 197 A. 387, 60 R.I. 79.

S.C.—Parnell v. Carolina Coca-Cola Bottling Co., 98 S.E.2d 834—Kilpatrick v. Brotherhood of R. R. Trainmen Ins. Dept., 42 S.E.2d 891, 210 S.C. 379.

S.D.—Frazier v. Travelers Ins. Co. of Hartford, Conn., 287 N.W. 589, 66 S.D. 638.

Tenn.—Brenizer v. Nashville, C. & St. L. Ry., 3 S.W.2d 1053, 156 Tenn. 479, rehearing denied 8 S.W.2d 1099, 156 Tenn. 479.

Tex.—Roberts v. Kenna, Civ.App., 241 S.W.2d 680—Traders & General Ins. Co. v. Scott, Civ.App., 189 S.W.2d 633, refused for want of merit—Phillips Petroleum Co. v. Thomas, Civ.App., 167 S.W.2d 571, error refused—Oden v. McAdams, Civ.App., 108 S.W.2d 920—Texas Employers' Ins. Ass'n v. Birdwell, Civ.App., 39 S.W.2d 159—Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351—Oscar v. Sackville, Civ. App., 270 S.W. 897—Heard v. Pratt, Civ.App., 257 S.W. 660—Texas City Terminal Co. v. Showalter, Civ. App., 257 S.W. 621—Toole v. Moore, Civ.App., 203 S.W. 429, appeal dismissed Moore v. American Lumber Co., Com.App., 231 S.W. 318—Eureka Ice Co. v. Buckloo, CivApp., 188 S.W. 510, error refused.

Va.—Stephens v. Virginia Elec. & Power Co., 34 S.E.2d 374, 184 Va. 94—City of Portsmouth v. Madrey, 191 S.E. 595, 168 Va. 517—Honaker Lumber Co. v. Kiser, 113 S.E. 718, 134 Va. 50.

Wash.—Griggs v. Wayne, 171 P. 230, 100 Wash. 459.

W.Va.—Aliff v. Berryman, 160 S.E. 864, 111 W.Va. 103.

4 C.J. p 861 note 24—52 C.J. p 153 note 76, p 174 note 14, p 534 note 24.

Where the evidence raised a jury question, the appellate court could not affirm that a verdict for plaintiff was contrary to the weight of evidence.

Ala.—Bank of Cottonwood v. Hood, 149 So. 676, 227 Ala. 237.

Ill.—Krug v. Armour & Co., 80 N.E.2d 386, 335 Ill.App. 222—LeMaitre v. Union Electric Power Co., 73 N.E. 2d 125, 331 Ill.App. 270—Belcher v. Citizens Coach Co., 64 N.E.2d 747, 327 Ill.App. 618—Goldstein v. Metropolitan Life Ins. Co., 57 N.E.2d 645, 324 Ill.App. 168—Moudy v. New York, C. & St. L. R. Co., 46 N.E.2d 180, 317 Ill.App. 154, reversed on other grounds 53 N.E.2d 406, 385 Ill. 446—Johnson v. Campanella, 40 N.E.2d 905, 314 Ill.App. 7—Armster v. American Steel Foundries, 40 N.E.2d 575, 313 Ill. App. 378—Summers v. Hendricks, 21 N.E.2d 635, 300 Ill.App. 498—Rich v. Albrecht, 21 N.E.2d 633, 300 Ill.App. 493.

N.Y.—Friedlander v. David Kahn Realty Co., 58 N.Y.S.2d 389, 269 App.Div. 992—Ferranti v. Vroman, 18 N.Y.S.2d 412, 259 App.Div. 782.

Mere existence of reasonable doubt as to the correctness of the verdict is no ground for grant of a new trial by the appellate court.

Fla.—Motor Transit Co. v. Driver, 162 So. 883, 120 Fla. 293.

Reversal only as matter of law

A reversal because the judgment is against the weight of evidence can be had as a matter of law, but not on the mere opinion or whim of the reviewing court.

Ohio.—Twin Dry Cell Battery Co. v. W. P. Southworth Co., 154 N.E. 58, 22 Ohio App. 450—J. P. Burton Coal Co. v. John P. Gorman Coal Co., 153 N.E. 863, 22 Ohio App. 383—Frost v. O'Kross, 153 N.E. 879, 22 Ohio App. 174.

Abuse of discretion

The appellate court will not disturb a verdict, as contrary to preponderance of evidence, unless the discretion of trial judge has been obviously abused.

Ark.—Lisko v. Uhren, 196 S.W. 816, 130 Ark. 111.

Pa.—Wargo v. Pittsburgh Rys. Co., 101 A.2d 638, 376 Pa. 168.

50. Ariz.—Lundberg v. Bolon, 194 P. 2d 454, 67 Ariz. 259—McRae v. Lois Grunow Memorial Clinic, 14 P.2d 478, 40 Ariz. 496—Young Mines Co. v. Citizens' State Bank, 296 P. 247, 37 Ariz. 521—Leadville Mining Co. v. Hemphill, 149 P. 384, 17 Ariz. 146.

Ark.—Mississippi River Fuel Corporation v. Senn, 43 S.W.2d 255, 184 Ark. 554—Arkansas Power & Light Co. v. Beauchamp, 43 S.W.2d 234, 184 Ark. 698—Byers v. Turpin, 295 S.W. 27—Wilhelm v. Young, 178 S. W. 372, 119 Ark. 629—Jackson v. Smith, 174 S.W. 1189, 117 Ark. 656.

Colo.—Seifried v. Mosher, 268 P.2d 411, 129 Colo. 156—Book v. Paddock, 267 P.2d 247, 129 Colo. 84.

Del.—Rudnick v. White Bros., 109 A. 881, 7 Boyce 576.

Ga.—Mathis v. Bulloch, 81 S.E.2d 13, 89 Ga.App. 697—Latham v. Duke, 74 S.E.2d 403, 87 Ga.App. 466—Tomlin v. Bickerstaff, 68 S.E.2d 224, 85 Ga.App. 48—Black v. Duncan, 53 S.E.2d 726, 79 Ga.App. 342—Fite v. McEntyre, 49 S.E.2d 159, 77 Ga.App. 585—Lane Drug Stores v.

stantial evidence;[51] nor will a verdict be disturbed | as contrary to the weight of the evidence unless a

Brooks, 29 S.E.2d 716, 70 Ga.App. 878—Duckett v. Pettyjohn, 161 S.E. 270, 44 Ga.App. 250—Rambo v. Goldin, 133 S.E. 297, 35 Ga.App. 413—Union Brokerage Co. v. Fine, 119 S.E. 343, 30 Ga.App. 788—Howard v. De Soto Banking Co., 88 S.E. 211, 17 Ga.App. 711—J. H. Schroeter & Bro. v. Slider, 85 S.E. 787, 16 Ga. App. 522.

Ill.—Pennell v. Baltimore & O. R. Co., 142 N.E.2d 497, 13 Ill.App.2d 433—Bernard v. Metropolitan Life Ins. Co., 45 N.E.2d 518, 316 Ill.App. 655—Village of Bolton v. Lewis, 194 Ill.App. 71—Guminski v. Tarrant, 192 Ill.App. 634—Illinois Malleable Iron Co. v. Chicago City Ry. Co., 184 Ill.App. 428.

Ind.—New York Cent. R. Co. v. Milhiser, 106 N.E.2d 453, 231 Ind. 180, rehearing denied 108 N.E.2d 57, 231 Ind. 180—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.

American Carloading Corp. v. Voight, 21 N.E.2d 453, 107 Ind.App. 267—Central Indiana Milk Dealers' Bottle Exchange v. Holmes, 4 N.E. 2d 61, 102 Ind.App. 608—Duguid v. Coldsnow, 132 N.E. 659, 76 Ind.App. 545—City of Lafayette v. Clark, 132 N.E. 651, 76 Ind.App. 565—Christie v. Walton, 113 N.E. 750, 63 Ind. App. 234—J. F. Darmody Co. v. Reed, 111 N.E. 317, 60 Ind.App. 662—Powell v. Jackson, 111 N.E. 208, 60 Ind.App. 597—Cleveland, C., C. & St. L. Ry. Co. v. Gannon, 109 N.E. 234, reheard 112 N.E. 411, 63 Ind. App. 289—Wood v. Rathman, 108 N.E. 126, 58 Ind.App. 229—Wheatcraft v. Myers, 107 N.E. 81, 57 Ind. App. 371—Cincinnati Gas, Coke, Coal & Mining Co. v. Underwood, 107 N.E. 28, 60 Ind.App. 351—J. M. Robinson Norton & Co. v. Stalcup, 106 N.E. 395, 58 Ind.App. 370.

Kan.—Christian v. Union Traction Co., 154 P. 271, 97 Kan. 46—Scott v. King, 152 P. 653, 96 Kan. 561.

Ky.—Scheidell v. McGregor, 106 S.W. 2d 651, 269 Ky. 233—Louisville & N. R. Co. v. Clarke, 288 S.W. 1022, 217 Ky. 11.

Mass.—Corsick v. Boston Elevated Ry., 105 N.E. 600, 218 Mass. 144.

Mich.—Van Lierop v. Chesapeake & O. Ry. Co., 57 N.W.2d 431, 335 Mich. 702, certiorari denied 74 S. Ct. 40, 346 U.S. 834, 98 L.Ed. 357—Dedo v. Skinner, 296 N.W. 265, 296 Mich. 299.

Mo.—Clark v. McKeone, 284 S.W.2d 574—Friedman v. United Rys. Co. of St. Louis, 238 S.W. 1074, 293 Mo. 235—Burtch v. Wabash Ry. Co., 236 S.W. 338—Missouri & Illinois Coal Co. v. Willis Coal & Mining Co., 235 S.W. 119—Hill v. Kansas City Rys. Co., 233 S.W. 205, 289 Mo. 193—Rutledge v. Swinney, 169 S.W. 17, 261 Mo. 128.

Ullom v. Griffith, App., 263 S.W. 876—Reynolds v. Hanson, App., 191 S.W. 1030—Silverthorne v. Summit Lumber Co., 176 S.W. 441, 190 Mo. App. 716—Willis v. Miller, 175 S.W. 301, 189 Mo.App. 318.

N.H.—Cadorette v. Markarian, 117 A. 459, 80 N.H. 591.

N.J.—Monteleone v. Roof, 67 A.2d 897, 4 N.J.Super. 466.

Zulinsky v. Greenblat, 184 A. 806, 14 N.J.Misc. 345, affirmed 189 A. 51, 117 N.J.Law 526.

Ohio.—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87—Jaynes v. Vetel, App., 80 N.E. 2d 621—Hilleary v. Bromley, 75 N. E.2d 818, 82 Ohio App. 219—Dworken v. Loudenslager, App., 51 N.E. 2d 207—Chilcoat v. Industrial Commission, 29 N.E.2d 54, 64 Ohio App. 537—Ferguson v. Frazier, 162 N.E. 777, 29 Ohio App. 67.

Hollenden Hotel Co. v. Jackson, 22 Ohio Cir.Ct.,N.S., 485.

Okl.—Cabiniss v. Andrews, 258 P.2d 180—Loyd v. Campbell, 254 P.2d 986, 208 Okl. 212—Grand Distributing Co. v. Adams, 244 P.2d 571, 206 Okl. 451—Pollock Stores Co. v. Draper, 215 P.2d 843, 202 Okl. 546—Kelley-Webb Realty Co. v. Allen, 187 P.2d 986, 199 Okl. 503—Burden v. Stephens, 49 P.2d 1098, 174 Okl. 312—Oklahoma Ry. Co. v. Mount, 9 P.2d 11, 155 Okl. 275—Kelly v. Brown, 155 P. 590, 55 Okl. 628—Dunn v. Modern Foundry & Machine Co., 151 P. 893, 51 Okl. 465—Texas Co. v. Collins, 141 P. 783, 42 Okl. 374.

Or.—Tyler v. Moore, 226 P. 443, 111 Or. 499.

Pa.—Koch v. Franklin, 172 A. 672, 315 Pa. 145—Coyne v. John Gibbons Coal Co., 172 A. 653, 314 Pa. 502.

Lodge v. Stone, 85 Pa.Super. 164.

R.I.—Miller v. Phillips, 98 A. 59, 39 R.I. 416.

Tenn.—Hime v. Sullivan, 221 S.W.2d 893, 188 Tenn. 605.

Tex.—In re King's Estate, 244 S.W. 2d 660, 150 Tex. 662.

U. S. Fidelity & Guaranty Co. v. Carr, Civ.App., 242 S.W.2d 224, error refused—National Cas. Co. v. Hampton, Civ.App., 216 S.W.2d 614, error refused no reversible error—Collins v. Davenport, Civ.App., 192 S.W.2d 291—Goldstein Hat Mfg. Co. v. Cowen, Civ.App., 136 S.W.2d 867, error dismissed, judgment correct—Panhandle & S. F. Ry. Co. v. Brown, Civ.App., 74 S.W.2d 531—Yoakum Mill & Elevator Co. v. Byars, Civ.App., 262 S.W. 226—Anderson v. McCain, Civ.App., 195 S. W. 921—Young Men's Christian Ass'n v. Jasse, Civ.App., 183 S.W. 867, error refused—Lofland v. Greenwood, Civ.App., 181 S.W. 517—Ramsey v. Farmers' & Citizens' Savings Bank, Civ.App., 177 S.W. 209—Thomas v. Barthold, Civ.App., 171 S.W. 1071, reversed on other grounds, Com.App., 210 S.W. 506—Benford Lumber Mfg. Co. v. Knox, Civ.App., 168 S.W. 32—Lisle-Dunning Const. Co. v. McCall, Civ.App., 167 S.W. 810.

Va.—Reynolds v. Wallace, 99 S.E. 516, 125 Va. 315.

Wash.—Skoug v. Downs, 154 P. 126, 89 Wash. 92—Farraris v. S. E. Slade Lumber Co., 152 P. 680, 88 Wash. 106—Stanley v. Clough, 148 P. 11, 85 Wash. 319—David v. Fidelity-Phenix Fire Ins. Co. of New York, 145 P. 199, 83 Wash. 242.

W.Va.—United Thacker Coal Co. v. Waugh, 164 S.E. 511, 112 W.Va. 379.

Wis.—Commerce Ins. Co. v. Badger Paint & Hardware Stores, 60 N.W. 2d 742, 265 Wis. 174—Scheuer v. Manitowoc & Northern Traction Co., 159 N.W. 901, 164 Wis. 333—Schroeder v. City of Watertown, 152 N.W. 470, 161 Wis. 13.

4 C.J. p 862 note 25.

51. Ala.—Bell v. Nichols, 16 So.2d 799, 245 Ala. 274—Mutual Savings Life Ins. Co. v. Osborne, 15 So.2d 713, 245 Ala. 15—Southeastern Greyhound Lines v. Callahan, 13 So.2d 660, 244 Ala. 449—Huckaba v. Hill, 96 So. 569, 209 Ala. 466.

Ariz.—Richfield Oil Co. v. Estes, 98 P.2d 851, 55 Ariz. 81—Sovereign Camp, W. O. W., v. Sandoval, 54 P. 2d 557, 47 Ariz. 167.

Ark.—Missouri Pac. R. Co. v. Reed, 165 S.W.2d 364, 204 Ark. 846—Mills v. Silbernagel & Co., 164 S.W.2d 893, 204 Ark. 734—St. Louis-Southwestern Ry. Co. v. Holwerk, 163 S. W.2d 175, 204 Ark. 587—Lewis v. Shackleford, 157 S.W.2d 509, 203 Ark. 500—Arkmo Lumber Co. v. Luckett, 143 S.W.2d 1107, 201 Ark. 140—Missouri Pac. R. Co. v. Price, 133 S.W.2d 645, 199 Ark. 346—Hot Springs St. Ry. v. Hill, 128 S.W. 2d 369, 198 Ark. 319—Arkansas Motor Coaches v. Williams, 116 S.W. 2d 585, 196 Ark. 48—Mays Mfg. Co. v. Hudson, 114 S.W.2d 1067, 196 Ark. 1178—Missouri Pacific Transp. Co. v. Sharp, 108 S.W.2d 579, 194 Ark. 405—Coca-Cola Bottling Co. v. Hill, 90 S.W.2d 210, 192 Ark. 154—Healy & Roth v. Balmat, 74 S.W. 2d 242, 189 Ark. 442—Southern Lumber Co. v. Downey, 64 S.W.2d 552, 188 Ark. 137—Missouri Pac. R. Co. v. Rodden, 59 S.W.2d 599, 187 Ark. 321—Ragland v. Snotzmeier, 55 S.W.2d 923, 186 Ark. 778—Altman-Rodgers Co. v. Rogers, 48 S. W.2d 239, 185 Ark. 561—Kearns v. Steinkamp, 45 S.W.2d 519, 184 Ark. 1177—Price-Snapp-Jones Co. v. Brown, 45 S.W.2d 517, 184 Ark. 1143—Republic Min. & Mfg. Co. v. May, 43 S.W.2d 742, 184 Ark. 786—Platt

v. Owens, 35 S.W.2d 358, 183 Ark. 261—Rice-Stix Dry Goods Co. v. Montgomery, 261 S.W. 325, 164 Ark. 161—Polson v. Jefferson, 249 S.W. 31, 158 Ark. 643.

Cal.—Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 9 C.2d 751.

Boness v. Richardson Mineral Springs, 296 P.2d 581, 141 C.A.2d 251—Hover v. Harout, 267 P.2d 823, 12 C.A.2d 860—Bates v. Zampelli, 129 P.2d 126, 54 C.A.2d 451—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054—Harrington v. Freddi, 23 P.2d 525, 133 C.A. 96—Bieser v. Davies, 7 P.2d 388, 119 C.A. 659—Switzler v. Atchison, T. & S. F. Ry. Co., 285 P. 918, 104 C.A. 138.

Colo.—Rocky Mountain Fuel Co. v. Tucker, 211 P. 383, 72 Colo. 308.

Del.—Commonwealth Ins. Co. of New York v. Soloman, 119 A. 850, 2 W.W.Harr. 98.

Fla.—Gaston v. Sevor, 23 So.2d 156, 153 Fla. 157—City of Hollywood v. Blair, 186 So. 818, 136 Fla. 100.

Ga.—Calhoun v. Babcock Bros. Lumber Co., 30 S.E.2d 872, 198 Ga. 74.

Ill.—Santiemmo v. Days Transfer, Inc., 133 N.E.2d 539, 9 Ill.App.2d 487—Ashby v. Irish, 118 N.E.2d 43, 2 Ill.App.2d 9—Hall v. Koehler, 110 N.E.2d 538, 349 Ill.App. 398—Dever v. Bowers, 94 N.E.2d 518, 341 Ill. App. 444—Read v. Friel, 64 N.E.2d 556, 327 Ill.App. 532—Seiffe v. Seiffe, 267 Ill.App. 23—Fleming v. City of Chicago, 260 Ill.App. 496—Illinois Nat. Bank of Springfield v. U. S. Fidelity & Guaranty Co., 253 Ill.App. 148—Williams v. Kaplan, 242 Ill.App. 166.

Ind.—Great American Tea Co. v. Van Buren, 33 N.E.2d 580, 218 Ind. 462—Bates Motor Transport Lines v. Mayer, 14 N.E.2d 91, 213 Ind. 664.

Johnnie J. Jones Exposition v. Terry, 63 N.E.2d 159, 116 Ind.App. 170—Superior Meat Products v. Holloway, 48 N.E.2d 83, 113 Ind. App. 320—Bailey v. Washington Theatre Co., 41 N.E.2d 819, 112 Ind. App. 336—Pierson v. Simmons, 12 N.E.2d 369, 104 Ind.App. 521—Mt. Pleasant Coal Co. v. Watts, 151 N. E. 7, 91 Ind.App. 501—Fidelity & Casualty Co. of New York v. Blount Plow Works, 136 N.E. 559, 78 Ind. App. 529.

Kan.—Taggart v. Yellow Cab Co. of Wichita, 131 P.2d 924, 156 Kan. 88.

Ky.—Runner v. Hudson, 247 S.W.2d 522—Wheat's Adm'r v. Gray, 218 S. W.2d 400, 309 Ky. 593, 7 A.L.R.2d 1336—Cook's Adm'r v. Bank Josephine, 191 S.W.2d 209, 301 Ky. 193—Wilhoit v. Cundiff, 163 S.W.2d 280, 291 Ky. 99—Pearl Packing Co. v. Ransdell, 148 S.W.2d 350, 285 Ky. 456—Glasgow Ice Cream Co. v. Fults' Adm'r, 105 S.W.2d 135, 268 Ky. 447—F. W. Woolworth Co. v. Brown, 79 S.W.2d 362, 258 Ky. 29—Taylor, for Use and Benefit of Laurel County, v. Broughton, 71 S. W.2d 635, 254 Ky. 265, followed in Taylor, for Use and Benefit of Laurel County, v. Gaines, 72 S.W. 2d 16, 254 Ky. 602—Allender Co. v. Browning's Adm'x, 46 S.W.2d 116, 242 Ky. 273—Newton v. Farris, 229 S.W. 145, 191 Ky. 71.

Me.—American Mut. Liability Ins. Co. v. Witham, 127 A. 719, 124 Me. 240.

Mass.—Forman v. Wolfson, 78 N.E. 2d 496, 321 Mass. 749.

Mich.—Weeks v. Hyatt, 78 N.W.2d 260, 346 Mich. 479—Winchester v. Chabut, 32 N.W.2d 358, 321 Mich. 114—Alley v. Klotz, 31 N.W.2d 816, 320 Mich. 521—King v. Herfurth, 11 N.W.2d 198, 306 Mich. 444—McConville v. Remington Rand, 270 N.W. 701, 278 Mich. 333—Pospeck v. Ellingson, 241 N.W. 261, 257 Mich. 212—Faulkner v. Parish Mfg. Co., 166 N.W. 954, 201 Mich. 182.

Minn.—Wyatt v. Wyett, 273 N.W. 600, 200 Minn. 106—C. W. La Moure Co. v. Cuyuna-Mille Lacs Iron Co., 180 N.W. 540, 147 Minn. 433.

Miss.—Brown-Miller Co. v. Howell, 79 So.2d 818, 224 Miss. 136—White's Lumber & Supply Co. v. Collins, 192 So. 312, 186 Miss. 659—Great Atlantic & Pacific Tea Co. v. Davis, 171 So. 550, 177 Miss. 562.

Mo.—Wiener v. Mutual Life Ins. Co. of New York, 179 S.W.2d 39, 352 Mo. 673—Murphy v. Kroger Grocery & Baking Co., 171 S.W.2d 610, 350 Mo. 1186—Aly v. Terminal R. Ass'n of St. Louis, 119 S.W.2d 363, 342 Mo. 1116, certiorari denied 59 S.Ct. 251, 305 U.S. 655, 83 L.Ed. 424—Biondi v. Central Coal & Coke Co., 9 S.W.2d 596, 320 Mo. 1130—Pietzuk v. Kansas City Rys. Co., 232 S.W. 987, 289 Mo. 135.

Hofstatter v. Johnson, App., 208 S.W.2d 924—Gillespie v. Terminal R. Ass'n of St. Louis, App., 204 S. W.2d 598—Gaddy v. Kurn, App., 187 S.W.2d 858—Morris v. Freyer, App., 151 S.W.2d 515—Clegg v. John Hancock Mut. Life Ins. Co. of Boston, Mass., App., 141 S.W.2d 143—Arnold v. Brotherhood of Locomotive Firemen and Enginemen, 101 S.W.2d 729, 231 Mo.App. 508—Weller v. Weaver, 100 S.W.2d 594, 231 Mo.App. 400—Rodefer v. Grange Mut. Ins. Co. of Lewis County, App., 91 S.W.2d 112—Bacon Piano Co. v. Wilson, App., 62 S. W.2d 774—Schaper v. Sayman, App., 61 S.W.2d 379—Tibbe v. Sayman, App., 61 S.W.2d 376—Meredith v. Martin, App., 9 S.W.2d 860—State ex rel. Athletic Tea Co. v. Cameron, 273 S.W. 746, 216 Mo.App. 683—Crain v. McKinley, App., 222 S.W. 495—Willis v. City of St. Joseph, 171 S.W. 27, 184 Mo.App. 428.

Mont.—Batchoff v. Craney, 172 P.2d 308, 119 Mont. 157—Freeman v. Withers, 65 P.2d 601, 104 Mont. 166—Wallace v. Wallace, 279 P. 374, 85 Mont. 492, 66 A.L.R. 587.

Neb.—Dyer v. Ilg, 57 N.W.2d 84, 156 Neb. 568—Conley v. Hays, 45 N.W. 2d 900, 153 Neb. 733—Ellis v. Omaha Cold Storage Co., 240 N.W. 760, 122 Neb. 567—Boste[illegible]r v. Duling, 219 N.W. 896, 117 Neb. 154—Caniglia v. Vacanti, 184 N.W. 813, 106 Neb. 793.

N.H.—Turcotte v. Fellows, 103 A. 129, 78 N.H. 616.

N.Y.—Frankenberger v. Schneller, 179 N.E. 492, 258 N.Y. 270, reargument denied 182 N.E. 157, 259 N. Y. 507.

In re Masten's Estate, 98 N.Y.S. 2d 900, 277 App.Div. 939—Beach v. Richtmyer, 90 N.Y.S.2d 332, 275 App.Div. 466—Burger v. Neumann, 86 N.Y.S.2d 871, 275 App.Div. 710, affirmed 88 N.E.2d 724, 300 N.Y. 495—Sullivan v. Central Hanover Bank & Trust Co., 51 N.Y.S.2d 525, 268 App.Div. 997, reversed on other grounds 63 N.E.2d 76, 294 N.Y. 497—Wilson v. Jaybro Realty & Development Co., 40 N.Y.S.2d 186, 266 App.Div. 668, appeal denied 41 N. Y.S.2d 218, 266 App.Div. 683—Denton v. Buffalo Pipe Line Corp., 15 N.Y.S.2d 632, 258 App.Div. 844, reargument denied 16 N.Y.S.2d 698, 258 App.Div. 860—Ackerman v. Lane, 9 N.Y.S.2d 11, 256 App.Div. 890, followed in 9 N.Y.S.2d 12, 256 App.Div. 890.

Ohio.—Wysong v. Bussard, 90 N.E.2d 393, 86 Ohio App. 127—Manchester v. Starr Transfer Co., App., 67 N.E.2d 133—Morgan v. Hunsicker, App., 60 N.E.2d 509—Fink v. New York Cent. R. Co., App., 56 N.E.2d 931—Flower v. Metropolitan Life Ins. Co., App., 44 N.E.2d 110—Alloy Cast Steel Co. v. Arthur, 179 N.E. 743, 40 Ohio App. 503.

Okl.—Capitol Transp. Co. v. Alexander, 242 P.2d 833, 219 Okl. 419—Ford Motor Co. v. State, 62 P.2d 48, 178 Okl. 198—Parker-Gordon Cigar Co. v. Wood & Co., 224 P. 301, 98 Okl. 124—Amsden Lumber Co. v. Wilkinson, 221 P. 513, 96 Okl. 243.

Or.—Carlson v. Portland Ry., Light & Power Co., 254 P. 809, 121 Or. 519.

Pa.—Miller v. Measmer, 44 A.2d 284, 353 Pa. 18.

Krott v. Reading St. Ry. Co. & Reading Bus Co., Com.Pl., 46 Berks Co. 65—Molinaro v. Prudential Ins. Co., Com.Pl., 39 Lack.Jur. 159.

R.I.—Tammelleo v. Solomon, 66 A.2d 101, 75 R.I. 303.

Tenn.—Little Stores v. Isenberg, 172 S.W.2d 13, 26 Tenn.App. 357—Municipal Paving & Construction Co. v. Hunt, 123 S.W.2d 843, 22 Tenn. App. 380—Standard Life Ins. Co. of the South v. Strong, 89 S.W.2d 367, 19 Tenn.App. 404.

clear affirmative showing is made that the verdict is wrong,[52] unless the verdict is clearly and palpably against the great weight of the evidence[53] or con-

Tex.—Browning v. Nesting, Civ.App., 219 S.W.2d 712, error refused, no reversible error—Hoskins v. Carpenter, Civ.App., 201 S.W.2d 606, error refused no reversible error—Hicks v. Frost, Civ.App., 195 S.W.2d 606, error refused no reversible error—Federal Underwriters Exchange v. Hinkle, Civ.App., 187 S.W.2d 122, error refused—Shely v. Harney, Civ.App., 163 S.W.2d 839, error refused—Cheesborough v. Corbett, Civ.App., 155 S.W.2d 942, error refused—Texas Creosoting Co. v. Sims, Civ.App., 113 S.W.2d 227, error dismissed—Continental Casualty Co. v. Canales, Civ.App., 100 S.W.2d 797—Whitley v. Kinsel Motor Co., Civ.App., 94 S.W.2d 203—Green v. Hall, Civ.App., 203 S.W. 1175, affirmed, Com.App., 228 S.W. 183—Rachofsky v. Rachofsky, Civ. App., 203 S.W. 1134—Brady v. Richey & Casey, Civ.App., 202 S.W. 170, dismissed for want of jurisdiction.

Va.—Lawson v. Southwestern Voluntary Ass'n, 191 S.E. 648, 168 Va. 294.

Wash.—Heggen v. City of Seattle, 288 P.2d 830, 47 Wash.2d 576—Jones v. Elliott, 189 P. 1007, 111 Wash. 138.

Wis.—Sikora v. Great Northern Ry. Co., 282 N.W. 588, 230 Wis. 283—Latta v. Fidelity-Phœnix Fire Ins. Co., 202 N.W. 299, 186 Wis. 116.

Substantial evidence to the contrary

Where verdict is supported by substantial evidence, appellate court cannot declare it to be against the manifest weight of the evidence merely because there is substantial evidence to the contrary, unless such evidence to the contrary palpably outweighs the evidence in support of verdict.

Ill.—Seaholm v. Davis, 105 N.E.2d 795, 347 Ill.App. 73—McMillan v. McLane, 88 N.E.2d 114, 338 Ill.App. 514.

Where evidence not clear and convincing

The reviewing court is not justified in disregarding jury's fact finding, supported by substantial evidence, on ground that evidence is not clear and convincing.

Ky.—Glass v. Bryant, 194 S.W.2d 390, 302 Ky. 236.

52. Ala.—Shelby County v. Oldham, 89 So.2d 106, 264 Ala. 626—Johnson v. King, 71 So.2d 60, 260 Ala. 497—Sorrell v. Lindsey, 25 So.2d 725, 247 Ala. 630—Kurn v. Counts, 22 So.2d 725, 247 Ala. 129—Southern Ry. Co. v. Sherrill, 167 So. 731, 232 Ala. 184—Hall v. Clark, 142 So. 65, 225 Ala. 87.

Central of Georgia Ry. Co. v. Gholston, 129 So. 705, 24 Ala.App. 18.

Fla.—Motor Transit Co. v. Driver, 162 So. 883, 120 Fla. 293.

Ga.—Broome v. Primrose Tapestry Mills, 200 S.E. 506, 59 Ga.App. 70.

Ky.—Coney Island Co. v. Brown, 162 S.W.2d 785, 290 Ky. 750.

Neb.—Borcherding v. Eklund, 55 N.W.2d 643, 156 Neb. 196—James v. Krebeck, 2 N.W.2d 629, 141 Neb. 73, reheard 7 N.W.2d 637, 142 Neb. 757—Platte Valley Bank v. Franta, 300 N.W. 347, 140 Neb. 453—Cuva v. Glens Falls Ins. Co. of Glens Falls, N. Y., 285 N.W. 917, 136 Neb. 359.

Nev.—Deiss v. Southern Pac. Co., 53 P.2d 332, 56 Nev. 151.

N.Y.—Blodgett v. Magee, 70 N.Y.S.2d 598.

Pa.—McCormick Transp. Co. v. Philadelphia Transp. Co., 55 A.2d 771, 161 Pa.Super. 533.

Tenn.—Hemmer v. Tennessee Electric Power Co., 139 S.W.2d 698, 24 Tenn.App. 42.

Tex.—Hopson v. Gulf Oil Corp., 237 S.W.2d 352, 150 Tex. 1.

Gulf, C. & S. F. Ry. Co. v. Latham, Civ.App., 288 S.W.2d 289, error refused no reversible error—Gulf Oil Corp. v. Walker, Civ. App., 288 S.W.2d 173—Texas & N. O. R. Co. v. Hanson, Civ.App., 271 S.W.2d 309, error dismissed—Texas & N. O. R. Co. v. Foster, Civ.App., 266 S.W.2d 206, error refused no reversible error—Holmes v. American General Ins. Co., Civ. App., 263 S.W.2d 615—Texas Emp. Ins. Ass'n v. Foreman, Civ.App., 262 S.W.2d 248—Dyer v. Sterett, Civ.App., 248 S.W.2d 234, error refused no reversible error—Highway Ins. Underwriters v. Roberts, Civ.App., 224 S.W.2d 903, error refused no reversible error—Insurance Co. of North America v. Cangelosi, Civ.App., 217 S.W.2d 888—Traders & General Ins. Co. v. Scott, Civ.App., 189 S.W.2d 633, refused for want of merit—McCrory's Stores Corp. v. Murphy, Civ.App., 164 S.W.2d 735, error refused—Carpenter v. Waxahachie Cotton Warehouse, Civ.App., 162 S.W.2d 139, error refused—Houston Natural Gas Co. v. Kluck, Civ.App., 154 S.W.2d 504, affirmed 163 S.W. 2d 618, 139 Tex. 491—Day v. Grayson County State Bank, Civ.App., 153 S.W.2d 599—Goldstein Hat Mfg. Co. v. Cowen, Civ.App., 136 S.W.2d 867, error dismissed, judgment correct—Freeman v. Great Atlantic & Pacific Tea Co., Civ. App., 135 S.W.2d 267, error refused—Nickel v. Nickel, Civ.App., 130 S.W.2d 1085—Bibby v. Bibby, Civ.App., 114 S.W.2d 284, error dismissed—Oden v. McAdams, Civ. App., 108 S.W.2d 920.

W.Va.—Wilson v. Edwards, 77 S.E. 2d 164, 138 W.Va. 613—Thrasher v. Amere Gas Utilities Co., 75 N.E. 2d 376, 138 W.Va. 166, appeal dismissed American Gas Utilities Co. v. Public Service Commission of State of W. Va., 74 S.Ct. 478, 347 U.S. 910, 98 L.Ed. 1067—French v. Sinkford, 54 S.E.2d 38, 132 W.Va. 66—Smith v. Smith, 22 S.E.2d 647, 125 W.Va. 24.

That the ends of justice will be subserved is not a ground warranting the appellate court in ordering a new trial and letting a second jury pass on the evidence, unless a clear affirmative showing is made that the verdict is wrong.

Fla.—Motor Transit Co. v. Driver, 162 So. 883, 120 Fla. 293.

Effect of determination

Determination on review of all the evidence that certain findings of the jury were not so contrary to the evidence as to be clearly wrong includes determination that there was evidence sufficient to require submission of the issues on which the findings were made.

Tex.—Texas & N. O. R. Co. v. Hanson, Civ.App., 271 S.W.2d 309, error dismissed.

53. Ala.—Homewood Dairy Products Co. v. Robinson, 48 So.2d 28, 254 Ala. 197, 22 A.L.R.2d 1059—Watson v. Hardaway-Covington Cotton Co., 137 So. 33, 223 Ala. 443.

Chevrolet Motor Co. v. Caton, 116 So. 325, 22 Ala.App. 284, certiorari denied 116 So. 327, 217 Ala. 332.

Ariz.—Burton v. Valentine, 141 P. 2d 847, 60 Ariz. 518, 61 Ariz. 28.

Ark.—Badley v. Scott, 10 S.W.2d 900, 178 Ark. 1199—Chaney v. Missouri Pac. R. Co., 267 S.W. 564, 167 Ark. 172.

Cal.—De Graf v. Anglo California Nat. Bank of San Francisco, 92 P.2d 899, 14 C.2d 87—Fay v. Cox, 188 P. 623, 45 C.A. 696.

Conn.—Martino v. Palladino, 123 A. 2d 872, 143 Conn. 547.

Fla.—Motor Transit Co. v. Driver, 162 So. 883, 120 Fla. 293—Howell v. Blackburn, 129 So. 341, 100 Fla. 114—Florida Trust & Banking Co. v. Consolidated Title Co., 98 So. 915, 86 Fla. 317.

Ga.—Sovereign Camp, W. O. W. v. Simmons, 126 S.E. 891, 33 Ga.App. 566.

Ill.—City of Monticello v. Le Crone, 111 N.E.2d 338, 414 Ill. 550—Wintersteen v. National Cooperage & Woodenware Co., 197 N.E. 578, 361 Ill. 95—McGrady v. McGrady, 131 N.E. 251, 298 Ill. 129.

Dobie v. Livengood, 139 N.E.2d 599, 12 Ill.App.2d 343—Ward v. Illiopolis Food Lockers, 132 N.E.2d 591, 9 Ill.App.2d 129—Hall v. Koehler, 110 N.E.2d 538, 349 Ill. App. 398—Hughes v. Wabash R. Co., 95 N.E.2d 735, 342 Ill.App. 159—Bishop v. Nikolas, 51 N.E.2d 828, 320 Ill.App. 681—Jones v. Esenberg, 20 N.E.2d 906, 299 Ill. App. 551—Voellinger v. Kohl, 261 Ill.App. 271—Taylor v. Southern Ry. Co., 259 Ill.App. 271, reversed on other grounds 182 N.E. 805, 350 Ill. 139—Waitrovich v. Black, 254 Ill.App. 49—Beck v. Baltimore & O. R. Co., 244 Ill.App. 441—Camerano v. Gimino, 242 Ill.App. 145—Mugaviro v. Chicago, B. & Q. R. Co., 239 Ill.App. 544—Chapman v. Cary, 238 Ill.App. 605—Snedden v. Illinois Cent. R. Co., 234 Ill.App. 234—McMillen v. Bets, 224 Ill.App. 117—Fairfowl v. Price, 221 Ill. App. 447—Waiswila v. Illinois Cent. R. Co., 220 Ill.App. 113—Sorenson v. Cox, 211 Ill.App. 649—Allison v. Sumner, 210 Ill.App. 25—Hoffman v. Chicago Rys. Co., 204 Ill.App. 414—Riggin v. Keck, 203 Ill.App. 87—Newkirk v. Gross, 203 Ill.App. 79—Rice v. Warner Hotel Co., 201 Ill.App. 530—Johnson Oil Refining Co. v. Galesburg Ry. Lighting & Power Co., 200 Ill. App. 392—Hindle v. City of Joliet, 200 Ill.App. 159—Lewis v. Chicago & N. W. Ry. Co., 199 Ill.App. 438—Born v. Schrieber, 199 Ill.App. 101—Louthan v. Chicago City Ry. Co., 198 Ill.App. 329—Sherburne v. McGuire, 197 Ill.App. 486—Kleet v. Southern Illinois Coal & Coke Co., 197 Ill.App. 243—Moyers v. Illinois Cent. R. Co., 197 Ill.App. 179—Jones v. Veeck, 197 Ill.App. 119—Roesner v. C. E. Dellenbarger Co., 196 Ill. App. 23—Cratty v. Buker, 195 Ill. App. 506—Grapperhaus v. Taylor, 195 Ill.App. 165—Hansen v. Ferree, 195 Ill.App. 27.

Ky.—Bristow v. Taul, 219 S.W.2d 641, 310 Ky. 82—Lindon v. Potter, 208 S.W.2d 515, 306 Ky. 511—Seal v. Fitch, 183 S.W.2d 533, 298 Ky. 530—Catlett v. Robertson, 178 S.W.2d 943, 297 Ky. 356—Slusher v. Blanton, 177 S.W.2d 378, 296 Ky. 422—Rybolt v. Futrell, 176 S.W.2d 269, 296 Ky. 158—Vogt v. Keller, 159 S.W.2d 29, 289 Ky. 486—Louisville Ry. Co. v. Lowe, 133 S.W.2d 742, 280 Ky. 465—Cable v. McCoun, 126 S.W.2d 818, 277 Ky. 410—Smith v. Dunning, 122 S.W.2d 781, 275 Ky. 733—Adams v. Hilton, 110 S.W.2d 1088, 270 Ky. 818—D. L. Walker & Co. v. Lewis, 101 S.W.2d 685, 267 Ky. 107—Walden v. Adams, 100 S.W.2d 827, 267 Ky. 8—Sparks v. Bowman, 99 S.W.2d 449, 266 Ky. 499—Adams v. Sexton, 97 S.W.2d 602, 265 Ky. 722—Taylor, for Use and Benefit of Laurel County v. Broughton, 71 S. W.2d 635, 254 Ky. 265, followed in Taylor, for Use and Benefit of Laurel County v. Gaines, 72 S.W. 2d 16, 254 Ky. 602—Fidelity & Casualty Co. of New York v. Bass, 71 S.W.2d 452, 254 Ky. 246—Koenig Bros. v. Zibart, 70 S.W.2d 945, 254 Ky. 43—Howard v. Gray's Warehouse, 67 S.W.2d 468, 252 Ky. 418—Klarer Provision Co. v. Frey, 66 S.W.2d 63, 252 Ky. 206—Equitable Life Assur. Soc. of U. S. v. Branham, 63 S.W.2d 498, 250 Ky. 472—Heil v. Seidel, 60 S.W.2d 626, 249 Ky. 314—S. L. Crook Corporation v. Blackburn, 59 S.W.2d 1, 248 Ky. 543—Illinois Cent. R. Co. v. Roark's Adm'r, 58 S.W.2d 648, 248 Ky. 398—Chaney v. Stacy, 57 S. W.2d 530, 247 Ky. 520—Kentucky Utilities Co. v. White Star Coal Co., 52 S.W.2d 705, 244 Ky. 759—Roberts v. Allen, 50 S.W.2d 965, 244 Ky. 353—Bryson v. Raum's Adm'r, 47 S.W.2d 927, 243 Ky. 121—Baxter v. Hubbard, 47 S.W.2d 743, 242 Ky. 751—Bass v. Simon, 44 S. W.2d 587, 241 Ky. 666—Dunn v. Whitley Nat. Bank, 39 S.W.2d 993, 239 Ky. 536—Rader v. Goe, 39 S.W.2d 486, 239 Ky. 288—Edwards v. Druien, 32 S.W.2d 411, 235 Ky. 835—Kelley v. J. R. Rice Realty Co., 32 S.W.2d 39, 235 Ky. 643—Security Ins. Co. v. Rosenberg, 31 S.W.2d 625, 235 Ky. 419—Mann's Ex'r v. Leyman Motor Co., 28 S.W. 2d 956, 234 Ky. 639—Old 76 Distillery Co. v. Morris, 28 S.W.2d 474, 234 Ky. 389—Howell v. Standard Oil Co., 28 S.W.2d 3, 234 Ky. 347—Vincennes Bridge Co. v. Poulos, 27 S.W.2d 952, 234 Ky. 243—Youtsey Bros. v. Darlington, 25 S.W.2d 44, 233 Ky. 112—Kentucky Traction & Terminal Co. v. Roman's Guardian, 23 S.W.2d 272, 232 Ky. 285—Knoxville Tinware Mfg. Co. v. American Safety Mine Appliance Co., 21 S.W.2d 451, 231 Ky. 282—Davisworth v. S. T. & J. M. Wright, 17 S.W.2d 756, 229 Ky. 572—Metropolitan Life Ins. Co. v. Penick, 13 S.W.2d 496, 227 Ky. 490—Brotherhood of Locomotive Firemen and Enginemen v. Sears, 10 S.W.2d 287, 225 Ky. 767—Ward v. Clark, 7 S.W.2d 1065, 225 Ky. 173—Crampton v. Daime, 6 S.W.2d 686, 224 Ky. 507—Asher v. Fordson Coal Co., 5 S.W.2d 481, 224 Ky. 48—Axton-Fisher Tobacco Co. v. Landrum, 3 S.W.2d 1082, 223 Ky. 446—Security Finance Co. v. A. L. Cook & Son, 3 S.W.2d 187, 223 Ky. 124—Cincinnati, N. O. & T. P. Ry. Co. v. Jacobs, 294 S.W. 1050, 220 Ky. 217—Carter v. Carter, 288 S. W. 666, 216 Ky. 732—La Fontaine v. Mitchell, 284 S.W. 1022, 215 Ky. 184—Owenton Warehouse & Realty Co. v. Miner's Ex'r, 280 S. W. 148, 212 Ky. 844—Cincinnati, N. O. & T. P. Ry. Co. v. Wheeldon, 270 S.W. 762, 208 Ky. 201—Tandy v. Farmers' Deposit Bank of Wheatley, 269 S.W. 718, 207 Ky. 538—Rice v. Penn Furniture Co., 262 S.W. 575, 203 Ky. 412—Renick v. Hays, 256 S.W. 26, 201 Ky. 192—Waitman v. Marksberry, 254 S.W. 432, 200 Ky. 1—Olcott & Read v. Choate, 250 S.W. 848, 199 Ky. 226—Security Life Ins. Co. v. Black's Adm'r, 237 S.W. 1059, 193 Ky. 849—Frankfort Elevator Coal Co. v. Williamson, 231 S.W. 241, 191 Ky. 674—Ortwein v. Droste, 228 S.W. 1028, 191 Ky. 17—Welch v. Jenkins, 227 S.W. 798, 190 Ky. 475—Steinke v. North Vernon Lumber Co., 227 S. W. 274, 190 Ky. 231—Peirano v. Shapiro, 223 S.W. 1098, 188 Ky. 652—Chesapeake & O. Ry. Co. v. Salyers, 218 S.W. 474, 187 Ky. 144, 150—Althoff v. Cull, 216 S.W. 861, 186 Ky. 120—Tanner v. Grace, 214 S.W. 824, 185 Ky. 127—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S.W. 409, 184 Ky. 70—Williams v. Louisville & N. R. Co., 210 S.W. 172, 183 Ky. 602—People's Sav. Bank v. Wright, 209 S.W. 342, 183 Ky. 362—American Beet Sugar Co. v. Turk-Wilson Grocery Co., 209 S.W. 2, 183 Ky. 351—Morgan v. Bennett, 206 S.W. 767, 182 Ky. 499—Louisville Ry. Co. v. Farmer, 206 S.W. 619, 182 Ky. 368—North Jellico Coal Co. v. Stewart, 191 S.W. 451, 173 Ky. 745—Adams Express Co. v. Tucker, 171 S.W. 428, 161 Ky. 741.

Bramel v. Cunningham, 11 Ky. Op. 409.

La.—Payne v. Reynolds, 114 So. 153, 164 La. 546—Gilliland v. Feibleman's Inc., 108 So. 112, 161 La. 24.

Mich.—Schneider v. Pomerville, 81 N.W.2d 405, 348 Mich. 49—In re Yokom's Estate, 38 N.W.2d 909, 325 Mich. 472—Michigan Fire & Marine Ins. Co. v. Pretty Lake Vacation Camp, 25 N.W.2d 166, 316 Mich. 197—Seymour v. Carr, 11 N.W.2d 344, 307 Mich. 109—Finch v. W. R. Roach Co., 1 N.W.2d 46, 299 Mich. 703—Cartwright v. Grand Trunk Western R. R., 284 N.W. 727, 288 Mich. 316—Murner v. Thorne, 279 N.W. 849, 284 Mich. 331—Harding v. Blankenship, 264 N.W. 312, 274 Mich. 118—Sampson v. Veenboer, 234 N.W. 170, 252 Mich. 660—Howell v. Hakes, 232 N.W. 216, 251 Mich. 372—McConnell v. Elliott, 218 N.W. 653, 242 Mich. 145—Hale v. Cole, 217 N.W. 898, 241 Mich. 624—Lewis v. Whitney, 213 N.W. 456, 238 Mich. 74—Gubas v. Bucsko, 189 N.W. 13, 219 Mich. 553—Mapes v. Boersma, 184 N.W. 495, 216 Mich. 106—Lignell v. Bruhns, 178 N.W. 665, 211 Mich. 346—Judson v. Pratt, 175 N.W. 184, 208 Mich. 286—Simmons v. Petersen, 174 N.W. 536, 207 Mich. 508—Chapman v. Ann Arbor R. Co., 163 N.W. 107, 196 Mich. 671—Jacobs v. Queen Ins. Co. of America, 161 N.W. 936, 195 Mich. 18.

Minn.—Carpenter v. Birkholm, 65 N.

W.2d 250, 242 Minn. 379—Webster v. St. Paul City Ry. Co., 64 N.W. 2d 82, 241 Minn. 515—Robinson v. Butler, 48 N.W.2d 169, 234 Minn. 252—Barnes v. Northwest Airlines, 47 N.W.2d 180, 233 Minn. 410—Froden v. Ranzenberger, 41 N.W.2d 807, 230 Minn. 366—Dahlgren v. Olson, 37 N.W.2d 438, 228 Minn. 379—Rivera v. Mandsager, 36 N.W.2d 700, 228 Minn. 227—Thelen v. Gartner, 31 N.W.2d 639, 226 Minn. 36—Dawson v. Thuet Bros., 180 N.W. 534, 147 Minn. 429.

Miss.—Brewer v. Anderson, 86 So.2d 365, suggestion of error overruled 86 So.2d 679—Yazoo & M. V. R. Co. v. Smith, 196 So. 230, 188 Miss. 856—Latimer v. Dent, 172 So. 126, 177 Miss. 869—Mississippi Cent. R. Co. v. Roberts, 160 So. 604, 173 Miss. 487, appeal dismissed 56 S.Ct. 107, 296 U.S. 536, 80 L.Ed. 381.

Mo.—City of Springfield v. Ellis, App., 97 S.W.2d 154—Keith v. Kansas City Rys. Co., App., 231 S. W. 1046—Beall v. Kansas City Rys. Co., App., 228 S.W. 834—Crow v. Winston, App., 219 S.W. 91.

Mont.—Roper v. Caterpillar Tractor Co., 37 P.2d 812, 98 Mont. 76—Stettheimer v. City of Butte, 198 P. 455, 60 Mont. 111.

N.H.—Condiles v. Waumbec Mills, 58 A.2d 726, 95 N.H. 127—Stowe v. Payne, 117 A. 16, 80 N.H. 331.

N.J.—Lynch v. Pennsylvania R. Co., 96 A. 395, 88 N.J.Law 408.

Mandrackie v. Fisher, 146 A. 48, 7 N.J.Misc. 495—Horowitz v. Gottwalt, Sup., 102 A. 930.

N.Y.—Ramey v. Gleichmann, 156 N. Y.S. 326, 172 App.Div. 882.

Ohio.—Wallace v. Bartlett, App., 58 N.E.2d 495—Kaiser v. Whetstone, App., 35 N.E.2d 465—Shaeffer-Weaver Co. v. Mallonn, 186 N.E. 514, 45 Ohio App. 1—Victor Tea Co. v. Walsh, 176 N.E. 585, 38 Ohio App. 516—Baltimore & O. R. Co. v. Shober, 176 N.E. 88, 38 Ohio App. 216—J. G. McCrory Co. v. Hanley, 175 N.E. 232, 37 Ohio App. 461—Cleveland Ry. Co. v. Smith, 172 N. E. 409, 35 Ohio App. 204—Hopkins v. Kissinger, 166 N.E. 916, 31 Ohio App. 229—Ford Motor Co. v. Barry, 165 N.E. 865, 30 Ohio App. 528—Cincinnati Traction Co. v. Schmidt, 153 N.E. 274, 22 Ohio App. 413—Goebel v. Hummel, 153 N.E. 223, 21 Ohio App. 486—Black v. Gorey, 19 Ohio App. 49—Cleveland Ry. Co. v. O'Reilly, 16 Ohio App. 132—Sovereign Camp, W. O. W. v. Clelland, 10 Ohio App. 210—Discount & Deposit State Bank v. Litt, 5 Ohio App. 439.

Okl.—Smedley v. Smedley, 191 P.2d 588, 200 Okl. 59—Lowe v. Hickory, 55 P.2d 769, 176 Okl. 426—Kirk v. Leeman, 22 P.2d 382, 163 Okl. 236—Burke v. Burke, 249 P. 1110, 119 Okl. 254—Modern Woodmen of America v. Michelin, 225 P. 163, 101 Okl. 217, 36 A.L.R. 971—Fitch v. Braddock, 219 P. 703, 93 Okl. 78.

Pa.—Commonwealth v. Reed, 7 Pa. Dist. & Co. 723.

Hotchkiss v. Cousins, Com.Pl., 33 West.L.J. 333.

R.I.—Della Posta v. Rand Exp. Freight Lines, Inc., 133 A.2d 775—Daniels v. Yanyar, 94 A.2d 593, 80 R.I. 204—Barlik v. United Electric Rys. Co., 197 A. 452, 60 R.I. 227, reargument denied 198 A. 359, 60 R.I. 285—Malfetano v. United Electric Rys. Co., 191 A. 491, 58 R.I. 129—Spiegel v. Grande, 123 A. 560, 45 R.I. 437.

S.C.—Peterson v. Atlantic Coast Line R. Co., 98 S.E. 848, 112 S.C. 89.

S.D.—Bruns v. Light, 54 N.W.2d 99, 74 S.D. 418.

Tenn.—Driver v. Aro, 6 Tenn.Civ.App. 582.

Tex.—In re King's Estate, 244 S.W. 2d 660, 150 Tex. 662.

Texas Emp. Ins. Ass'n v. Haywood, Civ.App., 266 S.W.2d 499, reversed on other grounds 266 S.W. 2d 856, 153 Tex. 242—Texas Emp. Ins. Ass'n v. Rollins, Civ.App., 257 S.W.2d 851—Insurance Co. of North America v. Cangelosi, Civ. App., 217 S.W.2d 888—McLean v. McCollum, Civ.App., 209 S.W.2d 959, error refused no reversible error—Old Nat. Life Ins. Co. v. Jerusalem Lodge No. 67, Free & Accepted Masons, Civ.App., 192 S. W.2d 921, error refused no reversible error—Fire Ass'n of Philadelphia v. Coomer, Civ.App., 158 S.W.2d 355—Boone v. Henry, Civ. App., 151 S.W.2d 323—Texas Standard Life Ins. Co. v. Casstevens, Civ.App., 132 S.W.2d 134, reversed on other grounds 155 S. W.2d 916, 137 Tex. 615—Dallas Railway & Terminal Co. v. Redman, Civ.App., 113 S.W.2d 262—Dallas Trust & Savings Bank v. Pickett, Civ.App., 59 S.W.2d 1090—Torres v. Brazos Valley Buick Co., Civ.App., 30 S.W.2d 375—Sonora Realty Co. v. Fabens Townsite & Improvement Co., Civ.App., 13 S.W.2d 965—Marine Bank & Trust Co. v. Epley, Civ.App., 10 S.W.2d 739—Blanton v. Alexander, Civ.App., 298 S.W. 308—Jennings v. Sovereign Camp, W. O. W., Civ. App., 296 S.W. 961—Moore v. Marines, Civ.App., 269 S.W. 825—Mackay Telegraph-Cable Co. v. Erhard, Civ.App., 264 S.W. 570—Missouri, K. & T. Ry. Co. of Texas v. Patterson, Civ.App., 230 S.W. 1051, dismissed for want of jurisdiction—Nations v. Miller, Civ. App., 212 S.W. 742, dismissed for want of jurisdiction—Jones v. Schnaufer, Civ.App., 202 S.W. 367—American Nat. Ins. Co. v. Frankel, Civ.App., 199 S.W. 1132.

Vt.—In re Brown's Estate, 45 A.2d 568, 114 Vt. 380.

Va.—Hebner v. Sullivan, 72 S.E.2d 689, 194 Va. 259—Clayton v. Taylor, 69 S.E.2d 424, 193 Va. 555—Yorke v. Cottle, 4 S.E.2d 372, 173 Va. 372—Frank v. East Carolina Lumber Co., 151 S.E. 135, 153 Va. 649—Fox v. Mason, 124 S.E. 405, 139 Va. 667.

W.Va.—Davis v. Sargent, 78 S.E.2d 217, 138 W.Va. 861—Wilson v. Edwards, 77 S.E.2d 164, 138 W.Va. 613—Thrasher v. Amere Gas Utilities Co., 75 S.E.2d 376, 138 W.Va. 166, appeal dismissed American Gas Utilities Co. v. Public Service Commission of State of W. Va., 74 S.Ct. 478, 347 U.S. 910, 98 L.Ed. 1067—Denton v. Third Avenue Theatre Co., 29 S.E.2d 353, 126 W.Va. 607—Malcolm v. American Service Co., 191 S.E. 527, 118 W.Va. 637—Roberts v. Toney, 131 S.E. 552, 100 W.Va. 688—Chewning v. Simmons, 122 S.E. 176, 95 W.Va. 742—Nesben v. Jackson, 109 S.E. 489, 89 W.Va. 470.

Wis.—Le Sage v. Le Sage, 271 N.W. 369, 224 Wis. 57.

4 C.J. p 862 note 26—9 C.J. p 664 note 93—62 C.J. p 224 note 63—71 C.J. p 160 note 69.

Similar statements of rule

(1) To hold that a verdict for plaintiff is against the great weight of evidence, the supreme court must be satisfied that defendants' testimony overwhelmingly outweighed plaintiff's testimony.

Mich.—Michaels v. Smith, 216 N.W. 413, 240 Mich. 671.

(2) The appellate court may not interfere with the verdict unless it is clearly and palpably against the weight of the evidence, and, to be so, it must appear at first blush after the reading of the evidence to be grossly and irreconcilably contrary to the weight thereof.

Ky.—McNeill v. Choate, 237 S.W. 1082, 194 Ky. 56.

Fact that appellate court would reach a different conclusion is not criterion for determining whether the verdict was contrary to the evidence, but whether or not the evidence was sufficient to support the verdict is controlling factor.

Ark.—Lloyd v. James, 128 S.W.2d 1019, 198 Ark. 255.

Mich.—Van Dyke v. Rozneck, 36 N. W.2d 201, 324 Mich. 29—Molitor v. Burns, 28 N.W.2d 106, 318 Mich. 261—Michigan Fire & Marine Ins. Co. v. Pretty Lake Vacation Camp, 25 N.W.2d 166, 316 Mich. 197.

Tex.—Texas & N. O. R. Co. v. Hellen, Civ.App., 47 S.W.2d 1112.

In reaching the conclusion that a verdict is not flagrantly against the evidence, the appellate court need not say that it is sustained by the weight of the evidence, but only that it is not palpably against the evidence.

Ky.—Hostetter v. Green, 185 S.W. 511, 170 Ky. 119.

trary to the manifest weight of the evidence,[53.5] | unless the evidence is so conclusive that reasonable

More contradiction of testimony for the successful party by a greater number of witnesses does not render the verdict contrary to the evidence.

Ky.—Bryson v. Raum's Adm'r, 47 S.W.2d 927, 243 Ky. 121.

Unsatisfactory evidence

A verdict will not be disturbed as being against the manifest weight of the evidence because the testimony of the principal witness is somewhat unsatisfactory to the reviewing court.

Ohio.—Union Bus Station v. Etosh, 192 N.E. 743, 48 Ohio App. 161.

Physical facts

(1) While the appellate court may not weigh the evidence it should use its judicial knowledge so as to bring about justice, and for that purpose may apply to the undisputed physical facts the well-known laws of nature and mathematics.

Pa.—Lessig v. Reading Transit & Light Co., 113 A. 381, 270 Pa. 266.

(2) Before a judgment can be reversed because physical facts do not warrant it, it must be impossible for the alleged results shown to have followed.

Mo.—Vaccaro v. Pevely Dairy Co., App., 22 S.W.2d 858.

42 C.J. p 874 note 24.

53.5 Conn.—Dokus v. Palmer, 33 A. 2d 315, 130 Conn. 247.

Fla.—Wheeler v. Yellow Cab Co. of Orlando, 66 So.2d 501—Kozak v. Ake, 3 So.2d 120, 147 Fla. 508, followed in Mazur v. Ake, 3 So.2d 121, 147 Fla. 512—Breeding's Dania Drug Co. v. Runyon, 2 So.2d 376, 147 Fla. 123.

Ga.—Britt v. Davis, 187 S.E. 125, 53 Ga.App. 783.

Ill.—Kahn v. James Burton Co., 126 N.E.2d 836, 5 Ill.2d 614.

Manion v. Chicago, R. I. & P. Ry. Co., 138 N.E.2d 98, 12 Ill.App. 2d 1—Danhof v. Osborne, 135 N.E. 2d 492, 10 Ill.App.2d 529, reversed on other grounds 142 N.E.2d 20, 11 Ill.2d 77—Green v. Keenan, 134 N.E.2d 115, 10 Ill.App.2d 53—Santiemmo v. Days Transfer, Inc., 133 N.E. 2d 539, 9 Ill.App. 487—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App.2d 388—Sagle v. McClellan, 132 N.E.2d 596, 9 Ill. App.2d 109—Bowman v. Illinois Cent. R. Co., 132 N.E.2d 558, 9 Ill. App.2d 182—Dixon v. Montgomery Ward & Co., 132 N.E.2d 20, 8 Ill. App.2d 552—Borst v. Langsdale, 130 N.E.2d 520, 8 Ill.App.2d 88—Andres v. Green, 129 N.E.2d 430, 7 Ill.App.2d 375—Griggas v. Clauson, 128 N.E.2d 363, 6 Ill.App.2d 412—Baber v. Rardin Grain Company, 126 N.E.2d 529, 6 Ill.App.2d 63—Praga Press v. Hill, 124 N.E.2d 47, 4 Ill.App.2d 376—Cerny-Pickas & Co. v. C. R. Jahn Co., 123 N.E. 2d 858, 4 Ill.App.2d 164—Davies v. Carstensen Freight Lines, 121 N.E. 2d 335, 3 Ill.App.2d 222—Swift & Co. v. Dollahan, 120 N.E.2d 249, 2 Ill.App.2d 574—In re Kanner's Estate, 119 N.E.2d 801, 2 Ill.App.2d 530—Buckley v. Wabash R. Co., 118 N.E.2d 792, 2 Ill.App.2d 173—Ward v. Peoria Transit Lines, 118 N.E.2d 611, 2 Ill.App.2d 170—Ashby v. Irish, 118 N.E.2d 43, 2 Ill.App.2d 9—Dixon v. Montgomery Ward & Co., 114 N.E.2d 44, 351 Ill.App. 75—Hart v. Goebelt, 112 N.E.2d 726, 350 Ill.App. 325—Hall v. Koehler, 110 N.E.2d 538, 349 Ill. App. 398—Ohlweiler v. Central Engineering Co., 109 N.E.2d 232, 348 Ill.App. 246—Chicago Club v. Basil, 105 N.E.2d 802, 347 Ill.App. 74—Ferrell v. Livingston, 101 N.E.2d 599, 344 Ill.App. 488—Countryman v. Sullivan, 100 N.E.2d 799, 344 Ill. App. 371—Wilson v. Peters, 99 N. E.2d 150, 343 Ill.App. 354—Radakovich v. Goldblatt Bros., 95 N.E.2d 528, 342 Ill.App. 200—Dever v. Bowers, 94 N.E.2d 518, 341 Ill.App. 444—Podgorny v. Wonick, 94 N.E. 2d 89, 341 Ill.App. 420—Carevic v. Ashland Public Market, 93 N.E.2d 377, 340 Ill.App. 217—De Frates v. Rowland, 93 N.E.2d 153, 341 Ill. App. 69—Johnson v. Commercial Credit Corp., 88 N.E.2d 737, 339 Ill. App. 122—Moore v. Locander, 86 N.E.2d 295, 337 Ill.App. 646—Hovey v. Stolleis, 82 N.E.2d 183, 335 Ill. App. 564—Frisch v. Knapp, 82 N.E. 2d 181, 335 Ill.App. 563—Karraker v. Smith, 77 N.E.2d 421, 333 Ill. App. 266—Lindholm v. Dohm, 76 N.E.2d 813, 333 Ill.App. 220—Ambrose v. Doyle, 76 N.E.2d 802, 333 Ill.App. 161—Phillips v. City of Chicago, 75 N.E.2d 403, 332 Ill. App. 443—Bartels v. McGarvey, 73 N.E.2d 123, 331 Ill.App. 275—McManaman v. Johns-Manville Products Corp., 72 N.E.2d 741, 331 Ill. App. 178, affirmed 81 N.E.2d 137, 400 Ill. 423—Schneiderman v. Interstate Transit Lines, 72 N.E.2d 705, 331 Ill.App. 143, affirmed 81 N.E.2d 861, 401 Ill. 172—Gantar v. Nastruz, 72 N.E.2d 565, 331 Ill.App. 113—Silberman v. Washington Nat. Ins. Co., 69 N.E.2d 519, 329 Ill. App. 448—Rehnbloom v. City of Berwyn, 68 N.E.2d 479, 329 Ill.App. 327—Chapman v. Bruton, Inc., 60 N.E.2d 125, 325 Ill.App. 334—Miller v. Arliskas, 58 N.E.2d 743, 324 Ill. App. 588—Kucia v. Rosenfield, 58 N.E.2d 341, 324 Ill.App. 522—Osinski v. Benson, 56 N.E.2d 665, 323 Ill.App. 562—Mayberry v. Cage, 54 N.E.2d 619, 322 Ill.App. 655—Donaldson v. Reynolds, 53 N.E.2d 734, 322 Ill.App. 72—Short v. Chrisman, 53 N.E.2d 731, 322 Ill.App. 71—Becherer v. Belleville-St. Louis Coach Co., 53 N.E.2d 731, 322 Ill. App. 37—Mortvedt v. Western Austin Co., 50 N.E.2d 764, 320 Ill.App. 337—Davis v. Commercial Fuel & Service Co., 47 N.E.2d 506, 318 Ill. App. 225—Trust Co. of Chicago v. Ancateau, 46 N.E.2d 125, 317 Ill. App. 186—Lomax v. Brooks, 43 N. E.2d 421, 315 Ill.App. 567—Dick v. Campbell Soup Co., Central Division, 38 N.E.2d 359, 312 Ill.App. 261—Kavanaugh v. Parret, 34 N.E. 2d 868, 310 Ill.App. 429—Edwards v. Hill-Thomas Lime & Cement Co., 32 N.E.2d 945, 309 Ill.App. 168, reversed on other grounds 37 N.E. 2d 801, 378 Ill. 180—McGoorty v. Benhart, 27 N.E.2d 289, 305 Ill. App. 458—Cooper v. Safeway Lines, 26 N.E.2d 632, 304 Ill.App. 302—Goad v. Obernagel, 23 N.E.2d 800, 302 Ill.App. 370—Sulzberger v. Sulzberger, 23 N.E.2d 46, 372 Ill. 240—Smith v. Illinois Power & Light Corp., 17 N.E.2d 632, 297 Ill. App. 358—Friend v. Hotel Del Prado Co., 16 N.E.2d 935, 296 Ill.App. 647—Sycamore Preserve Works v. Chicago & N. W. Ry. Co., 12 N.E. 2d 42, 293 Ill.App. 20—Graham v. Dressen, 10 N.E.2d 843, 292 Ill. App. 15—Froehler v. North American Life Ins. Co. of Chicago, 7 N. E.2d 456, 289 Ill.App. 402—Shellabarger v. Nattier, 7 N.E.2d 365, 289 Ill.App. 473—Rembke v. Bieser, 6 N.E.2d 900, 289 Ill.App. 136—Smithers v. Henriquez, 4 N.E.2d 793, 287 Ill.App. 95, affirmed 15 N. E.2d 499, 368 Ill. 588—Adamsen v. Magnelia, 3 N.E.2d 708, 286 Ill. App. 412—Erickson v. Ball, 2 N.E. 2d 375, 285 Ill.App. 598.

Ky.—Guyan Chevrolet Co. v. Dillow, 95 S.W.2d 796, 264 Ky. 812.

La.—Currie v. Government Emp. Ins. Co., App., 90 So.2d 482.

Mich.—Reardon v. Buck, 55 N.W.2d 847, 335 Mich. 318.

Minn.—Waldo v. St. Paul City Ry. Co., 70 N.W.2d 289, 244 Minn. 416—Sorlie v. Thomas, 51 N.W.2d 592, 235 Minn. 509—Stock v. Fryberger, 267 N.W. 368, 197 Minn. 399.

Miss.—Johns-Mansville Products Corp. v. Cather, 44 So.2d 405, 208 Miss. 268—Gregory v. Williams, 35 So.2d 451, 203 Miss. 455—Lynch v. American Slicing Mach. Co., 32 So.2d 546, 202 Miss. 515—Paine v. Dimijian, 29 So.2d 326, 201 Miss. 522—Blue Bell Globe Mfg. Co. v. Lewis, 27 So.2d 900, 200 Miss. 685.

Ohio.—Markley v. Motter, App., 135 N.E.2d 792—Smith v. Transamerican Freight Lines, 51 N.E.2d 208, 72 Ohio App. 239—Trame v. Orpheum Theatre Co., 21 N.E.2d 178, 60 Ohio App. 323.

Opposite conclusion must be clearly evident in order to render a ver-

minds could not reach different conclusions therefrom,[53.10] unless there is something to indicate that some mistake was made in the application of the law,[54] or unless the weight of the evidence is such as to indicate prejudice, passion, corruption, or other improper motive.[55] In this respect, particular

dict against the manifest weight of evidence.

Ill.—De Long v. Whitehead, 137 N.E. 2d 276, 11 Ill.App.2d 330—Veselich v. Lichtsinn, 135 N.E.2d 823, 11 Ill. App.2d 372—Henderson v. Shives, 135 N.E.2d 186, 10 Ill.App.2d 475—Peterie v. Thompson, 134 N.E.2d 534, 10 Ill.App.2d 100—Coby v. Turner, 133 N.E.2d 46, 9 Ill.App.2d 416.

Where reasonable minds could differ on the issues, a jury's verdict on such issues is not manifestly against the weight of the evidence.

Ohio.—Wolf v. Hawk, 25 N.E.2d 460, 63 Ohio App. 122.

53.10 Cal.—Hernandez v. Murphy, 115 P.2d 565, 46 C.A.2d 201.

Ga.—Atlantic Coast Line R. Co. v. Layne, 77 S.E.2d 565, 88 Ga.App. 674.

Me.—Bechard v. Lake, 11 A.2d 267, 136 Me. 385.

Ohio.—Claim of Kincade, 119 N.E.2d 314, 95 Ohio App. 329.

Tex.—Jara v. Thompson, Civ.App., 223 S.W.2d 941, error refused—Browning v. Nesting, Civ.App., 219 S.W.2d 712, error refused no reversible error.

Va.—Hooker v. Hancock, 49 S.E.2d 711, 188 Va. 345.

54. N.J.—Massari v. Accurate Bushing Co., 85 A.2d 260, 8 N.J. 299.

N.Y.—Mercury Mach. & Tool Co. v. Universal Metal Products Co., 54 N.Y.S.2d 51.

Ohio.—Slamey v. City Material Co., 165 N.E. 55, 30 Ohio App. 435—Industrial Commission of Ohio v. Ochenduska, 164 N.E. 797, 30 Ohio App. 442.

4 C.J. p 863 note 27.

55. Colo.—Marshall v. Barry, 142 P. 199, 26 Colo.App. 236.

Conn.—Martino v. Palladino, 123 A.2d 872, 143 Conn. 547—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204.

Fla.—Wheeler v. Yellow Cab Co. of Orlando, 66 So.2d 501—City of Hollywood v. Blair, 186 So. 818, 136 Fla. 100—308 East 79th St. Corporation v. Favorite, 149 So. 625, 111 Fla. 234—Wilson v. Maddox, 121 So. 805, 97 Fla. 489—Bessent v. Board of Bond Trustees of Special Road & Bridge Dist. No. 1 of Alachua County, 109 So. 597, 92 Fla. 292.

Ill.—Kahn v. James Burton Co., 126 N.E.2d 836, 5 Ill.2d 614—Geohegan v. Union Elevated R. Co., 107 N.E. 786, 266 Ill. 482, Ann.Cas.1916B 762.

Santiemmo v. Days Transfer, Inc., 133 N.E.2d 539, 9 Ill.App.2d 487—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App. 2d 388—Simmons Motor Co. v. Dudley, 196 Ill.App. 329—Gerdes v. Niemeyer, 193 Ill.App. 574—Deming v. Prudential Ins. Co. of America, 190 Ill.App. 604—Leaverton v. Myers, 190 Ill.App. 353—Weinstein v. Garcinski, 188 Ill.App. 353—Tountas v. Deligiannis, 187 Ill.App. 63—People v. Mutual Life Ins. Co. of New York, 183 Ill.App. 186—Carden v. Chicago Rys. Co., 183 Ill. App. 168.

Ky.—Hollis v. Fisk, 242 S.W.2d 1012—Barnett v. Gilbert, 133 S.W.2d 529, 280 Ky. 402—Henry v. Fields, 131 S.W.2d 467, 279 Ky. 513—Franks' Ex'r v. Bates, 128 S.W.2d 739, 278 Ky. 337—Ætna Life Ins. Co. v. Shemwell, 116 S.W.2d 328, 273 Ky. 264—Powell v. Louisville & N. R. Co., 189 S.W. 213, 172 Ky. 285—Louisville & N. R. Co. v. Sinclair, 188 S.W. 648, 171 Ky. 562—North East Coal Co. v. Setzer, 183 S.W. 553, 169 Ky. 245—Ligon v. Allen, 181 S.W. 656, 168 Ky. 19—Hodge Tobacco Co. v. Whaley, 179 S.W. 840, 166 Ky. 813—Louisville & N. R. Co. v. McArthur, 173 S.W. 770, 163 Ky. 291—Charles Taylor Sons Co. v. Hunt, 173 S.W. 333, 163 Ky. 120—Chesapeake & O. Ry. Co. v. Dean, 170 S.W. 167, 160 Ky. 757.

Mich.—Darling v. Grand Rapids, G. H. & M. Ry. Co., 151 N.W. 701, 184 Mich. 607.

Miss.—Mississippi Power & Light Co. v. Tripp, 183 So. 514, 183 Miss. 225—Teche Lines v. Bounds, 179 So. 747, 182 Miss. 638.

Mo.—Connole v. East St. Louis & S. Ry. Co., 102 S.W.2d 581, 340 Mo. 690.

Schreiber v. Andrews, App., 234 S.W. 862—Falloon v. Fenton, 167 S.W. 591, 182 Mo.App. 93.

Neb.—Borcherding v. Eklund, 55 N. W.2d 643, 156 Neb. 196.

N.J.—Rapp v. Public Service Coordinated Transport, 86 A.2d 676, 9 N. J. 11—Leary v. Gledhill, 84 A.2d 725, 8 N.J. 260—Bazinsky v. Conklin, 83 A.2d 705, 8 N.J. 40—Hager v. Weber, 81 A.2d 155, 7 N.J. 201.

Brendel v. Public Service Elec. & Gas Co., 101 A.2d 56, 28 N.J.Super. 500—Swanson v. Wiesenfeld, 95 A. 2d 161, 24 N.J.Super. 576—Stevens v. Roettger, 91 A.2d 617, 22 N.J. Super. 64—Gindin v. Baron, 83 A. 2d 790, 16 N.J.Super. 1—Capone v. Norton, 78 A.2d 126, 11 N.J.Super. 189, affirmed 83 A.2d 710, 8 N.J. 54—Fario v. Johnson, 68 A.2d 891, 5 N.J.Super. 310—Teas v. Curtiss-Wright Corp., 68 A.2d 845, 5 N.J. Super. 274—Fishkin v. Steinberg, 68 A.2d 840, 5 N.J.Super. 271—Knapp v. Seton Inn, Inc., 68 A.2d 770, 5 N.J.Super. 226—Stephens v. Public Service Coordinated Transport, 68 A.2d 487, 5 N.J.Super. 128.

Rafferty v. Public Service Interstate Transp. Co., 186 A. 575, 14 N. J.Misc. 643.

N.Y.—Bernardo v. New York Edison Co., 147 N.Y.S. 578, 163 App.Div. 875.

Krauss v. McNamee, 154 N.Y.S. 263.

Ohio.—Cohen v. Smith, 159 N.E. 329, 26 Ohio App. 32—J. P. Burton Coal Co. v. John P. Gorman Coal Co., 153 N.E. 863, 22 Ohio App. 383—Kronenberg v. Whale, 153 N.E. 302, 21 Ohio App. 322.

Okl.—Livingston v. Bonham, 308 P.2d 657—Rain v. Balph, 293 P.2d 359—National Life & Accident Ins. Co. v. Roberson, 68 P.2d 796, 180 Okl. 265—Lowe v. Hickory, 55 P.2d 769, 176 Okl. 426—City of Duncan v. Tidwell, 150 P. 112, 48 Okl. 382.

Pa.—Wilbert v. Pittsburgh Consolidation Coal Co., 122 A.2d 406, 385 Pa. 149.

S.D.—Kennedy v. First State Bank of Wall, 149 N.W. 168, 34 S.D. 457.

Tex.—Gulf Oil Corp. v. Walker, Civ. App., 288 S.W.2d 173—Dyer v. Sterett, Civ.App., 248 S.W.2d 234—Ohlen v. Hagar, Civ.App., 212 S.W.2d 253, error refused no reversible error—Quinn v. Wilkerson, Civ.App., 195 S.W.2d 399—Collins v. Davenport, Civ.App., 192 S.W.2d 291—McCrory's Stores Corp. v. Murphy, Civ.App., 164 S.W.2d 735, error refused—Houston Natural Gas Co. v. Kluck, Civ.App., 154 S.W.2d 504, affirmed 163 S.W.2d 618, 139 Tex. 491—Goldstein Hat Mfg. Co. v. Cowen, Civ.App., 136 S.W.2d 867, error dismissed, judgment correct—Nickel v. Nickel, Civ.App., 130 S. W.2d 1085—Oden v. McAdams, Civ. App., 108 S.W.2d 920—Conlisk v. Bender, Civ.App., 245 S.W. 941—Liverpool & London & Globe Ins. Co. v. Jones, Civ.App., 197 S.W. 736, error refused—American Nat. Ins. Co. v. Fulghum, Civ.App., 197 S. W. 235—International & G. N. Ry. Co. v. Vogel, Civ.App., 184 S.W. 229—Koch v. Noster, Civ.App., 182 S.W. 372—American Nat. Ins. Co. v. Fulghum, Civ.App., 177 S.W. 1008—Galveston, H. & S. A. Ry. Co. v. Patterson, Civ.App., 173 S. W. 273—Rodgers v. Texas & P. Ry. Co., Civ.App., 172 S.W. 1117—Horton v. Texas Midland R. R., Civ.App., 171 S.W. 1023—Kohlberg v. Awbrey & Semple, Civ.App., 167 S.W. 828.

W.Va.—Mylius v. Raine-Andrew Lumber Co., 81 S.E. 823, 73 W.Va. 674.

4 C.J. p 863 note 28.

verdicts have been held to be not flagrantly or | clearly against the weight of the evidence,[55.5] or not

Misapprehension, bias, or willful disregard of duty

Ga.—Thompson v. Fouts, 47 S.E.2d 571, 203 Ga. 522.

Ohio.—In re Appropriation of Easement for Highway Purposes, 107 N.E.2d 387, 90 Ohio App. 471—Appeal of Stickels, App., 104 N.E.2d 186.

Abuse of authority by jury

It is the primary function of jury to weigh and evaluate evidence, and their finding on an issue should not be disturbed unless it plainly appears that they have abused wide scope of authority accorded them as reasonable men.

Va.—Edmonds v. Mecklenburg Elec. Co-op., 90 S.E.2d 188, 197 Va. 540—Vaughan v. Eatoon, 89 S.E.2d 914, 197 Va. 459—Clayton v. Taylor, 69 S.E.2d 424, 193 Va. 555.

Verdicts not set aside

(1) In general.

Mich.—Larsen v. Stiller, 73 N.W.2d 865, 344 Mich. 279.

N.J.—Cherr v. Rubenstein, 91 A.2d 627, 22 N.J.Super. 212—Shafto v. Indemnity Ins. Co. of North America, 67 A.2d 692, 4 N.J.Super. 451.

Tex.—National Life & Accident Ins. Co. v. Harris, Civ.App., 118 S.W.2d 838.

(2) A verdict for defendant will not be overturned as being so strongly against the weight of the evidence as to raise a presumption of bias and prejudice, passion or misconduct, merely because plaintiff's version of what occurred was corroborated by other witnesses while defendant's testimony stands alone.

Mo.—Schreiber v. Andrews, App., 234 S.W. 862.

(3) A verdict which can be reasonably explained by what is in the record is not flagrantly against the evidence.

Ky.—Hall's Adm'r v. Burton Produce Co., 88 S.W.2d 938, 262 Ky. 36.

55.5 Ala.—Nelson v. Johnson, 88 So. 2d 358—Tucker v. Thompson, 83 So.2d 238, 263 Ala. 516—National Biscuit Co. v. Wilson, 54 So.2d 492, 256 Ala. 241—Duke v. Williams, 32 So.2d 362, 249 Ala. 574—F. Becker Asphaltum Roofing Co. v. Murphy, 141 So. 630, 224 Ala. 655.

Grissom v. Dahart Ice Cream Co., 40 So.2d 333, 34 Ala.App. 282, certiorari denied 40 So.2d 339, 252 Ala. 235.

Ga.—Callaway v. Pickard, 23 S.E.2d 564, 68 Ga.App. 637.

Idaho.—Simmons v. Trowbridge, 202 P.2d 1085, 69 Idaho 79.

Ill.—Thomas v. Smith, 137 N.E.2d 117, 11 Ill.App.2d 310—Columbia Cas. Co. v. Edwards, 87 N.E.2d 320, 338 Ill.App. 300—Smith v. Courtney, 281 Ill.App. 530—Harrison v. U. S. Fidelity & Guaranty Co., 255 Ill.App. 263—Humphreys v. East St. Louis & Suburban Ry. Co., 253 Ill.App. 450—Bennett v. W. M. McAllister Co., 241 Ill.App. 502—Di Marco v. Chicago & Riverdale Lumber Co., 220 Ill.App. 354—Schlatter v. Triebel, 208 Ill.App. 504, affirmed 120 N.E. 289, 284 Ill. 412—Baretti v. Theurer, 206 Ill. App. 164—Reeves v. Peoria Ry. Co., 196 Ill.App. 322—Rezek v. Grosch, 195 Ill.App. 164—Welch v. Chicago City Ry. Co., 195 Ill. App. 146.

Kan.—Hopson v. Union Traction Co., 167 P. 1059, 101 Kan. 499.

Ky.—Bruner v. Gordon, 214 S.W.2d 997, 309 Ky. 29—Collis v. Hoskins, 208 S.W.2d 70, 306 Ky. 391—Southern Oxygen Co. v. Martin, 163 S. W.2d 459, 291 Ky. 238—Marr v. Lawson, 161 S.W.2d 42, 290 Ky. 342—Castle v. McGaffee, 154 S.W. 2d 241, 287 Ky. 561—Hurt v. Gambill, 152 S.W.2d 606, 287 Ky. 182—Barnett v. Gilbert, 133 S.W.2d 529, 280 Ky. 402—Hall's Adm'r v. Burton Produce Co., 88 S.W.2d 938, 262 Ky. 36—West Kentucky Transp. Co. v. Dezern, 82 S.W.2d 486, 259 Ky. 470—Kroger Grocery & Baking Co. v. Schneider, 60 S.W.2d 594, 249 Ky. 261—Illinois Cent. R. Co. v. Roark's Adm'r, 58 S.W.2d 648, 248 Ky. 398—Howell v. Standard Oil Co., 28 S.W.2d 3, 234 Ky. 347—Security Finance Co. v. A. L. Cook & Son, 3 S.W.2d 187, 223 Ky. 124—Pacific Coal Mining Co. v. Horn, 277 S.W. 511, 211 Ky. 444—Security Life Ins. Co. v. Black's Adm'r, 237 S.W. 1059, 193 Ky. 849.

Mich.—Larsen v. Stiller, 73 N.W.2d 865, 344 Mich. 279—Ferries v. Copco Steel & Engineering Co., 73 N.W. 2d 850, 344 Mich. 345—Gibson v. Traver, 44 N.W.2d 834, 328 Mich. 698—Kneeshaw v. City of Detroit, 41 N.W.2d 542, 327 Mich. 259—Kurta v. Probelske, 36 N.W.2d 889, 324 Mich. 179—Nantico v. Matuszak, 34 N.W.2d 506, 322 Mich. 644—Odinetz v. Budds, 24 N.W.2d 193, 315 Mich. 512—Slayton v. Boesch, 23 N.W.2d 134, 315 Mich. 1—Gleason v. Hanafin, 13 N.W.2d 196, 308 Mich. 31—Rossien v. Berry, 9 N.W. 2d 895, 305 Mich. 693—Krukowski v. Englehardt, 267 N.W. 806, 276 Mich. 136—Bochenek v. Nilewski, 233 N.W. 420, 252 Mich. 575—Freeman v. Millen, 196 N.W. 200, 225 Mich. 271—Kane v. Detroit Life Ins. Co., 183 N.W. 38, 214 Mich. 329—Laskowski v. People's Ice Co., 157 N.W. 6, 190 Mich. 331.

Minn.—Hunter v. Chicago, St. P., M. & O. Ry. Co., 230 N.W. 793, 180 Minn. 305, reheard 231 N.W. 920, 180 Minn. 305—Gustafson v. Trocke Cafeteria Co., 219 N.W. 159, 174 Minn. 320.

Miss.—Forbes v. City of Durant, 46 So.2d 551, 209 Miss. 246—Gilmer v. Gunter, 46 So.2d 447—Mississippi Cent. R. Co. v. Roberts, 160 So. 604, 173 Miss. 487, appeal dismissed 56 S.Ct. 107, 296 U.S. 536, 80 L. Ed. 381—F. W. Woolworth Co. v. Volking, 100 So. 3, 135 Miss. 410.

Mo.—Zamora v. Woodmen of the World Life Ins. Soc., App., 157 S. W.2d 601—Smith v. Ætna Ins. Co., App., 269 S.W. 682.

N.J.—Gill v. Krassner, 77 A.2d 462, 11 N.J.Super. 10—Roberts Elec. Inc., v. Foundations & Excavations 73 A.2d 744, 8 N.J.Super. 168, appeal dismissed 75 A.2d 858, 5 N.J. 426—Van Riper v. Philip Carey Mfg. Co., 69 A.2d 755, 6 N.J.Super. 21—Thomas v. Hudson & Manhattan R. Co., 68 A.2d 414, 5 N.J.Super. 61.

Bacon v. Standard Oil Co., 149 A. 335, 8 N.J.Misc. 203—Gorman v. Mainzer, 149 A. 122, 8 N.J.Misc. 150.

N.Y.—Gentile v. Mesick, 128 N.Y.S. 2d 274, 283 App.Div. 759—Rapant v. Ogsbury, 109 N.Y.S.2d 737, 279 App.Div. 298—Barrett v. Perkins, 88 N.Y.S.2d 397, 275 App.Div. 867—Edgeworth v. Green Bus Lines, 86 N.Y.S.2d 531, 275 App.Div. 680—Keller v. Triboro Coach Corp., 79 N.Y.S.2d 523, 273 App.Div. 1022, appeal and reargument denied 81 N.Y.S.2d 266, 274 App.Div. 816—Harris v. Gladstone, 65 N.Y.S.2d 612, 271 App.Div. 849, affirmed 73 N. E.2d 271, 296 N.Y. 967—Goggin v. Kasulke, 46 N.Y.S.2d 876, 267 App. Div. 923—Bloodgood v. Lynch, 45 N.Y.S.2d 530, 267 App.Div. 797, appeal denied 47 N.Y.S.2d 282, 267 App.Div. 853, reversed on other grounds 56 N.E.2d 718, 293 N.Y. 308—Wellisch v. John Hancock Mut. Life Ins. Co., 44 N.Y.S.2d 635, 266 App.Div. 1046, appeal denied 47 N.Y.S.2d 278, 267 App.Div. 841, affirmed 56 N.E.2d 540, 293 N.Y. 178—Wells v. McNamara, 44 N.Y. S.2d 508, 266 App.Div. 1041—Brennan v. Brennan, 41 N.Y.S.2d 471, 266 App.Div. 813—Lander v. International Ry. Co., 203 N.Y.S. 625, 208 App.Div. 551.

Ritacco v. Morris, 76 N.Y.S.2d 218, 189 Misc. 987.

Ohio.—Renner v. Pennsylvania R. Co., App., 103 N.E.2d 832—State v. Liff, 87 N.E.2d 917, 86 Ohio App. 396—Raykovich v. City of Youngstown, App., 79 N.E.2d 242—Fay v. Thrasher, 66 N.E.2d 236, 77 Ohio App. 179—Lake Shore Electric Ry. Co. v. Rohrbacher, 186 N.E. 507, 44 Ohio App. 529.

Pa.—Noakes v. Lattavo, 37 A.2d 711, 349 Pa. 463.

Molinaro v. Prudential Ins. Co., Com.Pl., 39 Lack.Jur. 159.

R.I.—Daniels v. Yanyar, 94 A.2d 593, 80 R.I. 204.

contrary to the manifest weight of the evidence.[55.10]

On the other hand, it is well settled that the verdict will be set aside when it is clearly and palpably against the great weight of the evidence,[56] or op-

Tex.—McFall v. Fletcher, 157 S.W.2d 131, 138 Tex. 93.

Dallas Ry. & Terminal Co. v. Jarvis, Civ.App., 270 S.W.2d 684, reversed on other grounds 270 S.W.2d 205, 153 Tex. 384—Dyer v. Sterett, Civ.App., 248 S.W.2d 234, error refused no reversible error—Insurance Co. of North America v. Cangelosi, Civ.App., 217 S.W.2d 888—Milburn v. Athans, Civ.App., 190 S.W.2d 388, error dismissed—Houston Natural Gas Co. v. Kluck, Civ.App., 154 S.W.2d 504, affirmed 163 S.W.2d 618, 139 Tex. 491—Dallas Ry. & Terminal Co. v. Whitcomb, Civ.App., 153 S.W.2d 527, affirmed 163 S.W.2d 616, 139 Tex. 467—Northern Texas Traction Co. v. Weed, Civ.App., 297 S.W. 534, reversed on other grounds, Com. App., 300 S.W. 41—Galveston Electric Co. v. Marangola, Civ.App., 273 S.W. 311, reversed on other grounds, Com.App., 283 S.W. 777.

Wash.—Hagstrom v. Limbeck, 130 P. 2d 895, 15 Wash.2d 399.

W.Va.—Raines v. Faulkner, 48 S.E. 2d 393, 131 W.Va. 10.

4 C.J. p 862 note 26 [a].

Support by testimony

(1) A verdict is not palpably against the evidence when supported by substantial testimony, notwithstanding the testimony is contradicted.

Ky.—Monohan v. Grayson County Supply Co., 54 S.W.2d 311, 245 Ky. 781, followed in Monohan v. Moorman, 54 S.W.2d 315, 245 Ky. 789, Monohan v. Decker, 54 S.W.2d 315, 245 Ky. 790, and Monohan v. Whitely, 54 S.W.2d 315, 245 Ky. 790.

(2) A verdict is not palpably against the evidence when supported by testimony sufficient to sustain it, notwithstanding its contradiction by other testimony.

Ky.—Bryson v. Raum's Adm'r, 47 S. W.2d 927, 243 Ky. 121.

55.10 Ill.—Weinstein v. Metropolitan Life Ins. Co., 60 N.E.2d 207, 389 Ill. 571—Moore v. Edmonds, 52 N.E.2d 216, 384 Ill. 535.

Blue v. St. Clair Country Club, 134 N.E.2d 540, 10 Ill.App.2d 151—Coby v. Turner, 133 N.E.2d 46, 9 Ill.App.2d 416—Hall v. Flavin, 110 N.E.2d 673, 349 Ill.App. 392—Wilson v. Hobrock, 100 N.E.2d 412, 344 Ill.App. 147—Grib v. Chicago Transit Authority, 98 N.E.2d 400, 343 Ill.App. 263—Fitzgerald v. Reville, 97 N.E.2d 610, 342 Ill.App. 712—Piper v. Hoagland, 97 N.E.2d 605, 342 Ill.App. 706—Dever v. Bowers, 94 N.E.2d 518, 341 Ill.App. 444—De Frates v. Rowland, 93 N.E.2d 153, 341 Ill.App. 69—Engelman v. Chicago Transit Authority, 86 N.E.2d 890, 338 Ill.App. 129—Virginelli v. Chicago Transit Authority, 86 N.E.2d 158, 337 Ill.App. 657—Birnbaum v. Kirchner, 85 N.E.2d 191, 337 Ill.App. 25—Smith v. Seelbach, 84 N.E.2d 684, 336 Ill.App. 480—Hemphill v. Miller, 84 N.E.2d 660, 336 Ill.App. 601—Good v. Johnson, 83 N.E.2d 367, 336 Ill. App. 227—Sutton v. Phillips, 82 N. E.2d 192, 335 Ill.App. 381—Ranson v. Wilson, 80 N.E.2d 381, 335 Ill. App. 7—Craig v. Hegeler Local Union No. 209, Mine, Mill and Smelter Workers, 80 N.E.2d 377, 335 Ill. App. 28—Feeley v. McAuliffe, 80 N.E.2d 373, 335 Ill.App. 99—McCullough v. Schuberth, 79 N.E.2d 754, 334 Ill.App. 333—Mueller v. 1527-31 Wicker Park Ave. Bldg. Corp., 77 N.E.2d 555, 333 Ill.App. 385—Winson v. Fischer, 77 N.E.2d 48, 333 Ill.App. 222—McKay v. Wilhelm, 73 N.E.2d 168, 331 Ill.App. 407—Bartels v. McGarvey, 73 N.E. 2d 123, 331 Ill.App. 275—Schneiderman v. Interstate Transit Lines, 72 N.E.2d 705, 331 Ill.App. 143, affirmed 81 N.E.2d 861, 401 Ill. 172—Demske v. Crevie, 67 N.E.2d 424, 329 Ill.App. 187—Szalacha v. Landsman, 60 N.E.2d 643, 325 Ill.App. 691—Allied Cab Co. v. Hopkins, 60 N.E.2d 37, 325 Ill.App. 265—Miller v. Arliskas, 58 N.E.2d 743, 324 Ill. App. 588—Kucia v. Rosenfield, 58 N.E.2d 341, 324 Ill.App. 522—Montgomery v. Checker Taxi Co., 57 N. E.2d 231, 324 Ill.App. 83—Wolfram v. Bennehoff, 56 N.E.2d 849, 324 Ill. App. 16—Humbert v. Lowden, 56 N.E.2d 323, 323 Ill.App. 557—Johnson v. Stevens Building Catering Co., 55 N.E.2d 550, 323 Ill.App. 212—Miller v. Cummings, 55 N.E.2d 403, 323 Ill.App. 297—Paolinelli v. Dainty Foods Manufacturers, 54 N. E.2d 759, 322 Ill.App. 586—Hannaher v. Blue Cab Co., 54 N.E.2d 257, 322 Ill.App. 277—Whitely v. Arlington Farms, 54 N.E.2d 226, 322 Ill. App. 182—Wise v. Kuehne Mfg. Co., 53 N.E.2d 711, 322 Ill.App. 26—Hubka v. McCormick, 53 N.E.2d 467, 321 Ill.App. 638—Elmore v. Cummings, 52 N.E.2d 827, 321 Ill. App. 234—Krawitz v. Levinstein, 52 N.E.2d 60, 320 Ill.App. 618—Williams v. Alton Water Co., 49 N. E.2d 307, 319 Ill.App. 522—McNaghten v. Northwestern Mut. Life Ins. Co., 48 N.E.2d 200, 318 Ill.App. 390—Moore v. Young, 46 N.E.2d 852, 317 Ill.App. 474—Popp v. Terminal R. Ass'n of St. Louis, 45 N. E.2d 298, 316 Ill.App. 670—Hart v. City of Chicago, 42 N.E.2d 887, 315 Ill.App. 214—Horvat v. Opas, 42 N.E.2d 867, 315 Ill.App. 229—Midwest Investment & Finance Co. v. Gatton, 41 N.E.2d 109, 314 Ill.App. 201—Dick v. Campbell Soup Co., Central Division, 38 N.E.2d 359, 312 Ill.App. 261—Cooney v. Hughes, 34 N.E.2d 566, 310 Ill.App. 371—Meizis v. Domeikis, 32 N.E.2d 345, 308 Ill.App. 672—Kovacs v. Richardson, 28 N.E.2d 291, 306 Ill.App. 194.

Ohio.—West v. Ballentine, 109 N.E. 2d 536, rehearing denied 112 N.E. 2d 339, appeal dismissed 112 N.E. 2d 340, 150 Ohio St. 448—English v. Aubry, 103 N.E.2d 828, 90 Ohio App. 121—Cordova v. Youngstown Municipal Ry. Co., App., 95 N.E.2d 391—Linzey v. Fabian, App., 88 N. E.2d 260—Dakovich v. Henrich, 80 N.E.2d 800, 82 Ohio App. 121—Ebeling v. Harman, 80 N.E.2d 704, 83 Ohio App. 519, opinion adhered to 82 N.E.2d 425—Dickerhoff v. Athey, App., 79 N.E.2d 377—Grzywna v. Youngstown Municipal Ry. Co., App., 77 N.E.2d 84—Hilleary v. Bromley, 75 N.E.2d 818, 82 Ohio App. 219—Behan v. Cincinnati St. Ry. Co., 69 N.E.2d 160, 78 Ohio App. 129—Haney v. Dayton St. Transit Co., App., 67 N.E.2d 794—Soukoup v. Republic Steel Corp., 66 N.E.2d 334, 78 Ohio App. 87—Paulson v. Embrey, App., 65 N.E.2d 660—Mack v. Weir, App., 60 N.E.2d 931—Cloud v. City of Fremont, 51 N.E.2d 39, 72 Ohio App. 193.

56. Ala.—New York Life Ins. Co. v. Zivitz, 10 So.2d 276, 243 Ala. 379, 143 A.L.R. 321—Royal Ins. Co. v. Robertson, 6 So.2d 880, 242 Ala. 460—Green v. City of Birmingham, 4 So.2d 394, 241 Ala. 684—Southern Home Ins. Co. of the Carolinas v. Boatwright, 176 So. 460, 234 Ala. 668—National Life & Accident Ins. Co. v. Spigener, 144 So. 813, 225 Ala. 655.

Brown Service Ins. Co. v. Childs, 38 So.2d 737, 34 Ala.App. 128, certiorari denied 38 So.2d 741, 251 Ala. 660—North Carolina Mut. Life Ins. Co. v. Jones, 30 So.2d 270, 33 Ala. App. 77—Reaves v. Hoffman, 180 So. 600, 28 Ala.App. 188—New York Life Ins. Co. v. Torrance, App., 153 So. 458, certiorari denied 153 So. 463, 228 Ala. 286—Union Fire Ins. Co. of Paris, France v. Ryals, 145 So. 503, 25 Ala.App. 300.

Ariz.—Smith v. Moroney, 282 P.2d 470, 79 Ariz. 35.

Cal.—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054.

Colo.—Archuleta Mercantile Co. v. Archuleta, 163 P. 964, 62 Colo. 512—Hunt v. Cates, 157 P. 1162, 61 Colo. 365.

Conn.—Michelfelder v. Goldberg, 130 A. 377, 103 Conn. 302.

Fla.—Atlantic Coast Line R. Co. v. Alverson, 116 So. 30, 95 Fla. 73—

Florida East Coast Ry. Co. v. Thompson, 111 So. 525, 93 Fla. 30—McGowan v. City of Kissimmee, 106 So. 413, 90 Fla. 580—Tampa Electric Co. v. Barber, 88 So. 302, 81 Fla. 405—Chambers v. Armour, 83 So. 721, 78 Fla. 577—Bossom v. Gillman, 70 So. 364, 70 Fla. 310.

Ga.—Avery v. Hines, 23 S.E.2d 499, 68 Ga.App. 630.

Ill.—Duffy v. Cortesi, 113 N.E.2d 173, 350 Ill.App. 498, affirmed in part and reversed in part on other grounds 119 N.E.2d 241, 2 Ill.2d 511—Mareno v. Chicago Transit Authority, 96 N.E.2d 653, 342 Ill. App. 443—Tanner v. Palmer, 89 N. E.2d 861, 339 Ill.App. 377—Buehler v. White, 85 N.E.2d 203, 337 Ill. App. 18—Bell v. Illinois Farm Supply Co., 78 N.E.2d 838, 334 Ill. App. 216—New v. Abel Howe Co., 64 N.E.2d 195, 327 Ill.App. 336—Mortvedt v. Western Austin Co., 50 N.E.2d 764, 320 Ill.App. 337—Trust Co. of Chicago v. Ancateau, 46 N.E.2d 125, 317 Ill.App. 186—Mississippi Lime & Material Co. v. Smith, 282 Ill.App. 361—Walters v. Checker Taxi Co., 265 Ill.App. 329—Link v. Alton, G. & St. L. Traction Co., 210 Ill.App. 657—Bishop v. Chicago Telephone Co., 210 Ill.App. 347—Joseph v. Chicago City Ry. Co., 202 Ill.App. 159—Bagaini v. Donk Bros. Coal & Coke Co., 199 Ill.App. 76—Betts v. Tate, 195 Ill.App. 172—George Lueders & Co. v. Hudson Mfg. Co., 195 Ill. App. 28—Johnson v. Goldberg, 195 Ill.App. 25—Huchette v. Williamson County Coal Co., 188 Ill.App. 321.

Ind.—Emerson-Brantingham Implement Co. v. Tooley, 141 N.E. 890, 81 Ind.App. 460.

Iowa.—State v. Klein, 256 N.W. 741, 218 Iowa 1060—Lemire v. National Life Ass'n, 191 N.W. 67, 194 Iowa 1245.

Kan.—Yarnick v. Metropolitan Life Ins. Co., 131 P.2d 881, 156 Kan. 16—Livingston v. Stauffer, 185 P. 728, 105 Kan. 686—Zeeb v. Bahnmaier, 176 P. 643, 103 Kan. 895, 2 A.L.R. 883.

Ky.—Ashland Oil & Refining Co. v. Brashear, 251 S.W.2d 288—Baker's Adm'r v. Frederick, 243 S.W.2d 921—Phillips v. Phillips, 171 S.W.2d 458, 294 Ky. 323—Louisville Ry. Co. v. Prather, 162 S.W.2d 780, 290 Ky. 791—Davis v. Bennett's Adm'r, 159 S.W.2d 39, 289 Ky. 516—Hartford Fire Ins. Co. v. Webb, 135 S.W.2d 883, 281 Ky. 276—Equitable Life Assur. Soc. of U. S. v. Adams, 117 S.W.2d 200, 273 Ky. 512—Prudential Ins. Co. of America v. Gaines, 112 S.W.2d 666, 271 Ky. 496—Golubic v. Rasnich, 60 S. W.2d 616, 249 Ky. 266—Louisville & N. R. Co. v. Grant, 27 S. W.2d 980, 234 Ky. 276—Murphy's Ex'r v. Bryan, 18 S.W.2d 978, 230 Ky. 244—Denny v. Darraugh, 279 S.W. 1069, 213 Ky. 655—Mildren & Keating v. Henderson's Adm'r, 277 S.W. 820, 211 Ky. 458—Myers v. Cassity, 272 S.W. 718, 209 Ky. 315—Coca-Cola Bottling Works of Carrollton v. Lothridge, 251 S.W. 956, 199 Ky. 719—Ewing v. McClanahan, 216 S.W. 592, 186 Ky. 298—Louisville & N. R. Co. v. Baker's Adm'r, 210 S.W. 674, 183 Ky. 795—Sandy Valley & E. Ry. Co. v. Hughes, 205 S.W. 607, 181 Ky. 558—North Jellico Coal Co. v. Stewart, 191 S.W. 451, 173 Ky. 745.

La.—Dixon v. Vicksburg, S. & P. Ry. Co., 71 So. 527, 139 La. 329.

Bass v. Illinois Cent. Ry. Co., 4 La.App. 175—Chisolm v. Roppolo, 2 La.App. 269.

Me.—Morin v. Carney, 165 A. 166, 132 Me. 25.

Mich.—Schneider v. Pomerville, 81 N.W.2d 405, 348 Mich. 49—Wolf v. Providence Wash. Ins. Co. of Providence, R. I., 53 N.W.2d 475, 333 Mich. 333—Blair v. Consolidated Freight Co., 41 N.W.2d 512, 327 Mich. 167—Harding v. Blankenship, 264 N.W. 312, 274 Mich. 118—Miechikoski v. Chicago & N. W. R. Co., 239 N.W. 356, 256 Mich. 85—Crippen v. Chatterton, 200 N.W. 163, 228 Mich. 532—Pachuczynski v. Detroit United Ry., 168 N.W. 418, 202 Mich. 594.

Minn.—Becker v. Megan, 283 N.W. 401, 204 Minn. 283.

Miss.—Vaughan v. Bollis, 73 So.2d 160, 221 Miss. 589—**Corpus Juris Secundum cited in** Rawlings v. Inglebritzen, 52 So.2d 630, 634, 211 Miss. 760—Collins v. McLain, 40 So.2d 183—Redditt v. Hughes, 39 So.2d 861—Tabb v. Davis, 32 So.2d 575, 202 Miss. 538—Hotel Markham v. Patterson, 32 So.2d 255, 202 Miss. 451—Hurdle v. Edwards, 27 So. 2d 887—Flournoy v. Brown, 26 So.2d 351, 200 Miss. 171—Hurdle v. Edwards, 22 So.2d 167—Montgomery Ward & Co. v. Windham, 16 So. 2d 622, 195 Miss. 848, suggestion of error overruled 17 So.2d 208, 195 Miss. 848—Jones v. Carter, 13 So. 2d 623, 195 Miss. 182—City of Meridian v. Akin, 10 So.2d 194, 193 Miss. 505—White v. McCoy, 7 So. 2d 886—Mobile & O. R. Co. v. Bennett, 90 So. 113, 127 Miss. 413.

Mo.—Nichols v. Bresnahan, 212 S.W. 2d 570, 357 Mo. 1126—Weaver v. Mobile & O. R. Co., 120 S.W.2d 1105, 342 Mo. 223.

Greer v. McCrory, App., 192 S.W. 2d 431, affirmed in part and reversed in part on other grounds 197 S.W.2d 669.

Neb.—Long v. Railway Mail Ass'n, 17 N.W.2d 675, 145 Neb. 623—Atwater v. Sellers, 239 N.W. 629, 122 Neb. 118—Stewart v. City of Lincoln, 207 N.W. 511, 114 Neb. 362—Urban v. Novotny, 186 N.W. 337, 107 Neb. 384—Exchange Bank of Wilcox v. Gifford, 167 N.W. 69, 102 Neb. 324.

Nev.—Knock v. Tonopah & G. R. Co., 145 P. 939, 38 Nev. 143, L.R.A.1915F 8.

N.J.—Hager v. Weber, 81 A.2d 155, 7 N.J. 201.

Murphy v. Terzako, 82 A.2d 1, 14 N.J.Super. 254.

Cooper v. De Maio's Estate, 160 A. 213, 10 N.J.Misc. 770—Grove v. Viering, 151 A. 64, 8 N.J.Misc. 519—Adkins v. Philadelphia, Trenton & Chester Co., 146 A. 49, 7 N.J. Misc. 456.

N.Y.—Sharick v. Marvin, 150 N.Y.S. 2d 891, 1 A.D.2d 284—Luongo v. City of Syracuse, 139 N.Y.S.2d 30, 285 App.Div. 1015—McAndrew v. 5905 Broadway Realty Corp., 123 N.Y.S.2d 141, 282 App.Div. 757—Berk v. Schenectady Hotel Co., 110 N.Y.S.2d 69, 279 App.Div. 249—Rapant v. Ogsbury, 109 N.Y.S.2d 737, 279 App.Div. 298—Raia v. Grace Line, 108 N.Y.S.2d 137, 279 App.Div. 647—Guinan v. Smith, 105 N.Y.S.2d 633, 278 App.Div. 1006—Strone v. Hudson Transit Lines, 104 N.Y.S.2d 521, 278 App.Div. 815—Armstrong v. Swift, 103 N.Y.S. 2d 362, 278 App.Div. 738, reargument denied 105 N.Y.S.2d 374, 278 App.Div. 891—Knapp v. Realty Hotels, 100 N.Y.S.2d 176, 277 App.Div. 977, reargument denied 100 N.Y.S. 2d 1019, 277 App.Div. 1037—Gratien v. Fort Plain Nat. Bank of Fort Plain, N. Y., 99 N.Y.S.2d 943, 277 App.Div. 1017—Kleinhans v. Sun Oil Co., 98 N.Y.S.2d 868, 277 App.Div. 940—Lennon v. Stibbs Transp. Lines, 96 N.Y.S.2d 744, 277 App.Div. 807—Kleinman v. Metropolitan Life Ins. Co., 93 N.Y.S.2d 511, 276 App.Div. 142—Sullivan v. Triboro Coach Corp., 92 N.Y.S.2d 454, 276 App.Div. 769—Nixon v. Genung's Inc., 92 N.Y.S.2d 40, 275 App.Div. 1049—Buff & Buff v. Kaminsky, 90 N.Y.S.2d 240, 275 App. Div. 982—Esposito v. City of New York, 89 N.Y.S.2d 781, 275 App. Div. 912—Toner v. Gotham Credit Corp., 89 N.Y.S.2d 734, 275 App.Div. 959—McCarthy v. Troberg, 88 N.Y. S. 436, 275 App.Div. 139, appeal withdrawn 90 N.E.2d 492, 300 N.Y. 632—Lazes v. Kaplan, 88 N.Y.S.2d 313, 275 App.Div. 790—Johnson v. Tyler, 87 N.Y.S.2d 177, 275 App.Div. 726, reargument denied 89 N.Y.S. 2d 239, 275 App.Div. 865—Pryga v. Will, 87 N.Y.S.2d 162, 275 App.Div. 52—Paolantonio v. Long Island R. R. Co., 85 N.Y.S.2d 471, 274 App. Div. 1063, affirmed 90 N.E.2d 495, 300 N.Y. 645—Benson v. Hotel Onondaga Operating Co., 84 N.Y.S. 2d 716, 274 App.Div. 971, followed in 85 N.Y.S.2d 896, 274 App.Div. 971—Maher v. Colilli, 80 N.Y.S.2d 467, 274 App.Div. 832—Rubin Bros. v. Brady Transfer & Storage Co., 78 N.Y.S.2d 614, 273 App.Div. 1009—Jaffy v. Young & Halstead Co., 77 N.Y.S.2d 177, 273 App.Div. 902—Korzeniewski v. Welch Grape Juice

Co., 76 N.Y.S.2d 421, 273 App.Div. 803—Kenniff v. City of New York, 76 N.Y.S.2d 51, 273 App.Div. 815—Giordano v. Seaman Trucking Co., 75 N.Y.S.2d 115, 273 App.Div. 787—Retzler v. Bank of N. Y., 74 N.Y.S.2d 657, 272 App.Div. 1070—Sonnesen v. Panama Transp. Co., 72 N.Y.S.2d 153, 272 App.Div. 948, reargument denied 75 N.Y.S.2d 771, first case, 272 App.Div. 1071, opinion adhered to 75 N.Y.S.2d 771, second case, 272 App.Div. 1071, reversed on other grounds 82 N.E.2d 569, 298 N.Y. 262, motion denied 84 N.E.2d 324, 298 N.Y. 856, certiorari denied 69 S.Ct. 1157, 337 U. S. 919, 93 L.Ed. 1760—Schwartz v. Kraver, 72 N.Y.S.2d 49, 272 App. Div. 948—Cohen v. Max Michelson, Inc., 72 N.Y.S.2d 48, 272 App.Div. 937—Gardner v. Schulman, 71 N.Y.S.2d 284, 272 App.Div. 888—Gallub v. Cirillo, 71 N.Y.S.2d 13, 272 App.Div. 918—Schwartz v. City of New York, 70 N.Y.S.2d 187, 272 App.Div. 831, reargument denied 72 N.Y.S.2d 273, 272 App.Div. 910—Cardamona v. Hartigan, 70 N.Y. S.2d 158, 272 App.Div. 825—Burgess v. Long Island R. Co., 69 N. Y.S.2d 598, 272 App.Div. 768—Reiter v. City of New York, 69 N.Y.S. 2d 172, 272 App.Div. 770—Swartz v. Sixty Wall Tower, 69 N.Y.S.2d 154, 272 App.Div. 771—Gospodarek v. Murray, 68 N.Y.S.2d 145, 271 App.Div. 1038, reargument denied In re Murray's Estate, 71 N.Y.S. 2d 727, 273 App.Div. 843—Rizzo et al. v. City of New York, 67 N.Y. S.2d 95, 271 App.Div. 892—Sciremammana v. City of New York, 66 N.Y.S.2d 55, 271 App.Div. 842—Posner v. Precision Shapes, 65 N.Y.S. 2d 733, 271 App.Div. 435—McCaffry v. New York City, 65 N.Y.S.2d 686, 271 App.Div. 837—Bergen v. Fortis Contracting Co., 63 N.Y.S.2d 292, 270 App.Div. 1036, affirmed 79 N. E.2d 267, 297 N.Y. 856—Sussman v. Bio Associates, Inc., 61 N.Y.S. 2d 297, 270 App.Div. 886—Treshman v. Republican Pub. Co., 60 N. Y.S.2d 544, 270 App.Div. 505—Pipitone v. Standard Fruit & S. S. Co., 60 N.Y.S.2d 465, 270 App.Div. 844, reargument denied 66 N.Y.S.2d 158, 271 App.Div. 786, reargument denied 67 N.Y.S.2d 220, 275 App.Div. 671—Albert & Harrison v. Colonial Sand & Stone Co., 60 N.Y.S.2d 306, 270 App.Div. 831, appeal denied 62 N.Y.S.2d 580, 270 App.Div. 893—Dunstone v. Fowler, 58 N.Y.S.2d 2, 269 App.Div. 947—Dutton v. Marcone, 58 N.Y.S.2d 1, 269 App. Div. 947—Simon v. Brooklyn & Queens Transit Corp., 55 N.Y.S. 2d 548, 269 App.Div. 847—Sale v. Montrose Indus. Bank, 54 N.Y.S.2d 797, 269 App.Div. 762—Walsh v. Chisholm-Ryder Co., 54 N.Y.S.2d 232, 269 App.Div. 728—Bernstorff v. Title Guarantee & Trust Co., 53 N. Y.S.2d 877, 269 App.Div. 708—Hutchinson v. City of New York, 53 N.Y.S.2d 876, 269 App.Div. 708—Hahn v. Dorbin Holding Co., 53 N.Y.S.2d 397, 269 App.Div. 674—Foy v. Yett, 52 N.Y.S.2d 854, 268 App.Div. 1021—Mattoon v. Platt, 52 N.Y.S.2d 846, 268 App.Div. 1077—Gordon v. Brooklyn & Queens Transit Corp., 52 N.Y.S.2d 324, 268 App.Div. 1044—Kramer v. Old Colony Motor Lines, 50 N.Y.S.2d 580, 268 App.Div. 870—Gerlach v. Freeport Mach. Works, 49 N.Y.S.2d 321, 268 App.Div. 824—Miller v. Noyes, 49 N.Y.S.2d 167, 268 App.Div. 797, affirmed 61 N.E.2d 750, 294 N.Y. 755—Kahn v. Crystal Lumber & Trim Corporation, 48 N.Y.S.2d 857, 268 App.Div. 782, reargument denied 50 N.Y.S.2d 680, 268 App.Div. 862—Wells v. Thaber Realty Co., 48 N.Y.S.2d 489, 268 App.Div. 751—Berman v. Gravenhorst, 45 N.Y. S.2d 635, 267 App.Div. 781—O'Shaughnessy v. Brooklyn & Queens Transit Corp., 44 N.Y.S.2d 421, 266 App.Div. 1008—Papas v. Equitable Life Assur. Soc. of U. S., 44 N.Y.S.2d 389, 266 App.Div. 982—Lampert v. Baron Waiser Truck Renting Corp., 41 N.Y.S.2d 126, 266 App.Div. 748—Lager v. City of New York, 41 N.Y.S.2d 113, 266 App.Div. 748—Mohr v. Title Guarantee & Trust Co., 40 N.Y.S.2d 209, 266 App.Div. 674—Erickson v. Commercial Casualty Ins. Co., 39 N.Y.S.2d 72, 265 App.Div. 327—Youds v. Pinaud, Inc., 38 N.Y.S. 2d 281, 265 App.Div. 882—Whitehead v. Mutual Life Ins. Co. of New York, 37 N.Y.S.2d 261, 264 App.Div. 647—Shabbona Creston Oil & Gas Corp. v. Doherty, 35 N.Y.S.2d 839, 264 App.Div. 909, appeal denied 36 N.Y.S.2d 426, 264 App.Div. 918, reargument denied 37 N.Y.S.2d 831, 265 App.Div. 812—Josowitz v. Brooklyn & Queens Transit Corp., 35 N.Y.S.2d 814, 264 App.Div. 900—O'Shaughnessy v. Brooklyn & Queens Transit Corp., 34 N.Y.S.2d 965, 264 App.Div. 787—Stern v. City of New York, 34 N.Y.S.2d 279, 264 App.Div. 738—City of New York v. Milone, 32 N.Y.S.2d 380, 263 App.Div. 885—Globe Crayon Co. v. Manufacturers Chemical Co., 31 N.Y.S.2d 691, 263 App.Div. 131—Barnes v. Brooklyn & Queens Transit Corp., 31 N.Y.S.2d 27, 263 App.Div. 737—Brenna v. Hulkower, 30 N.Y.S.2d 289, 262 App.Div. 1023—Lee v. Industrial Laundry Mach. Co., 27 N.Y.S.2d 202, 261 App.Div. 741—Rechtweg v. City of New York, 23 N.Y.S.2d 282, 260 App.Div. 940—Pagano v. Boston, Albany, Rochester, Buffalo Express, 23 N.Y.S. 2d 266, 260 App.Div. 960—Flah & Co. v. Dudley, 20 N.Y.S.2d 525, 259 App.Div. 1054—Friedenberg v. Evans, 20 N.Y.S.2d 211, 259 App.Div. 605—Williamson v. Delehanty, 17 N.Y.S.2d 595, 258 App.Div. 991, appeal withdrawn 32 N.E.2d 832, 285 N.Y. 546—Zuccarello v. Bergson, 16 N.Y.S.2d 950, 258 App.Div. 971—Westfall v. Title Guarantee & Trust Co., 16 N.Y.S.2d 723, 258 App. Div. 928—Jackson v. Dickman, 16 N.Y.S.2d 366, 258 App.Div. 912—Gramaglia v. City of New York, 13 N.Y.S.2d 638, 257 App.Div. 990—Conant v. Forman, 8 N.Y.S.2d 801, 255 App.Div. 1029—Westfall v. Title Guarantee & Trust Co., 8 N.Y.S.2d 297, 255 App.Div. 1000—Gallagher v. Birney, 7 N.Y.S.2d 399, 255 App.Div. 810—Miller v. New York Rapid Transit Corp., 5 N.Y.S.2d 642, 254 App.Div. 831—Miller v. Roesler, 5 N.Y.S.2d 11, 254 App.Div. 905—Lagravinese v. Knickerbocker Ice Co., 285 N.Y.S. 473, 247 App.Div. 736—Fia v. Kreis, 282 N.Y.S. 389, 246 App.Div. 531—Vallario v. Prudential Ins. Co. of America, 280 N.Y.S. 907, 245 App.Div. 755—Boyer v. Lehigh Valley R. Co., 251 N.Y.S. 257, 233 App. Div. 150—White v. Lehigh Valley R. Co., 206 N.Y.S. 749, 211 App.Div. 177—Palisade Curtain Co. v. Korn, 188 N.Y.S. 497, 197 App.Div. 88.

Saltzman v. City of New York, 78 N.Y.S.2d 407, 191 Misc. 724.

Boshes v. Pearlman, 61 N.Y.S. 2d 706—Citarella v. Equitable Life Assur. Soc., 59 N.Y.S.2d 215—Phillips v. Oltarsh, 56 N.Y.S.2d 429—Spierto v. Matcovsky, 54 N.Y.S.2d 101—Stott v. Hotaling, 53 N.Y.S. 2d 755, affirmed 53 N.Y.S.2d 756, 269 App.Div. 718, affirmed 65 N.E. 2d 101, 295 N.Y. 664—McKay v. Coslow, 43 N.Y.S.2d 55—General Tire Repair Co. v. Brande, 159 N. Y.S. 826.

N.D.—Miller v. Kraft, 223 N.W. 190, 57 N.D. 559.

Ohio.—Stremanos v. City of Cleveland, App., 77 N.E.2d 504—A. Macaluso Fruit Co. v. Commercial Motor Freight, App., 57 N.E.2d 692—Brice v. Samuels, 17 N.E.2d 280, 59 Ohio App. 9.

Okl.—Webb v. Warren, 264 P. 180, 129 Okl. 151—Iron Trades Product Co. v. Murray Tool & Supply Co., 230 P. 703, 104 Okl. 103.

Pa.—Tingle v. Curtis-Martin Newspapers, Independence Square, Philadelphia, 179 A. 80, 318 Pa. 537.

Tex.—Harris v. Interstate Lumber Co., Civ.App., 303 S.W.2d 950—Phipps v. Evans, Civ.App., 262 S. W.2d 430, error refused no reversible error—Trotter v. McLennan County Water Control & Imp. Dist. No. 1, Civ.App., 252 S.W.2d 734, error dismissed—Wilson v. Teague Independent School Dist., Civ.App., 251 S.W.2d 263, error refused—Walker v. Simons, Civ.App., 243 S.W.2d 600, error refused no reversible error—National Cas. Co. v. Hampton, Civ..App., 216 S.W. 2d 614, error refused no reversible error—Thompson v. Clement, Civ. App., 202 S.W.2d 341, error refused

posed to the manifest weight of the evidence,[56.5] | and a verdict on a finding contrary to established

no reversible error—State v. Dickey, Civ.App., 158 S.W.2d 844, error refused—American Nat. Ins. Co. v. Williams, Civ.App., 144 S.W.2d 662—Arkansas Louisiana Gas Co. v. Max, Civ.App., 118 S.W.2d 383, error dismissed—Bibby v. Bibby, Civ.App., 114 S.W.2d 284, error dismissed.—Stell v. Salters, Civ. App., 83 S.W.2d 742—San Antonio Public Service Co. v. Fraser, Civ. App., 70 S.W.2d 232—Dallas Trust & Savings Bank v. Pickett, Civ. App., 59 S.W.2d 1090—Krueger v. Bankers Lloyds, Civ.App., 45 S.W. 2d 363—Rio Bravo Oil Co. v. Daniel, Civ.App., 20 S.W.2d 369—City of Abilene v. Moore, Civ.App., 12 S.W.2d 604—Gulf, C. & S. F. Ry. Co. v. Coffman, Civ.App., 11 S.W. 2d 631, affirmed Coffman v. Gulf, C. & S. F. Ry. Co., Com.App., 23 S.W.2d 304—Texas Vegetable Union v. Obets, Civ.App., 4 S.W.2d 1058—Texas Employers' Ins. Ass'n v. Manning, Civ.App., 299 S.W. 534—Kophal v. Jantz, Civ.App., 297 S.W. 336—Dunlap v. Wright, Civ. App., 280 S.W. 276—Kirby Lumber Co. v. R. L. Lumber Co., Civ.App., 279 S.W. 546—Brownwood Mut. Life Ins. Ass'n of Brownwood, Tex. v. Schumann, Civ.App., 276 S.W. 956, reversed on other grounds Schumann v. Brownwood Mut. Life Ins. Ass'n, Com.App., 286 S.W. 200—Schimmel v. Meyer, Civ.App., 272 S.W. 639—Whitney v. Murrie, Civ.App., 264 S.W. 270—Lowry v. Gill, Civ.App., 248 S.W. 1096—Schaff v. Hill & Thompson, Civ. App., 238 S.W. 1037—Stolle v. kanetzky, Civ.App., 238 S.W. 724—Hines v. Roan, Civ.App., 230 S.W. 1070—Selz Schwab & Co. v. Shipman, Civ.App., 230 S.W. 842—Texas & N. O. Ry. Co. v. Wagoner, Civ.App., 224 S.W. 377—Grelle v. Grelle, Civ.App., 206 S.W. 114—Toole v. Moore, Civ.App., 203 S. W. 429, appeal dismissed Moore v. American Lumber Co., Com.App., 231 S.W. 318—Eureka Ice Co. v. Buckloo, Civ.App., 188 S.W. 510, error refused—Texas & N. O. R. Co. v. Jones, Civ.App., 187 S.W. 717.

Vt.—Catto v. Liberty Granite Co., 141 A. 684, 101 Vt. 143.

Va.—Norfolk Southern Ry. Co. v. Harris, 59 S.E.2d 110, 190 Va. 966—Nelson v. Liggan, 56 S.E.2d 54, 190 Va. 213—Smith v. Turner, 16 S.E.2d 370, 178 Va. 172, 136 A.L.R. 1251—Norfolk Southern R. Co. v. Hudgins, 142 S.E. 412, 150 Va. 229—Norfolk Southern R. Co. v. Hudgins, 142 S.E. 409, 150 Va. 219.

W.Va.—Hurt v. Gwinn, 95 S.E.2d 248—Muldoon v. Kepner, 91 S.E.2d 727—Sammons Bros. Const. Co. v. Elk Creek Coal Co., 65 S.E.2d 94, 135 W.Va. 656—Burgess v. Gilchrist, 17 S.E.2d 804, 123 W.Va. 727, 138 A.L.R. 676—Marshall v. Conrad, 191 S.E. 553, 118 W.Va. 321—Beall v. Morgantown & Kingwood R. Co., 190 S.E. 333, 118 W. Va. 289—Le Grand v. Hamrick, 182 S.E. 577, 116 W.Va. 572—Appaline Oil Co. v. Clemens, 169 S.E. 792, 113 W.Va. 134—Armour Fertilizer Works v. Finnell, 164 S.E. 253, 112 W.Va. 325—McGraw v. Ætna Ins. Co., 146 S.E. 823, 106 W.Va. 714—Hetzel v. Kemper, 135 S.E. 667, 102 W.Va. 567—Wood v. Wyoming County Court, 129 S.E. 747, 100 W.Va. 29—Keyser Canning Co. v. Klots Throwing Co., 118 S. E. 521, 94 W.Va. 346, 31 A.L.R. 283—McKown v. Citizens' State Bank of Ripley, 114 S.E. 271, 91 W.Va. 716—Dexter & Carpenter v. Co-operative Fuel Co., 111 S.E. 153, 90 W.Va. 465—Kyle v. Huddlestun, 92 S.E. 679, 80 W.Va. 439—Owen v. Appalachian Power Co., 89 S.E. 262, 78 W.Va. 596—Showalter v. Chambers, 88 S.E. 1072, 77 W.Va. 720—Fuccy v. Coal & Coke Ry. Co., 83 S.E. 301, 75 W.Va. 134.

Wis.—Wilfert v. Nielson, 27 N.W.2d 893, 250 Wis. 646—Du Bois v. Johnson, 298 N.W. 590, 238 Wis. 161—Sikora v. Great Northern Ry. Co., 282 N.W. 588, 230 Wis. 283—Benedict v. Berg, 281 N.W. 650, 229 Wis. 1.

4 C.J. p 863 note 29—26 C.J. p 572 note 57—27 C.J. p 868 note 94 [a]—33 C.J. p 145 note 13—43 C.J. p 1325 note 52—48 C.J. p 1156 note 32—52 C.J. p 534 notes 35-37—62 C.J. p 224 note 63.

What constitutes

To set a verdict aside as against the weight of evidence, the evidence must raise the inference that the verdict resulted from mistake, passion, or prejudice.

N.J.—Palumbo v. Pennsylvania R. Co., 159 A. 322, 10 N.J.Misc. 204.

Disregard of, or refusal to accept, material or uncontradicted testimony

(1) Jury's disregard of material testimony which, if considered and given due weight, would require different verdict, requires grant of new trial.

Neb.—Platte Valley Bank v. Franta, 300 N.W. 347, 140 Neb. 453—Davis v. Security Ins. Co., 298 N.W. 687, 139 Neb. 730—Cuva v. Glens Falls Ins. Co. of Glens Falls, N. Y., 285 N.W. 917, 136 Neb. 359—Peterson v. Omaha & Council Bluffs St. Ry. Co., 269 N.W. 510, 131 Neb. 676.

(2) Although a jury is not required to accept as true evidence of a witness merely because there is no direct evidence to contradict it, appellate court will not permit a jury to act in an arbitrary manner in refusing to accept uncontradicted testimony.

Kan.—Reeves v. Child, 194 P.2d 919, 165 Kan. 341.

(3) A verdict for plaintiff in a malicious prosecution action cannot stand, where there is credible uncontradicted testimony that the facts before defendant reasonably warranted the conclusion that plaintiff was guilty of the offense charged.

Ga.—South Georgia Grocery Co. v. Banks, Ga.App., 182 S.E. 61, 52 Ga.App. 1.

(4) Reversal of judgment for injuries sustained by infant when struck by an automobile while crossing street was required where uncontradicted testimony showed that infant was guilty of contributory negligence.

N.Y.—Atkinson v. Dickerman, 13 N. Y.S.2d 570, 257 App.Div. 986.

Verdicts set aside or reversed

(1) A verdict is to be given great weight but will be reversed where the evidence on one side is cogent and strong and given by unimpeached and disinterested witnesses, and that on the other side is weak and improbable or given by interested witnesses, or witnesses whose credibility has been impeached.

Miss.—Universal Truck Loading Co. v. Taylor, 164 So. 3, 174 Miss. 353.

(2) The party holding the affirmative is required to prove his case by a preponderance of all the evidence and if evidence does not preponderate in his favor or is evenly balanced a verdict in his favor must be reversed.

Ill.—Bishop v. Nikolas, 51 N.E.2d 828, 320 Ill.App. 681.

A verdict supported only by a scintilla of evidence may be so flagrantly against the evidence as to require reversal.

Ky.—Murphy's Ex'r v. Bryan, 18 S. W.2d 978, 230 Ky. 244.

Evidence sufficient to go to jury

(1) Where evidence is sufficient to take case to jury, judgment will not be reversed and new trial granted on ground that verdict is palpably and flagrantly against the evidence.

Ky.—Clemens v. Richards, 200 S.W. 2d 156, 304 Ky. 154.

(2) It has been held, however, that even though the evidence was sufficient to go to the jury the court of appeals may set aside the judgment as against the evidence.

Ky.—Grubb v. Coleman Fuel Co., 114 S.W.2d 477, 272 Ky. 847.

Tex.—Long v. Crutchfield, Civ.App., 295 S.W. 625.

56.5 Fla.—Yappa v. Bennett, 80 So. 2d 600—City of Miami v. Miner, 169 So. 609, 124 Fla. 684.

physical facts cannot stand.[56.10] Likewise, notwithstanding the appellate court will not ordinarily

Ill.—Parker v. Bernat Bldg. Corp., 143 N.E.2d 72, 14 Ill.App.2d 110—Vandeveer v. Preston, 140 N.E.2d 521, 13 Ill.App.2d 29—People v. Howell, 138 N.E.2d 691, 12 Ill.App.2d 84—Eilers v. Chicago Transit Authority, 119 N.E.2d 449, 2 Ill.App.2d 233—Burns v. Stouffer, 100 N.E.2d 507, 344 Ill.App. 105—Sundene v. Koppenhoefer, 98 N.E.2d 538, 343 Ill.App. 164—Jackson v. Romanchuk, 85 N.E.2d 348, 337 Ill.App. 282—Holland v. Chicago Transit Authority, 84 N.E.2d 861, 337 Ill.App. 100—Bell v. Illinois Farm Supply Co., 78 N.E.2d 838, 334 Ill.App. 216—De Lattre v. Hayes Freight Lines, 75 N.E.2d 536, 332 Ill.App. 438—Carroll v. Friel, 73 N.E.2d 920, 332 Ill.App. 134—Russell v. Consolidated Forwarding Corp., 71 N.E.2d 853, 330 Ill.App. 529—Krueger v. Friel, 71 N.E.2d 815, 330 Ill.App. 557—Moore v. Sautter, 70 N.E.2d 260, 330 Ill.App. 132—Smith v. Bloom, 65 N.E.2d 483, 328 Ill.App. 310—Rogers v. New York, C. & St. L. R. Co., 65 N.E.2d 243, 328 Ill.App. 123—Jacobson v Chicago Motor Coach Co., 65 N.E.2d 142, 328 Ill. App. 131—Robertson v. Louisville & N. R. Co., 63 N.E.2d 608, 327 Ill.App. 44—Bell v. McMullen, 63 N.E.2d 523, 327 Ill.App. 12—Anderson v. Cummings, 60 N.E.2d 260, 325 Ill.App. 519—Weil v. Goldblatt Bros., 60 N.E.2d 256, 325 Ill.App. 579—Lantz v. Dortman, 58 N.E.2d 922, 324 Ill.App. 564—Carroll v. Leander J. McCormick Bldg. Corp., 58 N.E.2d 196, 324 Ill.App. 317—Marshall v. Cummings, 56 N.E.2d 488, 323 Ill.App. 650—Panitch v. Yellow Cab Co., 55 N.E.2d 404, 323 Ill.App. 284—Mayberry v. Cage, 54 N.E.2d 619, 322 Ill.App. 655—Lehan v. East St. Louis Shade & Fixture Co., 53 N.E.2d 728, 322 Ill.App. 74—Risch v. Consumers Petroleum Co., 53 N.E.2d 286, 321 Ill.App. 438—Kouba v. City of Chicago, 51 N.E.2d 617, 320 Ill.App. 435—Hintze v. Burren, 49 N.E.2d 876, 320 Ill.App. 139—Young v. Illinois Cent. R. Co., 49 N.E.2d 268, 319 Ill.App. 311—Marsh v. O'Flaherty, 48 N.E.2d 806, 319 Ill.App. 250—Feggett v. Chicago & E. I. R. Co., 48 N.E.2d 215, 318 Ill.App. 389—Welter v. Bowman Dairy Co., 47 N.E.2d 739, 318 Ill.App. 305—Louis v. Checker Taxi Co., 47 N.E.2d 351, 318 Ill.App. 71—Shaw v. Courtney, 46 N.E.2d 170, 317 Ill.App. 422, affirmed 53 N.E.2d 432, 385 Ill. 559—McKay v. Wilhelm, 45 N.E.2d 194, 316 Ill.App. 397—Sandberg v. Williams, 39 N.E.2d 395, 313 Ill.App. 149—Hirshman v. National Mineral Co., 35 N.E.2d 693, 311 Ill.App. 169—Blake v. Courtney, 31 N.E.2d 330, 308 Ill.App. 319—Mulroy v. Prudential Ins. Co. of America, 20 N.E.2d 613, 299 Ill. App. 598—Tallmadge v. Beuttas, 19 N.E.2d 107, 298 Ill.App. 624—Rodeghier v. Metropolitan Life Ins. Co., 13 N.E.2d 854, 294 Ill.App. 605—Pelkey v. Eagle, 13 N.E.2d 848, 294 Ill.App. 604—Rocca v. Metropolitan Life Ins. Co., 13 N.E. 2d 109, 293 Ill.App. 634—Kroon v. Travelers' Ins. Co., 7 N.E.2d 935, 290 Ill.App. 35—Leoni v. McMillan, 5 N.E.2d 742, 287 Ill.App. 579—Mississippi Lime & Material Co. v. Smith, 282 Ill.App. 361.

Miss.—Standard Oil Co. v. Henley, 25 So.2d 400, 199 Miss. 819.

N.Y.—Rapant v. Ogsbury, 109 N.Y. S.2d 737, 279 App.Div. 298.

Ohio.—Asteri v. City of Youngstown, App., 121 N.E.2d 143—Holliday v. Jones, App., 84 N.E.2d 602—Ransom v. Feeney, 76 N.E.2d 908, 81 Ohio App. 7—Thomson-Davis Chevrolet v. Lawrence, App., 64 N.E.2d 65—Bostick v. Beward, App., 38 N.E.2d 209—Gustely v. Bowman, App., 34 N.E.2d 784—Shoup v. Clemans, App., 31 N.E. 2d 103.

Opposite conclusion must be clearly evident

Ill.—Smith v. Bregstone's Inc., 143 N.E.2d 79, 14 Ill.App.2d 110—Anderson v. Launer, 142 N.E.2d 838, 13 Ill.App.2d 482—Hulke v. International Mfg. Co., 142 N.E.2d 717, 14 Ill.App.2d 5—Dinger v. Rudow, 142 N.E.2d 128, 13 Ill. App.2d 444—Niman v. Pecatonica Livestock Exchange, Inc., 141 N.E. 2d 327, 13 Ill.App.2d 144—Black v. White, 140 N.E.2d 736, 13 Ill.App. 2d 134.

56.10 Ariz.—Standard Oil Co. of California v. Shields, 119 P.2d 116, 58 Ariz. 239.

Ark.—**Corpus Juris Secundum cited in** Providence Washington Ins. Co. v. Eagle Milling Co., 219 S.W.2d 233, 214 Ark. 918—**Corpus Juris Secundum cited in** Newsom v. Glaze, 219 S.W.2d 232, 215 Ark. 40—**Corpus Juris Secundum cited in** Alldread v. Mills, 199 S.W.2d 571, 573, 211 Ark. 99—Magnolia Petroleum Co. v. Saunders, 104 S. W.2d 1062, 193 Ark. 1080—St. Louis-San Francisco Ry. Co. v. Stewart, 207 S.W. 440, 137 Ark. 6—Chicago, R. I. & P. Ry. Co. v. Womble, 199 S.W. 81, 131 Ark. 411.

Cal.—Kircher v. Atchison, T. & S. F. R. Co., 195 P.2d 427, 32 C.2d 176.

Colo.—Winterberg v. Thomas, 246 P. 2d 1058, 126 Colo. 60.

Ill.—Rogers v. New York, C. & St. L. R. Co., 65 N.E.2d 243, 328 Ill. App. 123.

Ky.—Coney Island Co. v. Brown, 162 S.W.2d 785, 290 Ky. 750.

Minn.—Price v. Mackner, 58 N.W.2d 260, 239 Minn. 119.

Mo.—Ducoulombier v. Thompson, 124 S.W.2d 1105, 343 Mo. 991.

Smith v. East St. Louis Ry. Co., 123 S.W.2d 198, 234 Mo.App. 1220—Weaver v. Mobile & O. R. Co., 120 S.W.2d 1105, 342 Mo. 223—Schmitt v. Standard Oil Co. of Indiana, App., 221 S.W. 389.

Neb.—Borcherding v. Eklund, 55 N. W.2d 643, 156 Neb. 196.

N.M.—Alexander v. Cowart, 271 P. 2d 1005, 58 N.M. 395—Ortega v. Koury, 227 P.2d 941, 55 N.M. 142.

N.Y.—Schrager v. Foster, 168 N.Y.S. 240, 181 App.Div. 923.

Tex.—Meeker v. Teer, Civ.App., 122 S.W.2d 338, error dismissed—Metropolitan Life Ins. Co. v. Ray, Civ. App., 105 S.W.2d 377.

Vt.—Ellison v. Colby, 8 A.2d 637, 110 Vt. 431.

Va.—Noland v. Fowler, 18 S.E.2d 251, 179 Va. 19.

W.Va.—Reece v. Hall, 95 S.E.2d 648—Marshall v. Conrad, 191 S.E. 553, 118 W.Va. 321.

4 C.J. p 863 note 29 [b].

Similar statements of rule

(1) The finding of the jury will be set aside if based on testimony which cannot be true, on any reasonable hypothesis, considering the circumstances and uncontroverted physical facts.

Tex.—San Antonio & A. P. Ry. Co. v. Biggs, Civ.App., 283 S.W. 627.

(2) Where the overwhelming weight of evidence and physical circumstances showed that the verdict was wrong and should have been set aside, the appellate court must do what the trial court should have done, notwithstanding some evidence supporting the verdict would prevent a directed verdict.

Ala.—Great Atlantic & Pacific Tea Co. v. Donaldson, 156 So. 859, 26 Ala.App. 179, certiorari denied 156 So. 865, 229 Ala. 276.

Actions in trespass

The rule that a verdict cannot stand when against the "incontrovertible physical facts" is customarily applied in actions in trespass where the testimony of a plaintiff or in his behalf would carry the case to the jury if it was not completely discredited by some physical fact introduced into the case with mathematical certainty or open to visual inspection or both, and the rule is invoked successfully only in support of a challenge to plaintiff's freedom from contributory negligence.

Pa.—MacDonald v. Pennsylvania R. Co., 36 A.2d 492, 348 Pa. 558.

Beyond reasonable doubt

To justify the court in rescinding a verdict on ground that evidence supporting it is incredible, undisputed physical facts must demon-

consider the weight of the testimony, or disturb a verdict founded therein, it may set aside the verdict where there is a total lack of proof to sustain it,[57] where the evidence is legally insufficient to support the verdict,[58] where there is a strong preponderance of evidence over that on which the verdict is based, and it appears that injustice has been done[59] or where the manifest injustice thereof shows mistake,[60] prejudice, sympathy, corruption, or other improper motive on the part of the jury,[61] or where the verdict is so contrary to the weight of the evidence as to shock the ordinary fair minded person.[62] The power of a court of review to set aside a verdict as against the weight of the evidence must be exercised judiciously, and only under circumstances where the interests of justice demand it.[62.5]

§ 1650. Amount of Recovery

Generally, a finding by a jury of value or of the amount of damages will not be disturbed by a reviewing

strate that evidence is false beyond a reasonable doubt.
Md.—Campbell v. State, to Use of Dix, 100 A.2d 798, 203 Md. 338—York Motor Exp. Co. v. State, for the Use of Hawk, 74 A.2d 12, 195 Md. 525.

Verdicts held not contrary to established physical facts
Cal.—Kircher v. Atchison, T. & S. F. Ry. Co., 195 P.2d 427, 32 C.2d 176.
Ky.—Smith v. Dunning, 122 S.W.2d 781, 275 Ky. 733.
Mo.—Higgins v. Terminal R. R. Ass'n of St. Louis, 241 S.W.2d 380, 362 Mo. 264.
Pa.—Miller v. Measmer, 44 A.2d 284, 353 Pa. 18.
Wis.—Kleckner v. Great Am. Indem. Co., 44 N.W.2d 560, 257 Wis. 574.

57. Ind.—Johnnie J. Jones Exposition v. Terry, 63 N.E.2d 159, 116 Ind.App. 189—Bowes v. Lambert, 51 N.E.2d 83, 114 Ind.App. 364, rehearing denied 51 N.E.2d 897, 114 Ind.App. 364.
Mo.—Siegel v. Ellis, 288 S.W.2d 932—Weaver v. Mobile & O. R. Co., 120 S.W.2d 1105, 342 Mo. 223.
Fyock v. Riales, App., 251 S.W.2d 102—Johnson v. Thompson, App., 236 S.W.2d 1.
N.Y.—Posner v. Precision Shapes, 65 N.Y.S.2d 733, 271 App.Div. 435—Lager v. City of New York, 41 N.Y.S.2d 113, 266 App.Div. 748.
Okl.—Riedt v. Winters Drug Co., 128 P.2d 1008, 191 Okl. 264—Riddle v. Garner, 52 P.2d 837, 175 Okl. 325—Hart Grocery Co. v. Hunt, 52 P.2d 66, 175 Okl. 32.
Pa.—York Trust Co. v. Wiest, Com. Pl., 66 York Leg.Rec. 136.
Tex.—Goldstein Hat Mfg. Co. v. Cowen, 136 S.W.2d 867, Civ.App., error dismissed, judgment correct—Nickel v. Nickel, Civ.App., 130 S.W.2d 1085—Oden v. McAdams, Civ.App., 108 S.W.2d 920.
Va.—Hebner v. Sullivan, 72 S.E.2d 689, 194 Va. 259.
W.Va.—Wilson v. Edwards, 77 S.E. 2d 164, 138 W.Va. 613—Thrasher v. Amere Gas Utilities Co., 75 S.E. 2d 376, 138 W.Va. 166, appeal dismissed American Gas Utilities Co. v. Public Service Commission of State of W. Va., 74 S.Ct. 478, 347 U.S. 910, 98 L.Ed. 1067.

58. Ala.—U. S. Fidelity & Guaranty Co. v. Miller, 179 So. 239, 235 Ala. 340.
Fla.—Charlotte Harbor & N. Ry. Co. v. Buchan, 71 So. 842, 71 Fla. 575.
Ill.—Deming v. Prudential Ins. Co. of America, 190 Ill.App. 604.
Ind.—Oliver Farm Equipment Sales Co. v. Walters, 37 N.E.2d 9, 109 Ind.App. 551.
Ky.—Hines v. Wilson's Adm'x, 231 S.W. 23, 191 Ky. 543.
N.Y.—De Feo v. City of New York, 28 N.Y.S.2d 822, 262 App.Div. 898—Straub v. Buffalo Broadcasting Corporation, 289 N.Y.S. 1020, 247 App.Div. 669.
Okl.—Berwyn Mercantile Co. v. Ardmore Flour & Feed Co., 229 P. 244, 100 Okl. 245.
Va.—Shelton v. Detamore, 93 S.E. 2d 314, 198 Va. 220—Nelson v. Liggan, 53 S.E.2d 798, 189 Va. 637, opinion adhered to 56 S.E.2d 54, 190 Va. 213.
W.Va.—Hurt v. Gwinn, 95 S.E.2d 248—Davis v. Sargent, 78 S.E.2d 217, 138 W.Va. 861.

59. Ala.—National Life & Accident Ins. Co. v. Cummings, 172 So. 353, 27 Ala.App. 355—Southern Ry. Co. v. Sherrill, 167 So. 731, 232 Ala. 184.
Mo.—Weaver v. Mobile & O. R. Co., 120 S.W.2d 1105, 342 Mo. 223.
N.Y.—Youds v. Pinaud, Inc., 38 N. Y.S.2d 281, 265 App.Div. 882—Stern v. City of New York, 34 N.Y.S.2d 279, 264 App.Div. 738.
Ohio.—Rathbun v. Humphrey Co., 113 N.E.2d 877, 94 Ohio App. 429.
Tex.—Texas & N. O. R. Co. v. Jones, Civ.App., 187 S.W. 717.
W.Va.—Wilson v. Edwards, 77 S.E.2d 164, 138 W.Va. 613—Thrasher v. Amere Gas Utilities Co., 75 S.E.2d 376, 138 W.Va. 166, appeal dismissed American Gas Utilities Co. v. Public Service Commission of State of W. Va., 74 S.Ct. 478, 347 U.S. 910, 98 L.Ed. 1067.
52 C.J. p 534 note 38.

60. Mo.—Yarber v. Connecticut Fire Ins. Co., App., 10 S.W.2d 957.
N.J.—Murphy v. Terzako, 82 A.2d 1, 14 N.J.Super. 254.
Tex.—Cardinal v. Cardinal, Civ.App., 131 S.W.2d 1005, error dismissed.
4 C.J. p 863 note 30.

61. Ill.—Deming v. Prudential Ins. Co. of America, 190 Ill.App. 604.
Miss.—Montgomery Ward & Co. v. Windham, 17 So.2d 208, 195 Miss. 848.
Neb.—Davis v. Security Ins. Co., 298 N.W. 687, 139 Neb. 730—Cuva v. Glens Falls Ins. Co. of Glens Falls, N. Y., 285 N.W. 917, 136 Neb. 359—Peterson v. Omaha & Council Bluffs St. Ry. Co., 269 N. W. 510, 131 Neb. 676.
N.J.—Massari v. Accurate Bushing Co., 85 A.2d 260, 8 N.J. 299.
Murphy v. Terzako, 82 A.2d 1, 14 N.J.Super. 254.
Schneider v. Rutherford Taxi Service, 37 A.2d 79, 131 N.J.Law 419.
Tex.—Wichita Valley Ry. Co. v. Williams, 288 S.W. 425, 116 Tex. 253.
Fireman's Fund Ins. Co. of San Francisco, Cal., v. Honnoll, Civ. App., 128 S.W.2d 96—Hulsey v. Patterson, Civ.App., 121 S.W.2d 509—Texas Employers' Ins. Ass'n v. Ford, Civ.App., 93 S.W.2d 227, error dismissed—Williams v. Perkins Dry Goods Co., Civ.App., 266 S.W. 793—Dirr v. San Antonio & A. P. Ry. Co., Civ.App., 260 S. W. 1108.
4 C.J. p 863 note 31.

Whims and caprice of a jury, when considering factual questions, cannot prevail over a preponderance of the evidence as shown by the record.
Fla.—Sorg v. Royal, 41 So.2d 317.

62. Mich.—Hintz v. Michigan Cent. R. Co., 93 N.W. 634, 132 Mich. 305.
Ohio.—Commercial Casualty Ins. Co. v. Creager, App., 43 N.E.2d 900—Riegel v. Oakwood St. Ry. Co., App., 42 N.E.2d 676—Watt v. Feuerlicht, App., 41 N.E.2d 719—Kaiser v. Whetstone, App., 35 N.E.2d 465—Molnar v. Scott-Burr Stores Corp., App., 33 N.E.2d 418.
Pa.—Londrino v. Equitable Life Assur. Soc. of the U. S., 105 A.2d 333, 377 Pa. 543—Wargo v. Pittsburgh Rys. Co., 101 A.2d 638, 376 Pa. 168.

62.5 Ill.—Corcoran v. City of Chicago, 27 N.E.2d 451, 373 Ill. 567, appeal dismissed 61 S.Ct. 45, 311 U.S. 610, 85 L.Ed. 386, rehearing denied 61 S.Ct. 132, 311 U.S. 727, 85 L.Ed. 473.

court; but the appellate court may or must interfere if the verdict is not reasonably within the range of the evidence.

A finding of value or of the amount of damages is so much a matter within the exclusive province of the jury that it will ordinarily not be disturbed by the reviewing court[63] where the issue has been fairly

63. Ala.—Montgomery City Lines v. Davis, 74 So.2d 923, 261 Ala. 491.
Belcher v. Hubbard, 21 So.2d 850, 32 Ala.App. 95.
Ariz.—Valley Nat. Bank of Phœnix v. Carrow, 223 P.2d 912, 71 Ariz. 87—Arizona Cotton Oil Co. v. Thompson, 245 P. 673, 30 Ariz. 204.
Ark.—**Corpus Juris Secundum cited in** Arkansas Amusement Corporation v. Ward, 161 S.W.2d 178, 183, 204 Ark. 130—**Corpus Juris Secundum quoted at length in** Missouri Pacific Transp. Co. v. Simon, 135 S.W.2d 336, 341, 199 Ark. 289—Dermott Grocery & Commission Co. of Eudora v. Meyer, 101 S.W. 2d 443, 193 Ark. 591—Baldwin v. Sears, 91 S.W.2d 266, 192 Ark. 257.
Cal.—Johnson v. Long, 181 P.2d 645, 30 C.2d 54—Deevy v. Tassi, 130 P. 2d 389, 21 C.2d 109—Beckett v. City of Paris Dry Goods Co., 96 P. 2d 122, 14 C.2d 633.
Proper v. Proper, 228 P.2d 62, 102 C.A.2d 612—Finley v. Steiner, 104 P.2d 819, 40 C.A.2d 331—McCullough v. Langer, 73 P.2d 649, 23 C. A.2d 510—Green v. Stewart, 289 P. 940, 106 C.A. 518—Rosander v. Market St. Ry. Co., 265 P. 541, 89 C.A. 721—Maris v. H. Crummey, Inc., 204 P. 259, 55 C.A. 573.
Colo.—Edwards v. Quackenbush, 149 P.2d 809, 112 Colo. 337—Riss & Co. v. Anderson, 114 P.2d 278, 108 Colo. 78—Ison v. Stewart, 94 P.2d 701, 105 Colo. 55—Knaus v. Yoder, 52 P.2d 1152, 98 Colo. 1.
Fla.—City of Miami v. Thigpen, 11 So.2d 300, 151 Fla. 800—Breeding's Dania Drug Co. v. Runyon, 2 So.2d 376, 147 Fla. 123—International Lubricant Corp. v. Grant, 175 So. 727, 128 Fla. 670—Southern Utilities Co. v. Davis, 105 So. 315, 90 Fla. 168.
Ill.—Hulke v. International Mfg. Co., 142 N.E.2d 717, 14 Ill.App.2d 5—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App.2d 388—McCleod v. Nel-Co Corp., 112 N.E. 2d 501, 350 Ill.App. 216—Philadelphia & Reading Coal & Iron Co. v. Calumet Shipyard & Dry Dock Co., 88 N.E.2d 891, 339 Ill.App. 142—Isley v. McClandish, 20 N.E.2d 890, 299 Ill.App. 564—Costello v. City of Aurora, 15 N.E.2d 38, 295 Ill.App. 510—Lill v. Murphy Door Bed Co. of Chicago, 8 N.E.2d 714, 290 Ill. App. 328.
Iowa.—Nichols v. Snyder, Iowa, 78 N.W.2d 836, 247 Iowa 1302—De Toskey v. Ruan Transport Corp., 40 N.W.2d 4, 241 Iowa 45, 17 A.L.R. 2d 826—Darnall v. Day, 37 N.W.2d 277, 240 Iowa 665—**Corpus Juris Secundum cited in** Christensen v. Boucher, 24 N.W.2d 783, 788, 237 Iowa 1170—Stoner v. Iowa State Highway Commission, 287 N.W. 269, 227 Iowa 115.
Ky.—Willingham v. Stevens, 226 S.W. 2d 770, 312 Ky. 124—Rogers v. Price, 160 S.W.2d 371, 290 Ky. 153—Brink v. Kennedy, 151 S.W.2d 58, 286 Ky. 566—Saxton v. Tucker, 134 S.W.2d 590, 280 Ky. 777—Chesapeake & O. Ry. Co. v. Hay, 88 S.W. 2d 318, 261 Ky. 566—City of Greenville v. Johnston, 52 S.W.2d 716, 244 Ky. 782.
La.—Franklin v. Arkansas Fuel Oil Co., 51 So.2d 600, 218 La. 987—Humphreys v. Bennett Oil Corp., 197 So. 222, 195 La. 531—Naihaus v. Louisiana Weekly Pub. Co., 145 So. 527, 176 La. 240—Groner v. Shreveport Rys. Co., 81 So. 258, 144 La. 705.
Kelly v. Ozone Tung Co-op., App., 36 So.2d 837, rehearing refused 38 So.2d 232—Fernandez v. Tri-State Transit Co. of Louisiana, App., 194 So. 84—Maddox v. Pattison, App., 186 So. 894—Guidry v. Breaux, App., 164 So. 666.
Me.—Nadeau v. Caribou Water, Light & Power Co., 108 A. 190, 118 Me. 325.
Md.—Riley v. Naylor, 16 A.2d 857, 179 Md. 1.
Mass.—Hubbard v. Conti, 75 N.E.2d 639, 321 Mass. 743.
Mich.—Vink v. House, 57 N.W.2d 887, 336 Mich. 292—Kocks v. Collins, 47 N.W.2d 676, 330 Mich. 423—Bathke v. Traverse City, 13 N.W.2d 184, 308 Mich. 1—Campbell v. Brown, 267 N.W. 877, 276 Mich. 449—Paton v. Stealy, 261 N.W. 131, 272 Mich. 57.
Miss.—Rasberry v. Calhoun County, 94 So.2d 612—Thomas v. Mickel, 58 So.2d 494, 214 Miss. 176—Caver v. Eggerton, 127 So. 727, 157 Miss. 88.
Mo.—Mooney v. Terminal R. Ass'n of St. Louis, 186 S.W.2d 450, 353 Mo. 1080, certiorari denied 66 S.Ct. 28, 326 U.S. 723, 90 L.Ed. 428—Yakubinis v. Missouri-Kansas-Texas R. Co., 137 S.W.2d 504, 345 Mo. 943—Harlan v. Wabash Ry. Co., 73 S.W.2d 749, 335 Mo. 414—Gill v. Baltimore & O. R. Co., 259 S.W. 93, 302 Mo. 311, certiorari denied Baltimore & O. R. Co. v. Gill, 44 S.Ct. 636, 265 U.S. 592, 68 L.Ed. 1196.
Piburn v. Reed, App., 193 S.W.2d 789—Edwards v. South Side Auto Parts Co., App., 180 S.W.2d 1015—Weisman v. Arrow Trucking Co., App., 176 S.W.2d 37—La Chance v. National Pigments & Chemical Co., App., 104 S.W.2d 693—Kelly v. Kansas City Building & Loan Ass'n, App., 86 S.W.2d 975—Ponticello v. Liliensiek, App., 83 S.W.2d 150—Ruppel v. Clayes, App., 72 S.W. 2d 833—Mason v. Down Town Garage Co. 53 S.W.2d 409, 227 Mo.App. 297—Broughton v. S. S. Kreage Co., App., 26 S.W.2d 838—Dietderick v. Missouri Iron & Metal Co., 9 S.W.2d 824, 222 Mo.App. 700—Fuller v. St. Louis-San Francisco Ry. Co., App., 270 S.W. 138—Traw v. Heydt, App., 216 S.W. 1009—Dodt v. Prudential Ins. Co. of America, 171 S.W. 655, 186 Mo.App. 168.
Mont.—Coolidge v. Meagher, 46 P.2d 684, 100 Mont. 172.
Neb.—Van Auker v. Steckley's Hybrid Seed Corn Co., 8 N.W.2d 451, 143 Neb. 24.
N.J.—Lukasiewicz v. Haddad, 94 A. 2d 504, 24 N.J.Super. 399—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499.
Haines v. Baker, 153 A. 614, 108 N.J.Law 190.
N.Y.—Manhattan Sav. Inst. v. Gottfried Baking Co., 36 N.E.2d 637, 286 N.Y. 398—Barile v. Wright, 175 N. E. 351, 256 N.Y. 1.
Sitkiewitz v. Central Hudson Gas & Electric Corporation, 280 N. Y.S. 108, 245 App.Div. 737.
N.C.—Tyree v. Tudor, 111 S.E. 714, 183 N.C. 340—Standard Oil Co. v. Banks, 111 S.E. 2, 183 N.C. 204—Query v. Postal Telegraph-Cable Co., 101 S.E. 390, 178 N.C. 639, 8 A. L.R. 1290.
N.D.—Bolen v. Dolph, 245 N.W. 259, 62 N.D. 700.
Ohio.—Hicks v. Currie, 60 N.E.2d 734, 75 Ohio App. 43—Misrach v. Epperson, 168 N.E. 230, 32 Ohio App. 451.
Okl.—Sebranek v. Krivohlavek, 163 P.2d 530, 196 Okl. 132—**Corpus Juris quoted at length in** Yellow Cab Operating Co. v. Spelce, 61 P.2d 672, 676, 177 Okl. 571—Ponca City v. Swayne, 50 P.2d 1082, 174 Okl. 576—St. Louis-San Francisco Ry. Co. v. Stuart, 47 P.2d 177, 173 Okl. 221—Fife v. Adair, 47 P.2d 145, 173 Okl. 234—Beggs Oil Co. v. Deardorf, 222 P. 535, 97 Okl. 33.
Or.—Fischer v. Howard, 271 P.2d 1059, 201 Or. 426—Snyder v. Portland Traction Co., 185 P.2d 563, 182 Or. 344—State ex rel. Mitchell v. U. S. Fidelity & Guaranty Co., 24 P.2d 1037, 144 Or. 535—Curtis v. Keller, 298 P. 196, 136 Or. 67—Tooley v. Spokane, Portland & Seattle Transp. Co., 285 P. 261, 132 Or. 328—Malpica v. Cannery Supply Co., 187 P. 596, 95 Or. 242.
Pa.—De Santis v. Maddalon, 35 A.2d 72, 348 Pa. 296—Knickerbocker v. City of Scranton, 25 A.2d 152, 344 Pa. 317—Mars v. Meadville Tel. Co., 23 A.2d 856, 344 Pa. 20.

Lynch v. Letterman, Com.Pl., 29 Erie Co. 149—Scabis v. Nobel, Com. Pl., 2 Fay.L.J. 159.

S.C.—Richardson v. General Motors Acceptance Corp., 68 S.E.2d 874, 221 S.C. 14—Bradley v. Washington Fidelity Nat. Ins. Co., 171 S.E. 243, 170 S.C. 509—Tate v. Mauldin, 154 S.E. 431, 157 S.C. 392—Weeks v. Carolina Power & Light Co., 153 S.E. 119, 156 S.C. 158—Matthews v. Payne, 113 S.E. 381, 121 S.C. 84, affirmed 44 S.Ct. 179, 263 U.S. 686, 68 L.Ed. 506.

Tenn.—Spence v. Carne, App., 292 S. W.2d 438—Martin v. Castner-Knott Dry Goods Co., 181 S.W.2d 638, 27 Tenn.App. 421—Garis v. Eberling, 71 S.W.2d 215, 18 Tenn.App. 1.

Tex.—Socony-Vacuum Oil Co. v. Aderhold, Civ.App., 230 S.W.2d 834; affirmed in part and reformed in part on other grounds 240 S.W.2d 751, 150 Tex. 292—Peerless Oil & Gas Co. v. Teas, Civ.App., 138 S.W. 2d 637, affirmed 158 S.W.2d 758, 138 Tex. 301—Bridgeport Mach. Co. v. Geers, Civ.App., 36 S.W.2d 1047—Duncan v. Donnell, Civ.App., 12 S. W.2d 811—Branham v. Hallam, Civ. App., 191 S.W. 158, error refused.

Vt.—Mullett v. Milkey, 29 A.2d 806, 13 Vt. 42—Shedrick v. Lathrop, 172 A. 630, 106 Vt. 311.

Va.—Stubbs v. Cowden, 18 S.E.2d 275, 179 Va. 190.

Wash.—Anderson v. Dalton, 246 P.2d 853, 40 Wash.2d 894, 35 A.L.R.2d 302—Gibson v. Thisius, 134 P.2d 713, 16 Wash.2d 693—Larson v. South Prairie Lumber Co., 253 P. 1076, 142 Wash. 648—Johnson v. Hunter, 251 P. 123, 141 Wash. 190—Nunn v. Turner, 234 P. 443, 133 Wash. 654.

4 C.J. p 869 note 96.

Court cannot constitute itself as a jury to determine the jury's method of arriving at a particular amount of damages to be awarded.

N.J.—Dunn v. Parker & Graham, 159 A. 613, 10 N.J.Misc. 492.

Tex.—Brewer v. Dallas Ry. & Terminal Co., Civ.App., 247 S.W.2d 435.

Jury award has great weight

The jury's award of damages, while not binding on the appellate court, must have great weight with it.

Ill.—Roedler v. Vandalia Bus Lines, 281 Ill.App. 520.

Mo.—Mabe v. Gille Mfg. Co., 271 S.W. 1023, 219 Mo.App. 234.

Tenn.—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498.

Wash.—Kramer v. Portland-Seattle Auto Freight, Inc., 261 P.2d 692, 43 Wash.2d 386.

Only question for review relative to the amount of the verdict is whether the amount is within the bounds of reason and reasonably proportionate to the injuries proved.

Mo.—O'Brien v. Rindskopf, 70 S.W. 2d 1085, 334 Mo. 1233.

Mathematical precision in proof lacking

Where a verdict is rendered on the evidence of experts as to value, the court will not set aside or reverse because the amount of the verdict cannot be demonstrated by the testimony of any single witness with mathematical precision.

Fla.—American Mfg. Co. v. A. H. McLeod & Co., 82 So. 802, 78 Fla. 162.

Failure to deliver telegram

(1) Amount of award for damages for failure to deliver telegram rests primarily with jury, but amount of award is not free from control or decision by either trial court or appellate court.

Tex.—W. U. Tel. Co. v. Hinson, Civ. App., 222 S.W.2d 636, error refused no reversible error.

(2) The amount of damages to be awarded one to whom a telegraph company negligently fails to deliver a telegram notifying him of the sickness of his father is a question peculiarly addressed to the sound and impartial judgment of the jury, and the appellate courts are reluctant to disturb the verdict of the jury as to the amount that should be awarded.

Tex.—Western Union Tel. Co. v. Goodson, Civ.App., 217 S.W. 183, error refused.

Tort action

Question of damages for tort, especially libel or slander, is peculiarly within jury's province and court rarely interferes with jury's verdict, unless damages awarded are so unconscionable as to impress court with verdict's injustice and thereby induce belief that jurors were actuated by prejudice, partiality or corruption, but such rule is not applicable to actions ex contractu, nor to actions ex delicto, where damages may be measured with some degree of certainty.

Mo.—Coats v. News Corp., 197 S.W. 2d 958, 355 Mo. 778.

Personal injury cases

(1) The amount of damages for a personal injury is for the determination of the jury, and it is only with the greatest reluctance that courts will substitute their own judgment for that of the jury.

Neb.—Curran v. Union Stockyards Co. of Omaha, 196 N.W. 135, 111 Neb. 251.

(2) It is for the jury, not the appellate court, to compare plaintiff's contributory negligence with that of defendant and, after ascertaining the full amount of his damages, to award such proportional part thereof as the negligence attributable to defendant bore to the entire negligence attributable to both.

Ky.—Cincinnati, N. O. & T. P. Ry. Co. v. Goode, 183 S.W. 264, 169 Ky. 102—Norfolk & W. Ry. Co. v. Thompson, 171 S.W. 451, 161 Ky. 814.

(3) Damages, resulting from injuries which practically close the door of opportunity in the vocation for which by nature an injured person is best fitted, rest largely in the discretion of the jury, there being no definite standard by which such damages may be measured.

Wis.—Bassett v. Milwaukee Northern Ry. Co., 170 N.W. 944, 169 Wis. 152.

(4) The amount of recovery in an action for personal injuries, within the bounds of reason, is for the determination of the jury in the trial court.

Ala.—Hilley v. Central of Georgia Ry. Co., 66 So. 883, 11 Ala.App. 605.

Colo.—Union Pac. R. Co. v. Gill, 153 P. 762, 60 Colo. 417.

Mo.—Winston v. Lusk, 172 S.W. 76, 186 Mo.App. 381.

Tex.—Galveston, H. & S. A. Ry. Co. v. Dickens, Civ.App., 170 S.W. 835.

(5) The amount of the verdict in a personal injury action, while inexplicable to the supreme court, was nevertheless within the jury's province.

Wash.—Crowe v. O'Rourke, 262 P. 136, 146 Wash. 74.

(6) The law prescribes no exact standard by which the compensation to be awarded for personal injuries shall be awarded. Full compensation is impossible in the abstract, and different individuals will vary in their estimate of the sum which will be a just pecuniary compensation. Therefore, the appellate court will not attempt to substitute its judgment for that of the jury.

Tenn.—Saucier v. Roberts, 2 Tenn. App. 211.

(7) The amount of recovery found by the jury in any case, and particularly one for personal injuries, is reviewed with reluctance.

Ariz.—Arizona Cotton Oil Co. v. Thompson, 245 P. 673, 30 Ariz. 204.

Ill.—Gorczynski v. Nugent, 80 N.E. 2d 418, 335 Ill.App. 63, affirmed 83 N.E.2d 495, 402 Ill. 147.

W.Va.—Watson v. Woodall, 61 S.E.2d 747, 134 W.Va. 787.

(8) A verdict of fifteen thousand dollars for personal injuries will not be disturbed, when it was deliberate judgment of the jury.

Wash.—Gillum v. Pacific Coast R. Co., 279 P. 114, 152 Wash. 657.

(9) Compensatory damages must not rest on conjecture or uncertainty, even though the determination of a jury as to the amount of unliquidated damages for personal injuries is entitled to great weight and is not lightly to be disturbed.

Ill.—Roedler v. Vandalia Bus Lines, 281 Ill.App. 520.

submitted under proper instructions.[64] The question of damages is committed first to the discretion of the jury and then to the trial court,[64.5] and it has been held that the exercise of discretion by the jury in

(10) Various other formulations and applications of the text rule with respect to damages in personal injury cases have been adjudicated by the courts.

Cal.—Sexton v. Key System Transit Lines, 301 P.2d 612, 144 C.A.2d 719—Knight v. Fitch, 70 P.2d 976, 22 C.A.2d 252.

Fla.—Loftin v. Wilson, 67 So.2d 185—City of Orlando v. Zapfe, 198 So. 801, 145 Fla. 120.

Ill.—Abrahamian v. Nickel Plate R. Co., 99 N.E.2d 153, 343 Ill.App. 353.

Iowa.—Skalla v. Daeges, 15 N.W.2d 638, 234 Iowa 1260.

La.—Richey v. Swink, App., 4 So.2d 749—Mathews v. Hayne, App., 188 So. 462.

Me.—Fotter v. Butler, 75 A.2d 160, 145 Me. 266.

Mass.—Kinnear v. General Mills, 32 N.E.2d 263, 308 Mass. 344—Palma v. Racz, 19 N.E.2d 8, 302 Mass. 249.

Mich.—Samuelson v. Olson Transp. Co., 36 N.W.2d 917, 324 Mich. 278—Alley v. Klotz, 31 N.W.2d 816, 320 Mich. 521—White v. Makela, 8 N.W.2d 123, 304 Mich. 425—Brown v. Arnold, 6 N.W.2d 914, 303 Mich. 616—Hartough v. Safeway Lines, 285 N.W. 561, 288 Mich. 471, modified on other grounds 288 N.W. 307, 288 Mich. 703—Reetz v. Schemansky, 270 N.W. 811, 278 Mich. 626.

Miss.—Mississippi Power & Light Co. v. Thomas, 39 So.2d 759, 206 Miss. 201, suggestion of error overruled 40 So.2d 597, 206 Miss. 201.

Mo.—Snyder v. Jensen, 281 S.W.2d 802—Triplett v. Beeler, 268 S.W.2d 814—Brown v. Moore, 248 S.W.2d 553.

Smith v. St. Louis Public Service Co., App., 235 S.W.2d 102.

Neb.—Peacock v. J. L. Brandeis & Sons, 60 N.W.2d 643, 157 Neb. 514.

Ohio.—Euclid-105th Street Properties Co. v. Beckman, App., 42 N.E. 2d 789.

R.I.—Tilley v. Mather, 124 A.2d 872.

S.C.—Brown v. Hill, 88 S.E.2d 838, 228 S.C. 34.

Tenn.—Carman v. Huff, 227 S.W.2d 780, 32 Tenn.App. 687.

Tex.—Kimbriel Produce Co. v. Webster, Civ.App., 185 S.W.2d 198, error refused.

Damages within statutory limit in death action

If the amount of damages assessed by the jury is within the statutory limit, their action will not, in general, be reviewed on appeal.

W.Va.—Turner v. Norfolk, etc., R. Co., 22 S.E. 83, 40 W.Va. 675.

On rule to show cause

Objection that damages are excessive or inadequate is cognizable only on the rule to show cause in the trial court.

N.J.—Ratz v. Hillside Bus Owners' Ass'n, 135 A. 884, 103 N.J.Law 502.

Matter considered

(1) Appellate court will give recognition to economic conditions in reviewing verdicts.

Wis.—Zeinemann v. Gasser, 29 N.W. 2d 49, 251 Wis. 238.

(2) So appellate court in reviewing question of excessiveness or inadequacy of verdict may properly consider inflation, high cost of living, and impaired purchasing power of money.

Tenn.—Foster & Creighton Co. v. Hale, 222 S.W.2d 222, 32 Tenn.App. 208—Waller v. Skeleton, 212 S.W. 2d 690, 31 Tenn.App. 103, certiorari denied 211 S.W.2d 445, 186 Tenn. 433.

(3) Appellate court may consider that amounts of similar size have been awarded in other wrongful death actions in determining reasonableness of award.

Cal.—Peterson v. General Geophysical Co., App., 185 P.2d 56.

64. Fla.—Seitner v. Clevenger, 68 So.2d 396.

Ill.—Kahn v. James Burton Co., 132 N.E.2d 10, 8 Ill.App.2d 543—Garshon v. Aaron, 71 N.E.2d 799, 330 Ill.App. 540—Ford v. Friel, 70 N. E.2d 626, 330 Ill.App. 136.

Ky.—Louisville & N. R. Co. v. Jolly's Adm'x, 23 S.W.2d 564, 232 Ky. 702, certiorari denied Louisville & N. R. Co. v. Jolly, 51 S.Ct. 26, 282 U.S. 847, 75 L.Ed. 751.

Mo.—Chilcutt v. Le Clair, App., 119 S.W.2d 1.

Okl.—Dixie Cab Co. v. Sanders, 284 P.2d 421—Oklahoma Ry. Co. v. Alexander, 240 P.2d 742, 205 Okl. 691—Oklahoma Ry. Co. v. Wilson, 227 P.2d 392, 204 Okl. 90—Oklahoma Transp. Co. v. Seminole Lodge No. 430, I. O. O. F., 217 P.2d 164, 200 Okl. 622—Feenberg Supply Co. v. Pierce, 95 P.2d 640, 185 Okl. 662—Carter v. Haynes, 49 P. 2d 1097, 174 Okl. 95—Dickinson v. Perry, 181 P. 504, 75 Okl. 25.

S.D.—Weibel v. Gardner, 188 N.W. 741, 45 S.D. 474.

Tenn.—Williamson v. Howell, 13 Tenn.App. 506.

Utah.—Thomas v. Ogden Rapid Transit Co., 155 P. 436, 47 Utah 595.

Va.—Danville Community Hospital v. Thompson, 43 S.E.2d 882, 186 Va. 746, 173 A.L.R. 525.

Improper instruction

Court of Appeals would not determine whether verdict was excessive where the case must be reversed because of improper instructions.

Ky.—Nehi Bottling Co. v. Flannery, 94 S.W.2d 297, 264 Ky. 68.

64.5 Cal.—Sills v. Soto, 269 P.2d 98, 124 C.A.2d 539—Gersick v. Shilling, 218 P.2d 583, 97 C.A.2d 641—Peterson v. General Geophysical Co., App., 185 P.2d 56—Stanhope v. Los Angeles College of Chiropractic, 128 P.2d 705, 54 Cal.App.2d 141—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77—Wallace v. King, 80 P.2d 523, 27 C.A.2d 174—Levy v. Berner, 293 P. 896, 110 C. A. 65—Green v. Stewart, 289 P. 940, 106 C.A. 518.

Hawaii.—Ginoza v. Takai, 40 Hawaii 691.

Miss.—Rasberry v. Calhoun County, 94 So.2d 612.

Mo.—Spears v. DeClue, App., 149 S. W.2d 461.

Pa.—Clark v. Horowitz, 143 A. 131, 293 Pa. 441.

Tenn.—Carman v. Huff, 227 S.W.2d 780, 32 Tenn.App. 687—Gibson County Elec. Membership Corp. v. Hall, 222 S.W.2d 689, 32 Tenn.App. 394.

On motion for new trial

(1) The reasonableness of a verdict is a question for the trial court under all the evidence on the motion for a new trial.

Cal.—Wilson v. City & County of San Francisco, 235 P.2d 81, 106 C. A.2d 440.

Pa.—Bochar v. J. B. Martin Motors, Inc., 97 A.2d 813, 374 Pa. 240—Ruemeli v. Wilson, 104 A. 667, 261 Pa. 452.

Contillo v. City of Pittsburgh, 45 A.2d 366, 158 Pa.Super. 524.

(2) Rules of law governing jury's right to fix damages originally, appellate court's right to grant new trial on ground that verdict is excessive or inadequate, and trial judge's right to grant new trial on ground that verdict is unfair, unjust, contrary to evidence, excessive, or too small, exist apart from, and independently of, each other.

Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437.

(3) Where trial court has ruled on amount of verdict in hearing on a motion for new trial, such ruling amounts to ruling on weight of evidence, and on review the supreme court will look to see whether evidence, viewed in light most favorable to ruling, affords reasonable and substantial support of the ruling, and if it does the ruling must be sustained.

Mo.—Roderick v. St. Louis Southwestern Ry. Co., 299 S.W.2d 422.

It is the duty of the trial justice to examine the evidence and weight thereof on issue of damages with as

this respect will not be reviewed in the absence of clear abuse.[64.10] As otherwise expressed, the appellate court will not interfere with the award of the jury unless it is palpably without support in the evidence presented at the trial,[65] unless the jury have departed for some reason from the legal measure of damages,[66] or unless the verdict is so palpably excessive or grossly inadequate[67] as to indicate

much care as is ordinarily given to the question of liability, and hence where trial justice sustained jury's award merely because jury heard testimony as to what deceased did with his money, such duty was not satisfied.

R.I.—Silvia v. Caizz, 7 A.2d 704, 63 R.I. 172.

64.10 Ariz.—Phillips v. Stillwell, 99 P.2d 104, 55 Ariz. 147.

Idaho.—Brown v. Arrington Const. Co., 262 P.2d 789, 74 Idaho 338—Koch v. Elkins, 225 P.2d 457, 71 Idaho 50—Checketts v. Bowman, 220 P.2d 682, 70 Idaho 463—Gardner v. Hobbs, 206 P.2d 539, 69 Idaho 288, 14 A.L.R.2d 478—Summerfield v. Pringle, 144 P.2d 214, 65 Idaho 300—Hepp v. Ader, 130 P.2d 859, 64 Idaho 240.

Iowa.—Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R. R., 60 N.W.2d 572, 244 Iowa 1364.

Mo.—Brown v. Moore, 248 S.W.2d 553—Marlow v. Nafziger Baking Co., 63 S.W.2d 115, 333 Mo. 790.

Davenport v. Armstead, App., 255 S.W.2d 132—Johnson v. Scheerer, App., 109 S.W.2d 1231—Silsby v. Hinchey, App., 107 S.W.2d 812—Ponticello v. Liliensiek, App., 83 S.W.2d 150.

Ohio.—Misrach v. Epperson, 168 N. E. 230, 32 Ohio App. 451.

Tex.—Marcus v. Huguley, Civ.App., 37 S.W.2d 1100.

65. Ark.—Arkansas Motor Coaches v. Williams, 116 S.W.2d 585, 196 Ark. 48.

Fla.—Ragg v. Hurd, 60 So.2d 673—City of Orlando v. Zapfe, 198 So. 801, 145 Fla. 120—Union Bus Co. v. Bowen, 184 So. 17, 134 Fla. 254.

Ill.—Ells v. Works, 55 N.E.2d 408, 323 Ill.App. 289.

Iowa.—Hackman v. Beckwith, 64 N. W.2d 275, 245 Iowa 791—Booth v. General Mills, 49 N.W.2d 561, 243 Iowa 206.

Ky.—Stanley v. Caldwell, 274 S.W. 2d 383—Crawford v. Alexander, 259 S.W.2d 476—De Buyser v. Walden, 255 S.W.2d 616—Railway Exp. Agency v. Bailey, 220 S.W.2d 997, 310 Ky. 781—Geoghegan v. Daugherty, 217 S.W.2d 953, 309 Ky. 383—Shely v. Jeter, 217 S.W.2d 804, 309 Ky. 323—Kentucky Bell Corp. v. Commonwealth, 172 S.W.2d 661, 295 Ky. 21.

Me.—Haines v. Cumberland County Power & Light Co., 1 A.2d 353, 136 Me. 60.

Mass.—Belkus v. Murdoch, 51 N.E.2d 776, 315 Mass. 86.

Mich.—Morris v. Radley, 11 N.W.2d 291, 306 Mich. 689—White v. Makela, 8 N.W.2d 123, 304 Mich. 425—Rufner v. Traverse City, 295 N.W. 620, 296 Mich. 204.

Miss.—Brown & Root Inc. v. Continental Southern Lines, Inc., 87 So. 2d 257, suggestion of error overruled 87 So.2d 926.

Mo.—Schaefer v. Transamerican Freight Lines, 173 S.W.2d 20—Philibert v. Benjamin Ansehl Co., 119 S.W.2d 797, 342 Mo. 1239.

Taylor v. Terminal R. Ass'n of St. Louis, App., 112 S.W.2d 944.

Mont.—Truzzolino Food Products Co. v. F. W. Woolworth Co., 91 P. 2d 415, 108 Mont. 408.

Neb.—Van Dorn v. Kimball, 160 N. W. 953, 100 Neb. 590.

Okl.—Tulsa City Lines v. Geiger, 275 P.2d 325—Denco Bus Lines v. Hargis, 229 P.2d 560, 204 Okl. 339.

Tex.—Missouri-Kansas-Texas R. Co. of Tex. v. Webb, Civ.App., 229 S. W.2d 204, error refused no reversible error—Missouri-Kansas-Texas R. Co. of Tex. v. Waddles, Civ. App., 203 S.W.2d 350—Norwood Bldg. v. Jackson, Civ.App., 175 S. W.2d 262, error refused—St. Louis, B. & M. Ry. Co. v. Davis, Civ.App., 262 S.W. 923.

Wash.—Simmons v. Kalin, 116 P.2d 840, 10 Wash.2d 409—Randall v. Cowlitz Amusements, 76 P.2d 1017, 194 Wash. 82—Dahlgren v. Chicago, M. & P. S. Ry. Co., 148 P. 567, 85 Wash. 395.

Wis.—McCartie v. Muth, 284 N.W. 529, 230 Wis. 604.

Appellate courts do not weigh the evidence in considering the excessiveness or inadequacy of verdicts.

Mo.—Walthall v. St. Louis Public Service Co., App., 66 S.W.2d 177.

Tenn.—Hammonds v. Mansfield, App., 296 S.W.2d 652.

66. Ariz.—Arizona Cotton Oil Co. v. Thompson, 245 P. 673, 30 Ariz. 204.

Conn.—Mulcahy v. Larson, 32 A.2d 161, 130 Conn. 112.

Fla.—Higbee v. Dorigo, 66 So.2d 684—Union Bus Co. v. Bowen, 184 So. 17, 134 Fla. 254.

Ga.—Langran v. Hodges, 4 S.E.2d 489, 60 Ga.App. 567.

Idaho.—Garrett v. Taylor, 210 P.2d 386, 69 Idaho 487.

Ky.—Allen v. Large, 239 S.W.2d 225.

La.—Fernandez v. Tri-State Transit Co. of Louisiana, App., 194 So. 84—Maddox v. Pattison, App., 186 So. 894.

Mich.—Bennett v. Hill, 71 N.W.2d 220, 342 Mich. 754—Day v. Troyer, 67 N.W.2d 74, 341 Mich. 189—Torma v. Montgomery Ward & Co., 58 N.W.2d 149, 336 Mich. 468—Teetel v. Pugsley, 29 N.W.2d 850, 319 Mich. 508—Crook v. Eckhardt, 275 N.W. 739, 281 Mich. 703.

Mo.—La Chance v. National Pigments & Chemical Co., App., 104 S.W.2d 693.

Tex.—Flores v. De Galvan, Civ.App., 127 S.W.2d 305.

Utah.—Thomas v. Ogden Rapid Transit Co., 155 P. 436, 47 Utah 595.

Damages commensurate with injuries

The jury which found defendant liable for plaintiff's injuries had the duty to award plaintiff damages reasonably commensurate with the nature and extent of the injuries, and, where the jury failed to do so, the reviewing court was required to interfere, regardless of whether the damages awarded were inadequate or excessive.

Mo.—Ulrich v. Kiefer, App., 90 S.W. 2d 140.

67. Ariz.—Horn v. Ruess, 231 P.2d 756, 72 Ariz. 132.

Cal.—Johnston v. Long, 181 P.2d 645, 30 C.2d 54.

Colo.—McAllister v. McAllister, 209 P. 788, 72 Colo. 28.

Conn.—Greenberg v. City of Waterbury, 167 A. 83, 117 Conn. 67.

Fla.—Union Bus Co. v. Bowen, 184 So. 17, 134 Fla. 254.

Ill.—Grissom v. Goad, 80 N.E.2d 380, 335 Ill.App. 120.

Ky.—Gheens v. Bush, 80 S.W.2d 581, 258 Ky. 540—Chesapeake & O. Ry. Co. v. Stone's Adm'r, 255 S.W. 134, 200 Ky. 502.

La.—Burge v. Windolph, App., 79 So. 2d 912.

Me.—Bragdon v. Bickford, 94 A.2d 816, 148 Me. 432.

Mo.—Sandifer v. Thompson, 280 S. W.2d 412—Triplett v. Beeler, 268 S.W.2d 814—Hooper v. Conrad, 260 S.W.2d 496, 364 Mo. 176—Dickson v. Beemer, 217 S.W.2d 515—Hampton v. Wabash R. Co., 204 S.W.2d 708, 356 Mo. 999, certiorari denied 68 S.Ct. 460, 333 U.S. 833, 92 L.Ed. 1117—Mooney v. Terminal R. Ass'n of St. Louis, 186 S.W.2d 450, 353 Mo. 1080, certiorari denied 66 S.Ct. 28, 326 U.S. 723, 90 L.Ed. 428—Lynch v. Baldwin, 117 S.W.2d 273—Crockett v. City of Mexico, 77 S. W.2d 464, 336 Mo. 145—Plater v. Kansas City, 68 S.W.2d 800, 334 Mo. 842—Rochester v. Gonterman, 49 S.W.2d 71.

Harrison v. St. Louis Public Service Co., App., 251 S.W.2d 348—Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356.

Tex.—Rowan & Hope v. Valadez, Civ.App., 258 S.W.2d 395, error re-

bias, passion, prejudice, corruption, outside influ- | ence, or mistake,[68] or shock the conscience or sense

fused no reversible error—El Paso City Lines v. Harris, Civ.App., 233 S.W.2d 620—Missouri-Kansas-Texas R. Co. of Tex. v. Waddles, Civ. App., 203 S.W.2d 350.

Vt.—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42—Shedrick v. Lathrop, 172 A. 630, 106 Vt. 311.

In determining the reasonableness of the verdict for damages, the appellate court should consider the purchasing value of money at the time of the trial.

Mo.—Sachse v. Highland Dairy Farms Co., App., 45 S.W.2d 934.

Instruction as law of case

The supreme court, in reviewing evidence to support the verdict in the amount rendered, must consider the evidence in the light of the instruction on damages, since the law governing the measure of damages in the case is settled by the instruction to which no exception was taken.

S.D.—Robertson v. Hall, 255 N.W. 803, 62 S.D. 599.

Recovery considered in light of evidence

The appellate court, when the question as to the amount of damages is saved by proper assignments, must consider recovery in the light of the evidence.

Ind.—Thompson v. Town of Ft. Branch, 178 N.E. 440, 204 Ind. 152, 82 A.L.R. 1413.

68. U.S.—Petition of H. & H. Wheel Service, C.C.A.Mich., 219 F.2d 904—Fitch v. Huff, W.Va., 218 F. 17, 134 C.C.A. 31.

Ala.—Firestone Tire & Rubber Co. v. Nixon, 87 So.2d 829, 264 Ala. 433—Montgomery City Lines v. Davis, 74 So.2d 923, 261 Ala. 491—Atlantic Coast Line R. Co. v. Taylor, 71 So.2d 27, 260 Ala. 401—Wilson & Co. v. King, 33 So.2d 351, 250 Ala. 90—Alabama Great Southern R. Co. v. Baum, 31 So.2d 366, 249 Ala. 442—J. C. Byram & Co. v. Livingston, 143 So. 461, 225 Ala. 442—Veitch v. Southern Ry. Co., 126 So. 845, 220 Ala. 436—Birmingham Waterworks Co. v. Watley, 68 So. 330, 192 Ala. 520.

Schwabacher v. Herring, 48 So. 2d 574, 35 Ala.App. 496—Birmingham Ry., Light & Power Co. v. Torpy, 70 So. 198, 14 Ala.App. 320.

Ariz.—Miller v. Condon, 182 P.2d 105, 66 Ariz. 34—Carr v. Florian, 29 P. 2d 728, 43 Ariz. 149—Eisenbeiss v. Payne, 25 P.2d 162, 42 Ariz. 262—Selaster v. Simmons, 7 P.2d 258, 39 Ariz. 432—Arizona Cotton Oil Co. v. Thompson, 245 P. 673, 30 Ariz. 204.

Cal.—Drotleff v. Renshaw, 208 P.2d 969, 34 C.2d 176—Brewer v. Second Baptist Church of Los Angeles, 197 P.2d 713, 32 C.2d 791—Luthringer v. Moore, 190 P.2d 1, 31 C. 2d 489—Johnston v. Long, 181 P.2d 645, 30 C.2d 54—Deevy v. Tassi, 130 P.2d 389, 21 C.2d 109—Kirschbaum v. McCarthy, 54 P.2d 8, 5 C.2d 191—Loeb v. Kimmerle, 9 P.2d 199, 215 C. 143—Price v. Northern Electric Ry. Co., 142 P. 91, 168 C. 173.

Mendoza v. Rudolf, 295 P.2d 445, 140 C.A.2d 633—Negra v. L. Lion & Sons Co., 227 P.2d 916, 102 C.A. 2d 453—Sumrall v. Butler, 227 P. 2d 881, 102 C.A.2d 515—Sullivan v. City and County of San Francisco, 214 P.2d 82, 95 C.A.2d 745—Music v. Southern Pac. Co., 204 P.2d 422, 91 C.A.2d 93—Pederson v. Carrier, 204 P.2d 417, 91 C.A.2d 84—Humble v. Union Pac. R. Co., 202 P.2d 791, 90 C.A.2d 276—Foshee v. Wolters, 195 P.2d 930, 86 C.A.2d 766—Peterson v. General Geophysical Co., App., 185 P.2d 56—Paul v. Key System, 180 P.2d 940, 80 C.A.2d 21—Hughes v. Hearst Publications, 180 P.2d 419, 79 C.A.2d 703—Freeman v. Nickerson, 174 P.2d 688, 77 C.A.2d 40—O'Neal v. Kelly Pipe Co., 173 P.2d 685, 76 C.A.2d 577—Miller v. Pacific Constructors, 157 P.2d 57, 68 C.A.2d 529—Thompson v. Simonds, 155 P.2d 870, 68 C.A.2d 151—Coleman v. Galvin, 152 P.2d 39, 66 C.A.2d 303—Ostertag v. Bethlehem Shipbuilding Corp., 151 P.2d 647, 65 C.A.2d 795—Sherman v. Frank, 146 P.2d 704, 63 C.A.2d 278—Cordi v. Garcia, 132 P.2d 887, 56 C.A.2d 584—Matthews v. Atchison, T. & S. F. Ry. Co., 129 P.2d 435, 54 C.A.2d 549—McNown v. Pacific Freight Lines, 122 P.2d 582, 50 C.A.2d 221—Finley v. Steiner, 104 P.2d 819, 40 C.A.2d 331—Reif v. Schumacker, App., 99 P.2d 593, reheard 102 P.2d 375—Weaver v. Shell Co. of California, 94 P.2d 364, 34 C.A.2d 713—Duclos v. Tashjian, 90 P.2d 140, 32 C.A.2d 444—Mitchell v. Towne, 87 P.2d 908, 31 C.A. 2d 259—Sassano v. Roullard, 81 P. 2d 213, 27 C.A.2d 372—Wallace v. King, 80 P.2d 523, 27 C.A.2d 174—Stevenson v. Alta Bates, Inc., 66 P.2d 1265, 20 C.A.2d 303—Griffiths v. Crawford, 52 P.2d 548, 10 C.A.2d 543—Corvin v. Hyatt, 51 P.2d 176, 10 C.A.2d 107—Christy v. City of Alhambra, 50 P.2d 454, 9 C.A.2d 499—Jaques v. Southern Pac. Co., 48 P.2d 63, 8 C.A.2d 738—Dodd v. Postal Telegraph-Cable Co., 30 P. 2d 81, 137 C.A. 237—Rogers v. Goodrich, 21 P.2d 122, 131 C.A. 245—Marshall v. Smith, 21 P.2d 117, 131 C.A. 258—Beatty v. Warren, 20 P.2d 355, 130 C.A. 573—Moore v. Levy, 18 P.2d 362, 128 C.A. 687—Baker v. Market St. Ry. Co., 11 P.2d 912, 123 C.A. 688—Wieck v. Hockett, 2 P.2d 476, 115 C.A. 600—Kleem v. Chapot, 297 P. 574, 112 C.A. 553—Bence v. Teddy's Taxi, 297 P. 128, 112 C.A. 636—Phelps v. Arnold, 297 P. 31, 112 C.A. 518—O'Donnell v. Excelsior Amusement Co., 294 P. 737, 110 C.A. 685, rehearing denied 295 P. 86, 110 C. A. 685—Conner v. Henderson, 291 P. 641, 108 C.A. 237—Von Stetten v. Yellow-Checker Cab Co., Consolidated, 281 P. 95, 100 C.A. 775—Gregoriev v. Northwestern Pac. R. Co., 273 P. 76, 95 C.A. 428—May v. Farrell, 271 P. 789, 94 C.A. 703—Herlihy v. Reilly, 267 P. 721, 92 C. A. 35—Rosander v. Market St. Ry. Co., 265 P. 541, 89 C.A. 721—Pedrow v. Federoff, 247 P. 212, 77 C.A. 164—Bispo v. Surabian, 217 P. 77, 62 C.A. 443—Scragg v. Sallee, 140 P. 706, 24 C.A. 133.

Colo.—Edwards v. Quackenbush, 149 P.2d 899, 112 Colo. 337—Riss & Co. v. Anderson, 114 P.2d 278, 108 Colo. 78—Ison v. Stewart, 94 P.2d 701, 105 Colo. 55—Knaus v. Yoder, 52 P.2d 1152, 98 Colo. 1—East Denver Municipal Irr. Dist. v. Altura Farms Co., 154 P. 100, 60 Colo. 452.

D.C.—Washington Ry. & Electric Co. v. Upperman, 47 App.D.C. 219.

Fla.—Merwin v. Kellems, 78 So.2d 865—Higbee v. Dorigo, 66 So.2d 684—Ragg v. Hurd, 60 So.2d 673—Martin v. Stone, 51 So.2d 33—International Lubricant Corp. v. Grant, 175 So. 727, 128 Fla. 670.

Ga.—Pratt Engineering & Machine Co. v. Trotti, 83 S.E. 107, 142 Ga. 401.

Bibb Mfg. Co. v. Snow, 106 S.E. 612, 26 Ga.App. 504—Hines v. Hendricks, 104 S.E. 520, 25 Ga.App. 682—Knight v. Northey, 93 S.E. 535, 21 Ga.App. 46—Tallulah Falls Ry. Co. v. Stribling, 93 S.E. 161, 20 Ga.App. 353—Lamb v. Davis, 92 S. E. 1009, 20 Ga.App. 240, affirmed 96 S.E. 881, 148 Ga. 367—Realty Bond & Mortgage Co. v. Harley, 91 S.E. 254, 19 Ga.App. 186—Seaboard Air Line Ry. v. Lyon, 89 S.E. 384, 18 Ga.App. 266—Anderson v. Kennickell, 87 S.E. 835, 17 Ga.App. 580.

Idaho.—Shrum v. Wakimoto, 215 P.2d 991, 70 Idaho 252—Garrett v. Taylor, 210 P.2d 386, 69 Idaho 487—Owen v. Taylor, 114 P.2d 258, 62 Idaho 408—Gorton v. Doty, 69 P.2d 136, 57 Idaho 792—Reinhold v. Spencer, 26 P.2d 796, 53 Idaho 688.

Ill.—Collins v. Sanitary Dist. of Chicago, 110 N.E. 318, 270 Ill. 108—Jones v. Sanitary Dist. of Chicago, 106 N.E. 473, 265 Ill. 98—Crooks v. Tazewell Coal Co., 105 N.E. 132, 263 Ill. 343, Ann.Cas.1915C 304.

Kahn v. James Burton Co., 132 N.E.2d 10, 8 Ill.App.2d 542—Rice v. Louisville & N. R. Co., 131 N.E. 2d 808, 8 Ill.App.2d 479—Perrine v. Charles T. Bisch & Son, 105 N.E.2d 543, 346 Ill.App. 321—Grissom v. Goad, 80 N.E.2d 380, 335 Ill.App. 120—Garshon v. Aaron, 71 N.E.2d 799, 330 Ill.App. 540—Ford v. Friel,

70 N.E.2d 626, 330 Ill.App. 126—Halloran v. Chicago & N. W. Ry. Co., 63 N.E.2d 670, 327 Ill.App. 217—Ells v. Norks, 55 N.E.2d 408, 323 Ill.App. 289—Gleason v. Cunningham, 44 N.E.2d 940, 316 Ill.App. 286—Kaznowski v. City of La Salle, 43 N.E.2d 852, 316 Ill.App. 115—Armster v. American Steel Foundries, 40 N.E.2d 575, 313 Ill.App. 378—Fugett v. Murray, 35 N.E.2d 946, 311 Ill.App. 323—Grunewald v. City of Chicago, 26 N.E.2d 751, 304 Ill. App. 589—Abt v. Chicago Rys. Co., 207 Ill.App. 314—Unterbrink v. City of Alton, 206 Ill.App. 253—Cheatham v. East St. Louis Ry. Co., 206 Ill.App. 237—Kleiman v. Chicago & N. W. Ry. Co., 205 Ill. App. 343—Hosie v. La Salle, 204 Ill.App. 481—Sprengel v. Schroeder, 203 Ill.App. 213—Lincoln v. Pryor, 199 Ill.App. 228—Smiley v. Barnes, 196 Ill.App. 536—Smiley v. Barnes, 196 Ill.App. 530—O'Malley v. Illinois Pub. & Printing Co., 194 Ill.App. 544—Borgerson v. Chicago Rys. Co., 187 Ill.App. 65.

Ind.—Henschen v. New York Cent. R. Co., 60 N.E.2d 738, 223 Ind. 393—Indianapolis & C. Traction Co. v. Roach, 135 N.E. 334, 192 Ind. 384—T. J. Moss Tie Co. v. Hite, 128 N.E. 752, 190 Ind. 198—Kawneer Mfg. Co. v. Kalter, 118 N.E. 561, 187 Ind. 99—Lavene v. Friedrichs, 115 N.E. 324, 186 Ind. 333, rehearing denied 116 N.E. 421, 186 Ind. 333—Public Utilities Co. v. Handorf, 112 N.E. 775, 185 Ind. 254—Wabash R. Co. v. McDoniels, 107 N.E. 291, 183 Ind. 104.

Helton v. Mann, 40 N.E.2d 395, 111 Ind.App. 487—Illinois Pipe Line Co. v. Coffman, 188 N.E. 217, 98 Ind.App. 419—Grabowski v. Benzsa, 140 N.E. 76, 80 Ind.App. 214—Wirtz v. Luckett, 135 N.E. 9, 78 Ind.App. 172—Grand Trunk Western Ry. Co. v. Thrift Trust Co., 115 N.E. 685, 68 Ind.App. 198, rehearing denied Grand Trunk Western Ry. Co. v. Thrift Co., 116 N.E. 756, 68 Ind.App. 198—Lake Shore & M. S. Ry. Co. v. W. H. McIntyre Co., 108 N.E. 978, 60 Ind.App. 191.

Iowa.—Nichols v. Snyder, 78 N.W.2d 836, 247 Iowa 1302—Stiefel v. Wandro, 68 N.W.2d 53, 246 Iowa 807—Hartman v. Peterson, 66 N.W.2d 849, 246 Iowa 41—Gatewood v. Cooper, 66 N.W.2d 472, 245 Iowa 1281—Hackman v. Beckwith, 64 N. W.2d 275, 245 Iowa 791—Elings v. Ted McGrevey, Inc., 53 N.W.2d 882, 243 Iowa 815—Booth v. General Mills, 49 N.W.2d 561, 243 Iowa 206—Boyle v. Bornholtz, 275 N.W. 479, 224 Iowa 90—Engle v. Nelson, 263 N.W. 505, 220 Iowa 771—Bridenstine v. Iowa City Electric Ry. Co., 165 N.W. 435, 181 Iowa 1124—Stutsman v. Des Moines City Ry. Co., 163 N.W. 580, 180 Iowa 524—Albrook v. Western Union Tel. Co., 150 N.W. 75, 169 Iowa 412—Ideal Cream Separator Repair Works v. City of Des Moines, 149 N.W. 640, 167 Iowa 517.

Ky.—Stanley v. Caldwell, 274 S.W.2d 383—Crawford v. Alexander, 259 S. W.2d 476—De Buyser v. Walden, 255 S.W.2d 616—Greathouse v. Mitchell, 249 S.W.2d 738—Roland v. Murray, 239 S.W.2d 967—Cumberland Quarries v. Gibson, 229 S. W.2d 978, 312 Ky. 802—Railway Exp. Agency v. Bailey, 220 S.W.2d 997, 310 Ky. 781—Geoghegan v. Daugherty, 217 S.W.2d 953, 309 Ky. 383—Shely v. Jeter, 217 S.W.2d 804, 309 Ky. 328—Commonwealth v. Webb, 216 S.W.2d 893, 309 Ky. 93—Peel v. Bramblett, 204 S.W.2d 565, 305 Ky. 577—Croley v. Huddleston, 202 S.W.2d 637, 304 Ky. 811—Aetna Oil Co. v. Metcalf, 190 S.W.2d 562, 300 Ky. 817—Kentucky Bell Corp. v. Commonwealth, 172 S.W.2d 661, 295 Ky. 21—Chesapeake & O. Ry. Co. v. Pittman, 166 S.W.2d 443, 292 Ky. 331—Louisville Baseball Club v. Hill, 164 S.W.2d 398, 291 Ky. 333—Rogers v. Price, 160 S.W.2d 371, 290 Ky. 153—Brink v. Kennedy, 151 S.W.2d 58, 286 Ky. 566—Southern Min. Co. v. Childers, 142 S.W.2d 995, 283 Ky. 687, 131 A.L.R. 315—Saxton v. Tucker, 134 S.W.2d 590, 280 Ky. 777—Cumberland River Oil Co. v. Dicken, 131 S.W.2d 927, 279 Ky. 700—Henry v. Fields, 131 S.W. 2d 467, 279 Ky. 513—Chesapeake & O. Ry. Co. v. Hav, 88 S.W.2d 318, 261 Ky. 566—City of Newport v. McElwee, 55 S.W.2d 665, 246 Ky. 659—Latonia Refining Corporation v. Dusing, 55 S.W.2d 23, 246 Ky. 328—Gayheart v. Smith, 42 S.W.2d 877, 240 Ky. 596—Kentucky Traction & Terminal Co. v. Roman's Guardian, 23 S.W.2d 272, 232 Ky. 285—Consolidated Coach Corporation v. Hopkins, 14 S.W.2d 768, 288 Ky. 184—City of Providence v. Young, 13 S.W.2d 1022, 227 Ky. 690—Newton v. French, 13 S.W.2d 1016, 227 Ky. 686—Beaver Dam Coal Co. v. Daniel, 13 S.W.2d 254, 227 Ky. 423—Cunliffe v. Chumbler, 11 S.W.2d 105, 226 Ky. 415—Fullenwider v. Brawner, 6 S.W.2d 264, 224 Ky. 274—Chesapeake & O. Ry. Co. v. Stapleton's Guardian, 3 S.W.2d 209, 223 Ky. 154, reversed on other grounds 49 S.Ct. 442, 279 U.S. 587, 73 L.Ed. 861—Kentucky Distilleries & Warehouse Co. v. Johnson, 237 S. W. 3, 193 Ky. 669—Chesapeake & O. Ry. Co. v. Honaker, 226 S.W. 394, 190 Ky. 125—Cole & Crane v. May, 214 S.W. 885, 185 Ky. 135—Sandy Valley & E. Ry. Co. v. Hughes, 205 S.W. 607, 181 Ky. 558—Louisville & N. R. Co. v. Mink, 210 S.W. 16, 179 Ky. 625—Benge's Adm'r v. Fouts, 192 S.W. 703, 174 Ky. 654—Louisville & N. R. Co. v. Thomas' Adm'r, 185 S.W. 840, 170 Ky. 145, rehearing denied 188 S.W. 463, 171 Ky. 471—North East Coal Co. v. Setzer, 183 S.W. 553, 169 Ky. 245—Cincinnati, N. O. & T. P. Ry. Co. v. Goode, 183 S.W. 264, 169 Ky. 102, error dismissed 38 S.Ct. 345, 245 U.S. 681, 62 L.Ed. 544—Louisville & N. R. Co. v. Holloway's Adm'r, 181 S.W. 1126, 168 Ky. 262, affirmed 38 S.Ct. 379, 246 U.S. 525, 62 L.Ed. 867—Chesapeake & O. Ry. Co. v. Kornhoff, 180 S.W. 523, 167 Ky. 353—Gnau v. Ackerman, 179 S.W. 217, 166 Ky. 258—Cincinnati, N. O. & T. P. Ry. Co. v. Goldston, 173 S.W. 161, 162 Ky. 42—Louisville & N. R. Co. v. Ohio Valley Tie Co., 170 S. W. 633, 161 Ky. 212, reversed on other grounds 37 S.Ct. 120, 242 U. S. 288, 61 L.Ed. 305—Kentucky & T. Ry. Co. v. West, 169 S.W. 728, 160 Ky. 280—Kentucky Traction & Terminal Co. v. Downing's Adm'r, 167 S.W. 683, 159 Ky. 502.

Mich.—Bennett v. Hill, 71 N.W.2d 220, 342 Mich. 754—Day v. Troyer, 67 N.W.2d 74, 341 Mich. 189—Torma v. Montgomery Ward & Co., 58 N.W.2d 149, 336 Mich. 468—Reardon v. Buck, 55 N.W.2d 847, 335 Mich. 318—Teeter v. Pugsley, 29 N.W.2d 850, 319 Mich. 508—White v. Makela, 8 N.W.2d 123, 304 Mich. 425—Gibbons v. Delta Contracting Co., 4 N.W.2d 39, 301 Mich. 638—Sweeney v. Hartman, 296 N.W. 282, 296 Mich. 343—Crook v. Eckhardt, 275 N.W. 739, 281 Mich. 703—Reetz v. Schemansky, 270 N.W. 811, 278 Mich. 626—Campbell v. Brown, 267 N.W. 877, 276 Mich. 449—Michaels v. Smith, 216 N.W. 413, 240 Mich. 671—Nicholas v. Maxwell Motor Corporation, 213 N.W. 128, 237 Mich. 612—In re Clark's Estate, 208 N.W. 611, 234 Mich. 471—Fishleigh v. Detroit United Ry., 171 N. W. 549, 205 Mich. 145.

Minn.—Zywiec v. City of South St. Paul, 47 N.W.2d 465, 234 Minn. 18—Sweeney v. Meyers, 270 N.W. 906, 199 Minn. 21—Yencho v. Kruly, 197 N.W. 752, 158 Minn. 408—Johnson v. Quinn, 153 N.W. 267, 130 Minn. 134.

Miss.—Brown & Root, Inc. v. Continental Southern Lines, Inc., 87 So. 2d 257, suggestion of error overruled 87 So.2d 926—Bush v. Watkins, 80 So.2d 19, 224 Miss. 238—Natchez Times Pub. Co. v. Dunigan, 72 So.2d 681, 221 Miss. 320—Sandifer Oil Co. v. Dew, 71 So.2d 752, 220 Miss. 609—Biedenharn Candy Co. v. Moore, 186 So. 628, 184 Miss. 721—Aponaug Mfg. Co. v. Carroll, 184 So. 63, 182 Miss. 793—J. C. Penney Co. v. Evans, 160 So. 779, 172 Miss. 900—Southern Bell Telephone & Telegraph Co. v. Quick, 149 So. 107, 167 Miss. 438—McDonald v. Moore, 131 So. 824, 159 Miss. 326—Harris v. Sims, 124 So. 325, 155 Miss. 207—Gulf Refining Co. v. Miller, 121 So. 482, 153 Miss. 741.

case as on the reduced amount.[32] Hence, where a remittitur for part of the recovery is entered in the lower court, a judgment for the balance will of course be upheld by the appellate court where it would have sustained a verdict for the full amount.[33]

So also, where the court directs a remittitur for part of the verdict, or a remittitur for part thereof is entered with plaintiff's consent, a reviewing court will uphold a judgment for the balance if there is evidence sustaining it,[34] even though the amount

defendant was not required to determine whether there was such alleged excessiveness in the fifteen thousand dollars award, but only whether evidence supported the ten thousand five hundred dollars finally allowed.
Tex.—Younger Bros. v. Hibbard, Civ. App., 201 S.W.2d 624.

Weight given trial court's opinion

(1) The trial court's opinion that the amount of damages awarded for injuries sustained is excessive by a certain amount should have great weight on appeal.
Ala.—Birmingham Elec. Co. v. Thompson, 37 So.2d 633, 251 Ala. 465.
Cal.—Deshotel v. Atchison, T. & S. F. Ry. Co., 300 P.2d 910, 144 C.A. 2d 224.
Mo.—Riley v. St. Louis Public Service Co., App., 245 S.W.2d 666—Couch v. St. Louis Public Service Co., App., 173 S.W.2d 617—Adams v. Carlo, App., 101 S.W.2d 753—Washburn v. Empire Printing Co., App., 249 S.W. 709.
Tenn.—Smith v. Sloan, 225 S.W.2d 539, 189 Tenn. 368, rehearing denied 227 S.W.2d 2, 189 Tenn. 368.
Spence v. Carne, App., 292 S.W. 2d 438—All v. John Gerber Co., 252 S.W.2d 138, 36 Tenn.App. 134—(Blue) Star Service, Inc. v. McCurdy, 251 S.W.2d 139, 36 Tenn. App. 1—Short Way Lines v. Thomas, 241 S.W.2d 875, 34 Tenn.App. 641—McMahan v. Tucker, 216 S.W. 2d 356, 31 Tenn.App. 429—Ezell v. Post Sign Co., 205 S.W.2d 13, 30 Tenn.App. 256—City of Nashville v. Brown, 157 S.W.2d 612, 25 Tenn. App. 340—East Tennessee Light & Power Co. v. Gose, 130 S.W.2d 984, 23 Tenn.App. 280—Roddy Mfg. Co. v. Dixon, 105 S.W.2d 513, 21 Tenn. App. 81.

(2) Judgment of the trial court, which on motion for new trial for excessiveness of verdict required plaintiff to reduce the verdict or submit to a new trial, has material influence with the supreme court in determining whether the verdict was excessive.
Miss.—Gulf Coast Motor Express Co. v. Diggs, 165 So. 292, 174 Miss. 650.

(3) In determining whether verdict was excessive notwithstanding remittitur, court of appeals was required to consider the question in light most favorable to plaintiff, disregarding evidence of defendant's side of case which contradicted plaintiff's evidence.
Mo.—Couch v. St. Louis Public Service Co., App., 173 S.W.2d 617.

(4) In reviewing assignment of error that damages awarded were grossly excessive, reviewing court does not weigh the evidence but examines the record to determine whether there is substantial evidence to support trial court's ruling, and if the evidence, viewed in light most favorable to ruling, affords reasonable and substantial support thereof, ruling must be sustained.
Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010—Daniels v. Brown, 266 S.W.2d 680—Wilhelm v. Haemmerle, 262 S.W.2d 609—Wicker v. Knox Glass Associates, 242 S.W.2d 566, 362 Mo. 614—Steuernagel v. St. Louis Public Service Co., 238 S.W.2d 426, 361 Mo. 1066.
Kasten v. St. Louis Public Service Co., App., 231 S.W.2d 252.

"Caprice"

Under statute providing for review of alleged error by trial judge in suggesting remittitur because verdict is so excessive as to indicate unaccountable "caprice," quoted word means without substantial cause and implies a certain willfulness or wantonness.
Tenn.—Waller v. Skelton, 211 S.W. 2d 445, 186 Tenn. 433.

32. Cal.—Cooper v. National Motor Bearing Co., 288 P.2d 581, 136 C.A. 2d 229—Hughes v. Hearst Publications, 180 P.2d 419, 79 C.A.2d 703—Sherwood v. Jackson, 14 P.2d 861, 126 C.A. 441.
Mo.—Kelly v. City of Cape Girardeau, 89 S.W.2d 41, 338 Mo. 103.
Wis.—Asplund v. Palmer, 44 N.W.2d 624, 258 Wis. 34.

Action of court in banc in reducing verdict limits scope of duty of the reviewing court in determining whether the verdict is excessive.
Pa.—Wilson v. Consolidated Dressed Beef Co., 145 A. 81, 295 Pa. 168.

33. Minn.—Faunce v. Searles, 142 N. W. 816, 122 Minn. 343.

Action of trial judge entitled to great weight
Tenn.—Nashville Ry. & Light Co. v. Harrison, 5 Tenn.App. 22.

34. Cal.—Riley v. Southern Pac. Co., 207 P. 699, 57 C.A. 477—Learned v. Peninsula Rapid Transit Co., 193 P. 591, 49 C.A. 436.
Fla.—Union Bus Co. v. Matthews, 192 So. 811, 141 Fla. 99—Standard Growers' Exchange v. Martin, 87 So. 54, 80 Fla. 864.
Ga.—Houston v. St. Louis Nat. Bank, 158 S.E. 618, 43 Ga.App. 361.
Ill.—Stephens v. Sweeney, 7 Ill. 375.
Yates v. Phillips, 211 Ill.App. 643.
Kan.—Bothe v. True, 175 P. 395, 103 Kan. 562.
Mass.—W. R. Grace & Co. v. Shaghalian's, Inc., 146 N.E. 799, 251 Mass. 340.
Mich.—McDaniel v. Hancock, 43 N.W. 2d 68, 328 Mich. 78.
Mo.—Combs v. Combs, 295 S.W.2d 78—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010—Daniels v. Brown, 266 S.W.2d 680—Larson v. Atchison, T. & S. F. Ry. Co., 261 S.W.2d 111, 364 Mo. 344—Hold v. Terminal R. R. Ass'n of St. Louis, 201 S.W.2d 958, 356 Mo. 412—Dees v. Skrainka Const. Co., 8 S.W.2d 873, 320 Mo. 839.
Phelps Stone & Supply Co. v. Norton, 52 S.W.2d 413, 227 Mo.App. 268—Hagen v. Wells, App., 277 S. W. 581—Campbell v. Crutcher, App., 224 S.W. 115.
Neb.—Dailey v. Sovereign Camp, W. O. W., 184 N.W. 920, 106 Neb. 767—Hellerich v. Central Granaries Co., 178 N.W. 919, 104 Neb. 818.
N.M.—Henderson v. Dreyfus, 191 P. 442, 26 N.M. 541.
Okl.—Queen Ins. Co. of America v. Baker, 50 P.2d 371, 174 Okl. 273—Reed v. Fichencord, 219 P. 937, 96 Okl. 3.
Or.—Robertson v. Frey, 144 P. 128, 72 Or. 599.
R.I.—Devine v. United Elec. Rys. Co., 128 A.2d 334—Perry v. New England Transp. Co., 45 A.2d 481, 71 R.I. 352—Goldblatt v. Koffler, 42 A.2d 490, 71 R.I. 63.
Tenn.—Waller v. Skelton, 211 S.W. 2d 445, 186 Tenn. 433—Reeves v. Catignani, 7 S.W.2d 38, 157 Tenn. 173.
Montesi v. Patton, 10 Tenn.App. 455.
Tex.—Webster v. Isbell, Civ.App., 71 S.W.2d 342, reversed on other grounds 100 S.W.2d 350, 128 Tex. 626—Webster v. Isbell, Civ.App., 71 S.W.2d 342—Lancaster v. Mebane, Civ.App., 247 S.W. 926—San Antonio, U. & G. Ry. Co. v. Ernst, Civ.App., 210 S.W. 603, error refused.
Va.—E. I. Dupont de Nemours & Co. v. Taylor, 98 S.E. 866, 124 Va. 750.
Wash.—Tate v. Chicago, M., St. P. & P. R. Co., 19 P.2d 137, 172 Wash. 33, certiorari denied Chicago, M., St. P. & P. R. Co. v. Tate, 54 S.Ct. 50, 290 U.S. 631, 78 L.Ed. 549.
4 C.J. p 874 note 45.

as reduced seems large,[35] if it is not clearly excessive.[36]

If, however, it is apparent to the appellate court that the verdict is the result of prejudice or passion or other improper influence, a remittitur will not remove the taint of the vice,[37] and a remittitur

Absence abuse of discretion

Where the trial court orders a remittitur, the appellate court will not further reduce the verdict, except on a clear showing of abuse of the court's discretion.

Mo.—Stelmach v. Saul, App., 50 S.W. 2d 721.

Effect of statute

Prior to the adoption of a statute relating to remittitur, the acceptance of a remittitur was a binding election on the part of plaintiff; the statute only affects those cases where the remittitur is made on account of passion or prejudice of the jury and hence the acceptance of a remittitur which is not made on those grounds is binding on plaintiff and cannot be raised on appeal.

Tenn.—Yarbrough v. Louisville & N. Ry. Co., 11 Tenn.App. 456.

35. Ala.—Luquire Funeral Homes Ins. Co. v. Turner, 178 So. 536, 235 Ala. 305.

Tex.—Houston Electric Co. v. Flattery, Civ.App., 217 S.W. 950.

4 C.J. p 874 note 46.

36. R.I.—Bernat v. De Gasparre, 129 A.2d 545—Magnotta v. De Lisi, 97 A. 593.

4 C.J. p 874 note 47.

37. Fla.—Atlantic Coast Line R. Co. v. Moore, 186 So. 210, 135 Fla. 485.

Ind.—Elliott v. Kraus, 172 N.E. 783, 92 Ind.App. 494.

Iowa.—Boyle v. Bornholtz, 275 N.W. 479, 224 Iowa 90—Ryan v. Trenkle, 200 N.W. 318, 199 Iowa 636—Faust v. Parker, 198 N.W. 646, 197 Iowa 1224.

Kan.—Wester v. Nelson, 29 P.2d 1087, 139 Kan. 147.

Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010.

Kasperski v. Rainey, App., 135 S.W.2d 11—Collins v. Leahy, App., 102 S.W.2d 801—Stelmach v. Saul, App., 50 S.W.2d 721.

Mont.—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48.

Ohio.—Cleveland Ry. Co. v. Mueller, 166 N.E. 391, 31 Ohio App. 488.

Cleveland Worsted Mills Co. v. Coates, 26 Ohio Cir.Ct.,N.S., 353.

Okl.—Reed v. Fichencord, 219 P. 937, 96 Okl. 3.

R.I.—Beaumier v. Provensal, 193 A. 521, 58 R.I. 472.

Tenn.—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498.

Tex.—Houston Electric Co. v. Flattery, Civ.App., 217 S.W. 950.

4 C.J. p 874 note 48.

Extent of inquiry

The reviewing court, in determining whether excessive damages, for which the trial court ordered a remittitur, were influenced by the jury's passion or prejudice, should consider whether excessive damages were induced by incompetent evidence, by misconduct of court or counsel, or by other action at the trial.

Ohio.—Fromson & Davis Co. v. Reider, 189 N.E. 851, 127 Ohio St. 564.

Trial court is in much better position to determine whether the excessive verdict was the result of passion and prejudice, and its determination should ordinarily be accepted.

N.M.—Henderson v. Dreyfus, 191 P. 442, 26 N.M. 541.

Appellate court makes no finding of prejudice

The trial judge having declined to make a finding that his reason for granting a remittitur was a belief that the jury were influenced by passion and prejudice in fixing the damages, a reviewing court will not supply such a finding and bring it into the record.

Ohio.—Spear & Co. v. Fulton, 3 Ohio App. 40, affirmed 112 N.E. 1086, 92 Ohio St. 523.

Wash.—Olson v. Weitz, 221 P.2d 537, 37 Wash.2d 70.

Limitation or exception

(1) However, it has been said that the rendition of a verdict so large that it shows on its face that it is the result of prejudice or passion constitutes error requiring reversal, unless a suitable remittitur is entered.

Tex.—Fisheries Co. v. McCoy, Civ. App., 202 S.W. 343, error refused.

(2) So it has also been said that although there is no warrant in law for the reduction of a verdict, in order to save the expense of a new trial, the court may require plaintiff to accept a lesser sum or suffer a new trial.

Mont.—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48.

Extent verdict affected by bias undeterminable

Where the reviewing court cannot say from the evidence to what extent the jury's bias affected the amount of damages in a libel, the trial court's error in rendering judgment for twelve thousand dollars after a remittitur of fifty-three thousand dollars was reversible.

Tex.—World Oil Co. v. Hicks, Civ. App., 75 S.W.2d 905.

Trial court's statement that prejudice exists

(1) A statement by the trial judge in requiring a remittitur of a portion of the damages awarded by the verdict as a condition of denying a motion for a new trial that the amount of the verdict was excessive, and the excess was the result of passion and prejudice, does not show that it was the trial court's opinion that the entire verdict was the result of passion and prejudice, and therefore does not require a reversal of the judgment rendered after remittitur for an amount which was not excessive.

Cal.—Riley v. Southern Pac. Co., 207 P. 699, 57 C.A. 477.

N.J.—Wilson v. Custer, 28 A.2d 169, 129 N.J.Law 123.

(2) Jury's return of verdict for plaintiff in three times amount finally allowed by judge, who stated in minute order, directing remission of difference by plaintiff as condition precedent to denial of defendants' motion for new trial, that verdict was given under influence of passion and prejudice, did not show that judge's misconduct influenced jury to defendants' prejudice, where reduced amount was not disproportionate to plaintiff's damage.

Cal.—Karwoski v. Grant, 85 P.2d 944, 30 C.A.2d 171.

(3) Record, on appeal by defendant in action for personal injuries, was insufficient to establish that verdict for plaintiffs had been result of passion and prejudice, and did not entitle defendant to new trial, notwithstanding fact that trial court had reduced verdict for one of plaintiffs on finding that verdict had been rendered under influence of passion and prejudice.

Minn.—Conradson v. Vinkemeir, 51 N.W.2d 651, 235 Minn. 537.

Mere size does not show passion or prejudice

(1) The mere size of verdict for damages, although it be necessary to reduce it, does not indicate passion or prejudice.

Mo.—Kimberling v. Wabash Ry. Co., 85 S.W.2d 736, 337 Mo. 702—Greenwell v. Chicago, M. & St. P. Ry. Co., 224 S.W. 404.

Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933.

Okl.—Queen Ins. Co. of America v. Baker, 50 P.2d 371, 174 Okl. 273.

(2) That the trial court determined damages were excessive and reduced the amount awarded does not necessarily indicate that the verdict was influenced by prejudice or passion.

Cal.—Monterrosa v. Grace Lines, 204 P.2d 377, 90 C.A.2d 826—Turner v. Whittel, 38 P.2d 835, 2 C.A.2d 585.

pears.[70]

The rule that the appellate court ordinarily will not interfere with the award of the jury is particularly applicable where the amount of the recovery is based on conflicting evidence,[71] or where the amount of the verdict is justified or supported by the evidence,[72] or has been approved by the trial

fere, notwithstanding the sum allowed was supported by legal experts.
Ill.—Gilbert v. Lloyd, 170 Ill.App. 436, 450.
6 C.J. p 765 note 65.

70. Ark.—Missouri Pac. R. Co. v. House, 168 S.W.2d 421, 205 Ark. 211—Lynch v. East Arkansas Builders' Supply Co., 104 S.W.2d 205, 193 Ark. 1004.
Fla.—Higbee v. Dorigo, 66 So.2d 684.
Idaho.—Hayward v. Yost, 242 P.2d 971, 72 Idaho 415.
Ill.—Armster v. American Steel Foundries, 40 N.E.2d 575, 313 Ill. App. 378.
Ind.—State v. Trotter, 14 N.E.2d 550, 214 Ind. 68.
Iowa.—Hackman v. Beckwith, 64 N. W.2d 275, 245 Iowa 791—Booth v. General Mills, 49 N.W.2d 561, 243 Iowa 206.
Ky.—De Buyser v. Walden, 255 S.W. 2d 616—Greathouse v. Mitchell, 249 S.W.2d 738—Roland v. Murray, 239 S.W.2d 967—Cumberland Quarries v. Gibson, 229 S.W.2d 978, 312 Ky. 802—Croley v. Huddleston, 202 S. W.2d 637, 304 Ky. 811—Aetna Oil Co. v. Metcalf, 190 S.W.2d 562, 300 Ky. 817.
La.—Mabry v. Midland Valley Lumber Co., 47 So.2d 673, 217 La. 877—Moore v. Blanchard, 43 So.2d 599, 216 La. 253—Allgood v. Loeb, 27 So. 2d 380, 210 La. 594.
Currie v. Government Emp. Ins. Co., App., 90 So.2d 482—Wainwright v. Globe Indem. Co., App., 75 So.2d 554—Mitchell v. Shreveport Laundries, App., 61 So.2d 539—Bonner v. Ouachita Baking Co., App., 37 So.2d 543—Thiel v. Kern, App., 34 So.2d 296—Lambert v. Greene, App., 32 So.2d 400—Payne v. Prestridge, 133 So. 512, 16 La. App. 479.
Md.—Kennedy v. Crouch, 62 A.2d 582, 191 Md. 580.
Mass.—Kinnear v. General Mills, 32 N.E.2d 263, 308 Mass. 344.
Mich.—Hoekzema v. Van Haften, 21 N.W.2d 183, 313 Mich. 417.
Mo.—Cruce v. Gulf, M. & O. R. Co., 238 S.W.2d 674, 361 Mo. 1138.
N.M.—Davis v. Campbell, 197 P.2d 430, 52 N.M. 272.
N.Y.—Masterson v. City of Mechanicville, 87 N.Y.S.2d 94, 274 App.Div. 736.
Okl.—Dixie Cab Co. v. Sanders, 284 P.2d 421—Oklahoma Transp. Co. v. Seminole Lodge No. 430, I. O. O. F., 217 P.2d 164, 200 Okl. 622.
R.I.—Gallo v. Simpson Spring Co., 181 A. 915, 55 R.I. 410.
Wash.—Wesseler v. Great Northern Ry. Co., 155 P. 1063, 90 Wash. 234, rehearing denied 157 P. 461, 90 Wash. 234.
W.Va.—Wolford v. Wolford, 56 S.E.2d 614, 133 W.Va. 403—Raines v. Faulkner, 48 S.E.2d 393, 131 W.Va. 10.

71. U.S.—St. Louis, I. M. & S. Ry. Co. v. Reed, Okl., 216 F. 741, 132 C.C.A. 651.
Ariz.—Keen v. Clarkson, 108 P.2d 573, 56 Ariz. 437.
Ark.—Abraham v. Turner, 223 S.W.2d 830, 216 Ark. 22—Home Ins. Co. of New York v. Williams, 145 S.W.2d 743, 201 Ark. 460—Walker v. Earnhart, 63 S.W.2d 974, 187 Ark. 1110—Hall v. Gage, 179 S.W. 508, 120 Ark. 320—St. Louis Southwestern Ry. Co. v. Overton, 169 S.W. 364, 114 Ark. 98.
Cal.—Konda v. Frumpkin, 265 P. 955, 90 C.A. 384—Miller v. Nathan, 261 P. 1047, 87 C.A. 185.
Conn.—Kearns v. Widman, 108 A. 661, 94 Conn. 257.
Fla.—Wolfe v. Darby, 193 So. 749, 141 Fla. 713.
Idaho.—Berding v. Northwestern Securities Co., 211 P. 62, 36 Idaho 384.
Ill.—Shope v. Laughlin, 191 Ill.App. 38.
Ind.—Chmielewski's Estate v. Chmielewski, App., 200 N.E. 747, 102 Ind. App. 20—Hill v. Boggs, App., 185 N.E. 300, 98 Ind.App. 506—Carter v. Drake, 156 N.E. 594, 88 Ind.App. 176.
Ky.—Croley v. Huddleston, 202 S.W. 2d 637, 304 Ky. 811—City of Greenville v. Johnston, 52 S.W.2d 716, 244 Ky. 782—C. F. Kleiderer & Son v. Aldridge's Ex'x, 170 S.W. 23, 160 Ky. 638—Robinson v. Louisville & N. R. Co., 169 S.W. 831, 160 Ky. 235.
Md.—Washington, B. & A. Electric R. Co. v. Linthicum, 96 A. 448, 127 Md. 257.
Minn.—Randall v. Great Northern Ry. Co., 234 N.W. 298, 182 Minn. 259.
Mo.—Coghlan v. Trumbo, 179 S.W.2d 705—Keyes v. Chicago, B. & Q. R. Co., 31 S.W.2d 50, 326 Mo. 236.
Scheidegger v. Thompson, App., 174 S.W.2d 216—Waeckerley v. Colonial Baking Co., App., 67 S.W. 2d 779—Nibler v. Kansas City Southern Ry. Co., 193 S.W. 598, 197 Mo.App. 696.
Mont.—Klus v. Lamire, 230 P. 364, 71 Mont. 445—Sharp v. Sharp, 213 P. 799, 66 Mont. 438.
Neb.—Christoffersen v. Weir, 193 N. W. 922, 110 Neb. 390—Calbreath v. Bamford, 151 N.W. 957, 97 Neb. 830.
Nev.—Ryan v. Manhattan Big Four Mining Co., 145 P. 907, 38 Nev. 92.
N.M.—California Sugar & White Pine Co. v. Whitmer Jackson & Co., 263 P. 504, 33 N.M. 117.
Ohio.—Barnett v. Hills, App., 79 N.E. 2d 691.
Okl.—Morrissey v. Carter, 229 P. 510, 103 Okl. 36.
R.I.—Grimes v. United Electric Rys. Co., 193 A. 740, 58 R.I. 458.
S.D.—Van Buren v. Tullar, 287 N.W. 312, 66 S.D. 580—Weibel v. Gardner, 188 N.W. 741, 45 S.D. 474.
Tex.—Dulaney Inv. Co. v. Wood, Civ. App., 142 S.W.2d 379—Central Texas Telephone Co. v. Allmand, Civ. App., 246 S.W. 676—Missouri, O. & G. Ry. Co. of Texas v. Love, Civ. App., 169 S.W. 922.
Utah.—Rampton v. Cole, 172 P. 477, 52 Utah 36.
W.Va.—Smith v. White, 87 S.E. 865, 77 W.Va. 377, rehearing denied 88 S.E. 662, 77 W.Va. 377.
Wyo.—Chicago & N. W. Ry. Co. v. Ott, 237 P. 238, 33 Wyo. 200, rehearing denied 238 P. 287, 33 Wyo. 200.

Appellate court will not substitute its judgment for judgment of the jury in ascertainment of damages, where the finding is based on conflicting evidence.
Mont.—Ashley v. Safeway Stores, 47 P.2d 53, 100 Mont. 312.

72. Ala.—Birmingham Ry., Light & Power Co. v. Nalls, 66 So. 5, 188 Ala. 352.
Ark.—Peek v. Henderson, 185 S.W.2d 704, 208 Ark. 238—Phillips Motor Co. v. Rouse, 151 S.W.2d 994, 202 Ark. 641—Cohen v. Ramey, 147 S. W.2d 338, 201 Ark. 713—Lynch v. East Arkansas Builders' Supply Co., 104 S.W.2d 205, 193 Ark. 1004—Dillon v. Hawkins, 227 S.W. 758, 147 Ark. 1.
Cal.—Mitchell v. Towne, 87 P.2d 908, 31 C.A.2d 259—Los Angeles County Flood Control Dist. v. Abbot, 76 P.2d 188, 24 C.A.2d 728—Elrod-Oas Home Bldg. Co. v. Mensor, 8 P.2d 171, 120 C.A. 485—Pacific States Auxiliary Corporation v. Farris, 5 P.2d 452, 118 C.A. 522.
Fla.—Steitner v. Clevenger, 68 So.2d 396.
Ga.—Steinmetz v. Chambley, 83 S.E. 2d 318, 90 Ga.App. 519—Powers v. Brunswick-Balke-Collender Co., 91 S.E. 1062, 19 Ga.App. 706.
Hawaii.—Coney v. Lihue Plantation Co., 39 Hawaii 129.
Ill.—Rice v. Louisville & N. R. Co., 131 N.E.2d 808, 8 Ill.App.2d 479.
Kan.—Will v. Hughes, 238 P.2d 478, 172 Kan. 45—In re Mecke's Estate, 201 P.2d 1030, 166 Kan. 400.
Ky.—Southern Min. Co. v. Childers, 142 S.W.2d 995, 283 Ky. 687, 131 A.

court.[72] The operation of the rule is not affected by the fact that, in the opinion of the reviewing

L.R. 315—A. Arnold & Son Transfer & Storage Co. v. Weisiger, 6 S.W.2d 1084, 224 Ky. 659.

La.—Petteway v. Shreveport Rys. Co., App., 41 So.2d 240—Mask v. City of Monroe, 121 So. 250, 9 La.App. 431—Mask v. City of Monroe, 121 So. 250, 9 La.App. 417.

Me.—Johnson v. Bangor Ry. & Electric Co., 131 A. 1, 125 Me. 88.

Mich.—Vink v. House, 57 N.W.2d 887, 336 Mich. 292—Anderson v. Kearly, 20 N.W.2d 728, 312 Mich. 566—Covell v. Colburn, 13 N.W.2d 275, 308 Mich. 240.

Minn.—Stephanie v. Consumers Mut. Ins. Co., 74 N.W.2d 116, 246 Minn. 62—Farmers' State Bank of Lake Mills, Iowa v. Hammond, 212 N.W. 593, 170 Minn. 313—Dufresne v. Marine Ins. Co., 196 N.W. 560, 157 Minn. 390.

Mo.—Thompson v. Healzer Cartage Co., 287 S.W.2d 791—Smithpeter v. Wabash R. Co., 231 S.W.2d 135, 360 Mo. 835, 19 A.L.R.2d 950—Schaefer v. Transamerican Freight Lines, 173 S.W.2d 20—Philibert v. Benjamin Ansehl Co., 119 S.W.2d 797, 342 Mo. 1239—Jones v. St. Louis-San Francisco Ry. Co., 228 S.W. 780, 287 Mo. 64.

Kamo Elec. Co-op. v. Baker, App., 274 S.W.2d 497—State ex rel. Burcham v. Drainage Dist. No. 25, App., 272 S.W.2d 712—Scheidegger v. Thompson, App., 174 S.W.2d 216—Robinson v. City of Poplar Bluff, App., 293 S.W. 503—Haney v. Geraghty, App., 273 S.W. 780—Murphy v. St. Joseph Transfer Co., App., 235 S.W. 138—Haden v. Imperial Assur. Co., 198 S.W. 72, 197 Mo. App. 574.

Mont.—Ashley v. Safeway Stores, 47 P.2d 53, 100 Mont. 312.

Neb.—Wolfe v. Mendel, 84 N.W.2d 109, 165 Neb. 16—Bezdek v. Patrick, 82 N.W.2d 583, 164 Neb. 398—Van Wye v. Wagner, 79 N.W.2d 281, 163 Neb. 205—Peacock v. J. L. Brandeis & Sons, 60 N.W.2d 643, 157 Neb. 514—Johnson v. Schrepf, 47 N.W.2d 853, 154 Neb. 317—Pearse v. Loup River Public Power Dist., 290 N.W. 474, 137 Neb. 611.

Nev.—J. C. Penney Co. v. Gravelle, 155 P.2d 477, 62 Nev. 434.

N.D.—Olson v. Wetzstein, 225 N.W. 459, 58 N.D. 263.

Ohio.—Barnett v. Hills, App., 79 N.E. 2d 691—Bowser v. Bembo, App., 36 N.E.2d 998.

Okl.—Dixie Cab Co. v. Sanders, 284 P.2d 421—Rochester Am. Ins. Co. v. Short, 252 P.2d 490, 207 Okl. 669, followed in National-Ben Franklin Fire Ins. Co. v. Short, 252 P.2d 495, 207 Okl. 673—Oklahoma Transp. Co. v. Seminole Lodge No. 430, I. O. O. F., 217 P.2d 164, 200 Okl. 622—Shead v. Mann, 185 P.2d 691, 199 Okl. 275—Shell Pipe Line Co. v. De Shazer, 157 P.2d 464, 195 Okl. 347—Simms v. Prather, 55 P.2d 463, 176 Okl. 199—Carter Oil Co. v. Kennedy, 278 P. 640, 137 Okl. 168—Merchants' Southwest Transfer & Storage Co. v. Campbell, 229 P. 542, 100 Okl. 226—Beggs Oil Co. v. Deardorf, 222 P. 535, 97 Okl. 33.

Or.—Lake County Pine Lumber Co. v. Underwood Lumber Co., 12 P.2d 324, 140 Or. 19—Richardson v. Portland Trackless Car Co., 233 P. 540, 113 Or. 544.

Pa.—Paustenbaugh v. Ward Baking Co., 97 A.2d 816, 374 Pa. 418—Riff v. Pittsburgh Rys. Co., 148 A. 102, 298 Pa. 256.

Pryor v. Graff, 117 A.2d 818, 179 Pa.Super. 322—Mohler v. Worley, 116 A.2d 342, 179 Pa.Super. 56—Perzak v. Coulter, 90 A.2d 256, 171 Pa. Super. 475.

Tex.—Hillin v. Hagler, Civ.App., 286 S.W.2d 661—Nunn v. Daly, Civ. App., 150 S.W.2d 834, error dismissed, judgment correct—Mitchell Oil & Gas Co. v. Green, Civ. App., 115 S.W.2d 729—S. H. Kress & Co. v. Rust, Civ.App., 97 S.W.2d 997, affirmed 120 S.W.2d 425, 132 Tex. 89—Parker v. Solis, Civ.App., 277 S.W. 714.

Utah.—Stuck v. Delta Land & Water Co., 227 P. 791, 63 Utah 495—Thomas v. Ogden Rapid Transit Co., 155 P. 436, 47 Utah 595.

Va.—Danville Community Hospital v. Thompson, 43 S.E.2d 882, 186 Va. 746, 173 A.L.R. 525.

Wash.—Beaulier v. Mahoney, 283 P. 707, 155 Wash. 141—Griggs v. Wayne, 171 P. 230, 100 Wash. 459—Godefroy v. Hupp, 160 P. 1056, 93 Wash. 371.

W.Va.—Thalman v. Schultze, 160 S. E. 303, 111 W.Va. 64.

Wis.—Mueller v. Silver Fleet Trucking Co., 37 N.W.2d 66, 254 Wis. 458—Zeise v. Deprey, 31 N.W.2d 523, 252 Wis. 316—Smith v. Huskelhus' Estate, 197 N.W. 170, 182 Wis. 349—Smith v. Huskelhus' Estate, 193 N.W. 996, 182 Wis. 349, opinion adhered to Smith v. Freng, 196 N.W. 887, 182 Wis. 349.

Reasonably supported by evidence

Ariz.—Sisters of St. Joseph in Arizona v. Edwards, 44 P.2d 155, 45 Ariz. 407.

Personal injuries

Where character of a plaintiff's injuries is such that jurors cannot determine their extent by observation as in case of loss of a leg, the court should be slow to disturb verdict where it is supported by substantial evidence, the weight and credibility of which is for the jury unless the amount of the verdict is manifestly out of proportion to injuries proved.

Mo.—Hoelzel v. Chicago, R. I. & P. Ry. Co., 85 S.W.2d 126, 337 Mo. 61.

Tex.—Boyd v. Guinn, Civ.App., 44 S.W.2d 1112.

Rule inapplicable in case of attorney's fee

On the question of the reasonableness of the award of attorney's fee, the appellate court may disregard the jury finding on uncontradicted evidence, and fix the amount in the light of the entire record.

Ark.—St. Paul Fire & Marine Ins. Co. v. Green, 29 S.W.2d 304, 181 Ark. 1096.

73. Ala.—Wilson & Co. v. King, 33 So.2d 351, 250 Ala. 90—Alabama Great Southern R. Co. v. Baum, 31 So.2d 366, 249 Ala. 442—Kraas v. American Bakeries Co., 164 So. 565, 231 Ala. 278—City of Huntsville v. Phillips, 67 So. 664, 191 Ala. 524.

Alley v. Birmingham Elec. Co., 71 So.2d 108, 37 Ala.App. 240, certiorari denied 71 So.2d 111, 260 Ala. 695—Birmingham Electric Co. v. Kennedy, 13 So.2d 101, 31 Ala.App. 142.

Ariz.—Dennis v. Stukey, 294 P. 276, 37 Ariz. 299, rehearing denied 295 P. 971, 37 Ariz. 510.

Cal.—Ericksen v. Southern Pac. Co., 246 P.2d 642, 39 C.2d 374, certiorari denied Southern Pac. Co. v. Ericksen, 73 S.Ct. 277, 344 U.S. 897, 97 L.Ed. 693—Drotleff v. Renshaw, 208 P.2d 969, 34 C.2d 176.

Gist v. French, 288 P.2d 1003, 136 C.A.2d 247—Khan v. Southern Pac. Co., 282 P.2d 78, 132 C.A.2d 410—Harris v. Lampert, 281 P.2d 292, 131 C.A.2d 751—Cavanah v. Mercush, 263 P.2d 133, 121 C.A.2d 371—Todd v. Standfield, 245 P.2d 331, 111 C.A.2d 615—Burke v. City and County of San Francisco, 244 P.2d 708, 111 C.A.2d 314—Sandoval v. Southern Cal. Enterprises, 219 P. 2d 928, 98 C.A.2d 240—Duvall v. T. W. A., 219 P.2d 463, 98 C.A.2d 106—Lasater v. Oakland Scavenger Co., 162 P.2d 486, 71 C.A.2d 217—Collier v. Landram, 155 P.2d 652, 67 C.A.2d 752—**Corpus Juris quoted in** Hallinan v. Prindle, 62 P.2d 1075, 1082, 17 C.A.2d 656—Criss v. Angelus Hospital Ass'n of Los Angeles, 56 P.2d 1274, 13 C.A.2d 412—Baker v. Peck, 36 P.2d 404, 1 C.A. 2d 231—Dodd v. Postal Telegraph-Cable Co., 30 P.2d 81, 137 C.A.2d 237—Westervelt v. McCullough, 228 P. 734, 68 C.A. 198.

Conn.—Rockhill v. White Line Bus Co., 145 A. 504, 109 Conn. 706.

Fla.—Florida Power & Light Co. v. Robinson, 68 So.2d 406.

Ga.—Western & Atlantic R. R. v. Burnett, 54 S.E.2d 357, 79 Ga.App. 530—McLendon v. Floyd, 1 S.E.2d 466, 59 Ga.App. 506—Martin v. Hutchinson, 105 S.E. 313, 26 Ga. App. 24.

Ill.—Pipal v. Grand Trunk Western Ry. Co., 173 N.E. 372, 341 Ill. 320, certiorari denied Grand Trunk Western Ry. Co. v. Pipal, 51 S.Ct. 486, 283 U.S. 838, 75 L.Ed. 1449.
Montgomery v. Atchison, T. & S. F. Ry. Co., 71 N.E.2d 105, 330 Ill. App. 334.
Ind.—Hahn v. Moore, App., 133 N.E. 2d 900, rehearing denied 134 N.E. 2d 705.
Kan.—Foster v. City of Augusta, 256 P.2d 121, 174 Kan. 324—West v. Lear, 205 P.2d 910, 167 Kan. 222.
Ky.—Louisville & N. R. Co. v. Gregory, 130 S.W.2d 745, 279 Ky. 295.
La.—Stanley v. Cryer Drilling Co., 36 So.2d 9, 213 La. 980.
Mass.—Mitchell v. Silverstein, 81 N. E.2d 364, 323 Mass. 239.
Mich.—White v. Makela, 8 N.W.2d 123, 304 Mich. 425.
Minn.—James v. Chicago, St. P., M. & O. Ry. Co., 16 N.W.2d 188, 218 Minn. 333—Wendt v. Bowman & Libby, 148 N.W. 568, 126 Minn. 509.
Miss.—McDonald v. Moore, 131 So. 824, 154 Miss. 326.
Mo.—Brown v. Moore, 248 S.W.2d 553—Cruce v. Gulf, M. & O. R. Co., 238 S.W.2d 674, 361 Mo. 1138—Wilhelm v. Kansas City Public Service Co., 212 S.W.2d 915, 358 Mo. 6—Capstick v. T. M. Sayman Products Co., 34 S.W.2d 480, 327 Mo. 1.
Smith v. St. Louis Public Service Co., App., 235 S.W.2d 102—Panke v. Shannon, App., 207 S.W.2d 854, reversed on other grounds 212 S. W.2d 792, 357 Mo. 1195—Scism v. Alexander, App., 93 S.W.2d 36—Dietderick v. Missouri Iron & Metal Co., 9 S.W.2d 824, 222 Mo.App. 740.
Mont.—Chancellor v. Hines Motor Supply Co., 69 P.2d 764, 104 Mont. 603—McGonigle v. Prudential Ins. Co. of America, 46 P.2d 687, 100 Mont. 203—Minneapolis - Moline Power Implement Co. v. Parent, 17 P.2d 1088, 93 Mont. 207.
N.Y.—Luedeke v. New York Cent. & H. R. R. Co., 149 N.Y.S. 525, 164 App.Div. 104, reargument and leave to appeal denied 150 N.Y.S. 1094, 165 App.Div. 948.
N.C.—Campo v. S. H. Kress & Co., 182 S.E. 475, 208 N.C. 816—James v. Sartin Dry Cleaning Co., 181 S. E. 341, 208 N.C. 412—Cook v. Holland Hospital, 84 S.E. 352, 168 N.C. 250, L.R.A.1914D 611, Ann.Cas. 1917C 158.
N.D.—Kohler v. Stephens, 24 N.W.2d 64, 74 N.D. 655.
Ohio.—Bishop v. East Ohio Gas Co., 56 N.E.2d 164, 143 Ohio St. 541.
Okl.—Dickinson v. Perry, 181 P. 504, 75 Okl. 251.
Pa.—Huey v. Blue Ridge Transp. Co., 39 A.2d 602, 350 Pa. 488.
Bockstoce v. Pittsburgh Rys. Co., 48 A.2d 126, 159 Pa.Super. 237.
Roadman v. Bellone, Com.Pl., 46 Mun.L.R. 185, affirmed 108 A.2d 754, 379 Pa. 483.
R.I.—Longo v. Monast, 40 A.2d 433, 70 R.I. 460—Gallo v. Simpson Spring Co., 181 A. 915, 55 R.I. 410.
Tenn.—McClard v. Reid, 229 S.W.2d 505, 190 Tenn. 337—Wolfe v. Vaughn, 152 S.W.2d 631, 177 Tenn. 678.
City of Columbia v. Lentz, 282 S.W.2d 787, 39 Tenn.App. 350—Gibson County Elec. Membership Corp. v. Hall, 222 S.W.2d 689, 32 Tenn.App. 394—Southern Ry. Co. v. Kuykendall, App., 186 S.W.2d 617—Martin v. Castner-Knott Dry Goods Co., 181 S.W.2d 638, 27 Tenn. App. 421—Municipal Paving & Construction Co. v. Hunt, 123 S.W.2d 843, 22 Tenn.App. 380—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498.
Tex.—Panos v. Jackson, Civ.App., 253 S.W.2d 705, error refused no reversible error—Dixon v. Samartino, Civ.App., 163 S.W.2d 739, error refused—Dulaney Inv. Co. v. Wood, Civ.App., 142 S.W.2d 379, error dismissed, judgment correct—Flores v. Sullivan, Civ.App., 137 S.W.2d 799, error dismissed, judgment correct.
Utah.—Wilson v. Oldroyd, 267 P.2d 759, 1 Utah 2d 362.
Vt.—Mullett v. Milkey, 29 A.2d 806, 13 Vt. 42—In re Brace's Estate, 196 A. 742, 109 Vt. 360.
Va.—Kritselis v. Petty, 105 S.E. 536, 129 Va. 175.
Wis.—Mossak v. Pfost, 44 N.W.2d 922, 258 Wis. 73—Kuenzi v. Leisten, 279 N.W. 68, 227 Wis. 506—Schuster v. Bridgeman, 275 N.W. 440, 225 Wis. 547—Maloney v. Wisconsin Power, Light & Heat Co., 193 N.W. 399, 180 Wis. 546.
4 C.J. p 870 note 97.
Approval or disapproval by trial court generally see infra § 1653.

Weight of trial court's opinion

(1) The opinion of the trial justice with respect to the justice or injustice of a verdict is not conclusive, although entitled to great weight.
Cal.—Johnson v. McRee, 152 P.2d 526, 66 C.A.2d 524.
Conn.—Scorpion v. American-Republican, 37 A.2d 802, 131 Conn. 42—Corey v. Phillips, 10 A.2d 370, 126 Conn. 246—Olsen v. Genalski, 184 A. 876, 121 Conn. 340.
La.—Davison v. American Policyholders Ins. Co., App., 48 So.2d 723.
R.I.—Somerset Realty Co. v. Shapiro, 155 A. 360, 51 R.I. 417.
Tenn.—D. M. Rose & Co. v. Snyder, 206 S.W.2d 897, 185 Tenn. 499.
Finks v. Gillum, 273 S.W.2d 722, 38 Tenn.App. 304—White v. Seier, 264 S.W.2d 241, 37 Tenn.App. 437—Act-O-Lane Gas Service Co. v. Hall, 248 S.W.2d 398, 35 Tenn.App. 500—Act-O-Lane Gas Service Co. v. Clinton, 245 S.W.2d 795, 35 Tenn. App. 442—Carman v. Huff, 227 S. W.2d 780, 32 Tenn.App. 687—Campbell v. Campbell, 199 S.W.2d 931, 29 Tenn.App. 651—Hughes v. Taylor, 198 S.W.2d 337, 29 Tenn.App. 548—Phillips v. Newport, 187 S.W. 2d 965, 28 Tenn.App. 187.
W.Va.—Yuncke v. Welker, 36 S.E.2d 410, 128 W.Va. 299.

(2) All presumptions are in favor of the action of the trial court in sustaining a verdict, and the reviewing court will not interfere unless it clearly appears that substantial justice has not been done.
Ala.—Austin v. Tennessee Biscuit Co., 52 So.2d 190, 255 Ala. 573.
Birmingham Electric Co. v. Bailey, 15 So.2d 465, 31 Ala.App. 275, certiorari denied 15 So.2d 469, 244 Ala. 671.
R.I.—Chisholm v. S. S. Kresge Co., 182 A. 4, 55 R.I. 422.
4 C.J. p 870 note 97 [a].

(3) In reviewing evidence in support of an award of damages, the supreme court defers to the judgment of the trial judge and the jury unless viewing the evidence in light most favorable to the plaintiff the damages awarded are patently excessive.
Mo.—Enyart v. Santa Fe Trail Transp. Co., 241 S.W.2d 268—Cordray v. City of Brookfield, 88 S.W. 161.

(4) Action of the trial court in denying motion to set aside verdict is entitled to great weight, where the matter involved is the amount of damages awarded for personal injuries.
Conn.—Briggs v. Becker, 124 A. 826, 101 Conn. 62.
Tenn.—Blalock v. Temple, 276 S.W. 2d 493, 38 Tenn.App. 463—Finks v. Gillum, 273 S.W.2d 722, 38 Tenn. App. 304—Thoni v. Hayborn, 260 S.W.2d 376, 37 Tenn.App. 56.

(5) The appellate court, in determining whether approval of the amount of the verdict was an abuse of discretion, will not weigh the evidence.
Pa.—Krauss v. Cohn, 93 Pa.Super. 101.

(6) If it appears, from trial justice's decision on motion for new trial, that he has not fully regarded the elements of evidence and has based his decision on a personal reluctance to differ with jury or to substitute his judgment on the evidence for their judgment, when the circumstances require it, then his approval of their verdict lacks the persuasive force that it regularly possesses.
R.I.—Paradise v. Rick, 7 A.2d 713, 63 R.I. 207.

Absence of abuse of discretion
Pa.—Filer v. Filer, 152 A. 567, 301 Pa. 461.

court, the amount awarded by the jury is larger or smaller than it should have been,[74] where there was evidence to sustain the verdict,[75] and nothing to induce the belief that the jury were actuated by prejudice, partiality, or corruption;[76] nor will a verdict be disturbed merely because it is for less than the damages testified to by the witnesses,[77] or because the amount found is between the estimates of witnesses.[78] A verdict for an amount within the range of the testimony will not be set aside because it does not correspond to the contentions of the parties.[79]

It has been held, however, that an appellate court may or must interfere if the verdict is not reasonably within the range of the evidence,[80] or where

74. Fla.—Lithgow v. Hamilton, 69 So.2d 776—Florida Power & Light Co. v. Hargrove, 35 So.2d 1, 160 Fla. 405.
Minn.—Brannan v. Shertzer, 64 N.W. 2d 755, 242 Minn. 277.
Mo.—Montgomery v. Hammond Packing Co., App., 217 S.W. 867.
N.J.—Heuser v. Rothenberg, 1 A.2d 328, 121 N.J.Law 14, affirmed 8 A.2d 391, 123 N.J.Law 319, 123 A.L.R. 319.
N.D.—Daniels v. Payne, 191 N.W. 776, 49 N.D. 370.
Ohio.—Barnett v. Hills, App., 79 N.E. 2d 691.
S.D.—Hardin v. Rogers, 159 N.W. 63, 37 S.D. 455.
Tex.—Red River Valley Pub. Co. v. Bridges, Civ.App., 254 S.W.2d 854, error refused no reversible error—Farmers' State Guaranty Bank v. Pierson, Civ.App., 201 S.W. 424—Texas Midland R. R. v. Becker & Cole, Civ.App., 171 S.W. 1024.
Vt.—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42.
Va.—Wash v. Holland, 183 S.E. 236, 166 Va. 45—Colonna Shipyard v. Dunn, 145 S.E. 342, 151 Va. 740, certiorari denied 49 S.Ct. 253, 279 U.S. 840, 73 L.Ed. 986—Kritselis v. Petty, 105 S.E. 536, 129 Va. 175.
Wash.—Simmons v. Kalin, 116 P.2d 840, 10 Wash.2d 409—Dorian v. Benj. E. Boone, Inc., 279 P. 107, 152 Wash. 681.
4 C.J. p 870 note 98.

75. Cal.—McCullough v. Langer, 73 P.2d 649, 23 C.A.2d 510.
Colo.—Schlessman v. Brainard, 92 P. 2d 749, 104 Colo. 514.
Ind.—Johann Realty Corporation v. Kirkpatrick, 189 N.E. 843, 99 Ind. App. 70.
Mich.—Tregonning v. Castantini, 220 N.W. 171, 243 Mich. 233.
N.D.—Daniels v. Payne, 191 N.W. 776, 49 N.D. 370.
4 C.J. p 870 note 99.

76. Ill.—Louis K. Liggett Co. v. Strum, 243 Ill.App. 576.
Iowa.—Bridenstine v. Iowa City Electric Ry. Co., 165 N.W. 435, 181 Iowa 1124.
N.D.—Daniels v. Payne, 191 N.W. 776, 49 N.D. 370.
Tex.—Texas & N. O. R. Co. v. Bolton, Civ.App., 235 S.W. 215, error refused.
Utah.—Thomas v. Ogden Rapid Transit Co., 155 P. 436, 47 Utah 595.
Vt.—Mullett v. Milkey, 29 A.2d 806, 113 Vt. 42.
Va.—Kritselis v. Petty, 105 S.E. 536, 129 Va. 175.
Wash.—De Honey v. Gjarde, 236 P. 290, 134 Wash. 647.
4 C.J. p 871 note 1.

77. Ga.—Macon v. Wing, 38 S.E. 392, 113 Ga. 90.
4 C.J. p 871 note 2.

78. Okl.—Russell Jobbers' Mills v. Dill-Crossett, 227 P. 126, 102 Okl. 134.
W.Va.—McCullough v. Clark, 106 S. E. 61, 88 W.Va. 22.
4 C.J. p 871 note 3.
That judgment was less than maximum and greater than minimum proved did not necessarily authorize the supreme court to disturb the same.
Ala.—Lincoln Reserve Life Ins. Co. v. Armes, 117 So. 46, 217 Ala. 464.

79. Ark.—Lynch v. East Arkansas Builders' Supply Co., 104 S.W.2d 205, 193 Ark. 1004.
Ga.—Sapp v. Sapp, 177 S.E. 265, 50 Ga.App. 145—Smith v. Turnipseed, 160 S.E. 877, 44 Ga.App. 220—Langston v. Langston, 155 S.E. 494, 42 Ga.App. 143.
Ill.—LeMaitre v. Union Electric Power Co., 73 N.E.2d 125, 331 Ill.App. 270.
N.J.—Voorhees Rubber Mfg. Co. v. U. S. Compression Inner Tube Co., 116 A. 688, 97 N.J.Law 13.

80. Ariz.—Spain v. Griffith, 25 P.2d 551, 42 Ariz. 304.
Ark.—**Corpus Juris Secundum quoted in** Arkansas Amusement Corporation v. Ward, 161 S.W.2d 178, 183, 204 Ark. 130—**Corpus Juris Secundum quoted in** Missouri Pacific Transp. Co. v. Simon, 135 S.W.2d 336, 341, 199 Ark. 289.
Fla.—Gilliland v. Mercantile Investment & Holding Co., 3 So.2d 148, 147 Fla. 613—Carlton v. Vaux, 136 So. 344, 102 Fla. 708.
Ga.—Roddenberry Hardware Co. v. Merritt, 87 S.E. 681, 17 Ga.App. 425.
Ill.—Orban v. Stoll, 66 N.E.2d 316, 328 Ill.App. 398.
Iowa.—Howard v. Brown, 148 N.W. 987, 168 Iowa 410.
Ky.—Allen v. Large, 239 S.W.2d 225.
Mich.—McGraw v. Lake Tp., 253 N. W. 207, 266 Mich. 38.
Minn.—Hallada v. Great Northern Ry., 69 N.W.2d 673, 244 Minn. 81, certiorari denied 76 S.Ct. 119, 350 U.S. 874, 100 L.Ed. 773.
Miss.—Missouri Pac. Transp. Co. v. Beard, 176 So. 156, 179 Miss. 764.
Neb.—Schafer v. Missouri Valley Pipe Line Co., 243 N.W. 889, 123 Neb. 669.
N.Y.—Ganz v. Hi-Line Co., 104 N.Y. S.2d 11, 278 App.Div. 761—De Santis v. City of New York, 50 N.Y.S. 2d 695, 268 App.Div. 874.
Ohio.—Schendel v. Bradford, 140 N. E. 155, 106 Ohio St. 387.
R.I.—Markarian v. Providence Ice Co., 148 A. 603.
Tenn.—Carman v. Huff, 227 S.W.2d 780, 32 Tenn.App. 687.
Utah.—Duffy v. Union Pac. R. Co., 218 P.2d 1080, 118 Utah 82.
Va.—Glass v. David Pender Grocery Co., 5 S.E.2d 478, 174 Va. 196.
Wash.—Hutteball v. Montgomery, 60 P.2d 679, 187 Wash. 516.
W.Va.—Ripley v. C. I. Whitten Transfer Co., 63 S.E.2d 626, 135 W.Va. 119.
Wis.—Vogelsburg v. Mason & Hanger Co., 26 N.W.2d 678, 250 Wis. 242.
9 C.J. p 1100 note 96.
Choice of verdicts
A verdict for one thousand seven hundred and eight dollars resulting from a collision of a motorbus with a building could not stand where the evidence presented the alternative of a verdict for not less than four thousand dollars or for not more than four hundred and fifty dollars.
Ariz.—Spain v. Griffith, 25 P.2d 551, 42 Ariz. 304.
Absence of evidence of value of service
Where in an action to recover for services, there is no evidence of the value of the services and there is nothing to show on what theory the jury found the verdict rendered, it will be set aside on appeal.
N.Y.—Klein v. American Cigar Co., 95 N.Y.S. 756, 108 App.Div. 341.
Flagrantly against weight of evidence
A verdict, finding the profits of a business in an amount flagrantly against the weight of evidence, will be reversed.
Ky.—Wickliffe Mfg. Co. v. Wilson, 184 S.W. 386, 169 Ky. 468.
Verdict entirely without support in the evidence will be set aside.
Okl.—Jones v. Harper, 278 P. 349, 137 Okl. 143.

there has been an abuse of discretion,[81] or if it appears to be the result of passion and prejudice.[82] In determining the reasonableness of damages, each case must stand on its own facts.[82.5] If plaintiff is entitled to a recovery only of the particular amount, according to his own testimony, or if defendant is entitled to recover another amount, according to his testimony, it has been held that a judgment for any other amount than one of these two is altogether unsupported by evidence.[83] So, where the jury have no discretion in fixing the amount of recovery, as where it is fixed by a definite rule or statute, a verdict for an amount at variance with that so fixed will be set aside.[84]

To uphold the lower court's action in sustaining plaintiff's motion for judgment on answers to interrogatories notwithstanding a general verdict, the supreme court was required to be able to say from facts found that plaintiff was, as a matter of law, entitled to judgment for the amount entered by the lower court.[85] A review of the evidence to determine liability in the first instance is a condition precedent to a decision as to the amount of recovery.[85.5]

§ 1651. —— Excessive Award

a. When verdict sustained
b. When verdict set aside
c. Effect of remittitur

a. When Verdict Sustained

While an appellate court generally has the duty to review the verdict of a jury claimed to be excessive, it will not interfere therewith where the verdict is not manifestly or grossly excessive or not excessive as a matter of law.

While an appellate court generally has the duty to review the verdict of a jury claimed to be excessive,[85.50] the primary duty of guarding against

Limitation of rule

The principle requiring the verdict to be set aside, which cannot be justified on any hypothesis presented by the evidence with respect to the amount thereof, applies only to cases where damages sought to be recovered are liquidated.

Okl.—Russell Jobbers' Mills v. Dill-Crossett, 227 P. 126, 102 Okl. 134.

Mere preponderance

Verdict of jury will not be disturbed on appeal on matter of damages when a mere preponderance of evidence is against it, but will be set aside when it is palpably against the weight of evidence.

Miss.—Boroughs v. Oliver, 85 So.2d 191.

81. Mo.—Hardy v. Lewis Automobile Co., App., 297 S.W. 169.

82. Ark.—Arkansas Amusement Corp. v. Ward, 161 S.W.2d 178, 204 Ark. 130.

Ill.—Chicago, N. S. & M. R. Co. v. Chicago Title & Trust Co., 160 N. E. 226, 328 Ill. 610.

Kan.—Young v. Kansas City Public Service Co., 135 P.2d 551, 156 Kan. 624.

Mo.—Jones v. St. Louis-San Francisco Ry. Co., 228 S.W. 780, 287 Mo. 64.

Jenkins v. Wabash Ry. Co., 107 S.W.2d 204, 232 Mo.App. 438, certiorari denied Wabash R. Co. v. Jenkins, 58 S.Ct. 139, 302 U.S. 737, 82 L.Ed. 570—Jones v. West Side Buick Auto Co., 93 S.W.2d 1083, 231 Mo.App. 187.

Va.—Glascock v. James, 32 S.E.2d 734, 183 Va. 561.

Rule unaffected by statute

Rule that verdict in toto may be set aside for inadequacy or excessiveness when such resulted from passion, prejudice, or unaccountable caprice of jury, is in no way affected by statute relating to curing an excessive verdict by suggestion of remittitur and providing for appeal after acceptance under protest.

Tenn.—Board of Mayor and Aldermen of Covington v. Moore, 232 S. W.2d 410, 33 Tenn.App. 561.

Inconsistent findings

Ark.—Missouri Pacific Transp. Co. v. Simon, 135 S.W.2d 336, 199 Ark. 289.

82.5 Iowa.—De Toskey v. Ruan Transport Corp., 40 N.W.2d 4, 241 Iowa 45, 17 A.L.R.2d 826.

Ky.—Lawson v. Sitgraves, 186 S.W. 2d 182, 299 Ky. 545.

Mo.—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220—Schupback v. Meshevsky, 300 S.W. 465.

Nev.—Wells, Inc., v. Shoemake, 177 P.2d 451, 64 Nev. 57.

83. Kan.—Dutton v. Brown, 252 P. 207, 122 Kan. 277.

4 C.J. p 871 note 4.

In action for money, where the debt is denied and the evidence shows the sum claimed or nothing is due, a verdict for less requires a new trial.

Kan.—Dutton v. Brown, supra.

84. Kan.—Smith v. Hanson, 144 P. 226, 93 Kan. 284, motion denied 150 P. 223, 96 Kan. 83.

S.C.—Burden v. Woodside Cotton Mills, 89 S.E. 474, 104 S.C. 435.

85. Ind.—Township of Haddon School of Sullivan County v. Willis, 199 N.E. 251, 209 Ind. 356.

85.5. Cal.—Bencich v. Market St. Ry. Co., 67 P.2d 398, 20 C.A.2d 518—Bakurjian v. Pugh, 41 P.2d 175, 4 C.A.2d 450.

85.50 Mo.—Davis v. Kansas City Public Service Co., 233 S.W.2d 679, 361 Mo. 61.

Fann v. Farmer, App., 289 S.W. 2d 144.

Tex.—Gulf, C. & S. F. Ry. Co. v. Shamburger, Civ.App., 231 S.W.2d 784.

Extent of review

(1) Review on the question of excessive damages is limited to a determination whether the verdict was the result of passion, prejudice, or corruption of the jury.

Cal.—Harris v. Lampert, 281 P.2d 292, 131 C.A.2d 751—Gluckstein v. Lipsett, 209 P.2d 98, 93 C.A.2d 391—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925—Christy v. Ulrich, 298 P. 135, 113 C.A. 338.

Miss.—Peerless Supply Co. v. Jeter, 65 So.2d 240, 218 Miss. 61.

S.C.—Anderson v. Elliott, 90 S.E.2d 367, 228 S.C. 371.

Wash.—Fleming v. City of Seattle, 275 P.2d 904, 45 Wash.2d 477.

(2) The appellate court, in determining whether a verdict is excessive, must measure the damages awarded with the evidence showing the nature and extent of injury.

Cal.—Harris v. Lampert, 281 P.2d 292, 131 C.A.2d 751—Duvall v. T. W. A., 219 P.2d 463, 96 C.A.2d 106—Gluckstein v. Lipsett, 209 P.2d 98, 93 C.A.2d 391—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Marshall v. McCarthy, 132 P.2d 873, 56 C.A. 2d 436—Davis v. Renton, 298 P. 834, 113 C.A. 561.

(3) In determining whether a verdict awarded parents for the death of an infant is excessive, the appellate court should consider the age, physical and mental condition of the infant, and its probable earnings during minority, as reflected by the occupation and circumstances in life of the parents, and occasionally other

excessive verdicts necessarily rests to a great extent on the trial judge, who will presumably not allow excessive verdicts to stand,[86] and the authority invested in appellate courts to disturb the verdict of

factors, together with all the evidence.

Pa.—Walker v. Perkins, 181 A. 511, 319 Pa. 469.

(4) In determining whether an award of damages was excessive, only the evidence and permissible inferences most favorable to support the award can be considered.

Ark.—Ward Body Works, Inc. v. Smallwood, 298 S.W.2d 332.

Mo.—Grimm v. Gargis, 303 S.W.2d 43—Scneder v. Wabash R. Co., 272 S.W.2d 198—Pierce v. New York Cent. R. Co., 257 S.W.2d 84—Lange v. St. Louis Public Service Co., 233 S.W.2d 641, 361 Mo. 74—Osburn v. Kansas City Southern Ry. Co., 230 S.W.2d 856, 360 Mo. 813—Prince v. Kansas City Southern Ry. Co., 229 S.W.2d 568, 360 Mo. 580—Hilton v. Thompson, 227 S.W.2d 675, 360 Mo. 177—Counts v. Thompson, 222 S.W. 2d 487, 359 Mo. 485—Rinderknecht v. Thompson, 220 S.W.2d 69, 359 Mo. 21—Henderson v. Dolas, 217 S.W.2d 554—Webb v. Missouri-Kansas-Texas R. Co., 116 S.W.2d 27, 342 Mo. 394.

Gromowsky v. Ingersol, App., 241 S.W.2d 60—Jones v. Carter, App., 234 S.W.2d 229—Stanley v. Ray, App., 220 S.W.2d 75—Nolan v. Joplin Transfer & Storage Co., 203 S.W.2d 740, 239 Mo.App. 915—Clader v. City of Neosho, App., 198 S.W.2d 523—Stofer v. Kansas City Public Service Co., 41 S.W.2d 614, 226 Mo.App. 376.

Pa.—Givens v. W. J. Gilmore Drug Co., 17 A.2d 184, 340 Pa. 361.

(5) The appellate court will not inquire into the excessiveness of a verdict further than to ascertain whether there is evidence supporting it.

Utah.—Falkenberg v. Neff, 269 P. 1008, 72 Utah 258.

(6) The reviewing court, in ascertaining whether a verdict is excessive, may consider the jury's knowledge of the fact that defendants carried liability insurance.

S.D.—Biggins v. Wagner, 245 N.W. 385, 60 S.D. 581, 85 A.L.R. 776.

(7) In determining whether verdict is excessive, test on appeal is whether size is such as to shock conscience of court.

Mo.—Rinderknecht v. Thompson, 220 S.W.2d 69, 359 Mo. 21.

Hughes v. St. Louis Public Service Co., App., 251 S.W.2d 360—Gromowsky v. Ingersol, App., 241 S.W.2d 60—Stanley v. Ray, App., 220 S.W.2d 75.

(8) In determining whether verdict is excessive, standard for reviewing court is whether the verdict is so excessive that its affirmance constitutes a manifest abuse of discretion.

Pa.—Kite v. Jones, 132 A.2d 683, 389 Pa. 339.

Rule in case of attorney's fees

(1) The court of civil appeals could disregard expert testimony in determining whether an attorney's fees recovered against an insurance company were excessive, and find a reasonable amount from its own knowledge.

Tex.—Southland Life Ins. Co. v. Norton, Civ.App., 9 S.W.2d 752.

(2) The court of civil appeals, determining whether a judgment for attorney's fees against an insurance company was excessive, was not bound by direct testimony in the record on the issue.

Tex.—Southland Life Ins. Co. v. Norton, Com.App., 5 S.W.2d 767, mandate conformed to, Civ.App., 9 S. W.2d 752.

(3) Where, as to the reasonable value of an attorney's services, there is expert evidence on the part of defendant that the value is one thousand dollars and on the part of plaintiff that the value is twelve thousand dollars, the supreme court will not disturb as excessive a six thousand dollar verdict approved by the trial court.

Minn.—Kolars v. Delnik, 266 N.W. 705, 197 Minn. 183.

(4) Reviewing court, in determining whether attorney's fee was excessive, may look to entire record and view matter in light of testimony, record before it, amount in controversy, and common knowledge and experience of its members.

Tex.—Acme Life Ins. Co. v. White, Civ.App., 99 S.W.2d 1059, error dismissed—American Nat. Ins. Co. v. Mays, Civ.App., 97 S.W.2d 975.

[86] Ark.—**Corpus Juris Secundum cited in** Arkansas Amusement Corporation v. Ward, 161 S.W.2d 178, 183, 204 Ark. 130—**Corpus Juris Secundum quoted in** Missouri Pacific Transp. Co. v. Simon, 135 S.W. 2d 336, 341, 199 Ark. 289—Arkansas Motor Coaches v. Williams, 116 S. W.2d 585, 196 Ark. 48.

Cal.—Roedder v. Rowley, 172 P.2d 353, 28 C.2d 820.

McNulty v. Southern Pac. Co., 216 P.2d 534, 96 C.A.2d 841—Tyson v. Romey, 199 P.2d 721, 88 C.A.2d 752—Couch v. Pacific Gas & Elec. Co., 183 P.2d 91, 80 C.A.2d 857—Lay v. Pacific Perforating Co., 144 P.2d 395, 62 C.A.2d 233, supersedeas denied 146 P.2d 923, 63 C.A.2d 452—Burke v. John E. Marshall, Inc., 108 P.2d 738, 42 C.A.2d 195—Purcell v. Goldberg, 93 P.2d 578, 34 C.A.2d 344—Formosa v. Yellow Cab Co., 87 P.2d 716, 31 C.A.2d 77—Adams v. Warren, 53 P.2d 780, 11 C.A.2d 344—Hamilton v. Hammond Lumber Co., 56 P.2d 1257, 13 C.A.2d 461—Adams v. Warren, 53 P.2d 780, 11 C.A.2d 344—Rannard v. Harris, 297 P. 623, 113 C.A. 15—Robinson v. McKnight, 284 P. 1056, 103 C.A. 718—Anderson v. Southern California Edison Co., 246 P. 559, 77 C.A. 328.

Conn.—Pierce v. Albanese, 129 A.2d 606, 144 Conn. 241—Fairbanks v. State, 124 A.2d 893, 143 Conn. 653.

Ill.—Barango v. E. L. Hedstrom Coal Co., 138 N.E.2d 829, 12 Ill.App.2d 118.

Iowa.—Maxwell v. Iowa State Highway Commission, 271 N.W. 883, 223 Iowa 159, 118 A.L.R. 862.

Md.—Patapsco Loan Co. of Baltimore City v. Hobbs, 106 A. 619, 134 Md. 222.

Mo.—Parks v. Thompson, 253 S.W.2d 796, 363 Mo. 791.

Sachse v. Highland Dairy Farms Co., App., 45 S.W.2d 934—Willis v. Buchanan County Quarries Co., 268 S.W. 102, 218 Mo.App. 698.

N.H.—Golej v. Varjabedian, 166 A. 287, 86 N.H. 244.

Pa.—Herb v. Hallowell, 154 A. 582, 304 Pa. 128, 85 A.L.R. 1004—Willenpart v. Otis Elevator Co., 112 A. 135, 269 Pa. 131—Boharis v. Martin, 109 A. 599, 266 Pa. 112—Lancaster v. Reese, 103 A. 891, 260 Pa. 390.

S.C.—Lawrence v. Southern Ry.—Carolina Division, 167 S.E. 839, 169 S.C. 1—Yarborough v. Columbia Ry., Gas & Electric Co., 84 S.E. 308, 100 S.C. 33.

Tex.—**Corpus Juris Secundum cited in** Texas & P. Ry. Co. v. Crown, Civ.App., 220 S.W.2d 294, 299, error refused no reversible error.

Wis.—Blaisdell v. Allstate Ins. Co., 82 N.W.2d 886, 1 Wis.2d 19—**Corpus Juris Secundum cited in** Asplund v. Palmer, 44 N.W.2d 624, 627, 258 Wis. 34.

Broader power

Court of appeals does not have as broad discretionary powers in setting aside verdicts as excessive as do trial judges.

Ga.—Atlantic Coast Line R. Co. v. Wells, 52 S.E.2d 496, 78 Ga.App. 859.

On motion for new trial

(1) In reviewing award of damages, considerable weight must be given to the fact that trial court weighed all the facts of case in refusing on motion for new trial to reduce amount of damages or to grant a new trial.

Cal.—Taylor v. Pacific Container Co., App., 306 P.2d 1049.

(2) Where motion for new trial on ground of excessiveness of verdict is overruled, supreme court cannot

the jury on the ground of excessive damages is one which should be exercised with great caution and discretion.[87] It follows that ordinarily such a court will refuse to set aside a judgment on the ground that the award is excessive.[88] The appellate court must evaluate a verdict by the particular facts of the case, taking into consideration the surrounding circumstances, economic conditions,[88.5] and amounts

weigh the evidence but can consider only evidence favorable to verdict.
Mo.—Mitchell v. Pla-Mor, Inc., 237 S. W.2d 189, 361 Mo. 946.

(3) On appeal from order granting new trial on ground that verdict was excessive, in absence of remittitur, it is not the duty of the court to weigh the evidence as to amount of plaintiff's injury but to determine whether in requiring remittitur, and on plaintiff's failure to remit, trial court abused its discretion in granting new trial.
Mo.—Barnes v. Chism, App., 215 S. W.2d 775.

87. Ala.—Woodward Iron Co. v. Earley, 25 So.2d 267, 247 Ala. 556.
Ark.—Missouri Pac. R. Co. v. Cathey, 254 S.W. 374, 160 Ark. 153.
Fla.—Mansfield v. King, 195 So. 700, 142 Fla. 650.
Hawaii.—Vasconcellos v. Juarez, 37 Hawaii 364.
Ky.—Jefferson Dry Goods Co. v. Blunk, 95 S.W.2d 244, 264 Ky. 673.
Md.—White v. Parks, 140 A. 70, 154 Md. 195.
Mich.—Cawood v. Earl Paige & Co., 214 N.W. 402, 239 Mich. 485.
Mo.—Osby v. Tarlton, 85 S.W.2d 27, 336 Mo. 1240.
Stofer v. Kansas City Public Service Co., 41 S.W.2d 614, 226 Mo.App. 376.
N.J.—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499.
Ohio.—Goodyear Tire & Rubber Co. v. Markofer, 176 N.E. 120, 38 Ohio App. 143.
Okl.—**Corpus Juris quoted in** Yellow Cab Operating Co. v. Speice, 61 P.2d 672, 676, 177 Okl. 571—Fife v. Adair, 47 P.2d 145, 173 Okl. 234.
Pa.—Gail v. City of Philadelphia, 117 A. 69, 273 Pa. 275—Willenpart v. Otis Elevator Co., 112 A. 135, 269 Pa. 131.
Va.—C. D. Kenny Co. v. Solomon, 163 S.E. 97, 158 Va. 25.
Wis.—Heintz v. Schenck, 186 N.W. 610, 176 Wis. 562.
4 C.J. p 871 note 5.

Lack of precedent alone will not justify reversal of a judgment for excessive damages.
Cal.—Christy v. Ulrich, 298 P. 135, 113 C.A. 338.

General rules govern

(1) The right to interfere with a verdict on the ground that excessive damages are awarded is controlled by the rules governing the right to disturb any other issue of fact found by the jury.
Tex.—Houston & T. C. R. Co. v. Coleman, Civ.App., 166 S.W. 685.

(2) An attack on a verdict on the ground that the damages are excessive is in fact an attack on the ground that it is against the evidence on the subject of damages, and is governed by the same rules as govern an attack on a verdict on the ground it is not supported by the evidence.
Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Highest award

Before court of civil appeals has authority to reverse for excessiveness, it must first determine highest award which would not require reversal for excessiveness in order to determine extent of excessiveness.
Ark.—East Tex. Motor Freight Lines v. Buck, 212 S.W.2d 13, 213 Ark. 640.
Tex.—Hill & Hill Truck Line v. Van Schoubroek, Civ.App., 233 S.W.2d 167.

Conjecture and speculation

Supreme court may not indulge in conjecture and speculation to set aside a verdict on ground that it is excessive.
Ind.—Swallow Coach Lines v. Cosgrove, 15 N.E.2d 92, 214 Ind. 532.

88. Ala.—Tennessee Coal, Iron & R. Co. v. Aycock, 28 So.2d 417, 248 Ala. 498—Montgomery City Lines v. Callahan, 22 So.2d 339, 247 Ala. 23.
Cal.—Kelly v. Silbough, 22 P.2d 757, 132 C.A. 467—Reneau v. Hirsch, 262 P. 1100, 88 C.A. 1.
Ill.—Dick & Bros. Quincy Brewing Co. v. City of Quincy, 167 N.E. 40, 335 Ill. 368, 64 A.L.R. 760.
Ky.—United Fuel Gas Co. v. Mauk, 302 S.W.2d 368.
Md.—Safeway Stores, Inc. v. Barrack, 122 A.2d 457, 210 Md. 168.
Miss.—Tri-State Transit Co. of La. v. Worley, 20 So.2d 477, 197 Miss. 663.
Mo.—Kleinlein v. Foskin, 13 S.W.2d 648, 321 Mo. 887.
Beyer v. Coca-Cola Bottling Co. of St. Louis, App., 75 S.W.2d 642—Lauf v. Wiegersen, App., 21 S.W.2d 635—Hudson v. Hall, App., 239 S.W. 152.
N.J.—Claypoole v. Motor Finance Corp., 15 A.2d 794, 125 N.J.Law 440.
Condra v. New Jersey & S. I. Ferry Co., 154 A. 748, 9 N.J.Misc. 529.
Okl.—Main v. Levine, 118 P.2d 252, 189 Okl. 564—Oklahoma Gas & Electric Co. v. Oliphant, 45 P.2d 1077, 172 Okl. 635.
Pa.—Ward v. Pittsburgh Rys. Co., 2 A.2d 694, 332 Pa. 152.
S.C.—Duncan v. Record Pub. Co., 143 S.E. 31, 145 S.C. 196—Union Bleaching & Finishing Co. v. Barker Fuel Co., 117 S.E. 735, 124 S.C. 458—Nelson v. Charleston & W. C. Ry. Co., 121 S.E. 198, 92 S.C. 151.
Tex.—Universal Atlas Cement Co. v. Oswald, 157 S.W.2d 636, 198 Tex. 159—Ford Motor Co. v. Maddin, 76 S.W.2d 474, 124 Tex. 131.
American Produce Co. v. Gonzales, Com.App., 1 S.W.2d 602—Horton v. Benson, Com.App., 277 S.W. 1050.
Dixie Motor Coach Corp. v. Shivers, Civ.App., 131 S.W.2d 677, error dismissed, judgment correct—Western Telephone Corp. of Texas v. McCann, Civ.App., 69 S.W.2d 465, reversed on other grounds 99 S.W.2d 895, 128 Tex. 582.
4 C.J. p 871 note 6.

On rule to show cause

(1) Excessive damages can only be reduced, and a verdict set aside as against the weight of the evidence, on rule to show cause in the court in which the trial was had, not on appeal.
N.J.—Schneider v. Rutherford Taxi Service, 37 A.2d 79, 131 N.J.Law 419.
N.J.—Kopko v. New York Live Poultry Trucking Co., 131 A. 923, 102 N.J.Law 440—Delaney v. Erie R. Co., 117 A. 395, 97 N.J.Law 434, affirmed 119 A. 924, 98 N.J.Law 558—Loveland v. McKeever Bros., 101 A. 377, 90 N.J.Law 704.
Condra v. New Jersey & S. I. Ferry Co., 154 A. 748, 9 N.J.Misc. 529—Moore v. Rensing, 144 A. 116, 7 N.J.Misc. 65.

(2) However where damages are excessive and illegal because of the absence of proof to sustain the award, the allowance of excessive and illegal damages may be assigned for error on appeal.
N.J.—Hammer v. Gordon, 172 A. 811, 12 N.J.Misc. 475.

88.5 Ala.—Birmingham Elec. Co. v. Thompson, 37 So.2d 633, 251 Ala. 465—Birmingham Elec. Co. v. Howard, 34 So.2d 830, 250 Ala. 421.
Cal.—Moran v. Zenith Oil Co., 206 P.2d 679, 92 C.A.2d 236—Tyson v. Romey, 199 P.2d 721, 88 C.A.2d 750—Nason v. Leth-Nissen, 185 P. 2d 880, 82 C.A.2d 70—Couch v. Pacific Gas & Elec. Co., 183 P.2d 91, 80 C.A.2d 857—Formosa v. Yellow Cab Co., 87 P.2d 716, 31 C.A. 2d 77.
Ill.—Smith v. Illinois Cent. R. Co., 99 N.E.2d 717, 343 Ill.App. 593—Avance v. Thompson, 51 N.E.2d 334, 320 Ill.App. 406, reversed on

awarded in similar cases;[88.10] but the fact that juries in other similar cases have fixed a lower amount as damages is not controlling on the question of excessiveness.[88.15]

Ordinarily a verdict will not be set aside as excessive when supported by the weight of the evidence.[89] So also, it has been held that a verdict will not be disturbed on the ground that it is excessive where there is some evidence to support it;[90] where the evidence would have authorized a larger

other grounds 55 N.E.2d 57, 387 Ill. 77, certiorari denied 65 S.Ct. 82, 323 U.S. 753, 89 L.Ed. 603.

Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010—Howerton v. Railway Exp. Agency, 235 S.W.2d 250, 361 Mo. 564—Smiley v. St. Louis-San Francisco Ry. Co., 222 S.W.2d 481, 359 Mo. 474—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220—Liles v. Associated Transports, 220 S.W.2d 36, 359 Mo. 87—Reeves v. Thompson, 211 S.W.2d 23, 357 Mo. 847—Marczuk v. St. Louis Public Service Co., 196 S.W. 2d 1000, 355 Mo. 536.

Arl v. St. Louis Public Service Co., App., 243 S.W.2d 797—Kasten v. St. Louis Public Service Co., App., 231 S.W.2d 252—Jenicek v. Harrigan, App., 217 S.W.2d 764—Nolan v. Joplin Transfer & Storage Co., 203 S.W.2d 740, 239 Mo.App. 915—Clader v. City of Neosho, App., 198 S.W.2d 523.

Tenn.—Carman v. Huff, 227 S.W.2d 780, 32 Tenn.App. 687—Atlantic Coast Line R. R. v. Meeks, 208 S. W.2d 355, 30 Tenn.App. 520.

Tex.—Henwood v. Moore, Civ.App., 203 S.W.2d 973.

88.10 Cal.—Maede v. Oakland High School Dist. of Alameda County, 298 P. 987, 212 C. 419.

Power v. California Street Cable R. Co., 126 P.2d 4, 52 C.A.2d 289—Formosa v. Yellow Cab Co., 87 P. 2d 716, 31 C.A.2d 77.

Mo.—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220—Liles v. Associated Transports, 220 S.W.2d 36, 359 Mo. 87—Hemminghaus v. Ferguson, 215 S. W.2d 481, 358 Mo. 476—Marczuk v. St. Louis Public Service Co., 196 S.W.2d 1000, 355 Mo. 536.

Kasten v. St. Louis Public Service Co., App., 231 S.W.2d 252—Jenicek v. Harrigan, App., 217 S. W.2d 764.

Tenn.—Carman v. Huff, 227 S.W.2d 780, 32 Tenn.App. 687—Atlantic Coast Line R. R. v. Meeks, 208 S. W.2d 355, 30 Tenn.App. 520.

Wyo.—Chapman v. Ewing, 24 P.2d 687, 46 Wyo. 130, rehearing denied 25 P.2d 1019, 46 Wyo. 130—Eagan v. O'Malley, 21 P.2d 821, 45 Wyo. 505.

88.15 Cal.—Daggett v. Atchison, T. & S. F. Ry. Co., 313 P.2d 557.

Nev.—Wells, Inc., v. Shoemake, 177 P.2d 451, 64 Nev. 57.

89. Cal.—Gluckstein v. Lipsett, 209 P.2d 98, 93 C.A.2d 391—Humble v. Union Pac. R. Co., 202 P.2d 791, 90 C.A.2d 276—Foerster v. Direito, 170 P.2d 986, 75 C.A.2d 323.

Ohio.—Pittsburgh, C., C. & St. L. Ry. v. Applegate, 1 Ohio App. 350, 34 Ohio Cir.Ct. 338, affirmed 108 N.E. 1129, 90 Ohio St. 445.

Okl.—Dills v. Calloway, 52 P.2d 707, 175 Okl. 395.

S.C.—Haselden v. Atlantic Coast Line R. Co., 53 S.E.2d 60, 214 S.C. 410, certiorari denied 70 S.Ct. 73, 338 U.S. 825, 94 L.Ed. 501.

W.Va.—Bailey v. DeBoyd, 65 S.E.2d 82, 135 W.Va. 730.

4 C.J. p 871 note 7.

Consideration

To find that a verdict is excessive requires a consideration of the weight of the evidence.

Ohio.—Matthis v. Youngstown Municipal Ry. Co., 42 N.E.2d 754, 140 Ohio St. 164.

Damages in excess of claim outside court

The fact that the amount of the judgment exceeds the amount of the loss as stated by plaintiff in a letter to the company written soon after the fire does not afford ground for reversing the judgment, where evidence detailing the loss and given at the trial supports the finding of the jury as to the amount of loss sustained.

Ohio.—Pittsburgh, C., C. & St. L. Ry. v. Applegate, 1 Ohio App. 350, 34 Ohio Cir.Ct. 338, affirmed 108 N.E. 1129, 90 Ohio St. 445.

90. Ala.—Pacific Fire Ins. Co. v. Overton, 55 So.2d 123, 256 Ala. 400.

Ark.—Ward Body Works, Inc. v. Smallwood, 298 S.W.2d 332—Missouri Pacific Transp. Co. v. Porter, 134 S.W.2d 513, 199 Ark. 225—Hot Springs St. Ry. Co. v. Hill, 128 S.W. 2d 369, 198 Ark. 319—Railway Express Agency v. Gee, 125 S.W.2d 802, 197 Ark. 925—Missouri Pac. R. Co. v. Creekmore, 102 S.W.2d 553, 193 Ark. 722—Arkansas Motor Coaches v. Williams, 116 S.W.2d 585, 196 Ark. 48—Texas Pipe Line Co. v. Johnson, 275 S.W. 329, 169 Ark. 235.

Cal.—Walsh v. Standart, 164 P. 795, 174 C. 807.

Gersick v. Shilling, 218 P.2d 583, 97 C.A.2d 641—Holmes v. Southern Cal. Edison Co., 177 P.2d 32, 78 C. A.2d 43—Foerster v. Direito, 170 P.2d 986, 75 C.A.2d 323.

Colo.—Southwestern Surety Ins. Co. v. Miller, 164 P. 507, 63 Colo. 15.

Fla.—Florida Power & Light Co. v. Robinson, 68 So.2d 406—City of Miami v. Thigpen, 11 So.2d 300, 151 Fla. 800—Tampa Electric Co. v. Jandreau, 112 So. 558, 93 Fla. 520.

Hawaii.—Ginoza v. Takai, 40 Hawaii 691—Vasconcellos v. Juarez, 37 Hawaii 364.

Ill.—Pennell v. Baltimore & O. R. Co., 142 N.E.2d 497, 13 Ill.App.2d 433.

Iowa.—Dunham v. Des Moines Ry. Co., 35 N.W.2d 578, 240 Iowa 421.

Ky.—Central Truckaway System v. Moore, 201 S.W.2d 725, 304 Ky. 533—Union Transfer & Storage Co. v. Fryman's Adm'r, 200 S.W.2d 953, 304 Ky. 422—Hellmueller Baking Co. v. Risen, 174 S.W.2d 134, 295 Ky. 273—Scobee v. Donahue, 164 S.W.2d 947, 291 Ky. 374.

Mich.—Aho v. Conda, 79 N.W.2d 917, 347 Mich. 450.

Minn.—Armstrong v. Minneapolis, A. & C. R. Ry. Co., 191 N.W. 47, 153 Minn. 374—Brody v. Foster, 158 N. W. 824, 134 Minn. 91, L.R.A.1916F 780.

Miss.—St. Louis-San Francisco Ry. Co. v. Dyson, 43 So.2d 95, 207 Miss. 639.

Mo.—Gardner v. Stout, 119 S.W.2d 790, 342 Mo. 1206.

De Moss v. Baudo, App., 79 S.W. 2d 766—Schlue v. Missouri Pacific Transp. Co., App., 62 S.W.2d 934—Garfinkel v. B. Nugent & Bro. Dry Goods Co., App., 25 S.W.2d 122.

Neb.—Peetz v. Masek Auto Supply Co., 74 N.W.2d 474, 161 Neb. 588—Shields v. Buffalo County, 71 N.W. 2d 701, 161 Neb. 34—Dunn v. Safeway Cabs, Inc., 57 N.W.2d 75, 156 Neb. 554—Johnson v. Schreph, 47 N.W.2d 853, 154 Neb. 317—Thoren v. Myers, 37 N.W.2d 725, 151 Neb. 453—Plumb v. Burnham, 36 N.W.2d 612, 151 Neb. 129—Rueger v. Hawks, 36 N.W.2d 236, 150 Neb. 834—Horky v. Schroll, 26 N.W.2d 396, 148 Neb. 96—Soulek v. City of Omaha, 299 N.W. 368, 140 Neb. 151.

N.H.—Leavitt v. Bacon, 200 A. 399, 89 N.H. 383.

N.J.—Cabakov v. Thatcher, 117 A.2d 298, 37 N.J.Super. 249.

N.Y.—White v. Coyle Wrecking & Lumber Corp., 109 N.Y.S.2d 118, 279 App.Div. 822.

Okl.—Fenquay v. Ecker, 157 P.2d 745, 195 Okl. 285—Meier v. Edsall, 137 P.2d 926, 192 Okl. 529—Thompson v. Boydstun, 118 P.2d 236, 189 Okl. 530—Yellow Cab Transit Co. v. Bethel, 81 P.2d 667, 183 Okl. 219—**Corpus Juris quoted in** Yellow Cab Operating Co. v. Speice, 61 P.2d 672, 676, 177 Okl. 571—Ruth Fuel Co. v. Nichter, 51 P.2d 502, 174 Okl. 601—City of Miami v. Finley, 240 P. 817, 112 Okl. 97—Howard v. Southwest-

amount of damages than that allowed;[91] where the evidence is conflicting;[92] where the question whether the verdict was excessive depends on the credit given by the jury to the evidence;[93] where the jury were properly instructed and the amount awarded is within the allegations of the complaint and the evidence admitted,[94] or does not appear unreasonable;[95] or where the verdict is less than that given at a former trial, which verdict was not reversed as being excessive.[96] The largeness of a verdict

ern Mortg. Co. 226 P. 80, 102 Okl. 62—Muskogee Electric Traction Co. v. Elsing, 208 P. 264, 86 Okl. 286.
Or.—Durbin v. Denham, 210 P. 165, 106 Or. 34, 29 A.L.R. 1227—Watts v. Spokane, P. & S. Ry. Co., 171 P. 901, 88 Or. 192.
Pa.—Contillo v. City of Pittsburgh, 45 A.2d 366, 158 Pa.Super. 524.
S.C.—Early v. South Carolina Public Service Authority, 90 S.E.2d 472, 228 S.C. 392.
Tenn.—City of Columbia v. Lentz, 282 S.W.2d 787, 39 Tenn.App. 350—Yellow Bus Line v. Brenner, 213 S.W.2d 626, 31 Tenn.App. 209.
Tex.—Gillette Motor Transp. Co. v. Whitfield, Civ.App., 197 S.W.2d 157, affirmed 200 S.W.2d 624, 145 Tex. 571—El Paso Electric Ry. Co. v. Jennings, Civ.App., 224 S.W. 1113, dismissed for want of jurisdiction—Kansas City, M. & O. Ry. Co. of Texas v. Weaver, Civ.App., 217 S.W. 740, dismissed for want of jurisdiction—Temple Trust Co. v. Pirtle, Civ.App., 198 S.W. 627.
Wash.—Carlson v. P. F. Collier & Son Corp., 67 P.2d 842, 190 Wash. 301—Colburn v. Great Northern Ry. Co., 6 P.2d 635, 166 Wash. 200—Yarno v. Hedlund Box & Lumber Co., 225 P. 659, 129 Wash. 457, modified on other grounds 227 P. 518, 129 Wash. 457.
W.Va.—Wine v. City Lines of West Virginia, 62 S.E.2d 260, 134 W.Va. 889—Wilson v. City of Elkins, 103 S.E. 118, 86 W.Va. 379.
Wis.—Parr v. Douglas, 34 N.W.2d 229, 253 Wis. 311—Heindel v. Wisconsin Traction, Light, Heat & Power Co., 171 N.W. 938, 169 Wis. 181.
4 C.J. p 871 note 8.

Even if against evidence

That the amount of a verdict is against the preponderance of the evidence does not authorize the appellate court to set it aside as excessive.
Tex.—Houston Belt & Terminal Ry. Co. v. Lee, Civ.App., 185 S.W. 393, error refused.

Damages within range of testimony

Whether a verdict is excessive is purely a question of fact, and where the evidence from which it must be determined is wholly that of expert witnesses, and the verdict is well within the range of the testimony, the appellate court cannot interfere.
Wash.—Elkenbary v. Calispel Light & Power Co., 231 P. 946, 132 Wash. 255.

Substantial evidence

A verdict for damage substantially supported by evidence will not be set aside as excessive.
Ark.—Grandbush v. Grimmett, 297 S.W.2d 647—Kansas City Southern R. Co. v. Taylor, 190 S.W.2d 968, 209 Ark. 488.
Cal.—Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 9 C.2d 751.
W.Va.—Neal v. City of Bluefield, 141 S.E. 779, 105 W.Va. 201.
4 C.J. p 871 note 8 [a].

Reasonably supported by evidence

A verdict will not be set aside as excessive where reasonably supported by the evidence.
Ariz.—Rodgers v. Bryan, 309 P.2d 773, 82 Ariz. 143.
Ky.—Consolidated Coach Corporation v. Hopkins, 14 S.W.2d 768, 228 Ky. 184.
Okl.—Jones v. Harper, 278 P. 349, 137 Okl. 143—Empire Gas & Fuel Co. v. Weddell, 261 P. 931, 128 Okl. 146—Empire Gas & Fuel Co. v. Denning, 261 P. 929, 128 Okl. 145.

Uncontradicted evidence

The jury's verdict as to the amount due a contractor for retained percentages, based on uncontradicted testimony, cannot be disturbed on appeal.
Wyo.—Snowball v. Maney Bros. & Co., 270 P. 167, 39 Wyo. 84, 61 A.L.R. 199, rehearing denied 271 P. 875, 39 Wyo. 84, 61 A.L.R. 199.

91. Ark.—Holcomb & Hoke Mfg. Co. v. Fish, 7 S.W.2d 313, 177 Ark. 631.
Fla.—Loftin v. Deal, 18 So.2d 163, 154 Ala. 489, certiorari denied 65 S.Ct. 86, 323 U.S. 751, 89 L.Ed. 602.
Mo.—State ex rel. Larson v. Mathieson, App., 261 S.W. 335.
Okl.—City of Okmulgee v. Wall, 167 P.2d 44, 196 Okl. 536—Shobe v. Sykes, 37 P.2d 908, 169 Okl. 491—Salter v. Larison, 226 P. 585, 99 Okl. 245.
Tex.—Mitchell Oil & Gas Co. v. Green, Civ.App., 115 S.W.2d 729.
4 C.J. p 871 note 9.

92. Ala.—Smith v. Heath, 91 So. 799, 207 Ala. 4.
Ark.—Parker v. Stephens, 247 S.W. 393, 157 Ark. 89.
Cal.—Eubanks v. Milton G. Cooper & Son, 156 P.2d 775, 68 C.A.2d 366—Sommer v. Martin, 204 P. 33, 55 C.A. 603.
Ind.—Swallow Coach Lines v. Cosgrove, 15 N.E.2d 92, 214 Ind. 532.
Iowa.—Chapman v. Lamp, 179 N.W. 50, 189 Iowa 771.
Ohio.—Simpson v. Mary Lee Candies, App., 35 N.E.2d 869.
Okl.—Feuquay v. Ecker, 157 P.2d 745, 195 Okl. 285.
Va.—Clinchfield Coal Corporation v. Hayter, 108 S.E. 854, 130 Va. 711.
Wash.—Kimball v. Betts, 169 P. 849, 99 Wash. 348—Sandberg v. Cavanaugh Timber Co., 164 P. 200, 95 Wash. 556.
4 C.J. p 871 note 10.

93. Ark.—East Tex. Motor Freight Lines v. Buck, 212 S.W.2d 13, 213 Ark. 640.
Mo.—Henson v. Kansas City, 210 S.W. 13, 277 Mo. 443.
Timmons v. Kurn, 100 S.W.2d 952, 231 Mo.App. 421.
4 C.J. p 871 note 11.

Questions for jury

Whether the damages were excessive depending on the demeanor of the witness and whether or not plaintiff was malingering and feigning as to symptoms of her injuries were questions for the jury, and not the appellate court.
Mo.—Henson v. Kansas City, 210 S.W. 13, 277 Mo. 443.

94. Ala.—News Employees Benevolent Soc. v. Agricola, 200 So. 748, 240 Ala. 668.
Ky.—Cheatham's Ex'r v. Parr, 214 S.W.2d 95, 308 Ky. 183.
Wash.—Provine v. Seattle, 126 P. 927, 70 Wash. 326.

95. Conn.—Sadonis v. Govan, 46 A.2d 895, 132 Conn. 668—Silks v. Monzani, 24 A.2d 247, 128 Conn. 470.
Fla.—Seaboard Air Line Ry. v. Callan, 74 So. 799, 73 Fla. 688.
Ky.—Humphrey v. Mansbach, 97 S.W.2d 573, 265 Ky. 675—Davis v. Smith, 94 S.W.2d 20, 264 Ky. 20.
Mich.—Hartough v. Safeway Lines, 285 N.W. 561, 288 Mich. 471, modified on other grounds 288 N.W. 307, 288 Mich. 703.
Mo.—Mayor v. St. Louis Public Service Co., 269 S.W.2d 101.
State ex rel. Burcham v. Drainage Dist. No. 25, App., 272 S.W.2d 712—Moehle v. St. Louis Public Service Co., App., 229 S.W.2d 285—Nolan v. Joplin Transfer & Storage Co., 203 S.W.2d 740, 239 Mo.App. 915—Hertz v. McDowell, App., 203 S.W.2d 500, affirmed 214 S.W.2d 546, 358 Mo. 383—Marshall v. St. Louis Union Trust Co., App., 196 S.W.2d 435—Moses v. Kansas City Public Service Co., App., 188 S.W.2d 538.
N.H.—Roy v. Chalifoux, 63 A.2d 226, 95 N.H. 321.
N.J.—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499.
4 C.J. p 871 note 13.

96. Ky.—Georgetown Water, etc.,

alone will not justify setting it aside as excessive,[96.5] and the appellate court will not interfere where the verdict is not manifestly or grossly excessive or not excessive as a matter of law,[97] or where there has

Co. v. Forwood, 126 S.W. 1092, 277 Ky. 638.

96.5 Ark.—Missouri Pacific Transp. Co. v. Simon, 135 S.W.2d 336, 199 Ark. 289.

Me.—Prinn v. De Rice, 149 A. 580, 129 Me. 479.

N.H.—Menard v. Cashman, 55 A.2d 156, 94 N.H. 428.

S.C.—Hyde v. Southern Grocery Stores, 15 S.E.2d 353, 197 S.C. 263.

Close scrutiny

Large verdict must be closely scrutinized where damages are based upon subjective symptoms only.

Minn.—Cameron v. Evans, 62 N.W.2d 793, 241 Minn. 200—Propper v. Chicago, R. I. & P. R. Co., 54 N.W.2d 840, 237 Minn. 386, 35 A.L.R.2d 459.

97. Ala.—South Brilliant Coal Co. v. Williams, 91 So. 589, 206 Ala. 637.

Birmingham Ry., Light & Power Co. v. Frazier, 69 So. 969, 14 Ala. App. 269.

Ariz.—City of Phœnix v. Mayfield, 20 P.2d 296—E. A. Tovrea & Co. v. Yutich, 206 P. 595, 24 Ariz. 41.

Ark.—Missouri Pac. R. Co. v. Newton, 168 S.W.2d 812, 205 Ark. 353—Missouri Pac. R. Co. v. Hendrix, 277 S.W. 337, 169 Ark. 825, certiorari denied 46 S.Ct. 351, 270 U.S. 651, 70 L.Ed. 781.

Cal.—Morris v. Standard Oil Co., 205 P. 1073, 188 C. 468—Varcoe v. Lee, 181 P. 223, 180 C. 338.

Van Ostrum v. State, App., 306 P.2d 44—Martin v. Mansfeldt, 223 P.2d 501, 100 C.A.2d 327—Sandoval v. Southern Cal. Enterprises, 219 P.2d 928, 98 C.A.2d 240—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925—Tyson v. Romey, 199 P.2d 721, 88 C.A.2d 752—Mason v. Leth-Nissen, 185 P.2d 880, 82 C.A.2d 70—Brown v. Boehm, 178 P.2d 49, 78 C.A.2d 595—Dodds v. Stellar, 175 P.2d 607, 77 C.A.2d 411—Callaghy v. Mosle, 153 P.2d 91, 66 C.A.2d 788—Wheeler v. Brown, 117 P.2d 707, 47 C.A.2d 239—Casselman v. Hartford Accident & Indemnity Co., 98 P.2d 539, 36 C.A.2d 700—Boyes v. Evans, 58 P.2d 922, 14 C.A.2d 472—Rohner v. Cross, 9 P.2d 509, 121 C.A. 667—Smith v. Fall River Joint Union High School Dist., 5 P.2d 930, 118 C.A. 673—Davis v. Renton, 298 P. 834, 113 C.A. 561—Rannard v. Harris, 297 P. 623, 113 C.A. 15—Gorman v. Sacramento County, 268 P. 1083, 92 C.A. 656—Latky v. Wolfe, 259 P. 470, 85 C.A. 332—Holmes v. California Crushed Fruit Co., 232 P. 178, 69 C.A. 779—Brown v. Beck, 220 P. 14, 63 C.A. 686—Averdieck v. Barris, 218 P. 786, 63 C.A. 495—Smith v. San Joaquin Light & Power Corporation, 211 P. 843, 59 C.A. 647—Stratton v. Spencer, 197 P. 540, 52 C.A. 98—Williams v. A. R. G. Bus Co., 190 P. 1036, 47 C.A. 568.

Conn.—Slabinski v. Dix, 88 A.2d 115, 138 Conn. 625—Thompson v. Lupone, 62 A.2d 861, 135 Conn. 236—Sadonis v. Govan, 46 A.2d 895, 132 Conn. 668—Quackenbush v. Vallario, 159 A. 893, 114 Conn. 652—Szivos v. Leonard, 155 A. 637, 113 Conn. 522—Jackiewicz v. United Illuminating Co., 138 A. 151, 106 Conn. 310—Samaha v. Mauro, 132 A. 455, 104 Conn. 300.

Fla.—Tampa Electric Co. v. Jandreau, 112 So. 558, 93 Fla. 520.

Ga.—Smoky Mountain Stages v. Wright, 8 S.E.2d 453, 62 Ga.App. 121—Georgia Ry. & Power Co. v. Shaw, 102 S.E. 904, 25 Ga.App. 146.

Idaho.—Gordon v. Sunshine Mining Co., 252 P. 870, 43 Idaho 439.

Ill.—Collins v. Ruby, 116 N.E.2d 629, 1 Ill.App.2d 116—Thomas v. Ohio Coal Co., 199 Ill.App. 50—Selle v. Rosenstiel, 197 Ill.App. 637.

Ind.—Hahn v. Moore, App., 133 N.E. 2d 900, rehearing denied 134 N.E.2d 705—Holmes v. Combs, 90 N.E.2d 822, 120 Ind.App. 331.

Iowa.—Turner v. Hansen, 75 N.W.2d 341, 247 Iowa 669.

Ky.—Scobee v. Donahue, 164 S.W.2d 947, 291 Ky. 374—Roberts v. Roberts, 18 S.W.2d 981, 230 Ky. 165—W. T. Grant Co. v. Taylor, 4 S.W.2d 741, 223 Ky. 812.

Me.—Crawford v. Lancaster, 157 A. 859, 130 Me. 525—Baston v. Thombs, 143 A. 63, 127 Me. 278—Gregory v. Perry, 136 A. 354, 126 Me. 99.

Miss.—General Benev. Ass'n v. Fowler, 50 So.2d 137, 210 Miss. 578.

Mo.—Mickel v. Thompson, 156 S.W. 2d 721, 348 Mo. 991—McNatt v. Wabash Ry. Co., 108 S.W.2d 33, 341 Mo. 516—Freeman v. Terminal R. Ass'n of St. Louis, 107 S.W.2d 36, 341 Mo. 288.

Statler v. St. Louis Public Service Co., App., 300 S.W.2d 831—Rossommano v. Quality Dairy Co., App., 297 S.W.2d 591—Joshmer v. Fred Weber Contractors, Inc., App., 294 S.W.2d 576—Long v. St. Louis Public Service Co., App., 288 S.W. 2d 417—State ex rel. Burcham v. Drainage Dist. No. 25, App., 272 S.W.2d 712—Kaster v. St. Louis Public Service Co., App., 231 S.W. 2d 252—Montana v. Nenert, App., 226 S.W.2d 394—Nolan v. Joplin Transfer & Storage Co., 203 S.W.2d 740, 239 Mo.App. 915—Marshall v. St. Louis Union Trust Co., App., 196 S.W.2d 435—Biener v. St. Louis Public Service Co., App., 160 S.W.2d 780—Kasperski v. Rainey, App., 135 S.W.2d 11—Olds v. St. Louis Nat. Baseball Club, App., 119 S.W.2d 1000—McNicholas v. Continental Baking Co., App., 112 S.W.2d 849—Hammack v. City of Sedalia, App., 105 S.W.2d 34—La Chance v. National Pigments & Chemical Co., App., 104 S.W.2d 693—Mason v. Down Town Garage Co., 53 S.W.2d 409, 227 Mo.App. 297—Foulks v. Lehman, App., 17 S.W.2d 994—Becker v. Koester, App., 295 S.W. 818—Goodwin v. Wells, 285 S.W. 112, 220 Mo.App. 1—Kuether v. Kansas City Light & Power Co., 276 S.W. 105, 220 Mo.App. 452—Fuller v. St. Louis-San Francisco Ry. Co., Mo.App., 270 S.W. 138—Lowther v. St. Louis-San Francisco Ry. Co., 261 S.W. 702, 214 Mo.App. 293.

Neb.—Southwell v. De Boer, 80 N.W. 2d 877, 163 Neb. 646.

Nev.—J. C. Penney Co. v. Granvelle, 155 P.2d 477, 62 Nev. 434.

N.J.—Swanson v. Wiesenfeld, 95 A.2d 161, 24 N.J.Super. 576—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499—Capone v. Norton, 78 A.2d 126, 11 N.J.Super. 189, affirmed 83 A.2d 710, 8 N.J. 54.

N.C.—Hulin v. Western Union Telegraph Co., 117 S.E. 588, 185 N.C. 470.

N.D.—Swanstrom v. Minneapolis, St. P. & S. S. M. Ry. Co., 157 N.W. 976, 34 N.D. 141.

Ohio.—Immel v. Richards, App., 91 N.E.2d 548, affirmed 93 N.E.2d 474, 154 Ohio St. 54.

Okl.—Southwestern Greyhound Lines, Inc. v. Rogers, 267 P.2d 572—Ponca City v. Reed, 242 P. 164, 115 Okl. 166—Missouri, O. & G. Ry. Co. v. Collins, 150 P. 142, 47 Okl. 761—Chicago, R. I. & P. Ry. Co. v. Pitchford, 143 P. 1146, 44 Okl. 197.

Pa.—Moraski v. Philadelphia Rapid Transit Co., 142 A. 276, 293 Pa. 224—Scott v. American Express Co., 101 A. 96, 257 Pa. 25.

McCabe v. Rutter, 89 Pa.Super. 257.

S.C.—Newman v. Brown, 90 S.E.2d 649, 228 S.C. 472.

Tex.—Nussbaum v. Anthony, Civ. App., 214 S.W.2d 686—Texas & N. O. R. Co. v. Coogler, Civ.App., 209 S.W.2d 778—Younger Bros. v. Hibbard, Civ.App., 201 S.W.2d 624—Lancaster v. Browder, Civ.App., 243 S.W. 625, affirmed Com.App., 256 S.W. 905—Baker v. Fields, Civ. App., 236 S.W. 170, dismissed for want of jurisdiction—Houston, E. & W. T. Ry. Co. v. Snow, Civ.App., 201 S.W. 224.

Utah.—Pauly v. McCarthy, 184 P.2d 123, 109 Utah 431—Ward v. Denver & R. G. W. R. Co., 85 P.2d 837, 96 Utah 564—Baker v. Wycoff, 79 P.2d 77, 95 Utah 199.

been no abuse of discretion on the part of the jury.[98]

So the verdict should not be set aside as excessive unless there has been a mistake of principles on which damages were estimated,[99] unless it is apparent that the whole of the evidence of plaintiff considered standing alone without reference to the countervailing proofs of defendant is insufficient to support the judgment for the amount for which it was ultimately entered,[1] or unless the verdict is so excessive as to offend against all sense of right.[1.5] Many decisions have stated the rule in the form that the appellate court will not interfere

Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Wash.—Reynolds v. Donoho, 236 P.2d 552, 39 Wash.2d 451—Thompson v. City of Seattle, 211 P.2d 500, 35 Wash.2d 124—Randall v. Cowlitz Amusements, 76 P.2d 1017, 194 Wash. 82—Bell v. Northwest Cities Gas Co., 2 P.2d 644, 164 Wash. 450.

W.Va.—French v. Sinkford, 54 S.E.2d 38, 132 W.Va. 66.

Wis.—Asplund v. Palmer, 44 N.W.2d 624, 258 Wis. 34.

Wyo.—Borzea v. Anselmi, 258 P.2d 796, 71 Wyo. 348.

4 C.J. p 872 note 15—6 C.J. p 765 note 64.

Verdict which is the result of dispassionate discretion of jury cannot be set aside as excessive.

Cal.—Bosse v. Marye, 250 P. 693, 80 C.A. 109.

Only in clear cases will the appellate court correct an alleged excessive verdict.

Pa.—Jenkins v. Beyer, 180 A. 135, 118 Pa.Super. 527.

Wyo.—Northwest States Utilities Co. v. Ashton, 65 P.2d 235, 51 Wyo. 168, rehearing denied 69 P.2d 623, 51 Wyo. 132.

98. Cal.—Bazzoli v. Nance's Sanitarium, 240 P.2d 672, 109 C.A.2d 232—Szasz v. Joyland Co., 257 P. 871, 84 C.A. 259.

Colo.—Trujillo v. Wilson, 189 P.2d 147, 117 Colo. 430.

Del.—Bennett v. Barber, 79 A.2d 363, 7 Terry 132.

Fla.—Sproule v. Nelson, 81 So.2d 478.

Ky.—Union Transfer & Storage Co. v. Fryman's Adm'r, 200 S.W.2d 953, 304 Ky. 422—Jones v. Grief, 131 S.W.2d 487, 279 Ky. 579—W. T. Grant Co. v. Taylor, 4 S.W.2d 741, 223 Ky. 812.

Mo.—Ford v. Louisville & N. R. Co., 196 S.W.2d 163, 355 Mo. 362—Seested v. Post Printing & Publishing Co., 31 S.W.2d 1045, 326 Mo. 559.

Conley v. Berberich, App., 300 S.W.2d 844—Long v. St. Louis Public Service Co., App., 288 S.W.2d 417—Sutton v. City of St. Joseph, App., 265 S.W.2d 760—Arl v. St. Louis Public Service Co., App., 243 S.W.2d 797—Padgett v. St. Louis Public Service Co., App., 240 S.W.2d 970—Hertz v. McDowell, App., 203 S.W.2d 500, affirmed 214 S.W.2d 546, 358 Mo. 383—Byram v. East St. Louis Ry. Co., App., 39 S.W.2d 376.

Neb.—Peetz v. Masek Auto Supply Co., 74 N.W.2d 474, 161 Neb. 588—Shields v. Buffalo County, 71 N.W.2d 701, 161 Neb. 34—Johnson v. Schreph, 47 N.W.2d 853, 154 Neb 317—Thoren v. Myers, 37 N.W.2d 725, 151 Neb. 453—Plumb v. Burnham, 36 N.W.2d 612, 151 Neb. 129—Rueger v. Hawks, 36 N.W.2d 236, 150 Neb. 834—Horky v. Schroll, 26 N.W.2d 396, 148 Neb. 96—Van Auker v. Steckley's Hybrid Seed Corn Co., 8 N.W.2d 451, 143 Neb. 24.

Okl.—Western Farmers Elec. Co-op. v. Smith, 288 P.2d 729—Oklahoma Ry. Co. v. Strong, 214 P.2d 939, 202 Okl. 434—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Spicers, Inc., v. Rudd, 188 P.2d 692, 199 Okl. 576—Southwest Stone Co. v. Hughes, 177 P.2d 489, 198 Okl. 257—Magnolia Pipe Line Co. v. Brown, 157 P.2d 184, 195 Okl. 345—Kurn v. Manley, 153 P.2d 623, 194 Okl. 574—Baker v. Shaw, 86 P.2d 319, 184 Okl. 194—Yellow Cab Operating Co. of Oklahoma City v. Thompson, 86 P.2d 310, 184 Okl. 179—Mid-Continent Petroleum Corp. v. Fisher, 84 P.2d 22, 183 Okl. 638—City of Norman v. Lewis, 69 P.2d 377, 180 Okl. 344.

Pa.—Fisher v. Allegheny County, 188 A. 196, 324 Pa. 471—Cook v. Miller Transportation Co., 179 A. 429, 319 Pa. 85—Brown, for Use of McArdle, v. Borough of Castle Shannon, 178 A. 678, 318 Pa. 363—Ensor v. Pennsylvania R. Co., 159 A. 872, 306 Pa. 451—Riff v. Pittsburgh Rys. Co., 148 A. 102, 298 Pa. 256.

Tex.—Medical & Surgical Memorial Hospital v. Cauthorn, Civ.App., 229 S.W.2d 932—Corpus Juris Secundum cited in Texas & P. Ry. Co. v. Crown, Civ.App., 220 S.W.2d 294, 299, error refused no reversible error—Gillette Motor Transp. Co. v. Whitfield, Civ.App., 197 S.W.2d 157, affirmed 200 S.W.2d 624, 145 Tex. 571.

Va.—Stuart v. Coates, 42 S.E.2d 311, 186 Va. 227—Glass v. David Pender Grocery Co., 5 S.E.2d 478, 174 Va. 196—News Leader Co. v. Kocen, 3 S.E.2d 385, 173 Va. 95, 122 A.L.R. 842.

W.Va.—Wine v. City Lines of West Virginia, 62 S.E.2d 260, 134 W.Va. 889—French v. Sinkford, 54 S.E.2d 38, 132 W.Va. 66.

Wis.—Parr v. Douglas, 34 N.W.2d 229, 253 Wis. 311.

4 C.J. p 872 note 16.

To justify interference with a verdict as excessive, the supreme court must find that the jury abused their functions on record.

Iowa.—Cory v. State, 242 N.W. 100, 214 Iowa 222.

99. Ariz.—Rodgers v. Bryan, 309 P. 2d 773, 82 Ariz. 143.

Fla.—Southern Utilities Co. v. Davis, 105 So. 315, 90 Fla. 168.

Iowa.—Kness v. Kommes, 222 N.W. 436, 207 Iowa 137.

N.M.—Hall v. Stiles, 258 P.2d 386, 57 N.M. 281.

Okl.—Western Farmers Elec. Co-op. v. Smith, 288 P.2d 729—Oklahoma Ry. Co. v. Strong, 214 P.2d 939, 202 Okl. 434—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Spicers, Inc., v. Rudd, 188 P.2d 692, 199 Okl. 576—Southwest Stone Co. v. Hughes, 177 P.2d 489, 198 Okl. 257—Magnolia Pipe Line Co. v. Brown, 157 P.2d 184, 195 Okl. 345—Kurn v. Manley, 153 P.2d 623, 194 Okl. 574—Baker v. Shaw, 86 P.2d 319, 184 Okl. 194—Yellow Cab Operating Co. of Oklahoma City v. Thompson, 86 P. 2d 310, 184 Okl. 179—Mid-Continent Petroleum Corp. v. Fisher, 84 P.2d 22, 183 Okl. 638—Sand Springs Ry. Co. v. Westhafer, 218 P. 525, 92 Okl. 89—Dickinson v. Whitaker, 182 P. 901, 75 Okl. 243—Missouri, O. & G. Ry. Co. v. Collins, 150 P. 142, 47 Okl. 761—Chicago, R. I. & P. Ry. Co. v. Pitchford, 143 P. 1146, 44 Okl. 197.

Va.—Webb v. Chesapeake & O. Ry. Co., 144 S.E. 100, 105 Va. 555, certiorari denied Chesapeake & O. R. Co. v. Webb, 49 S.Ct. 82, 278 U.S. 646, 73 L.Ed. 559.

4 C.J. p 872 note 17.

1. Ark.—Missouri Pacific Transp. Co. v. Porter, 134 S.W.2d 513, 199 Ark. 225.

Mo.—McHatton v. Kansas City Rys. Co., App., 246 S.W. 651.

Tex.—**Corpus Juris Secundum cited in** Texas & P. Ry. Co. v. Crown, Civ.App., 220 S.W.2d 294, 299, error refused no reversible error.

4 C.J. p 872 note 18.

1.5 Mo.—Sutton v. City of St. Joseph, App., 265 S.W.2d 760—Cline v. City of St. Joseph, App., 245 S.W. 2d 695—Arl v. St. Louis Public Service Co., App., 243 S.W.2d 797—Hertz v. McDowell, App., 203 S.W. 2d 500, affirmed 214 S.W.2d 546, 358 Mo. 383—Lanasa v. Downey, App., 201 S.W.2d 179—Clader v. City of Neosho, App., 198 S.W.2d 523—Marshall v. St. Louis Union Trust Co., App., 196 S.W.2d 435—Mollman v. St. Louis Public Service Co., App., 192 S.W.2d 618.

with a verdict as excessive unless it is so grossly disproportionate to the measure of damages or so palpably against the evidence as to shock the conscience and to raise an irresistible inference that it was influenced by passion, prejudice, corruption, or other improper causes.[2]

2. Ala.—International Union, United Auto., Aircraft and Agr. Implement Workers of America, C. I. O. v. Russell, 88 So.2d 175, 264 Ala. 456, certiorari granted 77 S.Ct. 213, 352 U.S. 915, 1 L.Ed.2d 121—Hudson v. Stripling, 73 So.2d 514, 261 Ala. 196—Pacific Fire Ins. Co. v. Overton, 55 So.2d 123, 256 Ala. 400—Republic Steel Corp. v. Stracner, 21 So.2d 690, 246 Ala. 620—Southern Ry. Co. v. Montgomery, 157 So. 854, 229 Ala. 456—Jackson v. Roddy, 139 So. 354, 224 Ala. 132—Whitman's Fifth Avenue Garage Co. v. Ricks, 101 So. 53, 211 Ala. 527—Birmingham Macaroni Co. v. Tadrick, 88 So. 858, 205 Ala. 540.

Winkler Auto Sales Co. v. Walter, 183 So. 689, 28 Ala.App. 312—Birmingham Electric Co. v. Chandler, 176 So. 321, 27 Ala.App. 563.

Ariz.—Rodgers v. Bryan, 309 P.2d 773, 82 Ariz. 143—Arizona Binghampton Copper Co. v. Dickson, 195 P. 538, 22 Ariz. 163, 44 A.L.R. 881—Inspiration Consol. Copper Co. v. Lindley, 177 P. 24, 20 Ariz. 95.

Ark.—Grandbush v. Grimmett, 297 S.W.2d 647—Braman v. Walthall, 225 S.W.2d 342, 215 Ark. 582—Keeshan v. Hays, 126 S.W.2d 105, 197 Ark. 755—Coca-Cola Bottling Co. of Arkansas v. Cordell, 76 S.W.2d 307, 189 Ark. 1132—Louisiana & A. Ry. Co. v. Woodson, 192 S.W. 174, 127 Ark. 323.

Cal.—Daggett v. Atchison, T. & S. F. Ry. Co., 313 P.2d 557—Arellano v. City of Burbank, 89 P.2d 113, 13 C.2d 248—Mudrick v. Market Street Ry. Co., 81 P.2d 950, 11 C.2d 724, 118 A.L.R. 533—Carter v. Murphy, 75 P.2d 1072, 10 C.2d 547—McIntosh v. Los Angeles Ry. Corp., 59 P.2d 959, 7 C.2d 90—Mirabito v. San Francisco Dairy Co., 35 P.2d 513, 1 C.2d 400—Miller v. Southern California Telephone Co., 14 P.2d 519, 216 C. 391—Ware v. McPherson, 1 P.2d 433, 213 C. 120—Chappell v. San Diego & A. Ry. Co., 258 P. 73, 201 C. 560—Darling v. Pacific Electric Ry., 242 P. 703, 197 C. 702—Kelley v. Hodge Transp. System, 242 P. 76, 197 C. 598—Casey v. Los Angeles Ry. Corporation, 219 P. 978, 192 C. 265—Morris v. Standard Oil Co., 205 P. 1073, 188 C. 468—Varcoe v. Lee, 181 P. 223, 180 C. 338.

Hodges v. Baurmann, App., 310 P.2d 24—Van Ostrum v. State, App., 306 P.2d 44—Sullivan v. Matt, 278 P.2d 499, 130 C.A.2d 134—Helms v. Thomas, 260 P.2d 1016, 120 C.A.2d 265—Blair v. Williams, 240 P.2d 1043, 109 C.A.2d 516—Bazzoli v. Nance's Sanitarium, 240 P.2d 672, 109 C.A.2d 232—Martin v. Mansfeldt, 223 P.2d 501, 100 C.A.2d 327—Nielsen v. Milligan, 222 P.2d 916, 100 C.A.2d 40—Butcher v. Queen City Iron & Metal Co., 221 P.2d 265, 99 C.A.2d 25—Sandoval v. Southern Cal. Enterprises, 219 P.2d 928, 98 C.A.2d 240—Gersick v. Shilling, 218 P.2d 583, 97 C.A.2d 641—Johnson v. Marquis, 209 P.2d 63, 93 C.A.2d 341—Burr v. Goss, 205 P.2d 61, 91 C.A.2d 351—Monterrosa v. Grace Lines, 204 P.2d 377, 90 C.A.2d 826—Stark v. Yellow Cab Co., 202 P.2d 802, 90 C.A.2d 217—Humble v. Union Pac. R. Co., 202 P.2d 791, 90 C.A.2d 276—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925—Tyson v. Romey, 199 P.2d 721, 88 C.A.2d 752—Mason v. Leth-Nissen, 185 P.2d 880, 82 C.A.2d 70—Christiana v. Rattaro, 184 P.2d 682, 81 C.A.2d 597—Brown v. Boehm, 178 P.2d 49, 78 C.A.2d 595—Holmes v. Southern Cal. Edison Co., 177 P.2d 32, 78 C.A.2d 43—Dodds v. Stellar, 175 P.2d 607, 77 C.A.2d 411—Freeman v. Nickerson, 174 P.2d 688, 77 C.A.2d 40—Pearson v. Whitworth, 171 P.2d 745, 75 C.A.2d 751—McChristian v. Popkin, 171 P.2d 85, 75 C.A.2d 249—Estrada v. Orwitz, 170 P.2d 43, 75 C.A.2d 54—Taylor v. Sims, 164 P.2d 17, 72 C.A.2d 60—Singleton v. Singleton, 157 P.2d 886, 68 C.A.2d 681—Eubanks v. Milton G. Cooper & Son, 156 P.2d 775, 68 C.A.2d 366—Kling v. Crown Finance Corp., 146 P.2d 54, 63 C.A.2d 33—Loper v. Morrison, 145 P.2d 1, 23 C.2d 600—Lay v. Pacific Perforating Co., 144 P.2d 395, 62 C.A.2d 233, supersedeas denied 146 P.2d 923, 63 C.A.2d 452—Stanhope v. Los Angeles College of Chiropractic, 128 P.2d 705, 54 C.A.2d 141—Power v. California Street Cable R. Co., 126 P.2d 4, 52 C.A.2d 289—Appier v. Hayes, 124 P.2d 125, 51 C.A.2d 111—Wheeler v. Brown, 117 P.2d 707, 47 C.A.2d 239—Burke v. John E. Marshall, Inc., 108 P.2d 738, 42 C.A.2d 195—Osrowitz v. Market Inv. Co., 104 P.2d 681, 40 C.A.2d 179—Junge v. Midland Counties Public Service Corp, 100 P.2d 1073, 38 C.A.2d 154—Casselman v. Hartford Accident & Indemnity Co., 98 P.2d 539, 36 C.A.2d 700—Purcell v. Goldberg, 93 P.2d 578, 34 C.A.2d 344—Lomax v. Haglund, 91 P.2d 210, 33 C.A.2d 233—Abos v. Martyn, 88 P.2d 797, 31 C.A.2d 705—Formosa v. Yellow Cab Co., 87 P.2d 716, 31 C.A.2d 77—Gates v. Gautier, 85 P.2d 141, 29 C.A.2d 524—Corral v. Sager, 77 P.2d 303, 25 C.A.2d 322—Los Angeles County Flood Control Dist. v. Abbot, 76 P.2d 188, 24 C.A.2d 728—McCullough v. Langer, 73 P.2d 649, 23 C.A.2d 510—Gardini v. Arakelian, 64 P.2d 181, 18 C.A.2d 424—Blanchard v. Shattuck, 58 P.2d 946, 14 C.A.2d 690—Criss v. Angelus Hospital Ass'n of Los Angeles, 56 P.2d 1274, 13 C.A.2d 412—Hamilton v. Hammond Lumber Co., 56 P.2d 1257, 13 C.A.2d 461—Britting v. Dewes, 54 P.2d 736, 11 C.A.2d 463—Adams v. Warren, 53 P.2d 780, 11 C.A.2d 344—Willoughby v. Zylstra, 42 P.2d 685, 5 C.A.2d 297—Duran v. Pickwick Stages System, 35 P.2d 148, 140 C.A. 103—Flury v. Beeskau, 33 P.2d 1033, 139 C.A. 398—Hellman v. Los Angeles Ry. Corporation, 27 P.2d 946, 135 C.A. 627, rehearing denied 28 P.2d 384, 135 C.A. 627—Collins v. Jones, 22 P.2d 39, 131 C.A. 747—Marckwardt v. Hayworth, 16 P.2d 328, 127 C.A. 738—Zumwalt v. E. H. Tryon, 14 P.2d 912, 126 C.A. 583—Brower v. Arnstein, 14 P.2d 863, 126 C.A. 291—Pate v. Pickwick Stages System, 14 P.2d 174, 125 C.A. 670—Calihan v. Yellow Cab Co. of San Diego, 13 P.2d 931, 125 C.A. 649—White v. Kretz Bros., 10 P.2d 198, 122 C.A. 197—McGlothin v. City and County of San Francisco, 10 P.2d 116, 122 C.A. 324—Rohner v. Cross, 9 P.2d 509, 121 C.A. 667—Rannard v. Harris, 8 P.2d 864, 121 C.A. 281—Manning v. O'Rourke, 8 P.2d 181, 120 C.A. 432—Harland v. Mitchell, 7 P.2d 1113, 120 C.A. 421—Chase v. Southern Pac. Co., 6 P.2d 540, 119 C.A. 341—Webster v. Harris, 6 P.2d 88, 119 C.A. 46—Johnston v. Peairs, 3 P.2d 617, 117 C.A. 208—Sarcady v. Biedenweg, 3 P.2d 43, 116 C.A. 581—Ullman v. California Cab Co., 2 P.2d 494, 116 C.A. 234—Corvello v. Baumsteiger, 1 P.2d 484, 115 C.A. 194—Barrett v. Harman, 1 P.2d 458, 115 C.A. 283—Harju v. Market St. Ry. Co., 299 P. 788, 114 C.A. 138—Davis v. Renton, 298 P. 834, 113 C.A. 561—Levy v. Berner, 293 P. 896, 110 C.A. 65—Sites v. Howrey, 291 P. 597, 108 C.A. 348—Fassett v. Nascimiento, 291 P. 269, 108 C.A. 14—Wallace v. Pacific Electric Ry. Co., 288 P. 834, 105 C.A. 664—Hamelin v. Foulkes, 287 P. 526, 105 C.A. 458—Bach v. C. Swanston & Son, 286 P. 1097, 105 C.A. 72—Coover v. Painless Parker, Dentist, 286 P. 1048, 105 C.A. 110—Johnson v. Pearson, 282 P. 394, 100 C.A. 503—Von Stetten v. Yellow-Checker Cab Co., Consolidated, 281 P. 95, 100 C.A. 775—Sundberg v. Ringel, 280 P. 557, 100 C.A. 545—Davis v. Renton, 278 P. 442, 99 C.A. 264—Gregoriev v. Northwestern Pac. R. Co., 273 P. 76, 95 C.A. 428—Horn v. Yellow

The general rule that the appellate court will not | set aside a verdict unless it is manifestly or grossly

Cab Co., 263 P. 1025, 88 C.A. 678—Cochran v. Brown, 258 P. 1000, 84 C.A. 743—Dawson v. San Diego Electric Ry. Co., 255 P. 215, 82 C.A. 141—Anderson v. Southern California Edison Co., 246 P. 559, 77 C.A. 328—Rocca v. Tuolumne County Electric Power & Light Co., 245 P. 468, 76 C.A. 569—Stanward v. Yellow Taxicab Co. of Los Angeles, 241 P. 902, 75 C.A. 96—Averdieck v. Barris, 218 P. 786, 63 C.A. 495—Smith v. San Joaquin Light & Power Corporation, 211 P. 843, 59 C.A. 647—Straten v. Spencer, 197 P. 540, 52 C.A. 98—Koehl v. Carpenter, 191 P. 43, 47 C.A. 642—Williams v. A. R. G. Bus Co., 190 P. 1036, 47 C.A. 568—Newby v. Times Mirror Co., 188 P. 1008, 46 C.A. 110—Moreno v. Los Angeles Transfer Co., 186 P. 800, 44 C.A. 551.

Colo.—Campion v. Eakle, 246 P. 280, 79 Colo. 320, 47 A.L.R. 289—Kohut v. Boguslavsky, 239 P. 876, 78 Colo. 95.

Conn.—Fairbanks v. State, 124 A.2d 893, 143 Conn. 653—Gorczyca v. New York, N. H. & H. R. Co., 109 A.2d 589, 141 Conn. 701.

Del.—Bennett v. Barber, 79 A.2d 363, 7 Terry 132.

D.C.—American Ice Co. v. Moorehead, 62 App.D.C. 266, 66 F.2d 792.

Fla.—Food Fair Stores of Fla., Inc. v. Macurda, 93 So.2d 860—Bartholf v. Baker, 71 So.2d 480—Upton v. Hutchison, 46 So.2d 20—Florida Motor Lines Corp. v. Shontz, 32 So. 2d 248, 159 Fla. 518—City of Miami v. Thigpen, 11 So.2d 300, 151 Fla. 800—City of Orlando v. Zapfe, 198 So. 801, 145 Fla. 120—Davis v. Ivey, 112 So. 264, 93 Fla. 387, certiorari denied Mellon v. Ivey, 48 S.Ct. 19, 275 U.S. 526, 72 L.Ed. 407—City of Jacksonville v. Vaughn, 110 So. 529, 92 Fla. 339—Southern Utilities Co. v. Davis, 105 So. 315, 90 Fla. 168—Tatum Bros. Real Estate & Investment Co. v. McSweeney, 82 So. 605, 78 Fla. 89.

Ga.—Draper Canning Co. v. Dempsey, 86 S.E.2d 678, 91 Ga.App. 593—Radio Cabs v. Tolbert, 71 S.E.2d 260, 86 Ga.App. 181—Colonial Stores v. Coker, 48 S.E.2d 150, 77 Ga.App. 222—Standard Sur. & Cas. Co. of N. Y. v. Johnson, 41 S.E.2d 576, 74 Ga.App. 823—Anthony v. Dutton, 36 S.E.2d 836, 73 Ga.App. 389—Holtsinger v. Scarborough, 30 S.E.2d 835, 71 Ga.App. 318—Gainesville Coca-Cola Bottling Co. v. Stewart, 179 S.E. 734, 51 Ga.App. 102—Candler v. Smith, 179 S.E. 395, 50 Ga.App. 667—Louisville & N. R. Co. v. Bean, 174 S.E. 209, 49 Ga. App. 4—Central of Georgia Ry. Co. v. Keating, 165 S.E. 873, 45 Ga.App. 811, reversed on other grounds 170 S.E. 493, 177 Ga. 345, conformed to 170 S.E. 497, 47 Ga.App. 336—Central of Georgia Ry. Co. v. Barnett, 134 S.E. 126, 35 Ga.App. 528—City of East Point v. Hendrix, 108 S.E. 623, 27 Ga.App. 485—City of Gainesville v. White, 107 S.E. 571, 27 Ga.App. 16—Bullard v. Rolader, 107 S.E. 548, 26 Ga.App. 742, affirmed 110 S.E. 16, 152 Ga. 369—Georgia Ry. & Power Co. v. Shaw, 102 S.E. 904, 25 Ga.App. 146—Western & A. R. Co. v. Jarrett, 96 S.E. 17, 22 Ga.App. 313—Atlantic Coast Line R. Co. v. Tomlinson, 94 S.E. 909, 21 Ga.App. 704—Knight v. Northey, 93 S.E. 535, 21 Ga.App. 46—Seaboard Air Line Ry. v. Vaughn, 91 S.E. 516, 19 Ga.App. 397—Savannah Electric Co. v. Dixon, 89 S.E. 373, 18 Ga.App. 314.

Hawaii.—Ginoza v. Takai, 40 Hawaii 691—Vasconcellos v. Juarez, 37 Hawaii 364.

Idaho.—Luther v. First Bank of Troy, 133 P.2d 717, 64 Idaho 416—Mintun v. Moorman, 259 P. 1, 44 Idaho 658—Gordon v. Sunshine Mining Co., 252 P. 870, 43 Idaho 439—Osier v. Consumers' Co., 248 P. 438, 42 Idaho 789—Nelson v. Johnson, 243 P. 649, 41 Idaho 703—Nelson v. Johnson, 243 P. 647, 41 Idaho 697—Ellis v. Ashton & St. Anthony Power Co., 238 P. 517, 41 Idaho 106.

Ill.—Gaddie v. Whittaker, 176 N.E. 373, 344 Ill. 149.

Collins v. Ruby, 116 N.E.2d 629, 1 Ill.App.2d 116—Avance v. Thompson, 51 N.E.2d 334, 320 Ill.App. 406, reversed on other grounds 55 N.E. 2d 57, 387 Ill. 77, certiorari denied 65 S.Ct. 82, 323 U.S. 753, 89 L.Ed. 603—Davis v. Bickelhaupt, 50 N.E. 2d 438, 320 Ill.App. 239—Fitzpatrick v. California & Hawaiian Sugar Refining Corp., 32 N.E.2d 990, 309 Ill.App. 215—Mahannah v. Bergfeld, 274 Ill.App. 97—Avey v. Medaris, 272 Ill.App. 207—Bolle v. Chicago & N. W. Ry. Co., 258 Ill. App. 545, reversed on other grounds 52 S.Ct. 59, 284 U.S. 74, 76 L.Ed. 173. See Metz v. Yellow Cab Co., 248 Ill.App. 609—Michalak v. Tomkiewicz, 199 Ill.App. 405.

Ind.—New York Cent. R. Co. v. Millhiser, 106 N.E.2d 453, 231 Ind. 180, rehearing denied 108 N.E.2d 57, 231 Ind. 180—Larkins v. Kohlmeyer, 98 N.E.2d 896, 229 Ind. 391—Northwestern Transit v. Wagner, 61 N.E. 2d 591, 223 Ind. 447—Swallow Coach Lines v. Cosgrove, 15 N.E.2d 92, 214 Ind. 532.

Highshew v. Kushto, 131 N.E.2d 652, 126 Ind.App. 584, rehearing denied 133 N.E.2d 76, 126 Ind.App. 584, transfer denied 134 N.E.2d 555, petition to withdraw denied 135 N. E.2d 251—Dallas & Mavis Forwarding Co. v. Liddell, 126 N.E.2d 18, 126 Ind.App. 113, transfer denied 130 N.E.2d 459, 234 Ind. 652—Matovina v. Hult, 123 N.E.2d 893, 125 Ind.App. 236—Bowers v. Sells, 123 N.E.2d 194, 125 Ind.App. 324, rehearing denied 125 N.E.2d 175, 124 Ind.App. 324—Armstrong Cork Co. v. Maar, 111 N.E.2d 82, 124 Ind. App. 105, rehearing denied 112 N.E. 2d 240, 124 Ind.App. 105—Public Service Co. of Ind. v. Dalbey, 85 N.E.2d 368, 119 Ind.App. 405—Indianapolis Rys. v. Williams, 59 N. E.2d 586, 115 Ind.App. 383—Van Drake v. Thomas, 38 N.E.2d 878, 110 Ind.App. 586—Standard Oil Co. of Indiana v. Thomas, 13 N.E.2d 336, 105 Ind.App. 610—Kickels v. Fein, 10 N.E.2d 297, 104 Ind.App. 606—Hoeppner v. Saltzgaber, 200 N.E. 458, 102 Ind.App. 458—Clevenger v. Kern, 197 N.E. 731, 100 Ind.App. 581—Elliott v. Kraus, 172 N.E. 783, 92 Ind.App. 494—Dickover v. Owen, 151 N.E. 349, 84 Ind.App. 463—General American Tank Car Co. v. Melville, 145 N.E. 890, 198 Ind.App. 529.

Iowa.—Henney v. Lambert, 21 N.W. 2d 301, 237 Iowa 146—La Sell v. Tri-States Theatre Corp., 17 N.W. 2d 89, 235 Iowa 492—Stoner v. Iowa State Highway Commission, 287 N.W. 269, 227 Iowa 115—Rogers v. Jefferson, 285 N.W. 701, 226 Iowa 1047—Maxwell v. Iowa State Highway Commission, 265 N.W. 899, superseded on other grounds 271 N.W. 885, 223 Iowa 159, 118 A.L.R. 862—Simons v. Harris, 245 N.W. 875, 215 Iowa 479—Kness v. Kommes, 222 N.W. 436, 207 Iowa 137—Taylor v. Williamson, 196 N.W. 713, 197 Iowa 88—Stegemann v. Paulsen, 190 N. W. 929, 194 Iowa 1314.

Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142—Henderson v. Deckert, 162 P.2d 88, 160 Kan. 386—Carlisle v. Union Public Service Co., 21 P.2d 395, 137 Kan. 636.

Ky.—Temperly v. Sarrington's Adm'r, 293 S.W.2d 863—Berio v. Talley, 269 S.W.2d 185—Williams v. Larkin, 268 S.W.2d 394—Tichenor v. Roll, 253 S.W.2d 13—Bailey v. Travis, 224 S.W.2d 941, 311 Ky. 624—Greer v. Summerfield, 215 S. W.2d 574, 308 Ky. 674—Croley v. Huddleston, 202 S.W.2d 637, 304 Ky. 811—Union Transfer & Storage Co. v. Fryman's Adm'r, 200 S.W. 2d 953, 304 Ky. 422—Great Atlantic & Pacific Tea Co. v. Smith, 136 S.W.2d 759, 281 Ky. 583—City of Paducah v. Brunnhoper, 135 S.W.2d 413, 281 Ky. 177—Jefferson Dry Goods Co. v. Blunk, 95 S.W.2d 244, 264 Ky. 673—Davis v. Smith, 94 S.W.2d 20, 264 Ky. 20—Refiners Oil Corporation v. Bell, 92 S.W.2d 88, 263 Ky. 216—Chesapeake & O. Ry. Co. v. Hay, 88 S.W.2d 318, 261 Ky. 566—Woltering v. Weber's Adm'x, 68 S.

W.2d 440, 253 Ky. 55—City of Greenville v. Johnston, 52 S.W.2d 716, 244 Ky. 782—Kentucky Utilities Co. v. White Star Coal Co., 52 S.W.2d 705, 244 Ky. 759—City of Covington v. Lovelace, 49 S.W.2d 593, 243 Ky. 627—High Splint Coal Co. v. Payne, 49 S.W.2d 539, 243 Ky. 677—Allender Co. v. Browning's Adm'x, 46 S.W.2d 116, 242 Ky. 273—Phillips' Committee v. Ward's Adm'r, 43 S.W.2d 331, 241 Ky. 25—Gayheart v. Smith, 42 S.W.2d 877, 240 Ky. 596—Louisville Taxicab & Transfer Co. v. Reno, 35 S.W.2d 902, 237 Ky. 452—City of Paducah v. Konkle, 33 S.W.2d 608, 236 Ky. 582—Ashland Sanitary Milk Co. v. Messersmith's Adm'r, 32 S.W.2d 727, 236 Ky. 91—Nussbaum v. Caskey, 32 S.W.2d 18, 235 Ky. 640—West Kentucky Coal Co. v. Shoulders' Adm'r, 28 S.W.2d 479, 234 Ky. 427—Louisville & N. R. Co. v. Jolly's Adm'x, 23 S.W.2d 564, 232 Ky. 702, certiorari denied Louisville & N. R. Co. v. Jolly, 51 S.Ct. 26, 282 U.S. 847, 75 L. Ed. 751—Rankin v. Wagoner, 15 S.W.2d 470, 228 Ky. 658—Chesapeake & O. Ry. Co. v. Kennard, 3 S.W.2d 649, 223 Ky. 262—Hayes v. Ketron, 3 S.W.2d 172, 223 Ky. 119—Chesapeake & O. Ry. Co. v. Dixon, 290 S.W. 1064, 218 Ky. 84—Louisville & I. Ry. Co. v. Jones, 250 S.W. 822, 199 Ky. 150, 33 A.L.R. 165.

Me.—Campbell v. Peters, 102 A. 881, 117 Me. 555.

Mich.—Aho v. Conda, 79 N.W.2d 917, 347 Mich. 450—Bramer v. Ames, 61 N.W.2d 160, 338 Mich. 226—Vink v. House, 57 N.W.2d 887, 336 Mich. 292—Watrous v. Conor, 254 N.W. 143, 266 Mich. 397—Clark v. Roem, 247 N.W. 722, 262 Mich. 478—Sebring v. Mawby, 232 N.W. 194, 251 Mich. 628—Adelsperger v. City of Detroit, 227 N.W. 694, 248 Mich. 399.

Minn.—Larson v. Degner, 78 N.W. 2d 333, 248 Minn. 59—Gilbertson v. Gross, 45 N.W.2d 547, 232 Minn. 373—Flemming v. Thorson, 43 N. W.2d 225, 231 Minn. 343—Bergstrom v. Frank, 4 N.W.2d 620, 213 Minn. 9—Frey v. McManus, 191 N. W. 392, 154 Minn. 175—Morrow v. Tourtellotte, 160 N.W. 665, 135 Minn. 248.

Miss.—Rasberry v. Calhoun County, 94 So.2d 612—Canale v. Jones, 87 So.2d 694—Gulf Refining Co. v. Myrick, 71 So.2d 217, 220 Miss. 429—Meridian Taxicab Co. v. Ward, 186 So. 636, 184 Miss. 499, 120 A.L.R. 1346—Mississippi Ice & Utilities Co. v. Pearce, 134 So. 164, 161 Miss. 252—S. H. Kress & Co. v. Sharp, 131 So. 412, 159 Miss. 283—Bufkin v. Grisham, 128 So. 563, 157 Miss. 746.

Mo.—Mayor v. St. Louis Public Service Co., 269 S.W.2d 101—Peterson v. Kansas City Public Service Co., 259 S.W.2d 789—Gardner v. Stout, 119 S.W.2d 790, 342 Mo. 1206—Schupback v. Meshevsky, 300 S.W. 465.

Rossommano v. Quality Dairy Co., App., 297 S.W.2d 591—State ex rel. Burcham v. Drainage Dist. No. 25, App., 272 S.W.2d 712—Sutton v. City of St. Joseph, App., 265 S. W.2d 760—Arl v. St. Louis Public Service Co., App., 243 S.W.2d 797—Kasten v. St. Louis Public Service Co., App., 231 S.W.2d 252—Montana v. Nenert, App., 226 S.W.2d 394—Hertz v. McDowell, App., 203 S.W.2d 500, affirmed 214 S.W.2d 546, 358 Mo. 383—Lanasa v. Downey, App., 201 S.W.2d 179—Marshall v. St. Louis Union Trust Co., App., 196 S.W.2d 435—Moses v. Kansas City Public Service Co., App., 188 S.W.2d 538—Daugherty v. Spuck Iron & Foundry Co., App., 175 S.W.2d 45—Gerharter v. Mitchellhill Seed Co., App., 157 S.W.2d 577—Pfiffner v. Kroger Grocer & Baking Co., App., 140 S.W.2d 79—Gust v. Montgomery Ward & Co., 136 S.W.2d 94, 234 Mo.App. 611—Lechner v. City of St. Louis, App., 121 S.W.2d 242—Smyth v. Hertz Driv-Ur-Self Stations, App., 93 S. W.2d 56—King v. City of De Soto, App., 89 S.W.2d 579—Wilkerson v. Missouri Pac. R. Co., App., 69 S. W.2d 299—Felts v. Spesia, App., 61 S.W.2d 402—Tibbe v. Sayman, App., 61 S.W.2d 376—Knight v. Kansas City Public Service Co., App., 49 S.W.2d 1074—Merritt v. Kansas City, App., 46 S.W.2d 275—Dietderick v. Missouri Iron & Metal Co., 9 S.W.2d 824, 222 Mo. App. 740—Peterson v. Fleming, 297 S.W. 163, 222 Mo.App. 296—Stuckenmeyer v. Creane, App., 291 S.W. 145—Stephens v. Mobile & O. R. Co., App., 285 S.W. 151—Todd v. American Ry. Express Co., 271 S. W. 880, 219 Mo.App. 405—Beck v. Galloway Peas Lumber Co., 239 S. W. 166, 210 Mo.App. 341.

Mont.—Mellon v. Kelly, 41 P.2d 49, 99 Mont. 10—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48—Johnson v. Horn, 283 P. 427, 86 Mont. 314.

Neb.—Southwell v. De Boer, 80 N.W. 2d 877, 163 Neb. 646—Gable v. Pathfinder Irr. Dist., 79 N.W.2d 708, 163 Neb. 349—Peetz v. Masek Auto Supply Co., 74 N.W.2d 474, 161 Neb. 588—Shields v. Buffalo County, 71 N.W.2d 701, 161 Neb. 34—Dunn v. Safeway Cabs, Inc., 57 N.W.2d 75, 156 Neb. 554—Johnson v. Schrepf, 47 N.W.2d 853, 154 Neb. 317—Thoren v. Myers, 37 N. W.2d 725, 151 Neb. 453—Plumb v. Burnham, 36 N.W.2d 612, 151 Neb. 129—Rueger v. Hawks, 36 N.W.2d 236, 150 Neb. 834—Horky v. Schroll, 26 N.W.2d 396, 148 Neb. 96—Van Auker v. Steckley's Hybrid Seed Corn Co., 8 N.W.2d 451, 143 Neb. 24—Lindley v. Wabash Ry. Co., 233 N.W. 450, 120 Neb. 195, certiorari denied Wabash Ry. Co. v. Lindley, 51 S.Ct. 655, 283 U.S. 863, 75 L.Ed. 1468—Stewart v. Weiner, 187 N.W. 121, 108 Neb. 49.

N.J.—Batts v. Joseph Newman, Inc., 71 A.2d 121, 3 N.J. 503.

Davis v. Gibbs, 93 A.2d 206, 23 N.J.Super. 558—McManus v. New Jersey Water Co., 91 A.2d 868, 22 N.J.Super. 253—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499.

Bowes v. Public Service Ry. Co., 110 A. 699, 94 N.J.Law 378.

Moncher v. Fuches, 149 A. 356, 8 N.J.Misc. 172.

N.M.—Hall v. Stiles, 258 P.2d 386, 57 N.M. 281.

N.Y.—Beach v. Watkins, 36 N.Y.S.2d 519.

N.D.—Moen v. Moen, 256 N.W. 254, 65 N.D. 40.

Ohio.—Fiebig v. Brofford, App., 97 N.E.2d 52—Bartlebaugh v. Pennsylvania R. Co., App., 78 N.E.2d 410, appeal dismissed 79 N.E.2d 912, 149 Ohio St. 585, modified on other grounds 82 N.E.2d 853, 150 Ohio St. 387—Goodyear Tire & Rubber Co. v. Marhofer, 176 N.E. 120, 38 Ohio App. 143—Cleveland Ry. Co. v. Smith, 172 N.E. 409, 35 Ohio App. 204—Rutsky v. Santa Lucia, 170 N.E. 599, 34 Ohio App. 317—Cleveland Ry. Co. v. Mueller, 166 N.E. 391, 31 Ohio App. 488—Dunham v. Mulby, 156 N.E. 608, 24 Ohio App. 509—Cincinnati Traction Co. v. Cahill, 16 Ohio App. 496—Cleveland Ry. Co. v. O'Reilly, 16 Ohio App. 132.

Okl.—Magnolia Petroleum Co. v. Angelly, 306 P.2d 309—Western Farmers Elec. Co-op. v. Smith, 288 P.2d 729—Valley Steel Products Co. v. Long, 282 P.2d 232—Republic Natural Gas Co. v. Melson, 274 P.2d 543—Roberts v. Van Cleave, 237 P.2d 892, 205 Okl. 319—Oklahoma Ry. Co. v. Wilson, 227 P.2d 392, 204 Okl. 90—Oklahoma Ry. Co. v. Strong, 214 P.2d 939, 202 Okl. 434—Southwest Stone Co. v. Hughes, 177 P.2d 489, 198 Okl. 257—Magnolia Pipe Line Co. v. Brown, 157 P.2d 184, 195 Okl. 345—Kurn v. Manley, 153 P.2d 623, 194 Okl. 574—United Transports v. Jett, 144 P.2d 110, 193 Okl. 399—Hale-Halsell Co. v. Webb, 89 P.2d 273, 184 Okl. 589—Baker v. Shaw, 86 P.2d 319, 184 Okl. 194—Yellow Cab Operating Co. of Oklahoma City v. Thompson, 86 P.2d 310, 184 Okl. 179—Mid-Continent Petroleum Corp. v. Fisher, 84 P.2d 22, 183 Okl. 638—Yellow Cab Transit Co. v. Bethel, 81 P.2d 667, 183 Okl. 219—City of Norman v. Lewis, 69 P.2d 377, 180 Okl. 344—Yellow Cab Operating Co. v. Spelce, 61 P.2d 672, 177 Okl. 571—Ponca City v. Swayne, 50 P.2d 1082, 174 Okl. 576—Beatrice Creamery Co. v. Bagley, 47 P.2d 87, 173 Okl. 188—

Oklahoma Gas & Electric Co. v. Oliphant, 45 P.2d 1077, 172 Okl. 635—Ætna Ins. Co. v. Bennett, 42 P.2d 536, 171 Okl. 232—Stover v. Mackie, 41 P.2d 474, 170 Okl. 574—Russell-Locke Super-Service v. Vaughn, 40 P.2d 1090, 170 Okl. 377—Greenback v. Wood, 280 P. 466, 138 Okl. 55—Greenback v. Wood, 280 P. 464, 138 Okl. 53—Henshaw v. Brunson, 278 P. 645, 137 Okl. 180—Bucktrot v. Partridge, 265 P. 772, 130 Okl. 126—Bucktrot v. Partridge, 265 P. 768, 130 Okl. 122—Muskogee Electric Traction Co. v. Dunnam, 263 P. 109, 129 Okl. 70—Town of Hallet v. Stephens, 256 P. 921, 125 Okl. 157—Brown v. McNair, 256 P. 903, 125 Okl. 144—St. Louis-San Francisco Ry. Co. v. Simmons, 245 P. 894, 119 Okl. 1—City of Pawhuska v. Black, 244 P. 1114, 117 Okl. 108—Ponca City v. Reed, 242 P. 164, 115 Okl. 166—Schaff v. Daugherty, 239 P. 922, 112 Okl. 124, certiorari denied 46 S.Ct. 208, 270 U.S. 642, 70 L.Ed. 776—St. Louis-San Francisco Ry. Co. v. Bryan, 237 P. 613, 113 Okl. 39—Consumers' Gas Co. v. O'Bannon, 221 P. 423, 94 Okl. 107—Sand Springs Ry. Co. v. McGrew, 219 P. 111, 92 Okl. 262—Sand Springs Ry. Co. v. Westhafer, 218 P. 525, 92 Okl. 89—Boling v. Asbridge, 203 P. 894, 84 Okl. 280—Muskogee Electric Traction Co. v. Wimmer, 194 P. 107, 80 Okl. 11—Dickinson v. Whitaker, 182 P. 901, 75 Okl. 243—Cornelius v. Smith, 175 P. 754, 73 Okl. 217, 9 A.L.R. 233—St. Louis & S. F. R. Co. v. McClain, 162 P. 751, 63 Okl. 75—Bellevue Gas & Oil Co. v. Carr, 161 P. 203, 61 Okl. 290—St. Louis & S. F. R. Co. v. Hodge, 157 P. 60, 53 Okl. 427—Missouri, O. & G. Ry. Co. v. Collins, 150 P. 142, 47 Okl. 761—Chicago, R. I. & P. Ry. Co. v. Pitchford, 143 P. 1146, 44 Okl. 197.

Or.—Curtis v. Keller, 298 P. 196, 136 Or. 67.

Pa.—Wilbert v. Pittsburgh Consolidation Coal Co., 122 A.2d 406, 385 Pa. 149—De Simone v. City of Philadelphia, 110 A.2d 431, 380 Pa. 137—Schultz v. City of Pittsburgh, 88 A.2d 74, 370 Pa. 271, 31 A.L.R. 2d 1327—Bourd v. Berman, 58 A.2d 442, 359 Pa. 183—Jones v. Williams, 58 A.2d 57, 358 Pa. 559—Allen v. Silverman, 50 A.2d 275, 355 Pa. 471—Giannone v. Reale, 3 A.2d 331, 333 Pa. 21—Neidlinger v. Haines, 200 A. 581, 331 Pa. 529—Majewski v. Lempka, 183 A. 777, 321 Pa. 369—Walker v. Perkins, 181 A. 511, 319 Pa. 469—Cook v. Miller Transp. Co., 179 A. 429 319 Pa. 85—Lookatch v. Robinson, 179 A. 66, 318 Pa. 545—Brown, for Use of McArdle, v. Borough of Castle Shannon, 178 A. 678, 318 Pa. 363—Schumacher v. Reading Transp. Co., 178 A. 670, 319 Pa. 254—McClellan v. Fox, 177 A. 823, 318 Pa. 423—McHendry v. Pittsburgh Rys. Co., 169 A. 145, 313 Pa. 81—Dichiero v. Pittsburgh Rys. Co., 169 A. 82, 313 Pa. 93—Dauphin Deposit Trust Co. v. Standard Oil Co. of Pennsylvania, 167 A. 287, 312 Pa. 229—Linhoss v. Hodgson, 165 A. 379, 310 Pa. 339—King v. Equitable Gas Co., 161 A. 65, 307 Pa. 287—Hysong v. J. Kenny Transfer Co., 154 A. 922, 304 Pa. 102—Herb v. Hallowell, 154 A. 582, 304 Pa. 128, 85 A.L.R. 1004—Curry v. J. M. Willson & Sons, 152 A. 746, 301 Pa. 467—Filer v. Filer, 152 A. 567, 301 Pa. 461—Scott v. American Express Co., 101 A. 96, 257 Pa. 25.

Dandridge v. Exhibitors Service Co., 74 A.2d 670, 167 Pa.Super. 143—Saar v. Saar, 17 A.2d 745, 143 Pa.Super. 528—Stompler v. Richman, 189 A. 730, 125 Pa.Super. 385—Heaver v. Philadelphia Rapid Transit Co., 183 A. 110, 120 Pa. Super. 520—Baymond v. Sternberger, 176 A. 787, 116 Pa.Super. 451—Kalo & Sullivan v. William Penn Hotel Co., 86 Pa.Super. 359.

Brown v. George B. Newton Coal Co., Com.Pl., 28 Del.Co. 23.

R.I.—Faltinali v. Great Atlantic & Pacific Tea Co., 182 A. 605, 55 R.I. 438.

S.C.—Newman v. Brown, 90 S.E.2d 649, 228 S.C. 472—Early v. South Carolina Public Service Authority, 90 S.E.2d 472, 228 S.C. 392—Jackson v. Solomon, 89 S.E.2d 436, 228 S.C. 225—Nelson v. Charleston & W. C. Ry. Co., 86 S.E.2d 56, 226 S.C. 516—Jennings v. McCowan, 55 S.E.2d 522, 215 S.C. 404, certiorari denied Atlantic Coast Line R. Co. v. Jennings, 70 S.Ct. 494, 338 U.S. 956, 94 L.Ed. 590—Gordon v. Rothberg, 50 S.E.2d 202, 213 S.C. 492—Bowers v. Charleston & W. C. Ry. Co., 42 S.E.2d 705, 210 S.C. 367—Smith v. Southern Ry. Co., Carolina Div., 35 S.E.2d 225, 207 S.C. 179—Norman v. Stevenson Theatres, 156 S.E. 357, 159 S.C. 191—Duncan v. Record Pub. Co., 143 S. E. 31, 145 S.C. 196—Southerland v. Davis, 115 S.E. 768, 122 S.C. 511—Prescott v. Hines, 103 S.E. 543, 114 S.C. 262.

S.D.—Tufty v. Sioux Transit Co., 17 N.W.2d 700, 70 S.D. 352—Nield v. Illinois Cent. R. Co., 225 N.W. 654, 55 S.D. 229.

Tenn.—City of Columbia v. Lentz, 282 S.W.2d 787, 39 Tenn.App. 350—Board of Mayor and Aldermen of Covington v. Moore, 232 S.W.2d 410, 33 Tenn.App. 561—Little Stores v. Isenberg, 172 S.W.2d 13, 26 Tenn.App. 357—Tennessee Cent. Ry. Co. v. Scarbrough, 9 Tenn.App. 295—City of Nashville v. Fox, 6 Tenn.App. 653—Tennessee Central Ry. Co. v. Zearing, 3 Tenn.App. 451—Rhoton v. Burton, 2 Tenn.App. 164.

Norris v. L. & N. R. R., 6 Tenn. Civ.App. 163—Memphis St. Ry. v. Bailey, 6 Tenn.Civ.App. 105.

Tex.—Texarkana Bus Co. v. Carter, Civ.App., 301 S.W.2d 300, error refused no reversible error—Texas & N. O. R. Co. v. Hayes, Civ.App., 284 S.W.2d 776, affirmed, Sup., 293 S.W.2d 484—Dallas Ry. & Terminal Co. v. Farnsworth, Civ.App., 221 S.W.2d 981, reversed on other grounds 227 S.W.2d 1017, 148 Tex. 584—Burlington-Rock Island R. Co. v. Newsom, Civ.App., 219 S.W. 2d 129—Texas & N. O. R. Co. v. Coogler, Civ.App., 209 S.W.2d 778, error refused no reversible error—Gillette Motor Transp. Co. v. Whitfield, Civ.App., 197 S.W.2d 157, affirmed 200 S.W.2d 624, 145 Tex. 571—Forrest v. Faust, Civ.App., 110 S.W.2d 147, error dismissed—Texas & N. O. R. Co. v. Rittimann, Civ.App., 87 S.W.2d 745—Pacific Greyhound Lines v. Vermillion, Civ.App., 87 S.W.2d 312, error dismissed—Wells v. Henderson, Civ.App., 78 S.W.2d 683—Phœnix Refining Co. v. Tips, Civ. App., 66 S.W.2d 396—Texas & N. O. R. Co. v. Barrow, Civ.App., 56 S.W.2d 260—Wichita Falls & S. R. Co. v. Holbrook, Civ.App., 50 S.W.2d 428—Southern Pub. Co. v. Foster, Civ.App., 36 S.W.2d 231, reversed on other grounds Com. App., 53 S.W.2d 1014—International-Great Northern R. Co. v. King, Civ.App., 27 S.W.2d 357, reversed on other grounds Com. App., 41 S.W.2d 234—Russell v. Adams, Civ.App., 18 S.W.2d 189—Fort Worth Gas Co. v. Bragg, Civ.App., 297 S.W. 244, reversed on other grounds Montrief & Montrief v. Bragg, Com.App., 2 S.W. 2d 276, rehearing denied Montrief & Montrief v. Fort Worth Gas Co., 4 S.W.2d 964—Galveston, H. & S. A. Ry. Co. v. Rodriguez, Civ.App., 281 S.W. 259, reversed on other grounds Com.App., 288 S. W. 151—Western Union Telegraph Co. v. Florence, Civ.App., 262 S. W. 523—Schaff v. Ridlehuber, Civ. App., 261 S.W. 523, certiorari denied 45 S.Ct. 194, 266 U.S. 629, 69 L.Ed. 477—Baker v. Fields, Civ. App., 236 S.W. 170, dismissed for want of jurisdiction—Flores v. Garcia, Civ.App., 226 S.W. 743—Houston E. & W. T. Ry. Co. v. Snow, Civ.App., 201 S.W. 224.

Utah.—Duffy v. Union Pac. R. Co., 218 P.2d 1080, 118 Utah 82—Pauly v. McCarthy, 184 P.2d 123, 109 Utah 431—Ward v. Denver & R. G. W. R. Co., 85 P.2d 837, 96 Utah 564—Baker v. Wycoff, 79 P.2d 77, 95 Utah 199—Fogg v. Oregon Short Line R. Co., 1 P.2d 954, 78 Utah 105—Morgan v. Ogden Union Ry. & Depot Co., 294 P. 541, 77 Utah

excessive is especially applicable where there is | no legal rule for the measure of damages,[3] where de-

325—McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115—Browning v. Bank of Vernal, 207 P. 462, 60 Utah 197.

Va.—Glass v. David Pender Grocery Co., 5 S.E.2d 478, 174 Va. 196—News Leader Co. v. Kocen, 3 S.E. 2d 385, 173 Va. 95, 122 A.L.R. 842—Diamond Cab Co. v. Jones, 174 S.E. 675, 162 Va. 412—Safety Motor Transit Corporation v. Cunningham, 171 S.E. 432, 161 Va. 356—C. D. Kenny Co. v. Solomon, 163 S.E. 97, 158 Va. 25—Norfolk & P. B. L. R. Co. v. Parker, 147 S.E. 461, 152 Va. 484—Carolina, C. & O. Ry. v. Hill, 89 S.E. 902, 119 Va. 416.

Wash.—Thompson v. City of Seattle, 211 P.2d 500, 35 Wash.2d 124—Scholz v. Leuer, 109 P.2d 294, 7 Wash.2d 76—Pryor v. Safeway Stores, 83 P.2d 241, 196 Wash. 382, opinion adhered to on rehearing 85 P.2d 1045, 196 Wash. 382—Carlson v. P. F. Collier & Son Corp., 67 P.2d 842, 190 Wash. 301—Crumrine v. Grubb, 17 P.2d 887, 171 Wash. 274—Bell v. Northwest Cities Gas Co., 2 P.2d 644, 164 Wash. 450—Parker v. Pantages Theater Co., 254 P. 1083, 143 Wash. 176—Sherrill v. Olympic Ice Cream Co., 237 P. 14, 135 Wash. 99—Viss v. Calligan, 158 P. 1012, 91 Wash. 673.

W.Va.—Homes v. Monongahela Power Co., 69 S.E.2d 131, 136 W.Va. 877—Black v. Peerless Elite Laundry Co., 169 S.E. 447, 113 W.Va. 828—Snodgrass v. Charleston Nugrape Co., 169 S.E. 406, 113 W.Va. 748—Webb v. Chesapeake & O. Ry. Co., 144 S.E. 100, 105 W.Va. 555, certiorari denied Chesapeake & Ohio R. Co. v. Webb, 49 S.Ct. 82, 278 U.S. 646, 73 L.Ed. 559—Stewart v. Pollack-Forsch Co., 143 S.E. 98, 105 W.Va. 453.

Wis.—Wasicek v. M. Carpenter Baking Co., 191 N.W. 503, 179 Wis. 274.

4 C.J. p 872 note 19—6 C.J. p 765 note 65—37 C.J. p 113 note 2 [a] (2).

Effect of size of verdict

(1) The mere size of the verdict, although excessive, does not show partiality, prejudice, or passion on the part of the jury, at least where the evidence will support a substantial verdict.

Cal.—Wilmot v. Golden Gate Inv. Co., 107 P.2d 263, 41 C.A.2d 664—Harmon v. San Joaquin Light & Power Corp., 98 P.2d 1064, 37 C.A. 2d 169.

Kan.—Young v. Kansas City Public Service Co., 135 P.2d 551, 156 Kan. 624.

Mo.—Brewer v. Rowe, 252 S.W.2d 372, 363 Mo. 592—Carver v. Missouri-Kansas-Texas R. Co., 245 S. W.2d 96, 362 Mo. 897—Mitchell v. Pla-Mor, Inc., 237 S.W.2d 189, 361 Mo. 946—O'Brien v. Louisville & N. R. Co., 227 S.W.2d 690, 360 Mo. 229—Reeves v. Thompson, 211 S. W.2d 23, 357 Mo. 847—Walsh v. Terminal R. Ass'n of St. Louis, 196 S.W.2d 192, 355 Mo. 377—Joice v. Missouri-Kansas-Texas R. Co., 189 S.W.2d 568, 354 Mo. 439, 161 A.L.R. 383—Willis v. Atchison, T. & S. F. Ry. Co., 178 S.W.2d 341, 352 Mo. 490—Schaefer v. Transamerican Freight Lines, 173 S.W. 2d 20—Webb v. Missouri-Kansas-Texas R. Co., 116 S.W.2d 27, 342 Mo. 394.

Pyle v. Kansas City Light & Power Co., App., 246 S.W. 979.

Nev.—Wells, Inc., v. Shoemake, 177 P.2d 451, 64 Nev. 57.

N.J.—Lukasiewicz v. Haddad, 94 A. 2d 504, 24 N.J.Super. 399—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J. Super. 499.

Utah.—Stamp v. Union Pac. R. Co., 303 P.2d 279, 5 Utah 2d 397—Duffy v. Union Pac. R. Co., 218 P. 2d 1080, 118 Utah 82—Pauly v. McCarthy, 184 P.2d 123, 109 Utah 431—Walkenhorst v. Kesler, 67 P. 2d 654, 92 Utah 312.

(2) It may, however, determine the question of passion or prejudice, in the absence of other reasonable explanation.

Ohio.—Cleveland Ry. Co. v. Mueller, 166 N.E. 391, 31 Ohio App. 488.

Passion or prejudice not shown

(1) In an action against two young defendants for the death of a guest in an automobile owned by one and driven by the other, the record was held not to show that the jury were actuated by prejudice, partiality, and sympathy in awarding seven thousand eight hundred and fifty dollars for the death of such guest, who was a young girl.

Va.—Margiotta v. Aycock, 174 S.E. 831, 162 Va. 557.

(2) In an action by a personal representative for the death of a miner, the amount recovered to become assets of the estate under statute, a verdict for fifteen thousand dollars will not be overturned on appeal as given under the influence of passion or prejudice where deceased was twenty-six years of age, earning six dollars to six dollars and forty cents per day, and with a life expectancy of thirty-seven and forty-three hundredths years.

Ariz.—Arizona Binghampton Copper Co. v. Dickson, 195 P. 538, 22 Ariz. 163, 44 A.L.R. 881.

4 C.J. p 873 note 19 [b].

(3) Other awards held not to evidence passion or prejudice.

Cal.—Foerster v. Direito, 170 P.2d 986, 75 C.A.2d 323.

Presumption

Unless a verdict or judgment is so grossly disproportionate to the reasonable limit of compensation warranted by the facts as to shock the sense of justice and raise a presumption of prejudice and passion, the appellate court cannot disturb it.

Cal.—Kircher v. Atchison, T. & S. F. Ry. Co., 195 P.2d 427, 32 C.2d 76—Roedder v. Rowley, 172 P.2d 353, 28 C.2d 820.

Safina v. Safeway Stores, Inc., App., 309 P.2d 470—Mendoza v. Rudolf, 295 P.2d 445, 140 C.A.2d 633—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Correia v. Van Camp Sea Food Co., 248 P.2d 81, 113 C.A.2d 71—Biggs v. Tourtas, 206 P.2d 871, 92 C.A.2d 316—Stark v. Yellow Cab Co., 202 P.2d 802, 90 C.A.2d 217—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Maddern v. City and County of San Francisco, 169 P.2d 425, 74 C.A.2d 742—Turnipseed v. Hoffman, 144 P.2d 797, 23 C.A.2d 532—Mahar v. MacKay, 132 P.2d 42, 55 C.A.2d 869—Peckham v. Warner Bros. Pictures, 108 P.2d 699, 42 C.A.2d 187—Van Derhoof v. Chambon, 8 P.2d 925, 121 C.A. 118—Davis v. Renton, 298 P. 834, 113 C.A. 561—Rannard v. Harris, 297 P. 623, 113 C.A. 15.

Iowa.—Weilbrenner v. Owens, 68 N. W.2d 293, 246 Iowa 580—Glatstein v. Grund, 51 N.W.2d 162, 243 Iowa 541, 36 A.L.R.2d 531—Thornbury v. Maley, 45 N.W.2d 576, 242 Iowa 70—De Toskey v. Ruan Transport Corp., 40 N.W.2d 4, 241 Iowa 45, 17 A.L.R.2d 826.

Ky.—Central Truckaway System v. Moore, 201 S.W.2d 725, 304 Ky. 533.

False arrest or malicious prosecution

A jury's award of compensatory damages for false arrest or malicious prosecution will not be interfered with on appeal, unless clearly the result of passion or prejudice.

Cal.—Hudson v. Zumwalt, 149 P.2d 457, 64 C.A.2d 866.

Mo.—Peterson v. Fleming, 297 S.W. 163, 222 Mo.App. 296.

Ohio.—Dunham v. Mulby, 156 N.E. 608, 24 Ohio App. 509.

3. Cal.—Brown v. Beck, 220 P. 14, 63 C.A. 686.

Tenn.—Tibbs v. Bright, 10 Tenn.App. 89.

Tex.—Kansas City, M. & O. Ry. Co. of Texas v. Starr, Civ.App., 194 S. W. 637, error refused.

Vt.—Shedrick v. Lathrop, 172 A. 630, 106 Vt. 311.

4 C.J. p 873 note 20.

fendant made no claim at the trial that the award of damages was excessive,[3.5] or where the trial court has approved the verdict, as by refusing to set it aside,[4] unless such refusal to set aside the verdict

3.5 Ohio.—Lucente v. Philipedes, App., 68 N.E.2d 558.
Okl.—Republic Natural Gas Co. v. Melson, 274 P.2d 543.
Tex.—McIver v. Gloria, Civ.App., 163 S.W.2d 890, affirmed 169 S.W.2d 710, 140 Tex. 566.

4. Ala.—Foster & Creighton Co. v. St. Paul Mercury Indem. Co., 88 So.2d 825, 264 Ala. 442—Louisville & N. R. Co. v. Tucker, 80 So.2d 288, 262 Ala. 570—Montgomery City Lines v. Davis, 74 So.2d 923, 261 Ala. 491—Hudson v. Stripling, 73 So.2d 514, 261 Ala. 196—W. T. Smith Lumber Co. v. McKenzie, 55 So.2d 919, 256 Ala. 496—Birmingham Elec. Co. v. Howard, 34 So.2d 830, 250 Ala. 421—Florence Hotel Co. v. Bumpus, 69 So. 566, 194 Ala. 69, Ann.Cas.1918E 252.
Birmingham Electric Co. v. Bailey, 15 So.2d 465, 31 Ala.App. 275, certiorari denied 15 So.2d 469, 244 Ala. 671.
Ariz.—Allied Van Lines v. Parsons, 293 P.2d 430, 80 Ariz. 88.
Ark.—Missouri Pac. R. Co. v. Cathey, 254 S.W. 374, 160 Ark. 153.
Cal.—Ericksen v. Southern Pac. Co., 246 P.2d 642, 39 C.2d 374, certiorari denied Southern Pac. Co. v. Ericksen, 73 S.Ct. 277, 344 U.S. 897, 97 L.Ed. 693—State Rubbish Collectors Ass'n v. Siliznoff, 240 P.2d 282, 38 C.2d 330—Finney v. Lockhart, 217 P.2d 19, 35 C.2d 161—Brewer v. Second Baptist Church of Los Angeles, 197 P.2d 713, 32 C.2d 791—Johnston v. Long, 181 P.2d 645 30 C.2d 54—Arellano v. City of Burbank, 89 P.2d 113, 13 C.2d 248—Mudrick v. Market Street Ry. Co., 81 P.2d 950, 11 C.2d 724, 118 A.L.R. 533—Koyer v. McComber, 82 P.2d 941, 12 C.2d 175—Douglas v. Berlin Dye Works & Laundry Co., 145 P. 535, 169 C. 28.
Sexton v. Key System Transit Lines, 301 P.2d 612, 144 C.A.2d 719—Harris v. Lampert, 281 P.2d 292, 131 C.A.2d 751—Bergevin v. Morger, 279 P.2d 136, 130 C.A.2d 590—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Luke v. Mercantile Acceptance Corp. of Cal., 244 P.2d 764, 111 C.A.2d 431—Gall v. Union Ice Co., 239 P.2d 48, 108 C. A.2d 303—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404—Duffey v. General Petroleum Corp., 209 P.2d 986, 93 C.A.2d 757—Gluckstein v. Lipsett, 209 P.2d 98, 93 C.A.2d 391—Johnson v. Marquis, 209 P.2d 63, 93 C. A.2d 341—Turner v. Elliott, 206 P. 2d 48, 91 C.A.2d 901—Pederson v. Carrier, 204 P.2d 417, 91 C.A.2d 84—Humble v. Union Pac. R. Co., 202 P.2d 791, 90 C.A.2d 276—Dodds v. Stellar, 175 P.2d 607, 77 C.A.2d 411—Freeman v. Nickerson, 174 P.2d 688, 77 C.A.2d 40—Reilly v. California St. Cable R. Co., 173 P.2d 872, 76 C.A.2d 620—Simpson v. Wilmer, 146 P.2d 933, 63 C.A.2d 501—Gladstone v. Fortier, 70 P.2d 255, 22 C.A.2d 1—Hamilton v. Hammond Lumber Co., 56 P.2d 1257, 13 C.A.2d 461—Beatty v. Warren, 20 P.2d 355, 130 C.A. 573—Zumwalt v. E. H. Tryon, Inc., 14 P.2d 912, 126 C.A. 583—Calihan v. Yellow Cab Co. of San Diego, 13 P.2d 931, 125 C.A. 649—Coover v. Painless Parker, Dentist, 286 P. 1048, 105 C.A. 110—Sundberg v. Ringer, 280 P. 557, 100 C.A. 545—Davis v. Renton, 278 P. 442, 99 C.A. 264.
Conn.—Zullo v. Zullo, 89 A.2d 216, 138 Conn. 712.
Del.—Empire Box Corp. v. Jefferson Island Salt Min. Co., 36 A.2d 40, 3 Terry 432.
Ga.—Shepherd Const. Co. v. Vaughn, 76 S.E.2d 647, 88 Ga.App. 285—Radio Cabs v. Tolbert, 71 S.E.2d 260, 86 Ga.App. 181—Kell v. Hunter, 67 S.E.2d 597, 84 Ga.App. 792—Western & Atlantic R. R. v. Burnett, 54 S.E.2d 357, 79 Ga.App. 530—Western & A. R. R. v. Fowler, 47 S.E.2d 874, 77 Ga.App. 206—Atlantic Greyhound Corp. v. Austin, 33 S.E.2d 718, 72 Ga.App. 19—Gainesville Coca-Cola Bottling Co. v. Stewart, 179 S.E. 734, 51 Ga.App. 102—Central of Georgia Ry. Co. v. Barnett, 134 S.E. 126, 35 Ga.App. 528—Bozikis v. Anestos, 126 S.E. 555, 33 Ga.App. 422—Georgia Ry. & Power Co. v. Howell, 113 S.E. 101, 28 Ga.App. 798—City of Gainesville v. White, 107 S.E. 571, 27 Ga.App. 16—Knight v. Northey, 93 S.E. 535, 21 Ga.App. 46—Seaboard Air Line Ry. v. Vaughn, 91 S.E. 516, 19 Ga. App. 397—Savannah & N. W. Ry. v. Roach, 91 S.E. 506, 19 Ga.App. 388, error dismissed 39 S.Ct. 184, 248 U.S. 596, 63 L.Ed. 439—Savannah Electric Co. v. Dixon, 89 S. E. 373, 18 Ga.App. 314.
Idaho.—Hayward v. Yost, 242 P.2d 971, 72 Idaho 415.
Ill.—Moffitt v. O. L. D. Forwarding Co., 73 N.E.2d 164, 331 Ill.App. 278—Freeman v. Leader Mercantile Co., 47 N.E.2d 516, 318 Ill.App. 224.
Ind.—Kelley v. Dickerson, 13 N.E.2d 535, 213 Ind. 624—General American Tank Car Corporation v. Melville, 145 N.E. 890, 198 Ind. 529.
Wayne Works v. Hicks Body Co., 55 N.E.2d 382, 115 Ind.App. 10.
Iowa.—Hrnicek v. Chicago, M. & St. P. Ry. Co., 175 N.W. 30, 187 Iowa 1145.
Minn.—Propper v. Chicago, R. I. & P. R. Co., 54 N.W.2d 840, 237 Minn. 386, 35 A.L.R.2d 459—Hughes v. City of Duluth, 281 N.W. 871, 204 Minn. 1, 120 A.L.R. 1144—Kolars v. Delnik, 266 N.W. 705, 197 Minn. 183—Barrett v. Lumber Exch. Co., 198 N.W. 804, 159 Minn. 326—Rasten v. Calderwood, 175 N.W. 1007, 145 Minn. 493—Draves v. Minneapolis & St. P. Suburban R. Co., 172 N.W. 128, 142 Minn. 321—Hefferon v. Reeves, 167 N.W. 423, 140 Minn. 505.
Mo.—Schaefer v. Transamerican Freight Lines, 173 S.W.2d 20.
Sutton v. City of St. Joseph, App., 265 S.W.2d 760—Schwinegruber v. St. Louis Public Service Co., App., 241 S.W.2d 782—Kasperski v. Rainey, App., 135 S.W.2d 11—Dunlap v. Kansas City Public Service Co., 130 S.W.2d 658, 234 Mo.App. 351—Scism v. Alexander, 93 S.W. 2d 36, 230 Mo.App. 1175—Kelly v. Kansas City Building & Loan Ass'n, App., 86 S.W.2d 975—Schlue v. Missouri Pacific Transp. Co., App., 62 S.W.2d 934—Foulks v. Lehman, App., 17 S.W.2d 994—Pittan v. Otis Elevator Co., App., 7 S.W.2d 412—Anderson v. Lusk, App., 202 S.W. 304.
Mont.—Keller v. Safeway Stores, 108 P.2d 605, 111 Mont. 28—Rasmussen v. O. E. Lee & Co., 66 P.2d 119, 104 Mont. 278—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48—Mullins v. City of Butte, 20 P.2d 626, 93 Mont. 601.
N.H.—Lemire v. Haley, 31 A.2d 62, 92 N.H. 358—Davidson v. Maine & New Hampshire Granite Corp., 3 A.2d 106, 89 N.H. 535—Zeroyan v. Duncan, 184 A. 860, 88 N.H. 114—Damboise v. Goodman, 169 A. 6, 86 N.H. 360—Golej v. Varjabedian, 166 A. 287, 86 N.H. 244.
N.J.—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499.
Thompson v. Barab, 16 A.2d 549, 125 N.J.Law 461, affirmed 19 A.2d 780, 126 N.J.Law 427.
N.C.—Cole v. Atlantic Coast Line R Co., 191 S.E. 353, 211 N.C. 591.
Okl.—Chicago, R. I. & P. R. Co. v. Wright, 278 P.2d 830, certiorari denied 75 S.Ct. 581, 349 U.S. 905, 99 L.Ed. 1241—Southwestern Greyhound Lines, Inc. v. Rogers, 267 P. 2d 572—San Springs Ry. Co. v. McGrew, 219 P. 111, 92 Okl. 262—Boling v. Asbridge, 203 P. 894, 84 Okl. 280.
Pa.—Tyler v. Pittsburg Rys. Co., 22 A.2d 738, 343 Pa. 179—Rebel v. Standard Sanitary Mfg. Co., 16 A.2d 534, 340 Pa. 313—Mashinsky v. City of Philadelphia, 3 A.2d 790, 333 Pa. 97—Maselli v. Stephens, 200 A. 590, 331 Pa. 491—Nalevanko v. Marie, 195 A. 49, 328 Pa. 586—Boharas v. Martin, 109 A. 599, 266 Pa. 112.
Contillo v. City of Pittsburg, 45

constituted an abuse of discretion.[5] In other words, in determining whether a verdict is excessive, the appellate court will place great weight on the approval of the verdict by the trial judge, or his refusal to disturb it, although such action is not conclusive.[5.5] The fact that the appellate court would

A.2d 366, 158 Pa.Super. 524—Williams v. Pennsylvania R. Co., 193 A. 79, 127 Pa.Super. 163.

R.I.—Floyd v. Turgeon, 27 A.2d 330, 68 R.I. 218—Keough v. Duggan, 196 A. 398, 59 R.I. 496—Gallo v. Simpson Spring Co., 181 A. 915, 55 R.I. 410—Adams v. John R. White & Son, 103 A. 230, 41 R.I. 157.

S.C.—Morrow v. Evans, 75 S.E.2d 598, 223 S.C. 288—Norwood v. Atlantic Coast Line R. Co., 27 S.E.2d 803, 203 S.C. 456—South Carolina Public Service Authority v. Spearwant Liquidating Co., 13 S.E.2d 605, 196 S.C. 481—Littleton v. Roberts, 187 S.E. 349, 181 S.C. 303—Southerland v. Davis, 115 S.E. 768, 122 S.C. 511.

S.D.—Weibel v. Gardner, 188 N.W. 741, 45 S.D. 474.

Tenn.—Shuey v. Frierson, 270 S.W. 2d 883, 197 Tenn. 235.

City of Nashville v. Brown, 157 S.W.2d 612, 25 Tenn.App. 340—Sweeney v. Carter, 137 S.W.2d 892, 24 Tenn.App. 6—Greyhound Lines, Inc. v. Patterson, 14 Tenn.App. 652—Pantaze Co., Inc. v. Chism, 13 Tenn.App. 227—Tennessee Central Ry. Co. v. Zearing, 2 Tenn.App. 451.

Tex.—Baker v. Fields, Civ.App., 236 S.W. 170, dismissed for want of jurisdiction—Gulf, C. & S. F. Ry. Co. v. Darrah, Civ.App., 193 S.W. 253—Texas Cent. R. Co. v. Rose, Civ. App., 172 S.W. 756.

Utah.—**Corpus Juris Secundum cited in** Stamp v. Union Pacific Railroad Company, 303 P.2d 279, 283, 5 Utah 2d 397—Duffy v. Union Pac. R. Co., 218 P.2d 1080, 118 Utah 82.

Wash.—Nagala v. Warsing, 219 P.2d 603, 36 Wash.2d 615—Johnson v. Burnham, 88 P.2d 833, 198 Wash. 500—Hilstad v. City of Seattle, 271 P. 264, 149 Wash. 483—O'Meara v. Russell, 156 P. 550, 90 Wash. 557, L.R.A.1916E 743.

Wis.—Van Hecke v. City of Stevens Point, 198 N.W. 732, 183 Wis. 654—Heintz v. Schenck, 186 N.W. 610, 176 Wis. 562—Heindel v. Wisconsin Traction, Light, Heat & Power Co., 171 N.W. 988, 169 Wis. 181—Prellwitz v. Milwaukee Electric Ry. & Light Co., 157 N.W. 523, 163 Wis. 84.

4 C.J. p 873 note 21.

Exercise of independent judgment

(1) Exceptions on ground of excessive damages to verdicts for plaintiffs required supreme court to determine whether trial justice exercised an independent judgment on the weight of the evidence and credibility of witnesses.

R.I.—Lottinville v. Dwyer, 27 A.2d 305, 68 R.I. 268.

(2) Where trial justice erred in expressly refusing to exercise his experienced and independent judgment in passing on defendant's motion for new trial on ground that damages awarded plaintiff by verdict were excessive, his mere formal approval of amount thereof carries no weight in supreme court on defendant's exceptions.

R.I.—Hayman v. Union Corp., 17 A. 2d 30, 66 R.I. 11.

(3) Where trial court's denial of administrator's motion for new trial on ground of excessive damages was reached through reluctance to differ with jury, supreme court would examine the testimony to determine the weight of the evidence and credibility of witnesses.

R.I.—Lottinville v. Dwyer, supra.

Minn.—Larson v. Degner, 78 N.W.2d 333, 248 Minn. 59—Ahlstrom v. Minneapolis, St. P. & S. S. M. R. Co., 68 N.W.2d 873, 244 Minn. 1—Olson v. Davis, 9 N.W.2d 344, 215 Minn. 18—Kelley v. Chicago, B. & Q. R. Co., 170 N.W. 886, 142 Minn. 44.

Pa.—Giannone v. Reale, 3 A.2d 331, 333 Pa. 21—Brown v. Paxton, 2 A. 2d 729, 332 Pa. 260—Nalevanko v. Marie, 195 A. 49, 328 Pa. 586—Fisher v. Allegheny County, 188 A. 196, 324 Pa. 471—Majewski v. Lempka, 183 A. 777, 321 Pa. 369—Linhoss v. Hodgson, 165 A. 379, 310 Pa. 339—Weiss v. Pittsburgh Rys. Co., 163 A. 528, 309 Pa. 290—Hysong v. J. Kenny Transfer Co., 154 A. 922, 304 Pa. 102—Wilson v. Consolidated Dressed Beef Co., 145 A. 81, 295 Pa. 168—Gail v. City of Philadelphia, 117 A. 69, 273 Pa. 275—Willenpart v. Otis Elevator Co., 112 A. 135, 269 Pa. 131—Hitz v. Pittsburgh & B. St. Ry. Co., 91 A. 215, 245 Pa. 7.

Parkes v. Opfermann, 119 A.2d 624, 180 Pa.Super. 184—Saar v. Saar, 17 A.2d 745, 143 Pa.Super. 528—Stompler v. Richman, 189 A. 730, 125 Pa.Super. 385—Heaver v. Philadelphia Rapid Transit Co., 183 A. 110, 120 Pa.Super. 520—Heaver v. Philadelphia Rapid Transit Co., 183 A. 110, 120 Pa.Super. 520—Wible v. Shor, 157 A. 322, 102 Pa.Super. 527—Krauss v. Cohn, 93 Pa.Super. 101.

S.C.—Norwood v. Atlantic Coast Line R. Co., 27 S.E.2d 803, 203 S.C. 456—Hyde v. Southern Grocery Stores, 15 S.E.2d 353, 197 S.C. 263—Neese v. Toms, 12 S.E.2d 859, 196 S.C. 67—Duncan v. Record Pub. Co., 143 S.E. 31, 145 S.C. 196—Southerland v. Davis, 115 S.E. 768, 122 S.C. 511.

Tenn.—Greyhound Lines, Inc. v. Patterson, 14 Tenn.App. 652.

Utah.—Pauly v. McCarthy, 184 P.2d 123, 109 Utah 431—Hepworth v. Covey Bros. Amusement Co., 91 P. 2d 507, 97 Utah 205—Baker v. Wycoff, 79 P.2d 77, 95 Utah 199.

9 C.J. p 883 note 89.

5. Conn.—Szivos v. Leonard, 155 A. 637, 113 Conn. 522.

5.5 Ala.—Republic Steel Corp. v. Stracner, 21 So.2d 690, 246 Ala. 620.

Cal.—Johnston v. Long, 181 P.2d 645, 30 C.2d 54—Roedder v. Rowley, 172 P.2d 353, 28 C.2d 820.

Ridley v. Grifall Trucking Co., 289 P.2d 31, 136 C.A.2d 682—Bergan v. Ormsby, 281 P.2d 70, 131 C. A.2d 505—Monterrosa v. Grace Lines, 204 P.2d 377, 90 C.A.2d 826—Stark v. Yellow Cab Co., 202 P.2d 802, 90 C.A.2d 217—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925—Foster v. Pestana, 177 P.2d 54, 77 C.A.2d 885—Holmes v. Southern Cal. Edison Co., 177 P.2d 32, 78 C.A.2d 43—Ostertag v. Bethlehem Shipbuilding Corp., 151 P.2d 647, 65 C.A.2d 795—Honeyman v. Lawrie, 95 P.2d 166, 35 C.A.2d 200—Sherwood v. Jackson, 14 P.2d 861, 126 C.A. 441.

Conn.—Sheiman v. Sheiman, 121 A. 2d 285, 143 Conn. 222—Gorczyca v. New York, N. H. & H. R. Co., 109 A.2d 589, 141 Conn. 701.

Ga.—Candler v. Smith, 179 S.E. 395, 50 Ga.App. 667.

Idaho.—Koch v. Elkins, 225 P.2d 457, 71 Idaho 50—Garrett v. Taylor, 210 P.2d 386, 69 Idaho 487.

Ill.—Morton v. Louisville & N. R. Co., 131 N.E.2d 816, 8 Ill.App.2d 474.

Mo.—Belding v. St. Louis Public Service Co., 215 S.W.2d 506, 358 Mo. 491—Cason v. Kansas City Terminal Ry. Co., 123 S.W.2d 133.

Belding v. St. Louis Public Service Co., App., 205 S.W.2d 866, reversed on other grounds 215 S.W. 2d 506, 358 Mo. 491—Mollman v. St. Louis Public Service Co., App., 192 S.W.2d 618—Jones v. Kansas City Public Service Co., 155 S.W.2d 775, 236 Mo.App. 794—Stelmach v. Saul, App., 50 S.W.2d 721.

N.J.—Moore v. Public Service Coordinated Transport, 83 A.2d 725, 15 N.J.Super. 499.

R.I.—Audette v. New England Transp. Co., 46 A.2d 570, 71 R.I. 420—Shattuck v. United Electric Rys. Co., 38 A.2d 634, 70 R.I. 280—Adams v. United Electric Rys. Co., 196 A. 396, 59 R.I. 503—Chisholm v. S. S. Kresge Co., 182 A. 4, 55 R.I. 422.

Wis.—Mahegan v. Faber, 149 N.W. 397, 158 Wis. 645.

have been better satisfied with, or would itself have rendered, a smaller recovery is no ground for interfering with the verdict of the jury.[6] This rule is not abrogated by a statute giving authority to appellate courts to suggest a remittitur of the excess and to affirm the judgment.[7]

The general rule that a verdict ordinarily will not be set aside as excessive where not palpably against the evidence has been applied in a wide variety of cases, as in actions for personal injuries;[8]

Presumption

After refusal of a new trial by trial judge, case comes to court of appeals with a presumption in favor of verdict and with stamp of approval of judge who tried case, and verdict cannot be set aside as excessive unless record shows finding was prejudiced or biased or procured by corrupt means.

Ga.—Atlantic Coast Line R. Co. v. Wells, 52 S.E.2d 496, 78 Ga.App. 859.

6. Ala.—Birmingham Macaroni Co. v. Tadrick, 88 So. 858, 205 Ala. 540—Atlantic Coast Line R. Co. v. Ballard, 80 So. 436, 202 Ala. 354.

Cal.—Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 9 C.2d 751—Nolen v. F. O. Engstrum Co., 166 P. 346, 175 C. 464.

Fry v. Bank of America Nat. Trust & Sav. Ass'n, 298 P.2d 34, 142 C.A.2d 150—Harris v. Lampert, 281 P.2d 292, 131 C.A.2d 751—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Helms v. Thomas, 260 P.2d 1016, 120 C.A.2d 265—Peterson v. General Geophysical Co., App., 185 P.2d 56—Williams v. Layne, 127 P.2d 582, 53 C.A.2d 81—Thompson v. B. F. Goodrich Co., 120 P.2d 693, 48 C.A.2d 723—Formosa v. Yellow Cab Co., 87 P.2d 716, 31 C.A.2d 77—Coppock v. Pacific Gas & Electric Co., 30 P.2d 549, 137 C.A. 80—Rowe v. Rennick, 297 P. 603, 112 C.A. 576—Bennett v. Hardy, 291 P. 903, 108 C.A. 473.

Colo.—Edwards v. Quackenbush, 149 P.2d 809, 112 Colo. 337—Riss & Co. v. Anderson, 114 P.2d 278, 108 Colo. 78—Kohut v. Boguslavsky, 239 P. 876, 78 Colo. 95.

Del.—Bennett v. Barber, 79 A.2d 363, 7 Terry 132.

Ga.—Western & Atlantic R. R. v. Burnett, 54 S.E.2d 357, 79 Ga.App. 530.

Ind.—Kawneer Mfg. Co. v. Kalter, 118 N.E. 561, 187 Ind. 99.

Pohlman v. Perry, 103 N.E.2d 911, 122 Ind.App. 222—Hines v. Nichols, 130 N.E. 140, 76 Ind.App. 445.

Iowa.—Glatstein v. Grund, 51 N.W.2d 162, 243 Iowa 541—Agans v. General Mills, 48 N.W.2d 242, 242 Iowa 978—Sterler v. Busch, 195 N.W. 369, 197 Iowa 231—Reutkemeier v. Nolte, 161 N.W. 290, 179 Iowa 342, L.R.A.1917D 273—Ideal Cream Separator Repair Works v. City of Des Moines, 149 N.W. 640, 167 Iowa 517.

Ky.—Cumberland Quarries v. Gibson, 229 S.W.2d 978, 312 Ky. 802—Croley v. Huddleston, 202 S.W.2d 637, 304 Ky. 811—National Bond & Investment Co. v. Whithorn, 123 S.W.2d 263, 276 Ky. 204—Davis v. Smith, 94 S.W.2d 20, 264 Ky. 20—East Jellico Coal Co. v. Closterides, 178 S.W. 1152, 166 Ky. 100.

Me.—Pelletier v. Davis, 118 A.2d 769, 151 Me. 327—Pearson v. Hanna, 70 A.2d 247, 145 Me. 379, 16 A.L.R.2d 1—Prinn v. De Rice, 149 A. 580, 129 Me. 479—Adams v. Barrell, 132 A. 130, 125 Me. 164—Gersu v. Tardiff, 99 A. 658, 115 Me. 564.

Mich.—Wilson v. Detroit United Ry., 175 N.W. 172, 208 Mich. 411.

Minn.—Teryll v. St. Paul City Ry. Co., 147 N.W. 273, 125 Minn. 528.

Neb.—Asche v. Loup River Public Power Dist., 296 N.W. 439, 138 Neb. 890.

N.J.—Davis v. Gibbs, 93 A.2d 206, 23 N.J.Super. 558.

N.M.—Padilla v. Atchison, T. & S. F. Ry. Co., 295 P.2d 1023, 61 N.M. 115—Hall v. Stiles, 258 P.2d 386, 57 N.M. 281.

N.Y.—Beach v. Watkins, 36 N.Y.S.2d 519.

N.C.—Hulin v. Western Union Telegraph Co., 117 S.E. 588, 185 N.C. 470.

Ohio.—Immel v. Richards, App., 91 N.E.2d 548, affirmed 93 N.E.2d 474, 154 Ohio St. 54.

S.C.—Hyde v. Southern Grocery Stores, 15 S.E.2d 353, 197 S.C. 263—Thompson v. Atlantic Coast Line R. Co., 102 S.E. 11, 113 S.C. 261.

Tex.—Dallas Railway & Terminal Co. v. Hendricks, Civ.App., 154 S.W.2d 899, reversed on other grounds 166 S.W.2d 116, 140 Tex. 93—Houston Electric Co. v. Potter, Civ.App., 51 S.W.2d 754—Schaff v. Ridlehuber, Civ.App., 261 S.W. 523, certiorari denied 45 S.Ct. 194, 266 U.S. 629, 69 L.Ed. 477—Baker v. Bell, Civ. App., 219 S.W. 245—Burnett v. Anderson, Civ.App., 207 S.W. 540.

Utah.—Duffy v. Union Pac. R. Co., 218 P.2d 1080, 118 Utah 82—Shepard v. Payne, 206 P. 1098, 60 Utah 140—Norman v. Utah Hotel Co., 206 P. 556, 60 Utah 52.

Wash.—Stotts v. Puget Sound Traction, Light & Power Co., 162 P. 519, 94 Wash. 339, L.R.A.1917D 214.

38 C.J. p 518 note 32.

7. Tex.—Galveston, etc., R. Co. v. Hynes, 50 S.W. 624, 21 Tex.Civ.App. 34.

8. Ala.—Luquire Funeral Homes Ins. Co. v. Turner, 178 So. 536, 235 Ala. 305.

Powell v. Bingham, 196 So. 154, 29 Ala.App. 248, certiorari dismissed 196 So. 160, 239 Ala. 515—Birmingham Electric Co. v. Chandler, 177 So. 646, 28 Ala.App. 9, certiorari denied 177 So. 648, 235 Ala. 104.

Ariz.—S. A. Gerrard Co. v. Couch, 29 P.2d 151, 43 Ariz. 57—Ross v. Clark, 274 P. 639, 35 Ariz. 60—Arizona Binghampton Copper Co. v. Dickson, 195 P. 538, 22 Ariz. 163, 44 A.L.R. 881.

Ark.—Pfeifers of Ark. v. Rorex, 286 S.W.2d 1, 225 Ark. 840—Norris v. Johnson, 218 S.W.2d 720, 214 Ark. 947—Missouri Pacific Transp. Co. v. Porter, 134 S.W.2d 513, 199 Ark. 225—Dickinson v. McBride, 193 S.W. 89, 127 Ark. 555.

Cal.—Luthringer v. Moore, 190 P.2d 1, 31 C.2d 489—Mondine v. Sarlin, 81 P.2d 903, 11 C.2d 593—Bellman v. San Francisco High School Dist., 81 P.2d 894, 11 C.2d 576—Chappell v. San Diego & A. Ry. Co., 258 P. 73, 201 C. 560—Cosey v. Los Angeles Ry. Corporation, 219 P. 978, 192 C. 265.

De Armond v. Turner, 297 P.2d 57, 141 C.A.2d 574—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Ingram v. Higgins, 229 P.2d 385, 103 C.A.2d 287—Sumrall v. Butler, 227 P.2d 881, 102 C.A.2d 515—Squires v. City of Los Angeles, 224 P.2d 774, 100 C.A.2d 708—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404—McNulty v. Southern Pac. Co., 216 P.2d 534, 96 C.A.2d 841—Music v. Southern Pac. Co., 204 P.2d 422, 91 C.A.2d 93—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Mason v. Leth-Nissen, 185 P.2d 880, 82 C.A.2d 70—McSweeney v. East Bay Transit Co., 141 P.2d 787, 60 C.A.2d 807—Power v. California Street Cable R. Co., 126 P.2d 4, 52 C.A.2d 289—Armstrong v. Ford, 86 P.2d 385, 30 C.A.2d 347—Bohanon v. James McClatchy Pub. Co., 60 P.2d 510, 16 C.A.2d 188—Stetson v. Blum, 37 P.2d 128, 1 C.A.2d 593—Hill v. Fresno County, 35 P.2d 593, 140 C.A. 272—Johnson v. Pearson, 280 P. 394, 100 C.A. 503—Reneau v. Hirsch, 262 P. 1100, 88 C.A. 1—Latky v. Wolfe, 259 P. 470, 85 C.A. 332—Cochran v. Brown, 258 P. 1000, 84 C.A. 743—Moreno v. Los Angeles Transfer Co., 186 P. 800, 44 C.A. 551.

Colo.—Rein v. Jarvis, 281 P.2d 1019, 131 Colo. 377—Trujillo v. Wilson, 189 P.2d 147, 117 Colo. 430.

Conn.—Varley v. Motyl, 90 A.2d 869, 139 Conn. 128, 32 A.L.R.2d 1439—Sette v. Dakis, 48 A.2d 271, 133 Conn. 55—Sadonis v. Govan, 46 A.2d 895, 132 Conn. 668—Kane v. New Idea Realty Co., 133 A. 686, 104 Conn. 508—Samaha v. Mauro, 132 A. 455, 104 Conn. 300.

Fla.—Loftin v. Dagley, 13 So.2d 311, 152 Fla. 831.

Ga.—Western & Atlantic R. R. v. Burnett, 54 S.E.2d 357, 79 Ga.App. 530—Allyn & Bacon Book Pub. Co. v. Nicholson, 7 S.E.2d 316, 61 Ga. App. 672—Bullard v. Rolader, 107 S.E. 548, 26 Ga.App. 742, affirmed 110 S.E. 16, 152 Ga. 369—Atlantic Coast Line R. Co. v. Tomlinson, 94 S.E. 909, 21 Ga.App. 704.

Idaho.—Garrett v. Taylor, 210 P.2d 386, 69 Idaho 487—Mintun v. Moorman, 259 P. 1, 44 Idaho 658—Nelson v. Johnson, 243 P. 649, 41 Idaho 703—Nelson v. Johnson, 243 P. 647, 41 Idaho 697.

Ill.—Thomas v. Smith, 137 N.E.2d 117, 11 Ill.App.2d 310—Andres v. Green, 129 N.E.2d 430, 7 Ill.App.2d 375—Stocco v. Buttenbender, 128 N.E.2d 615, 7 Ill.App.2d 20—Holsman v. Darling State St. Corp., 128 N.E.2d 581, 6 Ill.App.2d 517—Garner v. Burns Mid-Town, Inc., 104 N.E.2d 506, 346 Ill.App. 162—Thomas v. Meyer, 101 N.E.2d 626, 345 Ill. App. 84—Smith v. Kroger Grocery & Baking Co., 90 N.E.2d 500, 339 Ill.App. 501, 20 A.L.R.2d 1—Avance v. Thompson, 51 N.E.2d 334, 320 Ill.App. 406, reversed on other grounds 55 N.E.2d 57, 387 Ill. 77, certiorari denied 65 S.Ct. 82, 323 U.S. 753, 89 L.Ed. 603—Koch v. Barker, 41 N.E.2d 329, 314 Ill.App. 378—Smith v. Illinois Power & Light Corp., 17 N.E.2d 632, 297 Ill. App. 358—Glassman v. Keller, 9 N.E.2d 589, 291 Ill.App. 262—Avey v. Medaris, 272 Ill.App. 207—Bourland v. Louisville & N. R. Co., 199 Ill.App. 126.

Ind.—Citizens' Telephone Co. v. Prickett, 125 N.E. 193, 189 Ind. 141.

Kindler v. Edwards, 130 N.E.2d 491, 126 Ind.App. 261—Holmes v. Combs, 90 N.E.2d 822, 120 Ind.App. 331—Public Service Co. of Ind. v. Dalbey, 85 N.E.2d 368, 119 Ind.App. 405—Samuel E. Pentecost Const. Co. v. O'Donnell, 39 N.E.2d 812, 112 Ind.App. 47.

Kan.—Lawrence v. Kansas Power & Light Co., 224 P.2d 1007, 170 Kan. 299—Pagliro v. Cleveland, 194 S.W.2d 647, 302 Ky. 306—Louisville & N. R. Co. v. Utz, 178 S.W.2d 958, 297 Ky. 70.

Mich.—Bramer v. Ames, 61 N.W.2d 160, 338 Mich. 226—Vink v. House, 57 N.W.2d 887, 336 Mich. 292—Kurta v. Probelske, 36 N.W.2d 889, 324 Mich. 179—Alley v. Klotz, 31 N.W.2d 816, 320 Mich. 521—McDuffie v. Root, 1 N.W.2d 544, 300 Mich. 286—Meyer v. Weimaster, 270 N.W. 715, 278 Mich. 370—Adelsperger v. City of Detroit, 227 N.W. 694, 248 Mich. 399—Cawood v. Earl Paige & Co., 214 N.W. 402, 239 Mich. 485.

Minn.—Conradson v. Vinkemeier, 51 N.W.2d 651, 235 Minn. 537—Becker v. Megan, 283 N.W. 401, 204 Minn. 283.

Miss.—Mitchell - Davis Distributing Co. v. McDonald, 78 So.2d 597, 223 Miss. 573—Kincade & Lofton v. Stephens, 50 So.2d 587—Sears, Roebuck & Co. v. Burke, 44 So.2d 448, 208 Miss. 306—St. Louis-San Francisco Ry. Co. v. Dyson, 43 So.2d 95, 207 Miss. 639—Bufkin v. Grisham, 128 So. 563, 157 Miss. 746.

Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010—Larson v. Atchison, T. & S. F. Ry. Co., 261 S.W.2d 111, 364 Mo. 344—Wright v. Spieldoch, 193 S.W.2d 42, 354 Mo. 1376—Johnson v. Terminal R. Ass'n of St. Louis, 191 S.W.2d 676, 354 Mo. 800—Orr v. Shell Oil Co., 177 S.W.2d 608, 352 Mo. 288—Span v. Jackson, Walker Coal & Mining Co., 16 S.W.2d 190, 322 Mo. 158—Mooney v. Monark Gasoline & Oil Co., 298 S.W. 69, 317 Mo. 1255.

Schwinegruber v. St. Louis Public Service Co., App., 241 S.W.2d 782—Smith v. St. Louis Public Service Co., App., 235 S.W.2d 102—Moehle v. St. Louis Public Service Co., App., 229 S.W.2d 285—Burris v. Kansas City Public Service Co., App., 226 S.W.2d 743—Rothweiler v. St. Louis Public Service Co., App., 224 S.W.2d 569, reversed on other grounds 234 S.W.2d 552, 361 Mo. 259—Nolan v. Joplin Transfer & Storage Co., 203 S.W.2d 740, 239 Mo.App. 915—Schlue v. Missouri Pacific Transp. Co., App., 62 S.W.2d 934—O'Connell v. Kansas City, App., 58 S.W.2d 802—Hollensbe v. Pevely Dairy Co., App., 38 S.W.2d 273—Crapson v. United Chatauqua Co., App., 37 S.W.2d 966—Zahrt v. Elgasser, App., 21 S.W.2d 883—Becker v. Koester, App., 295 S.W. 818.

Mont.—McCartan v. Park Butte Theater Co., 62 P.2d 338, 103 Mont. 342—Kirk v. Montana Transfer Co., 184 P. 987, 56 Mont. 292.

Neb.—Hickey v. Omaha & Council Bluffs St. Ry. Co., 1 N.W.2d 304, 140 Neb. 665—Soulek v. City of Omaha, 299 N.W. 368, 140 Neb. 151—Schindler v. Mulhair, 273 N.W. 217, 132 Neb. 809—Banta v. McChesney, 257 N.W. 68, 127 Neb. 764—Yost v. Nelson, 245 N.W. 9, 124 Neb. 33.

Nev.—Slack v. Schwartz, 161 P.2d 345, 63 Nev. 47.

N.J.—Lindroth v. Christ Hospital, 123 A.2d 10, 21 N.J. 588.

Cabakov v. Thatcher, 117 A.2d 298, 37 N.J.Super. 249.

Pavlika v. Giglio, 137 A. 528, 5 N.J.Misc. 590.

N.D.—Huus v. Ringo, 47 N.W.2d 216, 77 N.D. 837.

Ohio.—Simpson v. Mary Lee Candies, App., 35 N.E.2d 869—Mansfield Ry., Light & Power Co. v. Barr, 19 Ohio Cir.Ct.,N.S., 466, 2 Ohio App. 367.

Okl.—Magnolia Petroleum Co. v. Angelly, 306 P.2d 309—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845—Jones v. Eppler, 266 P.2d 451—Independent-Eastern Torpedo Co. v. Price, 258 P.2d 189, 208 Okl. 633—Ada Coca-Cola Bottling Co. v. Asbury, 242 P.2d 417, 206 Okl. 269—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Spicers, Inc., v. Rudd, 188 P.2d 692, 199 Okl. 576—Feenberg Supply Co. v. Pierce, 95 P.2d 640, 185 Okl. 662—Ponca City v. Swayne, 50 P.2d 1082, 174 Okl. 576—Bucktrot v. Partridge, 265 P. 772, 130 Okl. 126—Bucktrot v. Partridge, 265 P. 768, 130 Okl. 122—Muskogee Electric Traction Co. v. Dunnam, 263 P. 1091, 129 Okl. 70—Town of Hallett v. Stephens, 256 P. 921, 125 Okl. 157—St. Louis-San Francisco Ry. Co. v. Simmons, 245 P. 894, 119 Okl. 1—City of Pawhuska v. Black, 244 P. 1114, 117 Okl. 108—Consumers' Gas Co. v. O'Bannon, 221 P. 423, 94 Okl. 107—Sand Springs Ry. Co. v. Westhafer, 218 P. 525, 92 Okl. 89—Boling v. Asbridge, 203 P. 894, 84 Okl. 280—Dickinson v. Whitaker, 182 P. 901, 75 Okl. 243.

Pa.—Lookatch v. Robinson, 179 A. 66, 318 Pa. 545.

Slater v. Tri-City Freight Line, Com.Pl., 28 Del.Co. 84.

R.I.—McGowan v. Dadekhian, 163 A. 883.

Tenn.—Finks v. Gillum, 273 S.W.2d 722, 38 Tenn.App. 304—Harrison v. Southern Ry. Co., 215 S.W.2d 31, 31 Tenn.App. 377—Olins v. Schocket, 215 S.W.2d 18, 31 Tenn.App. 346—Greyhound Lines, Inc. v. Patterson, 14 Tenn.App. 652—Pantaze Co., Inc. v. Chism, 13 Tenn.App. 227.

Illinois Cent. R. Co. v. Toombs, 6 Tenn.Civ.App. 293.

Tex.—John F. Buckner & Sons v. Allen, Civ.App., 289 S.W.2d 387—Nussbaum v. Anthony, Civ.App., 214 S.W.2d 686, error refused no reversible error—Phœnix Refining Co. v. Tips, Civ.App., 66 S.W.2d 396, reversed on other grounds, Com. App., 81 S.W.2d 60—Lang Floral & Nursery Co. v. Sheridan, Civ. App., 245 S.W. 467—Baker v. Fields, Civ.App., 236 S.W. 170, dismissed for want of jurisdiction—Flores v. Garcia, Civ.App., 226 S.W. 743.

Va.—Stuart v. Coates, 42 S.E.2d 311, 186 Va. 227—Diamond Cab Co. v. Jones, 174 S.E. 675, 162 Va. 412.

Wash.—Gayson v. Daugherty, 66 P.2d 1148, 190 Wash. 133—Parker v. Pantages Theater Co., 254 P. 1083, 143 Wash. 176—Allen v. Schultz, 181 P. 916, 107 Wash. 393, 6 A.L.R.

actions for alienation of affections;[9] actions for the wrongful expulsion of a passenger;[10] actions for libel or slander;[11] actions for wrongfully suing out an attachment;[12] actions for loss of services;[13] actions for wrongful death;[14] actions under the

676—Titus v. City of Montesano, 181 P. 43, 106 Wash. 608.
W.Va.—Drummond v. Cook Motor Lines, 67 S.E.2d 337, 136 W.Va. 293—Wine v. City Lines of West Virginia, 62 S.E.2d 260, 134 W.Va. 889—O'Faherty v. Tarrou, 43 S.E.2d 392, 130 W.Va. 326—Elswick v. Charleston Transit Co., 36 S.E.2d 419, 128 W.Va. 241—Stewart v. Pollack-Forsch Co., 143 S.E. 98, 105 W.Va. 453—Truschel v. Rex Amusement Co., 136 S.E. 30, 102 W. Va. 215, certiorari denied Rex Amusement Co. v. Truschel, 47 S. Ct. 574, 274 U.S. 736, 71 L.Ed. 1316.
Wis.—Bethke v. Duwe, 41 N.W.2d 277, 256 Wis. 378—Parr v. Douglas, 34 N.W.2d 229, 253 Wis. 311.
4 C.J. p 873 note 23.

No fixed rule exists for controlling decision of court of appeals as to whether amount awarded as damages in personal injury action shall be regarded so excessive as to authorize interference with verdict and judgment rendered thereon after circuit judge has considered question on motion for new trial.
Ky.—Sullivan v. Saylor, 132 S.W. 2d 340, 279 Ky. 820.

Only method of determining whether personal injury damages are excessive is by comparing the amount awarded with the evidence.
Cal.—Horn v. Yellow Cab Co., 263 P. 1025, 88 C.A. 678.

Close scrutiny required
When verdict in personal injury suit is twice what it should be, the case calls for the closest scrutiny and consideration on the subject of passion and prejudice.
Ohio.—Cleveland Ry. Co. v. Mueller, 166 N.E. 391, 31 Ohio App. 488.

Favorable standpoint
In action for injuries, supreme court, in considering excessiveness of award on appeal, would consider evidence as to nature and extent of injuries from standpoint favorable to plaintiff.
Mo.—Douglas v. Twenter, 259 S.W. 2d 353, 364 Mo. 71—Meade v. Kansas City Public Service Co., 250 S.W.2d 513.

Gravity of injury and large amount claimed and allowed as damages may demand more than ordinary consideration by the reviewing court.
La.—Miller v. City of New Orleans, App., 152 So. 141.

Grounds for interference with claimed excessive verdict must be most clearly apparent and made particularly strong, where plaintiff subjected himself to personal inspection or examination of injuries before the jury, and defendants did not undertake to dispute the injuries or effects thereof.
Miss.—Public Service Corporation v. Watts, 150 So. 192, 168 Miss. 235.

Larger than verdicts in similar cases
That the amount awarded as personal injury damages may be larger than is ordinarily allowed in such cases is not a basis for holding the award excessive as a matter of law.
Cal.—Crane v. Smith, 144 P.2d 356, 23 C.2d 288.
Corvello v. Baumsteiger, 1 P.2d 484, 115 C.A. 194—Barrett v. Harman, 1 P.2d 458, 115 C.A. 283—May v. Farrell, 271 P. 789, 94 C. A. 703.

Pain and suffering as element of damages
In an action for personal injuries, the element of pain and suffering is one which must be left largely to the sound judgment of the jury, and their conclusion as to the proper amount of damages sustained should not be disturbed unless the award is clearly excessive.
Ark.—Missouri Pac. R. Co. v. Hendrix, 277 S.W. 337, 169 Ark. 825, certiorari denied 46 S.Ct. 351, 270 U.S. 651, 70 L.Ed. 781.

Permanency of injuries are eliminated from the consideration of the reviewing court, where evidence of permanence was doubtful and recovery was by plaintiff's instruction limited to pain and suffering to occur in the future.
Mo.—Sachse v. Highland Dairy Farms Co., App., 45 S.W.2d 934.

Verdicts held not excessive
Cal.—Eldridge v. Clark & Henery Const. Co., 243 P. 43, 75 C.A. 516.
Ga.—Bullard v. Rolader, 107 S.E. 548, 26 Ga.App. 742, affirmed 110 S.E. 16, 152 Ga. 369.
Tenn.—Pantaze Co., Inc. v. Chism, 13 Tenn.App. 227.

9. Ohio.—Oskamp v. Oskamp, 152 N. E. 208, 20 Ohio App. 349.
Okl.—Fife v. Adair, 47 P.2d 145, 173 Okl. 234.
R.I.—Breault v. Karasek, 74 A.2d 450, 77 R.I. 174.

10. Tex.—Houston, E. & W. T. Ry. Co. v. Snow, Civ.App., 201 S.W. 224.
4 C.J. p 873 note 24.

11. Cal.—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77—Newby v. Times-Mirror Co., 188 P. 1008, 46 C.A. 110.
Iowa.—Stegemann v. Paulsen, 190 N. W. 929, 194 Iowa 1314.
Ky.—Yates v. Mullins, 26 S.W.2d 757, 233 Ky. 781.
Mo.—Seested v. Post Printing & Publishing Co., 31 S.W.2d 1045, 326 Mo. 559.
N.J.—Bahrey v. Poniatishin, 112 A. 481, 95 N.J.Law 128.
Ohio.—Ohio Public Service Co. v. Myers, 6 N.E.2d 29, 54 Ohio App. 40.
Tex.—Hooker v. Fort Worth Press Co., Civ.App., 11 S.W.2d 586—Express Pub. Co. v. Keeran, Civ. App., 274 S.W. 335, reversed on other grounds, Com.App., 284 S. W. 913.
Wash.—Viss v. Calligan, 158 P. 1012, 91 Wash. 673.
4 C.J. p 873 note 25.

12. Ill.—Katsulis v. Confectioners', etc., Supply Co., 166 Ill.App. 581.

13. Ky.—Cincinnati, etc., R. Co. v. Cooke, 121 S.W. 956.

14. Ala.—Jack Cole, Inc., v. Walker, 200 So. 768, 240 Ala. 683.
Cal.—Newton v. Thomas, 291 P.2d 503, 137 C.A.2d 748—Gall v. Union Ice Co., 239 P.2d 48, 108 C.A.2d 303—Shulman v. Los Angeles Ry. Corp., 111 P.2d 924, 44 C.A.2d 122—Koehl v. Carpenter, 191 P. 43, 47 C.A. 642.
Conn.—Lengel v. New Haven Gas Light Co., 111 A.2d 547, 142 Conn. 70.
Fla.—Southern Utilities Co. v. Davis, 105 So. 315, 90 Fla. 168.
Ga.—Georgia Ry. & Power Co. v. Shaw, 102 S.E. 904, 25 Ga.App. 146.
Ill.—Barnum v. Schmauss, 52 N.E. 2d 293, 321 Ill.App. 162.
Ind.—New York Cent. R. Co. v. Johnson, 127 N.E.2d 603, 134 Ind. 457.
Iowa.—De Toskey v. Ruan Transport Corp., 40 N.W.2d 4, 241 Iowa 45, 17 A.L.R.2d 826—Bridenstine v. Iowa City Electric Ry. Co., 165 N. W. 435, 181 Iowa 1124.
Kan.—DeGraw v. Kansas City & Leavenworth Transp. Co., 228 P.2d 527, 170 Kan. 713.
Ky.—Commonwealth v. Hoover's Adm'r, 118 S.W.2d 741, 274 Ky. 472.
Mass.—Mitchell v. Silverstein, 81 N. E.2d 364, 323 Mass. 239.
Miss.—Bush v. Watkins, 80 So.2d 19, 224 Miss. 238—Sandifer Oil Co. v. Dew, 71 So.2d 752, 220 Miss. 609.
Mo.—Wood v. St. Louis Public Service Co., 228 S.W.2d 665, 17 A.L.R. 2d 868—Hertz v. McDowell, 214 S. W.2d 546, 358 Mo. 383.
Hertz v. McDowell, App., 203 S. W.2d 500, affirmed 214 S.W.2d 546, 358 Mo. 383—Detmering v. St. Louis-San Francisco Ry. Co., 86 S.W. 2d 112, 225 Mo.App. 980.
Neb.—Dorsey v. Yost, 36 N.W.2d 574, 151 Neb. 66, 14 A.L.R.2d 544—Stuertz v. L. L. Coryell Bldg. Corp., 234 N.W. 926, 120 Neb. 667.

Federal Employers' Liability Act,[14.5] actions in which mental anguish is claimed as an element of damages;[15] actions in which punitive,[16] or exemplary,[17] damages are claimed; and in condemnation proceedings.[18]

N.J.—Capone v. Norton, 83 A.2d 710, 8 N.J. 54.
Grant v. Groom, 165 A. 579, 11 N.J.Misc. 285.
N.Y.—Neddo v. State, 90 N.Y.S.2d 650, 275 App.Div. 492, followed in 91 N.Y.S.2d 515, 275 App.Div. 982, and affirmed 89 N.E.2d 253, 300 N.Y. 533.
Ohio.—Smith v. Pennsylvania R. Co., App., 99 N.E.2d 501—Immel v. Richards, App., 91 N.E.2d 548, affirmed 93 N.E.2d 474, 154 Ohio St. 54—Cincinnati Traction Co. v. Cahill, 16 Ohio App. 496.
Okl.—Sample v. Campbell, 305 P.2d 1033—Hazelrigg Trucking Co. v. Duvall, 261 P.2d 204—Parkhill Trucking Co. v. Hopper, 256 P.2d 810, 208 Okl. 429—Belford v. Allen, 80 P.2d 671, 183 Okl. 256—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487.
Pa.—Fasick v. Byerly, 200 A. 1, 331 Pa. 85.
Tex.—Texas & N. O. R. Co. v. Hanson, Civ.App., 271 S.W.2d 309, error dismissed—Louisiana & A. Ry. Co. v. Chapin, Civ.App., 225 S.W.2d 614, error refused—Banker v. McLaughlin, Civ.App., 200 S.W.2d 699, affirmed 208 S.W.2d 843, 146 Tex. 434, 8 A.L.R.2d 1231—Western Telephone Corporation of Texas v. McCann, Civ.App., 69 S.W.2d 465—Marcus v. Huguley, Civ.App., 37 S.W.2d 1100—Cisco & N. E. Ry. Co. v. Proctor, Civ.App., 272 S.W. 308, affirmed Proctor v. Cisco & N. E. Ry. Co., Com.App., 277 S.W. 1047.
Va.—Highway Exp. Lines v. Fleming, 40 S.E.2d 294, 185 Va. 666.
4 C.J. p 873 note 28.

Expression of opinion

In some jurisdictions, however, the appellate court may express an opinion as to the amount beyond which the verdict should be deemed wrong.
Me.—Conley v. Maine Cent. R. Co., 49 A. 668, 95 Me. 149.

14.5 Cal.—Ericksen v. Southern Pac. Co., 246 P.2d 642, 39 C.2d 374, certiorari denied Southern Pac. Co. v. Ericksen, 73 S.Ct. 277, 344 U.S. 897, 97 L.Ed. 693.
Pa.—Duffy v. Monongahela Connecting R. Co., 89 A.2d 804, 371 Pa. 361.

15. Ky.—Fluhart Collieries Co. v. Meek, 183 S.W. 469, 169 Ky. 138.
Mo.—Beck v. Galloway Peas Lumber Co., 239 S.W. 166, 210 Mo.App. 341.
Tex.—Medical & Surgical Memorial Hospital v. Cauthorn, Civ.App., 229 S.W.2d 932, error refused no reversible error—Russell v. Adams, Civ.App., 18 S.W.2d 189—Western Union Telegraph Co. v. Florence, Civ.App., 262 S.W. 525—Western Union Telegraph Co. v. Parham, Civ.App., 210 S.W. 740—Gulf, C. & S. F. Ry. Co. v. Darrah, Civ.App., 193 S.W. 253.
4 C.J. p 873 note 29.

Malicious prosecution

In determining whether a verdict for damages for malicious prosecution is excessive, the reviewing court will not look too closely to pecuniary loss of plaintiff, but will look to his humiliation and injury to his character and the distress accompanying his arrest.
Tenn.—Citizens' Savings & Loan Corporation v. Brown, 65 S.W.2d 851, 16 Tenn.App. 136.

16. Ala.—International Union, United Auto., Aircraft and Agr. Implement Workers of America, C. I. O. v. Russell, 88 So.2d 175, 264 Ala. 456—Key v. DoZier, 42 So.2d 254, 252 Ala. 631—Lindsey v. Kindt, 128 So. 139, 221 Ala. 190—South Brilliant Coal Co. v. Williams, 91 So. 589, 206 Ala. 637.
Southern Express Co. v. Malone, 78 So. 408, 16 Ala.App. 414, certiorari denied 78 So. 990, 201 Ala. 700.
Cal.—Ingram v. Higgins, 229 P.2d 385, 103 C.A.2d 287—McChristian v. Popkin, 171 P.2d 85, 75 C.A.2d 249—Boyes v. Evans, 58 P.2d 922, 14 C.A.2d 472.
Fla.—Tatum Bros. Real Estate & Investment Co. v. McSweeney, 82 So. 605, 78 Fla. 89.
Ill.—Vondra v. Felcman, 202 Ill.App. 136.
Ind.—Bangert v. Hubbard, App., 126 N.E.2d 778.
Ky.—Harrod v. Fraley, 289 S.W.2d 203—Maddix v. Gammon, 169 S.W. 2d 594, 293 Ky. 540.
Mo.—Polk v. Missouri-Kansas-Texas R. Co., 174 S.W.2d 176, 351 Mo. 865—Seested v. Post Printing & Publishing Co., 31 S.W.2d 1045, 326 Mo. 559.
Hussey v. Ellerman, App., 215 S.W.2d 38—Jones v. West Side Buick Auto Co., 93 S.W.2d 1083, 231 Mo.App. 187—Hinson v. Morris, App., 298 S.W. 254.
Ohio.—Kuhn v. McNeal, 181 N.E. 153, 41 Ohio App. 485.
Okl.—Moyer v. Cordell, 228 P.2d 645, 204 Okl. 255.
Or.—Fowler v. Courtemanche, 274 P.2d 258, 202 Or. 413.
4 C.J. p 873 note 30.

Although there should be reasonable proportion between punitive damages and the actual damages allowed replevisor, the jury has the discretion with regard thereto which will not be disturbed unless the sum allowed is clearly excessive.
Cal.—Prentice v. Zumwalt, 13 P.2d 379, 124 C.A. 646.

17. Cal.—Finney v. Lockhart, 217 P. 2d 19, 35 C.2d 161—Deevy v. Tassi, 130 P.2d 389, 21 C.2d 109.
Mont.—Edquest v. Tripp & Dragstedt Co., 19 P.2d 637, 93 Mont. 446—Johnson v. Horn, 283 P. 427, 86 Mont. 314.
Okl.—Moyer v. Cordell, 228 P.2d 645, 204 Okl. 255—Empire Gas & Fuel Co. v. Weddell, 261 P. 931, 128 Okl. 146—Empire Gas & Fuel Co. v. Denning, 261 P. 929, 128 Okl. 145.
Tex.—Home Furniture Co. v. Hawkins, Civ.App., 84 S.W.2d 830, error refused.
Wis.—Asplund v. Palmer, 44 N.W.2d 624, 258 Wis. 34.
4 C.J. p 873 note 31.

Real question on appeal where verdict for intestate's death from gross negligence warranting exemplary damages is attacked as excessive is whether under all the facts and circumstances the amount of the verdict addresses itself to the mind of the court, at first blush, as being so flagrantly against the evidence as to have been induced by passion or prejudice.
Ky.—Kentucky & I. T. R. Co. v. Becker's Adm'r, 214 S.W. 900, 185 Ky. 169.

In absence of legal measure of damages

As respects the measure of exemplary damages recoverable, generally, where the law furnishes no legal measure of damages and they are unliquidated, the amount to be awarded rests largely in the discretion of the jury and unless the award is so large as to indicate that it is the result of passion, prejudice, or corruption, or that the evidence has been disregarded, the jury's verdict is conclusive and will not be set aside as excessive, on appeal.
Tex.—Home Furniture Co. v. Hawkins, Civ.App., 84 S.W.2d 830, error dismissed.

Actual and exemplary damages combined

Where the amount of actual damages, as distinguished from exemplary damages, is not disclosed by the verdict for plaintiff for five hundred dollars in a civil action for assault and battery, the court cannot say upon the record that the actual damages could not have exceeded one hundred dollars, so as to render the exemplary damages so excessive as to indicate passion and prejudice.
Iowa.—Hollingshead v. Watkins, 173 N.W. 4, 186 Iowa 582.
4 C.J. p 873 note 32.

18. Cal.—City of Los Angeles v.

b. When Verdict Set Aside

A reviewing court may, in a proper case, set aside a verdict on the ground of excessiveness.

Notwithstanding the general rule stated supra subdivision a of this section that ordinarily the verdict of a jury will not be interfered with on the ground that it is excessive, reviewing courts generally have power to set aside verdicts because excessive,[19] and such power exists although the trial court has refused to set aside the verdict[20] where it is clear that the latter court has abused the discretion vested in it.[21] A verdict will be set aside by an appellate court as excessive where there is not evidence on which the amount allowed could properly have been awarded;[22] where the verdict must of necessity

Frew, 294 P.2d 1073, 139 C.A.2d 859.
La.—New Orleans v. Steinhardt, 27 So. 586, 52 La.Ann. 1043.

19. Ariz.—Rio Grande Oil Co. v. Pankey, 73 P.2d 707, 50 Ariz. 529.
Ark.—**Corpus Juris Secundum quoted at length in** Missouri Pacific Transp. Co. v. Simon, 135 S.W.2d 336, 341, 199 Ark. 289—Coca-Cola Bottling Co. of Arkansas v. Adcox, 74 S.W.2d 771, 189 Ark. 610.
Cal.—Marshall v. McCarthy, 132 P.2d 873, 56 C.A.2d 436—Thompson v. B. F. Goodrich Co., 120 P.2d 693, 48 C.A.2d 723—Hallinan v. Prindle, 62 P.2d 1075, 17 C.A.2d 656.
Fla.—Bartholf v. Baker, 71 So.2d 480—Kenan v. Black, 1 So.2d 610, 146 Fla. 503.
Hawaii.—Nakamura v. Associated Oil Co., 31 Hawaii 939.
Ill.—Montgomery v. Harms, 110 N.E.2d 522, 349 Ill.App. 245—Avance v. Thompson, 51 N.E.2d 334, 320 Ill.App. 406, reversed on other grounds 55 N.E.2d 57, 387 Ill. 77, certiorari denied 65 S.Ct. 82, 323 U.S. 753, 89 L.Ed. 603—Stott v. Thompson, 14 N.E.2d 246, 294 Ill. App. 450, certiorari denied 59 S.Ct. 106, 305 U.S. 639, 83 L.Ed. 411—Butler v. Security Ins. Co. of New Haven, Conn., 244 Ill.App. 379.
Ky.—Gayheart v. Smith, 42 S.W.2d 877, 240 Ky. 596.
La.—Klein v. Medical Bldg. Realty Co., App., 147 So. 122.
Me.—Pelletier v. Davis, 118 A.2d 769—Pearson v. Hanna, 70 A.2d 247, 145 Me. 379, 16 A.L.R.2d 1.
Mich.—Parker v. England, 254 N.W. 169, 266 Mich. 467.
Minn.—Becker v. Megan, 283 N.W. 401, 204 Minn. 283.
N.M.—Hall v. Stiles, 258 P.2d 386, 57 N.M. 281.
N.Y.—Conant v. Forman, 8 N.Y.S.2d 802, 255 App.Div. 1029—Conant v. Forman, 8 N.Y.S.2d 801, 255 App. Div. 1029.
Ohio.—Fabish v. Smith, App., 140 N.E.2d 822.
Pa.—Vincent v. City of Philadelphia, 35 A.2d 65, 348 Pa. 290—Paul v. Atlantic Refining Co., 156 A. 94, 304 Pa. 360—Dattola v. Burt Bros., 135 A. 736, 288 Pa. 134, 51 A.L.R. 205.
R.I.—Tilley v. Mather, 124 A.2d 872.
Tex.—McIver v. Gloria, Civ.App., 163 S.W.2d 890, affirmed 169 S.W.2d 710, 140 Tex. 566.
Utah.—Pauly v. McCarthy, 184 P.2d 123, 109 Utah 431.
4 C.J. p 873 note 33.

Improper argument of counsel for plaintiff in a personal injury action will be considered in determining the question of excessive damages.
Mo.—Ostertag v. Union Pac. R. Co., 169 S.W. 1, 261 Mo. 457.

Just limits must not be exceeded

(1) Although there is no statutory limit to the amount of damages for wrongful death, the appellate court must see that just limits are not exceeded.
Tenn.—Garis v. Eberling, 71 S.W. 2d 215, 18 Tenn.App. 1.

(2) The reviewing court, in determining what are just limits of verdicts in death actions, cannot merely substitute its judgment for that of the jury in a particular case, but will consider the amount awarded in other similar cases in determining whether the particular verdict is excessive.
Tenn.—Garis v. Eberling, supra.

To justify setting aside an excessive verdict, it is not necessary to determine that it was the result of passion, prejudice, or corruption.
N.Y.—Hayes v. Albany Ice Cream Co., 165 N.Y.S. 801.

Verdict in excess of actual loss

Where it appears from the evidence that the recovery in a personal injury case is in excess of the actual loss sustained, the judgment will be modified or vacated, although the damages rest largely in the jury's discretion.
Idaho.—Beaton v. City of St. Maries, 151 P. 996, 27 Idaho 638.

Where punitive damages justified

The supreme court had the duty to review verdicts for excessiveness, even where a wanton wrong justified the imposition of punitive damages.
Ala.—Barrett v. McFerren, 165 So. 226, 231 Ala. 382.

Without regard to inducing cause

The reviewing court may set aside verdict, if excessive, without regard to the inducing cause.
Ky.—Lally v. Cochran, 21 S.W.2d 272, 231 Ky. 211.

20. Conn.—White v. L. Bernstein & Sons, 194 A. 723, 123 Conn. 300.
Ind.—Bangert v. Hubbard, App., 126 N.E.2d 778, petition denied, Sup., 143 N.E.2d 285.
N.Y.—Lennon v. Stibbs Transp. Lines, 96 N.Y.S.2d 744, 277 App.Div. 807.
Ohio.—Cleveland Worsted Mills Co. v. Coates, 26 Ohio Cir.Ct.,N.S., 353.
Pa.—Duffy v. Monongahela Connecting R. Co., 89 A.2d 804, 371 Pa. 361—Koontz v. Messer, 181 A. 792, 320 Pa. 487.
S.C.—Poole v. Saxon Mills, 6 S.E.2d 761, 192 S.C. 339.
4 C.J. p 873 note 34.

21. Pa.—De Simone v. City of Philadelphia, 110 A.2d 431, 380 Pa. 137—Kane v. Scranton Transit Co., 94 A.2d 560, 372 Pa. 496—Schultz v. City of Pittsburgh, 88 A.2d 74, 370 Pa. 271, 31 A.L.R.2d 1327—Goldman v. Mitchell-Fletcher Co., 131 A. 665, 285 Pa. 116.
Lyles v. Philadelphia Rapid Transit Co., 93 Pa.Super. 290.
4 C.J. p 873 note 35.

22. Ark.—Arkansas-Louisiana Gas Co. v. Campbell, 156 S.W.2d 255, 203 Ark. 307.
Conn.—Greene v. Fairbanks, 23 A.2d 160, 128 Conn. 405.
Ky.—Louisville Taxicab & Transfer Co. v. Hill, 201 S.W.2d 731, 304 Ky. 565.
La.—Himes v. Avinger, App., 85 So. 2d 304.
Neb.—Rich v. Dugan, 280 N.W. 225, 135 Neb. 63.
N.Y.—Palmer v. Smith, 117 N.Y.S. 2d 188, 280 App.Div. 1032—LaGrutta v. Blachly, 102 N.Y.S.2d 576, 278 App.Div. 661, reargument denied 103 N.Y.S.2d 837, 278 App.Div. 707.
Okl.—Chickasha Cotton Oil Co. v. Hancock, 306 P.2d 330—Connecticut Fire Ins. Co. v. Horne, 207 P. 2d 931, 201 Okl. 643.
Tex.—Missouri-Kansas-Texas R. Co. of Tex. v. Webb, Civ.App., 229 S.W. 2d 204, error refused no reversible error.
W.Va.—Thomason v. Mosrie, 60 S. E.2d 699, 134 W.Va. 634—Chesapeake & O. Ry. Co. v. Allen, 169 S.E. 610, 113 W.Va. 691.
Wis.—Krcmar v. Wisconsin River Power Co., 72 N.W.2d 328, 270 Wis. 640.
4 C.J. p 873 note 36.

Diminished damages

In personal injury action against railroad brought under the Federal Employers' Liability Act, where finding of compensatory damages was grossly excessive, a further finding which substantially diminished such

have been for a smaller sum than that awarded;[23] or where the testimony most favorable to the successful party will not sustain the inference of fact on which the damages are estimated.[24]

Likewise, the appellate court may set aside a verdict on the ground of excessiveness where the amount awarded is so excessive as to lead to the conclusion that the verdict was the result of passion, prejudice, or corruption or other misconduct,[25] or of some error or mistake of principle,[26] or to warrant the conclusion that the jury were not governed by the evidence;[27] where the verdict violates the

damages because of plaintiff's own negligence did not relieve railroad from injurious consequences of excessive judgment.
Tex.—Missouri-Kansas-Texas R. Co. of Tex. v. Webb, Civ.App., 229 S.W. 2d 204, error refused no reversible error.

23. Mo.—Fury v. Merriman, 45 Mo. 500.

Substantial instead of nominal damages

(1) In an action for the value of stock because of the retention of stock certificate, in which it was alleged to be of the same value as when the certificate was deposited, the verdict and judgment awarding plaintiff substantial damages was erroneous, and will be set aside on appeal; he being entitled only to nominal damages.
Okl.—Whitehead v. Gormley, 245 P. 562, 116 Okl. 287, 47 A.L.R. 171.

(2) A verdict for plaintiff for damages caused by the construction of an elevated railroad cannot be sustained, where the testimony of the only witness showing damage was based on detriment to use value and the evidence was overwhelming that the sale value had increased.
Ill.—Brand v. Union Elevated R. Co., 115 N.E. 532, 277 Ill. 356.

(3) In an action for damage caused by flooding land, where trespass was proved but no actual damages shown, and the verdict was for a substantial sum, the rulings of the court restricting damages could not be considered.
Mich.—Lewis v. Beaverton Power Co., 204 N.W. 768, 231 Mich. 585.

Verdict in excess of demand is fatal unless plaintiff remits the excess.
N.C.—Grist v. Hodges, 14 N.C. 198.

24. N.J.—Ising v. Philadelphia, etc., R. Co., 58 A. 1092, 71 N.J.Law 371.

25. Ark.—**Corpus Juris Secundum cited in** Arkansas Amusement Corporation v. Ward, 161 S.W.2d 178, 183, 204 Ark. 130—Missouri Pacific Transp. Co. v. Simon, 135 S.W.2d 336, 199 Ark. 289.
Cal.—Slaughter v. Van Winkle, 2 P. 2d 789, 213 C. 573—Wiezorek v. Ferris, 167 P. 234, 176 C. 353.
Marshall v. McCarthy, 132 P.2d 873, 56 C.A.2d 436—Thompson v. B. F. Goodrich Co., 120 P.2d 693, 48 C.A.2d 723—Foster v. Hudson, 92 P.2d 959, 33 C.A.2d 705—Hallinan v. Prindle, 62 P.2d 1075, 17 C. A.2d 656—Adams v. Warren, 53 P. 2d 780, 11 C.A.2d 344—Coppock v. Pacific Gas & Electric Co., 30 P. 2d 549, 137 C.A. 80.
Colo.—Kohut v. Boguslavsky, 239 P. 876, 78 Colo. 95.
Idaho.—Summerfield v. Pringle, 144 P.2d 214, 65 Idaho 300.
Ind.—New York, C. & St. L. R. Co. v. Connaughton, 5 N.E.2d 904, 211 Ind. 419.
Dickover v. Owen, 151 N.E. 349, 84 Ind.App. 463—Baltimore & Ohio R. Co. v. Applegate, 149 N.E. 651, 84 Ind.App. 192, rehearing denied 150 N.E. 794, 84 Ind.App. 192.
Kan.—Hammargren v. Montgomery Ward & Co., 241 P.2d 1192, 172 Kan. 484.
Ky.—Louisville Taxicab & Transfer Co. v. Hill, 201 S.W.2d 731, 304 Ky. 565—Cincinnati, N. O. & T. P. Ry. Co. v. Nelson, 184 S.W.2d 108, 299 Ky. 19.
Mo.—Gust v. Montgomery Ward & Co., 136 S.W.2d 94, 234 Mo.App. 611—Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933, certiorari quashed State ex rel. St. Joseph Belt Ry. Co. v. Shain, 108 S. W.2d 351, 341 Mo. 733—Bente v. Finley, App., 83 S.W.2d 155.
Mont.—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48—Prezeau v. Davis, 216 P. 773, 67 Mont. 523.
Neb.—Paddack v. Patrick, 79 N.W.2d 701, 163 Neb. 355—Peacock v. J. L. Brandeis & Sons, 60 N.W.2d 643, 157 Neb. 514—Heiden v. Loup River Public Power Dist., 298 N.W. 736, 139 Neb. 754—Asche v. Loup River Public Power Dist., 296 N. W. 439, 138 Neb. 890—Bonacci v. Cerra, 279 N.W. 314, 134 Neb. 588.
N.J.—Klein v. Millside Farms, 84 A. 2d 705, 8 N.J. 240.
Capone v. Norton, 90 A.2d 508, 21 N.J.Super. 6.
N.Y.—Northrup v. Ferrucci, 93 N.Y. S.2d 393, 276 App.Div. 820, followed in 93 N.Y.S.2d 714, 276 App.Div. 820.
N.D.—Moen v. Moen, 256 N.W. 254, 65 N.D. 40.
Ohio.—Bliss v. Hartnett, 192 N.E. 818, 48 Ohio App. 156.
Cleveland Worsted Mills Co. v. Coates, 26 Ohio Cir.Ct.,N.S., 353.
Okl.—Kurn v. Manley, 153 P.2d 623, 194 Okl. 574—Public Service Co. of Oklahoma v. Hawkins, 149 P.2d 783, 194 Okl. 272.
R.I.—Peters v. United Electric Rys. Co., 189 A. 901, 57 R.I. 311.
Tenn.—Flexer v. Crawley, 269 S.W. 2d 598, 37 Tenn.App. 639.
Tex.—Fisheries Co. v. McCoy, Civ. App., 202 S.W. 343, error refused.
Utah.—**Corpus Juris Secundum cited in** Stamp v. Union Pac. R. Co., 303 P.2d 279, 283, 5 Utah 2d 397—Wilson v. Oldroyd, 267 P.2d 759, 1 Utah 2d 362.
4 C.J. p 874 note 39.

Misconduct of party

Where it appears that a seemingly excessive verdict probably was contributed to by misconduct of the prevailing party, the supreme court will order a new trial in the interest of orderly administration of justice.
Minn.—Hanskett v. Broughton, 195 N.W. 794, 157 Minn. 83.

Award of punitive damages

An award of punitive damages, in absence of an award of compensatory damages, may be taken as an indication that the jury was actuated by passion, prejudice and improper motives.
W.Va.—Toler v. Cassinelli, 41 S.E. 2d 672, 129 W.Va. 591.

26. Colo.—Kohut v. Boguslavsky, 239 P. 876, 78 Colo. 95.
Idaho.—Summerfield v. Pringle, 144 P.2d 214, 65 Idaho 300.
Ill.—Borkowsky v. Chicago City Ry. Co., 205 Ill.App. 573.
Ind.—Baltimore & O. R. Co. v. Applegate, 149 N.E. 651, 84 Ind.App. 192, rehearing denied 150 N.E. 794, 84 Ind.App. 192.
Pa.—Koontz v. Messer, 181 A. 792, 320 Pa. 487.
4 C.J. p 874 note 40.

Verdict based on improper items

Where it appears from the record that a verdict is based on improper items of damages, the verdict will be held to be excessive, and new trial will be awarded.
Ind.—Indiana Pipe Line Co. v. Christensen, 123 N.E. 789, 188 Ind. 400.

27. Fla.—Atlantic Coast Line R. Co. v. Alverson, 116 So. 30, 95 Fla. 73.
Ind.—New York, C. & St. L. R. Co. v. Connaughton, 5 N.E.2d 904, 211 Ind. 419.
Ky.—Cincinnati, N. O. & T. P. Ry. Co. v. Nelson, 184 S.W.2d 108, 299 Ky. 19.
Okl.—Capitol Steel & Iron Co. v. Pickeral, 226 P.2d 397, 204 Okl. 37.
S.C.—Bowers v. Charleston & W. C. Ry. Co., 42 S.E.2d 705, 210 S.C. 367.
Tex.—Westerfeld v. Reed, Civ.App., 107 S.W.2d 640.

measure of damages prescribed by law;[28] or where the damages awarded are so great as to show that the jury abused their discretion in fixing the amount.[29] If the appellate court is asked to review the act of the trial court where, in the exercise of its discretionary power, it has seen fit to set aside the verdict on this ground, every intendment is indulged in the appellate court in support of the action of the court below.[30]

c. Effect of Remittitur

The appellate court ordinarily defers to the trial court's discretion in the matter of remittiturs in cases of excessive verdicts, and it will not interfere with the verdict as modified by the remittitur if there is evidence sustaining the judgment for the balance.

The exercise of discretion by the trial court, in the matter of remittiturs in cases of excessive verdicts, will ordinarily be sustained by the reviewing court,[31] and the reviewing court will consider the

28. Neb.—Peacock v. J. L. Brandeis & Sons, 60 N.W.2d 643, 157 Neb. 514.
W.Va.—Guinn v. Ohio River R. Co., 32 S.E. 87, 46 W.Va. 151, 76 Am.S. R. 806.
Wis.—Beveridge v. Welch, 7 Wis. 465.
4 C.J. p 874 note 41.

29. Ala.—Birmingham Ry., etc., Co. v. Coleman, 61 So. 890, 181 Ala. 478.
Ark.—Missouri Pac. R. Co. v. Newton, 168 S.W.2d 812, 205 Ark. 353.

30. Cal.—Harrison v. Sutter St. R. Co., 47 P. 1019, 116 C. 156.
Effect of disapproval of verdict generally see infra § 1653 b.

Examination of record

Although supreme court will not weigh evidence relating to plaintiff's disabilities on appeal from order granting defendant's motion for new trial on ground that verdict was excessive after plaintiff refused to enter remittitur ordered by trial court, supreme court would examine record to determine whether there was substantial evidence to sustain trial court's view that such disabilities were not as serious or as permanent as claimed or that some of the disabilities did not result from the accident.
Mo.—Nix v. Gulf, M. & O. R. Co., 240 S.W.2d 709, 362 Mo. 187.

Conflicting evidence

In action for fraud in connection with exchange of realty, where evidence conflicted as to damages caused thereby to plaintiffs, supreme court was required to affirm order of trial court granting a new trial on ground that damages were excessive.
Cal.—Koyer v. McComber, 82 P.2d 941, 12 C.2d 175.

31. Ala.—Moore v. Cooke, 84 So.2d 748, 264 Ala. 97.
Cal.—Strosk v. Howard Terminal Co., 277 P.2d 828, 129 C.A.2d 797—Browand v. Scott Lumber Co., 269 P.2d 891, 125 C.A.2d 68.
Conn.—Keyes v. Churchward, 61 A. 2d 668, 135 Conn. 115.
Ga.—Sellers v. Sellers, 46 S.E.2d 205, 76 Ga.App. 410.
Ill.—Suppe v. Sako, 36 N.E.2d 603, 311 Ill.App. 459.
Iowa.—Boyle v. Bornholtz, 275 N.W. 479, 224 Iowa 90.
Kan.—Gould v. Hutchinson Oil & Gas Co., 95 P.2d 301, 150 Kan. 516.
Mich.—Seta v. Swain, 42 N.W.2d 842, 327 Mich. 668.
Minn.—Glubka v. Teegarden, 279 N. W. 567, 202 Minn. 594.
Mo.—Larson v. Atchison, T. & S. F. Ry. Co., 261 S.W.2d 111, 364 Mo. 844—Brandt v. Thompson, 252 S. W.2d 339—Pettis v. St. Louis Public Service Co., 240 S.W.2d 909—Steuernagel v. St. Louis Public Service Co., 238 S.W.2d 426, 361 Mo. 1066—Abernathy v. St. Louis-San Francisco Ry. Co., 237 S.W.2d 161—Wenzel v. St. Louis Public Service Co., 235 S.W.2d 312, 361 Mo. 448—Cook v. Kansas City, 214 S.W.2d 430, 358 Mo. 296—Walsh v. Terminal R. Ass'n of St. Louis, 196 S.W.2d 192, 355 Mo. 377—Ford v. Louisville & N. R. Co., 196 S.W. 2d 163, 355 Mo. 362—Greenan v. Emerson Elec. Mfg. Co., 191 S.W. 2d 646, 354 Mo. 781—Orr v. Shell Oil Co., 177 S.W.2d 608, 352 Mo. 288—Schaefer v. Transamerican Freight Lines, 173 S.W.2d 20—Gieseking v. Litchfield & Madison Ry. Co., 127 S.W.2d 700, 344 Mo. 672, certiorari denied Litchfield & M. R. Co. v. Gieseking, 60 S.Ct. 104, 308 U.S. 583, 84 L.Ed. 488—Lepchenski v. Mobile & O. R. Co., 59 S.W.2d 610, 332 Mo. 194.
Barnes v. Chism, App., 215 S.W. 2d 775—Couch v. St. Louis Public Service Co., App., 173 S.W.2d 617—King v. City of St. Louis, App., 155 S.W.2d 557—Perringer v. Lynn Food Co., App., 148 S.W.2d 601—Kasperski v. Rainey, App., 135 S. W.2d 11—Duke v. Brown Transfer & Storage Co., App., 133 S.W. 2d 697—Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830—Stelmach v. Saul, App., 50 S.W.2d 721.
N.D.—Wolff v. Schlenker, 31 N.W.2d 793, 75 N.D. 645.
Pa.—Libengood v. Pennsylvania R. Co., 55 A.2d 756, 358 Pa. 7—Limper v. Philadelphia Electric Co., 146 A. 574, 297 Pa. 204—Lancaster v. Reese, 103 A. 891, 260 Pa. 390.
R.I.—Wood v. New England Transp. Co., 95 A.2d 885, 80 R.I. 257—Romano v. Caldarone, 79 A.2d 763, 78 R.I. 107—Armes v. United Elec. Rys. Co., 62 A.2d 131, 74 R.I. 450—Kulbabsky v. New England Transp. Co., 38 A.2d 152, 70 R.I. 220—Raleigh v. Fitzpatrick, 197 A. 387, 60 R.I. 79—Beaumier v. Provensal, 193 A. 521, 58 R.I. 472.
Tenn.—All v. John Gerber Co., 252 S. W.2d 138, 36 Tenn.App. 134—Yellow Bus Line v. Brenner, 213 S.W. 2d 626, 31 Tenn.App. 209—Sweeney v. Carter, 137 S.W.2d 892, 24 Tenn. App. 6—Chumley v. Anderton, 103 S.W.2d 331, 20 Tenn.App. 621—Hot Blast Coal Co. v. Williax, 10 Tenn. App. 226.
Tex.—United Fidelity Life Ins. Co. v. Holliday, Civ.App., 226 S.W.2d 139, error refused no reversible error—Texas & N. O. R. Co. v. Grace, Civ.App., 185 S.W.2d 219, reversed 188 S.W.2d 378, 144 Tex. 71.
Vt.—Gray v. Janicki, 99 A.2d 707, 118 Vt. 49.
Remittitur by appellate court see infra § 1653 b.

Effect of reduction

(1) Mere fact that verdict was reduced by trial court is not evidence of passion and prejudice.
Cal.—McCullough v. Langer, 73 P. 2d 649, 23 C.A.2d 510—Papineau v. Distributors Packing Co., 52 P.2d 571, 10 C.A.2d 558.
Ill.—Williams v. Alton Water Co., 49 N.E.2d 307, 319 Ill.App. 522—Gleason v. Cunningham, 44 N.E.2d 940, 316 Ill.App. 286—Fitzpatrick v. California & Hawaiian Sugar Refining Corp., 32 N.E.2d 990, 309 Ill. App. 215.
Kan.—Cox v. Kellogg's Sales Co., 95 P.2d 531, 150 Kan. 561.
Mo.—Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933, certiorari quashed State ex rel. St. Joseph Belt Ry. Co. v. Shain, 108 S.W.2d 351.

(2) Fact that trial court required the entry of a remittitur and overruled defendant's motion for new trial indicates that trial judge believed that trial of the cause was fair and free from error, save that the jury had made a larger award than the evidence justified.
Mo.—Schaefer v. Transamerican Freight Lines, 173 S.W.2d 20.

(3) Trial court's action in requiring a four thousand five hundred dollars remittitur cured any error jury might have committed in fixing plaintiff's damages for injuries at fifteen thousand dollars, and therefore the court of civil appeals on appeal by

case as on the reduced amount.[32] Hence, where a remittitur for part of the recovery is entered in the lower court, a judgment for the balance will of course be upheld by the appellate court where it would have sustained a verdict for the full amount.[33] So also, where the court directs a remittitur for part of the verdict, or a remittitur for part thereof is entered with plaintiff's consent, a reviewing court will uphold a judgment for the balance if there is evidence sustaining it,[34] even though the amount

defendant was not required to determine whether there was such alleged excessiveness in the fifteen thousand dollars award, but only whether evidence supported the ten thousand five hundred dollars finally allowed.

Tex.—Younger Bros. v. Hibbard, Civ. App., 201 S.W.2d 624.

Weight given trial court's opinion

(1) The trial court's opinion that the amount of damages awarded for injuries sustained is excessive by a certain amount should have great weight on appeal.

Ala.—Birmingham Elec. Co. v. Thompson, 37 So.2d 633, 251 Ala. 465.

Cal.—Deshotel v. Atchison, T. & S. F. Ry. Co., 300 P.2d 910, 144 C.A. 2d 224.

Mo.—Riley v. St. Louis Public Service Co., App., 245 S.W.2d 666—Couch v. St. Louis Public Service Co., App., 173 S.W.2d 617—Adams v. Carlo, App., 101 S.W.2d 753—Washburn v. Empire Printing Co., App., 249 S.W. 709.

Tenn.—Smith v. Sloan, 225 S.W.2d 539, 189 Tenn. 368, rehearing denied 227 S.W.2d 2, 189 Tenn. 368.

Spence v. Carne, App., 292 S.W. 2d 438—All v. John Gerber Co., 252 S.W.2d 138, 36 Tenn.App. 134—(Blue) Star Service, Inc. v. McCurdy, 251 S.W.2d 139, 36 Tenn. App. 1—Short Way Lines v. Thomas, 241 S.W.2d 875, 34 Tenn.App. 641—McMahan v. Tucker, 216 S.W. 2d 356, 31 Tenn.App. 429—Ezell v. Post Sign Co., 205 S.W.2d 13, 30 Tenn.App. 256—City of Nashville v. Brown, 157 S.W.2d 612, 25 Tenn. App. 340—East Tennessee Light & Power Co. v. Gose, 130 S.W.2d 984, 23 Tenn.App. 280—Roddy Mfg. Co. v. Dixon, 105 S.W.2d 513, 21 Tenn. App. 81.

(2) Judgment of the trial court, which on motion for new trial for excessiveness of verdict required plaintiff to reduce the verdict or submit to a new trial, has material influence with the supreme court in determining whether the verdict was excessive.

Miss.—Gulf Coast Motor Express Co. v. Diggs, 165 So. 292, 174 Miss. 650.

(3) In determining whether verdict was excessive notwithstanding remittitur, court of appeals was required to consider the question in light most favorable to plaintiff, disregarding evidence of defendant's side of case which contradicted plaintiff's evidence.

Mo.—Couch v. St. Louis Public Service Co., App., 173 S.W.2d 617.

(4) In reviewing assignment of error that damages awarded were grossly excessive, reviewing court does not weigh the evidence but examines the record to determine whether there is substantial evidence to support trial court's ruling, and if the evidence, viewed in light most favorable to ruling, affords reasonable and substantial support thereof, ruling must be sustained.

Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010—Daniels v. Brown, 266 S.W.2d 680—Wilhelm v. Haemmerle, 262 S.W.2d 609—Wicker v. Knox Glass Associates, 242 S.W.2d 566, 362 Mo. 614—Steuernagel v. St. Louis Public Service Co., 238 S.W.2d 426, 361 Mo. 1066.

Kasten v. St. Louis Public Service Co., App., 231 S.W.2d 252.

"Caprice"

Under statute providing for review of alleged error by trial judge in suggesting remittitur because verdict is so excessive as to indicate unaccountable "caprice," quoted word means without substantial cause and implies a certain willfulness or wantonness.

Tenn.—Waller v. Skelton, 211 S.W. 2d 445, 186 Tenn. 433.

32. Cal.—Cooper v. National Motor Bearing Co., 288 P.2d 581, 136 C.A. 2d 229—Hughes v. Hearst Publications, 180 P.2d 419, 79 C.A.2d 703—Sherwood v. Jackson, 14 P.2d 861, 126 C.A. 441.

Mo.—Kelly v. City of Cape Girardeau, 89 S.W.2d 41, 338 Mo. 103.

Wis.—Asplund v. Palmer, 44 N.W.2d 624, 258 Wis. 34.

Action of court in banc in reducing verdict limits scope of duty of the reviewing court in determining whether the verdict is excessive.

Pa.—Wilson v. Consolidated Dressed Beef Co., 145 A. 81, 295 Pa. 168.

33. Minn.—Faunce v. Searles, 142 N. W. 816, 122 Minn. 343.

Action of trial judge entitled to great weight

Tenn.—Nashville Ry. & Light Co. v. Harrison, 5 Tenn.App. 22.

34. Cal.—Riley v. Southern Pac. Co., 207 P. 699, 57 C.A. 477—Learned v. Peninsula Rapid Transit Co., 193 P. 591, 49 C.A. 436.

Fla.—Union Bus Co. v. Matthews, 192 So. 811, 141 Fla. 99—Standard Growers' Exchange v. Martin, 87 So. 54, 80 Fla. 864.

Ga.—Houston v. St. Louis Nat. Bank, 158 S.E. 618, 43 Ga.App. 361.

Ill.—Stephens v. Sweeney, 7 Ill. 375. Yates v. Phillips, 211 Ill.App. 643.

Kan.—Bothe v. True, 175 P. 395, 103 Kan. 562.

Mass.—W. R. Grace & Co. v. Shaghalian's, Inc., 146 N.E. 799, 251 Mass. 340.

Mich.—McDaniel v. Hancock, 43 N.W. 2d 68, 328 Mich. 78.

Mo.—Combs v. Combs, 295 S.W.2d 78—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010—Daniels v. Brown, 266 S.W.2d 680—Larson v. Atchison, T. & S. F. Ry. Co., 261 S.W.2d 111, 364 Mo. 344—Hold v. Terminal R. R. Ass'n of St. Louis, 201 S.W.2d 958, 356 Mo. 412—Dees v. Skrainka Const. Co., 8 S.W.2d 873, 320 Mo. 839.

Phelps Stone & Supply Co. v. Norton, 52 S.W.2d 413, 227 Mo.App. 268—Hagen v. Wells, App., 277 S. W. 581—Campbell v. Crutcher, App., 224 S.W. 115.

Neb.—Dailey v. Sovereign Camp, W. O. W., 184 N.W. 920, 106 Neb. 767—Hellerich v. Central Granaries Co., 178 N.W. 919, 104 Neb. 818.

N.M.—Henderson v. Dreyfus, 191 P. 442, 26 N.M. 541.

Okl.—Queen Ins. Co. of America v. Baker, 50 P.2d 371, 174 Okl. 273—Reed v. Fichencord, 219 P. 937, 96 Okl. 3.

Or.—Robertson v. Frey, 144 P. 128, 72 Or. 599.

R.I.—Devine v. United Elec. Rys. Co., 128 A.2d 334—Perry v. New England Transp. Co., 45 A.2d 481, 71 R.I. 352—Goldblatt v. Koffler, 42 A.2d 490, 71 R.I. 63.

Tenn.—Waller v. Skelton, 211 S.W. 2d 445, 186 Tenn. 433—Reeves v. Catignani, 7 S.W.2d 38, 157 Tenn. 173.

Montesi v. Patton, 10 Tenn.App. 455.

Tex.—Webster v. Isbell, Civ.App., 71 S.W.2d 342, reversed on other grounds 100 S.W.2d 350, 128 Tex. 626—Webster v. Isbell, Civ.App., 71 S.W.2d 342—Lancaster v. Mebane, Civ.App., 247 S.W. 926—San Antonio, U. & G. Ry. Co. v. Ernst, Civ.App., 210 S.W. 603, error refused.

Va.—E. I. Dupont de Nemours & Co. v. Taylor, 98 S.E. 866, 124 Va. 750.

Wash.—Tate v. Chicago, M., St. P. & P. R. Co., 19 P.2d 137, 172 Wash. 33, certiorari denied Chicago, M., St. P. & P. R. Co. v. Tate, 54 S.Ct. 50, 290 U.S. 631, 78 L.Ed. 549.

4 C.J. p 874 note 45.

as reduced seems large,[35] if it is not clearly excessive.[36]

If, however, it is apparent to the appellate court that the verdict is the result of prejudice or passion or other improper influence, a remittitur will not remove the taint of the vice,[37] and a remittitur

Absence abuse of discretion

Where the trial court orders a remittitur, the appellate court will not further reduce the verdict, except on a clear showing of abuse of the court's discretion.

Mo.—Stelmach v. Saul, App., 50 S.W. 2d 721.

Effect of statute

Prior to the adoption of a statute relating to remittitur, the acceptance of a remittitur was a binding election on the part of plaintiff; the statute only affects those cases where the remittitur is made on account of passion or prejudice of the jury and hence the acceptance of a remittitur which is not made on those grounds is binding on plaintiff and cannot be raised on appeal.

Tenn.—Yarbrough v. Louisville & N. Ry. Co., 11 Tenn.App. 456.

35. Ala.—Luquire Funeral Homes Ins. Co. v. Turner, 178 So. 536, 235 Ala. 305.

Tex.—Houston Electric Co. v. Flattery, Civ.App., 217 S.W. 950.

4 C.J. p 874 note 46.

36. R.I.—Bernat v. De Gasparre, 129 A.2d 545—Magnotta v. De Lisi, 97 A. 593.

4 C.J. p 874 note 47.

37. Fla.—Atlantic Coast Line R. Co. v. Moore, 186 So. 210, 135 Fla. 485.

Ind.—Elliott v. Kraus, 172 N.E. 783, 92 Ind.App. 494.

Iowa.—Boyle v. Bornholtz, 275 N.W. 479, 224 Iowa 90—Ryan v. Trenkle, 200 N.W. 318, 199 Iowa 636—Faust v. Parker, 198 N.W. 646, 197 Iowa 1224.

Kan.—Wester v. Nelson, 29 P.2d 1087, 139 Kan. 147.

Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010.

Kasperski v. Rainey, App., 135 S.W.2d 11—Collins v. Leahy, App., 102 S.W.2d 801—Stelmach v. Saul, App., 50 S.W.2d 721.

Mont.—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48.

Ohio.—Cleveland Ry. Co. v. Mueller, 166 N.E. 391, 31 Ohio App. 488.

Cleveland Worsted Mills Co. v. Coates, 26 Ohio Cir.Ct.,N.S., 353.

Okl.—Reed v. Fichencord, 219 P. 937, 96 Okl. 3.

R.I.—Beaumier v. Provensal, 193 A. 521, 58 R.I. 472.

Tenn.—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498.

Tex.—Houston Electric Co. v. Flattery, Civ.App., 217 S.W. 950.

4 C.J. p 874 note 48.

Extent of inquiry

The reviewing court, in determining whether excessive damages, for which the trial court ordered a remittitur, were influenced by the jury's passion or prejudice, should consider whether excessive damages were induced by incompetent evidence, by misconduct of court or counsel, or by other action at the trial.

Ohio.—Fromson & Davis Co. v. Reider, 189 N.E. 851, 127 Ohio St. 564.

Trial court is in much better position to determine whether the excessive verdict was the result of passion and prejudice, and its determination should ordinarily be accepted.

N.M.—Henderson v. Dreyfus, 191 P. 442, 26 N.M. 541.

Appellate court makes no finding of prejudice

The trial judge having declined to make a finding that his reason for granting a remittitur was a belief that the jury were influenced by passion and prejudice in fixing the damages, a reviewing court will not supply such a finding and bring it into the record.

Ohio.—Spear & Co. v. Fulton, 3 Ohio App. 40, affirmed 112 N.E. 1086, 92 Ohio St. 523.

Wash.—Olson v. Weitz, 221 P.2d 537, 37 Wash.2d 70.

Limitation or exception

(1) However, it has been said that the rendition of a verdict so large that it shows on its face that it is the result of prejudice or passion constitutes error requiring reversal, unless a suitable remittitur is entered.

Tex.—Fisheries Co. v. McCoy, Civ. App., 202 S.W. 343, error refused.

(2) So it has also been said that although there is no warrant in law for the reduction of a verdict, in order to save the expense of a new trial, the court may require plaintiff to accept a lesser sum or suffer a new trial.

Mont.—Fulton v. Chouteau County Farmers' Co., 37 P.2d 1025, 98 Mont. 48.

Extent verdict affected by bias undeterminable

Where the reviewing court cannot say from the evidence to what extent the jury's bias affected the amount of damages in a libel, the trial court's error in rendering judgment for twelve thousand dollars after a remittitur of fifty-three thousand dollars was reversible.

Tex.—World Oil Co. v. Hicks, Civ. App., 75 S.W.2d 905.

Trial court's statement that prejudice exists

(1) A statement by the trial judge in requiring a remittitur of a portion of the damages awarded by the verdict as a condition of denying a motion for a new trial that the amount of the verdict was excessive, and the excess was the result of passion and prejudice, does not show that it was the trial court's opinion that the entire verdict was the result of passion and prejudice, and therefore does not require a reversal of the judgment rendered after remittitur for an amount which was not excessive.

Cal.—Riley v. Southern Pac. Co., 207 P. 699, 57 C.A. 477.

N.J.—Wilson v. Custer, 28 A.2d 169, 129 N.J.Law 123.

(2) Jury's return of verdict for plaintiff in three times amount finally allowed by judge, who stated in minute order, directing remission of difference by plaintiff as condition precedent to denial of defendants' motion for new trial, that verdict was given under influence of passion and prejudice, did not show that judge's misconduct influenced jury to defendants' prejudice, where reduced amount was not disproportionate to plaintiff's damage.

Cal.—Karwoski v. Grant, 85 P.2d 944, 30 C.A.2d 171.

(3) Record, on appeal by defendant in action for personal injuries, was insufficient to establish that verdict for plaintiffs had been result of passion and prejudice, and did not entitle defendant to new trial, notwithstanding fact that trial court had reduced verdict for one of plaintiffs on finding that verdict had been rendered under influence of passion and prejudice.

Minn.—Conradson v. Vinkemeir, 51 N.W.2d 651, 235 Minn. 537.

Mere size does not show passion or prejudice

(1) The mere size of verdict for damages, although it be necessary to reduce it, does not indicate passion or prejudice.

Mo.—Kimberling v. Wabash Ry. Co., 85 S.W.2d 736, 337 Mo. 702—Greenwell v. Chicago, M. & St. P. Ry. Co., 224 S.W. 404.

Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933.

Okl.—Queen Ins. Co. of America v. Baker, 50 P.2d 371, 174 Okl. 273.

(2) That the trial court determined damages were excessive and reduced the amount awarded does not necessarily indicate that the verdict was influenced by prejudice or passion.

Cal.—Monterrosa v. Grace Lines, 204 P.2d 377, 90 C.A.2d 826—Turner v. Whittel, 38 P.2d 835, 2 C.A.2d 585.

cannot cure a verdict which is entirely without evidence to sustain it[38] or which is grossly excessive even after remittitur.[39]

Where the remittitur ordered by the trial court appears unwarranted and too large, the appellate court may overrule the remittitur and direct restoration of judgment entered on the verdict,[39.5] or it may vacate the excessive portion of the remittitur.[40]

§ 1652. —— Inadequate Award

a. When verdict sustained
b. When verdict set aside

a. When Verdict Sustained

Ordinarily a verdict of a jury will not be disturbed by the appellate court on the ground of inadequacy.

Generally, the rules governing the authority of an appellate court to set aside a verdict because of inadequacy are the same as those applicable to an excessive verdict.[40.50] The question of inadequacy of damages is one first addressed to the trial court, which must bear practically the whole responsibility in every case.[41] Ordinarily, therefore, a verdict will not be disturbed by an appellate court on the ground

Mo.—Cruce v. Gulf, M. & O. R. Co., 238 S.W.2d 674, 361 Mo. 1138.
Couch v. St. Louis Public Service Co., App., 173 S.W.2d 617—Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830—Steiner v. Degan, App., 101 S.W.2d 519.
Ohio.—Jones v. Santel, 128 N.E.2d 36, 164 Ohio St. 93.

(3) Verdict of sixteen thousand dollars for fraud in inducing mortgagors to forego a redemption was not the result of passion or prejudice, although the trial court required a remittitur of five thousand dollars and the supreme court prescribed a further reduction of five thousand dollars as a condition of affirmance.
Wash.—Kritzer v. Moffat, 240 P. 355, 136 Wash. 410, 44 A.L.R. 681.

Mention of insurance company

Where verdict was excessive and defendant had been deprived of a fair trial by diligent suggestion, by examination of jurors, and otherwise, that the damage was covered by insurance, the supreme court will not reduce the verdict, but will grant a new trial.
Iowa.—Ryan v. Trenkle, 200 N.W. 318, 199 Iowa 636.

Absence of prejudice indicated by offer of remittitur

Where jury, in a servant's action for injuries, returned a verdict for two thousand five hundred dollars, the action of trial court in giving plaintiff an option to remit one thousand dollars or to submit to a new trial was necessarily a finding that there was neither passion nor prejudice on part of jury.
Kan.—Hockman v. Sifers Candy Co., 178 P. 254, 104 Kan. 94.

Extent of remittitur does not show passion or prejudice

(1) The action of the trial court in modifying the verdict cannot be accepted as proof that the trial court considered the verdict to have resulted from passion or prejudice.
Cal.—Bennett v. Central California Traction Co., 1 P.2d 47, 115 C.A. 1—Connerly v. Correia, 226 P. 841, 66 C.A. 570.
Ill.—Sells v. Grand Trunk Western Ry. Co., 206 Ill.App. 45. See Vondra v. Felcman, 202 Ill.App. 136.

(2) That the trial court reduced a twenty thousand dollar verdict in an alienation of affections case to ten thousand dollars was held not to show that the verdict was the result of passion or prejudice.
Kan.—Davidson v. Douglass, 284 P. 427, 129 Kan. 766.
Mo.—Slater v. Atchison, T. & S. F. Ry. Co., 24 S.W.2d 660, 224 Mo. App. 824.

(3) That the trial court ordered a remittitur amounting to fifty per cent of a fifteen thousand dollar verdict was held not conclusive proof that excessive damages were given under the influence of passion or prejudice so as to require granting a new trial, where prejudicial error did not otherwise appear.
Ohio.—Fromson & Davis Co. v. Reider, 189 N.E. 851, 127 Ohio St. 564.

(4) That the trial court reduced a three thousand five hundred dollar personal injury verdict to five hundred dollars does not indicate passion or prejudice on jury's part requiring reversal, where the court evidently acted on the theory that an operation performed on plaintiff eighteen months after injury was not caused by the accident.
Mo.—Brohammer v. Lager, App., 194 S.W. 1072.

(5) The fact that the trial court reduced a judgment for injuries from fifteen thousand dollars to four thousand dollars did not show bias or prejudice on the part of the jury, so as to require a new trial.
Mo.—Lilly v. Kansas City Rys. Co., App., 209 S.W. 969.

(6) Yet it has been held that the court, of its own motion, in a personal injury case, entered a remittitur of sixty per cent, indicated that the verdict was the result of prejudice.
Ohio.—Klotz v. Balmat, 171 N.E. 409, 34 Ohio App. 490.

Mo.—Stocke v. Albert, 8 Mo.App. 577.
N.Y.—Weir v. Cosmopolitan Carriers, 291 N.Y.S. 968, 249 App.Div. 758.
Tex.—World Oil Co. v. Hicks, Civ. App., 75 S.W.2d 905, certified questions answered 103 S.W.2d 962, 129 Tex. 297.

Evidence erroneously admitted

In an action against a hotel keeper for injuries to a guest sustained in a fire, in which it was claimed that the fire was due to the hotel keeper's negligence, an excessive verdict is not cured by remittitur where hearsay testimony as to what witness had been told concerning the origin of the fire by person witness had met on the street, who claimed to have been a porter at the hotel at the time of the fire, and testimony by the assistant fire chief that his suspicions were aroused, was admitted in evidence although subsequently stricken out.
Neb.—Stewart v. Weiner, 187 N.W. 121, 108 Neb. 49.

38. Ark.—Jamison v. Spivey, 125 S.W.2d 453, 197 Ark. 698.

39. Ill.—Cartwright v. Elliott, 45 Ill. App. 458.
Mo.—Chrum v. St. Louis Public Service Co., 242 S.W.2d 54.

39.5 Mo.—Sanders v. Illinois Central R. Co., 270 S.W.2d 731, 364 Mo. 1010.

40. Mo.—Sanders v. Illinois Cent. R. Co., 270 S.W.2d 731, 364 Mo. 1010.
Neb.—Mangiameli v. Ariano, 253 N.W. 871, 126 Neb. 629.
R.I.—Afflick v. Laurence, 21 A.2d 245, 67 R.I. 188.
Va.—E. I. Dupont de Nemours & Co. v. Taylor, 98 S.E. 866, 124 Va. 750.

40.50 Ind.—Henschen v. New York Cent. R. Co., 60 N.E.2d 738, 223 Ind. 393.
Mo.—Wilhelm v. Kansas City Public Service Co., 212 S.W.2d 915, 358 Mo. 6.
Pa.—Kite v. Jones, 132 A.2d 683, 389 Pa. 339.
Tex.—Schooler v. State, Civ.App., 175 S.W.2d 664, error refused—Nunn v. Daly, Civ.App., 150 S.W.2d 834, error dismissed, judgment correct.

41. Cal.—Holden v. Patten-Blinn Lumber Co., 45 P.2d 1037, 7 C.A.2d 220.

that the damages awarded are inadequate,[42] especially where the amount has been approved by the trial court as by refusing to set the verdict aside for inadequacy.[43] It has been so held where the evidence

Mo.—Coghlan v. Trumbo, 179 S.W.2d 705.

Weight given to trial court's action

(1) The appellate court should attach some weight to the trial court's refusal to set aside a verdict on the ground of inadequacy.

Conn.—Mulcahy v. Larson, 32 A.2d 161, 130 Conn. 112.

Mo.—Coghlan v. Trumbo, 179 S.W.2d 705.

N.Y.—Robison v. Lockridge, 244 N.Y.S. 663, 230 App.Div. 389.

(2) Attitude of the trial court has great weight with reviewing courts, particularly on question of alleged inadequacy of amount of damages awarded.

Mo.—Scully v. Rolwing, App., 115 S.W.2d 96.

Power of appellate courts

Power of an appellate court to reverse a judgment because of inadequacy of damages is much more limited than power of trial court to grant new trial for inadequacy of damages.

Cal.—Toshio Hamasaki v. Flotho, 248 P.2d 910, 39 C.2d 602.

Discretion of trial judge

Granting of a new trial on ground that verdict was inadequate is a matter for exercise of judicial discretion by trial judge and verdict will not be overturned on appeal except in exceptional cases.

Ky.—Smith v. Bailey, 223 S.W.2d 582, 311 Ky. 118.

Order granting new trial

Granting of new trial on ground that jury's verdict is inadequate is equivalent to granting thereof on ground that verdict is against evidence, and sole question on appeal from such order is whether there was any substantial evidence to support order, in which case ruling will not be disturbed.

Mo.—State ex rel. State Highway Commission v. Liddle, App., 193 S.W.2d 625.

42. Ala.—Garrett v. Federal Land Bank of New Orleans, 194 So. 530, 239 Ala. 191.

Ark.—Smith v. Arkansas Power & Light Co., 86 S.W.2d 411, 191 Ark. 389.

Cal.—Bayless v. Mull, 122 P.2d 608, 50 C.A.2d 66—Sassano v. Roullard, 81 P.2d 213, 27 C.A.2d 372.

Conn.—Mulcahy v. Larson, 32 A.2d 161, 130 Conn. 112—Dean v. Connecticut Tobacco Corporation, 92 A. 408, 88 Conn. 619.

Ga.—Moore v. Sears, Roebuck & Co., 172 S.E. 680, 48 Ga.App. 185.

Ill.—McSee v. Chicago Motor Coach Co., 96 N.E.2d 381, 342 Ill.App. 238—Isley v. McClandish, 20 N.E.2d 890, 299 Ill.App. 564—Owens v. Guerney, 241 Ill.App. 477—Fritz v. Chicago Rys. Co., 205 Ill.App. 298.

Iowa.—Buck v. Donahue, 167 N.W. 466.

Ky.—United Fuel Gas Co. v. Mauk, 302 S.W.2d 368—Aker v. Smith, 290 S.W.2d 496—Lawson's Adm'r v. Brandenburg, 41 S.W.2d 201, 240 Ky. 68—Terhune v. Ben W. Gorham & Co., 16 S.W.2d 1060, 229 Ky. 229.

La.—Rumpf v. Callo, 132 So. 763, 16 La.App. 12—Anderson v. Brock Bros. & Collins, 124 So. 716, 11 La.App. 700.

Minn.—Morris v. Wulke, 169 N.W. 22, 141 Minn. 27.

Mo.—Coats v. News Corp., 197 S.W.2d 958, 355 Mo. 778—Grodsky v. Consolidated Bag Co., 26 S.W.2d 618, 324 Mo. 1067—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 2103. Gedville v. Mahacek, App., 231 S.W.2d 305.

N.J.—Van Sciver v. Public Service Ry. Co., 114 A. 146, 96 N.J.Law 13.

N.Y.—Hollywood Plays v. Columbia Pictures Corp., 83 N.Y.S.2d 302, 274 App.Div. 912, reversed on other grounds 85 N.E.2d 865, 299 N.Y. 61, 10 A.L.R.2d 722, reargument denied 87 N.E.2d 70, 299 N.Y. 683—Robison v. Lockridge, 244 N.Y.S. 663, 230 App.Div. 389.

N.C.—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106.

Ohio.—Larkins v. Ohio Electric Ry. Co., 4 Ohio App. 37.

Pa.—Keown v. Bunton, 61 Pa.Super. 220.

Tenn.—Saucier v. Roberts, 2 Tenn. App. 211.

Tex.—Laney v. Hardy, Civ.App., 265 S.W.2d 609—Weeks v. Lipp, Civ. App., 48 S.W.2d 716.

W.Va.—Legg v. Jones, 30 S.E.2d 76, 126 W.Va. 757.

4 C.J. p 646 note 74 [a], p 874 note 51—6 C.J. p 765 note 64—37 C.J. p 113 note 2 [b] (4).

Comparative negligence cases

(1) Where comparative negligence doctrine is applicable, the jury's discretion in comparing negligence of parties is unrestrained, and their finding for plaintiff in such case of only nominal amount will not be disturbed.

Ga.—Moore v. Sears, Roebuck & Co., 172 S.E. 680, 48 Ga.App. 185.

(2) While, because of plaintiff's negligence, the verdict may be for less than the damages sustained, when the extent to which plaintiff's negligence contributed is a question for the jury, the court of appeals can only determine whether the verdict could have been found on defendant's negligence alone.

Ga.—Georgia Ry. & Power Co. v. Tribble, 116 S.E. 207, 29 Ga.App. 575.

(3) In a suit for damages to plaintiff's automobile, resulting from a collision with defendant's automobile, where there was evidence as to the value of plaintiff's automobile before and after the collision, as to the character and amount of damage, and as to the value of repairs, and an inference of negligence on plaintiff's part was authorized, a verdict for plaintiff being more or less uncertain as to the amount, plaintiff could not complain that the evidence demanded a larger verdict in his behalf.

Ga.—Douglas v. Prescott, 121 S.E. 689, 31 Ga.App. 684.

(4) Where jury were authorized under evidence and charge to apply rule of comparative negligence, award of five hundred dollars for injuries sustained when struck by truck was not so inadequate as to justify an inference of gross mistake or undue bias which would warrant disturbance of verdict on appeal.

Ga.—Baggett v. Jackson, 54 S.E.2d 146, 79 Ga.App. 460.

Negligence case

Plaintiff appealing on the ground that a verdict for personal injuries was inadequate cannot prevail if his own negligence contributed to his injury nor unless defendant was negligent.

Minn.—Shearer v. Puent, 208 N.W. 182, 166 Minn. 425.

Nominal damages

(1) Nominal damages do not compensate for a substantial injury, but if the injury is nominal an award of damages not substantial in amount will not be disturbed as inadequate.

Minn.—Greenfield v. Unique Theatre Co., 177 N.W. 666, 146 Minn. 17.

(2) A verdict in a nominal amount for damages from flowage caused by obstruction of a drainage ditch, under the evidence in the case, was not so grossly inadequate as to warrant this court in granting a new trial.

Minn.—Koch v. Speiser, 176 N.W. 754, 145 Minn. 227.

(3) The court cannot set aside a verdict awarding nominal damages, where the jury, although finding that plaintiff had suffered injuries, found from the evidence that they were so slight that nominal damages were adequate.

Ala.—Hilley v. Central of Georgia Ry. Co., 66 So. 883, 11 Ala.App. 605.

43. Ala.—Yarbrough v. Mallory, 144 So. 447, 225 Ala. 579. Sims v. Warren, 27 So.2d 801, 32 Ala.App. 516, certiorari denied 27 So.2d 803, 248 Ala. 391.

Cal.—Gates v. Wendling Nathan Co., 81 P.2d 173, 27 C.A.2d 807.

is conflicting;[44] where based on findings justified by the evidence;[45] where the amount recoverable is left in doubt by the evidence;[46] or where the evidence shows that the jury, as reasonable men, could have fairly awarded the amount allowed,[47] even though they could have found a larger verdict.[48]

It has also been held that a reviewing court will not set aside a verdict as inadequate where it does not appear that the verdict is for less than the actual pecuniary loss suffered;[49] where the damages are of a class as to which no definite measure exists;[50] or where the inadequacy is not such as to shock the conscience and to clearly show that the jury were influenced by passion or prejudice, or that they proceeded on an erroneous basis in arriving at their conclusion.[51] So the fact that the reviewing

Fla.—Bulmer v. Strawn, 53 So.2d 315.
Ga.—Stalvey v. Statenville Ry. Co., 107 S.E. 780, 27 Ga.App. 174.
Mo.—Coats v. News Corp., 197 S.W. 2d 958, 355 Mo. 778.
N.J.—Gelsmine v. Vignale, 78 A.2d 602, 11 N.J.Super. 481.
Pa.—Patterson v. Palley Mfg. Co., 61 A.2d 861, 360 Pa. 259.
Pryor v. Graff, 117 A.2d 818, 179 Pa.Super. 322.
R.I.—Armes v. United Elec. Rys. Co., 62 A.2d 131, 74 R.I. 450.
Vt.—In re Brace's Estate, 196 A. 742, 109 Vt. 360.

Review in favor of verdict
In reviewing trial court's decision on motion to set aside verdict for inadequacy of damages awarded, fact that verdict has received express approval of trial court inclines supreme court strongly in favor of verdict, and ruling must stand if such ruling can be justified on any reasonable view of evidence, considered in the light most favorable for the defendant.
Vt.—Cenate v. Hunter, 62 A.2d 645, 115 Vt. 402.

Opinion of trial judge
Fact that trial judge would have awarded greater damages than amount awarded by jury is not basis for reversal unless jury was improperly directed.
Fla.—Bulmer v. Strawn, 53 So.2d 315.

44. Mo.—Hemminghaus v. Ferguson, 215 S.W.2d 481, 358 Mo. 476.
Vt.—In re Brace's Estate, 196 A. 742, 109 Vt. 360.
Wis.—Dekeyser v. Milwaukee Automobile Ins. Co., 295 N.W. 755, 236 Wis. 419—Hilton v. Hayes, 141 N. W. 1015, 154 Wis. 27.
4 C.J. p 874 note 52.

45. Colo.—Penny v. Anderegg, 160 P.2d 361, 114 Colo. 264.
Ga.—Bancroft v. Sewell, 199 S.E. 649, 58 Ga.App. 592—Felker v. Still, 133 S.E. 519, 35 Ga.App. 236.
Mo.—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 2103.
Mont.—Conman v. Niece, 121 P.2d 984, 113 Mont. 104.
Tex.—Morris v. Galveston Electric Co., Civ.App., 194 S.W. 490.
4 C.J. p 874 note 53.

Award in accord with defendant's evidence
It cannot be complained that recovery was too small, where the jury decided the issue according to the evidence for defendant, and it is doubtful whether there was any contrary evidence to make issue for the jury.
Ky.—R. O. Campbell Coal Co. v. Lewis Coal Co., 265 S.W. 436, 205 Ky. 47.

46. Hawaii.—Pao v. Diamond Head Memorial Park Ass'n, 38 Hawaii 270.
La.—Whitehead v. Albriton, 15 La. 20.

One or more claims
A reviewing court is not authorized to reverse a judgment on the ground of inadequacy of damages, where the verdict of the jury may have been based in whole or in part upon one or more of several claims for damages advanced by plaintiff.
Ohio.—Kavrisz v. Cleveland, C. C. & St. L. Ry. Co., 11 Ohio App. 421.

47. Ga.—Ellison v. Hicks, 179 S.E. 555, 51 Ga.App. 37.
4 C.J. p 875 note 55.

Evidence must clearly show that the jury could not have fairly found the verdict to warrant a reversal for insufficient damages.
Ky.—Springfield Water & Electric Light Co. v. Campbell Bros., 292 S.W. 829, 219 Ky. 290.

48. Ark.—Holcomb & Hoke Mfg. Co. v. Fish, 7 S.W.2d 313, 177 Ark. 631—Washa v. Harris, 266 S.W. 944, 167 Ark. 186—Currie v. Nation, 228 S.W. 388, 148 Ark. 654.
Cal.—Johnson v. McRee, 152 P.2d 526, 66 C.A.2d 524.
Ga.—Ellison v. Hicks, 179 S.E. 555, 51 Ga.App. 37.
Mo.—Moore v. McCutchen, App., 190 S.W. 350.
Tex.—Texas & N. O. R. Co. v. Davis, Civ.App., 54 S.W.2d 583.
4 C.J. p 875 note 56.

49. Kan.—Manhardt v. Sheridan's Estate, 92 P.2d 76, 150 Kan. 264.
Ky.—Lowery v. Hopkinsville Transfer Co., 61 S.W.2d 23, 249 Ky. 454—Gregory v. Republic Coal Co., 225 S.W. 1074, 189 Ky. 758.
4 C.J. p 875 note 57.

50. Ill.—Borgerson v. Chicago R. Co., 187 Ill.App. 65.

51. Ala.—Sturdivant v. Crawford, 199 So. 537, 240 Ala. 383—Whitman's Fifth Ave. Garage Co. v. Ricks, 101 So. 53, 211 Ala. 527.
Cal.—Daggett v. Atchison, T. & S. F. Ry. Co., 313 P.2d 557.
Sills v. Soto, 269 P.2d 98, 124 C. A.2d 539—Quirk v. City and County of San Francisco, 232 P.2d 893, 105 C.A.2d 85—Holden v. Patten-Blinn Lumber Co., 45 P.2d 1037, 7 C.A.2d 220.
Fla.—Alred v. Porro, 3 So.2d 869, 148 Fla. 187.
Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437.
Ill.—Miller v. Luehring, 98 N.E.2d 875, 343 Ill.App. 351.
Kan.—Manhardt v. Sheridan's Estate, 92 P.2d 76, 150 Kan. 264.
Ky.—Lawson v. Sitgraves, 186 S.W. 2d 182, 299 Ky. 545.
Minn.—Berg v. Ullevig, 70 N.W.2d 133, 244 Minn. 390.
Miss.—Rasberry v. Calhoun County, 94 So.2d 612—Harris v. Sims, 124 So. 325, 155 Miss. 207.
Mo.—Conley v. Berberich, App., 300 S.W.2d 844—English v. Thrower, App., 146 S.W.2d 667—Sullivan v. Wilson, App., 283 S.W. 743—Rohwedder-Freymann Jewelry Co. v. Riverside Swine Co., App., 246 S.W. 988.
Neb.—Myers v. Platte Val. Public Power & Irr. Dist., 67 N.W.2d 739, 159 Neb. 493.
S.C.—Bailey v. Smith, 128 S.E. 423, 132 S.C. 212.
Tenn.—Hammonds v. Mansfield, App., 296 S.W.2d 652—Saucier v. Roberts, 2 Tenn.App. 211—Citty v. Miller, 1 Tenn.App. 1.
Tex.—Hooker v. Fort Worth Press Co., Civ.App., 11 S.W.2d 586.
Wash.—Norland v. Peterson, 13 P.2d 483, 169 Wash. 380.
Wis.—Dabareiner v. Weisflog, 33 N. W.2d 220, 253 Wis. 23, 12 A.L.R.2d 605—Dekeyser v. Milwaukee Automobile Ins. Co., 295 N.W. 755, 236 Wis. 419.
4 C.J. p 875 note 58—37 C.J. p 113 note 2 [b] (5).

Award of only nominal damages for assault and battery without bodily injury does not indicate passion or prejudice requiring reversal.
Kan.—Knitig v. Slaven, 278 P. 727, 128 Kan. 466.

Verdict for pain and suffering will not be set aside as inadequate unless so small as clearly to indicate that the jury were improperly influenced.

court would have sustained a larger verdict, or that the amount awarded was not justified by the evidence, does not justify setting aside the verdict as inadequate,[52] as this does not necessarily indicate passion and prejudice justifying the granting of a new trial.[53]

b. When Verdict Set Aside

The appellate court may, in a proper case, set aside a verdict for inadequacy, as where the verdict is so small as to be clearly against the weight of the evidence.

The reviewing court may, in a proper case, set aside a verdict on the ground that the amount awarded is inadequate, and this it may do even though the trial court refused to set aside the verdict.[54] Thus it has been held that the verdict may be set aside if the finding is for such an inadequate amount as to indicate that the jury must have been influenced by passion, prejudice,[55] perversity, or a gross misconception of the evidence;[56] where the verdict is so small as to be clearly against the weight of the evidence;[57] where the jury omitted to consider some element of damage;[58] where the evidence shows that the damages suffered were susceptible of definite pecuniary measurement and exceeded the amount awarded by the verdict;[59] or where the ver-

W.Va.—Landau v. Farr, 140 S.E. 141, 104 W.Va. 445.

Passion or prejudice not shown

(1) In an action for the death of a railroad conductor caused by a rear-end collision, record was held not to show that the amount of the verdict was the result of passion, sympathy, or prejudice on the part of the jury, and contrary to the weight and preponderance of the evidence, the jury having found the deceased also negligent.

Tex.—St. Louis, B. & M. Ry. Co. v. McLean, Civ.App., 241 S.W. 1072, reversed on other grounds, Com. App., 253 S.W. 248.

(2) In a personal injury action, the finding of the jury that plaintiff sustained no damages, was held not to show prejudice against plaintiff requiring reversal, although the evidence showed serious injury to plaintiff, where the jury had previously found that plaintiff was not injured while traveling on a mission for defendant, and that injuries were received in an unavoidable accident.

Tex.—Harrison v. Missouri-Kansas & T. R. Co. of Texas, Civ.App., 89 S. W.2d 455, error dismissed.

Rule of uniformity

On appeal by plaintiff claiming that verdict in a personal injury action is inadequate and the result of passion and prejudice, the "rule of uniformity" may be used in a proper case.

Mo.—Hemminghaus v. Ferguson, 215 S.W.2d 481, 358 Mo. 476.

Each case stands on its own facts

Mo.—Hemminghaus v. Ferguson, supra.

52. Ark.—Johnson v. Faucett, 217 S. W.2d 616, 214 Ark. 684.

Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437.

Ill.—Olson v. Brundage, 139 Ill.App. 559.

Iowa.—Bell v. Kearns, 153 Iowa 62, 133 N.W. 347.

Ky.—Rhodes v. Young, 248 S.W.2d 416.

Minn.—Berg v. Ullevig, 70 N.W.2d 133, 244 Minn. 410.

53. Iowa.—Bell v. Kearns, 133 N.W. 347, 153 Iowa 62.

Mo.—Dickson v. Beemer, 217 S.W.2d 515.

54. Ala.—Jackson v. Roddy, 139 So. 354, 224 Ala. 132.

Cal.—Price v. McComish, 70 P.2d 978, 22 C.A.2d 92—Bencich v. Market St. Ry. Co., 67 P.2d 398, 20 C.A.2d 518.

Ill.—Ritholz v. Yellow Cab Co., 50 N. E.2d 114, 319 Ill.App. 647.

Mass.—Flower v. Town of Billerica, 68 N.E.2d 697, 320 Mass. 193.

Minn.—Ulrich v. Kessler, 282 N.W. 801, 204 Minn. 74.

Mo.—Coats v. News Corp., 197 S.W. 2d 958, 355 Mo. 778.

Ohio.—Fabish v. Smith, App., 140 N.E.2d 822—Pfister v. City of Cleveland, 113 N.E.2d 366, 96 Ohio App. 185, appeal dismissed 112 N.E. 2d 657, 159 Ohio St. 580—Sherer v. Smith, 88 N E.2d 426, 85 Ohio App. 317.

4 C.J. p 875 note 61.

55. Cal.—Knight v. Fitch, 70 P.2d 976, 22 C.A.2d 252.

Minn.—Ulrich v. Kessler, 282 N.W. 801, 204 Minn. 74.

Mo.—Wilhelm v. Kansas City Public Service Co., 212 S.W.2d 915, 358 Mo. 6—Grodsky v. Consolidated Bag Co., 26 S.W.2d 618, 324 Mo. 1067.

Davis v. City of Mountain View, App., 247 S.W.2d 539—Strange v. Ardison, App., 65 S.W.2d 115.

Neb.—Mares v. Chaloupka, 192 N.W. 397, 110 Neb. 199.

Ohio —Fabish v. Smith, App., 140 N. E.2d 822.

Tenn.—Flexer v. Crawley, 269 S.W. 2d 598, 37 Tenn.App. 639.

4 C.J. p 875 note 62.

56. Ala.—Sturdivant v. Crawford, 199 So. 537, 240 Ala. 383.

Fla.—Allen v. Powell, 12 So.2d 378, 152 Fla. 443.

Miss.—Faulkner v. Middleton, 188 So. 565, 186 Miss. 355, suggestion of error overruled, 190 So. 910, 186 Miss. 355.

Vt.—Cenate v. Hunter, 62 A.2d 645, 115 Vt. 402.

Wis.—Murphy v. Lachmund Lumber & Coal Co., 215 N.W. 822, 194 Wis. 119.

4 C.J. p 875 note 63.

Grossly inadequate assessment of damages for injuries requires reversal, unless plaintiff's contributory negligence is so clear as to negative the jury's perverseness.

Wis.—Murphy v. Lachmund Lumber & Coal Co., supra.

Where contributory negligence did not clearly appear, an assessment of one dollar for serious injuries is evidence of the jury's perversity, requiring reversal.

Wis.—Murphy v. Lachmund Lumber & Coal Co., supra.

57. Ark.—Smith v. Arkansas Power & Light Co., 86 S.W.2d 411, 191 Ark. 389.

Cal.—Frampton v. Stoloff, 298 P.2d 10, 142 C.A.2d 175.

Conn.—Devileskis v. Shea, 147 A. 8, 109 Conn. 526—Meyer v. Basta, 128 A. 32, 102 Conn. 144.

Ky.—Bozeman Mortuary Ass'n v. Fairchild, 86 S.W.2d 979, 260 Ky. 748.

Mo.—Melly v. Hill, App., 216 S.W. 545.

Ohio.—Pfister v. City of Cleveland, 113 N.E.2d 366, 96 Ohio App. 185, appeal dismissed 112 N.E.2d 657, 159 Ohio St. 580—Sherer v. Smith, 88 N.E.2d 426, 85 Ohio App. 317.

4 C.J. p 875 note 64.

Award of nominal damages where evidence shows substantial damages

Mich.—Walker v. Britton, 159 N.W. 150, 193 Mich. 174.

N.Y.—Schwartz v. New York Rys. Co., 160 N.Y.S. 1081.

58. Iowa.—Ideal Cream Separator Repair Works v. Des Moines, 149 N.W. 640, 167 Iowa 517.

Ky.—Foster v. Dukes, 193 S.W.2d 159, 301 Ky. 752.

Ohio.—Sherer v. Smith, 88 N.E.2d 426, 85 Ohio App. 317.

59. Kan.—Reeves v. Child, 194 P.2d 919, 165 Kan. 341.

Ky.—Schriewer v. Schworer, 178 S. W.2d 598, 296 Ky. 749.

dict is supported by no evidence at all.[60] Further, it is said that, where a verdict for personal injuries is largely below the average, it is fair to infer, unless the case presents extraordinary features, that partiality, prejudice, or other improper motive influenced the jury and justifies the setting aside of the verdict.[61]

§ 1653. Approval or Disapproval of Trial Court

a. Approval of verdict
b. Disapproval of verdict

a. Approval of Verdict

(1) Effect in general
(2) Verdict against weight of evidence
(3) Verdict based on conflicting evidence
(4) When verdict set aside

(1) Effect in General

Ordinarily, the direct supervision of verdicts is in the sound discretion of the trial court and is not reviewable on appeal; and a verdict approved by the trial court, if without legal error and supported by the evidence, is conclusive on appeal.

Ordinarily, a question as to the credibility, weight, and value of the evidence is primarily for the jury, as discussed supra § 1649, and secondarily for the trial court, and, in the absence of a clear abuse of discretion, is not, on appeal, a matter for review.[61.50] In the absence of some imputed error of law or legal inference arising in connection therewith, the direct supervision of verdicts is in the sound discretion of the trial court, and is not reviewable on appeal.[61.55] The fact that the trial court deliberately considered the evidence before judgment and approved the verdict is always a circumstance of great weight in determining whether a verdict shall be set aside on appeal for insufficiency of the evidence to support it, and in cases of doubt this circumstance will always be of controlling weight.[62] In accordance with this principle the general rule is well set-

Neb.—Spirk v. Chicago, etc., R. Co., 78 N.W. 272, 57 Neb. 565.
4 C.J. p 875 note 66.

At instance of defendant
A verdict contrary to unconflicting evidence for one half the amount plaintiff should recover, if entitled to recover, should be set aside at the instance of defendant.
Kan.—Martin Realty Co. v. Garver, 229 P. 70, 116 Kan. 689.

Statutory restriction inapplicable
The right of plaintiff to secure review of judgment because of insufficiency of damages is not affected by the statute providing for disallowance of new trial on account of smallness of damages, where the amount of verdict was less than pecuniary damages actually incurred, as measured by the correct rule for their ascertainment.
Ky.—Bozeman Mortuary Ass'n v. Fairchild, 86 S.W.2d 979, 260 Ky. 748.

60. Cal.—Sills v. Soto, 269 P.2d 98, 124 C.A.2d 539.
Okl.—Pahlka v. Chicago, R. I. & P. Ry. Co., 161 P. 544, 62 Okl. 223.
4 C.J. p 875 note 67.

61. Ala.—Central of Georgia R. Co. v. White, 56 So. 574, 175 Ala. 60.

61.50 Ariz.—Dunseath v. Tucson Golf & Country Club, 74 P.2d 43, 51 Ariz. 14.
Cal.—Gilmore v. Los Angeles Ry. Corporation, 295 P. 41, 211 C. 192. Tarasco v. Moyers, 185 P.2d 86, 81 C.A.2d 804—High v. Pacific Gas & Electric Co., 127 P.2d 588, 52 C. A.2d 701—Hanson v. Weckerle, 63 P.2d 322, 18 C.A.2d 214—Taylor v. Lowenstein, 298 P. 847, 113 C.A. 665—Mullin v. Rousseau, 297 P. 944, 112 C.A. 719—Perry v. A. Paladini, Inc., 264 P. 580, 89 C.A. 275.
Ill.—Allen v. Chicago Transit Authority, 114 N.E.2d 468, 351 Ill.App. 194.
Ind.—Baltimore & O. R. Co. v. Reyher, 24 N.E.2d 284, 216 Ind. 545—New York Life Ins. Co. v. Skinner, 14 N.E.2d 566, 214 Ind. 384.
Kan.—Collins v. Safeway Cab Transfer & Storage Co., 97 P.2d 1110, 151 Kan. 242—United Finance Plan v. Meier, 78 P.2d 904, 147 Kan. 688—Smith Bros. & Cooper v. Hanson, 187 P. 262, 106 Kan. 32.
Mo.—Helton v. Huckeba, 276 S.W.2d 78—Glick v. Arink, 58 S.W.2d 714 Calvin v. Lane, App., 297 S.W.2d 572—Spriggs v. Calumet Cab Co., App., 161 S.W.2d 741—Philippi v. New York, C. & St. L. R. Co., App., 136 S.W.2d 339.
N.H.—Bennett v. Larose, 136 A. 254, 82 N.H. 443.
Pa.—Pfordt v. Educators Beneficial Ass'n, 14 A.2d 170, 140 Pa.Super. 170.
Wash.—Parks v. Yakima Valley Production Credit Ass'n, 78 P.2d 162, 194 Wash. 380.

Reason for rule
A jury and trial judge seeing and hearing witnesses are in much better position to judge the truth of matter in controversy than is the appellate court on review.
Ala.—Republic Steel Corp. v. Stracner, 21 So.2d 690, 246 Ala. 620.
Ill.—Allanson v. Frieder, 27 N.E.2d 307, 305 Ill.App. 232.

A judgment is not reversible on appeal because testimony is unreasonable, unbelievable, and contrary to physical laws, since such questions are for trial court.
Mo.—English v. Wabash Ry. Co., 108 S.W.2d 51, 341 Mo. 550.

61.55 N.C.—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106.
Wis.—Duss v. Friess, 273 N.W. 547, 225 Wis. 406.

Truth of investigation
Conclusion of trial court is usually controlling in determining whether truth has been developed in the judicial investigation conducted before trial court and an accurate expression of that truth has been given in jury's answer.
Wis.—Markowitz v. Milwaukee Electric Railway & Light Co., 271 N.W. 380, 224 Wis. 347.

62. Ala.—Birmingham Machine & Foundry Co. v. Walpole, 79 So. 659, 202 Ala. 175.
Ariz.—Kjerschow v. Daggs, 207 P. 1089, 24 Ariz. 207.
Cal.—Bellandi v. Park Sanitarium Ass'n, 6 P.2d 508, 214 C. 472. Ortzman v. Van Der Waal, 249 P.2d 846, 114 C.A.2d 167, hearing denied 252 P.2d 7, 114 C.A.2d 167—Lewis v. Western Truck Line, 112 P.2d 747, 44 C.A.2d 455—Martin v. Angel City Baseball Ass'n, 40 P.2d 287, 3 C.A.2d 586.
Conn.—Giambartolomei v. Rocky De Carlo & Sons, Inc., 123 A.2d 760, 143 Conn. 468—Taylor v. Corkey, 111 A.2d 925, 142 Conn. 152—Marciniak v. Wauregan Mills, Inc., 93 A.2d 135, 139 Conn. 264—Delmore v. Polinsky, 42 A.2d 349, 132 Conn. 28—Dokus v. Palmer, 33 A.2d 315, 130 Conn. 247—Scarcello v. Town of Greenwich, 17 A.2d 523, 127 Conn. 464—Yasevac v. New Haven & S. L. Ry. Co., 9 A.2d 278, 126 Conn. 27—Caldwell v. Danforth, 200

tled that, where the verdict has been approved by the trial court, a court of review will not disturb the verdict on account of the insufficiency of the evidence.[63]

A. 577, 124 Conn. 468—McNulty v. Sherman Realty Corp., 194 A. 726, 123 Conn. 335—De Crosta v. City of New Haven, 176 A. 268, 119 Conn. 344—Piascik v. Railway Express Agency, 175 A. 919, 119 Conn. 277—Zint v. Wheeler, 169 A. 52, 117 Conn. 484—Coner v. Chittenden, 163 A. 472, 116 Conn. 78—Schepp v. Trotter, 160 A. 869, 115 Conn. 183—Genishevsky v. Fishbone, 145 A. 54, 109 Conn. 58—Schroeder v. City of Hartford, 132 A. 901, 104 Conn. 334.

Fla.—Miami Transit Co. v. Yellen, 22 So.2d 787, 156 Fla. 351.

Ga.—Lockwood v. Daniel, 22 S.E.2d 85, 194 Ga. 544.

Louisville & N. R. Co. v. Mayes, 95 S.E. 371, 22 Ga.App. 97.

Ill.—Appel v. Alton, G. & St. L. Traction Co., 207 Ill.App. 562.

Ind.—Kenwood Tire Co. v. Speckman, 176 N.E. 29, 92 Ind.App. 419.

La.—Breen v. Walters, 91 So. 50, 150 La. 578—Fontenelle v. Waguespack, 90 So. 662, 150 La. 316.

Newsom v. Starns, App., 142 So. 704.

Minn.—Clark v. Chicago & N. W. Ry. Co., 33 N.W.2d 484, 226 Minn. 375.

Mo.—Crews v. Sikeston Coca-Cola Bottling Co., 225 S.W.2d 812, 240 Mo.App. 993—Kribs v. Jefferson City Light, Heat & Power Co., App., 199 S.W. 261.

N.H.—Berounsky v. Ogden, 21 A.2d 838, 91 N.H. 424.

N.J.—Ross v. Metz, 82 A.2d 643, 14 N.J.Super. 571—Beggs v. Pasalano, 82 A.2d 640, 14 N.J.Super. 549.

N.M.—Reck v. Robert E. McKee General Contractors, Inc., 287 P.2d 61, 59 N.M. 492.

Ohio.—Watt v. Feuerlicht, App., 41 N.E.2d 719.

Pa.—Williams v. Southern Mut. Ins. Co. of Lancaster County, 166 A. 582, 312 Pa. 114.

R.I.—Chase v. Goyette, 133 A.2d 123—Malfetano v. United Electric Rys. Co., 191 A. 491, 58 R.I. 129—Bourre v. Texas Co., 154 A. 82, 51 R.I. 254—Oddo v. Berluti, 135 A. 405—Bova v. Scorpio, 110 A. 417, 43 R.I. 98—Wilmot v. Bartlett, 110 A. 411—Newberger v. Feldman, 94 A. 673.

S.C.—Dinkins v. Robbins, 34 S.E.2d 478, 207 S.C. 77.

S.D.—Bank of Dallas v. Wright, 196 N.W. 300, 47 S.D. 88.

Tenn.—McAmis v. Carlisle, App., 300 S.W.2d 59—Ezell v. Post Sign Co., 205 S.W.2d 13, 30 Tenn.App. 256.

Utah.—Coombs v. Perry, 275 P.2d 680, 2 Utah 2d 381—Wilson v. Oldroyd, 267 P.2d 759, 1 Utah 2d 362.

Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Va.—Danner v. Cunningham, 72 S.E. 2d 354, 194 Va. 142—Selfe v. Fuller, 18 S.E.2d 254, 179 Va. 30—Virginia Electric & Power Co. v. Steinman, 14 S.E.2d 313, 177 Va. 468—Oney v. Jamison, 9 S.E.2d 346, 175 Va. 420—Margiotta v. Aycock, 174 S.E. 831, 162 Va. 557—Virginian Ry. Co. v. Hillsman, 173 S.E. 503, 162 Va. 359—Southern Ry. Co. v. Whetzel, 167 S.E. 427, 159 Va. 796—Tabb v. Willis, 156 S.E. 556, 155 Va. 836.

Wash.—Coppo v. Van Wieringen, 217 P.2d 294, 36 Wash.2d 120.

W.Va.—Waddell v. New River Co., 93 S.E.2d 473—Wickline v. Monongahela Power Co., 81 S.E.2d 326, 139 W.Va. 380.

Wis.—Burant v. Studzinski, 282 N. W. 3, 230 Wis. 455, mandate modified on other grounds 282 N.W. 128, 230 Wis. 455—Schuster v. Bridgeman, 275 N.W. 440, 225 Wis. 547—Grasser v. Anderson, 273 N. W. 63, 224 Wis. 654—Hoppe v. Peterson, 161 N.W. 738, 165 Wis. 200—Randall v. Minneapolis, St. P. & S. S. M. Ry. Co., 156 N.W. 629, 162 Wis. 507.

4 C.J. p 864 note 32.

Effect of approval of amount see supra § 1650.

Correctness of verdict strengthened

When the judge of the trial court refuses to set aside verdict and grant a new trial, the correctness of the verdict attacked on appeal as contrary to the weight of evidence is thereby strengthened.

Ala.—Shelby County v. Oldham, 89 So.2d 106, 264 Ala. 626—Firestone Tire & Rubber Co. v. Nixon, 87 So. 2d 829, 264 Ala. 433—Louisville & N. R. Co. v. Tucker, 80 So.2d 288, 262 Ala. 570—Simpson v. Birmingham Elec. Co., 75 So.2d 111, 261 Ala. 599—Montgomery City Lines v. Davis, 74 So.2d 923, 261 Ala. 491—Gulf, M. & O. R. Co. v. Sims, 69 So.2d 449, 260 Ala. 258—National Biscuit Co. v. Wilson, 54 So. 2d 492, 256 Ala. 241—Thomas v. Rogers, 53 So.2d 736, 256 Ala. 53—Smith v. Smith, 48 So.2d 546, 254 Ala. 404.

American Life Ins. Co. v. Schrimscher, 42 So.2d 601, 34 Ala. App. 640—Montgomery City Lines v. Moore, 34 So.2d 177, 33 Ala. App. 388—Rayburn v. Crocker, 19 So.2d 554, 31 Ala.App. 542—International Harvester Co. of America v. Donaldson, 162 So. 566, 26 Ala.App. 502.

Conn.—Morris v. Granato, 50 A.2d 416, 133 Conn. 295.

Evidence in depositions

The appellate tribunal will defer to the trial court's judgment in weighing evidence produced from depositions.

Tex.—Zurich General Accident & Liability Ins. Co. v. Wood, Civ.App., 10 S.W.2d 760.

Review as on demurrer to evidence

Jury verdict, approved by the trial court, will be reviewed on appeal as on demurrer to evidence.

Va.—Norfolk & W. Ry. Co. v. Lumpkins, 144 S.E. 485, 151 Va. 173—Chesapeake & O. Ry. Co. v. Palmer, 140 S.E. 831, 149 Va. 560—Morris & Co. v. Alvis, 121 S.E. 145, 138 Va. 149.

Presumption of approval

Kan.—Gates v. Western Casualty & Surety Co., 112 P.2d 106, 153 Kan. 469.

Wis.—Jens v. Dallendorfer, 249 N.W. 283, 212 Wis. 252.

4 C.J. p 864 note 32 [a].

Burden of showing error in the verdict is on the complaining party.

R.I.—McClellan v. Rhode Island Co., 77 A. 774.

Remedy for perverse verdict is by motion for new trial.

Pa.—First Nat. Bank v. Cattie Bros. Corporation, 131 A. 731, 285 Pa. 202.

63. Ala.—City of Ozark v. Thomas, 166 So. 424, 231 Ala. 538—Sloss-Sheffield Steel & Iron Co. v. Bearden, 80 So. 42, 202 Ala. 220—Walker v. American Agricultural Chemical Co., 80 So. 36, 202 Ala. 214.

Southeastern Const. Co. v. Robbins, 27 So.2d 703, 32 Ala.App. 532, followed in Southeastern Const. Co. v. Godwin, 27 So.2d 708, 32 Ala.App. 535, certiorari denied 27 So.2d 709, 248 Ala. 371, 27 So.2d 709, 32 Ala.App. 535, certiorari denied 27 So.2d 709, 248 Ala. 372, and certiorari denied 27 So.2d 705, 248 Ala. 367—Rayburn v. Crocker, 19 So.2d 554, 31 Ala.App. 542—Mask v. Evers, 7 So.2d 95, 30 Ala. App. 420—Hospital Service Corp. v. Clifton, 196 So. 165, 29 Ala.App. 356.

Cal.—Packard v. Moore, 71 P.2d 922, 9 C.2d 571.

Fla.—Atlantic Coast Line R. Co. v. McIntosh, 198 So. 92, 144 Fla. 356—Bostwick v. Antuono, 156 So. 435, 116 Fla. 208.

Ga.—Allen v. Smith, 43 S.E.2d 150, 202 Ga. 363.

Dodson v. Knox, 81 S.E.2d 211, 89 Ga.App. 760—Ludwig v. J. J. Newberry Co., 52 S.E.2d 485, 78 Ga. App. 871—Hotel Richmond v. Wilkinson, 35 S.E.2d 536, 73 Ga.App. 36—Mathis v. Chambers, 159 S.E. 741, 43 Ga.App. 596—Whitley v. Postal Telegraph Cable Co., 144 S.E. 38, 38 Ga.App. 348—Thornton v. Mundy, 140 S.E. 920, 37 Ga.App. 476—International Cotton Mills v.

Similar statements are that, in the absence of errors of law, a verdict approved by the trial court will not be set aside when supported by the evidence,[64] or when the verdict is sustained or sup-

Mobley, 119 S.E. 467, 30 Ga.App. 781—Georgia Ry. & Power Co. v. Howell, 113 S.E. 101, 28 Ga.App. 798—Jones v. Tanner, 105 S.E. 705, 25 Ga.App. 140—Burns v. Long, 100 S.E. 38, 24 Ga.App. 167—City of Greensboro v. Robinson, 91 S.E. 244, 19 Ga.App. 199—Seaboard Air Line Ry. v. Studstill, 89 S.E. 381, 18 Ga.App. 300—Graham v. Owens, 89 S.E. 304, 18 Ga.App. 284.

Ill.—Anderson v. Cummings, 60 N.E.2d 260, 325 Ill.App. 519.

Ind.—Great Atlantic & Pacific Tea Co. v. Custin, 13 N.E.2d 542, 214 Ind. 54, rehearing denied 14 N.E.2d 538, 214 Ind. 54—American Ins. Co. of Newark, N. J. v. Paggett, 128 N.E. 468, 73 Ind.App. 677.

Kan.—Graves v. National Mut. Cas. Co., 220 P.2d 180, 169 Kan. 547—Christy v. Pember, 127 P.2d 437, 155 Kan. 665—Smith v. Derby Oil Co., 76 P.2d 846, 147 Kan. 300—Farmers' Nat. Bank of Lincoln v. Francis, 164 P. 146, 100 Kan. 225—Truman v. Kansas City, M. & O. R. Co., 161 P. 587, 98 Kan. 761.

Mich.—Weatherly v. Riley, 233 N.W. 385, 252 Mich. 476.

Mo.—Barker v. Crown Drug Co., 284 S.W.2d 559.

State ex rel. State Highway Commission v. Baumhoff, App., 93 S.W.2d 104—Platt v. Cape Girardeau Bell Telephone Co., App., 12 S.W.2d 933—Agee v. Missouri Pac. R. Co., App., 288 S.W. 992—Ridenour v. International Harvester Co. of America, App., 205 S.W. 881.

Mont.—Green v. Bohm, 211 P. 320, 65 Mont. 399—Wright v. City of Butte, 210 P. 78, 64 Mont. 362.

N.C.—Gatlin v. Norfolk-Southern R. Co., 102 S.E. 779, 179 N.C. 433.

N.D.—Beskos v. Bittis, 235 N.W. 348, 60 N.D. 521.

Pa.—Stein v. New York Life Ins. Co., 179 A. 589, 319 Pa. 225.

R.I.—Petrarca v. McLaughlin, 62 A.2d 877, 75 R.I. 1—Kelly, Inc., v. Summerfield Co., 146 A. 405—Zucchi v. Thomas, 133 A. 437—Vinciguerra v. Geanetty, 131 A. 198—Newell v. Anchor Webbing Co., 129 A. 264—Bova v. Scorpio, 110 A. 417, 43 R.I. 98—Daily v. Wilcox, 106 A. 580.

S.C.—Anderson v. Ætna Casualty & Surety Co., 178 S.E. 819, 175 S.C. 254.

Tenn.—Laman v. Craig, 206 S.W.2d 309, 30 Tenn.App. 353—Kurn v. Weaver, 161 S.W.2d 1005, 25 Tenn.App. 556.

Tex.—Zimmerman v. Hall, Civ.App., 213 S.W.2d 89, error refused no reversible error—McIver v. Gloria, Civ.App., 163 S.W.2d 890, affirmed 169 S.W.2d 710, 140 Tex. 566—Himes v. Himes, Civ.App., 55 S.W.2d 181—American Life Ins. Co. v. Moynahan, Civ.App., 36 S.W.2d 555—Federal Life Ins. Co. v. Thornton, Civ.App., 21 S.W.2d 352—Coulter v. Gulf, C. & S. F. Ry. Co., Civ.App., 286 S.W. 559.

Va.—Bott v. N. Snellenburg & Co., 14 S.E.2d 372, 177 Va. 331—Southern Ry. Co. v. Berry, 1 S.E.2d 261, 172 Va. 266—Marshall Nat. Bank & Trust Co. v. Corder, 194 S.E. 734, 169 Va. 606—Woody v. Abrams, 169 S.E. 915, 160 Va. 683.

Wash.—Nunn v. Turner, 234 P. 443, 133 Wash. 654.

Wis.—Jankovich v. Arens, 54 N.W.2d 909, 262 Wis. 210—Wagner v. Peiffer, 49 N.W.2d 739, 259 Wis. 566, followed in 49 N.W.2d 747, 259 Wis. 583—Zindell v. Central Mut. Ins. Co. of Chicago, 269 N.W. 327, 222 Wis. 575, 107 A.L.R. 1116—Jurkovic v. Chicago, M. & St. P. R. Co., 164 N.W. 993, 166 Wis. 266.

4 C.J. p 864 note 33.

Case properly submitted

(1) The supreme court of appeals will not disturb the jury's verdict, approved by the trial court, on a question properly submitted to the jury.

Va.—Marcuse v. Broad-Grace Arcade Corporation, 180 S.E. 327, 164 Va. 553, 101 A.L.R. 217.

(2) The jury's finding, supported by the trial justice on a fact issue fairly submitted, will not be disturbed on exception to refusal of new trial.

R.I.—Bopp v. McBride, 137 A. 148.

Perjury of witness

Under statute, evidence that witnesses, whose testimony established successful defense, committed perjury as to unrelated defenses is not ground for reversal after refusal of new trial by the district court.

Kan.—Pittman & Harrison Co. v. Hayes, 157 P. 1193, 98 Kan. 273.

64. Ala.—Sovereign Camp, W. O. W. v. Gay, 117 So. 78, 217 Ala. 543—St. Louis-San Francisco Ry. Co. v. Swaney, 113 So. 410, 216 Ala. 454—Watson Bros. v. Davis, 70 So. 118, 195 Ala. 158—Illinois Cent. R. Co. v. Robinson, 66 So. 519, 189 Ala. 523.

Stewart Veneer Co. v. Windham & Co., 68 So. 516, 12 Ala.App. 642.

Ariz.—City of Phœnix v. Clem, 237 P. 168, 28 Ariz. 315—Christy v. Wahlstrom, 199 P. 122, 22 Ariz. 515.

Cal.—Hunt v. United Bank & Trust Co., 291 P. 184, 210 C. 108.

Caraveo v. Pickwick Stages System, 298 P. 516, 113 C.A. 443.

Colo.—Shoichi Otsuki v. Shigeru Date Yamauchi, 26 P.2d 805, 93 Colo. 458.

Fla.—Chereton v. Lawrence Warehouse Co., 92 So.2d 410—Severson v. Boomer, 184 So. 486, 134 Fla. 719—Seaboard Air Line Ry. Co. v. Good, 84 So. 733, 79 Fla. 589—Southern Express Co. v. Stovall, 77 So. 618, 75 Fla. 1.

Ga.—Smith v. Tippins, 61 S.E.2d 138, 207 Ga. 262—Parks v. Hollis, 54 S.E.2d 132, 205 Ga. 437—Williams v. McGinnis, 159 S.E. 261, 172 Ga. 829—Parker v. Nelson, 135 S.E. 410, 163 Ga. 92—Shirley v. Byrd, 134 S.E. 316, 162 Ga. 598—Short v. Cofer, 131 S.E. 362, 161 Ga. 587—Groover v. Simmons, 129 S.E. 778, 161 Ga. 93—Banks v. Banks, 119 S.E. 519, 156 Ga. 682—Richards v. Neal, 106 S.E. 3, 151 Ga. 145—Singleton v. Marshall, 103 S.E. 229, 150 Ga. 266—Arnau v. First Nat. Bank, 100 S.E. 635, 149 Ga. 475—Morgan v. Morgan, 95 S.E. 964, 148 Ga. 90—Perry v. Sheppard, 92 S.E. 516, 147 Ga. 7—Camp v. Terrell, 88 S.E. 205, 144 Ga. 834—Louisville & N. R. Co. v. Gilbert, 86 S.E. 217, 144 Ga. 89—Morris v. Deadwyler, 84 S.E. 447, 143 Ga. 185—Gorday v. Cravey, 82 S.E. 514, 142 Ga. 114—Nicholson v. Castleberry, 82 S.E. 226, 141 Ga. 831—Stephenson v. Meeks, 81 S.E. 851, 141 Ga. 561.

Govner v. Ebenezer, 79 S.E.2d 826, 89 Ga.App. 480—Grant v. Dannals, 74 S.E.2d 119, 87 Ga.App. 389—Grady County v. Banker, 59 S.E.2d 732, 81 Ga.App. 701—Rust v. Producers Co-op. Exchange, 58 S.E.2d 435, 81 Ga.App. 260—Caldwell v. Brown, 57 S.E.2d 618, 80 Ga.App. 858—Agricultural Ins. Co. v. Crane, 47 S.E.2d 135, 76 Ga.App. 687—Vaughn v. Fairley, 44 S.E.2d 461, 75 Ga.App. 768—Fortson v. Caudell, 39 S.E.2d 579, 74 Ga.App. 276—Metropolitan Life Ins. Co. v. Milton, 38 S.E.2d 885, 74 Ga.App. 160—Brand v. City of Lawrenceville, 13 S.E.2d 214, 64 Ga.App. 357—Silver v. Sellers, 2 S.E.2d 216, 59 Ga.App. 690—Royal Arcanum v. Cannon, 199 S.E. 556, 58 Ga.App. 591—Teasley v. Richards, 195 S.E. 310, 57 Ga.App. 349—Simpson Grocery Co. v. Holley, 180 S.E. 501, 51 Ga.App. 355—McArthur v. McArthur, 179 S.E. 201, 51 Ga.App. 4—Lovelady v. Moss, 179 S.E. 168, 50 Ga.App. 652—Bussell v. Swift, 177 S.E. 277, 50 Ga.App. 148—Williams v. Brewton, 174 S.E. 720, 49 Ga.App. 210—Clark v. Sinclair Refining Co., 174 S.E. 544, 49 Ga.App. 143—Prescott v. Darby, 172 S.E. 235, 48 Ga.App. 143—Edmondson v. Wilson, 171 S.E. 320, 47 Ga.App. 693—Chapman v. Bates, 162 S.E. 880, 44 Ga.App. 752—Empire Lumber Co. v. Jackson, 158 S.E. 760, 43 Ga.

App. 866—Hardin v. Jordan, 158 S. E. 639, 43 Ga.App. 323—Frick v. McElwaney, 158 S.E. 374, 43 Ga. App. 209—Davis v. Peek, 158 S. E. 348, 43 Ga.App. 199—Waller v. Hardin, 157 S.E. 889, 43 Ga.App. 16—Head v. Johnson, 155 S.E. 499, 42 Ga.App. 164—Brooks v. Acrey, 153 S.E. 536, 41 Ga.App. 482—Cowart v. Lynn, 153 S.E. 431, 41 Ga.App. 512—Renew v. State, 153 S.E. 378, 41 Ga.App. 487—Booker v. Booker, 153 S.E. 94, 41 Ga. App. 380—Boyles v. H. N. Ramsey Motor Co., 153 S.E. 91, 41 Ga. App. 323—Louisville & N. R. Co. v. Porter, 152 S.E. 848, 41 Ga.App. 246—Pilgrims Health & Life Ins. Co. v. Smith, 152 S.E. 592, 41 Ga. App. 287—Sheppard v. Burns, 150 S.E. 434, 40 Ga.App. 496—Globe Indemnity Co. v. Valdosta Builders' Supply Co., 147 S.E. 536, 39 Ga.App. 403—Alabama Great Southern R. Co. v. McAuley, 145 S.E. 476, 38 Ga.App. 686—Mobley v. Christian, 145 S.E. 103, 38 Ga.App. 655—Hicks v. P. N. Brown Estate, 145 S.E. 99, 38 Ga.App. 659—Seaboard Air Line Ry. Co. v. Jackson, 144 S.E. 223, 38 Ga.App. 446—Mobley v. Childers, 144 S.E. 140, 38 Ga.App. 440—Shiver v. Young, 144 S.E. 129, 38 Ga. App. 409—Haverty Furniture Co. v. Jewell, 144 S.E. 46, 38 Ga.App. 395—Beavers v. Howell, 140 S.E. 525, 37 Ga.App. 351—Darby v. Thompson, 139 S.E. 130, 37 Ga.App. 79—Georgia Southern & F. Ry. Co. v. Tifton Produce Co., 139 S.E. 126, 37 Ga.App. 147—Parker v. Goff, 138 S.E. 265, 36 Ga.App. 766—Tench v. Swift & Co., 136 S.E. 287, 36 Ga. App. 182—Brock v. Hurst, 135 S. E. 320, 36 Ga.App. 57—Turner Terminal Co. v. Ashcraft-Wilkinson Co., 134 S.E. 821, 36 Ga.App. 32—Ward v. Gardner, 134 S.E. 346, 35 Ga.App. 569—Seaboard Air Line Ry. Co. v. Feingold, 134 S.E. 327, 35 Ga.App. 496—Commercial Credit Co. v. S. E. S. Motor Co., 134 S.E. 180, 35 Ga.App. 563—Cobb v. Bailey, 133 S.E. 42, 35 Ga. App. 302—Lucas v. Scott-Strother Lumber Co., 132 S.E. 645, 35 Ga.App. 249—Gross v. Higginbotham, 130 S.E. 371, 34 Ga. App. 549—Howard v. Montezuma Fertilizer Co., 130 S.E. 72, 34 Ga. App. 411—Dozier v. Thomas, 129 S. E. 798, 34 Ga.App. 445—Western & A. R. R. v. Edwards, 129 S.E. 792, 34 Ga.App. 431—Wilson v. Gray, 129 S.E. 297, 34 Ga.App. 320—Knight v. Richie, 125 S.E. 508, 33 Ga.App. 66—Stanfield v. Seaboard Air Line Ry. Co., 125 S.E. 504, 33 Ga.App. 29—American Mut. Liability Ins. Co. v. Adams, 124 S.E. 801, 32 Ga.App. 759—Tyson v. North American Fibre Products Co., 123 S.E. 917, 32 Ga.App. 490—Landrum v. Leachman, 123 S.E. 915, 32 Ga. App. 471—Sims v. Saunders, 123 S. E. 906, 32 Ga.App. 520—Rounsaville v. Lamb, 123 S.E. 723, 32 Ga.App. 403—Southern Ry. Co. v. Pair, 123 S.E. 142, 32 Ga.App. 378—Hendrick v. Foster, 123 S.E. 33, 32 Ga.App. 347—Stansall v. Columbian Nat. Life Ins. Co., 122 S.E. 733, 32 Ga. App. 87—Richardson v. Du Pree, 122 S.E. 707, 32 Ga.App. 3—O'Berry v. Davis, 121 S.E. 857, 31 Ga.App. 755—Atlas Assur. Co. v. Williams, 121 S.E. 135, 31 Ga.App. 536, affirmed 123 S.E. 697, 158 Ga. 421—Simmons v. State, 120 S.E. 20, 31 Ga.App. 155—Blalock v. Adams, 119 S.E. 465, 31 Ga.App. 68—D. Auerbach & Sons v. Ellington, Crenshaw & Horne, 119 S.E. 431, 30 Ga. App. 779—Western & A. R. R. v. Cummings, 119 S.E. 224, 30 Ga.App. 713—Graham v. Hightower, 118 S. E. 599, 30 Ga.App. 625—Monroe v. H. L. M. Warten Cotton Co., 115 S.E. 279, 29 Ga.App. 358—Bray v. Porterfield & Brown, 114 S.E. 86, 29 Ga.App. 135—Southern Ry. Co. v. Ray, 113 S.E. 590, 28 Ga.App. 792, reversed on other grounds 118 S.E. 53, 155 Ga. 579, conformed to 118 S.E. 411, 30 Ga.App. 376—Ward v. Cantrell, 113 S.E. 43, 28 Ga.App. 733—Savannah & S. Ry. v. Davis, 112 S.E. 907, 28 Ga.App. 654—Wise v. Ray, 112 S.E. 904, 28 Ga. App. 659—O'Quinn v. Edmondson, 111 S.E. 583, 28 Ga.App. 351—Center Point Gin v. Hathcock, 111 S. E. 575, 28 Ga.App. 305—Mills v. Braswell, 111 S.E. 223, 28 Ga.App. 316—Charleston & W. C. Ry. Co. v. Gay, 111 S.E. 80, 28 Ga.App. 367—White Provision Co. v. Hardman, 111 S.E. 67, 28 Ga.App. 299—Bullard v. Hightower, 111 S.E. 64, 28 Ga.App. 316—City of Ocilla v. Luke, 110 S.E. 757, 28 Ga.App. 234—Hines v. Payton, 110 S.E. 681, 28 Ga. App. 89—Belden v. Reynolds, 110 S.E. 454, 28 Ga.App. 167—Keese v. Mize, 110 S.E. 417, 27 Ga.App. 666—I. M. Scott & Co. v. Ward, 110 S. E. 319, 28 Ga.App. 49—Smith v. State, 109 S.E. 912, 27 Ga.App. 798—Hines v. Smith, 108 S.E. 818, 27 Ga.App. 406—Manning v. Dukes, 108 S.E. 817, 27 Ga.App. 408—Pelham & H. R. Co. v. Walker, 108 S.E. 814, 27 Ga.App. 398—Flynn-Harris-Bullard Co. v. Butler, 108 S.E. 805, 27 Ga.App. 419—Hearn v. Roberts, 108 S.E. 622, 27 Ga.App. 411—Welch v. Lindsey, 107 S.E. 891, 27 Ga.App. 164—Corbin v. Giddens, 107 S.E. 626, 27 Ga.App. 165—City of Gainesville v. White, 107 S.E. 571, 27 Ga.App. 16—Head v. Towaliga Falls Power Co., 107 S.E. 558, 27 Ga.App. 142—Hembree & Johnson v. Hawkins, 107 S.E. 376, 26 Ga. App. 797—Heaton v. Brock, 107 S. E. 340, 27 Ga.App. 95—Watts v. Atlanta Realty Inv. Co., 107 S.E. 169, 27 Ga.App. 587—Hines v. Vann, 106 S.E. 921, 26 Ga.App. 704—Norris v. Lynch, 106 S.E. 801, 26 Ga.App. 398—Hight Accessory Place v. Lam, 105 S.E. 872, 26 Ga.App. 163—Phaul v. Macon Ry. & Light Co., 105 S.E. 650, 26 Ga.App. 171—Southern Ry. Co. v. Smallwood, 105 S.E. 256, 26 Ga.App. 1—Sisson v. Roberts, 104 S.E. 910, 25 Ga.App. 725—Widincamp v. McCall, 104 S.E. 642, 25 Ga.App. 733—Nixon v. Williams, 103 S.E. 880, 25 Ga.App. 594—Sovereign Camp, W. O. W. v. Warner, 103 S.E. 861, 25 Ga.App. 449—Floyd v. Kaminsky, 103 S.E. 854, 25 Ga. App. 612—Laing v. Bodiford, 103 S.E. 743, 25 Ga.App. 460—Pittsburg Plate Glass Co. v. Austin, 103 S.E. 729, 25 Ga.App. 476—Stanton v. Parham, 103 S.E. 684, 25 Ga. App. 473—Belle Isle v. Kindig, 103 S.E. 269, 25 Ga.App. 293—Jones v. Stiles, 103 S.E. 175, 25 Ga.App. 289—Louisville & N. R. Co. v. Richie, 103 S.E. 98, 25 Ga.App. 259—Louisville & N. R. Co. v. Chastain, 103 S.E. 39, 25 Ga.App. 275—Ridley v. Ridley, 102 S.E. 918, 25 Ga.App. 154—Carter v. Norton, 102 S.E. 648, 25 Ga.App. 79—Happ Bros. Co. v. Montgomery, 102 S.E. 555, 25 Ga. App. 99—Savannah Electric Co. v. Falcone, 102 S.E. 551, 25 Ga.App. 103—Central of Georgia Ry. Co. v. Poole, 102 S.E. 461, 25 Ga.App. 58—Alexander v. Easterling, 102 S.E. 455, 25 Ga.App. 71—Atkinson v. Sommer, 102 S.E. 454, 25 Ga.App. 47—Hodges v. Thompson, 102 S.E. 379, 24 Ga.App. 799—Citizens' Banking Co. v. Jones, 102 S.E. 372, 24 Ga.App. 810—Motes v. Phillips, 102 S.E. 137, 24 Ga.App. 764—Wellons v. McCartha, 101 S.E. 775, 24 Ga.App. 652—Nisbet v. Vandiver, 101 S.E. 761, 24 Ga.App. 572—Hardy v. Sparks, 101 S.E. 399, 24 Ga.App. 458—Groover v. Terrell, 100 S.E. 758, 24 Ga.App. 414—Harrell v. Taylor, 100 S.E. 724, 24 Ga. App. 288—Perdue & Pace v. Hurst, 100 S.E. 647, 24 Ga.App. 239—Hutchins v. Watkins, 100 S.E. 644, 24 Ga.App. 207—Towns v. Wells, 100 S.E. 643, 24 Ga.App. 242—Whatley v. Riley, 100 S.E. 642, 24 Ga.App. 231—Rogers v. Murray, 100 S.E. 228, 24 Ga.App. 169—Presley v. State, 99 S.E. 891, 24 Ga.App. 143—Young v. Holsenbeck, 99 S.E. 140, 23 Ga.App. 640—Frey v. Thompson, 97 S.E. 753, 23 Ga.App. 160—Daniel v. Keen, 97 S.E. 444, 23 Ga.App. 105—Burkhalter v. Savannah, Guano Co., 97 S.E. 263, 23 Ga.App. 29—W. W. Kimball Co. v. Rogers, 97 S.E. 205, 22 Ga.App. 743—Harwell v. Childs, 97 S.E. 201, 22 Ga.App. 743—Southern Ry. Co. v. Sims, 97 S.E. 108, 22 Ga.App. 673—Liston v. Lake Park Bank, 97 S.E. 106, 22 Ga.App. 680—Central of Georgia Ry. Co. v. Lockett, 97 S.E. 103, 22 Ga.App. 678—Georgia Ry. & Power Co. v. Freeney, 96 S. E. 575, 22 Ga.App. 457—Jones v. Wall, 96 S.E. 344, 22 Ga.App. 513—State Life Ins. Co. v. Anderson, 96 S.E. 344, 22 Ga.App. 496—City of Griffin v. Stewart, 96 S.E. 219, 22

Ga.App. 362—Byrd v. Byrd, 96 S.E. 10, 22 Ga.App. 354—Smith v. Leverett, 96 S.E. 8, 22 Ga.App. 289—Georgia Coast & P. R. Co. v. Smith, 95 S.E. 1017, 22 Ga.App. 332—Dumas v. J. W. Stafford & Son, 95 S. E. 1009, 22 Ga.App. 365—Bond v. Bond, 95 S.E. 1005, 22 Ga.App. 366—Duane Chair Co. v. Lewallen, 95 S.E. 997, 22 Ga.App. 307—Rountree v. Brown, 95 S.E. 375, 22 Ga.App. 79—Central of Georgia Ry. Co. v. O'Kelley, 95 S.E. 323, 22 Ga.App. 35—Fulford v. Downs, 94 S.E. 1041, 21 Ga.App. 744—Abraham v. C. S. Maloof & Co., 94 S.E. 826, 21 Ga. App. 522—Price v. Rimes Bros., 94 S.E. 817, 21 Ga.App. 580—Callaway v. Pearson, 94 S.E. 817, 21 Ga.App. 565—Western & A. R. Co. v. Davis, 94 S E. 660, 21 Ga.App. 461—Roberts v. Carroll, 94 S.E. 583, 21 Ga. App. 464—Citizens' Nat. Bank of Danville, Ky. v. Fender, 94 S.E. 90, 21 Ga.App. 229—John Silvey & Co. v. Coleman Bros. & Co., 93 S.E. 531, 21 Ga.App. 47—Savannah & N. W. Ry. Co. v. McCoy, 93 S.E. 257, 20 Ga.App. 544—Cartledge v. Brandon, 93 S E. 240, 20 Ga.App. 738—Flowery Branch Gin & Oil Co. v. Shore, 93 S.E. 70, 20 Ga.App. 361—Copeland v. Ruff, 92 S E. 955, 20 Ga.App. 217—Ward & Tinsley v. Jennings, 92 S.E. 949, 20 Ga.App. 281—Atkins Nat. Bank v. Wiley, 92 S.E. 759, 20 Ga.App. 121—Citizens' & Southern Bank v. Blount, 92 S.E. 758, 20 Ga.App. 153—Gordon v. Rosenthal, 92 S.E. 290, 19 Ga.App. 795—Manly v. Oliver, 92 S.E. 288, 19 Ga.App. 783—Baldwin v. Berry, 91 S.E. 922, 19 Ga.App. 515—McCarty v. Keys, 91 S.E. 875, 19 Ga. App. 494—Smith v. Harrell, 91 S E. 578, 19 Ga.App. 369—Little Rock Furniture Mfg. Co. v. Jones & Co., 91 S.E. 239, 19 Ga.App. 177—Nessmith Lumber Co. v. Berrien County Bank, 90 S.E. 1039, 18 Ga.App. 788—Supreme Lodge of Masons' Annuity v. Gardner, 90 S.E. 986, 19 Ga.App. 58—Toole v. Jones, 90 S.E. 732, 19 Ga.App. 24—Southern Ry. Co. v. Bloch, 90 S.E. 656, 18 Ga. App. 767—Seaboard Air Line Ry. v. Barrow, 89 S.E. 383, 18 Ga.App. 261—Bell v. Reynolds, 89 S.E. 349, 18 Ga.App. 318—Desverges v. Marchant, 89 S.E. 221, 18 Ga.App. 248—Taylor v. Johnson, 89 S.E. 77, 18 Ga.App. 161—Swindle v. Waldrop, 87 S.E. 911, 17 Ga.App. 642—Commerce Coca-Cola Bottling Co. v. Farabee, 87 S.E. 720, 17 Ga.App. 487—Central of Georgia Ry. Co. v. Stamps & Co., 87 S.E. 702, 17 Ga. App. 453—Montgomery v. Savannah Electric Co., 87 S.E. 690, 17 Ga. App. 452—Blockam v. Few, 87 S.E. 607, 17 Ga.App. 440—Geiger v. Worth, 86 S.E. 938, 17 Ga.App. 361—Medlock v. Aycock, 86 S.E. 455, 16 Ga.App. 813—Ocilla Southern Ry. Co. v. Fletcher, 85 S.E. 673, 16 Ga.App. 522—Western & A. R. Co. v. Smith, 82 S.E. 906, 15 Ga.App. 289—Bainbridge Grocery Co. v. City Grocery Co., 82 S.E. 827, 15 Ga. App. 267—Southern Amusement Co. v. Neal, 82 S.E. 765, 15 Ga.App. 130—G. W. Foster & Co. v. Bennett, 82 S.E. 634, 15 Ga.App. 93—Weller v. Davis & Sanford Co., 82 S.E. 593, 15 Ga.App. 79.

Ill.—White v. Holden, 206 Ill.App. 567—Cellarius v. Junker, 200 Ill. App. 399.

Ind.—Great Atlantic & Pacific Tea Co. v. Custin, 13 N.E.2d 542, 214 Ind. 54, rehearing denied 14 N.E.2d 538, 214 Ind. 54—Indianapolis & Cincinnati Traction Co. v. Harrell, 134 N.E. 871, 192 Ind. 188—Selz, Schwab & Co. v. Gullion, 119 N.E. 209, 187 Ind. 328—American Maize Products Co. v. Widiger, 114 N.E. 457, 186 Ind. 227.

West v. Davis, 127 N.E. 806, 73 Ind.App. 649—Ft. Wayne & N. I. Traction Co. v. Smith, 107 N.E. 31, 57 Ind.App. 304.

Iowa.—Morgan v. Muench, 156 N.W. 819, 181 Iowa 719.

Kan.—Gantz v. Bondurant, 155 P.2d 450, 159 Kan. 389—Wendt v. Termier, 282 P. 588, 129 Kan. 213—De Good v. Wildman, 239 P. 748, 119 Kan. 292—Meyers v. Acme Iron Co., 175 P. 162, 103 Kan. 362—Duncan v. Kan-O-Tex Refining Co., 162 P. 288, 99 Kan. 558—Christian v. Union Traction Co., 154 P. 271, 97 Kan. 46—Frere v. Missouri, K. & T. Ry. Co., 145 P. 864, 94 Kan. 57.

Mass.—Emery v. Emery, 111 N.E. 287, 222 Mass. 439.

Minn.—Hagarty v. Phœnix Ins. Co., 203 N.W. 50, 162 Minn. 359—Wising v. Brotherhood of American Yeomen, 156 N.W. 247, 132 Minn. 303, Ann.Cas.1918A 621—Monroe v. Rehfeld, 155 N.W. 1042, 132 Minn. 81—Farmer v. Studebaker Corporation of America, 148 N.W. 285, 126 Minn. 346.

Mo.—Friedman v. United Rys. Co. of St. Louis, 238 S.W. 1074, 293 Mo. 235.

Schindler v. Producers' Grain Co., App., 237 S.W. 124—Reynolds v. Walsh-Griffith Tie & Lumber Co., App., 227 S.W. 438—Sethman v. Union Depot Bridge & Terminal R. Co., 218 S.W. 879, 203 Mo.App. 381—Smith v. Greenstone, App., 208 S.W. 628—Bruntmeyer v. Squaw Creek Drainage Dist. No. 1, 194 S. W. 748, 196 Mo.App. 360.

Mont.—Wandel v. Wandel, 248 P. 864, 76 Mont. 160—Comerford v. James Kennedy Const. Co., 145 P. 952, 50 Mont. 196.

N.H.—Stinson v. Maine Cent. R. Co., 128 A. 562, 81 N.H. 473.

N.Y.—Klein v. Hueg, 162 N.Y.S. 651.

N.C.—Collins v. U. S. Casualty Co., 90 S.E. 585, 172 N.C. 543.

N.D.—Beskos v. Bittis, 235 N.W. 348, 60 N.D. 521.

Okl.—Marlow v. Charbonnet, 126 P.2d 525, 190 Okl. 654—First Nat. Bank v. Beatty, 45 P.2d 158, 172 Okl. 47—Freeman v. King, 168 P. 436, 66 Okl. 175—Thompson v. Vaught, 160 P. 625, 61 Okl. 195—Marker v. Gillam, 154 P. 351, 54 Okl. 766—Bouton v. Carson, 152 P. 131, 51 Okl. 579.

Pa.—Carlson v. A. & P. Corrugated Box Corp., 72 A.2d 290, 364 Pa. 216—Baker v. Moore, 166 A. 362, 311 Pa. 38—John Eichleay, Jr., Co. v. Antonoplos, 164 A. 343, 309 Pa. 411, appeal dismissed Antonoplos v. John Eichleay, Jr. Co., 53 S.Ct. 528, 289 U.S. 703, 77 L.Ed. 1460—Lukens v. Wharton Ave. Baptist Church, 145 A. 587, 296 Pa. 1.

Kushie v. Western & Southern Life Ins. Co., 174 A. 585, 114 Pa. Super. 593—Frick v. City of Philadelphia, 60 Pa.Super. 283.

R.I.—Art Gravure Corporation v. Japanese Wood Novelty Co., 150 A. 497—Moore v. Budlong, 143 A. 602, 49 R.I. 392—Samson Auto Top & Equipment Co. v. Davis, 127 A. 565—Laudati v. Michele De Robbio & Sons, 117 A. 354—Jarvis v. Collins, 116 A. 198—Hanna v. Clarke, 100 A. 886—Harnedy v. Del Sesto, 100 A. 391—Marquis v. Messier, 99 A. 527, 39 R.I. 563—Greene v. Rhode Island Co., 94 A. 869, 38 R.I. 17, L.R. A.1915F 6.

S.C.—Smith v. Oliver Motor Co., 177 S.E. 791, 174 S.C. 464.

Tenn.—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512—Polk v. City of Memphis, 15 Tenn.App. 73—National Life & Accident Ins. Co. v. Alexander, 13 Tenn.App. 543—Landrum v. Callaway, 12 Tenn.App. 150.

Tex.—Blocker v. Brown Express, Civ. App., 144 S.W.2d 451, error refused—Jefferson Standard Life Ins. Co. v. Curfman, Civ.App. 127 S.W.2d 567, error dismissed.

Va.—Marks v. Ore, 45 S.E.2d 894, 187 Va. 146—Panther Coal Co. v. Looney, 40 S.E.2d 298, 185 Va. 758.

Wash.—Jensen v. Lawrence, 162 P. 40, 94 Wash. 148, reheard 166 P. 793, 97 Wash. 700—Payzant v. Caudill, 154 P. 170, 89 Wash. 250.

W.Va.—Ercole v. Daniel, 141 S.E. 631, 105 W.Va. 118.

Wis.—Tully v. Prudential Ins. Co. of America, 291 N.W. 804, 234 Wis. 549—Rebholz v. Wettengel, 248 N. W. 109, 211 Wis. 285—Green v. Loberg, 237 N.W. 274, 205 Wis. 221—Knutson v. Stangl, 220 N.W. 375, 196 Wis. 334—Lange v. Olson, 202 N.W. 361, 185 Wis. 657—Tarczek v. Chicago & N. W. Ry. Co., 156 N. W. 473, 162 Wis. 438—Wilger v. Wisconsin Traction, Light, Heat & Power Co., 152 N.W. 414, 160 Wis. 654—Kowalski v. American Candy Co., 151 N.W. 805, 160 Wis. 341—Parkes v. Lindenmann, 151 N.W. 787, 161 Wis. 101—Hewitt v. South-

ported by any evidence,[64.5] any competent evi- | dence,[64.10] any material evidence,[64.15] some evi-

ern Wisconsin Ry. Co., 150 N.W. 502, 159 Wis. 309.
4 C.J. p 864 note 34.

Ample evidence

(1) Where there was ample evidence to authorize the jury to find that plaintiff's property was destroyed by fire caused by burning sparks emitted from defendant's locomotive, and to find that presumption of defendant's negligence, arising on proof that fire was so caused, had not been completely rebutted by defendant's evidence, and such findings were approved by the trial judge, the court of appeals cannot interfere.
Ga.—Atlanta, B. & A. Ry. Co. v. McRae, 101 S.E. 587, 24 Ga.App. 537.

(2) Where the evidence presented only a fact issue, the verdict of the jury, amply supported by the evidence, and approved by the trial court, must be affirmed.
Ga.—Davis v. Davis, 33 S.E.2d 429, 199 Ga. 149.
Ind.—New York Cent. R. Co. v. Millhiser, 106 N.E.2d 453, 231 Ind. 180 rehearing denied 108 N.E.2d 57, 231 Ind. 180.
Minn.—Johnson v. Mieseler, 237 N.W. 22, 183 Minn. 477.
N.Y.—Davenport v. John Vogel, Inc., 40 N.Y.S.2d 160, 266 App.Div. 707.
Tenn.—Neal v. Midgett, 198 S.W.2d 32, 29 Tenn.App. 520—Woolard v. Ferrell, 169 S.W.2d 134, 26 Tenn. App. 197.

Different verdict not justifiable

After new trial is denied, the appellate court will not disturb the verdict for insufficiency of evidence, where a different verdict could not justifiably have been directed.
S.D.—Meylink v. Minnehaha Co-op. Oil Co., 291 N.W. 572, 67 S.D. 187—Wolff v. Stenger, 239 N.W. 181, 59 S.D. 231.

Evidence supporting verdict either way

(1) Where the evidence would have supported a verdict for either plaintiff or defendant, the jury's finding for plaintiff, approved by the trial judge, could not be controlled.
Ga.—Young v. Standard Lumber Co., 99 S.E. 138, 23 Ga.App. 639.

(2) Where different minds might reasonably have drawn different conclusions from the evidence on the issues in an action under the federal Employers' Liability Act (U.S.Comp. St. §§ 8657-8665), the jury's findings approved by the trial court will not be disturbed.
Kan.—Thompson v. Atchison, T. & S. F. Ry. Co., 177 P. 536, 104 Kan. 116.

Reasonable support

(1) The supreme court should not overthrow the determination of the judge and jury if, in any reasonable way, it may be considered to be sufficiently supported.
Wis.—Madison Trust Co. v. Hellecksen, 257 N.W. 691, 216 Wis. 443, 96 A.L.R. 992.

(2) A verdict which the evidence reasonably tends to support and which has been approved by the trial court will not be disturbed on appeal.
Okl.—Krieger v. Marshall, 292 P.2d 379—Valley Steel Products Co. v. Long, 282 P.2d 232—Turner v. Bruner, 263 P.2d 191—Smith v. Barry, 258 P.2d 165, 208 Okl. 606—Jones v. Home Ins. Co. of N. Y., 255 P.2d 489, 208 Okl. 276—Harley v. Jobe, 249 P.2d 468, 207 Okl. 296—Newsom v. Medis, 239 P.2d 784, 205 Okl. 574—R. & S. Auto Service v. McGill, 238 P.2d 1089, 205 Okl. 495—Sarkeys v. Marlow, 235 P.2d 676, 205 Okl. 15—Carpenters' Local 1686 v. Wallis, 237 P.2d 905, 205 Okl. 285—Jordan v. Lake, 234 P.2d 405, 205 Okl. 22—State ex rel. Com'rs of Land Office v. Du Bose, 198 P.2d 646, 200 Okl. 596—H. F. Wilcox Oil & Gas Co. v. Jamison, 190 P.2d 807, 199 Okl. 691—Rexroat v. Bettes Funeral Home, 44 P.2d 879, 172 Okl. 261—Chicago, R. I. & P. Ry. Co. v. Brooks, 11 P.2d 142, 155 Okl. 53, certiorari denied Chicago, R. I. & P. Ry. Co. v. Squire, 52 S.Ct. 502, 286 U.S. 552, 76 L.Ed. 1287—Dean v. Anson, 261 P. 174, 128 Okl. 23—Schoonover v. Beveridge, 233 P. 728, 108 Okl. 114—National Bond & Investment Co. v. Dickens, 230 P. 911, 104 Okl. 236—City of Wilson v. Fulton, 229 P. 136, 100 Okl. 228—Ranney-Davis Mercantile Co. v. Morris, 223 P. 887, 98 Okl. 13—Jensen v. Harless, 209 P. 740, 87 Okl. 197—Poos v. Kelly, 191 P. 600, 79 Okl. 118—Chicago, R. I. & P. Ry. Co. v. Pruitt, 170 P. 1143, 67 Okl. 219.
Tenn.—Murray v. Patterson, 72 S.W. 2d 558, 18 Tenn.App. 30.
Va.—Abrams v. Winesburg, 182 S.E. 233, 165 Va. 241—Norfolk & W. Ry. Co. v. Richmond Cedar Works, 170 S.E. 5, 160 Va. 790.
4 C.J. p 864 note 34 [e], [f].

Rule inapplicable to parol trust

The rule that the appellate court will not interfere with the jury's verdict, approved by the trial judge, if sustained by any evidence, is inapplicable in weighing evidence of parol trust.
Tenn.—Hunt v. Hunt, 80 S.W.2d 666, 169 Tenn. 1.

64.5 Ga.—McKinney v. Woodard, 94 S.E.2d 620, 94 Ga.App. 340—Goodrum v. Henton, 92 S.E.2d 590, 93 Ga.App. 592—Richardson v. Barrett, 84 S.E.2d 120, 90 Ga.App. 714—West Lumber Co. v. Schnuck, 69 S.E.2d 577, 85 Ga.App. 385—Atlanta & W. P. R. Co. v. Creel, 47 S.E.2d 762, 77 Ga.App. 77—Southeastern Greyhound Lines v. Suits, 190 S.E. 417, 55 Ga.App. 371—Saul v. Carson Naval Stores Co., 187 S.E. 392, 53 Ga.App. 571.
Tex.—Woodard v. Tatum, Civ.App., 277 S.W.2d 943.

64.10. Ga.—Associated Mutuals v. Pope Lumber Co., 37 S.E.2d 393, 200 Ga. 487.
Okl.—Herron v. Spencer, 231 P.2d 691, 204 Okl. 481—Morrison v. Cobb, 77 P.2d 675, 182 Okl. 338—Mid-Continent Life Ins. Co. v. Wylie, 72 P. 2d 778, 181 Okl. 200.

64.15 Ga.—J. R. Watkins Co. v. Ellington, 29 S.E.2d 300, 70 Ga.App. 722.
Ill.—Sundquist v. Hardware Mut. Fire Ins. Co. of Minnesota, 16 N.E. 2d 771, 296 Ill.App. 510, affirmed 21 N.E.2d 297, 371 Ill. 360, 124 A.L.R. 1375.
Okl.—Britt v. Doty, 161 P.2d 521, 195 Okl. 620—Farmers' Union Co-op. Gin Co. v. Squyres, 145 P.2d 949, 193 Okl. 578—Culver v. Bayliss, 141 P.2d 578, 193 Okl. 123—Woodmen of the World Life Ins. Soc. v. Chapman, 113 P.2d 600, 189 Okl. 69—Griffith v. McBride, 108 P.2d 109, 188 Okl. 227—Walker v. Oklahoma Natural Gas Co., 107 P.2d 997, 188 Okl. 241—Wells v. Mayer, 91 P.2d 784, 185 Okl. 355.
Tenn.—Hime v. Sullivan, 221 S.W.2d 893, 188 Tenn. 605.
Gemignani v. Partee, App., 302 S.W.2d 821—Sadler v. Middle Tenn. Elec. Membership Corp., 259 S.W. 2d 544, 36 Tenn.App. 495—Rogers v. McDaniel, 253 S.W.2d 36, 36 Tenn.App. 189—Laman v. Craig, 206 S.W.2d 309, 30 Tenn.App. 353—King v. Leeman, 204 S.W.2d 384, 30 Tenn.App. 206—Parker v. West, 199 S.W.2d 928, 29 Tenn.App. 642—Bennett v. Duffle, 198 S.W.2d 287, 29 Tenn.App. 526—Farmers Union Bank of Henning v. Johnson, 181 S.W.2d 369, 27 Tenn.App. 342—Davis v. Mitchell, 178 S.W.2d 889, 27 Tenn.App. 182—Young v. City of Nashville, 176 S.W.2d 877, 26 Tenn.App. 658—General Contract Purchase Corp. v. Conner, 126 S.W. 2d 347, 23 Tenn.App. 1—Anderson v. Carter, 118 S.W.2d 891, 22 Tenn. App. 118—Colonial Baking Co. v. Acquino, 103 S.W.2d 613, 20 Tenn. App. 695—Town of Dickson v. Stephens, 96 S.W.2d 201, 20 Tenn. App. 195—Stone v. O'Neal, 90 S.W. 2d 548, 19 Tenn.App. 512—Nichols v. Anderson-Clayton Co., 74 S.W. 2d 382, 18 Tenn.App. 160—Crigger v. Mutual Ben. Health & Accident Ass'n, 69 S.W.2d 907, 17 Tenn.App. 636—Warren v. Warren, 11 Tenn. App. 338.

dence,[64.20] credible evidence,[64.25] substantial evidence,[64.30] or sufficient evidence.[64.35] It has otherwise been stated that a verdict approved by the trial court will not be disturbed on appeal when not against the weight of the evidence;[65] where there is sufficient evidence to go to the jury;[66] where the sufficiency of the evidence depends on the credibility of the witnesses;[67] where the evidence is such that reasonable men might have come to the same conclusion;[68] or where there was no error of law,

Va.—Lawson v. Darter, 160 S.E. 74, 157 Va. 284.
Wis.—Thoma v. Class Mineral Fume Health Bath Co., 12 N.W.2d 29, 244 Wis. 347.

64.20 Ga.—Thompson v. Thompson, 44 S.E.2d 260, 202 Ga. 683.
Reville v. Sullivan, 90 S.E.2d 609, 93 Ga.App. 23—Tucker v. Baker, 77 S.E.2d 92, 88 Ga.App. 580—McFarland v. Bradley, 60 S.E.2d 498, 82 Ga.App. 223—Southern Bell Tel. & Tel. Co. v. Bailey, 57 S.E.2d 837, 81 Ga.App. 20—Western & A. R. R. v. Fowler, 47 S.E.2d 874, 77 Ga.App. 206.
Okl.—Kurn v. Bayless, 172 P.2d 779, 197 Okl. 521.

64.25 Ala.—Lamar Life Ins. Co. v. Kemp, 1 So.2d 760, 30 Ala.App. 138.
Va.—Lloyd v. Andrews, 63 S.E.2d 734, 192 Va. 41—Whitfield v. Cox, 52 S.E.2d 72, 189 Va. 219—Ross v. Schneider, 27 S.E.2d 154, 181 Va. 931—Ramey v. Ramey, 25 S.E.2d 264, 181 Va. 377—Sanders v. Newsome, 19 S.E.2d 883, 179 Va. 582—Fruit Growers Express Co. v. Hulfish, 3 S.E.2d 160, 173 Va. 27—Johnston v. Kincheloe, 180 S.E. 540, 164 Va. 370.
Wis.—Widness v. Central States Fire Ins. Co., 47 N.W.2d 879, 259 Wis. 159—Wallin v. Sutherland, 31 N.W.2d 178, 252 Wis. 149—Juneau Store Co. v. Badger Mut. Fire Ins. Co., 257 N.W. 144, 257 Wis. 342—Sharkey v. Shurman, 174 N.W. 912, 170 Wis. 350.

64.30 Ala.—American Life Ins. Co. v. Schrimscher, 42 So.2d 601, 34 Ala.App. 640.
Ariz.—Scott v. Scott, 252 P.2d 571, 75 Ariz. 116—Dunseath v. Tucson Golf & Country Club, 74 P.2d 43, 51 Ariz. 14.
Ark.—Duke v. Life & Cas. Ins. Co. of Tenn., 238 S.W.2d 631, 218 Ark. 686—Stanley v. Calico Rock Ice & Elec. Co., 205 S.W.2d 841, 212 Ark. 385—East Arkansas Lumber Co. v. Moss, 52 S.W.2d 49, 186 Ark. 30—Kansas City Southern Ry. Co. v. Biggs, 28 S.W.2d 68, 181 Ark. 818—Arkla Sash & Door Co. v. Fair, 5 S.W.2d 308, 176 Ark. 1203—Chalfant v. Haralson, 3 S.W.2d 38, 176 Ark. 375—Fowler v. Hammett, 258 S.W. 392, 162 Ark. 307.
Cal.—Treadwell v. Nickel, 228 P. 25, 194 C. 243.
Darnold v. Voges, 300 P.2d 255, 143 C.A.2d 230—Casper v. City of Los Angeles, 295 P.2d 452, 140 C.A. 2d 433.
Fla.—Dowling v. Loftin, 72 So.2d 283—Maule Industries, Inc. v. Messana, 62 So.2d 737—Neale v. Reed, 158 So. 87, 117 Fla. 637—Lincoln Fire Ins. Co. of New York v. Hurst, 150 So. 722, 112 Fla. 350—Putnam Lumber Co. v. Tompkins, 150 So. 712, 112 Fla. 635—Langston Const. Co. v. Hillsborough County, 143 So. 771, 106 Fla. 834.
Kan.—Stecklein v. Stecklein, 247 P. 449, 121 Kan. 490—Soptich v. Sonken Galamba Iron & Metal Co., 216 P. 831, 114 Kan. 19—McCleery-Dudley Lumber Co. v. Workman, 185 P. 288, 105 Kan. 505.
Mo.—Capra v. Phillips Inv. Co., 302 S.W.2d 924—Sakowski v. Baird, 69 S.W.2d 649, 334 Mo. 951—Vitale v. Duerbeck, 62 S.W.2d 559, 332 Mo. 1184—Manley v. Wells, 292 S.W. 67.
Stiel v. Turner Real Estate Co., App., 249 S.W. 107—Coyne v. Golland, App., 243 S.W. 376.
Nev.—Johnson v. International of United Brotherhood of Carpenters and Joiners of America, 16 P.2d 658, 54 Nev. 332, rehearing denied 18 P.2d 448, 54 Nev. 332.
S.D.—Meylink v. Minnehaha Co-op. Oil Co., 291 N.W. 572, 67 S.D. 187—Wolff v. Stenger, 239 N.W. 181, 59 S.D. 231.
Tenn.—Simpkins v. Manners, 236 S. W.2d 984, 34 Tenn.App. 244.
Va.—Drumwright v. Walker, 189 S.E. 310, 167 Va. 307—Poole v. Kelley, 173 S.E. 537, 162 Va. 279.
Wash.—Voelker v. Cleveland, 10 P. 2d 561, 168 Wash. 38.
Wyo.—Long v. Forbes, 136 P.2d 242, 58 Wyo. 533.
4 C.J. p 864 note 34 [d].

64.35 Fla.—308 East 79th St. Corporation v. Favorite, 149 So. 625, 111 Fla. 234—Lyle v. Semmes, 88 So. 301, 81 Fla. 460.
Ga.—Smith v. Merck, 57 S.E.2d 326, 206 Ga. 361.
Moffett v. McCurry, 67 S.E.2d 807, 84 Ga.App. 853—Hartley v. Strowbridge, 58 S.E.2d 249, 81 Ga. App. 155.
Ill.—Kettlewell v. Prudential Ins. Co. of America, 122 N.E.2d 817, 4 Ill.2d 383—City of Monticello v. Le Crone, 111 N.E.2d 338, 414 Ill. 550.
Pa.—Henigin v. Booth & Flinn, 161 A. 871, 307 Pa. 528.
R.I.—Leahy v. Hackett, 163 A. 542—Semonian v. Panoras, 116 A. 417, 44 R.I. 165, 20 A.L.R. 83, reargument denied 117 A. 235, 20 A.L.R. 83—Di Biasio v. Ross, 110 A. 415, 43 R.I. 78—Kerr Bros. v. Armstrong, 110 A. 416—Ross v. Snell, 109 A. 85.
Tenn.—McAmis v. Carlisle, App., 300 S.W.2d 59.
Va.—Otey v. Blessing, 197 S.E. 409, 170 Va. 542—Ætna Ins. Co. v. Carpenter, 196 S.E. 641, 170 Va. 312.
Wis.—Kline v. Thompson, 240 N.W. 128, 206 Wis. 464.
4 C.J. p 864 note 34 [b].

65. Ga.—Coulter v. Couch, 170 S.E. 302, 47 Ga.App. 283—Jenkins v. Cook, 121 S.E. 705, 31 Ga.App. 527—Smoyer v. Jarman, 114 S.E. 924, 29 Ga.App. 305—Morehead v. McGibony, 114 S.E. 912, 29 Ga.App. 265—Norton v. Anderson, 100 S.E. 638, 24 Ga.App. 267.
4 C.J. p 865 note 35.

66. Ga.—Horton v. Johnson, 15 S.E. 2d 605, 192 Ga. 338—Pope v. Bennett, 121 S.E. 333, 157 Ga. 357.
City of Dalton v. Phillips, 190 S.E. 46, 55 Ga.App. 287—Salsbury v. McNure, 116 S.E. 666, 30 Ga.App. 81.
Tenn.—East Tennessee Natural Gas Co. v. Peltz, 270 S.W.2d 591, 38 Tenn.App. 100—Act-O-Lane Gas Service Co. v. Hall, 248 S.W.2d 398, 35 Tenn.App. 500.
4 C.J. p 865 note 36.

Prima facie case
The finding of the jury on evidence making a prima facie case, confirmed by the trial judge, is conclusive.
Mont.—De Sandro v. Missoula Light & Water Co., 157 P. 641, 52 Mont. 333.
Tex.—Portilla Drilling Co. v. Miller, Civ.App., 144 S.W.2d 936, error dismissed, judgment correct.
Wash.—Heggen v. Humphries Transport, 167 P.2d 432, 24 Wash.2d 771.

67. Minn.—Morrissey v. Guaranty Sav., etc., Assoc., 84 N.W. 219, 81 Minn. 426.
Pa.—In re Paxson, 73 A. 1114, 225 Pa. 204.
Va.—Equitable L. Assur. Soc. v. Kitts, 63 S.E. 455, 109 Va. 105.
4 C.J. p 865 note 37.

68. Ala.—Mobile Light & R. Co. v. Logan, 106 So. 147, 213 Ala. 672.
Ariz.—Scott v. Scott, 252 P.2d 571, 75 Ariz. 116—Crozier v. Noriega, 233 P. 1104, 27 Ariz. 409.
Cal.—Himes v. Daniel, 15 P.2d 791, 127 C.A. 327—Crooks v. White, 290 P. 497, 107 C.A. 304.
Fla.—Town of De Funiak Springs v. Perdue, 68 So. 234, 69 Fla. 326.
Tenn.—Patillo v. Gambill, 124 S.W. 2d 272, 22 Tenn.App. 485.
Va.—Dodd v. Coakley, 79 S.E.2d 648, 195 Va. 554.
4 C.J. p 864 note 34 [g].

as in the rulings or instructions of the trial court.[69]

So it has been held that the verdict should be upheld unless a clear case of error is made out;[70] unless reversal is necessary to prevent injustice;[71] unless it is apparent that the verdict was due to passion, prejudice, misconduct, or mistake on the part of the jury,[72] or to a gross abuse of discretion on the part of the trial court;[73] unless there is a total or substantial failure of proof on all or some material points in the case;[74] unless it would have been the duty of the trial court on proper request to direct a verdict for the party complaining of the decision;[75] unless the great weight of the evidence is against it and that weight so re-enforced by all reasonable probabilities and inferences that it becomes overwhelming;[76] or unless the supporting evidence was incredible,[76.5] because inconsistent with natural laws.[77] The fact that the trial or appellate court, if

69. Ga.—Moore v. Smith, 50 S.E.2d 219, 78 Ga.App. 49—Frick Co. v. McElwaney, 158 S.E. 374, 43 Ga. App. 209—Davis v. Peek, 158 S.E. 348, 43 Ga.App. 199—Smith v. Renfroe, 153 S.E. 84, 41 Ga.App. 393—Pilgrims Health & Life Ins. Co. v. Smith, 152 S.E. 592, 41 Ga.App. 287—National Supply Co. v. Bibb Brick Co., 133 S.E. 643, 35 Ga.App. 470—Goode v. Powell, 95 S.E. 738, 22 Ga.App. 239.

R.I.—Wood v. Essex, 94 A. 666, 38 R.I. 21.

Wis.—Green v. Loberg, 237 N.W. 274, 205 Wis. 221.

4 C.J. p 865 note 39.

70. Ala.—Acme Lumber Co. v. Shaw, 10 So.2d 285, 243 Ala. 421.

Cal.—Perry v. A. Paladini, Inc., 264 P. 580, 89 C.A. 275—Towne v. Godeau, 232 P. 1010, 70 C.A. 148.

Ga.—North Carolina Mutual & Provident Ass'n v. Ross, 171 S.E. 304, 47 Ga.App. 692.

Kan.—Manhardt v. Sheridan's Estate, 92 P.2d 76, 150 Kan. 264.

La.—Beattie v. Dimitry, 110 So. 759, 162 La. 571—Reynaud v. Fabacher, 74 So. 167, 140 La. 839.

Futrell v. Pacific Indem. Co., App., 79 So.2d 903—Smith v. Bankston, App., 75 So.2d 880—Moore v. Louisiana & Arkansas Ry. Co., 3 La.App. 731.

Mich.—Finch v. W. R. Roach Co., 1 N.W.2d 46, 299 Mich. 703.

Minn.—Katiaba v. Pfeifer, 56 N.W. 2d 725, 238 Minn. 298.

R.I.—Hayward v. Girard, 115 A.2d 687—Grassi v. Gomberg, 102 A.2d 523, 81 R.I. 302—Stocking by Monteiro v. Hall, 100 A.2d 408, 81 R. I. 168, reargument denied 100 A. 2d 850, 81 R.I. 168—Perry v. New England Transp. Co., 45 A.2d 481, 71 R.I. 352—Enterprise Garnetting Co. v. Forcier, 35 A.2d 1, 69 R.I. 355—Sullivan v. Caruso, 29 A.2d 539, 68 R.I. 476—Baldwin v. Higgins, 27 A.2d 345, 68 R.I. 324—Floyd v. Turgeon, 27 A.2d 330, 68 R.I. 218—Hayman v. Union Corp., 17 A.2d 30, 66 R.I. 11—Neves v. Nemtzow, 12 A.2d 660, 64 R.I. 395—Rich v. Tanenbaum, 198 A. 240, 60 R.I. 254—Peters v. United Electric Rys. Co., 189 A. 901, 57 R.I. 311—Industrial Trust Co. v. Feuer, 189 A. 42, 57 R.I. 243—Gallo v. Simpson Spring Co., 181 A. 915, 55 R.I. 410—Scherer v. J. Sarubi Co., 181 A. 556—Affleck v. Kean, 148 A. 324, 50 R.I. 405—Perry v. McGuckian, 121 A. 431, 45 R.I. 259.

S.C.—Swift & Co. v. Callaham, 131 S.E. 146, 133 S.C. 353—Hair v. Winnsboro Bank, 88 S.E. 26, 103 S.C. 343.

Tex.—Angelina County Lumber Co. v. Mast, Civ.App., 208 S.W. 360.

Utah.—Toomer's Estate v. Union Pac. R. Co., 239 P.2d 163, 121 Utah 37.

Va.—Riddle v. Barksdale, 75 S.E.2d 507, 194 Va. 766—Norfolk & P. B. L. R. Co. v. Freeman, 64 S.E.2d 732, 192 Va. 400—Armstrong v. Rose, 196 S.E. 613, 170 Va. 190.

Wis.—Hoppe v. Peterson, 161 N.W. 738, 165 Wis. 200.

4 C.J. p 865 note 40.

71. Ala.—Kraas v. American Bakeries Co., 164 So. 565, 231 Ala. 278.

Minn.—Siemers v. United Ben. Life Ins. Co., 75 N.W.2d 605, 246 Minn. 459.

Pa.—Bochar v. J. B. Martin Motors, Inc., 97 A.2d 813, 374 Pa. 240.

R.I.—Catrone v. Rhode Island Co., 108 A. 417—Smith v. Rhode Island Co., 98 A. 1, 39 R.I. 146.

Va.—Tabb v. Willis, 156 S.E. 556, 155 Va. 836.

72. Cal.—Machado v. Harm, 297 P. 626, 112 C.A. 748.

Conn.—Amellin v. Leone, 159 A. 293, 114 Conn. 478—Baril v. New York, N. H. & H. R. Co., 96 A. 164, 90 Conn. 74.

Fla.—Seaboard Air Line Ry. Co. v. Good, 84 So. 733, 79 Fla. 589—Southern Express Co. v. Stovall, 77 So. 618, 75 Fla. 1.

Ga.—Seaboard Air Line Ry. v. Arrant, 87 S.E. 714, 17 Ga.App. 489.

Ill.—Public Service Co. of Northern Illinois v. Rietveld, 150 N.E. 403, 320 Ill. 56.

Kan.—Sams v. Commercial Standard Ins. Co., 139 P.2d 859, 157 Kan. 278.

Mo.—Burston v. Fennewald, 2 S.W. 2d 824, 222 Mo.App. 128—Sitts v. Daniel, App., 284 S.W. 857.

N.Y.—Levine v. Spiegel, 153 N.Y.S. 827.

N.C.—Cook v. Highland Hospital, 84 S.E. 352, 168 N.C. 250, L.R.A.1914D, 611, Ann.Cas.1917C 158.

R.I.—Wood v. Essex, 94 A. 666, 38 R. I. 21.

4 C.J. p 865 note 41.

Remarks not indicating prejudice

Remarks of the trial court, in passing on a motion for a new trial, that it thought a certain remark of plaintiffs' counsel was very unfortunate, and that it must have had some effect upon the jury, and that ordinarily remarks of that sort react on the person making them, but that it did not in this case, in view of the verdict returned, were held not to warrant conclusion that the verdict was the result of passion and prejudice.

Wash.—De Honey v. Gjarde, 236 P. 290, 134 Wash. 647.

73. Conn.—Amellin v. Leone, 159 A. 293, 114 Conn. 478.

R.I.—Scherer v. J. Sarubi Co., 181 A. 556.

Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Wash.—Fleming v. Buerkli, 1 P.2d 915, 164 Wash. 136.

4 C.J. p 865 note 42.

74. Ala.—Cooke v. Embry, 123 So. 27, 219 Ala. 623.

Henderson Land & Lumber Co. v. Brown, 78 So. 716, 16 Ala.App. 453.

Mo.—Grange v. Chicago & E. I. Ry. Co., 69 S.W.2d 955, 334 Mo. 1040.

N.H.—Davis v. Wade Motor Sales, 117 A.2d 924, 100 N.H. 12.

Va.—Norfolk & P. B. L. R. Co. v. Freeman, 64 S.E.2d 732, 192 Va. 400—U. S. Fidelity & Guaranty Co. v. Country Club of Virginia, 105 S.E. 686, 129 Va. 306.

W.Va.—Faull v. Abbot, 73 S.E.2d 727, 137 W.Va. 777.

4 C.J. p 865 note 43—66 C.J. p 1539 note 73.

75. Ind.—Cleveland, etc., R. Co. v. Stewart, 68 N.E. 170, 161 Ind. 242.

76. Ill.—City of East St. Louis v. American Asphalt Roof Corporation, 162 N.E. 117, 331 Ill. 58.

Miss.—Mississippi Power & Light Co. v. Smith, 153 So. 376, 169 Miss. 447.

4 C.J. p 865 note 45.

76.5 Cal.—Cucuk v. Payne, 296 P.2d 7, 140 C.A.2d 881.

Va.—Kirby v. Moehlman, 30 S.E.2d 548, 182 Va. 876.

77. Mo.—Hurley v. Missouri, etc., R. Co., 156 S.W. 57, 170 Mo.App. 235.

4 C.J. p 865 note 46.

sitting as a jury, would have rendered a different verdict will not authorize setting aside the verdict.[78]

Necessity and sufficiency of approval of verdict by trial court. There must be sufficient approval of the verdict by the trial court in order to preclude inquiry into the evidence by the appellate court,[78.5] and it has been held that a verdict in order to stand must have the independent approval of the trial court and if it does not have such approval the verdict should be set aside.[78.10] In this respect, the action of the trial judge in denying a motion for a new trial may constitute a sufficient approval of the verdict so as to give it persuasive force on appeal.[78.20] On the other hand, the appellate court

78. Ala.—Hatfield v. Riley, 74 So. 380, 199 Ala. 388.
Ariz.—Burton v. Valentine, 141 P.2d 847, 60 Ariz. 578, 61 Ariz. 28.
Ark.—Baldwin v. Wingfield, 85 S.W. 2d 689, 191 Ark. 129.
Fla.—308 East 79th St. Corporation v. Favorite, 149 So. 625, 111 Fla. 234—Parrish v. Clark, 145 So. 848, 107 Fla. 598—Southern Express Co. v. Stovall, 77 So. 618, 75 Fla. 1.
Minn.—Rees v. Nyberg, 190 N.W. 482, 153 Minn. 358—Van Chappellen v. Chicago, St. P., M. & O. Ry. Co., 148 N.W. 104, 126 Minn. 251.
Mont.—Kelly v. Kipp, 250 P. 819, 77 Mont. 110.
Va.—Wash v. Holland, 183 S.E. 236, 166 Va. 45.
4 C.J. p 865 note 47.

78.5 R.I.—Raleigh v. Fitzpatrick, 197 A. 387, 60 R.I. 79.

Approval held shown

(1) In general.

Tenn.—General Contract Purchase Corp. v. Conner, 126 S.W.2d 347, 23 Tenn.App. 1.

(2) The statement of the trial justice that, "upon the whole, it cannot be said that the jury were not warranted in finding for the plaintiff," was held a distinct approval of the verdict.

R.I.—Greene v. Rhode Island Co., 94 A. 869, 38 R.I. 17, L.R.A.1915F 6.

Approval held not shown

(1) In general.

R.I.—Costello v. Rose, 105 A.2d 803, 82 R.I. 88.

(2) In a personal injury case, the trial court's judgment was held not to show such approval of the verdict as to permit the judgment thereon to stand.

Kan.—Stroup v. Northeast Oklahoma R. Co., 253 P. 242, 122 Kan. 587, rehearing denied 254 P. 396, 123 Kan. 206.

(3) Where, notwithstanding the verdict for plaintiffs in a personal injury case, there was judgment for defendant, the verdict cannot be approved on appeal, when it appears that the trial judge was dissatisfied therewith because he believed the law and facts were against plaintiffs.

Tenn.—Hurt v. Yazoo & M. V. R. Co., 205 S.W. 437, 140 Tenn. 623.

78.10 Kan.—Cole v. Lloyd, 166 P.2d 577, 161 Kan. 150—Underhill v. Motes, 146 P.2d 374, 158 Kan. 173—Gates v. Western Casualty & Surety Co., 112 P.2d 106, 153 Kan. 469—Gould v. Hutchinson Oil & Gas Co., 95 P.2d 301, 150 Kan. 516—Posey v. Johnson, 67 P.2d 598, 145 Kan. 742.

Action by appellate court

Trial judge has duty to grant new trial if he is not satisfied that evidence preponderates in favor of verdict and appellate court cannot act on motion for new trial until trial judge has in fact approved the verdict.

Tenn.—Hime v. Sullivan, 221 S.W.2d 893, 188 Tenn. 605—State ex rel. Richardson v. Kenner, 109 S.W.2d 95, 172 Tenn. 34.

McLaughlin v. Broyles, 255 S.W. 2d 1020, 36 Tenn.App. 39—Davis v. Mitchell, 178 S.W.2d 889, 27 Tenn. App. 182—Allen v. Melton, 99 S.W. 2d 219, 20 Tenn.App. 387—Tennessee Central Ry. Co. v. Melvin, 5 Tenn.App. 85.

78.20 Ill.—Whitely v. Arlington Farms, 54 N.E.2d 226, 322 Ill.App. 182—Snedden v. Illinois Cent. R. Co., 234 Ill.App. 234.

Mo.—United Terminals & Forwarding Co. v. Hunter, App., 167 S.W.2d 672.

N.H.—Perry v. Faulkner, 120 A.2d 804, 100 N.H. 125.

R.I.—Smith v. Tompkins, 161 A. 221, 52 R.I. 434—Edward Wilkinson & Co. v. Universal Safety Ash Tray Co., 133 A. 658.

Tenn.—General Contract Purchase Corp. v. Conner, 126 S.W.2d 347, 23 Tenn.App. 1.

Accompanying remarks

(1) Where, in addition to trial judge's action in overruling motion for new trial, record reflects trial judge's observations made in disposing of motion, such observations may be looked to for purpose of determining whether overruling of motion in reality evidenced a satisfaction with verdict in sense that there was a decision of all questions necessary to be decided by trial judge made on a consideration of all pertinent factors.

Tenn.—Southern Housing Co. v. Morton, 242 S.W.2d 843, 35 Tenn.App. 109—Davis v. Mitchell, 178 S.W.2d 889, 27 Tenn.App. 182.

(2) Where trial judge sees fit to approve verdict without giving reasons on motion for new trial, his satisfaction therewith is adequately indicated, but, if he comments on evidence, the court of appeals must determine whether trial judge has passed on the issues and is satisfied with verdict.

Tenn.—McLaughlin v. Broyles, 255 S.W.2d 1020, 36 Tenn.App. 391—Central Truckaway System v. Waltner, 253 S.W.2d 985, 36 Tenn. App. 202.

(3) An order denying a new trial, with an explanation that no legal question was involved such as required new trial in previous instance, showed the verdict was approved by the judge.

Ga.—Seaboard Air Line Ry. Co. v. Benton, 159 S.E. 717, 43 Ga.App. 495.

(4) A statement expressing doubt in denying a new trial could be interpreted as approving the verdict, which could not be set aside as not approved.

Ga.—A. M. Robinson Co. v. Rice, 148 S.E. 542, 39 Ga.App. 785.

La.—Cimo v. Karstendiek, App., 173 So. 548.

N.Y.—Harris v. Brooklyn & Queens Transit Corp., 291 N.Y.S. 963, 249 App.Div. 749.

(5) Where, in passing upon the motion for a new trial, the trial judge remarked that it was a close case and twenty-four jurors had passed upon it, finding for plaintiff, it was held that the remarks were insufficient to show that the trial judge did not approve of the verdict for plaintiff.

Tenn.—P. & B. Storage & Transfer Co., Inc., v. Lane, 11 Tenn.App. 237.
4 C.J. p 864 note 32 [d].

Denial of motion held not controlling

(1) While the denial of a motion for a new trial by the trial justice is entitled to, and is usually given much consideration on, appeal, it is not controlling where all that the justice was able to say as to the preponderance of the evidence was, "I cannot say that there was no basis for the jury's finding."

R.I.—Barrett v. Rhode Island Co., 116 A. 199, 44 R.I. 147.

(2) The trial justice's refusal to disturb the verdict on the ground that there was testimony on which it could be based, whether the court would reach the same conclusion or not, was disregarded, and the case was considered on the evidence alone by the supreme court, because of the uncertainty as to whether the trial justice approved the verdict.

may consider the evidence without giving persuasive force to the verdict where the trial judge did not properly perform his duty with respect to full and independent consideration of the evidence in passing on the motion for a new trial,[78.25] or where the opinion of the trial judge in approving or disapproving the verdict was not based on evidence or valid reason appearing in the record;[78.30] but in such circumstances the appellate court will not set the verdict aside unless the evidence strongly preponderates against it.[78.35]

(2) Verdict against Weight of Evidence

The determination of the jury as to the weight of the evidence, supported by the approval of the trial judge, must prevail on appeal and the appellate court may not disturb the verdict merely because it appears to be against the weight of the evidence.

As a general rule, the determination of the jury as to the weight of the evidence, supported by the approval of the trial judge, must prevail on appeal,[78.60] since an objection that the verdict is against the weight of the evidence is for the consideration of the trial court, not of the appellate tribunal;[79] and a verdict which has been approved

R.I.—Bell v. Weiner, 129 A. 339, 46 R.I. 478.

(3) A verdict in an action for personal injuries can have no weight on appeal, where the trial court overruled defendant's motion for a new trial, but thereafter rendered judgment for defendant notwithstanding the verdict, it being impossible to say that such verdict had the approval of the trial court.

Tenn.—Hamburger v. Illinois Cent. R. Co., 196 S.W. 144, 138 Tenn. 123.

(4) Fact that judge who presided at trial did not pass on motion for new trial cannot affect appellate court's duty in determining sufficiency of evidence to support jury's verdict on appeal taken from judgment thereon after denial of such motion by special judge, who did not hear evidence, since rule of due deference to trial judge is not involved.

Mo.—Morris v. Freyer, App., 151 S.W.2d 515.

78.25 R.I.—Saritelli v. Industrial Trust Co., 121 A.2d 329—Turcotte v. United Elec. Rys. Co., 65 A.2d 717, 75 R.I. 268—McLain v. Tripp, 53 A.2d 919, 73 R.I. 105—Warren v. Martini, 47 A.2d 854, 72 R.I. 36—Baker v. Kinnecom, 29 A.2d 541, 68 R.I. 453.

Language of equivocal nature

(1) Where the trial justice in ruling on motion for new trial used language of an equivocal nature, the supreme court could not give his decision the weight ordinarily accorded to a decision expressly approving or disapproving a verdict.

R.I.—Bradley v. Brayton, 199 A. 741, 61 R.I. 44.

(2) In personal injury action, approval of verdict for plaintiff by trial justice did not have persuasive force which such approval ordinarily would have, where motion for new trial was denied in a brief rescript without direct reference to important features or preponderance of evidence or credibility of witnesses.

R.I.—Seamans v. Fitzpatrick, 6 A.2d 742, 63 R.I. 37.

78.30 R.I.—Normandin v. Tety, 84 A.2d 429, 79 R.I. 93—Scott v. McQuade, 43 A.2d 318, 71 R.I. 198—Anderson v. Johnson, 195 A. 240, 59 R.I. 241.

Faulty recollection of evidence

Where record disclosed that justice's faulty recollection of certain testimony clearly affected his judgment, supreme court would examine the transcript of evidence without the assistance of trial justice's decision on motion for new trial.

R.I.—Daniels v. Yanyar, 94 A.2d 593, 80 R.I. 204.

78.35 R.I.—Turcotte v. United Electric Rys. Co., 65 A.2d 717, 75 R.I. 268—Payne v. United Elec. Rys. Co., 65 A.2d 713, 75 R.I. 281—McLain v. Tripp, 53 A.2d 919, 73 R.I. 105—Bradley v. Brayton, 199 A. 741, 61 R.I. 44.

78.60 Ark.—St. Louis-San Francisco Ry. Co. v. Porter, 134 S.W.2d 546, 199 Ark. 133—Jonesboro Coca-Cola Bottling Co. v. Holt, 110 S.W.2d 535, 194 Ark. 992.

Fla.—Mann v. Etchells, 182 So. 198, 132 Fla. 409.

Ill.—Minters v. Mid-City Management Corp., 72 N.E.2d 729, 331 Ill. App. 64—Heil v. Kastengren, 65 N.E.2d 579, 328 Ill.App. 301—Branch v. Woulfe, 21 N.E.2d 148, 300 Ill.App. 472.

Mich.—Gibbons v. Delta Contracting Co., 4 N.W.2d 39, 301 Mich. 638.

Mo.—White v. Rohrer, 267 S.W.2d 31—Bloch v. Kinder, 93 S.W.2d 932, 338 Mo. 1099.

Gaddy v. Kurn, App., 187 S.W.2d 858.

Mont.—Coover v. Davis, 121 P.2d 985, 112 Mont. 605.

N.H.—Gagnon v. Krikorian, 31 A.2d 49, 92 N.H. 344.

N.J.—Murphy v. Terzako, 82 A.2d 1, 14 N.J.Super. 254.

R.I.—Hayman v. Union Corp., 17 A.2d 30, 66 R.I. 11.

Negative testimony

Rule precluding reviewing court from overriding testimony of an unimpeached witness which supports the verdict, where verdict is approved by trial court, is inapplicable to negative testimony.

Va.—Southern Ry. Co. v. Berry, 1 S.E.2d 261, 172 Va. 266.

79. Ala.—City of Ozark v. Thomas, 166 So. 424, 231 Ala. 538.

Ark.—Louisiana & A. Ry. Co. v. O'Steen, 110 S.W.2d 488, 194 Ark. 1125—Fowler v. Hammett, 258 S.W. 392, 162 Ark. 307.

Cal.—Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 9 C.2d 751—Rosenberg v. Geo. A. Moore & Co., 229 P. 34, 194 C. 392.

Wise v. Stott, 300 P. 883, 114 C.A. 702.

Ga.—Hagin v. Rogers, 87 S.E. 769, 17 Ga.App. 515.

Ill.—White v. City of Belleville, 5 N.E.2d 215, 364 Ill. 577, conformed to 9 N.E.2d 68, 290 Ill.App. 616.

Sycamore Preserve Works v. Chicago & N. W. Ry. Co., 12 N.E.2d 42, 293 Ill.App. 20.

Ind.—Pettibone v. Howard, 34 N.E. 2d 12, 218 Ind. 543—Koplovitz v. Jensen, 151 N.E. 390, 197 Ind. 475.

Better Taste Popcorn Co. v. Peters, 114 N.E.2d 817, 124 Ind.App. 319.

Kan.—Wilsey State Bank v. Amend, 190 P. 739, 107 Kan. 25.

Md.—Snyder v. Cearfoss, 46 A.2d 607, 186 Md. 360—Weissman v. Hokamp, 188 A. 923, 189 A. 813, 179 Md. 197—United Rys. & Electric Co. of Baltimore v. State, 163 A. 90, 163 Md. 313.

Mich.—Schon v. Lawrence, 242 N.W. 745, 258 Mich. 543—Barger v. Bissell, 170 N.W. 76, 204 Mich. 416.

Mo.—Dixon v. Edelen, 300 S.W.2d 469—Stubblefield v. Federal Reserve Bank of St. Louis, 204 S.W.2d 718, 356 Mo. 1018—Vitale v. Duerbeck, 62 S.W.2d 559, 332 Mo. 1184—Cluck v. Abe, 40 S.W.2d 558, 328 Mo. 81.

Scully v. Rolwing, App., 115 S.W. 2d 96—Gosnell v. Camden Fire Ins. Ass'n of Camden, N. J., App., 109 S.W.2d 59—State ex rel. State Highway Commission v. Baumhoff, 93 S.W.2d 104, 230 Mo.App. 1030—Power v. Frischer, App., 87 S.W.2d 692—Ziegler v. Schwach, App., 39 S.W.2d 446—Stofiel v. Reid Bros. Express & Transfer Co., App., 35 S.W.2d 948—Kent v. L. B. Price Mercantile Co., App., 17 S.W.2d 983—Vanausdol v. Bank of Odessa, 5 S.W.2d 109, 222 Mo.App. 91—Esty v. Walker, 3 S.W.2d 744, 222 Mo.

by the trial court will not be set aside merely because it is apparently against the weight or preponderance of the evidence.[80] Such rule applies if there is evidence in the case to support such verdict,[81] and unless the verdict is clearly and palpably against the great weight of the evidence,[82] or unless it appears unwarranted in any reasonable view of the evidence.[83] The fact that the verdict and ruling of trial court on a motion for a new trial do not correspond with the appellate court's opinion as to the weight of the evidence does not justify interference therewith.[84] On the other hand, the appellate court may consider whether the verdict approved by the trial court is manifestly against the

App. 619—Graham v. St. Louis & S. F. Ry. Co., App., 273 S.W. 221—Hutton v. Lambardi, App., 180 S.W. 566—Schuler v. Metropolitan Life Ins. Co., 176 S.W. 274, 191 Mo.App. 52—Criss v. United Rys. Co. of St. Louis, 166 S.W. 834, 183 Mo.App. 392.

N.H.—Morrell v. Gobeil, 147 A. 413, 84 N.H. 150.

N.J.—Hecky v. Fox Elizabeth Theatre Co., 164 A. 894, 11 N.J.Misc. 153.

Ohio.—Lubric Oil Co. v. Drawe, 160 N.E. 93, 26 Ohio App. 478.

Pa.—Mansur v. Josephson, 5 A.2d 102, 333 Pa. 467—O'Farrell v. Mawson, 182 A. 538, 320 Pa. 316.

Jones v. Baltimore & O. R. Co., 165 A. 260, 108 Pa.Super. 404.

R.I.—Cooper v. Ceco Mfg. Co., 155 A. 590, 51 R.I. 487.

S.C.—Appleby v. Reserve Loan Life Ins. Co., 172 S.E. 776, 172 S.C. 42—Yarborough v. Columbia Ry., Gas & Electric Co., 84 S.E. 308, 100 S.C. 32.

Tenn.—Jones v. Noel, 204 S.W.2d 336, 30 Tenn.App. 184—Crigger v. Mutual Ben. Health & Accident Ass'n, 69 S.W.2d 907, 17 Tenn.App. 636.

Vt.—Melen v. McLaughlin, 176 A. 297, 107 Vt. 111.

Existence of sustaining evidence only question for appellate court

The court of appeals, having no power to interfere with the trial court's ruling against defendant on the weight of the evidence in overruling latter's motion for a new trial after the verdict for plaintiff, must accept plaintiff's version of the facts and consider only the question whether the verdict is supported by substantial testimony.

Mo.—Fernandez v. Mutual Life Ins. Co. of Baltimore, App., 78 S.W.2d 526.

80. Ariz.—Richfield Oil Co. v. Estes, 98 P.2d 851, 55 Ariz. 81.

Ark.—Ocker v. Nix, 155 S.W.2d 58, 202 Ark. 1064—Myers v. Martin, 272 S.W. 856, 168 Ark. 1028—Kansas City Southern Ry. Co. v. Sparks, 222 S.W. 724, 144 Ark. 227—Spadra Creek Coal Co. v. Callahan, 196 S.W. 477, 129 Ark. 448.

Cal.—Rose v. Orange County, 211 P. 2d 45, 94 C.A.2d 688.

Fla.—Florida Telephone Corporation v. Wallace, 140 So. 472, 104 Fla. 566.

Ga.—Moss v. Moss, 151 S.E. 506, 169 Ga. 734.

Grubbs v. Elrod, 112 S.E. 379, 28 Ga.App. 526.

Mass.—Cummings v. Copley, 138 N.E. 803, 244 Mass. 448.

Mich.—Fabbro v. Soderstrom, 233 N. W. 378, 252 Mich. 455.

Mo.—Gill v. Baltimore & O. R. Co., 259 S.W. 93, 302 Mo. 317, certiorari denied Baltimore & O. R. Co. v. Gill, 44 S.Ct. 636, 265 U.S. 592, 68 L.Ed. 1196—Morrow v. Franklin, 233 S.W. 224, 289 Mo. 549—Eastman v. United Rys. Co. of St. Louis, 232 S.W. 725—Boyer v. Kansas City, 205 S.W. 873—Beck v. Klein, 183 S.W. 1070.

Buehler v. Baum, App., 71 S.W. 2d 851—Phillip v. Biernacki, App., 272 S.W. 707—Buehler v. Waggener Paint & Glass Co., App., 231 S.W. 283—Vormehr v. Knights of the Maccabees of the World, 200 S.W. 76, 198 Mo.App. 276—Raifeisen v. Young, 167 S.W. 648, 180 Mo.App. 477.

N.C.—Parker v. Seaboard Air Line Ry., 106 S.E. 755, 181 N.C. 95—Riley v. Stone, 94 S.E. 434, 174 N. C. 588.

Pa.—Dalgleish v. Oppenheim, Collins & Co., 152 A. 759, 302 Pa. 88.

Clearfield v. Driver Salesmen's Union, Local No. 463, of Philadelphia, 49 A.2d 849, 160 Pa.Super. 54.

R.I.—Adams v. United Electric Rys. Co., 128 A. 197, 46 R.I. 312—Brown v. La Bonte, 126 A. 868, 869.

Tex.—Schaff v. Verble, Civ.App., 240 S.W. 597, affirmed Verble v. Schaff, Com.App., 251 S.W. 1023.

Wash.—Armstrong v. Modern Woodmen of America, 178 P. 1, 105 Wash. 356—Bruenn v. North Yakima School Dist. No. 7, Yakima County, 172 P. 569, 101 Wash. 374.

4 C.J. p 865 note 48.

81. Ga.—Horne v. Coody, 113 S.E. 21, 29 Ga.App. 28.

Miss.—White's Lumber & Supply Co. v. Collins, 192 So. 312, 186 Miss. 659.

Mo.—Federal Chemical Co. v. Hitt, App., 155 S.W.2d 899.

Mont.—Doane v. Marquisee, 206 P. 426, 63 Mont. 166.

N.C.—Page v. Camp Mfg. Co., 104 S. E. 667, 180 N.C. 330.

Okl.—Anderson v. Cardwell, 265 P. 627, 130 Okl. 92.

Pa.—Tingle v. Curtis-Martin Newspapers, Independence Square, Philadelphia, 179 A. 80, 318 Pa. 537—Shetler v. Shetler Cash Stores Co., 129 A. 112, 283 Pa. 307.

82. Ala.—American Life Ins. Co. v. Williams, 175 So. 554, 234 Ala. 469, 112 A.L.R. 1215.

Fla.—Wheeler v. Yellow Cab Co. of Orlando, 66 So.2d 501.

Ill.—Read v. Friel, 64 N.E.2d 556, 327 Ill.App. 532—Danison v. Brosmore, 60 N.E.2d 768, 326 Ill.App. 34—Read v. Cummings, 59 N.E.2d 325, 324 Ill.App. 607—Horvat v. Opas, 42 N.E.2d 867, 315 Ill.App. 229—Mueth v. Jaska, 23 N.E.2d 805, 302 Ill.App. 289—Freeman v. Chicago & Joliet Electric Ry. Co., 208 Ill.App. 350—Kumorowski v. Armour & Co., 198 Ill.App. 306.

Ky.—Powers' Adm'r v. Wiley, 44 S.W. 2d 591, 241 Ky. 645.

Mich.—Schneider v. Pomerville, 81 N. W.2d 405, 348 Mich. 49—Finch v. W. R. Roach Co., 1 N.W.2d 46, 299 Mich. 703—Noll v. Hirschfeld, 195 N.W. 101, 224 Mich. 439—Nichols v. Grand Trunk Western Ry. Co., 176 N.W. 419, 209 Mich. 331.

Miss.—White's Lumber & Supply Co. v. Collins, 192 So. 312, 186 Miss. 659.

Okl.—Wichita Falls & N. W. Ry. Co. v. Benton, 167 P. 633, 66 Okl. 114.

R.I.—Normandin v. Tetu, 84 A.2d 429, 79 R.I. 93.

Vt.—Anair v. Mutual Life Ins. Co. of N. Y., 42 A.2d 423, 114 Vt. 217, 159 A.L.R. 547.

W.Va.—Faull v. Abbot, 73 S.E.2d 727, 137 W.Va. 777.

4 C.J. p 866 note 49.

Verdicts held not against manifest weight of evidence

Ill.—Weaver v. Sprague, 71 N.E.2d 106, 330 Ill.App. 331—Hirshberg v. Cummings, 57 N.E.2d 284, 324 Ill. App. 62—Edmiers' Motor Service v. Cummings, 56 N.E.2d 491, 323 Ill. App. 653.

S.C.—Dinkins v. Robbins, 34 S.E.2d 478, 207 S.C. 77.

83. Fla.—Stanley v. Powers, 169 So. 861, 125 Fla. 322.

N.H.—Smith v. Hooper, 200 A. 780, 89 N.H. 452.

Vt.—Enos v. Owens Slate Co., 176 A. 121, 107 Vt. 125.

4 C.J. p 866 note 50.

84. Ala.—Barber v. Upton, 187 So. 497, 237 Ala. 415—Mooneyham v. Herring, 85 So. 390, 204 Ala. 332—Hatfield v. Riley, 74 So. 380, 199 Ala. 388.

Mich.—Sabin v. Southard, 187 N.W. 341, 218 Mich. 227.

great weight of the evidence,[84.5] and if it determines that it is so, the verdict may be set aside, as discussed infra subdivision a (4) of this section.

(3) Verdict Based on Conflicting Evidence

Since conflicts in the evidence are to be resolved by the jury and trial court, a verdict based on conflicting evidence and approved by the trial court is ordinarily conclusive on appeal.

Ordinarily, conflicts in the evidence are to be resolved by the jury and trial court,[84.50] and the rule is broadly stated in a great number of decisions that the reviewing court will not disturb a verdict where the evidence was conflicting and the verdict was approved by the trial court.[85] Similar statements frequently met with are that a verdict on conflicting

84.5 Ill.—White v. City of Belleville, 5 N.E.2d 215, 364 Ill. 577, conformed to 9 N.E.2d 68, 290 Ill.App. 616.
Read v. Friel, 64 N.E.2d 556, 327 Ill.App. 532.

84.50 Cal.—Jones v. Rutherford, 67 P.2d 92, 8 C.2d 603.
Kelly v. David D. Bohannon Organization, 260 P.2d 646, 119 C.A.2d 787.
Ill.—Williams v. Johnson, 130 N.E.2d 123, 8 Ill.App.2d 99.
Kan.—Frogge v. Kansas City Public Service Co., 175 P.2d 112, 162 Kan. 209.
R.I.—Chase v. Goyette, 133 A.2d 123—Eckstein v. Caldwell, 200 A. 434, 61 R.I. 142, 119 A.L.R. 1311.
Utah.—In re Gordon's Estate, 125 P. 2d 413, 101 Utah 523.
Va.—Lennon v. Smith, 2 S.E.2d 340, 173 Va. 322.

85. Ala.—Sloss-Sheffield Steel & Iron Co. v. Greer, 113 So. 271, 216 Ala. 267—Southern Ins. Co. v. Wilson, 108 So. 5, 214 Ala. 373—Southern Ry. Co. v. Dickson, 100 So. 665, 211 Ala. 481—May v. Middleton, 100 So. 640, 211 Ala. 459—Louisville & N. R. Co. v. Morrill, 99 So. 297, 211 Ala. 39, certiorari denied 44 S.Ct. 456, 265 U.S. 582, 68 L.Ed. 1190—Beard v. Sailors, 92 So. 896, 207 Ala. 313—Woods v. Postal Telegraph Cable Co., 87 So. 681, 205 Ala. 236, 27 A.L.R. 834—Locomotive Engineers' Mut. Life & Accident Ass'n v. Hughes, 86 So. 19, 204 Ala. 492—Alabama Great Southern R. Co. v. Snodgrass, 79 So. 125, 201 Ala. 653—Huntsville Knitting Co. v. Butner, 78 So. 890, 201 Ala. 536—Sloss-Sheffield Steel & Iron Co. v. Scivally, 72 So. 349, 197 Ala. 103—McCalley v. Penney, 67 So. 696, 191 Ala. 369—Randman v. Mitchell, 66 So. 585, 189 Ala. 412.
Keeton v. Parker, 144 So. 119, 25 Ala.App. 236—Kirkland v. Neeley, 124 So. 115, 23 Ala.App. 227, certiorari denied 124 So. 117, 220 Ala. 48—Birmingham Electric Co. v. Edge, 114 So. 791, 22 Ala.App. 279—Brown-Ross Shoe Co. v. Abney, 104 So. 288, 20 Ala.App. 580—Simonetti v. Carlton, 82 So. 553, 17 Ala.App. 105—Sovereign Camp Woodmen of the World v. Wallace, 80 So. 691, 16 Ala.App. 617, certiorari denied 80 So. 894, 202 Ala. 699—Chappell v. Falkner, 66 So. 890, 11 Ala.App. 382—Cash v. Smith, 65 So. 193, 10 Ala.App. 417.
Ariz.—Parker v. Gentry, 185 P.2d 767, 66 Ariz. 189—Stewart v. Schnepf, 158 P.2d 529, 62 Ariz. 440—De Mund v. Benson, 265 P. 84, 33 Ariz. 374.
Ark.—First Nat. Bank v. City of Malvern, 287 S.W. 185, 171 Ark. 994.
Cal.—Martinelli v. Poley, 292 P. 451, 210 C. 450.
Schmidt v. Sears, 221 P.2d 171, 99 C.A.2d 204—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255—Stroh v. Bauman, 99 P.2d 337, 37 C.A.2d 241—Irwin v. Pickwick Stages System, 25 P.2d 998, 134 C.A. 443—Mullin v. Rousseau, 297 P. 944, 112 C.A. 719—Phillips v. Kingham, 288 P. 116, 105 C.A. 519—Wright v. Salzberger & Son, 218 P. 785, 63 C. A. 450—Fatta v. Catalano, 183 P. 224, 41 C.A. 630—Crofford v. Crofford, 157 P. 560, 29 C.A. 662.
Colo.—Rosenthal v. Citizens State Bank of Cortez, 266 P.2d 767, 129 Colo. 35—Wold v. City of Boulder, 9 P.2d 931, 91 Colo. 44—Ryan Gulch Reservoir Co. v. Swartz, 263 P. 728, 83 Colo. 225—Aspergren v. Younker, 223 P. 62, 74 Colo. 511.
Fla.—Seaboard Air Line R. Co. v. Martin, 56 So.2d 509—Equitable Life Assur. Soc. of U. S. v. Wiggins, 155 So. 327, 115 Fla. 136—Jacksonville Traction Co. v. Greene, 151 So. 523, 113 Fla. 316.
Ga.—Rocker v. De Loach, 173 S.E. 709, 178 Ga. 480—Johnston-Crews Co. v. Smith, 131 S.E. 65, 161 Ga. 382—Connecticut Mut. Life Ins. Co. v. Mulkey, 82 S.E. 1054, 142 Ga. 358—McFarlane v. Robertson, 82 S. E. 643, 142 Ga. 266.
Kell v. Hunter, 67 S.E.2d 597, 84 Ga.App. 792—Wofford v. Waldrip, 56 S.E.2d 816, 80 Ga.App. 562—Cox v. Norris, 28 S.E.2d 888, 70 Ga.App. 580—Gunnin v. Bankers & Shippers Ins. Co., 18 S.E.2d 563, 66 Ga. App. 574—Deen v. Baxley State Bank, 8 S.E.2d 689, 62 Ga.App. 536, followed in Deen v. Wood, 8 S.E.2d 691, 62 Ga.App. 538—Gulf Life Ins. Co. v. Fetzer, 200 S.E. 165, 59 Ga.App. 176—Oliver v. Chance, 191 S.E. 871, 56 Ga.App. 40—Lewis v. Tatum, 189 S.E. 375, 55 Ga.App. 24—Butler Bros. v. Goldstein, 174 S. E. 202, 49 Ga.App. 109—Hearn v. Batchelor, 170 S.E. 203, 47 Ga.App. 213—Herrin v. White, 166 S.E. 678, 46 Ga.App. 65, certiorari dismissed 173 S.E. 433, 178 Ga. 570—Georgia-Florida Motor Lines v. Slocumb, 164 S.E. 166, 45 Ga.App. 204, followed in 164 S.E. 167, 45 Ga.App. 205—Georgia Creosoting Co. v. Keene, 159 S.E. 133, 43 Ga.App. 392—Pictorial Review Co. v. Coolik, 155 S.E. 383, 42 Ga.App. 176—Atlanta Coca-Cola Bottling Co. v. Holbrook, 149 S.E. 316, 40 Ga.App. 269—Georgia Ry. & Power Co. v. Bone, 147 S.E. 413, 39 Ga.App. 454—Jones v. Sikes, 134 S.E. 113, 35 Ga.App. 469—Howard v. Caldwell, 133 S.E. 284, 35 Ga.App. 366—Shepherd v. Widincamp, 133 S.E. 272, 35 Ga.App. 379—J. R. Watkins Co. v. Mims, 132 S.E. 241, 35 Ga. App. 170—Johnston-Crews Co. v. Smith, 125 S.E. 734, 33 Ga.App. 25, affirmed 131 S.E. 65, 161 Ga. 382—Nelson v. J. L. Brannon & Co., 123 S.E. 735, 32 Ga.App. 455—Girard Fire & Marine Ins. Co. v. Carter, 122 S.E. 649, 32 Ga.App. 2—Woodall v. A. F. Gossett & Son, 122 S. E. 99, 31 Ga.App. 797—Dykes v. Porter, 119 S.E. 455, 31 Ga.App. 86—Codman v. Roberds, 109 S.E. 536, 27 Ga.App. 559—Muse v. Jones, 108 S.E. 837, 27 Ga.App. 489—Mosteller v. Davis, 107 S.E. 612, 27 Ga.App. 71—Milwaukee Mechanics' Ins. Co. v. Rawls, 107 S.E. 262, 26 Ga.App. 584—Joiner v. Wildes, 106 S.E. 742, 26 Ga.App. 404—Lewis v. Robertson, 105 S.E. 389, 26 Ga.App. 50—Davis v. Alford, 104 S.E. 644, 25 Ga.App. 671—Perry v. Cooper, 103 S.E. 175, 25 Ga.App. 295—Henderson v. Leviton, 102 S.E. 839, 25 Ga.App. 233—Dyer v. Black, 101 S. E. 692, 24 Ga.App. 589—Camp v. Bagwell & Bagwell, 99 S.E. 234, 23 Ga.App. 690—Western & A. R. Co. v. Gregg, 97 S.E. 866, 23 Ga.App. 270—Louisville & N. R. Co. v. Rogers, 94 S.E. 321, 21 Ga.App. 324—Capital City Oil Co. v. Central of Georgia Ry. Co., 86 S.E. 57, 16 Ga. App. 750—Hawes v. Smith, 85 S.E. 616, 16 Ga.App. 458—Central of Georgia Ry. Co. v. Daughtry, 85 S. E. 348, 16 Ga.App. 361—Holloway v. Cochran, 82 S.E. 761, 15 Ga.App. 196—Baldwin v. Lampkin, 82 S.E. 369, 14 Ga.App. 828.
Ill.—Carney v. Sheedy, 128 N.E. 810, 295 Ill. 78—Gilmore v. Killion, 118 N.E. 36, 281 Ill. 154—City of Pana v. Baldwin, 106 N.E. 454, 265 Ill. 119.

Spiker v. Christeson, 140 N.E.2d 302, 12 Ill.App. 557—Antosz v. Goss Motors, 35 N.E.2d 688, 311 Ill.App. 254, appeal dismissed 39 N.E.2d 322, 378 Ill. 608—Witzani v. Shannon, 9 N.E.2d 427, 291 Ill.App. 611—City of Moline v. Barber Asphalt Pav. Co., 208 Ill.App. 617—Potter v. Chicago, M. & St. P. Ry. Co., 208 Ill. App. 363—Granite City Lime & Cement Co. v. Hanover Fire Ins. Co. of New York, 194 Ill.App. 68—Adams v. Hogan, 193 Ill.App. 535.

Ind.—Beardslee Chandelier Mfg. Co. v. Evans, 181 N.E. 162, 94 Ind.App. 446—McCool v. Mickler, 124 N.E. 467, 71 Ind.App. 190—Shores-Mueller Co. v. Best, 118 N.E. 688, 66 Ind. App. 649.

Iowa.—Walker v. Laubscher, 162 N. W. 780, 180 Iowa 1381.

Kan.—Collins v. Wichita Transp. Corp., 281 P.2d 1102, 177 Kan. 677—Painter v. Monumental Life Ins. Co., 149 P.2d 626, 158 Kan. 585—Habegger v. Skalla, 34 P.2d 113, 140 Kan. 166—Lambert v. Rhea, 4 P.2d 419, 134 Kan. 10—Jones v. Webber, 207 P. 837, 111 Kan. 650—Colony State Bank of Colony v. Watson, 177 P. 544, 104 Kan. 3—Curtiss v. Reaume, 164 P. 1089, 100 Kan. 531—Welliver v. Clark, 155 P. 4, 97 Kan. 246—Denver v. Atchison, T. & S. F. R. Co., 150 P. 562, 96 Kan. 154, Ann.Cas.1917A 1007—Mueller v. Campbell, 148 P. 737, 95 Kan. 420—Allen v. Snodgrass, 148 P. 636, 95 Kan. 386—Menrow v. Pool, 141 P. 1134, 92 Kan. 732—Grimes v. Emery, 141 P. 1002, 92 Kan. 911, reheard 146 P. 1135, 94 Kan. 701.

Ky.—Owings v. Webb's Ex'r, 202 S. W.2d 410, 304 Ky. 748.

Newport St. R. Co. v. Johnson, 11 Ky.Op. 35.

La.—Moore v. Blanchard, App., 35 So. 2d 667, reversed on other grounds 43 So.2d 599, 216 La. 253.

Mich.—Woch v. Kozakiewicz, 237 N. W. 36, 255 Mich. 32—McKay v. Detroit United Ry., 161 N.W. 820, 195 Mich. 88—Mink v. Grand Rapids, G. H. & M. Ry. Co., 160 N.W. 535, 194 Mich. 324—Walsh v. Lake Shore & M. S. Ry. Co., 151 N.W. 754, 185 Mich. 177.

Minn.—Farnham v. Pepper, 258 N.W. 293, 193 Minn. 222—Northern Battery Service Co. v. Tschida, 196 N. W. 482, 157 Minn. 401—Johnson v. Sinclair, 168 N.W. 181, 140 Minn. 436—First International Bank of Portal, N. D. v. Brown, 153 N.W. 522, 130 Minn. 210—Duer v. Gagnon, 152 N.W. 880, 129 Minn. 517.

Mo.—Benner v. Terminal R. R. Ass'n of St. Louis, 156 S.W.2d 657, 348 Mo. 928, certiorari denied 62 S.Ct. 798, 315 U.S. 813, 86 L.Ed. 1211—Von Eime v. Fuchs, 8 S.W.2d 824, 320 Mo. 746—Griswold v. Hall, 191 S.W. 1011.

Williams v. Davis, App., 168 S. W.2d 483—Toedtman v. Grass, App., 116 S.W.2d 153—Cunningham v. Kansas City, 38 S.W.2d 734, 225 Mo.App. 1063—Lewis v. McClellan, App., 1 S.W.2d 247—Williams v. Missouri Pac. R. Co., App., 243 S. W. 188—Junge v. Pehl, App., 240 S.W. 278—Seidenkranz v. Supreme Lodge Knights and Ladies of Honor, App., 199 S.W. 451—O'Brien v. Heman, 177 S.W. 805, 191 Mo.App. 477.

Mont.—Pfau v. Stokke, 103 P.2d 673, 110 Mont. 471—Wallace v. Wallace, 279 P. 374, 85 Mont. 492, 66 A.L.R. 587—Tomcheck v. Maryland Casualty Co., 244 P. 506, 75 Mont. 557—Tripp v. Silver Dyke Mining Co., 224 P. 272, 70 Mont. 120—Bull v. Butte Electric Ry. Co., 223 P. 514, 69 Mont. 529—Williams v. Thomas, 194 P. 500, 58 Mont. 576—Glendenning v. Slayton, 179 P. 817, 55 Mont. 586—Savage v. Boyce, 164 P. 887, 53 Mont. 470—Fowlie v. Cruse, 157 P. 958, 52 Mont. 222—Eder v. Crown Butte Canal & Reservoir Co., 145 P. 1, 50 Mont. 106.

Neb.—Tunberg v. Courtney, 148 N.W. 1065, 96 Neb. 750.

N.H.—Charles I. Hosmer, Inc., v. L. P. Federico & Son, 199 A. 567, 89 N.H. 378.

N.Y.—Hageman v. Coleman, 191 N.Y. S. 190.

N.D.—Killmer v. Duchscherer, 72 N. W.2d 650—Moe v. Kettwig, 68 N.W. 2d 853—Clark v. Josephson, 66 N. W.2d 539—Reuter v. Olson, 59 N. W.2d 830, 79 N.D. 834—Jacobs v. Bever, 55 N.W.2d 512, 79 N.D. 168—Gunder v. Feeland, 200 N.W. 909, 51 N.D. 784.

Okl.—Greenland v. Gilliam, 241 P.2d 384, 206 Okl. 85—Bolds v. Randle, 8 P.2d 720, 155 Okl. 178—In re Carney's Guardianship, 237 P. 111, 110 Okl. 165—Cope v. Dancy, 222 P. 987, 99 Okl. 43—McClelland Gentry Motor Co. v. Meyer, 222 P. 261, 94 Okl. 282—Brockhaus v. Killough, 220 P. 863, 97 Okl. 256—Great Southern Life Ins. Co. v. Long, 219 P. 926, 93 Okl. 129—Harrell v. Kitchin, 218 P. 662, 92 Okl. 117—McIver v. Katsiolis, 217 P. 422, 93 Okl. 49—New v. Hughes, 194 P. 1071, 80 Okl. 129—Harwell, King & Co. v. Duncan Bros., 194 P. 115, 80 Okl. 74—Dimmers v. Regan, 174 P. 742, 68 Okl. 322—Shawnee Nat. Bank v. Pool, 167 P. 994, 66 Okl. 145—Mackey v. Nickoll, 158 P. 593, 60 Okl. 12—Selsor v. Arnbrecht, 157 P. 908, 57 Okl. 732—First Nat. Bank of Addington v. Shell, 157 P. 317, 57 Okl. 425—St. Louis & S. F. R. Co. v. Isenberg, 150 P. 123, 48 Okl. 51.

Pa.—O'Farrell v. Mawson, 182 A. 538, 320 Pa. 316—Hardy v. Millers' Mut. Fire Ins. Ass'n of Illinois, 141 A. 623, 293 Pa. 9—Pringle v. Smith, 137 A. 603, 289 Pa. 356.

Mladjen v. Karfunkle, 158 A. 280, 104 Pa.Super. 108.

R.I.—Messerlian v. Goodness, 65 A. 2d 42, 75 R.I. 203—Holmes v. Hurwitz, 35 A.2d 226, 69 R.I. 472—O'Connell v. Ford, 191 A. 501, 58 R.I. 111—Providence Body Co. v. Providence Transit Concrete Corporation, 177 A. 543—Bilgrei v. Berstein, 164 A. 327—Smith v. Di Maio, 163 A. 230—Stone v. Pollock, 163 A. 230—Laidler v. Wagner, 159 A. 830—Zimmerly v. Curran & Burton, 157 A. 871—McSherry v. Peckham, 149 A. 380, 50 R.I. 473—Butterfield v. Bernier, 148 A. 581—Simonian v. Kazanjian, 143 A. 611—Kimatian v. New England Telephone & Telegraph Co., 141 A. 331, 49 R.I. 186—Weisman v. Stone, 140 A. 912—Bartula v. Knowles, 140 A. 1—Violette v. Providence Ice Co., 139 A. 500, 49 R.I. 3—Conley v. Arter, 136 A. 688—Silva v. Mills, 131 A. 695, 47 R.I. 193—Pizzaia v. Bristow, 131 A. 693—Perlow v. Westminster Bank, 128 A. 193—Pullman v. Levy, 124 A. 466—Feder v. Berlinsky, 120 A. 627—Golato v. Mercurio, 116 A. 342—G. W. McNear, Inc., v. American & British Mfg. Co., 115 A. 709, 44 R. I. 190, certiorari denied American & British Mfg. Co. v. G. W. McNer, Inc., 42 S.Ct. 462, 258 U.S. 629, 66 L.Ed. 800—St. Germain v. Brown, 114 A. 177—Lopato v. Hayman, 111 A. 529, 43 R.I. 271—Mallen v. Rhode Island Co., 111 A. 528—Armstrong v. Rhode Island Co., 111 A. 401—Surmeian v. Simons, 107 A. 229, 42 R.I. 334—Di Vona v. Lee, 107 A. 77, 42 R.I. 375—Rickard v. Hinchcliffe, 106 A. 224—Kitchin v. Brown, 103 A. 565—Rieley v. O'Hara, 103 A. 483—Sullivan v. John R. White & Son, 99 A. 595—C. L. Flaccus Glass Co. v. Gavin, 98 A. 213, 39 R.I. 431—Tavares v. Dewing, 98 A. 54, 39 R.I. 174—Southbridge Roofing Co. v. Providence Cornice Co., 97 A. 210, 39 R.I. 35—Kaull v. Weaver, 95 A. 921—Hopkins v. C. W. Nass Co., 94 A. 672—Frey v. Rhode Island Co., 91 A. 1, 37 R.I. 96.

S.C.—Liquid Carbonic Co. v. Coclin, 159 S.E. 461, 161 S.C. 40—Webb v. Cook, 96 S.E. 290, 110 S.C. 231.

S.D.—Vig v. Hustel, 210 N.W. 156, 50 S.D. 364—Farran v. Nagel, 207 N. W. 58, 49 S.D. 340—Sales v Maupin, 151 N.W. 427, 35 S.D. 176, Ann.Cas. 1917C 1222.

Tenn.—Hawkins v. Byrn, 261 S.W. 980, 150 Tenn. 1.

Berryhill v. Mutual Ben. Health & Acc. Ass'n, Omaha, Neb., 262 S. W.2d 878, 37 Tenn.App. 303—Archer v. Archer, 219 S.W.2d 919, 31 Tenn.App. 657—Gardner v. Burke, 187 S.W.2d 25, 28 Tenn.App. 119.

Tex.—Etter v. Von Sternberg, Civ. App., 244 S.W.2d 321, error refused no reversible error—Texas City

evidence approved by the trial court will not be disturbed when supported by the evidence,[86] where there is no substantial evidence against it,[87] or where there were no errors of law, as in the rulings or instructions of the trial court[88] or abuse of discretion on its part.[89] It has also been held that such a verdict will not be set aside unless it is clearly wrong,[89.5] or unless the evidence preponderates so very strongly against the verdict[90] as to indicate the

Terminal Ry. Co. v. McLemore, Civ.App., 225 S.W.2d 1007, error refused no reversible error—Petroleum Producers Co. v. Stolley, Civ. App., 137 S.W.2d 207, error dismissed, judgment correct—Firemen's Ins. Co. v. Havron, Civ.App., 277 S.W. 742—Zucht v. Brooks, Civ. App., 216 S.W. 684—Obenhaus v. Allen, Civ.App., 199 S.W. 366—Scott v. Northern Texas Traction Co., Civ.App., 190 S.W. 209—San Antonio, U. & G. R. Co. v. Hagen, Civ.App., 188 S.W. 954, error refused.

Utah.—McLaughlin v. Chief Consol. Mining Co., 220 P. 726, 62 Utah 532.

Va.—Alvey v. Butchkavitz, 84 S.E.2d 535, 196 Va. 447—Young v. Merritt, 29 S.E.2d 834, 182 Va. 605—Reid v. Boward, 26 S.E.2d 27, 181 Va. 718—Clinchfield Coal Corporation v. Webber, 181 S.E. 357, 165 Va. 49—Sutherland v. Receiver for Dickenson County Bank, 178 S.E. 12, 163 Va. 949—Alsop Motor Corporation v. Barker, 123 S.E. 350, 138 Va. 598—Stuart v. Smith-Courtney Co., 96 S.E. 241, 123 Va. 231—Sutherland v. Gent, 93 S.E. 646, 121 Va. 643—Portsmouth Cotton Oil Refining Corp. v. Richardson, 88 S.E. 317, 118 Va. 667—Higgins v. Whitmore, 82 S.E. 180, 116 Va. 414.

Wash.—Hansen v. Puget Timber Co., 268 P. 142, 148 Wash. 173—Swafford v. Carnation Lumber & Shingle Co., 183 P. 92, 108 Wash. 305—Calhoun v. Portland Ry., Light & Power Co., 178 P. 805, 105 Wash. 592—Wik v. King, 149 P. 640, 86 Wash. 171—Fogarty v. Northern Pac. Ry. Co., 147 P. 652, 85 Wash. 90, L.R.A.1916C 803.

W.Va.—Queen v. Man Hospital, 37 S.E.2d 443, 128 W.Va. 574—Phenix Fire Ins. Co. v. Virginia-Western Power Co., 94 S.E. 372, 81 W.Va. 298.

Wis.—Spote v. Aliota, 37 N.W.2d 31, 254 Wis. 403—Pessin v. Fox Head Waukesha Corp., 282 N.W. 582, 230 Wis. 277—Van Dale v. Prudential Ins. Co. of America, 274 N.W. 153, 225 Wis. 281—Juneau Store Co. v. Badger Mut. Fire Ins. Co., 257 N.W. 144, 216 Wis. 342—Foreman v. Milwaukee Electric Ry. & Light Co., 252 N.W. 588, 214 Wis. 259—Ireland v. Tomahawk Light, Telephone & Improvement Co., 200 N.W. 642, 185 Wis. 148—Ellis v. Chicago & N. W. Ry. Co., 167 N.W. 1048, 167 Wis. 392—Lauerman Bros. Co. v. National Surety Co., 159 N.W. 575, 164 Wis. 357—Slack v. Joyce, 158 N.W. 310, 163 Wis. 567.

Wyo.—Kester v. Wagner, 145 P. 748, 22 Wyo. 512.

4 C.J. p 865 note 38, p 866 note 51.

Persuasive force

Trial justice's finding on the correctness of a verdict based on conflicting evidence is not necessarily binding on reviewing court on exception thereto, but has great persuasive force.

R.I.—Personal Finance Co. of Providence v. Nichols, 43 A.2d 315, 71 R.I. 213—Power Service Corp. v. Pascoag Fire Dist., 4 A.2d 261, 62 R.I. 167.

86. Fla.—May v. Whitehurst, 144 So. 326, 107 Fla. 174—Key v. Moore, 82 So. 810, 78 Fla. 205.

Ga.—Steed v. Rees, 14 S.E.2d 474, 192 Ga. 20—Davis v. Bulloch, 130 S.E. 526, 161 Ga. 217—McLendon v. Reynolds Grocery Co., 129 S.E. 65, 160 Ga. 763—Russell v. Harris, 122 S.E. 593, 157 Ga. 883.

Watts v. Roberts, 92 S.E.2d 605, 93 Ga.App. 699—City of Dalton v. Cochran, 55 S.E.2d 907, 80 Ga.App. 252—Vaughn v. Fairley, 44 S.E.2d 461, 75 Ga.App. 768—Stedham v. Kinney, 153 S.E. 610, 41 Ga.App. 543—Guaranty Life Ins. Co. v. Primo, 140 S.E. 780, 37 Ga.App. 472—Bennett v. Lifsey, 97 S.E. 884, 23 Ga.App. 309.

Idaho.—Fleming v. Benson, 178 P. 482, 32 Idaho 103.

Ill.—Wheeler v. Rudek, 65 N.E.2d 611, 328 Ill.App. 283, reversed on other grounds 74 N.E.2d 601, 397 Ill. 438, 4 A.L.R.2d 748.

Kan.—Closson v. Kaw Packing Co., 283 P. 493, 129 Kan. 418.

Mont.—O'Langan v. First State Bank of Hilger, 196 P. 149, 59 Mont. 190.

Okl.—Kline v. Haffner, 175 P. 341, 73 Okl. 176—Blasdel v. Gower, 173 P. 644, 70 Okl. 178.

R.I.—O'Connell v. Ford, 191 A. 501, 58 R.I. 111—Albanese v. Vendetuoli, 108 A. 584—Fazzi v. Rhode Island Co., 105 A. 563.

S.D.—First Nat. Bank of Webster v. First Nat. Bank of Mobridge, 187 N.W. 623, 45 S.D. 335—Mundon v. Greenameyer, 184 N.W. 257, 44 S.D. 440.

Tenn.—Brandtjen & Kluge v. Pope, 192 S.W.2d 496, 28 Tenn.App. 679.

Va.—Cooke v. Griggs, 33 S.E.2d 764, 183 Va. 851.

W.Va.—W. E. Deegans Coal Co. v. Logan-Pocahontas Fuel Co, 117 S.E. 621, 94 W.Va. 30.

4 C.J. p 866 note 52.

Reasonable support

(1) Where evidence conflicts, the verdict, reasonably sustained by competent evidence and inferences deducible therefrom and affirmatively approved by the trial court, will not be disturbed on appeal.

Canadian Valley Bank v. Cook, 247 P. 370, 118 Okl. 158—Spencer v. Bolt, 200 P. 187, 82 Okl. 280.

(2) A verdict based upon conflicting evidence, but with competent evidence reasonably tending to support the verdict and approved by the trial court, will not be disturbed on appeal.

Ariz.—Southwest Hay & Grain Co. v. Sherer, 185 P. 820, 21 Ariz. 166.

Okl.—American Alliance Ins. Co. v. Gaines, 131 P.2d 1003, 191 Okl. 577.

87. R.I.—Benoit v. Payette, 85 A. 641.

88. Fla.—Guirkin v. Ewing, 173 So. 705, 127 Fla. 617.

Ga.—Hall v. Smith, 153 S.E. 778, 41 Ga.App. 564—Daniels v. Arlington Wholesale Co., 132 S.E. 239, 35 Ga. App. 174.

La.—Liddell v. Lex, 113 So. 463, 163 La. 1083.

R.I.—McGair v. Humes, 169 A. 744.

4 C.J. p 866 note 54.

89. Mont.—Sullivan v. City of Butte, 285 P. 184, 87 Mont. 98.

Pa.—King v. Equitable Gas Co., 161 A. 65, 307 Pa. 287.

R.I.—Joseph v. Di Guilio, 198 A. 333, 60 R.I. 286.

89.5 R.I.—Di Biase v. Nardolillo, 68 A.2d 89, 76 R.I. 143—Wagner v. Benedick, 60 A.2d 160, 74 R.I. 293—Shattuck v. United Electric Rys. Co., 38 A.2d 634, 70 R.I. 280—Holmes v. Hurwitz, 35 A.2d 226, 69 R.I. 472—Belisle v. Bosquet, 32 A.2d 806, 69 R.I. 195—Grimley v. United Electric Rys. Co., 4 A.2d 373, 62 R.I. 192—De Cubbellis v. Mellucci, 194 A. 717, 59 R.I. 216—Kitchen v. Barrett, 192 A. 809, 58 R.I. 388.

90. Ala.—Southern Life & Health Ins. Co. v. Turner, 148 So. 411, 226 Ala. 642.

Harris v. State, 177 So. 311, 28 Ala.App. 23.

Ill.—Belz v. Piepenbrink, 149 N.E. 483, 318 Ill. 528.

Hall v. Flavin, 110 N.E.2d 673, 349 Ill.App. 392—Dusatko v. Pletka, 67 N.E.2d 424, 329 Ill.App. 189.

Ky.—Weill v. Gusdorf, 18 S.W.2d 879, 230 Ky. 64.

La.—Masicot v. New Orleans Ry. & Light Co., 75 So. 490, 141 La. 622.

jury were affected by passion, prejudice, or other improper influence.[91]

(4) When Verdict Set Aside

A verdict may be reviewed and set aside on appeal, notwithstanding its approval by the trial court, where there is no evidence to support it or other circumstances so require.

While due consideration and weight will be given on appeal to the approval of a verdict by the trial court, the action of the trial judge may nevertheless be reviewed, and under certain circumstances it is the duty of the reviewing court to set aside the verdict and order a new trial.[92] Thus, notwithstanding the trial court's approval of the verdict it should be set aside where there is no evidence to sustain it,[93] or where the verdict is clearly and palpably against the great weight of the evidence,[94] especially when the weight of the evidence is reinforced by all the reasonable probabilities,[95] or where the verdict is imputable only to the prejudice or ignorance of the jury;[96] and an appellate court on reviewing the sufficiency of the evidence to sustain the verdict approved by the trial court on denying a motion to set it aside as contrary to the evidence must consider the physical facts contradicting the testimony of witnesses.[97]

So also it has been held that, where the trial court, after considering the testimony, expressed its opinion that it was against the weight of the evidence, but failed in its duty to set aside the verdict, a judgment thereon will be reversed,[98] and that the judg-

Minn.—Northwestern Marble & Tile Co. v. Swenson, 175 N.W. 99, 144 Minn. 466.
Mont.—Robinson v. F. W. Woolworth Co., 261 P. 253, 80 Mont. 431.
R.I.—Gorman v. Lambert, 152 A. 319 —Gonsalves v. Baptiste, 133 A. 439.

Supporting testimony false

A finding of fact by the jury, based on conflicting evidence, approved by the trial court, should not be disturbed on appeal, unless testimony supporting it is demonstrably false or incorrect.
Minn.—Healy v. Morden, 210 N.W. 290, 168 Minn. 450.

Where trial justice fails to exercise independent judgment in passing on evidence on motion for new trial, supreme court may not set aside verdict unless examination of conflicting evidence apart from trial justice's rescript and decision discloses that verdict was contrary to the great weight of all the evidence.
R.I.—Talon v. Jackson, 30 A.2d 96, 68 R.I. 488.

91. Fla.—Alexander v. Rhine, 82 So. 831, 78 Fla. 313.

92. Ala.—Mixon v. Stanard Tilton Milling Co., 7 So.2d 778, 30 Ala.App. 454.
Fla.—Nelson v. McMillan, 10 So.2d 565, 151 Fla. 847.
La.—Kennedy v. Opdenweyer, 123 So. 906, 11 La.App. 532.
R.I.—Williams v. United Electric Rys. Co., 167 A. 117, 53 R.I. 472.
Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.
Va.—Stubbs v. Parker, 192 S.E. 820, 169 Va. 676, opinion adhered to 195 S.E. 688, 927, 169 Va. 676, 198 S.E. 363, 169 Va. 676.
W.Va.—Wickline v. Monongahela Power Co., 81 S.E.2d 326, 139 W. Va. 380.
4 C.J. p 866 note 55.

Misapprehension of law

A verdict for plaintiff is given no added force by justice's approval, if based on a misapprehension of the law.
R.I.—Smith v. Hopkins, 131 A. 542.
4 C.J. p 866 note 55 [b].

Verdict, manifestly erroneous, will be reversed on appeal.
La.—Hardee v. Nevers, 120 So. 227, 10 La.App. 537.
Va.—Shelton v. Detamore, 93 S.E.2d 314, 198 Va. 220—Thalhimer Bros. v. Buckner, 76 S.E.2d 215, 194 Va. 1011—Esso Standard Oil Co. v. Stewart, 59 S.E.2d 67, 190 Va. 949, 18 A.L.R.2d 1319—Boswell v. Lipscomb, 200 S.E. 756, 172 Va. 33.
W.Va.—Waddell v. New River Co., 93 S.E.2d 473.

93. Fla.—Hill v. Peddy, 86 So. 836, 80 Fla. 832—Silcox v. Corsa, 86 So. 611, 80 Fla. 677.
Minn.—In re Marsden's Estate, 13 N. W.2d 765, 217 Minn. 1.
Ohio.—Neave Bldg. Co. v. Roudebush, 18 Ohio Cir.Ct.,N.S., 426, 2 Ohio App. 330.
Okl.—Herron v. Spencer, 231 P.2d 691, 204 Okl. 481.
R.I.—Scott v. McQuade, 43 A.2d 318, 71 R.I. 198—O'Connell v. Ford, 191 A. 501, 58 R.I. 111.
Tex.—State v. Dickey, Civ.App., 158 S.W.2d 844, error refused.
Va.—Shelton v. Detamore, 93 S.E.2d 314, 198 Va. 220—Thalhimer Bros. v. Buckner, 76 S.E.2d 215, 194 Va. 1011—Esso Standard Oil Co. v. Stewart, 50 S.E.2d 67, 190 Va. 949, 18 A.L.R.2d 1319—Moore v. Vick, 24 S.E.2d 429, 181 Va. 157.
4 C.J. p 866 note 56.

94. Ala.—Mutual Life Ins. Co. of New York v. Maddox, 137 So. 290, 223 Ala. 503—Cudd v. Bentley, 87 So. 85, 204 Ala. 586.
Ill.—White v. City of Belleville, 5 N. E.2d 215, 364 Ill. 577, conformed to 9 N.E.2d 68, 290 Ill.App. 616.
N.Y.—Hoykendorf v. Bradley Contracting Co., 168 N.Y.S. 286, 181 App.Div. 922, modified on other grounds 125 N.E. 95, 227 N.Y. 204, motion denied 126 N.E. 911, 227 N.Y. 646.
R.I.—Wagner v. Benedick, 60 A.2d 160, 74 R.I. 293.
Va.—Garrison v. Burns, 16 S.E.2d 306, 178 Va. 1.
W.Va.—Morris v. City of Wheeling, 82 S.E.2d 536—Wickline v. Monongahela Power Co., 81 S.E.2d 326, 139 W.Va. 732.
4 C.J. p 866 note 57.

95. Mont.—Casey v. Northern Pac. Ry. Co., 198 P. 141, 60 Mont. 56.
4 C.J. p 867 note 58.

96. Ala.—Southern Ry. Co. v. Herron, 66 So. 627, 189 Ala. 662.
Mo.—Phillip v. Biernacki, App., 272 S.W. 707—Mann v. Weiss, 170 S.W. 355, 185 Mo.App. 335.
Tex.—St. Louis, B. & M. Ry. Co. v. Little, Civ.App., 81 S.W.2d 122.
4 C.J. p 867 note 59.

97. Wis.—Behling v. Wisconsin Bridge & Iron Co., 149 N.W. 484, 158 Wis. 584.
4 C.J. p 867 note 60.

98. Fla.—Seaboard Air Line Ry. v. Anderson, 73 So. 837, 73 Fla. 1.
R.I.—Syme v. McNeil, 107 A. 78, 42 R.I. 325.
Tenn.—Garis v. Eberling, App., 71 S. W.2d 215, 18 Tenn.App. 1.
Wis.—Wachowiak v. Spaight, 241 N. W. 346, 207 Wis. 323.
4 C.J. p 867 note 61.

Dissatisfaction not shown

(1) The trial judge's statement, in overruling a motion for new trial, that the jury were as competent to pass on the cause of accident as he was, was held not to show dissatisfaction with the jury's verdict, where the judge further stated that he was satisfied with the jury's finding.
Tenn.—Union Traction Co. v. Todd, 64 S.W.2d 26, 16 Tenn.App. 200.

(2) The record was held not to show that the trial judge was dissatisfied with the verdict in an ac-

ment should also be reversed where the trial judge in overruling a motion for new trial said that it was reluctantly overruled.[99]

b. Disapproval of Verdict

The action of the trial court in disapproving a verdict of the jury ordinarily will not be disturbed on appeal, especially if there is evidence to support a verdict other than the one rendered by the jury.

According to many decisions, a verdict disapproved by the trial judge is not entitled to the same weight as one which the trial judge has approved.[1] Hence it is generally held that where the trial court has exercised its discretion in setting aside a verdict on the ground that it is against the preponderance of the evidence or is not warranted by the evidence, its action will not be reviewed;[2] nor will its action in setting aside the verdict be disturbed where there is sufficient evidence on which to base a different verdict from the one rendered,[3] where there is not a preponderance of the evidence in favor of the verdict,[4] or unless the evidence plainly and palpably supports the verdict, or for errors of law, or where there is no basis in the evidence on which a verdict for the unsuccessful party could be permitted to stand.[5] However, the weight of the verdict, when there is evidence on which it can be based, in the absence of prejudice, partiality, or corruption, is not always overborne by the disapproval of the trial judge, and the reviewing court may regard itself bound by the conclusion of the jury, notwithstanding the disapproval of the trial court.[5.5]

Remittitur by appellate court. Where the trial court set aside a verdict as excessive, the appellate court will not reinstate it and order a remittitur.[6]

§ 1654. Successive Verdicts

a. When sustained
b. When set aside

a. When Sustained

The fact that the same verdict has been reached by several successive juries will usually preclude the appellate court from disturbing the last, at least where the evidence authorizes the verdict.

Since the law favors the termination of litigation when it can be done without violating some substantial right of the litigant,[6.50] it is generally the rule that, after two or more successive and concurrent verdicts, the appellate court will be strongly disinclined to interfere with the last verdict, and the findings under such circumstances are usually accepted as final,[7] especially where the trial court

tion for the death of a child playing about an automobile parked on an inclined driveway when such car began to move, so as to justify the reviewing court in granting a new trial on that ground.
Tenn.—Garis v. Eberling, App., 71 S.W.2d 215, 18 Tenn. 1.

(3) Other statements held not to show dissatisfaction with verdict requiring appellate court to grant new trial.
Fla.—Holstun v. Embry, 169 So. 400, 124 Fla. 554.

99. Ga.—Central of Ga. R. Co. v. Harden, 38 S.E. 949, 113 Ga. 453.
4 C.J. p 867 note 62.

1. Va.—Cooper v. Knox, 90 S.E.2d 844, 197 Va. 602—Von Roy v. Whitescarver, 89 S.E.2d 846, 197 Va. 384—Barb v. Lowe, 86 S.E.2d 854, 196 Va. 1014—Western State Hospital of Staunton v. Wininger, 83 S.E.2d 446, 196 Va. 300—Fedele v. National Liberty Ins. Co. of America, 35 S.E.2d 766, 184 Va. 528—Ellett v. Carpenter, 3 S.E.2d 370, 173 Va. 191—Stallard v. Atlantic Greyhound Lines, 192 S.E. 800, 169 Va. 223—Burch v. Grace Street Bldg. Corp., 191 S.E. 672, 168 Va. 329—Braswell v. Virginia Electric & Power Co., 173 S.E. 365, 162 Va. 27.
W.Va.—Browning v. Monongahela Transp. Co., 27 S.E.2d 481, 126 W. Va. 195.

Verdict liberally considered
While verdicts approved by trial judge are taken as on demurrer to evidence, verdicts disapproved are more liberally considered.
Va.—Chesapeake & O. Ry. Co. v. Palmer, 140 S.E. 831, 149 Va. 560.
Extent of review
(1) On appeal from an order vacating a verdict, the court must determine whether fair-minded men might reasonably differ as to the effect of evidence.
Conn.—Porcello v. Finnan, 156 A. 863, 113 Conn. 730.

(2) While jury's verdict, disapproved by trial court, is not entitled to same weight as verdict approved thereby, jury's fact finding, supported by credible testimony in record, cannot be disturbed by either trial court or supreme court of appeals.
Va.—Atlantic Greyhound Corp. v. Shelton, 36 S.E.2d 625, 184 Va. 684—Hinton v. Indemnity Ins. Co. of North America, 8 S.E.2d 279, 175 Va. 205.

2. Ala.—Karter v. Peck, 25 So. 1012, 121 Ala. 636.
4 C.J. p 867 note 63.

3. Mo.—Ward v. Prudential Life Ins. Co. of America, App., 105 S.W.2d 983.
Tenn.—Thomasson v. Western Union Tel. Co., 5 Tenn.Civ.App. 640.
4 C.J. p 867 note 64.

4. Minn.—Strobel v. Schulte, 82 N.W. 992, 79 Minn. 485.

5. Mo.—Graney v. St. Louis, etc., R. Co., 57 S.W. 276, 157 Mo. 666, 50 L.R.A. 153.
4 C.J. p 867 note 66.

5.5 Va.—Atlantic Greyhound Corp. v. Shelton, 36 S.E.2d 625, 184 Va. 684—Hinton v. Indemnity Ins. Co. of North America, 8 S.E.2d 279, 175 Va. 205.

6. Mo.—State ex rel. O'Donnell v. Boepple, App., 184 S.W. 1166.
Reason for rule
So to do would invade the province of the jury.
Mo.—State ex rel. O'Donnell v. Boepple, supra.
Conclusiveness of remittitur by trial court see supra § 1651 b.

6.50 Ga.—Baker v. Wyatt, 175 S.E. 678, 49 Ga.App. 410.

7. Cal.—**Corpus Juris quoted in** Albaugh v. Mt. Shasta Power Corp., 78 P.2d 217, 231, 9 C.2d 751.
Fla.—Southern Express Co. v. Stovall, 77 So. 618, 75 Fla. 1.
Ga.—Pound v. Smith, 96 S.E. 1038, 148 Ga. 497.
Southern Ry. Co. v. Birch, 17 S.E.2d 601, 66 Ga.App. 270—Gledhill v. Brown, 162 S.E. 824, 44 Ga.App. 670.
Idaho.—Union Grain & Elevator Co. v. McCammon Ditch Co., 288 P. 157, 49 Idaho 274.

approved all the verdicts or the last verdict,[8] or | even where each of the concurring verdicts has been

Ill.—Fenwick v. Bluebird Coal Co., 140 N.E.2d 129, 12 Ill.App.2d 464—Farr v. Chicago & E. I. R. Co., 131 N.E.2d 120, 8 Ill.App.2d 168—Warren v. Patton, 119 N.E.2d 465, 2 Ill.App.2d 173—Johnson v. Nevenhoven, 100 N.E.2d 60, 344 Ill.App. 125—Silberman v. Washington Nat. Ins. Co., 69 N.E.2d 519, 329 Ill. App. 448—Chucklin v. Fleming, 55 N.E.2d 539, 323 Ill.App. 362—Campbell v. Chicago, B. & Q. R. Co., 49 N.E.2d 750, 319 Ill.App. 453—Henry v. East & West Ins. Co. of New Haven, Conn., 32 N.E.2d 931, 309 Ill.App. 434—Wilson v. Kilgour, 9 N.E.2d 490, 291 Ill.App. 608—Greer v. Shell Petroleum Corp., 281 Ill.App. 238—Randall Dairy Co. v. Pevely Dairy Co., 278 Ill. App. 350—Williams v. Southern Ry. Co., 258 Ill.App. 34—Merrill v. Merrill, 215 Ill.App. 602—Jennings v. Glover's Estate, 214 Ill. App. 359—Meier v. Cleveland, C., C. & St. L. Ry. Co., 206 Ill.App. 255—Toledo, St. L. & W. R. Co. v. East St. Louis & Suburban Ry. Co., 206 Ill.App. 216—Stanton v. Chicago City Ry. Co., 205 Ill.App. 385, affirmed 119 N.E. 291, 283 Ill. 256—Cobine v. Cleveland, C., C. & St. L. Ry. Co., 199 Ill.App. 106—Gill v. Gill, 197 Ill.App. 211—Vogler v. Chicago & Carterville Coal Co., 196 Ill.App. 574—Hatcher v. Quincy Horse Ry. & Carrying Co., 193 Ill.App. 590, affirmed 111 N.E. 1005, 272 Ill. 347—Loftus v. Illinois Midland Coal Co., 193 Ill.App. 454—Bates v. Danville St. Ry. & Light Co., 190 Ill.App. 486.

Ky.—Hiram Blow Stave Co.'s Trustee v. Paducah Cooperage Co., 166 S.W. 615, 158 Ky. 833.

Louisville & N. R. Co. v. Brown, 11 Ky.Op. 199.

Minn.—Wilson v. Moline, 47 N.W.2d 865, 234 Minn. 174—State v. Drescher, 23 N.W.2d 533, 222 Minn. 120.

Miss.—Lynch v. American Slicing Mach. Co., 32 So.2d 546, 202 Miss. 515—Weaver v. Grenada Bank, 185 So. 249, 184 Miss. 158.

Mont.—Harrington v. Mutual Life Ins. Co. of New York, 195 P. 1107, 59 Mont. 261.

N.J.—Hutchinson v. Jersey Cent. Traction R. Co., 126 A. 481, 100 N. J.Law 218.

McMurtry v. Farm Service Exch., 130 A. 517, 3 N.J.Misc. 1064.

N.Y.—Pierce v. Village of Ravena, 36 N.Y.S.2d 42, 264 App.Div. 457—Bianchi v. Klein, 242 N.Y.S. 592, 229 App.Div. 758, affirmed 175 N.E. 303, 255 N.Y. 538.

Hygrade Knitting Co. v. Lisberg, 191 N.Y.S. 302.

N.C.—Pinnix v. Griffin, 20 S.E.2d 366, 221 N.C. 348, 141 A.L.R. 1164.

N.D.—Stratton v. Rosenquist, 171 N. W. 621, 41 N.D. 647.

Ohio.—Gibson v. National Life & Acc. Ins. Co., 110 N.E.2d 616, 92 Ohio App. 425—Jones v. Butler, 52 N.E.2d 347, 72 Ohio App. 335—Wills v. Anchor Cartage & Storage Co., 176 N.E. 680, 38 Ohio App. 358—Matis v. Woodruff, 166 N.E. 203, 31 Ohio App. 73—Korona Jewelry & Music House v. Loveland, 157 N. E. 500, 25 Ohio App. 116—Cincinnati Traction Co. v. Reilly, 19 Ohio App. 41—Storrs-Schaefer Co. v. Laws, 13 Ohio App. 387—McDonald & Frazier v. Schervish, 8 Ohio App. 386.

Michigan Mut. Life Ins. Co. v. Whitaker, 13 Ohio Cir.Ct.,N.S., 65.

Perry v. Edwards Mfg. Co., 18 Ohio N.P.,N.S., 293.

Pa.—O'Donnell v. Henderson, 87 Pa. Super. 342.

Gaita v. Pamula, Com.Pl., 38 Erie Co. 259.

R.I.—Melucci v. De Cubellis, 12 A. 2d 216, 64 R.I. 306.

Tex.—Monroe v. Gaylor, Com.App., 268 S.W. 724.

Va.—McClure Grocery Co. v. Watson, 149 S.E. 491, 153 Va. 221.

Wis.—Krudwig v. Koepke, 277 N.W. 670, 227 Wis. 1.

4 C.J. p 867 note 67.

Superior rule

Concurring verdicts rule is superior to the rule that decision of trial justice on motion for new trial will not be disturbed by reviewing court where evidence conflicts.

R.I.—Melucci v. De Cubellis, 12 A.2d 216, 64 R.I. 306.

No invariable number of verdicts is necessary before reviewing court may determine that "concurring verdicts rule" shall prevail, but, since the court and practice act, the rule has not been applied until after a third verdict, but whether the rule shall be applied after the third verdict rests entirely in the judgment of reviewing court.

R.I.—Melucci v. De Cubellis, supra.

Appellate court will have less hesitation in affirming a judgment where the case has been tried in two courts, and in both the findings of fact were against appellant.

Utah.—Callahan v. Simons, 228 P. 892, 64 Utah 250.

Careful consideration nevertheless

(1) Notwithstanding three successive verdicts for plaintiff in an action for death, a careful consideration of the trial evidence will not be omitted.

N.Y.—Schoonmaker v. Pittsburgh Contracting Co., 161 N.Y.S. 186, 176 App.Div. 48, reargument denied 161 N.Y.S. 1055, 176 App.Div. 55.

(2) Where case was remanded for new trial on ground of insufficiency of evidence to support verdict, verdict of second jury in favor of same litigant would be entitled to fair consideration by supreme court hearing second appeal, even if jury acted on same evidence that was before supreme court on first appeal.

Miss.—Universal Truck Loading Co. v. Taylor, 172 So. 756, 178 Miss. 143.

Concurrence of verdicts entitled to weight

(1) That an action was tried three times, and each time the jury gave the same verdict, is entitled to great weight on a third appeal, in determining whether there is sufficient evidence to sustain the verdict.

N.Y.—Lyman v. Village of Potsdam, 198 N.Y.S. 526, 204 App.Div. 528.

4 C.J. p 867 note 67 [a].

(2) On appeal from order granting or denying motion for new trial for insufficiency of evidence, made after two or more trials, appellate court, in determining whether retrial would result in different verdict, can consider the number of trials, whether evidence on each trial was substantially the same, the number of verdicts, and the similarity of the provisions of each, the orders for new trial, and the grounds thereof.

Cal.—Whitfield v. De Brincat, 96 P. 2d 156, 35 C.A.2d 476.

Amount of verdict

(1) The assessment of damages by a jury on a second trial at about what the first jury allowed was sufficient alone to eliminate the conclusion that such amount evidenced passion and prejudice.

Iowa.—Porter v. Heishman, 169 N.W. 115, 184 Iowa 931.

(2) On a motion for new trial on ground of excessive damages appearing to have been given under influence of passion and prejudice, it was proper for court, on appeal, to consider fact that substantial verdicts had been rendered in a prior trial.

Cal.—Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 9 C.2d 751.

N.D.—Mevorah v. Goodman, 68 N.W. 2d 469.

8. Ala.—Central of Georgia Ry. Co. v. Lee, 151 So. 840, 227 Ala. 661.

Cal.—**Corpus Juris quoted in** Albaugh v. Mt. Shasta Power Corp., 73 P. 2d 217, 231, 9 C.2d 751.

Fla.—American Automobile Ins. Ass'n v. Pearson, 163 So. 247, 120 Fla. 553—Jacksonville Traction Co. v. Seelbach, 157 So. 509, 117 Fla. 233.

Ga.—Culpepper v. Culpepper, 89 S.E. 161, 18 Ga.App. 182.

disapproved,[9] or where at the last trial the case of the prevailing party was strengthened by additional and substantial evidence.[10] Statutes limiting the number of new trials permissible on the ground of insufficiency of evidence have sometimes been construed to have this effect.[11]

Ill.—Heideman v. Kelsey, 131 N.E.2d 531, 7 Ill.2d 601.

Bosomburg v. Birk Bros. Brewing Co., 38 N.E.2d 352, 312 Ill.App. 262—Mulroy v. Prudential Ins. Co. of America, 20 N.E.2d 613, 299 Ill. App. 598—Norkevich v. Atchison, T. & S. F. R. Co., 263 Ill.App. 1, certiorari denied Atchison, T. & S. F. R. Co. v. Norkevich, 52 S.Ct. 497, 286 U.S. 544, 76 L.Ed. 1282—Segal v. Chicago City Ry. Co., 256 Ill.App. 569, motion denied 171 N.E. 922, 339 Ill. 635—Narkiewicz v. Wachowski, 198 Ill.App. 214—Larsen v. Ward Corby Co., 198 Ill. App. 109—Weisguth v. Supreme Tribe of Ben Hur, 194 Ill.App. 17, affirmed 112 N.E. 350, 272 Ill. 541—O'Brien v. Curran, 189 Ill.App. 542.

Minn.—Becker v. Thomson, 294 N.W. 214, 208 Minn. 332.

N.D.—Nesvold v. Gerding, 199 N.W. 860, 51 N.D. 237.

R.I.—Souza v. United Electric Rys. Co., 169 A. 484, 54 R.I. 51—Caccione v. Zino, 102 A. 35.

Tex.—American Nat. Ins. Co. v. Fulghum, Civ.App., 197 S.W. 235—Murray Gin Co. v. Putnam, Civ. App., 170 S.W. 806.

Va.—Snyder v. Fatherly, 163 S.E. 358, 158 Va. 335.

4 C.J. p 868 note 68.

9. R.I.—Melucci v. De Cubellis, 12 A.2d 216, 64 R.I. 306—Spiegel v. Grande, 123 A. 560, 45 R.I. 437.

Last verdict

To warrant reviewing court in applying concurring verdicts rule in a case where it appears to reviewing court that parties have been given sufficient opportunity for a fair determination of disputed questions of fact, it is immaterial whether the last verdict was approved or disapproved by the trial justice.

R.I.—Melucci v. De Cubellis, 12 A.2d 216, 64 R.I. 306.

10. Cal.—**Corpus Juris quoted in** Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 231, 9 C.2d 751.

Ky.—Polley v. Cline, 134 S.W.2d 631, 280 Ky. 773.

N.Y.—Budalich v. Baltimore & Ohio R. Co., 10 N.Y.S.2d 575, 256 App. Div. 991.

Ohio.—Michigan Mut. L. Ins. Co. v. Whitaker, 32 Ohio Cir.Ct. 297, affirmed 95 N.E. 1152, 84 Ohio St. 476.

4 C.J. p 868 note 69.

11. Miss.—Universal Truck Loading Co. v. Taylor, 172 So. 756, 178 Miss. 143.

Restriction applicable only to trial courts

A statute which provides that "no more than two new trials upon the same grounds shall be granted to the same party in the same cause" applies only to trial courts and does not prevent reviewing courts from reversing a judgment founded on a third verdict not warranted by the proof.

Ill.—Illinois Cent. R. Co. v. Patterson, 93 Ill. 290.

Tri-City Ry. Co. v. Brennan, 108 Ill.App. 471—Atchison, T. & S. F. R. Co. v. Alsdurf, 68 Ill.App. 149.

In Kentucky

(1) Under a statute since repealed, where there had been three verdicts for the same party, the court would not disturb the third one on the ground that it was flagrantly against the weight of the evidence and not sustained thereby, where the same complaint was made against the first two verdicts and urged as grounds for setting them aside; and this, although the first two judgments were reversed or set aside for errors of law.

Ky.—Nashville, C. & St. L. Ry. v. Byars, 67 S.W.2d 497, 252 Ky. 507, certiorari denied 54 S.Ct. 633, 292 U.S. 629, 78 L.Ed. 1483—Commonwealth Life Ins. Co. v. Goodnight's Adm'r, 32 S.W.2d 25, 235 Ky. 699—Cumberland R. Co. v. Girdner, 212 S.W. 105, 184 Ky. 375.

4 C.J. p 867 note 67 [e] (1).

(2) This statute was held to be not unconstitutional.

Ky.—Nashville, C. & St. L. Ry. v. Byars, supra.

(3) The rule under the statute obtained although either one or both of the first two verdicts were set aside for errors of law.

Ky.—Cumberland R. Co. v. Girdner, 212 S.W. 105, 184 Ky. 375.

4 C.J. p 867 note 67 [e] (2).

(4) However, there had to be three verdicts; if there were three trials, but the jury in one of them failed to agree, the trial in which there was not a verdict was not considered as one of the verdicts within the meaning of the statute.

Ky.—Louisville & N. R. Co. v. Daniel, 115 S.W. 804, 1198, 131 Ky. 689.

4 C.J. p 867 note 67 [e] (3).

(5) The statute, however, did not bar an assignment of insufficiency of evidence on a fifth appeal of a case where the former appeals had not determined the question as to sufficiency of evidence to support the verdict.

Ky.—Black Mountain Corporation v. Partin's Adm'r, 86 S.W.2d 676, 260 Ky. 680.

(6) Nor did it limit the right of the reviewing court to set aside a verdict and grant a new trial where errors of law had been committed to the prejudice of the party appealing.

Ky.—Louisville & N. R. Co. v. Daniel, supra.

(7) It did not preclude the granting of any number of new trials for errors of law in giving instructions and admitting incompetent evidence.

Ky.—Bardstown v. Nelson County, 90 S.W. 246, 121 Ky. 737, 28 Ky.L. 710.

(8) Nor did it limit the right to grant a new trial where the verdict was so excessive as to make it plain that it was given under the influence of passion or prejudice.

Ky.—Norfolk & W. Ry. Co. v. McCoy, 97 S.W.2d 571, 265 Ky. 653—Louisville & N. R. Co. v. Daniel, supra.

(9) So in accordance with the general rule a second verdict could be set aside because flagrantly against the evidence, as the statute merely provided that no more than two new trials could be granted on that ground.

Ky.—Cincinnati, etc., R. Co. v. Martin, 157 S.W. 710, 154 Ky. 348.

(10) Statute providing that not more than two trials should be awarded for insufficiency of evidence was merely declaratory of rule prevailing when statute became effective, as to the effect to be given three similar verdicts rendered on a given state of facts; and the repeal of the statute, while expressive of legislative will that court of appeals exercise its inherent power to prevent wrong and oppression, does not prevent court from giving great weight to the finding of three successive juries on an issue submitted for their determination under instructions.

Ky.—Polley v. Cline, 134 S.W.2d 631, 280 Ky. 773.

In Ohio

(1) A statute which provides that "'the same court shall not grant more than one new trial on the weight of the evidence against the same party in the same case,' has special and exclusive application to trial courts, and such provision does not operate as a limitation upon the power of the circuit court, as a court of error, to reverse a case any number of times, on the ground that the verdict of the jury in the trial court was against the case on the weight of the evidence."

Ohio.—Columbus St. R. Co. v. Pace, 67 N.E. 490, 68 Ohio St. 200.

"To take this course," it has been said, "is not to weakly permit or to approve the doing of a wrong in the name of justice, but is to recognize the proper functions of the court and the jury, and, after exercising due caution to prevent injustice, places the determination of disputed questions of fact in the tribunal provided by our constitution and laws."[12] This principle has been applied where the evidence authorizes the verdict;[13] where the evidence is conflicting;[14] where there is evidence sufficient to go to the jury;[15] where there is any evidence to sustain the verdict,[16] although meager and unsatisfactory[17] and such as would have authorized a different finding,[18] although the verdict is against the preponderance of the evidence,[19] although the reviewing court would have reached a different conclusion on the evidence,[20] and although the trial court granted a new trial on the ground of the insufficiency of the evidence.[21]

Similar statements are that the verdict should not be set aside unless without any support in the evidence;[22] unless decidedly or flagrantly against the evidence;[23] unless the evidence is manifestly

(2) However, it has been held that another statute, denying the right of the same court to grant more than one reversal in favor of the same party in the same cause of action, on the ground that the verdict is against the weight of the evidence, applies in the circuit court where the judgment to be reviewed was rendered and the proceedings in error were brought after its enactment.
Ohio.—Sidney v. Schmidt, 33 Ohio Cir.Ct. 128.

(3) In view of this latter statute the court of appeals cannot weigh evidence on an appeal from a second trial by a party where the verdict against him at the first trial was set aside as against the evidence.
Ohio.—Rolf v. Heil, 148 N.E. 398, 113 Ohio St. 113—Cleveland Ry. Co. v. Trendel, 128 N.E. 136, 101 Ohio St. 316.
Resor v. Resor, App., 84 N.E.2d 753—Green v. Henderson, App., 59 N.E.2d 765—Shank v. Hamilton Foundry & Machine Co., 155 N.E. 564, 23 Ohio App. 323—Miami Conservancy Dist. v. Shade, 12 Ohio App. 169.

(4) Although a statute precludes the trial court, which has granted one new trial on the weight of evidence, from granting a second new trial on the same ground, the court of appeals has power to determine whether the verdict on the second trial was against the weight of evidence.
Ohio.—Werner v. Rowley, 193 N.E. 623, 129 Ohio St. 15.
Bond Stores v. Miller, 197 N.E. 369, 49 Ohio App. 470.

(5) A court of appeals having once reversed a case on the weight of the evidence is not prohibited by the statute again to pronounce judgment of reversal on the ground that plaintiff was guilty of contributory negligence as a matter of law; but, where it requires the weighing of evidence to determine whether plaintiff was guilty of contributory negligence, it becomes a question of fact, and the provisions of such section apply.
Ohio.—McMurtrie v. Wheeling Traction Co., 140 N.E. 636, 107 Ohio St. 107.

(6) The provision of statute that the same court shall not grant more than one judgment of reversal on the weight of the evidence, refers to another provision, providing that a new trial may be granted because the verdict is not sustained by sufficient evidence, and not to a provision that a new trial may be granted on the ground of excessive damages given under the influence of passion and prejudice.
Ohio.—Waldron v. New York Cent. Ry. Co., 140 N.E. 161, 106 Ohio St. 371, followed in State ex rel. Niederlehner v. Ryan, 185 N.E. 882, 125 Ohio St. 635.

(7) The statute providing that the same court shall not grant more than one reversal on the weight of evidence, does not preclude the court of appeals from reversing a judgment upon finding that the verdict upon which it is based is excessive, appearing to have been given under the influence of passion and prejudice, although a former judgment in the same case had previously been reversed because the verdict was against the weight of the evidence.
Ohio.—Waldron v. New York Cent. Ry. Co., 140 N.E. 161, 106 Ohio St. 371, followed in State ex rel. Niederlehner v. Ryan, 185 N.E. 882, 125 Ohio St. 635.

12. Cal.—**Corpus Juris quoted in** Albaugh v. Mt. Shasta Power Corp., 73 P.2d 217, 231, 9 C.2d 751.
R.I.—Carr v. American Locomotive Co., 77 A. 104, 31 R.I. 234, 242, Ann.Cas.1912B 131, rehearing denied 77 A. 774.

13. Ga.—Roland v. Watson, 196 S.E. 710, 185 Ga. 866.
Haggerty v. Holmes & Barber, 93 S.E. 559, 20 Ga.App. 799—Dalton Excelsior Co. v. Keeble, 91 S.E. 440, 19 Ga.App. 336.
4 C.J. p 868 note 71.

14. Fla.—Wilson Cypress Co. v. Logan, 184 So. 331, 134 Fla. 617.
Ill.—Greer v. Shell Petroleum Corporation, 281 Ill.App. 238—Romano v. Rockford City Traction Co., 230 Ill.App. 402.
4 C.J. p 868 note 72.

15. Minn.—Miller v. Continental Ins. Co. of New York, 196 N.W. 651, 157 Minn. 489.
4 C.J. p 868 note 73.

16. Fla.—Florida East Coast R. Co. v. Carter, 67 So. 916, 69 Fla. 153.
Ill.—Dixon v. Montgomery Ward & Co., 132 N.E.2d 20, 8 Ill.App.2d 552—Pietrolonardo v. Houghteling, 61 N.E.2d 874, 326 Ill.App. 459.
N.D.—Rott v. Provident Life Ins. Co., 298 N.W. 17, 70 N.D. 758.
4 C.J. p 868 note 74.

17. Ga.—Davis v. Bellah, 116 S.E. 30, 29 Ga.App. 409.
Mo.—Reynolds v. Hanson, App., 199 S.W. 279.
N.Y.—Rice v. H. P. Cummings Const. Co., 155 N.Y.S. 766, 169 App.Div. 832, affirmed 115 N.E. 1050, 220 N.Y. 564.
4 C.J. p 869 note 75.

18. Ga.—Southern R. Co. v. Scott, 65 S.E. 143, 133 Ga. 82.

19. Ark.—Scott v. Cleveland, 192 S.W. 892, 127 Ark. 429.
4 C.J. p 869 note 77.

20. Mo.—Sisk v. Dillman Egg Case Co., App., 190 S.W. 389.
4 C.J. p 869 note 78.

21. R.I.—Carr v. American Locomotive Co., 77 A. 104, 31 R.I. 234, Ann.Cas.1912B 131, rehearing denied 77 A. 774.

22. Nev.—Birch v. Southern Pac. Co., 104 P. 225, 32 Nev. 75, Ann.Cas.1912B 1166.
N.J.—Anderson v. Public Service Corp., 83 A. 769, 83 N.J.Law 19.

23. Ga.—Morris v. Baxley Hardware Co., 149 S.E. 35, 168 Ga. 769.
Ill.—Chicago Title & Trust Co. v. Cleary, 48 N.E.2d 576, 319 Ill.App. 83.
Ky.—Lexington & E. Ry. Co. v. Sexton, 235 S.W. 773, 193 Ky. 201.

Strong case

Generally, after two or more trials resulting in like verdicts of different juries appellate court will not reverse judgment on last verdict for

and clearly insufficient to support the verdict;[24] unless the preponderance of the evidence is so great as to warrant the conclusion that the verdict was unjust or produced by improper influences,[25] or was the result of passion or of prejudice;[26] unless there is a reasonable probability of a different outcome;[27] unless some error of law has been committed;[28] or unless error is so clear as fully to demonstrate that a failure of justice will occur if the appellate court does not again interfere.[28.5]

Limitations of rule. Nevertheless the virtue ascribed to a subsequent concurring verdict is confined to the effect of the determination by the jury of the weight of the conflicting evidence and does not extend to questions of law arising from the admitted or uncontroverted facts of a case.[29] Also the rule that, where a plaintiff on two successive trials has secured verdicts which have been set aside for the insufficiency of the evidence, a verdict in his favor on a third trial, which the trial court refused to set aside, will not ordinarily be set aside on that ground on appeal, cannot be invoked in a case where the second and third trials were based on the record of the first trial, with the addition of plaintiff's own testimony on the third trial, since in such case the jury and the trial judge are in no better position to judge of the credibility of the witnesses than is the court of review.[30]

Verdicts differing from prior verdicts. A verdict differing from those rendered by prior juries in the same case receives no support from such verdicts and must be treated as one of first instance;[31] but the mere fact that several juries reached different conclusions on substantially the same evidence is no reason why the last verdict should not stand,[32] and it will not be disturbed[33] unless clearly shown to have been actuated by passion or prejudice.[34]

b. When Set Aside

Although a number of prior juries have in the same case rendered similar verdicts, the appellate court may in a proper case set aside the last of such verdicts, except as statutes may prevent.

insufficiency of evidence to support verdict except in very strong case.
Wyo.—Long v. Forbes, 136 P.2d 242, 58 Wyo. 533.

24. Minn.—State v. Drescher, 23 N.W.2d 533, 222 Minn. 120—Pellowski v. Pellowski, 265 N.W. 440, 196 Minn. 572.
4 C.J. p 869 note 81.

25. Ala.—Metropolitan Life Ins. Co. v. Goodman, 71 So. 409, 196 Ala. 304.
4 C.J. p 869 note 82.

Prejudice to substantial right
After two appeals have been taken, and four juries have found for plaintiff, a judgment in his favor will not be interfered with unless defendant has been prejudiced in some substantial right.
Utah.—Tyng v. Constant-Loraine Inv. Co., 165 P. 509, 50 Utah 1.

26. N.Y.—Koester v. New York City R. Co., 96 N.Y.S. 117.
4 C.J. p 869 note 83.

Passion or prejudice not shown
(1) Where four different juries have held defendant liable for trespass, and little defense is made, and no evidence of misconduct or error is shown, an excessive allowance of exemplary damages is not ground for a reversal or new trial, as showing passion or prejudice of the jury.
Mo.—Sperry v. Hurd, 185 S.W. 170, 267 Mo. 628.

(2) Where there was substantial evidence to support facts on which plaintiff relied for recovery, and two juries had rendered verdicts each for ten thousand dollars, and defendant assigned no error to the overruling of its demurrer to the evidence, a verdict of the named amount for the crushing off of an arm cannot be held to be so against the weight of evidence as to indicate passion and prejudice.
Mo.—Zini v. Terminal R. Ass'n of St. Louis, 250 S.W. 47.
4 C.J. p 869 note 83 [a].

27. N.Y.—Williams v. Delaware, etc., R. Co., 80 N.Y.S. 945, 81 App. Div. 444, affirmed 69 N.E. 1133, 177 N.Y. 564.
4 C.J. p 869 note 84.

28. N.C.—White v. Town of Edenton, 96 S.E. 729, 176 N.C. 685.
4 C.J. p 869 note 85.

28.5 Iowa.—Lawson v. Fordyce, 21 N.W.2d 69, 237 Iowa 28—McKlveen v. Townley, 7 N.W.2d 186, 233 Iowa 328—In re Hill's Estate, 6 N.W.2d 835, 232 Iowa 1000.

Slight error insufficient
A fourth successive verdict in favor of plaintiff will not be reversed for slight errors in the charge, or in refusal to charge as requested.
Ga.—Atlantic Coast Line R. Co. v. McElmurray Bros., 86 S.E. 48, 16 Ga.App. 759.

29. N.J.—Fulton v. Grieb Rubber Co., 60 A. 37, 72 N.J.Law 35.

30. N.Y.—Williams v. Delaware, etc., R. Co., 73 N.Y.S. 38, 66 App. Div. 336.

31. Cal.—Grant v. Los Angeles Transfer Co., 188 P. 294, 45 C.A. 731.
N.J.—Briggs v. Public Service Ry. Co., 102 A. 382, 91 N.J.Law 1.

32. Ill.—Hall v. Chicago & A. R. Co., 208 Ill.App. 102.
Iowa.—State Sav. Bank of Sharpsburg v. Universal Credit Co., 12 N.W.2d 890, 234 Iowa 443.
4 C.J. p 868 note 67 [i].

33. Ind.—Indiana Union Traction Co. v. Bales, 121 N.E. 850, 69 Ind. App. 391.
4 C.J. p 868 note 67 [i] (2).

Amount of verdict
(1) Two thousand dollars for the breaking of both bones of a leg about half an inch above the ankle, resulting in impairment of the function of the ankle, which will probably result in a flattened foot, will not be held excessive, the jury on the first trial having fixed damages at three thousand dollars.
Ind.—Indiana Union Traction Co. v. Bales, 121 N.E. 850, 69 Ind.App. 391.

(2) That the jury awarded plaintiff six thousand dollars in an action for wrongful death did not require that plaintiff remit two thousand dollars of a verdict obtained for eight thousand dollars in a subsequent trial, although the judgment in the first trial was reversed, for trial on the issue of negligence.
Kan.—Corley v. Atchison, T. & S. F. Ry. Co., 147 P. 842, 95 Kan. 124, Ann.Cas.1916B 163.

(3) A judgment on a second verdict for plaintiff will not be reversed, if sustained by evidence and not palpably excessive, although there are harmless errors, and although it exceeds the first verdict in amount.
Fla.—Florida East Coast Ry. Co. v. Carter, 67 So. 916, 69 Fla. 153.

34. Cal.—Grant v. Los Angeles Transfer Co., 188 P. 294, 45 C.A. 731.
Iowa.—Manning v. Meade, 164 N.W. 113, 180 Iowa 932.

Except where a different rule is provided for by statute, as is discussed supra subdivision a of this section, the mere fact that several successive verdicts have been rendered for the same party will not prevent a reviewing court from setting aside the verdict.[35] Accordingly, such a verdict may be set aside where the trial judge has refused to order a new trial principally because prior juries had rendered similar verdicts;[36] and the reviewing court may also set aside the verdict where it is contrary to the evidence,[37] or is not supported by any evidence;[38] where it is clearly and palpably against the great weight of the evidence;[39] where it plainly indicates that it is the result of ignorance, prejudice, passion, or corruption;[40] where it is obviously excessive;[41] or where the record reveals errors of law[42] or shows that a fair trial was not had.[43]

§ 1655. Verdicts in Equity

Ordinarily, the appellate court will not regard as conclusive a jury verdict in an equity case, since it is merely advisory; but such a verdict will nevertheless be given weight and will not usually be disturbed unless clearly wrong.

Except where the rule has been changed by statute, a verdict rendered on submission of issues in a chancery case to a jury is generally held to be merely advisory, and not binding either on the chancellor or on the appellate court, and the appellate court will examine the evidence to determine whether the decree is sufficiently supported[44] and this is

35. Ga.—Brogdon v. Hogan, 13 S.E.2d 666, 191 Ga. 647.
Ill.—Campbell v. Chicago, B. & Q. R. Co., 49 N.E.2d 750, 319 Ill.App. 453.
Miss.—Universal Truck Loading Co. v. Taylor, 172 So. 756, 178 Miss. 143.
Neb.—Stewart v. City of Lincoln, 207 N.W. 511, 114 Neb. 362.
N.Y.—Eddery v. Interborough Rapid Transit Co., 156 N.Y.S. 317, 172 App.Div. 882, affirmed 115 N.E. 1038, 220 N.Y. 589.
Tex.—Kveton v. Keding, Civ.App., 286 S.W. 673.
4 C.J. p 869 note 89.

There is no invariable rule that an appellate court will not reverse a second time because the verdict is manifestly against the weight of evidence.
Ill.—Wayne v. Freeport Motor Cas. Co., 67 N.E.2d 425, 329 Ill.App. 185.

Appellate court determines question
The supreme court determines when recovery of successive verdicts shall bar granting of new trial.
R.I.—Whitworth v. United Electric Rys. Co., 137 A. 781, 48 R.I. 301.

First trial replete with error
While a second verdict will often be allowed to stand on the same evidence on which the court set aside a similar verdict, this does not apply where the first trial was replete with error, as the appellate court cannot say that the two juries have come to the same conclusion on the same facts.
N.Y.—Shea v. Shea, 204 N.Y.S. 560, 209 App.Div. 228.

36. Tenn.—Nashville, Chattanooga & St. L. Ry. v. Perry, 13 Tenn. App. 268.

37. Ill.—Chucklin v. Lowden, 47 N.E.2d 129, 317 Ill.App. 537—Farrell v. Bruce, 200 Ill.App. 588.
4 C.J. p 869 note 90.

38. Ga.—Brumbelow v. Hopkins, 29 S.E.2d 42, 197 Ga. 247—Georgia Cent. R. Co. v. Woolsey, 37 S.E. 392, 112 Ga. 365.
Ill.—Novak v. Illinois Cent. R. Co., 79 N.E.2d 92, 334 Ill.App. 241.
4 C.J. p 869 note 91.

Insufficiency of evidence as matter of law
That four verdicts at the trial terms, sustained by the trial judge, have been rendered for plaintiff does not prevent the court, on appeal from the judgment on the last verdict, from setting it aside on the ground of the insufficiency of the evidence as a matter of law.
N.Y.—Hickey v. New York Cent., etc., R. Co., 148 N.Y.S. 795, 163 App. Div. 270.

Defects in proof not supplied
A second verdict in his favor cannot supply defect of proof in case of a party having the burden of proof.
Minn.—McCool v. Davis, 202 N.W. 900, 162 Minn. 281.

39. N.Y.—Adams v. New York City R. Co., 109 N.Y.S. 1019, 125 App. Div. 551.
4 C.J. p 869 note 92.

40. N.J.—Graham v. Consolidated Tract. Co., 44 A. 964, 64 N.J.Law 10.

41. N.J.—Green v. Barnes Mfg. Co., Sup., 58 A. 171.
Pa.—Givens v. W. J. Gilmore Drug Co., 17 A.2d 184, 340 Pa. 361.
4 C.J. p 869 note 94.

42. Ill.—Randall Dairy Co. v. Pevely Dairy Co., 278 Ill.App. 350.
Pa.—Itzkovich v. Royal Electrotype Co., 100 Pa.Super. 310.

Case will be retried as often as necessary to correct harmful errors of law.
Pa.—Itzkovich v. Royal Electrotype Co., supra.

43. Mo.—St. Louis Union Trust Co. v. Baker, App., 264 S.W. 437.
N.Y.—Rothenberg v. Collins, 146 N.Y.S. 762, 161 App.Div. 387.

44. Ala.—Wilkerson v. Sorsby, 94 So. 481, 208 Ala. 345.
Ill.—Kime v. Kime, 196 Ill.App. 344.
Kan.—Powell v. Kansas-Missouri Ry. & Terminal Co., 249 P. 675, 121 Kan. 622.
Ky.—Burley Tobacco Growers' Co-op. Ass'n v. Devine, 289 S.W. 253, 217 Ky. 320—Fort v. Wiser, 201 S.W. 7, 179 Ky. 706.
Mo.—Shaw v. Butler, 78 S.W.2d 420. Davis v. Yorkshire Ins. Co., 288 S.W. 80, 221 Mo.App. 798.
Okl.—Warren v. Howell, 232 P.2d 934, 204 Okl. 674—Brotherhood of Railroad Trainmen v. Brown, 71 P.2d 742, 180 Okl. 489—Clark v. Ellison, 71 P.2d 609, 180 Okl. 630—Reuck v. Green, 202 P. 790, 84 Okl. 131—Carter v. Prairie Oil & Gas Co., 160 P. 319, 58 Okl. 365.
S.C.—Anderson v. Ætna Casualty & Surety Co., 178 S.E. 819, 175 S.C. 254.
Tenn.—Doughty v. Grills, 260 S.W. 2d 379, 37 Tenn.App. 63.
Utah.—Burgess v. Colby, 71 P.2d 185, 93 Utah 103.
Va.—Twohy v. Harris, 72 S.E.2d 329, 194 Va. 69.
W.Va.—Di Bacco v. Benedetto, 95 S.E. 601, 82 W.Va. 84.
4 C.J. p 875 note 69.

Feigned issue
The judgment of the chancellor that the verdict of the jury on a feigned issue is or is not according to law is reviewable the same as a judgment on verdict of the supreme court.
N.J.—Lake Lenore, Inc. v. Delaware, L. & W. R. Co., 168 A. 178, 113 N. J.Eq. 533.
4 C.J. p 875 note 69 [b].

Findings of court against jury verdict or findings
(1) In cases of equitable cognizance, where the record shows that it did not adopt the jury's findings, but disagreed therewith, a judgment based on such findings must be reversed.

so notwithstanding the chancellor has adopted the verdict or findings of the jury.[45]

Nevertheless the rule that the weight of evidence is in the province of the court and jury and that the appellate court will not interfere except where the verdict is the result of a gross disregard of the evidence is much deferred to even in equity trials,[46] and where the verdict has been approved and the findings adopted by the chancellor, the decree will not be reversed unless it clearly appears to be erroneous.[47] Furthermore in some jurisdictions a verdict in such cases is given the same force as a verdict of a properly instructed jury at law;[48] and,

Okl.—Gamel v. Hynds, 171 P. 920, 69 Okl. 204.

(2) Findings of the jury prevail over those of the court, where the evidence is even unless there was error in the admission of evidence.

Wis.—Schabo v. Wolf-Pepper Transportation & Storage Co., 229 N.W. 549, 201 Wis. 190.

(3) Decree of chancellor, contrary to the verdict of a jury on a directed issue, will be reversed, and a final decree entered in accordance with the verdict, if the preponderance of evidence is with it.

Va.—Fitchette v. Cape Charles Bank, 133 S.E. 492, 146 Va. 715.

(4) While the supreme court will attach great weight to the decision of the trial court in setting aside a special verdict and directing that such verdict be reversed, where such verdict is supported by credible evidence, the action of the court in reversing it will be set aside on appeal.

Wis.—Delvaux v. Kewaunee, G. B. & W. Ry. Co., 167 N.W. 438, 167 Wis. 586.

4 C.J. p 875 note 69 [c].

Mechanic's lien case

(1) Under some statutes the findings of a jury in a mechanic's lien case are not binding on the appellate court.

Mich.—Willard v. Magoon, 30 Mich. 273.

40 C.J. p 516 note 31 [a].

(2) Under other statutes, when a jury are called in a mechanic's lien case, on demand of either party, their finding is final as in a law case, unless set aside by court, and is not subject to review or modification.

S.C.—Stone & Clamp, General Contractors v. Holmes, 60 S.E.2d 231, 217 S.C. 203.

45. Mo.—Shaw v. Butler, 78 S.W. 2d 420.

S.C.—Anderson v. Ætna Casualty & Surety Co., 178 S.E. 819, 175 S.C. 254.

Burden is on appellant to establish that the circuit judge erred.

S.C.—Anderson v. Ætna Casualty & Surety Co., supra.

Directed verdict

Where an issue out of chancery was ordered, and the chancellor directed a verdict, the case became one where the chancellor himself found facts, and is reviewable on appeal on the same principles that such judgments are reviewed.

Ky.—Kelley-Koett Mfg. Co. v. Goldenberg, 270 S.W. 15, 207 Ky. 695.

Tenn.—Standard Life Ins. Co. of the South v. Strong, 89 S.W.2d 367, 19 Tenn.App. 404.

4 C.J. p 875 note 69 [d].

On equitable issue

Where in one proceeding plaintiff united a demand for damages for the acts of defendant in casting surface water on his land, with a prayer for an injunction against maintenance of the condition, the verdict of the jury, while conclusive on the issues of damages, is not conclusive on the equitable issues.

Cal.—Farrell v. City of Ontario, 178 P. 740, 39 C.A. 354.

46. Kan.—Brothers v. Adams, 107 P.2d 757, 152 Kan. 675.

Ky.—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S.W. 409, 184 Ky. 70—Campbell v. Napier, 206 S.W. 271, 182 Ky. 182.

Mo.—Burnett v. Hudson, 228 S.W. 462.

Okl.—White v. Morrow, 100 P.2d 872, 187 Okl. 72.

Wash.—Parks v. Yakima Valley Production Credit Ass'n, 78 P.2d 162, 194 Wash. 380.

4 C.J. p 876 note 70.

Case considered in light of theory of trial

Fact issues submitted to the jury in an action triable to the court will be considered on review in the light of the theory upon which the case was tried by the court and jury, without arbitrarily applying technical rules of interpretation.

Minn.—Walsh v. Kuechenmeister, 265 N.W. 340, 196 Minn. 483.

47. Ill.—Campbell v. Freeman, 130 N.E. 319, 296 Ill. 536.

Ky.—Ellis' Adm'r v. Burgess, 270 S. W. 753, 208 Ky. 268—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S.W. 409, 184 Ky. 70—Campbell v. Napier, 206 S.W. 271, 182 Ky. 182—Louisville & N. R. Co. v. Tuttle, 203 S.W. 308, 180 Ky. 558.

Me.—Abbott v. Clark, 126 A. 828, 124 Me. 185.

Minn.—Coughlin v. Farmers & Mechanics Sav. Bank of Minneapolis, 272 N.W. 166, 199 Minn. 102.

Miss.—Studdard v. Carter, 82 So. 70, 120 Miss. 246.

Mont.—Mason v. Swee, 193 P. 356, 60 Mont. 32.

Okl.—Mattingly v. Sisler, 175 P.2d 796, 198 Okl. 107—Andrew v. Gant, 233 P. 741, 106 Okl. 219.

Tenn.—Barksdale v. Marcum, 7 Tenn. App. 697.

Va.—Richardson v. Breeding, 187 S. E. 454, 167 Va. 30.

4 C.J. p 876 note 71—21 C.J. p 596 note 3.

Where there is evidence to support the verdict, it will be sustained.

Ky.—Lower v. Pine & Cypress Mfg. Co., 18 S.W.2d 273, 229 Ky. 820.

N.Y.—Rubin v. Dairymen's League Co-op. Ass'n, 18 N.Y.S.2d 466, 259 App.Div. 23, motion denied 20 N. Y.S.2d 672, 259 App.Div. 940, affirmed 29 N.E.2d 458, 284 N.Y. 32, reargument denied 31 N.E.2d 927, 284 N.Y. 816.

Tenn.—Buice v. Scruggs Equipment Co., 267 S.W.2d 119, 37 Tenn.App. 556—Standard Life Ins. Co. of the South v. Strong, 89 S.W.2d 367, 19 Tenn.App. 404.

Tex.—Morgan v. Davis, Civ.App., 292 S.W. 610.

4 C.J. p 876 note 71 [a].

Appellate court looks only for evidence to sustain the verdict

Tenn.—Scarbrough v. Isham, 196 S. W.2d 73, 29 Tenn.App. 216—Davis v. Mitchell, 178 S.W.2d 889, 27 Tenn.App. 182—Meyer v. Cooper, 6 Tenn.App. 38.

Verdict held clearly erroneous

Ill.—Szarat v. Schuerr, 20 N.E.2d 587, 371 Ill. 289.

48. Ariz.—Lillywhite v. Coleman, 52 P.2d 1157, 46 Ariz. 523.

Cal.—Whiting v. Squeglia, 232 P. 986, 70 C.A. 108—Stone v. McCarty, 220 P. 690, 64 C.A. 158.

Colo.—McKee v. Elwell, 194 P. 616, 69 Colo. 316.

Ill.—Campbell v. Freeman, 130 N.E. 319, 296 Ill. 536.

Ky.—Ellis' Adm'r v. Burgess, 270 S. W. 753, 208 Ky. 268.

Mass.—Witherington v. Eldredge, 162 N.E. 300, 264 Mass. 166.

Mo.—Davis v. Alexander, 183 S.W. 563.

Okl.—Morey v. James, 276 P. 707, 136 Okl. 174—Lewis v. Allen, 142 P. 384, 42 Okl. 584.

S.C.—Carmichael v. Carmichael, 96 S. E. 526, 110 S.C. 357.

Tenn.—Buice v. Scruggs Equipment Co., 267 S.W.2d 119, 37 Tenn.App. 556—Brandtjen & Kluge v. Pope, 192 S.W.2d 496, 28 Tenn.App. 679—Ray v. Crain, 80 S.W.2d 113, 18 Tenn.App. 603—National Life &

if the findings are not objected to by motion for a new trial or set aside by the court, they become established facts and cannot be questioned on appeal.[49] So where, as under a code practice, all trials assume the features of trials at law, it has been held that the appellate court accepts the verdict of a jury as generally conclusive on the facts.[50]

As the verdict of the jury is advisory only, if the chancellor sets it aside and makes findings of his own, his decree will not ordinarily be reversed,[51] especially if supported by the evidence.[52] The appellate court will not weigh evidence to determine whether it preponderates in favor of the findings of the court or the verdict of the jury.[53] Clear and palpable error must appear to justify a reversal.[54]

3. Findings of Court

§ 1656(1). Conclusiveness in General

Except as a different holding may be required by statute or rule of court, fact findings of the trial court in a case tried without a jury are given the same effect on appeal as jury verdicts, and, if supported by the evidence and free from legal error, are generally regarded as conclusive and binding on the appellate court.

Except in so far as the rule has been modified by statutory provision[55] or except as it may have been

Accident Ins. Co. v. American Trust Co., 68 S.W.2d 971, 17 Tenn. App. 516—Meyer v. Cooper, 6 Tenn. App. 38.
Utah.—Felice v. Biscardi, 246 P. 535, 67 Utah 171.
Va.—Norfolk & W. Ry. Co. v. A. C. Allen & Sons, 95 S.E. 406, 122 Va. 603.
4 C.J. p 876 note 72.

Verdict on conflicting evidence ordinarily is conclusive.
Cal.—Whiting v. Squeglia, 232 P. 986, 70 C.A. 108—Stone v. McCarty, 220 P. 690, 64 C.A. 158.
Colo.—McKee v. Elwell, 194 P. 616, 69 Colo. 316.
Ill.—Scully v. Wilhelm, 15 N.E.2d 313, 368 Ill. 573.
Kan.—Adams v. Brothers, 122 P.2d 757, 155 Kan. 23.
Ky.—Ellis' Adm'r v. Burgess, 270 S. W. 753, 208 Ky. 268.
Utah.—Felice v. Biscardi, 246 P. 535, 67 Utah 171.
Va.—Twohy v. Harris, 72 S.E.2d 329, 194 Va. 69.
4 C.J. p 876 note 72 [a].

Legal issue in equitable case
Where there is presented in an equitable action a distinct legal issue, triable by a jury, the verdict of the jury will not be disturbed unless flagrantly against the evidence.
Ky.—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S. W. 409, 184 Ky. 70—Campbell v. Napier, 206 S.W. 271, 182 Ky. 182—Louisville & N. R. Co. v. Tuttle, 203 S.W. 308, 180 Ky. 558.

49. Mass.—Phillips v. Chase, 89 N. E. 1049, 203 Mass. 556, 30 L.R.A., N.S., 159, 17 Ann.Cas. 544.
4 C.J. p 876 note 73.

Where so provided by constitutional provision, the supreme court cannot review the facts found by the jury in a chancery case, where the verdict is not set aside.
S.C.—Thigpen v. Thigpen, 60 S.E.2d 621, 217 S.C. 322—Brown v. Volunteer State Life Ins. Co., 48 S.E.2d 507, 212 S.C. 537—Tindal v. Sublett, 63 S.E. 960, 82 S.C. 199.
4 C.J. p 876 note 73 [a].

50. Ind.—Gatting v. Newell, 9 Ind. 572.
4 C.J. p 876 note 74.

51. Ala.—Wilkerson v. Sorsby, 94 So. 481, 208 Ala. 345.
Ariz.—Wilson v. Coerver, 279 P. 253, 35 Ariz. 488.
Idaho.—McGrath v. West End Orchard & Land Co., 251 P. 623, 43 Idaho 255.
Ky.—James v. Cullins, 282 S.W. 1106 214 Ky. 179.
Nev.—Johnston v. De Lay, 158 P.2d 547, 63 Nev. 1, rehearing denied 161 P.2d 350, 63 Nev. 1.
Pa.—Hartig v. American Ice Co., 137 A. 867, 290 Pa. 21.
4 C.J. p 876 note 75.

In an equity suit to cancel a deed, where the evidence is conflicting, since the trial court had an opportunity to see the witnesses and observe their conduct upon the witness stand, together with all the facts and circumstances as presented by the record, the appellate court cannot say that the judgment of the lower court was against the clear weight of the evidence.
Okl.—Tillman v. Gazaway, 261 P. 935, 128 Okl. 183.

Extraordinary weight to trial judge's findings
The opinion of the trial judge rendering a judgment notwithstanding the verdict should be given extraordinary weight on appeal.
La.—Lehon v. New Orleans Public Service, 123 So. 172, 10 La.App. 715.

52. Cal.—In re Kreher's Estate, 238 P.2d 150, 107 C.A.2d 831—Simon Newman Co. v. Woods, 259 P. 460, 85 C.A. 360.
Me.—Mutual Ben. Life Ins. Co. v. Leighton, 136 A. 288, 126 Me. 591.
Okl.—Luke v. Patterson, 139 P.2d 175, 192 Okl. 631, 148 A.L.R. 679—Parker v. Hamilton, 154 P. 65, 49 Okl. 693.

Preponderance
Where chancellor has decided case himself despite verdict of jury and contrary to their findings, on appeal duty devolves on appellate court to examine evidence and if in its opinion preponderance thereof is in accord with the verdict the decree will be reversed and final judgment entered in accordance with the verdict; but, when evidence preponderates in support of judgment of chancellor, his judgment will be upheld.
Va.—De Jarnette v. Thomas M. Brooks Lumber Co., 97 S.E.2d 750, 199 Va. 18.

53. Cal.—Stockman v. Riverside Land, etc., Co., 28 P. 116, 64 C. 57.

54. Ala.—Wilkerson v. Sorsby, 94 So. 481, 208 Ala. 345.
Wis.—First Wisconsin Nat. Bank of Milwaukee v. Town of Catawba, 197 N.W. 1013, 183 Wis. 220—Kanass v. Chicago, M. & St. P. Ry. Co., 192 N.W. 383, 180 Wis. 49.
4 C.J. p 876 note 77.

55. Ariz.—State Tax Commission v. Magma Copper Co., 15 P.2d 961, 41 Ariz. 97.
Mass.—Old Colony Trust Co. v. Commissioner of Corporations and Taxation, 119 N.E.2d 175, 331 Mass. 329—Cohen v. Santoianna, 112 N. E.2d 267, 330 Mass. 187—Bowles v. Comstock, 189 N.E. 785, 286 Mass. 159—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106—Stitt v. Tribe, 170 N.E. 48, 270 Mass. 204—Beale v. Davis, 146 N.E. 354, 251 Mass. 175.
N.Y.—Marks v. Kellogg, 156 N.Y.S. 120, 170 App.Div. 464, 16 Mills Surr. 57, motion denied 112 N.E. 1065, and affirmed 115 N.E. 1044, 220 N.Y. 615.
Wash.—Stidell v. Davidson, 253 P. 458, 142 Wash. 348.
42 C.J. p 1288 note 36 [e]—4 C.J. p 876 note 78 [c], p 883 note 33 [1].

modified or changed by a controlling rule of court,[56] | it is the general rule that the fact findings of the

Duty of appellate court to make own independent findings of fact see infra § 1845.

All evidence considered

Where there was no jury trial, the court must on appeal consider all the evidence.

Pa.—Leary v. City of Philadelphia, 172 A. 459, 314 Pa. 458.

Sharp v. Sharp, 161 A. 453, 106 Pa.Super. 33—Koontz v. Koontz, 97 Pa.Super. 70.

Particular statutes construed

(1) Burns St.Annot.1914, § 698, requiring the appellate court, in all cases not triable by jury, to consider and weigh the evidence and admissions heard in the trial, does not require such court to weigh the evidence in passing upon its sufficiency to support the verdict of the jury or findings of the court.

Ind.—Dannhauer v. Young, 122 N.E. 589, 73 Ind.App. 651.

(2) Under Remington Comp.St. § 1736, providing that in an action tried by the court without a jury, wherein a statement of facts or bill of exceptions shall have been certified, the evidence of facts shown by such bill of exceptions or statement of facts shall be examined by the supreme court de novo, so far as the findings of fact or refusal to make findings based thereon shall have been excepted to, the supreme court is not concluded by the findings of the trial court.

Wash.—Smith v. City of Seattle, 35 P.2d 27, 178 Wash. 477—Stidell v. Davidson, 253 P. 458, 142 Wash. 348—Crowe v. Yakima Sheep Co., 236 P. 802, 135 Wash. 696—Vickers v. Machinery Warehouse & Sales Co., 191 P. 869, 111 Wash. 576—Alexander v. Al. G. Barnes Amusement Co., 177 P. 786, 105 Wash. 346—Island Belt S. S. Co. v. J. & M. Café, 174 P. 19, 103 Wash. 263—Plath v. Mullins, 151 P. 811, 87 Wash. 403—Cornwall v. Anderson, 148 P. 1, 85 Wash. 369.

(3) Latter statute does not contemplate that supreme court should examine evidence incorporated into statement of facts and pass on its weight without considering or referring to decision of trial court, or other means afforded by trial court for deciding fact questions.

Wash.—Darnell v. Noel, 208 P.2d 1194, 34 Wash.2d 428.

(4) Where by virtue of a statute actions at law tried before a court sitting without a jury are reviewable on both the law and the evidence in accordance with the rules discussed supra § 1457, the appellate court is not bound by the findings made by the trial court.

Mo.—Harrington v. Muzzy, 258 S.W 2d 637—Cross v. Gimlin, 256 S.W 2d 812—Faire v. Burke, 252 S.W. 2d 289, 363 Mo. 562—Tayler v. Tayler, 243 S.W.2d 310—Feigenbaum v. Van Raalte, 201 S.W.2d 283, 356 Mo. 67.

Oakes v. Oakes, App., 303 S.W. 2d 940—Fischman v. Kiphart, App., 297 S.W.2d 784—Browder v. Milla, App., 296 S.W.2d 502—Woodman v. Woodman, App., 281 S.W.2d 555—Wyler Watch Agency v. Hooker, App., 280 S.W.2d 849—Joseph v. Mutual Garage Co., App., 270 S.W.2d 137—Witte v. Cooke Tractor Co., App., 261 S.W.2d 651—Frank v. United Ben. Life Ins. Co., App., 231 S.W.2d 234—Pudiwitr v. Soloman, App., 224 S.W.2d 562—Avellone v. John Weisert Tobacco Co., App., 213 S.W.2d 222—Gershon v. Ashkanazie, 199 S.W.2d 38, 239 Mo. App. 1012.

(5) Nevertheless the appellate court will accord due deference to the findings of the trial court, giving due regard to the opportunity of that court to judge the credibility of the witnesses, and will not set aside the judgment and findings unless clearly erroneous.

Mo.—Moore v. Adams' Estate, 303 S.W.2d 936—Turner v. Mitchell, 297 S.W.2d 458—Emery v. Brown Shoe Co., 287 S.W.2d 761—State ex rel. Lyons v. Maryland Cas. Co., 278 S.W.2d 754—Barker v. Allen, 273 S.W.2d 191—Scott v. Kempland, 264 S.W.2d 349—Faire v. Burke, 252 S.W.2d 289, 363 Mo. 562—Harbin v. Schooley Stationery & Printing Co., 247 S.W.2d 77, 362 Mo. 1118—Tayler v. Tayler, 243 S.W.2d 310—Cosentino v. Heffelfinger, 229 S.W.2d 546, 360 Mo. 535—Gabel-Lockhart Co. v. Gabel, 229 S.W.2d 539, 360 Mo. 518—Union Nat. Bank of Wichita, Kan. v. Lamb, 227 S.W.2d 60, 360 Mo. 81—Lowther v. Hays, 225 S.W.2d 708—In re Jamison's Estate, 202 S.W.2d 879—Moore v. Brigman, 198 S.W.2d 857, 355 Mo. 889—Hart v. T. L. Wright Lumber Co., 196 S. W.2d 272, 355 Mo. 397—Dye v. School Dist. No. 32 of Pulaski County, 195 S.W.2d 874, 355 Mo. 231.

Oakes v. Oakes, App., 303 S.W. 2d 940—H. & H. Mfg. Co. v. Cimarron Ins. Co., App., 302 S.W. 2d 39—Browder v. Milla, App., 296 S.W.2d 502—Payne v. White, App., 288 S.W.2d 6—Heindselman v. Home Ins. Co., App., 282 S.W.2d 191—In re Oberman's Estate, App., 281 S.W.2d 549—Farmers Mut. Hail Ins. Co. of Mo. v. Minton, App., 279 S.W.2d 523—Kraft v. Armentrout, App., 275 S.W.2d 402—Forbis v. Forbis, App., 274 S.W.2d 800—Wilson v. White, App., 272 S.W.2d 1—Smith v. Githens, App., 271 S.W.2d 374—Emerson v. Treadway, App., 270 S.W.2d 614—Joseph v. Mutual Garage Co., App., 270 S.W.2d 137—Stephenson v. Pfeiffer, App., 263 S.W.2d 218—State of Cal. ex rel. Houser v. St. Louis Union Trust Co., 260 S.W.2d 821, certiorari dismissed 75 S.Ct. 354, 348 U.S. 932, 99 L.Ed. 731—Chamberlain v. Mutual Ben. Health & Acc. Ass'n, App., 260 S.W.2d 790—Cockrill v. Buchanan, App., 259 S.W.2d 696—Shortridge v. Ghio, App., 253 S.W.2d 838—Truck Leasing Corp. v. Esquire Laundry & Dry Cleaning Co., App., 252 S.W. 2d 108—Billings v. Independent Mut. Fire Ins. Co., App., 251 S.W. 2d 393—Coats v. Sandhofer, App., 248 S.W.2d 455—Truck Leasing Corp. v. Swope, App., 248 S.W.2d 84—Werner v. Welsh Co., App., 247 S.W.2d 311—Liberty Mut. Ins. Co. v. Mercantile Home Bank & Trust Co., App., 241 S.W.2d 493—Fisher v. Peterson, App., 240 S.W. 2d 176—In re Diehl's Estate, App., 239 S.W.2d 523—Personal Finance Co. of St. Louis v. Endicott, App., 238 S.W.2d 51—McKeown v. John Nooter Boiler Works Co., App., 237 S.W.2d 217—Abbott v. Record, App., 233 S.W.2d 793—Curlee v. Donaldson, App., 233 S.W.2d 746—In re Priest's Estate, App., 227 S. W.2d 474—Smith v. Geo. H. Weyer, Inc., App., 224 S.W.2d 543—Prestigiacamo v. American Equitable Assur. Co. of N. Y., 221 S.W. 2d 217, 240 Mo.App. 839—Loeb v. Viviano, App., 202 S.W.2d 528—Mound City Finance Co. v. Frank, 199 S.W.2d 902, 239 Mo.App. 807—Dell-Wood Tires v. Riss & Co., App., 198 S.W.2d 347—Wagner v. Mederacke, App., 195 S.W.2d 108—Harlan v. Blume, App., 190 S.W. 2d 273.

56. Mich.—Fyan v. McNutt, 254 N. W. 146, 266 Mich. 406.

N.J.—Midler v. Heinowitz, 89 A.2d 458, 10 N.J. 123—DeVries v. Evening Journal Ass'n, 87 A.2d 317, 9 N.J. 117—In re Perrone's Estate, 76 A.2d 518, 5 N.J. 514.

Canova v. Canova, 108 A.2d 287, 32 N.J.Super. 284—Gagliano v. Maggio, 108 A.2d 185, 32 N.J.Super. 219—Pratico v. Rhodes, 108 A.2d 97, 32 N.J.Super. 178, reversed on other grounds 111 A.2d 399, 17 N.J. 328—Julius Reiner Corp. v. Sutton, 92 A.2d 634, 23 N.J.Super. 93—In re Hoover's Estate, 91 A.2d 155, 21 N.J.Super. 323—R. Krevolin & Co. v. Brown, 89 A.2d 255, 20 N.J.Super. 85—In re Fleming's Estate, 89 A.2d 54, 19 N.J.Super. 565—Jordan v. Mohan, 83 A.2d 614, 15 N.J.Super. 513—Capone v. Norton, 78 A.2d 126, 11 N.J.Super. 189, affirmed 83 A.2d 710, 8 N.J. 54—Lehmann v. Lehmann, 72 A.

trial court in a case tried without a jury are on appeal to be given the same effect or weight as jury verdicts,[57] and that such findings of fact will be disturbed or reversed for the same reasons that

2d 895, 7 N.J.Super. 232—Tuzio v. Saylor, 62 A.2d 402, 1 N.J.Super. 61.

Construction and application of rules

(1) Under a court rule providing that upon appeal from a judgment in a nonjury law case the supreme court shall act according to the practice in equity cases, the supreme court is not bound by the findings or lack of findings of the trial court, but instead will consider the record as a whole and determine such questions raised by the appeal as are necessary to decision.

Mich.—Benjamin v. Bondy, 33 N.W. 2d 651, 322 Mich. 35—Fyan v. McNutt, 254 N.W. 146, 266 Mich. 406—Burchard v. Otis Elevator Co., 246 N.W. 78, 261 Mich. 142.

(2) Court rule authorizing appellant in law case to assign as error that judgment was against preponderance of evidence is applicable only where litigants have waived a jury and submitted trial of fact issues to court.

Mich.—Jones v. Eastern Michigan Motorbuses, 283 N.W. 710, 287 Mich. 619.

(3) Decision of the appellate court must turn on evidence presented at the trial.

Mich.—Saginaw Furniture Shops, Inc. v. Wolverine Finishes Corp., 59 N.W.2d 16, 336 Mich. 606.

(4) Review of trial court's findings of fact is not limited to procedure permissible in a case tried by a jury.

Mich.—Jones v. Eastern Michigan Motorbuses, supra.

57. Ala.—Board of Zoning Adjustment for City of Lanett v. Boykin, 92 So.2d 906, 265 Ala. 904—Parrish v. Davis, 92 So.2d 897, 265 Ala. 522—Gibson v. Anderson, 92 So.2d 692, 265 Ala. 553—McBee v. McBee, 91 So.2d 675, 265 Ala. 414—Hagan v. Crowley, 90 So.2d 760, 265 Ala. 291—Grubb v. Teale, 90 So.2d 727, 265 Ala. 257—Lamar v. Lamar, 82 So.2d 558, 263 Ala. 391—Eidson v. State ex rel. Burns, 82 So.2d 218, 263 Ala. 281—Miles v. Moore, 79 So.2d 432, 262 Ala. 441—Rudicell v. Rudicell, 77 So.2d 339, 262 Ala. 41—Cox v. Logan, 76 So.2d 169, 262 Ala. 11—Robins Transfer Co. v. Lewis, 74 So.2d 247, 261 Ala. 427—Pritchett v. Wade, 73 So.2d 533, 261 Ala. 156—Halman v. Bullard, 73 So.2d 351, 261 Ala. 115—Sparkman v. Williams, 71 So.2d 274, 260 Ala. 472—Hinson v. Byrd, 66 So.2d 736, 259 Ala. 459—Dorsey v. Dorsey, 66 So.2d 135, 259 Ala. 220—Lucas v. Lucas, 64 So.2d 70, 258 Ala. 515—Spruiell v. Stanford, 61 So.2d 758, 258 Ala. 212—Roe v. Brown, 31 So.2d 599, 249 Ala. 425—Clark v. Glenn, 31 So.2d 507, 249 Ala. 342—Forest Hill Corp. v. Latter & Blum, 29 So.2d 298, 249 Ala. 23—Clayton v. Monte, 26 So.2d 255, 248 Ala. 93—Smith v. Smith, 13 So.2d 578, 244 Ala. 342—Porter v. Porter, 12 So.2d 186, 244 Ala. 132—Hampton v. Stewart, 194 So. 509, 240 Ala. 2—Ex parte State ex rel. Altman, 188 So. 685, 237 Ala. 642—American Nat. Bank & Trust Co. v. Powell, 178 So. 21, 235 Ala. 236—Bonds v. Bonds, 175 So. 561, 234 Ala. 522—Long v. Doegg, 173 So. 41, 233 Ala. 637—J. R. Watkins Co. v. Williams, 170 So. 194, 233 Ala. 135—Anderson v. Lewter, 168 So. 171, 232 Ala. 375—Farmer v. Coleman, 165 So. 778, 231 Ala. 527—Schefano v. State, 164 So. 902, 231 Ala. 391—McMillan v. Fabretta, 163 So. 793—Hall v. Clark, 142 So. 65, 225 Ala. 87—Franklin v. Scott, 133 So. 684, 222 Ala. 641—Ward v. Tatum, 130 So. 898, 222 Ala. 66—Higgins v. Higgins, 130 So. 677, 222 Ala. 44—Webb v. Watson, 130 So. 211, 221 Ala. 595—Boshell v. Illinois Cent. R. Co., 121 So. 704, 219 Ala. 188—Thompson v. Fourth Nat. Bank, 111 So. 29, 215 Ala. 476—Cotton v. Courtright, 111 So. 7, 215 Ala. 474—Curb v. Stewart, Adams & Co., 110 So. 804, 215 Ala. 511—Cooke v. Fenner & Beane, 108 So. 370, 214 Ala. 558—Robinson v. State, 102 So. 693, 212 Ala. 459—McNaron v. McNaron, 99 So. 116, 210 Ala. 687—Cherry-Ellington Auto Co. v. State, 98 So. 389, 210 Ala. 469—Alabama Great Southern R. Co. v. Longshore, 96 So. 64, 209 Ala. 227—Standard Oil Co. v. State, 92 So. 894, 207 Ala. 303—Home Guano Co. v. Akin, 92 So. 404, 207 Ala. 367—Snyder v. State, 92 So. 170, 207 Ala. 147—Avant v. Avant, 91 So. 874, 207 Ala. 46—Perkins v. Perkins, 91 So. 256, 206 Ala. 571—McClurkin v. McClurkin, 90 So. 917, 206 Ala. 513—McConnell v. Free, 89 So. 170, 206 Ala. 83—Christie v. Durden, 88 So. 667, 205 Ala. 571—Byles v. State, 87 So. 856, 205 Ala. 286—McSwean v. McSwean, 86 So. 646, 204 Ala. 663—Bickley v. Murdock, 85 So. 461, 204 Ala. 192—Berger v. Dempster, 85 So. 392, 204 Ala. 305—Moon v. Lollar, 85 So. 6, 203 Ala. 672—Winston v. Morrisette, 82 So. 135, 203 Ala. 76—Smith v. Thomas, 78 So. 820, 201 Ala. 442—Darrow v. Darrow, 78 So. 383, 201 Ala. 477—Pinckard v. Cassels, 70 So. 153, 195 Ala. 353.

Greene v. Department of Indus. Relations, 83 So.2d 360, 38 Ala. App. 199, certiorari denied 83 So. 2d 364, 263 Ala. 564—Kinney v. La Frange, 81 So.2d 903, 28 Ala. App. 234—W. S. Brewbaker, Inc. v. McClinton, 70 So.2d 813, 37 Ala. App. 474—Allen v. Zickos, 68 So. 2d 841, 37 Ala.App. 361—Louisville & N. R. Co. v. Lowrey, 64 So.2d 139, 37 Ala.App. 112—Shaw v. Bailey, 55 So.2d 132, 36 Ala.App. 250, certiorari denied 55 So.2d 135, 256 Ala. 405—Craig v. Department of Indus. Relations, 47 So.2d 286, 35 Ala.App. 377—Bankers Fire & Marine Ins. Co. v. Terry, 45 So.2d 324, 35 Ala.App. 233—Dixie Drive It Yourself System, Mobile Co. v. Hames, 43 So.2d 140, 34 Ala.App. 619, certiorari denied 43 So.2d 143, 253 Ala. 132—Brush v. Rountree, 32 So.2d 244, 33 Ala.App. 227, certiorari denied 32 So.2d 246, 249 Ala. 567—Tatum v. Montgomery Banking Co., 31 So.2d 311, 33 Ala.App. 186—Alabama Dry Dock & Shipbuilding Co. v. Ward, 27 So.2d 710, 32 Ala.App. 535, certiorari denied 27 So.2d 716, 248 Ala. 371—Mewhinney v. Montgomery, 14 So. 2d 738, 31 Ala.App. 237—McSheridan v. City of Talladega, 14 So.2d 168, 31 Ala.App. 206—Harbin v. Burrow, 172 So. 910, 27 Ala.App. 381—Hanna v. Bear, 164 So. 120, 26 Ala.App. 576—Ingram v. Johnson, 147 So. 169, 25 Ala.App. 374—Mills Lumber Co. v. Heard, 134 So. 35, 24 Ala.App. 370—Manufacturers' Finance Acceptance Corporation v. Woods, 132 So. 608, 24 Ala.App. 202, reversed on other grounds 132 So. 611, 222 Ala. 329—J. R. Raible Co. v. City Bank & Trust Co., 112 So. 543, 22 Ala. App. 68—Tennessee Coal, Iron & R. Co. v. Pope, 107 So. 735, 21 Ala. App. 183, certiorari denied 107 So. 736, 214 Ala. 383—Wallace v. American Wholesale Corporation, 104 So. 776, 20 Ala.App. 642—American Ry. Express Co. v. Barnes, 91 So. 912, 18 Ala.App. 295—Lisenby v. Lindsey, 85 So. 827, 17 Ala.App. 467—Cleckler v. Childress, 80 So. 136, 16 Ala.App. 562—Reid v. McElderry, 65 So. 421, 10 Ala.App. 472.

Ark.—Hughes v. Harris, 299 S.W.2d 85—McWaters v. Jefferies, 294 S. W.2d 57, 226 Ark. 784—Wilson v. Morse Mill Co., 282 S.W.2d 803, 225 Ark. 405—Harrison v. United Farm Agency, 262 S.W.2d 293, 222 Ark. 530—Hudson v. Johnson, 261 S.W.2d 262, 222 Ark. 468—Wallace v. Wells, 255 S.W.2d 970, 221 Ark. 750—Strange v. Corley, 253 S.W.2d 337, 221 Ark. 316—Lewis v. Houchins, 249 S.W.2d 1, 220 Ark. 610—National Garages v. Barry, 232 S. W.2d 655, 217 Ark. 593—De Soto Life Ins. Co. v. Barham, 196 S.W. 2d 592, 210 Ark. 467—Kansas City

Southern Ry. Co. v. Shull, 136 S. W.2d 1040, 199 Ark. 932—McCarroll Agency v. Protectory for Boys under Care of Franciscan Bros. of Cincinnati, Ohio, 124 S.W.2d 816, 197 Ark. 534—Lumbermens Mut. Ins. Co. v. Mitchell, 122 S.W.2d 543, 197 Ark. 297—Hoeing v. River Valley Gas Co., 121 S.W.2d 513, 196 Ark. 1165—Graham v. Graham, 120 S.W.2d 699, 196 Ark. 1178—Helena Wholesale Grocery Co. v. Interstate Grocer Co., 118 S.W.2d 857, 196 Ark. 454—Washington County v. Day, 116 S.W.2d 1051, 196 Ark. 147—National Life Co. v. Brennecke, 115 S.W.2d 855, 195 Ark. 1088—Smith v. John Hancock Mut. Life Ins. Co., 114 S.W.2d 15, 195 Ark. 699—Mangrum v. Nemton, 109 S.W.2d 1250, 194 Ark. 1007—Arkansas Rural Rehabilitation Corp. v. Longino, 95 S.W.2d 897, 192 Ark. 912—Coral Gables v. Marks, 86 S.W.2d 911, 191 Ark. 467—Simpson v. Anderson, 80 S. W.2d 65, 190 Ark. 1178—Harvell v. Matthews, 72 S.W.2d 214, 189 Ark. 356—Sternberg v. Snow King Baking Powder Co., 57 S.W.2d 1057, 186 Ark. 1161—American Ins. Co. of Newark, N. J. v. Brannan, 44 S.W. 2d 346, 184 Ark. 1193—Vanemburg v. Duffey, 7 S.W.2d 336, 177 Ark. 663—Arkla Sash & Door Co. v. Fair, 5 S.W.2d 308, 176 Ark. 1203—Plunkett-Jarrell Grocer Co. v. Huie, 2 S.W.2d 1, 175 Ark. 1148—Prairie County v. Harris, 295 S.W. 725, 173 Ark. 1182—Road Improvement Dist. No. 1 of Howard County v. Bank of Commerce & Trust Co. of Memphis, Tenn., 272 S.W. 834, 169 Ark. 42—Little River County v. Buron, 265 S.W. 61, 165 Ark. 535—Cady v. Pack, 205 S.W. 819, 135 Ark. 445—Cherry v. Peay, 171 S.W. 924, 115 Ark. 607—Rush v. Citizens' Nat. Bank, 169 S.W. 777, 114 Ark. 170.

Cal.—Umsted v. Scofield Engineering Const. Co., 263 P. 799, 203 C. 224.

Del.—E. I. Du Pont De Nemours & Co. v. I. D. Griffith, Inc., 130 A.2d 783—Mulco Products, Inc. v. Black, 127 A.2d 851—Turner v. Vineyard, 80 A.2d 177, 7 Terry 138.

Fla.—Chakford v. Strum, 87 So.2d 419—First Atlantic Nat. Bank of Daytona Beach v. Cobbett, 82 So.2d 870—Read v. Frizzell, 60 So.2d 172—W. H. Clark Fruit Co. v. Bounds, 58 So.2d 552—MacGregor v. Sachs 57 So.2d 426—Jernigan v. Harrison, 186 So. 511, 136 Fla. 320—Prince v. Aucilla River Naval Stores Co., 137 So. 886, 103 Fla. 605.

Ga.—Tyson v. Shoemaker, 65 S.E.2d 163, 208 Ga. 28.

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Tex.—Schreiber v. Jones, Civ.App., 278 S.W.2d 902—Southwest Fabricating & Welding Co. v. Gray Electronics, Civ.App., 248 S.W.2d 961—Googins v. E. W. Hable & Sons, Civ.App., 237 S.W.2d 705, error refused no reversible error, certiorari denied 72 S.Ct. 556, 342 U.S. 944, 96 L.Ed. 702—Taylor v. Stanford, Civ.App., 229 S.W.2d 427—Taylor v. Austin, Civ.App., 221 S.W.2d 933—Walker v. Walker, Civ. App., 201 S.W.2d 61—Custer v. McGough, Civ.App., 184 S.W.2d 668—Harvey v. Humphreys, Civ.App., 178 S.W.2d 733, error refused—

would justify interference by the appellate court with jury verdicts, and for no other reasons.[58]

Broadly speaking, this means that if they have proper evidentiary support and are free from legal error the appellate court will regard the trial court's fact findings as conclusive and binding, and as establishing with finality that the facts are in truth as found;[59] and that no attempt will be made to

Turnbow v. Bland, Civ.App., 149 S.W.2d 604, error dismissed, judgment correct—Pippin v. Holland, Civ.App., 146 S.W.2d 266—Anderson-Berney Bldg. Co. v. Swan, Civ. App., 133 S.W.2d 269, error dismissed, judgment correct—Exporters & Traders Compress & Warehouse Co. v. Steele, Civ.App., 111 S.W.2d 867—Lloyds America v. Poe, Civ.App., 69 S.W.2d 160—Hewitt v. Green, Civ.App., 28 S.W. 2d 892—Blackwater Valley State Bank v. Edwards, Civ.App., 22 S.W. 2d 1105—Hickman v. Hickman, Civ. App., 20 S.W.2d 1073—Crawford v. Beaver-Electra Refining Co., Civ. App., 273 S.W. 892—Phipps v. Hemphill, Civ.App., 267 S.W. 310—Hudmon v. Foster, Civ.App., 210 S.W. 262, reversed on other grounds Com.App., 231 S.W. 346—McDougle, Cameron & Webster v. Pennington, Civ.App., 194 S.W. 657—Texas & N. O. R. Co. v. Weems, Civ.App., 184 S.W. 1103, affirmed Com.App., 222 S.W. 972—Ara v. Rutland, Civ.App., 172 S.W. 993, reversed on other grounds Com.App., 215 S.W. 445.

Utah.—Farrall v. Cameron, 94 P.2d 1068, 98 Utah 68—Colemere v. Layton, 22 P.2d 218, 82 Utah 142.

Vt.—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471—Cook v. Holden, 35 A.2d 353, 113 Vt. 409.

Va.—Commonwealth ex rel. Davis v. Johnson, 78 S.E.2d 690, 195 Va. 351—Jones v. Lamm, 69 S.E.2d 430, 193 Va. 506—Sutton v. Menges, 44 S.E. 2d 414, 186 Va. 805—Cross v. Grimes, 37 S.E.2d 1, 184 Va. 926—Wilson v. Schmidt & Wilson, 35 S.E.2d 737, 184 Va. 642—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203—Stone v. Com., 27 S.E.2d 900, 182 Va. 54—Morrison v. Dominion Nat. Bank, 192 S.E. 707, 169 Va. 191—Hunter v. Hollingsworth, 183 S.E. 508, 165 Va. 583—Surber v. Bridges, 165 S.E. 508, 159 Va. 329—Hayes v. Strauss, 144 S.E. 432, 151 Va. 136—Bunkley v. Commonwealth, 108 S.E. 1, 130 Va. 55—Hilliard v. Union Trust Co. of New Jersey, 97 S.E. 335, 123 Va. 724—Hamman v. Miller, 83 S.E. 382, 116 Va. 873.

W.Va.—Green v. Henderson, 67 S.E. 2d 554, 136 W.Va. 329.

Wis.—Phelps v. Monroe, 165 N.W. 471, 166 Wis. 315—Engel v. T. L. Smith Co., 159 N.W. 728, 164 Wis. 515.

4 C.J. p 876 note 78.

Conclusiveness of jury verdicts on appeal see supra §§ 1647-1655.

58. Ala.—Williams v. Riddlesperger, 148 So. 803, 227 Ala. 113—Rogers v. McLeskey, 142 So. 526, 225 Ala. 148.

First Nat. Bank v. Kirkland, 167 So. 334, 27 Ala.App. 141, certiorari denied 167 So. 335, 27 Ala.App. 30.

Ky.—Income Life Ins. Co. v. Anderson, 63 S.W.2d 1, 250 Ky. 367.

Pa.—Meitner v. Scarborough, 184 A. 81, 321 Pa. 212.

59. Ala.—Faulk v. Dorsey, 166 So. 792—Bookmiller v. Jones, 113 So. 32, 216 Ala. 298—Hamilton v. Watson, 112 So. 115, 215 Ala. 550—Dixie Industrial Co. v. Bank of Wetumpka, 92 So. 786, 207 Ala. 293—Wade v. Killen, 75 So. 970, 200 Ala. 212—Finney v. Studebaker Corp. of America, 72 So. 54, 196 Ala. 422.

Grant v. Henderson-Pierce Motor Co., 107 So. 724, 21 Ala.App. 285—American Cast-Iron Pipe Co. v. Birmingham Tailoring Co., 80 So. 157, 16 Ala.App. 583—Wilkinson v. Flowers, 77 So. 982, 16 Ala.App. 370—Cofield, v. McGraw & Garner, 77 So. 981, 16 Ala.App. 369—Johnson v. McFry, 68 So. 718, 13 Ala.App. 619.

Ariz.—Dawson v. McNaney, 223 P.2d 907, 71 Ariz. 79—Branker v. Bowman, 156 P.2d 898, 62 Ariz. 214—Lois Grunow Memorial Clinic v. Davis, 66 P.2d 238, 49 Ariz. 277—Gonzalez & Co., Brokers v. Thomas, 25 P.2d 552, 42 Ariz. 308.

Ark.—McFerrin v. Clarksville Wood Industries, 230 S.W.2d 49, 217 Ark. 383—Bridges v. Shapleigh Hardware Co., 57 S.W.2d 405, 186 Ark. 993—Creekmore v. Scott, 20 S.W.2d 177, 179 Ark. 1113—Johnson v. Spangler, 2 S.W.2d 1089, 176 Ark. 328, 59 A.L.R. 899—Crow Oil & Gas Co. v. Drain, 286 S.W. 971, 171 Ark. 817—Graham v. Drainage Dist. No. 11 of Jackson County, 255 S.W. 883, 161 Ark. 38.

Cal.—Murray v. Superior Court In and For City and County of San Francisco, 284 P.2d 1, 44 C.2d 611—Signorelli v. Potter, 275 P.2d 449, 43 C.2d 541—Richter v. Walker, 226 P.2d 593, 36 C.2d 634—Hansen v. Bear Film Co., 168 P.2d 946, 28 C. 2d 154—Steiner v. Amsel, 112 P.2d 635, 18 C.2d 48—Skinner v. City of Los Angeles, 54 P.2d 446, 5 C.2d 317—Norton v. City of Pomona, 53 P.2d 952, 5 C.2d 54—Lozier v. Janss Inv. Co., 36 P.2d 620, 1 C.2d 666—Granger v. Harper, 17 P.2d 135, 217 C. 16—Seidell v. Tuxedo Land Co., 13 P.2d 686, 216 C. 165—Thomas v. Lavery, 12 P.2d 636, 215 C. 675—McQuigg v. Childs, 3 P.2d 309, 213 C. 661—Ososke v. Kalinowsky, 285 P. 318, 209 C. 45—Muchenberger v. City of Santa Monica, 275 P. 803, 206 C. 635—Flach v. Fikes, 267 P. 1079, 204 C. 329—Noll v. Baida, 259 P. 433, 202 C. 98—Browning v. Reclamation Dist. No. 108, 254 P. 551, 200 C. 799—Hershey v. Reclamation Dist. No. 108, 254 P. 542, 200 C. 550—Union Mut. Life Ins. Co. v. Broderick, 238 P. 1034, 196 C. 497—Slayden v. O'Dea, 218 P. 395, 191 C. 785—Housel v. Pacific Electric Ry. Co., 171 P. 956, 177 C. 728—MacDermot v. Hayes, 170 P. 616, 175 C. 95—Winbigler v. Sherman, 165 P. 943, 175 C. 270—Blair v. Brownstone Oil & Refining Co., 143 P. 1022, 168 C. 632.

Zorich v. Petroff, App., 313 P.2d 118—Martin v. Chernabaeff, App., 308 P.2d 470—In re Inman's Estate, App., 307 P.2d 953—Casper v. City of Los Angeles, 295 P.2d 452, 140 C.A.2d 430—Pacific Gas & Elec. Co. v. State Bd. of Equalization, 285 P.2d 305, 134 C.A.2d 149, appeal dismissed 76 S.Ct. 468, 350 U.S. 979, 100 L.Ed. 848—Nathanson v. Murphy, 282 P.2d 174, 132 C.A.2d 363—Glascock v. Sukumlyn, 281 P. 2d 90, 131 C.A.2d 587—Kallgren v. Steele, 279 P.2d 1027, 131 C.A.2d 43—Gerpracht v. Obersmith, 277 P.2d 841, 129 C.A.2d 793—Putman v. Cameron, 276 P.2d 102, 129 C.A.2d 89—Los Angeles County v. Carpenter, 258 P.2d 1056, 118 C.A.2d 871—In re Guasti's Estate, 256 P.2d 629, 117 C.A.2d 612—Le Fevre v. Borwick, 254 P.2d 626, 116 C.A.2d 786—Crisci v. Sorci, 251 P.2d 383, 115 C.A.2d 76—Aboudara v. City and County of San Francisco, 251 P.2d 32, 114 C.A.2d 630—Wallace v. Sinclair, 250 P.2d 154, 114 C.A.2d 220—Bettelheim v. Hagstrom Food Stores, Inc., 249 P.2d 301, 113 C.A. 2d 873—King v. Hawley, 248 P.2d 491, 113 C.A.2d 534—Bartlett v. Pacific Nat. Bank, 244 P.2d 91, 110 C.A.2d 683—Lost Key Mines v. Hamilton, 241 P.2d 273, 109 C.A.2d 569—Greene v. M. & S. Lumber Co., 238 P.2d 87, 108 C.A.2d 6—Valentine v. Ratner, 233 P.2d 667, 105 C. A.2d 358—Silver's Liquor Stores v. Creeden, 227 P.2d 28, 102 C.A. 2d 195—Maganini v. Quinn, 221 P. 2d 241, 99 C.A.2d 1—Gomes v. Borba, 221 P.2d 124, 99 C.A.2d 38—Saunders v. Saunders, 219 P.2d 28, 98 C.A.2d 133—Hopkins v. Detrick, 217 P.2d 78, 97 C.A.2d 929, followed in 217 P.2d 84, 97 C.A.2d 50—Harabedian v. Parnell, 215 P.2d 73, 96 C.A.2d 358—Lundy v. Lakin, 215 P. 2d 61, 96 C.A.2d 221—Tompkins v. Bishop, 211 P.2d 14, 94 C.A.2d 546

—In re Capolino's Estate, 210 P.2d 850, 94 C.A.2d 574—Wilson v. Fredericksen, 210 P.2d 741, 94 C.A.2d 361—Logan v. Serpa, 206 P.2d 70, 91 C.A.2d 818—Camp v. Matich, 197 P.2d 345, 87 C.A.2d 660—Furtado v. Taylor, 194 P.2d 770, 86 C.A.2d 346—Chapman v. Mason, 189 P.2d 510, 83 C.A.2d 685—Sutera v. Palmieri, 180 P.2d 414, 79 C.A.2d 359—Thacker v. American Foundry, 177 P.2d 322, 78 C.A.2d 76—Brock v. Fouchy, 172 P.2d 945, 76 C.A.2d 363—Engle v. Farrell, 171 P.2d 588, 75 C.A.2d 612—Oil Tool Exchange v. Schuh, 153 P.2d 976, 67 C.A.2d 288—Baldwin v. Baldwin, 153 P.2d 567, 67 C.A.2d 175—Highsmith v. Crista, 153 P.2d 180, 66 C.A.2d 808—Gastine v. Ewing, 150 P.2d 266, 65 C.A.2d 131—Benites v. Adams, 148 P.2d 871, 64 C.A.2d 393—Leitch v. Gay, 147 P.2d 631, 64 C.A.2d 16—Madruga v. Borden Co., 146 P.2d 273, 63 C.A.2d 116—Caminetti v. Prudence Mut. Life Ins. Ass'n, 146 P.2d 15, 62 C.A.2d 945—Singh v. Furuta, 139 P.2d 664, 59 C.A.2d 695—Stevens v. Kelley, 134 P.2d 56, 57 C.A.2d 318—Waters v. Pacific Coast Dairy, Limited, Mut. Compensation Ins. Co., Intervener, 131 P.2d 588, 55 C.A.2d 789—Owings v. Laugharn, 128 P.2d 114, 53 C.A.2d 789—Thompson v. Steveson, 126 P.2d 127, 52 C.A.2d 250—Moore v. Miller, 125 P.2d 576, 51 C.A.2d 674—McWane v. Hetherton, 125 P.2d 85, 51 C.A.2d 508—Shore v. Crail, 123 P.2d 840, 50 C.A.2d 736—MacQuiddy v. Rice, 118 P.2d 853, 47 C.A.2d 755—McKay v. Security-First Nat. Bank of Los Angeles, 96 P.2d 376, 35 C.A.2d 349—Monnette v. Title Guarantee & Trust Co., 86 P.2d 848, 30 C.A.2d 428—Mahar v. Goodspeed, 86 P.2d 382, 30 C.A.2d 391—Gates v. Gautier, 85 P.2d 141, 29 C.A.2d 524—Hall v. Berliner, 66 P.2d 721, 20 C.A.2d 193—Co-operative Dairymen's League v. Lucerne Cream & Butter Co., 63 P.2d 833, 18 C.A.2d 162—Hacker Pipe & Supply Co. v. Chapman Valve Mfg. Co., 61 P.2d 944, 17 C.A.2d 265—Schick v. Equitable Life Assur. Soc. of U. S., 59 P.2d 163, 15 C.A.2d 28—Tumansky v. Woodruff, 57 P.2d 1372, 14 C.A.2d 279—Scott v. Sun-Maid Raisin Growers Ass'n, 57 P.2d 148, 13 C.A.2d 353—Bushey v. Union Oil Co. of California, 56 P.2d 1272, 13 C.A.2d 350—Pohl v. Anderson, 56 P.2d 992, 13 C.A.2d 241—Rabbitt v. Carthage Marble Corporation of Missouri, 55 P.2d 1205, 12 C.A.2d 572—Martinelli v. Stabnau, 52 P.2d 956, 11 C.A.2d 38—Earley v. Wolf, 51 P.2d 203, 10 C.A.2d 224—Morales v. L. W. Blinn Lumber Co., 49 P.2d 621, 9 C.A.2d 292—Carlon v. Gray, 49 P.2d 324, reheard 52 P.2d 966, 10 C.A.2d 658—McDevitt v. Butte City Ranch, 46 P.2d 290, 7 C.A.2d 252—Switzer v. Mullally, 46 P.2d 215, 7 C.A.2d 444—Taylor v. Hawley, 45 P.2d 226, 6 C.A.2d 576—Potts v. Crafts, App., 42 P.2d 87, 5 C.A.2d 83—Robinson v. Raquet, 36 P.2d 821, 1 C.A.2d 533—Neel v. Ramelli, 32 P.2d 175, 138 C.A. 362—Haupenthal v. Bert L. Perry, Inc., 31 P.2d 1088, 138 C.A. 198—Stephens v. Kaufmann, 30 P.2d 536, 137 C.A. 474—Lane Mfg. Co. v. Raymond Granite Co., 25 P.2d 1018, 134 C.A. 634—Gregg v. Manufacturers' Bldg. Corporation, 25 P.2d 1014, 134 C.A. 147—Strauss v. Dubuque Fire & Marine Ins. Co. of Dubuque, Iowa, 22 P.2d 582, 132 C.A. 283—Azevedo v. Pimentel, 15 P.2d 795, 127 C.A. 299—Kleinsasser v. McNamara, 15 P.2d 788, 127 C.A. 258—Shelton v. Los Angeles Ry. Corporation, 10 P.2d 470, 122 C.A. 533—Burns v. Grosvenor Inglis Corporation, 8 P.2d 546, 120 C.A. 688—Ley v. Babcock, 5 P.2d 620, 118 C.A. 525—Hofstedt v. Southern Pac. Co., App., 1 P.2d 470—Standley v. Knapp, 298 P. 109, 113 C.A. 91—Williams v. Myers, 294 P. 61, 110 C.A. 265—Woodson v. Torgerson, 291 P. 663, 108 C.A. 386—Anglo-California Trust Co. v. French American Bank, 291 P. 621, 108 C.A. 354—Hartman v. Bandini Petroleum Co., 290 P. 900, 107 C.A. 659—Cassetta v. Baima, 288 P. 830, 106 C.A. 196—Swan v. Smith, 283 P. 829, 102 C.A. 541—Wendt v. Stump, 283 P. 313, 102 C.A. 794—Wendt v. Gates, 283 P. 312, 102 C.A. 342—Baar v. Smith, 275 P. 861, 97 C.A. 398—Tracy-Waldron Fruit Co. v. Southern Pac. Co., 274 P. 411, 96 C.A. 400, certiorari denied 50 S.Ct. 25, 280 U.S. 566, 74 L.Ed. 619—Kurokawa v. Saroyan, 273 P. 613, 95 C.A. 772—Schleif v. Grigsby, 263 P. 255, 88 C.A. 174—Simon Newman Co. v. Woods, 259 P. 460, 85 C.A. 360—Shumway v. Woolwine, 257 P. 898, 84 C.A. 220—Cadwallader v. Martin, 257 P. 538, 83 C.A. 666—L. H. Mitchel & Sons v. Benwell, 249 P. 30, 79 C.A. 222—Miles v. Miles, 246 P. 143, 77 C.A. 219—Whitmore v. Smith, 241 P. 919, 75 C.A. 125—McNeill v. Pappas, 241 P. 897, 74 C.A. 591—Altamirano v. Cheo, 236 P. 960, 72 C.A. 222—Commonwealth Ins. Co. of New York v. Riverside-Portland Cement Co., 230 P. 995, 69 C.A. 165—Harlow v. Silveria, 225 P. 471, 66 C.A. 91—Reid v. Robinson, 220 P. 676, 64 C.A. 46—Gunther v. McCormick, 212 P. 715, 60 C.A. 350—Azevedo v. Davidson, 193 P. 594, 49 C.A. 443—Mann v. Dettling, 186 P. 603, 44 C.A. 489—Keeley v. Erbe, 164 P. 906, 33 C.A. 267—United States Nat. Bank of Los Angeles v. Jones, 141 P. 1073, 24 C.A. 514.

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N.Y.—Shohfi v. Shohfi, 103 N.E.2d 330, 303 N.Y. 370, reargument denied 105 N.E.2d 488, 303 N.Y. 902—Harman v. Board of Ed. of City of New York, 88 N.E.2d 351, 300 N.Y. 21, motion denied 90 N.E.2d 497, 300 N.Y. 644—In re Segall's Will, 38 N.E.2d 126, 287 N.Y. 52, reargument denied 40 N.E.2d 37, 287 N.Y. 751—Rubin v. Dairymen's League Co-op. Ass'n, 29 N.E.2d 458, 284 N.Y. 32, reargument denied 31 N.E.2d 927, 284 N.Y. 816—Oliver v. Wells, 173 N.E. 676, 254 N.Y. 451—Boyd v. Boyd, 169 N.E. 632, 252 N. Y. 422, reargument denied 171 N. E. 770, 253 N.Y. 532—Cox v. Lykes Bros., 143 N.E. 226, 237 N.Y. 376—Town of Easton v. Canal Board, 111 N.E. 49, 216 N.Y. 486.

Barber v. Parker, 11 N.Y.S.2d 964, 257 App.Div. 872—Gucker v. Lewis, 293 N.Y.S. 28, 249 App.Div. 858—Winter v. Anderson, 280 N.Y. S. 898, 244 App.Div. 674, reargument denied 282 N.Y.S. 836, 245 App.Div. 907—Reimer v. Naughton, 182 N.Y.S. 70, 191 App.Div. 711—Baumann v. City of New York, 167 N.Y.S. 720, 180 App.Div. 498, modified on other grounds and affirmed 124 N.E. 141, 227 N.Y. 25, 8 A.L.R. 595.

Schargel v. United Electric Light & Power Co., 215 N.Y.S. 217, 127 Misc. 24.

Jankowski v. Azaro, 282 N.Y.S. 793—Katz v. Carbondale Mills, 165 N.Y.S. 993—Pantaky v. Tuska, 157 N.Y.S. 887.

N.C.—Fairchild Realty Co. v. Spiegel, Inc., 98 S.E.2d 871, 246 N.C. 458—Beaver v. Crawford Paint Co., 82 S.E.2d 113, 240 N.C. 328—Ryan v. Wachovia Bank & Trust Co., 70 S. E.2d 853, 235 N.C. 585—Thompson v. Thompson, 70 S.E.2d 495, 235 N.C. 416—Horner v. Chamber of Commerce of City of Burlington, 68 S.E.2d 660, 235 N.C. 77—Briggs v. Briggs, 67 S.E.2d 349, 234 N.C. 450—S. D. Scott & Co. v. Jones, 52 S.E.2d 219, 230 N.C. 74—Wachovia Bank & Trust Co. v. Plumtree School for Boys, 51 S.E.2d 477, 229 N C. 738—State v. Hedgebeth, 45 S.E.2d 563, 228 N.C. 259, certiorari dismissed 68 S.Ct. 1185, 334 U.S. 806, 92 L.Ed. 1739—In re Collins' Estate, 38 S.E.2d 160, 226 N.C. 412—Wilson v. Robinson, 32 S.E. 2d 601, 224 N.C. 851—Yadkin County v. City of High Point, 8 S.E. 2d 470, 217 N.C. 462—Williamson v. City of High Point, 195 S.E. 90, 213 N.C. 96—Hardy v. Dahl, 187 S.E. 788, 210 N.C. 530—Baushar v. Willis, 185 S.E. 444, 210 N.C. 52—Travelers' Ins. Co. v. Murdock, 179 S.E. 886, 208 N.C. 223—Barringer v. Wilmington Savings & Trust Co., 177 S.E. 795, 207 N.C. 505—Raines v. Grantham, 171 S.E. 360, 205 N.C. 340—McCue v. Times-News Co., 156 S.E. 129, 199 N.C. 802—Town of Greenville v. Munford, 131 S.E. 740, 191 N.C. 373—Cook v. Bailey, 130 S.E. 498, 190 N.C. 599—Farmers' & Merchants' Bank v. Duke, 122 S.E. 1, 187 N.C. 386—Chatham Lumber Co. v. Parsons Lumber Co., 90 S.E. 241, 172 N.C. 320—Gaylord v. Berry, 86 S. E. 623—169 N.C. 733—W. M. Ritter Lumber Co. v. Montvale Lumber Co., 85 S.E. 438, 169 N.C. 80—Allen v. McPherson, 84 S.E. 766, 168 N. C. 435.

N.D.—Workmen's Compensation Bureau, Unemployment Compensation Division, v. Farmers State Bank of Lisbon, 11 N.W.2d 97, 73 N.D. 23—Austad v. Dreier, 221 N.W. 1, 57 N.D. 224—Graham Co. v. Russell, 215 N.W. 146, 55 N.D. 717.

Ohio.—McCune v. Larkin, 25 Ohio Cir.Ct.,N.S., 118.

Okl.—Turner v. Brown, 173 P.2d 943, 197 Okl. 638—Board of Ed. of City of Wilson, Carter County, v. Liberty Nat. Bank of Oklahoma City, 173 P.2d 450, 197 Okl. 596—Pearce v. Moore, 65 P.2d 189, 179 Okl. 277—Minshall v. Sanders, 51 P.2d 940, 175 Okl. 1—Hoodenpyl v. Guinn, 38 P.2d 510, 170 Okl. 78—Creekmore v. First Nat. Bank, 3 P.2d 419, 151 Okl. 281—Arkansas Fuel Oil Co. v. McDowell, 271 P. 1017, 133 Okl. 214—Nelson v. Hamra, 259 P. 838, 127 Okl. 141—Simmons v. Maxey, 233 P. 669, 106 Okl. 252—Myers v. Denison, 230 P. 742, 104 Okl. 208—Bounds v. Gooch, 219 P. 105, 92 Okl. 260—Arnold v. Gambrel, 167 P. 630, 64 Okl. 283—Brown v. W. H. Savage & Sons, 162 P. 704, 62 Okl. 157—Haizlip v. Whitfield, 155 P. 863, 56 Okl. 42—Kelly v. Brown, 155 P. 590, 55 Okl. 628—Akin v. Bonfils, 150 P. 194, 47 Okl. 492—Manwell v. Grimes, 149 P. 1182, 48 Okl. 72—Glenn v. Payne, 149 P. 1151, 48 Okl. 196—Washington County Abstract Co. v. Harris, 149 P. 1075, 48 Okl. 577.

Or.—Henningsen v. Title & Trust Co., 49 P.2d 458, 151 Or. 318—Kliks v. Courtemanche, 43 P.2d 913, 150 Or. 332—Wakefield, Fries & Co. v. Sherman, Clay & Co., 17 P.2d 319, 141 Or. 270—Engfors v. Nelson S. S. Co., 280 P. 337, 131 Or. 108—Bjorkman v. Columbia Wrecking & Fuel Co., 279 P. 633, 130 Or. 189—Olds v. Von der Hellen, 263 P. 907, 127 Or. 276, modified on other grounds 270 P. 497, 127 Or. 276—Burkitt v. Vail, 260 P. 1014, 123 Or. 461—Cunning v. Locke, 258 P. 192, 122 Or. 225—Umpqua Valley Bank of Roseburg v. Wilson, 252 P. 563, 120 Or. 396—Yreka Lumber Co. v. Lystul-Stuveland Lumber Co., 195 P. 378, 99 Or. 291—Maryland Casualty Co. v. Klaber's Estate, 164 P. 574, 84 Or. 115.

Pa.—In re Smith's Estate, 23 A.2d 450, 343 Pa. 539—Beckman v. Brownback, 20 A.2d 200, 341 Pa. 565—In re Patterson's Estate, 3 A.2d 320, 339 Pa. 92, 120 A.L.R. 967—Bonini v. Family Theatre Corp., 194 A. 498, 327 Pa. 273—In re Winsmore's Estate, 190 A. 892, 325 Pa. 303—In re Pusey's Estate, 184 A. 844, 321 Pa. 248, certiorari denied Lavely v. Young Women's Christian Ass'n of Pittsburg, 57 S.Ct. 36, 299 U.S. 572, 81 L.Ed. 422, rehearing denied 57 S.Ct. 114, 299 U.S. 621, 81 L.Ed. 458—Ward v. City of Pittsburgh, 184 A. 240, 321 Pa. 414—Meitner v. Scarborough, 184 A. 81, 321 Pa. 212—James v. Township of Stonycreek, Cambria County, 182 A. 254, 320 Pa. 363—In re Link's Estate, 180

A. 1, 319 Pa. 513—In re Dempster's Estate, 162 A. 447, 308 Pa. 153—In re Culbertson's Estate, 152 A. 540, 301 Pa. 438—Bayard v. Pennsylvania Knitting Mills Corporation, 137 A. 910, 290 Pa. 79—In re Davies' Estate, 137 A. 728, 289 Pa. 579—Petition of Knauer, 134 A. 463, 287 Pa. 115—Lenhart v. Wright, 133 A. 495, 286 Pa. 351—Frank B. Hall & Co. v. Lyon, Singer & Co., 133 A. 217, 286 Pa. 119—Straw v. City of Williamsport, 132 A. 804, 286 Pa. 41—In re Myers' Estate, 118 A. 508, 275 Pa. 10.

Scott-Smith Cadillac Co. v. Rajeski, 70 A.2d 454, 166 Pa.Super. 116—In re Cheponis' Estate, 25 A. 2d 779, 148 Pa.Super. 515—Morrison v. Stone, 14 A.2d 579, 141 Pa. Super. 237—Kellner v. Parker, 163 A. 353, 106 Pa.Super, 522—Commonwealth v. Knoble, 88 Pa.Super. 562—Melletz v. Kavitsky & Kavitsky, 78 Pa.Super. 204—In re Snively's Estate, 59 Pa.Super. 368—Grant v. City of Philadelphia, 17 Pa.Dist. & Co. 333—Huntingdon Presbyterian Congregation v. Stewart, 8 Pa.Dist. & Co. 691.

Allen v. Insurance Co. of North America, 85 Pa.Dist. & Co. 586, affirmed 104 A.2d 191, 175 Pa.Super. 281.

R.I.—Le Clair v. Textron Mills, 75 A.2d 309, 77 R.I. 318—Farrell v. Employers Liability Assur. Corp., 190 A. 466, 57 R.I. 389—North Shore Dye House v. Rosenfield, 166 A. 346, 53 R.I. 279.

S.C.—Simmons v. Cohen, 88 S.E.2d 679, 227 S.C. 606—Land v. Franklin Nat. Ins. Co. of N. Y., 80 S.E. 2d 420, 225 S.C. 33—State v. Ford Motor Co., 38 S.E.2d 242, 208 S.C. 379—Warren v. Pilgrim Health & Life Ins. Co., 60 S.E.2d 891, 217 S.C. 453—Ellison v. Independent Life & Acc. Ins. Co., 58 S.E.2d 890, 216 S.C. 475—Bridges v. Joanna Cotton Mill, 52 S.E.2d 406, 214 S.C. 319—Mason v. Williams, 31 S.E.2d 140, 205 S.C. 130—Beard v. Aiken County Stores, 179 S.E. 616, 175 S.C. 421—American Law Book Co. v. Bryson, 147 S.E. 650, 150 S. C. 36—Kneece v. Hall, 135 S.E. 881, 138 S.C. 157—Raines v. Sanders, 132 S.E. 581, 134 S.C. 284—Lipscomb v. Johnson, 115 S.E. 753, 123 S.C. 44—McFaddin v. Lumpkin, 100 S.E. 168, 112 S.C. 431—Green v. James, 96 S.E. 400, 110 S.C. 263—Fennell Infirmary v. Southern Ry. Co., 85 S.E. 237, 101 S.C. 134.

Tenn.—Hotel Claridge Co. v. Blank, 89 S.W.2d 758, 169 Tenn. 575.

Harris v. Miller, 144 S.W.2d 7, 24 Tenn.App. 332.

Tex.—McKee v. Stewart, 162 S.W.2d 948, 139 Tex. 260.

Owen v. City of Eastland, Com. App., 78 S.W.2d 178—Barker v. Temple Lumber Co., Com.App., 12 S.W.2d 175, reversed on other grounds Barker v. Temple Lumber Co., 37 S.W.2d 721, 120 Tex. 244—Graham Nat. Bank v. Beavers, Com.App., 290 S.W. 529.

Watson v. Kamenicky, Civ.App., 302 S.W.2d 443—White v. Cadwallader & Co., Civ.App., 299 S.W.2d 189, error refused no reversible error—Swift & Co. v. Baldwin, Civ. App., 299 S.W.2d 157—Chapman v. Sohio Petroleum Co., Civ.App., 297 S.W.2d 885, error refused no reversible error—Dr. Pepper Co. v. Dr. Pepper Bottling Co. of Gonzales, Civ.App., 297 S.W.2d 741—Brittian v. Hale County, Civ.App., 297 S.W.2d 721—Briarcroft Development Co. v. Stone, Civ.App., 281 S. W.2d 347—City of Lubbock v. Stubbs, Civ.App., 278 S.W.2d 519—McBroom v. Brown, Civ.App. 277 S. W.2d 310, error refused no reversible error—Fister v. Jackson, Civ.App., 276 S.W.2d 910—Sfair v. City of San Antonio, Civ.App., 274 S.W.2d 581, error refused no reversible error—Conner v. Chatman, Civ.App., 272 S.W.2d 136—Wright v. E-Z Finance Co., Civ.App., 267 S.W.2d 602, error refused no reversible error—Evans v. Jacobs, Civ.App., 249 S.W.2d 98, error refused no reversible error—McGowen v. Montgomery, Civ.App., 248 S.W.2d 789—Griffin v. Pritchett, Civ.App., 245 S.W.2d 558, error refused no reversible error—Long Bell Lumber Co. v. Miller, Civ.App., 240 S.W.2d 405—Texan Development Co. v. Hodges, Civ. App., 237 S.W.2d 436—Bramlett v. Jenkins, Civ.App., 231 S.W.2d 539, error refused no reversible error—Dallas General Drivers, Warehousemen & Helpers Local Union No. 745 v. Vilbig Bros., Civ.App., 225 S.W.2d 617, error refused no reversible error—Harrison v. Ingham, Civ.App., 223 S.W.2d 267, reversed in part on other grounds 224 S.W.2d 1019, 148 Tex. 380—Lytle v. McAlpin, Civ.App., 220 S. W.2d 216, error dismissed—Davis v. Trenholm, Civ.App., 217 S.W.2d 167—Mission Wholesale Grocery Co. v. Hammonds, Civ.App., 215 S.W.2d 260, error refused no reversible error—Phillips Petroleum Co. v. Vaughan, Civ.App., 214 S.W. 2d 637, error refused no reversible error—Davis v. Employers Cas. Co., Civ.App., 214 S.W.2d 642—Vermillion v. Haynes, Civ.App., 211 S.W. 2d 781, reversed on other grounds 215 S.W.2d 605, 147 Tex. 359—Schultze v. Schultze, Civ.App., 209 S.W.2d 791—Kuhn v. Downs, Civ. App., 208 S.W.2d 154, refused no reversible error—Shield v. Hall, Civ. App., 207 S.W.2d 997, error refused no reversible error—McGehee v. Boedeker, Civ.App., 200 S.W.2d 697—Copland v. Friedman, Civ.App., 195 S.W.2d 763—Morgan v. Darlington, Civ.App., 192 S.W.2d 327—Knox v. Campbell, Civ.App., 191 S. W.2d 817—Stanolind Oil & Gas Co. v. Terrell, Civ.App., 183 S.W.2d 748, error refused—Dean v. Maxwell, Civ.App., 173 S.W.2d 246—Binion v. Mathis, Civ.App., 171 S.W.2d 512—Packard-Dallas, Inc., v. Carle, Civ. App., 163 S.W.2d 735, error refused—Durden v. Groce, Civ.App., 159 S.W.2d 941—O'Connor v. Ryan, Civ.App., 159 S.W.2d 531, error refused—Willacy County Water Control & Improvement Dist. No. 1 v. Hofer, Civ.App., 149 S.W.2d 1114—Collier v. Perry, Civ.App., 149 S. W.2d 292, error dismissed, judgment correct—San Angelo v. Amalgamated Meat Cutters & Butchers Workmen of North America, Local 103, Civ.App., 139 S.W. 2d 843—Carpenters and Joiners Union of America, Local No. 213, v. Ritter's Cafe, Civ.App., 138 S.W. 2d 223—In re Supples' Estate, Civ. App., 131 S.W.2d 13—West Production Co. v. Southwestern Bell Tel. Co., Civ.App., 123 S.W.2d 675 error refused—Preibisch v. Lay, Civ.App., 122 S.W.2d 670—Allen v. Trentman, Civ.App., 115 S.W.2d 1177—Guerra v. Tabasco Consol. Independent School Dist., Civ.App., 103 S.W.2d 173, error dismissed—Bain v. Smith, Civ.App., 97 S.W. 2d 353—Armstrong v. Anderson, Civ.App., 91 S.W.2d 775, reversed on other grounds 120 S.W.2d 444, 132 Tex. 122, rehearing denied 132 S.W.2d 393, 132 Tex. 122—Dreyfuss & Son v. Dine, Civ.App., 90 S.W. 2d 598—Firemen's Ins. Co. of Newark, N. J. v. Universal Credit Co., Civ.App., 85 S.W.2d 1061—Campbell v. Fair, Civ.App., 82 S. W.2d 1038—Rodriguez v. Saegert, Civ.App., 74 S.W.2d 171—Wilkinson v. Owens, Civ.App., 72 S.W. 2d 330—Mathes v. Walker, Civ. App., 66 S.W.2d 1093—Netter v. Coleman, Civ.App., 63 S.W.2d 903—Amherst Independent School Dist. v. Tomes, Civ.App., 63 S.W.2d 319—First Nat. Bank v. Patty, Civ. App., 62 S.W.2d 629—First Nat. Bank v. Hancock, Civ.App., 60 S. W.2d 871—Hunt v. Throckmorton Independent School Dist., Civ. App., 59 S.W.2d 470—Teague v. Farmers' State Bank of Center, Civ.App., 55 S.W.2d 639—Skiles v. Shropshire, Civ.App., 50 S.W.2d 402, modified on other grounds 77 S.W.2d 872, 124 Tex. 462—Broun v. Collier, Civ.App., 35 S. W.2d 1050—Jones v. Clark, Civ. App., 30 S.W.2d 577—McAlister v. Bivings, Civ.App., 29 S.W.2d 853—Otjen v. Mitchell, Civ.App., 27 S.W. 2d 835—O'Neil v. Keisler, Civ.App., 26 S.W.2d 671—Gillaspie v. McKinney, Civ.App., 24 S.W.2d 764—Herren Realty Co. v. Scheltinga, Civ. App., 21 S.W.2d 372—Standard Acc. Ins. Co. v. Pennsylvania Car Co., Civ.App., 15 S.W.2d 1081—Runck v. Qualle, Civ.App., 15 S.W.2d 85—

correct the findings of the trial court in any material respect,[60] particularly when they are admitted by appellant to be correct.[61]

The vital considerations which appear to afford the basis or reasons for the above rule are the fundamental distinction between the respective provinces of trial and appellate courts in that the former is the trier of the facts while the latter deals with questions of law solely,[62] and the fact that the position of the trial court for the purpose of determining factual questions is vastly superior to that of the appellate court in that the former usually has the opportunity to observe and hear the witnesses and parties and obtain the benefit of many points and matters that cannot possibly be brought before the appellate court for its consideration by way of a printed record.[63]

Ward v. Bond, Civ.App., 10 S.W.2d 590—Allen v. Selman, Civ.App., 10 S.W.2d 178—Council v. American Nat. Ins. Co., Civ.App., 2 S.W.2d 351—Texas Co. v. Van Deventer, Civ.App., 290 S.W. 560—Houston, E. & W. T. Ry. Co. v. Owens, Civ. App., 282 S.W. 825—Boston Ins. Co. v. Kirby, Civ.App., 281 S.W. 275—Austin St. Ry. Co. v. Beckham, Civ.App., 274 S.W. 1008—Wheeler v. Stone, Civ.App., 261 S. W. 1082—Davis v. Teague, Civ. App., 256 S.W. 957—Couch v. Sparger, Civ.App., 252 S.W. 817—Desdemona State Bank & Trust Co. v. Tyler, Civ.App., 250 S.W. 742—Acrey v. Castleberry, Civ. App., 233 S.W. 535—Nesbit v. Richardson, Civ.App., 229 S.W. 595, dismissed for want of jurisdiction—Baker v. Davis, Civ.App., 227 S.W. 534—Pittman & Harrison Co. v. Knowlan Machine & Supply Co., Civ.App., 216 S.W. 678—Miller Link Lumber Co. v. Thompson, Civ.App., 208 S.W. 546—Cantwell v. Suttles, Civ.App., 196 S.W. 656—Whitley v. Gulf, C. & S. F. Ry. Co., Civ.App., 183 S.W. 36—Hamlin v. J. M. Radford Grocery Co., Civ.App., 182 S.W. 716—Houston Oil Co. of Texas v. Davis, Civ. App., 178 S.W. 669—Texas Midland R. R. v. Kaufman County Imp. Dist. No. 1, Civ.App., 175 S.W. 482—Bayle v. Norris, Civ.App., 134 S.W. 767.

Utah.—General Ins. Co. of America v. Lewis, 243 P.2d 433, 121 Utah 440—Browning v. Equitable Life Assur. Soc. of U. S., 80 P.2d 348, 94 Utah 570—Wilcox v. Cloward, 56 P.2d 1, 88 Utah 503—West v. Standard Fuel Co., 17 P.2d 292, 81 Utah 300—James v. Jensen, 167 P. 827, 50 Utah 485.

Vt.—Utley v. Town School Dist. of Woodbury, 9 A.2d 117, 110 Vt. 522—Conn Boston Co. v. Griswold, 157 A. 57, 104 Vt. 89—Wilson v. Barrows, 119 A. 422, 96 Vt. 344.

Va.—State Farm Mut. Auto. Ins. Co. v. Cook, 43 S.E.2d 863, 186 Va. 658, 5 A.L.R.2d 594—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203—Artrip v. Kelly, 134 S.E. 690, 145 Va. 422—Scott v. Jessee, 129 S.E. 333, 143 Va. 150.

Wash.—Hutson v. Walker, 221 P.2d 506, 37 Wash.2d 12—Schrock v. Gillingham, 219 P.2d 92, 36 Wash.2d 419—Davis v. Altose, 215 P.2d 705, 35 Wash.2d 807—Smith v. John Hancock Mut. Life Ins. Co. of Boston, Mass., 193 P.2d 856, 30 Wash.2d 901—Beers v. Martin, 190 P.2d 573, 30 Wash.2d 1—Hillman Inv. Co. v. Pilling, 13 P.2d 485, 169 Wash. 387—Washington Nat. Inv. Co. v. Lloyd, 282 P. 926, 154 Wash. 582—In re School Dists. No. 12 and 133, in San Juan County, 251 P. 882, 141 Wash. 538—State v. Eyres Storage & Distributing Co., 198 P. 390, 115 Wash. 682—Mailhot v. Crowe, 170 P. 131, 99 Wash. 623—Dickson v. Darnell, 167 P. 937, 98 Wash. 301—Brace & Hergert Mill Co. v. Burbank, 151 P. 803, 87 Wash. 356, Ann.Cas. 1917E 739.

Wis.—In re Langer's Estate, 11 N. W.2d 185, 243 Wis. 561—Joachim v. Madison Dental Clinic, 257 N.W. 143, 216 Wis. 261—Egger v. Northwestern Mut. Life Ins. Co., 234 N. W. 328, 203 Wis. 329—Williams v. Jensen, 231 N.W. 276, 202 Wis. 19—Sippel v. Fond du Lac County, 200 N.W. 459, 184 Wis. 607—Carson, Pirie Scott & Co. v. Karp, 195 N.W. 702, 182 Wis. 76—Ripon Hardware Co. v. Haas, 158 N.W. 330, 163 Wis. 592—In re Morse's Will, 149 N.W. 742, 159 Wis. 188—Cazier v. Hart, 148 N.W. 860, 158 Wis. 362—State v. Eschweiler, 147 N.W. 1008, 158 Wis. 25.

Wyo.—Weidt v. Brannan Motor Co., 260 P.2d 757, 72 Wyo. 1—Finance Corporation of Wyoming v. Commercial Credit Co., 283 P. 1100, 41 Wyo. 198—Perko v. Rock Springs Commercial Co., 259 P. 520, 37 Wyo. 98.

4 C.J. p 876 note 78—8 C.J. p 1088 note 75—37 C.J. p 1260 note 45—42 C.J. p 826 note 28, p 874 note 23, p 1288 note 36—45 C.J. p 1369 note 99—47 C.J. p 595 note 17 [a]—51 C.J. p 285 note 8 p 364 notes 83, 84—52 C.J. p 534 note 20—53 C.J. p 591 note 21.

Requests for findings of fact are not reviewable by appellate court.

Mass.—E. A. Strout Realty Agency v. Gargan, 105 N.E.2d 208, 328 Mass. 524.

Demonstration of correctness not required

Reviewing court is not required to demonstrate correctness of a fact issue determined by the trial court.

Minn.—Haglin v. Ashley, 4 N.W.2d 109, 212 Minn. 445.

Supplemental findings of the trial court in actions tried to a jury are not binding on appeal.

Tex.—Pickett v. Dallas Trust & Savings Bank, Civ.App., 13 S.W.2d 195, reversed on other grounds, Com.App., 24 S.W.2d 354.

60. Conn.—Malone v. Steinberg, 89 A.2d 213, 138 Conn. 718—Miller v. Poli's New England Theatres, 7 A. 2d 845, 125 Conn. 610—Andrews v. City of Bristol, 181 A. 624, 120 Conn. 499—Buckingham Routh Co. v. George B. Wuestefeld Co., 157 A. 414, 114 Conn. 720.

61. Ind.—City Nat. Bank of Auburn v. Brink, 187 N.E. 689, 98 Ind.App. 275.

Ky.—Diederich v. Ware, 288 S.W.2d 643.

62. Cal.—Tupman v. Haberkern, 280 P. 970, 208 C. 256.

Conn.—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529.

Nev.—**Corpus Juris Secundum cited in** Garaventa v. Gardella, 169 P.2d 540, 543, 63 Nev. 304.

63. Cal.—Bateman v. Long, 233 P. 2d 19, 105 C.A.2d 173—Richey v. Butler, 180 P. 652, 40 C.A. 314.

Iowa.—Shultz v. City of Oskaloosa, 187 N.W. 867, 193 Iowa 781.

Ky.—Thompson v. Henson, 209 S.W. 2d 849, 307 Ky. 61.

La.—Fontenot v. Tremie, 139 So. 558, 19 La.App. 67.

Md.—Hampson v. Brundige, 176 A. 472, 168 Md. 59.

Mo.—Dawes v. Williams, 40 S.W.2d 644, 328 Mo. 680.

Bender v. Bender, App., 193 S. W. 294.

Mont.—Hansen v. Johnson, 4 P.2d 1088, 90 Mont. 597.

Nev.—**Corpus Juris Secundum cited in** Garaventa v. Gardella, 169 P.2d 540, 543, 63 Nev. 304.

Pa.—Winter v. Winter, 156 A. 603, 102 Pa.Super. 300.

Utah.—Bartholomew v. Pickett, 170 P. 65, 51 Utah 312.

Wash.—Peterson v. Department of Labor and Industries, 157 P.2d 298, 22 Wash.2d 647.

4 C.J. p 885 note 39.

So strong are these considerations that when they are present it has even been held that the conclusive effect is to be given to the fact findings of the trial court notwithstanding a statute providing that the appellate court shall review with no presumption in favor of the findings of fact by the trial court,[64] or a statute providing that the appellate court may make findings of fact contrary to, or in addition to, those made by the trial court.[65]

On the other hand, the rule that the appellate court is concluded by the findings of the trial court should not be followed blindly and without exception;[65.5] and, where the trial court does not see and hear the witnesses, the view is sometimes taken that the trial court is in no better position to pass on the facts than the appellate court and that the latter has the power to review the fact findings.[66]

§ 1656(2). —— Scope of Review Generally

The appellate court will not ordinarily review or retry facts found by the trial court, the weight to be given to the evidence and the final determination of the facts being considered as resting within the exclusive province of the trial court when it has lawfully undertaken to function as the trier of the facts.

Where the issue before the appellate court is one of fact and the testimony was taken orally before the trial court, the well known rules of review must obtain.[66.50] As a general rule, after they have been found by the trial court, the appellate court will not review or retry the facts.[67] The credibility of the witnesses and the weight to be given to the evidence are matters within the province of the trial court,[68] and the appellate court will not seek to weigh the evidence or pass on the credibility of wit-

64. Ala.—Ex parte C. M. McMahen & Sons, 106 So. 57, 213 Ala. 642—Hackett v. Cash, 72 So. 52, 196 Ala. 403.
Bryant v. Lane, 81 So. 364, 17 Ala.App. 28.

65. Cal.—Isenberg v. Sherman, 298 P. 1004, 212 C. 454, rehearing denied 299 P. 528, 212 C. 454, and motion denied 7 P.2d 1006, 214 C. 722, certiorari denied 52 S.Ct. 501, 286 U.S. 547, 76 L.Ed. 1283—Tupman v. Haberkern, 280 P. 970, 208 C. 256.

65.5 Mont.—In re Bragg's Estate, 76 P.2d 57, 106 Mont. 132.

66. Ala.—Henslee v. Merritt, 82 So. 2d 212, 263 Ala. 266—Hipp v. McMurry, 81 So.2d 531, 263 Ala. 11—Adams v. Logan, 70 So.2d 786, 260 Ala. 346—Redwine v. Jackson, 49 So.2d 115, 254 Ala. 564—McCullough v. McCullough, 24 So.2d 123, 247 Ala. 286—Mitchell v. Walker, 179 So. 633, 235 Ala. 458.
Idaho.—Idaho Power Co. v. City of Buhl, 111 P.2d 1088, 62 Idaho 351.
Iowa.—**Corpus Juris cited in** Davis v. Knight, 35 N.W.2d 23, 24, 239 Iowa 1338—**Corpus Juris cited in** Rank v. Kuhn, 20 N.W.2d 72, 74, 236 Iowa 854.
Kan.—**Corpus Juris cited in** Rupp v. Rupp, 228 P.2d 692, 694, 170 Kan. 651.
La.—Walker v. Mire, App., 197 So. 798.
Md.—Burleigh v. Miller, 120 A.2d 378, 209 Md. 57.
N.M.—Bradford v. Armijo, 210 P. 1070, 28 N.M. 288.
Nev.—**Corpus Juris cited in** Garaventa v. Gardella, 169 P.2d 540, 543, 63 Nev. 304.
N.C.—**Corpus Juris cited in** Mitchell v. Barfield, 59 S.E.2d 810, 811, 232 N.C. 325.
Pa.—In re Quein's Estate, 62 A.2d 909, 361 Pa. 133.
Wyo.—**Corpus Juris cited in** Simmons v. Muir, 291 P.2d 810, 814—**Corpus Juris Secundum quoted at length in** Casper Lodge No. 22, I. O. O. F. v. Corbridge, 286 P.2d 1047, 1054, 74 Wyo. 244.
7 C.J. p 860 note 87.
Findings made by judge other than one who took evidence see infra § 1656(6).

66.50 Ala.—Willis v. Willis, 189 So. 873, 238 Ala. 153.

67. Conn.—Pillou v. Connecticut Co., 123 A.2d 470, 143 Conn. 481—Hudick v. Tycz, 118 A.2d 306, 142 Conn. 715—Morse v. Morse, 20 A. 2d 730, 128 Conn. 138—Friday v. Bacon, 5 A.2d 709, 125 Conn. 354—Seregi v. Kendzierski, 195 A. 605, 123 Conn. 402—Gage v. Chapin Motors, 162 A. 17, 115 Conn. 546—Ricci v. Naples, 142 A. 452, 108 Conn. 19.
Kan.—Dreisbach v. Spring, 144 P. 195, 93 Kan. 240.
Mo.—Moller-Vandenboom Lumber Co. v. Boudreau, App., 85 S.W.2d 141—Burns v. Reis, 191 S.W. 1096, 196 Mo.App. 694.
N.J.—Wegmann v. Melniczak, 43 A. 2d 860, 133 N.J.Law 243—Moreland v. Steen, 99 A. 135, 89 N.J. Law 383.
Pa.—Commonwealth ex rel. Butler v. Ervine, 126 A.2d 512, 182 Pa.Super. 179.
Tex.—Allstate Ins. Co. v. Lay, Civ. App., 265 S.W.2d 203.
24 C.J. p 910 note 90.

68. Ala.—American Home Building & Loan Ass'n v. Long, 129 So. 793, 24 Ala.App. 34.
Ark.—Hughes v. Harris, 299 S.W.2d 85—Casteel v. K. Lee Williams Theatres, Inc., 256 S.W.2d 732, 221 Ark. 935—Arkansas Rural Rehabilitation Corp. v. Longino, 95 S.W.2d 897, 192 Ark. 912—Sparkman Hardwood Lumber Co. v. Bush, 72 S.W.2d 527, 189 Ark. 391—Holman v. Armstrong, 63 S.W.2d 339, 187 Ark. 958—Sternberg v. Snow King Baking Powder Co., 57 S.W.2d 1057, 186 Ark. 1161—Edwards v. Lake Superior Piling Co., 57 S.W.2d 1039, 187 Ark. 462—Baltimore & O. R. Co. v. McGill Bros. Rice Mill, 46 S.W.2d 651, 185 Ark. 108—Williams v. Dawson, 46 S.W.2d 634, 185 Ark. 1190—Arkla Sash & Door Co. v. Fair, 5 S.W.2d 308, 176 Ark. 1203—International Harvester Co. of America v. Layton, 229 S.W. 22, 148 Ark. 156—Home Fire Ins. Co. v. Wilson, 176 S.W. 688, 118 Ark. 442, L.R.A. 1918E 409.
Ariz.—Todaro v. Gardner, 231 P.2d 435, 72 Ariz. 87—Rogers v. Greer, 219 P.2d 760, 70 Ariz. 264—Hiatt v. Lee, 61 P.2d 401, 48 Ariz. 320, 107 A.L.R. 444—Brady v. Brady, 61 P.2d 390, 48 Ariz. 308—Jackson v. Griffin, 4 P.2d 900, 39 Ariz. 183—C. I. T. Corporation v. First Nat. Bank, 266 P. 6, 33 Ariz. 483—Peters v. Taylor, 251 P. 446, 31 Ariz. 169—Hunt v. Campbell, 169 P. 596, 19 Ariz. 254.
Cal.—Dillard v. McKnight, 209 P.2d 387, 34 C.2d 209, 11 A.L.R.2d 835—Nichols v. Mitchell, 197 P.2d 550, 32 C.2d 598—Allen v. California Water & Tel. Co., 176 P.2d 8, 29 C.2d 466—Hansen v. Bear Film Co., 168 P.2d 946, 28 C.2d 154—Fackrell v. City of San Diego, 157 P.2d 625, 26 C.2d 196, 158 A.L.R. 773—Gudger v. Manton, 134 P.2d 217, 21 C.2d 537—Stromerson v. Averill, 133 P. 2d 617, reheard 141 P.2d 732, 22 C. 2d 808—Campbell v. Birch, 122 P.2d 902, 19 C.2d 778—Wright v. Best, 121 P.2d 702, 19 C.2d 368—Watson v. Poore, 115 P.2d 478, 18 C.2d 302—Bechtold v. Bishop & Co., 105 P. 2d 984, 16 C.2d 285—Lentell v. McBride, 60 P.2d 289, 7 C.2d 263—Caldwell v. Taylor, 52 P.2d 213, 4 C.2d 686—Ellis v. Union Trust Co. of San Diego, 25 P.2d 1, 219 C. 50—Secondo v. Secondo, 23 P.2d

752, 218 C. 453—Hurley v. Behnke, 300 P. 820, 212 C. 761—Linberg v. Stango, 297 P. 9, 211 C. 771, 75 A.L.R. 555—Taylor v. Bunnell, 296 P. 288, 211 C. 601—Consolidated Pipe Co. v. Wolski, 296 P. 277, 211 C. 563—Weissbaum v. Elbeshutz, 294 P. 396, 211 C. 170—Atkinson v. State, 275 P. 412, 206 C. 617—Mayhew v. Burke, 274 P. 517, 206 C. 396—Southern California Iron & Steel Co. v. Amalgamated Ass'n of Iron, Steel & Tin Workers, Golden State Lodge Local No. 3, 200 P. 1, 186 C. 604.

Gardner v. Rubin, App., 308 P. 2d 892—Greenblatt v. State Bd. of Equalization, App., 307 P.2d 379—Compania Harinera De La Baja California v. Western Belting & Equipment Co., App., 307 P.2d 70—Harlow v. United Title Guaranty Co., 303 P.2d 16, 145 C.A.2d 672—Duffey v. Duffey, 302 P.2d 64, 145 C.A.2d 169—Salmons v. Jameson, 301 P.2d 431, 144 C.A.2d 698—Jones v. Gore, 297 P.2d 474, 141 C.A.2d 667—Mast v. State Bd. of Optometry, 293 P.2d 148, 139 C.A. 2d 78—Moore v. Ruth, 292 P.2d 939, 139 C.A.2d 70—Kazanteno v. California-Western States Life Ins. Co., 290 P.2d 332, 137 C.A.2d 361—Marker v. Wendelken, 288 P.2d 981, 136 C.A.2d 276—Williams v. Barnett, 287 P.2d 789, 135 C.A.2d 607—Trembley v. Benedetti, 286 P. 2d 426, 134 C.A.2d 553—Linehan v. Linehan, 285 P.2d 326, 134 C.A.2d 250—Broadway Federal Sav. & Loan Ass'n of Los Angeles v. Howard, 285 P.2d 61, 133 C.A.2d 382—In re Cummins Estate, 280 P.2d 128, 130 C.A.2d 821—Scott v. Staggs, 276 P.2d 605, 129 C.A.2d 54—Sully v. Kern Drilling Corp., 272 P.2d 549, 126 C.A.2d 651—Lauder v. Wright Inv. Co., 271 P.2d 970, 126 C.A.2d 147—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Wahyou v. Ostrovsky, 267 P.2d 387, 123 C.A.2d 722—Sukiasian v. Shakarian, 252 P.2d 956, 115 C.A.2d 798—Smith v. Busniewski, 251 P.2d 697, 115 C.A.2d 124—Roberts v. Lebrain, 248 P.2d 810, 113 C.A.2d 712—Ventimiglia v. Hodgen, 247 P.2d 123, 112 C.A.2d 658—Kilstrom v. Bronnenberg, 242 P.2d 65, 110 C.A.2d 62—Shavarsh Chuchian v. Metropolitan Life Ins. Co., 230 P.2d 381, 103 C.A.2d 760—Oil Workers Intern. Union, CIO v. Superior Court, Contra Costa County, 230 P.2d 71, 103 C.A.2d 512—Kuhn v. Gottfried, 229 P.2d 137, 103 C.A.2d 80—Proper v. Proper, 228 P.2d 62, 102 C.A.2d 612—Braverman v. Rosenthal, 226 P.2d 617, 102 C.A.2d 30—McGillis v. Hofeditz, 226 P.2d 372, 101 C.A.2d 760—Lawler v. Solus, 226 P.2d 348, 101 C.A.2d 816—Standard Oil Co. of Cal. v. Houser, 225 P.2d 539, 101 C.A.2d 480—Johnson Trade v. Frimmersdorf, 224 P.2d 771, 100 C.A.2d 719—Consolidated Produce Co. v. Pieper, 224 P.2d 409, 100 C. A.2d 631—Sketchley v. Lipkin, 222 P.2d 927, 99 C.A.2d 849—Shepherd v. Perea, 220 P.2d 776, 98 C.A.2d 518—Quindt v. Kilpatrick, 216 P.2d 481, 96 C.A.2d 824—Mealy v. Sunland Refining Corp., 216 P.2d 59, 96 C.A.2d 700—Rakow v. Innes Co., 215 P.2d 111, 96 C.A.2d 278—Pfingst v. Goetting, 215 P.2d 93, 96 C.A.2d 293—Alonso v. Hills, 214 P. 2d 50, 95 C.A.2d 778—Weesner v. Leased Transp., 213 P.2d 26, 95 C.A.2d 414—Goldring v. Goldring, 211 P.2d 342, 94 C.A.2d 643—Helm v. Zaches, 211 P.2d 329, 94 C.A.2d 625—Rahim v. Akbar, 207 P.2d 80, 92 C.A.2d 383—Biggs v. Tourtas, 206 P.2d 871, 92 C.A.2d 316—In re Raphael's Estate, 206 P. 2d 391, 91 C.A.2d 931—Wilson v. Sampson, 205 P.2d 753, 91 C.A.2d 453—Balkema v. Deiches, 202 P.2d 1068, 90 C.A.2d 427—Edwards v. Edwards, 202 P.2d 589, 90 C.A.2d 33—Silver v. Shemanski, 201 P.2d 418, 89 C.A.2d 320—Fowler v. Case, 200 P.2d 130, 89 C.A.2d 140—Rosa v. Rosa, 197 P.2d 85, 87 C.A.2d 427—Foshee v. Wolters, 195 P.2d 930, 86 C.A.2d 766—Langer v. Langer, 194 P.2d 81, 85 C.A.2d 806—Khoury v. Barham, 192 P.2d 823, 85 C.A.2d 202—Crawford v. Ragan, 184 P.2d 311, 81 C.A.2d 547—McKinley v. Southern Pac. Co., 181 P.2d 899, 80 C.A.2d 301—Williams v. Williams, 181 P.2d 110, 80 C.A.2d 28—Lewis v. Silveira, 179 P.2d 829, 79 C.A.2d 489—Hughes v. Grandy, 177 P.2d 939, 78 C.A.2d 555—Combs v. Combs, 171 P.2d 949, 75 C.A.2d 903—Engle v. Farrell, 171 P.2d 588, 75 C.A.2d 612—Forbes v. Forbes, 169 P.2d 661, 74 C.A.2d 936—Stevens v. Dillon, 168 P.2d 492, 74 C.A.2d 178—Vaccarezza v. Sanguinetti, 163 P.2d 470, 71 C.A.2d 687—In re Creely, 160 P.2d 870, 70 C.A.2d 186—Boston Iron & Metal Co. v. Rosenthal, 156 P.2d 963, 68 C.A.2d 564—Katz v. Enos, 156 P.2d 461, 68 C.A.2d 266—Conrad v. Conrad, 152 P.2d 221, 66 C.A.2d 280—In re Skinner's Estate, 151 P.2d 31, 65 C.A. 2d 528—Welsh v. Mercy Hospital, 151 P.2d 17, 65 C.A.2d 473—Cooke v. Cooke, 150 P.2d 514, 65 C.A.2d 260—Massing v. Babcock, 149 P.2d 293, 64 C.A.2d 752—Seeger v. Odell, 148 P.2d 901, 64 C.A.2d 397—Rogers v. Mulkey, 147 P.2d 62, 63 C.A.2d 567—Hershey v. Laswell, 146 P.2d 509, 63 C.A.2d 219—Maduro v. Maduro, 145 P.2d 683, 62 C.A.2d 776—Adams v. Bloom, 142 P.2d 775, 61 C.A.2d 315—Tuman v. Brown, 138 P.2d 363, 59 C.A.2d 16—Millard v. Epsteen, 137 P.2d 717, 58 C.A.2d 612—Ferrari v. Mambretti, 136 P.2d 326, 58 C.A.2d 318—Klass v. Evans, 136 P.2d 78, 58 C.A.2d 163—Kramer v. Musser, 136 P.2d 74, 57 C.A.2d 942—Kalkruth v. Resort Properties, 134 P.2d 513, 57 C.A.2d 146—Podesta v. Mehrten, 134 P.2d 38, 57 C.A.2d 66—In re Peterson, 133 P. 2d 831, 56 C.A.2d 791—Gould v. Escondido Valley Poultry Ass'n, 133 P.2d 448, 56 C.A.2d 681—Airola v. Gorham, 133 P.2d 78, 56 C.A.2d 42—American Distilling Co. v. State Board of Equalization, 131 P.2d 609, 55 C.A.2d 799—Roman Catholic Bishop of San Diego v. Lawrence, 129 P.2d 931, 54 C.A.2d 730—Norgard v. Norgard's Estate, 128 P.2d 566, 54 C.A.2d 82—Kell v. Jansen, 127 P.2d 1033, 53 C.A.2d 498—Turner v. Lischner, 126 P.2d 156, 52 C.A.2d 273—Field v. Mollison, 123 P.2d 603, 50 C.A.2d 585—Nicola v. Pacific Gas & Electric Co., 123 P.2d 529, 50 C.A.2d 612—Armer v. Dorton, 123 P.2d 94, 50 C.A.2d 413—Lane v. Whitaker, 123 P.2d 53, 50 C.A.2d 327—Renzetti v. Los Angeles Motor Coach Co., 119 P.2d 164, 48 C.A.2d 37—Cragun v. Krossoff, 114 P.2d 431, 45 C.A.2d 480—Security-First Nat. Bank of Los Angeles v. Bruder, 113 P.2d 3, 44 C.A.2d 767—Chichester v. Mason, 111 P.2d 362, 43 C.A.2d 577—Bank of America Nat. Trust & Savings Ass'n v. Perry, 106 P.2d 53, 41 C.A. 2d 133—Darr v. Clevelin Realty Corp., 92 P.2d 475, 33 C.A.2d 500—In re McConkey's Estate, 92 P.2d 456, 33 C.A.2d 554—Hamilton v. Ferguson, 79 P.2d 427, 26 C.A.2d 390—George Herz & Co. v. Solt, 72 P.2d 251, 23 C.A.2d 178—Sullivan v. Barra, 70 P.2d 495, 22 C.A.2d 20—Burrows v. Burrows, 63 P.2d 1135, 18 C.A.2d 275—Boyes v. Evans, 58 P.2d 922, 14 C.A.2d 472—Carpenter v. First Trust & Savings Bank of Pasadena, 54 P.2d 495, 11 C.A.2d 668—Withrow v. Shaeffer Associates, 52 P.2d 514, 10 C.A.2d 516—Hosking v. Danforth, 36 P.2d 427, 1 C.A.2d 178—Lockard v. Matlaw, 35 P.2d 591, 140 C.A. 640—Trowbridge v. Briggs, 35 P.2d 426, 140 C.A. 554—G. W. Williams Co. v. Klassen, 34 P.2d 735, 139 C.A. 532—M. J. Ryan Co. v. Brown, 31 P.2d 1076, 138 C.A. 176—Vasiljevich v. Radanovich, 31 P.2d 802, 138 C.A. 97—Youngs v. Wright, 29 P.2d 445, 136 C.A. 634—Calico-Odessa Mining Co. v. Britt, 27 P.2d 778, 135 C.A. 744—Reton v. J. D. Millar Realty Co., 23 P.2d 419, 132 C.A. 708—Vaughan v. People's Mortg. Co., 20 P.2d 335, 130 C.A. 632—Smith v. Herron, 18 P.2d 1002, 129 C.A. 479—Minnich v. Minnich, 15 P.2d 804, 127 C.A. 1—Gray v. Craig, 15 P.2d 762, 127 C.A. 374, rehearing denied 16 P.2d 798, 127 C.A. 374, and certiorari denied 53 S.Ct. 688, 289 U.S. 744, 77 L.Ed. 1491—Benson v. Hamilton, 14 P.2d 876, 126 C.A. 331—Heintz v. 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Fla.—Whitehurst v. State, 144 So. 61, 106 Fla. 789, followed in Cornelius v. State, 144 So. 66, 106 Fla. 793.

Ga.—Gaskins v. Varn, 173 S.E. 695, 178 Ga. 502.

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Kan.—Hale v. Ziegler, 303 P.2d 190, 180 Kan. 249—Texas Co. v. Sloan, 267 P.2d 919, 175 Kan. 735—Rupp v. Rupp, 233 P.2d 709, 171 Kan. 357—In re Spark's Estate, 212 P.2d 369, 168 Kan. 270—Jones v. Davis, 197 P.2d 932, 165 Kan. 626—Sparks v. Maguire, 169 P.2d 826, 161 Kan. 520—Cole v. Lloyd, 166 P.2d 577, 161 Kan. 150—Cain v. Cain, 165 P. 2d 221, 160 Kan. 672—First Nat. Bank v. Cottengim, 65 P.2d 293, 145 Kan. 330—Adams v. Morgan, 52 P.2d 643, 142 Kan. 865—Harrison v. Lyon, 271 P. 395, 126 Kan. 705—Railroad Com'rs v. Missouri Pac. R. Co., 80 P. 53, 71 Kan. 193.

Ky.—Newberry v. Hardin, 161 S.W. 2d 369, 290 Ky. 394—Posey v. Cocke, 92 S.W.2d 4, 263 Ky. 177—Hurt v. Bank of Commerce, 32 S. W.2d 346, 235 Ky. 795.

La.—Branch v. Springfield Fire & Marine Ins. Co. of Springfield, Mass., 4 So.2d 806, 198 La. 720—Jordan v. Jordan, 143 So. 377, 175 La. 468—Harkness v. Leggett, 131 So. 190, 171 La. 405—Waguespack v. Flateau, 101 So. 725, 157 La. 1.

Me.—Bartley v. Couture, 55 A.2d 438, 143 Me. 69—Mitchell v. Mitchell, 11 A.2d 898, 136 Me. 406.

Md.—Taylor v. Wesley Freeman, Inc., 47 A.2d 500, 186 Md. 474—Rutherford v. Mancuso, 26 A.2d 374, 180 Md. 628, 140 A.L.R. 1016—Schley v. Zalis, 191 A. 563, 172 Md. 336—Machovec v. Shipley, 189 A. 223, 171 Md. 339.

Mass.—Laskey v. Railway Exp. Agency, 94 N.E.2d 256, 326 Mass. 339—Moroni v. Brawders, 57 N.E. 2d 14, 317 Mass. 48—Codman v. Beane, 45 N.E.2d 948, 312 Mass. 570—Memishian v. Phipps, 42 N.E. 2d 277, 311 Mass. 521—Tepjian v. Boston Casing Co., 192 N.E. 507, 288 Mass. 167—Gordon v. American Tankers Corporation, 191 N.E. 51, 286 Mass. 229—Hogan v. Whittemore, 180 N.E. 526, 278 Mass. 573—Jones v. Clark, 172 N.E. 250, 572 Mass. 146—Edwards v. Cockburn, 162 N.E. 225, 264 Mass. 112.

Mich.—Atlantic Die Casting Co. v. Whiting Tubular Products, Inc., 60 N.W.2d 174, 337 Mich. 414—Pocius v. Smykowski, 52 N.W.2d 224, 332 Mich. 578—Fruit Growers Package Co. v. Anderson, 35 N.W. 2d 150, 323 Mich. 169—Veltman v. Mallick, 34 N.W.2d 463, 322 Mich. 625—Brown v. Sellars, 20 N.W.2d 202, 312 Mich. 313—Desendorf v. Packers Outlet, 296 N.W. 684, 296 Mich. 575—Reedy v. Goodin, 281 N. W. 377, 285 Mich. 614—Delta Asbestos Co. v. Sanders, 243 N.W. 16, 259 Mich. 317.

Miss.—D. S. Pate Lumber Co. v. Weathers, 146 So. 433, 167 Miss. 228.

Mo.—Trieseler v. Helmbacher, 168 S.W.2d 1030, 350 Mo. 807—Missouri Electric Power Co. v. Smith, 155 S.W.2d 113, 348 Mo. 738—Pruitt v. St. Johns Levee & Drainage Dist., 106 S.W.2d 467, 341 Mo. 120—Sugent v. Arnold's Estate, 101 S.W.2d 715, 340 Mo. 603—State ex rel. Ward v. Trimble, 89 S.W.2d 372, 327 Mo. 773—Hecker v. Bleish, 3 S.W.2d 1008, 319 Mo. 149—Sexton v. Sexton, 243 S.W. 315, 295 Mo. 134—Sawyer v. French, 235 S.W. 126, 290 Mo. 374.

Cox v. Cox, App., 217 S.W.2d 722—McClellan v. City of St. Louis, App., 170 S.W.2d 131—Heath v. Perky Bros. Transfer & Storage Co., App., 157 S.W.2d 600—Ray Realty Co. v. Holtzman, App., 119 S.W.2d 981—Kenney v. Henson, App., 107 S.W.2d 947—Gilbert v. Malan, 100 S.W.2d 606, 231 Mo.App. 469—Nahn-Heberer Realty Co. v. Schrader, App., 89 S.W.2d 142—White v. Shepherd of the Hills Life Ins. Co., App., 62 S.W.2d 487—Nidy v. Rice, 44 S.W.2d 196, 226 Mo.App. 610—Craig v. Garnier, App., 39 S.W.2d 461—Waite v. Boutross, 39 S.W.2d 454, 225 Mo.App. 724—Rathbone v. Rathbun, App., 35 S.W.2d 38—Vail v. Beavers, App., 34 S.W.2d 546—General Motor Acceptance Co. v. Thomas, App., 33 S.W.2d 1033—Byington v. School Dist. of Joplin, 30 S.W.2d 621, 224 Mo.App. 541—Albert v. Dolan, App., 27 S.W.2d 438—Patten v. Springfield Fire & Marine Ins. Co., 25 S.W.2d 1075, 223 Mo. App. 1070—Dyer v. Brown, App., 25 S.W.2d 551—Kansas City Carpet Co. v. Smith, App., 25 S.W.2d 539—Robertson Bros. v. Garrison's Estate, App., 21 S.W.2d 202—Tracy v. Shreeves, App., 20 S.W.2d 944—Harms v. Pohlmann, 297 S.W. 138, 222 Mo.App. 276—Gump's Estate v. Jacobs, 292 S.W. 81, 222 Mo.App. 545—Saunders v. Englehart, App., 273 S.W. 157—Leavel v. Johnston, 232 S.W. 1064, 209 Mo. App. 197—Lester v. Hugley, App., 230 S.W. 355—Lester v. Sampson, App., 180 S.W. 419.

Mont.—In re Mickich's Estate, 136 P.2d 223, 114 Mont. 258—In re Sales' Estate, 89 P.2d 1043, 108 Mont. 202—Nemitz v. Reckards, 38 P.2d 980, 98 Mont. 229—Exchange State Bank of Glendive v. Occident Elevator Co., 24 P.2d 126, 95 Mont. 78, 90 A.L.R. 740—Bitter Root Creamery Co. v. Muntzer, 300 P. 251, 90 Mont. 77—Dockins v. Dockins, 266 P. 398, 82 Mont. 218.

Neb.—Cotner College v. Hester's Estate, 51 N.W.2d 612, 155 Neb. 279—In re Johnson's Estate, 13 N.W. 2d 412, 144 Neb. 372.

Nev.—Montgomery Ward & Co. v. Stevens, 109 P.2d 895, 60 Nev. 358—Sagardia v. Stockgrowers' & Ranchers' Bank of Reno, 274 P. 811, 51 Nev. 299.

N.H.—Delisle v. Smalley, 69 A.2d 868, 96 N.H. 58—Amodeo v. Allen, 54 A.2d 363, 94 N.H. 370—Geralds v. Champlin, 37 A.2d 155, 93 N.H. 157—Hood v. City of Nashua, 13 A.2d 726, 91 N.H. 98.

N.J.—Boldt v. Prudential Ins. Co. of America, 15 A.2d 757, 125 N.J.Law 328—Joseph M. Byrne Co. v. Snead & Co., 118 A. 841, 98 N.J.Law 256.

De Geeter v. Bennett, 32 A.2d 335, 133 N.J.Eq. 349, certiorari denied 64 S.Ct. 67, 320 U.S. 759, 88 L.Ed. 453, rehearing denied 64 S. Ct. 156, 320 U.S. 813, 88 L.Ed. 491—Johnson v. Savings Investment & Trust Co., of East Orange, 160 A. 371, 110 N.J.Eq. 466.

Kremin v. Brehn, 167 A. 5, 11 N. J.Misc. 491—Reiman v. Essex Chair Co., 159 A. 675, 10 N.J.Misc. 518—Krim v. Sacks, 145 A. 237, 7 N.J.Misc. 318.

N.M.—Rice v. First Nat. Bank in Albuquerque, 171 P.2d 318, 50 N.M. 99—Wilson Oil Co. v. Hardy, 164 P.2d 209, 49 N.M. 337, 162 A.L.R. 292—Dunakin v. Southwestern Consumers Co-op. Ass'n, 157 P.2d 243, 49 N.M. 69—Kell v. Wilson, 133 P.2d 705, 47 N.M. 43, 148 A.L.R. 397.

N.Y.—Selmar Garage Corp. v. Rink Realty Corp., 122 N.Y.S.2d 658, 282 App.Div. 780, reargument denied 124 N.Y.S.2d 348, 282 App.Div. 839—Scher v. City of New York, 294 N.Y.S. 552, 250 App.Div. 788—Peck Distributing Corp. v. Kellogg Sales Co., 293 N.Y.S. 611, 250 App.Div. 738—Hansen v. Brooklyn Trust Co., 285 N.Y.S. 2, 246 App.Div. 843.

In re New York Title & Mortgage Co. (Series B-K), 21 N.Y.S. 2d 575—Wineburgh v. Seeman Bros., 21 N.Y.S.2d 180—Hansen v. Brooklyn Trust Co., 285 N.Y.S. 2.

N.D.—Klundt v. Pfeifle, 41 N.W.2d 416, 77 N.D. 132.

Ohio.—Shaman v. Roberts, 94 N.E.2d 630, 87 Ohio App. 328—De Garmo v. De Garmo, App., 92 N.E.2d 414—Nickerson v. Nickerson, 87 N.E. 2d 915, 85 Ohio App. 372—In re Burdette, 83 N.E.2d 813, 83 Ohio App. 368—Kelso v. Cashen, App., 68 N.E.2d 355—Silberman v. National City Bank of Cleveland, 173 N.E. 16, 36 Ohio App. 442.

Okl.—Givens v. Western Paving Co., 261 P.2d 450—Wistar v. Whitewing, 116 P.2d 565, 189 Okl. 292—Ward v. Archer, 52 P.2d 758, 173 Okl. 465—National Fire Ins. Co. v. Patterson, 41 P.2d 645, 170 Okl. 593—Yellow Taxicab & Baggage Co. v. New, 40 P.2d 651, 170 Okl. 334—First Nat. Bank v. Melton & Holmes, 9 P.2d 703, 156 Okl. 63—Simmons v. Maxey, 233 P. 669, 106 Okl. 252.

Or.—Norwood v. Eastern Oregon Land Co., 5 P.2d 1057, 139 Or. 25, modified on other grounds 7 P.2d 996, 139 Or. 25—Brownell v. Heitman, 266 P. 1067, 125 Or. 515—Fitzpatrick v. Sletten, 242 P. 1114, 117 Or. 173.

Pa.—Commonwealth ex rel. Harry v. Eastridge, 97 A.2d 350, 374 Pa. 172—In re Wenz' Estate, 29 A.2d 13, 345 Pa. 393—I. Rokeach & Sons v. Imperial Metal Polish Co., 145 A. 440, 295 Pa. 366.

Welsh v. May, 98 A.2d 426, 173 Pa.Super. 618—Robinson Elec. Co. v. Capitol Trucking Corp., 79 A.2d 123, 168 Pa.Super. 430—Banca D'Italia & Trust Co. v. Giordano, 36 A.2d 242, 154 Pa.Super. 452—Hoefner v. Franklin Trust Co., 24 A.2d 457, 147 Pa.Super. 404—Jones v. Manhattan Life Ins. Co. of New York, 4 A.2d 220, 134 Pa.Super. 437—Huck-Gerhardt Co. v. Davies, 3 A.2d 963, 134 Pa.Super. 430—Lion Match Co. v. Frank, 169 A. 13, 110 Pa.Super. 599—Cancelmo v. Tilli, 158 A. 302, 104 Pa.Super. 274—In re People's Investment Co., 56 Pa. Super. 90.

Holland Furnace Co. v. Davis, Com.Pl., 7 Sch.Reg. 297.

R.I.—Cranston Dressed Meat Co. v. Packers Outlet Co., 190 A. 29, 57 R.I. 345—Gallivan v. O'Donnell, 171 A. 911, 54 R.I. 194—Seligman v. Russo, 170 A. 788.

S.D.—Chicago, B. & Q. R. Co. v. Wheaton, 80 N.W.2d 868—Credit Management Service v. Wendbourne, 72 N.W.2d 926—West v. Hanley, 45 N.W.2d 455, 73 S.D. 540—State ex rel. Helgerson v. Riff, 44 N.W.2d 126, 73 S.D. 467—Schmidt v. Young, 285 N.W. 522, 66 S.D. 472—Gunsul v. Gunsul, 199 N.W. 243, 47 S.D. 388.

Tex.—Gurley v. Pilgrim Oil Co., Com.App., 285 S.W. 283.

Baten v. Smart, Civ.App., 295 S. W.2d 521, error refused no reversible error—State v. Arkansas Fuel Oil Co., Civ.App., 268 S.W.2d 311, reversed on other grounds 280 S.W. 2d 723, 154 Tex. 573—Brown v. Moss, Civ.App., 265 S.W.2d 613, error refused no reversible error—Massey v. Jones, Civ.App., 259 S.W. 2d 646—Hardin v. State, Civ.App., 254 S.W.2d 898—Evans v. Rush, Civ.App., 254 S.W.2d 799—Brown v. Gainesville Nat. Bank, Civ.App., 250 S.W.2d 616, error refused—Hill v. Parker, Civ.App., 239 S.W. 2d 219, error refused no reversible error—Crawford Undertaking Co. v. Herman Siegel, Inc., Civ.App., 230 S.W.2d 590, error dismissed—Dennis v. Pace Petroleum Co., Civ. App., 230 S.W.2d 585, error refused no reversible error—Mahaffey v. Mahaffey, Civ.App., 219 S.W.2d 519—Jay v. Whiteside, Civ.App., 205 S.

nesses to determine whether the facts were correctly found,[69] or whether the evidence is sufficient to meet

W.2d 389, refused no reversible error—Boston Ins. Co. v. Rainwater, Civ.App., 197 S.W.2d 118—Railway Exp. Agency v. Hueber, Civ.App., 191 S.W.2d 710—Texas Farm Products Co. v. Johnson, Civ.App., 190 S.W.2d 178—Coefficient Foundation v. Kennedy, Civ.App., 188 S.W.2d 694—Mortensen v. Mortensen, Civ. App., 186 S.W.2d 297—Glenn v. Gleen, Civ.App., 183 S.W.2d 231—Comet Motor Freight Lines v. Holmes, Civ.App., 175 S.W.2d 464, error refused—Wright v. O'Neal, Civ.App., 161 S.W.2d 348—Lyford Realty Co. v. Clark, Civ.App., 154 S.W.2d 277, error refused—Ackermann v. Bartholomae, Civ.App., 144 S.W.2d 589—Roberson v. Keck, Civ. App., 135 S.W.2d 256, error dismissed, judgment correct—Mettauer v. Weeks, Civ.App., 134 S.W.2d 493, error dismissed, judgment correct—Tribble v. Harrison, Civ.App., 125 S.W.2d 383—Morris v. Drescher, Civ.App., 123 S.W.2d 958, error refused—Rachford v. Glover, Civ. App., 123 S.W.2d 700, error dismissed, judgment correct—Manire v. Burt, Civ.App., 121 S.W.2d 630, error refused—Jones v. Humble Oil & Refining Co., Civ.App., 114 S.W. 2d 398, error dismissed—Perry v. Venable, Civ.App., 112 S.W.2d 1069, error dismissed—Mosley v. Gulf Production Co., Civ.App., 111 S.W. 2d 726, error dismissed—Twin City Lumber & Shingle Co. v. Williams, Civ.App., 110 S.W.2d 596—Phœnix Refining Co. v. Walker, Civ.App., 108 S.W.2d 323, error dismissed—Blankenship v. Mott, Civ.App., 104 S.W.2d 607, error dismissed—Kelly v. Aransas Compress Co., Civ. App., 91 S.W.2d 1156, error dismissed—Dreyfuss & Son v. Dine, Civ.App., 90 S.W.2d 598—Woolf v. Smith, Civ.App., 86 S.W.2d 67—Menefee v. National Aid Life Ass'n, Civ.App., 61 S.W.2d 508, error refused—King v. Sieber, Civ.App., 50 S.W.2d 473—Stanley v. Bank of Logansport, Civ.App., 44 S.W.2d 445—R. B. Spencer & Co. v. Thorp Springs Christian College, Civ. App., 41 S.W.2d 482—Walker County Lumber Co. v. Sweet, Civ.App., 40 S.W.2d 225—Boykin v. Black, Civ.App., 31 S.W.2d 501—Lawson-Richards, Inc. v. Blalock Lumber Co., Civ.App., 30 S.W.2d 797—Kelsey v. Myers, Civ.App., 29 S.W.2d 855—National Grand Lodge, Loyal Friends of America Benev. Ass'n v. Wilson, Civ.App., 6 S.W.2d 206—McLain v. Guinn, Civ.App., 4 S. W.2d 121—McWhorter v. Oliver, Civ.App., 2 S.W.2d 281—Gurley v. Pilgrim Oil Co., Civ.App., 275 S.W. 295, affirmed, Com.App., 285 S.W. 283—Owens Refining Co. v. Schweitzer, Civ.App., 275 S.W. 232—Texas Employers' Ins. Ass'n v. Mummey, Civ.App., 200 S.W. 251, error refused—Gilbreath v. Cage & Crow, Civ.App., 198 S.W. 972—Emery v. Barfield, Civ.App., 183 S. W. 386—Broussard v. Le Blanc, Civ.App., 182 S.W. 78—Webb v. Wessell, Civ.App., 178 S.W. 696.

Utah.—Paulsen v. Coombs, 253 P.2d 621—Pender v. Anderson, 235 P. 2d 360, 120 Utah 399—Hinkson v. Bonanni, 205 P.2d 242, 115 Utah 376—Harper v. Tri-State Motors, 58 P.2d 18, 90 Utah 212, amended and rehearing denied 63 P.2d 1056, 90 Utah 226—Jensen v. Logan City, 57 P.2d 708, 89 Utah 347—Wood v. Akridge, 36 P.2d 804, 84 Utah 468—Colemere v. Layton, 22 P.2d 218, 82 Utah 142—Western Union Telegraph Co. v. Matthews, 280 P. 729, 74 Utah 495—Bracken v. Dahle, 251 P. 16, 68 Utah 486.

Vt.—Anton v. Fidelity & Cas. Co. of N. Y., 91 A.2d 697, 117 Vt. 300—Jeffords v. Poor, 55 A.2d 605, 115 Vt. 147—Guibord v. Guibord, 44 A. 2d 158, 114 Vt. 278—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107—Utley v. Town School Dist. of Woodbury, 9 A.2d 117, 110 Vt. 522—Village of St. Johnsbury v. Cenedella, 194 A. 382, 109 Vt. 174—Tyrrell v. Prudential Ins. Co. of America, 192 A. 184, 109 Vt. 6, 115 A.L. R. 392—Ward v. Lyman, 188 A. 892, 108 Vt. 464—Gomez v. Lawson, 166 A. 14, 105 Vt. 353—F. Chafee's Sons v. Blanchard's Estate, 165 A. 912, 105 Vt. 389—Wetmore & Morse Granite Co. v. Ryle, 107 A. 109, 93 Vt. 245.

Va.—Sutton v. Menges, 44 S.E.2d 414, 186 Va. 805—Cross v. Grimes, 37 S.E.2d 1, 184 Va. 926—James River & Kanawha Power Co. v. Old Dominion Iron & Steel Corporation, 122 S.E. 344, 138 Va. 461.

Wash.—Johnson v. Harvey, 268 P.2d 662, 44 Wash.2d 455—McDonald v. Wockner, 267 P.2d 97, 44 Wash.2d 261—In re Martinson's Estate, 190 P.2d 96, 29 Wash.2d 912—Anderson v. Kurrell, 182 P.2d 1, 28 Wash. 2d 227—Brown v. Mead, 154 P.2d 283, 22 Wash.2d 60—Kleiber v. Robinson, 264 P. 704, 146 Wash. 700.

Wis.—In re Fuller's Estate, 81 N.W. 2d 64, 275 Wis. 1—Ruby v. Farmers Mut. Auto. Ins. Co., 79 N.W.2d 644, 274 Wis. 158—Pelikan v. Russell, 69 N.W.2d 567, 269 Wis. 364.

Findings against weight of evidence see infra § 1658.

Resolving conflicts in evidence see infra § 1657.

Reconciliation of testimony

It is within the province of the trial court to reconcile testimony.

Ind.—Greis v. Herbert, 27 N.E.2d 924, 108 Ind.App. 369.

Acceptance of sole witness' testimony by trial court

(1) A trial court may base its judgment on the testimony of one witness against that of several, if it is of sufficient weight to force the conviction of truth to reasonable minds, and the appellate court is without power to enforce a contrary opinion by reversing the judgment.

Nev.—McNee v. McNee, 237 P. 534, 49 Nev. 90.

(2) The appellate court cannot declare an act established by evidence as a matter of law when such fact is specifically denied by the only witness who testifies on subject, and his testimony is accepted by the trial court.

Tex.—Shaw v. San Patricio County, Com.App., 61 S.W.2d 979.

69. Ala.—Germania Fire Ins. Co. v. Kitchens, 79 So. 246, 201 Ala. 674.

Ariz.—Fritsche v. Hudspeth, 262 P. 2d 243, 76 Ariz. 202.

Cal.—Bradley v. Superior Court In and For City and County of San Francisco, 310 P.2d 634.

Caviglia v. Jarvis, 287 P.2d 525, 135 C.A.2d 415—Pores v. Purity Milk Co., 287 P.2d 169, 135 C.A.2d 305—De Freitas v. De Freitas, 285 P.2d 111, 133 C.A.2d 769—Sonkin v. Hershon, 279 P.2d 156, 130 C.A. 2d 491—Seeger v. Odell, 148 P.2d 901, 64 C.A.2d 397.

Ind.—Hinds v. McNair, 129 N.E.2d 553—McKinley v. Long, 88 N.E.2d 382, 227 Ind. 639, 23 A.L.R.2d 577.

Zorich v. Zorich, 88 N.E.2d 694, 119 Ind.App. 547.

Kan.—Tucker v. Hankey, 250 P.2d 784, 173 Kan. 593.

Mass.—Winchester v. Missin, 180 N. E. 215, 278 Mass. 427.

Okl.—First State Bank of Noble v. McKiddy, 240 P.2d 1103, 206 Okl. 57.

Appellate court as not concerned with preponderance of evidence generally see infra § 1658.

Not required to analyze testimony

Appellate court was not required to analyze the testimony taken ore tenus before trial judge in action tried to the court without a jury.

Ala.—Gulf, M. & O. R. R. v. Berman Bros. Iron & Metal Co., 30 So.2d 446, 249 Ala. 159.

Matters of substance, not credibility, considered

An appellate court, as matter of law, passes on matters of substance, not credibility of evidence, and may say that particular evidence is substantial, if triers of facts believed it to be true.

Mo.—State ex rel. Rice v. Public Service Commission, 220 S.W.2d 61, 359 Mo. 109.

a presumption[70] or the burden of proof,[71] or overcome a prima facie case;[72] nor will proof of a fact be supplied by conjecture on an appeal.[72.5] Furthermore, the appellate court does not perform the functions of an expert accountant.[72.10]

Such matters and the final determination of the facts are considered as resting within the exclusive province of the trial court when it has lawfully undertaken to function as the trier of the facts.[73] Indeed, if by constitution the jurisdiction of the ap-

70. Cal.—Stone v. Walsworth, 252 P.2d 39, 115 C.A.2d 369—In re Jenkins' Estate, 242 P.2d 107, 110 C.A.2d 98—Silva v. Holme, 241 P.2d 21, 109 C.A.2d 461—Bales v. Farley, 237 P.2d 686, 107 C.A.2d 642—Pfingst v. Goetting, 215 P.2d 93, 96 C.A.2d 293—Halloran v. Isaacson, 213 P.2d 19, 95 C.A.2d 357—Douglas v. Bergere, 210 P.2d 727, 94 C.A.2d 267—Steward v. Paige, 203 P.2d 858, 90 C.A.2d 820—Siegell v. York, 191 P.2d 50, 84 C.A.2d 383—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334—Leathers v. Leathers, 174 P.2d 875, 77 C.A.2d 134—Wilson v. Wilson, 172 P.2d 568, 76 C.A.2d 119—Attebury v. Wayland, 165 P.2d 524, 73 C.A.2d 1—Daniel v. Sisnero, 292 P. 518, 109 C.A. 8—Motor Inv. Co. v. Breslauer, 221 P. 700, 64 C.A. 230.

Colo.—Sarvas v. Morrell, 220 P.2d 367, 122 Colo. 86.

Ga.—Georgia Northern Ry. Co. v. Battle, 103 S.E. 714, 25 Ga.App. 308.

Kan.—Wingard v. Smith, 148 P. 250, 95 Kan. 84.

Mont.—McMahon v. Cooney, 25 P.2d 131, 95 Mont. 138.

N.J.—Dunn v. Goldman, 168 A. 299, 111 N.J.Law 249.

Okl.—Shelden v. Shinn, 239 P.2d 803, 206 Okl. 69.

Pa.—Werle v. Werle, 1 A.2d 244, 332 Pa. 49.

McNulty v. General American Life Ins. Co., 33 A.2d 796, 153 Pa. Super. 288.

Tex.—Turner & Clayton v. Shackelford, Com.App., 288 S.W. 815.

71. Cal.—Taylor v. Bunnell, 23 P.2d 1062, 133 C.A. 177—Elliott v. Normandie Corporation, 294 P. 776, 110 C.A. 763—Merrill v. Normandie Corporation, 294 P. 774, 110 C.A. 621—Skellenger v. England, 253 P. 191, 81 C.A. 176.

Conn.—Simmons v. Addis, 110 A.2d 457, 141 Conn. 738.

Kan.—Sparks v. Maguire, 169 P.2d 826, 161 Kan. 520.

Minn.—In re Mollan's Estate, 232 N. W. 1, 181 Minn. 217.

Mont.—Union Bank & Trust Co. v. Wieck, 29 P.2d 884, 96 Mont. 132.

Pa.—Broida, in Own Right and for Use of Day v. Travelers' Ins. Co., 175 A. 492, 316 Pa. 444.

Although clear and convincing evidence of a fact found is required, the appellate court will not disturb the finding if it is not manifestly contrary to the evidence.

Minn.—In re Mollan's Estate, 232 N. W. 1, 181 Minn. 217.

72. Cal.—City of San Diego v. Alpha Securities Corp., 221 P.2d 770, 99 C.A.2d 246—Luberco, Limited v. Boswell, 217 P.2d 105, 96 C.A.2d 946—Ybarra v. Spangard, 208 P.2d 445, 93 C.A.2d 43—Shonafelt v. Busath, 151 P.2d 873, 66 C.A.2d 5—Bockwich v. Garlow, 20 P.2d 109, 130 C.A. 311.

72.5 Ark.—Kelley v. Carter, 226 S. W.2d 53, 216 Ark. 491.

72.10 Kan.—National Mut. Cas. Co. v. Hobbs, 88 P.2d 1006, 149 Kan. 625—Webster v. Toland, 79 P.2d 884, 148 Kan. 36—Board of County Com'rs of Allen County v. Board of Education of Iola, 51 P.2d 973, 142 Kan. 770.

73. Ala.—Roe v. Brown, 31 So.2d 599, 249 Ala. 425—Hyatt v. Reynolds, 17 So.2d 413, 245 Ala. 411—Mutual Sav. Life Ins. Co. v. Brown, 17 So.2d 164, 245 Ala. 423—Johnson v. Shook & Fletcher Supply Co., 16 So.2d 406, 245 Ala. 123—Hosey v. Southport Petroleum Co. of Delaware, 12 So.2d 93, 244 Ala. 45—Sauls v. Hand, 7 So.2d 762, 242 Ala. 643—Wood v. Williams, 192 So. 421, 238 Ala. 580—Stewart v. Carnell, 180 So. 307, 235 Ala. 636—Alabama Great Southern R. Co. v. Herring, 174 So. 502, 234 Ala. 238—Employers Ins. Co. of Alabama v. Brock, 172 So. 671, 233 Ala. 551—Faulk v. Dorsey, 166 So. 792, 232 Ala. 85.

Huffstutler v. Edge, 47 So.2d 191, 35 Ala.App. 276, affirmed 47 So.2d 197, 254 Ala. 102—Warren v. Peppers, 17 So.2d 585, 31 Ala.App. 394—Hill v. Burton, 10 So.2d 302, 30 Ala.App. 594—Lackey v. Thomas, 153 So. 287, 26 Ala.App. 65, reversed on other grounds Ex parte Lackey, 153 So. 289, 228 Ala. 106—Daniel v. M. C. Clayton & Co., 149 So. 355, 25 Ala.App. 487—Mazer v. City Nat. Bank of Tuscaloosa, 146 So. 885, 25 Ala.App. 372.

Ariz.—Robinson v. Merchants Packing Co., 182 P.2d 97, 66 Ariz. 22—Home Owners' Loan Corp. v. Bank of Arizona, 94 P.2d 437, 54 Ariz. 146—Equitable Life Assur. Soc. of U. S. v. Boyd, 76 P.2d 752, 51 Ariz. 308—Piper v. Salem, 61 P.2d 399, 48 Ariz. 314—Gonzalez & Co., Brokers, v. Thomas, 25 P.2d 552, 42 Ariz. 308—In re Iler, 145 P. 143, 16 Ariz. 323.

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pellate court is limited to trying questions of law, | no statute or rule of court can give it power to

6 C.2d 33—O'Leary v. Herbert, 55 P.2d 834, 5 C.2d 416—Walsh v. Majors, 49 P.2d 598, 4 C.2d 384—Stewart v. Wagenbach, 47 P.2d 267, 3 C.2d 755—Hansen v. Fresno Jersey Farm Dairy Co., 31 P.2d 359, 220 C. 402—Wood v. Nelson, 29 P.2d 854, 220 C. 139—Lemm v. Stillwater Land & Cattle Co., 19 P. 2d 785, 217 C. 474—Eaton v. Klimm, 18 P.2d 678, 217 C. 362—Stewart v. Crowley, 3 P.2d 562, 213 C. 694—Guggenhime & Co. v. Lamantia, 276 P. 995, 207 C. 96—Hershey v. Reclamation Dist. No. 108, 254 P. 542, 200 C. 550—Browning v. Reclamation Dist. No. 108, 254 P. 551, 200 C. 799—California Packing Corporation v. Larsen, 203 P. 102, 187 C. 610—Herdan v. Hanson, 189 P. 440, 182 C. 538.

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Bennett, Civ.App., 159 S.W. 2d 892, error refused—Sansing v. Bricka, Civ.App., 159 S.W.2d 142, error refused—Humble Oil & Refining Co. v. Parish, Civ.App., 146 S.W.2d 1045, error dismissed, judgment correct—Richardson v. Hughes, Civ.App., 146 S.W.2d 255, error dismissed, judgment correct—Ellett v. Mitcham, Civ.App., 145 S.W.2d 917, error dismissed, judgment correct—Central Motor Co. v. Roberson, Civ.App., 139 S.W. 2d 287—Gorin v. Moss, Civ.App., 138 S.W.2d 612—Wilson v. Wilson, Civ.App., 135 S.W.2d 1069—Government Personnel Automobile Ass'n v. Haag, Civ.App., 131 S.W.2d 978, error refused—Tribble v. Harrison, Civ.App., 125 S.W.2d 383—Walker-Smith Co. v. Jackson, Civ.App., 123 S.W.2d 993, error dismissed, judgment correct—Hughes v. Bond, Civ.App., 118 S.W.2d 443, error dismissed—Excel Auto Radiator Co. v. Lerer, Civ.App., 118 S.W.2d 388—Exchange Nat. Bank v. Parsons, Civ.App., 116 S.W.2d 817—Wichita Falls Motor Co. v. Tindall, Civ. App., 115 S.W.2d 502, error dismissed—Jones v. Humble Oil & Refining Co., Civ.App., 114 S.W.2d 398, error dismissed—Fidelity Union Ins. Co. v. Hutchins, Civ. App., 111 S.W.2d 292, reversed on other grounds 133 S.W.2d 105, 134 Tex. 268, rehearing denied 135 S. W.2d 695, 134 Tex. 268—Gossett v. Seggerman, Civ.App., 105 S.W.2d 421, reversed 111 S.W.2d 685, 130 Tex. 470—Blankenship v. Mott, Civ. App., 104 S.W.2d 607, error dismissed—Alamo Lumber Co. v. Walker, Civ.App., 103 S.W.2d 792—Mast v. Oakley-Metcalf Funeral Home, Civ.App., 101 S.W.2d 819—Dean v. Hines, Civ.App., 100 S.W. 2d 194—Hughes v. Jones, Civ.App., 94 S.W.2d 534—Sikes v. Lindale Independent Consol. School Dist. No. 72, Civ.App., 93 S.W.2d 193—Scoggins v. Lee, Civ.App., 92 S.W. 2d 1116, modified on other grounds Republic Production Co. v. Lee, 121 S.W.2d 973, 132 Tex. 254—Dallas Joint Stock Land Bank v. Lancaster, Civ.App., 91 S.W.2d 890—Joy v. Sachs, Civ.App., 91 S. W.2d 415, error dismissed—Woolf v. Smith, Civ.App., 86 S.W.2d 67—American Nat. Ins. Co. v. Shelton, Civ.App., 83 S.W.2d 698—Home Benev. Soc. v. Keeter, Civ.App., 82 S.W.2d 1084, error dismissed—Republic Building & Loan Ass'n v. Simpson, Civ.App., 77 S.W.2d 1101—Hunt v. Isom, Civ.App., 77 S.W.2d 1095—O'Connor v. Presswood, Civ.App., 76 S.W.2d 799—Rodriguez v. Saegert, Civ.App., 74 S.W.2d 171—Shanks v. First State Bank of Coahoma, Civ.App., 70 S.W.2d 444—State Trust & Savings Bank v. Mayes, Civ.App., 67 S.W. 2d 419—Teague v. Farmers' State Bank of Center, Civ.App., 55 S.W. 2d 639—French v. Hux, Civ.App., 54 S.W.2d 539—Costley v. Gracy, Civ.App., 52 S.W.2d 920—Skiles v. Shropshire, Civ.App., 50 S.W.2d 402, modified on other grounds 77 S.W.2d 872, 124 Tex. 462—American Ins. Union v. Monk, Civ.App., 16 S.W.2d 371—Dorman v. Ryan, Civ.App., 293 S.W. 888—Moroney v. Moroney, Civ.App., 280 S.W. 254, reformed on other grounds Com. App., 286 S.W. 167—Bush v. Bush, Civ.App., 275 S.W. 1096—Dollar Dodge Rent Service v. McEwen, Civ.App., 273 S.W. 889—Pioneer Land & Loan Co. of Martin County v. Ebersol, Civ.App., 226 S.W. 423—Jones v. Lanning, Civ.App., 201 S.W. 443, error refused—American Surety Co. of New York v. Hardwick, Civ.App., 186 S.W. 804, error refused.

Utah.—Shoemaker v. Floor, 217 P.2d 382, 117 Utah 434—Cardon v. Harper, 151 P.2d 99, 106 Utah 560, 154 A.L.R. 906—Ercanbrack v. Ellison, 134 P.2d 177, 103 Utah 138—Romney v. Covey Garage, 111 P.2d 545, 100 Utah 167—Decorso v. Booth, 91 P.2d 449, 97 Utah 163—Browning v. Equitable Life Assur. Soc. of U. S., 80 P.2d 348, 94 Utah 570—Parker v. California State Life Ins. Co., 40 P.2d 175, 85 Utah 595—Jensen v. Gerrard, 39 P.2d 1070, 85 Utah 481—West v. Standard Fuel Co., 17 P.2d 292, 81 Utah 300—Idaho State Bank of Twin Falls, Idaho v. Hooper Sugar Co., 276 P. 659, 74 Utah 24, 68 A.L.R. 969—Eagle Lumber Co. v. Burton Lumber Co., 220 P. 1069, 62 Utah 491.

Vt.—Wheeler v. Taylor, 39 A.2d 190, 114 Vt. 33—Wakefield v. Champlain Marine Co., 13 A.2d 183, 111 Vt. 243—Handy v. Trudell, 156 A. 902, 104 Vt. 85.

Va.—American Chlorophyll v. Schertz, 11 S.E.2d 625, 176 Va. 362—Hunter v. Hollingsworth, 183 S.E. 508, 165 Va. 583.

Wash.—Bryan v. Travelers Ins. Co., 201 P.2d 502, 32 Wash.2d 289, 8 A.L.R.2d 467—Wade v. Bartek, 191 P.2d 701, 30 Wash. 483—Goodwin v. Castleton, 144 P.2d 725, 19 Wash. 2d 748, 150 A.L.R. 859—Johns v. Hake, 131 P.2d 933, 15 Wash.2d 651—Winston v. Bacon, 111 P.2d 764, 8 Wash.2d 216—Ethridge v. Diamond Drill Contracting Co., 93 P.2d 324, 200 Wash. 273—In re Fischer's Estate, 81 P.2d 836, 196 Wash. 41—Freepons v. Elliott, 67 P.2d 924, 190 Wash. 348—Ekstrom v. D. Dierssen, Inc., 40 P. 2d 138, 180 Wash. 493—Grosgebauer v. Schneider, 31 P.2d 90, 177 Wash. 43—Hillman Inv. Co. v. Pilling, 13 P.2d 485, 169 Wash. 387—Hayes v. Osborn, 165 P. 95, 96 Wash. 342.

Wis.—Ideal Packing Co. v. Marachowsky Stores Co., 42 N.W.2d 161, 256 Wis. 614—Maitland v. Twin City Aviation Corp., 37 N.W.2d 74, 254 Wis. 541—Piehl v. Marino, 36 N.W.2d 694, 254 Wis. 538—In re Langer's Estate, 11 N.W.2d 185, 243 Wis. 561—Blake v. City of Madison, 297 N.W. 422, 237 Wis. 498—Jeske v. Hotz Mfg. Co., 290 N.W. 208, 233 Wis. 500—State v. M. Supple & Sons Co., 290 N.W.

change or retry the trial court's findings because of the weight of the evidence or the lower court's failure to give credit to certain testimony.[74]

The only question or inquiry before the appellate court for review with reference to the fact findings of the trial court is whether or not they are for some reason erroneous or wrong as a matter of law;[75] but for such errors the findings are subject to review and correction by the appellate court the same as are the findings of the jury.[76]

If, because of ambiguous phraseology, it becomes necessary for the appellate court to construe special findings of the trial court to see whether they support the ultimate conclusion reached, the appellate court will limit the scope of its inquiry to the ascertainment of the ultimate facts actually found by the trial court,[77] and will construe the findings broadly rather than narrowly or technically.[78]

§ 1656(3). —— Reversal and Affirmance in General

The appellate court is extremely reluctant to disagree with the fact findings of the trial judge, and such findings will not ordinarily be disturbed if they are not clearly, plainly, palpably, or manifestly wrong or erroneous.

Although the usual importance and weight which attach to his findings of fact are diminished where the trial judge has excluded competent evidence,[78.50] or has made statements showing that he was in doubt concerning the matter,[78.55] or where the judgment was not rendered until nearly a year after trial, at a time when the testimony had not yet been transcribed,[78.60] the findings will never be lightly disturbed by the appellate court even when they are being reviewed on the grounds that they are insufficiently supported or are erroneous as a matter of law.[79] When facts are involved, the appellate

139, 234 Wis. 255—Peterson v. City of Milwaukee, 277 N.W. 128, 226 Wis. 540—National Bond & Investment Co. v. Murphy, 273 N.W. 57, 224 Wis. 663—Kedinger v. Heisler, 272 N.W. 372, 224 Wis. 388—Schroeder v. Great Atlantic & Pacific Tea Co., 265 N.W. 559, 220 Wis. 642—De Brue v. Frank, 251 N.W. 494, 213 Wis. 280—Corman v. Lex Const. Co., 250 N.W. 839, 213 Wis. 450.

Wyo.—Lucksinger v. Salisbury, 262 P.2d 896, 72 Wyo. 164, rehearing denied 264 P.2d 1007, 72 Wyo. 164—Kammerzell v. Anderson, 240 P.2d 893, 69 Wyo. 252—Phelps v. Woodward Const. Co., 204 P.2d 179, 66 Wyo. 33—Gamet v. Beazley, 159 P.2d 916, 62 Wyo. 1—Miracle v. Barker, 136 P.2d 678, 59 Wyo. 92—Quealy Land & Livestock Co. v. George, 63 P.2d 802, 51 Wyo. 93, rehearing denied 66 P.2d 1045, 51 Wyo. 93—People's Finance & Thrift Co. v. De Berry, 62 P.2d 307, 50 Wyo. 301.

74. Conn.—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529.

75. Cal.—Bowman v. Carroll, 7 P. 2d 734, 120 C.A. 309.

Ga.—Thornton v. Germania Fire Ins. Co., 107 S.E. 279, 26 Ga.App. 653.

Ind.—Fidelity & Casualty Co. of New York v. Carroll, 117 N.E. 858, 186 Ind. 633.

Iowa.—Artificial Ice Co. v. Reciprocal Exchange, 184 N.W. 756, 192 Iowa 1133.

Kan.—Brunington v. Wagoner, 164 P. 1057, 100 Kan. 10, 439.

Ky.—Cary-Glendon Coal Co. v. Carmichael, 80 S.W.2d 29, 258 Ky. 411.

Me.—Ayer v. Harris, 132 A. 742, 125 Me. 249.

Mass.—Schon v. Odd Fellows' Bldg. Ass'n, 152 N.E. 55, 255 Mass. 465—Lancaster v. Stanetsky, 108 N.E. 1060, 221 Mass. 312.

Mich.—Barnes v. Beck, 83 N.W.2d 228, 348 Mich. 286.

Mo.—Universal Const. Co. v. City of St. Louis, 223 S.W. 931, 284 Mo. 89.

Barone v. Glens Falls Ins. Co., 13 S.W.2d 1086, 222 Mo.App. 1165—Idalia Realty & Development Co. v. Norman's Southeastern R. Co., App., 219 S.W. 923.

N.M.—Field v. Irvin, 279 P. 873, 34 N.M. 199.

Okl.—Simmons v. Maxey, 233 P. 669, 106 Okl. 252.

S.C.—Smith v. Atlantic Coast Line R. Co., 100 S.E. 148, 112 S.C. 462.

S.D.—Kreger v. City of Clear Lake, 195 N.W. 498, 46 S.D. 614.

Tex.—International Fire Insurance Co. v. Black, Civ.App., 179 S.W. 534.

Utah.—Woolf v. Gray, 158 P. 788, 48 Utah 239.

Where the court makes a general finding of fact, only questions of law reported or saved can be examined.

Mass.—Dodge v. Commissioner of Corporations and Taxation, 174 N. E. 109, 273 Mass. 187.

76. Ala.—Fidelity Phenix Fire Ins. Co. of New York v. Raper, 6 So.2d 513, 242 Ala. 440—Springer v. Sullivan, 119 So. 851, 218 Ala. 645.

Barnwell v. MacMahon, 162 So. 138, 26 Ala.App. 451.

Iowa.—Schmidt v. Hayden, 219 N.W. 399, 205 Iowa 1369.

4 C.J. p 882 note 25—28 C.J. p 1037 note 71.

77. Ind.—Knight v. Kerfoot, 110 N. E. 206, 184 Ind. 31.

78. Ind.—Knight v. Kerfoot, supra.

78.50 Mo.—Brooks v. Brooks, 208 S. W.2d 279, 357 Mo. 343, 4 A.L.R.2d 826.

Williams v. Patterson, 218 S.W. 2d 156, 240 Mo.App. 131.

78.55 La.—Oliver v. Andrus, App., 17 So.2d 748.

R.I.—Everett J. Horton & Co. v. Grinnell, 199 A. 315, 60 R.I. 457.

Apparent speculation and indecisiveness

Decision of trial court on the facts cannot be given customary weight by appellate court where decision reflects an apparent speculation and indecisiveness.

R.I.—Bridges v. Kerr, 57 A.2d 651, 73 R.I. 487.

78.60 La.—Smith v. Tri-State Transit Co. of Louisiana, App., 175 So. 83.

79. Ala.—London Assur. v. Hendon, 2 So.2d 917, 30 Ala.App. 175, certiorari denied 2 So.2d 921, 241 Ala. 390.

Cal.—In re Cummins' Estate, 280 P. 2d 128, 130 C.A.2d 821—In re Jenkins' Estate, 242 P.2d 107, 110 C.A. 2d 98—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334.

Ill.—Pure Torpedo Corp. v. Nation, 63 N.E.2d 600, 327 Ill.App. 28—Schwaan v. Schwaan, 50 N.E.2d 861, 320 Ill.App. 287.

La.—Cooper v. Yellow Cab Co. of Shreveport, App., 50 So.2d 697.

Md.—Lucas v. Maryland Drydock Co., 31 A.2d 637, 182 Md. 54.

Mich.—Common Council of City of Negaunee v. Muck, 171 N.W. 397, 205 Mich. 382.

N.J.—Zehrer v. Zehrer, 73 A.2d 911, 5 N.J. 53.

Friedman v. Friedman, 116 A.2d 793, 37 N.J.Super. 52—Gramatan Nat. Bank & Trust Co. of Bronx-

court is extremely reluctant to disagree with the trial court,[80] and the latter's findings are at all times given great weight or deference,[81] particularly where the trial judge saw and heard the witnesses

ville v. Backman, 104 A.2d 729, 30 N.J.Super. 349.
Croake v. Summit Trust Co., 182 A. 869, 119 N.J.Eq. 356.
Okl.—Reynolds v. Reynolds, 137 P.2d 914, 192 Okl. 564.
Vt.—Cook v. Holden, 35 A.2d 353, 113 Vt. 409.
Wis.—Home Fire & Marine Ins. Co. v. Farmers Mut. Auto. Ins. Co., 79 N.W.2d 834, 274 Wis. 210.
Wyo.—Simmons v. Muir, 291 P.2d 810, 75 Wyo. 44.

80. Ala.—Young v. Young, 78 So.2d 265, 262 Ala. 254.
Ill.—Sell v. Gambill, 19 N.E.2d 154, 298 Ill.App. 629.
La.—Washington Fire & Marine Ins. Co. v. Travelers Indemnity Co., App., 86 So.2d 743—Jacobs v. Landry, App., 82 So.2d 481—Moore v. Louisiana Coca-Cola Bottling Co., App., 58 So.2d 310—Davis v. Surebest Bakery, App., 38 So.2d 624—Ducote v. Anchor Gasoline Corp., App., 24 So.2d 891—Prevost v. Smith, App., 197 So. 905—Burnette v. Toebelman, App., 195 So. 135, reheard 196 So. 529—Ruston Brick Works v. Heard, App., 177 So. 494—Winn v. Veal-Winn Co.'s Receiver, 134 So. 264, 16 La.App. 323—Muslow v. Westmoreland, 127 So. 411, 13 La.App. 140.
N.J.—In re Hoover's Estate, 91 A.2d 155, 21 N.J.Super. 323.
Geroe v. Geroe, 12 A.2d 675, 127 N.J.Eq. 256.
Ohio.—In re Ruhl's Estate, App., 43 N.E.2d 760.
Wash.—Desimone v. Mutual Materials Co., 162 P.2d 808, 23 Wash.2d 876.
67 C.J. p 1075 note 18.

81. Ala.—Metropolitan Life Ins. Co. v. Shaw, 112 So. 179, 22 Ala.App. 54.
Ariz.—Robinson v. Merchants Packing Co., 182 P.2d 97, 66 Ariz. 22—McFadden v. Watson, 74 P.2d 1181, 51 Ariz. 110.
Ark.—Hurst v. Bar Rules Committee of Arkansas, 155 S.W.2d 697, 202 Ark. 1101.
Ill.—Kohut v. Cowel, 96 N.E.2d 649, 342 Ill.App. 447—Valley Terminal Ry. v. Eggman, 222 Ill.App. 457.
Iowa.—Knigge v. Dencker, 72 N.W.2d 494, 246 Iowa 1387—Nelson v. Nelson, 65 N.W.2d 154, 245 Iowa 1225—Sullivan v. Sullivan, 56 N.W.2d 910, 244 Iowa 838—England v. England, 51 N.W.2d 437, 243 Iowa 274—Meier v. Johannsen, 47 N.W.2d 793, 242 Iowa 665—Goodwin Tile & Brick Co. v. De Vries, 13 N.W.2d 310, 234 Iowa 566, 155 A.L.R. 346—Attig v. International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 90, 300 N.W. 636, 231 Iowa 1—Guttenfelder v. Iebsen, 300 N.W. 299, 230 Iowa 1080—Vermillion v. Sikora, 289 N.W. 27, 227 Iowa 786—Matalone v. Iowa-Des Moines Nat. Bank & Trust Co., 285 N.W. 648, 226 Iowa 1031—Eckhardt v. Bankers Trust Co., 273 N.W. 347, 223 Iowa 471—Wohlers v. Griesse, 161 N.W. 662, 179 Iowa 629—Matson v. Mitchell, 156 N.W. 838, superseded 179 N.W. 173.
Ky.—Commonwealth ex rel. Vincent v. Withers, 98 S.W.2d 24, 266 Ky. 29.
La.—Succession of Rockwood, 91 So. 2d 779, 231 La. 521—Lebleu v. Manning, 74 So.2d 384, 225 La. 1087—Berniard v. Galiano, 71 So.2d 857, 224 La. 1100, followed in 71 So.2d 861, 224 La. 1111—Barnes v. Le Blanc, 22 So.2d 404, 207 La. 989—Dessalles v. Tichenor, 179 So. 25, 189 La. 31—Bank of Abbeville & Trust Co. v. Lyons, 168 So. 513, 185 La. 117—Psayla v. Thomas, 150 So. 5, 177 La. 1019—Rausch Co. v. New Orleans Great Northern R. Co., 145 So. 532, 176 La. 257—Guillory v. Fontenot, 127 So. 746, 170 La. 345—Davis v. Willis, 124 So. 129, 169 La. 13—Belcher v. Booth, 114 So. 116, 164 La. 514—Bradshaw v. Weber, 109 So. 492, 161 La. 789—Jones v. Douglass, 103 So. 441, 158 La. 57.
Young v. Hughen, App., 68 So.2d 677—Mills v. Henderson, App., 49 So.2d 483—Automobile Ins. Co. of Hartford, Conn., v. Deshazor, App., 43 So.2d 629—Delahoussaye v. City of New Iberia, App., 35 So.2d 477—Oliver v. Andrus, App., 17 So.2d 748—Shaddinger v. Albeanese, App., 11 So.2d 624—Campbell v. F. Hollier & Sons, App., 4 So.2d 576—E. C. Fremeaux & Son v. Leger, App., 193 So. 374—Johns v. Shreveport Rys. Co., App., 187 So. 812—Bogan v. Caldwell Bros. & Hart, App., 184 So. 413—White v. Brame & Carter, App., 183 So. 578—Dillon v. Traders & General Ins. Co., App., 183 So. 553—Lococo v. Pendola, App., 171 So. 125—Isaac Bell, Inc. v. Wofford, App., 156 So. 41—Davis v. Louisiana Highway Commission, App., 143 So. 665—Betts v. Shreveport Rys. Co., 137 So. 615, 18 La. App. 282.
Mass.—New England Trust Co. v. Triggs, 135 N.E.2d 541, 334 Mass. 324.
Mo.—Mason v. Mason, 153 S.W.2d 27.
Staples v. O'Reilly, App., 288 S.W.2d 670—Townsend v. Lawrence, App., 267 S.W.2d 489—Skatoff v. Solomon, App., 244 S.W.2d 590—Reeve v. Reeve, App., 160 S.W.2d 804—Manley v. Ryan, 126 S.W.2d 909, 235 Mo.App. 45—Nelson v. Massman Const. Co., App., 120 S.W.2d 77, certiorari quashed State ex rel. Massman Const. Co. v. Shain, 130 S.W.2d 491, 344 Mo. 1003—Spicer v. Round Prairie Bank of Fillmore, App., 71 S.W.2d 121—Klebba v. Struempf, 23 S.W.2d 205, 224 Mo.App. 193—Richmond v. Richmond, App., 225 S.W. 126.
N.H.—Cloutier v. Charland, 119 A.2d 96, 100 N.H. 63—Oullette v. Ledoux, 30 A.2d 13, 92 N.H. 302.
N.J.—DeVries v. Evening Journal Ass'n, 87 A.2d 317, 9 N.J. 117.
Tluzek v. Federal Leather Co., 128 A.2d 521, 43 N.J.Super. 269.
Gilliam v. Gilliam, 23 A.2d 161, 130 N.J.Eq. 528.
N.D.—Shong v. Farmers' & Merchants' State Bank, Hutchinson, Minn., 70 N.W.2d 907—Dockter v. Crawford, 65 N.W.2d 691—Hoffer v. Crawford, 65 N.W.2d 625—Ginter v. Ginter, 63 N.W.2d 394—Larson v. Cole, 33 N.W.2d 325, 76 N.D. 32—Yocum v. Chisman, 168 N.W. 621, 40 N.D. 160.
Or.—Hagey v. Massachusetts Bonding & Insurance Co., 126 P.2d 836, 169 Or. 132—Barnhisel v. Watters, 4 P.2d 316, 138 Or. 8—Billups v. Colmer, 244 P. 1093, 118 Or. 192—Rowe v. Freeman, 172 P. 508, 89 Or. 428, reheard 174 P. 727, 89 Or. 428—Pierce Arrow Sales Co. v. Irwin, 169 P. 129, 86 Or. 683.
Pa.—In re Mnsho's Estate, 153 A. 899, 303 Pa. 56.
Overseers of Poor of Beaver Tp., Columbia County, v. Overseers of Poor of Black Creek Tp., Luzerne County, 191 A. 405, 126 Pa.Super. 415.
R.I.—Hampson v. Rocco, 128 A.2d 553—F. D. McKendall Lumber Co. v. Ramieri, 126 A.2d 560—Bruin Paper Box, Inc. v. Anthony Creations, Inc., 124 A.2d 875—Albert A. Coken, Inc. v. Dean, 122 A.2d 154, reargument denied 123 A.2d 926—Egan v. Boyce, 114 A.2d 402—Lornitzo v. Rhode Island Hospital, 89 A.2d 831, 79 R.I. 455—Sormanti v. Deacutis, 89 A.2d 191, 79 R.I. 361—Young v. Connetti, 81 A.2d 695, 78 R.I. 294—Daley v. Lawton, 163 A. 229—Campbell v. Lederer Realty Corporation, 125 A. 222—Garst v. Canfield, 116 A. 482, 44 R.I. 220—Davis v. Manson, 102 A. 714.
S.D.—Bogue v. Clay County, 60 N.W.2d 218, 75 S.D. 140—Weidmeier v. Edelman, 58 N.W.2d 306, 75 S.D. 29.
Va.—Trayer v. Bristol Parking, Inc., 95 S.E.2d 224, 198 Va. 595—Upton v. Ames & Webb, 18 S.E.2d 290, 179 Va. 219—Washington County Nat. Bank v. Washington County, 10 S.E.2d 515, 176 Va. 216—First Nat. Exchange Bank of Roanoke v. Roanoke Oil Co., 192 S.E. 764, 169 Va. 99—Anderson's Adm'x v. Le

giving oral testimony,[82] or has made a personal inspection of the person or thing to which the findings relate.[83]

Ordinarily, the findings will not be disturbed if

Sueur, 153 S.E. 799, 154 Va. 317.
Wash.—Lorang v. Lorang, 256 P.2d 481, 42 Wash.2d 539—Thilman v. Thilman, 193 P.2d 674, 30 Wash.2d 743—Brotherton v. Day & Night Fuel Co., 73 P.2d 788, 192 Wash. 362—Allen v. Allen, 52 P.2d 353, 184 Wash. 627—Patterson v. Ericson, 290 P. 998, 158 Wash. 411—Williams v. Bevis, 278 P. 193, 152 Wash. 469, followed in 279 P. 1119, 153 Wash. 701—Bresemann v. Hiteshue, 275 P. 543, 151 Wash. 187—Neff v. Whitham, 265 P. 462, 147 Wash. 101—State v. Superior Court in and for Chelan County, 259 P. 379, 145 Wash. 129, error dismissed Wick v. Superior Court of State of Washington in and for Chelan County, 49 S.Ct. 94, 278 U.S. 575, 73 L.Ed. 515, and appeal dismissed Wicks v. Chelan Electric Co., 50 S. Ct. 41, 280 U.S. 108, 74 L.Ed. 212—Newport Mining Co. v. Bead Lake Gold-Copper Mining Co., 188 P. 27, 110 Wash. 120.
W.Va.—Committee on Legal Ethics of West Virginia State Bar v. Pietranton, 99 S.E.2d 15.
Wis.—In re Merrick Dairy Co. of Beloit, 24 N.W.2d 679, 249 Wis. 295—Clark v. Guy Drews Post of Am. Legion No. 88, Dept. of Wis., 18 N.W.2d 322, 247 Wis. 48—Geisenfeld v. Village of Shorewood, 287 N.W. 683, 232 Wis. 410—Juneau County State Bank v. Steckling, 195 N.W. 396, 181 Wis. 430.

Same in law as in chancery

Where trial court hears evidence without a jury, the force of trial court's findings are the same regardless whether case is considered as one in chancery or law.
Ill.—Chicago Title & Trust Co. v. Guild, 68 N.E.2d 615, 329 Ill.App. 374.

Circumstances shown by record considered

Nature of the evidence and other pertinent facts and circumstances as shown by the record may be considered by the appellate court in determining in each case how much weight should be given to findings or decree of the trial court in determining whether such findings or decree is, or is not, erroneous.
Fla.—In re Alkire's Estate, 198 So. 475, 142 Fla. 862, 144 Fla. 606.

82. Cal.—In re De Mont's Estate, 282 P.2d 968, 132 C.A.2d 720.
Ill.—Hood Const. Corp. v. Clark-Randolph Property, 107 N.E.2d 37, 347 Ill.App. 432.
Iowa.—Else v. Fremont Methodist Church, 73 N.W.2d 59, 247 Iowa 127.
La.—Barlotta v. Walker, 65 So.2d 122, 223 La. 157—Meridian Land & Mineral Corp. v. Bagents, 30 So.2d 563, 211 La. 627—Thornton v. Ellington, 25 So.2d 282, 209 La. 613—Trascher v. Ducote, 152 So. 567, 178 La. 925.
Allison v. Ivy, App., 85 So.2d 332—Rogillio v. Parent, App., 75 So.2d 410—Martin v. American Heating & Plumbing Co., App., 52 So.2d 93—Jakubec v. Southern Bus Lines, App., 31 So.2d 282.
Md.—Cohen v. Frey & Son, 80 A.2d 267, 197 Md. 586—Jones v. Dickerson, 41 A.2d 492, 184 Md. 499.
Mass.—Metropolitan Life Ins. Co. v. Pollack, 126 N.E.2d 373, 332 Mass. 582—Hiller v. Hiller, 25 N.E.2d 163, 305 Mass. 163—Jenkins v. Jenkins, 23 N.E.2d 405, 304 Mass. 248—Murphy v. Nally, 17 N.E.2d 151, 301 Mass. 329.
Mich.—Etherington v. Bailiff, 55 N. W.2d 86, 334 Mich. 543—Mackie v. Mackie, 46 N.W.2d 393, 329 Mich. 595.
Mo.—Shaw v. Hamilton, 141 S.W.2d 817, 346 Mo. 366.
Pappas v. Pappas, App., 294 S.W. 2d 605—Stewart v. Droste, App., 294 S.W.2d 600—Miceli v. Williams, App., 293 S.W.2d 136—Atkinson v. Smothers, App., 291 S.W.2d 645—Bokata v. Illinois Bankers Life Ins. Co., App., 195 S.W.2d 888.
Neb.—Commercial Nat. Bank of Columbus v. Ruff, 193 N.W. 744, 110 Neb. 302.
N.J.—DeVries v. Evening Journal Ass'n, 87 A.2d 317, 9 N.J. 117—In re Perrone's Estate, 76 A.2d 518, 5 N.J. 514.
Clary v. Borough of Eatontown, 124 A.2d 54, 41 N.J.Super. 47—Canova v. Canova, 108 A.2d 287, 32 N.J.Super. 284—Pratico v. Rhodes, 108 A.2d 97, 32 N.J.Super. 178, reversed on other grounds 111 A.2d 399, 17 N.J. 328—Danes v. Smith, 104 A.2d 455, 30 N.J.Super. 292—R. Krevolin & Co. v. Brown, 89 A. 2d 255, 20 N.J.Super. 85—In re Fleming's Estate, 89 A.2d 54, 19 N. J.Super. 565—Lehmann v. Lehmann, 72 A.2d 895, 7 N.J.Super. 232.
N.Y.—Brunstein v. Brunstein, 76 N. Y.S.2d 599, 273 App.Div. 847, affirmed 84 N.E.2d 637, 298 N.Y. 871.
N.D.—Sailer v. Mercer County, 45 N. W.2d 206, 77 N.D. 698, 22 A.L.R.2d 988—Boozenny v. Desenko, 10 N.W. 2d 240, 72 N.D. 584—State, for Benefit of Workmen's Compensation Fund v. City of Williston, 8 N.W. 2d 564, 72 N.D. 486.
Or.—Buschke v. Dyck, 251 P.2d 873, 197 Or. 144—Miller v. Protrka, 238 P.2d 753, 193 Or. 585—Herndon v. Armstrong, 38 P.2d 44, 148 Or. 602—Anderson v. Hurlbert, 219 P. 1092, 109 Or. 284—Larsen v. Lootens, 203 P. 621, 102 Or. 579—Jones v. Waring, 200 P. 908, 101 Or. 403.
Pa.—Kalyvas v. Kalyvas, 89 A.2d 819, 371 Pa. 371.
Karpiel v. Karpiel, 7 A.2d 26, 136 Pa.Super. 251.
Buxton v. Good, Com.Pl., 43 Dauph.Co. 269—U. S. Fidelity & Guaranty Co. v. Mather, Com.Pl., 30 Del.Co. 458.
S.D.—Breneman v. Aune, 44 N.W.2d 219, 73 S.D. 478—Rhode v. Farup, 293 N.W. 632, 67 S.D. 437.
Tenn.—Troutt v. Troutt, 250 S.W.2d 372, 35 Tenn.App. 617.
Va.—Janitors Political Club v. Simmons, 32 S.E.2d 69, 183 Va. 321—Wyckoff Pipe & Creosoting Co. v. Saunders, 9 S.E.2d 318, 175 Va. 512—Sawyer v. Matthews, 184 S.E. 238, 166 Va. 177.
Wash.—Frahm v. Moore, 11 P.2d 593, 168 Wash. 212—Mallon v. Morrison, 222 P. 217, 128 Wash. 163—Callahan v. Sachs, 198 P. 269, 115 Wash. 659.

83. Ala.—Whatley v. Nesbitt, 85 So. 550, 204 Ala. 334.
Cal.—Wharam v. Investment Underwriters, 136 P.2d 363, 58 C.A.2d 346—Pohl v. Anderson, 56 P.2d 992, 13 C.A.2d 241—Wright v. Locomobile Co. of America, 167 P. 407, 33 C.A. 694.
Colo.—Board of Com'rs of Ouray County v. Board of Com'rs of San Juan County, 190 P. 666, 68 Colo. 428.
Conn.—Canepari v. Townshend, 115 A.2d 432, 142 Conn. 477—Albright v. MacDonald, 183 A. 389, 121 Conn. 88.
Idaho.—Young v. Extension Ditch Co., 156 P. 917, 28 Idaho 775.
Ill.—See Wright v. Rodgers, 195 Ill. App. 379.
Iowa.—Kent v. City of Harlan, 152 N.W. 6, 170 Iowa 90.
Mass.—Faircloth v. Framingham Waste Material Co., 190 N.E. 609, 286 Mass. 320.
Mont.—Nemitz v. Reckards, 38 P.2d 980, 98 Mont. 229.
Neb.—Mader v. Mettenbrink, 65 N.W. 2d 334, 159 Neb. 118—Lackaff v. Bogue, 62 N.W.2d 889, 158 Neb. 174—Schomberg v. Kuther, 45 N.W. 2d 129, 153 Neb. 413—Jack v. Teegarden, 37 N.W.2d 387, 151 Neb. 309—Probert v. Grint, 28 N.W.2d 548, 148 Neb. 666—Whipple v. Nelson, 9 N.W.2d 288, 143 Neb. 286—Witham v. City of Lincoln, 250 N. W. 247, 125 Neb. 366.
N.M.—Lucero v. Harshey, 165 P.2d 587, 50 N.M. 1.
N.Y.—Keefe v. Annpaul Realty Co., 213 N.Y.S. 637, 215 App.Div. 301, affirmed 154 N.E. 642, 243 N.Y. 647.
Or.—Davis v. Dial, 286 P.2d 654, 205 Or. 136—Seavey v. Green, 1 P.2d

they are not clearly, plainly, palpably, or manifestly | wrong or erroneous,[84] or there is any doubt in the

601, 137 Or. 127, 75 A.L.R. 1451—Juanto v. Wright, 187 P. 1036, 95 Or. 420—Tokay Heights Development Co. v. Hull, 180 P. 314, 92 Or. 159.

Wash.—Riblet v. Spokane-Portland Cement Co., 274 P.2d 574, 45 Wash. 2d 346—Berg v. Yakima Valley Canal Co., 145 P. 619, 83 Wash. 451, L.R.A.1915D 192.

Wyo.—Hudson v. Erickson, 216 P.2d 379, 67 Wyo. 167—Binning v. Miller, 146 P.2d 527, 60 Wyo. 114—Davis-Robinson v. Patee, 57 P.2d 681, 49 Wyo. 470.

View of premises does not make findings conclusive as to matters in no way dependent upon the view for determination.

N.Y.—Haber v. Paramount Ice Corporation, 190 N.E. 163, 264 N.Y. 98.

Where finding supported by evidence

(1) Fact that trial court viewed premises is entitled to consideration and weight on appeal, provided record contains competent evidence to support findings of trial court.

Neb.—Columbian Steel Tank Co. v. Vosika, 17 N.W.2d 488, 145 Neb. 541—Carter v. Parsons, 286 N.W. 696, 136 Neb. 515.

(2) Findings of fact based on inspection of premises by trial judge are entitled to no weight and may not be considered unless the record contains competent evidence to support findings.

Neb.—Bize v. Bize, 18 N.W.2d 75, 145 Neb. 722.

84. Ala.—Whiteside v. Brown, 93 So. 2d 747—Welch v. Lee, 93 So.2d 427, 265 Ala. 594—Beavers v. Harris, 93 So.2d 161, 265 Ala. 548—Board of Zoning Adjustment for City of Lanett v. Boykin, 92 So.2d 906, 265 Ala. 504—Parrish v. Davis, 92 So. 2d 897, 265 Ala. 522—Gibson v. Anderson, 92 So.2d 692, 265 Ala. 553—McBee v. McBee, 91 So.2d 675, 265 Ala. 414—Lovelace v. McMillan, 90 So.2d 822, 265 Ala. 290—Hagan v. Crowley, 90 So.2d 760, 265 Ala. 291—Grubb v. Teale, 90 So.2d 727, 265 Ala. 257—Coffman v. Coffman, 82 So.2d 333, 263 Ala. 367—Wilfe v. Waller, 81 So.2d 614, 263 Ala. 110—Trans-America Ins. Co. v. Wilson, 80 So.2d 253, 262 Ala. 532—Horn v. Dunn Bros., Inc., 79 So.2d 11, 262 Ala. 404—Smith v. Holloway, 78 So.2d 318, 262 Ala. 273—Frank v. Johnson, 75 So.2d 153, 261 Ala. 642—Eddleman v. Cade, 73 So.2d 362, 261 Ala. 154—Casey v. Krump, 69 So.2d 864, 260 Ala. 280—Snow v. State, 67 So.2d 822, 259 Ala. 579—Matthews v. Matthews, 67 So.2d 22, 259 Ala. 332—Haden v. Boykin, 66 So.2d 708, 259 Ala. 504—Sims v. State Dept. of Public Welfare, 66 So.2d 460, 259 Ala. 283—Dillon v. Dillon, 64 So.2d 821, 258 Ala. 688—Tranum v. Tranum, 63 So.2d 701, 258 Ala. 561—McLeod v. Willard, 60 So.2d 692, 257 Ala. 672—Lukes v. Alabama Power Co., 60 So.2d 349, 257 Ala. 590—Carlisle v. Blackmon, 60 So.2d 332, 257 Ala. 599—Collier v. Woody, 59 So.2d 670, 257 Ala. 391—Nelson v. Donaldson, 50 So.2d 244, 255 Ala. 76—Isaacks v. Clayton, 48 So.2d 536, 254 Ala. 450—Sieben v. Torrey, 42 So.2d 621, 252 Ala. 675—Barber v. Beckett, 39 So. 2d 17, 251 Ala. 569—Alabama Mills v. Brand, 38 So.2d 574, 251 Ala. 643—Cook v. Benton, 33 So.2d 877, 250 Ala. 259—Jennings v. Jennings, 33 So.2d 251, 250 Ala. 130—Odom v. Averett, 27 So.2d 479, 248 Ala. 289—Cornelius v. Walker, 27 So.2d 17, 248 Ala. 154—Pryor v. Deed, 26 So. 2d 270, 248 Ala. 106—Clayton v. Monte, 26 So.2d 255, 248 Ala. 93—Aiken v. Barnes, 25 So.2d 849, 247 Ala. 657—Gambill v. Cassimus, 22 So.2d 909, 247 Ala. 176—Roubicek v. Roubicek, 21 So.2d 244, 246 Ala. 442—Meadows v. Hulsey, 20 So.2d 526, 246 Ala. 261—Randolph v. Randolph, 18 So.2d 555, 245 Ala. 689—Mosely v. Kennedy, 17 So.2d 536, 245 Ala. 448—Davidson v. Church of Christ of Parrish, 16 So. 2d 179, 245 Ala. 203—Singley v. Land, 15 So.2d 564, 244 Ala. 692—Murphy v. May, 8 So.2d 442, 243 Ala. 94—Mitchell v. Kinney, 5 So. 2d 788, 242 Ala. 196—Berry v. Howell, 5 So.2d 405, 242 Ala. 138—Tsimpides v. Tsimpides, 1 So.2d 17, 241 Ala. 46—Puckett v. Puckett, 200 So. 420, 240 Ala. 607—Beck v. Johnson, 179 So. 225, 235 Ala. 323—Bonds v. Bonds, 175 So. 561, 234 Ala. 522—Tom Huston Peanut Co. v. Black, 129 So. 58, 221 Ala. 375—Robert G. Lassiter & Co. v. Nixon, 119 So. 17, 218 Ala. 484—London & Lancashire Ins. Co. v. McWilliams, 119 So. 15, 218 Ala. 503—American Ry. Express Co. v. Mobile Importing & Trading Co., 108 So. 238, 214 Ala. 420—Starkey v. Starkey, 107 So. 807, 214 Ala. 287—Ramsey v. McMillan, 106 So. 848, 214 Ala. 185—Odom v. County Coal Co. of Alabama, 103 So. 42, 212 Ala. 374—Smith v. Sharp, 98 So. 566, 210 Ala. 587—Weil v. Centerfit, 78 So. 885, 201 Ala. 531—Finney v. Studebaker Corp. of America, 72 So. 54, 196 Ala. 422—Hackett v. Cash, 72 So. 52, 196 Ala. 403.

Southern States Life Ins. Co. v. Allan, 87 So.2d 439, 38 Ala.App. 467—Whatley v. Odell, 36 So.2d 252, 34 Ala.App. 31—Montgomery City Lines v. Hawes, 20 So.2d 536, 31 Ala.App. 564, certiorari denied 20 So.2d 541, 246 Ala. 287—Mewhinney v. Montgomery, 14 So.2d 738, 31 Ala.App. 237—Skipper v. Wright & Colquett, 6 So.2d 896, 30 Ala. App. 409—Lamar Life Ins. Co. v. Kemp, 1 So.2d 760, 30 Ala.App. 138—Clark v. Loeb Hardware Co., 166 So. 732, 27 Ala.App. 129—C-J Parts Co. v. Echols, 150 So. 702, 25 Ala. App. 553, certiorari denied 150 So. 703, 227 Ala. 521—Tucker v. Fuqua, 148 So. 881, 25 Ala.App. 491—Ingram v. Johnson, 147 So. 169, 25 Ala.App. 374, conforming to 147 So. 172, 226 Ala. 68—Railway Express Agency v. Brown, 141 So. 726, 25 Ala.App. 121—Tharp v. Loeb Hardware Co., 135 So. 412, 24 Ala.App. 344—American Home Building & Loan Ass'n v. Long, 129 So. 793, 24 Ala.App. 34—Tully v. Strickland, 88 So. 342, 18 Ala.App. 7.

Ariz.—Brown v. City of Phoenix, 272 P.2d 358, 77 Ariz. 368—Lobban v. Vander Vries Realty & Mortgage Co., 60 P.2d 933, 48 Ariz. 180—Thomas v. Newcomb, 221 P. 226, 26 Ariz. 47.

Ark.—Norvell v. James, 234 S.W.2d 378, 217 Ark. 932—Zurich General Accident & Liability Ins. Co. v. Simms Co., 109 S.W.2d 933, 194 Ark. 676—Hamilton v. Horan, 97 S. W.2d 637, 193 Ark. 85—Howell v. White River Levee Dist., 295 S.W. 381, 174 Ark. 381—Doriphan Lumber Co. v. Cleburne County, 212 S. W. 308, 138 Ark. 449.

Cal.—Crogan v. Metz, 303 P.2d 1029, 47 C.2d 398—Bailey v. Los Angeles County, 293 P.2d 449, 46 C.2d 132—Scott v. Burke, 247 P.2d 313, 39 C.2d 388—Quader-Kino A. G. v. Nebenzal, 217 P.2d 650, 35 C.2d 287—Nichols v. Mitchell, 197 P.2d 550, 32 C.2d 598—Cope v. Davison, 180 P.2d 873, 30 C.2d 193, 171 A.L.R. 667—Roesch v. De Mota, 150 P.2d 422, 24 C.2d 563—In re Boggs' Estate, 121 P.2d 678, 19 C.2d 324—Gates v. McKinnon, 114 P.2d 576, 18 C.2d 179—Nebelung v. Norman, 96 P.2d 327, 14 C.2d 647—Braun v. Brown, 94 P.2d 348, 14 C.2d 346, 127 A.L.R. 773—Feckenscher v. Gamble, 85 P.2d 885, 12 C.2d 482—City of Los Angeles v. Knapp, 60 P.2d 127, 7 C.2d 168—Hildebrand v. Hall, 59 P.2d 988, 7 C.2d 162—Huddart v. McGuirk, 199 P. 494, 186 C. 386.

Standard Realty & Development v. Ferrera, App., 311 P.2d 855—Mettler v. Braly, App., 307 P.2d 419—Mann v. Stanley, 296 P.2d 921, 141 C.A.2d 438—Yates v. Yates, 292 P.2d 934, 138 C.A.2d 711—Stauffer v. Stauffer, 287 P.2d 518, 135 C.A.2d 515—Caron v. Andrew, 284 P.2d 544, 133 C.A.2d 402—Steele v. Steele, 282 P.2d 171, 132 C.A.2d 301—Veronin v. Veronin, 280 P.2d 173, 131 C.A.2d 298—Nevins v. Nevins, 276 P.2d 655, 129 C.A.2d 150—Perske v. Perske, 271 P.2d 528, 125 C.A.2d 795—Jenkins

v. Jenkins, 269 P.2d 908, 125 C.A. 2d 109—In re Guasti's Estate, 256 P.2d 629, 117 C.A.2d 612—Stone v. Walsworth, 252 P.2d 39, 115 C.A.2d 869—De Boer v. De Boer, 244 P.2d 953, 111 C.A.2d 500—Lost Key Mines v. Hamilton, 241 P.2d 273, 109 C.A.2d 569—Curtiss v. McGowan, 240 P.2d 997, 109 C.A.2d 436—Machado v. Katcher Meat Co., 237 P.2d 715, 108 C.A.2d 1—Borsook v. Continental Cas. Co., 236 P.2d 383 107 C.A.2d 21—Herrin v. White, 236 P.2d 180, 106 C.A.2d 796—Tedder v. Johnson, 234 P.2d 149, 105 C. A.2d 734—Heifetz v. Bell, 225 P. 2d 231, 101 C.A.2d 275—Shepherd v. Perea, 220 P.2d 776, 98 C.A.2d 518—Smith v. Glo-Fire Co., 210 P. 2d 286, 94 C.A.2d 154—Paramount Pictures v. Clark, 209 P.2d 968, 93 C.A.2d 768, certiorari denied McGrath v. Paramount Pictures, 70 S.Ct. 838, 339 U.S. 953, 94 L.Ed. 1366, and Sparling v. Paramount Pictures, 70 S.Ct. 839, 339 U.S. 953, 94 L.Ed. 1366—People ex rel. Wagner v. City of Pomona, 200 P.2d 176, 88 C.A.2d 460—Union Pac. R. Co. v. Zimmer, 197 P.2d 363, 87 C. A.2d 524—Siegell v. York, 191 P.2d 50, 84 C.A.2d 383—In re Baer's Estate, 185 P.2d 412, 81 C.A.2d 830—Couch v. Pacific Gas & Elec. Co., 183 P.2d 91, 80 C.A.2d 857—Burton v. Los Angeles Ry. Corp., 180 P.2d 367, 79 C.A.2d 605—Linden v. Rubens, 173 P.2d 713, 76 C.A.2d 688—Locke v. Red River Lumber Co., 150 P.2d 506, 65 C.A.2d 322—Alonso v. Badger, 138 P.2d 24, 58 C.A.2d 752—Blander v. Thompson, 134 P. 2d 924, 57 C.A.2d 444—Churchill v. Peters, 134 P.2d 841, 57 C.A.2d 521—Adams v. National Automobile Ins. Co., 133 P.2d 657, 56 C.A.2d 905—Breland v. Traylor Engineering & Manufacturing Co., 126 P.2d 455, 52 C.A.2d 415—Antioch College of Yellow Springs, Greene County, Ohio, v. Barnhart, 121 P. 2d 521, 49 C.A.2d 171—Sanker v. Humborg, 119 P.2d 431, 46 C.A.2d 203—City of Santa Clara v. Ivancovich, 118 P.2d 303, 47 C.A.2d 502—Merron v. Title Guarantee & Trust Co., 113 P.2d 481, 45 C.A.2d 60—Greenberg v. Du Bain Realty Corp., 80 P.2d 537, 27 C.A.2d 111—In re Trelut's Estate, 80 P.2d 147, 26 C.A.2d 717—Armstrong v. Sengo, 61 P.2d 1188, 17 C.A.2d 300—Dorner v. Heffner, 58 P.2d 1308, 15 C.A.2d 97—Clarke v. Angelus Memorial Ass'n, 58 P.2d 974, 14 C.A. 2d 750—Keefer v. Porterfield, 55 P.2d 931, 12 C.A.2d 403—State v. Arrata, 54 P.2d 532, 11 C.A.2d 662—Whitmore v. Smith, 241 P. 919, 75 C.A. 125.

Colo.—Denver Nat. Bank v. McLagan, 298 P.2d 386, 133 Colo. 487—Padia v. Hobbs, 286 P.2d 613, 132 Colo. 165—American Min. Co. v. Himrod-Kimball Mines Co., 235 P. 2d 804, 124 Colo. 186—U. S. Nat. Bank of Denver v. Bartges, 224 P. 2d 658, 122 Colo. 546, certiorari dismissed 71 S.Ct. 575, 340 U.S. 957, 95 L.Ed. 689—Colpitts v. Fastenau, 192 P.2d 524, 117 Colo. 594—Dohner v. Union Cent. Life Ins. Co., 121 P. 2d 661, 109 Colo. 85—Perry v. Bunten, 85 P.2d 731, 103 Colo. 279—Western Elaterite Roofing Co. v. Fisher, 273 P. 19, 85 Colo. 5—Rohrer v. Wagenblast, 207 P. 862, 71 Colo. 422.

Conn.—Galasso v. Cowles, 75 A.2d 46, 137 Conn. 111—Russakoff v. City of Stamford, 58 A.2d 517, 134 Conn. 450—Vastola v. Connecticut Protective System, 47 A.2d 844, 133 Conn. 18, 165 A.L.R. 1251—Onofrio v. Palmer, 43 A.2d 454, 132 Conn. 257—Girard v. Kabatznick, 24 A.2d 257, 128 Conn. 520—Kennel v. Kennel, 21 A.2d 400, 128 Conn. 200—Leventhal v. Town of Stratford, 4 A.2d 428, 125 Conn. 215—Blennerhassett v. Connecticut Co., 199 A. 443, 124 Conn. 687—Duggan v. Byrolly Transp. Co., 185 A. 85, 121 Conn. 372.

D.C.—New York Life Ins. Co. v. Miller, 81 F.2d 263, 65 App.D.C. 129—Capital Apartment Corporation v. Vassos, 65 F.2d 482, 62 App.D.C. 136—Boteler v. Plugge, 17 F.2d 221, 57 App.D.C. 69.

Hopp v. Calloway, 280 F. 977, 52 App.D.C. 3.

Fla.—Holland v. Gross, 89 So.2d 255—Williams v. Kane, 88 So.2d 599—In re Thompson's Estate, 84 So.2d 911—In re Baldridge's Estate, 74 So.2d 658—State ex rel. Watson v. City of Hallandale, 52 So.2d 797—Felton v. State, 49 So.2d 848—Crosthwait v. Northern Trust Co., 197 So. 785, 144 Fla. 231—Port St. Joe Dock & Terminal Ry. Co. v. Maddox, 191 So. 775, 140 Fla. 110—Purvis v. Malloy, for Use and Benefit of Tiller, 176 So. 71, 129 Fla. 191—City of Tampa v. Colgan, 163 So. 577, 121 Fla. 218—Hilton v. Northern Central Trust Co. of Philadelphia, Pa., 154 So. 328, 114 Fla. 796.

Ga.—Stepp v. Stepp, 25 S.E.2d 6, 195 Ga. 595.

Selvy v. Smith, 193 S.E. 178, 56 Ga.App. 531.

Idaho.—Cazier v. Economy Cash Stores, 228 P.2d 436, 71 Idaho 178—Payette Lakes Protective Ass'n v. Lake Reservoir Co., 189 P.2d 1009, 68 Idaho 111.

Ill.—Pease v. Kendall, 63 N.E.2d 2, 391 Ill. 193—People ex rel. Frailey v. McNeely, 32 N.E.2d 608, 376 Ill. 64—Kuehne v. Malach, 121 N. E. 391, 286 Ill. 120.

Hudson v. Leverenz, 132 N.E.2d 427, 9 Ill.App.2d 96, reversed on other grounds 139 N.E.2d 255, 10 Ill.2d 87—Horn v. Horn, 125 N.E. 2d 539, 5 Ill.App.2d 346—Newton v. Moushon, 125 N.E.2d 148, 5 Ill. App.2d 236—Bell v. Highland, 113 N.E.2d 79, 350 Ill.App. 501—Vail v. City of Paris, 112 N.E.2d 722, 350 Ill.App. 327—Dever v. Dunlap, 106 N.E.2d 141, 347 Ill.App. 79—Bertram v. Bertram, 105 N.E.2d 515, 346 Ill.App. 314—Brand v. Wilson, 96 N.E.2d 845, 342 Ill.App. 451—Thacker v. Hammer, 90 N.E.2d 667, 339 Ill.App. 579—Jonas v. Garrison's Estate, 76 N.E.2d 194, 333 Ill.App. 384—Hubele v. Baldwin, 75 N.E.2d 125, 332 Ill.App. 330—In re Wetstone's Estate, 69 N.E.2d 713, 329 Ill.App. 533—First Nat. Bank of Jonesboro v. Road Dist. No. 8, Union County, 65 N.E.2d 396, 328 Ill.App. 122—Mayflower Sales Co. v. Frazier, 60 N.E.2d 123, 325 Ill. App. 314—Western & Southern Life Ins. Co. v. Brueggeman, 55 N.E.2d 719, 323 Ill.App. 173—Floyd v. Smith's Estate, 50 N.E.2d 254, 320 Ill.App. 171—Buttles v. Adkins, 47 N.E.2d 516, 318 Ill.App. 24.

Ind.—McGuire v. Indianapolis Broadcasting, 61 N.E.2d 642, 223 Ind. 505—Sclamberg v. Sclamberg, 41 N.E. 2d 801, 220 Ind. 209.

McFarland v. Christoff, 92 N.E. 2d 555, 120 Ind.App. 416, rehearing denied 92 N.E.2d 867, 120 Ind. 416—Rader v. Derby, 89 N.E.2d 724, 120 Ind.App. 102—Denker v. Lloyd, 79 N.E.2d 658, 118 Ind.App. 509—Baker v. McCague, 75 N.E.2d 61, 118 Ind.App. 32—DeShields v. Joest, 34 N.E.2d 168, 109 Ind.App. 383—Popovich v. Yugoslav Nat. Home Soc., 18 N.E.2d 948, 106 Ind. App. 195—Town of Poseyville v. Gatewood, 114 N.E. 483, 65 Ind. App. 50.

Iowa.—Keune v. McCauley, 293 N. W. 25, 228 Iowa 607.

Or.—Farris v. Pendleton, 281 P.2d 972, 204 Or. 530, rehearing denied 284 P.2d 362, 204 Or. 530—Kramer v. Taylor, 266 P.2d 709, 200 Or. 640.

Kan.—Smith v. Harris, 311 P.2d 325, 181 Kan. 237—In re Snyder's Estate, 310 P.2d 944, 181 Kan. 222—Tucker v. Hankey, 250 P.2d 784, 173 Kan. 593—Dinsmoor v. Hill, 187 P. 2d 338, 164 Kan. 12—Gale v. Fruehauf Trailer Co., 145 P.2d 125, 158 Kan. 30—Sutor v. First Nat. Bank, 69 P.2d 315, 146 Kan. 52.

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Neb.—Capital Bridge Co. v. Saunders County, 83 N.W.2d 18, 164 Neb. 304—Leach v. Treber, 82 N.W.2d 544, 164 Neb. 419—Griggs v. Oak, 82 N.W.2d 410, 164 Neb. 296—Powell v. Farmers State Bank, 82 N.W.2d 260, 164 Neb. 180—Ord v. Benson, 79 N.W.2d 713, 163 Neb. 367—Scottsbluff Nat. Bank v. First State Bank, 76 N.W.2d 445, 162 Neb. 475—Joyce Wholesale Co. v. Northside Lumber & Manufacturers, Inc., 71 N.W.2d 186, 160 Neb. 703—Flaherty v. Carskadon, 53 N.W.2d 756, 155 Neb. 853—Fitzsimons v. Frey, 45 N.W.2d 603, 153 Neb. 550—In re Johnson's Estate, 13 N.W.2d 412, 144 Neb. 372—Pollock v. School Dist. No. 65 of Perkins County, 293 N.W. 108, 138 Neb. 315—Bank of Roca v. Meyer, 280 N.W. 449, 135 Neb. 128—Wescott v. Mathers, 263 N.W. 231, 129 Neb. 846—Fidelity & Deposit Co. of Maryland v. B. Grunwald, Inc., 262 N.W. 831, 129 Neb. 749—Broadway Bank of Kansas City v. Sager, 240 N.W. 561, 122 Neb. 894—Neff v. Kolb, 166 N.W. 195, 102 Neb. 108.

Nev.—Richards v. Steele, 100 P.2d 72, 60 Nev. 66—Picetti v. Orcio, 58 P.2d 1046, 57 Nev. 52, affirmed 67 P.2d 315, 57 Nev. 52—Cox v. Los Angeles & S. L. R. Co., 58 P.2d 373, 56 Nev. 510.

N.H.—York v. Misiak, 65 A.2d 877, 95 N.H. 437.

N.J.—State Highway Com'r v. Union Paving Co., 109 A.2d 424, 33 N.J. Super. 85—Gagliano v. Maggio, 108 A.2d 185, 32 N.J.Super. 219—Cierpial v. Ford Motor Co., 107 A.2d 61, 31 N.J.Super. 489, reversed on other grounds 109 A.2d 666, 16 N.J. 561—Ash v. Mestice, 96 A.2d 685, 25 N.J.Super. 463—Julius Reiner Corp. v. Sutton, 92 A.2d 634, 23 N.J.Super. 93—Dale v. Dale, 80 A.2d 234, 13 N.J.Super. 59—Capone v. Norton, 78 A.2d 126, 11 N.J.Super. 189, affirmed 83 A.2d 710, 8 N.J. 54.

N.M.—Campbell v. Campbell, 310 P.2d 266, 62 N.M. 330—Renehan v. Lobato, 237 P.2d 100, 55 N.M. 532—Campbell v. Doherty, 206 P.2d 1145, 53 N.M. 280, 9 A.L.R.2d 699—Hood v. Bond, 77 P.2d 180, 42 N.M. 295—Merrifield v. Buckner, 70 P.2d 896, 41 N.M. 442.

N.Y.—Sommer v. Guardian Life Ins. Co. of America, 24 N.E.2d 308, 281 N.Y. 508, reargument denied 25 N.E.2d 141, 282 N.Y. 585—Curcio v. City of New York, 9 N.E.2d 760, 275 N.Y. 20, reargument denied 12 N.E.2d 600, 276 N.Y. 610.

In re Benettsol Corp., 35 N.Y.S.2d 820, 264 App.Div. 897—Fielding v. Barr, 31 N.Y.S.2d 148, 263 App.Div. 779—Hogan v. National Sellers, 15 N.Y.S.2d 431, 258 App.Div. 749—Gery v. Dalsimer, 12 N.Y.S.2d 59, 257 App.Div. 842—Brown v. Algy Bldg. Corp., 12 N.Y.S.2d 38, 257 App.Div. 811.

In re Rich's Estate, 272 N.Y.S. 675, 151 Misc. 852.

N.C.—Keel v. Peoples Bank & Trust Co., 13 S.E.2d 428, 219 N.C. 259—Wells v. Jefferson Standard Life Ins. Co., 199 S.E. 291, 214 N.C. 351—Baushar v. Willis, 185 S.E. 444, 210 N.C. 52.

N.D.—State v. Crum, 292 N.W. 392, 70 N.D. 177.

Ohio.—Begin v. Jenkin, 105 N.E.2d 1, 157 Ohio St. 184.

Moore v. S. L. Grundstein & Sons, App., 125 N.E.2d 742—Glass v. Glass, App., 125 N.E.2d 375—Oxford Sporting Goods Mfg. Co. v. Gillman, 125 N.E.2d 214, 97 Ohio App. 269—State ex rel. Warner v. McGrath, App., 116 N.E.2d 218—P. B. Realty Co. v. Wallace, App., 93 N.E.2d 603—Reef v. Bon Ton Grill, App., 84 N.E.2d 247—Davies v. Columbia Gas & Elec. Corp., App., 79 N.E.2d 327, reversed on other grounds 86 N.E.2d 603, 151 Ohio St. 417—City of Cincinnati v. Bradford Mach. Tool Co., App., 49 N.E.2d 575—Holley v. Israel Bros. Co., App., 40 N.E.2d 676—Kuehner v. Johnson, App., 34 N.E.2d 996—Morris v. Retail Clerks' International Protective Ass'n, Local No. 450, 33 N.E.2d 851, 67 Ohio App. 472, appeal dismissed 30 N.E.2d 993, 137 Ohio St. 540.

Okl.—Jones v. Anderson, 178 P.2d 78, 198 Okl. 304—Bell Loan Co. v. Taylor, 143 P.2d 820, 193 Okl. 358—Minshall v. Sanders, 51 P.2d 940, 175 Okl. 1.

Pa.—Appeal of Park Drive Manor, 110 A.2d 392, 380 Pa. 134—Iacocca v. Robbins Homes, 74 A.2d 152, 365 Pa. 351—Biddle v. Biddle, 70 A.2d 281, 363 Pa. 426—Orth v. Wood, 47 A.2d 140, 354 Pa. 121—Borough of Cheswick v. Bechman, 42 A.2d 60, 352 Pa. 79—William Flaccus Oak Leather Co. v. Ocean Acc. & Guarantee Co., 40 A.2d 93, 351 Pa. 34—In re Kenna's Estate, 34 A.2d 617, 348 Pa. 214—In re Thompson, 114 A. 774, 271 Pa. 225—In re Verhovay Aid Ass'n's Charter, 101 A. 932, 258 Pa. 126—Lehigh Valley Coal Co. v. Luzerne County, 99 A. 223, 255 Pa. 17.

Menzel v. Lampropios, 77 A.2d 645, 168 Pa.Super. 329—U. S. Gypsum Co. v. Birdsboro Steel Foundry & Mach. Co., 52 A.2d 344, 160 Pa.Super. 548, appeal transferred 50 A.2d 666, 355 Pa. 653—McNulty v. General American Life Ins. Co., 33 A.2d 796, 153 Pa.Super. 288—Appeal of Bell Tel. Co. of Pennsylvania, 10 A.2d 817, 138 Pa.Super. 527—Moravitz v. Baer, 7 A.2d 17, 136 Pa.Super. 7—In re Mosebach's Estate, 73 Pa.Super. 278—Mabrey v. Metropolitan Life Ins. Co., 70 Pa.Super. 321.

In re Stern's Estate, 19 Pa.Dist. & Co. 582.

Philippine.—Florentino v. Cortes, 18 Philippine 281.

R.I.—Vezina v. Bodreau, 133 A.2d 753—Arlia v. Pate, 132 A.2d 91—Salcone v. Bottomley, 129 A.2d 635—Hampson v. Rocco, 128 A.2d 553—Foley v. Lyons, 125 A.2d 247, reargument denied 125 A.2d 728—McInnis v. Scungio, 125 A.2d 139—Albert A. Coken, Inc. v. Dean, 122 A.2d 154, reargument denied 123 A.2d 926—Valois v. Pelletier, 122 A.2d 148—Lawrence v. Andrews, 122 A.2d 132—Pukas v. Danforth, 114 A.2d 187—Luchesi v. Capitol Loan & Finance Co., 113 A.2d 725—Weinbaum v. Weinbaum, 103 A.2d 226, 81 R.I. 375—Jordan v. Harson, 102 A.2d 709, 81 R.I. 306—Procaccianti v. Sturges, 99 A.2d 1, 81 R.I. 130—Sormanti v. Deacutis, 89 A.2d 191, 79 R.I. 361—Jackson v. Choquette & Co., Inc., 80 A.2d 172, 78 R.I. 164—Armfield v. Frank N. McClure, Inc., 75 A.2d 196, 77 R.I. 390—Di Libero v. Tagliaferri, 69 A.2d 529, 76 R.I. 302—Lundell v. Lamoriello, 67 A.2d 401, 75 R.I. 470—Vanderford v. Kettelle, 64 A.2d 483, 75 R.I. 130—Bridges v. Kerr, 57 A.2d 651, 73 R.I. 487—Pettella v. Carreirero, 53 A.2d 531, 72 R.I. 439—Sorel v. Miller, 53 A.2d 332, 73 R.I. 16—Consolidated Trimming Corp. v. Angelo, 38 A.2d 478, 70 R.I. 275—McLaughlin v. Dunlop, 37 A.2d 779, 70 R.I. 155, reargument denied 38 A.2d 157, 70 R.I. 155—Marini v. Mutual Ben. Health & Accident Ass'n, 33 A.2d 193, 69 R.I. 338—A. D. Juilliard &

Co. v. American Woolen Co., 32 A.2d 800, 69 R.I. 215, 148 A.L.R. 187—Dupraw v. Dupraw, 31 A.2d 474, 69 R.I. 144—Industrial Trust Co. v. Taylor, 30 A.2d 853, 69 R.I. 62—Deatte v. Duxbury, 17 A.2d 24, 66 R.I. 1—Providence Transit Concrete Corp. v. New England Concrete Corp., 14 A.2d 807, 65 R.I. 430—Conant for Use and Benefit of Indemnity Ins. Co. of North America v. Giddings, 13 A.2d 517, 65 R.I. 79—National Sugar Refining Co. v. Knight, 11 A.2d 918, 64 R.I. 279—Whitmarsh v. Streeter, 6 A.2d 453, 62 R.I. 411—Misch v. Montgomery, 200 A. 999, 61 R.I. 345, affirmed 3 A.2d 816, 62 R.I. 142—Eckstein v. Caldwell, 200 A. 434, 61 R.I. 142, 119 A.L.R. 1311—Chiaverini v. Vail, 200 A. 462, 61 R.I. 117—Lautieri v. O'Gara, 199 A. 454, 60 R.I. 485—Levy v. Zura, 199 A. 291, 60 R.I. 399—Kevorko v. Vaitkunas, 198 A. 335, 60 R.I. 295—Siravo v. C. J. Ehrlich, Inc., 197 A. 435, 60 R.I. 150—Korjian v. Boghigian, 197 A. 210, 60 R.I. 73—St. Michael's Ukrainian Greek Catholic Church of Woonsocket v. Bohachewsky, 196 A. 796, 60 R.I. 1—Pimpare v. McNamara, 193 A. 513, 58 R.I. 515—Cranston Dressed Meat Co. v. Packers Outlet Co., 190 A. 29, 57 R.I. 345—Di Saia v. Vail, 181 A. 410—Pacheco v. Weybosset Pure Food Market, 171 A. 235—Fosdick v. Brunelle, 170 A. 921—Grossman v. Laurence, 169 A. 278—Marley v. Bankers' Indemnity Ins. Co., 166 A. 350, 53 R.I. 289—Scavonia v. Carnevale, 165 A. 594—Gilmore v. Prior, 161 A. 137, 52 R.I. 395—Dwyer v. Curria, 160 A. 206, 52 R.I. 264—Kernan v. Whitman, 158 A. 372—Marcotte v. Finn, 155 A. 865—Tillinghast v. Rhode Island Motor Sales Co., 150 A. 753—Matteodo v. Ricci, 148 A. 33—Dugan v. McGarry, 145 A. 169—Providence Inst. for Savings v. Cullen, 133 A. 648—Stead v. Warner, 125 A. 272—Campbell v. Union Mut. Fire Ins. Co., 124 A. 469, reargument denied 125 A. 273.

S.C.—Frazier v. Frazier, 89 S.E.2d 225, 228 S.C. 149—Warren v. Padgett, 82 S.E.2d 810, 225 S.C. 447—Croft v. Faust, 40 S.E.2d 801, 209 S.C. 477—Ex parte Tolbert, 34 S.E.2d 49, 206 S.C. 300—Dixon v. Williams, 7 S.E.2d 219, 192 S.C. 472—Ex Parte Blizzard, 193 S.E. 633, 185 S.C. 131—Harrell v. Sears, Roebuck & Co., 183 S.E. 303, 178 S.C. 482—Willard v. Finch, 117 S. E. 818, 125 S.C. 32—Manigo v. Tyler, 107 S.E. 914, 116 S.C. 212.

S.D.—Crawford v. Carter, 52 N.W.2d 302, 74 S.D. 316—Martindale v. Dickey, 38 N.W.2d 140, 78 S.D. 595.

Tex.—Faulk v. Futch, 214 S.W.2d 614, 147 Tex. 253, 5 A.L.R.2d 963. Providence Washington Ins. Co. v. Smulcer Trucking Co., Civ.App., 302 S.W.2d 255—Hutchings v. Republic Supply Co., Civ.App., 295 S.W.2d 449—Carver v. Huff, Civ. App., 283 S.W.2d 317, error refused no reversible error—Kollenborn v. Kollenborn, Civ.App., 273 S.W.2d 660, error dismissed—Moser v. McLemore, Civ.App., 266 S.W.2d 253—Gunstream v. Oil Well Remedial Service, Civ.App., 233 S. W.2d 897—Colburn v. Culwell, Civ. App., 229 S.W.2d 202—Shroff v. Deaton, Civ.App., 220 S.W.2d 489—Nilsen v. Bonugli, Civ.App., 220 S. W.2d 178—Younger Bros. v. Knox, Civ.App., 217 S.W.2d 41, error refused no reversible error—Gibson v. Young, Civ.App., 208 S.W.2d 139, error dismissed—W. C. Turnbow Petroleum Corp. v. Fulton, Civ.App., 199 S.W.2d 263, error refused no reversible error—Leonard v. Smith, Civ.App., 186 S.W.2d 284—Rogers v. Fort Worth Poultry & Egg Co., Civ.App., 185 S.W.2d 165—Cameron v. Cameron, Civ. App., 172 S.W.2d 980—Phillips Petroleum Co. v. Capps, Civ.App., 170 S.W.2d 522, error refused—Pendery v. Panhandle Refining Co., Civ.App., 169 S.W.2d 766, error refused—Hughes v. Parmer, Civ. App., 164 S.W.2d 576—National Fire Ins. Co. of Hartford, Conn., v. Green, Civ.App., 162 S.W.2d 1006—Carpenter v. Waxahachie Cotton Warehouse, Civ.App., 162 S.W.2d 139, error refused—White v. Jones, Civ.App., 158 S.W.2d 842—Canales v. Clopton, Civ.App., 145 S.W.2d 933—Anderson-Berney Bldg. Co. v. Swan, Civ.App., 133 S.W.2d 269, error dismissed, judgment correct—Texas Cotton Growers Ass'n v. McGuffey, Civ.App., 131 S.W.2d 771, error dismissed—Commonwealth Casualty Co. v. Thompson, Civ. App., 38 S.W.2d 351—Chapman v. First Nat. Bank, Civ.App., 275 S.W. 498—San Antonio & A. P. Ry. Co. v. Mosel, Civ.App., 195 S.W. 621, error refused.

Utah.—Nokes v. Continental Min. & Milling Co., 308 P.2d 954, 6 Utah 2d 177—Cole v. Parker, 300 P.2d 623, 5 Utah 2d 263—Ray v. Consolidated Freightways, 289 P.2d 196, 4 Utah 2d 137—Jacobson v. Swan, 278 P.2d 294, 3 Utah 2d 59—Oregon Short Line R. Co. v. Murray City, 277 P.2d 798, 2 Utah 2d 427—Bear River State Bank v. Merrill, 120 P.2d 325, 101 Utah 176—Farrell v. Cameron, 94 P.2d 1068, 98 Utah 68—Browning v. Equitable Life Assur. Soc. of U. S., 80 P.2d 848, 94 Utah 570—Paxton v. Paxton, 15 P.2d 1051, 80 Utah 540.

Va.—Barnes v. Moore, 98 S.E.2d 683, 199 Va. 227—Trayer v. Bristol Parking, Inc., 95 S.E.2d 224, 198 Va. 595—Raney v. Barnes Lumber Corp., 81 S.E.2d 578, 195 Va. 956—Brumfield v. Brumfield, 74 S.E.2d 170, 194 Va. 577—Richmond Oil Equipment Co. v. W. T. Holt, Inc., 53 S.E.2d 11, 189 Va. 334—Smith v. Pippin, 51 S.E.2d 159, 188 Va. 869—Sutton v. Menges, 44 S.E.2d 414, 186 Va. 805—**Corpus Juris Secundum cited in** Ashby v. Dumouchelle, 40 S.E.2d 493, 497, 185 Va. 724—Cook v. Hayden, 31 S.E. 2d 625, 183 Va. 203—Harris v. Citizens Bank & Trust Co., 200 S.E. 652, 172 Va. 111—Perkinson v. Persons, 178 S.E. 682, 164 Va. 172—Royal Indemnity Co. v. Hook, 157 S.E. 414, 155 Va. 956—Pryor v. East, 142 S.E. 361, 150 Va. 231.

Wash.—Cloakey v. Bouslog, 234 P.2d 880, 390 Wash.2d 66—Conradi v. Arnold, 209 P.2d 491, 34 Wash.2d 730—Dean v. Woodruff, 93 P.2d 357, 200 Wash. 166.

W.Va.—Gray v. Marino, 76 S.E.2d 585, 138 W.Va. 585—Holt Motors v. Casto, 67 S.E.2d 432, 136 W.Va. 284—Ghiz v. Savas, 60 S.E.2d 290, 134 W.Va. 550—In re Fox' Estate, 48 S.E.2d 1, 131 W.Va. 429, 7 A. L.R.2d 1—Bennett v. Neff, 42 S.E. 2d 793, 130 W.Va. 121—King v Meabon, 36 S.E.2d 211, 128 W.Va. 263—Central Realty Co. v. Martin, 30 S.E.2d 720, 126 W.Va. 915—Atlas Powder Co. v. Nelson and Chase & Gilbert Co., 20 S.E.2d 890, 124 W.Va. 298—Snyder v. Goldstein, 174 S.E. 897, 115 W.Va. 185—Staley v. Rife, 156 S.E. 113, 109 W.Va. 701—Multiseam Coal & Land Co. v. Hines, 146 S.E. 51, 106 W.Va. 513.

Wis.—Ruby v. Farmers Mut. Auto Ins. Co., 79 N.W.2d 644, 274 Wis. 158—Adolph Coors Co. v. Pursel, 26 N.W.2d 550, 250 Wis. 174—In re Langer's Estate, 11 N.W.2d 185, 243 Wis. 561—State ex rel. Priegel v. Northern States Power Co., 8 N.W.2d 350, 242 Wis. 345—Kupsick v. Diestelhorst, 177 N.W. 873, 171 Wis. 519—In re Gilbert's Estate, 166 N.W. 442, 167 Wis. 291, rehearing denied 167 N.W. 447, 167 Wis. 291—Smigiel v. Great Northern Ry. Co., 160 N.W. 1057, 165 Wis. 57—Mahoney v. Kurth, 157 N.W. 539, 163 Wis. 56—McKnelly v. Brotherhood of American Yeomen, 152 N.W. 169, 160 Wis. 514.

Wyo.—Weidt v. Brannan Motor Co., 260 P.2d 757, 72 Wyo. 1—Van Horn v. Wyoming Game and Fish Commission, 92 P.2d 560, 54 Wyo. 346—Quealy Land & Livestock Co. v. George, 63 P.2d 802, 51 Wyo. 93, rehearing denied 66 P.2d 1045, 51 Wyo. 93.

4 C.J. p 880 note 94, p 881 note 15—66 C.J. p 1338 note 72.

Affirmative showing of error required

Mo.—Laitner Plumbing & Heating Co. v. Platt Land Co., App., 67 S. W.2d 524.

mind of the appellate court as to their propriety or correctness.[85]

Although the mere presence in the record of substantial evidence to sustain the decree or judgment appealed from is not enough to justify an affirmance,[85.5] the appellate court will usually affirm if examination discloses that there has been no violation of the rules of law governing the case,[86] or the rules of logic pertaining to proper inferences and deductions,[87] and the findings are not wholly or totally without support in the evidence,[88]

85. Ala.—Forest Hill Corp. v. Latter & Blum, 29 So.2d 298, 249 Ala. 23.

Fla.—Schroeder v. Annenberg, 4 So. 2d 866, 148 Fla. 513.

Ky.—Conley's Adm'r v. Kindred, 199 S.W.2d 610, 304 Ky. 1—Morgan v. Walker, 165 S.W.2d 950, 292 Ky. 188—Claypool v. Hines, 155 S.W. 2d 478, 288 Ky. 18—Western & Southern Life Ins. Co. v. Van Hoose's Adm'x, 142 S.W.2d 145, 283 Ky. 577—Salyers v. Salyers, 114 S.W.2d 1130, 272 Ky. 702—Dupree v. Franklin Title & Trust Co., 114 S.W.2d 1116, 272 Ky. 566—Rupp v. Hickman, 112 S.W.2d 1023, 271 Ky. 708—Kentucky Bankers Ass'n v. Cassady, 94 S.W.2d 622, 264 Ky. 351—Kentucky Home Life Ins. Co. v. Johnson, 93 S.W.2d 863, 263 Ky. 787—Partin v. Jones, 63 S.W.2d 790, 250 Ky. 632—Coy v. Pursifull, 60 S.W.2d 93, 249 Ky. 57—Flanagan's Adm'x v. May, 28 S.W.2d 971, 234 Ky. 653—Elliott v. Elliott, 27 S.W.2d 963, 234 Ky. 257—Coffee v. Bushong, 18 S.W.2d 973, 230 Ky. 154—McGuire v. Cope, 9 S.W.2d 528, 225 Ky. 521—Hurst v. Hurst, 5 S.W.2d 1076, 224 Ky. 249—Martyn v. Jacoby's Adm'r, 4 S.W.2d 684, 223 Ky. 674—Bernheimer v. Bernheimer, 294 S.W. 786, 220 Ky. 9—Turner v. Kelly, 290 S.W. 711, 217 Ky. 773—Bowling's Trustee v. Bowling, 284 S. W. 77, 214 Ky. 849—Coyle v. Dark Tobacco Growers' Co-op. Ass'n, 277 S.W. 318, 211 Ky. 162—Motley v. Motley, 266 S.W. 11, 205 Ky. 460.

La.—Gilliland v. Feibleman's, Inc., 108 So. 112, 161 La. 24.
Singletary v. Wyatt, App., 55 So.2d 314.

Md.—Kidwell v. Kidwell, 59 A.2d 204, 190 Md. 614.

Mo.—St. Louis-San Francisco Ry. Co. v. Dillard, 43 S.W.2d 1034, 328 Mo. 1154.

Or.—Tryon v. Palmer, 263 P. 890, 123 Or. 661.

Va.—Quarles v. Fowlkes, 137 S.E. 365, 147 Va. 493.

85.5 Fla.—In re Alkrire's Estate, 198 So. 475, 142 Fla. 862, 144 Fla. 606.

Substantial evidence as sufficient to support findings generally see infra § 1656(9).

86. Conn.—City of New Haven v. Town of Torrington, 43 A.2d 455, 133 Conn. 194—Calway v. Williamson, 36 A.2d 377, 130 Conn. 575.

Idaho.—Walker v. Jackson, 279 P. 293, 48 Idaho 18.

Philippine.—Velasco v. Masa, 10 Philippine 279.

Tex.—Bute v. Stude, Civ.App., 264 S.W. 1037.

87. Conn.—Trenchard v. Trenchard, 109 A.2d 250, 141 Conn. 627—Franke v. Franke, 98 A.2d 804, 140 Conn. 133—Ranney v. Rock, 66 A. 2d 111, 135 Conn. 479—Calway v. Williamson, 36 A.2d 377, 130 Conn. 575—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529—Brody v. Dickie, 122 A. 908, 100 Conn. 189—Kempf v. Wooster, 121 A. 881, 99 Conn. 418.

88. U.S.—Southern Ry. Co. v. Blue Ridge Power Co., C.C.A.N.C., 30 F. 2d 33, certiorari denied 49 S.Ct. 418, 279 U.S. 860, 73 L.Ed. 1000—Majestic Co. v. Orpheum Circuit, C.C.A.Iowa, 21 F.2d 720.

Ala.—Louis Pizitz Dry Goods Co. v. House of Van Praag, 121 So. 701, 219 Ala. 183—Union Mut. Aid Ass'n of Mobile v. Carroway, 78 So. 792, 201 Ala. 414.

Ark.—State v. Warner, 48 S.W.2d 246, 185 Ark. 610.

Cal.—Boyles v. Kingsbaker Bros. Co., 53 P.2d 141, 5 C.2d 68—Simonton v. Los Angeles Trust & Savings Bank, 270 P. 672, 205 C. 252—Johnston v. Kitchin, 265 P. 941, 203 C. 766—Haddock v. Knapp, 151 P. 1140, 171 C. 59.
Goodman v. Jones, 299 P.2d 424, 142 C.A.2d 775—Pivardiere v. Mercurio, 290 P.2d 908, 137 C.A.2d 808—Pacific Tel. & Tel. Co. v. City of Los Angeles, App., 270 P.2d 903, vacated on other grounds 282 P. 2d 36, 44 C.2d 272—Sibert v. Shaver, 245 P.2d 514, 111 C.A.2d 833—Baldie v. Bank of America Nat. Trust & Sav. Ass'n, 217 P.2d 111, 97 C.A.2d 70, opinion supplemented 217 P.2d 1011, 97 C.A.2d 614—Gutknecht v. Paul, 188 P.2d 764, 83 C.A.2d 356—Jegen v. Berger, 174 P.2d 489, 77 C.A.2d 1—In re Sehabiague's Estate, 119 P.2d 30, 47 C.A.2d 793—Ohran v. Yolo County, 104 P.2d 700, 40 C.A.2d 298—Benson v. Hamilton, 14 P.2d 876, 126 C.A. 331—Stephenson v. Brand, 10 P.2d 476, 122 C.A. 543—Grettenberg v. Collman, 5 P.2d 944, 119 C.A. 7—Nielsen v. Frank, 3 P.2d 607, 117 C.A. 117—Barclay McCowan Co. v. Steele, 225 P. 782, 66 C.A. 216—Costello v. Sharp, 223 P. 567, 65 C.A. 152—Kennedy v. Scally, 217 P. 96, 62 C.A. 367.
Irvine v. Wilson, 289 P.2d 895, 137 C.A.2d Supp. 843—Burnett v. Reyes, 256 P.2d 91, 118 C.A.2d Supp. 878.

Conn.—Dwyer v. Hamre, 193 A. 207, 123 Conn. 137—White v. Connecticut Co., 92 A. 411, 88 Conn. 614, L.R.A.1915C 609.

D.C.—Palmer v. Strohecker, 60 App. D.C. 312, 53 F.2d 924.

Fla.—In re Mesker's Estate, 28 So.2d 260, 158 Fla. 180.

Ill.—Woods v. Harris Home Builders Co., 137 N.E.2d 92, 11 Ill.App.2d 331—Testo v. Di Mayo, 119 N.E.2d 454, 2 Ill.App.2d 281—Rodenkirk, for use of Deitenbach, v. State Farm Mut. Auto Ins. Co., 60 N.E. 2d 269, 325 Ill.App. 421—Marine Trust Co. of Buffalo v. Reynolds, 32 N.E.2d 371, 308 Ill.App. 674—Marine Trust Co. of Buffalo v. Reynolds, 32 N.E.2d 366, 308 Ill. App. 595.

Ind.—Heckman v. Heckman, 134 N.E. 2d 695—Van Camp Hardware & Iron Co. v. Ellis, 198 N.E. 75, 209 Ind. 582.
Krull v. Pierce, 71 N.E.2d 617, 117 Ind.App. 638—McGary v. Stephen, 7 N.E.2d 542, 103 Ind.App. 285—Daily v. Gaskill, 7 N.E.2d 541, 103 Ind.App. 551—Mid Continent Petroleum Corp. v. Weaver, 5 N.E.2d 146, 103 Ind.App. 96—Masters v. Stewart, 198 N.E. 800, 101 Ind.App. 243—Carlson v. Kesler, 198 N.E. 451, 103 Ind.App. 350, rehearing denied 199 N.E. 889, 103 Ind.App. 350, certiorari denied and appeal dismissed 58 S.Ct. 50, 302 U.S. 639, 82 L.Ed. 497—Lighthouse Electric Co. v. Kellogg Switchboard & Supply Co., 182 N.E. 545, 95 Ind.App. 69—Keenan Hotel Co. v. Funk, 177 N.E. 364, 93 Ind.App. 677—Citizens' Nat. Bank v. Kerney, 108 N.E. 139, 59 Ind.App. 96.

Iowa.—Lungren v. Lamoni Provision Co., 82 N.W.2d 749—Brown v. Compton & Roush, 53 N.W.2d 164, 243 Iowa 665—Weber v. Hansen, 43 N.W.2d 766, 241 Iowa 904—Coe v. Board of Sup'rs of Harrison County, 295 N.W. 151, 229 Iowa 798—Jefferies v. Prall, 246 N.W. 816, 215 Iowa 763—Ames Evening Times v. Ames Weekly Tribune, 168 N.W. 106, 183 Iowa 1188—Bell Jones Co. v. Erie R. Co., 150 N.W. 7, 168 Iowa 96.

or plainly or manifestly contrary to the great weight or preponderance of the evidence, as discussed infra § 1658, or unreasonable,[89] unsustainable on any reasonable theory or hypothesis,[90] unwarranted as a

Kan.—In re Bradley's Estate, 297 P. 2d 180, 179 Kan. 539—Wardrup v. Johnson, 184 S.W.2d 85, 298 Ky. 797.

Me.—Mitchell v. Mitchell, 11 A.2d 898, 136 Me. 406—Northwestern Inv. Co. v. Palmer, 94 A. 481, 113 Me. 395.

Mass.—Commissioners of Woburn Cemetery v. Treasurer of Woburn, 64 N.E.2d 627, 319 Mass. 86—Jasper v. Worcester Spinning & Finishing Co., 64 N.E.2d 89, 318 Mass. 752—St. George's Ebenezer Primitive Methodist Church of Methuen v. Primitive Methodist Church of U. S. Eastern Conference, 63 N.E.2d 900, 318 Mass. 723—Detore v. Demers Bros., 45 N.E.2d 745, 312 Mass. 531—City of Worcester v. City of Springfield, 37 N.E.2d 480, 310 Mass. 217—Caton v. Winslow Bros. & Smith Co., 34 N.E.2d 638, 309 Mass. 150—Stern v. Lieberman, 29 N.E.2d 839, 307 Mass. 77—Coe v. Ware, 171 N.E. 732, 271 Mass. 570—Block v. Opera Holding Co., 154 N.E. 761, 258 Mass. 269.

Mich.—In re Hoffman's Estate, 148 N.W. 268, 183 Mich. 67, affirmed 152 N.W. 952, 183 Mich. 67.

Neb.—McGuire v. Thompson, 40 N. W.2d 237, 152 Neb. 28.

Nev.—Gault v. Grose, 155 P. 1098, 39 Nev. 274.

N.J.—New Jersey Highway Authority v. J. & F. Holding Co., 123 A.2d 25, 40 N.J.Super. 309.

Del Vecchio v. Haflin Bus Co., 50 A.2d 881, 135 N.J.Law 339.

Okl.—Wilcox Oil Co. v. Lawson, 301 P.2d 686.

Or.—Hauglum v. Mt. Hood Woodlands Co., 258 P. 820, 122 Or. 306—Maeder Steel Products Co. v. Zanello, 220 P. 155, 109 Or. 562—United States Fidelity & Guaranty Co. v. Martin, 149 P. 1023, 77 Or. 369.

Pa.—Saracena v. Ninneman, 63 A.2d 57, 360 Pa. 619—In re Pusey's Estate, 184 A. 844, 321 Pa. 248, certiorari denied Lavely v. Young Women's Christian Ass'n of Pittsburgh, 57 S.Ct. 36, 299 U.S. 572, 81 L.Ed. 422, rehearing denied 57 S.Ct. 114, 299 U.S. 621, 81 L.Ed. 458.

S.C.—Pearce-Young-Angel Co. v. Charles R. Allen, Inc., 50 S.E.2d 698, 213 S.C. 578—McCollum v. Banks, 50 S.E.2d 199, 213 S.C. 476—Wiggins & Sons v. Ford Motor Co., 186 S.E. 272, 181 S.C. 171—St. Clair v. St. Clair, 178 S.E. 493, 175 S.C. 83—Forbes v. Kingan & Co., 176 S.E. 880, 174 S.C. 24—Douglas v. Frigidaire Sales Corporation, 174 S.E. 906, 173 S.C. 66—State v. W. T. Rawleigh Co., 174 S.E. 385, 172 S.C. 415—Willard v. Finch, 117 S. E. 818, 125 S.C. 32—Manos v. Easy, 117 S.E. 222, 124 S.C. 154—Willard v. Finch, 116 S.E. 96, 123 S.C. 56—Dillon County v. Lane, 104 S. E. 184, 114 S.C. 494.

Tex.—National Bond & Mortgage Corporation v. Davis, Com.App., 60 S.W.2d 429—Briscoe v. Bright's Adm'r, Com.App., 231 S.W. 1082.

Iowa Mut. Ins. Co. v. Faulkner, Civ.App., 294 S.W.2d 911, error granted—Stanley v. Stanley, Civ. App., 294 S.W.2d 132, error refused no reversible error—Moser v. McLemore, Civ.App., 266 S.W.2d 253—Morris v. J. S. Copeland Elec. Co., Civ.App., 248 S.W.2d 1011—Central Power & Light Co. v. Mathers, Civ.App., 234 S.W.2d 921—Sigler v. Realty Bond & Mortgage Co., Civ.App., 150 S.W.2d 845, error dismissed, judgment correct—Turnbow v. Bland, Civ.App., 149 S.W.2d 604, error dismissed, judgment correct—Canales v. Clopton, Civ.App., 145 S.W.2d 933—Miller v. Texas General Agency Co., Civ. App., 141 S.W.2d 441—Anderson-Berney Bldg. Co. v. Swan, Civ. App., 133 S.W.2d 269, error dismissed, judgment correct—Austin Bros. v. Patton, Civ.App., 245 S.W. 991, reversed on other grounds, Com.App., 288 S.W. 182, and rehearing denied, Com.App., 294 S. W. 537.

Va.—Trayer v. Bristol Parking, Inc., 95 S.E.2d 224, 198 Va. 595—Wyckoff Pipe & Creosoting Co. v. Sanders, 9 S.E.2d 318, 175 Va. 512—Duncan v. State Highway Commission, 128 S.E. 546, 142 Va. 135—Carson v. J. L. Mott Iron Works, 84 S.E. 12, 117 Va. 21.

Wash.—Miller v. Chicago, M., St. P. & P. R. Co., 295 P.2d 723, 48 Wash. 2d 601.

W.Va.—Green v. Henderson, 67 S.E. 2d 554, 136 W.Va. 329.

52 C.J. p 756 note 96.

Complete absence of substantial evidence to support finding necessary before finding will be disturbed see infra § 1656(9).

89. Ark.—Love v. Couch, 28 S.W. 2d 1067, 181 Ark. 994.

Cal.—Larson v. Thoresen, 254 P.2d 656, 116 C.A.2d 790.

Conn.—Flynn v. Hinsley, 113 A.2d 351, 142 Conn. 257—International Broth. of Elec. Workers Local 35 v. Commission on Civil Rights, 102 A.2d 366, 140 Conn. 537—Kriedel v. Krampitz, 79 A.2d 181, 137 Conn. 532—Hathaway v. Bornmann, 77 A.2d 91, 137 Conn. 322—Linn v. City and Town of Hartford, 66 A. 2d 115, 135 Conn. 469—Maitz v. Lulewicz, 51 A.2d 595, 133 Conn. 355—Balaas v. City of Hartford, 12 A.2d 765, 126 Conn. 510—Archambault v. Holmes, 10 A.2d 364, 126 Conn. 191—Johnson v. City of New Haven, 196 A. 343, 123 Conn. 569—McNulty v. Sherman Realty Corp., 194 A. 726, 123 Conn. 335—Albright v. MacDonald, 183 A. 389, 121 Conn. 88—Gage v. Chapin Motors, 162 A. 17, 115 Conn. 546.

Fla.—Parsons v. Federal Realty Corporation, 143 So. 912, 105 Fla. 105, 88 A.L.R. 275.

Ill.—Van Hooser v. Fick, 63 N.E.2d 141, 326 Ill.App. 593.

Mo.—Enterprise Furniture & Carpet Outfitting Installment Co. v. Stigall, App., 306 S.W. 390.

N.H.—Emery v. Woodward, 69 A.2d 865, 96 N.H. 61.

Tex.—Palatine Ins. Co., Limited, of London, England, v. Petrovich, Civ. App., 235 S.W. 929—Duckels v. Dougherty, Civ.App., 226 S.W. 720.

Utah.—Lyman v. Town of Price, 222 P. 599, 63 Utah 90.

45 C.J. p 1370 note 3.

90. Cal.—Kuhn v. Ferry & Hensler, 206 P.2d 1, 91 C.A.2d 805—Platt v. City of Los Angeles, 165 P.2d 714, 72 C.A.2d 753—Cordell v. City of Los Angeles, 154 P.2d 31, 67 C.A.2d 257—Hayward Lumber & Investment Co. v. Naslund, 13 P.2d 775, 125 C.A. 34—W. C. Cook & Co. v. White Truck & Transfer Co., 13 P. 2d 549, 124 C.A. 721—Skaggs v. Wiley, 292 P. 132, 108 C.A. 429—Robertson v. Weingart, 267 P. 741, 91 C.A. 715.

Ind.—Morris v. Buchanan, 44 N.E.2d 166, 220 Ind. 510.

Minn.—Lyons v. City of Minneapolis, 63 N.W.2d 585, 241 Minn. 439.

Mo.—St. Louis-San Francisco Ry. Co. v. Dillard, 43 S.W.2d 1034, 328 Mo. 1154.

Rubin v. Bassakin, App., 130 S. W.2d 224—Gronoway v. Markham, 115 S.W.2d 136, 232 Mo.App. 1118—Kenney v. Henson, App., 107 S. W.2d 947—Charles A. Liemke Co. v. Krekeler Grocer Co., 95 S.W.2d 820, 231 Mo.App. 169—Niedt v. American Ry. Express Co., App., 6 S.W.2d 973.

N.M.—White v. Montoya, 126 P.2d 471, 46 N.M. 241.

Tex.—Deane v. Deane, Civ.App., 298 S.W.2d 282—Copeland v. Stanolind Oil & Gas Co., Civ.App., 279 S.W.2d 893, error refused no reversible error—Munn v. Riggs, Civ.App., 257 S.W.2d 714—Orr v. Orr, Civ. App., 226 S.W.2d 172—City of Galveston v. Winslow, Civ.App., 218 S. W.2d 508, error refused no reversible error—Gulf Coast Chemical Co. v. Hopkins, Civ.App., 145 S.W.2d 928.

matter of law,[91] irrefragably impeached,[92] contrary to, or inconsistent with, the subordinate facts,[93] clearly unjust,[94] or the result of an abuse of discretion;[95] and under some constitutional provisions the appellate court is without power to set aside the findings merely because the evidence is insufficient to support them.[95.5]

Error of law, which will result in reversal, exists, however, if the fact findings or conclusions are manifestly or clearly wrong or erroneous,[96] contrary

91. Cal.—Pewitt v. Riley, 163 P.2d 873, 27 C.2d 310.
Jones v. Re-Mine Oil Co., 119 P.2d 219, 47 C.A.2d 832—Marshall v. Great Western Power Co. of California, 97 P.2d 1025, 36 C.A.2d 422—Cain v. Richmond, 14 P.2d 546, 126 C.A. 254—Cobb v. Lane, 10 P.2d 528, 122 C.A. 654.
Mass.—Casey v. Gallagher, 96 N.E.2d 709, 326 Mass. 746—Bianco v. Lay, 48 N.E.2d 36, 313 Mass. 444—Carpenter v. Knights of Columbus, 131 N.E. 863, 239 Mass. 287.
Mo.—Herr v. Graef, App., 267 S.W. 30.
Or.—Weigar v. Steen, 158 P. 280, 81 Or. 72.
S.C.—Pearce-Young-Angel Co. v. Charles R. Allen, Inc., 50 S.E.2d 698, 213 S.C. 578.
Tex.—Meir v. Pope, Civ.App., 245 S.W. 960.

92. N.M.—Odell v. Colmor Irrigation & Land Co., 280 P. 398, 34 N.M. 277.

93. Conn.—Calway v. Williamson, 36 A.2d 377, 130 Conn. 575—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529—Pattenden v. Connecticut Co., 119 A. 348, 98 Conn. 370.

94. Cal.—Heifetz v. Bell, 225 P.2d 231, 101 C.A.2d 275—Akers v. Hufford, 16 P.2d 802, 128 C.A. 146—Bryan v. Baymiller, 272 P. 1106, 95 C.A. 481.
La.—Roberts v. Lower Coast Lumber Co., App., 166 So. 498.
R.I.—Prudential Ins. Co. of America v. Tutalo, 178 A. 859, 55 R.I. 160.
Tex.—City of San Antonio v. Grayburg Oil Co., Civ.App., 259 S.W. 985.

95. Cal.—Williams v. Marshall, 235 P.2d 372, 37 C.2d 445.
Bixby v. Bixby, 261 P.2d 286, 120 C.A.2d 495—Perry v. Perry, 209 P.2d 847, 93 C.A.2d 720—Kay v. Karas, 197 P.2d 396, 87 C.A.2d 600—In re Phillipi's Estate, 172 P.2d 377, 76 C.A.2d 100—Fillmore v. Fillmore, 168 P.2d 725, 74 C.A.2d 418—California Prune & Apricot Growers Ass'n v. H. R. Nicholson Co., 158 P.2d 764, 69 C.A.2d 207—Curtis v. Title Guarantee & Trust Co., 40 P.2d 562, 3 C.A.2d 612, hearing denied 42 P.2d 323, 3 C.A.2d 612—Carlson v. Leonard, 200 P. 40, 53 C.A. 300.
Fla.—Suttles v. Florida Real Estate Commission ex rel. O'Kelley, 190 So. 433, 139 Fla. 210.
Ga.—Webb v. Webb, 140 S.E. 872, 165 Ga. 305.
Mass.—Levin v. Bernstein, 169 N.E. 430, 269 Mass. 542.
Mo.—Jourdan v. Jourdan, App., 251 S.W.2d 380—Shapiro v. Shapiro, App., 238 S.W.2d 886—Eaton v. Eaton, App., 237 S.W. 896.
Pa.—Pennell v. Kennedy, 12 A.2d 54, 338 Pa. 285—Calvary Presbyterian Church of Highland Park v. Jones, 185 A. 267, 322 Pa. 77.
Robinson Elec. Co. v. Capitol Trucking Corp., 79 A.2d 123, 168 Pa.Super. 430.
Tex.—Waco Hilton Hotel Co. v. Waco Development Co., Civ.App., 75 S.W.2d 968—French v. Hux, Civ. App., 54 S.W.2d 539.
Wash.—Biles-Coleman Lumber Co. v. Lesamiz, 302 P.2d 198, 49 Wash.2d 436—Lorang v. Lorang, 256 P.2d 481, 42 Wash.2d 539.

95.5 Or.—Butts v. State Indus. Acc. Commission, 239 P.2d 238, 93 Or. 417.

96. Ala.—Kelly v. Kelly, 24 So.2d 265, 247 Ala. 316—U. S. Guarantee Co. v. Harrison & Owen Produce Co., 198 So. 240, 240 Ala. 186—Esco v. Davidson, 193 So. 308, 238 Ala. 653—American Nat. Bank & Trust Co. v. Powell, 178 So. 21, 235 Ala. 236—Carraway v. Graham, 118 So. 807, 218 Ala. 453.
Ark.—Mays v. C. M. Johnston & Sons Sand & Gravel Co., 158 S.W.2d 910, 203 Ark. 779.
Cal.—Garfield v. Peoples Finance & Thrift Co. of Riverside, 74 P.2d 1061, 24 C.A.2d 144.
Colo.—Kountz v. Olson, 29 P.2d 627, 94 Colo. 186—Henderson v. People's Pharmacy Co., 2 P.2d 1090, 89 Colo. 338.
Fla.—Holland v. Gross, 89 So.2d 255—Foley Lumber Co. v. Koester, 61 So.2d 634—Bailey Motor & Equipment Co. v. Cullison, 42 So.2d 581.
Iowa.—Else v. Fremont Methodist Church, 73 N.W.2d 50, 247 Iowa 127.
Ky.—Salyers v. Salyers, 114 S.W.2d 1130, 272 Ky. 702.
La.—Ludeau v. Stromer, 7 So.2d 70, 199 La. 824—Brewster v. Emlet, 122 So. 54, 168 La. 326—Colletti v. Tranchina, 91 So. 818, 151 La. 403.
Purnell v. Jackson, App., 91 So.2d 67—Baker v. Smith, App., 87 So.2d 170—Malbreaugh v. City of Baton Rouge, App., 68 So.2d 619—Moore v. Louisiana Coca-Cola Bottling Co., App., 58 So.2d 310—Gardner v. Travelers Ins. Co., App., 12 So.2d 830—Townley v. Pomes, App., 198 So. 788—Tassin v. Downs, App., 190 So. 232—Tambrello v. Prados, App., 185 So. 698—Danove v. Mahoney, App., 176 So. 404—Stoma v. Smith, App., 172 So. 202—Smith v. Louisiana Power & Light Co., App., 158 So. 844—Boni v. Sovereign Camp, W. O. W., App., 154 So. 678, followed in 154 So. 681—E. George Rogers & Co. v. Black, App., 154 So. 667, rehearing refused 155 So. 403—Pate v. American Employers' Ins. Co., App., 152 So. 363, followed in Bounds v. American Employers' Ins. Co., App., 152 So. 364—Newman v. O. K. Industrial Life Ins. Co., App., 142 So. 791—O'Day v. Kapanica, 138 So. 472, 18 La.App. 634—Schmidt & Ziegler v. New Orleans Public Service, 137 So. 871, 18 La. App. 722—Frerichs Lumber Co. v. Moses, 118 So. 771, 9 La.App. 73—Shall v. Gordon, 4 La.App. 505—Tourmillion v. New Orleans Public Service, Inc., 3 La.App. 297—Mertzweiler & Reynolds v. Gwin Const. Co., 3 La.App. 280—Mill v. Lewis, 2 La.App. 62.
Mass.—Massachusetts Lubricant Corp. v. Socony-Vacuum Oil Co., 25 N.E.2d 719, 305 Mass. 269—Keeney v. Ciborowski, 24 N.E.2d 17, 304 Mass. 371.
Mich.—C. O. Porter Machinery Co. v. Coleman, 44 N.W.2d 845, 329 Mich. 8.
Mo.—Blum v. Frost, 116 S.W.2d 541, 234 Mo.App. 695.
Mont.—Fousek v. De Forest, 4 P.2d 472, 90 Mont. 448.
Neb.—Cunningham v. Scott, 191 N.W. 673, 109 Neb. 586—Miller v. National Council of Knights and Ladies of Security, 190 N.W. 495, 109 Neb. 199—In re O'Connor's Estate, 179 N.W. 401, 105 Neb. 88, 12 A.L.R. 199, certiorari denied O'Connor v. Slaker, 41 S.Ct. 450.
N.H.—Black v. Fiandaca, 93 A.2d 663, 98 N.H. 33.
N.Y.—I. H. L. Realty Corp. v. Ambros, 80 N.Y.S.2d 391.
Okl.—Dunlap v. Jeffrey, 260 P.2d 1072.
Pa.—In re Byer's Estate, 14 Pa.Dist. & Co. 298—In re Gilliland's Estate, 19 Pa.Co. 285—In re Lowry's Estate, 18 Pa.Co. 591—In re Bryant's Estate, 16 Pa.Co. 321.
R.I.—Marini v. Mutual Ben. Health & Accident Ass'n, 33 A.2d 193, 69 R.I. 338.
Tenn.—Carroll v. Fidelity Trust Co., 6 Tenn.Civ.App. 101.
Va.—Holloway v. Smith, 88 S.E.2d 909, 197 Va. 334.

to the evidence,[97] obviously or clearly against the weight of the evidence, as considered infra § 1658, or without support in the evidence,[98] as where it is manifest that the findings are so plainly unjusti-

Wash.—Meyer v. Eschbach, 73 P.2d 803, 192 Wash. 310—Swift v. Starrett, 200 P. 1108, 117 Wash. 188.
Wis.—Stoiber v. Miller Brewing Co., 42 N.W.2d 144, 257 Wis. 13.
4 C.J. p 880 note 94, p 881 note 15—66 C.J. p 1338 note 72.

Findings based on erroneous assumption of fact will not be regarded as conclusive.
Wis.—American Nat. Bank of Milwaukee v. Lewis, 225 N.W. 751, 199 Wis. 76.

Real facts apparent

If it is clearly and plainly apparent to appellate court that the real facts are otherwise than as found by trial court, the findings are not binding, but may be set aside.
Ky.—Alsip v. Perkins, 32 S.W.2d 565, 236 Ky. 5.

97. Cal.—Casper v. City of Los Angeles, 295 P.2d 452, 140 C.A.2d 433—Division of Labor Law Enforcement Dept. of Indus. Relations v. Safeway Stores, 215 P.2d 773, 96 C.A.2d 481—Pacific Palisades Ass'n v. Menninger, 26 P.2d 303, 134 C.A. 637—Claussen v. Newton, 216 P. 975, 62 C.A. 435.
D.C.—George v. Capital Traction Co., 54 App.D.C. 144, 295 F. 965.
Ind.—Mertz v. Wallace, 169 N.E. 333, 93 Ind.App. 289.
La.—Webb v. Lambert, 128 So. 317, 14 La.App. 147, rehearing denied 129 So. 200, 14 La.App. 147.
Mich.—Schlussel v. Ruhf, 229 N.W. 514, 249 Mich. 647.
Minn.—Gustafson v. Northwestern Reed & Fiber Co., 230 N.W. 795, 180 Minn. 338.
N.M.—Ortega v. Ortega, 273 P. 925, 33 N.M. 605.
N.Y.—Friedman v. Friedman, 57 N.Y.S.2d 628, 269 App.Div. 917.
Pa.—In re Miller's Estate, 123 A. 646, 279 Pa. 30.
Tex.—Janelli v. Janelli, Civ.App., 216 S.W.2d 587, set aside 220 S.W.2d 255, mandamus denied Janelli v. Bond, 255 S.W.2d 824, 148 Tex. 416 and mandamus overruled Janelli v. Janelli, Civ.App., 227 S.W.2d 889—Heilbron v. Stubblefield, Civ. App., 203 S.W.2d 986, error refused no reversible error.
Utah.—Stringfellow v. Botterill Auto Co., 221 P. 861, 63 Utah 56, 34 A.L.R. 533.
4 C.J. p 880 note 98, p. 882 note 26—42 C.J. p 114 note 10.

When findings contrary to undisputed evidence sustainable

(1) Findings contrary to the undisputed evidence are sustainable only where the evidence is insufficient as a matter of law to support different findings.
Cal.—Jewett v. Albin, 266 P. 329, 90 C.A. 535.

(2) If the trial court is not justified in wholly disregarding undisputed testimony, its findings contrary thereto will be set aside.
Wis.—Bradley v. Selden, 228 N.W. 494, 201 Wis. 61.

(3) Where the evidence is all one way, and is not immaterial, irrelevant, improbable, inconsistent, contradicted, or discredited, it cannot be disregarded or ignored by the judge, and if he makes a finding which is contrary to the evidence, an error results, for which the decision must be set aside.
D.C.—George v. Capital Traction Co., 54 App.D.C. 144, 295 F. 965.

98. Ala.—Young v. Young, 78 So.2d 265, 262 Ala. 254.
McCombs v. Clark, 47 So.2d 220, 35 Ala.App. 391—Alabama Dry Dock & Shipbuilding Co. v. Ward, 27 So.2d 710, 32 Ala.App. 535, certiorari denied 27 So.2d 716, 248 Ala. 371—Tennessee Coal, Iron & R. Co. v. Pope, 107 So. 735, 21 Ala.App. 183, certiorari denied 107 So. 736, 214 Ala. 383.
Ariz.—Spain v. Griffith, 25 P.2d 551, 42 Ariz. 304—State Tax Commission v. Magma Copper Co., 15 P.2d 961, 41 Ariz. 97—Peters v. Taylor, 251 P. 446, 31 Ariz. 169.
Ark.—Thompson v. Morris, 237 S.W. 2d 473, 218 Ark. 542, 24 A.L.R.2d 627—Cooper v. Woods, 110 S.W.2d 701, 194 Ark. 1155—Clark v. Matlock, 76 S.W.2d 104, 189 Ark. 1081—Henry Wrape Co. v. Cox, 183 S.W. 955, 122 Ark. 445.
Cal.—Vice v. Thacker, 180 P.2d 4, 30 C.2d 84—Mitchell v. Ceazan Tires, 153 P.2d 53, 25 C.2d 45—Pendleton v. Ferguson, 101 P.2d 81, 15 C.2d 319, rehearing denied 101 P.2d 688, 15 C.2d 319—Alexander v. State Capital Co., 70 P.2d 619, 9 C.2d 304.
Jones v. Jones, 286 P.2d 908, 135 C.A.2d 52—Snokelberg v. Crecelius, 280 P.2d 109, 131 C.A.2d 136—Berry v. Ryan, 217 P.2d 1015, 97 C.A. 2d 492—Steward v. Paige, 203 P.2d 858, 90 C.A.2d 820—Balasco v. Chick, 192 P.2d 76, 84 C.A.2d 802—Seeger v. Odell, 148 P.2d 901, 64 C.A.2d 397—Hess v. Gross, 133 P.2d 1, 56 C.A.2d 529—Cornell v. Hearst Sunical Land & Packing Corp., 131 P.2d 404, 55 C.A.2d 708—Sessions v. Southern California Edison Co., 118 P.2d 935, 47 C.A.2d 611—Finley v. Steiner, 104 P.2d 819, 40 C.A.2d 331—Wynne v. Wynne, 66 P. 2d 467, 20 C.A.2d 131—McClintock v. Robinson, 64 P.2d 749, 18 C.A. 2d 577—Lufkin v. Patten-Blinn Lumber Co., 59 P.2d 414, 15 C.A.2d 259—Blake v. Mosher, App., 54 P. 2d 492, 11 C.A.2d 532—Chapman v. Pickwick Stages System, 4 P.2d 283, 117 C.A. 560—Brown v. Sweet, 272 P. 614, 95 C.A. 117—Gardiner v. Holcomb, 255 P. 523, 82 C.A. 342.
People v. Church, 136 P.2d 139, 57 C.A.2d Supp. 1032.
Colo.—Gordon v. Brotherhood of Locomotive Firemen and Enginemen, 125 P.2d 140, 109 Colo. 347—Holbrook Irr. Dist. v. Ft. Lyon Canal Co., 269 P. 574, 84 Colo. 174—Boyd v. Boyd, 189 P. 608, 68 Colo. 293—Gromm v. Fybush, 144 P. 551, 58 Colo. 145.
Conn.—Samson v. Bergin, 84 A.2d 273, 138 Conn. 306—Howe v. Watkins Bros., 142 A. 69, 107 Conn. 640—McCarten v. Connecticut Co., 131 A. 505, 103 Conn. 537.
Idaho.—Clark v. Clark, 69 P.2d 980, 58 Idaho 37—Harding v. Home Inv. & Sav. Co., 286 P. 920, 49 Idaho 64, rehearing denied 297 P. 1101, 49 Idaho 64—Cook v. Bedford, 245 P. 73, 42 Idaho 300—Mahaffey v. McNicoll, 244 P. 401, 42 Idaho 108—Keltner v. Bundy, 233 P. 516, 40 Idaho 402.
Ill.—Johnson v. Spinhirne, 116 N.E. 2d 199, 2 Ill.App.2d 189—Scaggs v. Fithian, 86 N.E.2d 398, 337 Ill.App. 597—Winn v. Underwood, 80 N.E. 2d 392, 335 Ill.App. 119—Majewski v. Majewski, 65 N.E.2d 584, 328 Ill. App. 194—Fowler v. Fowler, 42 N.E.2d 954, 315 Ill.App. 270—Rago v. Naples, 28 N.E.2d 326, 306 Ill.App. 266—Koch v. Monarch Fire Ins. Co., 9 N.E.2d 68, 290 Ill.App. 608—Decorators Supply Corporation v. Babka, 8 N.E.2d 559, 290 Ill.App. 298.
Ind.—Fletcher Trust Co. v. Hines, 4 N.E.2d 562, 211 Ind. 111, 108 A.L.R. 930.
Treesh v. De Veny, 64 N.E.2d 41, 116 Ind.App. 305—Pierson v. Simmons, 12 N.E.2d 369, 104 Ind.App. 521—Arpas v. Mishawaka Rubber & Woolen Co., App., 199 N.E. 167, 101 Ind.App. 251—Mertz v. Wallace, 169 N.E. 333, 93 Ind.App. 289.
Iowa.—Hass v. Kaster, 66 N.W.2d 878, 246 Iowa 48—Miller v. Woolsey, 35 N.W.2d 584, 240 Iowa 450—Haldeman v. Addison, 265 N.W. 358, 221 Iowa 218—Andrew v. Pella Golf Club, 250 N.W. 709, 217 Iowa 577—First Presbyterian Church of Mt. Vernon v. Dennis, 161 N.W. 183, 178 Iowa 1352, L.R.A. 1917C 1005.
Kan.—J. R. Watkins Co. v. Waldo, 230 P. 1051, 117 Kan. 250.
Long Island Ins. Co. v. Great Western Mfg. Co., 42 P. 738, 2 Kan.App. 377.
Ky.—Lynn v. Stratton, 218 S.W.2d 962, 309 Ky. 721—Louisville & N. R. Co. v. McCoy, 110 S.W.2d 433, 270 Ky. 603.

La.—Miller v. Miller, 76 So.2d 3, 226 La. 273—Interdiction of Escat, 19 So.2d 96, 206 La. 207.

Arceneaux v. Louisiana Highway Commission, App., 12 So.2d 733—Cook v. Louisiana & A. Ry. Co., 6 La.App. 195.

Me.—Jolovitz v. Redington & Co., 88 A.2d 589, 148 Me. 23—Sard v. Sard, 83 A.2d 286, 147 Me. 46—Mitchell v. Mitchell, 11 A.2d 898, 136 Me. 406—Ayer v. Harris, 132 A. 742, 125 Me. 249.

Mont.—Perkins v. Glacier Dairy, 239 P.2d 531, 125 Mont. 453.

Mass.—Ames v. New York, N. H. & H. R. Co., 108 N.E. 920, 221 Mass. 304.

Mich.—In re Stott's Estate, 207 N.W. 1, 233 Mich. 494—First Nat. Bank v. Grand Rapids & I. Ry. Co., 161 N.W. 859, 195 Mich. 1.

Minn.—Yager v. Held, 242 N.W. 469, 186 Minn. 71.

Mo.—Willis v. Robinson, 237 S.W. 1030, 291 Mo. 650.

Gill v. Harris, 24 S.W.2d 673, 224 Mo.App. 717—Maxwell v. Dunham, 297 S.W. 94, 222 Mo.App. 193—Mississippi Valley Trust Co. v. Taylor, App., 238 S.W. 558—Bender v. Bender, App., 193 S.W. 294—Reynolds v. Title Guaranty Trust Co., 189 S.W. 33, 196 Mo.App. 21.

Mont.—In re Wadsworth's Estate, 11 P.2d 788, 92 Mont. 135—Miles v. Miles, 282 P. 37, 86 Mont. 19—Tuttle v. Pacific Mut. Life Ins. Co., 190 P. 993, 58 Mont. 121, 16 A.L.R. 601.

Neb.—Davis v. Ætna Life Ins. Co., 258 N.W. 58, 128 Neb. 154.

N.H.—Stearns v. O'Dowd, 101 A. 31, 78 N.H. 358.

N.J.—Stockhold v. Jackson Tp., 55 A. 2d 241, 136 N.J.Law 264—Everson v. Board of Ed. of Ewing Tp., 44 A. 2d 333, 133 N.J.Law 350, affirmed 67 S.Ct. 504, 330 U.S. 1, 91 L.Ed. 711—Young v. Schmidt, 23 A.2d 809, 127 N.J.Law 535—Eckman v. Beihl, 184 A. 430, 116 N.J.Law 308—Closter Dairy Farms v. New York Cent. & H. R. R. Co., 97 A. 305, 88 N.J.Law 557, affirmed Closter-Demarest Farms v. New York Cent. & H. R. R. Co., 99 A. 1070, 89 N.J.Law 709—Doolittle v. Hundertmark, 97 A. 47, 88 N.J.Law 515.

Blaicher Holding Co. v. City of Newark, 169 A. 521, 12 N.J.Misc. 45.

N.M.—Campbell v. Campbell, 310 P. 2d 266, 62 N.M. 330—Allen v. Allen, 194 P.2d 270, 52 N.M. 174—American Ry. Express Co. v. Gallup State Bank, 264 P. 947, 33 N.M. 251—First Nat. Bank v. Harlan, 234 P. 305, 30 N.M. 356—Jones v. Jernigan, 223 P. 100, 29 N.M. 399—Hoskins v. Talley, 220 P. 1007, 29 N.M. 173—Epstein v. Wass, 216 P. 506, 28 N.M. 608.

N.Y.—Atkinson v. Blackman, 66 N.Y. S.2d 602, 271 App.Div. 872, affirmed Ethel M. Atkinson, Inc. v. McCabe Hanger Mfg. Co., 74 N.E.2d 473, 297 N.Y. 539—Application of Title Guarantee & Trust Co., 27 N.Y.S.2d 33, 261 App.Div. 1098—Laner v. Laner, 2 N.Y.S.2d 306, 253 App. Div. 921—O'Brien v. Birnbaum, 297 N.Y.S. 255, 251 App.Div. 895, affirmed 16 N.E.2d 393, 278 N.Y. 662.

Pascual v. Arco, 32 N.Y.S.2d 207—Katz v. Carbondale Mills, 165 N.Y.S. 993—Weissman v. Charles Williams Stores, Inc., 164 N.Y.S. 125.

N.C.—S. D. Scott & Co. v. Jones, 52 S.E.2d 219, 230 N.C. 74.

N.D.—Fleckten v. Ward County Farmers' Press, 213 N.W. 498, 55 N.D. 399.

Ohio.—In re Rees' Estate, App., 85 N.E.2d 563.

Okl.—Wilcox Oil Co. v. Lawson, 301 P.2d 686—Continental Oil Co. v. Rapp, 301 P.2d 198—Engle v. Federal Nat. Mortg. Ass'n, 300 P.2d 997—Trawick v. Castleberry, 275 P.2d 292—Dunlap v. Jeffrey, 260 P.2d 1072—Turk v. Wood, 210 P.2d 662, 202 Okl. 112—Texas Co. v. Forson, 167 P.2d 877, 196 Okl. 599—Dick v. Vogt, 162 P.2d 325, 196 Okl. 66—Turman Oil Co. v. Carman, 65 P.2d 963, 179 Okl. 388—Kansas, O. & G. Ry. Co. v. Smith, 32 P.2d 302, 168 Okl. 190—Love County Nat. Bank v. Straughn, 30 P.2d 461, 167 Okl. 446—McKoy v. Keel, 18 P.2d 277, 161 Okl. 258—Fulton v. Teeter, 248 P. 584, 121 Okl. 154—Halsell v. Beartail, 227 P. 392, 107 Okl. 103, certiorari denied Beartail v. Halsell, 45 S.Ct. 126, 266 U.S. 628, 69 L.Ed. 476—Conner v. State, 221 P. 418, 94 Okl. 67—Crosbie v. National Bank of Commerce, 207 P. 311, 86 Okl. 174—American Nat. Bank of Stigler v. Funk, 172 P. 1078, 68 Okl. 169, L.R.A.1918F 1137.

Or.—Orley v. Linnton Plywood Ass'n, 284 P.2d 766, 205 Or. 78—Smith v. Stocker, 271 P.2d 1081, 201 Or. 678—Smith v. State Industrial Accident Commission, 23 P.2d 904, 144 Or. 480, affirmed 25 P.2d 1119, 144 Or. 480—Wakefield, Fries & Co. v. Sherman, Clay & Co., 17 P.2d 319, 141 Or. 270.

Pa.—Howarth v. Miller, 115 A.2d 222, 382 Pa. 419—Crew v. Gallagher, 58 A.2d 179, 358 Pa. 541—Lyntkowski v. Gallo, 164 A. 792, 310 Pa. 32—Lawrence v. King, 150 A. 169, 299 Pa. 568—Appeal of Kaemmerling, 127 A. 439, 282 Pa. 78—In re Kaufmann's Estate, 127 A. 133, 281 Pa. 519.

R.I.—Walsh-Kaiser Co. v. Della Morte, 69 A.2d 689, 76 R.I. 325—Mondillo v. Ward Baking Co., 57 A.2d 447, 73 R.I. 473—William H. Haskell Mfg. Co. v. Smith, 48 A. 2d 406, 72 R.I. 161—Johnson v. Duffy, 12 A.2d 277, 64 R.I. 332—Harvey v. Brown, 183 A. 639, 56 R.I. 34—Correia v. McCormick, 154 A. 276, 51 R.I. 301.

S.C.—Simmons v. Cohen, 88 S.E.2d 679, 227 S.C. 606—King v. Moore, 79 S.E.2d 460, 224 S.C. 400—Jones v. General Motors Corp., 14 S.E.2d 628, 197 S.C. 129—Morris v. Peoples Baking Co., 5 S.E.2d 286, 191 S.C. 501—Harrell v. Sears, Roebuck & Co., 183 S.E. 303, 178 S.C. 482—Central Nat. Bank of Spartanburg v. Kehoe, 128 S.E. 861, 132 S.C. 94.

Tenn.—Wilson v. Wilson, 130 S.W. 2d 140, 23 Tenn.App. 244.

Tex.—Sweatt v. Painter, Civ.App., 210 S.W.2d 442, reversed on other grounds 70 S.Ct. 848, 339 U.S. 629, 94 L.Ed. 1114, rehearing denied 71 S.Ct. 13, 340 U.S. 846, 95 L.Ed. 620—Central Surety & Insurance Corp. v. Hankins, Civ.App., 140 S. W.2d 360—Sullivan v. Hardin, Civ. App., 102 S.W.2d 1110—Metropolitan Casualty Ins. Co. of New York v. Texas Sand & Gravel Co., Civ. App., 68 S.W.2d 551—Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351—Powers v. Ullmann, Stern & Krausse, Civ. App., 16 S.W.2d 910—Rieger v. Smith, Civ.App., 2 S.W.2d 883—Webb v. Hardy, Civ.App., 269 S.W. 243, modified on other grounds Hardy v. Webb, Com.App., 282 S. W. 210—Phipps v. Hemphill, Civ. App., 267 S.W. 310—Gray v. Black, Civ.App., 267 S.W. 291.

Utah.—In re Behm's Estate, 213 P. 2d 657, 117 Utah 151, 40 A.L.R.2d 490.

Va.—Holloway v. Smith, 88 S.E.2d 909, 197 Va. 334—Malbon v. Davis, 40 S.E.2d 183, 185 Va. 748—Town of Narrows v. Giles County, 35 S. E.2d 808, 184 Va. 628—Clevinger v. County School Board of Buchanan County, 124 S.E. 440, 139 Va. 444—Buchanan v. Smith & Hicks, 109 S.E. 231, 131 Va. 1.

Wash.—Huber v. Rosing, 154 P.2d 609, 22 Wash.2d 110—Balkema v. Grolimund, 159 P. 127, 92 Wash. 326.

W.Va.—Williamson v. Levine, 83 S. E. 281, 75 W.Va. 143.

Wyo.—Weidt v. Brannan Motor Co., 260 P.2d 757, 72 Wyo. 1.

4 C.J. p 880 notes 96, 99, 1, p 882 note 22—51 C.J. p 285 note 9.

If verdict should have been directed for the losing party had the case been tried by a jury, the trial court's fact findings will be set aside.

Ala.—Jenkins v. McGeever, 50 So. 142, 162 Ala. 305.

Iowa.—Miller v. Woolsey, 35 N.W.2d 584, 240 Iowa 450.

Speculation or facts not in record

A finding based on speculation or on a consideration of facts not present on the record cannot be sustained.

R.I.—Grande v. Boston Mut. Life Ins. Co., 193 A. 516, 58 R.I. 502.

fied by the evidence that the interests of justice necessitate their nullification.[98.5]

So, error at law requiring reversal may exist where the findings or conclusions are due to, or colored by, an error or misconception of law,[99] or a capricious disbelief in the disposition of the case,[99.5] or are clearly the result of passion or prejudice,[1] prejudgment of the case,[1.5] or an abuse of discretion,[2] on the part of the trial judge. Furthermore, the judgment should be reversed if the facts found by the court, supplemented by those he should have found, will support a judgment for appellant.[2.5]

Apparent inconsistencies in the findings will not cause a reversal if they are susceptible of reconciliation with one another and with the judgment.[3]

98.5 N.J.—Julius Reiner Corp. v. Sutton, 92 A.2d 634, 23 N.J.Super. 93—Trusky v. Ford Motor Co., 83 A.2d 235, 19 N.J.Super. 100.

99. Ala.—Griggs v. Barnes, 78 So.2d 910, 262 Ala. 357—J. R. Watkins Co. v. Williams, 170 So. 194, 233 Ala. 135—Fiquett v. Wade Electric Light & Power Co., 91 So. 357, 206 Ala. 630—Murphree v. Hanson, 72 So. 437, 197 Ala. 246.
Bankers Fire & Marine Ins. Co. v. Terry, 45 So.2d 324, 35 Ala.App. 233—Alabama Dry Dock & Shipbuilding Co. v. Ward, 27 So.2d 710, 32 Ala.App. 535, certiorari denied 27 So.2d 716, 248 Ala. 371—Dolcito Quarry Co. v. Cruse-Crawford Mfg. Co., 100 So. 72, 19 Ala.App. 643.
Colo.—Cole v. Christopher, 217 P.2d 620, 121 Colo. 461—Larison v. Taylor, 266 P. 217, 83 Colo. 430.
Conn.—Rose v. Campitello, 159 A. 887, 114 Conn. 637—Hayward v. Plant, 119 A. 341, 98 Conn. 374.
Fla.—Holland v. Gross, 89 So.2d 255—Mulford v. Central Farmers' Trust Co., 126 So. 762, 99 Fla. 600.
Idaho.—Clark v. Clark, 69 P.2d 980, 58 Idaho 37.
Minn.—Olson v. Olson, 53 N.W.2d 29, 236 Minn. 363—Lee v. Delmont, 36 N.W.2d 530, 228 Minn. 101—Country Club District Service Co. v. Village of Edina, St. Paul Fire & Marine Ins. Co., Intervener, 8 N.W.2d 321, 214 Minn. 26—In re Holden's Trust, 291 N.W. 104, 207 Minn. 211.
Mo.—Maxwell v. Dunham, 297 S.W. 94, 222 Mo.App. 193—Meyer v. Goldsmith, 171 S.W. 606, 185 Mo. App. 707, error dismissed 38 S.Ct. 315, 246 U.S. 677, 62 L.Ed. 934—Meyer v. Bobb, 171 S.W. 600, 185 Mo.App. 685.
N.J.—Hendee v. Wildwood, D. B. & S. L. R. Co., 97 A. 719, 89 N.J.Law 32, affirmed 100 A. 1070, 90 N.J.Law 325.
N.Y.—Richards v. Wood, Dolson Co., 51 N.Y.S.2d 411—Halfon v. Coney Island & B. R. Co., 157 N.Y.S. 785.
N.C.—Van Hanford v. McSwain, 53 S.E.2d 84, 230 N.C. 229—In re Galloway's Estate, 50 S.E.2d 563, 229 N.C. 547.
Okl.—Continental Oil Co. v. Rapp, 301 P.2d 198.
R.I.—Smith v. Pendleton, 163 A. 738, 53 R.I. 79.
S.C.—Simmons v. Cohen, 88 S.E.2d 679, 227 S.C. 606.
S.D.—Johnson v. Shaver, 172 N.W. 676, 41 S.D. 585.
Tex.—Ramsey v. Abilene Building & Loan Ass'n, Civ.App., 57 S.W.2d 877.
Utah.—Clotworthy v. Clyde, 265 P.2d 420, 1 Utah 2d 251.
Wis.—Truelsch v. Northwestern Mut. Life Ins. Co., 202 N.W. 352, 186 Wis. 239, 38 A.L.R. 914—Mechanical Appliance Co. v. A. Kieckhefer Elevator Co., 159 N.W. 557, 164 Wis. 65.
Wyo.—Weidt v. Brannan Motor Co., 260 P.2d 757, 72 Wyo. 1.
4 C.J. p 881 note 4, p 883 note 28—52 C.J. p 154 note 79.

Error in excluding competent evidence

(1) The rule against reversal of the judgment of the trial court sitting without a jury, if sustained by legal evidence, does not apply where the court has erroneously excluded competent evidence.
Ala.—Union Mut. Aid Ass'n of Mobile v. Carroway, 78 So. 792, 201 Ala. 414.
Mass.—Vergnani v. Guidetti, 32 N.E. 2d 272, 308 Mass. 450.

(2) If the trial judge, being of the erroneous opinion that certain evidence is inadmissible, admits it only for the purpose of making a record on appeal and does not consider it in making his findings, the appellate court is at liberty to disregard them.
Or.—Witt v. Campbell-Lakin Segar Co., 134 P. 316, 66 Or. 144.

Overlooking of important evidence

If a trial justice's decision is based on a misconception or an overlooking of important evidence, or on a misconception of law applicable to evidence, decision will be set aside by appellate court.
R.I.—Moschetti v. De Cubellis, 20 A. 2d 253, 66 R.I. 463.

Construction of constitutional or statutory provisions

(1) Where question presented before reviewing court is a question of statutory construction, the reviewing court is not bound by the finding of the trial court.
N.Y.—City of Buffalo v. Roadway Transit Co., 104 N.E.2d 96, 303 N. Y. 453.

(2) In suit by motor express company against state board of equalization, finding by trial court that vehicle hauling only freight was not "stage" in generally accepted and commonly understood meaning of word could only be regarded as one among various sources of information to which appellate court could resort for the purpose of ascertaining what framers of constitution intended by terms they have employed.
Cal.—California Motor Exp. v. State Bd. of Equalization, 283 P.2d 1063, 133 C.A.2d 237.

99.5 Pa.—In re Archer's Estate, 70 A.2d 857, 363 Pa. 534.

1. Colo.—Lampton v. McIntosh, 225 P.2d 54, 123 Colo. 34.
Ky.—Lynn v. Stratton, 218 S.W.2d 962, 309 Ky. 721.
Pa.—In re Archer's Estate, 70 A.2d 857, 363 Pa. 534.
Wis.—Neacy v. Milwaukee County, 128 N.W. 1063, 144 Wis. 210.
4 C.J. p 881 note 2.

Mental balance of court unsettled

Even though the judgment is not manifestly against the weight of evidence and notwithstanding the judge had the opportunity of seeing and hearing the witnesses, the judgment will be reversed where the record indicates that scenes of disorder among the counsel and between the court and counsel were such as to have unsettled the mental balance of the court.
Ohio.—Gordon v. Klein, 19 Ohio N.P., N.S., 289.

1.5 Pa.—In re Archer's Estate, 70 A.2d 857, 363 Pa. 534.

2. Cal.—Lufkin v. Patten-Blinn Lumber Co., 59 P.2d 414, 15 C.A.2d 259.
Iowa.—Konicek v. Conway, 99 N.W. 703.
Tex.—Williamson v. McElroy, Civ. App., 155 S.W. 998.

2.5 N.M.—Sandoval County Board of Education v. Young, 94 P.2d 508, 43 N.M. 397—Greenfield v. Bruskas, 68 P.2d 921, 41 N.M. 346.

3. Kan.—Harbison v. Beets, 113 P. 423, 84 Kan. 11.
4 C.J. p 881 note 11.

§ 1656(4). —— Waiver of Jury or Request for Findings

Findings of the trial court have the force of a jury verdict where the parties have waived the jury, but a request or waiver is not necessary to make the findings binding if the trial court otherwise has authority to try the facts.

Where a trial by jury is waived and the case is tried to the court with the consent of the parties, the findings of the court have the force and effect of a jury verdict;[4] but the absence of a request for declarations of law or findings of fact does not deprive the findings of the trial court of the effect

4. Ala.—Benton Mercantile Co. v. Owensboro Wagon Co., 91 So. 784, 207 Ala. 49.
Lamar v. Johnson, 81 So. 140, 16 Ala.App. 648.
Ariz.—Wright v. Young, 176 P. 583, 20 Ariz. 46.
Ark.—Occidental Life Ins. Co. of Cal. v. Sammons, 271 S.W.2d 922, 224 Ark. 31—Pate v. Fears, 265 S.W. 2d 954, 223 Ark. 365—Wallis v. Stubblefield, 225 S.W.2d 322, 216 Ark. 119—Gray v. Ford, Bacon & Davis, 198 S.W.2d 508, 210 Ark. 995—Wall v. Robling, 183 S.W.2d 605, 207 Ark. 987—Friedman v. Short, 147 S.W.2d 11, 201 Ark. 723—Peterson v. Garland County, 65 S.W.2d 18, 188 Ark. 1167—Connelly v. Swilling, 266 S.W. 266, 167 Ark. 677—Dixon Rogers Trading Co. v. O. O. Scroggins & Co., 206 S.W. 49, 136 Ark. 33.
Fla.—Chakford v. Strum, 87 So.2d 419—King v. Griner, 60 So.2d 177.
Ga.—Engram v. Faircloth, 54 S.E.2d 598, 205 Ga. 577.
Mayor and Council of City of Butler v. Hortman, 29 S.E.2d 816, 70 Ga.App. 855—Mayor and Council of City of Butler v. Hortman, 29 S.E.2d 811, 70 Ga.App. 848—Porter v. Georgia Power Co., 167 S.E. 903, 46 Ga.App. 613—Central of Georgia Ry. Co. v. Houser, 123 S.E. 909, 32 Ga.App. 502—Beverly v. Wilson, 91 S.E. 515, 19 Ga.App. 393.
Hawaii.—Paki v. Saffery, 29 Hawaii 250—Hewahewa v. Lalakea, 27 Hawaii 544.
Ill.—Andrews v. Matthewson, 75 N.E.2d 123, 332 Ill.App. 325. See Rosenfeld v. Ehrhart, 202 Ill.App. 617.
Iowa.—Cleary v. Wolin, 58 N.W.2d 830, 244 Iowa 956—Hull-Dobbs Motor Co. v. Associates Discount Corp., 44 N.W.2d 403, 241 Iowa 1365—A. C. Nelsen Auto Sales v. Turner, 44 N.W.2d 36, 241 Iowa 927—Swift v. Petersen, 37 N.W.2d 258, 240 Iowa 715—**Corpus Juris Secundum cited in** Davis v. Knight, 35 N.W.2d 23, 24, 239 Iowa 1338—Haack v. Rodenbour, 12 N.W.2d 861, 234 Iowa 368—Iowa Methodist Hospital v. Utterback, 6 N.W.2d 284, 232 Iowa 739—Heyland v. Wayne Independent School Dist. No. 5 of Wayne Township, 4 N.W. 2d 278, 231 Iowa 1310—In re Gollobit's Estate, 3 N.W.2d 191, 231 Iowa 1074—Rifkin v. Miller Oil Co., 2 N.W.2d 739, 231 Iowa 1032—Gartin's Grocery v. Lucas County Co-op. Creamery Ass'n, 1 N.W.2d 275, 231 Iowa 204—Miller v. Acme Feed, 293 N.W. 637, 228 Iowa 861—Bukowski v. Security Ben. Ass'n of Topeka, Kan., 265 N.W. 132, 221 Iowa 416—Jones & White v. Park, 264 N.W. 700, 220 Iowa 894—Smith Bros. Mfg. Co. v. Carmichael, 264 N.W. 65, 221 Iowa 301—Sargent v. Mechanics' Ins. Co. of Philadelphia, 247 N.W. 267, 216 Iowa 688—Shierry v. Randall, 243 N.W. 350, 214 Iowa 1053—Versteeg v. Hoeven, 239 N.W. 709, 214 Iowa 92—Edwards v. Cooper, 222 N.W. 376—In re Wise's Estate, 221 N.W. 567, 206 Iowa 939—Crail v. Jones, 221 N.W. 467, 206 Iowa 761—Hart v. Patterson, 220 N.W. 58—Farmers' State Bank of Strahan, Iowa v. Fisher, 216 N.W. 709, 204 Iowa 1049—Stork v. Stork, 209 N.W. 276, 202 Iowa 196—Joseph v. Mangos, 185 N.W. 464, 192 Iowa 729—Kauffman v. Logan, 174 N.W. 366, 187 Iowa 670—Sanders v. Sutlive Bros. & Co., 174 N.W. 267, 187 Iowa 300, 6 A.L.R. 1503—E. H. Emery & Co. v. Chicago, B. & Q. R. Co., 170 N.W. 540, 186 Iowa 1156, rehearing denied 173 N.W. 12, 186 Iowa 1156—Miller v. McConnell, 157 N.W. 943, 179 Iowa 377, modified on other grounds 161 N.W. 461.
Kan.—Scrivner v. Tucker, 201 P.2d 632, 166 Kan. 295.
Ky.—Bristow v. Taul, 219 S.W.2d 641, 310 Ky. 82—Metropolitan Life Ins. Co. v. Edelen's Ex'x, 214 S.W. 2d 769, 308 Ky. 455—Lindon v. Potter, 208 S.W.2d 515, 306 Ky. 511—Mafizola v. Hardy-Burlingham Min. Co., 207 S.W.2d 769, 306 Ky. 492—Rybolt v. Futrell, 176 S.W.2d 269, 296 Ky. 158—Phillips Petroleum Co. v. Cunningham, 169 S.W.2d 628, 293 Ky. 514—Rose v. Reese, 160 S.W.2d 614, 290 Ky. 356—May v. Ken-Rad Corp., 131 S.W.2d 490, 279 Ky. 601—Davis v. Rose, 129 S.W.2d 530, 278 Ky. 752—Wells v. Board of Drainage Com'rs of Muhlenberg County, 35 S.W.2d 886, 237 Ky. 539—Southern Ry. Co. of Kentucky v. Frankfort Distillery, 26 S.W.2d 1025, 233 Ky. 771, certiorari denied 51 S.Ct. 75, 282 U.S. 868, 75 L.Ed. 767—Falls City Plumbing Supply Co. v. Jake's Foundry Co., 3 S.W.2d 1071, 223 Ky. 420—Oliver v. Clark, 273 S.W. 46, 209 Ky. 519—Castleman v. Continental Car Co., 268 S.W. 1100, 207 Ky. 209—Atkinson v. Murphy, 265 S.W. 506, 205 Ky. 138—Breslin v. Sprigg, 238 S.W. 755, 194 Ky. 258—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S.W. 409, 184 Ky. 70.
Me.—Consumers Fuel Co. v. Parmenter, 116 A.2d 138, 151 Me. 83—Public Loan Corp. v. Bodwell-Leighton Co., 89 A.2d 739, 148 Me. 93—Stern v. Fraser Paper, Limited, 22 A.2d 129, 138 Me. 98, 136—Madigan v. Lumbert, 5 A.2d 278, 136 Me. 178—Viele v. Curtis, 101 A. 966, 116 Me. 328.
Mich.—Watrous v. Conor, 254 N.W. 143, 266 Mich. 397.
Miss.—U. S. Fidelity & Guaranty Co. v. State, for Use of Ward, 53 So. 2d 11, 211 Miss. 864—Green v. Pearson, 110 So. 862, 145 Miss. 23.
Mo.—State ex rel. State Social Security Commission v. Butler's Estate, 181 S.W.2d 768, 353 Mo. 14—In re Franz' Estate, 127 S.W.2d 401, 344 Mo. 510—Ferguson v. Long, 107 S.W.2d 7, 341 Mo. 182—Brooks v. Roberts, 220 S.W. 11, 281 Mo. 551—Bingham v. Edmonds, 210 S.W. 885—Coulson v. La Plant, 196 S.W. 1144.
Hill v. Stealey, App., 153 S.W.2d 813—Fischman v. Kahn, App., 67 S.W.2d 776—Central States Life Ins. Co. v. Employers' Indemnity Corporation, App., 67 S.W.2d 543—Costello v. Ashford, 58 S.W.2d 755, 227 Mo.App. 862—In re Buck's Estate, 220 S.W. 716, 204 Mo.App. 1—Jackson v. City of Columbia, App., 217 S.W. 869—Bank of Hillsboro v. Bowen, App., 196 S.W. 1026.
Mont.—Ely v. Montana State Federation of Labor, 160 P.2d 752, 117 Mont. 609.
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United Hail Ins. Co., 18 N.W.2d 112, 145 Neb. 768—In re Donlen's Estate, 16 N.W.2d 731, 145 Neb. 370—McCullough v. Omaha Coliseum Corp., 12 N.W. 639, 144 Neb. 92—Donald v. Heller, 10 N.W.2d 447, 143 Neb. 600—In re Hagan's Estate, 9 N.W.2d 794, 143 Neb. 459, 154 A.L.R. 573—Palmer v. Schaber, 2 N.W.2d 923, 141 Neb. 138—Drainage Dist. No. 2 of Dawson County v. Dawson County Irr. Co., 2 N.W.2d 321, 140 Neb. 866—Neill v. Dakota County, 299 N.W. 294, 140 Neb. 26—Helleberg v. City of Kearney, 297 N.W. 672, 139 Neb. 413—Tullis v. Blixt, 285 N.W. 307, 136 Neb. 142—Department of Banking v. Flotree, 281 N.W. 857, 135 Neb. 416—In re Notke's Estate, 277 N.W. 45, 133 Neb. 739—Live Stock Nat. Bank of South Omaha v. Marshall, 267 N.W. 414, 131 Neb. 185—Corcoran v. Leon's Inc., 252 N. W. 819, 126 Neb. 149—City of Cozad v. Thompson, 252 N.W. 606, 126 Neb. 79—Citizens' State Bank v. Shafer, 252 N.W. 476, 126 Neb. 60—Vohland v. Barron, 252 N.W. 470, 126 Neb. 50—Duncan v. Ross, 239 N.W. 645, 122 Neb. 877—Nebraska Nat. Bank of Omaha v. Parsons, 215 N.W. 102, 115 Neb. 770—State of New Mexico v. First Nat. Bank, 196 N.W. 711, 111 Neb. 477—Wickersham v. Phillips, 177 N.W. 166, 104 Neb. 296—Durland Trust Co. v. Uttley, 172 N.W. 251, 103 Neb. 461—Boschulte v. Elkhorn River Drainage Dist., 167 N.W. 730, 102 Neb. 451, rehearing denied 169 N. W. 240, 102 Neb. 451—Dravo-Doyle Co. v. Metropolitan Water Dist. of City of Omaha, 166 N.W. 558, 102 Neb. 184.

N.Y.—Karameros v. Luther, 2 N.Y. S.2d 598, 166 Misc. 376.

N.C.—Wachovia Bank & Trust Co. v. Miller, 89 S.E.2d 765, 243 N.C. 1—Reid v. Johnston, 85 S.E.2d 114, 241 N.C. 201—Gasperson v. Rice, 83 S.E.2d 665, 240 N.C. 660—Woody v. Barnett, 79 S.E.2d 789, 239 N.C. 420—State Trust Co. v. M. & J. Finance Corp., 78 S.E.2d 327, 238 N.C. 478—Queen City Coach Co. v. Carolina Coach Co., 76 S.E.2d 47, 237 N.C. 697—Town of Burnsville v. Boone, 58 S.E.2d 351, 231 N.C. 577—Cannon v. Blair, 50 S.E.2d 732, 229 N.C. 606—Poole v. Gentry, 49 S.E.2d 464, 229 N.C. 266—Perry v. First Citizens Bank & Trust Co., 27 S.E.2d 636, 223 N.C. 642—Peoples Bank & Trust Co. v. Tar River Lumber Co., 19 S.E.2d 138, 221 N. C. 89—Barkley v. Thomas, 17 S.E. 2d 482, 220 N.C. 341—Blackburn v. Sovereign Camp, W. O. W., 14 S.E. 2d 670, 219 N.C. 602—McGuinn v. City of High Point, 8 S.E.2d 462, 217 N.C. 449, 128 A.L.R. 608—Pence v. Price, 192 S.E. 99, 211 N.C. 707—Hill v. Lindsay, 188 S.E. 406, 210 N.C. 694—Crews v. Crews, 186 S.E. 156, 210 N.C. 217—Marshall v. Bank of Beaufort, 174 S.E. 314, 206 N.C. 466—First Nat. Pictures Distributing Corporation v. Sewell, 171 S.E. 354, 205 N.C. 359—Lawson v. Bank of Bladenboro, 166 S.E. 177, 203 N.C. 368—Atlantic Coast Line R. Co. v. Lenoir County, 157 S.E. 610, 200 N.C. 494—Roebuck v. National Surety Co., 156 S.E. 531, 200 N.C. 196—Morris v. Y. & B. Corporation, 153 S.E. 327, 198 N.C. 705—Colvard v. Dicus Bros., 151 S.E. 191, 198 N.C. 270—Harrison v. City of New Bern, 137 S.E. 582, 193 N.C. 555—Aderholt v. Condon, 128 S.E. 337, 189 N.C. 748—Morganton Mfg. & Trading Co. v. Foy-Seawell Lumber Co., 101 S.E. 214, 178 N.C. 571—Caldwell County v. George, 97 S.E. 507, 176 N.C. 602—Barber v. W. M. Absher Co., 96 S.E. 43, 175 N.C. 602—Savings Loan & Trust Co. v. Yokley, 94 S. E. 102, 174 N.C. 573.

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Zeigler Milling Co. v. Denman, 72 N.E.2d 686, 79 Ohio App. 250—Chilcoat v. Industrial Commission, 29 N.E.2d 54, 64 Ohio App. 537—Hartford Accident & Indemnity Co. v. First Nat. Bank, 22 N.E.2d 517, 61 Ohio App. 217—Weber v. Kohn, 19 N.E.2d 534, 60 Ohio App. 64—Board of Education of Ross Tp. v. Board of Education of Silver Creek Tp., 185 N.E. 207, 44 Ohio App. 335.

Okl.—Rain v. Balph, 293 P.2d 359—Hartford Acc. & Indem. Co. v. McKown, 283 P.2d 792—Givens v. Western Paving Co., 261 P.2d 450—Grigg v. Federal Deposit Ins. Corp., 257 P.2d 290, 208 Okl. 419—Williams v. Garrett, 254 P.2d 369, 208 Okl. 53—Bullard v. Caulk, 243 P.2d 691, 206 Okl. 353—Pugh v. Hassell, 242 P.2d 701, 206 Okl. 290—First State Bank of Noble v. McKiddy, 240 P.2d 1103, 206 Okl. 57—Wallace v. Smith, 240 P.2d 799, 205 Okl. 557—Kansas, O. & G. Ry. Co. v. Searcy, 240 P.2d 440, 206 Okl. 1—Schulze v. Allison, 227 P. 2d 658, 204 Okl. 147—Hawkins v. Wright, 226 P.2d 957, 204 Okl. 55—American Cas. Co. of Reading, Pa. v. Blevins, 223 P.2d 347, 203 Okl. 405—Hendrix v. Ward, 219 P. 2d 203, 203 Okl. 173—Lawton Coco-Cola Bottling Co. v. Shaughnessy, 216 P.2d 579, 202 Okl. 610—Vahlberg v. Callaway, 215 P.2d 543, 202 Okl. 594—Huddleston v. Commerce Acceptance Co., 214 P.2d 905, 202 Okl. 429—Bowser v. Bowser, 211 P. 2d 517, 202 Okl. 97—Coxsey v. Taylor, 209 P.2d 506, 201 Okl. 447—Strahm v. Murry, 199 P.2d 603, 200 Okl. 640—Van Valkenberg v. Venters, 197 P.2d 284, 200 Okl. 504—Henderson v. Cherry, 195 P.2d 760, 200 Okl. 438—Braniff v. Coffield, 190 P.2d 815, 199 Okl. 604—Popplewell v. Gregory, 189 P.2d 941, 199 Okl. 681—Peerson v. Wooton, 184 P.2d 788, 199 Okl. 137—Handler v. Thompson, 182 P.2d 756, 199 Okl. 52—Hoffman v. Barnett, 178 P.2d 89, 198 Okl. 335—Seval v. Hunt, 177 P.2d 673, 198 Okl. 227—Jones v. Spencer, 173 P.2d 745, 197 Okl. 608—Irion v. Griffin, 170 P.2d 226, 197 Okl. 279—North Am. Acc. Ins. Co. v. Canady, 163 P.2d 221, 196 Okl. 105—Motley v. Wallace, 156 P.2d 366, 195 Okl. 187—Seitz v. Largent, 155 P.2d 724, 195 Okl. 162—Camp v. Black Gold Petroleum Co., 154 P.2d 769, 195 Okl. 30—Barrington v. Hembree, 143 P.2d 614, 193 Okl. 340—Rosser-Moon Furniture Co. v. Oklahoma State Bank, 135 P.2d 336, 192 Okl. 169—Morris Estate v. Kirby's Estate, 133 P.2d 896, 192 Okl. 69—Conley Drilling Co. v. Rogers, 132 P.2d 959, 191 Okl. 667—Burroughs Adding Machine Co. v. Bivens-Corhn Co., 119 P.2d 58, 189 Okl. 616—Drummond v. Skinner, 116 P.2d 695, 189 Okl. 279—Oklahoma Natural Gas Co. v. Graham, 111 P.2d 173, 188 Okl. 521—Consolidated School Dist. No. 97 v. Jasper Sipes Co., 109 P.2d 829, 188 Okl. 411—Jewell v. Allen, 109 P.2d 235, 188 Okl. 374—Electric Supply Co. v. Garland, 105 P.2d 758, 188 Okl. 21—Gross v. Alexander, 103 P. 2d 929, 187 Okl. 492—Retail Merchants Ass'n and Associated Retail Credit Men of Tulsa v. Peterman, 99 P.2d 130, 186 Okl. 560—Gorman v. Wilson, 98 P.2d 600, 186 Okl. 435—Sunshine Oil Co. v. Chantry, 96 P.2d 20, 186 Okl. 49—Locke v. Union Graded Dist. No. 6 of Love County, 94 P.2d 547, 185 Okl. 471—Evans v. Raper, 93 P.2d 754, 185 Okl. 426—Atlantic Refining Co. v. Fulsom, 91 P.2d 758, 185 Okl. 357—Cook v. Ripley Consol. School Dist. No. 3, Payne County, 90 P.2d 646, 185 Okl. 80—Lyons v. Lyons, 90 P. 2d 391, 185 Okl. 70—Board of Com'rs of Pottawatomie County v. A. C. Davis & Sons, 86 P.2d 782, 184 Okl. 258—Atlantic Fire Ins. Co. of Raleigh, N. C. v. Smith, 80 P. 2d 216, 183 Okl. 97—Caprock Oil Co. v. Hagan, 76 P.2d 243, 182 Okl. 124—Wewoka Burial Ass'n v. Callaway, 72 P.2d 801, 181 Okl. 136—McConkey v. Brittain, 72 P.2d 348, 181 Okl. 53—Clark v. Ellison, 71 P.2d 609, 180 Okl. 630—Potter v. Nix, 69 P.2d 48, 180 Okl. 196—Stevens v. Rogers, 68 P.2d 821, 180 Okl. 305—Terry v. Water Improvement Dist. No. 5 of Tulsa County, 64 P.2d 904, 179 Okl. 106—Fink v. Ætna Ins. Co., 64 P.2d 268, 179 Okl. 34—Harman v. Franks, 63 P. 2d 54, 178 Okl. 560—Blackford v. Casey, 62 P.2d 1023, 178 Okl. 268—Buzzard v. Dallas Joint Stock Land Bank of Dallas, 62 P.2d 1007, 178 Okl. 271—Sabin v. Midland Savings & Loan Co., 61 P.2d 1091.

178 Okl. 52—New York Life Ins. Co. v. Razzook, 61 P.2d 686, 178 Okl. 57—Leckie v. Dunbar, 59 P.2d 275, 177 Okl. 355—Illinois Bankers Life Ass'n of Monmouth, Ill. v. Palmer, 56 P.2d 370, 176 Okl. 514—Pharaoh & Co. v. Sies, 55 P.2d 1009, 175 Okl. 614—Lowe v. Hickory, 55 P.2d 769, 176 Okl. 426—Anderson v. Christburgh, 55 P.2d 65, 176 Okl. 300—Amerada Petroleum Corporation v. Tucker, 55 P. 2d 54, 176 Okl. 289—Mattes v. Baird, 55 P.2d 48, 176 Okl. 282—Staner v. McGrath, 51 P.2d 795, 174 Okl. 454—Okmulgee Building & Loan Ass'n v. Cutler, 51 P.2d 709, 174 Okl. 614—Truax v. Capitol Life Ins. Co., 26 P.2d 755, 166 Okl. 153—Briggs v. Wright, 18 P.2d 530, 162 Okl. 183—Alco Finance Co. v. Barnes, 13 P.2d 203, 158 Okl. 222—George P. Smith Oil Co. v. Travis Refining Co., 1 P.2d 746, 150 Okl. 279—Baldwin & Baker v. Saunders-Gibson Co., 298 P. 600, 148 Okl. 290—Fulford v. Fulford, 294 P. 183, 147 Okl. 47—Le Flore v. Hansen, 291 P. 542, 144 Okl. 227—Williams v. Swan, 291 P. 103, 144 Okl. 9—Tulsa Stove & Foundry Co. v. Karchmer, 289 P. 737, 144 Okl. 63—Collier v. Edwards, 289 P. 260, 144 Okl. 69, 69 A.L.R. 874—Eagle Creek Oil Co. v. Illinois-Oklahoma Petroleum Corporation, 284 P. 43, 141 Okl. 122—Roddie v. Oil Well Supply Co., 282 P. 454, 140 Okl. 215—Sipes v. Ardmore Book & News Co., 280 P. 805, 138 Okl. 180—Russell v. Lennox Furnace Co., 277 P. 915, 136 Okl. 249—Dobbins v. Texas Co., 275 P. 643, 136 Okl. 40—Prudential Ins. Co. of America v. Ward, 274 P. 648, 135 Okl. 117—Reed v. Sackett, 273 P. 1002, 135 Okl. 69—Robinson v. Hanner, 271 P. 1009, 133 Okl. 212—McCormick v. Stonebraker, 270 P. 1098, 133 Okl. 34—North Carolina Mut. Life Ins. Co. v. Christian, 268 P. 729, 131 Okl. 258—Likowski v. Catlett, 265 P. 117, 130 Okl. 71, 57 A.L.R. 517—Larkin v. Talley, 263 P. 145, 129 Okl. 58—Yargee v. McMillan, 262 P. 682, 129 Okl. 48—Prince & Prince v. Sullivan, 256 P. 23, 124 Okl. 298—Bunnell v. Frederick, 253 P. 56, 123 Okl. 222—Waite Phillips Co. v. Sidwell, 250 P. 415, 120 Okl. 81—Board of Education of Consol. School Dist. No. 40 of Nowata County v. Board of Education of Consol. School Dist. No. 30 of Nowata County, 250 P. 72, 120 Okl. 22—Bellah v. Keith, 249 P. 411, 121 Okl. 265—Sampson v. Lindley, 249 P. 285, 121 Okl. 252—Oklahoma Producing & Refining Corporation v. Pennok Oil Co., 247 P. 667, 118 Okl. 170—Blotz-Henneman Seed Co. v. Carroll, Brough, Robinson & Humphreys, 244 P. 781, 116 Okl. 285—Beams v. Step, 244 P. 775, 116 Okl. 291—Boggs v. McCasland, 244 P. 768, 117 Okl. 54—Baker v. Jack, 241 P. 478, 112 Okl. 142—Robison v. Thompson, 236 P. 395, 108 Okl. 160—Jackson v. Turner, 231 P. 290, 107 Okl. 167—Keaton v. Branch, 231 P. 289, 104 Okl. 287—Myers v. Denison, 230 P. 742, 104 Okl. 208—Pioneer Mortg. Co. v. Ragsdale, 230 P. 259, 107 Okl. 82—First Nat. Bank v. Liberty Nat. Bank of Tulsa, 229 P. 258, 100 Okl. 221—Hobbs v. McGhee, 229 P. 240, 100 Okl. 210—Evans v. Irby, 227 P. 433, 100 Okl. 60—Halsell v. Beartail, 227 P. 392, 107 Okl. 103, certiorari denied Beartail v. Halsell, 45 S.Ct. 126, 266 U.S. 628, 69 L.Ed. 476—Johnson v. Richards, 226 P. 559, 99 Okl. 254—Breene & Kinnear v. MacWhyte Co., 224 P. 959, 101 Okl. 247—Sinclair Refining Co. v. Keith, 221 P. 1003, 97 Okl. 55—Wood v. Wood, 221 P. 24, 94 Okl. 86—Billings v. Eagle Printing & Publishing Co., 221 P. 13, 96 Okl. 168—Billings v. News Pub. Co. of Enid, 221 P. 12, 96 Okl. 167—Cooper v. Long, 220 P. 610, 93 Okl. 239—Planters' Cotton & Ginning Co. v. Blackburn, 217 P. 395, 92 Okl. 15—Dustin Grocery & Feed Co. v. Lucas, 215 P. 417, 91 Okl. 11—Ledford v. Huggans, 214 P. 687, 89 Okl. 224—Chadwell v. Brown, 211 P. 410, 88 Okl. 44—Schaff v. McGuyre, 208 P. 263, 87 Okl. 41—Gaines Bros. & Co. v. Citizens' Bank of Henryetta, 204 P. 112, 84 Okl. 265—Beard v. Herndon, 203 P. 226, 84 Okl. 142—Anicker v. Doyle, 202 P. 281, 84 Okl. 62—Armstrong v. Phillips, 198 P. 499, 82 Okl. 82—Lamb v. Bennett, 196 P. 543, 81 Okl. 41—Barnett v. Barnett, 189 P. 743, 78 Okl. 249—Sims v. Ward, 188 P. 884, 78 Okl. 72—Meagher v. Harjo, 179 P. 757, 72 Okl. 206—Scott v. Iman, 176 P. 81, 74 Okl. 13—Mitchell v. Gafford, 175 P. 227, 73 Okl. 152—Stone v. Stone, 168 P. 423, 66 Okl. 123—Schafer v. Lee, 166 P. 94, 64 Okl. 106—Gilkeson v. Callahan, 161 P. 789, 62 Okl. 45—Falls City Clothing Co. v. Sweazea, 160 P. 728, 61 Okl. 154.

Or.—McMillan v. Kik, 181 P.2d 128, 181 Or. 270—Lawrence v. Gladitsch, 169 P.2d 877, 179 Or. 111—State v. American Surety Co. of New York, 300 P. 511, 137 Or. 394, rehearing denied 2 P.2d 1116, 137 Or. 394—Leonard v. King, 274 P. 116, 128 Or. 216—State v. Warren Const. Co., 244 P. 870, 117 Or. 633—O'Day v. Spencer, 189 P. 394, 96 Or. 73—Oregon Engineering & Construction Co. v. City of West Linn, 185 P. 750, 94 Or. 234.

Pa.—Perkins v. Halpren, 101 A. 741, 257 Pa. 402.

U. S. Gypsum Co. v. Birdsboro Steel Foundry & Mach. Co., 52 A. 2d 344, 160 Pa.Super. 548—Wilson v. Malenock, 194 A. 508, 128 Pa.Super. 544.

R.I.—Lundell v. Lamoriello, 67 A.2d 401, 75 R.I. 470—Berger v. Furtado, 64 A.2d 194, 75 R.I. 113.

S.C.—Weston v. Metropolitan Life Ins. Co., 33 S.E.2d 386, 206 S.C. 128, 157 A.L.R. 1198—Little v. Southern Cotton Oil Co., 153 S.E. 462, 156 S. C. 480.

Tenn.—Moore v. Chase, 156 S.W.2d 84, 25 Tenn.App. 239.

Tex.—Rinn v. Holmstrom, Civ.App., 243 S.W.2d 862—Capitol Steel & Iron Co. v. Henderson, Civ.App., 239 S.W.2d 851—Great Atlantic & Pacific Tea Co. v. Athens Lodge No. 165, A. F. & A. M., Civ.App., 207 S.W.2d 217, error refused no reversible error—Highsmith v. Tyler State Bank & Trust Co., Civ. App., 194 S.W.2d 142, followed in Coleman v. Tyler State Bank & Trust Co., 194 S.W.2d 145, error refused—Biggs v. Hinds, Civ.App., 177 S.W.2d 288, error refused—Employers' Liability Assur. Corp. v. Kolp, Civ.App., 149 S.W.2d 209, error dismissed, judgment correct—Remington Rand v. Sugarland Industries, Civ.App., 122 S.W.2d 729, reversed on other grounds 153 S. W.2d 477, 137 Tex. 409—Hodges v. Hodges, Civ.App., 111 S.W.2d 779—Lines v. Robinson, Civ.App., 91 S.W.2d 1108—St. Louis, B. & M. Ry. Co. v. Bonded Warehouse of San Benito, Civ.App., 255 S.W. 673—Hart v. Hulsey, Civ.App., 196 S. W. 302.

Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257—Powell v. Merrill, 103 A. 259, 92 Vt. 124.

Va.—Duncan v. Barbour, 49 S.E.2d 260, 188 Va. 53—Mitchell v. Kennedy, 186 S.E. 40, 166 Va. 346—Hunter v. Hollingsworth, 183 S.E. 508, 165 Va. 583—Birdsong & Co. v. American Peanut Corporation, 141 S.E. 759, 149 Va. 755—Chesapeake & O. Ry. Co. v. Westinghouse, Church, Kerr & Co., 123 S.E. 352, 138 Va. 647, affirmed 46 S.Ct. 220, 270 U.S. 260, 70 L.Ed. 576—Town of Appalachia v. Mainous, 101 S. E. 359, 126 Va. 419.

Wash.—Kennedy v. Meilicke Calculator Co., 155 P. 1043, 90 Wash. 238.

W.Va.—De Stubner v. United Carbon Co., 28 S.E.2d 593, 126 W.Va. 363—Arnold v. Potomac Improvement Co., 190 S.E. 685, 118 W.Va. 425.

Effect of statutes or rules requiring review of evidence in action tried before court sitting without jury see supra § 1656(1).

Trial of equity case to law court

Although an action should have been tried on the equity side of the court, if the cause is actually tendered to the court sitting on the law side, and a jury waived, the findings of the court will be accorded conclusiveness of a verdict of a jury.

Iowa.—Turner v. Hartford Fire Ins. Co., 172 N.W. 166, 185 Iowa 1363.

which would otherwise be accorded them;[5] and the findings are given the same weight where the law of its own force makes the trial judge the trier of the facts, as where the right to a jury has been waived,[6] or the court has discharged the jury on its own motion without exception being taken by the parties.[7]

Submission to judge after disagreement of jury. If the case has first been submitted to a jury who have disagreed and then submitted to the trial judge, the findings of the judge upon the same testimony as was submitted to the jury are not accorded the same weight that they would otherwise have had.[8]

§ 1656(5). —— Refusals to Find and Findings Not Strictly of Fact or Formally Expressed

Although there is some authority to the contrary, findings on mixed questions of law and fact and implied findings have been held within the general rule giving conclusive effect to the findings of the trial court on appeal.

Findings on mixed questions of law and fact have been held within the general rule giving conclusive effect to the findings of the trial court on appeal,[9] and so have implied findings of fact made by a trial court in support of its judgment.[10] Even though a finding of fact appears in the conclusions of law, it is entitled to the weight usually given a finding of fact.[10.5] As to mixed questions of law and fact, which are so interwoven that it is impossible to review the trial court's legal conclusions without reviewing its fact findings, however, there is some authority to the contrary.[11] Moreover, it has been held that where a trial judge fails to make an express finding on an important issue, the finding

5. Mass.—Corkery v. Dorsey, 111 N. E. 795, 223 Mass. 97.
Mo.—Skinner & Kennedy Stationery Co. v. Lammert Furniture Co., 166 S.W. 1079, 182 Mo.App. 549.
4 C.J. p 881 note 13.

6. Ark.—Matthews v. Cargill, 188 S.W. 564, 125 Ark. 136.

7. Ky.—Caddell v. Lovitt, 32 S.W. 2d 989, 236 Ky. 181.

8. Va.—John P. Pettyjohn & Sons v. Basham, 100 S.E. 813, 126 Va. 72.

9. U.S.—Rutan v. Johnson & Johnson, N.J., 231 F. 369, 145 C.C.A. 363.
Cal.—Thompson v. Municipal Bond Co., 73 P.2d 274, 23 C.A.2d 402—In re Dotta's Estate, 64 P.2d 741, 18 C.A.2d 763—Martinelli v. Stabnau, 52 P.2d 956, 11 C.A.2d 38.
Okl.—Reynolds v. Hill, 143 P. 1155, 43 Okl. 749, affirmed Hill v. Reynolds, 37 S.Ct. 163, 242 U.S. 361, 61 L.Ed. 363.
Utah.—Lambert v. Sine, 256 P.2d 241.
Vt.—Jeffords v. Poor, 55 A.2d 605, 115 Vt. 147.
4 C.J. p 881 note 12.

10. Ariz.—Hagan v. Cosper, 292 P. 1020, 37 Ariz. 209—Shorey v. Daniel, 234 P. 551, 27 Ariz. 496—North British & Mercantile Ins. Co. v. Dillman, 206 P. 171, 24 Ariz. 1.
Ark.—Briant v. Carl-Lee Bros., 249 S.W. 577, 158 Ark. 62.
Cal.—Bailey v. Los Angeles County, 293 P.2d 449, 46 C.2d 132—Murray v. Superior Court In And For City and County of San Francisco, 284 P.2d 1, 44 C.2d 611.
Goldberg v. Paramount Oil Co., 300 P.2d 329, 143 C.A.2d 215—Voss v. Friedgen, 296 P.2d 424, 141 C.A. 2d 135—Byrnes v. Johnson, 292 P. 2d 1, 138 C.A.2d 443—Murray v. Superior Court In And For City and County of San Francisco, 284 P.2d 1, 44 C.A.2d 611—Gross v. Wright & Callender Bldg. Co., 2 P.2d 857, 116 C.A. 480—Panzer-Hamilton Co. v. Bray, 274 P. 769, 96 C.A. 460—Kier Singh v. Basant Singh, 240 P. 1025, 74 C.A. 396.
Mass.—Bodman v. Martha's Vineyard Nat. Bank of Tisbury, 111 N.E.2d 670, 330 Mass. 125—Town of Seekonk v. Anthony, 103 N.E.2d 324, 328 Mass. 236—Attorney General v. City of Woburn, 79 N.E.2d 187, 322 Mass. 634—Mahoney v. Norcross, 187 N.E. 227, 284 Mass. 153.
Mich.—Feldman v. Preston, 160 N.W. 655, 194 Mich. 352.
Mo.—City of Brookfield v. McCollum, 5 S.W.2d 10, 319 Mo. 824.
Bokata v. Illinois Bankers Life Ins. Co., App., 195 S.W.2d 888—White v. Foster, App., 194 S.W.2d 723—Knotts v. Sentinel Life Ins. Co., App., 67 S.W.2d 798.
Mont.—Baker v. Pennsylvania Fire Ins. Co., 263 P. 93, 81 Mont. 271—Clark v. National Surety Co., 261 P. 618, 81 Mont. 113.
N.H.—Messier v. Ledoux, 164 A. 217, 86 N.H. 115—Marshall v. Boston & M. R. R., 124 A. 550, 81 N.H. 548.
Okl.—Wilson v. Wonderly, 281 P. 957, 139 Okl. 232—Nations v. Stone, 217 P. 1031, 92 Okl. 18—Lieberman v. Merring, Martin & Boise Co., 203 P. 1045, 84 Okl. 168.
Tex.—Citizens State Bank of Clarinda, Iowa, v. Del-Tex Inv. Co., Civ. App., 123 S.W.2d 450, error dismissed, judgment correct—Snidow v. Gage, Civ.App., 118 S.W.2d 910—Martinez v. Kilday, Civ.App., 117 S.W.2d 151—Campbell v. Eastern Seed & Grain Co., Civ.App., 109 S. W.2d 997—Mathes v. Walker, Civ. App., 66 S.W.2d 1093—Weierhauser v. Bennett, Civ.App., 19 S.W.2d 572—City of San Antonio v. Uvalde Rock Asphalt Co., Civ.App., 11 S. W.2d 829—First Texas Prudential Ins. Co. v. Sorley, Civ.App., 272 S. W. 346—First State Bank & Trust Co. of Taylor v. Blum, Civ.App., 239 S.W. 1035.
Wis.—In re Olson's Estate, 72 N.W. 2d 717, 271 Wis. 199—In re Daniels' Will, 274 N.W. 435, 225 Wis. 502.
Wyo.—State Bank of Wheatland v. Turpen, 34 P.2d 1, 47 Wyo. 284, rehearing denied 37 P.2d 679, 47 Wyo. 328.
4 C.J. p 877 note 79.

General finding

A general finding in favor of one party or another is a finding of every special fact necessary to sustain it and conclusive as to such facts, if there is evidence to support a finding of their existence.
Kan.—Platt v. Woodland, 246 P. 1017, 121 Kan. 291—Johnston v. Wear, 204 P. 141, 110 Kan. 237.
Okl.—Rain v. Balph, 293 P.2d 359—Turner v. Turner, 14 P.2d 388, 159 Okl. 93—National Bank of Commerce v. Shepard, 243 P. 749, 116 Okl. 113—Barnett v. Hentges, 238 P. 188, 111 Okl. 91—Theodore Maxfield Co. v. Andrus, 155 P. 1163, 56 Okl. 247—Conner v. Warner, 152 P. 1116, 52 Okl. 630—Davis v. First State Bank of Norman, 152 P. 122, 51 Okl. 498—Shenners v. Adams, 148 P. 1023, 46 Okl. 368.
4 C.J. p 883 note 33 [j].

10.5 Cal.—Torrance Nat. Bank v. Enesco Federal Credit Union, 285 P.2d 737, 134 C.A.2d 316.

11. U.S.—Connor v. Excess Ins. Co. of America, C.C.A.N.J., 67 F.2d 901.

implied in his decision on such issue lacks the persuasive force that it would otherwise have.[11.5]

Refusal to find. Where a refusal to find facts involves the weighing of evidence, it is as conclusive on appeal as affirmative findings;[12] and error of the court in not making an additional finding will not cause a reversal if the judgment is supported by sufficient unattacked controlling facts included in the court's findings;[13] although, where special findings have been requested and refused, the appellate court may review the evidence to see if it is such as imposed upon the trial court the duty to grant the request for special findings.[14]

An oral opinion rendered by the trial court, giving the reasons for its decision, does not amount to a judicial finding of facts, nor have any legal effect as such.[15]

§ 1656(6). —— When or by Whom Findings Made or Prepared

Findings made following the sustaining of a demurrer to the evidence, and concurrent findings made by two or more courts, are entitled to great weight; but less weight is usually accorded to findings prepared by a judge in vacation, or by a person other than the judge who took the evidence.

Findings of fact made following the sustaining of a demurrer to the evidence have the same force and effect as findings made by the court after weighing the evidence in a case submitted for decision on the testimony of both parties.[15.50] If there have been concurrent findings of fact on the same question by two or more courts below, the appellate court will be particularly reluctant to disturb the findings.[16]

The same weight and standing ordinarily accorded to findings of fact made by the trial court are not attributed to findings prepared by counsel for the prevailing party;[17] findings of a trial judge in proceedings had in vacation rather than when the court was in session;[18] nor, according to some authority, to findings made by a judge other than the one who took the evidence;[19] but other cases have held that the fact that one judge hears the evidence and another decides the case on the transcript thereof does not lessen the effect to be given to the findings on appeal.[20] Furthermore, if the transcript of the evidence taken before another judge forms only a partial basis for the fact findings in that the judge making the findings considers not only the transcript but also all the evidence in the cause, including evidence taken before him and an authorized examination of the premises involved, the appellate court will not weigh the evidence or review the facts.[21]

§ 1656(7). —— Jurisdictional Facts

Findings of facts relating to the trial court's jurisdiction will be reviewed, and must be fairly sustained by the evidence.

The general rule preventing the appellate court from reviewing the facts applies only to the review of the trial of the merits of the case, and where the review is of the decision of the trial court on the question of jurisdiction, the reviewing court will examine the evidence of the facts bearing on that

11.5 R.I.—Lamb v. Feyler, 26 A.2d 752, 68 R.I. 83.

12. U.S.—Pennok Oil Co. v. Roxana Petroleum Co. of Oklahoma, C.C.A. Okl., 289 F. 416—Nashville Interurban Ry. v. Barnum, N.Y., 212 F. 634, 129 C.C.A. 170.

13. Conn.—Fine v. Moomjian, 158 A. 241, 114 Conn. 226.

14. U.S.—Bunday v. Huntington, S. D., 224 F. 847, 140 C.C.A. 415.

15. Utah.—Utah Commercial & Savings Bank v. Fox, 140 P. 660, 44 Utah 323.

15.50 N.M.—Pankey v. Hot Springs Nat. Bank, 119 P.2d 636, 46 N.M. 10.

16. Colo.—Bivens v. Hull, 145 P. 694, 58 Colo. 338.
Hazard v. Fostoria Gold Mining Co., 146 P. 1072, 27 Colo.App. 118.
Ill.—Farley v. Mitchell, 282 Ill.App. 555—In re Swift's Estate, 267 Ill. App. 224.
La.—Smith v. Sladovich & Rosengarten, 8 La.App. 527.
N.Y.—Forster v. Manufacturers' Trust Co., 196 N.E. 294, 267 N.Y. 371.
Pa.—In re Boyle's Estate, 62 Pa. Super. 467.
4 C.J. p 881 note 8, p 884 note 34, p 886 note 48.
Concurrent findings on conflicting evidence see infra § 1657.

17. U.S.—Process Engineers v. Container Corporation of America, C. C.A.Ill., 70 F.2d 487, certiorari denied 55 S.Ct. 102, 293 U.S. 588, 79 L.Ed. 683.
4 C.J. p 883 note 32.

18. Tex.—White v. Perkins, Civ.App., 65 S.W.2d 423.

19. La.—Yarbrough v. Marks, 121 So. 301, 168 La. 57.
Smythe v. Great Am. Indem. Co., App., 35 So.2d 267—Walker v. Mire, App., 197 So. 798.
Pa.—Rutter v. Rutter, 141 A. 146, 292 Pa. 343.
In re Gorgas' Estate, 24 A.2d 171, 147 Pa.Super. 319.
Findings by trial judge who does not see or hear witnesses generally see supra § 1656 (1).
Findings made by successor judge who heard additional testimony
Where case was tried before judge who was assigned during interim between death of incumbent and election of his successor, and successor who was elected and qualified before case was decided heard additional testimony and then decided case orally, the rule applicable to the finding of facts by the lower court had little if any application.
La.—Morehead v. Shreveport Rys. Co., App., 195 So. 95.

20. Cal.—Tupman v. Haberkern, 280 P. 970, 208 C. 256.
Minn.—Bicanic v. J. C. Campbell Co., 19 N.W.2d 7, 220 Minn. 107, followed in Czupiy v. North Star Timber Co., 19 N.W.2d 11, 220 Minn. 116, and 20 N.W.2d 885, 220 Minn. 115, certiorari denied 66 S.Ct. 805, 327 U.S. 787, 90 L.Ed. 1014.
4 C.J. p 881 note 14.

21. Idaho.—Mahaffey v. McNicoll, 244 P. 401, 42 Idaho 108.

question;[22] and on such facts there must be enough testimony fairly to sustain the trial court's findings.[23]

§ 1656(8). —— Conclusions or Inferences from Facts or Undisputed Evidence

The appellate court is not bound by the conclusions or inferences drawn by the trial court from the facts found, and will review to determine whether the findings made support the judgment rendered or the ultimate conclusion drawn.

While it is the province of the trial court to draw reasonable inferences from the facts established,[23.50] the appellate court is not bound by the conclusions or inferences the trial court draws from the facts found,[23.55] and, in the absence of statutes providing otherwise, the appellate court will always review to determine whether the findings made support the judgment rendered, or the ultimate conclusion drawn.[24] For the conclusions of the trial court to stand they must find support in the subordinate facts.[25]

Conclusions or ultimate findings are subject to review and correction where they have been reached by way of deduction or inference from probative or subordinate facts,[26] or admitted undisputed facts,[27] or where the findings are deduced or inferred

22. U.S.—Davis v. Anderson-Tully Co., Ark., 252 F. 681, 164 C.C.A. 521.

23. Iowa.—Little v. Minneapolis Threshing Mach. Co., 147 N.W. 872, 166 Iowa 651.

23.50 Cal.—Healy v. Yellow Cab Co. of California, 90 P.2d 116, 32 C.A. 2d 479.

23.55 Ariz.—Hansen v. Oakley, 263 P.2d 807, 76 Ariz. 307.
N.C.—Heath v. Kresky Mfg. Co., 87 S.E.2d 300, 242 N.C. 215.

24. Ala.—Dolcito Quarry Co. v. Cruse-Crawford Mfg. Co., 100 So. 72, 19 Ala.App. 643—Johnson v. McFry, 68 So. 718, 13 Ala.App. 619—Johnson v. McFry, 68 So. 716, 14 Ala.App. 170.
Cal.—Hudson v. Becker, 56 P.2d 249, 12 C.A.2d 743.
Colo.—International Trust Co. v. Palisade Light, Heat & Power Co., 153 P. 1002, 60 Colo. 397.
Conn.—Pillou v. Connecticut Co., 123 A.2d 470, 143 Conn. 481—Hudick v. Tycz, 118 A.2d 306, 142 Conn. 715—Ullman ex rel. Eramo v. Payne, 16 A.2d 286, 127 Conn. 239.
Ind.—Terry v. Davenport, 112 N.E. 998, 185 Ind. 561.
Iowa.—Artificial Ice Co. v. Reciprocal Exchange, 184 N.W. 756, 192 Iowa 1133.
Kan.—In re Horton's Estate, 118 P. 2d 527, 154 Kan. 269.
Minn.—Naffke v. Naffke, 62 N.W.2d 63, 240 Minn. 468—In re Calich's Estate, 8 N.W.2d 337, 214 Minn. 292.
Mo.—Gershon v. Ashkanazie, 199 S. W.2d 38, 39 Mo.App. 1012—Roberson v. Brotherhood of Locomotive Firemen and Enginemen, 114 S.W. 2d 136, 233 Mo.App. 159, certiorari quashed State ex rel. Brotherhood of Locomotive Firemen and Enginemen v. Shain, 123 S.W.2d 1, 343 Mo. 666.
N.J.—Harris v. Merlino, 61 A.2d 276, 137 N.J.Law 717—Keehn v. Hi-Grade Coal & Fuel Co., 50 A.2d 454, 135 N.J.Law 52.
Pa.—In re McGrath's Estate, 179 A. 599, 319 Pa. 309.
Wash.—Marich v. Moe, 103 P.2d 362, 4 Wash.2d 343—Aquino v. Alaska S. S. Co., 91 P.2d 1014, 199 Wash. 490.

Conclusions of law
The rule giving conclusive effect to the findings of the trial court does not exclude inquiry into the question of whether, conceding the truth of the fact findings, they justify the conclusions of law drawn therefrom by the trial court.
Iowa.—Artificial Ice Co. v. Reciprocal Exchange, 184 N.W. 756, 192 Iowa 1133.

Relation to theory of case
Rules that supreme court must accept ultimate facts as stated by trial court if sustained by evidence and that where findings are silent as to facts necessary to sustain issues, such facts are regarded as not proved, are intended to apply only where and to extent that findings and conclusions as stated are related to, and support the theory of, case on which issues are drawn.
Ind.—Miller v. Ortman, 136 N.E.2d 17, 235 Ind. 641.

25. Cal.—Falk v. Falk, 120 P.2d 714, 48 C.A.2d 762.
Conn.—Comstock v. City of New Britain, 151 A. 335, 112 Conn. 25—Shaeffer v. O. K. Tool Co., 148 A. 330, 110 Conn. 528.

26. Cal.—Rudelson v. Paules, 264 P. 1096, 203 C. 453.
Laine v. Weddell, 173 P.2d 567, 76 C.A.2d 610.
Conn.—Del Gaudio v. Ingerson, 115 A.2d 665, 142 Conn. 564—Burk v. Corrado, 165 A. 682, 116 Conn. 511—Harvey Realty Co. v. Borough of Wallingford, 150 A. 60, 111 Conn. 352—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529—Griffin v. Smith, 125 A. 465, 101 Conn. 219—Hadfield v. Tracy, 125 A. 199, 101 Conn. 118, 34 A.L.R. 581—Ritch v. Robertson, 106 A. 509, 93 Conn. 459, 7 A.L.R. 81.
Ind.—Husbands v. Indiana Travelers' Acc. Ass'n, 133 N.E. 130, 194 Ind. 586, 35 A.L.R. 1184.
La.—Ellis v. Kolb, App., 196 So. 89.
Mass.—Caissie v. City of Cambridge, 58 N.E.2d 169, 317 Mass. 346—Cooperstein v. Bogas, 58 N.E.2d 131, 317 Mass. 341—Swinford v. Welch, 54 N.E.2d 932, 316 Mass. 112—Malone v. Walsh, 53 N.E.2d 126, 315 Mass. 484—Ryerson v. Fall River Philanthropic Burial Soc., 52 N.E.2d 688, 315 Mass. 244—Johnson v. Warner Bros. Circuit Management Corp., 17 N.E.2d 147, 301 Mass. 348—Emery v. Emery, 105 N.E. 879, 218 Mass. 227.
Pa.—In re Jac's Estate, 49 A.2d 360, 355 Pa. 137—Lawrence v. King, 150 A. 169, 299 Pa. 568.
In re Heath's Estate, 41 A.2d 353, 156 Pa.Super. 597.
4 C.J. p 883 note 31, p 886 note 53.

Where different conclusions can be rationally drawn from the evidence, the case is one for the trial court's determination in a suit tried without a jury.
Cal.—Bowden v. Wooden, 13 P.2d 811, 125 C.A. 115.
Wyo.—**Corpus Juris Secundum cited in** Hench v. Robinson, 291 P.2d 417, 420, 75 Wyo. 1.

27. Ariz.—Hansen v. Oakley, 263 P.2d 807, 76 Ariz. 307.
Ark.—South Miller County Highway Dist. v. Dorsey, 297 S.W. 833, 174 Ark. 553.
Cal.—City of Los Angeles v. Gage, 274 P.2d 34, 127 C.A.2d 442—Van Fleet v. West American Ins. Co., 42 P.2d 378, 5 C.A.2d 125, rehearing denied 43 P.2d 557, 5 C.A.2d 125.
Colo.—Cahill v. Readon, 273 P. 653, 85 Colo. 9.
Ind.—Keltner v. Patton, 185 N.E. 270, 204 Ind. 550.
American Income Ins. Co. v. Kindlesparker, 200 N.E. 432, 102 Ind.App. 445.

from facts found by the court,[28] or a jury,[29] and they will be set aside if the inference or conclusion drawn was erroneous or entirely unwarranted.[30]

The function of the appellate court in this connection is not, however, to determine whether or not it would have drawn the same conclusion as the trial court but simply to ascertain whether or not the conclusions of the latter court are so illogically drawn as to be wholly unjustifiable;[31] and the conclusions will not be disturbed when they are supported by the subordinate or subsidiary facts,[32] or are legally inferable therefrom,[33] or unless it ap-

Iowa.—**Corpus Juris Secundum cited in** In re Mathews' Estate, 12 N.W. 2d 162, 164, 234 Iowa 188.
La.—Tinker v. Hirst, 110 So. 324, 162 La. 209.
Nev.—**Corpus Juris Secundum cited in** Garaventa v. Gardella, 169 P.2d 540, 544, 63 Nev. 304—Cassinelli v. Humphrey Supply Co., 183 P. 523, 43 Nev. 208.
S.C.—Tarver v. Town of Johnston, 175 S.E. 821, 173 S.C. 333.
Tex.—Whittle & Kavanaugh's Third Co. v. Reynolds, Civ.App., 69 S.W. 2d 181—Cattlemen's Trust Co. of Ft. Worth v. Turner, Civ.App., 182 S.W. 438, reversed on other grounds Com.App., 215 S.W. 831.
Wash.—Pacific Coast Cement Co. v. Metropolitan Casualty Ins. Co. of New York, 23 P.2d 890, 173 Wash. 534—Westland v. Post Land Co., 197 P. 44, 115 Wash. 329.
Wis.—Weigell v. Gregg, 154 N.W. 645, 161 Wis. 413, L.R.A.1916B 856.
4 C.J. p 886 notes 51, 53.

Uncontradicted testimony as to a fact does not make the fact an undisputed one, since the trial court is at liberty to discredit or disbelieve the testimony.
Conn.—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529.

28. Mass.—Mellon Nat. Bank & Trust Co. v. Commissioner of Corporations and Taxation, 100 N.E.2d 370, 327 Mass. 631.
N.C.—Hardy v. Dahl, 187 S.E. 788, 210 N.C. 530.
Wis.—McMillen v. Strange, 150 N.W. 434, 159 Wis. 271.
4 C.J. p 886 note 54.

Wrong deduction from facts found
Where the court, after finding that the facts are undisputed, states conclusions contrary to those legally deducible from such facts, such conclusions are not conclusive on appeal.
Wis.—McMillen v. Strange, 150 N.W. 434, 159 Wis. 271.

29. Tex.—Kirby Petroleum Co. v. Houk, Civ.App., 51 S.W.2d 416, reversed on other grounds Houk v. Kirby Petroleum Co., Com.App., 65 S.W.2d 496, rehearing denied 67 S.W.2d 1112.

30. Cal.—Wells v. Comstock, 297 P. 2d 961, 4 C.2d 528.
City of Los Angeles v. Gage, 274 P.2d 34, 127 C.A.2d 442—Klein v. Farmer, 194 P.2d 106, 85 C.A.2d 545—Alkus v. Johnson-Pacific Co., 181 P.2d 72, 80 C.A.2d 1.
Conn.—Buckley v. Webb, 122 A.2d 220, 143 Conn. 309—Underwood Typewriter Co. v. City of Hartford, 122 A. 91, 99 Conn. 329.
Mass.—Perkins v. Becker's Conservatories, 61 N.E.2d 833, 318 Mass. 407.
Minn.—Graphic Arts Educational Foundation v. State, 59 N.W.2d 841, 240 Minn. 143.
N.H.—Hartford Acc. & Indem. Co. v. Come, 123 A.2d 267, 100 N.H. 177.
4 C.J. p 881 note 5.

31. Conn.—Palumbo v. George A. Fuller Co., 122 A. 63, 99 Conn. 353.
Iowa.—**Corpus Juris Secundum cited in** Davis v. Knight, 35 N.W.2d 23, 25, 239 Iowa 1338—**Corpus Juris Secundum quoted in** Home Ins. Co., N. Y. v. Fidelity-Phenix Fire Ins. Co., 279 N.W. 425, 432, 225 Iowa 36.

32. Cal.—In re Raphael's Estate, 206 P.2d 391, 91 C.A.2d 931.
Conn.—Goldstein v. City of Hartford, 131 A.2d 927—City of Norwalk v. Trombetta, 77 A.2d 77, 137 Conn. 318—Thompson v. Lupone, 62 A.2d 861, 135 Conn. 236—Holtz v. S. Landow Fruit & Produce Co., 5 A.2d 882, 125 Conn. 358—Connecticut Light & Power Co. v. Fleetwood, 200 A. 334, 124 Conn. 386—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529—Duffy v. J. W. Bishop Co., 122 A. 121, 99 Conn. 573—Andrews v. Olaff, 122 A. 108, 99 Conn. 530.
Iowa.—**Corpus Juris Secundum cited in** In re Mathews' Estate, 12 N.W. 2d 162, 165, 234 Iowa 188—**Corpus Juris Secundum quoted in** Home Ins. Co., N. Y. v. Fidelity-Phenix Fire Ins. Co., 279 N.W. 425, 432, 225 Iowa 36.
Mass.—Cantor v. Cantor, 92 N.E.2d 368, 325 Mass. 719—Winslow Bros. & Smith Co. v. Hillsborough Mills, 65 N.E.2d 1, 319 Mass. 137—Colby v. Callahan, 42 N.E.2d 801, 311 Mass. 727—Greenberg v. Flaherty, 27 N.E.2d 683, 306 Mass. 95, 129 A.L.R. 846—Ramseyer v. Conlon, 21 N.E.2d 272, 303 Mass. 270—Robinson v. Lyndonville Creamery Ass'n, 188 N.E. 248, 284 Mass. 396.
Minn.—Graphic Arts Educational Foundation v. State, 59 N.W.2d 841, 240 Minn. 143—Gubbins v. Irwin, 298 N.W. 715, 210 Minn. 428.
S.D.—Semmler v. Baier, 269 N.W. 88, 64 S.D. 587.
Tex.—Stefka v. Hartman, Civ.App., 120 S.W.2d 617.

Outstanding fact
Where findings of fact show an outstanding fact so vital as to make its legal consequences inevitable, reviewing court must give it effect without regard to other facts reported.
Vt.—Jeffords v. Poor, 55 A.2d 605, 115 Vt. 147.

33. Cal.—Bradley v. Superior Court In and For City and County of San Francisco, 310 P.2d 634.
Franck v. Moran, 171 P. 841, 36 C.A. 32.
Conn.—Marron v. Bohannan, 133 A. 667, 104 Conn. 467, 46 A.L.R. 838—New Haven Rendering Co. v. Connecticut Co., 93 A. 528, 89 Conn. 252.
Ind.—Western Union Telegraph Co. of Indiana v. Louisville & N. R. Co., 108 N.E. 951, 183 Ind. 258.
In re Patton's Will, 96 N.E.2d 353, 121 Ind.App. 256.
Iowa.—**Corpus Juris Secundum quoted in** Home Ins. Co., N. Y. v. Fidelity-Phenix Fire Ins. Co., 279 N.W. 425, 432, 225 Iowa 36.
N.H.—Mitchell v. Smith's Estate, 4 A.2d 355, 90 N.H. 36.
N.J.—Pollack v. New Jersey Bell Telephone Co., 181 A. 318, 116 N.J. Law 28.
N.M.—Fuller v. Crocker, 105 P.2d 472, 44 N.M. 499.
Va.—Hall v. MacLeod, 62 S.E.2d 42, 191 Va. 665.
4 C.J. p 880 note 90.
Inferences from evidence see infra § 1656(9).

Finding must oppose only reasonable inference
The appellate court cannot say that an ultimate fact is improperly inferred from evidentiary facts unless the finding is opposed to the only inference that can reasonably be drawn from such evidentiary facts.
Ind.—Western Union Telegraph Co. of Indiana v. Louisville & N. R. Co., 108 N.E. 951, 183 Ind. 258.

Findings held not to preclude conclusions
Mass.—Ray's Checker Taxi Co. v. Blaisdell, 66 N.E.2d 563, 319 Mass. 487.

pears that they either involve the application of some erroneous rule of law material to the case or are unreasonably drawn from the facts found.[33.5]

Moreover, if findings stated as conclusions are obviously not merely deductions from other facts found but are based on all the evidence in the case, they are not reviewable as conclusions or deductions from a finding of subordinate facts;[34] and the mere fact that some of the probative facts do not support the ultimate fact found by the trial court will not cause the ultimate fact to be disregarded by the appellate court.[35] So a judgment based on formal findings of fact and conclusions of law will not be reversed where there is a finding which conflicts with the judgment, unless there is evidence in the record to sustain the conflicting finding.[35.5] Subsidiary findings are not to be added to the evidence in considering exceptions to the refusal of rulings seasonably requested by plaintiff that on all the evidence plaintiff is entitled to recover where a general finding for defendant does not purport to be a mere conclusion from the subsidiary facts expressly found but may rest in part on other findings on all the evidence.[35.10]

Finding based on undisputed evidence. The rule that the appellate court is concluded by the findings of the trial court is usually applicable only where there is conflicting evidence.[35.15] When the evidence on which the findings of the trial court are based is undisputed, the question of whether the evidence sustains or justifies the findings is generally regarded as a question of law open to consideration by the appellate court which is not bound by the findings under such circumstances.[36] While the

Judgment supported by reasonable conclusions of fact which may be gathered from the record will be sustained by appellate court.

Ariz.—Commerce Mortg. Co. v. Title Realty Corp., 279 P.2d 717, 78 Ariz. 304.

Conclusion resting on mixed question of law and fact

Where conclusion of trial court rests on a mixed question of law and fact, judgment will not be reversed if conclusion is legally inferable from facts proved.

N.J.—Frayne v. Bahto, 57 A.2d 520, 137 N.J.Law 109.

Necessary facts inferable from facts found

If from the facts found other necessary facts to support judgment may be reasonably inferred, it will not be disturbed on appeal.

N.M.—Greenfield v. Bruskas, 68 P.2d 921, 41 N.M. 346.

33.5 Conn.—Arvee Const. Co. v. Ardolino, 127 A.2d 39, 144 Conn. 7—Antenucci v. Hartford Roman Catholic Diocesan Corp., 114 A.2d 216, 142 Conn. 349—Freda v. Smith, 111 A.2d 679, 142 Conn. 126—Bridgeport Hydraulic Co. v. Sciortino, 88 A.2d 379, 138 Conn. 690—Staff v. Hawkins, 64 A.2d 176, 135 Conn. 316—Burakowski v. Grustas, 56 A.2d 461, 134 Conn. 205—Johnson v. Shattuck, 3 A.2d 229, 125 Conn. 60.

34. Conn.—Wheaton v. City of Putnam, 11 A.2d 358, 126 Conn. 330—Slosberg v. Town of Norwich, 162 A. 772, 115 Conn. 578.

35. Cal.—Volat v. Tucker, 49 P.2d 337, 9 C.A.2d 295.

Sufficiency to support judgment

In reviewing sufficiency of findings to support judgment, reviewing court will regard ultimate facts found and may disregard findings as to evidentiary facts.

Cal.—In re Moore's Estate, 300 P.2d 110, 143 C.A.2d 64—Miller v. Pacific Pipeline Const. Co., 291 P.2d 534, 138 C.A.2d 187—Kompf v. Morrison, 166 P.2d 350, 73 C.A.2d 284—Washko v. Stewart, 67 P.2d 144, 20 C.A.2d 347—Lamanet v. Lamanet, 63 P.2d 1195, 18 C.A.2d 402—Hudson v. Becker, 56 P.2d 249, 12 C.A.2d 743.

35.5 Okl.—Dunlap v. Jeffrey, 260 P.2d 1072.

35.10 Mass.—Federal Nat. Bank of Boston v. O'Connell, 26 N.E.2d 539, 305 Mass. 559.

35.15 Mont.—In re Bragg's Estate, 76 P.2d 57, 106 Mont. 132.

36. Ala.—Duggan v. Duggan, 148 So. 844, 227 Ala. 92—Scott v. McGriff, 132 So. 177, 222 Ala. 344—Commercial Credit Co. v. Tarwater, 110 So. 39, 215 Ala. 123, 48 A.L.R. 1437—Marsh v. Elba Bank & Trust Co., 88 So 423, 205 Ala. 425.

Farmers' Exchange Bank v. Greil Bros. Co., 84 So. 427, 17 Ala. App. 287, certiorari denied Ex parte Greil Bros. Co., 84 So. 924, 203 Ala. 698.

Ariz.—Berger v. Bhend, 285 P.2d 751, 79 Ariz. 173—Sanders v. Brown, 238 P.2d 941, 73 Ariz. 116—In re Taylor's Estate, 106 P. 2d 492, 56 Ariz. 211.

Ark.—Gates v. Ritchie, 258 S.W. 397, 162 Ark. 484.

Cal.—In re Burnett's Estate, 79 P. 2d 89, 11 C.2d 259.

Zinn v. Ex-Cell-O Corp., App., 306 P.2d 1017—New v. New, App., 306 P.2d 987—Cuenin v. Lakin, 304 P.2d 157, 146 C.A.2d 855—In re Beebee's Estate, 258 P.2d 1101, 118 C.A.2d 851—Industrial Indem. Co. v. Golden State Co., 256 P.2d 677, 117 C.A.2d 519—Los Angeles County v. Wright, 236 P.2d 892, 107 C.A. 2d 235—Southern Cal. Collection Co. of Los Angeles v. Napkie, 235 P.2d 484, 106 C.A.2d 565—Export Leaf Tobacco Co. v. Los Angeles County, 202 P.2d 622, 89 C.A.2d 909—E. J. Stanton & Sons v. Los Angeles County, 177 P.2d 804, 78 C.A.2d 181, certiorari denied 68 S. Ct. 75, 332 U.S. 766, 92 L.Ed. 352.

Mills Sales Co. v. Gonzales, 304 P.2d 274, 146 C.A.2d Supp. 899—Continental Ins. Co. of New York v. Pacific Greyhound Lines, 111 P. 2d 37, 43 C.A.2d Supp. 877.

Colo.—Monte Vista Bank & Trust Co. v. Savage, 225 P. 219, 75 Colo. 180.

Ill.—Fichter v. Milk Wagon Drivers' Union, Local 753, 46 N.E.2d 921, 382 Ill. 91, certiorari denied 63 S. Ct. 1177, 319 U.S. 758, 87 L.Ed. 1710.

Ind.—Lewis v. Mackley, 99 N.E.2d 442, 122 Ind.App. 247—Bragdon v. Bruce, 92 N.E.2d 646, 120 Ind.App. 497—Peed v. Bennett, 52 N.E.2d 629, 114 Ind.App. 412.

Iowa.—Hull-Dobbs Motor Co. v. Associates Discount Corp., 44 N.W.2d 403, 241 Iowa 1365—Umthun v. Day & Zimmermann, 16 N.W.2d 258, 235 Iowa 293.

Kan.—White Star Machinery & Supply Co. v. Roulston, 289 P.2d 749, 178 Kan. 481.

La.—Succession of Fields, 62 So.2d 495, 222 La. 310.

Mass.—Shattuck v. Wood Memorial Home, 66 N.E.2d 568, 319 Mass. 444—Little v. Massachusetts Northeastern St. Ry. Co., 112 N.E. 77, 223 Mass. 501.

Mo.—Globe Indemnity Co. v. McDowell, App., 159 S.W.2d 822.

Mont.—In re Mullen's Estate, 33 P. 2d 270, 97 Mont. 144.

Or.—Harris v. Schnitzer, 27 P.2d 1010, 146 Or. 391.

R.I.—Pimpare v. McNamara, 193 A. 513, 58 R.I. 515—Lisker v. Emery, 171 A. 914, 54 R.I. 190—Raftery v. Reilly, 102 A. 711, 41 R.I. 47, reargument denied 102 A. 963.

S.C.—Ex parte Morrow, 190 S.E. 506, 183 S.C. 170, 110 A.L.R. 898.

appellate court, as a general rule, has no power to add to a special finding of facts, it may give heed to a fact appearing in the evidence which does not admit of dispute, in order to uphold the judgment;[36.5] and if the undisputed evidence supports the findings, they will not be disturbed.[37]

§ 1656(9). —— Evidence to Support or Overturn Findings

The question of whether or not the fact findings of the trial court are sufficiently sustained by the record evidence will be determined by the appellate court which, however, will not disturb the findings if they are sustained by sufficient material, competent, and credible evidence.

Unless the proper procedure or steps have not been followed in the lower court properly to preserve the question for review,[38] the question of whether or not the fact findings of the trial court are sufficiently sustained or supported by the record evidence is one which will be passed on by the appellate court;[39] and, as discussed supra § 1656 (3),

Tex.—Montgomery Ward & Co. v. Kirkland, Civ.App., 225 S.W.2d 906, error refused no reversible error.

Wash.—Hanford v. Goehry, 167 P. 2d 678, 24 Wash.2d 859—Trudeau v. Pacific States Box & Basket Co., 148 P.2d 453, 20 Wash.2d 561—Tope v. King County, 65 P.2d 1283, 189 Wash. 463—In re Sixth Ave. Improvement in City of Seattle, 284 P. 738, 155 Wash. 459—Burnham v. Rowley, 191 P. 811, 111 Wash. 656.

Wis.—Dairy Queen of Wis. v. McDowell, 51 N.W.2d 34, 260 Wis. 471, rehearing denied 52 N.W.2d 791, 260 Wis. 471—Saylor v. Marshall & Ilsley Bank, 272 N.W. 369, 224 Wis. 511.

Wyo.—**Corpus Juris Secundum cited in** Hercules Powder Co. v. State Bd. of Equalization, 210 P.2d 824, 825, 66 Wyo. 268.

4 C.J. p 882 note 19, p 886 note 52.

When evidence is all one way and but one conclusion can be reached from the facts proved, appellate court may substitute its judgment for that of the trial court; but mere lack of contradiction and dispute in evidence does not itself make reviewing court the finder of facts.

Ind.—Pearson Co. v. Cohen, 83 N.E. 2d 433, 118 Ind.App. 699.

36.5 Ind.—Bills v. Boettcher, 65 N. E.2d 495, 116 Ind.App. 631, rehearing denied 66 N.E.2d 131, 116 Ind. App. 631—American Income Ins. Co. v. Kindlesparker, 200 N.E. 432, 102 Ind.App. 445.

Power of appellate court to find facts see infra § 1845.

37. Ill.—See Muller v. Bernstein, 198 Ill.App. 104.

Utah.—Teuscher v. Utah-Idaho Flour & Grain Co., 221 P. 1096, 63 Utah 76.

Wis.—De Vries v. Dye, 269 N.W. 270, 222 Wis. 501—Ridgeway State Bank v. Severson, 201 N.W. 806, 185 Wis. 504—In re Brill's Estate, 197 N.W. 802, 183 Wis. 282.

38. U.S.—F. Carrera & Hermano v. Font, Gamundi & Co., C.C.A.Puerto Rico, 70 F.2d 999—Hawthorne v. Bankers' Life Co., C.C.A.Mo., 63 F.2d 971.

Wm. Edwards Co. v. La Dow, Ohio, 230 F. 378, 144 C.C.A. 520—Illinois Surety Co. v. U. S., N.Y., 229 F. 527, 143 C.C.A. 595, followed in 229 F. 533, 143 C.C.A. 601.

39. Ala.—Robert G. Lassiter & Co. v. Nixon, 119 So. 17, 218 Ala. 484.

Cal.—Application of Downer Corp., 304 P.2d 756, 146 C.A.2d 708—Tomas v. Vaughn, 146 P.2d 499, 63 C.A. 2d 188—Johanson v. Riverside County Select Groves, 40 P.2d 530, 4 C.A.2d 114.

Conn.—Esposito v. Schille, 40 A.2d 745, 131 Conn. 449.

D.C.—Moy Jik v. U. S., 47 App.D.C. 498.

Fla.—In re Alkire's Estate, 198 So. 475, 142 Fla. 862, 144 Fla. 606.

Hawaii.—Nawahi v. First Trust Co. of Hilo, 31 Hawaii 958.

Ill.—Reese v. Laymon, 119 N.E.2d 271, 2 Ill.2d 614.

Ind.—Smith v. Mesel, 84 N.E.2d 477, 119 Ind.App. 323.

Iowa.—Else v. Fremont Methodist Church, 73 N.W.2d 50, 247 Iowa 127.

Me.—Appeal of Eastman, 194 A. 586, 135 Me. 233.

Mass.—Casey v. Gallagher, 96 N.E. 2d 709, 326 Mass. 746—Vergnani v. Guidetti, 32 N.E.2d 272, 308 Mass. 450.

Mo.—Faire v. Burke, 252 S.W.2d 289, 363 Mo. 562—State ex rel. Ward v. Trimble, 39 S.W.2d 372, 327 Mo. 773—In re Lankford's Estate, 197 S.W. 147, 272 Mo. 1—Orchard v. Smith, 193 S.W. 574.

Byrd v. Town of Wardell, App., 176 S.W.2d 840—Bufton v. Southern Express Co., App., 217 S.W. 630.

Mont.—Nolan v. Benninghoff, 208 P. 905, 64 Mont. 68.

N.J.—Corin v. S. S. Kresge Co., 159 A. 799, 10 N.J.Misc. 489, affirmed 166 A. 291, 110 N.J.Law 378.

N.M.—Wedgwood v. Colclazier, 226 P.2d 99, 55 N.M. 32.

Ohio.—Cross v. Ledford, 120 N.E.2d 118, 161 Ohio St. 469.

Albers v. Continental Cas. Co., 94 N.E.2d 797, 87 Ohio App. 336—New York Cent. R. Co. v. Karl Kiefer Mach. Co., 74 N.E.2d 416, 80 Ohio App. 36.

Okl.—First State Bank of Noble v. McKiddy, 240 P.2d 1103, 206 Okl. 57—Uhrina v. Mastako, 229 P. 196, 100 Okl. 294—Crosbie v. National Bank of Commerce, 207 P. 311, 86 Okl. 174—Turben v. Douglass, 183 P. 881, 76 Okl. 78.

Or.—Meagher v. Eilers Music House, 164 P. 373, 84 Or. 33—Armstrong v. Pincus, 158 P. 662, 81 Or. 156.

Pa.—Pugliese v. Pugliese, 7 A.2d 41, 136 Pa.Super. 121—Commonwealth ex rel. Boysen v. Boysen, 2 A.2d 558, 133 Pa.Super. 329—Irwin v. Irwin, 200 A. 220, 131 Pa.Super. 321.

S.C.—Pearce-Young-Angel Co. v. Charles R. Allen, Inc., 50 S.E.2d 698, 213 S.C. 578.

Tex.—Maro Co. v. State, Civ.App., 168 S.W.2d 510, error refused—Modern Woodmen of America v. Atcheson, Civ.App., 219 S.W. 537, dismissed for want of jurisdiction.

Utah.—Mountain States Tel. & Tel. Co. v. Consolidated Freightways, 242 P.2d 563, 121 Utah 379—Bear River State Bank v. Merrill, 120 P. 2d 325, 101 Utah 176—Western Union Telegraph Co. v. Matthews, 280 P. 729, 74 Utah 495.

Wash.—Sodden v. Reinhardt, 106 P. 2d 574, 5 Wash.2d 689.

Wis.—Weinhagen v. Hayes, 178 N.W. 780, 174 Wis. 233, affirmed 183 N.W. 162, 174 Wis. 233.

Wyo.—Bruch v. Benedict, 165 P.2d 561, 62 Wyo. 213.

4 C.J. p 882 note 20, p 883 note 30.

In a negligence case tried without a jury the supreme court may consider evidence and determine whether it establishes liability.

Conn.—Davis v. Margolis, 140 A. 823, 107 Conn. 417.

Wash.—Pitschman v. Oman, 30 P.2d 945, 177 Wash. 55—Craig v. McAtee, 295 P. 146, 160 Wash. 337.

Contradictory findings

Where trial court made two contradictory findings, appellate court may examine evidence to determine which finding was supported.

Conn.—O'Connell v. Brady, 72 A.2d 493, 136 Conn. 475.

if it is found that the findings are unsupported by the evidence, a reversal will result.

In connection with the above question the appellate court's function is limited to an examination of the record to ascertain if sufficient evidence exists to justify the findings.[40] If this is found, the examination of the appellate court ceases.[41] It will give no regard to rules as to the sufficiency of evidence to establish a state of facts contrary to those found,[42] nor will it, in accordance with the rule stated infra § 1658, concern itself with the question of where the preponderance of the evidence may lie, although, if the preponderance of the evidence supports the findings, it is even more clear that they should not be disturbed.[43]

The appellate court in determining the sufficiency of the evidence to support the findings will indulge in every presumption in their favor,[44] and give due weight to the trial court's superior advantages in passing on the facts,[45] and judging the credibility of the witnesses.[46] When considering whether the findings have proper evidentiary support, the appellate court will eliminate from consideration all incompetent and immaterial evidence,[47] and consider only the evidence most favorable to the successful party,[48] including all reasonable inferences which might have been drawn therefrom,[49] which will be

Question of law

Sufficiency of evidence to support finding of trial court is question of law.

Va.—Upchurch v. Upchurch, 76 S.E. 2d 170, 194 Va. 990.

Evidence considered as a whole

Reviewing court, in reading evidence to support findings, must not consider it piecemeal, but as a whole.

Vt.—State v. O'Connell, 99 A.2d 705, 118 Vt. 55—Jeffords v. Poor, 55 A. 2d 605, 115 Vt. 147.

40. Cal.—Palmer v. Wahler, 285 P. 2d 8, 133 C.A.2d 705—Oldis v. La Societe Francaise De Bienfaisance Mutuelle, 279 P.2d 184, 130 C.A.2d 461—Gularse v. Martins, 151 P.2d 570, 65 C.A.2d 817—Lane v. Safeway Stores, 91 P.2d 160, 33 C.A.2d 169—Wann v. Mount Diablo Finance Corporation, 23 P.2d 303, 132 C.A. 621.

Iowa.—**Corpus Juris Secundum cited in** Davis v. Knight, 35 N.W.2d 23, 25, 239 Iowa 1338.

Kan.—Hansen v. Walker, 259 P.2d 242, 175 Kan. 121—Stoskopf v. Stoskopf, 245 P.2d 1180, 173 Kan. 244—**Corpus Juris Secundum cited in** Gale v. Fruehauf Trailer Co., 145 P.2d 125, 128, 158 Kan. 30—In re Horton's Estate, 118 P.2d 527, 154 Kan. 269.

Minn.—In re Calich's Estate, 8 N.W. 2d 337, 214 Minn. 292.

Limit of jurisdiction

Reviewing court has jurisdiction to consider evidence only where there is no evidence to sustain a finding, or it can be said as a matter of law that evidence is insufficient to sustain it.

Cal.—Olivero v. Rosano, 109 P.2d 976, 42 C.A.2d 740.

41. Cal.—In re Katz' Estate, 152 P. 2d 735, 66 C.A.2d 687—Turell v. Anderson, 60 P.2d 906, 16 C.A.2d 445—Melvin v. Mortgage Guarantee Co., 51 P.2d 167, 10 C.A.2d 69.

Ky.—Barnett v. Mullins, 286 S.W.2d 553.

Vt.—Scott v. Leonard, 119 A.2d 691, 119 Vt. 86.

42. Cal.—Melvin v. Mortgage Guarantee Co., 51 P.2d 167, 10 C.A.2d 69.

43. Ark.—McIlroy v. McIlroy, 83 S. W.2d 550, 191 Ark. 45—St. Louis Southwestern Ry. Co. v. Missouri Pac. R. Co., 62 S.W.2d 955, 187 Ark. 803—Oliver Const. Co. v. Mehler, 268 S.W. 360, 167 Ark. 678.

Cal.—Busset v. California Builders Co., 12 P.2d 36, 123 C.A. 657.

La.—Sparks v. Hanagriff, 131 So. 302, 15 La.App. 553—Nettles v. Blanchard, 2 La.App. 749.

Mich.—Hamburger v. Bank of Detroit, 187 N.W. 535, 218 Mich. 173—Carey v. Gleason Exploration & Mining Co., 149 N.W. 974, 183 Mich. 139.

N.D.—Herr v. Herr, 212 N.W. 214, 54 N.D. 930.

Okl.—Berton v. Coss, 280 P. 1093, 139 Okl. 42.

Or.—Singleton v. Rhodes, 152 P. 266, 77 Or. 643.

S.D.—Proctor v. Smith, 217 N.W. 178, 52 S.D. 219.

Tex.—Miller Link Lumber Co. v. Thompson, Civ.App., 208 S.W. 546.

W.Va.—Gainer v. Griffith, 85 S.E. 713, 76 W.Va. 426.

44. See supra § 1564 (6).

45. Wis.—Ticknor v. Sinclair, 203 N.W. 927, 187 Wis. 71.

4 C.J. p 880 note 95—42 C.J. p 826 note 28.

46. N.Y.—Dean v. Bauer, 166 N.Y. S. 983, 101 Misc. 301.

R.I.—Paulson v. Paulson, 145 A. 312, 50 R.I. 86.

4 C.J. p 884 note 35 [a]—42 C.J. p 113 note 9.

47. U.S.—Clauson v. U. S., C.C.A.S. D. 60 F.2d 694.

Ark.—Clark v. Matlock, 76 S.W.2d 104, 189 Ark. 1081.

Cal.—Pinsky v. Sloat, 279 P.2d 584, 130 C.A.2d 579.

Tex.—Montgomery v. Gibbens, Civ. App., 245 S.W.2d 311.

48. Ariz.—Brown v. Brown, 300 P. 1007, 38 Ariz. 459.

Cal.—Carlson v. Calhoun, 258 P.2d 26, 118 C.A.2d 516—Wheeler v. Citizens Nat. Trust & Sav. Bank of Los Angeles, 168 P.2d 727, 74 C.A.2d 354—Garlinghouse v. Merkle, 26 P.2d 528, 135 C.A. 46—Eacrett v. Zimmon, 19 P.2d 811, 130 C.A. 255—Carr v. Sacramento Clay Products Co., 170 P. 446, 35 C.A. 439.

Conn.—Kulak v. Landers, Frary & Clark, 181 A. 720, 120 Conn. 606.

Ind.—Rose v. City of Jeffersonville, 114 N.E. 85, 185 Ind. 577—Anderson v. Knotts, 104 N.E. 754, 181 Ind. 434.

Zorich v. Zorich, 88 N.E.2d 694, 119 Ind.App. 547—Meyer v. Meyer, 129 N.E. 340, 74 Ind.App. 699—Wainwright Trust Co. v. Kinder, 120 N.E. 419, 69 Ind.App. 88—New Albany Nat. Bank v. Brown, 114 N. E. 486, 63 Ind.App. 391—Vandalia R. Co. v. House, 108 N.E. 872, 59 Ind.App. 10—McKinzie v. Fisher Gibson Co., 108 N.E. 867, 59 Ind. App. 14—Reed v. Robbins, 108 N.E. 780, 58 Ind.App. 659.

Kan.—In re Besse's Estate, 183 P.2d 414, 163 Kan. 413.

N.C.—**Corpus Juris Secundum cited in** Horner v. Chamber of Commerce of City of Burlington, 68 S.E.2d 660, 663, 235 N.C. 77.

Tenn.—Conatser v. Reagan, 7 Tenn. App. 450.

Tex.—Central Tex. Elec. Co-op. v. Stehling, Civ.App., 282 S.W.2d 729, error dismissed—In re Cain, Civ. App., 280 S.W.2d 617.

Wash.—**Corpus Juris Secundum cited in** Shultes v. Halpin, 205 P.2d 1201, 1207, 33 Wash.2d 294.

4 C.J. p 876 note 78 [a].

49. Ind.—Public Savings Ins. Co. of America v. Greenwald, 118 N.E. 556, 68 Ind.App. 609, rehearing denied 121 N.E. 47, 68 Ind.App. 609.

N.C.—**Corpus Juris Secundum cited in** Horner v. Chamber of Commerce of City of Burlington, 68 S.E.2d 660, 663, 235 N.C. 77.

Wash.—**Corpus Juris Secundum cited in** Shultes v. Halpin, 205 P.2d 1201, 1207, 33 Wash.2d 294.

construed most strongly in favor of the judgment.[50]

The findings of fact are to be regarded or considered as adequately supported and left undisturbed if the record discloses that they are sustained by material and competent evidence,[51] or if the record discloses that they are sustained by some or any

50. Ark.—Inter-Southern Life Ins. Co. v. Ransom, 232 S.W. 754, 149 Ark. 517.

Iowa.—**Corpus Juris Secundum cited in** Davis v. Knight, 35 N.W.2d 23, 25, 239 Iowa 1338.

Mass.—North Adams Nat. Bank v. Curtiss, 180 N.E. 217, 278 Mass. 471, 83 A.L.R. 607.

4 C.J. p 876 note 78 [b].

51. Ala.—Frank v. Johnson, 75 So.2d 153, 261 Ala. 642—Quicksey v. Hall, 69 So.2d 698, 260 Ala. 162—Home Ins. Co. v. Shriner, 177 So. 897, 235 Ala. 65—Thompson v. Fourth Nat. Bank, 111 So. 29, 215 Ala. 476—Hill v. Hill, 100 So. 340, 211 Ala. 293—Obear-Nester Glass Co. v. Mobile Drug Co., 95 So. 13, 208 Ala. 618—Grubbs v. Hawkins, 94 So. 484, 208 Ala. 349—Griffith & Warren v. Biggers, 90 So. 795, 206 Ala. 563—Thompson v. Jones, 75 So. 460, 200 Ala. 84—Enslen Development Co. v. Ben F. Barbour Plumbing & Electric Co., 66 So. 514, 189 Ala. 450.

Patterson v. Longview Gin Co., 104 So. 871, 21 Ala.App. 26—Boaz Fertilizer Co. v. Cornelius, 86 So. 161, 17 Ala.App. 562—Broadus v. Lindsey, 84 So. 776, 17 Ala.App. 342—Tennessee River Nav. Co. v. J. C. Jacobs Banking Co., 77 So. 438, 16 Ala.App. 288—Dixie Fertilizer Co. v. Teasley, 69 So. 988, 14 Ala.App. 283.

Ariz.—Maricopa County Municipal Water Conservation Dist. No. 1 v. Warford, 206 P.2d 1168, 69 Ariz. 1—MacDonald v. Cluff, 206 P.2d 730, 68 Ariz. 369—Jacob v. Cherry, 180 P.2d 217, 65 Ariz. 307—Ehle v. Tenney Trading Co., 107 P.2d 210, 56 Ariz. 241—Tway v. Southern Methodist Hospital and Sanitorium of Tucson, 62 P.2d 1318, 48 Ariz. 490—Clark v. Adams, 5 P.2d 413, 39 Ariz. 257—Welker & Clifford v. Merrill, 255 P. 991, 32 Ariz. 90—In re Citizens' Bank & Trust Co., 254 P. 485, 31 Ariz. 478—Dragoon Marble & Mining Co. v. McNeish, 235 P. 401, 28 Ariz. 96—Johnson v. Bray & Co., 229 P. 96, 26 Ariz. 582—Moore v. Chilson, 224 P. 818, 26 Ariz. 244—Banco de Sonora v. Morales, 203 P. 328, 23 Ariz. 248—In re Bonds of Drainage Dist. No. 4, in and for Maricopa County, 193 P. 833, 22 Ariz. 31.

Ark.—Washington County v. Day, 116 S.W.2d 1051, 196 Ark. 147—Central Surety & Insurance Corp. v. O. & S. Wholesale Co., 101 S.W.2d 167, 193 Ark. 523—Bunting v. Rollins, 70 S.W.2d 40, 189 Ark. 12—Aetna Life Ins. Co. v. Person, 67 S.W.2d 1007, 188 Ark. 864—Hays v. McGuirt, 66 S.W.2d 281, 188 Ark. 1167—Continental Ins. Co. v. Dague, 65 S.W.2d 12, 188 Ark. 1167—Vanemburg v. Duffey, 7 S.W.2d 336, 177 Ark. 663—School Dist. No. 26 v. School Dist. No. 32, 6 S.W.2d 826, 177 Ark. 497—Lee v. Beauchamp, 300 S.W. 401, 175 Ark. 716—Prairie County v. Gray, 295 S.W. 363, 174 Ark. 377—Shackleford v. Ford, 290 S.W. 43, 172 Ark. 527—Arkansas Christian College v. Malone, 271 S. W. 964, 168 Ark. 1167—Carter v. Bates, 249 S.W. 355, 158 Ark. 640—Webb v. Spann, 248 S.W. 285, 157 Ark. 328—Lehman v. Broyles, 245 S.W. 24, 155 Ark. 593—Rice v. Metropolitan Life Ins. Co., 238 S.W. 772, 152 Ark. 498, 24 A.L.R. 143—Thomas v. Thomas, 233 S.W. 808, 150 Ark. 43—Loudermilk v. Midyett, 182 S.W. 262, 121 Ark. 634—Huffman v. Sudbury, 174 S.W. 1149, 117 Ark. 628.

Cal.—Kingsbury v. Arcadia Unified School Dist., 271 P.2d 40, 43 C.2d 33—Rouchleau v. Silva, 217 P.2d 929, 35 C.2d 355—Fuentes v. Ling, 130 P.2d 121, 21 C.2d 59—Rose v. State, 123 P.2d 505, 19 C.2d 713, followed in Bettencourt v. State, 123 P.2d 525, 19 C.2d 876—Brandon v. State, 123 P.2d 525, 19 C.2d 877—Jones v. State, 123 P.2d 526, 19 C. 2d 874—Laughlin v. State, 123 P.2d 526, 19 C.2d 875—MacDonnell v. California Lands, 101 P.2d 479, 15 C.2d 344—Balzer v. Caler, 82 P. 2d 19, 11 C.2d 663—National Ice & Cold Storage Co. of California v. Pacific Fruit Express Co., 79 P.2d 380, 11 C.2d 283—Knouse v. Nimocks, 66 P.2d 438, 8 C.2d 482—Ginn v. Podesta, 64 P.2d 1090, 8 C. 2d 233—Skinner v. City of Los Angeles, 54 P.2d 446, 5 C.2d 317—Norton v. City of Pomona, 53 P.2d 952, 5 C.2d 54—Boyles v. Kingsbaker Bros. Co., 53 P.2d 141, 5 C.2d 68—Fuller v. Berkeley School Dist. of Alameda County, 40 P.2d 831, 2 C.2d 152—In re Cronvall's Estate, 31 P.2d 372, 220 C. 503—Goodfellow v. Goodfellow, 27 P.2d 898, 219 C. 548—Silva v. Gustine Creamery, 17 P.2d 699, 217 C. 146—Joerger v. Pacific Gas & Electric Co., 276 P. 1017, 207 C. 8—In re Hastings' Estate, 274 P. 973, 206 C. 524—Scovill v. Guy, 270 P. 934, 205 C. 386—Ferguson v. Koch, 268 P. 342, 204 C. 342, 58 A.L.R. 1176—Seaton v. Garcia & Maggini Co., 263 P. 237, 203 C. 187—Sobelman v. Maier, 262 P. 1087, 203 C. 1—McNamara v. Steckman, 262 P. 297, 202 C. 569—Wehle v. Price, 260 P. 878, 202 C. 394—Brown v. Aguilar, 259 P. 735, 202 C. 143—Smith v. Lombard, 258 P. 55, 201 C. 518—Brusseau v. Hill, 256 P. 419, 201 C. 225, 55 A.L. R. 157—Miller v. Lyons, 252 P. 330, 200 C. 232—Rosener v. Hanlon Dry Dock & Shipbuilding Co., 236 P. 183, 196 C. 86—Hotaling v. Hotaling, 224 P. 455, 193 C. 368, 56 A.L. R. 734—In re Parkinson's Estate, 213 P. 259, 190 C. 475—McCarthy v. Security Trust & Savings Bank, 204 P. 818, 188 C. 229—F. Chevalier Co. v. Collins, 195 P. 44, 184 C. 648—McLean v. Colf, 176 P. 169, 179 C. 237—Hood v. Bekins Van & Storage Co., 172 P. 594, 178 C. 150—Eells v. Eells, 165 P. 441, 175 C. 127—Tucker v. Pacific Electric Ry. Co., 161 P. 1147, 174 C. 42—Hecker v. Morley, 148 P. 516, 170 C. 88—Davis v. John Breuner Co., 140 P. 586, 167 C. 683.

Credit Bureau of San Diego, Inc. v. Beach, 301 P.2d 87, 144 C.A.2d 439—Seabert v. Aiello, 289 P.2d 30, 136 C.A.2d 613—In re Nepogodin's Estate, 285 P.2d 672, 134 C.A.2d 161—Pizer v. Brown, 283 P.2d 1055, 133 C.A.2d 367, certiorari denied 76 S.Ct. 1045, 351 U.S. 982, 100 L.Ed. 1496—Commeford v. Baker, 273 P. 2d 321, 127 C.A.2d 111—Allen v. Gardner, 272 P.2d 99, 126 C.A.2d 335—Perske v. Perske, 271 P.2d 528, 125 C.A.2d 795—Moore v. Dealy, 254 P.2d 888, 117 C.A.2d 89—Kilstrom v. Bronnenberg, 242 P. 2d 65, 110 C.A.2d 62—Bergin v. Van Der Steen, 236 P.2d 613, 107 C.A.2d 8—Beaudreau v. Allen, 227 P.2d 896, 102 C.A.2d 552—Jordan v. Reynolds, 217 P.2d 66, 97 C.A.2d 194—Reeves v. Nichols, 216 P.2d 555, 96 C.A.2d 772—Wirz v. Wirz, 214 P.2d 839, 96 C.A.2d 171, 15 A.L. R.2d 1129—Goldberg v. Southwestern Metals Corp., 208 P.2d 75, 92 C.A.2d 819—Coleman v. Coleman, 206 P.2d 1093, 92 C.A.2d 312—Western Gulf Oil Co. v. Title Ins. & Trust Co., 206 P.2d 643, 92 C.A.2d 257—Logan v. Serpa, 206 P.2d 70, 91 C.A.2d 818—Rich v. Ervin, 194 P.2d 809, 86 C.A.2d 386—McKinley v. Southern Pac. Co., 181 P.2d 899, 80 C.A.2d 301—Larson v. King, 162 P.2d 974, 71 C.A.2d 421—Bays v. Clugston, 161 P.2d 953, 71 C.A.2d 55—Thomas v. White, 155 P.2d 698, 67 C.A.2d 738—Davis v. Stewart, 154 P.2d 447, 67 C.A.2d 415—In re Katz' Estate, 152 P.2d 735, 66 C.A.2d 687—Moretti v. Abbot, 149 P.2d 210, 64 C.A.2d 661—Campbell v. Sutton, 145 P.2d 91, 62 C.A. 2d 621—Waldteufel v. Sailor, 144 P.2d 894, 62 C.A.2d 577—Betschart v. Steel, 143 P.2d 81, 61 C.A.2d 517—Grimes v. Williams, 142 P.2d 749, 61 C.A.2d 304—Woodson v. Everson, 142 P.2d 338, 61 C.A.2d 204—Kirkpatrick v. Towers, 140 P.

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competent or admissible evidence,[52] evidence which | is not inherently improbable or unworthy of belief

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4 C.J. p 877 note 80, p 879 note 89, p 882 note 22—19 C.J. p 1227 note 6—51 C.J. p 285 note 8—52 C.J. p 153 note 77.

52. Ala.—Taylor v. Tennessee Coal, Iron & R. Co., 123 So. 78, 219 Ala. 614.

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Kansas City Jockey Club v. U. S. Fidelity & Guaranty Co. of Baltimore, Md., App., 86 S.W.2d 371—Byington v. Shool Dist. of Joplin, 30 S.W.2d 621, 224 Mo.App. 541—Missouri Pac. R. Co. v. Clark, App., 268 S.W. 97—Robinson v. Hope Bldg., etc., Co., 72 Mo.App. 522.

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Okl.—Davidor v. Smith, 309 P.2d 272—Huffman v. Oklahoma Coca-Cola Bottling Co., 281 P.2d 436—Murray v. Borg Compressed Steel Co., 271 P.2d 731—Magnolia Petroleum Co. v. McGeeley, 223 P.2d 131, 203 Okl. 470—Jones v. C. L. Frates & Co., 220 P.2d 243, 203 Okl. 261—Norris v. Van Handel, 163 P.2d 217, 196 Okl. 164—Peoples Finance & Thrift Co. v. Fuller, 162 P.2d 189, 196 Okl. 32—Yellow Dime Cab Co. v. Pike, 158 P.2d 469, 195 Okl. 373

—Alexander v. Pharaoh & Co., 155 P.2d 244, 195 Okl. 74—Continental Supply Co. v. Dickson Oil Co., 153 P.2d 1017, 194 Okl. 660—O'Neal v. O'Neal, 141 P.2d 593, 193 Okl. 146—Grissom v. Frensley Bros. Lumber Co., 136 P.2d 887, 192 Okl. 413—Looney v. Bruin Oil Corporation, 122 P.2d 1007, 190 Okl. 266—International Supply Co. v. Chemical Process Co., 122 P.2d 137, 190 Okl. 224—McKinney v. Bland, 112 P.2d 798, 188 Okl. 661—John A. Brown Co. v. Oklahoma City General Hospital, 102 P.2d 860, 187 Okl. 257—John A. Brown Co. v. Thompson, 102 P.2d 858, 187 Okl. 255—Karchmer v. Unger, 96 P.2d 300, 186 Okl. 53—Shick v. Enid Clinic, 88 P.2d 329, 184 Okl. 484—Cummins v. Smith, 86 P.2d 297, 184 Okl. 206—Riddle v. Bishop, 79 P.2d 801, 183 Okl. 55—First Federal Savings & Loan Ass'n of Elk City v. Rose, 79 P.2d 796, 183 Okl. 262—Turner v. Bishop, 71 P.2d 1088, 181 Okl. 61—Oklahoma State Bank of Ada v. Mitchell, 66 P.2d 920, 179 Okl. 567—Sutherland v. Lambard-Hart Loan Co., 66 P.2d 523, 179 Okl. 486—Jones v. Stedman Co., 65 P.2d 1007, 179 Okl. 291—Oklahoma Aid Ass'n v. Pecinosky, 63 P.2d 718, 178 Okl. 499—Frazier v. Oklahoma Gas & Electric Co., 63 P.2d 11, 178 Okl. 512—Berry Dry Goods Co. v. Jones, 58 P.2d 529, 177 Okl. 278—Stoutz v. Wilson Motor Co., 55 P.2d 900, 176 Okl. 316—Roberts v. Holt, 52 P.2d 878, 175 Okl. 284—International Chiropractic Congress v. Johnston, 50 P.2d 1115, 174 Okl. 567—Western Chemical Co. v. Board of Com'rs of Pottawatomie County, 44 P.2d 825, 170 Okl. 337—Ealy v. General Motors Acceptance Corporation, 36 P.2d 4, 169 Okl. 95—Smart v. Billings, 35 P.2d 923, 169 Okl. 26—Fischer v. Bashwitz, 5 P.2d 356, 152 Okl. 231—Frank v. Harjo, 286 P. 14, 142 Okl. 157—Kennedy v. Bridge, 250 P. 427, 120 Okl. 51—City of Tulsa v. Grier, 243 P. 753, 114 Okl. 93—Blackwell Pub. Co. v. Steinberger, 240 P. 1040, 115 Okl. 6—Enid Oil & Pipe Line Co. v. Champlin, 240 P. 649, 113 Okl. 170—Wrightsman Petroleum Co. v. Martin, 239 P. 663, 111 Okl. 279—Ex parte Sargent, 239 P. 625, 111 Okl. 254—Barstow v. Chaffee, 239 P. 622, 112 Okl. 81—Cline v. Blackstone Coal & Mining Co., 238 P. 189, 111 Okl. 22—Pleasant v. City of Frederick, 235 P. 205, 109 Okl. 236—Security State Bank of Lexington v. Peters, 233 P. 1068, 106 Okl. 287—Gibson v. International Harvester Co., 232 P. 80, 105 Okl. 253—American Nat. Bank of Sapulpa v. Board of Education of City of Sapulpa, 231 P. 855, 105 Okl. 120—Harrison v. Cummings, 230 P. 702, 107 Okl. 98—Allen v. Redfield, 230 P. 694, 104 Okl. 88—Okmulgee Democrat Pub. Co. v. National Supply Co., 230 P. 231, 107 Okl. 86—Royal Neighbors of America v. Fletcher, 227 P. 426, 99 Okl. 297—Roeser v. Citizens'-First Nat. Bank of Independence, Kan., 227 P. 114, 100 Okl. 38—York v. J. P. Chamblee & Son, 227 P. 90, 102 Okl. 127—Thompson v. Smith, 227 P. 77, 102 Okl. 150—Johnson v. Richards, 226 P. 559, 99 Okl. 254—Merchants' Southwest Transfer & Storage Co. v. Montgomery Ward & Co., 225 P. 355, 99 Okl. 27—Gahan v. Hart, 224 P. 494, 97 Okl. 243—Folsom Morris Coal Mining Co. v. Fautt, 218 P. 158, 92 Okl. 1—Griffith-Durney Co. v. Alton Mercantile Co., 217 P. 1047, 92 Okl. 54—Childers v. Vernon, 204 P. 641, 85 Okl. 68.

Pa.—Kahn v. American Cone & Pretzel Co., 74 A.2d 160, 365 Pa. 161—Allegheny By-Product Coke Co. v. J. H. Hillman & Sons Co., 118 A. 900, 275 Pa. 191—Piacentino v. Young, 116 A. 407, 272 Pa. 556—Reilly v. Magee, 116 A. 310, 272 Pa. 406.

Popkin Bros. v. Dunlap, 196 A. 586, 130 Pa.Super. 50—Zuro v. McClintic Marshall Co., 195 A. 160, 129 Pa.Super. 143.

R.I.—Milner v. 250 Greenwood Ave. Corp., 78 A.2d 358, 78 R.I. 5.

S.C.—Zeigler v. Puritan Mills, 199 S. E. 420, 188 S.C. 367—Wiggins & Sons v. Ford Motor Co., 186 S.E. 272, 181 S.C. 171—Murchison Nat. Bank of Wilmington v. Hamer, 161 S.E. 877, 164 S.C. 48—Weston v. Morgan, 160 S.E. 436, 162 S.C. 177—Creswell v. Wardlaw, 89 S.E. 317, 104 S.C. 374.

Tenn.—Nashville Bridge Co. v. Todd, 286 S.W.2d 861—Schrader v. Kentucky-Tennessee Light & Power Co., 8 S.W.2d 495, 157 Tenn. 391, 62 A.L.R. 495.

Southern Ry. Co. v. City of Elizabethton, 10 Tenn.App. 119—Cooper v. Inter-Ocean Casualty Co., 9 Tenn.App. 618—Tennessee Electric Power Co. v. Robinson, 8 Tenn. App. 396—Southern Surety Co. v. Poles, 8 Tenn.App. 78—Mosley v. Orr & Co., 6 Tenn.App. 243—Tennessee Central Ry. Co. v. Vance, 3 Tenn.App. 152.

Tex.—Cavanaugh v. Davis, 235 S.W. 2d 972, 149 Tex. 573—Liedeker v. Grossman, 206 S.W.2d 232, 146 Tex. 308—Williamson v. Texas Indemnity Ins. Co., 90 S.W.2d 1088, 127 Tex. 71—First State Bank of Temple v. Metropolitan Casualty Ins. Co. of New York, 79 S.W.2d 835, 125 Tex. 113.

Russell v. Adams, Com.App., 299 S.W. 889.

Bill Bell, Inc. v. Ramsey, Civ. App., 284 S.W.2d 244—Barnett v. Collins, Civ.App., 280 S.W.2d 639—Wilkinson v. Goddard, Civ.App., 278 S.W.2d 394—Methodist Home v. Mays, Civ.App., 273 S.W.2d 444, error refused no reversible error—Dansby v. Bryan-College Traction Co., Civ.App., 271 S.W.2d 306—Smith v. Roberts, Civ.App., 265 S. W.2d 915—Allied Bldg. Credits, Inc. v. Ellis, Civ.App., 258 S.W.2d 165—Bain v. Strance, Civ.App., 256 S.W.2d 208, error refused no reversible error—National Bond & Inv. Co. v. Atkinson, Civ.App., 254 S.W.2d 885, error dismissed—McElroy v. McGinney, Civ.App., 245 S.W.2d 761, error refused no reversible error—U. S. Fidelity & Guaranty Co. v. Carr, Civ.App., 242 S.W.2d 224, error refused—Gaford v. Arnold, Civ.App., 238 S.W.2d 225—Gulf Cas. Co. v. Hughes, Civ. App., 230 S.W.2d 293—Ragan v. Mosher, Civ.App., 225 S.W.2d 438—Walton v. Woolworth, Civ.App., 222 S.W.2d 347—Smith v. White, Civ.App., 216 S.W.2d 672, error refused no reversible error—Hix v. De Phillipi, Civ.App., 216 S.W.2d 643, error refused no reversible error—Magnolia Petroleum Co. v. Mitchell, Civ.App., 215 S.W.2d 263—McCasland v. Henwood, Civ.App., 213 S.W.2d 555, error refused no reversible error—Mortensen v. Mortensen, Civ.App., 186 S.W.2d 297—Glenn v. Glenn, Civ.App., 183 S.W.2d 231—Fertsch v. White, Civ. App., 138 S.W.2d 195—Kerr v. Folse, Civ.App., 137 S.W.2d 145—Archer v. Youngblood, Civ.App., 129 S.W.2d 382, error refused—Schroeder v. Whisenant, Civ.App., 93 S.W.2d 571—Uvalde Paving Co. v. Townsend, Civ.App., 92 S.W.2d 1128—First Nat. Bank v. Blewett, Civ.App., 89 S.W.2d 487, error dismissed—Home Benev. Soc. v. Keeter, Civ.App., 82 S.W.2d 1084, error dismissed—Mutual Protective Ass'n of Texas v. Woods, Civ.App., 57 S.W.2d 918—Oglesby v. Potts, Civ.App., 40 S.W.2d 815—Walker County Lumber Co. v. Sweet, Civ. App., 40 S.W.2d 225—Austin v. Nieman, Civ.App., 3 S.W.2d 128, reversed on other grounds, Com. App., 14 S.W.2d 794—Huffman v. Alexander, Civ.App., 276 S.W. 959—Easley v. Wichita State Bank & Trust Co., Civ.App., 274 S.W. 249—American Indemnity Co. v. Board of Trustees of Robstown Independent School Dist., Civ.App., 233 S. W. 878—Galveston-Houston Interurban Land Co. v. Dow, Civ.App., 193 S.W. 353, error refused.

Utah.—Seamons v. Andersen, 252 P. 2d 209, 122 Utah 497—Buckley v. Cox, 247 P.2d 277, 122 Utah 151—Harper v. Tri-State Motors, 58 P. 2d 18, 90 Utah 212, amended and rehearing denied 63 P.2d 1056, 90 Utah 226—Van Leeuwen v. Huffaker, 5 P.2d 714, 78 Utah 521—Hanson v. Greenleaf, 218 P. 969, 62 Utah 168—Van Wagoner v. Whitmore, 199 P. 670, 58 Utah 418

on its face,[53] credible evidence,[53.5] evidence having any probative force,[54] evidence logically leading to

—Rieske v. Hoover, 177 P. 228, 53 Utah 87.
Wash.—Dygert v. Hansen, 199 P.2d 596, 31 Wash.2d 858.
Wis.—Rhein v. Burns, 156 N.W. 138, 162 Wis. 309.
Wyo.—Finch v. Canaday, 297 P.2d 594.
4 C.J. p 879 notes 84, 89—26 C.J. p 572 note 55—33 C.J. p 145 note 11—36 C.J. p 458 note 64—43 C.J. p 1324 note 51—45 C.J. p 1369 note 99—51 C.J. p 1252 note 87.

53. Weissbaum v. Eibeshutz, 294 P. 396, 211 C. 170.
Sanders v. Riviera Realty Co., 230 P.2d 856, 104 C.A.2d 70—Farmer v. Matsutani, 119 P.2d 740, 48 C.A.2d 332—Clarke v. Fiedler, 113 P.2d 275, 44 C.A.2d 838—Bovais v. Cassassa, 291 P. 886, 108 C.A. 649—Pedrow v. Federoff, 247 P. 212, 77 C.A. 164.
Colo.—Kitts v. Hill, 300 P. 610, 89 Colo. 186.
Pa.—Goldstein v. Liebowitz, 189 A. 503, 124 Pa.Super. 542.
R.I.—Barrows v. Neary, 191 A. 721, 58 R.I. 153.

53.5 Ariz.—Canyon State Canners v. Hooks, 243 P.2d 1023, 74 Ariz. 70.
Cal.—Hopkins v. Detrick, 217 P.2d 78, 97 C.A.2d 50, followed in 217 P.2d 84, 97 C.A.2d 929.
Conn.—Hartford-Connecticut Trust Co. v. Putnam Phalanx, 88 A.2d 393, 138 Conn. 695.
Me.—Everett v. Rand, 181 A.2d 205—Green Acre Baha'I Institute v. Town of Eliot, 110 A.2d 581—In re Knapp's Estate, 99 A.2d 331, 149 Me. 130—Jolovitz v. Redington & Co., 88 A.2d 589, 148 Me. 23—Brown v. McCaffrey, 60 A.2d 792, 143 Me. 221—Stewart v. Stewart, 59 A.2d 706, 143 Me. 406—In re Cox' Will, 29 A.2d 281, 139 Me. 261—Elias v. Greene, 18 A.2d 867, 137 Me. 335.
Mich.—Patton v. Oakman, 299 N.W. 761, 298 Mich. 672.
Mo.—Nelson v. Massman Const. Co., App., 120 S.W.2d 77, certiorari quashed State ex rel. Massman Const. Co. v. Shain, 130 S.W.2d 491, 344 Mo. 1003—Beall v. North Missouri Farmers Mut. Ins. Co., App., 99 S.W.2d 492.
N.J.—Dacunzo v. Edgye, 111 A.2d 88, 33 N.J.Super. 504, affirmed 117 A.2d 508, 19 N.J. 443.
N.Y.—Loeb v. Dry Dock Sav. Bank, 164 N.Y.S.2d 408, 4 A.D.2d 190—In re McLaughlin's Estate, 20 N.Y.S.2d 742, 260 App.Div. 43, affirmed 33 N.E.2d 541, 285 N.Y. 604—Vatner v. Mackey, 294 N.Y.S. 586, 250 App.Div. 383.
Ohio.—Niederlehner v. Weatherly, 69 N.E.2d 787, 78 Ohio App. 263, appeal dismissed 67 N.E.2d 713, 146 Ohio St. 697.
Pa.—Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Wallace, 31 A.2d 71, 346 Pa. 532, 156 A.L.R. 1—Werle v. Werle, 1 A.2d 244, 332 Pa. 49.
Hoch v. Levan, Com.Pl., 33 Berks Co. 62.
S.D.—Bogue v. Clay County, 60 N.W.2d 218, 75 S.D. 140.
Utah.—Commercial Bank of Utah v. Madsen, 236 P.2d 343, 120 Utah 519.
Va.—City of Falls Church v. Board of Sup'rs of Fairfax County, 68 S.E.2d 96, 193 Va. 112—Adams v. Seymour, 61 S.E.2d 23, 191 Va. 372—Ashby v. Dumouchelle, 40 S.E.2d 493, 185 Va. 724.
Wis.—In re Evans' Estate, 22 N.W.2d 497, 248 Wis. 456.

54. Ind.—Isenhour v. Speece, App., 141 N.E.2d 142—Haley v. Williams, 123 N.E.2d 921, 125 Ind.App. 377.
Me.—Lutick v. Sileika, 14 A.2d 706, 137 Me. 30—Mitchell v. Mitchell, 11 A.2d 898, 136 Me. 406.
Pa.—General Bldg. Contractors' Ass'n v. Local Unions Nos. 542, 542-A and 542-B, 87 A.2d 250, 370 Pa. 73, 32 A.L.R.2d 822.
Tex.—Woodward v. Ortiz, 237 S.W.2d 286, 150 Tex. 75—Cavanaugh v. Davis, 235 S.W.2d 972, 149 Tex. 573—Liedeker v. Grossman, 206 S.W.2d 232, 146 Tex. 308—Gulf Production Co. v. Continental Oil Co., 164 S.W.2d 488, 139 Tex. 183—Long-Bell Lumber Co. v. Bynum, 158 S.W.2d 290, 138 Tex. 267—Merrell v. Timmons, 158 S.W.2d 278, 138 Tex. 250.
Strickland Transp. Co. v. Carmona, Civ.App., 303 S.W.2d 851—Providence Washington Ins. Co. v. Smulcer Trucking Co., Civ.App., 302 S.W.2d 255—Carraway v. Carraway, Civ.App., 302 S.W.2d 181—Sinclair v. Brownlee, Civ.App., 300 S.W.2d 103, error refused no reversible error—Dr. Pepper Co. v. Dr. Pepper Bottling Co. of Gonzales, Civ.App., 297 S.W.2d 741—Consolidated Cas. Ins. Co. v. Baker, Civ.App., 297 S.W.2d 706, error refused no reversible error—Seabrook Shipyard v. Lehrer, Civ.App., 297 S.W.2d 381—Higle v. Craig, Civ.App., 296 S.W.2d 948—Thompson v. Atlantic Refining Co., Civ.App., 295 S.W.2d 289, error dismissed—Gandy v. State, Civ.App., 293 S.W.2d 534, error refused no reversible error—Mozer v. Goolsbee, Civ.App., 293 S.W.2d 91, error refused no reversible error—Luttes v. State, Civ.App., 289 S.W.2d 357, error refused—Crowe v. Metzger Dairy of San Antonio, Civ.App., 288 S.W.2d 897—Eason v. Robertson, Civ.App., 288 S.W.2d 269, error dismissed—Lynch v. McLendon, Civ.App., 283 S.W.2d 88—Preferred Life Ins. Co. v. Dorsey, Civ.App., 281 S.W.2d 368, error refused no reversible error—Barnett v. Collins, Civ.App., 280 S.W.2d 639—Manning v. Barnard, Civ.App., 277 S.W.2d 160, error refused no reversible error—Tarver v. Youngblood, Civ.App., 274 S.W.2d 442, error refused no reversible error—Kollenborn v. Kollenborn, Civ.App., 273 S.W.2d 660, error dismissed—Reed v. Massey, Civ.App., 272 S.W.2d 910—Harry F. Frey & Co. v. W. D. Lacy Feed Co., Civ.App., 272 S.W.2d 765, error dismissed—Dansby v. Bryan-College Traction Co., Civ.App., 271 S.W.2d 306—Reynolds v. Crudgington, Civ.App., 266 S.W.2d 430—Curry v. Abbott, Civ.App., 265 S.W.2d 139, error refused no reversible error—Labay v. Amicable Life Ins. Co., Civ.App., 261 S.W.2d 476—Burrus Mills, Inc. v. Phillips, Civ.App., 260 S.W.2d 427—Penix v. First Nat. Bank of Paris, Civ.App., 260 S.W.2d 63, error refused—Stone v. Whitt, Civ.App., 259 S.W.2d 923—Massey v. Jones, Civ.App., 259 S.W.2d 646—Kingelin v. Rogers, Civ.App., 259 S.W.2d 245—Bradshaw v. Parkman, Civ.App., 254 S.W.2d 865, error refused no reversible error—Evans v. Rush, Civ.App., 254 S.W.2d 799—Wilson v. Teague Independent School Dist., Civ.App., 251 S.W.2d 263, error refused—Ruenbuhl v. Holland, Civ.App., 250 S.W.2d 455—O'Connor v. Delk, Civ.App., 249 S.W.2d 248—Capitol Steel & Iron Co. v. Henderson, Civ.App., 239 S.W.2d 851—Googins v. E. W. Hable & Sons, Civ.App., 237 S.W.2d 705, error refused no reversible error, certiorari denied 72 S.Ct. 556, 342 U.S. 944, 96 L.Ed. 702—Wade v. Taylor, Civ.App., 228 S.W.2d 922—McClure v. McClure, Civ.App., 228 S.W.2d 362—Brown v. Dallas Ry. & Terminal Co., Civ.App., 226 S.W.2d 135, error refused—Chanowsky v. Friedman, Civ.App., 219 S.W.2d 501, error refused no reversible error—Thomas v. Lollar, Civ.App., 217 S.W.2d 907—Hix v. De Phillipi, Civ.App., 216 S.W.2d 643, error refused no reversible error—Keeton v. Gillam Soap Works, Civ.App., 215 S.W.2d 675, error refused no reversible error—Herzstein v. Bonner, Civ.App., 215 S.W.2d 661, error refused no reversible error—John Hancock Mut. Life Ins. Co. v. Stanley, Civ.App., 215 S.W.2d 416—Moore v. Dallas Post Card Co., Civ.App., 215 S.W.2d 398, error refused no reversible error—Miller v. Lummus Co., Civ.App., 215 S.W.2d 227—Bray v. Peden, Civ.App., 213 S.W.2d 469—Barrick v. David, Civ.App., 204 S.W.2d 520—Lindley v. Lindley, Civ.App., 201 S.W.2d 108, error refused no reversible error

the court's conclusion,[55] any reasonable or rational view of the evidence,[56] or evidence which reasonably supports or tends to support them;[57] and the same rule applies where the record discloses that the

—Moore v. Moore, Civ.App., 192 S.W.2d 929—Landwer v. Fuller, Civ.App., 187 S.W.2d 670, refused for want of merit—Jones v. Jones, Civ.App., 181 S.W.2d 988, error refused—Gieb v. Goebel Brewing Co., Civ.App., 176 S.W.2d 975, error refused—Gray v. Moore, Civ.App., 172 S.W.2d 746, error refused—City of Wichita Falls v. Travelers Ins. Co., Civ.App., 137 S.W.2d 170, error dismissed, judgment correct—Wade v. Madison, Civ.App., 206 S.W. 118.

55. Cal.—Diggs v. Arnold Bros., 23 P.2d 71, 132 C.A. 518.

56. Ala.—Randle v. Dumas, 157 So. 218, 229 Ala. 396.

Cal.—O'Brien v. Markham, 99 P.2d 583, 37 C.A.2d 381—Dunlavy v. Nead, 97 P.2d 1003, 36 C.A.2d 478—Scholz v. Hilbert, 85 P.2d 902, 30 C.A.2d 228—Davis v. Lane, 75 P.2d 565, 24 C.A.2d 400—Miller v. Forster, 21 P.2d 678, 131 C.A. 509.

Mass.—Kellogg v. Suher, 109 N.E.2d 169, 329 Mass. 544—Reynolds v. Owen, 104 N.E.2d 146, 328 Mass. 451—Banks v. Election Com'rs of Boston, 99 N.E.2d 755, 327 Mass. 509—Buckley v. Railway Exp. Agency, 82 N.E.2d 599, 323 Mass. 448—Cohen v. Brockton Sav. Bank, 71 N.E.2d 109, 320 Mass. 690—Niagara Fire Ins. Co. v. Lowell Trucking Corp., 56 N.E.2d 28, 316 Mass. 652—Abele v. Dietz, 45 N.E.2d 970, 312 Mass. 685, 144 A.L.R. 1015—Spritz v. Brockton Sav. Bank, 25 N.E.2d 155, 305 Mass. 170—Russo v. Foster, 24 N.E.2d 666, 305 Mass. 1—Ryder v. Town of Lexington, 21 N.E.2d 382, 303 Mass. 281—J. P. O'Connell Co. v. Maryland Cas. Co., 18 N.E.2d 805, 302 Mass. 232—Howard v. Malden Sav. Bank, 15 N.E.2d 233, 300 Mass. 208—Indemnity Ins. Co. of North America v. Paige, 13 N.E.2d 616, 299 Mass. 523—Herman v. Sadolf, 2 N.E.2d 201, 294 Mass. 358—Weiner v. Egleston Amusement Co., 199 N.E. 306, 293 Mass. 83—Scriggins v. Thomas Dalby Co., 195 N.E. 749, 290 Mass. 414—Kennedy Bros. v. Bird, 192 N.E. 73, 287 Mass. 477—Gordon v. Amerian Tankers Corporation, 191 N.E. 51, 286 Mass. 349—State St. Trust Co. v. Lawrence Mfg. Co., 187 N.E. 755, 284 Mass. 355—Bianco v. City Engineer & Building Inspector of City of North Adams, 187 N.E. 101, 284 Mass. 20—Farina v. Vitti, 186 N.E. 236, 282 Mass. 532—Swift v. Registrars of Voters of Quincy, 183 N.E. 730, 281 Mass. 271—Ashapa v. Reed, 182 N.E. 859, 280 Mass. 514—Engel v. Checker Taxi Co., 176 N.E. 179, 275 Mass. 471—Standard Oil Co. of New York v. Malaguti, 168 N.E. 535, 269 Mass. 126—Treasurer and Receiver General v. Macdale Warehouse Co., 160 N.E. 434, 262 Mass. 588—O'Brien v. Board of Election Com'rs of City of Boston, 153 N.E. 553, 257 Mass. 332—Commercial Trust Co. of New York v. American Trust Co., 152 N.E. 104, 256 Mass. 58—Moss v. Old Colony Trust Co., 140 N.E. 803, 246 Mass. 139.

N.J.—Tuzio v. Saylor, 62 A.2d 402, 1 N.J.Super. 61.

Ohio.—De Garmo v. De Garmo, App., 92 N.E.2d 414—Blair v. Riley, 175 N.E. 210, 37 Ohio App. 513.

Tex.—Crawford v. Tramonte, Civ. App., 36 S.W.2d 269—Arnold v. Simpson, Civ.App., 261 S.W. 565.

Vt.—Petition of Stowell, 125 A.2d 807, 119 Vt. 298—Bagalio v. Hoar, 110 A.2d 719, 118 Vt. 386—Hayden v. Lavallee, 75 A.2d 690, 116 Vt. 340—Jeffords v. Poor, 55 A.2d 605, 115 Vt. 147—Partridge v. Cole, 127 A. 653, 98 Vt. 373.

57. Ala.—Bell v. Tennessee Coal, Iron & R. Co., 199 So. 813, 240 Ala. 422.

First Nat. Bank v. Kirkland, 167 So. 334, 27 Ala.App. 141, certiorari denied 167 So. 335, 232 Ala. 104.

Ariz.—Roberts v. Malott, 292 P.2d 838, 80 Ariz. 66—In re Wagner's Estate, 252 P.2d 789, 75 Ariz. 135—Lane v. Mathews, 245 P.2d 1025, 74 Ariz. 201, reversed on other grounds on second rehearing 251 P.2d 303, 75 Ariz. 1—Valley Nat. Bank of Phoenix v. Siebrand, 243 P.2d 771, 74 Ariz. 54—Guthrie v. Guthrie, 242 P.2d 549, 73 Ariz. 423—Rogers v. Greer, 219 P.2d 760, 70 Ariz. 264—Coffey v. Williams, 210 P.2d 959, 69 Ariz. 126—Anderson v. Artesia Inv. Co., 188 P.2d 455, 66 Ariz. 335—Gillespie Land & Irr. Co. v. Jones, 164 P.2d 456, 63 Ariz. 535—Lininger v. Desert Lodge, 160 P.2d 761, 63 Ariz. 239—Blaine v. Blaine, 159 P.2d 786, 63 Ariz. 100—Solomon v. Solomon, 157 P.2d 605, 62 Ariz. 311—Cracchiolo v. Carlucci, 157 P.2d 352, 62 Ariz. 284—Zaleski v. Wooton, 153 P.2d 274, 62 Ariz. 75—Daily Mines Co. v. Control Mines, 124 P.2d 324, 59 Ariz. 138—Allen v. Whiting, 119 P.2d 240, 58 Ariz. 273—Kenton v. Wood, 107 P.2d 380, 56 Ariz. 325—Villiborghi v. Prescott School Dist. No. 1 of Yavapai County, 100 P.2d 178, 55 Ariz. 230—Fagerberg v. Phoenix Flour Mills Co., 71 P.2d 1022, 50 Ariz. 227—Egeland v. Jewell, 69 P.2d 804, 50 Ariz. 140—State Tax Commission v. United Verde Extension Mining Co., 4 P.2d 395, 39 Ariz. 136, rehearing denied 6 P.2d 889, 39 Ariz. 331—Hall v. Hall, 259 P. 402, 32 Ariz. 395—Stark v. Stark, 259 P. 401, 32 Ariz. 392.

Ark.—Wilenzick v. Simon, 3 S.W.2d 297, 176 Ark. 1206.

Cal.—Nichols v. Mitchell, 197 P.2d 550, 32 C.2d 598—Reiniger v. Hassell, 13 P.2d 737, 216 C. 209—Miller v. Grimes, 275 P. 446, 206 C. 798—McMahon v. Grimes, 275 P. 440, 206 C. 526.

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findings are sustained by ample or abundant evi- | dence.[58]

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Minn.—Duffy v. Village of Princeton, 60 N.W.2d 27, 240 Minn. 9.

Miss.—Muse v. Alexander, 56 So.2d 804—First Nat. Bank of New Rochelle, N. Y. v. Bush, 48 So.2d 142.

Mo.—Mathis v. Melton, 238 S.W. 806, 293 Mo. 134—Laughlin v. Laughlin, 237 S.W. 1024, 291 Mo. 472—Vette v. Hackman, 237 S.W. 802, 292 Mo. 138—Black v. Howerton, 237 S.W. 471—Missouri, K. & T. Ry. Co. v. American Surety Co. of New York, 236 S.W. 657, 291 Mo. 92—Rusk v. West, 235 S.W. 1010, 290 Mo. 433—Nevins v. Gilliland, 234 S.W. 818, 290 Mo. 293—Slovensky v. O'Reilly, 233 S.W. 478—Stith v. Post, 232 S. W. 985—Crews v. Maupin, 226 S.W. 949, 285 Mo. 466—National Bank of Commerce in St. Louis v. Pierce, 219 S.W. 578, 280 Mo. 614—Hayes v. McLaughlin, 217 S.W. 262—Reader v. Williams, 216 S.W. 738—Gary Realty Co. v. Kelly, 214 S.W. 92, 278 Mo. 450—Tracey v. Coppage, 213 S.W. 38—Truitt v. Bender, 193 S.W. 838—Ledbetter v. Phillips, 187 S.W. 9—Orchard v. Missouri Lumber & Mining Co., 184 S.W. 1138.

State ex inf. McKittrick ex rel. Oehler v. Church, App., 158 S.W.2d 215—Southern Coal Co. v. Shepard, 9 S.W.2d 257, 223 Mo.App. 112—Hawkins v. I. E. Hatten Lumber & Supply Co., App., 240 S.W. 826—Morris v. Mahn, 235 S.W. 827, 208 Mo.App. 575—Hellrung v. Continental Ins. Co. of City of New York, App., 232 S.W. 240—Williams v. John T. Hesser Coal Co., App., 231 S.W. 680—Barnes v. Miller, App., 229 S.W. 283—State ex rel. and to Use of Missouri Poultry & Game Co. v. Nolte, App., 229 S.W. 273—Barthels v. Garrels, 227 S.W. 910, 206 Mo.App. 199—Sharber v. National Life & Accident Ins. Co. of Nashville, Tenn., App., 226 S.W. 267—Jine v. Jine, App., 226 S.W. 51—Rochette v. Terminal R. Ass'n of St. Louis, App., 225 S.W. 1019—Hollipeter Shonyo & Co. v. Maxwell, 224 S.W. 113, 205 Mo.App. 357—Napoleon Hill Cotton Co. v. H. Oetter Grocery Co., 222 S.W. 876, 204 Mo.App. 427—Hydraulic Press Brick Co. v. R. B. Winn Contracting Co., App., 219 S.W. 681—Rock v. Farmers' Produce Co., App., 217 S.W. 635—Salisbury v. Western Union Telegraph Co., App., 217 S. W. 551—L. Cohen Grocer Co. v. Pattee, App., 213 S.W. 889—Boyce v. Howell, App., 210 S.W. 89—Bruer v. Dunham, App., 210 S.W. 89—Griffith v. Mutual Protective League, 205 S.W. 286, 200 Mo.App. 87—Marks v. Wooster, App., 199 S. W. 446—Walker v. Southwest Missouri R. Co., App., 198 S.W. 441—State ex rel. and to Use of Lust v. Lust, App., 197 S.W. 172—Whitecotton v. Wilson, App., 197 S.W. 168—Barton v. Louisville & N. R. Co., App., 196 S.W. 379—Waverly Sales Co. v. Ford, App., 194 S.W. 1085—Gentry v. S. A. Rider Jewelry Co., App., 194 S.W. 1057—Mumford v. Mumford, App., 194 S. W. 898—Brannock v. Jaynes, 193 S.W. 51, 197 Mo.App. 150—Priest v. Garnett, App., 191 S.W. 1048—Osage Tie & Timber Co. v. Gorg-Murphy Timber & Grain Co., App., 191 S.W. 1026—Schrock v. Duncan, App., 189 S.W. 610—Reynolds v. Title Guaranty Trust Co., 189 S. W. 33, 196 Mo.App. 21—Sears v. Krekel, App., 184 S.W. 911.

Mont.—Giarratana v. Naddy, 284 P.2d 254, 129 Mont. 154.

N.H.—Consolidation Coal Co. v. Twin State Gas & Electric Co., 129 A. 876, 82 N.H. 91—Hinds v. Hindsale, 116 A. 635, 80 N.H. 346—Bachman v. Travelers' Ins. Co., 97 A. 223, 78 N.H. 100.

N.J.—Spagnuolo v. Bonnet, 109 A.2d 623, 16 N.J. 546.

Builders Fair v. Youmans, 120 A.2d 638, 39 N.J.Super. 183.

Koster v. Deegan, 1 A.2d 321, 121 N.J.Law 6—Shaw v. Texas Co., 103 A. 380, 91 N.J.Law 716—Duff v. Prudential Ins. Co. of America, 101 A. 371, 90 N.J.Law 646—Doolittle v. Hundertmark, 97 A. 47, 88 N.J. Law 515—City of Bridgeton v. Fidelity & Deposit Co. of Maryland, 96 A. 918, 88 N.J.Law 645.

N.M.—Stokes v. New Mexico State Bd. of Ed., 230 P.2d 243, 55 N.M. 213.

N.Y.—Estin v. Estin, 73 N.E.2d 113, 296 N.Y. 308, certiorari denied 68 S.Ct. 62, 332 U.S. 760, 92 L.Ed. 346, vacated on rehearing, 68 S.Ct. 260, 332 U.S. 840, 92 L.Ed. 412, affirmed 68 S.Ct. 1213, 334 U.S. 541, 92 L. Ed. 1561, 1 A.L.R.2d 1412.

Blum v. Connelly, 30 N.Y.S.2d 229, 262 App.Div. 1056.

N.C.—Hill v. Britt, 58 S.E.2d 727, 231 N.C. 713.

Okl.—McConkey v. Brittain, 72 P.2d 348, 181 Okl. 53—Mutual Life Ins. Co. v. Boucher, 200 P. 534, 83 Okl. 42.

Or.—Sherwood v. Gerking, 306 P.2d 386—Neppach v. Simpson, 3 P.2d 775, 137 Or. 576.

Pa.—In re Way's Estate, 109 A.2d 164, 379 Pa. 421—Schmoker v. Schmoker, 59 A.2d 55, 359 Pa. 272—In re Randall's Estate, 19 A.2d 272, 341 Pa. 501—Art Club of Philadelphia v. Heyman & Goodman, 190 A. 922, 325 Pa. 587—Commonwealth ex rel. Schnader v. Neptune Club of City of Philadelphia, 184 A. 542, 321 Pa. 574—New York & Pennsylvania Co. v. New York Cent. R. Co., 124 A. 428, 280 Pa. 297—Petition of Cushing, 109 A. 479, 266

Likewise the findings are to be regarded as adequately supported and left undisturbed if they are sustained by uncontradicted evidence,[58.5] or sufficient evidence;[59] and a similar rule applies if

Pa. 16—Duncan v. Duncan, 109 A. 222, 265 Pa. 471—Duncan v. Duncan, 109 A. 220, 265 Pa. 464—Compton v. Hoffman, 108 A. 626, 265 Pa. 257—Clothier v. Hoffman Co., 104 A. 559, 261 Pa. 83—Spiese v. Mutual Trust Co., 102 A. 119, 258 Pa. 414.

In re Shellenberger's Estate, 71 Pa.Super. 597.

Wernersville Borough v. Wenrich, Com.Pl., 42 Berks Co. 27.

S.C.—Stewart-Jones Co. v. Shehan, 121 S.E. 374, 127 S.C. 451—O'Dell v. McElmurray, 96 S.E. 255, 110 S.C. 80—Muns v. Kennedy, 96 S.E. 253, 110 S.C. 129.

S.D.—Brannigan v. Schneck, 208 N.W. 718, 50 S.D. 116.

Tenn.—People's Nat. Bank v. Swift, 183 S.W. 725, 134 Tenn. 175.

Tex.—Temple Trust Co. v. Haney, 126 S.W.2d 950, 133 Tex. 414—Cagle v. Sabine Valley Timber & Lumber Co., 202 S.W. 942, 109 Tex. 178, 6 A.L.R. 1426.

McCormick v. Rugeley, Civ.App., 253 S.W.2d 57, error refused no reversible error—Knops v. Ordorica, Civ.App., 242 S.W.2d 454—Kennedy v. General Geophysical Co., Civ.App., 213 S.W.2d 707, error refused no reversible error—Gregory v. Laird, Civ.App., 212 S.W.2d 193—Dixie Distributors v. Lane, Civ.App., 211 S.W.2d 581, error refused no reversible error—Trammell v. Trammell, Civ.App., 196 S.W.2d 209—Postal Mut. Indemnity Co. v. Greene, Civ.App., 180 S.W.2d 220, error refused—South Texas Life Ins. Co. v. Danhaus, Civ.App., 155 S.W.2d 406—Slattery v. Empire Dock & Boat Co., Civ.App., 145 S.W.2d 940—Marlett v. Brownfield, Civ.App., 145 S.W.2d 636—O'Connell v. Johnson, Civ.App., 122 S.W.2d 649, error refused—First State Bank of Memphis v. Seago, Civ.App., 120 S.W.2d 951, error refused—Harris v. Prince, Civ.App., 98 S.W.2d 1022, reversed on other grounds 121 S.W.2d 983, 132 Tex. 231—National Life & Accident Ins. Co. v. Love, Civ.App., 282 S.W. 829—Lambert v. Lambert, Civ.App., 243 S.W. 623—Wiseman v. Collins, Civ.App., 242 S.W. 1090—Rogers v. Riley, Civ.App., 240 S.W. 1011—State v. Texas Pac. Coal & Oil Co., Civ.App., 240 S.W. 1003—Lacoma v. Canto, Civ.App., 236 S.W. 1013—Williams v. Simon, Civ.App., 235 S.W. 257, dismissed for want of jurisdiction—Kerwin v. Mead, Civ.App., 229 S.W. 677, reversed on other grounds, Com.App., 241 S.W. 119—Lawson v. Armstrong, Civ.App., 227 S.W. 687, dismissed for want of jurisdiction—Commercial Nat. Bank of Hutchinson, Kan. v. Heid Bros., Civ.App., 226 S.W. 806, reversed on other grounds Heid Bros. v. Commercial Nat. Bank of Hutchinson, Kan., Com.App., 240 S.W. 908—Dodgen v. McCrea, Civ.App., 225 S.W. 71—Dittman v. Cornelius, Civ.App., 218 S.W. 109, reversed on other grounds, Com.App., 234 S.W. 880—Francklow v. Ullmann, Stern & Krausse, Civ.App., 214 S.W. 797, error refused—McFaddin v. White, Civ.App., 214 S.W. 704, dismissed for want of jurisdiction—Williams v. Davenport, Civ.App., 212 S.W. 675—Texas Lumber & Loan Co. v. Green Bros., Civ.App., 211 S.W. 352—Texas Lumber & Loan Co. v. First Nat. Bank, Civ.App., 209 S.W. 811—Williams v. Ogerly, Civ.App., 207 S.W. 572—Smith v. McAdams, Civ.App., 206 S.W. 955, error refused—Wells v. Cloud, Civ.App., 202 S.W. 331—National Fire Ins. Co. of Hartford, Conn. v. Carter, Civ.App., 199 S.W. 507, affirmed, Com.App., 257 S.W. 531—Jackson v. Sere, Civ.App., 198 S.W. 604—Hadnot v. Hicks, Civ.App., 198 S.W. 359, error refused—Whitley v. Alexander, Civ.App., 198 S.W. 173—Garvey v. Cain, Civ.App., 197 S.W. 765—Hart v. Hulsey, Civ.App., 196 S.W. 302—Houston E. & W. T. Ry. Co. v. Cavanaugh, Civ.App., 194 S.W. 642, error dismissed—Adams v. Boren, Civ.App., 194 S.W. 619—Turner v. Ontiberos, Civ.App., 193 S.W. 1089, error refused—Collin County School Trustee v. Stiff, Civ.App., 190 S.W. 216, error refused—Jenkins v. Guaranty State Bank of Palestine, Civ.App., 189 S.W. 314—Kanaman v. Gahagan, Civ.App., 185 S.W. 619, affirmed 230 S.W. 141, 111 Tex. 170, and rehearing denied Civ.App., 231 S.W. 797—Crews v. Powers, Civ.App., 184 S.W. 363.

Va.—Taylor v. Arlington County Bd., 53 S.E.2d 34, 189 Va. 472.

Wash.—Mahoney v. Canafax, 162 P. 2d 903, 23 Wash.2d 869—O'Neil v. Wilshire, 57 P.2d 1254, 186 Wash. 276—Rhodes v. O'Neil, 265 P. 737, 147 Wash. 318—Bernbaum v. United Motors Co., 216 P. 860, 126 Wash. 36—Falco v. Blodgett, 156 P. 407, 90 Wash. 519.

Wis.—Kieckhefer Box Co. v. John Strange Paper Co., 189 N.W. 145, 180 Wis. 367.

Wyo.—Coumas v. Transcontinental Garage, 230 P.2d 748, 68 Wyo. 99, 41 A.L.R.2d 539.

67 C.J. p 1075 note 19.

58.5 Cal.—Sublett v. Henry's Turk & Taylor Lunch, App., 123 P.2d 844, reheard 131 P.2d 369, 21 C.A. 273—In re Norswing's Estate, 118 P.2d 858, 47 C.A.2d 730.

Pa.—Smith v. Windsor Manor Co., 43 A.2d 6, 352 Pa. 449.

59. Ala.—Gibson v. Anderson, 92 So. 2d 692, 265 Ala. 553—Bolen v. Bolen, 87 So. 797, 205 Ala. 114—Allen v. Jacob Dold Packing Co., 86 So. 525, 204 Ala. 652—McCay v. Parks, 79 So. 119, 201 Ala. 647.

Ariz.—In re Taylor's Estate, 106 P.2d 492, 56 Ariz. 211.

Ark.—Newman v. Newman, 169 S.W. 2d 667, 205 Ark. 590—Edwards v. Lake Superior Piling Co., 57 S.W. 2d 1039, 187 Ark. 1162—United Friends of America v. Phillips, 52 S.W.2d 628, 186 Ark. 70—Buhler v. Perry County, 10 S.W.2d 32, 178 Ark. 82—Citizens' Inv. & Sec. Co. v. Daniel, 265 S.W. 63, 165 Ark. 543—Holt v. Brackville, 250 S.W. 33, 158 Ark. 642—Mississippi County v. Grider, 190 S.W. 102, 126 Ark. 219.

Cal.—Carlson v. Robinson, 60 P.2d 426, 7 C.2d 235—Nakamura v. Balish, 296 P. 1103, 211 C. 754—Seney v. Pickwick Stages, Northern Division, 274 P. 536, 206 C. 389—Becker v. Beldt, 271 P. 1059, 205 C. 491—Tiffany & Co. v. Spreckels, 262 P. 742, 202 C. 778—French v. Freeman, 217 P. 515, 191 C. 579—In re Johnson's Estate, 189 P. 280, 182 C. 642—Bufkin v. Cline, 181 P. 390, 180 C. 381.

Sealite, Inc. v. Finster, App., 309 P.2d 51—Martin v. Cassidy, App., 307 P.2d 981—Zinn v. Ex-Cell-O Corp., App., 306 P.2d 1017—Jarvis v. O'Brien, 305 P.2d 961, 147 C.A. 2d 758—Hagenbuch v. Kosky, 298 P.2d 875, 142 C.A.2d 296—Seward v. Wilkerson, 289 P.2d 114, 136 C. A.2d 661—Williams v. Barnett, 287 P.2d 789, 135 C.A.2d 607—Pores v. Purity Milk Co., 287 P.2d 169, 135 C.A.2d 305—Weeks v. Taddeucci, 282 P.2d 586, 132 C.A.2d 491—Ogulin v. Jeffries, 263 P.2d 75, 121 C. A.2d 211—Miller v. Miller, 157 P. 2d 867, 68 C.A.2d 751—Hartman v. San Pedro Commercial Co., 153 P. 2d 212, 66 C.A.2d 935—Miller v. Pierce, 152 P.2d 24, 66 C.A.2d 126—Gerard v. Gerard, 145 P.2d 702, 62 C.A.2d 672—Gordon v. McGaslin, 143 P.2d 359, 61 C.A.2d 540—Williamson v. Kinney, 125 P.2d 920, 52 C.A.2d 98—In re Chamberlain's Estate, 109 P.2d 449, reheard 112 P. 2d 53, 44 C.A.2d 193, rehearing denied 112 P.2d 934, 44 C.A.2d 193—Martin v. Los Angeles Turf Club, 103 P.2d 188, 39 C.A.2d 338—In re Trelut's Estate, 80 P.2d 147, 26 C. A.2d 717—Rabbitt v. Carthage Marble Corp. of Missouri, 55 P.2d 1205, 12 C.A.2d 572—Sayles v. Peters, 54 P.2d 94, 11 C.A.2d 401—Grider v. Manisera, 53 P.2d 982, 11 C.A.2d 355—Sadik v. Wallberg

Mining Corporation, 53 P.2d 981, 11 C.A.2d 379—Kerns v. Long, 45 P. 2d 288, 7 C.A.2d 117—Knickrihm v. Hazel, 40 P.2d 305, 3 C.A.2d 721—Benjamin v. McClure, 37 P.2d 194, 1 C.A.2d 740—Belden v. California Fireproof Storage Co., 35 P. 2d 1034, 140 C.A. 706—Kleinsasser v. McNamara, 18 P.2d 423, 129 C. A. 49—Terry v. Lesem, 265 P. 523, 89 C.A. 682—McGuire v. Aluminum Products Co. of the Pacific Coast, 207 P. 925, 57 C.A. 636—Arrelano v. Jorgensen, 199 P. 855, 52 C.A. 622—Crane v. Reynolds, 178 P. 301, 39 C.A. 83.

Colo.—Taylor v. Melton, 274 P.2d 977, 130 Colo. 280—Nelson v. Schuman, 131 P.2d 823, 110 Colo. 157—Keck v. Vogt, 117 P.2d 1005, 108 Colo. 382—Vasquez v. Morrow, 107 P.2d 246, 106 Colo. 540—Cline v. Heron's Estate, 84 P.2d 833, 103 Colo. 188—Miller v. Goff, 68 P.2d 915, 100 Colo. 545—First Nat. Bank v. O'Connell, 236 P. 1002, 77 Colo. 275—Clay Spring Cattle Co. v. Bassett, 233 P. 156, 76 Colo. 510—Fajkosz v. Beynon, 230 P. 1114, 76 Colo. 292—Sackett v. Rodeck, 226 P. 295, 75 Colo. 425—Larson v. Wahl, 223 P. 19, 74 Colo. 465—First Nat. Bank v. Ahrens, 170 P. 193, 64 Colo. 21.

Conn.—Cerne v. Zahariades, 183 A. 748, 121 Conn. 702.

Del.—S & S Builders, Inc. v. Di Mondi, 126 A.2d 826.

Fla.—Marek v. Patterson, 75 So.2d 808.

Ga.—Huey v. LaGrange Motors, 52 S.E.2d 45, 78 Ga.App. 624.

Idaho.—In re Village of Riggins, 200 P.2d 1011, 68 Idaho 547—Roddy v. State, 139 P.2d 1005, 65 Idaho 137—Knauss v. Hale, 131 P.2d 292, 74 Idaho 218—Bussell v. Barry, 102 P.2d 280, 61 Idaho 350—Tolmie v. San Diego Fruit & Produce Co., 68 P.2d 61, 57 Idaho 631—Amonson v. Amonson, 37 P.2d 228, 55 Idaho 42.

Ill.—Pielet v. Chicago & W. T. Rys., 77 N.E.2d 862, 333 Ill.App. 651—Sunflower Natural Gasoline Co. v. Brown, 63 N.E.2d 612, 327 Ill.App. 205.

Ind.—Moister v. Spickelmier, 22 N. E.2d 893, 107 Ind.App. 35—Curtis v. Mann, 14 N.E.2d 345, 105 Ind. App. 601—Hinton v. Dragroo, 134 N.E. 212, 77 Ind.App. 563—Citizens' Nat. Bank v. Gillett, 124 N.E. 396, 71 Ind.App. 155.

Iowa.—Riter v. Keokuk Electro-Metals Co., 82 N.W.2d 151—Olson v. Edmonds, 11 N.W.2d 693—Gartin's Grocery v. Lucas County Co-op. Creamery Ass'n, 1 N.W.2d 275, 231 Iowa 204—Simpson v. McConnell, 291 N.W. 862, 228 Iowa 412—Ida Grove Independent School Dist. v. Ida County, 286 N.W. 407, 226 Iowa 1237—In re Guardianship of Fisher, 284 N.W. 821—Rodskier v. Northwestern Mut. Life Ins. Co. of Milwaukee, Wis., 248 N.W. 295—Carlson v. City of Marshalltown, 236 N.W. 421, 212 Iowa 373.

Kan.—Truck-Trailer Supply Co. v. Farmer, 311 P.2d 1004, 181 Kan. 396—Hale v. Ziegler, 303 P.2d 190, 180 Kan. 249—In re Beeler's Estate, 262 P.2d 939, 175 Kan. 190—Hockens v. Republic Mut. Fire Ins. Co., 204 P.2d 773, 167 Kan. 17, 10 A.L.R. 2d 221—Perkins v. Citizens' State Bank, 230 P. 1040, 117 Kan. 184—Schlaudt v. Hartman, 181 P. 547, 105 Kan. 112.

Ky.—Phelps v. Brown, 295 S.W.2d 804—Heltsley v. Life & Cas. Ins. Co., 185 S.W.2d 673, 299 Ky. 396.

Md.—Penn Oil Co. v. Triangle Petroleum & Gasoline Co., 111 A. 482, 136 Md. 559.

Mass.—Lanigan v. Scharton, 131 N. E. 223, 238 Mass. 468.

Mich.—G. F. Redmond & Co. v. Michigan Securities Commission, 192 N. W. 688, 222 Mich. 1.

Miss.—McKeithen v. Bush, 29 So.2d 310, 201 Miss. 664, motion overruled 30 So.2d 83, 201 Miss. 664.

Mo.—Huttig v. Brennan, 41 S.W.2d 1054, 328 Mo. 471—Macom v. Brewster, 201 S.W. 547, 273 Mo. 616.

Grace v. Koppel, 30 S.W.2d 182, 225 Mo.App. 291—Martin-Welch Hardware & Plumbing Co. v. Moor, App., 16 S.W.2d 667—Green v. Chicago, B. & Q. R. Co., 251 S.W. 931, 213 Mo.App. 583—Campbell v. Snoddy, App., 249 S.W. 131—Porter v. Gibbs, App., 242 S.W. 1016—Miller v. Griswold, App., 241 S.W. 986—Smith v. Smith, App., 241 S.W. 968.

Mont.—Grosfield v. Johnson, 39 P.2d 660, 98 Mont. 412.

Neb.—Prigge v. Olson, 47 N.W.2d 344, 154 Neb. 131—Warrington v. Stewart, 152 N.W. 558, 98 Neb. 293, modified on other grounds 154 N. W. 206, 98 Neb. 293.

N.J.—Bayuk v. Feldman, 78 A.2d 282, 11 N.J.Super. 317.

N.M.—Flanagan v. Benvie, 273 P.2d 381, 58 N.M. 525—Guzman v. Avila, 265 P.2d 363, 58 N.M. 43—Gunderson v. Sage, 225 P.2d 136, 54 N.M. 347.

N.Y.—Rubin v. Dairymen's League Co-op. Ass'n, 29 N.E.2d 458, 284 N. Y 32, reargument denied 31 N.E. 2d 927, 284 N.Y. 816.

Boskowitz v. Continental Ins. Co., 161 N.Y.S. 680, 175 App.Div. 18, appeal dismissed 115 N.E. 1034, 220 N.Y. 648.

Rosenberg v. Jefferson, 163 N.Y. S. 157, 98 Misc. 616.

N.C.—Scott v. Shackelford, 86 S.E. 2d 453, 241 N.C. 738—Nesbitt v. Fairview Farms, Inc., 80 S.E.2d 472, 239 N.C. 481—Ewing v. Thompson, 65 S.E.2d 17, 233 N.C. 564—State Highway and Public Works Commission v. Diamond S. S. Transp. Corp., 34 S.E.2d 78, 225 N. C. 198—Schoenith, Inc., v. Adrian X-Ray Mfg. Co., 17 S.E.2d 350, 220 N.C. 390—Seawell v. Carolina Motor Club, 184 S.E. 540, 209 N.C. 624—Meares v. Williamson, 184 S.E. 41, 209 N.C. 448—Travelers' Ins. Co. v. Murdock, 179 S.E. 886, 208 N.C. 223—Alston v. Southern Ry. Co., 176 S.E. 292, 207 N.C. 114.

Ohio.—Hartley v. Tigner, App., 125 N.E.2d 360.

Okl.—Poe v. Poe, 256 P.2d 153, 208 Okl. 406—Commercial Credit Co. v. Harjo, 63 P.2d 686, 178 Okl. 397—Ward v. McKenney, 4 P.2d 108, 151 Okl. 242—Whitehead v. Holmes, 3 P.2d 1043, 152 Okl. 214—Southland Refining Co. v. Jackson, 1 P.2d 410, 149 Okl. 286—Springfield Fire & Marine Ins. Co. v. Oliphant, 300 P. 711, 150 Okl. 1—Crewson v. Tulsa Industrial Loan & Investment Co., 299 P. 874, 149 Okl. 142—Citizens' State Bank of Webbers Falls v. Hartsell, 299 P. 455, 149 Okl. 117—Miller v. Thompson, 249 P. 308, 119 Okl. 171—Burroughs v. Cocke & Willis, 156 P. 196, 56 Okl. 627, L.R. A.1916E 1170.

Pa.—Croft v. Malli, 105 A.2d 372, 378 Pa. 6—Essick v. Shillam, 32 A.2d 416, 347 Pa. 373, 146 A.L.R. 1399—School Dist. of Borough of Ferndale, Cambria County, v. School Dist. of Conemaugh Tp., Somerset County, 191 A. 611, 326 Pa. 141—Osterling v. Frick, 131 A. 250, 284 Pa. 397—Sturdevant v. Thomson, 124 A. 434, 280 Pa. 233—George H. West Shoe Co. v. Lemish, 124 A. 87, 279 Pa. 414—Stein v. W. H. Bradford & Co., 123 A. 303, 278 Pa. 321—Madole v. Miller, 119 A. 829, 276 Pa. 131.

Commonwealth ex rel. Mandell v. Mandell, 133 A.2d 235, 184 Pa. Super. 179—Commonwealth v. Turnblacer, 128 A.2d 177, 183 Pa. Super. 41—Hatalowich v. Nagy, 126 A.2d 809, 182 Pa.Super. 192—Applebaum v. Manayunk Spinning Mill, 115 A.2d 876, 178 Pa.Super. 198—Craft Engineering Co. v. Messa, 90 A.2d 628, 171 Pa.Super. 447—Arabian Am. Oil Co. v. Kirby & Kirby, 90 A.2d 410, 171 Pa.Super. 23—Villari v. James, 38 A.2d 379, 155 Pa.Super. 155—McNulty v. General American Life Ins. Co., 33 A.2d 796, 153 Pa.Super. 288—Hosack v. Taylor Bros., 15 A.2d 489, 142 Pa.Super. 83—School Dist. of City of New Castle, Now for Use of Sherer, v. School Dist. of North Beaver Tp., 14 A.2d 855, 141 Pa. Super. 401—Cowell, to Use of Fesler v. Builders, 11 A.2d 504, 139 Pa. Super. 192—Huron v. Schomaker, 1 A.2d 537, 132 Pa.Super. 462—Pearlman v. Newburger, 178 A. 402, 117 Pa.Super. 328—Ellman v. Bralow, 84 Pa.Super. 413—Robert J. Ward & Co. v. Miller, 80 Pa.Super. 259—Dintenfass v. American Railway Express Co., 78 Pa.Super. 395—

the fact findings of the trial court are sustained by substantial evidence,[60] by legitimate or reasonable

Johnston Harvester Co. v. Burch, 57 Pa.Super. 95.

S.C.—Smythe v. Brunson, 108 S.E. 99, 115 S.C. 385.

S.D.—Ellefson v. Cherney, 11 N.W. 2d 527, 69 S.D. 453.

Tex.—Jefferson Life Ins. Co. v. Kuehler, Civ.App., 298 S.W.2d 619—Hogan v. Cunningham, Civ.App., 278 S.W.2d 265—Grimes v. Jordan, Civ.App., 260 S.W.2d 220, error refused—Stanley v. Whitney, Civ. App., 259 S.W.2d 636—Banks v. Collins, Civ.App., 257 S.W.2d 97, answer to certified question conformed to 258 S.W.2d 348, 152 Tex. 265—Southwest Fabricating & Welding Co. v. Gray Electronics, Civ.App., 248 S.W.2d 961—Ball v. Yowell, Civ.App., 222 S.W.2d 277, refused no reversible error—Logan v. Bush, Civ.App., 220 S.W.2d 669, error refused no reversible error—City of Terrell Wells v. City of San Antonio, Civ.App., 216 S.W.2d 657, error refused—Clark v. Cohen, Civ.App., 205 S.W.2d 797, error refused no reversible error—El Paso Furniture Co. v. Gardner, Civ.App., 182 S.W.2d 818—Nixon-Clay Commercial College v. Woods, Civ.App., 176 S.W.2d 1015, error refused—Texas Osage Co-op. Royalty Pool v. Garcia, Civ.App., 176 S.W.2d 798, error refused—Harris County v. Hall, Civ.App., 166 S.W.2d 729, reversed on other grounds 172 S.W.2d 691, 141 Tex. 388—Foster v. Hackworth, Civ.App., 164 S.W.2d 796—Hughes v. Parmer, Civ.App., 164 S.W.2d 576—Sansing v. Bricka, Civ. App., 159 S.W.2d 142, error refused—Brennan v. Greene, Civ.App., 154 S.W.2d 523, error refused—Pure Oil Co. v. Crabb, Civ.App., 151 S. W.2d 962, error refused—James v. Davis, Civ.App., 150 S.W.2d 326, error dismissed, judgment correct—Hidalgo County Water Control & Improvement Dist. No. 1 v. Hidalgo County, Civ.App., 134 S.W.2d 464, error refused—Hardee v. Vincent, Civ.App., 127 S.W.2d 333, reversed on other grounds 147 S.W.2d 1072, 136 Tex. 99—Chacon v. Bruni, Civ.App., 125 S.W.2d 428, error refused—Frix v. Green, Civ.App., 95 S.W.2d 219—St. Louis Southwestern Ry. Co. of Texas v. Kessinger, Civ.App., 72 S.W.2d 1105—Graves v. Cooper, Civ.App., 273 S. W. 657—American Central Ins. Co. v. Buchanan-Vaughan Auto Co., Civ.App., 256 S.W. 610, affirmed Com.App., 271 S.W. 895—Gaal v. Eden, Civ.App., 255 S.W. 683.

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4 C.J. p 878 note 81.

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60. Ala.—National Surety Co. v. Julian, 150 So. 474, 227 Ala. 472—Wetter Pipe Co. v. Williams, 135 So. 172, 223 Ala. 220.

Putman v. Williams, 150 So. 701, 25 Ala.App. 552, certiorari denied 150 So. 702, 227 Ala. 428.

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inferences which may properly be deduced from the evidence in the case,[61] by evidence which is rea-

Burleson, Civ.App., 41 S.W.2d 338—Employers' Casualty Co. v. Ponton, Civ.App., 41 S.W.2d 147—Neblett & Norman v. Goukas, Civ.App., 40 S.W.2d 1113—Panhandle & S. F. Ry. Co. v. Williams, Civ.App., 38 S.W.2d 880—Rusk County v. Maloney, Civ.App., 38 S.W.2d 868—Massoud v. Attel, Civ.App., 32 S.W. 2d 225—Brown v. Brown, Civ.App., 30 S.W.2d 1110—Kelsey v. Myers, Civ.App., 29 S.W.2d 855—Gomez v. Hernandez, Civ.App., 29 S.W.2d 843—Hewitt v. Green, Civ.App., 28 S. W.2d 892—Cox v. McClave, Civ. App., 22 S.W.2d 961—Cruz v. Perkins, Civ.App., 21 S.W.2d 1078—Reeves v. Tunnell, Civ.App., 21 S. W.2d 365, reversed on other grounds Tunnell v. Reeves, Com. App., 35 S.W.2d 707—Hickman v. Hickman, Civ.App., 20 S.W.2d 1073—West Texas Utilities Co. v. Haynes, Civ.App., 20 S.W.2d 236—Porter v. McCraw, Civ.App., 19 S. W.2d 372—McNeal v. McCraw, Civ. App., 15 S.W.2d 139—Hardin v. Continental Casualty Co., Civ.App., 195 S.W. 653, dismissed for want of jurisdiction—T. W. Marse & Co. v. Flockinger, Civ.App., 189 S.W. 1017.

Utah.—Dalton v. Dalton, 307 P.2d 894, 6 Utah 2d 136—Huber v. Deep Creek Irr. Co., 305 P.2d 478, 6 Utah 2d 15—Malstrom v. Consolidated Theatres, 290 P.2d 689, 4 Utah 2d 181—Upton v. Heiselt Const. Co., 280 P.2d 971, 3 Utah 2d 170—John C. Cutler Ass'n v. De Jay Stores, 279 P.2d 700, 3 Utah 2d 107—Thirteenth & Washington Sts. Corp. v. Neslen, 254 P.2d 847—Parkinson v. Amundson, 250 P.2d 944, 122 Utah 443—Knudsen Music Co. v. Masterson, 240 P.2d 973, 121 Utah 252—Tacea Tsouras v. Brighton & North Point Irr. Co., 227 P.2d 329, 119 Utah 354—Sproul v. Parks, 210 P.2d 436, 116 Utah 368—Cummings v. Rytting, 207 P.2d 804, 116 Utah 1—Sine v. Salt Lake Transp. Co., 147 P.2d 875, 106 Utah 289—Tracy Loan & Trust Co. v. Openshaw Inv. Co., 132 P.2d 388, 102 Utah 509—G. S. Wood Mercantile Co. v. Dougall, 114 P.2d 202, 100 Utah 267—Decorso v. Booth, 91 P.2d 449, 97 Utah 163—Associated Scavengers v. Illingsworth, 74 P.2d 655, 93 Utah 504—Harper v. Tri-State Motors, 63 P.2d 1056, 90 Utah 226—Christensen v. Johnson, 61 P.2d 597, 90 Utah 273—Mary Jane Stevens Co. v. First Nat. Bldg. Co., 57 P.2d 1099, 89 Utah 456—Vadner v. Rozzelle, 45 P.2d 561, 88 Utah 162—Jensen v. Gerrard, 39 P.2d 1070, 85 Utah 481—Wood v. Akridge, 36 P. 2d 804, 84 Utah 468—Blackburn v. Bozo, 26 P.2d 542, 82 Utah 556—Angerman Co. v. Edgemon, 290 P. 169, 76 Utah 394, 79 A.L.R. 40—Jensen v. Howell, 282 P. 1034, 75 Utah 64—Bracken v. Dahle, 251 P. 16, 68 Utah 486—Davis v. Utah Const. Co., 231 P. 816, 64 Utah 460—Kelley v. Moab State Bank, 230 P. 566, 64 Utah 290—Carlquist v. Quayle, 218 P. 729, 62 Utah 266—McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115—Rock v. Gustaveson Oil Co., 214 P. 801, 61 Utah 399—Flinders v. Hunter, 208 P. 526, 60 Utah 314, 28 A. L.R. 886—Baker v. Latses, 206 P. 553, 60 Utah 38—Musser v. McCornick & Co., 192 P. 1057, 57 Utah 62—Larsen v. Ryan, 180 P. 178, 54 Utah 250—Stilphen v. Elliott, 173 P. 700, 53 Utah 579—Love v. St. Joseph Stock Yards Co., 169 P. 951, 51 Utah 305—In re Frandsen's Will, 167 P. 362, 50 Utah 156—Allen v. Allen, 166 P. 1169, 50 Utah 104—Beesley v. Boardman, 166 P. 991, 50 Utah 149—Woolf v. Gray, 158 P. 788, 48 Utah 239.

Vt.—D'Amato v. Donatoni, 168 A. 564, 105 Vt. 496—Bardwell v. Commercial Union Assur. Co., 163 A. 633, 105 Vt. 106, followed in Bardwell v. Continental Ins. Co., 163 A. 639, 105 Vt. 121, Bardwell v. Fire Ass'n of Philadelphia, 163 A. 639, 105 Vt. 122, Bardwell v. Home Ins. Co., 163 A. 639, 105 Vt. 123, Bardwell v. Insurance Co. of North America, 163 A. 640, 105 Vt. 124, Bardwell v. National Fire Ins. Co., 163 A. 640, 105 Vt. 125, Bardwell v. Pennsylvania Fire Ins. Co., 163 A. 640, 105 Vt. 126, and Bardwell v. Phœnix Ins. Co., 163 A. 640, 105 Vt. 127—University of Vermont v. Wilbur's Estate, 163 A. 572, 105 Vt. 147—Sheltra v. Carpenter, 148 A. 869, 102 Vt. 423, Labor v. Carpenter, 148 A. 867, 102 Vt. 418.

Va.—Duncan v. Barbour, 49 S.E.2d 260, 188 Va. 53—**Corpus Juris Secundum cited in** Ashby v. Dumouchelle, 40 S.E.2d 493, 496, 185 Va. 724.

Wash.—Duckworth v. Michel, 19 P.2d 914, 172 Wash. 234—Burnett v. Edw. J. Dunnigan, Inc., 4 P.2d 829, 165 Wash. 164—Desimone v. Shields, 277 P. 829, 152 Wash. 353—Williams v. Moore, 175 P. 172, 103 Wash. 560.

Wis.—Morris F. Fox & Co. v. Lisman, 240 N.W. 809, 208 Wis. 1, rehearing denied 242 N.W. 679, 208 Wis. 1—Graham v. Zellers, 238 N.W. 385, 205 Wis. 542, 78 A.L.R. 353—Northern Minnesota Dairy Farm Land Co. v. Haswell, 189 N.W. 268, 177 Wis. 635—Hickman v. Wellauer, 171 N.W. 635, 169 Wis. 18.

Wyo.—In re Bradley, 293 P.2d 678, 75 Wyo. 144—Board of Trustees of Memorial Hospital of Sheridan County v. Pratt, 262 P.2d 682, 72 Wyo. 120—Durante v. Consumers Filling Station Co. of Cheyenne, 257 P.2d 347, 71 Wyo. 271—Cook v. McDonald, 148 P.2d 594, 60 Wyo. 215—Yellowstone Sheep Co. v. Ellis, 96 P.2d 895, 55 Wyo. 63—Neil v. Updike, 95 P.2d 81, 55 Wyo. 53—Kaleb v. Modern Woodmen of America, 64 P.2d 605, 51 Wyo. 116—Kumor v. Scottish Union & National Ins. Co., 33 P.2d 916, 47 Wyo. 174—King v. Richards-Cunningham Co., 28 P.2d 492, 46 Wyo. 355—Stockmen's Nat. Bank of Casper v. Richardson, 18 P.2d 635, 45 Wyo. 306—Farmers' State Bank of Riverton v. Northern Trust Co., 270 P. 163, 39 Wyo. 46—Gray v. Elliott, 255 P. 593, 36 Wyo. 361, 53 A.L.R. 554, rehearing denied 257 P. 345, 37 Wyo. 4, 53 A.L.R. 554—Quealy Land & Live Stock Co. v. George, 254 P. 130, 36 Wyo. 268—White Automobile Co. v. Hamilton, 226 P. 687, 31 Wyo. 390—McFadden v. French, 213 P. 760, 29 Wyo. 401.

4 C.J. p 878 note 82—60 C.J. p 1131 note 92.

Meaning of "substantial evidence"

(1) "The term 'substantial evidence' is not used in the sense of reliability, but rather in contradistinction to the term 'scintilla of evidence.'"

U.S.—U. S. v. Tyrakowski, C.C.A.Ill., 50 F.2d 766, 770.

(2) Evidence is "substantial evidence" if reasonable men all agree, or if reasonable men may fairly differ as to whether the evidence establishes the facts found, and term may also be defined as evidence of substance, which establishes facts and from which reasonable inferences may be drawn.

N.M.—Brown v. Cobb, 294 P.2d 264, 53 N.M. 169.

Negative character of substantial evidence does not prevent it from being sufficient to sustain the trial court's fact findings.

Idaho.—Oregon Short Line R. Co. v. Mountain States Telephone & Telegraph Co., 237 P. 281, 41 Idaho 4.

Special finding of the court sitting without a jury will not be disturbed on appeal if the finding is supported by any substantial evidence in the whole record, including inferences of fact legitimately deducible therefrom.

Mo.—Broyles v. Achor, App., 78 S.W. 2d 459.

As against presumption

Where ultimate fact in case is found from substantial evidence, it cannot be said as matter of law that any presumption will prevail.

Cal.—Siegell v. York, 191 P.2d 50, 84 C.A.2d 383.

61. Ala.—Hagood v. Spinks, 122 So. 815, 219 Ala. 503.

Ariz.—DeSantis v. Dixon, 336 P.2d

38, 72 Ariz. 345—J. H. Mulrein Plumbing Supply Co. v. Walsh, 222 P. 1046, 26 Ariz. 152—Pacific Gas & Electric Co. v. Almanzo, 198 P. 457, 22 Ariz. 431.

Ark.—Swift & Co. v. Ft. Smith & W. Ry. Co., 16 S.W.2d 1001, 179 Ark. 516.

Cal.—Fackrell v. City of San Diego, 157 P.2d 625, 26 C.2d 196, 158 A.L.R. 773.

Ivancovich v. Sullivan, App., 307 P.2d 989—Casper v. City of Los Angeles, 295 P.2d 452, 140 C.A.2d 433—Donlon v. Donlon, 295 P.2d 51, 140 C.A.2d 428—Echols v. Fabyunkey, 290 P.2d 260, 137 C.A.2d 477—Bank of America Nat. Trust & Sav. Ass'n v. Beard, 290 P.2d 87, 137 C.A.2d 405—Anderson v. Joseph, 288 P.2d 524, 136 C.A.2d 382—Stewart v. Stewart, 278 P.2d 441, 130 C.A.2d 186—Basin Oil Co. of Cal. v. Baash-Ross Tool Co., 271 P.2d 122, 125 C.A.2d 578—Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7—Morand v. Seaside Memorial Hospital of Long Beach, 264 P.2d 96, 121 C.A.2d 745—Scott v. Nevis, 261 P.2d 797, 120 C.A.2d 619—Petition of Jost, 256 P.2d 71, 117 C.A.2d 379, reversed on other grounds Jost v. U. S., 74 S.Ct. 427, 347 U.S. 901, 98 L.Ed. 1066—Axell v. Axell, 250 P.2d 182, 114 C.A.2d 248—Epley v. Ingersoll, 249 P.2d 581, 114 C.A.2d 40—Sheeter v. Lifur, 249 P.2d 336, 113 C.A.2d 729—Dorman v. Taylor, 248 P.2d 441, 113 C.A.2d 505—Robinson v. Peardon, 247 P.2d 83, 112 C.A.2d 794—Beatty v. Oakland Sheet Metal Supply Co., 244 P.2d 25, 111 C.A.2d 53—Anderson v. Wagnon, 242 P.2d 915, 110 C.A.2d 362—Solomon v. Walton, 241 P.2d 49, 109 C.A.2d 381—DeRosier v. Vierra, 240 P.2d 660, 109 C.A.2d 291—Nellis v. Massey, 239 P.2d 509, 108 C.A.2d 724—In re Rugani's Estate, 239 P.2d 500, 108 C.A.2d 624—Coyne v. Nelson, 237 P.2d 45, 107 C.A.2d 467—Chaffee v. Sorensen, 236 P.2d 851, 107 C.A.2d 284—Ellis v. Geiger, 233 P.2d 166, 105 C.A.2d 415—Edgar v. Bank of America Nat. Trust & Sav. Ass'n, 228 P.2d 21, 102 C.A.2d 700—Church v. Headrick & Brown, 225 P.2d 558, 101 C.A.2d 396—Baggesi v. Baggesi, 224 P.2d 894, 100 C.A.2d 828—Turknette v. Turknette, 223 P.2d 495, 100 C.A.2d 271—Remillard Brick Co. v. Dandini, 220 P.2d 927, 98 C.A.2d 617—Calimpco, Inc. v. Warden, App., 219 P.2d 915, reheard 224 P.2d 421, 100 C.A.2d 429—Wanders v. Nelson, 219 P.2d 852, 98 C.A.2d 267—Abel v. O'Hearn, 218 P.2d 827, 97 C.A.2d 797—Swayze v. Swayze, 217 P.2d 122, 97 C.A.2d 89—In re Barton's Estate, 214 P.2d 857, 96 C.A.2d 234—Dickey v. Pattison, 207 P.2d 1081, 92 C.A.2d 659—Export Leaf Tobacco Co. v. Los Angeles County, 202 P.2d 622, 89 C.A.2d 909—In re Smith's Estate, 195 P.2d 842, 86 C.A.2d 456—Caperton v. Mast, 192 P.2d 467, 85 C.A.2d 157—Oregon-Nevada-California Fast Freight v. Fruehauf Trailer Co., 189 P.2d 329, 83 C.A.2d 620—Cloud v. Market St. Ry. Co., 168 P.2d 191, 74 C.A.2d 92—Givens v. Johnson, 166 P.2d 67, 73 C.A.2d 139—Southern Cal. Freight Lines v. State Bd. of Equalization, 163 P.2d 776, 72 C.A.2d 26—Vaccarezza v. Sanguinetti, 163 P.2d 470, 71 C.A.2d 687—Delay v. Braun, 146 P.2d 32, 63 C.A.2d 8—Norins Realty Co. v. Hoytt, 142 P.2d 353, 61 C.A.2d 194—In re Reynolds' Guardianship, 141 P.2d 498, 60 C.A.2d 669—Wallace v. Speier, 140 P.2d 900, 60 C.A.2d 387—Drabkin v. Bigelow, 138 P.2d 750, 59 C.A.2d 68—Caminetti v. Imperial Mut. Life Ins. Co., 139 P.2d 681, 59 C.A.2d 476—Morris v. George, 135 P.2d 195, 57 C.A.2d 665—In re Stahl's Estate, 129 P.2d 475, 54 C.A.2d 565—Oakland Scavenger Co. v. Gandi, 124 P.2d 143, 51 C.A.2d 69—Burdick v. Wittich, 116 P.2d 90, 46 C.A.2d 456—Stup v. Higgins, 106 P.2d 931, 41 C.A.2d 379—Swartzbaugh v. Sargent, 86 P.2d 895, 30 C.A.2d 467—Morrow v. Coast Land Co., 84 P.2d 301, 29 C.A.2d 92—Adams v. Dow Hotel, 76 P.2d 210, 25 C.A.2d 51—Fitzkee v. Turner, 75 P.2d 522, 24 C.A.2d 526—Rancho Santa Margarita v. San Diego County, 26 P.2d 716, 135 C.A. 134—Driscoll v. Varian, 7 P.2d 1036 120 C.A. 229—Turner v. Bush, 185 P. 190, 43 C.A. 309.

Conn.—Rodgers v. Cox, 36 A.2d 373, 130 Conn. 61—Fogarty v. Fidelity & Casualty Co., 188 A. 481, 122 Conn. 245—Amsterdam Realty Co. v. Johnson, 161 A. 339, 115 Conn. 243—Kanopka v. Kanopka, 154 A. 144, 113 Conn. 30, 80 A.L.R. 619—Dixon v. Lewis, 115 A. 472, 96 Conn. 661.

Ind.—Gwinn v. Myers, 129 N.E.2d 225, 234 Ind. 560—Ayres v. Smith, 84 N.E.2d 185, 227 Ind. 82.

Grooms v. Meriweather, 137 N. E. 32, 79 Ind.App. 274.

Iowa.—Hockert v. New York Life Ins. Co., 276 N.W. 422, 224 Iowa 789.

Me.—Jolovitz v. Redington & Co., 88 A.2d 589, 148 Me. 23.

Mass.—Wasserman v. National Gypsum Co., 139 N.E.2d 410—Drain v. Brookline Sav. Bank, 99 N.E.2d 160, 327 Mass. 435—First National Stores v. H. P. Welch Co., 55 N.E. 2d 200, 316 Mass. 147—Gallagher v. R. E. Cunniff, Inc., 49 N.E.2d 448, 314 Mass. 7—Barttro v. Watertown Square Theatre, 34 N.E.2d 696, 309 Mass. 223—Massachusetts Lubricant Corp. v. Socony-Vacuum Oil Co., 25 N.E.2d 719, 305 Mass. 269—City of Cambridge v. Town of West Springfield, 20 N.E.2d 432, 303 Mass. 63—Bridges v. Hart, 18 N.E.2d 1020, 302 Mass. 239—Snow v. City of Marlborough, 17 N.E.2d 318, 301 Mass. 422—Boston & A. R. Co. v. Com., 6 N.E.2d 613, 296 Mass. 426—Weiner v. Egleston Amusement Co., 199 N.E. 306, 293 Mass. 83—Gilbert v. Beacon Hill Credit Union, 192 N.E. 25, 287 Mass. 433, 94 A.L.R. 1012—State St. Trust Co. v. Lawrence Mfg. Co., 187 N.E. 755, 284 Mass. 355—Universal Adjustment Corporation v. Midland Bank, Limited, of London, England, 184 N.E. 152, 281 Mass. 303, 87 A.L.R. 1407—Engel v. Checker Taxi Co., 176 N.E. 179, 275 Mass. 471—Moss v. Old Colony Trust Co., 140 N.E. 803, 246 Mass. 139.

Mo.—Gronoway v. Markham, 115 S. W.2d 136, 232 Mo.App. 1118—Lampton Realty Co. v. Hoyt, App., 80 S.W.2d 249—Woodruff v. Rusk, App., 76 S.W.2d 709—Beckwith v. Massillon Rolling Mill Co., 175 S. W. 253, 190 Mo.App. 21.

Mont.—Van Voast v. Blaine County, 167 P.2d 563, 118 Mont. 375.

N.M.—Ham v. Ellis, 76 P.2d 952, 42 N.M. 241.

Okl.—Davidor v. Smith, 309 P.2d 272—Oklahoma Ry. Co. v. Gaines, 198 P.2d 411, 200 Okl. 585—Busboom v. Smith, 191 P.2d 198, 199 Okl. 688—Warren v. Farmers Co-op. Ass'n of Olustee, 175 P.2d 85, 198 Okl. 45—Continental Supply Co. v. Dickson Oil Co., 153 P.2d 1017, 194 Okl. 660—Grant G. Forsythe, Inc., v. Barclay, 153 P.2d 485, 194 Okl. 643—McMurtray v. Hamilton, 132 P.2d 335, 191 Okl. 657—Oklahoma Natural Gas Co. v. Shirley, 123 P.2d 669, 190 Okl. 319—Hivick v. Martin, 107 P.2d 540, 188 Okl. 183—City of Holdenville v. Deer, 91 P. 2d 79, 185 Okl. 260—Western Union Telegraph Co. v. Slife, 251 P. 48, 120 Okl. 285—Consolidated School Dist. No. 73, Carter County v. Ellison, 250 P. 103, 119 Okl. 259—Campbell v. Vance, 248 P. 634, 118 Okl. 283—Forman v. Needles, 188 P. 1087, 78 Okl. 105.

Or.—State Savings & Loan Ass'n v. Bryant, 81 P.2d 116, 159 Or. 601.

Pa.—Commonwealth ex rel. Mandell v. Mandell, 133 A.2d 235, 184 Pa. Super. 179—In re Hollowell's Estate, 182 A. 779, 120 Pa.Super. 576—Commonwealth v. Knoble, 88 Pa. Super. 562.

R.I.—Grande v. Boston Mut. Life Ins. Co., 193 A. 516, 58 R.I. 502.

S.C.—Pearce-Young-Angel Co. v. Charles R. Allen, Inc., 50 S.E.2d 698, 213 S.C. 578.

Tex.—Banks v. Collins, 257 S.W.2d 97, 152 Tex. 265, answer to certified question conformed to, Civ. App., 258 S.W.2d 348.

National Sur. Co. v. Roberts, Civ. App., 217 S.W.2d 894.

Utah.—Lyn v. Thompson, 184 P.2d 667, 112 Utah 24.

sonably susceptible of different inferences or conclusions,[62] or which raises a fair issue or question of fact,[63] or by evidence sufficient to go to the jury,[64] or not such as would warrant binding instructions if the facts were to be passed on by a jury.[65] Positive testimony of a witness believed by the trial court is ordinarily sufficient to compel the affirmance of the finding of the trial court,[65.5] but it is not necessarily so under all circumstances.[65.10]

To justify a reversal, the failure or insufficiency of the proof must relate to a vital point in the case[66] and amount to a complete absence of substantial supporting evidence,[67] or the evidence must be so

Vt.—E. A. Strout Realty Agency, Inc. v. Wooster, 99 A.2d 689, 118 Vt. 66—Hackel v. Burroughs, 91 A.2d 703, 117 Vt. 328—Whitman Lumber Co. v. Van Buren Lumber Co., 86 A.2d 550, 117 Vt. 170—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471—Eastman v. Pelletier, 47 A.2d 298, 114 Vt. 419.

W.Va.—Sutton v. Sutton, 36 S.E.2d 608, 128 W.Va. 290.

Wyo.—**Corpus Juris cited in** Hench v. Robinson, 291 P.2d 417, 420, 75 Wyo. 1.

4 C.J. p 879 note 85, p 881 note 9.

Inferences from subordinate facts or undisputed evidence see supra § 1656(8).

Circumstantial evidence

Findings of the trial court, supported by circumstantial evidence, will not be reviewed on appeal.

N.M.—Byers Bros. & Co. Live Stock Commission Corporation v. McKenzie, 239 P. 525, 30 N.M. 487.

Weight

Evidence supporting inferences adopted by fact-finding body, in order to be sustained on review, need not outweigh other reasonable inferences so as to demonstrate their impossibility.

Minn.—Burke v. B. F. Nelson Mfg. Co., 18 N.W.2d 121, 219 Minn. 381.

62. Ariz.—In re Clough, 236 P. 700, 28 Ariz. 204.

Cal.—Benton v. Sloss, 240 P.2d 575, 38 C.2d 399—Nichols v. Mitchell, 197 P.2d 550, 32 C.2d 598—Silva v. Gustine Creamery, 17 P.2d 699, 217 C. 146—Smith v. Blodget, 201 P. 584, 187 C. 235.

Plough v. Petersen, 295 P.2d 549, 140 C.A.2d 595—Johnson v. Comptoir Franco Belge D'Exportation Des Tubes D'Acier, 288 P.2d 151, 135 C.A.2d 683—In re Cummins' Estate, 280 P.2d 128, 130 C.A.2d 821—Snokelberg v. Crecelius, 280 P. 2d 109, 131 C.A.2d 136—In re Jenkins' Estate, 242 P.2d 107, 110 C. A.2d 98—Todd v. McColgan, 201 P.2d 414, 89 C.A.2d 509—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334—Bryant v. Market St. Ry. Co., 163 P.2d 33, 70 C.A.2d 508—People v. One 1941 Cadillac Club Coupe, 147 P.2d 49, 63 C.A.2d 418—Burgess v. Security-First Nat. Bank of Los Angeles, 113 P.2d 298, 44 C.A.2d 808—Chinnis v. Pomona Pump Co., 98 P.2d 560, 36 C.A.2d 633—Rea v. Glenn, 24 P.2d 204, 133 C.A. 82—Nielsen v. Frank, 3 P.2d 607, 117 C.A. 117—Jones v. Foster, 2 P.2d 582, 116 C.A. 102—Anderson v. Adams, 2 P.2d 569, 116 C.A. 302—Schumann-Heink & Co. v. U. S. Nat. Bank, 291 P. 684, 108 C.A. 223, rehearing denied 292 P. 547, 108 C.A. 223—Allen v. San Francisco Wholesale Dairy Produce Exch., 210 P. 41, 59 C.A. 93—Charles Nelson Co. v. Pacific Wharf & Storage Co., 209 P. 51, 58 C.A. 347—Off v. Crump, 180 P. 360, 40 C.A. 173.

Conn.—Katz v. Martin, 120 A.2d 826, 143 Conn. 215—Holmes v. City of New London, 101 A.2d 302, 140 Conn. 477.

D.C.—George v. Capital Traction Co., 54 App.D.C. 144, 295 F. 965.

Idaho.—Silkey v. Tiegs, 5 P.2d 1049, 51 Idaho 344.

Ind.—Louisville & N. Ry. Co. v. Western Union Telegraph Co. of Indiana, 111 N.E. 802, 184 Ind. 531, Ann.Cas.1917C 628.

Gish v. St. Joseph Loan & Trust Co., 113 N.E. 394, 66 Ind.App. 500.

Kan.—Bentley v. Keegan, 202 P. 70, 109 Kan. 762—Evans v. Diehl, 172 P. 17, 102 Kan. 728.

Minn.—Young v. Thorpe Bros., 259 N.W. 404.

Mo.—Stark v. National Council Knights and Ladies of Security, App., 259 S.W. 522, record quashed State ex rel. National Council of Knights and Ladies of Security v. Allen, 269 S.W. 388, 306 Mo. 633, mandate conformed to Stark v. National Council Knights and Ladies of Security, App., 273 S.W. 133.

Mont.—Stauffacher v. Great Falls Public Service Co., 43 P.2d 647, 99 Mont. 324—In re Adams' Estate, 32 P.2d 854, 97 Mont. 70—Vesel v. Polich Trading Co., 28 P.2d 858, 96 Mont. 118—Nolan v. Benninghoff, 208 P. 905, 64 Mont. 68.

Ohio.—Casci v. Evans, 152 N.E. 764, 21 Ohio App. 288—Loney v. Hall, 8 Ohio App. 154.

Okl.—Smith v. Lindsey, 215 P. 791, 91 Okl. 8.

S.C.—In re Hunt's Will, 99 S.E. 809, 112 S.C. 305—Sawyer v. Mabus, 92 S.E. 1029, 107 S.C. 369.

Tex.—Galveston-Houston Electric Ry. Co. v. Jewish Literary Society, Civ.App., 192 S.W. 324, dismissed by agreement.

Wash.—Buff v. Davies, 170 P. 875, 100 Wash. 343.

Wyo.—**Corpus Juris cited in** Hench v. Robinson, 291 P.2d 417, 420, 75 Wyo. 1.

4 C.J. p 879 note 86.

Circumstantial evidence

Cal.—Vaccarezza v. Sanguinetti, 163 P.2d 470, 71 C.A.2d 687.

63. Mo.—St. Louis-San Francisco Ry. Co. v. Dillard, 43 S.W.2d 1034, 328 Mo. 1154.

Standard Computing Scale Co. v. Reames, App., 258 S.W. 451.

N.J.—Suburban Home Co. v. Matulewich, 174 A. 708, 113 N.J.Law 403.

Suburban Home Co. v. Matulewich, 170 A. 862, 12 N.J.Misc. 208.

Tex.—Reed v. Reed, Civ.App., 303 S. W.2d 460—Payne Advertising Agency v. Wilhelm, Civ.App., 145 S.W.2d 641—Fisk Tire Co. v. Firestone Tire & Rubber Co., Civ.App., 143 S.W.2d 828—Hunt v. Isom, Civ. App., 77 S.W.2d 1095—McKay v. McKay, Civ.App., 189 S.W. 520, error refused.

64. Iowa.—Clark v. Sherriff, 74 N. W.2d 569—Weidert v. Monahan Post Legionnaire Club, 51 N.W.2d 400, 243 Iowa 643—Davis v. Mahaska County, 176 N.W. 244.

Mo.—Weisguth v. Burke, App., 138 S.W.2d 689.

Or.—Winters v. Privett, 168 P. 942, 86 Or. 501.

4 C.J. p 879 note 87.

65. Iowa.—Carlson v. Bankers Trust Co., 50 N.W.2d 1, 242 Iowa 1207—Miller v. Woolsey, 35 N.W.2d 584, 240 Iowa 450—Luppes v. Harrison, 32 N.W.2d 809, 239 Iowa 880.

Pa.—Banca D'Italia & Trust Co. v. Giordano, 36 A.2d 242, 154 Pa. Super. 452—Mabrey v. Metropolitan Life Ins. Co., 70 Pa.Super. 321.

Tex.—Cisneros v. Thompson, Civ. App., 189 S.W.2d 67.

65.5 Utah.—Continental Bank & Trust Co. v. Stewart, 291 P.2d 890, 4 Utah 2d 228.

65.10 Utah.—Continental Bank & Trust Co. v. Stewart, supra.

66. Mo.—Gill v. Harris, 24 S.W.2d 673, 224 Mo.App. 717.

67. Cal.—Potter v. Pacific Coast Lumber Co. of Cal., 234 P.2d 16, 37 C.2d 592—City of San Diego v. Cuyamaca Water Co., 287 P. 496, 209 C. 152, certiorari denied La Mesa Lemon Grove & Spring Valley Irrigation Dist. v. City of San Diego, 51 S.Ct. 36, 282 U.S. 863, 75 L.Ed. 763.

Garrick v. J. M. P., Inc., App., 309 P.2d 896—New v. New, App., 306 P.2d 987—In re Wisdom, 304 P.2d 221, 146 C.A.2d 635—Voss v. Friedgen, 296 P.2d 424, 141 C.A.2d

slight as to show an abuse of discretion,[68] or such that reasonable men are bound to reach a contrary conclusion.[68.5] If findings which will uphold the judgment are adequately sustained by the evidence, there will be no reversal because of the insufficiency of the evidence as to other or immaterial findings.[69] The evidence must, however, in states where the scintilla rule does not prevail, be of a substantial character in order to support the findings.[70]

If there is evidence which supports the findings, they will not be disturbed for lack of support simply because there is other evidence which, if believed and accepted, warrants findings the other way,[71] or because the reviewing court might have

135—Rathburn v. Rathburn, 292 P.2d 274, 138 C.A.2d 568—Kazanteno v. California-Western States Life Ins. Co., 290 P.2d 332, 137 C.A.2d 361—Rozelle v. Gunn, 286 P.2d 543, 134 C.A.2d 589—Camperi v. Chiechi, 286 P.2d 399, 134 C.A.2d 485—Zellers v. State, 285 P.2d 962, 134 C.A.2d 270—Linehan v. Linehan, 285 P.2d 326, 134 C.A.2d 250—Priester v. Citizens Nat. Trust & Sav. Bank of Los Angeles, 280 P.2d 835, 131 C.A.2d 314—Carvalho v. McCoy, 276 P.2d 21, 128 C.A.2d 702—Epley v. Hiller, 274 P.2d 696, 128 C.A.2d 100—Kirchnavy v. Levet, 274 P.2d 161, 127 C.A.2d 586—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Wilkman v. Banks, 269 P.2d 33, 124 C.A.2d 451—Eisendrath v. Bank of America Nat. Trust & Sav. Ass'n, 258 P.2d 13, 118 C.A.2d 434—Industrial Indem. Co. v. Golden State Co., 256 P.2d 677, 117 C.A.2d 519—Anderson v. Pastorini, 255 P.2d 855, 117 C.A.2d 428—Adams v. Henning, 255 P.2d 456, 117 C.A.2d 376—Richards v. Plumbe, 253 P.2d 126, 116 C.A.2d 132—Tesseyman v. Fisher, 248 P.2d 471, 113 C.A.2d 404—Katz v. Wahrhaftig, 248 P.2d 32, 113 C.A.2d 447—California Trust Co. v. Hughes, 245 P.2d 374, 111 C.A.2d 717—Van Der Most v. Workman, 236 P.2d 842, 107 C.A.2d 274—Karas v. Karas, 236 P.2d 415, 107 C.A.2d 135—Middlekauf v. Vinson, 234 P.2d 742, 106 C.A.2d 204—Brubaker v. Mallickzadha, 233 P.2d 635, 105 C.A.2d 780—Roberts v. Wachter, 231 P.2d 534, 104 C.A.2d 271—Tremeroli v. Austin Trailer Equipment Co., 227 P.2d 923, 102 C.A.2d 464—Johnson Trade v. Frimmersdorf, 224 P.2d 771, 100 C.A.2d 719—Jensen v. Union Paving Co., 218 P.2d 184, 97 C.A.2d 637—In re Hubbard's Guardianship, 217 P.2d 744, 97 C.A.2d 321—Shepherd v. Gamble, 214 P.2d 403, 95 C.A.2d 890—Prairie Oil Co. v. Carleton, 205 P.2d 81, 91 C.A.2d 555—Bishop v. Freeman, 203 P.2d 854, 90 C.A.2d 861—Bird v. Bird, 196 P.2d 941, 87 C.A.2d 377—Hughes v. Grandy, 177 P.2d 939, 78 C.A.2d 555—Drum v. Bummer, 175 P.2d 879, 77 C.A.2d 453—Azevedo v. Leavitt, 172 P.2d 704, 76 C.A.2d 321—Singleton v. Singleton, 157 P.2d 886, 68 C.A.2d 681—Plante v. Gray, 157 P.2d 421, 68 C.A.2d 582—Cordell v. City of Los Angeles, 154 P.2d 31, 67 C.A.2d 257—Marcart v. San Joaquin Building & Loan Ass'n, 114 P.2d 395, 45 C.A.2d 395—Burgess v. Security-First Nat. Bank of Los Angeles, 113 P.2d 298, 44 C.A.2d 808—In re Trelut's Estate, 80 P.2d 147, 26 C.A.2d 717—In re McConnell's Estate, 78 P.2d 1043, 26 C.A.2d 102—Troendle v. Clinch, 13 P.2d 852, 125 C.A. 147.

Singh v. Kashian, 268 P.2d 768, 124 C.A.2d Supp. 879—Burnett v. Reyes, 256 P.2d 91, 118 C.A.2d Supp. 878.

Fla.—Chakford v. Strum, 87 So.2d 419—In re Thompson's Estate, 84 So.2d 911—First Atlantic Nat. Bank of Daytona Beach v. Cobbett, 82 So.2d 870—In re Baldridge's Estate, 74 So.2d 658—Hussa v. Hussa, 65 So.2d 759—Read v. Frizzell, 60 So.2d 172—W. H. Clark Fruit Co. v. Bounds, 58 So.2d 552—Smith v. Biscayne Park Estates, 42 So.2d 442.

Kan.—In re Hall's Estate, 195 P.2d 612, 165 Kan. 465.

Minn.—Engquist v. Wirtjes, 68 N.W.2d 412, 343 Minn. 502—Bjerketvedt v. Jacobson, 44 N.W.2d 775, 230 Minn. 152—In re London's Estate, 16 N.W.2d 186, 218 Minn. 349—McCarthy v. Fahey, 282 N.W. 657, 204 Minn. 99.

Mo.—Hancock v. State Highway Commission, 149 S.W.2d 823, 347 Mo. 944.

Nev.—Richards v. Steele, 100 P.2d 72, 60 Nev. 66.

N.M.—Goodwin v. Travis, 272 P.2d 672, 58 N.M. 465—Renehan v. Lobato, 237 P.2d 100, 55 N.M. 532.

Or.—Tryon v. Smith, 229 P.2d 251, 191 Or. 172.

Pa.—Hood v. Meininger, 105 A.2d 126, 377 Pa. 342.

Tex.—Helmerich-Payne, Inc., v. Debus, Civ.App., 148 S.W.2d 243—Dreyfuss & Son v. Dine, Civ.App., 90 S.W.2d 598.

Evidence in particular case

Decision as to whether evidence supports finding must necessarily rest on the evidence in the particular case.

Cal.—In re Wisdom, 304 P.2d 221, 146 C.A.2d 635.

68. Cal.—Badin v. Gaugh, 42 P.2d 394, 5 C.A.2d 185.

68.5 Ind.—Schultz v. Leary, 106 N.E.2d 705, 128 Ind.App. 100—Arnold v. Moats, 105 N.E.2d 833, 122 Ind. App. 431—Baker v. McCague, 75 N.E.2d 61, 118 Ind.App. 32.

69. Cal.—Weissbaum v. Eibeshutz, 294 P. 396, 211 C. 170—Cameron v. Ah Quong, 165 P. 961, 175 C. 377.

Colmar v. Pinckard, 39 P.2d 262, 3 C.A.2d 213—McPhetridge v. Smith, 281 P. 419, 101 C.A. 122—Mack v. Gavello, 259 P. 359, 85 C.A. 355.

70. Ariz.—LaRue v. Kosich, 187 P.2d 642, 66 Ariz. 299.

Ark.—Henry Wrape Co. v. Cox, 183 S.W. 955, 122 Ark. 445.

Cal.—Potter v. Pacific Coast Lumber Co. of Cal., 234 P.2d 16, 87 C.2d 592—Fewel & Dawes v. Pratt, 109 P.2d 650, 17 C.2d 85.

Rose v. Porter, 225 P.2d 245, 101 C.A.2d 333—Helbing v. Helbing, 200 P.2d 560, 89 C.A.2d 224—Miller v. Miller, 130 P.2d 438, 55 C.A.2d 199—Nelson v. San Francisco Bank, 113 P.2d 258, 44 C.A.2d 832.

Idaho.—Jensen v. Chandler, 291 P.2d 1116, 77 Idaho 303—Claunch v. Jones, 270 P.2d 1002, 75 Idaho 271.

Iowa.—Olson v. Olson, 46 N.W.2d 1, 242 Iowa 192.

Md.—Goodwin v. Lumbermens Mut. Cas. Co., 85 A.2d 759, 199 Md. 121.

Mo.—State ex rel. Clark v. Shain, 119 S.W.2d 971, 343 Mo. 66—Holt v. St. Louis-San Francisco Ry. Co., 245 S.W. 1054.

Ray Realty Co. v. Holtzman, 119 S.W.2d 981, 234 Mo.App. 802.

Mont.—Judson v. Anderson, 165 P.2d 198, 118 Mont. 106.

N.M.—Vehn v. Bergman, 258 P.2d 734, 57 N.M. 351—Southern Union Gas Co. v. Cantrell, 241 P.2d 1209, 56 N.M. 184—Ortega v. Koury, 227 P.2d 941, 55 N.M. 142—De Baca v. Kahn, 161 P.2d 630, 49 N.M. 225—Salas v. Olmos, 143 P.2d 871, 47 N.M. 409.

Pa.—Kelleher v. Unemployment Compensation Bd. of Review, 104 A.2d 171, 175 Pa.Super. 261—Stillman v. Unemployment Compensation Bd. of Review, 56 A.2d 380, 161 Pa.Super. 569.

Tex.—Sovereign Camp, W. O. W. v. Mendez, Civ.App., 123 S.W.2d 985, error refused.

Vt.—City of Newport v. Newport Elec. Division of Citizens Utilities Co., 70 A.2d 590, 116 Vt. 103.

71. Ariz.—Tyson v. Tyson, 149 P.2d 674, 61 Ariz. 329.

Cal.—Rocha v. Rocha, 240 P. 1010, 197 C. 396—Simonsen v. L. J. Christopher Co., 200 P. 615, 186 C.

786—Moss v. Smith, 185 P. 385, 181 C. 519—Bandle v. Commercial Nat. Bank of Los Angeles, 174 P. 44, 178 C. 546.

In re Harvey's Estate, 299 P.2d 712, 143 C.A.2d 368—Beatty v. Oakland Sheet Metal Supply Co., 244 P.2d 25, 111 C.A.2d 53—Sheward v. Magit, 234 P.2d 708, 106 C.A.2d 163—Macal Imp. Co. v. Hoskins, 229 P.2d 461, 103 C.A.2d 347—Security-First Nat. Bank of Los Angeles v. Walters, 226 P.2d 41, 101 C.A.2d 772—Simonian v. Donoian, 215 P.2d 119, 96 C.A.2d 259—Thomas v. Juarez, 209 P.2d 966, 93 C.A.2d 846—Malvich v. Rockwell, 205 P.2d 389, 91 C.A.2d 463—Dandini v. Dandini, 186 P.2d 41, 82 C.A.2d 263—In re Baul's Estate, 175 P.2d 284, 77 C.A.2d 403—Gray v. Hartman, 166 P.2d 374, 73 C.A.2d 401—Aiello v. Sliskovich, 163 P.2d 768, 72 C.A.2d 39—Horn v. Klatt, 151 P.2d 149, 65 C.A.2d 510—Wescoatt v. Meeker, 147 P.2d 41, 63 C.A.2d 618—Replogle v. Ray, 119 P.2d 980, 48 C.A.2d 291—De La Cuesta v. Bazzi, 118 P.2d 909, 47 C.A.2d 661—Irvin v. Petitfils, 112 P.2d 688, 44 C.A.2d 496—Windsor v. Windsor, 109 P.2d 363, 42 C.A.2d 464—Bramble v. McEwan, 104 P.2d 1054, 40 C.A.2d 400—Towns v. Towns, 96 P.2d 971, 36 C.A.2d 88—In re Borneman's Estate, 96 P.2d 182, 35 C.A.2d 455—Short v. Orland Oil Syndicate, 84 P.2d 324, 29 C.A.2d 326—Miles v. A. Arena & Co., 73 P.2d 1260, 23 C.A.2d 680—Del Bosque v. Kakoo Singh, 65 P.2d 951, 19 C.A.2d 487—Morales v. L. W. Blinn Lumber Co., 49 P.2d 621, 9 C.A.2d 292—Crest Corporation v. Coffee Products of America, 45 P.2d 435, 7 C.A.2d 167—Haidopoulos v. Woollett, 42 P.2d 1056, 5 C.A.2d 229—Tracy v. Brecht, 39 P.2d 498, 3 C.A.2d 105—Easterly v. Cook, 35 P.2d 164, 140 C.A. 115—M. J. Ryan Co. v. Brown, 31 P.2d 1076, 138 C.A. 176—La Mar v. La Mar, 28 P.2d 63, 135 C.A. 693—Calico-Odessa Mining Co. v. Britt, 27 P.2d 778, 135 C.A. 744—Rancho Santa Margarita v. San Diego County, 26 P.2d 716, 135 C.A. 134—English v. English, 24 P.2d 369, 133 C.A. 408—Dewees v. Kuntz, 20 P.2d 733, 130 C.A. 620—Menning v. Sourisseau, 18 P.2d 77, 128 C.A. 635—U. S. Nat. Bank of Los Angeles v. Stiller, 6 P.2d 529, 119 C.A. 442—Jensen v. Burton, 3 P.2d 324, 117 C.A. 66—Corvin v. Smead Inv. Co., 1 P.2d 507, 115 C.A. 175—Trabucco v. Sorrels, 298 P. 521, 113 C.A. 401—Warner v. Taft Land & Development Co., 297 P. 969, 113 C.A. 71—Mathewson v. Alderman, 290 P. 317, 107 C.A. 272—Roloff v. Hundeby, 288 P. 702, 105 C.A. 645—Dudley v. Citizens' State Bank of Santa Monica, 284 P. 958, 103 C.A. 433—Latta v. Da Roza, 280 P. 711, 100 C.A. 606, rehearing denied 281 P. 655, 100 C.A. 606—Asher v. Martin, 279 P. 810, 100 C.A. 217—Heer v. Moran, 277 P. 149, 98 C.A. 430—Schenck v. Rountree, 265 P. 971, 90 C.A. 443—Johnson v. Wehner, 263 P. 553, 88 C.A. 399—Sondergard v. Breaum, 256 P. 580, 83 C.A. 352—Argula v. Pavlovski, 256 P. 447, 83 C.A. 796—Pozen v. Pavlovski, 256 P. 446, 83 C.A. 23—Cole v. Manning, 248 P. 1065, 79 C.A. 55—Harbinson v. Mallon, 245 P. 223, 76 C.A. 468—Yoakum v. Grimes, 238 P. 727, 73 C.A. 204—King v. California Bank, 238 P. 108, 73 C.A. 136—Correa v. Davis, 230 P. 984, 69 C.A. 180—San Francisco Laundry Ass'n v. Ragon, 227 P. 686, 67 C.A. 456—Hollenbeck v. Lunderville, 227 P. 679, 67 C.A. 432—Lanning v. Talmage, 225 P. 25, 66 C.A. 48—Radich v. Cernokus, 224 P. 124, 65 C.A. 452—Simone v. National Automobile Ins. Co., 218 P. 1020, 63 C.A. 487—Gould v. Gould, 218 P. 278, 63 C.A. 172—Wallenback v. Arnold, 217 P. 574, 62 C.A. 571—Dennis v. Brown, 216 P. 977, 62 C.A. 439—Stefanich v. Payne, 201 P. 940, 54 C.A. 210—Cushing v. Macaulay, 178 P. 732, 39 C.A. 287—In re Soale, 159 P. 1065, 31 C.A. 144—Spreckels v. State, 158 P. 549, 30 C.A. 313.

Colo.—Williams v. Miller, 27 P.2d 502, 93 Colo. 541—San Luis Valley Irr. Dist. v. Rio Grande Drainage Dist., 268 P. 533, 84 Colo. 99—Gertner v. Limon Nat. Bank, 257 P. 247, 82 Colo. 13.

Conn.—Kulak v. Landers, Frary & Clark, 181 A. 720, 120 Conn. 606—Fry v. Taylor, 138 A. 138, 106 Conn. 387—Driscoll v. Jewell Belting Co., 114 A. 109, 96 Conn. 295.

Idaho.—Dunclick, Inc. v. Utah-Idaho Concrete Pipe Co., 295 P.2d 700, 77 Idaho 499—Snyder v. Bock, 204 P.2d 1010, 69 Idaho 168—Jones v. Adams, 182 P.2d 963, 67 Idaho 402—Chiara v. Amabile, 127 P.2d 795, 64 Idaho 55—Idaho Lumber & Hardware Co. v. Digiacomo, 102 P.2d 637, 61 Idaho 383—Carrey v. Secesh Dredging, Min. & Mill. Co., 39 P.2d 772, 55 Idaho 136—Duthweiler v. Hanson, 28 P.2d 210, 54 Idaho 46—Hopkins v. Hemsley, 22 P.2d 138, 53 Idaho 120—Smeed v. Stockmen's Loan Co., 284 P. 559, 48 Idaho 643—Marysville Development Co. v. Marotz, 258 P. 180, 144 Idaho 469—Pence v. Shivers, 232 P. 568, 40 Idaho 181—Morrison v. Morrison, 221 P. 156, 38 Idaho 45—Independence Placer Mining Co. v. Knauss, 181 P. 701, 32 Idaho 269.

Ill.—Compton v. School Directors of Dist. No. 14, 131 N.E.2d 544, 8 Ill. App.2d 243—Olin Industries, Inc. v. Wuellner, 117 N.E.2d 565, 1 Ill. App.2d 267—Pinkley v. Allied Oil Corp. of Ill., 60 N.E.2d 106, 325 Ill. App. 326.

Ind.—Daniels v. Indiana Trust Co., 51 N.E.2d 838, 222 Ind. 36—Board of Com'rs of Lake County v. Hayhurst, 199 N.E. 258, 209 Ind. 416.

Hans v. Hollowell, 12 N.E.2d 364, 104 Ind.App. 602—Page v. Johnson, App., 184 N.E. 419, 97 Ind.App. 40—Chicago, S. B. & N. I. Ry. Co. v. Brown, 143 N.E. 609, 81 Ind.App. 411—Mikels v. Citizens' Nat. Bank of Crawfordsville, 137 N.E. 584, 79 Ind.App. 165—Sauer v. Sauer, 133 N.E. 169, 77 Ind.App. 22—Cassidy v. Ward, 123 N.E. 724, 70 Ind.App. 550—Beard v. Payne, 115 N.E. 782, 64 Ind.App. 324.

Iowa.—Wilkins v. Howell, 190 N.W. 1, 194 Iowa 654.

Kan.—Crawford Mfg. Co. v. State Commission of Revenue and Taxation, 304 P.2d 504, 180 Kan. 352—Martin v. Hunter, 297 P.2d 153, 179 Kan. 578—Hineman v. Hineman, 297 P.2d 149, 179 Kan. 543—McFadden v. McFadden, 296 P.2d 1098, 179 Kan. 455—In re Osborn's Estate, 295 P.2d 615, 179 Kan. 365—Amerine v. Amerine, 283 P.2d 469, 178 Kan. 79—Hilgenfeld v. Johnson, 270 P.2d 293, 176 Kan. 339—Condon Nat. Bank of Coffeyville v. Krigel, 270 P.2d 232, 176 Kan. 279—Spencer v. Supernois, 268 P.2d 946, 176 Kan. 135—Clark v. Axley, 254 P.2d 313, 174 Kan. 3—Whipple v. Fehsenfeld, 249 P.2d 638, 173 Kan. 427, certiorari denied Fehsenfeld v. Whipple, 74 S.Ct. 23, 346 U.S. 813, 98 L.Ed. 341, rehearing denied 74 S.Ct. 271, 346 U.S. 918, 98 L.Ed. 413—Shotzman v. Ward, 239 P.2d 935, 172 Kan. 272—Farmers State Bank of Clay Center v. Lanning, 174 P.2d 69, 162 Kan. 95—Doman Hunting & Fishing Ass'n v. Doman, 155 P.2d 438, 159 Kan. 439—Bolinger v. Moorhouse, 114 P.2d 853, 154 Kan. 124—Randall v. Bird, 235 P. 103, 118 Kan. 341—Linn County Bank v. Grisham, 185 P. 54, 105 Kan. 460—Brunington v. Wagoner, 164 P. 1057, 100 Kan. 439.

La.—Grau v. Consolidated Dredging & Mfg. Co., 110 So. 202, 162 La. 205.

Eberle v. Derbes, 141 So. 401, 19 La.App. 615—Jefferson v. Sardenga, 140 So. 877, 19 La.App. 603.

Minn.—In re London's Estate, 16 N.W.2d 186, 218 Minn. 349—Brennan v. Friedell, 2 N.W.2d 547, 212 Minn. 115—Martens v. Martens, 1 N.W.2d 356, 211 Minn. 369—Exsted v. Exsted, 279 N.W. 554, 202 Minn. 521, 117 A.L.R. 554—C. L. Colman Lumber Co. v. Mironowski, 219 N.W. 758, 174 Minn. 507.

Mo.—Hodgman v. Fensky, 247 S.W. 424.

Mont.—Walker v. Mink, 158 P.2d 630, 117 Mont. 351—Federal Land Bank of Spokane v. Green, 90 P.2d 489, 108 Mont. 56—Clack v. Clack, 41 P.2d 32, 98 Mont. 552—Langston

found differently had it been finding the facts as an original matter,[72] differs with the trial court's processes of reasoning,[73] or gravely doubts the correctness of the findings.[74] A finding that evidence is sufficient to be clear and convincing should not be disturbed unless it may be said as a matter of law that no one could reasonably find the evidence to be clear and convincing.[74.5]

v. Currie, 26 P.2d 160, 95 Mont. 57—Nett v. Stockgrowers' Finance Corporation, 274 P. 497, 84 Mont. 116—Huffine v. Miller, 237 P. 1103, 74 Mont. 50.

Neb.—State Bank of Omaha v. Huffman, 160 N.W. 115, 100 Neb. 396.

N.J.—Bussy v. Hatch, 111 A. 546, 95 N.J.Law 56.

N.M.—Menger v. Otero County State Bank, 98 P.2d 834, 44 N.M. 82—Roberson v. Bondurant, 73 P.2d 321, 41 N.M. 638—Garcia v. Leal, 231 P. 631, 30 N.M. 249.

N.Y.—John v. Coe-Stapley Mfg. Co., 194 N.Y.S. 681, 201 App.Div. 704.

Ohio.—Dunlevey v. Volk, App., 104 N.E.2d 458—Poet v. Rosinski, App., 102 N.E.2d 19, appeal dismissed In re Poet, 99 N.E.2d 320, 155 Ohio St. 510.

Okl.—York v. York, 270 P.2d 656—Gault v. Spears, 256 P. 515, 125 Okl. 126—King v. Smoot, 229 P. 233, 100 Okl. 297.

Pa.—In re Null's Estate, 153 A. 137, 302 Pa. 64—Clothier v. Hoffman Co., 104 A. 559, 261 Pa. 83.

Tex.—Custer v. McGough, Civ.App., 184 S.W.2d 668—Worth Finance Co. v. Charlie Hillard Motor Co., Civ. App., 131 S.W.2d 416—Ginsberg v. International Shoe Co., Civ.App., 299 S.W. 695—Smith v. Coburn, Civ. App., 222 S.W. 344—Coker v. Mott, Civ.App., 190 S.W. 747—Carter v. Smith, Civ.App., 184 S.W. 244, error refused.

Utah.—Plant v. Ritter, 155 P. 426, 47 Utah 506.

Vt.—City of Montpelier v. Bennett, 125 A.2d 779, 119 Vt. 228.

Wis.—Waukesha Gas & Electric Co. v. Waukesha Motor Co., 209 N.W. 590, 190 Wis. 462.

4 C.J. p 884 note 37, p 886 note 46—67 C.J. p 1075 note 20.

Conflict in evidence does not affect sufficiency thereof to support findings.

Cal.—In re Davies' Estate, 273 P. 612, 96 C.A. 57.

72. Ariz.—Leeker v. Leeker, 202 P. 397, 23 Ariz. 170—Rouillier v. A. & B. Schuster Co., 157 P. 976, 18 Ariz. 175.

Cal.—Waer v. Waer, 207 P. 691, 189 C. 178—In re Pauson's Estate, 199 P. 331, 186 C. 358.

Austin v. Richards, 304 P.2d 132, 146 C.A.2d 436—Metro v. Dickerson, 280 P.2d 25, 131 C.A.2d 106—Sonkin v. Hershon, 279 P.2d 156, 130 C.A.2d 491—Lauder v. Wright Inv. Co., 271 P.2d 970, 126 C.A.2d 147—Jackson v. Burke, 269 P.2d 137, 124 C.A.2d 519—Chuck v. Alves, 268 P.2d 94, 124 C.A.2d 144—Frank v. Dominick, 264 P.2d 161, 122 C.A. 2d 45—Bartholomae Corp. v. W. B. Scott Inv. Co., 259 P.2d 28, 119 C.A.2d 41—Sweet v. Los Angeles Ry. Co., 179 P.2d 824, 79 C.A.2d 195—Platt v. City of Los Angeles, 165 P.2d 714, 72 C.A.2d 753—Cordell v. City of Los Angeles, 154 P.2d 31, 67 C.A.2d 257—Cummings v. Kendall, 107 P.2d 282, 41 C.A.2d 549—Armstrong v. Studer, 37 P.2d 475, 2 C.A.2d 166—Stephens v. Kaufmann, 30 P.2d 536, 137 C.A. 328—Reidy v. Collins, 26 P.2d 712, 134 C.A. 713—Taylor v. Bunnell, 23 P. 2d 1062, 133 C.A. 177—Blank v. Blank, 18 P.2d 956, 129 C.A. 403—Lowe v. Copeland, 13 P.2d 522, 125 C.A. 315—Bedford v. Pacific Structural Welding Corporation, 8 P.2d 558, 121 C.A. 162—Stefani v. Southern Pac. Co., 5 P.2d 946, 119 C.A. 69—Silva v. Goldman, 4 P.2d 191, 117 C.A. 423—Vickery v. Valdez, 298 P. 151, 113 C.A. 135—O. A. Graybeal Co. v. Cook, 295 P. 1088, 111 C.A. 518—Edmunds v. Hysong, 294 P. 1078, 110 C.A. 746—Lanning v. Talmage, 225 P. 25, 66 C.A. 48—Stockton v. Santa Paula Oil Co., 221 P. 661, 64 C.A. 384—Thompson v. White, 204 P. 561, 56 C.A. 173.

Colo.—Gold, Silver & Tungsten v. Wallace, 91 P.2d 975, 104 Colo. 273, certiorari denied 60 S.Ct. 179, 308 U.S. 612, 84 L.Ed. 512, rehearing denied 60 S.Ct. 298, 308 U.S. 639, 84 L.Ed. 530—Jones v. Milliken, 42 P.2d 467, 96 Colo. 279.

Fla.—In re Thompson's Estate, 199 So. 352, 145 Fla. 42.

Iowa.—**Corpus Juris Secundum cited in** Davis v. Knight, 35 N.W.2d 23, 25, 239 Iowa 1338—Turner v. Hartford Fire Ins. Co., 172 N.W. 166, 185 Iowa 1363.

Minn.—Inland Products Corp. v. Donovan, Inc., 82 N.W.2d 691—Corah v. Corah, 75 N.W.2d 465, 246 Minn. 350—State v. Wagner, 46 N.W.2d 676, 233 Minn. 241, 23 A.L.R.2d 762—Loth v. Loth, 35 N.W.2d 542, 227 Minn. 387, 6 A.L.R.2d 170.

Miss.—Seale-Lily Ice Cream Co. v. Buck, 15 So.2d 213, 195 Miss. 440.

Mo.—Haverstick v. Brookshire, App., 28 S.W.2d 432.

Neb.—Edgington v. Howland, 195 N. W. 934, 111 Neb. 171—Skala v. Michael, 190 N.W. 878, 109 Neb. 305.

N.H.—Hahn v. Hemenway, 72 A.2d 463, 96 N.H. 214.

N.J.—Katz v. New York Life Ins. Co., 15 A.2d 898, 125 N.J.Law 358, affirmed 19 A.2d 830, 126 N.J.Law 370.

N.M.—Kutz Canon Oil & Gas Co. v. Harr, 244 P.2d 522, 56 N.M. 358.

Ohio.—McMillen v. Diehl, 190 N.E. 567, 128 Ohio St. 212.

Thompson v. Parrett, 78 N.E.2d 419, 82 Ohio App. 366.

Or.—Silver Falls Timber Co. v. Eastern & Western Lumber Co., 40 P. 2d 703, 149 Or. 126.

Pa.—Sinclair v. Henry Shaffer Lumber Co., 119 A.2d 682, 180 Pa.Super. 234—Fleischer v. Maryland Casualty Co., 164 A. 824, 108 Pa. Super. 461.

Tex.—National Educators Life Ins. Co. v. Morgan, Civ.App., 295 S.W. 2d 713—Taylor v. Stanford, Civ. App., 229 S.W.2d 427—Associates Inv. Co. v. Thomas, Civ.App., 210 S. W.2d 413—Boston Ins. Co. v. Rainwater, Civ.App., 197 S.W.2d 118—Turnbow v. Bland, Civ.App., 149 S.W.2d 604, error dismissed, judgment correct—Canales v. Clopton, Civ.App., 145 S.W.2d 933—Schroeder v. Whisenant, Civ.App., 93 S.W. 2d 571, error granted—Walker County Lumber Co. v. Sweet, Civ. App., 40 S.W.2d 225—Crawford v. Beaver-Electra Refining Co., Civ. App., 273 S.W. 892.

Utah.—Yowell v. Occidental Life Ins. Co., 110 P.2d 566, 100 Utah 120—Lyman v. Town of Price, 222 P. 599, 63 Utah 90—Van Wagoner v. Whitmore, 199 P. 670, 58 Utah 418.

Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Va.—Taylor v. Arlington County Bd., 53 S.E.2d 34, 189 Va. 472—Osborne v. Gillenwaters, 104 S.E. 578, 128 Va. 21.

Wyo.—Huber v. Glenrock State Bank, 234 P. 31, 32 Wyo. 357.

4 C.J. p 880 note 92, p 886 note 47.

Although the appellate court might have reached a different conclusion, it will not disturb the findings if it cannot say that a reasonable man could not have reasonably reached the conclusions reached by the trial court.

Cal.—Taylor v. Bunnell, 23 P.2d 1062, 133 C.A. 177.

73. U.S.—Conqueror Trust Co. v. Fidelity & Deposit Co. of Maryland, C.C.A.Mo., 63 F.2d 833—Wessel v. U. S., C.C.A.Neb., 49 F.2d 137.

74. Cal.—Cleverdon v. Gray, 145 P. 2d 95, 62 C.A.2d 612.

W.Va.—Schaeffer v. Schaeffer, 46 S.E. 150, 54 W.Va. 681.

74.5 Utah.—Paulsen v. Coombs, 253 P.2d 621—Northcrest, Inc. v. Walker Bank & Trust Co., 248 P.2d 692, 122 Utah 268.

The appellate court will not refuse to sustain the findings because the supporting evidence is somewhat weak and unsatisfactory,[75] or vague and uncertain,[76] or consists of competent opinions and conclusions of witnesses;[77] and the testimony of only one witness may be sufficient to support the findings.[78]

Credibility of the witnesses is, as noted supra § 1656(2), a thing with which the appellate court will not ordinarily concern itself, and seldom will the findings be disturbed for interest or lack of credibility of the witnesses if, when assuming their testimony to be the truth, it adequately supports the findings;[79] but, like all other rules, this one has its limitations or qualifications in that the appellate court will reject, or refuse to consider the findings as supported by, evidence which is inherently improbable,[80] or so contrary to the physical facts that it cannot be true.[81]

To justify the appellate court in refusing to regard supporting evidence as sufficient because of inherent improbability there must be either a physical impossibility or the evidence must set forth such a state of facts that nothing need be assumed or inferred to convince the ordinary mind that the story is false,[82] and the mere existence of suspicious circumstances reflecting on the testimony on which the findings are based will not cause them to be rejected by the appellate court.[83]

Effect of burden of proof on sufficiency of evidence. Findings adverse to the party having the burden of proving a fact must be sustained in the absence of evidence of the fact.[83.5] Findings adverse to the party having the burden of proof will not be disturbed unless the evidence is sufficiently convincing to warrant the appellate court in substituting a finding for the finding of not proven made by the trial court,[83.10] or unless the record shows that the party has so clearly established his case that it would be unreasonable to find otherwise,[84]

75. Colo.—Barrios v. Pleasant Valley & Lake Canal Co., 17 P.2d 301, 91 Colo. 563—Tallman v. Huff, 173 P. 869, 65 Colo. 128, L.R.A.1918F 399.
Ind.—Public Savings Ins. Co. of America v. Greenwald, 118 N.E. 556, 68 Ind.App. 609, rehearing denied 121 N.E. 47, 68 Ind.App. 609.
4 C.J. p 880 note 91.

76. Ga.—Donehoo v. Rogers, 90 S.E. 382, 146 Ga. 75.
Iowa.—Barnes v. Bishop, 192 N.W. 254.
La.—Demoss v. Wilson, 134 So. 367, 16 La.App. 329.

77. Cal.—Bochner v. Equitable Life Assur. Soc. of U. S., 41 P.2d 365, 4 C.A.2d 670.
La.—Champagne v. Unity Industrial Life Ins. Co., App., 161 So. 52, rehearing denied 161 So. 783.
Mass.—Preston v. Peck, 180 N.E. 671, 279 Mass. 16.
4 C.J. p 881 note 10—p 884 note 37 [e].

78. Cal.—Radich v. Gak, 214 P. 1000, 61 C.A. 375.
Colo.—Cocquyt v. Shower, 189 P. 606, 68 Colo. 89.
Nev.—McNee v. McNee, 237 P. 534, 49 Nev. 90.
Tex.—Shaw v. San Patricio County, Com.App., 60 S.W.2d 979.

79. Cal.—In re Filippi's Estate, 49 P.2d 892, 9 C.A.2d 407—Berg v. Journeymen's Plumbers' & Gas Fitters' Union, 42 P.2d 1091, 5 C.A.2d 582—Machado v. Machado, 9 P.2d 872, 122 C.A. 218—Winning v. Board of Dental Examiners, 300 P. 866, 114 C.A. 658.
Ohio.—Duckwitz v. Komite, 16 Ohio Cir.Ct.,N.S., 180.
Okl.—**Corpus Juris cited in** Skirvin v. Skirvin, 60 P.2d 765, 768, 177 Okl. 480.
Pa.—Dixon v. Minogue, 124 A. 334, 280 Pa. 128.
Tyson v. Coder, 83 Pa.Super. 116.
S.D.—Houck v. Hult, 258 N.W. 142, 63 S.D. 290.
4 C.J. p 879 note 88, p 885 note 39.

80. Cal.—De Felice v. Tabor, App., 308 P.2d 377—New v. New, App., 306 P.2d 987—In re Harvey's Estate, 299 P.2d 712, 143 C.A.2d 368—Crisci v. Sorci, 251 P.2d 383, 115 C.A.2d 76—Goff v. Goff, 125 P.2d 848, 52 C.A.2d 23—Wade v. Thorsen, 43 P.2d 592, 5 C.A.2d 706—Snyder v. Miller, 157 P. 22, 29 C.A. 566.
Colo.—Thuringer v. Trafton, 144 P. 866, 58 Colo. 250.
Mont.—Piersky v. Hocking, 292 P. 725, 88 Mont. 358.

81. Cal.—Mutch v. San Diego Electric Ry. Co., 102 P.2d 1100, 39 C.A. 2d 327.
Tex.—Humble Oil & Refining Co. v. Martin, 222 S.W.2d 995, 148 Tex. 175.
Houston, E. & W. T. Ry. Co. v. Lavine, Civ.App., 255 S.W. 448, appeal dismissed, Com.App., 267 S.W. 1114.

82. Cal.—Garrick v. J. M. P., Inc., App., 309 P.2d 896—In re Harvey's Estate, 299 P.2d 712, 143 C.A.2d 368—Murphy v. Ablow, 268 P.2d 80, 123 C.A.2d 853—Evje v. City Title Ins. Co., 261 P.2d 279, 120 C.A.2d 488—Gidre v. Houk, 251 P.2d 20, 114 C.A.2d 769—Rubin v. De Lao, 242 P.2d 360, 110 C.A.2d 345—Adams v. Allen, 211 P.2d 923, 94 C.A.2d 941—Kidroski v. Anderson, 103 P.2d 1000, 39 C.A.2d 602—Lane v. Safeway Stores, 91 P.2d 160, 33 C.A.2d 169—Back v. Farnsworth, 77 P.2d 295, 25 C.A.2d 212—Hales v. Snowden, 65 P.2d 847, 19 C.A.2d 366, certiorari denied Colyear v. Hales, 58 S.Ct. 34, 302 U.S. 715, 82 L.Ed. 552—Agoure v. Spinks Realty Co., 42 P.2d 660, 5 C.A.2d 444—Ward v. Gildea, 186 P. 612, 44 C.A. 380—Powell v. Powell, 180 P. 346, 40 C. A. 155.

83. Cal.—De Felice v. Tabor, App., 308 P.2d 377—New v. New, App., 306 P.2d 987—In re Harvey's Estate, 299 P.2d 712, 143 C.A.2d 368—Mayers v. Alexander, 167 P.2d 818, 73 C.A.2d 752—Kidroski v. Anderson, 103 P.2d 1000, 39 C.A.2d 602.
La.—Jackson Homestead Ass'n v. Zerlin, App., 141 So. 823.

83.5 Cal.—In re Karban's Estate, 257 P.2d 649, 118 C.A.2d 240.
Okl.—Davis v. Holland, 67 P.2d 449, 179 Okl. 621.

83.10 Wash.—Electrical Products Consolidated v. Smyser, 143 P.2d 452, 19 Wash.2d 509.

84. Cal.—Kniese v. Fairfax Incline R. Co., 277 P. 347, 98 C.A. 610.
Kan.—Ragland v. Watkins Nat. Bank, 283 P. 632, 129 Kan. 426.
La.—United Flour Co. v. Luizza Bros., 4 La.App. 573.
Mo.—Railsback v. Bowers, 257 S.W. 119.
Mason v. Geist, App., 263 S.W. 236.
Pa.—Engle v. Stayman, 86 Pa.Super. 529.
S.D.—Matejka v. Reider, 252 N.W. 878, 62 S.D. 290—Edge v. City of Pierre, 239 N.W. 191, 59 S.D. 193.
Tex.—Shreveport Tile Co. v. McCord, Civ.App., 83 S.W.2d 446, error dismissed.

and as to make the rendition of a judgment in his favor practically imperative;[85] and the question is not whether the evidence was such as to permit recovery, but whether it was so conclusive as to compel recovery.[85.5] If a case is thus clearly proved, however, a judgment for the other party will be reversed.[86]

Although it has been held that a judgment in favor of respondent cannot be sustained where respondent has not sustained the burden of proof resting on him,[86.5] when there is a finding in favor of plaintiff, or the party having the burden of proof, the appellate court is not concerned with whether or not the burden has been sustained,[87] and will reverse only if there is no evidence to support the claim or some essential element thereof.[88] Even where the party having the burden of proof offers no evidence, a finding in such party's favor will be sustained if supported by substantial evidence offered by the other party.[88.5] Where there is some evidence to support the judgment rendered, the question of the burden of proof becomes immaterial for purposes of appeal.[88.10]

A finding in favor of the party having the burden of proof, based upon evidence of a substantial character from which different inferences of equal probability can be drawn, will be sustained notwithstanding the rule that, where two inferences of equal probability may be drawn from the evidence, the party on whom rests the burden of proof must fail;[89] but if even the evidence most favorable to plaintiff fails to show a cause of action, a finding in his favor will be set aside.[90]

Finding that fact does not exist or is not proved. A finding that a certain fact does not exist or is not proved cannot be disturbed if there is no evidence in the record to show its existence,[91] or the appellate court cannot hold as a matter of law that the uncontroverted evidence conclusively establishes the existence of the fact,[92] and, as shown infra § 1657, if the evidence is conflicting, a finding that a fact does not exist will not be disturbed.

§ 1657. On Conflicting Evidence

a. In general
b. Nature and sufficiency of conflict

a. In General

Fact findings of the trial court are accorded great weight, and are almost universally regarded as binding

Undisputed evidence in support of every essential to the cause of action is necessary.
Ind.—Kaiser v. Adolph Wittekindt & Son, 112 N.E. 896, 62 Ind.App. 171.

85. U.S.—Luttrell v. U. S., C.C.A. Tenn., 41 F.2d 517, certiorari denied 51 S.Ct. 82, 282 U.S. 877, 75 L.Ed. 775.
Utah.—**Corpus Juris Secundum cited in** Hill v. Varner, 290 P.2d 448, 450, 4 Utah 2d 166.

85.5 Ind.—Starkey v. Galloway, 84 N.E.2d 731, 119 Ind.App. 287—Pearson Co. v. Cohen, 83 N.E.2d 433, 118 Ind.App. 699.
Iowa.—Staley v. Fazel Bros. Co., 75 N.W.2d 253, 247 Iowa 644—Jackson Wholesale Florists v. Schappaugh Floral, 70 N.W.2d 154, 246 Iowa 1189—Ruble v. Carr, 59 N.W. 2d 228, 244 Iowa 990.

86. Mo.—Noell v. Chicago & E. I. Ry. Co., App., 21 S.W.2d 937, certiorari denied Chicago & E. I. Ry. Co. v. Noell, 50 S.Ct. 465, 281 U.S. 766, 74 L.Ed. 1174.
N.Y.—Kaltner v. Kaltner, 197 N.E. 287, 268 N.Y. 293.

86.5 Idaho.—In re Odberg's Estate, 182 P.2d 945, 67 Idaho 447.

87. Cal.—Schwartz v. Brandon, 275 P. 448, 97 C.A. 30.
N.J.—Carbone v. California Packing Corporation, 169 A. 866, 12 N.J. Misc. 209.

88. Cal.—Rudneck v. Southern California Metal & Rubber Co., 193 P. 775, 184 C. 274.
Ind.—Public Service Commission of Ind. v. Indianapolis Rys., 76 N.E.2d 841, 225 Ind. 656.
Minn.—Nitkey v. Ward, 271 N.W. 873, 199 Minn. 334, certiorari denied 58 S.Ct. 25, 302 U.S. 706, 82 L.Ed. 545, rehearing denied 58 S.Ct. 134, 302 U.S. 775, 82 L.Ed. 600.
Mo.—Burman v. Vezeau, App., 85 S. W.2d 217—Snyder v. Loyal Protective Ins. Co., App., 196 S.W. 1022.
N.J.—Carbone v. California Packing Corporation, 169 A. 866, 12 N.J. Misc. 209.

Evidence admitted without objection held sufficient
Mo.—Bonnot v. Tackitt, App., 265 S. W.2d 748.

88.5 Ohio.—City of Cincinnati v. Public Utilities Commission, 86 N. E.2d 10, 151 Ohio St. 353.

88.10 Tex.—Davis v. Magnolia Petroleum Co., 134 S.W.2d 1042, 134 Tex. 201.

89. Tenn.—Iskiwitz v. John F. Clark & Co., 65 S.W.2d 825, 16 Tenn.App. 159.
Wyo.—Carter Oil Co. v. Gibson, 241 P. 219, 34 Wyo. 53.

90. Mass.—Inhabitants of Lanesborough v. Inhabitants of Ludlow, 145 N.E. 57, 250 Mass. 99.
Okl.—Rogers v. Pennington Grocery Co., 239 P. 126, 111 Okl. 190.

91. Iowa.—**Corpus Juris Secundum cited in** Davis v. Knight, 35 N.W. 2d 23, 29, 239 Iowa 1338.
N.Y.—Parsons v. First Trust & Deposit Co., 277 N.Y.S. 426, 243 App. Div. 681.
Okl.—Klaus v. Campbell-Ratcliff Land Co., 150 P. 676, 48 Okl. 648.
Pa.—Swaney v. Georges Tp. Road Dist., 164 A. 336, 309 Pa. 385.

92. Cal.—Schurman v. Los Angeles Creamery Co., 254 P. 681, 81 C.A. 758—Bayside Land Co. v. Phillips, 184 P. 951, 43 C.A. 255.
Conn.—Rubin v. Independent Forwarding Co., 177 A. 388, 119 Conn. 472.
Ind.—Scandinavian-American Trading Co. v. Skinner, 105 N.E. 784, 56 Ind.App. 520.
Minn.—Eisenmenger v. St. Paul City Ry. Co., 147 N.W. 430, 125 Minn. 399.
Mo.—Indian Creek Land Co. v. Bradford, 82 S.W.2d 589.
N.H.—Hartford Acc. & Indem. Co. v. Come, 123 A.2d 267, 100 N.H. 177.
Tex.—Houston Electric Co. v. McNatt, Com.App., 11 S.W.2d 303.
Michna v. Crane, Civ.App., 28 S. W.2d 837—Dyson v. Motors Securities Co., Civ.App., 17 S.W.2d 141, followed in Mann v. Motors Securities Co., 17 S.W.2d 144, and Stringer v. Motors Securities Co., 17 S.W.2d 144—Duncan v. Gragg, Civ.App., 242 S.W. 491—Nerio v. Christen, Civ.App., 189 S.W. 1038.

on the appellate court where based on substantially conflicting evidence and not unwarranted as a matter of law.

In accordance with the rule discussed supra § 1656 (1), findings of the trial court based on conflicting evidence are almost universally given the effect of a jury verdict,[93] and, except in so far as the rule

93. Ala.—Harrison v. Harrison, 75 So.2d 620, 261 Ala. 648—Eddleman v. Cade, 73 So.2d 362, 261 Ala. 154—Salvation Army v. Security Roofing Co., 51 So.2d 513, 255 Ala. 349—Lewis v. Ebersole, 12 So.2d 543, 244 Ala. 200—Viking Equipment Co. v. Prudential Ins. Co. of America, 168 So. 566, 232 Ala. 543—Thornhill v. Gulf Coast Produce Exchange, 121 So. 912, 219 Ala. 251—Murphy v. Crenshaw, 98 So. 870, 210 Ala. 603—Fulton Bag & Cotton Mills v. Leder Oil Co., 92 So. 613, 207 Ala. 350—Gulf Coast Lumber Co. v. Miles, 90 So. 281, 206 Ala. 429.

Hinkle v. Latta, 35 So.2d 521, 33 Ala.App. 567—Hyatt v. Ogletree, 12 So.2d 397, 31 Ala.App. 8, certiorari denied 12 So.2d 400, 244 Ala. 172—Lackey v. Thomas, 184 So. 262, 28 Ala.App. 302, certiorari denied Ex parte Thomas, 184 So. 264, 236 Ala. 602—Parrish Coal Co. v. Waid, 110 So. 321, 21 Ala.App. 593—Stephenson v. Jebeles & Colias Confectionery Co., 65 So. 314, 10 Ala.App. 431.

Ark.—Sachs v. Norton-Wheeler Stave Co., 240 S.W. 16, 153 Ark. 212—Payne v. Road Imp. Dist. No. 1 of Howard County, 232 S.W. 943, 149 Ark. 491—Koontz v. La Dow, 202 S.W. 686, 133 Ark. 523—Horner v. New South Oil Mill, 197 S.W. 1163, 130 Ark. 551—Hughes v. Sebastian County Bank, 195 S.W. 364, 129 Ark. 218—Churchill v. Vaughan, 185 S.W. 447, 123 Ark. 298.

Fla.—Hall v. Adams, 19 So.2d 412, 155 Fla. 1.

Idaho.—Carrey v. Secesh Dredging, Min. & Mill. Co., 39 P.2d 772, 55 Idaho 136, appeal dismissed and certiorari denied Secesh Dredging, Mining & Milling Co. v. Carrey, 56 S.Ct. 158, 296 U.S. 544, 80 L.Ed. 386—First Nat. Bank v. Cruickshank, 225 P. 142, 38 Idaho 789.

Ill.—Fritsch v. Swanson, 135 N.E.2d 508, 10 Ill.App.2d 566—People ex rel. Andersen v. Firek, 97 N.E.2d 143, 342 Ill.App. 514—McDermott v. Morton, 96 N.E.2d 633, 342 Ill. App. 446—Mayflower Sales Co. v. Frazier, 60 N.E.2d 123, 325 Ill.App. 314—Theis v. Stolze Lbr. Co., 44 N. E.2d 947, 316 Ill.App. 310—Pippert v. Schiele, 43 N.E.2d 407, 315 Ill. App. 563—Frazier v. Allison, 42 N.E.2d 967, 315 Ill.App. 253—Meyer v. Hendrix, 37 N.E.2d 445, 311 Ill. App. 605—Goldfarb v. Maryland Cas. Co., 37 N.E.2d 376, 311 Ill.App. 568—Foeller, for Use of Town of Shiloh Valley v. Griffin, 32 N.E. 2d 938, 309 Ill.App. 238—Finch v. Carlton, 249 Ill.App. 15.

Iowa.—Federal Land Bank of Omaha v. Union Bank & Trust Co. of Ottumwa, 290 N.W. 512, 228 Iowa 205, rehearing denied and opinion supplemented 292 N.W. 852—Armstrong v. Smith, 288 N.W. 621, 227 Iowa 450—In re Droge's Will, 249 N.W. 209, 216 Iowa 331—Gregerson Bros. v. J. G. Cherry Co., 231 N.W. 350, 210 Iowa 538—Whitlatch v. Bond & Mortgage Co. of Iowa, 201 N.W. 108, 199 Iowa 65—Geo. Birrell, Inc. v. Fidelity & Casualty Co. of New York, 188 N.W. 26, 193 Iowa 860—Livingston v. Chambers, 183 N.W. 429, 191 Iowa 966—Thompson v. Layman, 183 N.W. 375—Peoria Tractor Corporation v. Mason, 182 N.W. 193, 191 Iowa 228—Bowsher & Bowsher v. Sutherlin, 164 N.W. 113.

Ky.—Stewart v. Mitchell's Adm'x, 190 S.W.2d 660, 301 Ky. 123—Corbin Bldg. Supply Co. v. Martin, 39 S.W. 2d 480, 239 Ky. 272.

Me.—Jacques v. Otto Nelson Co., 111 A. 515, 119 Me. 388.

Minn.—Werner v. Miller, 78 N.W.2d 63, 248 Minn. 75—Gifford v. Vore, 72 N.W.2d 625, 245 Minn. 432.

Mo.—Meinhardt v. White, 107 S.W.2d 1061, 341 Mo. 446—Hayti Development Co. v. Clayton, 219 S.W. 601, 281 Mo. 221—Walker v. Roberts, 204 S.W. 16—Brooks v. Johnson, 199 S.W. 204.

Cantrell v. Robards, 238 S.W. 831, 210 Mo.App. 688—Petition of Elliott, 234 S.W. 520, 208 Mo.App. 348, certiorari granted Wabash R. Co. v. Elliott, 42 S.Ct. 185, 257 U.S. 632, 66 L.Ed. 407, and reversed on other grounds 43 S.Ct. 406, 261 U.S. 457, 67 L.Ed. 743—McCarthy Lumber & Const. Co. v. Kinder, 225 S. W. 1024, 206 Mo.App. 287, certiorari quashed State ex rel. St. Francois County Building & Loan Ass'n v. Reynolds, 232 S.W. 1035, 288 Mo. 522—Mytton v. Missouri Pac. R. Co., App., 211 S.W. 111—Baum v. Starck Distillery Co., App., 199 S. W. 431—Hiemenz v. Starck, App., 198 S.W. 447, 449—Rough v. Rough, App., 195 S.W. 501—Osage Tie & Timber Co. v. Gorg-Murphy Timber & Grain Co., App., 191 S.W. 1026—Wilson v. St. Louis Envelope & Paper Box Co., App., 190 S.W. 979—McTernan v. Mason, App., 188 S.W. 923—Diehr v. Dean, App., 187 S.W. 602—Maret v. Hough, App., 185 S.W. 544.

Neb.—Ord v. Benson, 79 N.W.2d 713, 163 Neb. 367—Linch v. Linch, 18 N.W.2d 98, 145 Neb. 792—George W. Condon Co. v. Loup River Public Power Dist., 281 N.W. 31, 135 Neb. 284—Giles v. Welsh, 239 N.W. 813, 122 Neb. 164—Sesto v. City of Omaha, 238 N.W. 357, 121 Neb. 730—Goodwin v. Rosebud Cattle Co., 198 N.W. 568, 112 Neb. 90—First Nat. Bank of Sidney v. Baldwin, 158 N. W. 371, 100 Neb. 25.

Okl.—Pugh v. Hassell, 242 P.2d 701, 206 Okl. 290—Douthit v. Scott, 155 P.2d 538, 195 Okl. 70—Cauthorn v. Allen, 104 P.2d 247, 187 Okl. 489—Pearce v. Moore, 65 P.2d 189, 179 Okl. 277—Mugna Oil & Refining Co. v. Cameron Refining Co., 238 P. 413, 111 Okl. 89—Davis v. Decker Bros. Co., 218 P. 518, 92 Okl. 177—Smith v. Lindsey, 215 P. 791, 91 Okl. 8—One Hudson Automobile v. State, 209 P. 223, 87 Okl. 54—Hartley v. Riley, 204 P. 920, 85 Okl. 101—Eastern Oil Co. v. Smith, 195 P. 773, 80 Okl. 207.

Or.—White v. Pallay, 247 P. 316, 119 Or. 97—Sharp v. McCargar, 236 P. 262, 114 Or. 435.

Pa.—In re Jacobs' Trust Estate, 183 A. 49, 320 Pa. 539—McIlvaine v. Powers, 113 A. 365, 270 Pa. 341.

Berg v. S. E. Sostmann Co., 18 A.2d 882, 144 Pa.Super. 198—Altman v. Arata, 195 A. 454, 129 Pa. Super. 229.

Tenn.—Fort v. Noe, 233 S.W. 516, 144 Tenn. 337.

Tex.—Steingruber v. City of San Antonio, Com.App., 220 S.W. 77.

Leonard v. Smith, 186 S.W.2d 284—Gossett v. Green, 153 S.W.2d 500—Burnett v. Boyer, Civ.App., 285 S. W. 670—Walsh v. Vaky, Civ.App., 269 S.W. 455—City Nat. Bank of Eastland v. Conley, Civ.App., 228 S. W. 972—Gordon v. Gordon, Civ. App., 224 S.W. 716—Campbell v. Turley, Civ.App., 224 S.W. 528—Western Union Telegraph Co. v. Gresham, Civ.App., 223 S.W. 1052—Signor Tie Co. v. Texas Iron Ass'n, Civ.App., 222 S.W. 644—Conn v. Southwestern Settlement & Development Co., Civ.App., 222 S. W. 612—Blair v. Paggi, Civ.App., 219 S.W. 287, reversed on other grounds, Com.App., 238 S.W. 639—Brader v. Zbranek, Civ.App., 213 S.W. 331, dismissed for want of jurisdiction—Rousseau v. Everett, Civ.App., 209 S.W. 460—O'Conor v. Sanchez, Civ.App., 202 S.W. 1005, affirmed, Com.App., 229 S.W. 309—Oneida Knitting Co. v. Popular Dry Goods Co., Civ.App., 202 S.W. 811—Landrum v. Burris, Civ.App., 202 S.W. 359—Zemurray v. Houston Fruit & Produce Co., Civ.App., 202 S.W. 209—Smith v. Smith, Civ.App., 200 S.W. 1129—Brittain v. Monsur, Civ.App., 195 S.W. 911, error dismissed—International Order of Twelve Knights and Daughters of Tabor v. Reynolds, Civ.App., 195 S.W. 330—Doran v. Campbell, Civ. App., 194 S.W. 674, error refused—Eubank v. Bostick, Civ.App., 194 S.W. 214—Cochran v. Williams,

has been modified by constitutional and statutory provisions or rules of court empowering the appellate court to review issues of fact or weigh conflicting evidence,[93.5] are regarded as binding and conclusive on the appellate court and not to be disturbed;[94] at least where they have sufficient support

Civ.App., 193 S.W. 255, dismissed for want of jurisdiction—Thrift & Edwards v. Holland, Civ.App., 183 S.W. 1189, error refused.

Va.—Oliver v. Oliver, 69 S.E.2d 350, 193 Va. 571—Haughton v. Lankford, 52 S.E.2d 111, 189 Va. 183—Smith v. Pinnin, 51 S.E.2d 159, 188 Va. 869—Jones v. Galleher & Co., 47 S.E.2d 333, 187 Va. 602—Malbon v. Davis, 40 S.E.2d 183, 185 Va. 748—Harrell v. Allen, 33 S.E.2d 222, 183 Va. 722—Word v. Childs, 29 S.E.2d 227, 182 Va. 394—Baird v. Crank, 29 S.E.2d 225, 182 Va. 455—Seventh St. Garage Co. v. Mercer, 142 S.E. 350, 150 Va. 269—Eastern Shore of Virginia Produce Exch. v. Belote, 123 S.E. 372, 138 Va. 707—F. W. Stock & Sons v. Owen & Barker, 105 S.E. 587, 129 Va. 256.

Wash.—Vulcan Mfg. Co. v. Pacific Sea Products Co., 156 P. 400, 90 Wash. 439—Barr v. Kerfoot Inv. Co., 156 P. 392, 90 Wash. 471.

Sufficiency of evidence to support findings as wholly unaffected by reason of conflicting evidence justifying findings to the contrary see supra § 1656(9).

93.5 N.J.—Foster v. Till, 71 A.2d 146, 6 N.J.Super. 259—De Moors v. Atlantic Cas. Ins. Co. of Newark, 61 A.2d 511, 1 N.J.Super. 1.

Power of appellate court to make findings of fact and conclusions of law in general see infra § 1845.

Limitation on review

Findings of fact on conflicting evidence will not be reviewed unless there was no legal evidence to support them.

N.J.—Lutz v. Ryno, 63 A.2d 881, 1 N.J. 363.

Nature of duties

Where testimony is conflicting, appellate court, in exercise of its appellate discretion, is bound to weigh it, and, if court differs with court below as to the weight, it not only is empowered but it is its duty to reverse the judgment.

La.—Authement v. Naquin, App., 26 So.2d 224.

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in competent believable evidence,[95] the mind of | the appellate court is left in doubt as to the true

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Wash.—Crowley v. Mills, 287 P.2d 491, 47 Wash.2d 340—Patrick v. Patrick, 260 P.2d 878, 43 Wash.2d 139—State ex rel. Carroll v. Seattle Hotel Bldg. Corp., 250 P.2d 982, 41 Wash.2d 595—Huber v. Rosing, 154 P.2d 609, 22 Wash.2d 110—Rogers v. Cation, 115 P.2d 702, 9 Wash.2d 369—Beakley v. City of Bremerton, 105 P.2d 40, 5 Wash.2d 670—Yates F. Hamm Funeral Home v. Biles, 101 P.2d 597, 3 Wash.2d 592—Verline v. Hyssop, 97 P.2d 653, 2 Wash.2d 141—Weir v. School Dist. No. 201, Klickitat County, 93 P.2d 308, 200 Wash. 172, 123 A.L.R. 1057—A. M. Castle & Co. v. Public Service Underwriters, 89 P.2d 506, 198 Wash. 576—Kalkwarf v. Geschke, 77 P.2d 612, 194 Wash. 135—Field v. Northwestern Fruit Exchange, 61 P.2d 135, 188 Wash. 698—Associated Indemnity Corporation v. King County School Dist. No. 181, 47 P.2d 10, 182 Wash. 414—Collins v. Larson, 38 P.2d 1057, 180 Wash. 171—Nagel v. Edmonston, 35 P.2d 64, 178 Wash. 577—Grosgebauer v. Schneider, 31 P.2d 90, 177 Wash. 43—Hottel v. Swanson, 6 P.2d 416, 166 Wash. 220—Fisher v. Berg, 290 P. 984, 158 Wash. 176—Foote v. Kearney, 290 P. 226, 157 Wash. 681—Narup v. Benson, 283 P. 179, 154 Wash. 646—Barr v. Campbell Mill Co., 280 P. 929, 154 Wash. 83, adhered to 284 P. 1119, 154 Wash. 83—Epley v. Enbody, 279 P. 1107, 153 Wash. 587—Williams v. Bevis, 278 P. 193, 152 Wash. 469, followed in 279 P. 1119, 153 Wash. 701—Kolderup v. American Nitrogen Products Co., 276 P. 298, 151 Wash. 450—North Bend Lumber Co. v. City of Seattle, 266 P. 156, 147 Wash. 330—Rapidol Co. v. Howe Co., 258 P. 469, 144 Wash. 543—Spahr v. Liebeck, 252 P. 107, 141 Wash. 581—Johnson v. Hunter, 251 P. 123, 141 Wash. 190—Jamme v. Howe, 239 P. 550, 136 Wash. 226—Dunn v. Hanson, 228 P. 1119, 131 Wash. 693—Goodsell v. Phillips, 227 P. 13, 130 Wash. 120—Williams v. Yellow Pine Box & Lumber Co., 218 P. 245, 126 Wash. 380, modified on other grounds 225 P. 433, 129 Wash. 642—Woodruff v. Stahl, 217 P. 1013, 126 Wash. 184—Johnson v. Sloane, 214 P. 840, 124 Wash. 420—Dickson v. Protzman, 212 P. 249, 123 Wash. 247—Bayless v. Gordon, 212 P. 169, 123 Wash. 316—Barton v. Tombari, 207 P. 239, 120 Wash. 331—American Packing Co. v. Luketa, 206 P. 965, 120 Wash. 278—Smith v. Telford, 203 P. 938, 118 Wash. 502—Mentzer Bros. Lumber Co. v. Russell, 203 P. 737, 118 Wash. 528—Hewitt-Lea Lumber Co. v. King County, 194 P. 377, 113 Wash. 431, 21 A.L.R. 201—Woolfolk v. Mullins Sawmill Co., 191 P. 854, 112 Wash. 296—Cartwright v. Hamilton, 191 P. 797, 111 Wash. 685—Peterson v. Ogle, 188 P. 768, 110 Wash. 610—In re Dingman, 188 P. 755, 110 Wash. 513—Luten v. Earles, 187 P. 349, 109 Wash. 550—Hausken v. Hodson-Feenaughty Co., 187 P. 319, 109 Wash. 606—Saari v. Wells Fargo Express Co., 186 P. 898, 109 Wash. 415—Hood Mfg. Co. v. Matzger, 181 P. 863, 107 Wash. 347—United States Fidelity & Guaranty Co. v. Cascade Const. Co., 180 P. 463, 106 Wash. 478—Courtis v. Freeburn Coal Co., 172 P. 860, 102 Wash. 178—Little-Wetzel Co. v. Lincoln, 172 P. 746, 101 Wash. 435—National Surety Co. v. Denny-Renton Clay & Coal Co., 171 P. 543, 100 Wash. 612—Hopkins v. American Fidelity Co., 158 P. 535, 91 Wash. 680—Alexander v. Bennett, 158 P. 534, 91 Wash. 688—Carstens Packing Co. v. Lewis C. Troughton, Inc., 155 P. 758, 90 Wash. 196.

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Wyo.—Dollar v. Allshouse, 311 P.2d 396—Skanadore v. Anderson, 304 P.2d 1072—Erickson v. Hudson, 249 P.2d 523, 70 Wyo. 317—Desmond v. Poulos, 237 P.2d 853, 69 Wyo. 129—Owens v. Capri, 202 P.2d 174, 65 Wyo. 325—Norris v. United Mineral Products Co., 158 P.2d 679, 61 Wyo. 386—Chittim v. Belle Fourche Bentonite Products Co., 149 P.2d 142, 60 Wyo. 235—Hawks v. Creswell, 144 P.2d 129, 60 Wyo. 1—Black v. Beagle, 139 P.2d 439, 59 Wyo. 268, 148 A.L.R. 243, rehearing denied 140 P.2d 594, 59 Wyo. 268—Wilson v. Schoonover, 101 P.2d 866, 55 Wyo. 519—Mitchell v. Walters, 100 P.2d 102, 55 Wyo. 317—Jovich v. National Croatian Soc. of U. S. of America, 86 P.2d 729, 53 Wyo. 504—Davis-Robinson v. Patee, 57 P.2d 681, 49 Wyo. 470—Kumor v. Scottish Union & National Ins. Co., 33 P.2d 916, 47 Wyo. 174—In re Shaul, 30 P.2d 478, 46 Wyo. 549—Tobin v. Town Council of Town of City of Sundance, 17 P.2d 666, 45 Wyo. 219, 84 A.L.R. 902—First Nat. Bank v. Ennis, 14 P.2d 201, 44 Wyo. 497, rehearing denied 15 P.2d 1111, 45 Wyo. 165—In re Goshen Irr. Dist., 293 P. 373, 42 Wyo. 229—Hitshew v. Rosson, 287 P. 316, 41 Wyo. 509—Mulhern v. Mahs, 284 P. 123, 41 Wyo. 214—Christensen v. McCann, 282 S. W. 1061, 41 Wyo. 101—Baylies v. Vanden Boom, 278 P. 551, 40 Wyo. 411, 70 A.L.R. 924—Wiltrout v. Sprague, 276 P. 448, 40 Wyo. 215—Brown v. Citizens' Nat. Bank of Cheyenne, 269 P. 40, 38 Wyo. 469—Wakefield v. Lord, 266 P. 1066, 38 Wyo. 301—Fletcher v. Pump Creek Gas & Oil Syndicate, 266 P. 1062, 38 Wyo. 329, 61 A.L.R. 615—Davison v. Nicholson, 263 P. 605, 37 Wyo. 412—Farmers' Lumber Co. v. Luikart, 256 P. 84, 36 Wyo. 413, rehearing denied 259 P. 1053, 37 Wyo. 201—Kamp v. Kamp, 254 P. 689, 36 Wyo. 310—Quealy Land & Live Stock Co. v. George, 254 P. 130, 36 Wyo. 268—Sorenson v. Howell, 241 P. 1068, 34 Wyo. 119—Stahley Land & Live Stock Co. v. Beckstead, 192 P. 1056, 27 Wyo. 173—Phelan v. Cheyenne Brick Co., 188 P. 354, 26 Wyo. 493, rehearing denied 189 P. 1103, 26 Wyo. 493—Richards v. Richards, 186 P. 1107, 26 Wyo. 421.

4 C.J. p 883 note 33—6 C.J. p 469 note 10—9 C.J. p 295 note 66—12 C.J. p 369 note 93—19 C.J. p 1226 note 99—29 C.J. p 725 note 26—36 C.J. p 458 note 65—37 C.J. p 1260 note 45—41 C.J. p 362 notes 1–3, p 731 notes 91, 92—42 C.J. p 445 note 2—45 C.J. p 1370 notes 2, 4—46 C.J. p 632 note 34—47 C.J. p 1270 note 21—51 C.J. p 1252 note 87—52 C.J. p 153 note 77—63 C.J. p 580 note 66—65 C.J. p 1077 note 43—66 C.J. p 314 note 46—67 C.J. p 637 note 92.

Implied findings cannot be disturbed on appeal where the evidence was conflicting.

Cal.—Kirkman Corp. v. Owens, 144 P.2d 405, 62 C.A.2d 193.

95. Ala.—Upchurch v. Goodroe, 6 So.2d 869, 242 Ala. 395.

Milner v. J. H. Lewis & Son, 104 So. 444, 20 Ala.App. 598—Roanoke Guano Co. v. Robertson, 85 So. 823, 17 Ala.App. 286—McDonough v.

Commercial State Bank, 73 So. 754, 15 Ala.App. 429.

Ariz.—Kauzlarich v. Board of Trustees of Oak Creek School Dist. No. 16, Yavapai County, 278 P.2d 888, 78 Ariz. 267—Tang v. Avitable, 264 P.2d 835, 76 Ariz. 346—In re Graham's Estate, 239 P.2d 365, 73 Ariz. 179—Chester v. Chester, 210 P.2d 331, 69 Ariz. 104—Grimm v. Beard, 161 P.2d 924, 63 Ariz. 281—Nickerson v. Arizona Consol. Mining Co., 95 P.2d 983, 54 Ariz. 351—Tolleson Union High School Dist. v. Kincaid, 85 P.2d 708, 53 Ariz. 60—State Tax Commission v. United Verde Extension Mining Co., 4 P.2d 395, 39 Ariz. 136, rehearing denied 6 P.2d 889, 39 Ariz. 331—Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co., 4 P.2d 369, 39 Ariz. 65, modified on other grounds and rehearing denied 7 P.2d 254, 39 Ariz. 367—Young Mines Co. v. Citizens' State Bank, 296 P. 247, 37 Ariz. 521—White River Sheep Co. v. Barkley, 288 P. 1029, 37 Ariz. 49—Morgan v. Krook, 283 P. 287, 36 Ariz. 133—Gray v. Headley, 276 P. 523, 35 Ariz. 232—Peters v. Taylor, 251 P. 446, 31 Ariz. 169—Montgomery v. Kirksey, 233 P. 588, 27 Ariz. 356—Ollason v. Glasscock, 224 P. 284, 26 Ariz. 193—Blackford v. Neaves, 205 P. 587, 23 Ariz. 501.

Ark.—Bank of Atkins v. Wirth, 190 S.W.2d 445, 209 Ark. 360—Ward v. Nu-Wa Laundry Cleaners, 170 S.W.2d 381, 205 Ark. 713—Mangrum v. Benton, 109 S.W.2d 1250, 194 Ark. 1007—Elmore v. Bishop, 42 S.W.2d 399, 184 Ark. 243—Gideon v. Blackwell, 266 S.W. 274, 167 Ark. 677—Harrell v. Huff, 181 S.W. 134, 121 Ark. 633.

Cal.—Potter v. Pacific Coast Lumber Co. of Cal., 234 P.2d 16, 37 C.2d 592—Berniker v. Berniker, 182 P.2d 557, 30 C.2d 439—Vice v. Thacker, 180 P.2d 4, 30 C.2d 84—Rice v. California Lutheran Hospital, 163 P.2d 860, 27 C.2d 296—Beeler v. American Trust Co., 140 P.2d 814, reheard 147 P.2d 583, 24 C.2d 1—Wheeland v. Rodgers, 124 P.2d 816, 20 C.2d 218—Fewel & Dawes v. Pratt, 109 P.2d 650, 17 C.2d 85—Longley v. Brooks, 92 P.2d 394, 13 C.2d 754—Foster v. Foster, 68 P.2d 719, 8 C.2d 719—Hersh v. Garau, 28 P.2d 1022, 218 C. 460—Stewart v. Crowley, 3 P.2d 562, 213 C. 694—Palmer v. Wells Fargo Bank & Union Trust Co., 2 P.2d 771, 213 C. 535—Oregon-California Live-Stock Co. v. McDonald, 2 P.2d 336, 213 C. 397—O'Hara v. Grand Lodge, I. O. G. T. of State of California, 2 P.2d 21, 213 C. 131—Goodman v. Goodman, 300 P. 449, 212 C. 730—Leviston v. Tonningsen, 299 P. 724, 212 C. 656—Isenberg v. Sherman, 298 P. 1004, 212 C. 454, rehearing denied 299 P. 528, 212 C. 454, and motion denied 7 P.2d 1006, 214 C. 722, certiorari denied 52 S.Ct. 501, 286 U.S. 547, 76 L.Ed. 1283—Lindberg v. Stango, 297 P. 9, 211 C. 771, 75 A.L.R. 555—Gunther v. Thompson, 296 P. 611, 211 C. 631—Hammond Lumber Co. v. Pile, 262 P. 715, 202 C. 624—Porter v. Miller, 258 P. 595, 201 C. 750—Rawlings v. Fuster, 171 P. 955, 177 C. 740—Cerruti Mercantile Co. v. Simi Land Co., 152 P. 727, 171 C. 254—In re Ross' Estate, 151 P. 1138, 171 C. 64—Francoeur v. Beatty, 151 P. 123, 170 C. 740—Briles v. Paulson, 149 P. 804, 170 C. 408—Briles v. Paulson, 149 P. 169, 170 C. 196—McRae v. Ross, 148 P. 215, 170 C. 74—In re Piercy's Estate, 145 P. 88, 168 C. 750—Craw v. Craig, 143 P. 604, 168 C. 351.

Cal.—Zorich v. Petroff, App., 313 P.2d 118—Cutter Laboratories, Inc. v. R. W. Ogle & Co., App., 311 P.2d 627—Pancoast v. Russell, App., 307 P.2d 719—Brown v. Jerome, 304 P.2d 194, 146 C.A.2d 698—Richards Realty Co. v. Real Estate Com'r, 300 P.2d 893, 144 C.A.2d 357—Wilson v. Wilson, 299 P.2d 318, 143 C.A.2d 53—In re Talbot's Estate, 296 P.2d 848, 141 C.A.2d 309—Donlon v. Donlon, 295 P.2d 51, 140 C.A.2d 428—Allen v. Shaver, 289 P.2d 255, 136 C.A.2d 621—Fifield v. Greeley, 282 P.2d 552, 132 C.A.2d 512—Penzner v. Wenland, 280 P.2d 489, 131 C.A.2d 327—Cunningham v. Weaver, 279 P.2d 830, 130 C.A.2d 787—Carson v. Vinding, 279 P.2d 604, 130 C.A.2d 652—Klassen v. E. Steinkamp, Inc., 279 P.2d 121, 130 C.A.2d 365—Stewart v. Stewart, 278 P.2d 441, 130 C.A.2d 186—Westbrook v. Reneau, 278 P.2d 32, 129 C.A.2d 715—Carvalho v. McCoy, 276 P.2d 21, 128 C.A.2d 702—Pieri v. Rosebrook, 275 P.2d 67, 128 C.A.2d 250—Herrmann v. Fireman's Fund Ins. Co., 274 P.2d 501, 127 C.A.2d 560—Sheridan v. Epps, 273 P.2d 264, 127 C.A.2d 147—Cochran v. Ellsworth, 272 P.2d 904, 126 C.A.2d 429—In re Gibson's Estate, 272 P.2d 807, 126 C.A.2d 534—Richmond v. Frederick, 253 P.2d 977, 116 C.A.2d 541—Noble v. Noble, 252 P.2d 1001, 115 C.A.2d 786—Payne v. Crossley, 251 P.2d 675, 115 C.A.2d 72—Peneski v. Ledford, 246 P.2d 109, 112 C.A.2d 371—Anderson v. Anderson, 237 P.2d 24, 107 C.A.2d 402—Tedder v. Johnson, 234 P.2d 149, 105 C.A.2d 734—Bateman v. Long, 233 P.2d 19, 105 C.A.2d 173—In re Busteed's Estate, 232 P.2d 881, 105 C.A.2d 14—Macal Imp. Co. v. Hoskins, 229 P.2d 461, 103 C.A.2d 347—Dynamic Air Engineering v. Western Design & Mfg. Corp., 226 P.2d 62, 101 C.A.2d 770—Davis v. Woodcock, 225 P.2d 918, 101 C.A.2d 618—Foley v. Riverside Iron & Steel Corp., 221 P.2d 998, 99 C.A.2d 431—Lundy v. Lakin, 215 P.2d 61, 96 C.A.2d 221—Lynn v. Cable, 213 P.2d 521, 95 C.A.2d 696—Wilke v. Crofton, 209 P.2d 790, 84 C.2d 304—Smythe v. Schacht, 209 P.2d 114, 93 C.A.2d 315—London v. Zachary, 207 P.2d 1067, 92 C.A.2d 654—Wilson v. Sampson, 205 P.2d 753, 91 C.A.2d 453—Long v. Long, 199 P.2d 47, 88 C.A.2d 544—Hodges v. Porikos, 198 P.2d 577, 88 C.A.2d 238—Rogers v. Rogers, 195 P.2d 890, 86 C.A.2d 817—In re Johnson's Estate, 193 P.2d 782, 85 C.A.2d 760—Rice v. Watkins, 191 P.2d 810, 85 C.A.2d 44—Taylor v. Humbird, 191 P.2d 788, 85 C.A.2d 40—Dooling v. Dabel, 186 P.2d 183, 82 C.A.2d 417—Rutherford v. Berick, 186 P.2d 23, 82 C.A.2d 331—Oakley v. Oakley, 185 P.2d 848, 82 C.A.2d 188—Gronenschild v. Ritzenthaler, 183 P.2d 720, 81 C.A.2d 138—Martin v. Martin, 179 P.2d 655, 79 C.A.2d 409—Fisher v. Losey, 177 P.2d 334, 78 C.A.2d 121—In re Meister's Estate, 175 P.2d 574, 77 C.A.2d 487—La Cava v. Breedlove, 174 P.2d 880, 77 C.A.2d 129—Guild v. Stockton Ice Rink Co., 174 P.2d 338, 77 C.A.2d 17—Seidenberg v. George, 172 P.2d 891, 76 C.A.2d 306—Martter v. Byers, 171 P.2d 101, 75 C.A.2d 375—Wilmerton v. Morton, 169 P.2d 992, 74 C.A.2d 891—Dykes v. Dykes, 166 P.2d 616, 73 C.A.2d 507—Valley Const. Co. v. City of Calistoga, 165 P.2d 521, 72 C.A.2d 839—Berger v. Steiner, 164 P.2d 559, 75 C.A.2d 208—Horsman v. Maden, 157 P.2d 882, 69 C.A.2d 11—Haworth v. Elliott, 153 P.2d 804, 67 C.A.2d 77—Miller v. Pierce, 152 P.2d 24, 66 C.A.2d 126—Welsh v. Mercy Hospital, 151 P.2d 17, 65 C.A.2d 473—Schmidt v. Pension Board for Administration of Relief and Pension Fund, 147 P.2d 90, 63 C.A.2d 439—Cleverdon v. Gray, 145 P.2d 95, 62 C.A.2d 612—Sears v. Schwartz, 142 P.2d 334, 61 C.A.2d 125—Sinnock v. Young, 142 P.2d 85, 61 C.A.2d 130—In re McCollum's Estate, 140 P.2d 176, 59 C.A.2d 744—Markall v. Peterson, 139 P.2d 70, 59 C.A.2d 248—Baird v. Madsen, 134 P.2d 885, 57 C.A.2d 465—Eriksson v. Wise, 132 P.2d 905, 56 C.A.2d 574—Witaschek v. Witaschek, 132 P.2d 600, 56 C.A.2d 277—Cornell v. Hearst Sunical Land & Packing Corp., 131 P.2d 404, 55 C.A.2d 708—Connolly v. Zaft, 130 P.2d 752, 55 C.A.2d 383—Sparks v. Board of Dental Examiners of California, 129 P.2d 405, 54 C.A.2d 491—Brakhage v. McCaslin, 126 P.2d 378, 52 C.A.2d 382—Kallmeyer v. Poore, 125 P.2d 924, 52 C.A.2d 142—In re Murphy's Estate, 123 P.2d 129, 50 C.A.2d 440—Board of Education of San Francisco Unified School Dist. v. Mulcahy, 123 P.2d 114, 50 C.A.2d 518—Drake v. Rusconi, 122 P.2d 605, 50 C.A.2d 89—Palmer v. Palmer, 121 P.2d 822, 49 C.A.2d 331—Farmer v. Matsutani, 119 P.2d 740, 48 C.A.2d 332—Jones v. Pleasant Valley Canal Co., 113

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Okl.—Garrett v. Pollock, 299 P.2d 516—Bredy v. Cantrell, 234 P.2d 381, 205 Okl. 9—Norris v. Van Handel, 163 P.2d 217, 196 Okl. 164—Gilliland v. Snedden, 159 P.2d 734, 195 Okl. 601—Rogers v. Jones, 147 P.2d 164, 194 Okl. 50—Advertiser's Exchange v. Morelock, 133 P.2d 204, 192 Okl. 7—Home-Stake Royalty Corp. v. McClish, 103 P.2d 72, 187 Okl. 352—Joseph v. Coffey, 85 P.2d 425, 184 Okl. 143—Wells v. U. S. Fidelity & Guaranty Co., 77 P.2d 716, 182 Okl. 290—Arkansas Valley Petroleum Corp. v. Twyford, 65 P.2d 181, 179 Okl. 128—Golden v. Griffin Grocery Co., 13 P.2d 188, 158 Okl. 236—Villines v. Conatser, 2 P.2d 1024, 151 Okl. 144—Webber v. Sandridge,

2 P.2d 959, 151 Okl. 112—School Dist. No. 60 of Ellis County v. Crabtree, 294 P. 171, 146 Okl. 197—Warner v. Wickizer, 294 P. 130, 146 Okl. 232—Lenapah Supply Co. v. Stewart, 269 P. 301, 132 Okl. 32—Campbell v. Johnson, 267 P. 661, 131 Okl. 79—Hill v. Wilson, 260 P. 4, 127 Okl. 171—Drew v. Anderson, Clayton & Co., 252 P. 64, 120 Okl. 250—Troup v. Hine, 251 P. 43, 120 Okl. 282—Beamer v. Key, 246 P. 628, 114 Okl. 276—Park Addition Co. v. Sawyer, 245 P. 829, 117 Okl. 141—Oklahoma Natural Gas Co. v. Coppedge, 237 P. 592, 110 Okl. 261—Oilton State Bank v. Ross, 234 P. 567, 108 Okl. 24—Williamson v. Allen, 232 P. 98, 105 Okl. 198—Mott v. Zimmerman, 229 P. 227, 100 Okl. 299—Holiday Oil Co. v. Smith, 228 P. 775, 100 Okl. 172—Jacobson v. Kill, 221 P. 21, 94 Okl. 146—Nunley v. Loftis, 220 P. 841, 100 Okl. 46—Squires v. Wesco Supply Co., 219 P. 895, 93 Okl. 138—Stone v. Easter, 219 P. 653, 93 Okl. 68—Smith v. Felkel, 217 P. 196, 91 Okl. 184—Thompson v. Shideler, 216 P. 161, 90 Okl. 94—Choctaw Lumber Co. v. Waldock, 190 P. 866, 78 Okl. 232—Peters v. Bledsoe, 190 P. 407, 78 Okl. 256—Marrs v. Barnes, 155 P. 560, 55 Okl. 590—Dunn v. Anderson, 151 P. 1045, 51 Okl. 280—Bothwell v. Way, 145 P. 350, 44 Okl. 555.

Or.—Kramer v. Taylor, 266 P.2d 709, 200 Or. 640—Adams v. King, 193 P. 196, 98 Or. 305—Oregon Engineering & Construction Co. v. City of West Linn, 185 P. 750, 94 Or. 234.

Pa.—In re Jacobs' Trust Estate, 183 A. 49, 320 Pa. 539—Commonwealth v. Snyder, 144 A. 748, 294 Pa. 555—Petition of Knauer, 134 A. 463, 287 Pa. 115—Pyle v. Pittsburgh & L. E. R. Co., 93 A. 171, 247 Pa. 113. Ramondo v. Pure Oil Co., 48 A. 2d 156, 159 Pa.Super. 217—El Commercio Pub. Corporation v. Starrels, 85 Pa.Super. 145.

R.I.—Tuller v. Kapstein, 169 A. 120.

S.C.—Acme Mfg. Co. v. Massey, 146 S.E. 605, 149 S.C. 22.

S.D.—Smith v. McKee, 226 N.W. 766, 55 S.D. 572.

Tenn.—Ætna Life Ins. Co. of Hartford, Conn. v. Bidwell, 241 S.W.2d 595, 192 Tenn. 627.

Tex.—Calvert v. Union Producing Co., 280 S.W.2d 241, 154 Tex. 479. Stanley v. Stanley, Civ.App., 294 S.W.2d 132, error refused no reversible error—Vera v. Davis, Civ. App., 274 S.W.2d 739, error refused no reversible error—Hughes v. Trimble, Civ.App., 254 S.W.2d 420, error refused no reversible error—Snyder v. Johnson, Civ.App., 237 S.W.2d 740, mandamus granted—Bomar v. Bomar, Civ.App., 229 S.W.2d 859—Continental Fire & Cas. Ins. Corp. v. Drummond, Civ. App., 220 S.W.2d 922, error refused no reversible error—Straffus v. Barclay, Civ.App., 214 S.W.2d 826, affirmed 219 S.W.2d 65, 147 Tex. 600—Fulford v. Heath, Civ.App., 212 S.W.2d 649, error refused no reversible error—Boyd v. Texas Emp. Ins. Ass'n, Civ.App., 207 S.W. 2d 709—Travelers Ins. Co. v. Calcote, Civ.App., 205 S.W.2d 56, error refused no reversible error—Walker v. Walker, Civ.App., 201 S. W.2d 61—Donaldson v. Clark, Civ. App., 163 S.W.2d 226, error refused—Wilmans v. Hubble, Civ. App., 153 S.W.2d 228, error refused—Roberson v. Keck, Civ.App., 135 S.W.2d 256, error dismissed judgment correct—Anderson-Berney Bldg. Co. v. Swan, Civ.App., 133 S.W.2d 269, error dismissed, judgment correct—Corn v. First Texas Joint Stock Land Bank of Houston, Civ.App., 131 S.W.2d 752, error refused—Texas Liquor Control Board v. Lanza, Civ.App., 129 S.W.2d 1153, error dismissed, judgment correct—McCarty v. Hogan, Civ.App., 121 S.W.2d 499, error dismissed—Kluckman v. Trustees of Raymondville Independent School Dist., Civ.App., 113 S.W.2d 301, error dismissed—Allen v. Texas & N. O. R. Co., Civ.App., 70 S.W.2d 758—Senter v. Dixie Motor Coach Corporation, Civ.App., 67 S.W.2d 345, rehearing denied 68 S.W.2d 1117—Aniol v. Aniol, Civ.App., 62 S.W.2d 668—Mahoney v. Pitman, Civ.App., 43 S.W.2d 143—Jones v. Clark, Civ.App., 40 S.W.2d 260—Murphy v. Smith, Civ.App., 277 S.W. 228—Foster v. Spearman Equity Exch., Civ.App., 266 S.W. 583—Scales v. Grassman, Civ.App., 261 S.W. 215—Beaumont Irrigating Co. v. Ellison, Civ.App., 260 S.W. 245—Paul v. Prince, Civ.App., 228 S.W. 1102, dismissed for want of jurisdiction—Jobe v. Patton, Civ. App., 222 S.W. 987, dismissed for want of jurisdiction—Roberts v. Atwood, Civ.App., 188 S.W. 1014—Southern Wells Sales Co. v. Eastham, Civ.App., 181 S.W. 698—Dawson v. Falfurrias State Bank, Civ. App., 181 S.W. 553—Missouri, K. & T. Ry. Co. of Texas v. Attaway, Civ.App., 180 S.W. 1151—Ramsey v. Farmers' & Citizens' Savings Bank, Civ.App., 177 S.W. 209—Ford v. Warner, Civ.App., 176 S.W. 885.

Utah.—Staley v. Grant, 276 P.2d 489, 2 Utah 2d 421—Palfreyman v. Bates & Rogers Const. Co., 158 P. 2d 132, 108 Utah 142—Campbell Bldg. Co. v. State Road Commission, 70 P.2d 857, 95 Utah 242—Osborn v. Peters, 255 P. 435, 69 Utah 391—Bear River Valley Implement Co. v. Jensen, 211 P. 186, 61 Utah 100—Emerson-Brantingham Implement Co. v. Giles, 202 P. 543, 59 Utah 54—McCarrick v. Lenox Mining Co., 164 P. 478, 49 Utah 353—Horn v. Dudley, 151 P. 352, 47 Utah 25—Jorgensen v. Gessell Pressed Brick Co., 141 P. 460, 45 Utah 31, Ann.Cas.1917C 309.

Vt.—Petition of Stowell, 125 A.2d 807, 119 Vt. 298—Loeb v. Loeb, 114 A.2d 518, 118 Vt. 474—Bagalio v. Hoar, 110 A.2d 719, 118 Vt. 386—State v. O'Connell, 99 A.2d 705, 118 Vt. 55—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292—Schwarz v. Avery, 31 A.2d 916, 113 Vt. 175—Nelson v. Travelers Ins. Co., 30 A.2d 75, 113 Vt. 86—Utley v. Town School Dist. of Woodbury, 9 A.2d 117, 110 Vt. 522—Handy v. Trudell, 156 A. 902, 104 Vt. 85.

Va.—Adams v. Seymour, 61 S.E.2d 23, 191 Va. 372—Kerr v. Kerr's Heirs, 30 S.E.2d 684, 182 Va. 731—Virginia Electric & Power Co. v. Holtz, 174 S.E. 870, 162 Va. 665.

Wash.—Kelly v. Bank, 62 P.2d 1359, 188 Wash. 614—Blanchard Lumber Co. v. Luckenbach S. S. Co., 276 P. 535, 151 Wash. 671—Storey v. Gaisford, 240 P. 9, 136 Wash. 378—Enquist v. P. J. McGowan & Sons, 209 P. 1091, 121 Wash. 695—Skinner v. McCrackan, 159 P. 977, 93 Wash. 43—Folmsbee v. Daniell, 154 P. 796, 89 Wash. 426—In re Connolly's Estate, 154 P. 155, 89 Wash. 168, L.R.A.1916D 635—A. J. Riffe-Kirkpatrick Co. v. West Coast Packing Co., 150 P. 1172, 86 Wash. 695—Fleming v. Langley, 150 P. 418, 86 Wash. 346—Stewart v. Fitzsimmons, 149 P. 659, 86 Wash. 55, affirmed 153 P. 20, 88 Wash. 700—In re Welch's Estate, 147 P. 4, 84 Wash. 558—Hornburg v. Schnatterly, 142 P. 1160, 81 Wash. 588—Bogle v. Devlin, 142 P. 433, 81 Wash. 50.

W.Va.—Malcolm v. Talley, 109 S.E. 613, 89 W.Va. 531—Stickley v. Thorn, 106 S.E. 240, 87 W.Va. 673—Williamson v. Levine, 83 S.E. 281, 75 W.Va. 143.

Wis.—Herbert A. Nieman & Co. v. Holton & Hunkel Greenhouse Co., 21 N.W.2d 637, 248 Wis. 324—Interior Woodwork Co. v. Larsen, 238 N.W. 822, 207 Wis. 1—Becker v. Beaver Mfg. Co., 149 N.W. 209, 158 Wis. 471—Cardine v. Schaffenbuhl, 147 N.W. 362, 157 Wis. 319.

Wyo.—Trails Motors, Inc. v. First Nat. Bank of Laramie, 301 P.2d 775—Hawkey v. Williams, 281 P. 2d 447, 73 Wyo. 463—Hancock v. Johnson, 244 P.2d 285, 69 Wyo. 503—Dawson, Corbett & Shelp v. Lieurance & Canfield Const. Co., 235 P.2d 457, 68 Wyo. 465—Parker v. Belle Fourche Bentonite Products Co., 189 P.2d 882, 64 Wyo. 269—**Corpus Juris Secundum cited in** Scoggin v. Miller, 189 P.2d 677, 683, 64 Wyo. 206—Jacoby v. Town of City of Gillette, 177 P.2d 204, 62 Wyo. 487—Cook v. McDonald, 148 P.2d 594, 60 Wyo. 215—Binning v. Miller, 146 P.2d 527, 69 Wyo. 114—Garman v. Garman, 136 P.2d 517, 59 Wyo. 1—Hill v. Walters, 100 P.

facts,[96] there has been no error as to a matter of law,[97] there is no definite showing that a result to the contrary should have been reached,[97.5] and the findings are not clearly or plainly wrong or erroneous,[98] or manifestly or flagrantly against the great

2d 98, 55 Wyo. 334—Foley v. Hassey, 95 P.2d 85, 55 Wyo. 24—First Nat. Bank v. Barrett, 93 P.2d 510, 54 Wyo. 394—Redwine v. Rohlff Lumber & Supply Co., 91 P.2d 49, 54 Wyo. 253—Yellowstone Sheep Co. v. Diamond Dot Live Stock Co., 297 P. 1107, 43 Wyo. 15, 75 A.L.R. 1151—Delfelder v. Poston, 293 P. 354, 42 Wyo. 176—McMahon v. Midwest Refining Co., 252 P. 1027, 36 Wyo. 90—Hjorth Oil Co. v. Curtis, 163 P. 362, 25 Wyo. 1, 3 A.L.R. 765—Stockgrowers' Bank of Wheatland v. Gray, 154 P. 593, 24 Wyo. 18.

"Credible" defined

Appellate court, on examination of conflicting testimony in order to determine whether there is credible evidence to support findings of lower court, should bear in mind that the word "credible" under common law means competent and worthy of belief.

Me.—Flagg v. Davis, 83 A.2d 319, 147 Me. 71.

96. Ky.—Pelfrey v. Gross, 175 S.W. 2d 2, 295 Ky. 602—Wynn v. Wynn, 166 S.W.2d 271, 292 Ky. 136—Hotze v. Ring, 115 S.W.2d 311, 273 Ky. 48—Hayes v. Cyrus, 65 S.W.2d 59, 251 Ky. 411—Svea Fire & Life Ins. Co. v. Foxwell, 27 S.W.2d 675, 234 Ky. 95—Powell v. Galloway, 16 S.W.2d 492, 229 Ky. 43.

Okl.—St. Louis & S. F. R. Co. v. Akard, 159 P. 344, 60 Okl. 4.

4 C.J. p 885 note 40.

97. U.S.—Leggat v. McLure, Mont., 234 F. 620, 148 C.C.A. 386.

Ariz.—In re McDonnell's Estate, 179 P.2d 238, 65 Ariz. 248.

Cal.—Security-First Nat. Bank of Los Angeles v. Bruder, 113 P.2d 3, 44 C.A.2d 767.

Conn.—Fields v. Metropolitan Life Ins. Co., 46 A.2d 127, 132 Conn. 588—Todd v. Bradley, 122 A. 68, 99 Conn. 307.

Ind.—Watson v. Watson, 108 N.E.2d 893, 231 Ind. 385—King v. Hartley, 123 N.E. 728, 71 Ind.App. 1.

Mo.—Evans v. General Explosives Co., 239 S.W. 487, 293 Mo. 364.

N.J.—Miko v. Feldman, 181 A. 632, 13 N.J.Misc. 837.

N.M.—Greene v. Esquibel, 272 P.2d 330, 58 N.M. 429.

Ohio.—Klein v. Stewart, 158 N.E. 238, 25 Ohio App. 393.

Okl.—Williams v. Cook, 261 P.2d 611—Jones v. Herring, 72 P.2d 387, 181 Okl. 24.

Wash.—Fox v. Fox, 307 P.2d 1062.

W.Va.—Watkins v. Norfolk & Western Ry. Co., 28 S.E.2d 621, 125 W. Va. 159.

Wis.—Riesen v. School Dist. No. 4 of Village of Shorewood, 212 N.W. 783, 192 Wis. 283—In re Heymann's Will, 208 N.W. 913, 190 Wis. 97.

97.5 Mich.—Vanden Bogert v. May, 55 N.W.2d 115, 334 Mich. 606—Green v. Bambrick, 49 N.W.2d 160, 331 Mich. 243—Beardsley v. Beardsley, 25 N.W.2d 205, 316 Mich. 303—Lau v. Lau, 7 N.W.2d 278, 304 Mich. 218—Gindorff v. Gindorff, 295 N.W. 229, 295 Mich. 469.

98. Ala.—Mitchell v. Williams, 86 So.2d 369, 264 Ala. 192—Wood v. Wood, 82 So.2d 556, 263 Ala. 384—Skelton v. Tyson, 41 So.2d 180, 252 Ala. 496—Morrison v. State ex rel. Dormon, 37 So.2d 196, 251 Ala. 289—Bates v. Bates, 24 So.2d 440, 247 Ala. 337—Watson v. Ingalls, 119 So. 667, 218 Ala. 537—First Avenue Coal & Lumber Co. v. Renfroe, 110 So. 899, 215 Ala. 424—Kerlin-Patterson Lumber Co. v. Eufaula Hardware Co., 108 So. 508, 214 Ala. 602.

Philips v. Smith, 94 So. 191, 18 Ala.App. 668.

Ariz.—Gillespie Land & Irr. Co. v. Jones, 164 P.2d 456, 63 Ariz. 535.

Cal.—Vecki v. Sorensen, 273 P.2d 908, 127 C.A.2d 407—Hosca v. Brather, 163 P.2d 760, 71 C.A.2d 826—Logan v. Richards, 121 P.2d 18, 49 C.A.2d 125—In re Lissner's Estate, 81 P.2d 448, 27 C.A.2d 570—O'Hare v. Peacock Dairies, 79 P.2d 433, 26 C.A.2d 345, followed in 79 P. 2d 443, 26 C.A.2d 753, motion denied 82 P.2d 1112, 28 C.A.2d 562—Hamilton v. Ferguson, 79 P.2d 427, 26 C.A.2d 390—Boyes v. Evans, 58 P.2d 922, 14 C.A.2d 472—Mitsuda v. Isbell, 234 P. 928, 71 C.A. 221.

Colo.—Gold, Silver & Tungsten v. Wallace, 91 P.2d 975, 104 Colo. 273, certiorari denied 60 S.Ct. 179, 308 U.S. 612, 84 L.Ed. 512, rehearing denied 60 S.Ct. 298, 308 U.S. 639, 84 L.Ed. 530—McMullin v. Magnuson, 78 P.2d 964, 102 Colo. 230—Frederick v. Resler, 260 P. 103, 82 Colo. 285.

Conn.—Horsfall v. Foley, 150 A. 64, 111 Conn. 722.

D.C.—Ansberry v. Harrah, 65 App.D. C. 80, 80 F.2d 381.

Fla.—Smith v. Clements, 154 So. 520, 114 Fla. 614.

Ga.—Heidt v. McMillan, 89 S.E. 718, 145 Ga. 640.

Ill.—City of Quincy v. Kemper, 136 N.E. 763, 304 Ill. 303.

Welch v. Laux, 142 N.E.2d 752, 13 Ill.App.2d 571—Dobie v. Livengood, 139 N.E.2d 599, 12 Ill.App.2d 343—Horn v. Horn, 125 N.E.2d 539, 5 Ill.App.2d 346—Malcomson v. Malcomson, 124 N.E.2d 541, 5 Ill. App.2d 235—Flug v. Craft Mfg. Co., 120 N.E.2d 666, 3 Ill.App.2d 56—In re Gleeson's Will, 117 N.E.2d 792, 1 Ill.App.2d 409—Goldsborough v. McDavid, 110 N.E.2d 875, 349 Ill. App. 466—Vancuren v. Vancuren, 109 N.E.2d 225, 348 Ill.App. 351.

Ind.—Ruoff v. Dowerman, 122 N.E. 361, 69 Ind.App. 460—Bueter v. Aulbach, 114 N.E. 8, 63 Ind.App. 31.

La.—Clay v. Clay, 59 So.2d 180, 221 La. 254, followed in 59 So.2d 182, 221 La. 258—Ponder v. Coyle, 114 So. 729, 164 La. 905—Pisciotte v. Indemnity Co. of America, 113 So. 840, 164 La. 260—Costanza v. Cali, 73 So. 241, 140 La. 387—Schwartzenberg v. Schwartzenberg, 70 So. 230, 138 La. 294.

Cross v. Marquez, App., 94 So. 2d 117—Daniel v. New Orleans Public Service, App., 61 So.2d 223—Forsyth v. Indemnity Ins. Co. of North America, App., 58 So.2d 282—Galiano v. Ocean Acc. & Guarantee Corp., App., 55 So.2d 641—Crescent Cigarette Service v. Norton, App., 55 So.2d 28—Svendson & Young Ins. Agency v. Binning, App., 48 So.2d 689—Zimmerman v. Delafield, App., 44 So.2d 338—Womack v. Doyle, App., 40 So.2d 825—Tillman v. Cangelosi, App., 40 So.2d 523—McGehee v. Tuemler, App., 37 So.2d 860—Stumpf v. Snell, App., 34 So.2d 359—Gibbs v. Whittlessey, App., 31 So.2d 241—Paquet v. Renken, App., 30 So. 2d 218—Hall v. Vincent, App., 14 So.2d 337—Guidry v. Foolkes, App., 13 So.2d 540—Whittaker v. Capritto, App., 5 So.2d 39—Anderson v. City of Monroe, App., 2 So.2d 499—Agee v. Brown Paper Mill Co., App., 190 So. 148—Gleason v. Twin Cities Drilling Co., App., 183 So. 67—Johnson v. John J. Kilcoyne, Inc., App., 180 So. 159—Daniels v. Louisiana Power & Light Co., App., 171 So. 612—Bagley v. Standard Coffee Co., App., 168 So. 350—Clark v. Ford, App., 167 So. 473—Mathews v. Priest, App., 165 So. 535—Guillory v. Horecky, App., 162 So. 89—Ghirardi v. Krisler, App., 161 So. 887—Bauer v. Efurd, App., 157 So. 279—Dowling Bros. v. Hardeman, App., 157 So. 168—Wynn v. Hillman, App., 153 So. 561—Lasseigne v. Kent, App., 142 So. 867—Cannon v. Nomey, 138 So. 169, 18 La.App. 432—Hite v. Woodville & Woodville, 135 So. 684, 17 La.App. 214—Mitchell v. Addington, 134 So. 338, 16 La.App. 454—Constabel v. Miller, 131 So. 699, 15 La.App. 315—Renaud v. Mason, 123 So. 169, 10 La.App. 771—Hamann v. Spicuzza, 120 So. 519, 10 La.App. 19—Tropical Landscape Engineering and Maintenance v. Loeb, 119 So. 580, 10 La.App. 9—John v. Liberty

weight or clear preponderance of the evidence,[99] or | do not clearly fail to do justice between the parties

Grocery Co., 8 La.App. 522—Demoss v. Wilson, 8 La.App., 492—Shelton v. Globe Const. Co., 7 La. App. 673—Commercial National Bank of Shreveport v. Marrs & Blanton, 7 La.App. 318—Carlisle v. Louisiana Oil Refining Corp., 3 La. App. 671—R. D. Pitard Hardware Co. v. Lala, 1 La.App. 534.

Md.—Rutherford v. Mancuso, 26 A. 2d 374, 180 Md. 628, 140 A.L.R. 1016—Mazeika v. Mazeika, 123 A. 71, 143 Md. 581.

Mass.—Young v. Young, 129 N.E.2d 894, 333 Mass. 767—Bohaker v. Koudelka, 128 N.E.2d 769, 333 Mass. 139—Alphen v. Bryant's Market, Inc., 109 N.E.2d 152, 329 Mass. 540—Restighini v. Hanagan, 18 N.E. 2d 1007, 302 Mass. 151—Smith v. Stratton, 18 N.E.2d 328, 302 Mass. 17—Buckley v. Buckley, 17 N.E.2d 887, 301 Mass. 530—Jones v. Swift, 15 N.E.2d 274, 300 Mass. 177—Novo v. Employers' Liability Assur. Corp., 3 N.E.2d 737, 295 Mass. 232—Dana v. Wildey Sav. Bank, 2 N. E.2d 450, 294 Mass. 462—Durfee v. Durfee, 200 N.E. 395, 293 Mass. 472—King v. Grace, 200 N.E. 346, 293 Mass. 244—Bankers' Trust Co. v. Dockham, 181 N.E. 174, 279 Mass. 199—Dwyer v. Dwyer, 176 N.E. 619, 275 Mass. 490—Beacon Oil Co. v. Perelis, 160 N.E. 892, 263 Mass. 288—Powell v. Powell, 157 N.E. 639, 260 Mass. 505—Needham Trust Co. v. Cookson, 146 N.E. 268, 251 Mass. 160—Scott v. Dedham Water Co., 113 N.E. 282, 224 Mass. 398.

Minn.—Murphy v. Anderson, 150 N. W. 387, 128 Minn. 106.

Miss.—Shipman v. Lovelace, 58 So. 2d 657, 214 Miss. 241, corrected 60 So.2d 559, 215 Miss. 141—Deposit Guaranty Bank & Trust Co. v. J. F. Weaver Lumber Co., 60 So.2d 598, 215 Miss. 183.

Mo.—General Contract Purchase Corp. v. Propst, App., 239 S.W.2d 563—Gerritzen v. Louisville & N. R. Co., App., 115 S.W.2d 44.

Neb.—Wallace v. Insurance Co. of North America, 75 N.W.2d 549, 162 Neb. 172—Nelson v. Nelson, 275 N.W. 829, 133 Neb. 458—Societe Titanor v. Paxton & Vierling Iron Works, 247 N.W. 356, 124 Neb. 570—Bodge v. Skinner Packing Co., 224 N.W. 9, 118 Neb. 179—Farmers' Co-op. Mercantile Co. of Scribner v. Shultz, 205 N.W. 288, 113 Neb. 801—Peterson v. State, 203 N.W. 1002, 113 Neb. 546, reheard 209 N. W. 221, 114 Neb. 612—Prime v. Squier, 203 N.W. 582, 113 Neb. 507—Omaha Structural Street Works v. Minkin, 181 N.W. 524, 105 Neb. 596—Wilhoit v. Stevenson, 148 N. W. 963, 96 Neb. 751.

Nev.—Ormachea v. Ormachea, 217 P.2d 355, 67 Nev. 273—Orr Ditch & Water Co. v. Silver State Lodge, 78 P.2d 95, 58 Nev. 292.

N.J.—Parnes v. Massachusetts Bonding & Insurance Co., 1 A.2d 26, 120 N.J.Law 517.

Ohio.—Finney v. Morehouse, 161 N. E. 293, 27 Ohio App. 499.

Okl.—Fabbro v. Reese, 246 P.2d 324, 206 Okl. 655—Smith v. Smith, 40 P.2d 634, 170 Okl. 358.

R.I.—Fine v. United Plumbing & Heating Supply Co., 126 A.2d 831—McInnis v. Scungio, 125 A.2d 139—Blount Seafood Corp. v. Arrow Transp. Co., 124 A.2d 869—Monahan v. Monahan, 117 A.2d 80—Riverside Silk Mills Limited v. Atlas Converting Co., 115 A.2d 686—Santerre v. Trillo, 114 A.2d 392—Conneally v. Gemma, 107 A.2d 308, 82 R.I. 136—Mitsmenn v. Mitsmenn, 105 A.2d 473, 82 R.I. 23—Gerace v. Rossi, 102 A.2d 518, 81 R.I. 298—Spenard v. Rhode Island Television Co., 97 A.2d 582, 80 R. I. 433—Downes v. United Elec. Rys. Co., 97 A.2d 107, 80 R.I. 382—Davis v. Girard, 95 A.2d 847, 80 R.I. 235—Petrarca v. Delfonso, 86 A.2d 376, 79 R.I. 183—Ostroff v. Stephen Girard, Inc., 85 A.2d 174, 79 R.I. 158—Breard v. Ouimette, 81 A.2d 693, 78 R.I. 304—Mann v. McDermott, 73 A.2d 815, 77 R.I. 142—Pasaty & Fuhrman v. Housing Authority of City of Providence, 68 A.2d 32, 76 R.I. 87, 10 A.L.R.2d 789—Stratford Credit Corp. v. Berman, 54 A.2d 404, 73 R.I. 247, reargument denied 55 A. 2d 162, 73 R.I. 247—Wetherill v. Moore, 54 A.2d 388, 73 R.I. 140—Pettella v. Carreirero, 53 A.2d 531, 72 R.I. 439—Orleck v. Basile, 51 A.2d 87, 72 R.I. 322—Szlatenyi v. Cleverley, 50 A.2d 185, 72 R.I. 253—Corey v. Smith, 45 A.2d 167, 71 R.I. 331—Jackson v. Jackson, 38 A. 2d 637, 70 R.I. 333—Carr v. MacDonald, 37 A.2d 158, 70 R.I. 65—Papazian v. Emerzian, 35 A.2d 9, 69 R.I. 443, reargument denied 35 A.2d 636, 69 R.I. 443, 483—Desforge v. American-British Home Bldg. Ass'n, 33 A.2d 203, 69 R.I. 366—Tormey v. Cassidy, 33 A.2d 181, 69 R.I. 302—Fournier v. Goulet, 26 A. 2d 480, 68 R.I. 63—Knight v. Knight, 24 A.2d 612, 67 R.I. 412—Warnard Constructors v. Narragansett Brewing Co., 18 A.2d 390, 66 R.I. 182—Donahue v. Seigelman, 14 A.2d 653, 65 R.I. 252—Quinn v. De Curtis, 12 A.2d 399, 64 R.I. 362—New England Box & Barrel Co. v. Travelers Fire Ins. Co., 8 A. 2d 805, 63 R.I. 315—Bradburn Motors Co. v. Moverman, 7 A.2d 207, 63 R.I. 67—Lockwood v. Rhode Island Hospital Trust Co., 6 A.2d 707, 62 R.I. 494—Woolley v. Tougas, 1 A.2d 92, 61 R.I. 434—Higgins v. J. B. Farnum Co., 200 A. 538, 61 R. I. 262, 117 A.L.R. 1003—Kasicia v. Kostka, 200 A. 476, 61 R.I. 138—Lautieri v. O'Gara, 199 A. 454, 60 R.I. 485—Charpentier v. Charpentier, 195 A. 210, 59 R.I. 225—Pimpare v. McNamara, 193 A. 513, 58 R.I. 515—Antociccio v. Stanley, 191 A. 498, 58 R.I. 118—Seward Trunk & Bag Co. v. S. S. Mfg. Co., 190 A. 28—Horaho v. Wanelik, 184 A. 323, 56 R.I. 193, reargument denied 185 A. 256, 56 R.I. 264—Korjian v. Garabedian, 181 A. 911, 55 R.I. 406—Walsh v. Carroll, 175 A. 832, 54 R.I. 497, reargument denied 176 A. 927—Smith v. Smith, 172 A. 323, 54 R.I. 236—Cheney v. Korzenowski, 166 A. 28—Hall v. Hall, 146 A. 415—Revens v. Berth, 145 A. 441—Panaretos v. Gatsos, 142 A. 329—Rotondo v. Geremia, 122 A. 680, 45 R.I. 378, modified on other grounds 123 A. 927—Bevan v. Brooks, 115 A. 923—Jano v. Jano, 100 A. 247.

Tex.—Burnette v. Bassett, Civ.App., 117 S.W.2d 483—Day v. Gulf, C. & S. F. Ry. Co., Civ.App., 297 S.W. 501.

Va.—Nix v. Nix, 41 S.E.2d 345, 186 Va. 14—Dulaney v. Smith, 148 S.E. 441, 153 Va. 118—Kiser v. Hannah, 139 S.E. 279, 148 Va. 594—Citizens' & Marine Bank of Newport News v. McMurran, 123 S.E. 507, 138 Va. 657.

Wash.—Choukas v. Carras, 81 P.2d 841, 195 Wash. 659—Gemberling v. Heitman, 60 P.2d 48, 187 Wash. 412—State v. Northern Pac. Ry. Co., 7 P.2d 29, 166 Wash. 437.

W.Va.—Gaylord v. Hope Natural Gas Co., 8 S.E.2d 189, 122 W.Va. 205—Tynes v. Shore, 185 S.E. 845, 117 W.Va. 355—White v. Graham, 164 S.E. 664, 112 W.Va. 451—Mulvey v. McGrail, 150 S.E. 524, 108 W.Va. 154—Davis v. Davis, 150 S. E. 523, 108 W.Va. 157—Roberts v. Roberts, 150 S.E. 231, 108 W.Va. 71—Ogdin v. First Nat. Bank, 138 S.E. 376, 103 W.Va. 665—Farley v. Forster, 123 S.E. 599, 96 W.Va. 652.

Wis.—Drott Tractor Co. v. Kehrein, 81 N.W.2d 500, 275 Wis. 320—Kuchera v. Kuchera, 178 N.W. 254, 754, 172 Wis. 108.

Wyo.—Arnold v. Jennings, 296 P.2d 989, 75 Wyo. 463—Andersen v. Griffeth, 254 P.2d 1001, 71 Wyo. 136—Eblen v. Eblen, 234 P.2d 434, 68 Wyo. 353—In re Lambert, 80 P.2d 425, 53 Wyo. 241.

4 C.J. p 885 note 42.

99. Ala.—Johnstone v. O'Rear, 124 So. 743, 220 Ala. 219—Carbon Hill Consol. Coal Co. v. Sanborn, 110 So. 131, 215 Ala. 118—Foshee v. State, 97 So. 565, 210 Ala. 155—Dees v. People's Bank, 76 So. 901, 200 Ala. 543—Reid v. McElderry, 66 So. 7, 188 Ala. 150.

State v. Clayton, 44 So.2d 276, 35 Ala.App. 93—Armour Fertilizer Works v. Alabama Farm Bureau Cotton Ass'n, 148 So. 748, 25 Ala. App. 452—Wright v. Ezzell, 128 So. 899, 23 Ala.App. 544—Howison v. Nicholson, 93 So. 373, 18 Ala.App. 504—State v. Margo, 89 So. 860, 18 Ala.App. 162—Jackson v. Hagin, 84 So. 547, 17 Ala.App. 216.

Ark.—Atkinson v. Atkinson, 178 S.W. 375, 119 Ark. 629—Cost v. Shinault, 166 S.W. 740, 113 Ark. 19, Ann.Cas. 1916C 483.

Cal.—Hulen v. Stuart, 217 P. 750, 191 C. 562.

In re Harvey's Estate, 299 P.2d 712, 143 C.A.2d 368—In re Standing's Estate, 222 P.2d 465, 99 C.A. 2d 668, rehearing denied 223 P.2d 255, 99 C.A.2d 668—Kellis v. Livingston, 111 P.2d 453, 43 C.A.2d 556.

Colo.—Farm Products, Land & Investment Co. v. Stout, 208 P. 456, 71 Colo. 574.

Fla.—In re Stoller, 19 So.2d 812, 154 Fla. 864.

Ill.—Northern Trust Co. v. City of Chicago, 123 N.E.2d 330, 4 Ill.2d 432—Eleopoulos v. City of Chicago, 120 N.E.2d 555, 3 Ill.2d 247—Armbrust v. Starkey, 119 N.E.2d 910, 3 Ill.2d 131—Local Union No. 222, Oil Workers Intern. Union v. Gordon, 92 N.E.2d 739, 406 Ill. 145—Winnetka Park Dist. v. Hopkins, 20 N.E.2d 58, 371 Ill. 46.

Jackson v. Evans, 134 N.E.2d 355, 10 Ill.App.2d 154—McGuire v. Purcell, 129 N.E.2d 598, 7 Ill.App.2d 407—Wade v. Mathis, 128 N.E.2d 927, 7 Ill.App.2d 113—Pilsen Laundry & Dry Cleaning Co. v. American Emp. Ins. Co., 123 N.E.2d 121, 3 Ill.App.2d 577—Spitz v. Brickhouse, 123 N.E.2d 117, 3 Ill.App.2d 536—Krohn v. O'Bara, 115 N.E.2d 569, 351 Ill.App. 476—Petrucelli v. Sable, 114 N.E.2d 370, 351 Ill.App. 193—Kokan v. Costello, 105 N.E. 2d 915, 347 Ill.App. 41—Kansas State Bank of Kansas, Ill., v. Young, 97 N.E.2d 598, 342 Ill.App. 697—In re Kritsch's Estate, 96 N.E.2d 846, 342 Ill.App. 452—Kohut v. Cowel, 96 N.E.2d 649, 342 Ill.App. 447—O. D. Jennings & Co. v. Fulton Mach. Co., 89 N.E.2d 278, 339 Ill.App. 250—Livingston v. Livingston, 78 N.E.2d 831, 334 Ill.App. 261—Schaffner v. Cowen, 74 N.E.2d 31, 332 Ill.App. 135—Anderson v. Kuchan, 61 N.E.2d 588, 326 Ill.App. 79—Mayflower Sales Co. v. Frazier, 60 N.E.2d 123, 325 Ill.App. 314—Segal v. Stone, 59 N.E.2d 347, 324 Ill.App. 659—Heafner v. Hill, 57 N.E.2d 759, 324 Ill.App. 232—Illinois Casket Co. v. Cohn, 55 N.E.2d 113, 323 Ill.App. 279—Balaban v. Willet, 27 N.E.2d 613, 305 Ill.App. 388—Green v. Sartwell, 22 N.E.2d 401, 301 Ill. App. 619—Roberts v. City of Rockford, 16 N.E.2d 565, 296 Ill.App. 469—Ledbetter v. Evans, 8 N.E.2d 970, 290 Ill.App. 533—Rapson v. Silver Cross Hospital, 3 N.E.2d 894, 286 Ill.App. 619—Johnson v. Throop Street Auto & Wagon Co., 282 Ill.App. 513—Caldwell v. Chicago City R. Co., 211 Ill.App. 310. See Springer v. David Bradley Mfg. Co., 191 Ill.App. 45—Coan v. Coan, 190 Ill.App. 633.

Ind.—Teter v. Shultz, 39 N.E.2d 802, 110 Ind.App. 541.

Kan.—Herdman v. Eubank, 146 P.2d 387, 158 Kan. 224.

Ky.—Ward v. Salyer, 140 S.W.2d 1016, 283 Ky. 294—Income Life Ins. Co. v. Anderson, 63 S.W.2d 1, 250 Ky. 367—Home Ins. Co. of New York v. Stroud, 50 S.W.2d 934, 244 Ky. 315—Henderson Wagon Works v. H. J. Heinz Co., 240 S.W. 356, 194 Ky. 658—Holmes v. Town of Rochester, 202 S.W. 871, 180 Ky. 362—Pittsburgh Filter Mfg. Co. v. Smith, 196 S.W. 150, 176 Ky. 554.

La.—Byas v. Texas & P. Ry. Co., 75 So. 209, 141 La. 469—Edwards v. Texas & P. Ry. Co., 75 So. 208, 141 La. 466.

Baudine v. Teche Transfer Co., 130 So. 60, 15 La.App. 90—Krousel v. Thieme, 128 So. 670, 13 La.App. 680—Lusco v. Corkern, 126 So. 540, 12 La.App. 557.

Md.—Cooper v. Cooper, 4 A.2d 714, 176 Md. 695.

Mass.—Duggan v. Adams, 172 N.E. 81, 272 Mass. 311.

Mich.—Celletti v. Toy, 79 N.W.2d 600, 347 Mich. 252—Roney v. Mazzara, 29 N.W.2d 259, 319 Mich. 103—Hazen v. Rockefeller, 6 N.W.2d 770, 303 Mich. 536—Kundel v. Portz, 3 N.W.2d 61, 301 Mich. 195—Jones v. Eastern Michigan Motorbuses, 283 N.W. 710, 287 Mich. 619—Marciniak v. Sundeen, 270 N. W. 729, 278 Mich. 407.

Minn.—Lippmann v. Huhn, 81 N.W. 2d 100—State v. Bentley, 71 N.W. 2d 780, 245 Minn. 334—Marquardt v. Stark, 58 N.W.2d 273, 239 Minn. 107—Caskey v. Lewandowski, 46 N. W.2d 865, 233 Minn. 334—Enderson v. Kelehan, 32 N.W.2d 286, 226 Minn. 163—Baker v. Baker, 28 N. W.2d 164, 224 Minn. 117—Shaughnessy v. Eidsmo, 23 N.W.2d 362, 222 Minn. 141, 166 A.L.R. 435—Kaehler v. Kaehler, 18 N.W.2d 312, 219 Minn. 536—Burke v. B. F. Nelson Mfg. Co., 18 N.W.2d 121, 219 Minn. 381—Parrish v. Peoples, 9 N.W.2d 225, 214 Minn. 589—Berndt v. Berndt, 149 N.W. 287, 127 Minn. 238.

Mo.—Huskey v. Davis, 210 S.W. 45.

Young v. Copeland, App., 204 S. W.2d 455—Swift & Co. v. Madden, App., 35 S.W.2d 59.

Mont.—State ex rel. Ebel v. Schye, 305 P.2d 350—Conner v. Helvik, 73 P.2d 541, 105 Mont. 437—Kelly v. Gullickson, 241 P. 623, 75 Mont. 66—Batchoff v. Melzner, 230 P. 45, 71 Mont. 411—Barnard Realty Co. v. City of Butte, 145 P. 946, 50 Mont. 159.

Nev.—Bawden v. Kuklinski, 228 P. 588, 48 Nev. 181, rehearing denied 232 P. 782, 48 Nev. 181.

N.D.—Richards v. Northern Pac. Ry. Co., 173 N.W. 778, 42 N.D. 472.

Ohio.—Seeley v. Peoples Transit Co., App., 107 N.E.2d 142—In re Burdette, 83 N.E.2d 813, 83 Ohio App. 368—Richter v. First Nat. Bank of Cincinnati, 80 N.E.2d 243, 82 Ohio App. 421—Geisler v. Arnovitz, App., 68 N.E.2d 406—Wampler v. Staley, App., 59 N.E.2d 68—Cleveland Akron Bag Co. v. Rodatt, 159 N.E. 105, 26 Ohio App. 233.

Okl.—Metzger v. Mueller, 238 P.2d 802, 205 Okl. 490—Wood v. Reed, 166 P.2d 85, 196 Okl. 498—Swearingen v. Oldham, 159 P.2d 247, 195 Okl. 532—Levine v. Teal, 145 P. 2d 886, 193 Okl. 495—Producers Finance Corp. v. Lee, 129 P.2d 850, 191 Okl. 326—Coryell v. Marrs, 70 P.2d 478, 180 Okl. 394—Johnson v. Petty, 281 P. 276, 138 Okl. 208—Henderson v. Mainard, 200 P. 441, 84 Okl. 244.

R.I.—Eisenberg v. Novograd, 150 A. 122, 51 R.I. 15—Ricci v. McGovern, 149 A. 860—Corcoran v. Corcoran, 148 A. 318, 50 R.I. 434.

S.D.—Johnson v. Mier, 73 N.W.2d 342—Kuehn v. Kuehn, 55 N.W.2d 70, 74 S.D. 521—Brooks v. Warner, 309 P.2d 757—Jewett v. Jewett, 50 N.W.2d 793, 74 S.D. 227—Case v. Gorder, 34 N.W.2d 175, 72 S. D. 338—Hulsether v. Sanders, 223 N.W. 335, 54 S.D. 412—Wright v. Heimstra, 218 N.W. 595, 52 S.D. 453—Citizens' State Bank of Trosky, Minn., v. Christiansen, 217 N. W. 203, 52 S.D. 183—Relf v. Cameron, 215 N.W. 881, 51 S.D. 554—Artificial Ice Co. v. Pratt, 176 N. W. 45, 42 S.D. 502—State v. Deisch, 162 N.W. 365, 38 S.D. 560—Watt v. Aylward, 147 N.W. 978, 34 S.D. 228.

Tex.—Davis v. Standard Rice Co., Civ.App., 293 S.W. 593—Wilkerson v. Davis, Civ.App., 264 S.W. 545—Jackson v. Chapman, Civ.App., 263 S.W. 958—Self v. Whittler, Civ. App., 259 S.W. 628—Wells Fargo & Co. v. Long, Civ.App., 190 S.W. 530—Jones v. Bartlett, Civ.App., 189 S.W. 1107, error refused—Barton v. McGuire, Civ.App., 189 S. W. 317.

Utah.—Waverly Oil Works Co. v. R. B. Epperson, Inc., 144 P.2d 286, 105 Utah 553—Wilcox v. Cloward, 56 P.2d 1, 88 Utah 503—Grover v. Cash, 253 P. 676, 69 Utah 194—Richmond Irr. Co. v. Shaw, 181 P. 162, 54 Utah 379.

Va.—Miller v. Miller, 125 S.E. 220, 140 Va. 424.

Wash.—Nelson Equipment Co. v. Estep, 313 P.2d 679—Olsson v. Hansen, 310 P.2d 251—Hartman v. Anderson, 286 P.2d 1103, 49 Wash. 2d 154—Skov v. MacKenzie-Rich-

to the litigation.[1]

Thus, where the trial court has heard conflicting evidence and considered and determined the weight thereof, the appellate court will not reëxamine the question or go beyond the conclusions thus reached,[2]

ardson, Inc., 296 P.2d 521, 48 Wash. 2d 710—Ferris v. Blumhardt, 293 P.2d 935, 48 Wash.2d 395—Knowles v. Becker, 278 P.2d 398, 46 Wash.2d 77—Johnson v. Harvey, 268 P.2d 662, 44 Wash.2d 455—Freeman v. Stemm Bros., 265 P.2d 1055, 44 Wash.2d 189—Farrell v. Neilson, 263 P.2d 264, 43 Wash.2d 647—Dally v. Isaacson, 245 P.2d 200, 40 Wash.2d 574—Allen v. Saccomanno, 242 P.2d 747, 40 Wash.2d 283—Batcheller v. Town of Westport, 235 P.2d 471, 39 Wash.2d 338—Coleman v. Davies, 235 P.2d 199, 39 Wash.2d 312—Carroll Const. Co. v. Smith, 223 P.2d 606, 37 Wash. 2d 322—Stevens v. King County, 220 P.2d 318, 66 Wash.2d 738—Bond v. Wiegardt, 216 P.2d 196, 36 Wash.2d 41—Karle v. Seder, 214 P.2d 684, 35 Wash.2d 542—Crystal Recreation v. Seattle Ass'n of Credit Men, 209 P.2d 358, 34 Wash. 2d 553—Rushlight v. McLain, 182 P.2d 62, 28 Wash.2d 189—In re Small's Estate, 179 P.2d 505, 27 Wash.2d 677—Stewart v. Stewart, 177 P.2d 900, 27 Wash.2d 236—Davis v. Alexander, 171 P.2d 167, 25 Wash.2d 458—Guenther v. Equitable Life Assur. Soc. of U. S., 159 P.2d 389, 23 Wash.2d 65—Trott v. Gilbert, 156 P.2d 234, 22 Wash.2d 361—Clifford v. State, 148 P.2d 302, 20 Wash.2d 527—Cotton v. Weyerhaeuser Timber Co., 147 P.2d 299, 20 Wash.2d 300—Purdie v. Brunswick, 146 P.2d 809, 20 Wash.2d 292—Doke v. United Pac. Ins. Co., 131 P.2d 436, 15 Wash.2d 536, opinion adhered to 135 P.2d 71, 15 Wash.2d 536—Bellingham Community Hotel v. Whatcom County, 121 P.2d 335, 12 Wash.2d 237—Sievers v. Sievers, 119 P.2d 668, 11 Wash.2d 446—Bernard v. Portland Seattle Auto Freight, 118 P.2d 167, 11 Wash.2d 17—Johnson v. Ohman, 117 P.2d 217, 10 Wash. 2d 466—Stangle v. Smith, 117 P.2d 207, 10 Wash.2d 461—Whiting v. Rubenstein, 116 P.2d 305, 10 Wash. 2d 5—Maryland Cas. Co. v. City of Seattle, 116 P.2d 280, 9 Wash.2d 666—Lee v. Debentures Inc., 112 P.2d 142, 8 Wash.2d 353—Tutewiler v. Shannon, 111 P.2d 215, 8 Wash.2d 23—Evans v. Hartmann, 105 P.2d 717, 5 Wash.2d 434—Gensman v. West Coast Power Co., 101 P.2d 316, 3 Wash.2d 404—Bohlke v. Wright, 93 P.2d 321, 200 Wash. 374—Lanza v. Hillman's Estate, 79 P.2d 643, 194 Wash. 694—Estep v. Security Savings & Loan Soc., 73 P.2d 740, 192 Wash. 432—Russell v. Stephens, 71 P.2d 30, 191 Wash. 314—Garofalo v. Commellini, 13 P.2d 497, 169 Wash. 704—American Finance & Commerce Co. v. Gordon, 1 P.2d 886, 164 Wash. 45—O'Reilly v. Miller, 268 P. 869, 148 Wash. 277—Hawkins v. Button, 265 P. 479, 147 Wash. 246—Yeatman v. Patrician, 257 P. 622, 144 Wash. 241—F. S. Harmon & Co. v. Eastern Furniture Co., 255 P. 964, 144 Wash. 16—Hance v. Frame, 250 P. 456, 141 Wash. 50—Olson v. Department of Labor and Industries, of Washington, 249 P. 789, 140 Wash. 703—Welts v. Paddock, 247 P. 953, 139 Wash. 668—Bertelson v. Arthur, 244 P. 695, 138 Wash. 445—Lambert v. Pope, 239 P. 216, 136 Wash. 194—Thorpe v. Hovick, 235 P. 14, 134 Wash. 249—Joyce v. Gibbons, 233 P. 921, 133 Wash. 385—Washer v. Cole, 224 P. 935, 129 Wash. 331—Becker v. Sauveur, 219 P. 7, 126 Wash. 682—Yarnall v. Knickerbocker Co., 206 P. 936, 120 Wash. 205—Bassen v. Andrews, 205 P. 1047, 119 Wash. 587—Dunagan v. School Dist. No. 4 of Snohomish County, 203 P. 15, 118 Wash. 160—Frye v. C. E. Blackwell & Co., 203 P. 5, 118 Wash. 107—Vachon v. Ditz, 194 P. 545, 114 Wash. 11—Maze v. Feuchtwanger, 179 P. 850, 106 Wash. 327—In re King's Estate, 172 P. 1167, 102 Wash. 299—Mottinger v. Reagan, 164 P. 595, 96 Wash. 49—Rubin v. Lucerne & A. C. Ry. Co., 151 P. 500, 87 Wash. 198—National Surety Co. v. A. C. Fry Co., 149 P. 637, 86 Wash. 118—Adams v. Hazelrigg, 149 P. 324, 86 Wash. 694—Christensen v. Koch, 148 P. 585, 85 Wash. 472—Stanley v. Clough, 148 P. 11, 85 Wash. 319—Burwell & Morford v. Barnes, 147 P. 657, 85 Wash. 153—Vincent v. City of South Bend, 145 P. 452, 83 Wash. 314.

W.Va.—State v. Isner, 114 S.E. 510, 92 W.Va. 149—Keystone Mfg. Co. v. Fisher, 114 S.E. 443, 92 W.Va. 123—McDannald v. Wilmoth, 97 S. E. 132, 82 W.Va. 719—South Penn Oil Co. v. Blue Creek Development Co., 88 S.E. 1029, 77 W.Va. 682.

Wis.—Coryell v. Bluett, 29 N.W.2d 741, 251 Wis. 458—Liebmann v. Welsh, 150 N.W. 966, 159 Wis. 597.

Wyo.—Benham Const. Co. v. Rentz, 238 P.2d 927, 69 Wyo. 176—Wilde v. Amoretti Lodge Co., 41 P.2d 508, 47 Wyo. 505—Williams v. Yocum, 263 P. 607, 37 Wyo. 432.

4 C.J. p 885 note 41.

Notwithstanding statute abolishing favorable presumptions, finding of court on conflicting evidence should not be disturbed unless it is contrary to the evidence.

Ala.—American Discount Co. v. Beck, 83 So.2d 232, 263 Ala. 470.

1. R.I.—Sal's Furniture Co. v. Peterson, 133 A.2d 770—Guglielmi v. Hambrecht, 98 A.2d 878, 81 R.I. 92—Vitullo v. Ambrosino, 82 A.2d 404, 78 R.I. 354—Young v. Connetti, 81 A.2d 695, 78 R.I. 294—Middleton v. Wilcox, 62 A.2d 132, 74 R.I. 452—Troia v. Leone, 60 A.2d 468, 74 R.I. 271—Keenan v. Coppa, 195 A. 485, 59 R.I. 321—Notarianni v. Di Muccio, 193 A. 617, 58 R.I. 504—Columbian Nat. Life Ins. Co. v. Industrial Trust Co., 190 A. 13, 57 R.I. 325, reargument denied 190 A. 787, 57 R.I. 468—Lane v. Beede, 171 A. 371, 54 R.I. 168—Morris Plan Co. of Rhode Island v. Di Stefano, 165 A. 365, 53 R.I. 190—McMurtry v. River Spinning Co., 117 A. 427—Hurst v. Brayton, 113 A. 4, 43 R.I. 378.

Wyo.—Willis v. Willis, 54 P.2d 814, 49 Wyo. 296.

2. Ark.—Parrott v. Fullerton, 193 S. W.2d 654, 209 Ark. 1018.

Cal.—Southern California Gas Co. v. Goss, App., 308 P.2d 41—Ivancovich v. Sullivan, App., 307 P.2d 989—Rogers v. Harris, 291 P.2d 68, 138 C.A.2d 1—Ward Mfg. Co. v. Miley, 281 P.2d 343, 131 C.A.2d 603—Knox v. Knox, 277 P.2d 854, 129 C.A.2d 795—Portis v. Portis, 264 P.2d 102, 122 C.A.2d 36—In re Sayegh's Estate, 257 P.2d 995, 118 C.A.2d 327—Cella v. Cosgro, 253 P.2d 57, 115 C.A.2d 816—Huhtala v. Huhtala, 186 P.2d 456, 82 C.A.2d 557—Hughes v. Grandy, 177 P.2d 939, 78 C.A.2d 555—In re St. Clair Estate Co., 153 P.2d 453, 66 C.A.2d 964—Gaspar v. United Milk Producers of California, 144 P.2d 867, 62 C.A.2d 546—Fares v. Morrison, 129 P.2d 735, 54 C.A.2d 773—Bones v. Fusco, 69 P.2d 911, 21 C.A.2d 476—Bank of America Nat. Trust & Savings Ass'n v. New York Life Ins. Co., 61 P.2d 364, 16 C.A.2d 719—Sharp v. Keating, 57 P.2d 539, 13 C.A.2d 637—Stahler v. Seaboard Mortg. Corporation, 48 P.2d 993, 9 C.A.2d 115—Coops v. Coops, 248 P. 286, 78 C.A. 282.

Colo.—Mabray v. Williams, 291 P.2d 677, 132 Colo. 523.

Conn.—Central Coat, Apron & Linen Service v. Indemnity Ins. Co. of North America, 70 A.2d 126, 136 Conn 234.

Kan.—Meyer v. Rogers, 244 P.2d 1169, 173 Kan. 124—Barnes v. Duncan, 228 P.2d 678, 170 Kan. 610—In re Schikowsky's Estate, 130 P.2d 598, 155 Kan. 815—Brothers v. Adams, 107 P.2d 757, 152 Kan. 675—Raynes v. Riss & Co., 103 P.2d 818, 152 Kan. 383—Schreiber Milling & Grain Co. v. Nutrena Mills, 87 P.2d 577, 149 Kan. 276.

or substitute its conclusions on the facts for those of the lower court,[3] but will resolve any conflict in favor of the judgment,[4] and give to the findings of the trial judge the greatest or utmost weight.[5]

Minn.—Shell Oil Co. v. Kapler, 50 N.W.2d 707, 235 Minn. 292.
Mo.—Van Eaton v. Dennis, 242 S.W.2d 21.
Pack v. Pemberton, 218 S.W.2d 125, 240 Mo.App. 758—Fitzgerald v. Schaefer, App., 216 S.W.2d 939—Riley v. City of Rock Port, App., 165 S.W.2d 880.
Nev.—Close v. Redelius, 215 P.2d 659, 67 Nev. 158.
Ohio.—Stewart v. Gravely, App., 69 N.E.2d 377—Schiff v. Schiff, App., 45 N.E.2d 132, rehearing denied 48 N.E.2d 139.
S.C.—Holliday v. City of Greenville, 78 S.E.2d 279, 224 S.E. 207.
Tex.—Sewell v. Chambers, Civ.App., 209 S.W.2d 363—Hughes v. Bond, Civ.App., 118 S.W.2d 443, error dismissed.
Wash.—In re Thacker, 214 P.2d 507, 35 Wash.2d 605—Walker v. Herke, 147 P.2d 255, 20 Wash.2d 239.
Wyo.—**Corpus Juris Secundum quoted at length in** Hardee v. Miller, 247 P.2d 149, 151, 70 Wyo. 204—Casper Nat. Bank v. Woodin, 232 P.2d 706, 68 Wyo. 232—Fulton v. Des Jardins, 227 P.2d 240, 67 Wyo. 517.

3. Ala.—Pugh v. Cannon, 94 So.2d 386—Grubb v. Teale, 90 So.2d 727, 265 Ala. 257.
Ariz.—Kirkpatrick v. Christensen, 206 P.2d 577, 68 Ariz. 364—Anderson v. Artesia Inv. Co., 188 P.2d 455, 66 Ariz. 335—Zaleski v. Wootton, 153 P.2d 274, 62 Ariz. 75.
Cal.—Gordon v. Cohn, 30 P.2d 19, 220 C. 193.
In re Moore's Estate, 300 P.2d 110, 143 C.A.2d 64—Hurley v. Smith, 290 P.2d 575, 137 C.A.2d 630—Stafford-Lewis v. Wain, 276 P.2d 157, 128 C.A.2d 614—Abbott v. Hauschild, 248 P.2d 41, 113 C.A.2d 383—Romero v. Eustace, 225 P.2d 235, 101 C.A.2d 253—Peterson v. General Geophysical Co., App., 185 P.2d 56—Maddern v. City and County of San Francisco, 169 P.2d 425, 74 C.A.2d 742—Cruickshank v. Vogh, 192 P. 86, 48 C.A. 393.
Colo.—Merkowitz v. Mahoney, 215 P.2d 317, 121 Colo. 38—Retail Hardware Mut. Fire Ins. Co. v. Securities Corporation, 51 P.2d 598, 97 Colo. 487.
Idaho.—Sellars v. Sellars, 248 P.2d 1063, 73 Idaho 163—Anderson v. Lloyd, 139 P.2d 244, 64 Idaho 768.
Ill.—Kane v. Dunn, 118 N.E.2d 66, 2 Ill.App.2d 50—Gariepy v. Chicago Service Parking Co., 112 N.E.2d 924, 350 Ill.App. 320—Bellm v. Henry, 84 N.E.2d 661, 336 Ill.App. 525—Haddad v. Marble, 65 N.E.2d 575, 328 Ill.App. 315—McGraw v. Shaffer, 53 N.E.2d 736, 322 Ill.App. 74.
Ind.—Smith v. Brown, 134 N.E.2d 823, 136 N.E.2d 545—Matis v. Yelasich, 132 N.E.2d 728, 126 Ind.App. 287—Southern Ry. Co. v. Bruce, 99 N.E.2d 447, 122 Ind.App. 87, rehearing denied 101 N.E.2d 68, 122 Ind.App. 87—Hollars v. Stephenson, 99 N.E.2d 258, 121 Ind.App. 410—Booher v. Booher, 86 N.E.2d 95, 119 Ind.App. 294—Deckard v. Kleindorfer, 29 N.E.2d 997, 108 Ind.App. 485—Brackin v. Franklin Sec. Co., 8 N.E.2d 97, 103 Ind.App. 418—Bope v. Ballinger, 7 N.E.2d 638, 103 Ind.App. 329—Wood v. Pogue, 5 N.E.2d 1011, 103 Ind.App. 577.
Kan.—Steiner v. Horejsi, 75 P.2d 219, 147 Kan. 139.
Mich.—Allen v. Currier Lumber Co., 61 N.W.2d 138, 337 Mich. 696—Saginaw Furniture Shops, Inc. v. Wolverine Finishes Corp., 59 N.W.2d 16, 336 Mich. 606—Parsons Co. v. Hall, 29 N.W.2d 676, 319 Mich. 240—Buhler v. City of Detroit, 264 N.W. 319, 274 Mich. 139.
Ohio.—Cross v. Ledford, 120 N.E.2d 118, 161 Ohio St. 469.
Slusser v. Slusser, App., 121 N.E.2d 317.
Okl.—Indian Territory Illuminating Oil Co. v. Carter, 57 P.2d 864, 177 Okl. 1.
Or.—Nelson v. Cohen, 84 P.2d 658, 160 Or. 336.
R.I.—Metropolitan Life Ins. Co. v. Sandstrand, 82 A.2d 863, 78 R.I. 457.
Tex.—Belstrom v. Belstrom, Civ.App., 144 S.W.2d 614, error dismissed—McCarty v. Hogan, Civ.App., 121 S.W.2d 499, error dismissed.
Wyo.—Swanson v. Johnson, 122 P.2d 423, 58 Wyo. 1—Perko v. Rock Springs Commercial Co., 259 P. 520, 37 Wyo. 98.

4. Cal.—Taylor v. Selig, 170 P.2d 913, 28 C.A.2d 634—Alexander v. Angel, 236 P.2d 561, 37 C.2d 856.
In re Moore's Estate, 300 P.2d 110, 143 C.A.2d 64—Cunningham v. Schmitz, 290 P.2d 937, 137 C.A.2d 567—Hughes v. Forward, 285 P.2d 668, 134 C.A.2d 329—Longo v. Freitas, 236 P.2d 403, 107 C.A.2d 5—Pope v. Pope, 227 P.2d 867, 102 C.A.2d 353—Crofts & Anderson v. Johnson, 225 P.2d 594, 101 C.A.2d 418—De Sylva v. Ballentine, 215 P.2d 780, 96 C.A.2d 503—Deniz v. Ferraiz, 205 P.2d 113, 91 C.A.2d 416—West v. Laurence, 183 P.2d 31, 81 C.A.2d 89—Seidenberg v. George, 172 P.2d 891, 76 C.A.2d 306—Shapiro v. Equitable Life Assur. Soc. of U. S., 172 P.2d 725, 76 C.A.2d 75—Buckhantz v. R. G. Hamilton & Co., 163 P.2d 756, 71 C.A.2d 777—Stewart v. Norsigian, 149 P.2d 46, 64 C.A.2d 540, rehearing denied 150 P.2d 554, 64 C.A.2d 540—Kossine v. Styliano, 105 P.2d 952, 40 C.A.2d 721—Guardianship of De Brath, 64 P.2d 968, 18 C.A.2d 697—Grant v. Ryon, 53 P.2d 170, 11 C.A.2d 101—Rogers v. Scott, 151 P. 379, 28 C.A. 93.
Colo.—In re Webb's Estate, 92 P.2d 328, 104 Colo. 446—Grunsfeld v. Yenter, 69 P.2d 309, 100 Colo. 570.
Ill.—Fritsch v. Swanson, 135 N.E.2d 508, 10 Ill.App.2d 566.
Mo.—Middleton v. American States Ins. Co., App., 217 S.W.2d 386—Riebold v. Smith, App., 150 S.W.2d 599.
N.M.—Huston v. Huston, 242 P.2d 495, 56 N.M. 203.
Pa.—Francis v. Shore, 195 A. 913, 129 Pa.Super. 511.
Tex.—Lands v. York Oil Corp., Civ.App., 280 S.W.2d 628, error refused no reversible error.
Vt.—City of Montpelier v. Bennett, 125 A.2d 779—In re Lake Seymour, 91 A.2d 813, 117 Vt. 367.
W.Va.—Board of Education of Hancock County v. Hartford Fire Ins. Co., 19 S.E.2d 448, 124 W.Va. 163.
Wyo.—Rienecker v. Lampman, 96 P.2d 561, 55 Wyo. 159.

5. Iowa.—S. D. & D. L. Cota Plastering Co. v. Moore, 77 N.W.2d 475, 247 Iowa 972—Thompson v. Thompson, 39 N.W.2d 132, 240 Iowa 1162—Frame v. Wright, 9 N.W.2d 364, 233 Iowa 394, 147 A.L.R. 1154—Gingerich v. Toomey, 300 N.W. 514—Helberg v. Eastern Iowa Flour Co., 171 N.W. 586.
Kan.—Broquet v. Norton Inv. Co., 185 P. 726, 105 Kan. 632.
La.—Williams v. Dupuy, 167 So. 425, 184 La. 735—Oliver v. New Orleans Ry. & Light Co., 100 So. 53, 156 La. 70—Dunn v. Bruat, 99 So. 296, 155 La. 376—Gouner v. Brosnan, 98 So. 681, 155 La. 1.
Roux v. Attardo, App., 93 So.2d 332—Beridon v. Lindley, App., 39 So.2d 156—Perret v. Toye Bros. Yellow Cab Co., App., 20 So.2d 377—Reeves v. Clark, App., 18 So.2d 223—Vincent v. Simon, App., 186 So. 362—White v. Halliburton Oil Well Cementing Co., App., 183 So. 537, rehearing denied 185 So. 68—Jackson v. Saenger-Ehrlich Enterprises, App., 175 So. 688—Pettaway v. K. C. S. Drug Co., App., 166 So. 902—Thomas v. Thomas, App., 155 So. 67—Gassiott v. Southland Produce Co., 138 So. 214, 18 La.App. 437.
Mass.—Buckley v. Buckley, 17 N.E.2d 887, 301 Mass. 530.
Mich.—Kinek v. Kinek, 49 N.W.2d 58, 331 Mich. 54—Wroblewski v. Wroblewski, 44 N.W.2d 869, 329 Mich. 61.
Mo.—Florida v. Wilkerson, 247 S.W.2d 678.
Woodman v. Woodman, App., 281 S.W.2d 555—Bank of Kennett v. Clayton, 245 S.W.2d 678, 241 Mo.App. 487—Beldt v. Beldt, App., 240 S.W.2d 983—Johnson v. Dur-Est,

Even under statutes or rules of court, where appellate courts are not bound by the findings of the trial court generally, as discussed supra § 1656(1), or are empowered or required to make their own independent findings of fact, as discussed infra § 1845, findings of fact by the trial court are of assistance to the appellate court in reviewing a decision, particularly where the evidence is conflicting;[5.5] and the appellate court will usually defer to findings based on conflicting evidence,[5.10] at least where they are supported by the evidence.[5.15]

Apparently, the underlying reason for deferring to, according great weight to, and not disturbing, fact findings based on conflicting evidence is that the resolving of the conflict one way or another is primarily within the province of the trial court in that such problem directly involves the weight of the evidence and the credibility of the witnesses, which, as already discussed in § 1656(2) are matters with which the appellate court will ordinarily not concern itself, because the trial court is in a much better position to pass on them.[6]

Inc., App., 224 S.W.2d 611—Polich v. Hermann, App., 219 S.W.2d 849—Ellis Gray Milling Co. v. Sheppard, App., 215 S.W.2d 57, reversed on other grounds 222 S.W.2d 742, 359 Mo. 505—Remley v. Remley, App., 208 S.W.2d 807.

Neb.—Potter v. Sorenson, 148 N.W. 898, 96 Neb. 698.

N.J.—Fruzynski v. Radler, 93 A.2d 35, 23 N.J.Super. 274.

N.D.—Hanson v. Hulett, 22 N.W.2d 209, 74 N.D. 390.

Or.—Hughes v. Heppner Lumber Co., 286 P.2d 126, 205 Or. 11—Nelson v. Nelson, 176 P.2d 648, 180 Or. 275—Reeves v. Porta, 144 P.2d 493, 173 Or. 147—Baldwin Co. v. Savage, 159 P. 80, 81 Or. 379—Nye v. Lincoln County Bank, 146 P. 983, 76 Or. 38.

Pa.—Francis v. Francis, 31 A.2d 607, 152 Pa.Super. 199—Bisceglia v. Bisceglia, 7 A.2d 147, 136 Pa.Super. 232—Karpiel v. Karpiel, 7 A.2d 26, 136 Pa.Super. 251.

R.I.—Salcone v. Bottomley, 129 A.2d 635—Lawrence v. Andrews, 122 A.2d 132—Aiello v. National-Ben Franklin Fire Ins. Co. of Pittsburgh, Pa., 79 A.2d 758, 78 R.I. 114—Girard v. Davis, 2 A.2d 486, 62 R.I. 6—Goggin v. Goggin, 195 A. 593, 59 R.I. 343.

Va.—Waynesboro Nat. Bank v. Smith, 145 S.E. 302, 151 Va. 481.

Wash.—Wiegardt v. Becken, 149 P.2d 929, 21 Wash.2d 59—Lamping v. Lamping, 84 P.2d 348, 197 Wash. 1—Gabalis v. Campbell, 55 P.2d 615, 185 Wash. 387—Laubach Union Check Valve Co. v. Laubach, 165 P. 1053, 97 Wash. 115.

5.5 Mo.—Witte v. Cooke Tractor Co., App., 261 S.W.2d 651.

5.10 Mo.—In re Petersen's Estate, 295 S.W.2d 144—Tayler v. Tayler, 243 S.W.2d 310.

Staples v. O'Reilly, App., 288 S.W.2d 670—Leader v. Pennell, App., 271 S.W.2d 57—Bonnot v. Tackitt, App., 265 S.W.2d 748—Davidson v. Fisher, App., 258 S.W.2d 297—Dubinsky v. Lindburg Cadillac Co., App., 250 S.W.2d 830—Pudiwitr v. Soloman, App., 224 S.W.2d 562—Clinton County Sportmen's Club v. Weakley, App., 203 S.W.2d 128—Armstrong v. Armstrong, App., 185 S.W.2d 845—White v. White, App., 180 S.W.2d 229—Ridge v. Ridge, App., 165 S.W.2d 294—Achor v. School Dist. No. 9 of Lincoln County, App., 141 S.W.2d 197.

5.15 Mo.—Hudspeth v. Zorn, 292 S.W.2d 271.

Rose v. Houser, App., 206 S.W.2d 571.

6. Ala.—Crawford v. Tucker, 64 So.2d 411, 258 Ala. 658—Skelton v. Tyson, 41 So.2d 180, 252 Ala. 496—Rudman v. Hooks, 40 So.2d 866, 252 Ala. 280—Viking Equipment Co. v. Prudential Ins. Co. of America, 168 So. 566, 232 Ala. 543.

Bank of Loretto v. Bobo, 67 So.2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374—Crump v. Cole, 50 So.2d 291, 35 Ala.App. 560—Shattah v. John F. Clark & Co., 140 So. 453, 25 Ala.App. 1, certiorari denied 140 So. 454, 224 Ala. 469.

Ariz.—Todaro v. Gardner, 231 P.2d 435, 72 Ariz. 87—Collison v. International Ins. Co., 118 P.2d 445, 58 Ariz. 156—Hyder v. Barton Hat Co., 241 P. 959, 29 Ariz. 380—Mosher v. Williams, 212 P. 498, 25 Ariz. 46.

Ark.—Rice v. Standridge, 218 S.W.2d 88, 214 Ark. 806—Trinity Universal Ins. Co. v. Willbanks, 144 S.W.2d 1092, 201 Ark. 386—United Order of Good Samaritans v. Acker, 103 S.W.2d 936, 193 Ark. 927—Missouri Pac. R. Co. v. Brewer, 102 S.W.2d 538, 193 Ark. 754—Collier v. Mississippi Beneficial Life Ins. Co., 261 S.W. 39, 164 Ark. 54.

Cal.—Potter v. Pacific Coast Lumber Co. of Cal., 234 P.2d 16, 37 C.2d 592—Dillard v. McKnight, 209 P.2d 387, 34 C.2d 209, 11 A.L.R.2d 835—DeYoung v. DeYoung, 165 P.2d 457, 27 C.2d 521—Pewitt v. Riley, 163 P.2d 873, 27 C.2d 310—Haime v. De Beaulieu, 129 P.2d 345, 20 C.2d 849—Spencer Kennelly, Limited, v. Bank of America Nat. Trust & Savings Ass'n, 122 P.2d 552, 19 C.2d 586—Dutton v. Interstate Inv. Corp., 119 P.2d 138, 19 C.2d 65—Goes v. Perry, 115 P.2d 441, 18 C.2d 373—Cook v. Cook, 111 P.2d 322, 17 C.2d 639—Holmes v. Hatch, 80 P.2d 70, 11 C.2d 376—Mitchell Camera Corp. v. Fox Film Corp., 64 P.2d 946, 8 C.2d 192—Hildebrand v. Hall, 59 P.2d 988, 7 C.2d 162—Monis v. Peterman, 31 P.2d 353, 220 C. 429—Taylor v. Bunnell, 296 P. 288, 211 C. 601—Schwannecke v. Phelps, 291 P. 183, 210 C. 279—Buttrick v. Seines, 289 P. 616, 209 C. 567—Witherill v. Brehm, 279 P. 432, 207 C. 574—Capuccio v. Caire, 277 P. 475, 207 C. 200, 73 A.L.R. 8—Guilloz v. Parkinson, 268 P. 635, 204 C. 441—In re Ross' Estate, 250 P. 676, 199 C. 641—Hotaling v. Hotaling, 203 P. 745, 187 C. 695—Tucker v. United Railroads of San Francisco, 154 P. 835, 171 C. 702.

De Felice v. Tabor, App., 308 P.2d 377—Compania Harinera De La Baja California v. Western Belting & Equipment Co., App., 307 P.2d 70—New v. New, App., 306 P.2d 987—Youngblood v. Higgins, 303 P.2d 637, 146 C.A.2d 350—Coachella Val. Lumber & Supply Co. v. Hollenbeck, 303 P.2d 98, 145 C.A.2d 722—Salmons v. Jameson, 301 P.2d 431, 144 C.A.2d 698—Mitchell v. Griffin, 299 P.2d 303, 142 C.A.2d 811—Atherley v. MacDonald, Young & Nelson, Inc., 298 P.2d 700, 142 C.A.2d 575—Tischhauser v. Tischhauser, 298 P.2d 551, 142 C.A.2d 252—Donlon v. Donlon, 295 P.2d 51, 140 C.A.2d 428—Muller v. Barnes, 294 P.2d 505, 139 C.A.2d 847—McMullen v. Saunders, 292 P.2d 282, 138 C.A.2d 554—Olson v. Basin Oil Co. of Cal., 288 P.2d 952, 136 C.A.2d 543—Williams v. Barnett, 287 P.2d 789, 135 C.A.2d 607—Caron v. Andrew, 284 P.2d 550, 133 C.A.2d 412—Lewis v. Johnson, 282 P.2d 953, 132 C.A.2d 635—Bohn v. Watson, 278 P.2d 454, 130 C.A.2d 24—Glasgow v. Andrews, 277 P.2d 400, 129 C.A.2d 660—Stafford-Lewis v. Wain, 276 P.2d 157, 128 C.A.2d 614—Morse v. Miller, 275 P.2d 545, 128 C.A.2d 237—Ellsworth v. Elite Dry Cleaners, Dyers and Laundry, 274 P.2d 17, 127 C.A.2d 479—Gilbert v. Yellow Cab Co., 267 P.2d 392, 123 C.A.2d 782—Stinson v. Blodget, 266 P.2d 947, 123 C.A.2d 390—Rousseau v. Hurtado, 265 P.2d 580, 122 C.A.2d 725, certiorari denied 75 S.Ct. 64, 348 U.S. 843, 99 L.Ed. 664, rehearing denied 75 S.Ct. 209, 348 U.S. 890, 99 L.Ed. 700, certiorari denied 76 S.Ct. 91, 350 U.S. 851, 100 L.Ed. 757, re-

Conclusive and binding effect is even more read- | ily accorded findings on conflicting evidence where

hearing denied 76 S.Ct. 184, 350 U.S. 905, 100 L.Ed. 795—Von Hasseln v. Von Hasseln, 264 P.2d 205, 122 C.A.2d 7—Leary v. Baker, 258 P.2d 1090, 119 C.A.2d 106—Wilcox v. Salomone, 258 P.2d 845, 118 C.A. 2d 704—People v. One 1950 Studebaker Commander Convertible Coupe, 253 P.2d 748, 116 C.A.2d 412—Sukiasian v. Shakarian, 252 P.2d 956, 115 C.A.2d 798—Dorman v. Taylor, 248 P.2d 441, 113 C.A.2d 505—Harris v. Los Angeles Transit Lines, 245 P.2d 35, 111 C.A.2d 593—Brogdon v. Graham, 242 P.2d 76, 110 C.A.2d 106—Edgar v. Bank of America Nat. Trust & Sav. Ass'n, 228 P.2d 21, 102 C.A.2d 700—Maguire v. Corbett, 225 P.2d 606, 101 C.A.2d 814—Girard v. Veach, 221 P. 2d 741, 99 C.A.2d 343—Gavin v. Blumenthal, 220 P.2d 759, 98 C.A.2d 719—Weesner v. Leased Transp., 213 P.2d 26, 95 C.A.2d 414—In re Xydias' Estate, 208 P.2d 378, 92 C.A.2d 857—Felt v. L. B. Frederick Co., 206 P.2d 676, 92 C.A.2d 157—Loveland v. Peters, 206 P.2d 443, 92 C.A.2d 47—Hanna v. Pipes, 206 P. 2d 399, 92 C.A.2d 106—Kuenzel v. Grettenberg, 199 P.2d 732, 88 C.A. 2d 656—Ribero v. Callaway, 196 P. 2d 109, 87 C.A.2d 135—Holzman v. De Escamilla, 195 P.2d 833, 86 C.A. 2d 858—Townsend v. Flotill Products, 187 P.2d 466, 82 C.A.2d 863—In re Da Róza's Estate, 186 P.2d 725, 82 C.A.2d 550—Neilsen v. Holmes, 186 P.2d 197, 82 C.A.2d 315—In re Piatt's Estate, 183 P.2d 919, 81 C.A.2d 348—Farmer v. Farmer, 180 P.2d 55, 79 C.A.2d 536—Lewis v. Silveira, 179 P.2d 829, 79 C.A.2d 489—Baker v. Ferrel, 177 P.2d 973, 78 C.A.2d 578—In re Phillipi's Estate, 172 P.2d 377, 76 C.A.2d 100—Medina v. Van Camp Sea Food Co., 171 P.2d 445, 75 C.A.2d 551—Tobola v. Wholey, 170 P.2d 952, 75 C.A.2d 351—Wuest v. Wuest, 164 P. 2d 32, 72 C.A.2d 101—Smith v. Skrbek, 162 P.2d 674, 71 C.A.2d 351—Fuchalin v. Hayes, 160 P.2d 50. 70 C.A.2d 16—Hart v. Olson, 157 P.2d 385, 68 C.A.2d 657—Bastanchury v. Times-Mirror Co., 156 P. 2d 488, 68 C.A.2d 217—Katz v. Enos, 156 P.2d 461, 68 C.A.2d 266—Smith v. Sleepy Hollow Inv. Co., 149 P.2d 754, 65 C.A.2d 75—In re White's Estate, 148 P.2d 892, 64 C. A.2d 406—Brooks v. Brooks, 147 P. 2d 417, 63 C.A.2d 671—Rogers v. Mulkey, 147 P.2d 62, 63 C.A.2d 567—Empire Star Mines Co. v. Butler, 145 P.2d 49, 62 C.A.2d 49—R. H. Geoffroy & Co. v. Faria, 144 P.2d 402, 62 C.A.2d 165—Hooval v. Hooval, 142 P.2d 87, 61 C.A.2d 132—Dorfer v. Delucchi, 141 P.2d 905. 61 C.A.2d 63—Cain v. Whiston, 137 P.2d 479, 58 C.A.2d 738—People v. Gabriel, 135 P.2d 378, 57 C.A.2d 788—Martin v. McLain, 128 P.2d 437, 54 C.A.2d 8—Matsuda v. Luond, 126 P.2d 359, 52 C.A.2d 453—Landegren v. Quilici, 126 P.2d 141, 52 C.A.2d 213—Thompson v. Stevenson, 126 P.2d 127, 52 C.A.2d 250—Hosch v. Hampton, 125 P.2d 881, 52 C.A.2d 111—Goff v. Goff, 125 P.2d 848, 52 C.A.2d 23—Scoville v. De Bretteville, 123 P.2d 616, 50 C.A.2d 622—Greene v. Fickert, 122 P.2d 93, 49 C.A.2d 511—De La Cuesta v. Bazzi, 118 P.2d 909, 47 C.A.2d 661—Angeles Securities Corp. v. Luton, 117 P.2d 741, 47 C.A.2d 262—Whitcomb v. 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Trust & Savings Ass'n v. New York Life Ins. Co., 61 P.2d 364, 16 C.A.2d 719—Curtis v. Pacific Electric Ry. Co., 59 P.2d 890, 15 C.A.2d 580—Lee v. Gump, 58 P. 2d 941, 14 C.A.2d 729—Cardoza v. West American Commercial Ins. Co., 44 P.2d 668, 6 C.A.2d 500—Waen v. Ohio Farmers' Ins. Co., 41 P.2d 168, 4 C.A.2d 513—Imperial Gypsum & Oil Corporation v. Chaplin, 40 P.2d 596, 4 C.A.2d 109—Benedict v. Lilly, 37 P.2d 128, 1 C.A.2d 563—San Francisco Bay Toll-Bridge Co. v. Leslie California Salt Co., 25 P.2d 268, 134 C.A. 237—Gray v. Magee, 24 P.2d 948, 133 C.A. 653—Strauss v. Dubuque Fire & Marine Ins. Co. of Dubuque, Iowa, 22 P.2d 582, 132 C.A. 283—Menning v. Sourisseau, 18 P.2d 77, 128 C.A. 635—Harlow v. Motor Coach Co., 16 P.2d 779, 127 C.A. 728, followed in Miller v. Motor Coach Co., 16 P.2d 781, two cases, 127 C.A. 781, 785—Andrews v. Tinkler, 13 P.2d 756, 125 C.A. 219—Gray v. Fred B. Neuhoff Co., 12 P.2d 1036, 124 C.A. 567—Siakin v. Dembroff, 9 P.2d 908, 121 C.A. 730—Newman v. 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Lamesa Rural High School Dist. v. Speck, Civ.App., 253 S.W.2d 315, refused no reversible error—Bonner v. Oliver, Civ.App., 219 S.W.2d 136, error refused no reversible error—Sawyer v. Bezner, Civ.App., 204 S.W.2d 19, error refused no reversible error—Lowe v. Henson, Civ.App., 190 S.W.2d 423—Quinn v. McCurdy, Civ.App., 187 S.W.2d 595, refused for want of merit—Mortensen v. Mortensen, Civ.App., 186 S.W.2d 297—Glenn v. Glenn, Civ.App., 183 S.W.2d 231—Comet Motor Freight Lines v. Holmes, Civ.App., 175 S.W.2d 464, error refused—Turnbow v. Bland, Civ.App., 149 S.W.2d 604, error dismissed, judgment correct—Humphrey v. Southport Petroleum Co., Civ.App., 131 S.W.2d 395—McCarty v. Hogan, Civ.App., 121 S.W.2d 499, error dismissed—Dreyfuss & Son v. Dine, Civ.App., 90 S.W.2d 598—London & Lancashire Ins. Co. v. Higgins, Civ.App., 68 S.W.2d 1056—Mueller v. Bobbitt, Civ.App., 41 S.W.2d 466—Wingart v. Baxter, Civ.App., 30 S.W.2d 522—Southern Ice & Utilities Co. v. Stewart, Civ.App., 15 S.W.2d 132—Martin v. Smith, Civ.App., 7 S.W.2d 114—Boyd v. Keystone Driller Co., Civ.App., 6 S.W.2d 221—National Grand Lodge, Loyal Friends of America Benev. Ass'n v. Wilson, Civ.App., 6 S.W.2d 206—Armstrong v. Roberts, Civ.App., 269 S.W. 452—Finley Method Co. of Texas v. Kelly, Civ.App., 235 S.W. 250, dismissed for want of jurisdiction—Tucker v. Imperial Oil & Development Co., Civ.App., 233 S.W. 339—Hull v. Guaranty State Bank of Carthage, Civ.App., 231 S.W. 810, modified on other grounds Com.App., 242 S.W. 189—Minnick v. Dreyer Motor Co., Civ.App., 227 S.W. 365—Jones v. Fink, Civ.App., 209 S.W. 777, error refused—Tucker v. McCullough, Civ.App., 209 S.W. 236—McCardell v. Lea, Civ.App., 200 S.W. 562, affirmed 235 S.

the conflict has been resolved the same way in two or more trials,[7] the decision of the trial judge is affirmed by the court en banc,[7.5] most of the witnesses, including the parties themselves, are foreigners who expressed themselves with such difficulty that the record is in apparent confusion,[8] the conflicting evidence is more or less evenly balanced,[9] or the findings are sustained by the preponderance of the evidence,[10] or corroborated by circumstances.[11]

Although a refusal or failure to make particular findings cannot be considered erroneous where the evidence in point is conflicting,[11.5] a finding on such evidence that a certain fact does not exist is equally as binding as a finding of the existence of a fact.[12]

Notwithstanding a conflict in the evidence, the findings will not be considered conclusive if they do not have the support of sufficient evidence,[13] could not reasonably have been made no matter what credibility was given to the various parts of the evidence,[14] are in conflict with admissions in appellee's pleadings,[15] are entirely foreign to the issues made by the pleadings,[16] or are clearly wrong or er-

W. 518, 111 Tex. 318—Coker v. Mott, Civ.App., 190 S.W. 747—Rudolph S. Blome Co. v. Herd, Civ. App., 185 S.W. 53, error refused.

Utah.—Quermbeck v. Hanson, 75 P.2d 1027, 94 Utah 127—Wasatch Livestock Loan Co. v. Lewis & Sharp, 35 P.2d 835, 84 Utah 347—Brooks v. Scoville, 17 P.2d 218, 81 Utah 163—Livingston v. Thornley, 280 P. 1042, 74 Utah 516.

Vt.—In re Moody's Estate, 49 A.2d 562, 115 Vt. 1, certiorari denied Perry v. Wheeler, 67 S.Ct. 1201, 331 U.S. 814, 91 L.Ed. 1833—Verfenstein v. Deiglmayr, 10 A.2d 2, 111 Vt. 87.

Va.—Royal Indemnity Co. v. Hook, 157 S.E. 414, 155 Va. 956.

Wash.—Paxport Mills, Inc. v. Stohr, 277 P.2d 332, 45 Wash.2d 667—Michaelson v. Hopkins, 224 P.2d 350, 37 Wash.2d 453—Campbell v. Webber, 188 P.2d 130, 29 Wash.2d 516—Leavenworth State Bank v. Beecher, 108 P.2d 345, 6 Wash.2d 483—Louring v. Louring, 91 P.2d 729, 199 Wash. 351—Hayden v. John, 298 P. 317, 162 Wash. 701—Rainey v. Pearce, 173 P. 328, 102 Wash. 536—Haskins v. Fidelity Nat. Bank, 159 P. 1198, 93 Wash. 63.

W.Va.—Sutton v. Sutton, 36 S.E.2d 608, 128 W.Va. 290.

Wis.—In re Hatten's Estate, 288 N. W. 278, 233 Wis. 199—Klukas v. Linderman, 179 N.W. 511, 172 Wis. 388.

Wyo.—McConnell v. Dixon, 283 P.2d 877, 68 Wyo. 301—Kelly v. Smythe, 157 P.2d 289, 61 Wyo. 209—Corson v. Wilson, 108 P.2d 260, 56 Wyo. 218—Rienecker v. Lampman, 96 P.2d 561, 55 Wyo. 159—Kinney v. Barnhisel, 77 P.2d 807, 53 Wyo. 58—Brown v. Citizens' Nat. Bank of Cheyenne, 269 P. 40, 38 Wyo. 469—Tendolle v. Eureka Oil Syndicate, 268 P. 185, 38 Wyo. 442, rehearing denied 270 P. 542, 38 Wyo. 442.

7. Tex.—Texas Employers' Ins. Ass'n v. Moreno, Com.App., 277 S. W. 84.

4 C.J. p 884 note 34.

Concurrent findings generally see supra § 1656(6).

7.5 Pa.—De Luca v. Manchester Laundry & Dry Cleaning Co., 112 A.2d 372, 380 Pa. 484.

8. Cal.—Tashjian v. Krikorian, 202 P. 956, 55 C.A. 160.

9. Ala.—Boutwell v. Spurlin Mercantile Co., 83 So. 481, 203 Ala. 482.
La.—Cloud v. Warner, 101 So. 794, 157 La. 14.
Hyde v. Nelson Bros., 130 So. 237, 15 La.App. 90—Stafford v. Nelson Bros., 130 So. 234, 15 La.App. 51—Kingsley v. Schnell, 120 So. 501, 9 La.App. 325.
Okl.—Magnolia Petroleum Co. v. Wright, 14 P.2d 949, 159 Okl. 198.
Wash.—Hovila v. Bartek, 292 P.2d 877, 48 Wash.2d 238—Sears, Roebuck & Co. v. Nilsen, 27 P.2d 128, 175 Wash. 237—Fulton v. Seegebarth, 223 P. 1053, 128 Wash. 630—Cremidas v. Dallas, 157 P. 1084, 91 Wash. 441.
4 C.J. p 884 note 36.

10. Cal.—Coyle v. Coyle, 300 P. 5, 212 C. 715.
La.—Wendling v. Aucoin, 37 So.2d 819, 214 La. 361.
Wash.—Rosskopf v. Harsh, 196 P. 581, 115 Wash. 188—Fernich-Murphy Printing Co. v. Palmer, 194 P. 785, 113 Wash. 566.
W.Va.—Security Realty Inv. Co. v. Lewis, Hubbard & Co., 102 S.E. 702, 86 W.Va. 10.
4 C.J. p 884 note 35.

11. Cal.—Arnheim v. Gordon, 132 P. 840, 21 C.A. 754.
Tex.—McKallip v. Collins, Civ.App., 118 S.W. 546.

11.5 Conn.—Pendlebury v. City of Bristol, 172 A. 216, 118 Conn. 285—Atlas v. Whitham, 156 A. 887, 113 Conn. 791—Tryon v. Smith, 151 A. 192, 111 Conn. 733—Murray v. Fairchild & Shelton Co., 131 A. 392, 103 Conn. 758.
Kan.—Derby Oil Co. v. Bell, 7 P.2d 39, 134 Kan. 489.
N.M.—Dale v. Dale, 261 P.2d 438, 57 N.M. 593—Waters v. Blocksom, 258 P.2d 1135, 57 N.M. 368—Roberts v. Roberts, 4 P.2d 920, 35 N. M. 593.
N.C.—Harrison v. City of New Bern, 137 S.E. 582, 193 N.C. 555.
R.I.—Dwares v. Clifton Yarn Mills, 16 A.2d 501, 65 R.I. 471.
Failure or refusal to state findings or conclusions as error generally see infra § 1790.

12. Ark.—Bowen v. Clark, 36 S.W. 2d 969, 183 Ark. 1153.
Cal.—Macedo v. Goodrich, 237 P. 389, 72 C.A. 354—Tassell v. Tassell, 232 P. 498, 70 C.A. 47—Gopcevic v. Gopcevic, 178 P. 734, 39 C.A. 306.
Colo.—Borah v. Kempf, 162 P. 146, 62 Colo. 201.
Conn.—Green v. White, 125 A. 264, 101 Conn. 749.
Ill.—Matousek v. Quirici, 195 Ill.App. 391.
Ind.—E. H. Purcell & Co. v. Agricide Corp., 134 N.E.2d 233, 126 Ind.App. 476.
Wyo.—Finch v. Canaday, 297 P.2d 594, 75 Wyo. 472.

13. Cal.—Monsen v. Monsen, 162 P. 90, 174 C. 97.
Conn.—Bell v. Strong, 112 A. 645, 96 Conn. 12.
Ill.—Hayes v. United Appliance & Furniture Co., 119 N.E.2d 523, 2 Ill.App.2d 525—McCue v. Flynn, 63 N.E.2d 647, 327 Ill.App. 222.
N.J.—Roe Realty Co. v. Sulzbacher Granger & Co., 189 A. 365, 15 N.J. Misc. 195, affirmed 194 A. 184, 118 N.J.Law 563.
N.M.—Allen v. Allen, 194 P.2d 270, 52 N.M. 174.
Okl.—Finerty v. Kirkendall, 187 P. 219, 77 Okl. 119.
Pa.—In re Patterson's Estate, 3 A.2d 320, 339 Pa. 92, 120 A.L.R. 967.
Tex.—Mallory S. S. Co. v. Walker-Smith Co., Com.App., 291 S.W. 535.

14. Conn.—Atwood v. Atwood, 86 A. 29, 86 Conn. 579, Ann.Cas.1914B 281.

15. Cal.—Dresser v. Allen, 142 P. 911, 25 C.A. 124.

16. Neb.—Furbush v. Barker, 56 N. W. 996, 38 Neb. 1.

roneous,[17] or the result of mistake,[18] are contrary to the legal effect of the evidence,[19] or are due to, or colored by, an error or misconception of law[20] or passion or prejudice on the part of the trial court.[21] It has also been held that, if in two cases involving the same occurrence different courts have reached opposite conclusions on substantially the same evidence, the general rule as to the conclusive effect of the findings of the trial court on conflicting evidence is inapplicable.[22]

Findings must actually be based on conflicting evidence. If, in making its findings, the trial court disregards conflicting testimony on which the decision could have been based, and bases its decision on undisputed facts, the rule discussed in § 1656(8) applies and the findings do not have the weight ordinarily accorded findings based on conflicting testimony.[23]

b. Nature and Sufficiency of Conflict

The conflict in the evidence must be a substantial one in order to have findings considered binding, but it need not necessarily be between the testimony of the witnesses for the respective parties.

There must be a material question or dispute concerning the evidentiary facts to have a conflict which will prevent the facts from being reviewed,[24] and such conflict must be substantial and real, not fanciful or fictitious.[25] The evidence to create a substantial conflict must be such as to present a fair and reasonable ground for a difference of opinion;[26] it is not enough that there is a mere scintilla of evidence which only furnishes ground for suspicion or conjecture that the facts are the other way.[27]

A sufficient conflict may be created by a presumption or inference on one side and direct testimony on the other;[28] and a finding resulting from the weighing of conflicting presumptions from admitted facts is as conclusive as one arising from conflicting

17. Cal.—Pacific Tank & Pipe Co. v. Pacific Box Corp., 64 P.2d 773, 18 C.A.2d 517.
Ky.—Kentucky River Coal Corp. v. Combs, 107 S.W.2d 241, 269 Ky. 365.
La.—Fridge v. Talbert, 158 So. 209, 180 La. 937.
Nev.—Stephens v. First Nat. Bank of Nev., 196 P.2d 756, 65 Nev. 352—Smith v. Goodin, 206 P. 1067, 46 Nev. 229.
R.I.—Armour v. Doonan, 180 A. 333, 55 R.I. 248.

18. Ariz.—Hein v. Nutt, 184 P.2d 656, 66 Ariz. 107.
Colo.—Larison v. Taylor, 266 P. 217, 83 Colo. 430.
4 C.J. p 886 note 44.

19. Fla.—Newman v. Smith, 82 So. 236, 77 Fla. 633, 667, 688.
W.Va.—Purcell v. Robertson, 8 S.E. 2d 881, 122 W.Va. 287.

20. Cal.—Felsenthal v. Warring, 180 P. 67, 40 C.A. 119.
Fla.—Neal v. Harrington, 31 So.2d 391, 159 Fla. 381.
4 C.J. p. 887 note 55.

Misapprehension of law held not shown

Cal.—Fowler v. Security-First Nat. Bank of Los Angeles, 303 P.2d 565, 146 C.A.2d 37.

21. Colo.—Neelley v. Farr, 158 P. 458, 61 Colo. 485.
4 C.J. p 886 note 45.

22. Cal.—Southern Pac. Co. v. City of Los Angeles, 55 P.2d 847, 5 C.2d 545.

23. Wash.—Vanasse v. Cavey, 9 P. 2d 60, 167 Wash. 238.

24. Cal.—Reese v. Smith, 70 P.2d 933, 9 C.2d 324.
Mo.—Skatoff v. Solomon, App., 244 S.W.2d 590.
Wash.—Plaza Farmers' Union Warehouse & Elevator Co. v. Tomlinson, 28 P.2d 299, 176 Wash. 178.
4 C.J. p 886 note 51.

Evidence conflicting as to minor details

Rule that findings of fact by trial court will not be disturbed unless plainly contrary to great weight of evidence is inapplicable to appeal where, while there were some conflicts in evidence as to minor details, controlling facts were undisputed.

Ala.—DeMoville v. Merchants & Farmers Bank of Greene County, 170 So. 756, 233 Ala. 204.

Exception to counsel's argument that the automobile shimmied was held before the supreme court for consideration, where the whole argument was neither retracted nor embraced within the ruling of the trial court that the verdict was not affected by the part of the argument withdrawn.

N.H.—McCourt v. Travers, 175 A. 865, 87 N.H. 185.

25. Cal.—Fewel & Dawes v. Pratt, 109 P.2d 650, 17 C.2d 85—Reese v. Smith, 70 P.2d 933, 9 C.2d 324.
Marshall v. Oakland, 207 P.2d 882, 92 C.A.2d 593.
Cal.—Brant v. Retirement Board of San Francisco, 135 P.2d 396, 57 C.A.2d 721—Pacific Employers Ins. Co. v. Industrial Accident Commission, 118 P.2d 334, 47 C.A.2d 494—Anderson v. Hagen, 66 P.2d 168, 19 C.A.2d 714—Gamberg v. Industrial Accident Commission of California, 32 P.2d 413, 138 C.A. 424—Thoreau v. Industrial Accident Commission of California, 7 P.2d 767, 120 C.A. 67—Bowers v. Putnam, 284 P. 470, 103 C.A. 289—Burns v. Faget Engineering Co., 200 P. 818, 53 C.A. 762.
Idaho.—Whicher v. Delaware Mines Corporation, 15 P.2d 610, 52 Idaho 304.
Mont.—Wells-Dickey Co. v. Embody, 266 P. 869, 82 Mont. 150.
Nev.—Valverde v. Valverde, 26 P.2d 233, 55 Nev. 82.
Va.—Parsons' Adm'r v. Fitchett, 149 S.E. 817, 153 Va. 295.
Wyo.—Desmond v. Snyder, 174 P.2d 139, 62 Wyo. 478.
4 C.J. p 886 note 52.

26. Cal.—Tobias v. Adams, 258 P. 588, 201 C. 689.
Ellwood v. Niedermeyer, 56 P.2d 279, 12 C.A.2d 699

Credibility

Where trial court considered respondent's testimony credible, it could not be said that respondent's testimony failed to create a substantial and real conflict on the issue before the court.
Cal.—Noland v. Noland, 113 P.2d 11, 44 C.A.2d 780.

27. Cal.—Ocean Accident & Guarantee Corporation v. Tucker, 205 P. 699, 56 C.A. 460.

28. Cal.—Bradner v. Vasquez, 272 P.2d 11, 43 C.2d 147.
In re Winzeler's Estate, 108 P. 2d 720, 42 C.A.2d 246—Rodabaugh v. Kauffman, 200 P. 747, 53 C.A. 676—Pacific Portland Cement Co. Consolidated v. Reinecke, 158 P. 1041, 30 C.A. 501.
Mont.—Roman v. Albert, 264 P. 115, 81 Mont. 393.

testimony.[29] If, however, the admitted circumstances show without question that the facts are a certain way, a mere statement of one of the litigants that the facts are otherwise does not create a bona fide conflict in the testimony,[30]

When there is direct, positive testimony of a fact, no substantial conflict is raised within the meaning of the rule by reason of contrary evidence consisting solely of the opinions and conclusions of expert witnesses,[31] particularly if they are based on an incorrect or faulty hypothetical case.[32] Ordinarily, however, conflicting expert or opinion testimony presents a question of fact to be determined by the trial court,[32.5] and the rule that findings of a trial court based on conflicting testimony will not be disturbed on appeal applies to cases where the conflict in the evidence is between expert or opinion evidence as well as to direct evidence.[32.10] Thus, findings based on conflicting opinions of expert witnesses may be considered final where the expert testimony is the only evidence,[33] or there is some direct evidence on both sides.[34]

The rule prohibiting the review of findings based on conflicting evidence applies where the conflict is between witnesses for the same party as well as between witnesses for the respective parties.[35] Indeed, there are some cases which even appear to hold that the conflict does not have to be between different witnesses but may be found in different parts of the testimony of the same witness;[36] but there is other authority to the effect that under such circumstances there is not a sufficient conflict to make the findings conclusive.[37]

§ 1658. Against Weight of Evidence

Unless a statute provides otherwise, the appellate court will not weigh the evidence in passing on fact findings of the trial court, and will not disturb the findings unless they are manifestly against the preponderance of the evidence.

Except where the rule is otherwise by reason of statute,[38] the appellate court, in passing on the fact

29. Cal.—Rice v. Carey, 151 P. 135, 170 C. 748.
Hill v. Hill, 205 P.2d 676, 97 C.A.2d 592.

30. Cal.—Tobias v. Adams, 258 P. 588, 201 C. 689.
Okl.—Norris v. Van Handel, 163 P.2d 217, 196 Okl. 164.

31. Cal.—Gamberg v. Industrial Accident Commission of California, 32 P.2d 413, 138 C.A. 424.
Wash.—Petition of City of Seattle to Acquire Certain Property in Moore's Five Acre Tracts, 299 P. 2d 843, 49 Wash.2d 247—Appeal of Schmitz, 268 P.2d 436, 44 Wash.2d 429.

32. Cal.—Gamberg v. Industrial Accident Commission of California, 32 P.2d 413, 138 C.A. 424.

32.5 Cal.—Clark v. Metropolitan Life Ins. Co., 118 P.2d 919, 47 C.A. 2d 773—Atherley v. Market St. Ry. Co., 108 P.2d 927, 42 C.A.2d 354—Hoffmann v. Lane, 54 P.2d 477, 11 C.A.2d 655.
Colo.—McMullin v. Magnuson, 78 P. 2d 964, 102 Colo. 230.

32.10 Ariz.—Viliborghi v. Prescott School Dist. No. 1 of Yavapai County, 100 P.2d 178, 55 Ariz. 230—Sarakoff v. Six Companies, 59 P.2d 302, 48 Ariz. 99.
Conn.—Culhane v. Ætna Life Ins. Co., 199 A. 103, 124 Conn. 237.

Rarely erroneous
Conclusion reached on comparison and examination of conflicting professional opinion, by reliance on one opinion rather than another, can rarely be found erroneous in law in absence of bad faith.
Conn.—Fields v. Metropolitan Life Ins. Co., 46 A.2d 127, 132 Conn. 588—Kulak v. Landers, Frary & Clark, 181 A. 720, 120 Conn. 606—Driscoll v. Jewell Belting Co., 114 A. 109, 96 Conn. 295.

33. Cal.—Chico Well Drilling Co. v. Givens, 274 P. 966, 206 C. 468.
Hawi Mill & Plantation Co. v. Finn, 255 P. 543, 82 C.A. 255.
Iowa.—Snyder v. Bernstein Bros., 208 N.W. 503, 201 Iowa 931.

34. Cal.—Hellmuth v. Bank & Trust Co. of Central California, 225 P. 771, 66 C.A. 243.

35. Cal.—Dietlin v. General American Life Ins. Co., 49 P.2d 590, 4 C.2d 336.
Pedrow v. Federoff, 247 P. 212, 77 C.A. 164—Frazee v. Fox Film Corporation, 188 P. 286, 45 C.A. 661.
Wyo.—**Corpus Juris Secundum quoted in** Grantham v. Union Pac. Coal Co., 239 P.2d 220, 224, 69 Wyo. 199.

36. Cal.—Peterson v. Peterson, 168 P.2d 474, 74 C.A.2d 312—Farmer v. Matsutani, 119 P.2d 740, 48 C.A. 2d 332—Rosella v. Paxinos, 294 P. 39, 110 C.A. 299—Storrow v. Green, 178 P. 339, 39 C.A. 123.

Conflicts between statements of witness on trial and in depositions are for the trial court to determine.
Cal.—Storrow v. Green, 178 P. 339, 39 C.A. 123.

37. Colo.—Thuringer v. Trafton, 144 P. 866, 58 Colo. 250.

38. Mo.—Barker v. Allen, 273 S.W. 2d 191—Hart v. Hines, 263 S.W.2d 13—Harrington v. Muzzy, 258 S.W. 2d 637—Cross v. Gimlin, 256 S.W. 2d 812—Faire v. Burke, 252 S.W. 2d 289, 363 Mo. 562.
Browder v. Milla, App., 296 S.W. 2d 502—Redden v. Boehmer, App., 223 S.W.2d 127.

Statute permitting examination de novo
(1) Under a statute permitting the appellate court to examine the evidence de novo where the trial has been had by the court without a jury, the appellate court will pass on the weight or preponderance of the evidence.
Wash.—Hovila v. Bartek, 292 P.2d 877, 48 Wash.2d 230—Pring v. Benevolent & Protective Order of Keglers, Lodge No. 1, 209 P.2d 284, 34 Wash.2d 510—Himmelsbach v. Ballinger, 294 P. 576, 160 Wash. 1—John Smith Co. v. Hardin, 218 P. 2, 126 Wash. 425—Thompson v. Unzelman, 173 P. 1091, 103 Wash. 191—Cochran v. Remillard, 150 P. 1197, 86 Wash. 582—Lake Gravel Co. v. D. A. Williams Co., 148 P. 8, 85 Wash. 360.

(2) If they clearly appear to be contrary to the weight of the evidence, the findings will not be sustained.
Wash.—Brown v. Davis, 225 P. 59, 129 Wash. 324—Brabston v. Shrewsbury, 171 P. 1012, 101 Wash. 31—Lovell v. Haye, 147 P. 632, 85 Wash. 109.

(3) However, the findings will be treated as verities and not disturbed if they do not appear to be against the preponderance of the evidence.
Wash.—McCaffrey v. Downie, 313 P. 2d 681—Lasser v. Grunbaum Bros. Furniture Co., 310 P.2d 259—Silhavy v. Doane, 309 P.2d 1047—Mading v. McPhaden, 308 P.2d 963—Kerns v. Pickett, 306 P.2d

findings of the trial court, ordinarily gives regard | only to the sufficiency of the evidence to support the

1112, 49 Wash.2d 770—Mell v. Winslow, 306 P.2d 751, 49 Wash.2d 738—Irwin v. Sanders, 304 P.2d 697, 49 Wash.2d 600—Matsko v. Daily, 301 P.2d 1074, 49 Wash.2d 370—Brillhardt v. Ben Tipp, Inc., 297 P.2d 232, 48 Wash.2d 722—Miller v. Chicago, M., St. P. & P. R. Co., 295 P.2d 723, 48 Wash.2d 601—In re Youngkin's Estate, 294 P.2d 426, 48 Wash.2d 432—Hovila v. Bartek, 292 P.2d 877, 48 Wash.2d 230—West v. Stanfield, 290 P.2d 704, 48 Wash.2d 55—Doss v. Schuller, 288 P.2d 475, 47 Wash.2d 520—Greetan v. Solomon, 287 P.2d 721, 47 Wash.2d 354—Gray v. McDonald, 283 P.2d 135, 46 Wash.2d 574—Larson v. Duclos, 281 P.2d 458, 46 Wash.2d 334—Barrett v. Inglin, 281 P.2d 236, 46 Wash.2d 317—Richards v. Kuppinger, 278 P.2d 395, 46 Wash.2d 62—Eder v. Reddick, 278 P.2d 361, 46 Wash.2d 41—Stimson Mill Co. v. Anacortes Veneer, 276 P.2d 590, 45 Wash.2d 561—Rohda v. Boen, 276 P.2d 586, 45 Wash.2d 553—Sirett v. Hines, 275 P.2d 448, 45 Wash.2d 893—Kingwell v. Hart, 275 P.2d 431, 45 Wash.2d 401—Peterson v. Thorvaldsen, 274 P.2d 844, 45 Wash.2d 376—Seattle Ass'n of Credit Men v. Green, 273 P.2d 513, 45 Wash.2d 139—Beyers v. Moore, 272 P.2d 626, 45 Wash.2d 68—MacKenzie-Richardson, Inc. v. Allert, 272 P.2d 146, 45 Wash.2d 1—Romano v. Abraham, 271 P.2d 701, 44 Wash.2d 848—Forant v. Pratt, 270 P.2d 474, 44 Wash.2d 923—Callihan v. Hoopman, 267 P.2d 906, 44 Wash.2d 918—McDonald v. Wockner, 267 P.2d 97, 44 Wash.2d 261—Kelley v. Valley Const. Co., 262 P.2d 970, 43 Wash.2d 679—Cambro Co. v. Snook, 262 P.2d 767, 43 Wash.2d 609—Eder v. Nelson, 262 P.2d 180, 43 Wash.2d 536—Peterson v. Schoonover, 257 P.2d 209, 42 Wash.2d 621—Hammerbeck v. Hubbard, 254 P.2d 479, 42 Wash.2d 204—In re Wiltzius' Estate, 253 P.2d 954, 42 Wash.2d 149—Cugini v. McPhail, 252 P.2d 290, 41 Wash.2d 801—Hill v. King County, 250 P.2d 960, 41 Wash.2d 592—Harrington v. Richeson, 245 P.2d 191, 40 Wash.2d 559—Brown v. Van Tuyl, 242 P.2d 1021, 40 Wash.2d 364—Allen v. Saccomanno, 242 P.2d 747, 40 Wash.2d 283—Jeffery v. Hanson, 239 P.2d 346, 39 Wash.2d 855—State v. Taylor, 238 P.2d 1189, 39 Wash.2d 751—Tardif v. Hellerstedt, 226 P.2d 908, 37 Wash.2d 940—Tackett v. Milburn, 218 P.2d 298, 36 Wash.2d 349—Westland Const. Co. v. Chris Berg, Inc., 215 P.2d 683, 35 Wash.2d 824—Barrington v. Murry, 215 P.2d 433, 35 Wash.2d 744—Witenberg v. Sylvia, 214 P.2d 690, 35 Wash.2d 626—Feak v. Lacamas Valley Ranch, 210 P.2d 133, 34 Wash.2d 798—Conradi v. Arnold, 209 P.2d 491, 34 Wash.2d 730—Mugaas v. Smith, 206 P.2d 332, 33 Wash.2d 429, 9 A.L.R.2d 846—Shultes v. Halpin, 205 P.2d 1201, 33 Wash.2d 294—Townsend v. Charles Schalkenbach Home for Boys, 205 P.2d 345, 33 Wash.2d 255—Graham v. Roderick, 202 P.2d 253, 32 Wash.2d 427, 6 A.L.R.2d 1237—Bryan v. Travelers Ins. Co., 201 P.2d 502, 32 Wash.2d 289, 8 A.L.R.2d 467—Michigan Millers Mut. Fire Ins. Co. v. Oregon-Washington R. & Nav. Co., 201 P.2d 207, 32 Wash.2d 256—Twohy v. Slate Creek Min. Co., 198 P.2d 832, 31 Wash.2d 664—Wade v. Bartek, 191 P.2d 701, 30 Wash.2d 483—Kirk v. Rohan, 187 P.2d 607, 29 Wash.2d 432—Kelly v. Kittitas County, 187 P.2d 297, 29 Wash.2d 383—Hynes v. Hynes, 184 P.2d 68, 28 Wash.2d 660—Angeles Gravel & Supply Co. v. Crown Zellerbach Corp., 183 P.2d 482, 28 Wash.2d 428—McMahon v. MacKinnon, 183 P.2d 173, 28 Wash.2d 442—Gillarde v. Northern Pac. Ry. Co., 179 P.2d 235, 28 Wash.2d 233—Nicholson v. Nelson, 178 P.2d 739, 27 Wash.2d 472—Schouten v. Jacobs, 175 P.2d 627, 26 Wash.2d 798—Bennett v. Karnowsky, 166 P.2d 192, 24 Wash.2d 487—Moxee Co. v. Lloyd L. Hughes, Inc., 163 P.2d 603, 24 Wash.2d 224—Dyal v. Fire Cos. Adjustment Bureau, 161 P.2d 321, 23 Wash.2d 515—Bleiler v. Wolff, 161 P.2d 145, 23 Wash.2d 368—Mullins v. Chinn, 156 P.2d 414, 22 Wash.2d 483—Long Island Oyster Co. v. Eagle Oyster Packing Co., 156 P.2d 222, 22 Wash.2d 322—Mancinelli v. Brown, 155 P.2d 497, 22 Wash.2d 299—Spath v. Larsen, 148 P.2d 834, 20 Wash.2d 500—Schanno v. Pangle, 143 P.2d 540, 19 Wash.2d 539—Shockley v. Travelers Ins. Co., 137 P.2d 117, 17 Wash.2d 736—Physicians' and Dentists' Business Bureau v. Dray, 134 P.2d 83, 16 Wash.2d 604—Hardman v. Younkers, 131 P.2d 177, 15 Wash.2d 483, 151 A.L.R. 868—Mathewson v. Carlson, 125 P.2d 272, 13 Wash.2d 363—Olsen v. John Hamrick's Tacoma Theatres, 115 P.2d 718, 9 Wash.2d 380—McLean v. Continental Baking Co., 114 P.2d 159, 9 Wash.2d 176—L. Romano Engineering Corp. v. State, 113 P.2d 549, 8 Wash.2d 670, former opinion adhered to on rehearing 120 P.2d 1008, 12 Wash.2d 736—Winston v. Bacon, 111 P.2d 764, 8 Wash.2d 216—Clarke v. Bohemian Breweries, 110 P.2d 197, 7 Wash.2d 487—Speckert v. Bunker Hill Arizona Mining Co., 106 P.2d 602, 6 Wash.2d 39, 131 A.L.R. 125—Evans v. Hartmann, 105 P.2d 717, 5 Wash.2d 434—Marich v. Moe, 103 P.2d 362, 4 Wash.2d 343—Buob v. Feenaughty Machinery Co., 103 P.2d 325, 4 Wash.2d 276—Warner v. Keebler, 94 P.2d 175, 200 Wash. 608—Dittmar v. Frye & Co., 93 P.2d 717, 200 Wash. 467—Lamping v. Lamping, 84 P.2d 348, 197 Wash. 1—Tacoma Hotel v. Morrison & Co., 74 P.2d 1003, 193 Wash. 134—Lincoln v. New York Life Ins. Co., 74 P.2d 14, 192 Wash. 507—Franklin v. Gilbert Ice Cream Co., 71 P.2d 52, 191 Wash. 269—Toe v. King County, 65 P.2d 1283, 189 Wash. 463—Carew, Shaw & Bernasconi v. General Casualty Co. of America, 65 P.2d 689, 189 Wash. 329—Williams v. Clayton, 64 P.2d 1017, 189 Wash. 282—Townsend v. Rosenbaum, 60 P.2d 251, 187 Wash. 372—Woodbridge v. Johnson, 59 P.2d 1135, 187 Wash. 191—Stover v. Winston Bros. Co., 55 P.2d 821, 185 Wash. 416, appeal dismissed 57 S.Ct. 44, 299 U.S. 508, 81 L.Ed. 376—Schatter v. Bergen, 55 P.2d 344, 185 Wash. 375—Allen v. Allen, 52 P.2d 353, 184 Wash. 627—Fletcher v. Miller, 52 P.2d 304, 185 Wash. 299—Pierce v. Mountain Lion Consol. Mines Co., 49 P.2d 23, 183 Wash. 629—Automatic Canteen Co. of Washington v. Automatic Canteen Co. of America, 45 P.2d 41, 182 Wash. 133—Farmers' Warehouse Co. v. Fry, 43 P.2d 23, 181 Wash. 365—Trout v. Shelikoff Packing Co., 38 P.2d 348, 179 Wash. 414—Grimes v. Fraser, 35 P.2d 88, 178 Wash. 511—Isings v. Cugini, 34 P.2d 359, 178 Wash. 698—Carlson v. City of Seattle, 27 P.2d 717, 175 Wash. 388—Lappenbusch v. Florkow, 26 P.2d 388, 175 Wash. 23—Ross v. Jones, 24 P.2d 622, 174 Wash. 205—Puget Sound Nat. Bank of Tacoma v. Olsen, 24 P.2d 613, 174 Wash. 200—King v. Brehme, 24 P.2d 453, 174 Wash. 61—Quin Smith Co. v. Litvin, 24 P.2d 425, 174 Wash. 129—Pittsburgh Reflector Co. v. Dwyer & Rhodes Co., 23 P.2d 1114, 173 Wash. 552—Rockwell v. Peyran, 20 P.2d 841, 173 Wash. 434—Bayside Iron Works v. Three Lakes Lumber Co., 19 P.2d 1108, 172 Wash. 283—Walnut Park Lumber & Coal Co. v. Roane, 17 P.2d 896, 171 Wash. 362—In re Anderson's Estate, 17 P.2d 889, 171 Wash. 385—Brewster v. State, 16 P.2d 812, 170 Wash. 422—Kruesel v. Collin, 16 P.2d 442, 170 Wash. 233—State v. Flora Co., 13 P.2d 467, 169 Wash. 120—Herz v. Ransom, 12 P.2d 750, 168 Wash. 512—Bucsko v. O'Farrell, 12 P.2d 405, 168 Wash. 388—Hart v. Steele, 11 P.2d 956, 168 Wash. 336—Morris v. Shell Oil Co., 9 P.2d 354, 167 Wash. 331—Webb v. Johnson, 8 P.2d 999,

findings and will not concern itself with the weight or preponderance of the evidence,[39] for, as shown

167 Wash. 78—Dalen v. Hansen, 8 P.2d 416, 166 Wash. 597—De Rosier v. Standard Oil Co. of California, 8 P.2d 296, 166 Wash. 670—Meacham v. Dioguardi, 8 P.2d 293, 166 Wash. 684—Otto Baedeker & Associates v. Hutton, 7 P.2d 17, 166 Wash. 376—Rae v. Wrather, 6 P.2d 619, 166 Wash. 276—Howie v. Mosher, 6 P.2d 411, 165 Wash. 691—Hardinger v. Fullerton, 5 P.2d 987, 165 Wash. 483—Dennis v. Trick, 5 P.2d 493, 165 Wash. 403—Halseth v. Rogers, 4 P.2d 862, 165 Wash. 40—Tomblinson v. Wise, 300 P. 1056, 163 Wash. 341—Codd v. Crowley Co., 299 P. 366, 162 Wash. 650—Hearron v. John Severyns & Co., 293 P. 458, 159 Wash. 486—H. W. Van Slyke Warehouse Co. v. Vilter Mfg. Co., 291 P. 1103, 158 Wash. 659—Essig v. Keating, 291 P. 323, 158 Wash. 443—Wheatman v. R. Hoe & Co., 290 P. 853, 158 Wash. 232—Byrne v. Paulson, 287 P. 891, 156 Wash. 634—Clark v. Parker, 285 P. 652, 155 Wash. 624—Nute Motor Co. v. Swartz-Sprague Motor Co., 282 P. 1119, 154 Wash. 497—Wallis v. Elliott, 282 P. 928, 154 Wash. 625—Kauffman v. Marlborough Inv. Co., 282 P. 377, 154 Wash. 396—Jewell v. Nichols, 281 P. 994, 154 Wash. 280—Jones-Short Motor Co. v. Bolin, 279 P. 395, 153 Wash. 198—Giblin v. Albert Pick & Co., 278 P. 1071, 153 Wash. 21—Williams v. Bevis, 278 P. 193, 152 Wash. 469, followed in 279 P. 1119, 153 Wash. 701—McGuirk v. Gazzam, 274 P. 176, 150 Wash. 554—Moberg v. McCauley, 273 P. 739, 150 Wash. 494—Hansen v. Cook Inlet Packing Co., 273 P. 200, 150 Wash. 433—Taylor v. Holm, 272 P. 40, 149 Wash. 701—Rennie v. Washington Trust Co., 270 P. 1031, 149 Wash. 351—Petro Paint Mfg. Co. v. Taylor, 265 P. 155, 147 Wash. 158—Kleiber v. Robinson, 264 P. 704, 146 Wash. 700—Williams v. Danson, 262 P. 980, 146 Wash. 358—Wilson v. Pederson, 261 P. 792, 146 Wash. 695—Schacht Const. Co. v. Smith, 257 P. 395, 144 Wash. 195—In re Donohue's Estate, 255 P. 370, 143 Wash. 423—Huguenin v. Davin, 255 P. 141, 143 Wash. 699—Commercial Credit Co. v. National Credit Co., 255 P. 104, 143 Wash. 253—Rankin v. Blanc, 254 P. 254, 143 Wash. 22—In re Williams' Estate, 254 P. 236, 142 Wash. 637—Chehalis Brick & Tile Co. v. Studebaker, 243 P. 846, 137 Wash. 637—Brice v. Minshull, 241 P. 667, 137 Wash. 70—Zintheo v. B. F. Goodrich Rubber Co., 239 P. 391, 136 Wash. 196—Macomber v. Hays, 237 P. 1002, 135 Wash. 404—Mackintosh-Truman Lumber Co. v. Scott, 237 P. 735, 135 Wash. 322—State v. American Fruit Growers, 237 P. 498, 135 Wash. 156—Caryl v. State, 236 P. 792, 135 Wash. 1—Osten v. Curtis, 234 P. 1032, 134 Wash. 39—State v. Kosai, 234 P. 5, 133 Wash. 442—Dupar-Blythe Co. v. Blanc's Cafe, 233 P. 922, 133 Wash. 697—Wood v. Yellow Cab Co., 233 P. 6, 133 Wash. 13—Glacier Fish Co. v. North Pacific Sea Products Co., 230 P. 410, 131 Wash. 426, affirmed 236 P. 301—Young v. American Can Co., 230 P. 147, 131 Wash. 374—Pugh v. Doupe, 228 P. 301, 130 Wash. 498—Lung v. Bank of California, N. A., 221 P. 293, 127 Wash. 615—Kalmans v. Lyons, 221 P. 291, 127 Wash. 700—Embola v. Tuppela, 220 P. 789, 127 Wash. 285—Wilson v. Levin, 216 P. 870, 126 Wash. 71—Walker Timber Co. v. Eureka Cedar Lumber & Shingle Co., 209 P. 1073, 122 Wash. 92—McDonald v. Curtis, 205 P. 1041, 119 Wash. 384—Norris Safe & Lock Co. v. Farmers' & Merchants' Nat. Bank, 205 P. 12, 119 Wash. 700—Bryan v. Blodgett, 201 P. 758, 117 Wash. 556—Williams v. T. W. Little Co., 201 P. 756, 117 Wash. 528—Westland v. Post Land Co., 197 P. 44, 115 Wash. 329—Kelley-Clarke Co. v. Northwestern Fisheries Co., 197 P. 32, 115 Wash. 263—Howell v. Welch, 194 P. 545, 113 Wash. 700—Snider v. Wright, 192 P. 923, 112 Wash. 536—Minnick v. Kitt, 191 P. 398, 111 Wash. 433—Di Luck v. Bradner Co., 190 P. 904, 111 Wash. 291—Lamont v. Fisher, 188 P. 387, 110 Wash. 699—Bickenbach v. Murmann, 187 P. 406, 110 Wash. 699—Yankov v. Lakos, 186 P. 848, 109 Wash. 335—W. F. Jahn & Co. v. Wright, 186 P. 262, 109 Wash. 164—Oregon-Washington Lumber & Mfg. Co. v. Bay City Lumber Co., 181 P. 687, 107 Wash. 353—Simon v. Saxony Knitting Co., 173 P. 1022, 103 Wash. 148—Kalivas v. Northern Pac. Ry. Co., 165 P. 96, 96 Wash. 309—Thompson v. Seattle Park Co., 162 P. 994, 94 Wash. 539—Wendler v. Woodward, 161 P. 1043, 93 Wash. 684—Sappington v. Owens, 159 P. 785, 92 Wash. 632—Armstrong v. J. H. Webber & Co., 158 P. 957, 92 Wash. 295—Bernheimer v. Rezek, 156 P. 16, 90 Wash. 386—Stewart v. Pacific Finance Co., 151 P. 1092, 87 Wash. 484—Daugherty v. Metropolitan Motor Car Co., 147 P. 655, 85 Wash. 105—Bradley v. Donovan-Pattison Realty Co., 147 P. 421, 84 Wash. 654—Laughlin v. Seattle Taxicab & Transfer Co., 146 P. 847, 84 Wash. 342—Woods v. Insurance Co. of State of Pennsylvania, 144 P. 650, 82 Wash. 563.

(4) This is also true if the evidence preponderates in favor of the findings.

Wash.—Brydges v. Millionair Club, 132 P.2d 188, 15 Wash.2d 714—O'Neil v. Wilshire, 57 P.2d 1254, 186 Wash. 276—Snodderly v. Brotherton, 21 P.2d 1036, 173 Wash. 86—Wynne v. Ronman, 15 P.2d 280, 170 Wash. 88—Antill v. Neely, 260 P. 252, 145 Wash. 341—Anderson v. McGill, 202 P. 969, 118 Wash. 135—Schroeder v. Hotel Commercial Co., 147 P. 417, 84 Wash. 685—Barnard v. Clarke, 146 P. 175, 84 Wash. 698.

39. Ala.—Bowden v. Turner, 24 So. 2d 429, 247 Ala. 352—Fields v. First Nat. Bank, 113 So. 298, 216 Ala. 381.

Ariz.—Ghiz v. Millett, 224 P.2d 650, 71 Ariz. 161—Wilkinson v. Takesuye, 185 P.2d 778, 66 Ariz. 205—Ruth v. Rhodes, 185 P.2d 304, 66 Ariz. 129—Clark v. Ellsworth, 184 P.2d 821, 66 Ariz. 119—Miller v. Springfield, 45 P.2d 666, 45 Ariz. 458—Nicolai v. Sugarman Iron & Metal Co., 202 P. 1075, 23 Ariz. 230.

Ark.—Portman v. State ex rel. Wood, 162 S.W.2d 67, 204 Ark. 349—Missouri Pac. Transp. Co. v. Jones, 122 S.W.2d 613, 197 Ark. 79—Norton & Wheeler Stave Co. v. Wright, 106 S.W.2d 178, 194 Ark. 115—Holman v. Armstrong, 63 S.W.2d 339, 187 Ark. 958—Barker v. Wist, 260 S.W. 408, 163 Ark. 511.

Cal.—Calvert v. Stoner, 199 P.2d 297, 33 C.2d 97—Wright v. Best, 121 P.2d 702, 19 C.2d 368—Caldwell v. Taylor, 52 P.2d 213, 4 C.2d 686—La Mar v. Bank of America Nat. Trust & Savings Ass'n, 22 P.2d 689, 218 C. 252—Hitchcock v. Rooney, 152 P. 913, 171 C. 285.

Brown v. Jerome, 304 P.2d 194, 146 C.A.2d 698—In re Miller's Estate, 299 P.2d 1005, 143 C.A.2d 544—Jones v. Shears, 299 P.2d 986, 143 C.A.2d 360—Taliaferro v. Insurance Commission, 298 P.2d 914, 142 C.A.2d 487, certiorari denied Taliaferro v. Insurance Commission of State of Cal., 77 S.Ct. 362, 352 U.S. 972, 1 L.Ed.2d 325—Hubbell v. City of Los Angeles, 297 P.2d 724, 142 C.A.2d 1—W. B. Camp & Sons, Inc. v. Turner Steel Erection Co., 297 P.2d 125, 141 C.A.2d 563—Muller v. Barnes, 294 P.2d 505, 139 C.A.2d 847—Carson v. Vinding, 279 P.2d 604, 130 C.A.2d 652—Ellsworth v. Elite Dry Cleaners, Dyers and Laundry, 274 P.2d 17, 127 C.A.2d 479—Lewis v. Union Pac. R. Co., 273 P.2d 706, 127 C.A.2d 280—Emden v. Verdi, 269 P.2d 47, 124 C.A.2d 555—Olcese v. Davis, 268 P.2d 175, 124 C.A.2d 58—Sukiasian v. Shakarian, 252 P.2d 956, 115 C.A.2d 798—People v. Becker, 246 P.2d 103, 112 C.A.2d 324—Harris v. Los Angeles Transit Lines, 245 P.2d 35, 111 C.A.2d 593—West v. Stainback, 240 P.2d 366, 108 C.A.2d 806—Nellis v. Massey, 239 P.2d 509, 108 C.A.2d 724—Raich v. Schwartz, 237

supra § 1656 (2), the weight to be given to the evidence and the credibility of the witnesses are matters within the province of the trial court. Hence, the mere fact that the findings may appear to the ap-

P.2d 68, 107 C.A.2d 364—Neptune Pier Co. v. Coaster Co., 236 P.2d 386, 106 C.A.2d 817—In re Hannam's Estate, 236 P.2d 208, 106 C.A.2d 782—Kuhn v. Gottfried, 229 P.2d 187, 103 C.A.2d 80—Maganini v. Quinn, 221 P.2d 241, 99 C.A.2d 1—Schuster v. Bowen, 218 P.2d 839, 97 C.A.2d 803—Murdoch v. Murdoch, 218 P.2d 613, 97 C.A.2d 825—In re Capolino's Estate, 210 P.2d 850, 94 C.A.2d 574—Jolin v. Spira, 210 P.2d 704, 94 C.A.2d 356—Moore v. Satir, 207 P.2d 835, 92 C.A.2d 809—Rich v. Riverbank Canning Co., 206 P.2d 889, 92 C.A.2d 378—Stewart v. Kaplan, 202 P.2d 1061, 90 C.A.2d 453—Taylor v. Humbird, 191 P.2d 788, 85 C.A.2d 40—Christiana v. Rattaro, 184 P.2d 682, 81 C.A.2d 597—Metcalf v. Drew, 177 P.2d 620, 78 C.A.2d 226—Mayers v. Alexander, 167 P.2d 818, 73 C.A.2d 752—Palmer v. Burnham, 165 P.2d 50, 72 C.A.2d 626—Haworth v. Elliott, 153 P.2d 804, 67 C.A.2d 77—Horn v. Klatt, 151 P.2d 149, 65 C.A.2d 510—Crouch v. Crouch, 147 P.2d 678, 63 C.A.2d 747—Morrison v. Willhoit, 145 P.2d 707, 62 C.A. 830—Unger v. Hall, 143 P.2d 497, 61 C.A.2d 535—George v. Soares, 128 P.2d 377, 54 C.A.2d 29—Chard v. O'Connell, 120 P.2d 125, 48 C.A. 2d 475—In re Sehabiague's Estate, 119 P.2d 30, 47 C.A.2d 793—Clark v. Metropolitan Life Ins. Co., 118 P.2d 919, 47 C.A.2d 773—Whitcomb v. Emerson, 115 P.2d 892, 46 C.A. 2d 263—Kekich v. Blum, 111 P.2d 411, 43 C.A.2d 525—Smith v. Smith, 109 P.2d 739, 42 C.A.2d 652—Orwitz v. Board of Dental Examiners of California, 107 P.2d 407, 41 C.A.2d 653, appeal dismissed, 61 S.Ct. 1088, 313 U.S. 546, 85 L.Ed. 1512, rehearing denied 62 S.Ct. 54, 314 U.S. 706, 86 L.Ed. 564—Taylor v. Industrial Accident Commission, 100 P.2d 511, 38 C.A.2d 75—Wallace v. La Vine, 97 P.2d 879, 36 C.A.2d 450—Moore v. Hoar, 81 P.2d 226, 27 C.A.2d 269—Young v. Young Holdings Corp., 80 P.2d 723, 27 C.A.2d 129—Greenberg v. Du Bain Realty Corp., 80 P.2d 537, 27 C.A.2d 111—Tuck v. Gudnason, 79 P.2d 767, 26 C.A.2d 468—Western Hardwood Lumber Co. v. Superior Furniture Mfrs., 63 P.2d 828, 18 C.A.2d 287—Koeberle v. Hotchkiss, 48 P.2d 104, 8 C.A.2d 634—Switzer v. Mullally, 46 P.2d 215, 7 C.A.2d 444—Crain v. Security Title Insurance & Guarantee Co., 44 P.2d 632, 6 C.A.2d 343—Moiola v. Paggi, 42 P.2d 331, 5 C.A.2d 279—Antognini v. Grandi Co., 265 P. 378, 89 C.A. 628—Hollman v. Hollman, 264 P. 289, 88 C.A. 748—Pendell v. Warren, 243 P. 707, 76 C.A. 33—Reuter v. San Pedro, L. A. & S. L. R. Co., 174 P. 927, 37 C.A. 277—Smalley v. Holt, 165 P. 1023, 33 C.A. 589.

Mastrofini v. Swanson, 250 P.2d 764, 114 C.A.2d Supp. 848.

Colo.—Hines v. Oliver, 291 P.2d 693, 133 Colo. 40—Williams v. Williams, 135 P.2d 1016, 110 Colo. 473—Rifle Creek Mercantile Co. v. Brown, 173 P. 398, 64 Colo. 527.

Conn.—Benrus Watch Co. v. Rosengarten, 85 A.2d 487, 138 Conn. 393—Pentin v. Gonsowski, 82 A.2d 157, 138 Conn. 43—Doty v. Wheeler, 182 A. 468, 120 Conn. 672—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529—Antonio Pepe Co. v. Apuzzo, 120 A. 681, 98 Conn. 807.

Fla.—Goldfarb v. Robertson, 82 So. 2d 504.

Idaho.—Sellars v. Sellars, 248 P.2d 1063, 73 Idaho 163.

Ind.—Kraus v. Kraus, 132 N.E.2d 608, 235 Ind. 325—Gross Income Tax Division v. L. S. Ayres & Co., 118 N. E.2d 480, 233 Ind. 194—Linton-Summit Coal Co. v. Hutchison, 111 N.E.2d 819, 232 Ind. 369—State ex rel. Bd. of Medical Registration & Examination v. Hayes, 91 N.E.2d 913, 228 Ind. 286—Ayres v. Smith, 84 N.E.2d 185, 227 Ind. 82—Illinois Cent. R. Co. v. Public Service Commission, 75 N.E.2d 900, 225 Ind. 643—Umbstead v. Preachers' Aid Soc. of Northwest Indiana Conference of M. E. Church, 58 N.E.2d 441, 233 Ind. 96—Greek v. Seward, 51 N.E.2d 3, 222 Ind. 211—Klingler v. Ottinger, 22 N.E.2d 805, 216 Ind. 9—State Life Ins. Co. v. Sare, 17 N.E.2d 100, 215 Ind. 68—City of Huntington v. Northern Indiana Power Co., 6 N.E.2d 335, 211 Ind. 502—City of Huntington v. Northern Indiana Power Co., 5 N.E.2d 889, 211 Ind. 502—Board of Com'rs of Lake County v. Hayhurst, 199 N.E. 258, 209 Ind. 416—Laird v. State, 163 N.E. 263, 200 Ind. 319.

Eikenberry v. Neher, 134 N.E.2d 710, 126 Ind.App. 571—Mitchell v. Mitchell, 133 N.E.2d 79, 126 Ind. App. 377—Matis v. Yelasich, 132 N. E.2d 728, 126 Ind.App. 287—First Bank & Trust Co. of South Bend v. Tellson, 118 N.E.2d 496, 124 Ind. App. 478—Gray v. Hawke Motor Sales, Inc., 112 N.E.2d 459, 124 Ind. App. 74—Haynes v. Brown, 88 N. E.2d 795, 120 Ind.App. 184—Zorich v. Zorich, 88 N.E.2d 694, 119 Ind. App. 547—Bulen v. Pendleton Banking Co., 78 N.E.2d 449, 118 Ind.App. 217—E. I. Du Pont De Nemours & Co. v. Green, 63 N.E. 2d 547, 116 Ind.App. 283—Sam v. Allie, 51 N.E.2d 393, 114 Ind.App. 156—Ohio Oil Co. v. Fidelity & Deposit Co. of Maryland, 42 N.E.2d 406, 112 Ind.App. 452—George v. Williams, 37 N.E.2d 21, 109 Ind. App. 623—Kelley, Glover & Vale Realty Co. v. Bruck, 33 N.E.2d 777, 109 Ind.App. 440, rehearing denied 35 N.E.2d 120, 109 Ind.App. 440—Clapham v. City of Huntington, 32 N.E.2d 118, 109 Ind.App. 244—Edwards v. Wiedenhaupt, 32 N.E.2d 106, 109 Ind.App. 450—Wachter v. Dewes, 29 N.E.2d 1001, 108 Ind.App. 469—Middleby-Marshall Oven Co. v. Wagoner, 19 N.E.2d 498, 106 Ind. App. 278—Vail v. Department of Financial Institutions of Indiana, 17 N.E.2d 854, 106 Ind.App. 39—Patoka School Tp. v. Ashby, 14 N. E.2d 764, 105 Ind.App. 235—Murray Envelope Corp. v. Kunderd, 13 N.E. 2d 329, 105 Ind.App. 215—Pierson v. Simmons, 12 N.E.2d 396, 104 Ind.App. 521—Coulter v. Coulter, 9 N.E.2d 141, 103 Ind.App. 565—City of Jasper v. Taichert & Schneider, 7 N.E.2d 534, 103 Ind.App. 302—Schmidt v. Kreuger, 200 N.E. 713, 102 Ind.App. 36—Arpas v. Mishawaka Rubber & Woolen Co., 199 N. E. 167, 101 Ind.App. 251—Indestructible Wheel Co. v. Red Ball Body Corporation, 194 N.E. 738, 100 Ind.App. 150—Cleveland, C., C. & St. L. Ry. Co. v. Stormont, 187 N.E. 838, 99 Ind.App. 61—Foster v. Malsbary, 157 N.E. 446, 86 Ind.App. 411.

Iowa.—Miller v. King, 39 N.W.2d 307, 240 Iowa 1336.

Kan.—In re Good's Estate, 266 P.2d 719, 175 Kan. 576—Briggs v. Burk, 257 P.2d 164, 174 Kan. 440—Persinger v. Mitchell, 256 P.2d 866, 174 Kan. 522—Thomasson v. Kirkpatrick, 254 P.2d 329, 174 Kan. 52—Rupp v. Rupp, 228 P.2d 692, 170 Kan. 651—Marshall v. Anderson, 216 P.2d 812, 169 Kan. 41, opinion adhered to 220 P.2d 187, 169 Kan. 534—In re Spark's Estate, 212 P. 2d 369, 168 Kan. 270—Lehmberg v. Hultberg, 203 P.2d 146, 166 Kan. 562—Basham v. Eureka Locker & Cold Storage, 187 P.2d 500, 164 Kan. 119—Jones v. Jones, 167 P.2d 634, 161 Kan. 284—Cain v. Cain, 165 P. 2d 221, 160 Kan. 672—Copenhaver v. Sykes, 160 P.2d 235, 160 Kan. 238—Mann v. Staatz, 133 P.2d 103, 156 Kan. 275—Killough v. Swift & Co. Fertilizer Works, 114 P.2d 831, 154 Kan. 113—Meixner v. Heusser, 112 P.2d 103, 153 Kan. 558—Adams v. Morgan, 52 P.2d 643, 142 Kan. 865.

Ky.—Bristow v. Taul, 219 S.W.2d 641, 310 Ky. 82—Burk v. Commonwealth, 217 S.W.2d 634, 309 Ky. 271—Whinery v. Crawford, 116 S. W.2d 631, 273 Ky. 325—Life & Casualty Co. of Tennessee v. Farthing, 86 S.W.2d 1036, 261 Ky. 78.

La.—McLemore v. Louisiana Ry. & Nav. Co., 135 So. 244, 17 La.App. 74.

pellate court to be against the weight or preponder- | ance of the evidence will not cause them to be dis-

Md.—Snyder v. Cearfoss, 51 A.2d 264, 187 Md. 635.

Mass.—Mastercraft Wayside Furniture Co. v. Sightmaster Corp., 125 N.E.2d 233, 332 Mass. 383—Deitrick v. Siegel, 48 N.E.2d 698, 313 Mass. 612—O'Toole v. Magoon, 4 N.E.2d 357, 295 Mass. 527—Moss v. Old Colony Trust Co., 140 N.E. 803, 246 Mass. 139.

Mich.—Northwest Auto Co. v. Mulligan Lincoln-Mercury, Inc., 83 N. W.2d 306, 348 Mich. 279.

Minn.—Rebne v. Rebne, 13 N.W.2d 18, 216 Minn. 379.

Mo.—State v. Thompson, 85 S.W.2d 594.

White v. Wabash R. Co., 207 S. W.2d 505, 240 Mo.App. 344—Lessner v. Monarch Ins. Co., 153 S.W.2d 129, 236 Mo.App. 161—Hurst v. Hurst's Estate, App., 151 S.W.2d 543—Brooks v. McCray, App., 145 S.W.2d 985—Weisguth v. Burke, App., 138 S.W.2d 689—Walker v. National Life & Accident Ins. Co., App., 130 S.W.2d 668—Central Surety & Insurance Corp. v. Hinton, 130 S.W.2d 235, 233 Mo.App. 1218—Price v. State Social Security Commission, 121 S.W.2d 298, 232 Mo. App. 721—Ray Realty Co. v. Holtzman, 119 S.W.2d 981, 234 Mo.App. 802—State ex rel. State Highway Commission v. Lindley, 113 S.W.2d 132, 232 Mo.App. 831—Universal Credit Co. v. Vanausdall, App., 106 S.W.2d 539—Murphy v. Pfeifer, App., 105 S.W.2d 39—State ex rel. State Highway Commission v. Lindley, App., 96 S.W.2d 1065, record quashed on other grounds and cause remanded State ex rel. State Highway Commission of Missouri v. Shain, 102 S.W.2d 666, 340 Mo. 802, conformed to 113 S.W.2d 132, 232 Mo.App. 831—Doll v. Purple Shoppe, 90 S.W.2d 181, 230 Mo.App. 256—Doll v. Purple Shoppe, App., 90 S.W.2d 181—Fischman v. Kahn, App., 67 S.W.2d 776—Keyser v. Hays, 177 S.W. 335, 190 Mo.App. 380.

Mont.—Perkins v. Glacier Dairy, 239 P.2d 531, 125 Mont. 453—Judson v. Anderson, 165 P.2d 198, 118 Mont. 106—Teagarden v. Calkins, 173 P. 549, 55 Mont. 35.

Neb.—Grant v. Williams, 62 N.W.2d 532, 158 Neb. 107—Sorter v. Citizens Fund Mut. Fire Ins. Co., 39 N.W.2d 276, 151 Neb. 686—Albers v. Ziegler, 37 N.W.2d 590, 151 Neb. 408.

Nev.—Gershenhorn v. Walter R. Stutz Enterprises, 304 P.2d 395, rehearing denied 306 P.2d 121—Canepa v. Durham, 198 P.2d 290, 65 Nev. 428, rehearing denied 202 P. 2d 286, 65 Nev. 428.

N.H.—Knox v. Allard, 5 A.2d 716, 90 N.H. 157—Wasutskie v. Malouin, 186 A. 769, 88 N.H. 242.

N.J.—Young v. Schmidt, 23 A.2d 809, 127 N.J.Law 535—Paguio v. Evening Journal Ass'n, 21 A.2d 667, 127 N.J.Law 144—Roth v. Protos, 1 A.2d 10, 120 N.J.Law 502—Frasier v. L. Bamberger & Co., 166 A. 101, 110 N.J.Law 447—Caporaso v. Schechner, 158 A. 485, 108 N.J. Law 540—Kelly v. Lembeck & Betz Eagle Brewing Co., 92 A. 282, 86 N.J.Law 471, affirmed 94 A. 1102, 87 N.J.Law 696.

Carr v. Iorio, 48 A.2d 392, 24 N. J.Misc. 257.

N.M.—Pentecost v. Hudson, 252 P. 2d 511, 57 N.M. 7—Cullender v. Doyal, 105 P.2d 326, 44 N.M. 491—Cullender v. Doyal, 102 P.2d 1115, 44 N.M. 378—Wilson v. Williams, 87 P.2d 683, 43 N.M. 173—In re Chavez' Will, 46 P.2d 665, 39 N.M. 304—State v. American Surety Co. of New York, 24 P.2d 267, 37 N. M. 411, 89 A.L.R. 1314.

N.Y.—In re Presender's Estate, 135 N.Y.S.2d 418, 285 App.Div. 109, appeal denied 137 N.Y.S.2d 821, 285 App.Div. 806—Wertheimer v. Korn, 275 N.Y.S. 961, 243 App.Div. 554.

Ohio.—Union Properties v. Cleveland Trust Co., 89 N.E.2d 638, 152 Ohio St. 430—American Surety Co. of New York v. Cortland Savings & Banking Co., 55 N.E.2d 583, 143 Ohio St. 353.

Hartley v. Tigner, App., 125 N.E. 2d 360—Slusser v. Slusser, App., 121 N.E.2d 317—Gilbert v. Kemp, App., 116 N.E.2d 213—Fawick Airflex Co. v. United Elec. Radio & Mach. Workers of America, Local 735, C. I. O., App., 90 N.E.2d 610, appeal dismissed 92 N.E.2d 689, 153 Ohio St. 589—Dalgarn v. Leonard, App., 90 N.E.2d 159—Spencer v. Spencer, 89 N.E.2d 496, 87 Ohio App. 539—Clark v. Ohio Prefabricated Homes Corp., App., 84 N.E.2d 251—Thompson v. Parrett, 78 N.E. 2d 419, 82 Ohio App. 366—Bossetti v. Cherubini, App., 57 N.E.2d 184—Russell v. Penn Mut. Life Ins. Co., 41 N.E.2d 251, 70 Ohio App. 113.

Okl.—Pendergraph v. Edwards, 283 P.2d 823—First State Bank of Noble v. McKiddy, 240 P.2d 1103, 206 Okl. 57—Kansas, O. & G. Ry. Co. v. Searcy, 240 P.2d 440, 206 Okl. 1—Strahm v. Murry, 199 P.2d 603, 200 Okl. 640—City of Lawton v. Sherman Machine & Iron Works, 77 P.2d 567, 182 Okl. 254—Sabin v. Midland Savings & Loan Co., 61 P. 2d 1091, 178 Okl. 52—Sooner Bond Co. of America v. Davis, 58 P.2d 300, 177 Okl. 143—Graff v. Holliday, 45 P.2d 1065, 172 Okl. 503—Miller v. Picou, 45 P.2d 478, 172 Okl. 456—Tate v. Bristow, 45 P.2d 153, 172 Okl. 404—Lena v. Clinkenbeard, 44 P.2d 2, 172 Okl. 6—Conner v. Fisher, 36 P.2d 501, 169 Okl. 197—Tancred v. Holuby, 254 P. 75, 124 Okl. 97—King v. Farris, 154 P. 510, 54 Okl. 594.

Or.—Sexton v. Kelly, 200 P.2d 950, 185 Or. 1—Silvertooth v. Kelley, 91 P.2d 1112, 162 Or. 381, 122 A.L. R. 1329—Laird v. Frick, 18 P.2d 1029, 142 Or. 639—Nibley v. Delahunt, 209 P. 473, 105 Or. 46.

Pa.—Petition of Knauer, 134 A. 463, 287 Pa. 115.

Appeal of Borough of Irwin, 90 A.2d 365, 171 Pa.Super. 256—In re Heath's Estate, 41 A.2d 353, 156 Pa.Super. 597—In re Mays' Estate, 15 A.2d 569, 141 Pa.Super. 479—Horosko v. School Dist. of Mount Pleasant Tp., 4 A.2d 601, 135 Pa. Super. 102, reversed on other grounds 6 A.2d 866, 335 Pa. 369, certiorari denied 60 S.Ct. 101, 308 U.S. 553, 84 L.Ed. 465—Tigoni v. Baltimore & O. R. Co., 176 A. 830, 116 Pa.Super. 117.

R.I.—White v. White, 31 A.2d 427, 69 R.I. 116—Walsh v. Carroll, 175 A. 832, 54 R.I. 497, reargument denied 176 A. 927.

S.D.—Johnson v. Kunz, 58 N.W.2d 227, 75 S.D. 22—Hafner v. Burke, 51 N.W.2d 872, 74 S.D. 291—Martindale v. Dickey, 38 N.W.2d 140, 72 S.D. 595—Houck v. Hult, 258 N. W. 142, 63 S.D. 290.

Tenn.—Wileman v. Mayor and Aldermen of Town of Tullahoma, 195 S.W.2d 325, 29 Tenn.App. 172.

Tex.—Grand Temple and Tabernacle in State of Texas of Knights and Daughters of Tabor of International Order of Twelve v. Independent Order of Knights and Daughters of Tabor of America, Com.App., 44 S. W.2d 973—Williams & Stephens v. Belo, Com.App., 41 S.W.2d 22.

Baten v. Smart, Civ.App., 295 S. W.2d 521, error refused no reversible error—Hallum v. Pinkerton, Civ.App., 267 S.W.2d 921—Wilson v. Wilson, Civ.App., 200 S.W.2d 258, affirmed in part and reversed on other grounds in part 201 S.W. 2d 226, 145 Tex. 607—Jones v. Jones, Civ.App., 181 S.W.2d 988, error refused—Rosenberg v. Levin, Civ.App., 181 S.W.2d 832, error refused—Humphrey v. Southport Petroleum Co., Civ.App., 131 S.W. 2d 395—Evans v. Dr. Pepper Bottling Co., Civ.App., 123 S.W.2d 706—Wichita Falls Motor Co. v. Tindall, Civ.App., 115 S.W.2d 502, error dismissed—Fagg v. Benners, Civ.App., 47 S.W.2d 872—Massoud v. Attel, Civ.App., 32 S.W.2d 225—Andrews v. Fuller, Civ.App., 186 S.W. 275.

Utah.—State, for Use and Benefit of McBride, v. Campbell Bldg. Co., 77 P.2d 341, 94 Utah 326—Malstrom v. Lund, 185 P. 1109, 55 Utah 253.

Vt.—City of Montpelier v. Bennett, 125 A.2d 779—Loeb v. Loeb, 114 A.

turbed[40] if they are supported by evidence which is | substantial[41] or evidence which is regarded by the

2d 518, 118 Vt. 474—Town of Randolph v. Ketchum, 94 A.2d 410, 117 Vt. 468—Hayden v. Lavallee, 75 A.2d 690, 116 Vt. 340—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292—Jeffords v. Poor, 55 A.2d 605, 115 Vt. 147—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471—Schwarz v. Avery, 31 A.2d 916, 113 Vt. 175—Harrison v. Harrison, 4 A.2d 348, 110 Vt. 254—Right Printing Co. v. Stevens, 179 A. 209, 107 Vt. 359.

Va.—Williams v. Williams, 66 S.E.2d 500, 192 Va. 787.

Wis.—In re Eannelli's Estate, 63 N.W.2d 108, 266 Wis. 257—In re Hatten's Estate, 288 N.W. 278, 233 Wis. 199.

In Illinois

(1) The rule of the text has been applied.

Ill.—In re Niehaus' Estate, 94 N.E.2d 525, 341 Ill.App. 454—Gold v. Boland, 88 N.E.2d 498, 338 Ill.App. 663—Haddad v. Marble, 65 N.E.2d 575, 328 Ill.App. 315.

(2) However, it has been held that it is the appellate court's duty to weigh the evidence.

Ill.—Talmage v. Union Cent. Life Ins. Co., 43 N.E.2d 575, 315 Ill. App. 623—Feucht v. Clarke, 20 N.E.2d 312, 299 Ill.App. 477.

Affirmative and negative findings

Reviewing court may set aside an affirmative finding because of absence of evidence to support it, but a negative finding is seldom set aside if evidence is limited in quantity and its weight and credibility may be questionable or if evidence may be regarded as unreliable.

Kan.—In re Wert's Estate, 193 P.2d 253, 165 Kan. 49, opinion adhered to 199 P.2d 793, 166 Kan. 159.

Weight of prima facie evidence considered

N.Y.—James P. Smith & Co. v. Companhia Colonial De Navegacao, 80 N.Y.S.2d 50.

Ohio.—Ford v. Ford, 43 N.E.2d 756, 71 Ohio App. 396.

40. Ala.—Becker Roofing Co. v. Hanks, 155 So. 360, 228 Ala. 685—Gattis Turpentine Co. v. Russell, 74 So. 231, 199 Ala. 4.

Ariz.—Kauffroath v. Wilbur, 185 P.2d 522, 66 Ariz. 152—Hall v. Hall, 259 P. 402, 32 Ariz. 395.

Ark.—Scales v. Union Cent. Life Ins. Co., 141 S.W.2d 547, 200 Ark. 869.

Cal.—Olson v. Olson, 49 P.2d 827, 4 C.2d 434.

Harper v. Markarian, 281 P.2d 805, 131 C.A.2d 771—Lobdell v. Miller, 250 P.2d 357, 114 C.A.2d 328—Weedon v. Weedon, 207 P.2d 78, 92 C.A.2d 367—Rivero v. Thomas, 194 P.2d 533, 86 C.A.2d 225—Hughes v. Grandy, 177 P.2d 939, 78 C.A.2d 555—Hanna v. Kern County, 177 P.2d 356, 78 C.A.2d 245—Fuchalin v. Hayes, 160 P.2d 50, 70 C.A.2d 16—De La Motte v. Rucker, 130 P.2d 444, 55 C.A.2d 226—Burke v. Bank of America Nat. Trust & Savings Ass'n, 94 P.2d 58, 34 C.A.2d 594—Hercules Glue Co. v. Littooy, 76 P.2d 700, 25 C.A.2d 182—In re Filippi's Estate, 49 P.2d 892, 9 C.A.2d 407—Corporation of America v. Harris, 43 P.2d 307, 5 C.A.2d 452—Rancho Santa Margarita v. San Diego County, 26 P.2d 716, 135 C.A. 134—Shapiro v. Shapiro, 14 P.2d 1058, 127 C.A. 20—Whitty v. Fidelity & Deposit Co. of Maryland, 11 P.2d 84, 123 C.A. 334—Warner v. Taft Land & Development Co., 297 P. 969, 113 C.A. 71.

Conn.—Marciel v. Berman, 132 A. 397, 104 Conn. 165—Finlay v. Swirsky, 131 A. 420, 103 Conn. 624—Dexter Yarn Co. v. American Fabrics Co., 129 A. 527, 102 Conn. 529—Purcell v. Purcell, 126 A. 353, 101 Conn. 422—De Feo v. Hindinger, 120 A. 314, 98 Conn. 578.

Idaho.—Gray v. Fraser, 123 P.2d 711, 63 Idaho 552—Ehlert v. Woods, 63 P.2d 1000, 57 Idaho 218.

Ill.—Cohn v. Cohn, 63 N.E.2d 618, 327 Ill.App. 22.

Kan.—Missouri Pac. R. Co. v. McCally, 21 P. 574, 41 Kan. 639.

Ky.—Karcher v. City of Louisville, 281 S.W. 1010, 213 Ky. 824.

Mo.—Moller-Vandenboom Lumber Co. v. Boudreau, App., 85 S.W.2d 141.

N.H.—Condiles v. Waumbec Mills, 58 A.2d 726, 95 N.H. 127.

N.J.—Ciccone v. Chesner, 147 A. 588, 7 N.J.Misc. 950.

Pa.—Hawkins v. Director General of Railroads, 121 A. 46, 277 Pa. 213—In re Dillon's Estate, 111 A. 919, 269 Pa. 234.

Tex.—Hughes v. Jones, Civ.App., 94 S.W.2d 534—Commonwealth Casualty Co. v. Thompson, Civ.App., 38 S.W.2d 351—Finley Method Co. of Texas v. Kelly, Civ.App., 235 S.W. 250, dismissed for want of jurisdiction.

Utah.—Knighton v. Manning, 33 P.2d 401, 84 Utah 1.

Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Wis.—Schlintz v. Equitable Life Assur. Soc. of U. S., 276 N.W. 336, 226 Wis. 255.

4 C.J. p 887 note 59—52 C.J. p 153 note 77.

41. Ark.—City of Harrison v. Moss, 212 S.W.2d 334, 213 Ark. 721.

Cal.—Berniker v. Berniker, 182 P.2d 557, 30 C.2d 439—Hansen v. Bear Film Co., 168 P.2d 946, 28 C.2d 154—Joerger v. Pacific Gas & Electric Co., 276 P. 1017, 207 C. 8.

Hill v. Matthews Paint Co., App., 308 P.2d 865—Boness v. Richardson Mineral Springs, 296 P.2d 581, 141 C.A.2d 251—Fifield v. Greeley, 282 P.2d 552, 132 C.A.2d 512—Lawson v. Lawson, 273 P.2d 304, 127 C.A.2d 126—Ellis v. Dallas, 248 P.2d 63, 113 C.A.2d 234—Karas v. Karas, 236 P.2d 415, 107 C.A.2d 135—Riesenberg v. Riesenberg, 218 P.2d 577, 97 C.A.2d 714—Candido v. California Employment Stabilization Commission, 212 P.2d 558, 95 C.A.2d 338—Rosa v. Rosa, 197 P.2d 85, 87 C.A.2d 427—Stevens v. Dillon, 168 P.2d 492, 74 C.A.2d 178—Rinker v. McKinley, 149 P.2d 859, 65 C.A.2d 109—Bradford v. Southern California Petroleum Corp., 145 P.2d 36, 62 C.A.2d 450—Singh v. Furuta, 139 P.2d 664, 59 C.A.2d 695—Brown v. Oxtoby, 114 P.2d 622, 45 C.A.2d 702—Maurice v. State, 110 P.2d 706, 43 C.A.2d 270—Wallace v. La Vine, 97 P.2d 879, 36 C.A.2d 450—Darr v. Clevelin Realty Corp., 92 P.2d 475, 33 C.A.2d 500—Hosman v. Southern Pac. Co., 83 P.2d 88, 28 C.A.2d 621, certiorari denied 59 S.Ct. 645, 306 U.S. 656, 83 L.Ed. 1054—Washko v. Stewart, 67 P.2d 144, 20 C.A.2d 347—In re Duffill's Estate, 58 P.2d 185, 14 C.A.2d 284.

Bartholomew v. Heyman Properties, 281 P.2d 921, 132 C.A.2d Supp. 889.

Fla.—Holland v. Gross, 89 So.2d 255.

Idaho.—Bolen v. Baker, 203 P.2d 376, 69 Idaho 93.

Ind.—Bearcreek Tp. of Jay County v. De Hoff, 49 N.E.2d 391, 113 Ind. App. 530.

Iowa.—Crouse v. Cadwell Transfer & Storage Co. of Mason City, Iowa, 285 N.W. 623, 226 Iowa 1083.

Kan.—In re Osborn's Estate, 295 P.2d 615, 179 Kan. 365—Gale v. Fruehauf Trailer Co., 145 P.2d 125, 158 Kan. 30—In re Doyle's Estate, 103 P.2d 52, 152 Kan. 23—Stanley v. Stanley, 289 P. 406, 131 Kan. 71—Farney v. Hauser, 198 P. 178, 109 Kan. 75.

Mo.—Woods v. St. Louis Merchants' Bridge Terminal Ry. Co., 8 S.W.2d 922, certiorari denied St. Louis Merchants' Bridge Terminal Ry. Co. v. Woods, 49 S.Ct. 94, 278 U.S. 649, 73 L.Ed. 561—Ryon v. Commercial Bank, 219 S.W. 652.

Taylor Inv. Co. v. Dye, App., 198 S.W. 440.

Ohio.—Graves v. Thurman, App., 112 N.E.2d 835.

S.D.—Durr v. Hardesty, 76 N.W.2d 393—Holabird State Bank v. Wipf, 219 N.W. 557, 52 S.D. 590—Little v. Plummer, 211 N.W. 972, 51 S.D. 27—Bruce v. McCoun, 211 N.W. 690, 51 S.D. 1.

Tenn.—Graybeal v. Smith, 225 S.W.2d 556, 189 Tenn. 412.

Utah.—Jensen v. Logan City, 83 P.2d 311, 96 Utah 53, reheard 88 P.2d 459, 96 Utah 522—Muehl v.

appellate court as legally sufficient.[42] Likewise, the findings will not be disturbed if they are not clearly, manifestly, or palpably against the great weight of the evidence,[43] particularly where they do not indi-

Smoot, 63 P.2d 563, 91 Utah 45—Goan v. Ogden, L. & I. Ry. Co., 169 P. 949, 51 Utah 285.

Vt.—Greenough v. U. S. Life Ins. Co. of City of New York, 117 A. 332, 96 Vt. 47.

Wyo.—Woolsulate, Inc. v. Fremont Lumber Co., 297 P.2d 818, 75 Wyo. 492—Kaleb v. Modern Woodmen of America, 64 P.2d 605, 51 Wyo. 116.

4 C.J. p 887 note 60.

42. Ala.—Brannon v. McCormick, 101 So. 56, 211 Ala. 546.

Ariz.—Young Mines Co. v. Citizens' State Bank, 296 P. 247, 37 Ariz. 521—Davies & Vincent v. Bank of Commerce, 232 P. 880, 27 Ariz. 276.

Ark.—Cook v. Talbert, 225 S.W.2d 682, 216 Ark. 370—Dyer v. Continental Jewelry Co., 10 S.W.2d 1, 178 Ark. 1199.

Cal.—De La Motte v. Rucker, 130 P.2d 444, 55 C.A.2d 226—American Exchange Nat. Bank v. Soffel, 2 P. 2d 533, 116 C.A. 353, rehearing denied 3 P.2d 338, 116 C.A. 353—Spaulding v. O'Connor, 261 P. 766, 87 C.A. 82—Whitworth v. Jones, 209 P. 60, 58 C.A. 492—Anglo-American Land Co. v. Heine, 198 P. 1009, 52 C.A. 472—Stirnus v. Adams, 195 P. 955, 50 C.A. 730—Reuter v. San Pedro, L. A. & S. L. R. Co., 174 P. 927, 37 C.A. 277.

Colo.—New Albany Hotel Co. v. Dingman, 181 P. 126, 66 Colo. 306—Keeler v. Chamberlin, 179 P. 141, 66 Colo. 109.

Ind.—Glover v. Parson, 9 N.E.2d 109, 103 Ind.App. 561—Loyd v. Midwest Fuel Co., 179 N.E. 583, 97 Ind. App. 322—Consolidated Garage & Sales Co. v. Dilts, 137 N.E. 771, 79 Ind.App. 287—Ballew v. Arnett, 129 N.E. 18, 74 Ind.App. 321—Davidsson v. Dustin, 122 N.E. 15, 69 Ind.App. 444.

Ky.—Karcher v. City of Louisville, 281 S.W. 1010, 213 Ky. 824.

Mich.—Rice v. Katz, 237 N.W. 27, 255 Mich. 1—Fendt v. Tarabusi, 224 N. W. 385, 246 Mich. 538—Woodward v. Huron Implement Co., 166 N.W. 1025, 200 Mich. 523.

Minn.—Sommers v. City of St. Paul, 237 N.W. 427, 183 Minn. 545.

Mo.—Williams v. Schneider, App., 1 S.W.2d 232 (second case).

Mont.—Rutherford v. J. B. Long & Co., 240 P. 821, 74 Mont. 420—Colwell v. Grandin Inv. Co., 210 P. 765, 64 Mont. 518.

N.J.—Oliver v. Leonardo, 51 A.2d 129, 135 N.J.Law 210—De Bourbon v. Costanzo, 19 A.2d 824, 126 N. J.Law 425.

Vischia v. Benjamin Motor Exp., 48 A.2d 391, 24 N.J.Misc. 255.

Ohio.—Glass v. Glass, App., 125 N. E.2d 375.

Okl.—McGeisey v. Chilcoat, 286 P. 778, 142 Okl. 251—Connor v. Thornburgh, 282 P. 122, 140 Okl. 16—Topeka Bridge & Iron Co. of Topeka v. Board of Com'rs of Major County, 240 P. 1043, 112 Okl. 148—Farmers' Exch. Bank of Lindsay v. Cutler, 229 P. 186, 100 Okl. 193.

Or.—Gaither v. Wallingford, 200 P. 910, 101 Or. 389.

S.D.—Kreider v. Yarosh, 217 N.W. 640, 52 S.D. 380—Botsford Lumber Co. v. Schriver, 206 N.W. 423, 49 S.D. 68.

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4 C.J. p 887 note 61.

Evidence clear and convincing to appellate court not required

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43. Ala.—Beavers v. Harris, 93 So. 2d 161, 265 Ala. 548—McBee v. McBee, 91 So.2d 675, 265 Ala. 414—Hagan v. Crowley, 90 So.2d 760, 265 Ala. 291—Smith v. State ex rel. Sullinger, 90 So.2d 225, 265 Ala. 138—Davis v. State ex rel. Pettus, 86 So.2d 849, 264 Ala. 233—O'Rear v. Conway, 83 So.2d 65, 263 Ala. 466—Eidson v. State ex rel. Burns, 82 So.2d 218, 263 Ala. 281—Pritchett v. Wade, 73 So.2d 533, 261 Ala. 156—Eddleman v. Cade, 73 So.2d 362, 26 Ala. 154—Halman v. Bullard, 73 So.2d 351, 261 Ala. 115—Sparkman v. Williams, 71 So.2d 274, 260 Ala. 472—Spruiell v. Stanford, 61 So.2d 758, 258 Ala. 212—McGregor v. McGregor, 58 So.2d 457, 257 Ala. 232—Johnson v. Gordon, 58 So.2d 108, 257 Ala. 193—Salvation Army v. Security Roofing Co., 51 So.2d 513, 255 Ala. 349—Rodgers v. Thornton, 46 So.2d 809, 254 Ala. 66—Crump v. Crump, 40 So.2d 94, 252 Ala. 164—Department of Indus. Relations v. Tomlinson, 36 So.2d 496, 251 Ala. 144—Culverhouse v. Glenn, 25 So.2d 719, 247 Ala. 622—Penny v. Penny, 24 So. 2d 912, 247 Ala. 434—Lane v. Bruner, 182 So. 5, 236 Ala. 269—Sullivan v. Parker, 174 So. 608, 234 Ala. 178—Boothe v. Reed, 159 So. 218, 229 Ala. 690—Farned v. Cleere, 140 So. 437, 224 Ala. 353—Louis Pizitz Dry Goods Co. v. House of Van Praag, 121 So. 701, 219 Ala. 183—Howell v. Moon, 116 So. 518, 217 Ala. 421—Curb v. Stewart, Adams & Co., 110 So. 804, 215 Ala. 511—Shows v. Jackson, 110 So. 273, 215 Ala. 256—Yorkshire Ins. Co. v. Bachus, 110 So. 27, 215 Ala. 112—Copeland Bros. Realty Co. v. Jones, 108 So. 591, 214 Ala. 615—Kennedy v. County Board of Education, 107 So. 907, 214 Ala. 349—Kelley v. Spencer, 105 So. 802, 213 Ala. 612—Fleming v. Moore, 105 So. 679, 213 Ala. 592—First Nat. Bank v. Burnett, 104 So. 17, 213 Ala. 89—Perry v. Marbury Lumber Co., 103 So. 580, 212 Ala. 542—Taylor v. Gallaha, 103 So. 457, 212 Ala. 474—Gillespie v. Bartlett & Byers, 100 So. 858, 211 Ala. 560—Smith v. Jack, 96 So. 419, 209 Ala. 520—Halle v. Brooks, 96 So. 341, 209 Ala. 486—Taylor v. Thomas, 95 So. 475, 209 Ala. 48—Cooper v. Rowe, 94 So. 725, 208 Ala. 494—Commonwealth Life Ins. Co. v. Reilly, 94 So. 294, 208 Ala. 313—Davis v. Webster Lumber Co., 92 So. 901, 207 Ala. 312—Williams v. Midgley, 92 So. 454, 207 Ala. 269—Bell v. Blackshear, 91 So. 576, 206 Ala. 673—Town of Camden v. Fairbanks, Morse & Co., 89 So. 456, 206 Ala. 293—Claborne v. Nichols, 85 So. 415, 204 Ala. 282—Profile Cotton Mills v. Calhoun Water Co., 85 So. 284, 204 Ala. 243—In re Igo, 84 So. 750, 203 Ala. 514—Central of Georgia Ry. Co. v. Clifton, 80 So. 36, 202 Ala. 214—Deal v. Houston County, 78 So. 809, 201 Ala. 431—Saibara v. Yokohama Nursery Co., 76 So. 861, 200 Ala. 535—Ahlrichs v. Rollo, 76 So. 37, 200 Ala. 271—North Ontario Packing Co. v. Napier-McCall Co., 75 So. 143, 199 Ala. 595—Colley v. Atlanta Brewing & Ice Co., 72 So. 45, 196 Ala. 374—Alabama City, G. & A. Ry. Co. v. Chasteen, 68 So. 322, 192 Ala. 684—Gingold v. Coplon, 65 So. 328, 186 Ala. 340.

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Wis.—Wm. G. Tannhaeuser Co. v. Holiday House, Inc., 83 N.W.2d 880, 1 Wis.2d 370—Subrt v. Subrt, 83 N. W.2d 122, 275 Wis. 628—Larson v. Superior Auto Parts, Inc., 81 N.W. 2d 505, 275 Wis. 261—Drott Tractor Co. v. Kehrein, 81 N.W.2d 500, 275 Wis. 320—In re Fuller's Estate, 81 N.W.2d 64, 275 Wis. 1—Parks Engineering, Inc. v. Wisconsin Steel Treating & Blasting Co., 79 N.W.2d 799, 274 Wis. 248—Town of Greenfield v. City of Milwaukee, 78 N.W.2d 909, 273 Wis. 484—Engel v. Dunn County, 77 N.W.2d 408, 273 Wis. 218—In re Engelhardt's Estate, 75 N.W.2d 631, 272 Wis. 275—Bahr v. Bahr, 75 N.W.2d 301, 272 Wis. 323—In re Hill's Estate, 74 N.W.2d 582, 272 Wis. 197—Gordon v. Gordon, 71 N.W.2d 386, 270 Wis. 332—W. H. Hobbs Supply Co. v. Ernst, 70 N.W.2d 615, 270 Wis. 166—In re Eannelli's Estate, 68 N.W.2d 791, 269 Wis. 192, followed in 68 N.W.2d 804, 269 Wis. 218—Turck v. Seefeldt, 68 N.W.2d 534, 268 Wis. 559—In re Mattes' Will, 68 N.W.2d 18, 268 Wis. 447—Herzing v. Hess, 58 N.W.2d 430, 263 Wis. 617—Gauger v. Hintz, 55 N. W.2d 426, 262 Wis. 333—MacPherson v. Strand, 55 N.W.2d 354, 262 Wis. 360—Siblik v. Motor Transport Co., 55 N.W.2d 8, 262 Wis. 242—In re Maxcy's Estate, 54 N.W. 2d 194, 262 Wis. 89—Schroeder v. Schroeder, 54 N.W.2d 49, 262 Wis. 133—In re Schaefer's Estate, 53 N. W.2d 427, 261 Wis. 431—Engle v. Peters, 53 N.W.2d 8, 261 Wis. 347—In re Teasdale's Estate, 52 N.W. 2d 366, 261 Wis. 248—Thayer v. Hyne, 48 N.W.2d 498, 259 Wis. 284—Swazee v. Lee, 47 N.W.2d 733, 259 Wis. 136—Auer v. Johnson, 45 N.W.2d 696, 258 Wis. 223—Stikl v. De Both, 44 N.W.2d 542, 258 Wis. 17—Winslow v. Winslow, 43 N.W. 2d 496, 257 Wis. 393—State on Complaint of Schmidt v. Krull, 43 N.W.2d 241, 257 Wis. 184—Peter Propsom & Son v. Schnuck, 43 N. W.2d 13, 257 Wis. 210—Ideal Packing Co. v. Marachowsky Stores Co., 42 N.W.2d 161, 256 Wis. 614—Shevel v. Warter, 41 N.W.2d 603, 256 Wis. 503—B. F. Goodrich Co. v. Wisconsin Auto Sales, 39 N.W.2d 678, 256 Wis. 11—Barr v. Granahan, 38 N.W.2d 705, 255 Wis. 192—Mississippi Valley Public Service Co. v. Larson, 38 N.W.2d 19, 255 Wis. 115—Journal Co. v. Bundy, 37 N.W.2d 89, 254 Wis. 390—Malinowski v. Elliott, 35 N.W.2d 331, 254 Wis. 81—In re Witwer's Estate, 34 N.W.2d 671, 253 Wis. 536—Sphatt v. Roth, 34 N.W.2d 222, 253 Wis. 339—In re Nols' Estate, 28 N. W.2d 360, 251 Wis. 90—Bowles v. Miller, 19 N.W.2d 285, 247 Wis. 139—Kearney v. Massman Const. Co., 18 N.W.2d 481, 247 Wis. 56—Angers v. Sabatinelli, 17 N.W.2d 282, 246 Wis. 374, rehearing denied 18 N.W.2d 705, 246 Wis. 374—In re West's Will, 16 N.W.2d 806, 246 Wis. 199—Depies-Heus Oil Co. v. Sielaff, 16 N.W.2d 386, 246 Wis. 36—In re Mechler's Will, 16 N.W.2d 373, 246 Wis. 45—Spellbrink v. Bramberg, 13 N.W.2d 600, 245 Wis. 103—In re Terrill, 2 N.W.2d 847, 240 Wis. 53—Lakelands, Inc. v. Chippewa & Flambeau Improvement Co., 295 N.W. 919, 237 Wis. 326—Goerke Motor Co. v. Lonergan, 295 N.W. 671, 236 Wis. 544—Hull v. Pfister & Vogel Leather Co., 294 N.W. 18, 235 Wis. 653—Kerler v. Evangelical Emanuel's Church of Hales Corners, 292 N.W. 887, 235 Wis. 209—Sevey v. Jones, 292 N.W. 436, 235 Wis. 109—Higbee v. Chicago, B. & Q. R. Co., 292 N.W. 320, 235 Wis. 91, 128 A.L.R. 734—State v. M. Supple & Sons Co., 290 N.W. 139, 234 Wis. 255—In re Johnson's Will, 288 N.W. 290, 232 Wis. 556—In re Hatten's Estate, 288 N.W. 278, 233 Wis. 199—Wisconsin Telephone Co. v. Public Service Commission, 287 N. W. 122, 232 Wis. 274, rehearing denied 287 N.W. 593, 232 Wis. 274, certiorari denied 60 S.Ct. 514, 309 U.S. 657, 84 L.Ed. 1006—In re Tufts' Estate, 280 N.W. 309, 228 Wis. 221—Farmer v. Pick Mfg. Co., 277 N.W. 668, 227 Wis. 99—Gifford v. Thur, 276 N.W. 348, 226 Wis. 630—Wesemann v. Watertown Milk Co-op. Ass'n, 269 N.W. 246, 222 Wis. 475—Rielly v. Arnsmeier, 265 N.W. 713, 220 Wis. 564—Schroeder v. Great Atlantic & Pacific Tea Co., 265 N.W. 559, 220 Wis. 642—Bujko v. Bujko, 263 N.W. 581, 219 Wis. 565—New Dells Lumber Co. v. Pfiffner, 258 N.W. 375, 216 Wis. 638—Bauer v. Franklin State Bank, 257 N.W. 456, 216 Wis. 507—Paul v. Smith, 255 N.W. 919, 215 Wis. 613—Burnett County Abstract Co. v. Eau Claire Citizens' Loan & Investment Co., 255 N.W. 890, 216 Wis. 35—In re Soles' Will, 253 N. W. 801, 215 Wis. 129—In re Fish's Estate, 253 N.W. 387, 214 Wis. 464—Zolandek v. First Nat. Bank, 250 N.W. 391, 212 Wis. 632—In re Keith's Will, 250 N.W. 382—Marche v. Schoenrock, 247 N.W. 852, 211 Wis. 300—Jones v. State, 247 N.W. 445, 211 Wis. 9—Price v. Herreid, 245 N.W. 689, 210 Wis. 422—Acme Chair & Metal Crafts Co. v. Northern Corrugating Co., 243 N.W. 415, 209 Wis. 8—Gottschalk v. Ziegler, 241 N.W. 713, 208 Wis. 55—Wilcox v. Powell's Estate, 240 N.W. 122, 206 Wis. 513—Flambeau River Lumber Co. v. Chippewa & Flambeau Imp. Co., 236 N.W. 679, 204 Wis. 602—Prince v. Clubine Co., 234 N.W. 699, 203 Wis. 504—Decker v. Ladish-Stoppenback Co., 234 N. W. 355, 203 Wis. 285—Gutschenritter v. Hosterman, 230 N.W. 610, 201 Wis. 558—Pusch v. Pusch, 228 N. W. 476, 200 Wis. 347—Timme v. Squires, 225 N.W. 825, 199 Wis. 178—Fritz v. Woldenberg, 225 N. W. 700, 199 Wis. 99—In re Village of Chenequa, 221 N.W. 856, 197 Wis. 163—Vande Voort v. Farmers' & Traders' Bank of Wrightstown, 215 N.W. 453, 194 Wis. 56—Halls v. McKearn, 212 N.W. 257, 192 Wis. 456—In re Gabrich's Estate, 211 N.W. 128, 191 Wis. 453—Mertz v.

cate mistake, prejudice, or improper influence,[44] and | are not clearly wrong[45] so that a trial judge would

Fleming, 210 N.W. 716, 191 Wis. 305—In re Allis' Estate, 209 N.W. 945, 191 Wis. 23, rehearing denied 210 N.W. 418, 191 Wis. 23—McMynn v. Richardson-Phenix Co., 201 N.W. 272, 186 Wis. 442—Goodman v. Brown Land & Lumber Co., 197 N.W. 730, 183 Wis. 574—Joseph F. Rothe Foundry Co. v. Harding, 191 N.W. 551, 180 Wis. 14—Behrend v. Buchmann, 171 N.W. 958, 169 Wis. 242—Miley v. Heaney, 169 N.W. 64, 168 Wis. 58—Eberhardt v. Randall, 166 N.W. 6, 166 Wis. 480—Mechanical Appliance Co. v. A. Kieckhefer Elevator Co., 159 N.W. 557, 164 Wis. 65—Bishop-Babcock-Becker Co. v. Keeley, 152 N.W. 189, 160 Wis. 546—First Savings & Trust Co. v. Cazenovia & S. C. R. Co., 150 N.W. 405, 159 Wis. 344—Keck v. Michigan Quartz Silica Co., 149 N.W. 208, 158 Wis. 500.

4 C.J. p 887 note 62.

Absence of matters impairing accuracy of testimony

Reviewing court cannot control trial court's finding or conclusion denying credence to testimony unless it appears that there are no matters or circumstances which at all impair its accuracy.

Cal.—Wagner v. Trout, 268 P.2d 537, 124 C.A.2d 248—Spaulding v. Jones, 256 P.2d 637, 117 C.A.2d 541—Boies v. Wylie, 248 P.2d 76, 113 C.A.2d 243—Bateman v. Long, 233 P.2d 19, 105 C.A.2d 173—Jordan v. O'Connor, 222 P.2d 322, 99 C.A.2d 632—Burns v. Radoicich, 176 P.2d 77, 77 C.A.2d 697—Bank of America Nat. Trust & Sav. Ass'n v. Crawford, 160 P.2d 169, 69 C.A.2d 697.

Findings held not manifestly against weight of evidence

Ala.—One Penny Marble Mach. v. State, 173 So. 91, 233 Ala. 678.

Ark.—House v. City of Texarkana, 279 S.W.2d 831, 225 Ark. 162—Nunn v. Mitchell, 196 S.W.2d 576, 210 Ark. 422—Keneipp v. Phillips, 196 S.W.2d 220, 210 Ark. 264—Horne v. Howe Lumber Co., 190 S.W.2d 7, 209 Ark. 202—Herndon v. Adkisson, 184 S.W.2d 953, 208 Ark. 106—Barnett v. Wilson, 174 S.W.2d 940, 206 Ark. 301.

Cal.—Bechtold v. Bishop & Co., 105 P.2d 984, 16 C.2d 285.

Rippe v. City of Los Angeles, 123 P.2d 47, 50 C.A.2d 189.

Fla.—Surf Club v. Tatem Surf Club, 21 So.2d 717, 155 Fla. 796.

Ill.—Velsicol Corp. v. Hyman, 90 N.E.2d 717, 405 Ill. 352, certiorari denied 70 S.Ct. 1002, 339 U.S. 966, 94 L.Ed. 1374.

Cannon v. Casteel, 94 N.E.2d 614, 341 Ill.App. 476—McCauley v. Paden, 93 N.E.2d 159, 341 Ill.App. 70—Shea v. Training Within Industry Associates, 86 N.E.2d 896, 338 Ill.App. 203—Marnik v. Northwestern Packing Co., 82 N.E.2d 195, 335 Ill.App. 568, appeal transferred see 79 N.E.2d 54, 400 Ill. 66—Koontz v. Public Service Co. of Northern Ill., 66 N.E.2d 490, 328 Ill.App. 587—In re Thompson's Estate, 65 N.E.2d 131, 328 Ill.App. 103—Daraska v. Dauksha, 64 N.E.2d 204, 327 Ill.App. 333—Pinkley v. Allied Oil Corp. of Ill., 60 N.E.2d 106, 325 Ill.App. 326—Cummings v. Stella, 60 N.E.2d 41, 325 Ill.App. 333—Gebel v. Wilson, 55 N.E.2d 408, 323 Ill.App. 298—Crowley Bros. v. Ward, 54 N.E.2d 753, 322 Ill.App. 687—Siegle v. Pierce, 53 N.E.2d 750, 322 Ill.App. 78—Vladoff v. Illinois Bankers Life Assur. Co., 51 N.E.2d 348, 320 Ill.App. 387—Trimmer v. Franklin Life Ins. Co., 49 N.E.2d 642, 319 Ill.App. 520—Rosenfeld v. Chicagoan, Inc., 47 N.E.2d 556, 318 Ill.App. 234—Wise v. Hayden, 41 N.E.2d 128, 314 Ill. App. 205—Mousette v. Monarch Life Ins. Co., 32 N.E.2d 1004, 309 Ill.App. 224.

Ky.—Lindon v. Potter, 208 S.W.2d 515, 306 Ky. 511—Price v. Shadoan, 184 S.W.2d 237, 298 Ky. 828.

La.—Maggio v. Papa, 18 So.2d 645, 206 La. 38—Esparros v. Vicknair, 17 So.2d 924, 205 La. 699.

Lafont v. Nola Cabs, Inc., App., 65 So.2d 918—Richard v. Taulli, App., 57 So.2d 785—Granier v. Bourgeois, App., 188 So. 423, rehearing denied 189 So. 474.

Mich.—Loving v. Howard Lare, Inc., 73 N.W.2d 290, 344 Mich. 97—Lang v. Ginste, 52 N.W.2d 620, 333 Mich. 108—Gee v. Olson, 30 N.W.2d 867, 320 Mich. 274—Marion v. Savin, 24 N.W.2d 100, 315 Mich. 448—Swain Lumber Co. v. Newman Development Co., 22 N.W.2d 891, 314 Mich. 437—School Dist. of City of Ionia, for Use and Benefit of Employers' Liability Assur. Corp. v. Dadd, 13 N.W.2d 268, 308 Mich. 220—Southfield Co. v. Christensen, 9 N.W.2d 882, 305 Mich. 656—Rubsam Corporation v. General Motors Corp., 292 N.W. 554, 294 Mich. 31.

Minn.—Bang v. International Sisal Co., 4 N.W.2d 113, 212 Minn. 135, 141 A.L.R. 657.

Nev.—City of Las Vegas v. Schultz, 83 P.2d 1040, 59 Nev. 1.

N.M.—Lopez v. Singh, 205 P.2d 492, 53 N.M. 245.

N.Y.—Bernardine v. City of New York, 62 N.E.2d 604, 294 N.Y. 361, 161 A.L.R. 364.

Morris Plan Indus. Bank of Schenectady v. Faulds, 55 N.Y.S.2d 372, 269 App.Div. 288—Kampf v. Yokell, 47 N.Y.S.2d 195, 267 App. Div. 914—Barton v. Race, 44 N.Y.S. 2d 555, 266 App.Div. 1042—Gleason v. Evans, 34 N.Y.S.2d 473, 264 App. Div. 747.

Ohio.—First Bancredit Corp. v. Gaudreau, App., 113 N.E.2d 398—Hursh v. Pennsylvania R. Co., App., 109 N.E.2d 670—De Hart v. Ohio Fuel Gas Co., 85 N.E.2d 586, 84 Ohio App. 62—Walton v. Hudson, 79 N. E.2d 921, 82 Ohio App. 330—Gates v. Wise, App., 77 N.E.2d 716—Sizemore v. Belser, 74 N.E.2d 560, 80 Ohio App. 383—Bosler v. Sanderson, 74 N.E.2d 113, 81 Ohio App. 35—City of Campbell v. Hassay, App., 67 N.E.2d 645—F. G. & A. Howald Co. v. Hall, App., 65 N.E.2d 680—Jones v. Icenhower, App., 63 N.E.2d 454—Farmers & Merchants Bank v. Bowman, App., 62 N.E.2d 588—Kuehner v. Johnson, App., 34 N.E. 2d 996.

Okl.—Allen v. Allison, 290 P.2d 410—Fisher v. Pugh, 261 P.2d 181—Ewing v. Trawick, 256 P.2d 182, 208 Okl. 311—Fahr v. State ex rel. Adams, 237 P.2d 128, 205 Okl. 244—Alexander v. Love County Nat. Bank of Marietta, 223 P.2d 363, 203 Okl. 402—Cooper v. Gerner, 217 P. 2d 823, 203 Okl. 18—Smith v. Lindley, 215 P.2d 566, 202 Okl. 501—Smilie v. Taft Stadium Bd. of Control, 205 P.2d 301, 201 Okl. 303—Hales v. Lee, 184 P.2d 451, 199 Okl. 110—In re Blackhawk's Estate, 158 P.2d 168, 195 Okl. 390—Reiter-Foster Oil Corp. v. Bodovitz, 138 P.2d 95, 192 Okl. 612—F. & M. Drilling Co. v. M. & T. Oil Co., 137 P.2d 575, 192 Okl. 372—Payne v. Wade, 122 P.2d 144, 190 Okl. 222—McGill v. McGill, 113 P.2d 826, 189 Okl. 3.

R.I.—Ace Industries v. Doco Insulation Co., 87 A.2d 698, 79 R.I. 284—Sanchirico v. Di Santo, 18 A.2d 333, 66 R.I. 161—Dwares v. Clifton Yarn Mills, 16 A.2d 501, 65 R.I. 471.

Tex.—Thomas v. Linder, Civ.App., 231 S.W.2d 891, error refused.

Utah.—Huber v. Newman, 145 P.2d 780, 106 Utah 363.

Wis.—Sparling v. Thomas, 59 N.W.2d 433, 264 Wis. 506—Nickel v. Black, 21 N.W.2d 658, 248 Wis. 122.

44. Ariz.—Hein v. Nutt, 184 P.2d 656, 66 Ariz. 107—Wright v. Young, 176 P. 583, 20 Ariz. 46.

Colo.—Denver Nat. Bank v. McLagan, 298 P.2d 386, 133 Colo. 487.

Tex.—Beaumont Traction Co. v. Cooper, Civ.App., 211 S.W. 278.

Utah.—Greco v. Gentile, 53 P.2d 1155, 88 Utah 255.

4 C.J. p 888 note 65.

45. Ind.—Wiggam v. Rhodes' Estate, 176 N.E. 250, 92 Ind.App. 491.

Tex.—Sonora Realty Co. v. Fabens Townsite & Improvement Co., Civ. App., 13 S.W.2d 965.

4 C.J. p 888 note 63.

have set aside a similar verdict rendered on the same testimony.[46]

Although a reviewing court will be slow to reverse findings on the weight of the evidence,[47] it will do so where the findings are clearly, manifestly, and palpably against the great weight of the evidence,[48]

46. Ala.—Payne v. Ellis, 114 So. 192, 216 Ala. 603—Bell v. Bell, 71 So. 465, 196 Ala. 465.
First Nat. Bank v. Crawford, 149 So. 230, 25 Ala.App. 463, certiorari denied 149 So. 228, 227 Ala. 188—Vandegrift v. Florida, 144 So. 120, 25 Ala.App. 241—Dickerson v. Jefferson Lumber Co., 124 So. 669, 23 Ala.App. 310—Wallace v. American Wholesale Corporation, 104 So. 776, 20 Ala.App. 642.
4 C.J. p 888 note 64.

47. Ohio.—Batzli v. Batzli, 76 N.E.2d 410—In re Lowry's Estate, App., 40 N.E.2d 459, affirmed 42 N.E.2d 987, 140 Ohio St. 223, motion granted 46 N.E.2d 471—Owens v. Owens, 152 N.E. 767, 20 Ohio App. 518.

48. Cal.—People v. Puritan Ice Co., 151 P.2d 1, 24 C.2d 1—Grigsby v. Davey, 277 P. 330, 207 C. 181.
Taliaferro v. Insurance Commission, 298 P.2d 914, 142 C.A.2d 487, certiorari denied Taliaferro v. Insurance Commission of State of Cal., 77 S.Ct. 362, 352 U.S. 972, 1 L.Ed.2d 325—People v. 748 Cases of Life Saver Candy Drops, 211 P.2d 383, 94 C.A.2d 599—Knudson v. Adams, 30 P.2d 608, 137 C.A. 261.
Colo.—Neighbors of Woodcraft v. Hildebrandt, 54 P.2d 889, 98 Colo. 231—Myers v. Hayden, 257 P. 351, 82 Colo. 98—Gertner v. Limon Nat. Bank, 257 P. 247, 82 Colo. 13.
Fulton Inv. Co. v. Smith, 149 P. 444, 27 Colo.App. 279, affirmed 170 P. 1183, 64 Colo. 33.
Fla.—Holland v. Gross, 89 So.2d 255—In re Alkire's Estate, 198 So. 475, 142 Fla. 862, 144 Fla. 606.
Idaho.—Baird v. Ash, 156 P. 109, 28 Idaho 594.
Ill.—Dobie v. Livengood, 139 N.E.2d 599, 12 Ill.App.2d 343—Ward v. Illiopolis Food Lockers, 132 N.E.2d 591, 9 Ill.App.2d 129—Pivoda v. Wood, 104 N.E.2d 123, 345 Ill.App. 503—Bellm v. Henry, 84 N.E.2d 661, 336 Ill.App. 525—Illinois Casket Co. v. Cohn, 55 N.E.2d 113, 323 Ill.App. 279—Talmage v. Union Cent. Life Ins. Co., 43 N.E.2d 575, 315 Ill.App. 623—Klovas v. Wedeskis, 41 N.E.2d 222, 314 Ill.App. 384—Feldman v. Karn, 247 Ill.App. 48.
Ind.—Egbert v. Egbert, 80 N.E.2d 104, 226 Ind. 346.
Jacqua v. Heston, 142 N.E. 874, 81 Ind.App. 142—Holland v. Farrier, 130 N.E. 823, 75 Ind.App. 368.
Iowa.—Kelley v. Kelley, 174 N.W. 342, 187 Iowa 349—In re Stuart's Estate, 168 N.W. 779, 184 Iowa 165.
Ky.—Equitable Life Assur. Soc. of the U. S. v. Gaines, 120 S.W.2d 663, 275 Ky. 1—Northcutt v. Hardebeck, 52 S.W.2d 901, 244 Ky. 842—Elliott v. Elliott, 27 S.W.2d 963, 234 Ky. 257—Smith v. Oliver, 224 S.W. 683, 189 Ky. 214.
Miller v. Payne, 13 Ky.Op. 656—Johns v. Martin, 11 Ky.Op. 109—Gentry v. Abshire, 11 Ky.Op. 81.
La.—Blache v. Goodier, App., 22 So. 2d 82—Burnette v. Toebelman, App., 195 So. 135, reinstated 196 So. 529.
Mich.—Schneider v. Pomerville, 81 N.W.2d 405, 348 Mich. 49—Brooks v. Flint Furniture Mart, 70 N.W. 2d 700, 342 Mich. 419—Case v. Beech Lanes, Inc., 62 N.W.2d 616, 338 Mich. 631—Burrell v. Scott, 1 N.W.2d 582, 300 Mich. 385—Hamburger v. Bank of Detroit, 187 N.W. 535, 218 Mich. 173—Kotzke v. Kotzke's Estate, 171 N.W. 442, 205 Mich. 184.
Mo.—State ex rel. Kansas City Power & Light Co. v. Public Service Commission of Missouri, 275 S.W. 940, 310 Mo. 313—Martin v. Hays, 228 S.W. 741.
Gump's Estate v. Jacobs, 292 S. W. 81, 222 Mo.App. 545.
Mont.—Lasby v. Burgess, 289 P. 1028, 88 Mont. 49—Giebler v. Giebler, 222 P. 436, 69 Mont. 347.
Neb.—Nebraska Mut. Ins. Co. v. Borden, 272 N.W. 767, 132 Neb. 656.
N.Y.—Litzman v. Title Guarantee & Trust Co., 55 N.Y.S.2d 284, 269 App. Div. 787—Kirschenblatt v. Academy Housing Corp., 54 N.Y.S.2d 473, 269 App.Div. 739—Smith v. City of New York, 33 N.Y.S.2d 218, 263 App.Div. 973—Clark v. Title Guarantee & Trust Co., 30 N.Y.S.2d 294, 262 App.Div. 1023—Levison v. Taylor, 287 N.Y.S. 92, 247 App.Div. 904.
Mandula v. Korrol Mfg. Co., 42 N.Y.S.2d 555, 180 Misc. 378.
Siegel v. Manette, 75 N.Y.S.2d 868—Grill v. Popkin, 61 N.Y.S.2d 624—Gagliardini v. Fierro, 54 N.Y. S.2d 25—Peterson v. N. K. K. Holding Corp., 53 N.Y.S.2d 39—Block v. Murray, 188 N.Y.S. 802—Mann v. Spangehl, 157 N.Y.S. 235.
N.C.—White v. White, 103 S.E. 216, 179 N.C. 592.
N.D.—Kopald Electric Co. v. Ocean Accident & Guarantee Corporation, 251 N.W. 852, 64 N.D. 213.
Ohio.—Cross v. Ledford, 120 N.E.2d 118, 161 Ohio St. 469.
Westfall v. Notman, 4 N.E.2d 932, 53 Ohio App. 314.
Weber v. Lucas, 12 Ohio Supp. 121.
Lanham v. Bowman, 26 Ohio Cir. Ct.,N.S., 22.
Okl.—Tankersley Inv. Co. v. Tankersley Inv. Co. ex rel. Tankersley, 210 P.2d 167, 202 Okl. 51—Pemberton v. Longmire, 151 P.2d 410, 194 Okl. 311—Western States Oil Co. v. Berkey, 94 P.2d 905, 185 Okl. 525—Keechi Oil & Gas Co. v. Smith, 198 P. 588, 81 Okl. 266—Baldridge v. Smith, 184 P. 153, 76 Okl. 36—Gorman v. Carlock, 179 P. 38, 72 Okl. 104.
Pa.—Glen Alden Coal Co. v. Schuylkill County Com'rs, 27 A.2d 239, 345 Pa. 159.
Tex.—Sanders v. Harder, 227 S.W.2d 206, 148 Tex. 593.
Purvis v. Morehead, Civ.App., 304 S.W.2d 221—Magnolia Petroleum Co. v. Mitchell, Civ.App., 215 S.W. 2d 263—Sweatt v. Painter, Civ.App., 210 S.W.2d 442, reversed on other grounds 70 S.Ct. 848, 339 U.S. 629, 94 L.Ed. 1114, rehearing denied 71 S.Ct. 13, 340 U.S. 846, 95 L.Ed. 620—Texas Employers' Ins. Ass'n v. Bauer, 128 S.W.2d 840, error dismissed, judgment correct—Sovereign Camp, W. O. W., v. Oliva, Civ. App., 128 S.W.2d 101, error refused—Hancock v. Hoegmeyer, Civ.App., 119 S.W.2d 141—Bankers Life & Loan Ass'n v. Chase, 114 S.W.2d 374—Shaw v. Centerfield Oil Co., Civ.App., 10 S.W.2d 144—Texas & N. O. Ry. Co. v. Wagner, Civ.App., 262 S.W 902, error dismissed National Compress Co. v. Hamlin, 269 S.W. 1024, 114 Tex. 375—Galveston, H. & S. A. Ry. Co. v. John Muennink & Son, Civ.App., 195 S.W. 613.
Utah.—Parker v. Weber County Irr. Dist., 251 P. 11, 68 Utah 472.
W.Va.—Collins v. Woodmen of World Life Ins. Soc., 19 S.E.2d 586, 124 W.Va. 195—Huntington Development & Gas Co. v. Topping, 176 S.E. 424, 115 W.Va. 364—Jones v. Hoard, 151 S.E. 183, 108 W.Va. 308—McKown v. Citizens' State Bank of Ripley, 114 S.E. 271, 91 W.Va. 716—McGraw v. Morgan, 94 S.E. 370, 81 W.Va. 331.
4 C.J. p 880 note 97, p 888 note 66.

Undisputed, uncontradicted, and unimpeached evidence

(1) Findings against uncontradicted and unimpeached evidence will be set aside.
Ariz.—In re Gary's Estate, 211 P.2d 815, 69 Ariz. 228.
Utah.—Parker v. Weber County Irr. Dist., 251 P. 11, 68 Utah 472.

(2) Where evidence is substantially undisputed, reviewing court may weigh and analyze it unaffected by trial justice's decision.
R.I.—Lamb v. Feyler, 26 A.2d 752, 68 R.I. 83.
Wash.—Kingwell v. Hart, 275 P.2d 431, 45 Wash.2d 401—Brotherton v. Day & Night Fuel Co., 73 P.2d 788, 192 Wash. 362.
Wis.—Dairy Queen of Wis. v. McDowell, 51 N.W.2d 34, 260 Wis. 471,

as where, if the case had been tried by a jury, it would have been the duty of the court to direct a verdict for the opposite party.[49]

In determining whether findings are so against the weight of the evidence that they must be disturbed, the appellate court will always give regard to the advantages of the trial court for determining the weight of the evidence, by reason of its having seen and heard the witnesses;[50] and the mere fact that the trial court has made its findings against the testimony of the greater number of witnesses will not cause them to be considered against the overwhelming weight of the evidence.[51]

§ 1659. Amount of Recovery

Ordinarily, findings of the trial court as to the damages recoverable are entitled to great weight and will not be disturbed on appeal if it is not shown that there was an abuse of discretion, passion, prejudice, or use of the

rehearing denied 52 N.W.2d 791, 260 Wis. 471.

Findings held manifestly against weight of evidence

Conn.—Swift & Co. v. Peoples Coal & Oil Co., 186 A. 629, 121 Conn. 579.

Ill.—Western Contractors Supply Co. v. T. P. Dowdle Co., 104 N.E.2d 826, 346 Ill.App. 17—Western Contractors Supply Co. v. T. P. Dowdle Co., 77 N.E.2d 856, 333 Ill.App. 653—New York Cent. R. Co. v. City of Chicago, 76 N.E.2d 200, 332 Ill.App. 583—Farmer v. Fuller, 73 N.E.2d 457, 331 Ill.App. 615—Lakowski v. Kustohs, 66 N.E.2d 487, 328 Ill.App. 557—Simon v. Balasic, 63 N.E.2d 676, 327 Ill.App. 211—Pure Torpedo Corp. v. Nation, 63 N.E.2d 600, 327 Ill.App. 28—Nolan v. American Tel. & Tel. Co., 61 N.E.2d 876, 326 Ill. App. 328—Bishop v. Bucklen, 54 N.E.2d 876, 322 Ill.App. 529, reversed on other grounds 60 N.E.2d 872, 390 Ill. 176—Garrett v. National Casualty Co., 54 N.E.2d 770, 323 Ill.App. 281—Ekstrand v. Severin, 54 N.E.2d 724, 322 Ill.App. 693—Wilcox v. Tracy, 38 N.E.2d 519, 312 Ill.App. 379—Home Ins. Co. v. Yellow Cab Co., 37 N.E.2d 445, 311 Ill. App. 604—Noyes v. Gold, 34 N.E.2d 1, 310 Ill.App. 1.

La.—Oil Field Supply & Scrap Material Co. v. Gifford Hill & Co., 16 So. 2d 483, 204 La. 929.

Moore v. Smith, App., 6 So.2d 803—Seither v. Poter, App., 194 So. 467.

Mich.—W. T. Rawleigh Co. v. Bowen, 13 N.W.2d 230, 308 Mich. 122.

N.H.—Kobilsek v. Hartford Acc. & Indem. Co., 63 A.2d 228, 95 N.H. 324.

N.Y.—Williams v. Williams, 139 N.Y. S.2d 734, 285 App.Div. 1081—Cassia Corp. v. North Hills Holding Corp., 105 N.Y.S.2d 631, 278 App.Div. 960—Rose v. Muldoon, 101 N.Y.S.2d 295, 277 App.Div. 1147—Greenberg v. Goldsmith, 100 N.Y.S.2d 88, 277 App.Div. 994—Pisciotta v. City of New York, 90 N.Y.S.2d 706, 275 App.Div. 966, affirmed 91 N.E.2d 323, 300 N.Y. 664, motion granted 92 N.E.2d 460, 300 N.Y. 775, certiorari denied 71 S.Ct. 60, 340 U.S. 825, 95 L.Ed. 606—Tauraso v. Texas Co., 89 N.Y.S.2d 146, 275 App.Div. 856, motion denied 91 N.Y.S.2d 759, 275 App.Div. 1003, affirmed 89 N.E.2d 526, 300 N.Y. 567—Stecker v. American Home Fire Assur. Co., 80 N.Y. S.2d 145, 274 App.Div. 91, reversed on other grounds 84 N.E.2d 797, 299 N.Y. 1, reargument denied 86 N.E. 2d 182, 299 N.Y. 629—Keller v. Triboro Coach Corp., 65 N.Y.S.2d 370, 271 App.Div. 804—Valentine v. City of New York, 62 N.Y.S.2d 221, 270 App.Div. 950—Curtiss-Wright Corp. v. Incorporated Village of Garden City, 61 N.Y.S.2d 678, 270 App.Div. 936, affirmed 72 N.E.2d 26, 296 N.Y. 839—O'Connor v. Hudson River Day Line, 58 N.Y.S.2d 175, 269 App.Div. 960, affirmed 68 N.E. 2d 450, 296 N.Y. 501—Weiman v. Weiman, 52 N.Y.S.2d 263, 268 App. Div. 1052, appeal dismissed 65 N.E. 2d 754, 295 N.Y. 150—Petchesky v. Brooklyn Terminal Market Ass'n, 40 N.Y.S.2d 296, 266 App.Div. 680—Neckers v. Larson, 40 N.Y.S.2d 170, 265 App.Div. 1033—Keslin v. Danziger, 39 N.Y.S.2d 55, 265 App.Div. 972—Montis v. Fifth Avenue Coach Co., 37 N.Y.S.2d 649, 265 App.Div. 18, affirmed 50 N.E.2d 1016, 291 N.Y. 626—Shannon v. Bergener, 31 N.Y.S.2d 369, 263 App.Div. 824, motion denied in part and granted in part 50 N.E.2d 251, 290 N.Y. 872, reversed on other grounds 87 N.E. 2d 122, 299 N.Y. 704—Richardson v. Brainard-Powers Corp., 22 N.Y.S.2d 558, 260 App.Div. 836—Pine v. Eastern Farms Products, 22 N.Y.S. 2d 545, 260 App.Div. 902—Marshall v. John Hancock Mut. Life Ins. Co., 22 N.Y.S.2d 537, 260 App.Div. 901—Mason v. Metropolitan Life Ins. Co., 9 N.Y.S.2d 539, 256 App.Div. 118—Kaufman v. Tremaine, 288 N. Y.S. 393, 248 App.Div. 628.

Logan v. Sherman, 70 N.Y.S.2d 423, 188 Misc. 1023—Christian v. Hotel Waldorf Astoria Corp., 67 N. Y.S.2d 281, 187 Misc. 516.

Hubshman Factors Corp. v. Sport Jewel, 86 N.Y.S.2d 427—Astor Plastics Corp. v. Andrews, 76 N.Y.S.2d 237—Malm v. Isaak, 75 N.Y.S.2d 815—Gotham Credit Corp. v. Vars, 72 N.Y.S.2d 383—Logan v. Egan, 70 N.Y.S.2d 425—Lee Equities v. Gibson, 53 N.Y.S.2d 45.

Ohio.—Byrum v. Red Star Transit Co., 80 N.E.2d 616, 81 Ohio App., 495—Severns v. Boylan, 60 N.E.2d 521, 75 Ohio App. 15—Dusi v. Albanese, 57 N.E.2d 802, 74 Ohio App. 136—Ford v. Ford, 43 N.E.2d 756, 71 Ohio App. 396—Miller v. Stambaugh-Thompson Co., App., 34 N.E. 2d 309.

Okl.—Norris v. Van Handel, 163 P.2d 217, 196 Okl. 164—Republic Life Ins. Co. v. Tourtellotte, 105 P.2d 254, 187 Okl. 624.

Utah.—Green v. Palfreyman, 166 P.2d 215, 109 Utah 291, amended on other grounds and rehearing denied 175 P.2d 213, 109 Utah 303.

Wash.—Knatvold v. Rydman, 182 P. 2d 9, 28 Wash.2d 178.

Wis.—Roberts v. Saukville Canning Co., 26 N.W.2d 145, 250 Wis. 112—Diederich v. Wisconsin Wood Products, 19 N.W.2d 268, 247 Wis. 212—Sheldon v. Johnston, 8 N.W.2d 269, 242 Wis. 442—Harvey v. Wheeler Transfer & Storage Co., 277 N.W. 627, 227 Wis. 36.

49. Tex.—Hughes v. McFarland, Civ. App., 128 S.W. 172.

50. Ill.—Marble v. Marble's Estate, 136 N.E. 589, 304 Ill. 229.

Hertzberg v. Betz, 109 N.E.2d 641, 348 Ill.App. 598—McDermott v. Morton, 96 N.E.2d 633, 342 Ill. App. 446—Halsenburg v. Dee, 84 N. E.2d 332, 336 Ill.App. 468—Loeb v. Corrie, 65 N.E.2d 28, 327 Ill.App. 660—Dowson v. Smith, 40 N.E.2d 553, 313 Ill.App. 650. See Pratt v. Pratt, 197 Ill.App. 530.

Md.—Seybolt v. Baber, 97 A.2d 907, 203 Md. 20—Appel v. Hupfield, 84 A.2d 94, 198 Md. 374—Taylor v. Wesley Freeman, Inc., 47 A.2d 500, 186 Md. 474—Consolidated Beef & Provision Co. v. Witt & Co., 40 A.2d 295, 184 Md. 105.

Utah.—Kakunis v. Ogden Rapid Transit Co., 221 P. 853, 63 Utah 4.

Va.—Sawyer v. Matthews, 184 S.E. 238, 166 Va. 177.

Wis.—Mechanical Appliance Co. v. A. Kieckhefer Elevator Co., 159 N.W. 557, 164 Wis. 65.

51. Colo.—Cocquyt v. Shower, 189 P. 606, 68 Colo. 89.

Nev.—McNee v. McNee, 237 P. 534, 49 Nev. 90.

N.Y.—Sheldon v. Otsego & H. R. Co., 152 N.Y.S. 702, 89 Misc. 482, affirmed 155 N.Y.S. 675, 169 App.Div. 707.

Okl.—Starritt v. Longcor, 65 P.2d 979, 179 Okl. 219.

Tex.—Deaton v. Hamilton County, Civ.App., 220 S.W. 577.

wrong measure of damages, or if it is not shown that the award is clearly wrong, shocks the sense of justice, could not reasonably have been made, or was excessive.

In accordance with the rules stated supra §§ 1656 (1)–1658, the value or amount of damages in a case tried without a jury is for the determination of the trial court,[51.50] and findings of the trial court as to the damages recoverable are, like the verdict of a jury, entitled to great weight.[52]

In the absence of special circumstances or apparent oversight,[52.5] and in the absence of an abuse of discretion,[53] such findings will ordinarily not be disturbed by the reviewing court[54] if it is possible to uphold them on any sound theory,[54.5] and if it is

51.50 Cal.—Pancoast v. Russell, App., 307 P.2d 719—Walpole v. Prefab Mfg. Co., 230 P.2d 36, 103 C.A. 2d 472—Griffin v. Northridge, 153 P.2d 800, 67 C.A.2d 69—Stillwell v. R. C. A. Mfg. Co., 144 P.2d 638, 62 C.A.2d 347—Finley v. Steiner, 104 P.2d 819, 40 C.A.2d 331—Lee v. Nanny, 100 P.2d 832, 38 C.A.2d 90—Williams v. McDowell, 89 P.2d 155, 32 C.A.2d 49.

Ill.—Cook v. East Shore Newspapers, 64 N.E.2d 751, 327 Ill.App. 559.

Iowa.—McWilliams v. Ebling, 35 N. W.2d 768, 240 Iowa 174.

La.—Humphreys v. Bennett Oil Corp., 197 So. 222, 195 La. 531.

Kelly v. Ozone Tung Co-op., App., 36 So.2d 837, rehearing refused 38 So.2d 232—Drewes v. Miller, App., 25 So.2d 820.

Mo.—Perrin v. Johnson, App., 124 S. W.2d 551.

Tenn.—Spence v. Carne, App., 292 S.W.2d 438.

Tex.—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error.

Wash.—Singleton v. Woodard, 206 P.2d 1034, 33 Wash.2d 764.

Wis.—Morse Chain Co. v. T. W. Meiklejohn, Inc., 4 N.W.2d 162, 241 Wis. 45.

52. Ala.—**Corpus Juris Secundum quoted in** Southern States Life Ins. Co. v. Allan, 87 So.2d 439, 446, 38 Ala.App. 467.

Conn.—Brown v. Bolton, 167 A. 821, 117 Conn. 673.

La.—Lewis v. Louisiana Weekly Pub. Co., 179 So. 315, 189 La. 281—Pecastaing v. Globe Indemnity Co., 145 So. 259, 176 La. 31—Anders v. Tremont Lumber Co., 129 So. 649, 171 La. 1.

Freeman v. U. S. Cas. Co., App., 88 So.2d 423—Mathews v. Hayne, App., 188 So. 462.

N.D.—Gussner v. Mandan Creamery & Produce Co., 51 N.W.2d 352, 78 N.D. 594.

Or.—Guild v. Wallis, 40 P.2d 737, 150 Or. 69, supplemented 41 P.2d 1119, 150 Or. 69, rehearing denied 42 P.2d 916, 150 Or. 69.

Rule based on better position of trial judge

Cal.—Flynn v. Kumamoto, 72 P.2d 248, 22 C.A.2d 607.

La.—Sparks v. Dan Cohen Co., 175 So. 590, 187 La. 830.

52.5 Ill.—Kolberg v. Cities Service Oil Co., 99 N.E.2d 152, 343 Ill.App. 355.

53. Ala.—**Corpus Juris Secundum quoted in** Southern States Life Ins. Co. v. Allan, 87 So.2d 439, 446, 38 Ala.App. 467.

Cal.—Wilder v. Wilder, 7 P.2d 1032, 214 C. 783.

Wade v. Markwell & Co., 258 P.2d 497, 118 C.A.2d 410, 37 A.L.R.2d 1363—Frazier v. Frazier, 252 P.2d 698, 115 C.A.2d 560—Harris v. Los Angeles Transit Lines, 245 P.2d 35, 111 C.A.2d 593—Cameron v. Cameron, 192 P.2d 89, 85 C.A.2d 22—Knight v. Fitch, 70 P.2d 976, 22 C. A.2d 252—Blanchard v. Shattuck, 58 P.2d 946, 14 C.A.2d 690.

Idaho.—Scogings v. Love, 312 P.2d 567.

La.—Vincent v. Morgan's Louisiana & T. R. & S. S. Co., 74 So. 541, 140 La. 1027.

Mass.—Bartley v. Phillips, 57 N.E.2d 26, 317 Mass. 35.

Minn.—Gilbertson v. Gross, 45 N.W. 2d 547, 232 Minn. 373.

Miss.—Gardiner v. Gardiner, 93 So.2d 638.

Tex.—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error.

Evaluation of factors involved

On appeal in separate maintenance proceeding, supreme court would weigh evidence to determine whether trial court had properly evaluated factors involved in making award of lump sum as separate maintenance or had abused its discretion in amount of such award.

Okl.—Strong v. Strong, 299 P.2d 148.

54. Ala.—**Corpus Juris Secundum quoted in** Southern States Life Ins. Co. v. Allan, 87 So.2d 439, 446, 38 Ala.App. 467.

Cal.—Carter v. Murphy, 75 P.2d 1072, 10 C.2d 547—Le Brun v. Richards, 291 P. 825, 210 C. 308, 72 A.L.R. 336.

Wade v. Markwell & Co., 258 P.2d 497, 118 C.A.2d 410, 37 A.L.R.2d 1363—Smythe v. Schacht, 209 P.2d 114, 93 C.A.2d 315—Lady v. Palen, 54 P.2d 1133, 12 C.A.2d 1—Zobelein Co. v. City of Los Angeles, 43 P.2d 818, 6 C.A.2d 29—Grange v. American Nat. Bank of San Francisco, 174 P. 75, 37 C.A. 432.

Colo.—Thompson v. Hartman, 209 P. 635, 72 Colo. 88.

Ryan v. Mineral County High School Dist., 146 P. 792, 27 Colo. App. 63.

Fla.—Burnett v. Rushton, 52 So.2d 645.

Ill.—William E. Dee Co. v. Proviso Coal Co., 125 N.E. 24, 290 Ill. 252.

Radzyner v. Koesling, 105 N.E.2d 151, 346 Ill.App. 305—Cowan v. Terrell, 273 Ill.App. 194.

Iowa.—Iowa Trust & Savings Bank v. Soppe, 247 N.W. 632, 215 Iowa 1242.

Ky.—Cary-Glendon Coal Co. v. Carmichael, 80 S.W.2d 29, 258 Ky. 411.

La.—Succession of Barrow, 145 So. 262, 176 La. 42.

Rhymes v. Guidry, App., 84 So.2d 634—Landry v. McNeil Hunter Motor Co., 122 So. 293, 11 La.App. 380—Pailet v. Mirandona, 120 So. 498, 9 La.App. 358—Wilson v. Hunt, 8 La.App. 65—Moncrief v. Ober, 3 La.App. 660.

Md.—Schneider v. Menaquale, 49 A.2d 330, 187 Md. 202—Koehnlein v. Koehnlein, 127 A. 388, 146 Md. 660.

Mass.—King Features Syndicate v. Cape Cod Broadcasting, 64 N.E.2d 925, 318 Mass. 783—Crehan v. Megargel, 126 N.E. 477, 235 Mass. 279.

Mo.—Wilkinson v. McLain, App., 15 S.W.2d 909.

N.M.—Napoleon v. City of Santa Fé, 35 P.2d 973, 38 N.M. 494.

N.Y.—Frankinstein v. Thomas, 4 Daly 256.

Ohio.—Zatko v. Zatko, App., 136 N.E. 2d 358.

Or.—J. L. Latture Equipment Co. v. Gruendler Patent Crusher & Pulverizer Co., 289 P. 1067, 133 Or. 421.

S.C.—Scott v. Atlantic Coast Line R. Co., 96 S.E. 305, 109 S.C. 471.

S.D.—Gamet v. Allender, 210 N.W. 49, 50 S.D. 307.

Tex.—Pasadena State Bank v. Isaac, 228 S.W.2d 127, 149 Tex. 47.

Ogus, Rabinovich & Ogus Co. v. Foley Bros. Dry Goods Co., Com. App., 252 S.W. 1048.

Allstate Ins. Co. v. Lay, Civ.App., 265 S.W.2d 203—Galveston, H. & H. R. Co. v. Copley, Civ.App., 176 S.W. 665.

Utah.—Baker v. Wycoff, 79 P.2d 77, 95 Utah 199.

Wis.—Morse Chain Co. v. T. W. Meiklejohn, Inc., 4 N.W.2d 162, 241 Wis. 45.

4 C.J. p 888 note 68—47 C.J. p 595 note 18.

54.5 Cal.—Wade v. Markwell & Co., 258 P.2d 497, 118 C.A.2d 410, 37 A. L.R.2d 1363—Stroman v. Lynch, 205 P.2d 409, 91 C.A.2d 406.

not shown that the trial court was influenced by improper motives,[55] such as passion or prejudice,[56] or if it is not shown that the trial court adopted the wrong measure of damages,[57] or that the award is clearly wrong,[58] shocks the sense of justice,[58.5] could not reasonably have been made,[58.10] or was excessive,[59] or against the weight of the evidence,[60] or if the uncontradicted evidence does not demonstrate that the award is insufficient as a matter of law.[60.5]

Furthermore, findings as to the amount of recovery will not ordinarily be disturbed where there is substantial,[60.10] competent,[60.15] supporting evidence,[61] conflicting evidence,[62] or no evidence to disprove the

55. Tex.—Sanders v. Hall, 55 S.W. 594, 22 Tex.Civ.App. 282.

56. Cal.—Mendoza v. Rudolf, 295 P. 2d 445, 140 C.A.2d 633—Harris v. Los Angeles Transit Lines, 245 P. 2d 35, 111 C.A.2d 593—Sheward v. Magit, 234 P.2d 708, 106 C.A.2d 163—Nielsen v. Milligan, 222 P.2d 916, 100 C.A.2d 40—Smythe v. Schacht, 209 P.2d 114, 93 C.A.2d 315—Ringis v. Otting, 146 P.2d 421, 63 C.A.2d 88—Flanton v. Greenfield, 132 P.2d 64, 56 C.A.2d 253—Finley v. Steiner, 104 P.2d 819, 40 C.A.2d 331—Williams v. McDowell, 89 P.2d 155, 32 C.A.2d 49—Brandes v. Freitas, 2 P.2d 830, 116 C.A. 459—Conner v. Henderson, 291 P. 641, 108 C.A. 237.
Bonetti v. Double Play Tavern, 274 P.2d 751, 126 C.A.2d Supp. 848—Baines v. Brady, 265 P.2d 194, 122 C.A.2d Supp. 957.
Del.—Bennett v. Barber, 79 A.2d 363, 7 Terry 132.
Ind.—Oceana Oil Producers v. Portland Silo Co., 100 N.E.2d 895, 229 Ind. 656.
Miller v. Long, App., 131 N.E.2d 348, rehearing denied 132 N.E.2d 272.
Iowa.—Gatewood v. Cooper, 66 N.W. 2d 472, 245 Iowa 1281.
Tex.—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error.

Passion or prejudice not shown

Cal.—Ingram v. Higgins, 229 P.2d 385, 103 C.A.2d 287—Ringis v. Otting, 146 P.2d 421, 63 C.A.2d 88—Blanchard v. Shattuck, 58 P.2d 946, 14 C.A.2d 690.

57. Colo.—Ryan v. Mineral County High School Dist., 146 P. 792, 27 Colo.App. 63.

58. Fla.—Burnett v. Rushton, 52 So. 2d 645.
La.—Townsend v. Missouri Pac. R. Co., 113 So. 130, 163 La. 872, 54 A. L.R. 538.
Bailey v. Southern Furniture Co., App., 94 So.2d 527—Baker v. Dye, App., 45 So.2d 228—McCain v. Pan-American Petroleum Corporation, App., 142 So. 376, reinstated 146 So. 331—Leon v. Klein, 139 So. 83, 18 La.App. 571—Weigand v. General Outdoor Advertising Co., 134 So. 770, 16 La.App. 558—Craton v. Couret, 120 So. 497, 9 La.App. 402.
Md.—Sugarman v. Sugarman, 78 A.2d 456, 197 Md. 182.
N.Y.—Sparkill Realty Corp. v. State, 4 N.Y.S.2d 679, 254 App.Div. 78, motion denied 4 N.Y.S.2d 1023, 254 App.Div. 800, affirmed 18 N.E.2d 301, 279 N.Y. 656.
4 C.J. p 888 note 78.

58.5 Cal.—Baines v. Brady, 265 P.2d 194, 122 C.A.2d Supp. 957.

58.10 Conn.—Squires v. Reynolds, 5 A.2d 877, 125 Conn. 366—Goldberg v. Mertz, 194 A. 721, 123 Conn. 308.
Del.—Turner v. Vineyard, 80 A.2d 177, 7 Terry 138.

59. Cal.—Biggs v. Tourtas, 206 P.2d 871, 92 C.A.2d 316—Mitchell v. City of Santa Barbara, 120 P.2d 131, 48 C.A.2d 568—Smith v. Pollard, 8 P. 2d 906, 121 C.A. 358.
Conn.—Stults v. Palmer, 109 A.2d 592, 141 Conn. 709—Gondek v. Pliska, 67 A.2d 552, 135 Conn. 610—Thompson v. Lupone, 62 A.2d 861, 135 Conn. 236—Horsfall v. Foley, 150 A. 64, 111 Conn. 722.
La.—Borgnemouth Realty Co. v. Gulf Soap Corp., 31 So.2d 488, 212 La. 57.
Brown & Williamson Tobacco Corp. v. Baumgardner, App., 92 So. 2d 107—Jenkins v. Hammond Stage Lines, App., 143 So. 116.
Mich.—Hirschfield v. Emerman, 261 N.W. 330, 272 Mich. 293.
N.J.—Tessmar v. Grosner, 128 A.2d 467, 23 N.J. 193.
Tex.—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error.

Excessive nature of award must be clearly apparent

Cal.—Reynolds v. Struble, 18 P.2d 690, 128 C.A. 716.

60. Ill.—Town of Centreville v. Reinhardt, 28 N.E.2d 343, 306 Ill. App. 281.
Mich.—Besh v. Mutual Benefit Health & Accident Ass'n, 8 N.W.2d 91, 304 Mich. 343.
N.H.—Clover Cutting Die Co. v. Sam Smith Shoe Corp., 79 A.2d 8, 96 N.H. 491.
Okl.—City of Bartlesville v. Keeler, 229 P. 450, 107 Okl. 14.
Wash.—Sloop v. Thomas, 147 P.2d 511, 20 Wash.2d 409.

60.5 Cal.—Harris v. Los Angeles Transit Lines, 245 P.2d 35, 111 C.A. 2d 593.

60.10 Cal.—Punton v. Sapp Bros. Const. Co., 300 P.2d 271, 143 C.A.2d 696—Vineland Homes v. Barish, 292 P.2d 941, 138 C.A.2d 747—Record Mach. & Tool Co. v. Pageman Holding Corp., 283 P.2d 724, 132 C.A.2d 821.
Ohio.—Lichter v. S. T. Kenyon & Co., 137 N.E.2d 782, 101 Ohio App. 76.

60.15 Cal.—La Jolla Casa de Manana v. Hopkins, 219 P.2d 871, 98 C.A.2d 339.
Iowa.—Boslough v. Panagakis, 280 N.W. 486.
Or.—In re Fulton's Estate, 58 P.2d 604, 154 Or. 72.
Wash.—Cugini v. McPhail, 252 P.2d 290, 41 Wash.2d 804.

61. Cal.—Gomes v. Borba, 221 P.2d 124, 99 C.A.2d 38—McCargo v. Matul, 166 P.2d 297, 73 C.A.2d 349.
Bonetti v. Double Play Tavern, 274 P.2d 751, 126 C.A.2d Supp. 848.
Conn.—Cleeland v. Carter, 14 A.2d 36, 126 Conn. 704.
Ga.—Powers v. Brunswick-Balke-Collender Co., 91 S.E. 1062, 19 Ga.App. 706.
Ind.—Watson v. Watson, 108 N.E.2d 893, 231 Ind. 385.
Miller v. Long, App., 131 N.E.2d 348, rehearing denied 132 N.E.2d 272—Kostas v. Zaracostas, 75 N.E. 2d 423, 118 Ind.App. 425.
La.—Borgnemouth Realty Co. v. Gulf Soap Corp., 31 So.2d 488, 212 La. 57.
Rhea v. Farrington, App., 78 So. 2d 47—Travis v. Brock Lime Co., App., 29 So.2d 545.
Mich.—Reeck v. Caloy Corp., 45 N.W. 2d 349, 329 Mich. 453.
Minn.—Carroll v. Pratt, 76 N.W.2d 693, 247 Minn. 198.
Okl.—Shimonek v. Tillman, 1 P.2d 154, 150 Okl. 177.
Tex.—Bly v. Swafford, Civ.App., 199 S.W.2d 1015—Shropshire v. Jones, Civ.App., 129 S.W.2d 480—Galveston, H. & H. R. Co. v. Copley, Civ. App., 176 S.W. 665.
Wash.—Nelson v. Swanson, 31 P.2d 521, 177 Wash. 187—P. S. Wick Co. v. Du Barry, 293 P. 447, 159 Wash. 380.
Wis.—Hickman v. Wellauer, 171 N. W. 635, 169 Wis. 18.
4 C.J. p 888 notes 69, 71, 79.

62. Cal.—Munzinger v. Caffrey, 121 P.2d 13, 49 C.A.2d 180—Bartholomae Oil Corporation v. Oregon Oil & Development Co., 288 P. 814, 106 C.A. 57—Freeman v. Donohoe, 223 P. 431, 65 C.A. 65—White v. Western Fish Co., 173 P. 934, 37 C.A. 261.
Ind.—Kostas v. Zaracostas, 75 N.E.2d 423, 118 Ind.App. 425.
Ky.—Kidd v. Roundtree, 148 S.W.2d 275, 285 Ky. 442—Collins v. Hud-

evidence on which the court based the amount of recovery,[63] or where the finding is within the limits or range of the evidence.[64]

Although the fixing of the damages is a matter of calculation or computation, the findings thereon will not be disturbed if it is not shown that the computation of the trial court was incorrect,[65] or the data for the calculation as found in the evidence are somewhat uncertain and unreliable.[66]

An award of damages will not be sustained by the appellate court, however, if it is for a larger amount than claimed in the petition,[67] so excessive as to show a failure to exercise a sound discretion,[68] inadequate,[69] obviously unsupported by competent[69.5] evidence,[70] or wrong on any hypothesis;[71] but the findings will not be disturbed merely because the appellate court would itself have reached a different result had it been making the allowance, and thinks the award made by the trial court somewhat excessive[72] or insufficient.[72.5]

Punitive damages. The allowance of punitive damages is largely within the discretion of the trial court and will not be disturbed except in the case of

son's Adm'x, 140 S.W.2d 365, 282 Ky. 810—Getas v. Eversole, 27 S.W.2d 688, 234 Ky. 164—Eastern Kentucky Home Telephone Co. v. Dempster Const. Co., 290 S.W. 684, 217 Ky. 762.
S.D.—Gamet v. Allender, 210 N.W. 49, 50 S.D. 307.
Tex.—Bush v. Bush, Civ.App., 275 S.W. 1096—Cry v. J. W. Bass Hardware, Civ.App., 273 S.W. 347.
Wyo.—Kinney v. Barnhisel, 77 P.2d 807, 53 Wyo. 58.
4 C.J. p 888 note 70.

63. Ala.—Bates v. General Steel Tank Co., 55 So.2d 213, 36 Ala.App. 261, certiorari dismissed 55 So.2d 218, 256 Ala. 466—Huffstutler v. Chandler Transfer & Freight Line, 31 So.2d 302, 33 Ala.App. 182.
Ariz.—Maricopa County Municipal Water Conservation Dist. No. 1 v. Warford, 206 P.2d 1168, 69 Ariz. 1.
Cal.—Lady v. Palen, 54 P.2d 1133, 12 C.A.2d 1.
Ill.—See Wardwell v. Hocking Valley Ry. Co., 208 Ill.App. 315.
Winston & Co. v. Clark County Const. Co., 217 S.W. 1027, 186 Ky. 743.
La.—In re Aetna Homestead Ass'n, 7 So.2d 188, 199 La. 929.
Agnew v. Hopper, App., 28 So.2d 375.
Ohio.—Falk v. Monning, 44 N.E.2d 375, 69 Ohio App. 550.
Wash.—Payn v. Hoge, 149 P.2d 939, 21 Wash.2d 32.
4 C.J. p 888 note 72.

64. Mich.—Phelps v. Grand Rapids Growers, 67 N.W.2d 59, 341 Mich. 62—Denny v. Garavaglia, 52 N.W.2d 521, 333 Mich. 317—Reeck v. Caloy Corp., 45 N.W.2d 349, 329 Mich. 453—France Duofone Co. v. DeLodder, 262 N.W. 316, 272 Mich. 639—Brebner v. Sidney Hill Health System, 257 N.W. 745, 269 Mich. 541—La Pointe v. Chevrette, 250 N.W. 272, 264 Mich. 482—Kinsler v. Simpson, 240 N.W. 98, 257 Mich. 7.
Minn.—Carroll v. Pratt, 76 N.W.2d 693, 247 Minn. 198—Lehman v. Hansord Pontiac Co., 74 N.W.2d 305, 246 Minn. 1.
Mont.—Hudon v. City of Butte, 107 P.2d 882, 111 Mont. 210.
Tex.—Houston Tie & Lumber Co. v. Hankins, Civ.App., 200 S.W. 237.
Wash.—Becwar v. Bear, 246 P.2d 1110, 41 Wash.2d 37.
4 C.J. p 888 note 71.

Evidence need not name exact amount allowed

Where the testimony variously indicates plaintiff's damages, ranging from a specified high to a specified low figure, a finding by the trial court of an intermediate sum will not be reversed because no witness estimated the damages at exactly the amount awarded.
Tex.—Houston Tie & Lumber Co. v. Hankins, Civ.App., 200 S.W. 237.

65. Ind.—Miller v. Long, App., 131 N.E.2d 348, rehearing denied 132 N.E.2d 272.
S.C.—Pruitt v. Pruitt, 38 S.E. 213, 59 S.C. 509.

66. Ind.—Wilson v. Vance, 34 Ind. 440.

67. Tex.—Gulf, etc., R. Co. v. Thompson, 16 S.W. 174, 4 Tex.App. Civ.Cas. § 155.

68. U.S.—Maytag Co. v. Meadows Mfg. Co., C.C.A.Ill., 45 F.2d 299, certiorari denied 51 S.Ct. 489, 283 U.S. 843, 75 L.Ed. 1452.

69. Cal.—Torr v. United Railroads of San Francisco, 202 P. 671, 187 C. 505.

When inadequacy shown

An award will be set aside as inadequate where the uncontradicted and overwhelming evidence establishes a right to a greater recovery and the trial court must have acted upon an erroneous view as to the measure of damages.
Cal.—Torr v. United Railroads of San Francisco, 202 P. 671, 187 C. 505.

69.5 N.Y.—Thirty-Fifth Ave. Bldg. Corporation v. Brodsky, 50 N.Y.S.2d 405.

70. La.—Redwitz v. Waggaman, 33 La.Ann. 26.
Mich.—Young v. Shepard, 83 N.W. 403, 124 Mich. 552.
N.Y.—Spampinato v. Columbia Soccer Football Ass'n, 103 N.Y.S.2d 73.

Opinion evidence

Where evidence as to reasonableness of amount and necessity of incurring hospital and medical expenses was opinion evidence, conclusion by trial court that right to recover amount of such expenses was conclusively established by evidence was error.
Tex.—Page v. Lockley, Civ.App., 176 S.W.2d 991, reversed on other grounds 180 S.W.2d 616, 142 Tex. 594.

Amendment or revision

(1) If damages are larger than justified by the evidence, the appellate court will amend accordingly.
La.—Jameson v. Standard Oil Co., 2 La.App. 419.

(2) On appeal from judgment in action on fire policies wherein by stipulation of parties cases were treated as single action, and tried, as far as apportionment of loss was concerned, as a single action without a jury, appellate court would make such apportionment as court deemed equitable and revise judgments accordingly.
N.Y.—Rankin Funeral Home v. Rhode Island Ins. Co., 288 N.Y.S. 220, 247 App.Div. 670, affirmed 7 N.E.2d 685, 273 N.Y. 545.

If rule to show cause is the only procedure by which the question of sufficiency of evidence to sustain the award can be raised, the reviewing court will not consider such question on an appeal.
N.J.—Precker v. Winarsky, 146 A. 40, 7 N.J.Misc. 465.

71. Colo.—Robeson v. Miller, 35 P. 880, 4 Colo.App. 313.
N.Y.—Memorial Parks v. Dingwall, 35 N.Y.S.2d 915, 264 App.Div. 541.
4 C.J. p 889 note 82.

72. Nev.—Brownfield v. F. W. Woolworth Co., 248 P.2d 1078, 69 Nev. 294, rehearing denied 251 P.2d 589, 69 Nev. 294.
Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

72.5 Cal.—Frazier v. Frazier, 252 P.2d 698, 115 C.A.2d 560.

abuse;[72.10] and it has been stated that a refusal of the trial judge to allow punitive damages is not reviewable on appeal because such damages are not given to the party as a matter of right but are awarded to protect the public against the repetition of similar offenses.[73]

Damages in personal injury actions. Findings of the trial court as to the amount of damages in personal injury actions will be given great weight,[73.5] and will not be disturbed because of excessiveness if it does not clearly appear that the trial court unreasonably exercised its discretion and awarded damages so excessive as to be unreasonable and amount to an injustice,[74] or that the award is so grossly disproportionate to any reasonable limit of compensation warranted by the facts as to shock the sense of justice[75] or to justify the view that the award was given under the influence of passion or prejudice.[75.5]

Attorney's services. It is sometimes held that it is within the power of the appellate court to make an independent appraisal and adjudication as to the reasonable value of attorney's services which have been passed on by the trial court.[76] Generally, however, such a determination is within the discretion of the trial court, and will not be disturbed in the absence of abuse.[76.5] The appellate court will give weight to the opinion of the trial judge as a lawyer;[76.10] and if there is evidence to support the allowance by the trial court of attorney's fees, it will usually not be disturbed,[77] at least where no contradictory testimony is offered,[77.5] and the allowance is not manifestly against the weight of the evidence.[77.10] It has been stated that the trial court has a better opportunity to determine the value of such services;[78] and before the appellate court can reverse a finding that a charge for attorney's services is reasonable it must appear from the record that the charge is grossly out of proportion to the serv-

72.10 Miss.—Hunter v. Williams, 92 So.2d 367.

Tenn.—Lichter v. Fulcher, 125 S.W. 2d 501, 22 Tenn.App. 670.

Existence of oppression, fraud, or malice

Whether defendant has been guilty of oppression, fraud, or malice, as ground for award of exemplary damages, is question for the trial judge or jury to decide on evidence.

Cal.—Beckett v. City of Paris Dry Goods Co., 96 P.2d 122, 14 C.2d 633.

Sufficiency of evidence to permit award by jury

In replevin action, whether defendant's proofs at trial are sufficient to permit a jury to award exemplary damages, in event that it finds for defendant in the action, is for determination of trial judge, subject to review on appeal.

Pa.—International Electronics Co. v. N. S. T. Metal Products Co., 88 A.2d 40, 370 Pa. 213.

73. Ill.—Kulesza v. Alliance Printers & Publishers, 47 N.E.2d 547, 318 Ill. App. 231.

Miss.—Neal v. Newburger Co., 123 So. 861, 154 Miss. 691.

73.5 La.—Hobbs v. Tom & Pal, App., 171 So. 593.

74. Cal.—Ringis v. Otting, 146 P.2d 421, 63 C.A.2d 88.

Conn.—Dunstan v. Round Hill Dairy, 22 A.2d 631, 128 Conn. 300—Belsky v. Sheronas, 112 A. 268, 95 Conn. 693.

La.—Higginbotham v. Frazier, App., 92 So.2d 89—Currie v. Government Emp. Ins. Co., App., 90 So.2d 482—Jackson v. Firemen's Ins. Co., App., 86 So.2d 220—Wainwright v. Globe Indem. Co., App., 75 So.2d 554.

Mass.—Bartley v. Phillips, 57 S.E.2d 26, 317 Mass. 35.

Mich.—Denny v. Garavaglia, 52 N.W. 2d 521, 333 Mich. 317.

75. Cal.—Martin v. Shea, 187 P. 23, 182 C. 130.

75.5 Cal.—Bechtold v. Bishop & Co., 105 P.2d 984, 16 C.2d 285.

Need for scrutiny

Where an award of damages is made by trial court in an action for injuries, there is not the same need, as in case tried to jury, to scrutinize award to see if it might reasonably be considered to have been result of emotion rather than sound judgment.

Conn.—Goldberg v. Mertz, 194 A. 721, 123 Conn. 308.

76. Ala.—King v. Keith, 60 So.2d 47, 257 Ala. 463—Dent v. Foy, 107 So. 210, 214 Ala. 243.

Ark.—St. Louis-San Francisco Ry. Co. v. Hurst, 129 S.W.2d 970, 198 Ark. 546, 122 A.L.R. 965.

Cal.—Kirk v. Culley, 261 P. 994, 202 C. 501.

Nev.—Mortimer v. Pacific States Savings & Loan Co., 145 P.2d 733, 62 Nev. 142.

6 C.J. p 765 note 65.

Findings not to be ignored

Where plaintiffs alleged that defendant wrongfully removed and withheld personalty and sought punitive damages as well as attorneys' fees, allegations in complaint and statements in findings concerning attorneys' fees could not be ignored or interpreted as referring to punitive damages, where court unequivocally awarded attorneys' fees but not punitive damages.

Cal.—Viner v. Untrecht, 158 P.2d 3, 26 C.2d 261.

Agreement by parties

Where parties to action by landlord for an accounting had waived by stipulation proof as to reasonable value of attorney's services and agreed that court should fix the amount thereof, supreme court on appeal could determine the reasonable value of such services and fix attorney's fees to which landlord was entitled under lease.

Idaho.—Donaldson v. Josephson, 228 P.2d 941, 71 Idaho 207.

Reviewing tribunal, in determining whether a reasonable attorney's fee has been allowed, looks to the whole record, and applies its own judgment as to what is just between the parties.

Ala.—Dent v. Foy, 107 So. 210, 214 Ala. 243.

76.5 N.C.—Stadiem v. Stadiem, 52 S.E.2d 899, 230 N.C. 318.

Wash.—State v. Moore, 208 P.2d 1207, 34 Wash.2d 351.

76.10 Mich.—Baker v. Hall-Dodds Co., 276 N.W. 518, 282 Mich. 463.

77. Ill.—See Supreme Council of Western Catholic Union v. Saule, 193 Ill.App. 532.

Okl.—Ardmore Hotel Co. v. J. B. Klein Iron & Foundry Co., 230 P. 734, 104 Okl. 125.

6 C.J. p 765 note 64.

77.5 La.—In re Phœnix Building & Homestead Ass'n, 14 So.2d 447, 203 La. 565—In re Ætna Homestead Ass'n, 7 So.2d 188, 199 La. 929.

77.10 Ohio.—Kern v. Heilker & Heilker, 10 N.E.2d 1005, 56 Ohio App. 371.

78. Ark.—Arkansas Nat. Bank v. Stuckey, 181 S.W. 913, 121 Ark. 302.

Cal.—Albertsworth v. Glens Falls Indem. Co., 192 P.2d 66, 84 C.A. 2d 816.

ice rendered and that there is no reasonable basis for the finding of the trial court.[79]

§ 1660. Where Evidence Is Documentary

Generally, although there is authority to the contrary, the appellate court is not bound by findings of the trial court based on evidence which is entirely or largely documentary, including findings based on affidavits, depositions, or transcripts of testimony; but where, in addition to the documentary evidence, some oral evidence affords a partial basis for the findings, they are usually accorded binding effect.

It is often held that the appellate court is not bound by the trial court's findings but may make an original examination of the evidence as contained in the record and make an independent decision on the factual questions where the evidence on which the findings of the trial court are based is entirely or largely documentary,[80] or the testimony of witnesses, which instead of being given orally with the witness before the court, has been reduced to, and presented to the court in the form of, a written statement or record,[81] such as an affidavit,[82] deposition,[83]

79. Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.

Shocking conscience

Cal.—Libby v. Kipp, 262 P. 68, 87 C.A. 538.

80. Ala.—Smith v. Blinn, 127 So. 155, 221 Ala. 24.

Farmers' Exchange Bank v. Greil Bros. Co., 84 So. 427, 17 Ala. App. 287, certiorari denied Ex parte Greil Bros. Co., 84 So. 924, 203 Ala. 698—Bank of Tallassee v. Elmore Fertilizer Co., 78 So. 648, 16 Ala.App. 465—Owensboro Banking Co. v. Buck, 77 So. 940, 16 Ala. App. 346, certiorari denied Ex parte Buck, 79 So. 394, 202 Ala. 56.

Ariz.—DeSantis v. Dixon, 236 P.2d 38, 72 Ariz. 345.

Colo.—Meyer v. Milliken, 76 P.2d 420, 101 Colo. 564, certiorari denied Milliken v. Meyer, 59 S.Ct. 63, 305 U.S. 598, 83 L.Ed. 379, reversed on other grounds 61 S.Ct. 339, 311 U.S. 457, 85 L.Ed. 278, 132 A.L.R. 1395, rehearing denied 61 S. Ct. 548, 312 U.S. 712, 85 L.Ed. 1143, conformed to 111 P.2d 232, 107 Colo. 295—Kern v. Campbell, 47 P.2d 688, 97 Colo. 64—Holbrook Irr. Dist. v. Ft. Lyon Canal Co., 269 P. 574, 84 Colo. 174—Gerard v. Costen, 190 P. 526, 68 Colo. 542—First Nat. Bank of Denver v. Cripple Creek State Bank, 163 P. 1134, 63 Colo. 37.

Idaho.—Hale v. McCammon Ditch Co., 244 P.2d 151, 72 Idaho 478—Burns v. Skogstad, 206 P.2d 765, 69 Idaho 227—Phipps v. Boise Street Car Co., 107 P.2d 148, 61 Idaho 740—Jaussaud v. Samuels, 71 P.2d 426, 58 Idaho 191—John Hancock Mut. Life Ins. Co. v. Girard, 64 P.2d 254, 57 Idaho 198—Whicher v. Delaware Mines Corporation, 15 P.2d 610, 52 Idaho 304—In re Tormey's Estate, 256 P. 535, 44 Idaho 299.

Ill.—Crane Packing Co. v. Brummer, 67 N.E.2d 892, 329 Ill.App. 272.

Kan.—Davis v. Vermillion, 249 P.2d 625, 173 Kan. 508—Reno County Community Hospital Ass'n v. Woodford's Estate, 229 P.2d 730, 171 Kan. 97—Dennett v. Meredith, 211 P.2d 117, 168 Kan. 58—White v. Turner, 192 P.2d 200, 164 Kan. 659—In re Besse's Estate, 183 P. 2d 414, 163 Kan. 413—In re Kemper's Estate, 145 P.2d 103, 157 Kan. 727—In re Swisher's Estate, 110 P.2d 765, 153 Kan. 401—De Pee v. National Life & Accident Ins. Co., 62 P.2d 923, 144 Kan. 751—Wollard v. Peterson, 56 P.2d 476, 143 Kan. 566—Palmer v. Johnson, 294 P. 874, 132 Kan. 161.

Me.—Pappas v. Stacey, 116 A.2d 497, 151 Me. 36, appeal dismissed 76 S.Ct. 117, 350 U.S. 870, 100 L.Ed. 770—Mellen v. Mellen, 90 A.2d 818, 148 Me. 153.

Mass.—Petition of Gally, 107 N.E.2d 21, 329 Mass. 143—Hosken, Inc. v. Hingham Management Corp., 105 N.E.2d 232, 328 Mass. 588—Attorney General v. Book Named "Serenade," 94 N.E.2d 259, 326 Mass. 324—Murphy v. Hanlon, 79 N.E.2d 292, 322 Mass. 683—Fiduciary Trust Co. v. Mishou, 75 N. E.2d 3, 321 Mass. 615—Webber v. Rosenberg, 64 N.E.2d 98, 318 Mass. 768—Eno v. Prime Mfg. Co., 50 N.E.2d 401, 314 Mass. 686—Malden Trust Co. v. Brooks, 197 N.E. 100, 291 Mass. 273—Rodrigues v. Rodrigues, 190 N.E. 20, 286 Mass. 77—Preston v. Peck, 180 N.E. 671, 279 Mass. 16—Edwards v. Cockburn, 162 N.E. 225, 264 Mass. 112—Hopkins v. Flower, 152 N.E. 635, 256 Mass. 367—Butterworth v. Smith, 133 N.E. 100, 240 Mass. 192.

Mich.—Union Guardian Trust Co. v. Zack, 264 N.W. 309, 274 Mich. 108.

N.M.—**Corpus Juris Secundum cited in** Valdez v. Salazar, 107 P.2d 862, 863, 45 N.M. 1—In re Jubala's Estate, 59 P.2d 356, 40 N.M. 312.

N.Y.—Gray v. Breckheimer, 183 N.Y. S. 748, 193 App.Div. 231.

Or.—Buschke v. Dyck, 251 P.2d 873, 197 Or. 144.

Pa.—Collins v. Kephart, 117 A. 440, 271 Pa. 428.

R.I.—Longo v. Monast, 40 A.2d 433, 70 R.I. 460—McKendall v. Tudor Arms, 184 A. 178, 56 R.I. 109.

Wash.—Kremmel v. Schnaufer, 103 P.2d 38, 4 Wash.2d 242.

4 C.J. p 881 note 6, p 889 note 84.

Signature or handwriting

Where, on the question of whether or not certain signatures are genuine, the disputed signatures and the admitted standards are before the appellate court, it may consider the question independently of the trial court's conclusion thereon.

Mass.—Preston v. Peck, 180 N.E. 671, 279 Mass. 16.

Resolution of corporation

Where interpretation of resolution of corporation presented only a question of law, supreme court on appeal was not bound by interpretation given resolution by trial court, but would give the trial court's conclusion careful consideration.

Ariz.—Read Mullan Motor Co. v. McAtee, 268 P.2d 1108, 77 Ariz. 188, opinion corrected on other grounds 270 P.2d 977, 77 Ariz. 275.

In Missouri

(1) There is authority supporting the rule of the text.

Mo.—Feinberg v. Millner, App., 178 S.W.2d 108—Jaudon v. Lantz, 47 S.W.2d 188, 226 Mo.App. 764.

4 C.J. p 889 note 84.

(2) There is other authority apparently to the contrary.

Mo.—Hill v. Stealey, App., 153 S.W. 2d 813.

4 C.J. p 889 note 88.

81. Ala.—Montgomery v. Bostick, 144 So. 584, 225 Ala. 597.

H. H. Daniel Co. v. Brown, 94 So. 243, 18 Ala.App. 655.

Colo.—Gianella v. Haffner, 26 P.2d 817, 93 Colo. 449.

Idaho.—Pioneer Irr. Dist. v. American Ditch Ass'n, 1 P.2d 196, 50 Idaho 732.

Ill.—Kunkel v. Johnson, 109 N.E. 279, 268 Ill. 442.

Ohio.—Palotto v. Hanna Parking Garage Co., App., 68 N.E.2d 170.

4 C.J. p 889 note 84.

82. Ala.—McDermott v. Halliburton, 126 So. 854, 220 Ala. 553.

Idaho.—Cornelison v. Cornelison, 23 P.2d 252, 53 Idaho 266—Keyes v. Keyes, 9 P.2d 804, 51 Idaho 670.

Kan.—Federal Agency Inv. Co. v. Baker, 252 P. 262, 122 Kan. 460.

Pa.—In re McFarland's Estate, 105 A.2d 92, 377 Pa. 290.

S.D.—Credit Management Service v. Wendbourne, 72 N.W.2d 926.

4 C.J. p 889 note 84.

83. Ala.—Carnegie v. Carnegie, 73 So.2d 556, 261 Ala. 146—Farmer v. Johns-McBride Engineering Serv-

or report or transcript of testimony previously given;[84] and this is so although no declarations of law were asked and given or refused.[85]

The reasons given for this rule are that under such circumstances the appellate court is in just as good a position as the trial court to form a just estimate of the credence to be given to the testimony,[86] and also has more time to give to an examination of the case.[87]

As already noted in § 1656 (1), however, the fact that the trial court is in a superior position to pass on the weight and credibility of the evidence is but one of the underlying reasons for the general rule giving a binding effect on appeal to the trial court's fact findings. While this reason becomes largely nonexistent where the evidence is documentary or in writing, the other reason, that of the fundamental distinction between the functions of the trial and appellate courts, still remains. Giving to this latter reason its logical result,[88] there are a number of cases which hold that the weight of documentary or written evidence is a matter for the trial court,[89] and that, although all of the evidence is documentary or written, the findings of the trial court will be given the same weight as if the evidence were oral and not disturbed unless without support or plainly wrong.[90]

ice, 54 So.2d 708, 256 Ala. 335—Tanner v. Dobbins, 53 So.2d 549, 255 Ala. 671—Box v. Box, 45 So.2d 157, 253 Ala. 297—Martin v. Culpepper, 44 So.2d 568, 253 Ala. 412—Butler v. Guaranty Sav. & Loan Ass'n, 37 So.2d 638, 251 Ala. 449—Holman v. Weed, 26 So.2d 721, 248 Ala. 179—Cochran v. Cochran, 25 So.2d 693, 247 Ala. 588—Farrell v. Farrell, 10 So.2d 153, 243 Ala. 389—Cryar v. Cryar, 10 So.2d 11, 243 Ala. 318—Williams v. Williams, 9 So.2d 875, 243 Ala. 332—Williams v. McArthur, 199 So. 235, 240 Ala. 338—Little v. Montgomery, 180 So. 269, 235 Ala. 615—Milton v. Maples, 179 So. 519, 235 Ala. 446—Martin v. Simms, 172 So. 897, 233 Ala. 646—Cotton v. Courtright, 111 So. 7, 215 Ala. 474.

Colo.—Gianella v. Haffner, 26 P.2d 817, 93 Colo. 449.

D.C.—**Corpus Juris Secundum cited in** Rogers v. Cox, Mun.App., 75 A.2d 776, 778.

Idaho.—Saccomano v. North Idaho Shingle Co., 252 P.2d 518, 73 Idaho 284—Cannon v. Seyboldt, 48 P.2d 406, 55 Idaho 796—In re Tormey's Estate, 256 P. 535, 44 Idaho 299.

Kan.—Reno County Community Hospital Ass'n v. Woodford's Estate, 229 P.2d 730, 171 Kan. 97—In re Besse's Estate, 183 P.2d 414, 163 Kan. 413—Reed-Smith v. Lockridge, 65 P.2d 345, 145 Kan. 395.

La.—Boudreaux v. Moreau, App., 73 So.2d 192.

Mass.—Hiller v. Submarine Signal Co., 91 N.E.2d 667, 325 Mass. 546—Murphy v. Hanlon, 79 N.E.2d 292, 322 Mass. 683.

N.M.—In re Jubala's Estate, 59 P.2d 356, 40 N.M. 312—Davidson v. Enfield, 3 P.2d 979, 35 N.M. 580.

R.I.—Gillogly v. New England Transp. Co., 57 A.2d 411, 73 R.I. 456.

Tex.—Lloyds Cas. Insurer v. Shafer, Civ.App., 267 S.W.2d 588, error refused no reversible error.

Wash.—Auger v. Shideler, 161 P.2d 200, 23 Wash.2d 505—Delle v. Delle, 192 P. 966, 112 Wash. 512, rehearing denied 193 P. 569, 112 Wash. 512.

4 C.J. p 889 note 84.

Judgment entitled to great respect

Judgment or decree based on evidence in form of depositions was entitled to great respect on appeal, but its weight differed from that in causes in which testimony is heard ore tenus.

Va.—Ashby v. Dumouchelle, 40 S.E.2d 493, 185 Va. 724—Williams v. Kendrick, 37 S.E.2d 8, 184 Va. 1076—Kaplan v. Copeland, 32 S.E.2d 678, 183 Va. 589—McClintock v. Royall, 4 S.E.2d 369, 173 Va. 408.

In Pennsylvania

(1) The rule of the text prevails.

Pa.—In re McFarland's Estate, 105 A.2d 92, 377 Pa. 290—Poelcher v. Poelcher, 76 A.2d 222, 366 Pa. 3—Petition of Wilwohl, 166 A. 654, 311 Pa. 152.

(2) The credibility to be given a deposition has, however, been said to be for the trial judge.

Pa.—First Nat. Bank of Portland v. Hartman Co., 24 A.2d 582, 147 Pa. Super. 396.

84. Colo.—Carlson v. Akeyson, 172 P. 1058, 65 Colo. 35.

La.—Boudreaux v. Moreau, App., 73 So.2d 192.

N.M.—Bolles v. Pecos Irr. Co., 167 P. 280, 23 N.M. 32.

Okl.—Feagin v. Fife, 175 P.2d 81, 198 Okl. 57.

4 C.J. p 889 note 84 [a], [b].

In Kansas

(1) The rule of the text has been recognized and followed.

Kan.—Reno County Community Hospital Ass'n v. Woodford's Estate, 229 P.2d 730, 171 kan. 97—In re Besse's Estate, 183 P.2d 407, 163 Kan. 402—State Bd. of Dental Examiners v. Bohl, 174 P.2d 998, 162 Kan. 156.

(2) The rule is, however, subject to some elasticity under certain conditions.

Kan.—Akins v. Illinois Bankers Life Assur. Co., 263 P.2d 180, 166 Kan. 648.

85. Mo.—Henry v. Bell, 75 Mo. 194—Waddell v. Williams, 50 Mo. 216.

86. Idaho.—Cannon v. Seyboldt, 48 P.2d 406, 55 Idaho 796—Keyes v. Keyes, 9 P.2d 804, 51 Idaho 670.

Kan.—Lohmeyer v. Bower, 227 P.2d 102, 170 Kan. 442—State Bd. of Dental Examiners v. Bohl, 174 P. 2d 998, 162 Kan. 156.

La.—Boudreaux v. Moreau, App., 73 So.2d 192.

Mass.—Murphy v. Hanlon, 79 N.E.2d 292, 322 Mass. 683—Berry v. Kyes, 22 N.E.2d 622, 304 Mass. 56.

N.M.—Newbold v. Florance, 243 P.2d 597, 56 N.M. 284.

N.D.—Wolff v. Schlenker, 31 N.W.2d 793, 75 N.D. 645.

Or.—Buschke v. Dyck, 251 P.2d 873, 197 Or. 144.

4 C.J. p 889 note 84.

87. La.—Hall v. Hill, 6 La.Ann. 745.

88. Cal.—Porter v. Miller, 258 P. 595, 201 C. 750.

89. Cal.—Goes v. Perry, 115 P.2d 441, 18 C.2d 373—Weissbaum v. Eibeshutz, 294 P. 396, 211 C. 170.

Wis.—Spellbrink v. Bramberg, 13 N. W.2d 600, 245 Wis. 103.

90. Cal.—Porter v. Miller, 258 P. 595, 201 C. 750.

Murray v. Superior Court In and For City and County of San Francisco, 284 P.2d 1, 44 C.A.2d 611—White v. White, 54 P.2d 482, 11 C. A.2d 570, hearing denied 56 P.2d 202, 11 C.A.2d 570—Hale v. Harbor Petroleum Corporation, 33 P.2d 1039, 139 C.A. 455—In re Woolsey's Estate, 17 P.2d 767, 128 C.A. 391—Andrew v. Bankers' & Shippers' Ins. Co. of New York, 13 P.2d 515, 125 C.A. 24—Keller v. Lile, 267 P. 124, 91 C.A. 585—Development Bldg. Co. v. Woodruff, 161 P. 754, 31 C.A. 732.

Minn.—State v. Bentley, 71 N.W.2d 780, 245 Minn. 334—Sommers v. City of St. Paul, 237 N.W. 427, 183 Minn. 545—State Bank of Gibbon v. Walter, 208 N.W. 423, 167 Minn. 37—Freeburg v. Honemann, 147 N. W. 827, 126 Minn. 52.

When in addition to the documentary or written evidence there is also some oral evidence which enters into the trial court's consideration or affords a partial basis for the findings, it is usually held that the findings are to be accorded their usual binding effect,[91] at least where a substantial portion of the evidence on the issue is oral and the evidence on the whole as to such issue is conflicting.[91.5] It has been indicated, however, that if the testimony is partly oral and partly by deposition, the appellate court may weigh and pass on the deposition evidence,[92] and there is even authority to the effect that where the testimony is partly written and partly oral, it is open to the appellate court to weigh the entire evidence.[93]

Conflicting affidavits or depositions. Apparently no matter which of the different views as to the effect of documentary or written evidence is taken, the findings will not be disturbed unless manifestly wrong where they are based on conflicting affidavits[94] or depositions.[95]

The interpretation and effect of documentary evidence are for the trial court in the first instance;[96]

Tenn.—Stone v. Stonecipher, 7 Tenn. App. 614.
Tex.—Yeager v. Laredo Nat. Bank, Civ.App., 146 S.W.2d 796, error dismissed, judgment correct.
4 C.J. p 889 note 88.

Evidence not before appellate court
In suit to establish a disputed boundary, in the absence of maps on which descriptions of the respective properties were based which were before the trial court and not before the appellate court, the latter could not affirm error in the decree where findings were consistent with the calls in the muniments of title of the respective parties.
Ala.—Minor v. A. B. Legg & Sons Burial Ins. Co., 56 So.2d 408, 256 Ala. 577.

In Nevada
(1) In a decision based squarely on the ground that the supreme court has no power or jurisdiction to weigh the evidence without regard to the findings of the trial court, the rule of the text has been followed.
Nev.—Garaventa v. Gardella, 169 P. 2d 540, 63 Nev. 304.

(2) It has been held, however, that if the question is one for the court either by reason of the construction of a written instrument or undisputed facts, the supreme court is not bound by the findings or conclusions of the lower court, but may draw its own conclusion as to the legal effect of the written instrument or other evidence.
Nev.—Cassinelli v. Humphrey Supply Co., 183 P. 523, 43 Nev. 208.

91. Ala.—St. Paul Fire & Marine Ins. Co. v. Johnson, 67 So.2d 896, 259 Ala. 627—State v. Frazier, 131 So. 442, 222 Ala. 180—Taylor v. Burgett, 91 So. 786, 207 Ala. 54.
Cal.—Shearer v. Cooper, 134 P.2d 764, 21 C.2d 695—In re Jepson's Estate, 172 P. 1107, 178 C. 257.
Scott v. Sun-Maid Raisin Growers Ass'n, 57 P.2d 148, 13 C.A.2d 353.
Idaho.—Penn Mut. Life Ins. Co. v. Ireton, 65 P.2d 1032, 57 Idaho 466.
Ind.—Indianapolis Dairymen's Co-op. v. Bottema, 79 N.E.2d 399, 226 Ind. 237.
La.—Adcock v. Palmer, 153 So. 538, 179 La. 131.
Mass.—Hanrahan v. Puget Sound Power & Light Co., 126 N.E.2d 499, 332 Mass. 586—Murphy v. Hanlon, 79 N.E.2d 292, 322 Mass. 683—Berry v. Kyes, 22 N.E.2d 622, 304 Mass. 56—Edwards v. Cockburn, 162 N.E. 225, 264 Mass. 112.
Pa.—Archbald Coal Co. v. Murrin, 130 A. 300, 284 Pa. 69.
Wyo.—Sims v. Southern Surety Co., 265 P. 450, 38 Wyo. 165.
4 C.J. p 883 note 33 [k], p 889 note 87.

91.5 N.M.—Newbold v. Florance, 243 P.2d 597, 56 N.M. 284—**Corpus Juris Secundum cited in** Valdez v. Salazar, 107 P.2d 862, 863, 45 N.M. 1.

92. Colo.—Gianella v. Haffner, 26 P. 2d 817, 93 Colo. 449.
Iowa.—Luce v. Tompkins, 158 N.W. 535, 177 Iowa 168.

93. N.M.—Sanchez v. Torres, 37 P. 2d 805, 38 N.M. 556.

Oral testimony having little bearing on question presented
Appellate court must decide for itself what the facts establish, substantially as it would in an original case, where only oral testimony adduced has little, if any, bearing on question presented.
Kan.—In re Besse's Estate, 183 P. 2d 414, 163 Kan. 413.

94. Ala.—Spenny v. Sorrell, 68 So. 547, 12 Ala.App. 650.
Cal.—Bailey v. Los Angeles County, 293 P.2d 449, 46 C.2d 132—Griffith Co. v. San Diego College for Women, 289 P.2d 476, 45 C.2d 501—Murray v. Superior Court In and For City and County of San Francisco, 284 P.2d 1, 44 C.2d 611.
Muller v. Muller, 297 P.2d 789, 141 C.A.2d 722—Obergfell v. Obergfell, 286 P.2d 462, 134 C.A.2d 541—Russell v. Landau, 274 P.2d 681, 127 C.A.2d 682—Small v. Small, 268 P.2d 63, 123 C.A.2d 870—Petition of Jost, 256 P.2d 71, 117 C.A. 2d 379, reversed on other grounds Jost v. U. S., 74 S.Ct. 427, 347 U.S. 901, 98 L.Ed. 1061—Hayutin v. Rudnick, 251 P.2d 707, 115 C.A.2d 138—Baratti v. Baratti, 242 P.2d 22, 109 C.A.2d 917—Wolfson v. Haddan, 233 P.2d 145, 105 C.A.2d 147—In re Standing's Estate, 222 P.2d 465, 99 C.A.2d 668, rehearing denied 223 P.2d 255, 99 C.A.2d 668—Bishop v. Babcock, 221 P.2d 733, 99 C.A.2d 232—Carruthers v. Crown Products Co., 200 P.2d 819, 89 C.A.2d 326—Deyl v. Deyl, 199 P.2d 424, 88 C.A.2d 536—Bank of America Nat. Trust & Sav. Ass'n v. Williams, 191 P.2d 17, 84 C.A.2d 562—Rench v. Harris, 172 P.2d 576, 76 C.A.2d 113—Thompson v. Lester, 67 P.2d 1093, 20 C.A.2d 745—La Bonte & Ransome Co. v. Scellers, 265 P. 550, 90 C.A. 183—Corgiat v. Realty Mortg. Corporation of California, 260 P. 573, 86 C.A. 37—Williams v. Reed, 185 P. 515, 43 C.A. 425.
Ind.—Pinnell v. Stroyman, 4 N.E.2d 572, 102 Ind.App. 624.
Mont.—Beller v. Le Bouef, 145 P. 945, 50 Mont. 192—Middlefork Cattle Co. v. Todd, 141 P. 641, 49 Mont. 259.
S.D.—Smith v. Hart, 207 N.W. 657, 49 S.D. 582, 46 A.L.R. 811, followed in 207 N.W. 659, 49 S.D. 587.

95. N.M.—**Corpus Juris Secundum cited in** Valdez v. Salazar, 107 P.2d 862, 863, 45 N.M. 1.
W.Va.—Poling v. Bennett, 137 S.E. 883, 103 W.Va. 456—Dickinson v. Rand, 136 S.E. 42, 102 W.Va. 574.

96. Cal.—Bishop v. Kelley, 224 P.2d 814, 100 C.A.2d 775—Jones v. Wilterding, 223 P.2d 91, 100 C.A.2d 210—Nuland v. Pruyn, 222 P.2d 261, 99 C.A.2d 603—In re Parker's Estate, 220 P.2d 580, 98 C.A.2d 393—Nuland v. Pruyn, App., 216 P.2d 526, reheard 222 P.2d 261, 99 C.A.2d 603—Connor v. Jackson, 210 P.2d 897, 94 C.A.2d 462—Pierce v. Nussbaum, 200 P.2d 146, 89 C.A.2d 189—Richards v. Pacific Southwest Discount Corp., 112 P.2d 698, 44 C.A.2d 551—Kerr Gifford & Co. v. American Distilling Co., 95 P.2d 694, 35 C.A.2d 390—O'Hare v. Peacock Dairies, 79 P.2d 433, 26 C.A. 2d 345, followed in 79 P.2d 438, 26 C.A.2d 753, motion denied 82 P.2d

and where a trial court has interpreted an instrument and such an interpretation appears to be reasonable and consistent with the intent of the maker, a reviewing court will not substitute a different conclusion even though it may be as clearly tenable as the one attacked,[96.5] as where the document or instrument is uncertain or ambiguous, and the trial court's construction is made in the light of the surrounding circumstances[97] or oral evidence offered

1112, 28 C.A.2d 562—George Herz & Co. v. Solt, 72 P.2d 251, 23 C.A. 2d 178.

Mass.—Ober v. National Cas. Co., 60 N.E.2d 90, 318 Mass. 27—Bielanski v. Westfield Sav. Bank, 48 N.E.2d 627, 313 Mass. 577, 147 A. L.R. 1104—Crane Const. Co. v. Commonwealth, 195 N.E. 110, 290 Mass. 249.

N.M.—Pugh v. Heating & Plumbing Finance Corp., 161 P.2d 714, 49 N. M. 234.

Pa.—Pears v. Shannon, 198 A. 307, 329 Pa. 278.

Findings on questions of fact relating to intentions of parties have same controlling force on appeal as though they were findings concerning acts of parties.

Cal.—Ross v. Pacific Mortg. Guaranty Co., 61 P.2d 368, 16 C.A.2d 672.

Discrepancy arising in deeds in chain of title was matter for determination by trial court, whose implied finding thereon is controlling on appeal from judgment quieting title.

Cal.—Wagnor v. Blume, App., 159 P.2d 55, reheard 161 P.2d 1001, 71 C.A.2d 94.

96.5 Cal.—In re Pearson's Estate, 203 P.2d 52, 90 C.A.2d 436.

97. Cal.—Decter v. Stevenson Properties, 247 P.2d 11, 39 C.2d 407—Transportation Guarantee Co. v. Jellins, 174 P.2d 625, 29 C.2d 242—Medico-Dental Bldg. Co. of Los Angeles v. Horton & Converse, 132 P.2d 457, 21 C.2d 411—Johnston v. Landucci, 130 P.2d 405, 21 C.2d 63, 138 A.L.R. 1355—Universal Sales Corp. v. California Press Mfg. Co., 128 P.2d 665, 20 C.2d 751—In re Northcutt's Estate, 107 P.2d 607, 16 C.2d 683—Teater v. Good Hope Development Corp., 93 P.2d 112, 14 C.2d 196—City of Manhattan Beach v. Cortelyou, 76 P.2d 483, 10 C.2d 653—McNeny v. Touchstone, 60 P. 2d 986, 7 C.2d 429—Meyers v. Texas Co., 59 P.2d 132, 6 C.2d 610—Mitchell Camera Corp. v. Fox Film Corp., 59 P.2d 127, reheard 64 P. 2d 946, 8 C.2d 192—Kautz v. Zurich General Accident & Liability Ins. Co., 300 P. 34, 212 C. 576.

Poles v. Glass, 288 P.2d 986, 136 C.A.2d 508—In re Halsell's Estate, 284 P.2d 821, 133 C.A.2d 665—Brogdex Co. v. Walcott, 267 P.2d 28, 123 C.A.2d 575—Millard v. Dether, 262 P.2d 365, 120 C.A.2d 893—Rost v. Bryson, 258 P.2d 72, 118 C.A.2d 489—Richardson v. Walter Land Co., 258 P.2d 42, 118 C.A.2d 459—In re Guasti's Estate, 256 P.2d 629, 117 C.A.2d 612—Davis v. Basalt Rock Co., 237 P.2d 338, 107 C.A.2d 436, motion denied 250 P.2d 254, 114 C.A.2d 300—Jones v. Wilterding, 223 P.2d 91, 100 C.A.2d 210—Nuland v. Pruyn, 222 P.2d 261, 99 C.A.2d 603—In re Parker's Estate, 220 P.2d 580, 98 C.A.2d 393—La Jolla Casa de Manana v. Hopkins, 219 P.2d 871, 98 C.A.2d 339—Chaney v. Schneider, 206 P.2d 669, 92 C.A.2d 88—Alexander v. Alexander, 199 P.2d 348, 88 C.A. 2d 724—Lori, Limited, v. Wolfe, 192 P.2d 112, 85 C.A.2d 54—Reid v. Johnson, 192 P.2d 106, 85 C.A. 2d 112—In re Welch's Estate, 188 P.2d 797, 83 C.A.2d 391—Whitlow v. Wolfe, 186 P.2d 752, 82 C.A.2d 610—Erich v. Dunkly, 179 P.2d 638, 79 C.A.2d 345—Paganucci v. Kalpouzos, 178 P.2d 62, 78 C.A.2d 714—Riccomini v. Riccomini, 176 P. 2d 750, 77 C.A.2d 850—Schaefer v. Lack, 173 P.2d 370, 76 C.A.2d 556—Burns v. McGraw, 171 P.2d 148, 75 C.A.2d 481—Baird v. Lindblad, 170 P.2d 488, 75 C.A.2d 202—Maguire v. Lees, 169 P.2d 411, 74 C. A.2d 697—Pitzer v. Wedel, 165 P. 2d 971, 73 C.A.2d 86—Davis v. Stulman, 164 P.2d 787, 72 C.A.2d 255—In re Murray's Estate, 160 P. 2d 880, 70 C.A.2d 300—In re Marin's Estate, 158 P.2d 412, 69 C.A. 2d 147—Larrey v. Sellers, 146 P. 2d 927, 63 C.A.2d 453—Morrison v. Willhoit, 145 P.2d 707, 62 C.A.2d 830—Isenberg v. Slayer, 145 P.2d 691, 62 C.A.2d 938—Republic Pictures Corp. v. St. John, 144 P.2d 603, 62 C.A.2d 353—Herberts Laurel-Ventura v. Laurel-Ventura Holding Corp., 138 P.2d 43, 58 C.A. 2d 684—Fresno Irr. Dist. v. Smith, 136 P.2d 382, 58 C.A.2d 48—People v. Marsicano, 135 P.2d 16, 57 C.A.2d 591—In re Goldsworthy's Estate, 129 P.2d 949, 54 C.A.2d 666—Scoville v. De Bretteville, 123 P.2d 616, 50 C.A.2d 622—Hayword Lumber & Investment Co. v. American Nat. Bank of San Bernardino, 123 P.2d 56, 50 C.A.2d 247—Bodkin v. Silerira, 120 P.2d 910, 49 C.A.2d 1—Neff v. Mutual Life Ins. Co. of New York, 119 P.2d 404, 48 C.A.2d 110—In re Chapin's Estate, 118 P.2d 499, 47 C.A.2d 605—Bayle-Lacoste & Co. v. Superior Court of Alameda County, 116 P.2d 458, 46 C.A.2d 636—Caletti v. State, 114 P.2d 9, 45 C.A. 2d 302—Tillis v. Western Fruit Growers, 113 P.2d 267, 44 C.A.2d 826—Coviello v. Moco Fruit Co., 109 P.2d 765, 42 C.A.2d 637—In re Burnett's Estate, 109 P.2d 26, 42 C. A.2d 427—Tide Water Associated Oil Co. v. Curtin, 107 P.2d 945, 41 C. A.2d 884—In re Wilson's Estate, 104 P.2d 716, 40 C.A.2d 229—McKee v. Lynch, 104 P.2d 675, 40 C.A.2d 216—Berdan v. Berdan, 103 P.2d 622, 39 C.A.2d 478—Paulin v. Paulin, 102 P.2d 809, 39 C.A.2d 180—Lewis v. Lewis, 93 P.2d 850, 34 C.A. 2d 422—In re Mallon's Estate, 93 P.2d 245, 34 C.A. 147—Calidino Hotel Co. of San Bernardino v. Bank of America Nat. Trust & Savings Ass'n, 87 P.2d 923, 31 C.A.2d 295—Weaver v. Grunbaum, 87 P.2d 406, 31 C.A.2d 42—Evans v. Citizens National Trust & Savings Bank of Riverside, 84 P.2d 218, 29 C.A.2d 133—In re Maloney's Estate, 80 P. 2d 998, 27 C.A.2d 332—O'Hare v. Peacock Dairies, 79 P.2d 433, 26 C. A.2d 345, followed in 79 P.2d 443, 26 C.A.2d 753, motion denied 82 P. 2d 1112, 28 C.A.2d 562—In re Bourn's Estate, 78 P.2d 193, 25 C. A.2d 590—In re Boyd's Estate, 74 P.2d 1049, 24 C.A.2d 287—Bank of America Nat. Trust & Savings Ass'n v. Superior Court in and for City and County of San Francisco, 71 P.2d 296, 22 C.A.2d 450—Caspary v. Moore, 70 P.2d 224, 21 C.A.2d 694—Hacker Pipe & Supply Co. v. Chapman Valve Mfg. Co., 61 P. 2d 944, 17 C.A.2d 265—Swerdfeger v. United Acceptance Corporation, 50 P.2d 818, 9 C.A.2d 590—Melvin v. Berendsen, 46 P.2d 189, 7 C.A. 2d 389—Palma v. Leslie, 45 P.2d 391, 6 C.A.2d 702—Whepley Oil Co. v. Associated Oil Co., 44 P.2d 670, 6 C.A.2d 94—Payne v. Pathe Studios, 44 P.2d 598, 6 C.A.2d 136—Salmon v. Allen, 36 P.2d 153, 1 C.A.2d 115—Moakley v. Los Angeles Pac. Ry. Co., 34 P.2d 218, 139 C.A. 421—Hale v. Harbor Petroleum Corporation, 33 P.2d 1039, 139 C.A. 455—Farmers' & Merchants' Nat. Bank of Los Angeles v. Bailie, 32 P.2d 157, 138 C.A. 143—Serviss v. Jones, 24 P.2d 881, 133 C.A. 640—Tilden Lumber & Mill Co. v. Bacon Land Co., 3 P. 2d 350, 116 C.A. 689—Oscar Krenz Copper & Brass Works v. England, 293 P. 689, 109 C.A. 747—Katz v. People's Finance & Thrift Co., 281 P. 1097, 101 C.A. 552—Manley v. Pacific Mill & Timber Co., 250 P. 710, 79 C.A. 641—Slama Tire Protecter Co. v. Ritchie, 161 P. 25, 31 C.A. 555.

Division of Labor Law Enforcement, Dept. of Indus. Relations v. Mayfair Markets, 227 P.2d 463, 102 C.A.2d Supp. 943.

Fla.—Gralynn Laundry v. Virginia

to explain the meaning.[98]

Since the interpretation of a written instrument presents a question of law, however, a reviewing court is not bound by the conclusion of the trial court.[98.5] Thus, the appellate court is not bound by the trial court's construction of unambiguous language of a written document,[99] or by the construction of a written instrument based solely on the terms of the instrument,[99.5] where no extrinsic evidence was introduced on the issue of its proper construction,[99.10] or where the evidence is without conflict and not susceptible of conflicting inferences;[99.15] and if a finding is in conflict with an express

Bond & Mortgage Corporation, 163 So. 706, 121 Fla. 312.

Kan.—Bolin v. Johnson County Nat. Bank & Trust Co., 159 P.2d 477, 160 Kan. 61—Stinson v. Bell, 150 P. 603, 96 Kan. 191.

N.H.—Carlo Bianchi & Co. v. New Hampshire Sav. Bank, 56 A.2d 533, 95 N.H. 14—Glines v. Auger, 42 A.2d 219, 93 N.H. 340.

N.Y.—Peeples v. State, 38 N.Y.S.2d 690, 179 Misc. 272.

Tex.—Cook Paint & Varnish Co. v. Lydick-Barmann Co., Civ.App., 230 S.W.2d 581, error dismissed—Labruzzo v. Catalina, Civ.App., 160 S.W.2d 83, error refused.

Wis.—Rimling v. Scherper, 240 N.W. 159, 206 Wis. 532.

Persuasive effect of decision

While decision of trial court construing a written instrument is entitled to consideration and weight in reviewing court, it does not have such persuasive effect as does the conclusion reached solely by inferences drawn from established facts.

Wis.—In re Mechler's Will, 16 N.W. 2d 373, 246 Wis. 45.

Determination not undertaken on appeal independent of evidence

In action to cancel a deed for nondelivery by grantor during his lifetime, appellate court on review should not undertake to determine maker's intention independent of evidence except where intention is not in doubt from full contents of the instrument itself.

Ga.—Childs v. Mitchell, 50 S.E.2d 216, 204 Ga. 542.

98. Cal.—Taylor v. J. B. Hill Co., 189 P.2d 258, 31 C.2d 372—Stevenson v. San Diego County, 161 P.2d 553, 26 C.2d 842—In re Rule's Estate, 152 P.2d 1003, 25 C.2d 1, 155 A.L.R. 1319.

Millard v. Dether, 262 P.2d 365, 120 C.A.2d 893—In re Beebee's Estate, 258 P.2d 1101, 118 C.A.2d 851—Hayward Lumber & Inv. Co. v. Construction Products Corp., 255 P.2d 473, 117 C.A.2d 221—Abbott v. Hauschild, 248 P.2d 41, 113 C.A.2d 383—Overton v. Vita-Food Corp., 210 P.2d 757, 94 C.A.2d 367—Crillo v. Curtola, 204 P.2d 941, 90 C.A.2d 263—Herberts Laurel-Ventura v. Laurel-Ventura Holding Corp., 138 P.2d 43, 58 C.A.2d 684—Ross v. Pacific Mortg. Guaranty Co., 61 P.2d 368, 16 C.A.2d 672—Scott v. Sun-Maid Raisin Growers Ass'n, 57 P.2d 148, 13 C.A.2d 353—Aries v. Squires, 287 P. 515, 105 C.A. 414.

98.5 Cal.—In re Pearson's Estate, 203 P.2d 52, 90 C.A.2d 436.

Colo.—Rio Grande Fuel Co. v. Colorado Central Power Co., 63 P.2d 470, 99 Colo. 395.

Kan.—Brungardt v. Smith, 290 P. 2d 1039, 178 Kan. 629—Thom v. Thom, 237 P.2d 250, 171 Kan. 651.

Ky.—Holbrook v. Hammond, 192 S. W.2d 746, 302 Ky. 10.

Mich.—Union Guardian Trust Co. v. Zack, 264 N.W. 309, 274 Mich. 108.

N.H.—Occhipinti v. Weiner, 20 A.2d 483, 91 N.H. 388.

N.Y.—Johnson v. Western Union Telegraph Co., 57 N.E.2d 721, 293 N. Y. 379, motion denied 59 N.E.2d 446, 293 N.Y. 859.

Ohio.—Kocher v. Ricketts, App., 49 N.E.2d 35.

Defamatory effect of communication

Determination by court that communication was capable of a defamatory meaning was reviewable on appeal.

Pa.—McAndrew v. Scranton Republican Pub. Co., 72 A.2d 780, 364 Pa. 504.

99. Ariz.—Daily Mines Co. v. Control Mines, 124 P.2d 324, 59 Ariz. 138.

Cal.—Moore v. Wood, 160 P.2d 772, 26 C.2d 621—In re Platt's Estate, 131 P.2d 825, 21 C.2d 343.

Thompson v. Levereau, 153 P.2d 206, 66 C.A.2d 795—Lane-Wells Co. v. Schlumberger Well Surveying Corp., 150 P.2d 251, 65 C.A.2d 180—Landres v. Rosasco, 144 P.2d 20, 62 C.A.2d 99.

Mass.—Denenberg v. Jurad, 15 N.E. 2d 660, 300 Mass. 488.

R.I.—McKendall v. Tudor Arms, Inc., 185 A. 136, 56 R.I. 221—McKendall v. Tudor Arms, 184 A. 178, 56 R.I. 109.

99.5 Cal.—Meyer v. State Bd. of Equalization, 267 P.2d 257, 42 C. 2d 376—Trubowitch v. Riverbank Canning Co., 182 P.2d 182, 30 C. 2d 355—Stevenson v. San Diego County, 161 P.2d 553, 26 C.2d 842—In re Platt's Estate, 131 P.2d 825, 21 C.2d 343.

Fischer v. Means, 198 P.2d 389, 88 C.A.2d 137—Free v. Sluss, 197 P.2d 854, 87 C.A.2d Supp. 933—In re Norris' Estate, 177 P.2d 299, 78 C.A.2d 152—Mitchel v. Brown, 110 P.2d 456, 43 C.A.2d 217—Wall v. Equitable Life Assur. Soc. of U. S., 91 P.2d 145, 33 C.A.2d 112—Texas Co. v. Todd, 64 P.2d 1180, 19 C.A.2d 174.

N.H.—Lynch v. Grundy, 86 A.2d 114, 97 N.H. 286—Smart v. Hernandez, 66 A.2d 643, 95 N.H. 492—Brampton Woolen Co. v. Local Union 112, 61 A.2d 796, 95 N.H. 255—Hogan v. Lebel, 58 A.2d 321, 95 N.H. 95.

Conclusion of trial court erroneously reached through consideration of incompetent evidence, is not binding on appellate court.

Cal.—Universal Sales Corp. v. California Press Mfg. Co., 118 P.2d 291, reheard 128 P.2d 665, 20 C.2d 751—Rilovich v. Raymond, 67 P.2d 1062, 20 C.A.2d 630.

Determination of date

Where date appearing on alleged will in form of letter was in dispute, appellate court could determine the date itself by examining the letter.

Cal.—In re Beebee's Estate, 258 P.2d 1101, 118 C.A.2d 851.

99.10 Cal.—Meyer v. State Bd. of Equalization, 267 P.2d 257, 42 C.2d 376—In re Platt's Estate, 131 P.2d 825, 21 C.2d 343—Universal Sales Corp. v. California Press Mfg. Co., 118 P.2d 291, reheard 128 P.2d 665, 20 C.2d 751.

Lubin v. Lubin, 302 P.2d 49, 144 C.A.2d 781—Livingston Rock & Gravel Co. v. De Salvo, 288 P. 2d 317, 136 C.A.2d 156—Stockton Theatres v. Palermo, 268 P.2d 799, 124 C.A.2d 353—In re Beebee's Estate, 258 P.2d 1101, 118 C.A.2d 851—In re Moody's Estate, 257 P.2d 709, 118 C.A.2d 300—Warming v. Shapiro, 257 P.2d 74, 118 C.A.2d 7—In re Erlanger's Estate, 230 P.2d 33, 103 C.A.2d 659—Record v. Indemnity Ins. Co. of North America, 229 P.2d 851, 103 C.A.2d 434—Clark v. Tide Water Associated Oil Co., 220 P.2d 628, 98 C.A.2d 488—Chase v. Leiter, 215 P.2d 756, 94 C.A.2d 439—Crillo v. Curtola, 204 P.2d 941, 90 C.A.2d 263—In re Sahlender's Estate, 201 P.2d 69, 89 C.A. 2d 329—Transport Oil Co. v. Exeter Oil Co., 191 P.2d 129, 84 C.A. 2d 616—Ohran v. National Auto. Ins. Co., 187 P.2d 66, 82 C.A.2d 636—La Lumia v. Northern Cal. Packing Co., 172 P.2d 94, 75 C.A.2d 917—In re O'Brien's Estate, 168 P.2d 432, 74 C.A.2d 405.

99.15 Cal.—In re Platt's Estate, 131 P.2d 825, 21 C.2d 343.

Oil Base, Inc. v. Transport Indem. Co., 299 P.2d 952, 143 C.A. 2d 453, remittitur corrected 306 P.

provision of a written agreement of the parties, which is the controlling fact in the case, the finding will be disregarded by the appellate court.[1] Although an agreement is unambiguous, if the trial court has interpreted it in accordance with the meaning placed upon it by the parties, the findings will not be disturbed.[2]

Notwithstanding the meaning and contents of an instrument or document as presented in evidence are clear, if the question presented is whether or not certain words were in the instrument at the time it was signed, and as to this there is conflicting oral evidence, the trial court's finding on the question is as conclusive and binding as any other finding on conflicting evidence.[3] On the other hand, the trial court's finding on the issue whether uncertainty or ambiguity exists in a contract is not binding on appeal.[3.5]

§ 1661. Case Tried on Agreed Statement of Facts

The appellate court will consider the finding of a trial court based on an agreed statement of ultimate facts as if trying the case originally in order to determine whether the facts warranted the judgment.

The finding of the trial court in a case submitted to it on an agreed statement of ultimate facts presents a question of law, and the appellate court, having the same means as the trial court had of reaching a correct conclusion of law on the facts, will consider it as if trying the case originally in order to determine whether the facts warranted the judgment.[4] The holding of the trial court will be sustained if the evidential facts agreed on support the judgment,[5] or reasonable minds might well differ in the conclusions reached under the agreed statement,[6] although documentary evidence involved indicates the facts to be otherwise than as stipulated.[7] On the other hand, if the facts are insufficient to sustain the judgment or there is a lack of clearness and certainty on the material points, the judgment will not be permitted to stand.[8]

§ 1662. In Equity

In many jurisdictions an appeal in equity brings the facts before the appellate court for a trial de novo, so that the court is not bound by the fact findings of the chancellor, but has the right to review and weigh the evidence and find the facts for itself, but in some other jurisdictions the fact findings of a chancellor or trial judge in an equity case have the same effect as findings in a law action.

In many jurisdictions, except where the scope of the appeal has been limited by stipulation of the parties,[9] or the point on which the appeal is taken,[10] an appeal in equity brings the facts before the appellate court for a trial de novo so that it is in no way concluded or bound by the fact findings of the chancellor trying the case, but has the right and duty to review and weigh all the evidence in the case

2d 924—Rutherford, Inc. v. Rouse, 260 P.2d 808, 120 C.A.2d 129—In re Beebee's Estate, 258 P.2d 1101, 118 C.A.2d 851—Abbott v. Hauschild, 248 P.2d 41, 113 C.A.2d 383—Bettis Rubber Co. v. Kleaver, 233 P.2d 82, 104 C.A.2d 821—Wall v. Equitable Life Assur. Soc. of U. S., 91 P.2d 145, 33 C.A.2d 112.
Wash.—Miller v. Heyes, 136 P.2d 157, 17 Wash.2d 467.

No substantial conflict
Cal.—MacDonald v. Rosenfeld, 188 P.2d 519, 83 C.A.2d 221.

1. Conn.—Klein v. Munson, 151 A. 177, 111 Conn. 709—Torkomian v. Russell, 97 A. 760, 90 Conn. 481.

2. Pa.—Ruffennach v. People's Trust Co., 178 A. 668, 319 Pa. 158.

3. Ala.—Ætna Ins. Co. v. Kacharos, 147 So. 438, 226 Ala. 504, 91 A.L.R. 1432.

3.5 Cal.—Universal Sales Corp. v. California Press Mfg. Co., 118 P. 2d 291, reheard 128 P.2d 665, 20 C.2d 751—Brant v. California Dairies, 48 P.2d 13, 4 C.2d 128.
Wagner v. Shapona, 267 P.2d 878, 128 C.A.2d 451—Leonard v. Houston, 265 P.2d 566, 122 C.A.2d 541—Hunter v. Sparling, 197 P.2d 807, 87 C.A.2d 711—Neff v. Mutual Life Ins. Co. of New York, 119 P.2d 404, 48 C.A.2d 110.

4. U.S.—Panama R. Co. v. Beckford, Canal Zone, 231 F. 436, 145 C.C.A. 430.
Ind.—General Asbestos & Supply Co. v. Ætna Casualty & Surety Co., 198 N.E. 813, 101 Ind.App. 207.
Kan.—Davis v. Vermillion, 249 P.2d 625, 173 Kan. 508—Lohmeyer v. Bower, 227 P.2d 102, 170 Kan. 442—City of Wichita v. Boles, 135 P. 2d 542, 156 Kan. 619.
Mass.—Fiduciary Trust Co. v. Mishou, 75 N.E.2d 3, 321 Mass. 615—Pitman v. Pitman, 50 N.E.2d 69, 314 Mass. 465, 150 A.L.R. 509—Gar Wood Industries v. Colonial Homes, 24 N.E.2d 767, 305 Mass. 41, 126 A.L.R. 591—Hopkins v. Hopkins, 192 N.E. 145, 287 Mass. 542.
Mo.—Berghorn v. Reorganized School Dist. No. 8, Franklin County, 260 S.W.2d 573, 364 Mo. 121.
Okl.—Odom v. Turner, 230 P.2d 487, 204 Okl. 370.
Pa.—In re Jordan's Estate, 165 A. 652, 310 Pa. 401.
Tex.—Temple Hill Development Co. v. Lindholm, Com.App., 231 S.W. 321, opinion conformed to, Civ.App., 234 S.W. 237.
Home Service Cas. Ins. Co. v. Barry, Civ.App., 277 S.W.2d 280, error refused no reversible error.
4 C.J. p 889 note 89.

5. Mass.—Nutter v. Mroczka, 21 N. E.2d 979, 303 Mass. 343—American Congregational Ass'n v. Abbot, 147 N.E. 895, 252 Mass. 535.
Wis.—Urban v. Trautmann, 24 N.W. 2d 619, 249 Wis. 264.
4 C.J. p. 890 note 90.

6. Ohio.—City Ry. Co. v. Shively, 17 Ohio App. 172.

Inference from stipulated facts
Judgment of trial court made on inferences from stipulated facts will not be upset on appeal in absence of gross abuse of discretion.
Cal.—Black v. Black, 204 P.2d 950, 90 C.A.2d 328.

7. Cal.—Corporation of America v. Harris, 43 P.2d 307, 5 C.A.2d 452.

8. Mo.—Carr v. Lewis Coal Co., 8 S.W. 907, 96 Mo. 149, 9 Am.S.R. 328.
4 C.J. p 890 note 91.

9. Iowa.—Doud v. Meighan, 1 N.W. 612, 51 Iowa 701.
4 C.J. p 897 note 81 [a].

10. Mo.—Wilson v. Caulfield, 67 S. W.2d 761, 228 Mo.App. 1206.

and find the facts for itself,[11] although, as shown infra § 1663, it may out of deference adopt the findings of the chancellor as its own.

11. Ala.—Fannin v. Trotter, 109 So. 102, 215 Ala. 17—Folmar Mercantile Co. v. Town of Luverne, 83 So. 107, 203 Ala. 363—Citizens' Light, Heat & Power Co. v. Central Trust Co. of Illinois, 75 So. 330, 200 Ala. 18.

Ark.—Ft. Smith Light & Traction Co. v. Bourland, 254 S.W. 481, 160 Ark. 1, affirmed 45 S.Ct. 249, 267 U.S. 330, 67 L.Ed. 631, rehearing denied and opinion amended 45 S.Ct. 511, 268 U.S. 676, 69 L.Ed. 631—Lewis v. Brown, 224 S.W. 986, 145 Ark. 492.

Del.—DuPont v. DuPont, 103 A.2d 234.

Gebhart v. Belton, 91 A.2d 137, 33 Del.Ch. 144, affirmed Brown v. Board of Ed. of Topeka, Kan., 75 S.Ct. 753, 349 U.S. 294, 99 L.Ed. 1083—Sohland v. Baker, 141 A. 277, 15 Del.Ch. 431, 58 A.L.R. 693.

Iowa.—In re O'Donnell's Guardianship, 40 N.W.2d 35, 241 Iowa 77—Uttvits v. Polsley, 298 N.W. 898, 230 Iowa 780—Geil v. Babb, 242 N.W. 34, 214 Iowa 263—Manning v. Ottumwa Auto Co., 232 N.W. 501, 210 Iowa 1182—Sutton v. Rhodes, 217 N.W. 626, 205 Iowa 227—Jordan v. Sharp, 214 N.W. 572, 204 Iowa 11—Northern Lumber Co. v. Clausen, 208 N.W. 72, 201 Iowa 701—Olmstead v. Lee, 200 N.W. 690—Farmers' Loan & Trust Co. v. Scheetz, 195 N.W. 348, 196 Iowa 692.

Ky.—King v. McMillan, 169 S.W.2d 10, 293 Ky. 399—Goff v. Charles, 143 S.W.2d 866, 284 Ky. 64—Mayhew v. McGlothlin, 106 S.W.2d 643, 269 Ky. 184—Ream v. Fugate, 97 S.W.2d 11, 265 Ky. 463—Thompson v. Dulaney, 75 S.W.2d 524, 255 Ky. 794—Furnace Gap Coal Co. v. White, 74 S.W.2d 4, 255 Ky. 351—Central Kentucky Natural Gas Co. v. Williams, 60 S.W.2d 580, 249 Ky. 242—Fisher v. Fisher's Adm'r, 46 S.W.2d 85, 242 Ky. 262—Stege v. Stege's Trustee, 35 S.W.2d 324, 237 Ky. 197—Hatcher-Powers Shoe Co. v. Kirk, 24 S.W.2d 903, 233 Ky. 19—Kash v. Lewis, 6 S.W.2d 1098, 224 Ky. 679—Goodin v. Turner, 300 S.W. 327, 222 Ky. 132—Taber v. McGregor, 234 S.W. 194, 192 Ky. 600—Johnston v. Williams, 220 S. W. 1057, 187 Ky. 764.

Md.—Gallagher v. Garrett, 124 A. 898, 144 Md. 241.

Mass.—Shoolman v. Wales Mfg. Co., 118 N.E.2d 71, 311 Mass. 211—291 Washington St., Inc. v. School St. Liquors, Inc., 117 N.E.2d 809, 331 Mass. 150—Cianciulli v. Marlowe, 114 N.E.2d 510, 330 Mass. 410—Town House, Inc. of Boston v. Hurley, 91 N.E.2d 758, 325 Mass. 621—Reeves v. Scott, 87 N.E.2d 833, 324 Mass. 594—Elovitz v. Smith, 82 N.E.2d 806, 323 Mass. 753—Prudential Acceptance Co. v. Ætna Life Ins. Co., 70 N.E.2d 818, 320 Mass. 763—Sterling Realty Co. v. Tredennick, 64 N.E.2d 921, 319 Mass. 153, 162 A.L.R. 1095—Ziegler v. McKinlay, 64 N.E.2d 15, 318 Mass. 765—Silbert v. Kerstein, 62 N.E.2d 109, 318 Mass. 476—O'Donnell v. Commissioner of Corporations and Taxation, 60 N.E.2d 11, 317 Mass. 664—Jurewicz v. Jurewicz, 58 N.E.2d 832, 317 Mass. 512—Kneeland v. Bernardi, 58 N.E. 2d 823, 317 Mass. 517—Cooperstein v. Bogas, 58 N.E.2d 131, 317 Mass. 341—First Nat. Stores v. First Nat. Liquor Co., 55 N.E.2d 940, 316 Mass. 538—MacLennan v. MacLennan, 55 N.E.2d 928, 316 Mass. 593—New England Trust Co. v. Commissioner of Corporations and Taxation, 53 N.E.2d 1001, 315 Mass. 639—Converse v. Boston Safe Deposit & Trust Co., 53 N.E.2d 841, 315 Mass. 544—Hurley v. Flanagan, 48 N.E.2d 621, 313 Mass. 567—Saltman v. Smith, 46 N.E.2d 550, 313 Mass. 135—Plumer v. Luce, 39 N.E.2d 961, 310 Mass. 789—Boyer v. Bowles, 37 N.E.2d 489, 310 Mass. 134—Albana v. Puopolo, 36 N.E. 2d 398, 309 Mass. 501—Greeley v. Flynn, 36 N.E.2d 394, 310 Mass. 23—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—National Shoe Corp. v. National Shoe Mfg. Co., 19 N.E.2d 734, 302 Mass. 449—Fallon v. Mains, 19 N.E.2d 68, 302 Mass. 166—Paloeian v. Day, 13 N.E.2d 398, 299 Mass. 586—Harpoot Assyrian United Ass'n of America v. Assyrian Nat. Union, 5 N.E.2d 435, 296 Mass. 224—Elkind v. Pinkerton, 2 N.E.2d 456, 294 Mass. 502—Vaughan v. Vaughan, 200 N.E. 912, 294 Mass. 164—Malden Trust Co. v. Brooks, 197 N.E. 100, 291 Mass. 473—Wyness v. Crowley, 196 N.E. 924, 292 Mass. 459—Masterson v. American Employers' Ins. Co., 193 N.E. 59, 288 Mass. 518—Newburyport Soc. for Relief of Aged Women v. Noyes, 192 N.E. 54, 287 Mass. 530—Albert Richards Co. v. The Mayfair, 191 N.E. 430, 287 Mass. 280—Tuelle v. Flint, 186 N.E. 222, 283 Mass. 106—Ryder v. Donovan, 185 N.E. 473, 282 Mass. 551—Fennell v. Russell, 184 N.E. 675, 282 Mass. 67—Adams v. Silverman, 182 N.E. 1, 280 Mass. 23—Bankers' Trust Co. v. Dockham, 181 N.E. 174, 279 Mass. 199—Shadman v. O'Brien, 180 N.E. 532, 278 Mass. 579—Brooks v. Bennett, 177 N.E. 685, 277 Mass. 8—New England Wood Heel Co. v. Nolan, 167 N.E. 323, 268 Mass. 191, 66 A.L.R. 1079—Draper v. Draper, 166 N.E. 874, 267 Mass. 528—Beaudette v. Graham, 165 N.E. 671, 267 Mass. 7—Reid v. Grat, 158 N.E. 339, 261 Mass. 72, 55 A.L.R. 330—Berman v. Coakley, 153 N.E. 463, 257 Mass. 159—Witherington v. Nickerson, 152 N.E. 707, 256 Mass. 351—Fitzgerald v. Fitzgerald, 138 N.E. 234, 244 Mass. 61—Appeal of Cook, 137 N.E. 299, 243 Mass. 149—Martell v. Dorey, 126 N.E. 354, 235 Mass. 35, certiorari dismissed Byrne v. Martell, 41 S.Ct. 148, 254 U.S. 665, 65 L. Ed. 465—Donnelly v. Alden, 118 N. E. 298, 229 Mass. 109—Glazier v. Everett, 112 N.E. 1009, 224 Mass. 184—Hayes v. Penn Mut. Life Ins. Co., 111 N.E. 168, 222 Mass. 382—Rubenstein v. Lottow, 107 N.E. 718, 220 Mass. 156.

Mich.—Crooker v. Crooker, 65 N.W. 2d 767, 340 Mich. 250—Polander v. Polander, 62 N.W.2d 449, 338 Mich. 646—Reed v. Vander Zalm, 57 N.W.2d 304, 336 Mich. 1—Vanden Bogert v. May, 55 N.W.2d 115, 334 Mich. 606—Green v. Bambrick, 49 N.W.2d 160, 331 Mich. 243—McDonald v. Scheifer, 34 N.W.2d 573, 323 Mich. 117—Hill v. Hairston, 1 N.W.2d 34, 299 Mich. 672—Strandt v. Strandt, 270 N.W. 709, 278 Mich. 354—Sun Life Assur. Co. of Canada v. Allen, 259 N.W. 281, 270 Mich. 272—Shultz v. McCarty, 235 N.W. 215, 253 Mich. 445—Penczak v. Penczak, 213 N.W. 117, 238 Mich. 97.

Mo.—Lukas v. Hays, 283 S.W.2d 561—Miller v. Coffeen, 280 S.W.2d 100—Cleary v. Cleary, 273 S.W.2d 340—Allen v. Allen, 270 S.W.2d 33, 364 Mo. 955—Howell v. Reynolds, 249 S.W.2d 381—Godwin v. Graham, 228 S.W.2d 789, 360 Mo. 418—Binnion v. Clark, 221 S.W.2d 214, 359 Mo. 202—Leone v. Bear, 241 S.W.2d 1008, 362 Mo. 464—Proffit v. Houseworth, 231 S.W.2d 612, 360 Mo. 947—Scheer v. Gerleman, 221 S.W.2d 875—Hoover v. Wright, 202 S.W.2d 83—Kuhn v. Zepp, 196 S.W.2d 249, 355 Mo. 295—Sloan v. Dunlap, 194 S.W.2d 32, 354 Mo. 1211—Maguire v. Wander, 193 S.W.2d 900—Schebaum v. Mersman, 191 S.W.2d 671—Kilbourn v. Kilbourn, 190 S.W.2d 206, 354 Mo. 17—Sutter v. Easterly, 189 S.W.2d 284, 354 Mo. 282, 162 A.L.R. 437—Nelson v. Hammett, 189 S.W. 2d 238—Shepard v. Shepard, 186 S.W.2d 472, 353 Mo. 1057—Galloway v. Galloway, 169 S.W.2d 883—Oetting v. Green, 166 S.W.2d 548, 350 Mo. 457—Hoxsey Hotel Co. v. Farm & Home Savings & Loan Ass'n of Missouri, 163 S.W.2d 766, 349 Mo. 880—Krick v. Thompson, 162 S.W.2d 240, 349 Mo. 488—Greenfield v. Petty, 145 S.W.2d 367, 346 Mo. 1186—Hein v. Payne, 144 S.W.2d 122, 346 Mo. 967—

Other courts, influenced largely by local statutory or constitutional provisions, are inclined even in equity cases to regard the facts and the weight of the evidence as within the province of the chancel-

Show v. Hamilton, 141 S.W.2d 817, 346 Mo. 366—Plemmons v. Pemberton, 139 S.W.2d 910, 346 Md. 45—Gorman v. Mercantile-Commerce Bank & Trust Co., 137 S.W.2d 571, 345 Mo. 1059—Woodard v. Cohron, 137 S.W.2d 497, 345 Mo. 967—Produce Exchange Bank of Kansas City v. Winn. 133 S.W.2d 419, 345 Mo. 420—Wrigley v. Wrigley, 132 S.W.2d 989, 345 Mo. 207—Johansen v. St. Louis Union Trust Co., 131 S.W.2d 599, 345 Mo. 135—Conrad v. Diehl, 129 S.W.2d 870, 344 Mo. 811—Gehlert v. Smiley, 114 S.W.2d 1029—Reynolds v. Stepanek, 99 S.W.2d 65, 339 Mo. 804—Barlow v. Scott, 85 S.W.2d 504—Ahern v. Matthews, 85 S.W.2d 377, 337 Mo. 362—Bank of Brimson v. Graham, 76 S.W.2d 376, 335 Mo. 1196, 96 A.L.R. 399—Bruegge v. State Bank of Wellston, 74 S.W. 2d 835—Kidd v. St. Louis Union Trust Co., 74 S.W.2d 827, 335 Mo. 1029—Jones v. Jones, 63 S.W.2d 146, 333 Mo. 478, 90 A.L.R. 219—Emlet v. Gillis, 63 S.W.2d 12—Fendler v. Roy, 58 S.W.2d 459, 331 Mo. 1083—McCoy v. Pollard, 50 S.W.2d 1037—Furrer v. Haupt, 49 S.W.2d 53, 329 Mo. 1087—Wegmann Realty Co. v. City of St. Louis, 47 S.W.2d 770, 329 Mo. 972—Webb v. Salisbury, 39 S.W.2d 1045, 327 Mo. 1123—Schenkmeyer v. Altheimer, 37 S.W.2d 944, 327 Mo. 666—Vannoy v. Duvall Trust Co., 29 S.W.2d 692—Aude v. Aude, 28 S.W.2d 665—Whetsel v. Forgey, 20 S.W.2d 523, 323 Mo. 681, 67 A.L.R. 476—Seested v. Dickey, 300 S.W. 1088, 318 Mo. 192—Kidd v. Brewer, 297 S.W. 960, 317 Mo. 1047—Croft v. Morehead, 293 S.W. 405, 316 Mo. 1213—Feaster v. Rooks, 293 S.W. 136—Krug v. Bremer, 292 S.W. 702, 316 Mo. 891—Kirby v. Balke, 266 S.W. 704, 306 Mo. 109—Securities Inv. Co. v. St. Louis County Automobile Co., 261 S.W. 87—Davies v. Keiser, 246 S.W. 897, 297 Mo. 1—Cook v. Higgins, 235 S.W. 807, 290 Mo. 402—Larrick v. Heathman, 231 S.W. 975, 288 Mo. 370—State ex rel. Hickman v. Nathan, 229 S.W. 176—Raleigh Inv. Co. v. Bunker, 227 S. W. 121, 285 Mo. 440—Welsh v. Veasley, 227 S.W. 58, 286 Mo. 93—Cross v. Huffman, 217 S.W. 520, 280 Mo. 640—Hurst v. Automatic Switch & Signal Co. v. Trust Co. of St. Louis, 216 S.W. 954—McKinney, v. Hawkins, 215 S.W. 250—Booth v. Scott, 205 S.W. 633, 276 Mo. 1, error dismissed Scott v. Booth, 40 S.Ct. 484, 253 U.S. 475, 64 L.Ed. 1020—Daudt v. Steiert, 205 S.W. 222—McFarland v. Brown, 193 S. W. 800—Burkey v. Burkey, 175 S. W. 623.

Henson v. Payne, App., 302 S.W. 2d 44—North Kansas City v. Kelley, App., 242 S.W.2d 582—Dildine v. Rimpson, App., 240 S.W.2d 214—Bank of Poplar Bluff v. Casey, App., 231 S.W.2d 851—Hydesburg Common School Dist. of Ralls County v. Rensselaer Common School Dist. of Ralls County, App., 218 S.W.2d 833—Hoynes v. Hoynes, App., 218 S.W.2d 823—Rubinstein v. City of Salem, App., 210 S.W.2d 382—State ex rel. Wallach v. Raeder, App., 196 S.W.2d 19—Trett v. Lambeth, App., 195 S.W.2d 524—Gordon v. Raymond, App., 186 S.W. 2d 849—Fricke v. Belz, 177 S.W.2d 702, 237 Mo.App. 861—Hall v. Gernhardt, App., 174 S.W.2d 915—French v. Franklin Life Ins. Co., 164 S.W.2d 90, 237 Mo.App. 696—De Mayo v. Cantley, App., 141 S.W. 2d 248—Bevier v. Bevier, App., 132 S.W.2d 1044—Ross v. Speed-O Corp. of America, App., 130 S.W. 2d 180—Breit v. Bowland, App., 127 S.W.2d 71—Rust Sash & Door Co. v. Bryant, App., 124 S.W.2d 544—Miners Lumber Co. v. Miller, App., 117 S.W.2d 711—Miller v. Farmers Exchange Bank, App., 107 S.W.2d 852—Stinson v. Bank of Queen City, App., 101 S.W.2d 537—Brown v. Luce Mfg. Co., 96 S.W.2d 1098, 231 Mo.App. 259—Major v. McVey, App., 94 S.W.2d 1122—Phillips v. Alford, App., 90 S.W.2d 1060—First Nat. Bank v. Witherspoon Livestock Commission Co., App., 90 S.W.2d 453, 230 Mo.App. 285—Metropolitan Life Ins. Co. v. Erdwins, 83 S.W.2d 597, 229 Mo.App. 437—Bost v. McFarland, 81 S.W.2d 350, 229 Mo. App. 776—Bauman v. Western & Southern Indemnity Co., App., 77 S.W.2d 496—Home Trust Co. v. Shapiro, 64 S.W.2d 717, 228 Mo. App. 266—City Ice & Fuel Co. v. Snell, App., 57 S.W.2d 440—Beckmann v. Beckmann, App., 51 S.W.2d 136—Greene v. Spinning, App., 48 S.W.2d 51—Twedell v. Treasure, App., 44 S.W.2d 216—Sampson v. Pierce, App., 33 S.W.2d 1039—Adamack v. Herman, App., 33 S.W. 2d 135—Foskin v. Laessig, App., 32 S.W.2d 768—Prater v. McDaniel, App., 30 S.W.2d 771—Town of Carrollton, to Use of Hanchett Bond Co. v. Tonnar, App., 28 S.W.2d 443—Brueckle v. Pechan, App., 21 S.W.2d 903—Page v. Riggins, App., 20 S.W.2d 164—McBride Realty Co. v. Grace, 15 S.W.2d 957, 223 Mo.App. 588—Krizek v. Treybal, App., 15 S.W.2d 382—Platte Valley Bank of Cosby v. Farmers' & Traders' Bank, 14 S.W.2d 12, 223 Mo. App., 500—Fielder v. Fielder, App., 6 S.W.2d 968—Clay v. Walker, App., 6 S.W.2d 961—Bahl v. Miles, 6 S.W.2d 661, 222 Mo.App. 984—Proctor v. Proctor, 4 S.W.2d 882, 222 Mo.App. 21—Ellis v. Metropolitan Life Ins. Co. of New York, App., 3 S.W.2d 397—Elsey v. Elsey, App., 297 S.W. 978—Leonard v. Dougherty, 296 S.W. 263, 221 Mo. App. 1056—Hall v. Flag Special Road Dist., App., 296 S.W. 164—Sexton v. Gordon, App., 291 S.W. 512—Smith v. Nicholson, 289 S.W. 349, 221 Mo.App. 428, certiorari quashed State ex rel. Bradley v. Trimble, 289 S.W. 922, 316 Mo. 97—Grossenbacher v. Daly, App., 287 S.W. 781—Fernandes Grain Co. v. Hunter, 274 S.W. 901, 217 Mo.App. 187—Riley v. Citizens' Bank of Windsor, 272 S.W. 711, 220 Mo. App., 963—Producers' State Bank v. Danciger, 264 S.W. 1000, 218 Mo.App. 39—Williams v. Morris, App., 263 S.W. 859—McAllister v. Security Ben. Ass'n, App., 261 S. W. 343—Randolph v. St. Joseph Gas Co., App., 250 S.W. 642—Krug v. Roberts Cone Mfg. Co., 250 S.W. 621, 213 Mo.App. 628—Farmer v. Wallin, 246 S.W. 53, 212 Mo.App. 380—Francis v. Smith, App., 245 S.W. 1115—Cambest v. McComas Hydroelectric Co., 245 S.W. 598, 212 Mo.App. 325—Coons v. Coons, App., 236 S.W. 358—Reid v. Brotherhood of Railroad Trainmen, App., 232 S.W. 185—In re First Nat. Bank of Adrian, 230 S.W. 358, 207 Mo.App. 115—Guthery v. Ball, 228 S.W. 887, 206 Mo.App. 570—Fred A. H. Garlichs Agency Co. v. Anderson, App., 226 S.W. 978—Scott v. Page, App., 224 S.W. 1001—Broaddus v. Broaddus, App., 221 S.W. 804—Thornhill v. Masucci, 216 S.W. 819, 202 Mo.App. 357—Strong v. Sperling, 205 S.W. 266, 200 Mo.App. 66—State ex rel. Wear v. Springfield Gas & Electric Co., App., 204 S.W. 942—Hobson v. Lenox, App., 201 S.W. 964—Dudley v. Waldrop, App., 183 S.W. 1095.

Mont.—Fey v. A. A. Oil Corp., 285 P.2d 578, 129 Mont. 300—In re Woodburn's Estate, 273 P.2d 391, 128 Mont. 145—Rooney v. Ford, 256 P.2d 1090, 127 Mont. 92—Bond v. Birk, 247 P.2d 199, 126 Mont. 250—Barcus v. Galbreath, 207 P.2d 559, 122 Mont. 537—State ex rel. Nagle v. Naughton, 63 P.2d 123, 103 Mont. 306—Rentfro v. Dettwiler, 26 P.2d 992, 95 Mont. 391—Whorley v. Patton-Kjose Co., 5 P.2d 210, 90 Mont. 461—Ferguson v. Standley, 300 P. 245, 89 Mont. 489—Laundreville v. Mero, 281 P. 749, 86 Mont. 43, 69 A.L.R. 416—Stanton v. Occidental Life Ins. Co., 261 P. 620, 81 Mont. 44—Heater v. Boston Montana Corporation, 244 P. 501, 75 Mont. 532—Violet v. Martin, 205 P. 221, 62 Mont. 335—

lor or trial judge whose findings will be regarded as | binding, the same as at law; the appellate court's

Babcock v. Engel, 194 P. 137, 58 Mont. 597—Lowry v. Carrier, 177 P. 756, 55 Mont. 392—Barnard Realty Co. v. City of Butte, 177 P. 402, 55 Mont. 384.

Neb.—Fiala v. Tomek, 81 N.W.2d 691, 164 Neb. 20—State ex rel. Heintze v. Adams County, 75 N.W. 2d 539, 162 Neb. 127—Rodgers v. Jorgensen, 67 N.W.2d 770, 159 Neb. 485—Trowbridge v. Donner, 40 N.W.2d 655, 152 Neb. 206—Johnson v. Radio Station WOW, 13 N.W.2d 556, 144 Neb. 406, rehearing denied 14 N.W.2d 666, 144 Neb. 432, reversed on other grounds 65 S.Ct. 1475, 326 U.S. 120, 89 L.Ed. 2092, conformed to 19 N.W.2d 853, 146 Neb. 429, motion denied 66 S. Ct. 11—Ericson v. Nebraska-Iowa Farm Inv. Co., 278 N.W. 841, 134 Neb. 391—Gentry v. Burge, 261 N.W. 854, 129 Neb. 493.

N.J.—Hager v. Weber, 81 A.2d 155, 7 N.J. 201.

N.Y.—York Mortg. Corporation v. Clotar Const. Corporation, 172 N.E. 265, 254 N.Y. 128.

N.C.—Roller v. Allen, 96 S.E.2d 851, 245 N.C. 516—Owen v. Claude De Bruhl Agency, 86 S.E.2d 197, 241 N.C. 597—Lance v. Cogdill, 78 S.E. 2d 319, 238 N.C. 500—Town of Fremont v. Baker, 72 S.E.2d 666, 236 N.C. 253—Clinard v. Lambeth, 67 S.E.2d 452, 234 N.C. 410—Smith v. Bank of Pinehurst, 25 S.E.2d 859, 223 N.C. 249—McCormick v. Proctor, 6 S.E.2d 870, 217 N.C. 23—Rosser v. Matthews, 6 S.E.2d 849, 217 N.C. 132—Harris v. Miller, 182 S.E. 663, 208 N.C. 746—Cahoon v. Board of Com'rs of Hyde County, 175 S.E. 846, 207 N.C. 48—Teeter v. Teeter, 171 S.E. 620, 205 N.C. 438—Castle v. Threadgill, 166 S.E. 313, 203 N.C. 441—Cohoon v. State, 160 S.E. 183, 201 N.C. 312—Mewborn v. City of Kinston, 154 S.E. 76, 199 N.C. 72—Scott v. Gillis, 148 S.E. 315, 197 N.C. 223—Parker v. Debnam, 141 S.E. 535, 195 N.C. 56—Angelo v. City of Winston-Salem, 136 S.E. 489, 193 N.C. 207, 52 A.L.R. 663, affirmed 47 S.Ct. 763, 274 U.S. 725, 71 L.Ed. 1329—Wentz v. Piedmont Land Co., 135 S.E. 480, 193 N.C. 32—Edenton Ice & Cold Storage Co. v. Town of Plymouth, 134 S.E. 449, 192 N.C. 180—Smith v. Board of Com'rs of Bladen County, 133 S.E. 1, 191 N.C. 775—Dixie Poster Advertising Co. v. City of Asheville, 128 S.E. 149, 189 N.C. 737—School Committee of Seventy-First Consol. School Dist. v. Board of Education of Cumberland County, 120 S.E. 202, 186 N.C. 643—Peters v. Pasquotank Highway Commission, 113 S.E. 567, 184 N.C. 30—Board of Sup'rs of Public Roads of Pactolus Tp. v. Board of Com'rs of Pitt County, 86 S.E. 520, 169 N.C. 548.

Ohio.—Cary v. Wilsey, 48 N.E.2d 141, 71 Ohio App. 122.

Okl.—Stark v. Akard, 313 P.2d 790—Gregory v. Bogdanoff, 307 P.2d 841—Horschler v. Graham, 306 P. 2d 701—Wright v. Wright, 303 P. 2d 428—May v. Archer, 302 P.2d 768—Kirtley v. Kirtley, 301 P.2d 671—Choate v. Muskogee Elec. Traction Co., 295 P.2d 781—Noble v. Burnet, 294 P.2d 301—Britton v. Absher, 290 P.2d 769—Allen v. Allison, 290 P.2d 410—Roddy v. Roddy, 288 P.2d 1117—Mitchell v. Walker, 288 P.2d 747—Cheatwood v. McEvoy, 287 P.2d 457—Craig v. Collins, 285 P.2d 859—Schaefer v. J. G. Stobaugh Supply Co., 285 P.2d 380—White v. White, 281 P.2d 745—Bennett v. Grother, 280 P.2d 1015—Moral Ins. Co. v. Fechtel, 280 P.2d 716—Grover v. Locke, 279 P.2d 319—Brown v. Bivings, 277 P.2d 671—Haskins v. Felder, 270 P.2d 960—Billingslea v. Booker, 263 P.2d 176—Miles v. Sparks, 262 P.2d 430—Norton v. Moore, 261 P.2d 196—Hitt v. Hitt, 258 P.2d 599—Plumer v. Pearce, 257 P.2d 813, 208 Okl. 526—Barker v. British Am. Oil Producing Co., 256 P.2d 807, 208 Okl. 426—Staton v. Moody, 256 P.2d 409, 208 Okl. 372—Ewing v. Trawick, 256 P.2d 182, 208 Okl. 311—Salisbury v. Murray, 252 P. 2d 455, 207 Okl. 664—Hamburg v. Doak, 251 P.2d 510, 207 Okl. 517—Kansas. O. & G. Ry. Co. v. Doneghy, 249 P.2d 719, 207 Okl. 346—Epps v. Pearman, 248 P.2d 590, 207 Okl. 177—Collmer v. Collmer, 246 P.2d 350, 206 Okl. 661—Fletcher v. Fletcher, 244 P.2d 827, 206 Okl. 481—Hatcher v. Hatcher, 244 P.2d 580, 206 Okl. 471—Catlett v. Jordan, 244 P.2d 564, 206 Okl. 473—Midyett v. Midyett, 243 P.2d 650, 206 Okl. 312—Younge v. Knappenberger, 240 P.2d 1114, 206 Okl. 48—Frey v. Glenn, 240 P.2d 1061, 206 Okl. 28—King v. Cade, 240 P.2d 88, 205 Okl. 666—Woodruff v. Woodruff, 240 P.2d 74, 206 Okl. 3—Guy v. Guy, 233 P.2d 266, 204 Okl. 642—Lovelady v. Loughridge, 228 P.2d 358, 204 Okl. 186—Copeland v. Tucker, 185 P.2d 192, 199 Okl. 211—Brankel v. McGill, 180 P.2d 827, 198 Okl. 594—Ward v. Ward, 172 P.2d 978, 197 Okl. 551—Hickey v. Ross, 172 P.2d 771, 197 Okl. 543—Ludeman v. Armbruster, 165 P.2d 835, 196 Okl. 452—Suttle v. Chadwell, 164 P.2d 880, 196 Okl. 298—Beidleman v. Anderson, 156 P.2d 611, 195 Okl. 203—Hudson v. Reaves, 147 P.2d 986, 194 Okl. 178—Wilson v. Coats, 146 P.2d 107, 193 Okl. 621—Payne v. Wade, 122 P.2d 144, 190 Okl. 222—Whittington v. McMasters, 109 P.2d 228, 188 Okl. 334—Crabtree v. Standard Savings & Loan Ass'n, 102 P.2d 127, 187 Okl. 189—Drummond v. Smith, 96 P.2d 42, 185 Okl. 613—Clayton v. Speakman, 76 P.2d 376, 182 Okl. 86—Lackey v. Quigley, 74 P.2d 927, 181 Okl. 492—McDowell v. Droz, 64 P.2d 1210, 178 Okl. 119—Hooks v. D. A. Schulte, Inc., 62 P.2d 1211, 178 Okl. 373—Beall v. Fergeson, 58 P. 2d 598, 177 Okl. 216—Higgins v. Classen, 55 P.2d 101, 176 Okl. 233—Embry v. Villines, 53 P.2d 277, 175 Okl. 552—Cromwell v. Ream, 52 P.2d 752, 175 Okl. 408—McCoy v. Braden Co., 46 P.2d 960, 173 Okl. 113—Harris v. Commerce Trust Co., 46 P.2d 368, 173 Okl. 38—Sanders v. Bank of Woodward, 35 P.2d 956, 169 Okl. 73—Hughes v. Baker, 35 P.2d 926, 169 Okl. 320—Stryker v. Palmer, 31 P.2d 958, 168 Okl. 113—Koutsky v. Park Nat. Bank, 29 P.2d 962, 167 Okl. 373—Moore v. Moore, 29 P.2d 961, 167 Okl. 365—Dearstone v. Grube, 29 P.2d 82, 167 Okl. 179—Johnston v. Dill, 25 P.2d 283, 165 Okl. 165—Littlefield v. Box, 21 P.2d 506, 163 Okl. 150—Pryor v. Galer Oil Co., 17 P.2d 486, 157 Okl. 105—Elling v. Kohler, 3 P.2d 161, 150 Okl. 129—Smith v. Gibson, 300 P. 797, 150 Okl. 101—Smith v. Burt, 300 P. 748, 150 Okl. 34—Terrell v. Wheeler-Motter Mercantile Co., 294 P. 644, 147 Okl. 77—State v. Wm. Cameron & Co., 294 P. 104, 147 Okl. 1—Galloway v. Loffland, 289 P. 774, 144 Okl. 176—Scott v. Orwig, 289 P. 350, 144 Okl. 17—Newman v. Replogle, 281 P. 272, 139 Okl. 86—Sarty v. Bower, 277 P. 246, 136 Okl. 213—Macklin v. Thompson, 276 P. 709, 136 Okl. 127—Bilby v. Bilby, 271 P. 145, 133 Okl. 27—Scott v. Scott, 268 P. 245, 131 Okl. 144—Campbell v. Johnson, 267 P. 661, 131 Okl. 79—Mothersead v. Patteson, 267 P. 472, 130 Okl. 295—Donnelly v. Atkins, 264 P. 911, 130 Okl. 33—Dieterle v. Clum, 264 P. 887, 130 Okl. 5—McKay v. Kelly, 264 P. 814, 130 Okl. 62—Barrows v. Alford, 264 P. 628, 129 Okl. 265—Feyerherm v. Feyerherm, 262 P. 199, 128 Okl. 147—Exchange Trust Co. v. Oklahoma State Bank of Ada, 259 P. 589, 126 Okl. 193—Gault v. Spears, 256 P. 515, 125 Okl. 126—Hunter v. Murphy, 255 P. 561, 124 Okl. 207—Clement Mortg. Co. v. Lewis, 253 P. 88, 122 Okl. 188—Kolb v. Wagner, 252 P. 34, 123 Okl. 142—Little v. Jackson, 251 P. 1026, 123 Okl. 123—Nix v. Brogan, 251 P. 753, 118 Okl. 62—Griffin v. Galbraith, 247 P. 339, 114 Okl. 208—Haydon v. Pratt, 240 P. 624, 112 Okl. 216—City of Enid v. Champlin Refining Co., 240 P. 604, 112 Okl. 168—Turner v. Turner,

examination being confined to a consideration of | whether or not there is evidence to support the find-

233 P. 1057, 106 Okl. 261—Campbell v. Smith, 232 P. 844, 106 Okl. 26—Campbell v. Campbell, 220 P. 955, 94 Okl. 109—Norris v. American Vacuum Syringe Co., 220 P. 577, 94 Okl. 31—Gypsy Oil Co. v. Ponder, 218 P. 663, 92 Okl. 181—McAllister v. Clark, 217 P. 178, 91 Okl. 205—Renas v. Green, 212 P. 755, 88 Okl. 246—Parks v. Sinai Oil & Gas Co., 201 P. 517, 83 Okl. 295—City of Muskogee v. Burford, 186 P. 949, 77 Okl. 174—Long v. Anderson, 186 P. 944, 77 Okl. 95—Nowka v. West, 186 P. 220, 77 Okl. 24—McLaughlin v. Nettleton, 183 P. 416, 69 Okl. 74—De Priest v. Welch, 174 P. 261, 70 Okl. 241—Crump v. Lanham, 168 P. 43, 67 Okl. 33—Jolly v. Fields, 166 P. 117, 65 Okl. 201—Heckman v. McQueen, 157 P. 139, 57 Okl. 303—Mitchell v. Leonard, 155 P. 696, 55 Okl. 626—Tucker v. Thraves, 151 P. 598, 50 Okl. 691—Gillam v. Richart, 150 P. 1037, 50 Okl. 144.

Or.—Claude v. Claude, 174 P.2d 179, 180 Or. 62—Jenkins v. Jenkins, 138 P.2d 904, 171 Or. 629—Portland Mortg. Co. v. Elder, 53 P.2d 1045, 152 Or. 406—Molalla Electric Co. v. Wheeler, 154 P. 686, 79 Or. 478.

R.I.—Purcell v. John Hancock Mut. Life Ins. Co., 183 A. 884, 56 R.I. 93.

S.C.—Gilbert v. McLeod Infirmary, 64 S.E.2d 524, 219 S.C. 174, 24 A.L.R.2d 60—Bates v. Bates, 48 S.E.2d 612, 213 S.C. 26—Ott v. Ott, 188 S.E. 789, 182 S.C. 135—Winn v. Harby, 172 S.E. 135, 171 S.C. 301—Glenn v. Worthy, 168 S.E. 705, 169 S.C. 263—Wilson v. Muehlberger, 163 S.E. 125, 165 S.C. 137—Stone v. School Dist. No. 17 of Greenville County, 159 S.E. 536, 161 S.C. 249—Citizens' Bank v. Heyward, 133 S.E. 709, 135 S.C. 190, rehearing denied 142 S.E. 651, 144 S.C. 365—Lanham v. Jennings, 113 S.E. 791, 122 S.C. 461—Sparks v. McCraw, 100 S.E. 161, 112 S.C. 519.

Tenn.—Hibbett v. Pruitt, 36 S.W.2d 897, 162 Tenn. 285.

Peoples Bank v. Baxter, App., 298 S.W.2d 732—Hall v. Britton, App., 292 S.W.2d 524—City of Nashville v. Ward-Belmont School, 7 Tenn.App. 610.

Utah.—Nokes v. Continental Min. & Milling Co., 308 P.2d 954, 6 Utah 2d 177—First Sec. Bank of Utah v. Burgi, 251 P.2d 297, 122 Utah 445—Greener v. Greener, 212 P.2d 194, 116 Utah 571—Reimann v. Baum, 203 P.2d 387, 115 Utah 147—Bybee v. Stuart, 189 P.2d 118, 112 Utah 462—Maxfield v. Sainsbury, 172 P.2d 122, 110 Utah 280—Green v. Palfreyman, 166 P.2d 215, 109 Utah 291, amended on other grounds, and rehearing denied 175 P.2d 213, 109 Utah 303—Crockett v. Nish, 147 P.2d 853, 106 Utah 241—Prowitt v. Lunt, 137 P.2d 361, 103 Utah 574—Bear River State Bank v. Merrill, 120 P.2d 325, 101 Utah 176—Merrill v. Bailey & Sons Co., 106 P.2d 255, 99 Utah 323—Federal Land Bank of Berkeley v. Salt Lake Valley Sand & Gravel Co., 85 P.2d 791, 96 Utah 359—Lund v. Howell, 67 P.2d 215, 92 Utah 232, followed in 67 P.2d 223, 92 Utah 250—Skola v. Merrill, 64 P.2d 185, 91 Utah 253—Christenson v. Nielsen, 54 P.2d 430, 88 Utah 326—Zuniga v. Evans, 48 P.2d 513, 87 Utah 198—Chapman v. Troy Laundry Co., 47 P.2d 1054, 87 Utah 15—Williams v. Peterson, 46 P.2d 674, 86 Utah 526—Benson v. Rozzelle, 39 P.2d 1113, 85 Utah 582—Greco v. Grako, 39 P.2d 318, 85 Utah 241—Transfer Realty Co. v. Lichfield, 33 P.2d 179, 84 Utah 163, rehearing denied 39 P.2d 752, 85 Utah 451—Corey v. Roberts, 25 P.2d 940, 82 Utah 445—Consolidated Wagon & Machine Co. v. Kay, 21 P.2d 836, 81 Utah 595—Buzianis v. Buzianis, 16 P.2d 413, 81 Utah 1—Paxton v. Paxton, 15 P.2d 1051, 80 Utah 540—Independent Oil & Gas Co. v. Shelton, 6 P.2d 1027, 79 Utah 384—Holman v. Christensen, 274 P. 457, 73 Utah 389—Warner v. Tyng Warehouse Co., 265 P. 748, 71 Utah 303—Ephraim Willow Creek Irr. Co. v. Olson, 258 P. 216, 70 Utah 95—Schulder v. Dickson, 243 P. 377, 66 Utah 418—Forbes v. Butler, 242 P. 950, 66 Utah 373—Garfield Banking Co. v. Argyle, 232 P. 541, 64 Utah 572—Jenkins v. Nicolas, 226 P. 177, 63 Utah 329—McKellar Real Estate & Investment Co. v. Paxton, 218 P. 128, 62 Utah 97—Lawley v. Hickenlooper, 212 P. 526, 61 Utah 298—Bracken v. Chadburn, 185 P. 1021, 55 Utah 430—Kinsman v. Utah Gas & Coke Co., 177 P. 418, 53 Utah 10—Lake Shore Duck Club v. Lake View Duck Club, 166 P. 309, 50 Utah 76, L.R.A.1918B 620—Little v. Stringfellow, 151 P. 347, 46 Utah 576—Fares v. Urban, 151 P. 57, 46 Utah 609—Utah Commercial & Savings Bank v. Fox, 140 P. 660, 44 Utah 323.

4 C.J. p 845 note 84, p 897 note 81—33 C.J. p 469 note 26—60 C.J. p 1131 note 93.

Power to investigate and analyze evidence

(1) The appellate court on an appeal in an equity case has complete power to ascertain by full investigation and analysis of the evidence what the facts are, and whether the general finding is consistent therewith.

Ky.—Schlachter v. Henderson's Adm'r, 83 S.W.2d 491, 259 Ky. 759.

N.J.—De Donis v. De Donis, 61 A.2d 729, 1 N.J. 43.

Glenn v. Glenn, 61 A.2d 41, 142 N.J.Eq. 625—Epstein v. Fleck, 57 A.2d 395, 141 N.J.Eq. 486—Tierney v. Hotz, 55 A.2d 39, 141 N.J.Eq. 114—Real Estate-Land Title & Trust Co. v. Stout, 175 A. 128, 117 N.J.Eq. 37—Cartan v. Phelps, 109 A. 291, 91 N.J.Eq. 312.

4 C.J. p 898 note 91.

(2) The court has power to ascertain whether the findings are against the weight or preponderance of the evidence.

Okl.—Hawkins v. Boynton Land, Mining & Investment Co., 157 P. 753, 59 Okl. 30.

(3) The appellate court is in as good position as the chancellor to arrive at a conclusion by means of a comparison of signatures.

Ill.—Nolan v. American Tel. & Tel. Co., 61 N.E.2d 876, 326 Ill.App. 328.

Ultimate responsibility for finding the facts in an equity case rests on the appellate court.

Mo.—Whiles v. Graves, 252 S.W. 943.

Scope of review

(1) In equity, the scope of review of findings of fact is broad.

Mich.—Goldberg v. Cities Service Oil Co., 266 N.W. 321, 275 Mich. 199.

(2) Attendant circumstances may properly be considered in determining the correctness of the chancellor's fact findings.

Ark.—Bryant ✝. Edgmon, 90 S.W.2d 994, 192 Ark. 20.

(3) While the supreme court may review findings of fact in an action for injunction, it will not, where no special findings are set out in the case, reverse what were apparently the judge's findings necessary to sustain his judgment unless such findings are clearly wrong.

N.C.—Davenport v. Board of Education of McDowell County, 112 S.E. 246, 183 N.C. 570.

Attorney fees

Where no question of veracity is involved on appeal from judgment for attorney fees in an allegedly inadequate amount in will construction case, appellate court reaches its own conclusion as to adequacy of attorney fees on the whole record.

Mo.—Stamm v. Desnoyers, App., 263 S.W.2d 45.

Findings of single justice

Where there is no reference the findings and decree of presiding judge, acting in the capacity of a master, should be reviewed by supreme court on the same theories which obtain when presiding judge in court of equity reviews the report of the register.

ings, they are manifestly against the great weight of | the evidence, or are clearly wrong or erroneous.[12]

Ala.—Stanley v. Beck, 7 So.2d 276, 242 Ala. 574.

Statutory provision

Statute providing that in equity cases the supreme court shall review all questions of fact presented in the record as well as questions of law is valid and constitutional, and is binding on the courts and litigants.

Mont.—Bond v. Birk, 247 P.2d 199, 126 Mont. 250.

Immaterial findings disregarded

On appeal in an equitable action, where master has heard evidence, appellate court need not consider immaterial findings and conclusions.

Ill.—Agatucci v. Corradi, 63 N.E.2d 630, 327 Ill.App. 153.

Facts undisputed

Whether equitable defenses converted action into a case in equity was immaterial, where facts were undisputed and only questions of law were presented on appeal.

Mo.—Lucas v. Lamb, 156 S.W.2d 634, 348 Mo. 900.

In Illinois

(1) The rule of the text prevails.

Ill.—Brown v. Moore, 95 N.E.2d 856, 407 Ill. 618—Stasch v. Stasch, 189 N.E. 891, 355 Ill. 581—Lingle v. Bulfer, 153 N.E. 589, 322 Ill. 606—Corbly v. Corbly, 117 N.E. 393, 280 Ill. 278.

Kopald v. O'Gradney, 128 N.E.2d 623, 7 Ill.App.2d 19—Barton v. Montrose Ave. Hospital & Sanitarium, 77 N.E.2d 423, 333 Ill.App. 309—Agatucci v. Corradi, 63 N.E. 2d 630, 327 Ill.App. 153—Dixmoor Golf Club v. Evans, 274 Ill.App. 517—Postal v. Hagist, 251 Ill.App. 454—Smith v. Baxter, 239 Ill.App. 453.

4 C.J. p 897 note 81.

(2) It has been said, however, that the force and effect of the finding of the trial court in law and chancery cases where the court hears evidence without a jury are substantially the same.

Ill.—Chicago Title & Trust Co. v. Guild, 68 N.E.2d 615, 329 Ill.App. 374.

12. Ariz.—Donahue v. Babbitt, 227 P. 995, 26 Ariz. 542.

Cal.—Beeler v. American Trust Co., 147 P.2d 583, 24 C.2d 1.

Harlan v. Ott, 272 P.2d 522, 126 C.A.2d 590—Harris v. Lee, 266 P. 2d 534, 123 C.A.2d 177—Wilson v. Sanchez, 254 P.2d 594, 116 C.A.2d 670—Douglas v. Foster, 230 P.2d 371, 103 C.A.2d 744—Rowland v. Clark, 206 P.2d 59, 91 C.A.2d 880—Blackwell v. Blackwell, 193 P.2d 75, 85 C.A.2d 403—Good v. Lindstrom, 181 P.2d 933, 80 C.A.2d 476—Neusted v. Skernswell, 159 P.2d 49, 69 C.A.2d 361—Weiner v. Mullaney, 140 P.2d 704, 59 C.A.2d 620—Brunvold v. Victor Johnson & Co., 138 P.2d 32, 59 C.A.2d 75—Perkins v. Maiden, 134 P.2d 30, 57 C.A.2d 46—Reiss v. Reiss, 114 P. 2d 718, 45 C.A.2d 740.

Colo.—Del Norte Irr. Dist. v. Santa Maria Reservoir Co., 113 P.2d 676, 108 Colo. 1—Scott v. McClain, 102 P.2d 470, 106 Colo. 84—Sanderford v. Walker Inv. Co., 269 P. 14, 84 Colo. 203—Ver Straten v. Worth, 243 P. 1104, 79 Colo. 30—Olden v. North Poudre Irr. Co., 203 P. 670, 70 Colo. 570—Stewart v. Breckenridge, 169 P. 543, 69 Colo. 108.

Conn.—Clover v. Urban, 142 A. 389, 108 Conn. 13—Porter v. Adams, 119 A. 358, 98 Conn. 349.

Fla.—American Surety Co. of New York v. Andrews, 12 So.2d 599, 152 Fla. 638—Saffold Bros. Produce Co. v. Winn & Lovett Grocery Co., 149 So. 1, 111 Fla. 60.

Ga.—Patrick v. Holliday, 36 S.E.2d 769, 200 Ga. 259.

Ind.—New York, C. & St. L. R. Co. v. Lincoln Nat. Life Ins. Co., App., 142 N.E.2d 437—Norling v. Bailey, 98 N.E.2d 513, 121 Ind.App. 457, rehearing denied 99 N.E.2d 439, 121 Ind.App. 457.

Kan.—Grannell v. Wakefield, 242 P. 2d 1075, 172 Kan. 685—Fink v. Smith, 36 P.2d 976, 140 Kan. 345—State v. Riverside Drainage Dist. of Sedgwick County, 254 P. 366, 123 Kan. 46, rehearing denied 255 P. 37, 123 Kan. 393—Farney v. Hauser, 198 P. 178, 109 Kan. 75—Safford v. Tibbetts, 178 P. 618, 104 Kan. 224.

Me.—First Nat. Bank v. Reynolds, 143 A. 266, 127 Me. 340, 60 A.L.R. 712—Bond v. Bond, 141 A. 833, 127 Me. 117—Pratt v. Dunham, 140 A. 606, 127 Me. 1—Tebbetts v. Tebbetts, 127 A. 720, 124 Me. 262—Briggs v. Childs, 119 A. 205, 122 Me. 175—Belfast Sav. Bank v. Sanford & C. P. Ry. Co., 113 A. 14, 120 Me. 108—Rankin v. Farrand, 101 A. 833, 116 Me. 507—Young v. Mosher, 97 A. 215, 115 Me. 56.

Miss.—Skrmetta v. Moore, 86 So.2d 46—Sharp v. Learned, 32 So.2d 141, 202 Miss. 393—Wiley v. Webb, 10 So.2d 455.

N.H.—City of Manchester v. Webster, 128 A.2d 924, 109 N.H. 409—Dunlap v. Foss, 136 A. 257, 82 N.H. 449—Barrett v. Cady, 96 A. 325, 78 N.H. 60.

N.M.—Pavletich v. Pavletich, 174 P. 2d 826, 50 N.M. 224—Arias v. Springer, 78 P.2d 153, 42 N.M. 350.

Pa.—Union Trust Co. of New Castle v. Cwynar, 131 A.2d 133, 388 Pa. 644—Commonwealth v. George, 56 A.2d 228, 358 Pa. 118—Keller v. Keller, 41 A.2d 547, 351 Pa. 461—West v. Young, 13 A.2d 89, 338 Pa. 298.

Popilock v. Piernikoski, 56 A.2d 326, 161 Pa.Super. 587.

Tex.—Clifford v. Swift, Civ.App., 120 S.W.2d 112, error dismissed.

Vt.—Scott v. Leonard, 119 A.2d 691, 119 Vt. 86—Laplante v. Eastman, 105 A.2d 265, 118 Vt. 221—McPherson v. Dow, 96 A.2d 649, 117 Vt. 506—Dundon v. Balthazar, 44 A.2d 156, 114 Vt. 312—Turner v. Bragg, 35 A.2d 356, 113 Vt. 393—Tuttle v. Tuttle, 23 A.2d 523, 112 Vt. 271—Spaulding v. City of Rutland, 3 A. 2d 556, 110 Vt. 186—Crawford v. Bromley, 182 A. 180, 108 Vt. 51—Patch v. Squires, 165 A. 919, 105 Vt. 405—White River Chair Co. v. Connecticut River Power Co. of New Hampshire, 162 A. 859, 105 Vt. 24—Kennedy v. Robinson, 160 A. 170, 104 Vt. 374—McClary v. Hubbard, 122 A. 469, 97 Vt. 222—Howland Bros. & Cave v. Barre Savings Bank & Trust Co., 95 A. 679, 89 Vt. 290.

4 C.J. p 897 note 82.

Incompetency

Trial court's finding that a person was not incompetent in a legal sense was conclusive of such issue.

Idaho.—Graves v. Cupic, 272 P.2d 1020, 75 Idaho 451.

Finding not directly attacked

Finding of trial judge made in quiet title suit was required to be accepted on appeal where finding was not directly attacked.

N.M.—Haden v. Eaves, 226 P.2d 457, 55 N.M. 40—Witherspoon v. Brummett, 176 P.2d 187, 50 N.M. 303.

Findings taken at full value

In equity suit tried without jury, all findings of fact by trial court must be taken at their full value in support of judgment.

Cal.—Bodkin v. Silveira, 120 P.2d 910, 49 C.A.2d 1.

Incorrect assumption of facts

Where appeal raises questions either on assumption of facts which do not appear in findings or by way of saying that chancellor should have found certain facts, appellate court will ordinarily affirm decree, because questions were not properly before it, and direct dismissal.

Vt.—Smith v. White's Estate, 188 A. 901, 108 Vt. 473.

Appellate court cannot supplement court's findings although the evidence may be before the appellate court.

Vt.—Tuttle v. Tuttle, 23 A.2d 523, 112 Vt. 271.

On appeal from decree dismissing bill in equity, wherein defendant offered no testimony, question was whether plaintiff made out a prima facie case.

Pa.—Overbeck v. McHale, 47 A.2d 142, 354 Pa. 177.

Where the trial on appeal is de novo, the findings of the chancellor in an equity action do not ordinarily have the full effect of a jury verdict,[13] unless the issue or action is in actuality a legal one, properly triable by a jury, but which has been submitted to the chancellor for trial instead,[14] or unless no exceptions were taken to the findings, and the statement of the case states that it does not contain all the evidence relating to such findings.[14.5] Many cases can be found however, in which it has been said that the fact findings of a chancellor in an equity suit have, on appeal, the same force and effect as a jury verdict, particularly in jurisdictions where the court's findings in equity are regarded the same as at law,[15] or where the findings are based on

Evidence not weighed

In suit for injunctive relief and damages because of discharge of surface water on the complainant's golf course, where final decree was for complainant although specific relief granted was ineffectual because defendant had disposed of its property pending the cause, appellate court need not weigh evidence to determine whether defendant violated complainant's rights and inflicted damage that justified injunctive relief.

Va.—Washington Golf & Country Club, Inc. v. Briggs & Brennan Developers, Inc., 95 S.E.2d 233, 198 Va. 586.

In Washington

(1) Since the adoption of Rule on Appeal 43, 34A Wash.2d 47, effective Jan. 2, 1951, there has been no distinction between the method of reviewing the record in equity cases and in law cases tried to the court.

Wash.—In re Mayer's Estate, 260 P. 2d 888, 43 Wash.2d 258—Simpson v. Hutchings, 248 P.2d 572, 41 Wash.2d 287—Detjen v. Detjen, 244 P.2d 238, 40 Wash.2d 479—In re Boundy's Estate, 242 P.2d 165, 40 Wash.2d 203.

(2) Formerly the trial on appeal in equity cases was de novo, and the appellate court was not bound by the findings of the trial court.

Wash.—Bergstrom v. Olson, 236 P. 2d 1052, 39 Wash.2d 536—Poole v. Schrichte, 236 P.2d 1044, 39 Wash. 2d 558—Akers v. Sinclair, 226 P.2d 225, 39 Wash.2d 693—Eckley v. Bonded Adjustment Co., 190 P.2d 718, 30 Wash.2d 96, 1 A.L.R.2d 717—Puckett v. Puckett, 185 P.2d 131, 29 Wash.2d 15—Widman v. Maurer, 141 P.2d 135, 19 Wash.2d 28.

13. Iowa.—Stooker v. Feil, 37 N.W. 2d 918, 240 Iowa 876.

Ky.—Furnace Gap Coal Co. v. White, 74 S.W.2d 4, 255 Ky. 351—Quarterman v. Arnold, 53 S.W.2d 970, 245 Ky. 595—Blanton v. Osborne, 39 S.W.2d 698, 239 Ky. 389—Ficklin v. Nickles, 38 S.W.2d 456, 238 Ky. 591.

Or.—Molalla Electric Co. v. Wheeler, 154 P. 686, 79 Or. 478.

4 C.J. p 897 note 84.

14. Ky.—Columbian Fuel Corp. v. Skidmore, 214 S.W.2d 761, 308 Ky. 447—Moore v. Waltman's Adm'x, 156 S.W.2d 100, 288 Ky. 258—Brewer v. Terrill, 122 S.W.2d 749, 275 Ky. 756—Booth v. Bell Grocery Co., 39 S.W.2d 984, 239 Ky. 521—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S.W. 409, 184 Ky. 70—Reynolds v. Binion, 197 S.W. 641, 177 Ky. 189—Perry v. Eagle Coal Co., 186 S.W. 875, 170 Ky. 824.

Mo.—Saucier v. Kremer, 249 S.W. 640, 297 Mo. 461—First Nat. Bank v. Wilson, 222 S.W. 381—Newbrough v. Moore, 202 S.W. 547.

Okl.—Pioneer Mortg. Co. v. Ragsdale, 230 P. 259, 107 Okl. 82.

S.C.—Carolina Sav. Bank v. Ellis, 176 S.E. 355, 174 S.C. 69.

Tenn.—Boshears v. Foster, 290 S.W. 387, 154 Tenn. 494—McCoy v. Lippner Auto Co., 265 S.W. 988, 150 Tenn. 482—Smith v. Grizzard, 259 S.W. 537, 149 Tenn. 207—Choate v. Sewell, 221 S.W. 190, 142 Tenn. 487.

Phifer v. Mutual Ben. Health & Accident Ass'n, 148 S.W.2d 17, 24 Tenn.App. 600—Pearson v. Mutual Life Ins. Co. of New York, 68 S.W.2d 963, 17 Tenn.App. 503—Interstate Life & Accident Co. v. Potter, 68 S.W.2d 119, 17 Tenn. App. 381—Underwood v. Hill, 10 Tenn.App. 608—Tennessee Hermitage Nat. Bank v. Bruce, 9 Tenn. App. 321—Barksdale v. Marcum, 7 Tenn.App. 697—Hayes v. Ginocchio, 6 Tenn.App. 677—Rucker v. Mayor & Aldermen of Dyersburg, 5 Tenn.App. 657—White v. Bratton, 5 Tenn.App. 61.

4 C.J. p 897 note 85.

14.5 N.C.—Williamson v. City of High Point, 195 S.E. 90, 213 N.C. 96.

15. Me.—Rioux v. Employers Liability Assur. Corp., 187 A. 753, 134 Me. 459—Libby v. Sherburne, 118 A. 379, 121 Me. 595.

Pa.—Oreovecz v. Merics, 114 A.2d 126, 382 Pa. 56—O'Neill v. Keegan, 103 A.2d 909, 376 Pa. 606—Teats v. Anderson, 58 A.2d 31, 358 Pa. 523—Cochrane v. Szpakowski, 49 A.2d 692, 355 Pa. 357—Hayden v. Hayden, 46 A.2d 502, 354 Pa. 11—Osborne v. United Gas Imp. Co., 46 A.2d 208, 354 Pa. 57, 164 A.L.R. 1119—T. F. Quinn Coal Co. v. Scranton Anthracite Coal Co., 38 A.2d 77, 350 Pa. 21—Pittsburgh Cut Wire Co. v. Sufrin, 38 A.2d 33, 350 Pa. 31—In re Huffman's Estate, 36 A.2d 638, 349 Pa. 18—Serventi v. Galli, 31 A.2d 715, 347 Pa. 47—Fitzpatrick v. Fitzpatrick, 29 A.2d 790, 346 Pa. 202—Zuback v. Bakmaz, 29 A.2d 473, 346 Pa. 279—Commonwealth ex rel. Bard v. Delaware Division Canal Co., 1 A.2d 672, 332 Pa. 53—Manheim v. Board of Com'rs of Venango County, 198 A. 650, 330 Pa. 92—Humphrys v. Republican Central Campaign Committee, 182 A. 366, 320 Pa. 353—Barnes Foundation v. Keely, 171 A. 267, 314 Pa. 112—City of Philadelphia v. Philadelphia Suburban Water Co., 163 A. 297, 309 Pa. 130—In re Kahle's Estate, 160 A. 857, 307 Pa. 212—Feuerstein v. New Century Realty Co., 156 A. 110, 304 Pa. 271—More v. People's Bank & Trust Co., 146 A. 896, 297 Pa. 252—Burke v. Harkins, 146 A. 94, 296 Pa. 414—Garr v. Fuls, 133 A. 150, 286 Pa. 137—Maranna v. Fritz, 132 A. 795, 286 Pa. 57—Borough of Ambridge v. Philadelphia Co., 129 A. 67, 283 Pa. 5, 39 A.L.R. 1064—Himrod v. McFayden, 128 A. 733, 283 Pa. 103—Atlas Portland Cement Co. v. American Brick & Clay Mfg. Co., 124 A. 650, 280 Pa. 449—Browne v. Hockstra, 123 A. 861, 279 Pa. 418—South Side Trust Co. of Pittsburgh v. Litman, 123 A. 670, 279 Pa. 124—Bangor Silk Knitting Co. v. Wise, 121 A. 308, 277 Pa. 415—Glenn v. Trees, 120 A. 109, 276 Pa. 165—Schmidt v. Musser, 116 A. 314, 272 Pa. 375—Volk v. Volk, 116 A. 312, 272 Pa. 378—Ben Avon Borough v. Ohio Valley Water Co., 114 A. 369, 271 Pa. 346—Kirk v. Kirker, 113 A. 185, 270 Pa. 158—Shimer v. Aldine Trust Co., 107 A. 782, 264 Pa. 444.

Tapler v. Frey, 132 A.2d 890, 184 Pa.Super. 239—Holden v. Moser, 103 A.2d 464, 175 Pa.Super. 206—Cohen v. Mutual Ben. Health & Acc. Ass'n, 101 A.2d 137, 174 Pa. Super. 630—Tonkin v. Tomkin, 94 A.2d 192, 172 Pa.Super. 552—Glessner v. Security-Peoples Trust Co., 72 A.2d 817, 166 Pa.Super. 566—Hacker v. Price, 71 A.2d 851, 166 Pa.Super. 404—Fellabaum v. Alvarez, 67 A.2d 788, 165 Pa.Super. 173—Elias v. Scott, 64 A.2d 508, 164 Pa.Super. 329—In re Frederick's Estate, 41 A.2d 59, 156 Pa. Super. 547—Pehlert v. Neff, 31 A. 2d 446, 152 Pa.Super. 84—Goodman

conflicting oral testimony given in open court.[16]

With the exception of improper evidence, which will be excluded,[17] the appellate court in reviewing an equity case de novo must take into consideration and weigh all the evidence, documentary, oral, inferential, and circumstantial.[18]

Findings affirmed or reversed by court in banc. A finding of the chancellor, supported by evidence, and affirmed or approved by the court in banc, has the force and effect of a jury's verdict,[18.5] and is generally held to be binding and conclusive in the appellate court.[18.10] The rule does not apply, how-

v. Goodman, 184 A. 306, 122 Pa. Super. 8—Bucia v. Bucia, 160 A. 140, 105 Pa.Super. 36—Markle v. Grothe, 156 A. 585, 102 Pa.Super. 90—Yeiser v. Hornberger, 99 Pa. Super. 453.

U. S. Fidelity & Guaranty Co. v. Mather, Com.Pl., 30 Del. 458—Department of Public Assistance v. Brownfield, Com.Pl., 6 Fay.L. J. 124—Wertman v. Frable, Com. Pl., 19 Leh.L.J. 268, affirmed 26 A.2d 451, 344 Pa. 597.

4 C.J. p 897 note 84.

Where issue one of law

The rule as to conclusiveness on appeal of a decision of a single justice in an equity case does not obtain where the issue is one of law, as in the case where the issue is one of law resting on the meaning of "dependent" in a written contract, and application thereof to undisputed facts.

Me.—O'Leary v. Menard, 105 A. 399, 118 Me. 25.

16. Fla.—Cobb v. Cobb, 89 So. 869, 82 Fla. 287.

Ill.—Cline v. Cline, 139 N.E.2d 828, 12 Ill.App.2d 231.

Ind.—Admire v. Brewer, 41 N.E.2d 662, 112 Ind.App. 92.

Tenn.—Broch v. Broch, 47 S.W.2d 84, 164 Tenn. 219.

Tex.—Klein v. Palmer, Civ.App., 151 S.W.2d 652.

Vt.—Turner v. Bragg, 35 A.2d 356, 113 Vt. 393—Ward v. Lyman, 188 A. 892, 108 Vt. 464.

Va.—Trayer v. Bristol Parking, Inc., 95 S.E.2d 224, 198 Va. 595—Packard Norfolk, Inc. v. Miller, 95 S.E.2d 207, 198 Va. 557—Van Winckel v. Carter, 95 S.E.2d 148, 198 Va. 550—Evans v. Slone, 83 S.E.2d 385, 196 Va. 231—Day v. Vaughn & Usilton, 67 S.E.2d 898, 193 Va. 168—Worrie v. Boze, 62 S.E.2d 876, 191 Va. 916—Crump v. Gilliam, 59 S.E. 2d 72, 190 Va. 935—Hastings v. Taylor, 37 S.E.2d 767, 185 Va. 13—Paramount Communities v. Abramson, 33 S.E.2d 771, 183 Va. 922—Williamson v. Johnson, 180 S.E. 310, 164 Va. 632—Hartman v. Melfa Banking Co., 174 S.E. 653, 162 Va. 433—General Motors Acceptance Corporation v. Vicars, 149 S.E. 476, 153 Va. 149.

4 C.J. p 897 note 84.

Common-law judgment

Where evidence in equity suit is taken ore tenus before chancellor, his decree has weight of common-law judgment in case heard without intervention of jury.

Va.—Collins v. Collins, 32 S.E.2d 657, 183 Va. 408—Taylor v. Taylor, 29 S.E.2d 833, 182 Va. 602.

17. Mo.—Stumpe v. City of Washington, App., 54 S.W.2d 731.

Conclusions of witnesses

Under statute relating to consideration of evidence in equity, testimony consisting merely of conclusions of witness must be disregarded on appeal from decree dismissing bill in equity.

Ala.—Cook v. Parker, 27 So.2d 779, 248 Ala. 393.

Evidence not considered

On appeal by plaintiff in an action on an account involving question of whether defendant purchased items in controversy personally, where appellate court was reviewing case as one in equity, the court would refuse to consider defendant's testimony that he did not purchase the items personally in determining the issue.

Mo.—A. A. Elec. Machinery Co. v. Block, App., 193 S.W.2d 631.

18. Mo.—Sampson v. Pierce, App., 33 S.W.2d 1039.

18.5 Pa.—Gagnon v. Speback, 131 A. 2d 619, 389 Pa. 17—De Luca v. De Luca, 130 A.2d 179, 388 Pa. 167—Mann v. Mann, 127 A.2d 666, 387 Pa. 230—Yenchko v. Grontkowski, 122 A.2d 705, 385 Pa. 272—Brobst v. Brobst, 121 A.2d 178, 384 Pa. 530—DeBernard v. DeBernard, 120 A.2d 176, 384 Pa. 194—Pappas v. Klutinoty, 118 A.2d 202, 383 Pa. 184—In re Hanna's Estate, 117 A.2d 730, 383 Pa. 196—Winters v. Rimersburg Coal Co., 114 A.2d 83, 382 Pa. 12—Maxwell v. Schaefer, 112 A.2d 69, 381 Pa. 13—Holst v. Butler, 108 A.2d 740, 379 Pa. 124—Andrikanics v. Andrekanics, 89 A. 2d 792, 371 Pa. 222—Brunier v. Stanert, 85 A.2d 130, 369 Pa. 178—Bohachevsky v. Sembrot, 81 A.2d 554, 368 Pa. 228—Woodbridge v. Hall, 76 A.2d 205, 366 Pa. 46—Roth v. Hartl, 75 A.2d 583, 365 Pa. 428—Peardon v. Peardon, 73 A.2d 661, 365 Pa. 13—Rayman v. Morris, 65 A.2d 397, 361 Pa. 583—Home Life Ins. Co. of America v. Greenspan, 63 A.2d 72, 360 Pa. 542—Barnsley v. Shaffer, 57 A.2d 870, 358 Pa. 415—American Oil Co. v. Norkus, 57 A.2d 868, 358 Pa. 407—Dziedzic v. Kaplan, 57 A.2d 839, 358 Pa. 419—Lacey v. Rutter, 57 A.2d 679, 358 Pa. 502—Coleman v. Huffman, 53 A.2d 601, 357 Pa. 232—Thomson-Porcelite Co. v. Harad, 51 A.2d 605, 356 Pa. 121—Schaffer v. Cloud, 50 A.2d 665, 355 Pa. 650—Norris Tool & Mach. Co. v. Rosenlund, 50 A.2d 273, 355 Pa. 560—Christy v. Christy, 46 A.2d 169, 353 Pa. 476.

18.10 Pa.—Gagnon v. Speback, 131 A.2d 619, 389 Pa. 17—Eways v. Reading Parking Authority, 124 A. 2d 92, 385 Pa. 592—Brightbill v. Boeshore, 122 A.2d 38, 385 Pa. 69—Maguire v. Osborne, 121 A.2d 147, 384 Pa. 430—Rosen v. Rosen, 121 A.2d 89, 384 Pa. 547—Kane v. D'Orazio, 110 A.2d 249, 380 Pa. 358—Wortex Mills v. Textile Workers Union of America, C. I. O., 109 A.2d 815, 380 Pa. 3—Taylor v. Kaufhold, 108 A.2d 713, 379 Pa. 191—Lugin v. Dobson, 104 A.2d 95, 376 Pa. 620—Cerbo v. Carabello, 103 A.2d 908, 376 Pa. 571—Leister v. Miller, 103 A.2d 656, 376 Pa. 452—Allardice v. McCain, 101 A.2d 385, 375 Pa. 528—Law v. Mackie, 95 A.2d 656, 373 Pa. 212—Andrikanics v. Andrekanics, 89 A.2d 792, 371 Pa. 222—In re Kerwin's Estate, 89 A.2d 332, 371 Pa. 147—In re Snyder's Estate, 84 A.2d 318, 368 Pa. 393—Incorporated Trustees of Salvation Army in Pa. v. Allegheny County, 80 A.2d 758, 367 Pa. 373—Barrett v. Heiner, 80 A.2d 729, 367 Pa. 510—Pregrad v. Pregrad, 80 A.2d 58, 367 Pa. 177—First Church of Brethren of Lewistown v. Snider, 79 A.2d 422, 367 Pa. 78—Kraftician v. St. Peter & St. Paul's Russian Greek Catholic Congregation of Carnegie, 77 A.2d 875, 366 Pa. 431—Commonwealth by Truscott v. Binenstock, 77 A.2d 628, 366 Pa. 519—Firth v. Scherzberg, 77 A.2d 443, 366 Pa. 443—Fine v. Fine, 77 A.2d 436, 366 Pa. 227—Heilig Bros. Co. v. Kohler, 76 A.2d 613, 366 Pa. 72—Teacher v. Kijurina, 76 A.2d 197, 365 Pa. 480—Kees v. Green, 75 A.2d 602, 365 Pa. 368—Slater v. Slater, 74 A. 2d 179, 365 Pa. 321—Gonzalez v. Simes, 72 A.2d 91, 364 Pa. 245—In re Archer's Estate, 70 A.2d 857, 363 Pa. 534—Young v. St. Martin's Church, 64 A.2d 814, 361 Pa. 505—Halkias v. Liberty Laundry Co., 64 A.2d 800, 361 Pa. 475—Appeal of Rogers, 62 A.2d 900, 361 Pa. 51—Kaufhold v. Taylor, 61 A.2d 813, 360 Pa. 372—Emberger v. Brunger, 59 A.2d 897, 359 Pa. 651—Hofford v. Roth, 59 A.2d 57, 359 Pa. 275—Teats v. Anderson, 58 A.2d 31, 358

Pa. 523—Lower Merion Tp. v. Frankel, 57 A.2d 900, 358 Pa. 430—In re Borden's Trust, 56 A.2d 108, 358 Pa. 138—Garan v. Bender, 55 A.2d 353, 357 Pa. 487—Gray v. Leibert, 53 A.2d 132, 357 Pa. 130—Herr v. Bard, 50 A.2d 280, 355 Pa. 578—Swartz v. Hafer, 47 A.2d 224, 354 Pa. 320—White v. Pennsylvania R. Co., 47 A.2d 200, 354 Pa. 397—Erkess v. Eisenthal, 47 A.2d 154, 354 Pa. 161—Pokrzywnicki v. Kozak, 47 A.2d 144, 354 Pa. 346—Hayden v. Hayden, 46 A.2d 502, 354 Pa. 11—William Sellers & Co. v. Clarke-Harrison, Inc., 46 A.2d 497, 354 Pa. 109—Commonwealth Trust Co. of Pittsburgh v. Cirigliano, 41 A.2d 863, 352 Pa. 108—In re Lewis' Estate, 41 A.2d 683, 351 Pa. 576—Jackson & Perkins Co. v. Mushroom Transp. Co., 41 A.2d 635, 351 Pa. 583, certiorari denied 66 S.Ct. 42, 326 U.S. 733, 90 L.Ed. 427—Spring v. Hawkes, 41 A.2d 538, 351 Pa. 602—Drob v. Jaffe, 41 A.2d 407, 351 Pa. 297—Genetti v. Genetti, 40 A.2d 413, 351 Pa. 169—Mattei v. Masci, 40 A.2d 265, 351 Pa. 93—McGinley v. Milk and Ice Cream Salesmen, Drivers and Dairy Employees Local Union No. 205, 40 A.2d 16, 351 Pa. 47—Patton v. Patton, 39 A.2d 921, 351 Pa. 6—H. Daroff & Sons v. Vitullo, 39 A.2d 595, 350 Pa. 501—Continental Bank & Trust Co. of New York v. American Assembling Mach. Co., 38 A.2d 220, 350 Pa. 300—T. F. Quinn Coal Co. v. Scranton Anthracite Coal Co., 38 A.2d 77, 350 Pa. 21—In re Jones' Estate, 38 A.2d 30, 350 Pa. 120—Hartman v. Cohn, 38 A.2d 22, 350 Pa. 41—MacCurdy v. Lindey, 37 A.2d 514, 349 Pa. 655—White v. Chester Municipal Authority, 36 A.2d 455, 349 Pa. 118—Hagdorn v. Faust, 35 A.2d 75, 348 Pa. 261—Boocks, for Use of Wrenshall, v. Cochran, 31 A.2d 541, 347 Pa. 36—De Paolo v. De Romo, 31 A.2d 158, 346 Pa. 654—Sheaffer v. Baeringer, 29 A.2d 697, 346 Pa. 32—Anderson v. Guerrein Sky-Way Amusement Co., 29 A.2d 682, 346 Pa. 80, 144 A.L.R. 1258—Kepler v. Kepler, 26 A.2d 429, 344 Pa. 617—Heffernan v. Heffernan, 23 A.2d 424, 344 Pa. 137—Purman v. Johnston, 22 A.2d 722, 343 Pa. 645—Bank of Charleroi & Trust Co. v. Renchkowsky, 22 A.2d 651, 343 Pa. 444—Warburton v. Warburton, 21 A.2d 21, 342 Pa. 401—De Silver v. Pennsylvania Trust Co. of Pittsburgh, 20 A.2d 761, 342 Pa. 320—Meltzer v. Kushin, 20 A.2d 189, 342 Pa. 84—Van Dyke v. O'Neill, 19 A.2d 159, 341 Pa. 182—Ringer v. Finfrock, 19 A.2d 157, 341 Pa. 419—Naulty v. Stiteler, 19 A.2d 141, 341 Pa. 234—Morris v. Featro, 17 A.2d 403, 340 Pa. 354—Ringer v. Finfrock, 17 A.2d 348, 340 Pa. 458—Dravosburg Land Co. v. Scott, 16 A.2d 415, 340 Pa. 230—City of Hazleton v. Lehigh Valley Coal Co., 16 A.2d 23, 339 Pa. 565—In re Frank's Estate, 15 A.2d 353, 339 Pa. 499—Edirose Silk Mfg. Co. v. First Nat. Bank & Trust Co., 12 A.2d 40, 338 Pa. 139—Harrisburg Dairies v. Eisaman, 11 A.2d 875, 338 Pa. 58—Pennsylvania R. Co. v. Driscoll, 9 A.2d 621, 336 Pa. 310—Malanchuk v. St. Mary's Greek Catholic Church of McKees Rocks, 9 A.2d 350, 336 Pa. 385—Markovitz v. Markovitz, 8 A.2d 46, 336 Pa. 145, 124 A.L.R. 359—Markovitz v. Markovitz, 8 A.2d 42, 336 Pa. 136—Markovitz v. Markovitz Bros., 8 A.2d 38, 336 Pa. 129—Merchants' Warehouse Co. v. Hitchler, 7 A.2d 455, 335 Pa. 465—Binns v. Copper Range Co., 6 A.2d 895, 335 Pa. 257—Union Trust Co. of Pittsburgh v. Schreck, 6 A.2d 428, 335 Pa. 190—Raynovic v. Vrlinic, 6 A.2d 288, 334 Pa. 529—Miners Nat. Bank of Wilkes-Barre v. Bowman, 6 A.2d 286, 334 Pa. 534—Vercesi v. Petri, 5 A.2d 563, 334 Pa. 385—In re Grenet's Estate, 2 A.2d 707, 332 Pa. 111—Honan v. Donaldson, 200 A. 30, 331 Pa. 388—Robinson v. Goldberg, 200 A. 4, 331 Pa. 401—McCown v. Fraser, 192 A. 674, 327 Pa. 561—Bowen v. A. R. Boyd Enterprises, 191 A. 137, 326 Pa. 385—Kratsas v. Mugianis, 188 A. 290, 324 Pa. 452—Jones v. Motor Sales Co. of Johnstown, 185 A. 809, 322 Pa. 492—In re Osterling's Estate, 185 A. 790, 323 Pa. 23—Gribben v. Carpenter, 185 A. 712, 323 Pa. 243—In re Pusey's Estate, 184 A. 844, 321 Pa. 248, certiorari denied Lavely v. Young Women's Christian Ass'n of Pittsburg, 57 S.Ct. 36, 299 U.S. 572, 81 L.Ed. 422, rehearing denied 57 S.Ct. 114, 299 U.S. 621, 81 L.Ed. 458—Wright v. Gallagher, 184 A. 657, 321 Pa. 433—Mahjoubian v. Mahjoubian, 184 A. 455, 321 Pa. 354—In re Deal's Estate, 184 A. 453, 321 Pa. 484—Weiss v. First Nat. Bank, 184 A. 451, 321 Pa. 365—Custis v. Serrill, 183 A. 774, 321 Pa. 154—Fleming v. Adamson, 182 A. 518, 321 Pa. 28—Maryland Casualty Co. v. National Bank of Germantown & Trust Co., 182 A. 362, 320 Pa. 129—White v. Old York Road Country Club, 178 A. 3, 318 Pa. 346—Equitable Life Assur. Soc. of U. S. v. Klein, 173 A. 188, 315 Pa. 156—Stern v. Gorson, 172 A. 720, 315 Pa. 315—Hillegass v. F. V. Warren & Co., 169 A. 754, 313 Pa. 394—Philadelphia & Reading Coal & Iron Co. v. Directors of Poor of Coal Tp., 166 A. 772, 311 Pa. 236—In re Krystkiewicz's Estate, 165 A. 230, 310 Pa. 298—Mulholland v. Sterling Motor Truck Co., 164 A. 597, 309 Pa. 590—Orth v. Doench, 163 A. 450, 309 Pa. 240—Brinton v. Davidson, 162 A. 905, 308 Pa. 371—Carter v. Martin, 162 A. 220, 307 Pa. 515—Burke v. Burke, 162 A. 199, 307 Pa. 518—Sheets v. Armstrong, 161 A. 359, 307 Pa. 385—Silverstein v. Boyle, 160 A. 221, 306 Pa. 544—Kraemer Hosiery Co. v. American Federation of Full Fashioned Hosiery Workers, Reading Branch, Local No. 10, 157 A. 588, 305 Pa. 206—Ebur v. Alloy Metal Wire Co., 155 A. 280, 304 Pa. 177—Garland v. Trout, 154 A. 926, 303 Pa. 545—First Regular Baptist Church of Indiana, Pa. v. Allison, 154 A. 913, 304 Pa. 1—Rachiele v. Marsico, 154 A. 698, 303 Pa. 372—Howard P. Foley Co. v. Barnett, 154 A. 391, 303 Pa. 218—Luzerne Tp. v. Monongahela Rys. Co., 154 A. 26, 303 Pa. 37—Belmont Laboratories v. Heist, 151 A. 15, 300 Pa. 542—More v. People's Bank & Trust Co., 146 A. 896, 297 Pa. 252—Lawrence v. Godfrey, 146 A. 107, 296 Pa. 474—Harrison v. Welsh, 145 A. 507, 295 Pa. 501—Rowley v. Rowley, 144 A. 537, 294 Pa. 535—Couch v. Thompson, 142 A. 280, 293 Pa. 237—Weber v. Kline, 141 A. 721, 293 Pa. 85—Kern v. Smith, 139 A. 450, 290 Pa. 566—Miller v. Central Trust & Savings Co., 132 A. 579, 285 Pa. 472—Hamilton v. Fay, 128 A. 837, 283 Pa. 175—Sagerson v. Nathan Realty Co. et al., 126 A. 802, 281 Pa. 358—City of Pittsburg v. Edwin Bell & Sons Co., 121 A. 101, 277 Pa. 135—Ben Avon Borough v. Ohio Valley Water Co., 114 A. 369, 271 Pa. 346—Hibberd v. Greenstein, 107 A. 28, 263 Pa. 527—Sklaroff v. Sklaroff, 106 A. 793, 263 Pa. 421—Pardee v. Harwood Electric Co., 105 A. 48, 262 Pa. 68.

In re King's Estate, 130 A.2d 245, 183 Pa.Super. 190—Dougherty v. Pennypack Woods Home Ownership Ass'n, 124 A.2d 703, 181 Pa. Super. 121—Abrams v. Crown, 116 A.2d 331, 178 Pa.Super. 407—Buncic v. Bierer, 115 A.2d 403, 178 Pa. Super. 562—Gut v. Good, 112 A.2d 653, 178 Pa.Super. 1—Glessner v. Security-Peoples Trust Co., 72 A.2d 817, 166 Pa.Super. 566—Baran v. Baran, 72 A.2d 623, 166 Pa.Super. 532—Mezza v. Beiletti, 70 A.2d 395, 165 Pa.Super. 609—Frederick v. Southwick, 67 A.2d 802, 165 Pa. Super. 78—Kahan v. Greenfield, 67 A.2d 567, 165 Pa.Super. 148—Guzzi v. Czaja, 63 A.2d 426, 163 Pa.Super. 597—Sczepaniak v. McGlone, 60 A.2d 382, 163 Pa.Super. 11—Popilock v. Piernikoski, 56 A.2d 326, 161 Pa. Super. 587—Mezza v. Beiletti, 53 A.2d 835, 161 Pa.Super. 213—Ziegenfuss v. Ziegenfuss, 51 A.2d 508, 160 Pa.Super. 374—Farris v. Swetts, 46 A.2d 504, 158 Pa.Super. 645—Camenisch v. Allen, 44 A.2d 309, 158 Pa.Super. 174—Pugh v. Gaines, 41 A.2d 287, 156 Pa.Super. 613—Logan Lumber Co. v. Knapp, 39 A.2d 275, 155 Pa.Super. 580—Sweigart v. Burkholder, 36 A.2d 181, 154 Pa. Super. 424—Weissman v. Henkin, 34 A.2d 907, 154 Pa.Super. 12—Williamson v. Barrett, 24 A.2d 546, 147 Pa.Super. 460, certiorari denied 62 S.Ct. 1312, 316 U.S. 703, 86

ever, where evidence, in order to prevail, must be clear, precise, and indubitable, or where it must meet some other prescribed standard of proof;[18.15] and the question whether evidence relied on by the successful party in the court below and accepted by the chancellor is legally sufficient to establish fraud is one of law which may be reviewed by the appellate court.[18.20]

Where the findings of the chancellor are reversed by the court in banc, and reasons are given for this action, it becomes the duty of an appellate court fully and carefully to examine them, together with the entire record, and determine whether the action of the court in banc is justified, keeping in mind the weight to which the original findings are entitled and the reasons for their overthrow.[18.25]

§ 1663. —— Review with Deference to Findings of Chancellor

Although the fact findings of a trial court in an equity suit may not be conclusive on appeal, they will never be lightly disturbed, because of the difficulties encountered by the appellate court in getting at the true facts and the superior position or advantage of the trial court in this respect.

Although the fact findings of a trial judge in an equity suit may not be conclusive on appeal, yet a presumption exists in favor of their correctness,[19] and they will never be lightly disturbed.[20] The appellate court in sifting and weighing the whole evidence and making its own determination of the facts in accordance therewith will do so with deference to the findings of the lower court which are often regarded as persuasive and accorded much consideration and weight;[21] and the determination of fac-

L.Ed. 1772, rehearing denied 63 S. Ct. 263, 17 U.S. 705, 87 L.Ed. 563—Kahn v. Griscom, 18 A.2d 499, 144 Pa.Super. 126—Robbins v. Weinstein, 17 A.2d 629, 143 Pa.Super. 307—Reynolds v. Maust, 15 A.2d 853, 142 Pa.Super. 109—Sanford v. Witherspoon, 15 A.2d 496, 142 Pa. Super. 71—Schwartz v. Gingerich, 14 A.2d 623, 141 Pa.Super. 298—Mische v. Local Unions No. 898 and No. 211, Dist. No. 1 United Mine Workers of America, 14 A.2d 598, 140 Pa.Super. 558—In re Kaufmann's Estate, 8 A.2d 472, 137 Pa. Super. 88—Thomas, Now to Use of Hartt v. Hartt, 7 A.2d 30, 136 Pa. Super. 84—Acme Realty v. Lafayette Building & Loan Ass'n, 4 A. 2d 240, 134 Pa.Super. 384—Houlihan v. Presbyterian Home for Aged Couples and Aged Men, 4 A.2d 175, 134 Pa.Super. 41—Chambley v. Rumbaugh, 200 A. 913, 132 Pa.Super. 312, affirmed 5 A.2d 171, 333 Pa. 319—Equitable Life Assur. Soc. of U. S. v. Saurman, 190 A. 422, 126 Pa.Super. 184—Kern v. Greensweig, 190 A. 182, 125 Pa.Super. 430—Berry v. Hoffman, 189 A. 516, 125 Pa.Super. 261—Borys v. Halko, 188 A. 539, 124 Pa.Super. 418—Andre v. Andre, 187 A. 321, 123 Pa.Super. 597—In re Simmons' Estate, 185 A. 871, 122 Pa.Super. 206—Goodman v. Goodman, 184 A. 306, 122 Pa.Super. 8—Melown v. Penn Real Estate Co., 183 A. 669, 121 Pa.Super. 209—McClernan v. Greenberg, 182 A. 59, 120 Pa.Super. 259—Home Financers' Building & Loan Ass'n v. Michael, 177 A. 503, 117 Pa.Super. 391—Varsity Building & Loan Ass'n v. Ankele, 177 A. 220, 117 Pa. Super. 45—Exton v. Saddler, 173 A. 694, 113 Pa.Super. 476—In re Hassen's Estate, 167 A. 465, 110 Pa. Super. 23—Schoen v. Lipkin, 159 A. 198, 105 Pa.Super. 127—Stalwart Building & Loan Ass'n v. Monahan, 159 A. 189, 104 Pa.Super. 498.

Change in findings

If the chancellor who originally made the findings sits with the court in banc and joins in changing the findings, they, as changed, are regarded as the final conclusion of the chancellor and entitled to the same conclusive effect as unchanged findings.

Pa.—Piacentino v. Young, 116 A. 407, 272 Pa. 556.

18.15 Pa.—Kelly v. Sheehan, 105 A. 2d 706, 378 Pa. 33—Gerfin v. Colonial Smelting & Refining Co., 97 A.2d 71, 374 Pa. 66—Stafford v. Reed, 70 A.2d 345, 363 Pa. 405.

18.20 Pa.—Bayout v. Bayout, 96 A. 2d 876, 373 Pa. 549.

18.25 Pa.—Bortz v. Troth, 59 A.2d 93, 359 Pa. 326—Lacey v. Rutter, 57 A.2d 679, 358 Pa. 502—Pilling v. Moore, 160 A. 109, 306 Pa. 406—Belmont Laboratories v. Heist, 151 A. 15, 17, 300 Pa. 542.

Kern v. Greensweig, 190 A. 182, 125 Pa.Super. 430.

Chancellor's findings accepted

If, on examination of the record, supreme court reached the conclusion that action of the court en banc in sustaining exceptions to findings of chancellor was unjustifiable, supreme court would be bound to accept the facts as found by the chancellor rather than as found by the full court.

Pa.—Harrisburg Dairies v. Eisaman, 11 A.2d 875, 338 Pa. 58.

19. See supra § 1564(1).

20. Conn.—Schneidau v. Manley, 39 A.2d 885, 131 Conn. 285.

Fla.—Maule v. Eckis, 24 So.2d 576, 156 Fla. 790—Adler v. Becker, 178 So. 117, 130 Fla. 330.

Ky.—Potter v. Potter's Ex'r, 169 S. W.2d 818, 293 Ky. 606—Roberts v. Burkhart, 160 S.W.2d 644, 290 Ky. 136—Bowling v. Duvall, 109 S.W. 2d 1200, 270 Ky. 494.

Md.—Hayes v. Covington, 39 A.2d 475, 183 Md. 506—Pitts v. Pitts, 29 A.2d 300, 181 Md. 182—Gellar v. Gellar, 150 A. 717, 159 Md. 236.

Mass.—Sidlow v. Sheridan, 38 N.E. 2d 665, 310 Mass. 395.

Mich.—Rytkonen v. Butler, 9 N.W.2d 849, 305 Mich. 580.

Miss.—McCartney v. McKendrick, 85 So.2d 164—Gordon v. Walton, 13 So.2d 627, 194 Miss. 760.

Neb.—Fisher v. Keeler, 7 N.W.2d 659, 142 Neb. 728.

N.J.—Rains v. Rains, 12 A.2d 857, 127 N.J.Eq. 328.

Okl.—Jones v. Jones, 148 P.2d 989, 194 Okl. 228—Renegar v. Bruning, 123 P.2d 686, 190 Okl. 340—Oliphant v. Rogers, 95 P.2d 887, 186 Okl. 70—Sands v. Dildine, 54 P.2d 171, 175 Okl. 520—Noble v. Bodovitz, 52 P.2d 1046, 175 Okl. 432.

Or.—Meads v. Stott, 239 P.2d 594, 193 Or. 509—Claude v. Claude, 174 P.2d 179, 180 Or. 62.

Pa.—Wilczenski v. Wilczenski, Com. Pl., 44 Berks Co. 11.

W.Va.—Martin v. Williams, 93 S.E. 2d 835.

21. Ala.—Edge v. Bice, 82 So.2d 252, 263 Ala. 273—American Nat. Bank & Trust Co. v. Powell, 178 So. 21, 235 Ala. 236—Barker v. Pinson, 110 So. 465, 215 Ala. 315.

Ark.—Ellis v. Blankenship, 182 S.W. 2d 756, 207 Ark. 739—Newport v. Chandler, 178 S.W.2d 240, 206 Ark. 974, 155 A.L.R. 1096—Andrews v. James' Estate, 82 S.W.2d 262, 190 Ark. 1177—Buffalo Stave & Lumber Co. v. Rice, 62 S.W.2d 2, 187 Ark. 731—Mullins & Kyte v. Road Improvement Dist. No. 5, 258 S.W. 639, 162 Ark. 427.

Del.—Equitable Trust Co. v. Gallagher, 95 A.2d 470, 33 Del.Ch. 435, cause remanded, Sup., 99 A.2d 490, modified on other grounds 102 A.2d 538, and motion denied 103 A.2d 151, 33 Del.Ch. 522—Henderson v.

Plymouth Oil Co., 141 A. 197, 16 Del.Ch. 347.

Fla.—Nelson v. State ex rel. Quigg, 23 So.2d 136, 156 Fla. 189, certiorari denied 66 S.Ct. 809, 327 U.S. 790, 90 L.Ed. 1016—Holland v. Florida Real Estate Commission ex rel. Linesbaugh, 178 So. 121, 130 Fla. 590—Saffold Bros. Produce Co. v. Winn & Lovett Grocery Co., 149 So. 1, 111 Fla. 60.

Ill.—Stephenson v. Kulichek, 101 N.E.2d 542, 410 Ill. 139—Kerner v. Peterson, 12 N.E.2d 884, 368 Ill. 59.

Manley v. Geng, 128 N.E.2d 641, 7 Ill.App.2d 6—Bowen v. Kraemer, 260 Ill.App. 454.

Iowa.—Wagner v. Wagner, 45 N.W.2d 508, 242 Iowa 480—Stooker v. Feil, 37 N.W.2d 918, 240 Iowa 876—State ex rel. McPherson v. Rakey, 20 N.W.2d 43, 236 Iowa 876—Chader v. Wilkins, 284 N.W. 183, 226 Iowa 417—Risser v. Cox, 174 N.W. 701, 187 Iowa 990—Stickles v. Townsend, 154 N.W. 307, 171 Iowa 697—In re Wearin's Estate, 149 N.W. 621, 167 Iowa 535.

Ky.—Stamper v. Garvin, 211 S.W.2d 399, 307 Ky. 447—Purcell v. Purcell, 198 S.W.2d 43, 303 Ky. 478—Board v. Schneider, 191 S.W.2d 418, 301 Ky. 289—Arnett's Ex'r v. Arnett's Ex'r, 185 S.W.2d 263, 299 Ky. 254—Keerkeek v. James, 170 S.W.2d 657, 293 Ky. 817—Herd v. Herd, 168 S.W.2d 762, 293 Ky. 258—Williams v. Hunter, 162 S.W.2d 541, 290 Ky. 730—Ratliff v. Ratliff, 141 S.W.2d 566, 283 Ky. 418—Tartar v. Eaton, 138 S.W.2d 342, 282 Ky. 219—Haas v. Fidelity & Columbia Trust Co., 136 S.W.2d 1088, 281 Ky. 671—Lawrence v. First State Bank of Dry Ridge, 132 S.W.2d 60, 279 Ky. 775—Walters v. Jenkins' Adm'r, 130 S.W.2d 43, 279 Ky. 144—Adkins v. Osborne, 122 S.W.2d 515, 275 Ky. 613—McDonald's Ex'r v. Transylvania University, Lexington, 118 S.W.2d 171, 274 Ky. 168—Colwell v. Holliday, 63 S.W.2d 776, 250 Ky. 584—Potter v. Potter, 61 S.W.2d 15, 249 Ky. 450—Kessler v. Liberty Ins. Bank, 50 S.W.2d 43, 244 Ky. 73—Garvin v. Steen, 47 S.W.2d 1010, 243 Ky. 256—Perkins v. Perkins, 44 S.W.2d 1073, 241 Ky. 695—Creasy v. Creasy's Next Friend, 44 S.W.2d 271, 241 Ky. 403—Jones v. O'Connell, 35 S.W.2d 290, 237 Ky. 219—Greenway v. Irvine's Ex'r, 28 S.W.2d 760, 234 Ky. 597—Mullins v. Patrick, 16 S.W.2d 1018, 229 Ky. 195—Goldstein v. McDonald, 3 S.W.2d 200, 223 Ky. 161—Stewart v. Wheeler, 295 S.W. 991, 220 Ky. 687—Hazard Lumber & Supply Co. v. Demumbrum, 295 S.W. 414, 220 Ky. 422—Collins' Ex'rs v. Bonner, 294 S.W. 1027, 220 Ky. 212—Burgin v. Burgin, 292 S.W. 516, 219 Ky. 47—Chesapeake & O. Ry. Co. v. Johnson, 291 S.W. 744, 218 Ky. 550—Pooley v. Hunt Oil Co., 287 S.W. 555, 216 Ky. 139—Gross v. Clark, 267 S.W. 1107, 206 Ky. 574—Hollingsworth v. Avey, 206 S.W. 493, 182 Ky. 334.

Md.—Trunck v. Hack's Point Community Ass'n, 103 A.2d 343, 204 Md. 193.

Mass.—Seder v. Gibbs, 131 N.E.2d 376—Harrigan v. Marvell, 89 N.E.2d 762, 325 Mass. 185—Artemis v. Malvers, 76 N.E.2d 3, 322 Mass. 136—Sterling Realty Co. v. Tredennick, 64 N.E.2d 921, 319 Mass. 153, 162 A.L.R. 1095—Silbert v. Kerstein, 62 N.E.2d 109, 318 Mass. 476—Jurewicz v. Jurewicz, 58 N.E.2d 832, 317 Mass. 512—Kneeland v. Bernardi, 58 N.E.2d 823, 317 Mass. 517—Cobuzzi v. Parks, 51 N.E.2d 965, 315 Mass. 199—Bernhardt v. Atlantic Finance Corp., 40 N.E.2d 713, 311 Mass. 183—Blair's Foodland v. Shuman's Foodland, 40 N.E.2d 303, 311 Mass. 172—Plumer v. Luce, 39 N.E.2d 961, 310 Mass. 789—R. H. White Co. v. Murphy, 38 N.E.2d 685, 310 Mass. 510—Hiller v. Hiller, 25 N.E.2d 163, 305 Mass. 163—City of Marlborough v. Snow, 17 N.E.2d 322, 301 Mass. 429—Kevorkian v. Moors, 12 N.E.2d 111, 299 Mass. 163—Foley v. Coan, 172 N.E. 74, 272 Mass. 207—Thayer v. Atwood, 156 N.E. 683, 259 Mass. 523—Romanausky v. Skutulas, 154 N.E. 856, 258 Mass. 190—Eaton v. Eaton, 124 N.E. 37, 233 Mass. 351, 5 A.L.R. 1426.

Mich.—Crooks v. Crooks, 76 N.W.2d 843, 345 Mich. 713—Hitchman v. Oakland Tp., 45 N.W.2d 306, 329 Mich. 331—Bankers Trust Co. v. Bradfield, 36 N.W.2d 870, 324 Mich. 116—Vandercook v. Kurtz, 297 N.W. 82, 297 Mich. 87—Klumpp v. Klumpp, 286 N.W. 171, 289 Mich. 97—Grand Rapids Trust Co. v. Bellows, 195 N.W. 66, 224 Mich. 504.

Miss.—State v. Cummings, 35 So.2d 636, 203 Miss. 583—Byrd v. Hendon, 120 So. 203, 153 Miss. 29—Mississippi R. Commission v. Mobile & O. R. Co., 78 So. 153, 117 Miss. 257.

Mo.—Vest v. Bialson, 293 S.W.2d 369—Kalivas v. Hauck, 290 S.W.2d 94—Poole v. Campbell, 289 S.W.2d 25—Ellis v. Farmer, 287 S.W.2d 840—Kenner v. Aubuchon, 280 S.W.2d 820—Cleary v. Cleary, 273 S.W.2d 340—Ratermann v. Striegel, 273 S.W.2d 304—Beckemeier v. Baessler, 270 S.W.2d 782—Jones v. Linder, 247 S.W.2d 817—Johns v. McNabb, 247 S.W.2d 640—Thomason v. Beery, 235 S.W.2d 308, 361 Mo. 424—Wagner v. Hicken, 232 S.W.2d 531—Proffit v. Houseworth, 231 S.W.2d 612, 360 Mo. 947—Welborn v. Rigdon, 231 S.W.2d 127—Cazel v. Alledine, 226 S.W.2d 729, 360 Mo. 1—Roberts v. Clevenger, 225 S.W.2d 728—Wallace v. Shanks, 221 S.W.2d 873—Powell v. Huffman, 213 S.W.2d 473, 358 Mo. 138—Rone v. Ward, 212 S.W.2d 404, 357 Mo. 1010—McFaw Land Co. v. Kansas City Title & Trust Co., 211 S.W.2d 44, 357 Mo. 797—Held v. Reis, 193 S.W.2d 17—Nelson v. Hammett, 189 S.W.2d 238—Edinger v. Kratzer, 175 S.W.2d 807—Klatt v. Wolff, 173 S.W.2d 933—Forster v. Clark, 171 S.W.2d 647, 351 Mo. 59—Horn v. Owens, 171 S.W.2d 585—Bowzer v. State Highway Commission, 170 S.W.2d 399—Dent v. Dent, 166 S.W.2d 582, 350 Mo. 560—Broz v. Hegwood, 163 S.W.2d 1009, 349 Mo. 920—Herman v. Madden, 162 S.W.2d 268, 349 Mo. 447—Schneider v. Schneider, 161 S.W.2d 650—Niehaus v. Madden, 155 S.W.2d 141, 348 Mo. 770—Shumate v. Hoefner, 147 S.W.2d 640, 347 Mo. 391—Mays v. Jackson, 145 S.W.2d 392, 346 Mo. 1224—Bick v. Mueller, 142 S.W.2d 1021, 346 Mo. 746—Lynn v. Coates, 142 S.W.2d 1014—Findley v. Johnson, 142 S.W.2d 61—Keller v. Lewis County, 134 S.W.2d 48, 345 Mo. 536—Mosley v. Cavanagh, 125 S.W.2d 852, 344 Mo. 236—Parsons v. Third Nat. Bank Co., 124 S.W.2d 630—White v. Chastain, 123 S.W.2d 548—Tichenor v. Bowman, 123 S.W.2d 324—Russell v. Franks, 120 S.W.2d 37, 343 Mo. 159—**Corpus Juris Secundum cited in** Shelton v. McHaney, 119 S.W.2d 951, 954, 343 Mo. 119—Edmonson v. Waterston, 119 S.W.2d 318, 342 Mo. 1082—Rhoads v. Rhoads, 119 S.W.2d 247, 342 Mo. 934—Presbyterian Orphanage of Missouri v. Fitterling, 114 S.W.2d 1004, 342 Mo. 299—Hale v. Weinstein, 102 S.W.2d 650—Finn v. Barnes, 101 S.W.2d 718, 340 Mo. 445—Franklin v. Moss, 101 S.W.2d 711—Peoples Bank of Memphis by Moberly v. Jones, 93 S.W.2d 903, 338 Mo. 1048—Selle v. Selle, 88 S.W.2d 877, 337 Mo. 1234—Fendler v. Roy, 58 S.W.2d 459, 331 Mo. 1083—Wintz v. Johannes, 56 S.W.2d 109, 331 Mo. 536—Manahan v. Manahan, 52 S.W.2d 825—Klaber v. Booth, 49 S.W.2d 181—Branner v. Klaber, 49 S.W.2d 169, 330 Mo. 306—Daggs v. McDermott, 34 S.W.2d 46, 327 Mo. 73—Queen City Inv. Co. v. Kreider, 31 S.W.2d 1002—Whetsel v. Forgey, 20 S.W.2d 523, 323 Mo. 681, 67 A.L.R. 476—Cuthbert v. Holmes, 14 S.W.2d 444—Security Sav. Bank v. Kellems, 9 S.W.2d 967, 321 Mo. 1—Hobbs v. Hicks, 8 S.W.2d 966, 320 Mo. 954—Morris v. Morris, 4 S.W.2d 459—Bybee v. S'Renco, 291 S.W. 459, 316 Mo. 517—Spring v. Giefing, 289 S.W. 825, 315 Mo. 525—Adrian v. Republic Finance Corporation, 286 S.W. 95—Williams v. Hybskmann, 278 S.W. 377, 311 Mo. 332—Bartlett v. White, 272 S.W. 944—Sayman v. Becker, 269 S.W. 973—Herryford v. Moore, 181 S.W. 389—Gill v. Newhouse, 178 S.W. 495—

Ellis v. McNally, 177 S.W. 654—Williams v. Williams, 168 S.W. 616, 259 Mo. 242.

Stamm v. Desnoyers, App., 263 S.W.2d 45—Hughes v. Hughes, App., 253 S.W.2d 500—Maas v. Dreckshage, App., 244 S.W.2d 397—North Kansas City v. Kelley, App., 242 S.W.2d 582—Dildine v. Rimpson, App., 240 S.W.2d 214—Duke v. Crossfield, App., 240 S.W.2d 180—Common School Dist. No. 27, of Gasconade County v. Brinkmann, App., 233 S.W.2d 768—Murr v. Maxwell, App., 232 S.W.2d 219—Biggs v. Griffith, App., 231 S.W.2d 875—Ewalt v. Hudson, App., 223 S.W.2d 132—Polich v. Hermann, App., 219 S.W.2d 849—Eldridge v. Logan, App., 217 S.W.2d 588—Brooks v. Brooks, App., 211 S.W.2d 65—Golden v. Golden, App., 197 S.W.2d 716—Trett v. Lambeth, App., 195 S.W.2d 524—Gray v. Kansas City, Mo., App., 194 S.W.2d 207, 239 Mo.App. 675—A. A. Elec. Machinery Co. v. Block, App., 193 S.W.2d 631—Knickmeier v. Fleer, App., 185 S.W.2d 57—Bragg v. Ross, App., 177 S.W.2d 543—Benton v. Smith, App., 171 S.W.2d 767—Leland Stanford Junior University v. Treat, App., 170 S.W.2d 115—Wood v. Gregory, App., 163 S.W.2d 355—Drainage Dist. No. 28 of New Madrid County v. Drainage Dist. No. 23 of Stoddard County, App., 146 S.W.2d 858—Bevier v. Bevier, App., 132 S.W.2d 1044—Balding v. Farm & Home Savings & Loan Ass'n of Missouri, App., 131 S.W.2d 57—Plemmons v. Pemberton, App., 117 S.W.2d 392, reversed on other grounds 139 S.W.2d 910, 346 Mo. 45—Weber v. Joslyn, App., 102 S.W.2d 693—City of Marshall ex rel. and to Use of Hasten v. Brown, App., 99 S.W.2d 485—Phillips v. Alford, App., 90 S.W.2d 1060—Hammersley v. LaForge, App., 80 S.W.2d 211—Grinnell Co. v. Farm & Home Savings & Loan Ass'n of Missouri, App., 74 S.W.2d 1097—Wayland v. Pendleton, App., 73 S.W.2d 288, reversed on other grounds 85 S.W.2d 492, 337 Mo. 190—Kent v. Bolckow State Bank of Bolckow, 70 S.W.2d 129, 228 Mo.App. 544—Kurzweil v. Enyart, App., 54 S.W.2d 464—Eldred v. Glenn, App., 52 S.W.2d 35—Meyers v. Beauchamp, App., 51 S.W.2d 545—Hanne v. Watters, 47 S.W.2d 182, 226 Mo.App. 810—Jones v. Reeves, App., 41 S.W.2d 605—Gold Lumber Co. v. Baker, 36 S.W.2d 130, 225 Mo.App. 849—Wright v. Logan, App., 25 S.W.2d 799—Tate v. Citizens' Sav. Bank of Cabool, 21 S.W.2d 222, 223 Mo. App. 957—Paxon v. Kregel Casket Co., 9 S.W.2d 856, 223 Mo.App. 151—Cavally v. Crutcher, App., 9 S.W.2d 848—Bahl v. Miles, 6 S.W.2d 661, 222 Mo.App. 984—Williamson v. Frank, 5 S.W.2d 462, 222 Mo. App. 643—Honey Creek Drainage Dist. of Grundy County v. Sampson, 5 S.W.2d 119, 222 Mo.App. 732—Proctor v. Proctor, 4 S.W.2d 882, 222 Mo.App. 21—Thompson v. Schultz, 296 S.W. 205, 222 Mo.App. 268—Lawson v. Edwards, App., 293 S.W. 794—Major v. Putney, App., 293 S.W. 81—Kelley v. Kelley, App., 290 S.W. 624—Childress v. Flynn, App., 181 S.W. 584—Nicholson v. Duff, 174 S.W. 451, 189 Mo.App. 47—Llewellyn v. Butler, 172 S.W. 413, 186 Mo.App. 525.

Neb.—Higgins v. Adelson, 270 N.W. 502, 131 Neb. 820—Burrows v. Keebaugh, 231 N.W. 751, 120 Neb. 136.

N.J.—Grossman v. Grossman, 61 A.2d 152, 142 N.J.Eq. 714—Gawales v. Gawales, 55 A.2d 13, 140 N.J.Eq. 421—Rains v. Rains, 12 A.2d 857, 127 N.J.Eq. 328—Thirteenth Ward Building & Loan Ass'n of Newark v. Weissberg, 170 A. 662, 115 N.J. Eq. 487—Guardian Life Ins. Co. of America v. Mareczko, 168 A. 642, 114 N.J.Eq. 369—Haviland v. Haviland, 168 A. 260, 114 N.J.Eq. 96—Naame v. Doughty, 158 A. 501, 109 N.J.Eq. 535.

N.D.—State ex rel. Halvorson v. Simpson, 49 N.W.2d 790, 78 N.D. 440—Arhart v. Thompson, 31 N.W.2d 56, 75 N.D. 569—McGuigan v. Heuer, 268 N.W. 679, 66 N.D. 710.

Ohio.—Damar Realty Co. v. City of Cleveland, 55 N.E.2d 805, 143 Ohio St. 469.

Okl.—Bradley v. Little, 134 P.2d 126, 192 Okl. 121—Mercer v. American Oil & Refining Co., 49 P.2d 101, 173 Okl. 515—Winn v. Willmott, 280 P. 808, 138 Okl. 177—Keenan v. Scott, 225 P. 906, 99 Okl. 63—Speaks v. Speaks, 224 P. 533, 98 Okl. 57.

Or.—Reeves v. Dickenson, 300 P.2d 458, 208 Or. 360—Smiley v. Ackerman, 249 P.2d 168, 196 Or. 383—Roberts v. Mariner, 245 P.2d 927, 195 Or. 311—Meads v. Stott, 239 P.2d 594, 193 Or. 509—Ward v. Town Tavern, 228 P.2d 216, 191 Or. 1—Biersdorf v. Putnam, 182 P.2d 992, 181 Or. 522—Claude v. Claude, 174 P.2d 179, 180 Or. 62—Gilliam v. Schoen, 157 P.2d 682, 176 Or. 356—Public Market Co. of Portland v. City of Portland, 130 P.2d 624, 171 Or. 522, reheard 138 P.2d 916, 171 Or. 522—In re Norman's Estate, 88 P.2d 977, 161 Or. 450—Edwards v. Tobin, 284 P. 562, 132 Or. 38, 68 A.L.R. 152—Mokler v. Doun, 268 P. 55, 125 Or. 595—Hamlin v. Tharp, 171 P. 894, 88 Or. 169—Goff v. Kelsey, 153 P. 103, 78 Or. 337.

Pa.—Ringer v. Finfrock, 19 A.2d 157, 341 Pa. 419—Duty v. Vacuum Oil Co., 175 A. 522, 317 Pa. 15.

Wertman v. Frable, Com.Pl., 19 Leh.L.J. 268, affirmed 26 A.2d 451, 344 Pa. 597.

R.I.—Bagley v. Page, 189 A. 39, 57 R.I. 186.

Tenn.—Haynes v. Sanford, 206 S.W.2d 796, 185 Tenn. 576—Trice v. McGill, 13 S.W.2d 49, 158 Tenn. 394.

Hepburn v. Milwaukee Mechanics Ins. Co., 183 S.W.2d 772, 27 Tenn.App. 612—Lindsey v. Planters Warehouse, 140 S.W.2d 803, 24 Tenn.App. 92—Mathis v. Campbell, 117 S.W.2d 764, 22 Tenn.App. 40—Seward v. Garner, 89 S.W.2d 770, 19 Tenn.App. 440.

Tex.—United Hay Co. v. Mueller-Huber Grain Co., Civ.App., 296 S.W. 985—Sociedad Union Mexicana La Constructora v. De Orona, Civ.App., 288 S.W. 1111.

Va.—Baird v. Crank, 29 S.E.2d 225, 182 Va. 455—Harnsberger v. Nicholas, 10 S.E.2d 873, 176 Va. 255—Dawson v. Hotchkiss, 169 S.E. 564, 160 Va. 577—Craddock's Adm'r v. Craddock's Adm'r, 163 S.E. 387, 158 Va. 58.

Wash.—Group Health Co-op., of Puget Sound v. King County Medical Soc., 237 P.2d 737, 39 Wash.2d 586—Bergstrom v. Olson, 236 P.2d 1052, 39 Wash.2d 536—Poole v. Schrichte, 236 P.2d 1044, 39 Wash.2d 558—Graff v. Geisel, 234 P.2d 884, 39 Wash.2d 131—Thomas v. Hensel, 230 P.2d 290, 38 Wash.2d 457—Bacon v. Gardner, 229 P.2d 523, 38 Wash.2d 299—Akers v. Sinclair, 226 P.2d 225, 37 Wash.2d 693—State ex rel. Bradford v. Stubblefield, 220 P.2d 305, 35 Wash.2d 664, 17 A.L.R.2d 1258—Fisher v. Hagstrom, 214 P.2d 654, 35 Wash.2d 632—Darnell v. Noel, 208 P.2d 1194, 34 Wash.2d 428—Osawa v. Onishi, 206 P.2d 498, 33 Wash.2d 546—Eckley v. Bonded Adjustment Co., 190 P.2d 718, 30 Wash.2d 96, 1 A.L.R.2d 717—Puckett v. Puckett, 185 P.2d 131, 29 Wash.2d 15—Wingard v. Pierce County, 160 P.2d 1009, 23 Wash.2d 296—Widman v. Maurer, 141 P.2d 135, 19 Wash.2d 28—Rapp v. Ellis, 129 P.2d 545, 14 Wash.2d 659—Columbia Lumber Co. v. Bush, 126 P.2d 584, 13 Wash.2d 657—Swingley v. Daniels, 212 P. 729, 123 Wash. 409—Williamson Inv. Co. v. Williamson, 165 P. 385, 96 Wash. 529.

W.Va.—Blair v. Dickinson, 54 S.E.2d 828, 133 W.Va. 38, certiorari denied Gauley-Eagle Coal & Coke Co. v. Blair, 70 S.Ct. 306, 338 U.S. 904, 94 L.Ed. 556—Allen v. Allen, 28 S.E.2d 829, 126 W.Va. 415.

Wis.—Welch v. Welch, 290 N.W. 758, 235 Wis. 282, mandate modified on other grounds 293 N.W. 150, 235 Wis. 282.

4 C.J. p 898 note 86.

Memorandum opinion not finding of fact

On appeal from judgment in action in equity, memorandum opinion does not have standing of findings of fact within rule that findings of fact will be accorded great weight by supreme court.

Wash.—Akers v. Sinclair, 226 P.2d 225, 37 Wash.2d 693.

tual questions is often regarded as within the province of the chancellor, at least in the first instance.[22]

The rule of deference is to a great extent but a rule of necessity or convenience invoked because of the difficulties encountered by the appellate court in getting at the true facts and the superior position or advantage of the trial court in this respect.[23] This is clearly shown by the fact that the terminology sometimes used to express the rule of deference is that the appellate court in determining the facts will

22. Ala.—Fitzpatrick v. Shine, 48 So. 2d 220, 254 Ala. 323.
Ariz.—Edwards v. Sheets, 185 P.2d 1001, 66 Ariz. 213—Davis v. Kleindienst, 169 P.2d 78, 64 Ariz. 251.
Ark.—Dobson v. Arkansas Oil & Gas Commission, 235 S.W.2d 33, 218 Ark. 160—Hopkins v. Williams, 219 S.W.2d 620, 215 Ark. 151—Tucker v. Stewart, 192 S.W.2d 766, 209 Ark. 856—Lea v. Bradshaw, 90 S.W.2d 487, 192 Ark. 135—Rutherford v. Casey, 77 S.W.2d 58, 190 Ark. 79.
Cal.—Butterfield v. Gentles, 70 P.2d 613, 9 C.2d 275—Union Mut. Life Ins. Co. v. Broderick, 238 P. 1034, 196 C. 497—Akley v. Bassett, 209 P. 576, 189 C. 625.
Kelly v. Bank of America Nat. Trust & Sav. Ass'n, 246 P.2d 92, 112 C.A. 388, 34 A.L.R.2d 578—Formosa Corp. v. Rogers, 239 P.2d 88, 108 C.A.2d 397—Bisogno v. Browne, 233 P.2d 631, 105 C.A.2d 635—Kaynor v. Fisch, 230 P.2d 418, 103 C.A. 2d 832—Sackett v. Starr, 212 P.2d 535, 95 C.A.2d 128—Baran v. Goldberg, 194 P.2d 765, 86 C.A.2d 506—Carman v. Athearn, 175 P.2d 926, 77 C.A.2d 585—Kosloskye v. Cis, 160 P.2d 565, 70 C.A.2d 174—Engebrecht v. Shelton, 158 P.2d 570, 69 C.A.2d 151—Tieso v. Tieso, 155 P.2d 659, 67 C.A.2d 872—Frankish v. Frankish Co., 283 P. 970, 103 C. A. 93—Dalbkermeyer v. Rader, 273 P. 600, 96 C.A. 23—Royal Realty Co. v. Harvey Inv. Co., 272 P. 805, 95 C.A. 352—Woodruff v. Gann, 264 P. 789, 89 C.A. 345—Thompson v. Mansfield, 258 P. 702, 84 C.A. 560—Careaga v. Moore, 234 P. 121, 70 C.A. 614—Carr v. Sacramento Clay Products Co., 170 P. 446, 35 C.A. 439.
Fla.—Evans v. Evans, 70 So.2d 506—Palm Orange Groves v. Yelvington, 32 So.2d 164, 159 Fla. 462—Winer v. New York Life Ins. Co., 197 So. 487, 143 Fla. 652—Patterson v. Town of Palm Beach, 195 So. 917, 142 Fla. 732—Mayo v. Texas Co., 188 So. 206, 137 Fla. 218—Crouch v. Poole, 182 So. 844, 133 Fla. 489—Schaar v. Smith, 174 So. 321, 128 Fla. 203—Kirkland v. Carter, 171 So. 767, 126 Fla. 773—Bean v. Suburban Holding Co., 164 So. 513, 121 Fla. 868.
Idaho.—Prescott v. Snell, 299 P. 1079, 50 Idaho 644.
Ill.—Pasedach v. Auw, 4 N.E.2d 841, 364 Ill. 491.
Bogaerts v. Bogaerts, 101 N.E. 2d 608, 344 Ill.App. 497—Sebastian v. Stamer, 90 N.E.2d 922, 340 Ill. App. 218—Prudential Ins. Co. of America v. Spain, 90 N.E.2d 256, 339 Ill.App. 476—Rafferty v. Rafferty, 85 N.E.2d 845, 337 Ill.App. 277—Ledbetter v. Evans, 8 N.E.2d 970, 290 Ill.App. 533—Straus v. Liebling, 2 N.E.2d 572, 284 Ill. App. 645.
Ind.—Bragdon v. Bruce, 92 N.E.2d 646, 120 Ind.App. 497—Burton v. Sparks, 36 N.E.2d 962, 109 Ind. App. 531.
Iowa.—Laufert v. Wegner, 62 N.W. 2d 758, 245 Iowa 472.
Ky.—Caskey v. Bradley, 168 S.W.2d 36, 292 Ky. 789—Buttermore v. Pope-Cawood Lumber & Supply Co., 106 S.W.2d 632, 269 Ky. 218—Midland Gas Corp. v. Reffitt, 149 S.W.2d 537, 286 Ky. 11—Maggard v. Asher, 105 S.W.2d 184, 268 Ky. 416—Cain v. Campbell's Adm'x, 98 S.W.2d 17, 265 Ky. 843—Whitney Transfer Co. v. Rigsby, 96 S.W.2d 577, 265 Ky. 217.
La.—Robertson v. Shipp, App., 50 So.2d 699.
Md.—Murray v. Requardt, 23 A.2d 697, 180 Md. 245.
Mass.—Goldstein v. Beal, 59 N.E.2d 712, 317 Mass. 750—Beaudoin v. Sinodinos, 48 N.E.2d 19, 313 Mass. 511—Springfield Safe Deposit & Trust Co. v. Friele, 23 N.E.2d 138, 304 Mass. 224—Spiegel v. Beacon Participations, 8 N.E.2d 895, 297 Mass. 398—Hubbard v. Southbridge Nat. Bank, 8 N.E.2d 351, 297 Mass. 17—Inhabitants of Town of Wayland v. Child, 157 N.E. 615, 260 Mass. 469—Brilliant v. Samelas, 108 N.E. 1047, 221 Mass. 302.
Minn.—Shaughnessy v. Eidsmo, 23 N.W.2d 362, 222 Minn. 141, 166 A. L.R. 435—Carlson v. Carlson, 300 N.W. 900, 211 Minn. 297.
Miss.—Sharp v. Learned, 32 So.2d 141, 202 Miss. 393—Wilkie v. West Const. Co. of Tennessee, 16 So.2d 154, 196 Miss. 233, suggestion of error overruled 16 So.2d 617, 196 Miss. 233—Cartee v. Blacketor, 176 So. 532, 179 Miss. 665—Security Mut. Life Ins. Co. v. Brunson, 170 So. 824, 176 Miss. 893—St. Paul Fire & Marine Ins. Co. v. McQuaid, 75 So. 255, 114 Miss. 430.
Mo.—Milligan v. Bing, 108 S.W.2d 108, 341 Mo. 648.
Mont.—Lewis v. Bowman, 121 P.2d 162, 113 Mont. 68.
N.H.—Ober v. Curnane, 56 A.2d 923, 95 N.H. 29—Miller v. Pender, 34 A. 2d 663, 93 N.H. 1, 150 A.L.R. 798.
N.J.—R. B. Davis Co. v. Sher, 5 A.2d 49, 125 N.J.Eq. 316—Jadzevicz v. Adams, 191 A. 803, 122 N.J.Eq. 6—U. S. Casualty Co. v. Diamond Fuel Co., 194 A. 169, 122 N.J.Eq. 369—Grunt v. Weissman, 151 A. 729, 107 N.J.Eq. 107.
N.Y.—Gargiulo v. Labate, 63 N.Y.S. 2d 94, 270 App.Div. 1049—Rubin v. Dairymen's League Co-op. Ass'n, 18 N.Y.S.2d 466, 259 App.Div. 23. motion denied 20 N.Y.S.2d 672, 259 App.Div. 940, affirmed 29 N.E.2d 458, 284 N.Y. 32, reargument denied 31 N.E.2d 927, 284 N.Y. 816.
Okl.—Gayer v. Roddie, 73 P.2d 420, 182 Okl. 116.
Pa.—Madera v. Monongahela Ry. Co., 52 A.2d 329, 356 Pa. 460—Zuback v. Bakmaz, 29 A.2d 473, 346 Pa. 279—Werle v. Werle, 1 A.2d 244, 332 Pa. 49.
Camenisch v. Allen, 44 A.2d 309, 158 Pa.Super. 174—Glessner v. Security-Peoples Trust Co., 39 A.2d 165, 156 Pa.Super. 56—Williamson v. Barrett, 24 A.2d 546, 147 Pa. Super. 460, certiorari denied 62 S. Ct. 1312, 316 U.S. 703, 86 L.Ed. 1772, rehearing denied 63 S.Ct. 26, 317 U.S. 705, 87 L.Ed. 563.
S.C.—Lee v. Columbia Ry. & Nav. Co., 12 S.E.2d 741, 195 S.C. 493.
Tenn.—Draper v. Draper, 147 S.W.2d 759, 24 Tenn.App. 548.
Tex.—Schultz v. Shatto, 237 S.W.2d 609, 150 Tex. 130.
Kennedy v. Shipp, Civ.App., 135 S.W.2d 204, error dismissed, judgment correct—Rampy v. Nance, Civ.App., 286 S.W. 292.
Vt.—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292—Hall v. Village of Swanton, 35 A.2d 381, 113 Vt. 424—Lowe v. Green Mountain Power Corp., 11 A.2d 219, 111 Vt. 112.
Wis.—Petition of Herman, 290 N.W. 119, 233 Wis. 653.
Wyo.—Eckdahl v. Hurwitz, 103 P.2d 161, 56 Wyo. 19.

Construction of will

Where both complainant and defendant by cross complaint sought specific construction of will and asserted rights dependent on such construction and no collateral facts were alleged to shed light on testator's intention, appellate court would not question propriety of trial court's action in construing will on demurrer to cross complaint.
Ala.—Blackwell v. Burketts, 36 So. 2d 326, 251 Ala. 233.

23. Mo.—Howard v. Zweigart, 197 S.W. 46.
Okl.—**Corpus Juris Secundum cited** in McCrory v. Evans, 138 P.2d 823, 825, 192 Okl. 649.
Utah.—Ward v. Ward, 85 P.2d 635, 96 Utah 263.

make due allowance for the more advantageous position occupied by the trial judge, in that he has had the opportunity to observe the conduct and appearance of the witnesses while testifying.[24] It is to be expected, therefore, that the deference and weight accorded the fact findings of the chancellor will vary somewhat according to the degree in which difficulty is encountered by the appellate court in getting at the true facts or in which the advantages often possessed by trial courts are present or lacking—and such is the situation.[24.5]

Particular deference and weight are accorded to the lower court's findings, and they are seldom interfered with, where the evidence is oral;[25] and in

24. Ala.—Christian v. Reed, 92 So.2d 881, 265 Ala. 533.

Ark.—Zackery v. Warmack, 212 S.W. 2d 706, 213 Ark. 808.

Fla.—Larkin v. Tsavaris, 85 So.2d 731—Reading v. Blakeman, 66 So. 2d 682—Miami Typographical Union No. 430 v. Ormerod, 61 So.2d 753.

Iowa.—Peddicord v. Peddicord, 47 N. W.2d 264, 242 Iowa 558—Christians v. Christians, 44 N.W.2d 431, 241 Iowa 1017—Reusch v. Shafer, 41 N.W.2d 651, 241 Iowa 536.

Ky.—Kelly v. King, 145 S.W.2d 78, 284 Ky. 429.

Md.—McGrath v. McGrath, 132 A.2d 109, 213 Md. 442—Hoffman v. Seth, 114 A.2d 58, 207 Md. 234—Harp v. Harp, 84 A.2d 895, 198 Md. 485.

Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302.

Mich.—Albert v. Gamble-Skogmo, Inc., 56 N.W.2d 263, 335 Mich. 539—Ruch v. First Nat. Bank of Three Rivers, 39 N.W.2d 240, 326 Mich. 52—Smith v. City of Ann Arbor, 6 N.W.2d 752, 303 Mich. 476—Grudzien v. Ziolowski, 293 N. W. 714, 294 Mich. 451—In re George L. Nadell & Co., 292 N.W. 684, 294 Mich. 150.

Mo.—Ratermann v. Striegel, 273 S.W. 2d 304—Glauert v. Huning, 266 S. W.2d 653—Gardine v. Cottey, 230 S.W.2d 731, 360 Mo. 681, 18 A.L.R. 2d 1100—Farr v. Lineberger, 207 S.W.2d 455—Oetting v. Green, 166 S.W.2d 548, 350 Mo. 457—Hobson v. Elmer, 163 S.W.2d 1020, 349 Mo. 1131—Tobin v. Wood, 159 S.W.2d 287—Wrigley v. Wrigley, 132 S.W. 2d 989, 345 Mo. 207—Conrad v. Diehl, 129 S.W.2d 870, 344 Mo. 811—Kingston v. Mitchell, 117 S. W.2d 226—Wigginton v. Burns, 216 S.W. 756—Taylor v. Cawood, 211 S.W. 47—Campbell v. McLaughlin, 205 S.W. 18—Sinnett v. Sinnett, 201 S.W. 887.

Schertz v. Blocher, App., 288 S. W.2d 385—Sapp v. Garrett, App., 284 S.W.2d 49—O'Meara v. New York Life Ins. Co., 169 S.W.2d 116, 237 Mo.App. 400—Mueller v. Klinart, App., 167 S.W.2d 670—Wallich v. Glenis, App., 152 S.W.2d 679—Birkey v. Burguard, App., 146 S.W. 2d 65—Hooper v. Wineland, App., 131 S.W.2d 232—Williams v. Hybskmann, App., 247 S.W. 203, certified 278 S.W. 377, 311 Mo. 332—Clippard v. Kneibert, 226 S.W. 584, 206 Mo.App. 144—Holmes v. Doe Run Lead Co., App., 223 S.W. 772.

Mont.—Lewis v. Bowman, 121 P.2d 162, 113 Mont. 68—Barnard Realty Co. v. City of Butte, 177 P. 402, 55 Mont. 384.

Neb.—James v. McNair, 81 N.W.2d 813, 164 Neb. 1—Fiala v. Tomek, 81 N.W.2d 691, 164 Neb. 20—Rodgers v. Jorgensen, 67 N.W.2d 770, 159 Neb. 485—Strasser v. Strasser, 44 N.W.2d 508, 153 Neb. 288—Fischer v. Adams, 38 N.W.2d 337, 151 Neb. 512—O'Brien v. Fricke, 27 N.W.2d 403, 148 Neb. 369—Columbian Steel Tank Co. v. Vosika, 17 N.W.2d 488, 145 Neb. 541—Fisher v. Standard Inv. Co., 15 N.W.2d 355, 145 Neb. 80—Nitzel & Co. v. Nelson, 14 N.W.2d 197, 144 Neb. 662—Smith v. Black, 9 N.W.2d 193, 143 Neb. 244—Fisher v. Keeler, 7 N.W.2d 659, 142 Neb. 728—Atandidge v. Creveling, 6 N.W.2d 56, 142 Neb. 334—Neary v. General American Life Ins. Co., 1 N.W.2d 908, 140 Neb. 756—Robinson v. Williams, 285 N.W. 574, 136 Neb. 253—Ohme v. Thomas, 279 N.W. 480, 134 Neb. 727—Lautenschlager v. Lautenschlager, 279 N.W. 200, 134 Neb. 577—Hole v. Hamp, 278 N.W. 480, 134 Neb. 259—Riggs v. Hroch, 274 N.W. 598, 133 Neb. 260—Higgins v. Adelson, 270 N.W. 502, 131 Neb. 820.

N.J.—Tierney v. Hotz, 55 A.2d 39, 141 N.J.Eq. 114.

Okl.—Adams v. Adams, 256 P.2d 458, 208 Okl. 378—Hill v. Hill, 215 P.2d 553, 202 Okl. 483—Wilkerson v. Walker, 167 P.2d 372, 196 Okl. 618.

Pa.—U. S. Fidelity & Guaranty Co. v. Mather, Com.Pl., 30 Del.Co. 458.

R.I.—Greene v. Rhode Island Hospital Trust Co., 197 A. 464, 60 R.I. 184.

S.C.—Twitty v. Harrison, 94 S.E.2d 879, 230 S.C. 174.

Tenn.—Troutt v. Troutt, 250 S.W.2d 372, 35 Tenn.App. 617—Murphy v. Reynolds, 212 S.W.2d 686, 31 Tenn. App. 94.

Utah.—Cannon v. Neuberger, 268 P.2d 425, 1 Utah 2d 396—Reimann v. Baum, 203 P.2d 387, 115 Utah 14—Provo City v. Jacobsen, 176 P.2d 130, 111 Utah 39, modified on other grounds 181 P.2d 213, 111 Utah 68—Baldwin v. Nielson, 170 P.2d 179, 110 Utah 172, opinion adhered to 174 P.2d 437, 110 Utah 180.

Va.—Batleman v. Rubin, 98 S.E.2d 519, 199 Va. 156.

W.Va.—Farley v. Farley, 68 S.E.2d 353, 136 W.Va. 598—Napper v. Rice, 32 S.E.2d 41, 127 W.Va. 157.

24.5 Determined by appellate court itself

The weight to be given to the findings of fact or to the decree rendered on facts adduced in evidence in trial court, as shown by the record on appeal, is for the appellate court to determine for itself within the judicial powers and jurisdiction conferred by the constitution.

Fla.—In re Alkire's Estate, 198 So. 475, 142 Fla. 862, 144 Fla. 606.

25. Ala.—Christian v. Reed, 92 So.2d 881, 265 Ala. 533—Hyatt v. Compton, 80 So.2d 650, 262 Ala. 649—Scruggs v. Beason, 20 So.2d 774, 246 Ala. 405.

Colo.—Antonioli v. Arlian, 45 P.2d 174, 96 Colo. 513.

Del.—Hob Tea Room v. Miller, 89 A. 2d 851, 38 Del.Ch. 38.

Fla.—Bittner v. Bittner, 67 So.2d 327—Daino v. Daino, 22 So.2d 253, 155 Fla. 886—Willis v. Van Woy, 20 So.2d 690, 155 Fla. 465—Kellogg v. Porter, 20 So.2d 59, 155 Fla. 287—Riesner v. Riesner, 186 So. 669, 136 Fla. 129—Franklin Life Ins. Co. v. Tharp, 178 So. 300, 130 Fla. 546, rehearing denied 179 So. 406, 131 Fla. 213—Riesner v. Riesner, 178 So. 164, 130 Fla. 489—Sabins v. City of Daytona Beach, 177 So. 229, 130 Fla. 62.

Idaho.—Snell v. Stickler, 299 P. 1080, 50 Idaho 648—Davenport v. Burke, 167 P. 481, 30 Idaho 599—Darry v. Cox, 155 P. 660, 28 Idaho 519.

Ill.—Lewis v. McCreedy, 38 N.E.2d 170, 378 Ill. 264, 138 A.L.R. 198—Flynne v. Troesch, 26 N.E.2d 91, 373 Ill. 275—Page v. Keeves, 199 N. E. 131, 362 Ill. 64—Parker v. Ruley, 148 N.E. 308, 317 Ill. 441—Sadler v. Drennan, 133 N.E. 870, 301 Ill. 335—Nofftz v. Nofftz, 124 N.E. 838, 290 Ill. 36—Smith v. Love, 122 N. E. 136, 286 Ill. 570—Woodruff v. Day, 115 N.E. 885, 278 Ill. 199.

In re Sandusky's Estate, 52 N.E. 2d 285, 321 Ill.App. 1—Shipman v. Moseley, 49 N.E.2d 662, 319 Ill. App. 443—Kinne v. Duncan, 43 N. E.2d 425, 315 Ill.App. 577, affirmed in part and reversed in part on other grounds 48 N.E.2d 375, 383 Ill. 110—Williams v. Griffith, 35 N.E.2d 95, 310 Ill.App. 574—Metcalf v. Metcalf, 2 N.E.2d 760, 286

like manner great deference is accorded to findings | of the lower court based on evidence which is partly

Ill.App. 10—Pribyl v. Pribyl, 250 Ill.App. 349—American Cigar Co. v. Berger, 221 Ill.App. 339—Heinrich v. Norton, 219 Ill.App. 86—Matthes v. Matthes, 198 Ill.App. 515. See Swartout v. Swartout, 207 Ill.App. 463.

Iowa.—Schaffer v. Campbell, 199 N. W. 334, 198 Iowa 43—Albaugh v. Shrope, 196 N.W. 743, 197 Iowa 844—Rembe v. Ferguson, 166 N.W. 720, 183 Iowa 29.

Ky.—Applegate's Adm'r v. Jones, 294 S.W. 1032, 220 Ky. 205.

Md.—Kirby v. Kirby, 40 A.2d 303, 184 Md. 120—Garner v. Garner, 190 A. 243, 171 Md. 603—Brett v. Brett, 182 A. 305, 169 Md. 704.

Mass.—Building Com'r of Medford v. C. & H. Co., 65 N.E.2d 537, 319 Mass. 273—Russell v. Meyers, 56 N.E.2d 604, 316 Mass. 669—DiMassa v. Great American Novelty Co., 49 N.E.2d 120, 314 Mass. 1—Burnham v. Prudential Ins. Co. of America, 3 N.E.2d 754, 295 Mass. 387—Vaughan v. Vaughan, 200 N. E. 912, 294 Mass. 164—Hollidge v. Colonial Trust Co., 194 N.E. 711, 290 Mass. 52, certiorari denied 56 S.Ct. 91, 296 U.S. 581, 80 L.Ed. 411—Ecklund v. Ecklund, 193 N.E. 43, 288 Mass. 517—Curtis v. First Church in Charlestown, 188 N.E. 631, 285 Mass. 73—Adams v. Silverman, 182 N.E. 1, 280 Mass. 23—Shadman v. O'Brien, 180 N.E. 532, 278 Mass. 579—Brooks v. Bennett, 177 N.E. 685, 277 Mass. 8—Rykiel v. Sklaver, 156 N.E. 842, 259 Mass. 608—American House Hotel Co. v. Hemenway, 129 N.E. 371, 237 Mass. 180.

Mo.—Schebaum v. Mersman, 191 S.W. 2d 671—Stibal v. Nation, 98 S.W. 2d 724—Wegmann Realty Co. v. City of St. Louis, 47 S.W.2d 770, 329 Mo. 972—Norton v. Norton, 43 S.W.2d 1024—Kent v. Crockett, 274 S.W. 460—Silber v. Silber, 249 S.W. 390—Bourg v. Manufacturers' Ry. Co., 245 S.W. 43—McKinney v. Hawkins, 215 S.W. 250.

Zorensky v. Wellston Clothing Co., App., 223 S.W.2d 851—Worley v. Worley, App., 176 S.W.2d 74—French v. Franklin Life Ins. Co., 164 S.W.2d 90, 237 Mo.App. 696—Phillips v. Alford, App., 90 S.W.2d 1060—Steffen v. Stahl, App., 273 S.W. 118.

N.Y.—People v. Silinsky, 216 N.Y.S. 637, 217 App.Div. 247, appeal dismissed 155 N.E. 882, 144 N.Y. 524.

Or.—White v. Harrison, 194 P. 431, 98 Or. 508.

Tenn.—Byrd v. Wright, 177 S.W.2d 820, 180 Tenn. 627, rehearing denied 179 S.W.2d 452, 180 Tenn. 627.

Seward v. Garner, 89 S.W.2d 770, 19 Tenn.App. 440—Pearson v. Mutual Life Ins. Co. of New York, 68 S.W.2d 963, 17 Tenn.App. 503.

Utah.—Zuniga v. Evans, 48 P.2d 513, 87 Utah 198—Chapman v Troy Laundry Co., 47 P.2d 1054, 87 Utah 15.

Va.—Sutton v. Sutton, 72 S.E.2d 275, 194 Va. 179.

Wis.—Jeske v. Hotz Mfg. Co., 290 N. W. 208, 233 Wis. 500.

Wyo.—**Corpus Juris Secundum quoted in** Trusler v. Grigsby, 286 P.2d 603, 609, 74 Wyo. 204.

4 C.J. p 898 note 87, p 899 note 95 [d].

Witnesses seen and heard

(1) Where the trial judge heard the evidence and saw the witnesses, great weight will be given his findings and they will not be disturbed unless clearly wrong or against weight of evidence.

Fla.—Kellogg v. Porter, 20 So.2d 59, 155 Fla. 287—Sheldon v. Wilfore, 186 So. 508, 136 Fla. 312—State ex rel. Smith v. Gomez, 179 So. 651, 131 Fla. 385.

Ill.—Rose v. Frailey, 140 N.E.2d 711, 10 Ill.2d 514—Burrows v. Palmer, 140 N.E.2d 668, 10 Ill.2d 344—Fox v. Fox, 138 N.E.2d 547, 9 Ill. 2d 509—Warner v. Gosnell, 132 N.E.2d 526, 8 Ill.2d 24—Bradley v. Bradley, 119 N.E.2d 788, 3 Ill.2d 58—Baker v. Baker, 107 N.E.2d 711, 412 Ill. 511—Halla v. Chicago Title & Trust Co., 104 N.E.2d 790, 412 Ill. 39—Bremer v. Bremer, 104 N.E.2d 299, 411 Ill. 454—Black v. Gray, 104 N.E.2d 212, 411 Ill. 503—Miethe v. Miethe, 101 N.E.2d 571, 410 Ill. 226—Stephenson v. Kulichek, 101 N.E.2d 542, 410 Ill. 139—Pepe v. Caputo, 97 N.E.2d 260, 408 Ill. 321—Stenwall v. Bergstrom, 90 N.E.2d 778, 405 Ill. 281—Schnepper v. Ashlock, 88 N.E.2d 853, 404 Ill. 417—Evangeloff v. Evangeloff, 85 N.E.2d 709, 403 Ill. 118—Dombrow v. Dombrow, 82 N.E.2d 47, 401 Ill. 324—Clark v. Clark, 76 N.E.2d 446, 398 Ill. 592—McCrillis v. Uterback, 74 N.E.2d 682, 397 Ill. 550—Pure Oil Co. v. Byrnes, 57 N.E.2d 356, 388 Ill. 26—Jones v. Koepke, 55 N.E.2d 154, 387 Ill. 97—O'Malley v. Deany, 51 N.E.2d 583, 384 Ill. 484—Elsasser v. Miller, 49 N.E.2d 21, 383 Ill. 243—Redmon v. Borah, 48 N.E.2d 355, 382 Ill. 610—Sroczynski v. Schultz, 44 N.E.2d 860, 381 Ill. 86—West v. Le Page, 44 N.E.2d 855, 381 Ill. 131—Seifert v. Demaree, 43 N.E.2d 957, 380 Ill. 283—Van Amburg v. Reynolds, 23 N.E.2d 694, 372 Ill. 317—Hadley v. White, 11 N.E.2d 813, 367 Ill. 406—Hall v. Pittenger, 6 N.E.2d 134, 365 Ill. 135—Steinke v. Sztanka, 4 N.E.2d 472, 364 Ill. 334—Page v. Keeves, 199 N.E. 131, 362 Ill. 64—Keating v. Frint, 126 N.E. 136, 291 Ill. 423—Roche v. Roche, 121 N.E. 621, 286 Ill. 336—Valbert v. Valbert, 118 N.E. 738, 282 Ill. 415—Woods v. Youngren, 112 N.E. 373, 272 Ill. 521.

Cline v. Cline, 139 N.E.2d 828, 12 Ill.App.2d 231—Pool v. Rutherford, 84 N.E.2d 650, 336 Ill.App. 516—Isaacs v. Okin, 73 N.E.2d 11, 331 Ill.App. 268—Brady v. Metropolitan Life Ins. Co., 72 N.E.2d 629, 331 Ill.App. 114—Ash v. Ash, 64 N.E.2d 741, 327 Ill.App. 656—Weber v. Weber, 64 N.E.2d 239, 327 Ill.App. 411—Anderson Bros. Mfg. Co. v. Larson, 61 N.E.2d 410, 326 Ill.App. 82—Betinis v. Gregory, 55 N.E.2d 549, 323 Ill.App. 287—Mousette v. Monarch Life Ins. Co., 32 N.E.2d 1004, 309 Ill.App. 224—Anderson v. Collinson, 20 N.E.2d 980, 300 Ill.App. 22—Immel, for Use and Benefit of Schutt v. Travelers Ins. Co., 20 N.E.2d 804, 300 Ill.App. 96, reversed on other grounds Immel v. Travelers Ins. Co., 26 N.E.2d 114, 373 Ill. 256—Garvy v. Garvy, 282 Ill.App. 485—Beiman v. Union Bank of Chicago, 255 Ill.App. 11.

Iowa.—Christensen v. Harris, 180 N. W. 325, 190 Iowa 256—Noble v. Jackson, 170 N.W. 764—Mockler v. Lohman, 170 N.W. 744, 185 Iowa 448—Lamkin v. Lamkin, 159 N.W. 436, 177 Iowa 583.

Ky.—Craddock v. Kaiser, 133 S.W.2d 916, 280 Ky. 577—Isgrig v. Jacoby, 251 S.W. 945, 199 Ky. 744.

Md.—Hite v. Hite, 124 A.2d 581, 210 Md. 576—Cohen v. Orlove, 57 A.2d 810, 190 Md. 237.

Mass.—Mendelsohn v. Leather Mfg. Corp., 93 N.E.2d 537, 326 Mass. 226—McKellar v. Hazen, 92 N.E.2d 597, 325 Mass. 714—Attorney General v. Book Named "Forever Amber", 81 N.E.2d 663, 323 Mass. 302—Marshall v. Landau, 31 N.E.2d 540, 308 Mass. 239—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—Spiegel v. Beacon Participations, 8 N.E.2d 895, 297 Mass. 398—Hub Dress Mfg. Co. v. Rottenberg, 129 N.E. 442, 237 Mass. 281—W. B. Mfg. Co. v. Rubenstein, 128 N.E. 21, 236 Mass. 215, 11 A.L.R. 1283.

Mo.—Gobel v. Kitchen, 266 S.W. 992, 217 Mo.App. 354.

(2) In weighing the evidence the appellate court will consider the fact that the trial court observed the witnesses.

Mo.—Kansas City Rapid Motor & Transp. Co. v. Young, 175 S.W. 95, 188 Mo.App. 289.

Neb.—State v. Cheyenne County, 241 N.W. 747, 123 Neb. 1—Yardum v. Evans, 235 N.W. 85, 120 Neb. 699.

Or.—Trueblood v. Talkington, 188 P. 159, 95 Or. 527.

Limitations on rule

(1) The fact that the chancellor heard and saw the witnesses will not be given any weight if it cannot be

oral,[26] or oral and conflicting.[27] In accordance with | the general rule, the findings will not be lightly in-

determined whether the chancellor based his conclusion on the weight of the evidence or an erroneous view that certain of appellant's evidence was incompetent.

Or.—Gress v. Wessinger, 172 P. 495, 88 Or. 625.

(2) Nor does the rule against disturbing findings on oral testimony apply where the judge disbelieved all the witnesses who testified on the point.

Mass.—Rubenstein v. Lottow, 107 N. E. 718, 220 Mass. 156.

Sufficiency to support findings

The appellate court will not weigh the evidence if there is sufficient to support the findings, and the evidence consists of the oral testimony of witnesses delivered at the trial.

Ind.—Flying Squadron Foundation v. Crippen, 169 N.E. 843, 201 Ind. 482—Mills v. Thomas, 144 N.E. 412, 194 Ind. 648—Gilchrist v. Hatch, 106 N.E. 694, 183 Ind. 371, Ann.Cas. 1917E 1030.

Wasmuth-Endicott Co. v. Richmond Cabinet Co., 159 N.E. 697, 86 Ind.App. 686—McCurdy v. Rich, 132 N.E. 315, 76 Ind.App. 469.

4 C.J. p 897 note 82 [b]

Exception to rule that appellate court shall weigh evidence

Notwithstanding statutory provisions that on a chancery appeal the supreme court shall weigh the evidence giving no weight to the chancellor's decision, it has been held that the chancellor's decision is to be given the weight of a jury verdict and not disturbed unless plainly wrong where the evidence is oral and the chancellor had the advantage of seeing the witnesses.

Ala.—Pugh v. Cannon, 94 So.2d 386—Pitts v. Hawkins, 87 So.2d 835, 264 Ala. 428—Stewart v. Weaver, 87 So. 2d 548, 264 Ala. 286—Longley v. Patton, 86 So.2d 820, 264 Ala. 235—Lamar v. Lamar, 82 So.2d 558, 263 Ala. 391—Casey v. Krump, 82 So.2d 424, 263 Ala. 346—Hyatt v. Compton, 80 So.2d 650, 262 Ala. 649—Rogers v. Sykes, 80 So.2d 649, 262 Ala. 634—Grimes v. Warren, 79 So. 2d 34, 262 Ala. 427—Turner v. Turner, 73 So.2d 549, 261 Ala. 129—Spradling v. May, 65 So.2d 494, 259 Ala. 10—Meador v. Meador, 53 So. 2d 546, 255 Ala. 688—Henderson Baker Lumber Co. v. Headley, 42 So.2d 821, 253 Ala. 107—Steed v. Bailey, 24 So.2d 765, 247 Ala. 407—Ray v. Ray, 18 So.2d 273, 245 Ala. 591—Gordon v. McLemore, 186 So. 470, 237 Ala. 270—Lane v. Bruner, 182 So. 5, 236 Ala. 269—Cook v. Taylor, 177 So. 344, 235 Ala. 63—Taylor v. Hoffman, 163 So. 339, 231 Ala. 39—Patterson v. First Nat. Bank, 157 So. 446, 229 Ala. 406—Kelly v. Tatum, 133 So. 703, 222 Ala. 655—Wiegand v. Alabama Power Co., 127 So. 206, 220 Ala. 620—Jones v. Stollenwerck, 119 So. 844, 218 Ala. 637—Black v. Campbell, 115 So. 19, 217 Ala. 134—Montgomery v. McNutt, 108 So. 752, 214 Ala. 692—London v. State, 108 So. 587, 214 Ala. 673—Fleming v. Moore, 105 So. 679, 213 Ala. 592—Cox v. Stollenwerck, 104 So. 756, 213 Ala. 390—Hope of Alabama Lodge of Odd Fellows v. Chambless, 103 So. 54, 212 Ala. 444—Curb v. Grantham, 102 So. 619, 212 Ala. 395—Smith v. City of Dothan, 100 So. 501, 211 Ala. 338—State v. Brown, 100 So. 224, 211 Ala. 266—Driver v. Johnson, 100 So. 116, 211 Ala. 184—Barkley v. Boyd, 99 So. 196, 211 Ala. 50—Donohoo v. Smith, 92 So. 455, 207 Ala. 296—McClurkin v. McClurkin, 90 So. 917, 206 Ala. 513—Spiva v. Boyd, 90 So. 289, 206 Ala. 536—Enterprise Auto Co. v. Huey, 87 So. 91, 204 Ala. 635—Bowling v. State, 85 So. 500, 204 Ala. 405—Cox v. Somerville, 85 So. 525, 204 Ala. 261—Jackson v. Jackson, 85 So. 482, 204 Ala. 257—State v. Merrill, 85 So. 28, 203 Ala. 686—Ray v. Watkins, 85 So. 25, 203 Ala. 683—Clifford v. Montgomery, 81 So. 551, 202 Ala. 609—Faulkner v. Fowler, 79 So. 257, 201 Ala. 685—Hess v. Hodges, 78 So. 85, 201 Ala. 309, L.R.A.1918D 858—Fitzpatrick v. Stringer, 76 So. 932, 200 Ala. 574—Andrews v. Grey, 74 So. 62, 199 Ala. 152.

26. U.S.—Wilson v. Sands, Ark., 231 F. 921, 146 C.C.A. 117.

Ala.—Harvell v. State ex rel. Sanford, 179 So. 233, 235 Ala. 329.

Ind.—Ashman v. Studebaker, 56 N.E. 2d 674, 115 Ind.App. 73.

Ky.—Yung v. Yung, 171 S.W.2d 1017, 294 Ky. 369.

Mass.—Harding v. Studley, 200 N.E. 916, 294 Mass. 193—Geo. W. Gale Lumber Co. v. Bush, 116 N.E. 480, 227 Mass. 203.

Mo.—National Union Fire Ins. Co. v. Vermillion, App., 19 S.W.2d 776.

Wyo.—**Corpus Juris Secundum quoted in** Trusler v. Grigsby, 286 P.2d 603, 609, 74 Wyo. 204.

27. Ala.—Lewis v. Hicks, 87 So.2d 867, 264 Ala. 440—Huggins v. Turner, 60 So.2d 909, 258 Ala. 7—Keener v. Brice, 43 So.2d 8, 253 Ala. 95—Turner v. Johnson, 19 So.2d 397, 246 Ala. 114—Floyd v. Hunt, 194 So. 402, 239 Ala. 101—Hollingsworth v. Rutledge, 183 So. 656, 236 Ala. 497—Compton v. Compton, 177 So. 900, 235 Ala. 174—De Freese v. Vanderford, 125 So. 228, 220 Ala. 360—Smith v. Allen, 112 So. 224, 215 Ala. 652—Preskitt v. Chandler, 107 So. 750, 214 Ala. 278—Cox v. Stollenwerck, 104 So. 756, 213 Ala. 390—Caples v. Young, 89 So. 460, 206 Ala. 282—Moore v. Walker, 79 So. 191, 201 Ala. 629—Joiner v. Watkins, 65 So. 135, 186 Ala. 211.

Ariz.—Pawley v. First Nat. Bank, 256 P. 507, 32 Ariz. 135.

Ark.—Turnage v. Matkin, 299 S.W.2d 831—Kennemore v. Robbins, 266 S. W.2d 64, 223 Ark. 384—Hill v. Barnard, 224 S.W.2d 31, 216 Ark. 29—Johnson v. Smith, 219 S.W.2d 926, 215 Ark. 247—Meek v. Love, 122 S. W.2d 606, 197 Ark. 394—Woodrow v. Riverside Greyhound Club, 94 S.W.2d 701, 192 Ark. 770—Clark v. Clark, 86 S.W.2d 937, 191 Ark. 461—First Nat. Bank v. Walker, 38 S.W.2d 306, 183 Ark. 1153—Shaw v. Rackensack Apartment Corporation, 295 S.W. 966, 174 Ark. 492—Lewis v. Pettis, 294 S.W. 388, 174 Ark. 170—Fairchild v. Darr, 292 S. W. 673, 173 Ark. 1180—Martin v. State, 286 S.W. 873, 171 Ark. 576—Miller v. Cohn, 280 S.W. 996, 170 Ark. 1193—Linker v. Rachel, 260 S.W. 440, 163 Ark. 426—Markle v. Fallin, 256 S.W. 841, 161 Ark. 504—Hess v. A. L. Ferguson Lumber Co., 244 S.W. 5, 155 Ark. 240—Williams v. Benton, 227 S.W. 410, 148 Ark. 654—McLain v. Keel, 205 S.W. 894, 135 Ark. 496—Puckett v. Glendenning, 205 S.W. 454, 135 Ark. 551—Braunick v. Van Wagener, 186 S.W. 81, 124 Ark. 599—Monroe Hardware Co. v. Tucker, 185 S.W. 459, 123 Ark. 619—Nevada County Bank v. Sullivan, 183 S.W. 169, 122 Ark. 235, Ann.Cas. 1917D 736—Barker v. Lack, 179 S.W. 493, 120 Ark. 323—Bonner v. Campbell, 174 S.W. 230, 117 Ark. 655—Dyer v. Dyer, 173 S.W. 394, 116 Ark. 487.

Cal.—Beeler v. American Trust Co., 147 P.2d 583, 24 C.2d 1—Jones v. Clark, 119 P.2d 731, 19 C.2d 156—Union Mut. Life Ins. Co. v. Broderick, 238 P. 1034, 196 C. 497—Mason v. Mason, 213 P. 39, 190 C. 439—Union Hollywood Water Co. v. City of Los Angeles, 172 P. 983, 178 C. 206—Grants Pass Land & Water Co. v. Brown, 143 P. 754, 168 C. 456—Crow v. Crow, 143 P. 689, 168 C. 607.

Arsenian v. Meketarian, 292 P.2d 293, 138 C.A.2d 627—Iacovitti v. Fardin, 273 P.2d 926, 127 C.A.2d 348—Formosa Corp. v. Rogers, 239 P.2d 88, 108 C.A.2d 397—Douglas v. Foster, 230 P.2d 371, 103 C.A.2d 744—Sparks v. Sparks, 225 P.2d 238, 101 C.A.2d 129—Consolidated Produce Co. v. Pieper, 224 P.2d 409, 100 C.A.2d 631—Epperson v. Rosemond, 223 P.2d 655, 100 C.A.2d 344, rehearing denied 224 P.2d 480, 100 C. A.2d 344—Szekeres v. Reed, 215 P. 2d 522, 96 C.A.2d 348—Sting v. Beckham, 211 P.2d 586, 94 C.A.2d 823—Most Worshipful Hiram of Tyre Grand Lodge of Ancient Free & Accepted Masons, Colored, of

State of Cal. v. Most Worshipful Sons of Light Grand Lodge Ancient Free & Accepted Masons, Jurisdiction of Cal., 210 P.2d 34, 94 C.A.2d 25—Duncan v. Ledig, 202 P.2d 107, 90 C.A.2d 7—Baines v. Zuieback, 191 P.2d 67, 84 C.A.2d 483—Bisno v. Herzberg, 170 P.2d 973, 75 C.A.2d 235—Tieso v. Tieso, 155 P.2d 659, 67 C.A.2d 872—Lytle v. Kroenke, 154 P.2d 919, 67 C.A.2d 596—Camicia v. Camicia, 150 P.2d 814, 65 C.A.2d 487—Tomas v. Vaughn, 146 P.2d 499, 63 C.A.2d 188—Taff v. Atlas Assur. Co., 137 P.2d 483, 58 C.A.2d 696—Reiss v. Reiss, 114 P.2d 718, 45 C.A.2d 740—Church v. Church, 105 P.2d 643, 40 C.A.2d 701—Peake v. Azusa Valley Sav. Bank, 99 P.2d 382, 37 C.A.2d 296—Juranek v. Juranek, 84 P.2d 195, 29 C.A.2d 276—Nelson v. Meadville, 64 P.2d 1116, 19 C.A.2d 68—Rittigstein v. Dignan, 9 P.2d 856, 122 C.A. 357—Speer v. Kittle Mfg. Co., 4 P.2d 575, 117 C.A. 717—Kaiser v. Kaiser, 289 P. 875, 106 C.A. 668—Simon Newman Co. v. Woods, 259 P. 460, 85 C.A. 360—Heney v. Heney, 251 P. 841, 80 C.A. 301—Cole v. Manning, 248 P. 1065, 79 C.A. 55—Tarpey v. Curran, 228 P. 62, 67 C.A. 575—Smith v. Masonic Mines Ass'n, 206 P. 1008, 57 C.A. 172.

Colo.—Edwards v. Edwards, 157 P.2d 616, 113 Colo. 390—Ebert v. Fluke, 238 P. 52, 78 Colo. 26—Finn v. Saffer, 208 P. 249, 71 Colo. 570—Whitescarver v. Interstate Trust Co., 207 P. 81, 71 Colo. 416—Martin et al. v. Wiley Drainage Dist., 198 P. 273, 70 Colo. 115.

Conn.—Goffredo v. Maxen, 111 A. 622, 95 Conn. 445.

Del.—Pierce v. Wahl, 86 A.2d 757, 32 Del.Ch. 465.

Fla.—National Rating Bureau, Inc. v. Florida Power Corp., 94 So.2d 809—Pryor v. Bass, 65 So.2d 45—Knowles v. Benson, 61 So.2d 365—Town of Largo v. Roberts, 57 So.2d 18—Thompson v. Field, 54 So. 2d 520—Joseph Langner, Inc. v. Finston & Co., 45 So.2d 338—Spencer v. Spencer, 36 So.2d 424, 160 Fla. 749—Ball v. Ball, 36 So.2d 172, 160 Fla. 601—Akins v. Bethea, 35 So.2d 583, 160 Fla. 514—Ogden v. Ogden, 33 So.2d 870, 159 Fla. 604—Dingman v. Ard, 33 So.2d 718, 160 Fla. 115—Joiner v. McCullers, 28 So.2d 823, 158 Fla. 562—Crown v. Coleman, 26 So.2d 509, 157 Fla. 463—City of Miami Beach v. Miami Beach Improvement Co., 14 So.2d 172, 153 Fla. 107—Moorer v. Putnam Lumber Co., 12 So.2d 370, 152 Fla. 520—Farnham v. Blount, 11 So.2d 785, 152 Fla. 208—Sikes v. Overholser, 7 So.2d 348, 150 Fla. 290—Gables Racing Assoc. v. Persky, 6 So.2d 257, 148 Fla. 627—Rich v. Hunter, 3 So.2d 393, 147 Fla. 724—Marcus v. Hull, 195 So. 170, 142 Fla. 306—Rackley v. Mathews, 193 So. 69, 141 Fla. 307—Bond v. Key, 192 So. 599, 141 Fla. 160—Atlantic Marine Boat Yard v. Daniel, 190 So. 612, 138 Fla. 864—Cuno Corp. v. Lamb, 190 So. 246, 138 Fla. 773—Drumright v. Dana, 190 So. 54, 138 Fla. 672—Meola v. Sparks, 189 So. 408, 138 Fla. 364—Gross v. Hammond, 188 So. 789, 138 Fla. 20—Durham v. Durham, 188 So. 609, 137 Fla. 506—Stewart v. City of De Land, 188 So. 590, 137 Fla. 731—Hamilton v. Rowell, 188 So. 94, 137 Fla. 227—Johns v. Gillian, 184 So. 140, 134 Fla. 575—Pyle v. Pyle, 182 So. 782, 133 Fla. 342—Argintar v. Lydell, 180 So. 346, 132 Fla. 45—Lovett v. Peoples First Nat. Bank of Quitman, 178 So. 124, 130 Fla. 142—Tidwell v. Tidwell, 170 So. 713, 126 Fla. 247—Roundtree v. Davis, 167 So. 820, 124 Fla. 212—Fickling Properties v. Smith, 167 So. 42, 123 Fla. 556—McDonald v. McDonald Holding Corporation, 165 So. 363, 122 Fla. 115—Nolen v. Nolen, 163 So. 401, 121 Fla. 130—Galloway v. Tompkins, 160 So. 679, 119 Fla. 689—Marx v. Withers, 160 So. 662, 119 Fla. 692—Garvin v. Fox, 160 So. 63, 118 Fla. 117—Metz v. Kennedy Inv. Co., 160 So. 5, 118 Fla. 708—Benton v. Wilkins, 159 So. 518, 118 Fla. 491—Orient Ins. Co. v. Peacock, 155 So. 724, 115 Fla. 525—Helland v. Evans, 152 So. 623, 113 Fla. 839—Newsom v. White, 151 So. 543, 113 Fla. 84—Sharp v. Lennard, 149 So. 805, 112 Fla. 3—Edwards v. Cahoon, 149 So. 479, 110 Fla. 449—Williams v. McAdow, 137 So. 891, 103 Fla. 644—Day v. Weadock, 134 So. 525, 101 Fla. 333—Fulton v. Clewiston, Limited, 129 So. 773, 100 Fla. 257—Shipley-Young Co. v. Young, 119 So. 522, 97 Fla. 46—Coogan v. Burley, 110 So. 529, 92 Fla. 899—Long v. Sphaler, 109 So. 422, 92 Fla. 121—Wimbish v. Douglass, 109 So. 306, 92 Fla. 224—Harvey v. Palmer, 97 So. 429, 86 Fla. 159—Dees v. American Agr. Chemical Co., 96 So. 289, 86 Fla. 28—Kreher v. Morley, 92 So. 686, 84 Fla. 121—Witham v. Shepard, 92 So. 685, 84 Fla. 75—Smith v. Dowling, 89 So. 315, 81 Fla. 867—Phinney v. Phinney, 82 So. 357, 77 Fla. 850—Yaeger-Stuckey Live Stock Co. v. Florida Pecan Endowment Co., 82 So. 234, 77 Fla. 735—Tatum v. City Building & Loan Ass'n, 79 So. 839, 76 Fla. 258—Baldwin v. Christopher, 79 So. 339, 75 Fla. 605—Rosenthal v. First Nat. Fire Ins. Co. of the United States, 77 So. 92, 74 Fla. 371—Shad v. Smith, 76 So. 897, 74 Fla. 32—Sandlin v. Hunter Co., 70 So. 553, 70 Fla. 514.

Ga.—Murray County v. Pickering, 31 S.E.2d 722, 198 Ga. 354—Bartow County v. Young, 95 S.E. 977, 148 Ga. 110.

Idaho.—Freedman v. Hendershott, 290 P.2d 738, 77 Idaho 213—Crouch v. Bischoff, 280 P.2d 419, 76 Idaho 216—Jones v. Adams, 182 P.2d 963, 67 Idaho 402—Loesli v. Heseman, 162 P.2d 393, 66 Idaho 469—Checketts v. Thompson, 152 P.2d 585, 65 Idaho 715—Finn v. Rees, 141 P.2d 976, 65 Idaho 181—Picciano v. Miller, 137 P.2d 788, 64 Idaho 759—McCarty v. Sauer, 136 P.2d 742, 64 Idaho 748—State v. Snoderly, 101 P.2d 9, 61 Idaho 314—Collins v. Hibbard, 279 P. 619, 48 Idaho 178—Lus v. Pecararo, 238 P. 1021, 41 Idaho 425—Viel v. Summers, 209 P. 454, 35 Idaho 182—Wolf v. Eagleson, 157 P. 1122, 29 Idaho 177—Jones v. Vanausdeln, 156 P. 615, 28 Idaho 743.

Ill.—Schwartz v. Piper, 122 N.E.2d 535, 4 Ill.2d 488—Weiss v. Beck, 115 N.E.2d 768, 1 Ill.2d 420—Calcutt v. Gaylord, 114 N.E.2d 340, 415 Ill. 390—Dean v. Dean, 82 N.E.2d 342, 401 Ill. 406—Bernstein v. Bernstein, 74 N.E.2d 785, 398 Ill. 52—Pfaff v. Petrie, 71 N.E.2d 345, 396 Ill. 44—Miller v. Pettengill, 63 N.E.2d 735, 392 Ill. 117—Brozina v. Wanda, 55 N.E.2d 145, 387 Ill. 46—Jones v. Dove, 47 N.E.2d 447, 382 Ill. 445—Daven v. Downey, 39 N.E.2d 45, 378 Ill. 543—Lolli v. Rendon, 58 N.E.2d 858, 389 Ill. 94—Johnson v. Gianacakos, 190 N.E. 691, 356 Ill. 410—Mackie v. Schoenstadt, 138 N.E. 686, 307 Ill. 398—Kelly v. Jones, 125 N.E. 334, 290 Ill. 375, 80 A.L.R. 792—Preston v. Lloyd, 109 N.E. 687, 269 Ill. 152—Merry v. Bergfeld, 105 N.E. 758, 264 Ill. 84—O'Gallagher v. Lockhart, 105 N.E. 295, 263 Ill. 489, 52 L.R.A.,N.S., 1044.

Goodman v. Motor Products Corp., 132 N.E.2d 356, 9 Ill.App.2d 57—Vail v. City of Paris, 112 N.E. 2d 722, 350 Ill.App. 327—Abrams v. Abrams, 91 N.E.2d 150, 340 Ill.App. 217—Handrich v. Handrich, 89 N.E.2d 191, 339 Ill.App. 151—Olson v. Eulette, 74 N.E.2d 609, 332 Ill.App. 178—Schwartz v. Schwartz, 73 N.E. 2d 797, 331 Ill.App. 608—Prill v. Magruder, 71 N.E.2d 180, 330 Ill. App. 430—Village of Melrose Park v. Prairie State Bank, 69 N.E.2d 729, 330 Ill.App. 18—Smith v. Farmers & Merchants Bank of Carlyle, 68 N.E.2d 634, 329 Ill.App. 347, reversed on other grounds 75 N.E.2d 299, 398 Ill. 239—Gillespie v. Gillespie, 66 N.E.2d 481, 328 Ill. App. 582—Martin v. Martin, 64 N.E.2d 379, 327 Ill.App. 552—Sullivan v. Morey, 62 N.E.2d 483, 326 Ill. App. 553—Anderson v. Wright, 60 N.E.2d 121, 325 Ill.App. 336—Hellrung v. Hellrung, 53 N.E.2d 10, 321 Ill.App. 333—Lindsey v. Goldblatt Bros., 45 N.E.2d 100, 316 Ill.App. 443—Garvy v. Garvy, 282 Ill.App. 485—Hosto v. Hosto, 183 Ill.App. 463. See Akin v. Nolan, 202 Ill. App. 157—Pratt v. Pratt, 197 Ill. App. 530.

Ind.—Gilchrist v. Gilchrist, 75 N.E. 2d 417, 225 Ind. 367—State Life

Ins. Co. v. Cast, 13 N.E.2d 705, 214 Ind. 17—Hitt v. Carr, 162 N.E. 409, 201 Ind. 17.

Pigg v. Cook, 109 N.E.2d 107, 123 Ind.App. 414—Zorich v. Zorich, 88 N.E.2d 694, 119 Ind.App. 547—Wadler v. Mogul Rubber Corp., 61 N.E.2d 472, 116 Ind.App. 152—Ashman v. Studebaker, 56 N.E.2d 674, 115 Ind.App. 73—Zaring v. Lodge, 52 N.E.2d 632, 114 Ind.App. 490—Ringenberg v. Ringenberg, 38 N.E. 2d 870, 110 Ind.App. 290—Lowman v. Lowman, 33 N.E.2d 780, 109 Ind. App. 163—Carpenter v. Carpenter, 27 N.E.2d 889, 108 Ind.App. 221—Bachelder v. Harshbarger, 10 N.E. 2d 927, 105 Ind.App. 41—C. Callahan Co. v. Lafayette Consumers Co., 2 N.E.2d 994, 102 Ind.App. 319—Beavers v. Bess, 108 N.E. 266, 58 Ind.App. 287.

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never, App., 218 S.W.2d 230—Rubinstein v. City of Salem, App., 210 S.W.2d 382—Golden v. Golden, App., 197 S.W.2d 716—Lambert v. Rodier, App., 194 S.W.2d 934—Byers v. Buettner, App., 191 S.W.2d 339—Harrety v. Kontos, 184 S.W.2d 195, 238 Mo.App. 519—Perkins v. Perkins, 157 S.W.2d 253, 236 Mo.App. 616—Schrader v. Westport Ave. Bank, 156 S.W.2d 753, 236 Mo. App. 362—Oldham v. McKay, 138 S.W.2d 735, 235 Mo.App. 348—Purcell v. Journeymen Barbers and Beauticians International Union of America, Local 192–A, 133 S.W.2d 662, 234 Mo.App. 843—Brutcher v. Fitzsimmons, App., 130 S.W.2d 206—Baker v. Fenley, 128 S.W.2d 295, 233 Mo.App. 998—Breit v. Bowland, App., 127 S.W.2d 71—Rust Sash & Door Co. v. Bryant, App., 124 S.W.2d 544—White v. Chastain, App., 123 S.W.2d 548—Miners Lumber Co. v. Miller, App., 117 S.W.2d 711—Pacific Movement of Eastern World v. Wright, App., 117 S.W.2d 647—Roth v. Hoffman, 111 S.W.2d 988, 234 Mo.App. 114—West End Bank v. University City Bank & Trust Co., App., 97 S.W.2d 881—Net Realty & Investment Co. v. Dubinsky, App., 94 S.W.2d 1108—Cities Service Oil Co. v. Berenice Holding Co., App., 90 S.W.2d 131—Kolaks v. Kolaks, App., 75 S.W.2d 600—Baker v. Fox, App., 70 S.W.2d 72—Brueckle v. Pechan, App., 21 S.W.2d 903—Blackburn v. Thomas, App., 18 S.W.2d 140—Baker v. Koontz, 13 S.W.2d 1085—Murphy v. Farmers' Bank of Conway, App., 11 S.W.2d 1066—Huls v. Lawrence, App., 300 S.W. 1004—Hairs v. Hairs, 300 S.W. 540, 222 Mo.App. 941—Polhemus v. Daly, App., 296 S.W. 442—Hall v. Morrin, App., 293 S.W. 435—Casner v. Schwartz, App., 286 S.W. 401—O'Donnell v. Mathews, 284 S.W. 204, 221 Mo.App. 657—Cohen v. Joseph Greenspon's Sons Iron & Steel Co., App., 282 S.W. 469—F. C. Church Shoe Co. v. Turner, 279 S.W. 232, 218 Mo.App. 516—State ex rel. Lamm v. Mid-State Serum Co., App., 272 S.W. 99—Williams v. Peterson, App., 271 S.W. 1016—Chandler v. Hale, 268 S.W. 691, 219 Mo.App. 133—McGurn v. Reichel, App., 268 S.W. 399—Kleissle v. Hasselbach, App., 268 S.W. 382—Corbett v. Brown, App., 266 S.W. 996—Dolan v. Talle, App., 263 S.W. 244—Berry v. Hamlin, App., 262 S.W. 464—De Bord v. Pendleton, 262 S.W. 393, 218 Mo.App. 54—Williams v. Hybskmann, App., 247 S.W. 203, certified 278 S.W. 377, 311 Mo. 332—Girdner v. Girdner, App., 230 S.W. 382—Nichols v. Wimer, App., 230 S.W. 343—Rawlings v Waddill, 227 S.W. 664, 206 Mo.App. 555—Broaddus v. Broaddus, App., 221 S.W. 804—Bishop v. Fernich, App., 221 S.W. 403—Shannon v. Dillon, App., 205 S.W. 236—Traill v. Dougherty & Bush Real Estate Co., 171 S.W. 665, 186 Mo.App. 196.

Neb.—Krelle v. Bowen, 259 N.W. 48, 128 Neb. 418—Eichholz v. Luikart, 258 N.W. 869, 128 Neb. 368—Resnick v. Kazakes, 240 N.W. 585, 122 Neb. 489, reheard 243 N.W. 861, 123 Neb. 654—Cary v. Reiter, 240 N.W. 582, 122 Neb. 476—Ellingwood v. Schellberg, 236 N.W. 451, 121 Neb. 207—Prudential Ins. Co. of America v. Qualset, 218 N.W. 734, 116 Neb. 706—McDonald v. McDonald, 214 N.W. 632, 115 Neb. 708—State v. Delaware-Hickman Ditch Co., 210 N.W. 279, 114 Neb. 806—Peterson v. Winkelmann, 209 N.W. 499, 114 Neb. 714—Magill v. Magill, 209 N.W. 241, 114 Neb. 636—Johnson v. Erickson, 194 N.W. 670, 110 Neb. 511—Dworak v. Dobson, 169 N.W. 259, 102 Neb. 696—Greiner v. Lincoln, 164 N.W. 1054, 101 Neb. 771—Enterprise Planing Mill Co. v. Methodist Episcopal Church of Sterling, Johnson County, 158 N.W. 386, 100 Neb. 29—Shafer v. Harden, 156 N.W. 632, 99 Neb. 317—Karbach Realty Co. v. George & Co., 148 N.W. 948, 96 Neb. 808—Occidental Building & Loan Ass'n of Omaha v. Adams, 148 N.W. 88, 96 Neb. 454.

Nev.—Agricultural Ins. Co. of Watertown, N. Y., v. Biltz, 64 P.2d 1042, 57 Nev. 370, modified on other grounds 68 P.2d 568, 57 Nev. 389—Farmers & Merchants Nat. Bank of Eureka v. Eureka Land & Stock Co., 49 P.2d 354, 56 Nev. 218.

N.M.—Kutz Canon Oil & Gas Co. v. Harr, 244 P.2d 522, 56 N.M. 358—New Mexico Transp. Co. v. State Corp. Commission, 178 P.2d 580, 51 N.M. 59—Westover v. Harris, 137 P.2d 771, 47 N.M. 112.

N.Y.—York Mortg. Corporation v. Clotar Const. Corporation, 172 N. E. 265, 254 N.Y. 128.

N.D.—Northern Trading Co. v. Drexel State Bank of Chicago, 164 N. W. 151, 37 N.D. 521.

Okl.—Cox v. Kelley, 295 P.2d 1061—Ward v. Lindly, 294 P.2d 296—Fry v. Hurst, 293 P.2d 552—Lemon v. Montgomery, 288 P.2d 407—Mayer v. Pettigrew, 272 P.2d 411—Little v. Echols, 269 P.2d 984—First Nat. Bank of Bethany v. Eagan, 263 P.2d 157—Humphreys v. Day, 254 P.2d 996, 208 Okl. 223—Matthews v. Stovall, 216 P.2d 975, 203 Okl. 108—Hamel v. Toronto Inv. Co., 216 P.2d 319, 202 Okl. 553—Hill v. Hill, 215 P.2d 553, 202 Okl. 483—Bailey v. Lovin, 209 P.2d 994, 202 Okl. 17—Wahby v. Renegar, 185 P.2d 184, 199 Okl. 191—Haynes v. Haynes, 169 P.2d 563, 197 Okl. 221—Wilkerson v. Walker, 167 P.2d 372, 196 Okl. 618—Harrell v. Nash, 133 P.2d 748, 192 Okl. 95—Lucas v. Coker, 113 P.2d 589, 189 Okl. 95—Johnson v. Rowe, 89 P.2d 955, 185 Okl. 60—Brown v. Investors Service Co. of McAlester,

77 P.2d 566, 182 Okl. 270—Thomas v. United Royalty Co., 68 P.2d 490, 180 Okl. 230—Saddler v. Watkins, 36 P.2d 760, 169 Okl. 279—Johnston v. Dill, 25 P.2d 283, 165 Okl. 165—Le Flore County Nat. Bank v. Cooper, 233 P. 706, 106 Okl. 230—Cull v. Cavanaugh, 218 P. 299, 95 Okl. 157—Guinan v. Readdy, 191 P. 602, 79 Okl. 111—Tescier v. Goyer, 181 P. 503, 72 Okl. 187.

Or.—Flaherty v. Bookhultz, 297 P.2d 856, 207 Or. 462—Turner v. McDaniel, 243 P.2d 273, 194 Or. 595—Hayward v. Morrison, 241 P.2d 888, 194 Or. 335—Meads v. Stott, 238 P.2d 256, 193 Or. 509, rehearing denied 239 P.2d 594, 193 Or. 509—Biersdorf v. Putnam, 182 P.2d 992, 181 Or. 522—Bennett v. Bruchou, 96 P.2d 762, 163 Or. 175—Shores v. Hollister, 223 P. 741, 111 Or. 330, rehearing denied 224 P. 830, 111 Or. 330—Brennan v. Growdon, 212 P. 189, 106 Or. 377—Homan v. Hirsch, 211 P. 795, 106 Or. 98—James v. Ward, 190 P. 1105, 97 Or. 232—Tucker v. Kirkpatrick, 169 P. 117, 86 Or. 677.

Pa.—Oreovecz v. Merics, 114 A.2d 126, 382 Pa. 56—In re Frank's Estate, 15 A.2d 353, 339 Pa. 499—Donaldson v. Andresen, 150 A. 616, 300 Pa. 312—Rupniewski v. Miazga, 149 A. 193, 299 Pa. 190—Crick v. Paull, 135 A. 103, 287 Pa. 431—Glenn v. Trees, 120 A. 109, 276 Pa. 165—Beaver v. Slane, 114 A. 509, 271 Pa. 317—City of Scranton v. Scranton Coal Co., 100 A. 813, 256 Pa. 322—Hathaway v. Newell, 93 A. 492, 247 Pa. 460.

Jennings v. Everett, 55 A.2d 569, 161 Pa.Super. 443—Wedge v. Schrock, 22 A.2d 305, 146 Pa.Super. 425—Shawnee Lake Ass'n v. Uhler, 198 A. 910, 131 Pa.Super. 146.

R.I.—Winiarski v. Leon Meyer, Inc., 106 A.2d 503, 82 R.I. 125—Aiken v. Olympia Realty Corp., 104 A.2d 244, 81 R.I. 452—Graziano v. Graziano, 101 A.2d 243, 81 R.I. 215—Lambert v. Lambert, 77 A.2d 325, 77 R.I. 463—Rooke v. Grant, 76 A.2d 793, 77 R.I. 447—Bogdanovich v. Bogdanovich, 75 A.2d 201, 77 R.I. 354—Parness v. Weiner, 74 A.2d 869, 77 R.I. 289—Angell v. Stowell, 73 A.2d 767, 77 R.I. 108—Mimande v. Marino, 69 A.2d 817, 76 R.I. 342—Lisker v. Monti, 60 A.2d 485, 74 R.I. 310—Picerne v. Redd, 47 A.2d 906, 72 R.I. 4, 166 A.L.R. 397—Nixon v. Connery, 42 A.2d 894, 71 R.I. 142—Robinson v. Robinson, 19 A.2d 1, 66 R.I. 321—Andreano v. Andreano, 17 A.2d 465, 66 R.I. 83—Onorato v. Mancini, 13 A.2d 805, 65 R.I. 115—Albro v. Matteson, 13 A.2d 391, 64 R.I. 494—Old Colony Co-op. Bank v. Burger, 7 A.2d 725, 63 R.I. 223—Gilbert v. Marguis, 200 A. 959, 61 R.I. 302—Morin v. Randall, 199 A. 616, 60 R.I. 505—Christiansen v. Stuwe, 197 A. 876, 60 R.I. 238—Greene v. Rhode Island Hospital Trust Co., 197 A. 464, 60 R.I. 134—Koppers Products Co. v. Readio, 197 A. 441, 60 R.I. 207—Joslin v. Astle, 194 A. 703, 59 R.I. 182—Oldham v. Oldham, 192 A. 758, 58 R.I. 268—Prudential Ins. Co. of America v. Tanenbaum, 167 A. 147, 58 R.I. 355—Sullivan v. Cartwright, 167 A. 132—Tweedale v. Miller, 164 A. 822—Fleckhamer v. Fleckhamer, 147 A. 886, 50 R.I. 363, modified on other grounds 149 A. 380—Gaynor v. Wax, 146 A. 814, 50 R.I. 194—Murray v. Allen, 120 A. 673—Preble v. Higgins, 109 A. 707, 43 R.I. 10.

Tenn.—Winer v. Chattanooga Feed Co., 6 Tenn.App. 415.

Tex.—Foster v. Buchele, Civ.App., 213 S.W.2d 738, error refused no reversible error—Landwer v. Fuller, Civ.App., 187 S.W.2d 670, error refused for want of merit—Masten v. Masten, Civ.App., 166 S.W.2d 347—Scanlan v. City of Houston, Civ.App., 137 S.W.2d 204, error dismissed, judgment correct—Cheatham v. Mann, Civ.App., 133 S.W.2d 264, error refused—Scanlan v. Houston Lighting & Power Co., Civ.App., 62 S.W.2d 537—White v. Burch, Civ.App., 19 S.W.2d 404—Montgomery v. City of Alamo Heights, Civ.App., 8 S.W.2d 258.

Utah.—Hatch v. W. S. Hatch Co., 283 P.2d 217, 3 Utah 2d 295—Millard v. Parry, 271 P.2d 852, 2 Utah 2d 217—Kartchner v. Horne, 262 P.2d 749, 1 Utah 2d 112—Pantages v. Arge, 262 P.2d 745, 1 Utah 2d 105—Cranford v. Gibbs, 260 P.2d 870—Greener v. Greener, 212 P.2d 194, 116 Utah 571—Haws v. Jensen, 209 P.2d 229, 116 Utah 212—Prowitt v. Lunt, 137 P.2d 361, 103 Utah 574—Bear River State Bank v. Merrill, 120 P.2d 325, 101 Utah 176—Tanner v. Provo Reservoir Co., 98 P.2d 695, 99 Utah 139, rehearing denied 103 P.2d 134, 99 Utah 158—Stanley v. Stanley, 94 P.2d 465, 97 Utah 520—Hoyt v. Upper Marion Ditch Co., 76 P.2d 234, 94 Utah 134—Hanson v. Mutual Finance Corporation, 37 P.2d 782, 84 Utah 579—Mollerup v. Daynes-Beebe Music Co., 24 P.2d 306, 82 Utah 299—Steiner v. Hoffman, 240 P. 273, 66 Utah 181—Jenkins v. Nicolas, 226 P. 177, 63 Utah 329—Gee v. Baum, 199 P. 680, 58 Utah 445—Beesley v. Boardman, 166 P. 991, 50 Utah 149.

Vt.—Laplante v. Eastman, 105 A.2d 265, 118 Vt. 221—Dwinell v. Alberghini, 62 A.2d 124, 115 Vt. 394—Sparrow v. Cimonetti, 58 A.2d 875, 115 Vt. 292—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471—Cook v. Holden, 35 A.2d 353, 113 Vt. 409—Boyd v. Town of Hartford, 28 A.2d 411, 112 Vt. 503—Putnam v. Woodard, 10 A.2d 186, 111 Vt. 39—Peck v. City Trust Co., 156 A. 403, 104 Vt. 20.

Va.—Boerner v. McCallister, 89 S.E.2d 23, 197 Va. 169—Evans v. Slone, 88 S.E.2d 385, 196 Va. 231—Southwest Virginia Hospitals v. Lipps, 68 S.E.2d 82, 193 Va. 191—Crump v. Gilliam, 59 S.E.2d 72, 190 Va. 935—County School Bd. of Scott County v. Dowell, 58 S.E.2d 38, 190 Va. 676—Masche v. Nichols, 51 S.E.2d 144, 188 Va. 857—Pretlow v. Hopkins, 30 S.E.2d 557, 182 Va. 826—First Nat. Bank of Bluefield v. Pressley, 10 S.E.2d 526, 176 Va. 25—Harris v. Citizens Bank & Trust Co., 200 S.E. 652, 172 Va. 111—Crump v. Bronson, 191 S.E. 663, 168 Va. 527—Whitehurst v. Aygarn, 153 S.E. 804, 154 Va. 679—Swetnam v. Antonsanti, 143 S.E. 716, 150 Va. 534—American Surety Co. v. Hannah, 130 S.E. 411, 143 Va. 291—Starke v. Starke, 112 S.E. 680, 133 Va. 310.

Wash.—State ex rel. Carroll v. Seattle Hotel Bldg. Corp., 250 P.2d 982, 41 Wash.2d 595—Davis v. Altose, 215 P.2d 705, 35 Wash.2d 807—Macri v. Bay Const. Co., 206 P.2d 797, 33 Wash.2d 625—Carey v. Powell, 204 P.2d 193, 32 Wash.2d 761—Columbia Lumber Co. v. Bush, 126 P.2d 584, 13 Wash.2d 657—J. L. Cooper & Co. v. Anchor Securities Co., 113 P.2d 845, 9 Wash.2d 45—Reagh v. Dickey, 48 P.2d 941, 183 Wash. 564—McNeff v. Capistran, 208 P. 41, 120 Wash. 498—Ready v. McGillivray, 186 P. 902, 109 Wash. 387—Kleesattel v. Orr, 141 P. 355, 80 Wash. 191.

W.Va.—Witt v. Witt, 87 S.E.2d 524—Mann v. Peck, 80 S.E.2d 518, 139 W.Va. 487—Sturm v. City of St. Albans, 78 S.E.2d 462, 138 W.Va. 911—McCausland v. Jarrell, 68 S.E.2d 729, 136 W.Va. 569—Acker v. Martin, 68 S.E.2d 721, 136 W.Va. 503—Rohrbaugh v. Rohrbaugh, 68 S.E.2d 361, 136 W.Va. 708—Adams v. Ferrell, 63 S.E.2d 840, 135 W.Va. 463—Ghiz v. Savas, 60 S.E.2d 290, 134 W.Va. 550—Carpenter v. Ohio River Sand & Gravel Corp., 60 S.E.2d 212, 134 W.Va. 587—Blossom Dairy Co. v. International Brotherhood of Teamsters, 23 S.E.2d 645, 125 W.Va. 165—Straton v. Aldridge, 6 S.E.2d 222, 121 W.Va. 691—Harner v. Harner, 177 S.E. 286, 115 W.Va. 457—Rine v. Compton, 176 S.E. 429, 115 W.Va. 379—Cohen v. Smith, 174 S.E. 521, 114 W.Va. 813—Raleigh County Const. Co. v. Amere Gas Utilities Co., 169 S.E. 785, 113 W.Va. 854—Wright v. Goins, 142 S.E. 438, 105 W.Va. 332—Pinkney v. Dixon, 137 S.E. 892, 103 W.Va. 463—Whiteman v. Backus, 135 S.E. 390, 102 W.Va. 454—Dickerson Lumber Co. v. Paul, 122 S.E. 270, 95 W.Va. 581—Wegmann v. Clark, 118 S.E. 517, 94 W.Va. 364—United Fuel Gas Co. v. Smith, 117 S.E. 900, 93 W.Va. 646—Walton v. Pritt, 116 S.E. 759, 93 W.Va. 375—O'Dell v. Lawrence,

terfered with where the evidence is about evenly balanced,[28] or leaves the mind in doubt so that reasonable minds might disagree as to the facts and the appellate court cannot with confidence or certainty come to a conclusion in favor of either party,[29] although it has been held that the rule

112 S.E. 297, 91 W.Va. 96—Baughman v. Hoffman, 110 S.E. 829, 90 W.Va. 388—Crowley v. Vaughan, 106 S.E. 539, 88 W.Va. 223—Ramsey v. England, 101 S.E. 73, 85 W.Va. 101.

Wyo.—**Corpus Juris Secundum quoted in** Trusler v. Grigsby, 286 P.2d 603, 609, 74 Wyo. 204—Bruch v. Benedict, 165 P.2d 561, 62 Wyo. 213—Edwards v. Willson, 219 P. 233, 30 Wyo. 275.

3 C.J. p 321 note 80—4 C.J. p 898 note 88, p 900 note 98—9 C.J. p 1272 note 32—19 C.J. p 1227 note 3—44 C.J. p 1441 notes 34, 39—46 C.J. p 632 note 34—58 C.J. p 1280 note 29—65 C.J. p 1077 notes 42, 43.

Irreconcilable conflict

When the evidence on material issues so conflicts that it cannot be reconciled, the appellate court will consider the fact that the trial court observed the witnesses, their manner of testifying, and must have accepted one version of the facts rather than the opposite.

Neb.—Uptegrove v. Elsasser, 74 N.W.2d 61, 161 Neb. 527—Cary v. Armbrust, 70 N.W.2d 427, 160 Neb. 392—Barrett v. Hand, 63 N.W.2d 185, 158 Neb. 273—Lackaff v. Bogue, 62 N.W.2d 889, 158 Neb. 174—Johnston v. Johnston, 51 N.W.2d 332, 155 Neb. 222—Parkening v. Haffke, 46 N.W.2d 117, 153 Neb. 678—Herrin v. Johnson Cashway Lumber Co., 46 N.W.2d 111, 153 Neb. 693—McCormick v. McCormick, 33 N.W.2d 543, 150 Neb. 192—Pavel v. Goehner, 31 N.W.2d 219, 149 Neb. 394—Meredith v. Meredith, 29 N.W.2d 643, 148 Neb. 845—Brown v. Brown, 22 N.W.2d 148, 146 Neb. 908—Dier v. Dier, 4 N.W.2d 731, 141 Neb. 685—Otto v. L. L. Coryell & Son, 3 N.W.2d 915, 141 Neb. 498—Neilson v. Leach, 1 N.W.2d 822, 140 Neb. 764—Gable v. Carpenter, 287 N.W. 70, 136 Neb. 669—Brodsky v. Brodsky, 272 N.W. 919, 132 Neb. 659—Cary v. Reiter, 240 N.W. 582, 122 Neb. 476.

Reasons for rule

"An appellate court does not, of course, see the witnesses nor hear their testimony. We have before us nothing but the cold record, whereas the trial judge is in a position to observe the witnesses while they are on the witness stand giving their testimony. He has before him the parties directly involved and can observe their demeanor and the demeanor of the witnesses during the trial, and is therefore in a far better position than is possible for an appellate court to be to weigh the evidence and to determine where the truth lies. It is because of this advantageous position of the trial judge that appellate courts, in reaching their conclusions in close cases where the evidence is conflicting, defer somewhat to the judgment of the trial judge, even though they are not bound by such judgment."

Mo.—Kolaks v. Kolaks, App., 75 S.W.2d 600, 603.

28. Ark.—Turnage v. Matkin, 299 S.W.2d 831—Central States Life Ins. Co. v. Robbins, 98 S.W.2d 870, 193 Ark. 166—Cochran v. People's Exchange Bank, 4 S.W.2d 515, 176 Ark. 830—Brewer v. Yancey, 277 S.W. 11, 169 Ark. 816—Wright v. Bennett, 233 S.W. 1089, 150 Ark. 154.

Ky.—Reusch v. Hemmer, 33 S.W.2d 618, 236 Ky. 546—Galloway v. Galloway, 21 S.W.2d 134, 231 Ky. 57.

Md.—Kline v. Kline, 182 A. 329, 169 Md. 708.

Mo.—Jones v. Peterson, 72 S.W.2d 76, 335 Mo. 242—Farmers' Bank of Higginsville v. Handly, 9 S.W.2d 880, 320 Mo. 754.

In re Moll's Estate, App., 299 S.W. 127—Fuller v. Laws, 271 S.W. 836, 219 Mo.App. 342.

Okl.—Black v. Silver, 274 P. 886, 135 Okl. 198.

Wash.—Thomas v. Hensel, 230 P.2d 290, 38 Wash.2d 457—Darnell v. Noel, 208 P.2d 1194, 34 Wash.2d 428—Osawa v. Onishi, 206 P.2d 498, 33 Wash.2d 546—Carey v. Powell, 204 P.2d 193, 32 Wash.2d 761—Columbia Lumber Co. v. Bush, 126 P.2d 584, 13 Wash.2d 657.

4 C.J. p 898 note 89.

29. Ark.—Leach v. Smith, 197 S.W. 1160, 130 Ark. 465.

Fla.—Travis v. Travis, 87 So. 762, 81 Fla. 309—Craft v. American Agr. Chemical Co., 87 So. 41, 81 Fla. 55.

Ky.—Collins v. Consolidation Coal Co., 268 S.W.2d 393—Bowland v. Brown, 259 S.W.2d 435—Mink v. Pope, 255 S.W.2d 992—Elkins v. Gilliam, 255 S.W.2d 645—Carson v. Johnson, 253 S.W.2d 608—Clark v. Hennecke, 252 S.W.2d 50—McCowan v. McCowan, 243 S.W.2d 614—Stanifer v. Stanifer, 242 S.W.2d 981—Dudley's Adm'r v. Fidelity & Deposit Co. of Md., 240 S.W.2d 76—Wagers v. Wagers, 238 S.W.2d 125—Westerfield v. Kessinger, 235 S.W.2d 1015, 314 Ky. 429—Foster's Adm'r v. Gatewood, 235 S.W.2d 764, 314 Ky. 322—Knuckles v. Woolum, 223 S.W.2d 886, 311 Ky. 262—Applegate v. Means, 223 S.W.2d 572, 311 Ky. 100—Lowe v. Allen, 221 S.W.2d 465, 310 Ky. 734—Moneypenny v. Moneypenny, 219 S.W.2d 960, 310 Ky. 9—Mitchell v. Perkins, 219 S.W.2d 45, 309 Ky. 785—Richardson v. Richardson, 218 S.W.2d 387, 309 Ky. 565—Hacker v. Hines, 214 S.W.2d 596, 308 Ky. 394—Escott v. Harley, 214 S.W.2d 387, 308 Ky. 298—Cunningham's Adm'r v. Owens, 213 S.W.2d 599, 308 Ky. 311—Harrison's Adm'x v. Heath, 211 S.W.2d 676, 307 Ky. 463—Conley v. Conley, 211 S.W.2d 401, 307 Ky. 429—Hollandsworth v. Sparks, 208 S.W.2d 504, 306 Ky. 473—Hensley v. Clay, 208 S.W.2d 501, 306 Ky. 482—Farra v. Begley, 206 S.W.2d 46, 306 Ky. 52—Moses v. Campbell, 205 S.W.2d 161, 305 Ky. 595—Shrout's Adm'r v. Vaughan, 204 S.W.2d 969, 305 Ky. 637—Burgess v. Marshall, 204 S.W.2d 567, 305 Ky. 582—Bradley v. Williams, 202 S.W.2d 159, 304 Ky. 724—Dause v. Wilkerson, 194 S.W.2d 998, 302 Ky. 422—Conley v. Caudill, 193 S.W.2d 147, 301 Ky. 735—Cook v. Hagen, 192 S.W.2d 97, 301 Ky. 346—Pelley v. Hill, 184 S.W.2d 352, 299 Ky. 184—Whitlow v. Beadles, 184 S.W.2d 129, 298 Ky. 753—Stephens v. Stephens, 183 S.W.2d 822, 298 Ky. 638—English's Ex'x v. Noe, 183 S.W.2d 630, 298 Ky. 568—Pinson v. Bentley, 182 S.W.2d 974, 298 Ky. 396—Duff v. Fordson Coal Co., 182 S.W.2d 955, 298 Ky. 411—Cole v. Landrum, 181 S.W.2d 253, 297 Ky. 735—City of Louisville v. Tway, 180 S.W.2d 278, 297 Ky. 565—Grigsby v. Mosley, 180 S.W.2d 99, 297 Ky. 571—Conley v. Coburn, 179 S.W.2d 668, 297 Ky. 292—Williamson v. Phillips, 179 S.W.2d 603, 207 Ky. 285—Luttrell v. Luttrell, 176 S.W.2d 85, 296 Ky. 36—Rollyson v. Lawless, 174 S.W.2d 417, 295 Ky. 315—Whitt v. Kentland Coal & Coke Co., 172 S.W.2d 581, 294 Ky. 727—Young v. Young's Adm'r, 171 S.W.2d 1002, 294 Ky. 362—Deskins v. Deskins, 171 S.W.2d 975, 294 Ky. 479—Gilliam v. Gilliam, 170 S.W.2d 343, 293 Ky. 772—Sword v. Scott, 169 S.W.2d 825, 293 Ky. 630—Hall v. Budde, 169 S.W.2d 33, 293 Ky. 436, 167 A.L.R. 1361—Caskey v. Bradley, 168 S.W.2d 36, 292 Ky. 789—Sparkman v. Triplett, 167 S.W.2d 323, 292 Ky. 569—Swinney v. Davidson, 166 S.W.2d 41, 292 Ky. 110—Collins v. Pigman, 165 S.W.2d 955, 202 Ky. 24—Duff v. Chaney, 164 S.W.2d 483, 291 Ky. 308—Williams v. Ward's Adm'x, 163 S.W.2d 41, 291 Ky. 101—Rose v. Reese, 160 S.W.2d 614, 290 Ky. 356—Slack's Ex'r v. Barrett, 160 S.W.2d 595, 290 Ky. 251—Staten v. Louisville Trust Co., 158 S.W.2d 387, 289 Ky. 258—Martin v. Wilson, 157 S.W.2d 732, 290 Ky. 1—T. M. Crutcher Laboratory v. Crutcher, 157 S.W.2d 314, 288 Ky. 709—Hudson v. Howell, 156 S.W.2d 477, 288 Ky. 422—Engle v. Moore, 156 S.W.

2d 466, 288 Ky. 419—Steele v. Ferrell, 156 S.W.2d 153, 288 Ky. 392—Green v. Bryant, 155 S.W.2d 465, 287 Ky. 831—Mullins v. Staton, 152 S.W.2d 939, 287 Ky. 296—Reynolds v. Cobb, 150 S.W.2d 702, 286 Ky. 329—Chesnut v. McPheteridge, 148 S.W.2d 717, 285 Ky. 550—Claypool v. Rutherford, 147 S.W.2d 702, 285 Ky. 321—Todd v. Bowman, 147 S.W.2d 75, 285 Ky. 117—Blankenship v. Green, 143 S.W.2d 294, 283 Ky. 700—Dumesnil v. Reeves, 142 S.W.2d 132, 283 Ky. 563—Hopper v. Beddow, 141 S.W. 2d 278, 283 Ky. 337—Russell v. Hogan, 140 S.W.2d 615, 282 Ky. 764—Decker v. Palmer, 138 S.W.2d 516, 282 Ky. 764—Frazier v. Frazier, 138 S.W.2d 506, 282 Ky. 405—Proctor v. Proctor, 137 S.W. 2d 354, 282 Ky. 20—Haas v. Fidelity & Columbus Trust Co., 136 S.W.2d 1088, 281 Ky. 671—Engle v. Terrell, 134 S.W.2d 980, 281 Ky. 88—Barber v. Barber, 134 S.W.2d 933, 280 Ky. 842—Cincinnati Finance Co. v. Atkinson's Adm'r, 133 S.W.2d 977, 275 Ky. 828—Craddock v. Kaiser, 133 S.W.2d 916, 280 Ky. 577—Gabbard v. Watkins, 133 S.W. 2d 54, 280 Ky. 257—Crowley v. Ballard, 131 S.W.2d 463, 279 Ky. 484—Uppington v. Cooper, 130 S.W. 2d 733, 279 Ky. 805—Taulbee v. First Nat. Bank, 130 S.W.2d 48, 279 Ky. 153—General Exchange Ins. Corp. v. Kinney, 129 S.W.2d 1014, 279 Ky. 76, 122 A.L.R. 920—Davis v. Rose, 129 S.W.2d 530, 278 Ky. 752—Stevie v. Stevie, 128 S.W. 2d 946, 278 Ky. 489—Poetter v. Poetter, 126 S.W.2d 1119, 277 Ky. 662—Layne v. Layne, 126 S.W.2d 416, 277 Ky. 295—Pennington v. Pennington's Adm'r, 124 S.W.2d 460, 276 Ky. 353—Fidelity & Cas. Co. of New York v. Breathitt County, 123 S.W.2d 250, 276 Ky. 173—Schroath v. Pioneer Bldg. Ass'n of Newport, 119 S.W.2d 1113, 274 Ky. 685—King v. Kitchen's Ex'rs, 118 S.W.2d 144, 274 Ky. 157—Bell's Ex'r v. Lawrence, 114 S.W.2d 517, 272 Ky. 439—Buchanan v. Sledge, 113 S.W.2d 859, 272 Ky. 15—Blackburn's Adm'x v. Union Bank & Trust Co., 108 S.W.2d 806, 269 Ky. 699—Webster v. Webster, 108 S.W.2d 724, 269 Ky. 712—Mayhew v. McGlothlin, 106 S.W.2d 643, 269 Ky. 184—Cassada v. First Nat. Bank, 105 S.W.2d 149, 268 Ky. 373—Davenport v. National Fluorspar Co., 103 S.W.2d 84, 267 Ky. 713—Lawson v. McNeil, 102 S.W.2d 42, 267 Ky. 297—Peoples' Cent. Transit Lines v. Myers, 102 S.W.2d 21, 267 Ky. 277—Davis v. Carico, 102 S.W.2d 8, 267 Ky. 334—Cain v. Campbell's Adm'x, 98 S.W. 2d 17, 265 Ky. 843—Hite's Adm'r v. Hite's Ex'r, 97 S.W.2d 811, 265 Ky. 786—Ream v. Fugate, 97 S.W.2d 11, 265 Ky. 463—Anderson's Adm'x v. Bourbon Agr. Bank & Trust Co., 96 S.W.2d 257, 265 Ky. 157—Cook's Committee v. Reaves, 90 S.W.2d 345, 262 Ky. 372—Cavalier Advertising Service v. Hudson, 90 S.W. 2d 28, 262 Ky. 282—Petrey's Adm'r v. Petrey, 90 S.W.2d 4, 262 Ky. 222—Hensley v. Miller, 88 S.W.2d 974, 261 Ky. 829—Prudential Ins. Co. of America v. Brasier, 84 S.W. 2d 43, 260 Ky. 240—Stephenson Lumber Co. v. Hurst, 83 S.W.2d 48, 259 Ky. 747—Thomas v. McBeth's Adm'r, 82 S.W.2d 790, 259 Ky. 484—Anglin v. Anglin, 82 S.W.2d 429, 259 Ky. 373—Shrum v. Meredith, 82 S.W.2d 426, 259 Ky. 366—Blaydes v. Blaydes, 78 S.W.2d 317, 257 Ky. 429—Sturgill v. Hensley, 78 S.W.2d 19, 257 Ky. 344—Combs v. Bowen, 75 S.W.2d 513, 255 Ky. 802—Daniels v. Daniels, 69 S.W. 2d 720, 253 Ky. 437—Poston v. Lothridge's Ex'r, 69 S.W.2d 22, 253 Ky. 177—Boldt v. Boldt, 69 S.W.2d 16, 253 Ky. 179—Green v. Davis, 68 S.W.2d 750, 253 Ky. 105—Baxter v. Davis, 67 S.W.2d 678, 252 Ky. 525—Bass & Co. v. Trustees of Madisonville Christian Church, 61 S.W.2d 1074, 250 Ky. 36—Edwards v. Lee, 61 S.W.2d 1049, 250 Ky. 166—Sampson v. Cottongim, 61 S.W.2d 309, 249 Ky. 670—People's Nat. Bank v. Jones, 61 S.W.2d 17, 249 Ky. 468—Bartley v. Robinson, 60 S.W.2d 358, 249 Ky. 130—Sandy Hook Bank's Trustee v. Elliott County Fiscal Court, 58 S.W.2d 637, 248 Ky. 498—Spencer v. Hogg's Adm'r, 58 S.W. 2d 401, 248 Ky. 229—Phillips v. Phillips' Ex'r, 58 S.W.2d 367, 248 Ky. 268—Gardner v. Hope, 58 S.W. 2d 353, 248 Ky. 270—Deep v. Farmers' Nat. Bank of Lebanon, 57 S.W. 2d 1002, 247 Ky. 801—Calloway v. Howard, 57 S.W.2d 677, 247 Ky. 730—Dwiggins v. Howard, 57 S.W. 2d 649, 247 Ky. 746—Henson v. Jones, 57 S.W.2d 498, 247 Ky. 465—Tapp v. Baskin, 55 S.W.2d 29, 246 Ky. 438—Hatfield v. Hatfield, 55 S.W.2d 5, 246 Ky. 359—Gover's Adm'r v. Waddle, 54 S.W. 2d 19, 245 Ky. 652—Quarterman v. Arnold, 53 S.W.2d 970, 245 Ky. 595—Klenekole Mining Co. v. Lusk, 53 S.W.2d 168, 245 Ky. 73—Baker v. McIntosh, 51 S.W.2d 244, 244 Ky. 410—Harkey v. Haddox, 50 S.W.2d 955, 244 Ky. 380—Rankin v. Dunn, 49 S.W.2d 1018, 243 Ky. 784—Strode's Ex'x v. Strode, 48 S.W.2d 543, 243 Ky. 367—Fisher v. Fisher's Adm'r, 46 S.W.2d 85, 242 Ky. 262—Perkins v. Perkins, 44 S.W.2d 1073, 241 Ky. 695—Reiss v. Wintersmith, 44 S.W.2d 609, 241 Ky. 470—Tunks v. Vincent, 44 S.W.2d 282, 241 Ky. 379—Creasy v. Creasy's Next Friend, 44 S.W.2d 271, 241 Ky. 403—Blanton v. Osborne, 39 S.W.2d 698, 239 Ky. 389—People's Bank v. Baker, 38 S.W.2d 225, 238 Ky. 473—Taulbee v. Campbell, 37 S.W. 2d 13, 238 Ky. 165—Burchett v. Burchett, 35 S.W.2d 557, 237 Ky. 411—Stege v. Stege's Trustee, 35 S.W.2d 324, 237 Ky. 197—Dixon v. Dixon, 33 S.W.2d 611, 236 Ky. 608—W. D. Harris & Co. v. Lewis, 32 S.W.2d 401, 235 Ky. 810—Rosa v. Nava, 31 S.W.2d 910, 235 Ky. 574—Shaw v. Farmers' Bank & Trust Co., 31 S.W.2d 893, 235 Ky. 502—Wade v. Wade, 28 S.W.2d 504, 234 Ky. 447—Combs v. Casebolt, 25 S.W.2d 365, 233 Ky. 192—Simmerman v. National Deposit Bank of Owensboro, 24 S. W.2d 912, 232 Ky. 844—Green v. Hammons, 22 S.W.2d 422, 232 Ky. 59—Rivers-Yager Co.'s Trustee in Bankruptcy v. Lincoln Bank & Trust Co., 22 S.W.2d 256, 231 Ky. 767—Carroll Gas & Oil Co. v. Skaggs, 21 S.W.2d 445, 231 Ky. 284—Hensley v. Hensley, 20 S.W. 2d 444, 230 Ky. 575—Long v. Howard, 17 S.W.2d 207, 229 Ky. 369—Bailey v. Norman's Adm'r, 15 S.W.2d 1005, 228 Ky. 790—Hagan v. Hurst, 15 S.W.2d 446, 228 Ky. 645—Walker v. Walker, 15 S. W.2d 298, 228 Ky. 357—Morgan v. Hazard Lumber & Supply Co., 15 S.W.2d 292, 228 Ky. 369—Heyna v. Lyons, 14 S.W.2d 766, 228 Ky. 211—Helm v. Goin, 14 S.W.2d 183, 227 Ky. 773—Jones v. Kentucky Glycerine Co., 11 S.W.2d 713, 226 Ky. 676—Moren v. Houston, 2 S.W.2d 667, 222 Ky. 785—Holcomb v. Potter, 2 S.W.2d 642, 222 Ky. 798—Gilbert v. Pace, 1 S. W.2d 1048, 222 Ky. 626—Sturgill's Adm'r v. Howard, 290 S.W. 1048, 218 Ky. 57—Eastern Kentucky Home Telephone Co. v. Dempster Const. Co., 290 S.W. 684, 217 Ky. 762—Begley v. Allen, 289 S.W. 257, 217 Ky. 231—Boston v. Trent, 288 S.W. 294, 216 Ky. 671—Alder v. Yager, 286 S.W. 983, 215 Ky. 678—Holliday v. Tennis Coal Co., 286 S. W. 773, 215 Ky. 551—Wells v. Dixon, 283 S.W. 434, 214 Ky. 499—Buckner v. Tucker, 281 S.W. 987, 213 Ky. 785—Faulkner v. Headrick's Adm'r, 281 S.W. 813, 213 Ky. 692—Lindholm v. Kice, 281 S.W. 795, 213 Ky. 544—Sallee v. Sallee, 280 S.W. 932, 213 Ky. 125—Carpenter v. Wilhoite's Adm'x, 280 S.W. 481, 213 Ky. 75—Black v. Napier, 278 S.W. 834, 212 Ky. 315—Richard Ritter, Inc. v. Morris Hess & Co., 277 S.W. 1016, 211 Ky. 730—Kochum v. Ezell, 277 S.W. 471, 211 Ky. 421—La Rue's Committee v. Williams, 277 S.W. 462, 211 Ky. 398—Ward v. Fisher, 277 S.W. 301, 211 Ky. 72—McAllister v. Vaughn, 276 S.W. 561, 210 Ky. 663—Brown v. Crescent Stave Co., 269 S.W. 739, 207 Ky. 470—McKinney Deposit Bank v. Cyrus W. Scott Mfg. Co., 269 S.W. 343, 207 Ky. 340—Kidd v. Walker, 268 S.W. 335, 206 Ky. 716—Marks v. Grace, 266 S.W. 30, 205 Ky. 456—Begley v. Erasmie,

restraining interference with the lower court's findings does not extend to cases in which the evidence is required to be clear, strong, and convincing to justify relief.[29.5]

The appellate court will defer to the chancellor's findings where the correctness of the findings depends on the credibility of the witnesses whom the trial court observed,[30] where the trial court has

265 S.W. 833, 205 Ky. 240, dismissed 273 U.S. 655, 47 S.Ct. 342, 71 L.Ed. 825—Wooley v. Mattingly, 265 S.W. 302, 204 Ky. 699—Brown v. Holifield, 262 S.W. 611, 203 Ky. 473—Roberts v. Aker & Vogt, 262 S.W. 609, 203 Ky. 468—Carter v. Roberts, 262 S.W. 10, 203 Ky. 224—Van Hook v. Hasty, 250 S.W. 987, 199 Ky. 235—Charles v. Charles, 250 S.W. 855, 199 Ky. 208—Lewis v. Williams, 234 S.W. 317, 192 Ky. 763—Williams v. Harvey, 234 S.W. 315, 192 Ky. 684—Cunningham v. Cunningham, 226 S.W. 353, 189 Ky. 834—Johnston v. Williams, 220 S.W. 1057, 187 Ky. 764—Jones v. Tarry, 220 S.W. 523, 187 Ky. 700—Smith v. Ferguson, 219 S.W. 160, 187 Ky. 338—Allen v. Henson, 217 S.W. 120, 186 Ky. 201—Groves v. Bryant, 216 S.W. 364, 186 Ky. 104—Ambrose v. Reece, 216 S.W. 341, 186 Ky. 171—Tutt v. Smith, 212 S.W. 920, 184 Ky. 732—Alexander v. Lewis, 212 S.W. 440, 184 Ky. 679—Louisville Property Co. v. Rose, 211 S.W. 743, 184 Ky. 221—Cumberland Grocery Co. v. Harwood Barley Mfg. Co., 211 S.W. 409, 184 Ky. 70—Meek v. Ward, 211 S.W. 200, 184 Ky. 30—Johnson v. Broughton, 210 S.W. 455, 183 Ky. 628—Franz v. Jacobs, 210 S.W. 163, 183 Ky. 647—Smallwood v. Lawson, 208 S.W. 808, 183 Ky. 189—Bacon v. Dabney, 208 S.W. 807, 183 Ky. 193—Bates v. Bates, 206 S.W. 800, 182 Ky. 566—McGoodwin v. Shelby, 206 S.W. 625, 182 Ky. 377, modifying 204 S.W. 171, 181 Ky. 230—Clark v. Isaacs, 206 S.W. 606, 182 Ky. 391—Hayes v. Hayes' Ex'r, 205 S.W. 596, 181 Ky. 589—Manchester Nat. Bank v. Herndon, 203 S.W. 1055, 181 Ky. 117—Clay v. Clay's Committee, 200 S.W. 934, 179 Ky. 494—Jewell v. Cecil, 198 S.W. 199, 177 Ky. 822—Robinett v. Coleman, 197 S.W. 532, 177 Ky. 135—Moody v. Fremd, 197 S.W. 433, 177 Ky. 5—Wood v. Moss, 195 S.W. 1077, 176 Ky. 419—Bank of Willard v. Pennsylvania & Kentucky Fire Brick Co., 194 S.W. 110, 175 Ky. 192, L.R.A.1918E 165—Hardaway v. Webb, 190 S.W. 1071, 172 Ky. 589—Caulder v. Elmore, 188 S.W. 666, 171 Ky. 575—Fields v. Couch, 184 S.W. 894, 169 Ky. 554—Shelton v. Shelton, 180 S.W. 83, 167 Ky. 167—Landis v. McCreary & Co., 180 S.W. 59, 167 Ky. 128—Gover v. Williams, 179 S.W. 1047, 167 Ky. 56—Cole v. Collins, 179 S.W. 607, 166 Ky. 645—Nicholson v. Ferdinand Bauer Engineering & Contracting Co., 177 S.W. 236, 165 Ky. 458—Gragg v. Barton's Adm'x, 170 S.W. 621, 161 Ky. 210—Robinson-Pettit Co. v. Sapp, 169 S.W. 869, 160 Ky. 445—Rounds v. Cloverport Foundry & Machine Co., 167 S.W. 384, 159 Ky. 414, Ann.Cas. 1915D 40, affirmed 35 S.Ct. 596, 237 U.S. 303, 59 L.Ed. 966.

Me.—Perry v. Curtis, 95 A.2d 562, 148 Me. 438.

Md.—Sheeler v. Sheeler, 114 A.2d 62, 207 Md. 264—Frank v. Frank, 113 A.2d 411, 207 Md. 124—Brett v. Brett, 182 A. 305, 169 Md. 708.

Or.—Rohrbacher v. Strain, 186 P. 583, 95 Or. 1.

Utah.—Nokes v. Continental Min. & Milling Co., 308 P.2d 954, 6 Utah 2d 177—Graham v. Street, 166 P. 2d 524, 109 Utah 460—Croft v. Jensen, 40 P.2d 198, 86 Utah 13.

W.Va.—Adkins v. Perry, 174 S.E. 377, 114 W.Va. 829.

4 C.J. p 898 note 90.

Appellate court uncertain as to where preponderance lies

Where the appellate court finds that it is wholly unable to determine where the preponderance of the evidence lies, it treats the findings of the trial court as persuasive, and adopts such findings as its own.

Ark.—Maloy v. Maloy, 271 S.W. 13, 168 Ark. 629—Walt v. Phillips, 266 S.W. 71, 166 Ark. 163—Manzil v. White, 255 S.W. 567, 161 Ark. 1—Griffin v. Eustice, 255 S.W. 12, 160 Ark. 508—Babcock v. Babcock, 250 S.W. 870, 158 Ark. 640—Morrow v. Merrick, 249 S.W. 369, 157 Ark. 618—Brunson v. Reinberger & Collier, 203 S.W. 269, 134 Ark. 211.

Ky.—Home Ins. Co. of New York v. Stroud, 50 S.W.2d 934, 244 Ky. 315.

29.5 Ky.—Langford v. Sigmon, 167 S.W.2d 820, 292 Ky. 650.

30. Ala.—Worthington v. Pruett, 96 So. 873, 209 Ala. 632.

Ark.—Dearien v. Lancaster, 252 S.W. 2d 72, 221 Ark. 98—Riggs v. Hill, 144 S.W.2d 26, 201 Ark. 206.

Cal.—Viner v. Untrecht, 158 P.2d 3, 26 C.2d 261.

Cox v. Klatte, 84 P.2d 290, 29 C.A.2d 150—Hall v. Alexander, 64 P.2d 767, 18 C.A.2d 660.

Ill.—Elder v. Clarke, 52 N.E.2d 778, 385 Ill. 335—Sohio Corp. v. Gudder, 32 N.E.2d 148, 375 Ill. 622.

Manley v. Geng, 128 N.E.2d 641, 7 Ill.App.2d 6—Shipman v. Moseley, 49 N.E.2d 662, 319 Ill.App. 443.

Iowa.—Clough v. Clough, 84 N.W.2d 16—Storck v. Pascoe, 72 N.W.2d 467, 247 Iowa 54—In re Martens' Estate, 283 N.W. 885, 226 Iowa 162—Anderson v. Rubenstein, 184 N.W. 738.

Ky.—Thomas v. Bradley, 277 S.W. 255, 211 Ky. 303.

Me.—Appeal of D'Aoust, 82 A.2d 409, 146 Me. 443.

Md.—Metaxa v. Coutros, 128 A.2d 273, 211 Md. 499—Archway Motors, Inc. v. Edelson, 95 A.2d 475, 202 Md. 75—Cropper v. Lambertson, 197 A. 576, 174 Md. 24—Jacobs v. Jacobs, 185 A. 109, 170 Md. 405—Buckner v. Jones, 152 A. 515, 159 Md. 679.

Mass.—Kevorkian v. Moors, 12 N.E. 2d 111, 299 Mass. 163—Spiegel v. Beacon Participations, 8 N.E.2d 895, 297 Mass. 398—Ecklund v. Ecklund, 193 N.E. 43, 288 Mass. 517.

Mich.—Macklem v. Warren Const. Co., 72 N.W.2d 60, 343 Mich. 334—Porritt v. Stone, 66 N.W.2d 244, 340 Mich. 645—Austin v. Painters' Dist. Council No. 22, Broth. of Painters, Decorators and Paperhangers of America (A. F. of L.), 64 N.W.2d 550, 339 Mich. 462, appeal dismissed Painters' Dist. Council No. 22, Broth. of Painters, Decorators, and Paperhangers of America (A. F. of L.) v. Austin, 75 S.Ct. 571, 348 U.S. 979, 99 L.Ed. 762—Jenks v. Daniel, 7 N.W.2d 286, 304 Mich. 239—Robinson v. Great Lakes College, 292 N.W. 701, 294 Mich. 192.

Mo.—Heath v. Motion Picture Mach. Operators Union No. 170, 290 S.W. 2d 152—Peine v. Sater, 289 S.W.2d 101—Erickson v. Greub, 287 S.W.2d 873—Lukas v. Hays, 283 S.W.2d 561—Walton v. Van Camp, 283 S. W.2d 493—Allen v. Kelso, 266 S.W. 2d 696—McElroy v. Mathews, 263 S.W.2d 1—Martin v. Lewis, 244 S. W.2d 87—New York Life Ins. Co. v. Feinberg, 229 S.W.2d 531—Rosenberg v. Steiner, 228 S.W.2d 806, 360 Mo. 447—Winchell v. Gaskill, 190 S.W.2d 266, 354 Mo. 593—Colquitt v. Lowe, 184 S.W.2d 420—C. Bewes, Inc., v. Buster, 108 S. W.2d 66, 341 Mo. 578—Castorina v. Herrmann, 104 S.W.2d 297, 340 Mo. 1026—Franklin v. Moss, 101 S.W.2d 711—Milan Bank v. Richmond, 213 S.W. 434.

Wilson v. Berning, App., 293 S. W.2d 151—E. C. Robinson Lumber Co. v. Lowrey, App., 276 S.W.2d 636—Burroughs v. Lasswell, App., 108 S.W.2d 705.

Neb.—McLaughlin Bros. v. Hilliard, 149 N.W. 807, 97 Neb. 326.

Okl.—Ewing v. Trawick, 256 P.2d 182, 208 Okl. 311—Application of Harper, 158 P.2d 472, 195 Okl. 386—Johnston v. American Finance Corp., 79 P.2d 242, 182 Okl. 567—

made a physical examination or inspection of the property or thing involved,[31] where the findings turn partly on knowledge of local persons or things with which the chancellor is familiar,[32] where documents and exhibits, to which the testimony of the witnesses relates and without which the testimony is not intelligible, are not made a part of the record on appeal,[33] or where there have been successive concurrent findings by different courts on the same question.[34]

On the other hand the appellate court is often much less hesitant about disturbing the findings, and does not accord them the same deference or binding effect, where the trial court or chancellor did not hear the testimony in open court;[35] the hearing is

Griffin v. Dwyer, 72 P.2d 359, 181 Okl. 71—McAfee v. Harden, 71 P.2d 463, 180 Okl. 546.
Or.—Hughes v. Kay, 242 P.2d 788, 194 Or. 519.
Pa.—Kees v. Green, 75 A.2d 602, 365 Pa. 368—Machalicka v. Lukasevic, 31 A.2d 164, 346 Pa. 487—Ringer v. Finfrock, 17 A.2d 348, 340 Pa. 458. Werner v. Deutsch, 7 A.2d 511, 135 Pa.Super. 519.
R.I.—Nixon v. Connery, 42 A.2d 894, 71 R.I. 142.
Tex.—Coskrey v. Morrison, Civ.App., 91 S.W.2d 902, error refused.
Utah.—Crockett v. Nish, 147 P.2d 853, 106 Utah 241.
Vt.—Turner v. Bragg, 35 A.2d 356, 113 Vt. 393—Boyd v. Town of Hartford, 28 A.2d 411, 112 Vt. 503—Putnam v. Woodard, 10 A.2d 186, 111 Vt. 39—Crawford v. Bromley, 182 A. 180, 108 Vt. 51.
Credibility of witnesses as question for trier of facts generally see supra § 1645.

Great weight

The chancellor's findings should be given great weight, where they largely depend on the credibility of the witnesses.
Iowa.—Salem v. Salem, 60 N.W.2d 772, 245 Iowa 62—Carter v. Cohen Bros., 164 N.W. 1040, 181 Iowa 588.
Md.—Singewald v. Singewald, 166 A. 441, 165 Md. 136.
Mass.—City of Boston v. Santosuosso, 80 N.E.2d 278, 307 Mass. 302.
Mo.—Basman v. Frank, 250 S.W.2d 989.
Or.—Bogle v. Paulson, 201 P.2d 733, 185 Or. 211.
Pa.—Thorndell v. Munn, 147 A. 848, 298 Pa. 1.
Kaufmann v. Kaufmann, 70 A.2d 481, 166 Pa.Super. 6—Stalwart Building & Loan Ass'n v. Monahan, 159 A. 189, 104 Pa.Super. 498—Kane v. McClenachan, 159 A. 61, 104 Pa.Super. 417.

31. Ala.—Welch v. Lee, 93 So.2d 427, 265 Ala. 594—Miles v. Moore, 79 So.2d 432, 262 Ala. 441—Mutual Service Funeral Homes v. Fehler, 58 So.2d 770, 257 Ala. 354—Town of Carbon Hill v. Leith, 79 So. 195, 201 Ala. 633—Faught v. Leith, 78 So. 830, 201 Ala. 452.
Del.—Gebhart v. Belton, 91 A.2d 137, affirmed Brown v. Board of Ed. of Topeka, Kan., 75 S.Ct. 753, 349 U.S. 294, 99 L.Ed. 1083.
Fla.—Hunnicutt v. City of Winter Haven, 31 So.2d 155, 159 Fla. 115.
Iowa.—Klopp v. Chicago, M. & St. P. Ry. Co., 157 N.W. 230, 175 Iowa 534.
Ky.—Johnson v. Johnson, 273 S.W. 2d 558—Goodin v. Tuggle, 215 S.W. 2d 124, 308 Ky. 537—Crawford v. Bates, 214 S.W.2d 772, 308 Ky. 460—Isaacs v. Karnes, 197 S.W.2d 789, 303 Ky. 305—Dause v. Wilkerson, 194 S.W.2d 998, 302 Ky. 422—Gilreath v. Stephens, 192 S.W.2d 966, 301 Ky. 689—Justice v. Blackburn, 189 S.W.2d 955, 300 Ky. 591—Collins v. Pigman, 165 S.W. 2d 955, 292 Ky. 24—Roberts v. Burkhart, 160 S.W.2d 644, 290 Ky. 136.
Mass.—Sargeant v. Traverse Bldg. Trust, 167 N.E. 233, 267 Mass. 490.
Miss.—Clements v. Town of Carrollton, 63 So.2d 398, 216 Miss. 859—Glover v. Falls, 82 So. 4, 120 Miss. 201.
Neb.—Town of Everett, Burt County v. Teigeler, 77 N.W.2d 467, 162 Neb. 769—Shepardson v. Chicago, B. & Q. R. Co., 69 N.W.2d 376, 160 Neb. 127—Keim v. Downing, 59 N.W.2d 602, 157 Neb. 481—City of Wilber v. Bednar, 242 N.W. 644, 123 Neb. 324—Davis v. Beem, 214 N.W. 633, 115 Neb. 697—Otto v. Gunnarson Bros., 168 N.W. 361, 102 Neb. 613.
Or.—Keller v. Gibson Packing Co., 257 P.2d 621, 198 Or. 510—Becker v. Tillamook Bay Lumber Co., 240 P.2d 237, 194 Or. 134—Anderson v. Richards, 198 P. 570, 100 Or. 641—Molalla Electric Co. v. Wheeler, 154 P. 686, 79 Or. 478.
Pa.—Lugin v. Dobson, 104 A.2d 95, 376 Pa. 620.
Utah.—Hatch v. W. S. Hatch Co., 283 P.2d 217, 3 Utah 2d 295—Cannon v. Neuberger, 268 P.2d 425, 1 Utah 2d 396—Reimann v. Baum, 203 P. 2d 387, 115 Utah 147—Kinsman v. Utah Gas & Coke Co., 177 P. 418, 53 Utah 10.
Va.—Ward v. Baylor, 153 S.E. 894, 154 Va. 669.

Effect of inspection disregarded

In considering the sufficiency of evidence on which state highway officers were restrained from constructing a drain in connection with a highway, the appellate court will disregard the effect of the circuit judge's inspection of the premises made before granting the injunction, since the law has made no provision for or provided any method by which the result of such injunction can be reviewed.
S.D.—Schmidt v. Norbeck, 189 N.W. 524, 45 S.D. 557.

32. Ky.—Layne v. Layne, 251 S.W. 667, 199 Ky. 598.
Pa.—Gordon v. Pettey, 139 A. 914, 291 Pa. 258.

33. Mont.—Northern Pac. Ry. Co. v. Hauswirth, 140 P. 516, 49 Mont. 135.

34. Mo.—Johnson v. United Rys. Co. of St. Louis, 219 S.W. 38, 281 Mo. 90.
4 C.J. p 899 note 95 [i].

35. Ala.—Porter v. Roberson, 82 So. 2d 244, 263 Ala. 294—Robinette v. Tidwell, 75 So.2d 138, 261 Ala. 538—Van Leer v. Helms, 66 So.2d 783, 259 Ala. 499—Sansom v. Sturkie, 18 So.2d 267, 245 Ala. 514—One Liberty Roadster v. State, 89 So. 273, 206 Ala. 110.
Del.—Sohland v. Baker, 141 A. 277, 15 Del.Ch. 431, 58 A.L.R. 693.
Fla.—Lesnoff v. Becker, 135 So. 146, 101 Fla. 716—Harp v. McRae, 129 So. 499, 100 Fla. 141—Roland v. Mathews, 124 So. 34, 98 Fla. 695—Atlantic Bank & Trust Co. v. Sengstak, 116 So. 267, 95 Fla. 606—Powell v. Powell, 81 So. 105, 77 Fla. 181—Mickens v. Mickens, 78 So. 287, 75 Fla. 391—Smith v. O'Brien, 78 So. 13, 75 Fla. 252—Simpson v. First Nat. Bank, 77 So. 204, 74 Fla. 539—Shad v. Smith, 76 So. 897, 74 Fla. 324—Johns v. Bowden, 73 So. 603, 72 Fla. 530—McGill v. Chappelle, 71 So. 836, 71 Fla. 479.
Ill.—Maley v. Burns, 126 N.E.2d 695, 6 Ill.2d 11—Brubaker v. Hatjimanolis, 88 N.E.2d 843, 404 Ill. 342—Dunnett v. Hughes, 77 N.E. 2d 36, 399 Ill. 120—Kosakowski v. Bagdon, 16 N.E.2d 745, 369 Ill. 252—Stasch v. Stasch, 189 N.E. 891, 355 Ill. 581—Nofftz v. Nofftz, 124 N.E. 838, 290 Ill. 36—Oliver v. Ross, 124 N.E. 800, 289 Ill. 624.
City of East Peoria v. Colianni & Dire Co., 78 N.E.2d 806, 334 Ill. App. 108—Chicago Title & Trust Co. v. Central Trust Co. of Illinois, 224 Ill.App. 474, reversed on other grounds 144 N.E. 165, 312 Ill. 396.
Md.—Schneider v. Menaquale, 49 A. 2d 330, 187 Md. 202.

entirely on bill and answer;[36] the evidence is not conflicting;[37] the testimony is so conflicting and confusing that the true facts are best ascertainable by a careful reading and rereading of the written testimony;[38] the evidence is written or documentary in form;[39] or the chancellor's conclusions have been

N.J.—Cartan v. Phelps, 109 A. 291, 91 N.J.Eq. 312.
Pa.—Schaeffer v. Jones, 143 A. 197, 293 Pa. 529.

Clear error required

(1) It has been said, however, that even in such a case the findings will not be disturbed if not clearly erroneous.
Fla.—Century Trust Co. of Baltimore v. Allison Realty Co., 141 So. 612, 105 Fla. 456—Laughlin v. Kent, 137 So. 247, 103 Fla. 280—Foxworth v. Maddox, 137 So. 161, 103 Fla. 32—Bowery v. Babbit, 128 So. 801, 99 Fla. 1151—Shippey v. Shippey, 122 So. 272, 91 Fla. 881—Atlantic Bank & Trust Co. v. Sengstak, 116 So. 267, 95 Fla. 606—Golinick v. Barker, 114 So. 527, 94 Fla. 885—Tatum Bros. Real Estate & Investment Co. v. Osborn, 83 So. 703, 79 Fla. 130—Davidson v. Collier, 78 So. 983, 75 Fla. 783—Manasse v. Dutton Bank, 78 So. 424, 75 Fla. 327—Carr v. Lesley, 74 So. 207, 73 Fla. 233—Sandlin v. Hunter Co., 70 So. 553, 70 Fla. 514—Hogeboom v. Anderson, 70 So. 312, 70 Fla. 392—Terra Ceia Estates v. Taylor, 67 So. 169, 68 Fla. 261.
Mass.—Metropolitan Trust Co. v. Federal Trust Co., 122 N.E. 413, 232 Mass. 363—First African M. E. Soc. of Boston v. Worthy, 122 N. E. 289, 232 Mass. 331.

(2) On an accounting in a case where a master has taken and reported the evidence, in which evidence there is some conflict, and the chancellor has reviewed the evidence and made a finding as to the amount due by one of the parties to the other and renders a decree for such sum, and there is sufficient evidence in the record to justify such finding, the conclusions of the chancellor as to the amount due will not be reversed.
Fla.—Empire Drug Co. v. Smith, 83 So. 458, 78 Fla. 594.

36. U.S.—United States v. Cantini, Pa., 212 F. 925, 129 C.C.A. 445.

37. Ill.—Dunnett v. Hughes, 77 N. E.2d 36, 399 Ill. 120.
Me.—Lunt v. Fidelity & Cas. Co. of New York, 28 A.2d 736, 139 Me. 218.
Miss.—Crichton v. Halliburton & Moore, 122 So. 200, 154 Miss. 265.
Mo.—Benton v. Alcazar Hotel Co., 180 S.W.2d 33, 352 Mo. 836—Smith v. Lore, 29 S.W.2d 91, 325 Mo. 282—MacDonald v. Rumer, 8 S.W. 2d 592, 320 Mo. 605—Guaranty Life Ins. Co. v. Frumson, 236 S. W. 310.
Nelson v. McClean's Estate, 161 S.W.2d 676, 236 Mo.App. 718.
Pa.—Wosche v. Kraning, 46 A.2d 220, 353 Pa. 481.
United Presbyterian Women's Ass'n of North America v. Butler County, 167 A. 389, 110 Pa.Super. 116.
R.I.—Picerne v. Redd, 47 A.2d 906, 72 R.I. 4, 166 A.L.R. 397—Matteson v. Wm. S. Sweet & Son, 193 A. 171, 58 R.I. 411, 114 A.L.R. 293.

Nonconflicting oral evidence

The rule of deference to the chancellor's findings applies mainly where there is oral conflicting evidence, and if the oral evidence is not conflicting the rule is not applied.
Mo.—Smith v. Lore, 29 S.W.2d 91, 325 Mo. 282.

38. Iowa.—Wendt v. Haglestange, 161 N.W. 455, 179 Iowa 476.
Mich.—Pakulski v. Ludwiczewski, 289 N.W. 231, 291 Mich. 502.

Reasons for rule

"It is strongly urged by the appellee that the trial court had better opportunity of examining the witnesses than we can have, and for that reason the finding of facts below should not be disturbed. It is true that we attach weight, even in an equity case, to the findings of fact by the trial court, because in some respects there are advantages available to the trial judge which are not available to us. On the other hand, cases come before us not infrequently where the trial judge was manifestly at a disadvantage because of the conflict and confusion of testimony. In such cases the real facts are sometimes so elusive and concealed that only a careful reading and re-reading of the written testimony in its completeness will enable a satisfactory finding thereon."
Iowa.—Wendt v. Haglestange, 161 N.W. 455, 458, 179 Iowa 476.

39. Ala.—Levy v. Levy, 56 So.2d 344, 256 Ala. 629—Tillman v. Calhoun Lumber Co., 26 So.2d 906, 248 Ala. 226—Wells v. Wells, 10 So.2d 853, 243 Ala. 533—Pollard v. Simpson, 199 So. 560, 240 Ala. 401—Wade v. Miller, 93 So. 905, 208 Ala. 264—Hampton v. Reichert, 90 So. 311, 206 Ala. 463.
Colo.—Conklin v. Shaw, 185 P. 661, 67 Colo. 169.
Del.—Hob Tea Room v. Miller, 89 A. 2d 851, 33 Del.Ch. 38.
Fla.—Johnston v. Thomas, 111 So. 541, 93 Fla. 67—Guggenheimer & Co. v. Davidson, 77 So. 266, 74 Fla. 485.
Ill.—Seely v. Rowe, 18 N.E.2d 874, 370 Ill. 336.
See Bartson v. Wiekert, 193 Ill.App. 467—Blake v. Thwing, 185 Ill.App. 187.
Ind.—Pigg v. Cook, 109 N.E.2d 107, 123 Ind.App. 414.
Iowa.—Sisson v. Janssen, 56 N.W.2d 30, 244 Iowa 123.
Kan.—Bailey v. Talbert, 294 P.2d 220, 179 Kan. 169—Home Owners' Loan Corp. v. Oakson, 173 P.2d 257, 161 Kan. 755.
Ky.—Ficklin v. Nickles, 38 S.W.2d 456, 238 Ky. 591—White v. Philpot, 299 S.W. 173, 221 Ky. 529.
Me.—Holmes v. Vigue, 173 A. 816, 133 Me. 50.
Mass.—Attorney General v. Book Named "Forever Amber," 81 N.E. 2d 663, 323 Mass. 302—Ogens v. Northern Industrial Chemical Co., 24 N.E.2d 1, 304 Mass. 401, 126 A.L.R. 280—Brockton Olympia Realty Co. v. Lee, 165 N.E. 873, 266 Mass. 550—Fenelon v. Fenelon, 138 N.E. 334, 244 Mass. 14—Hutchins v. Mead, 108 N.E. 67, 220 Mass. 348.
Miss.—Magnolia Textiles v. Gillis, 41 So.2d 6, 206 Miss. 797.
Mo.—Lukas v. Hays, 283 S.W.2d 561—Creek v. Union Nat. Bank in Kansas City, 266 S.W.2d 737—May Department Stores Co. v. Union Electric Light & Power Co., 107 S.W.2d 41, 341 Mo. 299.
Bealmear v. Beeson, App., 303 S.W.2d 690.
Mont.—Hoppin v. Lang, 263 P. 421, 81 Mont. 330.
Neb.—Maca v. Sabata, 34 N.W.2d 267, 150 Neb. 213.
Va.—Peal v. Luther, 97 S.E.2d 668, 199 Va. 35—Wolford v. Williams, 78 S.E.2d 660, 195 Va. 489—Childress v. Fidelity & Cas. Co. of N. Y., 72 S.E.2d 349, 194 Va. 191, 35 A.L.R.2d 1—Prindes v. Prindes, 69 S.E.2d 332, 193 Va. 463—Christianson v. Brosius, 37 S.E.2d 50, 184 Va. 958—Porter v. Frost, 32 S.E.2d 687, 183 Va. 549—Shenandoah Valley Nat. Bank v. Lineburg, 20 S.E.2d 541, 179 Va. 734—Foster v. Helms, 194 S.E. 799, 169 Va. 634—American Nat. Bank of Portsmouth v. Ames, 194 S.E. 784, 169 Va. 711, certiorari denied 58 S.Ct. 1046, 304 U.S. 577, 82 L.Ed. 1540—Norfolk County v. City of Portsmouth, 98 S.E. 755, 124 Va. 639—Catron v. Norton Hardware Co., 96 S.E. 853, 123 Va. 380.
Effect generally of findings on written or documentary evidence see supra § 1660.

Conflicting depositions

(1) Chancellor's finding on conflicting testimony even where taken by deposition is at least presumptively correct, although not entitled to as great weight as would be accorded if testimony had been taken ore tenus.

reached by way of reasoning or inference from undisputed or established facts.[40]

§ 1664. —— When Reversed or Set Aside

The fact findings of the chancellor or equity court will seldom be disturbed or set aside on appeal, if they appear to do substantial justice, but they will ordinarily be reversed or set aside only where they are clearly wrong, without evidentiary support, against the weight or preponderance of the evidence, the result of legal error, or inconsistent with, or not properly deducible from, conceded or established subordinate facts.

The fact findings of the chancellor or equity court will seldom be disturbed or set aside on appeal, if they do not show substantial prejudice,[40.50] if they appear to do substantial justice,[41] or if they appear to have sufficient evidentiary support,[42] provided, in

Va.—Christianson v. Brosius, 37 S.E.2d 50, 184 Va. 958—Taylor v. Taylor, 29 S.E.2d 833, 182 Va. 602.

(2) Where the case is tried on depositions which are so conflicting that different minds might reasonably reach different conclusions, findings of the chancellor based thereon will not be reversed, although the appellate court might have found differently had it been acting in the first instance.

W.Va.—Kesterson v. Kesterson, 135 S.E. 182, 102 W.Va. 331—Crummett v. Crummett, 135 S.E. 16, 102 W.Va. 151—Matney v. Blakely, 124 S.E. 918, 97 W.Va. 291—Ross v. McConnaughy, 101 S.E. 443, 85 W.Va. 199.

Bias

Reviewing court should not give much weight to deposition testimony which is unconvincing because of obvious bias of witnesses for both sides.

Ill.—Seely v. Rowe, 18 N.E.2d 874, 370 Ill. 336.

40. Mass.—Seder v. Gibbs, 131 N.E. 2d 376, 333 Mass. 445—McHale v. Treworgy, 90 N.E.2d 908, 325 Mass. 381—Robinson v. Pero, 172 N.E. 599, 272 Mass. 482—Jones v. Clark, 172 N.E. 250, 272 Mass. 146.

Mo.—Howard v. Zweigart, 197 S.W. 46.

N.J.—Naame v. Doughty, 158 A. 501, 109 N.J.Eq. 535.

Pa.—Eways v. Reading Parking Authority, 124 A.2d 92, 385 Pa. 592—Com. ex rel. Woodside v. Sun Ray Drug Co., 116 A.2d 833, 383 Pa. 1—Kelly v. City of Philadelphia, 115 A.2d 238, 382 Pa. 459—Howarth v. Miller, 115 A.2d 222, 382 Pa. 419—Foulke v. Miller, 112 A.2d 124, 381 Pa. 587—Peters v. Machikas, 105 A.2d 708, 378 Pa. 52—Wallace v. Wallace, 89 A.2d 769, 371 Pa. 404—Brunier v. Stanert, 85 A.2d 130, 369 Pa. 178—Barrett v. Heiner, 80 A.2d 729, 367 Pa. 510—Payne v. Winters, 77 A. 2d 407, 366 Pa. 299—Heilig Bros. Co. v. Kohler, 76 A.2d 613, 366 Pa. 72—Smith v. Smith, 70 A.2d 630, 364 Pa. 1—William Sellers & Co. v. Clarke-Harrison, Inc., 46 A. 2d 497, 354 Pa. 109—Blue Ridge Metal Mfg. Co. v. Proctor, 194 A. 559, 327 Pa. 424—Young Men's Christian Ass'n of Germantown v. City of Philadelphia, 187 A. 204, 323 Pa. 401.

Barndollar v. Groszkiewicz, 113 A.2d 154, 178 Pa.Super. 110.

R.I.—Daniels v. Blake, 99 A.2d 7, 81 R.I. 103.

Weighing proper understanding of facts

Where the facts are proved without dispute, the appellate court may determine whether the result reached by the chancellor was based on a proper understanding of the facts.

Pa.—Fidelity Trust Co. v. Union Nat. Bank of Pittsburgh, 169 A. 209, 313 Pa. 467, certiorari denied Union Nat. Bank of Pittsburgh v. Fidelity Trust Co., 54 S.Ct. 530, 291 U.S. 680, 78 L.Ed. 1068—Kirmse v. Adler, 166 A. 566, 311 Pa. 78—Binswanger v. Hyman, 114 A. 628, 271 Pa. 296.

Kaufmann v. Kaufmann, 70 A. 2d 481, 166 Pa.Super. 6—City of Easton v. Koch, 31 A.2d 747, 152 Pa.Super. 327—Altaffer v. Anderson Automobile Co., 77 Pa.Super. 63.

40.50 Okl.—Murray v. Eagle, 300 P. 2d 652—Hassell v. Workman, 260 P.2d 1081.

Error held not prejudicial

N.C.—Taylor v. Smith, 2 S.E.2d 708, 215 N.C. 793.

41. Cal.—Lewis v. Winfield, 120 P. 2d 65, 48 C.A.2d 543.

Fla.—Biggs v. Smith, 184 So. 106, 134 Fla. 569—Escambia County v. Blount Const. Co., 97 So. 477, 86 Fla. 244.

Ky.—Insurance Co. of North America v. Evans, 17 S.W.2d 711, 229 Ky. 613.

Md.—Dowell v. Dowell, 9 A.2d 593, 177 Md. 370, 125 A.L.R. 1008.

Mich.—Vanden Bogert v. May, 55 N. W.2d 115, 334 Mich. 606—Flood v. Welsh, 55 N.W.2d 104, 334 Mich. 583—De Longpre v. Carroll, 50 N. W.2d 132, 331 Mich. 474—Borngesser v. Winfree, 46 N.W.2d 366, 329 Mich. 528—Barar v. Phillips, 43 N.W.2d 846, 328 Mich. 267—Ensign v. Walls, 34 N.W.2d 549, 323 Mich. 49—Wright v. Brown, 27 N.W.2d 97, 317 Mich. 561—Bradley Grinding Mach. Corp. v. Bradley, 25 N.W.2d 520, 316 Mich. 396—Nebus v. Wein, 3 N.W.2d 280, 301 Mich. 293—Yaroch v. La Body, 284 N.W. 906, 288 Mich. 354.

Mo.—Lawson v. Cunningham, 204 S. W. 1100, 275 Mo. 128.

R.I.—Caton v. Caton, 59 A.2d 853, 74 R.I. 208.

Tenn.—Winer v. Chattanooga Feed Co., 6 Tenn.App. 415.

4 C.J. p 899 note 94.

42. Ala.—Dunn v. Fletcher, 96 So. 2d 257—Lamar v. Lamar, 82 So.2d 558, 263 Ala. 391—Downs v. Downs, 60 So.2d 686, 257 Ala. 643—Rodgers v. Thornton, 46 So.2d 809, 254 Ala. 66—Stallworth v. Ward, 31 So.2d 324, 249 Ala. 505—Penny v. Penny, 24 So.2d 912, 247 Ala. 434—Riley v. Wilkinson, 23 So.2d 582, 247 Ala. 231—Mullinax v. State ex rel. Hunter, 14 So.2d 150, 244 Ala. 435—State v. Frazier, 131 So. 442, 222 Ala. 180—Wilder v. Loehr, 101 So. 591, 211 Ala. 651—Burke v. Burke, 94 So. 513, 208 Ala. 502—Lyons v. Yielding, 85 So. 21, 203 Ala. 682.

Ariz.—Davis v. Kleindienst, 169 P.2d 78, 64 Ariz. 251—Amado v. Aguirre, 161 P.2d 117, 63 Ariz. 213, 160 A. L.R. 1126—Dragoon Marble & Mining Co. v. McNeish, 235 P. 401, 28 Ariz. 96.

Ark.—Stokes v. Stokes, 296 S.W.2d 399—City of Little Rock v. Hocott, 247 S.W.2d 1012, 220 Ark. 421—Harrell v. Harrell, 183 S.W.2d 293, 207 Ark. 905—Witherspoon v. Johnson, 144 S.W.2d 39, 201 Ark. 100—Brakensiek v. Carson, 139 S. W.2d 394, 200 Ark. 1189—Dunnington v. Taylor, 131 S.W.2d 627, 198 Ark. 770—American Building & Loan Ass'n v. McCarroll, 63 S.W. 2d 273, 187 Ark. 1162—Vanderford v. Monroe County Road Improvement Dist. No. 4, 244 S.W. 448, 155 Ark. 391—Singfield v. Vogler, 192 S.W. 906, 127 Ark. 618.

Cal.—O'Banion v. Borba, 195 P.2d 10, 32 C.2d 145—Viner v. Untrecht, 158 P.2d 3, 26 C.2d 261—Beeler v. American Trust Co., 147 P.2d 583, 24 C. 2d 1—Bard v. Kent, 122 P.2d 8, 19 C.2d 449, 139 A.L.R. 1032—Henry Cowell Lime & Cement Co. v. State, 114 P.2d 331, 18 C.2d 169—Butterfield v. Gentles, 70 P.2d 613, 9 C. 2d 275—Wheat v. Thomas, 287 P. 102, 209 C. 306—Burt v. Los Angeles Olive Growers' Ass'n, 166 P. 993, 175 C. 668.

Jones v. Gore, 297 P.2d 474, 141 C.A.2d 667—Gotta v. Colombero, 292 P.2d 261, 138 C.A.2d 676—Smith v. Sheffey, 248 P.2d 959, 113 C.A.2d 741—Palmer v. Palmer, 226 P.2d 613, 101 C.A.2d 819—Joshua Tree Townsite Co. v. Joshua Tree Land Co., 224 P.2d 85, 100 C.A.2d 590—Barthorpe v. Brown, 223 P.2d 884,

100 C.A.2d 474—Sketchley v. Lipkin, 222 P.2d 927, 99 C.A.2d 849—Westwood Temple v. Emanuel Center, 221 P.2d 146, 98 C.A.2d 755—Schlageter Estate Co. v. Koontz, 218 P.2d 814, 97 C.A.2d 814—Szekeres v. Reed, 215 P.2d 522, 96 C.A.2d 348—Sackett v. Starr, 212 P.2d 535, 95 C.A.2d 128—McNeil v. Graner, 206 P.2d 1120, 92 C.A.2d 371—Robertson v. Nichols, 206 P.2d 898, 92 C.A.2d 201—Lowry v. McCaffrey, 202 P.2d 600, 90 C.A.2d 188—Dalakis v. Paras, 194 P.2d 736, 86 C.A.2d 243—Quan v. Kraseman, 191 P.2d 16, 84 C.A.2d 550—Woock v. Schlink, 183 P.2d 46, 81 C.A.2d 12—Good v. Lindstrom, 181 P.2d 933, 80 C.A.2d 476—Application of Keck, 171 P.2d 933, 75 C.A.2d 846—Neustadt v. Skernswell, 151 P.2d 857, reheard 159 P.2d 49, 69 C.A.2d 361—Alvarez v. Ritter, 144 P.2d 83, 67 C.A.2d 574—Kobida v. Hinkelmann, 127 P.2d 657, 53 C.A.2d 186—Kort v. City of Los Angeles, 127 P.2d 66, 52 C.A.2d 804—Van Gammeren v. City of Fresno, 124 P.2d 621, 51 C.A.2d 235—Assets Corp. v. Perrin Properties, 119 P.2d 375, 48 C.A.2d 220—Reiss v. Reiss, 114 P.2d 718, 45 C.A.2d 740—Maier v. Boyle, 112 P.2d 913, 44 C.A.2d 698—Olivero v. Rosano, 109 P.2d 976, 42 C.A.2d 740—Joost v. Castel, 91 P.2d 172, 33 C.A.2d 138—Cox v. Klatte, 84 P.2d 290, 29 C.A.2d 150—Hall v. Alexander, 64 P.2d 767, 18 C.A.2d 660—Tarpey v. Curran, 228 P. 62, 67 C.A. 575—Poultry Producers of Central California v. Murphy, 221 P. 962, 64 C.A. 450—In re Cheda's Estate, 209 P. 70, 58 C.A. 433.

Colo.—Lestoque v. Arnold, 180 P.2d 862, 116 Colo. 293—Dry Creek No. 2 Ditch Co. v. Coal Ridge Ditch Co., 129 P.2d 292, 109 Colo. 556—Ebert v. Fluke, 238 P. 52, 78 Colo. 6—Hawkins v. Elston, 146 P. 254, 58 Colo. 400.

Conn.—Peerless Mfg. Co. v. Goehring, 38 A.2d 5, 131 Conn. 93—Arrigoni v. Adorno, 31 A.2d 32, 129 Conn. 673.

Del.—Consolidated Fisheries Co. v. Consolidated Solubles Co., 112 A. 2d 30, reargument denied and opinion supplemented 113 A.2d 576—Thomas v. King, 99 A.2d 778.

Blish v. Thompson Automatic Arms Corp., 64 A.2d 581, 30 Del. Ch. 538—Equitable Trust Co. v. Hollingsworth, 49 A.2d 325, 29 Del. Ch. 563—Kennedy v. Emerald Coal & Coke Co., 42 A.2d 398, 28 Del. Ch. 405, certiorari denied 65 S.Ct. 1017, 324 U.S. 872, 89 L.Ed. 1436—New York Trust Co. v. Riley, 16 A.2d 772, 24 Del.Ch. 354, affirmed 62 S.Ct. 608, 315 U.S. 343, 86 L.Ed. 885, rehearing denied 62 S.Ct. 903, 315 U.S. 829, 86 L.Ed. 1223—Radio Corp. of America v. Philadelphia Storage Battery Co., 6 A.2d 329, 23 Del.Ch. 289—Gott v. Live Poultry Transit Co., 161 A. 150, 13 Del.Ch. 442, affirming 156 A. 292, 13 Del.Ch. 138—Duffy v. Loft, Inc., 152 A. 849, 17 Del.Ch. 376—Chalfant v. Reinhardt, 113 A. 674, 12 Del.Ch. 389.

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Okl.—Blagg v. Rutledge, 251 P.2d 196, 207 Okl. 559—Wood v. Reed, 166 P.2d 85, 196 Okl. 498—Galbraith v. McKenney, 129 P.2d 187, 191 Okl. 282—Bert Whiteis, Inc. v. Motor Mortg. Co., 77 P.2d 698, 182 Okl. 384—McAfee v. Harden, 71 P. 2d 463, 180 Okl. 546—Whitehead v. Holmes, 3 P.2d 1043, 152 Okl. 214—Security Trust Co. of Freeport, Ill. v. Thomas, 293 P. 224, 146 Okl. 15—Security Trust Co. of Freeport, Ill. v. Thompson, 293 P. 223, 146 Okl. 15—Security Trust Co. of Freeport, Ill. v. Taylor, 291 P. 550, 145 Okl. 111—Town of Jennings v. Pappenfuss, 263 P. 456, 129 Okl. 85—Dickerson v. George, 249 P. 292, 121 Okl. 157—Cook v. Harjo, 248 P. 651, 118 Okl. 291—Pabst Brewing Co. v. Nelson, 236 P. 873, 108 Okl. 286—Killam v. Gritts, 225 P. 357, 98 Okl. 263—Elliott v. Bond, 176 P. 242, 72 Okl. 3, rehearing denied 176 P. 991, 72 Okl. 3—Smith v. Aldridge, 161 P. 177, 61 Okl. 274.

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Keystone Coal Co. v. Hay, 64 A. 2d 511, 164 Pa.Super. 293—Monongahela Trust Co. v. Kazimer, 54 A. 2d 841, 161 Pa.Super. 380—Certo v. Spadaro, 49 A.2d 841, 160 Pa.Super. 10—Schwartz v. Gingerich, 14 A.2d 623, 141 Pa.Super. 298—Borough of Millerstown, to Use of Mershon, v. Receivers of Millerstown Deposit Bank, 193 A. 332, 128 Pa.Super. 258—Andre v. Andre, 187 A. 321, 123 Pa.Super. 597—Krieger v. Rizzo, 161 A. 483, 105 Pa.Super. 429—Mulville v. Cooper, 93 Pa.Super. 139—Milasinovich v. Milasinovich, 88 Pa.Super. 196—Moore v. Doyle, 85 Pa.Super. 406—Reitz v. Somerset Telephone Co., 83 Pa. Super. 399—Kasson v. Rocky Glen Water Co., 81 Pa.Super. 11—Shuster v. Mason & Mason, 77 Pa.Super.

addition, that they are not palpably, manifestly, or | clearly erroneous or wrong.[43] Likewise, the fact

436—Chambersburg Woolen Co. v. Hager, 66 Pa.Super. 63—Rosensteel v. Long, 65 Pa.Super. 541—Glinn v. Silver, 64 Pa.Super. 383—Smith v. Ridge, 64 Pa.Super. 172—Blume v. Carrolltown Borough, 62 Pa.Super. 141.

Leister v. Miller, Com.Pl., 6 Chest.Co. 1—Crew v. Gallagher, Com.Pl., 3 Chest.Co. 94—Holman v. Green, Com.Pl., 40 Del.Co. 413.

Or.—Unterkircher v. Unterkircher, 195 P.2d 178, 183 Or. 583—Clemence v. Mazika, 54 A.2d 379, 73 R.I. 254—Simeone v. Antonelli, 156 A. 799, 52 R.I. 41—Billinge v. Read, 155 A. 665—Paulson v. Paulson, 145 A. 312, 50 R.I. 86.

S.C.—Crotwell v. Whitney, 92 S.E.2d 473, 229 S.C. 213—Parrott v. Dickson, 148 S.E. 704, 151 S.C. 114, 63 A.L.R. 965.

Tenn.—Ingram v. Carruthers, 250 S.W.2d 537, 194 Tenn. 290—Silver Fleet Motor Exp. v. Carson, 219 S.W.2d 199, 188 Tenn. 338—Nicholson v. Cummings, 217 S.W.2d 942, 188 Tenn. 201—Simm v. Dougherty, 210 S.W.2d 486, 186 Tenn. 356.

Peoples Bank v. Baxter, App., 298 S.W.2d 783—Hepburn v. Milwaukee Mechanics Ins. Co., 282 S.W.2d 772, 27 Tenn.App. 612—Bovay v. Bovay, 181 S.W.2d 157, 27 Tenn.App. 332—Byrd v. Wright, 179 S.W.2d 452, 180 Tenn. 627—Fletcher v. Russell, 177 S.W.2d 854, 27 Tenn.App. 44—Phifer v. Mutual Ben. Health & Accident Ass'n, 148 S.W.2d 17, 24 Tenn. App. 600—Maden v. Home Ins. Co., 9 Tenn.App. 329.

Tex.—De Witt v. Brooks, 182 S.W.2d 687, 143 Tex. 122, certiorari denied 65 S.Ct. 1196, 325 U.S. 862, 89 L.Ed. 1983.

Sloan v. Sloan, Civ.App., 228 S.W.2d 294—Bonner v. Oliver, Civ. App., 219 S.W.2d 136, error refused no reversible error—Elliott v. Elliott, Civ.App., 208 S.W.2d 709, error refused no reversible error—Wilson v. Fuston, Civ.App., 189 S.W.2d 769, reversed on other grounds 192 S.W.2d 444, 144 Tex. 588—Dallas Joint Stock Land Bank v. King, Civ.App., 167 S.W.2d 245, error refused—City of Dallas v. Meserole Bros., Civ.App., 164 S.W.2d 564, error refused—West Production Co. v. Penn, Civ.App., 131 S.W.2d 131, error refused—Benson v. Gregston, Civ.App., 253 S.W. 684—McAfee v. Swepston, Civ.App., 198 S.W. 812, dismissed for want of jurisdiction—City of Marlin v. Holloway, Civ.App., 192 S.W. 623.

Utah.—Hanson v. Mutual Finance Corporation, 37 P.2d 782, 84 Utah 579—Kunzler v. Jones Thomas Ranch Co., 290 P. 173, 76 Utah 405.

Vt.—Dwinell v. Alberghini, 62 A.2d 124, 115 Vt. 394—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471—Putnam v. Woodard, 10 A.2d 186, 111 Vt. 39—Crawford v. Bromley, 182 A. 180, 108 Vt. 51—Dunn v. Williams, 181 A. 131, 107 Vt. 447—Patch v. Squires, 165 A. 919, 105 Vt. 405—Federal Land Bank of Springfield, Mass. v. Flanders, 164 A. 539, 105 Vt. 204—White River Chair Co. v. Connecticut River Power Co. of New Hampshire, 162 A. 859, 105 Vt. 24—Peck v. City Trust Co., 156 A. 403, 104 Vt. 20—Houghton v. Grimes, 135 A. 15, 100 Vt. 99—McClary v. Hubbard, 122 A. 469, 97 Vt. 222—Farmers' Exchange v. Walter M. Lowney Co., 115 A. 507, 95 Vt. 445—Blodgett v. Lawrence, 97 A. 666, 90 Vt. 269—Bennington County v. Town of Manchester, 90 A. 502, 87 Vt. 555.

Va.—Harless v. Malcolm, 87 S.E.2d 817, 197 Va. 56—Evans v. Slone, 83 S.E.2d 385, 196 Va. 231—Klingstein v. Eagle, 68 S.E.2d 547, 193 Va. 350—Fulton v. Fulton, 68 S.E.2d 485, 193 Va. 255—Mason v. Hodgson, 68 S.E.2d 482, 193 Va. 337—Stutzman v. C. A. Nash & Son, 53 S.E.2d 45, 189 Va. 438—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203—Henrico County v. City of Richmond, 15 S.E.2d 309, 177 Va. 754—Ewell v. Lambert, 13 S.E.2d 333, 177 Va. 222—Fuller v. Troy, 194 S.E. 668, 169 Va. 490—Planters Nat. Bank of Fredericksburg v. E. G. Heflin Co., 184 S.E. 216, 166 Va. 166.

Wash.—Losli v. Foster, 222 P.2d 824, 37 Wash.2d 220—Long v. Leonard, 71 P.2d 1, 191 Wash. 284.

W.Va.—Harrison v. City of Huntington, 93 S.E.2d 221—Gaymont Fuel Co. v. Price, 79 S.E.2d 96, 138 W.Va. 930—Johnston v. Terry, 36 S.E.2d 489, 128 W.Va. 94—Ireland v. Hibbs, 22 S.E.2d 706, 125 W.Va. 31—Tressler Coal Min. Co. v. Klefeld, 195 S.E. 202, 119 W.Va. 567—Root v. Close, 98 S.E. 733, 83 W.Va. 600.

Wis.—Schafer v. Shelby Farmers Mut. Ins. Co., 18 N.W.2d 365, 246 Wis. 592, rehearing denied 19 N.W.2d 241, 246 Wis. 592.

4 C.J. p 898 note 92, p 900 note 99—56 C.J. p 740 note 40.

Preponderance of evidence in support

If the chancellor's fact findings are supported by a preponderance of the conflicting evidence, they will be accepted by the appellate court.

Ala.—Lucas v. Scott, 24 So.2d 540, 247 Ala. 183.

Ark.—Bradley Lumber Co. of Ark. v. Burbridge, 210 S.W.2d 284, 213 Ark. 165—City of Little Rock v. Joyner, 206 S.W.2d 446, 212 Ark. 508—Esch v. Werner-Dunlap Coal Co., 20 S.W.2d 857, 180 Ark. 1167—Barham v. Federal Reserve Bank, 5 S.W.2d 318, 176 Ark. 1082—Lasker-Morris Bank & Trust Co. v. Gans, 200 S.W. 1029, 132 Ark. 402.

Fla.—Bell v. First Nat. Bank of Bradenton, 3 So.2d 127, 147 Fla. 528—Robinson v. Pepper, 116 So. 4, 94 Fla. 1184.

Iowa.—Madden v. Eldridge, 230 N.W. 371, 210 Iowa 938.

Ky.—Carson v. Johnson, 253 S.W.2d 608—Moriarty v. Howard, 80 S.W. 2d 526, 258 Ky. 629—Elam v. Elam, 80 S.W.2d 11, 258 Ky. 350—Field Furniture Co. v. Community Loan Co., 79 S.W.2d 211, 257 Ky. 825—Blaydes v. Blaydes, 78 S.W.2d 317, 257 Ky. 429—Home Ins. Co. of New York v. Stroud, 50 S.W.2d 934, 244 Ky. 315—King v. Gregory, 47 S.W. 2d 1019, 243 Ky. 231—Brandenburg v. W. T. B. Williams & Sons, Bankers, 47 S.W.2d 963, 243 Ky. 106—Friel v. Grayson Road Corporation, 11 S.W.2d 943, 226 Ky. 794—Lawson v. First Nat. Bank, 7 S.W.2d 495, 225 Ky. 58—Roberts v. Owens, 281 S.W. 525, 213 Ky. 580—Forguson v. Newton, 278 S.W. 602, 212 Ky. 92—Thomas v. Vallandingham, 205 S.W. 686, 181 Ky. 649.

Mo.—Sinclare Coal Co. v. Tabor-Grigg Coal Co., App., 272 S.W. 701.

N.J.—Mackie v. Cain, 114 A. 549, 92 N.J.Eq. 631.

Okl.—Foster v. Owens, 165 P.2d 615, 196 Okl. 416—Stewart v. Martin, 146 P.2d 836, 193 Okl. 686—Bunger v. Rogers, 112 P.2d 361, 188 Okl. 620—Haynes Drilling Co. v. Indian Territory Illuminating Oil Co., 90 P.2d 639, 185 Okl. 122, certiorari denied 60 S.Ct. 108, 308 U.S. 584, 84 L.Ed. 489—Bryant v. Mahan, 264 P. 811, 130 Okl. 67.

Or.—Cripe v. Wade, 261 P. 72, 123 Or. 111.

Pa.—Mullen v. Vollrath, Com.Pl., 4 Chest.Co. 306.

S.C.—Walker v. Oswald, 186 S.E. 916, 181 S.C. 278.

Tenn.—Simpson v. Harper, 111 S.W. 2d 882, 21 Tenn.App. 431.

Utah.—Knighton v. Manning, 33 P. 2d 401, 84 Utah 1—Spanish Fork City v. Jarvis, 167 P. 806, 50 Utah 275.

Wash.—Adams v. Dose, 152 P. 9, 87 Wash. 575.

4 C.J. p 898 note 92 [b].

Testimony of single interested witness is sufficient to support the chancellor's findings and permit presumption of correctness in their favor.

U.S.—Weld v. McKay, Ill., 218 F. 807, 134 C.C.A. 495.

43. U.S.—Shell Oil Co. v. Dye, C.C.A.Ill., 135 F.2d 365.

Ala.—Dunn v. Fletcher, 96 So.2d 257—Christian v. Reed, 92 So.2d 881, 265 Ala. 533—McCary v. McMorris, 92 So.2d 319—Salter v. Cobb, 88 So. 2d 845, 264 Ala. 609—Draper v. Sewell, 82 So.2d 303, 263 Ala. 250—

findings will seldom be disturbed or set aside on | appeal if they are not the result of plain and serious

Stewart v. Stewart, 74 So.2d 423, 261 Ala. 374—Holoway v. Carter, 72 So.2d 728, 261 Ala. 51—Parkman v. Ludlum, 69 So.2d 434, 260 Ala. 235—Hale v. Hale, 68 So.2d 63, 259 Ala. 666—Shiland v. Retail Clerks, Local 1657, 66 So.2d 146, 259 Ala. 277—Crawford v. Tucker, 64 So.2d 411, 258 Ala. 658—Bobo v. Young, 61 So.2d 814, 258 Ala. 222—Leeth v. Perry, 60 So.2d 821, 257 Ala. 687—Jackson v. Morrison, 59 So.2d 681, 257 Ala. 481—Westcott v. Sharp, 54 So.2d 758, 256 Ala. 418—Moss v. Davitt, 52 So.2d 515, 255 Ala. 513—Hamner v. Carroll's Creek Baptist Church, 51 So.2d 164, 255 Ala. 277—Marks v. Marks, 49 So.2d 166, 254 Ala. 612, followed in 49 So.2d 170, two cases, 254 Ala. 672—Neese v. Ellis, 45 So.2d 19, 253 Ala. 377—Ramsey v. Kitchens, 32 So.2d 361, 249 Ala. 609—Hamilton v. City of Anniston, 31 So.2d 715, 249 Ala. 479—Beasley v. Beasley, 29 So.2d 232, 248 Ala. 690—Penny v. Penny, 24 So.2d 912, 247 Ala. 434—Grayson v. George, 145 So. 427, 226 Ala. 106—Kelly v. Tatum, 133 So. 703, 222 Ala. 655—Lynn v. Lynn, 115 So. 184, 217 Ala. 190.

Ark.—Riggs v. Hill, 144 S.W.2d 26, 201 Ark. 206—Burke v. International Life Ins. Co., 17 S.W.2d 314, 179 Ark. 651—Hollabaugh v. Taylor, 204 S.W. 628, 134 Ark. 415.

Colo.—Sarvas v. Morrell, 220 P.2d 367, 122 Colo. 86—De Sollar v. Blauvelt, 237 P. 153, 77 Colo. 436.

Fla.—Cowen v. Cowen, 95 So.2d 584—Holland v. Gross, 89 So.2d 255—Loew v. Friedman, 80 So.2d 672—Moncrief v. Hall, 63 So.2d 640—Knowles v. Benson, 61 So.2d 365—Burket v. Johnson, 61 So.2d 197—Town of Largo v. Roberts, 57 So. 2d 18—Sorrells v. Sorrells, 53 So. 2d 645—Bethea v. Langford, 45 So. 2d 496—Calhoun v. Abstract Co. of Sarasota, 44 So.2d 83—Bray v. City of Winter Garden, 40 So.2d 459—Harmon v. Harmon, 40 So.2d 209—Akins v. Bethea, 35 So.2d 583, 160 Fla. 514—Fishman v. Hopson, 32 So.2d 913, 159 Fla. 817—Lungren v. Strawn, 9 So.2d 195, 151 Fla. 106—Westerberg v. Nininger, 6 So.2d 378, 149 Fla. 528—Boose v. Henderson, 3 So.2d 757, 148 Fla. 101—Peterson v. Hancock, 1 So.2d 255, 146 Fla. 410—Anders v. Anders, 197 So. 451, 143 Fla. 721—Giffen v. Florida Nat. Bank & Trust Co. at Miami, 196 So. 822, 143 Fla. 375—Henderson v. Boose, 196 So. 671, 142 Fla. 804—Mehaffey v. Mehaffey, 196 So. 416, 143 Fla. 157—Marcus v. Hull, 195 So. 170, 142 Fla. 306—Walker v. Cone, 194 So. 631, 142 Fla. 253—City of Miami Beach v. Texas Co., 194 So. 368, 141 Fla. 616, 128 A. L.R. 350—Butts v. Butts, 194 So. 212, 141 Fla. 887—Smith v. Stillman, 193 So. 63, 141 Fla. 312—Tampa Theatre Bldg. v. City of Tampa, 193 So. 61, 141 Fla. 299—Markell v. Hilpert, 192 So. 392, 140 Fla. 842—Roberts v. Ebeneezer Wesleyan Methodist Church of West Palm Beach, 191 So. 835, 140 Fla. 470—Grantham v. Grantham, 191 So. 197, 140 Fla. 120—Hawley v. Kendall, 191 So. 10, 139 Fla. 850—Rariden v. Jason, 189 So. 410, 138 Fla. 145—Tippins v. Belle Mead Development Corp., 188 So. 787, 136 Fla. 373—Knabb v. Mabry, 188 So. 586, 137 Fla. 530—Speier v. Speier, 187 So. 764, 137 Fla. 331—Riesner v. Riesner, 186 So. 669, 136 Fla. 129—Schomberg v. Schomberg, 186 So. 507, 136 Fla. 310—Central Hanover Bank & Trust Co. v. Smith, 184 So. 513, 134 Fla. 845—Hamilton v. Laesch, 184 So. 110, 134 Fla. 591—Wise v. Wise, 184 So. 91, 134 Fla. 553—Miami Bottled Gas v. Dri-Gas Corp., 183 So. 828, 134 Fla. 309—State v. City of Fort Pierce, 182 So. 774, 133 Fla. 348—Du Bose v. Kelly, 181 So. 11, 132 Fla. 548—Anderson v. Sandquist Const. Co., 180 So. 372, 131 Fla. 555—Burns v. Campbell, 180 So. 46, 131 Fla. 630—Everglades Cypress Co. v. Tyner, 179 So. 764, 131 Fla. 740—Fisher v. Grady, 178 So. 852, 131 Fla. 1—Magill v. Sherman, 176 So. 795, 129 Fla. 797—Burgoyne v. Chadwick Mather Co., 176 So. 772, 129 Fla. 850—McChesney v. Herman, 176 So. 565, 129 Fla. 638—Wofford v. Wofford, 176 So. 499, 129 Fla. 445—Gaffny v. Marshall, 175 So. 873, 128 Fla. 804—Gulf Life Ins. Co. v. Stossel, 175 So. 804, 131 Fla. 268, modified on other grounds 179 So. 163, 131 Fla. 127—Dade County Croppers v. Wood, 173 So. 345, 127 Fla. 493—Lockwood v. Walker, 172 So. 359, 127 Fla. 20—Pushee v. Johnson, 166 So. 847, 123 Fla. 305, 105 A.L.R. 789—Spinney v. Sanford-Orlando Kennel Club, 166 So. 559, 123 Fla. 113—Winn & Lovett Grocery Co. v. Saffold Bros. Produce Co., 164 So. 681, 121 Fla. 833—Bean v. Suburban Holding Co., 164 So. 513, 121 Fla. 868—Smith v. Fleetwood Bldg. Corporation, 163 So. 293, 120 Fla. 481—McGregor v. Provident Trust Co. of Philadelphia, 162 So. 323, 119 Fla. 718—Schonfeld v. Engler, 160 So. 879, 119 Fla. 138—Benton v. Wilkins, 159 So. 518, 118 Fla. 491—Seaboard Air Line Ry. Co. v. Atlantic Coast Line R. Co., 158 So. 459, 117 Fla. 810—Rosenau v. Bear, 158 So. 175, 117 Fla. 406—Columbus Hotel Corporation v. Hotel Management Co., 156 So. 893, 116 Fla. 464—Halstead v. Florence Citrus Growers' Ass'n, 156 So. 395, 115 Fla. 618—Roxton v. Armstrong, 155 So. 755, 115 Fla. 506—Thomas v. Thompson, 155 So. 321, 114 Fla. 833—Fee v. Peery, 154 So. 140, 114 Fla. 556—Helland v. Evans, 152 So. 623, 113 Fla. 839—McCaskill Inv. Co. v. Green, 150 So. 735, 112 Fla. 634—Corsentina v. McPherson, 150 So. 609, 111 Fla. 616—Townsend v. Farmers' & Dealers' Bank, 150 So. 588, 112 Fla. 438—Deauville Casino Corporation v. Miami Beach Furnished Homes Corporation, 150 So. 226, 112 Fla. 55—Furen v. Perez, 149 So. 378, 111 Fla. 341—Gardiner v. Goertner, 149 So. 186, 110 Fla. 377—Saffold Bros. Produce Co. v. Winn & Lovett Grocery Co., 149 So. 1, 111 Fla. 60—Wicker v. Trust Co. of Florida, 147 So. 586, 109 Fla. 411—Palm Beach Estates v. Croker, 143 So. 792, 106 Fla. 617—Century Trust Co. of Baltimore v. Allison Realty Co., 141 So. 612, 105 Fla. 456—Tampa Dock Co. v. Hanchett Bond Co., 141 So. 526, 105 Fla. 470—Heisley v. First Bond & Mortgage Co., 138 So. 81, 103 Fla. 171—Jacksonville Properties v. Manhattan Beach Co., 136 So. 506, 102 Fla. 839—Turnipseed v. Brown, 136 So. 343, 102 Fla. 542—Lesnoff v. Becker, 135 So. 146, 101 Fla. 716—Hancoy Holding Co. v. Lambright, 133 So. 631, 101 Fla. 128—Heinisch v. Mills, 132 So. 109, 100 Fla. 1594—Weaver-Loughridge Lumber Co. v. Kirkland, 131 So. 784, 99 Fla. 426—Gold v. City of Tampa, 130 So. 914, 100 Fla. 1134—Miami Home Milk Producers' Ass'n v. Thomas, 129 So. 912, 100 Fla. 759—Harp v. McRae, 129 So. 499, 100 Fla. 141—Hyman v. City Trust Co., 128 So. 611, 99 Fla. 1202—Stringfellow v. Adams, 127 So. 338, 99 Fla. 623—Gould v. Barthle, 123 So. 740, 98 Fla. 233—M. J. Hoffman Const. Co. v. Ward, 121 So. 800, 97 Fla. 530—Shipley-Young Co. v. Young, 119 So. 522, 97 Fla. 46—Sperry v. City of Tampa, 118 So. 816, 96 Fla. 567—Cramer v. Eichelberger, 118 So. 737, 96 Fla. 683—Farrington v. Harrison, 116 So. 497, 95 Fla. 769—Johns v. Seeley, 114 So. 452, 94 Fla. 851—Farmers' Bank & Trust Co. v. Ravlin Corporation, 114 So. 246, 94 Fla. 218—Punta Gorda State Bank v. Wilder, 112 So. 569, 93 Fla. 301—Lightsey v. Washington Park Properties, 112 So. 555, 93 Fla. 531—Wilson v. Duncan, 112 So. 48, 92 Fla. 470—Lluis v. Lluis, 108 So. 671, 91 Fla. 706—Burgess v. Wirt, 108 So. 169, 91 Fla. 425—Peacock v. Du Bois, 105 So. 321, 90 Fla. 162—Sirkin v. Schupler, 105 So. 151, 90 Fla. 68—Norton v. Baya, 102 So. 361, 88 Fla. 1—Gautier v. Bradway, 99 So. 879, 87 Fla. 193—McCook v. Caruthers, 99 So. 559, 87 Fla. 238—Lasseter v. Long, 96 So. 841, 85 Fla. 439—Smith v. Hollingsworth, 96 So. 394, 85 Fla. 431

—Sommers v. Apalachicola Northern R. Co., 96 So. 151, 85 Fla. 9—Kirkland v. Hutto, 95 So. 429, 85 Fla. 82—Berry v. Perdido Realty Co., 93 So. 171, 84 Fla. 134—Glass v. Craig, 91 So. 332, 83 Fla. 408—Douglas v. Ogle, 85 So. 243, 80 Fla. 42—Hill v. Beacham, 85 So. 147, 79 Fla. 430—Brickell v. Town of Ft. Lauderdale, 78 So. 681, 75 Fla. 622—Shad v. Smith, 76 So. 897, 74 Fla. 324—Farrell v. Forest Inv. Co., 74 So. 216, 73 Fla. 191, 1 A.L.R. 25—Johns v. Bowden, 73 So. 603, 72 Fla. 530—Sandlin v. Hunter Co., 70 So. 553, 70 Fla. 514—Hogeboom v. Anderson, 70 So. 312, 70 Fla. 393—Terra Ceia Estates v. Taylor, 67 So. 169, 68 Fla. 261—Gove v. Nautilus Hotel Co., 67 So. 112, 68 Fla. 490.

Goldstein v. Stone, App., 96 So. 2d 227.

Ill.—Elliott v. Pure Oil Co., 139 N.E. 2d 295, 10 Ill.2d 146—Rothenberg v. Rothenberg, 38 N.E.2d 13, 378 Ill. 242—Chance v. Kimbrell, 35 N.E.2d 48, 376 Ill. 615—Cravens v. Hubble, 30 N.E.2d 622, 375 Ill. 51—Mosbacher v. Mees, 179 N.E. 433, 347 Ill. 112—Rae v. Klotter, 160 N. E. 147, 329 Ill. 59—Heiligenstein v. Schlotterbeck, 133 N.E. 188, 300 Ill. 206—Pemberton v. Kraper, 124 N. E. 61, 289 Ill. 295.

Bitzer Motor Co. v. Local 604, Intern. Broth. of Teamsters, Chauffers, Warehousemen & Helpers, 110 N.E.2d 674, 349 Ill.App. 283—Jorn v. Tallett, 93 N.E.2d 82, 341 Ill. App. 240—Lucchesi v. Pemberton, 89 N.E.2d 537, 339 Ill.App. 252—Milhahn v. Whiteway Oil Co., 77 N.E.2d 428, 333 Ill.App. 328—Rankin v. Rankin, 54 N.E.2d 58, 322 Ill.App. 90—Panozzo v. City of Rockford, 28 N.E.2d 748, 306 Ill. App. 443—Hall v. Putney, 10 N.E. 2d 204, 291 Ill.App. 508—Bennett v. Benton State Bank, 249 Ill.App. 539—Kellner v. Schmidt, 237 Ill. App. 428—Huff v. Coats, 221 Ill. App. 543. See Cope v. Cope, 207 Ill.App. 617—Bottigliero v. Zeidman, 205 Ill.App. 587—American Musicians' Union of North America v. Chicago Federation of Musicians, Local No. 10, A. F. of M., 184 Ill.App. 444—Hockett v. Logan, 183 Ill.App. 640.

Kan.—Garnes v. Barber, 308 P.2d 76, 180 Kan. 793—Buckwalter v. Henrion, 208 P. 645, 111 Kan. 781—Rowland v. Deck, 195 P. 868, 108 Kan. 440—Ryan v. Cullen, 150 P. 597, 96 Kan. 284.

Ky.—Farra v. Johnson, 302 S.W.2d 570—Major v. Christian County Livestock Market, Inc., 300 S.W.2d 246—Caudill v. Bates, 286 S.W.2d 922—Sheets v. Winans, 285 S.W.2d 501—Jennings v. Jett, 279 S.W.2d 17—Swafford v. Manning, 272 S.W. 2d 339—Fyffe v. Mason, 268 S.W. 2d 29—Ilari v. Ewing, 234 S.W.2d 293, 314 Ky. 182—Noe v. Akridge, 220 S.W.2d 93, 310 Ky. 107—Farber's Ex'r v. Farber, 148 S.W. 2d 732, 285 Ky. 596—Petrey's Adm'r v. Petrey, 90 S.W.2d 4, 262 Ky. 222—Hensley v. Miller, 88 S.W.2d 974, 261 Ky. 829—Bartley v. Robinson, 60 S.W.2d 358, 249 Ky. 130—Coy v. Pursifull, 60 S.W.2d 93, 249 Ky. 57—Blackburn v. Smith, 33 S.W.2d 336, 236 Ky. 387—S. J. Marx Co.'s Trustee v. Marx, 3 S.W.2d 644, 223 Ky. 339—Spears v. Howell, 300 S.W. 878, 222 Ky. 370—Pinson v. Stratton, 295 S.W. 859, 220 Ky. 557—Staton Springs Park Co. v. Keesee, 289 S.W. 292, 217 Ky. 329—Downing v. Hughes, 289 S.W. 252, 217 Ky. 357—Gillam v. Qualls, 283 S.W. 396, 214 Ky. 436—Tabor v. Tabor, 280 S.W. 136, 213 Ky. 309—Kochum v. Ezell, 277 S.W. 471, 211 Ky. 421—Pullins v. Pullins, 272 S.W. 51, 208 Ky. 800—Brown v. Holifield, 262 S.W. 611, 203 Ky. 473—Ballentine v. Scottsville Builders' Supply Co., 251 S.W. 207, 199 Ky. 347—Meade v. Ratliff, 169 S.W. 729, 160 Ky. 315.

Me.—Dutch v. Scribner, 118 A.2d 887—Bell v. Bell, 116 A.2d 921, 151 Me. 207—Perry v. Curtis, 95 A.2d 562, 148 Me. 438—Flagg v. Davis, 83 A.2d 319, 147 Me. 71—Cadorette v. Cadorette, 83 A.2d 315, 147 Me. 79—Morin v. H. W. Maxim Co., 82 A.2d 789, 146 Me. 421—Wolf v. U. S. Jordan Co., 82 A.2d 93, 146 Me. 374—Levesque v. Pelletier, 68 A.2d 9, 144 Me. 245—Medomak Canning Co. v. York, 57 A.2d 745, 143 Me. 190—Fortin v. Wilensky, 53 A. 2d 266, 142 Me. 372—Gordon v. Lewis, 55 A.2d 879, 143 Me. 399—Rancourt v. Beaudet, 55 A.2d 180, 143 Me. 396—Sachelie v. Connellan, 43 A.2d 300, 141 Me. 267—Tozier v. Pepin, 34 A.2d 203, 140 Me. 92—Poisson v. Travelers Ins. Co., 31 A.2d 233, 139 Me. 365—Tewksbury v. Noyes, 23 A.2d 204, 138 Me. 127—Goodale v. Wilson, 186 A. 876, 134 Me. 358—Saco & Biddeford Sav. Ins. v. Johnston, 180 A. 322, 133 Me. 445—Meader v. Cummings, 163 A. 792, 131 Me. 445—Adams v. Ketchum, 151 A. 146, 129 Me. 212—Brickley v. Leonard, 149 A. 833, 129 Me. 94—Smith v. Diplock, 144 A. 383, 127 Me. 452—Gatchell v. Gatchell, 143 A. 169, 127 Me. 328—King v. Metropolitan Bldg., 142 A. 780, 127 Me. 543—Merriam v. Jones, 136 A. 667, 126 Me. 130—Rolfe v. Rolfe, 130 A. 877, 125 Me. 82—Littlefield v. Hubbard, 128 A. 285, 124 Me. 299, 38 A.L.R. 1306—Tebbetts v. Tebbetts, 127 A. 720 124 Me. 262—Wood v. White, 122 A. 177, 123 Me. 139—Rideout v. Rideout, 119 A. 584, 122 Me. 559—Denison v. Dawes, 117 A. 314, 121 Me. 402—Waugh v. Prince, 115 A. 612, 121 Me. 67—City of Lewiston v. Grant, 113 A. 181, 120 Me. 194—Quinn v. Thalasinou, 113 A. 37, 120 Me. 547—Ætna Life Ins. Co. v. Kimball, 112 A. 708, 119 Me. 571—First Nat. Bank v. Franklin Motor Car Co., 109 A. 819, 119 Me. 592—Walbridge v. Walbridge, 108 A. 105, 118 Me. 337—Eastman v. Eastman, 104 A. 1, 117 Me. 276—Supreme Lodge, New England Order of Protection v. Sylvester, 99 A. 655, 116 Me. 1, L.R.A.1917C 925—Bailey v. Coffin, 99 A. 447, 115 Me. 495—Androscoggin County Sav. Bank v. Tracy, 99 A. 257, 115 Me. 433—Stewart v. Gilbert, 98 A. 752, 115 Me. 262—Edgell v. Hyde, 96 A. 738, 114 Me. 431—Gilman v. Haviland, 96 A. 139, 114 Me. 303—Gower v. Keene, 93 A. 546, 113 Me. 249—Hemenway v. Cunningham, 92 A. 897, 113 Me. 559.

Md.—McGrath v. McGrath, 132 A.2d 109, 213 Md. 442—Lutz v. Porter, 112 A.2d 480, 206 Md. 595—Smith v. Bounds Package Corp., 110 A. 2d 71, 206 Md. 74—Burger v. Burger, 104 A.2d 923, 204 Md. 495—Merkle v. Merkle, 97 A.2d 334, 202 Md. 497—Long v. Dixon, 93 A.2d 758, 201 Md. 321—Feldstein v. Segall, 81 A.2d 610, 198 Md. 285—Sause v. Sause, 69 A.2d 811, 194 Md. 76—Shives v. Borgman, 69 A. 2d 802, 194 Md. 29—Friedman v. McLane, 69 A 2d 253, 193 Md. 565—Lickle v. Lickle, 52 A.2d 910, 188 Md. 403—Stritmater v. Stritmater, 49 A.2d 648, 187 Md. 699—Polish-American Building & Loan Ass'n v. Dembowczyk, 173 A. 254, 167 Md. 259—Farmers' Milling & Grain Co. v. Urner, 134 A. 29, 151 Md. 43—Sporrer v. Ady, 132 A. 376, 150 Md. 60.

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2d 393, 320 Mass. 746—Prudential Acceptance Co. v. Ætna Life Ins. Co., 70 N.E.2d 818, 320 Mass. 763—Barnum v. Fay, 69 N.E.2d 470, 320 Mass. 177—Rosen v. Garston, 66 N.E.2d 29, 319 Mass. 390—Building Com'r of Medford v. C. & H. Co., 65 N.E.2d 537, 319 Mass. 273—Rayner v. McCabe, 65 N.E.2d 417, 319 Mass. 311—Ziegler v. McKinlay, 64 N.E.2d 15, 318 Mass. 765—Westgate v. Doberk, 62 N.E.2d 105, 318 Mass. 780—Town of Lincoln v. Giles, 57 N.E.2d 554, 317 Mass. 185—Russell v. Meyers, 56 N.E.2d 604, 316 Mass. 669—Cobuzzi v. Parks, 51 N.E.2d 965, 315 Mass. 199—Beaudoin v. Sinodinas, 48 N.E.2d 19, 313 Mass. 511—Oliver v. Poulos, 44 N.E.2d 1, 312 Mass. 188, 142 A.L.R. 1094—Bernhardt v. Atlantic Finance Corp., 40 N.E.2d 713, 311 Mass. 183—Blair's Foodland v. Shuman's Foodland, 40 N.E.2d 303, 311 Mass. 172—Tompkins v. Sullivan, 34 N.E.2d 607, 309 Mass. 496—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—Gedart v. Ejdrygiewicz, 25 N.E.2d 371, 305 Mass. 224—Czapski v. Sun Oil Co., 21 N.E.2d 230, 303 Mass. 186—National Shoe Corp. v. National Shoe Mfg. Co., 19 N.E.2d 734, 302 Mass. 449—White v. Standard Accident Ins. Co., 19 N.E.2d 702, 302 Mass. 474—White Tower Management Corp. v. Taglino, 19 N.E.2d 700, 302 Mass. 453, 121 A.L.R. 1158—Markiewicus v. Town of Methuen, 16 N.E.2d 32, 300 Mass. 560—Kevorkian v. Moors, 12 N.E.2d 111, 299 Mass. 163—Farrell v. Farrell, 12 N.E.2d 73, 299 Mass. 187—Shirk v. Walker, 10 N.E.2d 192, 298 Mass. 251, 125 A.L.R. 620—Spiegel v. Beacon Participations, 8 N.E.2d 895, 297 Mass. 398—Yankee Network v. Gibbs, 3 N.E.2d 228, 295 Mass. 56—Goldston v. Randolph, 199 N.E. 896, 293 Mass. 253, 103 A.L.R. 1117—MacLeod v. Davis, 195 N.E. 315, 290 Mass. 335—Birch v. Arnold & Sears, 192 N.E. 591, 288 Mass. 125—New England Theatres v. Olympia Theatres, 192 N.E. 93, 287 Mass. 485, certiorari denied E. M. Loew's, Inc. v. New England Theatres, 55 S.Ct. 509, 294 U.S. 713, 79 L.Ed. 1247—Levy v. Holland System, 191 N.E. 413, 287 Mass. 181—Seager v. Dauphinee, 187 N.E. 94, 284 Mass. 96—Eddy v. Eddy, 183 N.E. 268, 281 Mass. 156—Walker Dishwasher Corporation v. Medford Trust Co., 180 N.E. 517, 279 Mass. 33, 81 A.L.R. 1437—Freeman v. Davenport, Peters Co., 172 N.E. 234, 272 Mass. 321—Blankenburg v. Commonwealth, 172 N.E. 209, 272 Mass. 25, 73 A.L.R. 808, certiorari denied 51 S.Ct. 344, 283 U.S. 819, 75 L.Ed. 1435—Fitch v. Ingalls, 170 N.E. 833, 271 Mass. 121—Beaudette v. Graham, 165 N.E. 671, 267 Mass. 7—Mulloney v. Barnes, 164 N.E. 917, 266 Mass. 50—Edwards v. Cockburn, 162 N.E. 225, 264 Mass. 112—Inhabitants of Town of Wayland v. Child, 157 N.E. 615, 260 Mass. 469—Thayer v. Atwood, 156 N.E. 683, 259 Mass. 523—Hamilton v. Coster, 144 N.E. 226, 249 Mass. 391—Flint v. Codman, 142 N.E. 256, 247 Mass. 463—Lazenby v. Henderson, 135 N.E. 302, 241 Mass. 177—Moore Drop Forging Co. v. Fisher, 132 N.E. 169, 239 Mass. 434—Sigel v. Sigel, 131 N.E. 316, 238 Mass. 587—New York, N. H. & H. R. Co. v. Plimpton, 130 N.E. 498, 238 Mass. 337—Brown v. Hallgreen, 129 N.E. 429, 237 Mass. 293—Matthews v. Dinner, 129 N.E. 394, 237 Mass. 153—Winchester Rock & Brick Co. v. Murdough, 123 N.E. 344, 233 Mass. 50—Kirby v. Donovan, 117 N.E. 241, 228 Mass. 86—Hayes v. Penn Mut. Life Ins. Co., 111 N.E. 168, 222 Mass. 382—Goldsmith v. Traveler Shoe Co., 109 N.E. 394, 221 Mass. 482—Brilliant v. Samelas, 108 N.E. 1047, 221 Mass. 302.

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Mo.—Erickson v. Greub, 287 S.W.2d 873—Cleary v. Cleary, 273 S.W.2d 340—Beckemeier v. Baessler, 270 S.W.2d 782—City of Kirksville v. Young, 252 S.W.2d 286—Kimberly v. Presley, 245 S.W.2d 72—Roberts v. Murray, 232 S.W.2d 540—Stewart v. Russell, 227 S.W.2d 1011—Owens v. Owens, 146 S.W.2d 569, 347 Mo. 80—Long v. Von Erdmannsdorff, 111 S.W.2d 37.

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N.J.—Morris County Building & Loan Ass'n v. Walters, 198 A. 756, 123 N.J.Eq. 548—Lebkuecher v. Carr, 178 A. 745, 118 N.J.Eq. 303.

Okl.—Hargis v. Hargis, 73 P.2d 1129, 181 Okl. 377.

Pa.—Bortz v. Troth, 59 A.2d 93, 359 Pa. 326—Commonwealth ex rel. Bard v. Delaware Division Canal Co., 1 A.2d 672, 332 Pa. 53—Manheim v. Board of Com'rs of Venango County, 198 A. 650, 330 Pa. 92—Constitutional Defense League v. Waters, 162 A. 216, 308 Pa. 150—Husted v. Parts Engineering Co., 146 A. 30, 296 Pa. 376—City of Pittsburgh v. Edwin Bell & Sons Co., 121 A. 101, 277 Pa. 135—Berlin Smokeless Coal & Clay Mining Co. v. Rohm, 115 A. 877, 272 Pa. 24—Anthracite Lumber Co. v. Lucas, 95 A. 80, 249 Pa. 517—Bauer v. Byrd, 91 A. 848, 245 Pa. 437.

Stern v. Sanet, 82 A.2d 511, 169 Pa.Super. 448—Smith v. Smith, 7 A.2d 9, 136 Pa.Super. 11—Stecko v. Salak, 174 A. 611, 114 Pa.Super. 483—Davis v. Willig, 56 Pa.Super. 423.

R.I.—Noonan v. Cuddigan, 131 A.2d 241—Silva v. Silva, 128 A.2d 336—Girard v. Sorel, 125 A.2d 212—Klo-

mistake,[44] misconception of the law,[45] or an abuse of discretion,[46] or contrary to, or in disregard of, the evidence,[47] or against the clear preponderance or weight thereof.[48] This is so, although the re-

wan v. Howard, 113 A.2d 872—Rowe v. Federal Bldg. & Development Corp., 107 A.2d 340, 82 R.I. 312—Smith v. Coutu, 107 A.2d 282, 82 R.I. 280—Lambert v. Lambert, 106 A.2d 729, 82 R.I. 166—Winiarsky v. Leon Meyer, Inc., 106 A.2d 503, 82 R.I. 125—Aiken v. Olympia Realty Corp., 104 A.2d 244, 81 R.I. 452—Aiello v. Colavecchio, 89 A.2d 834, 79 R.I. 438—Lambert v. Lambert, 77 A.2d 325, 77 R.I. 463—Parness v. Weiner, 74 A.2d 869, 77 R.I. 289—Mimande v. Marino, 69 A.2d 817, 76 R.I. 342—Baumgartner v. Seidel, 65 A.2d 697, 75 R.I. 243, reargument denied 68 A.2d 59, 75 R.I. 243—Lisker v. Monti, 60 A.2d 485, 74 R.I. 310—Clemence v. Mazika, 54 A.2d 379, 73 R.I. 254—Sorel v. Miller, 53 A.2d 332, 73 R.I. 16—Coulters v. Meiggs, 191 A. 115, 58 R.I. 30—Kerr v. McKenna, 189 A. 408, 57 R.I. 252—Green v. Johnson, 167 A. 142, 53 R.I. 432—Brown v. Perry, 165 A. 362—Edwards v. Miller, 131 A. 554—Frechette v. Smart, 131 A. 545—Lowe v. Angell, 117 A. 535, 44 R.I. 383.

S.C.—Cunningham v. Waterloo Cash Co., 93 S.E. 243, 108 S.C. 27.

Tenn.—Bank of Commerce & Trust Co. v. Buckingham, 233 S.W. 668, 144 Tenn. 344.

Tex.—Lebman v. Sullivan, Civ.App., 198 S.W.2d 280, error refused no reversible error.

Utah.—Prowitt v. Lunt, 137 P.2d 361, 103 Utah 574—Bear River State Bank v. Merrill, 120 P.2d 325, 101 Utah 176—Nielson v. Smith, 107 P.2d 158, 100 Utah 342—Smith v. Edwards, 17 P.2d 264, 81 Utah 244—Rich v. Stephens, 11 P.2d 295, 79 Utah 411—Omega Inv. Co. v. Woolley, 271 P. 797, 72 Utah 474.

Vt.—Steffanazzi v. Italian Mut. Ben. Soc., 101 A. 1010, 91 Vt. 538, L.R.A. 1918B 308.

Va.—Waverly Feed Co. v. Harrell, 23 S.E.2d 155, 180 Va. 385—American Nat. Bank of Portsmouth v. Ames, 194 S.E. 784, 169 Va. 711, certiorari denied 58 S.Ct. 1046, 304 U.S. 577, 82 L.Ed. 1540—Pollard & Bagby v. Morton G. Thalhimer, Inc., 194 S.E. 701, 169 Va. 529—White v. Reed, 135 S.E. 809, 146 Va. 246—Wood v. Lester, 101 S.E. 52, 126 Va. 169—Smith v. Alderson, 83 S.E. 373, 116 Va. 986.

Wash.—Grand Union Laundry Co. v. Carney, 153 P. 5, 88 Wash. 327.

W.Va.—Lieberman v. Lieberman, 98 S.E.2d 275—Martin v. Williams, 93 S.E.2d 835—Meadows v. Bradshaw-Diehl Co., 81 S.E.2d 63, 139 W.Va. 569—Fisher v. West Virginia Coal & Transp. Co., 73 S.E.2d 633, 137 W.Va. 613—Mullens v. Frazer, 59 S.E.2d 694, 134 W.Va. 409, 24 A.L.R. 2d 380—Taylor v. Taylor, 36 S.E.2d 601, 128 W.Va. 198—Crouch v. Crouch, 20 S.E.2d 169, 124 W.Va. 331—Mullens v. Lilly, 13 S.E.2d 634, 123 W.Va. 182—Lindner v. Daniels, 2 S.E.2d 267, 121 W.Va. 210—Crickmer v. Thomas, 200 S.E. 353, 120 W.Va. 769—Highland v. Davis, 195 S.E. 604, 119 W.Va. 501—William C. Atwater & Co., v. Fall River Pocahontas Collieries Co., 195 S.E. 99, 119 W.Va. 549—Lemen-Downs v. Beltzhoover, 161 S.E. 440, 111 W.Va. 207—Meyers v. Washington Heights Land Co., 149 S.E. 819, 107 W.Va. 362.

4 C.J. p 899 note 95, p 901 note 1—11 C.J. p 370, note 9—58 C.J. p 1279 note 26.

Evidence taken before examiner

Rule that chancellor's conclusions on facts will not be disturbed unless shown to be clearly erroneous applies although evidence was taken before an examiner.

Fla.—Palm Beach Sash & Door Co. v. Rice, 1 So.2d 861, 146 Fla. 780.

Applicable to factual findings only

Principle that the decision of a single justice sitting in equity should not be disturbed on appeal unless clearly erroneous is applicable only to factual findings and not to decisions or rulings of law.

Me.—Lunt v. Fidelity & Cas. Co. of New York, 28 A.2d 736, 139 Me. 218.

Evidence not misconceived

Fact that trial court places a different reasonable meaning on evidence than that urged by appellant, or that more weight is given certain reasonable inferences therefrom than appellant would give, does not necessarily constitute a misconception of evidence.

R.I.—Aiken v. Olympia Realty Corp., 104 A.2d 244, 81 R.I. 452.

44. Md.—Five Oaks Corp. v. Gathmann, 58 A.2d 656, 190 Md. 348.

Pa.—Roberts Electric Supply Co. v. Crouthamel, 97 Pa.Super. 463.

Mistake of fact, which will authorize reviewing court to reverse the decision of chancellor after he has seen and heard witnesses who gave conflicting testimony, means that evidence clearly does not support conclusion of fact reached by chancellor, not that on reading testimony reviewing court might reach a different conclusion.

Md.—Five Oaks Corp. v. Gathmann, 58 A.2d 656, 190 Md. 348.

45. Cal.—Borden v. Boyvin, 130 P. 2d 718, 55 C.A.2d 432.

Fla.—Massachusetts Bonding & Ins. Co. v. Dolan, 9 So.2d 508, 151 Fla. 184.

Okl.—Moral Ins. Co. v. Fechtel, 280 P.2d 716.

46. Ark.—McKinney v. City of Little Rock, 146 S.W.2d 167, 201 Ark. 618—Riggs v. Hill, 144 S.W.2d 26, 201 Ark. 206.

Cal.—Wilson v. Cole, 252 P. 757, 80 C. A. 729.

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47. Ark.—Hill v. Bush, 21 S.W.2d 604, 180 Ark. 432—Simpson v. Martin, 298 S.W. 861, 174 Ark. 956.

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48. Ala.—Webb v. Bank of Brewton, 93 So.2d 154, 265 Ala. 568—Casey v. Krump, 82 So.2d 424, 263 Ala. 346—Carlisle v. Carlisle, 70 So.2d 263, 260 Ala. 283—Crawford v. Tucker, 64 So.2d 411, 258 Ala. 658—Cousins v. Crawford, 63 So.2d 670, 258 Ala. 590—Bobo v. Young, 61 So. 2d 814, 258 Ala. 222—Channell v. Channell, 57 So.2d 549, 257 Ala. 85—Fitzpatrick v. Shine, 48 So.2d 220, 254 Ala. 323—Stariha v. Hagood, 40 So.2d 85, 252 Ala. 158—Hancock v. Taylor, 21 So.2d 308, 246 Ala. 521—Ray v. Ray, 18 So.2d 273, 245 Ala.

viewing court might have determined the facts differently had it been deciding them in the first in-

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Brown, 282 P. 313, 140 Okl. 155—Houston v. McCrory, 282 P. 149, 140 Okl. 21—Anderson v. Gunther City Coke, Coal & Mining Co., 281 P. 982, 139 Okl. 102—Anderson v. Intemann, 281 P. 977, 139 Okl. 278—Newman v. Replogle, 281 P. 272, 139 Okl. 86—Balliet v. Walton, 281 P. 135, 138 Okl. 293—Crutchfield v. Griffin, 280 P. 1075, 139 Okl. 35—Winn v. Willmott, 280 P. 808, 138 Okl. 177—Georgia State Sav. Ass'n v. Sun Lumber Co., 280 P. 281, 138 Okl. 11—Baker v. Murray Tool & Supply Co., 279 P. 340, 137 Okl. 288—Burt v. Riley, 278 P. 265, 137 Okl. 10—Sarty v. Bower, 277 P. 246, 136 Okl. 213—Macklin v. Thompson, 276 P. 709, 136 Okl. 127—Kirkpatrick v. Baker, 276 P. 193, 135 Okl. 142—Flynn v. Vanderslice's Estate, 273 P. 213, 134 Okl. 156—Nolan v. Mathis, 272 P. 865, 134 Okl. 86—Hamra v. Mitchell, 271 P. 1042, 133 Okl. 264—Bilby v. Bilby, 271 P. 145, 133 Okl. 27—Burt v. Steigleder, 270 P. 54, 132 Okl. 217—Grissom v. Grissom, 270 P. 45, 132 Okl. 210—Hines v. McCall, 269 P. 269, 132 Okl. 5—Campbell v. Johnson, 267 P. 661, 131 Okl. 79 —Mothersead v. Patteson, 267 P. 472, 130 Okl. 295—Bynum v. Cooley, 267 P. 263, 130 Okl. 281—Donnelly v. Atkins, 264 P. 911, 130 Okl. 33—Mattox v. Mattox, 264 P. 898, 129 Okl. 301—McKay v. Kelly, 264 P. 814, 130 Okl. 62—Barrows v. Alford, 264 P. 628, 129 Okl. 265—Fox Rig Co. v. Bell, 263 P. 119, 128 Okl. 300—Burns v. Harder, 263 P. 111, 129 Okl. 11—Midland Valley R. Co. v. Imler, 262 P. 1067, 130 Okl. 79, 69 A.L.R. 1404, certiorari denied 48 S.Ct. 528, 277 U.S. 591, 72 L.Ed. 1003—Griffith v. Scott, 261 P. 371, 128 Okl. 125—Gates v. Gates, 260 P. 41, 127 Okl. 198—Carson v. Exchange Trust Co., 259 P. 857, 127 Okl. 55—Security Nat. Bank of Tulsa v. Cain, 259 P. 572, 126 Okl. 202—Sample v. King, 258 P. 913, 126 Okl. 63—First Nat. Bank v. Elam, 258 P. 892, 126 Okl. 93—Maloy v. Maloy, 258 P. 758, 126 Okl. 120—Moschos v. Bayless, 258 P. 263, 126 Okl. 25—Moore v. Porterfield, 257 P. 307, 125 Okl. 217—Cobb v. 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Moore, 247 P. 391, 118 Okl. 242 —Mosier v. Tinker, 246 P. 593, 118 Okl. 85—Moran v. Pryor, 246 P. 448, 117 Okl. 260—Clark v. Sloan, 246 P. 425, 117 Okl. 303—Easley v. Easley, 245 P. 831, 117 Okl. 227—City of Bartlesville v. Riggs, 245 P. 603, 114 Okl. 181, followed in City of Bartlesville v. Coombs, 245 P. 607, 114 Okl. 181—Brummett v. Syfert, 244 P. 772, 117 Okl. 51—Crawford v. Hemmingway, 244 P. 198, 116 Okl. 192—Bloch v. Morgan, 244 P. 176, 116 Okl. 199—Hudson-Houston Lumber Co. v. McPherson, 244 P. 166, 119 Okl. 4—Mothersead v. Wiley, 243 P. 718, 114 Okl. 105 —Maxwell v. Gillespey, 243 P. 497, 116 Okl. 68—Conard v. Darnell, 242 P. 772, 114 Okl. 48—Eason v. Rice, 242 P. 204, 115 Okl. 179—Thompson v. Coker, 241 P. 486, 112 Okl. 268 —City of Enid v. Champlin Refining Co., 240 P. 604, 112 Okl. 168 —Francis v. Hamra, 240 P. 76, 112 Okl. 105—Jackson v. Bowlin, 239 P. 637, 111 Okl. 299—Mullen v. First Guaranty State Bank of Crossplains, Tex., 239 P. 161, 113 Okl. 84—Norris v. Blevins, 239 P. 133, 111 Okl. 150—Taylor v. Bunyard, 239 P. 131, 111 Okl. 146—Jones v. Mead, 237 P. 445, 111 Okl. 16—Farmers' Mut. Oil Leasing Co. v. Bonneau, 237 P. 83, 110 Okl. 168—Johnson v. Valleau, 236 P. 871, 110 Okl. 137—Caton v. Brubaker, 236 P. 420, 113 Okl. 1—Harrison v. Crume, 236 P. 388, 110 Okl. 87—Simpson v. Schaff, 236 P. 384, 110 Okl. 90—Knight v. Cecil, 235 P. 1107, 110 Okl. 57—Miller v. Smith, 235 P. 225, 109 Okl. 203—Johnston v. Key, 235 P. 211, 110 Okl. 19—Brown v. Privette, 234 P. 577, 109 Okl. 1—Turner v. Turner, 233 P. 1057, 106 Okl. 261—Edwards v. Edwards, 233 P. 477, 108 Okl. 93—Campbell v. Smith, 232 P. 844, 106 Okl. 26—Donaldson v. Josey Oil Co., 232 P. 821, 106 Okl. 11—Gentry v. Gentry, 232 P. 370, 105 Okl. 288—Scroggins v. New State Town-

site Co., 231 P. 848, 104 Okl. 290—Stuart v. Mayberry, 231 P. 491, 105 Okl. 13—Rhoads v. Rhoads, 231 P. 282, 105 Okl. 79—Apple v. American Nat. Bank of Ardmore, 231 P. 79, 104 Okl. 69—Katter v. Rodgers, 230 P. 500, 107 Okl. 116—Baldridge v. Zigler, 229 P. 831, 103 Okl. 219—Cloud v. Young, 229 P. 604, 103 Okl. 65—Reigel v. Wood, 229 P. 556, 110 Okl. 279—Aldridge v. Anderson, 229 P. 262—Disch v. Emmons, 229 P. 134, 102 Okl. 300—Park Addition Co. v. Bryan, 228 P. 959, 102 Okl. 205—Travis v. Aaronson, 228 P. 958, 102 Okl. 210—Holiday Oil Co. v. Smith, 228 P. 775, 100 Okl. 172—Kline v. Kollman, 228 P. 768, 100 Okl. 160—Graham v. Cosby, 227 P. 888, 107 Okl. 9—Roeser v. Citizens' First Nat. Bank of Independence, Kan., 227 P. 114, 100 Okl. 38—Sibel v. Vawter, 227 P. 103, 100 Okl. 1—Pauls Valley Nat. Bank v. Foss, 226 P. 567, 99 Okl. 178—Wilson v. Schrutchfield, 226 P. 356, 99 Okl. 242—Keenan v. Scott, 225 P. 906, 99 Okl. 63—Bronaugh v. Sharp, 225 P. 681, 99 Okl. 12—Churchill v. Roberts, 225 P. 535, 98 Okl. 295—Huston v. City of Miami, 224 P. 316, 98 Okl. 35—Bynum v. Moore, 223 P. 687, 101 Okl. 128—Sequoyah Oil & Refining Co. v. Sunday, 223 P. 665, 101 Okl. 44—Richardson v. American Surety Co., 223 P. 389, 97 Okl. 264—Shannon v. Belt, 223 P. 388, 101 Okl. 78—Orth v. Gregory, 223 P. 385, 98 Okl. 229—Kinch v. Pierson, 223 P. 144, 97 Okl. 109—Weitz v. Richardson, 222 P. 977, 101 Okl. 81—Clark v. Frazier, 222 P. 970, 101 Okl. 163—Walden v. Potts, 222 P. 549, 97 Okl. 24—Bobier v. Horn, 222 P. 238, 95 Okl. 8—McMillan v. Gentry, 221 P. 717, 96 Okl. 235—Claggett v. Hampton, 221 P. 707, 94 Okl. 252—Flowers v. Flowers, 221 P. 483, 94 Okl. 134—Foster v. Whitenton, 221 P. 52, 96 Okl. 187—Wright v. Anstine, 220 P. 928, 96 Okl. 162—Davis v. Littlefield, 220 P. 830, 96 Okl. 130—Parks v. De Arman, 220 P. 619, 94 Okl. 28—Byers v. Burton, 220 P. 476, 93 Okl. 211—Rogers v. Brummet, 220 P. 362, 92 Okl. 216—Cousins v. Tolon, 219 P. 104, 95 Okl. 230—Putnam City Co. v. Minnetonka Lumber Co., 218 P. 1061, 95 Okl. 149—In re McDade's Estate, 218 P. 532, 95 Okl. 120—McKone v. McConkey, 217 P. 383, 90 Okl. 290—Colby v. Eason, 217 P. 202, 91 Okl. 214—Washington v. Morton, 216 P. 457, 90 Okl. 142—Davis v. Keeche Oil & Gas Co., 214 P. 711, 89 Okl. 226—Parker v. Simcox, 213 P. 729, 89 Okl. 30—McLaughlin v. Yingling, 213 P. 552, 90 Okl. 159—Bernard v. McRay, 213 P. 82, 89 Okl. 1—Parks v. Roach, 210 P. 402, 88 Okl. 19—York v. Trigg, 209 P. 417, 87 Okl. 214—McClintick v. Ellis, 209 P. 403, 87 Okl. 75—Croker v. Shurley, 207 P. 91, 86 Okl. 178—Johnson v. Johnson, 206 P. 205, 85 Okl. 274—Dike v. Martin, 204 P. 1106, 85 Okl. 103—Foley v. Brown, 204 P. 267, 85 Okl. 1—Interstate Building & Loan Co. v. Oklahoma City, 203 P. 172, 84 Okl. 227—Lamb v. Alexander, 201 P. 519, 83 Okl. 292—Parks v. Sinai Oil & Gas Co., 201 P. 517, 83 Okl. 295—Reed v. Robinson, 200 P. 773, 83 Okl. 68—Kindt v. Parmenter, 200 P. 706, 83 Okl. 111—Johnson v. Johnson, 200 P. 204, 82 Okl. 259—Etchen v. Texas Co., 199 P. 212, 82 Okl. 62—Harper v. James, 199 P. 209, 82 Okl. 186—Armstrong v. Phillips, 198 P. 499, 82 Okl. 82—Tracy v. Norvell, 196 P. 929, 81 Okl. 94—Mehard v. Little, 196 P. 536, 81 Okl. 1—Potter v. Ertel, 194 P. 201, 80 Okl. 67—Wyatt v. Shackleford, 193 P. 427, 79 Okl. 325—Black v. Donelson, 193 P. 424, 79 Okl. 299—Weaver v. Drake, 193 P. 45, 79 Okl. 277—Wooten v. Lackey, 191 P. 1037, 79 Okl. 141—Stone v. Spencer, 191 P. 197, 79 Okl. 85—Lamb v. Palmer, 191 P. 184, 79 Okl. 68—Swan v. Duncan, 190 P. 678, 78 Okl. 305—Robinson v. Pottorff, 189 P. 744, 78 Okl. 202—Hogan v. Grimes, 189 P. 353, 78 Okl. 184—Parker v. Tomm, 188 P. 1074, 78 Okl. 103—Jacobs v. Hill, 188 P. 661, 78 Okl. 38—Custer v. Fortuna Oil Co., 187 P. 248, 77 Okl. 257—Prowant v. Sealy, 187 P. 235, 77 Okl. 244—Van Winkle v. Henkle, 186 P. 942, 77 Okl. 34—Clinton v. Miller, 186 P. 932, 77 Okl. 173—Mobley v. Rhoades, 186 P. 230, 77 Okl. 64—Nowka v. West, 186 P. 220, 77 Okl. 24—Haynes v. Gaines, 185 P. 74, 76 Okl. 268—Hiller v. Howard, 184 P. 773, 76 Okl. 237—Miller v. Kimmel, 184 P. 762, 76 Okl. 233—Benn v. Trobert, 184 P. 595, 76 Okl. 184—Winemiller v. Page, 183 P. 501, 75 Okl. 278—Deskins v. Rogers, 180 P. 691, 72 Okl. 274—Day v. Keechi Oil & Gas Co., 180 P. 366, 72 Okl. 267—Bruner v. Oswald, 178 P. 693, 72 Okl. 42—Blackwell Oil & Gas Co. v. Whitesides, 174 P. 573, 71 Okl. 41—Rouss v. Crawford, 170 P. 688, 69 Okl. 110—Crump v. Lanham, 168 P. 43, 67 Okl. 33—Rees v. Egan, 166 P. 1038, 66 Okl. 20—Thomas v. Halsell, 164 P. 458, 63 Okl. 203—Smith v. Skelton, 163 P. 268, 63 Okl. 116—Echols v. Reeburgh, 161 P. 1065, 62 Okl. 67—Dandridge v. Dandridge, 158 P. 445, 59 Okl. 146—Chesnutt v. Hicks, 155 P. 545, 55 Okl. 655—Jones v. Thompson, 154 P. 1139, 55 Okl. 24—Voris v. Robbins, 153 P. 120, 52 Okl. 671—Checote v. Berryhill, 150 P. 679, 48 Okl. 696.

Pa.—Colwes v. Meyer, 116 A. 292, 272 Pa. 323.

R.I.—Bogdanovich v. Bogdanovich, 75 A.2d 201, 77 R.I. 354—Kelley v. McMinniman, 123 A. 289.

S.C.—Metze v. Meetze, 97 S.E.2d 514—Carolina Sav. Bank v. Ellis, 176 S.E. 355, 174 S.C. 69—Austin v. Goddard, 161 S.E. 767, 164 S.C. 20—Atlantic Sav. Bank of Charleston v. Rowland, 130 S.E. 57, 133 S.C. 1—Jumper v. Queen Mab Lumber Co., 106 S.E. 473, 115 S.C. 452.

S.D.—Johnston v. Eriksson, 23 N.W.2d 799, 71 S.D. 268—Jones v. Jones, 291 N.W. 579, 67 S.D. 200—Karlsson v. Odland, 192 N.W. 758, 46 S.D. 350.

Tenn.—Joest v. John A. Denie's Sons Co., 126 S.W.2d 312, 174 Tenn. 410—Robichaud v. Smith, 232 S.W.2d 576, 33 Tenn.App. 651—Fletcher v. Russell, 177 S.W.2d 854, 27 Tenn.App. 44.

Tex.—Sunliand Furniture Co. v. Sunnyland Wholesale Furniture Co., Civ.App., 235 S.W.2d 674, error refused—Coskrey v. Morrison, Civ. App., 91 S.W.2d 902, error refused.

Utah.—Millard v. Parry, 271 P.2d 852, 2 Utah 2d 217—Kartchner v. Horne, 262 P.2d 749, 1 Utah 2d 112—Pantages v. Arge, 262 P.2d 745, 1 Utah 2d 105—Cranford v. Gibbs, 260 P.2d 870—Stevens v. Gray, 259 P.2d 889—First Sec. Bank of Utah v. Burgi, 251 P.2d 297, 122 Utah 445—Shaw v. Jeppson, 239 P.2d 745, 121 Utah 155—Gibbons v. Brimm, 230 P.2d 983, 119 Utah 621—Alldredge v. Alldredge, 229 P.2d 681, 119 Utah 504, 34 A.L.R.2d 305—Haws v. Jensen, 209 P.2d 229, 116 Utah 212—Webb v. Webb, 209 P.2d 201, 116 Utah 155—Petty v. Clark, 192 P.2d 589, 113 Utah 205—Peterson v. Peterson, 190 P.2d 135, 112 Utah 554—Maxfield v. Sainsbury, 172 P.2d 122, 110 Utah 280—Merrill v. Bailey & Sons Co., 106 P.2d 255, 99 Utah 323—Hoyt v. Upper Marion Ditch Co., 76 P.2d 234, 94 Utah 134—Silver King Consol. Mining Co. v. Sutton, 39 P.2d 682, 85 Utah 297—Froyd v. Barnhurst, 28 P.2d 135, 83 Utah 271—Corey v. Roberts, 25 P.2d 940, 82 Utah 445—Thomas v. Butler, 296 P. 597, 77 Utah 402—Clark v. Clark, 279 P. 502, 74 Utah 290—Holman v. Christensen, 274 P. 457, 73 Utah 389—Jenkins v. Nicolas, 226 P. 177, 63 Utah 329—Olivero v. Eleganti, 214 P. 313, 61 Utah 475—Turnbull v. Meek, 196 P. 1008, 58 Utah 23—Rieske v. Hoover, 177 P. 228, 53 Utah 87—Mayer v. Flynn, 150 P. 962, 46 Utah 598.

Wash.—Carstens Packing Co. v. Cox, 287 P.2d 486, 47 Wash.2d 346—Osawa v. Onishi, 206 P.2d 498, 33 Wash.2d 546—State v. Shepardson, 191 P.2d 286, 30 Wash.2d 165—Griffin v. Hart, 173 P.2d 780, 26 Wash.2d 304—Cobb v. Merchants' Rating & Adjusting Co., 248 P. 807, 140 Wash. 315—George v. Pierce County, 191 P. 406, 111 Wash. 495.

W.Va.—Stuart v. Lake Washington Realty Corp., 92 S.E.2d 891—Lantz v. Reed, 89 S.E.2d 612—Meadows v.

stance,[49] or although there is conflicting evidence which would have justified a finding the other way.[50] If the appellate court, after reviewing the evidence, agrees with the conclusions of the trial court, they will not be disturbed.[51]

There may, however, be a reversal or the findings of the trial court set aside and new findings made, if the appellate court, from its investigation of the evidence and the facts, is convinced that the findings or decree of the trial court is clearly wrong or

Bradshaw-Diehl Co., 81 S.E.2d 63, 139 W.Va. 569—Gaymont Fuel Co. v. Price, 79 S.E.2d 96, 138 W.Va. 930—Farley v. Farley, 68 S.E.2d 353, 136 W.Va. 598—Kadogan v. Booker, 66 S.E.2d 297, 135 W.Va. 438—Adams v. Ferrell, 63 S.E.2d 840, 135 W.Va. 463—Mullens v. Frazer, 59 S.E.2d 694, 134 W.Va. 409, 24 A.L.R.2d 380—Sutton v. Sutton, 36 S.E.2d 608, 128 W.Va. 290—Coulter v. Coulter, 34 S.E.2d 330, 127 W.Va. 710—Weaver v. Trembly, 30 S.E.2d 242, 126 W.Va. 802—Minear Coal Co. v. Miller-Todd Coal Co., 27 S.E.2d 428, 126 W.Va. 151—Hardin v. Collins, 23 S.E.2d 916, 125 W.Va. 81—Kronjaeger v. Travelers Ins. Co., 22 S.E.2d 689, 124 W.Va. 730—Crouch v. Crouch, 20 S.E.2d 169, 124 W.Va. 331—Board of Com'rs of Ohio County v. Elm Grove Min. Co., 9 S.E.2d 813, 122 W.Va. 442—Straton v. Aldridge, 6 S.E.2d 222, 121 W.Va. 691—Pickens v. O'Hara, 200 S.E. 746, 120 W.Va. 751—Shipper v. Downey, 197 S.E. 355, 119 W.Va. 591—Saunders v. Huffman, 192 S.E. 297, 119 W.Va. 31—Spradling v. Spradling, 190 S.E. 537, 118 W.Va. 308—Werner v. Hopkins, 188 S.E. 128, 117 W.Va. 727—Swan v. Mumford, 183 S.E. 916, 117 W.Va. 11—Wade v. Wade, 174 S.E. 787, 115 W.Va. 132—First Nat. Bank v. McCloud, 165 S.E. 799, 112 W.Va. 537—Arnold v. Arnold, 164 S.E. 850, 112 W.Va. 481—Hedrick v. Daly, 164 S.E. 799, 112 W.Va. 413—Robinson v. Robinson, 163 S.E. 633, 112 W.Va. 39—Miller v. Miller, 161 S.E. 566, 111 W.Va. 338—Brown v. Brown, 161 S.E. 555, 111 W.Va. 324—Dwight v. Hazlett, 161 S.E. 434, 111 W.Va. 109—McNabb v. Love, 158 S.E. 167, 110 W.Va. 300—Hatten v. Hatten, 157 S.E. 582, 110 W.Va. 208—Vance v. Harper, 156 S.E. 118, 109 W.Va. 747—Stansbury v. Bright, 156 S.E. 62, 109 W.Va. 651—Stephenson v. Point Pleasant Building & Loan Ass'n, 152 S.E. 790, 108 W.Va. 701—Commercial Inv. Trust v. Browning, 152 S.E. 10, 108 W.Va. 585—Ohio Valley Builders' Supply Co. v. Wetzel Const. Co., 151 S.E. 1, 108 W.Va. 354—National Fruit Product Co. v. Parks, 150 S.E. 749, 108 W.Va. 321—Coffman v. Coffman, 150 S.E. 609, 108 W.Va. 191—Linger v. Watson, 150 S.E. 525, 108 W.Va. 180—Davis v. Davis Trust Co., 147 S.E. 490, 107 W.Va. 141—Blue v. Hazel-Atlas Glass Co., 147 S.E. 22, 106 W.Va. 642—Kincaid v. Evans, 146 S.E. 620, 106 W.Va. 605—Marmet v. Watson, 145 S.E. 744, 106 W.Va. 429—Swope v. Wade, 145 S.E. 384, 106 W.Va. 265—Penix v. No. 2 Gas Coal Co., 129 S.E. 127, 99 W.Va. 310—McBee v. Deusenberry, 128 S.E. 378, 99 W.Va. 176—Pepsi-Cola Bottling Co. v. Indian Rock Bottling Co., 126 S.E. 715, 98 W.Va. 269.

Wis.—In re Acme Brass & Metal Works, 272 N.W. 356, 225 Wis. 74—Terminal Warehouse Co. v. City of Milwaukee, 238 N.W. 513, 205 Wis. 607, 80 A.L.R. 247—Miranovitz v. Gee, 157 N.W. 790, 163 Wis. 246.

Wyo.—See Ben Realty Co. v. Gothberg, 109 P.2d 455, 56 Wyo. 294.

4 C.J. p 900 note 96, p 901 note 2—12 C.J. p 369 note 93 (b).

Duty of court to determine weight of evidence

"This being a suit in equity, it is our duty to examine the evidence, determine its weight, and reach our own conclusions with respect thereto, bearing in mind, however, the rule so often announced by this court that the findings of a trial court will not be disturbed unless we are of the opinion they are against the clear preponderance of the evidence."

Utah.—Silver King Consol. Mining Co. v. Sutton, 39 P.2d 682, 684, 85 Utah 297.

Number of witnesses

In determining whether the findings of trial court in equity suit are contrary to the weight of the evidence in the case, the weight of the evidence does not necessarily involve the number of witnesses testifying.

Mo.—Perkins v. Perkins, 157 S.W. 2d 253, 236 Mo.App. 616.

49. Ala.—Ex parte State ex rel. Grace, 139 So. 288, 224 Ala. 273.

Cal.—Crittenden v. Hansen, 138 P.2d 37, 59 C.A.2d 56—Silveria v. Alexander, 144 P. 303, 25 C.A. 506.

Ill.—Pettersson v. Bornemann, 47 N.E.2d 520, 318 Ill.App. 226.

Mo.—Reed v. Steward, 276 S.W. 12.

Okl.—Woodside v. Mullen, 136 P.2d 871, 192 Okl. 480—Harrison v. Eaves, 130 P.2d 841, 191 Okl. 453.

W.Va.—Martin v. Moore, 115 S.E. 833, 92 W.Va. 671.

Wis.—Town of Howard v. Brunette, 147 N.W. 995, 158 Wis. 5.

4 C.J. p 899 note 93.

Court will not read record to determine whether or not it agrees with conclusion reached by trial court.

Mont.—Hier v. Farmers Mut. Fire Ins. Co., 67 P.2d 831, 104 Mont. 471, 110 A.L.R. 1051.

50. Ala.—Caldwell v. Caldwell, 76 So. 928, 200 Ala. 570.

Cal.—Pomeroy v. Collins, 243 P. 657, 198 C. 46.

Siem v. Cooper, 250 P. 1106, 79 C.A. 748.

Fla.—McEwen v. Growers' Loan & Guaranty Co., 139 So. 805, 104 Fla. 176—Roland v. Mathews, 124 So. 34, 98 Fla. 695—Edney v. Stinson, 105 So. 821, 90 Fla. 335—Travis v. Travis, 87 So. 762, 81 Fla. 309—Commercial Bank of Ocala v. First Nat. Bank, 87 So. 315, 80 Fla. 685.

Idaho.—Ryan v. Day, 258 P.2d 1146, 74 Idaho 159—Lingenfelter v. Eby, 190 P.2d 130, 68 Idaho 134—Graham v. Leek, 144 P.2d 475, 65 Idaho 279—McCarty v. Sauer, 136 P.2d 742, 64 Idaho 748—Gore v. Richard Allen Min. Co., 105 P.2d 735, 61 Idaho 622—Wooton v. Dahlquist, 244 P. 407, 42 Idaho 121—Darry v. Cox, 155 P. 660, 28 Idaho 519.

Ill.—Schultz v. Schultz, 113 N.E. 638, 274 Ill. 341.

Ind.—McHenry v. Foutty, 60 N.E.2d 781, 223 Ind. 335, 158 A.L.R. 537.

Kan.—In re Gereke's Estate, 195 P. 2d 323, 165 Kan. 249.

Ky.—McManus' Adm'x v. Kirk, 208 S.W.2d 953, 306 Ky. 606.

Miss.—Harris v. Williams, 43 So.2d 364.

Mo.—Oetting v. Green, 166 S.W.2d 548, 350 Mo. 457.

N.M.—Grissom v. Grissom, 185 P. 64, 25 N.M. 518.

Okl.—Ransom v. Fields, 35 P.2d 935, 169 Okl. 68—First Nat. Bank v. Elam, 258 P. 892, 126 Okl. 93.

Pa.—Kratz v. City of Allentown, 155 A. 116, 304 Pa. 51—Chrapko v. Kobasa, 114 A. 254, 271 Pa. 447.

R.I.—Lockwood v. Rhode Island Hospital Trust Co., 6 A.2d 707, 62 R.I. 494.

51. Ky.—Conyers' Adm'x v. McGee, 171 S.W.2d 450, 294 Ky. 382.

La.—Coleman v. Adam, 5 La.App. 747.

Mich.—Edelman Realty Company v. Edelman, 75 N.W.2d 29, 344 Mich. 646.

Mo.—Williamson v. Frazee, 242 S.W. 958, 294 Mo. 320.

Tex.—J. M. Radford Grocery Co. v. City of Abilene, Civ.App., 20 S.W. 2d 255, affirmed, Com.App., 34 S.W. 2d 830.

manifestly erroneous,[52] or is against the weight or | preponderance of the evidence,[53] or if the appellate

52. Ala.—Dew v. Garner, 92 So. 647, 207 Ala. 353, 27 A.L.R. 5.
Fla.—Stubblefield v. Dunlap, 4 So.2d 519, 148 Fla. 401—Drumright v. Dana, 190 So. 54, 138 Fla. 672—Jones v. Jones, 161 So. 836, 119 Fla. 824—Bankers' Financing Co. v. Dye, 100 So. 804, 88 Fla. 45.
Ill.—Bova v. Keller, 142 N.E.2d 811, 13 Ill.App.2d 572—Hellrung v. Hellrung, 53 N.E.2d 10, 321 Ill. App. 333.
Ky.—Ken-Tex Exploration Co. v. Conner, 251 S.W.2d 280—Caldwell v. Hatcher, 248 S.W.2d 892—Norman v. Norman, 206 S.W.2d 917, 306 Ky. 232—American Life & Acc. Ins. Co. v. Arnett, 201 S.W.2d 554, 304 Ky. 440—Begley v. Skaggs, 157 S.W.2d 279, 288 Ky. 649—Kentucky Union Co. v. Beatty, 61 S.W.2d 45, 249 Ky. 544—Ray's Ex'r v. Bridges, 57 S.W.2d 492, 247 Ky. 459—Baker v. McIntosh, 51 S.W.2d 244, 244 Ky. 410—Reiss v. Wintersmith, 44 S.W.2d 609, 241 Ky. 470—Cassinelli v. Stacy, 38 S. W.2d 980, 238 Ky. 827—Davis v. Dean, 33 S.W.2d 340, 236 Ky. 362—Oliver v. Noe, 24 S.W.2d 592, 232 Ky. 809—Turner v. Hammock, 18 S.W.2d 285, 229 Ky. 836—White v. Philpot, 299 S.W. 173, 221 Ky. 529—Roberts v. Aker & Vogt, 262 S.W. 609, 203 Ky. 468.
Md.—Schwaber v. Hargest, 40 A.2d 336, 184 Md. 198—Simmont v. Simmont, 153 A. 665, 160 Md. 422.
Miss.—Thames v. Thames, 76 So.2d 707, 222 Miss. 617—Kirk v. U. S. Fidelity & Guaranty Co., 58 So.2d 924, 214 Miss. 441, suggestion of error overruled 59 So.2d 845—Page v. O'Neal, 42 So.2d 391, 207 Miss. 350—James v. Tax Inv. Co., 40 So. 2d 539, 206 Miss. 605—Puryear v. Austin, 39 So.2d 257, 205 Miss. 590—Teague v. Brown, 24 So.2d 726, 199 Miss. 262—Gerard v. Gill, 15 So.2d 478, 195 Miss. 726, modified on other grounds 15 So.2d 916, 195 Miss. 726—Tarver v. Lindsey, 137 So. 93, 161 Miss. 379—Gillis v. Smith, 75 So. 451, 114 Miss. 665—Rice v. W. L. Robinson Lumber Co., 70 So. 817, 110 Miss. 607.
Pa.—Schaeffer v. Jones, 143 A. 197, 293 Pa. 529.
R.I.—Rosenfeld v. Wunsch, 119 A. 658, 45 R.I. 48.
W.Va.—Lieberman v. Lieberman, 98 S.E.2d 275—Witt v. Witt, 87 S.E.2d 524—Adams v. Ferrell, 63 S.E.2d 840, 135 W.Va. 463—Tokas v. J. J. Arnold Co., 11 S.E.2d 759, 122 W. Va. 613—Buskirk v. Bankers Finance Corp., 3 S.E.2d 450, 121 W. Va. 361—Central Trust Co. v. Cook, 160 S.E. 561, 111 W.Va. 99.
4 C.J. p 902 note 3.

53. Ark.—Central States Life Ins. Co. v. Robbins, 98 S.W.2d 870, 193 Ark. 166—White v. Williams, 89 S.W.2d 927, 192 Ark. 41—Welch v. Farber, 67 S.W.2d 588, 188 Ark. 693—Perrin v. Perrin, 2 S.W.2d 1084, 176 Ark. 1205.
Fla.—Ballard v. Gilbert, 55 So.2d 723—Kellogg v. Porter, 20 So.2d 59, 155 Fla. 287—Marcus v. Hull, 195 So. 170, 142 Fla. 306—Dade County v. South Dade Farms, 182 So. 858, 133 Fla. 288—Holland v. Florida Real Estate Commission ex rel. Linesbaugh, 178 So. 121, 130 Fla. 590—Friddle v. Stewart, 176 So. 750, 129 Fla. 821—Gryzmish v. Krim, 170 So. 717, 126 Fla. 191—Farrington v. Harrison, 116 So. 497, 95 Fla. 769—Wolkowsky v. Kirchick, 95 So. 611, 85 Fla. 210—Bass v. Aldermen, 90 So. 378, 82 Fla. 490—Florida Nat. Bank of Gainesville v. Sherouse, 86 So. 279, 80 Fla. 405.
Ill.—Pernod v. American Nat. Bank & Trust Co. of Chicago, 132 N.E. 2d 540, 8 Ill.2d 16—Stoke v. Wheeler, 63 N.E.2d 492, 391 Ill. 429—Johnson v. Lane, 15 N.E.2d 710, 369 Ill. 135—Shlensky v. Shlensky, 15 N.E.2d 694, 369 Ill. 179—Decker v. Decker, 155 N.E. 349, 324 Ill. 457—Burandt v. Burandt, 149 N.E. 306, 318 Ill. 218—Cook v. Wolf, 129 N.E. 556, 296 Ill. 27—Bordner v. Kelso, 127 N.E. 337, 293 Ill. 175. Miller v. Miller, 78 N.E.2d 131, 333 Ill.App. 642—Bock v. Jablonski, 67 N.E.2d 886, 329 Ill.App. 275—McCarthy v. McCarthy, 219 Ill.App. 369. See Darrow v. Darrow, 207 Ill.App. 513.
Ind.—State ex rel. Indiana State Board of Medical Registration and Examination v. Cole, 20 N.E.2d 972, 215 Ind. 562.
Iowa.—Jewell v. Logsdon, 206 N.W. 136, 200 Iowa 1327.
Ky.—Johnson v. Roy, 279 S.W.2d 20—Long v. Howard, 223 S.W.2d 376, 311 Ky. 66—Wilder v. Lee, 200 S.W.2d 153, 304 Ky. 144—Duff v. Fordson Coal Co., 182 S.W.2d 955, 298 Ky. 411—McCoy v. Arena, 174 S.W.2d 726, 295 Ky. 403—Buckner v. Buckner, 174 S.W.2d 695, 295 Ky. 410—Williams v. Hunter, 162 S.W.2d 541, 290 Ky. 730—Hodges v. Daviess County, 148 S.W.2d 697, 285 Ky. 508—Fields Motor Co. v. Sturgill, 129 S.W.2d 1003, 279 Ky. 47—Fields v. Lewis, 122 S.W.2d 746, 275 Ky. 765—McDonald's Ex'r v. Transylvania University, Lexington, 118 S.W.2d 171, 274 Ky. 168—Vance v. Atherton, 98 S.W. 2d 489, 266 Ky. 202—Allen v. Rogers, 91 S.W.2d 17, 262 Ky. 744—Patton v. Blevins, 87 S.W.2d 623, 261 Ky. 307—Thomas v. McBeth's Adm'r, 82 S.W.2d 790, 259 Ky. 484—Lincoln Bank & Trust Co. v. Cross, 78 S.W.2d 747, 257 Ky. 537—Andrews v. Wilson, 69 S.W.2d 343, 253 Ky. 237—Home Lumber Co. v. Smith, 66 S.W.2d 83, 251 Ky. 845—Colwell v. Holliday, 63 S.W.2d 776, 250 Ky. 584—Bass & Co. v. Trustees of Madisonville Christian Church, 61 S.W.2d 1074, 250 Ky. 36—Deep v. Farmers' Nat. Bank of Lebanon, 57 S.W.2d 1002, 247 Ky. 801—Ray's Ex'r v. Bridges, 57 S.W. 2d 492, 247 Ky. 459—Reiss v. Wintersmith, 44 S.W.2d 609, 241 Ky. 470—Blanton v. Osborne, 39 S.W.2d 698, 239 Ky. 389—Katz v. Earl & John Scott, 17 S.W.2d 1024, 229 Ky. 738—Walker v. Walker, 15 S. W.2d 298, 228 Ky. 357—Spears v. Howell, 300 S.W. 878, 222 Ky. 370—Smith v. Boone, 299 S.W. 1059, 222 Ky. 1—Chesapeake & O. Ry. Co. v. Johnson, 291 S.W. 744, 218 Ky. 550—Siddens v. Ennis, 290 S.W. 669, 217 Ky. 810—Faulkner v. Headrick's Adm'r, 281 S.W. 813, 213 Ky. 692—Downing v. Whitlow, 277 S. W. 262, 211 Ky. 294—Lewis v. Shell, 266 S.W. 254, 205 Ky. 624—Hale v. Hale, 224 S.W. 1078, 189 Ky. 171—Elkhorn By-Product Coal Co. v. Tynes, 221 S.W. 514, 188 Ky. 269—Tackitt v. Newsom, 216 S.W. 376, 186 Ky. 188—Jacobs' Ex'r v. Meyers, 215 S.W. 532, 185 Ky. 594—Rockcastle Lumber Co. v. Burns, 194 S.W. 95, 175 Ky. 224—Farmer v. Cornett, 192 S.W. 628, 174 Ky. 560—James v. Golden, 189 S.W. 446, 172 Ky. 499—Ford Lumber & Mfg. Co. v. Cornett, 188 S.W. 466, 171 Ky. 404.
Mich.—Silver v. Shulman, 181 N.W. 1006, 213 Mich. 211.
Miss.—Smith v. Cook, 58 So.2d 27, 213 Miss. 876—Teague v. Brown, 24 So.2d 726, 199 Miss. 262—Gerard v. Gill, 15 So.2d 478, 195 Miss. 726, modified on other grounds 15 So.2d 916, 195 Miss. 726.
Mo.—Trotter v. Carter, 183 S.W.2d 898, 353 Mo. 708—Ver Standig v. St. Louis Union Trust Co., 129 S. W.2d 905, 344 Mo. 880—Peikert v. Repple, 114 S.W.2d 999, 342 Mo. 274—Batson v. Peters, 89 S.W.2d 46—Barlow v. Scott, 85 S.W.2d 504—Gross v. Byler, 297 S.W. 391. Fried v. Schiff, App., 181 S.W.2d 776.
Mont.—Ferguson v. Standley, 300 P. 245, 89 Mont. 489—Piersky v. Hocking, 292 P. 725, 88 Mont. 358—Giebler v. Giebler, 222 P. 436, 69 Mont. 347—Moulton v. Irish, 218 P. 1053, 67 Mont. 504.
N.J.—Cartan v. Phelps, 109 A. 291, 91 N.J.Eq. 312.
N.Y.—Gargiulo v. Labate, 63 N.Y.S. 2d 94, 270 App.Div. 1049—Esposito v. Esposito, 47 N.Y.S.2d 253, 267 App.Div. 545, affirmed 61 N.E.2d 521, 294 N.Y. 737—Shields v. Shields, 5 N.Y.S.2d 771, 254 App. Div. 928, motion granted 8 N.Y.S. 2d 1012, 255 App.Div. 936.

Okl.—Dwelle v. Greenshields, 305 P. 2d 1038—Marshall v. Amos, 300 P. 2d 990—Abbott v. Woods, 295 P.2d 793—Jeffers v. Edge, 295 P.2d 787—Grover v. Locke, 279 P.2d 319—Warner v. Gremore, 277 P.2d 668—Modern Woodmen of America, Camp No. 6967 v. Tulsa Modern Woodmen Bldg. Ass'n, 264 P.2d 993—Majors v. Majors, 263 P.2d 1012—Turner v. Turner, 223 P.2d 536, 203 Okl. 513—Panhandle Co-op. Royalty Co. v. Ferguson, 229 P.2d 594, 204 Okl. 303—Neff v. Cohen, 215 P.2d 823, 202 Okl. 511—Allen v. Palmer, 209 P.2d 502, 201 Okl. 673—Vilbig Const. Co. v. Whitham, 201 P.2d 922, 201 Okl. 86—In re Ho-tah-Moie's Estate, 198 P.2d 638, 200 Okl. 532—Home Owners' Loan Corp. v. Ashford, 179 P.2d 905, 198 Okl. 481—Ward v. Ward, 172 P.2d 978, 197 Okl. 551—Ex parte Parker, 156 P.2d 584, 195 Okl. 224—Mackey v. Purdy, 156 P.2d 137, 195 Okl. 171—Franklin v. Margay Oil Corp., 153 P.2d 486, 194 Okl. 519—Wallace v. Brooks, 147 P.2d 784, 194 Okl. 137—Luke v. Patterson, 139 P.2d 175, 192 Okl. 631, 148 A.L.R. 679—Fessler v. Thompson, 130 P.2d 513, 191 Okl. 450—Galbraith v. McKenney, 129 P.2d 187, 191 Okl. 282—Kickbusch v. Bailey, 109 P.2d 812, 188 Okl. 405—Harjo v. Johnston, 104 P.2d 985, 187 Okl. 561—Superior Oil Corp. v. Wilson, 103 P.2d 535, 187 Okl. 447—Mohr v. Detamore, 102 P.2d 850, 187 Okl. 278—Crabtree v. Standard Savings & Loan Ass'n, 102 P.2d 127, 187 Okl. 189—McCubbins v. Simpson, 98 P.2d 49, 186 Okl. 417—City of Barnsdall v. Barnsdall Nat. Bank of Barnsdall, 90 P.2d 1057, 185 Okl. 228—Stinson v. Mobley, 88 P.2d 378, 184 Okl. 468—Finley & Lollar v. Dean, 88 P.2d 366, 184 Okl. 456—British American Oil Producing Co. v. Midway Oil Co., 82 P.2d 1049, 183 Okl. 475—Tucker v. Porter, 72 P. 2d 388, 181 Okl. 30—Mid-Continent Petroleum Corp. v. Bettis, 69 P.2d 346, 180 Okl. 193—Jacobs v. American Bank & Trust Co., 68 P.2d 801, 180 Okl. 225—Christburgh v. Anderson, 66 P.2d 902, 179 Okl. 552—Cromwell v. Ream, 52 P.2d 752, 175 Okl. 408—Quality Milk Products Co. v. Endowment Loan & Mortgage Co., 51 P.2d 550, 175 Okl. 94—Quality Milk Products Co. v. Young, 51 P.2d 547, 175 Okl. 98—Taggart v. Snipes, 50 P.2d 640, 174 Okl. 449—Richard v. Richard, 45 P.2d 101, 172 Okl. 397—Sticelber v. Iglehart, 37 P.2d 638, 169 Okl. 453—Boyle v. Barnett, 12 P.2d 539, 158 Okl. 87—Boyle v. Barnett, 12 P.2d 217, 158 Okl. 85—Elling v. Kohler, 3 P.2d 161, 150 Okl. 129—Ruland v. Bohner, 299 P. 167, 149 Okl. 36—Hutson v. McConnell, 281 P. 760, 139 Okl. 240—Myers v. Myers, 266 P. 452, 130 Okl. 184—Weitz v. Richardson, 258 P. 262, 125 Okl. 294—Clement Mortg. Co. v. Lewis, 253 P. 88, 122 Okl. 188—Mistletoe Oil & Gas Co. v. Revelle, 245 P. 620, 117 Okl. 144—Rochelle v. Anderson, 243 P. 528, 113 Okl. 137—Serrato v. Hopkins, 238 P. 479, 113 Okl. 54—Eyestone v. Eyestone, 229 P. 518, 103 Okl. 301—Orton v. Citizens' State Bank, 225 P. 899, 99 Okl. 80—Teague v. Murphy, 216 P. 475, 91 Okl. 116—Chamness v. Collopy, 215 P. 953, 90 Okl. 71—Harris v. International Land Co., 213 P. 845, 89 Okl. 163—Clark v. Carter, 209 P. 932, 86 Okl. 126—Pelham Petroleum Co. v. North, 188 P. 1069, 78 Okl. 39—Hivick v. Turben, 187 P. 1094, 77 Okl. 230—Prentice v. Freeman, 185 P. 87, 76 Okl. 260—Pyeatt v. Estus, 179 P. 42, 72 Okl. 160, 4 A.L.R. 1570—City of Tulsa v. Purdy, 174 P. 759, 73 Okl. 98—Swan v. O'Bar, 167 P. 470, 66 Okl. 91—Noble v. Harriman, 158 P. 1148, 58 Okl. 117—Roberts v. Cora Exploitation Co., 156 P. 644, 57 Okl. 251—Coley v. Dore, 156 P. 164, 56 Okl. 443.

Pa.—Commonwealth Trust Co. of Pittsburgh v. Cirigliano, 41 A.2d 863, 352 Pa. 108.

S.C.—Frazier v. Frazier, 89 S.E.2d 225, 228 S.C. 149.

S.D.—Scriven v. Wintersteen, 12 N. W.2d 371, 69 S.D. 515—Lewis v. Tinsley, 287 N.W. 507, 66 S.D. 648, 124 A.L.R. 459—Schmidt v. Norbeck, 189 N.W. 524, 45 S.D. 557.

Utah.—Nokes v. Continental Min. & Milling Co., 308 P.2d 954, 6 Utah 2d 177—Randall v. Tracy Collins Trust Co., 305 P.2d 480, 6 Utah 2d 18—Greco v. Grako, 39 P.2d 318, 85 Utah 241—Hargreaves v. Burton, 206 P. 262, 59 Utah 575, 33 A.L.R. 1481—Cram v. Reynolds, 186 P. 100, 55 Utah 384—Steed v. Steed, 181 P. 445, 54 Utah 244—Fenstermaker v. Jorgensen, 178 P. 760, 53 Utah 325.

Wash.—Bergstrom v. Olson, 236 P. 2d 1052, 39 Wash.2d 536—Darnell v. Noel, 208 P.2d 1194, 34 Wash. 2d 428.

W.Va.—Sturm v. City of St. Albans, 78 S.E.2d 462, 138 W.Va. 911—Smith v. Smith, 76 S.E.2d 253, 138 W.Va. 388—McCausland v. Jarrell, 68 S.E.2d 729, 136 W.Va. 569—La-Follette v. Croft, 14 S.E.2d 917, 122 W.Va. 727—Mullens v. Lilly, 13 S. E.2d 634, 123 W.Va. 182—Tokas v. J. J. Arnold Co., 11 S.E.2d 759, 122 W.Va. 613—Pickens v. O'Hara, 200 S.E. 746, 120 W.Va. 751—Gall v. Cowell, 190 S.E. 130, 118 W.Va. 263—Smith v. Pew, 183 S.E. 53, 116 W.Va. 734—Wood v. Snodgrass, 182 S.E. 286, 116 W.Va. 538—Raleigh County Const. Co. v. Amere Gas Utilities Co., 169 S.E. 785, 113 W.Va. 854—Lemen-Downs v. Beltzhoover, 161 S.E. 440, 111 W.Va. 207—Meyers v. Washington Heights Land Co., 149 S.E. 819, 107 W.Va. 632—Hendrick v. Jenkins, 140 S.E. 483, 104 W.Va. 486—First Nat. Bank v. Depue, 129 S.E. 393, 99 W.Va. 509—Rice v. Rice, 106 S.E. 237, 88 W.Va. 54.

Wis.—Krahn v. Goodrich, 160 N.W. 1072, 164 Wis. 600.

4 C.J. p 902 note 4.

Test

(1) In a chancery appeal the test in determining whether decree should be reversed is not whether the evidence clearly preponderates against findings of trial court.

Mich.—McFarland v. Kinnee, 60 N. W.2d 324, 337 Mich. 484.

(2) The test as to whether judgment canceling deed on ground of fraud, incompetency, and lack of consideration should be affirmed or reversed was whether judgment was clearly against the weight of the evidence, and not whether judgment was against the clear weight of the evidence.

Okl.—Tindel v. Williams, 103 P.2d 551, 187 Okl. 482.

Evidence considered as a whole

Statute requiring supreme court in reviewing equity cases to determine whether judgment is clearly erroneous, requires court to determine whether or not the evidence, considered as a whole, is overwhelmingly against the findings of the trial court.

Mo.—George F. Robertson Plastering Co. v. Magidson, 271 S.W.2d 538.

Finding against uncontradicted and unimpeached testimony

Where the character of a witness for truth and veracity is unimpeached, and his testimony is uncontradicted, not contrary to circumstances in evidence, and contains no inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to the truth of the testimony, it is the duty of the court to give the testimony effect and a finding of the chancellor against the testimony will be set aside.

N.J.—Cartan v. Phelps, 109 A. 291, 91 N.J.Eq. 312.

Finding on oral evidence will not be disturbed although slightly against the weight of the evidence.

Mo.—Kidd v. Brewer, 297 S.W. 960, 317 Mo. 1047—Hunnell v. Zinn, 184 S.W. 1154.

Mere conflict does not prevent reversal if the appellate court concludes that the credible evidence clearly preponderates against the trial court's findings or that injustice was done.

Fla.—Winton v. Stone, 145 So. 845, 107 Fla. 636.

Mont.—Piersky v. Hocking, 292 P. 725, 88 Mont. 358.

Some or substantial evidence to support the findings will not save

court is convinced that the findings or decree is without adequate or sufficient evidentiary support.[54] So, findings may be set aside if they appear to be the result of a misconception of the law as applied to the facts,[55] or the chancellor's failure to take competent evidence into consideration.[56] There

them if they are manifestly against the clear preponderance of the evidence.

U.S.—New York Life Ins. Co. v. Simons, C.C.A.Mass., 60 F.2d 30, certiorari denied Simons v. New York Life Ins. Co., 53 S.Ct. 93, 287 U.S. 648, 77 L.Ed. 560.

Utah.—Rockhill v. Creer, 189 P. 668, 56 Utah 119.

Wis.—Krahn v. Goodrich, 160 N.W. 1072, 164 Wis. 600.

Numerical weight of evidence

(1) Mere numerical weight of testimony against findings does not so conclusively establish that they are against the preponderance of the evidence as to require a reversal.

Ill.—Dalbey v. Hayes, 108 N.E. 657, 267 Ill. 521.

Ky.—Gillam v. Qualls, 283 S.W. 396, 214 Ky. 436.

(2) Findings based on the testimony of one witness who has testified from his personal knowledge and information will be approved, although they are in direct conflict with the testimony of two witnesses.

Miss.—Bradbury v. McLendon, 80 So. 633, 119 Miss. 210.

Misconception or prejudice shown

If the findings are so manifestly against the weight of the evidence as to show that the lower court misconceived either its force and effect or that its conclusions were induced by passion or prejudice, the findings will be reversed or set aside.

Colo.—Baird v. Baird, 111 P. 79, 48 Colo. 506.

54. Conn.—Fox v. Schaeffer, 41 A. 2d 46, 131 Conn. 439, 157 A.L.R. 132.

Del.—Henderson v. Plymouth Oil Co., 141 A. 197, 16 Del.Ch. 347.

Fla.—Forbes v. Bushnell Steel Const. Co., 76 So.2d 268—State v. City of Fort Pierce, 182 So. 774, 133 Fla. 348—Franklin Life Ins. Co. v. Tharp, 178 So. 300, 130 Fla. 546, rehearing denied 179 So. 406, 131 Fla. 213—Riesner v. Riesner, 178 So. 164, 130 Fla. 489—Sabins v. City of Daytona Beach, 177 So. 229, 130 Fla. 62—Becker v. City Trust Co., 136 So. 642, 102 Fla. 682—Hennessy v. Hudson, 131 So. 315, 100 Fla. 967—Lonergan v. Peebles, 81 So. 514, 77 Fla. 188.

Ill.—Stephenson v. Kulichek, 101 N. E.2d 542, 410 Ill. 139—Dombrow v. Dombrow, 82 N.E.2d 47, 401 Ill. 324—Nickoloff v. Nickoloff, 51 N.E. 2d 565, 384 Ill. 377—Daven v. Downey, 39 N.E.2d 45, 378 Ill. 543—Carter Oil Co. v. Durbin, 34 N.E.2d 407, 376 Ill. 398, certiorari denied Koeberlein v. Durbin, 62 S.Ct. 85, 314 U.S. 644, 86 L.Ed. 517—McGregor v. Keun, 161 N.E. 99, 330 Ill. 106.

Ind.—Flying Squadron Foundation v. Crippen, 169 N.E. 843, 201 Ind. 482.

Ky.—Toms v. Holmes, 171 S.W.2d 245, 294 Ky. 233—People's Savings Bank v. Wright, 209 S.W. 342, 183 Ky. 362—Carter County Commercial Bank v. Elfort, 200 S.W. 342, 179 Ky. 232.

La.—New Orleans & N. E. R. Co. v. Redmann, App., 28 So.2d 303.

Md.—Hockman v. Hockman, 41 A.2d 510, 184 Md. 473—Perry v. Coose, 28 A.2d 735, 139 Me. 215—Heaton v. Heaton, 14 A.2d 708, 137 Me. 325.

Mass.—Rowland v. June, 99 N.E.2d 283, 327 Mass. 455—Band v. Davis, 88 N.E.2d 652, 325 Mass. 18—Acacia Mut. Life Ins. Co. v. Feinberg, 56 N.E.2d 914, 317 Mass. 8—Marshall v. Landau, 31 N.E.2d 540, 308 Mass. 239.

Mich.—City of Garden City v. Holland, 50 N.W.2d 158, 331 Mich. 566—Skurski v. Gurski, 45 N.W.2d 359, 329 Mich. 474.

Miss.—Ivey v. Geisler, 56 So.2d 501, 213 Miss. 212—Reed v. Charping, 41 So.2d 11, 207 Miss. 1.

Mo.—Collier v. Porter, 16 S.W.2d 49, 322 Mo. 697—Linneman v. Henry, 291 S.W. 109, 316 Mo. 674—Guaranty Life Ins. Co. v. Frumson, 236 S. W. 310.

Neb.—Fischer v. Wilhelm, 300 N.W. 350, 140 Neb. 448.

N.Y.—Takacs v. Kapela, 35 N.Y.S.2d 502, 264 App.Div. 871, motion denied 35 N.Y.S.2d 924, 264 App.Div. 893—Brindisi v. Stallone, 21 N.Y.S. 2d 29, 259 App.Div. 1080.

Okl.—Burford v. Kephart, 194 P.2d 167, 200 Okl. 344—Roberts v. Roberts, 53 P.2d 671, 175 Okl. 602—Murray Tool & Supply Co. v. Bridgeport Mach. Co., 23 P.2d 165, 164 Okl. 136—Bahr v. Chicago, R. I. & P. Ry. Co., 188 P. 1057, 78 Okl. 69—Dotterer v. Chicago, R. I. & P. Ry. Co., 188 P. 1055, 78 Okl. 67.

Pa.—Payne v. Winters, 77 A.2d 407, 366 Pa. 299—Lacey v. Rutter, 57 A.2d 679, 358 Pa. 502—Commonwealth Trust Co. of Pittsburgh v. Cirigliano, 41 A.2d 863, 352 Pa. 108—Potter v. Brown, 195 A. 901, 328 Pa. 554, 118 A.L.R. 1415—Goslin v. Edmunds, 188 A. 851, 325 Pa. 154—Gribben v. Carpenter, 185 A. 712, 323 Pa. 243—Kirmse v. Adler, 166 A. 566, 311 Pa. 78—Belmont Laboratories v. Heist, 151 A. 15, 300 Pa. 542—Pennsylvania Knitting Mills Corporation v. Bayard, 134 A. 397, 287 Pa. 216—Miller v. Central Trust & Savings Co., 132 A. 579, 285 Pa. 472—Hamilton v. Fay, 128 A. 837, 283 Pa. 175—McConville v. Ingham, 112 A. 85, 268 Pa. 507.

Shryock v. Association of United Fraternal Buyers, 5 A.2d 581, 135 Pa.Super. 428—In re Hassen's Estate, 167 A. 465, 110 Pa.Super. 23.

Tenn.—Lincoln County Bank v. Maddox, 114 S.W.2d 821, 21 Tenn.App. 648.

Utah.—Bear River State Bank v. Merrill, 120 P.2d 325, 101 Utah 176—Crosby v. Anderson, 162 P. 75, 49 Utah 167.

Vt.—Howland Bros. & Cave v. Barre Savings Bank & Trust Co., 95 A. 679, 89 Vt. 290.

Va.—Sutton v. Sutton, 72 S.E.2d 275, 194 Va. 179—Gillespie v. Somers, 13 S.E.2d 330, 177 Va. 231—Shirley v. Van Every, 167 S.E. 345, 159 Va. 762—Central Trust Co. v. Cook, 160 S.E. 561, 111 W.Va. 99.

4 C.J. p 886 note 49, p 902 notes 6, 7—46 C.J. p 632 note 35—56 C.J. p 741 note 41.

Consideration of whole record

The appellate court will set aside a chancellor's decree where, from a consideration of the whole record, it is of the opinion that the evidence did not justify the decree.

Ill.—Sharkey v. Sisson, 141 N.E. 427, 310 Ill. 98.

Nonsupport of immaterial finding by evidence is not ground for reversal.

N.Y.—Wetmore v. Bruce, 23 N.E. 303, 118 N.Y. 319.

58 C.J. p 1280 note 30.

Incredible or inherently improbable testimony

If the testimony on which the findings are based is incredible or inherently improbable, the findings will be reversed.

Fla.—Boyd v. Gosser, 82 So. 758, 78 Fla. 64, 70, 6 A.L.R. 500.

W.Va.—Shook v. Shook, 161 S.E. 235, 111 W.Va. 284.

55. Fla.—Smith v. McEwen, 161 So. 68, 119 Fla. 588—Atlantic Shores Corporation v. Zetterlund, 138 So. 50, 103 Fla. 761—Schmitt v. Bethea, 82 So. 817, 78 Fla. 304.

Ky.—Huffman v. Chasteen, 209 S.W. 2d 705, 307 Ky. 1—Gay v. American Trading Co., 215 S.W. 73, 185 Ky. 305.

Md.—McKeever v. Washington Heights Realty Corp., 37 A.2d 305, 183 Md. 216.

N.H.—Morgan v. Morgan, 47 A.2d 569, 94 N.H. 116.

Okl.—Luke v. Patterson, 139 P.2d 175, 192 Okl. 631, 148 A.L.R. 679.

56. Mo.—Williams v. Patterson, 218 S.W.2d 156, 240 Mo.App. 131.

Okl.—Johnson v. Perry, 153 P. 289, 54 Okl. 23.

may also be a reversal where it appears that the inferences or conclusions of the lower court are inconsistent with, or cannot logically or reasonably be drawn from, conceded or established subordinate facts;[57] that the findings are arbitrary and capricious,[57.5] or that necessary special findings supported sufficiently by the evidence are in conflict with a general finding,[58] or where the appellate court entertains more than a doubt as to the correctness of the chancellor's findings.[58.5]

Where a finding is entirely foreign to the issues made by the pleadings, it has no weight in the appellate court, and, if such finding is essential to the decree, the decree must be set aside and the proper decree entered.[59]

Effect of burden of proof on sufficiency of evidence. Before a decree denying relief to appellant will be reversed, he must show a preponderance of the evidence supporting every fact essential to recovery,[60] but if, as thus tested, the preponderance of the evidence warrants a decree for complainant, a finding for defendant will be reversed.[61]

On the other hand, according to some cases, a finding of a fact in favor of a party having the burden of proving the same by evidence of a certain kind or degree will be accepted as conclusive, if it is supported by substantial evidence and not plainly wrong, without the appellate court giving regard to whether the evidence is such as fully satisfies the burden of proof;[62] but in other cases the appellate court has gone into the question of whether the party having the burden of proof has sustained it by the character and degree of evidence the law requires,[63] and reversed findings for such party where he has failed to establish his case by a preponderance of the evidence[63.5] or where the evidence is flatly in conflict and sustains a finding no more for one party than for the other.[64]

57. Colo.—Tost v. Smies, 216 P. 545, 74 Colo. 435.
Mass.—Jones v. Clark, 172 N.E. 250, 272 Mass. 146—Danforth v. Chandler 130 N.E. 105, 237 Mass. 518.
Pa.—Howarth v. Miller, 115 A.2d 222, 382 Pa. 419—Bohachevsky v. Sembrot, 81 A.2d 554, 368 Pa. 228—Potter v. Brown, 195 A. 901, 328 Pa. 554, 118 A.L.R. 1415.
4 C.J. p 902 note 9.

57.5 Pa.—Pierce v. Pierce, 49 A.2d 346, 355 Pa. 175—Gajewski v. Fettig, 47 A.2d 658, 354 Pa. 430.

Bias, prejudice or capricious disbelief of evidence

(1) Appellate court will set aside decree based on trial judge's prejudgment of case, bias, prejudice, or capricious disbelief of evidence, but record must clearly show such facts.
Pa.—In re Pusey's Estate, 184 A. 844, 321 Pa. 248, certiorari denied Lavely v. Young Women's Christian Ass'n of Pittsburgh, 57 S.Ct. 36, 299 U.S. 572, 81 L.Ed. 422, rehearing denied 57 S.Ct. 114, 299 U.S. 621, 81 L.Ed. 458.

(2) To charge trial judge, with capricious disbelief of evidence, warranting reviewing court in setting aside decree appealed from, there must have been willful, deliberate disbelief of apparently trustworthy witness, whose testimony one of ordinary intelligence could not possibly challenge or doubt, and such disbelief must be so flagrant as to be repugnant to man of reasonable intelligence.
Pa.—In re Pusey's Estate, 184 A. 844, 321 Pa. 248, certiorari denied Lavely v. Young Women's Christian Ass'n of Pittsburgh, 57 S.Ct. 36, 299 U.S. 572, 81 L.Ed. 422, rehearing denied 57 S.Ct. 114, 299 U.S. 621, 81 L.Ed. 458.
Popilock v. Piernikoski, 56 A.2d 326, 161 Pa.Super. 587.

(3) Where, although witness was apparently disinterested it was difficult, if not impossible, to reconcile his admitted conduct with his testimony, trial judge was not chargeable with capricious disbelief for failing to believe his testimony.
Pa.—Popilock v. Piernikoski, supra.

58. Neb.—Carpenter Paper Co. v. News Pub. Co., 87 N.W. 1050, 63 Neb. 59.

58.5 Ky.—McWhorter v. Carter, 267 S.W.2d 736—Toms v. Holmes, 171 S.W.2d 245, 294 Ky. 233—Crowley v. Ballard, 131 S.W.2d 463, 279 Ky. 484.

Possibility of doubt

(1) Evidence need not prove error beyond possibility of doubt to justify appellate court in disturbing fact findings of equity judge who saw and heard witnesses.
Md.—Jacobs v. Jacobs, 185 A. 109, 170 Md. 405.

(2) In action to set aside deed on ground of inadequacy of consideration, undue influence, and mental incompetency, where the evidence left appellate court in doubt as to plaintiff's competency, new trial was granted on that issue in the interest of justice.
Minn.—Parrish v. Peoples, 9 N.W.2d 225, 214 Minn. 589.

59. Neb.—Furbush v. Barker, 56 N.W. 996, 38 Neb. 1.

60. Miss.—Watson v. Owen, 107 So. 865, 142 Miss. 676.
N.M.—Sanchez v. Torres, 37 P.2d 805, 38 N.M. 556.
Okl.—Hogan v. Grimes, 189 P. 353, 78 Okl. 184.

61. Fla.—Thacker v. Ingram, 147 So. 576, 109 Fla. 309—Ullendorff v. Graham, 92 So. 624, 83 Fla. 628.
Miss.—Pannell v. Glidewell, 107 So. 273, 142 Miss. 77.

62. Cal.—Speer v. Kittle Mfg. Co., 4 P.2d 575, 117 C.A. 717—Shurman v. Look, 218 P. 624, 63 C.A. 347—Turman v. Ellison, 174 P. 396, 37 C.A. 204—Carr v. Sacramento Clay Products Co., 170 P. 446, 35 C.A. 439.
Idaho.—Bedal v. Johnson, 218 P. 641, 37 Idaho 359.
Me.—Stewart v. Gilbert, 98 A. 752, 115 Me. 262.
Minn.—Hartigan v. Norwich Union Indemnity Co., 246 N.W. 477, 188 Minn. 48.
Okl.—Perry v. Shaver, 225 P. 359, 101 Okl. 248.
Tex.—Hart v. Harrell, Civ.App., 17 S.W.2d 1093.
Va.—Planters Nat. Bank of Fredericksburg v. E. G. Heflin Co., 184 S.E. 216, 166 Va. 166.
58 C.J. p 1280 note 29 [a].

63. Ala.—Howard v. State ex rel. Andrews, 190 So. 278, 238 Ala. 185.
Iowa.—Albia Light & Ry. Co. v. Gold Goose Coal & Mining Co., 176 N.W. 722, affirmed 185 N.W. 571, 192 Iowa 869.
Mo.—Steere v. Palmer, 223 S.W.2d 391, 359 Mo. 664.

63.5 Neb.—Trowbridge v. Donner, 40 N.W.2d 655, 152 Neb. 206.

64. Iowa.—Albia Light & Ry. Co. v. Gold Goose Coal & Mining Co., 176 N.W. 722, affirmed 185 N.W. 571, 192 Iowa 869.

4. FINDINGS OF REFEREE, MASTER, COMMISSIONER, OR AUDITOR

§ 1665. Conclusiveness in General

Ordinarily, findings of a master or referee, having support in the evidence, are given the force and effect of a verdict of a jury, or the findings of the trial court in a trial without a jury, and are conclusive on appeal, but not always, as where they are at variance with the proof or with each other.

The findings or report of a referee, master, commissioner, auditor, or register are given the same force on appeal as the verdict of a jury[65] or the findings of a trial court sitting as a jury,[66] and as a general rule these findings will not be disturbed.[67]

65. Ala.—Sykes v. Poteet, 197 So. 884, 240 Ala. 122—Staley v. International Agr. Corp., 194 So. 168, 239 Ala. 98—First Nat. Bank v. Bain, 188 So. 64, 237 Ala. 580—Shotts v. Shotts, 181 So. 910, 236 Ala. 267—Stumpf v. Wiles, 179 So. 201, 235 Ala. 317—Clark v. Whitfield, 119 So. 631, 218 Ala. 593—Buttrey v. Buttrey, 118 So. 282, 218 Ala. 268—Bailes v. Bailes, 114 So. 185, 216 Ala. 569—Nelson v. Atkins, 109 So. 166, 215 Ala. 76—McKleroy v. Musgrove, 84 So. 280, 203 Ala. 603.

Cal.—Williams v. Flinn & Treacy, 214 P. 1024, 61 C.A. 352.

Fla.—Mahan v. Mahan, 88 So.2d 545—Aldred v. Romano, 58 So.2d 436—Empire Lumber Co. v. Morris, 135 So. 508, 102 Fla. 226.

Ga.—Hardy v. Rylee, 186 S.E. 727, 182 Ga. 618.

Ill.—Nimmons v. Lyon & Healy, 197 Ill.App. 376.

Kan.—Jackson v. Jackson, 190 P.2d 426, 164 Kan. 391—Copp v. Zimmerman, 256 P. 145, 123 Kan. 461.

Me.—McKenzie v. Edwards, 33 A.2d 412, 140 Me. 33.

Mass.—Walsh v. Cornwell, 172 N.E. 855, 272 Mass. 555—Marden v. Howard, 136 N.E. 385, 242 Mass. 350.

Minn.—Prior Lake State Bank v. National Sur. Corp., 80 N.W.2d 612, 248 Minn. 383.

Miss.—State Highway Commission v. Wunderlich, 10 So.2d 453, suggestion of error overruled 11 So.2d 437, 194 Miss. 119—Sadler v. Glenn, 199 So. 305, 190 Miss. 112.

Mo.—Kline Cloak & Suit Co. v. Morris, 240 S.W. 96, 293 Mo. 478.
Rees v. Carpenter, App., 161 S.W. 2d 31—Citizens' Trust Co. v. Ferguson, 190 S.W. 395, 195 Mo.App. 330—Craig v. McNichols Furniture Co., App., 187 S.W. 793.

N.H.—Dube v. Bickford, 31 A.2d 64, 92 N.H. 362.

N.Y.—Leonard v. New York, etc., Tel. Co., 41 N.Y. 544, 1 Am.R. 446.

Ohio.—Kuerze v. Western German Bank, 31 Ohio C.A. 296.

Okl.—Brougham v. Independent Potash & Chemical Co., 199 P.2d 211, 200 Okl. 659—Riverside Oil & Refining Co. v. Lynch, 243 P. 967, 114 Okl. 198—In re Carney's Guardianship, 237 P. 111, 110 Okl. 165—Cromwell v. Hamilton, 214 P. 694, 89 Okl. 225.

Pa.—Stewart v. Metropolitan Life Ins. Co., 30 A.2d 314, 346 Pa. 314—Newman v. North River Ins. Co. of New York, 171 A. 601, 314 Pa. 428.
Mansfield's Est., 13 Pa.Dist. 14.
Contra In re Nixon's Estate, 159 A. 172, 104 Pa.Super. 506.
4 C.J. p 890 note 92.

In Oregon

(1) In a law action, findings of referee both in circuit court and in supreme court, are deemed tantamount to verdict of a jury.
Or.—Ward v. Town Tavern, 228 P.2d 216, 191 Or. 1.

(2) In equity suits report of referee is merely advisory, and, on appeal, it is duty of supreme court to try suit de novo notwithstanding referee's findings.
Or.—Ward v. Town Tavern, supra.

66. Ark.—Griffin v. Anderson Tully Co., 121 S.W. 297, 91 Ark. 292, 134 Am.S.R. 73.

Cal.—In re Hart's Estate, 77 P.2d 1082, 11 C.2d 89.

Me.—McKenzie v. Edwards, 33 A.2d 412, 140 Me. 33.

Minn.—Prior Lake State Bank v. National Sur. Corp., 80 N.W.2d 612, 248 Minn. 383.

N.Y.—Standard Improvement Corporation of Westchester County v. Village of Ardsley, 19 N.Y.S.2d 3, 259 App.Div. 824, appeal denied 20 N.Y.S.2d 669, 259 App.Div. 917, modified on other grounds 35 N.E. 2d 506, 285 N.Y. 843.
4 C.J. p 890 note 93.

67. Ala.—Sykes v. Poteet, 197 So. 884, 240 Ala. 122—Bidwell v. Johnson, 70 So. 685, 195 Ala. 547.

Ark.—Oliver v. Martin, 195 S.W.2d 338, 210 Ark. 271.

Cal.—Noonan v. Hood, 49 C. 293.
Madison v. Moon, App., 306 P.2d 15.

Conn.—Hill v. Jones, 170 A. 154, 118 Conn. 12—Liefeld v. Coffin, 130 A. 576, 103 Conn. 279.

Del.—Omar Oil & Gas Co. v. Mackenzie Oil Co., 138 A. 392, 3 W.W.Harr. 259.

Hawaii.—In re Estate of Lee Chuck, 33 Hawaii 445.

Kan.—Potts v. Lux, 214 P.2d 277, 168 Kan. 387.

Me.—Bickford v. Bragdon, 102 A.2d 412, 149 Me. 324—Woodworth v. Lafoy, 30 A.2d 20, 139 Me. 297—Blanchette v. Miles, 27 A.2d 396, 139 Me. 70—Inhabitants of Town of Mexico v. Inhabitants of Moose River Plantation, 26 A.2d 657, 139 Me. 8—Leonard v. Carmichael, 21 A.2d 410, 138 Me. 33—Poirier v. Venus Shoe Mfg. Co., 3 A.2d 116, 136 Me. 100—Leavens v. Metropolitan Life Ins. Co., 197 A. 309, 135 Me. 365—Hincks Coal Co. v. Milan, 193 A. 243, 135 Me. 203—Ingraham v. Berliawsky, 147 A. 227, 128 Me. 307.

Mass.—Sykes v. Smith, 132 N.E.2d 168, 333 Mass. 560—Fauci v. Denehy, 127 N.E.2d 477, 332 Mass. 691—Vitelli v. Ryder, 106 N.E.2d 541, 329 Mass. 119—Ramos v. Mello, 103 N.E.2d 709, 328 Mass. 320—Capaldo v. Connolly, 90 N.E.2d 846, 325 Mass. 764—Town of Dartmouth v. Silva, 90 N.E.2d 832, 325 Mass. 401—Holmes v. Johnson, 86 N.E.2d 924, 324 Mass. 450—Patterson v. Simonds, 86 N.E.2d 630, 324 Mass. 344—Weltshe v. Graf, 82 N.E.2d 795, 323 Mass. 498—Sawyer v. Shader, 75 N.E.2d 647, 321 Mass. 725—Burns v. Thomas Cook & Sons, 58 N.E.2d 150, 317 Mass. 398—Weiss v. Balaban, 53 N.E.2d 83, 315 Mass. 390—Harsha v. Bowles, 51 N.E.2d 454, 314 Mass. 738—Ingram v. Eichel's Spa, 46 N.E.2d 583, 313 Mass. 109—Saltman v. Smith, 46 N.E.2d 550, 313 Mass. 135—Cappy's Inc. v. Dorgan, 46 N.E.2d 538, 313 Mass. 170—Jubinville v. Jubinville, 46 N.E.2d 533, 313 Mass. 103, 144 A.L.R. 1008—Buckman v. Elm Hill Realty Co. of Peabody, 42 N.E.2d 814, 312 Mass. 10—Cohen v. U. S. Trust Securities Corp., 40 N.E.2d 282, 311 Mass. 152—Shoobridge v. Callahan, 39 N.E.2d 429, 310 Mass. 632—Elias v. Steffo, 37 N.E.2d 991, 310 Mass. 280—Snow v. Merchants Nat. Bank of New Bedford, 35 N.E. 2d 213, 309 Mass. 354—Dow v. Brookline Trust Co., 31 N.E.2d 13, 308 Mass. 90—Banks v. Everett Nat. Bank, 25 N.E.2d 177, 305 Mass. 178—Jones v. Fraser, 25 N.E.2d 161, 305 Mass. 147—Oldfield v. Smith, 24 N.E.2d 544, 304 Mass. 590—Wadsworth v. Richenburg, 22 N.E.2d 108, 303 Mass. 548—Killoren v. Hernan, 20 N.E.2d 946, 303 Mass. 93—Hobart-Farrell Plumbing & Heating Co. v. Klayman, 19 N.E.2d 805, 302 Mass. 508—Bumpus v. Church, 19 N.E.2d 716, 302 Mass. 419—Rosman v. Rosman, 19 N.E.2d 41, 302 Mass. 158—Dickman v. McClellan, 18 N.E. 2d 430, 302 Mass. 87—Zytka v. Dmochowski, 18 N.E.2d 332, 302 Mass. 63, 120 A.L.R. 470—La Chance v. Rubashe, 17 N.E.2d 685, 301 Mass. 488—Dodge v. Anna

They have been compared to a document in that they present a question of interpretation to the court;[68] and will be accepted by the appellate court subject to the latter's power and duty to draw such inferences and deductions from the facts found as it feels are warranted.[69]

Jaques Hospital, 17 N.E.2d 308, 301 Mass. 431—Shulkin v. Shulkin, 16 N.E.2d 644, 301 Mass. 184, 118 A.L.R. 629—New England Mica Co. v. Waltham Factories, 16 N.E.2d 81, 301 Mass. 56—Gerace v. Gerace, 16 N.E.2d 6, 301 Mass. 14, 117 A.L.R. 1459—MacLeod v. Davis, 195 N.E. 315, 290 Mass. 335—Horvitz v. Golen, 192 N.E. 925, 288 Mass. 375—Currier v. Essex Co., 189 N.E. 835, 286 Mass. 192—Robinson v. Lyndonville Creamery Ass'n, 188 N. E. 248, 284 Mass. 396—Rudnick v. Greenfield, 179 N.E. 591, 278 Mass. 138—Brine v. Parker, 171 N.E. 324, 271 Mass. 86—Westminster Nat. Bank v. Graustein, 170 N.E. 621, 270 Mass. 565, certiorari denied Graustein v. Westminster Nat. Bank, 51 S.Ct. 80, 282 U.S. 876, 75 L.Ed. 773—Lunn & Sweet Co. v. Wolfman, 167 N.E. 641, 268 Mass. 345—Sinclair v. Holden, 158 N.E. 753, 261 Mass. 412—Bartlett v. The Roosevelt, 155 N.E. 459, 258 Mass. 494—Murphy v. Mitchell, 149 N.E. 603, 254 Mass. 18—Ryan v. Hayes, 137 N.E. 344, 243 Mass. 168—Aitchison v. Chamberlain, 136 N.E. 818, 243 Mass. 16—Rutan v. Coolidge, 136 N.E. 257, 241 Mass. 584—Kronoff v. City of Worcester, 125 N.E. 394, 234 Mass. 254—Attorney General v. Armstrong, 120 N.E. 678, 231 Mass. 196—Baush Mach. Tool Co. v. Hill, 120 N.E. 188, 231 Mass. 30—Gilpin v. Brooks, 115 N.E. 421, 226 Mass. 322.

Mo.—Goetz v. Piel, 26 Mo.App. 634.

N.H.—A. C. Erisman Co. v. Laconia Furniture Co., 177 A. 409, 87 N.H. 483—Sonabend v. Charron, 169 A. 589, 86 N.H. 386—Weeks v. Morin, 153 A. 471, 85 N.H. 9.

N.J.—Peppler v. Roffe, 11 A.2d 82, 127 N.J.Eq. 9—Howes v. Howes, 4 A.2d 282, 125 N.J.Eq. 272.

N.M.—Sandoval v. Sandoval, 294 P.2d 278, 61 N.M. 38.

N.Y.—Stewart v. Stone, 28 N.E. 595, 127 N.Y. 500, 14 L.R.A. 215—Stevens v. New York, 84 N.Y. 296—Kerr v. McGuire, 28 N.Y. 446.

Horton v. Niagara, Lockport & Ontario Power Co., 247 N.Y.S. 741, 231 App.Div. 386.

In re Reilly's Estate, 300 N.Y.S. 1285, 165 Misc. 214.

Pa.—In re Reichert's Estate, 51 A.2d 615, 356 Pa. 269—Newman v. North River Ins. Co. of New York, 171 A. 601, 314 Pa. 428.

Davis v. Davis, 119 A.2d 596, 180 Pa.Super. 404—Orsuto v. Orsuto, 91 A.2d 284, 171 Pa.Super. 532—Wiggins v. Wiggins, 90 A.2d 275, 171 Pa.Super. 298.

In re Haas' Estate, 13 Pa.Dist. 401.

Snyder v. Snyder, Com.Pl., 20 Leh.L.J. 12.

S.C.—Riley v. Berry, 199 S.E. 866, 189 S.C. 4.

Vt.—Houghton v. Cook, 100 A. 115, 91 Vt. 197.

Wis.—Valentine v. Patrick Warren Const. Co., 56 N.W.2d 860, 263 Wis. 143.

4 C.J. p 890 note 94—37 C.J. p 1260 note 46—66 C.J. p 314 note 46 [a] (1).

Reports of referees are only open to attack on certain definite lines and according to certain definite procedure.

Me.—Depositors Trust Co. v. Bruneau, 66 A.2d 86, 144 Me. 142.

Law and evidence reviewable under statute

(1) Statute providing that in cases tried on facts without a jury, appellate court shall review case on both law and evidence as in suits of an equitable nature, and that judgment will not be set aside unless clearly erroneous, is applicable to cases referred to, and tried by, a referee.

Mo.—Baerneldt & Honig Const. Co. v. Dye Candy Co., Inc., 212 S.W.2d 65, 357 Mo. 1072.

Nieberding v. E. M. Stivers Co., App., 227 S.W.2d 462.

(2) The former rule that appellate courts were limited in reviewing the findings of a referee to the same extent that they are limited in reviewing a jury verdict no longer prevails and the appellate court now reviews the law and the evidence.

Mo.—McKinley v. Durbin, App., 231 S.W.2d 286.

In Illinois

(1) Findings of a master are merely advisory and will not control judgment of reviewing court.

Ill.—Layton v. Layton, 126 N.E.2d 225, 5 Ill.2d 506—Pfaff v. Petrie, 71 N.E.2d 345, 396 Ill. 44—Rydalek v. Rydalek, 71 N.E.2d 19, 396 Ill. 65—Kosakowski v. Bagdon, 16 N.E.2d 745, 369 Ill. 252—Stasch v. Stasch, 189 N.E. 891, 355 Ill. 581—Mallinger v. Shapiro, 161 N.E. 104, 329 Ill. 629—Hoelscher v. Hoelscher, 153 N.E. 662, 322 Ill. 406—Chechik v. Koletsky, 143 N.E. 66, 311 Ill. 433, 33 A.L.R. 742.

Brock v. Derry, 66 N.E.2d 182, 328 Ill.App. 400—Bailer v. McCarthy, 46 N.E.2d 105, 317 Ill.App. 215—Bowen v. Kraemer, 260 Ill. App. 454—Chicago Title & Trust Co. v. Central Trust Co. of Illinois, 224 Ill.App. 474, reversed on other grounds 144 N.E. 165, 312 Ill. 396.

4 C.J. p 890 note 92 [b]—21 C.J. p 624 note 91.

(2) They do not have the force of a jury verdict in a suit where a jury trial is a matter of right.

Ill.—Schnoor v. Terlep, 77 N.E.2d 140, 399 Ill. 101—Thatcher v. Kramer, 180 N.E. 434, 347 Ill. 601—Chechik v. Koletsky, supra.

(3) Such findings are, however, entitled to due weight in reviewing court.

Ill.—Maley v. Burns, 126 N.E.2d 695, 6 Ill.2d 11—Johnson v. Johnson, 115 N.E.2d 617, 1 Ill.2d 319—Stowell v. Satorius, 109 N.E.2d 734, 413 Ill. 482—Kolze v. Fordtran, 107 N.E.2d 686, 412 Ill. 461—Schnoor v. Terlep, 77 N.E.2d 140, 339 Ill. 101—Bydalek v. Bydalek, 71 N.E.2d 19, 396 Ill. 65—Newman v. Youngblood, 69 N.E.2d 309, 394 Ill. 617—Chambers v. Appel, 64 N.E.2d 511, 392 Ill. 294—Staufenbiel v. Staufenbiel, 58 N.E.2d 569, 388 Ill. 511—Osgood v. Zieve, 57 N.E.2d 869, 388 Ill. 226—Kawszewicz v. Kawszewicz, 53 N.E. 2d 386, 385 Ill. 461—Zarembski v. Zarembski, 48 N.E.2d 394, 382 Ill. 622—Green v. Gawne, 47 N.E.2d 86, 382 Ill. 363—Fisher v. Burgiel, 46 N.E.2d 380, 382 Ill. 42—McGlaughlin v. Pickerel, 46 N.E.2d 368, 381 Ill. 574—Mruk v. Mruk, 41 N.E.2d 490, 379 Ill. 394—Brainard v. Brainard, 26 N.E.2d 856, 373 Ill. 459—Kosakowski v. Bagdon, 16 N.E.2d 745, 369 Ill. 252—Pasedach v. Auw, 4 N.E.2d 841, 364 Ill. 491.

Boucher v. Nuccio, App., 139 N.E. 2d 855—Robison v. Moorefield, 107 N.E.2d 278, 347 Ill.App. 508—Eyer v. Read, 102 N.E.2d 754, 345 Ill. App. 293—Feltinton v. Rudnik, 85 N.E.2d 858, 337 Ill.App. 286—Ziegler v. Obernuefemann, 55 N.E.2d 539, 323 Ill.App. 317—People v. Roseland State Sav. Bank, 48 N.E. 2d 600, 318 Ill.App. 495—Pidot v. Zenith Radio Corp., 31 N.E.2d 385, 308 Ill.App. 197—Borovansky v. Para, 28 N.E.2d 174, 306 Ill.App. 60.

68. Mass.—Jones v. Clark, 172 N.E. 250, 272 Mass. 146.

69. Mass.—Swaney v. Clark-Wilcox Co., 120 N.E.2d 281, 331 Mass. 471—Vitelli v. Ryder, 106 N.E.2d 541, 329 Mass. 119—Garfield v. Garfield, 99 N.E.2d 645, 327 Mass. 529—Town of Dartmouth v. Silva, 90 N.E.2d 832, 325 Mass. 401—Murray v. Bateman, 51 N.E.2d 954, 315 Mass. 113—Leavitt v. Elkin, 49 N. E.2d 1020, 314 Mass. 396—Hanifin v. C. & R. Const. Co., 48 N.E.2d 913, 313 Mass. 651—Beaman-Marvell Co. v. Marvell, 25 N.E.2d 473, 305 Mass. 246—U. S. Fidelity & Guaranty Co. v. English Const. Co., 20 N.E.2d 939, 303 Mass. 105—

For obvious reasons the findings or report will not be disturbed where the preponderance of evidence is in favor thereof,[70] or where there is no evidence in conflict therewith.[71] Furthermore, the findings will not be disturbed when supported by sufficient[72] or substantial[73] or competent[74] or credible[75] evidence; when reasonably supported by the evidence,[76] when there is evidence to support them,[77]

Jason v. Jason, 193 N.E. 554, 289 Mass. 72—Conlin Bus Lines v. Old Colony Coach Lines, 185 N.E. 350, 282 Mass. 498—Robinson v. Pero, 172 N.E. 599, 272 Mass. 482—Prudential Trust Co. v. Brown, 171 N. E. 42, 271 Mass. 132—Cohen v. Bailly, 165 N.E. 7, 266 Mass. 39—A. T. Stearns Lumber Co. v. Howlett, 157 N.E. 82, 260 Mass. 45, 52 A.L.R. 1125—Commissioner of Banks v. Cosmopolitan Trust Co., 148 N.E. 609, 253 Mass. 205, 41 A.L.R. 658—Anagnosti v. Almy, 147 N.E. 854, 252 Mass. 492—Nichols v. Atherton, 145 N.E. 277, 250 Mass. 215—Caines v. Sawyer, 143 N.E. 326, 248 Mass. 368—Forman v. Gadouas, 142 N.E. 87, 247 Mass. 207—Glover v. Waltham Laundry Co., 127 N.E. 420, 235 Mass. 330—Bearse v. Lebowich, 125 N.E. 621, 234 Mass. 492.

The supreme judicial court had duty to draw inferences from facts found by master and to reach the general conclusion, which the reported facts supported and warranted.

Mass.—La Chance v. Rubashe, 17 N.E.2d 685, 301 Mass. 488.

70. Fla.—Broward v. Roche, 21 Fla. 465.

4 C.J. p 891 note 95.

71. N.C.—Faison v. Board of Com'rs of Duplin County, 88 S.E. 761, 171 N.C. 411.

72. Me.—MacQuinn v. Patterson, 85 A.2d 183, 147 Me. 196.

Mass.—Wade v. Buchanan, 28 N.E.2d 421, 306 Mass. 318—Westminster Nat. Bank v. Graustein, 170 N.E. 621, 270 Mass. 565, certiorari denied Graustein v. Westminster Nat. Bank, 51 S.Ct. 80, 282 U.S. 876, 75 L.Ed. 773—Boston & M. R. R. v. Cate, 150 N.E. 210, 254 Mass. 248—Gamwell v. Bigley, 145 N.E. 47, 250 Mass. 140—Welch v. Haley, 112 N. E. 860, 224 Mass. 261.

N.Y.—Callaghan v. Rogers, 24 N.Y.S. 2d 390, 260 App.Div. 1050, reargument denied 25 N.Y.S.2d 998, 261 App.Div. 826, appeal denied, 32 N.E. 2d 834, 285 N.Y. 855.

In re Machinery Builders, 47 N.Y. S.2d 735.

Pa.—Stewart v. Metropolitan Life Ins. Co., 30 A.2d 314, 346 Pa. 314.

Howard v. Siegel, 184 A. 272, 121 Pa.Super. 519.

In re Christie's Estate, 71 Pa. D. & C. 209.

4 C.J. p 891 note 96.

73. Kan.—Potts v. Lux, 214 P.2d 277, 168 Kan. 387.

Ky.—Purcell v. Purcell, 198 S.W.2d 43, 303 Ky. 478.

Mo.—Grand Lodge of United Brothers of Friendship and Sisters of Mysterious Ten v. Massachusetts Bonding & Insurance Co., 25 S.W. 2d 783, 324 Mo. 938—St. Charles Sav. Bank v. Denker, 204 S.W. 902—Weber Implement Co. v. Acme Harvesting Mach. Co., 187 S.W. 874, 268 Mo. 363.

Houchin v. Ward Stores, App., 167 S.W.2d 650—Christopher & Simpson Architectural Iron & Foundry Co. v. E. A. Steininger Const. Co., 205 S.W. 278, 200 Mo. App. 33—Craig v. McNichols Furniture Co., App., 187 S.W. 793—Father Matthew, etc., Soc. v. Fitzwilliam, 12 Mo.App. 445.

Vt.—Smith & Nye v. Munsel, 110 A. 12, 94 Vt. 201.

4 C.J. p 891 note 97.

74. Me.—Wedge v. Butler, 6 A.2d 46, 136 Me. 189.

Miss.—Crawley v. Ivy, 117 So. 257, 150 Miss. 827.

Pa.—In re Strock's Estate, 56 Pa. Super. 32.

75. Me.—Melanson v. Reed Bros., 76 A.2d 853, 146 Me. 16—O'Connor v. Wassookeag Preparatory School, 46 A.2d 861, 142 Me. 86—Connolly v. Serunian, 21 A.2d 830, 138 Me. 80—Brann v. City of Ellsworth, 19 A.2d 425, 137 Me. 316—Wentworth v. Whitney, 174 A. 461, 133 Me. 141.

76. Cal.—Bishop v. Kelley, 224 P.2d 814, 100 C.A.2d 775.

Okl.—Brougham v. Independent Potash & Chemical Co., 199 P.2d 211, 200 Okl. 659—Riverside Oil & Refining Co. v. Lynch, 243 P. 967, 114 Okl. 198—In re Carney's Guardianship, 237 P. 111, 110 Okl. 165—Cromwell v. Hamilton, 214 P. 694, 89 Okl. 225.

4 C.J. p 891 note 98.

77. Ala.—Gay v. Metcalf, 66 So. 668, 189 Ala. 42.

Conn.—Corriveau v. Jenkins Bros., 132 A.2d 67, 144 Conn. 383.

Ga.—Crim v. Alston, 151 S.E. 807, 169 Ga. 852.

Me.—MacQuinn v. Patterson, 85 A.2d 183, 147 Me. 196—Knowlton v. John Hancock Mut. Life Ins. Co., 79 A. 2d 581, 146 Me. 220—Robinson v. Le Sage, 75 A.2d 447, 145 Me. 300—Dubie v. Brann, 73 A.2d 217, 145 Me. 170, 146 Me. 455—Flood v. Earle, 71 A.2d 55, 145 Me. 24—Depositors Trust Co. v. Bruneau, 66 A.2d 86, 144 Me. 142—Brown v. McCaffrey, 60 A.2d 792, 143 Me. 221—Courtenay v. Gagne, 43 A.2d 817, 141 Me. 302—Bernstein v. Metropolitan Life Ins. Co. of New York, 34 A.2d 682, 139 Me. 388—McKenzie v. Edwards, 33 A.2d 412, 140 Me. 33—Pearl v. Cumberland Sand & Gravel Co., 31 A.2d 413, 139 Me. 411—Woodworth v. Lafoy, 30 A.2d 20, 139 Me. 297—Inhabitants of Town of Mexico v. Inhabitants of Moose River Plantation, 26 A.2d 657, 139 Me. 8—Davis v. Simpson, 23 A.2d 320, 138 Me. 137—Wood v. Balzano, 15 A.2d 188, 137 Me. 87—Shaw v. Bridge, 200 A. 505, 135 Me. 516—Leavens v. Metropolitan Life Ins. Co., 197 A. 309, 135 Me. 365—Richardson v. Lalumiere, 184 A. 392, 134 Me. 224—Hawkins v. Maine & New Hampshire Theaters Co., 164 A. 628, 132 Me. 1—Hovey v. Bell, 91 A. 844, 112 Me. 192.

Mass.—New England Trust Co. v. Paine, 59 N.E.2d 263, 317 Mass. 542, 158 A.L.R. 262.

Mo.—Commercial Bank v. American Bonding Co., 187 S.W. 99, 194 Mo. App. 224.

N.H.—Dodge v. Stickney, 62 N.H. 330.

N.Y.—In re National Surety Co., 36 N.E.2d 119, 286 N.Y. 216—Matthews v. Truax, Carsley & Co., 191 N.E. 714, 265 N.Y. 6—Harris v. Wade, 61 N.Y. 630—Ashley v. Marshall, 29 N.Y. 494—Ball v. Loomis, 29 N.Y. 412.

Van Dyne v. Nelson, 245 N.Y.S. 389, 230 App.Div. 577—Brady v. Erlanger, 177 N.Y.S. 301, 188 App. Div. 728.

Southern Kraft Corp. v. Standard Capital Corp., 40 N.Y.S.2d 947, modified on other grounds 51 N.Y.S. 2d 571, 268 App.Div. 959, affirmed 63 N.E.2d 121, 294 N.Y. 937, motion denied 63 N.E.2d 710, 294 N.Y. 976.

N.C.—Maxwell v. Norfolk & Western Ry. Co., 181 S.E. 248, 208 N.C. 397—Moore v. Watauga & Y. R. Co., 92 S.E. 361, 173 N.C. 726—W. M. Ritter Lumber Co. v. Montvale Lumber Co., 85 S.E. 438, 169 N.C. 80—Spencer v. Bynum, 85 S.E. 216, 169 N.C. 119.

Okl.—Hale v. Marshall, 153 P. 167, 52 Okl. 688.

Pa.—Newman v. North River Ins. Co. of New York, 171 A. 601, 314 Pa. 428.

In re Haas' Estate, 13 Pa.Dist. 401.

Vt.—Nelson & Wallace v. Gibson, 98 A. 1006, 90 Vt. 423.

Va.—Mitchell v. Cox, 52 S.E.2d 105, 189 Va. 236.

Wis.—Tollefson v. Tollefson, 176 N. W. 879, 171 Wis. 149.

4 C.J. p 891 notes 99, 1.

or where there is evidence sufficient to go to the jury,[78] where the evidence is not reported[79] or is doubtful and there is no reason for belief that the reviewing court could reach a more satisfactory conclusion,[80] where a finding either way is warranted by the evidence,[81] where the court is unable to say that it is not fully justified by the evidence,[82] where the evidence is not such as to compel a conclusion to the contrary,[83] or where the findings are apparently fair and just;[84] but should be upheld instead unless manifestly and palpably wrong[85] or wholly unsupported by the evidence,[86] unless plainly not warranted by any reasonable view of the evidence,[87] unless a clear and decisive error has been committed injurious to the party objecting,[88] or unless fraud or corruption is shown.[89] The fact that the reviewing court might have found differently does not authorize it to set aside the findings.[90]

A master's findings have been held decisive, although his general conclusion is inconsistent with some subordinate finding,[91] and the fact that the

78. Pa.—White v. Wright, 36 A. 154, 179 Pa. 75.

79. Mass.—MacDonald v. Goff, 107 N.E.2d 198, 329 Mass. 220—New England Inv. Corp. v. Sandler, 107 N.E.2d 16, 329 Mass. 230—De Angelis v. Palladino, 61 N.E.2d 117 318 Mass. 251—Fist v. Bower, 116 N.E. 568, 227 Mass. 315—Carter v. Exchange Trust Co., 108 N.E. 359, 220 Mass. 543—Crawford v. Nies, 107 N.E. 382, 220 Mass. 61—McMahon v. Brown, 106 N.E. 576, 219 Mass. 23—Goldenberg v. Taglino, 105 N.E. 883, 218 Mass. 357.
40 C.J. p 515 note 26 [b].

80. Mo.—Bird v. Fox, App., 193 S.W. 941.
N.H.—Town of Hampton v. Town of Seabrook, 95 A.2d 133, 98 N.H. 84.
4 C.J. p 892 note 3.

81. Mass.—Perry v. Pye, 102 N.E. 653, 215 Mass. 403.

82. Mass.—D'Urso v. Leone, 130 N. E. 223, 238 Mass. 58.
4 C.J. p 892 note 5.

83. Ala.—Mabry v. Ray, 95 So. 6, 208 Ala. 615—Grand Bay Land Co. v. Simpson, 92 So. 789, 207 Ala. 303—Porter v. Henderson, 86 So. 531, 204 Ala. 564
Mass.—Peavey v. Moran, 152 N.E. 360, 256 Mass. 311.
N.Y.—Metcalf v. Baker, 57 N.Y. 662.
4 C.J. p 892 note 6.

Reasonable doubt as to the correctness of the register's finding of facts orally testified to will be resolved in its support.
Ala.—Southern Ry. Co. v. Clark, 126 So. 855, 220 Ala. 555.

84. N.Y.—Deam v. Driggs, 31 N.Y.S. 548, 82 Hun 561, affirmed 40 N.E. 163, 145 N.Y. 595.

85. Ala.—Staley v. International Agr. Corp., 194 So. 168, 239 Ala. 98—Stumpf v. Wiles, 179 So. 201, 235 Ala. 317—Clark v. Whitfield, 119 So. 631, 218 Ala. 593—Bailes v. Bailes, 114 So. 185, 216 Ala 569—Nelson v. Atkins, 109 So. 166, 215 Ala. 76—Luverne Land Co. v. Bank of Luverne, 75 So. 461, 200 Ala. 85.
Fla.—Jones v. McMahon, 151 So. 712, 113 Fla. 394—Snell Isle v. Avery, 137 So. 10, 103 Fla. 90.
Ill.—Wojtas v. Rachel, 267 Ill.App. 148.
Me.—Knowlton v. John Hancock Mut. Life Ins. Co., 79 A.2d 581, 146 Me. 220.
Mass.—Turgeon v. Turgeon, 113 N.E. 2d 821, 330 Mass. 402—Black v. Parker Mfg. Co., 106 N.E.2d 544, 329 Mass. 105—Broderick v. Broderick, 91 N.E.2d 772, 325 Mass. 579—Mt. Tom Motor Lines v. McKesson & Robbins, 89 N.E.2d 3, 325 Mass. 45—Briggs v. Larson, 88 N.E. 2d 899, 325 Mass. 757, followed in 88 N.E.2d 900, 325 Mass. 757—Shelburne Shirt Co. v. Singer, 76 N.E.2d 762, 322 Mass. 262—Brennan v. Bonnoyer, 66 N.E.2d 17, 319 Mass. 307—Vigeault v. Dr. Hewson Dental Co., 15 N.E.2d 185, 300 Mass. 223, 129 A.L.R. 95—Jenney v. Hynes, 184 N.E. 444, 282 Mass. 182—Carter v. Sullivan, 183 N.E. 343, 281 Mass. 217—Knowlton v. Fourth-Atlantic Nat. Bank, 171 N. E. 721, 271 Mass. 343—Macdonald v. Page Co., 162 N.E. 364, 264 Mass. 199—Cronan v. Commissioner of Banks, 150 N.E. 193, 254 Mass. 444—Libby, McNeill & Libby v. Libby, 135 N.E. 120, 241 Mass. 239—Glover v. Waltham Laundry Co., 127 N.E. 420 235 Mass. 330—Tileston v. Tileston, 125 N.E. 555, 234 Mass. 530—Fellows v. Hunt, 116 N.E. 505, 227 Mass. 323—Wentworth v. Manhattan Market Co., 106 N.E. 118, 218 Mass. 91.
Okl.—Central Light & Fuel Co. v. State Board of Equalization, 151 P. 1170, 51 Okl. 407.
Pa.—In re Seidman's Estate, 104 A. 799, 261 Pa. 549.
Philippine.—Tan Siu Pic v. Tan Siuco, 5 Philippine 516.
4 C.J. p 892 note 8.

86. Ill.—Niehaus v. Niehaus, 120 N. E.2d 66, 2 Ill.App.2d 434.
N.Y.—Russell v. Burton, 66 Barb. 539. Hartford, etc., R. Co. v. New York, etc., R. Co., 26 N.Y.Super. 411.
Pa.—In re Harbaugh's Estate, 182 A. 394, 320 Pa. 209.
Va.—Monk v. Walters, 78 S.E.2d 202, 195 Va. 246—Kramer Bros. Co. v. Powers, 77 S.E.2d 468, 195 Va. 131—Rorer v. Taylor, 27 S.E.2d 923, 182 Va. 49—Lohman v. Sherwood, 26 S.E.2d 74, 181 Va. 594.
4 C.J. p 892 note 9.

87. Cal.—Williams v. Flinn & Treacy, 214 P. 1024, 61 C.A. 352.
Conn.—City of Bridgeport v. Ætna Indemnity Co., 105 A. 680, 92 Conn. 277.
Mass.—Union Old Lowell Nat. Bank v. Paine, 61 N.E.2d 666, 318 Mass. 313.
N.Y.—Ball v. Loomis, 29 N.Y. 412.
W.Va.—Snyder v. Lane, 89 S.E.2d 607—Darby v. Morrison, 163 S.E. 819, 112 W.Va. 167—Kelly v. Wellsburg & S. L. R. Co., 92 S.E. 433, 80 W.Va. 306.

88. Mass.—Macdonald v. Page Co., 162 N.E. 364, 264 Mass. 199.
Pa.—Zentmyer v. Zentmyer, 69 Pa. Super. 496.
In re Mansfield's Estate, 13 Pa. Dist. 14—In re Kelly's Estate, 12 Pa.Dist. 718.
R.I.—William H. Low Estate Co. v. Lederer Realty Corp., 98 A. 180 39 R.I. 422.
4 C.J. p 892 note 10.

89. Ill.—Williams v. Lindblom, 45 N.E. 245, 163 Ill. 346.
Me.—Kennebec Housing Co. v. Barton, 120 A. 56, 122 Me. 374.
Pa.—In re Mansfield's Estate, 13 Pa. Dist. 14.
4 C.J. p 892 note 11.

90. Mass.—Wood v. Baldwin, 156 N.E. 846, 259 Mass. 499.
4 C.J. p 892 note 12.

91. Mass.—Potter Press v. C. W. Potter, Inc., 22 N.E.2d 68, 303 Mass. 485—Craig v. Warner, 103 N.E. 1032, 216 Mass. 386.

Absence of specific finding
Where it is agreed that the facts found are correct, the general conclusion found by the master will be sustained, where consistent therewith, despite the total absence of any specific finding on some particular fact which might, if specifically found against appellee, have demanded a different general finding.
Ill.—People v. La Salle Street Trust & Savings Bank, 225 Ill.App. 227.
N.Y.—Murray v. Barney, 34 Barb. 336.

referee had difficulty in coming to a conclusion does not invalidate it.[92]

When findings or report will be reviewed. While the court on appeal is reluctant to disturb findings,[93] they are not absolutely binding on it under all circumstances or in all kinds of proceedings,[94] and the reviewing court will look into the facts and may reverse where the evidence on which the findings are based is documentary,[95] or where the facts are undisputed or established, or the findings merely deductions from undisputed testimony, such findings being of no greater weight than conclusions of law,[96] when the findings or report are against the

Consideration of findings as a whole

A finding of a master must be taken in connection with his other findings.

Mass.—Fist v. Bower, 116 N.E. 568, 227 Mass. 315.

Effect of inconsistency

(1) Only where a general conclusion of fact purports to be based wholly on subsidiary facts specifically found and there is manifest inconsistency between the conclusion and the essential particular findings will the former be reversed.

Mass.—MacLeod v. Davis, 195 N.E. 315, 290 Mass. 335—Lawyers' Mortg. Inv. Corporation of Boston v. Paramount Laundries, 181 N.E. 262, 279 Mass. 314—Murphy v. Moore, 117 N.E. 918, 228 Mass. 565.

(2) In guests' actions for personal injuries against automobile driver, in absence of evidence before trial judge other than auditor's report, auditor's general finding that each guest, in exercise of due care, received bodily injuries as result of gross negligence of driver, required finding for guests unless subsidiary findings were necessarily inconsistent with general finding or warranted inference, contrary to general finding, that driver was not grossly negligent.

Mass.—Hebert v. Hicks, 13 N.E.2d 428, 299 Mass. 538.

92. N.H.—Searles v. Churchill, 43 A. 184, 69 N.H. 530.

93. Ill.—Meyer v. Levy, 249 Ill.App. 408—Hickey v. Barrett, 212 Ill.App. 86.

Mass.—Parsons v. Parsons, 119 N.E. 1020, 230 Mass. 544.

Mo.—Riley v. Citizens' Bank of Windsor, 272 S.W. 711, 220 Mo.App. 963.

N.Y.—Major v. Leary, 268 N.Y.S. 413, 241 App.Div. 606.

Va.—American Nat. Bank of Portsmouth v. Ames, 194 S.E. 784, 169 Va. 711, certiorari denied 58 S.Ct. 1046, 304 U.S. 577, 82 L.Ed. 1540.

94. Ala.—McNeil v. Hadden, 76 So. 2d 160, 261 Ala. 691—Sansom v. Sturkie, 18 So.2d 267, 245 Ala. 514—Dent v. Foy, 107 So. 210, 214 Ala. 243.

Cal.—Ex parte De La Roi, 164 P.2d 10, 27 C.2d 354.

Ill.—Noel State Bank v. Blakely Real Estate Imp. Corp., 53 N.E.2d 621, 321 Ill.App. 594.

Me.—Wedge v. Butler, 6 A.2d 46, 136 Me. 189.

Mass.—Sullivan v. Sullivan, 139 N.E. 2d 510—Ravage v. Johnson, 56 N.E.2d 25, 316 Mass. 558—Wilkie v. Randolph Trust Co., 55 N.E.2d 466, 316 Mass. 267—Harsha v. Bowles, 51 N.E.2d 454, 314 Mass. 738—Lamereaux v. Tula, 44 N.E.2d 789, 312 Mass. 359—Lewis v. Conrad & Co., 42 N.E.2d 732, 311 Mass. 541—Ferrone v. Rossi, 42 N.E.2d 564, 311 Mass. 591—Mahoney v. C. & R. Const. Co., 42 N.E.2d 255, 311 Mass. 558—Busteed v. Cambridge Sav. Bank, 26 N.E.2d 983, 306 Mass. 9—U. S. Fidelity & Guaranty Co. v. English Const. Co., 20 N.E.2d 939, 303 Mass. 105—Dodge v. Anna Jaques Hospital, 17 N.E.2d 308, 301 Mass. 431—Johnson v. Warner Bros. Circuit Management Corp., 17 N.E.2d 147, 301 Mass. 348—DeBoer v. Anthony, 15 N.E.2d 260, 300 Mass. 403—Cohen v. Silver, 178 N.E. 508, 277 Mass. 230.

Mich.—Crooker v. Crooker, 65 N.W. 2d 767, 340 Mich. 250.

Mo.—Hansen v. Duvall, 62 S.W.2d 732, 333 Mo. 59—St. Charles Sav. Bank v. Denker, 204 S.W. 902.

Willis v. Ozark Poultry & Egg Co., App., 235 S.W. 476—Raleigh Inv. Co. v. Bismarck-Bellevue Valley & W. Ry. Co., App., 232 S.W. 769—Raleigh Inv. Co. v. Cureton, App., 232 S.W. 766, certiorari quashed State ex rel. Raleigh Inv. Co. v. Allen, 242 S.W. 77, 294 Mo. 214—W. T. Rawleigh Medical Co. v. Woodward, App., 230 S.W. 647—Craig v. McNichols Furniture Co., App., 187 S.W. 793.

N.Y.—Union Dime Saving Inst. v. Osley, 4 Hun 657.

In re Machinery Builders, 47 N. Y.S.2d 735.

Pa.—Helon v. Helon, 43 A.2d 398, 157 Pa.Super. 587.

Tex.—Coke v. Bargaimes, Civ.App., 116 S.W.2d 904, error dismissed.

Right to except reserved

Findings of fact by a referee material to decision, unsupported by any evidence, constitute errors of law, reviewable by the supreme judicial court where there has been a reservation of the right to except.

Me.—Wedge v. Butler, 6 A.2d 46, 136 Me. 189.

Distinction between findings of master and of auditor or master in chancery

Findings of a master, although not having conclusiveness of findings of an auditor or a master in chancery, are entitled to consideration on appeal.

Pa.—Apelian v. Apelian, 169 A. 454, 111 Pa.Super. 208.

Statute authorizing review construed prospectively

A statute, providing for a review of the facts on appeal from the judgment on report of the referee, not containing anything to indicate intention that it should have other than a prospective operation, will be held inapplicable to an appeal already pending, in view of a constitutional provision inhibiting retrospective laws, and a general statutory provision declaring against retrospective effect of repeal of laws.

Mo.—Christine v. Luyties, 217 S.W. 55, 280 Mo. 416.

View of premises by referee

The referee's personal view of the premises involved in the dispute with the parties' consent adds strong support to any finding otherwise supported by competent evidence, but findings based on such view are not conclusive against all other evidence.

N.Y.—Stokes Bros. v. Drefs, 279 N. Y.S. 884, 244 App.Div. 524.

In Washington the report of a referee, appointed to make an accounting, is advisory only and the cause is triable de novo in both the superior court and the supreme court.

Wash.—Gerson v. Sussman, 30 P.2d 379, 176 Wash. 564.

95. Mass.—Keefe v. Johnson, 24 N. E.2d 520, 304 Mass. 572—New England Mica Co. v. Waltham Factories, 16 N.E.2d 81, 301 Mass. 56—E. C. Bowman & Son Co. v. Hern, 131 N.E. 334, 239 Mass. 200—Glover v. Waltham Laundry Co., 127 N.E. 420, 235 Mass. 330—Amory v. Trustees of Amherst College, 118 N.E. 933, 229 Mass. 374.

Va.—Boston v. Shackelford, 175 S.E. 625, 162 Va. 733.

4 C.J. p 892 note 15.

96. Me.—MacQuinn v. Patterson, 85 A.2d 183, 147 Me. 196.

Mass.—Leavitt v. Elkin, 49 N.E.2d 1020, 314 Mass. 396—MacLeod v. Davis, 195 N.E. 315, 290 Mass. 335—Hannah v. Frawley, 188 N.E. 385, 285 Mass. 28—Barrows v. Fuller, 148 N.E. 374, 253 Mass. 79—Glover v. Waltham Laundry Co., 127 N.E. 420, 235 Mass. 330.

Pa.—Fidelity-Philadelphia Trust Co. v. Lehigh Valley Coal Co., 143 A. 474, 294 Pa. 47.

evidence on which they purport to be based[97] or are based largely on incompetent evidence.[98]

Findings which are referable in a material degree to a mistake of law on misapplication of law to the facts,[99] which are beyond the scope of the submission,[1] which there is no evidence to support,[2] which, as to the ultimate conclusion, are based in part on facts not proved which may have influenced the decision,[3] will be set aside; and this is likewise true where it is apparent that the referee or master failed to find certain facts, not because he did not believe the witnesses, but because he considered the facts testified to by them as immaterial;[4] where the findings are conflicting in respect to material matters;[5] where the referee fails to have a bearing or give notice thereof[6] or fails to pass on questions submitted;[7] or where the trial court violates its duty in a referred case by refusal to hear argument and to hear or read testimony on a motion for new trial.[8]

General or particular character of findings. Findings which are general and comprehensive in nature enjoy, on appeal, the same finality and conclusiveness as findings of detailed or particular facts.[9]

§ 1666. On Conflicting Evidence

Where the evidence is conflicting, findings thereon will generally be sustained on appeal.

Findings on conflicting evidence are presumably correct[10] and as a general rule will be upheld by the reviewing court,[11] which will not disturb the findings where the preponderance of the evidence is in favor thereof,[12] where the findings are supported by the evidence,[13] where the evidence justifies a

Va.—Jacobs v. Jacobs, 35 S.E.2d 119, 184 Va. 281.
4 C.J. p 892 note 16.

97. Ark.—Philpot v. Shelby, 289 S. W. 781, 172 Ark. 1177.
Fla.—A. R. Harper Piano Co. v. Cumbie, 67 So. 141, 68 Fla. 356.
N.Y.—Strittmacher v. Salina, etc., Plankroad Co., 34 How.Pr. 74.
W.Va.—Snyder v. Lane, 89 S.E.2d 607—Thomas v. Collins, 117 S.E. 489, 93 W.Va. 678.
4 C.J. p 892 note 17.

98. N.Y.—Doolittle v. Stone, 8 N.Y. S. 605.

99. Me.—Kennebec Housing Co. v. Barton, 120 A. 56, 122 Me. 374.
Tex.—Richardson v. McCloskey, Com. App., 276 S.W. 680.
4 C.J. p 892 note 19.

1. Ala.—Jones v. Stollenwerck, 119 So. 844, 218 Ala. 637.
Me.—Kennebec Housing Co. v. Barton, 120 A. 56, 122 Me. 374.

2. N.Y.—Pollock v. Pollock, 71 N.Y. 137—Putnam v. Hubbell, 42 N.Y. 106.
O'Connor v. Graff, 173 N.Y.S. 730, 186 App.Div. 116.
N.C.—Holder v. Home Mortgage Co., 198 S.E. 589, 214 N.C. 128.
4 C.J. p 892 note 21.

Evidence insufficient to go to jury

Where a referee finds a material fact, in the absence of such evidence as would, under like circumstances, authorize a judge to submit the question to the jury, the finding is not conclusive.
N.Y.—Putnam v. Hubbell, 42 N.Y. 106.

3. N.Y.—Matthews v. Coe, 49 N.Y. 57.

4. Pa.—Schwab v. Bickel, 11 Pa. Super. 312.

5. Mass.—Dodge v. Anna Jaques Hospital, 17 N.E.2d 308, 301 Mass. 431—Rudnick v. Greenfield, 179 N. E. 591, 278 Mass. 138.
4 C.J. p 892 note 20.

6. Me.—Kennebec Housing Co. v. Barton, 120 A. 56, 122 Me. 374.

7. Me.—Kennebec Housing Co. v. Barton, supra.

8. Colo.—Michael v. Tracy, 62 P. 1048, 15 Colo.App. 312.

9. Mass.—MacLeod v. Davis, 195 N. E. 315, 290 Mass. 335.
N.H.—Eastern Electric Supply Co. v. Ekdahl Bros., 150 A. 549, 84 N. H. 339.

10. Ala.—Morrison v. Chambers, 103 So. 666, 212 Ala. 574—Citizens' Light, Heat & Power Co. v. Central Trust Co. of Illinois, 75 So. 330, 200 Ala. 18.
Ill.—See Sundstrom v. Weinrich, 207 Ill.App. 313.
Va.—Buckle v. Marshall, 10 S.E.2d 506, 176 Va. 139.
4 C.J. p 892 note 26.

Findings entitled to great weight

Because of his better opportunity to judge of the intelligence and credibility of witnesses and their knowledge of the subject under investigation, an auditor's findings of fact from disputed testimony, while not equivalent to the verdict of a jury or to a chancellor's findings, are entitled to great weight.
Pa.—In re Cameron's Estate, 130 A. 2d 173, 388 Pa. 25.

Referee to take testimony and report

The fact findings on conflicting evidence of a master appointed to take testimony and report, while persuasive, are not conclusive.
Ark.—Arkansas Valley Bank v. McClenahan, 25 S.W.2d 772, 181 Ark. 198.
Idaho.—Jackson v. Cowan, 196 P. 216, 33 Idaho 525.

11. Ala.—Gulf Red Cedar Co. v. Crenshaw, 65 So. 1010, 188 Ala. 606.
Fla.—Wilson v. T. A. Monk, Inc., 192 So. 407, 140 Fla. 797.
Ga.—Mitchell v. Turner, 9 S.E.2d 621, 190 Ga. 485—Wilkes v. Carter, 99 S.E. 860, 149 Ga. 240.
Ill.—Douglas Lumber Co. v. Chicago Home for Incurables, 43 N.E.2d 535, 380 Ill. 87.
Carbone v. Sparks, 111 N.E.2d 567, 350 Ill.App. 56. See Strawn v. Vipond, 191 Ill.App. 274.
Ky.—Theatre Realty Co. v. P. H. Meyer Co., 48 S.W.2d 1, 243 Ky. 346.
Me.—Robinson v. Great Atlantic & Pacific Tea Co., 28 A.2d 468, 139 Me. 194—Brann v. City of Ellsworth, 19 A.2d 425, 137 Me. 316.
Minn.—Prior Lake State Bank v. National Sur. Corp., 80 N.W.2d 612, 248 Minn. 383.
Mont.—In re McCue, 261 P. 341, 80 Mont. 537.
Neb.—Stutzman v. Bates, 225 N.W. 678, 118 Neb. 520.
Va.—Henderson v. Henderson, 58 S. E.2d 77, 190 Va. 805—Parksley Nat. Bank v. Parks, 200 S.E. 629, 172 Va. 169.
4 C.J. p 893 note 27—29 C.J. p 725 note 26.

12. N.Y.—Snyder v. O'Connor, 8 N. Y.S. 101.

13. Ga.—Williams v. Northern States Envelope Co., 82 S.E.2d 830, 210 Ga. 787—Lee v. Calhoun, 43 S.E.2d 156, 202 Ga. 297—Grant v. Grant, 41 S.E.2d 534, 202 Ga. 40—Carter v. Smith, McDonald & Co., 97 S.E. 857, 148 Ga. 648.
Mass.—Brodie v. Evirs, 49 N.E.2d 218, 313 Mass. 741.
Mo.—Kline Cloak & Suit Co. v. Morris, 240 S.W. 96, 293 Mo. 478.
N.M.—Purdy v. Tucker, 214 P.2d 766, 54 N.M. 86.
Va.—Surf Realty Corp. v. Standing, 78 S.E.2d 901, 195 Va. 431.
4 C.J. p 893 note 29.

doubt,[14] where the propriety of the findings depends entirely on the credibility of witnesses,[15] or where substantial justice appears to have been done,[16] unless they are manifestly erroneous,[17] unless the preponderance of evidence is such as to justify the inference that the findings were based on influences other than a due consideration of the evidence,[18] such as bias or partiality,[19] or unless the trial court would be justified in setting aside a verdict under the same or similar circumstances.[20]

This is so although the evidence would support a finding the other way,[21] or although the reviewing court might have found differently,[22] since it is not the function of the reviewing court in such case to pass on the weight of the evidence.[23] The fact that a party, appearing as a witness, specifically denies the truth of matters involved in his adversary's case[24] or that there is inconsistent testimony given by some of the witnesses[25] does not render inapplicable the general rules as to conclusiveness of the referee's findings.

§ 1667. Against Weight of Evidence

Where supported by evidence, findings merely against the apparent weight of the evidence need not be disturbed on appeal.

As is the case with the verdict of a jury, the findings of a master, a referee, or a commissioner when supported by the evidence are not to be set aside merely because they appear to be against the weight of the evidence.[26] They are not to be disturbed on that score unless clearly and manifestly against the weight of the evidence,[27] and the master's decision as to the weight of testimony will rarely be rejected.[28]

Nevertheless, the reviewing court will not hesitate to examine into the sufficiency and preponderance of evidence when a proper occasion arises;[29] and if the findings are clearly and manifestly not sustained by the evidence,[30] or are against the

14. Ill.—Neiman v. Neiman, 64 N.E. 2d 241, 327 Ill.App. 411.
N.Y.—Hart v. Tuite, 78 N.Y.S. 154, 75 App.Div. 323.

15. Ill.—See Gordon v. Brucker, 208 Ill.App. 188.
Mo.—Craig v. McNichols Furniture Co., App., 187 S.W. 793.
Pa.—Coyles v. Coyles, 26 Pa.Dist. 816.
4 C.J. p 893 note 31.

16. N.Y.—Case v. Hitchins, 14 N.Y. St. 274.
4 C.J. p 893 note 32.

17. Ill.—Wechsler v. Gidwitz, 250 Ill.App. 136.
Iowa.—**Corpus Juris Secundum cited in** Nelson v. Barnick, 63 N.W.2d 911, 916, 245 Iowa 982.
N.J.—Oliver v. Autographic Register Co., 7 A.2d 797, 126 N.J.Eq. 18.
R.I.—Cook, Borden & Co. v. R. Z. L. Realty Corporation, 147 A. 891, 50 R.I. 375.
W.Va.—Shinn v. Westfall, 120 S.E. 762, 95 W.Va. 292—Harper v. Harper, 112 S.E. 520, 91 W.Va. 257.
4 C.J. p 893 notes 33, 34.

18. Fla.—Atlantic Coast Line R. Co. v. Partridge, 50 So. 634, 58 Fla. 153.

19. N.Y.—Dalzell v. Raw, 1 Thomps. & C. addenda 4.

20. Ala.—Gulf Red Cedar Co. v. Crenshaw, 65 So. 1010, 188 Ala. 606—O'Kelley v. Clark, 63 So. 948, 184 Ala. 391.

21. N.Y.—Moller v. Pickard, 133 N. E. 887, 232 N.Y. 271.
4 C.J. p 893 note 38.

22. N.Y.—Fuller v. Tolman, 36 N. Y.S. 639, 92 Hun 119.
4 C.J. p 893 note 39.

23. N.C.—Maxwell v. Norfolk & Western Ry. Co., 181 S.E. 248, 208 N.C. 397.

24. Ill.—Nartzik v. Ehman, 191 Ill. App. 71.

25. Mass.—City of Worcester v. Boston & A. R. R., 114 N.E. 814, 225 Mass. 548.

26. N.C.—Alley v. Rogers, 87 S.E. 326, 170 N.C. 538.
4 C.J. p 893 note 40.

27. Ala.—Smith v. Albert, 25 So.2d 382, 247 Ala. 520—Bethune Electric Const. Corporation v. Graybar Electric Co., 17 So.2d 175, 245 Ala. 405—Giddens v. J. S. Carroll Mercantile Co., 97 So. 789, 210 Ala. 313.
Ark.—Baker v. State, for Use and Benefit of Independence County, 147 S.W.2d 17, 201 Ark. 652.
Ill.—Schwartzentruber v. Stephens, 133 N.E.2d 33, 8 Ill.2d 222—Ginther v. Duginger, 129 N.E.2d 147, 6 Ill. 2d 474—Johnson v. Johnson, 115 N.E.2d 617, 1 Ill.2d 319—Stowell v. Satorius, 109 N.E.2d 734, 413 Ill. 482—Stromsen v. Stromsen, 73 N. E.2d 272, 397 Ill. 260—Branigar v. Village of Riverdale, 72 N.E.2d 201, 396 Ill. 534—Douglas Lumber Co. v. Chicago Home for Incurables, 43 N.E.2d 535, 380 Ill. 87.
Hurford v. Hurford, 123 N.E.2d 870, 4 Ill.App.2d 163—Niehaus v. Niehaus, 120 N.E.2d 66, 2 Ill.App. 2d 434—Bernard Bros. v. Deibler, 100 N.E.2d 512, 344 Ill.App. 222—Jost v. Lewis, 99 N.E.2d 392, 343 Ill.App. 461—Schmitt v. Continental-Diamond Fibre Co., 91 N.E.2d 123, 340 Ill.App. 221—Jay-Bee Realty Corp. v. Agricultural Ins. Co., 50 N.E.2d 973, 320 Ill.App. 310—Mutual Life Ins. Co. of New York v. Wineberg, 49 N.E.2d 44, 319 Ill.App. 177—Sexauer v. Trust Co. of Chicago, 40 N.E.2d 103, 313 Ill.App. 352—E. Edelman & Co. v. Stromberg, 28 N.E.2d 128, 306 Ill. App. 118—Hibernian Banking Ass'n v. Chicago Title & Trust Co., 217 Ill.App. 36, affirmed Hibernian Banking Ass'n v. Davis, 129 N.E. 540, 295 Ill. 537.
N.Y.—Murtagh v. White, 104 N.Y.S. 2d 893, 278 App.Div. 891, reheard 107 N.Y.S.2d 506, 279 App.Div. 624.
Ohio.—Cincinnati & Eastern Electric Ry. Co. v. Ritty, 21 Ohio Cir.Ct., N.S., 568.
Va.—Reese v. Reese, 87 S.E.2d 133, 196 Va. 1028.
Wis.—Mohs v. Quarton, 44 N.W.2d 580, 257 Wis. 544—In re Burke, 282 N.W. 598, 229 Wis. 545—Truelsch v. Northwestern Mut. Life Ins. Co., 202 N.W. 352, 186 Wis. 239, 38 A.L.R. 914.
4 C.J. p 893 note 41.

28. Ill.—Gottschalk Const. Co. v. Carlson, 253 Ill.App. 520.
Mass.—Knowlton v. Fourth-Atlantic Nat. Bank, 171 N.E. 721, 271 Mass. 343.

29. Ill.—Mallinger v. Shapiro, 161 N.E. 104, 329 Ill. 629.
Brock v. Derry, 66 N.E.2d 182, 328 Ill.App. 400—Fischer v. Queen Hedwig's Polish Nat. Church of Chicago, 63 N.E.2d 675, 327 Ill. App. 215.
Md.—Meininger v. Meininger, 84 A. 2d 61, 198 Md. 432.
Va.—Gilmer v. Brown, 44 S.E.2d 16, 186 Va. 630—Clevinger v. County School Board of Buchanan County, 124 S.E. 440, 139 Va. 444.

30. Fla.—A. R. Harper Piano Co. v. Cumbie, 67 So. 141, 68 Fla. 356.
4 C.J. p 894 note 43.

weight of the evidence,[31] they will not be accepted regardless of that fact but instead will be discarded. So, too, the report of a referee will be set aside as against the weight of the evidence if he has been unduly influenced by inadmissible evidence,[32] or if the finding is based on testimony of a single witness, which is suspicious in nature and highly improbable in detail,[33] or is based in part on facts not proved which may have had some influence.[34]

§ 1668. Amount of Recovery

Generally, where supported by evidence, findings as to the amount of damages or relief awarded will not be disturbed.

Ordinarily, a finding of value or the amount of damages will not be disturbed by a reviewing court[35] where there is evidence to sustain the finding,[36] particularly where the finding has been approved by the trial court.[37]

The amount awarded will not be set aside as excessive where it does not appear unreasonable,[38] or unless the preponderance of evidence against the findings is so clear and decisive as to compel the inference that the referee erred.[39] On the other hand, the fact that a referee awarded a less amount than that fixed by the evidence does not warrant the inference that the evidence was wholly disregarded by him, but only that he may have considered it exaggerated.[40]

If, however, the amount awarded is manifestly not supported by the evidence, the findings must be set aside,[41] and the court may exercise its independent judgment as to whether it will accept the opinions and estimates of witnesses on questions of value.[42] Where the trial court, in the exercise of a judicial discretion, has reduced the amount of the award, the amount as found by the referee will not be restored even though the evidence preponderates in support of his findings.[43]

§ 1669. Approval of Trial Court

Findings concurred in, and approved by, the trial court are especially entitled to be respected and sustained on appeal, and generally will not be disturbed although not necessarily conclusive.

When approved by the trial court, the findings of fact of a referee, master, auditor, commissioner, or register will not as a general rule be disturbed by the reviewing court.[44]

31. Ill.—Auer v. Wm. Meyer Co., 54 N.E.2d 304, 322 Ill.App. 244—Gottschalk Const. Co. v. Carlson, 253 Ill.App. 520.
N.Y.—Broderick v. Saretsky, 39 N.Y.S.2d 802, 179 Misc. 737.
Okl.—Phillips Petroleum Co. v. Davis, 147 P.2d 135, 194 Okl. 84.
4 C.J. p 894 note 44.

32. N.Y.—Dibblee v. Maillard, 19 How.Pr. 576.

33. N.Y.—Kennedy v. New York, etc., R. Co., 10 N.Y.Super. 69.

34. N.Y.—Matthews v. Coe, 49 N.Y. 57.

35. Ala.—Morrison v. Chambers, 103 So. 666, 212 Ala. 574.
Me.—Courtenay v. Gagne, 43 A.2d 817, 141 Me. 302—Leonard v. Carmichael, 21 A.2d 410, 138 Me. 33—Sterns Lumber Co. v. Penobscot Bay Electric Co., 116 A. 734, 121 Me. 287.
Mass.—Downey v. Union Trust Co. of Springfield, 45 N.E.2d 373, 312 Mass. 405.
N.H.—Delay Mfg. Co. v. Carey, 13 A.2d 152, 91 N.H. 44.
Wis.—Harvey v. Wheeler Transfer & Storage Co., 277 N.W. 627, 227 Wis. 36.
4 C.J. p 894 note 48.

36. N.Y.—Henry Hall Sons Co. v. Sundstrom, etc., Co., 123 N.Y.S. 390, 138 App.Div. 548, affirmed 97 N.E. 1106, 204 N.Y. 660.
4 C.J. p 894 note 50.

37. Ala.—Morrison v. Chambers, 103 So. 666, 212 Ala. 574.
Tenn.—Dale v. Hartman, 6 S.W.2d 319, 157 Tenn. 60.
Lichter v. Fulcher, 125 S.W.2d 501, 22 Tenn.App. 670—Gilbert v. Smith, 14 Tenn.App. 500.
4 C.J. p 894 note 49.

38. Fla.—Warfield v. Hepburn, 57 So. 618, 62 Fla. 409, 418—Pervis v. Frink, 54 So. 862, 61 Fla. 712.

39. Me.—Courtenay v. Gagne, 43 A.2d 817, 141 Me. 302.
N.Y.—Golden v. Metropolitan El. R. Co., 20 N.Y.S. 630, 1 Misc. 142—Betjeman v. New York El. R. Co., 20 N.Y.S. 628, 1 Misc. 138.

40. N.Y.—Collier v. Rutledge, 32 N.E. 626, 136 N.Y. 621.

41. N.Y.—Weidman v. Thompson, 65 N.Y.S. 481, 53 App.Div. 22.
Error in computation
An award of referees may be set aside for a mistake of fact apparent on the face of award, as where there has been a manifest error in computation, showing that result stated is not that intended and does not therefore express the real judgment of referees.
Me.—McKenzie v. Edwards, 33 A.2d 412, 140 Me. 33.

42. Ala.—Citizens' Light, Heat & Power Co. v. Central Trust Co. of Illinois, 75 So. 330, 200 Ala. 18.

43. Ky.—U. S. Fire Ins. Co. of New York v. Green, 300 S.W. 900, 222 Ky. 298.

44. Cal.—Riccomini v. Pierucci, 202 P. 344, 54 C.A. 606.
Fla.—Cohlen v. Fincke, 39 So.2d 65.
Ga.—Horkan v. Great Am. Indem. Co., 88 S.E.2d 13, 211 Ga. 690—Allen v. Davis, 23 S.E.2d 665, 195 Ga. 167—Lefkoff v. Sicro, 18 S.E. 2d 464, 193 Ga. 292—Barber v. Southern Service Corporation, 185 S.E. 93, 182 Ga. 124.
Ill.—Brubaker v. Hatjimanolis, 88 N.E.2d 843, 404 Ill. 342—Finn v. Monk, 85 N.E.2d 701, 403 Ill. 167—Faulkner v. Black, 37 N.E.2d 796, 378 Ill. 112—Noll v. Peterson, 170 N.E. 756, 338 Ill. 552.
Church of God of Decatur v. Finney, 101 N.E.2d 856, 344 Ill. App. 598—Hanna v. Yeoman, 82 N.E.2d 703, 336 Ill.App. 43—Schreiber v. Lovewell, 40 N.E.2d 803, 314 Ill.App. 201—R. M. Owen & Co. v. Johnson, 184 Ill.App. 90. See Hiller v. Holman, 204 Ill.App. 223.
Kan.—Comerford v. Groves, 177 P. 358, 103 Kan. 823—Severy State Bank v. People's State Bank, 171 P. 10, 102 Kan. 412.
Ky.—Livingston County v. Dunn, 190 S.W.2d 328, 300 Ky. 367—Congleton Lumber Co. v. Watkins, 140 S.W.2d 372, 282 Ky. 805—Gay v. Hardman, 124 S.W.2d 1048, 276 Ky. 624—Blackburn's Adm'x v. Union Bank & Trust Co., 108 S.W.2d 806, 269 Ky. 699—National Surety Corporation v. City of Bowling Green, 95 S.W.2d 1080, 265 Ky. 36.
Me.—Andrews v. Nalley, 111 A. 804, 119 Me. 500.

As stated in a great number of decisions such | findings by a person to whom a case has been re-

Mass.—Sprague v. Rust Master Chemical Corp., 70 N.E.2d 831, 320 Mass. 668—Levine v. Lawrence & Co., 25 N.E.2d 201, 305 Mass. 210—Dickman v. McClellan, 18 N.E.2d 480, 302 Mass. 87—LaMontagne v. Kenney, 193 N.E. 9, 228 Mass. 363—Orebaugh v. Badger, 180 N.E. 529, 279 Mass. 54—New England Oil Refining Co. v. Canada Mexico Oil Co., 174 N.E. 330, 274 Mass. 191—Title Guaranty & Surety Co. v. Fred T. Ley & Co., 130 N.E. 73, 238 Mass. 113—Loring v. Wise, 115 N.E. 302, 226 Mass. 231.

Miss.—Allen v. Newton Oil Mill, 139 So. 846, 163 Miss. 860.

N.J.—Owen F. Langan, Inc. v. McCullough, 168 A. 272, 111 N.J.Law 299—Grantwood Lumber Co. v. Aragona, 162 A. 883, 109 N.J.Law 447, followed in Furman v. Shell Eastern Petroleum Products, 166 A. 74, 110 N.J.Law 452.

Campanella v. Campanella, 40 A. 2d 551, 136 N.J.Eq. 111.

N.Y.—Lyons v. Chamberlain, 89 N.Y. 578, 15 N.Y.Wkly.Dig. 344.

N.C.—Lindsay v. Brawley, 38 S.E.2d 528, 226 N.C. 468—Pack v. Katzin, 1 S.E.2d 566, 215 N.C. 233—Parker v. Hood ex rel. Central Bank & Trust Co. of Asheville, 183 S.E. 737, 209 N.C. 494—Justice v. Boone Fork Lumber Co., 107 S.E. 232, 181 N.C. 390—Wynne v. Greenleaf Johnson Lumber Co., 102 S.E. 403, 179 N.C. 320, 8 A.L.R. 1081—Buchanan v. J. Walter Wright Lumber Co., 92 S.E. 491, 173 N.C. 731—Marler-Dalton-Gilmer Co. v. Golden, 90 S.E. 909, 172 N.C. 823—Myrose v. Swain, 90 S.E. 118, 172 N.C. 223—Southern Spruce Co. v. Hayes & Enloe, 85 S.E. 382, 169 N.C. 254.

Okl.—Rodesney v. Hall, 307 P.2d 130—Thlocco Oil Co. v. Bay State Oil & Gas Co., 247 P.2d 740, 207 Okl. 83.

Pa.—In re Rosenthal's Estate, 6 A.2d 585, 335 Pa. 49.

In re Snively's Estate, 36 A.2d 193, 154 Pa.Super. 437—In re Elstrodt's Estate, 186 A. 318, 122 Pa.Super. 131—In re Ortmann's Estate, 71 Pa.Super. 303.

R.I.—Joslin v. Joslin, 6 A.2d 456, 62 R.I. 389.

S.C.—Meyerson v. Malinow, 97 S.E. 2d 88—Sumter Elec. Rewinding Co. v. Aiken County S. C. Clays, Inc., 95 S.E.2d 259, 230 S.C. 229—Theodore v. Mozie, 95 S.E.2d 173, 230 S.C. 216—Brooks v. Central Baptist Church, 193 S.E. 326, 185 S.C. 200—Farrow v. City Council of Charleston, 168 S.E. 852, 169 S.C. 373, 87 A.L.R. 981—Manuel v. Bradley, 138 S.E. 815, 140 S.C. 321—Middleton & Co. v. Atlantic Coast Line R. Co., 130 S.E. 552, 133 S.C. 23.

Tenn.—Trenton Cotton Oil Co. v. McCanless, 229 S.W.2d 143, 190 Tenn. 219—Dale v. Hartman, 6 S.W.2d 319, 157 Tenn. 60.

Evans v. Boggs, 245 S.W.2d 641, 35 Tenn.App. 354—Robichaud v. Smith, 232 S.W.2d 576, 33 Tenn. App. 651—Reed Bros. Stone Co. v. Pittman Const. Co., 101 S.W.2d 473, 20 Tenn.App. 552—Gilbert v. Smith, 14 Tenn.App. 500—Johnson v. Jones, 1 Tenn.App. 24.

Vt.—Luce v. Brown, 118 A. 530, 96 Vt. 140.

Va.—Hodge v. Kennedy, 94 S.E.2d 274, 198 Va. 416—Hayes v. Parker, 12 S.E.2d 750, 177 Va. 70—Young v. Bowen, 108 S.E. 866, 131 Va. 401.

W.Va.—Snyder v. Lane, 89 S.E.2d 607—Darby v. Morrison, 163 S.E. 819, 112 W.Va. 167.

4 C.J. p 894 note 56—21 C.J. p 630 note 35.

Force of verdict

In a number of decisions it is said that the findings when approved by the court have the force of a verdict.

Ala.—Fricke v. City of Guntersville, 48 So.2d 420, 254 Ala. 370—King v. McAnnally, 186 So. 558, 237 Ala. 230—Cone v. Barganier, 118 So. 342, 218 Ala. 292—Higdon v. Bradley, 77 So. 685, 201 Ala. 159.

Colo.—Julius Hyman & Co. v. Velsicol Corp., 233 P.2d 977, 123 Colo. 563, certiorari denied 72 S.Ct. 113, 342 U.S. 870, 96 L.Ed. 654, rehearing denied 72 S.Ct. 199, 342 U.S. 895, 96 L.Ed. 171.

Ill.—Meyers v. Dorfman, 54 N.E.2d 235, 322 Ill.App. 120—Zamis v. Hanson, 24 N.E.2d 59, 302 Ill.App. 404.

Iowa.—F. I. Gardiner & Co. v. Hayward, 179 N.W. 417, 189 Iowa 1129.

Minn.—Robbins v. Hobart, 157 N.W. 908, 133 Minn. 49.

Mo.—Industrial Bank & Trust Co. v. Hesselberg, 195 S.W.2d 470—Hancock v. State Highway Commission, 149 S.W.2d 823, 347 Mo. 944—Paisley v. Lucas, 143 S.W.2d 262, 346 Mo. 827—Nodaway County v. Kidder, 129 S.W.2d 857, 344 Mo. 795—Baum v. Davis, 85 S.W.2d 757—State ex rel. Roberts v. Trimble, 289 S.W. 796, 316 Mo. 354—Kline Cloak & Suit Co. v. Morris, 240 S.W. 96, 293 Mo. 478—Roloson v. Riggs, 203 S.W. 973, 274 Mo. 522—Coombs v. J. H. Tschudy Hardwood Lumber Co., 197 S.W. 342.

Ward Stores v. Jaco, App., 157 S.W.2d 790—Home Coal Co. v. City of Macon, 262 S.W. 59, 216 Mo.App. 590—Springfield Gas & Electric Co. v. Southern Surety Co. of Oklahoma, App., 250 S.W. 78—Hannan, Hickey Bros. Const. Co. v. Chicago, B. & Q. R. Co., App., 247 S.W. 436, transferred, Mo., 226 S.W. 881—Hunt v. Lehrack, App., 245 S.W. 52—Higdon v. Ming, App., 236 S.W. 384—Keleher v. Johnson, 206 S.W. 261, 200 Mo.App. 344—Commercial Bank v. Maryland Casualty Co., App., 187 S.W. 803.

Pa.—In re Walton's Estate, 34 A.2d 484, 348 Pa. 143—Northrop v. P. W. Finn Const. Co., 103 A. 544, 260 Pa. 15.

In re Christman's Estate, 67 A. 2d 826, 165 Pa.Super. 45—In re Hackett, 63 A.2d 477, 164 Pa. Super. 18—In re Byrne's Estate, 184 A. 303, 121 Pa.Super. 550—In re Boswell's Estate, 167 A. 402, 109 Pa.Super. 365—In re Koonce's Estate, 161 A. 578, 105 Pa.Super. 539—In re Nixon's Estate, 159 A. 172, 104 Pa.Super. 506—Penn Cigar Co. v. Friedberg & Sloan, 74 Pa.Super. 554.

In re Quein's Estate, Orph., 8 Chester Co. 305.

S.C.—Williams v. Lawrence, 8 S.E. 2d 838, 194 S.C. 1—Scott v. Newell, 144 S.E. 82, 146 S.C. 385—United Timber Corporation v. Mullins Lumber Co., 141 S.E. 15, 142 S.C. 477.

Tenn.—Black v. Love & Amos Coal Co., 206 S.W.2d 432, 30 Tenn.App. 377—Winer v. Chattanooga Feed Co., 6 Tenn.App. 415—Love v. Nashville Agr'l & Normal Inst., 6 Tenn. App. 104—Wright v. Batchelor Motor Co., 2 Tenn.App. 408.

4 C.J. p 894 note 56 [d].

Presumptions and burden of proof

(1) The action and findings of the referee and trial court are presumptively correct.

Ala.—Cone v. Barganier, 118 So. 342, 218 Ala. 292—Gulf Red Cedar Co. v. Crenshaw, 65 So. 1010, 188 Ala. 606.

Fla.—London Operating Co. v. Continental Const. Co., 159 So. 33, 118 Fla. 15.

Va.—Watson v. Brunner, 105 S.E. 97, 128 Va. 600.

4 C.J. p 894 note 56 [b].

(2) One contesting them must clearly establish the existence of error therein.

Ala.—Gulf Red Cedar Co. v. Crenshaw, supra.

Fla.—London Operating Co. v. Continental Const. Co., supra.

Miss.—Rose v. Jones, 78 So. 771, 118 Miss. 494.

Pa.—In re Kirst's Estate, 100 A. 523, 256 Pa. 30.

Roberts v. Ward, 93 Pa.Super. 392.

S.C.—Hannon v. Mechanics' Bldg. & Loan Ass'n of Spartanburg, 180 S. E. 873, 177 S.C. 153—Hammassapoulo v. Hammassapoulo, 131 S.E. 319, 134 S.C. 54.

4 C.J. p 894 note 56 [c].

Where conflicting inferences could be drawn from facts contained in referee's report which was adopted as finding of court, district court of

ferred will be upheld by the reviewing court when | supported by the evidence,[45] or by any[46] or suf-

appeal had duty to draw those inferences which would support the action of the trial court.
Cal.—Balian v. Rainey, 251 P.2d 731, 115 C.A.2d 11.

45. Colo.—Mountain States Oil Corp. v. Sandoval, 96 P.2d 5, 105 Colo. 130—Board of Com'rs of Ouray County v. Board of Com'rs of San Juan County, 190 P. 666, 68 Colo. 428.
Ga.—Thomas v. Fred W. Amend Co., 26 S.E.2d 415, 196 Ga. 455—Southern Feed Stores v. Sanders, 20 S.E.2d 413, 193 Ga. 884—Callan Court Co. v. Citizens & Southern Nat. Bank, 190 S.E. 831, 184 Ga. 87.
Ill.—Noll v. Peterson, 170 N.E. 756, 338 Ill. 552.
Gruenenfelder Lumber Co. v. Golden, 260 Ill.App. 313.
Kan.—State v. Southwestern Bell Telephone Co., 223 P. 771, 115 Kan. 236.
Ky.—Fontana v. Fontana, 237 S.W.2d 844—Congleton Lumber Co. v. Watkins, 140 S.W.2d 372, 282 Ky. 805—Chenault v. Southern Trust Co., 53 S.W.2d 369, 245 Ky. 305—Shelby v. Shelby, 279 S.W. 942, 212 Ky. 552.
Mass.—MacLean v. Neipris, 23 N.E.2d 85, 304 Mass. 237—Royal Paper Box Co. v. Munro & Church Co., 188 N.E. 223, 284 Mass. 446—Reardon v. Reardon, 114 N.E. 359, 225 Mass. 255.
Mo.—Enright v. Schaden, 242 S.W. 89—State ex rel. Saline County v. Wilson, 232 S.W. 140, 288 Mo. 315, 15 A.L.R. 1035—St. Charles Savings Bank v. Denker, 204 S.W. 902.
Fagan v. Brock Motor Car Co., App., 282 S.W. 135—Ogle v. W. M. Sutherland Building & Contracting Co., App., 207 S.W. 848—Christopher & Simpson Architectural Iron & Foundry Co. v. E. A. Steininger Const. Co., 205 S.W. 278, 200 Mo. App. 33.
N.C.—Mimidis v. Papoulias, 94 S.E.2d 367, 244 N.C. 479—Macon v. Murray, 55 S.E.2d 807, 231 N.C. 61—Griffin v. Jones, 54 S.E.2d 920, 230 N.C. 612—Owens v. Chaplin, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797—Troitino v. Goodman, 35 S.E.2d 277, 225 N.C. 406—Grady v. Faison, 31 S.E.2d 760, 224 N.C. 567—Harrison v. Darden, 26 S.E.2d 860, 223 N.C. 364—Grimes v. Beaufort County, 21 S.E.2d 827, 222 N.C. 41—Biggs v. Lassiter, 18 N.E.2d 419, 220 N.C. 761—Wilkinson v. Coppersmith, 10 S.E.2d 670, 218 N.C. 178—Rose v. Bank of Wadesboro, 9 S.E.2d 2, 217 N.C. 600—Town of Wake Forest v. Gulley, 196 S.E. 845, 213 N.C. 494—Bryan v. Old Colony Ins. Co., 196 S.E. 345, 213 N.C. 391—Corbitt Co. v. John P Nutt Corp., 194 S.E. 120, 212 N.C. 666—Dent v. English Mica Co., 193 S.E. 165, 212 N.C. 241—Smith v. Atlantic Joint Stock Land Bank of Raleigh, 192 S.E. 866, 212 N.C. 79—Buncombe County v. Cain, 188 S.E. 399, 210 N.C. 766—Lockridge v. Smith, 173 S.E. 36, 206 N.C. 174—Moffitt v. Davis, 172 S.E. 317, 205 N.C. 565—Wilson v. Allsbrook, 172 S.E. 217, 205 N.C. 597—Thompson v. Hood, 166 S.E. 311, 203 N.C. 440—Kenney v. Balsam Hotel Co., 138 S.E. 349, 194 N.C. 44—Story v. Truitt, 138 S.E. 121, 193 N.C. 851—London v. Board of Com'rs for Yancey County, 136 S.E. 356, 193 N.C. 100—Greer v. Board of Com'rs of Watauga County, 135 S.E. 862, 192 N.C. 714—Dilling Cotton Mills v. Lowell Cotton Yarn Co., 135 S.E. 770, 192 N.C. 713—Hardy v. Thornton, 134 S.E. 641, 192 N.C. 296—Dill-Cramer-Truitt Corporation v. Jacksonville Lumber Co., 112 S.E. 740, 183 N.C. 660—Robertson v. Jackson, 110 S.E. 593, 183 N.C. 695—Martin v. McBryde, 108 S.E. 739, 182 N.C. 175, 21 A.L.R. 12—Steed v. Clover Lumber Co., 107 S.E. 445, 181 N.C. 508—Morganton Mfg. & Trading Co. v. Foy-Seawell Lumber Co., 99 S.E. 104, 177 N.C. 404—Williams v. Kearney, 98 S.E. 705, 177 N.C. 531—Dorsey v. North Carolina Talc & Mining Co., 97 S.E. 746, 177 N.C. 60—Board of Com'rs of Mitchell Co. v. Abee Bros. & Hart, 96 S.E. 31, 175 N.C. 701—Dumas v. Trustees of Church at Rockingham, 95 S.E. 775, 175 N.C. 431—Godwin v. Jernigan, 93 S.E. 443, 174 N.C. 76—Southern Public Utilities Co. v. Town of Bessemer City, 92 S.E. 331, 173 N.C. 482—McGeorge v. Nicola, 91 S.E. 708, 173 N.C. 707, rehearing denied 92 S.E. 610, 173 N.C. 733—Lewis v. May, 91 S.E. 691, 173 N.C. 100—Taylor v. Hayes, 90 S.E. 801, 172 N.C. 663—Simmons v. Groom, 83 S.E. 471, 167 N.C. 271—Montcastle v. Wheeler, 83 S.E. 469, 167 N.C. 258.
Okl.—First Nat. Bank v. Jackson, 283 P. 242, 140 Okl. 282, 68 A.L.R. 900—Caldwell State Bank v. Cowan, 225 P. 690, 99 Okl. 50.
Pa.—In re Fink's Estate, 21 A.2d 883, 343 Pa. 65—Foulk v. Hampton, 149 A. 486, 299 Pa. 272—In re Mack's Estate, 123 A. 462, 278 Pa. 426—S. G. V. Co. of Delaware v. S. G. V. Co. of Pennsylvania, 107 A. 722, 264 Pa. 377—Account of Shaw, 103 A. 827, 260 Pa. 368—Leiser v. Albright, 99 A. 411, 255 Pa. 121—In re Myers' Estate, 98 A. 694, 253 Pa. 537—Stevenson v. Commonwealth Title Ins. & Trust Co., 91 A. 232, 245 Pa. 232.
In re McLiesh's Estate, 54 A.2d 106, 161 Pa.Super. 292—In re Williamson's Estate, 53 A.2d 869, 161 Pa.Super. 106—In re Pruski's Estate, 27 A.2d 292, 149 Pa.Super. 218—In re Rudolph's Estate, 194 A. 311, 128 Pa.Super. 459—In re Byrne's Estate, 184 A. 303, 121 Pa. Super. 550.
S.C.—Wyman v. Davis, 74 S.E.2d 694, 223 S.C. 172—Robinson v. Watson, 18 S.E.2d 215, 198 S.C. 396—Brooks v. Central Baptist Church, 193 S.E. 326, 185 S.C. 200—Windburn v. Johnson, 141 S.E. 720, 144 S.C. 3—Fleishman, Morris & Co. v. National Surety Co., 113 S.E. 686, 121 S.C. 254—Campbell v. Stewart, 84 S.E. 415, 100 S.C. 144.
Tenn.—State ex rel. McCormack v. American Building & Loan Ass'n, 150 S.W.2d 1048, 177 Tenn. 385—Nashville Packet Co. v. Neville, 235 S.W. 64, 144 Tenn. 698.
Kelso v. Kelso, App., 292 S.W.2d 483—Commercial Credit Corp. v. Monroe, 277 S.W.2d 423, 38 Tenn. App. 596—State v. Breedlove, 270 S.W.2d 582, 38 Tenn.App. 80—Black v. Love & Amos Coal Co., 206 S.W. 2d 432, 30 Tenn.App. 377—Lebanon Bank & Trust Co. v. Grandstaff, 141 S.W.2d 924, 24 Tenn.App. 162—Love v. Nashville Agr'l & Normal Inst., 6 Tenn.App. 104.
Va.—First Nat. Bank v. Weinberg, 182 S.E. 250, 165 Va. 433.
Wis.—Preston v. La Belle View Corporation, 212 N.W. 286, 192 Wis. 168.
4 C.J. p 895 note 57.

Finding adversely to request

Where, without excluding any evidence, the referee and court find that there is no evidence to prove an allegation, the finding cannot be reviewed.
N.C.—Lenoir v. Linville Impr. Co., 36 S.E. 185, 126 N.C. 922, 51 L.R.A. 146.

46. Ga.—Horkan v. Great Am. Indem. Co., 88 S.E.2d 13, 211 Ga. 690.
Me.—McNally v. Ray, 117 A.2d 342, 151 Me. 277.
Mass.—Childs, Jeffries & Co. v. Bright, 186 N.E. 571, 283 Mass. 283.
N.C.—Murphy v. Smith, 70 S.E.2d 697, 235 N.C. 455—Gaither v. Albemarle Hospital, 70 S.E.2d 680, 235 N.C. 431—Clark v. Cagle, 37 S.E.2d 672, 226 N.C. 230—Rose v. Bank of Wadesboro, 9 S.E.2d 2, 217 N.C. 600—Wimberly v. Washington Furniture Stores, 6 S.E.2d 512, 216 N.C. 732—Corbett v. Atlantic Coast Line R. Co., 170 S.E. 129, 205 N.C. 85—Wallace v. Benner, 156 S.E. 795, 200 N.C. 124—Standard Crown Co. v. Jones, 145 S.E. 5, 196 N.C. 208—Wade v. Lutterloh, 144 S.E. 694, 196 N.C. 116—Pickler v. Pinecrest Manor, 143 S.E. 8, 195 N.C. 614.
S.C.—Lazenby v. Mackey, 14 S.E.2d 12, 196 S.C. 507—Smith v. Coxe,

ficient[47] or substantial[48] evidence, especially where the finding involves a passing on the credence to be given to oral testimony,[49] when the truth, as to issues of fact, is open to doubt,[50] when there is evidence on the question sufficient to be submitted to the jury,[51] when the evidence or testimony is not fully reported[52] or when it is conflicting,[53] and should not be set aside unless there is manifest er-

191 S.E. 422, 183 S.C. 509—Watkins v. Justice, 98 S.E. 193, 112 S.C. 329.

Tenn.—Maden v. Home Ins. Co., 9 Tenn.App. 329—Brady & Edmondson v. Lambert, 7 Tenn.App. 494—Wright v. Batchelor Motor Co., 2 Tenn.App. 468.

4 C.J. p 895 note 57 [b], [c].

Scope of review

Where legal issues of title and possession of land were tried by referee by consent, and his findings were adopted by court as its judgment, factual review on appeal to supreme court was limited to a determination of whether there was any evidence to sustain it.

S.C.—Phillips v. Du Bose, 75 S.E.2d 56, 223 S.C. 224.

47. Fla.—Holding v. Holding, 46 So. 2d 893—Luke v. First Federal Savings & Loan Ass'n of Miami, 3 So. 2d 153, 147 Fla. 609.

Ga.—Murray County v. Pickering, 31 S.E.2d 722, 198 Ga. 354.

Huffmaster v. Jones Bros., 100 S. E. 227, 24 Ga.App. 198.

Ill.—See Sundstrom v. Weinrich, 207 Ill.App. 313.

Mo.—Universal Const. Co. v. City of St. Louis, 223 S.W. 931, 284 Mo. 89.

N.C.—Gurganus v. McLawhorn, 193 S.E. 844, 212 N.C. 397.

Pa.—In re Black's Estate, 19 A.2d 130, 341 Pa. 264—McEvoy v. Grant, 153 A. 763, 302 Pa. 539—In re Lentz's Estate, 104 A. 763, 261 Pa. 530—In re Kvist's Estate, 100 A. 523, 256 Pa. 30.

In re Elstrodt's Estate, 186 A. 318, 122 Pa.Super. 131—Chapman Decorative Co. v. Welsh, 90 Pa. Super. 225—In re Finch's Estate, 86 Pa.Super. 238—Penn Cigar Co. v. Friedberg & Sloan, 74 Pa.Super. 554.

S.C.—Glenn v. Woodworth, 14 S.E.2d 555, 197 S.C. 56—Claffy v. Mechanics Building & Loan Ass'n, 15 S.E. 2d 142, 197 S.C. 198—Furst & Thomas v. Whitmire, 133 S.E. 222, 135 S.C. 33.

W.Va.—Berrymont Land Co. v. Davis Creek Land & Coal Co., 158 S.E. 651, 110 W.Va. 305.

4 C.J. p 895 note 57 [a].

48. Fla.—Blanchard v. McCord, 40 So.2d 457—Pierce v. Brand Properties, 178 So. 168, 130 Fla. 469—Weber v. Harvey, 174 So. 5, 127 Fla. 706—Phillips v. Smith, 156 So. 260, 116 Fla. 1.

Kan.—Johnson v. Owens, 276 P. 828, 128 Kan. 149.

Ky.—Faulkner v. Terrell, 287 S.W. 2d 409—Mink v. Miracle, 284 S.W. 2d 677.

Mo.—Industrial Bank & Trust Co. v. Hesselberg, 195 S.W.2d 470—Baum v. Davis, 85 S.W.2d 757—Bradbury v. Crites, 281 S.W. 725, 312 Mo. 694—Kline Cloak & Suit Co. v. Morris, 240 S.W. 96, 293 Mo. 478—Christine v. Luyties, 217 S.W. 55, 280 Mo. 416—Roloson v. Riggs, 203 S.W. 973, 274 Mo. 522—Johnston v. Star Bucket Pump Co., 202 S.W. 1143, 274 Mo. 414.

Bank of Darlington v. Atwood, 36 S.W.2d 429, 225 Mo.App. 974, motion overruled, App., 47 S.W.2d 1097—Whitesell v. Pioneer Const. Co., App., 2 S W.2d 147—Farmers' Bank of Callao v. Allen, App., 294 S.W. 93—Mississippi Valley Trust Co. v. Franke, 268 S.W. 420, 216 Mo.App. 466—Home Coal Co. v. City of Macon, 262 S.W. 59, 216 Mo.App. 590—Hannan, Hickey Bros. Const. Co. v. Chicago, B. & Q. R. Co., App., 247 S.W. 436—Hunt v. Lehrack, App., 245 S.W. 52—Higdon v. Ming, App., 236 S.W. 384—Kelcher v. Johnson, 206 S.W. 261, 200 Mo.App. 544—Commercial Bank v. Maryland Casualty Co., App., 187 S.W. 103—City of St. Louis to Use of Gilsonite Const. Co. v. McCully Const. Co., App., 184 S.W. 939.

Mont.—Ivins v. Hardy, 217 P.2d 204, 123 Mont. 513.

N.M.—Manby v. Voorhees, 203 P. 543, 27 N.M. 511.

49. Ala.—Cone v. Barganier, 118 So. 342, 218 Ala. 292—Higdon v. Bradley, 77 So. 685, 201 Ala. 159.

Ill.—Argus Press, Inc. v. Lindhout, 268 Ill.App. 465—Schipersky v. Gartner, 202 Ill.App. 337.

W.Va.—McDermitt v. Moore, 104 S.E. 744, 87 W.Va. 300.

4 C.J. p 895 note 58.

50. Ky.—Congleton Lumber Co. v. Watkins, 140 S.W.2d 372, 282 Ky. 805—Gay v. Hardman, 124 S.W.2d 1048, 276 Ky. 624—King v. Kitchen's Ex'rs, 118 S.W.2d 144, 274 Ky. 157—Engle v. Childers, 3 S.W.2d 222, 223 Ky. 210.

51. Pa.—Ellison v. Hosie, 23 A. 455, 147 Pa. 236.

52. Ky.—Wilson v. Smoot, 216 S.W. 129, 186 Ky. 194.

Mass.—Greek Orthodox Community v. Malicourtis, 166 N.E. 863, 267 Mass. 472.

N.C.—Cecil v. Barbee, 140 S.E. 289, 194 N.C. 812.

S.C.—Wannamaker v. South Carolina State Bank, 179 S.E. 896, 176 S.C. 133.

53. Colo.—Stuart v. Chaney, 242 P. 638, 78 Colo. 421.

Fla.—Rospigliosi v. Clogher, 46 So. 2d 170, certiorari denied 71 S.Ct. 81, 340 U.S. 853, 95 L.Ed. 625, rehearing denied 71 S.Ct. 290, 340 U. S. 916, 95 L.Ed. 661—Phillips v. Howell, 102 So. 157, 88 Fla. 280.

Ga.—Horkan v. Great Am. Indem. Co., 88 S.E.2d 13, 211 Ga. 690—Bradley v. De Loach, 167 S.E. 301, 176 Ga. 142.

Ill.—Black v. Hoopeston Gas & Electric Co., 117 N.E. 411, 280 Ill. 263.

Holzmann v. Holzmann, 123 N.E. 2d 351, 4 Ill.App.2d 82—Bierut v. Setlak, 4 N.E.2d 262, 286 Ill.App. 617—Kennedy v. Lang, 3 N.E.2d 168, 286 Ill.App. 623.

Iowa.—Town v. Town, 212 N.W. 471, 203 Iowa 254—F. I. Gardiner & Co. v. Hayward, 179 N.W. 417, 189 Iowa 1129.

Ky.—Hibler's Adm'r v. Bourbon Agr. Bank & Trust Co., 9 S.W.2d 1008, 225 Ky. 629—Chiles v. Robinson, 5 S.W.2d 269, 224 Ky. 71—Dawson v. Morris, 173 S.W. 348, 163 Ky. 220.

Mo.—Baum v. Davis, 85 S.W.2d 757.

N.H.—U. S. Fidelity & Guaranty Co. v. Dunn, 7 A.2d 246, 90 N.H. 236.

N.Y.—Briegel v. Day, 195 N.Y.S. 295, 202 App.Div. 484.

Okl.—First Nat. Bank v. Jackson, 283 P. 242, 140 Okl. 282, 68 A.L.R. 900.

Tex.—Grimes v. Hall, Civ.App., 211 S.W.2d 956.

Va.—Boston v. Shackelford, 175 S.E. 625, 162 Va. 733—Moore v. Ætna Casualty & Surety Co., 155 S.E. 707, 155 Va. 556—Hitt v. Smallwood, 133 S.E. 503, 147 Va. 778—American Surety Co. v. Hannah, 130 S. E. 411, 143 Va. 291—Ficklen v. Fredericksburg Power Co., 112 S. E. 775, 133 Va. 571—Ingram v. Ingram, 107 S.E. 653, 130 Va. 329—Watson v. Brunner, 105 S.E. 97, 128 Va. 600—Alexander v. Critcher, 94 S.E. 335, 121 Va. 723—Virginia Lumber & Extract Co. v. O. D. McHenry Lumber Co., 94 S.E. 173, 122 Va. 111.

W.Va.—Harwood v. Harwood, 164 S. E. 290, 112 W.Va. 344—Vaughan v. Vaughan, 133 S.E. 158, 101 W.Va. 561—York v. Meek, 123 S.E. 225, 96 W.Va. 427—McDermitt v. Moore, 104 S.E. 744, 87 W.Va. 300—Marshall v. Porter, 98 S.E. 207, 83 W. Va. 246—Kane & Keyser Hardware Co. v. Cobb, 91 S.E. 454, 79 W.Va. 587.

Wis.—Citizens' State Bank of Sheboygan v. City of Sheboygan, 224 N.W. 720, 198 Wis. 416.

4 C.J. p 895 note 60.

ror therein,[54] unless manifestly against the weight | of the evidence[55] or manifestly not warranted by the

54. Ala.—Willingham v. Lankford, 72 So.2d 411, 260 Ala. 681—McCollum v. McCollum, 119 So. 232, 218 Ala. 500—Higdon v. Bradley, 77 So. 865, 201 Ala. 159—Gulf Red Cedar Co. v. Crenshaw, 65 So. 1010, 188 Ala. 606.

Ark.—Reynolds v. Polk, 182 S.W. 544, 122 Ark. 611.

Fla.—Budd v. Tison, 47 So.2d 12—O'Connell v. Davis, 44 So.2d 811—Peters v. Thompson, 42 So.2d 91—Nahmod v. Nelson, 3 So.2d 162, 147 Fla. 564—Gover v. Mann, 157 So. 24, 117 Fla. 22—Peninsula Terminal Co. v. Zaring, 151 So. 514, 113 Fla. 87, followed in Peninsula Terminal Co. v. Townsend, 151 So. 520, 113 Fla. 104—Peacock Hotel v. Shipman, 138 So. 44, 103 Fla. 633—Gus' Baths v. Lightbown, 133 So. 85, 101 Fla. 1205, rehearing denied 135 So. 300, 101 Fla. 1205—Phillips v. Howell, 102 So. 157, 88 Fla. 280—City of Marianna v. Daniel, 76 So. 692, 74 Fla. 103.

Ill.—Monninger v. Koob, 91 N.E.2d 411, 405 Ill. 417—Meyer v. Meyer, 39 N.E.2d 311, 379 Ill. 97, 140 A. L.R. 484—Black v. Hoopeston Gas & Electric Co., 117 N.E. 411, 280 Ill. 263. See Baker v. Benjamin, 195 Ill.App. 17.

Kan.—Board of Com'rs of Allen County v. Board of Education of Iola, 51 P.2d 973, 142 Kan. 770.

Ky.—Kirby v. Scroggins, 246 S.W. 2d 453—Jones v. Jones, 231 S.W. 2d 15, 313 Ky. 367—Campbell v. Snyder, 154 S.W.2d 724, 287 Ky. 596—Williams v. Denny, 38 S.W.2d 668, 238 Ky. 662—Madison-Jackson-Estill Lumber & Development Co. v. Coyle, 178 S.W. 1170, 166 Ky. 108—Apseloff Bros. v. Hyman, 172 S.W. 946, 162 Ky. 541.

Md.—Maryland Lumber Co. v. White, 107 A.2d 73, 205 Md. 180.

Mass.—Brennan v. Bonnoyer, 66 N.E. 2d 17, 319 Mass. 307—Greek Orthodox Community v. Malicourtis, 166 N.E. 863, 267 Mass. 472—Horton v. Phillips, 131 N.E. 324, 238 Mass. 7—Rochelle Roofing Co. v. Burley & Stevens, 115 N.E. 478, 226 Mass. 349.

Minn.—Robbins v. Hobart, 157 N.W. 908, 133 Minn. 49.

N.C.—Corbett v. Atlantic Coast Line R. Co., 170 S.E. 129, 205 N.C. 85—Drainage Dist. No. 1 v. Parks, 87 S.E. 229, 170 N.C. 435—Simmons v. Groom, 83 S.E. 471, 167 N.C. 271—Montcastle v. Wheeler, 83 S.E. 469, 167 N.C. 258.

Pa.—In re Stauffer's Estate, 94 A.2d 726, 372 Pa. 537—In re Levy's Estate, 161 A. 740, 307 Pa. 522—Sadtler v. Home Pattern Co., 153 A. 769, 302 Pa. 527—In re Catanach's Estate, 117 A. 178, 273 Pa. 368—In re Murnaghan's Estate, 107 A. 886, 888, 264 Pa. 520, 523—In re Kvist's Estate, 100 A. 523, 256 Pa. 30—Covington v. Hawes-La Anna Co., 91 A. 514, 245 Pa. 73, Ann.Cas.1915D 1254—Stevenson v. Commonwealth Title Ins. & Trust Co., 91 A. 232, 245 Pa. 232.

In re Istocin's Estate, 190 A. 382, 126 Pa.Super. 158—In re Boswell's Estate, 167 A. 402, 109 Pa.Super. 365—In re Nixon's Estate, 159 A. 172, 104 Pa.Super. 506—Penn Cigar Co. v. Friedberg and Sloan, 74 Pa. Super. 554—Willock v. Beaver Valley R. Co., 60 Pa.Super. 589—In re Harvey's Estate, 59 Pa.Super. 449—In re Olds' Estate, 57 Pa.Super. 509.

S.C.—Riley v. Berry, 199 S.E. 866, 189 S.C. 4—Brooks v. Central Baptist Church, 193 S.E. 326, 185 S.C. 200—Hammassapoulo v. Hammassapoulo, 131 S.E. 319, 134 S.C. 54—Summerton Live Stock Co. v. Cleveland Mfg. Co., 103 S.E. 516, 114 S. C. 186—Miller v. Smith, 88 S.E. 354, 103 S.C. 307—Southern Engine & Boiler Works v. Dicks, 86 S.E. 18, 101 S.C. 462—McClure v. Goodwin, 85 S.E. 900, 101 S.C. 362—Forrester v. Moon, 84 S.E. 532, 100 S.C. 157—Campbell v. Stewart, 84 S.E. 415, 100 S.C. 144.

Va.—Morrison v. Morrison, 4 S.E.2d 776, 174 Va. 58—First Nat. Bank v. Weinberg, 182 S.E. 250, 165 Va. 433—Ficklen v. Fredericksburg Power Co., 112 S.E. 775, 133 Va. 571—Watson v. Brunner, 105 S.E. 97, 128 Va. 600—Alexander v. Kritcher, 94 S.E. 335, 121 Va. 723.

W.Va.—Gaston v. Wolfe, 53 S.E.2d 632, 132 W.Va. 791—Harwood v. Harwood, 164 S.E. 290, 112 W.Va. 344—Vaughan v. Vaughan, 133 S.E. 158, 101 W.Va. 561—York v. Meek, 123 S.E. 225, 96 W.Va. 427—Patterson v. Clem, 91 S.E. 654, 79 W. Va. 666—Kane & Keyser Hardware Co. v. Cobb, 91 S.E. 454, 79 W.Va. 587.

4 C.J. p 895 note 61.

Absence of legal error

When the result is not repugnant to any rule of law, fact findings concurred in by the court below will stand.

Ky.—Larimore v. West, 12 S.W.2d 856, 227 Ky. 306.

N.C.—Wilson v. Allsbrook, 172 S.E. 217, 205 N.C. 597.

S.C.—Williams v. Bruton, 131 S.E. 18, 133 S.C. 395.

4 C.J. p 895 note 61 [b].

55. Ark.—Newberger Cotton Co. v. Smith Trading Co., 217 S.W. 451, 144 Ark. 642.

Ill.—Punzak v. De Lano, 142 N.E.2d 64, 11 Ill.2d 117—Allendorf v. Daily, 129 N.E.2d 673, 6 Ill.2d 577—Schmitt v. Heinz, 125 N.E.2d 457, 5 Ill.2d 372—Rizzo v. Rizzo, 120 N. E.2d 546, 3 Ill.2d 291—Rose v. Dolejs, 116 N.E.2d 402, 1 Ill.2d 280—Midland Elec. Coal Corp. v. Knox County, 115 N.E.2d 275, 1 Ill.2d 200—Freymark v. Handke, 114 N.E. 2d 349, 415 Ill. 360—Staude v. Heinlein, 110 N.E.2d 228, 414 Ill. 1—Spencer v. Burns, 108 N.E.2d 413, 413 Ill. 240—Tess v. Radley, 107 N.E.2d 677, 412 Ill. 405—Hopkins v. Austin State Bank, 101 N.E.2d 536, 410 Ill. 67—Zeta Bldg. Corp. v. Garst, 97 N.E.2d 331, 408 Ill. 519—Schmalzer v. Jamnik, 95 N. E.2d 347, 407 Ill. 236—Lasky v. Smith, 94 N.E.2d 898, 407 Ill. 97—Weidler v. Seibert, 91 N.E.2d 416, 405 Ill. 477—Velsicol Corp. v. Hyman, 90 N.E.2d 717, 405 Ill. 352, certiorari denied 70 S.Ct. 1002, 339 U.S. 966, 94 L.Ed. 1374—Fuller v. Cook, 89 N.E.2d 794, 405 Ill. 32—Brubaker v. Hatjimanolis, 88 N.E. 2d 843, 404 Ill. 342—Carter v. Michel, 87 N.E.2d 759, 403 Ill. 610—Finley v. Felter, 86 N.E.2d 188, 403 Ill. 372—Schnoor v. Terlep, 77 N. E.2d 140, 399 Ill. 101—Kane v. Johnson, 73 N.E.2d 321, 397 Ill. 112—Branigar v. Village of Riverdale, 72 N.E.2d 201, 396 Ill. 534—Pfaff v. Petrie, 71 N.E.2d 345, 396 Ill. 44—Bydalek v. Bydalek, 71 N.E.2d 19, 396 Ill. 65—Stough v. Brach, 70 N.E.2d 585, 395 Ill. 544—Chambers v. Appel, 64 N.E.2d 511, 392 Ill. 294—Staufenbiel v. Staufenbiel, 58 N.E.2d 569, 388 Ill. 511—Osgood v. Zieve, 57 N.E.2d 869, 388 Ill. 226—Stasch v. Romza, 55 N.E.2d 81, 387 Ill. 67—McKey v. McKean, 51 N.E.2d 189, 384 Ill. 112—Kuzlik v. Kwasny, 49 N.E.2d 212, 383 Ill. 354—Zarembski v. Zarembski, 48 N. E.2d 394, 382 Ill. 622—Fisher v. Burgiel, 46 N.E.2d 380, 382 Ill. 42—McGlaughlin v. Pickerel, 46 N. E.2d 368, 381 Ill. 574—Mruk v. Mruk, 41 N.E.2d 490, 379 Ill. 394—Litwin v. Litwin, 30 N.E.2d 619, 375 Ill. 90—Brainard v. Brainard, 26 N.E.2d 856, 373 Ill. 459—Smuk v. Hryniewiecki, 17 N.E.2d 223, 369 Ill. 546—Pasedach v. Auw, 4 N.E. 2d 841, 364 Ill. 491—Chicago Title & Trust Co. v. Central Trust Co. of Illinois, 144 N.E. 165, 312 Ill. 396—Union Colliery Co. v. Fishback, 132 N.E. 492, 299 Ill. 165—North Side Sash and Door Co. v. Hecht, 129 N.E. 273, 295 Ill. 515—Bell v. Anderson, 127 N.E. 87, 292 Ill. 605—Klekamp v. Klekamp, 113 N.E. 852, 275 Ill. 98, Ann.Cas.1918A 663.

Haring v. Godbersen, 141 N.E.2d 90, 13 Ill.App.2d 95—People ex rel. Brady v. La Salle St. Trust & Sav. Bank, 125 N.E.2d 654, 5 Ill.App.2d 261—Israel v. Hart, 124 N.E.2d 647, 5 Ill.App.2d 233—Hurford v. Hurford, 123 N.E.2d 870, 4 Ill.App.2d 163—Petru v. Petru, 123 N.E.2d

evidence,[56] unless there is no evidence to sustain the | findings,[57] unless such findings of fact by a referee

352, 4 Ill.App.2d 1—Barr & Collins v. Seiden, 120 N.E.2d 380, 3 Ill.App. 2d 115—Garofalo v. Verni, 119 N.E. 2d 457, 2 Ill.App.2d 282—Merschat v. Merschat, 117 N.E.2d 868, 1 Ill. App.2d 429—Carbone v. Sparks, 111 N.E.2d 567, 350 Ill.App. 56—Derkers v. Vaughan Co., 109 N.E.2d 262, 348 Ill.App. 407—Carroll v. Cummings, 106 N.E.2d 144, 347 Ill.App. 77—American Smelting & Refining Co. v. City of Chicago, 105 N.E.2d 803, 347 Ill.App. 32—Stein v. Rubber Linings Corp., 103 N.E.2d 382, 345 Ill.App. 413—Schroeder v. Brennan, 102 N.E.2d 164, 345 Ill. App. 85—Franks v. Globe Co., 99 N.E.2d 408, 343 Ill.App. 464—Jost v. Lewis, 99 N.E.2d 392, 343 Ill. App. 461—Chertow v. Cohen, 98 N.E.2d 790, 343 Ill.App. 270—Tuzil v. Smatlak, 94 N.E.2d 103, 341 Ill. App. 418—Schmitt v. Continental-Diamond Fibre Co., 91 N.E.2d 123, 340 Ill.App. 221—Cooney v. Verhoeven, 86 N.E.2d 838, 338 Ill.App. 199—American Roof Truss Co. v. Golk, 86 N.E.2d 387, 337 Ill.App. 659—Adams v. Silfen, 86 N.E.2d 288, 337 Ill.App. 654—Price v. Seator, 85 N.E.2d 848, 337 Ill.App. 248—Hanna v. Yoeman, 82 N.E.2d 703, 336 Ill.App. 43—Marnik v. Northwestern Packing Co., 82 N.E. 2d 195, 335 Ill.App. 568—Pike v. Lewis, 76 N.E.2d 830, 333 Ill.App. 220—Phillips v. O'Connell, 73 N.E. 2d 864, 331 Ill.App. 511—Mills v. Susanka, 72 N.E.2d 451, 331 Ill. App. 111—Newman v. Youngblood, 69 N.E.2d 309, 394 Ill. 617—Neiman v. Neiman, 64 N.E.2d 241, 327 Ill. App. 411—Seaborn v. Miller, 54 N.E.2d 591, 322 Ill.App. 399—Meyers v. Dorfman, 54 N.E.2d 235, 322 Ill.App. 120—Jay-Bee Realty Corp. v. Agricultural Ins. Co., 50 N.E.2d 973, 320 Ill.App. 310—Cannon v. Marmor, 48 N.E.2d 742, 319 Ill.App. 251—Thomas v. Morris, 41 N.E.2d 990, 314 Ill.App. 570—McVeigh v. McConnell, 38 N.E.2d 962, 313 Ill. App. 75—Northern Trust Co. v. McDowall, 29 N.E.2d 865, 307 Ill.App. 29—Phillips v. WGN, Inc., 29 N.E. 2d 849, 307 Ill.App. 1—A. J. Canfield Co. v. McGee, 28 N.E.2d 548, 306 Ill.App. 226—Borovansky v. Para, 28 N.E.2d 174, 306 Ill.App. 60—Metropolitan Life Ins. Co. v. Shattas, 18 N.E.2d 560, 298 Ill.App. 336—Mayer v. Collins, 279 Ill.App. 439—Byczek v. Sokolowski, 279 Ill. App. 178—Knights of Ku Klux Klan v. First Nat. Bank, 254 Ill. App. 264—Kahn v. Rasof, 253 Ill. App. 546—Foreman Trust & Savings Bank v. Cohn, 253 Ill.App. 469, affirmed 174 N.E. 419, 342 Ill. 280. See Auto Parts Co. v. Silverstein, 211 Ill.App. 436—Perks v. Tippett, 202 Ill.App. 619—Dowland v. Staley, 201 Ill.App. 6—Reese v. Reese, 198 Ill.App. 298—Anderson v. Benson, 187 Ill.App. 576.

Ky.—Faulkner v. Terrell, 287 S.W. 2d 409—Simms v. Veach, 209 S.W. 2d 732, 307 Ky. 146—Archer v. Corey-Scheffel Lumber Co., 209 S. W.2d 73, 306 Ky. 736—Damron v. Bartley, 194 S.W.2d 73, 302 Ky. 83—Corbin's Ex'rs v. Corbin, 194 S. W.2d 65, 302 Ky. 208—Meyers v. Brown-Forman Distillery Co., 158 S.W.2d 407, 289 Ky. 185—Bullock v. Young, 158 S.W.2d 401, 289 Ky. 841—Meyer v. Meyer, 117 S.W.2d 610, 273 Ky. 630—Goff v. Blackburn, 299 S.W. 164, 221 Ky. 550—Cushenberry v. Neely, 287 S.W. 975, 216 Ky. 512.

Okl.—Suffudy v. Frier, 76 P.2d 1060, 182 Okl. 224—Patton v. First Nat. Bank & Trust Co. of Muskogee, 56 P.2d 1181, 186 Okl. 453—Titus v. Miller, 43 P.2d 705, 171 Okl. 549—Noble v. Johnson, 291 P. 26, 145 Okl. 46—Caldwell State Bank v. Cowan, 225 P. 690, 99 Okl. 50—Wolfe v. Killingsworth, 209 P. 410, 87 Okl. 170, certiorari denied 43 S. Ct. 359, 261 U.S. 613, 67 L.Ed. 826.

R.I.—Littlefield v. Gorton, 14 A.2d 682, 65 R.I. 390.

S.C.—Meyerson v. Malinow, 97 S.E. 2d 88—Oswald v. Oswald, 95 S.E. 2d 493, 230 S.C. 299—Dean v. Dean, 93 S.E.2d 206, 229 S.C. 430—Graves v. Dubose, 92 S.E.2d 134, 229 S.C. 123—South Orange Trust Co. v. Conner, 89 S.E.2d 372, 228 S.C. 218—Maxwell v. Smith, 89 S.E.2d 280, 228 S.C. 182—Peoples Nat. Bank of Greenville v. Manos Bros., Inc., 84 S.E.2d 857, 226 S.C. 257—Royal Crown Bottling Co. v. Chandler, 83 S.E.2d 745, 226 S.C. 94—Miller v. Miller, 82 S.E.2d 119, 225 S.C. 274—Newton v. Batson, 77 S.E.2d 212, 223 S.C. 545—Ives v. Ives, 76 S.E. 2d 471, 223 S.C. 461—Wyman v. Davis, 74 S.E.2d 694, 223 S.C. 172—Anderson v. Purvis, 67 S.E.2d 80, 220 S.C. 259—Archambault v. Sprouse, 63 S.E.2d 459, 218 S.C. 500—Phipps v. Phipps, 57 S.E.2d 417, 216 S.C. 248, 16 A.L.R.2d 1426—Wolfe v. Wolfe, 56 S.E.2d 343, 215 S.C. 530—Samuel v. Young, 51 S.E. 2d 367, 214 S.C. 91—Lyon v. Bargiol, 47 S.E.2d 625, 212 S.C. 266—Epworth Orphanage v. Long, 36 S. E.2d 37, 207 S.C. 384—Stein v. Xepapas, 29 S.E.2d 257, 204 S.C. 239—Turbeville v. Morris, 26 S.E.2d 821, 203 S.C. 287—Karres v. Pappas, 10 S.E.2d 15, 194 S.C. 512—Riley v. Berry, 199 S.E. 866, 189 S. C. 4—First Carolinas Joint Stock Land Bank of Columbia v. Knotts, 190 S.E. 114, 183 S.C. 68—Ulmer v. Bookhart, 182 S.E. 162, 178 S.C. 87—Alderman v. Alderman, 181 S.E. 897, 178 S.C. 9—Hannon v. Mechanics Building & Loan Ass'n of Spartanburg, 180 S.E. 873, 177 S.C. 153—Crouch v. Tarver, 175 S.E. 273, 173 S.C. 172—Glenn v. Worthy, 168 S.E. 705, 169 S.C. 263—South Carolina State Bank v. Stokes, 168 S.E. 541, 169 S.C. 173—Austin v. Goddard, 161 S.E. 767, 164 S.C. 20—Farrow v. First Nat. Co., 155 S.E. 736, 158 S.C. 435—Bain v. Rogers, 155 S.E. 619, 158 S.C. 417—Kaminski Hardware Co. v. Holden Trunk & Bag Co., 147 S.E. 874, 150 S.C. 244—Cohen v. Goldberg, 142 S.E. 36, 144 S.C. 70—Ellis v. Johnson, 141 S.E. 564, 143 S.C. 325—Williams v. Bruton, 131 S.E. 18, 133 S.C. 395—Youmans v. Youmans, 121 S.E. 674, 128 S.C. 31—Wilson v. Wilson, 112 S.E. 330, 117 S.C. 454.

Va.—Leckie v. Lynchburg Trust & Sav. Bank, 60 S.E.2d 923, 191 Va. 360.

W.Va.—Snyder v. Lane, 89 S.E.2d 607—McDermitt v. Moore, 104 S.E. 744, 87 W.Va. 300—Marshall v. Porter, 98 S.E. 207, 83 W.Va. 246.

4 C.J. p 895 note 62.

56. Fla.—London Operating Co. v. Continental Const. Co., 159 So. 33, 118 Fla. 15.

Ga.—Crim v. Alston, 151 S.E. 807, 169 Ga. 852.

Va.—Granite Hall Farms Corporation v. Virginia Trust Co., 153 S.E. 841, 154 Va. 333—Venable v. McNutt, 153 S.E. 709, 154 Va. 597—Reynolds v. Adams, 99 S.E. 695, 125 Va. 295—Cottrell v. Mathews, 92 S.E. 808, 120 Va. 847.

4 C.J. p 896 note 63.

57. Cal.—Garland v. Smith, 21 P.2d 688, 131 C.A. 517.

Ga.—Thomas v. Fred W. Amend Co., 26 S.E.2d 415, 196 Ga. 455—Allen v. Davis, 23 S.E.2d 665, 195 Ga. 167—Regal Textile Co. v. Feil, 6 S.E. 2d 908, 189 Ga. 581.

N.C.—Wallace v. Benner, 156 S.E. 795, 200 N.C. 124.

Pa.—Roberts v. Ward, 93 Pa.Super. 392.

S.C.—Meyerson v. Malinow, 97 S.E.2d 88—Oswald v. Oswald, 95 S.E.2d 493, 230 S.C. 299—Watson v. Little, 93 S.E.2d 645, 229 S.C. 486—Dean v. Dean, 93 S.E.2d 206, 229 S.C. 430—South Orange Trust Co. v. Conner, 89 S.E.2d 372, 228 S.C. 218—Maxwell v. Smith, 89 S.E.2d 280, 228 S.C. 182—Peoples Nat. Bank of Greenville v. Manos Bros. Inc., 84 S.E.2d 857, 226 S.C. 257—Royal Crown Bottling Co. v. Chandler, 83 S.E.2d 745, 226 S.C. 94—Miller v. Miller, 82 S.E.2d 119, 225 S.C. 274—Newton v. Batson, 77 S.E.2d 212, 223 S.C. 545—Wyman v. Davis, 74 S.E.2d 694, 223 S.C. 172—Anderson v. Purvis, 67 S.E.2d 80, 220 S.C. 259—Archambault v. Sprouse, 63 S.E.2d 459, 218 S.C. 500—Phipps v. Phipps, 57 S.E.2d 417, 216 S.C. 248, 16 A.L.R.2d 1426—Wolfe v. Wolfe, 56 S.E.2d 343, 215

or other person are mutually inconsistent,[58] or unless fraud[59] or abuse of discretion[60] is shown.

The mere fact that a finding to the contrary would be allowed to stand,[61] or that the reviewing court might have found differently,[62] does not authorize it to set aside the finding. After concurrence of the master and the trial court, the evidence will not be weighed on appeal;[63] only where reasons sufficient for granting a new trial appear will the court disturb the findings concurred in.[64]

Nevertheless, while the findings are always entitled to great weight on appeal,[65] the reviewing court is not conclusively bound by them, although approved by the trial court, but may, under certain circumstances, review the case and set aside the findings.[66] Thus, findings of a master, even when

S.C. 530—Samuel v. Young, 51 S.E. 2d 867, 214 S.C. 91—Lyon v. Bargiol, 47 S.E.2d 625, 212 S.C. 266—Epworth Orphanage v. Long, 36 S.E.2d 37, 207 S.C. 384—Stein v. Xepapas, 29 S.E.2d 257, 204 S.C. 239—Karres v. Pappas, 10 S.E.2d 15, 194 S.C. 512—First Carolinas Joint Stock Land Bank of Columbia v. Knotts, 190 S.E. 114, 183 S.C. 68—Ulmer v. Bookhart, 182 S.E. 162, 178 S.C. 87—Alderman v. Alderman, S.C., 181 S.E. 897, 178 S.C. 9—Hannon v. Mechanics Bldg. & Loan Ass'n of Spartanburg, 180 S.E. 873, 177 S.C. 153—Crouch v. Tarver, 175 S.E. 273, 173 S.C. 172—Glenn v. Worthy, 168 S.E. 705, 169 S.C. 263—South Carolina State Bank v. Stokes, 168 S.E. 541, 169 S.C. 173—Austin v. Goddard, 161 S.E. 767, 164 S.C. 20—Farrow v. First Nat. Co., 155 S.E. 736, 158 S.C. 435—Bain v. Rogers, 155 S.E. 619, 158 S.C. 417—Kaminski Hardware Co. v. Holden Trunk & Bag Co., 147 S.E. 874, 150 S.C. 244—Cohen v. Goldberg, 142 S.E. 36, 144 S.C. 70.

Va.—Surf Realty Corp. v. Standing, 78 S.E.2d 901, 195 Va. 431.

4 C.J. p 896 note 64.

58. Mass.—Greek Orthodox Community v. Malicourtis, 166 N.E. 863, 267 Mass. 472.

59. Ill.—House v. Linn, 179 Ill.App. 114—Masek v. Chmelik, 169 Ill. App. 589.

60. Ill.—Ryerson v. Apland, 38 N.E. 2d 712, 378 Ill. 472.

S.C.—Hammassapoulo v. Hammassapoulo, 131 S.E. 319, 134 S.C. 54.

61. Ga.—Torras v. Raeburn, 33 S.E. 989, 108 Ga. 345.

Mass.—Joslin v. Goddard, 72 N.E. 948, 187 Mass. 165.

62. Pa.—In re Murnaghan's Estate, 107 A. 888, 264 Pa. 523—In re Murnaghan's Estate, 107 A. 886, 264 Pa. 520.

S.C.—Riley v. Berry, 199 S.E. 866, 189 S.C. 4.

4 C.J. p 896 note 67.

63. Colo.—Board of Com'rs of Ouray County v. Board of Com'rs of San Juan County, 190 P. 666, 68 Colo. 428.

Mo.—Coombs v. J. H. Tschudy Hardwood Lumber Co., 197 S.W. 342.

64. Ala.—Fricke v. City of Guntersville, 48 So.2d 420, 254 Ala. 370.

Pa.—In re Grissinger's Estate, 158 A. 582, 104 Pa.Super. 184.

65. Ala.—Nelson v. Atkins, 109 So. 166, 215 Ala. 76.

Fla.—Stengel v. Biggar, 176 So. 786, 129 Fla. 627.

Ill.—Lewis v. West Side Trust & Savings Bank, 32 N.E.2d 907, 376 Ill. 23.

Bush v. Bush, 64 N.E.2d 396, 327 Ill.App. 554—Roth-Adam Fuel Co. v. Adam, 33 N.E.2d 744, 310 Ill. App. 265.

Ky.—Gay v. Hardman, 124 S.W.2d 1048, 276 Ky. 624—Sutherland Bros. v. Stanley, 63 S.W.2d 487, 250 Ky. 417—Hoskins v. Williamson, 15 S.W.2d 242, 228 Ky. 395—Madison-Jackson-Estill Lumber Co. v. Coyle, 178 S.W. 1170, 166 Ky. 108.

Mo.—Craig v. McNichols Furniture Co., App., 187 S.W. 793.

Pa.—In re Miller's Estate, 123 A. 646, 279 Pa. 30.

Caldwell v. Caldwell, 70 Pa.Super. 332.

Schantz v. Schantz, Com.Pl., 53 Lanc.L.Rev. 281.

R.I.—Rado v. Dwares, 144 A. 145.

Va.—Shield v. Brown, 186 S.E. 33, 166 Va. 596—Venable v. McNutt, 153 S.E. 709, 154 Va. 597—Ingram v. Ingram, 107 S.E. 653, 130 Va. 329—Reynolds v. Adams, 99 S.E. 695, 125 Va. 295—Cottrell v. Matthews, 92 S.E. 808, 120 Va. 847.

W.Va.—Jenkins v. Brown, 155 S.E. 660, 109 W.Va. 539—Browning v. Browning, 150 S.E. 233, 108 W.Va. 81.

66. Ill.—Zilvitis v. Szczudlo, 99 N.E. 2d 124, 409 Ill. 252—Scales v. Mitchell, 92 N.E.2d 665, 406 Ill. 130—Jones v. Koepke, 55 N.E.2d 154, 387 Ill. 97—Union Bank of Chicago v. Gallup, 148 N.E. 2, 317 Ill. 184.

Buckley v. Coyne Elec. School, 99 N.E.2d 370, 343 Ill.App. 420, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691.

Iowa.—Nelson v. Barnick, 63 N.W.2d 911, 245 Iowa 982.

Mass.—Fauci v. Denehy, 127 N.E.2d 477, 332 Mass. 691—La Chance v. Rigoli, 91 N.E.2d 204, 325 Mass. 425—Ford v. Cahill, 53 N.E.2d 81, 315 Mass. 492—Brian v. B. Sopkin & Sons, 49 N.E.2d 894, 314 Mass. 180—Lewis v. Conrad & Co., 42 N.E.2d 732, 311 Mass. 541—Keefe v. Johnson, 24 N.E.2d 520, 304 Mass. 572—Cohen v. Simon, 23 N. E.2d 863, 304 Mass. 375—U. S. Fidelity & Guaranty Co. v. English Const. Co., 20 N.E.2d 939, 303 Mass. 105.

Mo.—Craig v. McNichols Furniture Co., App., 187 S.W. 793.

N.M.—Manby v. Voorhees, 203 P. 543, 27 N.M. 511.

N.Y.—Zellner v. Brooklyn Trust Co., 62 N.Y.S.2d 40, 270 App.Div. 941—People ex rel. Luce v. Lewis, 15 N. Y.S.2d 180, 257 App.Div. 724.

Pa.—In re Miller's Estate, 123 A. 646, 279 Pa. 30.

In re McLiesh's Estate, 54 A.2d 106, 161 Pa.Super. 292.

S.C.—Young v. Levy, 32 S.E.2d 889, 206 S.C. 1—Masonic Temple v. Ebert, 18 S.E.2d 584, 199 S.C. 5—Fant v. Easley Loan & Trust Co., 169 S.E. 659, 170 S.C. 61—Scott v. Newell, 144 S.E. 82, 146 S.C. 385.

Tenn.—Robichaud v. Smith, 232 S.W. 2d 576, 33 Tenn.App. 651—Vanhooser v. Cunningham, 146 S.W.2d 840, 24 Tenn.App. 480.

Va.—Taylor v. Hopkins, 84 S.E.2d 430, 196 Va. 571—Leckie v. Lynchburg Trust & Sav. Bank, 60 S.E.2d 923, 191 Va. 360—First Nat. Bank v. Weinberg, 182 S.E. 250, 165 Va. 433.

4 C.J. p 896 note 68.

Testimony by deposition

A master's findings, approved by chancellor, were not binding on appellate court where the two principal witnesses testified by way of deposition.

Ill.—Meyers v. Dorfman, 54 N.E.2d 235, 322 Ill.App. 120.

Where master made no ultimate finding as to title to pattern plates involved in dispute, supreme judicial court was required, on appeal, to draw its own inference without regard to finding of superior court.

Mass.—Morin v. Clark, 6 N.E.2d 880, 296 Mass. 479.

Where equity suit was brought up for review on master's report, supreme judicial court was in the same position as a trial judge to determine whether plaintiff was entitled to relief.

Mass.—Bonifazi v. Breschi, 6 N.E.2d 816, 296 Mass. 544.

Where official referee's opinion specifically invites confirming court's review of fact findings, court will consider case unprejudiced by referee's decision thereon.

approved or adopted by the trial court, are subject to review on appeal, and may be set aside where they embody only conclusions of law or deductions from undisputed facts,[67] where obviously based on an error of law,[68] or where they relate to questions of fact improperly referred;[69] nor does the general rule that findings approved by the court will not be reviewed apply if the finding of the ultimate and determinative fact is not definitely stated by the referee.[70]

There is, of course, nothing to prevent the reviewing court from drawing further inferences from the facts found by the referee and approved by the trial court.[71]

§ 1670. Where Court and Master or Referee Do Not Concur

a. Disapproval of, or conflict in, findings
b. Independent findings of court

a. Disapproval of, or Conflict in, Findings

Where the trial judge disapproves the findings and makes his own, and that not merely as a result of different inferences or conclusions from the same facts, the appellate courts in some jurisdictions attach the presumption of correctness to the judge's findings, in others to those of the referee or master, and in still others exercise an independent determination from all the facts and evidence in the record.

The rule that the findings of a master, referee, or the like, when approved by the court, will be regarded as in the nature of a verdict cannot apply where the findings are overruled and disaffirmed by the lower court, instead the appellate court will sustain the conclusion of the master or referee or that of the lower court either on its own independent determination or by assuming the correctness of whichever of the conflicting findings is entitled to a presumption of correctness by the law of the particular jurisdiction.[72]

In some jurisdictions the court will, in such a situation, regard the finding of the trial judge as being prima facie correct,[73] and his findings will be sustained if supported by competent evidence[74] and will not be set aside unless unsupported by, or clearly opposed to, the preponderance of evidence,[75] the finding of the master or referee being regarded on

N.Y.—Martin v. Barrett-Cravens Co., 298 N.Y.S. 101, 164 Misc. 69.

Where a reference had been improperly ordered

Tenn.—Myrick v. Johnson, 160 S.W. 2d 185, 25 Tenn.App. 483—Ingram v. Stein, 126 S.W.2d 891, 23 Tenn. App. 105.

67. Mass.—New England Gas & Elec. Ass'n v. Ocean Acc. & Guarantee Corp., 116 N.E.2d 671, 330 Mass. 640—Cutler v. Johansson, 28 N.E.2d 529, 306 Mass. 466—Dolben v. Duncan Const. Co., 177 N.E. 105, 276 Mass. 242.

Mo.—Industrial Bank & Trust Co. v. Hesselberg, 195 S.W.2d 470—Paisley v. Lucas, 143 S.W.2d 262, 346 Mo. 827.

Pa.—In re Miller's Estate, 128 A. 646, 279 Pa. 30.

In re Boswell's Estate, 167 A. 402, 109 Pa.Super. 365—In re Nixon's Estate, 159 A. 172, 104 Pa.Super. 506.

Tenn.—Falls v. Carruthers, 103 S.W. 2d 605, 20 Tenn.App. 681—Love v. Nashville Agricultural & Normal Inst., 6 Tenn.App. 104.

Worley v. Byrd, 6 Tenn.Civ.App. 59.

4 C.J. p 896 note 69—21 C.J. p 624 note 90.

Questions of law or mixed questions of law and fact

On appeal from decree in equity in suit wherein vital issue was as to what was the contract between the parties, reviewing court was not bound by the general rule as to concurrent findings in determining what the contract was, since the question was one of law, or was a mixed question of law and fact.

Tenn.—Reed Bros. Stone Co. v. Pittman Const. Co., 101 S.W.2d 478, 20 Tenn.App. 552.

68. Tenn.—Hord v. Holston River R. Co., 123 S.W. 637, 122 Tenn. 399, 135 Am.S.R. 878, 19 Ann.Cas. 331.

Evans v. Boggs, 245 S.W.2d 641, 35 Tenn.App. 354—Black v. Love & Amos Coal Co., 206 S.W.2d 432, 30 Tenn.App. 377.

Horne v. Greer, Ch.App., 43 S.W. 774.

69. Tenn.—State v. Bolt, 169 S.W. 761, 130 Tenn. 212.

Evans v. Boggs, 245 S.W.2d 641, 35 Tenn.App. 354—Black v. Love & Amos Coal Co., 206 S.W.2d 432, 30 Tenn.App. 377.

4 C.J. p 896 note 71.

70. N.C.—French v. Richardson, 83 S.E. 31, 167 N.C. 41.

71. Mass.—Rioux v. Cronin, 109 N. E. 898, 222 Mass. 131—Fairbanks v. McDonald, 106 N.E. 1000, 219 Mass. 291.

72. Ill.—Ryerson v. Apland, 38 N.E. 2d 712, 378 Ill. 472.

Kopald v. O'Gradney, 128 N.E. 2d 623, 7 Ill.App.2d 19—Merschat v. Merschat, 117 N.E.2d 868, 1 Ill. App.2d 429—Eyer v. Read, 102 N. E.2d 754, 345 Ill.App. 293.

Mo.—Parsons v. Third Nat. Co., App., 124 S.W.2d 630.

N.Y.—Ferguson v. Ferguson, 67 N.Y. S.2d 906, 271 App.Div. 976.

W.Va.—Damron v. Williamson Construction & Engineering Co., 153 S.E. 250, 109 W.Va. 122.

4 C.J. p 896 note 74.

Where special master's findings are supported by evidence, final decree overruling such findings and recommendation of special master must be reversed, unless master misconceived the legal effect of the evidence.

Fla.—Hartnett v. Lotauro, 82 So.2d 362.

73. Fla.—Empire Lumber Co. v. Morris, 135 So. 508, 102 Fla. 226.

Mo.—City of St. Louis v. Parker-Washington Co., 196 S.W. 767, 271 Mo. 229, certiorari denied 38 S.Ct. 11, 245 U.S. 651, 62 L.Ed. 531.

N.C.—Kenney v. Balsam Hotel Co., 138 S.E. 349, 194 N.C. 44.

S.C.—Scott v. Newell, 144 S.E. 82, 146 S.C. 385—United Timber Corporation v. Mullins Lumber Co., 141 S.E. 15, 142 S.C. 477.

4 C.J. p 896 note 76.

74. Fla.—Mizner Land Corporation v. Abbott, 175 So. 507, 128 Fla. 489.

Mo.—Mecartney v. Guardian Trust Co., 202 S.W. 1131, 274 Mo. 224.

Rice v. Robertson, App., 48 S.W. 2d 172.

N.C.—Hughes v. Oliver, 47 S.E.2d 6, 228 N.C. 680—Meadows v. Meadows, 5 S.E.2d 128, 216 N.C. 413—Robertson v. Jackson, 110 S.E. 593, 183 N.C. 695.

Or.—Liebe v. Nicolai, 48 P. 172, 30 Or. 364.

75. Fla.—Empire Lumber Co. v. Morris, 135 So. 508, 102 Fla. 226.

Ga.—Fitzpatrick v. Massee-Felton Lumber Co., 3 S.E.2d 91, 188 Ga. 80.

Mo.—City of St. Louis v. Parker-Washington Co., 196 S.W. 767, 271

appeal merely as a circumstance of more or less weight in testing the correctness of the chancellor's finding.[76] Where the record is not clear, the trial judge's conclusion contrary to that of the referee will not be disturbed.[77]

Elsewhere the rule, by statute or decision, is that, where the master has heard testimony and made findings based on it, he stands in a position superior to the trial court acting without the benefit of that factor and his finding will be adopted by the appellate court in preference to that of the trial court.[78]

In still other jurisdictions the reviewing court will exercise its own independent judgment and sustain whichever of the prior findings seems to it in accordance with the truth and the facts,[79] making due allowance for the fact that the referee had the benefit of observing the witnesses, where that is the case, and giving that circumstance proper weight in arriving at its conclusion.[80] Where the action of the court is accompanied by a statement of the reasons therefor, the reviewing court should consider the reasons given in the light of the entire record and of the weight to which the original findings are entitled, and arrive at its independent conclusion in view of such considerations, on the facts in issue.[81]

Inferences or conclusions. Where the trial court did not accept the master's results or conclusions, but based the decision on a different theory from that acted on by the master, without disturbing the underlying fact findings, there is no concurrence which will call for the operation of the rules stated in the preceding section.[82] A difference in findings arising merely from different inferences drawn from the same testimony, documentary or otherwise, as to which the referee had no superior opportunities of observation over the trial justice, will be resolved by the reviewing court in favor of the latter in the absence of clear error in his findings.[83]

b. Independent Findings of Court

Facts found by the court before the submission or after the report have not the same conclusiveness as those which are concurred in but have that to which fact findings generally are entitled.

Fact issues not submitted, but determined by the trial judge prior to submission, are not findings on which the referee and the court concur and may be reviewed under the same circumstances as any other finding of a trial justice,[84] and further, or additional, findings by the judge stand on the same footing, on review, as the approved findings of the referee.[85]

Mo. 229, certiorari denied 38 S.Ct. 11, 245 U.S. 651, 62 L.Ed. 531.
N.Y.—People ex rel. Syracuse Trust Co. v. Matt, 15 N.Y.S.2d 1003, 258 App.Div. 853, modified on other grounds, 28 N.E.2d 394, 283 N.Y. 241.
N.C.—McGeorge v. Nicola, 91 S.E. 708, 173 N.C. 707, rehearing denied 92 S.E. 610, 173 N.C. 733.
S.C.—Troy Cemetery Ass'n v. Davis, 75 S.E.2d 458, 223 S.C. 305—Daniel v. Daniel, 98 S.E. 798, 111 S.C. 511.
W.Va.—Damron v. Williamson Construction & Engineering Co., 153 S.E. 250, 109 W.Va. 122.
4 C.J. p 896 note 77.

Grant of new trial

Where an action which is tried by a referee is set aside and a new trial granted, the appellate court will not interfere unless the evidence manifestly preponderates in favor of the referee's decision.
Minn.—Koktan v. Knight, 46 N.W. 354, 44 Minn. 304.

76. W.Va.—Damron v. Williamson Construction & Engineering Co., 153 S.E. 250, 109 W.Va. 122.
4 C.J. p 896 note 75.

77. Ky.—Schultz v. Dillow, 254 S.W.2d 930—Ashurst v. Thurman's Adm'r, 35 S.W.2d 273, 237 Ky. 186.

78. Ala.—Selman v. Bryant, 72 So.2d 704, 261 Ala. 53—Fricke v. City of Guntersville, 59 So.2d 590, 257 Ala. 442—Vaughan v. Smith, 69 Ala. 92.
Ill.—Baker v. Abbott Mfg. Co., 212 Ill.App. 476.
N.M.—Givens v. Veeder, 50 P. 316, 9 N.M. 256.
4 C.J. p 896 note 76 [a].

79. Pa.—Merchants' & Manufacturers' Nat. Bank of Pittsburgh v. Kern, 44 A. 334, 193 Pa. 67—Bugbee's Appeal, 1 A. 273, 110 Pa. 331.
Wash.—In re Johnson Creek Water Rights, 294 P. 566, 159 Wash. 629.

80. Pa.—Williams v. Concord Cong. Church, 44 A. 272, 193 Pa. 120.
Wash.—In re Johnson Creek Water Rights, 294 P. 566, 159 Wash. 629.

Where neither the auditor nor the court personally hear witnesses, the findings of the court will be accepted in preference to those of the auditor.
Pa.—In re Harbaugh's Estate, 182 A. 394, 320 Pa. 209.

81. Pa.—In re Cameron's Estate, 130 A.2d 173, 388 Pa. 25—In re Curran's Estate, 165 A. 842, 310 Pa. 434.
In re Follansbee's Estate, 53 A. 2d 864, 161 Pa.Super. 31.

82. N.C.—French v. Richardson, 83 S.E. 31, 167 N.C. 41.
4 C.J. p 896 note 73.

83. Pa.—In re Mallory's Estate, 150 A. 606, 300 Pa. 217.

84. Tenn.—Tankesly v. Bell, Ch. App., 37 S.W. 1018.

85. N.C.—Biggs v. Lassiter, 18 S.E. 2d 419, 220 N.C. 761—Pickler v. Pinecrest Manor, 143 S.E. 8, 195 N.C. 614—Robertson v. Jackson, 110 S.E. 593, 183 N.C. 695—Steed v. Dover Lumber Co., 107 S.E. 445, 181 N.C. 508—McGeorge v. Nicola, 91 S.E. 708, 173 N.C. 707, rehearing denied 92 S.E. 610, 173 N.C. 733.

Inferences from facts found

(1) Although trial court and reviewing court may draw further inferences from facts reported by master to whom case is referred, neither may draw inferences of fact in contradiction of those found by master unless it has before it as a foundation all that was before master, or unless subsidiary facts are so inconsistent with ultimate findings that both cannot stand.
Mass.—Dodge v. Anna Jaques Hospital, 17 N.E.2d 308, 301 Mass. 431.

(2) Where the trial judge took report of auditor whose findings were not to be final, with power to draw proper inferences, from subsidiary or specific facts found, his findings, made by way of inference, were not reviewable.
Mass.—M. McDonough Corp. v. Connolly, 46 N.E.2d 576, 313 Mass. 62.

(3) Trial judge and the supreme judicial court could draw permissible inferences from facts stated in report of auditor whose fact findings the parties agreed should be final.

5. Dismissal, Nonsuit, Direction of Verdict, or Demurrer to Evidence

§ 1671. Dismissal or Nonsuit, or Direction of Verdict

a. Motions to direct verdict or for nonsuit in general
b. Both parties moving for directed verdict
c. Dismissal

a. Motions to Direct Verdict or for Nonsuit in General

The action of the trial court in granting or refusing to grant a motion for a directed verdict or for a nonsuit is subject to appellate review, but only to the extent of determining whether there was adduced any evidence legally sufficient to support a conclusion contrary to that reached by the trial court.

Although there may be an appellate review of a ruling or order of the trial court on a motion for a directed verdict or for a nonsuit in the sense that the appellate court may determine whether such action was justified by the legal inferences to be deduced from the undisputed evidence, nevertheless the appellate court will not weigh the evidence, but will confine itself, when the action of the court below is questioned, to a determination of the question whether there is any evidence fairly tending to support a conclusion opposed to that involved in the action of the trial court.[86]

Mass.—Galluzzi v. City of Beverly, 34 N.E.2d 492, 309 Mass. 135—Galante v. City of Brockton, 26 N.E.2d 341, 305 Mass. 580.

(4) Where the inferences of fact drawn by the judge from the facts found by the master are not plainly wrong, they must stand.

Mass.—Wallin v. Fredin, 135 N.E. 129, 241 Mass. 233.

Pa.—Dingee v. Wood, 77 A. 440, 228 Pa. 250.

86. Ala.—Penney v. Speake, 54 So. 2d 709, 256 Ala. 359—Birmingham Elec. Co. v. McQueen, 44 So.2d 598, 253 Ala. 395—Street v. Street, 22 So.2d 35, 246 Ala. 683—Birmingham Water Works Co. v. Walker, 8 So.2d 827, 243 Ala. 149—Porterfield v. Life & Casualty Co. of Tennessee, 5 So.2d 71, 242 Ala. 102—Ray v. Sears, Roebuck & Co., 200 So. 608, 240 Ala. 614—Gassenheimer v. Alabama Gas Co., 199 So. 817, 240 Ala. 465—Northam v. Metropolitan Life Ins. Co., 163 So. 635, 231 Ala. 110—Mobile Light & R. Co. v. Logan, 106 So. 147, 213 Ala. 672—Louisville & N. R. Co. v. Long, 105 So. 890, 213 Ala. 679—Rooks v. Swift & Co., 98 So. 16, 210 Ala. 364—Alabama Power Co. v. Alford, 97 So. 224, 210 Ala. 98.

Downey v. Johnson, 19 So.2d 85, 31 Ala.App. 514—National Life Ins. Co. of America v. Hedgecoth, 77 So. 422, 16 Ala.App. 272, certiorari denied Ex parte National Life Ins. Co. of America, 77 So. 1000, 201 Ala. 696.

Ariz.—J. & B. Motors v. Margolis, 257 P.2d 588, 75 Ariz. 392, 38 A.L.R.2d 946—L. C. James Motor Co. v. Wetmore, 286 P. 180, 36 Ariz. 382.

Ark.—Bridges v. Harold L. Schaefer, Inc., 179 S.W.2d 176, 207 Ark. 122—Missouri Pac. R. Co. v. Clay, 168 S.W.2d 621, 205 Ark. 300—Meyer v. Moore, 115 S.W.2d 1087, 195 Ark. 1114.

Cal.—Parker v. James E. Granger, Inc., 52 P.2d 226, 4 C.2d 668, appeal dismissed and certiorari denied 56 S.Ct. 958, 298 U.S. 644, 80 L.Ed. 1375—Schroeder v. Baumgarteker, 262 P. 740, 202 C. 626—Marini v. Southern Pac. Co., 257 P. 74, 201 C. 392.

Dickow v. Cookinham, 266 P.2d 63, 123 C.A.2d 81, 40 A.L.R.2d 1066—Charlton v. Pan Am. World Airways, 254 P.2d 128, 116 C.A.2d 550—Sweet v. Markwart, 252 P.2d 751, 115 C.A.2d 735—Frederickson v. Kepner, 187 P.2d 800, 82 C.A.2d 905—Southern Cal. Tel. Co. v. Carpenter, 171 P.2d 142, 75 C.A. 336—In re Rabinowitz' Estate, 135 P.2d 579, 58 C.A.2d 106—Wiswell v. Shinners, 117 P.2d 677, 47 C.A.2d 156—Martin v. Tully, 112 P.2d 282, 44 C.A.2d 226—Reinhard v. Lawrence Warehouse Co., 107 P.2d 501, 41 C.A.2d 741—Knecht v. Lombardo, 91 P.2d 917, 33 C.A.2d 447—Pignet v. City of Santa Monica, 84 P.2d 166, 29 C.A.2d 286—Blodget v. Preston, 5 P.2d 25, 118 C.A. 297—Scott v. Sciaroni, 226 P. 827, 66 C.A. 577.

Conn.—Burley v. Davis, 46 A.2d 417, 132 Conn. 631—Ackerson v. Erwin M. Jennings Co., 140 A. 760, 107 Conn. 393, 56 A.L.R. 1127.

Fla.—Red Top Cab & Baggage Co., for Use and Benefit of Fontaine, v. Dorner, 32 So.2d 321, 159 Fla. 538—Smith, Richardson & Conroy v. Tampa Electric Co., 89 So. 352, 82 Fla. 79.

Ga.—Jackson v. Thompson, 48 S.E. 2d 903, 77 Ga.App. 367—W. A. Lathem & Sons v. Reinhardt, 46 S.E.2d 631, 76 Ga.App. 528—Crozier v. Provident Life & Accident Ins. Co., 186 S.E. 719, 53 Ga.App. 572.

Ill.—Lindroth v. Walgreen Co., 94 N.E.2d 847, 407 Ill. 121—Schneiderman v. Interstate Transit Lines, 69 N.E.2d 293, 394 Ill. 569—Bartolucci v. Falleti, 46 N.E.2d 980, 382 Ill. 168—Ryan v. Deneen, 31 N.E.2d 582, 375 Ill. 452—Bowman v. Woodway Stores, 177 N.E. 727, 345 Ill. 110—Burns v. City of Chicago, 169 N.E. 811, 338 Ill. 89.

Farr v. Chicago & E. I. R. Co., 131 N.E.2d 120, 8 Ill.App.2d 168—Kettlewell v. Prudential Ins. Co. of America, 117 N.E.2d 568, 1 Ill. App.2d 300, reversed 122 N.E.2d 817, 4 Ill.2d 383—Eckhardt v. Hickman, 111 N.E.2d 199, 349 Ill.App. 474, appeal dismissed 116 N.E.2d 873, 2 Ill.2d 98—Brussel v. Lilly, 107 N.E.2d 32, 347 Ill.App. 533—Goldberg v. Hamburger, 96 N.E.2d 636, 342 Ill.App. 444—Emmick v. Baltimore & O. R. Co., 88 N.E.2d 739, 339 Ill.App. 147, certiorari denied 71 S.Ct. 43, 340 U.S. 831, 95 L.Ed. 611—Applegate v. Chicago & N. W. Ry. Co., 78 N.E.2d 793, 334 Ill.App. 141—Cook v. Kirgan, 75 N.E.2d 120, 332 Ill.App. 294—Elbers v. Standard Oil Co., 72 N.E. 2d 874, 331 Ill.App. 207—Olympia Fields Country Club v. Bankers Indem. Ins. Co., 60 N.E.2d 896, 325 Ill.App. 649—Hart v. Sullivan, 58 N.E.2d 301, 324 Ill.App. 243—Curtis v. Kaderbek, 53 N.E.2d 277, 321 Ill.App. 471—Sundberg v. Boal, 49 N.E.2d 824, 320 Ill.App. 138—Zator v. Cummings, 42 N.E.2d 858, 315 Ill.App. 210—Paul v. Garman, 34 N.E.2d 884, 310 Ill.App. 447—Mesce v. City of Chicago, 23 N.E. 2d 188, 301 Ill.App. 429—Le Menager v. Northwestern Steel & Wire Co., 22 N.E.2d 710, 301 Ill. App. 260—Rocca v. Metropolitan Life Ins. Co., 21 N.E.2d 849, 300 Ill.App. 592—Synwolt v. Klank, 15 N.E.2d 895, 296 Ill.App. 79—Trust Co. of Chicago v. Richardson, 8 N.E.2d 530, 290 Ill.App. 464—Kaldunski v. Chicago City Ry. Co., 250 Ill.App. 475—Dupuis v. Kipnis, 217 Ill.App. 254—Burger v. St. Louis Bed & Mfg. Co., 206 Ill.App. 256.

Ind.—Sears v. Moran, 59 N.E.2d 566, 223 Ind. 179—Wilson v. Rollings, 14 N.E.2d 905, 214 Ind. 155.

Johnson v. Gaugh's Estate, 124 N.E.2d 704, 125 Ind.App. 510—Hummel v. New York Cent. R. Co., 66 N.E.2d 901, 117 Ind.App. 22—Cory v. Ray, 55 N.E.2d 117, 115 Ind.App. 50—McIntosh v. Pennsylvania R. Co., 38 N.E.2d 263, 111 Ind.App. 550—Dean v. Dalton Foundries, 34 N.E.2d 145, 109 Ind. App. 377—Kettner v. Jay, 26 N.E. 2d 546, 107 Ind.App. 643—Croly v. Indianapolis Traction & Terminal Co., 115 N.E. 105, 63 Ind.App. 663.

Iowa.—Wessman v. Sundholm, 291 N.W. 137, 228 Iowa 344—Remer v. Takin Bros. Freight Lines, 289 N. W. 477, 227 Iowa 903—Ottumwa Nat. Bank v. Starns, 210 N.W. 455, 202 Iowa 412—Swegle v. Chicago, B. & Q. R. Co., 192 N.W. 894, 196 Iowa 413.

Ky.—Jones' Adm'x v. May, 221 S.W. 2d 617, 310 Ky. 706—Bauman's Adm'r v. Brown & Williamson Tobacco Corp., 204 S.W.2d 327, 305 Ky. 344—Jellico Coal Mining Co. v. Walls, 170 S.W. 19, 160 Ky. 730.

Me.—Temple v. Congress Square Garage, 75 A.2d 459, 145 Me. 274—Jordan v. Maine Cent. R. Co., 27 A.2d 811, 139 Me. 99—Goodwin v. Boutin, 155 A. 738, 130 Me. 322—Healey v. Cumberland County Power & Light Co., 134 A. 544, 125 Me. 519—Morneault v. Cohen, 120 A. 915, 122 Me. 543.

Md.—Miller v. Graff, 78 A.2d 220, 196 Md. 609—Neuland v. Millison, 53 A.2d 568, 188 Md. 594—Strohecker v. Schumacher & Seiler, 43 A.2d 208, 185 Md. 144—State, to Use of Birckhead, v. Sammon, 139 A. 265, 171 Md. 178.

Mass.—Burwick v. McClure, 63 N.E. 2d 338, 318 Mass. 626—De Angelis v. Boston Elevated Ry. Co., 23 N.E.2d 859, 304 Mass. 461—Dunlea v. R. D. A. Realty Co., 17 N.E.2d 707, 301 Mass. 505—Abdow v. Silverbrand, 17 N.E.2d 163, 301 Mass. 337—Johnson v. Warner Bros. Circuit Management Corp., 17 N.E.2d 147, 301 Mass. 348—Bergantino v. General Baking Co., 9 N.E.2d 521, 298 Mass. 106—Flynn v. First National Stores, 6 N.E.2d 814, 296 Mass. 521—Gustafson v. Gatto, 6 N.E.2d 385, 296 Mass. 404.

Mich.—Edmunds v. Sughrow, 206 N. W. 309, 233 Mich. 400.

Minn.—Anderson v. Sears, Roebuck & Co., 26 N.W.2d 355, 223 Minn. 1.

Miss.—Mobile & O. R. Co. v. Cox, 121 So. 292, 153 Miss. 597.

Mo.—Craddock v. Greenberg Mercantile, Inc., 297 S.W.2d 541—Brawley v. Esterly, 267 S.W.2d 655—Niklas v. Metz, 222 S.W.2d 795, 359 Mo. 601—Larkin v. Larkin, 119 S.W.2d 351—Clingenpeel v. Citizens' Trust Co. of Boonville, Mo., 240 S.W. 177—Laughlin v. Kansas City Southern Ry. Co., 205 S.W. 3, 275 Mo. 459.

Sutton v. City of St. Joseph, App., 265 S.W.2d 760—Girratono v. Kansas City Public Service Co., App., 248 S.W.2d 539, affirmed 251 S.W.2d 59, 363 Mo. 359—Mastin v. Emery, Bird, Thayer Dry Goods Co., 140 S.W.2d 720, 236 Mo.App. 487, certiorari quashed State ex rel. Emery, Bird, Thayer Dry Goods, 154 S.W.2d 775, 348 Mo. 650—Magee v. Hayden, App., 111 S.W. 2d 239—Frank v. Myers, 109 S.W. 2d 54, 232 Mo.App. 681—Sheppard v. Travelers Protective Ass'n of America, App., 104 S.W.2d 784—Thomas Patrick, Inc., v. Corbett, App., 67 S.W.2d 756—U. S. Fidelity & Guaranty Co. v. Goodson, 54 S.W.2d 754, 227 Mo.App. 456—Devine v. Barton, App., 22 S.W.2d 877—Trepp v. Monongah Glass Co., 297 S.W. 108, 220 Mo.App. 1099—Records v. Powell, App., 278 S.W. 1078—Drake v. Rowan, 272 S.W. 101, 216 Mo.App. 663—Luellen v. Pickering Coal Co., App., 242 S.W. 143—Montague v. Missouri & K. I. Ry. Co., App., 193 S.W. 935.

Mont.—Hewitt v. Novak, 158 P.2d 627, 117 Mont. 365—Wilson v. Davis, 103 P.2d 149, 110 Mont. 356—Olsen v. Zappone, 273 P. 635, 83 Mont. 573—Myrick v. Peet, 180 P. 574, 56 Mont. 13.

Neb.—Anthony v. City of Lincoln, 41 N.W.2d 147, 152 Neb. 320.

N.H.—Kenney v. Boston & Maine R. R., 33 A.2d 557, 92 N.H. 495—Glidden v. Public Service Co. of New Hampshire, 183 A. 865, 88 N.H. 4—Watson v. Firemen's Ins. Co., 140 A. 169, 83 N.H. 200—Stinson v. Maine Cent. R. Co., 128 A. 562, 81 N.H. 473—Judkins v. Exeter & Hampton Electric Co., 125 A. 435, 81 N.H. 264—Romani v. Boston & M. R. R., 123 A. 233, 81 N.H. 206—Ingerson v. Grand Trunk Ry., 106 A. 488, 79 N.H. 154—Morrison v. Hall, 96 A. 298, 78 N.H. 48.

N.J.—Riker v. John Hancock Mut. Life Ins. Co., 30 A.2d 42, 129 N.J. Law 508—Burdge v. Retail Department Stores of America, 29 A. 2d 139, 129 N.J.Law 228, affirmed 31 A.2d 778, 130 N.J.Law 81—Ellis v. Dowd, 27 A.2d 869, 128 N. J.Law 607—Kelly v. Forman, 27 A.2d 862, 129 N.J.Law 41—Wilkinson v. Walsh, 178 A. 721, 115 N.J. Law 243—Bencke v. Weltersbach, 158 A. 752, 108 N.J.Law 430—Cervona v. Delaware, L. & W. R. Co., 114 A. 14, 95 N.J.Law 246—Fagan v. Central R. Co. of New Jersey, 111 A. 32, 94 N.J.Law 454.

Wilson v. Deschner, 167 A. 670, 11 N.J.Misc. 609—Lewis v. Public Service Ry. Co., 138 A. 466, 5 N.J. Misc. 840.

N.Y.—Foley v. Union Free School Dist. No. 17, Town of Oyster Bay, 19 N.Y.S.2d 198, 259 App.Div. 837.

N.C.—Futrelle v. Atlantic Coast Line R. Co., 94 S.E.2d 899, 245 N.C. 36—Venus Lodge No. 62, F. & A. M. v. Acme Benev. Ass'n, 58 S.E.2d 109, 231 N.C. 522, 15 A.L.R.2d 1446—Ballard v. Ballard, 55 S.E.2d 316, 230 N.C. 629—Chesser v. McCall, 52 S.E.2d 231, 230 N.C. 119—Harrison v. Brown, 24 S.E.2d 470, 222 N.C. 610—Castelloe v. Phelps, 152 S.E. 163, 198 N.C. 454—Hart v. Atlantic Coast Line R. R., 136 S.E. 874, 193 N.C. 317—Hanes v. Southern Public Utilities Co., 124 S.E. 866, 188 N.C. 465—Loggins v. Southern Public Utilities Co., 106 S.E. 822, 181 N.C. 221—Woods v. North Carolina Public Service Co., 94 S.E. 459, 174 N.C. 697, 1 A.L.R. 942.

N.D.—Bentley v. Oldetyme Distillers, 289 N.W. 92, 69 N.D. 587.

Ohio.—Clark v. Hiatt, App., 136 N. E.2d 412—Mazza v. Greenstein, 80 N.E.2d 216, 82 Ohio App. 145—Sizemore v. Beiser, 74 N.E.2d 560, 80 Ohio App. 383—Wiley v. Wharton, 41 N.E.2d 255, 68 Ohio App. 345.

Or.—Johnston v. Leach, 253 P.2d 642, 197 Or. 430—Keefer v. Givens, 232 P.2d 808, 191 Or. 611—Dudleston v. Chiravollatti, 198 P.2d 858, 184 Or. 405—McMillan v. Kik, 181 P.2d 128, 181 Or. 270—Portland Postal Employees Credit Union v. U. S. Nat. Bank of Portland, 135 P.2d 467, 171 Or. 40, rehearing denied 136 P.2d 259, 171 Or. 40—Bond v. Graf, 96 P.2d 1091, 163 Or. 264—Whisler v. U. S. Nat. Bank of Portland, 82 P.2d 1079, 160 Or. 10—Corrigan v. Portland Traction Co., 73 P.2d 378, 157 Or. 496—Krieger v. Doolittle, 18 P.2d 1041, 142 Or. 122—Zuccala v. Suncrest Orchards, 280 P. 344, 130 Or. 612—Hamilton v. Kelsey, 268 P. 750, 126 Or. 26—Phipps v. Stancliff, 245 P. 508, 118 Or. 32—Morata v. Oregon-Washington R. & Nav. Co., 170 P. 291, 87 Or. 219—Taggart v. Hunter, 150 P. 738, 78 Or. 139, Ann. Cas.1918A 128, reversed on other grounds 152 P. 871, 78 Or. 139, Ann. Cas.1918A 128.

Pa.—Stewart v. Loughman, 80 A.2d 715, 367 Pa. 486—Sargeant v. Ayers, 57 A.2d 881, 358 Pa. 393—Schell v. Miller North Broad Storage Co., 45 A.2d 53, 353 Pa. 319—Stabelli v. Somerton Building & Loan Ass'n, 23 A.2d 477, 343 Pa. 460—Fantozzi v. Schappert, 192 A. 114, 326 Pa. 298—Sakach v. Antonoplos, 148 A. 58, 298 Pa. 130.

Vernon v. Firemen's Pension Fund of Philadelphia, 52 A.2d 199, 160 Pa.Super. 617—Lemak v. City of Pittsburgh, 23 A.2d 354, 147 Pa. Super. 62—Ayoob v. William Penn Trust Co., 1 A.2d 580, 132 Pa.Super. 496.

R.I.—Withington Co. v. Maryland Cas. Co., 65 A.2d 710, 75 R.I. 297, 8 A.L.R.2d 399—Rossi v. Ronci, 195 A. 401, 59 R.I. 307—Ziegler v. Providence Biltmore Hotel Co., 195 A. 397, 59 R.I. 326—Knight v. Trainor, 194 A. 713, 59 R.I. 208—

Unless manifestly wrong, the action of the trial | court will be upheld,[87] and naturally the conclu-

Fliger v. Pennsylvania Fire Ins. Co., 137 A. 470, 48 R.I. 274.

S.C.—Johnson v. Atlantic Coast Line R. Co., 60 S.E.2d 678, 217 S.C. 347—Haselden v. Atlantic Coast Line R. Co., 53 S.E.2d 60, 214 S.C. 410, certiorari denied 70 S.Ct. 73, 338 U.S. 825, 94 L.Ed. 501—Bedford v. Armory Wholesale Grocery Co., 10 S.E.2d 330, 195 S.C. 150—Moore v. Atlantic Coast Line R. Co., 7 S.E. 2d 4, 192 S.C. 406—Dobson v. Henrietta Mills, 197 S.E. 313, 187 S.C. 281—White v. Southern Ry. Co., 118 S.E. 531, 125 S.C. 271—Nicholson v. Villepigue, 81 S.E. 494, 97 S.C. 130.

S.D.—Haase v. Willers Truck Service, 34 N.W.2d 313, 72 S.D. 353—Federal Land Bank of Omaha v. Houck, 4 N.W.2d 213, 68 S.D. 449—Forbes State Bank v. Higgins, 237 N.W. 735, 58 S.D. 497—L. A. McKean Auto Co. v. O'Marro, 223 N.W. 354, 54 S.D. 435—Hanson v. Lambert, 219 N.W. 892, 53 S.D. 34.

Tenn.—McCann Steel Co. v. Carney, 237 S.W.2d 942, 192 Tenn. 94.

Chattanooga Gas Co. v. Underwood, 270 S.W.2d 652, 38 Tenn.App. 142—Poole v. First Nat. Bank of Smyrna, 196 S.W.2d 563, 29 Tenn. App. 327—Martin v. Miller Bros. Co., 168 S.W.2d 187, 26 Tenn.App. 110—Standard Oil Co. of Louisiana v. Roach, 94 S.W.2d 63, 19 Tenn. App. 661—Nashville Gas & Heating Co. v. Phillips, 69 S.W.2d 914, 17 Tenn.App. 648—Smith v. Fisher, 11 Tenn.App. 273.

Tex.—Slay v. Burnett Trust, 187 S.W. 2d 377, 143 Tex. 621—White v. White, 172 S.W.2d 295, 141 Tex. 328—Allison v. Campbell, 1 S.W.2d 866, 117 Tex. 277.

Capitol Steel & Iron Co. v. Standard Acc. Ins. Co., Civ.App., 299 S. W.2d 738—Bingham v. Kimbrell, Civ.App., 285 S.W.2d 312, error refused no reversible error—Dallas Ry. & Terminal Co. v. Bailey, Civ. App., 245 S.W.2d 275, reversed on other grounds 250 S.W.2d 379, 151 Tex. 359—Rodgers v. Tracy, Civ. App., 242 S.W.2d 900, error refused no reversible error—Hull v. FitzGerald, Civ.App., 232 S.W.2d 93, affirmed 237 S.W.2d 256, 150 Tex. 39—Continental Ins. Co. of City of New York v. Johnson, Civ.App., 216 S.W.2d 635, error refused no reversible error—Maryland Casualty Co. v. Morua, Civ.App., 180 S.W.2d 194, error refused—Texas & N. O. R. Co. v. J. Kahn & Co., Civ.App., 156 S.W.2d 292, error refused—Lone Star Gas Co. v. Bradford, Civ.App., 147 S.W.2d 547, error dismissed, judgment correct—Caller Times Pub. Co. v. Chandler, Civ. App., 122 S.W.2d 249, affirmed 130 S.W.2d 853, 134 Tex. 1—Kelly v. Lone Star Gas Co., Civ.App., 82 S.W.2d 699, reversed on other grounds Lone Star Gas Co. v. Kelly, Com.App., 46 S.W.2d 656—Moore v. Garza, Civ.App., 10 S.W.2d 172—Employers' Casualty Co. v. Rockwall County, Civ.App., 300 S.W. 148, modified on other grounds 35 S.W.2d 690, 120 Tex. 441 and reformed 38 S.W.2d 1098, 120 Tex. 441—Bretzke v. Gode, Civ.App., 289 S.W. 111—Graves v. Cooper, Civ. App., 273 S.W. 657—Scott v. Industrial Finance Corporation, Civ. App., 265 S.W. 181—Liberty Hardwood Lumber Co. v. Stevens, Civ. App., 199 S.W. 869.

Utah.—Boskovich v. Utah Const. Co., 259 P.2d 885.

Vt.—Campbell v. Howard Nat. Bank & Trust Co., 103 A.2d 96, 118 Vt. 182—Hastings v. Murray, 20 A.2d 107, 112 Vt. 37—Johnson v. Hardware Mut. Casualty Co., 1 A.2d 817, 109 Vt. 481—Cummings v. Connecticut General Life Ins. Co., 142 A. 82, 100 Vt. 73.

Va.—Commander v. Provident Relief Ass'n, 102 S.E. 89, 126 Va. 455.

Wash.—Gray v. Department of Labor & Industries, 262 P.2d 533, 43 Wash.2d 578—Walsh v. West Coast Coal Mines, 197 P.2d 233, 31 Wash. 2d 396—Jamieson v. Taylor, 95 P. 2d 791, 1 Wash.2d 217—Cannon v. Seattle Title Trust Co., 252 P. 699, 142 Wash. 213—Skoug v. Downes, 154 P. 126, 89 Wash. 92.

W.Va.—Smith v. Smith, 22 S.E.2d 647, 125 W.Va. 24.

Wyo.—Collins v. Anderson, 260 P. 1089, 37 Wyo. 275.

4 C.J. p 902 notes 12, 13—19 C.J. p 1226 note 96.

Compulsory nonsuit in Connecticut and Delaware

The action of the trial court on a motion for compulsory nonsuit is not reviewable.

Conn.—Norman Printers' Supply Co. v. Ford, 59 A. 499, 77 Conn. 461.

Del.—Queen Anne's R. Co. v. Reed, 59 A. 860, 5 Del. 226, 119 Am.S.R. 301.

4 C.J. p 903 note 12 [c].

Credibility of witnesses not to be judged on review

Cal.—Kersten v. Young, 125 P.2d 501, 52 C.A.2d 1.

Ill.—American Sanitary Rag Co. v. U. S. Hoffman Machinery Corp., 51 N. E.2d 809, 320 Ill.App. 556.

Minn.—Van Tassel v. Patterson, 50 N.W.2d 113, 235 Minn. 152.

R.I.—Goodwill Advertising Co. v. Elmwood Amusement Corp., 133 A. 2d 644—Kennedy v. New England Bakery, 95 A.2d 454, 80 R.I. 224.

Utah.—Sullivan v. Beneficial Life Ins. Co., 64 P.2d 351, 91 Utah 405.

Refusal to direct

In Georgia the refusal of the court to direct a verdict will in no case be held erroneous.

Ga.—Sewell v. Anderson, 30 S.E.2d 102, 197 Ga. 623—Sikes v. Norman, 50 S.E. 134, 122 Ga. 387.

4 C.J. p 903 note 12 [d].

Some weight to be given to conclusion of trial court

On appeal from a judgment for plaintiff where defendant contended that the trial court should have directed a verdict for defendant, it was held that the reviewing court was justified in giving some weight to the conclusion of the trial court that the evidence was sufficient.

Iowa.—Halligan v. Lone Tree Farmers Exchange, 300 N.W. 551, 230 Iowa 1277.

Weighing of evidence by trial court

Judgment granting motion of defendant for directed verdict would not be sustained merely because on weighing the evidence it might be found to support verdict and judgment for defendant, since trial court did not weigh evidence except in so far as it was necessary to determine whether it raised a factual issue as to which reasonable minds could not differ.

Ohio.—Hale v. Kohler, App., 35 N.E. 2d 967.

87. Ark.—Altschul v. Martin, 301 S. W.2d 571—Steelcote Mfg. Co. v. Byrnes, 3 S.W.2d 331, 176 Ark. 562.

Cal.—Parker v. James E. Granger, Inc., 52 P.2d 226, 4 C.2d 668, appeal dismissed and certiorari denied 56 S.Ct. 958, 298 U.S. 644, 80 L.Ed. 1375.

Lasry v. Lederman, 305 P.2d 663, 147 C.A.2d 480—Mayr v. Goldschmidt, 218 P. 621, 63 C.A. 381—Armock v. United Railroads of San Francisco, 204 P. 856, 56 C.A. 160.

Conn.—Carrano v. S. Cinque & Sons, 20 A.2d 615, 128 Conn. 104.

Fla.—Greenberg v. Post, 19 So.2d 714, 155 Fla. 135—Duncan v. Growers Equipment Co., 1 So.2d 458, 146 Fla. 516—Stevens v. Tampa Electric Co., 88 So. 303, 81 Fla. 512.

Ga.—Tinnerman v. Baldwin, 87 S.E. 2d 65, 211 Ga. 532—Taylor v. Cureton, 25 S.E.2d 815, 196 Ga. 28—Jackson v. Crutchfield, 191 S.E. 468, 184 Ga. 412—Webb v. Deadwyler, 83 S.E. 99, 142 Ga. 422.

Johnson v. Southern Life Ins. Co., 98 S.E.2d 382, 95 Ga.App. 625—Rhodes v. Mutual Benefit Health & Accident Ass'n, 8 S.E.2d 685, 62 Ga.App. 208—Robinson v. White, 125 S.E. 523, 33 Ga.App. 62—Georgian Co. v. Kinney, 92 S.E. 31, 19 Ga.App. 732—Improved Fertilizer Co. v. Swift & Co., 84 S.E. 132, 15 Ga.App. 601.

Hawaii.—Ching v. Service Cold Storage Co., 35 Hawaii 306—Ciacci v. Woolley, 33 Hawaii 247.

sion of the court will not be disturbed where on the merits the evidence amply supports the conclusion reached.[88]

The court must view the evidence in the light

Idaho.—Hopkins v. Hemsley, 22 P.2d 138, 53 Idaho 120.

Ill.—Ginsburg v. Bartlett, 262 Ill. App. 14—Lamarre v. Cleveland, C., C. & St. L. Ry. Co., 217 Ill.App. 296.

Ind.—Sears v. Moran, 59 N.E.2d 566, 223 Ind. 179—Heiny v. Pennsylvania R. Co., 47 N.E.2d 145, 221 Ind. 367—Wilson v. Rollings, 14 N.E.2d 905, 214 Ind. 155.

La.—Bailey v. Fisher, 123 So. 166, 11 La.App. 187.

Me.—Shaw v. Piel, 27 A.2d 137, 139 Me. 57—Piper v. Daniels, 139 A. 480, 126 Me. 458—Williams v. Sweet, 115 A. 895, 121 Me. 118.

Mass.—Sandler v. Elliott, 141 N.E.2d 367—Petition of Melnick, 87 N.E. 2d 204, 324 Mass. 524—Murphy v. Brilliant Co., 83 N.E.2d 166, 323 Mass. 526—Wagman v. Morse, 70 N.E.2d 3, 320 Mass. 462—DesLauries v. Shea, 13 N.E.2d 932, 300 Mass. 30—Butler v. Graves, 187 N.E. 115, 284 Mass. 84.

Minn.—Martin v. Reibel, 34 N.W.2d 290, 227 Minn. 106.

Mo.—Coleman v. Ziegler, App., 226 S. W.2d 388—Missouri Interstate Paper Co. v. Gresham, 116 S.W.2d 228, 233 Mo.App. 5.

Mont.—Myrick v. Peet, 180 P. 574, 56 Mont. 13.

N.J.—David T. Houston Co. v. Schneider, 37 A.2d 36, 131 N.J.Law 480—Kelly v. Forman, 27 A.2d 862, 129 N.J.Law 41—Goldstein v. Barclay Amusement Corp., 8 A.2d 171, 123 N.J.Law 166—Peterpaul v. Torp, 5 A.2d 779, 122 N.J.Law 476. Alson-Garner v. Jennette, 139 A. 221, 5 N.J.Misc. 957—Lewis v. Public Service Ry. Co., 138 A. 466, 5 N.J.Misc. 840.

N.Y.—Kattan v. Silver Fleet Motor Express Co., 13 N.Y.S.2d 582, 257 App.Div. 997. Goodwin v. Cushman, 17 N.Y.S.2d 553.

N.C.—Kitchen Lumber Co. v. Tallassee Power Co., 174 S.E. 427, 206 N.C. 515.

Or.—Derrick v. Portland Eye, Ear, Nose, and Throat Hospital, 209 P. 344, 105 Or. 90—Johnson v. Underwood, 203 P. 879, 102 Or. 680.

S.C.—White v. Southern Ry. Co., 118 S.E. 531, 125 S.C. 271.

Tex.—Else v. Hawks, Civ.App., 284 S.W.2d 413, error refused no reversible error—Cedziwoda v. Crane-Longley Funeral Chapel, Civ.App., 273 S.W.2d 455, affirmed, Sup., 283 S.W.2d 217—Hull v. Fitz-Gerald, Civ.App., 232 S.W.2d 93, affirmed 237 S.W.2d 256, 150 Tex. 39—Parker v. Boyles, Civ.App., 197 S.W.2d 842, error refused no reversible error—Frost v. Baumgarten, Civ. App., 181 S.W.2d 127, reversed on other grounds 186 S.W.2d 982, 143 Tex. 533, 159 A.L.R. 428—Hood v. Hood, Civ.App., 153 S.W.2d 247—Stanolind Oil & Gas Co. v. State, Civ.App., 114 S.W.2d 699, reversed on other grounds 133 S.W.2d 767, 136 Tex. 5, modified on other grounds 145 S.W.2d 569, 136 Tex. 5—Morten Inv. Co. v. Jordan, Civ. App., 57 S.W.2d 887—Benson v. Abercrombie, Civ.App., 51 S.W.2d 431—Connelly v. Johnson, Civ.App., 259 S.W. 634—Stark v. Brown, Civ. App., 193 S.W. 716.

Utah.—Gibbs v. Blue Cab, Inc., 249 P.2d 213, 122 Utah 312, adhered to 259 P.2d 294—Knox v. Snow, 229 P.2d 874, 119 Utah 522—Raymond v. Union Pac. R. Co., 191 P.2d 137, 113 Utah 26.

W.Va.—Kidwell v. Norfolk & W. Ry. Co., 117 S.E. 781, 94 W.Va. 131.

Wis.—Topel v. Correz, 79 N.W.2d 253, 273 Wis. 611—Wear v. Northern States Power Co., 53 N.W.2d 777, 262 Wis. 9—Nitka v. Van Camp, 40 N.W.2d 570, 256 Wis. 119—Fjelstad v. Walsh, 12 N.W.2d 51, 244 Wis. 295—Bramman v. Teutonia Recreation Co., 9 N.W.2d 115, 242 Wis. 624—Wendt v. Fintch, 292 N. W. 890, 235 Wis. 220—Smith v. Pabst, 288 N.W. 780, 233 Wis. 489—Leckwe v. Ritter, 241 N.W. 339, 207 Wis. 333—Ryan v. Milwaukee Northern Ry. Co., 203 N.W. 340, 186 Wis. 537—Paro v. Carter, 188 N.W. 68, 177 Wis. 121—Elmergreen v. Kern, 182 N.W. 947, 174 Wis. 622—Dunkel v. Smith, 169 N.W. 567, 168 Wis. 257—Kuchler v. City of Milwaukee, 162 N.W. 315, 165 Wis. 320—Delvaux v. Kewaunee, G. B. & W. Ry. Co., 154 N.W. 380, 161 Wis. 554—Hewitt v. Southern Wisconsin Ry. Co., 150 N.W. 502, 159 Wis. 309—Tomscyk v. Badger Box & Lumber Co., 147 N.W. 333, 157 Wis. 360.

4 C.J. p 903 note 14.

Reversal only for abuse of discretion

In case tried before jury wherein trial judge sits as a chancellor, with respect to direction of verdict, supreme court will not reverse unless it finds that trial judge has abused his discretion.

Pa.—Kish v. Bakaysa, 199 A. 321, 330 Pa. 533.

Error apparent from party's own evidence

If it appears by plaintiff's own evidence, when he rests his case, that it is the duty of the court to nonsuit him, a refusal to nonsuit may be corrected by a writ of error.

N.J.—New Jersey Express Co. v. Nichols, 33 N.J.Law 434, 97 Am.D. 722.

Obvious error

Error in directing a verdict is apparent from the abstract, where it shows substantial evidence in favor of appellant's cause of action.

Ark.—Williams v. Agee, 280 S.W. 635, 170 Ark. 670.

Time for taking nonsuit

Where there was a sharp dispute between counsel as to whether case was finally closed and submitted to trial judge for decision, trial judge was in a far better position to decide dispute than appellate court and would be presumed to know if and when plaintiff's counsel had cut himself off from his right to a nonsuit.

Tenn.—McCann Steel Co. v. Carney, 237 S.W.2d 942, 192 Tenn. 94.

88. Cal.—Mintzer v. Wilson, 68 P.2d 370, 21 C.A.2d 85—Raddant v. Watson, 264 P. 589, 89 C.A. 103.

Fla.—Biscayne Trust Co. v. Pennsylvania Sugar Co., 137 So. 147, 103 Fla. 155.

Ga.—Bailey v. Murray, 77 S.E.2d 103, 88 Ga.App. 491—Massey v. David Rothschild & Co., 125 S.E. 771, 33 Ga.App. 143—Sovereign Camp, W. O. W. v. Beard, 105 S.E. 629, 26 Ga.App. 130—Johnson v. Ætna Life Ins. Co., 101 S.E. 134, 24 Ga.App. 431.

Ill.—Fortney v. Hotel Rancroft, 125 N.E.2d 544, 5 Ill.App.2d 327—Clark v. Gitterman, 86 N.E.2d 276, 337 Ill. App. 390—Schmidt v. Anderson, 21 N.E.2d 825, 301 Ill.App. 28—Reichmann v. Robertson's Inc., 264 Ill. App. 537.

Iowa.—Kuebker v. Success Heater & Mfg. Co., 192 N.W. 435.

Kan.—Nigh v. Wondra, 208 P.2d 239, 167 Kan. 701.

Ky.—Hotel Operating Co. v. Saunders' Adm'r, 141 S.W.2d 260, 283 Ky. 345.

Me.—Royal v. Bar Harbor & Union River Power Co., 95 A. 945, 114 Me. 220.

Mass.—Puro v. Heikkinen, 55 N.E.2d 762, 316 Mass. 262.

Mich.—Cummings v. National Fire Ins. Co. of Hartford, Conn., 231 N. W. 61, 251 Mich. 105.

Neb.—Higgins v. Doty, 186 N.W. 315, 107 Neb. 442—Crane v. Grand Lodge, A. O. U. W. of Nebraska, 183 N.W. 291, 106 Neb. 291.

N.Y.—Thomann v. Flynn, 12 N.Y.S. 2d 609, 257 App.Div. 867.

N.C.—Boles v. Hegler, 59 S.E.2d 796, 232 N.C. 327—Carruthers v. Southern Ry. Co., 59 S.E.2d 782, 232 N.C. 183—Klassette v. Liggett Drug Co., 42 S.E.2d 411, 227 N.C. 353—Board of Drainage Com'rs of Forsyth County, Dist. No. 2 v. Jarvis, 191 S.E. 514, 211 N.C. 690.

Ohio.—Kain v. Cordes, App., 42 N.E. 2d 1005.

least favorable to the movant and most favorable | to the adverse party,[89] confining itself to the ques-

Okl.—Moore v. Milner, 100 P.2d 999, 187 Okl. 84—Burford v. Mitchell, 98 P.2d 1098, 186 Okl. 465—Kelly v. Baughman, 167 P. 80, 66 Okl. 200.
Or.—Zuccala v. Suncrest Orchards, 280 P. 344, 130 Or. 612.
S.C.—Bedford v. Armory Wholesale Grocery Co., 10 S.E.2d 330, 195 S.C. 150—Williamson v. Southern Ry. Co., 191 S.E. 79, 183 S.C. 312.
Tenn.—Cunningham v. Union Chevrolet Co., 148 S.W.2d 633, 177 Tenn. 214.
Tex.—Cox v. Rhodes, Civ.App., 233 S.W.2d 924—Karlen v. El Jardin Immigration Co., Civ.App., 277 S. W. 173—Cooper Grocery Co. v. McDonald, Civ.App., 256 S.W. 311—Lee v. Baker, Civ.App., 251 S.W. 580—McLane v. San Antonio Sewer Pipe Co., Civ.App., 202 S.W. 210.
4 C.J. p 904 note 15.

89. U.S.—**Corpus Juris Secundum cited in** Maty v. Grasselli Chemical Co., C.C.A.N.J., 98 F.2d 877, 878—**Corpus Juris Secundum cited in** Boal v. Electric Storage Battery Co., C.C.A.Pa., 98 F.2d 815, 817.
Ala.—Adams v. Queen Ins. Co. of America, 88 So.2d 331, 264 Ala. 572—Carraway Methodist Hospital v. Pitts, 57 So.2d 96, 256 Ala. 665—Zell v. Foster Wheeler Corp., 54 So.2d 553, 256 Ala. 367—Mobile City Lines v. Orr, 45 So.2d 766, 253 Ala. 528—Montgomery City Lines v. Jones, 20 So.2d 599, 246 Ala. 291—Jack Cole, Inc. v. Walker, 200 So. 768, 240 Ala. 683.
National Life & Accident Ins. Co. v. Blanchard, 196 So. 171, 29 Ala.App. 372—J. B. Colt Co. v. Channell, 95 So. 209, 19 Ala.App. 74.
Ark.—Rexer v. Carter, 186 S.W.2d 147, 208 Ark. 342—Missouri Pac. R. Co. v. Hopper, 185 S.W.2d 88, 208 Ark. 128—Life & Casualty Ins. Co. of Tennessee v. Kinney, 177 S.W.2d 768, 206 Ark. 804—Arkansas Power & Light Co. v. Connelly, 49 S. W.2d 387, 185 Ark. 693.
Cal.—Coverstone v. Davies, 239 P.2d 876, 38 C.2d 315, certiorari denied Mock v. Davies, 73 S.Ct. 50, 344 U. S. 840, 97 L.Ed. 653—Wood v. Samaritan Institution, 161 P.2d 556, 26 C.2d 847.
Gottloeb v. Melrose Health Baths, App., 306 P.2d 568—Towers v. Massey-Harris Co., 302 P.2d 77, 145 C.A.2d 210—Zar v. Alafetich, 272 P.2d 922, 126 C.A.2d 643—Ross v. San Francisco Unified School Dist., 260 P.2d 663, 120 C.A.2d 185—Marino v. Valenti, 259 P.2d 84, 118 C.A.2d 830—Refinite Sales Co. v. Fred R. Bright Co., 258 P.2d 1116, 119 C.A.2d 56—Milani v. Southern Pac. Co., 209 P.2d 413, 93 C.A.2d 527—Hurt v. Susnow, App., 192 P. 2d 771—Nash v. Wright, 186 P.2d 686, 82 C.A.2d 467—Board of Trustees of Leland Stanford Junior University, 148 P.2d 405, 64 C.A.2d 197—Millsap v. National Funding Corp. of California, 135 P.2d 407, 57 C.A.2d 197—Mastro v. Kennedy, 134 P.2d 865, 57 C.A.2d 499—Horsman v. Maden, 120 P.2d 92, 48 C.A. 2d 635—Laraway v. First Nat. Bank of La Verne, 104 P.2d 95, 39 C.A.2d 718—Slater v. Shell Oil Co., 103 P.2d 1043, 39 C.A.2d 535—Barty v. Collins, 292 P. 979, 109 C. A. 94.
Conn.—Calway v. William Schaal & Son, 155 A. 813, 113 Conn. 586.
Ill.—Huff v. Illinois Cent. R. Co., 199 N.E. 116, 362 Ill. 95.
Finley v. Chicago, A. & E. R. Co., 122 N.E.2d 594, 3 Ill.App.2d 436—Leonard Ashbach Co. v. Lear, Inc., 121 N.E.2d 343, 3 Ill.App.2d 254—Houser v. Wabash R. Co., 92 N.E.2d 878, 341 Ill.App. 31—Cook v. Kirgan, 75 N.E.2d 120, 332 Ill.App. 294—Raimondi v. Ziffrin Truck Lines, 70 N.E.2d 221, 329 Ill.App. 650—Panella v. Weil-McLain Co., 67 N.E. 2d 699, 329 Ill.App. 240—Lindroth v. Walgreen Co., 67 N.E.2d 595, 329 Ill.App. 105—Olympia Fields Country Club v. Bankers Indem. Ins. Co., 60 N.E.2d 896, 325 Ill.App. 649—Hassey v. A. C. Allyn & Co., 28 N.E.2d 164, 306 Ill.App. 37—Germann v. Huston, 23 N.E.2d 371, 302 Ill.App. 38—Trust Co. of Chicago v. Richardson, 8 N.E.2d 530, 290 Ill.App. 464—McMahel v. Smith, 277 Ill.App. 29.
Ind.—Sears v. Moran, 59 N.E.2d 566, 223 Ind. 179.
Lincoln Nat. Bank & Trust Co. of Fort Wayne v. Parker, 34 N.E. 2d 190, 110 Ind.App. 1, petition overruled 37 N.E.2d 5, 110 Ind.App. 1—Hamble v. Brandt, 189 N.E. 533, 98 Ind.App. 405.
Ky.—City of Madisonville v. Poole, 249 S.W.2d 133—Commercial Carriers v. Small, 126 S.W.2d 143, 277 Ky. 189.
Md.—Baltimore Car Wheel Co. v. Clark, 104 A. 357, 131 Md. 513.
Mass.—Harvard Furniture Co. v. City of Cambridge, 68 N.E.2d 684, 320 Mass. 227.
Mich.—Cabana v. City of Hart, 42 N. W.2d 97, 327 Mich. 287, 19 A.L.R. 2d 333.
Minn.—Lee v. Lee, 80 N.W.2d 529, 248 Minn. 496.
Miss.—Williams v. Logue, 122 So. 490, 154 Miss. 74.
Mo.—Duke v. Missouri Pac. R. Co., 303 S.W.2d 613—Mincielli v. Sloan's Moving & Storage Co., 303 S.W.2d 17—West v. St. Louis-San Francisco Ry. Co., 295 S.W.2d 48—Levins v. Vigne, 98 S.W.2d 737, 339 Mo. 660—Mrazek v. Terminal R. Ass'n of St. Louis, 111 S.W.2d 26, 341 Mo. 1054, certiorari denied Terminal R. Ass'n of St. Louis v. Mrazek, 58 S.Ct. 760, 303 U.S. 656, 82 L.Ed. 1116.
Hook v. St. Louis Public Service Co., App., 296 S.W.2d 123—Helton v. Huckeba, App., 270 S.W.2d 486, reversed on other grounds 276 S. W.2d 78—Geisendorfer v. Geisendorfer, App., 227 S.W.2d 470.
Mont.—Wight v. Stevenson, 252 P. 2d 241, 126 Mont. 377.
Neb.—James v. Krebeck, 2 N.W.2d 629, 141 Neb. 73, vacated 7 N.W. 2d 637, 142 Neb. 757.
N.M.—Addison v. Tessier, 305 P.2d 1067, 62 N.M. 120—Cole v. Younger, 269 P.2d 1096, 58 N.M. 211.
N.Y.—Central Laundry & Supply Co. v. Lee, 18 N.Y.S.2d 802, 257 App. Div. 1040.
N.C.—Glenn v. City of Raleigh, 98 S. E.2d 913, 246 N.C. 469—Hartley v. Smith, 79 S.E.2d 767, 239 N.C. 170—Gladden v. Setzer, 52 S.E.2d 804, 230 N.C. 269.
Ohio.—Mattucci v. Ohio Edison Co., 73 N.E.2d 809, 79 Ohio App. 367.
Okl.—Elk City v. Rice, 286 P.2d 275.
Pa.—Stabelli v. Somerton Building & Loan Ass'n, 23 A.2d 477, 343 Pa. 460.
Klatt v. Daniels, 98 A.2d 649, 173 Pa.Super. 563—Pennsylvania Supply Co. v. National Casualty Co., 31 A.2d 453, 152 Pa.Super. 217.
Tenn.—Southern Ry. Co. v. Cradic, App., 301 S.W.2d 374—Parrish v. Yeiser, App., 298 S.W.2d 556—Harris v. Dobson-Tankard Co., App., 298 S.W.2d 28—McParland v. Pruitt, 284 S.W.2d 299, 39 Tenn.App. 399—Nashville, C. & St. L. Ry. v. Crawford, 281 S.W.2d 69, 39 Tenn. App. 37—McMahan v. McMahan, 276 S.W.2d 738, 38 Tenn.App. 498—Everett v. Evans, 207 S.W.2d 350, 30 Tenn.App. 450.
Tex.—Trussel v. Westinghouse Elec. Supply Co., Civ.App., 302 S.W.2d 277—Marquis v. Benfer, Civ.App., 298 S.W.2d 601, error refused no reversible error—Blasberg v. Cockerell, Civ.App., 254 S.W.2d 1012—Klinke v. Harbison, Civ.App., 248 S.W.2d 545, affirmed Petit v. Klinke, 254 S.W.2d 769, 152 Tex. 142.
Utah.—Christensen v. Utah Rapid Transit Co., 27 P.2d 468, 83 Utah 231.
Vt.—Peterson v. Post, 128 A.2d 668, 119 Vt. 445—Conger v. Gruenig, 96 A.2d 821, 117 Vt. 559—Frenier v. Brown, 80 A.2d 524, 116 Vt. 538—MacDonald v. Orton, 134 A. 599, 99 Vt. 425.
4 C.J. p 902 note 12 [a] (1).

Palpably improbable testimony

In considering the principles applicable to directed verdicts, appellate courts may disregard as impossible that palpably improbable testimony, and treat it as no evidence,

tion whether the evidence which favors the latter, with the legitimate inferences therefrom, fairly tends to support his contention[90] and excluding from its consideration all evidence or inferences in conflict therewith or unfavorable to him.[91] It has been held that on review of an order made on a

but before such testimony may be disregarded, the palpable untruthfulness must appear to be inherent in rejected testimony, so that it contradicts itself, or is irreconcilable with facts of which court takes judicial knowledge, or obviously inconsistent with, and contradicted by, undisputed physical facts.

Tenn.—McMahan v. Tucker, 216 S.W. 2d 356, 31 Tenn.App. 429.

Physical fact doctrine

Evidence or contentions conflicting with well-known physical laws do not impress the appellate court, and will be given little, if any, weight, in considering a claim that verdict was improperly directed.

Ky.—Cochran's Adm'rs v. Chesapeake & O. Ry. Co., 22 S.W.2d 452, 232 Ky. 107.

Jury's answer to special question asked by trial judge before recording jury's verdict must be treated as part of verdict, and the facts established by such answer must be considered in determining correctness of judge's ruling entering a verdict contrary to that returned by jury.

Mass.—Sellew v. Tuttle's Millinery, 66 N.E.2d 26, 319 Mass. 368.

90. U.S.—**Corpus Juris Secundum quoted in** McGogney v. Mutual Life Ins. Co., C.C.A.Pa., 103 F.2d 649, 652.

Ala.—Carraway Methodist Hospital v. Pitts, 57 So.2d 96, 256 Ala. 665—Schock v. Bear, 35 So.2d 97, 250 Ala. 529.

Ariz.—Barker v. General Petroleum Corp., 233 P.2d 449, 72 Ariz. 238.

Ark.—Missouri Pac. R. Co. v. McKamey, 171 S.W.2d 932, 205 Ark. 907—Collett v. Loews, 158 S.W.2d 658, 203 Ark. 756.

Cal.—Laurenzi v. Vranizan, 155 P.2d 633, 25 C.2d 806—Gates v. Pendleton, 195 P. 664, 184 C. 797.

Merlino v. Southern Pac. Co., 281 P.2d 583, 132 C.A.2d 58—Illers v. Crary, 269 P.2d 638, 125 C.A.2d 62—Greene v. Atchison, T. & S. F. Ry. Co., 260 P.2d 834, 120 C.A.2d 135, 40 A.L.R.2d 873—McGuigan v. Southern Pac. Co., 247 P.2d 415, 112 C.A.2d 704—Hyman v. Hyman, 220 P.2d 623, 98 C.A.2d 463—Hurt v. Susnow, App., 192 P.2d 771—Shinn v. Johnson, 189 P.2d 322, 83 C.A.2d 661—In re Rabinowitz' Estate, 135 P.2d 579, 58 C.A.2d 106—Kersten v. Young, 125 P.2d 501, 52 C.A.2d 1—Martin v. Tully, 112 P.2d 282, 44 C.A.2d 226.

Colo.—Gunby v. Colorado & S. R. Co., 235 P. 566, 77 Colo. 225.

Conn.—Szabados v. Chatlos, 177 A. 719, 119 Conn. 537.

Ga.—Ellison v. Evans, 69 S.E.2d 94, 85 Ga.App. 292.

Ill.—Mahlstedt v. Ideal Lighting Co., 110 N.E. 795, 271 Ill. 154, Ann.Cas. 1917D 209.

March v. Hirshman, 137 N.E.2d 279, 11 Ill.App.2d 245—Beverly v. Central Ill. Elec. & Gas Co., 124 N.E.2d 669, 5 Ill.App.2d 27—Wantroba v. Chicago Surface Lines, 64 N.E. 2d 395, 327 Ill.App. 552—Schmidt v. Edmonds, 64 N.E.2d 241, 327 Ill. App. 413—Anderson v. Cummings, 60 N.E.2d 260, 325 Ill.App. 519—Risch v. Consumers Petroleum Co., 53 N.E.2d 286, 321 Ill.App. 438—Paul v. Garman, 34 N.E.2d 884, 310 Ill.App. 447—Rocca v. Metropolitan Life Ins. Co., 21 N.E.2d 849, 300 Ill.App. 592—Brandt v. Brandt, 3 N.E.2d 96, 286 Ill.App. 151—Hoke v. Harrisburg Hospital, 281 Ill.App. 247—P-H Lumber Co. v. Thielen, 271 Ill.App. 269.

Iowa.—Ducummon v. Johnson, 47 N. W.2d 231, 242 Iowa 488—Salinger v. Cowles, 191 N.W. 167, 195 Iowa 873—George v. Iowa & S. W. Ry. Co., 168 N.W. 322, 183 Iowa 994.

Ky.—Higgans v. Deskins, 263 S.W.2d 108—Sympson Bros. Coal Co. v. Coomes, 58 S.W.2d 594, 248 Ky. 324.

Me.—Hamlin v. N. H. Bragg & Sons, 147 A. 602, 128 Me. 358.

Md.—Klein v. United Rys. & Electric Co. of Baltimore, 137 A. 306, 152 Md. 492—City of Baltimore v. Baltimore Marine Works, 136 A. 829, 152 Md. 367.

Mo.—Sollenberger v. Kansas City Public Service Co., 202 S.W.2d 25, 356 Mo. 454.

Farmer v. Taylor, App., 301 S.W. 2d 429—Walters v. Larson, App., 270 S.W.2d 112—Beerend v. Benwood-Linze Co., App., 192 S.W.2d 660—Williams v. Terminal Railroad Ass'n of St. Louis, App., 20 S.W.2d 584—Morris v. Mattingly, 218 S.W. 922, 204 Mo.App. 669.

N.H.—Leonard v. City of Manchester, 70 A.2d 915, 96 N.H. 115.

N.J.—Maddi v. Lindberg, 79 A.2d 481, 12 N.J.Super. 248.

Fitzpatrick v. Merchants & Manufacturers Fire Ins. Co., 5 A.2d 771, 122 N.J.Law 468—Cervona v. Delaware, L. & W. R. Co., 114 A. 14, 95 N.J.Law 246.

N.M.—Lindsey v. Cranfill, 297 P.2d 1055, 61 N.M. 228.

N.Y.—P. Pastene & Co. v. Irving Nat. Bank, 164 N.E. 49, 249 N.Y. 272, reargument denied 166 N.E. 316, 250 N.Y. 538.

N.C.—Futrelle v. Atlantic Coast Line R. Co., 94 S.E.2d 899, 245 N.C. 36—Hawkins v. McCain, 79 S.E.2d 493, 239 N.C. 160—Jackson v. Browning, 29 S.E.2d 21, 224 N.C. 75—Thompson v. Davis, 28 S.E.2d 556, 223 N.C. 792—Yokeley v. Kearns, 25 S.E.2d 602, 223 N.C. 196—Tarrant v. Pepsi Cola Bottling Co., 20 S.E.2d 565, 221 N.C. 390—Jeffries v. Powell, 20 S.E.2d 561, 221 N.C. 415—Mitchell v. Saunders, 13 S.E.2d 242, 219 N.C. 178—Jackson v. Parks, 4 S.E.2d 873, 216 N. C. 329—Fetter v. Boone, 142 S.E. 221, 195 N.C. 860.

Okl.—Lone Star Gas Co. v. Burk, 20 P.2d 170, 162 Okl. 259—St. Louis & S. F. R. Co. v. Boush, 174 P. 1036, 68 Okl. 301.

S.C.—Brasington v. Williams, 141 S. E. 375, 143 S.C. 223.

Tex.—Smith v. Bolin, 271 S.W.2d 93, 153 Tex. 486.

Riojas v. Riojas, Civ.App., 289 S.W.2d 802—Zachary v. Home Owners Loan Corp., Civ.App., 117 S.W. 2d 153, error dismissed—E. L. Martin, Inc., v. Kyser, Civ.App., 104 S.W.2d 592, error dismissed—Stubblefield v. Cooper, Civ.App., 37 S.W. 2d 818—Reed v. Hester, Civ.App., 28 S.W.2d 219, reversed on other grounds, Com.App., 44 S.W.2d 1107—Massie v. Hutcheson, Civ.App., 296 S.W. 939.

Vt.—Kinsley v. Willis, 132 A.2d 163.

Wis.—Thoni v. Bancroft Dairy Co., 39 N.W.2d 690, 255 Wis. 577.

4 C.J. p 902 note 12 [a] (2).

Any logical process of reasoning

"Judgment of nonsuit may not be sustained in any case in which, by any logical process of reasoning, an issue of fact may be found."

N.Y.—Relihan v. Felson, 48 N.Y.S.2d 736, 737, 268 App.Div. 76, appeal dismissed 63 N.E.2d 713, 294 N.Y. 980.

Erroneously excluded evidence considered

Pa.—Ehrlich v. U. S. Fidelity & Guaranty Co., 51 A.2d 794, 356 Pa. 417.

Vt.—Purington v. Newton, 49 A.2d 98, 114 Vt. 490.

91. U.S.—**Corpus Juris Secundum quoted in** McGogney v. Mutual Life Ins. Co., C.C.A.Pa., 103 F.2d 649, 652.

Ala.—McDermott v. Bancroft, 121 So. 735, 219 Ala. 205.

Ark.—Hood v. Sovereign Camp, W. O. W., 69 S.W.2d 880, 188 Ark. 1048.

Cal.—McDonald v. Shell Oil Co., 285 P.2d 902, 44 C.2d 785—Hildebrand v. Atchison, T. & S. F. Ry. Co., 281 P.2d 249, 44 C.2d 196.

Ferner v. Casalegno, 297 P.2d 91, 141 C.A.2d 467—Johnson v. Goldberg, 279 P.2d 131, 130 C.A.2d 571—Adams v. Henning, 255 P.2d 456, 117 C.A.2d 376—Carlton v. Pacific Coast Gasoline Co., 242 P.2d 391, 110 C.A.2d 177—Green v. Uarte, 196

motion for a directed verdict or for the entry of nonsuit, the decision of the appellate court should be based on the status of the proofs and pleading at the time the motion was made,[91.5] and, accordingly, where the motion is made at the close of plaintiff's case, the reviewing court will not consider testimony introduced by defendant.[91.10] However, it has also been held that if defendant introduces evidence after his motion has been denied, and any of his evidence is favorable to plaintiff, it may be considered in determining whether the denial of the motion was erroneous;[91.15] and if defendant's evidence supplies the omission of plaintiff's evidence, the denial of the motion will be sustained.[91.20]

P.2d 63, 87 C.A.2d 75—Andre v. Allynn, 190 P.2d 949, 84 C.A.2d 347—Dawson v. Tulare Union High School Dist., 276 P. 424, 98 C.A. 138.

Colo.—Gossard v. Watson, 221 P.2d 353, 122 Colo. 271.

Del.—Townsend v. Poynter, 130 A. 267, 3 W.W.Harr. 53.

Ga.—Stepp v. Stepp, 25 S.E.2d 6, 195 Ga. 595—Summer v. Strayhorn, 199 S.E. 108, 186 Ga. 755.

Riggins v. Equitable Life Assur. Soc. of U. S., 14 S.E.2d 182, 64 Ga. App. 834.

Idaho.—Servel v. Corbett, 290 P. 200, 49 Idaho 536.

Ill.—Evans v. Paul F. Beich Co., 85 N.E.2d 202, 337 Ill.App. 98—Orr v. Herzog, 64 N.E.2d 382, 327 Ill. App. 555—Relaco Rosin Products v. National Casein Co., 64 N.E.2d 243, 327 Ill.App. 334—Campbell v. Goldblatt Bros., 49 N.E.2d 817, 320 Ill. App. 138—Brandt v. Brandt, 3 N.E. 2d 96, 286 Ill.App. 151—Hoke v. Harrisburg Hospital, 281 Ill.App. 247—Van Meter v. Chicago Rys. Co., 240 Ill.App. 371. See O'Connell v. West Side Hospital of Chicago, 209 Ill.App. 233.

Iowa.—Christensen v. Sheldon, 63 N. W.2d 892, 245 Iowa 674—Sterlane v. Fleming, 18 N.W.2d 159, 236 Iowa 480.

Kan.—Eckl v. Brennan, 95 P.2d 535, 150 Kan. 502.

Ky.—Gaines' Adm'x v. City of Bowling Green, 32 S.W.2d 348, 235 Ky. 800—Leslie v. Elliott & Day Coal Co., 22 S.W.2d 104, 231 Ky. 673—Terrell v. Southern Ry. Co. in Kentucky, 9 S.W.2d 993, 225 Ky. 645.

Mass.—Leigh v. Rule, 121 N.E.2d 854, 331 Mass. 664—Donnelly v. Larkin, 98 N.E.2d 280, 327 Mass. 287, 25 A. L.R.2d 487—Mazzaferro v. Dupuis, 75 N.E.2d 503, 321 Mass. 718.

Mich.—Kelley v. Brown, 247 N.W. 900, 262 Mich. 356.

Minn.—Kundiger v. Metropolitan Life Ins. Co., 15 N.W.2d 487, 218 Minn. 273.

Miss.—Holliman v. Lucas, 32 So.2d 259, 202 Miss. 463—Furr v. Brookhaven Creamery Co., 191 So. 684, 188 Miss. 1.

Mo.—Wattels v. Marre, 303 S.W.2d 9—Helton v. Huckeba, 276 S.W.2d 78—Moore v. Middlewest Freightways, 266 S.W.2d 578—Hines v. W. U. Tel. Co., 217 S.W.2d 482, 358 Mo. 782.

Rossommano v. Quality Dairy Co., App., 297 S.W.2d 591—Morris v. Alexander, App., 275 S.W.2d 373—Colley v. Cox, App., 266 S.W.2d 778—Brawley v. Harwell, App., 236 S.W.2d 419—Stevers v. Walker, 125 S.W.2d 920, 233 Mo.App. 636.

Mont.—Johnson v. Chicago, M. & St. P. R. Co., 230 P. 52, 71 Mont. 390.

N.J.—Fitzpatrick v. Merchants & Manufacturers Fire Ins. Co., 5 A. 2d 771, 122 N.J.Law 468.

N.M.—McMullen v. Ursuline Order of Sisters, 246 P.2d 1052, 56 N.M. 570.

N.Y.—Soma v. Handrulis, 14 N.E.2d 46, 277 N.Y. 223, reargument denied 15 N.E.2d 71, 278 N.Y. 481.

N.C.—Deaton v. Board of Trustees of Elon College, 38 S.E.2d 561, 226 N.C. 433—Kitchen Lumber Co. v. Tallassee Power Co., 174 S.E. 427, 206 N.C. 515.

Okl.—Wray v. Ferris, 103 P.2d 942, 187 Okl. 428, 128 A.L.R. 1079.

Or.—Phillips v. Colfax Co., 245 P.2d 898, 195 Or. 285.

Pa.—Dicenzo v. Berg, 16 A.2d 15, 340 Pa. 305—Reiners v. Pittsburgh Rys. Co., 188 A. 163, 324 Pa. 460.

Tenn.—T. H. Hayes & Sons v. Stuyvesant Ins. Co., 250 S.W.2d 7, 194 Tenn. 35—Smith v. Sloan, 225 S. W.2d 539, 189 Tenn. 368, rehearing denied 227 S.W.2d 2, 189 Tenn. 368.

Hooper v. Starkey, App., 297 S. W.2d 948—Callahan v. Town of Middleton, App., 292 S.W.2d 501—Dunn v. Ralston Purina Co., 272 S.W.2d 479, 38 Tenn.App. 229—France v. Newman, 248 S.W.2d 392, 35 Tenn.App. 486—Farrell v. Metropolitan Life Ins. Co., 230 S.W. 2d 192, 33 Tenn.App. 115—Poole v. First Nat. Bank of Smyrna, 196 S.W.2d 563, 29 Tenn.App. 327.

Tex.—Lopez v. Ely, Civ.App., 302 S. W.2d 957—Shaw v. Tyler Bank & Trust Co., Civ.App., 285 S.W.2d 782, refused no reversible error—Le Bus v. Le Bus, Civ.App., 269 S.W.2d 506, error refused no reversible error—Godwin v. Roberts, Civ.App., 213 S.W.2d 571, error refused no reversible error—Ingram v. Gentry, Civ.App., 205 S.W.2d 673—City of Austin v. Howard, Civ.App., 158 S.W.2d 556, error refused—Anchor v. Gose, Civ.App., 8 S.W.2d 690—Lisle-Dunning Const. Co. v. McCall, Civ.App., 167 S.W. 810.

Vt.—Shanks v. Lavallee, 111 A.2d 808, 118 Vt. 436—Campbell v. Howard Nat. Bank & Trust Co., 103 A.2d 96, 118 Vt. 182—Tinney v. Crosby, 22 A.2d 145, 112 Vt. 95.

Wash.—Hill v. Parker, 122 P.2d 476, 12 Wash.2d 517.

4 C.J. p 902 note 12 [a] (3).

91.5 Ill.—Hyde v. Saunders, 86 N.E. 2d 843, 338 Ill.App. 205—Miller v. Illinois Cent. R. Co., 65 N.E.2d 597, 328 Ill.App. 171, affirmed 69 N.E.2d 878, 395 Ill. 273.

Mich.—Manning v. Noa, 76 N.W.2d 75, 345 Mich. 130—Hilliker v. Jewel Oil & Gas Co., 270 N.W. 158, 277 Mich. 615.

Time of motion determinative

If defendant, having offered an affirmative defense, successfully moves for a directed verdict at close of plaintiff's evidence, the appellate court must give effect to evidence most favorable to plaintiff, but where the motion comes at close of the evidence, the appellate court on defendant's appeal may consider all the evidence in determining plaintiff's right to recover.

Ill.—Gardner v. International Shoe Co., 54 N.E.2d 482, 386 Ill. 418.

91.10 Mich.—Hilliker v. Jewel Oil & Gas Co., 268 N.W. 825, 277 Mich. 96, decision affirmed 270 N.W. 158, 277 Mich. 615—Campbell v. Michigan Consol. Gas Co., 21 N.W.2d 181, 313 Mich. 410.

91.15 Colo.—Anchor Cas. Co. v. Denver & R. G. W. R. Co., 277 P.2d 523, 130 Colo. 548.

Ky.—Paducah Dry Goods Co. v. Thompson, 213 S.W.2d 440, 308 Ky. 12.

Or.—Buckles v. Continental Cas. Co., 251 P.2d 476, 197 Or. 128—School Dist. 47 Joint, Columbia County v. U. S. Nat. Bank of Portland, 211 P.2d 723, 187 Or. 360—Berkshire v. Harem, 178 P.2d 133, 181 Or. 42.

Wash.—Johnson v. Burnham, 88 P. 2d 833, 198 Wash. 500.

Failure of plaintiff to introduce rebuttal testimony

Where at close of plaintiff's case defendant's motion for peremptory instruction was denied and thereupon defendant introduced several witnesses following which trial court indicated it would grant instruction, and plaintiff did not introduce rebuttal testimony, and instruction was given, appeal would be decided on evidence as it stood when instruction was given.

Ky.—Dunning v. Kentucky Utilities Co., 109 S.W.2d 6, 270 Ky. 44.

91.20 Ga.—Weller v. Davis & San-

b. Both Parties Moving for Directed Verdict

In some jurisdiction if each party moves for a directed verdict and a verdict is directed for one it has the same effect and will be reviewed in the same manner as a jury verdict; but in other jurisdictions if a verdict is directed for one party after both have moved for directed verdicts the effect is generally the same as though only the successful party had made the motion.

A number of jurisdictions follow the rule set out in Trial § 256 b (1) to the effect that unconditional motions by both sides for directed verdicts waive a jury and submit the case to the court, provided there is no action by either party inconsistent with such waiver. In those jurisdictions which follow the theory of waiver, the court's decision stands on the same footing as a jury verdict and is in general conclusive on both parties where supported by, and not clearly against the weight of, the evidence;[92] and the reviewing court is limited to a

ford Co., 82 S.E. 593, 15 Ga.App. 79.

Or.—Weygandt v. Bartle, 171 P. 587, 88 Or. 310—Taggart v. Hunter, 150 P. 738, 78 Or. 139, Ann.Cas. 1918A 128, reversed on other grounds 152 P. 871, 78 Or. 139, Ann.Cas.1918A 128.

92. U.S.—Federal Life Ins. Co. v. Rumpel, C.C.A.Mich., 102 F.2d 120—Globe Indemnity Co. v. Nodlere, C.C.A.Okl., 69 F.2d 955.

Ark.—Bailey v. Tolleson, 241 S.W.2d 110, 219 Ark. 307—Green v. Ozark Land Co., 163 S.W.2d 325, 204 Ark. 627—Wilson v. Whitworth, 125 S.W.2d 112, 197 Ark. 675—Pyramid Life Ins. Co. v. Patten, 110 S.W.2d 526, 194 Ark. 987—Mid-Continent Life Ins. Co. v. Hill, 94 S.W.2d 364, 192 Ark. 667—Tipton v. Ravenden Springs School Dist. No. 29, 73 S.W.2d 464, 189 Ark. 1172—Dollins Sign & Advertising Co. v. Smith, 62 S.W.2d 978, 187 Ark. 1162—Rawls v. Free, 43 S.W.2d 540, 184 Ark. 737—Continental Casualty Co. v. Baker, 25 S.W.2d 23, 181 Ark. 156—Holland Furnace Co. v. Spinnenweber, 18 S.W.2d 1020, 179 Ark. 1014—Upson v. Robison, 17 S.W.2d 305, 179 Ark. 600—Missouri Pac. R. Co. v. Sloan, 2 S.W.2d 15, 176 Ark. 179—General Motors Acceptance Corporation v. Salter, 290 S.W. 584, 172 Ark. 691—People's Life Ins. Co. v. Britt, 287 S.W. 758, 172 Ark. 98—Dunford v. Dardanelle & R. R. Co., 287 S.W. 170, 171 Ark. 1036—Creasey Grocery Corporation v. Southern Mercantile Co., 277 S.W. 513, 169 Ark. 1046—A. M. Collins Mfg. Co. v. Lawrence County Bank, 261 S.W. 27, 164 Ark. 133—Vinson v. Wooten, 259 S.W. 366, 163 Ark. 170—Staggs v. Joseph, 249 S.W. 566, 158 Ark. 133—National Benev. Soc. v. Barker, 244 S.W. 720, 155 Ark. 506—J. T. Fargason Co. v. Bank of Lepanto, 244 S.W. 456, 155 Ark. 361—Watkins v. Louisiana State Life Ins. Co., 237 S.W. 89, 151 Ark. 596—Farmers' Mut. Fire Ins. Ass'n v. Hodges, 219 S.W. 13, 142 Ark. 577—Supreme Tribe of Ben Hur v. Gailey, 173 S.W. 838, 117 Ark. 145.

Colo.—Butts v. Sauve, 245 P. 713, 79 Colo. 317—Catlin v. Moynihan, 230 P. 1114, 76 Colo. 164—Commonwealth Casualty Ins. Co. v. Kuhrt, 225 P. 251, 75 Colo. 175—O'Brien v. Galley-Stockton Shoe Co., 173 P. 544, 65 Colo. 70.

Idaho.—Binder v. Blair, 283 P. 613, 48 Idaho 580—Gibbs v. Christensen, 277 P. 814, 47 Idaho 658—McCall v. First Nat. Bank, 277 P. 562, 47 Idaho 519—Oregon Short Line R. Co. v. Mountain States Telephone & Telegraph Co., 237 P. 281, 41 Idaho 4.

Ind.—Cooper v. Cooper, 193 N.E. 722, 100 Ind.App. 252—Continental Casualty Co. v. Klinge, 144 N.E. 246, 82 Ind.App. 277—Kleine v. Houk, 134 N.E. 872, 78 Ind.App. 146.

Mich.—Dimmer v. Mutual Life Ins. Co. of New York, 283 N.W. 16, 287 Mich. 168—Shiovitz v. New York Life Ins. Co., 275 N.W. 181, 281 Mich. 382—Cardinal v. Reinecke, 274 N.W. 379, 280 Mich. 15—Foster v. Farmers' Mut. Fire Ins. Co. of Calhoun County, 232 N.W. 187, 251 Mich. 407—Hemphill v. Orloff, 213 N.W. 867, 238 Mich. 508, 58 A.L.R. 507, affirmed 48 S.Ct. 577, 277 U.S. 537, 72 L.Ed. 978.

Mont.—Electrical Products Consolidated v. El Campo, Inc., 73 P.2d 199, 105 Mont. 386—Midland Motor Co. v. Norwich Union Fire Ins. Soc., 234 P. 482, 72 Mont. 583—Schauer v. Morgan, 216 P. 347, 67 Mont. 455.

Neb.—Linch v. Thorpe, 300 N.W. 383, 140 Neb. 478—Slagle v. Securities Investment Corp., 268 N.W. 294, 131 Neb. 319—Bonacorso v. Camden Fire Ins. Ass'n, 264 N.W. 442, 130 Neb. 203—Larson v. Bumann, 252 N.W. 614, 126 Neb. 85—Eastep v. Northwestern Nat. Life Ins. Co., 208 N.W. 632, 114 Neb. 505—Funke v. Fraas, 199 N.W. 836, 112 Neb. 541—Riverton State Bank v. Walker, 186 N.W. 1011, 107 Neb. 672—Merchants'-Mechanics' First Nat. Bank v. Cavers Elevator Co., 180 N.W. 588, 105 Neb. 321—Bank of Benson v. Gordon, 172 N.W. 367, 103 Neb. 508.

N.M.—Romero v. Herrera, 228 P. 604, 30 N.M. 139.

N.Y.—Britton v. Scognamillo, 144 N.E. 649, 238 N.Y. 375, reargument and amendment of remittitur denied 147 N.E. 173, 239 N.Y. 509—Glanzer v. Shepard, 135 N.E. 275, 233 N.Y. 236.

McTighe v. MacNeill, 278 N.Y.S. 23, 243 App.Div. 797—Niagara Ferry & Transportation Co. v. Eagle Star & British Dominion Ins. Co., 242 N.Y.S. 273, 229 App.Div. 433, affirmed 173 N.E. 895, 254 N.Y. 626, and certiorari denied Eagle Star & British Dominions Ins. Co. v. Niagara Ferry & Transportation Co., 51 S.Ct. 182, 282 U.S. 899, 75 L.Ed. 791—Franklin Sugar Refining Co. v. Lipowicz, 221 N.Y.S. 11, 220 App. Div. 160, affirmed 160 N.E. 916, 247 N.Y. 465—Island Trading Co. v. Berg Bros., 204 N.Y.S. 523, 209 App. Div. 63, affirmed 146 N.E. 345, 239 N.Y. 229—Lewis v. Jackson, 191 N.Y.S. 806, 199 App.Div. 446.

Durham v. Stuyvesant Ins. Co. of the City of New York, 182 N.Y.S. 887, 112 Misc. 440, reversed on other grounds 187 N.Y.S. 659, 196 App. Div. 924.

N.D.—Baird v. Hanson, 215 N.W. 538, 55 N.D. 836.

Ohio.—Cincinnati Summer Opera Ass'n v. Williams, 16 N.E.2d 1000, 58 Ohio App. 513.

Or.—First Nat. Bank v. Conroy, 272 P. 271, 127 Or. 302—Port of Nehalem v. Nicholson, 259 P. 900, 122 Or. 523—Hudelson v. Sanders-Swafford Co., 227 P. 310, 111 Or. 600—Banfield v. Crispen, 226 P. 235, 111 Or. 388—Joseph Milling Co. v. First Bank of Joseph, 216 P. 560, 109 Or. 1, 29 A.L.R. 358—Rugh v. Soleim, 180 P. 930, 92 Or. 329.

S.D.—Citizens' State Bank of Colman v. Rosenwald, 256 N.W. 264, 63 S.D. 50—Bank of Ipswich v. Harding County Farmers Mut. Fire & Lightning Ins. Co., 225 N.W. 721, 55 S.D. 261, 63 A.L.R. 925—Sioux Nat. Bank of Sioux City, Iowa v. Lundberg, 223 N.W. 826, 54 S.D. 581—J. R. Watkins Medical Co. v. Miller, 168 N.W. 373, 40 S.D. 505.

Wyo.—McDonald v. Mulkey, 231 P. 662, 32 Wyo. 144—Sneider v. Big Horn Milling Co., 200 P. 1011, 28 Wyo. 40.

4 C.J. p 902 note 12 [b] (1)-(4).

Decision against preponderance of evidence

The court's decision on facts, after a motion by both parties for a directed verdict, is reviewable as in an equity case, and may be reversed if against the weight of evidence.

N.Y.—Karpas v. Bandler, 228 N.Y.S. 241, 223 App.Div. 306.

consideration of the law and will accept, without review, the determination of the trial court as to the facts, unless it is without any substantial support.[93]

The rule of waiver is not universally followed, and, as stated in Trial § 256 b (2), in a number of jurisdictions motions by both parties for directed verdicts do not, in themselves, waive a jury trial; and in such jurisdictions if there are motions by both parties for directed verdicts and the trial court determines that a verdict should be directed, finality does not attach to this determination, and the action of the court in directing a verdict is to be examined and disposed of just as if the successful party alone had moved the court to direct,[94] unless the conduct and circumstances in addition to the cross motions are sufficient to disclose an intention to submit the whole case to the court.[95]

c. Dismissal

On review of an order on motion to dismiss a cause, the same rules apply as on review of an order on motion for a directed verdict or for nonsuit.

As a general rule, error cannot be assigned on the action of the trial court in dismissing or refusing to dismiss a cause,[96] unless the decision clearly appears

93. U.S.—Federal Life Ins. Co. v. Rumpel, C.C.A.Mich., 102 F.2d 120.
Ark.—General Contract Purchase Corp. v. Row, 188 S.W.2d 507, 208 Ark. 951—Inter-Ocean Casualty Co. v. Copeland, 43 S.W.2d 65, 184 Ark. 648—United Order of Good Samaritans v. Grigsby, 22 S.W.2d 31, 180 Ark. 610—Hightower v. Stillwell, 15 S.W.2d 326, 179 Ark. 256—American Ins. Union v. Rowland, 8 S.W. 2d 452, 177 Ark. 875—Commonwealth Life Ins. Co. v. Tanner, 300 S.W. 927, 175 Ark. 482—St. Louis-San Francisco Ry. Co. v. Fletcher, 253 S.W. 12, 159 Ark. 344, 33 A.L.R. 445—Inter-Southern Life Ins. Co. v. Ransom, 232 S.W. 754, 149 Ark. 517—Strange v. Planters' Gin Co., 218 S.W. 188, 142 Ark. 100—Hall v. Harrel, 206 S.W. 435, 136 Ark. 329.
Colo.—Wells v. Blystad, 14 P.2d 1078, 91 Colo. 346.
Idaho.—Goranson v. Brady-McGowan Co., 281 P. 370, 48 Idaho 261—Oregon Short Line R. Co. v. Mountain States Telephone & Telegraph Co., 237 P. 281, 41 Idaho 4.
Ind.—Indianapolis Traction & Terminal Co. v. Vaughn, 117 N.E. 673, 65 Ind.App. 581.
Mich.—Jarecki Mfg. Co. v. Ragir, 262 N.W. 323, 272 Mich. 689—Peninsular State Bank of Detroit v. First Nat. Bank, 222 N.W. 157, 245 Mich. 179—In re Gilmartin's Estate, 222 N.W. 146, 244 Mich. 641—Barden v. A. Heller Sawdust Co., 215 N.W. 364, 240 Mich. 549—Hannan Real Estate Exchange v. Davis, 213 N.W. 61, 238 Mich. 257—E. Clemens Horst Co. v. Dunn, 200 N.W. 954, 229 Mich. 56—Funk v. U. S. Fidelity & Guaranty Co., 194 N.W. 515, 224 Mich. 95.
Mont.—F. H. Stoltze Land Co. v. Westberg, 206 P. 407, 63 Mont. 38—Fifty Associates Co. of Great Falls v. Quigley, 185 P. 155, 56 Mont. 348.
Neb.—Linch v. Thorpe, 300 N.W. 383, 140 Neb. 478.
N.M.—De Burg v. Armenta, 164 P. 838, 22 N.M. 443.
N.Y.—Meruk v. City of New York, 119 N.E. 571, 223 N.Y. 271—Hennessey v. Knights of Columbus, 267 N.Y.S. 297, 239 App.Div. 409, affirmed 191 N.E. 617, 264 N.Y. 668—Ontario Industrial Co. v. New York Air Brake Co., 179 N.Y.S. 940, 190 App.Div. 894.
N.D.—Anderson v. Reservation State Bank, 217 N.W. 177, 56 N.D. 265.
S.D.—Bank of Ipswich v. Harding County Farmers Mut. Fire & Lightning Ins. Co., 225 N.W. 721, 55 S.D. 261, 63 A.L.R. 925.
Wyo.—McDonald v. Mulkey, 231 P. 662, 32 Wyo. 144.
4 C.J. p 902 note 12 [b] (5).

Evidence authorizing verdict for either party

If from the testimony the jury might have found the verdict for plaintiff or for defendant, where both parties request an instructed verdict, a finding of the trial court in favor of one or the other will not be disturbed.
Idaho.—Oregon Short Line R. Co. v. Mountain States Telephone & Telegraph Co., 237 P. 281, 41 Idaho 4.

Issues unduly restricted by court

The rule that if there is any evidence to sustain a verdict, directed after motion by both parties, it cannot be assailed as a finding of fact, is not applicable, where the court has improperly restricted the issues as to the party against whom the verdict is directed by compelling him to elect between defenses set up in his answer.
Or.—Fletcher v. Yates, 211 P. 179, 105 Or. 680.

Striking evidence, motion granted after

The rule that a judgment on a directed verdict, where both parties moved for such verdict, cannot be disturbed if supported by any evidence does not apply, where the court struck out all of defendant's evidence after defendant made his motion for directed verdict.
Mont.—McCaull-Dinsmore Co. v. Stevens, 194 P. 213, 59 Mont. 206.

Submission of special question to jury

Where both sides moved for a directed verdict, but both acquiesced in submission of special questions to the jury, and verdict on one of questions was against the weight of the evidence, judgment on a directed verdict for defendant was subject to reversal.
N.Y.—Marshall v. Prudential Ins. Co. of America, 7 N.Y.S.2d 971, 255 App. Div. 883, reargument denied 10 N.Y. S.2d 210, 256 App.Div. 819.

94. Tenn.—Wildman Mfg. Co. v. Davenport Hosiery Mills, 249 S.W. 984, 147 Tenn. 551.
Tex.—Alexander Co. v. First Nat. Bank, Civ.App., 119 S.W.2d 718, error dismissed—Wharton v. Mortgage Bond Co. of New York, Civ. App., 48 S.W.2d 519—Bell v. Ramirez, Civ.App., 299 S.W. 655.

95. Tex.—Fry v. Harkey, Civ.App., 141 S.W.2d 662, error dismissed, judgment correct—Moore v. Knemeyer, Civ.App., 271 S.W. 653.
Vt.—Buckley v. Jennings, 114 A. 40, 95 Vt. 205—Brightlook Hospital Ass'n v. Garfield, 104 A. 99, 92 Vt. 353.

Consent that court pass on issues

Where opposing parties move for directed verdicts and consent for court to pass fact issues, judgment on directed verdict for one of parties will be affirmed if there is any evidence supporting verdict and no errors of law appear.
Ga.—Stallings v. Britt, 49 S.E.2d 517, 204 Ga. 250.

96. Ariz.—McCray v. Barth, 267 P. 421, 34 Ariz. 43.
Ill.—West Frankfort Building & Loan Ass'n v. Muir, 237 Ill.App. 122.
Minn.—Busack v. Johnson, 152 N.W. 757, 129 Minn. 364.
N.H.—Pearson v. Wallace, 42 A.2d 738, 93 N.H. 381.
N.C.—Kitchen Lumber Co. v. Tallassee Power Co., 174 S.E. 427, 206 N.C. 515.
Utah.—R. J. Daum Const. Co. v. Child, 247 P.2d 817, 122 Utah 194.
4 C.J. p 904 note 16.

to be erroneous,[97] in which case it may review and reverse.[98]

The same rules with respect to the evidence which will be considered and the manner of its consideration as have been stated in connection with the grant or refusal of directed verdicts or nonsuits apply where the motion granted or refused was one to dismiss.[99] If, however, a case is tried before one judge and thereafter a different judge sets aside the verdict and dismisses the case, the action of the judge in setting aside the verdict and dismissing the case will not be sustained unless it is fully supported by the record, [99.5] since he is not aided by having heard the trial and observed the demeanor of the witnesses.[99.10]

In at least one jurisdiction, on appellate review of an equity case which has been disposed of by sustaining defendant's motion to dismiss at the conclusion of plaintiff's case, and where the court has made no findings with respect to the truth of the evidence, but has simply declared as a matter of law that, assuming plaintiff's evidence to be true, such evidence has no substantial value as tending to support the issues tendered, the appellate court will not confine itself to the law question thus presented but will look behind the trial court ruling and will review the case on its merits without regard to the course actually taken in the trial court.[99.15] Furthermore, the same course will be followed by the appellate court where the case was disposed of by granting defendant's motion to dismiss made at the conclusion of plaintiff's case, even though defendant's motion was not granted until after defendant had presented his case to the trial court.[99.20]

On review of an order made on motion to dismiss at the conclusion of the presentation of plaintiff's case where the motion is not acted on until after defendant's case has been presented, it has been held that only the evidence that was before the court when the motion was made will be considered, and evidence introduced by defendant will not be considered.[99.25] However, it has also been held that where the court reserves decision on a motion to dismiss at the conclusion of the presentation of plaintiff's case, and defendant then proceeds with the defense, the question raised by the motion to dismiss should be decided on a consideration of the entire record.[99.30]

§ 1672. Demurrer to Evidence

On review of an order or ruling on a demurrer to the evidence the only question for the appellate court to determine is whether there is any substantial evidence which tends to establish the issues, and in making this determination the court will consider the evidence in its aspect least favorable to the party demurring.

On review of an order or ruling of the trial court on a demurrer to the evidence, the appellate court is governed by the same principles as those which apply to a judgment on verdicts or findings of a

97. Ga.—Smith v. Swann, 35 S.E.2d 787, 73 Ga.App. 144—Minnick v. Jackson, 13 S.E.2d 891, 64 Ga.App. 554.
Mass.—Gordon v. Richardson, 70 N.E. 1027, 185 Mass. 492, 69 L.R.A. 867—Biggerstaff v. Marston, 36 N.E. 785, 161 Mass. 101.
N.D.—Coppin v. Pankow, 54 N.W.2d 877, 79 N.D. 157.

98. Minn.—Reams v. Chicago, M., St. P. & P. R. Co., 231 N.W. 236, 180 Minn. 534.
N.Y.—Spivak v. McMahon, 91 N.Y.S. 2d 877, 275 App.Div. 1051—Walters Laundry Service v. A. De Bevoise Co., 60 N.Y.S.2d 571, 270 App.Div. 861—Boyce v. New York Cent. R. Co., 12 N.Y.S.2d 844, 257 App.Div. 1014, affirmed 24 N.E.2d 489, 281 N. Y. 823.
4 C.J. p 904 note 18.

99. Cal.—Pignet v. City of Santa Monica, 84 P.2d 166, 29 C.A.2d 286.
Iowa.—Hirtz v. Koppes, 234 N.W. 854, 212 Iowa 536.
La.—Jones v. American Mut. Liability Ins. Co., App., 189 So. 169.
Mich.—Groth v. Singerman, 44 N.W. 2d 155, 328 Mich. 615—John A. Parks Co. v. General Discount Corporation, 293 N.W. 663, 294 Mich. 316.
N.J.—Coll v. Bernstein, 81 A.2d 389, 14 N.J.Super. 71.
N.M.—Dickerson v. Montoya, 100 P. 2d 904, 44 N.M. 207.
N.Y.—Sullivan v. Central Hanover Bank & Trust Co., 51 N.Y.S.2d 525, 268 App.Div. 997, reversed on other grounds 63 N.E.2d 76, 294 N.Y. 497.
McCoy Service v. New York Telephone Co., 295 N.Y.S. 133, 163 Misc. 206, reversed on other grounds 2 N.Y.S.2d 804, 166 Misc. 564.
N.C.—Kitchen Lumber Co. v. Tallassee Power Co., 174 S.E. 427, 206 N. C. 515.
Tex.—Rochelle v. Gibler, Civ.App., 269 S.W.2d 515, error refused no reversible error.

Prima facie case sole question
On appeal from a judgment dismissing complaint at the close of plaintiff's proofs, the sole question is whether plaintiff had established a prima facie case.
N.Y.—Geiger v. Bush, 43 N.E.2d 445, 288 N.Y. 365, reargument denied 44 N.E.2d 622, 289 N.Y. 649.
Miller-Schott v. McGovern, 293 N.Y.S. 868, 250 App.Div. 763.

99.5 W.Va.—Wilson v. Co-operative Transit Co., 30 S.E.2d 749, 126 W. Va. 943.

99.10 W.Va.—Wilson v. Co-operative Transit Co., supra.

99.15 Mo.—Hoynes v. Hoynes, App., 218 S.W.2d 823.

99.20 Mo.—Hoynes v. Hoynes, supra.

99.25 Mich.—Hilliker v. Jewel Oil & Gas Co., 268 N.W. 825, 277 Mich. 96, reheard 270 N.W. 158, 277 Mich. 615.

99.30 N.Y.—McCoy Service v. New York Telephone Co., 295 N.Y.S. 133, 163 Misc. 206, reversed on other grounds 2 N.Y.S.2d 804, 166 Misc. 564.

Motion repeated after all evidence presented
Where a motion to dismiss is made both at close of plaintiff's case and at close of all the evidence, the appellate court must examine all the evidence, and not merely that offered on the part of plaintiff.
Ill.—Gardner v. International Shoe Co., 54 N.E.2d 482, 386 Ill. 418.

court.[1] On such a review, the appellate court is concerned only with evidence which supports or tends to support a cause of action or defense, and the court does not consider evidence favorable to the party demurring;[1.5] and every reasonable inference will be drawn from the facts in evidence that may be indulged in favor of the cause of action.[2] Thus, the reviewing court will abstain from considering questions of credibility and from weighing the evidence, but will, instead, accept it in the aspect most favorable to the party against whom the demurrer is interposed,[3] unless the testimony relied

1. Mo.—Gray v. Kurn, 137 S.W.2d 558, 345 Mo. 1027.
Moore v. Fitzpatrick, App., 31 S.W.2d 590—Brashears v. Rogers Foundry & Mfg. Co., App., 11 S.W.2d 1060.
Tex.—Donaldson v. Oak Park Cemetery, Civ.App., 110 S.W.2d 119.
Va.—Davis v. Ellis' Adm'r, 131 S.E. 815, 146 Va. 366—Chesapeake & O. Ry. Co. of Indiana v. National Bank of Commerce of Norfolk, 95 S.E. 454, 122 Va. 471, certiorari denied 38 S.Ct. 582, 247 U.S. 519, 62 L.Ed. 1246.
4 C.J. p 904 note 20.

Error not to be assigned

Refusal of a demurrer to the evidence in an equity suit cannot form the basis of an assignment of error.
Mo.—Butler County v. Campbell, 182 S.W.2d 589, 353 Mo. 413.

Where parents are defendants in alienation action, on review of an instruction in the nature of a demurrer to the evidence the appellate court will subject the evidence to a close and careful scrutiny in determining its substantiality.
Mo.—Weaver v. Lehman, 107 S.W.2d 81, 341 Mo. 378.

Review of motion to set aside verdict contrasted

Plaintiff's position being more favorable on a demurrer to the evidence than on a motion to set aside a verdict, the appellate court will consider only the demurrer.
Va.—Wadkins v. Damascus Lumber Co., 93 S.E. 591, 121 Va. 691.

1.5 Kan.—Stegman v. Professional & Business Men's Life Ins. Co., 252 P.2d 1074, 173 Kan. 744—Brown v. Great Am. Ins. Co. of N. Y., 224 P.2d 989, 170 Kan. 281—Corkill v. Thompson, 217 P.2d 273, 169 Kan. 38—Thummel v. Kansas State Highway Commission, 164 P.2d 72, 160 Kan. 532—Smith v. Kansas City, 146 P.2d 660, 158 Kan. 213—Underhill v. Motes, 146 P.2d 374, 158 Kan. 173—Schroeder v. Nelson, 139 P.2d 868, 157 Kan. 320—State ex rel. State Labor Com'r v. Garlinghouse, 138 P.2d 421, 157 Kan. 91—McDaniel v. Myers, 131 P.2d 650, 156 Kan. 21—Bradley v. Allis Hotel Co., 109 P.2d 165, 153 Kan. 166—Rush v. Brown, 109 P.2d 84, 153 Kan. 59—Lane v. Atchison, T. & S. F. Ry. Co., 98 P.2d 408, 151 Kan. 113—Riggs v. Gouldner, 96 P.2d 694, 150 Kan. 727—Gould v. Hutchinson Oil & Gas Co., 95 P.2d 801, 150 Kan. 516—Dobson v. Baxter Chat Co., 85 P.2d 1, 148 Kan. 750—Hayes v. Reid, 64 P.2d 19, 145 Kan. 51.
Mo.—Stephens v. Kansas City Gas Co., 191 S.W.2d 601, 354 Mo. 835—Neal v. Kansas City Public Service Co., 184 S.W.2d 441, 353 Mo. 779—Karr v. Chicago, R. I. & P. Ry. Co., 168 S.W.2d 461, 339 Mo. 1124—Guthrie v. City of St. Charles, 152 S.W.2d 91, 347 Mo. 1175—Gray v. Kurn, 137 S.W.2d 558, 345 Mo. 1027—Yakubinis, by Flynn, v. Missouri-Kansas-Texas R. Co., 100 S.W.2d 461, 339 Mo. 1124.
Tenkhoff v. New York Life Ins. Co., App., 191 S.W.2d 1005—Corley v. Kroger Grocery & Baking Co., App., 189 S.W.2d 178, reversed on other grounds, Sup., 193 S.W.2d 897—Cheatham v. Chartrau, 176 S.W.2d 865, 237 Mo.App. 793—Leavell v. Thompson, 176 S.W.2d 854, 238 Mo.App. 130—Savage v. Michalon's Estate, App., 176 S.W.2d 626—Chervek v. St. Louis Public Service Co., App., 173 S.W.2d 599—Hollyfield v. Joplin Coca Cola Bottling Co., App., 170 S.W.2d 451—Farris v. Thompson, App., 168 S.W.2d 439—Dyer v. Kansas City Life Ins. Co., App., 168 S.W.2d 433, opinion quashed State ex rel. Dyer v. Blair, 178 S.W.2d 1020, 352 Mo. 584, conformed to, App., 188 S.W.2d 758—Gayle v. Thompson, App., 167 S.W.2d 954—Knorp v. Thompson, App., 167 S.W.2d 105, transferred, see, 175 S.W.2d 889, 352 Mo. 44—Winegar v. Chicago, B. & Q. R. Co., App., 163 S.W.2d 357—Northcutt v. McKibben, 159 S.W.2d 699, 236 Mo.App. 605—Buhrmester v. Independent Plumbing & Heating Supply Co., App., 151 S.W.2d 509—Saunders v. Prue, 151 S.W.2d 478, 235 Mo.App. 1245—Dougan v. Thompson, 150 S.W.2d 518, 237 Mo.App. 619—Foster v. Kurn, 133 S.W.2d 1114, 234 Mo.App. 909—Jos. Greenspon's Son Pipe Corporation v. Hyman-Michaels Co., App., 133 S.W.2d 426—Putnam v. Unionville Grante Works, App., 122 S.W.2d 389—Shade v. Brinkopf, App., 119 S.W.2d 444—Jordan v. St. Louis Public Service Co., 103 S.W.2d 552, 232 Mo.App. 267.
Okl.—Spangenburg v. Aetna Life Ins. Co., 306 P.2d 707—Cook v. Bingman, 179 P.2d 470, 198 Okl. 421.

All testimony considered

On review of a demurrer to the evidence the appellate court considers the entire testimony of a witness and not some isolated statement, and if this were not true plaintiff might recover on testimony in chief, although on cross-examination he admitted he was in error.
Va.—Virginia Electric & Power Co. v. Ford, 186 S.E. 84, 166 Va. 619.

Defendant's evidence considered

Where defendant did not stand on demurrer after it was overruled, but proceeded to introduce evidence, the appellate court would not consider the sufficiency of plaintiff's evidence alone.
Okl.—City of Wagoner v. Black, 97 P.2d 21, 186 Okl. 207.

Instruction in nature of demurrer to evidence

In determining whether an instruction in the nature of a demurrer to the evidence should have been given, the appellate court is required to take plaintiff's evidence as true and to disregard defendant's evidence which conflicts with plaintiff's evidence, to give plaintiff benefit of all reasonable and legitimate inferences arising from all evidence and also benefit of all testimony given by defendant which tends to support plaintiff's case, and to give plaintiff benefit of all reasonable inferences deducible from facts and circumstances tending to support his theory of case.
Mo.—Molkenbur v. St. Louis Public Service Co., 103 S.W.2d 560, 232 Mo.App. 256.

2. Kan.—Hukle v. Kimble, 219 P.2d 434, 169 Kan. 438—Klassen v. Central Kan. Co-op. Creamery Ass'n, 165 P.2d 601, 160 Kan. 697.
Mo.—Bieser v. Goran, 100 S.W.2d 897, 340 Mo. 354—Glick v. Arink, 58 S.W.2d 714—Coble v. St. Louis-San Francisco Ry. Co., 38 S.W.2d 1031.
Sullivan v. S. S. Kresge Co., 163 S.W.2d 811, 236 Mo.App. 1191.
W.Va.—Truschel v. Rex Amusement Co., 136 S.E. 30, 102 W.Va. 215, certiorari denied Rex Amusement Co. v. Truschel, 47 S.Ct. 574, 274 U.S. 736, 71 L.Ed. 1316.
4 C.J. p 904 note 21.

3. Kan.—Jones v. Winn, 297 P.2d 199, 179 Kan. 587—Maust v. Ioerger, 280 P.2d 566, 177 Kan. 558—Rusch v. Phillips Petroleum Co., 180 P.2d 270, 163 Kan. 11—In re Brown's Estate, 155 P.2d 445, 159 Kan. 408—Moler v. Cox, 149 P.2d 611, 158 Kan. 589.
Md.—Baltimore Transit Co. v. State, to Use of Schriefer, 40 A.2d 678, 184 Md. 250—Holland Furnace Co. v. Rollman, to Use of New York Underwriters Ins. Co., 20 A.2d 500,

on as against the demurrer is palpably impossible and false.[4]

If there is any competent evidence tending to support the issues made by the pleadings, the overruling of such a demurrer is proper;[5] but where the evidence does not support the issues thus tendered under any theory or on any reasonable consideration, to overrule a demurrer to such evidence is error available on review as a ground for reversal.[6] Conversely, the action of the trial court in sustaining such a demurrer will be upheld where there is no evidence reasonably tending to sustain the issues,[7]

179 Md. 510—Clough & Molloy v. Shilling, 131 A. 343, 149 Md. 189.

Mo.—Brickey v. St. Louis Merchants' Bridge Terminal Ry. Co., 259 S. W. 476—Kilburn v. Chicago, M. & St. P. Ry. Co., 232 S.W. 1017, 289 Mo. 75—Ash v. Woodward & Tiernan Printing Co., 199 S.W. 994—Hall v. Manufacturers' Coal & Coke Co., 168 S.W. 927, 260 Mo. 351, Ann. Cas.1916C 375.

Ramel v. Kansas City Public Service Co., App., 187 S.W.2d 492—Sullivan v. S. S. Kresge Co., 163 S. W.2d 811, 236 Mo.App. 1191—In re Bearden, App., 86 S.W.2d 585—Stout v. Kansas City Public Service Co., App., 17 S.W.2d 363—Shirley v. Kansas City Southern Ry. Co., 298 S.W. 125, 221 Mo.App. 1158—Watts v. Fleming, 298 S.W. 107, 221 Mo.App. 1123—Fink v. Gregg Realty Co., App., 296 S.W. 838—Watson v. Carthage Marble & White Line Co., App., 290 S.W. 649—Straub v. Laclede Gaslight Co., App., 287 S.W. 1061—Terry v. Kansas City Rys. Co., App., 228 S.W. 885—Hanheide v. Supreme Tribe of Ben Hur, App., 223 S.W. 684.

Okl.—**Corpus Juris cited in** Davis v. Wallace, 37 P.2d 602, 604, 169 Okl. 497—Forry v. Brophy, 243 P. 506, 116 Okl. 99—Acacia Oil & Gas Co. v. Tidal Oil Co., 217 P. 372, 91 Okl. 237.

Va.—W. T. Grant Co. v. Owens, 141 S.E. 860, 149 Va. 906—F. A. Rausch & Co. v. Graham Mfg. Corporation, 134 S.E. 692, 145 Va. 681—Atlantic Coast Line R. Co. v. Wheeler, 132 S.E. 517, 147 Va. 1, affirmed 136 S. E. 570, 147 Va. 1—Chesapeake & O. Ry. Co. of Indiana v. National Bank of Commerce of Norfolk, 95 S.E. 454, 122 Va. 471, certiorari denied 38 S.Ct. 582, 247 U.S. 519, 62 L.Ed. 1246—Greenwood v. Royal Neighbors of America, 87 S.E. 581, 188 Va. 329, Ann.Cas.1918D 1002.

4 C.J. p 904 note 20 [a].

Common reason not to be disregarded

In reviewing ruling for defendant on demurrer to plaintiff's testimony, although court must view plaintiff's evidence and all reasonable inferences therefrom favorably to plaintiff and disregard evidence unfavorable to plaintiff, court need not disregard common reason and accept as true what cannot be true under circumstances, or give plaintiff benefit of any other than reasonable inferences.

Mo.—Louzader v. James, App., 107 S. W.2d 976.

Reconciliation of conflicting testimony

In reviewing the action taken by the trial court on a demurrer to the evidence, the appellate court does not undertake to reconcile conflicting testimony.

Mo.—Maybee v. Missouri Orpheum Corp., 181 S.W.2d 771, 238 Mo.App. 537—Bowman v. Moore, 167 S.W. 2d 675, 237 Mo.App. 1163.

4. Mo.—Spain v. St. Louis & S. F. R. Co., App., 190 S.W. 358.

Va.—Equitable Fire & Marine Ins. Co. of Providence, R. I. v. Stieffens, 153 S.E. 731, 154 Va. 281—Virginia Ry. & Power Co. v. Bailey, 96 S.E. 275, 123 Va. 250—Virginian Ry. Co. v. Bell, 87 S.E. 570, 118 Va. 492.

Giving instructions of equivalent effect

Where plaintiff's instructions assumed testimony tending to prove the falsity of defendant's representations as to the value of property exchanged, the result on appeal would be the same as if a demurrer to it had been offered, although none was in fact offered.

Mo.—Wakefield v. Moore, App., 186 S.W. 1148.

5. Kan.—Rusch v. Phillips Petroleum Co., 180 P 2d 270, 163 Kan. 11—Carver v. Farmers & Bankers Broadcasting Corp., 179 P.2d 195, 162 Kan. 663—Jones v. Jones, 146 P.2d 405, 158 Kan. 196.

Md.—Ebling v. Brewer, 141 A. 363, 154 Md. 290—Friedman v. Katzner, 114 A. 884, 139 Md. 195.

Mo.—Branson v. Abernathy Furniture Co., 130 S.W.2d 562, 344 Mo. 1171—Jamison v. Wells, 7 S.W.2d 347—State ex rel. Steinbruegge v. Hostetter, 115 S.W.2d 802, 342 Mo. 341, conformed to, App., 118 S.W. 2d 39, record quashed State ex rel. Waters v. Hostetter, 126 S.W.2d 1164, 344 Mo. 443, mandate conformed to Waters v. Hays, App., 130 S.W.2d 220.

Winegar v. Chicago, B. & Q. R. Co., App., 163 S.W.2d 357—Jones v. Metropolitan Life Ins. Co., App., 130 S.W.2d 967—La Font v. Richardson, App., 119 S.W.2d 25—Chasteen v. Singer Sewing Mach. Co., 41 S.W.2d 621, 226 Mo.App. 57—Widick v. Vandergrift, App., 37 S. W.2d 663—Rosenstein v. Lewis Automobile Co., App., 34 S.W.2d 1023—Erxleben v. Kaster, App., 21 S.W. 2d 195—Hoodenpyle v. Wells, App., 10 S.W.2d 331—Cox v. Bondurant, 7 S.W.2d 403, 220 Mo.App. 948—Peterson v. Fleming, 297 S.W. 163, 222 Mo.App. 296—Krummenacher Drug Co. v. Chouteau, App., 296 S. W. 255—Brown v. American Car & Foundry Co., App., 271 S.W. 540—Security Printing Co. v. Connecticut Fire Ins. Co. of Hartford, Conn., 240 S.W. 263, 209 Mo.App. 422—Evans v. Clapp, App., 231 S. W. 79—Hunt v. Hines, 223 S.W. 798, 204 Mo.App. 318—Barnes v. Missouri Pac. Ry. Co., App., 192 S. W. 1040—Summers v. Chicago, R. I. & P. Ry. Co., App., 187 S.W. 125—Dunn v. Missouri Pac. Ry. Co., 182 S.W. 109, 192 Mo.App. 260—March v. Vandiver, 168 S.W. 824, 181 Mo.App. 281—Cooper v. McFarlen, 168 S.W. 671, 184 Mo.App. 181.

Okl.—Carter Oil Co. v. Johnston, 257 P.2d 817, 208 Okl. 564—Benke v. Stepp, 184 P.2d 615, 199 Okl. 119—Winter v. Klein, 96 P.2d 83, 186 Okl. 74—Beverly Hills Nat. Bank & Trust Co. v. Martin, 91 P.2d 94, 185 Okl. 254—Lone Star Gas Co. v. Burk, 20 P.2d 170, 162 Okl. 259—Nelson v. Peterman, 249 P. 333, 119 Okl. 125—German-American Bank of Blackburn v. Rush, 171 P. 713, 68 Okl. 56.

Va.—Barnes v. Hampton, 141 S.E. 836, 149 Va. 740.

W.Va.—Davis v. Combined Ins. Co. of America, 70 S.E.2d 814, 137 W.Va. 196—Miller v. Johnson, 90 S.E. 677, 79 W.Va. 198.

4 C.J. p 904 note 22.

Competent evidence presented by incompetent witness

Okl.—Hartsell v. Davis, 53 P.2d 261, 175 Okl. 446.

6. Kan.—In re Hayden's Estate, 254 P.2d 813, 174 Kan. 140, 36 A.L.R.2d 1278.

Mo.—Geninazzi v. Leonori, App., 233 S.W. 75, transferred, see, Geninazza v. R. W. Leonori Auction and Storage Co., 252 S.W. 417.

Okl.—Gulf, C. & S. F. Ry. Co. v. Harpole, 239 P. 609, 111 Okl. 301.

4 C.J. p 904 note 19.

7. Mo.—Maryland Casualty Co. v. Mercantile Commerce Trust Co., App., 122 S.W.2d 23.

N.C.—Bethune v. Bridges, 46 S.E.2d 711, 228 N.C. 623.

Okl.—Biggs v. Federal Land Bank of Wichita, 95 P.2d 902, 186 Okl. 99—Katschor v. Eason Oil Co., 63 P.2d 977, 178 Okl. 634—Harris v. Tucker, 296 P. 397, 147 Okl. 210—Woods v.

but will be reviewed and set aside where there is such evidence,[8] unless it has been held, there is no right to a jury trial.[9]

Motion to strike evidence. After the parties have introduced all available evidence and the trial court has sustained a motion to strike plaintiff's evidence, on review the appellate court will examine the evidence to determine whether or not a verdict on behalf of the losing party can be sustained, and if the court is of the opinion that reasonable men may differ on the conclusion to be reached, it is the duty of the court to hold that the trial court committed error in striking the evidence.[9.5] In determining whether the motion to strike should be sustained, the reviewing court will not view the evidence as strictly as on a demurrer, but appellants will be given the benefit of all substantial conflict in the evidence and all fair inferences which may be drawn from the evidence.[9.10] Where defendant's motion to strike plaintiff's evidence is granted without defendant having introduced any evidence, on review the only question presented in whether the evidence submitted presented a question of fact for determination by the jury or a question of law to be determined by the court.[9.15]

6. Decision on Motion for New Trial

§ 1673. Grant of Motion

a. In general
b. Grounds of order

a. In General

A decision by the trial court to grant a motion for a new trial generally is made only after there has been a determination of questions of fact, and the decision of the trial court is usually sustained on review unless error of law is shown to exist.

While an appellate court may have the power to overrule the trial court on questions of fact involving the granting of a new trial,[9.50] it is not the province of an appellate court to substitute its judgment for that of the trier of facts on the review of an order granting a new trial.[9.55] Accordingly, an order granting a motion for new trial, where the order is based on questions of fact, ordinarily will not be disturbed on review,[10] unless it is apparent

Board of Directors of Union Graded School Dist. No. 36, Stephens County, 271 P. 424, 133 Okl. 249—Bobeck v. Bank of Jefferson, 244 P. 795, 114 Okl. 197—Husted v. Bank of Jefferson, 244 P. 795, 114 Okl. 150—Davis v. Bank of Jefferson, 244 P. 795, 114 Okl. 149, 150—Elling v. Bank of Jefferson, 244 P. 793, 114 Okl. 147—Avery v. Abraham, 243 P. 728, 114 Okl. 101—Thompson v. City of Vinita, 215 P. 621, 91 Okl. 5—Fuss v. Cocannouer, 172 P. 1077, 70 Okl. 36.

8. Okl.—C. D. Coggeshall & Co. v. Smiley, 285 P. 48, 142 Okl. 8—Kline v. Kollman, 192 P. 208, 79 Okl. 179.

9. Okl.—Coker v. Vierson, 41 P.2d 95, 170 Okl. 528—Winans v. Harn, 275 P. 618, 136 Okl. 5.

Equity cases

(1) In equity cases in which issues of fact are tried by the court, judgment for defendant on demurrer to plaintiff's testimony will not, according to some authorities, be reversed on appeal, unless against clear weight of the evidence.

Okl.—Connolly v. Gaffaney, 14 P.2d 391, 159 Okl. 60—Rowsey v. Witcher, 270 P. 850, 133 Okl. 17—Heldt v. Heldt, 246 P. 608, 118 Okl. 103—Penny v. Vose, 234 P. 601, 108 Okl. 103.

(2) Elsewhere, however, it has been held that the rule that, if there is some evidence tending to support plaintiff's case, a demurrer to the evidence should not be sustained, does not apply in a suit in equity, as far as concerns the extent of review on appeal; but, as a demurrer to evidence is not proper in equity, the sustaining of it amounts only to a judgment that plaintiff has not sustained the allegations of his petition, and the appellate court will examine the record and will determine whether the judgment of the lower court was proper.

Mo.—Baker v. Satterfield, 43 Mo.App. 591.

9.5 Va.—Holland v. Edelblute, 20 S.E.2d 506, 179 Va. 685—Walton v. Walton, 191 S.E. 768, 168 Va. 418.

Only plaintiff's evidence considered

Va.—Caudill v. Gibson Fuel Co., 38 S.E.2d 465, 185 Va. 233.

9.10 Va.—Walton v. Walton, 191 S.E. 768, 168 Va. 418.

9.15 Va.—Gray v. Van Zaig, 37 S.E.2d 751, 185 Va. 7.

9.50 Ill.—Goodrich v. Sprague, 52 N.E.2d 250, 385 Ill. 200.

Motion based on evidence or question of law

Appellate court, in reviewing orders granting motions for new trial, will recognize distinction between such a motion when based on evidence and when involving questions of law.

Ill.—Kavanaugh v. Washburn, 50 N.E.2d 761, 320 Ill.App. 250, appeal denied 56 N.E.2d 420, 387 Ill. 204.

9.55 Ala.—King v. Skinner, 72 So.2d 730, 261 Ala. 9—Martin v. Birmingham Southern R. Co., 35 So.2d 339, 250 Ala. 583.

N.H.—Perreault v. Lyons, 106 A.2d 380, 99 N.H. 169.

N.J.—Clayton v. Carroll Drug Co., 56 A.2d 732, 136 N.J.Law 407.

Pa.—Plazak v. Allegheny Steel Co., 188 A. 130, 324 Pa. 422.

Partial retrial

A finding in trial court on question of a partial retrial is conclusive in supreme court on exceptions if there was evidence on which it could be made.

N.H.—Hadley v. McLaughlin, 131 A.2d 54, 100 N.H. 497.

10. Ala.—Herman Saks & Sons v. Ivey, 157 So. 265, 26 Ala.App. 240—Mangino v. Todd, 98 So. 323, 19 Ala.App. 486.

Cal.—Mann v. Shipley, 181 P.2d 641, 80 C.A.2d 453.

Conn.—De Lahunta v. City of Waterbury, 59 A.2d 800, 134 Conn. 630, 7 A.L.R.2d 218.

Fla.—Cuneo v. Peninsular Life Ins. Co., 197 So. 116, 143 Fla. 492—Phillips v. Lowenstein, 107 So. 350, 91 Fla. 89.

Ga.—Dobbs v. Fort, 17 S.E. 846, 92 Ga. 573.

Flag Fish Co. v. Mann Seafood, 34 S.E.2d 294, 72 Ga.App. 484—Lawson v. Lawson, 7 S.E.2d 603, 61 Ga.App. 787.

Ill.—Grassle v. Knowles, 45 N.E.2d 513, 317 Ill.App. 153.

Ind.—Lewin v. Moll, 186 N.E. 905, 98 Ind.App. 1.

that the order is clearly wrong.[10.5] This rule will usually be followed even though the original trial was held before a judge other than the one before whom the motion for new trial was made,[11] although in such a case, the weight to be accorded the determination of the court below is not as great.[12]

If an order granting a motion for a new trial is sustainable on any of several grounds assigned, it will not be disturbed,[13] and, conversely, if an order granting a new trial cannot be sustained on any of the grounds assigned it will be reversed.[13.5]

There is authority to the effect that an order granting a new trial can be set aside only in the case of error of law,[14] as where the conclusion reached by the trial judge to grant a new trial was

Iowa.—Bletzer v. Wilson, 276 N.W. 836, 224 Iowa 884.

Kan.—Barstow v. Elmore, 276 P.2d 360, 177 Kan. 30—Atkinson v. Cardinal Stage Lines Co., 66 P.2d 553, 145 Kan. 639—Durkin v. Kansas City Public Service Co., 27 P.2d 259, 138 Kan. 558—Arnold v. Harte, 9 P.2d 664, 135 Kan. 142—Warner v. Snook, 172 P. 521, 102 Kan. 814.

Mo.—Andres v. Brown, 300 S.W.2d 800—Logsdon v. Duncan, 293 S.W. 2d 944—Catanzaro v. McKay, 277 S. W.2d 566—Lindsey v. Vance, 88 S. W.2d 150, 337 Mo. 1111—Security Bank of Elvins v. National Surety Co., 62 S.W.2d 708, 333 Mo. 340—Keller v. St. Louis Butchers' Supply Co., 229 S.W. 173.

Seymour v. Tobin Quarries, 123 S.W.2d 628, 233 Mo.App. 573—Tappmeyer v. Ryckoff, App., 45 S.W.2d 890—Morgeneier v. Grafeman Dairy Co., App., 220 S.W. 1009—James v. Butcher, App., 215 S.W. 767—Lackland v. United Rys. Co. of St. Louis, 191 S.W. 1104, 197 Mo.App. 62—Patterson v. American Ins. Co. of Newark, N. J., App., 186 S.W. 552—Tevis v. United Rys. Co. of St. Louis, App., 185 S.W. 738—Farmers' & Merchants' Bank v. Munson, App., 177 S.W. 778.

Neb.—Greenberg v. Fireman's Fund Ins. Co. of San Francisco, Cal., 35 N.W.2d 772, 150 Neb. 695.

Nev.—**Corpus Juris Secundum cited in** Nevada Rock & Sand Co. v. Grich, 93 P.2d 513, 522, 59 Nev. 345.

N.H.—Jackson v. Smart, 200 A. 789, 89 N.H. 457—Whiting v. Sussman, 102 A. 539, 78 N.H. 486.

N.Y.—Pierson v. Towner, 195 N.E. 366, 266 N.Y. 653.

Moon v. Finkle, 160 N.Y.S.2d 387, 3 A.D.2d 802—Marczinak v. J. B. King Transp. Co., 155 N.Y.S. 608, 170 App.Div. 56.

Pa.—Braughler v. Commonwealth, 131 A.2d 341, 388 Pa. 573—Helz v. City of Pittsburgh, 127 A.2d 89, 387 Pa. 169.

R.I.—Kimatian v. New England Telephone & Telegraph Co., 141 A. 331, 49 R.I. 186—Jefferds v. Chapman, 141 A. 330.

S.C.—Tedder v. Coca-Cola Bottling Co. of Darlington, 77 S.E.2d 293, 224 S.C. 46—Watson v. Paschall, 84 S. E. 531, 100 S.C. 281.

Tex.—Liberty Cab Co. v. Green, Civ. App., 262 S.W.2d 522, error refused no reversible error—Houston Electric Co. v. McLeroy, 153 S.W.2d 617, reversed on other grounds 163 S. W.2d 1062, 139 Tex. 170.

W.Va.—McGraw v. New York Cent. R. Co., 161 S.E. 9, 111 W.Va. 175—Adkinson v. Baltimore & O. R. Co., 83 S.E. 291, 75 W.Va. 156.

Wis.—Nowicki v. Northwestern Nat. Cas. Co., 12 N.W.2d 918, 244 Wis. 632.

4 C.J. p 904 note 23.

Findings and rulings at hearing on motion

Findings of fact made at a hearing on a motion for new trial are final, but rulings of law are open to revision by the supreme judicial court.

Mass.—Bruns v. Jordan Marsh Co., 26 N.E.2d 368, 305 Mass. 437.

Surprise

An order setting aside a verdict and granting a new trial on the ground of surprise as to the testimony will not ordinarily be disturbed on the finding of surprise.

N.C.—Sanford v. National Council, Junior Order of United American Mechanics, 97 S.E. 384, 176 N.C. 443.

10.5 Ala.—McClellan v. Orange Crush-Grapico Bottling Co., 62 So. 2d 803, 36 Ala.App. 682.

Ariz.—General Petroleum Corp. v. Barker, 269 P.2d 729, 77 Ariz. 235.

Ill.—Hackett v. Hicks, 53 N.E.2d 742, 322 Ill.App. 76.

Mo.—Lightfoot v. Kurn, App., 164 S.W.2d 77.

Neb.—Schwank v. Platte County, 40 N.W.2d 863, 152 Neb. 273.

N.J.—Hartpence v. Grouleff, 105 A. 2d 514, 15 N.J. 545.

Pa.—Fitz-Patrick v. Sheppard, 29 A. 2d 475, 346 Pa. 249.

R.I.—Wein v. Lucey, 104 A.2d 248, 81 R.I. 434—Audette v. New England Transp. Co., 46 A.2d 570, 71 R.I. 420—Papi v. Ferri, 40 A.2d 431, 70 R.I. 477.

W.Va.—Kap-Tex, Inc. v. Romans, 67 S.E.2d 847, 136 W.Va. 489—McClaugherty v. Tri-City Traction Co., 14 S.E.2d 432, 123 W.Va. 112.

Manifest denial of justice

N.J.—Kovacs v. Everett, 117 A.2d 172, 37 N.J.Super. 133.

11. Cal.—Empire Inv. Co. v. Mort, 147 P. 960, 169 C. 732.

Miller v. Logan, 161 P. 1022, 32 C.A. 28.

4 C.J. p 904 note 24.

12. Fla.—**Corpus Juris Secundum cited in** Wolkowsky v. Goodkind, 14 So.2d 398, 402, 153 Fla. 267.

Ga.—Young-Jones Hardware Co. v. Dewey, 106 S.E. 593, 26 Ga.App. 521.

Mont.—Waite v. C. E. Shoemaker & Co., 146 P. 736, 50 Mont. 264.

W.Va.—Hendricks v. Monongahela West Penn Public Service Co., 175 S.E. 441, 115 W.Va. 208.

13. Cal.—McEwen v. Occidental Life Ins. Co., 155 P. 86, 172 C. 6.

Kan.—Walsh v. Joplin & Pittsburg Ry. Co., 164 P. 184, 100 Kan. 232.

Mo.—Tappmeyer v. Ryckoff, App., 45 S.W.2d 890.

N.Y.—Bromberg v. Rothkowitz, 160 N.Y.S. 1080.

Or.—Hitchman v. Bush, 247 P.2d 211, 195 Or. 640—Bartholomew v. Oregonian Pub. Co., 216 P.2d 257, 188 Or. 407—Di Nucci v. Hager, 200 P. 2d 380, 184 Or. 555.

Failure to specify what facts unsupported

Order granting a new trial on the ground that the evidence submitted was insufficient to support a judgment on previous finding, without specifying which of the probative facts found was without sufficient support, could not be reversed.

Cal.—Hitchcock v. Rooney, 152 P. 913, 171 C. 285.

Failure of order to specify insufficiency of evidence

Where an order grants a new trial and does not specify that the new trial is being granted for insufficiency of evidence, under a statutory provision the order cannot be sustained on the ground that the evidence was insufficient to support the verdict.

Cal.—Fulton v. Huguet, 248 P.2d 954, 113 C.A.2d 692.

13.5 Ohio.—Haffner v. Schmiedl, 90 N.E.2d 700, 87 Ohio App. 143.

Case for jury on any issue

In determining on appeal whether plaintiff had made a case for jury, it was only necessary to determine that a case was made for jury on any one or more of the issues that were submitted.

Mo.—Schmidt v. Allen, 303 S.W.2d 652.

14. Cal.—Francis v. Pacific Electric Ry. Co., 49 P.2d 313, 9 C.A.2d 278.

Fla.—Carney v. Stringfellow, 74 So. 866, 73 Fla. 700.

influenced or controlled by an error of law.[14.5] If the trial court in granting a new trial has erred on an unmixed question of law, the order will be reversed.[14.10] Questions of the weight and probative effect of the evidence[15] or the credibility of witnesses[16] are not before the reviewing court.

Great weight is due to the ruling of a trial court setting aside a verdict as contrary to the evidence,[17]

Kan.—Armourdale State Bank v. Hoel, 242 P. 481, 120 Kan. 130.
Okl.—Lovejoy v. Stutsman, 148 P. 175, 46 Okl. 122—Bucher v. Showalter, 145 P. 1143, 44 Okl. 690.
R.I.—Korn v. Congdon, 123 A. 444.
S.C.—Ramer v. Hughes, 127 S.E. 565, 131 S.C. 488—Wilson v. Southern Ry., Carolina Division, 115 S.E. 764, 123 S.C. 399.
4 C.J. p 904 note 25.

Erroneous construction of pleading

Where the basis for a grant of a new trial was an erroneous construction of a pleading, there was a reviewable error of law.
S.C.—Marshall v. Charleston, etc., R. Co., 35 S.E. 497, 57 S.C. 138.

Right of appellate court to dispose of case as test

The grant of a new trial should not be disturbed unless the circumstances disclosed by the evidence and the inferences to be drawn from the facts testified to are so far conclusive against the right of recovery of the party granted the new trial as to warrant the reviewing court in directing judgment finally disposing of the case.
Minn.—Byrne v. Great Northern R. Co., 126 N.W. 627, 111 Minn. 198.

14.5 S.C.—Bessinger v. National Sur. Corp., 35 S.E.2d 658, 207 S.C. 365.

14.10 Okl.—Cabiniss v. Andrews, 258 P.2d 180—Moses v. Miller, 164 P.2d 879, 196 Okl. 294.

15. Cal.—Richardson v. Ham, 285 P.2d 269, 44 C.2d 772—Brooks v. Metropolitan Life Ins. Co., 163 P.2d 689, 27 C.2d 305—Hall v. Desser, 63 P.2d 809, 8 C.2d 29.
Jensen v. Western Pioneer Ins. Co., App., 312 P.2d 285—Thompson v. Blum's Inc., 293 P.2d 82, 139 C.A.2d 140—Birch v. Mahaney, 290 P.2d 579, 137 C.A.2d 584—Deshotel v. Atchison, T. & S. F. Ry. Co., 272 P.2d 71, 126 C.A.2d 303—Lopez v. Capiti, 250 P.2d 616, 114 C.A.2d 544—Ona v. Reachi, 233 P.2d 949, 105 C.A.2d 758—Rembold v. Goodwin, 209 P.2d 402, 93 C.A.2d 605—Yost v. Johnson, 206 P.2d 13, 91 C.A.2d 849—De La Falaise v. Gaumont-British Picture Corp., 103 P.2d 447, 39 C.A. 2d 461—Charles Lomori & Sons v. Globe Laboratories, 95 P.2d 173, 35 C.A.2d 248—Silva v. Kavert, 292 P. 1089, 109 C.A. 386—Northrup v. Cohn, 262 P. 778, 88 C.A. 141—Work v. Whittington, 214 P. 474, 61 C.A. 302—Griffey v. Pacific Electric Ry. Co., 209 P. 45, 58 C.A. 509—Meinberg v. Jordan, 157 P. 1005, 29 C.A. 760, rehearing denied 157 P. 1007, 29 C.A. 760.
Idaho.—Sanchotena v. Tower Co., 264 P.2d 1021, 74 Idaho 541.
Kan.—Barstow v. Elmore, 276 P.2d 360, 177 Kan. 30.
Mo.—Thompson v. Healzer Cartage Co., 287 S.W.2d 791—Woods v. Ogden, 102 S.W.2d 648—Lindsey v. Vance, 88 S.W.2d 150, 337 Mo. 1111—Stegner v. Missouri-Kansas-Texas R. Co., 64 S.W.2d 691, 333 Mo. 1182—Hunt v. Gus Gillerman Iron & Metal Co., 39 S.W.2d 369, 327 Mo. 887—Johnson v. Bray, 31 S.W.2d 998—Guthrie v. Gillespie, 6 S.W.2d 886, 319 Mo. 1137—Cullison v. Wells, 297 S.W. 370, 317 Mo. 880.
Neb.—Scherz v. Platte Valley Public Power & Irr. Dist., 37 N.W.2d 721, 151 Neb. 415.
Pa.—Valentine v. Seigfried, Com.Pl., 41 Sch.Leg.Rec. 145.
R.I.—Talbot v. Clement, 98 A.2d 924, 81 R.I. 79.
Utah.—Perrin v. Union Pac. R. Co., 201 P. 405, 59 Utah 1, certiorari denied Union Pac. R. Co. v. Perrin, 42 S.Ct. 270, 257 U.S. 661, 66 L.Ed. 423.

16. Cal.—Richardson v. Ham, 285 P. 2d 269, 44 C.2d 772—Brooks v. Metropolitan Life Ins. Co., 163 P. 2d 689, 27 C.2d 305.
Jones v. Maynard, 297 P.2d 461, 141 C.A.2d 643—Thompson v. Blum's, Inc., 293 P.2d 82, 139 C.A. 2d 140—Birch v. Mahaney, 290 P. 2d 579, 137 C.A.2d 584—Deshotel v. Atchison, T. & S. F. Ry. Co., 272 P.2d 71, 126 C.A.2d 303—Ona v. Reachi, 233 P.2d 949, 105 C.A.2d 758—Rembold v. Goodwin, 209 P. 2d 402, 93 C.A.2d 605—Yost v. Johnson, 206 P.2d 13, 91 C.A.2d 849—Myles v. Los Angeles Ry. Corp., 143 P.2d 972, 62 C.A.2d 14—Serpa v. Davidson, 125 P.2d 603, 51 C.A.2d 619.
Conn.—De Lahunta v. City of Waterbury, 59 A.2d 800, 134 Conn. 630, 7 A.L.R.2d 218.
Ga.—Loe v. Brown, 116 S.E. 309, 155 Ga. 24.
Kan.—Barstow v. Elmore, 276 P.2d 360, 177 Kan. 30.
Mo.—Thompson v. Healzer Cartage Co., 287 S.W.2d 791.
White v. Kuhnert, App., 207 S. W.2d 839.
R.I.—Dawley v. Greene, 47 A.2d 567, 71 R.I. 495—Loughran v. McKenna, 199 A. 302, 60 R.I. 453.

Perjury must be shown

Before appellate courts will grant new trial on ground that material evidence is false, printed record must clearly show perjury.
Mo.—Seymour v. Tobin Quarries, 123 S.W.2d 628, 233 Mo.App. 573.

Judge as thirteenth juror

Trial judge, who has opportunity of observing witnesses as they testify, is the thirteenth juror and no verdict is valid unless approved by him.
Tenn.—Gardner v. Burke, 187 S.W.2d 25, 28 Tenn.App. 119.

17. Cal.—Brandwein v. Rodriguez, 284 P.2d 130, 133 C.A.2d 433—Harvey v. Machtig, 239 P. 78, 73 C.A. 667.
Conn.—Martino v. Palladino, 123 A. 2d 872, 143 Conn. 547—De Lahunta v. City of Waterbury, 59 A.2d 800, 134 Conn. 630, 7 A.L.R.2d 218—Hudima v. Hudyma, 39 A.2d 890, 131 Conn. 281—Dole v. Lublin, 153 A. 856, 112 Conn. 603—Canfield v. Sheketoff, 132 A. 401, 104 Conn. 28—Briggs v. Becker, 124 A. 826, 101 Conn. 62.
Mo.—Sho-Me Power Corp. v. Fann, 292 S.W.2d 91.
N.Y.—Summers Supply Co. v. Staten Island Rapid Transit Ry. Co., 161 N.Y.S. 23.
R.I.—Gallo v. American Egg Co., 72 A.2d 166, 76 R.I. 450—Smith v. United Electric Rys. Co., 38 A.2d 654, 70 R.I. 377—Kimatian v. New England Telephone & Telegraph Co., 141 A. 331, 49 R.I. 186—Cartier v. Liberty Laundry, 139 A. 473, 49 R.I. 12—Stranahan v. Tilden-Thurber Corporation, 121 A. 209.
Wash.—Discargar v. City of Seattle, 191 P.2d 870, 30 Wash.2d 461.
W.Va.—Reese v. Lowry, 86 S.E.2d 381—St. Clair v. Jaco, 120 S.E. 188, 95 W.Va. 5.
4 C.J. p 904 note 26.

Conflicting evidence

(1) All presumptions are in favor of an order granting a new trial as against the verdict, and such an order granted on the ground of insufficiency of evidence must be sustained if there is an appreciable conflict in the evidence.
Cal.—Parker v. Brown, 57 P.2d 183, 13 C.A.2d 501.
Mo.—Lindsey v. Vance, 88 S.W.2d 150, 337 Mo. 1111.

(2) In determining whether the trial court in passing on a motion for new trial was confronted with an appreciable conflict in the evidence, its probative value, rather than the amount of evidence, must be taken into consideration.
Cal.—Parker v. Brown, supra.

but the appellate court is not absolutely bound by the ruling of the trial court.[17.5] Accordingly, if the trial judge in granting a motion for a new trial failed to consider all the material evidence which tended to support the verdict, or misconceived the evidence, his decision to grant a new trial would be lacking in persuasive force,[17.10] and the appellate court may make an independent examination of the evidence to determine whether it preponderates against the verdict,[17.15] and may decline to sustain the ruling of the trial court.[17.20] Where the verdict rendered was correct as a matter of law, the grant of a new trial may be reviewed and revised.[18]

It has been declared that in reviewing an order granting the motion, the appellate court indulges in the same presumption in favor of the ruling as when the motion is denied;[19] while elsewhere it has been stated that even greater weight is to be accorded an order setting aside the verdict and for a new trial than to a refusal of the motion.[20]

It is stated in New Trial § 66 b that the fact that a verdict is self-contradictory, or that it is inconsistent with another verdict, or that special findings are inconsistent with each other or with the general verdict, may be ground for a new trial, and, accordingly, where a new trial is awarded on such a ground the decision of the trial court will not usually be disturbed on review.[20.5]

Under statutes so providing, the trial court may set aside a verdict and grant a new trial because the verdict or decision is "against law," or "contrary to law," as stated in New Trial § 68, but an order granting a new trial on the ground that the verdict was "against law" cannot be sustained by merely showing that it was unsupported by the evidence,[20.10] and it cannot be sustained where no error is shown in the determination of any question of fact.[20.15]

b. Grounds of Order

(1) Sufficiency of evidence
(2) Conduct of counsel, court, or jury
(3) Newly discovered evidence
(4) Amount of recovery

(1) Sufficiency of Evidence

(a) In general
(b) After grant or refusal of directed verdict

(a) In General

A determination by the trial court that a new trial should be granted because of insufficient evidence to

Weight of verdict set aside by trial judge

(1) Verdict which has been set aside by the trial judge is not entitled to the same weight on appeal as a verdict that has been approved by him.

Va.—Butler v. Darden, 53 S.E.2d 146, 139 Va. 459—Mauser v. Hebb, 48 S.E 2d 257, 187 Va. 876—Schools v. Walker, 47 S.E.2d 418, 187 Va. 619—Braxton v. Flippo, 33 S.E.2d 757, 183 Va. 839—Cawley v. Hanes, 4 S.E.2d 376, 173 Va. 381—McQuown v. Phaup, 2 S.E.2d 330, 172 Va. 419—Watson v. Coles, 195 S.E. 506, 170 Va. 141—Harris v. Howerton, 194 S.E. 692, 169 Va. 647—Clark v. Parker, 171 S.E. 600, 161 Va. 480—Johnson v. Richmond, F. & P. R. Co., 169 S.E. 603, 160 Va. 766—Ocean Accident & Guarantee Corporation, Limited, of London, England, v. Washington Brick & Terra Cotta Co., 139 S.E. 513, 148 Va. 829—Maurer v. City of Norfolk, 133 S.E. 484, 147 Va. 900—Kendricks v. City of Norfolk, 124 S.E. 210, 139 Va. 702—Ricketts v. J. G. McCrory Co., 121 S.E. 916, 138 Va. 548.

W.Va.—Browning v. Monongahela Transp. Co., 27 S.E.2d 481, 126 W. Va. 195.

(2) **This rule does not apply if the judge who sets aside the verdict is** not the judge who presided at the trial and heard the witnesses, since the force of the verdict is not weakened by the disapproval of the judge who conducted the trial.

Va.—Mauser v. Hebb, 48 S.E.2d 257, 187 Va. 876.

On appeal from an order of the appellate division, reversing a ruling of the district court and directing a new trial, a ruling that plaintiff can recover rarely can be made; even facts found, unless including a statement of the inferences drawn, do not afford a basis for such ruling.

Mass.—Demers v. Scaramella, 147 N. E. 894, 252 Mass. 430.

17.5 Conn.—Nevulis v. Wentland, 197 A. 883, 124 Conn. 116.

Pa.—Londrino v. Equitable Life Assur. Soc. of the U. S., 105 A.2d 333, 377 Pa. 543—Jones v. Williams, 58 A.2d 57, 358 Pa. 559.

R.I.—Black v. Child's Co. of Providence, 58 A.2d 115, 73 R.I. 516.

S.C.—Fallon v. Rucks, 60 S.E.2d 88, 217 S.C. 180.

W.Va.—Doman v. Baltimore & O. R. Co., 22 S.E.2d 703, 125 W.Va. 8.

17.10 R.I.—Soucy v. Alix, 90 A.2d 722, 79 R.I. 499—Mahoney v. Smith, 78 A.2d 798, 78 R.I. 56—Colapietro v. Sarcione, 53 A.2d 916, 73 R.I. 152—Martino v. Simonelli, 30 A.2d 459, 69 R.I. 4—Hamilton Co. v. Rosen, 191 A. 255, 53 R.I. 35.

Material evidence not overlooked or misconceived

R.I.—Chase v. Goyette, 133 A.2d 123—Colapietro v. Sarcione, 53 A. 2d 916, 73 R.I. 152—Sharp v. Rhode Island Hospital Trust Co., 27 A.2d 323, 68 R.I. 248—Hathaway v. Boner, 26 A.2d 239, 68 R.I. 36.

17.15 R.I.—Mahoney v. Smith, 78 A. 2d 798, 78 R.I. 56—R. H. Kimball, Inc., v. Rhode Island Hospital Nat. Bank, 48 A.2d 420, 72 R.I. 144.

17.20 R.I.—Mahoney v. Smith, 78 A. 2d 798, 78 R.I. 56—Nitschke v. Silvia, 59 A.2d 537, 74 R.I. 183.

18. Pa.—Walters v. Federal Life Ins. Co., 184 A. 25, 320 Pa. 588.

19. See supra § 1568.

20. Fla.—Bailey v. Lloyd, 62 So.2d 56—Carney v. Stringfellow, 74 So. 866, 73 Fla. 700.

Mo.—Shoemaker v. Metropolitan Life Ins. Co., App., 164 S.W.2d 84.

W.Va.—Dangerfield v. Akers, 33 S.E. 2d 140, 127 W.Va. 409—St. Clair v. Jaco, 120 S.E. 188, 95 W.Va. 5.

20.5 Kan.—Roehrman v. D. S. & O. Rural Elec. Co-op. Ass'n, 283 P.2d 411, 178 Kan. 52.

20.10 Cal.—Hawkinson v. Oesdean, 143 P.2d 967, 61 C.A.2d 712.

20.15 Cal.—Annin v. Belridge Oil Emp. Federal Credit Union, 260 P. 2d 295, 119 C.A.2d Supp. 900.

support the verdict or finding will be sustained on review unless the determination is without any reasonable basis.

Ordinarily, an appellate court does not disturb an order of the trial court granting a motion for a new trial because of insufficiency of evidence, or because the verdict or finding is against the weight of the evidence,[20.50] and particularly where the verdict or finding is palpably against the weight of the evidence,[21] or the proved physical facts,[22] or is without any substantial or sufficient evidentiary support.[23]

Under the generally accepted rule, an appellate court will not disturb such an order where there is evidence which would have warranted a more favorable decision to the party moving;[24] where any substantial evidence is shown in favor of the party seeking the new trial;[25] where the verdict was not

20.50 Ala.—White v. State ex rel. Hardegree, 53 So.2d 599, 256 Ala. 18.
Cal.—Beal v. Dunn, 113 P.2d 242, 44 C.A.2d 785.
Ill.—Brashears v. O'Brien, 2 N.E.2d 576, 285 Ill.App. 593.
N.H.—Roy v. Levy, 79 A.2d 847, 97 N.H. 36.
R.I.—Colgan v. United Electric Rys. Co., 4 A.2d 258, 62 R.I. 184.
Wash.—Bowser v. City of Seattle, 59 P.2d 294, 186 Wash. 550.

21. Kan.—Bedell v. Lundquist, 215 P. 1024, 113 Kan. 722.
Va.—Comess v. Norfolk General Hospital, 52 S.E.2d 125, 189 Va. 229.
W.Va.—Monongahela & Western Dredging Co. v. Smith, 88 S.E. 1085, 78 W.Va. 67.
4 C.J. p 904 note 27.

Where motion to dismiss should have been granted
N.Y.—Abair v. City of New York, 55 N.Y.S.2d 69, 269 App.Div. 780, affirmed 66 N.E.2d 300, 295 N.Y. 789, motion denied 67 N.E.2d 526, 295 N.Y. 895.

22. W.Va.—Daniels v. Cranberry Fuel Co., 163 S.E. 24, 111 W.Va. 484.

23. Mo.—Robert v. Rialto Bldg. Co., 199 S.W. 428, 198 Mo.App. 121.
S.C.—Bessinger v. National Sur. Corp., 35 S.E.2d 658, 207 S.C. 365.
Va.—Comess v. Norfolk General Hospital, 52 S.E.2d 125, 189 Va. 229.
Wash.—Miles v. Hoffman, 221 P. 316, 127 Wash. 653.
Wis.—Ernst v. Milwaukee Western Fuel Co., 149 N.W. 146, 158 Wis. 467.

Entry of a mistrial is not prejudicially erroneous, however good in form the verdict recorded or whatever irregularities may have crept into the proceedings which induced the mistrial, where the evidence was insufficient in any view to sustain the verdict returned.
Miss.—Bond v. State, 9 So. 353, 68 Miss. 648.

24. Ariz.—Buckeye Irr. Co. v. Askren, 46 P.2d 1068, 45 Ariz. 566.
Cal.—Altieri v. F. B. McKevitt Co., 5 P.2d 637, 118 C.A. 756—Robinson v. Thornewill, 297 P. 28, 112 C.A. 498.
Ga.—Allen v. Allen, 92 S.E. 288, 19 Ga.App. 812.
Mo.—Payne v. Reed, 59 S.W.2d 43, 332 Mo. 343.
4 C.J. p 905 note 28.

25. Cal.—Amavisca v. City of Merced, App., 308 P.2d 380—Brown v. Guy, 301 P.2d 413, 144 C.A.2d 659—Beseau v. George, 245 P.2d 542, 111 C.A.2d 807—Barcus v. Campbell, 204 P.2d 65, 90 C.A.2d 768—De Victoria v. Erickson, 188 P.2d 276, 83 C.A.2d 206—Pearl v. Kaline, 188 P.2d 58, 82 C.A.2d 910—In re Phillipi's Estate, 172 P.2d 877, 76 C.A.2d 100—Grover v. Sharp & Fellows Contracting Co., 153 P.2d 83, 66 C.A.2d 736—Ewing v. Otokichi Hamada, 139 P.2d 655, 59 C.A.2d 679—Serpa v. Davidson, 125 P.2d 603, 51 C.A.2d 619—Ogando v. Carquinez Grammar School Dist. of Contra Costa County, 75 P.2d 641, 24 C.A.2d 567—Fisher v. Zimmerman, 73 P.2d 1243, 23 C.A.2d 696—Nelson v. Angelus Hospital Ass'n of Los Angeles, 72 P.2d 169, 23 C.A.2d 71—Los Angeles Scenic Studios v. Television, 61 P.2d 1192, 17 C.A.2d 356.
Ill.—In re Hire, 26 N.E.2d 990, 305 Ill.App. 161.
Mo.—Rhyne v. Thompson, 284 S.W.2d 553—Dowdell v. Hassett, 247 S.W.2d 691—Castorina v. Herrmann, 104 S.W.2d 297, 340 Mo. 1026—Lindsey v. Vance, 88 S.W.2d 150, 337 Mo. 111—Hunt v. Gus Gillerman Iron & Metal Co., 39 S.W.2d 369, 327 Mo. 887—Weed v. American Car & Foundry Co., 14 S.W.2d 652, 322 Mo. 137—Guthrie v. Gillespie, 6 S.W.2d 886, 319 Mo. 1137—Cullison v. Wells, 297 S.W. 370, 317 Mo. 880—Borack v. Mosler Safe Co., 231 S.W. 623, 288 Mo. 83—State v. Ellison, 186 S.W. 1075, 268 Mo. 225, conformed to 194 S.W. 71, 196 Mo.App. 349.
Van Hook v. Strassberger, App., 259 S.W.2d 399—Rosenblum v. St. Louis Public Service Co., App., 242 S.W.2d 304—Hoefel v. Hammel, App., 228 S.W.2d 402—Mary Potter Love, Inc., v. Medart, App., 198 S.W.2d 386—Merchants & Planters Bank of Hornersville v. Brewer, App., 177 S.W.2d 540—Seigel v. Kroger Grocery & Baking Co., App., 164 S.W.2d 645—Williams v. Kahlmeyer, App., 135 S.W.2d 10—Wood v. Walgreen Drug Stores, App., 125 S.W.2d 534—National Fireproofing Corporation v. Roberts, App., 80 S.W.2d 243—Feucht v. Parkview Amusement Co., App., 60 S.W.2d 663—Bankers' Mortg. Co. v. Osborn, 24 S.W.2d 215, 224 Mo.App. 865—Panagos v. General Cigar Co., App., 268 S.W. 643—Petrilli v. Swift & Co., 260 S.W. 516, 216 Mo. App. 626—Modisitt v. Rozier Quarry & Mfg. Co., App., 255 S.W. 715—Haag v. Cohen, 229 S.W. 296, 207 Mo.App. 36—Bernheimer v. Scott, App., 228 S.W. 523—Messerli v. Bantrop, App., 226 S.W. 589—Frame v. Kansas City, C. & S. Ry. Co., App., 209 S.W. 314—Roam v. Crocker State Bank, App., 206 S.W. 585—Culp v. Supreme Lodge, K. P., 199 S.W. 275, 198 Mo.App. 77, 628—U. S. Fidelity & Guaranty Co. v. W. P. Carmichael Co., 190 S.W. 648, 195 Mo.App. 93—Miles v. Haney, 176 S.W. 429, 190 Mo.App. 220.
N.H.—Flaherty v. Manchester St. Ry., 99 A. 89, 78 N.H. 254.
Okl.—Moore v. Taylor, 71 P.2d 605, 180 Okl. 495—A. & A. Taxicab Co. v. McCain, 66 P.2d 17, 179 Okl. 492.
R.I.—Simmons v. Simmons, 185 A. 133, 51 R.I. 222.
S.C.—Ramer v. Hughes, 127 S.E. 565, 131 S.C. 488—Wilson v. Southern Ry., Carolina Division, 115 S.E. 764, 123 S.C. 399.
Tenn.—Wileman v. Mayor and Aldermen of Town of Tullahoma, 195 S.W.2d 325, 29 Tenn.App. 172.
Wash.—Johnson v. City of Ilwaco, 229 P.2d 878, 38 Wash.2d 408.
Wis.—Lange v. Olson, 202 N.W. 361, 185 Wis. 657.
4 C.J. p 905 note 29.

Except in equity cases, appellate courts cannot interfere with action of trial court in granting a motion for new trial on ground of failure of evidence, if there is shown any substantial evidence.
Mo.—Seymour v. Tobin Quarries, 123 S.W.2d 628, 233 Mo.App. 573.

Evidence to justify submission
In determining whether trial court properly exercised its discretion in awarding new trial on ground that verdict was against weight of evidence, a discretionary ground, appellate court must examine record to ascertain if there was sufficient substantial evidence to justify submission of plaintiff's case to jury.

manifestly demanded by the evidence;[26] where the evidence merely preponderates in favor of the verdict which was rendered;[26.5] or where the evidence on which the verdict or judgment was based was conflicting.[27] An order granting a new trial will be allowed to stand unless the evidence is clearly,

Mo.—Schmidt v. Allen, 303 S.W.2d 652.

26. Cal.—Tweedale v. Barnett, 156 P. 483, 172 C. 271.
Market St. Ry. Co. v. George, 3 P.2d 41, 116 C.A. 572—Brininstool v. Pacific Electric Ry. Co., 226 P. 410, 66 C.A. 445.
Ga.—Townsend v. Rechsteiner, 24 S.E.2d 776, 195 Ga. 618—Douglas v. Baxley State Bank, 187 S.E. 632, 183 Ga. 132—Syracuse Chilled Plow Co. v. Kelly-Hardin Hardware Co., 83 S.E. 111, 142 Ga. 457—Washington v. Rudulph, 82 S.E. 514, 142 Ga. 66.
Rozenberg v. Sund, 60 S.E.2d 390, 81 Ga.App. 856.
Mo.—Davis v. Johnson, 58 S.W.2d 746, 332 Mo. 417.
First Nat. Bank v. Dunbar, App., 31 S.W.2d 257—Crocker v. MacCartney, App., 24 S.W.2d 649—Christesen v. Prewett, App., 11 S.W.2d 1112—United States Fidelity & Guaranty Co. v. W. P. Carmichael Co., 190 S.W. 648, 195 Mo. App. 93.
4 C.J. p 905 note 30—52 C.J. p 757 note 3.

26.5 R.I.—Meehan v. Petroleum Heat & Power Co., 68 A.2d 77, 76 R.I. 178.
Vt.—Russell v. Pilger, 37 A.2d 403, 113 Vt. 537—Cram v. Meagher, 35 A.2d 855, 113 Vt. 463.

27. Ala.—Webb v. Gay, 2 So.2d 775, 241 Ala. 336—Reed v. Thompson, 143 So. 559, 225 Ala. 381—Bynum v. Southern Building & Loan Ass'n, 137 So. 21, 223 Ala. 392—Parker v. Hayes Lumber Co., 127 So. 504, 221 Ala. 73—Hillman v. City of Anniston, 114 So. 55, 216 Ala. 661.
Mixon v. Stanard Tilton Milling Co., 7 So.2d 778, 30 Ala.App. 454—Mutual Sav. Life Ins. Co. v. Osborne, 7 So.2d 314, 30 Ala.App. 399, reversed on other grounds 7 So. 2d 319, first case, 242 Ala. 589, affirmed 7 So.2d 319, second case, 242 Ala. 19—Corinth Bank & Trust Co. v. Gentry, 116 So. 320, 22 Ala. App. 313, certiorari denied 116 So. 321, 217 Ala. 326—Ingram Land Co. v. Tubb, 89 So. 827, 10 Ala.App. 113—Austell v. McCampbell, 77 So. 238, 16 Ala.App. 249.
Ark.—Thudium v. Dickson, 235 S.W. 2d 53, 218 Ark. 1—Hall v. W. E. Cox & Sons, 154 S.W.2d 19, 202 Ark. 909—Washington v. Hamer, 266 S.W. 269, 166 Ark. 273—McCollum v. Neimeyer, 244 S.W. 740, 158 Ark. 642—Mitchell v. Conway Cotton Oil & Gin Co., 241 S.W. 48, 153 Ark. 594—Johnson v. Mantooth, 179 S.W. 175, 120 Ark. 99.
Cal.—Dempsey v. Market Street Ry. Co., 142 P.2d 929, 23 C.2d 110—Lauchere v. Lambert, 291 P. 412, 210 C. 274—Buck v. Borchers, 263 P. 226, 203 C. 210—Rahmel v. Rost, 171 P. 1068, 178 C. 15—Dynes v. Bekins Van & Storage Co., 165 P. 12, 175 C. 72—Tweedale v. Barnett, 156 P. 483, 172 C. 271—Empire Inv. Co. v. Mort, 147 P. 960, 169 C. 732.
Birch v. Mahaney, 290 P.2d 579, 137 C.A.2d 584—Bauer v. Helene Curtis Industries, Inc., 254 P.2d 931, 117 C.A.2d 66—Wilson v. Kopp, 250 P.2d 166, 114 C.A.2d 198—Tremeroli v. Austin Trailer Equipment Co., 227 P.2d 923, 102 C.A.2d 464—Parks v. Dexter, 224 P.2d 121, 100 C.A.2d 521—Graf v. Harvey, 179 P. 2d 348, 79 C.A.2d 64—Hays v. Service Tank Lines, 169 P.2d 249, 74 C.A.2d 577—Porter v. Thompson, 169 P.2d 40, 74 C.A.2d 474—Grover v. Sharp & Fellows Contracting Co., 153 P.2d 83, 66 C.A.2d 736—Leplat v. Raley Wiles Auto Sales, 145 P. 2d 350, 62 C.A.2d 628—Holt v. Henry, 136 P.2d 97, 58 C.A.2d 168—Crandall v. McGrath, 124 P.2d 858, 51 C.A.2d 438—Torrey v. Nelson, 124 P.2d 336, 51 C.A.2d 191—Mytinger v. Weir, 115 P.2d 18, 45 C.A. 2d 698—Kostouros v. O'Connell, 103 P.2d 1028, 39 C.A.2d 618—Sternbeck v. Valinder, 97 P.2d 997, 36 C.A.2d 346—Gallardo v. Luke, 91 P.2d 211, 33 C.A.2d 230—Owings v. Gatchell, 90 P.2d 368, 32 C.A.2d 482—Shortt v. Los Angeles Gas & Electric Corp., 86 P.2d 854, 30 C.A.2d 511—Rose v. Carter, 84 P.2d 174, 29 C. A.2d 191—Wallace v. Miller, 78 P. 2d 745, 26 C.A.2d 55—Nelson v. Angelus Hospital Ass'n of Los Angeles, 72 P.2d 169, 23 C.A.2d 71—Mallett v. Southern Pac. Co., 68 P.2d 281, 20 C.A.2d 500—Sharp v. Keating, 57 P.2d 539, 13 C.A.2d 637—Robbins v. Jenkins, 50 P.2d 826, 9 C.A.2d 580—Livesay v. Deibert, 39 P.2d 466, 3 C.A.2d 140—Christy v. Herbert M. Baruch Corporation, 27 P.2d 660, 135 C.A. 355—Altieri v. F. B. McKevitt Co., 5 P.2d 637, 118 C.A. 756—Robinson v. Thornewill, 297 P. 28, 112 C.A. 498—Northrup v. Cohn, 262 P. 778, 88 C.A. 141—Huckaby v. Northam, 228 P. 717, 68 C.A. 83—Brininstool v. Pacific Electric Ry. Co., 226 P. 410, 66 C.A. 445—Roberts v. Southern Pac. Co., 201 P. 958, 54 C.A. 315—McNeely v. Hill, 198 P. 427, 52 C.A. 184—Miller v. Logan, 161 P. 1022, 32 C. A. 28—Brode v. Clark, 159 P. 1048, 31 C.A. 182—Crofford v. Crofford, 157 P. 560, 29 C.A. 662—Taylor v. Northern Electric Ry. Co., 148 P. 543, 26 C.A. 765.
Fla.—Arcadia Citrus Growers' Ass'n v. Supervisors, Inc., 143 So. 603, 106 Fla. 518—Miami Transit Co. v. Stephens, 143 So. 325, 106 Fla. 353, followed in Segall Investment Co. v. Rosedale Delicatessen, 143 So. 441, 106 Fla. 578—Carney v. Stringfellow, 74 So. 866, 73 Fla. 700.
Ga.—Sims Estates, Inc. v. Walker, 74 S.E.2d 465, 209 Ga. 534—Mobley v. Bell, 171 S.E. 701, 177 Ga. 876.
Idaho.—Marker v. McCue, 297 P. 401, 50 Idaho 462—Boomer v. Isley, 246 P. 966, 42 Idaho 547, 47 A.L.R. 578.
Iowa.—Lange v. Nissen, 216 N.W. 697, 204 Iowa 1080—Sawyer v. Iowa Constitutional Prohibitory Amendment Ass'n, 158 N.W. 679, 177 Iowa 218.
Kan.—Walsh v. Joplin & Pittsburg Ry. Co., 164 P. 184, 100 Kan. 232.
Minn.—Visneski v. Visneski, 17 N. W.2d 313, 219 Minn. 217.
Mo.—Lindsey v. Vance, 88 S.W.2d 150, 337 Mo. 1111—Hunt v. Gus Gillerman Iron & Metal Co., 39 S.W.2d 369, 327 Mo. 887.
Seymour v. Tobin Quarries, 123 S.W.2d 628, 233 Mo.App. 573—Sharon v. Kansas City Granite & Monument Co., App., 69 S.W.2d 323—Bankers' Mortg. Co. v. Osborn, 24 S.W.2d 215, 224 Mo.App. 865.
Mont.—Bull v. Butte Electric Ry. Co., 223 P. 514, 69 Mont. 529—Heavey v. Laden, 170 P. 947, 54 Mont. 421—Fadden v. Butte Miners' Union No. 1, 147 P. 620, 50 Mont. 104.
Nev.—Nevada Rock & Sand Co. v. Grich, 93 P.2d 513, 59 Nev. 345.
Okl.—Kurn v. Thompson, 80 P.2d 578, 183 Okl. 185.
R.I.—Monacelli v. Hall, 42 A.2d 444, 71 R.I. 55—Sweeney v. United Electric Rys. Co., 30 A.2d 863, 69 R.I. 47—Spaziano v. Raponi, 13 A.2d 810, 65 R.I. 163—Melucci v. De Cubellis, 12 A.2d 216, 64 R.I. 306—Allsop v. Gallant, 6 A.2d 542, 62 R.I. 399—Grimes v. United Electric Rys. Co., 193 A. 740, 58 R.I. 458—Owens v. Hagenbeck-Wallace Shows Co., 192 A. 158, 58 R.I. 162, 112 A.L.R. 113, reargument denied 192 A. 464, 58 R.I. 268, 112 A.L.R. 113—Korn v. Congdon, 123 A. 444—Strongoli v. Receivers of Rhode Island Co., 122 A. 653—Stranahan v. Tilden-Thurber Corporation, 121 A. 209—Nichols v. Henry W. Mason & Co., 117 A. 99.
S.D.—Schoof v. Hoagland, 183 N.W. 132, 44 S.D. 184.
Tex.—Southern Traction Co. v. Wilson, Civ.App., 241 S.W. 636, reversed on other grounds, Com.App., 254 S.W. 1104.
Wash.—Griffin v. Cascade Theatres Corp., 117 P.2d 651, 10 Wash.2d 574—Winter v. Neuman, 259 P. 1083, 145 Wash. 287—Stickney v. Congdon, 250 P. 32, 140 Wash. 670—

palpably, or plainly in favor of the verdict or finding,[28] or unless the order is clearly wrong because of an erroneous decision by the trial judge as to the weight or sufficiency of the evidence.[29]

Scott v. McAnally, 237 P. 292, 135 Wash. 231—Griffin v. Wilson, 232 P. 690, 132 Wash. 620—Adams v. Olson, 232 P. 361, 132 Wash. 129—Alberts v. Rasher, Kingman, Herrin, 221 P. 975, 128 Wash. 32.

W.Va.—Venturino v. Norfolk & W. Ry. Co., 167 S.E. 868, 113 W.Va. 341—Nutter v. City of Salem, 157 S.E. 592, 110 W.Va. 180—Haggar v. Monongahela Transport Co., 146 S.E. 49, 106 W.Va. 522.

4 C.J. p 905 note 31.

Conflicting affidavits presented on motion

Iowa.—Hampton v. Burrell, 17 N.W. 2d 110, 236 Iowa 79.

28. Ala.—Chisom v. Woodward Iron Co., 90 So.2d 816, 265 Ala. 212—Pike County v. Whittington, 81 So. 2d 288, 263 Ala. 47—King v. Skinner, 72 So.2d 730, 261 Ala. 9—Romano v. Thrower, 63 So.2d 369, 258 Ala. 416—Frost v. Johnson, 54 So. 2d 897, 256 Ala. 383—Camp v. Atlantic Coast Line R. Co., 36 So.2d 331, 251 Ala. 184—Martin v. Birmingham Southern R. Co., 35 So.2d 339, 250 Ala. 583—American Mut. Liability Ins. Co. v. Louisville & N. R. Co., 34 So.2d 474, 250 Ala. 354—Cox v. Martin, 34 So.2d 463, 250 Ala. 401—Lindsay Products Corp. v. Alabama Securities Corp., 25 So.2d 852, 247 Ala. 662—Webb v. Gay, 2 So.2d 775, 241 Ala. 336—W. M. Templeton & Son v. David, 173 So. 231, 233 Ala. 616—Hopkins v. Harrison, 153 So. 255, 228 Ala. 180—Robinson v. Solomon Bros. Co., 143 So. 566, 225 Ala. 389—Reed v. Thompson, 143 So. 559, 225 Ala. 381—Hall v. Clark, 142 So. 65, 225 Ala. 87—Jackson v. Roddy, 139 So. 354, 224 Ala. 132—Bynum v. Southern Building & Loan Ass'n, 137 So. 21, 223 Ala. 392—Birmingham News Co. v. Lester, 133 So. 270, 222 Ala. 503—Parker v. Hayes Lumber Co., 127 So. 504, 221 Ala. 73—Cook v. Sheffield Co., 91 So. 473, 206 Ala. 625—Harp, Hardee & Co. v. Haas-Phillips Produce Co., 88 So. 740, 205 Ala. 573—Newman v. Morgan, 81 So. 548, 202 Ala. 606—Nashville, C. & St. L. Ry. v. Crosby, 70 So. 7, 194 Ala. 338.

McClellan v. Orange Crush-Grapico Bottling Co., 62 So.2d 803, 36 Ala.App. 682—Abbott v. Alabama Coca Cola Bottling Co., 59 So.2d 623, 36 Ala.App. 477—Woodall v. Regal Andre, Inc., 50 So.2d 2, 35 Ala.App. 537—Watson v. Hollis, 49 So.2d 679, 35 Ala.App. 519—Crumpton v. Pilgrim Health & Life Ins. Co., 46 So.2d 848, 35 Ala.App. 363—First Nat. Bank of Birmingham v. Searcy, 19 So.2d 559, 31 Ala.App. 553—Pitts v. Bethea, 15 So.2d 311, 31 Ala.App. 294—Mixon v. Stanard Tilton Milling Co., 7 So.2d 778, 30 Ala.App. 454—Dees v. Uniontown Cotton Oil Co., 147 So. 204, 25 Ala. App. 378—Druhan v. Mobile Light & R. Co., 146 So. 421, 25 Ala.App. 337—Burger v. Watts, 140 So. 886, 25 Ala.App. 79—Bridgeforth v. National Life & Accident Ins. Co., 140 So. 770, 25 Ala.App. 75—Smith v. Ward Baking Co., 130 So. 164, 24 Ala.App. 66—Chevrolet Motor Co. v. Caton, 108 So. 644, 21 Ala. App. 393—Bevill v. Wilkins, 103 So. 306, 20 Ala.App. 510—Shelton v. Russell & Johnson, 101 So. 633, 20 Ala.App. 306—Ingram Land Co. v. Tubb, 89 So. 827, 10 Ala.App. 113—Wood v. Empire Laundry Co., 68 So. 584, 14 Ala.App. 144.

Ill.—Goranson v. Yellow Cab Co., 59 N.E.2d 347, 324 Ill.App. 581.

Iowa.—Lentz v. City of Dubuque, 159 N.W. 570.

Minn.—Barker v. Sharp, 38 N.W.2d 221, 229 Minn. 152, certiorari denied 70 S.Ct. 234, 338 U.S. 895, 94 L.Ed. 550—Wilson v. Moline, 47 N. W.2d 865, 234 Minn. 174—Appeal of Borstad, 45 N.W.2d 828, 232 Minn. 365—Pierce v. Grand Army of the Republic, 28 N.W.2d 637, 224 Minn. 248.

N.Y.—Bauer v. Montague Mailing Machinery Co., 148 N.Y.S. 990, 163 App.Div. 589.

N.D.—Malmstad v. McHenry Telephone Co., 149 N.W. 690, 29 N.D. 21.

Wash.—Gamer v. Schlentz, 146 P. 166, 84 Wash. 37.

4 C.J. p 905 note 33.

29. Ala.—Hall v. Clark, 142 So. 65, 225 Ala. 87—Louisville & N. R. Co. v. Byrd, 73 So. 514, 198 Ala. 271.

First Nat. Bank of Birmingham v. Searcy, 19 So.2d 559, 31 Ala.App. 553.

Mo.—Security Bank of Elvins v. National Surety Co., 62 S.W.2d 708, 333 Mo. 340.

Zahner Mfg. Co. v. Harnish, 24 S.W.2d 641, 224 Mo.App. 870—Hogue v. St. Louis-San Francisco Ry. Co., App., 20 S.W.2d 301—Petrilli v. Swift & Co., 260 S.W. 516, 216 Mo.App. 626—Broyles v. Morris, App., 245 S.W. 341—Alexander v. Allison, App., 224 S.W. 50—Frame v. Kansas City, C. & S. Ry. Co., App., 209 S.W. 314—McNally v. Leach, App., 205 S.W. 82—Geiger v. City of St. Joseph, App., 198 S.W. 78.

N.H.—Marshall v. J. P. Morin Co., 109 A. 80, 79 N.H. 351.

N.Y.—Jones v. Better Beverage Distributing Co., 14 N.Y.S.2d 810, 258 App.Div. 778.

R.I.—Cavallaro v. Sharp, 121 A.2d 669—Gregson v. Big Bear Food Corp., 121 A.2d 325—Mills v. Waterman, 114 A.2d 185—Westcott Const. Co. v. Barber, 113 A.2d 638—Di Caprio v. Campanella & Cardi Const. Co., 90 A.2d 784, 80 R.I. 55—Prete v. United Elec. Rys. Co., 80 A.2d 521, 78 R.I. 189—Aiello v. National-Ben Franklin Fire Ins. Co. of Pittsburgh, Pa., 79 A.2d 758, 78 R.I. 114—Fraraccio v. Progress Ice Cream Co., 75 A.2d 298, 77 R.I. 315—Vadnais v. Riskin, 73 A.2d 813, 77 R.I. 131—St. Onge v. Fontaine, 66 A.2d 429, 75 R.I. 338—Hamilt v. United Elec. Rys. Co., 65 A.2d 449, 75 R.I. 264—Jones v. Thornton, 62 A.2d 662, 74 R.I. 510—Colapietro v. Sarcione, 53 A.2d 916, 73 R.I. 152—De Robbio v. Hart, 45 A.2d 169, 71 R.I. 347—Hovas v. Cirigliano, 38 A.2d 298, 70 R.I. 227—Ohannasian v. Collier, 32 A.2d 622, 69 R.I. 204—Sharp v. Rhode Island Hospital Trust Co., 27 A.2d 323, 68 R.I. 248—Marsh v. Rhode Island Hospital Trust Co., 21 A.2d 540, 67 R.I. 229—Knightsville Loan Corp. v. Bankers Indemnity Ins. Co., 13 A.2d 383, 65 R.I. 48—Paradise v. Rick, 7 A.2d 713, 63 R.I. 207—Allsop v. Gallant, 6 A.2d 542, 62 R.I. 399—Winslow v. Einharn, 2 A.2d 390, 62 R.I. 1—Iwanicki v. Metropolitan Life Ins. Co., 199 A. 611, 60 R.I. 498—Manwaring v. Liggett Drug Co., 199 A. 457, 60 R.I. 442—Thomaszewski v. Morose, 199 A. 298, 60 R.I. 415—Barlik v. United Electric Rys. Co., 197 A. 452, 60 R.I. 227, reargument denied 198 A. 359, 60 R.I. 285—Dolan v. United Electric Rys. Co., 194 A. 538, 59 R.I. 116—Simmons v. Simmons, 185 A. 133, 51 R.I. 222—Zinck v. Saltzman, 153 A. 871, 51 R.I. 236—Jefferds v. Chapman, 141 A. 330—Cartier v. Liberty Laundry, 139 A. 473, 49 R.I. 12—Stranahan v. Tilden-Thurber Corporation, 121 A. 209—Scotti v. Scotti, 99 A. 527—Vervena v. White, 99 A. 521, 39 R.I. 576—Rossi v. Johnson, 97 A. 884—Balicer v. Eastman, 92 A. 981—Heathcote v. Barbour, 90 A. 803, 36 R.I. 453.

S.C.—Ramer v. Hughes, 127 S.E. 565, 131 S.C. 488.

W.Va.—Williams v. Zimmerman, 20 S.E.2d 785, 124 W.Va. 458—Venturino v. Norfolk & W. Ry. Co., 167 S.E. 868, 113 W.Va. 341—Daniels v. Cranberry Fuel Co., 163 S.E. 24, 111 W.Va. 484—Nutter v. City of Salem, 157 S.E. 592, 110 W.Va. 180—Haggar v. Monongahela Transport Co., 146 S.E. 49, 106 W.Va. 522.

4 C.J. p 905 note 34.

The allowance of a motion for a new trial on the weight of the evidence is peculiarly within the discretion of the trial court, as discussed in New Trial § 201 b (5); and a ruling by the trial court granting a new trial because of insufficiency of the evidence to sustain the verdict is not subject to review except where there has been an abuse or withholding of discretion.[30] The fact that the reviewing court might or would have ruled differently is not a sufficient circumstance to induce it to set aside the order or restore the verdict.[31]

A trial court has the right and power to grant a new trial in the interest of justice, and it is the duty of the trial court to do so when the ends of justice have not been served as discussed in New Trial § 202; and if it appears to the trial judge that the verdict was against the weight of the evidence and that the interests of justice would be promoted by a new trial, his determination will not be disturbed,[31.5] but will be deemed conclusive on appeal.[31.10]

However, a grant of the motion by the trial court is not conclusive against an exercise by the appellate court of the right to review,[32] except, perhaps, where the evidence is such that different inferences may reasonably be drawn from it.[32.5] An order or ruling granting a new trial because of insufficiency of evidence may be reviewed and reversed where the verdict is clearly supported by the evidence,[33] particularly if, in addition, there is no substantial conflict in the evidence,[33.5] or if it does not affirmatively appear that the trial court granted the new trial in the exercise of its discretion.[34] Such an order or ruling may be reviewed and reversed where there is no substantial evidence in the record to support a verdict for the party awarded a new trial;[35] where it can be said as a matter of law that there is no substantial evidence to support a different judgment or verdict;[35.5] where the evidence is

30. See supra § 1624.

31. Cal.—Efinoff v. Shepherd, 176 P. 2d 407, 77 C.A.2d 818.
Colo.—Mooney v. Carter, 160 P.2d 390, 114 Colo. 267.
Conn.—Gilstein v. City of Hartford, 123 A. 435, 100 Conn. 279.
Ky.—Wilson v. Rockcastle Mining, Lumber & Oil Co., 255 S.W. 88, 200 Ky. 484.
Mo.—State ex rel. Spears v. Hughes, 142 S.W.2d 3, 346 Mo. 421.
Albert H. Hoppe, Inc. v. St. Louis Public Service Co., App., 227 S.W.2d 499, reversed on other grounds 235 S.W.2d 347, 361 Mo. 402, 23 A.L.R.2d 846—Stark v. St. Louis Public Service Co., App., 211 S.W.2d 500—Schreiner v. City of St. Louis, App., 203 S.W.2d 678—Ritzheimer v. Marshall, App., 168 S.W.2d 159.
N.J.—Forfar v. Kosacielecki, 153 A. 387, 9 N.J.Misc. 262.
N.Y.—Mann v. Hunt, 126 N.Y.S.2d 823, 283 App.Div. 140.
4 C.J. p 905 note 36.

31.5 Iowa.—Holman v. Rook, 271 N. W. 612.
Pa.—Gawron v. Levine, 96 A.2d 149, 373 Pa. 384—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128—Stewart v. Ray, 76 A.2d 628, 366 Pa. 134.
Wash.—Yocum v. Department of Labor and Industries, 154 P.2d 306, 22 Wash.2d 72—Bond v. Ovens, 147 P.2d 514, 20 Wash.2d 354.

Justifiable belief of trial judge
Although a new trial may not be granted solely on "the interest of justice," if it appears that the trial judge justifiably believed that the verdict was against the weight of the evidence, his order requiring a new trial will not be disturbed.
Pa.—Werner v. Aunkst, 115 A.2d 416, 178 Pa.Super. 404.

31.10 Cal.—Ewing v. Otokichi Hamada, 139 P.2d 655, 59 C.A.2d 679.

No determination as to abuse of power
Appellate court cannot determine whether trial court has abused its power in granting a new trial on ground that substantial justice has not been done or by a general order.
Wash.—Yocum v. Department of Labor and Industries, 154 P.2d 306, 22 Wash.2d 72.

32. Mo.—Tevis v. United Rys. Co. of St. Louis, App., 185 S.W. 738.
N.H.—Gilbert v. Desmarais, 175 A. 247, 87 N.H. 150.
N.Y.—Hogan v. Franken, 223 N.Y.S. 1, 221 App.Div. 164.
Pa.—Gawron v. Levine, 96 A.2d 149, 373 Pa. 384—Martin v. Arnold, 77 A.2d 99, 366 Pa. 128—Stewart v. Ray, 76 A.2d 628, 366 Pa. 134.
R.I.—Cartier v. Liberty Laundry, 139 A. 473, 49 R.I. 12—Crafts v. Mechanics' Sav. Bank, 102 A. 516.
W.Va.—Reese v. Lowry, 86 S.E.2d 381.

32.5 Cal.—Hoffart v. Honig, 106 P. 2d 630, 41 C.A.2d 271—Shortt v. Los Angeles Gas & Electric Corp., 86 P.2d 854, 30 C.A.2d 511.

33. Ill.—Miller v. Interstate Bedding Co., 133 N.E.2d 773, 9 Ill.App. 2d 571—Franks v. Childs, 102 N.E. 2d 363, 345 Ill.App. 83.
N.Y.—Binder v. Marcus, 100 N.Y.S. 2d 538, 277 App.Div. 1022, affirmed 98 N.E.2d 883, 302 N.Y. 745.
R.I.—Nitschke v. Silvia, 59 A.2d 537, 74 R.I. 183.

33.5 Ark.—Missouri Pac. R. Co. v. Brewer, 102 S.W.2d 538, 193 Ark. 754.
Fla.—Motor Transit Co. v. Studstill, 176 So. 769, 129 Fla. 769.
Nev.—Nevada Rock & Sand Co. v. Grich, 93 P.2d 513, 59 Nev. 345.

34. Conn.—Reinholtz v. Carlson, 123 A. 12, 100 Conn. 123.
4 C.J. p 905 note 37.

35. Cal.—Rowe v. Edwards, App., 313 P.2d 82—Roberson v. J. C. Penney Co., 288 P.2d 275, 136 C.A.2d 1—Henderson v. Drake, 258 P.2d 879, 118 C.A.2d 777—Murray v. San Leandro Rock Co., 245 P.2d 347, 111 C.A.2d 641—McAtee v. City of Marysville, 244 P.2d 936, 111 C.A. 2d 507—Martin v. Smith, 230 P.2d 679, 103 C.A.2d 894—Wilkinson v. Marcellus, 125 P.2d 584, 51 C.A.2d 630—Seth v. Lew Hing, 14 P.2d 537, 125 C.A. 729, rehearing denied 15 P.2d 190, 125 C.A. 729—Springer v. Pacific Fruit Exchange, 268 P. 951, 92 C.A. 732—Harvey v. Machtig, 239 P. 78, 73 C.A. 667.
Annin v. Belridge Oil Emp. Federal Credit Union, 260 P.2d 295, 119 C.A.2d Supp. 900.
Fla.—Seaboard Air Line Ry. Co. v. Wester, 114 So. 242, 94 Fla. 259.
Mo.—Liddle v. Collins Const. Co., 283 S.W.2d 474—Burr v. Singh, 243 S. W.2d 295, 362 Mo. 692—Graves v. Atchison, T. & S. F. Ry. Co., 227 S.W.2d 660, 360 Mo. 167—Kopp v. Traders Gate City Nat. Bank, 210 S.W.2d 49, 357 Mo. 659—Borack v. Mosler Safe Co., 231 S.W. 623, 288 Mo. 83.
O'Dell v. American Nat. Ins. Co., App., 107 S.W.2d 108.
Wash.—Hayes v. Sears, Roebuck & Co., 209 P.2d 468, 34 Wash.2d 666.
Wis.—Himebauch v. Ludtke, 39 N.W. 2d 684, 256 Wis. 1.
4 C.J. p 905 note 38.

35.5 Cal.—Richardson v. Ham, 285 P.2d 269, 44 C.2d 772—Williams v. Field Transp. Co., 171 P.2d 722, 28

such that no verdict in favor of the party to whom a new trial was granted could be allowed to stand;[35.10] where a verdict the opposite of that returned should have been directed;[35.15] where the determination of the trial judge is clearly wrong;[36] and where the verdict was well supported and the grounds on which the court set it aside are merely conjectural,[37] or are merely based on inferences from the testimony on which the jury and the appellate court are as well qualified to pass as is the trial justice.[38] A grant of a new trial for the insufficiency of the evidence as a matter of law is not sustainable when there is evidence in the case which tends to support the verdict.[39]

In Virginia, the rule is opposed to that prevailing generally and if there is evidence not physically impossible or inherently incredible which if credited by the jury is sufficient to support the verdict, an order of the trial court setting such verdict aside and granting a new trial is to be reversed.[40] While weight is to be accorded to the determination of the trial judge,[41] it is nevertheless the privilege and the duty of the reviewing court to examine the evidence to see whether it is capable of sustaining the verdict and, if it is, to set aside the order.[42]

(b) After Grant or Refusal of Directed Verdict

If a new trial was granted because of error in directing or refusing to direct a verdict, the question on appellate review is whether there was legally sufficient evidence to support a verdict for the party against whom the motion was directed, and the evidence will be reviewed only in so far as is required to resolve that question.

Where the verdict set aside on a motion for a new trial is one which was entered pursuant to a direction by the court, the order allowing the new trial will be sustained if there is any evidence to uphold a verdict for the movant; if not, the order will be

C.2d 696—Ballard v. Pacific Greyhound Lines, 170 P.2d 465, 28 C.2d 357—Brooks v. Metropolitan Life Ins. Co., 163 P.2d 689, 27 C.2d 305.

Redwood Turkey Hatchery, Inc. v. Meadowbrook Farms, App., 313 P.2d 146—Rowe v. Edwards, App., 313 P.2d 82—Hendriksen v. Young Men's Christian Ass'n of San Diego, App., 313 P.2d 54—Jensen v. Western Pioneer Ins. Co., App., 312 P.2d 285—Thomas v. Moore, 303 P. 2d 624, 146 C.A.2d 59—Brown v. Guy, 301 P.2d 413, 144 C.A.2d 659—Edler v. Sepulveda Park Apartments, 297 P.2d 508, 141 C.A.2d 675—Birch v. Mahaney, 290 P.2d 579, 137 C.A.2d 584—Grisso v. Broude, 285 P.2d 718, 134 C.A.2d 635—Eason v. Bryan, 284 P.2d 862, 133 C.A.2d 679—Bruns v. Southern Pac. R. Co., 281 P.2d 531, 132 C.A.2d 142—Deshotel v. Atchison, T. & S. F. Ry. Co., 272 P.2d 71, 126 C.A.2d 303—Gibson v. Stuck, 270 P.2d 17, 125 C. A.2d 340—Gilbert v. Yellow Cab Co., 267 P.2d 392, 123 C.A.2d 782—Dorsa v. MacNeil, 247 P.2d 577, 112 C.A.2d 807—Beseau v. George, 245 P.2d 542, 111 C.A.2d 807—Long v. California-Western States Life Ins. Co., 244 P.2d 488, 111 C.A.2d 254—Reyes v. Gonzales, 242 P.2d 401, 110 C.A.2d 266—Marosi v. J. W. Robinson Co., 238 P.2d 78, 107 C.A.2d 811—Ridenour v. Scarcella, 237 P. 2d 322, 107 C.A.2d 554—Bridgford v. Sawyer, 234 P.2d 95, 105 C.A.2d 631—Parks v. Dexter, 224 P.2d 121, 100 C.A.2d 521—Brattain v. Pacific Elec. Ry. Co., 220 P.2d 747, 98 C. A.2d 678—Goodman v. Atchison, T. & S. F. Ry. Co., 211 P.2d 310, 94 C.A.2d 745—Barnett v. Garrison, 209 P.2d 426, 93 C.A.2d 553—Rembold v. Goodwin, 209 P.2d 402, 93 C.A.2d 605—Yost v. Johnson, 206 P.2d 13, 91 C.A.2d 849—Stone v. Los Angeles County Flood Control Dist., 185 P.2d 396, 81 C.A.2d 902—Smith v. Ward Transp. Co., 183 P.2d 701, 81 C.A.2d 213.

35.10 Cal.—Brooks v. Metropolitan Life Ins. Co., 163 P.2d 689, 27 C. 2d 305—Mazzotta v. Los Angeles Ry. Corp., 153 P.2d 338, 25 C.2d 165.

Pirrone v. Nuccio, 179 P.2d 18, 78 C.A.2d 864—Schlemmer v. Stokes, 117 P.2d 396, 47 C.A.2d 164.

Mo.—State ex rel. Inter-State Oil Co. v. Bland, 190 S.W.2d 227, 354 Mo. 622.

Goodwin v. Winston, App., 230 S.W.2d 793—Inter-State Oil Co. v. Equity Mut. Ins. Co., App., 183 S. W.2d 328—Green v. First Nat. Bank of Kansas City, 163 S.W.2d 788, 236 Mo.App. 1257—Robert v. New York Cent. R. Co., App., 122 S.W.2d 1—Winkler v. Kurn, App., 118 S.W.2d 1065.

35.15 Wis.—Himebauch v. Ludtke, 39 N.W.2d 684, 256 Wis. 1.

36. R.I.—Surmeian v. Simons, 107 A. 229, 42 R.I. 334.

Wis.—Jacobson v. City of Milwaukee, 55 N.W.2d 1, 262 Wis. 256—Wear v. Northern States Power Co., 53 N.W.2d 777, 262 Wis. 9.

37. N.Y.—Aidman v. Rabinoff, 137 N.Y.S. 852.

Wash.—Graaf v. Vulcan Iron Works, 109 P. 1016, 59 Wash. 325.

38. N.Y.—Hogan v. Franken, 223 N. Y.S. 1, 221 App.Div. 164.

39. Cal.—Manufacturers' Finance Corporation v. Pacific Wholesale Radio, 19 P.2d 1013, 130 C.A. 239.

Iowa.—Farnsworth v. Umlandt, 158 N.W. 462, 177 Iowa 39.

40. Va.—Schools v. Walker, 47 S.E. 2d 418, 187 Va. 619—Alanton Corporation v. Myers Corporation of Norfolk, 144 S.E. 610, 151 Va. 581—Doswell v. Thompson, 129 S.E. 684, 143 Va. 777.

Credible evidence considered

Defendants, who on first trial obtained a verdict, which was set aside by trial court, were entitled on writ of error to have credible evidence considered in light favorable to them, and, if it was sufficient to support the verdict, all adverse evidence could be disregarded.

Va.—Barb v. Lowe, 86 S.E.2d 854, 196 Va. 1014.

Trial judge not a juror

"It is not sufficient that the judge, if on the jury, would have rendered a different verdict. It is not sufficient that there is a great preponderance of the evidence against it. If there is a conflict of the testimony on a material point, or if reasonably fair-minded men may differ as to the conclusions of fact to be drawn from the evidence, or if the conclusion is dependent on the weight to be given the testimony, in all such cases the verdict of the jury is final and conclusive and cannot be disturbed either by the trial court, or by this court, or if improperly set aside by the trial court, it will be reinstated by this court."

Va.—Edgerton v. Norfolk Southern Bus Corp., 47 S.E.2d 409, 414, 187 Va. 642—Hoover v. J. P. Neff & Son, 31 S.E.2d 265, 268, 183 Va. 56.

41. Va.—Palmer v. Showalter, 101 S. E. 136, 126 Va. 306.

42. Va.—Doswell v. Thompson, 129 S.E. 684, 143 Va. 777—Palmer v. Showalter, 101 S.E. 136, 126 Va. 306.

set aside and the verdict reinstated.[43] In such a situation, the evidence favoring the party against whom the verdict was originally directed, and who has procured the new trial, must be taken as true.[44]

Where a motion for a directed verdict has been refused and a new trial is granted on the ground that such refusal was legally erroneous, the question presented on appeal is whether there was evidence sufficient to warrant submission to the jury, and, if not, the order granting the new trial will be sustained.[45] Where the trial court granted a new trial on the ground that it had erred in not directing a verdict, if the record does not clearly show that the motion for a directed verdict was properly denied the order granting a new trial will be affirmed.[45.5]

(2) Conduct of Counsel, Court, or Jury

If a new trial has been granted because of misconduct of jury, counsel, or the court, the trial court ruling will usually be sustained if it has evidentiary support; but if the misconduct is established, the effect of it may be a question of law for the appellate court to determine finally.

On appeal from an order granting a motion for a new trial because of misconduct of the jury, the weight of the testimony taken at the hearing of the motion is for the trial court.[45.50] Accordingly, new trial granted on the ground of misconduct of jurors will not be disturbed where the evidence of misconduct, on which the motion was based, is conflicting;[46] and this is true although it preponderates against the ruling, in view of the trial judge's opportunity to observe the jury and discover at first-hand the facts as to the misconduct.[47]

The rule has been applied in a variety of situations, including cases involving quotient verdicts,[48] intoxication of a juror,[49] communication by a juror with an attorney for one of the parties,[49.5] and the examination of objects or articles not introduced in evidence.[50]

Where a clearly erroneous verdict has resulted, but whether from improper argument of counsel or from misconduct of the jury is not clear, there being circumstances in support of each view, the determination of the cause of the error is for the trial judge and not for the appellate court on review.[51]

On the other hand, if misconduct of a juror has been established, the question of whether the misconduct did or did not affect the verdict is one of law for the reviewing court to decide.[51.5]

Error of court. The action of the court in granting a new trial on the ground that its own remarks in the course of the trial were improperly prejudicial will not be disturbed where they might perhaps have had such a tendency, depending on the manner and circumstances of utterance;[52] and an order to that effect, on the ground that the court gave additional instructions when counsel were absent, will not be set aside where there is clear testimony that such instructions were given and an absence of testimony

43. Iowa.—Rice v. Friend Bros. Co., 161 N.W. 310, 179 Iowa 355.
Mo.—Baker v. Gates, 216 S.W. 775, 279 Mo. 630.

Verdict defective in form
Assuming that the court in construing a verdict might look beyond pleadings and consider the undisputed evidence, a verdict for plaintiff in garnishment proceedings, insufficient for failure to establish the specific amount subject to garnishment, was not aided by the fact that the jury was instructed that, if it found the plaintiff's contentions to be true, it should render its verdict in the form and manner which it did, where evidence introduced was not specified nor any attempt made to have it brought up as part of record, and the action of the court in setting aside such defective verdict will not be reviewed on appeal.
Ga.—Roberts v. Citizens' Bank & Trust Co., 127 S.E. 621, 33 Ga.App. 626.

44. Wash.—McDonald v. McDougall, 150 P. 625, 86 Wash. 339.

45. Or.—Wakefield v. Supple, 160 P. 376, 82 Or. 595.

45.5 Cal.—Moriarty v. California Western States Life Ins. Co., 65 P. 2d 842, reheard 69 P.2d 434, reheard 70 P.2d 684, 22 C.A.2d 260.

45.50 Mo.—Buchanan v. Scott County Milling Co., App., 157 S.W.2d 810.

Any tangible theory
As long as there appears any tangible theory leading to trial judge's conclusion that party was prevented from having a fair trial because of irregularity of juror, and was therefore entitled to a new trial, trial judge's action was conclusive and not open to review.
Cal.—In re Mesner's Estate, 176 P.2d 70, 77 C.A.2d 667.

46. Cal.—Buhl v. Wood Trucking Lines, 144 P.2d 847, 62 C.A.2d 542—Ham v. Los Angeles County, 189 P. 462, 46 C.A. 148—Tunmore v. Macleish, 187 P. 443, 45 C.A. 266.
Neb.—Scherz v. Platte Valley Public Power & Irr. Dist., 37 N.W.2d 721, 151 Neb. 415.
S.D.—Hansen v. Muller, 276 N.W. 150, 65 S.D. 546.
Tex.—City of San Antonio v. McKenzie Const. Co., 150 S.W.2d 989, 136 Tex. 315.
Casstevens v. Texas & P. Ry. Co., Civ.App., 28 S.W.2d 288, reversed on other grounds 32 S.W.2d 637, 119 Tex. 456, 73 A.L.R. 89.
4 C.J. p 905 note 32.

47. Wash.—Gamer v. Schlentz, 146 P. 166, 84 Wash. 37.
4 C.J. p 904 note 23 [c].

48. Cal.—Ham v. Los Angeles County, 189 P. 462, 46 C.A. 148.
Iowa.—Klein v. Swift & Co., 81 N.W. 2d 469.
Wash.—Gamer v. Schlentz, 146 P. 166, 84 Wash. 37.

49. Iowa.—Carlisle v. Council Bluffs, 130 N.W. 813, 151 Iowa 181.

49.5 Tex.—City of San Antonio v. McKenzie Const. Co., 150 S.W.2d 989, 136 Tex. 315.

50. Cal.—Tunmore v. Macleish, 187 P. 443, 45 C.A. 266.

51. N.H.—Moulton v. Langley, 124 A. 70, 81 N.H. 138.

51.5 Tex.—City of San Antonio v. McKenzie Const. Co., 150 S.W.2d 989, 136 Tex. 315.

52. Mo.—Copeland v. American Cent. Ins. Co., 177 S.W. 820, 191 Mo.App. 435.

to the contrary.[53] Ordinarily, an order of the trial judge granting a new trial because of an erroneous instruction to the jury will be affirmed,[53.5] and if an error in instructions could have been prejudicial, the decision of the trial judge to grant a new trial because the jury may have been misled by the instructions is final.[53.10] Where a new trial is granted by the trial judge on the ground of an erroneous exclusion of evidence, his determination will not be reviewed on appeal where the trial court was in a better position than the appellate court to determine the propriety and probable effect of the exclusion.[54]

It is not sufficient to induce the appellate court to set aside the grant of the new trial that, had the trial judge refused to grant it, his refusal would not have been reversed.[55]

(3) Newly Discovered Evidence

If the trial court determines that there is newly discovered evidence which warrants the grant of a new trial, an order granting the new trial on this ground usually will be sustained on appeal if there is evidence supporting the determination of the trial court.

Ordinarily, an appellate court will not disturb an order granting a motion for a new trial where the trial court has made the order after a determination of a question of fact, as, that there is newly discovered evidence,[56] that there has been no want of diligence in failing to discover it at an earlier stage in the trial,[57] that the newly discovered evidence is reasonably likely to change the result,[58] and that justice requires that a new trial should be granted.[58.5] The order granting the new trial will not be disturbed where the affidavits are in conflict,[59] or where there is room for a reasonable doubt;[60] and, a fortiori, where the preponderance of the evidence supports the conclusion of the trial court, the order granting the new trial will not be disturbed.[61]

The sufficiency of the evidence to sustain a judgment for the movant is not before the court on appeal from an order granting a new trial for newly discovered evidence;[62] nor is the weight or credibility of the new evidence.[63] It is, however, the duty of the appellate court to determine as a matter of law whether the evidence on which the trial judge based his findings is such that those findings can reasonably be made.[63.5]

(4) Amount of Recovery

On appeal from an order granting a new trial because of excessive or inadequate damages, the trial court ruling ordinarily will not be disturbed if there is some basis for the order and it is not manifestly erroneous.

An appellate court may reverse an order granting a new trial because of the amount of the verdict,[63.50] but if a motion for a new trial because of excessive or inadequate damages is granted, the action of the trial court is entitled to great weight in an appellate court;[63.52] and an appellate court will not set aside the order unless it appears that the decision of the trial court is manifestly erroneous,[63.54]

53. Ohio.—Krieger's Cleaners & Dyers v. Benner, 175 N.E. 871, 38 Ohio App. 18.

53.5 Cal.—Lamoreux v. San Diego & A. E. Ry. Co., 311 P.2d 1.

53.10 Cal.—Copley v. Putter, 207 P. 2d 876, 93 C.A.2d 453—Conroy v. Perez, 148 P.2d 680, 64 C.A.2d 217.

54. Kan.—Bowers v. Carlson, 32 P. 2d 246, 139 Kan. 396.

55. Mo.—Copeland v. American Cent. Ins. Co., 177 S.W. 820, 191 Mo.App. 435.

56. N.D.—Seymour v. Davies, 156 N. W. 112, 32 N.D. 504.
W.Va.—Lindamood v. Potomac Light & Power Co., 100 S.E. 868, 85 W. Va. 85.

57. N.D.—Seymour v. Davies, 156 N. W. 112, 32 N.D. 504.
Okl.—Lake v. Bridges, 70 P.2d 82, 180 Okl. 442.

58. Kan.—Hiltabidle v. Bradburn, 204 P. 707, 110 Kan. 623.
Okl.—Lake v. Bridges, 70 P.2d 82, 180 Okl. 442.

58.5 N.H.—Small v. Chronical & Gazette Pub. Co., 74 A.2d 544, 96 N. H. 265.

59. N.D.—Seymour v. Davies, 156 N. W. 112, 32 N.D. 504.

60. N.D.—Seymour v. Davies, supra.

61. W.Va.—Lindamood v. Potomac Light & Power Co., 100 S.E. 868, 85 W.Va. 85.

62. Wash.—Mann v. American Bonding Co. of Baltimore, Md., 170 P. 565, 100 Wash. 258.

63. Idaho.—Hudson v. Kootenai Power Co., 258 P. 169, 44 Idaho 423.
Iowa.—Kenwood Lumber Co. v. Armstrong, 198 N.W. 521, 197 Iowa 1239.
R.I.—Schacht Motor Truck Co. of New England v. Cardi, 154 A. 478.

63.5 N.H.—Small v. Chronical & Gazette Pub. Co., 74 A.2d 544, 96 N.H. 265.

63.50 Pa.—Fitzpatrick v. Sheppard, 29 A.2d 475, 346 Pa. 240—Dickson v. Doherr, 194 A. 916, 328 Pa. 10.

63.52 Conn.—Burns v. Metropolitan Distributors, 33 A.2d 131, 130 Conn. 226.
Pa.—Dickson v. Doherr, 194 A. 916, 328 Pa. 10.
W.Va.—Browning v. Monongahela Transp. Co., 27 S.E.2d 481, 126 W. Va. 195.
Wis.—Blong v. Ed. Schuster & Co., 79 N.W.2d 820, 274 Wis. 237—Hale v. Schultz, 270 N.W. 46, 223 Wis. 285.

63.54 U.S.—Southern Pac. Co. v. Zehnle, C.C.A.Cal., 163 F.2d 453.
Ala.—German-American Wholesale Optical Co. v. Rosen, 170 So. 211, 233 Ala. 105—Spivy-Johnson Portrait Co. v. Belt Automobile Indemnity Ass'n, 99 So. 80, 210 Ala. 681.
Kent v. Lindsey, 10 So.2d 54, 30 Ala.App. 582.
Cal.—Bonner v. Los Angeles Examiner, 62 P.2d 427, 17 C.A.2d 458—Johnson v. Ostrom, 16 P.2d 794, 128 C.A. 38.
Mo.—State v. Ellison, 186 S.W. 1075, 268 Mo. 225, conformed to 194 S.W. 71, 196 Mo.App. 349.
N.H.—Hadley v. McLaughlin, 131 A. 2d 54, 100 N.H. 497.
R.I.—Tilley v. Mather, 124 A.2d 872—Ungaro v. Ciaccia, 104 A.2d 240, 81 R.I. 432.
W.Va.—Browning v. Monongahela Transp. Co., 27 S.E.2d 481, 126 W. Va. 195—Walke v. Premier Pocahontas Collieries Co., 117 S.E. 905, 94 W.Va. 38—Ross v. Lake & Ex-

or unless it appears that the trial judge has overlooked or misconceived some vital evidence, or has applied a wrong rule of law thereto.[63.56] Thus, an order granting a new trial because of an excessive verdict will be sustained unless all the evidence shows that that there was no substantial basis for the order.[63.58] If an order is made granting a new trial on several grounds and one ground is that the damages are excessive, the order will be affirmed on review if it is sufficient on that ground alone.[63.60]

Ordinarily, an appellate court will not disturb an order granting a new trial because of inadequacy of the verdict,[63.62] and such an order will be affirmed if supported by substantial evidence,[63.64] as, where it appears that the amount awarded was manifestly inadequate,[63.66] or that the jury had overlooked substantial elements of damage,[63.68] or had capriciously rejected uncontradicted testimony,[63.70] or that some improper motive had entered into the verdict rendered.[63.72] If the sole ground for granting a new trial is the inadequacy of the verdict, the appellate court will review the order, particularly where the review does not involve a consideration of the evidence.[63.74]

Under some statutory provisions the appellate court will review de novo the judgment exercised or the action taken by a trial court in reducing or increasing a jury verdict as an alternative to a new trial,[63.76] and on such de novo review the appellate court will reverse or affirm the trial court order, dependent on whether or not a majority of the reviewing court believes the jury verdict unmistakably must have been the result of passion or prejudice.[63.78]

§ 1674. Denial of Motion

A ruling by the trial court denying a motion for a new trial is entitled to great weight and ordinarily it will not be disturbed if it has evidentiary support; but the ruling will be reviewed and reversed if it is clearly wrong.

On review of an order denying a motion for a new trial the ruling of the trial court is entitled to great weight[64] and will not ordinarily be dis-

port Coal Corporation, 116 S.E. 155, 92 W.Va. 229.

Excessive verdict resulting from passion and prejudice

Where new trial has been granted because of excessive verdict and conclusion of trial judge is that excessive verdict was result of passion and prejudice, appellate court will not disturb the trial court ruling because record does not disclose jury's bias since decision of trial court may be based on matters which occurred at trial but which cannot be preserved in record.

Mo.—Mitchell v. Pla-Mor, Inc., 237 S.W.2d 189, 361 Mo. 946.

63.56 R.I.—Tilley v. Mather, 124 A.2d 872.

63.58 Mo.—Combs v. Combs, 295 S.W.2d 78—Day v. Union Pac. R. Co., 276 S.W.2d 212—Wicker v. Knox Glass Associates, 242 S.W.2d 566, 362 Mo. 614—Coats v. News Corp., 197 S.W.2d 958, 355 Mo. 778.

63.60 Cal.—Parks v. Dexter, 224 P.2d 121, 100 C.A.2d 521—Kent v. Los Angeles Ry. Corp., 84 P.2d 1057, 29 C.A.2d 435.

63.62 Cal.—Hughes v. Schwartz, 124 P.2d 886, 51 C.A.2d 362.

N.Y.—Di Bella v. Wilson, 52 N.Y.S.2d 168, 268 App.Div. 1011.

63.64 Mo.—Widener v. St. Louis Public Service Co., 230 S.W.2d 698, 360 Mo. 761.

Settles v. McGinley, 296 S.W. 846, 222 Mo.App. 247—Dorset v. Chambers, 173 S.W. 725, 187 Mo.App. 276.

N.J.—Ruth v. Fenchel, 117 A.2d 284, 37 N.J.Super. 295, affirmed 121 A.2d 373, 21 N.J. 171.

N.Y.—Ferraro v. Sieradski, 163 N.Y.S.2d 709, 4 A.D.2d 735—Rosen v. Rohloff, 71 N.Y.S.2d 558, 272 App.Div. 974.

63.66 Neb.—Dixon v. Coffey, 73 N.W.2d 660, 161 Neb. 487.

Pa.—Dickson v. Doherr, 194 A. 916, 328 Pa. 10.

63.68 Ala.—Alabama Great Southern R. Co. v. Randle, 112 So. 112, 215 Ala. 535.

63.70 Ala.—Alabama Great Southern R. Co. v. Randle, supra.

63.72 Ala.—Taylor v. Lewis, 170 So. 79, 27 Ala.App. 240.

63.74 Pa.—Fitzpatrick v. Sheppard, 29 A.2d 475, 346 Pa. 240.

63.76 Wash.—Martin v. Coca Cola Bottling, 294 P.2d 429, 48 Wash.2d 444—Lundquist v. Coca Cola Bottling, 254 P.2d 488, 42 Wash.2d 170.

Two separate reviews

"The statute provides for two separate and distinct reviews of jury verdicts in civil actions for damages: the first is performed by the trial judge; the second, *de novo* review on the question of damages, is performed by the appellate court."

Wash.—Martin v. Coca Cola Bottling, 294 P.2d 429, 431, 48 Wash.2d 444.

Rule prior to statute

Wash.—Coppo v. Van Wieringen, 217 P.2d 294, 36 Wash.2d 120.

63.78 Wash.—Martin v. Coca Cola Bottling, 294 P.2d 429, 48 Wash.2d 444.

64. Ala.—Birmingham Macaroni Co. v. Tadrick, 88 So. 858, 205 Ala. 540.

McEntyre v. First Nat. Bank, 171 So. 913, 27 Ala.App. 311.

Cal.—Sanguinetti v. Moore Dry Dock Co., 228 P.2d 557, 36 C.2d 812.

Sheldon v. River Lines, 205 P.2d 37, 91 C.A.2d 478—Mize v. Davy, 165 P.2d 26, 72 C.A.2d 607—Mullanix v. Basich, 155 P.2d 130, 67 C.A.2d 675—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436—Brown v. McCuan, 132 P.2d 838, 56 C.A.2d 35—Wills v. J. J. Newberry Co., 111 P.2d 346, 43 C.A.2d 595.

Conn.—Andrea v. New York, N. H. & H. R. Co., 131 A.2d 642, 144 Conn. 340—Harris v. Clinton, 112 A.2d 885, 142 Conn. 204—Efland v. Guyott Const. Co., 82 A.2d 925, 138 Conn. 183—Hauk v. Zimmerman, 63 A.2d 146, 135 Conn. 259—Koelsch v. Olshesky, 40 A.2d 186, 131 Conn. 404—Adams v. Mohican Hotel, 200 A. 336, 124 Conn. 400—Masi v. General Ice Cream Corporation, 180 A. 455, 120 Conn. 259—Connelly v. Connecticut Co., 140 A. 121, 107 Conn. 236.

Ga.—Robinson v. Guerry, 155 S.E. 495, 42 Ga.App. 187—A. M. Robinson Co. v. Rice, 148 S.E. 542, 39 Ga.App. 785.

Mich.—Marsh v. Barnard, 210 N.W. 478, 236 Mich. 471.

Mo.—Ostmann v. Ostmann, 183 S.W.2d 133.

N.H.—McLaughlin v. Union-Leader Corp., 127 A.2d 269, 100 N.H. 367—McLaughlin v. Union-Leader Corp., 116 A.2d 489, 99 N.H. 492.

R.I.—Lancaster v. Marshall, 34 A.2d 718, 69 R.I. 422—Talon v. Jackson, 30 A.2d 96, 68 R.I. 488.

Tex.—Texas Milk Products Co. v. Birtcher, Civ.App., 138 S.W.2d 285,

turbed,[65] unless it appears to be tainted with passion, prejudice, corruption, or mistake.[66]

Ordinarily, in reviewing an order denying such a motion, the appellate court is not concerned with the weight or effect of the evidence or the credibility of witnesses,[67] and this rule is applied where the

reversed on other grounds 157 S. W.2d 633, 138 Tex. 178.
4 C.J. p 905 note 39.

Dissent by trial judge sitting in banc

Where the majority of judges hearing a motion for new trial in banc were of the opinion that the trial court did not abuse its discretion in denying a new trial, the order refusing new trial would be affirmed, notwithstanding the dissent of the trial judge.

Pa.—Dobson v. Borough of Crafton, 172 A. 109, 315 Pa. 52.

Order denying motion imports verity

Ill.—Stefan v. Elgin, J. & E. R. Co., 120 N.E.2d 52, 2 Ill.App.2d 300.

Time lapse between verdict and ruling

(1) Time lapse between rendering of verdict and ruling on motion for new trial would not affect weight to be given trial court ruling.

Cal.—Humble v. Union Pac. R. Co., 202 P.2d 791, 90 C.A.2d 276.

(2) A trial justice's decision denying motion fer new trial after verdict for plaintiff was not entitled to weight ordinarily accorded it by reviewing court, where hearing on motion did not take place until nearly three years after trial and trial justice stated in his rescript that he had no recollection of appearance or demeanor of witnesses or parties.

R.I.—Champlin v. Stokes, 195 A. 707, 59 R.I. 441.

65. Ala.—America Mining Co. v. Taylor, 100 So. 761, 211 Ala. 513—Connors-Weyman Steel Co. v. Harless, 80 So. 399, 202 Ala. 317—Caravella Shoe Co. v. Hubbard, 78 So. 899, 201 Ala. 545—Louisville & N. R. Co. v. Blankenship, 74 So. 960, 199 Ala. 521.

Brown Service Ins. Co. v. Childs, 38 So.2d 737, 34 Ala.App. 128, certiorari denied 38 So.2d 741, 251 Ala. 660—Cousins v. Harrison, 30 So.2d 393, 33 Ala.App. 37, certiorari denied 30 So.2d 396, 249 Ala. 153—North Carolina Mut. Life Ins. Co. v. Coleman, 26 So.2d 114, 32 Ala. App. 287, certiorari denied 26 So. 2d 120, 248 Ala. 32—Montgomery City Lines v. Hawes, 20 So.2d 536, 31 Ala.App. 564, certiorari denied 20 So.2d 541, 246 Ala. 287.

Cal.—Block v. Snyder, 234 P.2d 52, 105 C.A.2d 783—Metcalfe v. Pacific Electric Ry. Co., 218 P. 486, 63 C.A. 331.

Colo.—Harvey v. Beard, 172 P. 420, 64 Colo. 410.

Conn.—Ladany v. Assad, 99 A. 762, 91 Conn. 316.

Ga.—Bean v. Barron, 168 S.E. 259, 176 Ga. 285.

Atlantic Coast Line R. Co. v. Hodges, 54 S.E.2d 500, 79 Ga.App. 563—Rogers v. Martin, 124 S.E. 358, 32 Ga.App. 650—Anderson v. Etheridge, 119 S.E. 437, 31 Ga. App. 101—Nashville, C. & St. L. Ry. v. Tatum, 94 S.E. 632, 21 Ga.App. 388.

Ill.—Laflin v. Herrington, 17 Ill. 400.

Kan.—Mathis v. Public School Dist. No. 103, Johnson County, 264 P. 2d 1082, 175 Kan. 453—In re Young's Estate, 217 P.2d 269, 169 Kan. 20.

Mich.—Samuelson v. Olson Transp. Co., 36 N.W.2d 917, 324 Mich. 278—Leslie v. Mendelson, 4 N.W.2d 481, 302 Mich. 95—McDuffie v. Root, 1 N.W.2d 544, 300 Mich. 286—Teater v. Stratton, 284 N.W. 722, 288 Mich. 302.

N.H.—Lamontagne v. Lamontagne, 122 A.2d 920, 100 N.H. 237—Slocinski v. Radwan, 144 A. 787, 83 N.H. 501, 63 A.L.R. 543—Reynolds v. Maine Mfg. Co., 128 A. 329, 81 N.H. 421.

N.M.—Reck v. Robert E. McKee General Contractors, Inc., 287 P.2d 61, 59 N.M. 492.

N.Y.—Forrest v. Albany Transit Co., 101 N.Y.S.2d 955, 278 App.Div. 612.

N.D.—Hager v. Clark, 161 N.W. 280, 35 N.D. 591—Blackorby v. Ginther, 158 N.W. 354, 34 N.D. 248.

Pa.—Banca D'Italia & Trust Co. v. Giordano, 36 A.2d 242, 154 Pa. Super. 452.

R.I.—Paradise v. Rick, 7 A.2d 713, 63 R.I. 207—Stephens Realty Corporation v. Paolino, 153 A. 798.

Tenn.—Gordon's Transports, Inc. v. Bailey, App., 294 S.W.2d 313—Tevis v. Proctor & Gamble Distributing Co., 113 S.W.2d 64, 21 Tenn.App. 494.

Tex.—Cohen v. City of Houston, Civ. App., 185 S.W.2d 450—Grant v. Pendley, Civ.App., 22 S.W.2d 467, reversed on other grounds, Com. App., 39 S.W.2d 596, 78 A.L.R. 638—Moore v. Orgain, Civ.App., 291 S.W. 583—Carey v. Planters' State Bank, Civ.App., 280 S.W. 251.

Vt.—Fitzgerald v. Metropolitan Life Ins. Co., 98 A. 498, 90 Vt. 291.

Wash.—Carney v. Lydon, 224 P.2d 634, 36 Wash.2d 878—Rooker v. Alaska S. S. Co., 53 P.2d 295, 185 Wash. 71, certiorari denied 57 S. Ct. 14, 299 U.S. 552, 81 L.Ed. 406.
4 C.J. p 905 note 40.

Newspaper reports of trial

A party is not entitled to a new trial refused him by the trial court merely because of fair newspaper accounts of the progress of the trial and contentions of the parties, where no complaint was made until after verdict, and the trial court found that no prejudice had resulted.

Wis.—Rebholz v. Wettengel, 248 N. W. 109, 211 Wis. 285.

Exclusive province of trial judge

It is exclusive province of trial judge to determine whether verdict of jury is justified by evidence.

Tenn.—Wakefield v. Baxter, App., 297 S.W.2d 97.

66. Ill.—Camp v. Union Drainage Dist. No. 1, Raymond and Harvel Tps., Montgomery County, 42 N.E. 2d 327, 315 Ill.App. 22.

Mass.—Ogden v. Aspinwall, 107 N.E. 448, 220 Mass. 100.

N.J.—O'Brien v. Dade Bros., 114 A.2d 266, 18 N.J. 457.

Flanagan v. Equitable Life Assur. Soc. of U. S., 97 A.2d 710, 26 N.J.Super. 312, affirmed 102 A. 2d 35, 14 N.J. 309.

R.I.—Paquin v. Boston & Taunton Transp. Co., 32 A.2d 153, 69 R.I. 176—Grello v. Curran, 157 A. 72.

Tex.—Baker v. Grace, Civ.App., 213 S.W. 299, error refused.

Utah.—Valiotis v. Utah-Apex Mining Co., 184 P. 802, 55 Utah 151.
4 C.J. p 906 note 46.

67. Ariz.—Tucson Rapid Transit Co. v. Rubiaz, 187 P. 568, 21 Ariz. 221.

Cal.—Shiya v. Reviea, 264 P.2d 190, 122 C.A.2d 155—Goodman v. Atchison, T. & S. F. Ry. Co., 211 P.2d 310, 94 C.A.2d 745.

Ind.—New York, C. & St. L. R. Co. v. Shields, 112 N.E. 762, 185 Ind. 704.

Ayres v. Lucas, 63 N.E.2d 204, 116 Ind.App. 431—Damler v. Baine, 51 N.E.2d 885, 114 Ind.App. 534—Butz v. Lyle, 197 N.E. 700, 101 Ind. App. 331—Adam v. Board of Com'rs of Boone County, 117 N.E. 876, 66 Ind.App. 48.

Kan.—Smith v. Wichita Transp. Corp., 293 P.2d 242, 179 Kan. 8.

Mo.—Preston v. Union Pac. R. Co., 239 S.W. 1080, 292 Mo. 442, petition dismissed Davis v. Preston, 43 S. Ct. 14, 260 U.S. 753, 67 L.Ed. 496.

Rossommano v. Quality Dairy Co., App., 297 S.W.2d 591—Palmer v. Lasswell, App., 267 S.W.2d 492—Toedtman v. Grass, App., 116 S.W.2d 153.

Mont.—Bank of Commerce, Forsyth, v. U. S. Fidelity & Guaranty Co., 194 P. 158, 58 Mont. 236.

Ohio.—Bridgeport Bank Co. v. Shadyside Coal Co., 170 N.E. 358, 121 Ohio St. 544.

R.I.—Dawson v. Bertolini, 38 A.2d 765, 70 R.I. 325—Providence Body Co. v. Providence Transit Concrete Corporation, 177 A. 543.

Tenn.—Blalock v. Temple, 276 S.W. 2d 493, 38 Tenn.App. 463—Davis

ground for the new trial was jury misconduct[67.5] or newly discovered evidence.[67.10] Under some rules of civil procedure, if a new trial is sought on the ground that the verdict is so against the weight of the evidence as to be manifestly unjust and clearly wrong, the appellate court will consider and weigh all the evidence in the case, and may remand the case for a new trial even though the record contains some evidence of probative force in support of the verdict.[67.15]

The fact that there is a serious conflict in the evidence[68] or even that the reviewing court might have reached a different conclusion[69] furnishes no ground for setting aside the order of the trial court; nor does the circumstance that the greater number of witnesses appeared for the party against whom verdict was rendered and judgment entered.[70] The fact findings on such motions are given the same effect on appeal as other findings or fact determinations by the court;[71] and the determination can be set aside only on the same grounds as a jury verdict on issues of fact might be.[72]

Refusal of a motion asserting the verdict to be against the weight of, or not sustained by, the evidence will not be disturbed where there was evidence legally sufficient to support the verdict or judgment;[73] where there was a conflict in the evi-

v. Mitchell, 178 S.W.2d 889, 27 Tenn.App. 182.

4 C.J. p 904 note 26 [a].

Self-contradiction of witness

Whether a witness' deposition or his contrary affidavit, used on a motion for new trial, was true, was for the trial court.

Wis.—Burnett County Abstract Co. v. Eau Claire Citizens' Loan & Investment Co., 255 N.W. 890, 216 Wis. 35.

67.5 Tex.—Romo v. San Antonio Transit Co., Civ.App., 236 S.W.2d 205, error refused no reversible error—Sproles Motor Freight Lines v. Juge, Civ.App., 123 S.W.2d 919, error dismissed, judgment correct—El Paso Electric Co. v. Barker, Civ.App., 116 S.W.2d 433, reversed on other grounds 137 S.W.2d 17, 134 Tex. 496—State Teachers' Mut. Life Ins. Co. v. Mims, Civ.App., 74 S.W.2d 549—Wichita Falls & S. R. Co. v. Holbrook, Civ.App., 50 S.W.2d 428, affirmed Com.App., 78 S.W.2d 938, certiorari denied 56 S.Ct. 139—Estep v. Bratton, Civ.App., 24 S.W.2d 465—Texas & P. Ry. Co. v. Aaron, Civ.App., 19 S.W.2d 930, certiorari denied 50 S.Ct. 409, 281 U.S. 756, 74 L.Ed. 1166.

67.10 Tex.—Texas Emp. Ins. Ass'n v. Pillow, Civ.App., 268 S.W.2d 716, error refused no reversible error.

67.15 Tex.—In re King's Estate, 244 S.W.2d 660, 150 Tex. 662.

Texarkana Bus Co. v. Carter, Civ.App., 292 S.W. 869, reversed on other grounds, Sup., 295 S.W.2d 653—Wilkie v. Dean, Civ.App., 289 S.W.2d 402—Chantly v. Chrystal, Civ.App., 274 S.W.2d 765.

68. Va.—Bowen's Ex'r v. Bowen, 94 S.E. 166, 122 Va. 1.

69. Ala.—Montgomery City Lines v. Hawes, 20 So.2d 536, 31 Ala.App. 564, certiorari denied 20 So.2d 541, 246 Ala. 287.

Ark.—Presley v. Schenebeck, 110 S.W.2d 5, 194 Ark. 1069.

Mich.—In re Kanera's Estate, 54 N.W.2d 718, 334 Mich. 461.

Minn.—Floberg v. Joslin, 82 N.W. 681, 79 Minn. 431.

70. N.H.—Morrison v. Noone, 103 A. 309, 78 N.H. 549.

71. Minn.—Thoreson v. Quinn, 147 N.W. 716, 126 Minn. 48.

Miss.—Pan American Petroleum Corporation v. Pate, 128 So. 870, 157 Miss. 822.

Tex.—Texas & P. Ry. Co. v. Gillette, Com.App., 83 S.W.2d 307.

Findings conclusive if supported by evidence

Findings of trial court supporting order overruling motion for new trial are conclusive on appeal only when supported by sufficient evidence.

Tex.—Triangle Cab Co. v. Taylor, Civ.App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568.

72. Tex.—Yellow Cab Co. of Galveston v. Word, Civ.App., 125 S.W.2d 1050—Hatt v. Walker, Civ.App., 33 S.W.2d 489.

73. Ala.—City of Birmingham v. Bowen, 47 So.2d 174, 254 Ala. 41—Piper v. Halford, 25 So.2d 264, 247 Ala. 530—Corona Coal Co. v. Willingham, 92 So. 894, 207 Ala. 428—Slaughter v. Green, 87 So. 358, 205 Ala. 250—Horn v. Pope, 87 So. 161, 205 Ala. 127.

Walker v. Ingram, 37 So.2d 682, 34 Ala.App. 133, certiorari denied 37 So.2d 685, 251 Ala. 395—Brock v. Shirley, 197 So. 665, 29 Ala.App. 449—William E. Harden, Inc., v. Harden, 197 So. 94, 29 Ala.App. 411.

Ark.—Currie v. Nation, 228 S.W. 388, 148 Ark. 654—Kansas City Southern Ry. Co. v. Sparks, 222 S.W. 724, 144 Ark. 227—Leach v. Smith, 197 S.W. 1160, 130 Ark. 465—Stackhouse v. Johnson, 191 S.W. 22, 126 Ark. 627—Twist v. Mullinix, 190 S.W. 851, 126 Ark. 427—St. Louis Southwestern Ry. Co. v. Ellenwood, 185 S.W. 768, 123 Ark. 428.

Cal.—Blair v. Williams, 240 P.2d 1043, 109 C.A.2d 516—Nelson v. Angelus Hospital Ass'n of Los Angeles, 72 P.2d 169, 23 C.A.2d 71.

Conn.—Sanderson v. Bob's Coaster Corp., 54 A.2d 270, 133 Conn. 677.

Fla.—J. R. Watkins Co. v. Eatmon, 191 So. 199, 140 Fla. 144—Cobb v. Twitchell, 108 So. 186, 91 Fla. 539, 45 A.L.R. 865.

Ga.—Howard v. Lee, 69 S.E.2d 263, 208 Ga. 735—Smith v. Smith, 57 S.E.2d 611, 206 Ga. 461—Pantone v. Pantone, 57 S.E.2d 77, 206 Ga. 305—Phillips v. Bowen, 54 S.E.2d 141, 205 Ga. 440—Clements v. Clements, 30 S.E.2d 615, 197 Ga. 820—Elyea v. Elyea, 20 S.E.2d 592, 194 Ga. 58—Williams v. Lane, 18 S.E.2d 481, 193 Ga. 306—Barlow v. Wrightsville & T. R. Co., 159 S.E. 411, 172 Ga. 861—Hendrix v. De Loach, 156 S.E. 649, 171 Ga. 763—Barlow v. Wrightsville & T. R. Co., 152 S.E. 902, 170 Ga. 332—Usry v. Cato, 146 S.E. 905, 168 Ga. 240.

Mustin v. Barnes, 77 S.E.2d 94, 88 Ga.App. 596—Blaylock v. Ware, 59 S.E.2d 274, 81 Ga.App. 498—Weideman v. Christopher, 51 S.E.2d 601, 78 Ga.App. 548—Lasseter v. Griffin, 49 S.E.2d 142, 77 Ga.App. 429—Whitfield v. Wheeler, 47 S.E.2d 658, 76 Ga.App. 857—W. A. Lathem & Sons v. Reinhardt, 46 S.E.2d 631, 76 Ga.App. 528—Harper v. Hall, 46 S.E.2d 201, 76 Ga.App. 441—Coates v. Bennett, 15 S.E.2d 469, 65 Ga.App. 118—Brewer v. McMickle, 158 S.E. 638, 43 Ga.App. 361—Byrd v. Grace, 158 S.E. 467, 43 Ga.App. 255—Southern Ry. Co. v. Rylee, 156 S.E. 705, 42 Ga.App. 431—Peterman v. Dunaway, 122 S.E. 727, 32 Ga.App. 171—Bennett v. Watson, 120 S.E. 802, 31 Ga.App. 367—White v. Knapp, 120 S.E. 796, 31 Ga.App. 344—Cobb v. Bank of Cobbtown, 120 S.E. 640, 31 Ga.App. 301—Lovelace Lumber Co. v. Bohler, 120 S.E. 640, 31 Ga.App. 296—Terry v. Farmers' Supply Co., 119 S.E. 459, 31 Ga.App. 93—Holloway v. State, 109 S.E. 913, 27 Ga.App. 801—Render v. Dixon, 109 S.E. 912, 27 Ga.App. 821—Croake v.

dence on which the verdict or finding was based,[74] the finding being supported by abundant testimony;[75] or where the testimony warranted submission of the case to the jury.[76] The action of the trial court may be reviewed, however, where the order denying the motion is against the great preponderance of the evidence[77] or is unsupported by

Ware, 106 S.E. 560, 26 Ga.App. 524—Savannah & S. Ry. Co. v. First Nat. Bank, 103 S.E. 887, 25 Ga.App. 529—Cook v. Ryals, 99 S.E. 131, 23 Ga.App. 673—Western & A. R. Co. v. Jarrett, 96 S.E. 17, 22 Ga.App. 313—Bank of Harlem v. Phillips, 95 S.E. 721, 22 Ga.App. 219—Stone Mountain Granite Corp. v. Patrick, 91 S.E. 286, 19 Ga.App. 269—Bryant v. Dickerson & Adair, 90 S.E. 1027, 19 Ga.App. 80.

Ind.—Black v. Krauss, 85 N.E.2d 647, 119 Ind.App. 529—In re Lowe's Estate, 70 N.E.2d 187, 117 Ind.App. 554—Esch v. Leitheiser, 69 N.E.2d 760, 117 Ind.App. 338—Hatfield v. Thurston, 161 N.E. 568, 87 Ind. App. 541.

Iowa.—Murchland v. Jones, 279 N.W. 382, 225 Iowa 149.

Minn.—Spiess v. Brandt, 41 N.W.2d 561, 230 Minn. 246, 27 A.L.R.2d 1—Pearson v. Norell, 273 N.W. 359, 200 Minn. 58—Lepak v. Michel, 233 N.W. 851, 182 Minn. 171—Lewis v. Lawton, 183 N.W. 517, 149 Minn. 500.

Mo.—Coats v. News Corp., 197 S.W. 2d 958, 355 Mo. 778—Chapman v. Kansas City Rys. Co., 233 S.W. 177.

White v. Kuhnert, App., 207 S.W. 2d 839—Morris v. Freyer, App., 151 S.W.2d 515.

Nev.—Richards v. Steele, 99 P.2d 641, 60 Nev. 66, rehearing denied 100 P.2d 72, 60 Nev. 66.

N.M.—Smith v. Meadows, 242 P.2d 1006, 56 N.M. 242.

Pa.—Crider v. Crider, 97 A. 68, 251 Pa. 543.

R.I.—Paradise v. Rick, 7 A.2d 713, 63 R.I. 207—Brownell v. Kelley, 121 A. 420.

Tenn.—Nashville, C. & St. L. Ry. v. Sutton, 104 S.W.2d 834, 21 Tenn. App. 31.

Vt.—Enosburg Grain Co. v. Wilder, 20 A.2d 473, 112 Vt. 11—Dessereau v. Walker, 163 A. 632, 105 Vt. 99—Jasmin v. Parker, 148 A. 874, 102 Vt. 405.

Wash.—Carney v. Lydon, 224 P.2d 634, 36 Wash.2d 878—Hadley v. Simpson, 127 P.2d 260, 14 Wash.2d 93—Trotter v. Williams, 8 P.2d 980, 167 Wash. 151.

4 C.J. p 905 note 41.

74. Ala.—Foster & Creighton Co. v. St. Paul Mercury Indem. Co., 88 So.2d 825, 264 Ala. 581—International Union, United Auto., Aircraft and Agr. Implement Workers of America, C. I. O. v. Russell, 88 So.2d 175, 264 Ala. 456, certiorari granted 77 S.Ct. 213, 352 U.S. 915, 1 L.Ed.2d 121—Wilson v. Payton, 37 So.2d 499, 251 Ala. 411—Sorrell v. Lindsey, 25 So.2d 725, 247 Ala. 630—Reese v. Mackentepe, 149 So. 71, 227 Ala. 153—Mississippi Fire Ins. Co. v. Perdue, 116 So. 142, 217 Ala. 292, 62 A.L.R. 626—Liles v. Pentecost, 105 So. 198, 213 Ala. 413—Dees v. Lindsey Mill Co., 97 So. 647, 210 Ala. 183—Louisville & N. R. Co. v. Cross, 88 So. 908, 205 Ala. 626—Phillips v. Shotts, 71 So. 94, 195 Ala. 20.

Butler v. Walton, 56 So.2d 369, 36 Ala.App. 319, certiorari denied 56 So.2d 379, 257 Ala. 714—Royal Ins. Co. v. Story, 40 So.2d 719, 34 Ala.App. 363, certiorari denied 40 So.2d 724, 252 Ala. 275—Gorum v. Mott, 35 So.2d 381, 33 Ala.App. 525—Allen v. Wilson, 32 So.2d 380, 33 Ala.App. 261—Joyner v. McMurphy, 163 So. 533, 26 Ala.App. 549.

Ark.—American Co. of Arkansas v. Baker, 60 S.W.2d 572, 187 Ark. 492.

Cal.—Nelson v. Angelus Hospital Ass'n of Los Angeles, 72 P.2d 169, 23 C.A.2d 71—Mallett v. Southern Pac. Co., 65 P.2d 93, reheard 68 P. 2d 281, 20 C.A.2d 500—Healy v. Obear, 157 P. 569, 29 C.A. 696, rehearing denied 157 P. 570, 29 C.A. 696.

Fla.—Florida Fire & Casualty Ins. Co. v. Hart, 75 So. 528, 73 Fla. 970.

Ga.—Gay v. Mayor of Lyons, 93 S.E. 2d 352, 212 Ga. 438—Hendrix v. Pirkle, 76 S.E.2d 769, 209 Ga. 882—Lewis v. Seabolt, 71 S.E.2d 519, 209 Ga. 253.

Moore v. King, 80 S.E.2d 74, 89 Ga.App. 521—Lanier v. Turner, 42 S.E.2d 246, 75 Ga.App. 119—Pilgrim Health & Life Ins. Co. v. Grimmette, 29 S.E.2d 101, 70 Ga. App. 585—Landers v. Adcock, 141 S.E. 914, 37 Ga.App. 735—Cooper v. Means, 124 S.E. 555, 32 Ga.App. 731—Lambright v. Everett, 94 S.E. 593, 21 Ga.App. 488.

Ill.—Williams v. Johnson, 130 N.E.2d 123, 8 Ill.App.2d 99.

Ind.—Northern Indiana Finance Co. v. Yakob, 13 N.E.2d 313, 105 Ind. App. 1.

Iowa.—McSpadden v. Axmear, 181 N. W. 4, 191 Iowa 547.

Mich.—Kirkpatrick v. Muskegon Traction & Lighting Co., 162 N.W. 99, 195 Mich. 519.

Mo.—Hunt v. Gus Gillerman Iron & Metal Co., 39 S.W.2d 369, 327 Mo. 887.

Mont.—Gardiner v. Eclipse Grocery Co., 234 P. 490, 72 Mont. 540.

R.I.—Hulton v. Phaneuf, 132 A.2d 85—Goodman v. Zawadowicz, 129 A.2d 537, reargument granted in part 129 A.2d 541—Cola v. Eastern Concrete Products Co., 127 A.2d 858—Grillo v. Schaperow, 104 A.2d 748, 81 R.I. 801—Senn v. Kogut, 89 A.2d 842, 79 R.I. 429—Evangelista v. Antonio De Cubellis, Inc., 85 A.2d 69, 79 R.I. 142—Turcotte v. United Elec. Rys. Co., 65 A.2d 717, 75 R.I. 268—Ephremian v. Sholes, 52 A.2d 425, 75 R.I. 395—Personal Finance Co. of Providence v. Nichols, 43 A.2d 315, 71 R.I. 213—Chabot v. Andre, 161 A. 128, 52 R.I. 399, motion denied 161 A. 496—Cardin v. Lovett, 157 A. 423, 52 R.I. 78—Long v. Kleistone Rubber Co., 128 A. 574—Cady v. Case, 128 A. 193, 46 R.I. 359, reargument denied 129 A. 816—Percelay v. Jenckes Spinning Co., 117 A. 530.

Utah.—Valiotis v. Utah-Apex Mining Co., 184 P. 802, 55 Utah 151.

Va.—City of Danville v. Lipford, 91 S.E. 168, 120 Va. 280.

4 C.J. p 906 note 42.

Qualification of rule

To make applicable the general rule that an order denying a new trial on the ground of insufficiency of the evidence to sustain the verdict will not be reversed where the evidence is conflicting and there is some evidence to support the verdict, the conflict must be real, and the supporting evidence substantial.

Mont.—Casey v. Northern Pac. Ry. Co., 198 P. 141, 60 Mont. 56.

75. Ga.—E. A. Waxelbaum & Bro. v. Livingston, 104 S.E. 508, 25 Ga.App. 709—McWhorter v. Swilley, 95 S.E. 720, 22 Ga.App. 210.

R.I.—London v. Glatstein & Hortvitz, 102 A. 314.

Wash.—Armstrong v. Modern Woodmen of America, 160 P. 946, 93 Wash. 352.

4 C.J. p 906 note 43.

76. Ala.—Life & Casualty Ins. Co. v. Cain, 116 So. 154, 217 Ala. 301.

National Life Ins. Co. of America v. Hedgecoth, 77 So. 422, 16 Ala. App. 272, certiorari denied Ex parte National Life Ins. Co. of America, 77 So. 1000, 201 Ala. 696.

R.I.—Robinson v. Miller, 159 A. 735—Hart v. Cunningham, 118 A. 689.

S.C.—Guignard Brick Works v. Allen University, 152 S.E. 707, 155 S.C. 507.

77. Ala.—First Nat. Bank of Birmingham v. Lowery, 81 So.2d 284, 263 Ala. 36—Howell v. Greyhound Corp., 59 So.2d 587, 257 Ala. 492—Hamilton v. Browning, 57 So.2d 530, 257 Ala. 72—Davis v. Radney, 38 So.2d 867, 251 Ala. 629—Futvoye v. Chuites, 140 So. 432, 224 Ala. 458—Equitable Finance Co. v. Burns, 126 So. 885, 220 Ala. 559—

evidence,[78] or where the conclusion of the court was influenced by an error of law.[79]

A denial by the trial court of a motion for a new trial will not be disturbed unless it unequivocally appears that there was a manifest denial of justice,[79.5] or that the verdict was clearly wrong and unjust,[79.10] or that the trial judge's decision was clearly wrong;[79.15] and the appellate court will not interfere with the order solely because the evidence seems to preponderate somewhat against the verdict.[80]

Similarly, where the motion is made orally or on affidavit on the ground of disqualification or bias of jurors[81] or on the ground of disqualification, bias or

Wallace v. Elliott, 124 So. 286, 220 Ala. 125—National Life Ins. Co. of U. S. of America v. Reedy, 115 So. 8, 217 Ala. 114—Curb v. Stewart, Adams & Co., 110 So. 804, 215 Ala. 511—Dye-Washburn Hotel Co. v. Aldridge, 93 So. 512, 207 Ala. 471—Tennessee Coal, Iron & R. Co. v. Wiggins, 73 So. 516, 198 Ala. 346—Howton v. Mathias, 73 So. 92, 197 Ala. 457—Nashville, C. & St. L. Ry. v. Crosby, 70 So. 7, 194 Ala. 338—Brotherhood of Locomotive Firemen & Engineers v. Milner, 69 So. 10, 193 Ala. 68—Southern Ry. Co. v. Grady, 68 So. 346, 192 Ala. 515—Kimbrell v. Louisville & N. R. Co., 67 So. 586, 191 Ala. 392—Kyle v. Slaughter, 48 So. 343, 158 Ala. 109.

Great Atlantic & Pacific Tea Co. v. Meeks, 38 So.2d 891, 34 Ala.App. 241, certiorari denied 38 So.2d 895, 251 Ala. 576, followed in 39 So.2d 255, 34 Ala.App. 308, 39 So.2d 256, first case, 34 Ala.App. 308, and 39 So.2d 256, second case, 34 Ala.App. 309—Williams v. Bobo, 163 So. 13, 26 Ala.App. 519—Peck v. Henderson, 118 So. 258, 22 Ala.App. 541, certiorari denied 118 So. 262, 218 Ala. 233—Louisville & N. R. Co. v. Abercrombie, 84 So. 423, 17 Ala. App. 233.

Ill.—Holland v. Chicago Transit Authority, 84 N.E.2d 861, 337 Ill.App. 100.

Mich.—Marsh v. Barnard, 210 N.W. 478, 236 Mich. 471—Romanuick v. Highland Park State Bank, 209 N. W. 129, 235 Mich. 217—Daleiden v. Stevens, 209 N.W. 94, 235 Mich. 111—Kane v. Detroit Life Ins. Co., 183 N.W. 38, 214 Mich. 329—Foster v. Rinz, 168 N.W. 420, 202 Mich. 601.

Minn.—Jurgensen v. Schirmer Transp. Co., 64 N.W.2d 530, 242 Minn. 157.

Okl.—Curry v. De Lana, 259 P. 851, 127 Okl. 70.

4 C.J. p 906 note 45.

78. Cal.—Bush v. Weed Lumber Co., 218 P. 618, 63 C.A. 426.

Ga.—Hutchins & Montgomery v. Ezzard, 137 S.E. 912, 36 Ga.App. 692.

Minn.—Austin v. Rosecke, 61 N.W.2d 240, 240 Minn. 321.

S.C.—Ramer v. Hughes, 127 S.E. 565, 131 S.C. 488—Wilson v. Southern Ry., Carolina Division, 115 S.E. 764, 123 S.C. 399.

79. S.C.—Bessinger v. National Sur. Corp., 35 S.E.2d 658, 207 S.C. 365—Ramer v. Hughes, 127 S.E. 565, 131 S.C. 488—Wilson v. Southern Ry., Carolina Division, 115 S.E. 764, 123 S.C. 399.

79.5 Ala.—McEntyre v. First Nat. Bank, 171 So. 913, 27 Ala.App. 311.

N.J.—Palumbo v. Collito, 127 A.2d 27, 42 N.J.Super. 436—Roether v. Pearson, 116 A.2d 529, 36 N.J.Super. 465.

Pa.—Mineo v. Eureka Sec. Fire & Marine Ins. Co., 125 A.2d 612, 182 Pa.Super. 75.

79.10 Ala.—Simpson v. Birmingham Elec. Co., 75 So.2d 111, 261 Ala. 599—Atlantic Coast Line R. Co. v. Taylor, 71 So.2d 27, 260 Ala. 401—Atlantic Coast Line R. Co. v. J. B. Maynard Const. Co., 67 So.2d 893, 259 Ala. 623—Pacific Fire Ins. Co. v. Overton, 55 So.2d 123, 256 Ala. 400—Birmingham Elec. Co. v. Thompson, 37 So.2d 633, 251 Ala. 465—Barber v. Upton, 187 So. 497, 237 Ala. 415.

Jones v. Daniel, 41 So.2d 627, 34 Ala.App. 490.

79.15 Ala.—Williams v. Saks, 185 So. 167, 236 Ala. 683.

Sloss-Sheffield Steel & Iron Co. v. Willingham, 199 So. 15, 29 Ala. App. 569, cause remanded 199 So. 28, 240 Ala. 294—National Life & Accident Ins. Co. v. Hollis, 197 So. 378, 29 Ala.App. 447—Norris v. Neeley, 180 So. 124, 28 Ala.App. 171.

N.H.—Charles I. Hosmer, Inc., v. L. P. Federico & Son, 199 A. 567, 89 N.H. 378.

R.I.—Wine v. Lovett, 97 A.2d 591, 80 R.I. 425—Kennedy v. New England Bakery, 95 A.2d 454, 80 R.I. 224—Greenstein v. Singer, 93 A.2d 306, 80 R.I. 141, reargument denied 96 A.2d 623, 80 R.I. 141—Romano v. Caldarone, 79 A.2d 763, 78 R.I. 107—Gregory v. Eugene, 66 A.2d 371, 75 R.I. 330—Schiano v. McCarthy Freight System, 65 A.2d 462, 75 R. I. 253—Murphy v. Palmer, 54 A.2d 427, 73 R.I. 182—McLain v. Tripp, 53 A.2d 919, 73 R.I. 105—McSoley v. Hogan, 40 A.2d 599, 70 R.I. 470—Rowy v. Mainella, 26 A.2d 755, 68 R.I. 149—Marsh v. Rhode Island Hospital Trust Co., 21 A.2d 540, 67 R.I. 229—Dietz v. United Electric Rys. Co., 21 A.2d 277, 67 R.I. 161—Goff v. Craft's, Inc., 20 A.2d 520, 67 R.I. 11, reargument denied 21 A.2d 10, 67 R.I. 11—Couture v. Industrial Trust Co., 19 A. 2d 772, 66 R.I. 395—Gallagher v. Harlow, 14 A.2d 663, 65 R.I. 267—Potemkin v. Leach, 13 A.2d 250, 65 R.I. 1—Larsh v. Manian, 9 A. 2d 5, 63 R.I. 358—Guadagno v. Folco, 6 A.2d 450, 62 R.I. 404—Smith v. Rose, 4 A.2d 900, 62 R.I. 222—Power Service Corp. v. Pascoag Fire Dist., 4 A.2d 261, 62 R.I. 167—Giguere v. Yellow Cab Co., 195 A. 214, 59 R.I. 248—Menzoian v. Johnson, 189 A. 410, 57 R.I. 196, reargument denied 190 A. 435, 57 R.I. 451.

Denial of unconditional new trial

Where jury's verdict for plaintiff and trial justice's decision granting defendant's motion for new trial, unless plaintiff remitted all of verdict in excess of stated sum, were supported by competent evidence, when read as whole and in light of trial justice's unequivocal adverse evaluation of defendant's credibility, appellate court cannot say that trial justice clearly erred in denying defendant's motion for unconditional new trial.

R.I.—Abizaid v. Abizaid, 85 A.2d 173, 79 R.I. 156.

Default judgment

Refusal of new trial in a default judgment case should not be disturbed on appeal unless defendant has shown trial judge a good excuse for his failure to appear and defend suit.

La.—DeFrances v. Gauthier, 55 So. 2d 896, 220 La. 145.

80. Ala.—Rutledge v. Brilliant Coal Co., 22 So.2d 428, 247 Ala. 40—Republic Steel Corp. v. Stracner, 21 So.2d 690, 246 Ala. 620—Bell v. Nichols, 16 So.2d 799, 245 Ala. 274—Southern Ry. Co. v. Norris, 2 So. 2d 899, 241 Ala. 386—Tennessee Mill & Feed Co. v. Giles, 99 So. 84, 211 Ala. 44—Louisville & N. R. Co. v. Holmes, 87 So. 574, 205 Ala. 47—Veid v. Roberts, 76 So. 934, 200 Ala. 576.

Ark.—Rice-Stix Dry Goods Co. v. Montgomery, 261 S.W. 325, 164 Ark. 161.

81. Ga.—Johnston-Crews Co. v. Smith, 131 S.E. 65, 161 Ga. 382.

O'Berry v. Davis, 121 S.E. 857, 31 Ga.App. 755.

Mass.—Dixon v. A. J. Cunningham Co., 153 N.E. 257, 257 Mass. 63.

Ohio.—Faucett v. Hensley, 171 N.E. 352, 35 Ohio App. 16.

Okl.—Harris v. Smith, 300 P. 392, 149 Okl. 277.

prejudice of the trial judge,[81.5] or on the ground | of misconduct of counsel,[82] parties,[83] jurors,[84] court

Wash.—Bundy v. Dickinson, 182 P. 947, 108 Wash. 52.
4 C.J. p 906 note 44 [a] (2)-(4).

Insanity of juror

N.Y.—De Rosa v. Binghamton Taxicab Co., 44 N.Y.S.2d 664, 266 App. Div. 1044.

81.5 Cal.—Barry v. Contractors State License Bd., 193 P.2d 979, 85 C.A.2d 600.

82. Ala.—W. M. Smith & Co. v. Harris, 42 So.2d 623, 253 Ala. 78.
Cal.—Hatfield v. Levy Bros., 117 P.2d 841, 18 C.2d 798.
Shriver v. Silva, 151 P.2d 528, 65 C.A.2d 753—Elford v. Hiltabrand, 146 P.2d 510, 63 C.A.2d 65—Haskins v. Southern Pac. Co., 39 P.2d 895, 3 C.A.2d 177—Aydlott v. Key System Transit Co., 286 P. 456, 104 C.A. 621.
Kan.—Block v. Bodam, 278 P. 19, 128 Kan. 354—Ely v. Jones, 202 P. 609, 110 Kan. 10.
Ind.—Wilson v. Smith, 133 N.E.2d 84, 126 Ind.App. 321.
Mo.—Mann v. Weiss, 170 S.W. 355, 185 Mo.App. 335.
Mont.—Pascoe v. Nelson, 158 P. 317, 52 Mont. 405.
Neb.—Banta v. McChesney, 257 N.W. 68, 127 Neb. 764.
N.H.—Reynolds v. Maine Mfg. Co., 128 A. 329, 81 N.H. 421.
Pa.—Faust v. Cotner, 160 A. 155, 105 Pa.Super. 177.
Tenn.—Gulf Refining Co. v. Frazier, 15 Tenn.App. 662.
Tex.—Tucker v. Slovacek, Civ.App., 234 S.W.2d 254, error refused no reversible error—Lindquist v. Sanford, Civ.App., 132 S.W.2d 279, error dismissed, judgment correct—Jagoe Const. Co. v. Harrison, Civ. App., 28 S.W.2d 232.

83. Ala.—Alabama Power Co. v. Hall, 103 So. 867, 212 Ala. 638.
Penney v. Grant, 79 So. 271, 16 Ala.App. 510.
Ariz.—Sisters of St. Joseph in Arizona v. Edwards, 44 P.2d 155, 45 Ariz. 407.
Cal.—Lafferty v. Market St. Ry. Co., 46 P.2d 996, 7 C.A.2d 698.
Ind.—Tecumseh Coal & Mining Co. v. Buck, 135 N.E. 481, 192 Ind. 122.
Kan.—Pittman & Harrison Co. v. Hayes, 157 P. 1193, 98 Kan. 273.
Wash.—Leopold v. Livermore, 197 P. 778, 115 Wash. 481.

84. Ala.—Western Union Telegraph Co. v. Morrison, 74 So. 88, 15 Ala. App. 532, reversed on other grounds Ex parte Western Union Telegraph Co., 76 So. 438, 200 Ala. 496.
Ark.—Surridge v. Ellis, 174 S.W. 537, 117 Ark. 223.
Cal.—Lindemann v. San Joaquin Cotton Oil Co., 55 P.2d 870, 5 C. 480—Loeb v. Kimmerle, 9 P.2d 199, 215 C. 143.
Sepulveda v. Ayako Ishimaru, App., 308 P.2d 809—Noble v. Key System, 51 P.2d 887, 10 C.A.2d 132—Gordon v. Perkins, 171 P. 698, 36 C.A. 90—Foley v. Hornung, 169 P. 705, 35 C.A. 304.
Colo.—Smillie v. De Mendoza, 190 P. 533, 68 Colo. 461.
Ga.—Brazil v. City of La Grange, 140 S.E. 782, 37 Ga.App. 500.
Ill.—Miller v. Scandrett, 63 N.E.2d 252, 326 Ill.App. 631.
Ind.—Hamilton v. Pattison, 157 N.E. 57, 86 Ind.App. 269.
Iowa.—Sheker v. Jensen, 41 N.W.2d 679, 241 Iowa 583—Hoegh v. See, 246 N.W. 787, 215 Iowa 733—Wallace v. Farmers' Exch. Co., 197 N. W. 654, 197 Iowa 568—James v. Winifred Coal Co., 169 N.W. 121, 184 Iowa 619—Becker v. Incorporated Town of Churdan, 157 N.W. 221, 175 Iowa 159—In re Howe's Estate, 154 N.W. 1001, 172 Iowa 723.
Kan.—Anderson v. Thompson, 22 P. 2d 438, 137 Kan. 754—Watson v. Wheat Growers' Ass'n, 243 P. 1051, 120 Kan. 444.
Ky.—Brink v. Kennedy, 151 S.W.2d 58, 286 Ky. 566.
Mass.—Collins v. Splane, 120 N.E. 66, 230 Mass. 281.
Minn.—Lundberg v. Zimmer, 198 N. W. 407, 159 Minn. 179—Thoreson v. Quinn, 147 N.W. 716, 126 Minn. 48.
Neb.—Schwank v. Platte County, 40 N.W.2d 863, 152 Neb. 273—Blackwell v. Omaha Athletic Club, 242 N.W. 664, 123 Neb. 332—Farmers' Irr. Dist. v. Calkins, 176 N.W. 367, 104 Neb. 196.
N.H.—Lynch v. L. B. Sprague, Inc., 66 A.2d 697, 95 N.H. 485—Lavigne v. Lavigne, 119 A. 869, 80 N.H. 559.
Okl.—Harris v. Boggess, 255 P. 685, 124 Okl. 251.
Pa.—Redmond v. Pittsburgh Rys. Co., 198 A. 71, 329 Pa. 302—Hostetler v. Kniseley, 185 A. 300, 322 Pa. 248.
Tenn.—Stanford v. Holloway, 157 S. W.2d 864, 25 Tenn.App. 379.
Tex.—City of Amarillo v. Huddleston, 152 S.W.2d 1088, 137 Tex. 226.
Texas & P. Ry. Co. v. Gillette, Com.App., 83 S.W.2d 307—Walker v. Quanah, A. & P. Ry. Co., Com. App., 58 S.W.2d 4—Texas Employers' Ins. Ass'n v. Chocolate Shop, Com.App., 44 S.W.2d 989—Bradshaw v. Abrams, Com.App., 24 S.W. 2d 372.
Hollingsworth v. Williamson, Civ.App., 300 S.W.2d 194—St. Paul-Mercury Indem. Co. v. Bearfield, Civ.App., 296 S.W.2d 956, error refused no reversible error—Hearn v. Mrs. Baird's Bread Co., Civ.App., 295 S.W.2d 689, reversed on other grounds Mrs. Baird's Bread Co. v. Hearn, Sup., 300 S.W.2d 646—Eubank v. Hopkins, Civ.App., 238 S. W.2d 720, error refused no reversible error—Lee v. Galbreath, Civ. App., 234 S.W.2d 91—Smith v. Travelers Ins. Co., Civ.App., 205 S. W.2d 432, error refused no reversible error—Balque v. Green, Civ. App., 193 S.W.2d 705, error refused no reversible error—Snow v. Harding, Civ.App., 180 S.W.2d 965, error refused—Lackey v. Moffett, Civ.App., 172 S.W.2d 715—Mitchell v. Gibson, Civ.App., 160 S.W.2d 79, error refused—Yellow Cab Co. of Galveston v. Word, Civ.App., 125 S. W.2d 1050—Forrest v. Faust, Civ. App., 110 S.W.2d 147, error dismissed—Paschall v. Gulf, C. & S. F. Ry. Co., Civ.App., 100 S.W.2d 183, modified on other grounds Campbell v. Paschall, 121 S.W.2d 593, 132 Tex. 226—Morris v. Jackson's Model Laundry, Civ.App., 81 S.W.2d 798, error refused—Gifford-Hill & Co. v. Henderson, Civ.App., 81 S.W.2d 274—Bailey v. National Aid Life Ass'n, Civ.App., 78 S.W. 2d 692—Wells v. Henderson, Civ. App., 78 S.W.2d 683—Garrett v. U. S. Fidelity & Guaranty Co., Civ. App., 77 S.W.2d 1066, reversed on other grounds 105 S.W.2d 868, 129 Tex. 587—Levy v. Rogers, Civ.App., 75 S.W.2d 304—St. Louis, S. F. & T. Ry. Co. v. Barr, Civ.App., 67 S. W.2d 1063—Turner v. Big Lake Oil Co., Civ.App., 62 S.W.2d 491—Texas & P. Ry. Co. v. Foster, Civ.App., 58 S.W.2d 557—Wichita Falls & S. R. Co. v. Holbrook, Civ.App., 50 S. W.2d 428, affirmed, Com.App., 78 S.W.2d 938, certiorari denied 56 S. Ct. 139, 296 U.S. 618, 80 L.Ed. 439—Harwell v. Reed, Civ.App., 50 S. W.2d 415—Medford v. Hendricks, Civ.App., 38 S.W.2d 413—Lackey v. Southland Greyhound Lines, Civ. App., 35 S.W.2d 739—Hatt v. Walker, Civ.App., 33 S.W.2d 489—Estep v. Bratton, Civ.App., 24 S.W.2d 465—Texas & P. Ry. Co. v. Aaron, Civ. App., 19 S.W.2d 930, certiorari denied 50 S.Ct. 409, 281 U.S. 756, 74 L.Ed. 1166—Galveston Electric Co. v. Biggs, Civ.App., 14 S.W.2d 807—St. Louis Southwestern Ry. Co. of Texas v. Smithhart, Civ.App., 9 S.W.2d 146—Sandifer v. Fort Worth Nat. Bank, Civ.App., 8 S.W. 2d 512—Amarillo Traction Co. v. Russell, Civ.App., 290 S.W. 905—W. T. Carter & Bro. v. Brown, Civ.App., 280 S.W. 889, dismissed for want of jurisdiction.
Wash.—Heggem v. Humphries Transport, 167 P.2d 432, 24 Wash.2d 771.
4 C.J. p 906 note 44 [a] (1).

Question of fact subject to appellate review

"The rule under the statute and now under Rule 327, is that a question of whether or not jury misconduct actually occurred is a question

officials or attendants,[85] or the trial judge himself,[86] or on the ground of excess, inadequacy, or other error in the damages or relief awarded,[87] or on the ground of surprise or mistake developed in the progress of the trial,[88] or of newly discovered evidence,[89] its denial by the trial justice will stand when there is a conflict in the evidence submitted in support of, and in opposition to, the motion,[90] where

of fact to be determined by the trial court subject to review by an appellate court in the same manner as any other question of fact."

Tex.—Tumlinson v. San Antonio Brewing Ass'n, Civ.App., 170 S.W. 2d 620, 623, error refused.

Review in appellate court

When misconduct of the jury is alleged as a ground for a new trial, even though the evidence as to such misconduct is in conflict, the finding of the trial court thereon is subject to review by the appellate court.

Tex.—Triangle Cab Co. v. Taylor, Civ.App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568.

85. Mass.—Damm v. Town of Boylston, 106 N.E. 177, 218 Mass. 557.

N.H.—Brown v. Smith, 193 A. 224, 89 N.H. 133.

Tex.—Coats v. Windham, Civ.App., 281 S.W.2d 207, error refused no reversible error.

86. Cal.—McAvoy v. Helms Bakeries, 111 P.2d 431, 43 C.A.2d 587.

Mo.—Carlisle v. Tilghmon, 174 S.W. 2d 798.

Copeland v. American Cent. Ins. Co., 177 S.W. 820, 191 Mo.App. 435.

Tenn.—Hamilton v. Carter, 14 Tenn. App. 337.

Tex.—Triangle Cab Co. v. Taylor, Civ.App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568.

4 C.J. p 906 note 44 [a] (5).

87. Ala.—Marbury Lumber Co. v. Heinege, 85 So. 453, 204 Ala. 241.

Cal.—McSweeney v. East Bay Transit Co., 141 P.2d 787, 60 C.A.2d 807.

Ga.—Jolly v. Jolly, 94 S.E. 885, 147 Ga. 566.

Williams v. Hines, 107 S.E. 265, 26 Ga.App. 381.

Ind.—Union Traction Co. of Indiana v. Morris, 136 N.E. 861, 193 Ind. 313.

Mass.—Ogden v. Aspinwall, 107 N.E. 448, 220 Mass. 100.

Minn.—Lewis v. Olson, 180 N.W. 775, 147 Minn. 462.

Mo.—Johannes v. Edward G. Becht Laundry Co., 274 S.W. 877.

N.H.—Leavitt v. Bacon, 200 A. 399, 89 N.H. 383.

N.J.—Blum v. Parsons Mfg. Co., 112 A. 848, 95 N.J.Law 471.

N.C.—Campo v. S. H. Kress & Co., 182 S.E. 475, 208 N.C. 816—Parker v. Seaboard Air Line Ry., 106 S.E. 755, 181 N.C. 95—Gatlin v. Norfolk-Southern R. Co., 102 S.E. 779, 179 N.C. 433.

Pa.—McCloskey v. Petersen Motors, Inc., 80 Pa.Super. 132.

R.I.—Moore v. Wetherell, 74 A.2d 249, 77 R.I. 161—Fielding v. Kaplan, 51 A.2d 492, 72 R.I. 352—Finizia v. Braverman, 197 A. 472, 60 R.I. 162—Harrison v. Pearson, 103 A. 565.

Tex.—Houston Electric Co. v. Pearce, Civ.App., 192 S.W. 558, dismissed for want of jurisdiction.

Utah.—Berg v. Otis Elevator Co., 231 P. 832, 64 Utah 518.

Vt.—Wilford v. Salvucci, 95 A.2d 37, 117 Vt. 495, followed in 95 A.2d 41, 117 Vt. 501.

Va.—Kritselis v. Petty, 105 S.E. 536, 129 Va. 175.

Remittitur as adequate correction of error

The trial judge's finding that a remittitur covers the portion of verdict tainted by the jury's misconduct is conclusive on appeal, unless the evidence leaves the question reasonably doubtful.

Tex.—International-Great Northern R. Co. v. Cooper, Com.App., 1 S.W. 2d 578.

Where verdict might well have been directed for defendant, refusal of a new trial to plaintiff who had been awarded nominal damages was not subject to be set aside.

Pa.—Cohen v. Rosa, 69 Pa.Super. 235.

88. Ind.—Mitchell v. Chambers, 55 Ind. 289.

Kan.—Bisagno v. Lane, 211 P.2d 85, 168 Kan. 153—Yurann v. Hamilton, 108 P. 822, 82 Kan. 528.

Minn.—State v. Bongard, 94 N.W. 1093, 89 Minn. 426.

Okl.—Gower v. Short, 127 P. 485, 36 Okl. 30.

Falsity of material testimony

A refusal to grant a new trial will not be disturbed on appeal on the ground that false material testimony was introduced, where it appears that the motion for new trial merely contained the affidavit of a witness discovered after the trial, who would testify that the facts were the opposite to those contained in such alleged false testimony.

Mo.—Fiorina v. Wabash Ry. Co., App., 260 S.W. 123.

89. Ala.—Hesk v. Ellis, 75 So. 329, 200 Ala. 17.

Cal.—Crofford v. Crofford, 157 P. 560, 29 C.A. 662.

Colo.—Lanham v. Copeland, 178 P. 562, 66 Colo. 27.

Conn.—Costello v. Costello, 96 A.2d 755, 139 Conn. 690.

Kan.—Krueger v. Schlemeyer, 66 P. 2d 395, 145 Kan. 469—Harris v. Thompson, 23 Kan. 372.

Minn.—Gau v. J. Borgerding & Co., 225 N.W. 22, 177 Minn. 276.

N.C.—Campo v. S. H. Kress & Co., 182 S.E. 475, 208 N.C. 816.

Okl.—Berry v. Park, 110 P.2d 902, 188 Okl. 477.

R.I.—De Fusco v. Laudati, 10 A.2d 346, 64 R.I. 68.

Tex.—Brinker v. McDonald, Civ.App., 115 S.W.2d 1185—Allen v. Texas & N. O. R. Co., Civ.App., 70 S.W.2d 758.

4 C.J. p 906 note 44 [a] (8).

Character as merely cumulative

Ind.—Meldon v. Cox, 110 N.E. 1008, 60 Ind.App. 403.

Lack of diligence.

Cal.—Rudin v. Luman, 199 P. 874, 53 C.A. 212.

Iowa.—Hanley v. Travelers' Protective Ass'n, 161 N.W. 125—Hanley v. Fidelity & Casualty Co., 161 N. W. 114, 180 Iowa 805.

Tex.—Peters v. Williams, Civ.App., 271 S.W. 430—St. Louis Southwestern Ry. Co. of Texas v. Turner, Civ.App., 225 S.W. 383, error refused.

Force and effect of newly discovered evidence

Probative force of newly discovered evidence, and its probable effect on result of another trial are matters for trial court, and will not be considered on appeal from order denying motion for new trial.

Tex.—Goodrich v. Masey, Civ.App., 227 S.W.2d 844—Foster v. McClain, Civ.App., 197 S.W.2d 508.

90. Ala.—Penney v. Grant, 79 So. 271, 16 Ala.App. 510—Western Union Telegraph Co. v. Morrison, 74 So. 88, 15 Ala.App. 532, reversed on other grounds Ex parte Western Union Telegraph Co., 76 So. 438, 200 Ala. 496.

Ariz.—Tom Reed Gold Mines Co. v. Brady, 117 P.2d 484, 58 Ariz. 44—Wilson v. Wiggins, 94 P.2d 870, 54 Ariz. 240—Sisters of St. Joseph in Arizona v. Edwards, 44 P.2d 155, 45 Ariz. 407.

Ark.—Surridge v. Ellis, 174 S.W. 537, 117 Ark. 223.

Cal.—Union Supply Co. v. Morris, 30 P.2d 394, 220 C. 331.

Lafferty v. Market St. Ry. Co., 46 P.2d 996, 7 C.A.2d 698—Coats v. Hathorn, 8 P.2d 1038, 121 C.A. 257—Lydon v. Beach, 264 P. 511, 89 C.A. 69—Gordon v. Perkins, 171 P. 698, 36 C.A. 90.

Ga.—Smith v. Tippins, 61 S.E.2d 138, 207 Ga. 262.

Brazil v. City of La Grange, 140 S.E. 782, 37 Ga.App. 500—O'Berry v. Davis, 121 S.E. 857, 31 Ga.App. 755.

Ill.—Miller v. Scandrett, 63 N.E.2d 252, 326 Ill.App. 631.

Ind.—Tecumseh Coal & Mining Co. v. Buck, 135 N.E. 481, 192 Ind. 123.

the trial judge was in a position to observe the acts of alleged misconduct and to form a first-hand opinion as to whether they occurred and what was their influence on the case,[91] or where his findings of fact are supported by the evidence,[92] unless the evidence

Iowa.—Hoegh v. See, 246 N.W. 787, 215 Iowa 733—James v. Winifred Coal Co., 169 N.W. 121, 184 Iowa 619—Hanley v. Fidelity & Casualty Co., 161 N.W. 114, 180 Iowa 805, followed in Hanley v. Travelers' Protective Ass'n, 161 N.W. 125—Becker v. Incorporated Town of Churdan, 157 N.W. 221, 175 Iowa 159—In re Howe's Estate, 154 N.W. 1001, 172 Iowa 723.

Minn.—Lundberg v. Zimmer, 198 N. W. 407, 159 Minn. 179.

Mont.—Pascoe v. Nelson, 158 P. 317, 52 Mont. 405.

Neb.—Pope v. Tapelt, 50 N.W.2d 352, 155 Neb. 10—Banta v. McChesney, 257 N.W. 68.

Ohio.—Faucett v. Hensley, 171 N.E. 352, 35 Ohio App. 16.

Tenn.—Rice Bros. Auto Co. v. Ely, 178 S.W.2d 88, 27 Tenn.App. 81—Hamilton v. Carter, 14 Tenn.App. 337.

Tex.—Barrington v. Duncan, 169 S. W.2d 462, 140 Tex. 510—Boddeker v. Olschewske, 94 S.W.2d 730, 127 Tex. 598—Texas & P. R. Co. v. Gillette, 83 S.W.2d 307, 125 Tex. 563.

Texas Employers' Ins. Ass'n v. Chocolate Shop, Com.App., 44 S.W. 2d 989—Bradshaw v. Abrams, Com. App., 24 S.W.2d 372.

St. Paul-Mercury Indem. Co. v. Bearfield, Civ.App., 296 S.W.2d 956, error refused no reversible error—Bowles v. Penny, Civ.App., 295 S. W.2d 291, error refused no reversible error—Gulf Oil Corp. v. Walker, Civ.App., 288 S.W.2d 173—Burnett v. Rutledge, Civ.App., 284 S.W. 2d 944, error refused no reversible error—Greenwade v. Bledsoe, Civ. App., 282 S.W.2d 75, error refused no reversible error—Watts v. Dallas Ry. & Terminal Co., Civ.App., 279 S.W.2d 400, error refused no reversible error—Texas Emp. Ins. Ass'n v. Logsdon, Civ.App., 278 S. W.2d 893, error refused no reversible error—Texas Emp. Ins. Ass'n v. Layton, Civ.App., 278 S.W.2d 453—Myers v. Continental Panhandle Lines, Civ.App., 278 S.W.2d 365—Ray v. Gage, Civ.App., 269 S.W.2d 411, error refused no reversible error—Trousdale v. Texas & N. O. R. Co., Civ.App., 264 S.W.2d 489, affirmed 276 S.W.2d 242, 154 Tex. 231—Martin v. Shell Oil Co., Civ.App., 262 S.W.2d 564—Willrodt v. Union City Transfer, Civ.App., 258 S.W.2d 443, error refused no reversible error—J. H. Hubbard & Son v. Greer, Civ.App., 255 S.W.2d 389—McCarthy Oil & Gas Corp. v. Cunningham, Civ.App., 255 S.W.2d 368, error refused no reversible error—Burks v. Burks, Civ.App., 252 S.W. 2d 226—Krottinger v. Marchand, Civ.App., 252 S.W.2d 217—Swaim v. Teasley, Civ.App., 249 S.W.2d 674—Andrews v. Dewberry, Civ. App., 242 S.W.2d 685, error refused no reversible error—Connor v. Heard & Heard, Civ.App., 242 S.W.2d 205, error refused no reversible error—Dofner v. Branard, Civ.App., 236 S.W.2d 544, error refused no reversible error—Traders & General Ins. Co. v. Gibbs, Civ. App., 229 S.W.2d 410, error refused no reversible error—Patterson v. Hughes, Civ.App., 227 S.W.2d 397—Kissman v. Downey, Civ.App., 221 S.W.2d 785—Fisher v. Leach, Civ. App., 221 S.W.2d 384, error refused no reversible error—Texas Emp. Ins. Ass'n v. Tate, Civ.App., 214 S. W.2d 877—Kelley v. Dickson, Civ. App., 200 S.W.2d 719, error refused no reversible error—City of Dallas v. Mitchell, Civ.App., 197 S.W.2d 586, error refused no reversible error—Triangle Cab Co. v. Taylor, Civ.App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568—Callahan v. Hester, Civ.App., 181 S.W. 2d 294, error refused—Martin v. J. S. Hunt Lbr. Co., Civ.App., 180 S. W.2d 956—Peurifoy v. Wiebusch, Civ.App., 174 S.W.2d 619—Browning v. Graves, Civ.App., 152 S.W.2d 515, error refused—Norris Bros. v. Mattinson, Civ.App., 145 S.W.2d 204—Dulaney Inv. Co. v. Wood, Civ. App., 142 S.W.2d 379, error dismissed, judgment correct—Huddleston v. City of Amarillo, Civ. App., 131 S.W.2d 1095, reversed on other grounds 152 S.W.2d 1088, 137 Tex. 226—Sharp v. American Nat. Ins. Co., Civ.App., 126 S.W.2d 50—El Paso Electric Co. v. Barker, Civ. App., 116 S.W.2d 433, reversed on other grounds 137 S.W.2d 17, 134 Tex. 496—Brinker v. McDonald, Civ.App., 115 S.W.2d 1185—Sweatt v. Tarrant County, Civ.App., 108 S.W.2d 700, error dismissed—Morris v. Jackson's Model Laundry, Civ.App., 81 S.W.2d 798—Gifford-Hill & Co. v. Henderson, Civ.App., 81 S.W.2d 274—Garrett v. U. S. Fidelity & Guaranty Co., Civ.App., 77 S.W.2d 1066—State Teachers' Mut. Life Ins. Co. v. Mims, Civ. App., 74 S.W.2d 549—St. Louis, S. F. & T. Ry. Co. v. Barr, Civ.App., 67 S.W.2d 1063—Turner v. Big Lake Oil Co., Civ.App., 62 S.W.2d 491—Texas & P. Ry. Co. v. Foster, Civ. App., 58 S.W.2d 557—Harwell v. Reed, Civ.App., 50 S.W.2d 415—Davidson v. Swanson, Civ.App., 43 S.W.2d 172—Texas & P. Ry. Co. v. Aaron, Civ.App., 19 S.W.2d 930, certiorari denied 50 S.Ct. 409, 281 U.S. 756, 74 L.Ed. 1166.

Wash.—Shephard v. Smith, 88 P.2d 601, 198 Wash. 395—Bundy v. Dickinson, 182 P. 947, 108 Wash. 52.

4 C.J. p 906 note 44.

Statutory provisions

Where, on a motion for new trial, the affidavits of some jurors would show that the verdict was arrived at by chance, and the affidavits by others denied such, the finding of the court sustaining the verdict will not be disturbed, despite the provisions of a statute that misconduct might be established by one juror.

Cal.—Foley v. Hornung, 169 P. 705, 35 C.A. 304.

91. Cal.—Walling v. Kimball, 110 P. 2d 58, 17 C.2d 364.

Dam v. Bond, 251 P. 818, 80 C. A. 342.

Kan.—Block v. Bodam, 278 P. 19, 128 Kan. 354—Ely v. Jones, 202 P. 609, 110 Kan. 10.

N.H.—Lavigne v. Lavigne, 119 A. 869, 80 N.H. 559.

Tenn.—Gulf Refining Co. v. Frazier, 15 Tenn.App. 662.

92. Cal.—Bates v. Newman, 264 P. 2d 197, 121 C.A.2d 800.

Colo.—Harvey v. Beard, 172 P. 420, 64 Colo. 410.

Mo.—Brady v. St. Louis Public Service Co., 233 S.W.2d 841, 361 Mo. 148.

Phillip v. Biernacki, App., 272 S.W. 707.

Neb.—Thoren v. Myers, 37 N.W.2d 725, 151 Neb. 453—Farmers' Irr. Dist. v. Calkins, 176 N.W. 367, 101 Neb. 196.

Okl.—Harris v. Boggess, 255 P. 685, 124 Okl. 251.

Pa.—Faust v. Cotner, 160 A. 155, 105 Pa.Super. 177.

Tenn.—Hamilton v. Carter, 14 Tenn. App. 337.

Tex.—International-Great Northern R. Co. v. Hawthorne, 116 S.W.2d 1056, 131 Tex. 622, certiorari denied 59 S.Ct. 487, 306 U.S. 639, 83 L.Ed. 1040.

Hatch v. Sallas, Civ.App., 263 S.W.2d 610—Smallwood v. Edmiston, Civ.App., 246 S.W.2d 220—Crawford v. Detering Co., Civ. App., 234 S.W.2d 123, reversed on other grounds 237 S.W.2d 615, 150 Tex. 140—Clark v. Levingston Shipbuilding Co., Civ.App., 226 S. W.2d 212, error refused no reversible error—Thompson v. Goode, Civ.App., 221 S.W.2d 569, error refused no reversible error—Harris v. Levy, Civ.App., 217 S.W.2d 154—Buckalew v. Butcher-Arthur, Inc., Civ.App., 214 S.W.2d 184, error refused no reversible error—Dallas Ry. & Terminal Co. v. Bishop, Civ.App., 203 S.W.2d 651, error re-

opposed to the finding is clear and convincing,[93] unless the conclusion of the trial court was plainly wrong,[94] or unless the ruling is contrary to the clear preponderance of evidence.[95]

However, the appellate court, while reluctant to set aside an order refusing a new trial,[96] will do so where the verdict and judgment are clearly against the weight of the evidence[97] or are without support in the evidence,[98] where the order is based on inferences from facts on which the reviewing court is as well able to pass as is the trial judge,[99] where newly discovered evidence is made to appear which is conclusive against the judgment entered,[1] where affidavits of misconduct by the jurors are uncontroverted,[2] or where the trial judge has acted in a manner manifestly erroneous in point of law.[3]

fused no reversible error—Airline Motor Coaches v. Cleveland, Civ. App., 199 S.W.2d 847, error refused no reversible error—White Cabs v. Moore, Civ.App., 199 S.W. 2d 202, reversed on other grounds 203 S.W.2d 200, 146 Tex. 101—Triangle Cab Co. v. Taylor, Civ. App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568—Friedman v. Friedman, Civ.App., 188 S. W.2d 909, refused for want of merit—Texas Motor Coaches v. McKinney, Civ.App., 186 S.W.2d 714—Texas Employers Ins. Ass'n v. Shackelford, Civ.App., 158 S.W.2d 572, reversed on other grounds 164 S.W.2d 657, 139 Tex. 653—Dallas Railway & Terminal Co. v. Bishop, Civ.App., 153 S.W.2d 298—Service Mut. Ins. Co. of Texas v. White, Civ.App., 138 S.W.2d 273, error refused—Spears Dairy v. Davis, Civ. App., 125 S.W.2d 382—Sproles Motor Freight Lines v. Juge, Civ. App., 123 S.W.2d 919, error dismissed, judgment correct—Kincaid v. Chicago, R. I. & G. Ry. Co., Civ.App., 119 S.W.2d 1084, error dismissed—Batey v. Greenwood Floral Co., Civ.App., 113 S.W.2d 647—Miller v. Wyrick, Civ.App., 96 S.W.2d 253, error dismissed—Wells v. Henderson, Civ.App., 78 S.W.2d 683—Medford v. Hendricks, Civ.App., 38 S.W.2d 413—Lackey v. Southland Greyhound Lines, Civ.App., 35 S.W.2d 739—Estep v. Bratton, Civ.App., 24 S.W.2d 465—Galveston Electric Co. v. Biggs, Civ.App., 14 S.W.2d 307—Sandifer v. Fort Worth Nat. Bank, Civ. App., 8 S.W.2d 512.

93. Ga.—Rogers v. Martin, 124 S.E. 358, 32 Ga.App. 650.
Mo.—Johnson v. Kansas City Rys. Co., App., 233 S.W. 942.
Neb.—Blackwell v. Omaha Athletic Club, 242 N.W. 664, 123 Neb. 332.

94. Cal.—Ching v. Dy Foon, 299 P. 2d 668, 143 C.A.2d 129—Burch v. Levy Bros. Box Co., 117 P.2d 435, 47 C.A.2d 104—Haskins v. Southern Pac. Co., 39 P.2d 895, 3 C.A.2d 177—Aydlott v. Key System Transit Co., 286 P. 456, 104 C.A. 621.
N.H.—Roy v. Levy, 79 A.2d 847, 97 N.H. 36.
R.I.—Goff v. Craft's, Inc., 20 A.2d 520, 67 R.I. 11, reargument denied 21 A.2d 10, 67 R.I. 11—Boettger v. Mauran, 12 A.2d 285, 64 R.I. 340—United Electric Rys. Co. v. Pennsylvania Petroleum Products Co., 192 A. 749, 58 R.I. 305.
Tex.—Myers v. Thomas, Civ.App., 182 S.W.2d 266, reversed on other grounds 186 S.W.2d 811, 143 Tex. 502—Edens-Birch Lumber Co. v. Wood, Civ.App., 139 S.W.2d 881, error dismissed, judgment correct—Texas Employers' Ins. Ass'n v. White, Civ.App., 97 S.W.2d 960, error granted.

95. Okl.—Harris v. Smith, 300 P. 392, 149 Okl. 277.
Tex.—St. Louis Southwestern Ry. Co. of Texas v. Smithhart, Civ. App., 9 S.W.2d 146.

96. Cal.—Harvey v. Machtig, 239 P. 78, 73 C.A. 667.

Review of facts

Where a motion for a new trial is denied, appellate court may review facts raised by motion.

Ill.—Goodrich v. Sprague, 52 N.E.2d 250, 385 Ill. 200.

97. Ala.—Housing Authority of City of Decatur v. Decatur Land Co., 64 So.2d 594, 258 Ala. 607—American Life Ins. Co. v. Williams, 175 So. 554, 234 Ala. 469, 112 A.L.R. 1215—Louisville & N. R. Co. v. Rush, 94 So. 577, 208 Ala. 516.
North Carolina Mut. Life Ins. Co. v. Jones, 30 So.2d 270, 33 Ala. App. 77—Edmonds v. Schreiber, 111 So. 755, 22 Ala.App. 24—Eminent Household of Columbian Woodmen v. Payne, 88 So. 454, 18 Ala.App. 23.
Minn.—Austin v. Rosecke, 61 N.W.2d 240, 240 Minn. 321.
N.Y.—Schemel v. Prudential Ins. Co. of America, 15 N.Y.S.2d 516, 258 App.Div. 801.
Okl.—Cudjo v. Smith, 196 P. 698, 81 Okl. 74—Garber v. Hauser, 185 P. 436, 76 Okl. 292.
R.I.—Martino v. Simonelli, 30 A.2d 459, 69 R.I. 4.
Tex.—Mohan v. Safeway Stores of Tex., Civ.App., 237 S.W.2d 813—Boyd v. Texas Emp. Ins. Ass'n, Civ.App., 207 S.W.2d 709.
Vt.—Travers & Thomas v. Rupe, 75 A.2d 692, 116 Vt. 314.
4 C.J. p 906 note 49 [a].

Inadequacy of relief

Where a verdict is manifestly inadequate as to the relief awarded, the denial of a new trial is reversible error.

Iowa.—De Moss v. Brown Cab Co., 254 N.W. 17, 218 Iowa 154.

Independent examination on review

Where trial judge found that verdict was not supported by the evidence and that verdict was motivated by passion, yet denied defendant's motion for new trial, it was duty of appellate court to examine the evidence independently.

R.I.—Lornitzo v. Rhode Island Hospital, 89 A.2d 831, 79 R.I. 455.

98. Cal.—Harvey v. Machtig, 239 P. 78, 73 C.A. 667.
Fla.—Florida Fire & Casualty Ins. Co. v. Hart, 75 So. 528, 73 Fla. 970.
Idaho.—Williams v. Skelton, 237 P. 412, 40 Idaho 741.
Ohio.—Schendel v. Bradford, 140 N. E. 155, 106 Ohio St. 387.

Inherently improbable evidence

While the appellate court will examine the evidence to ascertain whether there is a substantial conflict or whether there is substantial evidence to support the verdict, and if there is a substantial conflict will hold that the lower court did not abuse its discretion in refusing new trial, yet if the evidence is incredible or inherently improbable or so inconsistent with natural laws as to impel the conclusion that the verdict is the result of mistake, prejudice, or passion, the court will hold the lower court in error notwithstanding some conflict in the evidence.

Utah.—Valiotis v. Utah-Apex Mining Co., 184 P. 802, 55 Utah 151.

99. Conn.—Gimelli v. Waterbury Cadillac Co., 145 A. 563, 109 Conn. 722.

1. Ill.—Powers v. Browning, 119 N. E.2d 795, 2 Ill.App.2d 479.
Minn.—In re Wood, 167 N.W. 358, 140 Minn. 130.

2. Tex.—Dallas Ry. & Terminal Co. v. Garrison, Com.App., 45 S.W.2d 185.
Wash.—Lyberg v. Holz, 259 P. 1087, 145 Wash. 316, affirmed 263 P. 960, 146 Wash. 698.

3. Ga.—Radford v. Bethea, 162 S.E. 409, 44 Ga.App. 593.
R.I.—Jones v. Thornton, 62 A.2d 662, 74 R.I. 510—Monacelli v. Hall, 42 A.2d 444, 71 R.I. 55.
Tex.—Dallas Ry. & Terminal Co. v. Garrison, Com.App., 45 S.W.2d 185.

Where evidence is such that the trial court should have directed a verdict for the party moving for a new trial in accordance with his request therefor, a refusal of a motion to set aside a verdict against him and for a new trial is error;[4] and, conversely, an order refusing to set aside a directed verdict and grant a new trial cannot be sustained on appeal if there is any evidence from which a jury could reasonably have found for the movant.[5] It has also been held that an order denying a new trial cannot be sustained on appeal in the absence of sufficient findings of fact, even though the evidence as certified to the appellate court would have fully warranted the findings.[5.5]

Where a new trial is sought under the provisions of a statute authorizing a new trial if the reporter's transcript becomes unavailable, it is for the trial court to determine such questions of fact as will entitle the moving party to a new trial on this ground; and, ordinarily, if the trial court determines questions of fact adversely to the moving party and, accordingly, denies the new trial, the determination by the trial court will not be disturbed on review.[5.10]

Misconduct of a juror or jurors warrants a new trial only where the verdict was, or probably was, influenced thereby to the prejudice of the complaining party, as discussed in New Trial § 61. Where jury misconduct has been established, it is a question of law whether the misconduct did or did not have a prejudicial effect on the verdict, and a determination by the trial court on this question is not binding on the reviewing court.[5.15] The reviewing court will make an independent determination of this question,[6] and, if the doctrine of reasonable doubt is applied, the reviewing court will reverse the judgment of the trial court denying a new trial unless it was shown beyond a reasonable doubt that the jury misconduct did not affect or influence the verdict.[7] In at least one jurisdiction the doctrine of reasonable doubt has been abolished by a rule of civil procedure,[7.5] and under such rule a person asserting misconduct of a juror or jurors as ground for a new trial has the burden of proving by a preponderance of the evidence that the established misconduct probably resulted in injury to him.[7.10] If it is established to the satisfaction of the reviewing

4. Vt.—Tarbell v. Grand Trunk Ry. Co., 111 A. 567, 94 Vt. 449.
4 C.J. p 906 note 49.

5. Conn.—Szabados v. Chatlos, 177 A. 719, 119 Conn. 537.

5.5 Minn.—Lewis v. Lewis, 2 N.W. 2d 134, 211 Minn. 587—Benjamin v. Levy, 38 N.W. 702, 39 Minn. 11.

5.10 Cal.—Duarte v. Rivera, 202 P. 2d 612, 90 C.A.2d 152.

5.15 Tex.—O'Dowd v. State, Civ. App., 304 S.W.2d 241—Gage v. Lone Star Gas Co., Civ.App., 278 S.W.2d 231, error refused no reversible error—Lee v. Galbreath, Civ.App., 234 S.W.2d 91—Harris v. Levy, Civ. App., 217 S.W.2d 154—Texas & P. Ry. Co. v. Mix, Civ.App., 193 S.W. 2d 542.

6. Tex.—Barrington v. Duncan, 169 S.W.2d 462, 140 Tex. 510.
Estep v. Bratton, Civ.App., 24 S. W.2d 465.

Time of misconduct
Evidence regarding whether acts of misconduct of the jury occurred before or after the rendition of the verdict was evidence to show the probable effect of misconduct, the finding on which was not binding on the appellate court.
Tex.—Gulf, C. & S. F. Ry. Co. v. Harvey, Com.App., 278 S.W. 839.
Estep v. Bratton, Civ.App., 24 S. W.2d 465.

Independent determination by appellate court
"Under Rule 327, R.C.P. the question of the materiality of this misconduct shown (i. e., its tendency toward prejudice), as well as the question of whether or not it reasonably appears that injury probably resulted to the complaining party, is a question of law. It seems that the question of probable injury includes that of materiality so that in effect but one question is involved, that of probable injury, which is first determined by the trial court, and then on appeal by the appellate court as a question of law, independently of the trial court's holding."
Tex.—Tumlinson v. San Antonio Brewing Ass'n, Civ.App., 170 S.W. 2d 620, 624, error refused.

7. Tex.—Republic Ins. Co. v. Hale, 99 S.W.2d 909, 128 Tex. 616—Taylor v. General Exchange Ins. Corporation, 96 S.W.2d 70, 128 Tex. 118—Texas & P. R. Co. v. Gillette, 83 S.W.2d 307, 125 Tex. 563.
Gulf, C. & S. F. Ry. Co. v. Harvey, Com.App., 278 S.W. 839.
Saladiner v. Polanco, Civ.App., 160 S.W.2d 531, error refused—Huddleston v. City of Amarillo, Civ.App., 131 S.W.2d 1095, reversed on other grounds 152 S.W.2d 1088, 137 Tex. 226.

Absolute certainty is not required, however, in determining whether the judgment should be reversed on the ground that the misconduct of the jury was prejudicial.
Tex.—Gulf, C. & S. F. Ry. Co. v. Harvey, Com.App., 278 S.W. 839.

Testimony of jurors minimizing effect of misconduct is given little weight in determining whether the verdict was affected by the misconduct.
Tex.—Wald Transfer & Storage Co. v. Randolph, Civ.App., 56 S.W.2d 197.

7.5 Tex.—Barrington v. Duncan, 169 S.W.2d 462, 140 Tex. 510.
Fisher v. Leach, Civ.App., 221 S. W.2d 384, error refused no reversible error—Triangle Cab Co. v. Taylor, Civ.App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568—Blaugrund v. Gish, Civ.App., 179 S.W.2d 257, affirmed 179 S.W.2d 266, 142 Tex. 379—Lackey v. Moffett, Civ.App., 172 S.W.2d 715.

7.10 Tex.—Barrington v. Duncan, 169 S.W.2d 462, 140 Tex. 510.
Texas Emp. Ins. Ass'n v. Logsdon, Civ.App., 278 S.W.2d 893, error refused no reversible error—Myers v. Continental Panhandle Lines, Civ.App., 278 S.W.2d 365—Texas Emp. Ins. Ass'n v. Hicks, Civ.App., 237 S.W.2d 699, error refused no reversible error—Southwestern Greyhound Lines v. Dickson, Civ.App., 228 S.W.2d 232, reversed on other grounds 236 S.W. 2d 115, 149 Tex. 599—Fisher v. Leach, Civ.App., 221 S.W.2d 384, error refused no reversible error—Menefee v. Gulf, C. & S. F. Ry. Co., Civ.App., 181 S.W.2d 287, error refused—Blaugrund v. Gish, Civ.App., 179 S. W.2d 257, affirmed 179 S.W.2d 266, 142 Tex. 379.

court that the jury misconduct was not prejudicial, the judgment of the trial court denying the new trial will be sustained;[7.15] but if the reviewing court determines that the jury misconduct was prejudicial, the order of the trial court denying the new trial will be reversed.[7.20]

7. Refusal to Find Facts

§ 1675. When Reviewable

No question is presented for appellate review by the refusal of the trial court to find incidental or evidentiary facts, and an appellate court will review only if the trial court has refused to find ultimate facts as to which the evidence is uncontroverted and the inferences are all only one way.

Because a trial court is only required to find ultimate facts, the refusal to find facts merely incidental or evidentiary does not present a question for appellate review.[8]

A refusal by the trial court to find a proposed fact is not reviewable where there is conflict in the evidence, and it cannot be said that the inferences are not all one way, or that an opinion to the contrary might not lawfully be formed;[9] nor will such refusal be disturbed on appeal, although defendant's testimony on which the finding was requested was apparently not directly contradicted inasmuch as determination of the witness' credibility is the trial court's exclusive province.[10]

In order for refusal of findings to be error available on appeal, the facts as to which the request is made must be established by admitted or undisputed proof,[11] and the inferences must all be only one way,[11.5] and where the facts are thus established, a refusal to make a finding may present a question reviewable in the appellate court;[12] but if an appellate court declines to reverse for error because of the refusal of the trial court to make a finding where the facts are undisputed and the inferences are only one way, the appellate court may and should supply the finding.[12.5]

Where the triers of the facts refuse to find facts in favor of the party having the burden of proof, the question on review is not whether competent evidence would sustain such finding if made, but whether there was a capricious disregard of competent evidence in the refusal so to find.[12.10]

H. HARMLESS ERROR

1. General Rules

§ 1676. Review Dependent on Prejudice to Rights of Party in General

It is a fundamental principle of appellate procedure which is universally recognized and applied that a party cannot assign as error that which is not prejudicial to him; and harmless error, that is error unaccompanied by prejudice or injury, is not ground for reversal.

In the interest of the orderly administration of justice and for the avoidance of useless expense to litigants,[12.50] it is a fundamental principle of appel-

7.15 Tex.—Gray v. Burroughs, Civ. App., 298 S.W.2d 859—Lyons v. Cope, Civ.App., 217 S.W.2d 116—Stewart v. Humble Oil & Refining Co., Civ.App., 193 S.W.2d 259, error refused no reversible error—Tumlinson v. San Antonio Brewing Ass'n, Civ.App., 170 S.W.2d 620, error refused.

7.20 Tex.—Prudential Fire Ins. Co. v. United Gas Corp., 199 S.W.2d 767, 145 Tex. 257—Barrington v. Duncan, 169 S.W.2d 462, 140 Tex. 510. Thompson v. Copeland, Civ.App., 289 S.W.2d 312, error refused no reversible error—Gage v. Lone Star Gas Co., Civ.App., 278 S.W.2d 231, error refused no reversible error—Texas Emp. Ins. Ass'n v. Phillips, Civ.App., 255 S.W.2d 364, error refused no reversible error.

Ariz.—Wiser v. Lawler, 62 P. 695, 7 Ariz. 163.

Mass.—Lennon v. Cohen, 168 N. E. 63, 264 Mass. 414.
C.J. p 906 note 50.

10. Conn.—Dundon v. Dundon, 76 A. 1008, 83 Conn. 716.

11. Conn.—Post v. Hartford St. R. Co., 44 A. 547, 72 Conn. 362.

Wis.—**Corpus Juris Secundum cited in** Vogt, Inc. v. International Brotherhood of Teamsters, 74 N. W.2d 749, 754, 270 Wis. 315, affirmed International Brotherhood of Teamsters Local 695, A.F.L. v. Vogt, Inc., 77 S.Ct. 1166, 354 U.S. 284, 1 L.Ed.2d 1347, rehearing denied 77 S.Ct. 1423, 352 U.S. 817, 1 L.Ed.2d 1558.

11.5 Wis.—Vogt, Inc. v. International Brotherhood of Teamsters, 74 N. W.2d 749, 754, 270 Wis. 315, affirmed International Brotherhood of Teamsters Local 695, A.F.L. v. Vogt, Inc., 77 S.Ct. 1166, 354 U.S. 284, 1 L.Ed.2d 1347, rehearing denied 77 S.Ct. 1423, 352 U.S. 817, 1 L.Ed.2d 1558.

12. N.Y.—Bedlow v. New York Floating Dry-Dock Co., 19 N.E. 800, 112 N.Y. 263, 2 L.R.A. 629.

Wis.—**Corpus Juris Secundum cited in** Vogt, Inc. v. International Brotherhood of Teamsters, 74 N. W.2d 749, 754, 270 Wis. 315, affirmed International Brotherhood of Teamsters Local 695, A.F.L. v. Vogt, Inc., 77 S.Ct. 1166, 354 U.S. 284, 1 L.Ed.2d 1347, rehearing denied 77 S.Ct. 1423, 352 U.S. 817, 1 L.Ed.2d 1558.

4 C.J. p 907 note 53.

12.5 Wis.—Vogt, Inc. v. International Brotherhood of Teamsters, 74 N. W.2d 749, 754, 270 Wis. 315, affirmed International Brotherhood of Teamsters Local 695, A.F.L. v. Vogt, Inc., 77 S.Ct. 1166, 354 U.S. 284, 1 L.Ed.2d 1347, rehearing denied 77 S.Ct. 1423, 352 U.S. 817, 1 L.Ed.2d 1558.

12.10 Pa.—Williams v. New Bethlehem Burial Service, 74 A.2d 677, 167 Pa.Super. 364—Kostello v. Kostello, 48 A.2d 25, 159 Pa.Super. 194.

12.50 Md.—Adams v. Benson, 117 A. 2d 881, 208 Md. 261.

late procedure which is universally recognized and applied that a party cannot assign as error that which is not prejudicial to him;[13] and harmless error, that is, error as such, unaccompanied by prejudice or injury, is not ground for reversal.[14]

13. Ala.—Pate v. Hall, 125 So. 650, 220 Ala. 411—Walker v. Pitts, 98 So. 278, 210 Ala. 516—Benson Hardware Co. v. Wilder Mercantile Co., 73 So. 4, 197 Ala. 703.

Ark.—J. F. McGehee & Co. v. Fuller, 277 S.W. 39, 169 Ark. 920—Baxter County Bank v. Copeland, 169 S.W. 1180, 114 Ark. 316.

Cal.—In re Palmer's Estate, 302 P. 2d 629, 145 C.A.2d 428—Barker v. Barker, 293 P.2d 85, 139 C.A.2d 206—Winkie v. Turlock Irr. Dist., 74 P.2d 392, 24 C.A.2d 1—Bank of America Nat. Trust & Savings Ass'n v. Cohen, 69 P.2d 875, 21 C. A.2d 510—Leonard v. Hume, 41 P. 2d 965, 5 C.A.2d 41—Ridens v. Economy Home Builders, 286 P. 481, 104 C.A. 677.

Colo.—Fishel v. City and County of Denver, 108 P.2d 236, 106 Colo. 576.

Ga.—Ludwig v. J. J. Newberry Co., 52 S.E.2d 485, 78 Ga.App. 871—United Motor Freight Terminal Co. v. Hixon, 51 S.E.2d 679, 78 Ga.App. 638—Callaway v. Hopkinsville Milling Co., 157 S.E. 900, 43 Ga.App. 81.

Idaho.—Frost v. Penfold, 258 P. 534, 44 Idaho 651.

Ill.—**Corpus Juris Secundum cited in** Sullivan v. Harris Trust and Savings Bank, 132 N.E.2d 69, 74, 8 Ill. App.2d 397.

Ind.—**Corpus Juris Secundum cited in** Poulsen v. Review Bd. of Ind. Employment Sec. Division, 106 N. E.2d 245, 247, 122 Ind.App. 484—**Corpus Juris Secundum cited in** Baker v. State Bank of Akron, 44 N.E.2d 257, 260, 112 Ind.App. 612—Shea v. People's Coal & Cement Co., 161 N.E. 849, 93 Ind.App. 302.

Kan.—Holloway v. Telfer, 12 P.2d 826, 136 Kan. 80—State v. Riverside Drainage Dist. of Sedgwick County, 281 P. 881, 129 Kan. 150.

Ky.—Ogden v. Ogden, 13 Ky.Op. 35.

Mich.—Zoski v. Gaines, 260 N.W. 99, 271 Mich. 1—Sweeney v. Adam Groth Co., 257 N.W. 855, 269 Mich. 436.

Miss.—Carmichael v. J. Cahn Co., 184 So. 417, 183 Miss. 535—Gulf, M. & N. R. Co. v. Willis, 158 So. 551—Golden Saw Mill Co. v. Jourdan, 127 So. 287, 156 Miss. 813.

Mo.—State ex rel. Missouri Mut. Ass'n v. Allen, 78 S.W.2d 862, 336 Mo. 352.

Betz v. Kansas City Home Tel. Co., 97 S.W. 207, 121 Mo.App. 473.

Mont.—Clack v. Clack, 41 P.2d 32, 98 Mont. 552.

Neb.—In re Lodge's Estate, 243 N.W. 781, 123 Neb. 531—Hershiser v. Chicago, B. & Q. R. Co., 170 N.W. 177, 102 Neb. 820.

N.H.—Robertson v. Monroe, 116 A. 92, 80 N.H. 258.

N.M.—Trauer v. Meyers, 147 P. 458, 19 N.M. 490.

N.Y.—Schoenherr v. Hartfield, 158 N. Y.S. 388, 172 App.Div. 294.

N.C.—Nowell v. Neal, 90 S.E.2d 247, 243 N.C. 175—Bechtel v. Weaver, 164 S.E. 338, 202 N.C. 856—Virginia-Carolina Power Co. v. Taylor, 139 S.E. 381, 194 N.C. 231—Rierson v. Carolina Steel & Iron Co., 114 S.E. 467—Brewer v. Ring, 99 S.E. 358, 177 N.C. 476.

Ohio.—Sims v. Norfolk & W. Ry. Co., 194 N.E. 27, 48 Ohio App. 395—Dungan v. Dungan, 173 N.E. 208, 36 Ohio App. 427.

Okl.—Wat Henry Pontiac, Inc. v. Pitcock, 301 P.2d 203—Regier v. Hutchins, 298 P.2d 777—Edmonston v. Holder, 218 P.2d 905, 203 Okl. 189—Bailey v. Lovin, 209 P.2d 994, 202 Okl. 17—Pine v. Robson, 105 P.2d 530, 187 Okl. 670—**Corpus Juris quoted in** Streeter v. Anderson, 43 P.2d 53, 56, 172 Okl. 113—**Corpus Juris quoted in** Heggem v. Kilpatrick, 271 P. 643, 649, 133 Okl. 145—Curtin v. Moroney, 246 P. 232, 117 Okl. 276.

Pa.—Paley v. Trautman, 177 A. 819, 317 Pa. 589.

Commonwealth v. Nickels, 5 Pa. Dist. & Co. 263.

Philippine.—Uy Aloc v. Cho Jan Ling, 19 Philippine 202.

R.I.—Gallo v. Simpson Spring Co., 181 A. 915, 55 R.I. 410.

S.C.—Wells v. Sumter Trust Co., 117 S.E. 519, 124 S.C. 244—Eleazer v. Shealy, 81 S.E. 648, 97 S.C. 335.

Tex.—Carter v. Ferris, Civ.App., 93 S.W.2d 504—Douglas Oil Co. v. State (California Case), Civ.App., 70 S.W.2d 452—Bridgeport Mach. Co. v. Geers, Civ.App., 36 S.W.2d 1047—A. Harris & Co. v. Caldwell, Civ.App., 276 S.W. 298.

Va.—Upton v. Southern Produce Co., 133 S.E. 576, 147 Va. 937.

W.Va.—Merchants' Nat. Bank of Point Pleasant v. Ralphsnyder, 169 S.E. 89—Horner v. Life, 85 S.E. 249, 76 W.Va. 231.

Wyo.—Stockgrowers' Bank of Wheatland v. Gray, 154 P. 593, 24 Wyo. 18.

4 C.J. p 908 note 63—29 C.J. p 725 note 27—42 C.J. p 1289 note 39—52 C.J. p 154 note 83, p 534 note 41—57 C.J. p 40 note 24—62 C.J. p 224 note 64—67 C.J. p 1074 note 10.

14. Ala.—Pacific Fire Ins. Co. v. Overton, 55 So.2d 123, 256 Ala. 400—Perry v. Warnock, 20 So.2d 867, 246 Ala. 470—Baxter v. State ex rel. Metcalf, 9 So.2d 119, 243 Ala. 120—Life & Casualty Ins. Co. of Tennessee v. Womack, 151 So. 880, 228 Ala. 70—Thomas v. McArdle, 93 So. 395, 207 Ala. 521—Sovereign Camp, W. O. W., v. Ward, 78 So. 824, 201 Ala. 446.

Tennessee, A. & G. Ry. v. Cardon, 177 So. 171, 27 Ala.App. 585, certiorari denied 177 So. 173, 235 Ala. 53—Night Commander Lighting Co. v. Coleman, 148 So. 749, 25 Ala.App. 454—Lambert v. Bowman-Moore Hat Co., 136 So. 738, 24 Ala. App. 311, certiorari denied 136 So. 741, 223 Ala. 420—Quisenberry v. Grant, 104 So. 284, 20 Ala.App. 576.

Ariz.—Leigh v. Loyd, 244 P.2d 356, 74 Ariz. 84—Dennis v. Stukey, 295 P. 971, 37 Ariz. 510—Hagan v. Cowan, 278 P. 68, 35 Ariz. 334.

Ark.—Home Ins. Co. of New York v. Williams, 145 S.W.2d 743, 201 Ark. 460—Coffee v. Arkansas Power & Light Co., 113 S.W.2d 1100, 195 Ark. 559—Sutton v. McClain, 99 S. W.2d 236, 193 Ark. 49—Dierks Lumber & Coal Co. v. Tollerson, 54 S.W.2d 61, 186 Ark. 429—Browne-Brun Wholesale Grocery Co. v. Hinton, 18 S.W.2d 369, 179 Ark. 831—Texas Pipe Line Co. v. Johnson, 275 S.W. 329, 169 Ark. 235—Minick v. Ramey, 269 S.W. 565, 168 Ark. 180—Church v. Jones, 268 S.W. 7, 167 Ark. 326—Coburn v. Gilbert, 263 S.W. 383, 165 Ark. 155—Haynes v. Gwin, 209 S.W. 67, 137 Ark. 387—Mills v. Roberts, 206 S.W. 751, 136 Ark. 433—Van Veneer Co. v. Jones, 194 S.W. 711, 128 Ark. 594.

Cal.—Mortimer v. Marder, 28 P. 814, 93 C. 172—Angell v. Hopkins, 21 P. 729, 79 C. 181.

Belcher v. Williams, App., 311 P. 2d 861—Schneider v. Civil Service Commission of Los Angeles County, 290 P.2d 306, 137 C.A.2d 277—Bank of America Nat. Trust & Savings Ass'n v. Cohen, 69 P.2d 875, 21 C.A.2d 510—Janssen v. R. K. O. Studios, 67 P.2d 757, 20 C.A.2d 705—Private Investors v. Homestake Mining Co., 60 P.2d 146, 16 C.A.2d 1—Mix v. Yoakum, App., 31 P.2d 1071, 138 C.A. 290—Allen v. Bay Cities Transit Co., 10 P.2d 520, 122 C.A. 590—Mankin v. Southwestern Automobile Ins. Co., 298 P. 42, 113 C.A. 243—Warner v. Taft Land & Development Co., 297 P. 969, 113 C.A. 71—Merchants' Nat. Trust & Savings Bank of Los Angeles v. Snell, 294 P. 413, 110 C.A. 483—Von Schrader v. Milton, 273 P. 1074, 96 C.A. 192—Yule v. Miller, 252 P. 733, 80 C.A. 609—Gallagher v. Barstow, 219 P. 1014, 63 C.A. 643—Alameda County v. Tieslau, 186 P. 398, 44 C.A. 332—National Bank of San Mateo v. Whitney, 180 P. 845, 40 C.A. 276.

In other words, while a judgment, decree, or order will be reversed for error which is prejudi-

Colo.—Hadden v. Gateway West Pub. Co., 273 P.2d 733, 130 Colo. 73—Stahl v. Cooper, 190 P.2d 891, 117 Colo. 468.

Conn.—Senderoff v. Senderoff, 50 A.2d 422, 133 Conn. 300—Lomas & Nettleton Co. v. City of Waterbury, 188 A. 433, 122 Conn. 228—O'Brien v. Doolittle, 99 A. 1055, 91 Conn. 354.

Fla.—Glass v. Parrish, 51 So.2d 717—Sullivan v. Florida East Coast Ry. Co., 129 So. 340, 100 Fla. 42—Stringfellow v. Adams, 127 So. 338, 99 Fla. 623—Johns v. Bowden, 73 So. 603, 72 Fla. 530.

Ga.—Childers v. Ackerman Const. Co., 86 S.E.2d 227, 211 Ga. 350—Phillips v. Phillips, 85 S.E.2d 427, 211 Ga. 305—Rushing v. Akins, 80 S.E.2d 813, 210 Ga. 450—Gamble v. Gamble, 61 S.E.2d 836, 207 Ga. 380, certiorari denied 71 S.Ct. 507, 340 U.S. 943, 95 L.Ed. 680—Morris v. City Council of Augusta, 48 S.E.2d 855, 204 Ga. 26—Bradley v. Thompson, 44 S.E.2d 898, 202 Ga. 785—Powers v. Wren, 31 S.E.2d 713, 198 Ga. 316—Holcombe v. Jones, 30 S.E.2d 903, 197 Ga. 825—Stovall v. New York Underwriters Ins. Co., 185 S.E. 241, 182 Ga. 163—Smith v. McWhorter, 160 S.E. 250, 173 Ga. 255—Southern Cotton Oil Co. v. Thomas, 117 S.E. 456, 155 Ga. 99—Bryant v. Pugh, 12 S.E. 927, 86 Ga. 525.

Simonton Const. Co. v. Pope, 97 S.E.2d 590, 95 Ga.App. 211—Carter v. State, 90 S.E.2d 672, 93 Ga.App. 12—Dye v. Hirsch, 90 S.E.2d 332, 92 Ga.App. 803—Gaulding v. Courts, 83 S.E.2d 288, 90 Ga.App. 472—Luckie v. Max Wright, Inc., 82 S.E.2d 660, 90 Ga.App. 243—Kaylor v. Romines, 70 S.E.2d 395, 85 Ga.App. 839—Aiken v. Richardson, 68 S.E.2d 228, 85 Ga.App. 180, appeal dismissed 73 S.Ct. 15, 344 U.S. 802, 97 L.Ed. 625, rehearing denied 73 S.Ct. 282, 344 U.S. 905, 97 L.Ed. 699—Wardlaw v. Wardlaw, 154 S.E. 159, 41 Ga.App. 538—Whitfield County v. Hogan, 87 S.E. 1087, 17 Ga.App. 685—Lamb v. Gorman, 85 S.E. 981, 16 Ga.App. 663.

Idaho.—W. T. Rawleigh Co. v. Van Duyn, 188 P. 945, 32 Idaho 767.

Ill.—Farmer v. Davis, 124 N.E. 640, 289 Ill. 392.

Gauger v. Mills, 90 N.E.2d 790, 340 Ill.App. 1—Kavanaugh v. Washburn, 50 N.E.2d 761, 320 Ill. App. 250, appeal denied 56 N.E.2d 420, 387 Ill. 204—Maher v. New York, C. & St. L. R. Co., 8 N.E.2d 512, 290 Ill.App. 267—Hansen v. Cole, 189 Ill.App. 19. See Dahlgren v. Israel, 204 Ill.App. 340.

Ind.—Lennox & Matthews & Associates v. Rozzelle, 108 N.E.2d 621, 231 Ind. 343—Click v. Arnold, 149 N.E. 178, 197 Ind. 350—Montgomery v. Pierson, 145 N.E. 771, 195 Ind. 475.

Shea v. E. Horn Real Estate & Inv. Co., 102 N.E.2d 506, 122 Ind. App. 636—**Corpus Juris Secundum cited in** Romey v. Glass, 91 N.E.2d 850, 853, 120 Ind.App. 279—**Corpus Juris Secundum cited in** Baker v. State Bank of Akron, 44 N.E.2d 257, 260, 112 Ind.App. 612—Willard v. Stauffer, 170 N.E. 332, 91 Ind.App. 119—Continental Life Ins. Co. v. Archibald, 162 N.E. 66, 87 Ind.App. 597—Grand Trunk Western Ry. Co. v. Thrift Trust Co., 115 N.E. 685, 68 Ind.App. 198, rehearing denied Grand Trunk Western Ry. Co. v. Thrift Co., 116 N.E. 756, 68 Ind.App. 198.

Iowa.—Lang v. Waller, 5 N.W.2d 145, 232 Iowa 956—Johnson v. Marshall, 4 N.W.2d 369, 232 Iowa 299—Central Trust Co. v. City of Des Moines, 216 N.W. 41, 204 Iowa 678—Blake v. City of Bedford, 151 N.W. 74, 170 Iowa 128—Wenks v. Hazard, 127 N.W. 1099, 121 N.W. 1058, 149 Iowa 16—Luce v. Moorehead, 35 N.W. 598, 73 Iowa 498, 5 Am.S.R. 695.

Kan.—Krueger v. Krueger, 255 P.2d 621, 174 Kan. 249—Crumley v. Weiner, 94 P.2d 307, 150 Kan. 427—Ligiejko v. Niczyperowicz, 271 P. 282, 126 Kan. 675—Cook v. Leavenworth Terminal Ry. & Bridge Co., 165 P. 803, 101 Kan. 103, rehearing denied 166 P. 498, 101 Kan. 437—Cox v. Chase, 163 P. 184, 99 Kan. 740.

Ky.—Glens Falls Ins. Co. v. Jacobs, 13 S.W.2d 1040, 227 Ky. 741, 76 A.L.R. 1170—Park v. Schell, 295 S.W. 161, 220 Ky. 317—Midkiff v. Carter, 222 S.W. 92, 188 Ky. 339—Owensboro City R. Co. v. Owensboro Fuel Co., 216 S.W. 72, 185 Ky. 717—Central Kentucky Traction Co. v. City of Winchester, 191 S.W. 636, 173 Ky. 806.

La.—State ex rel. Russell v. Richardson, 152 So. 748, 178 La. 1029.

Me.—Desmond v. Wilson, 60 A.2d 782, 143 Me. 262—McCully v. Bessey, 49 A.2d 230, 142 Me. 209—Perkins v. Kavanaugh, 196 A. 645, 135 Me. 344—Masse v. Wing, 149 A. 385, 129 Me. 33—Bessey v. Herring, 118 A. 423, 121 Me. 539—Feingold v. Supovitz, 104 A. 697, 117 Me. 371.

Md.—Hawk v. Wil-Mar, Inc., 123 A.2d 328, 210 Md. 364—Adams v. Benson, 117 A.2d 881, 208 Md. 261—Francies v. Debaugh, 71 A.2d 455, 194 Md. 448—Baltimore Transit Co. v. State for Use of Castranda, 71 A.2d 442, 194 Md. 421—Sieland v. Gallo, 71 A.2d 45, 194 Md. 282—Johnson & Higgins v. Simpson, 163 A. 832, 163 Md. 574—Singer Const. Co. v. Goldsborough, 128 A. 754, 147 Md. 628—Susquehanna Transmission Co. of Maryland v. Murphy, 101 A. 791, 131 Md. 340—American Express Co. v. Terry, 94 A. 1026, 126 Md. 254, Ann.Cas.1917C 650.

Mass.—MacDonald v. Adamian, 200 N.E. 888, 294 Mass. 187.

Mich.—Helmer v. Dearborn Nat. Ins. Co., 30 N.W.2d 399, 319 Mich. 696—Anthony v. Cochrane, 295 N.W. 197, 295 Mich. 386—Mazzolini v. Kalamazoo County, 199 N.W. 648, 228 Mich. 59—Cutler v. Spens, 158 N.W. 224, 191 Mich. 603—Blaisdell v. Scally, 47 N.W. 585, 84 Mich. 149—Wood v. Elliot, 16 N.W. 666, 51 Mich. 320—Grant v. Smith, 26 Mich. 201.

Minn.—Rampi v. Vevea, 38 N.W.2d 297, 229 Minn. 11—Loth v. Loth, 35 N.W.2d 542, 227 Minn. 387, 6 A.L.R. 2d 176—Henschke v. Young, 28 N.W.2d 766, 224 Minn. 339—Potter v. Potter, 27 N.W.2d 784, 224 Minn. 29—Fewell v. Tappan, 27 N.W.2d 648, 223 Minn. 483—Warters v. Fiebelkorn, 13 N.W.2d 461, 216 Minn. 489—Dahlstrom v. Hurtig, 295 N.W. 508, 209 Minn. 72—Rappaport v. Stockdale, 199 N.W. 513, 160 Minn. 78—Nininger v. Banning, 7 Minn. 274.

Miss.—Paramount Fire Ins. Co. v. Anderson, 51 So.2d 763, 211 Miss. 312—Metzger v. Sessions, 23 So. 2d 746, 198 Miss. 892—Robinson v. Cary-Reid Co., 177 So. 531—Mississippi Utilities Co. v. Smith, 145 So. 896, 166 Miss. 105—Ladnier v. Ingram Day Lumber Co., 100 So. 369, 135 Miss. 632.

Mo.—Smith v. St. Louis Public Service Co., 277 S.W.2d 498—Blanford v. St. Louis Public Service Co., 266 S.W.2d 718—Carlisle v. Tilghmon, 159 S.W.2d 663—Clark v. Skinner, 70 S.W.2d 1094, 334 Mo. 1190—State ex rel. St. Louis Public Service Co. v. Haid, 63 S.W.2d 15, 333 Mo. 845—First Nat. Bank v. Security Mut. Life Ins. Co. of Binghamton, N. Y., 222 S.W. 832, 283 Mo. 336.

State ex rel. Payne v. Wilson, App., 207 S.W.2d 785—Longmoor Corp. v. Jeffers, App., 205 S.W.2d 234—Morris v. Freyer, App., 151 S.W.2d 515—Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933, certiorari quashed State ex rel. St. Joseph Belt Ry. Co. v. Shain, 108 S.W.2d 351, 341 Mo. 733—Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933—Securities Inv. Co. of St. Louis v. International Shoe Co., App., 5 S.W.2d 682—Rudy v. Autenrieth, App., 287 S.W. 850—Anth v. Wells, App., 285 S.W. 768—Carpenter v. Burmeister, App., 273 S.W. 418—Yontz v. McVean, 217 S.W. 1000, 202 Mo.App. 377—Hudgings v. Burge, App., 194 S.W. 886.

Mont.—Halko v. Anderson, 93 P.2d 956, 108 Mont. 588—Hill v. Chappel

Bros. of Montana, 33 P.2d 319, 97 Mont. 305—Backer v. Parker-Morelli-Barclay Motor Co., 289 P. 571, 87 Mont. 595—First Nat. Bank v. Robke, 235 P. 327, 72 Mont. 527.

Neb.—James v. Hogan, 47 N.W.2d 847, 154 Neb. 306, modified on other grounds 48 N.W.2d 756, 154 Neb. 640—Long v. Guilliatt, 288 N.W. 689, 137 Neb. 199—Rich v. Dugan, 280 N.W. 225, 135 Neb. 63—Triplett v. Lundeen, 272 N.W. 307, 132 Neb. 434—Holman v. Stull, 267 N. W. 149, 130 Neb. 876—In re Slattery's Estate, 249 N.W. 597, 125 Neb. 194—Yost v. Nelson, 245 N. W. 9, 124 Neb. 33—Central Bridge & Construction Co. v. Saunders County, 184 N.W. 220, 106 Neb. 484—Johnson v. Lane, 158 N.W. 943, 100 Neb. 177.

Nev.—Nelson v. Reinhart, 219 P. 554, 47 Nev. 246, rehearing denied 221 P. 521, 47 Nev. 246—Kline v. Vansickle, 217 P. 585, 47 Nev. 139.

N.H.—Daniels v. Barker, 200 A. 410, 89 N.H. 416—Richardson v. Boston & M. R. R., 117 A. 733, 80 N.H. 370—Walcott v. Keith, 22 N.H. 196.

N.J.—Cole v. Epstein, 198 A. 835, 120 N.J.Law 219—McDonald v. Henry Becker & Son, 166 A. 345, 110 N.J. Law 535.

N.M.—Edwards v. Peterson, 295 P. 2d 858, 61 N.M. 104—Mares v. New Mexico Public Service Co., 82 P.2d 257, 42 N.M. 473.

N.Y.—De Graaf v. Wycoff, 22 N.E. 1118, 118 N.Y. 1.

Flamm v. Noble, 86 N.Y.S.2d 253, 274 App.Div. 1037—Dold v. Niagara County, 59 N.Y.S.2d 426, 270 App. Div. 344.

Kilpatrick v. Dean, 4 N.Y.S. 708, 15 Daly 182.

Saunders v. Payne, 12 N.Y.S. 735.

N.C.—Mesimore v. Palmer, 96 S.E.2d 356, 245 N.C. 488—Barrett v. Williams, 16 S.E.2d 405, 220 N.C. 32—Gudger v. Robinson Bros. Contractors, 13 S.E.2d 414, 219 N.C. 251—Foxman v. Hanes, 12 S.E.2d 258, 218 N.C. 722—Fisher v. Town of Waynesville, 4 S.E.2d 316, 216 N.C. 790—Rogers v. Freeman, 190 S.E. 728, 211 N.C. 468—Munday v. Bank of Franklin, 189 S.E. 779, 211 N.C. 276—White v. McCabe, 180 S.E. 704, 208 N.C. 301—Rudd v. American Fidelity & Casualty Co., 164 S.E. 345, 202 N.C. 779—Taylor v. Home Ins. Co., 163 S.E. 749, 202 N.C. 659—Butner v. Whitlow, 161 S.E. 389, 201 N.C. 749—Farmers' Bank of Clayton v. McCullers, 160 S.E. 494, 201 N.C. 440—Walker v. Walker, 159 S.E. 363, 201 N.C. 183—Combs v. Paul, 157 S.E. 12, 200 N.C. 382—Hayes v. Lancaster, 156 S.E. 530, 200 N.C. 293—Virginia-Carolina Power Co. v. Taylor, 139 S.E. 881, 194 N.C. 231—Carstarphen v. Carstarphen, 137 S.E. 658, 193 N.C. 541—L. Harvey & Son Co. v. Tull, 135 S.E. 534, 192 N.C. 826—Western Carolina Lumber Co. v. Sturgill, 130 S.E. 845, 190 N.C. 776—Gover v. Malever, 122 S.E. 841, 187 N.C. 774—Wilson v. Suncrest Lumber Co., 118 S.E. 797, 186 N.C. 56—Shaw Cotton Mills v. Acme Hosiery Mills, 106 S.E. 24, 181 N.C. 33—Schas v. Equitable Life Assur. Society of United States, 87 S.E. 222, 170 N.C. 420, Ann.Cas.1918A 679.

Ohio.—Cleveland Boat Service v. City of Cleveland, App., 130 N.E.2d 421, affirmed 136 N.E.2d 274, 165 Ohio St. 429—Alf v. Hunsicker, 80 N.E. 2d 511, 82 Ohio App. 197—Dornette v. Allais, 63 N.E.2d 805, 76 Ohio App. 345—Snell v. Bowser, App., 51 N.E.2d 407—Kain v. Cordes, App., 42 N.E.2d 1005—Gibson v. Johnson, 42 N.E.2d 689, 69 Ohio App. 19—State v. Wright, 17 N.E.2d 428, 59 Ohio App. 191, reversed on other grounds 20 N.E.2d 229, 135 Ohio St. 187—Arnold v. Wylie, 157 N.E. 571, 25 Ohio App. 10.

Okl.—Highway Ins. Underwriters v. Nichols, 255 P.2d 263, 208 Okl. 244—Reynolds v. Reynolds, 137 P. 2d 914, 192 Okl. 564—Higbee v. City of Bartlesville, 294 P. 168, 147 Okl. 49—Muskogee Electric Traction Co. v. Dunnam, 263 P. 1091, 129 Okl. 70—Conservative Loan Co. v. Sarkey, 219 P. 107, 92 Okl. 257.

Or.—Edvalson v. Swick, 227 P.2d 183, 190 Or. 473—Tomihiro v. United Hotel Corporation, 28 P.2d 880, 145 Or. 629—Krewson v. Purdom, 16 P. 480, 15 Or. 589.

Pa.—Richmond v. Otter, 70 A.2d 314, 364 Pa. 191—Farmers Nat. Bank & Trust Co. of New Holland v. New Holland Nat. Bank, 5 A.2d 198, 333 Pa. 428—Commonwealth Trust Co. of Pittsburgh v. Hachmeister Lind Co., 181 A. 787, 320 Pa. 233—Haun v. McCabe, 162 A. 906, 308 Pa. 431—Rubinsky v. Kosh, 151 A. 676, 301 Pa. 35—Statler v. Pennsylvania R. Co., 149 A. 494, 299 Pa. 321—Lewistown & Reedsville Electric Ry. Co. v. Mifflin County, 130 A. 926, 284 Pa. 88.

Sullivan v. Johns, 5 Whart. 366.

Peters v. Colonial Life Co. of America, 193 A. 460, 128 Pa.Super. 21—Mitchell v. Edeburn, 37 Pa. Super. 223.

Betterman v. American Stores Co., Com.Pl., 16 Cambria 113—Republic Fuel & Burner Co. v. Girard, Com.Pl., 41 Del.Co. 360.

S.C.—Armitage v. Seaboard Air Line Ry. Co., 164 S.E. 169, 166 S.C. 21—Snipes v. Augusta-Aiken Ry. & Electric Corporation, 149 S.E. 111, 151 S.C. 391—Charleston & W. C. Ry. Co. v. Gosnell, 90 S.E. 264, 106 S.C. 84, L.R.A.1917B 215.

S.D.—Sejnoha v. Buchanan, 23 N.W. 2d 142, 71 S.D. 220—Holbert v. Parish, 159 N.W. 871, 38 S.D. 13.

Tenn.—Wright v. Lindsay, 140 S.W. 2d 793, 24 Tenn.App. 77—McCuiston v. Haggard, 109 S.W.2d 413, 21 Tenn.App. 277.

Tex.—Wright v. Traders & General Ins. Co., 123 S.W.2d 314, 132 Tex. 172—Wichita Valley Ry. Co. v. Williams, 288 S.W. 425, 116 Tex. 353.

City of Houston v. Charpiot, Civ. App., 292 S.W.2d 677, error refused no reversible error—Dakoff v. National Bank of Commerce, Civ.App., 254 S.W.2d 550, error refused—Maryland Casualty Co. v. Abbott, Civ.App., 148 S.W.2d 465, error dismissed, judgment correct—Carter v. Ferris, Civ.App., 93 S.W.2d 504, error dismissed—Coffee v. Blair, Civ.App., 92 S.W.2d 496—City of Houston v. Pillot, Civ.App., 73 S. W.2d 585, reversed on other grounds, Com.App., 105 S.W.2d 870—Runnels Chevrolet Co. v. Clifton, Civ.App., 46 S.W.2d 426—Cockerham v. Gilchriest Chevrolet Co., Civ.App., 39 S.W.2d 186—American Indemnity Co. v. McCann, Civ.App., 27 S.W.2d 354, modified on other grounds, Com. App., 45 S.W.2d 174—Texas & N. O. R. Co. v. Miller Bros., Civ.App., 22 S.W.2d 989—Smalling v. Smalling, Civ.App., 3 S.W.2d 840—Leverett v. St. Louis, S. F. & T. Ry. Co., Civ.App., 266 S.W. 589—Lancaster v. Mays, Civ.App., 207 S.W. 676—Ferguson v. Johnson, Civ.App., 205 S.W. 512—Missouri, K. & T. Ry. Co. of Texas v. Williams, Civ.App., 194 S.W. 1154—Land v. Klein, 50 S.W. 638, 21 Tex.Civ.App. 3—Kean v. Zundelowitz, 29 S.W. 930, 9 Tex.Civ.App. 350.

Utah.—Bowden v. Denver & R. G. W. R. Co., 286 P.2d 240, 3 Utah 2d 444—Shaw v. O'Byrne, 228 P. 570, 64 Utah 139.

Vt.—Loeb v. Loeb, 114 A.2d 518, 118 Vt. 474—Vermont Salvage Corp. v. Northern Oil Co., 109 A.2d 267, 118 Vt. 339—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216—Wilson v. Dyer, 75 A.2d 677, 116 Vt. 342—Joly v. Jones, 55 A.2d 181, 115 Vt. 174—Long v. Leonard, 32 A.2d 679, 113 Vt. 258—Duchaine v. Ray, 6 A.2d 28, 110 Vt. 313—Commercial Finance Corporation v. Gale, 162 A. 899, 105 Vt. 3.

Va.—Quick v. Southern Churchman Co., 199 S.E. 489, 171 Va. 403—Jeffress v. Virginia Ry. & Power Co., 104 S.E. 393, 127 Va. 694.

Wash.—Fuller v. Friedman, 237 P. 293, 135 Wash. 116—Hafner v. U. S. Fidelity & Guaranty Co., 219 P. 16, 126 Wash. 670—Harringer v. Keenan, 201 P. 306, 117 Wash. 311.

W.Va.—Burcham v. City of Mullens, 83 S.E.2d 505, 139 W.Va. 399—Dudley v. Grace Hospital, 164 S.E. 670, 112 W.Va. 461.

Wyo.—Burbank v. Paige, 75 P.2d 387, 52 Wyo. 383.

4 C.J. p 908 note 63—5 C.J. p 206 note 81—8 C.J. p 1088 note 77—9 C.J. p 295 note 68, p 371 note 12—17 C.J. p 1318 note 11—18 C.J. p 1026 note 62—19 C.J. p 1227 note

cial,[14.5] not all errors are necessarily prejudicial,[14.10] and to constitute reversible error there must be a concurrence of both error and injury or prejudice therefrom.[14.15] In fact, "reversible error" has been defined as error materially affecting the merits of the action, and as excluding the consideration of any error or defect not affecting the substantial rights of the complaining party.[14.20]

The reviewing court must disregard error, in every stage of the action, which does not affect the substantial rights of the party complaining.[15]

27—23 C.J. p 609 note 53—26 C.J. p 573 note 58—28 C.J. p 1320 note 85, p 1271 note 27—30 C.J. p 1163 note 84—33 C.J. p 145 note 16—36 C.J. p 458 note 66—38 C.J. p 1190 note 18—39 C.J. p 214 note 85, p 108 note 31—40 C.J. p 517 note 40—42 C.J. p 874 note 21, p 1300 note 88—43 C.J. p 1325 note 54—44 C.J. p 1494 note 96—45 C.J. p 360 note 16—48 C.J. p 734 note 2—51 C.J. p 285 note 11, p 364 note 90—52 C.J. p 154 note 83—57 C.J. p 980 note 93, p 1095 note 7—63 C.J. p 1206 note 95—65 C.J. p 1077 note 45—67 C.J. p 637 note 93, p 1074 note 11—71 C.J. p 161 note 79.

Relaxation of common-law rules

While object of judicial procedure is to safeguard meticulously the fair trial of litigants' rights, as to error which is harmless, the adoption of harmless error statute has relaxed rigid rules of ancient common law to prevent reversal therefor.

Okl.—Carpenters' Local 1686 v. Wallis, 237 P.2d 905, 205 Okl. 285.

Interpretation of court rule

Reviewing court will seldom disturb interpretation of a rule as made by a member of court which promulgated it unless and until it affirmatively appears that a party has been prejudiced by failure to observe the rule.

Ohio.—Cameron v. Gordon, App., 33 N.E.2d 1016.

14.5 Ind.—Calumet Teaming & Trucking Co. v. Young, 33 N.E.2d 583, 218 Ind. 468.

Ky.—Connecticut Indem. Co. v. Kelley, 301 S.W.2d 584.

14.10 Ga.—Ginn v. City of Atlanta, 35 S.E.2d 777, 73 Ga.App. 162.

Neb.—Neighbors & Danielson v. West Nebraska Methodist Hospital, 77 N.W.2d 667, 346 Neb. 227.

Mere showing of abstract error, if any, does not constitute "prejudice."

Idaho.—Patrick v. Smith Baking Co., 129 P.2d 651, 64 Idaho 190.

14.15 Ala.—Austin v. Tennessee Biscuit Co., 52 So.2d 190, 255 Ala. 573—Bean v. Northcutt, 199 So. 7, 240 Ala. 289.

Cal.—Pearson v. Tide Water Associated Oil Co., App., 223 P.2d 669.

Ga.—McKenney v. Woodbury Banking Co., 68 S.E.2d 571, 208 Ga. 616—Avary v. Avary, 41 S.E.2d 314, 202 Ga. 22.

Md.—Nocar v. Greenberg, 124 A.2d 757, 210 Md. 506—State, for Use of Kalives, v. Baltimore Eye, Ear and Throat Hospital, 10 A.2d 612, 177 Md. 517.

In order to sustain exceptions, the ruling complained of must have been wrong, and the complaining party must have been aggrieved.

Me.—Estabrook v. Webber Motor Co., 15 A.2d 25, 137 Me. 20, 129 A.L.R. 1268.

14.20 Mo.—Shinn v. United Rys. Co. of St. Louis, 154 S.W. 103, 105, 248 Mo. 173.

54 C.J. p 745 notes 15, 17.

15. Ala.—Headley v. Headley, 88 So.2d 341, 264 Ala. 383—Bates v. Rentz, 81 So.2d 349, 262 Ala. 681—Whitlow v. Moore, 21 So.2d 253, 246 Ala. 472—Hunt v. Murdock, 156 So. 841, 229 Ala. 277—Navco Hardwood Co. v. Bass, 108 So. 452, 214 Ala. 553.

Ark.—Missouri Pac. R. Co. v. Williams, 21 S.W.2d 858, 180 Ark. 453.

Cal.—Lane v. Smith, 142 P.2d 944, 61 C.A.2d 340—Erskine v. Upham, 132 P.2d 219, 56 C.A.2d 235—Bank of America Nat. Trust & Savings Ass'n v. Gillett, 97 P.2d 875, 36 C.A.2d 453—Fox v. Ravera, 9 P.2d 590, 122 C.A. 35—Crooks v. White, 290 P. 497, 107 C.A. 304—Jones v. Express Pub. Co., 262 P. 78, 87 C.A. 246—Jones v. Peck, 218 P. 1030, 63 C.A. 397.

Fla.—M. F. S. Land Co. v. J. Ray Arnold Cypress Co., 139 So. 200, 103 Fla. 732—Mathers v. Botsford, 97 So. 282, 86 Fla. 40, 32 A.L.R. 881—McClellan v. Wood, 88 So. 295, 78 Fla. 407—Peacock v. Our Home Life Ins. Co., 75 So. 799, 73 Fla. 1207—City of Jacksonville v. Glover, 69 So. 20, 69 Fla. 701—Georgia Southern & F. Ry. Co. v. Ruff, 67 So. 575, 69 Fla. 93—Symmes v. Prairie Pebble Phosphate Co., 67 So. 228, 69 Fla. 4—Welles v. Bryant, 66 So. 562, 68 Fla. 113.

Ga.—Eberhardt v. Bennett, 137 S.E. 64, 163 Ga. 796.

Gulick v. Mulcahy, 97 S.E.2d 362, 95 Ga.App. 178.

Idaho.—Richardson v. Bohney, 140 P. 1106, 26 Idaho 35.

Ill.—Pease v. Kendall, 63 N.E.2d 2, 391 Ill. 193—Suiter v. Suiter, 154 N.E. 337, 323 Ill. 519.

Harlan E. Moore & Co. v. Champaign Nat. Bank, 141 N.E.2d 97, 13 Ill.App.2d 232—Fenwick v. Bluebird Coal Co., 140 N.E.2d 129, 12 Ill.App.2d 464—McClary v. Grand Lodge Brotherhood of Railroad Trainmen, 282 Ill.App. 77—Gritton v. Illinois Traction, 247 Ill.App. 395.

Ind.—Kalleres v. Glover, 196 N.E. 679, 208 Ind. 472—Harmon v. Speer, 144 N.E. 241, 195 Ind. 199.

International Harvester Co. of America v. Haas, 163 N.E. 613, 88 Ind.App. 267.

Kan.—Pulkrabek v. Lampe, 293 P.2d 998, 179 Kan. 204—Blakeman v. Lofland, 252 P.2d 852, 173 Kan. 725—Whipple v. Fehsenfeld, 249 P.2d 638, 173 Kan. 427, certiorari denied Fehsenfeld v. Whipple, 74 S.Ct. 23, 346 U.S. 813, 98 L.Ed. 341, rehearing denied 74 S.Ct. 271, 346 U.S. 918, 98 L.Ed. 413—Grannell v. Wakefield, 242 P.2d 1075, 172 Kan. 685—Martin v. Brisbois, 242 P.2d 1061, 172 Kan. 679—Rupp v. Rupp, 233 P.2d 709, 171 Kan. 357—Federal Deposit Ins. Corp. v. Cloonan, 222 P.2d 553, 169 Kan. 735—Leclercq v. Heimerman, 218 P.2d 243, 169 Kan. 149—Jones v. Crowell, 207 P.2d 435, 167 Kan. 415—Union Public Service Co. v. Public Service Commission of Kansas, 9 P.2d 976, 135 Kan. 123—Clark v. Milwaukee Mechanics' Ins. Co., 185 P. 1056, 105 Kan. 728.

Ky.—Clark County Farm Bureau Tobacco Co-op. v. Culton, 282 S.W.2d 140—Ballback's Adm'r v. Boland-Maloney Lumber Co., 208 S.W.2d 940, 306 Ky. 647—Cunningham v. Sublett's Adm'r, 208 S.W.2d 509, 306 Ky. 701—Big Sandy & C. R. Co. v. Thacker, 109 S.W.2d 820, 270 Ky. 404—Norfolk & N. W. Ry. Co. v. Hensley's Adm'r, 67 S.W.2d 11, 252 Ky. 223—Duvin Coal Co. v. Fike, 38 S.W.2d 201, 238 Ky. 376—Wakenva Coal Co. v. Johnson, 28 S.W.2d 737, 234 Ky. 558—Columbus Mining Co. v. Combs, 26 S.W.2d 26, 233 Ky. 476—Thoenis' Adm'x v. Andrews, 21 S.W.2d 250, 231 Ky. 160—Louisville & N. R. Co. v. Jones, 1 S.W.2d 972, 222 Ky. 531—Green v. Moore, 266 S.W. 337, 206 Ky. 724—Lakes v. Terrell, 251 S. W. 175, 199 Ky. 383—Johnson v. Gunnell, 197 S.W. 790, 177 Ky. 361.

La.—Atkins v. Pumila, 137 So. 865, 18 La.App. 193.

Md.—Kasten v. Kasten, 150 A. 854, 159 Md. 329—Chiswell v. Nichols, 115 A. 790, 139 Md. 442.

Mass.—Larson v. Jeffrey-Nichols Motor Co., 181 N.E. 213, 279 Mass. 362.

Moreover, to warrant reversal the error must be substantial[15.5] or obvious.[15.10] However, it is not required that, in addition to the substantial error, great injustice be shown.[15.15]

Whether, in any given instance, an error is harmless depends largely on the circumstances of the particular case.[16] Moreover, whether or not error complained of has produced substantial injury to ap-

Mich.—Porth v. Cadillac Motor Car Co., 176 N.W. 554, 209 Mich. 89.

Minn.—Shuster v. Vecchi, 279 N.W. 841, 203 Minn. 76.

Mo.—Bloecher v. Duerbeck, 92 S.W. 2d 681, 338 Mo. 535—Dorman v. East St. Louis Ry. Co., 75 S.W.2d 854, 335 Mo. 1082—Loveless v. Berberich Delivery Co., 73 S.W. 2d 790, 335 Mo. 650—Blankenship v. St. Louis Public Service Co., 71 S.W.2d 723—Clark v. Atchison & Eastern Bridge Co., 62 S.W.2d 1079, 333 Mo. 721, certiorari denied Atchison & Eastern Bridge Co. v. Clark, 54 S.Ct. 229, 290 U.S. 701, 78 L.Ed. 603—Neal v. Curtis & Co. Mfg. Co., 41 S.W.2d 543, 328 Mo. 389—State ex rel. Kansas City University of Physicians and Surgeons v. North, 294 S.W. 1012, 316 Mo. 1050.

Armes v. Missouri Ins. Co., App., 263 S.W.2d 873—Murphy v. Kroger Grocery & Baking Co., App., 185 S.W.2d 62—Plannett v. McFall, App., 284 S.W. 850—Callanan v. United Rys. Co. of St. Louis, App., 263 S.W. 443.

Mont.—Montana Live Stock & Loan Co. v. Stewart, 190 P. 985, 58 Mont. 221.

Neb.—Wolfe v. Mendel, 84 N.W.2d 109, 165 Neb. 16—Buhrman v. Smollen, 83 N.W.2d 386, 164 Neb. 655—Bartek v. Glasers Provisions Co., 71 N.W.2d 466, 160 Neb. 794—Hardin Trust Co. v. Wollard, 228 N.W. 866, 119 Neb. 307—In re O'Connor's Estate, 222 N.W. 57, 117 Neb. 636—In re Nebel's Estate, 183 N.W. 575, 106 Neb. 302.

Nev.—Barcellos v. Gompertz, 245 P. 700, 49 Nev. 326—Ramezzano v. Avansino, 189 P. 681, 44 Nev. 72—Peterson v. Pittsburg Silver Peak Gold Mining Co., 140 P. 519, 37 Nev. 117.

N.J.—Lertch v. McLean, 112 A.2d 735, 18 N.J. 68.

MacWhinney v. Jacobson, 156 A. 281, 9 N.J.Misc. 958, reversed on other grounds 162 A. 401, 109 N.J. Law 477.

N.Y.—Gaetano v. Perretta, 215 N.Y. S. 683, 217 App.Div. 718.

Hoffman v. Manheim, 159 N.Y.S. 686.

N.C.—Hinson v. Britt, 61 S.E.2d 185, 232 N.C. 379—Veazey v. City of Durham, 57 S.E.2d 377, 231 N.C. 357, rehearing denied 59 S.E.2d 429, 232 N.C. 744—Walker v. Walker, 159 S.E. 363, 201 N.C. 183—Combs v. Paul, 157 S.E. 12, 200 N.C. 382—Ramsey v. Carolina-Tennessee Power Co., 143 S.E. 861, 195 N.C. 788—Wilson v. Suncrest Lumber Co., 118 S.E. 797, 186 N.C. 56—In re Edens' Will, 109 S.E. 269, 182 N.C. 398.

Ohio.—Conner v. Republic Light & Furniture Co., 115 N.E.2d 700, 94 Ohio App. 385—Estridge v. Cincinnati St. Ry. Co., 63 N.E.2d 823, 76 Ohio App. 220.

Okl.—Duncan Bros. v. Robinson, 294 P.2d 822—Cauthron v. Goodwin, 287 P.2d 893—Montgomery Ward & Co. v. Beller, 276 P.2d 932—Oklahoma Ry. Co. v. Benson, 257 P.2d 1084, 208 Okl. 588—R & S Auto Service v. McGill, 238 P.2d 1089, 205 Okl. 495—Harmon v. Metcalfe, 226 P.2d 979, 204 Okl. 79—Fibikowski v. Fibikowski, 121 P.2d 304, 190 Okl. 152—Home Ins. Co. of New York, N. Y., v. Voto-Jacobus Motor Co., 117 P.2d 779, 189 Okl. 426—Hardy v. Bowzer, 73 P.2d 1158, 181 Okl. 360—Houghton v. Duffner-Cravens Co., 51 P.2d 817, 175 Okl. 148—**Corpus Juris quoted in** Streeter v. Anderson, 43 P.2d 53, 56, 172 Okl. 113—Pease v. Golightly, 35 P.2d 469, 168 Okl. 582, 94 A.L.R. 956—**Corpus Juris quoted in** Heggem v. Kilpatrick, 271 P. 643, 649, 133 Okl. 145—First Nat. Bank v. Fidelity Nat. Bank of Oklahoma City, 265 P. 1071, 130 Okl. 164—Town of Davis v. Thomason, 264 P. 877, 130 Okl. 21—Missouri Pac. R. Co. v. Fleak, 258 P. 260, 124 Okl. 213—Schaff v. Coyle, 249 P. 947, 121 Okl. 228—Mannford State Bank v. Arnold, 221 P. 76, 105 Okl. 131—Twin States Oil Co. v. Westerly Oil Co., 220 P. 839, 93 Okl. 297—Muskogee Electric Traction Co. v. Ellison, 218 P. 829, 92 Okl. 200—Rock Island Coal Mining Co. v. Toleikis, 171 P. 17, 67 Okl. 299—Effenberger v. Durant, 156 P. 212, 57 Okl. 445.

Smith v. State, 290 P.2d 170.

Pa.—Richter v. Mozenter, 53 A.2d 76, 356 Pa. 650—Newman v. Globe Indemnity Co., 119 A. 488, 275 Pa. 374.

Kerns v. Ripka, 85 Pa.Super. 97—Bayuk Bros. v. Wilson Martin Co., 81 Pa.Super. 195.

R.I.—Senn v. Kogut, 89 A.2d 842, 79 R.I. 429—Wallworth v. United Electric Rys. Co., 155 A. 402, 51 R.I. 463.

S.D.—Armstrong v. Edwards, 209 N. W. 339, 50 S.D. 255.

Tex.—Ginther v. Southwest Workover Co., Civ.App., 286 S.W.2d 291—Loughry v. Hodges, Civ.App., 215 S.W.2d 669, error refused no reversible error—National Surety Co. v. United Brick & Tile Co., Civ.App., 71 S.W.2d 937—Union Assur. Soc. v. Equitable Trust Co. Civ.App., 63 S.W.2d 869—Kenney v. La Grone, Civ.App., 62 S.W.2d 600—Shipley v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 199 S.W. 661, reversed on other grounds 217 S.W. 137, 110 Tex. 194.

Utah.—Startin v. Madsen, 237 P.2d 834, 120 Utah 631—Mace v. Tingey, 149 P.2d 832, 106 Utah 420.

W.Va.—State v. Musgrave, 153 S.E. 515, 109 W.Va. 247.

Wis.—Bursack v. Davis, 225 N.W. 738, 199 Wis. 115—Wood v. Coleman, 181 N.W. 716, 173 Wis. 554.

Wyo.—Tompkins v. Byrtus, 267 P. 2d 753, 72 Wyo. 537—Trepanier v. Standard Min. & Mill. Co., 123 P.2d 378, 58 Wyo. 29—Day v. Smith, 30 P.2d 786, 46 Wyo. 515.

2 C.J. p 970 note 76—4 C.J. p 908 note 64—33 C.J. p 469 note 31—39 C.J. p 1261 note 17, p 1262 note 19—47 C.J. p 595 note 20—51 C.J. p 1252 note 89—68 C.J. p 1193 notes 81, 82.

Nature of right affected

An appellate court will not reverse to vindicate a barren, naked legal right.

N.Y.—Schaffer Stores Co. v. Teti, 104 N.Y.S.2d 231, 278 App.Div. 832.

Failure of appellee to assert lack of prejudice

The mere fact that appellee failed to contend that the record did not present reversible error in the exclusion of testimony, because it failed to show what the testimony would have been or what was lost to appellant, did not relieve the court on appeal from considering whether the error was nonprejudicial, since the law raises the point.

Iowa.—Jacobs v. City of Cedar Rapids, 164 N.W. 891, 181 Iowa 407.

15.5 Ind.—Calumet Teaming & Trucking Co. v. Young, 33 N.E.2d 583, 218 Ind. 468.

Or.—Tycer v. Hartsell, 198 P.2d 263, 184 Or. 310.

15.10 La.—Gasquet v. General Contract Corp., App., 68 So.2d 141.

15.15 Ind.—Calumet Teaming & Trucking Co. v. Young, 33 N.E.2d 583, 218 Ind. 468.

16. Cal.—Pullen v. Heyman Bros., 162 P.2d 961, 71 C.A.2d 444—In re Shannon's Estate, 110 P.2d 1017, 43 C.A.2d 425.

Ill.—Grosh v. Acom, 156 N.E. 485, 325 Ill. 474.

Md.—McKay v. Paulson, 126 A.2d 296, 211 Md. 90.

Mont.—Hills v. Chappel Bros. of Montana, 33 P.2d 819, 97 Mont. 305.

N.H.—N. E. Redlon Co. v. Franklin Square Corp., 11 A.2d 821, 90 N.H. 519.

pellant is always a proper question for consideration on appeal;[16.5] and the appellate court may, and is required to, examine the record as a whole and determine therefrom whether any procedural errors probably resulted in an erroneous and prejudicial judgment.[16.10] Thus, the appellate courts have inherent power to decide that an error was of that character and to refuse to disturb a judgment because of it when they believe that a proper judgment has been rendered.[17]

Where the judgment is clearly correct on the merits, intervening errors will not operate to reverse the judgment.[18] Thus, the fact that an ac-

Tex.—Loyd v. Herrington, Civ.App., 178 S.W.2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135—Bruyere v. Liberty Nat. Bank of Waco, Civ.App., 262 S.W. 844.

Various factors stated

In determining whether error was probably harmless or probably prejudicial, an appellate court is guided by all factors in case bearing on likelihood of prejudice, force of evidence to sustain verdict, assumption that jury were intelligent, and where verdict is sustainable on more than one theory, that verdict is based on theory unaffected by error, where nothing in case suggests the contrary.

S.D.—Allen v. McLain, 69 N.W.2d 390, 75 S.D. 520.

Length of trial as factor

Questionable ruling in a long trial is rarely held so harmful as to constitute, of itself, reversible error.

Conn.—H. O. Canfield Co. v. United Const. Workers, 70 A.2d 547, 136 Conn. 293.

Absence of party during second trial

Fact that trial of action against truck driver and owner for death of driver of automobile with which truck collided in the dark at which trial truck driver testified resulted in verdict for defendants, whereas subsequent trial during truck driver's absence because of military service resulted in verdict for plaintiff, was some evidence that refusal to stay proceedings on ground of truck driver's military service was prejudicial to truck driver and owner.

Iowa.—Semler v. Oertwig, 12 N.W.2d 265, 234 Iowa 233.

Cumulative effect of errors

(1) While under some circumstances one error in the trial of a case standing alone, would not be sufficient to work a reversal of the judgment of the trial court, an accumulation of such minor errors may have the effect of creating an improper prejudice against a party to such an extent that the judgment should not be permitted to stand.

Tex.—White Cabs v. Moore, Civ.App., 199 S.W.2d 202, reversed on other grounds 203 S.W.2d 200, 146 Tex. 101.

(2) However, the record did not present such an accumulation of errors as to require a reversal of judgment by the appellate court.

Tex.—Utilities Natural Gas Corp. v. Hill, Civ.App., 239 S.W.2d 431, error refused no reversible error—White Cabs v. Moore, Civ.App., 199 S.W.2d 202, reversed on other grounds 203 S.W.2d 200, 146 Tex. 101.

Weight of evidence; conflicting evidence

(1) Evidence which is very nearly insufficient as a matter of law to sustain the verdict requires reversal for errors otherwise not reversible.

Tex.—Chapman v. Head, Civ.App., 279 S.W. 906.

(2) In close and doubtful cases error is reversible which otherwise would not warrant the setting aside of a verdict.

Ga.—Clough v. Greyhound Corp., 85 S.E.2d 476, 91 Ga.App. 246, reversed on other grounds 87 S.E.2d 387, 211 Ga. 574, conformed to and vacated on other grounds 88 S.E.2d 700, 92 Ga.App. 558.

Ill.—Edwards v. Hill-Thomas Lime & Cement Co., 37 N.E.2d 801, 378 Ill. 180.

N.Y.—Lerner v. Morris, 129 N.Y.S.2d 440, 283 App.Div. 885.

Ohio.—Book v. Erskine & Sons, 96 N.E.2d 289, 154 Ohio St. 391, 32 A.L.R.2d 1.

(3) Where the reviewing court is in serious doubt as to sufficiency of evidence to support judgment, court must carefully consider errors complained of and order a retrial if such errors probably prejudiced the case of party against whom they were committed.

Cal.—Herbert v. Lankershim, 71 P. 2d 220, 9 C.2d 409.

Belletich v. Pollock, 171 P.2d 57, 75 C.A.2d 142.

(4) The greater number of witnesses or quantity of evidence on one side, or sharp conflict in the evidence, does not mean that a case is "close" so that error which ordinarily might not be prejudicial would become prejudicial.

Cal.—Hatfield v. Levy Bros., 117 P. 2d 841, 18 C.2d 798.

Sheldon v. River Lines, 205 P.2d 37, 91 C.A.2d 478.

(5) Where evidence would sustain a verdict for either party, it is essential to a fair trial that issues be determined by an impartial jury, solely on the evidence in the case, without any appeal to passion or prejudice, and the record should be substantially free from prejudicial error.

Ill.—Keehn v. Braubach, 80 N.E.2d 156, 307 Ill.App. 339.

(6) On the other hand, the fact that the cold record may show that the evidence preponderated in favor of defendants does not foreclose the supreme court's consideration of any error or irregularity committed at the trial.

Mont.—Pilgeram v. Haas, 167 P.2d 339, 118 Mont. 431.

16.5 Cal.—Webber v. Webber, 199 P. 2d 934, 33 C.2d 153.

McVey v. McVey, 281 P.2d 898, 132 C.A.2d 120.

16.10 Ga.—Scott v. Holden, 26 S.E. 2d 456, 69 Ga.App. 615.

Or.—Frangos v. Edmunds, 173 P.2d 596, 179 Or. 577.

Tex.—Texas Power & Light Co. v. Hering, 224 S.W.2d 191, 148 Tex. 350.

Stowe v. Baldwin, Civ.App., 298 S.W.2d 943—State v. Parkey, Civ. App., 295 S.W.2d 457, error refused no reversible error—Poole v. State Highway Dept., Civ.App., 256 S.W. 2d 168, error dismissed.

Analysis of issues and evidence required

Only by technique of logical analysis of nature of issues and state of evidence in particular case can harmful or prejudicial effect, if any, of an erroneous ruling of trial court be determined.

N.J.—Corbett v. Van Kirk, 119 A.2d 467, 38 N.J.Super. 478.

17. Okl.—**Corpus Juris quoted in** Streeter v. Anderson, 43 P.2d 53, 56, 172 Okl. 113—**Corpus Juris quoted in** Heggem v. Kilpatrick, 271 P. 643, 649, 133 Okl. 145.
4 C.J. p 909 note 66.

18. U.S.—**Corpus Juris Secundum quoted in** Witmer v. United States, C.C.A.Pa., 96 F.2d 745, 746.

Ark.—Shapard v. Lesser, 193 S.W. 262, 127 Ark. 590, 3 A.L.R. 247.

Cal.—Dam v. Lake Aliso Riding School, 57 P.2d 1315, 6 C.2d 395—Clark v. Millsap, 242 P. 918, 197 C. 765.

Elliott v. Rodeo Land & Water Co., 297 P.2d 129, 141 C.A.2d 404—Gist v. French, 288 P.2d 1003, 136 C.A.2d 247—Stuart v. Dotts, 201 P.2d 820, 89 C.A.2d 683—Klein v. Caswell, 199 P.2d 689, 88 C.A.2d 774—Ravettino v. City of San Diego, 160 P.2d 52, 70 C.A.2d 37—Adams v. National Automobile Ins. Co., 133 P.2d 657, 56 C.A.2d 905—

tion was commenced prematurely does not require reversal of the judgment therein where, at the time the judgment was rendered, it was a proper judgment on the merits and there appears to be no prejudice from the prematurity.[18.5] So also, where errors which have been committed against both par-

Harris v. Smith, 112 P.2d 907, 44 C.A.2d 694—Inouye v. McCall, 96 P.2d 386, 35 C.A.2d 634—Nickell v. Rosenfield, 255 P. 760, 82 C.A. 369.

Colo.—Scott v. Gilmore, 192 P. 497, 68 Colo. 590.

Conn.—African Methodist Episcopal Church of Bridgeport v. Jenkins, 94 A.2d 618, 139 Conn. 418—W. F. Miller Co. v. Grussi, 98 A. 90, 90 Conn. 555.

Fla.—E. O. Roper, Inc. v. Wilson & Toomer Fertilizer Co., 156 So. 883, 116 Fla. 796—National Ben. Life Ins. Co. v. Brown, 139 So. 193, 103 Fla. 758—Peacock Hotel v. Shipman, 138 So. 44, 103 Fla. 633—Herman v. Peacock, 137 So. 704, 103 Fla. 438—Day v. Weadock, 134 So. 525, 101 Fla. 333.

Ga.—Sherman v. Bird, 139 S.E. 333, 164 Ga. 696.

Housing Authority of City of Calhoun v. Spink, 85 S.E.2d 80, 91 Ga.App. 72—Jennings v. Gibson, 47 S.E.2d 779, 77 Ga.App. 28.

Ill.—Johnson v. Chicago & N. W. Ry. Co., 132 N.E.2d 678, 9 Ill.App.2d 340—O'Brien v. Musfeldt, 102 N. E.2d 173, 345 Ill.App. 12—Williams v. Cowsert, 81 N.E.2d 264, 335 Ill. App. 229—Sparberg v. Cohen, 38 N.E.2d 993, 313 Ill.App. 143—Beery v. Breed, 36 N.E.2d 591, 311 Ill. App. 469—Central Illinois Public Service Co. v. Schell, 238 Ill.App. 560—Luly Stores Co. v. Hartman, 235 Ill.App. 319—Kincaid v. Dobrinsky, 225 Ill.App. 85—West v. Kenney, 220 Ill.App. 49. See Cable Lumber Co. v. Mack, 210 Ill. App. 151—Weber Chimney Co. v. Johnson, 205 Ill.App. 348—Sipes v. Barlow, 197 Ill.App. 239.

Ind.—Huntington v. Helma, 130 N.E. 807—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.

Northern Indiana Finance Co. v. Yakob, 13 N.E.2d 313, 105 Ind.App. 1—South Side State Bank v. Snyder, 176 N.E. 52, 92 Ind.App. 433—Talbot v. Talbot, 167 N.E. 535, 91 Ind.App. 333—State Bank of Westfield v. Westfield Stock Farm Co., 132 N.E. 308, 78 Ind.App. 4.

Iowa.—Miller v. Kramer, 134 N.W. 538, 154 Iowa 523.

Me.—Petition of Kimball, 49 A.2d 70, 142 Me. 182.

Mich.—Miskiewicz v. Smolenski, 227 N.W. 789, 249 Mich. 63.

Minn.—De Losier v. Metcalf, 80 N. W.2d 57, 248 Minn. 365—Gordon v. Pappas, 34 N.W.2d 293, 227 Minn. 95.

Mo.—Longmoor Corp. v. Jeffers, App., 205 S.W.2d 234—South Side Bank of Kansas City v. Ozias, App., 155 S.W.2d 519—Amber v. Davis, 282 S.W. 459, 221 Mo.App. 448—Potes v. Pyle, App., 202 S.W. 446.

Neb.—**Corpus Juris cited in** Leichner v. First Trust Co. of Lincoln, 274 N.W. 475, 476, 133 Neb. 170—Hershiser v. Chicago, B. & Q. R. Co., 170 N.W. 177, 102 Neb. 820.

N.M.—Lopez v. Townsend, 82 P.2d 921, 42 N.M. 601.

N.C.—Concrete Steel Co. v. Rose, 149 S.E. 555, 197 N.C. 464—Perry v. Southern Surety Co., 129 S.E. 721, 190 N.C. 284—Davis v. Greensboro Warehouse & Storage Co., 120 S.E. 462, 186 N.C. 676, certiorari denied Greensboro Warehouse & Storage Co. v. Davis, 44 S.Ct. 453, 264 U.S. 594, 68 L.Ed. 866—National Bank of Hopewell v. Carson, 108 S.E. 388, 182 N.C. 763—Powell v. Seaboard Air Line Ry. Co., 100 S.E. 424, 178 N.C. 243.

Ohio.—Kolberg v. Central Fruit & Grocery Co., 174 N.E. 144, 37 Ohio App. 64—Cleveland Ry. Co. v. Durschuk, 166 N.E. 909, 31 Ohio App. 248.

Gund v. Cleveland Store Fixture Co., 14 Ohio Cir.Ct.,N.S., 493.

Okl.—Hall v. Deal, 234 P.2d 384, 205 Okl. 46—Colonial Royalties Co. v. Hinds, 216 P.2d 958, 202 Okl. 660—Atlas Life Ins. Co. of Tulsa v. Miles, 161 P.2d 1022, 195 Okl. 645—Wilson v. Berryhill, 73 P.2d 449, 181 Okl. 213—**Corpus Juris cited in** Streeter v. Anderson, 43 P.2d 53, 56, 172 Okl. 113—Watson v. Butler, 40 P.2d 653, 170 Okl. 350—Dean v. Anson, 261 P. 174, 128 Okl. 23—Westlake v. Cole, 241 P. 809, 115 Okl. 109—Edwards v. Negim & Co., 231 P. 488, 105 Okl. 7—Ezell v. Midland Valley R. Co., 174 P. 781, 73 Okl. 40—Larimore Hardware Co. v. Loengrich, 152 P. 349, 51 Okl. 751—Dunn v. Modern Foundry & Machine Co., 151 P. 893, 51 Okl. 465.

Or.—In re Andersen's Estate, 198 P. 236, 101 Or. 94.

Pa.—Sautter v. Rowland, 131 A. 733, 285 Pa. 212.

Montour Furniture Co. v. Sakolsky, 189 A. 761, 125 Pa.Super. 512.

S.D.—Wyatt v. Meade County Bank, 166 N.W. 423, 40 S.D. 111.

Tenn.—Owens v. Owens, 106 S.W.2d 227, 21 Tenn.App. 104.

Tex.—Southern Surety Co. v. Adams, 34 S.W.2d 789, 119 Tex. 489.

Landers v. Overaker, Civ.App., 141 S.W.2d 451, error dismissed, judgment correct—Bishop v. Gilmer Co., Civ.App., 131 S.W.2d 173—City of Houston v. Pillot, Civ. App., 73 S.W.2d 585—Conley v. Texas Co., Civ.App., 289 S.W. 169.

Va.—Atlantic Life Ins. Co. v. Worley, 172 S.E. 168, 161 Va. 951—Stanley v. Tomlin, 129 S.E. 379, 143 Va. 187.

Wis.—Remmel v. Czaja, 198 N.W. 266, 183 Wis. 503.

4 C.J. p 908 note 65—40 C.J. p 517 note 38.

No reversal unless improper judgment

An appellate court should not reverse trial court's judgment, unless appellate court is of opinion that error complained of amounted to such a denial of appellant's rights as was reasonably calculated to cause and probably did cause rendition of improper judgment.

Tex.—York v. Glenn, Civ.App., 242 S.W.2d 653.

Judgment held improper

Fact that jury returned a verdict against one of defendants in death action, although there was no evidence of any negligent acts on part of that defendant and although findings of negligence were contrary to the overwhelming weight and preponderance of the evidence, indicated that jury verdict must have been influenced by improper considerations.

Tex.—Plains Creamery v. Denny, Civ. App., 277 S.W.2d 755.

Substantial supporting evidence

Where there is substantial evidence to support verdict, judgment will not be reversed on appeal by reason of errors or defects in proceedings which do not affect substantial rights of parties.

Idaho.—Union Seed Co. of Burley v. Savage, 283 P.2d 918, 76 Idaho 432—Hooton v. City of Burley, 219 P. 2d 651, 70 Idaho 369.

Reasons for rule

(1) The purpose of a review is to correct an erroneous result and not merely to approve or disapprove the grounds on which it is based.

Ind.—Baker v. State Bank of Akron, 44 N.E.2d 257, 112 Ind.App. 612.

N.M.—State Trust & Savings Bank v. Hermosa Land & Cattle Co., 240 P. 469, 30 N.M. 566.

(2) It is the policy of the law that cases should be tried on the merits, and not on defects in the pleading or violation of rules of evidence.

Tex.—Martin v. Farmers' Nat. Bank of Hillsboro, Civ.App., 294 S.W. 240.

18.5 Ky.—Burton v. Bradshaw, 98 S. W.2d 467, 266 Ky. 162.

Ohio.—Cleveland Boat Service v. City of Cleveland, App., 130 N.E.2d 421, affirmed 136 N.E.2d 274, 165 Ohio St. 429.

Particular actions held free of prejudice

(1) That an action for money had and received was commenced before

ties offset each other, the judgment must be affirmed,[18.10] although it has also been held that error cannot be set off against error to save a judgment.[18.15]

When the error could not or did not affect the final result it is harmless;[19] and where it could

the actual receipt of the money by defendants does not require reversal of a judgment rendered against defendants after they had received the money.
Cal.—Cavanagh v. Shaver, 207 P. 275, 56 C.A. 758.

(2) Assuming that extension of time of payment of a note was binding, and that action by indorser paying the note for contribution against the coindorser was prematurely brought, the coindorser was not prejudiced thereby, where nothing but time was wanting to fix the coindorser's liability, and that had elapsed, and the note had matured under last extension before the cause was tried.
Iowa.—Keefer v. Valentine, 203 N. W. 787, 199 Iowa 1337.

(3) In an action by sureties on a note to subject land mortgaged to them as an indemnity for payment of the debt which they had paid, a defendant, claiming some interest in the land and denying the sureties' right to maintain suit, was not prejudiced by the fact that suit was prematurely brought.
Ky.—McHargue v. Whitaker, 198 S. W. 895, 178 Ky. 169.

(4) Where defendant insurer admitted actual receipt of proofs of loss before a suit was filed, there could be no possible injury to it from premature filing of the suit, where costs were adjudged against plaintiffs.
Tex.—Royal Ins. Co. of Liverpool, England v. Humphrey, Civ.App., 201 S.W. 426.

(5) Although some necessary condition precedent to suit, such as a tender, is omitted, if the court expressly makes the enforcement of the judgment for plaintiff dependent upon the performance of that condition, the error is nonprejudicial and nonreversible.
Wash.—Hardinger v. Hainsworth, 191 P. 755, 111 Wash. 590.

(6) An action on a fire policy will not be remanded for new trial as premature, although the jury's finding that insurer had declined to pay loss was not warranted, where the case was thoroughly tried and justice done.
Wis.—Day v. Hustisford Farmers' Mut. Ins. Co., 212 N.W. 301, 192 Wis. 160.

(7) In action for injunction to remove obstruction of sewage easement, judgment was held not reversible for premature trial where obstruction was causing continuing damage to plaintiff's land and defendant showed no prejudice from prematurity.
Ky.—Burton v. Bradshaw, 98 S.W. 2d 467, 266 Ky. 162.

18.10 Colo.—Asiatic Tunnell Min. & Mill. Co. v. Stephenson, 165 P. 773, 63 Colo. 301.
Ga.—McRae v. Smith, 137 S.E. 390, 164 Ga. 23.
Ind.—Jackson v. Rutledge, 122 N.E. 579, 188 Ind. 415.
Mont.—Hale v. Belgrade Co., 242 P. 425, 75 Mont. 99.
4 C.J. p 908 note 65 [c].

Erroneous charge favorable to both parties

Any error in a charge as to credibility of witnesses was harmless, where the charge if erroneous was as favorable to plaintiff in error as to defendant in error.
Ga.—Central Mfrs.' Mut. Ins. Co. v. Graham, 99 S.E. 434, 24 Ga.App. 199.

18.15 Ala.—Sovereign Camp, W. O. W. v. Partridge, 127 So. 505, 221 Ala. 75.

Defense to which defendant not entitled

However where defendant received, over plaintiff's objection, the benefit of a defense to which he was not entitled, if error intervened in any ruling relating thereto, it was error without injury.
Ala.—Louisville & N. R. Co. v. Carter, 104 So. 754, 213 Ala. 393.

19. Ala.—Birmingham Elec. Co. v. Yoast, 57 So.2d 103, 256 Ala. 673, 30 A.L.R.2d 907—De Kalb County v. McClain, 78 So. 961, 201 Ala. 565.
Wertheimer Bag Co. v. Hill, 71 So. 618, 14 Ala.App. 623.
Cal.—Smith v. Smith, 161 P. 495, 173 C. 725.
Mercer Casualty Co. v. Lewis, 108 P.2d 65, 41 C.A.2d 918—Hoffman v. Van Duzee, 65 P.2d 1330, 19 C.A. 2d 517—Thompson v. M. K. & T. Oil Co., 42 P.2d 374, 5 C.A.2d 117.
Colo.—Scofield v. Scofield, 3 P.2d 794, 89 Colo. 409—North Boulder Farmers' Ditch Co. v. Leggett Ditch & Reservoir Co., 168 P. 742, 63 Colo. 522.
Conn.—Bryant v. Scribner, 60 A.2d 174, 134 Conn. 678.
Ga.—Whitner v. Whitner, 57 S.E.2d 458, 80 Ga.App. 831, reversed on other grounds 60 S.E.2d 464, 207 Ga. 97, vacated on other grounds 60 S.E.2d 467, 82 Ga.App. 136.
Idaho.—Applebaum v. Stanton, 276 P. 47, 47 Idaho 395—Joyce Bros. v. Stanfield, 189 P. 1104, 33 Idaho 68.
Ill.—Rotheli v. Chicago Transit Authority, 130 N.E.2d 172, 7 Ill.2d 172—Baker v. Baker, 107 N.E.2d 711, 412 Ill. 511—Lindroth v. Walgreen Co., 94 N.E.2d 847, 407 Ill. 121—Buerger v. Buerger, 148 N.E. 274, 317 Ill. 401—Hunt Drainage Dist. v. Cole, 118 N.E. 1037, 283 Ill. 105—Barnes v. Earle, 114 N.E. 168, 275 Ill. 381.
Colmar v. Greater Niles Tp. Pub. Corp., 141 N.E.2d 652, 13 Ill.App. 2d 267—Donnelly v. Pennsylvania R. Co., 97 N.E.2d 846, 342 Ill.App. 556, affirmed 105 N.E.2d 730, 412 Ill. 115, certiorari denied Pennsylvania R. Co. v. Donnelly, 73 S.Ct. 93, 344 U.S. 855, 97 L.Ed. 663.
Ind.—Fetter v. Powers, 78 N.E.2d 555, 118 Ind.App. 367.
Iowa.—McKlveen v. Townley, 7 N.W. 2d 186, 233 Iowa 328.
Ky.—Vittitow v. Carpenter, 291 S.W. 2d 34—Louisville & N. R. Co. v. Ray, 209 S.W.2d 714, 306 Ky. 857—McGrath v. Smith, 194 S.W. 806, 175 Ky. 572.
Me.—Perkins v. Kavanaugh, 196 A. 645, 135 Me. 344.
Mass.—La Plante v. Maguire, 89 N. E.2d 1, 325 Mass. 96—Hamlen v. Rednalloh Co., 197 N.E. 149, 291 Mass. 119, 99 A.L.R. 1230.
Mich.—Krause v. Hartford Acc. & Indem. Co., 49 N.W.2d 41, 331 Mich. 19—Horowitz v. Blay, 160 N.W. 438, 193 Mich. 493.
Minn.—Hlubeck v. Beeler, 9 N.W.2d 252, 214 Minn. 484—Brown v. City of Minneapolis, 161 N.W. 503, 136 Minn. 177.
Miss.—Stone v. Independent Linen Service Co., 55 So.2d 165, 212 Miss. 580—Mississippi Cent. R. Co. v. Roberts, 160 So. 604, 173 Miss. 487, appeal dismissed 56 S.Ct. 107, 296 U.S. 536, 80 L.Ed. 381—Lee v. Cleveland State Bank, 67 So. 146, 108 Miss. 623.
Mo.—Hatch v. Rhyne, 253 S.W.2d 170.
Kansas City Wholesale Grocery Co. v. H. T. Poindexter & Sons Merchandise Co., 107 S.W.2d 841, 232 Mo.App. 378—Bishop v. Musick Plating Works, 3 S.W.2d 256, 222 Mo.App. 370—Hayden v. Independent Gravel Co., App., 186 S.W. 1193.
N.H.—Brock v. Robinson, 88 A.2d 306, 97 N.H. 384.
N.M.—Wiggs v. City of Albuquerque, 263 P.2d 963, 57 N.M. 770.
N.Y.—Stillman v. Stillman, 148 N.E. 518, 240 N.Y. 268.
N.C.—Justice v. Mitchell, 78 S.E.2d 122, 238 N.C. 364—Rhodes v. American Upholstery Co., 150 S.E. 193, 197 N.C. 673—Virginia-Carolina Power Co. v. Taylor, 139 S.E. 381, 194 N.C. 231—Ewbank v. Lyman, 87 S.E. 348, 170 N.C. 505, Ann.Cas. 1917A 272.
Okl.—Sunray Packing Co. v. Wilson, 268 P.2d 264—Mortgage Bond Co.

affect only a particular issue, it is harmless so far as concerns any other issues in the case.[20] Thus, errors relating solely to an issue on which the verdict or finding was favorable to appellant do not constitute a ground for reversal;[20.5] and the appellate courts should not interfere unless the errors are such as may fairly be said to have had a controlling influence in securing the result,[20.10] or unless there is a reasonable likelihood that the result would have been different without the error.[20.15] It must appear with reasonable certainty that had the error not occurred the result might have been more favorable to the person complaining.[20.20]

Where the unsuccessful party is not entitled to succeed in any event, and the successful party is entitled to judgment on the merits as a matter of law, intervening errors are not prejudicial and neither require nor justify a reversal of the judgment;[21] and where no other verdict or conclusions

v. Stephens, 74 P.2d 361, 181 Okl. 419—Gourley v. Northwestern Nat. Life Ins. Co., 220 P. 645, 94 Okl. 46.

Pa.—Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Conway, 46 A.2d 166, 353 Pa. 647.

S.C.—Beard v. South Carolina Tax Commission, 95 S.E.2d 628, 230 S. C. 357—Banister v. Lollis, 190 S.E. 511, 183 S.C. 218—Mann v. Seaboard Air Line Ry. Co., 136 S.E. 234, 138 S.C. 241—Strode v. Barnes, 117 S.E. 420, 124 S.C. 403—Charleston & W. C. Ry. Co. v. Gosnell, 90 S.E. 264, 106 S.C. 84, L.R.A.1917B 215.

Tenn.—East Tennessee Natural Gas Co. v. Peltz, 270 S.W.2d 591, 38 Tenn.App. 100—Seals v. Sharp, 212 S.W.2d 620, 31 Tenn.App. 75.

Tex.—Johnson Aircrafts v. Wilborn, Civ.App., 190 S.W.2d 426, refused for want of merit—Weatherby v. Guerrero, Civ.App., 82 S.W.2d 1059—Maryland Casualty Co. v. Frizzell, Civ.App., 58 S.W.2d 135—Coffman v. Brannen, Civ.App., 50 S.W. 2d 913—Lockney State Bank v. Bolin, Civ.App., 184 S.W. 553.

Va.—Taylor v. Carter, 86 S.E. 120, 117 Va. 845.

W.Va.—Starcher v. South Penn Oil Co., 95 S.E. 28, 81 W.Va. 587.

Wis.—Rowart v. Kewaunee, G. B. & W. Ry. Co., 185 N.W. 189, 175 Wis. 286.

Wyo.—Trepanier v. Standard Min. & Mill. Co., 123 P.2d 378, 58 Wyo. 29.

4 C.J. p 909 note 68—42 C.J. p 1300 note 89.

Failure to pay into court

The failure to pay into court the amount received by plaintiff in settlement of her action which was set aside by the court for fraud did not prejudice defendant, where plaintiff recovered judgment for a much larger amount.

Ind.—Clark v. Bledsaw, 127 N.E. 310, 73 Ind.App. 282.

20. Ala.—O'Quinn v. Alston, 104 So. 653, 213 Ala. 346, 39 A.L.R. 1263—Ellard v. Goodall, 87 So. 196, 204 Ala. 644.

Iowa.—Miller v. Morine, 149 N.W. 229, 167 Iowa 287.

S.D.—Mundon v. Greenameyer, 184 N.W. 257, 44 S.D. 440.

Tex.—Wright v. McCoy, Civ.App., 131 S.W.2d 52.

20.5 Ga.—Bowen v. Holland, 193 S.E. 233, 184 Ga. 718.

Moore v. Green, 70 S.E.2d 782, 86 Ga.App. 70.

Ky.—Cable v. McCoun, 126 S.W.2d 818, 277 Ky. 410.

Me.—Perkins v. Kavanaugh, 196 A. 645, 135 Me. 344.

N.Y.—De Casiano v. Morgan, 127 N. E.2d 321, 308 N.Y. 526.

N.C.—Plemmons v. Murphy, 97 S.E. 648, 176 N.C. 671—Gaston Farmers' Union Warehouse Co. v. American Agr. Chemical Co., 97 S.E. 472, 176 N.C. 509.

R.I.—Finizia v. Braverman, 197 A. 472, 60 R.I. 162.

S.D.—Polluck v. Minneapolis & St. L. R. Co., 183 N.W. 859, 44 S.D. 249, reheard 186 N.W. 830, 45 S.D. 210.

Special finding on particular issue

Error with respect to the issue of defendants' negligence in the operation of automobile is not prejudicial to plaintiff in event of a general verdict for defendants accompanied by a finding in answer to a special interrogatory that defendants were negligent.

Ohio.—Wolfe v. Baskin, 28 N.E.2d 629, 137 Ohio St. 284.

Nominal damages

In action to determine title to land and in ejectment, where jury found issue of title in plaintiff's favor and awarded only one dollar damages, defendants could not complain of alleged error in instruction on damages.

Mo.—Wilcox v. Coons, 241 S.W.2d 907, 362 Mo. 381.

20.10 Mich.—In re Woodward Avenue in City of Detroit, 297 N.W. 468, 297 Mich. 235.

Reversal required

Where there is a reasonable probability that the jury were influenced by extraneous matter to the prejudice of one of the parties, judgment must be reversed.

S.C.—Entzminger v. Seigler, 195 S.E. 244, 186 S.C. 194.

20.15 Cal.—Powell v. Bartmess, 294 P.2d 150, 139 C.A.2d 394—Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778.

Utah.—Bowden v. Denver & R. G. W. R. Co., 286 P.2d 240, 3 Utah 2d 444.

20.20 U.S.—Schwartz v. Eitel, C.C.A. Wis., 132 F.2d 760.

N.C.—Johnson v. Heath, 81 S.E.2d 657, 240 N.C. 255—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478.

Wis.—Holtz v. Fogarty, 72 N.W.2d 411, 270 Wis. 647.

21. Ala.—Bromberg v. First Nat. Bank, 178 So. 48, 235 Ala. 226—Britt v. Daniel, 159 So. 684, 230 Ala. 79—Stephens v. Walker, 117 So. 22, 217 Ala. 466—Crew v. Buckeye Cotton Oil Co., 77 So. 23, 200 Ala. 649—Harris v. Jones, 70 So. 640, 195 Ala. 691—Butler-Kyser Mfg. Co. v. Central of Georgia Ry. Co., 67 So. 393, 190 Ala. 646—Christian v. Stith Coal Co., 66 So. 641, 189 Ala. 500.

Cal.—Dinkins v. Lamb, 238 P.2d 630, 108 C.A.2d 175—Ballew v. Davis, 173 P.2d 317, 76 C.A.2d 418.

Colo.—Taylor v. Bastian, 142 P. 419, 26 Colo.App. 185.

Conn.—Ball v. Town of Branford, 110 A.2d 459, 142 Conn. 13.

Ga.—Grizzel v. Grizzel, 9 S.E.2d 247, 190 Ga. 219.

Gulick v. Mulcahy, 97 S.E.2d 362, 95 Ga.App. 158—Whitner v. Whitner, 57 S.E.2d 458, 80 Ga.App. 831, reversed on other grounds 60 S.E. 2d 464, 207 Ga. 97, vacated on other grounds 60 S.E.2d 467, 82 Ga. App. 136—Moore v. Moore, 131 S.E. 922, 35 Ga.App. 39—Butler v. Berry School, 109 S.E. 544, 27 Ga.App. 560—McRee v. Parramore, 86 S.E. 402, 17 Ga.App. 161.

Ill.—Nelson v. Armistead, 63 N.E.2d 648, 327 Ill.App. 184—Eidman v. Drewes, 269 Ill.App. 264—Lindblom v. Purity Ice & Refrigerating Co., 217 Ill.App. 306—Waterman v. Fidelity & Casualty Co. of New York, 209 Ill.App. 284.

Ind.—Kalleres v. Glover, 196 N.E. 679, 208 Ind. 472.

Looney v. Prest-O-Lite Co., 117 N.E. 678, 65 Ind.App. 617—State v. Reichard, 109 N.E. 438, 59 Ind. App. 338.

Kan.—Eller v. Atchison, T. & S. F. Ry. Co., 157 P. 261, 98 Kan. 150.

Ky.—Raley v. Mitchell, 4 S.W.2d 677, 223 Ky. 685—Johnson v. Gunnell, 197 S.W. 790, 177 Ky. 361—Moody-Mitchell Lumber & Building Co. v.

could be sustained, or no other judgment could properly be entered, a reversal will not be warranted because of intervening errors.[22] So, also, if appellee is entitled to an affirmative charge or directed

City of Louisville, 183 S.W. 481, 169 Ky. 237—Gilbert v. Parrott, 182 S.W. 859, 168 Ky. 599.

Me.—Pejepscot Paper Co. v. Town of Lisbon, 142 A. 194, 127 Me. 161—Great Northern Mfg. Co. v. Brown, 92 A. 993, 113 Me. 51.

Md.—White v. Snyder, 92 A. 763, 124 Md. 395.

Mich.—Board of Sup'rs of Chippewa County v. Bennett, 152 N.W. 229, 185 Mich. 544, rehearing denied 153 N.W. 814, 185 Mich. 544.

Mo.—Peetz Bros. Livery & Undertaking Co. v. Vahlkamp, 11 S.W.2d 26, 321 Mo. 287—Phillips v. Pulitzer Pub. Co., 238 S.W. 127—Brigham City Fruit Growers' Ass'n v. G. H. Zollmann Produce Co., 220 S.W. 911—Goodwin v. Ross, 193 S.W. 573—Laclede Land & Improvement Co. v. Schneider, 177 S.W. 388.

Koehler v. Franklin Paving Co., App., 269 S.W. 400—Callaway & Perkins v. Collier, App., 246 S.W. 966—Locher v. New York Life Ins. Co., 208 S.W. 862, 200 Mo.App. 659—Crosby v. Evans, App., 195 S.W. 514, certified questions answered 219 S.W. 948, 281 Mo. 202—Smith v. Rose, 184 S.W. 910, 192 Mo.App. 580.

Neb.—Borsen v. Moskowitz, 79 N.W. 2d 178, 163 Neb. 223—Eilts v. Bendt, 76 N.W.2d 623, 162 Neb. 538—Sarpy County v. Wright, 19 N.W.2d 146, 146 Neb. 193—Campagna v. Home Owners' Loan Corp., 300 N.W. 894, 140 Neb. 572, modified on other grounds 3 N.W.2d 750, 141 Neb. 429—Kuhns v. Live Stock Nat. Bank of Omaha, 295 N.W. 818, 138 Neb. 797.

N.Y.—Ferrier v. City of White Plains, 28 N.Y.S.2d 218, 262 App.Div. 94, appeal denied 30 N.Y.S.2d 399, 262 App.Div. 962—Jacobs v. Jacobs, 299 N.Y.S. 187, 252 App.Div. 794—Gotham Const. Corporation v. City of New York, 249 N.Y.S. 570, 233 App.Div. 699.

N.C.—Sanderson v. Ætna Life Ins. Co., 10 S.E.2d 802, 218 N.C. 270—Rankin v. Oates, 112 S.E. 32, 183 N.C. 517.

N.D.—Norgart v. Hoselton, 39 N.W. 2d 427, 77 N.D. 1—**Corpus Juris cited in** Baird v. Nelson, 235 N.W. 351, 353, 60 N.D. 503.

Ohio.—Peitsmeyer v. Omar Baking Co., 117 N.E.2d 184, 95 Ohio App. 37—Silver v. Thomas, 9 Ohio App. 187.

Okl.—Lambert v. Rainbolt, 250 P.2d 459, 207 Okl. 451—**Corpus Juris cited in** Streeter v. Anderson, 43 P. 2d 53, 56, 172 Okl. 113—Cook v. Redfield, 229 P. 588, 103 Okl. 77—Purdy v. Miller Hunter Co., 221 P. 490, 94 Okl. 209—Smith v. Sutton, 169 P. 886, 67 Okl. 191.

Or.—Bohart v. Parker, 149 P. 85, 76 Or. 371.

Pa.—Jaski v. West Park Daily Cleaners & Dyers, 5 A.2d 105, 334 Pa. 12.

S.C.—Stone v. Columbia, N. & L. R. Co., 91 S.E. 320, 106 S.C. 433.

Tex.—Alvey v. Goforth, Civ.App., 263 S.W.2d 313, reversed on other grounds Goforth v. Alvey, 271 S.W. 2d 404, 153 Tex. 449—Hooper v. Courtney, Civ.App., 256 S.W.2d 462—Phillips v. Interstate Securities Co. of Tex., Civ.App., 250 S.W.2d 444—Stephens v. Kansas City Life Ins. Co., Civ.App., 233 S.W. 352, dismissed for want of jurisdiction—Coffman v. Brannen, Civ.App., 50 S.W.2d 913—Hubbard v. Bates, Civ. App., 28 S.W.2d 843—Dalton v. Davis, Civ.App., 294 S.W. 1115, reversed on other grounds, Com.App., 1 S.W.2d 571—Feris v. Bassett, Civ. App., 227 S.W. 233—W. T. Rawleigh Medical Co. v. Mayberry, Civ. App., 193 S.W. 199.

Vt.—Vermont Mut. Fire Ins. Co. v. Van Dyke, 165 A. 906, 105 Vt. 257, followed in Green Mountain Mut. Fire Ins. Co. v. Van Dyke, 165 A. 909, 105 Vt. 264.

Wash.—Cloakey v. Bouslog, 234 P.2d 880, 39 Wash.2d 66.

Wis.—Carlson v. Dorsch, 79 N.W.2d 99, 274 Wis. 22.

4 C.J. p 909 note 67.

No primary negligence

Where contributory negligence is pleaded as an affirmative defense but the verdict of the jury for defendants clearly shows that it is based on a finding that there was no primary negligence on defendant's part, question of contributory negligence loses much of its importance.

Okl.—Boyett v. Airline Lumber Co., 277 P.2d 676.

Collusion, fraud, and perjury

Appellate court would not disturb judgment for defendant insurance company, although errors appeared in record, where there was clear case of collusion, fraud, and perjury on part of plaintiff and individual defendant to aid plaintiff's recovery.

Ohio.—Beauregard v. Beauregard, 10 N.E.2d 227, 56 Ohio App. 158.

Action barred

Where evidence established that cross action was barred by limitations, errors complained of by cross-complainant were harmless.

Cal.—Merchants' Ice & Cold Storage Co. v. Globe Brewing Co., 177 P.2d 963, 78 C.A.2d 618.

Complaint not stating cause of action

Where the complaint fails to state a cause of action, a judgment for defendant will not be disturbed.

Cal.—O'Moore v. Driscoll, 28 P.2d 438, 135 C.A. 770.

4 C.J. p 909 note 67 [b].

No case for jury

Generally trial errors are immaterial if no case was made for the jury.

Mo.—Floyd v. St. Louis Public Service Co., 280 S.W.2d 74—Branstetter v. Gerdeman, 274 S.W.2d 240, 364 Mo. 1230—Hoock v. S. S. Kresge Co., 230 S.W.2d 758—Cottonwood Fibre Co. v. Thompson, 225 S.W.2d 702, 359 Mo. 1062.

Rexite Casting Co. v. Midwest Mower Corp., App., 267 S.W.2d 327—Weinel v. Hesse, App., 174 S.W.2d 903.

22. Cal.—Shaha v. Frey, 277 P.2d 428, 129 C.A.2d 509.

Colo.—Minnear v. Minnear, 281 P.2d 517, 131 Colo. 319.

Fla.—Reese v. Levin, 168 So. 851, 124 Fla. 96.

Ga.—Reeves v. Lancaster, 126 S.E. 480, 159 Ga. 540.

Progressive Life Ins. Co. v. Bohannon, 44 S.E.2d 180, 75 Ga.App. 625—Maryland Cas. Co. v. Smith, 192 S.E. 449, 56 Ga.App. 154.

Ill.—Johnson v. Chicago & N. W. Ry. Co., 132 N.E.2d 678, 9 Ill.App.2d 340—Swift & Co. v. Dollahan, 120 N.E.2d 249, 2 Ill.App.2d 574—Board of Ed. of School Dist. 85½ v. Idle Motors, 90 N.E.2d 121, 339 Ill.App. 359—People of City of Olney v. City of Olney, 53 N.E.2d 728, 322 Ill.App. 43—Rapers v. Holmes, 10 N.E.2d 707, 292 Ill.App. 116—Maxon v. U. S. Underwriters' Co., 246 Ill.App. 385—Shultz v. Hamilton, 223 Ill.App. 64—Bartee Tie Co. v. Jackson, 206 Ill.App. 393, affirmed 117 N.E. 1007. See Weber v. Krueger, 202 Ill.App. 57.

Ind.—Lane v. Gugsell, 47 N.E.2d 835, 113 Ind.App. 676—Willard v. Stauffer, 170 N.E. 332, 91 Ind.App. 119.

Mass.—S. Solomont & Sons Trust v. New England Theatres Operating Corp., 93 N.E.2d 241, 326 Mass. 99.

Mich.—Donnelly v. Michigan Malleable Iron Co., 148 N.W. 165, 181 Mich. 333.

Mo.—Keen v. City of St. Louis, App., 189 S.W.2d 139.

Neb.—Reller v. Ankeny, 68 N.W.2d 686, 160 Neb. 47—Patrick v. Shallcross, 243 N.W. 907, 123 Neb. 742—Dodder v. Pacific Mut. Life Ins. Co. of California, 176 N.W. 730, 104 Neb. 74—Dodder v. Ætna Life Ins. Co. of Hartford, Conn., 175 N.W. 651, 104 Neb. 70—Underfeed Stoker Co. of America v. Farmers' Co-operative Creamery & Supply Co., 152 N.W. 741, 98 Neb. 377.

Ohio.—Walters v. Homberg, 19 Ohio Cir.Ct.,N.S., 514, 3 Ohio App. 326.

verdict in his favor, errors intervening at the trial afford no ground for reversal.[23]

Materiality and relevancy of error. To be reversible, error must appear to be material and prejudicial to appellants' rights;[23.5] and error with respect to matters having no bearing on the ultimate disposition of the case below is immaterial and will not be considered on appeal.[24] Thus, where there

Or.—State ex rel. Moltsner v. Mott, 97 P.2d 950, 163 Or. 631.
Pa.—Sellers v. Hanratty, 22 A.2d 697, 343 Pa. 316.
S.C.—Lyles v. Fellers, 136 S.E. 13, 138 S.C. 31.
Tex.—Thomas v. Stanolind Oil & Gas Co., 198 S.W.2d 420, 145 Tex. 270.
Keel v. Kilgore Transfer & Storage Co., Civ.App., 238 S.W.2d 738, error refused—Cook v. Wilmeth, Civ.App., 166 S.W.2d 359—Burton-Lingo Co. v. Federal Glass & Paint Co., Civ.App., 54 S.W.2d 176—Higginbotham Cattle Co. v. Whaley & Lewis, Civ.App., 26 S.W.2d 308, reversed on other grounds, Com.App., 41 S.W.2d 34—Harris v. Western Union Telegraph Co., Civ.App., 281 S.W. 877—O'Brien v. Jones, Civ. App., 274 S.W. 242—Brabson v. Brownfield, Civ.App., 259 S.W. 251—Tinsley v. Mays, Civ.App., 251 S. W. 577—Clifton George Co. v. Great Southern Life Ins. Co., Civ.App., 247 S.W. 912.
Va.—J. B. Colt Co. v. Elam, 120 S.E. 857, 138 Va. 124.
W.Va.—Pickens v. Wisman, 145 S.E. 177, 106 W.Va. 133—Belknap v. Baltimore & O. R. Co., 91 S.E. 656, 79 W.Va. 691, L.R.A.1917D 916.
4 C.J. p 909 note 69.

Same verdict reached at two trials
Cal.—Naudack v. Canini, 85 P.2d 510, 29 C.A.2d 687.

Evidence insufficient
Where bill of exceptions contains all the evidence but evidence is insufficient to authorize verdict, all errors become harmless.
Ohio.—Loving v. Kamm, App., 34 N. E.2d 591.

Only one inference possible from facts
That defendants' attorneys at trial, without authority, made damaging admissions of facts was not ground for reversal where the record as a whole showed that no other inference concerning such facts could have been reached from the entire evidence.
Cal.—Title Guarantee & Trust Co. v. Monson, 81 P.2d 944, 11 C.2d 621.

22. Ala.—Davis v. Birmingham Elec. Co., 33 So.2d 355, 250 Ala. 98—First Nat. Bank of Birmingham v. Hendrix, 4 So.2d 407, 241 Ala. 675—Sovereign Camp, W. O. W., v. Wiggins, 191 So. 470, 238 Ala. 424—McBurney v. Central of Georgia Ry. Co., 136 So. 796, 223 Ala. 390—Singer v. National Bond & Investment Co., 118 So. 561, 218 Ala. 375—Brent v. Whittington, 108 So. 567, 214 Ala. 613—Sovereign Camp, W. O. W. v. Alford, 98 So. 130, 210 Ala. 378—Cunningham Hardware Co. v. Louisville & N. R. Co., 96 So. 358, 209 Ala. 327—Chandler v. Pope, 87 So. 539, 205 Ala. 49—Hood v. Warren, 87 So. 524, 205 Ala. 332—Alabama Red Cedar Co. v. Tennessee Valley Bank, 76 So. 980, 200 Ala. 622—Travis v. Alabama Great Southern R. Co., 73 So. 983, 199 Ala. 38—Donahoo Horse & Mule Co. v. Durick, 69 So. 545, 193 Ala. 456.
Kelton v. Baker, 54 So.2d 632, 36 Ala.App. 268.
Ark.—Carodine v. Southern Nat. Ins. Co., 99 S.W.2d 586, 193 Ark. 376.
Cal.—Blochman Commercial & Savings Bank v. Moretti, 170 P. 419, 177 C. 256.
Ga.—Dye v. Hirsch, 90 S.E.2d 332, 92 Ga.App. 803.
Ind.—Looney v. Prest-O-Lite Co., 117 N.E. 678, 65 Ind.App. 617.
Iowa.—Lyons v. Shearman, 62 N.W. 2d 196, 245 Iowa 376—Hayungs v. Falk, 27 N.W.2d 15, 238 Iowa 285—In re Hill's Estate, 297 N.W. 278, 230 Iowa 189—Young v. Clark, 285 N.W. 633, 226 Iowa 1066—Paulson v. Hanson, 285 N.W. 189, 226 Iowa 858—Comparet v. Wm. H. Metz Co., 271 N.W. 847, 222 Iowa 1328—Foley v. Mathias, 233 N.W. 106, 211 Iowa 160, 71 A.L.R. 696—Conway Bros. v. Iowa Hardware Mut. Ins. Ass'n, 181 N.W. 768, 190 Iowa 1369—Mulroney Mfg. Co. v. Weeks, 171 N.W. 36, 185 Iowa 714.
Ky.—West v. Whitley Lodge No. 148 of Knights of Pythias of Corbin, 178 S.W.2d 203, 296 Ky. 671.
Mich.—Erickson v. Leach, 281 N.W. 324, 285 Mich. 554—Hollingsworth v. Liberty Life Ins. Co. of Illinois, 217 N.W. 908, 241 Mich. 675.
Mo.—Merriam v. Star-Chronicle Pub. Co., 74 S.W.2d 592, 335 Mo. 937.
Kansas City Stockyards Co. of Maine v. Federal Grain Co., App., 279 S.W. 771—Grohmann v. The Maccabees, App., 237 S.W. 875—Tilles v. American Express Co., App., 186 S.W. 1102.
N.C.—Johnson v. Heath, 81 S.E.2d 657, 240 N.C. 255—Freeman v. Preddy, 76 S.E.2d 159, 237 N.C. 734—Gray v. Duke Power Co., 57 S.E.2d 316, 231 N.C. 423.
Okl.—Board of County Com'rs of Atoka County v. Cypert, 166 P. 195, 65 Okl. 168.
Pa.—Lesh Lumber Co. v. Aberdeen Lumber Co., 75 Pa.Super. 13.
Tex.—Prudential Fire Ins. Co. v. United Gas Corp., Civ.App., 191 S.W.2d 517, reversed on other grounds 199 S.W.2d 767, 145 Tex. 257—Barreda Corp. v. Ballenger, Civ.App., 116 S.W.2d 442, error dismissed—Southern Old Line Life Ins. Co. v. Mims, Civ.App., 101 S. W.2d 396, error dismissed—Bassmer v. Kotulek, Civ.App., 75 S.W.2d 295—Wiley v. Smith, Civ.App., 55 S.W.2d 879.
Vt.—Russell v. Pilger, 37 A.2d 403, 113 Vt. 537.
Wyo.—Blackstone v. First Nat. Bank of Cody, 192 P.2d 411, 64 Wyo. 318.
4 C.J. p 910 note 70.

23.5 Cal.—Leoni v. Delany, 188 P. 2d 765, 83 C.A.2d 303, rehearing denied 189 P.2d 517, 83 C.A.2d 303.
N.C.—Rea v. Simowitz, 38 S.E.2d 194, 226 N.C. 379—Woods v. Roadway Express, 25 S.E.2d 856, 223 N.C. 269—In re Cooper's Will, 25 S.E.2d 166, 223 N.C. 34—Mebane Graded School Dist. v. Alamance County, 189 S.E. 873, 211 N.C. 213.
S.C.—Anderson v. Elliott, 90 S.E.2d 367, 228 S.C. 371.
Tenn.—State v. Delinquent Taxpayers, 167 S.W.2d 690, 26 Tenn.App. 62—State v. Harr, 143 S.W.2d 893, 24 Tenn.App. 298.

24. Ala.—First Nat. Life Ins. Co. v. Burnett, 140 So. 616, 25 Ala.App. 42.
Cal.—Universal Sales Corp. v. California Press Mfg. Co., 118 P.2d 291, reheard 128 P.2d 665, 20 C.2d 751.
Wilson v. Sampson, 205 P.2d 753, 91 C.A.2d 453—Gillis v. Royalty Service Corp., 204 P.2d 968, 91 C.A. 2d 365—In re Bourn's Estate, 78 P.2d 193, 25 C.A.2d 590—Furlong v. White, 196 P. 903, 51 C.A. 265—Duff v. Anderson, 195 P. 445, 50 C.A. 397.
Colo.—Sibley v. Wallrich, 226 P. 152, 75 Colo. 421.
Degge v. Carstarphen Electric Co., 140 P. 478, 27 Colo.App. 563.
Fla.—Evans v. Kloeppel, 73 So. 180, 72 Fla. 267.
Ga.—Dawson Paper Shell Pecan Co. v. Montezuma Fertilizer Co., 90 S.E. 984, 19 Ga.App. 42.
Ind.—Martin v. Ortlieb, 1 N.E.2d 1000, 210 Ind. 199—Massachusetts Bonding & Insurance Co. v. State, 131 N.E. 398, 191 Ind. 595.
Matthews v. National Lumber Stores, 8 N.E.2d 397, 103 Ind.App. 450—Coca Cola Bottling Co. v. Wheeler, 193 N.E. 385, 99 Ind. App. 502.
Iowa.—Finley v. Thorne, 226 N.W. 103, 209 Iowa 343—Jolly v. Doolittle, 149 N.W. 890, 169 Iowa 658—Herman & Ben Marks v. Haas, 147 N.W. 740, 166 Iowa 340.

is a total failure of allegation or proof as to some essential element of a cause of action or ground of defense, any alleged error in the trial court's disposition of such cause or defense, which does not prevent the establishment of such element, will not be considered by the reviewing court;[25] nor

Kan.—Shotzman v. Ward, 239 P.2d 935, 172 Kan. 272—Thompson v. Barnette, 227 P.2d 120, 170 Kan. 384—McGuire v. White, 11 P.2d 698, 135 Kan. 517—Shanks v. Williams, 144 P. 1007, 93 Kan. 573.

Ky.—McFadden v. Farmers State Bank of London, 129 S.W.2d 550, 278 Ky. 805.

La.—Smith v. Trippe Motors, App., 193 So. 603.

Mich.—Miskiewicz v. Smolenski, 227 N.W. 789, 249 Mich. 63.

Miss.—Planters' Lumber Co. v. Sibley, 93 So. 440, 130 Miss. 26.

Mo.—Hunter v. Roberts, App., 267 S.W.2d 368—Schraedel v. St. Louis Public Service Co., App., 248 S.W. 2d 25—Seify v. State Bank of Bevier, App., 44 S.W.2d 205.

N.Y.—Doelger v. Battery Park Nat. Bank, 194 N.Y.S. 582, 201 App.Div. 515.

Ohio.—Walters v. Homberg, 3 Ohio App. 326, 35 Ohio Cir.Ct. 337.

Okl.—Thompson v. Smith, 227 P. 77, 102 Okl. 150.

Pa.—Hunsicker v. Waidelich, 153 A. 335, 302 Pa. 224, 84 A.L.R. 211—Pulling v. Yeager & Sons, 151 A. 674, 301 Pa. 7.

Tenn.—Gulf Compress Co. v. Insurance Co. of Pennsylvania, 167 S.W. 859, 129 Tenn. 586.

Tex.—Employers' Casualty Co. v. Roland, Com.App., 1 S.W.2d 568.

Reagan v. Andrews, Civ.App., 241 S.W.2d 249—Kirby v. Houston Oil Co. of Tex., Civ.App., 200 S.W. 2d 246, error refused, certiorari denied 68 S.Ct. 86, 332 U.S. 772, 92 L.Ed. 357, rehearing denied 68 S.Ct. 152, 332 U.S. 820, 92 L.Ed. 397—Harding v. Raymondville Independent School Dist., Civ.App., 51 S.W.2d 826—L. T. Wright & Co. v. Smith, Civ.App., 13 S.W.2d 953—Moss v. Ingram, Civ.App., 239 S. W. 1029—Norman v. Stark Grain, etc., Co., Civ.App., 237 S.W. 963—West v. Carlisle, Civ.App., 199 S. W. 515, affirmed 241 S.W. 471, 111 Tex. 529—Texas & P. Ry. Co. v. Jones, Civ.App., 196 S.W. 357—Southern Traction Co. v. Reagor, Civ.App., 186 S.W. 272—Hall v. Ray, Civ.App., 179 S.W. 1135.

Vt.—Parizo v. Wilson, 144 A. 856, 101 Vt. 514.

Va.—City of Norfolk v. Southern Ry. Co., 83 S.E. 1085, 117 Va. 101.

W.Va.—Tredway v. New River & Pocahontas Consol. Coal Co., 135 S.E. 253, 102 W.Va. 135.

4 C.J. p 908 note 63—17 C.J. p 1318 note 12—39 C.J. p 1263 notes 28, 29.

Mistaken belief as to nature of right

Where plaintiff possesses a good cause of action, the fact that he and the court are mistaken as to the basis on which it rests is immaterial, if it is properly and sufficiently made out in any aspect of the case which will sustain the recovery allowed.

Iowa.—Equitable Life Ins. Co. of Iowa v. Brown, 262 N.W. 124, 220 Iowa 585.

N.J.—Blanos v. Eastwood Realty Co., 181 A. 144, 116 N.J.Law 1.

Relief as broad as prayer

(1) Plaintiff cannot be heard to complain of error of law, if any, where relief granted is in accordance with prayer of his bill.

Md.—Lynch v. Kamanitz, 129 A. 862, 148 Md. 381.

(2) Where plaintiff obtained a verdict for the full amount of claims submitted to the jury, exceptions relating to the admission and rejection of testimony, to rulings of the trial justice in refusing and granting requests to charge, and to certain parts of the charge, will not be considered.

R.I.—Haynes v. Greene, 124 A. 255, 46 R.I. 32.

Right of recovery and extent of recovery

(1) On appeal from judgment for appellant, questions pertaining alone to right of recovery will not be considered.

Ala.—Cocke v. Edwards, 108 So. 857, 215 Ala. 8—Jones v. Woodward Iron Co., 82 So. 26, 203 Ala. 66.

Ill.—See Carper v. Myers, 202 Ill. App. 485.

(2) Where the judgment appealed from by plaintiff is for plaintiff, the appellate court will not consider as reversible error any ruling merely on the naked question of defendant's liability, and not affecting the amount of damages recovered.

Ala.—Holloway v. Henderson Lumber Co., 82 So. 344, 203 Ala. 246—Southern Ry. Co. v. Harris, 80 So. 101, 202 Ala. 263—State v. Montgomery Sav. Bank, 74 So. 942, 199 Ala. 365.

Patt v. Welsch, 89 So. 94, 18 Ala.App. 82, certiorari denied Ex parte Patt, 89 So. 432, 206 Ala. 196.

Okl.—Durbin v. Martin Fleming Undertaking Co., 285 P. 82, 142 Okl. 53.

Tenn.—All v. John Gerber Co., 252 S.W.2d 138, 36 Tenn.App. 134.

(3) However, in proceeding for damages, where appellant's witnesses placed the damages at more than four times the amount of damages awarded by jury in accordance with damages testified to by appellee's witnesses, it could not be contended that any errors were harmless.

Mo.—Accomac Realty Co. v. City of St. Louis, 152 S.W.2d 100, 347 Mo. 1224.

(4) Where property owners in actions against city for damages caused by changing grade of street failed to show any damage, errors, if any, as to other matter, would not constitute reversible error.

Neb.—Quivey v. City of Mitchell, 277 N.W. 50, 133 Neb. 727.

(5) On appeal from a judgment for nominal damages only, rulings of the trial court bearing on defendant's liability and not affecting the amount of recovery will not be considered as reversible error.

Ala.—Jones v. Spradlin, 88 So. 373, 18 Ala.App. 29.

(6) Where the trial court or jury found that plaintiff was not entitled to recover from defendant, and the finding was supported, any error in computing damages was immaterial.

Cal.—Homer Laughlin Engineers Corporation v. J. W. Leavitt & Co., 2 P.2d 511, 116 C.A. 197.

Conn.—Attardo v. Connecticut Ry. & Lighting Co., 132 A.2d 70.

Ill.—Brunner v. Yellow Cab Co., 141 N.E.2d 658, 13 Ill.App.2d 255.

Mo.—Marquand Development Corp. v. Maisak-Handler Shoe Co., 260 S. W.2d 242.

(7) In an action for injuries, errors affecting defendant's liability were harmless to defendant, where the jury found in his favor, although, as claimed, for an inadequate amount.

Mo.—Roper v. Wadleigh, App., 219 S.W. 982.

(8) Where plaintiff appeals from a judgment in his favor on the ground that the damages awarded are insufficient, the judgment is conclusive as to his right of recovery, and any ruling bearing only on such right, not affecting the amount of recovery, will not require reversal, since, if erroneous, it does not injure plaintiff.

Ala.—Tennessee Coal, Iron & R. Co. v. Dunlap, 137 So. 320, 24 Ala.App. 515.

25. Ala.—Ritter v. Moseley, 148 So. 143, 226 Ala. 648.

Johnson v. Coosa Mfg. Co., 81 So. 141, 16 Ala.App. 649—McLendon v. Western Union Telegraph Co., 73 So. 120, 15 Ala.App. 230.

Ill.—See G. H. Hammond Co. v. Ford, 211 Ill.App. 490.

Ky.—Stephenson Lumber Co. v. Hurst, 83 S.W.2d 48, 259 Ky. 747.

S.D.—Anderson v. Ray, 156 N.W. 591, 37 S.D. 17.

Tex.—Burton v. McGuire, Civ.App., 3 S.W.2d 576, affirmed, Com.App., 41 S.W.2d 238.

will error be considered as to a matter which is not submitted to the jury, or considered by the court, and so has no part in the verdict or decision which is reached;[26] nor will consideration be given to an error on the trial of an issue which is admitted or not in dispute or satisfactorily established.[27]

Error confined to some particular branch, issue, or count of the case is harmless if another independent cause of action or ground of defense or issue, established without the taint of error, sufficiently sustains the determination,[28] except where the one affected by the error may have influenced or controlled the result.[29] This rule has no application where none of the issues in controversy was tried and submitted free from error,[30] unless as to one or some of the issues sufficient to sustain the result, the error was harmless or invited error.[31] Where a general verdict is returned, and different issues are involved, and it is not disclosed on what issue the verdict was based, the reviewing court cannot say under the record that any single matter or combination of matters objected to constituted reversible error.[31.5]

Mere irregularity of proceeding. A judgment, if correct, will not be reversed because of any question as to mere irregularity of proceeding which does not adversely affect or change the merits of the controversy, or is not otherwise prejudicial.[32] Ac-

26. Ariz.—Costello v. Cunningham, 172 P. 664, 19 Ariz. 512.
Cal.—Schudel v. Helbing, 147 P. 89, 26 C.A. 410.
Colo.—Schell v. Kullhem, 259 P.2d 861, 127 Colo. 555—Spaulding v. Porter, 31 P.2d 711, 94 Colo. 496.
Mo.—Floyd v. St. Louis Public Service Co., 280 S.W.2d 74.
Globe American Corp. v. Miller, 131 S.W.2d 340, 234 Mo.App. 253—Ford v. Ford Roofing Products Co., App., 285 S.W. 538.
N.H.—Beaudette & Graham Co. v. Therrien, 122 A. 796, 81 N.H. 117.
Or.—Patterson v. Skoglund, 180 P.2d 108, 181 Or. 167.
R.I.—Dimon v. O'Connor, 106 A.2d 509, 82 R.I. 146.
Tex.—Mitchell v. Town of Refugio, Civ.App., 265 S.W.2d 261, error refused—Lauderdale v. Lee, Civ. App., 264 S.W. 558, reversed on other grounds, Com.App., 276 S.W. 660—Bankers' Trust Co. v. Franks, Civ.App., 178 S.W. 602—Southern Pac. Co. v. Walker, Civ.App., 171 S.W. 264.
Wash.—Bayers v. Barry, 194 P. 993, 114 Wash. 252.

27. Ala.—Huffstutler v. Edge, 47 So. 2d 191, 35 Ala.App. 276, affirmed 47 So.2d 197, 254 Ala. 102.
N.C.—Wachovia Bank & Trust Co. v. Ebert, 172 S.E. 175, 205 N.C. 651.
Ohio.—Borden's Red Wing Ice Cream Co. v. Burrows, App., 106 N.E.2d 84.
Tenn.—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512.
W.Va.—Staples v. Left Fork Fuel Co., 77 S.E.2d 872, 138 W.Va. 819.

28. Ala.—Pair v. Rice, 122 So. 297, 23 Ala.App. 187.
Cal.—Strutzel v. Williams, 240 P.2d 988, 109 C.A.2d 512—Leoni v. Delany, 188 P.2d 765, 83 C.A.2d 303, rehearing denied 189 P.2d 517, 83 C.A.2d 303—Shields v. Oxnard Harbor Dist., 116 P.2d 121, 46 C.A. 2d 477—King v. Schumacher, 89 P. 2d 466, 32 C.A.2d 172, certiorari denied 60 S.Ct. 123, 308 U.S. 593, 84 L.Ed. 496.
Conn.—Weinstein v. Hallas, 100 A.2d 733, 140 Conn. 387—Jacobs v. Connecticut Co., 82 A.2d 151, 138 Conn. 80—Leonard v. Gambardella, 181 A. 542, 120 Conn. 445—Ziman v. Whitley, 147 A. 370, 110 Conn. 108.
Ind.—Anselm v. Anselm, 75 N.E.2d 921, 118 Ind.App. 169, transfer denied 78 N.E.2d 31, 226 Ind. 98—Scoopmire v. Taflinger, 52 N.E.2d 728, 114 Ind.App. 419—Union Traction Co. of Indiana v. Barnett, 127 N.E. 287, 75 Ind.App. 19.
Kan.—Hays v. Patterson, 155 P. 932, 97 Kan. 478.
Ky.—Salkeld v. Davis, 247 S.W.2d 517.
Mass.—Callahan v. Fleischman Co., 160 N.E. 249, 262 Mass. 437.
Mo.—Watson v. Long, 221 S.W.2d 967.
N.J.—Lepore v. Kooligan, 143 A. 739, 6 N.J.Misc. 1041.
N.C.—Hallman v. Southern R. Co., 85 S.E. 298, 169 N.C. 127.
Ohio.—Plas v. Holmes Const. Co., 104 N.E.2d 689, 157 Ohio St. 95.
J. T. Fish & Co. v. States Coal Co., App., 129 N.E.2d 657—American Nat. Fire Ins. Co. v. Western Ohio Public Service Co., 75 N.E.2d 72, 81 Ohio App. 228—Woodward v. Gray, 188 N.E. 304, 46 Ohio App. 177—Berchtold v. Martin, 177 N.E. 57, 38 Ohio App. 556—McCombs v. Landes, 171 N.E. 862, 35 Ohio App. 164—Tillman v. City of Toledo, 157 N.E. 120, 23 Ohio App. 442—Remix v. Sisler, 156 N.E. 240, 24 Ohio App. 162.
Pa.—Rubinsky v. Kosh, 151 A. 676, 301 Pa. 35.
S.C.—Honeywell v. Dominick, 76 S. E.2d 59, 223 S.C. 365.
Tex.—Poteet v. W. T. Waggoner Estate, Civ.App., 96 S.W.2d 405—Leap v. Braziel, Civ.App., 93 S.W. 2d 1213, modified on other grounds, Com.App., 121 S.W.2d 334—St. Louis, S. F. & T. Ry. Co. v. Houze, Civ.App., 28 S.W.2d 865—St. Louis, B. & M. Ry. Co. v. Cole, Civ.App., 4 S.W.2d 1019, affirmed, Com.App., 14 S.W.2d 1024, rehearing denied 16 S.W.2d 534—Eastern Texas Electric Co. v. Hunsucker, Civ. App., 230 S.W. 817.
Wis.—City of Baraboo v. Excelsior Creamery Co., 177 N.W. 36, 171 Wis. 242—De Pas v. Southern Wisconsin Ry. Co., 150 N.W. 408, 159 Wis. 306.
4 C.J. p 908 note 65 [b].

29. Ala.—Ex parte Lackey, 153 So. 289, 228 Ala. 106.
Ind.—Roback v. City of Greenfield, 105 N.E. 163, 56 Ind.App. 263.
N.Y.—Vanderbilt Amusement Co. v. Royce, 214 N.Y.S. 659, 216 App. Div. 195.
Ohio.—Plas v. Holmes Const. Co., 104 N.E.2d 689, 157 Ohio St. 95.
Pa.—Grutski v. Kline, 43 A.2d 142, 352 Pa. 401.
Tex.—Kennedy v. Wheeler, Civ.App., 268 S.W. 516.

30. Ohio.—Mulcahy v. Deitrick, 176 N.E. 481, 39 Ohio App. 65.

31. Ohio.—Woodward v. Gray, 188 N.E. 304, 46 Ohio App. 177.

31.5 Mo.—Devine v. Kroger Grocery & Baking Co., 162 S.W.2d 813, 349 Mo. 621.
Utah.—Skerl v. Willow Creek Coal Co., 69 P.2d 502, 92 Utah 474.

32. Ala.—Couch v. Couch, 22 So.2d 599, 247 Ala. 70—Crawford v. Walter, 80 So. 73, 202 Ala. 235.
Ariz.—Hagan v. Cowan, 278 P. 68, 35 Ariz. 334.
Ark.—Home Ins. Co. of New York v. Williams, 145 S.W.2d 743, 201 Ark. 460—Steed v. Henry, 180 S.W. 508, 120 Ark. 583.
Cal.—Berkowitz v. Kiener Co., 99 P. 2d 578, 37 C.A.2d 419—O'Moore v. Driscoll, 28 P.2d 438, 135 C.A. 770—Neudeck v. Vestal, 3 P.2d 595, 117 C.A. 266.
Fla.—Coombes v. Wheeler, 179 So. 785, 131 Fla. 593—Reese v. Levin, 168 So. 851, 124 Fla. 96—Buchanan v. Smith, 140 So. 775, 103 Fla. 1130—Woodruff v. Lantana Finance Corporation, 136 So. 712, 102 Fla. 950—Fagg Mill Work & Lumber Co. v. Greer, 136 So. 679, 102 Fla. 955—Catlett v. White, 135 So. 565,

cordingly, irregular orders or entries by the court, which merely express or carry into effect that which, by agreement between them or otherwise, is independently binding on the parties, furnish no

102 Fla. 110—Kennedy v. Kennedy, 134 So. 201, 101 Fla. 239—Lake Mabel Development Corporation v. Bird, 126 So. 356, 99 Fla. 253, rehearing denied 129 So. 105, 99 Fla. 259—Mirror Lake Co. v. Kirk Securities Corporation, 124 So. 719, 98 Fla. 946, followed in 124 So. 722, 98 Fla. 953—Wright v. Nesmith, 98 So. 584, 86 Fla. 544.

Ga.—W. T. Rawleigh Co. v. Greenway, 26 S.E.2d 458, 69 Ga.App. 590.

Ill.—Werner v. Reid, 153 N.E. 633, 322 Ill. 613.

Mitchell v. Tyler, 80 N.E.2d 449, 335 Ill.App. 117—Trust Co. of Chicago v. Jackson Park Bldg. Corp., 25 N.E.2d 616, 303 Ill.App. 531.

Ind.—Kalleres v. Glover, 196 N.E. 679, 208 Ind. 472—Blain v. City of Delphi, 145 N.E. 764, 195 Ind. 463—Jackson v. State, 142 N.E. 1, 194 Ind. 130—City of Indianapolis v. Barthel, 141 N.E. 339, 194 Ind. 273, rehearing overruled 142 N.E. 409, 194 Ind. 273.

Kitch v. Moslander, 50 N.E.2d 933, 114 Ind.App. 74.

Kan.—Kennedy v. Farmers & Merchants State Bank of Macksville, 313 P.2d 264, 181 Kan. 504—Dwelle v. Home Realty & Investment Co., 7 P.2d 522, 134 Kan. 520—Benson v. Altenburg, 259 P. 791, 124 Kan. 296, modified on other grounds 261 P. 589, 124 Kan. 571—Lucky v. Rush, 246 P. 1004, 121 Kan. 279.

Ky.—Matthews v. Fork Ridge Bus Line, 79 S.W.2d 196, 257 Ky. 757—Williams v. Denny, 38 S.W.2d 668, 238 Ky. 662—Cooper v. Williamson, 248 S.W. 245, 198 Ky. 62.

La.—Meraux & Nunez v. Gaidry, 132 So. 401, 171 La. 852.

Derouen v. Le Bleu, App., 18 So.2d 207.

Me.—Perkins v. Inhabitants of Town of Standish, 62 A.2d 321, 143 Me. 253.

Md.—Crawford v. Richards, 66 A.2d 483, 193 Md. 236.

Mich.—Cook v. Vineyard, 289 N.W. 181, 291 Mich. 375—United Sav. Bank of Detroit v. School Dist. No. 5, Fractional, Redford and Livonia Tps., Wayne County, and Farmington Tp., Oakland County, 273 N.W. 753, 280 Mich. 419—Second Nat. Bank v. Gamble, 198 N.W. 340, 227 Mich. 31.

Minn.—Roehrs v. Thompson, 240 N. W. 111, 185 Minn. 154—In re Shell's Estate, 206 N.W. 457, 165 Minn. 349.

Mo.—Blanford v. St. Louis Public Service Co., 266 S.W.2d 718—State ex rel. Hayes v. Ellison, 191 S.W. 49.

Papen v. Friedmeyer, App., 255 S.W.2d 841—Gerharter v. Mitchellhill Seed Co., App., 157 S.W.2d 577—Phares v. Century Electric Co., App., 131 S.W.2d 879—Panich v. Curtis, Owen, Fuller Corp., App., 124 S.W.2d 619—H. W. Eddy, Insurance, Inc., v. National Union Fire Ins. Co., App., 94 S.W.2d 1062.

Neb.—Lindley v. Wabash Ry. Co., 231 N.W. 812, 120 Neb. 195, modified on other grounds 233 N.W. 450, 120 Neb. 195, certiorari denied Wabash Ry. Co. v. Lindley, 51 S. Ct. 655, 283 U.S. 863, 75 L.Ed. 1468.

Nev.—Smart v. Valencia, 248 P. 46, 49 Nev. 411.

N.J.—MacPherson v. Schwinn, 89 A. 2d 99, 19 N.J.Super. 502.

Ahlemeyer v. Miller, 137 A. 543, 103 N.J.Law 611.

Wilentz v. Edwards, 36 A.2d 423, 134 N.J.Eq. 522—Shaw v. Standard Piano Co., 100 A. 167, 87 N.J.Eq. 350.

N.Y.—3105 Grand Corp. v. City of New York, 27 N.Y.S.2d 544, 262 App.Div. 17, appeal denied 28 N.Y. S.2d 741, 262 App.Div. 850, affirmed 42 N.E.2d 475, 288 N.Y. 178, 141 A.L.R. 1211—Isler v. Isler, 24 N.Y.S.2d 401, 260 App.Div. 1032, reargument denied 25 N.Y.S.2d 998, 261 App.Div. 827—In re Mitsui & Co., 8 N.Y.S.2d 289, 255 App.Div. 620, reargument denied 9 N.Y.S.2d 896, 256 App.Div. 806.

N.C.—Rankin v. Oates, 112 S.E. 32, 183 N.C. 517.

Ohio.—Board of Ed. of Starr-Washington Rural School Dist., Hocking County, v. Defenbacher, App., 67 N.E.2d 732.

Okl.—Colonial Royalties Co. v. Hinds, 216 P.2d 958, 202 Okl. 660—Commercial Casualty Ins. Co. v. Town of Breckenridge, 262 P. 208, 128 Okl. 215—Brown v. Fox, 242 P. 157, 115 Okl. 41—Edwards v. Negim & Co., 231 P. 488, 105 Okl. 7—Chenault v. Mauer Mercantile Co., 154 P. 507, 54 Okl. 651—McGuire v. Roberts, 146 P. 33, 44 Okl. 661.

Or.—Brakebush v. Aasen, 267 P. 1035, 126 Or. 1.

S.C.—Erwin v. Williams, 18 S.E.2d 598, 199 S.C. 38.

Tenn.—Taylor v. Goodrich Tire & Rubber Co., 98 S.W.2d 1094, 20 Tenn.App. 352.

Tex.—Traders & General Ins. Co. v. Jenkins, 141 S.W.2d 312, 135 Tex. 232, answers conformed to, Civ. App., 144 S.W.2d 350.

Bunker v. Lott, Civ.App., 282 S. W.2d 879, error refused no reversible error—McGuire v. Roemer, Civ.App., 162 S.W.2d 1048, error refused—Hawkins v. Everts, Civ. App., 91 S.W.2d 1086, error refused—Clifton Mercantile Co. v. First Nat. Bank, Civ.App., 283 S.W. 205.

Va.—Smyth v. Gay, 91 S.E.2d 425, 197 Va. 800—Rinehart & Dennis Co. v. McArthur, 96 S.E. 829, 123 Va. 556—Johnston v. Johnston, 82 S.E. 694, 116 Va. 678.

Wash.—W. L. Reid Co. v. M-B Contracting Co., 285 P.2d 121, 46 Wash. 2d 784—Hinton v. Carmody, 60 P. 2d 1108, 186 Wash. 242—Pleasant Valley Irrigation & Power Co. v. Okanogan Power & Irrigation Co., 167 P. 1122, 98 Wash. 401.

Wis.—Hicks v. Hardy, 4 N.W.2d 150, 241 Wis. 11—Schlecht v. Anderson, 232 N.W. 566, 202 Wis. 305—Zietlow v. Sweger, 192 N.W. 47, 179 Wis. 462.

4 C.J. p 910 note 71.

Acquisition and exercise of jurisdiction distinguished

Prescribed formalities of procedure, when they relate to means by which jurisdiction is to be acquired, are substantive and must be pursued with great strictness, but when they relate to exercise of jurisdiction which is otherwise complete, a breach thereof not shown to be harmful is harmless error.

Fla.—In re Johnson, 24 So.2d 711, 157 Fla. 25.

No substantial departure from rules of procedure

In action for breach of warranty in sale of food for human consumption, where there was no substantial departure from rules of procedure as claimed by plaintiff, verdict and judgment for defendant were upheld.

N.C.—Williams v. Elson, 13 S.E.2d 246, 219 N.C. 861.

Particular irregularities held not ground for reversal

(1) Failure to follow exact wording of statute in affidavit on which warning order attorneys were appointed was not ground for reversal.

Ky.—Pruett v. Pruett's Adm'x, 192 S.W.2d 722, 301 Ky. 568.

(2) Regularly elected county judge, although he disqualified himself to act in proceedings involving probate and construction of a will, was nevertheless prohibited by constitution from appearing as counsel for plaintiff in suit in district court for construction of will, but error in permitting county judge so to act was not reversible error in absence of showing of resulting prejudice to rights of defendants.

Neb.—Tucker v. Myers' Estate, 37 N.W.2d 585, 151 Neb. 359.

(3) Where on defendant's motion to dissolve temporary injunction, plaintiff applied for disqualification and change of judge on ground defendant's attorney was trial judge's son, and defendant's attorney made no objection and judge stated that he had already indicated his intention to refuse to disqualify and al-

ground for appeal;[33] and an order directing a change in the record of the evidence to make it conform to the actual facts testified to, if irregular, is similarly not prejudicial;[33.5] nor does the fact that the method chosen by appellee to assert his rights was not that which he should have employed furnish ground for appeal, where no harm resulted to appellant therefrom.[34] Likewise, the fact that the trial court strikes matter from the record which could have no bearing on the result of the case does not furnish ground for appeal.[35]

§ 1677. Presumptions and Burden of Proof as to Effect of Error

a. Existence
b. Rebuttal of presumptions

a. Existence

(1) In general
(2) Error manifestly harmless in nature
(3) Error prima facie prejudicial
(4) Prejudice dependent on circumstances

(1) In General

The existence of prejudicial error must appear from the record, the test as to whether error will be presumed prejudicial or harmless or must be proved so being whether it was such as had any reasonable tendency to influence the final result, which sometimes depends on the intrinsic character of the error and sometimes upon all the circumstances of the particular case disclosed by the record and by legitimate inference therefrom.

Quoted in: N.D.—Ellsworth v. Martindale-Hubbell Law Directory, 289 N.W. 101, 103, 69 N.D. 610.

It is elementary that, before there can be a reversal of a judgment or decree for prejudicial error in the proceedings below, the record itself must show the existence of such error, there being no other method by which it can be shown.[36] Where

lowed plaintiff to dictate application into the record for purpose of saving grounds for appeal, error, if any, by reason of plaintiff's failure to comply with statute requiring written application for disqualification of judge with notice to opposing party was harmless.

Okl.—Morissette v. Musgrave, 108 P. 2d 123, 188 Okl. 222.

(4) Fact that attorney appeared in case for client who was not party thereto or liable therein was held not reversible error.

Tenn.—Copeland v. Cherry, 95 S.W. 2d 1275, 20 Tenn.App. 122.

In an equitable proceeding in which the equities are with appellee, an appeal resting on claimed errors of adjective law should not succeed unless inflexible rules of adjective law so require.

Conn.—Spirt v. Albert, 146 A. 717, 109 Conn. 292.

Okl.—Kelly v. West, 149 P. 902, 48 Okl. 274.

33. Ky.—Kentucky Service Co. v. Miracle, 56 S.W.2d 521, 246 Ky. 797.

33.5 Mo.—Ray v. City of Poplar Bluff, App., 102 S.W.2d 814.

34. Cal.—Ream v. Barr, 291 P. 451, 108 C.A. 172.

La.—Minden Presbyterian Church v. Lambert, 120 So. 61, 167 La. 712.

N.J.—Kohn v. Lazarus, 155 A. 260, 9 N.J.Misc. 644.

35. Ind.—50 N.E.2d 933, 114 Ind.App. 74.

Mass.—James v. Columbia Securities Co., 141 N.E. 72, 246 Mass. 210.

36. Ala.—First Nat. Life Ins. Co. v. Burnett, 140 So. 616, 25 Ala.App. 42—Walker, Stipp & Johnson v. Fletcher, 77 So. 56, 16 Ala.App. 218—Wilson v. Owens Horse & Mule Co., 70 So. 956, 14 Ala.App. 467.

Ark.—Massey v. Southern Land Co., 174 S.W. 531, 117 Ark. 655.

Cal.—Lutz v. Merchant's Nat. Bank of San Diego, 177 P. 158, 179 C. 257.

Wright v. Sniffin, 181 P.2d 675, 80 C.A.2d 358—Adams Pipe Works v. Okell Well Machinery Corporation, 29 P.2d 224, 136 C.A. 608—Turano v. Bailey, 260 P. 841, 86 C. A. 402—Chalmers v. Hawkins, 248 P. 727, 78 C.A. 733—Rodetsky v. Nerney, 237 P. 791, 72 C.A. 545—Derkmann v. Von Blumenthal, 232 P. 152, 69 C.A. 606—Shebley v. Peters, 200 P. 364, 53 C.A. 288—Pacific Portland Cement Co. Consolidated v. Reinecke, 158 P. 1041, 30 C.A. 501.

Colo.—Freeman v. Boyer Bros., 261 P. 864, 82 Colo. 509, 55 A.L.R. 1285—Cooper v. Newmyer, 250 P. 559, 80 Colo. 246.

Conn.—Burke v. Yencsik, 182 A. 135, 120 Conn. 618.

Fla.—Small v. Colonial Inv. Co., 109 So. 433, 92 Fla. 503.

Ill.—Johnson v. City of St. Charles, 200 Ill.App. 184—City of Chicago v. Cullen, 191 Ill.App. 97. See Kreeb v. Lake Erie & W. R. Co., 211 Ill. App. 630.

Ind.—Henderson v. Kleinman, 109 N. E.2d 905, 231 Ind. 657.

I. Duffey & Son Co. v. Kemmer, 37 N.E.2d 274, 110 Ind.App. 116—Wolf Hotel Co. v. Parker, 158 N.E. 294, 87 Ind.App. 333—Ross v. Illinois Glass Co., 115 N.E. 598, 64 Ind.App. 166.

Iowa.—Stevens v. City of Chariton, 168 N.W. 310, 184 Iowa 59—Mondt v. Iowa Ry. & Light Co., 155 N.W. 245, 178 Iowa 666.

Ky.—Hart Dry Cleaning Co. v. Grizzel, 290 S.W. 1057, 218 Ky. 111.

Me.—Selberg v. Bay of Naples, 157 A. 856, 130 Me. 492.

Mass.—MacDonald v. Adamian, 200 N.E. 888, 294 Mass. 187—Harrington v. Travers, 192 N.E. 495—Gilchrist v. Boston Elevated Ry., 172 N.E. 349, 272 Mass. 346—Reilly v. Selectmen of Blackstone, 165 N.E. 660, 266 Mass. 503.

Neb.—Staskiewicz v. State, 14 N.W. 2d 184, 144 Neb. 581—Combs v. Owens Motor Co., 235 N.W. 682, 121 Neb. 5—State v. State Bank of Papillion, 232 N.W. 585, 119 Neb. 519—Morfeld v. Weidner, 154 N.W. 860, 99 Neb. 49.

N.M.—Hisaw v. Hendrix, 215 P.2d 598, 54 N.M. 119, 22 A.L.R.2d 285.

N.C.—Bailey v. Justice, 94 S.E. 518, 174 N.C. 753.

Ohio.—Brockmeyer v. Cincinnati Dowel & Wood Products Co., 48 N. E.2d 475, 71 Ohio App. 514—Zaggi v. Republic Steel Corp. Employees Relief Ass'n, 37 N.E.2d 968, 67 Ohio App. 533—Collins v. McClure, 26 N.E.2d 780, 63 Ohio App. 312—Johnston v. Hart, 22 N.E.2d 557, 61 Ohio App. 268—First Nat. Bank v. Rawson, 7 N.E.2d 6, 54 Ohio App. 285—Kalovsky v. Meyer Dairy Products Co., 164 N.E. 370, 30 Ohio App. 118.

Okl.—Benzel v. Pitchford, 245 P.2d 1131, 206 Okl. 672—O. B. Garrison & Co. v. Meyers, 152 P. 838, 52 Okl. 100.

S.C.—Cook v. Atlantic Coast Line R. Co., 13 S.E.2d 1, 196 S.C. 230, 133 A.L.R. 1144.

Tenn.—Johnson v. McCord, 251 S.W. 2d 144, 36 Tenn.App. 14—Tiffany v. Shipley, 161 S.W.2d 373, 25 Tenn. App. 539—Haley v. Ogilvie, 2 Tenn. App. 607.

Tex.—Vaughn v. Gulf Ins. Co., Civ. App., 151 S.W.2d 227—Universal Dealers Co. v. Vance, Civ.App., 117

the record is incomplete or unclear in particulars which, had they been made to appear, might well have cured the errors asserted or affirmatively shown them to be harmless, some decisions incline to treat those errors as nonprejudicial,[37] while others make the opposite assumption.[38]

In many cases there are broad statements to the effect, on the one hand, that error is presumed prejudicial unless and until something appears to the contrary, and that respondent, the party in whose favor the error or transgression is committed, has the burden of showing that the error was harmless,[38.5] or, on the other hand, that, unless the error is such that prejudice is evident on the face of the record, prejudice is not presumed, the burden being on appellant to establish prejudicial error.[38.10]

S.W.2d 512, error dismissed—Kostas v. C. D. Shamburger Lumber Co., Civ.App., 87 S.W.2d 511—Gray v. Missouri, K. & T. R. Co. of Texas, Civ.App., 45 S.W.2d 267—Lyon-Gray Lumber Co. v. Nocona Cotton Oil Co., Civ.App., 194 S.W. 633, error refused—Huggins v. Carey, Civ.App., 149 S.W. 390.

Vt.—Hanley v. United Steel Workers of America, 110 A.2d 728, 118 Vt. 380—Higgins v. Metzger, 143 A. 394, 101 Vt. 285.

Va.—Standard Paint Co. v. E. K. Vietor & Co., 91 S.E. 752, 120 Va. 595.

Wis.—Knauf v. Diamond Cartage Co., 275 N.W. 903, 226 Wis. 111.

Wyo.—Boyce v. Northern Utilities Co., 297 P.2d 820, 75 Wyo. 500—Willis v. Willis, 49 P.2d 670, 48 Wyo. 403.

4 C.J. p 910 note 72-73.

Appellate consideration as confined exclusively to matters contained in record see supra § 1206.

37. Ala.—Opelika Coca-Cola Bottling Co. v. McEachern, 7 So.2d 570, 242 Ala. 628.

Ark.—London v. McGehee, 191 S.W. 10, 126 Ark. 469.

Colo.—Kestle v. Preuit, 298 P. 415, 88 Colo. 419.

Ga.—McRae v. Boykin, 179 S.E. 535, 50 Ga.App. 866.

Mass.—MacDonald v. Adamian, 200 N.E. 888, 294 Mass. 187.

Mich.—Grevnin v. Grevnin, 24 N.W. 2d 196, 315 Mich. 519.

N.D.—Cohn v. Wyngarden, 184 N.W. 575, 48 N.D. 344.

38. Cal.—Abbott v. Coronado Beach Co., 203 P. 145, 55 C.A. 137—Polkinghorn v. Riverside Portland Cement Co., 142 P. 140, 24 C.A. 615.

Ill.—See Johnson v. City of Chicago, 189 Ill.App. 32.

Ind.—Wolf Hotel Co. v. Parker, 158 N.E. 294, 87 Ind.App. 333.

N.D.—Farderer v. Northern Pac. Ry. Co., 26 N.W.2d 236, 75 N.D. 139.

Or.—Pitts v. Crane, 236 P. 475, 114 Or. 593—Provo v. Spokane, P. & S. Ry. Co., 170 P. 522, 87 Or. 467.

Tex.—Richie v. State, Civ.App., 275 S.W.2d 723—In re Wesch's Estate, Civ.App., 78 S.W.2d 1052.

38.5 Fla.—Griffith v. Shamrock Village, Inc., 94 So.2d 854.

Ga.—Gulick v. Mulcahy, 97 S.E.2d 362, 95 Ga.App. 158—Rogers v. Johnson, 96 S.E.2d 285, 94 Ga.App. 666—Cobb v. Coleman, 93 S.E.2d 801, 94 Ga.App. 86—Lively v. Thompson, 75 S.E.2d 846, 88 Ga. App. 31—Stanley v. Warner Bros. Pictures, 12 S.E.2d 441, 64 Ga.App. 228.

Ind.—Calumet Teaming & Trucking Co. v. Young, 33 N.E.2d 583, 218 Ind. 468.

Iowa.—Olson v. Olson, 46 N.W.2d 1, 242 Iowa 192—Pickrell v. Griffith, 29 N.W.2d 588, 238 Iowa 1151.

Mo.—Middleton v. Kansas City Public Service Co., 152 S.W.2d 154, 348 Mo. 107.

Watkins v. West, App., 297 S.W. 2d 568—Casto v. Railway Exp. Co., App., 219 S.W.2d 276—Gurwell v. Jefferson City Lines, 192 S.W.2d 683, 239 Mo.App. 305.

N.H.—Daniels v. Barker, 200 A. 410, 89 N.H. 416.

Tex.—Southwestern Greyhound Lines v. Dickson, Civ.App., 219 S.W.2d 592—Texas Employers' Ins. Ass'n v. Drayton, Civ.App., 173 S.W.2d 782, error refused.

Va.—Spence v. Miller, 90 S.E.2d 131, 197 Va. 477.

38.10 Ala.—Campbell v. Campbell, 41 So.2d 185, 252 Ala. 487—Opelika Coca-Cola Bottling Co. v. McEachern, 7 So.2d 570, 242 Ala. 628—Linton v. Morton, 200 So. 614, 240 Ala. 563.

Wert v. Geeslin, 69 So.2d 718, 37 Ala.App. 351, certiorari denied 69 So.2d 724, 260 Ala. 701—Roughton v. Jackson, 64 So.2d 112, 37 Ala. App. 17, certiorari denied 64 So.2d 115, 258 Ala. 579—Resolute Fire Ins. Co. v. O'Rear, 47 So.2d 425, 35 Ala.App. 398—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So. 2d 236, 35 Ala.App. 237, certiorari denied 45 So.2d 245, 254 Ala. 10—Southern Ry. Co. v. Milan, 199 So. 708, 29 Ala.App. 590, reversed on other grounds 199 So. 711, 240 Ala. 333—City of Birmingham v. Lynch, 197 So. 46, 29 Ala.App. 242, certiorari denied 197 So. 48, 240 Ala. 24.

Ariz.—Sanders v. Beckwith, 283 P. 2d 235, 79 Ariz. 67—Schmerfeld v. Hendry, 245 P.2d 420, 74 Ariz. 159—Webb v. Hardin, 89 P.2d 30, 53 Ariz. 310.

Cal.—Vaughn v. Jones, 191 P.2d 432, 31 C.2d 587—McDowd v. Pig'n Whistle Corp., 160 P.2d 797, 26 C. 2d 696—Rose v. State, 123 P.2d 505, 19 C.2d 713, followed in Bettencourt v. State, 123 P.2d 525, 19 C.2d 876, Brandon v. State, 123 P.2d 525, 19 C.2d 877, Jones v. State, 123 P.2d 526, 19 C.2d 874, and Laughlin v. State, 123 P.2d 526, 19 C.2d 875.

Pizer v. Brown, 283 P.2d 1055, 133 C.A.2d 367, certiorari denied 76 S.Ct. 1045, 351 U.S. 982, 100 L. Ed. 1496—Bergan v. Ormsby, 281 P.2d 70, 131 C.A.2d 505—Batchelor v. Caslavka, 276 P.2d 64, 128 C.A. 2d 819—Baldwin v. Baldwin, 261 P. 2d 16, 120 C.A.2d 493—Ravel v. Hubbard, 246 P.2d 88, 112 C.A. 255—Brown v. Southern Pac. Co., 207 P.2d 632, 92 C.A.2d 639—Woods v. Pacific Greyhound Lines, 205 P.2d 738, 91 C.A.2d 572—Black v. Black, 204 P.2d 950, 91 C.A.2d 382—Carr v. Duncan, 202 P.2d 855, 90 C.A.2d 282—Perbost v. San Marino Hall-School for Girls, 199 P.2d 701, 88 C.A.2d 796—Danziger v. Peebler, 198 P.2d 719, 88 C.A.2d 307—Hill v. Hill, 187 P.2d 28, 82 C.A.2d 682—Mears v. Jeffry, 182 P.2d 294, 80 C.A.2d 610—Mullanix v. Basich, 155 P.2d 130, 67 C.A.2d 675—Neustadt v. Skernswell, 151 P.2d 857, reheard 159 P.2d 49, 69 C.A.2d 361—Meyer v. Lindsley, 109 P.2d 714, 42 C.A.2d 698—Santina v. General Petroleum Corp. of California, 106 P.2d 60, 41 C.A.2d 74—Kidroski v. Anderson, 103 P.2d 1000, 39 C.A.2d 602—Semple v. Andrews, 81 P.2d 203, 27 C.A.2d 228—Nelson v. Sweitzer, 71 P.2d 85, 22 C.A.2d 382—Hartford v. Pacific Motor Trucking Co., 60 P.2d 476, 16 C.A.2d 378.

Colo.—Thompson v. Davis, 184 P.2d 133, 117 Colo. 82—Hollenbeck & Reeves v. Peterson, 172 P.2d 678, 115 Colo. 301.

Fla.—Bolick v. Sperry, 82 So.2d 374—City of Miami v. Hollis, 77 So.2d 834—Dowling v. Loftin, 72 So.2d 283—Christian v. Christian, 52 So. 2d 905—Sikes v. Overholser, 7 So. 2d 348, 150 Fla. 290—Certain Lands on Which Taxes are Delinquent v. City of Stuart, 188 So. 605, 137 Fla. 784.

Ga.—Childers v. Ackerman Const. Co., 86 S.E.2d 227, 211 Ga. 350—Thornton v. Thornton, 75 S.E.2d 749, 209 Ga. 784—Kent v. Shannon, 70 S.E.2d 376, 209 Ga. 8—Mills v. Williams, 67 S.E.2d 212, 208 Ga. 425—Mills v. Smith, 47 S.E.2d 260, 203 Ga. 444—Jackson v. Davis, 45 S.E.2d 278, 203 Ga. 39—Walker v. Hartford Accident & Indemnity Co., 26 S.E.2d 695, 196 Ga. 361—

However, the explanation of the apparently conflicting rules is that the examination of the record as a whole, in the light of everything therein appearing with reference to the prior proceedings and the rights of the parties, may disclose error of either of two kinds, namely, that which is prima fa-

Jacobs v. Rittenbaum, 20 S.E.2d 425, 193 Ga. 838—Lowe v. City of Atlanta, 11 S.E.2d 891, 191 Ga. 76—Richter v. Cann, 11 S.E.2d 774, 191 Ga. 103—Sims v. Ramsey, 198 S.E. 770, 186 Ga. 732.

Daniel v. Rich's, Inc., 52 S.E.2d 557, 78 Ga.App. 888—Kendrick v. White, 43 S.E.2d 285, 75 Ga.App. 307—Babb v. Kirk, 195 S.E. 452, 57 Ga.App. 299.

Idaho.—State v. Snoderly, 101 P.2d 9, 61 Idaho 314—Judy v. Reilly Atkinson & Co., 87 P.2d 451, 59 Idaho 752.

Ind.—Kraft v. Himsel Stock Yards, App., 139 N.E.2d 569—I. Duffey & Son Co. v. Kemmer, 37 N.E.2d 274, 110 Ind.App. 116.

Iowa.—In re Behrend's Will, 10 N.W. 2d 651, 233 Iowa 812.

Kan.—Henks v. Panning, 264 P.2d 483, 175 Kan. 424—Olsen v. Lambert, 145 P.2d 159, 158 Kan. 94—Phillippi v. Speer, 103 P.2d 777, 152 Kan. 325.

Me.—In re Knapp's Estate, 99 A.2d 331, 149 Me. 130.

Md.—Rippon v. Mercantile Safe Deposit & Trust Co. of Baltimore, 131 A.2d 695, 213 Md. 215—Adams v. Benson, 117 A.2d 881, 208 Md. 261—Baltimore Transit Co. v. State for Use of Castranda, 71 A.2d 442, 194 Md. 421.

Mass.—Guertin v. Lucier, 112 N.E.2d 816, 330 Mass. 706—Furbush v. Connolly, 62 N.E.2d 595, 318 Mass. 511—Landers v. Cyr, 60 N.E.2d 959, 318 Mass. 778—Bendett v. Bendett, 52 N.E.2d 2, 315 Mass. 59—Williamson v. Feinstein, 41 N.E.2d 185, 311 Mass. 322—Lariviere v. Boucher, 8 N.E.2d 353, 297 Mass. 27.

Mich.—Goldberg v. Cities Service Oil Co., 266 N.W. 321, 275 Mich. 199.

Minn.—Gubbins v. Irwin, 298 N.W. 715, 210 Minn. 428—McDowell v. Hanson, 283 N.W. 537, 204 Minn. 349.

Miss.—Cole v. Cole, 12 So.2d 425, 194 Miss. 292—Mississippi State Highway Department v. Meador, 186 So. 642, 184 Miss. 381.

Mo.—McDill v. Terminal R. R. Ass'n of St. Louis, 268 S.W.2d 823.

Gover v. Cleveland, App., 299 S.W.2d 239—Staples v. O'Reilly, App., 288 S.W.2d 670—Ringeisen v. City of St. Louis, App., 238 S.W.2d 57—Anderson v. Biscoe, App., 201 S.W.2d 432—Longmire v. Diagraph-Bradley Stencil Mach. Corp., 173 S.W.2d 641, 237 Mo.App. 553—Owl Drug Co. v. Frank E. Whalen Advertising Co., App., 156 S.W.2d 777—Martin v. Bulgin, App., 111 S.W.2d 963.

Mont.—Conway v. Fabian, 89 P.2d 1032, 108 Mont. 287, certiorari denied 60 S.Ct. 94, 308 U.S. 578, 84 L.Ed. 484.

Nev.—Tobin v. Seaborn, 82 P.2d 746, 58 Nev. 432.

N.J.—Gibson v. Pennsylvania R. Co., 82 A.2d 635, 14 N.J.Super. 425.

N.C.—Waddell v. Carson, 97 S.E.2d 222, 245 N.C. 669—In re Gamble, 93 S.E.2d 66, 244 N.C. 149—Shepard v. La Grange Oil & Fuel Co., 89 S.E.2d 464, 242 N.C. 762—Henry v. Home Finance Group, 87 S.E.2d 517, 242 N.C. 300—Spears v. Randolph, 86 S.E.2d 263, 241 N.C. 659—Daniel v. Gardner, 81 S.E.2d 660, 240 N.C. 249—Johnson v. Heath, 81 S.E.2d 657, 240 N.C. 255—Moore v. Deal, 79 S.E.2d 507, 239 N.C. 224—Goode v. Barton, 78 S.E.2d 398, 238 N.C. 492—Freeman v. Preddy, 76 S.E.2d 159, 237 N.C. 734—Harris v. Burgess, 75 S.E.2d 248, 237 N.C. 430—White v. Price, 75 S.E.2d 244, 237 N.C. 347—Garland v. Penegar, 70 S.E.2d 486, 235 N.C. 517—Hodges v. Malone & Co., 70 S.E.2d 478, 235 N.C. 512—In re Johnson's Will, 65 S.E.2d 12, 233 N.C. 570—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478—Nichols v. Wachovia Bank & Trust Co., 56 S.E.2d 429, 231 N.C. 158—Stewart v. Dixon, 51 S.E.2d 182, 229 N.C. 737—Harrelson v. Gooden, 50 S.E.2d 901, 229 N.C. 654—Sisson v. Royster, 45 S.E. 2d 351, 228 N.C. 298—Rea v. Simowitz, 38 S.E.2d 194, 226 N.C. 379—Gibbs v. Russ, 26 S.E.2d 909, 223 N.C. 349—In re Cooper's Will, 25 S.E.2d 166, 223 N.C. 34—Gold v. Kiker, 10 S.E.2d 650, 218 N.C. 204—Tolley v. Dairymen's Creamery, 7 S.E.2d 502, 217 N.C. 255—Atlantic Coast Line R. Co. v. Thrower, 6 S.E.2d 899, 217 N.C. 77—Rogers v. Freeman, 190 S.E. 728, 211 N.C. 468—Hicks v. Niven, 185 S.E. 469, 210 N.C. 44.

N.D.—Killmer v. Duchscherer, 72 N.W.2d 650—Moe v. Kettwig, 68 N.W.2d 853—State v. Van Horne, 2 N.W.2d 1, 71 N.D. 455.

Ohio.—Brown v. Follrod, App., 141 N.E.2d 925—Baxter v. Baxter, App., 115 N.E.2d 857—McCary v. Jones, App., 39 N.E.2d 167.

Okl.—Batts v. Carter, 312 P.2d 472—City of Shawnee v. Bryant, 310 P. 2d 754—Sattler v. Coulter, 307 P.2d 838—State ex rel. Com'rs of Land Office v. Landess, 293 P.2d 574—Layton v. Purcell, 267 P.2d 547—Grooms v. Johnson, 138 P.2d 98, 192 Okl. 527—Kelly v. Cann, 136 P. 2d 896, 192 Okl. 446—Wilson v. Holmes, 91 P.2d 85, 185 Okl. 239.

Tenn.—Monday v. Millsaps, 264 S.W. 2d 6, 37 Tenn.App. 371—Phillips v. Newport, 187 S.W.2d 965, 28 Tenn. App. 187—Shelton v. Hickman, 172 S.W.2d 9, 26 Tenn.App. 344—Getz v. Weiss, 160 S.W.2d 438, 25 Tenn. App. 520.

Tex.—City of Galveston v. Hill, 246 S.W.2d 860, 151 Tex. 139—Schroeder v. Brandon, 172 S.W.2d 488, 141 Tex. 319.

Fenton v. Wade, Civ.App., 303 S.W.2d 816—Gill v. Willis, Civ. App., 282 S.W.2d 88—Commercial Travelers Cas. Co. v. Dymke, Civ. App., 279 S.W.2d 405—Henderson v. Couch, Civ.App., 274 S.W.2d 844—Wooldridge v. Rogers, Civ. App., 268 S.W.2d 213—Griswold v. Carlson, Civ.App., 245 S.W.2d 278, reversed on other grounds 249 S. W.2d 58, 151 Tex. 246—O'Connell v. Scott, Civ.App., 231 S.W.2d 967, error refused no reversible error—Triangle Cab Co. v. Taylor, Civ. App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568—Wright v. Matthews, Civ.App., 144 S.W.2d 367. Error dismissed, judgment correct—Homestead Fire Ins. Co. v. Simpson, Civ.App., 91 S.W.2d 960, error dismissed.

Vt.—Loeb v. Loeb, 114 A.2d 518, 118 Vt. 474—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216—Ripley v. Spaulding, 80 A.2d 375, 116 Vt. 531—Horicon v. Langlois' Estate, 66 A.2d 16, 115 Vt. 470, 9 A.L.R.2d 195—Bailey v. Central Vermont Ry., 35 A.2d 365, 113 Vt. 433—Turner v. Bragg, 35 A.2d 356, 113 Vt. 393—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107—Meyette v. Canadian Pac. Ry. Co., 6 A.2d 33, 110 Vt. 345.

Va.—Virginia Electric & Power Co. v. Wright, 196 S.E. 580, 170 Va. 442.

Wis.—Kalb v. Luce, 1 N.W.2d 176, 239 Wis. 256—Knauf v. Diamond Cartage Co., 275 N.W. 903, 226 Wis. 111.

Wyo.—Tompkins v. Byrtus, 267 P.2d 753, 72 Wyo. 537—Trepanier v. Standard Min. & Mill. Co., 123 P.2d 378, 58 Wyo. 29—In re Utah-Idaho Sugar Co., 120 P.2d 601, 57 Wyo. 425.

Under statute

(1) Under the rules of civil procedure enacted in 1941, the rule of "presumed prejudice" was abrogated, and the burden is cast on the complaining party to show at least that error probably resulted to his prejudice.

Tex.—Walker v. Texas Emp. Ins. Ass'n, 291 S.W.2d 298—Texas Power & Light Co. v. Hering, 224 S.W. 2d 191, 148 Tex. 350.

McCarty v. Gappelberg, Civ.App., 273 S.W.2d 943, error refused no reversible error—Texas Emp. Ins. Ass'n v. Henthorn, Civ.App., 240 S.W.2d 392, error refused no re-

cie collateral, irrelevant, and without probable substantial relation to the disposition of the case, or, on the other hand, that which is so substantial in nature or so connected with the rights of the parties or the course of the proceedings that it cannot be said prima facie not to have influenced the result; and, in determining whether error will be deemed on its face to be prejudicial or otherwise, the courts act on this distinction, although usually in language so general as to seem confusing and contradictory.[39]

Thus the rule as to the first class of errors, those which are intrinsically collateral and without influence on the final result, is that the record must not only establish error, but also that the party complaining was prejudiced thereby;[40] and there must be an affirmative showing that it is not unlikely that the error affected the result.[41] The ba-

versible error—Morgan v. Empire Southern Gas Co., Civ.App., 236 S.W.2d 198—Texas Power & Light Co. v. Hering, Civ.App., 218 S.W.2d 301, affirmed 224 S.W.2d 191, 148 Tex. 350—Ligon v. Green, Civ.App., 206 S.W.2d 629, error refused no reversible error—American Nat. Bank of Austin v. Sheppard, Civ.App., 175 S.W.2d 626, error refused.

(2) Accordingly, on appeal, burden was on appellant to show from record as a whole that complained of error was such that it was reasonably calculated to cause and probably did cause rendition of an improper judgment.

Tex.—Walker v. Texas Emp. Ins. Ass'n, 291 S.W.2d 298.

Duff v. Matthews, Civ.App., 300 S.W.2d 679, error granted—McCarty v. Gappelberg, Civ.App., 273 S.W.2d 943, error refused no reversible error.

(3) However, complaining party is not required to demonstrate that but for erroneous ruling a different judgment would have resulted.

Tex.—Texas Power & Light Co. v. Hering, 224 S.W.2d 191, 148 Tex. 350.

McCarty v. Gappelberg, Civ.App., 273 S.W.2d 943, error refused no reversible error.

(4) The new rules prohibiting reversal of judgment except for prejudicial error should be construed in connection with rule stating proper objectives of rules, and all other applicable rules.

Tex.—Ross v. Texas Emp. Ins. Ass'n, 267 S.W.2d 541, 153 Tex. 276.

Former rule abrogated by constitutional provision

Constitutional provision for setting aside a judgment only if error resulted in a miscarriage of justice abrogated former rule that prejudice is presumed from an error of law.

Cal.—Drotleff v. Renshaw, 208 P.2d 969, 34 C.2d 176.

Black v. Black, 204 P.2d 950, 91 C.A.2d 328—Carr v. Duncan, 202 P.2d 855, 90 C.A.2d 282—In re Rich's Estate, 179 P.2d 373, 79 C.A.2d 22—Credit Bureau of San Diego v. Horeth, 139 P.2d 962, 60 C.A.2d 47—In re Olson, 67 P.2d 690, 20 C.A.2d 589.

39. Tex.—Williams v. Rodecker, Civ.App., 84 S.W.2d 556.

Vt.—Parker v. Roberts, 131 A. 21, 99 Vt. 219, 49 A.L.R. 1382.

Corpus Juris Secundum has been cited as containing a thorough treatment of this subject.

Cal.—Santina v. General Petroleum Corp. of California, 106 P.2d 60, 61, 41 C.A.2d 74.

40. Ala.—Gavin v. Hughes, 30 So.2d 245, 249 Ala. 126—Black v. Sloss-Sheffield Steel & Iron Co., 80 So. 794, 202 Ala. 506.

Knights of Modern Maccabees v. Gillespie, 71 So. 67, 14 Ala.App. 493.

Cal.—Baker v. Smith-Booth-Usher Co., 181 P. 56, 180 C. 309—Vallejo & N. R. Co. v. Reed Orchard Co., 147 P. 238, 169 C. 545.

Hoffman v. Citizens State Bank of Long Beach, 67 P.2d 1061, 21 C.A.2d 7—In re Olson, 67 P.2d 690, 20 C.A.2d 589—Andreen v. Escondido Citrus Union, 269 P. 556, 93 C.A. 182—Turgeon v. Barney, 233 P. 394, 70 C.A. 432—Imperial Water Co. No. 1 v. Imperial Irr. Dist., 217 P. 88, 62 C.A. 286—Arnett v. Nall, 196 P. 291, 51 C.A. 194—Cuddahy v. Gragg, 189 P. 721, 46 C.A. 578.

Ga.—Campbell v. Powell, 58 S.E.2d 829, 206 Ga. 768.

Dillin v. United Roofing & Supply Co., 129 S.E. 573, 34 Ga.App. 316.

Ill.—Welsh v. Jakstas, 82 N.E.2d 53, 401 Ill. 288.

Ind.—Washington Hotel Realty Co. v. Bedford Stone & Construction Co., 143 N.E. 156, 196 Ind. 128, motion denied 148 N.E. 405, 196 Ind. 396—Massachusetts Bonding & Insurance Co. v. State, 131 N.E. 398, 191 Ind. 595.

Refiners' Oil Co. v. Grocutt, 162 N.E. 59, 87 Ind.App. 594—Meadowcroft v. Wood, 132 N.E. 267, 76 Ind.App. 317.

Iowa.—Henn v. Finley, 201 N.W. 783—Ex parte Blodgett, 163 N.W. 342.

Kan.—Cox v. Chase, 163 P. 184, 99 Kan. 740.

Ky.—Rice v. Kelly, 10 S.W.2d 1112, 226 Ky. 347—Prewitt v. Wilborn, 212 S.W. 442, 184 Ky. 638.

Me.—Lunge v. Abbott, 95 A. 942, 114 Me. 177—In re Moore, 93 A. 180, 113 Me. 195—Salter v. Greenwood, 92 A. 786, 112 Me. 548—Smith v. Booth Bros. & Hurricane Isle Granite Co., 92 A. 103, 112 Me. 297—State v. Intoxicating Liquors, 91 A. 175, 112 Me. 138.

Mich.—Goldberg v. Cities Service Oil Co., 266 N.W. 321, 275 Mich. 199.

Mo.—Central Coal & Coke Co. v. Kansas City Southern R. Co., App., 215 S.W. 914.

Mont.—Olson v. City of Butte, 283 P. 222, 86 Mont. 240, 70 A.L.R. 1352.

N.J.—Baumann v. Delaware, L. & W. R. Co., 176 A. 369, 114 N.J.Law 314.

N.C.—Thigpen v. Farmers' Banking & Trust Co. of Tarboro, 165 S.E. 720, 203 N.C. 291—Blevins v. Norfolk & W. Ry. Co., 114 S.E. 298, 184 N.C. 324.

S.D.—Housman v. Housman, 226 N.W. 755, 55 S.D. 548.

Tex.—Kelsey v. Myers, Civ.App., 29 S.W.2d 855—Standard Acc. Ins. Co. v. Williams, Civ.App., 4 S.W.2d 1023—Haines v. Bankers' Petroleum & Refining Co., Civ.App., 273 S.W. 940.

Utah.—**Corpus Juris Secundum cited in** First Security Bank of Utah v. Burgi, 251 P.2d 297, 300, 122 Utah 445—Olsen v. S. H. Kress & Co., 48 P.2d 430, 87 Utah 51.

Va.—Shelton v. Sydnor, 102 S.E. 83, 126 Va. 625.

Wash.—**Corpus Juris Secundum cited in** La Vera v. Department of Labor and Industries, 275 P.2d 426, 428, 45 Wash.2d 413.

4 C.J. p 912 note 77.

41. Ala.—Howell v. Dodd, 157 So. 211, 229 Ala. 393—Alaga Coach Line v. McCarroll, 151 So. 834, 227 Ala. 686—Dorough v. Alabama Great Southern R. Co., 128 So. 602, 221 Ala. 305.

Liberty Nat. Life Ins. Co. v. Collier, 154 So. 116, 26 Ala.App. 75, reversed on other grounds 154 So. 118, 228 Ala. 3, certiorari denied 154 So. 119, 228 Ala. 4.

Ariz.—Peabody Consol. Copper Co. v. Maier, 181 P. 177, 20 Ariz. 370.

Ark.—Lee Wilson & Co. v. Osceola and Little River Road Improvement Dist. No. 1, 192 S.W. 371, 127 Ark. 310.

Cal.—Coleman v. Farwell, 276 P. 335, 206 C. 740—Saltzen v. Associated Oil Co. of California, 244 P. 338, 198 C. 157—Mathes v. Aggeler & Musser Seed Co., 178 P. 713, 179 C. 697

sis of this rule is that the doctrine of harmless error is favored and will be applied whenever it seems reasonable and safe to do so.[42]

On the other hand, the doctrine is not a cure-all;[42.5] and the courts, in their desire to sustain what appears to be a just verdict, should not strain the doctrine beyond its legitimate function.[42.10] Accordingly, the rule is otherwise as to those er-

—Vallejo & N. R. Co. v. Reed Orchard Co., 147 P. 238, 169 C. 545. Jones v. Bayley, 122 P.2d 293, 49 C.A.2d 647—**Corpus Juris Secundum quoted in** Santina v. General Petroleum Corporation of California, 106 P.2d 60, 61, 41 C.A.2d 74—Semple v. Andrews, 81 P.2d 203, 27 C.A.2d 228—Anderson v. Southern Pac. Co., 18 P.2d 703, 129 C.A. 206—Noble v. Bacon, 18 P.2d 699, 129 C.A. 177—Kettelle v. Kettelle, 294 P. 453, 110 C.A. 310—Belm v. Patrick, 293 P. 847, 109 C.A. 599—Houghton v. Pickwick Stages, Northern Division, 262 P. 770, 87 C.A. 669—Eddie v. Schumacher Wall Board Co., 249 P. 235, 79 C.A. 318—Bellone v. Kleinau, 201 P. 977, 54 C.A. 428—Shebley v. Peters, 200 P. 364, 53 C.A. 288—Dilger v. Whittier, 164 P. 49, 33 C.A. 15—Valencia v. Milliken, 160 P. 1086, 31 C.A. 533.

Colo.—Sutton v. Ahart, 252 P. 346, 80 Colo. 420—Denver Dry Goods Co. v. Jester, 152 P. 903, 60 Colo. 290, L.R.A.1917A 957.

Fla.—White v. Crandall, 143 So. 871, 105 Fla. 70.

Ga.—Studstill v. Growers' Finance Corporation, 140 S.E. 859, 165 Ga. 304. Herrington v. Moore, 165 S.E. 867, 45 Ga.App. 636.

Ill.—Yellow Terminals, Inc. v. Watson Bros. Transp. Co., 120 N.E.2d 74, 2 Ill.App.2d 520.

Ind.—Paul v. Walkerton Woodlawn Cemetery Ass'n, 184 N.E. 537, 204 Ind. 693. Ferdinand R. Co. v. Bretz, 108 N.E. 967, 59 Ind.App. 123.

Iowa.—Johnson v. Des Moines City Ry. Co., 207 N.W. 984, 201 Iowa 1044.

Kan.—Willhite v. Wood Const. Co., 292 P.2d 703, 179 Kan. 140.

La.—Ratcliff v. Levin, 143 So. 1, 175 La. 49.

Me.—Pratt v. Chapman, 128 A. 3, 124 Me. 443—Skene v. Graham, 100 A. 938, 116 Me. 202.

Md.—**Corpus Juris cited in** Johnson & Higgins v. Simpson, 163 A. 832, 837, 163 Md. 574.

Mass.—National Bank of Charlottesville v. Cambridge Salvage Supply Co., 169 N.E. 787, 270 Mass. 280—De Filippo v. Di Pietro, 163 N.E. 742, 265 Mass. 186—Del Visco v. General Electric Co., 126 N.E. 799, 235 Mass. 415—City of Fall River v. Public Service Commission, 117 N.E. 915, 228 Mass. 575—Dunham v. Holmes, 113 N.E. 845, 225 Mass. 68.

Mo.—Vette v. Hackman, 237 S.W. 802, 292 Mo. 138. Hellums v. Randol, 40 S.W.2d 500, 225 Mo.App. 1092—Wooldridge v. Hopkins, 278 S.W. 1081, 220 Mo.App. 1034—Balderson v. Monaghan, App., 278 S.W. 783.

Mont.—Dockins v. Dockins, 266 P. 398, 82 Mont. 218—Thompson v. Chicago, B. & Q. R. Co., 253 P. 313, 78 Mont. 170—Lindeberg v. Howe, 215 P. 230, 67 Mont. 195.

N.C.—Shelly v. Grainger, 168 S.E. 736, 204 N.C. 488—In re Creecy's Will, 129 S.E. 822, 190 N.C. 801—Perry v. Southern Surety Co., 129 S.E. 721, 190 N.C. 284—Quelch v. Futch, 94 S.E. 713, 175 N.C. 694—Universal Oil & Fertilizer Co. v. Burney, 93 S.E. 912, 174 N.C. 382.

Okl.—Young v. Smith, 41 P.2d 461, 171 Okl. 222—Mid-West Ins. Co. of Enid v. Shrader, 225 P. 541, 99 Okl. 17—Stekoll v. Abraham, 217 P. 410, 90 Okl. 218—L. E. Harmon & Son v. Majors, 152 P. 450, 51 Okl. 776.

S.C.—Federal Land Bank of Columbia v. Summer, 167 S.E. 830, 168 S.C. 510—Stukes v. Life Ins. Co. of Virginia, 161 S.E. 478, 163 S.C. 216—Rouk v. Virginia-Carolina Chemical Co., 95 S.E. 79, 108 S.C. 397.

Tenn.—L. & N. R. R. Co. v. Erby, 7 Tenn. 248. Haley v. Ogilvie, 2 Tenn.App. 607.

Tex.—Cruse v. Daniels, Civ.App., 293 S.W.2d 616, error refused no reversible error—Douglas Oil Co. v. State (California Case), Civ.App., 70 S.W.2d 452—Rosson v. Groom Mut. Hail Ass'n, Civ.App., 58 S.W.2d 572—Trevino v. Southland Greyhound Lines, Civ.App., 57 S.W.2d 281—D. & H. Truck Line v. Lavallee, Civ.App., 7 S.W.2d 661—McCaskill v. Clay, Civ.App., 284 S.W. 643—Millers' Indemnity Underwriters v. Schrieber, Civ.App., 240 S.W. 963—Schaff v. Riha, Civ.App., 201 S.W. 210—St. Louis Southwestern Ry. Co. of Texas v. Miller & White, Civ.App., 190 S.W. 819—American Surety Co. of New York v. Hardwick, Civ.App., 186 S.W. 804.

Vt.—In re Moxley's Will, 152 A. 713, 103 Vt. 100—MacDonald v. Orton, 134 A. 599, 99 Vt. 425—Hill v. Bedell, 126 A. 493, 98 Vt. 82.

Va.—General Motors Acceptance Corporation v. Vicars, 149 S.E. 476, 153 Va. 149—Ashby v. Virginia Ry. & Power Co., 122 S.E. 104, 138 Va. 310.

Wash.—Huston v. Murrell, 253 P. 451, 142 Wash. 404.

W.Va.—First Nat. Bank v. Prichard, 167 S.E. 745, 113 W.Va. 295.

42. Ala.—Harrell v. Hooks, 80 So. 145, 16 Ala.App. 571.

Ill.—See Hughes v. Eldorado Coal & Mining Co., 197 Ill.App. 259.

Ind.—Johnson v. Smith, 176 N.E. 705, 203 Ind. 214.

Mass.—Thayer v. Thayer, 178 N.E. 730, 277 Mass. 256.

Minn.—**Corpus Juris Secundum cited in** Independent School Dist. No. 35, St. Louis County v. A. Hedenberg & Co., 7 N.W.2d 511, 521, 214 Minn. 82.

N.C.—McNinch v. American Trust Co., 110 S.E. 663, 183 N.C. 33, certiorari denied American Trust Co. v. McNinch, 43 S.Ct. 363, 261 U.S. 618, 67 L.Ed. 829, and error dismissed 43 S.Ct. 363, 261 U.S. 606, 67 L.Ed. 823.

Okl.—Sequoyah Oil & Refining Co. v. Sunday, 223 P. 665, 101 Okl. 44—Grantz v. Jenkins, 175 P. 527, 73 Okl. 205—Oklahoma City Land & Development Co. v. Adams Engineering & Blueprinting Co., 155 P. 496, 51 Okl. 763.

Vt.—Higgins v. Metzger, 143 A. 394, 101 Vt. 285.

Va.—Windsor v. Carlton, 118 S.E. 222, 136 Va. 652.

Conflicting inferences

The rule that instructions authorizing a recovery for elements of damage within issues, but not established by proof, are presumptively harmful is not superior to the rule that the jury will not be presumed to have awarded compensation for loss not shown by the evidence, unless the record presents strong evidence that the jury based its award on an element of damage which required definite proof and in so doing must necessarily have entered the realm of speculation.

Ind.—Indianapolis Traction & Terminal Co. v. Hensley, 115 N.E. 934, 186 Ind. 479.

Manifest fairness of trial judge

When it is apparent that the trial judge has made a fair effort to see that truth was established and justice done, the complaining party has the burden of showing the court's action was prejudicial.

Tex.—U. S. Fidelity & Guaranty Co. v. Rochester, Civ.App., 281 S.W. 306, affirmed 283 S.W. 135, 115 Tex. 404.

42.5 Minn.—Independent School Dist. No. 35, St. Louis County v. A. Hedenberg & Co., 7 N.W.2d 511, 214 Minn. 82.

42.10 Minn.—Independent School Dist. No. 35, St. Louis County v. A. Hedenberg & Co., supra.

rors which by fair and legitimate inference have a potential connection with the final verdict or judgment, and if there is such error apparent on the face of the record a presumption of prejudice arises which cannot be disregarded, unless the record affirmatively discloses that the error was not prejudicial;[43] and the judgment is ipso facto reversible for error of that character unless appellee, defendant in error, shows from the record that which clearly rebuts the presumption of prejudice.[44] The reviewing court must be convinced of the justice of the verdict and judgment and of the fact that the errors complained of did not contribute to the injury of any substantial rights before it may affirm notwithstanding error.[45] When any absolute right of appellant, as to which the court had no discretion, is denied, a presumption of prejudice results.[46]

Irrebuttable presumption under mandatory statute. Where a statute requiring the court to instruct the jury in writing unless both parties consent to oral instructions is regarded as mandatory, the failure of the court to comply therewith is irrebuttably presumed to be prejudicial, without any inquiry as to whether it in fact was actually prejudicial.[46.5]

Grant or denial of new trial. In general, on appeal from an allegedly erroneous judgment or order granting,[46.10] or denying,[46.15] a motion for a new trial the burden is on appellant to show affirmatively that the decision is prejudicial. On the oth-

43. Ga.—Battle v. F. S. Royster Guano Co., 118 S.E. 343, 155 Ga. 322.
City of East Point v. Christian, 153 S.E. 784, 41 Ga.App. 536.
Ill.—Duffy v. Cortesi, 119 N.E.2d 241, 2 Ill.2d 511.
Iowa.—In re Kahl's Estate, 232 N.W. 133, 210 Iowa 903—Iowa Electric Co. v. Scott, 220 N.W. 333, 206 Iowa 1217.
Mo.—State ex rel. Central Coal & Coke Co. v. Ellison, 195 S.W. 722, 270 Mo. 645.
Conaghan v. Dean, App., 96 S.W.2d 924—Ferd Bauer Engineering & Contracting Co. v. Arctic Ice & Storage Co., 172 S.W. 417, 186 Mo. App. 664.
N.J.—Industrial Sales Engineering Co. v. Agisim, 147 A. 45, 7 N.J.Misc. 648.
N.Y.—Kohn v. P. & D. Pub. Co., 155 N.Y.S. 455, 169 App.Div. 580.
Ohio.—Richards v. Cleveland Jewish Orphan Home, 154 N.E. 61, 22 Ohio App. 475.
Roth v. Bien, 15 Ohio Cir.Ct.,N.S., 109.
Or.—Fromme v. Lang & Co., 281 P. 120, 131 Or. 501—Pitts v. Crane, 236 P. 475, 114 Or. 593—Salisbury v. Goddard, 156 P. 261, 79 Or. 593.
Tenn.—Hager v. Hager, 13 Tenn.App. 23.
Tex.—Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091.
Bassmer v. Kotulek, Civ.App., 75 S.W.2d 295—Hutton v. Burkett, Civ. App., 18 S.W.2d 740.
Utah.—Clark v. Los Angeles & S. L. R. Co., 275 P. 582, 73 Utah 486—Jensen v. Utah Ry. Co., 270 P. 349, 72 Utah 366.
4 C.J. p 911 note 74.

Not affected by statute as to effect of harmless error
The statutory rule requiring the disregarding of nonprejudicial errors was not inconsistent with the rule that error is presumed prejudicial.
Mo.—Aronovitz v. Arky, 219 S.W. 620.

Prejudice as incident to error
"Error and prejudice go hand in hand, until the latter, which is the creature of presumption, is met and neutralized by something in the record. It follows, therefore, that the interference of the appellate court with the judgment of the lower court can be successfully invoked by showing an error in the record; for when the error is shown the law supplies and attaches the consequence of prejudice."
Mo.—Bindbeutal v. Street Ry. Co., 43 Mo.App. 463, 469.

Qualified nature of presumption
The presumption that error is prejudicial is not absolute.
Minn.—Rennie v. Skellett Co., 186 N. W. 130, 151 Minn. 63.

44. Ala.—Mullins-Lambert Gin Co. v. Reneau, 122 So. 467, 23 Ala.App. 20, certiorari denied 122 So. 469, 219 Ala. 484.
Ind.—National Motor Vehicle Co. v. Pake, 109 N.E. 787, 60 Ind.App. 366.
Iowa.—Borough v. Minneapolis & St. L. Ry. Co., 184 N.W. 320, 191 Iowa 1216—In re Hoyt's Estate, 163 N.W. 430, 180 Iowa 1250.
Ky.—Louisville Ry. Co. v. Lenehan, 69 S.W.2d 1017, 253 Ky. 489.
Mo.—State ex rel. Berberich v. Haid, 64 S.W.2d 667, 333 Mo. 1224.
Ferd Bauer Engineering & Contracting Co. v. Arctic Ice & Storage Co., 172 S.W. 417, 186 Mo.App. 664.
Or.—Lintner v. Wiles, 141 P. 871, 70 Or. 356.
Tex.—Putnam Supply Co. v. Chapin, Civ.App., 45 S.W.2d 283, affirmed Chapin v. Putnam Supply Co., 76 S.W.2d 469, 124 Tex. 247—St. Louis Southwestern Ry. Co. of Texas v. Smithhart, Civ.App., 9 S.W.2d 146.
Va.—Irvine v. Carr, 177 S.E. 208, 163 Va. 662.
4 C.J. p 911 note 75.

45. Tenn.—Hager v. Hager, 13 Tenn. App. 23.

Negligence and contributory negligence
A judgment on a verdict for defendant may not be sustained, regardless of errors on the trial, on the theory that plaintiff was guilty of contributory negligence, unless such negligence conclusively appears in such a way that direction of verdict for defendant would have been justified.
Mo.—Monroe v. Chicago & A. R. Co., 219 S.W. 68, 280 Mo. 483.

46. Wash.—Americus v. McGinnis, 221 P. 987, 128 Wash. 28.

46.5 Utah.—Kunz v. Nelson, 76 P.2d 577, 94 Utah 185, 115 A.L.R. 1322.

46.10 Ala.—Jefferson Iron & Metal Co. v. Bethune, 81 So.2d 674, 263 Ala. 131.

46.15 Cal.—Engleman v. Malchow, 205 P.2d 413, 91 C.A.2d 341.
Ga.—Gaulding v. Courts, 83 S.E.2d 288, 90 Ga.App. 472.

Particular incidental matters as prejudicial
(1) Where trial court overruled plaintiff's motion for new trial based on giving of certain instructions at defendant's request, burden rested on plaintiff of establishing reversible error in giving of the instructions complained of.
Mo.—Mueller v. Schien, 176 S.W.2d 449, 352 Mo. 180.
(2) Denial of defendant's motion for new trial for alleged misconduct of juror or jury would not be disturbed where defendant did not show that alleged misconduct materially affected defendant's rights.
S.D.—Carpenter v. Union Baking Co., 290 N.W. 322, 67 S.D. 151.
Tex.—Kimble v. Younger Bros.-J. M. English Truck Lines, Civ.App., 283 S.W.2d 254, error refused no reversible error.

er hand, it is incumbent on appellant, appealing from an order granting a new trial, to show that the record is free from prejudicial error against appellee;[46.20] but it has been held that where the order granting a new trial states no reason therefor, appellee must point out prejudicial errors existing in the record which he contends justify the decision of the trial court.[46.25]

(2) Error Manifestly Harmless in Nature

Various errors have been held to be of such a nature as to make it improbable that the error is in any way connected with the result, so that an affirmative showing must be made by the appellant.

Sometimes the very nature of the error makes it improbable that it is in any way connected with the result, thus bringing it into the class of errors as to which an affirmative showing must be made by appellant, and this is true whenever the error is at most a mere irregularity in proceeding;[47] and so, typically, where technical errors and errors in matter of pleading and procedure only are relied on for reversal, and the judgment is not assailed on the merits, some indication of prejudice must be adduced by appellant.[48]

Application of rule to particular errors. Under particular circumstances, various errors have been held to be manifestly harmless within the above rule,[48.5] including the trial court's grant or refusal

46.20 Iowa.—Steensland v. Iowa-Illinois Gas & Elec. Co., 47 N.W.2d 162, 242 Iowa 534.

Instruction without prejudicial error

On appeal from grant of new trial on ground that an erroneous instruction was given, appellant had burden to establish that grant of new trial was reversible error, and this required appellant to establish that the questioned instructions were without prejudicial error.

Mo.—Donaldson v. Rather, App., 288 S.W.2d 682.

46.25 Mo.—Dove v. Atchison, T. & S. F. Ry. Co., 163 S.W.2d 548, 349 Mo. 798.

Pemberton v. Buescher, 165 S.W. 2d 707, 237 Mo.App. 251.

Neb.—Burhoop v. Brackhan, 82 N.W. 2d 557, 164 Neb. 382—Maska v. Stoll, 81 N.W.2d 571, 163 Neb. 857—Wright v. Lincoln City Lines, Inc., 81 N.W.2d 170, 163 Neb. 679—Borsen v. Moskowitz, 79 N.W.2d 178, 163 Neb. 223—Gain v. Drennen, 69 N.W.2d 916, 160 Neb. 263—Vielehr v. Malone, 63 N.W.2d 497, 158 Neb. 436—Pongruber v. Patrick, 61 N. W.2d 578, 157 Neb. 799—Keiserman v. Lydon, 44 N.W.2d 513, 153 Neb. 279—Greenberg v. Fireman's Fund Ins. Co. of San Francisco, Cal., 35 N.W.2d 772, 150 Neb. 695.

Beneficiary of error consisting of failure of trial court to state reasons for sustaining motion for new trial should bear burden of proving the error harmless.

Mo.—King v. Kansas City Life Ins. Co., 164 S.W.2d 458, 350 Mo. 75.

47. Ariz.—E. A. Tovrea & Co. v. Yutich, 206 P. 595, 24 Ariz. 41.

Cal.—Chamberlain v. Wakefield, 213 P.2d 62, 95 C.A.2d 280.

Idaho.—Greenstreet v. Greenstreet, 139 P.2d 239, 65 Idaho 36.

Iowa.—Hampton v. Burrell, 17 N.W. 2d 110, 236 Iowa 79.

Ky.—Whittaker v. Commonwealth ex rel. Attorney General, 115 S.W.2d 355, 272 Ky. 794.

Md.—Benner v. E. & H. Bottling Co., 153 A. 850, 160 Md. 507.

Mass.—Minot v. Minot, 66 N.E.2d 5, 319 Mass. 253.

Or.—Payne v. Payne, 72 P.2d 536, 157 Or. 428.

S.C.—Sanders v. Atlantic Coast Line R. Co., 103 S.E. 564, 114 S.C. 164.

Tenn.—Walsh v. Rose, 193 S.W.2d 118, 29 Tenn.App. 78.

Tex.—Miguez v. Miguez, Civ.App., 221 S.W.2d 293.

Burden not on respondent

Where appellant complained of trial court's refusal of permission to make experimental test of machine, respondent did not have burden of showing that he would have been harmed if additional time had been allowed to hold thirty-hour demonstration.

Cal.—Grupe v. Glick, 160 P.2d 832, 26 C.2d 680.

48. Ala.—Miller v. Mutual Grocery Co., 106 So. 396, 214 Ala. 62.

Cal.—Scribner v. Bertmann, 276 P.2d 697, 129 C.A.2d 204—In re Olson, 67 P.2d 690, 20 C.A.2d 589—Peak v. Key System Transit Co., 263 P. 578, 88 C.A. 354—Myers v. Canepa, 174 P. 903, 37 C.A. 556, rehearing denied 174 P. 906, 37 C.A. 556.

Kan.—Willhite v. Wood Const. Co., 292 P.2d 703, 179 Kan. 140—Fakes v. Osborne, 286 P.2d 154, 178 Kan. 339—Cooper v. Cooper, 76 P.2d 867, 147 Kan. 256.

Ky.—United Ben. Life Ins. Co. v. Schott, 177 S.W.2d 581, 296 Ky. 789, 150 A.L.R. 1359—Ramey v. Weddington, 105 S.W.2d 824, 268 Ky. 675.

Me.—Perkins v. Inhabitants of Town of Standish, 62 A.2d 321, 143 Me. 253.

N.C.—Keener v. Beal, 98 S.E.2d 19, 246 N.C. 247.

Okl.—Franklin v. Jackson, 188 P. 325, 78 Okl. 15.

Tex.—Clary & Sons Plumbing & Heating v. Local Trademarks, Civ. App., 250 S.W.2d 916—Homestead Fire Ins. Co. v. Simpson, Civ.App., 91 S.W.2d 960, error dismissed King v. Lowry, Civ.App., 80 S.W.2d 790—Bray v. Peters, Civ.App., 283 S.W. 591.

Demurrers on technical grounds

Even if defendant were entitled to have separate acts stated separately in complaint, overruling of demurrer to complaint on such ground did not require reversal after trial on merits where there was no showing of prejudice.

Cal.—Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778.

Cure of defects in pleading

Where a complaint is defective in regard to the statement of some elements of the cause of action, although no requisite element is altogether omitted, it will be assumed in support of the judgment that evidence to support all requisite elements was admitted without objection.

Cal.—Hall v. Mitchell, 211 P. 853, 59 C.A. 743.

Misjoinder

A party complaining of misjoinder of causes of action must show that the error was prejudicial to obtain review on appeal.

Tex.—Daily v. Brown, Civ.App., 26 S.W.2d 400.

48.5 Particular errors held to require affirmative showing of prejudice

(1) Permitting defendant to answer plaintiffs' written request for admission or denial of relevant facts during progress of the trial and more than three months after time designated in the request.

Tex.—Masten v. Gower, Civ.App., 165 S.W.2d 901.

(2) Disposition of plea of privilege at conclusion of evidence in trial on merits instead of before trial on merits.

Tex.—Commercial Casualty Ins. Co. v. Loper, Civ.App., 104 S.W.2d 580, error dismissed.

(3) Overruling of motion to require the production of certain books and writings.

Ohio.—Ornstein v. Chesapeake & O. R. Co., App., 36 N.E.2d 521, appeal dismissed, 13 N.E.2d 909, 133 Ohio St. 385.

of a motion for a change of place of trial,[48.10] the transfer of a case from one department of the district court to another,[49] a substitution of parties pursuant to the discretion confided to the trial court,[50] a direction to a referee to summon before him anyone deemed to be a necessary party,[51] the grant of a preliminary injunction in abuse of the court's discretion,[51.5] and a failure to serve notice of motion on other parties whose interest is not made to appear.[52]

Pleadings. Various errors relating to pleadings have been held to be within the rule as manifestly harmless in nature,[52.5] including the extension of time to file a pleading,[53] the denial or grant of a discretionary motion to make a pleading more definite and certain,[54] the overruling of exceptions or a special exception to a pleading,[55] and the allowance or refusal of an amendment;[56] and, in the absence of circumstances establishing the contrary, the court will conclude that appellant was not misled to his prejudice by a variance.[57]

Trial generally. Likewise, the rule has been applied in the case of the grant[58] or denial[59] of a motion for the continuance or postponement of a

(4) Orders appointing receivers.
Cal.—Snidow v. Hill, 191 P.2d 513, 84 C.A.2d 702.

(5) Decree quashing levy of execution.
Ala.—Jobe-Rose Jewelry Co. v. City of Birmingham, 178 So. 215, 235 Ala. 178.

(6) Refusal to strike interrogatories filed.
Ind.—Holland Furnace Co. v. Nauracaj, 14 N.E.2d 339, 105 Ind.App. 574.

(7) Trial judge's conduct in carrying on conversation in courtroom, and in leaving courtroom while trial was going on.
Tenn.—Tiffany v. Shipley, 161 S.W. 2d 373, 25 Tenn.App. 539.

(8) Error assigned on the court's disregard of its rule that instructions must be handed to judge personally and a copy delivered to adverse party.
Cal.—Sheldon v. James, 166 P. 8, 175 C. 474, 2 A.L.R. 1493.

48.10 Utah.—Anderson v. Johnson, 268 P.2d 427, 1 Utah 2d 400.

49. Mont.—Finlen v. Heinze, 80 P. 918, 32 Mont. 354.

50. Iowa.—Webster County Buick Co. v. Nebraska Buick Automobile Co., 249 N.W. 203, 216 Iowa 485.

51. Va.—Goins v. Garber, 108 S.E. 868, 131 Va. 59.

51.5 Cal.—Remillard Brick Co. v. Dandini, 117 P.2d 432, 47 C.A.2d 63.

52. Cal.—Johnson v. Nelson, 184 P. 501, 43 C.A. 113.

52.5 Striking allegations from pleadings
N.Y.—Muller v. McCormick, 74 N.Y.S. 2d 261, 272 App.Div. 1027.
N.C.—State ex rel. Wilson v. Pearson, 89 S.E.2d 150, 242 N.C. 601.
Okl.—Thompson v. Board of Com'rs of Okmulgee County, 102 P.2d 867, 187 Okl. 312—Federal Tax Co. v. Board of Com'rs of Okmulgee County, 102 P.2d 148, 187 Okl. 223.

53. Utah.—State Bank of Sevier v. American Cement & Plaster Co., 10 P.2d 1065, 80 Utah 250.

54. Ind.—Mock v. Polley, 66 N.E.2d 78, 116 Ind.App. 580—Johnnie J. Jones Exposition v. Terry, 63 N.E. 2d 159, 116 Ind.App. 189—Public Service Co. of Indiana v. Tackett, 47 N.E.2d 851, 113 Ind.App. 307—Weis v. Wakefield, 38 N.E.2d 303, 111 Ind.App. 106—First State Bank v. Montoney, 17 N.E.2d 870, 106 Ind.App. 61—Brown v. Powell, 176 N.E. 241, 92 Ind.App. 467—Standard Life Ins. Co. v. Grigsby, 140 N.E. 457, 80 Ind.App. 231.
S.C.—Ridgeland Box Mfg. Co. v. Sinclair Refining Co., 56 S.E.2d 585, 216 S.C. 20.
Wash.—Raab v. Wallerich, 282 P.2d 271, 46 Wash.2d 375, appeal dismissed 290 P.2d 697, 46 Wash.2d 905—Messick v. National Council of Knights and Ladies of Security, 173 P. 940, 103 Wash. 143.

55. Tex.—Kittrell v. Barbee, Civ. App., 198 S.W.2d 155, error dismissed—Montgomery Ward & Co. v. Levy, Civ.App., 136 S.W.2d 663, error dismissed, judgment correct—Thomas v. State Life Ins. Co., Civ.App., 123 S.W.2d 385—Gay v. Crow, Civ.App., 111 S.W.2d 782, error dismissed—Harris v. Sadler, Civ.App., 55 S.W.2d 173—Arendale v. Arendale, Civ.App., 22 S.W.2d 1080—Becker, Smith & Page v. Wm. Cameron & Co., Civ.App., 22 S.W.2d 951—Exporters' & Traders' Compress & Warehouse Co. v. Shaw, Civ.App., 20 S.W.2d 248—McDaniel v. Turner, Civ.App., 269 S.W. 496—Reisenberg v. Hankins, Civ.App., 258 S.W. 904—Schaff v. Sanders, Civ.App., 257 S.W. 670, affirmed, Com.App., 269 S.W. 1034.

56. Cal.—Jenssen v. R. K. O. Studios, 67 P.2d 757, 20 C.A.2d 705—Riskind v. Frank Meline Co., 13 P.2d 383, 124 C.A. 628.
Ind.—Chicago, etc., R. Co. v. Jones, 6 N.E. 8, 103 Ind. 386—Darrell v. Hilligoss, etc., Gravel Road Co., 90 Ind. 264—Martinsville v. Shirley, 84 Ind. 546—Child v. Swain, 69 Ind. 230—Durham v. Fechheimer, 67 Ind. 35—Burr v. Mendenhall, 49 Ind. 496.
Dickerson v. Dickerson, 10 N.E. 2d 424, 104 Ind.App. 686, reheard 11 N.E.2d 514, 104 Ind.App. 686—Laramore v. Blumenthal, 108 N.E. 602, 58 Ind.App. 597—Adams v. Main, 29 N.E. 792, 3 Ind.App. 232, 50 Am.S.R. 266.
Kan.—In re Woods' Trust Estate, 311 P.2d 359, 181 Kan. 271.
Minn.—Short v. Great Northern Life Ins. Co., 228 N.W. 440, 179 Minn. 19.
Miss.—Kersh v. Lyons, 15 So.2d 768, 195 Miss. 598—Planters' Oil Mill v. Yazoo & M. V. R. Co., 121 So. 138, 153 Miss. 712.
Neb.—Robinson Outdoor Advertising Co. v. Wendelin Baking Co., 15 N. W.2d 388, 145 Neb. 112—Sutton v. Inland Const. Co., 14 N.W.2d 387, 144 Neb. 721.
Okl.—City of Shawnee v. Bryant, 310 P.2d 754.
Tex.—Davis v. National Acceptance Co., Civ.App., 233 S.W.2d 321, error refused no reversible error—Wantland v. Anderson, Civ.App., 203 S. W.2d 787, error refused no reversible error—American Nat. Bank of Austin v. Sheppard, Civ.App., 175 S.W.2d 626, error refused.
4 C.J. p 912 note 81.

57. Iowa.—Western Fruit & Produce Co. v. Buzzard, 202 N.W. 759, 199 Iowa 834.
Okl.—Howard v. Stewart, 159 P.2d 527, 195 Okl. 491—Throm v. Hollister, 219 P. 115, 92 Okl. 233.
Wash.—German-American Bank of Seattle v. Wright, 148 P. 769, 85 Wash. 460, Ann.Cas.1917D 381.
4 C.J. p 912 note 82.

58. Tex.—Smith v. Bunch, 73 S.W. 559, 31 Tex.Civ.App. 541.
Wis.—Gunnison v. Kaufman, 72 N. W.2d 706, 271 Wis. 113.

59. Ill.—See In re Rahn's Will, 209 Ill.App. 234.
Miss.—Planters' Oil Mill v. Yazoo & M. V. R. Co., 121 So. 138, 153 Miss. 712.
N.H.—American Motorists Ins. Co. v. Rush, 190 A. 432, 88 N.H. 383.
Tex.—Texas Indem. Ins. Co. v. Harlan, Civ.App., 236 S.W.2d 564, error dismissed—Edwards v. Dallas County, Civ.App., 232 S.W.2d 262—Beene v. Bryant, Civ.App., 201 S. W.2d 268—Costley v. Chapman, Civ.App., 262 S.W. 543.
4 C.J. p 915 note 20.

trial, the consolidating of cases for trial,[60] the erroneous ordering of a trial by a jury[60.5] despite a waiver thereof,[61] or the fact that the case was not tried by a jury.[61.5]

There is ordinarily no presumption that errors or irregularities in the selection or impaneling of the jury were prejudicial and the burden is on appellant to show prejudice.[61.10] Thus, there is ordinarily no presumption that questions asked in connection with the selection of jurors constitute prejudicial error.[62] So the erroneous rejection of a juror for cause is not ground for reversal in the absence of a showing of prejudice;[63] and the overruling of a challenge for cause is not prejudicial error where the record does not show that an objectionable person was left on the jury after all peremptory challenges had been exhausted.[64] Moreover, the burden is on the complaining party to establish that the trial court's ruling on the number of peremptory challenges to which the parties were entitled was prejudicial.[64.5]

A showing of prejudice is necessary as to an alleged error in excluding a witness from the courtroom while others are testifying,[65] in not excluding a witness during counsel's opening statements,[65.5] in the order of reception of evidence or the time when it is adduced,[66] and other rulings relating to matters incidental to the giving of testimony by witnesses,[66.5] in restricting counsel in the cross-examination of witnesses,[66.10] in that counsel for the appellee examine or cross-examine for purposes of impeachment and subsequently have the examination stricken without proceeding to impeach,[67] in awarding the right to open and to close,[68] and in the refusal to submit a special issue on a matter having no apparent bearing on the rights or liabilities of the parties.[69]

Mere existence of misconduct or irregularity in connection with the jury and their deliberations is not deemed such error as to require a reversal in the absence of anything to establish a likelihood that it influenced the verdict;[70] nor are statements

Allegation of meritorious defense insufficient

Merely alleging generally existence of meritorious defense is not enough to show prejudice in denying continuance for absence of defendant.

Tex.—Costley v. Chapman, supra.

60. N.C.—Peeples v. Seaboard Air Line R. Co., 46 S.E.2d 649, 228 N.C. 590—In re Atkinson's Will, 35 S.E. 2d 638, 225 N.C. 526.

Tex.—Roy Campbell & Co. v. Rains, Civ.App., 66 S.W.2d 1108.

60.5 Tenn.—Shelton v. Hickman, 172 S.W.2d 9, 26 Tenn.App. 344.

61. Cal.—Johnson v. Western Air Express Corp., 114 P.2d 688, 45 C.A.2d 614—Duran v. Pickwick Stages System, 35 P.2d 148, 140 C.A. 103.

Trial by court

Where the right to a jury trial is waived, a trial of the fact issues by the court will be presumed harmless and will not be deemed prejudicial, even though the judge has a discretionary power to permit a trial by a jury.

Cal.—Harmon v. Hopkins, 2 P.2d 540, 116 C.A. 184.

61.5 Cal.—Holbrook & Tarr v. Thomson, 304 P.2d 186, 140 C.A.2d 800—Sidney v. Rotblatt, 298 P.2d 880, 142 C.A.2d 453—Glogau v. Hagan, 237 P.2d 329, 107 C.A.2d 313.

61.10 Kan.—Lee v. Gas Service Co., 201 P.2d 1023, 166 Kan. 285.

N.J.—Wright v. Bernstein, 129 A.2d 19, 23 N.J. 284.

Tex.—Yturria Town & Improvement Co. v. Hidalgo County, Civ.App., 125 S.W.2d 1092.

62. Cal.—Dermer v. Pistoresi, 293 P. 78, 109 C.A. 310.

Mo.—Malone v. Small, App., 291 S. W. 163.

N.D.—Smith v. Knutson, 47 N.W.2d 537, 78 N.D. 43.

63. Iowa.—Boston v. Keokuk Electric Co., 221 N.W. 508, 206 Iowa 753.

Tex.—Smith v. Morgan, Civ.App., 235 S.W.2d 938, error dismissed.

4 C.J. p 916 note 27.

What must be shown

The action of the court in excluding a juror in a personal injury action was not error in the absence of a showing that a fair and impartial jury was not secured.

Iowa.—Boston v. Keokuk Electric Co., 221 N.W. 508, 206 Iowa 753.

64. Tex.—Colgrove v. Falfurrias State Bank, Civ.App., 192 S.W. 580.

4 C.J. p 916 note 28.

64.5 **Use of additional challenges**

Burden is on defendants, complaining on appeal of trial judge's ruling that all of them together were entitled to but six peremptory challenges, to show that they were dissatisfied with jury finally impaneled and would have exercised statutory right to additional peremptory challenges.

N.J.—Roberts v. Saunders, 194 A. 1, 118 N.J.Law 548.

65. Ky.—Glens Falls Ins. Co. v. Hall, 79 S.W.2d 383, 259 Ky. 25.

Tex.—Southland Greyhound Lines v. Matthews, Civ.App., 74 S.W.2d 713.

65.5 Mich.—Coburn v. Goldberg, 40 N.W.2d 150, 326 Mich. 280.

66. Cal.—Fuchs v. Southern Pac. Co., 42 P.2d 704, 5 C.A.2d 409.

Iowa.—International Harvester Co. of America v. Chicago, M. & St. P. Ry. Co., 172 N.W. 471, 186 Iowa 86.

Neb.—Berggren v. Hannan, Odell & Van Brunt, 215 N.W. 556, 116 Neb. 18.

Okl.—Atwood v. Hayes, 281 P. 259, 139 Okl. 95.

Tex.—Southern Underwriters v. Hodges, Civ.App., 141 S.W.2d 707, error refused.

66.5 Cal.—Scott v. Sheedy, 102 P.2d 575, 39 C.A.2d 96.

Refusal to permit witness to refresh his recollection

Cal.—Matteoni v. Pacific Gas & Electric Co., 127 P.2d 574, 53 C.A.2d 260.

66.10 Me.—Page v. Hemingway Bros. Interstate Trucking Co., 114 A.2d 238, 150 Me. 423.

Mo.—Bloecher v. Duerbeck, 92 S.W. 2d 681, 338 Mo. 535.

67. Cal.—Pandolfo v. Jackson, 55 P. 2d 550, 12 C.A.2d 232.

68. Iowa.—Kayser v. Occidental Life Ins. Co. of California, 12 N.W. 2d 582, 234 Iowa 310—Farmer v. Norton, 105 N.W. 371, 129 Iowa 88—Shaffer v. Des Moines Coal, etc., Co., 98 N.W. 111, 122 Iowa 233.

69. Tex.—Galveston, H. & S. A. Ry. Co. v. Cook, Civ.App., 214 S.W. 539, dismissed for want of jurisdiction.

70. Ariz.—Sanders v. Beckwith, 283 P.2d 235, 79 Ariz. 67.

Cal.—McDowd v. Pig'n Whistle Corp., 160 P.2d 797, 26 C.2d 696.

Santina v. General Petroleum Corp. of California, 106 P.2d 60, 41 C.A.2d 74—Foster v. Hudson, 92 P.2d 959, 33 C.A.2d 705.

made by counsel to the court alone in support of, or opposition to, rulings,[71] or even remarks, argument, or the conduct of counsel in the presence of the jury or some jurors;[71.5] nor are apparently innocuous remarks, statements, or conduct of the judge.[71.10]

Judicial cognizance of obvious harmlessness. Where error is necessarily and obviously harmless, the court will take cognizance of that fact of its own motion.[72]

(3) Error Prima Facie Prejudicial

Various errors are intrinsically so closely related to the result reached that their very commission is assumed to have influenced the judgment so that they raise a presumption of prejudice which must be affirmatively rebutted to avoid a reversal.

Sometimes errors are intrinsically so closely related to the result reached that their very commission will be assumed to have influenced the judgment, and so raise a presumption of prejudice whenever they occur which must be affirmatively rebutted to avoid a reversal.[72.50] It has been held that whenever the rights of a party are withheld or violated, the presumption is that he has been injured unless the contrary appears.[72.55]

Iowa.—Johnson v. Des Moines City Ry. Co., 207 N.W. 984, 201 Iowa 1044.
Kan.—Bohannon v. Peoples Taxicab Co., 64 P.2d 1, 145 Kan. 86.
Minn.—Eichten v. Central Minn. Co-op. Power Ass'n of Redwood County, 28 N.W.2d 862, 224 Minn. 180.
Mont.—Watson v. City of Bozeman, 156 P.2d 178, 117 Mont. 5.
Tex.—Schoenfeld v. De Puy, Civ. App., 58 S.W.2d 574—Elliott-Greer Office Supply Co. v. Martin, Civ. App., 54 S.W.2d 1068, set aside, Com.App., 86 S.W.2d 635—Lackey v. Southland Greyhound Lines, Civ. App., 35 S.W.2d 739—Stell v. Fitch, Civ.App., 256 S.W. 650.

Interim jury service

Where no delay was occasioned by a juror in one case serving in another case during a recess of trial proceeding in first case, and the other case involved no question of a party in common with the first case, prejudice to the parties would not be presumed by reason of such interim jury service.
Okl.—Chase v. Watson, 294 P.2d 801.

Under statute

Under an amendment of the rules of civil procedure to that effect, as to error relating to the misconduct of the jury or the officer in charge of them, prejudice is not presumed but it must reasonably appear that injury probably resulted to the complaining party, the burden of so showing being on such party.
Tex.—City of Houston v. Quinones, 177 S.W.2d 259, 142 Tex. 282.
Andrews v. Daniel, Civ.App., 240 S.W.2d 1018, error dismissed—Texas Emp. Ins. Ass'n v. Hicks, Civ.App., 237 S.W.2d 699, error refused no reversible error—Burkett v. Slauson, Civ.App., 235 S.W.2d 505, reversed on other grounds 237 S.W.2d 253, 150 Tex. 69—Swanson v. Fort Worth Transit Co., Civ. App., 209 S.W.2d 772—Kelley v. Dickson, Civ.App., 200 S.W.2d 719, error refused no reversible error—Church v. Texas & Pac. Motor Transp. Co., Civ.App., 193 S.W.2d 994—Balque v. Green, Civ.App., 193 S.W.2d 705, error refused no reversible error—Texas & P. Ry. Co. v. Mix, Civ.App., 193 S.W.2d 542—Triangle Cab Co. v. Taylor, Civ. App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568—Bauguss v. Bauguss, Civ.App., 186 S.W.2d 384, refused for want of merit—Stotts v. Love, Civ.App., 184 S.W. 2d 308, error refused.

Participation by appellee or his attorneys

Where plaintiff and counsel participated in juror's misconduct, plaintiff assumed burden of showing defendant was not prejudiced thereby.
Tex.—Campbell v. Struve, Civ.App., 30 S.W.2d 344.

71. Vt.—Perkins v. Vermont Hydro-Electric Corporation, 177 A. 631, 106 Vt. 367.

71.5 Tex.—King v. Miller, Civ.App., 280 S.W.2d 331, error refused no reversible error—Western Cotton-oil Co. v. Brecheen, Civ.App., 274 S.W.2d 767—McCown v. Jennings, Civ.App., 209 S.W.2d 408—Commerce Farm Credit Co. v. Ramp, Civ.App., 116 S.W.2d 1144, affirmed Commerce Trust Co. v. Ramp, 138 S.W.2d 531, 135 Tex. 84.
Vt.—French v. Nelson, 17 A.2d 323, 111 Vt. 386.
Wis.—Roeske v. Schmitt, 64 N.W.2d 394, 266 Wis. 557.

Interchange of lefthanded compliments

Jurors may be presumed to disregard ordinary interchange of lefthanded compliments between opposing counsel except as matters of momentary diversion.
Iowa.—Connelly v. Nolte, 21 N.W.2d 311, 237 Iowa 114.

Inflammatory questions

Assignment of error that questions propounded to witness were inflammatory and prejudicial to appellant's rights was held without merit, where no injury had been done to appellant and no showing had been made of probable injury done.
Tex.—Dunning v. Yancy, Civ.App., 103 S.W.2d 221.

Reference to liability insurance

Tenn.—Monday v. Millsaps, 264 S.W. 2d 6, 37 Tenn.App. 371.

71.10 Ohio.—Lewis v. Kocis, App., 89 N.E.2d 162.
Okl.—Chuck's Bar v. Wallace, 176 P. 2d 484, 198 Okl. 152.
Or.—Kinney v. Snyder, 198 P.2d 983, 184 Or. 418.
Tex.—Hudspeth v. Hudspeth, Civ. App., 206 S.W.2d 863.

72. Iowa.—Albia Light & Ry. Co. v. Gold Goose Coal & Mining Co., 176 N.W. 722, reheard 185 N.W. 571, 192 Iowa 869.

72.50 Ind.—Attica Building & Loan Ass'n of Attica v. Colvert, 23 N.E. 2d 483, 216 Ind. 192.
Tex.—Ward v. Strickland, Civ.App., 177 S.W.2d 79, error refused.

In absence of affirmative showing beyond reasonable doubt

Where action of trial court was material error reasonably calculated to prejudice a party, in absence of a showing by record beyond a reasonable doubt that error was harmless, it would be presumed to have been "prejudicial."
Tex.—Preston v. Ohio Oil Co., Civ. App., 121 S.W.2d 1039, error refused.

72.55 Ala.—Sumner v. Caldwell, 12 So.2d 391, 244 Ala. 149.
Ga.—Poultryland, Inc., v. Anderson, 37 S.E.2d 785, 200 Ga. 549.
N.D.—Ferderer v. Northern Pac. Ry. Co., 26 N.W.2d 236, 75 N.D. 139.
Ohio.—Monroe v. Golner, 139 N.E.2d 483, 101 Ohio App. 290.

Denial of due process

Miss.—Wisdom v. Stegall, 70 So.2d 43, 219 Miss. 776.

Notice of application for default judgment

Since adoption of 1939 Code, every party who has given notice of appearance before expiration of time for answering is entitled to six days' notice of application for default judgment, and prejudice is conclusively presumed from failure to give such notice.
S.D.—Heitman v. Gross, 19 N.W.2d 508, 70 S.D. 510.

Errors which have been held to be prima facie prejudicial within the above rule include errors in rulings of the trial court sustaining[73] or overruling[74] demurrers to pleadings, striking pleadings,[75] or overruling motions attacking a complaint for misjoinder of causes of action,[76] denying a change of venue for disqualification of the trial judge,[77] or a motion for a change of judges,[78] or refusing a demand for a jury trial to which a party is constitutionally entitled,[79] and errors in the admission or rejection of evidence,[79.5] the exclusion of a witness for incompetency as a witness and not on the ground of objection to his proposed testimony,[79.10] arbitrarily denying the opportunity of cross-examination,[80] denying the right of representation by counsel,[81] and striking a proper motion for new trial.[82]

Other prima facie prejudicial errors include errors in connection with the selection of the jury,[82.5] such as in overruling motions or excluding questions on the voir dire, designed to test the qualifications of the jurors,[83] or permitting disqualified persons to serve as jurors,[84] errors or misconduct relating to the deliberations of the jury,[84.5] and error in the submission of an issue to the jury.[84.10] In an action tried to the court, where a view is had by the trial judge without the consent of the parties, and his judgment is based partly on the results of his inspection, it will be reversed on appeal because it cannot be determined whether the judge erred in considering what he had before him;[85] and in a jury trial, a juror's failure to view the premises pursuant to the court's order is deemed prejudicial in the absence of any showing.[86]

The grant of a motion for a directed verdict at the close of the testimony, in violation of a statute, is presumed to be prejudicial.[86.5] The failure of the trial court to file findings of fact and conclusions of law on the request of a party is presumed to be prejudicial unless the contrary appears.[86.10]

73. Ala.—Alabama Fuel & Iron Co. v. Alabama Fidelity & Casualty Co., 73 So. 374, 197 Ala. 669.
4 C.J. p 912 note 78.

74. Ga.—Sampson v. Vann, 51 S.E. 2d 863, 78 Ga.App. 564.
Ind.—Attica Building & Loan Ass'n of Attica v. Colvert, 23 N.E.2d 483, 216 Ind. 192—Continental Nat. Bank of Indianapolis v. Discount & Deposit State Bank of Kentland, 157 N.E. 433, 199 Ind. 290.
Millner v. Gary Paper Mills, Inc., 110 N.E.2d 304, 123 Ind.App. 551—Michael v. Mitchell, 73 N.E.2d 363, 118 Ind.App. 18—Denney v. Reber, 114 N.E. 424, 63 Ind.App. 192.
4 C.J. p 912 note 79.

75. Ark.—Farish v. Jones, 23 Ark. 323.

76. Iowa.—Ellis v. Bruce, 245 N.W. 320, 215 Iowa 308.

77. Kan.—Jones v. Williamsburg City F. Ins. Co., 112 P. 826, 83 Kan. 682.

78. Ind.—Stidham v. Sterett, 124 N. E. 697, 188 Ind. 507.

79. Cal.—Davis v. Security-First Nat. Bank, 23 P.2d 1036, 133 C.A. 262.

79.5 Tex.—Triangle Cab Co. v. Taylor, Civ.App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568.

79.10 Ohio.—Totten v. Miller's Estate, 37 N.E.2d 961, 139 Ohio St. 29.

80. Iowa.—Jones v. Lozier, 191 N.W. 103, 195 Iowa 365.

81. Ala.—State Realty Co. v. Ligon, 119 So. 672, 218 Ala. 541.

82. Ind.—Phillips v. Gammon, 124 N.E. 699, 188 Ind. 497.

82.5 Tex.—Preston v. Ohio Oil Co., Civ.App., 121 S.W.2d 1039, error refused.
Wash.—W. E. Roche Fruit Co. v. Northern Pac. Ry. Co., 139 P.2d 714, 18 Wash.2d 484.

Ruling on challenge for cause

In trespass to try title where plaintiffs specially pleaded title by limitation and court erroneously overruled plaintiffs' challenge for cause of a juror, with respect to question whether court's action was prejudicial and entitled plaintiffs to a new trial, burden of showing that evidence established conclusively issue of limitation in defendants' favor was on defendants by way of answer to contentions of plaintiffs on plaintiffs' appeal.
Tex.—Preston v. Ohio Oil Co., Civ. App., 121 S.W.2d 1039, error refused.

83. Ala.—Gammill v. Culverhouse, 114 So. 800, 217 Ala. 65.
4 C.J. p 916 note 29.

Not rebutted by affidavits

In a personal injury suit, after verdict for defendant, refusal to purge a jury panel of employees, stockholders, and relations of stockholders of defendant's liability insurer was prima facie harmful, and presumption of harm was not rebutted by affidavits, submitted by defendant on plaintiff's motion for a new trial, showing that none of the jurors was disqualified.
Ga.—Atlanta Coach Co. v. Cobb, 174 S.E. 131, 178 Ga. 544.

84. Ga.—Gulf Refining Co. v. Miller, 108 S.E. 25, 151 Ga. 721.

84.5 Pa.—Noreika, to Use of Petranskas v. Pennsylvania Indemnity Corp., 5 A.2d 619, 135 Pa.Super. 474.
Tex.—Saladiner v. Polanco, Civ.App., 160 S.W.2d 531, error refused—Kuhn v. Palo Duro Corp., Civ.App., 151 S.W.2d 894, reversed on other grounds Jones v. Kuhn, 161 S.W. 2d 778, 139 Tex. 125—Stahr v. Hicks Rubber Co. of Waco, Civ. App., 122 S.W.2d 1112, error dismissed—Butler v. Abilene Mut. Life Ins. Ass'n, Civ.App., 108 S.W. 2d 972, error dismissed.

Communication with jury after retirement

Privy communications in absence of counsel, particularly when oral, between trial judge in chambers and jury engaged in deliberations in jury room concerning any matter implicated ever so remotely in consideration and decision of case are forbidden by essentials of trial procedure as imperiling principles of due process, and if record fails to disclose whether or not such communication was prejudicial, it will be presumed to be so and constitute cause for reversal of judgment.
N.J.—Guzzi v. Jersey Cent. Power & Light Co., 115 A.2d 629, 36 N.J. Super. 255.
N.D.—Ferderer v. Northern Pac. Ry. Co., 26 N.W.2d 236, 75 N.D. 139.

84.10 Tex.—McCluskey v. Keathley, Civ.App., 111 S.W.2d 1199, error dismissed.

85. Wash.—Elston v. McGlauflin, 140 P. 396, 79 Wash. 355.

86. Okl.—Harrod v. Sanders, 278 P. 1102, 137 Okl. 231.

86.5 N.D.—Haser v. Pape, 39 N.W. 2d 578, 77 N.D. 36—Ellsworth v. Martindale-Hubbell Law Directory, 289 N.W. 101, 69 N.D. 610.

86.10 Tex.—Wagner v. Riske, 178 S.W.2d 117, 142 Tex. 337.

Argument of counsel. Prejudice will likewise be presumed from improper argument or questioning by counsel,[86.15] at least where such argument or questioning is in its nature material and calculated to injure the rights of the adverse party,[86.20] such as statements of counsel in argument as to matters not within the record or irrelevant to the issues,[87] or arguments based on inferences unsupported by the evidence;[88] and prejudice may be presumed from the refusal of the court to instruct the jury to disregard improper argument.[89] However, where the jury is instructed to disregard improper argument or conduct of counsel it will be presumed that such was not prejudicial in the absence of any affirmative showing to the contrary;[90] and in general, the remedies which a trial judge applies to correct errors during the trial are deemed effective unless the contrary appears.[90.5] Moreover, it must appear in any event that the argument or misconduct complained of had some reasonably probable connection with the verdict.[91]

As a corollary to the rule with respect to improper argument, setting aside a verdict because of the misconduct of counsel in argument to the jury is no cause for reversal, unless it is shown by appellant that the argument was nonprejudicial.[92]

Richie v. State, Civ.App., 275 S.W.2d 723—Barnett v. Barnett, Civ.App., 98 S.W.2d 215.

86.15 Tex.—Sherwood v. Murray, Civ.App., 233 S.W.2d 879—East Tex. Motor Freight Lines v. Sterrett, Civ.App., 232 S.W.2d 253, reversed on other grounds 236 S.W. 2d 776, 150 Tex. 12—Price v. Pelton, Civ.App., 199 S.W.2d 249—Triangle Cab Co. v. Taylor, Civ. App., 190 S.W.2d 755, affirmed 192 S.W.2d 143, 144 Tex. 568—Ragsdale v. Ragsdale, Civ.App., 172 S.W.2d 381, affirmed 179 S.W.2d 291, 142 Tex. 476—Dodd v. Burkett, Civ. App., 160 S.W.2d 1016, error refused—Walker v. Koger, Civ.App., 131 S.W.2d 1074, error dismissed, judgment correct—Daily v. Sugarland Industries, Civ.App., 124 S.W. 2d 199, reversed on other grounds 143 S.W.2d 931, 135 Tex. 532—Traders & General Ins. Co. v. Crouch, Civ.App., 113 S.W.2d 650, error dismissed—Ashmore v. Pike, Civ.App., 108 S.W.2d 276—Trinity-Universal Ins. Co. v. Maxwell, Civ. App., 101 S.W.2d 606, error dismissed—Southern Enterprises of Texas v. Marek, Civ.App., 68 S.W. 2d 384, reversed on other grounds 99 S.W.2d 594, 128 Tex. 377, conformed to, Civ.App., 101 S.W.2d 591.

86.20 Tex.—Price v. Pelton, Civ. App., 199 S.W.2d 249—American Emps.' Ins. Co. v. Kellum, Civ. App., 185 S.W.2d 113, refused for want of merit—Texas Coca Cola Bottling Co. v. Lovejoy, Civ.App., 112 S.W.2d 203, error dismissed—Carter v. Lindeman, Civ.App., 111 S.W.2d 318—Ashmore v. Pike, Civ. App., 108 S.W.2d 276.

Whether defendant carries insurance

Under Texas law, information that defendant carries insurance must not be imparted to the jury, and when questions are asked which disclose insurance protection, nothing short of an affirmative showing that no injury resulted is sufficient to render it harmless.

U.S.—Coble v. Phillips Petroleum Co., D.C.Tex., 30 F.Supp. 39.

87. Mo.—Amsinger v. Najim, 73 S. W.2d 214, 335 Mo. 528.
N.H.—Olena v. Standard Oil Co., 135 A. 27, 82 N.H. 408—Bailey v. Bailey, 120 A. 80, 80 N.H. 594—Palmer v. Dimick, 94 A. 268, 77 N. H. 565.
Tex.—Texas Indemnity Ins. Co. v. McCurry, Com.App., 41 S.W.2d 215, 78 A.L.R. 760—Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091—Behringer v. South Plains Coaches, Com.App., 13 S.W. 2d 334—Emberlin v. Wichita Falls, R. & Ft. W. Ry. Co., Com.App., 284 S.W. 539.

Texas General Utilities Co. v. Nixon, Civ.App., 81 S.W.2d 250—Gulf States Utilities Co. v. Cauthen, Civ.App., 72 S.W.2d 370—Dallas Ry. & Terminal Co. v. Moore, Civ.App., 52 S.W.2d 104—Houston Electric Co. v. Potter, Civ.App., 51 S.W.2d 754—Guardian Securities Corporation v. Mahoney, Civ.App., 49 S.W.2d 963—Blohm v. Krueger, Civ.App., 297 S.W. 596—Green v. Green, Civ.App., 235 S.W. 980.
4 C.J. p 915 note 13.

88. Ga.—Knowles v. J. A. Dayries Rice Co., 73 S.E. 856, 10 Ga.App. 567.
Tex.—Safeway Stores of Texas v. Brigance, Civ.App., 118 S.W.2d 812, error dismissed.

89. N.H.—Humphreys v. Ash, 6 A.2d 436, 90 N.H. 223.
Ohio.—Cincinnati Traction Co. v. Jennings, 7 Ohio N.P.,N.S., 462.
Tex.—Missouri-Kansas-Texas R. Co. of Texas v. Thomason, Civ.App., 3 S.W.2d 106—Bruyere v. Liberty Nat. Bank of Waco, Civ.App., 262 S.W. 844.
4 C.J. p 915 note 15.

90. Iowa.—Mitchell v. Mystic Coal Co., 179 N.W. 428, 189 Iowa 1018.
Tex.—El Paso Electric Ry. Co. v. Terrazas, Civ.App., 208 S.W. 387, error refused—Galveston, H. & S. A. Ry. Co. v. Marti, Civ.App., 183 S.W. 846.
4 C.J. p 915 note 16.

90.5 Or.—Makino v. Spokane, P. & S. Ry. Co., 63 P.2d 1082, 155 Or. 317.

91. Cal.—Healy v. Market St. Ry. Co., 107 P.2d 488, 41 C.A.2d 733.
Miss.—Brush v. Laurendine, 150 So. 818, 168 Miss. 7.
Tex.—McKinney v. Watts, Civ.App., 99 S.W.2d 673—Williams v. Rodocker, Civ.App., 84 S.W.2d 556—Southern Pac. Co. v. Huggins, Civ. App., 9 S.W.2d 382—Texas Employers' Ins. Ass'n v. Glass, Civ.App., 2 S.W.2d 902—El Paso Electric Ry. Co. v. Terrazas, Civ.App., 208 S.W. 387, error refused.
Wis.—Smith v. Yellow Cab Co., 180 N.W. 125, 173 Wis. 33—Union Bank of Milwaukee v. Commercial Securities Co., 157 N.W. 510, 163 Wis. 470.

Interruption, by counsel for defendant, of closing argument of counsel for plaintiff, stating that he wished to ask a question, without stating what the question was, was not error.
Tex.—Suttle v. Texas Electric Ry., Civ.App., 272 S.W. 256.

Side bar remarks, as, "You are trying to boost up his testimony," although improper, cannot be assumed to have influenced the verdict, especially where a new trial was refused.
Ala.—Jefferson County Burial Soc. v. Cotton, 133 So. 256, 222 Ala. 578.

Reading parts only of pleadings

Where abstract does not show what parts of answers, admitted in evidence, were read to the jury in plaintiff's closing argument, the court cannot assume that the reading of such parts only was prejudicial error.
Mo.—Wahl v. Cunningham, 56 S.W. 2d 1052, 332 Mo. 21.

92. Iowa.—Hamilton v. Davenport, 98 N.W. 135.

(4) Prejudice Dependent on Circumstances

In some types of error, such as in connection with the admission or exclusion of evidence, the giving or refusal of instructions, or the making of findings, the question of whether the error is presumed harmless or prejudicial depends in each instance on the particular circumstances of the error.

With respect to other types of error, such as the admission or exclusion of evidence, the giving of improper instructions, or the making of improper findings, as discussed below, whether the error is presumed to be or not to be prejudicial depends in each instance on the particular circumstances of the error or irregularity,[92.50] and not on any general rule as to errors manifestly harmless in nature or errors prima facie prejudicial, discussed supra subdivisions a (2) (3) of this section.

Admission of evidence. While it has been broadly stated that rulings on the admissibility of evidence, even if erroneous, do not warrant a reversal in the absence of a showing that the ruling was prejudicial,[92.55] it is the common rule, specifically stated, that where evidence, so slight, remote, or unsatisfactory that it bears no reasonable relation to the merits of the cause or, for all that appears in the record, cannot in fairness be thought to have affected the verdict, is permitted to be given to the jury, even though improperly, the error will not be presumed prejudicial, and prejudice must be established by appellant to warrant a reversal.[93]

92.50 Mo.—Koeppel v. Koeppel, App., 208 S.W.2d 929.
Nev.—Pfister v. Shelton, 250 P.2d 239, 69 Nev. 309.
Tenn.—McAlester v. Monteverde, 115 S.W.2d 257, 22 Tenn.App. 14.

Permitting plaintiff to prepare rough drawing in jury's presence for purpose of explaining his testimony did not warrant reversal of judgment on verdict for plaintiff, in absence of showing of any prejudice to defendant, although drawing was not identified and offered in evidence.
Okl.—Walton v. Bryan, 109 P.2d 489, 188 Okl. 358.

Extent of bias of juror
Where false or misleading information of such character as to indicate probable bias is given by a juror on voir dire, it is presumed that a free exercise of right of peremptory challenge has been so restricted as to prejudice party, and verdict must be set aside, but if information innocently withheld or given, although false, is so insignificant or trifling as to indicate only a remote or speculative influence on juror, there is no prejudice.
Ky.—Cincinnati, N. & C. Ry. Co. v. Peluso, 293 S.W.2d 556.

Misleading issues
Discharged railroad employee who had been employed under union contract with grievance procedure appealable to National Railway Labor Board, and who sued for damages and reinstatement instead of accepting discharge as final and suing for damages, proceeded on wrong theory thus presenting to jury misleading issues which court could not assume did not affect verdict for eight thousand dollars damages and which did cause prejudice to employer.
Ill.—Keel v. Illinois Terminal R. Co., 104 N.E.2d 659, 346 Ill.App. 169.

92.55. Okl.—Mid-Continent Life Ins. Co. v. Bean, 65 P.2d 1018, 179 Okl. 394.
Or.—Edwards v. Hoevet, 200 P.2d 955, 185 Or. 284, 6 A.L.R.2d 104.
S.C.—Gaskins v. Firemen's Ins. Co. of Newark, N. J., 33 S.E.2d 498, 206 S.C. 213.
Vt.—In re Moody's Estate, 49 A.2d 562, 115 Vt. 1, certiorari denied, Perry v. Wheeler, 67 S.Ct. 1201, 331 U.S. 814, 91 L.Ed. 1833.

93. Ala.—Southern Ry. Co. v. Montgomery, 157 So. 854, 229 Ala. 456—Howell v. Dodd, 157 So. 211, 229 Ala. 393.
Cal.—Kalfus v. Fraze, 288 P.2d 967, 136 C.A.2d 415—Caccamo v. Swanston, 212 P.2d 246, 94 C.A.2d 957—Cohen v. Metropolitan Life Ins. Co., 89 P.2d 732, 32 C.A.2d 337—Robertson v. Weingart, 267 P. 741, 91 C.A. 715.
Colo.—Hadden v. Gateway West Pub. Co., 273 P.2d 733, 130 Colo. 73.
Ga.—Georgia Power Co. v. Brooks, 62 S.E.2d 183, 207 Ga. 406—Crozier v. Goldman, 111 S.E. 666, 153 Ga. 162.
Ill.—Murphy v. Brichler, 27 N.E.2d 1003, 305 Ill.App. 6, affirmed Murphy v. Illinois State Trust Co., 31 N.E.2d 305, 375 Ill. 310—Whitley v. Wright Carriage Body Co., 186 Ill.App. 300.
Ind.—Terre Haute Gas Corp. v. Johnson, 45 N.E.2d 484, 221 Ind. 499, modified on other grounds 48 N.E. 2d 455, 221 Ind. 499.
Evansville City Coach Lines v. Roger, 99 N.E.2d 435, 122 Ind. App. 119, rehearing denied 102 N.E. 2d 504, 122 Ind.App. 119—Kahan v. Wecksler, 12 N.E.2d 998, 104 Ind.App. 673.
Iowa.—In re Roberts' Estate, 3 N.W. 2d 161, 231 Iowa 1088—Ceretti v. Des Moines Ry. Co., 293 N.W. 45, 228 Iowa 548—City of Ottumwa v. McCarthy Improvement Co., 150 N.W. 586, 175 Iowa 233, Ann.Cas. 1917E 1077, modified on other grounds and rehearing denied 154 N.W. 306, 175 Iowa 233, Ann.Cas. 1917E 1077.
Ky.—City of Newport v. McElwee, 55 S.W.2d 665, 246 Ky. 659.
Me.—Bessey v. Herring, 118 A. 423, 121 Me. 539.
Mass.—Ferris v. Turner, 70 N.E.2d 715, 320 Mass. 555—McCabe v. City of Chelsea, 163 N.E. 255, 265 Mass. 494—Freedman v. Lipman, 112 N. E. 95, 223 Mass. 471.
Mich.—Vigo American Clay Co. v. L. C. Monroe Co., 245 N.W. 778, 260 Mich. 462.
Mo.—Richards v. Earls, 133 S.W.2d 381, 345 Mo. 260—Span v. Jackson, Walker Coal & Mining Co., 16 S.W. 2d 190, 322 Mo. 158.
Mundy v. Missouri Power & Light Co., 101 S.W.2d 740, 231 Mo. App. 555—Marks v. Acme Phonograph Co., App., 236 S.W. 900.
Neb.—In re Lyell's Estate, 219 N.W. 189, 116 Neb. 827.
N.J.—Kellam v. Akers Motor Lines, 42 A.2d 261, 133 N.J.Law 1.
N.C.—Perkins v. Langdon, 74 S.E.2d 634, 237 N.C. 159—Collins v. Lamb, 2 S.E.2d 863, 215 N.C. 719—Williams v. Charles Stores Co., 184 S. E. 496, 209 N.C. 591—Lupton v. Southern Express Co., 86 S.E. 614, 169 N.C. 671.
Ohio.—Schumacher v. Smith, App., 96 N.E.2d 433.
Okl.—Moore v. Bennett, 312 P.2d 480—Aldridge v. Patterson, 276 P. 2d 202—Cravens v. Hughes, 250 P. 2d 877, 207 Okl. 503—Benzel v. Pitchford, 245 P.2d 1131, 206 Okl. 672—West v. Clopine, 198 P.2d 742, 200 Okl. 625—In re Wilkins' Estate, 185 P.2d 213, 199 Okl. 249—Pinkerton v. Carter, 169 P.2d 192, 197 Okl. 95—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35—Peoples Finance & Thrift Co. v. Fuller, 162 P.2d 189, 196 Okl. 32—Gilliland v. Snedden, 159 P.2d 734, 195 Okl. 601—Jewell v. Allen, 109 P.2d 235, 188 Okl. 374—Mid-Continent Petroleum Corporation v. Fisher, 84 P.2d 22, 183 Okl. 638—Sinclair Prairie Oil Co. v. Seebeck, 78 P.2d 282, 182 Okl.

This rule has been applied where the evidence admitted was immaterial or irrelevant,[94] or where there is other and competent evidence to the same effect.[94.5] The same doctrine applies where what is involved is the admission of improper evidence on trial by the court without a jury.[95]

On the other hand, where the record shows that evidence which may, not improbably, have had a part in the final outcome of the case has been erroneously admitted for the jury's consideration, prejudice will be presumed, and the burden will rest on appellee to show affirmatively that no prejudice resulted.[96] This is particularly true where there is

436—Clark v. Ellison, 71 P.2d 609, 180 Okl. 630—Fixico v. Harmon, 70 P.2d 114, 180 Okl. 412—Polson v. Pirtle, 49 P.2d 531, 173 Okl. 594—Sautbine v. C. I. T. Corporation, 45 P.2d 764, 172 Okl. 526—Graf Packing Co. v. Pelphrey, 42 P.2d 889, 171 Okl. 416—L. O. & H. L. Street v. Arnold, 40 P.2d 1050, 170 Okl. 389—Render v. Richardson, 31 P.2d 923, 168 Okl. 122—Allen v. Oklahoma State Bank of Enid, 270 P. 838, 133 Okl. 14—Cole v. Ramsey, 254 P. 962, 124 Okl. 235—Troup v. Hine, 251 P. 43, 120 Okl. 282—Union Petroleum Co. v. Oklahoma, N. M. & P. Ry. Co., 242 P. 1027, 114 Okl. 21—Petty v. Knight-Petty Mercantile Co., 223 P. 128, 97 Okl. 250.

Pa.—Quinn v. American Range Lines, 23 A.2d 487, 344 Pa. 85, certiorari denied 62 S.Ct. 1107, 316 U.S. 677, 86 L.Ed. 1750.

S.C.—Feinstein v. Politz, 87 S.E. 1005, 103 S.C. 238.

Tenn.—Huber v. Wilson, 126 S.W.2d 893, 23 Tenn.App. 109—Patton v. Hardison, 101 S.W.2d 698, 20 Tenn. App. 585—Hager v. Hager, 66 S. W.2d 250, 17 Tenn.App. 143.

Tex.—McCarty v. Gappelberg, Civ. App., 273 S.W.2d 943, error refused no reversible error—Moore v. Dallas Ry. & Terminal Co., Civ.App., 238 S.W.2d 741, error dismissed—Pound v. Popular Dry Goods Co., Civ.App., 139 S.W.2d 341—Murphy v. Murphy, Civ.App., 237 S.W. 640, dismissed for want of jurisdiction—Fuller v. El Paso Live Stock Commission Co., Civ.App., 174 S. W. 930—Henson v. Baxter, Civ. App., 166 S.W. 460.

Vt.—Bloomstrand v. Stevens, 156 A. 414, 104 Vt. 1—Strong & Jarvis v. Oldsmobile Co. of Vermont, 120 A. 100, 96 Vt. 355—Smith v. Martin, 106 A. 666, 93 Vt. 111.

Va.—United Dentists v. Bryan, 164 S.E. 554, 158 Va. 880.

Wash.—Heath v. Stephens, 258 P. 321, 144 Wash. 440.

Wis.—In re Cullen's Estate, 272 N.W. 363, 224 Wis. 463—Union Bank of Milwaukee v. Commercial Securities Co., 157 N.W. 510, 163 Wis. 470.

4 C.J. p 913 note 84.

Denial of motion to strike testimony

Defendant, not indicating to trial court that he considered testimony of plaintiff's witness as to plaintiff's position when struck by defendant's automobile prejudicial to defendant, takes nothing by exception to court's denial of his motion to strike such testimony.

N.H.—Bullard v. McCarthy, 195 A. 355, 89 N.H. 158.

Cross-examination of one plaintiff by attorney for another plaintiff

In consolidated damage actions, permitting the cross-examination of one plaintiff by counsel for another plaintiff was not reversible error in the absence of a showing in the record of prejudice to defendant.

Mass.—Harrington v. Travers, 192 N. E. 495, 288 Mass. 156.

Manner in which testimony given

Unless it is shown, on appeal, that the party complaining that the adverse party, a lawyer, gave his testimony in narrative form, has been prejudiced, he should not be heard.

Mo.—Daudt v. Steiert, 205 S.W. 222.

94. Cal.—Brown v. Southern Pac. Co., 207 P.2d 632, 92 C.A.2d 639.

Ga.—Central Georgia Transmission Co. v. Storer, 85 S.E. 498, 17 Ga. App. 55.

Mo.—Span v. Jackson, Walker Coal & Mining Co., 16 S.W.2d 190, 322 Mo. 158.

N.J.—International Dye & Print Works v. Fashion Screen Printing Co., 186 A. 467, 116 N.J.Law 610, affirmed 189 A. 138, 117 N.J.Law 424.

N.C.—Hunt v. Wooten, 76 S.E.2d 326, 238 N.C. 42.

Okl.—Lincoln-Income Life Ins. Co. of Louisville, Ky. v. Thomas, 210 P.2d 776, 202 Okl. 122.

S.C.—Mitchell v. Hamilton, 82 S.E. 425, 98 S.C. 289.

S.D.—Arlt v. Langley, 227 N.W. 469, 56 S.D. 79.

Tex.—Roberts v. Nowlin, Civ.App., 9 S.W.2d 69.

Vt.—In re Taft's Estate, 49 A.2d 102, 114 Vt. 505—Bloomstrand v. Stevens, 156 A. 414, 104 Vt. 1.

4 C.J. p 913 note 86.

94.5 Neb.—In re Potts' Estate, 14 N. W.2d 323, 144 Neb. 729.

Okl.—Leal v. Blackwell, 206 P.2d 199, 201 Okl. 388.

95. Ala.—Webb v. Watson, 130 So. 211, 221 Ala. 595.

Cal.—Black v. Black, 204 P.2d 950, 91 C.A.2d 328—Potter v. Smith, 191 P. 1023, 48 C.A. 162.

Colo.—Fisher v. Colorado Central Power Co., 29 P.2d 641, 94 Colo. 218.

Ill.—Metcalf v. Metcalf, 219 Ill.App. 96.

Mich.—International Shoe Co. v. C. G. Fleckenstein Co., 202 N.W. 942, 229 Mich. 686.

N.M.—Bounds v. Carner, 205 P.2d 216, 53 N.M. 234—Keil v. Wilson, 133 P.2d 705, 47 N.M. 43, 148 A.L.R. 397.

Okl.—Security Nat. Bank of Oklahoma City v. Martin, 241 P. 812, 113 Okl. 295—Mid-West Ins. Co. of Enid v. Shrader, 225 P. 541, 99 Okl. 17.

S.D.—Murdo Independent School Dist. No. 32 v. Litzenberg, 235 N.W. 606, 58 S.D. 162.

4 C.J. p 913 note 93.

96. Ala.—Central of Georgia Ry. Co. v. Teasley, 65 So. 981, 187 Ala. 610.

Ariz.—Valley Transp. System v. Reinartz, 197 P.2d 269, 67 Ariz. 380.

Cal.—Hill v. Bank of San Pedro, 107 P.2d 399, 41 C.A.2d 595.

Ind.—Indiana Die-Casting Development Co. v. Newcomb, 111 N.E. 16, 184 Ind. 250.

Guenther v. Jackson, 126 N.E. 873, 73 Ind.App. 162.

Iowa.—**Corpus Juris Secundum cited in** Steensland v. Iowa-Illinois Gas & Electric Co., 47 N.W.2d 162, 165, 242 Iowa 534—Case v. Case, 238 N. W. 85, 212 Iowa 1213—Case v. Case, 226 N.W. 922—Yarcho v. Chicago, R. I. & P. Ry. Co., 168 N.W. 336, 183 Iowa 1180.

Me.—Fournier v. Great Atlantic & Pacific Tea Co., 148 A. 147, 128 Me. 393, 68 A.L.R. 481.

Mo.—Zarisky v. Kansas City Public Service Co., App., 186 S.W.2d 854.

N.Y.—Weibert v. Hanan, 95 N.E. 688, 202 N.Y. 328.

Wurtzman v. Kalinowski, 251 N. Y.S. 328, 233 App.Div. 187.

Ohio.—Stover v. Yoakum, App., 109 N.E.2d 877.

Tex.—Bain Peanut Co. of Texas v. Pinson, Com.App., 294 S.W. 536.

Landers v. Overaker, Civ.App., 141 S.W.2d 451, error dismissed, judgment correct—Washington Nat. Ins. Co. v. Curry, Civ.App., 97 S.W.2d 525—Chicago, R. I. & G. Ry. Co. v. Vinson, Civ.App., 61 S.W. 2d 532—C. A. Bryant Co. v. Hamlin Independent School Dist., Civ. App., 18 S.W.2d 750, certified questions answered 14 S.W.2d 53, 118 Tex. 255.

Wash.—Wappenstein v. Schrepel, 142 P.2d 897, 19 Wash.2d 371.

4 C.J. p 913 note 83.

material evidence improperly admitted;[97] but it is also true although the evidence is immaterial or irrelevant if it is nevertheless such as might have influenced the verdict.[98]

Where illegal evidence has been allowed to go to the jury over seasonable objections, prejudice will be presumed unless the record shows affirmatively to the contrary;[99] and so also such a presumption arises where evidence is admitted which is calculated to excite the jury's sympathy for appellee.[1] If the evidence improperly admitted may have been a factor in the decision, the presumption applies equally where the cause is tried by the court without a jury, and will require a reversal of the judgment unless the remaining evidence is without conflict and is sufficient to support the judgment.[2] In short, although there is some authority to the contrary,[2.5] it is frequently held that wherever it is impossible to determine from the record that prejudice did not result from the erroneous admission of evidence the error is deemed prejudicial;[3] but if the jury are instructed to disregard evidence improperly admitted, its admission cannot be presumed prejudicial.[4] It has even been held that where the trial court has instructed the jury to disregard improper questions or objectionable evidence it is presumed that no prejudice resulted from the improper question or evidence.[4.5]

Exclusion of evidence. Like principles apply to the exclusion of evidence, and where the record shows that evidence has been improperly excluded which, had it been admitted, might reasonably be expected to have influenced the verdict or judgment, it will be presumed that the error was prejudicial to appellant, and the burden is on appellee to establish

97. Ariz.—Valley Transp. System v. Reinartz, 197 P.2d 269, 67 Ariz. 380.
Ark.—State Nat. Bank of Texarkana v. Birmingham, 266 S.W. 76, 166 Ark. 446.
Ind.—Indianapolis Railways v. Waters, 12 N.E.2d 119, 213 Ind. 527. Gary Heat, Light & Water Co. v. Lucas, 7 N.E.2d 536, 103 Ind.App. 638—Seymour Improvement Co. v. Viking Sprinkler Co., 161 N.E. 389, 87 Ind.App. 179—Indiana Union Traction Co. v. Hiatt, 114 N.E. 478, 65 Ind.App. 233, rehearing denied 115 N.E. 101, 65 Ind.App. 233—Pittsburgh, C., C. & St. L. Ry. Co. v. Lamm, 112 N.E. 45, 61 Ind.App. 389.
Mo.—Zarisky v. Kansas City Public Service Co., App., 186 S.W.2d 854.
N.H.—Connell v. State Oil Co., 40 A. 2d 743, 93 N.H. 244.
S.C.—Cooper Corp. v. Jeffcoat, 61 S.E. 2d 53, 217 S.C. 489—Jones v. Charleston & W. C. Ry. Co., 142 S. E. 516, 144 S.C. 212—Powers v. Rawles, 112 S.E. 78, 119 S.C. 134—Templeton v. Charleston & W. C. Ry. Co., 108 S.E. 363, 117 S.C. 44.
W.Va.—Skidmore v. Star Ins. Co. of America, 27 S.E.2d 845, 126 W.Va. 307.
4 C.J. p 913 note 85.

Evidence engineering racial prejudice
Where as to one issue, testimony was admitted which had the natural tendency of engineering racial prejudice against the losing party as to all issues, the two-issue rule did not apply, and the presumption would be indulged that such testimony influenced the general verdict of the jury, and judgments rendered thereon would be reversed.
Ohio.—Acrey v. Bauman, 17 N.E.2d 755, 134 Ohio St. 449.

98. Iowa.—State v. Cordaro, 233 N. W. 51, 211 Iowa 224.
Tex.—Washington Nat. Ins. Co. v. Curry, Civ.App., 97 S.W.2d 525.
4 C.J. p 913 note 87.

No assumption of nonprejudice
Where evidence of amount of profit from certain job was irrelevant and should not have been admitted, because there was nothing to bring claim for a share of the profits on that job within scope of the bill of particulars, and amount of jury's verdict could not be matched with amounts of any elements or combination of elements of damages properly claimed by plaintiff, the court of appeals on appeal could not assume that the improper admission of such evidence was harmless error.
Md.—Cline v. Fountain Rock Lime & Brick Co., 122 A.2d 449, 210 Md. 78.

99. Iowa.—Welton v. Iowa State Highway Commission, 233 N.W. 876, 211 Iowa 625.
S.C.—Cohen v. Standard Accident Ins. Co., 9 S.E.2d 222, 194 S.C. 533—Johnson v. Broome, 179 S.E. 315, 175 S.C. 385.
W.Va.—Slater v. United Fuel Gas Co., 27 S.E.2d 436, 126 W.Va. 127—Byrd v. Virginian Ry. Co., 13 S.E.2d 273, 123 W.Va. 47.
4 C.J. p 913 note 88.

1. Va.—Chesapeake, etc., R. Co. v. Ghee, 66 S.E. 826, 110 Va. 527.

2. Ala.—Pigford v. Billingsley, 84 So.2d 664, 264 Ala. 29—Deal v. Houston County, 78 So. 809, 201 Ala. 431.
Brush v. Rountree, 32 So.2d 244, 33 Ala.App. 227, certiorari denied 32 So.2d 246, 249 Ala. 567—Lackey v. Thomas, 184 So. 262, 28 Ala.App. 302, certiorari denied Ex parte Thomas, 184 So. 264, 236 Ala. 602—Brown v. Grayson, 86 So. 121, 17 Ala.App. 463.
Ind.—Rushville Nat. Bank of Rushville v. State Life Ins. Co., 1 N.E.2d 445, 210 Ind. 492—Shaughnessey v. Jordan, 111 N.E. 622, 184 Ind. 499.
Md.—Vocci v. Ambrosetti, 94 A.2d 437, 201 Md. 475.
4 C.J. p 913 notes 91, 92.

Basis of decision not certain
Where, because of absence of special findings, it could not be said which of two contentions had prompted trial court's decision, and error had been committed in admission of evidence supporting one of such contentions, reviewing court would have to assume that such error had been harmful.
Ind.—Juday v. Lantz, 117 N.E.2d 382, 124 Ind.App. 552.

2.5 **Errors not set out**
Where appellant, who complained of numerous errors in admission of evidence, did not set out such errors in brief but only made reference to reporter's transcript, it would be assumed that none of such errors was prejudicial.
Cal.—Huntington v. Huntington, 262 P.2d 104, 120 C.A.2d 205.

3. Ind.—Porter v. Mooney, 116 N.E. 60, 64 Ind.App. 479.
Iowa.—Rubin Bros. Butter & Egg Co. v. Larson, 63 N.W.2d 908, 245 Iowa 741—Steensland v. Iowa-Illinois Gas & Elec. Co., 47 N.W.2d 162, 242 Iowa 534.
Mo.—Holmes v. Terminal R. R. Ass'n of St. Louis, 257 S.W.2d 922, 363 Mo. 1178.
Tex.—Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091.
4 C.J. p 913 note 90.

4. N.H.—McQuaid v. Michou, 157 A. 881, 85 N.H. 299.

4.5 Cal.—Eubanks v. Milton G. Cooper & Son, 156 P.2d 775, 68 C.A. 2d 366.
Minn.—Krueger v. City of Faribault, 18 N.W.2d 777, 220 Minn. 89.

the contrary;[5] but if, for all that appears from the record, as where there is no offer of proof, the evidence is prima facie devoid of such tendency, and would probably not have substantially altered the result, one who complains on appeal of the exclusion of such evidence must show affirmatively that he was injured thereby.[6] Thus, it is not enough for an excepting party to show that evidence was legally admissible, but he must show that its exclusion was prejudicial to him.[6.5] Denial of a motion for a view of the premises is not ground for reversal in the absence of an affirmative showing of prejudice.[7]

Instructions generally. In the giving of instructions, the same basic considerations prevail, so that if an error in an instruction is trivial or formal, or merely academic, or for any other reason could not or probably did not have any effect upon the verdict, the error will be regarded as nonprejudicial unless appellant affirmatively establishes the contrary.[8]

5. Ind.—Keller v. Cox, 118 N.E. 543, 67 Ind.App. 381—J. P. Smith Shoe Co. v. Curme-Feltman Shoe Co., 118 N.E. 360, 71 Ind.App. 401.
Iowa.—Lantz v. Goodwin, 231 N.W. 331, 210 Iowa 605—Martin v. Interstate Business Men's Acc. Ass'n, 174 N.W. 577, 187 Iowa 869.
Ohio.—Bowman v. Delaney, 187 N.E. 788, 46 Ohio App. 109.
Tex.—Daggett v. Wolff, Civ.App., 44 S.W.2d 1063—Morris County Nat. Bank v. Parrish, Civ.App., 207 S. W. 939.
W.Va.—Ohio Valley Bending Co. v. Pickens, 81 S.E. 1041, 74 W.Va. 303.
4 C.J. p 914 note 94.

6. Ala.—Berry v. Dannelly, 145 So. 663, 226 Ala. 151.
Ross Neely Motor Exp. v. Robinson, 48 So.2d 252, 35 Ala.App. 431, certiorari denied 48 So.2d 254, 254 Ala. 293.
Ariz.—Woodmen of the World Life Ins. Soc. v. Velasquez, 139 P.2d 766, 60 Ariz. 457.
Ark.—Schirmer v. Hallman, 204 S.W. 606, 135 Ark. 5.
Cal.—Cook v. Mehlberg, 294 P.2d 746, 140 C.A.2d 10—Lipman v. Ashburn, 235 P.2d 627, 106 C.A.2d 616—Conrad v. Conrad, 152 P.2d 221, 66 C.A. 2d 280—Bewick v. Mecham, 121 P. 2d 815, 49 C.A.2d 287—Stroud v. Hansen, 120 P.2d 102, 48 C.A.2d 556—Thompson v. Buffums' Inc., 62 P. 2d 171, 17 C.A.2d 401—Grandy v. Southern Pac. Co., 49 P.2d 1127, 9 C.A.2d 441—Merchants' Nat. Trust & Savings Bank of Los Angeles v. Snell, 294 P. 413, 110 C.A. 483—Richmond v. Moore, 284 P. 681, 103 C.A. 173—Wilcox v. Hardisty, 212 P. 633, 60 C.A. 206—Kloster v. Hawn, 164 P. 402, 33 C.A. 100.
Conn.—Dudley v. Hull, 136 A. 575, 105 Conn. 710—Hensen v. Connecticut Co., 118 A. 464, 98 Conn. 71.
Ga.—McKee v. J. E. Hurst & Co., 94 S.E. 886, 21 Ga.App. 571.
Idaho.—Aker v. Aker, 20 P.2d 796, 52 Idaho 713, appeal dismissed and certiorari denied 54 S.Ct. 80, 290 U. S. 587, 78 L.Ed. 518.
Ill.—Kubin v. Chicago Title & Trust Co., 29 N.E.2d 859, 307 Ill.App. 12—Whitley v. Wright Carriage Body Co., 186 Ill.App. 300.
Ind.—I. Duffey & Son Co. v. Kemmer, 37 N.E.2d 274, 110 Ind.App. 116—Kreighbaum v. Dinsmore, 165 N.E. 526, 88 Ind.App. 693.
Iowa.—Vandell v. Roewe, 6 N.W.2d 295, 232 Iowa 896—McGuire v. Interurban Ry. Co., 200 N.W. 55, 199 Iowa 203—Gose v. True, 198 N.W. 528, 197 Iowa 1094—Jacobs v. City of Cedar Rapids, 164 N.W. 891, 181 Iowa 407.
Kan.—In re Gereke's Estate, 195 P.2d 323, 165 Kan. 249.
Me.—Richardson v. Lalumiere, 184 A. 392, 134 Me. 224—Selberg v. Bay of Naples, 157 A. 856, 130 Me. 492—Gross v. Martin, 148 A. 680, 128 Me. 445.
Md.—**Corpus Juris cited in** Johnson & Higgins v. Simpson, 163 A. 832, 837, 163 Md. 574.
Mass.—Bowles v. Comstock, 189 N. E. 785, 286 Mass. 159—Hanley Co. v. Whitney, 182 N.E. 104, 279 Mass. 546—E. P. Sanderson Co. v. Carroll Bros., 130 N.E. 81, 238 Mass. 142—Crane Co. v. Pension, 112 N.E. 654, 224 Mass. 135.
Miss.—Bradley v. Howell, 134 So. 843, 161 Miss. 346.
Mo.—Marks v. Acme Phonograph Co., App., 236 S.W. 900.
Mont.—Bookout v. White, 214 P.2d 861, 123 Mont. 459, 17 A.L.R.2d 562.
N.J.—Cherr v. Rubenstein, 91 A.2d 627, 22 N.J.Super. 212.
N.C.—Cudworth v. Reserve Life Ins. Co., 91 S.E.2d 580, 243 N.C. 584—Mercer v. Frank Hitch Lumber Co., 91 S.E. 588, 173 N.C. 49.
Okl.—West Edmond Hunton Line Unit v. Lillard, 265 P.2d 730—Byrd v. McKoy, 81 P.2d 315, 183 Okl. 209—Troup v. Hine, 251 P. 43, 120 Okl. 282—Mid-West Ins. Co. of Enid v. Shrader, 225 P. 541, 99 Okl. 17.
Or.—Columbia Realty Inv. Co. v. Alameda Land Co., 168 P. 440, 87 Or. 277.
S.C.—McRae v. S. F. Bowser & Co., 105 S.E. 411, 115 S.C. 262—Erskine v. Erskine, 93 S.E. 465, 107 S.C. 233.
S.D.—Stokes v. Christenson, 209 N.W. 338, 50 S.D. 230, reheard 213 N.W. 950, 51 S.D. 365.
Tex.—Robinson v. Howard County, Civ.App., 287 S.W.2d 234, error refused no reversible error—Benson v. Weaver, Civ.App., 250 S.W.2d 770, affirmed 254 S.W.2d 95, 152 Tex. 50—Southland Life Ins. Co. v. Greenwade, Civ.App., 143 S.W.2d 648, affirmed 159 S.W.2d 854, 138 Tex. 450—Barclay v. Falvey, Civ.App., 100 S.W.2d 791—Ludtke v. Murray, Civ. App., 199 S.W. 321.
Wash.—Kirsch v. Kirsch, 73 P.2d 356, 192 Wash. 156.
Wis.—Union Bank of Milwaukee v. Commercial Securities Co., 157 N. W. 510, 163 Wis. 470.
4 C.J. p 914 note 95.

Testimony of party, presumption as to

Even where a party is being examined, it will not be presumed that he would give testimony beneficial to him if allowed to testify.
Iowa.—Jacobs v. City of Cedar Rapids, 164 N.W. 891, 181 Iowa 407.

6.5 Me.—Torrey v. Congress Square Hotel Co., 75 A.2d 451, 145 Me. 234.

7. Fla.—Coons v. Pritchard, 68 So. 225, 69 Fla. 362, L.R.A.1915F 558.

8. Ark.—National Union Fire Ins. Co. of Pittsburgh, Pa. v. School Dist. No. 60 of Washington County, 199 S.W. 924, 131 Ark. 547.
Cal.—Hooper v. Bronson, 266 P.2d 590, 123 C.A.2d 243—Takako Inai v. Ede, 139 P.2d 76, 59 C.A.2d 549—Van Rennes v. Southern Counties Gas Co. of California, 124 P.2d 350, 51 C.A.2d 228—Day v. General Petroleum Corp., 89 P.2d 718, 32 C.A. 2d 220—Wallace v. King, 80 P.2d 523, 27 C.A.2d 174—Parrett v. Carothers, 53 P.2d 1023, 11 C.A.2d 222—Johnson v. Pearson, 280 P. 394, 100 C.A. 503—Mintzer v. City of Richmond, 150 P. 799, 27 C.A. 566.
Colo.—Bijou Irr. Dist. v. Cateran Land & Live Stock Co., 213 P. 999, 73 Colo. 93.
Gregg v. Hayes, 149 P. 1055, 27 Colo.App. 412.
Conn.—Sullivan v. Nesbit, 117 A. 502, 97 Conn. 474.
Ga.—Houston v. Horton, 43 S.E.2d 90, 202 Ga. 307—Veal v. Barber, 30 S.E.2d 252, 197 Ga. 555.
Craig v. Augusta Roofing & Metal Works, 51 S.E.2d 565, 78 Ga. App. 514.
Idaho.—Morrison v. Pierce, 276 P. 306, 47 Idaho 430.
Ind.—Indianapolis Traction & Terminal Co. v. Hensley, 115 N.E. 934, 186 Ind. 479.
Mitchell v. Godsey, 32 N.E.2d 745, 109 Ind.App. 399—Chicago, S.

However, erroneous instructions, which might and perhaps did influence the jury's deliberations and verdict, will be presumed to be prejudicial to appellant, and the burden of proof rests on appellee to show affirmatively from the record that no prejudice resulted;[9] and when an appellate court can-

B. & N. I. Ry. Co. v. Brown, 143 N.E. 609, 81 Ind.App. 411—Guion v. Terre Haute, Indianapolis & Eastern Traction Co., 142 N.E. 20, 82 Ind.App. 458.

Iowa.—Comfort v. Valley Inv. Co., 5 N.W.2d 180, 232 Iowa 87—Lange v. Bedell, 212 N.W. 354, 203 Iowa 1194—Miller & Kizer v. Des Moines City Ry. Co., 195 N.W. 600, 196 Iowa 1033.

Ky.—Codell Const. Co. v. Steele, 56 S.W.2d 955, 247 Ky. 173.

Me.—Mencher v. Waterman, 132 A. 132, 125 Me. 173—Allard v. La Plain, 130 A. 737, 125 Me. 44.

Mass.—Levine v. Cohen, 126 N.E. 660, 235 Mass. 446—Sawyer v. Worcester Consol. St. Ry., 120 N.E. 404, 231 Mass. 215.

Mo.—Nibler v. Coltrane, 275 S.W.2d 270—State ex rel. Chicago, R. I. & P. Ry. Co. v. Shain, 89 S.W.2d 654, 338 Mo. 217.

Jackson v. Ricketts, App., 288 S.W.2d 10—Lewis v. Kansas City Public Service Co., App., 17 S.W.2d 359.

N.C.—Price v. Gray, 97 S.E.2d 844, 246 N.C. 162—Whiteman v. Seashore Transp. Co., 58 S.E.2d 752, 231 N.C. 701—Smith v. Steen, 35 S.E.2d 888, 225 N.C. 644.

N.D.—Moe v. Kettwig, 68 N.W.2d 853—State v. Van Horne, 2 N.W.2d 1, 71 N.D. 455—Worlitz v. Miller, 184 N.W. 806, 48 N.D. 335.

Ohio.—Rickabaugh v. Youngstown Municipal Ry. Co., 9 N.E.2d 900, 55 Ohio App. 431.

Okl.—Lawhead v. State, 226 P. 376, 99 Okl. 197.

S.C.—Howell v. State Highway Department, 166 S.E. 129, 167 S.C. 217—Hair v. Winnsboro Bank, 88 S.E. 26, 103 S.C. 343.

Tenn.—Huber v. Wilson, 126 S.W.2d 893, 23 Tenn.App. 109.

Tex.—Continental Fire & Cas. Ins. Corp. v. Drummond, Civ.App., 220 S.W.2d 922, error refused no reversible error—Coffee v. Blair, Civ. App., 92 S.W.2d 496, error dismissed—Brown v. Dallas Gas Co., Civ.App., 42 S.W.2d 869—Farmers' & Merchants' State Bank of Lelia Lake v. Guffey, Civ.App., 255 S.W. 462—Jones v. Roche, Civ.App., 244 S.W. 227—Schaff v. Scoggin, Civ. App., 202 S.W. 758, error refused—City of Comanche v. Hoff & Harris, Civ.App., 170 S.W. 135.

Wis.—Dick v. Heisler, 198 N.W. 734, 184 Wis. 77—Kadolph v. Town of Herman, 166 N.W. 433, 166 Wis. 577.

4 C.J. p 914 note 96.

Failure to show source of instructions

In personal injury action arising out of automobile accident, failure of defendants to show source of instructions given comparing negligence and willful misconduct, was insufficient to meet burden assumed by defendants, as appellants, of establishing error prejudicial to them in such instructions.

Cal.—Lynch v. Birdwell, 285 P.2d 919, 44 C.2d 839.

Whether jury misled as test

The test, in Arizona, of whether giving or refusing of an instruction is reversible error, is, whether action taken by court may reasonably be presumed to have misled jury as to correct rule of law applicable to the facts.

Ariz.—Salt River Valley Water Users' Ass'n v. Arthur, 74 P.2d 582, 51 Ariz. 101.

Lack of precision

Supreme court of appeals could not infer prejudice to the plaintiff in error, even though some of the trial court's instructions could have been drawn more precisely.

W.Va.—Rouse v. Eagle Convex Glass Specialty Co., 13 S.E.2d 15, 122 W. Va. 671, 132 A.L.R. 1421.

Failing to confine jury to evidence

Although it is always good practice directly to predicate an instruction relating to facts on the belief of the jury "from the evidence," harm from failure to do so will not be presumed and reversal based thereon when it does not appear that the jury were misled thereby, their verdict being clearly within the evidence.

W.Va.—Neeley v. Cameron, 75 S.E. 113, 71 W.Va. 144.

Instruction correct in point of law

(1) Alleged error that oral charge to jury was merely abstract is not reversible error in absence of showing that jury was misled thereby.

Ala.—Lehigh Portland Cement Co. v. Sharit, 173 So. 386, 234 Ala. 40—Mulder v. Stokes, 63 So. 563, 184 Ala. 195.

(2) Where instructions correctly stated applicable legal principles, prejudice could not be inferred from fact that one instruction, by quoting from discussive portions of former opinions of supreme court, assumed an undesirable editorial aspect.

Miss.—Ming v. City of Jackson, 31 So.2d 900, 202 Miss. 260.

9. Ala.—Peck v. Henderson, 118 So. 262, 218 Ala. 233.

Ark.—Davis v. H. A. Nelson & Son, 201 S.W. 511, 132 Ark. 436.

Cal.—Bragg v. Mobilhome Co. of Los Angeles, 302 P.2d 424, 145 C.A.2d 326—Jaynes v. Jaynes, 220 P.2d 598, 98 C.A.2d 447—Wright v. Sniffin, 181 P.2d 675, 80 C.A.2d 358—Stroud v. Hansen, 120 P.2d 102, 48 C.A.2d 556—Hill v. Bank of San Pedro, 107 P.2d 399, 41 C.A.2d 595.

Colo.—Mosher v. Schumm, 166 P.2d 559, 114 Colo. 441.

Conn.—O'Brien v. Seaboard Freight Lines, 16 A.2d 826, 127 Conn. 374—Lombardi v. Wallad, 120 A. 291, 98 Conn. 510.

Fla.—Henning v. Thompson, 45 So.2d 755—Bibb v. United Grocery Co., 74 So. 880, 73 Fla. 589.

Ga.—Hayes v. O'Shield Buick Co., 94 S.E.2d 44, 94 Ga.App. 177—Willis v. Jones, 81 S.E.2d 517, 89 Ga.App. 824.

Ill.—Daubach v. Drake Hotel Co., 243 Ill.App. 298.

Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559—Sweeney v. Vierbuchen, 66 N.E.2d 764, 224 Ind. 341—Allman v. Malsbury, 65 N.E.2d 106, 224 Ind. 177—Propst v. Spitznagle, 19 N.E.2d 263, 215 Ind. 402—Indiana Pipe Line Co. v. Christensen, 143 N.E. 596, 195 Ind. 106—Bennighof-Nolan Co. v. Adcock, 141 N.E. 782, 194 Ind. 33, 29 A.L.R. 1344—Jones v. Beasley, 131 N.E. 225, 191 Ind. 209.

Gergely v. Moore, 120 N.E.2d 637, 125 Ind.App. 263, opinion adhered to 122 N.E.2d 142, 125 Ind.App. 263—Neese v. Boatright, 118 N.E. 2d 510, 124 Ind.App. 680—Nepsha v. Wozniak, 92 N.E.2d 734, 120 Ind. App. 362—Public Service Co. of Ind. v. De Ark, 92 N.E.2d 723, 120 Ind.App. 353—Emge v. Sevedge, 76 N.E.2d 687, 119 Ind.App. 277—Chesapeake & O. Ry. Co. v. Boston, 75 N.E.2d 194, 118 Ind.App. 526, vacated 82 N.E.2d 249, 226 Ind. 582—Chandler v. Kraner, 73 N.E.2d 490, 117 Ind.App. 538—Fields v. Hahn, 57 N.E.2d 955, 115 Ind.App. 365, petition dismissed 59 N.E.2d 359, 223 Ind. 178—Bonham v. Mendenhall, 188 N.E. 695, 99 Ind.App. 526—Pawlisch v. Atkins, 182 N.E. 636, 96 Ind.App. 132—Midwest Motor Coach Co. v. Elliott, 182 N.E. 541, 95 Ind.App. 64—Indiana Rys. & Light Co. v. Armstrong, 138 N.E. 830, 79 Ind.App. 486—Remington v. Edwards, 138 N.E. 824, 79 Ind.App. 501—Hatton v. Hodell Furniture Co., 125 N.E. 797, 72 Ind.App. 357—Workingmen's Mut. Protective Ass'n v. Roos, 113 N.E. 760, 63 Ind. App. 18—Evansville & T. H. R. Co. v. Hoffman, 105 N.E. 788, 56 Ind. App. 530.

Iowa.—Remer v. Takin Bros. Freight Lines, 289 N.W. 477, 227 Iowa 903—Collinson v. Cutter, 170 N.W. 420, 186 Iowa 276.

Ky.—Prichard v. Kitchen, 242 S.W.2d 988—Corpus Juris quoted in Louisville Ry. Co. v. Lenehan, 69 S.W. 2d 1017, 1018, 253 Ky. 489—Trevil-

not determine from the record that a verdict was probably not influenced by an erroneous charge, the judgment will be reversed.[9.5]

Applying these principles to cases of conflicting instructions, the general presumption is that the jury followed the erroneous instructions,[10] unless the language contained in the different instructions can be reconciled and would ordinarily be readily understood by the jury as not conflicting.[10.5] The same principles apply also to cases where the court improperly defined the issues,[11] or submitted issues not raised by the pleadings or evidence,[12] or submitted improper elements of damages,[13] or elimi-

lian v. Boswell, 43 S.W.2d 715, 241 Ky. 237.

Mo.—Larsen v. Webb, 58 S.W.2d 967, 332 Mo. 370, 90 A.L.R. 67—Moloney v. Boatmen's Bank, 232 S.W. 133, 288 Mo. 435—Aronovitz v. Arky, 219 S.W. 620.

Schaefer v. Kansas City, App., 270 S.W.2d 84—Flaspoler v. Kansas City Public Service Co., 170 S.W.2d 141, 237 Mo.App. 1055—Doll v. Purple Shoppe, 90 S.W.2d 181, 230 Mo.App. 256—McDonough v. Freund, App., 39 S.W.2d 818—Brown v. St. Louis-San Francisco Ry. Co., App., 281 S.W. 452—Avery v. Mechanics' Ins. Co. of Philadelphia, 280 S.W. 726, 222 Mo.App. 467.

N.H.—Fortier v. Stone, 107 A. 342, 79 N.H. 235.

Or.—Barnes v. Davidson, 226 P.2d 289, 190 Or. 508.

Tex.—Wichita Valley Ry. Co. v. Williams, 288 S.W. 425, 116 Tex. 253.

Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091—Eastland County v. Davisson, Com. App., 298 S.W. 268—Humble Oil & Refining Co. v. McLean, Com.App., 280 S.W. 557—Lamar v. Panhandle & S. F. Ry. Co., Com.App., 248 S. W. 34.

Southland Greyhound Lines v. Ashby, Civ.App., 80 S.W.2d 445—Cannon Ball Motor Freight Lines v. Grasso, Civ.App., 59 S.W.2d 337, affirmed Grasso v. Cannon Ball Motor Freight Lines, Com.App., 81 S. W.2d 482—Walker v. Dawley, Civ. App., 4 S.W.2d 159—Shelton v. Shelton, Civ.App., 281 S.W. 331—McDonald v. Whaley, Civ.App., 228 S.W. 313, modified on other grounds, Com.App., 244 S.W. 596.

Utah.—Jensen v. Utah Ry. Co., 270 P. 349, 72 Utah 366—Littledike v. Wood, 255 P. 172, 69 Utah 323.

Wash.—Franks v. Department of Labor & Industries, 215 P.2d 416, 35 Wash.2d 763.

4 C.J. p 914 note 97.

Instruction after long disagreement

Where a disagreement is of more than ordinary and usual duration, and, after giving of verdict-urging instruction, verdict is reached in a time short in comparison with duration of disagreement, presumption arises that instruction was prejudicial, and there should be a reversal in absence of competent evidence to indicate that final agreement did not result through coercive influence of instruction and long hours of involuntary servitude with tentative suggestion of longer confinement on further disagreement.

Iowa.—Middle States Utilities Co. v. Incorporated Tel. Co., 271 N.W. 180, 222 Iowa 1275, 109 A.L.R. 66.

Oral instructions after written requested instructions

Court which instructs a jury orally in whole or in part after written instructions have been properly requested commits reversible error, prejudice being conclusively presumed.

Ind.—Huntington v. Hamilton, 73 N. E.2d 352, 118 Ind.App. 88.

Misleading tendency must be negatived

A party requesting a charge not entirely accurate must show by the record that the inaccuracy was not misleading.

S.C.—McMahan v. Walhalla Light & Power Co., 86 S.E. 194, 102 S.C. 57.

9.5 Ky.—Prichard v. Kitchen, 242 S. W.2d 988—Louisville Ry. Co. v. Lenehan, 69 S.W.2d 1017, 253 Ky. 489.

10. Ark.—McCord v. Bailey, 114 S. W.2d 840, 195 Ark. 862.

Ill.—Gregory v. Richey, 138 N.E. 669, 307 Ill. 219.

Mich.—In re Bailey's Estate, 153 N. W. 39, 186 Mich. 677.

Ohio.—Readnour v. Cincinnati St. Ry. Co., 93 N.E.2d 587, 154 Ohio St. 69.

Cohen v. I. B. Goodman Mfg. Co., 87 N.E.2d 370, 85 Ohio App. 85.

Tex.—J. T. Burgher & Co. v. Floore, 174 S.W. 819, 107 Tex. 112.

Texas Electric Ry. Co. v. Jones, Com.App., 243 S.W. 980.

Yellow Cab & Baggage Co. v. Mason, Civ.App., 266 S.W.2d 463, reversed on other grounds 269 S. W.2d 329, 153 Tex. 344.

Va.—Gary v. Artist, 43 S.E.2d 833, 186 Va. 616.

Wis.—Bobrowski v. Henne, 70 N.W. 2d 666, 270 Wis. 173.

4 C.J. p 914 notes 98, 99.

Instructions contradictory and without explanation

Where language of instructions is contradictory and there is no reference or explanation in either of them to show that one refers to an exception or to conditions not covered by the other, there can be no presumption that the conflicting statements have been reconciled by the jury.

Iowa.—Smith v. Middle States Utilities Co. of Delaware, 275 N.W. 158, 224 Iowa 151.

Correcting instructions

Where the court after reading an instruction to the jury corrected it, but refused to read it to them, the error cannot be presumed to have been cured by the jury reading the corrected instruction after retiring.

Mo.—Murphy v. Foster, App., 184 S. W. 929.

10.5 Iowa.—Smith v. Middle States Utilities Co. of Delaware, 275 N. W. 158, 224 Iowa 151.

11. Ohio.—Cleveland Ry. Co. v. Kozlowski, 191 N.E. 787, 128 Ohio St. 445.

Tex.—Texas & N. O. R. Co. v. Crow, 123 S.W.2d 649, 132 Tex. 465.

Saltmount Oil Corp. v. Imperial Crown Royalty Corp., Civ.App., 98 S.W.2d 418, error dismissed.

Utah.—Bruner v. McCarthy, 142 P.2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547.

12. Cal.—Weeks v. Raper, 294 P.2d 178, 139 C.A.2d 737.

Ga.—Palefsky v. Mayor of Savannah, 95 S.E.2d 715, 94 Ga.App. 597—Atlantic Coast Line R. Co. v. Strickland, 74 S.E.2d 897, 87 Ga.App. 596—Nelson v. Huber & Huber Express, 54 S.E.2d 462, 79 Ga.App. 721—Western & A. R. Co. v. Sellers, 83 S.E. 445, 15 Ga.App. 369.

Ind.—Vandalia R. Co. v. Topping, 113 N.E. 421, 62 Ind.App. 657—National Motor Vehicle Co. v. Pake, 109 N. E. 787, 60 Ind.App. 366.

Iowa.—Sergeant v. Challis, 238 N.W. 442, 213 Iowa 57.

Minn.—Cole v. Johnson, 149 N.W. 467, 127 Minn. 291.

Mo.—Mueller v. Schien, 176 S.W.2d 449, 352 Mo. 180.

Lester v. Hugley, App., 230 S. W. 355.

Mont.—Martin v. Northern Pac. Ry. Co., 149 P. 89, 51 Mont. 31.

Tenn.—Shew v. Bailey, 260 S.W.2d 362, 37 Tenn.App. 40.

Tex.—Kansas City, M. & O. Ry. Co. of Texas v. Foster, Civ.App., 38 S.W.2d 391—Amarillo Gas Co. v. Walsh, Civ.App., 257 S.W. 291.

4 C.J. p 914 note 1.

13. Ariz.—Gilmore v. Wingate, 190 P. 571, 21 Ariz. 542.

Ark.—Webb v. Waters, 243 S.W. 846, 154 Ark. 547.

nated from the consideration of the jury defenses or issues of fact which should have been considered.[14]

The principles have been similarly held applicable where the instructions violated the rule against charging on the facts;[15] or where the instructions improperly limited the effect of the evidence[16] or improperly stated the rule for testing the credibility of the witnesses,[17] or improperly placed or defined the burden of proof.[18] However, where instructions operate equally against both parties, the one complaining thereof must show injury.[19]

In equity actions in which the verdict of the jury is advisory only, errors in instructions cannot be successfully assigned, since it is presumed that any errors in the submission of the case to the jury were considered by the trial court before judgment was entered.[19.5]

Refusal to give requested instructions. With respect to error in the refusal to give requested instructions, while it has been held that it must affirmatively appear that there was prejudice or a miscarriage of justice resulting from such refusal in order to warrant a reversal therefor,[19.10] it has also been held that the improper refusal of instructions will be deemed to be prejudicial until the contrary is shown.[20] Thus, the adverse party must show that as a matter of fact the error was not prejudicial,[21] as by showing that the error did not in fact influence the verdict,[21.5] or that the record indicates that some other incident neutralized the error.[21.10]

Accordingly, the mere fact that a requested instruction might properly be given does not mean that the court is imperatively obliged to give it, since the court may have adequately covered the issue involved by other instructions, or other circumstances may exist having a similar effect, so appellant is under the duty of offering to the reviewing court some indication that he has been harmed by the refusal;[22] and a fortiori when there is no request, but merely an omission to charge, appellant must show injury.[23]

Submission of issues without instructions. Submission to the jury of the pleadings, without instruc-

Miss.—Gulf, M. & N. R. Co. v. Marshall, 92 So. 236.
Mo.—Gilwee v. Pabst Brewing Co., 193 S.W. 886, 195 Mo.App. 487.
Tex.—Lake Worth Amusement Co. v. Maples, Civ.App., 36 S.W.2d 1072.
Utah.—Grow v. Oregon Short Line R. Co., 150 P. 970, 47 Utah 26.
4 C.J. p 915 note 2.

14. Ohio.—Richards v. Cleveland Jewish Orphan Home, 154 N.E. 61, 22 Ohio App. 475.
4 C.J. p 915 note 3.

15. Tex.—Ft. Worth, etc., R. Co. v. Lynch, Civ.App., 136 S.W. 580.

16. Ga.—Atlantic Coast Line R. Co. v. Strickland, 74 S.E.2d 897, 87 Ga. App. 596.
Ill.—MacDonald v. Chicago Rys. Co., 121 N.E. 571, 286 Ill. 239.
4 C.J. p 915 note 5.

17. Ind.—Hammelmann v. Bernhardt, 124 N.Y.S. 394, 140 App.Div. 42.

18. Ohio.—Johnson v. Hunter, 142 N.E.2d 227, 166 Ohio St. 289—Cleveland Ry. Co. v. Kozlowski, 191 N.E. 787, 128 Ohio St. 445—Cleveland Ry. Co. v. Goldman, 170 N.E. 641, 122 Ohio St. 73.
Sharp v. Russell, 174 N.E. 617, 37 Ohio App. 306.

19. Colo.—Bell v. Kaufman, 47 P. 1035, 9 Colo.App. 259.
Wash.—Von Tobel v. Stetson, etc., Mill Co., 73 P. 788, 32 Wash. 683.

19.5 Neb.—Robinson v. Dawson County Irr. Co., 8 N.W.2d 179, 142 Neb. 811.

19.10 Cal.—McNulty v. Southern Pac. Co., 216 P.2d 534, 96 C.A.2d 841—Luis v. Cavin, 198 P.2d 563, 88 C.A.2d 107—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255—Van Rennes v. Southern Counties Gas Co. of California, 124 P.2d 350, 51 C.A.2d 228—Church v. Payne, 97 P.2d 819, 36 C.A.2d 382—Day v. General Petroleum Corp., 89 P.2d 718, 32 C.A.2d 220—Wallace v. King, 80 P.2d 523, 27 C.A.2d 174—Parrett v. Carothers, 53 P.2d 1023, 11 C.A.2d 222.
Ga.—American Fidelity & Cas. Co. v. Farmer, 48 S.E.2d 141, 77 Ga.App. 192—Dixon v. Evans, 193 S.E. 470, 56 Ga.App. 583.
Okl.—Indian Territory Illuminating Oil Co. v. Adams, 64 P.2d 706, 179 Okl. 129.

20. Or.—DeLashmitt v. Journal Pub. Co., 114 P.2d 1018, 166 Or. 650, 135 A.L.R. 1175.
Vt.—Meyette v. Canadian Pac. Ry. Co., 6 A.2d 33, 110 Vt. 345.
W.Va.—Ohio Valley Bending Co. v. Pickens, 81 S.E. 1041, 74 W.Va. 303.
4 C.J. p 915 note 10.

21. N.H.—McBride v. Huckins, 81 A. 528, 76 N.H. 206.
Va.—Danville Bank v. Waddill, 27 Gratt. 448, 68 Va. 448.

What record must disclose to save judgment

The appellate court will reverse a judgment for error in refusing an instruction unless it can see from the whole record that even under correct instructions a different verdict could not rightfully have been found, or unless it is able to see that the erroneous ruling could not have influenced the verdict.
Va.—Danville Bank v. Waddill, supra.
W.Va.—Ward v. Brown, 44 S.E. 488, 53 W.Va. 227.

21.5 Or.—DeLashmitt v. Journal Pub. Co., 144 P.2d 1018, 135 A.L.R. 1175, 166 Or. 650.

21.10 Or.—DeLashmitt v. Journal Pub. Co., supra.

22. Cal.—Howard v. Adams, 105 P. 2d 971, 16 C.2d 253, 130 A.L.R. 1003.
Paulos v. Market St. Ry. Co., 28 P.2d 94, 136 C.A. 163.
Ind.—Indiana Pipe Line Co. v. Christensen, 143 N.E. 596, 195 Ind. 106.
Or.—Bly v. Moores Motor Co., 28 P.2d 627, 145 Or. 528.

Prejudice or presumption must be shown

Party who asserts error on refusal to give requested instruction must show either that refusal of trial court to give such instruction was in fact prejudicial to such party or that action of trial court under particular circumstances was such that prejudice would be presumed.
Ind.—Hartford Acc. & Indem. Co., Hartford, Conn. v. Armstrong, 127 N.E.2d 347, 125 Ind.App. 606.

23. Conn.—Le Count v. Farrand, 171 A. 623, 118 Conn. 210.
Ga.—Central of Georgia Ry. Co. v. Deas, 96 S.E. 267, 22 Ga.App. 425.

tions defining the issues, while erroneous, will not be presumed prejudicial.[24]

Findings and conclusions. Error in findings is similarly prima facie prejudicial, where reasonably tending to appellant's injury;[25] but where the error is not such as to have any natural or apparent connection with the judgment, the burden is on appellant to point out in what respect it was prejudicial.[26] Accordingly, where the findings do not cover all material issues but any further findings must have been adverse to appellant, there has been held to be a presumption that failure to find on all issues was without prejudice.[27] However, on a total failure of the court to file findings of fact, although requested, prejudice will be presumed.[28] Appellant has the burden of showing that an erroneous change in a fact finding was prejudicial to his cause.[28.5]

A judgment will not be reversed because of a possibly erroneous conclusion of law, unless it is established that it led to an erroneous result;[28.10] and an erroneous conclusion of law which is mere surplusage is not reversible error.[29]

Dismissal or substitution as to parties. Erroneous dismissal of an action as to one of the parties is prima facie prejudicial;[30] but a substitution of parties during the trial raises no presumption of prejudice.[31]

b. Rebuttal of Presumptions

The rebuttal of a presumption of prejudice or of harmlessness by a contrary showing depends on all circumstances relevant to indicate whether or not the error had any influence on the final result in the court below.

A presumption as to whether an error is harmless or prejudicial is rebuttable by a contrary showing.[31.50] Thus, a presumption of prejudice may be rebutted by a showing that the error did not affect the verdict or judgment.[31.55] The appellate court, in determining whether error was probably harmless or probably prejudicial, is guided by all the various factors which appear in the case and tend to show the likelihood of consequential injuries, such as the award of damages, which, when excessive, tend to show prejudice, and, when not, indicate its absence,[32] and the force of the evidence to sustain the verdict rendered, the rule being that if it is barely sufficient for that purpose or preponderates against the verdict or leaves the issue doubtful, errors which might otherwise be disregarded as harmless may be deemed prejudicial.[33]

The determination will be made in the light of the assumption that the jury was of ordinary intelligence,[34] and that, in a case involving several issues independently capable of sustaining the determination, the verdict was based upon one which was unaffected by the error, when there is nothing to suggest the contrary.[35] Where an error on the trial is overlooked by alert and able counsel that is a

24. Utah.—Farmers' & Merchants' Sav. Bank v. Jensen, 232 P. 1084, 64 Utah 609.

25. Cal.—Murdock v. Clarke, 24 P. 272, 3 C.Unrep.Cas. 265.
Conn.—Atwood v. Welton, 18 A. 322, 57 Conn. 514.

26. Cal.—McCosker v. Fredericksen, App., 308 P.2d 836—Spellacy v. Dauterman, 10 P.2d 114, 122 C.A. 416.
Me.—Googins v. Skillings, 108 A. 50, 118 Me. 299.
Mont.—First Nat. Bank v. Vagg, 212 P. 509, 65 Mont. 34.
S.D.—Goodhope v. Overgaard, 227 N. W. 380, 56 S.D. 28.
Tex.—Walker-Smith Co. v. Jackson, Civ.App., 123 S.W.2d 993, error dismissed, judgment correct.
4 C.J. p 915 note 24.
Alleged commingling of findings of fact and conclusions of law by trial court was not reversible error, where appellants showed no injury, and they were not thereby prevented from effectually prosecuting the appeal.
Tex.—Schultze v. Schultze, Civ.App., 209 S.W.2d 791.

27. Cal.—Machado v. Canty, 122 P. 77, 18 C.A. 35.

28. Tex.—Galveston, H. & S. A. Ry. Co. v. Stewart & Threadgill, Com. App., 257 S.W. 526.
Bolding v. Porter & Billingsley, Civ.App., 55 S.W.2d 206—Gulf Mfg. & Lumber Co. v. Newton, Civ.App., 27 S.W.2d 873—Rothschild Bros. Hat Co. v. Rolnick Bros., Civ.App., 26 S.W.2d 430—Hanlon Gasoline Co. v. Henley, Civ.App., 293 S.W. 914—Daugherty v. Daugherty, Civ. App., 198 S.W. 985.

28.5 Okl.—Mortgage Bond Co. v. Stephens, 74 P.2d 361, 181 Okl. 419.

28.10 Tex.—Hustace v. Black, Civ. App., 191 S.W.2d 82.

29. Cal.—Platner v. Vincent, 229 P. 24, 194 C. 436.

30. N.Y.—Ader v. Blau, 208 N.Y.S. 164, 211 App.Div. 532, reversed on other grounds 148 N.E. 771, 241 N. Y. 7, 41 A.L.R. 1216.

31. Iowa.—Webster County Buick Co. v. Nebraska Buick Automobile Co., 249 N.W. 203, 216 Iowa 485.

31.50 Cal.—Scott v. McPheeters, 125 P.2d 868, 52 C.A.2d 61.

31.55 Cal.—Scott v. McPheeters, supra.

32. Ariz.—Swansea Lease, Inc. v. Willison, 238 P. 389, 28 Ariz. 581.
Mo.—Jones v. St. Louis-San Francisco Ry. Co., 63 S.W.2d 94, 333 Mo. 802.
N.Y.—Kennedy v. National Jewelers' Board of Trade, 162 N.Y.S. 635, 175 App.Div. 735.
No appellate inference from award while trial judge may, in view of his better opportunity to measure general effect of trial proceedings on jury, infer prejudice and bias from size of verdict alone, that right is denied to appellate court.
Mo.—Naylor v. St. Louis Public Service Co., App., 235 S.W.2d 72.

33. Cal.—Stein v. Lacassie, 207 P. 886, 189 C. 118.
Neb.—Hershiser v. Chicago, B. & Q. R. Co., 170 N.W. 177, 102 Neb. 820.

34. Ohio.—Kalovsky v. Meyer Dairy Products Co., 164 N.E. 370, 30 Ohio App. 118.
S.D.—**Corpus Juris Secundum cited in** Allen v. McLain, 69 N.W.2d 390, 394, 75 S.D. 520.
Tex.—Commercial Standard Ins. Co. v. Shudde, Civ.App., 76 S.W.2d 561.

35. S.D.—**Corpus Juris Secundum cited in** Allen v. McLain, 69 N.W. 2d 390, 394, 75 S.D. 520—Mundon v. Greenameyer, 184 N.W. 257, 44 S.D. 440.

circumstance which tends to show that it was so trivial and without probable effect as to be harmless.[36]

Upon the suggestion that any part of the record will show that an apparently prejudicial error is harmless, the court must examine the record;[37] but it need not search the record when the suggestion is made that an apparently harmless error is prejudicial, unaccompanied by any specification of the manner in which harm arises or the portion of the record which will disclose it.[38] If the record as a whole overcomes the presumption of prejudice established by the commission of error, and shows affirmatively that no substantial rights of appellant have been injuriously affected, appellee thus sustains the burden imposed on him and the judgment will not be reversed in any case.[39] Conversely, if the record affirmatively establishes a violation of substantial rights, the judgment must be reversed unless it further discloses that, notwithstanding such violation, no injury ensued.[40]

It need not be shown that prejudice actually did result from the errors complained of.[41] If a sufficient showing is made to create a reasonable doubt as to its harmlessness, whatever presumption against prejudice might exist otherwise is overcome;[42] and a reasonable possibility of injury attributable to the error calls for reversal.[43] If, on the other hand, the error is such as is presumed prejudicial, it must be affirmatively established that no harm did result from it, and if that is left in any doubt, the presumption is not rebutted.[44]

In any event, any presumption of prejudice arising from erroneous submission of matter to the jury is rebutted by affidavits of the jurors that they gave such matter no consideration in arriving at their verdict;[45] and the same is true as to matter improperly before the court, in a trial without a jury, where the judge states that such matter was not considered by him in reaching his determination.[46] Appellee's mere statement that errors which are prima facie prejudicial were cured by other matters occurring during the trial, where there is nothing disclosed by the record in support of that assertion, is insufficient.[47]

Waiver of error. The fact that a certain error was waived by the parties results in the conclusive presumption that appellant was not harmed thereby.[47.5]

§ 1678. Errors Favorable to Party Complaining

a. In general
b. Pleadings and proof
c. Trial and submission to jury
d. Instructions

36. Ala.—Sovereign Camp, W. O. W. v. Colvin, 119 So. 635, 218 Ala. 616.
Ohio.—City of Campbell v. Hassay, App., 67 N.E.2d 645.
Utah.—McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115.

37. Tex.—Standard v. Texas Pacific Coal & Oil Co., Civ.App., 47 S.W.2d 443.

38. Tex.—Calvin v. Olschewske, Civ. App., 62 S.W.2d 574.

39. Ill.—See Edwards v. Prest-O-Lite Co., 202 Ill.App. 233.
N.D.—Elliott Supply Co. v. Green, 160 N.W. 1002, 35 N.D. 641.
Tex.—Texas & N. O. Ry. Co. v. Rooks, Com.App., 292 S.W. 536, rehearing denied, Com.App., 293 S.W. 554.
Utah.—Ryan v. Beaver County, 21 P. 2d 858, 82 Utah 27, 89 A.L.R. 1253.
4 C.J. p 912 note 76.

40. Ala.—Shelby Iron Co. v. Bierly, 80 So. 806, 202 Ala. 422.
Cal.—Belm v. Patrick, 293 P. 847, 109 C.A. 599.
Tex.—American Produce Co. v. Gonzales, Com.App., 1 S.W.2d 602.
Morgan v. Maunders, Civ.App., 37 S.W.2d 791—Bender v. Mettler, Civ.App., 17 S.W.2d 182.

41. N.C.—Carter v. Seaboard Air Line Ry. Co., 81 S.E. 321, 165 N.C. 244.
Okl.—Ratzlaff v. State, 229 P. 278, 102 Okl. 263.
Tex.—Golden v. Odiorne, 249 S.W. 822, 112 Tex. 544.
Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091—Bell v. Blackwell, Com.App., 283 S.W. 765.
Gulf States Utilities Co. v. Cauthen, Civ.App., 72 S.W.2d 370—Williams v. Penick-Hughes Co., Civ.App., 36 S.W.2d 1060.
Utah.—Ryan v. Beaver County, 21 P.2d 858, 82 Utah 27, 89 A.L.R. 1253.

42. Ind.—City of Decatur v. Eady, 115 N.E. 577, 186 Ind. 205, L.R.A. 1917E 242.
N.Y.—Greene v. White, 37 N.Y. 405, 4 Transcr.A. 382.
Tex.—Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091—Davis v. Hill, Com.App., 298 S.W. 526—Bell v. Blackwell, Com.App., 283 S.W. 765—Lamar v. Panhandle & S. F. Ry. Co., Com.App., 248 S. W. 34.
Texas Indemnity Ins. Co. v. Clark, Civ.App., 50 S.W.2d 465—Williams v. Penick-Hughes Co., Civ.App., 36 S.W.2d 1060—Kennard v. Kennard, Civ.App., 26 S. W.2d 336—Hanover Co. v. Hines, Civ.App., 11 S.W.2d 621, affirmed Com.App., 23 S.W.2d 289.
Va.—Rinehart & Dennis Co. v. Brown, 120 S.E. 269, 137 Va. 670.
Evidence to be considered
In determining whether error in requiring plaintiff to prove fraud to the satisfaction of the jury worked injury, the evidence most favorable to plaintiff must be considered to the exclusion of contrary evidence.
Tex.—Walker v. Dawley, Civ.App., 4 S.W.2d 159.

43. Me.—Colbath v. H. B. Stebbins Lumber Co., 144 A. 1, 127 Me. 406.

44. Ind.—Hatton v. Hodell Furniture Co., 125 N.E. 797, 72 Ind.App. 357.
Mo.—Brown v. St. Louis-San Francisco Ry. Co., App., 281 S.W. 452.
Tex.—Putnam Supply Co. v. Chapin, Civ.App., 45 S.W.2d 283, affirmed Chapin v. Putnam Supply Co., 76 S.W.2d 469, 124 Tex. 247.

45. Ga.—City of East Point v. Christian, 153 S.E. 784, 41 Ga.App. 536.

46. Wash.—Richardson v. City of Seattle, 166 P. 1131, 97 Wash. 521.

47. Ind.—Waters v. Indianapolis Traction & Terminal Co., 113 N.E. 289, 185 Ind. 526.

47.5 Ga.—Jennings v. Autry, 94 S. E.2d 629, 94 Ga.App. 344.

e. Verdict, findings, conclusions of law, and judgment
f. Other matters

a. In General

It is a rule of universal application that appellant cannot complain of, or seek review as to, errors which were favorable to him or operated in his favor.

In accordance with the universal rule of appellate procedure that a party cannot assign as error that which is not prejudicial to him, as discussed supra § 1676, it is a concomitant rule of universal application that appellant cannot complain of errors which were favorable to himself or operated in his favor.[48] However, this rule does not apply where

48. Ala.—Gantt v. Phillips, 77 So. 2d 916, 262 Ala. 184—Sovereign Camp, W. O. W., v. Feltman, 169 So. 9, 232 Ala. 570—Sims v. Taylor, 135 So. 580, 223 Ala. 280—Jones v. Stollenwerck, 119 So. 844, 218 Ala. 637—Carswell v. B. F. Kay & Son, 108 So. 518, 214 Ala. 619—Douglass v. Central of Georgia Ry. Co., 78 So. 457, 201 Ala. 395.

Ariz.—In re Monaghan's Estate, 227 P.2d 227, 71 Ariz. 334.

Ark.—Lusk v. Osborne, 191 S.W. 944, 127 Ark. 170—Bradley Lumber Co. v. Hamilton, 173 S.W. 848, 117 Ark. 127.

Cal.—Moss v. Underwriters' Report, 83 P.2d 503, 12 C.2d 266—Gosnell v. Lloyd, 10 P.2d 45, 215 C. 244—In re Funkenstein's Estate, 150 P. 987, 170 C. 594.

Druley v. Peyton, 149 P.2d 478, 64 C.A.2d 916, hearing denied 150 P.2d 887, 64 C.A.2d 916—Gordon v. Santa Cruz Portland Cement Co., App., 130 P.2d 232—Kee v. Becker, 129 P.2d 159, 54 C.A.2d 406—Bostock v. Hulse, 128 P.2d 912, 54 C.A.2d 334—Shore v. Crail, 123 P. 2d 840, 50 C.A.2d 736—Madera Sugar Pine Co. v. Weakley, 16 P.2d 321, 127 C.A. 733—In re Lewis' Estate, 14 P.2d 357, 126 C.A. 90—In re Vizelich's Estate, 11 P.2d 870, 123 C.A. 651—McNeal v. Mercer, 275 P. 990, 97 C.A. 583—Schenck v. Rountree, 265 P. 971, 90 C.A. 443.

Colo.—Friesen v. People ex rel. Fletcher, 192 P.2d 430, 118 Colo. 1—Fleming v. Miller, 267 P. 1064, 84 Colo. 27.

Conn.—Spirt v. Albert, 146 A. 717, 109 Conn. 292—Hartford-Connecticut Trust Co. v. Cambell, 111 A. 864, 95 Conn. 399.

D.C.—Glassman v. Graver, Mun.App., 56 A.2d 160.

Ga.—Reeves v. Lancaster, 126 S.E. 480, 159 Ga. 540.

Salter v. Salter, 55 S.E.2d 868, 80 Ga.App. 263—Terry Shipbuilding Corporation v. Gregory, 106 S. E. 803, 26 Ga.App. 450.

Idaho.—In re Stone's Estate, 308 P. 2d 597.

Ill.—Andrews v. McCumber, 215 Ill. App. 536.

Ind.—Scott v. Kell, App., 137 N.E.2d 449—City of Linton v. Jones, 130 N.E. 541, 75 Ind.App. 320—Haskell & Barker Car Co. v. Timm, 122 N. E. 788, 73 Ind.App. 612.

Iowa.—Elson v. Nickles, 36 N.W.2d 343, 240 Iowa 292—Bank of Pulaski v. Bloomfield State Bank, 232 N.W. 124, 210 Iowa 817—National Produce Co. v. Dye Yaus Co., 201 N.W. 572, 199 Iowa 286—Watland v. Quaintance, 171 N.W. 692, 186 Iowa 1271, rehearing denied 173 N.W. 12—Dilenbeck v. Security Sav. Bank, 169 N.W. 675, 186 Iowa 308, modified on other grounds 172 N.W. 486, 186 Iowa 308—Tero Petroff & Co. v. Equity Fire Ins. Co., 167 N.W. 660, 183 Iowa 906.

Ky.—Barnett v. Gilbert, 133 S.W.2d 529, 280 Ky. 402—Otte v. Otte, 83 S.W.2d 42, 259 Ky. 741—Majestic Theater Co. v. Lutz, 275 S.W. 16, 210 Ky. 92—Pulliam v. Gentry, 268 S.W. 557, 206 Ky. 763—Louisville & N. R. Co. v. Howser's Adm'r, 257 S.W. 1010, 201 Ky. 548, 36 A.L. R. 327—Morton v. Sanders, 200 S. W. 24, 178 Ky. 836—Ramey v. Ironton Lumber Co., 179 S.W. 207, 166 Ky. 295.

Callahan v. Harris, 13 Ky.Op. 380.

La.—Uvalde Rock Asphalt Co. v. City of Shreveport, 136 So. 23, 172 La. 977.

Md.—Red Star Motor Coaches v. Chatham, 163 A. 886, 163 Md. 412.

Mass.—In re Rothwell's Estate, 186 N.E. 662, 283 Mass. 563.

Minn.—Walsh v. Kuechenmeister, 265 N.W. 340, 196 Minn. 483.

Miss.—Smith v. Lundy, 167 So. 631, 175 Miss. 485.

Mo.—Phelps v. Scott, 30 S.W.2d 71, 325 Mo. 711, 71 A.L.R. 290—O'Donnell v. Baltimore & O. R. Co., 26 S. W.2d 929, 324 Mo. 1097.

Lynn v. Stricker, App., 213 S.W. 2d 672—Young v. Griesbauer, App., 183 S.W.2d 917—Sudduth v. Kansas City Gas Co., 123 S.W.2d 539, 234 Mo.App. 527, certiorari quashed State ex rel. Kansas City Gas Co. v. Shain, 132 S.W.2d 1015, 345 Mo. 233—Joseph Greenspon's Sons Iron & Steel Co. v. Gerstein, 27 S.W.2d 487, 224 Mo.App. 330—Facendini v. Hillman, App., 298 S.W. 1073.

Neb.—State v. Platte Valley Public Power and Irrigation Dist., 10 N. W.2d 631, 143 Neb. 661.

N.J.—Heinz v. Delaware, L. & W. R. Co., 100 A. 229, 90 N.J.Law 198.

N.Y.—Lansing Liquidation Corporation v. Heinze, 171 N.Y.S. 738, 184 App.Div. 129.

N.C.—Shaw v. North Carolina Public Service Corporation, 84 S.E. 1010, 168 N.C. 611.

Ohio.—Creck v. Becker, App., 67 N. E.2d 566—Johnson v. Thompson, 172 N.E. 298, 35 Ohio App. 91.

Okl.—Newton v. Paul, 224 P.2d 265, 203 Okl. 556—Swisher v. Clark, 209 P.2d 880, 202 Okl. 25—Tischer v. Arrington, 146 P.2d 121, 193 Okl. 584—New York Life Ins. Co. v. Morgan, 101 P.2d 826, 187 Okl. 214—Kerley v. Branch, 228 P. 950, 100 Okl. 167.

Or.—Conrad v. Sauers, 5 P.2d 1062, 138 Or. 201—Hopka v. Forbes, 294 P. 342, 135 Or. 91—Emmons v. Southern Pac. Co., 191 P. 333, 97 Or. 263—Winn v. Taylor, 190 P. 342, 98 Or. 556, reheard 194 P. 857, 98 Or. 556.

Pa.—Gratton v. Conte, 73 A.2d 381, 364 Pa. 578—Commonwealth v. Gulf Oil Corp., 60 A.2d 46, 359 Pa. 583—Rossmassler v. Spielberger, 112 A. 876, 270 Pa. 30.

S.C.—Sheriff v. City of Easley, 183 S.E. 311, 178 S.C. 504.

S.D.—Wood v. McCain, 171 N.W. 82, 41 S.D. 418—Van Horn v. Simpson, 153 N.W. 883, 35 S.D. 640.

Tenn.—Whitehurst v. Howell, 98 S. W.2d 1071, 20 Tenn.App. 314—Herstein v. Kemker, 94 S.W.2d 76, 19 Tenn.App. 681.

Tex.—Stalnaker v. Howard, Civ.App., 230 S.W.2d 563, error dismissed—Casseb v. Sweeney, Civ.App., 252 S.W.2d 209, error refused no reversible error—Cornelison v. First Nat. Bank of San Angelo, Civ.App., 218 S.W.2d 888, error refused no reversible error—Carter v. Ferris, Civ.App., 93 S.W.2d 504, error dismissed—Texas Employers' Ins. Ass'n v. Burnett, Civ.App., 72 S.W. 2d 952—Leonard v. Burton, Civ. App., 11 S.W.2d 668—Atlas Brick Co. v. North, Civ.App., 2 S.W.2d 980, reversed on other grounds, Com.App., 13 S.W.2d 59—Farmers' & Merchants' Bank v. Owens, Civ. App., 178 S.W. 734.

Vt.—York v. Partridge's Estate, 132 A. 37, 99 Vt. 329.

Va.—American Tobacco Co. v. Harrison, 27 S.E.2d 181, 181 Va. 800—Ruckdeschall v. Seibel, 101 S.E. 425, 126 Va. 359—Norfolk Hosiery & Underwear Mills Co. v. Ætna Hosiery Co., 98 S.E. 43, 124 Va. 221.

Wash.—Blair v. McKinnon, 244 P.2d 250, 40 Wash.2d 492—Getty v. Hutton, 188 P. 10, 110 Wash. 124—Rinear v. Skinner, 56 P. 24, 20 Wash. 541.

Wis.—In re Hogan, 287 N.W. 725, 232 Wis. 521—Ross v. Koberstein, 264 N.W. 642, 220 Wis. 73—Brown v.

an error, although superficially favorable to appellant, may, under the circumstances, have influenced the jury against him provoking a reaction resulting in harm to him.[49]

Provisional remedies; interlocutory proceedings. Increase by interest of the amount tendered when it is deposited in court is not a ground of complaint available to plaintiff.[50] Similarly, defendant may not object, on appeal, to plaintiff's motion to vacate an attachment levied on defendant's property[51] or to an order permitting dissolution of a temporary injunction upon the giving of bond.[52] An order directing a garnishee to pay money into court, without proof of any debt owed by him to defendant, cannot be complained of by a party other than the garnishee.[53]

b. Pleadings and Proof

Appellant cannot complain of erroneous rulings with respect to pleadings, issues, proof and variance, or evidence, where they operate in his favor.

Appellant cannot complain of erroneous rulings with respect to pleadings which operate in his favor.[54] This proposition has been followed in respect of rulings on demurrers,[55] the striking of portions of the adversary's pleadings,[56] or allowing,[57] requiring,[58] or refusing to allow[59] amendments of pleadings. Appellant cannot complain that appellee did not ask for all he was entitled to recover,[60] did

Gaulke, 210 N.W. 687, 191 Wis. 347.
Wyo.—Peterson v. Johnson, 28 P.2d 487, 46 Wyo. 473, 91 A.L.R. 723.
4 C.J. p 691 note 86, p 916 note 31—9 C.J. p 663 note 89 [a]—26 C.J. p 572 note 49—33 C.J. p 145 note 17—42 C.J. p 1289 note 38—51 C.J. p 285 note 3—52 C.J. p 154 note 84—54 C.J. p 607 note 36—63 C.J. p 1206 note 97.

Severance of claims for separate trials

Where evidence was insufficient to establish geographical location of dam allegedly erected by plaintiff and his damages in connection therewith, trial court could have entered judgment against plaintiff on his claim for damages for improvements allegedly made in good-faith belief that he owned land on which they were made, and hence plaintiff could not complain, on appeal, of action of trial court in severing such claim for separate trial at a future date.
Tex.—Minchen v. Ament, Civ.App., 266 S.W.2d 257, error refused no reversible error.

Parties

South Carolina truck owner who was being sued for injuries sustained in collision between automobile and truck in Virginia could not complain because his liability insurer which was nonresident was made a party to suit.
S.C.—Andrews v. Poole, 188 S.E. 860, 182 S.C. 206.

Election

(1) Allowing one, having an election between two kinds of action, to sue in that which is subject to the greater number of defenses and permits the smaller recovery is not an error of which defendant can complain.
Or.—Thompson v. Union Fishermen's Co-op. Packing Co., 246 P. 733, 118 Or. 436.

(2) A property owner cannot complain that a contractor, entitled to either the reasonable value of his services or the difference between the amount paid and that contracted for, sued for the smaller sum.
Tex.—Live Oak Dairy Corporation v. Kaase, Civ.App., 45 S.W.2d 657.

(3) In a suit in the nature of a suit in equity, where the judgment on the proof submitted permits plaintiff to elect between two methods of relief, and he elects to accept judgment against certain defendants for a lesser sum than he would have had against them under the other method, they cannot complain of his election.
Okl.—Henderson v. Arkansas, 176 P. 751, 71 Okl. 253.

Stay of execution

A week's stay of execution, preserving statutory time for appeal, cannot be complained of by the losing party.
Conn.—Gruber v. Friedman, 132 A. 395, 104 Conn. 107.

Actual injury the test

A party in fact injured by the decree in a cause is entitled to urge error, despite a judicial declaration in connection therewith that the terms of the decree were favorable to him.
La.—Hewes v. Baxter, 13 So. 817, 821, 45 La.Ann. 1049, 1059.

Reservation of right of further demurrer

Where demurrer to complaint is properly sustained on the ground that the action could not be maintained against defendant, reserving the right to further demur, if error, is harmless.
S.C.—Mullinax v. Hambright, 104 S.E. 309, 115 S.C. 22.

W.Va.—Porter v. Woodard, 60 S.E.2d 199, 134 W.Va. 612.
4 C.J. p 917 note 32.

49. Mo.—Crone v. United Rys. Co. of St. Louis, 236 S.W. 654.
Mont.—Marinkovich v. Tierney, 17 P.2d 93, 93 Mont. 72.
S.C.—Sumter Trust Co. v. Holman, 132 S.E. 811, 134 S.C. 412.

50. Ala.—Ham Turpentine Co. v. Mizell, 110 So. 372, 215 Ala. 143.

51. N.Y.—McCann v. Schnitzler, 172 N.E. 143, 254 N.Y. 107.

52. Ga.—McRae v. Smith, 137 S.E. 390, 164 Ga. 23.

53. Ky.—Esterman-Verkamp Co. v. Rouse, 278 S.W. 124, 211 Ky. 791.

54. Ala.—Metropolitan Life Ins. Co. v. Hyche, 108 So. 40, 214 Ala. 447.
Ga.—Johnson v. Southern Ry. Co., 142 S.E. 857, 166 Ga. 222.
Ill.—Department of Finance v. Schmidt, 29 N.E.2d 530, 374 Ill. 351.

55. Ala.—Woods v. Chrissinger, 163 So. 318, 230 Ala. 678—Jefferson Standard Life Ins. Co. v. Simpson, 153 So. 198, 228 Ala. 146—Kyle v. Central Nat. Bank of Decatur, 146 So. 801, 226 Ala. 257—Pope v. Allinder, 122 So. 419, 219 Ala. 439—Carmichael v. City of Dothan, 100 So. 643, 211 Ala. 492—Thompson v. Alexander City Cotton Mills Co., 67 So. 407, 190 Ala. 184, Ann.Cas. 1917A 721.
Ga.—Shadden v. Cowan, 96 S.E.2d 608, 213 Ga. 29.
Hubert v. Luden's, Inc., 88 S.E. 2d 481, 92 Ga.App. 427.
Ky.—Felts v. Edwards, 204 S.W. 145, 181 Ky. 287.
4 C.J. p 917 note 33.

56. Ala.—Drew v. Fort Payne Co., 65 So. 71, 186 Ala. 285.
Mont.—Canonica v. St. George, 208 P. 607, 64 Mont. 200.
4 C.J. p 917 note 34.

57. Miss.—Yazoo & M. V. R. Co. v. Daily, 127 So. 575, 157 Miss. 3.
Mo.—Stipetich v. Security Stove & Mfg. Co., App., 218 S.W. 964.
Okl.—Smith v. Findley, 298 P.2d 440.
Wis.—Schroeder v. City of Watertown, 152 N.W. 470, 161 Wis. 13.
4 C.J. p 917 note 35.

58. Mich.—Heck v. Henne, 213 N.W. 112, 238 Mich. 198.

59. Ky.—East Jellico Coal Co. v. Golden, 79 S.W. 291, 25 Ky.L. 2056.

60. Ala.—Coston v. McClelland, 127 So. 176, 220 Ala. 598.
Cal.—Band v. Wilson, 4 P.2d 807, 118 C.A. 101.

not state as many grounds for recovery as the evidence seemed to warrant,[61] or assumed, by his allegations, an unnecessary burden of proof;[62] nor can appellant complain that he himself was given a longer time in which to plead than he was entitled to.[63]

Splitting causes of action; misjoinder of parties. Permitting the splitting of causes of action[64] or the misjoinder of parties[65] may not be complained of, where they operated to the benefit of appellant.

Issues, proof, and variance. Where appellee assumes a more onerous burden in establishing his case than is required of him under his pleadings, appellant cannot complain of the variance;[66] and defendant may not complain of plaintiff's failure to introduce evidence in support of a special damage item,[67] or of the court's requiring the adverse party again to prove a matter already established.[68] If plaintiff undertakes to prove, as part of his case, matters which he need not prove such as matters presumed in his favor and requiring disproof by defendant, the latter cannot complain thereof on appeal.[69] Where plaintiff consents that the jury may find the contract to be as alleged in defendant's answer rather than as alleged in the complaint, defendant cannot object thereto on appeal.[70]

Evidence. The rule that appellant cannot complain of errors which were favorable to himself, discussed above, has been applied to errors relating to evidence,[70.5] such as errors relating to the question of burden of proof,[70.10] or the scope of cross-examination.[70.15]

Appellant cannot complain of rulings admitting,[71]

Ga.—Aiken v. Richardson, 56 S.E.2d 782, 80 Ga.App. 591.
Mo.—Zeitinger v. Steinberg, App., 277 S.W. 953.
Tex.—Commonwealth Finance Corporation v. Amundson, Civ.App., 294 S.W. 286.
4 C.J. p 917 note 37.

61. N.C.—Jones v. Warren, 46 S.E. 740, 134 N.C. 390.

Abandonment of count
In an action for injuries to a railroad employee, in which a count under federal Employers' Liability Act was joined with a count under the common law, the railroad, on appeal, could not complain that the employee abandoned the count under the common law.
Mo.—Miller v. Schaff, 228 S.W. 488, petition dismissed Schaff v. Miller, 42 S.Ct. 53, 257 U.S. 651, 66 L.Ed. 417.

62. Ala.—Southern Ry. Co. v. Blackwell, 100 So. 215, 211 Ala. 216.
S.C.—Davis v. Palmetto Quarries Co., 48 S.E.2d 329, 212 S.C. 496.

63. Ky.—Simon v. Webster, 211 S.W. 866, 184 Ky. 262.

64. Wash.—Howell v. Hunters' Exchange State Bank, 270 P. 831, 149 Wash. 249.

65. Ala.—Woods v. Chrissinger, 163 So. 318, 230 Ala. 678.
N.C.—Mull v. Louisville & N. R. Co., 96 S.E. 27, 175 N.C. 593.

66. Mo.—Neal v. Crowson, App., 231 S.W. 1033.

67. Cal.—Cullinan v. McColgan, 263 P. 353, 87 C.A. 684.
S.C.—Union Bleaching & Finishing Co. v. Barker Fuel Co., 117 S.E. 735, 124 S.C. 458.

68. Kan.—Smith Bros. & Cooper v. Hanson, 187 P. 262, 106 Kan. 32.

69. Mont.—Schauer v. Morgan, 216 P. 347, 67 Mont. 455.

70. N.C.—Harper v. Virginia Lumber & Box Co., 149 S.E. 686, 197 N.C. 539.

70.5 N.C.—Carolina Coach Co. v. Central Motor Lines, 50 S.E.2d 909, 229 N.C. 650.

Permitting questioning by juror
Where after both sides had completed introduction of evidence but before court had passed on instructions, court without objection from either side called one of defendants to stand and permitted juror to ask him a number of questions and only ruling made by court was favorable to plaintiff and in accord with his suggestion, there was no adverse ruling and no exception of plaintiff on which to base an assignment of error.
Va.—Federal Deposit Ins. Corp. v. Mapp's Ex'r, 37 S.E.2d 23, 184 Va. 970.

70.10 Pa.—Slater v. Pennsylvania Public Utility Commission, 98 A. 2d 743, 173 Pa.Super. 404.

Burden of proof placed on appellee
Plaintiffs, who had burden of establishing the invalidity of their father's second marriage in order to establish their right to inherit certain property, could not complain of trial court's error in placing burden of establishing validity of second marriage on defendant.
N.C.—Kearney v. Thomas, 33 S.E.2d 871, 225 N.C. 156.

70.15 Improper question resulting in favorable answer
Ala.—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala.App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10.
S.C.—Shockley v. Cox Circus Co., 29 S.E.2d 491, 204 S.C. 353.

Evidence for impeachment of witness
(1) The admission of answers to cross-examination questions, asked to impeach a witness, as substantive evidence, would be harmless, where the reply to a question substantiated witness.
Conn.—McCarthy v. Tierney, 165 A. 805, 116 Conn. 593.

(2) Permitting a witness for plaintiff who had been asked about his conviction for murder for purpose of impeaching his credibility as a witness to explain circumstances under which homicide had occurred constituted error, but was not reversible where explanation given was clearly calculated further to impeach his credibility instead of being prejudicial to rights of defendants.
Miss.—Crosby Lumber & Manufacturing Co. v. Jefferson, 10 So.2d 102.

71. Ala.—Tankersley v. Webb, 82 So.2d 259, 263 Ala. 234—Gulf, M. & O. R. Co. v. Sims, 69 So.2d 449, 260 Ala. 258—Evans v. Walker, 187 So. 189, 237 Ala. 385—Dickson v. Dinsmore, 122 So. 437, 219 Ala. 353—Thaggard v. Vafes, 119 So. 647, 218 Ala. 609—Bull v. O'Riley, 112 So. 437, 216 Ala. 73—Shook v. Benson, 96 So. 224, 209 Ala. 303—Knowles v. Blue, 95 So. 481, 209 Ala. 27—Woods v. Postal Telegraph Cable Co., 87 So. 681, 205 Ala. 236, 27 A.L.R. 834—Gorman-Gammill Seed & Dairy Supply Co. v. Morton, 84 So. 766, 203 Ala. 530—Tennessee Coal, Iron & R. Co. v. King, 76 So. 982, 200 Ala. 624—Huntsville Knitting Mills v. Butner, 76 So. 54, 200 Ala. 288—Central of Georgia Ry. Co. v. Mathis, 71 So. 674, 196 Ala. 32—Phillips v. Shotts, 71 So. 94, 195 Ala. 20—Bullock v. Mason, 69 So. 882, 194 Ala. 663—Jones v. White, 66 So. 605, 189 Ala. 622.
Ark.—Wilenzick v. Simon, 3 S.W.2d 297, 176 Ark. 1206—Gerard B. Lambert Co. v. Newton, 294 S.W. 707, 174 Ark. 209—National Fruit Products Co. v. Garrett, 181 S.W. 926, 121 Ark. 570—Kansas City South-

ern Ry. Co. v. Cobb, 178 S.W. 383, 118 Ark. 569.

Cal.—Hatfield v. Levy Bros., 117 P.2d 841, 18 C.2d 798—Willard v. Valley Gas & Fuel Co., 151 P. 286, 171 C. 9.

Sanders v. Park Beverly Corp., 241 P.2d 597, 109 C.A.2d 698—Lowrey v. Rego, 149 P.2d 706, 65 C.A.2d 16—Saecker v. Metropolitan Life Ins. Co., 125 P.2d 105, 51 C.A.2d 479—Depaoli v. Claus, 293 P. 881, 110 C.A. 145—Dohrman v. J. B. Roof, Inc., 291 P. 879, 108 C.A. 456—McNeal v. Mercer, 275 P. 990, 97 C. A. 583—Peterson v. Gilbert, 257 P. 140, 83 C.A. 542—Scheimer v. James, 199 P. 827, 53 C.A. 207.

Conn.—Smith v. Smith, 159 A. 489, 114 Conn. 575.

Ga.—Green v. Green, 168 S.E. 266, 176 Ga. 421—Bennett v. Hinson, 136 S.E. 893, 163 Ga. 703.

United Motor Freight Terminals v. Driver, 44 S.E.2d 156, 75 Ga. App. 571—City of Atlanta v. Gore, 169 S.E. 776, 47 Ga.App. 70—Landrum v. Leachman, 123 S.E. 915, 32 Ga.App. 471.

Ill.—Lewis v. West Side Trust & Savings Bank, 32 N.E.2d 907, 376 Ill. 23—Fowler v. Chicago Rys. Co., 120 N.E. 635, 285 Ill. 196.

Hillmer v. Chicago Bank of Commerce, 24 N.E.2d 388, 303 Ill. App. 43, modified on other grounds 31 N.E.2d 309, 375 Ill. 266—Town of Hudson v. Carrithers, 201 Ill. App. 153. See Scown v. Cook County, 199 Ill.App. 351.

Ind.—Timmons v. Gochenour, 117 N. E. 279, 169 Ind.App. 295.

Iowa.—McDonald v. Padzensky, 224 N.W. 824—McDonald v. Robinson, 224 N.W. 820, 207 Iowa 1293, 62 A. L.R. 1419—Dice v. Johnson, 199 N. W. 346, 198 Iowa 1093—Bashaw-Joy Co. v. Walsh, 174 N.W. 399, 187 Iowa 574—Peterson v. McManus, 172 N.W. 460, 187 Iowa 522—Woodworth v. Iowa Cent. Ry. Co., 149 N.W. 522, 170 Iowa 697.

Ky.—Greenway v. Watson, 105 S.W. 2d 848, 268 Ky. 745—Pyatt's Adm'r v. Chesapeake & O. Ry. Co., 200 S. W. 476, 179 Ky. 318—Louisville & N. R. Co. v. Thomas' Adm'r, 185 S.W. 840, 170 Ky. 145, rehearing denied 188 S.W. 463, 171 Ky. 471.

La.—State ex rel. Hills, Inc., v. Recorder of Mortgages, 173 So. 139, 186 La. 661.

Me.—Duff v. Holland System, 119 A. 808, 122 Me. 297—Bessey v. Herring, 118 A. 423, 121 Me. 539—Butler v. Hawkins, 96 A. 774, 114 Me. 553.

Md.—Penrose v. Canton Nat. Bank of Canton, 127 A. 852, 147 Md. 200—Shaffer v. Bond, 99 A. 973, 129 Md. 648.

Mass.—Geary v. Blomerth, 34 N.E. 2d 922, 309 Mass. 91—Matthew Cummings Co. v. Grande, 184 N.E. 865, 281 Mass. 546—Lake v. Kimball, 183 N.E. 147, 281 Mass. 186—Thomas v. Inhabitants of Town of Winthrop, 111 N.E. 173, 222 Mass. 456.

Mich.—Snider v. Schaffer, 267 N.W. 791, 276 Mich. 92—Moynes v. Applebaum, 187 N.W. 241, 218 Mich. 198—Boeing v. Fordney, 150 N.W. 852, 184 Mich. 153.

Minn.—Harris v. Atchison, 236 N.W. 458, 183 Minn. 292.

Mo.—Bloch v. Kinder, 93 S.W.2d 932, 338 Mo. 1099—Page v. Payne, 240 S.W. 156, 293 Mo. 600.

Chambers v. Metropolitan Life Ins. Co., 157 S.W.2d 593, 236 Mo. App. 823—Coffey v. S. S. Kresge Co., App., 102 S.W.2d 161—Fenton v. Missouri Motor Distributing Corporation, App., 52 S.W.2d 213—Wentzel v. Lake Lotawana Development Co., 48 S.W.2d 185, 226 Mo. App. 960—Cashion v. Wells, App., 35 S.W.2d 909—Troxell v. De Shon, App., 279 S.W. 438—Jordan v. Missouri Pac. R. Co., App., 268 S.W. 110—Swearingen v. Moore, 257 S. W. 815, 215 Mo.App. 531—Williams v. Gideon-Anderson Lumber Co., App., 224 S.W. 51.

Neb.—Griess v. Borchers, 72 N.W.2d 820, 161 Neb. 217.

Nev.—Nelson v. Reinhart, 219 P. 554, 47 Nev. 246, rehearing denied 221 P. 521, 47 Nev. 246—Rehling v. Brainard, 144 P. 167, 38 Nev. 16, Ann.Cas.1917C 656.

N.H.—Downie v. Proctor, 131 A.2d 68—Abbott v. Hayes, 26 A.2d 842, 92 N.H. 126.

N.J.—Coles v. People's Gas Co., 162 A. 405, 109 N.J.Law 428.

N.Y.—Grosheim v. Mineola Boulevard Realty Co., 299 N.Y.S. 953, 252 App.Div. 869.

Flaherty v. Wunsch, 28 N.Y.S.2d 178.

N.C.—Nantahala Power & Light Co. v. Rogers, 178 S.E. 575, 207 N.C. 751—Bryant v. Stone, 100 S.E. 578, 178 N.C. 291—Young v. Gruner, 92 S.E. 618, 173 N.C. 622—In re Mueller's Will, 86 S.E. 719, 170 N.C. 28—Cochran v. Young-Hartsell Mills Co., 85 S.E. 149, 169 N.C. 57.

Ohio.—Watzek v. Whetstone, App., 40 N.E.2d 172.

Okl.—Oklahoma State Bank of Ada v. Reed, 288 P. 281, 143 Okl. 131, 85 A.L.R. 635.

Or.—Andrew v. Oregon-Washington R. & Nav. Co., 178 P. 181, 90 Or. 611.

Pa.—Stewart v. Pen Argyl Nat. Bank, 161 A. 327, 307 Pa. 328—Ohio Valley Lumber Co. v. Blanarik, 141 A. 476, 292 Pa. 574.

Commonwealth for Use of Croyle Tp. v. Long, 167 A. 433, 110 Pa. Super. 1, followed in 167 A. 435, 110 Pa.Super. 7.

S.C.—Taylor v. Taylor, 91 S.E.2d 876, 229 S.C. 92—Leonard v. People's Tobacco Warehouse Co., 122 S.E. 678, 128 S.C. 155—Bell v. Bell, 87 S.E. 540, 103 S.C. 95.

Tex.—Fort Worth & Denver Ry. Co. v. Ferguson, Civ.App., 261 S.W.2d 874, error dismissed—Barton v. Bailey, Civ.App., 202 S.W.2d 277, error refused no reversible error—Loving County v. Higginbotham, Civ.App., 115 S.W.2d 1110, error dismissed—Goode v. Ramey, Civ. App., 48 S.W.2d 719—Texas & P. Ry. Co. v. Edwards, Civ.App., 21 S.W.2d 754, reversed on other grounds, Com.App., 36 S.W.2d 477—Veazey v. Galveston, H. & S. A. Ry. Co., Civ.App., 290 S.W. 283—Great West Mill & Elevator Co. v. Hess, Civ.App., 281 S.W. 234—San Angelo Water, Light & Power Co. v. Baugh, Civ.App., 270 S.W. 1101—Connecticut Fire Ins. Co. v. Fields, Civ.App., 236 S.W. 790—Laybourn v. Bray & Shiflet, Civ.App., 214 S. W. 630—Hallam v. Duckworth, Civ. App., 209 S.W. 222—Graham v. Kesseler, Civ.App., 192 S.W. 299—Southern Kansas Ry. Co. of Texas v. Hughey, Civ.App., 182 S.W. 361—Memphis Cotton Oil Co. v. Goode, Civ.App., 171 S.W. 284.

Utah.—Amussen v. Hansen, 173 P. 127, 52 Utah 113.

Vt.—Paul v. Drown, 189 A. 144, 108 Vt. 458, 109 A.L.R. 1085—Perkins v. Vermont Hydro-Electric Corporation, 177 A. 631, 116 Vt. 367—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215.

Va.—Wessel, Duval & Co. v. Crozet Cooperage Co., 130 S.E. 393, 143 Va. 469—Bardach Iron & Steel Co. v. Charleston Port Terminals, 129 S.E. 687, 143 Va. 656—Monroe & Monroe v. Cowne, 112 S.E. 848, 133 Va. 181.

Wash.—Rice v. Garl, 98 P.2d 301, 2 Wash.2d 403—Nicolle v. United Auto Transp. Co., 244 P. 127, 138 Wash. 48—Rohweder v. Titus, 148 P. 583, 85 Wash. 441.

Wis.—Zimdars v. Zimdars, 295 N.W. 675, 236 Wis. 484.

4 C.J. p 917 note 39.

Admission of photograph

Where plaintiff's photograph of scene of automobile accident was taken shortly before trial and at time when shrubbery was not leafed out, and was more favorable to defendant on question of plaintiff's visibility of intersecting highway than it was to plaintiff, and defendant's photographs which were taken shortly after accident disclosed a greater obstruction to plaintiff's visibility, defendant could not complain of admission of plaintiff's photographs.

Mo.—Reed v. Coleman, App., 167 S. W.2d 125.

Hypothetical questions

(1) The omission from a hypothetical question as to the distance within which a street car could be stopped of a recital of the number of passengers in the car was not prejudicial to defendant, where the evidence showed the car was practically empty, as presumably it could be stopped shorter with a smaller load.

excluding,[72] or striking[73] evidence, where such rulings operate in his favor or against appellee.

c. Trial and Submission to Jury

A party cannot complain of errors favorable to himself in connection with the conduct of the trial and the submission of the case or an issue to the jury.

The general rule, under which a party cannot complain of errors favorable to himself, has been applied in the case of assignments of error to remarks of the court[74] or of counsel;[75] to misconduct of the jury during their deliberations, where the issue under consideration was decided favorably to appellant;[75.5] to misconduct of jurors in connection with statements or discussions calculated to operate advantageously to appellant in the determination of the amount of the verdict;[76] and to a failure to exclude the jury at the time of appellant's offer of inadmissible evidence tending to support his case.[77]

The rule has also been applied to rulings directing the adverse party to appear for examination after his refusal to answer questions at a prior examination,[78] giving appellant the right to open and close,[79] refusing a continuance to procure the attendance of an adverse witness,[80] or preventing counsel for the adverse party from commenting on evidence introduced by appellant;[81] and to a refusal of the court to permit one of appellant's adversaries to remain in the courtroom during the trial,[82] or a re-

Mo.—Crockett v. Kansas City Rys Co., 243 S.W. 902.

(2) Where doctor was asked to assume plaintiff fell on her shoulder, defendant could not complain that the doctor was not asked to assume that she did not fall on her abdomen.
Mo.—Kirk v. Kansas City Terminal Ry. Co., App., 27 S.W.2d 739.

Leading questions

Permitting plaintiff to state leading questions to a former employee of defendant called as a witness by plaintiff, if error, was harmless, where answers were favorable to defendant.
Tex.—Cyrus W. Scott Mfg. Co. v. Millis, Civ.App., 67 S.W.2d 885.

Reception for limited purpose

Where evidence or testimony is absolutely admissible, its reception for a limited purpose only is improper, but, being error favorable to the party against whom it is offered, it cannot be complained of by him on appeal.
S.C.—Lucius v. Du Bose, 103 S.E. 759, 114 S.C. 375.

72. Ala.—Grubbs v. Hawkins, 94 So. 484, 208 Ala. 349—Sloss-Sheffield Steel & Iron Co. v. City of Birmingham, 78 So. 896, 201 Ala. 542—Bullock v. Mason, 69 So. 882, 194 Ala. 663—Potter v. Shauf, 65 So. 778, 187 Ala. 128.
Cal.—Kling v. Kimball Pump Co., 32 P.2d 659, 138 C.A. 470—Edge v. Bryan, 190 P. 476, 47 C.A. 312.
Conn.—Verdi v. Donahue, 99 A. 1041, 91 Conn. 448.
Ga.—Parker v. Williams, 147 S.E. 571, 168 Ga. 301.
Kan.—Jukes v. North Am. Van Lines, Inc., 309 P.2d 692, 118 Kan. 12.
Ky.—Louisville Grinding & Machine Co. v. Southern Oil & Tar Co., 18 S.W.2d 877, 230 Ky. 39—Jonas v. South Covington & C. St. Ry. Co., 185 S.W. 117, 169 Ky. 807.
Md.—Patterson v. Baltimore & O. R. Co., 105 A. 159, 133 Md. 276—Murdock v. Taylor, 98 A. 149, 128 Md. 633—Michael v. Smith, 91 A. 762, 124 Md. 116.
Mass.—Sax v. Horn, 174 N.E. 673, 274 Mass. 428—Bilodeau v. Fitchburg & L. St. Ry. Co., 128 N.E. 872, 236 Mass. 526.
Mich.—Jolman v. Alberts, 158 N.W. 170, 192 Mich. 25.
Minn.—Pullen v. Chicago, M., St. P. & P. Ry. Co., 227 N.W. 352, 178 Minn. 347.
Miss.—National Box Co. v. Henry, 105 So. 854, 140 Miss. 397—Cooper v. Bell, 75 So. 767, 114 Miss. 766.
Mo.—Beal v. Chicago, B. & Q. R. Co., 285 S.W. 482—Page v. Payne, 240 S.W. 156, 293 Mo. 600.
Nev.—Rehling v. Brainard, 144 P. 167, 38 Nev. 16, Ann.Cas.1917C 656.
N.C.—Gaffney v. Phelps, 178 S.E. 231, 207 N.C. 553—In re Mueller's Will, 86 S.E. 719, 170 N.C. 28.
N.D.—Anderson v. Reservation State Bank, 217 N.W. 177, 56 N.D. 265.
Or.—Turner v. Jackson, 4 P.2d 925, 139 Or. 539, reheard 11 P.2d 1048, 139 Or. 539.
Pa.—Vahlsing v. Rothstein, 163 A. 350, 107 Pa.Super. 281.
S.C.—American Fruit Growers v. King, 114 S.E. 861, 122 S.C. 69.
Tenn.—American Nat. Bank & Trust Co. v. Mander, 253 S.W.2d 994, 36 Tenn.App. 220.
Tex.—Baten v. Smart, Civ.App., 295 S.W.2d 521, error refused no reversible error—Waddell v. Coleman, Civ.App., 248 S.W.2d 216, reversed on other grounds 249 S.W.2d 912, 151 Tex. 337—Hughes v. McClatchy, Civ.App., 242 S.W.2d 799, error refused no reversible error—Republic Production Co. v. Collins, Civ.App., 3 S.W.2d 1113, reheard 7 S.W.2d 187—Memphis Cotton Oil Co. v. Goode, Civ.App., 171 S.W. 284.
Wash.—Rohweder v. Titus, 148 P. 583, 85 Wash. 441.
4 C.J. p 918 note 40.

Evidence tending to contradict appellant's witnesses

Defendant street railway's exceptions to the exclusion of evidence, which it claimed tended to contradict one of its own witnesses, cannot be sustained.
Mass.—Bilodeau v. Fitchburg & L. St. Ry. Co., 128 N.E. 872, 236 Mass. 526.

73. Ky.—Steubing's Adm'r v. J. C. Fisel Transfer Co., 71 S.W.2d 1040, 254 Ky. 509.
Mo.—Heriford v. Kansas City Rys. Co., 220 S.W. 899.
Uhlmann v. Domino's Bakery & Macaroni Co., App., 238 S.W. 511.
4 C.J. p 918 note 41.

74. Ark.—J. T. Fargason Co. v. Driver, 284 S.W. 20, 171 Ark. 15.
Or.—Friday v. Rowen, 224 P. 632, 111 Or. 7.
S.C.—Terry v. Richardson, 116 S.E. 273, 123 S.C. 319.
4 C.J. p 923 note 89.

75. Utah.—Cromeenes v. San Pedro, etc., R. Co., 109 P. 10, 37 Utah 475, Ann.Cas.1912C 307.

75.5 Tex.—Batey v. Greenwood Floral Co., Civ.App., 113 S.W.2d 647—Gulf States Security Life Ins. Co. v. Edwards, Civ.App., 109 S.W. 2d 1125, error dismissed.

76. Tex.—Ford Motor Co. v. Whitt, Civ.App., 81 S.W.2d 1032—Lackey v. Southland Greyhound Lines, Civ. App., 35 S.W.2d 739.
4 C.J. p 924 note 91.

77. Wash.—MacDermid v. City of Seattle, 160 P. 290, 93 Wash. 167.

78. Ind.—Citizens' Nat. Bank v. Alexander, 73 N.E. 279, 34 Ind.App. 496.

79. Okl.—Wilson v. Moran, 197 P. 1051, 82 Okl. 34.

80. Tex.—Lloyds Casualty Co. v. Buckner, Civ.App., 56 S.W.2d 658.

Absence of a material witness for either party to a cause is no cause of complaint by the other.
W.Va.—Producers' Coal Co. v. Mifflin Coal Mining Co., 95 S.E. 948, 82 W.Va. 311.

81. N.H.—Drown v. Hamilton, 44 A. 79, 68 N.H. 23.

82. Ky.—Kenton Ins. Co. v. Osborne, 51 S.W. 306, 21 Ky.L. 330.

call of the jury, after they have been sent out, to give additional instructions favorable to appellant.[83]

Submitting case or question to jury. Any error in sending the case or an issue to the jury is not a basis for objection on appeal where it operates in favor of appellant.[84] Thus, a party in whose favor the jury answered a question submitted cannot complain of error in the submission of the question;[84.5] and so also a submission of the case to the jury furnishes appellant with no ground of complaint where the evidence is such as to warrant the court in directing a verdict against him.[85] Moreover, where the evidence warrants a directed verdict for defendant, the granting of a nonsuit is harmless to plaintiff.[85.5]

Similarly, appellant cannot complain of the erroneous submission of a question of law to the jury where the decision of the court on such question would necessarily have been against him,[86] or where such submission gives the jury an opportunity to find against appellee on a question of fact that should not have been submitted to them.[87] More-

83. Tenn.—Edgington v. K. C., M. & B. R. R. Co., 10 Tenn.App. 685.

84. Ariz.—Rodriquez v. Childress, 272 P. 921, 34 Ariz. 489.
Cal.—Cartwright v. Cartwright, 216 P.2d 545, 96 C.A.2d 932.
Fla.—Kuharske v. Lake County Citrus Sales, 61 So.2d 495.
Iowa.—Fleming v. Thornton, 251 N. W. 158, 217 Iowa 166—Thomas v. Wyckoff, 174 N.W. 26, 187 Iowa 148.
Mich.—Wood v. Standard Drug Store, 157 N.W. 403, 190 Mich. 654.
Neb.—**Corpus Juris Secundum quoted in** Loyal's Auto Exchange v. Munch, 45 N.W.2d 913, 920, 153 Neb. 628—**Corpus Juris Secundum quoted in** Kline v. Metcalfe Const. Co., 27 N.W.2d 383, 389, 148 Neb. 357—**Corpus Juris Secundum quoted in** In re Keup's Estate, 18 N.W. 2d 63, 66, 145 Neb. 729.
N.J.—Cotton v. Keen, 1 A.2d 8, 120 N.J.Law 491, affirmed 3 A.2d 574, 121 N.J.Law 589.
N.Y.—Grant v. Schilling, 170 N.Y.S. 102.
Ohio.—Melville v. Greyhound Corp., 133 N.E.2d 436, 99 Ohio App. 411.
Okl.—Muskogee Electric Traction Co. v. Hairel, 148 P. 1005, 46 Okl. 409.
Or.—Senter v. Peninsula Lumber Co., 220 P. 139, 109 Or. 325—Hicks v. Peninsula Lumber Co., 220 P. 133, 109 Or. 305.
Pa.—First Nat. Bank v. Fry, 144 A. 416, 294 Pa. 425.
S.C.—Sheriff v. City of Easley, 183 S. E. 311, 178 S.C. 504.
Tex.—Mims v. Hearon, Civ.App., 248 S.W.2d 754—Fort Worth & D. C. Ry. Co. v. Capehart, Civ.App., 210 S.W.2d 839, error refused no reversible error—Atlas Metal Works v. Republic Nat. Bank, Civ.App., 176 S.W.2d 350, error refused—Lone Star Gas Co. v. Haire, Civ. App., 41 S.W.2d 424—St. Louis, S. F. & T. Ry. Co. v. Allen, Civ. App., 262 S.W. 1066, reversed on other grounds, Com.App., 278 S. W. 186—Panhandle Grain & Elevator Co. v. Dowlin, Civ.App., 247 S.W. 873.
Utah.—Beck v. Dutchman Coalition Mines Co., 269 P.2d 867, 2 Utah 2d 104.
Wis.—Ross v. Koberstein, 264 N.W. 642, 220 Wis. 73.

84.5 Tex.—Southland Industries v. O. R. Mitchell Motors, Civ.App., 244 S.W.2d 528, error refused no reversible error.
Wis.—Wegner v. Chicago & N. W. Ry. Co., 55 N.W.2d 420, 262 Wis. 402.

85. Ky.—Ogle Coal Co. v. Martin, 24 S.W.2d 296, 232 Ky. 564—Intersouthern Life Ins. Co. v. Duff, 211 S.W. 738, 184 Ky. 227.
Mich.—McPheeters v. Birkholz, 205 N.W. 196, 232 Mich. 370—Gallant v. Miles, 166 N.W. 1009, 200 Mich. 532.
Neb.—Southwell v. De Boer, 80 N.W. 2d 877, 163 Neb. 646—**Corpus Juris Secundum quoted in** Loyal's Auto Exchange v. Munch, 45 N.W.2d 913, 920, 153 Neb. 628—**Corpus Juris Secundum quoted in** Kline v. Metcalfe Const. Co., 27 N.W.2d 383, 389, 148 Neb. 357—**Corpus Juris Secundum quoted in** In re Keup's Estate, 18 N.W.2d 63, 66, 145 Neb. 729.
N.Y.—Bradley v. Village of Union, 150 N.Y.S. 107, 164 App.Div. 565, appeal denied 151 N.Y.S. 1106, 166 App.Div. 953.
Ohio.—McCarthy v. Cincinnati Enquirer, Inc., App., 136 N.E.2d 393.
Pa.—Zook v. Zook, 157 A. 355, 104 Pa.Super. 374.
4 C.J. p 920 note 62.

85.5 Ga.—Wells v. Aldridge, 44 S. E.2d 183, 75 Ga.App. 702.

86. Ariz.—Inspiration Consol. Copper Co. v. Bryan, 276 P. 846, 35 Ariz. 285.
Colo.—Cooper v. Woodward, 204 P. 336, 71 Colo. 90.
Mass.—Creditors' National Clearing House v. Bannwart, 116 N.E. 886, 227 Mass. 579, Ann.Cas.1918C 130.
N.D.—Quaschnick v. Sandbo, 239 N. W. 164, 61 N.D. 599.
Pa.—Philadelphia Electric Co. v. City of Philadelphia, 154 A. 492, 303 Pa. 422—Chamberlain v. Director General of Railroads, 118 A. 550, 275 Pa. 47.
Tex.—Sante Fé Tie & Lumber Preserving Co. v. Collins, Civ.App., 198 S.W. 164.
4 C.J. p 921 note 66.

87. Ala.—Moore v. Cruit, 191 So. 252, 238 Ala. 414.
Ark.—Johnson v. Cheek, 259 S.W. 368, 163 Ark. 176.
Ga.—Linder v. Pope, 103 S.E. 265, 25 Ga.App. 332.
Iowa.—McDermott v. Ida County, 171 N.W. 690, 186 Iowa 736—Ball v. Davenport, 152 N.W. 69, 170 Iowa 33.
Kan.—Fenn v. Kansas Gas & Electric Co., 234 P. 77, 118 Kan. 131.
Ky.—Paducah Cooperage Co. v. Arkansas Stave Co., 237 S.W. 412, 193 Ky. 774.
Mich.—Gibberson v. Burroughs, 194 N.W. 535, 223 Mich. 667—C. A. S. Engineering Co. v. H. J. Walker Co., 184 N.W. 431, 216 Mich. 113—Folger v. Addison Apartment Co., 175 N.W. 485, 208 Mich. 607.
Mo.—Demaray v. Missouri-Kansas-Texas R. Co., 50 S.W.2d 127, 330 Mo. 589, certiorari denied Missouri-Kansas-Texas R. Co. v. Demaray, 53 S.Ct. 20, 287 U.S. 620, 77 L.Ed. 538—Gilchrist v. Kansas City Rys. Co., 254 S.W. 161—Simpson v. Burnett, 252 S.W. 949, 299 Mo. 232. Bryant v. Kansas City Rys. Co., App., 217 S.W. 632.
Neb.—Shiers v. Cowgill, 59 N.W.2d 407, 157 Neb. 265—**Corpus Juris Secundum quoted in** Loyal's Auto Exchange v. Munch, 45 N.W.2d 913, 920, 153 Neb. 628—**Corpus Juris Secundum quoted in** Kline v. Metcalfe Const. Co., 27 N.W.2d 383, 389, 148 Neb. 357—**Corpus Juris Secundum quoted in** In re Keup's Estate, 18 N.W.2d 63, 66, 145 Neb. 729.
N.J.—National Spun Silk Co. v. Peerless Silk Mills Corporation, 116 A. 711, 97 N.J.Law 190.
N.Y.—Day v. Chamber of Commerce of U. S., 267 N.Y.S. 215, 239 App. Div. 447, affirmed 191 N.E. 546, 264 N.Y. 522.
N.C.—Bond v. Carolina, C. & O. Ry., 96 S.E. 22, 175 N.C. 606.
N.D.—Morton v. Woolery, 189 N.W. 232, 48 N.D. 1132, 24 A.L.R. 1107.
Or.—Waller v. City of New York Ins. Co., 164 P. 959, 84 Or. 284.
S.C.—Veronee v. Charleston Consol. Ry. & Lighting Co., 149 S.E. 753, 152 S.C. 178—Capital City Garage

over, he cannot complain of error favorable to himself in a submission of issues to the jury which is not warranted by the pleadings or evidence,[88] of instructions authorizing or requiring the jury to pass on admitted or uncontroverted facts,[89] or of the action of the court in ignoring or withdrawing from the consideration of the jury facts, issues, grounds of action, or defenses favorable to appellee,[90] or in refusing a request to submit such matters to them.[91]

Although an issue as submitted is duplicitous, if the effect is merely to impose on appellee a greater burden than a proper submission would have done, appellant cannot claim a review thereof.[92] Submission of the case on the theory that the law of a particular jurisdiction governs cannot be complained of when that is more favorable to appellant than the law which actually controls.[93]

Appellant cannot complain of the court's action in withholding a case from the jury by sustaining appellant's demurrer to the evidence[94] or in any case

& Tire Co. v. Electric Storage Battery Co., 101 S.E. 838, 113 S.C. 352.
Tex.—Galveston, H. & S. A. Ry. Co. v. Roemer, Civ.App., 173 S.W. 229.
4 C.J. p 921 note 67—42 C.J. p 833 note 41.

88. Ark.—Dodson v. Wade, 101 S. W.2d 182, 193 Ark. 534—Cotton v. Mutual Aid Union, 201 S.W. 124, 132 Ark. 458.
Cal.—Brown v. Kiely, 271 P.2d 928, 126 C.A.2d 191—Kashevaroff v. Webb, 166 P.2d 306, 73 C.A.2d 177.
Colo.—Zarlengo v. Zarlengo, 197 P. 1019, 70 Colo. 189.
Conn.—Pietrycka v. Simolan, 127 A. 717, 102 Conn. 42.
Ga.—Spalding Lumber Co. v. Hemphill, 47 S.E.2d 514, 77 Ga.App. 1.
Iowa.—In re Klepper's Estate, 57 N. W.2d 565, 244 Iowa 521—Arnold v. Ft. Dodge, D. M. & S. R. Co., 173 N.W. 252, 186 Iowa 538.
Kan.—Bruce v. Hayes, 169 P. 199, 102 Kan. 115.
Ky.—Bean v. Bevins, 287 S.W.2d 627—Louisville & N. R. Co. v. Thomas' Adm'r, 185 S.W. 840, 170 Ky. 145, rehearing denied 188 S.W. 463, 171 Ky. 471—City of Paris v. Baldwin Bros., 185 S.W. 144, 169 Ky. 802.
Md.—Slaska v. Idzi, 47 A.2d 503, 186 Md. 530.
Mo.—State ex rel. Greer v. Cox, 274 S.W. 373—Godfrey v. Kansas City Light & Power Co., 253 S.W. 233, 299 Mo. 472.
Allen v. Chicago, R. I. & P. Ry. Co., 54 S.W.2d 787, 227 Mo.App. 468—Alexander v. Barnes Grocery Co., 7 S.W.2d 370, 223 Mo.App. 1—Jones v. Munroe, App., 231 S.W. 1069—Gordner v. St. Louis Screw Co., 210 S.W. 930, 201 Mo.App. 349—Lilly v. Kansas City Rys. Co., App., 209 S.W. 969.
Neb.—Loyal's Auto Exchange v. Munch, 45 N.W.2d 913, 153 Neb. 628—Rocha v. Payne, 187 N.W. 804, 108 Neb. 246.
N.J.—Dellabello v. Central R. Co. of New Jersey, 124 A. 59, 99 N.J. Law 348.
Okl.—Hurt v. Paredes, 241 P. 772, 115 Okl. 139—Mayo v. Thede, 175 P. 348, 73 Okl. 181.
Or.—Weygandt v. Bartle, 171 P. 587, 88 Or. 310.
Tex.—North East Texas Motor Lines v. Hodges, Civ.App., 141 S.W.2d 386, affirmed 158 S.W.2d 487, 138 Tex. 280—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122, error dismissed.
Va.—Fein v. Wade, 61 S.E.2d 29, 191 Va. 203—Norfolk & W. Ry. Co. v. Lumpkins, 144 S.E. 485, 151 Va. 173.
4 C.J. p 920 note 63.

89. Ark.—Dierks Lumber & Coal Co. v. Tollerson, 54 S.W.2d 61, 186 Ark. 429.
Ky.—City of Richmond v. Hill, 242 S.W. 867, 195 Ky. 566.
Mich.—West Michigan Sav. Bank v. Dater, 205 N.W. 113, 232 Mich. 409.
Mo.—McQuary v. Quincy, O. & K. C. Ry. Co., 269 S.W. 605, 306 Mo. 697—U. S. Fashion & Sample Book Co. v. Montrose Cloak & Suit Co., 218 S.W. 867.
Chapman v. Brown, 179 S.W. 774, 192 Mo.App. 78.
Mont.—Steinbrenner v. Minot Auto Co., 180 P. 729, 56 Mont. 27.
N.Y.—Dairymen's League Co-Op. Ass'n v. Holmes, 202 N.Y.S. 663, 207 App.Div. 429, affirmed 147 N.E. 171, 239 N.Y. 503, reargument denied 147 N.E. 210, 239 N.Y. 596.
Tex.—Young Men's Christian Ass'n v. Jasse, Civ.App., 183 S.W. 867.
4 C.J. p 921 note 64.

90. Ariz.—Inspiration Consol. Copper Co. v. Bryan, 252 P. 1012, 31 Ariz. 302.
Ark.—Western Cabinet & Fixture Mfg. Co. v. Davis, 181 S.W. 273, 121 Ark. 370.
Conn.—Corey v. Phillips, 10 A.2d 370, 126 Conn. 246—Lentine v. McAvoy, 136 A. 76, 105 Conn. 528.
Ga.—Furney v. Tower, 137 S.E. 850, 36 Ga.App. 698—Ivey v. Louisville & N. R. Co., 89 S.E. 629, 18 Ga.App. 434.
Iowa.—Ganzhorn v. Reep, 12 N.W. 2d 154, 234 Iowa 495—Reilly v. C. C. Taft Co., 182 N.W. 656, 191 Iowa 448—Fellers v. Modern Woodmen of America, 176 N.W. 244—Turner v. Brien, 167 N.W. 584, 184 Iowa 320, 3 A.L.R. 1585.
Kan.—Cox v. Chase, 163 P. 184, 99 Kan. 740.
Ky.—Broadway Coal-Mining Co. v. Ortkies, 254 S.W. 434, 200 Ky. 8.
N.Y.—Odwell v. Martin, 190 N.Y.S. 202, 198 App.Div. 189.
N.C.—Sentelle v. Board of Education, 151 S.E. 877, 198 N.C. 389.
Okl.—Barall Food Stores v. Bennett, 153 P.2d 106, 194 Okl. 508.
Pa.—Weglein v. Golder, 177 A. 47, 317 Pa. 437.
Tex.—Texas Coca-Cola Bottling Co. v. Wimberley, Civ.App., 108 S.W.2d 860, error dismissed—Carter v. Ferris, Civ.App., 93 S.W.2d 504, error dismissed—McDaniel Bros. v. Wilson, Civ.App., 70 S.W.2d 618—El Paso Electric Ry. Co. v. Carruth, Civ.App., 208 S.W. 984, reversed on other grounds El Paso & Juarez Traction Co. v. Carruth, Com.App., 255 S.W. 159.
4 C.J. p 921 note 65—54 C.J. p 607 note 38.

91. Minn.—Vietor v. Costello, 279 N.W. 743, 203 Minn. 41.
S.C.—Lide v. Hartsville Oil Mill, 98 S.E. 199, 111 S.C. 448.
Tex.—Bevil v. Kirby Lumber Co., Civ.App., 58 S.W.2d 843—Western Casualty Co. v. Shepard, Civ.App., 295 S.W. 1105.

92. Tex.—Central Nat. Bank of Waco v. Lawson, Com.App., 27 S. W.2d 125.
Mims v. Hearon, Civ.App., 248 S.W.2d 754—Payton v. City of Big Spring, Civ.App., 157 S.W.2d 975—Service Finance Corporation v. Singleton, Civ.App., 155 S.W.2d 955, reversed on other grounds 166 S. W.2d 98, 140 Tex. 86—Kyle v. Kyle, Civ.App., 55 S.W.2d 885.

93. Ind.—Grand Trunk Western Ry. Co. v. Thrift Co., 116 N.E. 756, 68 Ind.App. 198.
Mo.—Milburn v. Chicago, M., St. P. & P. R. Co., 56 S.W.2d 80, 331 Mo. 1171.
Ohio.—Davis Cabs v. Evans, 182 N.E. 327, 42 Ohio App. 493.
Tex.—El Paso Electric Ry. Co. v. Carruth, Civ.App., 208 S.W. 984, reversed on other grounds El Paso & Juarez Traction Co. v. Carruth, Com.App., 255 S.W. 159.

94. Ariz.—Garrett v Reid-Cashion Land & Cattle Co., 272 P. 918, 34 Ariz. 482.

where the court itself disposes of the issue favorably to appellant's contention;[95] nor can plaintiff-appellant, after dismissal at the close of his case, complain of the action of the court in refusing to hear defendant's side of the controversy.[95.5]

d. Instructions

Appellant cannot complain of error with respect to instructions where such error operates in his favor, as where an instruction is too favorable to appellant or prejudicial only to appellee.

Under the general rule heretofore stated, appellant cannot complain of error in instructions where such error operates in his favor,[96] as where the erroneous instruction was more favorable to appellant

95. Ga.—Jones v. Darling, 95 S.E.2d 709, 94 Ga.App. 641.
Ill.—La Cerra v. Woodrich, 52 N.E.2d 461, 321 Ill.App. 107.
Tex.—Schnitzendable v. Hasting, Civ.App., 97 S.W.2d 715—Leslie v. Griffin, Civ.App., 23 S.W.2d 535, reversed on other grounds, Com.App., 25 S.W.2d 820.

95.5 Colo.—Moody v. Moody, 276 P.2d 563, 130 Colo. 464.

96. Ala.—Jersey Ins. Co. v. Roddam, 56 So.2d 631, 256 Ala. 634—Morgan-Hill Paving Co. v. Fonville, 140 So. 575, 224 Ala. 383—Birmingham Electric Co. v. Cleveland, 113 So. 403, 216 Ala. 455—McShan v. Kilpatrick, 110 So. 281, 215 Ala. 185—Sprinkle v. St. Louis & S. F. R. Co., 110 So. 137, 215 Ala. 191—Baker v. Horsley, 101 So. 830, 212 Ala. 181—Garner v. Morris, 65 So. 1000, 187 Ala. 658.
Central of Georgia Ry. Co. v. Gillis Mule Co., 103 So. 906, 20 Ala.App. 535, certiorari denied Ex parte Central of Georgia R. Co., 103 So. 909, 212 Ala. 635—Curb v. Dabbs & Tannehill, 97 So. 109, 19 Ala.App. 149, certiorari denied Ex parte Curb, 97 So. 111, 210 Ala. 45—Kitchens v. Mann, 80 So. 173, 16 Ala.App. 599.
Ariz.—Peppers Fruit Co. v. Charlebois, 4 P.2d 905, 39 Ariz. 195.
Ark.—St. Louis-San Francisco Ry. Co. v. McCarn, 205 S.W.2d 704, 212 Ark. 287—Missouri Pac. R. Co. v. Magness, 178 S.W.2d 493, 206 Ark. 1081—Bates Coal & Mining Co. v. Mannon, 168 S.W.2d 408, 205 Ark. 215—Cunningham v. Davis, 159 S.W.2d 751, 203 Ark. 982—Pacific Mut. Life Ins. Co. of California v. Jordan, 82 S.W.2d 250, 190 Ark. 941—Chicago, R. I. & P. Ry. Co. v. Britt, 74 S.W.2d 398, 189 Ark. 571—Western Coal & Mining Co. v. Young, 65 S.W.2d 1074, 188 Ark. 191—McDaniel v. Davis, 56 S.W.2d 1022, 186 Ark. 962—555 Incorporated v. Helmers Mfg. Co., 56 S.W.2d 1016, 186 Ark. 1197—Hammans Lumber Co. v. Fricker, 42 S.W.2d 1001, 184 Ark. 1193—Featherston v. Jackson, 36 S.W.2d 405, 183 Ark. 373—Brown v. Arkebauer, 31 S.W.2d 530, 182 Ark. 354—National Life & Accident Ins. Co. v. Jackson, 16 S.W.2d 469, 179 Ark. 412—Century Life Ins. Co. v. Custer, 10 S.W.2d 882, 178 Ark. 304, 61 A.L.R. 914—Altman v. Sproles, 255 S.W. 1092, 161 Ark. 128—Altman v. Sproles, 255 S.W. 573, 161 Ark. 128—Stone v. Suckle, 224 S.W. 735, 145 Ark. 387—Nimnich v. Bank of Corning, 200 S.W. 992, 132 Ark. 617—Bush v. Beason, 198 S.W. 130, 130 Ark. 569.
Cal.—Wiley v. Young, 174 P. 316, 178 C. 681.
Royko v. Griffith Co., 306 P.2d 36, 147 C.A.2d 770—Sarafini v. City and County of San Francisco, 300 P.2d 44, 143 C.A.2d 570—Barkett v. Brucato, 264 P.2d 978, 122 C.A.2d 264—Viera v. Gordon, 248 P.2d 981, 113 C.A.2d 700—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495—Noble v. Key System, 51 P.2d 887, 10 C.A.2d 132—Holcomb v. Long Beach Inv. Co., 19 P.2d 31, 129 C.A. 285—Handley v. Lombardi, 9 P.2d 867, 122 C.A. 22—Elsey v. Domecq, 299 P. 794, 114 C.A. 42—Fassett v. Nascimiento, 291 P. 269, 108 C.A. 14—Bogue v. Roeth, 276 P. 1071, 98 C.A. 257—Botti v. Savill, 275 P. 1029, 97 C.A. 524—Miles v. Rosenthal, 266 P. 320, 90 C.A. 390—Peavy v. Mutual Realty Corporation, 255 P. 858, 82 C.A. 542—Zolkover v. Pacific Electric Ry. Co., 254 P. 926, 81 C.A. 772—Byrne v. Western Pipe & Steel Co. of California, 253 P. 776, 81 C.A. 270—Driscoll v. California Street Cable R. Co., 250 P. 1062, 80 C.A. 208—Bosse v. Marye, 250 P. 693, 80 C.A. 109—City of Sacramento v. Hunger, 249 P. 223, 79 C.A. 234—Reinders v. Olsen, 214 P. 268, 60 C.A. 764—Mier v. Southern California Ice Co., 206 P. 83, 56 C.A. 512—Neff v. Mattern, 151 P. 382, 28 C.A. 99.
Colo.—Craft v. Stumpf, 170 P.2d 779, 115 Colo. 181—Kimmins v. City of Montrose, 151 P. 434, 59 Colo. 578, Ann.Cas.1917A 407.
Conn.—Tocchetti v. Cyril and Julia C. Johnson Memorial Hospital, 36 A.2d 381, 130 Conn. 623—Sagor v. Joseph Burnett Co., 190 A. 258, 122 Conn. 447—H. Williamson, Limited, v. Perry, 150 A. 17, 111 Conn. 317—Ziman v. Whitley, 147 A. 370, 110 Conn. 108—Williamsburgh Stopper Co. v. Bickart, 134 A. 233, 104 Conn. 674—Lane v. McLay, 99 A. 498, 91 Conn. 185—Earley v. Hall, 95 A. 2, 89 Conn. 606.
Fla.—Atlantic Food Supply Co. v. Weldon, 10 So.2d 817, 152 Fla. 54.
Ga.—Prescott v. Herring, 94 S.E.2d 417, 212 Ga. 571—Rushing v. Akins, 80 S.E.2d 813, 210 Ga. 450—Ealy v. Tolbert, 78 S.E.2d 26, 210 Ga. 96—Deal v. Lanier, 68 S.E.2d 566, 208 Ga. 615—Gibson v. Gibson, 49 S.E.2d 877, 204 Ga. 437—Jones v. Hogans, 29 S.E.2d 568, 197 Ga. 404—Lewis v. Patterson, 12 S.E.2d 593, 191 Ga. 348—Stonecypher v. Coleman, 150 S.E. 164, 169 Ga. 294—Spraggins v. Brooks, 115 S.E. 495, 154 Ga. 822—Hand v. Matthews, 111 S.E. 408, 153 Ga. 75—Worsham v. Ligon, 87 S.E. 1025, 144 Ga. 707—Rosenberg v. Weinstein, 85 S.E. 1042, 144 Ga. 46—Georgia R. & Banking Co. v. Auchinachie, 83 S.E. 127, 142 Ga. 513.
Pulliam v. Casey, 91 S.E.2d 807, 93 Ga.App. 324—Auerbach v. Bresee, 89 S.E.2d 536, 92 Ga.App. 591—Payne v. Norris, 78 S.E.2d 351, 88 Ga.App. 850—Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793—Hotel Dempsey Co. v. Miller, 58 S.E.2d 475, 81 Ga.App. 233—Milam v. Gray, 56 S.E.2d 168, 80 Ga.App. 356—Salter v. Salter, 55 S.E.2d 868, 80 Ga.App. 263—Mutual Life Ins. Co. of New York v. Barron, 28 S.E.2d 334, 70 Ga.App. 454, affirmed 30 S.E.2d 879, 198 Ga. 1—Black & White Cab Co. v. Cowden, 13 S.E.2d 724, 64 Ga.App. 477—Pollard v. Gammon, 12 S.E.2d 624, 63 Ga.App. 852—Daughtry v. Georgia Power Co., 6 S.E.2d 454, 61 Ga.App. 505—Atlantic Coast Line R. Co. v. Heath, 196 S.E. 125, 57 Ga.App. 763—Southern Ry. Co. v. Lunsford, 194 S.E. 602, 57 Ga.App. 53, certiorari denied 59 S.Ct. 78, 305 U.S. 619, 83 L.Ed. 395—Maner v. Dykes, 190 S.E. 189, 55 Ga.App. 436—Dillon v. Sills, 187 S.E. 725, 54 Ga.App. 299—Pollard v. Phelps, 193 S.E. 102, 56 Ga.App. 408—Central of Georgia Ry. Co. v. Gable, 162 S.E. 719, 44 Ga.App. 626—Atlanta Cadillac Co. v. Manley, 116 S.E. 35, 29 Ga.App. 522—City of Tallapoosa v. Brock, 111 S.E. 88, 28 Ga.App. 384—Cason v. Duke, 110 S.E. 684, 28 Ga.App. 170—Southern States Life Ins. Co. v. Morris, 102 S.E. 179, 24 Ga.App. 746—Tallulah Falls Ry. Co. v. Taylor, 93 S.E. 533, 20 Ga.App. 786—Seaboard Air Line Ry. v. Lyon, 89 S.E. 384, 18 Ga.App. 266—Roberts v. Martin, 82 S.E. 813, 15 Ga.App. 205—Atlantic Coast Line R. Co. v. Thomas, 82 S.E. 299, 14 Ga.App. 619.
Idaho.—Bischoff v. Steele, 274 P.2d 986, 75 Idaho 485—Meir-Nandorf

v. Milner, 201 P. 720, 34 Idaho 396—Saccamonno v. Great Northern Ry. Co., 166 P. 267, 30 Idaho 513.

Ill.—Schultz v. Henry Ericsson Co., 106 N.E. 236, 264 Ill. 156.

Bollenbach v. Bloomenthal, 255 Ill.App. 305, reversed on other grounds 173 N.E. 670, 341 Ill. 539—Treece v. Southern Gem Coal Corporation, 245 Ill.App. 113—Bowers v. Heflebower, 243 Ill.App. 129—Surinak v. Elgin, J. & E. Ry. Co., 235 Ill.App. 431—Fry v. Howard, 232 Ill.App. 295—Cooper v. Illinois Publishing & Printing Co., 218 Ill. App. 95—Schlatter v. Triebel, 208 Ill.App. 504, affirmed 120 N.E. 289, 284 Ill. 412. See Perfection Pulverizing Mills v. Keiser, 203 Ill.App. 383—Johnson v. Hull, 199 Ill.App. 258—Stapleton v. National Council of Knights & Ladies of Security, 192 Ill.App. 482.

Ind.—Southern Indiana Gas & Electric Co. v. Storment, 188 N.E. 313, 206 Ind. 25—Chicago & E. R. Co. v. Steele, 118 N.E. 824, 187 Ind. 358, rehearing denied 119 N.E. 483, 187 Ind. 358.

Peoples Life Ins. Co. v. Menard, 117 N.E.2d 376, 124 Ind.App. 606—Southern Ry. Co. v. Wilkins, 178 N.E. 454, 95 Ind.App. 130, certiorari denied 53 S.Ct. 85, 287 U.S. 635, 77 L.Ed. 550—Pennsylvania R. Co. of Ft. Wayne v. Lincoln Trust Co., 170 N.E. 92, 91 Ind.App. 28—Maxwell Implement Co. v. Fitzgerald, 146 N.E. 883, 85 Ind.App. 206—City of Linton v. Maddox, 130 N.E. 810, 75 Ind.App. 449—Travelers' Protective Ass'n v. Jones, 127 N.E. 783, 75 Ind.App. 29—Southern Surety Co. v. Kinney, 127 N.E. 575, 74 Ind. App. 205—Lake Erie & W. R. Co. v. Howarth, 124 N.E. 687, 73 Ind.App. 454, rehearing denied 127 N.E. 804, 73 Ind.App. 454—Town of Bloomfield v. West, 121 N.E. 4, 68 Ind. App. 568—Pennsylvania Co. v. Stalker, 119 N.E. 163, 67 Ind.App. 329—Pittsburgh, C., C. & St. L. Ry. Co. v. Ellis, 110 N.E. 228, 61 Ind. App. 172.

Iowa.—In re Repp's Estate, 40 N.W. 2d 607, 241 Iowa 190—Shatto v. Grabin, 6 N.W.2d 149, 233 Iowa 46—Beckley v. New York Life Ins. Co., 295 N.W. 844, 229 Iowa 1007—Charles City v. Rasmussen, 232 N.W. 137, 210 Iowa 841, 72 A.L.R. 638—Judd v. Rudolph, 222 N.W. 416, 207 Iowa 113, 62 A.L.R. 1174—Olson v. Shuler, 221 N.W. 941, 208 Iowa 70—Ferber v. Great Northern Ry. Co., 217 N.W. 880, 205 Iowa 291—Pullan v. Struthers, 207 N.W. 235, 201 Iowa 1179—Coe v. Moline Power Farming Corporation, 202 N.W. 265—Borough v. Minneapolis & St. L. R. Co., 197 N.W. 312, 198 Iowa 130—Lalley v. Sprague, 196 N.W. 1015, 197 Iowa 300—First Nat. Bank of Marengo v. Athey, 174 N.W. 347, 188 Iowa 330—Garren v. Ottumwa Gas Co., 170 N.W. 428, 185 Iowa 1142—Grafton v. Delano, 154 N.W. 1009, 175 Iowa 483—Farmers' & Merchants' State Bank v. Shaffer, 154 N.W. 485, 172 Iowa 173.

Kan.—Pontious v. Bath, 223 P.2d 985, 170 Kan. 103—Babcock v. Newby, 298 P. 804, 133 Kan. 48.

Ky.—Pacific Mut. Life Ins. Co. v. Fagan, 166 S.W.2d 1007, 292 Ky. 533—Warfield Natural Gas Co. v. Clark's Adm'x, 79 S.W.2d 21, 257 Ky. 724—H. M. Williams Motor Co. v. Howard, 65 S.W.2d 688, 251 Ky. 557—Globe Indemnity Co. v. Daviess, 65 S.W.2d 456, 251 Ky. 442—Phillips' Committee v. Ward's Adm'r, 43 S.W.2d 331, 241 Ky. 25—Elkhorn Coal Corporation v. Watkins, 265 S.W. 814, 205 Ky. 357—Hatfield v. Payne, 242 S.W. 32, 195 Ky. 310—Magowan v. Kentucky Utilities Co., 200 S.W. 367, 179 Ky. 114—Louisville & N. Ry. Co. v. Copley, 197 S.W. 648, 177 Ky. 171—City of Paris v. Baldwin Bros., 185 S.W. 144, 169 Ky. 802—Chesapeake Stone Co. v. Holbrook, 181 S.W. 953, 168 Ky. 128, L.R.A.1916D 311—Lunsford v. Hatfield Coal Co., 178 S.W. 1166, 166 Ky. 119—Keiner v. Collins, 171 S.W. 399, 161 Ky. 696—C. F. Kleiderer & Son v. Aldridge's Ex'x, 170 S.W. 23, 160 Ky. 638—Fluhart Collieries Co. v. Meeks, 169 S.W. 686, 160 Ky. 127—Coleman v. Freeman, 169 S.W. 523, 160 Ky. 57.

Me.—Brann v. Leavitt, 103 A. 12, 117 Me. 144—Therriault v. Breton, 95 A. 699, 114 Me. 137.

Md.—Texas Co. v. Pecora, 118 A.2d 377, 208 Md. 281—Annarina v. Boland, 111 A. 84, 136 Md. 365—Zipus v. United Rys. & Electric Co. of Baltimore City, 108 A. 884, 135 Md. 297—Hart v. Leitch, 91 A. 782, 124 Md. 77.

Mass.—Bradley Lumber & Mfg. Co. v. Cutler, 148 N.E. 101, 253 Mass. 37—Chandler v. Prince, 109 N.E. 374, 221 Mass. 495.

Mich.—Menominee Lumber & Cedar Co. v. Thomson, 15 N.W.2d 155, 309 Mich. 263—Sherwood v. Evening News Ass'n, 239 N.W. 305, 256 Mich. 318.

Minn.—Allen v. Florida & Southern Dredging Co., 231 N.W. 204, 180 Minn. 514—Monn v. Weivoda, 204 N.W. 466, 163 Minn. 473—Carlson v. Payne, 186 N.W. 291, 150 Minn. 480.

Miss.—Hoxie v. Hadad, 11 So.2d 693, 193 Miss. 896—Hood v. Moffett, 69 So. 664, 109 Miss. 757, L.R.A.1916B 622, Ann.Cas.1917E 410.

Mo.—Stith v. St. Louis Public Service Co., 251 S.W.2d 693, 363 Mo. 442, 34 A.L.R.2d 972—Burneson v. Zumwalt Co., 159 S.W.2d 605, 349 Mo. 94—Derrington v. Southern Ry. Co., 40 S.W.2d 1069, 328 Mo. 283, certiorari denied Southern Ry. Co. v. Derrington, 52 S.Ct. 37, 284 U.S. 662, 76 L.Ed. 561—State ex rel. State Highway Commission v. Duncan, 19 S.W.2d 465, 323 Mo. 339—State ex rel. Shaw Transfer Co. v. Trimble, 250 S.W. 396—Mahany v. Kansas City Rys. Co., 228 S.W. 821, 286 Mo. 601—Baker v. J. W. McMurry Contracting Co., 223 S. W. 45, 282 Mo. 685.

Jackson v. Scott County Milling Co., App., 118 S.W.2d 1054—Hurst v. Montgomery Ward & Co., App., 107 S.W.2d 183—Rosenblum v. Rosenblum, 96 S.W.2d 1082, 231 Mo.App. 276—McGee v. St. Joseph Belt Ry. Co., 93 S.W.2d 1111, 233 Mo.App. 111—Streeter v. Washington Fidelity Nat. Ins. Co., App., 68 S.W.2d 889—Cook v. Harrington, App., 54 S.W.2d 436—Wentzel v. Lake Lotawana Development Co., 48 S.W.2d 185, 226 Mo.App. 960—Robinson v. Ross, App., 47 S.W.2d 122—Gilday v. Smith Bros., App., 32 S.W.2d 118, record quashed on other grounds State ex rel. Gilday v. Trimble, 44 S.W.2d 57, 329 Mo. 198, conformed to Gilday v. Smith Bros., 50 S.W.2d 191, 226 Mo.App. 1246—McDonnell v. Cornelison, App., 25 S.W.2d 558—McClellan v. Kansas City Public Service Co., App., 19 S.W.2d 902—Jamison v. Kansas City, 17 S.W.2d 621, 223 Mo.App. 684—Neely v. Chicago Great Western R. Co., App., 14 S. W.2d 972, certiorari quashed State ex rel. Chicago Great Western R. Co. v. Trimble, App., 14 S.W.2d 978—Esty v. Walker, 3 S.W.2d 744, 222 Mo.App. 619—Meyer Furnace & Supply Co. v. Greenwell, App., 297 S.W. 197—Uhrhan v. Morie, App., 293 S.W. 483—Houston v. American Car & Foundry Co., App., 282 S. W. 170—Scott v. City of Hannibal, App., 282 S.W. 123—Black v. Emory, App., 275 S.W. 48—Halley v. Federal Truck Co., App., 274 S.W. 507—Viviano v. Davis, App., 258 S.W. 69—Stallings v. Missouri Pac. R. Co., App., 251 S.W. 143—Mitchell v. Wayland, App., 243 S.W. 275—Mayo v. J. L. Price Brokerage Co., App., 218 S.W. 932—Strother v. Dunham, App., 193 S.W. 882—Brim v. Alexander, App., 186 S.W. 544—Janes v. Levee Dist. No. 2 of Dunklin County, App., 183 S.W. 697—Penney & Penney Feed Co. v. Kramer, App., 182 S.W. 755.

Mont.—Leonidas v. Great Northern Ry. Co., 72 P.2d 1007, 105 Mont. 302, affirmed 59 S.Ct. 51, 305 U.S. 1, 83 L.Ed. 3—Stagg v. Stagg, 32 P.2d 856, 96 Mont. 573—Johnson v. Horn, 283 P. 427, 86 Mont. 314—Stokes v. Long, 159 P. 28, 52 Mont. 470.

Neb.—In re Kinsey's Estate, 40 N.W. 2d 526, 152 Neb. 95—Wright v. Cameron, 27 N.W.2d 226, 148 Neb. 292—Tews v. Bamrick, 26 N.W.2d 499, 148 Neb. 59—In re Keup's Estate, 18 N.W.2d 63, 145 Neb. 729—Kennedy v. Woods, 267 N.W. 390, 131 Neb. 217—Rucker v. Ward, 267 N.W. 191, 131 Neb. 25—Holley v. Omaha & C. B. St. Ry. Co., 193 N.W. 710, 110 Neb. 541—Webb v.

Omaha & S. I. Ry. Co., 164 N.W. 564, 101 Neb. 596—Britt v. Omaha Concrete Stone Co., 156 N.W. 497, 99 Neb. 300.

N.H.—Herschensohn v. Weisman, 119 A. 705, 80 N.H. 557, 28 A.L.R. 514.

N.J.—Harpell v. Public Service Coordinated Transport, 114 A.2d 295, 35 N.J.Super. 354, affirmed 120 A.2d 43, 20 N.J. 309.

Anthony v. Public Transit Co., 130 A. 895, 3 N.J.Misc. 1204.

N.M.—Spencer v. Gross Kelly & Co., 163 P. 1087, 22 N.M. 426.

N.Y.—Pine Grove Poultry Farm v. Newtown By-Products Mfg. Co., 162 N.E. 84, 248 N.Y. 293—Kittredge v. Grannis, 155 N.E. 88, 244 N.Y. 168.

Rimbaud v. Beiermeister, 154 N.Y.S. 333, 168 App.Div. 596—Newhall v. McCann, 275 N.Y.S. 222, 242 App.Div. 841.

Mermelstein v. Glass, 155 N.Y.S. 216.

N.C.—Price v. Gray, 97 S.E.2d 844, 246 N.C. 162—Carolina Scenic Stages v. Lowther, 64 S.E.2d 846, 233 N.C. 555—Vaughin v. Booker, 8 S.E.2d 603, 217 N.C. 479, 132 A.L.R. 977—Lynn v. Pinehurst Silk Mills, 179 S.E. 11, 208 N.C. 7—Castello v. Parker, 139 S.E. 224, 194 N.C. 221—Patillo v. Camp Mfg. Co., 98 S.E. 323, 177 N.C. 156—Bradley v. Camp Mfg. Co., 98 S.E. 318, 177 N.C. 153—Weathersbee v. Goodwin, 95 S.E. 491, 175 N.C. 234—Belk v. Belk, 94 S.E. 726, 175 N.C. 69—Atkins v. Madry, 93 S.W. 744, 174 N.C. 187—Settee v. Charlotte Electric Ry. Co., 88 S.E. 734, 171 N.C. 440—Seagraves v. City of Winston, 87 S.E. 507, 170 N.C. 618—Lupton v. Southern Express Co., 86 S.E. 614, 169 N.C. 671—Mitchem v. Mitchem, 85 S.E. 146, 169 N.C. 48—McDonald v. Randolph & C. Ry., 81 S.E. 1017, 165 N.C. 622.

N.D.—Stone v. Bartsch, 39 N.W.2d 1, 76 N.D. 721—Engen v. Skeels, 236 N.W. 240, 60 N.D. 652.

Ohio.—Hess v. Avon Const. Co., 171 N.E. 318, 34 Ohio App. 327.

Okl.—Farmers State Bank v. Bush, 124 P.2d 385, 190 Okl. 405—Helmerich & Payne v. Nunley, 54 P.2d 1088, 176 Okl. 246—Smittle v. Yadon Inv. Co., 6 P.2d 818, 154 Okl. 37—Thompson v. Davis, 254 P. 501, 124 Okl. 79—Johnson v. Curlee Clothing Co., 240 P. 632, 112 Okl. 220—Potter v. Bond, 224 P. 537, 98 Okl. 135—Smith v. Pulaski Oil Co., 211 P. 1047, 88 Okl. 47—Foreman v. Henry, 210 P. 1026, 87 Okl. 272—Hostettler v. Carter, 175 P. 244, 73 Okl. 125—Creek Coal Mining Co. v. Paprotta, 175 P. 235, 73 Okl. 119.

Or.—Kerns v. Couch, 17 P.2d 323, 141 Or. 147—Simmons v. Washington Fidelity Nat. Ins. Co., 13 P.2d 366, 140 Or. 164—Davis v. Bush & Lane Piano Co., 265 P. 417, 124 Or. 585—Preble v. Hanna, 244 P. 75, 117 Or. 306—Cripe v. Davis, 214 P. 343, 107 Or. 142—Hurst v. Hill, 188 P. 973, 96 Or. 311—Shields v. W. R. Grace & Co., 179 P. 265, 91 Or. 187—Cranston v. West Coast Life Ins. Co., 142 P. 762, 72 Or. 116.

Pa.—Le Van v. McLean, 120 A. 395, 276 Pa. 361.

Vahlsing v. Rothstein, 163 A. 350, 107 Pa.Super. 281.

Mathis v. Off, 8 Pa.Dist. & Co. 6.

R.I.—Boettger v. Mauran, 12 A.2d 285, 64 R.I. 340—Gallo v. Simpson Spring Co., 181 A. 915, 55 R.I. 410—Staples v. Spelman, 165 A. 783, 53 R.I. 244—Drainville v. Follett, 147 A. 664.

S.C.—Hallman v. Cushman, 13 S.E.2d 498, 196 S.C. 402—Mallard v. Duke, 126 S.E. 525, 131 S.C. 175—Meredith v. Fretwell, 122 S.E. 767, 128 S.C. 267—Barley v. Davis, 116 S.E. 438, 123 S.C. 228—Whitworth v. Columbia N. & L. R. Co., 85 S.E. 402, 101 S.C. 213—Anderson v. Merchants' Grocery Co., 84 S.E. 109, 99 S.C. 383.

S.D.—Cox v. General Motors Acceptance Corporation, 241 N.W. 609, 59 S.D. 588—Van Horn v. Simpson, 153 N.W. 883, 35 S.D. 640.

Tenn.—Grizzard & Cuzzort v. O'Neill, 15 Tenn.App. 395.

Tex.—Kansas City Southern Ry. Co. v. Chandler, Civ.App., 192 S.W.2d 304, refused no reversible error—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122—Galbraith-Foxworth Lumber Co. v. Gerneth, Civ.App., 66 S.W.2d 471—Chase Bag Co. v. Longoria, Civ.App., 45 S.W.2d 242—St. Louis Southwestern Ry. Co. of Texas v. Barrett, Civ.App., 207 S.W. 557—Sulzberger & Sons Co. of America v. Page, Civ.App., 195 S.W. 928—Chicago, R. I. & G. Ry. Co. v. Comstock, Civ.App., 189 S.W. 109—Texas Cent. R. Co. v. Claybrook, Civ.App., 178 S.W. 580—Woodard v. Eskridge, Civ.App., 174 S.W. 868—Prince v. Taylor, Civ.App., 171 S.W. 826—Dallas Consol. Electric St. Ry. Co. v. Stone, Civ.App., 166 S.W. 708—Johnson v. Conger, Civ.App., 166 S.W. 405—Larrabee v. Porter, Civ.App., 166 S.W. 395.

Utah.—Garff v. Myers Cleaning & Dyeing Co., 238 P. 278, 65 Utah 548.

Vt.—Summerskill v. Vermont Power & Mfg. Co., 99 A. 1017, 91 Vt. 251—Goslant v. Town of Calais, 96 A. 751, 90 Vt. 114.

Va.—Ashworth v. Baker, 90 S.E.2d 860, 197 Va. 582—Humphreys v. Baird, 90 S.E.2d 796, 197 Va. 667—Norfolk Coca-Cola Bottling Works v. Land, 52 S.E.2d 85, 189 Va. 35—Burruss v. Suddith, 47 S.E.2d 546, 187 Va. 473—Kemp v. Miller, 186 S.E. 99, 166 Va. 661—Thomas v. Snow, 174 S.E. 837, 162 Va. 654—Hopkins v. Le Cato, 128 S.E. 55, 142 Va. 769—Director General of Railroads v. Lucas, 107 S.E. 675, 130 Va. 212—Nelson County v. Loving, 101 S.E. 406, 126 Va. 283—Rosenbaum Hardware Co. v. Paxton Lumber Co., 97 S.E. 784, 124 Va. 346.

Wash.—Holden v. Schafer Bros. Lumber & Shingle Co., 160 P.2d 537, 23 Wash.2d 202—Ferris & Hardgrove v. Buff, 146 P.2d 331, 20 Wash.2d 161—Joski v. Short, 96 P.2d 483, 1 Wash.2d 454—Luna v. Seattle Times Co., 59 P.2d 753, 186 Wash. 618, 105 A.L.R. 932—Emmerich v. Gray, 49 P.2d 31, 183 Wash. 600—Anderson v. Rucker Bros., 186 P. 293, 107 Wash. 595, 8 A.L.R. 544, affirming 183 P. 70, 107 Wash. 595, 8 A.L.R. 544—Remnsnyder v. Lowman & Hanford, 159 P. 107, 92 Wash. 95—Schuster v. Sutherland, 158 P. 730, 92 Wash. 135—Frank v. Switchmen's Union of North America, 152 P. 512, 87 Wash. 634.

W.Va.—First Nat. Bank of Peterstown v. Hansbarger, 40 S.E.2d 822, 129 W.Va. 418—Cline v. Christie, 184 S.E. 854, 117 W.Va. 192.

Wis.—Kausch v. Chicago, Milwaukee Electric Ry. Co., 186 N.W. 257, 176 Wis. 21.

4 C.J. p 918 note 42—30 C.J. p 1147 note 92—38 C.J. p 518 note 24—39 C.J. p 1366 note 56—43 C.J. p 1326 note 58—52 C.J. p 757 note 99—54 C.J. p 607 note 37—55 C.J. p 1020 note 46, p 1152 note 15 [b].

Amended charge

Verdicts for plaintiffs would not be set aside and new trial granted where amended charge under which case was submitted was more favorable to defendant than original charge and had not been requested by defendant.

N.Y.—Winkler v. American Sundries Co., 291 N.Y.S. 944, 249 App.Div. 759, affirmed 11 N.E.2d 311, 275 N.Y. 490.

Failure to instruct as strongly as the law would warrant for appellee is favorable to appellant, who cannot complain of the court's moderation in that regard.

N.D.—North Star Lumber Co. v. Rosenquist, 151 N.W. 289, 29 N.D. 566.

Tex.—Cleburne Peanut & Products Co. v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 184 S.W. 1070, reversed on other grounds, Com.App., 221 S.W. 270.

Interpreting instruction too favorably

That defendant places an interpretation on an instruction given which makes it too favorable to him is not a ground on which he can successfully attack the judgment.

Kan.—Smith Bros. & Cooper v. Hanson, 187 P. 262, 106 Kan. 32.

Automobile cases

Ark.—Willbanks v. Laster, 199 S.W. 2d 602, 211 Ark. 88.

Cal.—Kline v. Barkett, 158 P.2d 51, 68 C.A.2d 765—Wood v. Moore, 148 P.2d 91, 64 C.A.2d 144.

than he was entitled to or than it should have been,[96.5] or more favorable than unfavorable,[96.10] or more favorable to appellant than to appellee.[96.15]

Thus, for example, appellant cannot complain of instructions which are prejudicial only to appellee;[97]

Conn.—Griswold v. Connecticut Co., 38 A.2d 676, 131 Conn. 248—Beck v. Sosnowitz, 7 A.2d 389, 125 Conn. 553.
Ill.—Schoenbacher v. Kadetsky, 7 N. E.2d 768, 290 Ill.App. 28.
Ind.—Jones v. Cary, 37 N.E.2d 944, 219 Ind. 268.
Kan.—Jones v. McCullough, 83 P.2d 669, 148 Kan. 561.
Ky.—Sears v. Frost's Adm'r, 279 S.W. 2d 776—Lever Bros. Co. v. Stapleton, 233 S.W.2d 1002, 313 Ky. 837—Grigsby v. Smith, 146 S.W.2d 719, 285 Ky. 48—Kelly v. Marshall's Adm'r, 120 S.W.2d 142, 274 Ky. 666—Moody's Adm'r v. Commonwealth, 97 S.W.2d 816, 265 Ky. 780.
Mo.—Engleman v. Railway Express Agency, 100 S.W.2d 540, 340 Mo. 360.
Neb.—Bailey v. Spindler, 74 N.W.2d 344, 161 Neb. 563—Blanchard v. Lawson, 27 N.W.2d 217, 148 Neb. 299.
N.H.—American Motorists Ins. Co. v. Rush, 190 A. 432, 88 N.H. 383.
Pa.—Shedlock v. Wyoming Valley Autobus Co., 17 A.2d 384, 340 Pa. 377.
Tenn.—Consolidated Coach Co. v. McCord, 102 S.W.2d 53, 171 Tenn. 253.
Va.—Umberger v. Koop, 72 S.E.2d 370, 194 Va. 123.
Wis.—Eberdt v. Muller, 8 N.W.2d 763, 240 Wis. 341.

96.5 Ark.—Arkansas Farmers Ass'n v. Yohe, 300 S.W.2d 589—Lewis v. Phillips, 266 S.W.2d 68, 223 Ark. 380—Black & White Cab Co. v. Doville, 251 S.W.2d 1005, 221 Ark. 66.
Cal.—O'Hey v. Matson Nav. Co., 288 P.2d 81, 135 C.A.2d 819.
Colo.—Calnon v. Sorel, 119 P.2d 615, 108 Colo. 467.
Conn.—Cote v. Palmer, 16 A.2d 595, 127 Conn. 321—Frogge v. Shugrue, 13 A.2d 503, 126 Conn. 608—McPheters v. Loomis, 7 A.2d 437, 125 Conn. 526.
Ga.—Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793.
Iowa.—Janvrin v. Broe, 33 N.W.2d 427, 239 Iowa 977—Merritt v. Leuck, 2 N.W.2d 49, 231 Iowa 777.
Kan.—Moorhouse v. Robbins, 64 P.2d 5, 145 Kan. 157.
Ky.—Ellis v. Glenn, 269 S.W.2d 234—Chesapeake & O. Ry. Co. v. Bailey, 225 S.W.2d 299, 311 Ky. 725.
Mich.—Horetski v. American Sandblast Co., 65 N.W.2d 702, 340 Mich. 323—Baker v. Wetherald, 289 N.W. 282, 291 Mich. 646.
Minn.—Jandric v. Skahan, 50 N.W.2d 625, 235 Minn. 256—Stark v. Magnuson, 2 N.W.2d 814, 212 Minn. 167.
Mo.—Muegler v. Crosthwait, App., 179 S.W.2d 761—Schaefer v. Fulton Iron Works Co., App., 158 S.W.2d 452—Martin v. Springfield City Water Co., App., 128 S.W.2d 674.
Mont.—Harding v. H. F. Johnson, Inc., 244 P.2d 111, 126 Mont. 70.
Neb.—Shiers v. Cowgill, 59 N.W.2d 407, 157 Neb. 265—Loyal's Auto Exchange v. Munch, 45 N.W.2d 913, 153 Neb. 628.
N.J.—Lertch v. McLean, 112 A.2d 735, 18 N.J. 68.
Knox v. Goodman, 133 A.2d 50, 45 N.J.Super. 428.
N.M.—Lujan v. McCuistion, 232 P.2d 478, 55 N.M. 275.
N.Y.—Scudero v. Campbell, 32 N.Y.S. 2d 809, 263 App.Div. 956, appeal denied 34 N.Y.S.2d 139, 263 App.Div. 997, affirmed 43 N.E.2d 66, 288 N.Y. 328.
Okl.—American Life Ass'n v. Rogers, 281 P.2d 183—Gantz v. Matthews, 219 P.2d 631, 203 Okl. 225—Rogers v. Lassiter, 164 P.2d 632, 196 Okl. 228—Bogle v. Bumgarner, 156 P. 2d 813, 195 Okl. 188—McDowell v. King, 96 P.2d 37, 186 Okl. 90.
Or.—Linkhart v. Savely, 227 P.2d 187, 190 Or. 484—Garrett v. Eugene Medical Center, 224 P.2d 563, 190 Or. 117—Bond v. Graf, 96 P.2d 1091, 163 Or. 264.
S.C.—Legette v. Smith, 85 S.E.2d 576, 226 S.C. 403.
Wis.—Stenson v. Schumacher, 290 N. W. 285, 234 Wis. 19.

96.10 Mont.—Broberg v. Northern Pac. Ry. Co., 182 P.2d 851, 120 Mont. 280.

96.15 Okl.—Pact Gas Co. v. Baker, 218 P.2d 912, 203 Okl. 124—Gulf Oil Corp. v. Lemmons, 181 P.2d 568, 198 Okl. 596.

97. Cal.—Gould v. Samuels, 282 P.2d 566, 132 C.A.2d 459—Haskins v. Southern Pac. Co., 39 P.2d 895, 3 C. A.2d 177—Singleton v. Hartford Fire Ins. Co., 16 P.2d 293, 127 C.A. 635.
Conn.—McMahon v. Bryant Electric Co., 185 A. 181, 121 Conn. 397.
Ga.—Trammell v. Matthews, 72 S.E. 2d 132, 86 Ga.App. 661—Atlanta, B. & C. R. Co. v. Thomas, 12 S.E.2d 494, 64 Ga.App. 253—Crawford v. English, 117 S.E. 263, 30 Ga.App. 230—Southern Ry. Co. v. Ray, 113 S.E. 590, 28 Ga.App. 792, reversed on other grounds 118 S.E. 53, 155 Ga. 579, and conformed to 118 S.E. 411, 30 Ga.App. 376.
Ill.—Boulter v. Joliet Nat. Bank, 217 Ill.App. 330, affirmed 129 N.E. 513, 295 Ill. 594.
Iowa.—Heacock v. Baule, 249 N.W. 437, 216 Iowa 311—Dimond v. Peace River Land & Development Co., 165 N.W. 1032, 182 Iowa 400.
Ind.—Kempf v. Himsel, 98 N.E.2d 200, 121 Ind.App. 488.
Ky.—Louisville & N. R. Co. v. Stewart, 142 S.W.2d 119, 283 Ky. 585—Big Sandy & K. R. R. Co. v. Keaton, 288 S.W. 687, 216 Ky. 764.
Mich.—Selkirk v. Winfield, 183 N.W. 58, 214 Mich. 205—Stahl v. Southern Michigan Ry. Co., 178 N.W. 710, 211 Mich. 350.
Mo.—White v. Teague, App., 177 S.W. 2d 517, affirmed 182 S.W.2d 288, 353 Mo. 247—Wheeler v. Cantwell, App., 140 S.W.2d 744—Gust v. Montgomery Ward & Co., 136 S.W. 2d 94, 234 Mo.App. 611—Gamblin v. Wells' Estate, App., 75 S.W.2d 862—Barton v. Brundage, 240 S.W. 890, 210 Mo.App. 446.
Neb.—Wray v. Equitable Life Assur. Soc., 262 N.W. 833.
N.J.—Coombs v. Witte, 140 A. 408, 104 N.J.Law 519.
N.Y.—Ryan v. Progressive Grocery Stores, 175 N.E. 105, 255 N.Y. 388, 74 A.L.R. 339.
N.C.—Sparks v. Sparks, 140 S.E. 300, 194 N.C. 809.
Ohio.—Goertz v. Wodzisz, App., 70 N. E.2d 776—Dow Drug Co. v. Nieman, 13 N.E.2d 130, 57 Ohio App. 190—Cincinnati Traction Co. v. Handy, 4 Ohio App. 21.
Okl.—Mealy-Wolfe Drilling Co. v. Lambert, 256 P.2d 818, 208 Okl. 624.
Or.—Miami Quarry Co. v. Seaborg Packing Co., 204 P. 492, 103 Or. 362.
Pa.—Luckenbaugh v. Haughawout, 46 A.2d 163, 353 Pa. 528.
Frace v. Mutual Life Ins. Co. of New York, 30 A.2d 380, 151 Pa.Super. 354.
Tenn.—Southern Bell Tel. & Tel. Co. v. Skaggs, 241 S.W.2d 126, 34 Tenn. App. 549.
Tex.—Havens v. Guetersloh, Civ.App., 255 S.W.2d 233, error refused no reversible error—Joy v. Craig, Civ. App., 94 S.W.2d 524, error dismissed—Texas Employers' Ins. Ass'n v. Hilderbrandt, Civ.App., 80 S.W.2d 1031.
Utah.—Connell v. Oregon Short Line R. Co., 168 P. 337, 51 Utah 26.
Wash.—McDermont v. Bateman, 203 P. 66, 118 Wash. 230.
4 C.J. p 919 note 43.

Too favorable to coparty

(1) One defendant may not complain of an instruction because it is too favorable to his codefendant, or because it prevents a joint judgment against both defendants.
Mo.—Schneider v. Dubinsky Realty Co., 127 S.W.2d 691, 344 Mo. 654.

(2) Where plaintiff claims that negligence of two or more defendants was the proximate cause of injury, one defendant cannot complain because charge was too favorable to another defendant, since, if both are

or which were less favorable to appellee than was warranted.[97.5]

Applying the above rules, appellant cannot complain of instructions which, to authorize a verdict in appellee's favor, impose on him a greater burden than the law authorizes;[98] that is, instructions

liable, they are liable jointly and severally.

Conn.—Griswold v. Connecticut Co., 38 A.2d 676, 131 Conn. 248.

(3) An electric railway company, joined as defendant with the driver of an automobile in a suit by a passenger in the automobile for injuries in collision on track, cannot complain of instructions on the question of the automobile driver's negligence which were too favorable to him.

Cal.—Nichols v. Pacific Electric Ry. Co., 174 P. 319, 178 C. 630.

97.5 Cal.—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77.

Miss.—General Benev. Ass'n v. Fowler, 50 So.2d 137, 210 Miss. 578.

Mo.—Counts v. Coca-Cola Bottling Co. of St. Louis, App., 149 S.W.2d 418.

98. Ala.—McKinney v. Birmingham Electric Co., 193 So. 139, 238 Ala. 627—Motor Sales Corporation v. Whaley, 101 So. 475, 120 Ala.App. 35, certiorari denied Ex parte Whaley, 101 So. 478, 211 Ala. 624.

Ariz.—Southwestern Coca Cola Bottling Co. v. Northern, 177 P.2d 219, 65 Ariz. 172—Chapman v. Salazar, 11 P.2d 613, 40 Ariz. 215.

Ark.—Williams v. Cooper, 273 S.W.2d 15, 224 Ark. 317—Kansas City Southern Ry. Co. v. Diggs, 167 S.W.2d 879, 205 Ark. 150.

Cal.—Benjamin v. Noonan, 277 P. 1045, 207 C. 279.

Karwoski v. Grant, 85 P.2d 944, 30 C.A.2d 171—Ying v. Pickwick Stages System, 3 P.2d 597, 117 C.A. 312.

Colo.—Garden of the Gods Village v. Hellman, 294 P.2d 597, 133 Colo. 286.

Conn.—Murphy v. Ossola, 199 A. 648, 124 Conn. 366.

Ga.—Ashford v. Holliday, 149 S.E. 790, 169 Ga. 237.

National Life & Accident Ins. Co. v. Harris, 12 S.E.2d 419, 64 Ga.App. 136—American Surety Co. v. Smallon, 194 S.E. 35, 56 Ga.App. 746—Bazemore v. Powell, 188 S.E. 282, 54 Ga.App. 444—Reid v. Morrison, 121 S.E. 860, 31 Ga.App. 613.

Ind.—Standard Life Ins. Co. v. Grigsby, 140 N.E. 457, 80 Ind.App. 231—Irvine v. Baxter Stove Co., 123 N. E. 185, 70 Ind.App. 105.

Iowa.—White v. McVicker, 246 N.W. 385, 216 Iowa 90—Lange v. Bedell, 212 N.W. 354, 203 Iowa 1194.

Ky.—Thomas v. Dahl, 170 S.W.2d 337, 293 Ky. 808—Acme Mills v. Moore, 22 S.W.2d 105, 231 Ky. 720—Krieger v. Standard Printing Co., 231 S. W. 27, 191 Ky. 552—Kingkad v. City of Covington, 218 S.W. 458, 187 Ky. 137.

Md.—Adkins v. Hastings, 114 A. 288, 138 Md. 454.

Mich.—In re Turner's Estate, 186 N. W. 402, 217 Mich. 359—Tatro v. Baker-Fisk-Hugill Co., 184 N.W. 449, 215 Mich. 623.

Mo.—Davis v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 460—Tinsley v. Massman Const. Co., 270 S.W.2d 835—Hilton v. Thompson, 227 S.W. 2d 675, 360 Mo. 177—Cameron v. Small, 182 S.W.2d 565—Burneson v. Zumwalt Co., 159 S.W.2d 605, 349 Mo. 94—Wilday v. Missouri-Kansas-Texas R. Co., 147 S.W.2d 431, 347 Mo. 275—State ex rel. Kansas City Gas Co. v. Shain, 132 S.W.2d 1015, 345 Mo. 233, 527—Young v. Missouri-Kansas-Texas R. Co., 100 S.W.2d 929—Noonan v. Independence Indemnity Co., 41 S.W.2d 162, 328 Mo. 706, 76 A.L.R. 931—Maurizi v. Western Coal & Mining Co., 11 S. W.2d 268, 321 Mo. 378—Morrow v. Missouri Gas & Electric Service Co., 286 S.W. 106, 315 Mo. 367—Hunt v. Chicago, B. & Q. R. Co., 259 S.W. 481, 303 Mo. 107—McIntyre v. St. Louis & S. F. Ry. Co., 227 S. W. 1047, 286 Mo. 234, certiorari denied St. Louis-San Francisco R. Co. v. McIntyre, 41 S.Ct. 376, 255 U.S. 573, 65 L.Ed. 792—State ex rel. Grear v. Ellison, 182 S.W. 961.

Jackson v. Ricketts, App., 288 S. W.2d 10—Brewer v. Gowin, App., 241 S.W.2d 275—Cacioppo v. Kansas City Public Service Co., App., 234 S.W.2d 799—Dunlap v. Donnell, App., 234 S.W.2d 330—Southern Ill. Finance Corp. v. Strubel, App., 228 S.W.2d 374—Schubert v. St. Louis Public Service Co., App., 206 S.W.2d 708, affirmed 214 S.W.2d 420, 358 Mo. 303—Coogan v. Nighthawk Freight Service, App., 193 S.W.2d 388—Shipper v. Dr. C. M. Coe, Inc., App., 174 S.W.2d 887—Martin v. John Clay & Co., App., 167 S.W.2d 407—Evans v. Great Northern Life Ins. Co., 167 S.W.2d 118, 237 Mo. App. 317—Rosanbalm v. Thompson, App., 148 S.W.2d 830, opinion quashed State ex rel. Thompson v. Shain, 159 S.W.2d 582, 349 Mo. 27—Moone v. Kroger Grocery & Baking Co., App., 148 S.W.2d 628—Ralston Purina Co. v. Swaithes, App., 142 S.W.2d 340—Sinclair Refining Co. v. Farmers Bank of Portageville, 91 S.W.2d 122, 230 Mo.App. 1132—Jackson v. Order of United Commercial Travelers of America, App., 89 S.W.2d 536—Greaves v. Kansas City Junior Orpheum Co., App., 80 S.W.2d 228—Yancey v. Central Mut. Ins. Ass'n, App., 77 S.W.2d 149—Grasher v. Kansas City Public Service Co., App., 35 S.W.2d 645—Andybur v. National Pigments & Chemical Co., App., 24 S.W.2d 1069—Craven v. Halpin-Boyle Const. Co., App., 15 S.W.2d 853—Drew v. St. Louis-San Francisco Ry. Co., 293 S.W. 468, 220 Mo.App. 720—Murphy v. Great American Ins. Co., 285 S.W. 772, 221 Mo.App. 727—Jedlicka v. Shackelford, App., 270 S.W. 125—Pelster v. Shamrod Boiler Co., App., 268 S.W. 890—Marsh v. Davis, App., 251 S.W. 390—Eisenberg v. Nelson, App., 247 S.W. 244—West v. Kansas City Rys. Co., 232 S.W. 749, 208 Mo.App. 181—Orr v. Russell, App., 231 S.W. 275—Plumlee v. Swan Machinery Co., App., 202 S.W. 586—Ruch v. Pryor, App., 190 S.W. 1037.

Mont.—Palmer v. Great Northern Ry. Co., 170 P.2d 768, 119 Mont. 68—Earlywine v. C. I. T. Corp., 101 P. 2d 59, 110 Mont. 295.

N.J.—Thompson v. Barab, 16 A.2d 549, 125 N.J.Law 461, affirmed 19 A. 2d 780, 125 N.J.Law 427—Ryan v. Deans, 176 A. 160, 114 N.J.Law 199.

N.C.—Price v. Gray, 97 S.E.2d 844, 246 N.C. 162.

Ohio.—Packet Co. v. Long, 14 Ohio Cir.Ct.,N.S., 225.

Okl.—Chicago, R. I. & P. R. Co. v. Hale, 254 P.2d 338, 208 Okl. 141—Newton v. Paul, 224 P.2d 265, 203 Okl. 556—King v. Davis, 164 P.2d 639, 196 Okl. 277.

Or.—Brady v. Schnitzer, 295 P. 961, 135 Or. 250—Johnson v. Underwood, 203 P. 879, 102 Or. 680.

Pa.—Keller v. New Jersey Fidelity & Plate Glass Ins. Co., 159 A. 40, 306 Pa. 124.

S.C.—Sheriff v. City of Easley, 183 S.E. 311, 178 S.C. 504.

Tex.—McElroy v. Luster, Civ.App., 254 S.W.2d 893, error refused no reversible error—Columbia Cas. Co. v. Combs, Civ.App., 188 S.W.2d 1015—Mercer v. Evans, Civ.App., 173 S.W.2d 206—Continental Oil Co. v. Barnes, Civ.App., 97 S.W.2d 494, error refused—Bankers Lloyds v. Pollard, Civ.App., 40 S.W.2d 859—Gulf States Telephone Co. v. Evetts, Civ.App., 188 S.W. 289.

Utah.—Lewis v. Davis, 201 P. 861, 59 Utah 85.

4 C.J. p 919 note 44—54 C.J. p 607 note 45.

Assumption of extra burden in instructions by plaintiff or defendant is not error of which loser can complain.

Mo.—Potterfield v. Terminal R. Ass'n of St. Louis, 5 S.W.2d 447, 319 Mo. 619, certiorari denied Terminal R. Ass'n of St. Louis v. Potterfield, 49 S.Ct. 20, 278 U.S. 616, 73 L.Ed. 539.

Palmer v. Lasswell, App., 267 S. W.2d 492.

which place the burden of proof on appellee,[99] place on him a greater burden of proof than the law imposes,[1] give undue prominence and emphasis to the necessity of his establishing a particular issue or element in the case,[2] impose on him a higher degree of care than the law prescribes,[3] or require him to establish unessential facts.[4]

Similarly, appellant cannot complain of instruc-

99. Ariz.—Salt River Valley Water Users' Ass'n v. Wheeler, 236 P. 1108, 28 Ariz. 350.
Ark.—St. Louis-San Francisco Ry. Co. v. Cole, 294 S.W. 357, 174 Ark. 10—National Union Fire Ins. Co. of Pittsburgh, Pa., v. School Dist. No. 60 of Washington County, 199 S. W. 924, 131 Ark. 547.
Cal.—Jordan v. Great Western Motorways, 2 P.2d 786, 213 C. 606.
Ga.—Southern Ry. Co. v. Perdue, 154 S.E. 793, 171 Ga. 134—Oliver v. Lewis, 102 S.E. 146, 149 Ga. 763.
Iowa.—Ruegnitz v. Harrington, 183 N.W. 605.
Ky.—Louisville & N. R. Co. v. Priddy, 71 S.W.2d 39, 254 Ky. 173.
Mass.—Flaherty v. Collins, 61 N.E.2d 12, 318 Mass. 153.
Minn.—Nardinger v. Ladies of the Maccabees of the World, 163 N.W. 785, 138 Minn. 16.
Mo.—Tate v. Tyzzer, 234 S.W. 1038, 208 Mo.App. 290.
N.C.—Star Mfg. Co. v. Atlantic Coast Line R. Co., 23 S.E.2d 32, 222 N.C. 330—Hammond v. Williams, 3 S.E. 2d 437, 215 N.C. 657—Collins v. Vandiford, 145 S.E. 235, 196 N.C. 237—Hipps v. Southern Ry., 99 S. E. 335, 177 N.C. 472—Griffin v. Barrett, 97 S.E. 394, 176 N.C. 473—Ball-Thrash Co. v. McCormick, 90 S.E. 916, 172 N.C. 677.
Ohio.—Smith v. Thoms, 9 N.E.2d 172, 55 Ohio App. 174.
Okl.—Chase v. Cable Co., 170 P. 1172, 67 Okl. 322.
R.I.—R. H. Kimball, Inc., v. Rhode Island Hospital Nat. Bank, 48 A.2d 420, 72 R.I. 144.
Tex.—Allison v. Wheless, Civ.App., 84 S.W.2d 529, error dismissed—Southern Ice & Utilities Co. v. Richardson, Civ.App., 60 S.W.2d 308—American Fidelity & Casualty Co. v. Williams, Civ.App., 34 S.W. 2d 396—McNabb v. Woolfolk, Civ. App., 240 S.W. 1043.
Wis.—Gauthier v. Carbonneau, 277 N.W. 135, 226 Wis. 527—Halamka v. Schneider, 222 N.W. 821, 197 Wis. 538.
4 C.J. p 919 note 45.

1. Ala.—Farmers' & Merchants' Bank v. Hollind, 76 So. 287, 200 Ala. 371—Neely v. Reynolds, 72 So. 124, 196 Ala. 581.
Ariz.—City of Phœnix v. Johnson, 75 P.2d 30, 51 Ariz. 115.
Ark.—Wagley v. Roberts, 73 S.W.2d 463—Kansas City Southern Ry. Co. v. Cecil, 283 S.W. 1, 171 Ark. 34.
Cal.—Campbell v. Bradbury, 176 P. 685, 179 C. 364.
Rayl v. Syndicate Bldg. Co., 5 P. 2d 476, 118 C.A. 396.
Conn.—Le Count v. Farrand, 171 A. 623, 118 Conn. 210—Darrow v. Fleischner, 169 A. 197, 117 Conn. 518.
Ga.—Spooner v. Cobb, 117 S.E. 320, 155 Ga. 458.
Atkinson v. Boggs, 86 S.E. 62, 16 Ga.App. 738.
Iowa.—McFarlin v. Quegg, 192 N.W. 401, 195 Iowa 624.
Mass.—Proctor v. Dillon, 129 N.E. 265, 235 Mass. 538.
Mich.—Anderson v. Lynch, 205 N.W. 134, 232 Mich. 276.
Mo.—Moyer v. Chicago & A. R. Co., 198 S.W. 839.
Cox v. American Steam Laundry Co., App., 267 S.W. 77—Todd v. Kansas City Rys. Co., App., 237 S.W. 868—Troutman v. East St. Louis Cotton Oil Co., App., 224 S. W. 1014—Stansberry v. McDowell, App., 186 S.W. 757.
Neb.—Burhoop v. Brackhan, 82 N.W. 2d 557, 164 Neb. 382—Harding v. Hoffman, 62 N.W.2d 333, 158 Neb. 86—Sohler v. Christensen, 39 N.W. 2d 837, 151 Neb. 843—Brown v. Security Mut. Life Ins. Co., 36 N.W.2d 251, 150 Neb. 811—Kline v. Metcalfe Const. Co., 27 N.W.2d 383, 148 Neb. 357—Wray v. Equitable Life Assur. Soc., 262 N.W. 833, 129 Neb. 703.
N.J.—Ryan v. Deans, 176 A. 160, 114 N.J.Law 199.
N.C.—Union Central Life Ins. Co. v. Cates, 137 S.E. 324, 193 N.C. 456.
Ohio.—Schieve v. Silver, App., 75 N.E. 2d 104—Buttermiller v. Schmid, 4 Ohio App. 100.
Okl.—Liberty Nat. Bank of Pawhuska v. Exendine, 11 P.2d 154, 156 Okl. 26.
Pa.—Se-Ling Hosiery v. Margulies, 70 A.2d 854, 364 Pa. 45—Arco Metalscraft Co. v. Shaw, 70 A.2d 850, 364 Pa. 39.
Tex.—Texas & N. O. Ry. Co. v. Rooks, Com.App., 292 S.W. 536, rehearing denied, Com.App., 293 S.W. 554.
Emerson-Brantingham Implement Co. v. Roquemore, Civ.App., 214 S.W. 679.
Utah.—Garff v. Myers Cleaning & Dyeing Co., 238 P. 278, 65 Utah 548.
Wis.—Kramer v. Bins, 238 N.W. 407, 205 Wis. 562—Venne v. Damrow Bros. Co., 212 N.W. 796, 192 Wis. 249—Allen v. Murray, 57 N.W. 979, 87 Wis. 41.
4 C.J. p 919 note 46.

2. Conn.—Skene v. Carayanis, 131 A. 497, 103 Conn. 708.
Okl.—Piquet v. Piquet, 165 P.2d 622, 196 Okl. 419.
Tex.—McAdoo v. McClure, Civ.App., 232 S.W. 348, modified on other grounds Boyles v. McClure, Com. App., 243 S.W. 1080.
3. Ariz.—Eisenbeiss v. Payne, 25 P. 2d 162, 42 Ariz. 262.
Cal.—Gilmore v. Los Angeles Ry. Corporation, 295 P. 41, 211 C. 192.
Ga.—Daughtry v. Georgia Power Co., 6 S.E.2d 454, 61 Ga.App. 505.
Ill.—Von Boeckmann v. Corn Products Refining Co., 113 N.E. 902, 274 Ill. 605.
Ind.—Mays v. Welsh, 32 N.E.2d 701, 218 Ind. 356.
Kan.—Damitz v. Christian, 21 P.2d 324, 137 Kan. 562.
Ky.—Kentucky & West Virginia Power Co. v. Elliott, 220 S.W.2d 964, 310 Ky. 496—Nichols v. Luster's Adm'r, 82 S.W.2d 498, 259 Ky. 379—Lehr v. Fenton Dry Cleaning & Dyeing Co., 80 S.W.2d 831, 258 Ky. 663—City of Providence v. Young, 13 S.W.2d 1022, 227 Ky. 690—D. H. Ewing's Sons v. Arnold, 251 S.W. 626, 199 Ky. 513.
Mass.—Direnski v. Eastern Massachusetts St. Ry. Co., 138 N.E. 554, 244 Mass. 313.
Mo.—Burtch v. Wabash Ry. Co., 236 S.W. 338—State ex rel. Grear v. Ellison, 182 S.W. 961.
Va.—Chesapeake & O. Ry. Co. v. Crum, 125 S.E. 301, 140 Va. 333.
Wash.—Nagel v. McDermott, 244 P. 977, 138 Wash. 536.
4 C.J. p 919 note 47.

4. Ala.—Bank of Mobile, N. B. A., v. Smith, 81 So. 193, 16 Ala.App. 673.
Ariz.—Eisenbeiss v. Payne, 25 P.2d 162, 42 Ariz. 262—Grasty v. Sabin, 259 P. 1049, 32 Ariz. 463.
Ark.—Barry v. Armstrong, 256 S.W. 65, 161 Ark. 314.
Colo.—Colorado & S. Ry. Co. v. Western Light & Power Co., 214 P. 30, 73 Colo. 107.
Ga.—Griffin v. Browning, 181 S.E. 801, 51 Ga.App. 826.
Ill.—Steinberg v. Northern Illinois Telephone Co., 260 Ill.App. 538—Hess v. Canode, 257 Ill.App. 535.
Iowa.—Indiana Wagon Co. v. Van De Pol, 181 N.W. 392, 190 Iowa 1080.
Ky.—Sears v. Frost's Adm'r, 279 S. W.2d 776—Louisville & N. R. Co. v. Mason, 251 S.W. 184, 199 Ky. 337.
Mich.—Vanderberg v. Detroit & C. Nav. Co., 186 N.W. 477, 216 Mich. 682.
Mo.—Henderson v. Dolas, 217 S.W.2d 554—Lepchenski v. Mobile & O. R. Co., 59 S.W.2d 610, 332 Mo. 194—Barr v. Missouri Pac. R. Co., 97 S. W.2d 927—Evans v. General Explosives Co., 239 S.W. 487, 293 Mo. 364.

tions which minimize the probative force of the testimony of witnesses introduced by, or favorable to, appellee;[5] which require the jury to find facts not essential to appellee's recovery or defense;[6] which exclude or ignore one or some of the grounds on which appellant might be found liable;[7] or which enlarge or extend the grounds on which appellee might be found liable.[8]

Young v. Griesbauer, App., 183 S. W.2d 917—Woods v. Moore, App., 48 S.W.2d 202—Webster v. International Shoe Co., App., 18 S.W.2d 131—Nicholson v. Missouri Pac. R. Co., App., 297 S.W. 996—Raber v. Kansas City Rys. Co., App., 204 S. W. 739—Fiester v. Drozda, App., 185 S.W. 748—Moore v. McHaney, 178 S.W. 258, 191 Mo.App. 686.

N.Y.—Boyles v. Blankenhorn, 153 N. Y.S. 466, 168 App.Div. 388, affirmed 115 N.E. 443, 220 N.Y. 624.

S.D.—Stewart v. Rapid City, 205 N. W. 654, 48 S.D. 554.

Tex.—Louisiana Ry. & Nav. Co. of Texas v. Eldridge, Civ.App., 293 S. W. 901—Galveston, H. & H. R. Co. v. Fleming, Civ.App., 203 S.W. 105.

4 C.J. p 919 note 48.

5. Ala.—Ellard v. Goodall, 87 So. 196, 204 Ala. 644—Sloss-Sheffield Co. v. Ross, 77 So. 686, 201 Ala. 160.

Conn.—Valentine v. Pollak, 111 A. 869, 95 Conn. 556.

Ga.—Sweatman v. Dailey, 133 S.E. 257, 162 Ga. 295.

Butler v. Lovelace-Eubanks Lumber Co., 139 S.E. 83, 37 Ga.App. 74—Yaryan Rosin & Turpentine Co. v. Haskins, 116 S.E. 913, 29 Ga.App. 753.

Iowa.—Reimer v. Swingle, 171 N.W. 589, 185 Iowa 1111.

Kan.—Matthews v. McNeill, 157 P. 387, 98 Kan. 5.

Mo.—Nelson v. C. Heinz Stove Co., 8 S.W.2d 918, 320 Mo. 655—Mahany v. Kansas City Rys. Co., 254 S.W. 16, 29 A.L.R. 817—Turnbow v. Kansas City Rys. Co., 211 S.W. 41, 277 Mo. 644.

Okl.—Schaff v. Coyle, 249 P. 947, 121 Okl. 228.

Or.—Fahnrich Grocery Co. v. Paulsen, 293 P. 422, 134 Or. 247.

S.C.—Swift & Co. v. Callaham, 131 S. E. 146, 133 S.C. 353.

Tex.—Chase Bag Co. v. Longoria, Civ. App., 45 S.W.2d 242.

Wash.—Taylor v. City of Spokane, 171 P. 249, 100 Wash. 409, 2 A.L.R. 1046.

6. Cal.—Hill v. Peres, 28 P.2d 946, 136 C.A. 132—Marks v. Reissinger, 169 P. 243, 35 C.A. 44.

Ga.—Lanham v. Keys, 121 S.E. 856, 31 Ga.App. 635—Mitchell v. Owen, 121 S.E. 699, 31 Ga.App. 649, reversed on other grounds 127 S.E. 122, 159 Ga. 690, and conformed to 128 S.E. 12, 33 Ga.App. 665.

Kan.—Fidelity Savings State Bank v. Grimes, 131 P.2d 894, 156 Kan. 55.

Ky.—Miller v. Miller, 296 S.W.2d 684—Sears v. Frost's Adm'r, 279 S.W. 2d 776—Koenig Bros. v. Zibart, 70 S.W.2d 945, 254 Ky. 43—Phillips' Committee v. Ward's Adm'r, 43 S. W.2d 331, 241 Ky. 25—Missouri Moline Plow Co. v. Render, 251 S.W. 977, 199 Ky. 773—American Tobacco Co. v. Troutman, 194 S.W. 543, 175 Ky. 436—Louisville & N. R. Co. v. Thomas' Adm'r, 185 S.W. 840, 170 Ky. 145, rehearing denied 188 S.W. 463, 171 Ky. 471.

Md.—Cohen v. Fink Piano Co., 153 A. 664, 160 Md. 440—City of Baltimore v. Clark, 97 A. 911, 128 Md. 291.

Minn.—Savings Bank of Kewanee, Ill. v. Schaal, 195 N.W. 141, 156 Minn. 424.

Mo.—Henderson v. Dolas, 217 S.W.2d 554—Tash v. St. Louis-San Francisco Ry. Co., 76 S.W.2d 690, 335 Mo. 1148—Simpson v. St. Louis-San Francisco Ry. Co., 70 S.W.2d 904, 334 Mo. 1126—Berry v. Baltimore & O. R. Co., 43 S.W.2d 782, reversed on other grounds 52 S.Ct. 510, 286 U.S. 272, 76 L.Ed. 1098—Ward v. Missouri Pac. Ry. Co., 277 S.W. 908, 311 Mo. 92—Hunt v. Chicago, B. & Q. R. Co., 259 S.W. 481, 303 Mo. 107—McKenzie v. Randolph, 257 S.W. 126, 238 Mo. 828—Turnbow v. Kansas City Rys. Co., 211 S.W. 41, 277 Mo. 644—Moyer v. Chicago & A. R. Co., 198 S.W. 839.

Stephenson v. American Nat. Ins. Co., App., 78 S.W.2d 876—Craven v. Halpin-Boyle Const. Co., App., 15 S.W.2d 853—Main Street Bank v. Werner, App., 7 S.W.2d 723—Clower v. Fidelity-Phenix Fire Ins. Co. of New York, 296 S.W. 257, 220 Mo. App. 1112—Houston v. American Car & Foundry Co., App., 282 S.W. 170—Galba v. Payne, App., 253 S.W. 137—Doerr v. National Fire Ins. Co. of Hartford, 253 S.W. 39, 215 Mo.App. 372, reversed on other grounds 285 S.W. 961—Beckwith v. City of Malden, 253 S.W. 17, 212 Mo.App. 488—Chambers v. Hines, 233 S.W. 949, 208 Mo.App. 222—Swinehart v. Kansas City Rys. Co., App., 233 S.W. 59—Hartweg v. Kansas City Rys. Co., App., 231 S.W. 269—Sparks v. Harvey, App., 214 S.W. 249—Latham v. Douglass, App., 206 S.W. 392—Shawhan v. Shawhan Distillery Co., 197 S.W. 371, 195 Mo.App. 492—Johnson v. St. Louis & S. F. R. Co., App., 190 S.W. 352—Plumlee v. Swan Machinery Co., App., 189 S.W. 580.

S.C.—Mallard v. Duke, 126 S.E. 525, 131 S.C. 175.

Tex.—Texas Co-op. Inv. Co. v. Clark, Civ.App., 235 S.W. 973, dismissed for want of jurisdiction—Klein v. Stahl, Civ.App., 219 S.W. 523.

Va.—White v. Commonwealth, 164 S. E. 375, 158 Va. 749.

4 C.J. p 919 note 49.

7. Ark.—Lakeside Bridge & Steel Co. v. Duvall, 19 S.W.2d 1107, 179 Ark. 963—Missouri Pac. R. Co. v. Martindale, 213 S.W. 777, 139 Ark. 143.

Conn.—Spirt v. Albert, 146 A. 717, 109 Conn. 292.

Ga.—City of Summerville v. Sellers, 94 S.E.2d 69, 94 Ga.App. 152—Deibert v. McWhorter, 132 S.E. 110, 34 Ga.App. 803—Brazell v. Hearn, 127 S.E. 479, 33 Ga.App. 490—City of Tallapoosa v. Brock, 111 S.E. 88, 28 Ga.App. 384.

Iowa.—Ruebel Bros. v. American Express Co., 180 N.W. 658, 190 Iowa 600.

Ky.—Koenig Bros. v. Zibart, 70 S.W. 2d 945, 254 Ky. 43—R. B. Tyler Co. v. Kirby's Adm'r, 293 S.W. 155, 219 Ky. 389—Parker v. Smith, 277 S.W. 986, 211 Ky. 624—Henry Bickel Co. v. Huffaker's Adm'x, 186 S. W. 474, 170 Ky. 407.

Mo.—Alexander v. Emmke, App., 15 S.W.2d 868—Nitchman v. United Rys. Co. of St. Louis, App., 203 S.W. 491—Bridges v. St. Louis-San Francisco Ry. Co., 199 S.W. 572, 198 Mo.App. 576.

N.Y.—J. Aron & Co. v. Sills, 148 N. E. 717, 240 N.Y. 588.

N.C.—Green v. Harshaw, 121 S.E. 456, 187 N.C. 213.

Okl.—Allen v. Cubbison, 3 P.2d 677, 150 Okl. 116—Rhodes v. Lamar, 292 P. 335, 145 Okl. 223.

Pa.—Wolverine Glass Co. v. Miller, 123 A. 672, 279 Pa. 138—Windsor Mfg. Co. v. Globe & Rutgers Fire Ins. Co., 121 A. 328, 277 Pa. 374.

Gower v. Harakal, 198 A. 923, 131 Pa.Super. 185.

S.C.—Younginer v. Ætna Life Ins. Co. of Hartford, Conn., 19 S.E.2d 452, 199 S.C. 283—American Fruit Growers v. King, 114 S.E. 861, 122 S.C. 69.

Tenn.—Colonial Baking Co. v. Acquino, 103 S.W.2d 613, 20 Tenn.App. 695.

Tex.—Leap v. Braziel, Civ.App., 93 S. W.2d 1213, modified on other grounds 121 S.W.2d 334.

Va.—Jacob v. Commonwealth, 138 S.E. 574, 148 Va. 836.

8. Ala.—Hester v. Ford, 130 So. 203, 221 Ala. 592.

Conn.—Salemme v. Mulloy, 121 A. 870, 99 Conn. 474.

Ga.—Hill v. Chattanooga Ry. & Light Co., 93 S.E. 1027, 21 Ga.App. 104—Livsey v. Georgia Ry. & Electric Co., 91 S.E. 1074, 19 Ga.App. 687.

Iowa.—Livingstone v. Dole, 167 N.W. 639, 184 Iowa 1340.

Ky.—Citizens' State Bank of Greenup v. Johnson County, 242 S.W. 582, 195 Ky. 587.

Further applying the rule, appellant cannot complain of instructions which unduly limit the claims of appellee;[8.5] which fail to state the law against appellant as strongly as it should have been stated;[8.10] which extend the limits and operation of defenses on which appellant relies;[9] which impose on appellant, in an action based on negligence, a less degree of care than the law prescribes;[10] which improperly assume the existence of facts favorable to appellant,[11] fail to place on him the burden of

Mo.—Kapros v. Pierce Oil Corporation, 25 S.W.2d 777, 324 Mo. 992, 78 A.L.R. 722.
McLarney v. Cary, App., 98 S.W. 2d 144.
Okl.—Bowring v. Denco Bus Lines, 162 P.2d 525, 196 Okl. 1.
Wash.—Osborne v. Charbneau, 268 P. 884, 148 Wash. 359, 64 A.L.R. 251.
Wis.—Maltby v. Thiel, 272 N.W. 848, 224 Wis. 648.

8.5 S.D.—Hjermstad v. Petroleum Carriers, 53 N.W.2d 839, 48 S.D. 406.

8.10 Cal.—In re Eakle's Estate, 91 P. 2d 954, 33 C.A.2d 379.
Neb.—Shiers v. Cowgill, 59 N.W.2d 407, 157 Neb. 265.
N.C.—Kelly v. Hunsucker, 189 S.E. 664, 211 N.C. 153.

9. Ariz.—Brandon v. Carr, 237 P. 642, 28 Ariz. 454.
Ark.—Warren & O. V. Ry. Co. v. Ederington, 28 S.W.2d 1073, 181 Ark. 1037—Washa v. Harris, 266 S. W. 944, 167 Ark. 186—Bish v. Woods, 258 S.W. 352, 162 Ark. 463.
Conn.—Granniss v. Weber, 141 A. 877, 107 Conn. 622—Knox v. Binkoski, 122 A. 400, 99 Conn. 582.
Ga.—Carroll v. Taylor, 75 S.E.2d 346, 87 Ga.App. 815.
Ind.—Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind.App. 585—Hoeppner v. Saltzgaber, 200 N.E. 458, 102 Ind. App. 458.
Mich.—Gibbard v. Cursan, 196 N.W. 398, 225 Mich. 311—Jones v. Brookfield Tp., 190 N.W. 733, 221 Mich. 235.
Mo.—Cazzell v. Schofield, 8 S.W.2d 580, 319 Mo. 1169.
Pearson v. Kansas City Public Service Co., App., 217 S.W.2d 276, affirmed 225 S.W.2d 742, 359 Mo. 1185.
N.C.—Gore v. City of Wilmington, 140 S.E. 71, 194 N.C. 450—Kepley v. Kirk, 132 S.E. 788, 191 N.C. 690—Merrill v. Tew, 110 S.E. 850, 183 N.C. 172—Bradshaw v. Hilton Lumber Co., 90 S.E. 146, 172 N.C. 219.
Okl.—Thompson v. Davis, 254 P. 501, 124 Okl. 79.
Tex.—Texas & P. Ry. Co. v. Weatherly, 101 S.W.2d 217, 128 Tex. 642.
Waggoner v. Zundelowitz, Com. App., 231 S.W. 721.
Wichita Falls, R. & F. W. Ry. Co. v. Crawford, Civ.App., 19 S.W. 2d 166—Louisiana Ry. & Nav. Co. of Texas v. Eldridge, Civ.App., 293 S.W. 901—El Paso Electric Co. v. Sawyer, Civ.App., 291 S.W. 667, affirmed, Com.App., 298 S.W. 267—Apex Co. v. Grant, Civ.App., 276 S.W. 445—Taylor Cotton Oil Co. v. Early-Foster Co., Civ.App., 204 S. W. 1179.
Va.—Housing Authority of City of Bristol v. East Tennessee Light & Power Co., 31 S.E.2d 273, 183 Va. 64—Turner v. Richmond & R. R. Ry. Co., 92 S.E. 841, 121 Va. 194.
Wash.—Yenor v. Spokane United Rys., 255 P. 947, 143 Wash. 541—Nagel v. McDermott, 244 P. 977, 138 Wash. 536.
Wis.—Max L. Bloom Co. v. U. S. Casualty Co., 210 N.W. 689, 191 Wis. 524.
55 C.J. p 866 note 92.

10. Ark.—Arkansas Power & Light Co. v. Hughes, 76 S.W.2d 53, 189 Ark. 1015.
Ind.—Jones v. Cary, 37 N.E.2d 944, 219 Ind. 268—Northern Indiana Power Co. v. West, 32 N.E.2d 713, 218 Ind. 321.
Jackson Hill Coal & Coke Co. v. McDaniel, 131 N.E. 408, 76 Ind. App. 56.
Ky.—City of Covington v. Willis, 117 S.W.2d 945, 273 Ky. 762—Louisville & N. R. Co. v. Snow's Adm'r, 30 S.W.2d 885, 235 Ky. 211—City of Providence v. Hunter, 21 S.W. 2d 135, 231 Ky. 72—American Dye Works v. Baker, 276 S.W. 133, 210 Ky. 508—Louisville & N. R. Co. v. Howser's Adm'r, 257 S.W. 1010, 201 Ky. 548, 36 A.L.R. 327—Ohio County Drug Co. v. Howard, 256 S.W. 705, 201 Ky. 346, 31 A.L.R. 1355.
Minn.—Carr v. Davis, 199 N.W. 237, 159 Minn. 485.
Mo.—Mahan v. Baile, 216 S.W.2d 92, 358 Mo. 625—Null v. Stewart, 78 S.W.2d 75—Heigold v. United Rys. Co. of St. Louis, 271 S.W. 773, 308 Mo. 142—Krinard v. Westerman, 216 S.W. 938, 279 Mo. 680.
Morris v. Alexander, App., 275 S.W.2d 373—Evans v. Clapp, App., 231 S.W. 79—Grubb v. Kansas City Rys. Co., 230 S.W. 675, 207 Mo.App. 16—Vogts v. Kansas City Rys. Co., App., 228 S.W. 526.
N.Y.—Pedro v. Newman, 101 N.Y.S. 2d 146, 277 App.Div. 567, appeal and reargument denied 102 N.Y.S. 2d 443, 278 App.Div. 568—Fowler v. International Ry. Co., 216 N.Y.S. 558, 217 App.Div. 537, affirmed 155 N.E. 910, 224 N.Y. 592—Burrows v. Livingston-Niagara Power Co., 216 N.Y.S. 516, 217 App.Div. 206, affirmed 155 N.E. 892, 244 N.Y. 548.
Ohio.—Watt v. Feuerlicht, App., 41 N.E.2d 719—Columbus Ry., Power & Light Co. v. Lombard, 168 N.E. 619, 33 Ohio App. 47—Reed v. Hensel, 159 N.E. 843, 26 Ohio App. 79.
Cleveland Electric Ry. Co. v. Pifer, 20 Ohio Cir.Ct.,N.S., 435.
Okl.—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263.
Tex.—City of Beaumont v. Wiggins, Civ.App., 136 S.W.2d 260, error dismissed, judgment correct—Baldridge v. Klein, Civ.App., 56 S. W.2d 897—Reilly v. Buster, Civ. App., 52 S.W.2d 521, reversed on other grounds, Com.App., 82 S.W. 2d 931.
Wash.—Wold v. Gardner, 8 P.2d 975, 167 Wash. 191.
4 C.J. p 919 note 50—52 C.J. p 174 note 18.

Malpractice cases
Okl.—Stagner v. Files, 78 P.2d 418, 182 Okl. 475.
Or.—Clemens v. Smith, 134 P.2d 424, 170 Or. 400—Carruthers v. Phillips, 131 P.2d 193, 169 Or. 636.

11. Ark.—Nolan v. Haskett, 53 S.W. 2d 996, 186 Ark. 455—Inter-Southern Life Ins. Co. v. Coffee, 251 S.W. 365, 159 Ark. 52.
Cal.—Hart v. Fresno Traction Co., 167 P. 885, 175 C. 489.
Ga.—Quinton v. Peck, 24 S.E.2d 36, 195 Ga. 299.
Pollard v. Gammon, 12 S.E.2d 624, 63 Ga.App. 852.
Idaho.—Elson v. Jones, 245 P. 95, 42 Idaho 349.
Ill.—Rasmussen v. National Tea Co., 26 N.E.2d 523, 304 Ill.App. 353.
Kan.—Wing v. Mid-Continent Seeds, 225 P.2d 78, 170 Kan. 242.
Md.—Finkelstein v. Morganstern, 124 A. 872, 144 Md. 387.
Mich.—Quayle v. Billings, 222 N.W. 91, 244 Mich. 649.
Mo.—Fourcade v. Kansas City, 118 S.W.2d 1, 342 Mo. 847—Bollinger v. Curtis & Co. Mfg. Co., 249 S.W. 907.
Rearden v. F. W. Woolworth Co., App., 154 S.W.2d 373—Little Bros. Co. v. G. Mathes Iron & Metal Co., App., 223 S.W. 952.
Ohio.—Parker v. Mutual Life Ins. Co. of New York, 156 N.E. 231, 23 Ohio App. 535.
Or.—Sperry Flour Co. v. De Moss, 18 P.2d 242, 141 Or. 440, 90 A.L.R. 406.
Pa.—Campagna v. Lyles, 148 A. 527, 298 Pa. 352.
Tex.—Taber v. Smith, Civ App., 26 S.W.2d 722.
Va.—Chesapeake & O. Ry. Co. v. Crum, 125 S.E. 301, 140 Va. 333.
Wash.—Erickson v. Barnes, 107 P.2d 348, 6 Wash.2d 251.
4 C.J. p 919 note 51.

proof he is by law required to bear,[12] relieve him of the obligation of establishing particular facts or issues,[13] state or assume that a particular defense is available to him,[14] or which state or assume that appellant is not precluded by a particular defense;[14.5] which fail to require the jury to find certain facts essential to appellant's case;[14.10] or which give undue prominence to the testimony of witnesses for appellant.[14.15]

Furthermore, appellant cannot complain of instructions which adopt a measure of damages that is favorable to appellant, or more favorable to him than to appellee,[14.20] which adopt a measure of damages that could not have been more favorable to appellant,[15] or is more favorable to appellant than

12. Neb.—Sohler v. Christensen, 39 N.W.2d 837, 151 Neb. 843.
N.C.—Crowder v. Murray Const. Co., 135 S.E. 323, 192 N.C. 502.

13. Ala.—Citizens' Bank of Winfield v. Commercial Sav. Bank of Guin, 96 So. 324, 209 Ala. 280.
Cal.—Davidson v. Marin County, 304 P.2d 743, 147 C.A.2d 54—Kemp v. Van Bezel, 199 P. 1099, 53 C.A. 312.
Ga.—Mayes v. Simons, 8 S.E.2d 73, 189 Ga. 845, 130 A.L.R. 245—Kitchens v. Pool, 91 S.E. 81, 146 Ga. 229.
Ind.—Gatewood v. Lynch, 23 N.E.2d 289, 107 Ind.App. 168.
Ky.—Lever Bros. Co. v. Stapleton, 233 S.W.2d 1002, 313 Ky. 837—Clifton v. McMakin, 157 S.W.2d 85, 288 Ky. 806—Kentucky & West Virginia Power Co. v. Anderson, 156 S.W.2d 857, 288 Ky. 501—Howton v. Sovereign Camp Woodmen of the World, 172 S.W. 687, 162 Ky. 432.
Mass.—McClean v. University Club, 97 N.E.2d 174, 32 Mass. 68.
Mo.—Williams v. Guyot, 126 S.W.2d 1137, 344 Mo. 372.
N.C.—Forbes v. Harrison, 107 S.E. 447, 181 N.C. 461.
Ohio.—Dow Drug Co. v. Nieman, 13 N.E.2d 130, 57 Ohio App. 190—Hess v. Avon Const. Co., 171 N.E. 318, 34 Ohio App. 327.
S.C.—Dozier v. Charleston Consol. Ry. & Lighting Co., 131 S.E. 592, 133 S.C. 335—Loveland v. Collins, 96 S.E. 124, 109 S.C. 294.
Wash.—Heitmiller v. Prall, 184 P. 334, 108 Wash. 382.

14. Ariz.—Ainsworth v. Lipsohn, 196 P. 1028, 22 Ariz. 291.
Ark.—Arkansas Power & Light Co. v. Hughes, 76 S.W.2d 53, 189 Ark. 1015—St. Louis-San Francisco Ry. Co. v. Bishop, 33 S.W.2d 383, 182 Ark. 763, certiorari denied 51 S.Ct. 647, 283 U.S. 854, 75 L.Ed. 1461—Gerard B. Lambert Co. v. Fleming, 275 S.W. 912, 169 Ark. 532—Missouri Pac. R. Co. v. Curcio, 261 S.W. 896, 164 Ark. 350.
Cal.—Johnston v. Brewer, 105 P.2d 365, 40 C.A.2d 583.
Conn.—Hall v. Root, 145 A. 36, 109 Conn. 33.
Ga.—Pulliam v. Casey, 91 S.E.2d 807, 93 Ga.App. 324—Carroll v. Taylor, 75 S.E.2d 346, 87 Ga.App. 815—McClure Ten Cent Co. v. Humphries, 127 S.E. 151, 33 Ga.App. 523.
Idaho.—Burns v. Getty, 24 P.2d 31, 53 Idaho 347.
Ill.—See DeBeauviere v. Chicago School of Physical Education & Expression, 194 Ill.App. 296.
Ind.—New York, C. & St. L. R. Co. v. Peele, 164 N.E. 705, 88 Ind.App. 532, certiorari denied 49 S.Ct. 263, 279 U.S. 842, 73 L.Ed. 988.
Iowa.—Tibbals v. Sanborn, 191 N.W. 799, 195 Iowa 172.
Ky.—Kelemen v. Citizens' Bank of Cumberland's Liquidating Agent, 82 S.W.2d 355, 259 Ky. 292—West Kentucky Coal Co. v. Shoulders' Adm'r, 28 S.W.2d 479, 234 Ky. 427—Kentucky Utilities Co. v. Howard, 263 S.W. 360, 203 Ky. 829.
Mass.—Lincoln v. Finkelstein, 152 N.E. 332, 255 Mass. 486.
Mich.—Bewernitz v. Detroit, J. & C. Ry., 161 N.W. 976, 195 Mich. 528, L.R.A.1917E 767.
Miss.—Davis v. Waynesboro Hardware Co., 118 So. 541, 151 Miss. 532.
Mo.—Jacobs v. Danciger, 95 S.W.2d 1193, 339 Mo. 91—Spencer v. Quincy, O. & K. C. R. Co., 297 S.W. 353, 317 Mo. 492.
Haberman v. Kuhs, App., 270 S.W. 399—Callanan v. United Rys. Co. of St. Louis, App., 263 S.W. 443.
Neb.—Fimple v. Archer Ballroom Co., 35 N.W.2d 680, 150 Neb. 681—Wright v. Cameron, 27 N.W.2d 226, 148 Neb. 292.
N.H.—Grew v. Boston & M. R. R., 142 A. 707, 83 N.H. 383.
N.D.—McLean v. Foisie, 157 N.W. 840, 33 N.D. 646.
Ohio.—Dunlap v. Robinson, App., 136 N.E.2d 336—Ebeling v. Harman, App., 82 N.E.2d 425—Snow v. Cincinnati St. Ry. Co., 75 N.E.2d 220, 80 Ohio App. 369—John Shillito Co. v. Shanley, 153 N.E. 102, 21 Ohio App. 12.
Okl.—Gulf Oil Corp. v. Lemmons, 181 P.2d 568, 198 Okl. 596—Chicago, R. I. & P. Ry. Co. v. Cheek, 231 P. 1078, 105 Okl. 91—Chicago, R. I. & P. Ry. Co. v. Ward, 173 P. 212, 68 Okl. 201, affirmed 46 S.Ct. 275, 252 U.S. 18, 64 L.Ed. 430.
S.C.—Prisock v. International Agr. Corporation, 144 S.E. 579, 147 S.C. 58—Robinson v. Grand Lodge, Knights of Pythias, of the State of South Carolina, Jurisdiction of the Supreme Lodge, Knights of Pythias, of North America, South America, Europe, Asia, Africa, and Australia, 131 S.E. 774, 134 S.C. 86.
Tenn.—Thompson v. Malone & Hyde, 65 S.W.2d 1079, 16 Tenn.App. 152.
Tex.—Fred Harvey, Inc., v. Comegys, Civ.App., 233 S.W. 601—Panhandle & S. F. Ry. Co. v. Norton, Civ. App., 188 S.W. 1011.
Utah.—Miller v. Utah Consol. Mining Co., 178 P. 771, 53 Utah 366.
Vt.—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Davis v. Central Vermont Ry. Co., 92 A. 973, 88 Vt. 460.
Va.—Burton v. Oldfield, 79 S.E.2d 660, 195 Va. 544.
Wash.—Lamanna v. Scott Pub. Co., 296 P.2d 321, 48 Wash.2d 683—Tigner v. Zosel, 21 P.2d 239, 172 Wash. 552—Helf v. Hansen & Keller Truck Co., 9 P.2d 110, 167 Wash. 206—Yenor v. Spokane United Rys., 255 P. 947, 143 Wash. 541—Hansen v. Dodwell Dock & Warehouse Co., 170 P. 346, 100 Wash. 46, L.R.A.1918C 925.

14.5 Pa.—Susser v. Wiley, 39 A.2d 616, 350 Pa. 427.

14.10 Mo.—Welch v. McNeely, 269 S.W.2d 871.

14.15 Tex.—Cockrell v. Work, Civ. App., 94 S.W.2d 784, error dismissed.

14.20 Ky.—Settlemires v. Corum, 200 S.W.2d 105, 304 Ky. 105.
N.C.—Goeckel v. Stokely, 73 S.E.2d 618, 236 N.C. 604—Crouse v. Vernon, 59 S.E.2d 185, 232 N.C. 24.
Okl.—Krieger v. Marshall, 292 P.2d 379.
Pa.—Styborski v. Hartford Fire Ins. Co., 32 A.2d 543, 169 Pa.Super. 452.

15. Ala.—Horticultural Development Co. v. Loxley Farms Co., 106 So. 686, 214 Ala. 109.
Ariz.—Gila Water Co. v. Gila Land & Cattle Co., 238 P. 336, 28 Ariz. 531—Phœnix Ry. Co. of Arizona v. Ayala, 237 P. 189, 28 Ariz. 411.
Ark.—Reed Oil Co. v. Cain, 275 S.W. 333, 169 Ark. 309.
Cal.—Berkovitz v. American River Gravel Co., 215 P. 675, 191 C. 195—Hoffman v. Patterson, 176 P. 162, 179 C. 253.
Colo.—Schwartz v. Weiner, 30 P.2d 1110, 94 Colo. 251.
Conn.—Chykirda v. Yanush, 41 A.2d 449, 131 Conn. 565—Stoll v. Almon C. Judd Co., 138 A. 479, 106 Conn. 551, 53 A.L.R. 1042.

he is entitled to,[16] or than the rule which he contends should be applied;[17] which confine appellee's recovery to damages sustained during a period of time less than that warranted;[18] or which make an explanation of a charge in a manner advantageous to appellant.[19]

He cannot claim a reversal for instructions authorizing a verdict for himself on a hypothetical state of facts, some of which were not in evidence,[20]

Ga.—Ausley v. Cummings, 89 S.E. 1071, 145 Ga. 750.
Seaboard Air Line Ry. Co. v. Young, 148 S.E. 757, 40 Ga.App. 4—Atlanta & W. P. R. Co. v. Lambert, 147 S.E. 163, 39 Ga.App. 371—Southern Ry. Co. v. Woodward, 146 S.E. 561, 39 Ga.App. 173—Southern Ry. Co. v. Ray, 113 S.E. 590, 28 Ga.App. 792, reversed on other grounds 118 S.E. 53, 155 Ga. 579, and conformed to 118 S.E. 411, 30 Ga.App. 376—Covington v. J. I. Case Threshing Mach. Co., 107 S.E. 370, 26 Ga.App. 781.

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Gannon, 112 N.E. 411, 63 Ind. App. 289.

Iowa.—Conover v. Hasselman, 202 N. W. 502, 199 Iowa 661—Snyder v. Sargeant, 196 N.W. 22, 197 Iowa 475.

Ky.—Dittcher v. Binkley, 64 S.W.2d 502, 251 Ky. 134—Chesapeake & O. Ry. Co. v. Shirley's Adm'x, 291 S. W. 395, 218 Ky. 337—Louisville & N. R. Co. v. Wingo's Adm'x, 281 S.W. 170, 213 Ky. 336.

Md.—Mullineaux v. Voltz, 132 A. 594, 150 Md. 114.

Mo.—Becker v. Thompson, 76 S.W. 2d 357, 336 Mo. 27—Schlueter v. East St. Louis Connecting Ry. Co., 296 S.W. 105, 316 Mo. 1266.
Boudreau v. Brown, App., 39 S.W. 2d 455—Uhrhan v. Morie, App., 293 S.W. 483—Duerkob v. Brown, App., 255 S.W. 962—Jourdan v. Sheets, App., 248 S.W. 641—Cotton Lumber Co. v. La Crosse Lumber Co., 204 S.W. 957, 200 Mo.App. 7.

N.Y.—Leventhal v. Liberman, 186 N. E. 675, 262 N.Y. 209, 88 A.L.R. 782.
Hopewell Bldg. Co. v. Callan, 193 N.Y.S. 504, 200 App.Div. 588.

N.C.—Merrill v. Tew, 110 S.E. 850, 183 N.C. 172—Borden v. Carolina Power & Light Co., 93 S.E. 442, 174 N.C. 72.

N.D.—Butler v. Ætna Ins. Co. of Hartford, Conn., 256 N.W. 214, 64 N.D. 764—Paul v. St. Paul Fire & Marine Ins. Co., 253 N.W. 752, 64 N.D. 479.

Pa.—Hunter v. Pope. 137 A. 731, 289 Pa. 560.

S.C.—Jones v. Atlantic Coast Line R. Co., 94 S.E. 490, 108 S.C. 217.

Tex.—Earnhardt Development Co. v. Ray, Civ.App., 51 S.W.2d 732—Kansas City, M. & O. Ry. Co. v. Perry, Civ.App., 296 S.W. 683, reversed on other grounds Kansas City, M. & O. Ry. Co. of Texas v. Perry, Com.App., 6 S.W.2d 111.

Wash.—Clements v. Cook, 191 P. 874, 112 Wash. 217.

Wyo.—**Corpus Juris quoted in** Shikany v. Salt Creek Transp. Co., 45 P.2d 645, 650, 48 Wyo. 190.
4 C.J. p 920 note 52.

16. Ala.—Archer v. Sibley, 78 So. 849, 201 Ala. 495.
Steel Cities Chemical Co. v. Jenkins, 84 So. 408, 17 Ala.App. 221.

Ark.—Missouri State Life Ins. Co. v. Case, 71 S.W.2d 199, 189 Ark. 223—Wofford v. De Queen Real Estate Co., 216 S.W. 710, 141 Ark. 310.

Cal.—Haskins v. Southern Pac. Co., 39 P.2d 895, 3 C.A.2d 177.

Ga.—McKinney v. Woodard, 94 S.E. 2d 620, 94 Ga.App. 340—Steve M. Solomon, Jr., Inc. v. Edgar, 88 S.E.2d 167, 92 Ga.App. 207—Whitton v. Central of Ga. Ry. Co., 79 S.E.2d 331, 89 Ga.App. 304—Brown v. West, 133 S.E. 304, 35 Ga.App. 444.

Ill.—Wall v. Greene, 52 N.E.2d 303, 321 Ill.App. 161—Washington v. Peterson, 49 N.E.2d 883, 320 Ill. App. 140.

Ind.—Tate v. West, 94 N.E.2d 371, 120 Ind.App. 519—Boram v. St. Joseph Loan & Trust Co., 141 N.E. 364, 80 Ind.App. 467.

Iowa.—Conover v. Hasselman, 202 N. W. 502, 199 Iowa 661—Seitsinger v. Iowa City Electric Ry. Co., 165 N. W. 205, 181 Iowa 739—Hanen v. Lenander, 160 N.W. 18, 178 Iowa 569—Odem v. Vandewater, 159 N. W. 1033, 178 Iowa 478.

Ky.—Monarch Coal & Coke Co. v. W. E. Gunn & Co., 10 S.W.2d 1109, 226 Ky. 306—Vaughn v. Shady Grove Milling Co., 239 S.W. 37, 194 Ky. 326—Paducah Cooperage Co. v. Arkansas Stave So., 237 S.W. 412, 193 Ky. 774—Marksberry v. Weir, 190 S.W. 1108, 173 Ky. 316.

Md.—Bailey v. Ford, 135 A. 835, 151 Md. 664.

Mass.—Hoshor-Platt Co. v. Miller, 131 N.E. 310, 238 Mass. 518.

Mich.—Odell v. Powers, 278 N.W. 819, 284 Mich. 201—Motts v. Michigan Cab Co., 264 N.W. 855, 274 Mich. 437—Fink v. Superior Lamp & Shade Co., 213 N.W. 453, 238 Mich. 390—Puffer v. American Ry. Express Co., 191 N.W. 27, 221 Mich. 426.

Minn.—Geo. E. Lennon, Inc., v. McDermott, 161 N.W. 211, 136 Minn. 30.

Mo.—Lerner v. Yeghishian, App., 271 S.W.2d 588—Brinkmann Realty Co. v. Deidesheimer, App., 201 S.W. 2d 503—Spears v. Carter, 24 S.W. 2d 717, 224 Mo.App. 726—South Side Buick Auto Co. v. Schmitter, App., 5 S.W.2d 687—Miller v. Firemen's Ins. Co., 229 S.W. 261, 206 Mo.App. 475.

Neb.—In re Johnson's Estate, 16 N. W.2d 504, 145 Neb. 333.

N.C.—Stamey v. Town of Burnsville, 126 S.E. 103, 189 N.C. 39.

Okl.—Wilson & Co. v. Hickey, 97 P. 2d 564, 186 Okl. 324.

Pa.—O'Hara v. City of Scranton, 19 A.2d 114, 342 Pa. 137—Yost v. West Penn. Rys. Co., 9 A.2d 368, 336 Pa. 407.

S.C.—Anderson v. Elliott, 90 S.E.2d 367, 228 S.C. 371.

Tex.—Hutson v. Chambless, Civ.App., 295 S.W.2d 723, reversed on other grounds, Sup., 300 S.W.2d 943—American Automobile Ins. Co. v. Fox, Civ.App., 218 S.W. 92—Wm. Cameron & Co. v. Gamble, Civ. App., 216 S.W. 459—Hicks v. Hunter, Civ.App., 183 S.W. 792.

Wyo.—**Corpus Juris quoted in** Shikany v. Salt Creek Transp. Co., 45 P. 2d 645, 650, 48 Wyo. 190—Garner v. Brown, 223 P. 217, 31 Wyo. 77.
4 C.J. p 920 note 53.

17. Ariz.—Brown v. Jerrild, 239 P. 795, 29 Ariz. 121.

Cal.—Graham v. Yellow Cab Co. of Los Angeles, 13 P.2d 773, 125 C. A. 141.

Ga.—Payne v. Norris, 78 S.E.2d 351, 88 Ga.App. 850—Southern Ry. Co. v. Lunsford, 194 S.E. 602, 57 Ga. App. 53, certiorari denied 59 S.Ct. 78, 305 U.S. 619, 83 L.Ed. 395.

Kan.—Pontious v. Bath, 223 P.2d 985, 170 Kan. 103.

Me.—Lewiston Trust Co. v. Cobb, 98 A. 756, 115 Me. 264.

Mo.—Finke v. Boyer, 56 S.W.2d 372, 331 Mo. 1242.

Okl.—Campbell v. Wood, 278 P. 281, 137 Okl. 90.

18. Ind.—Pittsburgh, C., C. & St. L. Ry. Co. v. Kearns, 128 N.E. 42, 191 Ind. 1.

Mass.—Therrien v. Le Blanc, 185 N. E. 15, 282 Mass. 328.

Mont.—De Vore v. Mutual Life Ins. Co. of New York, 64 P.2d 1071, 103 Mont. 599.
4 C.J. p 920 note 54.

19. Ala.—Greenwood Café v. Lovinggood, 72 So. 354, 197 Ala. 34.
4 C.J. p 920 note 55.

20. Ala.—Giddy v. Shotts, 108 So. 573, 214 Ala. 627.

Ga.—Cowart v. Gunn, 83 S.E.2d 832, 90 Ga.App. 680.

Ind.—Pittsburgh, C., C. & St. L. Ry. Co. v. Nichols, 130 N.E. 546, 78 Ind.App. 361.

or for instructions adopting his pleadings in stating his contentions,[21] or limiting or misstating the allegations of the pleadings in a manner injurious to appellee,[22] or directing the jury's consideration to evidence or circumstances favorable to appellant.[23]

Moreover, he cannot urge error in an instruction which was more favorable than one requested by him,[24] or complain of instructions as contradictory when the instruction which is erroneous is favorable to him,[25] or where each of the contradictory instructions is more favorable to appel-

Mo.—Grubbs v. Kansas City Public Service Co., 45 S.W.2d 71, 329 Mo. 390.
Lampe v. American Ry. Express Co., App., 266 S.W. 1009.
4 C.J. p 920 note 56.

21. Tex.—Emerson-Brantingham Implement Co. v. Roquemore, Civ. App., 214 S.W. 679.
4 C.J. p 920 note 57.

22. Ala.—Louisville & N. R. Co. v. Wright, 80 So. 93, 202 Ala. 255.
Colo.—Commercial Credit Co. v. Calkins, 241 P. 529, 78 Colo. 257.
Ga.—F. L. Allison & Co. v. McMath Plantation Co., 115 S.E. 916, 29 Ga.App. 414.
Minn.—James E. Carlson, Inc., v. Babler, 174 N.W. 824, 144 Minn. 125.
Ohio.—Community Traction Co. v. Neorr, 3 N.E.2d 638, 52 Ohio App. 190—American Security & Trust Co. of Washington, D. C., v. White, 181 N.E. 918, 42 Ohio App. 272.
S.C.—Mann v. Seaboard Air Line Ry. Co., 136 S.E. 234, 138 S.C. 241.

23. Conn.—Knox v. Binkoski, 122 A. 400, 99 Conn. 582.
Ill.—American Appraisal Co. v. Pio, 246 Ill.App. 467—Barbour v. Ætna Life Ins. Co., 224 Ill.App. 312.
Iowa.—Morrow v. Scoville, 221 N.W. 802, 206 Iowa 1134—Fisher v. Cedar Rapids & M. C. Ry. Co., 157 N.W. 860, 177 Iowa 406.
N.J.—Belperche v. Erie R. Co., 166 A. 463, 111 N.J.Law 81.
Pa.—First Nat. Bank v. Fry, 144 A. 416, 294 Pa. 425.
Tenn.—Turner v. National Life & Accident Ins. Co., 17 S.W.2d 13, 159 Tenn. 130.
Tex.—Dunn v. Land, Civ.App., 193 S.W. 698.
Vt.—Legier v. Deveneau, 126 A. 892, 98 Vt. 188.
Wis.—Heintz v. Schenck, 186 N.W. 610, 176 Wis. 562.

24. Ala.—Ferguson v. Callahan, 76 So.2d 856, 262 Ala. 117.
Cal.—Fresno City Lines v. Herman, 217 P.2d 987, 97 C.A.2d 366—Burge v. Los Angeles Transit Lines, 217 P.2d 752, 97 C.A.2d 292—Balzeca v. Lorentzen, 127 P.2d 1018, 53 C.A.2d 370.
Conn.—Tefft v. New York, N. H. & H. R. Co., 163 A. 762, 116 Conn. 127—Grasso v. Frattolillo, 149 A. 838, 111 Conn. 209.
Kan.—Duran v. Mission Mortuary, 258 P.2d 241, 174 Kan. 565.
Ky.—W. M. Abbott Transfer Co. v. Kruse, 114 S.W.2d 781, 272 Ky. 479—Mann's Ex'r v. Levman Motor Co., 28 S.W.2d 956, 234 Ky. 639.
Minn.—Dose v. Yager, 42 N.W.2d 420, 231 Minn. 90.
Mo.—Moss v. Mindlin's, Inc., 301 S. W.2d 761—Kenefick v. Terminal R. Ass'n of St. Louis, 207 S.W.2d 294—Gillen v. Bayfield, 46 S.W.2d 571, 329 Mo. 681.
Gabriel v. Farmers Mut. Fire Ins. Co. of Rock Tp., Jefferson County, App., 108 S.W.2d 628—Kirk v. Metropolitan Life Ins. Co., App., 72 S.W.2d 185, transferred, see, 81 S.W.2d 333, 336 Mo. 765—Wentzel v. Lake Lotawana Development Co., 48 S.W.2d 185, 226 Mo.App. 960—Alexander v. Barnes Grocery Co., 7 S.W.2d 370, 223 Mo. App. 1.
Tex.—Lockley v. Page, 180 S.W.2d 616, 142 Tex. 594.
Winn v. Warner, Civ.App., 199 S.W.2d 560, error refused no reversible error—Carter v. Ferris, Civ.App., 93 S.W.2d 504—Levy v. Rogers, Civ.App., 75 S.W.2d 304—Chase Bag Co. v. Longoria, Civ. App., 45 S.W.2d 242.
4 C.J. p 920 note 58—43 C.J. p 1326 note 58.

25. Ariz.—Kreig v. Hammels, 240 P. 1031, 29 Ariz. 280—Arizona Pub. Co. v. Harris, 181 P. 373, 20 Ariz. 446.
Ark.—Ozan Graysonia Lumber Co. v. Ward, 66 S.W.2d 1074, 188 Ark. 557—Hunt v. Hurst, 280 S.W. 652, 170 Ark. 644—Missouri Pac. R. Co. v. American Fruit Growers, 260 S.W. 39, 163 Ark. 318—Ft. Smith Rim & Bow Co. v. Qualls, 225 S.W. 892, 146 Ark. 475.
Cal.—Barkhaus v. Producers' Fruit Co., 219 P. 435, 192 C. 200.
Pomerantz v. Bryar Motors, 206 P.2d 440, 92 C.A.2d 114—Happoldt v. Guardian Life Ins. Co. of America, 203 P.2d 55, 90 C.A.2d 386—Christianson v. Hollings, 112 P.2d 723, 44 C.A.2d 332—Richmond v. Moore, 284 P. 681, 103 C.A. 173—Wright v. Foreman, 261 P. 481, 86 C.A. 595—Kofoid v. Beckner, 234 P. 113, 70 C.A. 624—Poor v. W. P. Fuller & Co., 159 P. 233, 30 C.A. 650.
Ind.—Evansville & T. H. R. Co. v. Hoffman, 118 N.E. 151, 67 Ind.App. 571.
Iowa.—Hall v. Crow, 34 N.W.2d 195, 240 Iowa 81—Freeby v. Incorporated Town of Sibley, 191 N.W. 867, 195 Iowa 1032—Aler v. West, 183 N.W. 321—Hopkins v. Convy, 182 N.W. 225, 191 Iowa 402.
Ky.—Louisville & N. R. Co. v. Moore's Adm'r, 166 S.W.2d 68, 292 Ky. 223—Eagle Coal Co. v. Patrick's Adm'r, 170 S.W. 960, 161 Ky. 333.
Mich.—Pfeiffer v. Haines, 30 N.W.2d 862, 320 Mich. 263—Bostetter v. Kirsch Co., 30 N.W.2d 276, 319 Mich. 547.
Miss.—Crane v. Adams, 84 So.2d 530—Mayfield Motor Co. v. Parker, 75 So.2d 435, 222 Miss. 152—Hercules Powder Co. v. Tyrone, 124 So. 74, 155 Miss. 75, suggestion of error overruled 124 So. 475, 155 Miss. 75—Yazoo & M. V. R. Co. v. Decker, 116 So. 287, 150 Miss. 621—American Ins. Co. v. Crawford, 70 So. 579, 110 Miss. 493.
Mo.—Bond v. Weiner, 140 S.W.2d 25, 346 Mo. 258—Wells v. City of Jefferson, 132 S.W.2d 1006, 345 Mo. 239—Jones v. Chicago, B. & Q. R. Co., 125 S.W.2d 5, 343 Mo. 1104—First Nat. Bank v. Security Mut. Life Ins. Co. of Binghamton, N. Y., 222 S.W. 832, 283 Mo. 336.
Williams v. Ætna Life Ins. Co. of Hartford, Conn., App., 154 S.W.2d 426—Lonergan v. Love, 150 S.W.2d 534, 235 Mo.App. 1066—Home Ins. Co. of New York v. Savage, 103 S. W.2d 900, 231 Mo.App. 569—Jones v. West Side Buick Auto Co., 93 S. W.2d 1083, 231 Mo.App. 187—Da Pron v. Neu, App., 43 S.W.2d 915—Crowley v. American Car & Foundry Co., App., 279 S.W. 212—Adams v. St. Louis-San Francisco Ry. Co., App., 272 S.W. 984—Tutle v. Kennedy, App., 272 S.W. 117—Lowther v. St. Louis-San Francisco Ry. Co., 261 S.W. 702, 214 Mo.App. 293—Rabok Mfg. Co. v. Agricultural Ins. Co. of Watertown, N. Y., 236 S.W. 916, 212 Mo.App. 600—Moran v. Kansas City Rys. Co., App., 232 S. W. 1111—Malone v. St. Louis-San Francisco Ry. Co., 213 S.W. 864, 202 Mo.App. 489—Hughes v. Bilby, App., 198 S.W. 179—Holdaway v. Lusk, App., 194 S.W. 891—American Spectacle Co. v. Denizet, App., 193 S.W. 939—Rail v. National Newspaper Ass'n, 192 S.W. 129, 198 Mo.App. 463, certiorari quashed State ex rel. National Newspapers' Ass'n v. Ellison, 200 S.W. 433—Allaire, Woodward & Co. v. Cole, App., 187 S.W. 816—Papic v. Freund, App., 181 S.W. 1161—Hufft v. Dougherty, 171 S.W. 17, 184 Mo. App. 374.
Mont.—Brown v. Homestake Exploration Corporation, 39 P.2d 168, 98 Mont. 305.

lant than he is entitled to.[26] Where his adversary was entitled to a directed verdict, appellant cannot urge objections to the instructions;[27] nor can he complain of an instruction, on a particular issue, which is peremptory and in his favor.[28]

The refusal or modification of a requested instruction more onerous on appellant, or less favorable to him, or more beneficial to appellee, than that given affords him no ground of complaint;[29] nor does a refusal of requested instructions where, in lieu of them, the court directs a verdict for appellant on the issues to which they relate,[30] where the effect of the refusal is to eliminate a cause of action on which a verdict for appellee might be returned,[31] or where the instruction requested has a natural tendency to harm appellant.[32]

Failure to define a relevant word may not be objected to on appeal where its popular meaning is

N.C.—Borden v. Carolina Power & Light Co., 93 S.E. 442, 174 N.C. 72.
Okl.—Lutner v. Shoffner, 73 P.2d 1140, 181 Okl. 271.
Tex.—Compton v. Franks, Civ.App., 222 S.W. 988, error refused—Panhandle & S. F. Ry. Co. v. Brooks, Civ.App., 199 S.W. 665, affirmed, Com.App., 222 S.W. 186.
Va.—Burch v. Virginia Public Service Co., 194 S.E. 698, 169 Va. 460—Snyder v. Fatherly, 163 S.E. 358, 158 Va. 335.
Wash.—Plastino v. City of Seattle, 205 P. 404, 119 Wash. 195—Marton v. Pickrell, 191 P. 1101, 112 Wash. 117.
4 C.J. p 920 note 59.

26. Mo.—Yancey v. Central Mut. Ins. Ass'n, App., 77 S.W.2d 149.
4 C.J. p 920 note 60.

27. Iowa.—Wilson v. Else, 216 N.W. 33, 204 Iowa 857.
Tex.—International Travelers' Ass'n v. Votaw, Civ.App., 197 S.W. 237—Heard v. Bowen, Civ.App., 184 S.W. 234.
Vt.—La Mountain's Adm'x v. Rutland R. Co., 106 A. 517, 93 Vt. 21.
4 C.J. p 920 note 61.

28. Ala.—Wilson v. Orr, 97 So. 133, 210 Ala. 93.
Ga.—Herrington v. Herrington, 155 S.E. 51, 42 Ga.App. 126—Hawks v. Moore, 109 S.E. 807, 27 Ga.App. 555.
Ind.—Public Utilities Co. v. Handorf, 112 N.E. 775, 185 Ind. 254.
Iowa.—Rosenstein v. Smith, 257 N. W. 397, 218 Iowa 1381.
Ky.—Challinor v. Axton, 54 S.W.2d 600, 246 Ky. 76—Wight v. Rose, 273 S.W. 472, 209 Ky. 803.
Minn.—Loining v. Kilgore, 45 N.W. 2d 554, 232 Minn. 347.
Mo.—State ex rel. and to Use of Kibble v. First Nat. Bank, App., 22 S.W.2d 185—Keady v. Stix, Baer & Fuller Co., App., 15 S.W.2d 379.
Or.—Nordin v. Lovegren Lumber Co., 156 P. 587, 80 Or. 140.

29. Ala.—Hooper Motor Co. v. Harris, 146 So. 618, 226 Ala. 278.
Ariz.—Bruno v. Grande, 251 P. 550, 31 Ariz. 206.
Ark.—Byrd v. Galbraith, 288 S.W. 717, 172 Ark. 219—Hunt v. Hurst, 280 S.W. 652, 170 Ark. 644—Prescott & N. W. R. Co. v. Thomas, 167 S.W. 486, 114 Ark. 56.
Cal.—Cucuk v. Payne, 296 P.2d 7, 140 C.A.2d 881.
Conn.—Cornwell v. Rosoff, 78 A.2d 544, 137 Conn. 458.
Ga.—Scott v. Gillis, 43 S.E.2d 95, 202 Ga. 220.
Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793—Smith v. Payne, 70 S.E.2d 163, 85 Ga.App. 693—Mabry v. Holcomb, 60 S.E.2d 411, 82 Ga. App. 1.
Idaho.—Ramon v. Interstate Utilities Co., 170 P. 88, 31 Idaho 117.
Ill.—See Johnson v. Chicago Surface Lines, 209 Ill.App. 26.
Kan.—Jelf v. Cottonwood Falls Gas Co., 178 P.2d 992, 162 Kan. 713—Stoner v. Wilson, 36 P.2d 999, 140 Kan. 383.
Ky.—Raidt v. Blount, 171 S.W.2d 233, 294 Ky. 172—Vincennes Bridge Co. v. Poulos, 27 S.W.2d 952, 234 Ky. 243—Acme Mills v. Moore, 22 S.W. 2d 105, 231 Ky. 720—Casey v. Hart Wallace & Co., 222 S.W. 111, 188 Ky. 441—Pitman v. Drown, 195 S. W. 815, 176 Ky. 263.
Md.—Francies v. Debaugh, 71 A.2d 455, 194 Md. 448—Peoples Drug Stores v. Windham, 12 A.2d 532, 178 Md. 172—S. J. Van Lill Co. v. Frederick City Packing Co., 141 A. 898, 155 Md. 303—Gordon v. Opalecky, 137 A. 299, 152 Md. 536—Himmel v. Levinstein, 103 A. 848, 132 Md. 317.
Mich.—Noll v. Hirschfeld, 195 N.W. 101, 224 Mich. 439.
Minn.—Gibbons v. Yunker, 177 N.W. 632, 145 Minn. 401.
Mo.—Schnell v. Landis Mach. Co., 199 S.W. 993.
Kiger v. Sanko, App., 1 S.W.2d 218—Coyne v. Golland, App., 243 S.W. 376.
Mont.—Hageman v. Arnold, 254 P. 1070, 79 Mont. 91.
N.C.—Woods v. Roadway Express, 25 S.E.2d 856, 223 N.C. 269—Miller v. Greenwood, 10 S.E.2d 708, 218 N.C. 146.
Ohio.—Community Traction Co. v. Neorr, 3 N.E.2d 638, 52 Ohio App. 190.
Okl.—Williams v. Terbush, 256 P.2d 434, 208 Okl. 401—Munding v. Walnut Creek Milling Co., 231 P. 858, 105 Okl. 124.
S.C.—Bosdell v. Dixie Stores Co., 167 S.E. 834, 168 S.C. 520—Southern Realty & Inv. Co. v. Keenan, 83 S. E. 39, 99 S.C. 200.
Tex.—Pecos & N. T. Ry. Co. v. Suitor, 218 S.W. 1034, 110 Tex. 250.
Fort Worth Belt Ry. Co. v. Davis, Civ.App., 254 S.W. 219—San Antonio, U. & G. R. Co. v. Green, Civ. App., 182 S.W. 392.
Vt.—Roberts v. Gray, 122 A.2d 855, 119 Vt. 153.
52 C.J. p 174 note 19.

30. S.D.—Hulm v. Chicago, M. & St. P. Ry. Co., 171 N.W. 210, 41 S.D. 422.

31. Colo.—Arkansas Valley Bank v. Esser, 224 P. 227, 75 Colo. 110.

32. Ala.—Johnson v. Pruitt, 194 So. 406, 29 Ala.App. 174, reversed on other grounds 194 So. 409, 239 Ala. 44.
Cal.—Earl v. Times-Mirror Co., 196 P. 57, 185 C. 165.
Ga.—Donaldson v. Central of Georgia Ry. Co., 159 S.E. 738, 43 Ga.App. 480.
Ky.—Chesapeake & O. Ry. Co. v. Bland, 188 S.W. 498, 171 Ky. 430.
Mass.—Cohen v. James Millar Co., 164 N.E. 820, 266 Mass. 551.
Mich.—In re Turner's Estate, 186 N. W. 402, 217 Mich. 359.
Mo.—Schuler v. St. Louis Can Co., 18 S.W.2d 42, 322 Mo. 765.
N.J.—Mosca v. Atlantic & S. Ry. Co., 124 A. 600, 100 N.J.Law 181, 1 N. J.Misc. 615.
Or.—Gile v. Lasselle, 171 P. 741, 89 Or. 107.
S.C.—Duncan v. Clement, 126 S.E. 752, 131 S.C. 75.
Tex.—San Antonio, U. & G. R. Co. v. Green, Civ.App., 182 S.W. 392.
55 C.J. p 866 note 93.

Preponderance of evidence

Refusal of requested instruction that preponderance of evidence did not refer to number of witnesses was not harmful to defendant having greater number of witnesses.
Mo.—Schuler v. St. Louis Can Co., 18 S.W.2d 42, 322 Mo. 765.

more favorable to appellant than its legal meaning,[33] or where, under the definition thereof, the court might have found against appellant as a fact;[34] and appellant cannot complain of appellee's failure to submit requests for instructions.[35]

The party having the burden of proof cannot complain of a failure to charge with reference to it.[36]

e. Verdict, Findings, Conclusions of Law, and Judgment

Error favorable to appellant is not open for review where it appears in the verdict, findings, conclusions of law, or order, judgment, or decree.

Error favorable to an appellant is not open for review where it appears either in the verdict,[37] findings,[38] conclusions of law,[39] or order, judgment, or decree;[40] and the rule applies also to error in

33. Tex.—Commercial Standard Ins. Co. v. Noack, Tex.Civ.App., 45 S.W.2d 798, reversed on other grounds, Com.App., 62 S.W.2d 72.

34. Mo.—Busch v. Louisville & N. R. Co., 17 S.W.2d 337, 322 Mo. 469, certiorari denied Louisville & N. R. Co. v. Busch, 50 S.Ct. 27, 280 U.S. 569, 74 L.Ed. 622.

35. Mo.—Pavlo v. Forum Lunch Co., 19 S.W.2d 510, 225 Mo.App. 167.
Va.—Virginia Electric & Power Co. v. Evich, 146 S.E. 265, 152 Va. 236.

36. Tex.—Kuehn v. Kuehn, Civ.App., 259 S.W. 290.

37. Ala.—McEntyre v. First Nat. Bank, 171 So. 913, 27 Ala.App. 311.
Cal.—McNett v. Volfi, 269 P. 932, 205 C. 89.
Menges v. Robinson, 26 P.2d 882, 135 C.A. 161—Connerly v. Correia, 226 P. 841, 66 C.A. 570.
Colo.—O'Connor v. Boulder Colorado Sanitarium Ass'n, 111 P.2d 633, 107 Colo. 290.
Ga.—Greenwood v. Starr, 163 S.E. 500, 174 Ga. 503.
Ind.—Conrad v. Parks, 44 N.E.2d 503, 112 Ind.App. 301.
Mich.—Ortynski v. Grand Trunk Western R. Co., 11 N.W.2d 326, 307 Mich. 61—Robertson & Wilson Scale & Supply Co. v. Richman, 180 N.W. 470, 212 Mich. 334.
Mo.—Kaimann v. Kaimann Bros., App., 182 S.W.2d 458—Lindenlaub v. Ozora Marble Quarries Co., App., 70 S.W.2d 1110.
Ohio.—George B. Scrambling Co. v. Tennant Drug Co., 158 N.E. 282, 25 Ohio App. 197.
Okl.—Evans v. Smith, 150 P. 1096, 50 Okl. 285.
Pa.—Mature v. Angelo, 97 A.2d 59, 373 Pa. 593.
S.C.—Speights v. Commissioners of Public Works of City of Union, 122 S.E. 401, 128 S.C. 59.
Tex.—Texas & N. O. R. Co. v. Rittimann, Civ.App., 87 S.W.2d 745—Sanchez v. McKittrick, Civ.App., 25 S.W.2d 935—Smith-Boyett Co. v. Adams, Civ.App., 16 S.W.2d 925.
4 C.J. p 921 note 68—54 C.J. p 607 notes 39, 40.

38. Cal.—Whann v. Doell, 221 P. 899, 192 C. 680—Reher v. Reed, 176 P. 170, 179 C. 235—People v. Banning Co., 140 P. 587, 167 C. 643.
McCarthy v. McCarthy, 185 P.2d 821, 82 C.A.2d 166—Tuman v. Brown, 138 P.2d 363, 59 C.A.2d 16—Smith v. Herron, 18 P.2d 1002, 129 C.A. 479—Mahood v. Mutual Motors, 299 P. 117, 113 C.A. 719—Easom v. General Mortg. Co., 281 P. 514, 101 C.A. 186—Sweet v. Hamilothoris, 258 P. 652, 84 C.A. 775—Jackson v. Allen, 203 P. 411, 55 C.A. 257—Espinosa v. Stuart, 199 P. 66, 52 C.A. 477.
Ga.—Southern Cotton Oil Co. v. Thomas, 117 S.E. 456, 155 Ga. 99.
Ill.—See Kotite v. Goselle, 185 Ill. App. 116.
Ind.—State v. Wright, 175 N.E. 666, 97 Ind.App. 660—Tolsom v. Buttolph, 143 N.E. 258, 82 Ind.App. 283.
Iowa.—Pengilly v. Southern Land Co., 157 N.W. 146.
Minn.—Walsh v. Kuechenmeister, 265 N.W. 340, 196 Minn. 483.
Mont.—Mathews v. Marsden, 230 P. 775, 71 Mont. 502.
Ohio.—Hiler v. Hiler, 14 Ohio App. 174.
R.I.—Freestone v. United Elec. Rys. Co., 89 A.2d 195, 79 R.I. 382.
Tex.—Bewley Mills v. First Nat. Bank, Civ.App., 110 S.W.2d 201, error dismissed—Williams v. Safety Cas. Co., Civ.App., 97 S.W.2d 729, reversed on other grounds 102 S.W.2d 178, 129 Tex. 184—Frazier v. Crews, Civ.App., 255 S.W. 673—Vaky v. Phelps, Civ.App., 194 S.W. 601, error refused.
Vt.—Cook v. Holden, 35 A.2d 353, 113 Vt. 409.
4 C.J. p 921 note 69.

Inconsistencies in findings

Where court made certain inconsistent findings, but such findings, if they had been made in accordance with the evidence, would not have been more favorable to appellants, appellants could not complain of inconsistencies on appeal.
Cal.—Chamberlain v. Wakefield, 213 P.2d 62, 95 C.A.2d 280.

Finding for intervener on matters not in issue

In replevin, the fact that the jury found that the intervener was entitled to certain specified property not involved in the litigation was without prejudice to the intervener.
Minn.—Cohen v. Seashore, 198 N.W. 1009, 159 Minn. 345.

39. Ky.—Harris v. Cincinnati, N. O. & T. P. Ry. Co., 197 S.W. 464, 176 Ky. 846.
Mich.—Walkinshaw v. Knox, 197 N.W. 522, 226 Mich. 298.
Mo.—Citizens' Bank of Clovis v. Cowart, App., 255 S.W. 931.
Wash.—Knatvold v. Rydman, 182 P. 2d 9, 28 Wash.2d 178.
4 C.J. p 922 note 70.

Applying recent amendment

Defendants, in a suit for injunction to compel compliance with a zoning ordinance, could not complain of the court's application of an amendment enacted after the commencement of suit which benefited them.
Wis.—Bouchard v. Zetley, 220 N.W. 209, 196 Wis. 635.

40. Ala.—Clark v. Ingram, 160 So. 229, 230 Ala. 160—City of Birmingham v. Emond, 134 So. 622, 223 Ala. 20—Morrison v. Chambers, 103 So. 666, 212 Ala. 574.
Ark.—Marion Mach. Foundry & Supply Co. v. Colcord, 294 S.W. 361, 174 Ark. 90—Stephens v. Clark, 181 S.W. 895, 121 Ark. 292.
Cal.—Pacific Gas & Electric Co. v. Scott, 75 P.2d 1054, 10 C.2d 581—Maxwell Hardware Co. v. Foster, 277 P. 327, 207 C. 167—Irvine v. MacGregor, 265 P. 218, 203 C. 583—In re Bergland's Estate, 170 P. 400, 177 C. 227.
Coen v. Superior Optical Co., 221 P.2d 183, 99 C.A.2d 28—Kallmeyer v. Poore, 125 P.2d 924, 52 C.A.2d 142—Epperson v. Cappellino, 298 P. 533, 113 C.A. 473.
Colo.—Wellshire Land Co. v. City and County of Denver, 87 P.2d 1, 103 Colo. 416—Board of Com'rs of San Miguel County v. McFerson, 9 P.2d 614, 90 Colo. 408—Ady v. Dodge, 262 P. 921, 83 Colo. 99—Keith v. Schuck, 190 P. 530, 68 Colo. 480—Delta Land & Orchard Co. v. Zaninetti, 170 P. 964, 64 Colo. 268.
Conn.—Warneke v. Preissner, 131 A. 25, 103 Conn. 503.
Fla.—Fawcett v. Weaver, 163 So. 561, 121 Fla. 245—Piper v. Cooper-Athabar Real Estate & Mortgage Co., 151 So. 495, 113 Fla. 327.
Ga.—Jackson v. Davis, 45 S.E.2d 278, 203 Ga. 39—Bennett v. Patten, 95 S.E. 690, 148 Ga. 66.
Hawaii.—Kondo v. Dai Yen Chang, 31 Hawaii 7.
Idaho.—Pringle v. Summers, 262 P. 512, 45 Idaho 349.

the failure of the court to make findings of fact and conclusions of law generally or in respect of a particular issue or matter.[41]

On the other hand, this does not mean that merely because a judgment is rendered in his favor a party cannot complain, there being a wide difference between a judgment in favor of a party and error in his favor, since one may be prejudiced by a judgment although it is in his favor where it is not for the thing he asks or is for less than he asks.[42] Moreover, where a judgment in appellant's favor is based on reversible error, it has been held that he is not bound to wait until the adverse party chooses to attack it, but may himself secure its reversal in

Ind.—Fisher v. Rosander, 151 N.E. 12, 84 Ind.App. 694.

Iowa.—Conn v. Heaps, 216 N.W. 73, 205 Iowa 248—Chariton Cemetery Co. v. Chariton Granite Works, 197 N.W. 457, 197 Iowa 403, 32 A.L.R. 1402.

Kan.—Dougan v. Board of Com'rs of Shawnee County, 43 P.2d 223, 141 Kan. 554—Ruf v. Grimes, 179 P. 378, 104 Kan. 335.

Ky.—Prewitt v. George, 162 S.W.2d 23, 290 Ky. 559—Dotson v. Steele, 248 S.W. 191, 198 Ky. 7—Mills v. Dawson, 247 S.W. 764, 197 Ky. 518.

La.—Burson v. Hamilton, 80 So. 194, 144 La. 46.

General Motors Acceptance Corporation v. Calhoun Chevrolet Co., 129 So. 168, 14 La.App. 258—State ex rel. McClanahan v. Ridgeway, 121 So. 261, 9 La.App. 505.

Me.—Cushing v. Babcock, 38 A.2d 137, 141 Me. 14.

Mass.—Dondis v. Lash, 186 N.E. 549, 283 Mass. 353—King v. Connors, 111 N.E. 848, 223 Mass. 305.

Minn.—Abernethy v. Halk, 166 N.W. 218, 139 Minn. 252.

Miss.—Musser v. First Nat. Bank, 147 So. 783, 165 Miss. 873—Pool v. Town of Union, 106 So. 518, 141 Miss. 407.

Mo.—Nibler v. Coltrane, 275 S.W.2d 270—Fleming v. Anderson, 232 S. W. 718—Wright v. Cobb, 229 S.W. 171.

Lyvers v. Rutherford, App., 80 S.W.2d 729—Sandusky v. Waller, App., 272 S.W. 1045.

Neb.—Williams v. Lantz, 242 N.W. 269, 123 Neb. 67, reheard 244 N.W. 400, 123 Neb. 790.

N.J.—Harvester Building & Loan Ass'n of Newark v. Kaufherr, 194 A. 82, 122 N.J.Eq. 373.

Pabst v. Hudson & M. R. Co., 133 A. 74, 4 N.J.Misc. 414.

N.Y.—Alaimo v. Ruhe, 185 N.Y.S. 156.

Ohio.—City of Cincinnati v. Wess, 186 N.E. 854, 45 Ohio App. 185, affirmed 186 N.E. 855, 127 Ohio St. 99.

Okl.—Null v. Board of Com'rs of Latimer County, 224 P. 159, 98 Okl. 16—Wall v. Randerson, 197 P. 432, 81 Okl. 207.

Or.—Corbin v. Preston, 218 P. 917, 109 Or. 230—Gillihan v. Cieloha, 145 P. 1061, 74 Or. 462.

Pa.—Rowley v. Rowley, 137 A. 226, 289 Pa. 171.

S.C.—Piedmont Grocery Co. v. Moore, 169 S.E. 78, 169 S.C. 394.

S.D.—Anderson v. Craven, 231 N.W. 538, 57 S.D. 168—J. B. Colt Co. v. Hayenga, 217 N.W. 187, 52 S.D. 201.

Tenn.—Rogers v. Roop, 92 S.W.2d 423, 19 Tenn.App. 579.

Tex.—Tom Green County v. Motley, 118 S.W.2d 306, 132 Tex. 54.

Stuyvesant Ins. Co. v. Driskill, Civ.App., 244 S.W.2d 291—Jamison Cold Storage Door Co. v. Brown, Civ.App., 218 S.W.2d 883, error refused no reversible error—New Home Sewing Mach. Co. v. Withrow, Civ.App., 143 S.W.2d 971—Bradshaw v. Wolfe City, Civ.App., 3 S.W.2d 527, modified on other grounds Employers' Casualty Co. v. Wolfe City, 25 S.W.2d 320, 119 Tex. 552, opinion readopted on rehearing 35 S.W.2d 694, 119 Tex. 552—Celada v. A. Mathias & Co., Civ.App., 269 S.W. 459—Owenwood Oil Corporation v. Sweet, Civ.App., 263 S.W. 641—Brabson v. Brownfield, Civ.App., 259 S.W. 251—Hardin v. Palm, Civ.App., 253 S.W. 948—Elmendorf v. City of San Antonio, Civ.App., 223 S.W. 631, reversed on other grounds, Com.App., 242 S.W. 185—Independent Order of Puritans v. Manley, Civ.App., 220 S.W. 647—Adams v. Van Mourick, Civ.App., 206 S.W. 721, dismissed for want of jurisdiction.

Utah.—Shurtleff v. Salt Lake City, 82 P.2d 561, 96 Utah 21—Lyman v. Town of Price, 222 P. 599, 63 Utah 90.

Vt.—Hill v. Longe, 115 A. 237, 95 Vt. 441—Slafter v. Savage, 95 A. 790, 89 Vt. 352.

Va.—Kelly v. Schneller, 139 S.E. 275, 148 Va. 573—Providence Forge Fishing & Hunting Club v. Miller Mfg. Co., 83 S.E. 1047, 117 Va. 120.

Wash.—Continental Distributing Co. v. Hays, 150 P. 416, 86 Wash. 300, Ann.Cas.1917B 708—Nutter v. Cowley Inv. Co., 147 P. 896, 85 Wash. 207.

4 C.J. p 922 note 71—54 C.J. p 607 notes 41–44.

Correction of judgment

(1) Where docket entry showed defendant entitled to recover on a counterclaim, plaintiffs could not complain of the correction of the judgment so as to show that the matter involved in the counterclaim was not adjudicated, not being injured thereby.

Mo.—Kirkman v. Stevenson, 238 S.W. 543, 210 Mo.App. 380.

(2) Defendant could not complain on his appeal from refusal of a motion to vacate a default judgment of an original error in the judgment or of the correction thereof reducing the judgment.

S.D.—Languein v. Olson, 227 N.W. 369, 56 S.D. 1.

Striking out portion of judgment

The court's action in striking out a portion of a judgment for plaintiffs, which action inured to the benefit of defendants, could not be complained of by the latter.

Tex.—Postal Savings & Loan Ass'n v. Powell, Civ.App., 47 S.W.2d 343.

41. Cal.—Staub v. Muller, 60 P.2d 283, 7 C.2d 221.

K. & M., Inc. v. LeCuyer, 238 P. 2d 28, 107 C.A.2d 710, followed in 238 P.2d 33, 107 C.A.2d 845—K. & M. Inc. v. LeCuyer, App., 233 P.2d 569, followed in 233 P.2d 574, reheard 238 P.2d 33, 107 C.A.2d 845—Cleverdon v. Gray, 145 P.2d 95, 62 C.A.2d 612—William Beekley Refrigerator Truck Service v. Glaser, 120 P.2d 36, 48 C.A.2d 658—Mile v. California Growers Wineries, 114 P.2d 651, 45 C.A.2d 674—Griffin v. Parker, 13 P.2d 403, 124 C.A. 701—United Bank & Trust Co. of California v. Powers, 265 P. 403, 89 C.A. 690—Hersom v. Hersom, 212 P. 717, 60 C.A. 383—Cross v. Thiele, 197 P. 974, 51 C.A. 780—Forbes v. Forbes, 182 P. 773, 41 C. A. 365—Luchini v. Roux, 157 P. 554, 29 C.A. 755.

Ky.—King v. Gregory, 47 S.W.2d 1019, 243 Ky. 231.

N.M.—Owensby v. Nesbitt, 293 P.2d 652, 61 N.M. 3.

Wis.—Coyne v. Coyne, 225 N.W. 138, 199 Wis. 623, rehearing denied 225 N.W. 935, 199 Wis. 263.

4 C.J. p 921 note 69 [b], p 922 note 72—54 C.J. p 607 note 46.

42. Ohio.—Sterret v. Creed, 2 Ohio 343.

Tenn.—All v. John Gerber Co., 252 S.W.2d 138, 36 Tenn.App. 134.

order that he may proceed in a proper manner for the enforcement of his rights.[43]

Separate judgments as to persons sued jointly. Where two persons are jointly liable on a cause of action, the entry of separate judgments against them, instead of a joint and several judgment, may under certain circumstances constitute prejudicial error.[43.5] However, where defendants are sued jointly, and separate judgments are entered against them, one defendant cannot complain that a larger judgment was entered against his codefendant.[43.10]

Inadequacy of relief or damages. The fact that a judgment, decree, or verdict against him is for a smaller sum or awards less relief than the prevailing party claims or is entitled to furnishes no ground for complaint to appellant,[44] as, for in-

43. Ill.—Thayer v. Finley, 36 Ill. 262.
4 C.J. p 922 note 74.

43.5 Owner and lessee of vehicle; statutory provisions
Where owner of truck and lessee whose driver was operating truck at time of collision with plaintiff's truck were jointly liable, entry of separate judgments against owner and lessee, rather than a joint and several judgment, was prejudicial error as to owner, as depriving him of benefit of statute providing, as to owner of vehicle held liable because of imputed negligence, that on recovery of judgment, recourse shall first be had against the property of the operator, since under the independent damage award, plaintiff would be required to proceed against owner without first having recourse against lessee.
Cal.—Aynes v. Winans, 200 P.2d 533, 33 C.2d 206.

43.10 Tex.—Worth Finance Co. v. Charlie Hillard Motor Co., Civ. App., 131 S.W.2d 416.

44. Ala.—Patrick v. Mitchell, 6 So. 2d 889, 242 Ala. 414—Catanzano v. Hydinger, 170 So. 214, 233 Ala. 116—Prowell v. Wilson, 123 So. 38, 219 Ala. 645—Hughes v. Baker, 114 So. 688, 217 Ala. 81—Harvey v. Bodman, 103 So. 569, 212 Ala. 503—Headley v. McCall, 87 So. 355, 205 Ala. 108—Stokely v. Bessemer Coal, Iron & Land Co., 81 So. 78, 202 Ala. 576.
Heaton v. Slaten, 141 So. 267, 25 Ala.App. 81.
Ariz.—Arizona Eastern R. Co. v. Matthews, 237 P. 384, 28 Ariz. 443—Hunter v. Dase, 170 P. 788, 19 Ariz. 310.
Ark.—Abraham v. Turner, 223 S.W. 2d 830, 216 Ark. 22—Morris v. Kerkseick, 148 S.W.2d 1068, 202 Ark. 1197—Hanson v. Louisiana Oil Refining Corporation, 53 S.W.2d 430, 186 Ark. 331—Laster v. Raper, 294 S.W. 994, 173 Ark. 1181—Dyke Bros. v. Stokes, 272 S.W. 663, 168 Ark. 943—Missouri Pac. R. Co. v. King, 268 S.W. 595, 167 Ark. 335—Wofford v. De Queen Real Estate Co., 216 S.W. 710, 141 Ark. 310—Shapard v. Mixon, 184 S.W. 399, 122 Ark. 530.
Cal.—Crocker-Huffman Land & Water Co. v. Goss, 263 P. 802, 203 C. 233—Sobelman v. Maier, 262 P. 1087, 203 C. 1—Payne v. Commercial Nat. Bank of Los Angeles, 169 P. 1007, 177 C. 68, L.R.A.1918C 328.
Miller v. Taber, App., 309 P.2d 110—H. Moffat Co. v. Rosasco, 260 P.2d 126, 119 C.A.2d 432—Dixon v. Eastown Realty Co., 233 P.2d 138, 105 C.A.2d 260—Riverside Rancho Corp. v. Cowan, 198 P.2d 526, 88 C.A.2d 197—Dutra v. Calbral, 181 P.2d 26, 80 C.A.2d 114—Cleverdon v. Gray, 145 P.2d 95, 62 C.A.2d 612—Paine v. Bank of Ceres, 138 P.2d 396, 59 C.A.2d 242, motion denied 141 P.2d 219, 60 C.A.2d 621—Sharp v. Conti, 136 P.2d 99, 57 C.A.2d 1007—Asamen v. Thompson, 131 P.2d 841, 55 C.A.2d 661—Schwarz v. Hatch, 114 P.2d 677, 45 C.A.2d 510—Orfanos v. California Ins. Co., 84 P.2d 233, 29 C.A.2d 75—Juranek v. Juranek, 84 P.2d 195, 29 C.A.2d 276—Archibald v. Schultz, 58 P.2d 233, 14 C.A.2d 320—Baroni v. Musick, 39 P.2d 435, 3 C.A.2d 419—Sears v. Whiston, 34 P.2d 818, 139 C.A. 682—California Crushed Fruit Corporation v. International Provision Co., 7 P.2d 349, 119 C.A. 738—Babcock v. Olhasso, 293 P. 141, 109 C.A. 534—Roloff v. Hundeby, 288 P. 702, 105 C.A. 645—Guitron v. Rodriquez, 288 P. 134, 105 C.A. 513—Johannsen v. Klipstein, 284 P. 1047, 104 C.A. 128—Andrews v. De Lorm, 283 P. 393, 102 C.A. 623—Anderson v. Van Camp Sea Food Co., 277 P. 1099, 98 C.A. 787—Moore v. Borgfeldt, 273 P. 1114, 96 C.A. 306—Hunt v. Sutter-Butte Canal Co., 225 P. 884, 66 C.A. 363—Rauer v. Fernando Nelson & Sons, 200 P. 809, 53 C.A. 695—Abdullah v. Abdullah, 194 P. 511, 50 C.A. 115—Howard v. D. W. Hobson Co., 176 P. 715, 38 C.A. 445—Randolph Fruit Co. v. Galbreath, 166 P. 859, 34 C. A. 28—Trimlett v. De Coursey, 151 P. 390, 28 C.A. 90.
Colo.—Sawyer v. Blanchard, 251 P.2d 434, 126 Colo. 485—Hollenbeck & Reeves v. Peterson, 172 P.2d 678, 115 Colo. 301—Barslund v. Anderson, 103 P.2d 23, 106 Colo. 238—Belcoe v. Heffelfinger, 50 P.2d 784, 97 Colo. 490—Agate Irrigation & Land Co. v. Sigman, 281 P. 363, 86 Colo. 317.
Conn.—Ryan v. Katz, 12 A.2d 835, 126 Conn. 555—Petroman v. Anderson, 135 A. 391, 105 Conn. 366—Ansonia Foundry Co. v. Bethlehem Steel Co., 120 A. 307, 98 Conn. 501, 31 A.L.R. 1087.
D.C.—Stern v. Ace Wrecking Co., Mun.App., 38 A.2d 626.
Fla.—Walling v. Carlton, 147 So. 236, 109 Fla. 97.
Ga.—Williams v. Blanton, 86 S.E.2d 504, 211 Ga. 491—Smallpiece v. Johnson, 80 S.E.2d 296, 210 Ga. 310—Cagle v. Bell, 44 S.E.2d 119, 202 Ga. 623.
Griffin v. Burdine, 79 S.E.2d 562, 89 Ga.App. 391—Jett v. Securities Inv. Co., 23 S.E.2d 265, 68 Ga.App. 454—Ewing v. Mechanics Loan & Savings Co., 7 S.E.2d 583, 61 Ga. App. 808—Stephens v. Wilson, 197 S.E. 350, 58 Ga.App. 24—Daniel v. G. Ober & Sons Co., 184 S.E. 439, 52 Ga.App. 691—Empire State Development Co. v. Coggins, 171 S.E. 576, 47 Ga.App. 786—Grolier Soc. v. Freeman, 165 S.E. 290, 45 Ga.App. 465—Industrial Life & Health Ins. Co. v. Thomas, 159 S.E. 885, 43 Ga. App. 679—Lee v. Jones, 147 S.E. 118, 39 Ga.App. 291—Farm Products Co. v. Eubanks, 116 S.E. 327, 29 Ga.App. 604—O'Quinn v. Edmondson, 111 S.E. 583, 28 Ga.App. 351—Brandt v. Computing Cloth-Measuring Mach. Co., 109 S.E. 694, 27 Ga.App. 704, transferred 108 S.E. 61, 151 Ga. 583—Ray v. Hutchinson, 108 S.E. 815, 27 Ga.App. 448—Stokes v. Martin, 107 S.E. 552, 27 Ga.App. 138—Decatur County v. Philyaw, 106 S.E. 799, 26 Ga.App. 702—Hicks v. Walker, 87 S.E. 152, 17 Ga.App. 391—Baker v. Central Grocery Co., 83 S.E. 504, 15 Ga. App. 377.
Hawaii.—Jendrusch v. Abbott, 39 Hawaii 506.
Idaho.—Slusser v. Aumock, 59 P.2d 723, 56 Idaho 793.
Ill.—Thomas v. Meyer, 101 N.E.2d 626, 345 Ill.App. 84—Brown v. Welborn, 88 N.E.2d 104, 338 Ill.App. 507—Du Quoin Packing Co. v. Bonifield, 71 N.E.2d 173, 330 Ill.App. 338—Schaefer v. Then, 63 N.E.2d 624, 327 Ill.App. 206—Palmer v. Gillarde, 38 N.E.2d 352, 312 Ill. App. 230—Hunter v. Winter, 268 Ill.App. 487—People's Nat. Bank of Monmouth v. Fernald, 252 Ill.App. 5—Rauen v. Chicago Rys. Co., 205 Ill.App. 464—Moyers v. Illinois Cent. R. Co., 197 Ill.App. 179. See Ryan v. Harty, 200 Ill.App. 470—Nathan v. Brown, 197 Ill.App. 533—Shaffer v. Natoma Farm, 195 Ill.

App. 97—Erickson v. Weinberger, 194 Ill.App. 444—Central Trust Co. of Illinois v. Kuglin, 194 Ill.App. 294—Smith v. Stilley, 186 Ill.App. 602.

Ind.—Kist v. Coughlin, 57 N.E.2d 199, 222 Ind. 639, modified on other grounds 57 N.E.2d 586, 222 Ind. 639—City of Rochester v. Campbell, 111 N.E. 420, 184 Ind. 421.

Talbot v. Talbot, 167 N.E. 535, 91 Ind.App. 333—National Live Stock Ins. Co. v. Cramer, 114 N.E. 427, 63 Ind.App. 211.

Iowa.—Jackson v. Kubias, 211 N.W. 245.

Kan.—Ennis-Bayard Petroleum Co. v. Plainville Mill & Elevator Co., 235 P. 119, 118 Kan. 202—Graves v. Negy, 219 P. 286, 114 Kan. 373.

Ky.—Jones v. Miller, 243 S.W.2d 933—Harcourt & Co. v. Heller, 62 S.W.2d 1056, 250 Ky. 321—Rowan County Lumber Co. v. Kautz, 56 S.W.2d 1, 246 Ky. 732—Lee County v. Hieronymus, 42 S.W.2d 730, 240 Ky. 490—Walker v. Howard, 277 S.W. 843, 211 Ky. 526—Evans v. Barbourville Brick Co., 266 S.W. 46, 205 Ky. 561—Lisle v. Byars, 252 S.W. 126, 199 Ky. 840—Kinnaird v. E. R. Spotswood & Son, 189 S.W. 904, 172 Ky. 612—Wilson v. Marsee, 179 S.W. 410, 166 Ky. 487.

Me.—Jones v. Berry, 37 A.2d 745, 140 Me. 311—Richardson v. Lalumiere, 184 A. 392, 134 Me. 224—Marquis v. Arsenault, 94 A. 938, 113 Me. 569.

Mass.—McMillan v. Wickstrom, 138 N.E. 253, 244 Mass. 159.

Mich.—Bowman v. Emery's Estate, 298 N.W. 321, 297 Mich. 663—Crook v. Ford, 229 N.W. 587, 249 Mich. 500—Joseph N. Smith & Co. v. Dickinson, 225 N.W. 580, 246 Mich. 689—Maxwell v. Hammond, 208 N.W. 443, 234 Mich. 461—Stretch v. Stretch, 158 N.W. 185, 191 Mich. 416.

Minn.—Altman v. Furniture Exposition Mart, 51 N.W.2d 96, 235 Minn. 459—Barnard-Curtiss Co. v. Minneapolis Dredging Co., 274 N.W. 229, 200 Minn. 327—Engeln Electric Co. of Illinois v. Kolling, 230 N.W. 778, 180 Minn. 264—Giliuson, Ellingsen & Erickson v. Priest, 213 N.W. 47, 171 Minn. 25—Westlund-Westerberg Lumber Co. v. Lindsay, 168 N.W. 96, 140 Minn. 518—Alden v. Sacramento Suburban Fruit Lands Co., 163 N.W. 133, 137 Minn. 161.

Miss.—Melchor v. Casey, 161 So. 692, 173 Miss. 67.

Mo.—Hatch v. Rhyne, 253 S.W.2d 170—Coleman v. Kansas City, 182 S.W.2d 74, 353 Mo. 150—Allen v. Jackson, 216 S.W. 539.

General Exchange Ins. Corp. v. Young, App., 206 S.W.2d 683, affirmed 212 S.W.2d 396, 357 Mo. 1099—Humphries v. Shipp, 194 S.W.2d 693, 238 Mo.App. 985—Taylor v. Ætna Life Ins. Co., 154 S.W.2d 421, 236 Mo.App. 435—Hoyland Flour Mills Co. v. Missouri Pac. R. Co., 5 S.W.2d 125, 222 Mo.App. 599, certiorari denied Erie R. Co. v. Hoyland Flour Mills Co., 48 S.Ct. 433, 277 U.S. 586, 72 L.Ed. 1001—La Rue v. Bloch, App., 255 S.W. 321—Coyne v. Golland, App., 243 S.W. 376—Donner v. Whitecotton, 212 S.W. 378, 201 Mo.App. 443—King v. King, App., 182 S.W. 1047—Cabool Nat. Bank v. McDowell, 170 S.W. 682, 184 Mo.App. 567.

Mont.—Osterholm v. Butte Electric Ry. Co., 199 P. 252, 60 Mont. 193—McDonald v. Klenze, 157 P. 175, 52 Mont. 142.

Neb.—Fred Egger Sons v. Welsh, 69 N.W.2d 366, 160 Neb. 124—Wilhoit v. Stevenson, 148 N.W. 963, 96 Neb. 751.

N.J.—Singer v. Parker, 166 A. 325.

Head v. Theis, 150 A. 191, 106 N.J.Law 281.

Giglio v. Kraemer, 133 A. 778, 4 N.J.Misc. 584—Rodgers v. Hall Lace Co., 133 A. 72, 4 N.J.Misc. 411.

N.Y.—Kelly v. Utica Fire Ins. Co. of Oneida County, 196 N.Y.S. 795, 203 App.Div. 335.

Pearlberg v. Levisohn, 182 N.Y.S. 615, 112 Misc. 95.

Okl.—Hart v. Starnes Lumber Co., 290 P.2d 123—Wilder v. Walker, 250 P.2d 442, 207 Okl. 411—Swisher v. Clark, 209 P.2d 880, 202 Okl. 25—Knox v. Loose-Wiles Biscuit Co. of Oklahoma, 154 P.2d 59, 194 Okl. 611—Reeves v. Langford, 72 P.2d 782, 181 Okl. 192—Colchensky v. Williamson, 72 P.2d 337, 181 Okl. 58—Fagras v. Marks, 43 P.2d 108, 171 Okl. 413—Simons v. Harber, 243 P. 510, 116 Okl. 233—Parmenter v. Douglass Tank Co., 241 P. 471, 115 Okl. 193—Combs v. Langston Inv. Co., 227 P. 94, 100 Okl. 21—Dunning v. Studt, 151 P. 1066, 51 Okl. 388.

Or.—Lilley v. Gifford Phillips Wood Products, Inc., 305 P.2d 390.

Pa.—Billow v. Billow, 61 A.2d 817, 360 Pa. 343—Petry v. Harwood Electric Co., 124 A. 307, 280 Pa. 158.

Hereda v. Lower Burrell Tp., 48 A.2d 83, 159 Pa.Super. 262—Blau v. Kettling, 94 Pa.Super. 411—United Supreme Council of Masons v. De Windt, 89 Pa.Super. 572—Seiler v. New York Ice Cream & Creameries, 71 Pa.Super. 32.

S.C.—Seymour & Co. v. Perry, 110 S.E. 389, 118 S.C. 265.

S.D.—Fahrni v. Artz, 178 N.W. 733, 43 S.D. 188—Fowler v. Aberdeen R. Co., 171 N.W. 816, 41 S.D. 563—Sweeney v. Hewett, 148 N.W. 503, 34 S.D. 302.

Tenn.—Town of Dickson v. Stephens, 96 S.W.2d 201, 20 Tenn.App. 195—Sadler v. Murphy, 77 S.W.2d 70, 18 Tenn.App. 340.

Tex.—Union Assur. Soc. v. Equitable Trust Co., 94 S.W.2d 1151, 127 Tex. 618.

Great American Ins. Co. v. D. W. Ray & Son, Com.App., 15 S.W.2d 223, rehearing denied, Com.App., 17 S.W.2d 779.

Mattiza v. Lachs, Civ.App., 204 S.W.2d 848—Robinson v. State, Civ. App., 143 S.W.2d 629, error dismissed, judgment correct—Carle Oil Co. v. Owens, Civ.App., 134 S.W.2d 411—Cockburn v. Stanton, Civ.App., 104 S.W.2d 556—Davis v. Krupp, Civ.App., 75 S.W.2d 309—Collins v. Dawson, Civ.App., 54 S.W.2d 256—Southern Surety Co. v. Lafferty, Civ.App., 43 S.W.2d 460, reversed on other grounds Nacogdoches County v. Lafferty, Com. App., 61 S.W.2d 994—Cockerham v. Gilchriest Chevrolet Co., Civ.App., 39 S.W.2d 186—Bradshaw v. Wolfe City, Civ.App., 3 S.W.2d 527, modified on other grounds Employers' Casualty Co. v. Wolfe City, 25 S.W.2d 320, 119 Tex. 552, opinion readopted on rehearing 35 S.W.2d 694, 119 Tex. 552—Chapman v. Vollman-Lawrence Co., Civ.App., 293 S.W. 221—Hughey Bros. v. Gillespie, Shields & Co., Civ.App., 276 S.W. 322—Garcia v. State, Civ. App., 274 S.W. 319—Farmers' & Merchants' State Bank of Lelia Lake v. Guffey, Civ.App., 255 S.W. 462—Montague County v. White, Civ.App., 241 S.W. 740—Daniels v. Garrett, Civ.App., 239 S.W. 1118—Galveston, H. & S. A. Ry. Co. v. Harris, Civ.App., 216 S.W. 430—Smith v. Railroad Employés Development Co., Civ.App., 195 S.W. 220, error refused—Galveston, H. & S. A. Ry. Co. v. State, Civ.App., 194 S.W. 462, reversed on other grounds 216 S.W. 393, 110 Tex. 128, rehearing denied 218 S.W. 361, 110 Tex. 128—Zavala Land & Water Co. v. Tolbert, Civ.App., 184 S.W. 523, error refused—Capps v. City of Longview, Civ.App., 178 S.W. 730—Ara v. Rutland, Civ.App., 172 S.W. 993, reversed on other grounds, Com.App., 215 S.W. 445.

Utah.—Tatsuno v. Kasai, 259 P. 318, 70 Utah 203, 62 A.L.R. 54—Cummings v. Hines, 194 P. 901, 57 Utah 382—Alder v. Crosier, 168 P. 83, 50 Utah 437.

Wash.—Gilmartin v. Stevens Inv. Co., 261 P.2d 73, 43 Wash.2d 289, opinion adhered to on rehearing 266 P.2d 800, 43 Wash.2d 289—Ball v. Stokely Foods, 221 P.2d 832, 37 Wash.2d 79—Lee v. Debentures, Inc., 112 P.2d 142, 8 Wash.2d 353—U'Ren v. Falls City Mill & Feed Co., 235 P. 2, 134 Wash. 128—Maryland Casualty Co. v. Hill, 170 P. 594, 100 Wash. 289.

W.Va.—Thayer v. Holley, 111 S.E. 326, 90 W.Va. 525.

Wyo.—Eller v. Salathe, 12 P.2d 386, 44 Wyo. 369.

4 C.J. p 922 note 75—71 C.J. p 161 note 78.

Sureties on bond could not complain that the court adjudged against

stance, where the court or jury allows him credits,[45] or makes deductions from those allowed appellee,[46] allows a counterclaim in his favor[47] or awards appellee less than the full amount of his counterclaim[48] or rejects it in its entirety,[49] awards merely compensatory damages in a case where the evidence justifies an award of punitive or multiple damages,[50] makes an alternative decree for payment by him of a sum less than the value of the property involved,[51] or otherwise gives him some option or alternative, in the compliance with the order or judgment, that is beneficial to him,[51.5] allows recovery on part only of several causes of actions,[52] or finds that a limited interest in the

them, on defendant's breach of the bond, a sum less than the penalty of the bond.
Miss.—Johnson v. Johnson, 198 So. 308, 189 Miss. 561.

Court's refusal to receive first verdict

Where court refused to accept jury's first verdict against defendant for reason that it was over five thousand dollars and instructed jury that recovery was limited to five thousand dollars, and it appeared that damages in excess of five thousand dollars had in fact been pleaded in ad damnum clause of declaration, and verdict for lesser amount was subsequently returned, defendants against whom verdict was returned were in no position to complain of action taken by court in refusing to receive first verdict, but such question, if to be raised at all, must have been raised by plaintiff.
Mich.—Howland v. Local Union 306, UAW-CIO, 50 N.W.2d 186, 331 Mich. 644.

Failure to order issuance of execution

Defendants could not object that judgment reviving judgment against them did not contain an order that execution issue for the judgment as revived.
Ill.—Bismarck Hotel Co. v. Tyrrell, 47 N.E.2d 544, 318 Ill.App. 280.

Reducing verdict

(1) Error, if any, in reducing verdict against appellant is not error prejudicial to appellant, and therefore not ground for appeal.
Cal.—Asebez v. Bliss, 172 P. 595, 178 C. 137.
Salisbury v. Campe-Rose Co., 236 P. 174, 71 C.A. 683—Creely v. Cohen, 170 P. 643, 35 C.A. 642.
Ga.—Nix v. Monroe, 136 S.E. 806, 36 Ga.App. 356.
Vt.—Joly v. Jones, 55 A.2d 181, 115 Vt. 174.
(2) Where plaintiff requested deduction of part of recovery, although defendants were not entitled thereto, defendants not having objected cannot complain of the deduction, it being to their advantage.
Tex.—Mindes Millinery Co. v. Wellborn, Civ.App., 201 S.W. 1059.

Refusing reformation of judgment

Appellants cannot complain of a refusal to reform a judgment, where the judgment, if reformed, would increase appellee's recovery.
Tex.—Bedford-Carthage Stone Co. v. Ramey, Civ.App., 34 S.W.2d 387.

45. Ala.—Wade v. Killen, 75 So. 970, 200 Ala. 212.
Ark.—Norris v. Scroggins, 297 S.W. 1022, 175 Ark. 50.
Cal.—Burton v. Curtis, 266 P. 601, 91 C.A. 11—McKeever v. Locke-Paddon Co., 207 P. 1040, 58 C.A. 51.
Colo.—Kendrick v. Price, 201 P. 884, 70 Colo. 405.
Ga.—Loe v. Brown, 116 S.E. 309, 155 Ga. 24.
Hornsby v. American Agr. Chemical Co., 142 S.E. 748, 38 Ga.App. 103—Sea Island Cotton Gin Co. v. Fowler, 142 S.E. 173, 37 Ga.App. 792—Riverside Academy v. Urigh, 126 S.E. 900, 33 Ga.App. 455.
Iowa.—Beveridge v. Cook, 263 N.W. 264—Black v. Chicago Great Western R. Co., 174 N.W. 774, 187 Iowa 904—Sloanaker v. Howerton, 174 N.W. 339.
Ky.—Elliott v. Pikeville Nat. Bank & Trust Co., 128 S.W.2d 756, 278 Ky. 325—Hoskins v. Harlan Building & Loan Ass'n, 91 S.W.2d 1008, 263 Ky. 85.
N.C.—Nance v. King, 101 S.E. 212, 178 N.C. 574.
Tex.—Abernathy v. Brashear, Civ. App., 48 S.W.2d 393—Texas Harvester Co. v. Wilson-Whaley Co., Civ.App., 210 S.W. 574, error refused—Cochran v. Gibson, Civ. App., 191 S.W. 161, error refused.
Wyo.—Finley v. Pew, 205 P. 310, 28 Wyo. 342, rehearing denied 206 P. 148, 28 Wyo. 342.
4 C.J. p 923 note 76.

Set-off of prior judgment

Ind.—O'Day v. Hanes, 40 N.E.2d 366, 111 Ind.App. 617.

46. Iowa.—Sawyer v. Hawthorne, 158 N.W. 665, 178 Iowa 407.
Kan.—Bryant v. Glenn, 33 P.2d 167, 139 Kan. 660.
Ohio.—Stachler v. Travelers Fire Ins. Co. of Hartford, Conn., App., 117 N.E.2d 176.
Wash.—Gaffney v. O'Leary, 283 P. 1091, 155 Wash. 171.
4 C.J. p 923 note 77.

47. Fla.—McMullen v. Hoofnagle, 142 So. 598, 106 Fla. 16.
Iowa.—Fred S. Todd Shoe Co. v. Pierce Shoe Co., 160 N.W. 827, 179 Iowa 1383.
Mo.—Dick v. Puritan Pharmaceutical Co., App., 46 S.W.2d 941—Knight v. Lauer, App., 253 S.W. 454.
N.Y.—Lumbrazo v. Woodruff, 242 N.Y.S. 335, 229 App.Div. 407, reversed on other grounds 175 N.E. 525, 256 N.Y. 92, 75 A.L.R. 1017, amended 177 N.E. 174, 256 N.Y. 640.
N.D.—Burt v. Lake Region Flying Service, 54 N.W.2d 339, 78 N.D. 928.
Va.—Shenandoah Milling Co. v. Phosphate Products Corporation, 171 S.E. 681, 161 Va. 642.
4 C.J. p 923 note 78.

48. Ky.—Duncan's Ex'rs v. Porch, 248 S.W. 526, 198 Ky. 177.
4 C.J. p 923 note 79.

49. Mo.—Villmer v. Household Plastics Co., 250 S.W.2d 964.
Pa.—Rohland v. Nagy, 85 A.2d 88, 369 Pa. 186.
Utah.—J. C. Weeter Lumber Co. v. Gunderson, 151 P. 983, 47 Utah 105.

50. Cal.—Bowman v. Maryland Casualty Co., 263 P. 826, 88 C.A. 481.
Ga.—Paulk v. South Georgia Bldg. & Inv. Co., 111 S.E. 26, 152 Ga. 646.
Ky.—Salyer's Guardian v. Keeton, 283 S.W. 1015, 214 Ky. 643.
S.C.—Brogdon v. Northwestern R. Co. of South Carolina, 139 S.E. 459, 141 S.C. 238.
4 C.J. p 923 note 80.

51. Minn.—Miller Motor Co. v. Jaax, 257 N.W. 653, 193 Minn. 85.

51.5 Cal.—Steinberg v. Goldstein, 303 P.2d 80, 145 C.A.2d 692—Morgan v. Veach, 139 P.2d 976, 59 C.A. 2d 682.

52. Ala.—Hopkins v. Duggar, 87 So. 103, 204 Ala. 626.
Ky.—Dorsey v. Clarke, 4 S.W.2d 748, 223 Ky. 619—City of Paris v. Baldwin Bros., 185 S.W. 144, 169 Ky. 802.
Minn.—Baumann v. Katzenmeyer, 283 N.W. 242, 204 Minn. 240, 120 A.L.R. 627.
N.J.—Doherty v. Romano, 135 A. 62, 4 N.J.Misc. 940.
S.C.—Mortgage Loan Co. v. Townsend, 152 S.E. 878, 156 S.C. 203.
Tex.—Forrest v. Burns, Civ.App., 57 S.W.2d 1111—Hillmer v. Asher, Civ.App., 19 S.W.2d 89, reversed on other grounds, Com.App., 29 S.W.2d 1011—Martin v. Lee County State Bank, Civ.App., 265 S.W. 1057.
Wash.—Nevins v. Scace, 199 P. 805, 116 Wash. 215.
4 C.J. p 923 note 81.

property levied on is subject to execution which is less in amount than under the verdict was authorized.[53]

The rule certainly applies in cases where damages are unliquidated, as in a tort case, and defendant cannot complain that the amount of damages awarded is inadequate;[53.5] and in a tort case, a party against whom a verdict for money damages is awarded may not complain that it is a compromise verdict, because the amount of the award is inadequate,[53.10] although it has also been held that while in such case defendant cannot complain of the inadequacy of the verdict, he may challenge it as a compromise verdict.[53.15] However, the rule has been held by some decisions not to apply in cases where the issue is contract or no contract, and the alleged contract definitely, specifically, and unalterably fixes the measure of liability for breach thereof,[54] although some authorities apply the rule even in those circumstances,[54.5] holding that where a verdict was returned against defendant for an amount less than that to which plaintiff was entitled, if entitled to recover at all, defendant could not complain.[54.10]

Excessiveness of relief or damages. Conversely, appellant cannot complain where the verdict, judgment, or decree awards him relief or damages in excess of that to which he is entitled,[55] as where some recovery is allowed where none is warranted,[55.5] where the judgment allows him nominal damages although he is not entitled to recover anything,[56] or where in lieu of a partition the court enters a money decree for him in excess of the value of his interest in the property.[57]

Calculation of damages; exclusion or inclusion of items. Where the court or jury make an error in appellant's favor in the calculation of damages, he cannot complain thereof;[58] nor can he object

53. Ga.—Ellis v. Ellis, 81 S.E. 857, 141 Ga. 590.

53.5 Ala.—S. D. Winn Cigar Co. v. Wilson, 48 So.2d 64, 35 Ala.App. 466.

53.10 Tenn.—High v. Lenow, 258 S.W.2d 742, 195 Tenn. 158.

53.15 Minn.—Thiesen v. Hellermann, 64 N.W.2d 762, 242 Minn. 218.

54. Ala.—S. D. Winn Cigar Co. v. Wilson, 48 So.2d 64, 35 Ala.App. 466—Metropolitan Life Ins. Co. v. Ray, 184 So. 282, 28 Ala.App. 357.
Ind.—Kundred v. Bitler, 177 N.E. 345, 93 Ind.App. 691.
Mo.—Coyne v. Golland, Mo.App., 243 S.W. 376—Blakely v. Miller, 167 S.W. 1136, 180 Mo.App. 389.
4 C.J. p 923 note 83.

54.5 Ga.—Johns v. League, Duvall & Powell, 45 S.E.2d 211, 202 Ga. 868, 174 A.L.R. 757.
Or.—Craig v. Maher, 74 P.2d 396, 158 Or. 40.

54.10 Ga.—Mabry v. Holcomb, 60 S.E.2d 411, 82 Ga.App. 1—Lokey v. Malcom, 186 S.E. 448, 53 Ga.App. 434.

55. Ala.—Perry v. Seals, 65 So. 151, 186 Ala. 514.
Ark.—Cook v. Barber, 47 S.W.2d 800, 185 Ark. 494.
Cal.—Collier v. Landram, 155 P.2d 652, 67 C.A.2d 752—Peake v. Harris, 192 P. 310, 48 C.A. 363.
Colo.—Wanamaker Ditch Co. v. Pettit, 3 P.2d 295, 89 Colo. 344.
Fla.—Strong v. Clay, 58 So.2d 435.
Ill.—Noth v. Noth, 127 N.E. 113, 292 Ill. 536.
Weiner v. Kjelstad, 42 N.E.2d 549, 314 Ill.App. 671.
Iowa.—Farmers' Trust & Savings Bank of Laurens v. Miller, 214 N.W. 546, 203 Iowa 1380.
Ky.—Nants v. Doherty, 262 S.W. 979, 203 Ky. 596.
Md.—Hoffman v. Chapman, 34 A.2d 438, 182 Md. 208.
Minn.—Crain v. Baumgartner, 256 N.W. 671, 192 Minn. 426—Speiss v. Speiss, 183 N.W. 822, 149 Minn. 314.
Miss.—Robertson v. Southern Bitulithic Co., 97 So. 482.
N.J.—Becker v. Welliver, 34 A.2d 893, 131 N.J.Law 64—Security Trust Co. of Pottstown, Pa. v. Anderson, 166 A. 303, 110 N.J.Law 503.
N.C.—Ware v. Southern Power Co., 106 S.E. 669, 181 N.C. 500.
Okl.—Smith v. Lindley, 215 P.2d 566, 202 Okl. 501.
Pa.—Fairmount Engine Co. v. Montgomery County, 5 A.2d 419, 135 Pa.Super. 367.
R.I.—Rhode Island Bar Ass'n v. Lesser, 26 A.2d 6, 68 R.I. 14.
Tenn.—Rogers v. Roop, 92 S.W.2d 423, 19 Tenn.App. 579.
Tex.—New Home Sewing Mach. Co. v. Withrow, Civ.App., 143 S.W.2d 971.
Utah.—Mollerup v. Daynes-Beebe Mining Co., 24 P.2d 306, 82 Utah 299.
Wis.—Bush v. Hadley, 69 N.W.2d 261, 269 Wis. 160—Tweedy v. Johnston, 267 N.W. 282, 222 Wis. 302.

55.5 Minn.—Blume v. Ballis, 291 N.W. 906, 207 Minn. 393.
Ohio.—Chapman v. Menke, App., 68 N.E.2d 361.

Defense of contributory negligence

Minn.—Caswell v. Minar Motor Co., 60 N.W.2d 263, 240 Minn. 213—Blume v. Ballis, 291 N.W. 906, 207 Minn. 393.

56. Ind.—Merrifield v. Williams, 51 N.E.2d 9, 221 Ind. 619.
Mich.—Sioux City Seed & Nursery Co. v. Detroit & M. Ry. Co., 150 N.W. 841, 184 Mich. 181.
Minn.—Cavin v. Smith, 37 N.W.2d 368, 228 Minn. 322.
Mo.—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 210.
Merriman v. City of Chillicothe, Mo.App., 217 S.W. 637—Forsee v. Jackson, 182 S.W. 783, 192 Mo.App. 408.
N.J.—Sullivan v. Magnolia Const. Co., 114 A. 404, 96 N.J.Law 214—Bouquet v. Hackensack Water Co., 101 A. 379, 90 N.J.Law 203, L.R.A. 1917F 206.

57. Tex.—Oliver v. Oliver, Civ.App., 181 S.W. 705.

58. Ariz.—Wolff v. First Nat. Bank, 53 P.2d 1077, 47 Ariz. 97.
Ark.—Beloate v. Less, 103 S.W.2d 633, 193 Ark. 907.
Cal.—Wood v. Niemeyer, 197 P. 795, 185 C. 526.
Hjorth v. Bernstein, 112 P.2d 643, 44 C.A.2d 561—Harvey v. De Garmo, 18 P.2d 971, 129 C.A. 487—Firestone v. O'Brien, 274 P. 1006, 97 C.A. 43—Davis v. Boscou, 237 P. 401, 72 C.A. 323—Humphry v. Farmers' Union & Milling Co., 190 P. 489, 47 C.A. 211—McPherson v. Great Western Milling Co., 186 P. 803, 44 C.A. 491.
Abramowitz v. Bank of America, 281 P.2d 380, 131 C.A.2d Supp. 892.
Conn.—Belisle v. Berkshire Ice Co., 120 A. 599, 98 Conn. 689, 34 A.L.R. 108.
Iowa.—Davis v. Walker, 184 N.W. 385, 191 Iowa 1268.
Ky.—Brickley v. Standard Mortgage Co., 160 S.W.2d 633, 290 Ky. 125—Hoskins v. Black, 226 S.W. 384, 190 Ky. 98.

to the exclusion or omission of items from a judgment against him[59] or their inclusion in a judgment in his favor.[60]

f. Other Matters

The rule that reversal may not be had for errors favorable to the complaining party has been applied to errors relating to costs and their taxation, motions for new trial and rulings thereon, and remittitur of part of the judgment.

Taxation of part of the costs against appellant cannot be made the basis of a complaint where he might properly have been taxed with a greater share or all of the costs;[61] and a ruling, favorable to appellant, setting aside an order for costs is similarly unavailable.[62]

Allowance of costs in the formal judgment despite the absence of any provision therefor in the order for judgment is not error prejudicial to the party to whom they are awarded;[63] and appellant cannot complain that the court denied costs to him if costs should have been assessed against him,[64] or limited the costs awarded to appellee,[65] or that appellee consented that judgment for costs should go against him.[66]

New trial. The rule that appellant cannot complain of errors which operate in his favor has been applied to matters relating to motions for new trial.[66.5] Thus, a party will not be heard to complain of a ruling granting a motion for new trial in the absence of the moving party and without notice to him;[67] and where a new trial is granted unless appellee within a stated time shall remit a portion of the recovery allowed, the part of the order relating to the remittitur is beneficial and

Mich.—Detroit Free Press v. Miller, 193 N.W. 779, 223 Mich. 333.
Mo.—Wisconsin & Arkansas Lumber Co. v. Buschow Lumber Co., App., 257 S.W. 840.
Nev.—Turner Lumber Co. v. Tonopah Lumber Co., 145 P. 914, 38 Nev. 338, modified on other grounds 153 P. 254, 38 Nev. 338.
S.D.—Farmers' State Bank of Turton v. Van Houten, 219 N.W. 206, 52 S.D. 528.
Tex.—Lamb v. Kinslow, Civ.App., 256 S.W.2d 903, error refused no reversible error—Thomas v. Pioneer Motors, Civ.App., 203 S.W.2d 325, reversed on other grounds 206 S.W.2d 591, 146 Tex. 299—Goodyear Tire & Rubber Co. v. Pearcy, Civ.App., 80 S.W.2d 1096—Farwell Motor Co. v. Williams, Civ.App., 10 S.W.2d 238—First Nat. Bank v. Roller, Civ.App., 299 S.W. 917, affirmed in part and reversed in part on other grounds, Com.App., 14 S.W.2d 834—Pondrom v. Gray, Civ.App., 289 S.W. 79, reversed on other grounds Pondrum v. Gray, Com.App., 298 S.W. 409, modified and rehearing denied Pondrum v. Gray, Com.App., 1 S.W.2d 278.
Wash.—Lagomarsino v. Pacific Alaska Nav. Co., 170 P. 368, 100 Wash. 105.

Mortgage deficiency

Order and judgment determining amount of deficiency between value of mortgaged premises and amount of bond would be affirmed on appeal by guarantors of deficiency, although court erred in method of computation, where, under evidence of appellants' experts, deficiency was greater than that found by court.
N.Y.—McCarthy v. Jablonski, 300 N.Y.S. 950, 253 App.Div. 759.

Treating verdict at former trial as conclusive

A ruling of the court to the effect that the value of property established at another trial was conclusive as to the value of the same property in the present trial was not prejudicial where the adoption of another view by the court would have resulted in a larger judgment against defendant.
Cal.—Travis Glass Co. v. Ibbetson, 200 P. 595, 186 C. 724.

Matters relating to computing interest

D.C.—Sloan v. Sloan, Mun.App., 66 A.2d 799.
Me.—Richardson v. Lalumiere, 184 A. 392, 134 Me. 224.
N.C.—Ausband v. Pack, 94 S.E.2d 835, 244 N.C. 694.
Wis.—Beck Inv. Co. v. Ganser, 47 N.W.2d 490, 259 Wis. 69.

59. Ark.—El Reno Mill & Elevator Co. v. Robey, 75 S.W.2d 395, 189 Ark. 1171—Gibson Oil Co. v. Bush, 1 S.W.2d 88, 175 Ark. 944—St. Louis Southwestern Ry. Co. v. Tucker, 255 S.W. 553, 161 Ark. 140.
Cal.—Podesta v. Linden Irr. Dist., 296 P.2d 401, 141 C.A.2d 38—Driscoll v. Varian, 7 P.2d 1036, 120 C.A. 229—Wilson v. Mattei, 258 P. 453, 84 C.A. 567.
Conn.—Lokes v. Kondrotas, 134 A. 246, 104 Conn. 703.
Ga.—Atlantic Coast Line R. Co. v. Stovall-Pace Co., 118 S.E. 62, 30 Ga.App. 326—Groover v. Hardeman, 94 S.E. 812, 21 Ga.App. 661.
Ill.—Wright v. Stinger, 269 Ill.App. 224.
Mo.—Babcock v. Rieger, App., 76 S.W.2d 731—Bredel v. Parker-Russell Min. & Mfg. Co., App., 21 S.W.2d 932—Schwartz v. National Acc. Soc., 267 S.W. 87, 216 Mo.App. 63—Rabok Mfg. Co. v. Agricultural Ins. Co. of Watertown, N. Y., 236 S.W. 916, 212 Mo.App. 600.
Or.—Weatherspoon v. Stackland, 271 P. 741, 127 Or. 450.
S.C.—Union Bleaching & Finishing Co. v. Barker Fuel Co., 117 S.E. 735, 124 S.C. 458.
Tex.—O'Brien v. McDow, Civ.App., 8 S.W.2d 561.
W.Va.—Duckworth v. Stalnaker, 81 S.E. 989, 74 W.Va. 247.

60. Cal.—Fletcher v. Stapleton, 10 P.2d 1019, 123 C.A. 133.
Ill.—Totten v. Totten, 132 N.E. 277, 299 Ill. 43.
Tex.—Williams v. Walker, Civ.App., 290 S.W. 299—Pennock v. Texas Builders' Supply Co., Civ.App., 193 S.W. 760.

61. Cal.—Merlino v. Fresno Macaroni Mfg. Co., 168 P.2d 182, 74 C.A.2d 120.
Ill.—Fitzgerald v. Power, 225 Ill. App. 118.
Tex.—Davis v. Krupp, Civ.App., 75 S.W.2d 309—J. B. Colt Co. v. Wheeler, Civ.App., 12 S.W.2d 1102, error dismissed, Com.App., 23 S.W.2d 299.

62. Iowa.—Main v. Brown, 211 N.W. 232, 202 Iowa 924.

63. Ariz.—Scott v. Bartholomew, 286 P. 825, 36 Ariz. 451.

64. Minn.—Walsh v. Kuechenmeister, 265 N.W. 340, 196 Minn. 483. 4 C.J. p 924 note 94.

65. Wis.—Welch v. City of Oconomowoc, 221 N.W. 750, 197 Wis. 173.

66. Ala.—Harris v. Byrd, 79 So. 472, 202 Ala. 78.

66.5 Mo.—Arnold v. Haskins, 147 S.W.2d 469, 347 Mo. 320.

Ruling before time for counter-affidavits

Trial court's action, in ruling on plaintiff's new trial motion before time allowed to defendants to file counter-affidavits had expired, was not a matter of which plaintiff could successfully complain.
Cal.—Silver v. Schwartz, 297 P.2d 1018, 142 C.A.2d 92.

67. Mont.—Wulf v. Manuel, 23 P. 723, 9 Mont. 276.

not prejudicial to appellant and cannot be complained of by him;[68] nor can one who appeals from an order granting new trial complain that his adversary was ordered to pay costs as a condition to the granting of the order.[69] However, the granting of a new trial on the ground of inadequacy of damages cannot be held harmless on the theory that the ruling was for the benefit of defendant, if plaintiff on a retrial recovers a larger verdict.[70]

Similarly, where a motion for new trial is refused, no complaint by the moving party on the ground that the trial court was without authority to impose a condition in the order requiring a modification of the judgment in his favor will be entertained;[71] nor, where a verdict is set aside and an additional issue submitted, may appellant complain that the court did not set aside special issues found for him.[72]

He cannot complain that a new trial was granted on a motion for judgment notwithstanding verdict if the verdict in his favor would have had to be set aside on review.[73]

Remittitur. It affords no ground for objection by appellant that part of the judgment against him has been remitted.[74]

§ 1679. Technical or Formal Errors

The appellate court will not reverse for, and will deem harmless, purely technical or formal errors; and an abstract or academic error will be disregarded.

Where there has been a trial on the merits of a case, the appellate court will not reverse for, and will deem harmless, purely technical or formal errors;[75] and an error which is merely abstract or

68. Ind.—Sheehan Const. Co. v. Hurst, 150 N.E. 319, 84 Ind.App. 636.
Miss.—Salter v. Jennings Furniture Co., 109 So. 704, 144 Miss. 194.
Okl.—Grosshart v. Shaffer, 152 P. 441, 52 Okl. 204.
S.C.—Sandel v. Whisenhunt, 167 S.E. 166, 168 S.C. 129.
4 C.J. p 923 note 84.

69. Cal.—Anglo-Nevada Assur. Corp. v. Ross, 56 P. 335, 123 C. 520.

70. Utah.—Hirabelli v. Daniels, 138 P. 1172, 44 Utah 88.

71. Cal.—Welch v. Alcott, 198 P. 626, 185 C. 731.
4 C.J. p 923 note 88.

72. N.C.—Sanford v. National Council, Junior Order of United American Mechanics, 97 S.E. 384, 176 N. C. 443.

73. N.D.—Larson v. Albers, 205 N. W. 875, 53 N.D. 340.
Wis.—Bloomer v. Koepke, 184 N.W. 680, 175 Wis. 138.

74. Colo.—Fordham v. Cooper, 202 P. 1086, 70 Colo. 529.
Ga.—Bank of Oglethorpe v. Hicks, 82 S.E. 635, 15 Ga.App. 92.
Ill.—Knight v. Seney, 124 N.E. 813, 290 Ill. 11.
Richardson v. Lusk, 208 Ill.App. 333.
Ky.—Marcum v. Hedger, 303 S.W.2d 558—Otte v. Otte, 83 S.W.2d 42, 259 Ky. 741—Nussbaum v. Caskey, 82 S.W.2d 18, 235 Ky. 640.
Mo.—Witte v. Smith, App., 162 S.W. 2d 604—Eutsler v. Mixon, App., 77 S.W.2d 655.
Okl.—Cosden Pipe Line Co. v. Seybold, 31 P.2d 605, 168 Okl. 86.
Or.—Boyer v. Anduiza, 175 P. 853, 90 Or. 163.
Tex.—Burchfield v. Tanner, Civ.App., 175 S.W.2d 756, reversed on other grounds 178 S.W.2d 681, 142 Tex. 404—New Fenfield Townsite Co. v. King, Civ.App., 204 S.W. 788.
W.Va.—L. Blustein & Co. v. American Ry. Express Co., 123 S.E. 566, 95 W.Va. 643.
4 C.J. p 923 note 86.

75. Ala.—Reynolds v. Massey, 122 So. 29, 219 Ala. 265—Guarenire v. Bessemer Lumber Co., 106 So. 49, 214 Ala. 8.
Mackey v. Hall Auto Co., 176 So. 318, 27 Ala.App. 557.
Ark.—Lea v. Bradshaw, 90 S.W.2d 487, 192 Ark. 135.
Cal.—Bergevin v. Morger, 279 P.2d 136, 130 C.A.2d 590—Kohn v. Kohn, 214 P.2d 71, 95 C.A.2d 708, followed in 214 P.2d 79, 95 C.A.2d 918—Sanfilippo v. Lesser, 210 P. 44, 59 C.A. 86.
Colo.—Macaluso v. Easley, 253 P. 397, 81 Colo. 50—Lathrop v. Maddux, 144 P. 870, 58 Colo. 258.
Fla.—City of Winter Haven v. State ex rel. Eloise Groves Corporation, 153 So. 92, 114 Fla. 93—Routh v. Richards, 138 So. 72, 103 Fla. 757—Jones v. Griffin, 138 So. 38, 103 Fla. 745—Leake v. Watkins, 74 So. 652, 73 Fla. 596.
Ill.—Bicek v. Royall, 30 N.E.2d 747, 307 Ill.App. 504—Bingaman v. Dahm, 30 N.E.2d 509, 307 Ill.App. 432—Dickson v. Great American Casualty Co., 269 Ill.App. 532—Smoot v. Hollingsworth, 265 Ill. App. 447—Wever v. Staggs, 264 Ill. App. 556—Stewart v. Clark, 194 Ill. App. 2. See Baker v. Morrison, 204 Ill.App. 429—Dahlgren v. Israel, 204 Ill.App. 340.
Ind.—Selph v. Illinois Pipe Line, 190 N.E. 191, 206 Ind. 490.
Lane v. Gugsell, 47 N.E.2d 835, 113 Ind.App. 676—Hill v. Boggs, 185 N.E. 300, 98 Ind.App. 506.
Iowa.—Scanlan & Murphy v. Fahey, 179 N.W. 623, 189 Iowa 1156—Heaton v. Consolidated Independent School Dist. of Randolph, 160 N. W. 906, 178 Iowa 1230—Miller v. Bryson, 152 N.W. 568, 171 Iowa 354.
Kan.—Kennedy v. Farmers & Merchants State Bank of Macksville, 313 P.2d 264, 181 Kan. 504—Fakes v. Osborne, 286 P.2d 154, 178 Kan. 339—Buxton & Beck v. Board of County Com'rs of Ford County, 223 P.2d 734, 170 Kan. 148—Stevens v. Jones, 215 P.2d 653, 168 Kan. 583.
Ky.—Adrian v. McGillivray, 243 S. W.2d 895—Combs v. Combs, 204 S. W.2d 361, 305 Ky. 358—Ernst v. Pike, 24 S.W.2d 553, 232 Ky. 680.
La.—Ascano v. Macaluso, 120 So. 506, 9 La.App. 354.
Mass.—Stein v. Canadian Pac. S. S., 11 N.E.2d 457, 298 Mass. 479.
Mo.—Carpenter v. Burmeister, App., 273 S.W. 418.
Mont.—Vicain v. City of Missoula, 81 P.2d 350, 107 Mont. 105.
Neb.—State v. Holdrege State Bank of Holdrege, 195 N.W. 120, 110 Neb. 814.
N.Y.—Helfhat v. Whitehouse, 179 N. E. 493, 258 N.Y. 274.
McKee v. Robert, 189 N.Y.S. 502, 197 App.Div. 842.
N.C.—Keener v. Beal, 98 S.E.2d 19, 246 N.C. 247—Waddell v. Carson, 97 S.E.2d 222, 245 N.C. 669—Avery v. Guy, 162 S.E. 217, 202 N.C. 152—Walker v. Walker, 159 S.E. 363, 201 N.C. 183—In re Ross' Will, 109 S.E. 365, 182 N.C. 477—Smith v. Hancock, 90 S.E. 127, 172 N.C. 150.
Ohio.—Ford v. Reamsnider, 26 Ohio Cir.Ct.,N.S., 535—Northern Ohio Traction & Light Co. v. Jenkins, 19 Ohio Cir.Ct.,N.S., 602, 3 Ohio App. 161.
Or.—Pope v. MacDonald, 193 P. 831, 98 Or. 373.
Pa.—Commonwealth Trust Co. of Pittsburgh v. Hachmeister Lind Co., 181 A. 787, 320 Pa. 233—Cooley v. Houston, 93 A. 624, 247 Pa. 590.

academic will be disregarded.[76]

Failure to observe formal requirements in the institution, trial, or disposition of causes is not harmfully prejudicial, so as to call for a reversal, unless it injuriously affects appellant's rights,[77] so that no action will be taken by the reviewing court on the basis of errors which, on a consideration of the whole record, are shown not to have affected the judgment.[78]

2. Nature and Form of Remedy, and Parties and Process

§ 1680. Nature and Form of Remedy

Except where a substantial statutory right is thereby violated, where the judgment is correct and the same as would have been reached by the proper remedy or procedure, any error in such respect is harmless; but such an error is prejudicial where a different result might have been reached but for the error, or the result is one which could not possibly have been reached by the right procedure.

In accordance with the general rules as to the nature of error as harmless or prejudicial and whether or not it warrants reversal, discussed supra §§ 1676–1679, except where a substantial statutory right is thereby violated,[78.50] where the judgment is correct, and is the same as would have

Jones v. Stiffler, 8 A.2d 455, 137 Pa.Super. 133—Rosen v. Lis, 88 Pa. Super. 84—Terry v. Duell, 76 Pa. Super. 38.

Tenn.—Wright v. Lindsay, 140 S.W. 2d 793, 24 Tenn.App. 77.

Tex.—R. Lacey, Inc., v. Jarrett, Civ. App., 214 S.W.2d 692, error refused—El Paso Electric Co. v. Barker, Civ.App., 116 S.W.2d 433, reversed on other grounds 137 S.W. 2d 17, 134 Tex. 496—Hawkins v. Everts, Civ.App., 91 S.W.2d 1086, error refused.

Wis.—Day v. Hustisford Farmers' Mut. Ins. Co., 212 N.W. 301, 192 Wis. 160.

4 C.J. p 924 note 97, p 1167 notes 94–97—39 C.J. p 1262 note 18—40 C.J. p 517 note 39—41 C.J. p 74 note 50 [b]—52 C.J. p 174 note 16.

Designation of party

Fact that plaintiff was designated "Matilda L. Throop, Guardian of the Estate of Florence M. Martin, Incompetent," instead of as "Florence M. Martin, by her Guardian, Matilda M. Throop," was a technical error which was not prejudicial to defendant.

Cal.—Martin v. Pacific Southwest Royalties, 106 P.2d 443, 41 C.A.2d 161.

Clerical error

Mere clerical errors will not reverse a case.

Ill.—See Goodykoontz v. Keely, 185 Ill.App. 165.

Minn.—Bahr v. Union Fire Ins. Co., 209 N.W. 490, 167 Minn. 479.

Mo.—Peirson-Lathrop Grain Co. v. Barker, App., 223 S.W. 941.

Nonsubstantial errors to be discounted

"Stability of determinations of trial courts is of inestimable importance, both to the parties and the public. Technical defects, however numerous, should not constitute a basis for efficient interference. They should not count at all in that regard. Doubts should be resolved in favor of stability. Errors, however clear, inexcusable, or numerous, should be regarded as inconsequential, unless, manifestly, had they not occurred the result to the complaining party might, within reasonable probabilities, have been substantially more favorable to him."

Wis.—Samulski v. Menasha Paper Co., 133 N.W. 142, 147 Wis. 285, 293.

76. Cal.—Courtney v. Tufeld, 17 P. 2d 1035, 128 C.A. 504.

Idaho.—Williamson v. Wilson, 42 P. 2d 290, 55 Idaho 337.

Me.—Borneman v. Milliken, 124 A. 200, 123 Me. 488.

Mo.—Robinson v. Ross, App., 47 S. W.2d 122.

Pa.—Siegfried v. Lehigh Valley Transit Co., 6 A.2d 97, 334 Pa. 346.

Tex.—Rachford v. Builders' Lumber Co., Civ.App., 278 S.W. 225.

Theoretical error

Appellate courts will not prolong litigation merely for theoretical reasons, but will consider only practical errors which result in harm.

N.C.—Barrett v. Williams, 16 S.E.2d 405, 220 N.C. 32.

77. Ill.—Hudson v. Hudson, 122 N. E. 497, 287 Ill. 286.

Bouslough v. Schumacher, 270 Ill.App. 79—Wever v. Staggs, 264 Ill.App. 556—Mayer v. Miller, 213 Ill.App. 279.

Minn.—Henschke v. Young, 28 N.W. 2d 766, 224 Minn. 339.

N.J.—Rizzolo v. Poysher, 99 A. 390, 89 N.J.Law 618.

Okl.—Great American Ins. Co. v. Williams, 251 P. 1012, 123 Okl. 206.

Or.—Peterson v. Foss, 6 P. 397, 12 Or. 81.

S.C.—Germany v. Kelley, 96 S.E. 959, 110 S.C. 518.

Tex.—McElhinney v. Swepston, Civ. App., 263 S.W. 940—St. Louis, B. & M. Ry. Co. v. Green, Civ.App., 183 S.W. 829.

Wash.—In re Wren's Estate, 299 P. 972, 163 Wash. 65.

Mere clerical mistake in the rendition of the judgment which may be corrected by the lower court nunc pro tunc on proper application is not ground for reversal.

Mo.—Horstkotte v. Menier, 50 Mo. 158.

Wrong number

Trial of a case under the wrong number does not require reversal.

Tex.—Hawkins v. Everts, Civ.App., 91 S.W.2d 1086, error refused.

78. Colo.—Macaluso v. Easley, 253 P. 397, 81 Colo. 50.

Fla.—E. O. Roper, Inc. v. Wilson & Toomer Fertilizer Co., 156 So. 883, 116 Fla. 796—Leake v. Watkins, 74 So. 652, 73 Fla. 596.

Ga.—Hill v. Hill, 82 S.E. 521, 142 Ga. 119.

Ill.—Smoot v. Hollingsworth, 265 Ill. App. 447—Herdien v. Jones, 202 Ill. App. 172—Wagner v. Chicago, R. I. & P. Ry. Co., 200 Ill.App. 305, affirmed 115 N.E. 201, 277 Ill. 114. See Dahlgren v. Israel, 204 Ill.App. 340—Commissioners of Highways of Town of Saline v. Klaus, 199 Ill. App. 108.

Ind.—Hill v. Boggs, 185 N.E. 300, 98 Ind.App. 506.

Kan.—Blakeman v. Lofland, 252 P.2d 852, 173 Kan. 725.

Mo.—Carpenter v. Burmeister, App., 273 S.W. 418.

N.Y.—Bonachea v. Westchester Park County Commission, 278 N.Y.S. 202, 243 App.Div. 789.

N.C.—In re Efird's Will, 141 S.E. 460, 195 N.C. 76—Ball-Thrash Co. v. McCormick, 90 S.E. 916, 172 N.C. 677.

Ohio.—Johnston Paper Co. v. Globe Register Co., 159 N.E. 589, 26 Ohio App. 135.

Tenn.—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512.

Tex.—Cockerham v. Gilchriest Chevrolet Co., Civ.App., 39 S.W.2d 186.

4 C.J. p 924 note 98—51 C.J. p 864 note 90.

78.50 **Mortgagee's violation of bulk sales act**

Where bulk sales statute provided that a mortgagee failing to conform to requirements thereof should be

been reached had the proper remedy or procedure been followed or used, any error as to the remedy or procedure used or followed will be regarded as harmless,[79] as it also will where the complaining party has by the wrong procedure been accorded all of the substantial rights that he would have had under the proper procedure.[80] However, it is otherwise if a different result might have been reached but for the error,[81] or if, by the wrong remedy, a result is reached which could not properly have been reached under the correct one.[82]

The above principles apply where the wrong form of action or proceeding has been brought,[83] where the cause has been improperly tried in equity in-

liable in garnishment to creditors of his mortgagor and that stock acquired should be subject to attachment, right of mortgagee failing to conform to statute to be proceeded against in manner provided therein was a substantial statutory right, and maintenance by mortgagor's creditor of direct action against mortgagee could not be considered harmless error.

Okl.—Johnston v. Stromon Motor Supply Co., 76 P.2d 373, 182 Okl. 126.

79. Ala.—Ex parte Waldrop, 152 So. 44, 228 Ala. 38.

Ariz.—**Corpus Juris Secundum cited in** Town of Holbrook v. Girand, 80 P.2d 695, 698, 52 Ariz. 291, 118 A.L.R. 1203—In re Bank of Winslow, 287 P. 444, 36 Ariz. 507.

Ark.—Hunt v. Boyce, 3 S.W.2d 342, 176 Ark. 303—Stewart v. Budd, 275 S.W. 748, 169 Ark. 363—Shelton v. Landers, 270 S.W. 522, 167 Ark. 638—Security Bank & Trust Co. v. Bond, 201 S.W. 820, 132 Ark. 592—Bank of Midland v. Harris, 170 S. W. 67, 114 Ark. 344, Ann.Cas.1916B 1255.

Cal.—Whitworth v. Fernandez, 259 P. 727, 202 C. 134.

Parlier Fruit Co. v. Fireman's Fund Ins. Co., App., 311 P.2d 62—DeCampos v. State Compensation Ins. Fund, 265 P.2d 617, 122 C.A.2d 519—**Corpus Juris Secundum cited in** Tranchina v. Arcinas, 178 P.2d 65, 68, 78 C.A.2d 522—Holley v. Hunt, 56 P.2d 1240, 13 C.A.2d 335—Burbank v. McIntyre, 27 P.2d 400, 135 C.A. 482—Peterson v. Chorley, 284 P. 956, 103 C.A. 783—Ackley v. Prime, 278 P. 932, 99 C.A. 534—Parr v. Baer, 140 P. 712, 24 C.A. 149.

Colo.—Order of Railway Conductors v. Jones, 239 P. 882, 78 Colo. 80.

Fla.—Equitable Life Assur. Soc. of U. S. v. Nichols, 84 So.2d 500.

Ga.—Allen v. Gates, 95 S.E. 231, 147 Ga. 649—Farrer v. Edwards, 87 S. E. 777, 144 Ga. 553.

Bradley v. Swift & Co., 93 S.E. 2d 364, 93 Ga.App. 842—NcNeel v. Clark, 137 S.E. 99, 36 Ga.App. 358.

Ill.—Babcock v. Harrsch, 141 N.E. 701, 310 Ill. 413.

Ind.—Bell v. Union Trust Co. of Indianapolis, 12 N.E.2d 510, 213 Ind. 333.

Fidelity & Cas. Co. of New York v. State ex rel. McWhir, 32 N.E.2d 102, 110 Ind.App. 507.

Iowa.—Ballard v. Miller, 229 N.W. 159, 210 Iowa 1144—Westerfield v. Liberty Oil Co., 223 N.W. 894, 208 Iowa 912—Henn v. McGinnis, 165 N.W. 406, 182 Iowa 131.

Kan.—Kansas Wheat Growers Ass'n v. Goering, 256 P. 119, 123 Kan. 508—Central Trust Co. v. Mahin, 233 P. 1022, 118 Kan. 49.

Ky.—Thornton v. Black, 173 S.W.2d 819, 295 Ky. 72—Rice v. Kelly, 10 S.W.2d 1112, 226 Ky. 347—Charles v. Hopkins, 290 S.W. 720, 217 Ky. 842—Foley's Adm'r v. Robertson's Guardian, 286 S.W. 851, 215 Ky. 647—Illinois Cent. R. Co. v. Meacham Contracting Co., 202 S.W. 859, 180 Ky. 430.

La.—Lockhart v. Dickey, 108 So. 483, 161 La. 282.

Mass.—McLean Co. v. Sidebottom, 178 N.E. 284, 277 Mass. 158.

Mich.—Porth v. Cadillac Motor Car Co., 176 N.W. 554, 209 Mich. 89.

Minn.—Wegman v. Great Northern Ry. Co., 249 N.W. 422, 189 Minn. 325.

Miss.—Matthews v. Thompson, 95 So.2d 438.

N.H.—Ibey v. Ibey, 55 A.2d 872, 94 N.H. 425.

N.J.—Morris v. Muller, 168 A. 772, 11 N.J.Misc. 866, reversed on other grounds 172 A. 63, 113 N.J.Law 46.

N.M.—Mayer v. Lane, 262 P. 178, 33 N.M. 18.

N.Y.—Rosenwald v. Goldfein, 159 N. Y.S.2d 333, 3 A.D.2d 206—Taylor v. Embury, 187 N.Y.S. 138, 195 App.Div. 633.

Sixth Ave. Twenty-Third St. Corp. v. Dane, 156 N.Y.S. 89, 92 Misc. 398.

N.D.—Baird v. Nelson, 235 N.W. 351, 60 N.D. 503.

Okl.—Morrison v. Perry, 30 P.2d 670, 167 Okl. 459—Oxley v. Southland Life Ins. Co., 15 P.2d 43, 159 Okl. 287—Brown v. Nichols, 245 P. 850, 117 Okl. 233.

Or.—L. B. Menefee Lumber Co. v. MacDonald, 260 P. 444, 122 Or. 579.

Pa.—Pyles v. Bosler, 170 A. 897, 313 Pa. 548—Schaaf v. Politowski, 119 A. 748, 276 Pa. 31.

United Supreme Council of Masons v. De Windt, 89 Pa.Super. 572.

R.I.—Marley v. Bankers' Indemnity Ins. Co., 166 A. 350, 53 R.I. 289.

S.C.—Williamson v. Roberts, 44 S.E. 2d 317, 211 S.C. 179.

S.D.—Kremer v. Public Drug Co., 170 N.W. 959, 41 S.D. 376—Kremer v. Public Drug Co., 170 N.W. 571, 41 S.D. 365.

Tenn.—Rutzler v. Bond, 53 S.W.2d 376, 165 Tenn. 160.

Tex.—Buttrill v. Occidental Life Ins. Co., Civ.App., 45 S.W.2d 636—Smith v. Citizens' Nat. Bank of Lubbock, Civ.App., 246 S.W. 407.

Utah.—Thompson v. Bown Live Stock Co., 276 P. 651, 74 Utah 1.

Va.—George H. Rucker & Co. v. Glennan, 107 S.E. 725, 130 Va. 511.

Wash.—McClure v. Calispell Duck Club, 288 P. 217, 157 Wash. 136—Solomon Valley Dredging Co. v. Berg, 264 P. 421, 146 Wash. 628—People's State Bank of Walla Walla v. Driscoll, 255 P. 134, 143 Wash. 401.

4 C.J. p 927 note 40.

Futility of any judgment

In action against irrigation district by unpaid bondholder, for partition of lands acquired by the district, refusal to permit the action to go to judgment on the bonds was not prejudicial error, since enforcement by execution would not be permitted, and hence such judgment would be futile.

Cal.—Clough v. Compton-Delevan Irr. Dist., 85 P.2d 126, 12 C.2d 385.

Miscarriage of justice must result

"The error, if any, was in a matter of procedure. Under such circumstances a judgment cannot be set aside unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error resulted in a miscarriage of justice."

Cal.—Peterson v. Chorley, 284 P. 956, 958, 103 C.A. 783.

80. Iowa.—Brown v. Schmitz, 22 N. W.2d 340, 237 Iowa 418.

Va.—Sacks v. Theodore, 118 S.E. 105, 136 Va. 466.

81. U.S.—Rettig Beverage Co. v. U. S., C.C.A.Pa., 13 F.2d 740.

Ky.—Queen Ins. Co. v. Marks, 265 S.W. 30, 204 Ky. 662.

Mich.—Nelson v. Ironwood & B. Ry. & Light Co., 170 N.W. 45, 204 Mich. 347.

Mo.—Schick v. Rehkop, App., 237 S.W. 209—Steyer v. United Rys. Co. of St. Louis, App., 185 S.W. 737.

82. Va.—Clark v. George, 170 S.E. 713, 161 Va. 104.

83. Ariz.—In re Bank of Winslow, 287 P. 444, 36 Ariz. 507.

stead of law,[84] or vice versa,[85] or under one employers' liability act or rule instead of another.[86]

Cal.—Ackley v. Prime, 278 P. 932, 99 C.A. 534—Carvell v. Weaver, 202 P. 897, 54 C.A. 734.
D.C.—Selden v. Lee, 3 F.2d 335, 55 App.D.C. 164.
Ill.—Babcock v. Harrsch, 141 N.E. 701, 310 Ill. 413.
Ky.—Board of Education of City of Catlettsburg v. City of Catlettsburg, 122 S.W.2d 754, 275 Ky. 797.
La.—Lockhart v. Dickey, 108 So. 483, 161 La. 282.
Mich.—Porth v. Cadillac Motor Car Co., 176 N.W. 554, 209 Mich. 89.
N.Y.—Taylor v. Embury, 187 N.Y.S. 188, 195 App.Div. 633.
Okl.—Rogers v. Lassiter, 164 P.2d 682, 196 Okl. 228.
R.I.—Marley v. Bankers' Indemnity Ins. Co., 166 A. 350, 53 R.I. 289.
Va.—Spady v. Farmers & Merchants Trust Bank, 190 S.E. 173, 168 Va. 143.
Wyo.—Ohio Oil Co. v. Wyoming Agency, 179 P.2d 773, 63 Wyo. 187.

Action of debt instead of trespass on the case

The fact that plaintiff should have brought an action on the case instead of an action on the debt is harmless and nonreversible error where defendant was allowed and availed himself of any defense that he would have had in the proper form of action.
R.I.—Marley v. Bankers' Indemnity Ins. Co., 166 A. 350, 53 R.I. 289.

Assumpsit instead of debt

Ill.—Babcock v. Harrsch, 141 N.E. 701, 310 Ill. 413.

Improper use of conversion

Where conditional vendee brought action in conversion against vendor, who wrongfully deprived him of possession of the property and disposed of it, so that he could not return it, a judgment for the vendee for an amount which he was entitled to receive under the facts of the case will not be disturbed, although conversion was not technically the proper action to bring.
Cal.—Carvell v. Weaver, 202 P. 897, 54 C.A. 734.

Tort instead of assumpsit

Defendant is not prejudiced by the bringing of an action in tort when it should have been brought in assumpsit, where the measure of damages would not have been different in an action of assumpsit.
Mich.—Porth v. Cadillac Motor Car Co., 176 N.W. 554, 209 Mich. 89.

Where measure of damages in two actions is different, the error in bringing a suit in replevin instead of in tort for damages is prejudicial.
Mo.—Schick v. Rehkop, App., 237 S. W. 209.

84. U.S.—Milwaukee Mechanics' Ins. Co. v. Ciaccio, C.C.A.Ill., 88 F.2d 153.
Ark.—Hunt v. Boyce, 3 S.W.2d 342, 176 Ark. 303—Landreth v. Henson, 173 S.W. 427, 116 Ark. 361.
Iowa.—Henn v. McGinnis, 165 N.W. 406, 182 Iowa 131—Day v. Dyer, 152 N.W. 53, 171 Iowa 437.
Ky.—Charles v. Hopkins, 290 S.W. 720, 217 Ky. 842.
Miss.—Taylor v. Hines, 74 So.2d 834, 221 Miss. 759.
Mo.—Wolf v. Hartford Fire Ins. Co., 269 S.W. 701, 219 Mo.App. 307.
Pa.—Bank of Pittsburgh v. Purcell, 133 A. 31, 286 Pa. 114.
Va.—Sacks v. Theodore, 118 S.E. 105, 136 Va. 466.
Wash.—Nelson v. Lewiston-Clarkston Imp. Co., 229 P. 1027, 131 Wash. 235.
4 C.J. p 927 note 40 [a].

Binding instructions called for if at law

The fact that the case is improperly tried in equity is harmless to defendant where, if the trial had been at law, the judge would necessarily have given binding instructions for plaintiff.
Pa.—Bank of Pittsburgh v. Purcell, 133 A. 31, 286 Pa. 114.

Under a constitutional provision that no reversal shall be had because of want of jurisdiction due to error or mistake as to whether the proceedings should be at law or in equity, unless there be other error in the proceedings, the fact that the lower court tries in equity an action which is not one of equitable cognizance is not ground for reversal.
Miss.—Engleburg v. Tonkel, 106 So. 447, 140 Miss. 513.

85. U.S.—Great American Ins. Co. v. Johnson, C.C.A.W.Va., 27 F.2d 71, certiorari denied 49 S.Ct. 29, 278 U.S. 629, 73 L.Ed. 548—Fidelity & Casualty Co. of New York v. Glenn, C.C.A.W.Va., 3 F.2d 913.
Ark.—Stewart v. Budd, 275 S.W. 748, 169 Ark. 363—Security Bank & Trust Co. v. Bond, 201 S.W. 820, 132 Ark. 592—Bank of Midland v. Harris, 170 S.W. 67, 114 Ark. 344, Ann.Cas.1916B 1255—Kansas City Southern Ry. Co. v. Smithson, 168 S.W. 555, 113 Ark. 305.
Iowa.—Ballard v. Miller, 229 N.W. 159, 210 Iowa 1144.
Ky.—Sells v. Hurley, 191 S.W.2d 212, 301 Ky. 199—Foley's Adm'r v. Robertson's Guardian, 286 S.W. 851, 215 Ky. 647.
Va.—Universal C. I. T. Credit Corp. v. Kaplan, 92 S.E.2d 359, 198 Va. 67.
4 C.J. p 927 note 40 [b].
Improper transfer of cause from equity to law or vice versa see infra § 1711.

Correct giving of peremptory instruction to jury renders harmless any error in trying the case at law instead of in equity.
Ark.—Security Bank & Trust Co. v. Bond, 201 S.W. 820, 132 Ark. 592.

Manifest miscarriage of justice required

"Where the only effect of holding that a case tried at law should have been disposed of in equity would be to send the same back to be transferred to the equity side, and heard over again by the same judge, upon probably the same testimony, this court should be reluctant to adopt such course, and not do so unless the circumstances of the case made the same necessary to prevent a manifest miscarriage of justice."
U.S.—Fidelity & Casualty Co. of New York v. Glenn, C.C.A.W.Va., 3 F.2d 913, 915.

86. Minn.—Wegman v. Great Northern Ry. Co., 249 N.W. 422, 189 Minn. 325.

Common-law doctrine of negligence

In action against railroad by section hand for injuries tried under the common-law doctrine of negligence, railroad was not prejudiced by trial under such doctrine rather than under the Federal Employers' Liability Act, since question of assumed risk, which was submitted to the jury, is no longer a defense under the federal act.
Ark.—Missouri Pac. R. Co. v. Bryant, 209 S.W.2d 690, 213 Ark. 149.

Where all essentials and measure of damages are the same, the fact that a case was erroneously tried and recovery allowed under the federal Employers' Liability Act, because the employee was not engaged in interstate commerce, is not ground for reversal, as the same result would have been reached under the state act.
Minn.—Wegman v. Great Northern Ry. Co., 249 N.W. 422, 189 Minn. 325.

Existence of differences between two sets of laws

(1) Where defenses are available to defendant under the federal Employers' Liability Act that are not open under the state act, and the case is one properly within the federal act, it is prejudicial error for the case to be tried under the state rather than the federal act.
Mich.—Nelson v. Ironwood & B. Ry. & Light Co., 170 N.W. 45, 204 Mich. 347.

(2) Vice versa, where there are defenses more favorable to appellant under the state law, and the case is not properly within the federal act, it is prejudicial error to try the case

§ 1681. Parties

General rules as to the nature of error as harmless or prejudicial and the effect thereof on review apply to errors or defects relating to the parties to the cause.

In accordance with the general rules as to the nature of error as harmless or prejudicial and its effect on the case on review, discussed supra § 1676–1679, unless the rights of appellant have been materially affected thereby,[87] or plaintiff is not shown to have any legal capacity to sue,[88] errors in the lower court with respect to the parties to the cause are generally regarded as harmless and not grounds for reversal.[89]

Within the above rule are errors consisting of a misjoinder of parties,[90] and errors in bringing in third persons as parties to the action or proceed-

under the federal law rather than the state law.

Mo.—Williams v. Schaff, 222 S.W. 412, 282 Mo. 497.

87. Ga.—Pardue v. Masters, 88 S.E. 2d 385, 211 Ga. 772.

N.Y.—Kromback v. Killian, 213 N. Y.S. 138, 215 App.Div. 19.

Pa.—Fisher v. Stevens Coal Co., 7 A.2d 573, 136 Pa.Super. 394.

S.C.—Mauldin v. Milford, 121 S.E. 547, 127 S.C. 508.

Tex.—Hudson Underwriters Agency of Franklin Fire Ins. Co. v. Ablon. Civ.App., 203 S.W.2d 584, error dismissed—Keneagh v. Baker, Civ. App., 284 S.W. 321.

Wis.—Jones v. Mehlberg, 254 N.W. 95, 214 Wis. 629.

88. Tex.—Cole v. Dyer Hardware Co., Civ.App., 77 S.W.2d 286.

Capacity as legal entity or natural person must be shown

"Where . . . a suit is brought and judgment obtained in a name not appearing affirmatively to be either a corporation, partnership, or natural person, a reversal will follow; the record showing that timely exception was taken."

Tex.—Cole v. Dyer Hardware Co., supra.

89. Ala.—Birmingham Trust & Savings Co. v. Ansley, 173 So. 378, 234 Ala. 37—Ory-Cohen v. Taylor, 94 So. 525, 208 Ala. 520—Charlton v. Alabama Great Southern R. Co., 89 So. 710, 206 Ala. 341.

Ark.—Maupin v. Gains, 188 S.W. 552, 125 Ark. 181—Mayers v. Lark, 168 S.W. 1093, 113 Ark. 207, Ann.Cas. 1915C 1094.

Cal.—Bellon v. Silver Gate Theatres, 47 P.2d 462, 4 C.2d 1.

Horton v. Citizens Nat. Trust & Sav. Bank of Los Angeles, 195 P. 2d 494, 86 C.A.2d 680—Wiseman v. Sklar, 285 P. 1081, 104 C.A. 369—Brooks v. Nelson, 272 P. 610, 95 C.A. 144—Curtis v. Nye & Nissen, 261 P. 747, 86 C.A. 507.

Colo.—McMullin v. Magnuson, 78 P. 2d 964, 102 Colo. 230—Porter Thompson Co. v. Kistler, 32 P.2d 191, 94 Colo. 598—Lockard v. Ware, 157 P. 1165, 61 Colo. 354.

Fla.—Walker Fertilizer Co. v. Race, 166 So. 283, 123 Fla. 84, 105 A.L.R. 341—Miller v. Ellenwood, 164 So. 140, 121 Fla. 551.

Ga.—McLean v. Johnson, 51 S.E.2d 836, 204 Ga. 862.

Idaho.—First Nat. Bank v. Peterson, 279 P. 302, 47 Idaho 794.

Ill.—Jones & Laughlin Steel Co. v. Graham, 112 N.E. 967, 273 Ill. 377.

Ky.—Waddle v. Hughes, 84 S.W.2d 75, 260 Ky. 269—Shutt's Adm'r v. Shutt's Adm'r, 232 S.W. 405, 192 Ky. 98.

La.—Charity Hospital of Louisiana v. Axford, 131 So. 770, 14 La.App. 535.

Mass.—New England Oil Refining Co. v. Canada Mexico Oil Co., 174 N.E. 330, 274 Mass. 191.

Mich.—Kearns v. Michigan Iron & Coke Co., 66 N.W.2d 230, 340 Mich. 577—Boman v. Wolverine Power Co., 255 N.W. 613, 268 Mich. 59.

Minn.—Forney v. Farmers' Mut. Fire Ins. Co. of North Fork, 231 N.W. 401, 181 Minn. 8.

Miss.—Joiner v. LeFlore Grocer Co., 110 So. 857, 145 Miss. 31.

Mo.—Conrades v. Spink, 38 Mo.App. 309.

N.J.—MacPherson v. Schwinn, 89 A. 2d 99, 19 N.J.Super. 502.

N.C.—Potter v. Norwood Lumber Co., 101 S.E. 553, 179 N.C. 131.

Ohio.—Schaller v. Chapman, App., 66 N.E.2d 266—Mullin v. Claremont Realty Co., 177 N.E. 226, 39 Ohio App. 103.

Okl.—Home Ins. Co. of New York v. Southern Motor Coach Corporation, 41 P.2d 870, 171 Okl. 94.

Pa.—Sinberg v. Davis, 132 A. 287, 285 Pa. 426—Gentile v. Philadelphia & R. Ry. Co., 118 A. 223, 274 Pa. 553—Hewitt v. Democratic Pub. Co., 115 A. 838, 271 Pa. 546.

Potter Title & Trust Co. v. Carlson, 50 A.2d 28, 160 Pa.Super. 38.

S.C.—Wyman v. Atlantic Coast Line R. Co., 104 S.E. 542, 115 S.C. 138.

Tex.—Sullivan v. City of Galveston, Com.App., 34 S.W.2d 808.

Rawson v. Brownsboro Independent School Dist., Civ.App., 263 S. W.2d 578, error refused no reversible error—Perkins v. Terrell, Civ.App., 214 S.W. 551, error refused.

Wash.—Guse v. Lundgren, 32 P.2d 807, 177 Wash. 532.

4 C.J. p 924 note 1.

Class actions

In suit by property owners for benefit of themselves and all others similarly situated to enjoin collection of special paving assessments which had not been collected and to require return of money which had been collected, whether suit was properly brought as a class suit was immaterial where court in its order approving master's original report required notice to all claimants to file claims within stated period and numerous claimants had complied with that order, thereby intervening in the suit, and the order confirming master's supplementary report allowed the proved claims.

Fla.—City of Miami Beach v. Tenney, 7 So.2d 136, 150 Fla. 241.

90. U.S.—Marion Steam Shovel Co. v. Bertino, C.C.A.Mo., 82 F.2d 541.

Mexican Gulf Oil Co. v. Compania Transcontinental De Petroleo, S. A., D.C.N.Y., 281 F. 148, affirmed Compania Transcontinental De Petroleo, S. A. v. Mexican Gulf Oil Co., C.C.A., 292 F. 846.

Ala.—Southern Ry. Co. v. Williams, 100 So. 203, 211 Ala. 235—Tony v. Chenault, 85 So. 742, 204 Ala. 329.

Ariz.—Jerome Verde Copper Co. v. Riley, 192 P. 429, 21 Ariz. 655.

Ark.—Arkansas Trust Co. v. Sims, 133 S.W.2d 854, 198 Ark. 1143—Firemen's Ins. Co. v. Simmons, 22 S.W.2d 45, 180 Ark. 500—Pennington v. Karcher, 286 S.W. 969, 171 Ark. 828—American Cent. Fire Ins. Co. v. Arndt, 195 S.W. 1075, 129 Ark. 309—Prudential Ins. Co. of America v. Williams, 168 S.W. 1114, 113 Ark. 373—Williams v. Williams, 166 S.W. 552, 112 Ark. 507.

Cal.—Ales v. Ryan, 64 P.2d 409, 8 C.2d 82.

Neusted v. Skernswell, App., 151 P.2d 857, reheard 159 P.2d 49—Union Oil Co. v. Domengeaux, 86 P.2d 127, 30 C.A.2d 266—Saxton v. State Board of Education, 29 P.2d 873, 137 C.A. 167—Mayer v. West, 273 P. 849, 96 C.A. 31—Gartler v. First Nat. Bank, 263 P. 566, 88 C.A. 411—Rice Securities Co. v. Daggs, 218 P. 484, 63 C.A. 273—Bouton v. Stuart, 199 P. 71, 52 C.A. 484—Chase v. Peters, 174 P. 116, 37 C.A. 358.

Conn.—Torrington Creamery v. Davenport, 12 A.2d 780, 126 Conn. 515.

Fla.—Great American Ins. Co. of New York v. Peters, 141 So. 745, 106 Fla. 40.

Ill.—Fors v. Anderson, 110 N.E. 361, 270 Ill. 45.

Citizens' State Bank of Mantano v. Senesac, 267 Ill.App. 288.

ing,[91] in retaining, or permitting the addition of, an unnecessary party or parties plaintiff,[92] or in

Ky.—Kentucky Title Trust Co. v. Weil, 136 S.W.2d 1097, 281 Ky. 763—Hall v. Hall, 19 S.W.2d 988, 230 Ky. 351—Louisville Gas & Electric Co. v. Nall, 198 S.W. 745, 178 Ky. 33—Hoosier Mining Co. v. Union Trust Co., 191 S.W. 305, 173 Ky. 505—Smith v. Chapman, 169 S.W. 834, 160 Ky. 400.

Mass.—New England Oil Refining Co. v. Canada Mexico Oil Co., 174 N. E. 330, 274 Mass. 191.

Mich.—Boman v. Wolverine Power Co. 255 N.W. 613, 268 Mich. 59—McPeake v. Grand Trunk Western Ry. Co., 219 N.W. 734, 242 Mich. 676.

Minn.—State v. Rock Island Motor Transit Co., 295 N.W. 519, 209 Minn. 105—Forney v. Farmers' Mut. Fire Ins. Co. of North Fork, 231 N.W. 401, 181 Minn. 8.

Mo.—Volkart v. Groom, 9 S.W.2d 947.

Stewart v. Eveland, App., 38 S.W.2d 301.

Neb.—Krotter & P. J. Fitzgerald v. Davis, 199 N.W. 853, 112 Neb. 545.

N.Y.—Security Trust Co. of Rochester v. Pritchard, 194 N.Y.S. 486, 201 App.Div. 142—Tucker v. Weeks, 163 N.Y.S. 595, 177 App.Div. 158.

N.C.—Highway Com'rs of Woodsdale Tp. v. Central Highway Commission of Person County, 103 S.E. 744, 179 N.C. 610.

Ohio.—Tamplin v. Pennsylvania R. Co., App., 51 N.E.2d 736.

Okl.—Sentinel Fire Ins. Co. of Springfield, Mass. v. Boone, 23 P. 2d 200, 164 Okl. 156.

Or.—Benson v. City of Medford, 20 P.2d 232, 142 Or. 243—Closset v. Portland Amusement Co., 290 P. 556, 134 Or. 414, rehearing denied 293 P. 720, 134 Or. 414—Rushing v. Saboe, 279 P. 867, 130 Or. 522.

S.D.—Smith v. Goldsmith, 207 N.W. 978, 49 S.D. 580.

Tex.—Crenwelge v. Ponder, Com. App., 228 S.W. 145.

Dickerson v. State, Civ.App., 169 S.W.2d 1005, reversed on other grounds State v. Dickerson, 174 S. W.2d 244, 141 Tex. 475—Bullock v. Englert, Civ.App., 125 S.W.2d 663—Sanders v. Lowrimore, Civ. App., 73 S.W.2d 148, reversed on other grounds 103 S.W.2d 739, 129 Tex. 563, affirmed on rehearing 106 S.W.2d 266, 129 Tex. 563—McClendon v. Brown, Civ.App., 63 S. W.2d 746—Richards v. Westmoreland, Civ.App., 63 S.W.2d 715—Southern Ice & Utilities Co. v. Richardson, Civ.App., 60 S.W.2d 308—Allen-Figh Motor Co. v. Hodgkins Motor Co., Civ.App., 32 S.W. 2d 224—Cox v. McClave, Civ.App. 22 S.W.2d 961—Wichita Falls Traction Co. v. McAbee, Civ.App., 21 S.W.2d 97—City Nat. Bank v. Eastland County, Civ.App., 12 S. W.2d 662, modified on other grounds Ling v. Eastland County, Com.App., 39 S.W.2d 599, 77 A. L.R. 1466—Lingner v. Gaines, Civ. App., 244 S.W. 205—Pope v. Brookshire, Civ.App., 236 S.W. 108—Missouri, K. & T. Ry. Co. of Texas v. Grimes, Civ.App., 196 S.W. 691—Langford v. Power, Civ.App., 196 S.W. 662—Clark v. State, Civ. App., 189 S.W. 84, error refused—Neblett v. Cooper Grocery Co., Civ. App., 180 S.W. 1162.

Wash.—Yakima Fruit Growers Ass'n v. Henneford, 47 P.2d 831, 182 Wash. 437—Sherman, Clay & Co. v. Turner, 2 P.2d 688, 164 Wash. 257—Cashmere Fruit Growers' Union v. Great Northern Ry. Co., 270 P. 1038, 149 Wash. 319, certiorari denied Great Western Ry. Co. v. Cashmere Fruit Growers' Union, 49 S.Ct. 347, 279 U.S. 851, 73 L.Ed. 994—Parker v. Parker, 207 P. 1062, 121 Wash. 24.

4 C.J. p 925 note 2.

Harmless failure to require election

Where several persons have joined as plaintiffs and only one of them is entitled to, and does, recover, the trial court's denial of defendant's efforts to compel an election on the part of plaintiffs as to which was entitled to prosecute the suit is without prejudice.

Minn.—Forney v. Farmers' Mut. Fire Ins. Co. of North Fork, 231 N.W. 401, 181 Minn. 8.

Defendant against whom no relief is sought

The joinder as a party defendant of one against whom no relief is sought is immaterial, prejudicing no one.

Ala.—Tony v. Chenault, 85 So. 742, 204 Ala. 329.

Tex.—Lingner v. Gaines, Civ.App., 244 S.W. 205.

Joinder of defendant not liable

A defendant held liable cannot obtain a reversal because another not liable was made defendant with him.

Ark.—Firemen's Ins. Co. v. Simmons, 22 S.W.2d 45, 180 Ark. 500.

Judgment in favor of misjoined defendants

Whether or not all defendants are proper parties is immaterial where all defendants have judgment.

Cal.—Saxton v. State Board of Education, 29 P.2d 873, 137 C.A. 167.

Nominal damages only recovered

A misjoinder of defendants is not reversible error where the only recovery had against them is for nominal damages.

Mo.—Volkart v. Groom, 9 S.W.2d 947.

Confusion of issues and increase in damages

Where a misjoinder of parties plaintiff and the resulting trial of their combined grievances tends to confuse the issues and increase the damages allowed the only plaintiff who has stated a cause of action, the error is prejudicial and reversible.

S.C.—Mauldin v. Milford, 121 S.E. 547, 127 S.C. 508.

91. Ark.—Sauve v. Ingram, 142 S.W. 2d 541, 200 Ark. 1181.

Cal.—Moon v. Marker, 78 P.2d 460, 26 C.A.2d 33—Wiseman v. Sklar, 285 P. 1081, 104 C.A. 369.

Colo.—Porter Thompson Co. v. Kistler, 32 P.2d 191, 94 Colo. 598.

Conn.—Boiselle v. Rogoff, 13 A.2d 753, 126 Conn. 635.

Idaho.—Gooding v. Koonce, 306 P.2d 657, 78 Idaho 515.

Ill.—Martin v. Cole, 73 N.E.2d 633, 331 Ill.App. 597—Cowles v. Morris & Co., 242 Ill.App. 548, affirmed 161 N.E. 150, 330 Ill. 11.

N.C.—Potter v. Norwood Lumber Co., 101 S.E. 553, 179 N.C. 131.

Pa.—Kratsas v. Mugianis, 188 A. 290, 324 Pa. 452.

Tex.—Montgomery v. Ebony Hills Imp. Co., Civ.App., 229 S.W.2d 830.

4 C.J. p 925 note 2 [a].

Rule stated

"When a judgment, if satisfied, will protect defendant from further suit, annoyance, or loss, and the action has afforded defendant the opportunity to assert in that action all the defenses, causes of action on cross-complaint and counterclaims available to him as against the cause of action, and time has been allowed for preparation for trial, defendant's objection to the bringing in of an additional party plaintiff, of itself, will not justify a reversal of that judgment."

Cal.—Wiseman v. Sklar, 285 P. 1081, 1085, 104 C.A. 369.

Joinder of insurer held prejudicial

(1) The bringing in of an insurance company as defendant in an action against insured is prejudicial to insurer where it is not liable until the liability of insured is judicially established, and on appeal of insurer the judgment will be reversed.

N.Y.—Kromback v. Killian, 213 N.Y. S. 138, 215 App.Div. 19.

(2) In suits by insured persons, who were advanced funds by insurers and executed loan receipt agreements, against third party tortfeasors, it was prejudicial error to require plaintiffs to join insurers as parties plaintiff.

Fla.—Gould v. Weibel, 62 So.2d 47.

92. Cal.—Fuentes v. Tucker, 187 P. 2d 752, 31 C.2d 1.

sustaining,[93] overruling,[94] or delaying the ruling on,[95] objections for misjoinder, or in plaintiff not being strictly the proper party to sue.[96]

The rule that errors will not warrant reversal unless they are harmful or prejudicial also applies to errors consisting of the nonjoinder of parties;[97]

Rehart v. Klossner, 119 P.2d 145, 48 C.A.2d 40—Curtis v. Nye & Nissen, 261 P. 747, 86 C.A. 507.
Ky.—Commonwealth v. Black, 181 S.W.2d 415, 297 Ky. 832—Drinkard v. George, 36 S.W.2d 56, 237 Ky. 560.
Miss.—Grenada Auto Co. v. Waldrop, 195 So. 491, 188 Miss. 468.
Mo.—Bert v. Rhodes, App., 258 S.W. 40.
N.D.—Bumann v. Burleigh County, 18 N.W.2d 10, 73 N.D. 655.
Okl.—Fife v. Jackson Material Co., 125 P.2d 175, 190 Okl. 500.
Tex.—H. T. Cab Co. v. Ginns, Civ. App., 280 S.W.2d 360, error refused no reversible error—Feris v. Bassett, Civ.App., 227 S.W. 233.
Va.—Commonwealth v. Jones & Robins, 41 S.E.2d 720, 186 Va. 30.
Wis.—Muldowney v. McCoy Hotel Co., 269 N.W. 655, 223 Wis. 62.
4 C.J. p 926 note 16.

93. Ky.—Owens v. Georgia Life Ins. Co., 177 S.W. 294, 165 Ky. 507.
Tex.—Liberty Annex Corporation v. City of Dallas, Civ.App., 289 S.W. 1067, affirmed City of Dallas v. Liberty Annex Corporation, Com. App., 295 S.W. 591.
Va.—People's Bank of Rural Retreat v. People's Nat. Bank of Abingdon, 139 S.E. 325, 148 Va. 651.
W.Va.—Harris v. North, 88 S.E. 603, 78 W.Va. 76, 1 A.L.R. 356.
4 C.J. p 925 note 3.

94. Ala.—Van Antwerp v. Van Antwerp, 5 So.2d 73, 242 Ala. 92.
Cal.—Asevado v. Orr, 34 P. 777, 100 C. 293.
Jones v. Peck, 218 P. 1030, 63 C.A. 397—Shanklin v. Scribner, 217 P. 130, 62 C.A. 487.
Fla.—John W. Campbell Farms, Inc. v. Zeda, 59 So.2d 750.
Ga.—A. C. Alexander Lumber Co. v. Livingston, 12 S.E.2d 89, 63 Ga. App. 733.
Kan.—Plains State Bank v. Ellis, 263 P.2d 254, 175 Kan. 261.
Ky.—Brown v. Farmers' Deposit Bank, 3 S.W.2d 215, 223 Ky. 171.
Okl.—Lindley v. Kelly, 147 P. 1015, 47 Okl. 328.
Tex.—Stoeppleman v. Carter, Civ. App., 111 S.W.2d 774—Farmers Elevator Co. v. Wunschel, Civ. App., 88 S.W.2d 574—City of Wichita Falls v. Whitney, Civ.App., 11 S.W.2d 404—White v. Carlton, Civ. App., 277 S.W. 701—Griffin v. Reilly, Civ.App., 275 S.W. 242—Millerman v. Megaritty, Civ.App., 242 S.W. 757—Western Nat. Bank of Ft. Worth v. Texas Christian University, Civ.App., 176 S.W. 1194.
4 C.J. p 925 note 4.

Defendant nevertheless liable for whole amount

The overruling of a demurrer, on the ground that there is misjoinder of parties defendant, is harmless as to a defendant who is under legal obligation to pay the whole amount due plaintiff, since the fact that other persons are made defendants cannot affect such obligation.
Cal.—Shanklin v. Scribner, 217 P. 130, 62 C.A. 487.

Improper joinder of nonrecovering plaintiff

The fact that a plaintiff to whom no relief is awarded is improperly joined with a plaintiff for whom the judgment is rendered does not make overruling of a demurrer to the complaint reversible error on appeal by defendants, since defendants are not prejudiced thereby.
Cal.—Jones v. Peck, 218 P. 1030, 63 C.A. 397.

Prejudicial joinder of insurer

Where plaintiff has joined with defendant in a suit for damages an insurance company, who is not liable for such loss, it is reversible error for the court to overrule the defendant's plea of misjoinder, as such joinder would have a tendency to increase the recovery allowed against defendant.
Tex.—Keneagh v. Baker, Civ.App., 284 S.W. 321.

95. Ariz.—DeMund v. Oro Grande Consol. Mines, 108 P.2d 770, 56 Ariz. 458.
Tex.—Engler v. Hatton, Civ.App., 2 S.W.2d 519, affirmed, Com.App., 12 S.W.2d 990.

96. Cal.—Basler v. Sharp & Fellows Co., 166 P.2d 403, 73 C.A.2d 480, certiorari denied 67 S.Ct. 86, 329 U.S. 730, 91 L.Ed. 631.
Ill.—Jones & Laughlin Steel Co. v. Graham, 112 N.E. 967, 273 Ill. 377.
Ky.—Shutt's Adm'r v. Shutt's Adm'r, 232 S.W. 405, 192 Ky. 98.
La.—Charity Hospital of Louisiana v. Axford, 131 So. 770, 14 La.App. 535.
Okl.—Hutchman v. Henshaw, 177 P. 2d 112, 198 Okl. 244.
Pa.—Sinberg v. Davis, 132 A. 287, 285 Pa. 426.
Tex.—Moerschell v. City of Eagle Lake, Civ.App., 236 S.W. 996, error refused.

Naming agent as plaintiff

No harm results from the naming of an agent as plaintiff where the judgment in the proceedings is binding on the principal and protects defendant from further actions on account of the same cause.
Pa.—Sinberg v. Davis, 132 A. 287, 285 Pa. 426.

97. Ala.—McCary v. McMorris, 92 So.2d 319, 265 Ala. 493—Dowling v. Sollie & Sollie, 176 So. 340, 234 Ala. 630—Hodge v. Joy, 92 So. 171, 207 Ala. 198.
Ariz.—Oglesby v. Chandler, 288 P. 1034, 37 Ariz. 1.
Ark.—Snider v. Dennis, 251 S.W. 682, 159 Ark. 231—Missouri Pac. R. Co. v. Block, 218 S.W. 682, 142 Ark. 127, certiorari denied 40 S.Ct. 586, 253 U.S. 493, 64 L.Ed. 1029.
Cal.—Hagenbuch v. Kosky, 298 P.2d 875, 142 C.A.2d 296—Price v. Hovsepian, 250 P.2d 252, 114 C.A.2d 385—Smith v. Smith, 124 P.2d 117, 51 C.A.2d 29—Alhambra Building & Loan Ass'n v. DeCelle, 118 P.2d 19, 47 C.A.2d 409—Granger v. New Jersey Ins. Co., 291 P. 698, 108 C.A. 290—Coneland Water Co. v. Nickalls, 242 P. 518, 75 C.A. 212—Althouse v. Provident Mut. Building-Loan Ass'n, 209 P. 1018, 59 C.A. 31.
Colo.—Haley v. Austin, 223 P. 43, 74 Colo. 571—Terrace Irr. Dist. v. Overflow Ditch No. 1, 195 P. 325, 69 Colo. 362—American Smelting & Refining Co. v. Hicks, 172 P. 1055, 65 Colo. 146, L.R.A.1918F 302.
Ga.—McLean v. Johnson, 51 S.E.2d 836, 204 Ga. 862.
Ill.—Garrett Biblical Institute v. Elmhurst State Bank, 163 N.E. 1, 331 Ill. 308. See Supreme Council of Western Catholic Union v. Saule, 193 Ill.App. 532.
Ind.—Pittsburgh, C., C. & St. L. Ry. Co. v. Home Ins. Co. of New York, 108 N.E. 525, 183 Ind. 355, Ann.Cas. 1918A 828.
National Fire Ins. Co. v. Gellman, 144 N.E. 154, 83 Ind.App. 219—Clark v. Spangler & Grouleff Lumber Co., 135 N.E. 890, 78 Ind. App. 613.
Iowa.—In re Pierce's Estate, 60 N.W. 2d 894, 245 Iowa 22.
Ky.—Keck v. Hafley, 237 S.W.2d 527—Collett v. Commonwealth, 223 S.W.2d 877, 311 Ky. 218—Beck v. Lynch, 209 S.W.2d 58, 306 Ky. 738—Kentucky Service Co. v. Miracle, 56 S.W.2d 521, 246 Ky. 797—Dejarnett v. Tutt, 18 S.W.2d 968, 230 Ky. 99—Hurm v. Collignon, 261 S.W. 602, 202 Ky. 807.
La.—Parten v. Webb, 1 So.2d 76, 197 La. 197.
Md.—Safe Deposit & Trust Co. v. Sanford, 29 A.2d 657, 181 Md. 271—Snavely v. Berman, 121 A. 842, 143 Md. 75.
Mass.—Town of Seekonk v. John J. McHale & Sons, 90 N.E.2d 325, 325 Mass. 271—North Easton Co-op.

Bank v. MacLean, 15 N.E.2d 241, 300 Mass. 285—Weinstein v. Miller, 144 N.E. 387, 249 Mass. 516.

Nev.—Gershenhorn v. Walter R. Stutz Enterprises, 304 P.2d 395, rehearing denied 306 P.2d 121.

Okl.—Spicers, Inc., v. Rudd, 188 P. 2d 692, 199 Okl. 576—Home Ins. Co. of New York v. Southern Motor Coach Corporation, 41 P.2d 870, 171 Okl. 94.

Or.—Portland Trust & Sav. Bank v. Gallin, 216 P.2d 681, 188 Or. 526—Welch v. Johnson, 183 P. 776, 93 Or. 591, rehearing denied 184 P. 280, 93 Or. 591.

Pa.—Ronca v. British & Foreign Marine Ins. Co., Limited, of Liverpool, England, 172 A. 475, 314 Pa. 449—Loughrey v. Pennsylvania R. Co., 131 A. 260, 284 Pa. 267.

S.C.—Long v. Carolina Baking Co., 8 S.E.2d 326, 193 S.C. 225.

S.D.—Smith v. Monserud, 235 N.W. 693, 58 S.D. 278.

Tenn.—Pickens v. Scarbrough, 46 S. W.2d 58, 164 Tenn. 75.

Tex.—Stanolind Oil & Gas Co. v. State, 133 S.W.2d 767, 136 Tex. 5, modified on other grounds 145 S.W. 2d 569, 136 Tex. 5.

Milner v. Whatley, Civ.App., 282 S.W.2d 903, error refused no reversible error—Lewis v. Hall, Civ. App., 271 S.W.2d 447, error refused no reversible error—Community Natural Gas Co. v. Lane, Civ.App., 133 S.W.2d 200, error dismissed 134 S.W.2d 1058, 134 Tex. 255—Vela v. Shacklett, Civ.App., 1 S.W.2d 672, affirmed, Com.App., 12 S.W.2d 1007—Security State Bank of Fort Worth v. Green, Civ.App., 258 S. W. 606—Ward v. Veale, Civ.App., 253 S.W. 844—Colonna v. Kruger, Civ.App., 246 S.W. 707.

Utah.—Gray v. Defa, 153 P.2d 544, 107 Utah 272.

W.Va.—Merchants' Nat. Bank of Point Pleasant v. Ralphsnyder, 169 S.E. 89, 113 W.Va. 480—Ohio Finance Co. v. Mannington Window Glass Co., 103 S.E. 333, 86 W.Va. 322—Ephraim Creek Coal & Coke Co. v. Bragg, 83 S.E. 190, 75 W.Va. 70.

Wis.—State v. Hoebel, 41 N.W.2d 865, 256 Wis. 549—Servi v. Draheim, 36 N.W.2d 273, 254 Wis. 356—Leonard v. Bottomley, 245 N.W. 849, 210 Wis. 411, followed in 245 N.W. 852, 210 Wis. 420, Id., 245 N.W. 853, 210 Wis. 421.

4 C.J. p 925 note 5.

Failure to make regular guardian of defendant party

"It appears that no guardian had been appointed for defendant when the suit was filed. Later a guardian was appointed. The trial court, however, did not require that the regular guardian be made a party, but appointed a guardian ad litem for the defendant—eminent counsel. While it would have been better practice to make the regular guardian a party, still we do not think defendant was in any way prejudiced by the course taken. The guardian ad litem raised every point possible in the defendant's favor. In fact he made a defense far more vigorous than the regular guardian could have done, unless that guardian had employed counsel of ability corresponding with that of the guardian ad litem. Such an irregularity does not require a reversal."

Tenn.—Pickens v. Scarbrough, 46 S. W.2d 58, 59, 164 Tenn. 75.

Necessary and indispensable parties

(1) Nonjoinder of an indispensable or necessary party not otherwise bound or precluded by the judgment or decree is ground for reversal.

U.S.—Garretson v. National Surety Co., C.C.A.Fla., 63 F.2d 847, certiorari denied National Surety Co. v. Garretson, 54 S.Ct. 55, 290 U.S. 638, 78 L.Ed. 555.

Ala.—Pate v. Hall, 125 So. 650, 220 Ala. 411.

Cal.—Bowles v. Superior Court of City and County of San Francisco, 283 P.2d 704, 44 C.2d 574.

Fla.—McAdoo v. Moses, 132 So. 638, 101 Fla. 936.

Ind.—Ætna Ins. Co. v. Reyman, 132 N.E. 657, 191 Ind. 574.

Mich.—Cities Service Oil Co. v. Waldron, 238 N.W. 249, 255 Mich. 530.

N.Y.—Mulligan v. Mulligan, 60 N.Y. S.2d 501, 270 App.Div. 836.

W.Va.—Hensley v. Broadwater, 157 S.E. 87, 110 W.Va. 134—Harper v. South Penn Oil Co., 87 S.E. 483, 77 W.Va. 294.

(2) This rule applies only where the interest of the omitted party is a present substantial one, and where the judgment or decree will result in depriving him of some material right without a hearing.

Ill.—Gulick v. Hamilton, 122 N.E. 537, 287 Ill. 367.

(3) In suit involving efficacy of nonassignability clause of life insurance policy, the insurer was a "necessary party" so that nonjoinder of the insurer required reversal of decree.

N.J.—Chelsea-Wheeler Coal Co. v. Marvin, 28 A.2d 505, 132 N.J.Eq. 462.

(4) In quo warranto proceedings brought in name of the state on relation of an individual who did not make himself a party thereto, and where no private rights were sought to be protected, proceeding to a final judgment of ouster against defendant without joinder of individual was reversible error, since individual was a "necessary party" and the state a mere "nominal party."

Ala.—Baxter v. State ex rel. Metcalf, 9 So.2d 119, 243 Ala. 120.

Joinder before or after judgment or decree

(1) Although a trustee in a trust deed is a necessary party in a suit to foreclose the same, error in failing to join him is cured by making him a party before rendition of decree so that it will not be reversed because of the nonjoinder.

Ark.—Snider v. Dennis, 251 S.W. 682, 159 Ark. 231.

(2) In an action by a surety against his principal to foreclose a mortgage to satisfy debts paid by surety and to subject land to payment of other debts, it is immaterial that the creditors are not made parties before the judgment, where the question of defect of parties was not raised in the proper way and at the proper time, and the creditors subsequently become parties and file their answers and cross petitions setting up their claims and electing to take their share of the proceeds.

Ky.—Hurm v. Collignon, 261 S.W. 602, 202 Ky. 807.

(3) In breach of contract action by owner of dwelling against remodeling contractor and his surety and subcontractor engaged to raise the dwelling, subcontractor was not prejudiced by not having been brought into the suit through third party petitions until after introduction of evidence had begun, where subcontractor participated in entire trial of case.

La.—Macaluso v. Thibodeaux, 94 So. 2d 426, 232 La. 431.

Omitted party precluded by action

(1) A failure to join as plaintiff another having an interest in the subject matter is error without prejudice where that other appears at trial and testifies and in effect approves of the bringing of the action so that he is estopped from disputing plaintiff's right to bring it and from seeking to subject defendant to another action for the same injury.

Ark.—Missouri Pac. R. Co. v. Block, 218 S.W. 682, 142 Ark. 127, certiorari denied 40 S.Ct. 586, 253 U.S. 493, 64 L.Ed. 1029.

(2) In a suit by the assignee, a failure to join the assignor is harmless where the assignment is established by the testimony of the assignor so that he is concluded by the judgment.

Ky.—Dejarnett v. Tutt, 18 S.W.2d 968, 230 Ky. 99.

(3) In an action by a tenant against a landlord for permitting another lessee, in violation of his lease to engage in business in competition to plaintiff, the overruling of a demurrer to the complaint on the ground that such other lessee had not been joined as defendant is not reversible error, where such lessee knew of the proceeding and participated as a witness in such a man-

irregularities in allowing the joinder of new parties,[98] or refusing to allow or require the addition of a proper or necessary party;[99] a failure to act on a frivolous application to bring in a new party;[1] dismissing a party from the case,[2] or failing,[3] or refusing[4] to dismiss or strike a party; or com-

ner as to become bound by the decree.
Md.—Snavely v. Berman, 121 A. 842, 143 Md. 75.

(4) In a suit brought by the grantee of land against the holder of a mortgage thereon to reform a deed whereby plaintiff acquired title by striking out, because inserted by mistake, a clause assuming the mortgage, a failure to join plaintiff's grantor as a party is harmless where the grantor appeared as witness and testified in plaintiff's favor that the assumption clause was inserted by mistake, so that the grantor becomes estopped to deny that fact.
Or.—Welch v. Johnson, 183 P. 776, 93 Or. 591, rehearing denied 184 P. 280, 93 Or. 591.

(5) It has been held by other courts, however, that the fact that a person who is a necessary party plaintiff, and not joined, appears and testifies in favor of plaintiff does not cure the error or render it harmless.
W.Va.—Coffman v. Hope Natural Gas Co., 81 S.E. 575, 74 W.Va. 57.

(6) Where witness, who testified for parties who claimed title to property by adverse possession and as beneficiaries of alleged parol trust, appeared to own a fractional interest in property, he would have been estopped to assert his interest had judgment been rendered in favor of beneficiaries, and, therefore, failure to include witness as party to action was not fundamental error.
Tex.—Hardin v. Cotton, Civ.App., 300 S.W.2d 719, refused no reversible error.

98. Cal.—Bellon v. Silver Gate Theatres, 47 P.2d 462, 4 C.2d 1.
Jones v. Alameda, 259 P. 976, 85 C.A. 607.
Ky.—Briggs v. Muir, Wilson & Muir, 263 S.W. 740, 204 Ky. 135.
Miss.—Joiner v. LeFlore Grocer Co., 110 So. 857, 145 Miss. 31.
Mo.—McDonnell v. Cornelison, App., 25 S.W.2d 558.
Tex.—Brantley v. Boone, Civ.App., 34 S.W.2d 409—Tonn v. Inner Shoe Tire Co., Civ.App., 260 S.W. 1078.

99. U.S.—Hafey v. W. C. Mitchell Co., C.C.A.N.D., 293 F. 27.
Ark.—Robinson v. City of Pine Bluff, 276 S.W.2d 419, 224 Ark. 791—Smith v. Pettus, 169 S.W.2d 586, 205 Ark. 442.
Cal.—Hoffman v. Van Duzee, 65 P.2d 1330, 19 C.A.2d 517—Kohn v. Kempner, 211 P. 805, 59 C.A. 621.
Ga.—Orr v. Hapeville Realty Co., 94 S.E.2d 682, 212 Ga. 649—Coffee v. Gray, 122 S.E. 687, 158 Ga. 218, error dismissed 45 S.Ct. 635, 268 U. S. 680, 69 L.Ed. 1153.
Iowa.—Shipman v. Bucher, 296 N.W. 394, 229 Iowa 1196—Bookhart v. Younglove, 218 N.W. 533, 207 Iowa 800.
Kan.—Dick's Transfer Co. v. Miller, 119 P.2d 454, 154 Kan. 574.
Ky.—Smith v. Kentucky-West Virginia Power Co., 283 S.W.2d 376—Williams v. Word's Adm'x, 163 S. W.2d 41, 291 Ky. 101.
La.—Macaluso v. Thibodeaux, 94 So. 2d 426, 232 La. 431.
Ogden v. Rosedale Inn, App., 189 So. 162.
Mo.—Frye v. Baskin, App., 231 S.W. 2d 630.
N.C.—Journal Pub. Co. v. Barber, 81 S.E. 694, 165 N.C. 478.
R.I.—Goggin v. Goggin, 195 A. 593, 59 R.I. 343.
Tex.—Stanolind Oil & Gas Co. v. State, 133 S.W.2d 767, 136 Tex. 5, modified on other grounds 145 S.W. 2d 569, 136 Tex. 5.
Mims v. Hearon, Civ.App., 248 S.W.2d 754—Perkins v. Terrell, Civ.App., 214 S.W. 551, error refused—Finley v. Wakefield, Civ. App., 184 S.W. 755, error refused.
Utah.—Inland Engineering & Construction Co. v. Maryland Casualty Co., 290 P. 367, 76 Utah 435.
Wash.—Bleiler v. Wolff, 161 P.2d 145, 23 Wash.2d 368—Guse v. Lundgren, 32 P.2d 807, 177 Wash. 532.
4 C.J. p 926 note 15—63 C.J. p 1206 note 96.

Judgment binding on nonjoined necessary party

If a necessary party, for whose use and benefit plaintiff assumed to sue, was personally present at trial of the suit, directing the suit as far as it affected his interests, so that judgment therein would bind him, there is no reversible error in refusing to make him an actual party of record.
Tex.—Perkins v. Terrell, Civ.App., 214 S.W. 551, error refused.

Error held reversible

(1) Where certain persons are vital as parties for the relief asked, the failure to bring them in after objection renders the decree reversible.
Iowa.—Swan v. Clark, 36 Iowa 560.

(2) Where joinder of third person is necessary to protect defendant, a denial of his motion to have a necessary third party interpleaded constitutes reversible error.
Cal.—De Olazabal v. Mix, 74 P.2d 787, 24 C.A.2d 258.
Wis.—Jones v. Mehlberg, 254 N.W. 95, 214 Wis. 629.

(3) In suit for damages for alleged trespass and cutting and removing of timber from owners' land, wherein defendant denied the trespass on ground that he owned the timber, refusing to allow defendant to call his vendors in warranty was reversible error.
La.—Blanchard v. Norman-Breaux Lumber Co., 44 So.2d 112, 216 La. 551.

1. Or.—Petteys v. Comer, 54 P. 813, 34 Or. 36.

2. Cal.—Harrington v. Evans, 221 P. 2d 696, 99 C.A.2d 269—Martin v. Los Angeles Ry. Corp., 171 P.2d 511, 75 C.A.2d 744—Bassot v. United Railroads of San Francisco, 177 P. 884, 39 C.A. 60.
Fla.—Walker Fertilizer Co. v. Race, 166 So. 283, 123 Fla. 84, 105 A.L. R. 341.
Ga.—Spinks v. La Grange Banking & Trust Co., 129 S.E. 31, 160 Ga. 705.
Ill.—Goldberg v. Capitol Freight Lines, 47 N.E.2d 67, 382 Ill. 283.
La Rocco v. Antonello, 21 N.E.2d 26, 300 Ill.App. 608.
Iowa.—Massingham v. Illinois Cent. R. Co., 179 N.W. 832, 189 Iowa 1288—Korf v. Howerton, 174 N.W. 350, 188 Iowa 120.
Md.—Kaufman Beef Co. v. United Rys. & Electric Co. of Baltimore, 109 A. 191, 135 Md. 524, 9 A.L.R. 476.
N.Y.—Rosebrock v. General Electric Co., 236 N.Y. 227, 140 N.E. 571.
Tex.—Sullivan v. City of Galveston, Com.App., 34 S.W.2d 808.
Thomas v. State Life Ins. Co., Civ.App., 123 S.W.2d 385—Ford v. Cochran, Civ.App., 223 S.W. 1041.
Va.—Johnston v. Pearson, 93 S.E. 640, 121 Va. 453.
4 C.J. p 925 note 6.

3. N.D.—Morrell v. Northern Pac. Ry. Co., 179 N.W. 922, 46 N.D. 535.

4. Ala.—McKenzie v. Minge, 84 So. 475, 17 Ala.App. 269.
Ind.—Hopkins v. Matters, 112 N.E. 248, 62 Ind.App. 676.
Mich.—McPeake v. Grand Trunk Western Ry. Co., 219 N.W. 734, 242 Mich. 676.
S.C.—Wyman v. Atlantic Coast Line R. Co., 104 S.E. 542, 115 S.C. 138.
Tex.—Atchison, T. & S. F. Ry. Co. v. Francis, Civ.App., 227 S.W. 342, affirmed Francis v. Atchison, T. & S. F. Ry. Co., 253 S.W. 819, 113 Tex. 202, 30 A.L.R. 114.
4 C.J. p 925 notes 7, 8.

pelling,[5] permitting,[6] refusing to allow,[7] or dismissing or striking,[8] or refusing to dismiss or strike,[8.5] an intervention.

The rule also applies to a failure to make a substitution of parties,[9] or permitting,[10] or ordering a

5. Ark.—Smith v. Arkansas Power & Light Co., 86 S.W.2d 411, 191 Ark. 389.
Ga.—Hiers v. Exum, 122 S.E. 784, 158 Ga. 19.
4 C.J. p 925 note 9.

Compelling intervention held reversible error

Requiring automobile theft insurer to intervene in action in the name of insured for damage to automobile allegedly stolen through negligence of defendant garage proprietors was reversible error, where such forced joinder deprived insurer of right under subrogation agreement to sue in name of insured and merely tended to becloud the issues and divert the minds of jurors.
Tex.—Hudson Underwriters Agency of Franklin Fire Ins. Co. v. Ablon, 203 S.W.2d 584, error dismissed.

6. U.S.—Texas Co. v. Hogarth Shipping Corporation, D.C., 41 S.Ct. 612, 256 U.S. 619, 65 L.Ed. 1123.
Bromfield v. Trinidad Nat. Inv. Co., C.C.A.Colo., 36 F.2d 646, 71 A.L.R. 542.
Cal.—In re Boeson's Estate, 255 P. 800, 201 C. 36.
Cohan v. Shibley, App., 289 P. 169—Batcher v. Hoeppner, 224 P. 117, 65 C.A. 385.
Ga.—Cason v. United Realty & Auction Co., 123 S.E. 894, 158 Ga. 584.
Idaho.—Bergh v. Pennington, 198 P. 158, 33 Idaho 726.
Ill.—Security Ben. Life Ins. Co. v. McCarthy, 122 N.E.2d 549, 4 Ill. 2d 194—Wallace v. Malooly, 122 N.E.2d 275, 4 Ill.2d 86—Kennedy v. Town of Normal, 194 N.E. 576, 359 Ill. 306.
Ind.—Clark v. De Camp, 136 N.E. 844, 79 Ind.App. 225, rehearing denied 137 N.E. 716, 79 Ind.App. 225.
Kan.—Adams v. Morgan, 52 P.2d 643, 142 Kan. 865.
Ky.—Union Light, Heat & Power Co. v. City of Covington, 139 S.W.2d 64, 282 Ky. 558—Cavalier Advertising Service v. Hudson, 90 S.W.2d 28, 262 Ky. 282—Waddle v. Hughes, 84 S.W.2d 75, 260 Ky. 269—McGregor v. Louisville & N. R. Co., 51 S.W.2d 953, 244 Ky. 696.
Neb.—Rea v. Pierson, 206 N.W. 760, 114 Neb. 173.
Ohio.—Grant v. City Trust & Savings Bank, App., 46 N.E.2d 453—Rundell v. Batch, 181 N.E. 278, 42 Ohio App. 204.
Tenn.—Julian Engineering Co. v. R. J. & C. W. Fletcher, Inc., 253 S.W.2d 743, 194 Tenn. 542.
Tex.—Joy v. City of Terrell, Civ. App., 143 S.W.2d 704, error dismissed, judgment correct—Weyel v. Lower Colorado River Authority, Civ.App., 121 S.W.2d 1032, error refused—Lamb v. Bonds & Dillard Drilling Corp., Civ.App., 107 S.W.2d 500—Anderson v. Welch, Civ.App., 92 S.W.2d 1121, error dismissed—Small-Lynch Co. v. Midwest & Gulf Co. of Texas Trust Estate, Civ.App., 269 S.W. 163—Edwards v. Roberts, Civ.App., 209 S.W. 247, rehearing overruled 212 S.W. 673, error refused.
Wash.—Kemp v. Putnam, 288 P.2d 837, 47 Wash.2d 530—In re Anderson's Estate, 61 P.2d 132, 187 Wash. 674—Boyd v. Hutton, 210 P. 33, 121 Wash. 685—Mountain Timber Co. v. Manufacturing Woodworkers Underwriters, 167 P. 93, 98 Wash. 167.
4 C.J. p 926 note 10.

Intervention held prejudicial error

In action on industrial life policy containing provision for double indemnity in case of accidental death, where insurer paid amount of policy into court defending only as to double indemnity, insurer's intervention, in trial of issue as to whether insured's administrator was entitled to proceeds in preference to alleged common-law wife by whom premiums were paid, was prejudicial error.
N.Y.—Rawlings v. Prudential Ins. Co. of America, 9 N.Y.S.2d 979, 256 App.Div. 284.

7. U.S.—Long v. Stites, C.C.A.Ky., 63 F.2d 855, certiorari denied 54 S.Ct. 59, 290 U.S. 640, 78 L.Ed. 556.
Cal.—Jersey Maid Milk Products Co. v. Brock, 91 P.2d 599, 13 C.2d 661.
Conn.—Fine v. Moomjian, 158 A. 241, 114 Conn. 226.
Ga.—Zeagler v. Zeagler, 9 S.E.2d 263, 190 Ga. 220.
Ind.—Siegel v. Archer, 10 N.E.2d 626, 212 Ind. 599—Laiskomis v. Federal Land Bank of Louisville, 4 N.E.2d 204, 210 Ind. 577—Inskeep v. State, 153 N.E. 411, 198 Ind. 224.
Ky.—Justice v. Elkhorn Wholesale Grocery Co., 291 S.W. 780, 218 Ky. 586.
Mich.—Zerfas v. Bills, 40 N.W.2d 763, 326 Mich. 657.
N.H.—Scamman v. Sondheim, 86 A.2d 329, 97 N.H. 280.
Okl.—Interstate Power Co. v. Hughes, 53 P.2d 1096, 175 Okl. 511—Excise Board of Marshall County v. School Dist. No. 34 of Marshall County, 10 P.2d 643, 156 Okl. 261.
Pa.—Cameron v. Shahedy, 59 A.2d 88, 359 Pa. 472—Commonwealth ex rel. Duff v. McCloskey, 46 A.2d 178, 353 Pa. 553.
Tex.—Davey v. W. G. Hecht, Inc., Civ.App., 56 S.W.2d 275.
4 C.J. p 926 note 11.

8. Iowa.—Cochburn v. Hawkeye Commercial Men's Assoc., 143 N.W. 1006, 163 Iowa 28.
Okl.—Fullwood v. Brown, 185 P.2d 449, 199 Okl. 324.
Tex.—Beaumont v. Masterson, Civ. App., 145 S.W. 1079—St. Louis Southwestern R. Co. v. Carwile, 67 S.W. 160, 28 Tex.Civ.App. 208.
4 C.J. p 926 note 13.

Dismissal held to affect result

Error in dismissing intervention by state in suit in equity to partition among individual members of former unincorporated National Guard Company land, title to which was taken in the name of National Guard Company, entered into and affected the final result of cause, and hence such final judgment must be set aside.
Ga.—State v. Hiers, 80 S.E.2d 308, 210 Ga. 348.

8.5 Tex.—Hughes Production Co. v. Hagan, Civ.App., 114 S.W.2d 326, error dismissed.

9. Ala.—Charlton v. Alabama Great Southern R. Co., 89 So. 710, 206 Ala. 341.
Cal.—Arguello Estate Protective Ass'n v. Crofton, 258 P.2d 97, 118 C.A.2d 511.
4 C.J. p 926 note 22.

10. Cal.—Klopstock v. Superior Court in and for City and County of San Francisco, 108 P.2d 906, 17 C.2d 13, 135 A.L.R. 318.
Everett v. Howard Buick Co., 59 P.2d 506, 15 C.A.2d 544—Calistoga Vineyard Co. v. Luchetti, 18 P.2d 729, 129 C.A. 374—Bowman v. Southern Pac. Co., 204 P. 403, 55 C.A. 734.
Colo.—Bright v. Schmitt, 231 P. 159, 76 Colo. 329.
Ill.—Oberman v. Camden Fire Ins. Ass'n, 145 N.E. 351, 314 Ill. 264.
Kan.—Howard v. Reiter, 243 P. 278, 120 Kan. 303, rehearing denied 244 P. 4, 120 Kan. 550.
Ky.—Davis v. Britt, 255 S.W. 68, 200 Ky. 413.
N.J.—Galamb v. Erie R. Co., 156 A. 128, 108 N.J.Law 7.
N.D.—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N.D. 734.
Or.—E. J. Struntz Planing Mill Co. v. Paget, 262 P. 263, 123 Or. 651, rehearing denied 263 P. 389, 123 Or. 651.
S.C.—Long v. Carolina Baking Co., 3 S.E.2d 46, 190 S.C. 367.
Tenn.—Monday v. Millsaps, 264 S.W. 2d 6, 37 Tenn.App. 371.
4 C.J. p 926 note 23.

Substitution is prejudicial where it is made after trial and defendant appellant could have urged different defenses against substitute plaintiff than against original plaintiff.
La.—Citizens' Bank & Trust Co. v. Jones, App., 160 So. 186.

substitution of parties in the action or proceeding,[11] or denying[12] a substitution, or substituting a party as plaintiff without notice to defendant.[13] Also within the rule is the making of an order of revivor,[14] reviving in the name of the wrong party,[15] or reviving a judgment in the name of the personal representatives of a deceased judgment creditor for the purpose of obtaining an appeal.[16]

Other errors within the rule include defects in designating or giving the name of a party;[17] the joinder of a party as defendant instead of as plaintiff;[18] the bringing of suit in a dual capacity[19] or in plaintiff's individual instead of in his representative capacity,[20] or a ruling on a motion to require plaintiff to make an election as to the capacity in which he will sue;[21] the bringing of suit in the name of the guardian instead of in the name of the ward by the guardian;[22] denying a motion to amend by naming as next friend a husband of plaintiff already joined as a party to the suit;[23] or a minor's failure to amend by striking the name of his next friend, on the minor's becoming of age before trial and this fact being suggested.[24]

§ 1682. Process

While errors or defects in connection with the issuance or service of process or notice, or the return thereof, may under some circumstances constitute ground for reversal, they will not so operate where no prejudice results.

The general rules as to the nature of error as harmless or prejudicial and its effect on the case on review, discussed supra §§ 1676–1679, have been applied to errors and defects relating to process and notice.[24.50] Thus, while errors or defects in connection with the issuance or service of process or notice may, under some circumstances, constitute ground for reversal of the judgment, decree, or order obtained in the proceeding,[24.55] where no

11. Cal.—Mitchell v. Automobile Owners Indemnity Underwriters, 118 P.2d 815, 19 C.2d 1, 137 A.L.R. 923.
Okl.—Dierks v. Walsh, 141 P.2d 95, 192 Okl. 584—Automobile Ins. Co. of Hartford, Conn. v. Lewis, 220 P. 639, 93 Okl. 280, 35 A.L.R. 1463.

12. Ky.—Atkins v. Globe Bank, etc., Co., 124 S.W. 879.
N.C.—Bynum v. Fidelity Bank of Durham, 12 S.E.2d 898, 219 N.C. 109.
Ohio.—Simon v. Mooney, 22 Ohio Cir.Ct. 271, 12 Ohio Cir.Dec. 73.

13. Iowa.—Carroll Impr. Co. v. Engleman, 99 N.W. 574.

14. Neb.—Union Pac. R. Co. v. Smith, 99 N.W. 813, 5 Neb.(Unoff.) 631.

15. Ark.—Oliver v. Howie, 281 S.W. 17, 170 Ark. 758—Mayers v. Lark, 168 S.W. 1093, 113 Ark. 207, Ann. Cas.1915C 1094.
4 C.J. p 926 note 20.

16. Va.—Charlottesville v. Stratton, 45 S.E. 737, 102 Va. 95.

17. Cal.—Brooks v. Nelson, 272 P. 610, 95 C.A. 144.
Ind.—Ziffrin v. Bolitho, 25 N.E.2d 675, 108 Ind.App. 44.
Ky.—Sovereign Camp, W. O. W., v. Rajkovich, 111 S.W.2d 626, 271 Ky. 235.
La.—Charity Hospital of Louisiana v. Axford, 131 So. 770, 14 La.App. 535.
Me.—Collins v. Bugbee & Brown Co., 1 A.2d 178, 136 Me. 12.
Minn.—Gustafson v. Johnson, 51 N.W.2d 108, 235 Minn. 358.
Mo.—Vaughn v. Mountain Grove Creamery, Ice & Electric Co., App., 275 S.W. 592, quashed in part on other grounds State ex rel. Mountain Grove Creamery, Ice & Electric Co. v. Cox, 286 S.W. 368, 315 Mo. 619.
4 C.J. p 926 note 17.

Summons not yet served
Where summons and complaint erroneously named intended defendant's brother as sole defendant and summons was not served on intended defendant, amendment of complaint to correct misnomer was not prejudicial to intended defendant, since he had not yet been brought into court and case could be considered as one in which no process had issued.
N.J.—Patrick v. Brago, 66 A.2d 749, 4 N.J.Super. 226.

Professional name
Where television and radio performer used a professional name in his television and radio work, and he brought action in his professional name to recover damages for assault and battery, and record disclosed his actual name, defendant was not prejudiced because trial court overruled defendant's motion to make the television and radio performer a party plaintiff in his real name.
Kan.—Sanders v. Sitton, 292 P.2d 1099, 179 Kan. 118.

Disregarding a defect in designating a party by the initial of his name instead of by his christian name is not ground for reversal where harmless.
Mich.—Stever v. Brown, 77 N.W. 704, 119 Mich. 196.

Designating plaintiff as trustee
In an action for a balance due for building a hunting lodge for defendant, an amendment designating plaintiff, after his coplaintiff's death, as surviving trustee of a certain realty trust was unnecessary, but was permissible and harmless to defendant.
Mass.—Burdo v. Tarky, 52 N.E.2d 396, 315 Mass. 296.

18. Neb.—Jobst v. Hayden, 121 N.W. 957, 84 Neb. 735, 50 L.R.A.,N.S., 501.

19. Cal.—In re Walker's Estate, 168 P. 689, 176 C. 402.
Colo.—Lockard v. Ware, 157 P. 1165, 61 Colo. 354.
Ga.—Malcom v. Webb, 86 S.E.2d 489, 211 Ga. 450.

20. Ark.—Pendergrass v. Allen, 141 S.W. 507, 101 Ark. 365.

21. Minn.—Forney v. Farmers' Mut. Fire Ins. Co. of North Fork, 231 N.W. 401, 181 Minn. 8.
4 C.J. p 926 note 14.

22. Ky.—Wathen v. Mackey, 187 S.W.2d 1000, 300 Ky. 115—Madisonville, etc., R. Co. v. Wiar, 138 S.W. 255, 144 Ky. 206.
Minn.—Richardson v. Kotek, 143 N.W. 973, 123 Minn. 360.
4 C.J. p 926 note 28.

23. Fla.—Miller v. Ellenwood, 164 So. 140, 121 Fla. 551.

24. Mich.—Bernard v. Pittsburg Coal Co., 100 N.W. 396, 137 Mich. 279.

24.50 Va.—Buttery v. Robbins, 14 S.E.2d 544, 177 Va. 368.

24.55 Tex.—Bostwick v. Allen, Civ. App., 189 S.W.2d 448.

Improper service
Under rule prohibiting service of process on Sunday, except in cases of injunction, etc., rendering of default money judgment was reversible error where service of citation was had on Sunday.
Tex.—Bostwick v. Allen, supra.

Notice of lis pendens
In some instances a defect in the notice of lis pendens may furnish

prejudice results, the erroneous issuance of process,[25] or the absence of process[26] or notice,[27] or defects in process[28] or notice,[29] or improper service of process,[30] or failure to obtain service of process on a party,[30.5] will not operate to reverse the judgment.

Similarly, while errors or defects in connection with the return or proof of service of process or notice, or subsequent proceedings relating to process or notice, may under some circumstances constitute ground for reversal,[30.10] where no prejudice results, defects in the affidavit or return of service,[31] or error in setting aside process,[32] in quashing the service of process,[32.5] in overruling a motion to quash service or the return of service,[33] or in permitting,[34] or refusing to permit,[35] amendment of process, or permitting the amendment of the return or proof of service,[35.5] will not operate to reverse the judgment.

3. Pleadings

§ 1683. Defective or Insufficient Pleadings

Defects or insufficiencies of the pleadings which do not affect the determination of the case on the merits or prejudice the substantial rights of the opposite party afford no basis for a reversal.

Where they have not been the cause of or have not resulted in an incorrect decision or judgment on the merits,[36] defects or insufficiencies with respect to pleadings which do not operate to the

ground for the reversal of the decree.
Wis.—Catlin v. Pedrick, 17 Wis. 88. 42 C.J. p 67 note 80.

25. Mass.—Whiting v. Cochran, 9 Mass. 532.
Mich.—Maxon v. Perrott, 17 Mich. 332, 97 Am.D. 191.

26. Cal.—Oliver v. Staples & Pfeiffer, 227 P. 927, 67 C.A. 570.
W.Va.—Hubbard v. Equitable Life Assur. Soc. of the U. S., 106 S.E. 786, 88 W.Va. 367.
4 C.J. p 926 note 33.

27. Cal.—Rio Del Mar Country Club v. Superior Court in and for Santa Cruz County, 190 P.2d 295, 84 C.A. 2d 214.
Ind.—Jones v. Becker, 8 N.E.2d 587, 212 Ind. 248.
Minn.—Northwestern Nat. Bank of Minneapolis v. Mickelson-Shapiro Co., 159 N.W. 948, 134 Minn. 422.
N.Y.—Driscoll v. New York Veal & Mutton Co., 151 N.Y.S. 647, 89 Misc. 147.

28. Colo.—Hocks v. Farmers Union Co-op. Gas & Oil Co., 180 P.2d 860, 116 Colo. 282.
Ky.—Morris v. Cumberland Producing & Refining Co., 218 S.W. 302, 187 Ky. 15.
N.Y.—Lambert v. Lambert, 1 N.E.2d 833, 270 N.Y. 422.
Pa.—Commonwealth v. Woelfel, Quar.Sess., 46 Luz.Leg.Reg. 75.
Tex.—Tankersley v. Martin-Reo Sales Co., Civ.App., 242 S.W. 328—Wood v. Warren, Civ.App., 157 S.W. 301.
4 C.J. p 926 note 34.

Misstatement as to date of filing petition may be so prejudicial as to require a reversal.
Tex.—Conner v. W. C. Bowman Lumber Co., Civ.App., 45 S.W.2d 237.

Unauthorized extension of time
Where plaintiff in slander action obtained personal service on defendant while defendant was in the state for purpose of attending a civil action, and affidavit on which warrant of attachment on defendant's property was based stated that defendant was a resident of North Carolina and trial court found that defendant was Florida resident, defendant was not prejudiced by trial court's extension of time for plaintiff to commence service by publication even though mandatory period for service by publication after issuance of warrant of attachment had expired.
N.C.—Thrush v. Thrush, 97 S.E.2d 472, 246 N.C. 114.

29. Iowa.—Higdon v. Lincoln Joint Stock Land Bank of Lincoln, Neb., 272 N.W. 93, 223 Iowa 57.
Va.—Colley v. Summers Parrott Hardware Co., 89 S.E. 906, 119 Va. 439, Ann.Cas.1917D 375.

30. Miss.—Eubanks v. McLeod, 69 So. 289.
4 C.J. p 926 note 35—68 C.J. p 1195 note 97.

Citing persons through attorney
An exception to jurisdiction, based on attempt of plaintiffs to cite certain individuals through attorneys, was without merit, where plaintiffs abandoned their case against such individuals who were not required to be joined in the suit.
La.—Dugas v. Powell, 1 So.2d 677, 197 La. 409.

30.5 Miss.—Jones v. New Orleans & Northeastern R. Co., 59 So.2d 541, 214 Miss. 804.

30.10 Va.—Buttery v. Robbins, 14 S.E.2d 544, 177 Va. 368.

Refusal to permit amendment of return
Error in refusing to permit sheriff to amend his return to show that service was made in national park was harmless if that part of county taken into the national park continued to be part of the county for purposes of the action, but was hurtful if for such purposes it was no longer part of that county.
Va.—Buttery v. Robbins, supra.

31. Cal.—Blalock v. Dunger, 272 P. 1048, 205 C. 782.
Kan.—Kinsch v. Missouri-Kansas-Texas R. Co., 310 P.2d 903, 181 Kan. 354.

32. D.C.—Engle v. Manchester, 46 App.D.C. 220.
Ga.—Georgia Power Co. v. Ozburn, 187 S.E. 154, 53 Ga.App. 797.
4 C.J. p 926 note 36.

32.5 Ohio.—Taylor v. Victor Equipment Co., 81 N.E.2d 804, 84 Ohio App. 236.

33. Miss.—Afro-American Sons and Daughters v. Webster, 161 So. 318, 172 Miss. 602.
Mo.—Creason v. Yardley, 198 S.W. 830, 272 Mo. 279.
Buddecke v. Garrels, 216 S.W. 811, 203 Mo.App. 1.
Ohio.—Hill v. Moseley, 91 N.E.2d 551, 86 Ohio App. 304.
Tex.—Cranfill Bros. Oil Co. v. State, Civ.App., 54 S.W.2d 813—Blakeney v. Johnson County, Civ.App., 253 S.W. 333—Thames-Forward Realty Co. v. Melaun, Civ.App., 211 S.W. 268, dismissed for want of jurisdiction.
W.Va.—Crouch v. Crouch, 20 S.E.2d 169, 124 W.Va. 331.
4 C.J. p 926 note 37.

34. Colo.—Erdman v. Hardesty, 60 P. 360, 14 Colo.App. 395.
Ga.—Anthanissen v. Brunswick, etc., Steam Towing, etc., Co., 17 S.E. 951, 92 Ga. 409.

35. Pa.—Rhinehart v. Jordan, 169 A. 151, 313 Pa. 197.
4 C.J. p 927 note 39.

35.5 S.C.—H. S. Chisholm, Inc. v. Klinger, 91 S.E.2d 538, 229 S.C. 8.

36. Ohio.—Blumberg v. Saylor, App., 137 N.E.2d 696, appeal dismissed 129 N.E.2d 388, 164 Ohio St. 188.

prejudice of the opposite party do not constitute ground for reversal.[37]

Tex.—Hill v. City of Galveston, Civ. App., 241 S.W.2d 229, reversed on other grounds City of Galveston v. Hill, 246 S.W.2d 860, 151 Tex. 139—Norris Bros. v. Mattinson, Civ. App., 118 S.W.2d 460, error dismissed.

Utah.—Van Leeuwen v. Huffaker, 5 P.2d 714, 78 Utah 521.

Allegation of nonliability

Where only issue submitted to jury in vendor's action for breach of contract to purchase realty was issue of damages, failure of answer to allege facts showing that purchaser was not liable for damages required reversal of judgment for purchaser, where there had been no bill of exceptions preserving evidence.

Neb.—Crafts v. Sawtelle, 272 N.W. 567, 132 Neb. 592.

37. U.S.—Jones v. Box Elder County, C.C.A.Utah, 52 F.2d 340, certiorari denied 52 S.Ct. 456, 285 U.S. 555, 76 L.Ed. 944—Bromfield v. Trinidad Nat. Inv. Co., C.C.A.Colo., 36 F.2d 646, 71 A.L.R. 542.

Ala.—Moody v. Myers, 91 So.2d 686, 265 Ala. 435—City of Birmingham v. Lynch, 197 So. 48, 240 Ala. 24—Birmingham Electric Co. v. Rylant, 174 So. 511, 234 Ala. 332—Pickens County v. National Surety Co., 155 So. 620, 229 Ala. 191—Life & Casualty Ins. Co. of Tennessee v. Tollison, 134 So. 805, 223 Ala. 78—Blankenship v. Van Hooser, 130 So. 63, 221 Ala. 542—Navco Hardwood Co. v. Bass, 108 So. 452, 214 Ala. 553—Hines v. Dollar, 87 So. 825, 205 Ala. 330—W. F. Covington Mfg. Co. v. Ferguson, 85 So. 726, 204 Ala. 192—Farmers' State Bank v. Kirkland & Brackin, 75 So. 894, 200 Ala. 146.

Ariz.—Clark v. Adams, 5 P.2d 413, 39 Ariz. 257.

Ark.—Ball v. Messmore, 289 S.W.2d 183, 226 Ark. 256—Rainwater v. Emberton, 250 S.W. 866, 158 Ark. 573—Price v. Hartzell, 205 S.W. 829, 135 Ark. 440.

Cal.—Tobin Grocery Co. v. Spry, 267 P. 694, 204 C. 247—Sobelman v. Maier, 262 P. 1087, 203 C. 1—Finn v. Goldstein, 258 P. 85, 201 C. 605—Holden v. Mensinger, 165 P. 950, 175 C. 300.

Priester v. Citizens Nat. Trust & Sav. Bank of Los Angeles, 280 P.2d 835, 131 C.A.2d 314—People v. Birch Securities Co., 196 P.2d 143, 86 C.A.2d 703, certiorari denied 69 S.Ct. 745, 336 U.S. 936, 93 L.Ed. 1095—Casaretto v. DeLucchi, 174 P.2d 328, 76 C.A.2d 800—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436—Santa Ana Mortg. & Inv. Co. v. Kinslow, 85 P.2d 899, 30 C.A.2d 107—Cowles v. Independent Elevator Co., 70 P.2d 711, 22 C.A.2d 109—Private Investors v. Homestake Min. Co., 60 P.2d 146, 16 C.A.2d 1—Pneucrete Corporation v. U. S. Fidelity & Guaranty Co., 46 P.2d 1000, 7 C.A.2d 733—Collins v. Welsh, 37 P.2d 505, 2 C.A.2d 103—McKay v. Hedger, 34 P.2d 221, 139 C.A. 266—Langstaff v. Mitchell, 6 P.2d 546, 119 C.A. 407—Koeppel v. Daluiso, 5 P.2d 457, 118 C.A. 442—Kilbride v. Swafford, 278 P. 448, 99 C.A. 303—Cummings v. Cummings, 275 P. 245, 97 C.A. 144—City of Los Angeles v. Darms, 268 P. 487, 92 C.A. 501—Starkweather v. Eddy, 261 P. 763, 87 C.A. 92—Davis v. Davis, 224 P. 478, 65 C.A. 499—Newark Trust Co. v. Kriebel, 193 P. 962, 49 C.A. 614—Carrington v. Smithers, 147 P. 225, 26 C.A. 460.

Colo.—Nelson v. Spotts, 162 P.2d 224, 114 Colo. 72—Griffith v. Sands, 271 P. 191, 84 Colo. 456—Bernstein v. Goldberg, 253 P. 477, 81 Colo. 39.

Fla.—**Corpus Juris Secundum cited in** S. H. Kress & Co. v. Powell, 180 So. 757, 763, 132 Fla. 471—Cochrane v. Florida East Coast Ry. Co., 145 So. 217, 107 Fla. 431—Buchanan v. Smith, 140 So. 775, 103 Fla. 1130—Woodruff v. Lantana Finance Corporation, 136 So. 712, 102 Fla. 950—Fagg Mill Work & Lumber Co. v. Greer, 136 So. 679, 102 Fla. 955—Catlett v. White, 135 So. 565, 102 Fla. 110—Stratton v. Andrews, 105 So. 842, 90 Fla. 375—Welborn v. Sawyer, 67 So. 83, 68 Fla. 308.

Ga.—Bateman v. Patterson, 92 S.E. 2d 8, 212 Ga. 284.

Flint River Motor Car Co. v. Farrar, 172 S.E. 97, 48 Ga.App. 607—Atlanta Terminal Co. v. Alexander, 143 S.E. 905, 38 Ga.App. 280.

Idaho.—Dybvig v. Willis, 82 P.2d 95, 59 Idaho 160.

Ill.—Joyce v. Blankenship, 77 N.E.2d 325, 399 Ill. 136—Roe v. Cook County, 193 N.E. 472, 358 Ill. 568—Dempsey v. Burns, 118 N.E. 193, 281 Ill. 644—Hinchliffe v. Wenig Teaming Co., 113 N.E. 707, 274 Ill. 417.

Kelly v. Brice, 49 N.E.2d 742, 319 Ill.App. 513—Central Cleaners and Dyers v. Schild, 1 N.E.2d 90, 284 Ill.App. 267.

Ind.—Buddenberg v. Morgan, 38 N.E. 2d 287, 110 Ind.App. 609—Moorman Mfg. Co. v. Keller, 184 N.E. 913, 98 Ind.App. 607.

Iowa.—City of Creston v. Center Milk Products Co., 51 N.W.2d 463, 243 Iowa 611—Boyle v. Bornholtz, 275 N.W. 479, 224 Iowa 90—Westerfield v. Liberty Oil Co., 223 N.W. 894, 208 Iowa 912—Pirkl v. Ellenberger, 162 N.W. 791, 179 Iowa 1122.

Kan.—Smith v. Wright, 305 P.2d 810, 180 Kan. 584—Plains State Bank v. Ellis, 263 P.2d 254, 175 Kan. 261—Fleming v. Campbell, 69 P.2d 718, 146 Kan. 294.

Ky.—Consolidated Products Co. v. Jackson, 215 S.W.2d 834, 308 Ky. 718—Grant County Assessment Fire Ins. Co. v. Scroggin, 171 S.W. 2d 1, 294 Ky. 244—Meyers v. Brown-Forman Distillery Co., 158 S.W.2d 407, 289 Ky. 185—Cornett v. Maddin, 126 S.W.2d 871, 277 Ky. 480—Garrison v. Bradford Supply Co., 51 S.W.2d 254, 244 Ky. 430—Colovas v. Allen Motor Company, 45 S.W.2d 809, 242 Ky. 93—Murphy v. Hagan, 173 S.W. 1146, 163 Ky. 407.

La.—State ex rel. Russell v. Richardson, 152 So. 748, 178 La. 1029.

Md.—Johnson & Higgins v. Simpson, 163 A. 832, 163 Md. 574.

Mass.—Gifford v. Eastman, 146 N.E. 773, 251 Mass. 520.

Mich.—Michigan Trust Co. v. National Bank of Ionia, 216 N.W. 472, 241 Mich. 146.

Minn.—Schmidt v. Koecher, 265 N.W. 347, 196 Minn. 178.

Miss.—Warren v. Clark, 94 So.2d 323—Duncan v. Mars, 44 So.2d 529.

Mo.—Duncan v. Thompson, App., 146 S.W.2d 112, reversed on other grounds 62 S.Ct. 422, 315 U.S. 1, 86 L.Ed. 575—Riner v. Riek, App., 57 S.W.2d 724.

Mont.—Campana v. Dobry, 221 P. 540, 69 Mont. 240.

Neb.—Hammond v. Hammond, 174 N. W. 865, 103 Neb. 860.

Nev.—Marks v. Roberti, 271 P. 467, 51 Nev. 150.

N.J.—Rizzolo v. Poysher, 99 A. 390, 89 N.J.Law 618.

N.M.—Cullender v. Doyal, 105 P.2d 326, 44 N.M. 491.

N.Y.—Galland v. Shubert Theatrical Co., 221 N.Y.S. 437, 220 App.Div. 704.

N.C.—Poovey v. City of Hickory, 188 S.E. 78, 210 N.C. 630.

Ohio.—Gerend v. City of Akron, 30 N. E.2d 987, 137 Ohio St. 527.

Stepanchev v. Kotney, 70 N.E.2d 279, 78 Ohio App. 363—Clauss v. City of Cincinnati, 44 N.E.2d 485, 70 Ohio App. 363.

Brown v. Farr, 19 Ohio Cir.Ct., N.S., 578.

Okl.—Regier v. Hutchins, 298 P.2d 777—Montgomery Ward & Co. v. Beller, 276 P.2d 932—Lawson v. Benson, 192 P.2d 662, 200 Okl. 234—Riddle v. Brann, 131 P.2d 999, 191 Okl. 596—Home Ins. Co. of New York, N. Y., v. Voto-Jacobus Motor Co., 117 P.2d 779, 189 Okl. 426—Rourke v. Myers, 84 P.2d 639, 184 Okl. 46—Walker v. Mills, 78 P. 2d 697, 182 Okl. 480—Davis v. Kelley, 219 P. 923, 96 Okl. 17—Muskogee Electric Traction Co. v. Ellison, 218 P. 829, 92 Okl. 200—Dunn v. Modern Foundry & Machine Co., 151 P. 893, 51 Okl. 465—Blackwell v. Hatch, 73 P. 933, 13 Okl. 169.

Under this rule reversal has been denied despite the fact that the pleadings were defective because of surplusage;[38] inclusion of improper elements of recovery;[39] failure to annex or attach exhibits or copies of instruments to the pleadings;[40] omissions in the allegations;[41] erroneous allegations of

Pa.—Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Houseman, 19 A.2d 148, 341 Pa. 311.

Philadelphia Rapid Transit Co. v. King, 169 A. 23, 110 Pa.Super. 475.

S.C.—Lerner v. Bluestein, 178 S.E. 265, 175 S.C. 59—Simkins v. Western Union Telegraph Co., 81 S.E. 657, 97 S.C. 413.

S.D.—Schwitz v. Thomas, 160 N.W. 734, 38 S.D. 180.

Tenn.—McDowell v. Rambo, 111 S.W. 2d 892, 21 Tenn.App. 448.

Tex.—Wright v. Robert & St. John Motor Co., 58 S.W.2d 67, 122 Tex. 278.

Pure Oil Co. v. Fowler, Civ.App., 302 S.W.2d 461, error refused no reversible error—Shaw & Estes v. Texas Consol. Oils, Civ.App., 299 S.W.2d 307—Williams v. Wyrick, Civ.App., 242 S.W.2d 669, affirmed 245 S.W.2d 961, 151 Tex. 40—Smith v. Hamilton, Civ.App., 237 S.W.2d 774—Sumerlin v. Fowler, Civ.App., 229 S.W.2d 75—Consolidated Underwriters v. Hubbard, Civ.App., 107 S.W.2d 908, error refused—Meyer v. Hackett, Civ.App., 29 S.W.2d 520—Wichita Falls Traction Co. v. McAbee, Civ.App., 21 S.W.2d 97—Garrett v. Kelley, Civ.App., 6 S.W.2d 414—Reed v. Tom, Civ.App., 2 S.W.2d 909—Laurenson v. Carrell, Civ.App., 289 S.W. 1024—Wolf v. Wolf, Civ.App., 269 S.W. 488—Old Faithful Oil Co. v. McGiveran, Civ.App., 200 S.W. 249—St. Louis, B. & M. Ry. Co. v. Green, Civ. App., 196 S.W. 555.

Utah.—Woodbury v. Bunker, 98 P.2d 948, 98 Utah 216—Standard Coal Co. v. Stewart, 269 P. 1014, 72 Utah 272.

Va.—Chick v. MacBain, 160 S.E. 214, 157 Va. 60—New York, P. & N. R. Co. v. Duer, 138 S.E. 563, 148 Va. 295—Colley v. Summers Parrott Hardware Co., 89 S.E. 906, 119 Va. 439, Ann.Cas.1917D 375.

Wash.—Pontious v. American Motorists' Ins. Co., 290 P. 850, 158 Wash. 264—Wheeler v. Yoakam, 239 P. 557, 136 Wash. 216—Wilson & Co. v. Hines, 213 P. 5, 123 Wash. 643—Anderson v. Hall, 157 P. 996, 91 Wash. 376.

W.Va.—County Court of Mason County v. Barnett, 130 S.E. 471, 100 W.Va. 405.

Wis.—Hitz v. Pospychalla, 280 N.W. 413, 228 Wis. 614.

Wyo.—Claughton v. Johnson, 41 P. 2d 527, 47 Wyo. 536—McDonald v. Mulkey, 231 P. 662, 32 Wyo. 144—Quinlan v. Jones, 198 P. 352, 27 Wyo. 410.

4 C.J. p 927 note 42—19 C.J. p 1227 note 28—42 C.J. p 1289 note 40—44 C.J. p 1494 note 96 [a]—52 C.J. p 535 note 42—54 C.J. p 606 note 8.

Error in numbering pleadings where merely inadvertent and not prejudicial will not cause reversal.

Okl.—Addington v. State ex rel. Pruet, 44 P.2d 131, 172 Okl. 61.

Tex.—Duncan v. Donnell, Civ.App., 12 S.W.2d 811.

Failure to file or serve pleading is not ground for reversal where no rights of the complaining party have been prejudiced thereby.

Cal.—Thomas v. Fursman, 178 P. 870, 39 C.A. 278.

4 C.J. p 927 note 41.

Substance of action

Appellate court must consider substance of action, irrespective of pleading formalities.

Ill.—Parker v. Parker, 81 N.E.2d 745, 335 Ill.App. 293.

Technical view of pleadings

(1) Where there has been a trial on merits, court is slow to reverse judgment on technical view of the pleadings.

Ky.—Conley v. Coburn, 179 S.W.2d 668, 297 Ky. 292.

(2) In equity, weight may be given technicalities in procedure, where the litigation is a matter of private rights, but a technical mistake in pleading is wholly useless when the decision would result in the plain violation of a statute.

Pa.—Lemley v. Waynesburg Home Gas Co., Com.Pl., 86 Pittsb.Leg.J. 602.

38. Ala.—Pickens County v. National Surety Co., 155 So. 620, 229 Ala. 191.

Cal.—McGibbon v. Schmidt, 155 P. 460, 172 C. 70.

Metropolitan Water Dist. of Southern California v. Adams, 134 P.2d 882, 57 C.A.2d 574—Sullivan v. Richardson, 6 P.2d 567, 119 C.A. 367—Newark Trust Co. v. Kriebel, 193 P. 962, 49 C.A. 614.

Fla.—Sheridan v. Respess, 3 So.2d 704, 147 Fla. 626.

Ga.—Bartow County v. Darnell, 97 S.E.2d 610, 95 Ga.App. 193—Martin v. Mayer, 11 S.E.2d 218, 63 Ga.App. 387.

Ky.—Lawrence Oil Corporation v. Metcalfe, 43 S.W.2d 986, 241 Ky. 353—Chesapeake & O. Ry. Co. v. Cooper, 181 S.W. 933, 168 Ky. 137.

Mont.—Borgeas v. Oregon Short Line R. Co., 236 P. 1069, 73 Mont. 407.

N.C.—Lovette v. Lloyd, 73 S.E.2d 886, 236 N.C. 663.

Okl.—Robberson v. Board of Com'rs of Noble County, 235 P. 525, 109 Okl. 249.

Tex.—Republic Production Co. v. Collins, Civ.App., 3 S.W.2d 1113, reheard 7 S.W.2d 187—Wolf v. Gardner, Civ.App., 209 S.W. 752.

Va.—Ely v. Gray, 100 S.E. 660, 125 Va. 708.

Alleging conclusions of pleader is harmless where facts supporting the conclusions are fully set forth in the pleading.

Ala.—Pickens County v. National Surety Co., 155 So. 620, 229 Ala. 191.

Tex.—Wolf v. Gardner, Civ.App., 209 S.W. 752.

39. Iowa.—Granger v. Granger, 154 N.W. 305, 172 Iowa 159.

Ky.—Morton v. Sanders, 200 S.W. 24, 178 Ky. 836.

Or.—Hill v. Merrick, 31 P.2d 663, 147 Or. 244.

Wash.—Wilson v. Barnes, 234 P. 1029, 134 Wash. 108.

40. U.S.—Remington Rand Business Service v. Walter J. Peterson Co., C.C.A.Mich., 58 F.2d 11.

Ga.—Steele v. Graves, 127 S.E. 465, 160 Ga. 120.

Pa.—Rowles v. Evanuik, 38 A.2d 255, 350 Pa. 64—Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Houseman, 19 A.2d 148, 341 Pa. 311—Hendley v. Bittinger, 94 A. 831, 249 Pa. 193, L.R.A.1915F 711.

41. U.S.—Winn v. Consolidated Coach Corporation, C.C.A.Tenn., 65 F.2d 256, certiorari denied 54 S.Ct. 453, 291 U.S. 668, 78 L.Ed. 1059, rehearing denied 54 S.Ct. 557, 291 U.S. 651—Remington Rand Business Service v. Walter J. Peterson Co., C.C.A.Mich., 58 F.2d 11.

Keystone Coal & Coke Co. v. Petrovich, Pa., 227 F. 43, 141 C.C.A. 591.

Ala.—Barber Pure Milk Co. v. Holmes, 84 So.2d 345, 264 Ala. 45—Atlantic Coast Line R. Co. v. Jackson, 144 So. 813, 225 Ala. 652—Barclift v. First Nat. Bank, 143 So. 446, 225 Ala. 426—Federal Automobile Ins. Ass'n v. Meyers, 119 So. 230, 218 Ala. 520—Supreme Lodge of the World, Loyal Order of Moose v. Gustin, 80 So. 84, 202 Ala. 246—Cudd v. Reynolds, 73 So. 373, 197 Ala. 687.

Birmingham Elec. Co. v. Echols, 32 So.2d 374, 33 Ala.App. 234, certiorari denied 32 So.2d 379, 249 Ala. 589.

Ark.—Prescott & N. W. Ry. Co. v. Henley, 186 S.W. 616, 124 Ark. 118.

Cal.—Tobin Grocery Co. v. Spry, 267 P. 694, 204 C. 247—Miguel v. Miguel, 193 P. 935, 184 C. 311.

Kaliterna v. Wright, 212 P.2d 32, 94 C.A.2d 926—Steffen v. Refrigeration Discount Corp., 205 P. 2d 727, 91 C.A.2d 494—Drullinger v. Erskine, 163 P.2d 48, 71 C.A.2d

a technical or other harmless nature[42] immateri- | al,[42.5] or unnecessary allegations which do not

492—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436—Woodman v. Pacific Indemnity Co., 91 P.2d 898, 33 C.A. 2d 321—Kilbride v. Swafford, 278 P. 448, 99 C.A. 303—Jones v. Alameda, 259 P. 976, 85 C.A. 607—Fisher v. Brotherton, 255 P. 854, 82 C.A. 532—Hutson v. Owl Drug Co., 249 P. 524, 79 C.A. 390—Porter v. Gestri, 247 P. 247, 77 C.A. 578—Smith v. Whyers, 221 P. 387, 64 C.A. 193—Heberling v. Day, 209 P. 908, 59 C.A. 13—Benson v. Harriman, 204 P. 255, 55 C.A. 483.

Colo.—Gwillim v. Asher, 204 P. 609, 71 Colo. 143.

Del.—Bloom v. Handloff, 97 A. 586, 6 Boyce 172.

Ga.—City of Gainesville v. Robertson, 103 S.E. 853, 25 Ga.App. 632.

Idaho.—Hewett v. Samuels, 272 P. 703, 46 Idaho 792.

Ill.—Welsh v. Jakstas, 82 N.E.2d 53, 401 Ill. 288.

Rogers v. Enzinger, 89 N.E.2d 853, 339 Ill.App. 376. See Missouri State Life Ins. Co. v. Copas, 265 Ill.App. 478.

Ind.—Little v. Hoffman, 119 N.E. 218, 67 Ind.App. 371.

Kan.—Woleslagel v. Carson, 256 P. 162, 123 Kan. 568—Manross v. Uncle Sam Oil Co., 190 P. 619, 107 Kan. 71.

Ky.—Cincinnati, Newport & Covington Ry. Co. v. Rothe, 252 S.W.2d 668—Vaughn v. Carlton, 217 S.W. 2d 201, 309 Ky. 180.

La.—Franz v. Mohr, App., 186 So. 114.

Me.—Rowe v. Kerr, 135 A. 825, 126 Me. 35.

Mass.—Standard Oil Co. of New York v. Y-D Supplies Co., 193 N.E. 66, 288 Mass. 453.

Mich.—Alley v. Klotz, 31 N.W.2d 816, 320 Mich. 521—Charlet v. Teakle, 163 N.W. 923, 197 Mich. 426.

Minn.—Strang v. Chicago Great Western R. Co., 179 N.W. 369, 147 Minn. 1.

Mo.—Polhemus v. Daly, App., 296 S. W. 442—Newell v. St. Louis Transfer Co., 226 S.W. 80, 205 Mo.App. 543—Mathewson v. Larson-Myers Co., App., 217 S.W. 609.

N.M.—Poteet v. Poteet, 114 P.2d 91, 45 N.M. 214.

N.Y.—Rapid Mach. Works v. Silberstein, 241 N.Y.S. 68, 136 Misc. 837, reversed on other grounds 248 N.Y. S. 735, 140 Misc. 30—Skolny v. Hillman, 187 N.Y.S. 706, 114 Misc. 571, affirmed 189 N.Y.S. 955, 198 App. Div. 941.

N.C.—Paul v. National Auction Co., 105 S.E. 881, 181 N.C. 1.

Ohio.—Chucales v. Royalty, 129 N.E. 2d 823, 164 Ohio St. 214, certiorari denied 76 S.Ct. 781, 351 U.S. 926, 100 L.Ed. 1456—Northern Ohio Power & Light Co. v. Smith, 186 N.E. 712, 126 Ohio St. 601.

Smith v. McKelvey, 162 N.E. 722, 28 Ohio App. 361.

Okl.—Regier v. Hutchins, 298 P.2d 777.

Pa.—Commonwealth ex rel. Shumaker v. New York & Pennsylvania Co., 79 A.2d 439, 367 Pa. 40.

R.I.—Dimon v. O'Connor, 106 A.2d 509, 82 R.I. 146.

S.C.—Lerner v. Bluestein, 178 S.E. 265, 175 S.C. 59.

Tex.—Wright v. Robert & St. John Motor Co., 58 S.W.2d 67, 122 Tex. 278.

White v. Akers, Civ.App., 125 S. W.2d 388—Brotherhood of Locomotive Firemen and Enginemen v. Raney, Civ.App., 101 S.W.2d 863, error dismissed—McFarlane v. First Nat. Bank, Civ.App., 97 S.W. 2d 754, error refused—Edmondson v. Carroll, Civ.App., 65 S.W.2d 1107—First State Bank of Rock Springs v. Sherrill, Civ.App., 27 S. W.2d 258—Western Union Telegraph Co. v. Morrow, Civ.App., 208 S.W. 689, error refused—Hall v. White, Civ.App., 208 S.W. 669—Britton v. Eagan, Civ.App., 196 S. W. 972—First Nat. Bank of Hereford v. Hogan, Civ.App., 185 S.W. 880, error refused—Southwestern Telegraph & Telephone Co. v. Andrews, Civ.App., 178 S.W. 574.

Utah.—Keller v. Gerber, 199 P.2d 562, 114 Utah 345—Genola Town v. Santaquin City, 80 P.2d 930, 96 Utah 88, rehearing denied 85 P.2d 790, 96 Utah 104—Moran v. Knights of Columbus, 151 P. 353, 46 Utah 397.

Vt.—Burlington Building & Loan Ass'n v. Cummings, 17 A.2d 319, 111 Vt. 447.

Wash.—Pontious v. American Motorists' Ins. Co., 290 P. 850, 158 Wash. 264—Hahn v. Brickell, 237 P. 305, 135 Wash. 189.

Wyo.—Claughton v. Johnson, 41 P. 2d 527, 47 Wyo. 536.

Admitted facts not in dispute

The failure of the petition to allege necessary facts is harmless and nonprejudicial where such facts are admitted and not disputed by defendant.

Cal.—Miguel v. Miguel, 193 P. 935, 184 C. 311.

Subsequent making of tender not alleged

Where plaintiff in a suit to cancel a conveyance fails to allege a tender back to defendant of the consideration received, but just before the trial is commenced plaintiff makes a sufficient tender, the omission of the petition to allege the tender is cured by the tender in open court.

Kan.—Woleslagel v. Carson, 256 P. 162, 123 Kan. 568.

42. Ala.—Bartlett v. Jenkins, 105 So. 654, 213 Ala. 510.

Bradley v. Johnson, 108 So. 651, 21 Ala.App. 395.

Cal.—Frazzini v. Cable, 300 P. 121, 114 C.A. 444.

Colo.—McPhee v. U. S., 174 P. 808, 64 Colo. 421, followed in Owen v. U. S., 174 P. 816, 65 Colo. 159.

Ind.—Chicago, I. & L. Ry. Co. v. Ellis, 149 N.E. 909, 83 Ind.App. 701.

Mo.—Riner v. Riek, App., 57 S.W.2d 724.

Mont.—St. George v. Boucher, 274 P. 489, 84 Mont. 158.

N.J.—Hinck v. Cohn, 92 A. 378, 86 N. J.Law 615, Ann.Cas.1916D 200.

N.Y.—Young v. U. S. Mortgage & Trust Co., 108 N.E. 418, 214 N.Y. 279.

Or.—Johnson v. Steele, 59 P.2d 237, 154 Or. 137.

Pa.—Podona v. Lehigh Valley Coal Co., 91 A. 920, 245 Pa. 501.

Tex.—Consumers' Lignite Co. v. Grant, Civ.App., 181 S.W. 202.

53 C.J. p 591 note 26 [a] (3).

Pleading ordinance by wrong number

Mo.—Riner v. Riek, App., 57 S.W.2d 724.

Technical and nonmisleading errors

(1) Erroneous allegations in the petition which are technical and neither mislead defendant nor affect his substantial rights are harmless and not grounds for reversal.

Cal.—In re Wieboldt's Estate, 259 P. 2d 31, 119 C.A.2d 10.

Colo.—McPhee v. U. S., 174 P. 808, 64 Colo. 421, followed in Owen v. U. S., 174 P. 816, 65 Colo. 159.

Utah.—Conover v. Board of Ed. of Nebo School Dist., 175 P.2d 209, 110 Utah 454, rehearing denied 186 P.2d 588, 112 Utah 219.

(2) The fact that one count of a pleading mistakenly transposes the words "plaintiff" and "defendant" by alleging that the count is "for money had and received by the plaintiff to the use of the defendant," is not ground for reversal, an error of this character being merely clerical and self-correcting from the plain intent and purpose of the entire count.

Ala.—Bartlett v. Jenkins, 105 So. 654, 213 Ala. 510.

Typographical error

Or.—Klein v. Miller, 77 P.2d 1103, 159 Or. 27, 116 A.L.R. 820.

42.5 Tex.—First Nat. Bank v. Phillips, Civ.App., 101 S.W.2d 319, error dismissed.

Doubtful materiality

N.C.—Pinnix v. Toomey, 87 S.E.2d 893, 242 N.C. 358.

prejudice the opposite party,[43] or inconsistent[44] allegations; inaccuracies in the description of the instrument[45] or property[46] in suit; failure to amend the petition by striking out the name of a defendant who has been dismissed from the cause;[47] the statement in several counts of matter which should have been alleged in but one,[48] or in one count of matter which should have been alleged in several;[49] omission to indorse correctly the name of the pleading,[50] or nature of the cause of action,[51] even though the court proceeded on a mistaken assumption of the nature of the pleading that initiated the proceedings;[51.5] omission of the complaint to state part of the name of plaintiff in the caption;[52] or misnomer in designating the nature of the pleading,[53] or the court,[54] or the county[55] in which the case is to be tried.

Reversal has also been denied for error or misnomer in designating the parties;[56] the absence of a similiter or joinder of issue,[57] or the absence of a formal pleading traversing the allegations of the answer where defendant understood what issues were being tried;[57.5] failure to verify pleadings;[58] the violation of a rule of court which prohibits the annexing of designated instruments to pleadings,[59] or which requires the numbering instead of the lettering of the sections of a bill;[60] ambiguity,[61] vagueness,[61.5] uncertainty,[62] or failure to make

43. Ala.—Blumberg v. Speilberger, 96 So. 191, 209 Ala. 278.
City of Birmingham v. Whitfield, 197 So. 666, 29 Ala.App. 454.
Idaho.—Peterson v. Hailey Nat. Bank, 6 P.2d 145, 51 Idaho 427.
Ill.—Guerin v. Guerin, 110 N.E. 402, 270 Ill. 239.
Ind.—Buddenberg v. Morgan, 38 N.E. 2d 287, 110 Ind.App. 609.
Ky.—Koenig Bros. v. Zibart, 70 S.W. 2d 945, 254 Ky. 43.
Or.—Whitney v. Crittendon, 229 P. 378, 112 Or. 278.
Tex.—Eddleman v. Wofford, Civ.App., 217 S.W. 221, dismissed for want of jurisdiction—Sims v. Ford, Civ. App., 209 S.W. 699.
Wyo.—Farmers' State Bank of Riverton v. Haun, 222 P. 45, 30 Wyo. 322, rehearing denied 224 P. 856, 31 Wyo. 201.
4 C.J. p 927 note 44.

44. Cal.—Burns v. Jackson, 211 P. 821, 59 C.A. 662—Brooke v. Quigley, 165 P. 731, 33 C.A. 484.
Ind.—Moran v. Wilson, 133 N.E. 845, 77 Ind.App. 553.
Iowa.—Westerfield v. Liberty Oil Co., 223 N.W. 894, 208 Iowa 912.
Kan.—Christy v. Pember, 127 P.2d 437, 155 Kan. 665.
Miss.—Duncan v. Mars, 44 So.2d 529.
Mo.—Danklef v. Armbruster, App., 91 S.W.2d 660—Pabst v. Armbruster, App., 91 S.W.2d 652.
Tex.—Cusenbary v. Holman Bros., Civ.App., 288 S.W. 283—Rick v. Farrell, Civ.App., 266 S.W. 522.
Wash.—Fay v. Best, 241 P. 354, 137 Wash. 1.
4 C.J. p 928 note 51.

45. Cal.—Sobelman v. Maier, 262 P. 1087, 203 C. 1.
4 C.J. p 927 note 45.

46. Ga.—Teal v. Equitable Loan Co., 159 S.E. 904, 43 Ga.App. 673.
Ill.—De Martini v. De Martini, 26 N. E.2d 167, 304 Ill.App. 165.
Minn.—Schmidt v. Koecher, 265 N.W. 347, 196 Minn. 178.
4 C.J. p 928 note 58.

47. Ill.—Witteman Co. v. Goeke, 200 Ill.App. 108.

48. Cal.—Richmond Dredging Co. v. Atchison, T. & S. F. Ry. Co., 160 P. 862, 31 C.A. 399.
4 C.J. p 927 note 46.

49. Colo.—Ison v. Stewart, 94 P.2d 701, 105 Colo. 55—Olson v. Harvey, 188 P. 751, 68 Colo. 180.
Tenn.—American Tobacco Co. v. Zoller, 6 Tenn.App. 390.

50. Tex.—Norton v. Maddox, Civ. App., 66 S.W. 319.

51. S.C.—Wheeler v. Smith, 99 S.E. 757, 112 S.C. 22.

51.5 Mass.—Charles I. Hosmer, Inc., v. Commonwealth, 19 N.E.2d 800, 302 Mass. 495.

52. Ind.—Simons v. Kosciusko Bldg., etc., Assoc., 103 N.E. 2, 180 Ind. 335.

53. Mich.—Lyons v. City of Grand Rapids, 9 N.W.2d 552, 305 Mich. 309.
Pa.—Security Title & Trust Co. v. Welsh, 159 A. 227, 104 Pa.Super. 502.
Tex.—American Nat. Ins. Co. v. Bird, Civ.App., 174 S.W. 939.
4 C.J. p 927 note 48.

54. Tex.—Herring v. Herring, Civ. App., 189 S.W. 1105.

55. Ariz.—Clark v. Adams, 5 P.2d 413, 39 Ariz. 257.
Tex.—Anderson v. Welch, Civ.App., 92 S.W.2d 1121, error dismissed.

56. Tex.—Schulz v. Gould, Civ.App., 26 S.W.2d 664—Garrett v. Kelley, Civ.App., 6 S.W.2d 414.

Fictitious names

Where defendants were designated in complaint by fictitious names and designation was not changed by amendment of complaint thereafter, but defendants appeared and were properly named in judgment, omission to amend and correct names was not prejudicial.
Cal.—Hunt v. Plavsa, 229 P.2d 482, 103 C.A.2d 222.

57. Fla.—Camp v. Sturgis, 149 So. 559, 111 Fla. 378.
4 C.J. p 927 note 49—49 C.J. p 781 note 72.

57.5 Mo.—Linders v. Linders, 204 S. W.2d 229, 356 Mo. 852.

58. Ark.—Parker v. Nixon, 44 S.W. 2d 1088, 184 Ark. 1085.
Ga.—Gamble v. Gamble, 61 S.E.2d 836, 207 Ga. 380, certiorari denied 71 S.Ct. 507, 340 U.S. 943, 95 L.Ed. 680.
Kan.—Cook v. Donner, 66 P.2d 587, 145 Kan. 674, 110 A.L.R. 244.
Tex.—Taylor v. Hawks, Civ.App., 129 S.W.2d 1203, error dismissed, judgment correct.
Va.—Ely v. Gray, 100 S.E. 660, 125 Va. 708.
4 C.J. p 927 note 50.

59. Tex.—Whitley v. General Electric Co., 45 S.W. 959, 18 Tex.Civ. App. 674.

60. Ala.—Grubbs v. Hawes, 56 So. 227, 173 Ala. 383.

61. U.S.—Pennsylvania R. Co. v. Wm. H. Muller & Co., C.C.A.Md., 15 F.2d 535, certiorari denied 47 S.Ct. 449, 273 U.S. 748, 71 L.Ed. 872.
Cal.—Semple v. Andrews, 81 P.2d 203, 27 C.A.2d 228—Pneucrete Corporation v. U. S. Fidelity & Guaranty Co., 46 P.2d 1000, 7 C.A.2d 733—Proper v. Sutter Drainage Dist., 200 P. 664, 53 C.A. 576.
Idaho.—Hulse v. Consolidated Quicksilver Min. Corp., 154 P.2d 149, 65 Idaho 768.
Iowa.—Westerfield v. Liberty Oil Co., 223 N.W. 894, 208 Iowa 912.
4 C.J. p 928 note 54.

Ambiguity not misleading

Where defendants are not misled to their prejudice by a technical ambiguity in the complaint, the ambiguity cannot be said to affect their substantial rights.
Cal.—Proper v. Sutter Drainage Dist., 200 P. 664, 53 C.A. 576.

61.5 Ill.—Snook v. Shaw, 43 N.E.2d 417, 315 Ill.App. 594.
Tex.—Shields v. McCoy, Civ.App., 192 S.W.2d 806.

62. Ala.—W. F. Covington Mfg. Co. v. Ferguson, 85 So. 726, 204 Ala. 192.

the pleadings sufficiently specific;[63] failure expressly to describe the transaction which formed the basis of the suit by its legal name;[64] the setting out of matter in a reply[65] or supplemental pleading,[66] which should have been set up by amendment; the setting up in the original or amended petition of matters which should have been set up by way of reply,[67] or in a supplemental petition of matters which should have been alleged in the original;[68] the setting up by way of cross complaint of matters which should have been set up in the defense;[69] the attachment of defective or insufficient instruments to the pleading;[70] the failure to file proper orders and papers with the declaration;[70.5] or the demand in the pleading of something which is impossible of performance.[71]

Defects in the pleadings may be cured or rendered harmless for the purposes of the above rule in a variety of ways or circumstances, as where no evidence is offered or admitted in support of the unnecessary or improper averments;[72] another pleading properly sets up that matter which renders the one pleading defective;[73] the issue as to which the allegations are insufficient or the pleading defective is not submitted to the jury;[74] although the answer is insufficient, the petition does not state a cause of action;[75] defendant by reason of a previous trial has been fully apprised of the contents of

Ark.—Rainwater v. Emberton, 250 S. W. 866, 158 Ark. 573.
Cal.—Empire Star Mines Co. v. Butler, 145 P.2d 49, 62 C.A.2d 49—Semple v. Andrews, 81 P.2d 203, 27 C.A.2d 228.
Fla.—Cochrane v. Florida East Coast Ry. Co., 145 So. 217, 107 Fla. 431.
Ill.—Preble v. Architectural Iron Workers' Union of Chicago, 260 Ill. App. 435.
Ky.—Louisville & N. R. Co. v. O'Flynn, 281 S.W. 174, 213 Ky. 346.
S.D.—Carlon v. Western Union Telegraph Co., 153 N.W. 375, 35 S.D. 554.
Tex.—Houston Packing Co. v. Dunn, Civ.App., 176 S.W. 634.
4 C.J. p 928 note 55.

"And/or"

(1) Use of term "and/or" was not prejudicial to defendant even though it created uncertainty, particularly where the matter could have been reached by timely demurrer.
Cal.—Archibald v. Schultz, 58 P.2d 233, 14 C.A.2d 320.

(2) "We must condemn the use of the words 'and/or' because they tend to confuse and mislead. While the use of these words in the allegation above quoted is not so inappropriate as in many cases which come before us, we mention them here to show our disapproval of them. In a close case where these words are used, a situation may be presented that would warrant this court in reversing a judgment or decree."
Ill.—Preble v. Architectural Iron Workers' Union of Chicago, 260 Ill. App. 435, 442.

(3) "In the matter of the use of the alternative, conjunctive phrase 'and/or,' it is sufficient to say that we do not hold this to be reversible error, but we take our position with that distinguished company of lawyers who have condemned its use."
Fla.—Cochrane v. Florida East Coast Ry. Co., 145 So. 217, 218, 107 Fla. 431.

Uncertainty removed by trial

Although the petition may leave it somewhat uncertain as to the theory on which plaintiff is proceeding, if the case is tried throughout on one definite theory which is clearly understood by the parties, the defect in the pleading is harmless.
S.D.—Carlon v. Western Union Telegraph Co., 153 N.W. 375, 35 S.D. 554.

63. Ariz.—Brazee v. Morris, 179 P.2d 442, 65 Ariz. 291.
Ark.—Phillips v. Mantle, 206 S.W. 660, 136 Ark. 338.
4 C.J. p 928 note 56.

64. Kan.—Bridges v. Vann, 127 P. 604, 88 Kan. 98.

65. Ky.—Rosa v. Nava, 31 S.W.2d 910, 235 Ky. 574.
4 C.J. p 928 note 59.

66. Tex.—Britton v. Eagan, Civ. App., 196 S.W. 972.
4 C.J. p 928 note 60.

67. Ky.—Prudential Ins. Co. of America v. Howard, 36 S.W.2d 857, 238 Ky. 108—U. S. Fidelity & Guaranty Co. v. Miller, 34 S.W.2d 938, 941, 237 Ky. 43, 76 A.L.R. 12.

Matters avoiding defense

Where the petition in advance sets up matters in avoidance of a defense subsequently raised in defendant's answer, a failure of plaintiff to set the matters of avoidance up by way of reply, as was proper practice, is harmless error.
Ky.—U. S. Fidelity & Guaranty Co. v. Miller, supra.

Reasons for rule

"It would be a vain and useless thing to reverse a correct judgment rendered upon a full development of the facts because the basis of it was alleged in the petition instead of being inserted in the reply."
Ky.—U. S. Fidelity & Guaranty Co. v. Miller, supra.

68. Tex.—First Nat. Bank v. Van Horn, Civ.App., 2 S.W.2d 333.

69. Cal.—Schubert v. Lowe, 223 P. 550, 193 C. 291.

70. La.—State ex rel. Russell v. Richardson, 152 So. 748, 178 La. 1029.
4 C.J. p 928 note 61.

Certificate without seal

The attaching to a pleading of the certificate to a copy of a municipal ordinance which did not bear the imprint of the corporate seal is harmless and nonreversible error where the defect can be supplied by amendment.
Ill.—White v. Chicago, 58 N.E. 917, 188 Ill. 392.

Uncertified copies

The failure to certify copies of papers attached to the pleadings is immaterial and harmless where there is no showing that such copies are incorrect and defendant had possession of the originals and was familiar with their contents.
La.—State ex rel. Russell v. Richardson, 152 So. 748, 178 La. 1029.

70.5 Miss.—Britton v. Magnolia State Casket & Supply Co., 49 So.2d 404, 210 Miss. 264.

71. Mo.—Otto v. Young, 127 S.W. 9, 227 Mo. 193.

72. Iowa.—Granger v. Granger, 154 N.W. 305, 172 Iowa 159.
Okl.—Robberson v. Board of Com'rs of Noble County, 235 P. 525, 109 Okl. 249.
4 C.J. p 928 note 63.

73. Ind.—Orange County Farmers' Fire Ass'n v. Frost, 128 N.E. 768, 74 Ind.App. 193.
Kan.—Palin v. Insurance Co. of North America, 140 P. 886, 92 Kan. 401.
Ky.—Moore's Adm'r v. Pierce, 169 S. W. 620, 160 Ky. 107.

74. Iowa.—Pirkl v. Ellenberger, 162 N.W. 791, 179 Iowa 1122.
Ky.—Koenig Bros. v. Zibart, 70 S.W. 2d 945, 254 Ky. 43.
Tex.—Northern Texas Traction Co. v. Bryan, Civ.App., 299 S.W. 325—Baker v. East, Civ.App., 197 S.W. 1123.

75. Tex.—Hicks v. Murphy, Civ. App., 151 S.W. 845.

instruments which should have been, but were not, attached to the petition;[76] the matters with reference to which the pleadings are claimed to be defective have been fully and fairly tried on the merits;[77] the opposite party's own evidence shows that he has no cause of action;[78] or where the defect is cured by amendment,[79] instructions,[80] proof,[80.5] verdict,[81] or findings,[82] or by the judgment.[83]

If the defect or insufficiency is in only one part

76. U.S.—Remington Rand Business Service v. Walter J. Peterson Co., C.C.A.Mich., 58 F.2d 11.

77. U.S.—U. S. v. Anderson, C.C.A. Or., 70 F.2d 537.
Ala.—Mitchell v. Williams, 86 So.2d 369, 264 Ala. 192—Barber Pure Milk Co. v. Holmes, 84 So.2d 345, 264 Ala. 45—Southern Building & Loan Ass'n v. Dinsmore, 144 So. 21, 225 Ala. 550.
Hammond v. Stevens Motor Co., 106 So. 620, 21 Ala.App. 154, certiorari dismissed 106 So. 621, 214 Ala. 102.
Cal.—Buxbom v. Smith, 145 P.2d 305, 23 C.2d 535—Miller v. Lantz, 71 P.2d 585, 9 C.2d 544—Holden v. Mensinger, 165 P. 950, 175 C. 300—First Nat. Bank v. Maryland Casualty Co., 121 P. 321, 162 C. 61, Ann.Cas.1913C 1170.
O'Keefe v. Aptos Land & Water Co., 286 P.2d 417, 134 C.A.2d 772—De Campos v. State Compensation Ins. Fund, 265 P.2d 617, 122 C.A.2d 519—Ravel v. Hubbard, App., 246 P.2d 88, 112 C.A.2d 255—Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778—Tooke v. Allen, 192 P.2d 804, 85 C.A.2d 230—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436—Semple v. Andrews, 81 P.2d 203, 27 C.A.2d 228—Gibbons v. Naritoka, 283 P. 845, 102 C.A. 669—Kilbride v. Swafford, 278 P. 448, 99 C.A. 303—Benson v. Harriman, 204 P. 255, 55 C.A. 483—Fay v. Cox, 188 P. 623, 45 C.A. 696—Ward v. Southern Pac. Co., 183 P. 594, 42 C.A. 182.
Kan.—Liberal Coal & Mining Co. v. McAlester Fuel Co., 220 P. 178, 114 Kan. 546.
Mass.—Charles I. Hosmer, Inc., v. Commonwealth, 19 N.E.2d 800, 302 Mass. 495.
Miss.—Holmes v. Elmer, 181 So. 325, 182 Miss. 171.
Mo.—Davis v. Springfield Hospital, 218 S.W. 696, 204 Mo.App. 626.
Ohio.—Northern Ohio Power & Light Co. v. Smith, 186 N.E. 712, 126 Ohio St. 601.
Smith v. McKelvey, 162 N.E. 722, 28 Ohio App. 361.
Tex.—Pounds v. Jenkins, Civ.App., 157 S.W.2d 173—Willis v. First Nat. Bank, Civ.App., 262 S.W. 851.
Wash.—Hahn v. Brickell, 237 P. 305, 135 Wash. 189.
W.Va.—Brown v. Erwin, 108 S.E. 605, 89 W.Va. 113.
4 C.J. p 928 note 64.

78. Mo.—Harris v. Kansas City So. R. Co., 157 S.W. 564, 250 Mo. 567.

79. Colo.—Gwillim v. Asher, 204 P. 609, 71 Colo. 143.
La.—Unity Plan Finance Co. v. Green, App., 148 So. 297, annulled on other grounds 151 So. 85.
Minn.—Strand v. Chicago Great Western R. Co., 179 N.W. 369, 147 Minn. 1.
4 C.J. p 928 note 67.

Amendable on final hearing
On appeal from interlocutory order granting temporary injunction, assignments on sufficiency of pleadings, many of which were amendable on final hearing, presented no reversible error.
Tex.—Blaser v. Linen Service Corp. of Texas, Civ.App., 135 S.W.2d 509, error dismissed, judgment correct.

80. U.S.—U. S. v. Anderson, C.C.A. Or., 70 F.2d 537.
Ala.—Atlantic Coast Line R. Co. v. Jackson, 144 So. 813, 225 Ala. 652.
Birmingham v. Whitfield, 197 So. 666, 29 Ala.App. 454—Bradley v. Johnson, 108 So. 651, 21 Ala.App. 395.
Cal.—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436.
Ill.—Carson-Payson Co. v. Peoria Terrazzo Co., 6 N.E.2d 534, 288 Ill. App. 583.
Ind.—Buddenberg v. Morgan, 38 N.E.2d 287, 110 Ind.App. 609—Chicago, I. & L. Ry. Co. v. Ellis, 149 N.E. 909, 83 Ind.App. 701.
Iowa.—Duncanson v. City of Fort Dodge, 11 N.W.2d 583, 233 Iowa 1325.
Mich.—Gwitt v. Foss, 203 N.W. 151, 230 Mich. 8.
Mo.—Davis v. Springfield Hospital, 218 S.W. 696, 204 Mo.App. 626.
N.Y.—Tromblee v. North American Acc. Ins. Co., 158 N.Y.S. 1014, 173 App.Div. 174.
N.C.—Paul v. National Auction Co., 105 S.E. 881, 181 N.C. 1.
Or.—Hill v. Merrick, 31 P.2d 663, 147 Or. 244.
Tex.—Schaff v. Johnson, Civ.App., 267 S.W. 737.
Va.—City of Richmond v. McCormack, 91 S.E. 767, 120 Va. 552.
4 C.J. p 928 note 68.

Defect not cured by charge
Ala.—Birmingham Broadcasting Co. v. Bell, 68 So.2d 314, 259 Ala. 656.

80.5 Ala.—Royal Ins. Co. v. Story, 40 So.2d 719, 34 Ala.App. 363, certiorari denied 40 So.2d 724, 252 Ala. 275.
Okl.—Prudential Ins. Co. v. Foster, 168 P.2d 295, 197 Okl. 39, 166 A.L.R. 1—Van Horn v. Van Horn, 141 P.2d 1006, 193 Okl. 182—Riddle v. Brann, 131 P.2d 999, 191 Okl. 596—Buckholts v. Wright, 97 P.2d 44, 186 Okl. 230—Ward v. Coleman, 39 P.2d 113, 170 Okl. 201—Hunt v. Tulsa Terrazzo & Mosaic Co., 11 P.2d 521, 157 Okl. 174—School Dist. No. 60 of Ellis County v. Crabtree, 294 P. 171, 146 Okl. 197—St. Louis-San Francisco Ry. Co. v. Simmons, 242 P. 151, 116 Okl. 151—Norton v. Beydler, 238 P. 856, 111 Okl. 79—Lamb v. Ulrich, 221 P. 741, 94 Okl. 240.
Utah.—Keller v. Gerber, 199 P.2d 562, 114 Utah 345.

Sufficiency of proof
Ga.—Griffin Realty & Const. Co. v. Chatham County, 171 S.E. 237, 47 Ga.App. 545.

81. N.C.—Paul v. National Auction Co., 105 S.E. 881, 181 N.C. 1.
Ohio.—Kennard v. Palmer, App., 53 N.E.2d 652, reversed on other grounds 53 N.E.2d 908, 143 Ohio St. 1.
Okl.—Lea v. American Nat. Bank of Pryor Creek, 186 P.2d 321, 199 Okl. 360.
4 C.J. p 928 note 69.

General verdict for the opposite party effects a cure.
Kan.—Ergenbright v. Henderson, 82 P. 524, 72 Kan. 29.
Ky.—Ingram v. Turner, 51 S.W. 148, 21 Ky.L. 283.
Me.—Kimball v. Page, 52 A. 1010, 96 Me. 487.
4 C.J. p 928 note 70.

82. Cal.—Ladd v. Mathis, 13 P.2d 1012, 125 C.A. 535—Elliott v. Normandie Corporation, 294 P. 776, 110 C.A. 763—Merrill v. Normandie Corporation, 294 P. 774, 110 C.A. 621—Cummings v. Cummings, 275 P. 245, 97 C.A. 144—California Real Estate Co. v. Walkup, 150 P. 385, 27 C.A. 441.
Colo.—Schneider v. Cross, 249 P. 643, 80 Colo. 26.
Tex.—Rosenthal Dry Goods Co. v. Hillebrandt, Civ.App., 299 S.W. 665, reversed on other grounds, Com. App., 7 S.W.2d 521.
4 C.J. p 928 note 66.

83. U.S.—Lion Oil Refining Co. v. Albritton, C.C.A.Ariz., 21 F.2d 280.
Ala.—Davidson v. Brown, 110 So. 384, 215 Ala. 205.
Cal.—McDonald v. Morley, 101 P.2d 690, 15 C.2d 409, 129 A.L.R. 810—Lynn v. Knob Hill Improvement Co., 169 P. 1009, 177 C. 56.
Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436.
Ga.—Tippins v. American Plant Co., 174 S.E. 378, 178 Ga. 726.
Ill.—Rogers v. Enzinger, 89 N.E.2d 853, 339 Ill.App. 376.

of the pleading and it contains good parts or divisions sufficient to sustain the judgment or verdict, and to which it can clearly be referred, the presence of the defective part or division is often held to be harmless and immaterial;[84] but if one of the two paragraphs in a complaint is faulty, and it does not appear from the record that the judgment for plaintiff rests entirely upon the other paragraph, it cannot be affirmed.[85] If a complaint alleges several different acts which constitute separate causes of action, and alleges only the total amount of damages flowing therefrom, and damages are found and awarded on the same theory, defendant is prejudiced thereby.[86]

§ 1684. —— Misjoinder of Causes of Action or Defenses

In the absence of substantial prejudice, a misjoinder of causes of action or defenses is not a ground for reversal.

Unless appellant's rights have been substantially affected thereby,[86.50] a misjoinder of causes of action or defenses is not a ground for reversal.[87] So, an alleged misjoinder of counts in contract and in tort is not harmful to defendant who is by a bill of particulars fully appraised of the facts and theory on which plaintiff's claim is based and on which the case is tried.[87.5]

Iowa.—Granger v. Granger, 154 N.W. 305, 172 Iowa 159.
Tex.—Edmondson v. Carroll, Civ. App., 65 S.W.2d 1107.
4 C.J. p 928 note 71.

Judgment conditional on performance of condition not alleged
Where plaintiff seeking to avoid the effect of releases for a personal injury claim fails to plead or tender repayment of the consideration paid him for the releases, the error in this respect is immaterial and harmless where the judgment provides for a cancellation of the releases only if plaintiff repays or tenders the consideration to defendant.
U.S.—Lion Oil Refining Co. v. Albritton, C.C.A.Ark., 21 F.2d 280.

Judgment in disregard of defective part of petition renders defect harmless.
Ga.—Tippins v. American Plant Co., 174 S.E. 378, 178 Ga. 726.

84. Ala.—Slaughter v. Murphy, 194 So. 649, 239 Ala. 260—Keller v. Jones & Weeden, 72 So. 89, 196 Ala. 417.
Bates v. Turney, 153 So. 782, 26 Ala.App. 98—Tucker v. Graves, 88 So. 40, 17 Ala.App. 602.
Cal.—Collins v. Welsh, 37 P.2d 505, 2 C.A.2d 103—Hirschberg v. Rose, 29 P.2d 785, 136 C.A. 653.
Colo.—Christy v. Hammitt, 233 P. 831, 76 Colo. 579.
4 C.J. p 928 note 73.

If the court does not find against appellant on a defective count, he cannot complain of insufficiencies therein.
Cal.—Parker v. Power, 152 P. 935, 28 C.A. 332.

85. Ind.—W. B. Conkey Co. v. Larsen, 91 N.E. 163, 173 Ind. 585, 29 L.R.A.,N.S., 116.

86. Cal.—Bowman v. Wohlke, 135 P. 37, 166 C. 121, Ann.Cas.1915B 1011.

86.50 Ky.—Nelson v. Conyers' Adm'x, 288 S.W.2d 626.
Mo.—Kansas City v. Halvorson, 177 S.W.2d 495, 352 Mo. 280.
N.Y.—Stein v. Baff, 95 N.Y.S.2d 298, 197 Misc. 509.
Ohio.—Fielder v. Ohio Edison Co., 109 N.E.2d 855, 158 Ohio St. 375, 35 A.L.R.2d 1365.

Introduction of prejudicial evidence
Where the improper joinder of a cause of action permits the introduction of evidence which is highly prejudicial and likely to influence the jury in plaintiff's favor on the other cause of action, the error is prejudicial and reversible although the cause of action improperly joined does not go to the jury.
Tex.—First Nat. Bank v. Mangum, Civ.App., 176 S.W. 1197.

Large joint verdict
Fatal misjoinder of two causes of action was not corrected by instructions, where jury returned joint verdict for large amount against both defendants.
Va.—Norfolk Union Bus Terminal v. Sheldon, 49 S.E.2d 338, 188 Va. 288.

87. Ark.—Catlett v. Bradley, 47 S.W. 2d 15, 185 Ark. 260.
Cal.—Summers v. Dominguez, 84 P. 2d 237, 29 C.A.2d 308—Butler v. Cornell, 243 P. 701, 75 C.A. 692—First Nat. Bank v. Spangler, 192 P. 874, 49 C.A. 133—Sweet v. Richvale Land Co., 154 P. 608, 29 C.A. 111.
Ga.—Wade v. Combined Mut. Cas. Co. of Chicago, Ill., 39 S.E.2d 681, 201 Ga. 318.
Ind.—Sweigart v. State, 12 N.E.2d 134, 213 Ind. 157, 114 A.L.R. 1117.
Miami County Bank v. State, 112 N.E. 40, 61 Ind.App. 360.
Okl.—British America Assur. Co. v. Shores, 243 P.2d 343, 206 Okl. 300.
Tenn.—De Bord v. Brown, 217 S.W. 2d 772, 188 Tenn. 160.
Tex.—Stafford v. Drewry, Civ.App., 32 S.W.2d 255—White Point Oil & Gas Co. v. Dunn, Civ.App., 18 S.W.2d 267—Miller v. Coffee, Civ. App., 17 S.W.2d 1100—Tomerlin v. Mittendorf, Civ.App., 286 S.W. 477—Cauble v. Cauble, Civ.App., 283 S.W. 914—Pope v. Brookshire, Civ.App., 236 S.W. 108—Mayhew & Isbell Lumber Co. v. Valley Wells Truck Growers' Ass'n, Civ.App., 216 S.W. 225.
Va.—Bowers v. Town of Martinsville, 159 S.E. 196, 156 Va. 497.
Wash.—In re Fisher's Estate, 81 P. 2d 836, 196 Wash. 41.
4 C.J. p 928 note 76.

Abandonment of one cause
Where plaintiff misjoins two causes of action but subsequently abandons one of the causes, defendant can in no way be prejudiced by the misjoinder.
Cal.—Butler v. Cornell, 243 P. 701, 75 C.A. 692.
Iowa.—Brunner v. Floyd County, 284 N.W. 814, 226 Iowa 583.

Consolidation proper
(1) Where causes of action alleged to have been misjoined could have been consolidated, defendant is not prejudiced by the misjoinder.
Ark.—Catlett v. Bradley, 47 S.W.2d 15, 185 Ark. 260.

(2) Joinder of plaintiffs and of causes of action, in two separate actions against the same defendants which could have been consolidated for trial if brought by each plaintiff singly, and were consolidated without objection by defendants, was not prejudicial.
Cal.—Union Oil Co. v. Domengeaux, 86 P.2d 127, 30 C.A.2d 266.

Curing improper cumulation of causes
In action by landlord against tenant for eviction and money judgment for unmatured rent, it was proper for trial court to cure any improper cumulation of causes of action by restricting trial of cause to eviction matter and recalling rule with respect to demand for judgment for unmatured rents.
La.—Wall v. Green, 81 So.2d 769, 228 La. 59.

87.5 Md.—Woodcock v. Dennis, 199 A. 845, 175 Md. 9.

Dismissal as to one defendant
Alleged error in refusing to dismiss case which joined contract ac-

§ 1685. Rulings on Pleadings

Erroneous rulings on pleadings which do not adversely affect the substantial rights of the complaining party will not furnish grounds for reversal.

Erroneous rulings on pleadings not resulting in injury to the substantial rights of appellant, nor affecting the decision on the merits, are harmless and nonprejudicial and not cause for reversal;[88] but it is otherwise if appellant has been deprived of a substantial right or benefit to which he is entitled.[89]

Rulings to which the foregoing principle has been applied are those overruling a motion to separate a complaint or petition into paragraphs or counts;[90] requiring plaintiff separately to state and

tion against some of defendants with tort action against remaining defendants was harmless, where contract action against some of defendants was dismissed and case proceeded as one in tort against remaining defendants.
La.—Gates v. Bisso Ferry Co., App., 172 So. 829.

88. Ala.—Sovereign Camp, W. O. W. v. Turner, 191 So. 473, 238 Ala. 436—Day & Sachs v. Travelers' Ins. Co., 137 So. 409, 223 Ala. 558—Hill v. Hyde, 121 So. 510, 219 Ala. 155—Security Bank & Trust Co. of Memphis, Tenn. v. Laney, 108 So. 367, 214 Ala. 561—Miller v. Metropolitan Life Ins. Co., 106 So. 335, 214 Ala. 4—Tedder v. Home Ins. Co., 103 So. 674, 212 Ala. 624—Kelley Realty Co. v. Botsford, 78 So. 860, 201 Ala. 506—Buck Creek Lumber Co. v. Nelson, 66 So. 476, 188 Ala. 243.
First Nat. Bank v. Howard, 108 So. 402, 21 Ala.App. 363—Farmers' Mut. Ins. Ass'n of Alabama v. Tankersley, 69 So. 410, 13 Ala. App. 524.
Cal.—Arnold v. Universal Oil Land Co., 114 P.2d 408, 45 C.A.2d 522—Consolidated Nat. Bank of Tucson, Ariz., v. Reiniger Mining & Smelting Co., 295 P. 79, 111 C.A. 64—Snyder v. United Properties Co. of California, 200 P. 366, 53 C.A. 428.
Colo.—Berkley v. Consolidated Lower Boulder Reservoir & Ditch Co., 216 P. 548, 73 Colo. 483.
D.C.—Peake v. N. L. Sansbury Co., 52 App.D.C. 100, 281 F. 604.
Fla.—City of Gainesville v. Kirkland, 156 So. 601, 116 Fla. 319—Cracowaner v. Worthington, 135 So. 304, 101 Fla. 756—Avon Mfg. Co. v. Herrin, 114 So. 425, 93 Fla. 1128.
Ill.—Couzet v. Hibben, 112 N.E. 305, 272 Ill. 508, Ann.Cas.1918A 1197.
Central Cleaners and Dyers v. Schild, 1 N.E.2d 90, 284 Ill.App. 267. See Blemaster v. Rockey, 200 Ill.App. 320.
Ind.—Armstrong v. Pressler, 73 N.E. 2d 751, 853, 225 Ind. 291—Payne v. Grossart, 190 N.E. 752, 207 Ind. 157—Rowley v. Pogue, 178 N.E. 449, 203 Ind. 655, rehearing denied 181 N.E. 589, 185 N.E. 273, 203 Ind. 655, followed in Waller v. Pogue, 185 N.E. 278, 205 Ind. 709.
Central Indiana Ry. Co. v. Mitchell, App., 199 N.E. 439, 102 Ind. App. 121—City of Huntington v. Sonken, 165 N.E. 449, 89 Ind.App. 645.
Kan.—Kinne v. Waggoner, 197 P. 195, 108 Kan. 814.
Ky.—Black Motor Co. v. Blair, 18 S.W.2d 866, 230 Ky. 78.
La.—R. P. Farnsworth & Co. v. Estrade, Cotton & Fricke, App., 166 So. 160, amended and rehearing denied 166 So. 676.
Mass.—State Realty Co. of Boston v. MacNeil Bros. Co., 135 N.E.2d 291, 334 Mass. 294—Prondecka v. Turners Falls Power & Electric Co., 134 N.E. 352, 241 Mass. 100.
Miss.—Edward Hines Yellow Pine Trustees v. Knox, 108 So. 907, 144 Miss. 560.
Mo.—Rice v. Hawley, 203 S.W.2d 158, 239 Mo.App. 901.
N.J.—Furman v. Feibleman & Lehman Co., 96 A. 886, 88 N.J.Law 711.
N.Y.—Holmes v. Wood, 88 N.Y. 650.
Brennan v. Community Service Soc. of New York, 45 N.Y.S.2d 825, 181 Misc. 637.
N.C.—Baker v. Fruehauf Trailer Co., 89 S.E.2d 388, 242 N.C. 724—Bowman v. Howard, 110 S.E. 98, 182 N.C. 662.
Ohio.—Silver v. McKnight, App., 49 N.E.2d 89.
Okl.—Bennett v. Winfrey, 50 P.2d 363, 173 Okl. 441—Schaff v. Coyle, 249 P. 947, 121 Okl. 228.
Or.—L. B. Menefee Lumber Co. v. MacDonald, 260 P. 444, 122 Or. 579.
Pa.—Clarke v. Graham, 76 A.2d 382, 365 Pa. 542—Richter v. Mozenter, 53 A.2d 76, 356 Pa. 650—Borough of Hollidaysburg v. Snyder, 102 A. 168, 258 Pa. 490—Feather v. Hustead, 98 A. 971, 254 Pa. 357.
R.I.—Grim v. Dolan, 96 A.2d 205, 80 R.I. 259, reargument denied 97 A.2d 439, 80 R.I. 259.
Tenn.—Johnson Transfer & Freight Lines v. American Nat. Fire Ins. Co., 79 S.W.2d 587, 168 Tenn. 514.
State ex rel. George v. Fleming, 264 S.W.2d 589, 37 Tenn.App. 460.
Tex.—Douglass v. McLure, Civ.App., 254 S.W.2d 876, error dismissed—Sumerlin v. Fowler, Civ.App., 229 S.W.2d 75—General Crude Oil Co. v. Harris, Civ.App., 101 S.W.2d 1098, error dismissed—Richardson v. City Nat. Bank of Olney, Civ. App., 61 S.W.2d 137—Chauncey v. Kansas City, M. & O. Ry. Co., Civ. App., 32 S.W.2d 869—St. Louis Southwestern Ry. Co. of Texas v. Roman, Civ.App., 244 S.W. 197—Cobb v. H. C. Burt & Co., Civ.App., 241 S.W. 185—Ulrich v. Galveston-Seeburg Electric Piano Co., Civ. App., 199 S.W. 310—City of Brownsville v. Tumlinson, Civ.App., 179 S.W. 1107.
Utah.—Robison v. Robison, 203 P. 340, 59 Utah 215.
Wash.—Wise v. Vaughan, 295 P. 126, 160 Wash. 505—Nelson v. Smith, 248 P. 798, 140 Wash. 293—Carabin v. Wilhelm, 151 P. 87, 87 Wash. 52.
W.Va.—Kronjaeger v. Travelers Ins. Co., 22 S.E.2d 689, 124 W.Va. 730—Zirkle v. Moore, Keppel & Co., 158 S.E. 785, 110 W.Va. 535—Lynch v. Armstrong, 111 S.E. 489, 90 W. Va. 98.
Wyo.—Buffalo Basin Petroleum Co. v. Tanberg Oil Co., 13 P.2d 243, 44 Wyo. 424.
4 C.J. p 926 note 18, p 929 note 77, p 930 note 4—37 C.J. p 113 note 4 [a] (1), p 1260 note 59—51 C.J. p 285 note 12, p 1253 note 90.

89. Ala.—Sovereign Camp, W. O. W. v. Harris, 153 So. 870, 228 Ala. 417—Shelby Iron Co. v. Bierly, 80 So. 806, 202 Ala. 422.
Fla.—I. Epstein & Bro. v. First Nat. Bank, 110 So. 354, 92 Fla. 796—Hayman v. Mitchell, 107 So. 635, 91 Fla. 304.
Miss.—Williams v. Mid-South Paving Co., 25 So.2d 792, 200 Miss. 103.
Nev.—Thiess v. Rapaport, 66 P.2d 1000, 57 Nev. 434.
N.Y.—Jessel v. Lockwood Textile Corp., 95 N.Y.S.2d 77, 276 App. Div. 378, appeal granted 96 N.Y. S.2d 489, 276 App.Div. 1067.
Ohio.—Blumberg v. Saylor, App., 137 N.E.2d 696, appeal dismissed 129 N.E.2d 383, 164 Ohio St. 188—Home Owners' Service Corp. v. Hadley, 84 N.E.2d 314, 86 Ohio App. 340.
Okl.—Childers v. New York Life Ins. Co., 245 P. 59, 117 Okl. 7.
Pa.—McSorley v. Little, 161 A. 77, 307 Pa. 316.
Wis.—Polzin v. Wachtl, 245 N.W. 182, 209 Wis. 289.

90. U.S.—Yates v. Whyel Coke Co., Ohio, 221 F. 603, 137 C.C.A. 327.
Colo.—Cornucopia Leasing, Min. & Mill. Co. v. Kenney, 259 P. 1033, 82 Colo. 264—Olson v. Harvey, 188 P. 751, 68 Colo. 180.
Ind.—Ratcliff v. Ratcliff, 39 N.E.2d 435, 219 Ind. 429—Rich v. Fry, 146 N.E. 393, 196 Ind. 303, rehearing denied 148 N.E. 202, 196 Ind. 303—Ætna Ins. Co. v. Indiana Nat. Life Ins. Co., 133 N.E. 4, 191 Ind. 554.

number causes of action;[90.5] refusing to dismiss a counterclaim or set-off for want of a proper verification;[91] granting time to plead;[92] refusing to permit,[93] or permitting,[94] the verification of a pleading; refusing to compel a verification of the pleadings;[95] sustaining a motion to divide a paragraph containing but a single answer to the complaint;[96] sustaining,[97] overruling,[98] or failing to act on[99] pleas in abatement; with respect to pleas to the jurisdiction;[1] or ruling contrary to the theory of

22 A.L.R. 402—Baldwin Piano Co. v. Allen, 118 N.E. 305, 187 Ind. 315—Huntington Light & Fuel Co. v. Spell, 111 N.E. 311, 185 Ind. 30. Daugherty v. Daugherty, 57 N. E.2d 599, 115 Ind.App. 253—George v. Massey Harris Co., 34 N.E.2d 956, 109 Ind.App. 305—Travelers' Ins. Co. v. Fletcher American Nat. Bank of Indianapolis, 150 N.E. 825, 84 Ind.App. 563—Pittsburgh, C., C. & St. L. R. Co. v. Rushton, 148 N.E. 337, 90 Ind.App. 227, rehearing denied 149 N.E. 652, 90 Ind.App. 227—Talge Mahogany Co. v. New Albany Veneering Co., 147 N.E. 781, 84 Ind.App. 93—Terre Haute, Indianapolis & Eastern Traction Co. v. McDermott, 144 N.E. 620, 82 Ind.App. 134—American Coal Mining Co. v. Knight, 139 N.E. 463, 80 Ind.App. 30—Eickmier v. Geddes, 126 N.E. 859, 73 Ind.App. 167—Brown v. Guyer, 115 N.E. 947, 64 Ind.App. 356—Adams v. Antles, 105 N.E. 931, 57 Ind.App. 594.

Iowa.—Duncanson v. City of Fort Dodge, 11 N.W.2d 583, 233 Iowa 1325—Stacey Fruit Co. v. Sketchley, 183 N.W. 452, 192 Iowa 186.

Kan.—Gibson v. Bodley, 133 P.2d 112, 156 Kan. 338—Nardyz v. Fulton Fire Ins. Co., 101 P.2d 1045, 151 Kan. 907—Nelson v. Schippel, 56 P.2d 469, 143 Kan. 546—Pirott v. Heinen, 19 P.2d 723, 137 Kan. 186, modified on other grounds 26 P.2d 453, 138 Kan. 319.

Wash.—Wiggins v. North Coast Transp. Co., 98 P.2d 675, 2 Wash. 2d 446—Bradbury v. Nethercutt, 164 P. 194, 95 Wash. 670—Ginnet v. Greene, 151 P. 99, 87 Wash. 40.

4 C.J. p 929 note 78.

Abandonment of one cause of action

The error of the court in overruling a motion to require a pleading to be separated into two counts is harmless where plaintiff later elects to proceed on only one of the theories or causes set forth in his petition.

Wash.—Ginnet v. Green, 151 P. 99, 87 Wash. 40.

Deprivation of right to demur to one count

Where plaintiff sued in one count on an oral contract and for services rendered, the fact that defendant's right under the statute of frauds to demur to cause on oral contract was cut off by overruling motion to separate counts is not prejudicial where defendant could have raised defense by answer and was given the benefit thereof by the court's instructions.

Ind.—Brown v. Guyer, 115 N.E. 947, 64 Ind.App. 356.

90.5 Wyo.—Boyce v. Northern Utilities Co., 297 P.2d 820, 75 Wyo. 500.

91. Ky.—Grover v. Tingle, 53 S.W. 281, 21 Ky.L. 885.

92. Nev.—Butzbach v. Siri, 5 P.2d 533, 53 Nev. 453.

Wis.—State ex rel. Walling v. Sullivan, 13 N.W.2d 550, 245 Wis. 180, 154 A.L.R. 841.

93. Tex.—Ricks v. Serna, Civ.App., 258 S.W. 226.

94. N.C.—Ashley v. Miller, 169 S.E. 222, 204 N.C. 797.

95. Ky.—Ball v. Sandlin, 195 S.W. 1089, 176 Ky. 537.

4 C.J. p 929 note 80.

96. Ind.—Conwell v. Connersville, 8 Ind. 358.

4 C.J. p 929 note 81.

97. Tex.—American Cent. Ins. Co. v. Robinson, Civ.App., 219 S.W. 277, dismissed for want of jurisdiction—J. D. Fields & Co. v. Allison, Civ.App., 171 S.W. 274.

4 C.J. p 929 note 82.

98. U.S.—Louisville & N. R. Co. v. Burns, Tenn., 242 F. 411, 155 C.C. A. 187.

Ariz.—Smith v. Phlegar, 236 P.2d 749, 73 Ariz. 11.

Ind.—Jackson Civil Tp. v. Darrow, 134 N.E. 779, 192 Ind. 136.

Iowa.—Gotsch v. Schoenjahn, 207 N. W. 567, 201 Iowa 1317.

Okl.—Smith v. Findley, 298 P.2d 440.

Tex.—U. S. v. Yates, Civ.App., 204 S.W.2d 399, error refused no reversible error—Reynolds v. City of Alice, Civ.App., 150 S.W.2d 455—General Crude Oil Co. v. Harris, Civ.App., 101 S.W.2d 1098, error dismissed—Homestead Fire Ins. Co. v. Simpson, Civ.App., 91 S.W. 2d 960, error dismissed—J. M. Radford Grocery Co. v. Matthews, Civ.App., 86 S.W.2d 464—Radford v. Ellis, Civ.App., 64 S.W.2d 1033—Farmers' Nat. Bank v. Dublin Nat. Bank, Civ.App., 55 S.W.2d 567—Ætna Casualty & Surety Co. v. Woodward, Civ.App., 31 S.W.2d 679, modified on other grounds, Com. App., 36 S.W.2d 721, modified on other grounds 41 S.W.2d 674—Southern Surety Co. v. Griffith Lumber Co., Civ.App., 10 S.W.2d 272—Pomona Mut. Oil Syndicate v. Williamsport Wire Rope Co., Civ.App., 282 S.W. 958—Hays v. Deeley, Civ.App., 204 S.W. 1177—McCoy v. Bankers' Trust Co., Civ. App., 200 S.W. 1138, error refused.

W.Va.—Staples v. Left Fork Fuel Co., 77 S.E.2d 872, 138 W.Va. 819.

4 C.J. p 929 note 83.

Another action pending

The error of the trial court in not abating a suit because there was another cause between the same parties and for the same cause pending on appeal cannot be considered, where the appeal of the other case was dismissed before instant case was appealed, and where it is not claimed that the judgment of dismissal in the other case, which was not introduced in evidence in instant case, was res judicata.

Mo.—Rookery Realty, Loan, Inv. & Bldg. Co. v. Johnson, 243 S.W. 123, 294 Mo. 461.

Prejudicial error

(1) Error in overruling plea in abatement is prejudicial where plaintiff's own testimony shows that one not a party owned an interest in the property involved.

Tex.—Gulf Pipe Line Co. v. Smith, Civ.App., 42 S.W.2d 812.

(2) Where the proceedings are absolutely void for want of jurisdiction, the overruling of a plea in abatement on that ground is reversible error.

Tex.—Stewart v. Poinbocuf, 233 S.W. 1095, 111 Tex. 299.

(3) Where court was without jurisdiction if action was not commenced in county of defendant's residence, it was reversible error to refuse to hear plea in abatement alleging that defendant was not a resident in county.

Ind.—Brown v. Board of Children's Guardians of Hamilton County, 10 N.E.2d 289, 104 Ind.App. 69.

(4) Overruling pleas in abatement and requiring bus company to proceed to trial with its insurer as co-defendant were prejudicial.

Tex.—Bransford v. Pageway Coaches, 104 S.W.2d 471, 129 Tex. 327.

99. Pa.—Feather v. Hustead, 98 A. 971, 254 Pa. 357.

4 C.J. p 929 note 84.

1. Ga.—Hannah v. Union Consol. Warehouse Co., 86 S.E. 1085, 144 Ga. 291.

Tex.—Johnson v. City of Dallas, Civ. App., 291 S.W. 972—Stewart v. Howell Co., Civ.App., 264 S.W. 208.

W.Va.—Staples v. Left Fork Fuel Co., 77 S.E.2d 872, 138 W.Va. 819.

4 C.J. p 926 note 18, p 929 note 85.

the complaint, but nevertheless permitting a recovery.[2]

Errors in rulings on pleadings may be cured by incidents of the trial.[2.5] Thus, rulings with respect to pleadings are often rendered or considered harmless because the case was fully and fairly tried on the merits without reference thereto;[3] the issues involved in the pleadings and rulings were found in favor of the complaining party;[4] an amended pleading has been filed;[5] the pleadings with respect to which the rulings were made amounted to nothing more than surplusage,[6] were withdrawn before the trial,[7] or were withdrawn by the court from the consideration of the jury;[8] plaintiff eliminated from the complaint counts the rulings on which were complained of;[9] the evidence subsequently offered in support of the pleading ruled on was insufficient to sustain it;[10] or the pleading, in response to which the pleading on which the rulings have been made has been filed, is not supported by the evidence.[11]

Likewise, rulings with respect to pleadings may be rendered or considered harmless because the complaining party otherwise obtains the benefit of the matters set up in the pleading, or that portion thereof, adversely ruled on;[12] the party who has filed the pleading in favor of which the ruling is made fails to obtain any advantage or relief by reason of the pleading;[13] his pleadings as a whole would not entitle the complaining party to prevail even though adverse rulings had not been made on some of the pleadings;[14] or because the error has been cured by the instructions,[15] the verdict,[16] the findings,[17] or the judgment;[18] but, after the appeal has been taken, no act on the part of appellee without the consent of appellant can cure a reversible error.[19]

If the erroneous ruling is with respect to only one part of a pleading, it is harmless and immaterial where the verdict or decision is based on another part of the pleading,[20] or where the complaining party could avail himself of all the advantages given by that part of the pleading ruled against under,

2. Mont.—John v. Northern Pac. R. Co., 111 P. 632, 42 Mont. 18, 32 L.R.A.,N.S., 85.

2.5 Ala.—Mindler v. Crocker, 18 So. 2d 278, 245 Ala. 578.

3. U.S.—Lauderdale County v. Kittel, Miss., 229 F. 593, 143 C.C.A. 615.
Ala.—American Agr. Chemical Co. v. Lowery, 148 So. 849, 227 Ala. 96. H. C. Schrader Co. v. A. Z. Bailey Grocery Co., 74 So. 749, 15 Ala.App. 647, certiorari denied Ex parte A. Z. Bailey Grocery Co., 77 So. 373, 201 Ala. 79.
Ill.—People v. Strawn, 106 N.E. 840, 265 Ill. 292.
Ind.—Lind v. Douglas, 148 N.E. 497, 83 Ind.App. 380.
Kan.—Plains State Bank v. Ellis, 263 P.2d 254, 175 Kan. 261.
La.—State ex rel. Thigpen v. Gayle, App., 8 So.2d 315.
Pa.—Drob v. Jaffe, 41 A.2d 407, 351 Pa. 297.
Tex.—Riley v. Palmer, Civ.App., 237 S.W. 326—Paddleford v. Wilkinson, Civ.App., 194 S.W. 467.
4 C.J. p 929 note 87.

4. Tex.—Gulf, C. & S. F. Ry. Co. v. Dunman, Civ.App., 15 S.W.2d 1053, affirmed, Com.App., 27 S.W.2d 116, 72 A.L.R. 90—Bush & Gerts Piano Co. of Texas v. Strawn, Civ.App., 294 S.W. 267.

5. Fla.—Jordan v. John Ryan Co., 17 So. 73, 35 Fla. 259.
Ga.—Taylor v. Chambers, 58 S.E. 369, 2 Ga.App. 178.
Iowa.—Butler Mfg. Co. v. Elliott & Cox, 233 N.W. 669, 211 Iowa 1068.
Wash.—New Amsterdam Casualty Co. v. Frazier, 252 P. 703, 142 Wash. 230.
4 C.J. p 930 note 96.

6. Ala.—Gardiner v. Solomon, 75 So. 621, 200 Ala. 115, L.R.A.1917F 380.
4 C.J. p 929 note 88.

7. N.C.—Bowman v. Howard, 110 S. E. 98, 182 N.C. 662.
Tex.—Bond v. Kirby Lumber Co., Civ.App., 2 S.W.2d 936.
4 C.J. p 929 note 89.

8. Tex.—Galveston, H. & S. A. Ry. Co. v. Hopkins, Civ.App., 202 S.W. 222, error refused.
4 C.J. p 929 note 90.

9. Ala.—Age-Herald Pub. Co. v. Waterman, 66 So. 16, 188 Ala. 272.

10. Ala.—Hilton v. Birmingham Ry., Light & Power Co., 68 So. 343, 192 Ala. 474.
Hill v. Hooper, 110 So. 323, 21 Ala.App. 584.
Cal.—De Laval Dairy Supply Co. v. Talbott, 175 P. 83, 38 C.A. 39.
Ill.—Place v. Tri-State Investment Co., 212 Ill.App. 524.
Tex.—Wilkirson v. Bradford, Civ. App., 200 S.W. 1094, error refused.
4 C.J. p 930 notes 91, 98.

11. Ala.—Walls v. Decatur Fertilizer Co., 111 So. 214, 215 Ala. 426.

12. Ala.—Staples v. City Bank & Trust Co., 70 So. 115, 194 Ala. 687. J. R. Raible Co. v. City Bank & Trust Co., 112 So. 543, 22 Ala.App. 68.
4 C.J. p 930 notes 92–94.

13. Tex.—Eastern Seed & Grain Co. v. Weldon, Civ.App., 61 S.W.2d 586.
4 C.J. p 930 note 95.

14. Ala.—Vines v. Buck, 93 So. 398, 207 Ala. 523—Clark v. Choctaw Mining Co., 78 So. 372, 201 Ala. 466. C. H. Minge & Co. v. Barrett Bros. Shipping Co., 65 So. 671, 10 Ala.App. 592.

15. Ala.—Johnson v. Louisville & N. R. Co., 148 So. 822, 227 Ala. 103. Buerger v. Mabry, 73 So. 135, 15 Ala.App. 241.
Tex.—Brady-Neely Grocer Co. v. De Foe, Civ.App., 169 S.W. 1135.
4 C.J. p 930 note 1.

16. Ala.—Ashley v. McMurray, 130 So. 401, 222 Ala. 32.
Tex.—Peyton Creek Irr. Dist. v. White, Civ.App., 230 S.W. 1060, error refused.
4 C.J. p 930 note 2.

17. Tex.—City of El Paso v. Wiley, Civ.App., 180 S.W. 661.
Findings eliminating issues to which rulings related render the rulings harmless.
Tex.—City of El Paso v. Wiley, supra.

18. Tex.—Cotton v. Thompson, Civ. App., 159 S.W. 455.
4 C.J. p 930 note 3.

19. Ala.—Anders Bros. v. Latimer, 73 So. 925, 198 Ala. 578.

20. Ala.—May Hosiery Mills v. Munford Cotton Mills, 87 So. 674, 205 Ala. 27—Keller v. Jones & Weeden, 72 So. 89, 196 Ala. 417.
Tex.—Burnett v. Summerour, Civ. App., 228 S.W. 1013.

and by virtue of, another part of his pleadings not affected by the ruling.[21]

§ 1686. —— Filing or Withdrawal

Erroneous rulings of the court permitting, or refusing to permit, the filing or withdrawal of pleadings are not ground for reversal where no substantial injury results therefrom.

Rulings of the court permitting,[22] or refusing to permit,[23] the filing of pleadings do not constitute a ground for reversal where no substantial injury results therefrom. Such also is the rule with respect to erroneous rulings permitting,[24] or refusing to permit,[25] the withdrawal of pleadings.

§ 1687(1). —— Demurrers or Exceptions

Rulings of the court on demurrers or exceptions although erroneous are harmless where the rights of the complaining party are not substantially affected thereby.

Erroneous rulings of the court on demurrers,[26]

21. Ala.—Green v. Marlin, 121 So. 19, 219 Ala. 27—McClusky v. Duncan, 113 So. 250, 216 Ala. 388—Louisville & N. R. Co. v. James, 93 So. 701, 208 Ala. 6—Louisville & N. R. Co. v. James, 86 So. 906, 204 Ala. 604.
Louisville & N. R. Co. v. Johnson, 88 So. 925, 18 Ala.App. 691.
Ind.—Federal Life Ins. Co. v. Weedon, 118 N.E. 842, 68 Ind.App. 529.

22. Ark.—Scott v. McCraw, Perkins & Webber Co., 177 S.W. 901, 119 Ark. 133.
Ill.—Martin v. Cole, 73 N.E.2d 633, 331 Ill.App. 597.
Ind.—New York Life Ins. Co. v. Hubbell, 40 N.E.2d 352, 111 Ind. App. 631.
Iowa.—A. Y. McDonald Co. v. Morrison, 228 N.W. 878, 211 Iowa 882.
Mich.—Boman v. Wolverine Power Co., 255 N.W. 613, 268 Mich. 59.
Minn.—Wilson Storage & Transfer Co. v. Geurkink, 64 N.W.2d 9, 242 Minn. 60.
N.M.—Rallis v. Connecticut Fire Ins. Co., 120 P.2d 736, 46 N.M. 77.
Pa.—Murphy v. Chase, 103 Pa. 260.
R.I.—Enos v. Enos, 138 A. 865, 48 R.I. 470.
S.C.—Wessinger v. Duncan, 102 S.E. 6, 113 S.C. 205—Rish v. Seaboard Air Line Ry., 93 S.E. 250, 108 S. C. 30—Outlaw v. National Council, Junior Order United American Mechanics, 92 S.E. 469, 107 S.C. 225.
Wash.—Olympia Nat. Bank v. Murphy Motor Car Co., 200 P. 577, 116 Wash. 695.
4 C.J. p 930 note 6.

23. Fla.—Seaboard Air Line Ry. Co. v. Hess, 74 So. 500, 73 Fla. 494.
Ill.—American Woolen Co. v. Lesher, 107 N.E. 882, 267 Ill. 11.
Ind.—Holaday v. Rickard, 131 N.E. 760, 190 Ind. 684—Bronnenberg v. Goins, 108 N.E. 862, 183 Ind. 225.
Kan.—Hodge v. Bishop, 165 P. 644, 101 Kan. 152.
Me.—Spaulding v. York County Mut. Fire Ins. Co., 149 A. 143, 128 Me. 512.
Mo.—Early v. Smallwood, 256 S.W. 1053, 302 Mo. 92.
Tex.—Wood v. Young, Civ.App., 11 S.W.2d 369.
Va.—Daily v. Rucker, 144 S.E. 466, 151 Va. 72—P. Lorillard Co. v. Clay, 104 S.E. 384, 127 Va. 734.
W.Va.—Lynch v. Armstrong, 111 S. E. 489, 90 W.Va. 98—Payne v. Riggs, 92 S.E. 133, 80 W.Va. 57.
4 C.J. p 930 note 7.

Additional pleadings
Cal.—Private Investors v. Homestake Min. Co., 60 P.2d 146, 16 C. A.2d 1.

Full hearing on issues
Where the issues were as fully heard as if presented by pleading, the refusal to permit the pleading is not prejudicial.
Ind.—Bronnenberg v. Goins, 108 N.E. 862, 183 Ind. 225.

Object of pleading accomplished
Refusal of the court to permit a demurrer to be filed is harmless where the court virtually sustained the demurrer by requiring plaintiff to amend his petition.
Va.—Daily v. Rucker, 144 S.E. 466, 151 Va. 72.

24. Cal.—Brown v. Brown, 13 P.2d 1004, 125 C.A. 429.
Md.—Shoop v. Fidelity & Deposit Co. of Maryland, 91 A. 753, 124 Md. 130, Ann.Cas.1916D 954.
Tex.—Browne v. McGuire, Civ.App., 181 S.W. 479.
4 C.J. p 930 note 8.

25. Ky.—Maryland Casualty Co. v. Givens, 197 S.W. 497, 177 Ky. 131.
Mich.—Kolodziejczak v. Bak, 189 N. W. 929, 220 Mich. 274.
4 C.J. p 930 note 8.

26. Ala.—Futvoye v. Chuites, 140 So. 432, 224 Ala. 458—Moody v. Tennessee Coal, Iron & R. Co., 96 So. 427, 209 Ala. 479—Danforth v. Burchfield, 78 So. 904, 201 Ala. 550.
McDougal v. Louisville & N. R. Co., 85 So. 880, 17 Ala.App. 468.
Cal.—Brown v. Kentfield, 50 C. 129.
McLean v. Mooser, 210 P. 827, 59 C.A. 345.
Colo.—Colorado Cent. R. Co. v. Blake, 3 Colo. 417—Brown v. People, 3 Colo. 115—Marr v. Wetzel, 3 Colo. 2.
Conn.—Coupland v. Housatonic R. Co., 23 A. 870, 61 Conn. 531, 15 L.R.A. 534.
Ga.—Hudgins Contracting Co. v. Redmond, 173 S.E. 135, 178 Ga. 317.
Robertson v. Robertson, 83 S.E. 2d 619, 90 Ga.App. 576—Flint Explosive Co. v. Edwards, 66 S.E.2d 368, 84 Ga.App. 376—Clarkson v. Clarkson, 12 S.E.2d 468, 64 Ga.App. 1—Fidelity & Deposit Co. of Maryland v. Norwood, 144 S.E. 387, 38 Ga.App. 534—Bell v. Tucker, 139 S.E. 573, 37 Ga.App. 254—J. H. Herbener & Son v. Boston Oil & Guano Co., 87 S.E. 607, 17 Ga.App. 437.
Ind.—**Corpus Juris cited in** Rowley v. Pogue, 178 N.E. 449, 450, 203 Ind. 655, rehearing denied 181 N.E. 589, 203 Ind. 655—Clinton Coal Co. v. Chicago & E. I. R. Co., 130 N.E. 798, 190 Ind. 465—Over v. Shannon, 75 Ind. 352—Davis v. State, 68 Ind. 104—Hadley v. Prather, 64 Ind. 137—McGill v. Pressley, 62 Ind. 193—Allis v. Nanson, 41 Ind. 154—Rhode v. Green, 26 Ind. 83—Story v. O'Dea, 23 Ind. 326—Ausem v. Byrd, 6 Ind. 475—Cheek v. Glass, 3 Ind. 286.
Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind. App. 121—Ninde v. Bank of Geneva, 181 N.E. 378, 95 Ind.App. 558.
Kan.—Cannon v. Kreipe, 14 Kan. 324.
Tex.—Sims v. Chance, 7 Tex. 561.
Mueller v. Sutherland, Civ.App., 179 S.W.2d 801, error refused—Southern Underwriters v. Hodges, Civ.App., 141 S.W.2d 707, error refused.
W.Va.—Boyd v. Pancake Realty Co., 46 S.E.2d 633, 131 W.Va. 150.
4 C.J. p 930 note 9, p 931 note 10—37 C.J. p 1260 note 59.

Motion in nature of general demurrer
Ga.—Gregory v. Schnurstein, 94 S.E. 2d 514, 94 Ga.App. 330.

Waiver of demurrer
Vt.—Manley v. Brattleboro Trust Co., 78 A.2d 488, 116 Vt. 460.

Failure to object or except to rulings relating to consolidating of two suits, the bringing in of additional parties, and the granting of relief to a new party rendered harmless previous adverse ruling on demurrer to such matters.
Ga.—Roberts v. McBrayer, 22 S.E.2d 165, 194 Ga. 606.

Material points
Ruling on demurrer to the complaint was immaterial where wide range taken by testimony touched

or exceptions,[27] although erroneous, are harmless and not ground for reversal where the substantial rights of the objecting party are not affected thereby; but reversal can be had because thereof if by reason of the ruling appellant has been prejudiced or deprived of a substantial right.[28]

§ 1687(2). —— —— Sustaining Demurrer or Exception

a. In general
b. To part of pleadings
c. Error cured by amendment or withdrawal

a. In General

Although erroneous, the sustaining of a demurrer or exception to a pleading is usually regarded as harmless where the complaining party could in no event have derived any substantial benefit from the matters set forth therein, he otherwise obtains the full benefit of such matters, or it is shown by the evidence, findings, or otherwise, that the matters set forth have no foundation in fact.

Sustaining a demurrer or exception to a pleading, although error, is harmless and not ground for reversal where it does not adversely affect the rights of the complaining party or influence the final outcome of the case,[29] but not when his rights are substantially affected thereby.[30]

most issues in the complaint and brought to attention of trial court the material points of controversy.
Ark.—Harris v. Blackburn, 219 S.W. 2d 922, 215 Ark. 195.

Multiple demurrers
Ind.—Appeal of Sears, Roebuck & Co., 109 N.E.2d 620, 123 Ind.App. 358.

27. Tex.—City of Dallas v. Shows, Com.App., 212 S.W. 633.
Cabaniss v. Grayburg Oil Co., Civ.App., 50 S.W.2d 437—Western Union Telegraph Co. v. Hicks, Civ. App., 47 S.W.2d 466—Drane v. Humble Oil & Refining Co., Civ. App., 4 S.W.2d 241—Feris v. Bassett, Civ.App., 227 S.W. 233—Paddleford v. Wolkinson, Civ.App., 194 S.W. 467.

28. Ala.—Shelby Iron Co. v. Bierly, 80 So. 806, 202 Ala. 422.
Ga.—Aycock v. Gillhan, 184 S.E. 912, 53 Ga.App. 115—Simmons v. Simmons, 122 S.E. 644, 32 Ga.App. 69.
Ind.—Fidelity & Cas. Co. of New York v. State ex rel. McWhir, 32 N.E.2d 102, 110 Ind.App. 507.
Kan.—Fleming v. Campbell, 69 P.2d 718, 146 Kan. 294.
Tex.—Houston, E. & W. T. Ry. Co. v. Browder, Com.App., 283 S.W. 154.
Jernigan v. O'Brien, Civ.App., 303 S.W.2d 515—Gilbert v. Mooring, Civ.App., 88 S.W.2d 537, error dismissed—Commercial Standard Ins. Co. v. Lowrie, Civ.App., 49 S. W.2d 933—Bragg v. Houston Electric Co., Civ.App., 264 S.W. 245, affirmed Houston Electric Co. v. Bragg, Com.App., 276 S.W. 641, motion overruled 280 S.W. 188.

29. Ala.—Streater v. Town of Town Creek, 173 So. 853, 234 Ala. 132—Beatty v. McMillan, 147 So. 180, 226 Ala. 405—Hume v. Kirkwood, 113 So. 613, 216 Ala. 534—Warren v. Crow, 81 So. 636, 202 Ala. 680—Fruitticher Electric Co. v. Birmingham Trust & Savings Co., 79 So. 248, 201 Ala. 676—Crews & Green v. Parker, 68 So. 287, 192 Ala. 383.
Johnson v. Hill, 124 So. 394, 23 Ala.App. 286.
Ark.—Polk v. Road Improvement Dist. No. 2 of Lincoln County, 185 S.W. 453, 123 Ark. 334.
Colo.—Wyatt v. Burnett, 36 P.2d 768, 95 Colo. 414.
Conn.—J. E. Smith & Co. v. W. M. Hurlburt Co., 106 A. 319, 93 Conn. 391.
Fla.—Harry P. Leu, Inc., v. Seaboard Air Line R. R., 145 So. 869, 107 Fla. 562—May v. Simmons, 140 So. 780, 104 Fla. 707—Fidelity & Deposit Co. of Maryland v. State, 136 So. 881, 103 Fla. 15—Cracowaner v. Worthington, 135 So. 304, 101 Fla. 756—Hernando Hard Rock Co. v. American State Bank, 129 So. 769, 100 Fla. 307—West v. State, 78 So. 285, 75 Fla. 379—Catlett v. State, 78 So. 284, 75 Fla. 375—West v. State, 78 So. 275, 75 Fla. 342.
Ga.—Southern Ry. Co. v. Wehunt, 170 S.E. 380, 177 Ga. 444.
Ind.—Sisters of Providence of St. Mary's of the Woods v. Lower Vein Coal Co., 154 N.E. 659, 198 Ind. 645—Hoosier Stone Co. v. McCain, 31 N.E. 956, 133 Ind. 231—Huntington County v. Huffman, 31 N.E. 570, 134 Ind. 1—Palmerton v. Hoop, 30 N.E. 874, 131 Ind. 23—Wood v. State, 30 N.E. 309, 130 Ind. 364—Craig v. Frazier, 26 N.E. 842, 127 Ind. 286—Wallace v. Exchange Bank, 26 N.E. 175, 126 Ind. 265—Ralston v. Moore, 4 N.E. 673, 105 Ind. 243—Flora v. Cline, 89 Ind. 208—Kidwell v. Kidwell, 84 Ind. 224—Wedekind v. Parsons, 64 Ind. 290—Alvord v. Smith, 63 Ind. 58—De Haven v. De Haven, 46 Ind. 296—Vaughn v. Cushing, 23 Ind. 184.
Evansville & O. V. Ry. Co. v. Woosley, 93 N.E.2d 355, 120 Ind. App. 570—Minas Furniture Co. v. Edward C. Minas Co., 165 N.E. 84, 96 Ind.App. 520.
Ky.—Ringo v. McFarland, 24 S.W. 2d 265, 232 Ky. 622—Wharton v. Barber, 221 S.W. 499, 188 Ky. 57—Shields' Adm'rs v. Chesser, 180 S. W. 968, 167 Ky. 532.
Md.—Ridgely v. Wilson, 131 A. 749, 149 Md. 569—Cumberland, etc., R. Co. v. Slack, 45 Md. 161.
Tex.—Kelly v. Wright, 188 S.W.2d 983, 144 Tex. 114.
Williams v. Cass County, Civ. App., 147 S.W.2d 588, error dismissed, judgment correct—Hubbard v. Texas Indemnity Ins. Co., Civ.App., 136 S.W.2d 627—Hendricks v. Kopecky, Civ.App., 133 S. W.2d 837, error dismissed, judgment correct—Moseley v. Fikes, Civ.App., 126 S.W.2d 589, affirmed 151 S.W.2d 202, 136 Tex. 386—Southern Ornamental Iron Works v. Morrow, Civ.App., 101 S.W.2d 336—Tarry Warehouse & Storage Co. v. Duvall, Civ.App., 94 S.W.2d 1249, reversed on other grounds 115 S.W.2d 401, 131 Tex. 466—Fritz Motor Co. v. Gabert, Civ.App., 41 S.W.2d 72—Muil v. Stevens, Civ. App., 39 S.W.2d 136—Livezey v. Putnam Supply Co., Civ.App., 30 S.W.2d 902—Harding v. Yarbrough, Civ.App., 293 S.W. 939—Smith v. Farmers' State Bank, Civ.App., 262 S.W. 835—Driggers v. Philadelphia Underwriters Agency of Fire Ins. Ass'n of Philadelphia, Civ.App., 240 S.W. 618, conforming to answers to certified questions Philadelphia Underwriters Agency of Fire Ins. Ass'n of Philadelphia v. Driggers, 238 S.W. 633, 111 Tex. 392—Smith v. Thompson, Civ.App., 233 S.W. 876, reversed on other grounds Thompson v. Smith, Com. App., 248 S.W. 1070.
Wash.—Slater v. Lich, 145 P. 996, 83 Wash. 687.
Wyo.—Burnett v. Taylor, 252 P. 790, 36 Wyo. 12.

30. Ala.—Shelby Iron Co. v. Bierly, 80 So. 806, 202 Ala. 422.
Ga.—Williams Realty & Loan Co. v. Simmons, 3 S.E.2d 580, 188 Ga. 184.
La.—Strickland v. Southern Nat. Ins. Co., App., 27 So.2d 733.
Okl.—Martin v. Mutaloke, 105 P.2d 413, 187 Okl. 613.

Petition or complaint. In accordance with the above rule, the sustaining of a demurrer to a declaration or complaint is harmless error where plaintiff would nevertheless not have been entitled to a substantial recovery even had the demurrer been overruled,[31] the pleading is incapable of being amended without departure therefrom,[32] or notwithstanding the ruling, plaintiff otherwise obtains all the benefits he would have had had the pleading been permitted to stand.[33]

Error in sustaining with respect to some counts of a declaration and denying with respect to others a demurrer addressed to the entire declaration is harmless where it is not shown that the ruling resulted in prejudice to plaintiff.[33.5] Furthermore, plaintiff is not harmed by a ruling sustaining a demurrer to the complaint as defectively stating a good cause of action, rather than a statement of a defective cause of action, where plaintiff is entitled to amend.[33.10]

The erroneous sustaining of a general demurrer to a petition or complaint may, however, be ground for reversal where the petition or complaint states a substantial cause of action,[34] even though plaintiff fails to offer proof in support of his petition after the demurrer has been sustained.[35] A judgment based on sustaining of a demurrer without leave to amend will not be affirmed on appeal un-

31. Ala.—Watson v. Birmingham Belt R. Co., 96 So. 257, 209 Ala. 413—Kimbrell v. Louisville & N. R. Co., 67 So. 586, 191 Ala. 392.
Ark.—Hughes Mfg. & Lumber Co. v. Culver, 189 S.W. 850, 126 Ark. 72.
Cal.—Olwell v. Hopkins, 168 P.2d 972, 28 C.2d 147.
Ga.—Kerr v. Kerr, 189 S.E. 20, 183 Ga. 573.
Maggioni v. Postal Telegraph-Cable Co., 110 S.E. 309, 28 Ga.App. 51.
Ill.—Bartee Tie Co. v. Jackson, 206 Ill.App. 393, affirmed 117 N.E. 1007, 281 Ill. 452.
Ind.—State v. Sizelove, 137 N.E. 616, 83 Ind.App. 48.
Md.—Lusby v. Baltimore Transit Co., 86 A.2d 407, 190 Md. 283.
Pa.—Costa v. City of Pittsburgh, 110 A.2d 884, 177 Pa.Super. 380.
Tex.—McClellan v. Haley, Com.App., 250 S.W. 413.
Presley v. City of Odessa, Civ. App., 263 S.W.2d 293—Obets v. Oppenheimer, Civ.App., 63 S.W.2d 320—Rosser v. Levi, Civ.App., 210 S. W. 314—Kidd v. Prince, Civ.App., 182 S.W. 725, reversed on other grounds, Com.App., 215 S.W. 844.
4 C.J. p 931 note 12, p 932 notes 15, 16.

Amended petition

Where petition as amended was subject to general demurrer, in absence of a showing that only demurrer to original petition was ruled on, or that opportunity to amend amended petition was denied, any error in order sustaining demurrer as to petition as amended was harmless.
Ga.—Beatus v. Darling Stores Corp., 33 S.E.2d 37, 72 Ga.App. 84.

Jury finding against plaintiff

Where the jury find against plaintiff on that portion of his petition to which the demurrer is sustained, the error is harmless.
Ala.—Kimbrell v. Louisville, etc., R. Co., Ala., 67 So. 586, 191 Ala. 392.

Lack of evidence

If there is no evidence to sustain the complaint, the sustaining of a demurrer thereto is harmless.
Ga.—Andrews v. Butts County, 114 S.E. 912, 29 Ga.App. 302.
4 C.J. p 932 note 16.

If only nominal damages could have been recovered, error in sustaining a demurrer to the complaint is harmless.
Ind.—State v. Sizelove, 137 N.E. 616, 83 Ind.App. 48.
4 C.J. p 931 note 12.

32. Ala.—McGehee v. Western Union Tel. Co., 53 So. 205, 169 Ala. 109, Ann.Cas.1912B 512—Ryall v. Allen, 38 So. 851, 143 Ala. 222.

33. Ala.—Reed v. L. Hammel Dry Goods Co., 111 So. 237, 215 Ala. 494—Buttrey v. Wilhite, 94 So. 585, 208 Ala. 573.
Ark.—Davis v. Cook, 251 S.W. 691, 159 Ark. 84.
Cal.—Dwyer v. Los Angeles Ry. Corporation, 2 P.2d 468, 115 C.A. 709.
Ohio.—Piepmeier v. Meck, 153 N.E. 523, 22 Ohio App. 228.
Tex.—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072—Obets v. Oppenheimer, Civ.App., 63 S.W.2d 320—Brown v. Spornitz, Civ.App., 6 S.W.2d 219—Broussard v. Wilson, Civ.App., 183 S.W. 814.
4 C.J. p 931 notes 13, 14.

Special demurrer

Chancellor, after having sustained special demurrer to petition, was not required to rule on general demurrer, and hence chancellor's error in sustaining general demurrer would not require a reversal.
Ky.—Tinsley v. Gibson, 183 S.W.2d 528, 298 Ky. 533.

Full hearing on same issues in cross action

(1) Any error in sustaining a demurrer to plaintiff's petition is harmless, where there was a full hearing on a cross action presenting the identical issue.
Tex.—Brown v. Spornitz, Civ.App., 6 S.W.2d 219.

(2) Plaintiffs were not prejudiced by erroneous sustaining of defendant's demurrer to plaintiffs' complaint, where defendant's cross complaint and answer to cross complaint tendered all material issues presented by original complaint, and case was tried on those issues and finally submitted to the court, and by the court decided under the issues and proofs presented thereunder.
Idaho.—Varkas v. Varkas, 130 P.2d 867, 64 Idaho 297.

If a demurrer to a similar complaint subsequently filed is overruled, error in sustaining a demurrer to the prior complaint is harmless.
Tex.—Shaw v. Harris, Civ.App., 8 S.W.2d 194.
4 C.J. p 931 note 13.

Permitting plaintiff to introduce evidence to sustain averments of complaint renders harmless error in sustaining demurrer thereto.
Tex.—Lawless v. Ellis, Civ.App., 281 S.W. 1090.
4 C.J. p 931 note 14.

33.5 Fla.—Goodrich v. Lawrence, 189 So. 233, 138 Fla. 287.

33.10 N.C.—Lindley v. Yeatman, 87 S.E.2d 5, 242 N.C. 145.

34. Cal.—Bartell v. Johnson, 140 P. 2d 878, 60 C.A.2d 432.
Ga.—Moseley v. Equitable Life Assur. Soc., 176 S.E. 87, 49 Ga. App. 424—Moore v. Standard Accident Ins. Co., 173 S.E. 481, 48 Ga. App. 508.
Ky.—Lowey v. Armes, 193 S.W.2d 444, 301 Ky. 833.
Okl.—Bigpond v. Mutaloke, 105 P.2d 408, 187 Okl. 611—Richards v. Baker, 99 P.2d 118, 186 Okl. 533.
Tex.—Reasoner v. Gulf, C. & S. F. Ry. Co., 203 S.W. 592, 109 Tex. 204.
Rushing v. Mayfield Co., Civ. App., 104 S.W.2d 619, reversed on other grounds 127 S.W.2d 185, 133 Tex. 120, 124 A.L.R. 1210.

35. Tex.—Bragg v. Houston Electric Co., Civ.App., 264 S.W. 245, affirmed Houston Electric Co. v. Bragg, Com.App., 276 S.W. 641, motion overruled 280 S.W. 188.

less it appears not only that the complaint failed to state a cause of action, but also that it cannot be amended to do so.[35.5]

Prejudicial error in sustaining a demurrer to a complaint on the ground of misjoinder of parties or causes is not rendered harmless by reason of the fact that, after plaintiff eliminated one of the defendants, judgment was rendered against him in favor of the other,[36] or the fact that plaintiff fails, because of insufficiency of the evidence, to recover on the one cause of action he has been compelled to proceed on;[37] but it also has been held that error in sustaining a demurrer to a petition for misjoinder of causes will not be considered by the appellate court where plaintiff, after the ruling, has voluntarily dismissed as to one cause of action.[38]

Plea or answer. Sustaining a demurrer or an exception to a plea or answer is harmless where such pleading could not have been amended so as to cure the defects,[39] plaintiff was required to make his proof of all material allegations,[39.5] the matter set up would not have constituted a defense,[40] the issue presented by the plea is fully litigated,[40.5] defendant otherwise had the benefit of the defense set forth,[41] or it has been subsequently established

35.5 Cal.—Wohlgemuth v. Meyer, 293 P.2d 816, 139 C.A.2d 326—Robbins v. Sonoma County Flood Control and Water Conservation Dist., 292 P.2d 52, 138 C.A.2d 291—Myers v. Stevenson, 270 P.2d 885, 125 C.A.2d 399.

Opportunity to amend

Where petition is dismissed on all grounds of general and special demurrers and is not subject to the general demurrer, fact that one or more of the special grounds may be good will not preclude reversal of judgment, where no opportunity was given below to plaintiff to amend to meet the defect.

Ga.—Hall v. Browning, 24 S.E.2d 392, 195 Ga. 423.

36. Ala.—Aldrich v. Tyler Grocery Co., 89 So. 289, 206 Ala. 138, 17 A.L.R. 617.

37. Tex.—Hudmon v. Foster, Com. App., 231 S.W. 346.

38. Ariz.—Moore v. Meyers, 253 P. 626, 31 Ariz. 347, reversed on other grounds 255 P. 164, 31 Ariz. 519.

39. Ala.—Montgomery County v. Pruett, 57 So. 823, 175 Ala. 391—Staples v. Steed, 52 So. 646, 167 Ala. 241, Ann.Cas.1912A 480—De Leon v. Walter, 50 So. 934, 163 Ala. 499, 19 Ann.Cas. 914.

Atlantic Coast Line R. Co. v. Ward, 58 So. 677, 4 Ala.App. 374.

4 C.J. p 932 note 17.

39.5 Tex.—Byars v. Johnson, Civ. App., 213 S.W.2d 294, error refused no reversible error—Barton v. Kansas City Life Ins. Co., Civ.App., 98 S.W.2d 836.

40. Ala.—Flowers v. Jernigan, 198 So. 615, 240 Ala. 234—Birmingham Purchasing Co. v. Colvin, 123 So. 45, 219 Ala. 662—Heralds of Liberty v. Collins, 110 So. 283, 216 Ala. 1—Minge v. Clarke, 82 So. 439, 203 Ala. 189—Alabama City, G. & A. Ry. Co. v. Lee, 76 So. 908, 200 Ala. 550.

Fidelity-Phenix Fire Ins. Co. v. Lawler, 81 So.2d 908, 38 Ala.App. 245.

Ariz.—Boyle v. Webb, 94 P.2d 642, 54 Ariz. 188.

Colo.—Foster v. Coffey, 204 P. 900, 71 Colo. 171.

Ind.—George B. Limert & Co. v. Waznitsky, 133 N.E. 128, 191 Ind. 419.

Satterblom v. Wasson, 41 N.E.2d 674, 111 Ind.App. 377—Eickmier v. Geddes, 126 N.E. 859, 73 Ind.App. 167—Easley v. Deer, 121 N.E. 542, 69 Ind.App. 264.

Miss.—Moore v. Abdalla, 19 So.2d 502, 197 Miss. 125.

Tex.—Stephenson v. Gaines, Com. App., 298 S.W. 401.

Kansas Life Ins. Co. v. First Nat. Bank of Truscott, Civ.App., 47 S.W.2d 678—Kansas Life Ins. Co. v. First Bank of Truscott, Civ. App., 47 S.W.2d 675.

Wash.—Lucas v. Panos, 68 P.2d 617, 190 Wash. 402.

4 C.J. p 932 note 18.

40.5 Ala.—Christian Benevolent Burial Ass'n v. Huff, 1 So.2d 390, 241 Ala. 119—Brasher v. Bromberg, 168 So. 552, 232 Ala. 450.

Milwaukee Mechanics Ins. Co. v. Maples, 66 So.2d 159, 37 Ala.App. 74, certiorari denied 66 So.2d 173, 259 Ala. 189.

41. U.S.—Donald v. J. J. White Lumber Co., C.C.A.Miss., 68 F.2d 441.

Ala.—Chenault v. City of Russellville, 169 So. 706, 233 Ala. 60—Pittman v. Calhoun, 165 So. 391, 231 Ala. 460—Aplin v. Dean, 164 So. 737, 231 Ala. 320—Forrester v. McFry, 157 So. 68, 229 Ala. 324—Martin v. Davis, 141 So. 667, 224 Ala. 648—Gilliland v. Hawkins, 112 So. 454, 216 Ala. 97—Davis v. Sorrell, 104 So. 397, 213 Ala. 191—People's Shoe Co. v. Skally, 71 So. 719, 196 Ala. 349.

Kalas v. MacMahon, 54 So.2d 322, 36 Ala.App. 238—American Ins. Co. v. Millican, 153 So. 448, 26 Ala. App. 31—certiorari denied 153 So. 454, 228 Ala. 357—Ingram Land Co. v. Wilkerson, 117 So. 4, 22 Ala. App. 479—Sunny South Grain Co. v. National Feed Co., 101 So. 542, 20 Ala.App. 145, certiorari denied Ex parte Sunny South Grain Co., 101 So. 546, 211 Ala. 615—Royal Ins. Co. v. Eggleston, 99 So. 828, 19 Ala.App. 638—Brotherhood of Painters, Decorators and Paperhangers of America v. Trimm, 97 So. 770, 19 Ala.App. 429—Houston Nat. Bank of Dothan v. Eldridge, 84 So. 430, 17 Ala.App. 235.

Cal.—Los Angeles County v. Rindge Co., 200 P. 27, 53 C.A. 166.

Conn.—Kirsch v. Coon, 150 A. 523, 111 Conn. 564.

Fla.—Fidelity & Deposit Co. of Maryland v. State, 136 So. 881, 103 Fla. 15—West v. State, 78 So. 285, 75 Fla. 379—Catlett v. State, 78 So. 284, 75 Fla. 375—West v. State, 78 So. 275, 75 Fla. 342.

Ga.—Bright v. Auto Finance & Loan Co., 184 S.E. 786, 52 Ga.App. 841—Massachusetts Bonding & Insurance Co. v. U. S. Conservation Co., 122 S.E. 728, 31 Ga.App. 716.

Ill.—Atkinson v. National Council of Knights and Ladies of Security, 193 Ill.App. 215. See Miller v. Assureds' Nat. Mut. Fire Ins. Co. of Decatur, Ill., 184 Ill.App. 271, affirmed 106 N.E. 203, 264 Ill. 380.

Ind.—City of Evansville v. Maddox, 25 N.E.2d 321, 217 Ind. 39—Citizens' Bank of Michigan City v. Opperman, 115 N.E. 55, 188 Ind. 212, certiorari denied Citizens' Bank of Michigan City, Ind. v. Opperman, 38 S.Ct. 424, 246 U.S. 673, 62 L.Ed. 932, and error dismissed 39 S.Ct. 330, 249 U.S. 448, 63 L.Ed. 701.

Slate v. Peoples Mut. Savings & Loan Ass'n, 8 N.E.2d 101, 104 Ind. App. 460—Sowerwine v. Noblesville Heat, Light & Power Co., 118 N.E. 146, 66 Ind.App. 292.

Ky.—United States Fidelity & Guaranty Co. v. Shepherds' Home Lodge No. 2, 174 S.W. 487, 163 Ky. 706.

La.—Bowie Lumber Co. v. Youngs, App., 144 So. 71.

Or.—Thompson v. Union Fishermen's Co-op. Packing Co., 273 P. 953, 128 Or. 172.

Tex.—City of Waco v. Thompson, Civ.App., 127 S.W.2d 223, error dismissed, judgment correct—Paul v. Stanolind Oil & Gas Co., Civ.App.,

by the evidence,[42] the findings of the jury,[43] or a distinct admission of defendant,[44] that the pleading was without merit or not true in fact. The erroneous sustaining of a demurrer to a plea or answer is prejudicial where defendant does not,[45] or is in no other way able to,[46] obtain the full benefit of the matters set up in the plea.

Replication or reply. Sustaining a demurrer to a replication or reply is harmless where the facts alleged therein could be proved under the general issue or general denial,[47] or other pleading to which no demurrer was sustained;[48] plaintiff had the benefit of matters set up in his replication to which a demurrer is sustained by the introduction of evidence, full instructions by the court, and special charges given;[48.5] the facts were fully contested in evidence without any objection being taken to the evidence;[49] the court permitted another averment

83 S.W.2d 808, error refused—Vance v. Town of Pleasanton, Civ. App., 261 S.W. 457, affirmed Town of Pleasanton v. Vance, Com.App., 277 S.W. 89—R. E. Taylor Syndicate v. James, Civ.App., 243 S.W. 1105.

Wash.—Mosher v. Philips, 213 P. 484, 124 Wash. 118—Hamblet v. Mutual Union Ins. Co., 206 P. 836, 120 Wash. 31—Manahan v. Aumiller, 188 P. 789, 110 Wash. 673.

4 C.J. p 932 note 19.

42. Ala.—Norris v. Kelly, 31 So.2d 129, 249 Ala. 281—Wommock v. Davis, 153 So. 611, 228 Ala. 362—Holczstein v. Bessemer Trust & Savings Bank, 136 So. 409, 223 Ala. 271—Green v. Waynesboro Motor Co., 116 So. 363, 217 Ala. 348—Alabama Great Southern R. Co. v. Sheffield, 104 So. 222, 213 Ala. 15—Crimm Lumber Co. v. Walden, 97 So. 833, 210 Ala. 323—McCarver v. Griffin, 69 So. 920, 194 Ala. 634, Ann.Cas.1917C 1172.

Cousins v. Harrison, 30 So.2d 393, 33 Ala.App. 37, certiorari denied 30 So.2d 396, 249 Ala. 153—National Timber Co. v. Deer, 84 So. 865, 17 Ala.App. 295, certiorari denied Ex parte Eichberg, 85 So. 921, 204 Ala. 698.

Ark.—Baucum v. Waters, 188 S.W. 802, 125 Ark. 305.

Conn.—Artman v. Artman, 149 A. 246, 111 Conn. 124.

Tex.—Zachary v. City of Uvalde, 42 S.W.2d 417, 121 Tex. 89.

Hartford Fire Ins. Co. v. Galveston, H. & S. A. Ry. Co., Com.App., 239 S.W. 919.

German v. Continental Jewelry Co., Civ.App., 22 S.W.2d 341.

W.Va.—Weaver v. Trembly, 30 S.E. 2d 242, 126 W.Va. 802.

4 C.J. p 932 notes 20, 23.

43. Ala.—Alabama Power Co. v. Kendrick, 123 So. 215, 219 Ala. 692.

Tex.—International-Great Northern R. Co. v. Lucas, Civ.App., 70 S.W. 2d 226, reversed on other grounds 99 S.W.2d 297, 128 Tex. 480, opinion corrected 100 S.W.2d 97, 128 Tex. 480.

4 C.J. p 932 note 21.

44. Okl.—Keota First State Bank v. Bridges, 135 P. 378, 39 Okl. 355.

45. Ala.—Ford v. Bowden, 9 So.2d 906, 243 Ala. 334—Warrior River Coal Co. v. Thompson, 69 So. 76, 193 Ala. 639.

Cal.—Coons v. Thompson, 171 P.2d 443, 75 C.A.2d 687.

Ky.—Eutsler v. Huff, 299 S.W. 1070, 222 Ky. 48—Waddle v. Wilson, 175 S.W. 382, 164 Ky. 228.

Tex.—Driggers v. Philadelphia Underwriters Agency of Fire Ins. Ass'n of Philadelphia, Civ.App., 240 S.W. 618, conforming to answers to certified questions Philadelphia Underwriters Agency of Fire Ins. Ass'n of Philadelphia v. Driggers, 238 S.W. 633, 111 Tex. 392—Barcus v. J. I. Case Threshing Mach. Co., Civ.App., 197 S.W. 478, dismissed for want of jurisdiction.

28 C.J. p 1320 note 86.

Introduction of evidence on issue

The mere fact that defendant is permitted to introduce evidence on the issue raised by the plea to which the demurrer is erroneously sustained does not render the error harmless where the issue was not submitted to the jury, although defendant failed to ask a peremptory instruction.

Ky.—Eutsler v. Huff, 299 S.W. 1070, 222 Ky. 48.

Rejected offer to permit defendant to prove matter pleaded does not cure prejudicial error in sustaining a demurrer to a plea.

Ky.—Waddle v. Wilson, 175 S.W. 382, 164 Ky. 228.

46. Ala.—Benefit Ass'n Ry. Employees v. Bray, 147 So. 640, 226 Ala. 444—Webb v. J. R. Lowe & Co., 112 So. 138, 215 Ala. 552—Corona Coal & Iron Co. v. Spann, 82 So. 444, 203 Ala. 194—Shelby Iron Co. v. Bierly, 80 So. 806, 202 Ala. 422—Travelers' Ins. Co. v. Whitman, 80 So. 470, 202 Ala. 388—Tatum v. Commercial Bank & Trust Co., 69 So. 508, 193 Ala. 120, L.R.A.1916C 767.

Ill.—Cox v. Ætna Casualty & Surety Co. of Hartford, Conn., 248 Ill.App. 209.

Iowa.—Home Sav. Bank of Davenport v. Kelley, 218 N.W. 288, 205 Iowa 514.

Miss.—Tri-State Transit Co. of Louisiana v. Rawls, 1 So.2d 497, 191 Miss. 573.

Mont.—Lewis v. Steele, 157 P. 575, 52 Mont. 300.

Tex.—Southwest Nat. Bank of Dallas v. Underwood, 36 S.W.2d 141, 120 Tex. 83.

Tex.—Thompson v. Lutz, Civ.App., 278 S.W. 333—Westchester Fire Ins. Co. v. McMinn, Civ.App., 188 S.W. 25.

47. Ala.—Olive v. Equitable Life Assur. Soc. of U. S., 151 So. 57, 227 Ala. 557—Armour Fertilizer Works v. Kinney, 114 So. 41, 216 Ala. 547—Norwood v. Stinnett, 80 So. 431, 202 Ala. 349—Long v. Myers, 80 So. 76, 202 Ala. 238—McRight v. Farned, 76 So. 975, 200 Ala. 617.

Bank of Loretto v. Bobo, 67 So. 2d 77, 37 Ala.App. 139 certiorari denied 67 So.2d 90, 259 Ala. 374.—Butler v. Walton, 56 So.2d 369, 36 Ala.App. 319, certiorari denied 56 So.2d 379, 257 Ala. 714—Night Commander Lighting Co. v. Coleman, 148 So. 749, 25 Ala.App. 454—Southern Cotton Oil Co. v. Currie, 102 So. 149, 20 Ala.App. 1, certiorari denied Ex parte Southern Cotton Oil Co., 93 So. 662, 207 Ala. 704—Clancy v. Taylor, 68 So. 522, 12 Ala.App. 557.

Ind.—Allen Realty Co. v. Uhler, 146 N.E. 766, 83 Ind.App. 103—Nashville, C. & St. L. Ry. Co. v. Johnson, 109 N.E. 912, 60 Ind.App. 416.

Iowa.—Cleophas v. Walker, 233 N.W. 257, 211 Iowa 122.

Kan.—Ellis v. Home Ins. Co. of New York, 196 P. 598, 108 Kan. 467.

4 C.J. p 932 note 24.

48. Ala.—McCullough v. Mill Owners Mut. Fire Ins. Co., 8 So.2d 404, 243 Ala. 67—Kiker v. Sovereign Camp, W. O. W., 167 So. 313, 232 Ala. 151—Moore v. Whitmire, 66 So. 601, 189 Ala. 615.

Ill.—Ogren v. Rockford Star Printing Co., 123 N.E. 587, 288 Ill. 405.

4 C.J. p 932 note 25.

48.5 Ala.—Butler v. Walton, 56 So. 2d 369, 36 Ala.App. 319, certiorari denied 56 So.2d 379, 257 Ala. 714.

49. Ala.—Davis v. Findley, 78 So. 869, 201 Ala. 515.

Bank of Loretto v. Bobo, 67 So. 2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374.

to stand which fully raised the issue;[50] the matter stated in the pleading was shown by the evidence to be without merit or foundation in fact;[51] or another plea to which no reply was made was established by the undisputed evidence and constituted a complete answer to the complaint.[52] If the matter pleaded in the reply to which the demurrer is erroneously sustained is matter not available under the general issue and might have benefited the pleader if established, the error is prejudicial.[53]

Rejoinder. Where matters asserted in a rejoinder merely raise an issue or issues already made by other pleadings, and defendant is permitted to make proof of matters alleged in the rejoinder, a ruling of the trial court sustaining plaintiff's demurrer to the rejoinder is harmless.[53.5]

Counterclaim or cross complaint. Sustaining a demurrer to a counterclaim or cross complaint is harmless provided appellant's rights are not prejudiced,[53.10] as where the matter set up therein could be shown or claimed under the answer,[54] the cause of action alleged has already been determined adversely to appellant,[55] appellant has fully presented his proof in support thereof,[56] the same facts were set up in the answer and decided adversely to appellant,[57] the matter set up in the counterclaim rested on a fact which the jury found did not exist,[58] the cross complainant makes admissions which establish that it has no foundation in fact,[59] a demurrer to a similar cross complaint by another defendant was overruled, and all of the issues raised thereby were determined by the findings of fact,[60] plaintiff remitted the full amount of the counterclaim,[61] or where the counteraction was such that it would have been stricken on motion if the demurrer was overruled as improperly raising the question.[61.5] If a counterclaim or cross action sets up a good claim and defendant cannot otherwise obtain the benefit thereof, the sustaining of a demurrer to the counterclaim or cross-action is prejudicial.[62]

b. To Part of Pleadings

Sustaining a demurrer to a part of a pleading, although error, is harmless where the pleader can avail himself of the same matters under the remaining part of the pleading, or otherwise, or he is nevertheless not entitled to prevail; but the error is not harmless if the matter available under the part demurred to is not available under the part which remains.

Error in sustaining a demurrer to a part of a pleading is harmless where the complaining party by reason of other parts of the same pleading,[63]

50. Iowa.—Johnson v. Chicago, etc., R. Co., 77 N.W. 476, 107 Iowa 1.

51. Ala.—Esslinger v. Spragins, 183 So. 401, 236 Ala. 508—Box v. Metropolitan Life Ins. Co., 168 So. 220, 232 Ala. 447—National Union Fire Ins. Co. v. Morgan, 166 So. 24, 231 Ala. 640—McRight v. Farned, 76 So. 975, 200 Ala. 617.
4 C.J. p 932 note 26.

52. Ala.—Whitehead v. Coker, 76 So. 484, 16 Ala.App. 165, certiorari denied Ex parte Whitehead, 76 So. 999, 200 Ala. 70.

53. Ala.—Emerson-Brantingham Implement Co. v. Arrington, 112 So. 428, 216 Ala. 21.
Ind.—Stenger v. Metropolitan Life Ins. Co., 123 N.E. 418, 77 Ind.App. 523.

53.5 Ala.—Ryan v. Young, 41 So. 954, 147 Ala. 660—Pope v. Glens Falls Ins. Co., 34 So. 29, 136 Ala. 670.
Hanover Fire Ins. Co. of N. Y. v. Salter, 49 So.2d 188, 35 Ala.App. 487, certiorari denied 49 So.2d 193, 254 Ala. 500.

53.10 S.D.—Northwest Sec. Nat. Bank & Trust Co. v. Palmer, 275 N.W. 505, 65 S.D. 533.

54. Ala.—City of Mobile v. Merchants Nat. Bank of Mobile, 37 So. 2d 104, 251 Ala. 254—Hamer v. Drake, 96 So. 478, 209 Ala. 394.
Ind.—Mesker v. Bishop, 105 N.E. 644, 56 Ind.App. 455.
4 C.J. p 932 note 28.

55. Cal.—Meldrim v. Doyle, 12 P.2d 997, 124 C.A. 514.
Fla.—**Corpus Juris Secundum cited in** Jackson v. Florida Weathermakers, Fla., 55 So.2d 575, 579.
Tex.—Williams v. Cass County, Civ. App., 147 S.W.2d 588, error dismissed, judgment correct.

56. Ky.—Taylor v. Harris' Adm'r, 176 S.W. 168, 164 Ky. 654.

57. Ind.—Clark v. Spangler & Grouleff Lumber Co., 135 N.E. 890, 78 Ind.App. 613—McKay v. Corwine, 119 N.E. 471, 69 Ind.App. 208.
4 C.J. p 932 note 29.

58. Ky.—Jacoby v. Carrollton Federal Sav. & Loan Ass'n, 265 S.W. 2d 71—Frankfort Modes Glass Works v. Arbogast, 145 S.W. 1122, 148 Ky. 4.

59. Ala.—Robertson v. Robertson, 104 So. 27, 213 Ala. 114.

60. Cal.—Sociedade Do Espirito Santo v. Santa Clara Valley Bank, 141 P. 1054, 24 C.A. 592.

61. Ind.—Hiser v. Litchfield, 154 N. E. 510, 87 Ind.App. 19.

61.5 Ind.—Sams v. Kern, 98 N.E.2d 920, 121 Ind.App. 370.

62. Iowa.—Rice v. Friend Bros. Co., 161 N.W. 310, 179 Iowa 355.
Ohio.—Braden v. Neubrander, 101 N. E.2d 789, 89 Ohio App. 295.
Tex.—Stump v. Harvey, Civ.App., 96 S.W.2d 411.

63. Ala.—McCullough v. Mill Owners Mut. Fire Ins. Co., 8 So.2d 404, 243 Ala. 67—Connecticut General Life Ins. Co. v. Smith, 145 So. 651, 226 Ala. 142—Smith-Schultz-Hodo Realty Co. v. Henley-Spurgeon Realty Co., 140 So. 443, 224 Ala. 331—Anderson v. Foshee, 112 So. 356, 216 Ala. 78—Gay & Bruce v. Citizens' Nat. Bank of Lineville, 110 So. 19, 215 Ala. 114—Bell v. Brotherhood of Railroad Trainmen, 107 So. 810, 214 Ala. 302—Davis v. Reed, 100 So. 226, 211 Ala. 207—Mauney v. Electric Const. Co., 98 So. 874, 210 Ala. 554—Tomme v. Pullman Co., 93 So. 462, 207 Ala. 511—Bice v. Steverson, 88 So. 753, 205 Ala. 576—Wade v. Garnett, 82 So. 161, 203 Ala. 131—Davidson v. Alabama Power Co., 82 So. 91, 203 Ala. 77—Foust v. Kinney, 80 So. 474, 202 Ala. 392—Rothrock v. Alabama Great Southern R. Co., 78 So. 84, 201 Ala. 308—Walker v. Alabama, T. & N. Ry., 70 So. 125, 194 Ala. 360—Ex parte Bricken, 69 So. 425, 194 Ala. 148—Liverett v. Nashville, C. & St. L. Ry., 65 So. 54, 186 Ala. 111.
Roberts v. Murphy, 171 So. 757, 27 Ala.App. 281, certiorari denied 171 So. 759, 234 Ala. 8—Sullivan v.

or otherwise,[64] obtains the same benefits or advantages that he would have had under that part of the pleading to which the demurrer was sustained; or the ultimate result would nevertheless have been the same, in that there are factors or elements in the case which definitely establish or show that the complaining party would not have been entitled to prevail on the part demurred to even had the demurrer been overruled.[65]

It has, however, been held that the principle that error in sustaining a demurrer to a part of a pleading is harmless if the matter pleaded is available under another part applies only where such matter appears to have been so availed of;[66] and error in sustaining a demurrer to a count or paragraph of the complaint,[67] or to a plea or paragraph of the answer,[68] will not be considered harmless where evidence admissible under the pleading to which the demurrer was sustained is not admissible under the part of the pleading which remains, the remaining counts of the complaint place an additional burden of proof on plaintiff,[69] or the theory of the part to which the demurrer was sustained differs from the theory advanced in the remaining part or parts.[70] The fact that the same questions are presented by exceptions to the conclusions of law does not render harmless error in sustaining a demurrer to a paragraph of the complaint.[71]

Petition or complaint. Sustaining a demurrer to a count or paragraph of a petition or complaint is harmless where there is another count or paragraph to which the demurrer is not sustained which is identical with,[72] or substantially the same as,[73] the remaining counts or paragraphs, or differs from

W. G. Wright & Co., 134 So. 676, 24 Ala.App. 119, certiorari denied 134 So. 677, 223 Ala. 129.
Fla.—Shelfer v. American Agr. Chemical Co., 152 So. 613, 113 Fla. 108.
Ga.—Jackson v. Western & A. R. Co., 90 S.E. 963, 146 Ga. 151.
Brooks v. Sessoms, 186 S.E. 456, 53 Ga.App. 453.
Ill.—City of Moline v. Barber Asphalt Pav. Co., 208 Ill.App. 617.
Ind.—Hill v. Chicago, I. & L. R. Co., 122 N.E. 321, 188 Ind. 130.
Hauser v. George, 195 N.E. 592, 100 Ind.App. 346—Wiard v. Landes, 141 N.E. 519, 80 Ind.App. 551—Doriot v. Haskell & Barker Car Co., 137 N.E. 283, 79 Ind.App. 535—Hancock v. Hancock, 132 N.E. 297, 76 Ind.App. 351.
Tex.—American Surety Co. of New York v. Bache, Civ.App., 82 S.W. 2d 181, error refused—O'Brien v. First State Bank & Trust Co. of Taylor, Civ.App., 241 S.W. 556.
Utah.—Reese Howell Co. v. Brown, 158 P. 684, 48 Utah 142.
4 C.J. p 932 note 32.

64. Ala.—Roll v. Dockery, 122 So. 630, 219 Ala. 374, 65 A.L.R. 1473—Looker v. Gulf Coast Fair, 81 So. 832, 203 Ala. 42—Eagle Coal Co. v. Gravlee, 72 So. 30, 196 Ala. 188.
Cal.—In re Cook's Estate, 160 P. 553, 173 C. 465.
Corpus Juris Secundum cited in Thompson v. Brown, 170 P.2d 1010, 1013, 75 C.A.2d 344.
Ga.—Babb v. Kersh, 88 S.E.2d 432, 92 Ga.App. 346—McKenzie v. Perdue, 19 S.E.2d 765, 67 Ga.App.2d 202, reversed on other grounds 21 S.E. 2d 705, 194 Ga. 356, mandate conformed to 23 S.E.2d 183, 68 Ga.App. 498—Birmingham Fertilizer Co. v. Dozier, 79 S.E. 927, 13 Ga.App. 759.
Ky.—A. Arnold & Son Transfer & Storage Co. v. Weisiger, 6 S.W.2d 1084, 224 Ky. 659.
R.I.—Allen v. Bonded Municipal Corp., 4 A.2d 249, 62 R.I. 101, 153.
Tex.—Richey v. City of San Antonio, Civ.App., 217 S.W. 214, dismissed for want of jurisdiction—J. L. Collins Piano Co. v. Adams & Allcorn, Civ.App., 216 S.W. 420, dismissed for want of jurisdiction.

65. Ala.—Abrams v. Abrams, 144 So. 828, 225 Ala. 622—Bice v. Steverson, 88 So. 753, 205 Ala. 576—Vandiver v. De Bardeleben Coal Co., 81 So. 569, 202 Ala. 627—Kimbrell v. Louisville & N. R. Co., 67 So. 586, 191 Ala. 392.
Smith v. E. T. Davenport & Co., 68 So. 545, 12 Ala.App. 456.
Cal.—**Corpus Juris Secundum cited in** Thompson v. Brown, 170 P.2d 1010, 1013, 75 C.A.2d 344—Arp v. Blake, 218 P. 773, 63 C.A. 362.
Ga.—Fulton County v. Chambers, 17 S.E.2d 296, 66 Ga.App. 123—Kersey v. Robinson, 10 S.E.2d 75, 62 Ga. App. 837—Smith v. Ætna Ins. Co., 199 S.E. 557, 58 Ga.App. 711.
Ind.—Johnson v. Greenen, 188 N.E. 796, 98 Ind.App. 612.
Ky.—Whitley Lodge No. 148 of Knights of Pythias of Corbin v. West, 168 S.W.2d 1009, 293 Ky. 341—Dorsey v. Clarke, 4 S.W.2d 748, 223 Ky. 619.
Tex.—Harrison v. Harrison, Civ.App., 230 S.W. 803—Laas-Jersig Co. v. San Antonio & A. P. Ry. Co., Civ. App., 197 S.W. 1002.
4 C.J. p 933 note 40.
Failure to make proof
It has been held that error in sustaining a demurrer to a part of the pleading is harmless where there is a failure to make the necessary proof to sustain the original pleadings.
Ala.—Brown v. Hunter, 25 So. 924, 121 Ala. 210.
Conn.—Chester v. Leonard, 37 A. 397, 68 Conn. 495.
Ind.—Romy v. State, 67 N.E. 998, 32 Ind.App. 146.
Pa.—Lucas Coal Co. v. Delaware, etc., Canal Co., 23 A. 990, 148 Pa. 227.
Tex.—Shearer v. Gaar, 90 S.W. 684, 41 Civ.App. 39.
Oral demurrer
Cal.—Enos v. Murtaugh, 117 P.2d 905, 47 C.A.2d 269.

66. Ala.—Lambie v. Sloss Iron, etc., Co., 24 So. 108, 118 Ala. 427.

67. Ala.—Stroup v. Alabama Power Co., 113 So. 18, 216 Ala. 290, 52 A.L.R. 1075—Allen v. Alger-Sullivan Lumber Co., 85 So. 278, 204 Ala. 92.
4 C.J. p 934 note 52.

68. Ala.—Alexander v. Letson, 7 So. 2d 33, 242 Ala. 488—Gulf Export Co. v. People's Bank of Mobile, 84 So. 714, 203 Ala. 528—Shelby Iron Co. v. Bierly, 80 So. 806, 202 Ala. 422—Gidley v. Gidley, 78 So. 861, 201 Ala. 507—George v. Roberts, 65 So. 345, 186 Ala. 521.
Cal.—Rogers v. Rogers, 121 P.2d 819, 49 C.A.2d 366.
4 C.J. p 934 note 53.

69. Ala.—Alabama Fuel & Iron Co. v. Alabama Fidelity & Casualty Co., 73 So. 374, 197 Ala. 669.

70. Ala.—Jones v. Keith, 134 So. 630, 223 Ala. 36.
Ind.—Hill v. Chicago, I. & L. R. Co., 122 N.E. 321, 188 Ind. 130.

71. Ind.—Warner v. Jennings, 76 N. E. 1013, 37 Ind.App. 394.

72. U.S.—Quinn v. Smith Co., C.C. A.Fla., 57 F.2d 784.
Ala.—Lowery v. Louisville & N. R. Co., App., 153 So. 465, 26 Ala.App. 70, reversed on other grounds 153 So. 467, 228 Ala. 137.
4 C.J. p 933 note 36.

73. Ala.—Hartley v. Fuller, 84 So. 2d 124, 263 Ala. 695—Kendrick v. Birmingham Southern R. Co., 48

the other paragraphs merely in anticipating the defense,[74] the paragraph or count of the complaint demurred or excepted to is not material to plaintiff's recovery,[75] another count to which a demurrer is properly sustained simply alleges the same cause of action more in detail and discloses that plaintiff would not be entitled to recover,[76] the evidence shows that the part to which the demurrer was sustained has no support in fact,[77] the count to which the demurrer is sustained is subsequently stricken on motion of plaintiff,[78] or where the finding of facts covers the subject matter of each paragraph of the complaint.[79]

A ruling sustaining a demurrer to a count of a complaint is not error without injury, however, where there is evidence supporting such count.[79.5] Where some counts of a complaint state a cause of action, the sustaining of a demurrer without leave to amend is error, although the complaint might be subject to special demurrers;[79.10] and even though some counts of a complaint may be duplicates of others, which latter counts are held good as against demurrers, the sustaining of demurrers to the former counts which state a cause of action is prejudicial to plaintiff.[79.15]

Plea or answer. Sustaining a demurrer to a part of a plea or answer has been held harmless where defendant receives the same benefit or advantage under a plea of general issue or general denial[80]

So.2d 320, 254 Ala. 313—Coker v. Louisville & N. R. Co., 18 So.2d 84, 245 Ala. 545—Young v. Rutledge, 158 So. 185, 229 Ala. 492—Gafford v. Tittle, 141 So. 653, 224 Ala. 605—Aycock v. City of Decatur, 122 So. 664, 219 Ala. 486—Elder v. Ralls Sanitarium, 122 So. 41, 219 Ala. 298—Gilliland v. Order of Ry. Conductors of America, 112 So. 225, 216 Ala. 13—McCormick v. Badham, 85 So. 401, 204 Ala. 2.

Sovereign Camp, W. O. W., v. Carrell, 101 So. 914, 20 Ala.App. 340.

Cal.—Curtis v. Twentieth Century-Fox Film Corp., 295 P.2d 62, 140 C.A.2d 461—Anglo American Land Co. v. Sundberg, 225 P. 874, 66 C.A. 331.

Colo.—Dick v. Petersen, 6 P.2d 923, 90 Colo. 83.

Fla.—Jones v. Brink, 39 So.2d 791—Goodrich v. Lawrence, 189 So. 233, 138 Fla. 287.

Ind.—Brown v. Guthrie, 114 N.E. 443, 185 Ind. 669.

Ferguson v. Cleveland, C., C. & St. L. Ry. Co., 122 N.E. 14, 70 Ind. App. 543, rehearing denied 123 N. E. 177, 70 Ind.App. 543.

Iowa.—McGlothlen v. Mills, 265 N. W. 117, 221 Iowa 204.

4 C.J. p 933 note 37.

74. Ind.—Hauger v. Benua, 53 N.E. 942, 153 Ind. 642.

75. Ala.—Tilley v. Tucker, 73 So.2d 923, 261 Ala. 287—Day v. Broyles, 133 So. 269, 222 Ala. 508.

Tex.—Pate v. Stevens, Civ.App., 257 S.W.2d 763, error dismissed.

4 C.J. p 933 note 38.

76. Ala.—Gee v. Alabama Protection & Aid Ass'n, 101 So. 750, 212 Ala. 98.

77. Ala.—Coker v. Louisville & N. R. Co., 18 So.2d 84, 245 Ala. 545—Franklin v. Argyro, 100 So. 811, 211 Ala. 506—Wilkinson v. City of Birmingham, 68 So. 999, 193 Ala. 139.

Md.—Coquelet v. Union Hotel Co. of Baltimore City, 115 A. 813, 139 Md. 544.

4 C.J. p 934 note 42.

78. Ala.—Bank of Moulton v. Rankin, 181 So. 450, 24 Ala.App. 110, certiorari denied 131 So. 454, 222 Ala. 188.

79. Ind.—Jennings v. Dark, 92 N.E. 778, 175 Ind. 332.

79.5 Ala.—Sharpe v. Western Ry. of Alabama, 175 So. 542, 234 Ala. 507.

79.10 Cal.—Western Title Ins. & Guaranty Co. v. Bartolacelli, 269 P.2d 165, 124 C.A.2d 690.

79.15 Cal.—McDonell v. American Trust Co., 279 P.2d 138, 130 C.A.2d 296.

80. Ala.—Life Ins. Co. of Va. v. Hanback, 35 So.2d 696, 250 Ala. 643—Box v. Metropolitan Life Ins. Co., 168 So. 217, 232 Ala. 321—Lollar v. Jones, 157 So. 209, 229 Iowa 329—Denson v. Kirkpatrick Drilling Co., 144 So. 86, 225 Ala. 473—Southern Ry. Co. v. Cunningham, 141 So. 561, 224 Ala. 642—I. O. Drewrey Contracting Co. v. Ramsey, 140 So. 587, 224 Ala. 463—Futvoye v. Chuites, 140 So. 432, 224 Ala. 458—Heady v. Pool, 130 So. 329, 221 Ala. 619—Cypress v. Green, 127 So. 844, 221 Ala. 64—McCullar v. Williams, 116 So. 137, 217 Ala. 278—George's Restaurant v. Dukes, 113 So. 53, 216 Ala. 239—Pocahontas Graphite Co. v. Minerals Separation North American Corporation, 109 So. 873, 215 Ala. 225—Police & Firemen's Ins. Ass'n v. Crabtree, 109 So. 156, 215 Ala. 36—Abates v. Timbes, 108 So. 534, 214 Ala. 591—Irwin v. Cotney, 108 So. 235, 214 Ala. 415—Huckaby v. McConnon & Co., 105 So. 886, 213 Ala. 631—Smith v. Lewis, 102 So. 21, 212 Ala. 133—Cooledge v. Collum, 100 So. 143, 211 Ala. 203—McCord v. Rogers, 99 So. 794, 211 Ala. 76—Wilson v. Orr, 97 So. 133, 210 Ala. 93—Wood & Pritchard v. McClure, 96 So. 577, 208 Ala. 523—New York Life Ins. Co. v. Norris, 91 So. 595, 206 Ala. 656—American Nat. Ins. Co. v. Wright, 87 So. 577, 205 Ala. 186—Age-Herald Pub. Co. v. Waterman, 81 So. 621, 202 Ala. 665—Neill v. Central Nat. Bank, 78 So. 73, 201 Ala. 297—Sample v. Tennessee Valley Bank, 76 So. 936, 200 Ala. 578—Eminent Household of Columbian Woodmen v. Gallant, 69 So. 884, 194 Ala. 680—Southern Ry. Co. v. Hayes, 69 So. 641, 194 Ala. 194—Maybank v. Lumpkin, 66 So. 584, 189 Ala. 559—Copeland v. Union Nursery Co., 65 So. 834, 187 Ala. 148.

Kalas v. MacMahon, 54 So.2d 322, 36 Ala.App. 238—City of Cullman v. Laminack, 2 So.2d 314, 30 Ala. App. 85, certiorari denied 2 So.2d 316, 241 Ala. 203—All States Life Ins. Co. v. Kelso, 195 So. 460, 29 Ala.App. 310—Kirkland v. Neeley, 124 So. 115, 23 Ala.App. 227, certiorari denied 124 So. 117, 220 Ala. 48—Bolen Bros. v. Miller, App., 116 So. 508, certiorari denied 117 So. 462, 218 Ala. 12—Singer Sewing Mach. Co. v. Hayes, 114 So. 420, 22 Ala.App. 250—Quisenberry v. Grant, 104 So. 284, 20 Ala.App. 576—McVoy v. Chassin, 88 So. 29, 17 Ala.App. 646—Maloney v. Smith, 80 So. 169, 16 Ala.App. 595—American Workmen v. James, 70 So. 976, 41 Ala.App. 477—Long-Lewis Hardware Co. v. Ewing, 68 So. 794, 13 Ala.App. 435, certiorari denied Ex parte Long-Lewis Hardware Co., 69 So. 1018, 193 Ala. 678—Birmingham Ry., Light & Power Co. v. Donaldson, 68 So. 596, 14 Ala.App. 160—Mobile Light & R. Co. v. Burch, 68 So. 509, 12 Ala.App. 421—Padgett v. Gulfport Fertilizer Co., 66 So. 866, 11 Ala.App. 366—Sovereign Camp, Woodmen of the World v. Jones, 66 So. 834, 11 Ala.App. 433.

Fla.—C. F. Hamblen, Inc. v. Owens, 172 So. 694, 127 Fla. 91.

Ind.—Interstate Public Service Co. v. Weiss, 193 N.E. 226, 208 Ind. 122—Rowley v. Pogue, 185 N.E. 273, 203

or under other pleas or paragraphs,[81] the evidence | in support of the plea or paragraph is actually ad-

Ind. 655, followed in Waller v. Pogue, 185 N.E. 278, 205 Ind.App. 709—Rowley v. Pogue, 178 N.E. 449, 203 Ind. 655, rehearing denied 181 N.E. 589, 203 Ind. 655—Sterling Fire Ins. Co. v. Comision Reguladora del Mercado de Henequen, 143 N.E. 2, 195 Ind. 29—Federal Life Ins. Co. v. Sayre, 142 N.E. 223, 195 Ind. 7, followed in Federal Life Ins. Co. v. Harding, 166 N.E. 926, 201 Ind. 704—Pittsburgh, C., C. & St. L. Ry. Co. v. Ft. Wayne & Northern Indiana Traction Co., 138 N.E. 759, 193 Ind. 405—Kuhn v. National City Bank, 119 N.E. 145, 187 Ind. 726—Millikan v. Security Trust Co., 118 N. E. 568, 187 Ind. 307—Citizens' Bank of Michigan City v. Opperman, 115 N.E. 55, 188 Ind. 212, certiorari denied Citizens Bank of Michigan City, Ind. v. Same, 38 S.Ct. 424, 246 U.S. 673, 62 L.Ed. 932, and error dismissed 39 S.Ct. 330, 249 U.S. 448, 63 L.Ed. 701.

Ind.—Rageas v. Hohman-Clinton Realty Corp., 88 N.E.2d 255, 119 Ind.App. 426—American Employers Ins. Co. v. Board of Finance of Township of Knight, Vanderburgh County, 200 N.E. 418, 102 Ind.App. 520—George F. Hinrichs, Inc. v. U. S. Bank & Trust Co. of Rochester, 163 N.E. 842, 88 Ind.App. 327—Armstrong v. Hallock, 157 N.E. 10, 86 Ind.App. 440—Obering v. Swain-Roach Lumber Co., 155 N.E. 712, 86 Ind.App. 632—Cortright v. Place, 131 N.E. 830, 76 Ind.App. 638—Arnott v. McClinock-Turnkey Co., 130 N.E. 436, 75 Ind.App. 308—Massachusetts Bonding & Ins. Co. v. State, 127 N.E. 226, 76 Ind. App. 692—Massachusetts Bonding & Ins. Co. v. State, 127 N.E. 223, 76 Ind.App. 16—Bundy v. Bowman, 125 N.E. 781, 72 Ind.App. 367—Sheehan Const. Co. v. Kuhn, 123 N. E. 442, 70 Ind.App. 459—Crume v. Brightwell, 122 N.E. 230, 69 Ind. App. 404—Scottish Union & National Ins. Co. v. B. E. Linkenhelt & Co., 121 N.E. 373, 70 Ind.App. 324—Cleveland, C., C. & St. L. Ry. Co. v. Woodbury Glass Co., 120 N.E. 426, 80 Ind.App. 298—Portland Body Works v. McCullough Motor Supply Co., 119 N.E. 180, 72 Ind. App. 216, rehearing denied 119 N. E. 1005, 72 Ind.App. 216—Campbell v. Langford, 118 N.E. 571, 66 Ind.App. 553—Terre Haute, I. & E. Traction Co. v. Hornaday, 109 N. E. 189, 59 Ind.App. 207—Pittsburgh, C., C. & St. L. Ry. Co. v. Kearns, 108 N.E. 873, 58 Ind.App. 694.

Mont.—Word v. Moore, 214 P. 79, 66 Mont. 550.

Tex.—**Corpus Juris Secundum cited in** Mueller v. Sutherland, Civ.App., 179 S.W.2d 801, 809, error refused—Crocker v. Santo Consol. Independent School Dist., Civ.App., 116 S.W.2d 750, error dismissed.

Va.—Clark v. Miller, 138 S.E. 556, 148 Va. 83.

W.Va.—Magruder v. Hagen-Ratcliff & Co., 50 S.E.2d 488, 131 W.Va. 679—Huntington Engineering Co. v. Gallaher, 132 S.E. 866, 101 W. Va. 110, certiorari denied Gallaher v. Huntington Engineering Co., 46 S.Ct. 638, 271 U.S. 686, 70 L.Ed. 1152.

4 C.J. p 933 note 33.

Withdrawal of general denial

The rule of text remains good although defendant, after the demurrer to his special plea is sustained, withdraws his general denial and refuses to plead further.

Ind.—Sims v. Fletcher Savings & Trust Co., 142 N.E. 121, 194 Ind. 93.

81. U.S.—National Surety Co. v. First Nat. Bank, C.C.A.Ala., 293 F. 377—United States v. Illinois Surety Co., Ill., 226 F. 653, 141 C.C.A. 409, affirmed Illinois Surety Co. v. John Davis Co., 37 S.Ct. 614, 244 U.S. 376, 61 L.Ed. 1206.

Ala.—New Hampshire Fire Ins. Co. v. Curtis, 85 So.2d 441, 264 Ala. 137—Motors Ins. Corp. v. Stewart, 76 So.2d 171, 262 Ala. 15—Inter-Ocean Cas. Co. v. Anderson, 17 So.2d 766, 245 Ala. 534—Johnson v. Louisville & N. R. Co., 198 So. 350, 240 Ala. 219—American Nat. Bank & Trust Co. v. Banco Nacional De Nicaragua, 189 So. 191, 238 Ala. 128—Stocks v. Inzer, 168 So. 877, 232 Ala. 482—Pittman v. Calhoun, 165 So. 391, 231 Ala. 460—Aplin v. Dean, 164 So. 737, 231 Ala. 320—Sovereign Camp, W. O. W. v. Clarke, 157 So. 259, 229 Ala. 382—Skates v. Perkins, 152 So. 36, 228 Ala. 35—Skates v. Perkins, 141 So. 687, 225 Ala. 33—Gafford v. Tittle, 141 So. 653, 224 Ala. 605—Sanders v. Gernert Bros. Lumber Co., 129 So. 46, 221 Ala. 469—Fields v. First Nat. Bank, 113 So. 298, 216 Ala. 381—Ehl v. J. R. Watkins Medical Co., 112 So. 426, 216 Ala. 69—Scharnagel v. Furst, 112 So. 102, 215 Ala. 528—Heralds of Liberty v. Collins, 110 So. 283, 216 Ala. 1—City of Birmingham v. Mauzey, 108 So. 382, 214 Ala. 476—Whitaker v. Hofmayer Dry Goods Co., 99 So. 911, 211 Ala. 160—Sovereign Camp, W. O. W. v. Craft, 99 So. 167, 210 Ala. 683—Shelton v. Blount County, 96 So. 415, 209 Ala. 441—Shelby Iron Co. v. Cole, 95 So. 47, 208 Ala. 657—Sovereign Camp, W. O. W. v. Craft, 94 So. 831, 208 Ala. 467—Atlantic Coast Line R. Co. v. Carroll, 94 So. 820, 208 Ala. 361—Standard Oil Co. v. Davis, 94 So. 754, 208 Ala. 565—Reliance Life Ins. Co. v. Russell, 94 So. 748, 208 Ala. 559—Price v. Hendricks, 92 So. 431, 207 Ala. 267—Edwards v. Earnest, 89 So. 729, 206 Ala. 1, 22 A.L.R. 1387—Alabama, T. & N. R. Co. v. Huggins, 87 So. 546, 205 Ala. 80—Sovereign Camp, W. O. W. v. Burrell, 85 So. 762, 204 Ala. 210—Grand Lodge of Alabama, A. F. & A. M. v. Goodwin, 85 So. 553, 204 Ala. 213—Brilliant Coal Co. v. Barton, 81 So. 828, 203 Ala. 38—Fruitticher Electric Co. v. Birmingham Trust & Savings Co., 79 So. 248, 201 Ala. 676—Western Assur. Co. v. Hann, 78 So. 232, 201 Ala. 376—Vogler v. Manson, 76 So. 117, 200 Ala. 351—U. S. Health & Accident Ins. Co. v. Goin, 73 So. 117, 197 Ala. 584—City of Birmingham v. Muller, 73 So. 30, 197 Ala. 554—Strain v. Irwin, 70 So. 734, 195 Ala. 414—Huntsville Knitting Mills Co. v. Butner, 69 So. 960, 194 Ala. 317—Parker v. I. T. Law & Sons, 69 So. 879, 194 Ala. 693—Central of Georgia Ry. Co. v. Chambers, 69 So. 518, 194 Ala. 152—Birmingham Ry., Light & Power Co. v. Ayer, 69 So. 56, 192 Ala. 593—Corry v. Sylvia y Cia, 68 So. 891, 192 Ala. 550, Ann.Cas.1917E 1052—Jones v. Dunn Hardware Co., 68 So. 811, 192 Ala. 95—Western Union Telegraph Co. v. Hughston, 67 So. 670, 191 Ala. 424—Birmingham Ry., Light & Power Co. v. Colbert, 67 So. 513, 190 Ala. 229—Central of Georgia Ry. Co. v. Broda, 67 So. 437, 190 Ala. 266—Mutual Life Ins. Co. of New York v. Witte, 67 So. 263, 190 Ala. 327—Norvell v. Gilreath, 66 So. 635, 189 Ala. 452—Connors-Weyman Steel Co. v. Kilgore, 66 So. 609, 189 Ala. 643—Woodward Iron Co. v. Finley, 66 So. 587, 189 Ala. 634—Cedar Creek Store Co. v. Steadham, 65 So. 984, 187 Ala. 622—Eason Drug Co. v. Montgomery Showcase Co., 65 So. 345, 186 Ala. 454—Baker v. Lehman, Weil & Co., 65 So. 321, 186 Ala. 493—Thompson v. Manufacturers' Finance Acceptance Corporation, 150 So. 175, 25 Ala.App. 534, certiorari denied 150 So. 178, 227 Ala. 43, and 150 So. 178, 227 Ala. 334.

Lambert v. Jefferson, 36 So.2d 583, 34 Ala.App. 67, reversed on other grounds 36 So.2d 594, 251 Ala. 5—Royal Ins. Co. v. Eggleston, 99 So. 828, 19 Ala.App. 638—Hill Grocery Co. v. Hameker, 89 So. 850, 18 Ala.App. 84—Louisville & N. R. Co. v. Bishop, 85 So. 859, 17 Ala.App. 320—Hurt v. Atlanta, B. & A. Ry. Co., 84 So. 631, 17 Ala.App. 241—Smith v. Webb, 82 So. 638, 17 Ala.App. 148—Southern Indemnity Ass'n v. Hoffman, 77 So. 424, 16 Ala.App. 274—National Life Ins. Co. of America v. Hedgecoth, 77 So. 422, 16 Ala.App. 272, certiorari denied Ex parte National Life Ins. Co. of America, 77 So. 1000,

mitted and defendant receives the full benefit thereof,[82] the jury found correctly in spite of the error[83] or found that the averments in the part to which the demurrer was sustained were not true,[84] the other paragraphs of the answer set up sufficient defenses to the complaint and defendant has prevailed thereon,[85] plaintiff admitted a defense which was sufficient to defeat his recovery,[86] plaintiff was nevertheless entitled to recover under the pleadings and proof,[87] evidence admitted without objection in support of the part to which the demurrer was sustained was not sufficient to justify its submission to the jury,[88] or the count which the plea answers is abandoned at the trial.[89] Sustaining a demurrer to a paragraph of a plea or answer is not harmless, however, where it does not appear from the record that defendant could not have secured some additional benefit from the paragraph had it been permitted to stand.[90]

Replication or reply. Sustaining a demurrer to part of a reply is harmless where the paragraph to which the demurrer was sustained is substantially the same as another paragraph which remained on file.[91]

c. Error Cured by Amendment or Withdrawal

Error in sustaining a demurrer may be rendered harmless by a subsequent amendment or withdrawal of the pleading to which the demurrer was sustained.

Error in sustaining a demurrer to a pleading is not available to appellant where he files an amendment setting up substantially the same cause of action or defense,[92] where appellant elects to plead further in accordance with the ruling on the de-

201 Ala. 696—Donaldson v. Roberson, 73 So. 233, 15 Ala.App. 354—Tallapoosa County Bank v. Salmon, 68 So. 542, 12 Ala.App. 589.

Cal.—Schutzer v. Taylor, 180 P. 660, 40 C.A. 322.

Colo.—Rogers v. Nevada Canal Co., 151 P. 923, 60 Colo. 59, Ann.Cas. 1917C 669.

Fla.—S. H. Kress & Co. v. Powell, 180 So. 757, 132 Fla. 471—Shelfer v. American Agr. Chemical Co., 152 So. 613, 113 Fla. 108—Sovereign Camp of Woodmen of the World v. McDonald, 80 So. 566, 76 Fla. 599—Atlantic Coast Line R. Co. v. Sandlin, 78 So. 667, 75 Fla. 539.

Ill.—Scofield v. Wabash Ry. Co., 214 Ill.App. 353.

Ind.—Henderson v. State, 154 N.E. 378, 198 Ind. 608—Washington Hotel Realty Co. v. Bedford Stone & Construction Co., 143 N.E. 156, 195 Ind. 128, motion denied 148 N.E. 405, 196 Ind. 396—Boxell v. Bright Nat. Bank of Flora, 112 N.E. 3, 184 Ind. 631—Waters v. Delagrange, 109 N.E. 758, 183 Ind. 497.

Carson v. Carson, 89 N.E.2d 555, 120 Ind.App. 1—Federal Life Ins. Co. v. Relias, 185 N.E. 319, 99 Ind.App. 115—Charters v. Citizens' Nat. Bank of Peru, 145 N.E. 517, 84 Ind.App. 15—Hawkins v. First Nat. Bank, 143 N.E. 709, 81 Ind. App. 478—Lipnik v. Ehalt, 132 N. E. 410, 76 Ind.App. 390—Crume v. Brightwell, 122 N.E. 230, 69 Ind. App. 404—Farmers' Nat. Life Ins. Co. v. Hale, 122 N.E. 19, 69 Ind. App. 413—Portland Body Works v. McCullough Motor Supply Co., 119 N.E. 180, 72 Ind.App. 216, rehearing denied 119 N.E. 1005, 72 Ind. App. 216—Parker v. Hickman, 111 N.E. 649, 61 Ind.App. 152—Lemcke v. Hendrickson, 110 N.E. 691, 60 Ind.App. 323—Fender v. Phillips, 108 N.E. 971, 59 Ind.App. 85.

Tex.—Robinson v. Diggs, Civ.App., 125 S.W.2d 348—Chalk v. Daggett, Civ.App., 204 S.W. 1057, modified on other grounds, Com.App., 257 S. W. 228.

4 C.J. p 933 note 34, p 934 note 45.

Withdrawal of other paragraph or plea

The error is regarded as harmless under the rule of the text although defendant subsequently withdraws the other paragraph or plea under which he could have received the same benefits as the plea to which the demurrer was sustained.

Ind.—Washington Hotel Realty Co. v. Bedford Stone & Construction Co., 143 N.E. 156, 195 Ind. 128, motion denied 148 N.E. 405, 196 Ind. 396.

82. Ala.—Wheat v. Union Springs Guano Co., 70 So. 631, 195 Ala. 180.

Or.—Patterson v. Horsefly Irr. Dist., 69 P.2d 282, 157 Or. 1, rehearing denied 70 P.2d 36, 157 Or. 1.

Tex.—O'Quinn v. Tate, Civ.App., 187 S.W.2d 241, error refused.

Wash.—Washington Fish & Oyster Co. v. G. P. Halferty & Co., 269 P.2d 806, 44 Wash.2d 646.

83. Ga.—Birmingham Fertilizer Co. v. Dozier, 79 S.E. 927, 13 Ga.App. 759.

84. Ga.—Scott v. Holden, 26 S.E.2d 456, 69 Ga.App. 615.

Ind.—Travelers' Ins. Co. v. Fletcher American Nat. Bank of Indianapolis, 150 N.E. 825, 84 Ind.App. 563.

85. Ind.—Island Coal Co. v. Wright, 40 N.E. 1114, 12 Ind.App. 640.

86. Iowa.—Slafter v. Concordia F. Ins. Co., 120 N.W. 706, 142 Iowa 116.

87. Iowa.—Jenkins v. Hawkeye Commercial Men's Assoc., 124 N.W. 199, 147 Iowa 113, 30 L.R.A.,N.S., 1181.

88. Ky.—Postal Telegraph-Cable Co. v. Murrell, 201 S.W. 462, 180 Ky. 52, L.R.A.1918D 357.

89. Ga.—Swaim v. Barton, 77 S.E.2d 507, 210 Ga. 24.

Ill.—Chicago, etc., R. Co. v. Scanlan, 48 N.E. 826, 170 Ill. 106.

90. Ky.—Southern National Life Realty Corp. v. People's Bank of Bardstown, 200 S.W. 313, 179 Ky. 113.

91. Ind.—Mason v. Mason, 26 N.E. 124, 102 Ind. 38.

92. Ala.—W. T. Rawleigh Co. v. Cone, 167 So. 274, 232 Ala. 127—Mutual Building & Loan Ass'n v. Watson, 147 So. 817, 226 Ala. 526—Harris v. Wright, 144 So. 834, 225 Ala. 627—Blakeney v. Alabama Power Co., 133 So. 16, 222 Ala. 394—Morris v. Clark, 80 So. 406, 202 Ala. 324—Gardiner v. Solomon, 75 So. 621, 200 Ala. 115, L.R.A.1917F 380—North Ontario Packing Co. v. Napier-McCall Co., 75 So. 143, 199 Ala. 595—Wilson v. Gulf States Steel Co., 69 So. 921, 194 Ala. 311.

Singletary v. Milwaukee Tool & Forge Co., 151 So. 599, 25 Ala.App. 573, certiorari denied and petition dismissed 151 So. 600, 227 Ala. 650—Coca-Cola Bottling Co. v. Barksdale, 88 So. 36, 17 Ala.App. 606—S. E. Webb & Co. v. Riley, 80 So. 144, 16 Ala.App. 570, certiorari denied Ex parte S. E. Webb & Co., 80 So. 482, 202 Ala. 400.

Cal.—Woolsey v. Woolsey, 9 P.2d 605, 121 C.A. 576—Pritchard v. Mercantile Trust Co., 224 P. 103, 65 C.A. 327.

Colo.—Ahart v. Barrett, 57 P.2d 701, 98 Colo. 520.

Fla.—Key West Electric Co. v. Albury, 109 So. 223, 91 Fla. 695.

Minn.—Lowry Coffee Co. v. Andresen-Ryan Coffee Co., 190 N.W. 985, 153 Minn. 498.

Tex.—Hubbard v. Texas Indemnity Ins. Co., Civ.App., 136 S.W.2d 627—Farmers' & Merchants' State Bank of Lelia Lake v. Guffey, Civ.

murrer, and no judgment was entered against him in the entry sustaining the demurrer,[92.5] where appellant takes leave to amend,[93] or withdraws the pleading to which the demurrer has been sustained.[94] Although plaintiff changes his cause of action by his amendment the error is still regarded as harmless if he is awarded the same amount as damages that he asked for in his original petition.[95]

An amended answer setting up the same defense as in the answer to which the demurrer was previously sustained has been regarded as a waiver of the error in sustaining the demurrer although that part of the answer is subsequently stricken;[96] but there is other authority for the view that a defendant to whose answer a demurrer has been erroneously sustained does not waive or cure the error by filing an amended answer.[97]

§ 1687(3). —— —— Overruling Demurrer or Exception

a. In general
b. To part of pleadings
c. Cure by amendment, abandonment, or pleading over

a. In General

Error in overruling a demurrer is harmless only where there are circumstances which show that the fact that the pleading was permitted to stand could have had no effect on the final result.

Quoted in: Fla.—S. H. Kress & Co. v. Powell, 180 So. 757, 763, 132 Fla. 471.

Error in overruling a demurrer or exception to a pleading is harmless where the complaining party is not injured or the final result is in no way affected by the fact that the pleading was permitted to stand against the demurrer.[98] This rule has been

App., 255 S.W. 462—Guyler v. Guyler, Civ.App., 220 S.W. 604.

4 C.J. p 934 note 56.

92.5 Ohio.—Pengelly v. Thomas, 65 N.E.2d 897, 79 Ohio App. 53, appeal dismissed 67 N.E.2d 714, 146 Ohio St. 693.

93. Colo.—Sholes v. Citizens' State Bank of Holyoke, 261 P. 456, 82 Colo. 432.

94. Tex.—Howe v. Central State Bank of Coleman, Civ.App., 297 S. W. 692.

95. Ky.—Laurel County v. Howard, 224 S.W. 762, 189 Ky. 221.

96. Colo.—Manney v. McClure, 233 P. 158, 76 Colo. 539.

97. Mo.—Berns v. P. A. Starck Piano Co., App., 296 S.W. 239.

98. U.S.—Sacramento Suburban Fruit Lands Co. v. Lindquist, C.C. A.Cal., 39 F.2d 900, certiorari denied 51 S.Ct. 31, 282 U.S. 853, 75 L.Ed. 756, and followed in 45 F.2d 163.

Ala.—Linton v. Morton, 200 So. 614, 240 Ala. 563—Alabama Great Southern R. Co. v. Independent Oil Co., 160 So. 720, 230 Ala. 222—Watson v. Baker, 154 So. 788, 228 Ala. 652—Sovereign Camp, W. O. W. v. Gunn, 140 So. 410, 224 Ala. 444—Thomasson v. Benson Hardware Co., 138 So. 287, 224 Ala. 11—Day & Sachs v. Travelers' Ins. Co., 137 So. 409, 223 Ala. 558—Meyerson v. New Idea Hosiery Co., 115 So. 94, 217 Ala. 153, 55 A.L.R. 1231—P. B. Yates Mach. Co. v. Taylor, 110 So. 396, 215 Ala. 311—Ex parte Farmers' Union Warehouse Co., 105 So. 728, 213 Ala. 448—Shepherd Motor Co. v. Henderson Land & Lumber Co., 104 So. 334, 213 Ala. 195—Boutwell v. Spurlin Mercantile Co., 83 So. 481, 203 Ala. 482—Birmingham Southern R. Co. v. Goodwyn, 81 So. 339, 202 Ala. 599—Bedgood v. T. R. Miller Mill Co., 80 So. 364, 202 Ala. 299—Southern Ry. Co. v. Harris, 80 So. 101, 202 Ala. 263—Manson v. Sutterer, 77 So. 375, 201 Ala. 81—Grasselli Chemical Co. v. City Ice Co., 75 So. 920, 200 Ala. 172—Weinstein v. Citizens' Bank of Lexington, Tenn., 75 So. 397, 200 Ala. 69—Hunter v. Taylor, 66 So. 671, 189 Ala. 104.

Ark.—Southwestern Gas & Electric Co. v. Godfrey, 10 S.W.2d 894, 178 Ark. 103.

Cal.—Burge v. Albany Nurseries, 168 P. 343, 176 C. 313.

Sorci v. Crisci, App., 309 P.2d 937—Richee v. Gillette Realty Co., 275 P. 477, 97 C.A. 365—Willett v. Schmeiser Mfg. Co., 255 P. 529, 82 C.A. 249—Gallagher v. Barstow, 219 P. 1014, 63 C.A. 643—Amundson v. Shafer, 172 P. 173, 36 C.A. 398—Haberly v. Haberly, 149 P. 53, 27 C.A. 139.

Fla.—**Corpus Juris Secundum quoted in** S. H. Kress & Co. v. Powell, 180 So. 757, 763, 132 Fla. 471.

Ga.—Orr v. Hapeville Realty Co., 94 S.E.2d 682, 212 Ga. 649—Federal Land Bank of Columbia v. Roberts, 171 S.E. 135, 177 Ga. 668—Barrett v. Barrett, 160 S.E. 399, 173 Ga. 375, 78 A.L.R. 962—Equitable Building & Loan Ass'n v. Brady, 156 S.E. 222, 171 Ga. 576—Swift & Co. v. First Nat. Bank, 132 S.E. 99, 161 Ga. 543.

Rogers v. Johnson, 96 S.E.2d 285, 94 Ga.App. 666—City of Albany v. Burt, 76 S.E.2d 413, 88 Ga.App. 144—Aiken v. Richardson, 68 S.E.2d 228, 85 Ga.App. 180, appeal dismissed 73 S.Ct. 15, 344 U.S. 802, 97 L.Ed. 625, rehearing denied 73 S. Ct. 282, 344 U.S. 905, 97 L.Ed. 699—Georgia, Ashburn, Sylvester & Camilla Ry. Co. v. Atlantic Coast Line R. Co., 54 S.E.2d 492, 79 Ga. App. 837—Sampson v. Vann, 51 S. E.2d 863, 78 Ga.App. 564—Fite v. McEntyre, 49 S.E.2d 159, 77 Ga. App. 585—Scott v. Holden, 26 S.E. 2d 456, 69 Ga.App. 615—Walker v. Southeastern Stages, 22 S.E.2d 742, 68 Ga.App. 320—Lunceford v. Nunnally, 15 S.E.2d 620, 65 Ga.App. 234—Villa Rica Mfg. Co. v. General American Life Ins. Co., 190 S.E. 49, 55 Ga.App. 328—Teal v. Equitable Loan Co., 159 S.E. 904, 43 Ga.App. 673—Tennessee Chemical Co. v. George, 131 S.E. 918, 34 Ga.App. 824—Shafer v. Carson, 126 S.E. 735, 33 Ga.App. 418—Martin & Lanier Paint Co. v. Daniels, 108 S.E. 246, 27 Ga.App. 302.

Idaho.—Carlson v. Ozmun, 258 P. 1078, 44 Idaho 500.

Ind.—Banta v. Banta, 76 N.E.2d 698, 118 Ind.App. 117, rehearing denied 77 N.E.2d 597, 118 Ind.App. 117—Pittsburgh, C., C. & St. L. R. Co. v. Staats, 149 N.E. 912, 83 Ind.App. 680—City of Indianapolis v. National City Bank of Indianapolis, 148 N.E. 675, 80 Ind.App. 677, affirmed 141 N.E. 249, 80 Ind.App. 677—Records v. Smith, 126 N.E. 335, 72 Ind.App. 618—Laramore v. Blumenthal, 108 N.E. 602, 58 Ind.App. 597.

Iowa.—School District Township of Richland in Sac County v. Hanson, 173 N.W. 873, 186 Iowa 1314.

Kan.—Smith v. Republic Underwriters, Waco, Tex., 103 P.2d 858, 152 Kan. 305.

Ky.—Thoenis' Adm'x v. Andrews, 21 S.W.2d 250, 231 Ky. 160—Fitzpatrick's Committee v. Dundon, 201 S. W. 339, 179 Ky. 784.

La.—E. A. Carrere & Sons v. Michel, App., 144 So. 540—Bearman v. Southern Bell Telephone & Telegraph Co., 134 So. 787, 17 La.App. 89.

Md.—Warczynski v. Barnycz, 117 A. 2d 573, 208 Md. 222—Jenkins v. Spedden, 111 A. 136, 136 Md. 637.

applied where the issue to which it relates is in some way eliminated or excluded from the case before it is finally submitted or decided,[99] or the allegations to which the demurrer relates are immateri-

Mont.—Armstrong v. Billings, 283 P. 226, 86 Mont. 228.

Nev.—Strohecker v. Mutual Building & Loan Ass'n of Las Vegas, 34 P. 2d 1076, 55 Nev. 350.

N.C.—Bechtel v. Weaver, 164 S.E. 338, 202 N.C. 856.

Okl.—City of Tulsa v. Copp, 260 P. 16, 127 Okl. 128.

Tex.—Sam Bassett Lumber Co. v. City of Houston, Civ.App., 194 S.W. 2d 114, reversed on other grounds 198 S.W.2d 879, 145 Tex. 492—Payton v. City of Big Spring, Civ. App., 157 S.W.2d 975—Universal Credit Co. v. O'Neal, Civ.App., 140 S.W. 596—Gooden v. Phillips, Civ. App., 118 S.W.2d 943, error dismissed—Brazos River Gas Co. v. McGarr, Civ.App., 113 S.W.2d 643—Paschall v. Gulf, C. & S. F. Ry. Co., Civ.App., 100 S.W.2d 183, modified on other grounds Campbell v. Paschall, 121 S.W.2d 593, 132 Tex. 226—Woodson Mill & Elevator Co. v. Burrus Mill & Elevator Co., Civ. App., 57 S.W.2d 945—Woodson Mill & Elevator Co. v. Graham Mill & Elevator Co., Civ.App., 57 S.W. 2d 943—Harris v. Sadler, Civ.App., 55 S.W.2d 173—Western Union Telegraph Co. v. Hicks, Civ.App., 47 S.W.2d 466—Cohen v. Lewis, Civ. App., 44 S.W.2d 468—Jennings-Progress Common School Dist. No. 106 v. Marvin School Dist. No. 14, Civ.App., 42 S.W.2d 805—R. B. Spencer & Co. v. Thorp Springs Christian College, Civ.App., 41 S.W. 2d 482—Shell Pipe Line Corporation v. Coston, Civ.App., 35 S.W.2d 1056—Sweetwater Progressive Mut. Life & Accident Ass'n v. Allison, Civ.App., 22 S.W.2d 1107—Exporters' & Traders' Compress & Warehouse Co. v. Shaw, Civ.App., 20 S.W.2d 248—International-Great Northern R. Co. v. Motley, Civ.App., 18 S.W.2d 782—White v. Goudchaux, Civ.App., 11 S.W.2d 614—Moore v. Garza, Civ.App., 10 S.W.2d 172—Bailey v. Giant Tire & Rubber Co., Civ.App., 3 S.W.2d 501—Somerset Pipe Line Co. v. Pioneer Oil & Refining Co., Civ.App., 289 S.W. 155—North Texas Gin Co. v. Thomas, Civ.App., 277 S.W. 438—American Law Book Co. v. Carter, Civ.App., 275 S.W. 510—Chicago, R. I. & G. Ry. Co. v. Hanna, Civ.App., 273 S.W. 280—Johnson v. Wise, Civ.App., 272 S.W. 296—Green v. Enen, Civ.App., 270 S.W. 929—El Paso & S. W. Co. v. Hudspeth, Wallace & Harper, Civ.App., 255 S.W. 772—Evans v. Evans, Civ. App., 249 S.W. 1097—Hines v. Warden, Civ.App., 229 S.W. 957—Baker v. Davis, Civ.App., 227 S.W. 534—Eimendorf v. City of San Antonio, Civ.App., 223 S.W. 631, reversed on other grounds, Com.App., 242 S.W. 185—Hickory Jones Co. v. Mettauer, Civ.App., 208 S.W. 745—Hall v. White, Civ.App., 208 S.W. 669—Planters' Oil Co. v. Hill Printing & Stationery Co., Civ.App., 208 S.W. 192—Slaughter v. Oakes, Civ.App., 203 S.W. 405, error refused—Rowe v. Daugherty, Civ.App., 196 S.W. 240—Clark v. State, Civ.App., 189 S.W. 84, error refused—Wright Bros. v. Leonard, Civ.App., 183 S. W. 780—Stephenville, N. & S. T. Ry. Co. v. Wheat, Civ.App., 173 S. W. 974—Williams v. Phelps, Civ. App., 171 S.W. 1100—Southwestern Telegraph & Telephone Co. v. Andrews, Civ.App., 169 S.W. 218.

Utah.—Pitchios v. Jones, 290 P. 958, 76 Utah 595.

4 C.J. p 935 note 69.

Special demurrer

(1) Rulings on special demurrer which did not affect the substance of answer which was not vulnerable to general demurrer presented no cause for reversal.

Ga.—Goodyear Tire & Rubber Co. v. Hay, 22 S.E.2d 496, 194 Ga. 750, 143 A.L.R. 186.

(2) Defendant could not complain of overruling of special demurrer, where no such demurrer was made.

Ga.—Wideman v. Selph, 30 S.E.2d 797, 71 Ga.App. 343.

(3) Overruling of special demurrer attacking allegation of jurisdictional fact as a conclusion of the pleader was not reversible error, where petition showed that court had jurisdiction of defendant as alleged joint tort-feasor.

Ga.—Community Gas Co. v. Williams, 73 S.E.2d 119, 87 Ga.App. 68.

99. Ala.—Thierry v. Oswell, 102 So. 903, 212 Ala. 418—Henderson v. Holmes & Dawson, 85 So. 536, 204 Ala. 203—Northern Alabama Ry. Co. v. Foster, Creighton, Gould Co., 76 So. 979, 200 Ala. 621.

W. T. Rawleigh Co. v. Jordan, 116 So. 302, 22 Ala.App. 395.

Conn.—Spirt v. Albert, 146 A. 717, 109 Conn. 292.

Ga.—Avary v. Avary, 41 S.E.2d 314, 202 Ga. 22—Hudgins Contracting Co. v. Redmond, 173 S.E. 135, 178 Ga. 317.

Western & A. R. R. v. Hughes, 142 S.E. 185, 37 Ga.App. 771, affirmed 49 S.Ct. 231, 278 U.S. 496, 73 L.Ed. 473—Louisville & N. R. Co. v. Harrell & Murphy, 120 S.E. 35, 31 Ga.App. 126.

Ind.—W. T. Rawleigh Co. v. Snider, 194 N.E. 356, 207 Ind. 686.

Miss.—Smith v. Gulf, M. & N. R. Co., 129 So. 599, 158 Miss. 188.

Mont.—Morrison v. Concordia Fire Ins. Co. of Milwaukee, Wis., 231 P. 905, 72 Mont. 97.

Okl.—Rotan Motor Co. v. Farmers & Merchants State Bank of Valley Center, Kan., 249 P.2d 125, 207 Okl. 271.

Or.—Brown v. Gessler, 230 P.2d 541, 191 Or. 503, 23 A.L.R.2d 815.

Tex.—Universal Credit Co. v. Towns, Civ.App., 58 S.W.2d 864—Potomac Ins. Co. v. Easley, Civ.App., 293 S.W. 346, reformed on other grounds and affirmed, Com.App., 1 S.W.2d 263—Anders v. Johnson, Civ.App., 263 S.W. 946, reversed on other grounds, Com.App., 276 S. W. 678—El Paso Electric Ry. Co. v. Jennings, Civ.App., 224 S.W. 1113, dismissed for want of jurisdiction—First State Bank of Blackwell v. Knox, Civ.App., 173 S.W. 894.

Wash.—McDonald v. McDonald, 206 P. 23, 119 Wash. 396—McNall v. Sandýgren, 170 P. 561, 100 Wash. 133.

4 C.J. p 934 notes 57, 58, p 935 notes 59–62.

Issue not submitted to jury by charge of court

Tex.—Radford v. Ellis, Civ.App., 64 S.W.2d 1033—Northern Texas Traction Co. v. Weed, Civ.App., 297 S.W. 534, reversed on other grounds, Com.App., 300 S.W. 41—Baker v. Sparks, Civ.App., 234 S.W. 1109—Schwander v. Noble, Civ. App., 220 S.W. 443—Green v. Missouri State Life Ins. Co., Civ.App., 219 S.W. 552.

4 C.J. p 934 note 57.

Jury instructed not to consider issue

Tex.—Long v. Mooring, Civ.App., 183 S.W.2d 232.

Issue withdrawn from jury's consideration

Ga.—Hudgins Contracting Co. v. Redmond, 173 S.E. 135, 178 Ga. 317.

4 C.J. p 934 note 58, p 938 note 8.

Pleading restricted to legitimate scope on the trial

Wash.—Nelson v. Smith, 248 P. 798, 140 Wash. 293.

4 C.J. p 935 note 59.

Ruling against pleading after demurrer overruled

Conn.—Spirt v. Albert, 146 A. 717, 109 Conn. 292.

Wash.—McDonald v. McDonald, 206 P. 23, 119 Wash. 396.

4 C.J. p 935 note 61.

Subsequent withdrawal of pleading demurred to

Ala.—Kern v. Friedrich, 126 So. 857, 220 Ala. 581.

4 C.J. p 935 note 60.

al,[1] or the issue is otherwise sufficiently raised by sufficient pleadings,[2] or the omissions in the defective pleading are supplied by other pleadings[3] or the evidence,[4] or the decision or verdict on the issue is in favor of the party who demurred,[5] or all questions raised by the demurrer were put in issue and fully tried,[6] or where the case is fairly tried on the merits under circumstances which indicate that nothing in the pleadings misled the unsuccessful litigant to his prejudice,[6.5] or there is a special finding of the facts or a special verdict on which conclusions of law are entered.[7]

The appellate court in determining whether or not error in overruling a demurrer has been prejudicial will look to the whole record,[8] and if, from this, it is apparent that a fair trial was had and a correct result reached there will be no reversal.[9]

Petition or complaint. If, after a demurrer to a petition or complaint has been overruled, defendant has answered and obtained a full trial on the merits, there must be a showing that the ruling was prejudicial before a reversal can be had;[10] and if there is no decision in favor of plaintiff on the matter to

1. U.S.—Ætna Life Ins. Co. v. Caffee, C.C.A.Fla., 286 F. 657.
Cal.—Brown v. Brown, 13 P.2d 1004, 125 C.A. 429.
Ga.—Moore v. Cook, 107 S.E. 518, 151 Ga. 523.
Tex.—Lone Star Finance Corporation v. Davis, Civ.App., 77 S.W.2d 711—National Surety Co. v. Masters, Civ.App., 200 S.W. 1123.

2. Md.—Baltimore Life Ins. Co. v. Fahrney, 103 A. 450, 132 Md. 222.
Tex.—First State Bank of Amarillo v. Cooper, Civ.App., 179 S.W. 295.
4 C.J. p 935 note 63.

3. Ala.—Quarles v. Kendrick Mercantile Co., 79 So. 160, 16 Ala.App. 486, certiorari denied 79 So. 394, 202 Ala. 56.
Tex.—Desdemona State Bank & Trust Co. v. Tyler, Civ.App., 250 S.W. 742.
Wyo.—Lusk Lumber Co. v. Independent Producers Consolidated, 249 P. 790, 35 Wyo. 381, rehearing denied 252 P. 1029, 36 Wyo. 34.
4 C.J. p 935 note 68.

4. Ala.—Newell Contracting Co. v. Lacy, 155 So. 379, 229 Ala. 208.
Craft v. Standard Accident Ins. Co., 123 So. 265, 23 Ala.App. 246, reversed on other grounds 123 So. 271, 220 Ala. 6.

5. Ala.—Burton v. Steverson, 91 So. 74, 206 Ala. 508—Morris v. Bragan, 70 So. 717, 195 Ala. 372.
Odum v. Coldwell, 105 So. 398, 21 Ala.App. 74.
Ky.—Chambers v. Thomas, 205 S.W. 2d 1000, 305 Ky. 838.
Tex.—Pope v. State, Civ.App., 86 S.W.2d 475.
4 C.J. p 935 notes 64, 66.

6. Cal.—Palmer v. McArthur, 278 P. 1049, 99 C.A. 510—Morris v. Hartley, 146 P. 78, 26 C.A. 804—Morris v. Hartley, 146 P. 73, 26 C.A. 61.
4 C.J. p 935 note 65.

6.5 Cal.—Mann v. Mueller, 295 P.2d 421, 140 C.A.2d 481—Ravel v. Hubbard, 246 P.2d 88, 112 C.A.2d 255—Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778.

7. Ind.—Owens v. Downs, 98 N.E. 2d 914, 121 Ind.App. 294—Hadley v. Kays, 98 N.E.2d 237, 121 Ind. App. 112—In re Lowe's Estate, 70 N.E.2d 187, 117 Ind.App. 554—Newlin v. Newlin, 52 N.E.2d 503, 114 Ind.App. 574—Brown v. National Life Ins. Co. of Washington County, Vt., 46 N.E.2d 246, 112 Ind.App. 684—Retter v. Retter, 40 N.E.2d 385, 110 Ind.App. 659—American Income Ins. Co. v. Kindlesparker, 37 N.E.2d 304, 110 Ind.App. 517—New Albany Trust Co. v. Nadorff, 27 N.E.2d 116, 108 Ind.App. 229—McHie v. McHie, 16 N.E.2d 987, 106 Ind.App. 152—First & Tri State Nat. Bank & Trust Co. of Fort Wayne v. Massachusetts Bonding & Insurance Co., 200 N.E. 449, 102 Ind.App. 361—Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298—Ninde v. Bank of Geneva, 181 N.E. 378, 95 Ind.App. 558—Makeever v. Barker, 154 N.E. 692, 85 Ind.App. 418—Sawers Grain Co. v. Goodwin, 146 N.E. 837, 83 Ind.App. 556—Board of Com'rs of Sullivan County v. Town of Carlisle of Sullivan County, 144 N.E. 859, 82 Ind.App. 63—First Nat. Bank v. McCoy, 141 N.E. 795, 80 Ind.App. 613—Coddington v. Turner, 139 N.E. 323, 85 Ind. App. 604—Karas v. Skouras, 137 N.E. 289, 79 Ind.App. 99—Pleasant School Tp. v. Fultz, 137 N.E. 60, 79 Ind.App. 27—Bliss v. Gallagher, 109 N.E. 215, 60 Ind.App. 454.
Tex.—Denton v. Cole, Civ.App., 20 S.W.2d 361, reversed on other grounds Cole v. Denton, Com.App., 34 S.W.2d 1091.
4 C.J. p 935 note 67.

Same result reached

Error in overruling demurrer to complaint was harmless where correct conclusions of law on facts found would reach the same legal result as correct ruling on demurrer.
Ind.—City of Frankfort v. Easterly, 46 N.E.2d 817, 221 Ind. 268, rehearing denied 47 N.E.2d 319, 221 Ind. 268.

Same questions presented

Where exceptions to conclusions of law present same questions as demurrer to complaint or petition, determination of one question determines the other.
Ind.—Creighton v. Schafer, 72 N.E.2d 360, 117 Ind.App. 518—Warrick v. Spry, 97 N.E. 361, 49 Ind.App. 327.

8. Ind.—Bedwell v. De Bolt, 50 N.E. 2d 875, 221 Ind. 600—McTurnan v. Dailey, 14 N.E.2d 913, 214 Ind. 159.
Lane v. Gugsell, 47 N.E.2d 835, 113 Ind.App. 676—Security Underwriters v. Long, 168 N.E. 699, 96 Ind.App. 9, rehearing denied 170 N.E. 355, 96 Ind.App. 9.
Tex.—Tri-County Elec. Co-op. v. Clair, Civ.App., 217 S.W.2d 681, error refused no reversible error.

9. Ind.—McTurnan v. Dailey, 14 N.E.2d 913, 214 Ind. 159.
Lane v. Gugsell, 47 N.E.2d 835, 113 Ind.App. 676—Baltimore & O. S. W. R. Co. v. Hill, 148 N.E. 489, 84 Ind.App. 354, certiorari denied 47 S.Ct. 246, 273 U.S. 738, 71 L.Ed. 867—Finch v. McClellan, 130 N.E. 13, 77 Ind.App. 533, rehearing denied 131 N.E. 236, 77 Ind.App. 533—Federal Life Ins. Co. v. Barnett, 125 N.E. 522, 71 Ind.App. 613.

10. Ala.—Smith v. Kifer, 52 So.2d 399, 36 Ala.App. 79.
Cal.—Ingalls v. Monte Cristo Oil & Development Co., 167 P. 857, 176 C. 128.
Ravel v. Hubbard, 246 P.2d 88, 112 C.A.2d 255—Brubaker v. Mallickzadha, 233 P.2d 635, 105 C.A.2d 780—Mortgage Guarantee Co. v. Smith, 50 P.2d 835, 9 C.A.2d 618—Sherwood v. Greater Berkeley Land Co., 279 P. 167, 99 C.A. 663—Duke v. Thornbury, 217 P. 100, 62 C.A. 505.
Conn.—Railway Express Agency v. Goodman's New York & Connecticut Express Corp., 28 A.2d 869, 129 Conn. 386.
Ga.—Gaulding v. Courts, 83 S.E.2d 288, 90 Ga.App. 472.
Ind.—Bedwell v. De Bolt, 50 N.E.2d 875, 221 Ind. 600—Kostanzer v. State ex rel. Ramsey, 187 N.E. 337, 205 Ind. 536.
Terre Haute Union Transfer & Storage Co. v. Pickett, 15 N.E.2d 765, 106 Ind.App. 82, rehearing denied 16 N.E.2d 778, 106 Ind.App. 82—International Harvester Co. of America v. Haas, 163 N.E. 613, 88 Ind.App. 267—Brown v. Ogle, 130 N.E. 147, 75 Ind.App. 90.

which the demurrer was directed the error is harmless.[11] The erroneous overruling of a demurrer or exception based on the failure of the complaint or petition to allege or set out sufficiently or properly certain facts or matters is often regarded as harmless where such facts or matters are later fully established by the evidence[12] or findings of the court or jury,[13] or are put in issue by subsequent plead-

Kan.—Clark v. Meyers, 244 P.2d 217, 173 Kan. 96.

Tex.—Ramsey v. Polk County, Civ. App., 256 S.W.2d 425—Tripp v. Watson, Civ.App., 235 S.W.2d 677, error refused no reversible error—McDermott v. Steck Co., Civ.App., 138 S.W.2d 1106, error refused—Keels v. Metzler, Civ.App., 94 S.W.2d 799, error dismissed—Windfohr v. Johnson's Estate, Civ.App., 57 S.W.2d 215.

11. Ala.—Metropolitan Casualty Ins. Co. of New York v. Sloss-Sheffield Steel & Iron Co., 3 So.2d 306, 241 Ala. 545—Montgomery v. State, 153 So. 394, 228 Ala. 296—Daniel v. Sharp, 135 So. 178, 223 Ala. 251—Ballenger v. Ballenger, 94 So. 127, 208 Ala. 147—Griffin v. Griffin, 90 So. 907, 206 Ala. 489—Morrison v. Clark, 72 So. 305, 196 Ala. 670.

Cal.—Cliff v. California Spray-Chemical Co., 257 P. 99, 83 C.A. 424.

Ga.—McKenney v. Woodbury Banking Co., 68 S.E.2d 571, 208 Ga. 616—May Realty Co. v. Forsdick, 178 S.E. 660, 180 Ga. 226—Persons v. Persons, 155 S.E. 27, 171 Ga. 212.

Riverside Academy v. Urigh, 126 S.E. 900, 33 Ga.App. 455.

Idaho.—Judd v. Ludke, 296 P. 1080, 50 Idaho 459.

Ind.—Pivot City Realty Co. v. State Savings & Trust Co., 162 N.E. 27, 88 Ind.App. 222.

Ky.—Union Charcoal & Chemical Co. v. McIntosh, 294 S.W. 798, 220 Ky. 74.

Mo.—Johnson v. Wabash Ry. Co., App., 251 S.W. 719.

Or.—Hauglum v. Mt. Hood Woodlands Co., 258 P. 820, 122 Or. 306.

Tex.—Texas Electric Service Co. v. Clark, Civ.App., 47 S.W.2d 483—Wood v. Williams, Civ.App., 46 S.W.2d 332—Republic Production Co. v. Collins, Civ.App., 41 S.W.2d 100—Foster v. Balderez, Civ. App., 32 S.W.2d 875—Finks v. Fitzpatrick, Civ.App., 30 S.W.2d 419, reversed on other grounds, Com.App., 48 S.W.2d 593—Stowers v. O'Dell, Civ.App., 13 S.W.2d 395—Robertson v. Holden, Civ.App., 297 S.W. 327, reversed on other grounds Robertson & Mueller v. Holden, Com.App., 1 S.W.2d 570—Counts v. Dobbs, Civ. App., 235 S.W. 716—Home Life & Accident Co. v. Jordan, Civ.App., 231 S.W. 802—Bivins v. Oldham, Civ.App., 224 S.W. 240, error refused—Ferguson v. Mansfield, Civ. App., 215 S.W. 234, modified on other grounds, Com.App., 235 S.W. 524, which was reversed on other grounds 263 S.W. 894, 114 Tex. 112—Staacke v. Routledge, Civ. App., 175 S.W. 444, affirmed 241 S.W. 994, 111 Tex. 489—Dallas Terminal Ry. & Union Co. v. Ardrey, Civ.App., 146 S.W. 616.

Va.—Boyd v. Dalton, 192 S.E. 692, 169 Va. 17.

W.Va.—Dotson v. Skaggs, 87 S.E. 460, 77 W.Va. 376, L.R.A.1916D 761.

40 C.J. p 517 note 40 [a] (1).

Judgment for less than prayed but more than plaintiff entitled to

Error in overruling an exception to the measure of damages pleaded is not cured by a judgment for less than the sum prayed, but for more than the loss sustained.

Tex.—W. R. Pickering Lumber Co. v. Bussey, Civ.App., 294 S.W. 665.

12. Ala.—Brown v. Oldham, 81 So.2d 331, 263 Ala. 76—Smith v. Tripp, 20 So.2d 870, 246 Ala. 421—Woodson v. Hare, 13 So.2d 172, 244 Ala. 301—Downer v. First Nat. Bank, 165 So. 758, 231 Ala. 523—Britling Cafeteria Co. v. Irwin, 159 So. 228, 229 Ala. 687—Birmingham Water Works Co. v. Barksdale, 150 So. 139, 227 Ala. 354—City of Mobile v. McClure, 127 So. 832, 221 Ala. 51—Life & Casualty Ins. Co. of Tennessee v. Peacock, 124 So. 229, 220 Ala. 104—State Realty Co. v. Ligon, 119 So. 672, 218 Ala. 541—Cook v. Sheffield Co., 91 So. 473, 206 Ala. 625—Pratt Consol. Coal Co. v. Vintson, 85 So. 502, 204 Ala. 185.

Alabama Great Southern R. Co. v. Russell, 48 So.2d 239, 35 Ala. App. 345, reversed on other grounds 48 So.2d 249, 254 Ala. 701—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala.App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10—Lord v. Werneth, 46 So.2d 236, 35 Ala.App. 290—Tidmore v. Mills, 32 So.2d 769, 33 Ala.App. 243, certiorari denied 32 So.2d 782, 249 Ala. 648—Home Ins. Co. v. Trammell, 174 So. 536, 27 Ala.App. 476.

Ark.—Wharf Improvement Dist. No. 1 of Helena v. U. S. Gypsum Co., 25 S.W.2d 425, 181 Ark. 288.

Cal.—Froeming v. Stockton Electric R. Co., 153 P. 712, 171 C. 401, Ann. Cas.1918B 408.

Miller v. Pacific Constructors, 157 P.2d 57, 68 C.A.2d 529—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436—Olson v. Washington, 63 P.2d 304, 18 C.A.2d 85—Hirsch v. James S. Remick Co., 177 P. 876, 38 C.A. 764.

Ga.—Lunceford v. Nunnally, 15 S.E.2d 620, 65 Ga.App. 234—Villa Rica Mfg. Co. v. General American Life Ins. Co., 190 S.E. 49, 55 Ga.App. 328—Union Fire Ins. Co. of Paris, France, v. Stone, 152 S.E. 146, 41 Ga.App. 49.

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Gillespie, 173 N.E. 708, 96 Ind.App. 535—Biggs v. Bank of Marshfield, 169 N.E. 71, 90 Ind. App. 467—Security Underwriters v. Long, App., 168 N.E. 699, 96 Ind. App. 9, rehearing denied 170 N.E. 355, 96 Ind.App. 9—Continental Life Ins. Co. v. Archibald, 162 N. E. 66, 87 Ind.App. 597—Rowlett v. Cockrill, 156 N.E. 181, 86 Ind.App. 92—Maryland Motorcar Ins. Co. v. Harris, 154 N.E. 36, 86 Ind.App. 129—Citizens' Gas & Fuel Co. v. Warden, 149 N.E. 565, 90 Ind.App. 182, rehearing denied 151 N.E. 433, 90 Ind.App. 119—Pittsburg, C., C. & St. L. R. Co. v. Rushton, 148 N. E. 337, 90 Ind.App. 227, rehearing denied 149 N.E. 652, 90 Ind.App. 227.

Ky.—Federal Union Life Ins. Co. v. Stengler, 82 S.W.2d 309, 259 Ky. 156.

La.—Mathews v. Louisiana Industrial Life Ins. Co., App., 11 So.2d 80—Dossey v. Life & Cas. Ins. Co. of Tennessee, App., 177 So. 427.

Mo.—Tual v. Martin, App., 66 S.W. 2d 969.

Tex.—Ashby v. Luttrell, Civ.App., 213 S.W.2d 77, error refused no reversible error—Ward v. Pace, Civ.App., 73 S.W.2d 959—Clark v. Scott, Civ.App., 212 S.W. 728—Davis v. White, Civ.App., 207 S.W. 679, affirmed Wyatt & Wingo v. White, Com.App., 228 S.W. 154.

Matters put in issue at trial

Ala.—Turner v. Turner, 73 So.2d 549, 261 Ala. 129.

Glenn v. Blackman, 35 So.2d 698, 33 Ala.App. 571, certiorari denied 35 So.2d 702, 250 Ala. 664.

13. U.S.—American Surety Co. of New York v. Blount County Bank, C.C.A.Ala., 30 F.2d 882, certiorari denied 50 S.Ct. 19, 280 U.S. 561, 74 L.Ed. 616—U. S. Casualty Co. v. Drew, C.C.A.Cal., 5 F.2d 498.

Ala.—American Standard Life Ins. Co. v. Tolliver, 146 So. 625, 25 Ala. App. 363.

Cal.—City Inv. Co. v. Pringle, 231 P. 355, 69 C.A. 416.

Ind.—Wallace v. Shoemaker, 143 N.E. 285, 194 Ind. 419.

Terre Haute, Indianapolis & Eastern Traction Co. v. Ferrell, 164 N.E. 307, 95 Ind.App. 456—Orton & Steinbrenner Co. v. Miltonberger, 129 N.E. 47, 74 Ind.App. 462.

Tex.—Hinds v. Biggs, Civ.App., 142 S.W.2d 902.

ings,[14] or shown to have been within the full knowledge of defendant,[15] or admitted or established by defendant,[16] or there is a correct instruction clearly requiring that plaintiff prove such matters.[17]

There is no ground for reversal in overruling a demurrer to a complaint for ambiguity or for uncertainty where the party demurring was not misled by the averments of the complaint and the cause was fairly tried on the merits;[18] and the overruling of a demurrer for misjoinder of causes of actions,[19]

14. Cal.—Hunceker v. Lutz, 224 P. 1001, 65 C.A. 649.
Ohio.—Putnam v. Board of Com'rs of Paulding County, 130 N.E. 165, 102 Ohio St. 45.

15. U.S.—Louisville & N. R. Co. v. Chatters, C.C.A.La., 26 F.2d 403, reversed on other grounds 49 S.Ct. 329, 279 U.S. 320, 73 L.Ed. 711.
Ala.—Louisville & N. R. Co. v. Sunday, 48 So.2d 216, 254 Ala. 299—Commercial Casualty Ins. Co. v. Hubert, 147 So. 134, 226 Ala. 357—Tyson v. Winter, 143 So. 460, 225 Ala. 437—Bankers' Credit Life Ins. Co. v. Lee, 140 So. 609, 224 Ala. 398—Bennett v. Bennett, 140 So. 378, 224 Ala. 335—Atlantic Coast Line R. Co. v. J. S. Carroll Mercantile Co., 104 So. 413, 213 Ala. 234.
Cal.—Arena v. Bank of Italy, 228 P. 441, 194 C. 195.
Haskell v. First Nat. Bank, 91 P.2d 934, 33 C.A.2d 399—Levy v. Dusenbery, 163 P. 231, 32 C.A. 411.
Ga.—Simonton Const. Co. v. Pope, 97 S.E.2d 590, 95 Ga.App. 193—Fite v. McEntyre, 49 S.E.2d 159, 77 Ga. App. 585—Steed v. Harris, 183 S.E. 847, 52 Ga.App. 581—Cline v. Nelson, 168 S.E. 70, 46 Ga.App. 600.
Tex.—King v. Lowry, Civ.App., 80 S.W.2d 790—Republic Ins. Co. v. Dickson, Civ. App., 69 S.W.2d 599—Runnels v. La Fitte, Civ.App., 61 S.W.2d 585—Traders' & General Ins. Co. v. Hurst, Civ.App., 55 S.W. 2d 1057—International Travelers' Ass'n v. Bettis, Civ.App., 52 S.W. 2d 1059.

True issue apparent during entire trial

Cal.—Neustadt v. Skernswell, 151 P. 2d 857, reheard 159 P.2d 49, 69 C. A.2d 361.

Ability of defendant to prove nonexistence of fact

In a real estate broker's action for a commission, the overruling of demurrer on the ground of his failure to allege that he had secured a license to engage in the brokerage business as required by statute, is not reversible error, it being presumed that, if no license had been issued, defendant would have proved such fact, instead of standing on a mere technicality, evidence thereof being available to defendant as well as to plaintiff.
Md.—Walkling v. Ensor, 114 A. 484, 138 Md. 496.

16. Cal.—Klimm v. Henry Cowell Lime & Cement Co., 175 P. 908, 38 C.A. 289.
Fla.—Kerman's v. Strobhar, 143 So. 138, 106 Fla. 148.
Ga.—Corbin v. Shadburn, 174 S.E. 259, 49 Ga.App. 91.
Ohio.—Yocum v. Allen, 50 N.E. 909, 58 Ohio St. 280.
Northwestern Nat. L. Ins. Co. v. Hare, 26 Ohio Cir.Ct. 197.
Okl.—Germania Fire Ins. Co. v. Barringer, 142 P. 1026, 43 Okl. 279.
Or.—Treadgold v. Willard, 160 P. 803, 81 Or. 658.
Tex.—Keppler v. Texas Lumber Mfg. Co., Civ.App., 184 S.W. 353, error refused—Illinois Cent. R. Co. v. Freeman, Civ.App., 182 S.W. 369.
Wyo.—Farmers' State Bank of Riverton v. Haun, 222 P. 45, 30 Wyo. 322, rehearing denied 224 P. 856, 31 Wyo. 201.

17. Ala.—Metropolitan Life Ins. Co. v. Carter, 102 So. 130, 212 Ala. 212—Southern Ry. Co. v. Dickson, 100 So. 665, 211 Ala. 481.
Birmingham Iron & Development Co. v. Hood, 94 So. 835, 19 Ala.App. 4, certiorari denied Ex parte Birmingham Iron & Development Co., 94 So. 837, 208 Ala. 486—Alabama Great Southern R. Co. v. Hunt, 86 So. 97, 17 Ala.App. 566, reversed on other grounds Ex parte Alabama Great Southern R. Co., 86 So. 100, 204 Ala. 504—Hines v. Laurendine, 84 So. 780, 17 Ala.App. 350.
Tex.—Hopkins County Levee Improvement Dist. No. 1 v. Smith, Civ.App., 243 S.W. 793.

18. Ala.—Williams v. Roche Undertaking Co., 49 So.2d 902, 255 Ala. 56—Atlantic Coast Line R. Co. v. Watson, 110 So. 316, 215 Ala. 254.
Cal.—Burge v. Albany Nurseries, 168 P. 343, 176 C. 313—Bergen v. Tulare County Power Co., 161 P. 269, 173 C. 709.
Alonso v. Hills, 214 P.2d 50, 95 C.A.2d 778—Salas v. Whittington, 174 P.2d 886, 77 C.A.2d 90—Bacon v. Kessel, 87 P.2d 857, 31 C.A.2d 245—Tilden Lumber & Mill Co. v. Bacon Land Co., 3 P.2d 350, 116 C. A. 689—Green v. Hanson, 284 P. 1082, 103 C.A. 430—Pray v. Trower Lumber Co., 281 P. 1036, 101 C.A. 482—Thatcher v. G. & M. Concrete Co., 280 P. 211, 100 C.A. 424—Latky v. Wolfe, 259 P. 470, 85 C.A. 332—Goetting v. Goetting, 252 P. 656, 80 C.A. 363—Cowing v. Wofford, 229 P. 883, 68 C.A. 538—Jones v. Peck, 218 P. 1030, 63 C.A. 397—Gaddis v. Grant, 179 P. 410, 39 C. A. 437—Christie v. McCall, 177 P. 507, 35 C.A. 546—Prophet v. Katzenberger, 172 P. 775, 36 C.A. 543—Amundson v. Shafer, 172 P. 173, 36 C.A. 398—Countryman v. California Trona Co., 170 P. 1069, 35 C.A. 728.
Tex.—Texas Employers' Ins. Ass'n v. Downing, Civ.App., 218 S.W. 112, error refused—Padgett v. Young County, Civ.App., 204 S.W. 1046, error dismissed Padgitt v. Young County, 229 S.W. 459, 111 Tex. 98—Kansas City, M. & O. Ry. Co. of Texas v. Oates, Civ.App., 185 S.W. 1014—Fink v. San Augustine Grocery Co., Civ.App., 167 S.W. 35.
Utah.—Olsen v. S. H. Kress & Co., 48 P.2d 430, 87 Utah 51—Van Dyke's Food Store v. Independent Coal & Coke Co., 34 P.2d 706, 84 Utah 95—Gleason v. San Pedro, L. A. & S. L. R. Co., 164 P. 484, 49 Utah 405.
4 C.J. p 935 note 70.

Abstract error

Prejudicial error as distinguished from abstract error must appear.
Cal.—Semple v. Andrews, 81 P.2d 203, 27 C.A.2d 228.

Complaint inconsistent

Ala.—Watkins v. Reinhart, 9 So.2d 113, 243 Ala. 243.

Judgment for plaintiff justified only by evidence not admissible

Overruling an exception to a petition based on the fact that the allegations of the petition are too vague to justify the admission of evidence concerning the arrangement on which plaintiff bases his cause of action is ground for reversal where there was a judgment for plaintiff which can be justified only by the evidence introduced which was not properly admissible under the petition in its vague condition.
La.—Julius Aaron & Son v. Jackson, App., 159 So. 414.

19. Ark.—Earl v. Ellison, 210 S.W. 342, 138 Ark. 166.
Cal.—Blakeslee v. Tannlund, 76 P.2d 216, 25 C.A.2d 32—Keele v. Clouser, 268 P. 682, 92 C.A. 526—Logan v. Lewis, 170 P. 851, 35 C.A. 663.
Colo.—Keith v. Schuck, 190 P. 530, 68 Colo. 480.
Kan.—Sentney v. Commercial Nat. Bank, 275 P. 1081, 128 Kan. 107, 67 A.L.R. 966—Herman v. Turner, 232 P. 864, 117 Kan. 733—Mullarky v. Manker, 170 P. 31, 102 Kan. 92.
Okl.—Lea v. American Nat. Bank of Pryor Creek, 186 P.2d 321, 199 Okl. 360—Planters Gin Co. v. Herring & Young, 67 P.2d 17, 179 Okl. 596—Meshuk v. Cordes, 22 P.2d 921, 164 Okl. 40—Govan v. McCord, 11 P.2d 141, 155 Okl. 278—Lindley v. Kelly, 147 P. 1015, 47 Okl. 328.

or misjoinder of parties,[20] or failure to state separately several causes of action,[21] is a harmless error where no substantial rights are affected.

Overruling a demurrer on the ground of misjoinder is reversible error, however, where substantial rights are affected,[21.5] and where demurrant stands on his demurrer.[22] Where a complaint fails to state a cause of action, and a demurrer on that ground is overruled, the error is prejudicial and ground for reversal if the record fails to show that in the subsequent trial the harm done was completely obviated,[23] the trial does not result in any record evidence of the fact essential to the plaintiff's right to maintain the action,[24] or the petition does not at all allege the matter shown at the trial to establish a right of recovery.[25] Overruling an exception or a demurrer to a petition on the ground that its allegations are too vague and indefinite to advise defendant of the charge made by plaintiff is prejudicial where defendant is thereby unduly burdened in preparing his defense,[26] and although a petition as amended sets out a cause of action, where the court errs in overruling a demurrer to one of the amendments, a judgment overruling all demurrers is required to be reversed.[26.5]

Plea or answer. Overruling a demurrer or exception to a plea or answer is harmless error where such ruling does not affect the substantial rights of demurrant.[26.10] This rule has been applied where plaintiff is not in any event entitled to recover,[27]

Or.—Stennick v. J. K. Lumber Co., 166 P. 951, 85 Or. 444.
R.I.—O'Brien v. Moskol, 123 A. 568, 45 R.I. 486.
Tex.—Lamb v. Bonds & Dillard Drilling Corp., Civ.App., 107 S.W.2d 500—Garza v. Jennings, Civ.App., 44 S.W.2d 1016—Scheps v. Giles, Civ. App., 222 S.W. 348—Western Nat. Bank of Ft. Worth v. Texas Christian University, Civ.App., 176 S.W. 1194—Oklahoma Fire Ins. Co. v. Ross, Civ.App., 170 S.W. 1062.
4 C.J. p 935 note 71.

Cure of error

(1) Any error in overruling a demurrer for misjoinder of causes of action is cured by the court's subsequently sustaining a demurrer to the evidence as to all causes of action except one.
Okl.—Goldberg v. Willcox, 260 P. 777, 127 Okl. 263.

(2) The overruling of demurrer to complaint for misjoinder of causes of action and the denial of motion to compel plaintiff to elect upon which cause of action he would proceed, if error, is harmless, where the court in its instructions to the jury limited plaintiff's recovery, if any, to that sought only in one cause of action.
Colo.—Keith v. Schuck, 190 P. 530, 68 Colo. 480.

20. Ala.—Van Antwerp v. Van Antwerp, 5 So.2d 73, 242 Ala. 92.
Cal.—Conaway v. Toogood, 158 P. 200, 172 C. 706.
Ga.—A. C. Alexander Lumber Co. v. Livingston, 12 S.E.2d 89, 63 Ga. App. 733.
Ohio.—English v. Aubry, 103 N.E.2d 828, 90 Ohio App. 121.
Okl.—Planters Gin Co. v. Herring & Young, 67 P.2d 17, 179 Okl. 596.

21. Cal.—Wilson v. Rigali & Veselich, 33 P.2d 455, 138 C.A. 760.
Tex.—Pryor & Wilson v. Moody, Civ. App., 49 S.W.2d 506.

21.5 Ky.—Evola Realty Co. v. Westerfield, 251 S.W.2d 298.
Nev.—Hartford Min. Co. v. Home Lumber & Coal Co., 114 P.2d 1091, 61 Nev. 1.

Improper joinder

Where complaint combined counts ex contractu with a count ex delicto, improper overruling of demurrer was prejudicial error where verdict was for plaintiff and it did not specify under which count it was rendered.
Ala.—Abercrombie v. Pell, 179 So. 371, 235 Ala. 396.

22. N.M.—Johnson v. Yelverton, 249 P. 99, 31 N.M. 568.

23. Ala.—Hickman v. Hannas, 82 So.2d 795, 263 Ala. 399—City of Mobile v. McClure, 127 So. 832, 221 Ala. 51—Lamb v. Roberts, 72 So. 309, 196 Ala. 679, L.R.A.1916F 1018.
Ga.—Moore v. Kiser, 87 S.E. 403, 144 Ga. 460.
Gunter v. King, 167 S.E. 549, 46 Ga.App. 297.
Ky.—S. K. Jones Const. Co. v. Hendley, 5 S.W.2d 482, 224 Ky. 83.
Mont.—Dickason v. Dickason, 274 P. 145, 84 Mont. 52.
Okl.—Shelton v. Jones, 167 P. 458, 66 Okl. 83, L.R.A.1918A 830.
Tex.—Humble Oil & Refining Co. v. Strauss, Civ.App., 243 S.W. 528.
Wyo.—Lusk Lumber Co. v. Independent Producers Consolidated, 249 P. 790, 35 Wyo. 381, rehearing denied 252 P. 1029, 36 Wyo. 34.
51 C.J. p 285 note 12 [b].

Unobjected to testimony showing unalleged fact

Where the petition fails to allege a fact, the existence of which is absolutely essential to his right to maintain the action, and a demurrer on that ground is erroneously overruled, the error is prejudicial and is not cured by the fact that plaintiff testifies to the existence of the necessary fact without objection from defendant for all proceedings subsequent to the overruling of the demurrer were nugatory.
Ga.—Gunter v. King, 167 S.E. 549, 46 Ga.App. 297.

24. Ala.—Obermark v. Clark, 114 So. 135, 216 Ala. 564, 55 A.L.R. 1153—St. Louis & S. F. R. Co. v. Dorman, 89 So. 70, 205 Ala. 609.
Ind.—Eads v. Kumley, 119 N.E. 219, 67 Ind.App. 361.
Tex.—Womack Const. Co. v. Rhodes, Civ.App., 283 S.W. 1108.
W.Va.—Brogan v. Union Traction Co., 86 S.E. 753, 76 W.Va. 698.

25. U.S.—U. S. Fidelity & Guaranty Co. v. Union Indemnity Co., C.C.A. Ala., 56 F.2d 147.
Ala.—Brookside-Pratt Min. Co. v. Wright, 173 So. 605, 234 Ala. 70.
Cal.—Milstein v. Sartain, 133 P.2d 836, 56 C.A.2d 924.

Recovery against insurer

Tex.—Webster v. Isbell, 100 S.W.2d 350, 128 Tex. 626.

26. Tex.—Texas & N. O. R. Co. v. Conn, Civ.App., 30 S.W.2d 939.

26.5 Ga.—Aycock v. Gillhan, 184 S. E. 912, 53 Ga.App. 115.

26.10 Ala.—J. R. Watkins Co. v. Hamilton, 26 So.2d 207, 32 Ala.App. 361.
Cal.—Cavalli v. Luckett, 104 P.2d 708, 40 C.A.2d 250.
Ga.—Duncan v. Proctor, 24 S.E.2d 791, 195 Ga. 499.
J. R. Watkins Co. v. Ellington, 29 S.E.2d 300, 70 Ga.App. 722—Gregg v. Fitzpatrick, 187 S.E. 730, 54 Ga.App. 303.
Idaho.—McCarty v. Sauer, 136 P.2d 742, 64 Idaho 748.
Tex.—Armstrong v. Marshall, Civ. App., 146 S.W.2d 250, error dismissed, judgment correct—Longmire v. Taylor, Civ.App., 109 S.W. 2d 525, error dismissed—Hale v. Herring, Civ.App., 102 S.W.2d 468—Currie v. First Nat. Bank, Civ. App., 96 S.W.2d 731, error refused.
Utah.—Roe v. Lundstrom, 57 P.2d 1128, 89 Utah 520.

27. Ala.—Evans v. Kilgore, 21 So. 2d 842, 246 Ala. 647—Johnson v. Louisville & N. R. Co., 198 So. 350, 240 Ala. 219—Burchfield v. Ætna Life Ins. Co., 159 So. 235, 230 Ala. 49—Alabama Machinery & Supply

or is entitled to recover irrespective of the matter set up in the answer,[28] where no relief was granted defendant on the answer,[28.5] where the evidence on the issue presented was freely admitted and the issue was submitted to the jury in favorable terms,[28.10] where the filing of the answer was unnecessary and defendant could have introduced all evidence which he did without filing the answer,[29] where all the facts are stipulated and a correct declaration or statement of the law as applied to the relevant facts stipulated can be made without regard to the sufficiency of the pleadings,[29.5] where the court gives correct instructions which cure the effect of the error,[30] where an affirmative charge is given for plaintiff which eliminates the plea,[31] where the error is cured by a verdict in favor of demurrant,[31.5] where the evidence shows without conflict that the matters set up in the pleading do not exist,[32] or where the plea or answer is not supported by the evidence.[33]

Error in overruling a demurrer based on failure of the answer sufficiently to specify certain matters referred to is harmless where plaintiff in fact knew exactly what was intended.[34] An appellate court will look to the whole record to determine whether overruling a demurrer to an answer resulted in harm to plaintiff.[34.5]

Error, however, in overruling a demurrer or exception to a plea or answer is prejudicial and ground for reversal where the record discloses that there is a probability that it affected or influenced the final result in the case,[35] or where it results in the injection of an improper issue in the case on which the verdict of the jury is expressly based.[36]

Replication or reply. Error in overruling a demurrer to a reply or replication is not prejudicial where proof of the facts therein set up can be made under the general denial or general replication,[37] the reply was eliminated from the case or not estab-

Co. v. Roquemore, 87 So. 435, 205 Ala. 244—Traweek v. Hagler, 75 So. 152, 199 Ala. 664.
Trammell v. Robinson, 37 So.2d 142, 34 Ala.App. 91—Silverfield v. Globe Indemnity Co., 19 So.2d 76, 31 Ala.App. 499.

Cal.—People v. City of Reedley, 226 P. 408, 66 C.A. 409.

Ga.—Schmidt v. General Accident Fire & Life Assur. Corporation, 23 S.E.2d 479, 68 Ga.App. 519.

Ind.—Lee v. Bossung, App., 138 N.E. 2d 913—Foudy v. Daugherty, 76 N. E.2d 268, 118 Ind.App. 68—Eberhart v. Eyre-Shoemaker, Inc., 134 N.E. 227, 78 Ind.App. 658—State v. Reichard, 109 N.E. 438, 59 Ind. App. 338—Hayes v. Johnson, 105 N.E. 166, 56 Ind.App. 707—Hayes v. Johnson, 105 N.E. 164, 56 Ind. App. 238.

Kan.—Chaput v. Demars, 243 P. 311, 120 Kan. 273, rehearing denied 244 P. 1042, 120 Kan. 612.

Minn.—Warner v. E. C. Warner Co., 33 N.W.2d 721, 226 Minn. 565.

Or.—Cabell v. Federal Land Bank of Spokane, 144 P.2d 297, 173 Or. 11.

Tex.—Hoskins v. Carpenter, Civ.App., 201 S.W.2d 606, error refused no reversible error—Smith v. Columbian Carbon Co., Civ.App., 196 S.W.2d 660, reversed on other grounds 198 S.W.2d 727, 145 Tex. 418—Armstrong v. Marshall, Civ.App., 146 S.W.2d 250, error dismissed, judgment correct—Alsup v. Hawkeye Securities Fire Ins. Co., Civ.App., 300 S.W. 223—First State Bank of Ovalo v. Ovalo Warehouse Ass'n, Civ.App., 276 S.W. 773—Greenameyer v. McFarlane, Civ.App., 220 S.W. 613—Polk v. Inman, Civ.App., 211 S.W. 261.

4 C.J. p 933 note 35, p 935 notes 72, 73, p 936 note 74.

No injury or monetary damages suffered by plaintiff

Tex.—Clark v. City of Eastland, Civ. App., 134 S.W.2d 509.

28. Tex.—Cannon v. Healy Const. Co., Civ.App., 242 S.W. 526.

28.5 Ga.—Zeagler v. Zeagler, 9 S.E. 2d 263, 190 Ga. 220.

28.10 Ala.—Sovereign Camp, W. O. W., v. Deese, 181 So. 274, 236 Ala. 85.

29. Ga.—Kytle v. Kytle, 181 S.E. 81, 180 Ga. 833.

Ind.—City of Indianapolis v. National City Bank of Indianapolis, 138 N.E. 791, rehearing denied City of Indianapolis v. National City Bank, 141 N.E. 249, 80 Ind.App. 677, and corrected opinion, 148 N.E. 675, 80 Ind.App. 677.

29.5 Ind.—State ex rel. Stone v. U. S. Fidelity & Guaranty Co., 78 N. E.2d 881, 119 Ind.App. 63.

30. Ala.—Tindell v. Guy, 10 So.2d 862, 243 Ala. 535—Renfroe v. Collins & Co., 78 So. 395, 201 Ala. 489.
Butler v. Walton, 56 So.2d 369, 36 Ala.App. 319, certiorari denied 56 So.2d 379, 257 Ala. 714.

Ga.—Walker v. Southeastern Stages, 22 S.E.2d 742, 68 Ga.App. 320.

Ky.—Thoenis' Adm'x v. Andrews, 21 S.W.2d 250, 231 Ky. 160.

31. Ala.—Furst v. Shows, 110 So. 299, 215 Ala. 133.

Ind.—State v. Hillis, 124 N.E. 515, 79 Ind.App. 599.

31.5 Wash.—Hardinger v. Till, 96 P.2d 262, 1 Wash.2d 335.

32. Ala.—Poull v. Foy-Hays Constr. Co., 48 So. 785, 159 Ala. 452—Bullock - McCall - McDonnell Electric Co. v. Coleman, 33 So. 884, 136 Ala. 610.

33. Ala.—Hampton v. Roberson, 168 So. 644, 231 Ala. 55—Montgomery v. Tucker, 153 So. 188, 228 Ala. 182.
W. T. Rawleigh Medical Co. v. Hooks, 78 So. 310, 16 Ala.App. 394.

Ind.—Records v. Smith, 126 N.E. 335, 72 Ind.App. 618.

4 C.J. p 936 note 76.

34. Cal.—Lawrence v. Premier Indemnity Assur. Co., 182 P. 431, 180 C. 688.

34.5 Ga.—J. R. Watkins Co. v. Ellington, 29 S.E.2d 300, 70 Ga.App. 722.

35. Ala.—J. R. Watkins Co. v. Tuberville, 198 So. 847, 240 Ala. 283—Franklin Life Ins. Co. v. Ward, 187 So. 462, 237 Ala. 474—Lollar v. Jones, 157 So. 209, 229 Ala. 329—Fenner & Beane v. Olive, 147 So. 147, 226 Ala. 359—Compton v. Alabama Power Co., 114 So. 46, 216 Ala. 558.
Cook v. Standard Oil Co., 73 So. 763, 15 Ala.App. 448.

Cal.—Silvers v. Grossman, 192 P. 534, 183 C. 696.

Ga.—Tharpe v. Cudahy Packing Co., 4 S.E.2d 49, 60 Ga.App. 449.

Tex.—Reyes v. Smith, Civ.App., 288 S.W.2d 822, error refused no reversible error.

4 C.J. p 930 note 5.

36. Ala.—Johnson v. Williams, 132 So. 170, 222 Ala. 278.

37. Ala.—North River Ins. Co. v. Flippo, 181 So. 114, 236 Ala. 128—Sovereign Camp, W. O. W. v. Clarke, 157 So. 259, 229 Ala. 382—American Ins. Co. v. Millican, 153 So. 454, 228 Ala. 357—Coleman v. Night Commander Lighting Co., 118 So. 377, 218 Ala. 196—Dixie Industrial Co. v. Atlas Lumber Co., 81 So. 64, 202 Ala. 562—Central of

lished,[38] defects in the replication were supplied by the evidence and the proper issues were submitted to the jury by appropriate instructions,[39] or defendant failed to establish the matter set up in his pleading which has brought forth the reply or replication to which the demurrer was directed,[40] the plea to which the replication is directed has been eliminated by demurrer,[41] or, under the record, defendant was nevertheless liable.[42] In a proper case there may be reversible error in overruling a demurrer to a replication.[42.5] Thus there may be reversible error in the overruling of a demurrer to a replication where the facts stated therein are not sufficient to establish plaintiff's case,[43] or where defendant is forced to take issue on allegations of replications which presented false issues.[43.5]

Cross action or counterclaim. Error in overruling a demurrer to a pleading in a cross action is harmless where the complaining party is not injured or the final result is in no way affected by the fact that the pleading was permitted to stand against the demurrer.[43.10] Thus, error in overruling a demurrer to a cross complaint, cross bill, or counterclaim is harmless where no evidence was introduced that could not have been introduced if the demurrer had been sustained,[44] or the matters pleaded in the cross petition were not submitted to the jury by the court's instructions,[45] or there is no finding or judgment in favor of the counterclaim or cross complaint,[46] or only nominal damages were allowed,[47] or where the failure to allege a matter with particularity resulted in no harm to the opposite party,[47.5] or complainant obtained all the relief to which he was entitled regardless of the cross bill,[48] or where it was rejected as surplusage.[49] If a cross petition against third persons is insufficient as a cross petition but sufficiently states a cause of action, the overruling of a demurrer thereto is harmless error where the third persons thereafter answer the cross petition and are given separate trials on the issues thus formed.[50]

Answer to cross complaint or reply. Error in overruling a demurrer to an answer to a cross complaint or reply may be harmless where both the

Georgia Ry. Co. v. Mathis, 71 So. 674, 196 Ala. 32—National Life & Accident Ins. Co. v. Singleton, 69 So. 80, 193 Ala. 84.
Ahrens-Rich Auto Co. v. Love, 103 So. 602, 20 Ala.App. 502.
Md.—Fleischmann v. Clark, 111 A. 851, 137 Md. 171.
Ohio.—Congregation of St. Augustine Roman Catholic Church of Minster v. Metropolitan Bank of Lima, App., 32 N.E.2d 518.
4 C.J. p 936 notes 81, 82.

38. Ind.—Colt v. Hicks, 179 N.E. 335, 97 Ind.App. 177—Beaven v. Hamilton, 124 N.E. 466, 71 Ind.App. 141—Aldridge v. Clasmeyer, 123 N.E. 825, 71 Ind.App. 43.
N.C.—Bowman v. Howard, 110 S.E. 98, 182 N.C. 662.

Replication insufficient

Ala.—Southern Home Ins. Co. of the Carolinas v. Boatwright, 176 So. 460, 234 Ala. 668.

39. Ala.—National Life & Accident Ins. Co. v. Moore, 114 So. 45, 216 Ala. 554—Clinton Mining Co. v. Bradford, 76 So. 74, 200 Ala. 308.
Ind.—Krieg v. Palmer Nat. Bank, 111 N.E. 31, 67 Ind.App. 677.

40. Ala.—Willingham v. Wesley Hardware Co., 149 So. 703, 227 Ala. 280—Travelers' Ins. Co. v. Plaster, 98 So. 909, 210 Ala. 607—Dixie Industrial Co. v. Atlas Lumber Co., 81 So. 64, 202 Ala. 562—Weinstein v. Citizens' Bank of Lexington, Tenn., 75 So. 397, 200 Ala. 69—Jones v. Dunn Hardware Co., 68 So. 811, 192 Ala. 95.
Hale v. Helms, 81 So. 840, 17 Ala.App. 62.
Ill.—See Franklin v. Continental Casualty Co., 184 Ill.App. 259.
Ind.—Travelers' Ins. Co. v. Fletcher American Nat. Bank of Indianapolis, 150 N.E. 825, 84 Ind.App. 563.

41. Ala.—Davis v. Simpson Coal Co., 50 So. 368, 162 Ala. 424.

Replication becomes immaterial by elimination of plea

If the plea has passed out on demurrer, the overruling of a demurrer to a special replication to it, if error, is harmless, since the replication becomes immaterial with the elimination of the plea to which it is addressed.
Ala.—Davis v. Simpson Coal Co., supra.

42. Ind.—Scott v. Triggs, 131 N.E. 415, 76 Ind.App. 69.

42.5 Ala.—Metropolitan Life Ins. Co. v. James, 176 So. 813, 27 Ala. App. 575, certiorari denied 176 So. 816, 235 Ala. 8.

43. Ala.—National Life & Accident Ins. Co. v. Hannon, 101 So. 892, 212 Ala. 184.

43.5 Ala.—Metropolitan Life Ins. Co. v. James, 176 So. 813, 27 Ala. App. 575, certiorari denied 176 So. 816, 235 Ala. 8.

43.10 Cal.—Vecki v. Sorensen, 273 P.2d 908, 127 C.A.2d 407.
Ga.—Adcock v. Berry, 21 S.E.2d 605, 194 Ga. 243.

Substantial rights not injured

Ala.—Thurlow v. Berry, 25 So.2d 726, 247 Ala. 631.

44. Ind.—Bowen v. Eaton, 89 N.E. 961, 46 Ind.App. 65.
4 C.J. p 936 note 77.

45. Okl.—T. W. McNear Securities Co. v. Baker, 259 P. 563, 126 Okl. 216.

46. Cal.—Adams v. Tuxedo Land Co., 267 P. 926, 92 C.A. 266—Al G. Barnes Shows Co. v. Tait, 214 P. 1015, 61 C.A. 304.
Ga.—Kniepkamp v. Richards, 16 S.E.2d 24, 192 Ga. 509.
Ind.—Crouch v. Parker, 125 N.E. 453, 188 Ind. 660, 7 A.L.R. 1598.
Stover v. Harlan, 154 N.E. 882, 87 Ind.App. 347.
Ky.—Damron v. Sowards, 261 S.W. 1093, 203 Ky. 211.
Mo.—Mackey v. First Nat. Bank, App., 293 S.W. 66.
Tex.—Radford v. Ellis, Civ.App., 64 S.W.2d 1033—Evans v. Evans, Civ. App., 50 S.W.2d 842—Coleman v. Miller, Civ.App., 19 S.W.2d 829, affirmed C. R. Miller Mfg. Co. v. Coleman, Com.App., 29 S.W.2d 991—Harris v. Harris, Civ.App., 230 S.W. 224—Brenard Mfg. Co. v. Watkins, Civ.App., 224 S.W. 522.
4 C.J. p 936 note 78.

47. Ky.—Baber v. Griggs, 68 S.W.2d 419, 252 Ky. 816.

47.5 Ga.—Brogdon v. Hogan, 13 S.E.2d 666, 191 Ga. 647.

48. Ala.—Brown v. Powers, 52 So. 647, 167 Ala. 518.

49. Cal.—Vance v. Smith, 56 P. 1031, 124 C. 219.

50. Okl.—Valley Abstract Co. v. Page, 141 P. 416, 42 Okl. 365.

answer and the cross complaint are based on an erroneous theory,[50.5] or where all the evidence admissible under the cross complaint, or the answers to the cross complaint, are admissible under the complaint and answers.[50.10]

b. To Part of Pleadings

Reversal will be granted for error in overruling a demurrer or exception to a part of a pleading unless it affirmatively appears from the record that the appellant was not harmed by the ruling.

Error in overruling a demurrer or exception to part of a pleading will not be ground for reversal where it appears that no prejudice resulted therefrom.[51] This is the case where the judgment or verdict can be referred to a sufficient part of the pleading other than that part to which the demurrer overruled was interposed,[52] or the decision is for the complaining party on the issue raised by that part of the pleading to which the demurrer related.[53] In order, however, for error in overruling a demurrer to part of a pleading to be regarded as harmless it is necessary that the appellate court be able to see from the record that no prejudice did or could have resulted to appellant from the error,[54] and where the record leaves it possible that the judgment rests wholly,[55] or in part,[56] on a defec-

50.5 Ind.—Wilhelm v. Ryband, 19 N.E.2d 551, 215 Ind. 281.

50.10 Ind.—Angola State Bank v. State ex rel. Sanders, 52 N.E.2d 620, 222 Ind. 244.

51. Ariz.—Levandoski v. Ford, 83 P.2d 281, 52 Ariz. 454.
Cal.—Sorci v. Crisci, App., 309 P.2d 937.
Ga.—Smith v. McWhorter, 160 S.E. 250, 173 Ga. 255—Hand Trading Co. v. Citizens' Bank of Moultrie, 128 S.E. 65, 160 Ga. 448.
Northern Ry. Co. v. Hathcock, 91 S.E.2d 145, 93 Ga.App. 72—A. C. Samford, Inc. v. Beech, 88 S.E.2d 701, 92 Ga.App. 502.
Ind.—Newton v. Lyons, 90 N.E.2d 917, 120 Ind.App. 465.
Kan.—Emerson-Brantingham Implement Co. v. Willhite, 169 P. 549, 102 Kan. 56.
Ky.—Victor's Ex'r v. Monson, 283 S.W.2d 175.
Mont.—Fowlie v. Cruse, 157 P. 958, 52 Mont. 222.
Tex.—Panola Motor Co. v. Corbin, Civ.App., 253 S.W.2d 688, error refused—Vise v. Foster, Civ.App., 247 S.W.2d 274, error refused no reversible error—Brazos River Gas Co. v. McGarr, Civ.App., 113 S.W.2d 643—San Antonio & A. P. Ry. Co. v. Sutherland, Civ.App., 199 S.W. 521—J. Kennard & Sons Carpet Co. v. Houston Hotel Ass'n, Civ.App., 197 S.W. 1139—Farmers' & Merchants' Nat. Bank of Nocona v. H. C. London & Sons, Civ.App., 194 S.W. 635—Vaky v. Phelps, Civ.App., 194 S.W. 601, error refused—Rowan v. Stowe, Civ.App., 193 S.W. 434—Gulf, T. & W. Ry. Co. v. Dickey, Civ.App., 171 S.W. 1097, reversed on other grounds, Com.App., 187 S.W. 184.
4 C.J. p 936 note 84.

52. U.S.—U. S. v. Fifteen Cases of Bred Spred, Raspberry Flavor, C.C.A.Ind., 35 F.2d 183.
U. S. v. Northern Pac. Ry. Co., C.C.A.Wash., 293 F. 657.
Ala.—Eady v. Heaton, 140 So. 408, 224 Ala. 327—Latter v. Schwarz, 137 So. 27, 223 Ala. 438—Bell v. Brotherhood of Railroad Trainmen, 107 So. 810, 214 Ala. 302—Newell Contracting Co. v. Glenn, 107 So. 801, 214 Ala. 282—Finney v. Newson, 82 So. 441, 203 Ala. 191—U. S. Health & Accident Ins. Co. v. Goin, 73 So. 117, 197 Ala. 584.
Cleveland v. Towle, 106 So. 58, 21 Ala.App. 161, reversed on other grounds Ex parte Towle, 106 So. 60, 213 Ala. 129—Knights of Modern Maccabees v. Gillespie, 71 So. 67, 14 Ala.App. 493—Loy v. Reid, 65 So. 855, 11 Ala.App. 231.
Cal.—Ransch v. Arp, 179 P. 694, 39 C.A. 580.
Fla.—Bostwick v. Antuono, 156 So. 435, 116 Fla. 208.
Ga.—Whitworth v. Oliver, 165 S.E. 767, 45 Ga.App. 671.
Ind.—Luckett v. Hammond, 124 N.E. 675, 188 Ind. 484—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.
Foudy v. Daugherty, 76 N.E.2d 268, 118 Ind.App. 68—Nesbitt v. Miller, 188 N.E. 702, 98 Ind.App. 702—Lester v. Hinkle, 153 N.E. 179, 90 Ind.App. 193—Maxwell Implement Co. v. Fitzgerald, 146 N.E. 883, 85 Ind.App. 206—Weil v. Connecticut Fire Ins. Co., 139 N.E. 696, 79 Ind.App. 421—Buckel v. Auer, 120 N.E. 437, 68 Ind.App. 320—Harris v. Greer-Wilkinson Lumber Co., 113 N.E. 322, 62 Ind.App. 697—Harris v. Routt, 113 N.E. 322, 62 Ind.App. 696—Harris v. Rogers, 113 N.E. 322, 62 Ind.App. 696—Harris v. International Steel & Iron Const. Co., 112 N.E. 532, 62 Ind.App. 64—Dietrich v. Minas, 109 N.E. 930, 61 Ind.App. 333.
Ky.—Stuart v. Clements, 216 S.W. 136, 186 Ky. 9—Wash v. Noel, 170 S.W. 197, 160 Ky. 847—Williamson's Adm'r v. Norfolk & W. R. Co., 169 S.W. 613, 160 Ky. 158.
Tex.—McFarlin v. Elliott-Tuck, Inc., Civ.App., 71 S.W.2d 410—Ablon v. King, Civ.App., 279 S.W. 563—Masterson v. Amarillo Oil Co., Civ.App., 253 S.W. 908—Houston & T. C. Ry. Co. v. Meadors, Civ.App., 169 S.W. 1106.
Va.—Hunter v. Burroughs, 96 S.E. 360, 123 Va. 113.
4 C.J. p 936 note 85.

53. Cal.—North Confidence Mining & Development Co. v. Morrice, 204 P. 851, 56 C.A. 145.
Ga.—Hinesley v. Anderson, 43 S.E.2d 736, 75 Ga.App. 394.
Ind.—McKay v. Corwine, 119 N.E. 471, 69 Ind.App. 208.
Tex.—Brady-Neely Grocer Co. v. De Foe, Civ.App., 169 S.W. 1135.

54. Ala.—Spalding Mfg. Co. v. Larren, 77 So. 971, 16 Ala.App. 359.
Ind.—National Surety Co. v. Fletcher Savings & Trust Co., 169 N.E. 524, 201 Ind. 631.
Michigan Cent. R. Co. v. S. J. Peabody Lumber Co., 131 N.E. 841, 76 Ind.App. 222—Fairbanks, Morse & Co. v. Gardner, 126 N.E. 338, 72 Ind.App. 647.
4 C.J. p 937 note 3.

55. Ala.—Ex parte Lackey, 153 So. 289, 228 Ala. 106—Schwartz Motor Co. v. Bradley Real Estate & Insurance Co., 125 So. 26, 220 Ala. 295.
Ind.—Fairbanks, Morse & Co. v. Gardner, 126 N.E. 338, 72 Ind.App. 647—Merchants' Nat. Bank of Massillon, Ohio, v. Nees, 110 N.E. 73, 62 Ind.App. 290, rehearing denied 112 N.E. 904, 62 Ind.App. 290.

56. Ala.—Dixie Industrial Co. v. Atlas Lumber Co., 81 So. 64, 202 Ala. 562.
Southern Ry. Co. v. Jarvis, 66 So. 936, 11 Ala.App. 635.
Fla.—S. H. Kress & Co. v. Powell, 180 So. 757, 132 Fla. 471.
Ga.—Whitley Const. Co. v. Price, 79 S.E.2d 416, 89 Ga.App. 352.
Ind.—Attica Building & Loan Ass'n of Attica v. Colvert, 23 N.E.2d 483, 216 Ind. 192—Continental Nat. Bank of Indianapolis v. Discount & Deposit State Bank of Kentland, 157 N.E. 433, 199 Ind. 290.
Michael v. Mitchell, 73 N.E.2d 363, 118 Ind.App. 18—Trinkle v. Ladoga Bldg. Loan Fund & Savings Ass'n, 117 N.E. 542, 65 Ind.App. 415.
Tex.—Independent Eastern Torpedo Co. v. Carter, Civ.App., 131 S.W.2d 125.
4 C.J. p 937 note 4.

tive portion of a pleading to which a demurrer was interposed and was overruled, the judgment will be reversed.

Petition or complaint. Overruling a demurrer to a count or part of a petition or complaint is harmless where plaintiff could properly recover under other sufficient counts or parts,[57] as where similar allegations to those not sustained on demurrer appeared elsewhere in the petition but were not demurred to,[57.5] or the averments demurred to were immaterial and not essential to recovery,[58] or the allegation as a conclusion of the pleader is harmless in view of the evidence,[58.5] or no evidence was admitted which was not admissible under other counts of the declaration,[59] or where allegations in a petition excepted to by defendant in no way broadened the proof admissible under other allegations,[59.5] or the part to which the demurrer was directed is not supported by the evidence,[60] or is cured by a charge to the jury,[60.5] or is otherwise eliminated from the case so that the final result is in no way based thereon.[61]

57. Ala.—Hamilton v. Browning, 57 So.2d 530, 257 Ala. 72—Brush v. Rountree, 32 So.2d 246, 249 Ala. 567—Louisville & N. R. Co. v. Grizzard, 189 So. 203, 238 Ala. 49, certiorari denied 60 S.Ct. 140, 308 U. S. 603, 84 L.Ed. 504—McClelland v. Coston, 149 So. 697, 227 Ala. 267—Alabama Power Co. v. Lewis, 141 So. 229, 224 Ala. 594—Smith v. Summers, 112 So. 344, 215 Ala. 690—Gillis v. White, 106 So. 166, 214 Ala. 22—McCarty v. Williams, 102 So. 133, 212 Ala. 232—National Life & Accident Ins. Co. v. Hannon, 101 So. 892, 212 Ala. 184—Stallworth Turpentine Co. v. Ward, 98 So. 719, 210 Ala. 595—Dixie Pratt Coal Mining Co. v. Arrant Ins. Agency, 96 So. 193, 209 Ala. 289—Choctaw Coal & Mining Co. v. Lillich, 86 So. 383, 204 Ala. 533, 11 A.L.R. 1014—Ex parte Alabama Great Southern R. Co., 86 So. 100, 204 Ala. 504.

W. B. Davis Hosiery Mill v. Wilson, 74 So.2d 532, 37 Ala.App. 675—White v. Jackson, 62 So.2d 477, 36 Ala.App. 643—Trammell v. Robinson, 37 So.2d 142, 34 Ala.App. 91—Brush v. Rountree, 32 So.2d 244, 33 Ala.App. 227, certiorari denied 32 So.2d 246, 249 Ala. 567—William E. Harden, Inc., v. Harden, 197 So. 94, 29 Ala.App. 411—City of Birmingham v. Lynch, 197 So. 46, 29 Ala.App. 242, certiorari denied 197 So. 48, 240 Ala. 24—Lehigh Portland Cement Co. v. Campbell, 166 So. 727, 27 Ala.App. 130—Hines v. Laurendine, 84 So. 780, 17 Ala.App. 350—Stout v. Thornhill, 79 So. 154, 16 Ala.App. 480—Fagan Peel Co. v. Harrison Co., 79 So. 144, 16 Ala. App. 470.

Cal.—Avery v. Chucawalla Development Co., 166 P. 1002, 175 C. 644.

Fla.—Goodrich v. Lawrence, 189 So. 233, 138 Fla. 287—Miami Poultry & Egg Co. v. City Ice & Fuel Co., 172 So. 82, 126 Fla. 563.

Ga.—Wright Contracting Co. v. Waller, 81 S.E.2d 541, 89 Ga.App. 827—Miller Service v. Miller, 48 S.E. 2d 761, 77 Ga.App. 413—State Farm Mut. Auto Ins. Co. v. Collins, 43 S.E.2d 277, 75 Ga.App. 335—Burnsed v. Spivey, 184 S.E. 410, 52 Ga. App. 646—Montezuma Live Stock Co. v. Dover, 111 S.E. 441, 28 Ga. App. 392.

Ind.—Laiskomis v. Federal Land Bank of Louisville, 4 N.E.2d 204, 210 Ind. 577.

Switzer v. Armantront, 19 N.E. 2d 858, 106 Ind.App. 468.

Md.—Woodcock v. Dennis, 199 A. 845, 175 Md. 9—Hines v. Symington, 112 A. 814, 137 Md. 441.

Okl.—City of Altus v. Martin, 94 P. 2d 1, 185 Okl. 446.

Tex.—Sweet v. Berry, Civ.App., 236 S.W. 531, dismissed for want of jurisdiction.

W.Va.—Hill v. Norton, 82 S.E. 363, 74 W.Va. 428, Ann.Cas.1917D 489.

57.5 Ga.—Davis v. Macon Tel. Pub. Co., 92 S.E.2d 619, 93 Ga.App. 633.

58. Ala.—Gulf States Steel Co. v. Carpenter, 87 So. 580, 205 Ala. 162.

Ga.—Hill v. Horsley, 82 S.E. 225, 142 Ga. 12.

Morgan v. Crowley, 85 S.E.2d 40, 91 Ga.App. 58.

Tex.—Shelton v. Lock, Civ.App., 19 S.W.2d 124—Mason v. Gantz, Civ. App., 226 S.W. 435—Morris v. Brown, Civ.App., 173 S.W. 265.

4 C.J. p 937 notes 90, 91.

58.5 Ga.—Aycock v. Williams, 196 S.E. 54, 185 Ga. 585.

59. Ala.—Globe & Rutgers Fire Ins. Co. v. Home Investment & Loan Corporation, 146 So. 610, 226 Ala. 275.

Ind.—Bollenbacher v. Miller, 179 N. E. 556, 94 Ind.App. 409.

W.Va.—Laraway v. Croft Lumber Co., 84 S.E. 333, 75 W.Va. 510.

4 C.J. p 937 note 87.

59.5 Tex.—Texas Indemnity Ins. Co. v. Godsey, Civ.App., 143 S.W.2d 639, error refused.

60. Tex.—Texas & P. Ry. Co. v. Baldwin, Civ.App., 25 S.W.2d 969, affirmed, Com.App., 44 S.W.2d 909, certiorari denied 53 S.Ct. 11, 287 U.S. 606, 77 L.Ed. 527—Lancaster v. Mebane, Civ.App., 260 S.W. 256.

4 C.J. p 936 note 86.

60.5 Ga.—Mills v. Williams, 67 S.E. 2d 212, 208 Ga. 425.

Whitley Const. Co. v. Price, 79 S.E.2d 416, 89 Ga.App. 352—Atlanta, B. & C. R. Co. v. Davis, 187 S.E. 143, 53 Ga.App. 814.

61. Ala.—Newell Contracting Co. v. Glenn, 107 So. 801, 214 Ala. 282—Wood & Pritchard v. McClure, 96 So. 577, 209 Ala. 523—Butler Cotton Oil Co. v. Brooks, 94 So. 518, 208 Ala. 386—Birmingham Bottling Co. v. Morris, 69 So. 85, 193 Ala. 627.

Putman v. White, 88 So. 355, 18 Ala.App. 15—Central of Georgia Ry. Co. v. Faust, 82 So. 36, 17 Ala. App. 96, certiorari denied Ex parte Central of Georgia Railway Co., 82 So. 345, 203 Ala. 248.

Conn.—Gruskay v. Simenauskas, 140 A. 724, 107 Conn. 380.

Ga.—Burnsed v. Spivey, 184 S.E. 410, 52 Ga.App. 646—Idle Hour Club v. Robinson, 157 S.E. 125, 42 Ga.App. 650.

Ind.—Pittsburgh, C., C. & St. L. Ry. Co. v. Kearns, 128 N.E. 42, 191 Ind. 1—First Nat. Bank v. Garner, 118 N.E. 813, 187 Ind. 391, rehearing denied 119 N.E. 711, 187 Ind. 391.

New York, C. & St. L. R. Co. v. Laudenslager, App., 141 N.E.2d 355—Chicago & Erie R. Co. v. Patterson, 34 N.E.2d 960, 110 Ind.App. 94.

Md.—Harshman v. Mercer, 109 A. 437, 135 Md. 595.

Tex.—Weiss v. Gaines, Civ.App., 51 S.W.2d 428, set aside on other grounds, Com.App., 81 S.W.2d 39—Oil Well Supply Co. v. Jowell, Civ.App., 48 S.W.2d 406—Gulf, C. & S. F. Ry. Co. v. Conley, Civ.App., 236 S.W. 521, reversed on other grounds 252 S.W. 737, affirmed 260 S.W. 561, 113 Tex. 472, 32 A.L.R. 1183—Halff Co. v. Waugh, Civ. App., 183 S.W. 839, error refused—Missouri, K. & T. Ry. Co. of Texas v. Ryon, Civ.App., 177 S.W. 525.

4 C.J. p 937 notes 88, 89, 92, 93.

Affirmative charge given for defendant on count as to which demurrer was overruled.

Ala.—Birmingham Purchasing Co. v. Colvin, 123 So. 45, 219 Ala. 662.

4 C.J. p 937 note 93.

Election of plaintiff to proceed on another count or part of pleading other than that demurred to.

Ga.—Reidsville, etc., R. Co. v. Baxter, 79 S.E. 187, 13 Ga.App. 357.

It has been held that error in overruling a demurrer to a count on the ground of repugnancy in joining charges of wanton and simple negligence is not rendered harmless by the fact that the complaint contained two good counts charging simple negligence alone, where the bad count charging only wanton negligence was submitted to the jury as a good count based on wanton negligence.[62]

Plea or answer. With respect to pleas or answers it has been held that the overruling of a demurrer to one or more pleas or paragraphs of an answer will not constitute reversible error where the facts set up were provable under other parts of the pleadings;[63] the judgment was based on other pleas[64] or paragraphs,[65] or no evidence was admitted in support of the plea;[66] or defendant was entitled to the general charge upon other pleas;[67] or there was no evidence to support the counts of the complaint to which the pleas were addressed;[68] or the court failed to submit any issue as to the allegations of the plea or paragraph;[69] or where the finding was in favor of plaintiff.[70]

On the other hand, in a proper case there may be reversible error in overruling a special demurrer to an answer.[70.5] Thus, in the absence of the charge of the lower court, where such court improperly

Jury instructed not to consider evidence on issues raised by part of pleading demurred to.

Ala.—Ballenger v. Shumate, 65 So. 416, 10 Ala.App. 329.

4 C.J. p 937 note 88.

62. Ala.—Central of Georgia R. Co. v. Mathis, 64 So. 197, 9 Ala.App. 643.

63. Ala.—Lollar v. Jones, 157 So. 209, 229 Ala. 329—Newell Contracting Co. v. Lacy, 155 So. 379, 229 Ala. 208—Perkins Oil Co. of Delaware v. Davis, 153 So. 417, 228 Ala. 190—First Nat. Bank v. Jackson County, 150 So. 690, 227 Ala. 448—Dawson v. Dawson, 138 So. 414, 224 Ala. 13—Tipton v. Duke, 127 So. 524, 221 Ala. 77—Armour Fertilizer Works v. Kinney, 114 So. 41, 216 Ala. 547—Abbott v. Alabama Power Co., 107 So. 811, 214 Ala. 281—Fribush v. Friedman, 100 So. 100, 211 Ala. 166—Shannon v. McClung, 97 So. 840, 210 Ala. 273—Shearin v. Pizitz, 94 So. 92, 208 Ala. 244—Bice v. Steverson, 88 So. 753, 205 Ala. 576—Dixie Industrial Co. v. Atlas Lumber Co., 81 So. 64, 202 Ala. 562—Hambright v. Birmingham Ry., Light & Power Co., 77 So. 702, 201 Ala. 176.

Brotherhood of R. R. Trainmen Ins. Dept. v. Pemberton, 93 So.2d 797, 38 Ala.App. 647, certiorari denied 93 So.2d 801, 265 Ala. 694—Faust v. Baker, 20 So.2d 727, 31 Ala.App. 596, appeal denied 20 So. 2d 731, 246 Ala. 378—Southern Indemnity Ass'n v. Hoffman, 77 So. 424, 16 Ala.App. 274.

Cal.—Sorci v. Crisci, App., 309 P.2d 937.

Conn.—Equitable Industrial Loan Soc. v. Kelly, 199 A. 766, 124 Conn. 346, 116 A.L.R. 1357—Murphy v. Ossola, 199 A. 648, 124 Conn. 366.

Fla.—Harvey v. Bank of Center Hill, 90 So. 699, 83 Fla. 55.

Ga.—Sheraton Whitehall Corp. v. McConnell, 77 S.E.2d 752, 88 Ga. App. 725.

Ill.—Whitaker Paper Co. v. Galesburg Mail Co., 238 Ill.App. 600.

Ind.—State v. Wirt, 177 N.E. 441, 203 Ind. 121.

Rapp v. Harrold, 154 N.E. 679, 85 Ind.App. 494—Burton v. Burton, 133 N.E. 612, 77 Ind.App. 436—Garn v. Houser, 128 N.E. 772, 75 Ind.App. 364—Campbell v. Pugsley, 125 N.E. 585, 73 Ind.App. 305—Excel Furniture Co. v. Brock, 114 N.E. 701, 63 Ind.App. 494—Harris v. Greer-Wilkinson Lumber Co., 113 N.E. 322, 62 Ind.App. 697—Harris v. Routt, 113 N.E. 322, 62 Ind. App. 696—Harris v. Rogers, 113 N. E. 322, 62 Ind.App. 696—Harris v. International Steel & Iron Const. Co., 112 N.E. 532, 62 Ind.App. 64.

Mont.—Apple v. Edwards, 16 P.2d 700, 92 Mont. 524, 87 A.L.R. 179.

4 C.J. p 937 note 94.

Matter set up must constitute good defense

(1) If the matter stated in the plea or paragraph of the answer to which the demurrer is erroneously overruled does not constitute a legal defense, the error is prejudicial and ground for reversal, although proof of the matter alleged in the bad paragraph would be admissible under another.

Ind.—Allen Realty Co. v. Uhler, 146 N.E. 766, 83 Ind.App. 103.

(2) "In other words, if a demurrer is overruled to a plea which imperfectly sets up a good defense, provable under the general issue, the special plea being bad because of form, rather than substance, and proof of the facts averred would establish a good defense, provable under the good plea, the overruling of the demurrer to said defective plea could not be injurious; but, if the trial court overrules a demurrer to a plea defective in substance, that is, the facts set up did not constitute a legal defense, the error could not be without injury, notwithstanding the facts so set up were provable under a good plea in the case, for the reason that the defendant would be entitled to a judgment upon proof of a plea which did not set up a complete legal defense."

Ala.—Shearin v. Pizitz, 94 So. 92, 93, 208 Ala. 244.

64. Ala.—Trammell v. Robinson, 87 So.2d 142, 34 Ala.App. 91.

Fla.—Hensley Ins. Co. v. Echols, 31 So.2d 625, 159 Fla. 324.

Ill.—Road Dist. No. 11, Scott County, Ill. v. Coultas, 212 Ill.App. 18.

4 C.J. p 937 note 95.

65. Ind.—Miller v. McDonald, 39 N. E. 159, 139 Ind. 465—Parry v. Richmond, 27 Ind. 66.

Levi v. Allen, 43 N.E. 571, 15 Ind.App. 38.

66. Ala.—Hoffman v. Birmingham Ry., Light & Power Co., 69 So. 551, 194 Ala. 30.

Ind.—Smith v. Frantz, 109 N.E. 407, 59 Ind.App. 260.

4 C.J. p 937 note 96.

67. Ala.—Kiker v. Sovereign Camp, W. O. W., 167 So. 313, 232 Ala. 151—Birmingham-Trussville Iron Co. v. Allied Engineers, 144 So. 1, 225 Ala. 522—Lawrenceburg Roller Mills Co. v. Chas. A. Jones Co., 85 So. 719, 204 Ala. 59.

4 C.J. p 937 note 97.

68. Ala.—Hambright v. Birmingham Ry., Light & Power Co., 77 So. 702, 201 Ala. 176—Walker v. John Smith, T., 74 So. 451, 199 Ala. 514.

Hurt v. Atlanta, B. & A. Ry. Co., 84 So. 631, 17 Ala.App. 241.

Ind.—Drinski v. Putek, 83 N.E.2d 435, 119 Ind.App. 262.

4 C.J. p 937 note 99.

69. Ind.—Crouch v. Parker, 125 N.E. 453, 188 Ind. 660, 7 A.L.R. 1598.

Tex.—Tyler Box & Lumber Mfg. Co. v. City Nat. Bank of Paris, Civ. App., 185 S.W. 352—Williams v. Phelps, Civ.App., 171 S.W. 1100.

4 C.J. p 937 note 1.

70. Ind.—Ladoga Canning Co. v. Corydon Canning Co., 98 N.E. 849, 52 Ind.App. 23—Krohn v. Anderson, 64 N.E. 621, 29 Ind.App. 379.

Tex.—Colls v. Price's Creameries, Civ.App., 244 S.W.2d 900, error refused no reversible error.

70.5 Ga.—Trusco Finance Co. v. Lewis, 91 S.E.2d 60, 93 Ga.App. 123.

overruled a special demurrer to a paragraph of the answer, an appellate court may not determine that the error was harmless because the issue was assertedly withdrawn from the jury.[70.10]

c. Cure by Amendment, Abandonment, or Pleading Over

The fact that the pleading demurred to has been amended or abandoned, or the party has pleaded over, may render harmless an error in overruling a demurrer.

Error in overruling a demurrer is harmless where the pleading is amended,[71] or could have been amended had the demurrer been sustained,[71.5] to obviate the objection, or is abandoned or withdrawn at the trial;[72] and where the party pleads over, the objection is waived.[73] Where the trial court gives no instructions under certain paragraphs of defendant's pleadings, plaintiff is not prejudiced by overruling his general demurrer to such paragraphs, and the appellate court will not discuss the question whether the trial court erred in such rulings.[73.5]

§ 1687(4). —— —— Errors of Practice with Relation to Demurrers or Exceptions

Errors in practice with respect to ruling or not ruling on demurrers or exceptions are not ground for reversal where no substantial rights have been adversely affected.

In the absence of prejudice resulting therefrom, errors in practice with respect to a demurrer or an exception will not be ground for reversal,[74] as

70.10 Ga.—Trusco Finance Co. v. Lewis, 91 S.E.2d 60, 93 Ga.App. 123.

71. Ala.—Spurling v. Fillingim, 12 So.2d 740, 244 Ala. 172—Drummond v. Drummond, 102 So. 112, 212 Ala. 242.
Cal.—Miguel v. Miguel, 193 P. 935, 184 C. 311.
Lake County v. Forbes, 109 P.2d 972, 42 C.A.2d 744—Turner & Dahnken v. Bauer, 152 P. 308, 28 C. A. 311.
Ga.—Burk v. Tyrrell, 91 S.E.2d 744, 212 Ga. 239—Irwin v. Torbert, 49 S.E.2d 70, 204 Ga. 111—Fay v. Burton, 95 S.E. 224, 147 Ga. 648—Witt v. Nesar, 89 S.E. 747, 145 Ga. 674.
Southern Ry. Co. v. Liley, 43 S.E. 2d 576, 75 Ga.App. 489—Rubin & Cherry Exposition v. Bray, 6 S.E. 2d 425, 61 Ga.App. 232—Western & A. R. R. v. Allgood, 153 S.E. 442, 41 Ga.App. 484—Western & A. R. R. v. Allgood, 153 S.E. 441, 41 Ga. App. 483—Pullman Co. v. Strang, 132 S.E. 399, 35 Ga.App. 59—Hagedorn v. Zemurray, 113 S.E. 244, 28 Ga.App. 807.
Idaho.—Todd v. City of Hailey, 260 P. 1092, 45 Idaho 175.
Ind.—Slifer v. Williard, 131 N.E. 87, 78 Ind.App. 88—Jones v. Chatfield & Woods Co., 110 N.E. 561, 60 Ind. App. 265.
Ky.—Gott v. Franklin, 211 S.W.2d 680, 307 Ky. 466—Rose v. Wigginton, 269 S.W. 761, 207 Ky. 627—Moody v. Barker, 222 S.W. 89, 188 Ky. 401—Owensboro City R. Co. v. Owensboro Fuel Co., 216 S.W. 72, 185 Ky. 717.
Okl.—School Dist. No. 60 of Ellis County v. Crabtree, 294 P. 171, 146 Okl. 197.
Tex.—Meriwether v. Stanfield, Civ. App., 196 S.W.2d 704—Foster v. Hackworth, Civ.App., 164 S.W.2d 796—Coleman v. Miller, Civ.App., 19 S.W.2d 829, affirmed C. R. Miller Mfg. Co. v. Coleman, Com.App., 39 S.W. 991—American Transfer & Storage Co. v. Rush, Civ.App., 8 S.W.2d 756—Pomona Mut. Oil Syndicate v. Williamsport Wire Rope Co., Civ.App., 282 S.W. 958—Vaky v. Phelps, Civ.App., 194 S.W. 601, error refused.
Wash.—Skarlatos v. Brice, 164 P. 939, 96 Wash. 205.
4 C.J. p 937 note 6.
Action tantamount to an amendment
N.C.—Freeman v. Ball, 13 S.E.2d 531, 219 N.C. 329.

71.5 S.C.—Tobias v. Carolina Power & Light Co., 2 S.E.2d 686, 190 S.C. 181.

72. Ala.—Spurling v. Fillingim, 12 So.2d 740, 244 Ala. 172.
Fla.—Delco Light Co. v. John Le Roy Hutchinson Properties, 128 So. 831, 99 Fla. 410.
Ga.—Southern Ry. Co. v. Heaton, 6 S.E.2d 339, 61 Ga.App. 386.
Tex.—National Life & Accident Ins. Co. v. Robledo, Civ.App., 93 S.W.2d 1198, error dismissed—Wolf v. Wolf, Civ.App., 269 S.W. 488.
4 C.J. p 938 note 7.
Issue not submitted to jury
Ga.—American Fidelity & Cas. Co. v. Farmer, 48 S.E.2d 122, 77 Ga.App. 166.
Mo.—Ozias v. South Side Bank of Kansas City, App., 128 S.W.2d 283.
Tex.—Montgomery Ward & Co. v. Levy, Civ.App., 136 S.W.2d 663, error dismissed, judgment correct.

73. Wash.—Halverstadt v. Estus, 295 P. 175, 160 Wash. 390.
4 C.J. p 938 note 9.

73.5 Ky.—Halcomb v. Wilson, 129 S.W.2d 178, 278 Ky. 642.

74. Cal.—Eustace v. Dechter, 128 P.2d 367, 53 C.A.2d 726.
Colo.—Sweet v. Barnard, 182 P. 22, 66 Colo. 526.
Fla.—Reliance Life Ins. Co. v. Gray, 102 So. 764, 89 Fla. 20.
Ga.—Ewart v. E. Philips & Sons, 162 S.E. 271, 174 Ga. 70.
Carter v. Rich's, Inc., 63 S.E.2d 241, 83 Ga.App. 188.
Ky.—Rose v. Martin, 215 S.W.2d 579, 308 Ky. 661—McGinnis v. McGinnis' Ex'r, 190 S.W.2d 323, 300 Ky. 759—Tinsley v. Gibson, 183 S.W.2d 528, 298 Ky. 533.
La.—Bickham v. Pitts, 171 So. 80, 185 La. 930.
Md.—Coddington v. Helbig, 73 A.2d 454, 195 Md. 330.
N.C.—Griggs v. Griggs, 197 S.E. 165, 213 N.C. 624.
Ohio.—Schaefer v. First Nat. Bank, 18 N.E.2d 263, 134 Ohio St. 511.
Okl.—Holbert v. Patrick, 176 P. 903, 74 Okl. 290.
Tex.—Travelers Ins. Co. v. Nelle, Civ.App., 115 S.W.2d 988, error dismissed—Maytag Southwestern Co. v. Thornton, Civ.App., 20 S.W.2d 383.
Wyo.—Beck v. Adams, 174 P.2d 134, 62 Wyo. 431.
4 C.J. p 938 note 10.
Pendente lite ruling
(1) Rule of practice making a ruling on demurrer a pendente lite ruling if exceptions pendente lite are certified and filed by demurrant is not prejudicial to demurrant, since ruling is harmless in the event of a judgment in demurrant's favor and since a review of the ruling on demurrer may be had by assigning error on the exceptions pendente lite in a direct bill of exceptions to final judgment in event of an adverse judgment.
Ga.—Smith v. Barksdale, 35 S.E.2d 149, 199 Ga. 723.
(2) Where pendente lite ruling on a demurrer in no way affected the merits of the case, reversible error would not be predicated thereon.
Ga.—Dye v. Richards, 81 S.E.2d 820, 210 Ga. 601.
Special exception as general demurrer
Action of trial court in treating special exception as general demurrer and dismissing cause may in unusual cases be classified as harmless error.

where a correct result was reached in ruling on the pleadings, although the demurrer sustained was defective,[75] or was not the appropriate remedy,[76] although a motion to strike was filed simultaneously with a demurrer,[77] or although the court failed to designate the ground of demurrer sustained as required by statute,[78] or to change the date of the order on the demurrer to the proper date.[79] Entering judgment on demurrer to an amended replication, without first disposing of an issue raised by demurrer to the original replication, will not be ground for reversal where no prejudice results.[80] If apparent justice has been done, error of the court, in proceeding to trial without amendment of the pleadings after a demurrer thereto has been properly sustained, will be considered harmless.[81] Error of the court in ruling on special demurrer to a pleading after a general demurrer thereto has been sustained is, likewise, harmless.[82]

Although the failure to pass on apparently meritorious demurrers before proceeding to trial may give rise to reversible error,[83] failure to pass on a demurrer is harmless where no substantial prejudice to appellant results,[84] as where the demurrer is without merit,[85] the court rules on another demurrer which covers the main points urged in the demurrer not ruled on,[86] or the opposite party is entitled, as a matter of law, to judgment;[87] and failure to rule on a demurrer to a plea of non assumpsit, in an action of debt, is not prejudicial where defendant thereafter filed a plea of nil debet in place thereof, since, had the court ruled, it would doubtless have permitted defendant to plead over.[88] Also, failure of the court to rule on a plea and demurrer until after the jury are sworn is a mere irregularity having no prejudicial effect as to either party and does not constitute reversible error.[88.5]

Tex.—Martin v. Hunter, Civ.App., 233 S.W.2d 354, error refused no reversible error.

Hearing on wrong day

Although the court has erroneously sustained a demurrer to a petition on a day when its rules do not permit a hearing, the error will be regarded as harmless where the petition does not state sufficient facts to entitle plaintiff to the relief demanded.

Okl.—Holbert v. Patrick, 176 P. 903, 74 Okl. 290.

75. Fla.—Mortimer Co. v. Fridstein, 133 So. 566, 101 Fla. 33.
Ind.—Larimore v. Indianapolis Water Co., 151 N.E. 333, 197 Ind. 457—Washington Hotel Realty Co. v. Bedford Stone & Construction Co., 143 N.E. 156, 195 Ind. 128, motion denied 148 N.E. 405, 196 Ind. 396—Kokomo, F. & W. Traction Co. v. Kokomo Trust Co., 137 N.E. 763, 193 Ind. 219—State v. Palmer, 110 N.E. 213, 184 Ind. 7—Spaulding v. Mott, 76 N.E. 620, 167 Ind. 58—Garrett v. Bissell Chilled Plow Works, 56 N.E. 667, 154 Ind. 319.
Pattie v. State, 130 N.E. 421, 75 Ind.App. 233—Herald Pub. Co. v. State, 114 N.E. 703, 63 Ind.App. 465—Fender v. Phillips, 108 N.E. 971, 59 Ind.App. 85.
4 C.J. p 938 note 11.

Defective demurrer to bad pleadings

(1) Mere insufficiency in the form of a demurrer to a pleading is not cause for reversing the judgment, if the pleading to which it was addressed is bad.

Ind.—Kokomo, F. & W. Traction Co. v. Kokomo Trust Co., 137 N.E. 763, 193 Ind. 219—State v. Palmer, 110 N.E. 213, 184 Ind. 7.
4 C.J. p 938 note 11 [a].

(2) Reversal has been granted, however, for error in sustaining a demurrer which failed to set out the ground therefor as required by statute, although the pleading to which the demurrer was made was properly demurrable.

Ala.—Sandlin v. Maury Nat. Bank, 98 So. 190, 210 Ala. 349.

76. Colo.—Sweet v. Barnard, 182 P. 22, 66 Colo. 526.
Fla.—Armstrong v. Seaboard Air Line Ry. Co., 95 So. 506, 85 Fla. 126.
Ind.—Campbell v. Langford, 118 N. E. 571, 66 Ind.App. 553.
Ky.—Wahl v. Lockwood & Gasser, 12 S.W.2d 321, 227 Ky. 183.
Va.—Withrow's Ex'x v. Porter, 109 S.E. 441, 131 Va. 623.
4 C.J. p 938 note 12.

77. Colo.—Enright v. Midland Sampling, etc., Co., 80 P. 1041, 33 Colo. 341.
4 C.J. p 938 note 13.

78. Conn.—Patterson v. Farmington St. R. Co., 57 A. 853, 76 Conn. 628.
Fla.—Tice v. Dickerson, 53 So. 645, 60 Fla. 380.
Md.—Continental Trust Co. v. Baltimore Refrigerating, etc., Co., 87 A. 947, 120 Md. 450, 46 L.R.A.,N.S., 887.

79. Ga.—Williams Mfg. Co. v. J. S. Schofield's Sons Co., 93 S.E. 527, 21 Ga.App. 23.

80. Ill.—Ray v. Keith, 75 N.E. 921, 218 Ill. 182.

81. Tex.—Stevens v. Triggo, Civ. App., 296 S.W. 979, affirmed Sereno v. Triggo, Com.App., 1 S.W.2d 607.

82. Tex.—Maytag Southwestern Co. v. Thornton, Civ.App., 20 S.W.2d 383.

83. Ga.—Firemen's Ins. Co. v. Oliver, 167 S.E. 909, 46 Ga.App. 507.

84. U.S.—United Verde Extension Mining Co. v. Koso, C.C.A.Ariz., 273 F. 369.
Ala.—Greil Bros. Co. v. McLain, 89 So. 505, 206 Ala. 212.
Ga.—Anderson v. Fulton County Home Builders, 92 S.E. 934, 147 Ga. 104.
Ky.—Motor Wheel Corp. v. Minter, 183 S.W.2d 535, 298 Ky. 512.
4 C.J. p 938 note 16.

85. Ala.—Greil Bros. Co. v. McLain, 89 So. 505, 206 Ala. 212.
Ga.—Seaboard Air Line Ry. Co. v. Jolly, 127 S.E. 765, 160 Ga. 315.
Iowa.—Sloanaker v. Howerton, 166 N.W. 78, 182 Iowa 487.
Tex.—Quanah, A. & P. Ry. Co. v. Wiseman, Civ.App., 247 S.W. 695—City of Brownsville v. Tumlinson, Civ.App., 179 S.W. 1107.
4 C.J. p 938 note 17.

Entry of final decree

Fact that judge refused to pass on demurrer to petition until entry of final decree when demurrer was overruled was no ground for reversal of decree unless the demurrer was well taken.

Ala.—Riley v. Wilkinson, 23 So.2d 582, 247 Ala. 231.

Power of appellate court

The appellate court has power to pass on the merits of the demurrer to determine whether or not the trial court's failure to consider the same was harmless.

Ga.—Seaboard Air Line Ry. Co. v. Jolly, 127 S.E. 765, 160 Ga. 315.

86. U.S.—United Verde Extension Mining Co. v. Koso, C.C.A.Ariz., 273 F. 369.

87. Colo.—Castner v. Gray, 131 P. 404, 54 Colo. 551.

88. R.I.—Di Lauro v. Cerullo, 89 A. 241.

88.5 W.Va.—Riley v. West Virginia Northern R. Co., 51 S.E.2d 119, 132

Defendant may not complain of the imposition of terms, on leave to answer on his demurrer being overruled, where he participated in the proceedings and trial, offering evidence and presenting his claims by counsel, thus having practically the same advantages as if answer had been filed.[89] If the court in overruling a demurrer to the petition conditions the same on plaintiff's filing a copy of the instrument on which the suit is based, plaintiff's failure to comply with this condition cannot be urged as reversible error by defendant, where he, in his answer, refers to such instrument and admits its existence.[90]

The fact that a demurrer is sustained and the case dismissed without leave to amend does not constitute reversible error in the absence of a request or application by plaintiff for permission to amend,[91] or where the defect is with respect to a matter that could not have been amended;[92] and plaintiff may not complain that the failure to notify him of the sustaining of a demurrer to a complaint deprived him of a reasonable opportunity to ask leave to amend, where it does not appear that he lacked actual notice of the making of the order and a sufficient time elapsed before entry of the judgment.[92.5]

Where a general demurrer is sustained without leave to amend the petition to meet special exceptions, the judgment must be reversed unless the general demurrer was properly sustained.[92.10] The fact that a demurrer is sustained without leave to amend does not constitute reversible error where the proposed amendment would not have cured the defect.[92.15] Where a defendant is not liable, it is immaterial that a court sustained a special demurrer of defendant instead of his general demurrer.[92.20]

§ 1688. —— Amendments or Supplemental Pleadings

a. In general
b. Permitting amendment
c. Refusing to allow amendment
d. Allowing or refusing supplemental pleadings

a. In General

In the absence of prejudice to the complaining party, errors in rulings with respect to amendments or supplemental pleadings are harmless.

Error in ruling with respect to amendments to pleadings[93] or error in ruling on supplemental plead-

W.Va. 208, certiorari denied West Virginia Northern R. Co. v. Riley, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113—Pritt v. West Virginia Northern R. Co., 51 S.E.2d 105, 132 W.Va. 184, 6 A.L.R.2d 562, certiorari denied West Virginia Northern R. Co. v. Pritt, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113.

89. Wis.—Steele v. Korn, 118 N.W. 207, 120 N.W. 261, 137 Wis. 51, 129 Am.S.R. 1051.

90. Okl.—Smith v. First Nat. Bank, 36 P.2d 27, 169 Okl. 90.

91. Cal.—Bailey Trading Co. v. Levy, 237 P. 408, 72 C.A. 339.
Ga.—Owens v. Rutherford, 36 S.E.2d 309, 200 Ga. 143.

92. Nev.—Keenan v. Keenan, 164 P. 351, 40 Nev. 351.

92.5 Cal.—Graybiel v. Consolidated Ass'ns, 60 P.2d 164, 16 C.A.2d 20.

Appeal taken promptly

Failure to notify plaintiff of entry of judgment after general demurrer to complaint was sustained was not prejudicial, where he took his appeal therefrom promptly.
Cal.—Graybiel v. Consolidated Ass'ns, supra.

92.10 Cal.—Hurlimann v. Bank of America Nat. Trust & Sav. Ass'n, 297 P.2d 682, 141 C.A.2d 801—Wohlgemuth v. Meyer, 293 P.2d 816, 139 C.A.2d 326.
Tex.—Grota v. Holcombe, Civ.App., 97 S.W.2d 301, reversed on other grounds 102 S.W. 1041, 129 Tex. 100, 110 A.L.R. 234.

92.15 Cal.—George v. Weston, 79 P. 2d 110, 26 C.A.2d 256—Graybiel v. Consolidated Ass'ns, 60 P.2d 164, 16 C.A.2d 20.

92.20 Ky.—McFarland v. Ellison, 99 S.W.2d 779, 266 Ky. 628.

93. U.S.—Westwater v. Murray, Ohio, 245 F. 427, 157 C.C.A. 589.
Ala.—Lindsey v. Atkison, 35 So.2d 191, 250 Ala. 481.
Lampkin v. Thomas, 79 So. 156, 16 Ala.App. 482, modified on other grounds 80 So. 398, 202 Ala. 316.
Cal.—Campagna v. Market Street Ry. Co., 149 P.2d 281, 24 C.2d 304—National City Finance Co. v. Lewis, 14 P.2d 298, 216 C. 254—Green v. Burr, 63 P. 360, 131 C. 236.
Head v. Logan, 102 P.2d 813, 39 C.A.2d 243—Davidson v. National Tool & Metals, 10 P.2d 491, 122 C.A. 720—Hilbert v. Kundicoff, 290 P. 1080, 108 C.A. 85—Karlik v. Peters, 288 P. 863, 106 C.A. 126—Sudden Lumber Co. v. Singer, 284 P. 477, 103 C.A. 386—Ruzanoff v. Retailers Credit Ass'n of Sacramento, 276 P. 156, 97 C.A. 682—Bone v. Dwyer, 265 P. 292, 89 C.A. 535—Grecian v. Jackson, 244 P. 608, 76 C.A. 264—Gaddis v. Grant, 179 P. 410, 39 C.A. 437.
Colo.—Macaluso v. Easley, 253 P. 397, 81 Colo. 50—Drennen v. Williams, 148 P. 265, 59 Colo. 301, Ann.Cas. 1917A 664.
Fla.—Surfside Hotel v. W. E. Moorehead Co., 5 So.2d 857, 149 Fla. 397.
Ga.—Harris v. Neuman, 188 S.E. 689, 183 Ga. 398—Lowery Lock Co. v. Wright, 115 S.E. 801, 154 Ga. 867.
Lee v. Georgia Power Co., 161 S.E. 851, 44 Ga.App. 435—Bell v. Tucker, 139 S.E. 573, 37 Ga.App. 254—Georgia Ry. & Power Co. v. Middlebrooks, 128 S.E. 777, 34 Ga. App. 156—W. L. Wisenbaker & Co. v. West Yellow Pine Co., 86 S.E. 46, 16 Ga.App. 699.
Hawaii.—Borowsky v. Honolulu Rapid Transit Co., 29 Hawaii 188.
Idaho.—Radermacher v. Eckert, 123 P.2d 426, 63 Idaho 531.
Ill.—Scovill Mfg. Co v. Cassidy, 114 N.E. 181, 275 Ill. 462, Ann.Cas. 1918E 602—Hinchliffe v. Wenig Teaming Co., 113 N.E. 707, 274 Ill. 417.
McMahon v. Smith, 275 Ill.App. 56.
Ind.—Needham v. Proffitt, 41 N.E. 2d 606, 220 Ind. 265.
West Virginia Coal & Coke Corp. v. Kokomo Sanitary Pottery Corp., 21 N.E.2d 442, 106 Ind.App. 637—American Surety Co. v. State ex rel. Taber, 1 N.E.2d 295, 102 Ind. App. 378—Folsom v. Buttolph, 143 N.E. 258, 82 Ind.App. 283.
Iowa.—Gjerde v. Thelander, 199 N.W. 401, 197 Iowa 1384—Boyd v. Buick Automobile Co., 165 N.W. 908, 182 Iowa 306—Worex v. Des Moines City Ry. Co., 156 N.W. 867, 175

ings[94] is harmless and no ground for reversal where no substantial rights of the complaining party have been adversely affected by the ruling of the court. This rule is often applied where the amendment involved amounts to mere surplusage,[95] or the prior pleadings are sufficient,[96] or the amendment

Iowa 1—Keller v. Bare, 17 N.W. 666, 62 Iowa 468.
Kan.—Green v. Warnock, 58 P.2d 1059, 144 Kan. 170—Foley v. Schmidt, 224 P. 489, 115 Kan. 621—Raedell v. Anderson, 158 P. 45, 98 Kan. 216.
Ky.—Dr. Pepper Bottling Co. of Kentucky v. Hazelip, 144 S.W.2d 798, 284 Ky. 333—De Borde v. Moore, 277 S.W. 461, 211 Ky. 896—Florence v. Lyons' Adm'r, 245 S.W. 278, 196 Ky. 697.
Continental Ins. Co. v. Randolph, 11 Ky.Op. 125.
Mass.—Janevesian v. Esa, 174 N.E. 279, 274 Mass. 231—Loomis v. Pease, 125 N.E. 177, 234 Mass. 101.
Mich.—Hutchins v. Liberty Life Ins. Co., 227 N.W. 720, 248 Mich. 593.
Minn.—Short v. Great Northern Life Ins. Co., 228 N.W. 440, 179 Minn. 19—Farmers' Bank of Dunn County v. Woolery, 194 N.W. 759, 156 Minn. 193—Nichols, etc., Co. v. Dedrick, 63 N.W. 1110, 61 Minn. 513.
Miss.—Bank of McLain v. Pascagoula Nat. Bank, 117 So. 124, 150 Miss. 738.
Mo.—State ex rel. Hardy v. Farris, 47 S.W.2d 198, 226 Mo.App. 1007—Kinsella v. Marquette-Easton Finance Corporation, App., 28 S.W. 2d 427.
Mont.—Walsh v. Kennedy, 147 P.2d 425, 115 Mont. 551—Doichinoff v. Chicago, M. & St. P. Ry. Co., 154 P. 924, 51 Mont. 582.
Neb.—Miller Rubber Products Co. v. Anderson, 242 N.W. 449, 123 Neb. 247—Folken v. Union Pac. R. Co., 239 N.W. 831, 122 Neb. 193—Neal v. Missouri Pac. Ry. Co., 153 N.W. 492, 98 Neb. 460.
N.H.—Grew v. Boston & M. R. R., 142 A. 707, 83 N.H. 383.
N.J.—McKenna v. Reade, 144 A. 812, 105 N.J.Law 408.
N.M.—Pugh v. Phelps, 19 P.2d 315, 37 N.M. 126.
N.Y.—Donaghue v. Di Giorgio Fruit Corporation, 232 N.Y.S. 178, 225 App.Div. 81—Moliver v. Finegan, 161 N.Y.S. 465, 175 App.Div. 180.
N.D.—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N.D. 734—Sheimo v. Norqual, 153 N.W. 470, 31 N.D. 343.
Ohio.—Flynn v. Sharon Steel Corp., 50 N.E.2d 319, 142 Ohio St. 145.
Community Traction Co. v. Wandtke, 167 N.E. 701, 32 Ohio App. 207.
Okl.—Loos v. Parent, 142 P.2d 616, 193 Okl. 231—Woodruff v. Phillips, 280 P. 449, 138 Okl. 77—Great American Ins. Co. v. Williams, 251 P. 1012, 123 Okl. 206—Shawnee-Tecumseh Traction Co. v. Wollard, 153 P. 1189, 54 Okl. 432.
Or.—Walters v. Dock Commission of City of Portland, 266 P. 634, 126 Or. 487, motion denied 270 P. 778, 126 Or. 487—Irwin v. McElroy, 178 P. 791, 91 Or. 232.
Pa.—McMeekin v. Prudential Ins. Co. of America, 36 A.2d 430, 348 Pa. 568—Yubas v. Makransky, 150 A. 900, 300 Pa. 507.
Miller v. Dillon, 165 A. 64, 108 Pa.Super. 455.
S.C.—Frady v. Ivester, 110 S.E. 135, 118 S.C. 195.
S.D.—Cornell v. Johnson, 241 N.W. 740, 59 S.D. 617—Pinches v. New Farmers' Grain Co., 217 N.W. 190, 52 S.D. 198.
Tex.—Adams v. Johnson, Com.App., 298 S.W. 265.
Chandler v. Welborn, Civ.App., 282 S.W.2d 940, affirmed, Sup., 294 S.W.2d 801—National Surety Co. v. United Brick & Tile Co., Civ.App., 71 S.W.2d 937—Sethman v. Liberty Nat. Bank of Oklahoma City, Okl., Civ.App., 55 S.W.2d 644—Brinkley v. State, Civ.App., 53 S.W.2d 830—Western Union Telegraph Co. v. Hicks, Civ.App., 47 S.W.2d 466—Gill v. Baird, Civ.App., 32 S.W.2d 941, affirmed 77 S.W.2d 201, 124 Tex. 252—Calvin Coal Co. v. First Nat. Bank, Civ.App., 286 S.W. 901—Palm v. Johnson, Civ.App., 255 S.W. 1007—Lumsden v. Jones, Civ.App., 205 S.W. 375—De Berry v. Chambers, Civ.App., 200 S.W. 1141—Guaranty Trust Co. of New York v. Green, Civ.App., 197 S.W. 1026.
Utah.—Tebbs & Tebbs v. Oliveto, 256 P.2d 699—McMonegal v. Fritsch Loan & Trust Co., 286 P. 635, 75 Utah 470, rehearing denied 289 P. 91, 76 Utah 179.
Va.—Barbee v. Murphy, 141 S.E. 237, 149 Va. 406.
Wash.—Hartman v. Barnes Grain & Feed Co., 284 P. 754, 155 Wash. 394—Washington Fire Relief Ass'n v. Albro, 241 P. 856, 137 Wash. 31—Maze v. Feuchtwanger, 179 P. 850, 106 Wash. 327.
Wyo.—Corpus Juris cited in First Nat. Bank v. Ennis, 14 P.2d 201, 208, 44 Wyo. 497, rehearing denied 15 P.2d 1111, 45 Wyo. 165—Eller v. Salathe, 12 P.2d 386, 44 Wyo. 369.
4 C.J. p 943 note 81—33 C.J. p 469 note 31 [a] (2).

94. U.S.—Union Indemnity Co. v. Vetter, C.C.A.Fla., 40 F.2d 606.
Ohio.—Hiler v. Hiler, 14 Ohio App. 174.
Tex.—Payne v. Boswell, Civ.App., 241 S.W. 761.
Va.—Sutherland v. Wampler, 89 S.E. 875, 119 Va. 800.
4 C.J. p 943 note 80.

95. Ariz.—Clint v. Northern Assur. Co., 223 P.2d 401, 71 Ariz. 44.
Idaho.—Lind v. Holland, 215 P. 834, 37 Idaho 178.
Iowa.—Mau v. Rice Bros., 249 N.W. 206, 216 Iowa 864.
La.—Rio v. Gordon, 14 La. 418.
McEachern v. Adcock, 127 So. 99, 13 La.App. 201.
Me.—Di Pietro v. Modes, 126 A. 575, 124 Me. 132.
Mich.—Prussia v. Bailey, 159 N.W. 140, 193 Mich. 77.
Okl.—Kirschner v. Kirschner, 36 P. 2d 297, 169 Okl. 129—Mudd v. Perry, 235 P. 479, 108 Okl. 168.
Or.—Hamm v. McKenny, 144 P. 435, 73 Or. 347.
Va.—Standard Paint Co. v. E. K. Vietor & Co., 91 S.E. 752, 120 Va. 595.
4 C.J. p 944 note 82.

96. Ala.—Miles v. Hines, 87 So. 837, 205 Ala. 83.
Cal.—McClure v. Alberti, 212 P. 204, 190 C. 348.
O'Melia v. Adkins, 166 P.2d 298, 73 C.A.2d 143—Bryson v. Byrer, 262 P. 461, 87 C.A. 320—Richmond v. Denny, 191 P. 554, 47 C.A. 745.
Conn.—Spirt v. Albert, 146 A. 717, 109 Conn. 292.
Ga.—Green v. Green, 168 S.E. 266, 176 Ga. 421—Lee v. Byrd, 151 S.E. 28, 169 Ga. 622—Hall v. Wingate, 126 S.E. 796, 159 Ga. 630.
Ky.—Rouse v. Fergerson, 58 S.W.2d 593, 248 Ky. 802—Bailey's Adm'r v. Hampton Grocery Co., 224 S.W. 1067, 189 Ky. 261—Proctor Coal Co. v. Price's Adm'r, 189 S.W. 923, 172 Ky. 627—Hodge Tobacco Co. v. Whaley, 179 S.W. 840, 166 Ky. 813.
Minn.—Kipp v. Love, 151 N.W. 201, 128 Minn. 498.
Mo.—Loveless v. Cunard Mining Co., App., 201 S.W. 375.
N.Y.—McCready v. Staten Island Electric R. Co., 64 N.Y.S. 996, 51 App.Div. 338.
N.C.—Williams v. May, 91 S.E. 604, 173 N.C. 78.
Okl.—Kirschner v. Kirschner, 36 P. 2d 297, 169 Okl. 129.
Tex.—Smith v. Simpson, Civ.App., 97 S.W.2d 522, error refused.
Utah.—Continental Nat. Bank of Salt Lake City v. Minersville Reservoir & Irrigation Co., 273 P. 502, 73 Utah 243.
Wis.—Schumaker v. Hoeveler, 32 Wis. 43.
4 C.J. p 944 note 83.

does not make a very wide departure from the matter set up in the original pleading.[97]

Error in refusing to compel an amendment will not constitute ground for reversal where no prejudice resulted therefrom,[98] and a refusal to require plaintiff to amend immediately when the amendment is held essential is not prejudicial where defendant was not required to proceed until after the amendment was filed within the statutory period, and was then permitted to introduce evidence admissible under a special plea to the amended pleading.[99]

Requiring an amendment to a complaint which adds nothing to its legal effect nor increases plaintiff's burden is harmless error.[1]

Failure to obtain leave to amend will not warrant a reversal where the party was entitled to amend,[2] and it is not reversible error to permit a trial upon an amended complaint filed without leave, and after the time had expired, where defendant was in no way misled thereby.[3]

Moving in the presence of the jury at the conclusion of plaintiff's case in chief for leave to amend the complaint so as to increase the amount sued for may be prejudicial error, where the jury returned the full amount demanded, and substantial evidence supported the position of defendant.[3.5]

b. Permitting Amendment

Error in permitting an amendment is harmless where the complaining party is not prejudiced thereby, as where the other pleadings are sufficient to sustain the result, or the matter set up by amendment in no way enters into the verdict or judgment.

Error in allowing an amendment is often held harmless where the complaining party is not prejudiced by the ruling of the court,[3.50] as where it simply makes the pleadings conform to the proof;[4]

97. Mo.—Dyer v. Harper, 77 S.W. 2d 106, 336 Mo. 52.
Okl.—Hartford Fire Ins. Co. v. Sullivan, 179 P. 24, 74 Okl. 241.
S.D.—Cronholm v. Sheldon, 226 N.W. 948, 55 S.D. 582.

98. Wash.—Henry v. Navy Yard Route, 162 P. 584, 94 Wash. 526.
4 C.J. p 946 note 13.

99. Md.—Brotherhood of Locomotive Firemen & Engineers v. Nash, 125 A. 441, 144 Md. 623.

1. Ala.—Widener v. Alabama Great Southern R. Co., 69 So. 558, 194 Ala. 115.
Utah.—Shaw v. O'Byrne, 228 P. 570, 64 Utah 139.

2. Cal.—Burks v. Weast, 228 P. 541, 67 C.A. 745.
4 C.J. p 946 note 11.

3. S.D.—Richards v. Smith, 228 N. W. 182, 56 S.D. 213.

3.5 Cal.—Sanguinetti v. Moore Dry Dock Co., 228 P.2d 557, 86 C.2d 812.

3.50 Ala.—Lee v. Diamond, 174 So. 309, 234 Ala. 175.
Jones v. Baker, 41 So.2d 191, 34 Ala.App. 108, certiorari denied 41 So.2d 193, 252 Ala. 520.
Ariz.—Thornburg v. Elgas, 228 P.2d 448, 71 Ariz. 400.
Cal.—Earl v. Saks & Co., 226 P.2d 340, 36 C.2d 602.
Bernstein v. Rubin, App., 312 P. 2d 755—Lilley v. Key System Transit Lines, 289 P.2d 517, 136 C.A.2d 737—Seedborg v. Lakewood Gardens Civic Ass'n, 233 P.2d 943, 105 C.A.2d 449—Vallera v. Vallera, 148 P.2d 694. 64 C.A.2d 266—Woods v. Cook, 58 P.2d 965, 14 C.A.2d 560.
Colo.—City and County of Denver v. Strafacia, 129 P.2d 674, 110 Colo. 14.
Ga.—Smith v. Jefferson County, 40 S.E.2d 773, 201 Ga. 674, appeal dismissed 67 S.Ct. 1087, 330 U.S. 808, 91 L.Ed. 1265, rehearing denied 67 S.Ct. 1529, 331 U.S. 867, 91 L.Ed. 1871.
State Farm Mut. Auto. Ins. Co. v. Collins, 43 S.E.2d 277, 75 Ga. App. 335—Morris Plan Bank v. Baggarly, 23 S.E.2d 271, 69 Ga.App. 714—McKay v. Atlanta, B. & C. R. Co., 3 S.E.2d 456, 60 Ga.App. 212.
Ill.—Electric Supply Corp. v. Meyrick, 110 N.E.2d 525, 349 Ill.App. 383.
Ind.—Needham v. Proffitt, 41 N.E.2d 606, 220 Ind. 265—Sheets Oil Co. v. Fruehauf Trailer Co., 12 N.E.2d 504, 213 Ind. 314.
Iowa.—Elson v. Nickles, 36 N.W.2d 343, 240 Iowa 292—Thompson v. Brownlee, 1 N.W.2d 239, 231 Iowa 406.
Ky.—Eigelbach v. Roppel, 92 S.W. 2d 764, 263 Ky. 604.
Miss.—Duncan v. Mars, 44 So 2d 529.
Mo.—Panich v. Curtis, Owen, Fuller Corp., App., 124 S.W.2d 619.
Mont.—Slattery v. Labbitt, 181 P.2d 601, 120 Mont. 183.
Neb.—Robinson Outdoor Advertising Co. v. Wendelin Baking Co., 15 N. W.2d 388, 145 Neb. 112.
Nev.—Nevada Transfer & Warehouse Co. v. Peterson, 99 P.2d 633, 60 Nev. 87.
N.J.—Urian v. Urian, 107 A.2d 558, 31 N.J.Super. 608—Tsibikas v. Morrof, 79 A.2d 64, 12 N.J.Super. 102.
Neidig v. Fisher, 8 A.2d 564, 123 N.J.Law 242.
N.C.—Reynolds v. Earley, 85 S.E.2d 904, 241 N.C. 521.
Ohio.—Kish v. City of Cleveland, App., 131 N.E.2d 260—Gibson v. City Ry. Co., App., 126 N.E.2d 67—Gardner v. Heldman, 80 N.E. 2d 681, 82 Ohio App. 1—Frazier v. Village of Westerville, App., 36 N. E.2d 812—Smith v. Cushman Motor Delivery Co., 6 N.E.2d 594, 54 Ohio App. 99.
Okl.—Dierks v. Walsh, 218 P.2d 920, 203 Okl. 113—Underhill v. Miller, 174 P.2d 249, 197 Okl. 657—Miles v. Jones, 173 P.2d 949, 197 Okl. 684—Pioneer Reserve Life Ins. Co. v. Dunavant, 76 P.2d 1044, 182 Okl. 58.
Pa.—Midland Credit Co. v. White, 115 A.2d 788, 178 Pa.Super. 607.
S.C.—Brown v. Hendricks, 45 S.E.2d 603, 211 S.C. 395.
S.D.—Behringer v. Muchow, 30 N.W. 2d 5, 72 S.D. 80.
Tex.—Boyett v. Galey, Civ.App., 254 S.W.2d 807.
Utah.—Draper v. J. B. & R. E. Walker, Inc., 244 P.2d 360, 121 Utah 567.
Vt.—Vaillancourt v. Dutton, 50 A.2d 762, 115 Vt. 36—Johnson v. Hardware Mut. Cas. Co., 1 A.2d 817, 109 Vt. 481.
Wash.—Stusser v. Gottstein, 61 P.2d 149, 187 Wash. 660.

4. U.S.—Erie R. Co. v. Schmidt, N. J., 225 F. 513, 140 C.C.A. 655.
Ark.—Yeung v. Barde, 108 S.W.2d 495, 194 Ark. 416.
Cal.—Peters v. Binnard, 25 P.2d 834—Lemon v. First Nat. Bank, 216 P. 620, 191 C. 388—Gartlan v. C. A. Hooper & Co., 170 P. 1115, 177 C. 414.
Keeble v. Brown, 266 P.2d 569, 123 C.A.2d 126—McKee v. Mires, 242 P.2d 954, 110 C.A.2d 517—Carman v. Athearn, 175 P.2d 926, 77 C.A.2d 585—Peoples' Finance & Thrift Co. of Porterville v. Moon, 112 P.2d 24, 44 C.A.2d 223—Davis Welding & Manufacturing Co. v. Advance Auto Body Works, 100 P. 2d 1067, 38 C.A.2d 270.
Idaho.—Jeffery v. Ouldhouse, 80 P. 2d 685, 59 Idaho 50—Aker v. Aker,

or the court, if a new cause of action set up by the amendment allowed had been stated in a separate petition, could have consolidated the causes of action for trial;[5] or the final result would have been the same notwithstanding the amendment;[6] or the subject matter of the action was not changed by the amendment;[6.5] or the verdict and the judgment are supported by the original pleadings;[7] or the other party also is permitted to amend[8] or has himself put in issue the matter to which the amendment referred,[9] or by his claims has induced the making of the amendment.[10]

Such an error may be rendered harmless by reason of the fact that the final judgment or decision is in no way based on the amendment,[11] as because

20 P.2d 796, 52 Idaho 713, appeal dismissed and certiorari denied 54 S.Ct. 80, 290 U.S. 587, 78 L.Ed. 518.
Ind.—West Virginia Coal & Coke Corporation v. Kokomo Sanitary Pottery Corp., 21 N.E.2d 442, 106 Ind.App. 637—Voorhees v. Cragan, 112 N.E. 826, 61 Ind.App. 690.
Iowa.—Elson v. Nickles, 36 N.W.2d 343, 240 Iowa 292—Neese v. Wilke, 200 N.W. 689.
Kan.—File v. Conzelman, 187 P. 878, 106 Kan. 345.
Ky.—Commonwealth Life Ins. Co. v. Brandon, 97 S.W.2d 2, 265 Ky. 434.
Mich.—King v. Herfurth, 11 N.W.2d 198, 306 Mich. 444.
Mo.—Shannon v. Kansas City Light & Power Co., 287 S.W. 1031, 315 Mo. 1136.
Loughlin v. Marr-Bridger Grocer Co., App., 10 S.W.2d 75.
Neb.—Schwank v. Platte County, 40 N.W.2d 863, 152 Neb. 273—Shurtleff v. Bankers' Nat. Life Ins. Co., 240 N.W. 310, 122 Neb. 306.
Okl.—Pure Oil Co. v. Chisholm, 75 P.2d 464, 181 Okl. 618.
Tex.—Brown v. Kelley, Civ.App., 212 S.W.2d 834—Bewley Mills v. First Nat. Bank, Civ.App., 110 S.W.2d 201, error dismissed.
Utah.—Ward v. Ward, 85 P.2d 635, 96 Utah 263.
Vt.—Silveira v. Croft, 77 A.2d 911, 116 Vt. 420.
4 C.J. p 944 note 84.

Failure to rule on motion

Cal.—Stienback v. Halsey, 251 P.2d 1008, 115 C.A.2d 213.

Where plaintiff does not waive a stipulation by his acquiescence in litigating a new and independent issue, ruling of trial court permitting defendant to conform to new issue becomes innocuous, since there is no proof to which amending allegations can conform.
N.M.—First Nat. Bank in Albuquerque v. Rowe, 199 P.2d 987, 52 N.M. 366.

5. Ky.—Stokes v. Watts, 213 S.W. 188, 184 Ky. 803.

6. Cal.—Davis Welding & Manufacturing Co. v. Advance Auto Body Works, 100 P.2d 1067, 38 C.A. 2d 270.
Ga.—Kenney v. Walden, 113 S.E. 61, 28 Ga.App. 810—Ocmulgee Guano Co. v. Price, 89 S.E. 156, 18 Ga. App. 206.
Iowa.—Mau v. Rice Bros., 249 N.W. 206, 216 Iowa 864.
N.H.—Patey v. Peaslee, 131 A.2d 433.
N.Y.—Morse v. Brown, 162 N.Y.S. 666.
N.C.—Gaither v. Albemarle Hospital, 70 S.E.2d 680, 235 N.C. 431.
Okl.—Elwood Oil & Gas Co. v. Gano, 185 P. 443, 76 Okl. 287.
Tenn.—Towater v. Darby, 15 Tenn. App. 53.
Tex.—Rogers v. Rogers, Civ.App., 70 S.W.2d 211.
49 C.J. p 477 note 62.

6.5 Mo.—Wooldridge v. Scott County Milling Co., App., 102 S.W.2d 958.

7. Cal.—Weinberg v. Dayton Storage Co., 124 P.2d 155, 50 C.A.2d 750—McCully v. Gano, 3 P.2d 348, 116 C.A. 695.
Colo.—Schwartz v. Weiner, 30 P.2d 1110, 94 Colo. 251.
Iowa.—Miller v. King, 39 N.W.2d 307, 240 Iowa 1336.
Mo.—Schneider v. Kohler, App., 201 S.W.2d 499.
Pa.—Parsons Trading Co. v. Dohan, 167 A. 310, 312 Pa. 464.
Tex.—Hastings Oil Co. v. Texas Co., Civ.App., 227 S.W.2d 317, affirmed 234 S.W.2d 389, 149 Tex. 416—American Surety Co. of New York v. Thompson, Civ.App., 23 S.W.2d 820, reversed on other grounds, Com.App., 38 S.W.2d 576.
W.Va.—Hallauer v. Fire Ass'n of Philadelphia, 98 S.E. 441, 83 W.Va. 401.
4 C.J. p 945 note 86.

Increased damages asked by amendment not recovered

(1) Error in allowing an amendment increasing the damages asked is harmless where the recovery did not exceed the amount originally claimed.
Ala.—Sovereign Camp, W. O. W. v. Dennis, 87 So. 616, 17 Ala.App. 652, certiorari denied Ex parte Sovereign Camp, W. O. W., 87 So. 620, 205 Ala. 316.
Cal.—Wakeman v. Green, 276 P. 387, 98 C.A. 50—Stohlman v. Martin, 152 P. 319, 28 C.A. 338.
Ga.—Firemen's Ins. Co. v. Oliver, 186 S.E. 706, 53 Ga.App. 638, 182 Ga. 212—Christy Bros. Circus v. Turnage, 144 S.E. 680, 38 Ga.App. 581.
Iowa.—Arenson v. Butterworth, 54 N.W.2d 557, 243 Iowa 880.
Mont.—Phelps v. Great Northern Ry. Co., 213 P. 610, 66 Mont. 198, certiorari dismissed Great Northern Ry. Co. v. Galbreath Cattle Co., 44 S. Ct. 334, 264 U.S. 571, 68 L.Ed. 855, and reversed on other grounds 46 S.Ct. 439, 271 U.S. 99, 70 L.Ed. 854.
N.Y.—Blackwell v. Finlay, 135 N.E. 600, 233 N.Y. 361.
Or.—Filkins v. Portland Lumber Co., 142 P. 578, 71 Or. 249.
4 C.J. p 945 note 99.

(2) It is also harmless where plaintiff voluntarily reduced the verdict to the amount originally sued for.
Ga.—Taylor v. Keown, 137 S.E. 907, 36 Ga.App. 631.
Okl.—Parker v. Everetts, 165 P.2d 630, 196 Okl. 408.

8. Cal.—Frey v. Vignier, 78 P. 733, 145 C. 251.
Kan.—Robbins v. Kansas City, 163 P.2d 630, 160 Kan. 425.
S.C.—Whitmire v. Boyd, 31 S.E. 306, 53 S.C. 315.
4 C.J. p 945 note 88.

9. Colo.—Enyart v. Orr, 238 P. 29, 78 Colo. 6.
Ky.—Baber v. Griggs, 68 S.W.2d 419, 252 Ky. 816.
4 C.J. p 945 note 92.

10. Mich.—Kitchen v. Hill, 184 N.W. 465, 215 Mich. 668.

11. Ala.—Thomas v. Barnes, 123 So. 18, 219 Ala. 652.
Cal.—Williamson v. Egan, 287 P. 503, 209 C. 343.
Langdon v. Langdon, 117 P.2d 371, 47 C.A.2d 28.
Colo.—Christy v. Hammitt, 233 P. 831, 76 Colo. 579.
Kan.—Jones v. Crowell, 207 P.2d 435, 167 Kan. 415.
Ky.—Smith v. Ferguson, 295 S.W. 2d 792.
Mass.—Capano v. Melchionno, 7 N. E.2d 593, 297 Mass. 1.
N.H.—Bacon v. Thompson, 177 A. 548, 87 N.H. 270.
N.Y.—Landau v. Wollman, 258 N.Y.S. 947, 144 Misc. 541.
Pa.—Kavalkovich v. Order of Liberty, 75 Pa.Super. 328.
S.D.—Hoven State Bank v. Acker, 186 N.W. 954, 45 S.D. 259.
Tenn.—Hughes v. Young, 65 S.W.2d 858, 17 Tenn.App. 24.
Tex.—U. S. Torpedo Co. v. Liner, Civ. App., 300 S.W. 641, reversed on other grounds Liner v. U. S. Torpedo Co., Com.App., 12 S.W.2d 552, affirmed 16 S.W.2d 519—Cozart v. Crenshaw, Civ.App., 299 S.W. 499.

no attempt was made to prove the matters set up in the amendment;[12] or the matter set up in the amendment was legally insufficient,[13] or the judgment rendered ignored the amendment,[14] the amendment was not in fact made,[15] or was withdrawn or stricken;[16] or the issue sought to be raised by an amended pleading was not submitted to the jury;[17] or the case was tried on the issues made by the original pleading;[18] or the verdict or judgment was in favor of the opposite party with respect to the matter set up in the amendment;[19] or, after the sustaining of a demurrer to the amended pleading, the party, by leave of court, filed a new pleading which superseded the amended pleading.[20]

If permitting an amendment to a petition has prejudiced defendant because of his failure to file an answer to the new matter, the prejudice is avoided by plaintiff's agreeing that the original answer shall be considered as a denial of all the facts contained in the amended petition.[21] Granting an amendment at the trial is not harmful where the other party was in no way misled or surprised,[22] or had ample opportunity to overcome his surprise, if any,[23] or was not prejudiced,[23.5] or was offered a continuance which he declined,[24] or was offered a right to renew his plea of surprise at the end of the trial, but the plea was not renewed.[24.5] Defendant may not maintain that permitting an amendment to

12. Ky.—Martin v. White, 237 S.W. 31, 193 Ky. 610.
Me.—Emery v. Wheeler, 152 A. 624, 129 Me. 428.
Or.—Krieger v. Doolittle, 18 P.2d 1041, 142 Or. 122.
Wash.—Wagner v. City of Seattle, 146 P. 621, 84 Wash. 275, Ann.Cas. 1916E 720.
4 C.J. p 945 note 85.

13. Ga.—Candler v. Hunnicutt, 132 S.E. 140, 35 Ga.App. 120.

14. Kan.—Bear v. Cutler, 119 P. 713, 86 Kan. 66.

15. Ind.—Teegarden v. Brown, 39 N.E.2d 793, 111 Ind.App. 159.

16. Mo.—Packer v. Chicago, M. & St. P. Ry. Co., App., 265 S.W. 119.
4 C.J. p 945 note 89.

17. Ga.—Monroe Motor Exp. v. Jackson, 38 S.E.2d 863, 74 Ga.App. 148.
Ky.—Eigelbach v. Roppel, 92 S.W.2d 764, 263 Ky. 604.
Minn.—Baker v. City of South St. Paul, 279 N.W. 211, 202 Minn. 491.
Or.—Brown v. O'Flynn, 272 P. 673, 127 Or. 497.
4 C.J. p 945 note 90.

18. U.S.—Ellerd v. Griffith, C.C.A. Tex., 29 F.2d 402, certiorari denied 49 S.Ct. 480, 279 U.S. 864, 73 L.Ed. 1003.
Ky.—American Ry. Express Co. v. Hicks, 249 S.W. 342, 198 Ky. 549.
Mo.—Duncan v. St. Louis Public Service Co., 197 S.W.2d 964, 355 Mo. 733.
N.H.—Lavallee v. Laconia Nat. Bank, 47 A.2d 416, 94 N.H. 76.
Tenn.—Tennessee Cent. R. Co. v. Vanhoy, 226 S.W. 225, 143 Tenn. 312.
Vt.—Belock v. State Mut. Fire Ins. Co., 185 A. 100, 108 Vt. 252, followed in Belock for Benefit of Cramton v. Union Mut. Fire Ins. Co., 185 A. 106, 108 Vt. 264, and Belock for Benefit of Cramton v. Vermont Mut. Fire Ins. Co., 185 A. 106, 108 Vt. 265.

18. Iowa.—Mondamin Bank v. Burke, 147 N.W. 148, 165 Iowa 711.
Mich.—Rundell v. Farmers' Co-op. Elevator Co. of Corunna, 178 N.W. 21, 210 Mich. 642.
N.J.—Mach Mfg. Co. v. Donovan, 91 A. 310, 86 N.J.Law 327.
N.Y.—Kouloris v. Cohen, 226 N.Y.S. 751, 131 Misc. 407.
Va.—Stewart v. Stewart, 95 S.E. 388, 122 Va. 642.
39 C.J. p 214 note 85 [a].

19. Ariz.—Clint v. Northern Assur. Co., 223 P.2d 401, 71 Ariz. 44.
Colo.—Miller v. City and County of Denver, 167 P. 767, 63 Colo. 385.
Ga.—Ætna Ins. Co. of Hartford v. Griffin, 113 S.E. 224, 28 Ga.App. 774.
Ind.—Denney v. Reber, 114 N.E. 424, 63 Ind.App. 192.
N.Y.—Wolf v. Heating Maintenance Corporation of New York, 279 N.Y.S. 547, 244 App.Div. 779.
S.C.—Ellis v. Johnson, 141 S.E. 564, 143 S.C. 325.
Tex.—Alamo Trust Co. v. Prudential Life Ins. Co. of Texas, Civ.App., 183 S.W. 787.
4 C.J. p 945 note 91.

20. S.D.—Redwater Land, etc., Co. v. Reed, 128 N.W. 702, 26 S.D. 466.

21. Pa.—Kestner v. Homeopathic Medical & Surgical Hospital of Reading, 91 A. 659, 245 Pa. 326, 52 L.R.A.,N.S., 1032, Ann.Cas.1916A 123.

22. U.S.—H. F. Wilcox Oil & Gas Co. v. Skidmore, C.C.A.Mo., 72 F. 2d 748.
Ariz.—Southern Casualty Co. v. Johnson, 207 P. 987, 24 Ariz. 221.
Fla.—Surfside Hotel v. W. E. Moorehead Co., 5 So.2d 857, 149 Fla. 397.
Ind.—West Virginia Coal & Coke Corp. v. Kokomo Sanitary Pottery Corp., 21 N.E.2d 442, 106 Ind.App. 637.
Mo.—Adams v. Goldman, App., 253 S.W. 194—West v. Duncan, 249 S.W. 127, 215 Mo.App. 423.
Neb.—Cook v. Moats, 238 N.W. 529, 121 Neb. 769, 78 A.L.R. 694.
N.J.—Reed v. Director General of Railroads, 113 A. 146, 95 N.J.Law 525.
N.Y.—Austin v. Saccacio, 152 N.Y.S. 2d 41, 1 A.D.2d 1027.
Vucci v. Pellettieri, 103 N.Y.S. 104.
S.C.—Brown v. Hendricks, 45 S.E.2d 603, 211 S.C. 395—Manufacturers' Finance Co. v. Dyches, 86 S.E. 1, 101 S.C. 527.
Tex.—Ravel v. Couravallos, Civ.App., 245 S.W.2d 731—Pierce v. Baker, Civ.App., 143 S.W.2d 681, error refused.
W.Va.—William James Sons Co. v. Hutchinson, 90 S.E. 1047, 79 W.Va. 389.
4 C.J. p 945 note 94.
Amendment filed shortly before trial
Ariz.—Matsumato v. Arizona Sand & Rock Co., 295 P.2d 850, 80 Ariz. 232.
Utah.—Graham v. Street, 166 P.2d 524, 109 Utah 460.

23. Tex.—Sherman v. Stein, Civ. App., 173 S.W.2d 732, error refused —St. Louis, B. & M. Ry. Co. v. Lane, Civ.App., 248 S.W. 59.

23.5 Ariz.—Valley Nat. Bank v. Witter, 121 P.2d 414, 58 Ariz. 491.
Cal.—Piltingsrud v. Harman, 208 P. 2d 444, 93 C.A.2d 33—Cotton v. Hudson, 110 P.2d 70, 42 C.A.2d 812 —Fuller v. Vista Del Arroyo Hotel, 108 P.2d 920, 42 C.A.2d 400.
Minn.—Raspler v. Seng, 11 N.W.2d 440, 215 Minn. 596.
Tex.—Fenton v. Wade, Civ.App., 303 S.W.2d 816—City of Wichita Falls v. Cox, Civ.App., 300 S.W.2d 317, error refused no reversible error.

24. Idaho.—Lorang v. Randall, 148 P. 468, 27 Idaho 259.
Wash.—Garrison v. Newton, 165 P. 90, 96 Wash. 284, 4 A.L.R. 804.
4 C.J. p 945 note 95.
Plaintiff held entitled to continuance but did not ask for one.
Ky.—Nolan v. Miniard, 195 S.W.2d 81, 302 Ky. 540.

24.5 Pa.—McNernie v. W. S. Peace, Inc., 24 A.2d 12, 344 Pa. 24.

a petition after submission to the jury deprived him of his right to trial by jury where he had a trial by jury on at least every issue which it was desired to have so tried;[25] nor is it reversible error to grant an amendment without notice where the amendment is again allowed on a motion made on notice.[26] An amendment which corrects a clerical error in a pleading is harmless,[27] as is an amendment recognizing a change of parties,[28] particularly where the complaining party has been offered additional time in which to plead, which he refused.[29]

However, error in permitting an amendment is reversible where the amendment is demurrable or subject to objection and there has been a verdict or judgment thereon adverse to the complaining party,[30] or the error in allowing the amendment adversely affects the further trial of the case,[31] or where the cause of action originally set up is not supported by the evidence and the amendment sets up an entirely different cause of action.[32] Also, error in permitting an amendment to the petition instead of requiring a supplemental petition to bring forth additional claims that have fallen due since the institution of the suit has been held ground for reversal;[33] but other authority has held such an error nonprejudicial where the recovery on the matter set up in the amendment is at the same rate as the recovery allowed on the original petition.[34]

c. Refusing to Allow Amendment

An erroneous refusal to allow an amendment is prejudicial only where the benefit of the matter proposed to be set up in the amendment cannot otherwise be obtained and a different result might have been reached had the amendment been allowed.

A refusal to permit an amended pleading to be filed, although technically erroneous, is harmless error if on the whole case the rights of the complaining party are not prejudiced.[34.50] Thus a refusal to permit an amendment is harmless where the party seeking the amendment in some other way has the benefit of the matter which he wanted to set up in the amendment,[35] as by other pleadings which suf-

25. Ind.—Folsom v. Buttolph, 143 N.E. 258, 82 Ind.App. 283.

26. Cal.—Baker v. Southern California R. Co., 46 P. 604, 114 C. 501.
Minn.—Markell v. Ray, 77 N.W. 788, 75 Minn. 138.
4 C.J. p 946 note 12.

27. Ky.—Craig v. Chipman, 57 S.W. 244, 22 Ky.L. 322.
Mo.—J. M. Batterton Estate v. Edwards, App., 115 S.W.2d 1.
Tex.—Bailey v. Hopkins, Civ.App., 131 S.W. 624.
Wis.—Alft v. Clintonville, 105 N.W. 561, 126 Wis. 334.

28. Ala.—Boykin v. Persons, 11 So. 67, 95 Ala. 626.
Iowa.—Carroll Impr. Co. v. Engleman, 99 N.W. 574.

29. Cal.—Bhumgara v. Garvini, 190 P. 854, 47 C.A. 515.

30. Ga.—Lawrence v. Grimes, 86 S.E. 218, 144 Ga. 112.
La.—Seale v. Stephens, Employers Cas. Co., Interveners, 24 So.2d 651, affirmed 29 So.2d 65, 210 La. 1068.
Me.—Gilbert v. Dodge, 156 A. 891, 130 Me. 417.
N.J.—Altana v. McCabe, 38 A.2d 192, 132 N.J.Law 12.

31. Colo.—Green v. Hertz Drivurself System, 274 P.2d 597, 130 Colo. 238—Barnes v. Wright, 231 P.2d 794, 123 Colo. 462.
Fla.—Seltzer v. Grine, 79 So.2d 688.
Ga.—McDonald v. Wimpy, 50 S.E.2d 347, 204 Ga. 617—Barrett v. Mason, 85 S.E. 340, 143 Ga. 464.
La.—Caddo Parish School Bd. v. Pyle, App., 30 So.2d 349, cause remanded on other grounds 32 So.2d 897, 213 La. 481.
Ohio.—Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483.
Okl.—Mid-Central Fish Co. v. Gentry Poultry & Egg Co., 118 P.2d 225, 189 Okl. 521.
Tex.—Texas Emp. Ins. Ass'n v. Dillingham, Civ.App., 262 S.W.2d 748, error refused no reversible error.

32. Ark.—Shelton v. Harris, 286 S.W.2d 20, 225 Ark. 855.
Colo.—Schleier v. Bonella, 214 P. 537, 73 Colo. 222.
Okl.—Mid-Central Fish Co. v. Gentry Poultry & Egg Co., 118 P.2d 225, 189 Okl. 521.

33. S.C.—Francis Marion Hotel v. Chicco, 127 S.E. 436, 131 S.C. 344.

34. Wash.—Minard v. Schumaker, 201 P. 909, 117 Wash. 599.

34.50 Ga.—Elliott v. Georgia Power Co., 197 S.E. 914, 58 Ga.App. 151.
Ill.—Deasey v. City of Chicago, 105 N.E.2d 727, 412 Ill. 151.
Jilek v. Missouri Pac. R. Co., 142 N.E.2d 708, 13 Ill.App.2d 518.
Ind.—American Surety Co. v. State ex rel. Taber, 1 N.E.2d 295, 102 Ind. App. 378.
Kan.—In re Bennett's Estate, 290 P. 2d 837, 178 Kan. 590—Achenbach v. Baker, 118 P.2d 584, 154 Kan. 252.
Ky.—Edwards v. Whitley City Sales, 246 S.W.2d 1018—Harding v. Kentucky Title Trust Co., 108 S.W.2d 539, 269 Ky. 632, certiorari denied 58 S.Ct. 522, 303 U.S. 635, 82 L.Ed. 1095.
Minn.—Yeager v. Chapman, 45 N.W. 2d 776, 233 Minn. 1, 22 A.L.R.2d 1260.
Miss.—Sansing v. Thomas, 52 So.2d 478, 211 Miss. 727.
N.H.—Mansfield v. Federal Services Finance Corp., 111 A.2d 322, 99 N. H. 352.
N.J.—City of Bayonne v. Murphy & Perrett Co., 81 A.2d 485, 7 N.J. 298.
Ohio.—Sumner v. Lambert, 121 N.E. 2d 189, 96 Ohio App. 53.
Okl.—Cooke v. Townley, 265 P.2d 1108.
S.D.—Janssen v. Tusha, 297 N.W. 119, 67 S.D. 597.
Wash.—Simms v. Ervin, 282 P.2d 291, 46 Wash.2d 417.

35. Ala.—Fraser v. R. W. Allen & Co., 94 So. 782, 19 Ala.App. 55.
Cal.—Rohl v. Van Cleve, 202 P.2d 807, 90 C.A.2d 317—Eustace v. Lynch, 111 P.2d 372, 43 C.A.2d 486—Rose v. Dunk-Harbison Co., 46 P.2d 242, 7 C.A.2d 502—Dean v. McNerney, 266 P. 975, 91 C.A. 206.
Ga.—Thompson v. Graham, 157 S.E. 204, 172 Ga. 35.
Wood v. Keysville Lumber Co., 175 S.E. 923, 49 Ga.App. 799—Finn v. McAllister, 167 S.E. 309, 46 Ga.App. 230.
Ill.—Anderson v. Stewart, 121 N.E. 198, 285 Ill. 605.
Ind.—School City of Brazil v. Rupp, 10 N.E.2d 924, 104 Ind.App. 287.
Iowa.—Kelly v. Emary, 45 N.W.2d 866, 242 Iowa 683.
Ky.—Chicago, St. L. & N. O. R. Co. v. Adkins, 56 S.W.2d 969, 247 Ky. 241.
La.—McEachern v. Adcock, 127 So. 99, 13 La.App. 201.
Minn.—Wright v. Mutual Ben. Health & Acc. Ass'n, 81 N.W.2d 610.
Mo.—Stone v. Farmington Aviation Corp., 232 S.W.2d 495, 360 Mo. 1015.

ficiently covered the grounds;[36] or an agreement of the parties which rendered the amendment unnecessary;[37] or having it subsequently allowed,[38] being permitted to file a statement which was in substance an amendment,[39] being allowed to give all the proof on the subject the same as if the proposed amendment had been made,[40] or having the case tried and submitted on the issue set up by the proposed amendment;[41] or where the final result would have been the same with or without the amendment,[42] as where, notwithstanding the amendment,

Mont.—Palmer v. Great Northern Ry. Co., 170 P.2d 768, 119 Mont. 68.
N.C.—Bowman v. Howard, 110 S.E. 98, 182 N.C. 662.
Okl.—Boling v. Asbridge, 203 P. 894, 84 Okl. 280.
S.C.—Home Bank of Barnwell v. Mixon, 121 S.E. 787, 128 S.C. 310.
Tex.—Spadra-Clarksville Coal Co. v. Security Nat. Bank of Dallas, Civ. App., 206 S.W. 200.

Failure to accept offer to amend

Ohio.—In re Miller's Estate, 129 N. E.2d 838, 98 Ohio App. 445.

Defendant's admission of facts alleged in paragraph on trial amendment obviated any possible error in exclusion of that paragraph of the trial amendment.

Tex.—Ebberts v. Carpenter Production Co., Civ.App., 256 S.W.2d 601, error refused no reversible error.

36. Ala.—Miles v. Hines, 87 So. 837, 205 Ala. 83.
Cal.—Muller v. Barnes, 294 P.2d 505, 139 C.A.2d 847—Penzner v. Wenland, 280 P.2d 489, 131 C.A.2d 301—Neilsen v. Richter, 67 P.2d 353, 20 C.A.2d 546.
Colo.—Barnard v. Moore, 207 P. 332, 71 Colo. 401.
Ga.—Cook v. Southern Ry. Co., 9 S.E. 2d 123, 62 Ga.App. 613—Lewis v. Cairo Banking Co., 121 S.E. 695, 31 Ga.App. 532.
Iowa.—Larson v. Baker, 16 N.W.2d 262, 235 Iowa 200.
Ky.—Champion v. Franklin, 229 S.W. 2d 969, 312 Ky. 808, 21 A.L.R.2d 811.
Mullins v. County Ct., 13 Ky.Op. 273—Bank v. Bush, 11 Ky.Op. 559—Padgett v. Mays, 11 Ky.Op. 24.
Or.—Krueger v. Brooks, 184 P. 285, 94 Or. 119.
Tex.—Farquaharson v. Fresno Oil Co., Civ.App., 248 S.W. 481—Vaden v. Buck, Civ.App., 184 S.W. 318.
Utah.—Continental Nat. Bank of Salt Lake City v. Minersville Reservoir & Irrigation Co., 273 P. 502, 73 Utah 243.
4 C.J. p 945 note 1.

Amendment merely cumulative

N.J.—Handelman v. Handelman, 109 A.2d 797, 17 N.J. 1.

Amendment not offered as statement of separate or additional cause of action

Iowa.—Robinson v. Home Fire & Marine Ins. Co., 59 N.W.2d 776, 244 Iowa 1884.

37. Cal.—Southside Impr. Co. v. Burson, 81 P. 1107, 147 C. 401.

38. Cal.—Frey v. Vignier, 78 P. 733, 145 C. 251.
Ky.—Wallingford v. Indiana Second Nat. Bank, 12 Ky.L. 93.

39. Cal.—Anglo-Californian Bank v. Field, 80 P. 1080, 146 C. 644.
Or.—York v. Nash, 71 P. 59, 42 Or. 321.

40. Ala.—McDonald v. Stephens, 85 So. 746, 204 Ala. 359.
Ariz.—Union Auto Transp. Co. v. Mattingly, 278 P. 368, 35 Ariz. 372.
Cal.—Dunn v. Security-First Nat. Bank, 21 P.2d 647, 131 C.A. 541—Ray v. American Photo Player Co., 189 P. 130, 46 C.A. 311.
Ga.—Northwestern Mut. Life Ins. Co. v. Suttles, 38 S.E.2d 786, 201 Ga. 84, certiorari denied 67 S.Ct. 490, 329 U.S. 801, 91 L.Ed. 685, rehearing denied 67 S.Ct. 631, 329 U.S. 835, 91 L.Ed. 707—Hixon v. Bank of Siloam, 159 S.E. 901, 43 Ga.App. 696.
Kan.—German-American State Bank v. Badders, 152 P. 651, 96 Kan. 533.
Ky.—Girtman's Adm'r v. Akins, 120 S.W.2d 660, 275 Ky. 2—Cincinnati, N. O. & T. P. Ry. Co. v. Smith & Johnston, 176 S.W. 1013, 165 Ky. 235.
La.—Charbonnet v. Reliance Finance Corporation, App., 143 So. 104.
S.C.—Guimarin v. Southern Life & Trust Co., 90 S.E. 319, 106 S.C. 37.
Tex.—Henderson v. Beggs, Civ.App., 207 S.W. 565—Houston Oil Co. of Texas v. Reese-Corriher Lumber Co., Civ.App., 181 S.W. 745.
Wash.—Holland v. Tjosevig, 186 P. 317, 109 Wash. 142.
4 C.J. p 945 note 4.

41. Ark.—Dodgson v. Mercer, 245 S. W. 481, 158 Ark. 641.
Fla.—Welch v. Moothart, 89 So.2d 485.
Ky.—Girtman's Adm'r v. Akins, 120 S.W.2d 660, 275 Ky. 2.
Mich.—Robertson v. Hulbert, 197 N. W. 505, 226 Mich. 219.
Minn.—Sonnesyn v. Hawbaker, 148 N.W. 476, 127 Minn. 15.
Okl.—City of Duncan v. Nicholson, 247 P. 979, 118 Okl. 275—White v. Kimerer, 200 P. 430, 83 Okl. 9.
4 C.J. p 946 note 5.

42. U.S.—Federal Bridge Co. v. Hanson County, S. D., C.C.A.S.D., 298 F. 924.
Cal.—Meindersee v. Meyers, 205 P. 1078, 188 C. 498.
Jetty v. Craco, 267 P.2d 1055, 123 C.A.2d 876—Winger v. Elmore, 57 P.2d 1369, 14 C.A.2d 241—Agoure v. Spinks Realty Co., 42 P.2d 660, 5 C.A.2d 444—Williams v. First Nat. Bank, 258 P. 709, 84 C.A. 787—Berry v. Crowell, 203 P. 835, 55 C.A. 534—Maltby v. Conklin, 195 P. 280, 50 C.A. 201.
Colo.—Mansfield v. Harris, 244 P. 474, 79 Colo. 164.
Conn.—Cramer v. Barlow, 84 A.2d 795, 138 Conn. 352.
Ga.—Johnson v. Southern Ry. Co., 142 S.E. 857, 166 Ga. 222—Coker v. Utter, 108 S.E. 538, 152 Ga. 157.
Bowers v. Fred W. Amend Co., 36 S.E.2d 15, 72 Ga.App. 714—London v. Citizens & Southern Nat. Bank, 3 S.E.2d 136, 60 Ga.App. 154—Carolina Portland Cement Co. v. Zuber, 113 S.E. 813, 29 Ga.App. 96.
Idaho.—Cleveland v. Mochel, 279 P. 410, 48 Idaho 37—Anderson v. Walker Co., 225 P. 144, 38 Idaho 751.
Ill.—Fyffe v. Fyffe, 11 N.E.2d 857, 292 Ill.App. 539.
Iowa.—Sietsema v. Anderson, 176 N. W. 611, 188 Iowa 651.
Ky.—Happy Coal Co. v. Brashear, 92 S.W.2d 23, 263 Ky. 257—Smith's Adm'x v. Middlesboro Electric Co., 174 S.W. 773, 164 Ky. 46, Ann.Cas. 1917A 1164.
Mass.—Seder v. Kozlowski, 23 N.E. 2d 880, 304 Mass. 367—Aronson v. Orlov, 116 N.E. 951, 228 Mass 1, certiorari denied Orlov v. Aronson, 38 S.Ct. 61, 245 U.S. 662, 62 L.Ed. 536.
Miss.—Magee v. Sun Life Assur. Co. of Canada, 180 So. 797, 182 Miss. 287.
Mo.—Rueter v. Terminal R. Ass'n of St. Louis, App., 261 S.W. 713.
N.Y.—Durham v. Stuyvesant Ins. Co. of the City of New York, 182 N.Y. S. 887, 112 Misc. 440, reversed on other grounds 187 N.Y.S. 659, 196 App.Div. 924.
Ohio.—New York Cent. R. Co. v. Lukanc, 167 N.E. 403, 32 Ohio App. 232.
Or.—Michelin Tire Co. of California v. Williams, 293 P. 938, 135 Or. 158.
Pa.—Franklin Sugar Refining Co. v. Howell, 118 A. 109, 274 Pa. 190.
Massiah v. Hood, 10 A.2d 79, 138 Pa.Super. 90.
S.C.—McRae v. S. F. Bowser & Co., 105 S.E. 411, 115 S.C. 262.
Tex.—Moore Bros. v. Kirkpatrick, Civ.App., 172 S.W.2d 135—Clay v. Maxwell, Civ.App., 84 S.W.2d 785.
Va.—Nuttall v. Lankford, 43 S.E.2d 37, 186 Va. 532.
Wis.—Schwenker v. Teasdale, 239 N. W. 434, 206 Wis. 275.

the complaint[43] or answer[44] would still have been fatally defective, or, notwithstanding the amendment, there could have been no verdict or judgment with respect thereto for the party asking it under the proof.[45]

Refusal to grant leave to amend at a proper time is prejudicial error and ground for reversal where the complaining party cannot otherwise obtain the benefit of the matter sought to be set up and might have prevailed had the amendment been allowed;[46] and particularly is this true where the proposed amendment does not radically change the original issues, the other party is not taken by surprise or his rights jeopardized, and the granting of the amendment would have been in furtherance of justice.[47]

d. Allowing or Refusing Supplemental Pleadings

Where no substantial rights are adversely affected by the ruling, permitting or refusing to permit the filing of supplemental pleadings is not cause for reversal.

Permitting,[48] or refusing to permit, the filing of

Wyo.—State v. Town of Kemmerer, 167 P. 982, 25 Wyo. 211.
4 C.J. p 945 note 3.

43. Cal.—Rose v. Ames, 128 P.2d 65, 53 C.A.2d 583—Coykendall v. Jackson, 62 P.2d 746, 17 C.A.2d 729.
Ga.—Farmers' Warehouse Co. v. Malone, 88 S.E. 988, 145 Ga. 283.
H. L. Harrell Realty Co. v. Rowell, 106 S.E. 307, 26 Ga.App. 413.
Okl.—Turner v. Pitts, 19 P.2d 563, 162 Okl. 246.
Tenn.—Brown v. Monroe, 34 S.W.2d 209, 161 Tenn. 703.
4 C.J. p 946 note 8.

44. Colo.—W. H. Swanson Theater Co. v. Pueblo Opera Block Inv. Co., 197 P. 762, 70 Colo. 83.
S.D.—Bryant State Bank of Bryant v. Knadle, 215 N.W. 694, 51 S.D. 534.
4 C.J. p 946 note 9.

45. Ala.—Bates v. Rentz, 81 So.2d 349, 262 Ala. 681.
Cal.—Maxwell Hardware Co. v. Foster, 277 P. 327, 207 C. 167.
King v. Griffith Co., 150 P.2d 8, 65 C.A.2d 114—Gopcevic v. Gopcevic, 178 P. 734, 39 C.A. 306.
Colo.—Arkansas Valley Bank v. Esser, 224 P. 227, 75 Colo. 110.
Ga.—Northwestern Mut. Ins. Co. v. Suttles, 38 S.E.2d 786, 201 Ga. 84, certiorari denied 67 S.Ct. 490, 329 U.S. 801, 91 L.Ed. 685, rehearing denied 67 S.Ct. 631, 329 U.S. 835, 91 L.Ed. 707.
Hill v. Hicks, 163 S.E. 253, 44 Ga.App. 817—Chandler v. Merchants' & Mechanics' Nat. Bank, 118 S.E. 785, 30 Ga.App. 694—Carolina Portland Cement Co. v. Zuber, 113 S.E. 813, 29 Ga.App. 96—W. T. Martin & Son v. Harrison, 99 S.E. 894, 24 Ga.App. 117—Williams v. Western & A. R. Co., 93 S.E. 555, 20 Ga.App. 726—Central of Georgia Ry. Co. v. De Loach, 89 S.E. 433, 18 Ga.App. 862, reversed on other grounds 38 S.Ct. 423, 246 U.S. 655, 62 L.Ed. 924.
Neb.—Wertz v. Lincoln Liberty Life Ins. Co., 41 N.W.2d 740, 152 Neb. 451, 17 A.L.R.2d 629—Curren v. All Persons Having or Claiming Any Interest In Certain Real Estate, 31 N.W.2d 405, 149 Neb. 477.
N.Y.—Pease Piano Co. v. Well-Bilt Table Co., 268 N.Y.S. 215, 149 Misc. 837.
Tex.—Ebberts v. Carpenter Production Co., Civ.App., 256 S.W.2d 601, error refused no reversible error—Boynton v. Smith, Civ.App., 110 S.W.2d 640, error dismissed—Schram v. Pearl Oil Corporation, Civ.App., 90 S.W.2d 846, error granted—Goodman v. Republic Inv. Co., Civ. App., 215 S.W. 466, dismissed for want of jurisdiction.
Wash.—Capilano Timber Co. v. Bahamas-Cuban Co., 244 P. 968, 138 Wash. 668.
4 C.J. p 946 note 10.

Where evidence is insufficient to support a count offered after the evidence is closed, denial of amendment is not prejudicial.
Ala.—Johnson v. Shook & Fletcher Supply Co., 16 So.2d 406, 245 Ala. 123.

46. U.S.—Standard Lumber Co. v. Interstate Trust Co., C.C.A.Fla., 82 F.2d 346.

46. Cal.—Myers v. Stevenson, 270 P. 2d 885, 125 C.A.2d 399.
Ill.—See Burbridge v. Howard, 184 Ill.App. 185.
Ky.—Smith v. Smith, 173 S.W.2d 813, 295 Ky. 50.
Mich.—Gratiot Lumber & Coal Co. v. Lubinski, 16 N.W.2d 112, 309 Mich. 662.
N.Y.—Newman v. Goldberg, 294 N.Y. S. 211, 250 App.Div. 431.
Sanders v. Rolnick, 67 N.Y.S.2d 652, 188 Misc. 627, affirmed 71 N.Y. S.2d 896, 272 App.Div. 803—Lupo v. Erie R. Co., 161 N.Y.S. 66, 96 Misc. 693.
Ohio.—Willeke v. Neuenschwander, 9 N.E.2d 1018, 55 Ohio App. 527—Nosse v. Rose, 186 N.E. 622, 45 Ohio App. 54.
Okl.—Murray v. Speed, 153 P. 181, 54 Okl. 31.
Pa.—Newman v. Globe Indemnity Co., 119 A. 488, 275 Pa. 374.
S.C.—Smith v. Traxler, 78 S.E.2d 630, 224 S.C. 290.
Tex.—Jago v. Indemnity Ins. Co. of North America, 36 S.W.2d 980, 120 Tex. 204.
W.Va.—Buffa v. Baumgartner, 58 S.E.2d 270, 133 W.Va. 758.

47. Cal.—Hanna v. Hirschhorn, 296 P. 891, 112 C.A. 438.

48. Cal.—Butte Creek Consol. Dredging Co. v. Olney, 161 P. 260, 173 C. 697.
D.C.—Daly v. Sacks, 38 F.2d 388, 59 App.D.C. 216.
Idaho.—Conley v. Amalgamated Sugar Co., 263 P.2d 705, 74 Idaho 416.
Ind.—Thurston v. Carter, 155 N.E. 834, 87 Ind.App. 518—Dietrich v. Minas, 109 N.E. 930, 61 Ind.App. 333.
La.—McGee v. Police Jury of Caddo Parish, App., 66 So.2d 408, affirmed 73 So.2d 424, 225 La. 47, followed in McCrary v. Police Jury of Caddo Parish, 73 So.2d 431, 225 La. 489, and Tuggle v. Police Jury of Webster Parish, 73 So.2d 431, 225 La. 490.
Mont.—Noe v. Matlock, 208 P. 591, 64 Mont. 35.
Tex.—St. Louis Southwestern Ry. Co. of Texas v. Shumate, Civ.App., 178 S.W. 1050.
4 C.J. p 943 note 80.

Permitting supplemental pleading held harmless where:
(1) The final result was in no way based thereon.
Cal.—Butte Creek Consol. Dredging Co. v. Olney, 161 P. 260, 173 C. 697.
Ind.—Dietrich v. Minas, 109 N.E. 930, 61 Ind.App. 333.
Mont.—Noe v. Matlock, 208 P. 591, 64 Mont. 35.
Tex.—St. Louis Southwestern Ry. Co. of Texas v. Shumate, Civ.App., 178 S.W. 1050.

(2) It was subsequently superseded by a substituted amended pleading.
D.C.—Daly v. Sacks, 38 F.2d 388, 59 App.D.C. 216.

(3) No evidence was introduced in support of the supplemental pleading.
Ind.—Thurston v. Carter, 155 N.E. 834, 87 Ind.App. 518.

(4) The matters alleged in the supplemental pleading could properly have been set up by way of amendment.
Cal.—Stark v. Hoeft, 269 P. 1105, 205 C. 102.

supplemental pleadings[49] is not cause for reversal where no substantial rights of the complaining party are adversely affected by the ruling of the court. The failure to serve an amended and supplemental pleading is immaterial where the amended and supplemental complaint merely includes additional recitations of specific acts committed after the action is filed, but does not alter or add to the cause of action.[49.5]

Improper designation or misnomer of supplemental pleading is not prejudicial or ground for reversal.

W.Va.—Fidelity Mut. Life Ins. Co. v. Sims, 82 S.E.2d 312, 140 W.Va. 49.

Wyo.—Simmons v. Parrent, 256 P.2d 101, 71 Wyo. 207.

49. U.S.—Union Indemnity Co. v. Vetter, C.C.A.Fla., 40 F.2d 606—Norrie v. Lohman, C.C.A.N.Y., 16 F. 2d 355.

Ariz.—Leigh v. Loyd, 244 P.2d 356, 74 Ariz. 84.

Cal.—Homer Laughlin Engineers Corporation v. J. W. Leavitt & Co., 2 P.2d 511, 116 C.A. 197.

Fla.—Thornton v. Parker, 181 So. 346, 132 Fla. 532—Pritchett v. New York Life Ins. Co., 170 So. 700, 125 Fla. 653.

Ind.—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62.

La.—Charbonnet v. Reliance Finance Corporation, App., 143 So. 104.

Minn.—Morgan v. Ibberson, 10 N.W. 2d 222, 215 Minn. 293.

S.C.—Safran v. Meyer, 88 S.E. 3, 103 S.C. 356.

Tex.—Dyche v. Simmons, Civ.App., 264 S.W.2d 208, error refused no reversible error—Harris v. Thomas, Civ.App., 217 S.W. 1068.

4 C.J. p 943 note 80.

Refusal to permit filing of supplemental pleading held harmless where:

(1) The complaining party otherwise received the benefit of the matter proposed in the supplemental pleading.

U.S.—Union Indemnity Co. v. Vetter, C.C.A.Fla., 40 F.2d 606—Norrie v. Lohman, C.C.A.N.Y., 16 F. 2d 355.

La.—Charbonnet v. Reliance Finance Corporation, App., 143 So. 104.

R.I.—Warnard Constructors v. Narragansett Brewing Co., 18 A.2d 390, 66 R.I. 182.

S.C.—Safran v. Meyer, 88 S.E. 3, 103 S.C. 356.

4 C.J. p 943 note 80 [c].

(2) The filing of the supplemental pleading could in no way have altered the final result.

Cal.—Homer Laughlin Engineers Corporation v. J. W. Leavitt & Co., 2 P.2d 511, 116 C.A. 197.

Ind.—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62.

Tex.—Harris v. Thomas, Civ.App., 217 S.W. 1068.

(3) Nothing in the amended answers would set up a defense.

Ill.—Stone v. Tri-State Mut. Life Ass'n, 37 N.E.2d 564, 311 Ill.App. 624.

49.5 Cal.—Supreme Grand Lodge of Ancient and Mystical Order Rosae Crucis v. Smith, 61 P.2d 449, 7 C. 2d 510.

§ 1689. —— Motion to Strike Out

a. In general

b. Part of pleadings

a. In General

Where no substantial rights of the complaining party have been affected thereby, errors in ruling on motions to strike pleadings do not constitute grounds for reversal.

Errors in ruling on motions to strike pleadings do not constitute grounds for reversal where no substantial rights of the complaining party have been affected thereby.[50]

50. Ala.—Streater v. Town of Town Creek, 173 So. 853, 234 Ala. 132—Indemnity Ins. Co. of North America v. Gardner, 108 So. 342, 214 Ala. 528—Tuscaloosa Ry. & Utilities Co. v. Lewis, 93 So. 386, 207 Ala. 463—Street v. Browning, 87 So. 527, 205 Ala. 110—Lister v. Vowell, 25 So. 564, 122 Ala. 264—Duncan v. Hargrove, 22 Ala. 150.

Lambert v. Bowman-Moore Hat Co., 136 So. 738, 24 Ala.App. 311, certiorari denied 136 So. 741, 223 Ala. 420—McDonough v. Commercial State Bank, 73 So. 754, 15 Ala.App. 429.

Cal.—Hanes v. Coffee, 300 P. 963, 212 C. 777.

Bates v. Zampelli, 129 P.2d 126, 54 C.A.2d 451—Metropolitan Cas. Ins. Co. of New York v. Margulis, 102 P.2d 459, 38 C.A.2d 711.

Conn.—Di Biase v. Garnsey, 136 A. 871, 106 Conn. 86.

Fla.—Thomas v. Sheppard-Notter Co., 163 So. 524, 121 Fla. 191—Sea Board Air Line Ry. Co. v. Watson, 113 So. 716, 94 Fla. 571—Tripp v. Wade, 89 So. 870, 82 Fla. 325.

Ga.—Jarecky v. Arnold, 182 S.E. 66, 51 Ga.App. 954.

Ill.—Chicago, etc., R. Co. v. O'Connor, 9 N.E. 263, 119 Ill. 586.

See Deming v. Grunenberg, 183 Ill.App. 208.

Ind.—Yelton v. Plantz, 77 N.E.2d 895, 226 Ind. 155—**Corpus Juris Secundum cited in** Armstrong v. Pressler, 73 N.E.2d 751, 753, 853, 225 Ind. 291—Lindley v. Sink, 30 N.E.2d 456, 218 Ind. 1—Hart v. Scott, 81 N.E. 481, 168 Ind. 530—Brickley v. Edwards, 30 N.E. 708, 131 Ind. 3—Crawford v. Anderson, 129 Ind. 117, 28 N.E. 314—Delaware County Bd. of Com'rs v. McClintock, 51 Ind. 325.

American Income Ins. Co. v. Kindlesparker, 37 N.E.2d 304, 110 Ind. App. 517—Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298—Lohrig v. Rochat, 169 N.E. 77, 90 Ind.App. 481—Employers' Liability Assur. Corporation v. Citizens' Nat. Bank of Peru, 151 N.E. 396, 85 Ind.App. 169—Gwinn v. Hobbs, 118 N.E. 155, 72 Ind.App. 439—Forsyth v. American Maize Products Co., 108 N.E. 622, 59 Ind.App. 634—Jones v. Bryan, 102 N.E. 153, 53 Ind.App. 550—Owens v. Tague, 29 N.E. 784, 3 Ind.App. 245.

Iowa.—Davis v. Mater, 79 N.W.2d 400—Cochran v. Independent School Dist. of Broad Horn, 224 N.W. 809, 207 Iowa 1385—Mulenix v. Fairfield Nat. Bank of Fairfield, 209 N. W. 432, 203 Iowa 897—Cotten v. Halverson, 207 N.W. 795, 201 Iowa 636.

Kan.—Nausley v. Nausley, 313 P.2d 302, 181 Kan. 543—Smith v. Wright, 305 P.2d 810, 180 Kan. 584—Gibson v. Bodley, 133 P.2d 112, 156 Kan. 338—Nardyz v. Fulton Fire Ins. Co., 101 P.2d 1045, 151 Kan. 907—Nelson v. Schippel, 56 P.2d 469, 143 Kan. 546.

Ky.—Gilliam v. Cassady, 161 S.W.2d 915, 290 Ky. 477.

Mo.—Missouri Glass Co. v. Copeland Sewing Mach. Co., 88 Mo. 57.

N.J.—Warren v. Hudson County, 47 A.2d 348, 135 N.J.Law 91, affirmed 50 A.2d 877, 135 N.J.Law 178—Miles v. Miles, 158 A. 449, 108 N. J.Law 496—Holdman v. Tansey, 151 A. 873, 107 N.J.Law 378—Sculthorpe v. Commonwealth Casualty Co., 121 A. 751, 98 N.J.Law 845.

Lotz Bros. Dairy v. Werner & Co., 177 A. 358, 13 N.J.Misc. 208.

N.C.—U. S. Fire Ins. Co. v. Parks, 80 S.E.2d 641, 239 N.C. 680—Lipinsky v. Revell, 83 S.E. 820, 167 N.C. 508.

Ohio.—Roof v. National Sur. Corp., 110 N.E.2d 159, 92 Ohio App. 295—Heim v. Deshler-Wallick Hotel Co., App., 41 N.E.2d 580.

Error in sustaining a motion to strike is usually regarded as harmless where the party otherwise has the benefit of the matter set up in his stricken pleading,[51] or has had ample opportunity to file another pleading to replace the one stricken,[52] or the pleading of the opposite party to which the stricken pleading related has been withdrawn or dismissed,[53] or the judgment is sustainable on issues other than those raised by the leading stricken;[54] or even had the pleading been permitted to stand it would have

Pa.—Hoff v. Kauffman, 128 A. 120, 282 Pa. 471.

Tenn.—Fortune v. McGinn, 134 S.W. 2d 898, 23 Tenn.App. 504, rehearing denied 139 S.W.2d 256, 24 Tenn.App. 36.

Tex.—Kittrell v. Barbee, Civ.App., 198 S.W.2d 155, error dismissed—Western Union Telegraph Co. v. Hicks, Civ.App., 47 S.W.2d 466.

Wyo.—First Nat. Bank v. Sorenson, 217 P. 948, 30 Wyo. 136.

4 C.J. p 989 note 21—9 C.J. p 663 note 89—51 C.J. p 285 note 12 [a].

51. U.S.—Upton v. Harrison, C.C.A. N.C., 68 F.2d 232, certiorari denied 54 S.Ct. 718, 292 U.S. 633, 78 L.Ed. 1486.

Ala.—Mobile Building & Loan Ass'n v. Odom, 166 So. 698, 232 Ala. 19—Weeden v. Asbury, 138 So. 267, 223 Ala. 687—Page v. Skinner, 125 So. 36, 220 Ala. 320—Alabama Water Co. v. Wilson, 107 So. 821, 214 Ala. 364—Wilson v. City of Russellville, 96 So. 870, 209 Ala. 617—Bedgood v. T. R. Miller Mill Co., 80 So. 364, 202 Ala. 299—Atlantic Coast Line R. Co. v. Farmer, 79 So. 35, 201 Ala. 603—Huntsville Knitting Mills v. Butner, 76 So. 54, 200 Ala. 288.

Stewart v. Smith, 78 So. 724, 16 Ala.App. 461—Dillworth v. Holmes Furniture & Vehicle Co., 73 So. 288, 15 Ala.App. 340.

Ariz.—Brandt v. Meade, 148 P. 297, 17 Ariz. 34.

Cal.—Hamm v. San Joaquin & Kings River Canal Co., 111 P.2d 940, 44 C.A.2d 47—Welfare Inv. Co. v. Stowell, 22 P.2d 529, 132 C.A. 275—Gallentine v. Hickey, 189 P. 308, 46 C.A. 411.

Colo.—Johnson v. Engstrom, 155 P. 1095, 61 Colo. 30.

Fla.—Fain v. Cartwright, 182 So. 302, 132 Fla. 855—Bryan v. Cogswell, 178 So. 830, 130 Fla. 788—Atlantic Coast Line R. Co. v. Baynard, 151 So. 5, 112 Fla. 544—Behrman v. Max, 137 So. 120, 102 Fla. 1094—Tripp v. Wade, 89 So. 870, 82 Fla. 325.

Ga.—Powers v. Wren, 31 S.E.2d 713, 198 Ga. 316—Felton v. Whitfield, 136 S.E. 914, 163 Ga. 841—J. A. Cook & Son v. Parsons, 84 S.E. 559, 143 Ga. 127.

Benton v. Roberts, 176 S.E. 804, 49 Ga.App. 760—Greenwood v. Greenwood, 163 S.E. 316, 44 Ga. App. 846—Wight v. Merchants' & Planters' Bank, 121 S.E. 695, 31 Ga.App. 560—Smith v. Commercial Credit Co., 111 S.E. 821, 28 Ga.App. 403.

Ill.—Stipanowich v. Sleeth, 181 N.E. 632, 349 Ill. 98.

Watson v. Willerton, 258 Ill.App. 390—Krupp v. National Fur Dressing & Dyeing Co., 250 Ill.App. 282. See Sprengel v. Schroeder, 203 Ill. App. 213.

Ind.—Opple v. Ray, 195 N.E. 81, 208 Ind. 450.

Federal Life Ins. Co. v. Relias, 185 N.E. 319, 99 Ind.App. 115—South Side State Bank v. Snyder, 176 N.E. 52, 92 Ind.App. 433—Gwinn v. Hobbs, 118 N.E. 155, 72 Ind.App. 439.

Kan.—Nausley v. Nausley, 313 P.2d 302, 181 Kan. 543—Henning v. Wichita Natural Gas Co., 164 P. 297, 100 Kan. 255.

Ky.—Oliver v. Muncy, 89 S.W.2d 617, 262 Ky. 164—Board v. Dorris, 181 S.W. 1098, 168 Ky. 195.

Md.—Belmont Dairy Co. v. Thrasher, 124 Md. 320, 92 A. 766.

Mass.—Des Brisay v. Foss, 162 N.E. 4, 264 Mass. 102.

N.J.—Petersen v. Preferred Accident Ins. Co. of New York, 176 A. 897, 114 N.J.Law 180.

Ohio.—Howard v. Barner, App., 137 N.E.2d 422—Levine v. Sun Drug Co., 80 N.E.2d 815, 65 Ohio App. 513.

Okl.—Sabin v. Levorsen, 145 P.2d 402, 193 Okl. 320, certiorari denied 64 S.Ct. 205, 320 U.S. 792, 88 L.Ed. 477, rehearing denied 64 S.Ct. 368, 320 U.S. 815, 88 L.Ed. 492.

Or.—Stamm v. Wood, 168 P. 69, 86 Or. 174.

S.C.—Dobson v. Cothran, 13 S.E. 679, 34 S.C. 518.

Tenn.—Life & Casualty Ins. Co. of Tennessee v. Robertson, 6 Tenn. App. 43—Metropolitan Life Ins. Co. v. Borsje, 2 Tenn.App. 173.

Tex.—Dallas Railway & Terminal Co. v. Price, Civ.App., 94 S.W.2d 884, affirmed 114 S.W.2d 859, 131 Tex. 319—Thomason v. Pacific Mut. Life Ins. Co. of California, Civ. App., 74 S.W.2d 162—Howe v. Central State Bank of Coleman, Civ. App., 297 S.W. 692—Ralls v. Parish, Civ.App., 151 S.W. 1089.

Utah.—Brophy v. Ogden Rapid Transit Co., 151 P. 49, 46 Utah 426.

Va.—Alexander v. Commonwealth, 120 S.E. 296, 137 Va. 477.

Wash.—Lindsay v. Lindsay, 267 P. 777, 148 Wash. 31—Schmit v. Campbell, 249 P. 487, 140 Wash. 376.

Wis.—Markgraf v. Columbia Bank of Lodi, 233 N.W. 782, 203 Wis. 429.

Matter stricken available under other pleadings

Ala.—Weeden v. Asbury, 138 So. 267, 223 Ala. 687—Page v. Skinner, 125 So. 36, 220 Ala. 302.

Ariz.—Brandt v. Meade, 148 P. 297, 17 Ariz. 34.

Cal.—Welfare Inv. Co. v. Stowell, 22 P.2d 529, 132 C.A. 275—Gallentine v. Hickey, 189 P. 308, 46 C.A. 411.

Fla.—Atlantic Coast Line R. Co. v. Baynard, 151 So. 5, 112 Fla. 544.

Ill.—Stipanowich v. Sleeth, 181 N.E. 632, 349 Ill. 98.

Tex.—Howe v. Central State Bank of Coleman, Civ.App., 297 S.W. 692.

Wis.—Markgraf v. Columbia Bank of Lodi, 233 N.W. 782, 203 Wis. 429.

Proof of matters alleged permitted

Error in striking out a pleading is harmless where the pleader is permitted to prove all facts alleged in the pleading stricken.

U.S.—Upton v. Harrison, C.C.A.N.C., 68 F.2d 232, certiorari denied 54 S. Ct. 718, 292 U.S. 633, 78 L.Ed. 1486.

Ala.—Garner v. Morris, 65 So. 1000, 187 Ala. 658.

H. C. Schrader Co. v. A. Z. Bailey Grocery Co., 74 So. 749, 15 Ala.App. 647—Dillworth v. Holmes Furniture, etc., Co., 73 So. 288, 15 Ala. App. 340.

Cal.—Hanson v. Goldsmith, 150 P. 364, 170 C. 512.

Colo.—Moore v. Burritt, 105 P.2d 1084, 106 Colo. 413—Johnson v. Engstrom, 155 P. 1095, 61 Colo. 30.

Conn.—Cook v. Packard Motor Car Co. of New York, 92 A. 413, 88 Conn. 590, L.R.A.1915C 319.

Fla.—Welles v. Bryant, 66 So. 562, 68 Fla. 113.

Ga.—Greenwood v. Greenwood, 163 S.E. 316, 44 Ga.App. 846—Minter v. Maisby Machinery Co., 87 S.E. 607, 17 Ga.App. 443.

Ind.—South Side State Bank v. Snyder, 176 N.E. 52, 92 Ind.App. 433.

Md.—Belmont Dairy Co. v. Thrasher, 92 A. 766, 124 Md. 320.

Or.—Stamm v. Wood, 168 P. 69, 86 Or. 174.

Tex.—Ralls v. Parish, Civ.App., 151 S.W. 1089.

52. Cal.—Cuddahy v. Gragg, 189 P. 721, 46 C.A. 578.

Ill.—Farmer v. Fowler, 213 Ill.App. 581, affirmed 123 N.E. 550, 288 Ill. 494.

53. Ohio.—De Ran v. Stahl, 197 N.E. 144, 49 Ohio App. 262.

54. Ga.—Camden Fire Ins. Ass'n v. Almand, 147 S.E. 722, 39 Ga.App. 496.

La.—Central Sav. Bank & Trust Co. v. Oil Field Supply & Scrap Mate-

availed the pleader nothing,[55] as where the pleading is legally insufficient,[56] or there was no evidence to support it,[57] or the facts which are necessary to sustain it are established to be otherwise by the undisputed evidence[58] or the findings of the jury.[59] Failure to give the pleader notice of a motion to strike his pleading before sustaining it is harmless error where the pleader subsequently has full hearing on the merits of the question involved.[60]

Sustaining a motion to strike is, however, harmful where the party is thereby erroneously deprived of substantial benefits under the pleading, and the final result might have been different had the pleading been permitted to stand.[61]

It seems to be well settled in some states that ground for reversal cannot be predicated on error of the court in overruling or denying a motion to strike, where the moving party has a further adequate remedy by objecting to the testimony and requesting a proper charge or instruction.[62] Apart

rial Co., App., 12 So.2d 815, affirmed in part and annulled in part, 12 So. 2d 819, 202 La. 787.
N.Y.—Gilbert v. Rothschild, 19 N.E. 2d 785, 280 N.Y. 66, 134 A.L.R. 1.

55. Ala.—McGregor v. Shipp, 189 So. 740, 238 Ala. 221—Burgess v. Jones, 166 So. 683, 231 Ala. 622—Southern Ry. Co. v. Slade, 68 So. 867, 192 Ala. 568.
Cal.—Hanson v. Goldsmith, 150 P. 364, 170 C. 512.
Keenan v. Dean, 285 P.2d 300, 134 C.A.2d 189—Barr Lumber Co. v. Shaffer, 238 P.2d 99, 108 C.A.2d 14.
Ga.—Hoffman v. Franklin Motor Car Co., 122 S.E. 896, 32 Ga.App. 229—Golightly v. Line, 121 S.E. 878, 31 Ga.App. 550.
Ill.—Moffet v. Brown, 16 Ill. 91.
Warren v. McRoberts, 43 N.E.2d 401, 315 Ill.App. 499.
Ind.—New York Life Ins. Co. v. Adams, 176 N.E. 146, 202 Ind. 493.
Iowa.—Cain v. Osler, 150 N.W. 17, 168 Iowa 59, Ann.Cas.1918C 1126.
Ky.—Moore v. Shepherd, 225 S.W. 484, 189 Ky. 593.
Miss.—Wood v. Meyer, 7 So. 359.
Okl.—Johnson v. City of Vinita, 45 P.2d 1089, 172 Okl. 376.
Or.—Susznik v. Alger Logging Co., 147 P. 922, 76 Or. 189, Ann.Cas. 1917C 700.
S.C.—Virginia-Carolina Chemical Corporation v. Tweed-Lumber Co., 178 S.E. 131, 174 S.C. 497.
Tex.—American Nat. Ins. Co. v. Brawner, Civ.App., 93 S.W.2d 450—New Liberty Common School Dist. No. 3 v. Merchants' & Planters' Bank, Civ.App., 273 S.W. 330.
Wis.—Hurlburt v. Marshall, 22 N.W. 852, 62 Wis. 590—Hoffman v. Wheelock, 22 N.W. 713, 716, 62 Wis. 434.

56. Ala.—Ex parte Hale, 18 So.2d 713, 246 Ala. 40.
Ark.—Mitchell v. Real Estate Bank, 4 Ark. 513.
Fla.—Cooey v. Cooey, 182 So. 202, 132 Fla. 716.
Ill.—Chicago, etc., R. Co. v. O'Connor, 9 N.E. 263, 119 Ill. 586.
Ind.—Yelton v. Plantz, 77 N.E.2d 895, 226 Ind. 155—Kilty v. Michael, 130 N.E. 531, 190 Ind. 374—Wabash R. Co. v. Todd, 113 N.E. 997, 186 Ind. 72—Clark v. Jeffersonville, etc., R. Co., 44 Ind. 248.
Iowa.—McIntosh v. Coulthard, 88 N. W. 1069—Rhoadabeck v. Blair Town Lot, etc., Co., 17 N.W. 582, 62 Iowa 368.
Wis.—Moore v. May, 94 N.W. 45, 117 Wis. 192.

57. Iowa.—People's Nat. Bank of Waukon v. Russel, 194 N.W. 247, 196 Iowa 401.
Ky.—Wheeler's Adm'r v. Sullivan's Adm'r, 86 S.W.2d 1023, 260 Ky. 814.
Wash.—Carr v. Bell, 225 P. 230, 129 Wash. 413.

58. Ala.—McPherson v. Gay, 117 So. 202, 217 Ala. 557.
Ga.—Ellis v. First Nat. Bank, 186 S. E. 813, 182 Ga. 641.

59. Iowa.—Harriman v. Roberts, 235 N.W. 751, 211 Iowa 1372.
N.D.—Carr v. Neva, 164 N.W. 729, 38 N.D. 158.
Wash.—Gay v. Hansen, 226 P. 271, 130 Wash. 107.

60. Ill.—Farmer v. Fowler, 123 N. E. 550, 288 Ill. 494.

61. Ala.—Formby v. Whitaker, 142 So. 536, 225 Ala. 154—Ashurst v. Arnold-Henegar-Doyle Co., 78 So. 386, 201 Ala. 480.
Oneonta Trust & Banking Co. v. Box, 73 So. 759, 15 Ala.App. 440.
Ariz.—Ingalls v. Neidlinger, 216 P. 2d 387, 70 Ariz. 40.
Ark.—General Talking Pictures Corporation v. Shea, 49 S.W.2d 359, 185 Ark. 777.
Fla.—Hayman v. Mitchell, 107 So. 635, 91 Fla. 304.
Ga.—Williams Realty & Loan Co. v. Simmons, 3 S.E.2d 580, 188 Ga. 184—Biggers v. Rhodes, 123 S.E. 604, 158 Ga. 471.
Gable v. Central of Georgia Ry. Co., 147 S.E. 135, 39 Ga.App. 350—Rutledge v. Temple Banking Co., 121 S.E. 707, 31 Ga.App. 686.
Ill.—Sunbeam Heating Co. v. Chambers, 38 N.E.2d 544, 312 Ill.App. 382.
Ind.—Dill v. O'Ferrell, 45 Ind. 268.
Deveny v. Treesh, 72 N.E.2d 578, 117 Ind.App. 374—Minor v. Sumner, 140 N.E. 580, 80 Ind.App. 269.
Mo.—Rowles v. Paulson, App., 105 S. W.2d 31.
Mont.—Murray v. Haldorn, 64 P. 511, 69 P. 835, 25 Mont. 218.
N.J.—Barnes v. P. & D. Mfg. Co., 187 A. 186, 117 N.J.Law 156.
N.C.—Penn Dixie Lines, Inc. v. Grannick, 78 S.E.2d 410, 238 N.C. 552.
Ohio.—Mills v. Penn-Lox Co., App., 36 N.E.2d 828.
Okl.—Egan v. Henshaw, 169 P.2d 298, 197 Okl. 83—Washington Nat. Ins. Co. v. De Lancy, 56 P.2d 134, 176 Okl. 370—Davis v. Penn Mut. Life Ins. Co., 233 P. 434, 106 Okl. 155.
Tex.—Southwest Nat. Bank of Dallas v. Underwood, 86 S.W.2d 141, 120 Tex. 83.
Lindsey v. Williams, Civ.App., 199 S.W.2d 183.
Wyo.—McGinnis v. Beatty, 204 P. 340, 28 Wyo. 328.
4 C.J. p 939 note 21 [a].

62. Ala.—P. B. Yates Mach. Co. v. Taylor, 110 So. 396, 215 Ala. 311—Irwin v. Cotney, 108 So. 235, 214 Ala. 415—Louisville, etc., R. Co. v. Robinson, 105 So. 874, 213 Ala. 522—Ex parte Steverson, 100 So. 912, 211 Ala. 597—Stull v. Daniel Mach. Co., 93 So. 583, 207 Ala. 544—Plylar v. Jones, 92 So. 445, 207 Ala. 372—National Surety Co. v. O'Connell, 81 So. 660, 202 Ala. 684—Brookside-Pratt Mining Co. v. McAlister, 72 So. 18, 196 Ala. 110—Western Union Telegraph Co. v. Hughston, 67 So. 670, 191 Ala. 424.
Southern Ry. Co. v. Penny, 114 So. 15, 22 Ala.App. 199.
Ind.—Terre Haute, Indianapolis & Eastern Traction Co. v. McDermott, 144 N.E. 620, 82 Ind.App. 134—National Mut. Ins. Co. of Celina, Ohio v. Bales, 139 N.E. 703, 81 Ind. App. 302, rehearing denied 141 N.E. 481, 81 Ind.App. 302—Olejniczak v. Indiana Lumber Mfg. Co., 135 N.E. 6, 78 Ind.App. 168—Lipnik v. Ehalt, 132 N.E. 410, 76 Ind.App. 390—Cook & Bernheimer Co. v. Hagedorn, 131 N.E. 788, 82 Ind.App. 444—Eagle Lake Ice Co. v. Munson, 127 N.E. 839, 73 Ind.App. 496—Guenther v. Jackson, 126 N.E. 873, 73 Ind.App. 162—Cleveland, etc., R. Co. v. Doan, 94 N.E. 598, 47 Ind.App. 322.
Or.—Brownell v. Salem Flouring Mills Co., 87 P. 770, 48 Or. 525.
4 C.J. p 941 note 48 [a], [b].

from this, a refusal to strike a pleading is harmless where the matter pleaded therein is disregarded or not taken into consideration,[63] or the complaining party would not have been entitled to prevail even had the pleading been stricken,[64] or he is accorded all the advantages he would have acquired by having the motion sustained,[65] or the verdict or decision is for the moving party with respect to those matters raised by the pleading sought to be stricken,[66] or the facts alleged could properly have been incorporated in another pleading by way of amendment,[67] or are sufficiently covered in, and provable under, another pleading to which the motion was not directed.[68] Refusal to strike a cross complaint is harmless where the complaint is subsequently dismissed leaving only the issues formed by the cross-complaint and the answer thereto;[69] and error in refusing to strike a complaint for misjoinder of two causes of action is harmless where there is recovery on only one cause of action.[70]

The fact that a motion to strike was not the proper remedy will not authorize a reversal for striking out a pleading, where the correct result was reached,[71] or the pleader was accorded the same rights as if the correct procedure had been followed.[72]

b. Part of Pleadings

(1) In general
(2) Sustaining motion to strike
(3) Denying motion to strike

(1) In General

If the complaining party has not been injured or prejudiced thereby, error in ruling on a motion to strike part of a pleading is not ground for reversal.

Error in ruling with reference to a motion to strike only a part of the pleadings is not ground for reversal if the complaining party has not been injured or prejudiced thereby,[73] as where the ruling

63. Idaho.—Federal Reserve Bank of San Francisco v. Hansbrough, 292 P. 222, 49 Idaho 747.
Tex.—Chicago, R. I. & G. Ry. Co. v. Trout, Com.App., 206 S.W. 829, rehearing denied 208 S.W. 656.
Utah.—Hoggan v. Price River Irr. Co., 184 P. 536, 55 Utah 170.

64. Cal.—People v. City of Reedley, 226 P. 408, 66 C.A. 409.
Idaho.—Morton v. Fuller, 281 P. 377, 48 Idaho 203.
Ind.—Yellow Mfg. Acceptance Corporation v. Linsky, 192 N.E. 715, 99 Ind.App. 691.
Minn.—Nelson v. McDonald, 191 N. W. 281, 153 Minn. 474—Cookson v. Hill, 178 N.W. 591, 146 Minn. 165.

No cause of action in favor of moving plaintiff

Denying a motion to strike out an answer raising an affirmative defense is harmless where it has been found that one of the essential elements of plaintiff's cause of action is lacking.
Cal.—People v. City of Reedley, 226 P. 408, 66 C.A. 409.

65. Utah.—Boley v. Butterfield, 194 P. 128, 57 Utah 262.

Same right to make proof accorded

A defendant is not prejudiced by refusal to strike a reply on the ground that it alleges matter which should have been in the complaint where he is permitted to prove every fact that he could have proved if the same matter had been pleaded in the complaint.
Utah.—Boley v. Butterfield, 194 P. 128, 57 Utah 262.

66. Colo.—People v. White, 255 P. 453, 81 Colo. 315.
Okl.—Woods v. Davis, 7 P.2d 905, 155 Okl. 6.

67. Iowa.—Cochran v. Independent School Dist. of Broad Horn, 224 N. W. 809, 207 Iowa 1385.

68. Ala.—Martin v. Walker, 71 So. 667, 196 Ala. 469.
Ariz.—Crane v. Franklin, 147 P. 718, 16 Ariz. 501, reheard 154 P. 1036, 17 Ariz. 476.
Cal.—Bronge v. Mowat & Co., 155 P. 827, 29 C.A. 388.

69. Ind.—Muir v. Robinson, 186 N. E. 289, 205 Ind. 293.

70. Or.—Lange v. Allen, 251 P. 715, 120 Or. 96.

71. Ala.—Ex parte Hale, 18 So.2d 713, 246 Ala. 40—Montiel v. Holcombe, 199 So. 245, 240 Ala. 352.
Ariz.—Hulsebus v. McConnell, 51 P. 2d 259, 46 Ariz. 371.
Fla.—Bailey v. Averill, 182 So. 848, 133 Fla. 621—Reliance Life Ins. Co. v. Gray, 102 So. 764, 89 Fla. 20.
Ga.—Burkhalter v. Lanier, 115 S.E. 920, 29 Ga.App. 416.
Ind.—Wohadlo v. Fary, 46 N.E.2d 489, 221 Ind. 219—Wilson v. Tevis, 111 N.E. 181, 184 Ind. 712.
Piersol v. Hays, 47 N.E.2d 844, 113 Ind.App. 337—Minor v. Sumner, 140 N.E. 580, 80 Ind.App. 269.
Or.—Oregon Box & Mfg. Co. v. Jones Lumber Co., 244 P. 313, 117 Or. 411.
Tenn.—Hoover Lines v. Whitaker, 120 S.W.2d 983, 22 Tenn.App. 223.
4 C.J. p 942 note 62.

72. S.D.—Plank v. Hopkins, 151 N. W. 1017, 35 S.D. 248.

73. U.S.—Skolar v. Lehigh Valley R. Co., C.C.A.N.Y., 60 F.2d 893—Fort Worth Independent School Dist. v. Ætna Casualty & Surety Co., C.C.A. Tex., 48 F.2d 1, 77 A.L.R. 222, certiorari denied 52 S.Ct. 24, 284 U.S. 645, 76 L.Ed. 548—Graff v. Town of Seward, Alaska, C.C.A.Alaska, 20 F.2d 816.
Cal.—Everts v. Matteson, 132 P.2d 476, 21 C.2d 437.
Mile v. California Growers Wineries, 114 P.2d 651, 45 C.A.2d 674.
Colo.—Newton v. Canty, 203 P.2d 910, 119 Colo. 381—Eltzroth v. Murphy, 223 P. 760, 75 Colo. 5.
Conn.—O'Keefe v. Atlantic Refining Co., 46 A.2d 343, 132 Conn. 613.
Fla.—Dezen v. Slatcoff, 65 So.2d 484—Town of Lake Hamilton v. Hughes, 32 So.2d 283, 159 Fla. 600—Thomas v. Carlton, 143 So. 780, 106 Fla. 648.
Ill.—Turner v. Modern Woodmen of America, 186 Ill.App. 404. See Kubiatowski v. Henry Pratt Boiler & Machine Co., 205 Ill.App. 560.
Ind.—King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523—Buddenberg v. Morgan, 38 N. E.2d 287, 110 Ind.App. 609—Watson v. Gary St. Ry. Co., 12 N.E.2d 976, 104 Ind.App. 656.
Iowa.—Evans v. Herbranson, 41 N. W.2d 113, 241 Iowa 268, 15 A.L.R. 2d 925—State ex rel. Wadsworth v. Board of Sup'rs of Linn County, 6 N.W.2d 877, 232 Iowa 1092—Attig v. International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 90, 300 N.W. 636, 231 Iowa 1.
Kan.—Lessley v. Kansas Power & Light Co., 231 P.2d 239, 171 Kan. 197—Connell v. Kanwa Oil, 194 P. 2d 950, 165 Kan. 241—Cox v. Gibson, 262 P. 1030, 125 Kan. 76.
Mass.—Reynolds v. Missouri, K. & T. Ry. Co., 117 N.E. 913, 228 Mass. 584.
Minn.—Lewerenz v. E. W. Wylie Co., 51 N.W.2d 834, 236 Minn. 94.

of the court relates to parts of pleadings which are surplusage, immaterial, irrelevant,[74] or argumentative,[74.5] or averments of evidential facts.[75]

Reinstatement of a stricken paragraph of complaint setting forth notes evidencing a claim in suit is not reversible error where the correct conclusion and judgment were reached by the court.[76]

(2) Sustaining Motion to Strike

Sustaining a motion to strike part of a pleading, although erroneous, is ground for reversal only when the complaining party cannot otherwise avail himself of the benefit of the portion stricken and he might have obtained a more favorable result had it been permitted to stand.

The erroneous sustaining of a motion to strike a part of a pleading, although erroneous, is harmless where the party against whom the motion is sustained nevertheless has the benefit of the matters set up in the portion so stricken,[77] as where the facts therein alleged are admissible or available under the remaining parts of the pleading,[78] or he is

Miss.—Dunn v. Sims, 67 So.2d 261, 218 Miss. 227.
Mo.—State ex rel. State Highway Commission v. Jacobs, App., 281 S.W.2d 597.
N.J.—Kinney v. Fidelity Union Trust Co., 18 A.2d 19, 129 N.J.Eq. 80.
N.Y.—Ruzicka v. Rager, 111 N.E.2d 878, 305 N.Y. 191, 39 A.L.R.2d 288.
Steinbugler v. William C. Atwater & Co., 18 N.Y.S.2d 102, 259 App. Div. 725, reargument denied 19 N.Y.S.2d 772, 259 App.Div. 818.
N.C.—Hamilton v. Hamilton, 89 S.E.2d 417, 242 N.C. 715—Tucker v. Transou, 88 S.E.2d 131, 242 N.C. 498—Pinnix v. Toomey, 87 S.E.2d 893, 242 N.C. 358—Dunn v. Dunn, 87 S.E.2d 308, 242 N.C. 234—Lanier v. Southern Ry. Co., 23 S.E.2d 328, 222 N.C. 756—Alamance Lumber Co. v. Edwards, 7 S.E.2d 497, 217 N.C. 251—City of Fayetteville v. Spur Distributing Co., 5 S.E.2d 838, 216 N.C. 596.
Okl.—Nolan v. Mathis, 295 P. 801, 147 Okl. 155.
Or.—Frangos v. Edmunds, 173 P.2d 596, 179 Or. 577.
S.C.—Mallard Lumber Co. v. Carolina Portland Cement Co., 132 S.E. 614, 134 S.C. 228.
S.D.—Corpus Juris Secundum cited in Larimore v. Dobbs, 57 N.W.2d 750, 751, 74 S.D. 635.
Tex.—Humphrey v. Davis, Civ.App., 11 S.W.2d 383—Chapman v. Eastland County, Civ.App., 260 S.W. 889, reversed on other grounds Eastland County v. Chapman, Com. App., 276 S.W. 654, rehearing denied 277 S.W. 629, reheard 278 S.W. 425—Dees v. Crane, Civ.App., 175 S.W. 468.
Utah.—Robison v. Kelly, 255 P. 480, 69 Utah 376.
Va.—Morriss v. White, 131 S.E. 835, 146 Va. 553.
Wyo.—Willis v. Willis, 49 P.2d 670, 48 Wyo. 403, rehearing denied 54 P.2d 814, 49 Wyo. 296.
4 C.J. p 939 note 22—9 C.J. p 348 note 49.

74. Cal.—Jones v. Southern Pac. Co., 239 P. 429, 74 C.A. 10.
Colo.—Thuro v. Meredith, 226 P. 867, 75 Colo. 471.
N.J.—Kinney v. Fidelity Union Trust Co., 18 A.2d 19, 129 N.J.Eq. 80.
N.C.—Gallimore v. State Highway and Public Works Commission, 85 S.E.2d 392, 241 N.C. 350—Lanier v. Southern Ry. Co., 23 S.E.2d 328, 222 N.C. 756.
Tex.—Guyler v. Guyler, Civ.App., 220 S.W. 604.
4 C.J. p 939 note 23.

74.5 N.C.—Pinnix v. Toomey, 87 S.E. 2d 893, 242 N.C. 358.

75. Ala.—Shirley v. Shirley, 73 So. 2d 77, 261 Ala. 100.
Kan.—Fleming v. Campbell, 83 P.2d 708, 148 Kan. 516—Manwaring v. Reynolds, 196 P. 1086, 108 Kan. 777.
4 C.J. p 939 note 23.

76. Wash.—Leavenworth v. Brandon, 136 P. 375, 76 Wash. 394.

77. U.S.—Rickard v. Thompson, C.C.A.Alaska, 72 F.2d 807—Sunlight Carbon Co. v. St. Louis & S. F. R. Co., C.C.A.Okl., 15 F.2d 802.
Ala.—Coker v. Louisville & N. R. Co., 18 So.2d 84, 245 Ala. 545—Slaughter v. Green, 87 So. 358, 205 Ala. 250.
Cal.—Vance v. Gilbert, 174 P. 42, 178 C. 574.
Sociedade Do Espirito Santo v. Santa Clara Valley Bank, 141 P. 1054, 24 C.A. 592.
Colo.—Johnson v. Engstrom, 155 P. 1095, 61 Colo. 30.
Conn.—Frick v. Hartford Life Ins. Co., 119 A. 229, 98 Conn. 251.
Fla.—Mach v. Mosgrove, 174 So. 20, 127 Fla. 446—Conners v. Gaskins, 90 So. 379, 82 Fla. 389—Loomis v. Dubois, 89 So. 804, 82 Fla. 293.
Ga.—Citizens' & Southern Bank v. Realty Savings & Trust Co., 144 S.E. 893, 167 Ga. 170.
Fidelity & Deposit Co. of Maryland v. Norwood, 144 S.E. 387, 38 Ga.App. 534—Copeland v. Curtis, 136 S.E. 324, 36 Ga.App. 255.
Idaho.—Ineas v. Union Pac. R. Co., 241 P.2d 1178, 72 Idaho 390.
Ind.—Ideal Laundry & Dry Cleaning Co. v. Mackowiak, 143 N.E. 614, 83 Ind.App. 1—Miller v. Fletcher Savings & Trust Co., 133 N.E. 174, 78 Ind.App. 183—Georgia Casualty Co. v. Schrepferman, 122 N.E. 783, 70 Ind.App. 11—Bailey v. Indianapolis Abattoir Co., 118 N.E. 374, 66 Ind. App. 465.
Iowa.—Merchants' State Bank of Velva, N. D. v. Roline, 205 N.W. 863, 200 Iowa 1059—Kuebker v. Success Heater & Mfg. Co., 192 N.W. 435—Franke v. Kelsheimer, 163 N.W. 239, 180 Iowa 251—Comptograph Co. v. Burroughs Adding Mach. Co., 159 N.W. 465, 179 Iowa 83.
Kan.—Connell v. Kanwa Oil, 194 P.2d 950, 165 Kan. 241.
Ky.—Gassaway Const. Co. v. Gentry, 277 S.W.2d 848.
N.Y.—Marr v. Frank, 60 N.Y.S.2d 132, 270 App.Div. 445, appeal denied 61 N.Y.S.2d 913, 270 App.Div. 840.
Ohio.—Domestic Finance Corp. v. Morton, App., 135 N.E.2d 456.
Tex.—Eisenberg v. Great Atlantic & Pacific Tea Co., Civ.App., 169 S.W. 2d 221—Norfleet v. Berryman, Civ. App., 25 S.W.2d 212—Hemler v. Hucony Gas Co., Civ.App., 18 S.W. 2d 942.
Utah.—Bracklein v. Realty Ins. Co., 80 P.2d 471, 95 Utah 490, rehearing denied 82 P.2d 561, 95 Utah 506.
Wash.—Peterson v. Hansen, 260 P. 1074, 145 Wash. 582—Greene v. Atwood, 180 P. 399, 106 Wash. 416—Canyon Lumber Co. v. Sexton, 161 P. 841, 93 Wash. 620.
W.Va.—Teter v. Moore, 93 S.E. 342, 80 W.Va. 443.
Wis.—Thin v. Brand, 124 N.W. 999, 142 Wis. 85, 20 Ann.Cas. 521.
4 C.J. p 940 note 25 [a]—55 C.J. p 1152 note 16.

Instruction stating legal conclusion stricken from petition
Iowa.—Merchants' State Bank of Velva, N. D. v. Roline, 205 N.W. 863, 200 Iowa 1059.

Recovery asked for allowed
Where an amount claimed in a plea of set-off which was stricken out was allowed, the error in striking is harmless.
Ga.—Georgia Cane Products Co. v. Corn Products Refining Co., 80 S.E. 818, 141 Ga. 40.

78. U.S.—Davis v. Jefferson Standard Life Ins. Co., C.C.A.Ga., 73 F. 2d 330, 96 A.L.R. 599, certiorari denied 55 S.Ct. 352, 294 U.S. 706, 79 L.Ed. 1241, rehearing denied 55 S. Ct. 511, 294 U.S. 732, 79 L.Ed. 1261—Dickason Goodman Lumber Co. v. Penn Mut. Life Ins. Co., C.C.A. Okl., 60 F.2d 225—Pacific Mut. Life Ins. Co. of California v. Barton, C.

in fact allowed to prove and have considered all matters which would have been provable under the portion stricken out;[79] or the court found on all the material facts set up in the part stricken;[80] or

C.A.Fla., 50 F.2d 362, certiorari denied 52 S.Ct. 29, 284 U.S. 647, 76 L. Ed. 550.

Martin v. Brown, C.C.A.Colo., 294 F. 436.

Ala.—Fiscus v. Young, 8 So.2d 514, 243 Ala. 39—Weeden v. Asbury, 138 So. 267, 223 Ala. 687—Page v. Skinner, 125 So. 36, 220 Ala. 302—Miller v. Metropolitan Life Ins. Co., 106 So. 335, 214 Ala. 4—Slaughter v. Green, 87 So. 358, 205 Ala. 250—Huntsville Knitting Mills v. Butner, 76 So. 54, 200 Ala. 288—O'Rear v. Walker, 75 So. 353, 200 Ala. 41—People's Shoe Co. v. Skally, 71 So. 719, 196 Ala. 349—Baker v. Britt-Carson Shoe Co., 66 So. 475, 188 Ala. 225—Helms v. Central of Georgia Ry. Co., 66 So. 470, 188 Ala. 393.

Ark.—Smith v. Wallis-McKinney Coal Co., 215 S.W. 385, 140 Ark. 218.

Colo.—Security Ben. Ass'n v. Henning, 222 P. 396, 74 Colo. 394—Martinez v. Martinez, 141 P. 469, 57 Colo. 292.

Fla.—Behrman v. Max, 137 So. 120, 102 Fla. 1094.

Ill.—Prickett v. City of Hillsboro, 55 N.E.2d 306, 323 Ill.App. 235—Reilly Tar & Chemical Corp. v. Lewis, 38 N.E.2d 798, 312 Ill.App. 654.

Ind.—Renner v. Hanna, 114 N.E. 976, 186 Ind. 43—Hallock v. Iglehart, 30 Ind. 327.

Carson v. Carson, 89 N.E.2d 555, 120 Ind.App. 1—Doddridge v. American Trust & Savings Bank, 189 N.E. 165, 98 Ind.App. 334—Nesbitt v. Miller, 188 N.E. 702, 98 Ind. App. 702—Gwinn v. Hobbs, 118 N. E. 155, 72 Ind.App. 439—Mutual Trust & Deposit Co. v. Travelers' Protective Ass'n of America, 104 N. E. 880, 57 Ind.App. 329.

Iowa.—Cleophas v. Walker, 233 N.W. 257, 211 Iowa 122—Mulvaney v. Burroughs, 132 N.W. 873, 152 Iowa 439.

Kan.—Roehrman v. D. S. & O. Rural Elec. Co-op. Ass'n, 256 P.2d 872, 174 Kan. 498—Davies v. Lutz, 191 P. 485, 107 Kan. 199—Henning v. Wichita Natural Gas Co., 164 P. 297, 100 Kan. 255—Stroupe v. Hewitt, 90 Kan. 200, 133 P. 562.

Md.—Belmont Dairy Co. v. Thrasher, 92 A. 766, 124 Md. 320.

Minn.—Butler v. Butler, 221 N.W. 5, 175 Minn. 253.

Miss.—Williams Yellow Pine Co. v. Williams, 193 So. 1, 187 Miss. 425.

Mo.—Williams v. Patterson, 218 S. W.2d 156, 240 Mo.App. 131.

Neb.—Maine v. Hill, 140 N.W. 771, 93 Neb. 466.

N.C.—Pinnix v. Toomey, 87 S.E.2d 893, 242 N.C. 358—Scarboro v. Morgan, 58 S.E.2d 354, 231 N.C. 597—Chason v. Marley, 28 S.E.2d 223, 223 N.C. 738.

Or.—Cholia v. Kelty, 63 P.2d 895, 155 Or. 287.

S.C.—Mutual Lumber Co. v. Southern Ry. Co., 84 S.E. 994, 100 S.C. 415.

Tex.—Robinson v. Diggs, Civ.App., 125 S.W.2d 348—Houston Ice & Brewing Ass'n v. Armour & Co., Civ.App., 253 S.W. 635—Dallas Hunting & Fishing Club v. Nash, Civ.App., 202 S.W. 1032, dismissed for want of jurisdiction.—Housman v. Horn, Civ.App., 157 S.W. 1172.

Va.—Wright v. Rabey, 86 S.E. 71, 117 Va. 884.

Wash.—Westcott v. Donion, 241 P. 658, 137 Wash. 78.

Wis.—Markgraf v. Columbia Bank of Lodi, 233 N.W. 782, 203 Wis. 429.

4 C.J. p 940 note 24.

Other allegations of complaint sufficient to admit proof

Striking an allegation from a complaint, if error, is harmless, where there were other allegations under which plaintiff could have introduced all the evidence that it was possible to introduce under the stricken allegation.

Ark.—Smith v. Wallis-McKinney Coal Co., 215 S.W. 385, 140 Ark. 218.

Ill.—Reilly Tar & Chemical Corp. v. Lewis, 61 N.E.2d 290, 326 Ill.App. 84.

Ind.—Renner v. Hanna, 114 N.E. 976, 186 Ind. 43.

Kan.—Henning v. Wichita Natural Gas Co., 164 P. 297, 100 Kan. 255.

4 C.J. p 940 note 24 [a].

Striking special plea where matters are provable under general issue or general denial is not reversible error.

U.S.—Dickason Goodman Lumber Co. v. Penn Mut. Life Ins. Co., C.C.A. Okl., 60 F.2d 225—Pacific Mut. Life Ins. Co. of California v. Barton, C. C.A.Fla., 50 F.2d 362, certiorari denied 52 S.Ct. 29, 284 U.S. 647, 76 L. Ed. 550.

Ala.—Weeden v. Asbury, 138 So. 267, 223 Ala. 687—Page v. Skinner, 125 So. 36, 220 Ala. 302—Woodmen of the World v. Maynor, 96 So. 352, 209 Ala. 443—Huntsville Knitting Mills v. Butner, 76 So. 54, 200 Ala. 288—People's Shoe Co. v. Skally, 71 So. 719, 196 Ala. 349.

Fla.—Behrman v. Max, 137 So. 120, 102 Fla. 1094.

Ind.—Wabash Ry. Co. v. Todd, 113 N.E. 997, 186 Ind. 72, rehearing denied 114 N.E. 975, 186 Ind. 72.

City of Terre Haute v. Pigg, 27 N.E.2d 137, 108 Ind.App. 68—Gwinn v. Hobbs, 118 N.E. 155, 72 Ind.App. 439.

Iowa.—Lang v. Waller, 5 N.W.2d 145, 232 Iowa 956—Cleophas v. Walker, 233 N.W. 257, 211 Iowa 122—Rudd v. Jackson, 213 N.W. 428, 203 Iowa 661.

Ky.—Oliver v. Muncy, 89 S.W.2d 617, 262 Ky. 164.

Md.—Belmont Dairy Co. v. Thrasher, 92 A. 766, 124 Md. 320.

Minn.—Butler v. Butler, 221 N.W. 5, 175 Minn. 253.

Tex.—Fleming's Fraternal Undertaking Co. v. Quarrels, Civ.App., 116 S.W.2d 1160—Dallas Hunting & Fishing Club v. Nash, Civ.App., 202 S.W. 1032, dismissed for want of jurisdiction.

Wash.—Westcott v. Donion, 241 P. 658, 137 Wash. 78.

Wis.—Markgraf v. Columbia Bank of Lodi, 233 N.W. 782, 203 Wis. 429.

4 C.J. p 940 note 24 [b].

79. Ala.—Brothers v. Brothers, 94 So. 175, 208 Ala. 258.

Cal.—Schorr v. Southern Pac. Co., 254 P.2d 579, 117 C.A.2d 13—Birkhauser v. Ross, 283 P. 866, 102 C.A. 582—Howard v. Howard, 226 P. 984, 67 C.A. 56—Newby v. Times-Mirror Co., 188 P. 1008, 46 C.A. 110.

Conn.—Todd v. Bradley, 122 A. 68, 99 Conn. 307.

Fla.—Tucker Bros., Inc. v. Menard, 90 So.2d 908.

Ga.—Hayslip v. Long, 71 S.E.2d 852, 86 Ga.App. 482—Graham v. Frazier, 66 S.E.2d 77, 84 Ga.App. 458.

Ill.—Knittle v. Heyden, 85 N.E.2d 207, 337 Ill.App. 104.

Ind.—George v. Williams, 37 N.E.2d 21, 109 Ind.App. 623—Smith v. Keyes, 9 N.E.2d 119, 103 Ind.App. 487.

Iowa.—Main v. Brown, 211 N.W. 232, 202 Iowa 924—Franke v. Kelsheimer, 163 N.W. 239, 180 Iowa 251.

Kan.—Nausley v. Nausley, 313 P.2d 302, 181 Kan. 543.

Minn.—McConn v. Lyell, 283 N.W. 112, 204 Minn. 198.

Mo.—E. C. Robinson Lumber Co. v. Ladman, App., 255 S.W.2d 72—First Nat. Bank v. Fulton, App., 28 S.W.2d 868—Buschow Lumber Co. v. Union Pac. R. Co., 276 S.W. 409, 220 Mo.App. 743.

Mont.—Mathews v. Marsden, 230 P. 775, 71 Mont. 502.

Tex.—Crocker v. Santo Consol. Independent School Dist., Civ.App., 116 S.W.2d 750, error dismissed—Houston Ice & Brewing Ass'n v. Armour & Co., Civ.App., 253 S.W. 635.

4 C.J. p 940 note 25.

80. Ind.—Miller v. Fletcher Savings & Trust Co., 133 N.E. 174, 78 Ind. App. 183.

4 C.J. p 941 note 29.

the order striking the pleading is subsequently revoked;[81] or both parties treated the case as if the matter alleged in the pleading stricken was an issue.[82]

The rule has likewise been applied where the error is cured or corrected,[83] as by the verdict;[83.5] or where the final result in the case would have been the same even had the stricken portion of the pleading been permitted to stand,[84] as because the matter alleged in the stricken portion of the pleading was shown or found to have no support in fact,[85] or could not as a matter of law support a recovery[86] or constitute a defense;[87] or where the verdict or decision is based on an issue other than that raised by the part of the pleadings stricken;[88] or the variance between the part stricken and the other parts of the pleading was such that it would have in any event been necessary for the pleader to amend;[89] or the pleading or part of pleading of the adverse party to which the portion stricken related was eliminated from the case or did not enter into the final result.[90] Technical error committed in striking matter does not prejudice a party where he is given ample time within which to amend.[91]

The erroneous sustaining of a motion to strike a part of a pleading is, however, prejudicial where the party against whom the motion is sustained cannot otherwise avail himself of the matter stricken and he might have obtained a favorable result thereon.[92] Hence, error resulting from the striking

81. Cal.—Risdon v. Yates, 78 P. 641, 145 C. 210.

82. Cal.—Kinard v. Kaelin, 134 P. 370, 22 C.A. 383.

83. Ga.—La Grange Lumber & Supply Co. v. Farmers' & Traders' Bank, 140 S.E. 766, 37 Ga.App. 409.
4 C.J. p 941 notes 35, 36.

83.5 Iowa.—Shannon v. Gaar, 15 N.W.2d 257, 234 Iowa 1360.

84. Ala.—Jones v. Tennessee Land Co., 173 So. 233, 234 Ala. 25—Davis v. Reid Lumber Co., 86 So. 379, 204 Ala. 517.
Cal.—Anderson Co. v. Regenold, 134 P. 999, 166 C. 44.
Fla.—Orange State Oil Co. v. Crosby, 36 So.2d 273, 160 Fla. 664.
Ga.—Powers v. Wren, 31 S.E.2d 713, 198 Ga. 316.
Ind.—Mutual Trust, etc., Co. v. Travelers' Protective Assoc., 100 N.E. 451, reheard 104 N.E. 880, 57 Ind. App. 329.
Iowa.—Abel v. Abel, 65 N.W.2d 68, 245 Iowa 907—Shannon v. Gaar, 15 N.W.2d 257, 234 Iowa 1360—Whitmore v. Herrick, 218 N.W. 334, 205 Iowa 621.
Ky.—Mann v. Woodward, 290 S.W. 333, 217 Ky. 491—First Nat. Bank v. Mammoth Blue Gem Coal Co., 240 S.W. 78, 194 Ky. 580.
N.Y.—Cooper v. Roggen, 174 N.Y.S. 687, 107 Misc. 494.
Or.—Ingerslev v. Goodman, 240 P. 877, 116 Or. 210.
Tex.—Westex Theaters v. Williams, Civ.App., 35 S.W.2d 253.

85. Ala.—Roll v. Dockery, 122 So. 630, 219 Ala. 374, 65 A.L.R. 1473.
Ark.—T. J. Ellis & Co. v. Farrell, 225 S.W. 349, 146 Ark. 274.
Ga.—Benton v. Roberts, 152 S.E. 141, 41 Ga.App. 189.
Ky.—First Nat. Bank v. Mammoth Blue Gem Coal Co., 240 S.W. 78, 194 Ky. 580—Germania Fire Ins. Co. v. Nickell, 198 S.W. 534, 178 Ky. 1.
Minn.—Gordon v. Freeman, 128 N.W. 834, 112 Minn. 482.
Neb.—Young v. McCoy, 40 N.W.2d 540, 152 Neb. 138.
Tex.—Denison v. Nunn, Civ.App., 293 S.W. 838—Musey v. Charles E. Hires Co., Civ.App., 276 S.W. 737—International & G. N. Ry. Co. v. J. E. Bryant & Co., Civ.App., 171 S.W. 815.
4 C.J. p 940 note 28.

86. Ind.—Thompson v. True, 143 N.E. 586, 194 Ind. 493.
Iowa.—Johnson County Sav. Bank v. City of Creston, 231 N.W. 705, 212 Iowa 929, 84 A.L.R. 926, supplemented 237 N.W. 507, 212 Iowa 929, 84 A.L.R. 926.
Tex.—Lederman v. Cunningham, Civ. App., 283 S.W.2d 108.
4 C.J. p 941 note 34.

Allegations making petition demurrable
The striking of allegations of a petition which would have made it demurrable had they remained therein is harmless error.
Ind.—Williams v. Citizens' Gas Co., 188 N.E. 212, 206 Ind. 448.

Claim barred by limitations
Where the claim sought to be set up by the pleading stricken out was barred by the statute of limitations, the error is harmless.
Cal.—Andreson Co. v. Regenold, 134 P. 999, 166 C. 44.

87. Fla.—Forbes v. Ft. Lauderdale Mercantile Co., 90 So. 821, 83 Fla. 66.
Ga.—Neal v. Harber, 134 S.E. 347, 35 Ga.App. 628.
Ind.—New York Life Ins. Co. v. Adams, 176 N.E. 146, 202 Ind. 493.
Mo.—First Nat. Bank v. Fulton, App., 28 S.W.2d 368.
Neb.—Meyer Bros. Drug Co. v. Hirsching-Morse Co., 143 N.W. 206, 94 Neb. 309.
N.M.—Rallis v. Connecticut Fire Ins. Co., 120 P.2d 736, 46 N.M. 77.
4 C.J. p 941 note 33.

Inapplicable statute of limitations pleaded
Where a statute of limitations pleaded in the portion stricken was not applicable, the error in striking is harmless.
Mont.—Ross v. Saylor, 104 P. 864, 39 Mont. 559.

88. Cal.—Gibbons v. Naritoka, 283 P. 845, 102 C.A. 669.

89. Wash.—Canyon Lumber Co. v. Sexton, 161 P. 841, 93 Wash. 620.

90. Ga.—Burk v. Tyrrell, 91 S.E.2d 744, 212 Ga. 239.
Kan.—Lewis v. Barton Salt Co., 107 P. 783, 82 Kan. 163.

Withdrawal of other party's pleading
Where, by reason of the subsequent withdrawal of the original declaration, defendant was released from the obligation to plead, error in striking a portion of his pleading to the original complaint is harmless.
R.I.—Cambio v. Ibello, 79 A. 789, 32 R.I. 307.

91. Colo.—Dyett v. Harney, 127 P. 226, 53 Colo. 381.
4 C.J. p 941 note 37.

92. Ala.—Steward v. Gold Medal Shows, 14 So.2d 549, 244 Ala. 583.
Cal.—Everts v. Matteson, 132 P.2d 476, 21 C.2d 437.
Colo.—Silver State Building & Loan Ass'n v. Austin, 61 P.2d 582, 99 Colo. 241.
Ga.—Stanley v. Warner Bros. Pictures, 12 S.E.2d 441, 64 Ga.App. 228.
Ind.—Chambers v. Pennsylvania R. Co., 92 N.E.2d 559, 120 Ind.App. 342.
Iowa.—McIntire v. Gordon, 4 N.W.2d 376, 231 Iowa 1364.
Minn.—Thoen v. First Nat. Bank, 271 N.W. 111, 199 Minn. 47.
N.J.—Ettl v. Land & Loan Co., 5 A.2d 689, 122 N.J.Law 401.
N.C.—Penn Dixie Lines, Inc. v. Grannick, 78 S.E.2d 410, 238 N.C. 552.
Tex.—Aransas Pass Harbor Co. v. Manning, 65 S.W. 674, 26 Tex.Civ. App. 590.

out of a count of a complaint is not cured by the retention and submission of another count setting forth different issues;[93] and, where the issue which the party attempted to get before the jury by his pleading was not considered by the jury, the error in striking out the plea is not harmless,[94] although he may have been permitted to introduce evidence with respect to the issue.[95]

While the subsequent filing of an amendment has been held a waiver of prior error in striking portions of a pleading,[96] the fact that plaintiff was permitted to amend and to refile a count of his complaint does not cure the error where the special breach assigned in the amendment was also stricken out by the court;[97] and it has been held that the filing of a substitute answer does not operate as a waiver of exceptions to an order of the court striking out an affirmative defense in the original answer.[98] The fact that other allegations similar to those stricken remained in the pleading has been considered not to render the error harmless where the remaining allegations were even more subject to the same objections as the allegations stricken and not so specific or definite.[99]

(3) Denying Motion to Strike

A denial of a motion to strike portions of a pleading, although erroneous, is not ground for reversal when no prejudice has resulted therefrom; but the denial of a motion to strike unnecessary, redundant, and irrelevant allegations is ground for reversal if their retention in the pleading tends to prejudice the moving party in the trial of the cause.

The denying or overruling of a motion to strike portions of a pleading, even when erroneous, is not ground for reversal when no prejudice has resulted therefrom;[1] and, as pointed out in § 1689 a, in

93. Ala.—Sington v. Birmingham Ry., Light & Power Co., 76 So. 48, 200 Ala. 282.
4 C.J. p 941 note 39.

94. Okl.—Davis v. Penn Mut. Life Ins. Co., 233 P. 434, 106 Okl. 155.
Tex.—American General Ins. Co. v. Fort Worth Transit Co., Civ.App., 201 S.W.2d 869.
4 C.J. p 941 note 41.

95. Ga.—McKaig v. Hardy, 27 S.E.2d 11, 196 Ga. 582.
Tex.—Universal Automobile Ins. Co. v. Culberson, Civ.App., 54 S.W.2d 1061, affirmed 86 S.W.2d 727, 126 Tex. 282, rehearing denied 87 S.W. 2d 475, 126 Tex. 282.

96. Iowa.—Independent School Dist. of Town of Kelley v. School Tp. of Washington, 143 N.W. 837, 162 Iowa 42.
Wyo.—King v. Giblin, 256 P. 1035, 36 Wyo. 448.

97. Ala.—Nelson v. Rothschild, 62 So. 288, 7 Ala.App. 390.

98. Wash.—Schulte v. Littlejohn, 26 P. 79, 2 Wash. 129.

99. Tex.—Hanover Fire Ins. Co. v. D. W. Ray & Son, Civ.App., 26 S. W.2d 295.

1. U.S.—U. S. v. Golden, C.C.A.N.M., 34 F.2d 367.
Minnesota Mut. Inv. Co. v. McGirr, C.C.A.Colo., 263 F. 847.
Ala.—City of Birmingham v. Flowers, 140 So. 353, 224 Ala. 279—Jerome H. Sheip, Inc. v. Baer, 97 So. 698, 210 Ala. 231—Roddam v. Brown, 77 So. 403, 201 Ala. 109—Marx v. Miller, 32 So. 765, 134 Ala. 347—Bibby v. Thomas, 31 So. 432, 131 Ala. 350—Columbus, etc., R. Co. v. Bridges, 5 So. 864, 86 Ala. 448, 11 Am.S.R. 58.
Lambert v. Bowman-Moore Hat Co., 136 So. 738, 24 Ala.App. 311, certiorari denied 136 So. 741, 223 Ala. 420.
Ariz.—Posner v. New York Life Ins. Co., 106 P.2d 488, 56 Ariz. 202—Alabam's Freight Co. v. Jiminez, 9 P.2d 194, 40 Ariz. 18.
Ark.—Webb v. Herpin, 233 S.W.2d 385, 217 Ark. 826—Kansas City Southern Ry. Co. v. Leslie, 167 S. W. 83, 112 Ark. 305, Ann.Cas.1915B 834, reversed on other grounds 35 S.Ct. 844, 238 U.S. 599, 59 L.Ed. 1478.
Cal.—Sorci v. Crisci, App., 309 P.2d 937—Fay v. Norquist, 140 P.2d 141, 60 C.A.2d 218—Shahabian v. Najarian, 58 P.2d 396, 14 C.A.2d 435—Hilborn v. Soale, 155 P. 130, 29 C.A. 309—Boschetti v. Morton, 137 P. 1085, 23 C.A. 325.
Colo.—New York Life Ins. Co. v. Holck, 151 P. 916, 59 Colo. 416.
Fla.—Williams v. Peninsular Grocery Co., 75 So. 517, 73 Fla. 937.
Ga.—Adams v. Richmond County, 17 S.E.2d 184, 193 Ga. 42—Brown v. Taunton, 150 S.E. 206, 169 Ga. 240—Berry v. Brunson, 143 S.E. 761, 166 Ga. 523—Ausley v. Cummings, 89 S.E. 1071, 145 Ga. 750.
Sampson v. Vann, 51 S.E.2d 863, 78 Ga.App. 564—Turk v. Royal, 131 S.E. 119, 34 Ga.App. 717.
Ind.—Lindley v. Sink, 30 N.E.2d 456, 218 Ind. 1—Great Atlantic & Pacific Tea Co. v. Custin, 13 N.E.2d 542, 214 Ind. 54, rehearing denied 14 N.E.2d 538, 214 Ind. 54—Laiskomis v. Federal Land Bank of Louisville, 4 N.E.2d 204, 210 Ind. 577—Petree v. Brotherton, 32 N.E. 300, 133 Ind. 692—Walker v. Larkin, 26 N.E. 684, 127 Ind. 100—Hudson v. Houser, 24 N.E. 243, 123 Ind. 309—Aetna L. Ins. Co. v. Deming, 24 N.E. 86, 375, 123 Ind. 384—Lake Erie, etc., R. Co. v. Kinsey, 87 Ind. 514.
New York, C. & St. L. R. Co. v. Laudenslager, App., 141 N.E.2d 355—Hire v. Pinkerton, App., 127 N.E.2d 244, 126 Ind.App. 23—Barrett v. Stone, 108 N.E.2d 201, 123 Ind.App. 191—Trent v. Rodgers, 104 N.E.2d 759, 123 Ind.App. 139—Evansville & O. V. Ry. Co. v. Woosley, 93 N.E.2d 355, 120 Ind. App. 570—Cynthiana State Bank of Cynthiana v. Murphy, 88 N.E. 2d 252, 119 Ind.App. 685—Foudy v. Daugherty, 76 N.E.2d 268, 118 Ind.App. 68—Heinrich v. Ellis, 48 N.E.2d 96, 113 Ind.App. 478—American Income Ins. Co. v. Kindlesparker, 37 N.E.2d 304, 110 Ind. App. 517—Ætna Life Ins. Co. v. Burton, 12 N.E.2d 360, 104 Ind. App. 576—Hook Drug Co. v. Kandis Bros., 169 N.E. 596, 91 Ind.App. 472—Bigham v. National Brookville Bank, 161 N.E. 567, 87 Ind. App. 371—Ulman v. Thompson, 106 N.E. 611, 57 Ind.App. 126—Garn v. Working, 34 N.E. 821, 5 Ind.App. 14—Koehring v. Aultman, 34 N.E. 30, 7 Ind.App. 475.
Iowa.—Anspach v. Littler, 253 N.W. 120, 217 Iowa 787—Holt v. Brown, 19 N.W. 235, 63 Iowa 319.
Kan.—Plains State Bank v. Ellis, 263 P.2d 254, 175 Kan. 261—Stinnett v. Harper, 259 P.2d 190, 175 Kan. 61—Reed v. Mai, 231 P.2d 227, 171 Kan. 169—Billups v. American Sur. Co., 228 P.2d 731, 170 Kan. 666—Hickman v. Cave, 224 P. 57, 115 Kan. 701—Starr v. Great American Life Ins. Co. of Hutchinson, 219 P. 514, 114 Kan. 315—Sillix v. Armour, 160 P. 1021, 99 Kan. 103—Oliver v. Christopher, 159 P. 397, 98 Kan. 660.
Ky.—Louisville & N. R. Co. v. Smith's Adm'r, 263 S.W. 29, 203 Ky. 513, 35 A.L.R. 1238—Blair v. Fraley, 189 S.W. 886, 172 Ky. 570.
Mo.—State ex rel. Place v. Bland, 183 S.W.2d 878, 353 Mo. 639.
Artz v. Bannan, App., 71 S.W.2d 795—Lundberg v. Equitable Fire &

some jurisdictions it appears to be the settled rule that error in refusing to strike improper allegations or portions of a pleading is not one on which ground for reversal can be predicated where the moving party can later raise the same objection by objecting to the testimony and requesting a proper charge or instruction.

In addition, such an error is harmless and nonprejudicial where the portions of the pleading to which the motion was directed are subsequently eliminated from the case,[2] as by abandonment or withdrawal,[3] or not being taken into consideration,[4] or the opposite party's failure to introduce proof in support of the allegations sought to be stricken;[5] or the portion of the pleading objected to is a mere

Marine Ins. Co., App., 285 S.W. 741.

Mont.—Smith v. Sullivan, 190 P. 288, 58 Mont. 77.

Neb.—Felthauser v. Greeble, 160 N. W. 983, 100 Neb. 652—German Ins. Co. v. Stiner, 96 N.W. 122, 2 Neb. (Unoff.) 308.

N.J.—Peacock v. De Lap, 56 A.2d 405, 136 N.J.Law 361.

N.Y.—Shore Poster Advertising Corp. v. Richmond Poster Advertising Co., 104 N.Y.S.2d 1009.

N.C.—Hayes v. City of Wilmington, 91 S.E.2d 690, 243 N.C. 548—Hamilton v. Hamilton, 89 S.E.2d 417, 242 N.C. 715—Lutz Industries v. Dixie Home Stores, 88 S.E.2d 333, 242 N.C. 332, followed in O. P. Lutz Furniture Co. v. Dixie Home Stores, 88 S.E.2d 343, 242 N.C. 346—Henry v. Home Finance Group, 87 S.E.2d 517, 242 N.C. 300—Ammons v. Layton, 86 S.E.2d 915, 242 N.C. 122—Gallimore v. State Highway and Public Works Commission, 85 S.E.2d 392, 241 N.C. 350—Daniel v. Gardner, 81 S.E.2d 660, 240 N.C. 249—In re Wood's Will, 81 S.E.2d 127, 240 N.C. 134—U. S. Fire Ins. Co. v. Parks, 80 S.E.2d 641, 239 N.C. 680—Ledford v. Marion Transp. Co., 74 S.E.2d 653, 237 N.C. 317—Woody v. Barnett, 68 S. E.2d 810, 235 N.C. 73—**Corpus Juris Secundum cited in** Hinson v. Britt, 61 S.E.2d 185, 187, 232 N.C. 379—Parker v. Duke University, 55 S.E.2d 189, 230 N.C. 656—Hill v. Stansbury, 20 S.E.2d 308, 221 N. C. 339—Warren v. Virginia-Carolina Joint Stock Land Bank, 198 S.E. 624, 214 N.C. 206—Teasley v. Teasley, 172 S.E. 197, 205 N.C. 604.

Ohio.—Makranczy v. Gelfand, 142 N. E. 688, 109 Ohio St. 325.

Wangelin v. Ferro Concrete Const. Co., App., 136 N.E.2d 683—Mills v. Banks, 127 N.E.2d 773, 97 Ohio App. 557—Buchanan v. Battson, App., 56 N.E.2d 339—Madison v. Caledonian-American Ins. Co. of New York, App., 43 N.E.2d 245—Henry v. Page Dairy Co., 30 N.E. 2d 812, 65 Ohio App. 517.

Okl.—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10—Gilliland v. Snedden, 159 P.2d 734, 195 Okl. 601—Hurley v. Hurley, 127 P.2d 147, 191 Okl. 194—Federal Life Ins. Co. v. Bartlett, 80 P.2d 587, 183 Okl. 189—Caprock Oil Co. v. Hagan, 76 P.2d 243, 182 Okl. 124—Hardy v. Bowzer, 73 P.2d 1158, 181 Okl. 860—Metropolitan Life Ins. Co. v. Golden, 68 P.2d 516, 180 Okl. 164—Mitchell v. Gibson, 36 P.2d 1, 169 Okl. 430—Ambrose v. Province, 300 P. 758, 150 Okl. 120—Pierce Petroleum Corporation v. Osage Coal Co., 271 P. 675, 133 Okl. 130—Niagra Fire Ins. Co. v. Flowers, 259 P. 840, 127 Okl. 137.

Or.—Moe v. Alsop, 216 P.2d 686, 189 Or. 59—State v. Fitzgerald, 58 P. 2d 508, 154 Or. 182—Parker v. Norton, 21 P.2d 790, 143 Or. 165.

Puerto Rico.—De Lara v. Garrosi, 23 Puerto Rico 378.

S.C.—Brown v. Southern Ry. Co., 96 S.E. 701, 111 S.C. 140.

S.D.—Smith v. Caster, 170 N.W. 156, 41 S.D. 262.

Tenn.—Taylor v. Cobble, 187 S.W.2d 648, 28 Tenn.App. 167.

Tex.—City of Marlin v. Criswell, Civ.App., 293 S.W. 910—St. Louis Southwestern Ry. Co. of Texas v. Culberson, Civ.App., 248 S.W. 111.

Utah.—Shaw v. O'Byrne, 228 P. 570, 64 Utah 139.

Va.—Mathieson Alkali Works v. Virginia Banner Coal Corporation, 124 S.E. 470, 140 Va. 89.

Wash.—Engel v. Interstate Transit Co., 115 P.2d 681, 9 Wash.2d 590—Barber v. City of Seattle, 48 P.2d 234, 182 Wash. 672—Morgan v. Union Automobile Ins. Co., 273 P. 527, 150 Wash. 443—August v. Craig, 246 P. 295, 139 Wash. 221—Davis v. Ford, 45 P. 739, 46 P. 393, 15 Wash. 107.

Wyo.—Boyle v. Mountford, 270 P. 537, 39 Wyo. 141.

4 C.J. p 941 note 42.

Office of demurrer

Motion to strike cannot perform office of a demurrer in determining sufficiency of pleading, and no error can be predicated on action of trial court in overruling such motion.

Ind.—In re Barger's Estate, 51 N.E. 2d 104, 114 Ind.App. 129.

Failure to pass on motion

Ky.—Motor Wheel Corp. v. Minter, 183 S.W.2d 535, 298 Ky. 512.

2. **Ind.**—Grevenstuk v. Hubeny, 24 N.E.2d 924, 216 Ind. 379.

Iowa.—Bettinger v. Loring, 150 N.W. 31, 168 Iowa 103.

Kan.—Rock v. Gaede, 207 P. 323, 111 Kan. 214, 27 A.L.R. 1152.

Ky.—Bong v. Webster, 290 S.W. 662, 217 Ky. 781.

Tenn.—Southern Ry. Co. v. Brubeck, 6 Tenn.App. 493.

4 C.J. p 941 note 43.

Issue raised not submitted to jury

Where the question presented by the pleading was not submitted to the jury, error in refusing to strike the same is harmless.

Iowa.—Bettinger v. Loring, 150 N.W. 31, 168 Iowa 103.

Kan.—Rock v. Gaede, 207 P. 323, 111 Kan. 214, 27 A.L.R. 1152.

Ky.—Bong v. Webster, 290 S.W. 662, 217 Ky. 781.

Miss.—Ward v. Mitchell, 62 So.2d 388, 216 Miss. 379.

Okl.—Smith v. Barry, 258 P.2d 165, 208 Okl. 606.

4 C.J. p 942 note 54.

3. **Ind.**—Payne v. Goldbach, 42 N. E. 642, 14 Ind.App. 100.

Iowa.—Urdangen v. Doner, 98 N.W. 317, 122 Iowa 533.

Mo.—Hunter v. Sloan, 190 S.W. 57, 195 Mo.App. 69.

Ohio.—Cincinnati St. Ry. Co. v. Hickey, 163 N.E. 310, 29 Ohio App. 399.

4 C.J. p 941 note 48, p 942 note 58.

4. **S.C.**—Daniel v. Tower Trucking Co., 32 S.E.2d 5, 205 S.C. 333.

Tex.—Witherspoon v. Cory, Civ.App., 250 S.W. 199.

Va.—Aronovitch v. Ayres, 193 S.E. 524, 169 Va. 308.

4 C.J. p 941 note 46.

5. **Cal.**—Ross v. Sweeters, 7 P.2d 334, 119 C.A. 716.

Ind.—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.

Ky.—Payne v. Bowman's Adm'x, 252 S.W. 1010, 200 Ky. 171.

Mo.—Alexander v. Wabash Ry. Co., App., 38 S.W.2d 545.

Okl.—Mitchell v. Gibson, 36 P.2d 1, 169 Okl. 430.

Tex.—Schaff v. Sanders, Civ.App., 257 S.W. 670, affirmed, Com.App., 269 S. W. 1034—St. Louis, B. & M. Ry. Co. v. Watkins, Civ.App., 245 S.W. 794.

Wash.—Grant v. Libby, McNeill & Libby, 295 P. 139, 160 Wash. 138—Eyers v. Burbank Co., 166 P. 656, 97 Wash. 220.

4 C.J. p 941 note 47.

legal conclusion,[6] or an allegation of immaterial,[7] unnecessary,[7.5] or redundant[7.10] matter, or admissible evidential facts,[8] or mere surplusage;[9] or the result reached is based on, or can be referred to, other portions of the pleadings which were properly permitted to stand;[10] or the moving party could not have prevailed even had the motion been sustained;[11] or the decision with respect to the matter which it was sought to have stricken is in favor of movant;[12] or the error is cured by a subsequent allowance of the motion,[13] or by the instructions,[14] or the verdict;[15] or the matter set up in the portion of the pleading sought to be stricken could have been proved without such pleading;[16] or where that part of the pleading of movant, to which those portions of the opposite party's pleading sought to be stricken were directed, is itself stricken.[17]

Denial of a motion to strike unnecessary, redundant, and irrelevant allegations is ground for reversal if their retention in the pleading tends to prejudice the moving party in the trial of the cause.[18] The refusal to strike an improper ground

6. Ind.—American Carloading Corp. v. Gary Trust & Savings Bank, 25 N.E.2d 777, 216 Ind. 649.
Oliver v. Coffman, 45 N.E.2d 351, 112 Ind.App. 507.
Iowa.—Albright v. Winey, 284 N.W. 86, 226 Iowa 222—Graves v. Clark, 69 N.W. 1046, 101 Iowa 738.
Kan.—Sinclair Prairie Oil Co. v. Worcester, 205 P.2d 942, 167 Kan. 194—The Exchange State Bank v. Jacobs, 156 P. 771, 97 Kan. 798.
N.C.—Rucker v. Snider Bros., 191 S.E. 6, 211 N.C. 566.

7. Ind.—Laiskomis v. Federal Land Bank of Louisville, 4 N.E.2d 204, 210 Ind. 577.
Nev.—Pruett v. Caddigan, 176 P. 787, 42 Nev. 329.

7.5 Mont.—Polson Sheep Co. v. Owen, 106 P.2d 181, 110 Mont. 601.

7.10 Ind.—Ætna Life Ins. Co. v. Burton, 12 N.E.2d 360, 104 Ind.App. 576.
N.C.—Henry v. Home Finance Group, 87 S.E.2d 517, 242 N.C. 300—Neal v. Atlantic Greyhound Corp., 69 S.E.2d 319, 235 N.C. 225.

8. Ala.—Shirley v. Shirley, 73 So.2d 77, 261 Ala. 100.
Iowa.—Maine v. Rittenmeyer, 151 N.W. 499, 169 Iowa 675.
Ky.—Smith v. W. C. Hutcherson & Co., 259 S.W. 364, 202 Ky. 302.
Okl.—Niagra Fire Ins. Co. v. Flowers, 259 P. 840, 127 Okl. 137.
4 C.J. p 941 note 45.

9. Cal.—Peluso v. City Taxi Co., 182 P. 808, 41 C.A. 297.
Ind.—Cushman Motor Delivery Co. v. McCabe, 36 N.E.2d 769, 219 Ind. 156—Fidelity Phenix Fire Ins. Co. of New York v. Purlee, 135 N.E. 385, 192 Ind. 106—Rout v. Woods, 67 Ind. 319.
Evansville & O. V. Ry. Co. v. Woosley, 93 N.E.2d 355, 120 Ind. App. 570—Foudy v. Daugherty, 76 N.E.2d 268, 118 Ind.App. 68—Flagg v. Russell, 166 N.E. 672, 87 Ind. App. 110—Olejniczak v. Indiana Lumber Mfg. Co., 135 N.E. 6, 78 Ind.App. 168—Outing Kumfy-Kab Co. v. Ivey, 125 N.E. 234, 74 Ind. App. 286.
Okl.—Shawnee Life Ins. Co. v. Taylor, 160 P. 622, 58 Okl. 313.

10. Ariz.—Blaine v. Stinger, 290 P. 2d 732, 79 Ariz. 376.
Ga.—Sale City Gin & Mfg. Co. v. Dukes, 96 S.E. 348, 22 Ga.App. 462.
Ill.—Hunt v. L. Fish Furniture Co., 187 Ill.App. 326.
Kan.—Mullarky v. Manker, 170 P. 31, 102 Kan. 92.
Mo.—Magee v. Hayden, App., 111 S.W.2d 239.
Mont.—Vicain v. City of Missoula, 81 P.2d 350, 107 Mont. 105.
Ohio.—Roberts v. Grable, 63 N.E.2d 172, 76 Ohio App. 253.
4 C.J. p 941 note 44, p 942 note 57.

Evidence admissible under general denial

Mont.—Smith v. Armstrong, 198 P. 2d 795, 121 Mont. 377.

11. Cal.—Pacific Improvement Co. v. Maxwell, 146 P. 900, 26 C.A. 265.
Iowa.—Lambert v. Reisman Co., 223 N.W. 541, 207 Iowa 711—Dean v. Atkinson, 208 N.W. 301, 201 Iowa 818.
Tenn.—Brown v. Monroe, 34 S.W.2d 209, 161 Tenn. 703.
4 C.J. p 941 note 50, p 942 note 56.

12. Ark.—Luce v. Arkansas Brick & Mfg. Co., 188 S.W. 566, 125 Ark. 219.
Cal.—Shank v. Blackburn, 200 P. 762, 53 C.A. 620.
Ga.—Field v. C. L. Hardwick & Co., 83 S.E. 93, 142 Ga. 424.

13. Mass.—Christensen v. Bremer, 160 N.E. 410, 263 Mass. 129.

14. Ala.—New York Life Ins. Co. v. Jones, 17 So.2d 879, 31 Ala.App. 417, reversed on other grounds 17 So.2d 883, 245 Ala. 247.
Cal.—Nave v. Graham, 174 P. 76, 37 C.A. 332.
Ga.—Whitley Const. Co. v. Price, 79 S.E.2d 416, 89 Ga.App. 352.
Ind.—Vandalia Coal Co. v. Butler, 119 N.E. 34, 68 Ind.App. 245.
Mass.—Christensen v. Bremer, 160 N.E. 410, 263 Mass. 129.
Miss.—Pearl River Valley R. Co. v. Moody, 171 So. 769, 178 Miss. 1.
Ohio.—Booth v. Coldiron, 9 N.E.2d 161, 55 Ohio App. 144.
Okl.—Munding v. Walnut Creek Milling Co., 231 P. 858, 105 Okl. 124.
Wash.—Tobin v. City of Seattle, 242 P. 2, 137 Wash. 177—W. B. Hutchinson Inv. Co. v. Van Nostern, 170 P. 121, 99 Wash. 549.
4 C.J. p 941 note 52.

15. Cal.—Procter v. Southern California R. Co., 62 P. 306, 509, 130 C. 20.
Ind.—Pittsburgh, etc., R. Co. v. Beck, 53 N.E. 439, 152 Ind. 421—Nicodemus v. Simons, 23 N.E. 521, 121 Ind. 564.
Ky.—Grover v. Tingle, 53 S.W. 281, 21 Ky.L. 885.
Mo.—Dwyer v. Rohan, 73 S.W. 384, 99 Mo.App. 120.
Tex.—McKneely v. Beatty, Civ.App., 161 S.W. 18.
Wash.—Dunkin v. Hoquiam, 105 P. 149, 56 Wash. 47.
4 C.J. p 942 note 55.

16. Ill.—O'Donnell v. Travelers Ins. Co., 74 N.E.2d 735, 332 Ill.App. 222.
Iowa.—Cate v. Gilman, 41 Iowa 530.
Mont.—Lesage v. Largey Lumber Co., 43 P.2d 896, 99 Mont. 372.
Neb.—Citizens' Bank v. Emley, 107 N.W. 1014, 76 Neb. 794.
4 C.J. p 941 notes 49, 51.

17. Kan.—Farmers' & Merchants' State Bank of Wakefield v. Goe, 202 P. 835, 119 Kan. 65.

18. Colo.—Weng v. Schleiger, 273 P. 2d 356, 130 Colo. 90.
Ill.—Vulcan Corp. v. Cobden Mach. Works, 84 N.E.2d 173, 336 Ill.App. 394.
Kan.—Moffet v. Kansas City Fire & Marine Ins. Co., 244 P.2d 228, 173 Kan. 52.
Roe v. Elk County, 40 P. 1082, 1 Kan.App. 219.
Ky.—Rudolph Wurlitzer Co. v. Kaufman-Straus Co., 116 S.W.2d 305, 273 Ky. 149.
Miss.—Ward v. Mitchell, 62 So.2d 388, 216 Miss. 379.
N.J.—Anderson v. Modica, 73 A.2d 49, 4 N.J. 383.
N.C.—Hayes v. City of Wilmington, 91 S.E.2d 690, 243 N.C. 548—Baker v. Fruehauf Trailer Co., 89 S.E.2d 388, 242 N.C. 724—Lutz Industries v. Dixie Home Stores, 88 S.E.2d 333, 242 N.C. 332, followed in O. P. Lutz Furniture Co. v. Dixie Home Stores, 88 S.E.2d 343, 242 N.C. 346—Henry v. Home Finance Group, 87 S.E.2d 517, 242 N.C.

of defense is reversible error where the jury could have found for defendant on no other ground;[19] and error in refusing to strike a division of the answer alleging affirmative defenses elsewhere properly pleaded is prejudicial where the court also dismissed a count of the petition which such division answered, although such dismissal should not have been entered.[20]

If a reply sets up a new and different cause of action from that alleged in the petition, refusal to strike the objectionable allegations of the reply as constituting a departure is reversible error;[21] and, where the court's failure to strike out part of a complaint because of misjoinder of parties and causes of action results in a larger verdict being rendered against the moving defendant than could properly be rendered on the only cause of action sustainable against him, the error is ground for reversal.[22]

In a proper case denial of a motion to strike allegations of a replication may constitute reversible error.[22.5]

§ 1690. —— Motion to Dismiss

In the absence of resulting prejudice, error in sustaining or denying a motion to dismiss is harmless.

Error in sustaining[23] or denying[24] a motion to dismiss will not be ground for reversal where no prejudice resulted from the ruling. The dismissal of a pleading is not prejudicial where the pleader could be afforded the same relief under other pleadings,[25] or the facts on which it is based are found not to exist;[26] and error in dismissing a pleading is

300—Gallimore v. State Highway and Public Works Commission, 85 S.E.2d 392, 241 N.C. 350—Daniel v. Gardner, 81 S.E.2d 660, 240 N.C. 249—Craumer v. Grannick, 78 S.E. 2d 416, 238 N.C. 559—Lambert v. Schell, 69 S.E.2d 11, 235 N.C. 21—Hinson v. Britt, 61 S.E.2d 185, 232 N.C. 379—Hill v. Sansbury, 20 S.E. 2d 308, 221 N.C. 339.

Okl.—Lubell v. King, 216 P.2d 325, 202 Okl. 517.

Tex.—Pegues v. Moss, Civ.App., 140 S.W.2d 461, error dismissed.

Inconsistent or repugnant allegations

Ohio.—Baker v. Norfolk & W. Ry. Co., 100 N.E.2d 649, 88 Ohio App. 537.

Rejoinders

Ala.—Franklin v. All States Life Ins. Co., 195 So. 230, 239 Ala. 430.

19. Cal.—California Sugar, etc., Agency v. Penoyar, 139 P. 671, 167 C. 274.

20. Iowa.—McKay v. McCarthy, 123 N.W. 755, 146 Iowa 546, 34 L.R.A., N.S. 911, rehearing denied 125 N. W. 207.

21. Okl.—Wilson v. Oil Well Supply Co., 238 P. 415, 111 Okl. 63.

22. Ind.Terr.—Tishomingo Electric Light, etc., Co. v. Burton, 98 S.W. 154, 6 Ind.Terr. 445.

22.5 Ala.—Metropolitan Life Ins. Co. v. James, 176 So. 813, 27 Ala. App. 575, certiorari denied 176 So. 816, 235 Ala. 8.

23. Cal.—Garcia v. Garcia, App., 306 P.2d 80.

Fla.—6701 Realty, Inc., v. Deauville Enterprises, Inc., 84 So.2d 325—Wise v. Wise, 184 So. 91, 134 Fla. 553—Evans v. Harvey, 114 So. 239, 94 Fla. 291.

Ill.—Gray v. First Nat. Bank of Chicago, 51 N.E.2d 797, 320 Ill. App. 682, reversed on other grounds 57 N.E.2d 363, 388 Ill. 124—Bigelow v. Oglesby, 23 N.E. 2d 378, 302 Ill.App. 27.

Ind.—Yelton v. Plantz, 77 N.E.2d 895, 226 Ind. 155—Loftin v. Johnson, 24 N.E.2d 916, 216 Ind. 537—Lambert v. Smith, 23 N.E.2d 430, 216 Ind. 226.

Anderson v. Biggs, 77 N.E.2d 909, 118 Ind.App. 266.

Iowa.—Davis v. Mater, 79 N.W.2d 400—Elson v. Nickles, 36 N.W.2d 343, 240 Iowa 292—Hunt, Hill & Betts v. Moore, 239 N.W. 112, 213 Iowa 1323—Pyle v. East, 155 N.W. 283, 173 Iowa 165, 3 A.L.R. 885.

Mass.—Kelley v. American Sugar Refining Co., 42 N.E.2d 592, 311 Mass. 617.

Mich.—Hay v. Le Bus, 27 N.W.2d 309, 317 Mich. 698—Hofweber v. Detroit Trust Co., 294 N.W. 108, 295 Mich. 96.

N.J.—Kelleher v. Lozzi, 80 A.2d 196, 7 N.J. 17.

N.Y.—Johannes v. City of New York, 12 N.Y.S.2d 430, 257 App.Div. 197, affirmed 24 N.E.2d 489, 281 N.Y. 825—Siberian Fur & Flax Co. v. Irving Trust Co., 294 N.Y.S. 515, 250 App.Div. 754, motion denied 296 N.Y.S. 993, 251 App.Div. 704, affirmed 14 N.E.2d 194, 277 N.Y. 629.

Tex.—Kanner v. Startz, Civ.App., 203 S.W. 603, error refused.

Vt.—Hyde Park Lumber Co. v. Hunt, 98 A. 907, 90 Vt. 435, Ann.Cas. 1918E 1183.

4 C.J. p 942 note 63.

Misuse of motion as demurrer

Neb.—Reller v. Ankeny, 68 N.W.2d 686, 160 Neb. 47.

24. Ala.—Templeton v. Scruggs, 174 So. 237, 234 Ala. 146.

Colo.—Lanham v. Jones, 268 P. 521, 84 Colo. 129.

Conn.—Brower v. Perkins, 68 A.2d 146, 135 Conn. 675.

Fla.—Giddens v. McFarlan, 10 So.2d 807, 152 Fla. 281—Federation of Pan-American Clubs v. City of Tampa, 194 So. 218, 141 Fla. 890—Wise v. Wise, 184 So. 91, 134 Fla. 553—Van Huss v. Prudential Ins. Co. of America, 165 So. 896, 123 Fla. 20.

Ga.—Cheatham v. Palmer, 13 S.E.2d 674, 191 Ga. 617—Faughnan v. Bashlor, 136 S.E. 545, 163 Ga. 525.

La.—Alfortish v. Wagner, 7 So.2d 708, 200 La. 198.

S.D.—Stockwell v. German Mut. Ins. Ass'n of Le Mars, 158 N.W. 450, 37 S.D. 348.

Vt.—Berkley v. Burlington Cadillac Co., 122 A. 665, 97 Vt. 260.

4 C.J. p 942 note 64.

Failure to rule on motion held not prejudicial.

Cal.—Weiss v. Bank of America Nat. Trust & Savings Ass'n, 135 P.2d 584, 57 C.A.2d 892.

Belated dismissal

Erroneous action of the court, in refusing to dismiss cross bill, is cured by the belated dismissal of the cross bill.

W.Va.—Wolford v. Wolford, 56 S.E. 2d 614, 133 W.Va. 403.

Pleading curable by amendment

It is harmless error to refuse to dismiss a petition for defects which could have been cured by amendment.

Ga.—Faughnan v. Bashlor, 136 S.E. 545, 163 Ga. 525.

25. Ga.—Porter v. Wright, 89 S.E. 838, 145 Ga. 787.

26. N.Y.—Hoisting Machinery Co. v. Federal Terra Cotta Co., 167 N.Y.S. 85, 179 App.Div. 653, dismissal of appeal denied 119 N.E. 1049, 223 N. Y. 557, and affirmed 127 N.E. 915, 228 N.Y. 569.

cured by a subsequent order setting aside the original order of dismissal.[27]

Dismissal of a pleading is prejudicial where the pleader is thereby deprived of a substantial right,[28] as where a pleading is dismissed for want of supporting evidence and evidence offered in support thereof is erroneously excluded,[29] or the pleading is dismissed on the ground that it is not sufficiently specific when the court could, on proper motion, have required the pleading to be made more specific.[30] Refusal to dismiss a petition which fails to state a cause of action may be reversible error, although the cause of action subsequently accrues.[31]

§ 1691. —— Motion to Make More Definite and Certain

Error in sustaining or overruling motions to make pleadings more definite and certain is not ground for reversal unless it appears that the complaining party was prejudiced or his substantial rights affected.

Any error in sustaining[32] or overruling[33] a motion to make a pleading more definite and certain is

27. Ga.—Johnson v. Southern Ry. Co., 142 S.E. 857, 166 Ga. 222.

28. Ala.—Badham v. Badham, 14 So. 2d 730, 244 Ala. 622.
Ark.—Cruce v. Mitchell, 182 S.W. 530, 122 Ark. 141.
N.Y.—Irving Trust Co. v. Park & Tilford Import Corp., 294 N.Y.S. 822, 250 App.Div. 570.
Ohio.—Ohio Edison Co. v. Warner Coal Corp., 72 N.E.2d 487, 79 Ohio App. 437.

29. N.Y.—James E. Cashman, Inc. v. Spellman, 251 N.Y.S. 240, 233 App.Div. 45.

30. Ky.—Brashears v. Letcher County Ct., 41 S.W. 22, 19 Ky.L. 478.

31. N.Y.—Boffee v. Consolidated Telegraph & Electrical Subway Co., 157 N.Y.S. 318, 171 App.Div. 892, affirmed 123 N.E. 856, 226 N.Y. 654.

32. Ala.—Scales v. Rosenbush Furniture Co., 101 So. 743, 212 Ala. 19.
Ind.—Payne v. Grossart, 190 N.E. 752, 207 Ind. 157.
Iowa.—Davis v. Mater, 79 N.W.2d 400—Arthaud v. Griffin, 227 N.W. 158.
Kan.—Smith v. Wright, 305 P.2d 810, 180 Kan. 584—Toklan Royalty Corp. v. Panhandle Eastern Pipe Line Co., 212 P.2d 348, 168 Kan. 259—Van Deren v. Heineke & Co., 252 P. 459, 122 Kan. 215—Smith v. Hern, 170 P. 990, 102 Kan. 373.
Minn.—Cull v. Brennam, 206 N.W. 929, 166 Minn. 53.
N.Y.—Walton Foundry Co. v. A. D. Granger Co., 196 N.Y.S. 719, 203 App.Div. 226.
Okl.—Rourke v. Meyers, 84 P.2d 639, 184 Okl. 46.
4 C.J. p 942 note 66.

Pleading demurrable even after amendment

Sustaining a motion to make a pleading more specific is harmless where the pleading is so defective that it is demurrable even after it has been amended in accordance with the ruling on the motion to make more specific.
Ind.—Scanlon v. Duel, 94 N.E. 561, 176 Ind. 208.

Compulsory amendment
Fla.—Hurner v. Mutual Bankers Corp., 191 So. 831, 140 Fla. 435.

33. U.S.—West Helena Consol. Co. v. McCray, Ark., 256 F. 753, 168 C.C.A. 99, certiorari denied McCray v. West Helena Consolidated Co., 39 S.Ct. 494, 250 U.S. 644, 63 L.Ed. 1186.
Ariz.—Calumet & Arizona Mining Co. v. Chambers, 176 P. 839, 20 Ariz. 54.
Ark.—De Queen & E. R. Co. v. Park, 225 S.W. 614, 146 Ark. 350.
Ind.—Adams v. Holcomb, 77 N.E.2d 891, 226 Ind. 67—Bradford Homes v. Long, 47 N.E.2d 609, 221 Ind. 309—City of Logansport v. Green, 135 N.E. 657, 192 Ind. 253—Tecumseh Coal & Mining Co. v. Buck, 135 N.E. 481, 192 Ind. 122—Cleveland, C., C. & St. L. Ry. Co. v. Wolf, 128 N.E. 38, 189 Ind. 585, rehearing denied 128 N.E. 695, 189 Ind. 585—Bush v. State, 119 N.E. 417, 187 Ind. 339.
Marcisz v. Osborne, 118 N.E.2d 378, 228 Ind.App. 574—A & B Automatic Heating Sales & Service v. Cooley, 92 N.E.2d 865, 120 Ind. App. 590—Mock v. Polley, 66 N.E. 2d 78, 116 Ind.App. 580—Chesapeake & O. Ry. Co. v. Powell, 44 N.E.2d 514, 113 Ind.App. 1—King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523—Weis v. Wakefield, 38 N.E.2d 303, 111 Ind.App. 106—Meyer v. Garvin, 37 N.E.2d 291, 110 Ind.App. 403—Shank Fireproof Warehouse Co. v. Harlem, 29 N.E.2d 1003, 108 Ind. App. 592—Town of Geneva v. Mesel, 21 N.E.2d 458, 106 Ind.App. 632—American Carloading Corp. v. Voight, 21 N.E.2d 453, 107 Ind. App. 267—Indianapolis Power & Light Co. v. Waltz, 12 N.E.2d 404, 104 Ind.App. 526—Wheeler v. Stafford, 6 N.E.2d 736, 103 Ind.App. 236—U. S. Fidelity & Guaranty Co. v. Stark, 200 N.E. 489, 102 Ind. App. 222—Ragsdale v. Ratcliff, 195 N.E. 595, 100 Ind.App. 331—Wheelock v. Wheelock, 187 N.E. 205, 97 Ind.App. 501—Hill v. Boggs, 185 N.E. 300, 98 Ind.App. 506—Pennsylvania R. Co. v. Boyd, 185 N.E. 160, 98 Ind.App. 439—Cline v. Rodabaugh, 179 N.E. 6, 97 Ind.App. 258—Pivot City Realty Co. v. State Savings & Trust Co., 162 N. E. 27, 88 Ind.App. 222—State v. Wright, 161 N.E. 839, 89 Ind.App. 244, rehearing denied 162 N.E. 695, 89 Ind.App. 244—Myers v. Sparks, 154 N.E. 39, 85 Ind.App. 342—Baltimore & O. S. W. R. Co. v. Hill, 148 N.E. 489, 84 Ind.App. 354, certiorari denied 47 S.Ct. 246, 273 U.S. 738, 71 L.Ed. 867—Pittsburg, C., C. & St. L. R. Co. v. Rushton, 148 N.E. 337, 90 Ind.App. 227, rehearing denied 149 N.E. 652, 90 Ind.App. 227—Terre Haute, Indianapolis & Eastern Traction Co. v. McDermott, 144 N.E. 620, 82 Ind.App. 134—Chicago, I. & L. Ry. Co. v. Sanders, 143 N.E. 175, 81 Ind.App. 275—Terre Haute, Indianapolis & Eastern Traction Co. v. McDermott, 141 N.E. 362, reheard 144 N.E. 620, 82 Ind.App. 134—Newman v. Sasse, 139 N.E. 590, 80 Ind.App. 51—Clawson v. Black, 138 N.E. 362, 80 Ind.App. 111—Rohan v. Gehring, 137 N.E. 288, 80 Ind.App. 46—Terre Haute, I. & E. Traction Co. v. Sanders, 136 N.E. 54, 80 Ind.App. 16—Union Traction Co. v. Taylor, 135 N.E. 255, 81 Ind.App. 257—Dowd v. Andrews, 134 N.E. 294, 77 Ind.App. 627—American Coal Mining Co. v. Lewis, 133 N.E. 846, 77 Ind.App. 394—Central Indiana Ry. Co. v. Davis, 132 N.E. 611, 78 Ind.App. 341—Lipnik v. Ehalt, 132 N.E. 410, 76 Ind.App. 390—Terre Haute, I. & E. Traction Co. v. Holland, 131 N.E. 534, 76 Ind.App. 99—Haskell & Barker Car Co. v. Erickson, 128 N.E. 466, 73 Ind.App. 657—Western Life Indemnity Co. v. Lindsay, 127 N.E. 841, 74 Ind.App. 122—Howard v. Merker, 127 N.E. 807, 73 Ind. App. 400—Federal Life Ins. Co. v. Barnett, 125 N.E. 522, 71 Ind.App. 613—Louisville & Southern Indiana Traction Co. v. Cotner, 125 N.E. 78, 71 Ind.App. 377—Lake County Agr. Soc. v. Verplank, 124 N.E. 494, 71 Ind.App. 186—Haskell & Barker Car Co. v. Logermann, 123 N.E. 818, 71 Ind.App. 69—Federal Casualty Co. v. Chatman, 121 N.E. 296, 69 Ind.App. 67—McMahan v. Terk-

not ground for reversal if it does not appear that the complaining party has been prejudiced or his substantial rights affected. Overruling of a motion to make a pleading more specific is not harmless

horn, 116 N.E. 327, 67 Ind.App. 501—S. W. Little Coal Co. v. O'Brien, 113 N.E. 465, 63 Ind.App. 504, rehearing denied 114 N.E. 96, 63 Ind.App. 504—Romona Oolitic Stone Co. v. Tate, 37 N.E. 1065, 39 N.E. 529, 12 Ind.App. 57.

Iowa.—Iowa Pharmaceutical Ass'n v. May's Drug Stores, 294 N.W. 756, 229 Iowa 554—Garretson v. Harlan, 256 N.W. 749, 218 Iowa 1049—McManus v. Mullin, 165 N.W. 58—Hurd v. Ladner, 81 N.W. 470, 110 Iowa 263.

Kan.—Donie v. Associated Co., 268 P.2d 927, 176 Kan. 95—Clark v. Meyers, 244 P.2d 217, 173 Kan. 96—Lessley v. Kansas Power & Light Co., 231 P.2d 239, 171 Kan. 197—Reed v. Mai, 231 P.2d 227, 171 Kan. 169—Connell v. Saco Oil Co., 223 P.2d 1020, 170 Kan. 91—Gibson v. Bodley, 133 P.2d 112, 156 Kan. 338—LaHarpe Fuel Co. v. City of Iola, 105 P.2d 900, 152 Kan. 445—Nardyz v. Fulton Fire Ins. Co., 101 P.2d 1045, 151 Kan. 907—Nelson v. Schippel, 56 P.2d 469, 143 Kan. 546—Schroyer v. Ruffhead, 253 P. 414, 122 Kan. 767—Farmers' & Merchants' State Bank of Wakefield v. Goe, 202 P. 835, 110 Kan. 65—State v. Mayer, 135 P. 666, 90 Kan. 470.

Dwelle v. Dwelle, 40 P. 825, 1 Kan.App. 473.

Ky.—Standard Oil Co. v. Brittain, 33 S.W.2d 625. 236 Ky. 625—Mills v. Lantrip, 185 S.W. 514, 170 Ky. 81—Louisville & N. R. Co. v. Parker's Adm'r, 177 S.W. 465, 165 Ky. 658, affirmed 37 S.Ct. 4, 242 U.S. 13, 61 L.Ed. 719—German Ins. Bank v. Martin, 114 S.W. 319, 131 Ky. 57.

Minn.—Cull v. Brennam, 206 N.W. 929, 166 Minn. 53.

Mo.—McDaniels v. Zink, App., 75 S. W.2d 78—Gammon v. McDowell, 235 S.W. 461, 208 Mo.App. 616.

Neb.—Dinkel v. Hagedorn, 56 N.W. 2d 464, 156 Neb. 419—McDuffie v. Bentley, 43 N.W. 123, 27 Neb. 380.

N.H.—Abbott v. Hayes, 26 A.2d 842, 92 N.H. 126.

N.Y.—Swartmore Textile Co. v. Morris Bernhard Co., 172 N.Y.S. 15, 184 App.Div. 572.

Ohio.—Putnam v. Board of Com'rs of Paulding County, 130 N.E. 165, 102 Ohio St. 45.

Fawick Airflex Co. v. United Elec., Radio & Mach. Workers of America, Local 735, C. I. O., 92 N. E.2d 436, 87 Ohio App. 371, appeal dismissed 93 N.E.2d 409, 154 Ohio St. 106, appeal dismissed 95 N.E. 2d 764, 154 Ohio St. 387—Community Traction Co. v. Wandtke, 167 N.E. 701, 32 Ohio App. 207—Cincinnati, L. & N. Ry. Co. v. Shurts, 10 Ohio App. 226.

Okl.—Williams v. Williams, 274 P. 2d 359—Cherry v. Crown Hill Cemetery Trust, 191 P.2d 591, 200 Okl. 35—Lea v. American Nat. Bank of Pryor Creek, 186 P.2d 321, 199 Okl. 360—American Home Mut. Life Ins. Co. v. Gunn, 184 P.2d 766, 199 Okl. 220—Hodges v. Reynolds, 40 P.2d 1025, 170 Okl. 345—Blumenfeld v. Mann, 258 P. 918, 126 Okl. 64—Gallemore v. Buzzard, 224 P. 293, 98 Okl. 104—Henry v. Gulf Coast Drilling Co., 156 P. 321, 56 Okl. 604—St. Louis, etc., R. Co. v. Cox, 138 P. 144, 40 Okl. 258—Frey v. Failes, 132 P. 342, 37 Okl. 297.

Or.—Williams v. Barbee, 106 P.2d 1033, 165 Or. 260.

S.C.—Ellen v. King, 88 S.E.2d 598, 227 S.C. 481—Ridgeland Box Mfg. Co. v. Sinclair Refining Co., 56 S.E. 2d 585, 216 S.C. 20.

Wash.—Raab v. Wallerich, 282 P.2d 271, 46 Wash.2d 375, appeal dismissed 290 P.2d 697, 46 Wash.2d 905—Engel v. Interstate Transit Co., 115 P.2d 681, 9 Wash.2d 590—Smith v. Telford, 203 P. 938, 118 Wash. 502—Henry v. Navy Yard Route, 162 P. 584, 94 Wash. 526—Switzer v. Sherwood, 141 P. 181, 80 Wash. 19, Ann.Cas.1917A 216.

Wyo.—Wilson v. McLogan, Inc., 242 P. 1111, 34 Wyo. 299.

4 C.J. p 942 note 67—51 C.J. p 1194 note 82.

Facts fully known to movant

(1) Where it appears that the moving party had knowledge of the facts which would have been disclosed had the motion to make more definite and certain been sustained, the overruling of the same is harmless error.

Ark.—De Queen & E. R. Co. v. Park, 225 S.W. 614, 146 Ark. 350.

Ind.—City of Logansport v. Green, 135 N.E. 657, 192 Ind. 253.

Patton v. State Bank of Hardinsburg, 15 N.E.2d 106, 105 Ind.App. 381—U. S. Fidelity & Guaranty Co. v. Stark, 200 N.E. 489, 102 Ind.App. 222—McMahan v. Terkhorn, 116 N. E. 327, 67 Ind.App. 501.

Iowa.—McManus v. Mullin, 165 N.W. 58.

(2) If defendant by conditional examination of plaintiff before trial has become fully informed of the matters involved, it is not reversible error to overrule his motion to have the complaint made more specific.

Ind.—Cline v. Rodabaugh, 179 N.E. 6, 97 Ind.App. 258.

(3) Error of the trial court in failing to require plaintiff to amend his complaint to state the particulars of the accident more clearly, is not reversible error, where the answer supplied all defects in complaint in that respect.

Ariz.—Calumet & Arizona Mining Co. v. Chambers, 176 P. 839, 20 Ariz. 54.

(4) Overruling of motion to make complaint more specific was not prejudicial where defendant raised specific question to which motion was directed by answer.

Ind.—Abraham Lincoln Life Ins. Co. v. Meore, 2 N.E.2d 223, 102 Ind. App. 412.

(5) Overruling of motion to make complaint more specific was not reversible error, where defendant was not misled as to issues presented, and was sufficiently advised of nature and character of charges to be met, and was not deprived of any defenses to cause of action.

Ind.—Town of Frankton v. Closser, 20 N.E.2d 216, 107 Ind.App. 193.

Insufficient part withdrawn or stricken

(1) The overruling of a motion to have a part of a pleading made more specific is harmless where such part is subsequently stricken or withdrawn.

Ind.—Cook & Bernheimer Co. v. Hagedorn, 131 N.E. 788, 82 Ind.App. 444.

Kan.—Farmers' & Merchants' State Bank of Wakefield v. Goe, 202 P. 835, 110 Kan. 65.

(2) Where request for damages was the only item which could be regarded as a separate cause of action, and, where damage request was abandoned during trial and no evidence was offered on it, overruling of defendants' motion to require plaintiffs separately to state and number their causes of action and to make petition more definite and certain was not reversible error.

Kan.—Simpson v. Goering, 170 P.2d 831, 161 Kan. 558.

Movant able to present case adequately notwithstanding denial of motion

Denying a motion to make a petition for conversion more definite and certain by listing the names and prices of books, listed as miscellaneous, is not reversible error, where defendant's expert witnesses heard plaintiff's testimony regarding the names and value of books referred to as miscellaneous and gave testimony as to the value thereof.

Okl.—Hodges v. Reynolds, 40 P.2d 1025, 170 Okl. 345.

Final decision in favor of movant renders harmless error in overruling his motion to have a pleading made more specific.

Ind.—Pivot City Realty Co. v. State Savings & Trust Co., 162 N.E. 27, 88 Ind.App. 222.

if the moving party is thereby prevented from having sufficient information of the claims of his opponent adequately to prepare or present his case.[34]

Failure of a party to comply with an order requiring him to make a portion of his pleading more specific is harmless if the issues raised by such portion are not litigated on the trial.[35]

§ 1692. —— Motion for Bill of Particulars

If there has been no substantial injury to the rights of the complaining party, error in sustaining or denying a motion for a bill of particulars is not ground for reversal.

The granting[36] or denial[37] of a motion for a bill of particulars, although erroneous, will not constitute a ground for reversal where no substantial injury results therefrom.

§ 1693. —— Compelling or Refusing to Compel Election

Where the error does not enter into the final result or adversely affect the substantial rights of the complaining party, error in compelling or refusing to compel an election between different matters set up in a pleading is harmless.

Requiring an election between several causes of actions, counts, or defenses is not prejudicial error where appellant is not deprived of the benefit of any material fact[38] or any issue on which he could

Unnecessary or immaterial allegations

(1) Refusal to require unnecessary or immaterial allegations to be made more specific is harmless error.

Ark.—Searcy Wholesale Grocer Co. v. Baltz, 192 S.W.2d 111, 209 Ark. 620.

Ind.—Baltimore & O. S. W. R. Co. v. Berdon, 145 N.E. 2, 195 Ind. 265, rehearing denied Baltimore & O. S. R. Co. v. Berdon, 150 N.E. 407, 195 Ind. 265, and certiorari denied Baltimore & O. S. W. R. Co. v. Berdon, 45 S.Ct. 225, 266 U.S. 633, 69 L.Ed. 479—Tecumseh Coal & Mining Co. v. Buck, 135 N.E. 481, 192 Ind. 122—Haskell & Barker Car Co. v. Trzop, 128 N.E. 401, 190 Ind. 35.

Premier Motor Mfg. Co. v. Tilford, 111 N.E. 645, 61 Ind.App. 164.

(2) Thus the overruling of a motion to make allegations of complaint not constituting a necessary part of the statement of the cause of action more specific is not reversible error.

Ind.—Cincinnati, I. & W. R. Co. v. Little, 131 N.E. 762, 190 Ind. 662.

Verdict based on part to which motion not directed

Overruling a motion to have one paragraph of a complaint made more definite and certain is harmless where the verdict is based on a different paragraph of the complaint.

Ind.—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.

34. Ind.—Hankins v. State ex rel. Miller, 27 N.E.2d 365, 217 Ind. 225—Tipton Light, etc., Co. v. Newcomer, 58 N.E. 842, 156 Ind. 348.

American Carloading Corp. v. Voight, 21 N.E.2d 453, 107 Ind.App. 267—Indiana Mfg. Co. v. Coughlin, 115 N.E. 260, 65 Ind.App. 268.

Wash.—Griffith v. Wright, 58 P. 582, 21 Wash. 494.

35. Minn.—Barnes v. Verry, 191 N. W. 580, 154 Minn. 252, 31 A.L.R. 707.

Contributory negligence

In action for injuries where court ordered defendant to file amended answer making answer setting up contributory negligence more definite, and defendant stated that it did "forego the filing of its plea of contributory negligence which it wished to set up," failure to set up plea of contributory negligence did not prejudice defendant, since, if evidence disclosed contributory negligence under general denial such facts could be relied on by defendant and if necessary answer could be amended to conform to the evidence during progress of trial.

Kan.—Ross v. Kansas City Public Service Co., 98 P.2d 153, 151 Kan. 132.

36. Ill.—See Heinz v. Peoria Life Ins. Co., 183 Ill.App. 35.

Kan.—Nolan v. Board of County Com'rs of Ellis County, 168 P. 326, 101 Kan. 513.

4 C.J. p 942 note 68.

37. Cal.—Osbourne v. First Nat. Trust and Sav. Bank of Santa Barbara, 302 P.2d 417, 145 C.A.2d 285.

Idaho.—Forbush v. San Diego Fruit & Produce Co., 266 P. 659, 46 Idaho 231.

Ind.—Brownstown Water & Light Co. v. Hewitt, 118 N.E. 693, 66 Ind. App. 645.

La.—Young v. Anderson, App., 43 So. 2d 280.

Minn.—Ewing v. Kirtland, 155 N.W. 617, 132 Minn. 8.

Miss.—Interstate Co. v. Garnett, 122 So. 373, 154 Miss. 325, suggestion of error overruled 122 So. 756, 154 Miss. 325, 63 A.L.R. 1402.

Mont.—Meister v. Farrow, 92 P.2d 753, 109 Mont. 1.

R.I.—Kenyon v. Hart, 96 A. 529, 38 R.I. 524.

Tex.—Reed v. Markland, Civ.App., 173 S.W.2d 346, error refused.

Va.—Keister's Ex'rs v. Philips' Ex'x, 98 S.E. 674, 124 Va. 585.

4 C.J. p 943 note 69.

Contentions of appellant admitted

Overruling a motion for a bill of particulars is harmless where appellant's contentions with reference to the matter on which the bill is sought are admitted by appellee upon the trial.

Va.—Keister's Ex'rs v. Philips' Ex'x, supra.

Failure to indicate information desired in demand for a bill of particulars will cause it to be presumed that the failure to obtain a bill of particulars was not prejudicial.

Minn.—Ewing v. Kirtland, 155 N.W. 617, 132 Minn. 8.

Knowledge of appellant

Overruling a motion for a bill of particulars is harmless where the matters as to which the particulars are sought are within the knowledge of appellant making the motion.

Idaho.—Forbush v. San Diego Fruit & Produce Co., 266 P. 659, 46 Idaho 231.

Ind.—Brownstown Water & Light Co. v. Hewitt, 118 N.E. 693, 66 Ind.App. 645.

38. U.S.—Buckeye Powder Co. v. E. I. Dupont de Nemours Powder Co., N.J., 39 S.Ct. 38, 248 U.S. 55, 63 L.Ed. 123.

Robbins v. Pennsylvania Co., Ohio, 245 F. 435, 157 C.C.A. 597.

Cal.—Tanforan v. Tanforan, 159 P. 709, 173 C. 270.

Conn.—Volpe v. Gunder, 26 A.2d 13, 129 Conn. 14.

Ky.—Business Men's Assur. Co. of America v. Evades, 161 S.W.2d 920, 290 Ky. 553—Fordson Coal Co. v. Carter, 108 S.W.2d 1007, 269 Ky. 805.

La.—Williams v. Police Jury of Concordia Parish, 107 So. 126, 160 La. 325.

Minn.—McLeod v. Holt Motor Co., 294 N.W. 479, 208 Minn. 473—Farmers' Store & Warehouse Ass'n v. Barlow, 182 N.W. 447, 148 Minn. 377.

Miss.—Louis Cohn & Bros. v. Lovell Lumber Co., 100 So. 188, 135 Miss. 716—Batson-McGehee Co. v. Smith, 98 So. 534, 134 Miss. 222.

Neb.—Schellpeper v. Sporn, 198 N.W. 1012, 112 Neb. 192.

have prevailed.[39]

Failure to require an election between several parts of a pleading is not a ground for reversal where no prejudice results,[40] as where the jury finds on only one cause of action or defense;[41] or the judgment is entered on only one of the claims or counts between which the election was sought to be required;[42] or the motion to compel an election is later granted before any evidence is introduced,[43] or even after all the evidence is in;[43.5] or the party during the progress of the case abandons or dismisses all but one of the counts or defenses,[44] or

N.Y.—J. J. Little & Ives Co. v. Lecouver Press Co., 157 N.Y.S. 350, 171 App.Div. 233.
Ohio.—Peitsmeyer v. Omar Baking Co., 117 N.E.2d 184, 95 Ohio App. 37.
Or.—State v. C. J. Montag Co., 286 P. 995, 132 Or. 587—Swank v. Moisan, 166 P. 962, 85 Or. 662—Ramaswamy v. Hammond Lumber Co., 152 P. 223, 78 Or. 407.
Tex.—Texas Co-op. Inv. Co. v. Clark, Civ.App., 212 S.W. 245, reversed on other grounds Clark v. Texas Co-op. Inv. Co., Com.App., 231 S.W. 381, conformed to, Civ.App., 235 S. W. 973, dismissed for want of jurisdiction.
Vt.—Kendall v. Borofsky, 111 A.2d 251, 118 Vt. 354.
Va.—Morriss v. White, 131 S.E. 835, 146 Va. 553.
Wash.—Virtue v. Stanley, 151 P. 270, 87 Wash. 167.
4 C.J. p 943 note 70.

Admission of evidence on all issues

Any error in requiring plaintiff to elect between paragraphs is harmless, where practically all evidence was admitted, and no error was claimed in the instructions bearing on the excluded paragraph.
U.S.—Robbins v. Pennsylvania Co., Ohio, 245 F. 435, 157 C.C.A. 597.

Count discarded not supported by evidence

Error in requiring that plaintiff elect upon which of two inconsistent causes she will rely is harmless, where the requirement is made after all of plaintiff's evidence is in, and there is absolutely no evidence to support the count then discarded.
Cal.—Tanforan v. Tanforan, 159 P. 709, 173 C. 270.

Defense not elected insufficient

Error in requiring defendant to elect between two defenses is harmless if the defense rejected upon the making of the election is insufficient.
N.Y.—J. J. Little & Ives Co. v. Lecouver Press Co., 157 N.Y.S. 350, 171 App.Div. 233.
Or.—Swank v. Moisan, 166 P. 962, 85 Or. 662.

Submission of all issues to jury

Error in compelling an election between several parts of a pleading is harmless where the issues raised by all parts are fully submitted to the jury.
Minn.—Farmers' Store & Warehouse Ass'n v. Barlow, 182 N.W. 447, 148 Minn. 377.
4 C.J. p 943 note 70 [a].

39. Ky.—Chambers v. Thomas, 205 S.W.2d 1000, 305 Ky. 838—Thornton's Adm'r v. Minton's Ex'r, 64 S. W.2d 158, 250 Ky. 805.

40. U.S.—Federal Reserve Bank of San Francisco v. Idaho Grimm Alfalfa Seed Growers' Ass'n, Idaho, 8 F.2d 922, certiorari denied 46 S. Ct. 347, 270 U.S. 646, 70 L.Ed. 778.
Ark.—Thudium v. Dickson, 235 S.W. 2d 53, 218 Ark. 1—Earl v. Ellison, 210 S.W. 342, 138 Ark. 166—Weigel v. McCloskey, 166 S.W. 944, 113 Ark. 1, Ann.Cas.1916C 503.
Colo.—Degge v. Carstarphen Electric Co., 140 P. 478, 27 Colo.App. 563.
Ind.—Bradford Homes v. Long, 47 N. E.2d 609, 221 Ind. 309—Terre Haute, Indianapolis & Eastern Traction Co. v. McDermott, 141 N. E. 362, reheard 144 N.E. 620, 82 Ind.App. 134.
Iowa.—Riggs v. Gish, 205 N.W. 833, 201 Iowa 148.
Kan.—Montague v. Burgerhoff, 102 P. 2d 1031, 152 Kan. 124.
Ky.—Coleman v. Hager, 208 S.W.2d 316, 307 Ky. 70—Board of Trustees of Fairview Graded Common School Dist. v. Renfroe, 83 S.W. 2d 27, 259 Ky. 644—Cincinnati, N. O. & T. P. Ry. Co. v. Clarke, 185 S.W. 94, 169 Ky. 662.
Mo.—Graves v. Merchants & Mechanics Mut. Fire Ins. Co., 139 S.W.2d 1039, 235 Mo.App. 543—Summers v. Peoples Elevator Co., App., 136 S.W.2d 81—Braun v. Toeneboehn, App., 238 S.W. 569.
N.Y.—Hall v. Allemannia Fire Ins. Co. of Pittsburgh, 161 N.Y.S. 1091, 175 App.Div. 289.
N.C.—Walker v. Hickory Packing Co., 16 S.E.2d 668, 220 N.C. 158.
Okl.—National Farmers Union Property & Cas. Co. v. Watson, 298 P. 2d 762.
Tenn.—McMahan v. McMahan, 276 S. W.2d 738, 38 Tenn.App. 498—Green v. Arnold, 150 S.W.2d 1075, 25 Tenn. App. 67—Brown v. Wilson, 13 Tenn. App. 255.
Wash.—Stevenson v. Hazzard, 24 P. 2d 73, 174 Wash. 1—Hillman v. Gordon, 219 P. 46, 126 Wash. 614—Fiske v. Elston, 141 P. 1138, 80 Wash. 625—B. Schade Brewing Co. v. Chicago, M. & P. S. Ry. Co., 140 P. 897, 79 Wash. 651.
Wis.—Liner v. Mittelstadt, 42 N.W. 2d 504, 257 Wis. 70.
4 C.J. p 943 note 71.

Power of court to consolidate

(1) Where a number of parties sue for damages growing out of the breach of identical contracts all made with defendant at the same time, each party's cause of action being alleged in a separate count, the overruling of defendant's motion to require plaintiffs to elect to dismiss as to all except one of them is not prejudicial where the court in its discretion might have consolidated the actions had they been separately brought.
Ark.—Earl v. Ellison, 210 S.W. 342, 138 Ark. 166.

(2) The refusal to compel an election between causes of action for false imprisonment and for damages for unlawfully shackling a convict laborer is not prejudicial where by statute the court may consolidate causes of like nature when it appears reasonable to do so.
Ark.—Weigel v. McCloskey, 166 S.W. 944, 113 Ark. 1, Ann.Cas.1916C 503.

Trial to court without jury

Error in refusing to compel plaintiff to elect whether he would rely on the cause of action for the reasonable value of an automobile, or on one for an agreed value, is not prejudicial where the trial was before the court without a jury and the evidence disclosed no dispute as to the value agreed on and the promise of defendant to pay the same, as it will be assumed that the court under the evidence eliminated the first cause of action and entered judgment on the second.
Colo.—Degge v. Carstarphen Electric Co., 140 P. 478, 27 Colo.App. 563.

41. Mass.—Popkin v. Goldman, 165 N.E. 655, 266 Mass. 531.
4 C.J. p 943 note 72.

42. Cal.—Bare v. Richman & Samuels of New York, N. Y., 140 P.2d 895, 60 C.A.2d 413.
Colo.—Scott v. Gilmore, 192 P. 497, 68 Colo. 590.
Kan.—Kindig v. Smith, 227 P. 373, 116 Kan. 468.

43. Or.—Bevan v. Templeman, 26 P. 2d 775, 145 Or. 279.

43.5 Okl.—Griffin v. Asbury, 165 P. 2d 822, 196 Okl. 484.

44. Ind.—Indiana Life Endowment Co. v. Carnithan, 109 N.E. 851, 62 Ind.App. 567.
Kan.—Kouns v. Myers, 235 P. 122, 118 Kan. 221.
Ky.—Reedy v. Beauchamp, 211 S.W. 2d 393, 307 Ky. 409.

offers no evidence to establish the other counts or defenses;[45] or where the court, after hearing the evidence, eliminates one of the counts[46] or submits only one issue to the jury;[47] or the original pleading which contains the several parts is superseded by an amended pleading at the trial;[48] or a plaintiff who has moved to compel defendant to elect between different parts of the latter's answer fails to establish his case;[49] or a verdict resulted against defendant, as a matter of law, on one count, and no judgment went against him as to the other.[50]

On the other hand, where the rights of the complaining party were prejudiced thereby, requiring,[50.5] or failing to require,[50.10] an election constitutes reversible error.

§ 1694. Issues, Proof, and Variance

Unless a variance between pleading and proof is material and such as misleads or prejudices the appellant, it is not ground for reversal; a similar rule applies where trial is in part on an immaterial issue.

While a reversal may be had if there has been a total failure to prove the matter alleged in the pleading,[51] or a material variance between pleading and proof having an apparent tendency to mislead or prejudice appellant,[52] mere variances which have

Mo.—Ideal Reversible Hinge & Cabinet Co. v. Metallic Specialty Mfg. Co., App., 207 S.W. 273.
Okl.—Rotan Motor Co. v. Farmers & Merchants State Bank of Valley Center, Kan., 249 P.2d 125, 207 Okl. 271.
4 C.J. p 943 note 73.

Dismissal before submission to jury
Error, if any, in overruling a motion to require plaintiff to elect to go to trial on either the first and third paragraphs of his complaint or on the second paragraph is rendered harmless by plaintiff's dismissal of the first and second paragraphs before submission of the case to the jury.
Ind.—Indiana Life Endowment Co. v. Carnithan, 109 N.E. 851, 62 Ind. App. 567.

45. Minn.—Johnson v. Wild Rice Boom Co., 150 N.W. 218, 127 Minn. 490.
Mo.—Grand River Tp., De Kalb County v. Cooke Sales & Service, Inc., 267 S.W.2d 322.
S.D.—Ede v. Ward, 143 N.W. 269, 32 S.D. 351.

Only one cause tried and proved
Refusal to require plaintiff to elect, where he has stated the facts giving rise to a single right of recovery in several causes of action, is harmless error where all of the causes so stated were tried as one and no effort was made to prove damages in each cause of action separately.
Minn.—Johnson v. Wild Rice Boom Co., 150 N.W. 218, 127 Minn. 490.

46. U.S.—Mohrenstecher v. Westervelt, Neb., 87 F. 157, 70 C.C.A. 584.
Iowa.—Tuffree v. Binford, 107 N.W. 425, 130 Iowa 532.
Kan.—Day v. Kansas City Pipe Line Co., 125 P. 43, 87 Kan. 617.

47. Ariz.—California Steel Products Co. v. Wadlow, 118 P.2d 67, 58 Ariz. 69.
Ky.—City of Hazard v. Eversole, 133 S.W.2d 906, 280 Ky. 621.
Mo.—Lindsay v. Evans, App., 174 S.W.2d 390.
N.C.—Simpson v. American Oil Co., 14 S.E.2d 638, 219 N.C. 595.
Or.—Voyt v. Bekins Moving & Storage Co., 119 P.2d 586, 169 Or. 30, adhered to 127 P.2d 360, 169 Or. 30.
Tex.—Humble Oil & Refining Co. v. Ooley, Civ.App., 46 S.W.2d 1038.
4 C.J. p 943 note 77.

48. Iowa.—Frey v. Stangl, 125 N.W. 868, 148 Iowa 522.
Miss.—Floyd v. Williams, 22 So.2d 365, 198 Miss. 350.

49. Minn.—Cookson v. Hill, 178 N.W. 591, 146 Minn. 165.

50. N.M.—Tagliaferri v. Grande, 120 P. 730, 16 N.M. 486.

50.5 N.C.—Jenkins v. Trantham, 94 S.E.2d 311, 244 N.C. 422.
Utah.—Shumway v. Anderson, 96 P. 2d 1098, 98 Utah 144.

50.10 Ohio.—Angel v. Leech, 106 N.E.2d 85, 90 Ohio App. 301.
Okl.—Lubell v. King, 216 P.2d 325, 202 Okl. 517—Oklahoma Wheat Pool Terminal Corp. v. Rodgers, 70 P.2d 1080, 180 Okl. 623.

51. Mo.—Peters v. McDonough, 87 S.W.2d 530, 327 Mo. 487.

52. Ala.—Aplin v. Dean, 164 So. 737, 231 Ala. 320.
Ariz.—Dykes v. Clem Lumber Co., 118 P.2d 454, 58 Ariz. 176.
Cal.—Sublett v. Henry's Turk & Taylor Lunch, 131 P.2d 369, 21 C.2d 273.
Mayer v. Beondo, 189 P.2d 327, 83 C.A.2d 665, rehearing denied 190 P.2d 23, 83 C.A.2d 665—Harris v. Reingold, 277 P. 750, 98 C.A. 709—Adkins v. Model Laundry Co., 268 P. 939, 92 C.A. 575.
Conn.—Aldrich v. Duggan, 139 A. 272, 107 Conn. 23.
Fla.—Atlantic Coast Line R. Co. v. Johnson, 40 So.2d 892, certiorari denied 70 S.Ct. 82, 338 U.S. 852, 94 L.Ed. 521.
Ga.—Loftin v. Carroll County Board of Education, 28 S.E.2d 372, 70 Ga. App. 315.
Ill.—Lake St. El. R. Co. v. Collins, 118 Ill.App. 270.
Ky.—Waller v. Parsley, 229 S.W.2d 741, 312 Ky. 758.
Md.—Nardo v. Favazza, 110 A.2d 676, 206 Md. 122.
Minn.—Nett v. Bonfig, 185 N.W. 956, 151 Minn. 32.
Miss.—Ellis v. Hubbard, 87 So.2d 251—Calvert Fire Ins. Co. v. Swain, 65 So.2d 253, 217 Miss. 773.
Mo.—Taylor v. Kansas City Southern Ry. Co., 293 S.W.2d 894.
Proctor v. Jacob Ruppert, 159 S.W.2d 328, 236 Mo.App. 684—Greenfield v. Purple Shoppe, 100 S.W.2d 345, 231 Mo.App. 464—Sevier v. Harmon, App., 261 S.W. 348.
N.M.—Campbell v. Hollywood Race Ass'n, 221 P.2d 558, 54 N.M. 260.
N.Y.—Wilson v. Zaher, 160 N.Y.S.2d 450, 3 A.D.2d 739—Morgan v. Robinson, 159 N.Y.S.2d 639, 3 A.D.2d 216—Eisenberg v. Irving Kemp, Inc., 11 N.Y.S.2d 449, 256 App.Div. 698—Fearn v. George K. Culp, Inc., 225 N.Y.S. 330, 222 App.Div. 25.
N.C.—Beck v. Lexington Coca-Cola Bottling Co., 199 S.E. 924, 214 N.C. 566—Dill-Cramer-Truitt Corporation v. Downs, 160 S.E. 492, 201 N.C. 478.
Ohio.—Regal Motor Products, Inc. v. Bender, App., 139 N.E.2d 463—Merrill Coal Mines v. Logan & Kanawha Coal Co., App., 31 N.E.2d 440—Groves v. Freedom Oil Works Co., 21 N.E.2d 599, 60 Ohio App. 376.
Tex.—Skeeters v. Granger, Civ.App., 304 S.W.2d 188—Texas Lime Co. v. Hindman, Civ.App., 300 S.W.2d 112, error granted—Goss v. Phillips, Civ.App., 292 S.W.2d 700—Cox v. Johnson, Civ.App., 259 S.W.2d 623—Mosey v. Texas & P. Ry. Co., Civ.App., 191 S.W.2d 55—Sonken-Galamba Corp. v. Hillman, Civ.App., 111 S.W.2d 853, error dismissed—Gamer v. Winchester, Civ.App., 110 S.W.2d 1190, error dismissed—Wainwright-West Oils v. Cooke, Civ.App., 103 S.W.2d 847, error dismissed—Travelers Ins. Co. v. Barker, Civ.App., 96 S.W.2d 559—Connecticut General Life Ins. Co. v. Smith, Civ.App., 94 S.W.2d 519, error dismissed.

not misled appellant or adversely affected his substantial rights are usually not regarded as sufficiently prejudicial to afford grounds for reversal.[58] Variances ordinarily falling in this latter category

Proof of damages not pleaded

The reception of evidence of special damages not specially pleaded over the objection of defendant is prejudicial error when it cannot be determined whether or not any such damages were allowed by the jury.

Cal.—Mills v. San Diego Conservatory of Music, 191 P. 546, 47 C.A. 300.

Ill.—See Murray v. Vandalia R. Co., 202 Ill.App. 362.

58. U.S.—American Ry. Express Co. v. Ewing Thomas Converting Co., C.C.A.Pa., 292 F. 335—Druid S. S. Co. v. Allaun, N.Y., 255 F. 20, 166 C.C.A. 348.

Ala.—Goodgame v. Dawson, 7 So.2d 77, 242 Ala. 499—Pearce v. Hubbard, 135 So. 179, 223 Ala. 231—Bond Bros. v. Bates, 96 So. 422, 209 Ala. 326—Birmingham Ry., Light & Power Co. v. Kyser, 82 So. 151, 203 Ala. 121—J. E. Butler & Co. v. A. G. Henry & Co., 79 So. 630, 202 Ala. 155—Cudd v. Reynolds, 73 So. 373, 197 Ala. 687.

Raia v. Goldberg, 34 So.2d 620, 33 Ala.App. 435, certiorari denied 34 So.2d 625, 250 Ala. 398—Hines v. Hammond, 91 So. 323, 18 Ala.App. 227, certiorari denied 91 So. 922, 207 Ala. 711.

Ariz.—Shell Oil Co. v. Brazee, 75 P. 2d 45, 51 Ariz. 143—Dudley v. Peterson, 25 P.2d 276, 42 Ariz. 282—Friedman v. Friedman, 9 P.2d 1015, 40 Ariz. 96—Moore v. Meyers, 253 P. 626, 31 Ariz. 347, reversed on other grounds 255 P. 164, 31 Ariz. 519—Perazzo v. Ortega, 241 P. 518, 29 Ariz. 334.

Ark.—Augusta Cooperage Co. v. Plant, 259 S.W. 12, 163 Ark. 49.

Cal.—Chelini v. Nieri, 196 P.2d 915, 32 C.2d 480—Drinkhouse v. Van Ness, 260 P. 869, 202 C. 359—Victor Oil Co. v. Drum, 193 P. 243, 184 C. 226—Gibson v. McReynolds, 165 P. 921, 175 C. 263.

Hollywood Wholesale Elec. Co. v. Jack Baskin, Inc., 303 P.2d 1049, 146 C.A.2d 399—In re Palmer's Estate, 302 P.2d 629, 145 C.A.2d 428—Lumsden v. Roth, 291 P.2d 88, 138 C.A.2d 172—Guillory v. Godfrey, 286 P.2d 474, 134 C.A.2d 628—Kreisa v. Stoddard, 274 P.2d 164, 127 C.A.2d 627—Wilson v. Stearns, 267 P.2d 59, 123 C.A.2d 472—In re Prior's Estate, 244 P.2d 697, 111 C.A.2d 464—Keller v. Hiers, 239 P. 2d 6, 108 C.A.2d 424—Niblack v. Atchison, T. & S. F. Ry. Co., 234 P. 2d 208, 105 C.A.2d 847—Kuitems v. Covell, 231 P.2d 552, 104 C.A.2d 482—McIvor v. Mercer-Fraser Co., 172 P.2d 758, 76 C.A.2d 247—Erskine v. Upham, 132 P.2d 219, 56 C.A.2d 235—Jones v. Re-Mine Oil Co., 119 P.2d 219, 47 C.A.2d 832—Head v. Logan, 102 P.2d 813, 39 C.A.2d 243—Gardiner v. Burket, 40 P.2d 279, 3 C.A.2d 666—Mankin v. Southwestern Automobile Ins. Co., 298 P. 42, 113 C.A. 243—San Jose Brick Co. v. Rhodes-Jamieson Co., 297 P. 619, 112 C.A. 558—Kimes v. Rasor, 285 P. 359, 104 C.A. 201—Christman v. Guaranty Mortg. Co. of California, 284 P. 517, 103 C.A. 347—Henderson v. Electric Loop Land Co., 274 P. 445, 96 C.A. 576—Young v. Lo Presti, 272 P. 310, 95 C.A. 79—Robertson v. Weingart, 267 P. 741, 91 C.A. 715—Wright v. Serimian, 225 P. 28, 66 C.A. 75—Hoeft v. Hotchkiss, 194 P. 509, 49 C.A. 773—Hillcrest Co. v. Shrier, 183 P. 239, 41 C.A. 624—Otten v. Spreckels, 141 P. 224, 24 C.A. 251.

Colo.—Marquart v. Clark, 121 P.2d 885, 109 Colo. 62—Gold, Silver & Tungsten v. Wallace, 91 P.2d 975, 104 Colo. 273, certiorari denied 60 S.Ct. 179, 308 U.S. 612, 84 L.Ed. 512, rehearing denied 60 S.Ct. 298, 308 U.S. 639, 84 L.Ed. 530—Marysville & Colorado Land Co. v. Heyde, 27 P.2d 498, 93 Colo. 523—Hiner v. Cassidy, 18 P.2d 309, 92 Colo. 78.

Conn.—Reciprocal Exchange v. Altherm, Inc., 115 A.2d 460, 142 Conn. 545—Taylor v. Corkey, 111 A.2d 925, 142 Conn. 150—Klein v. De Rosa, 79 A.2d 773, 137 Conn. 586—Antonio Pepe Co. v. Apuzzo, 120 A. 681, 98 Conn. 807.

Fla.—Coleman v. Williams, 200 So. 207, 146 Fla. 45—Penn v. Pearce, 163 So. 288, 121 Fla. 3—Jacksonville Terminal Co. v. Alston, 152 So. 14, 113 Fla. 423.

Ga.—Comolli v. National Cash Register Co., 150 S.E. 551, 169 Ga. 409, answers to certified questions conformed to 151 S.E. 517, 40 Ga.App. 683.

Turner v. Joiner, 48 S.E.2d 907, 77 Ga.App. 603—City of Atlanta v. Hawkins, 166 S.E. 262, 45 Ga.App. 847.

Idaho.—Wood v. Hill, 212 P.2d 391, 70 Idaho 93—Naccarato v. Village of Priest River, 195 P.2d 370, 68 Idaho 368—Advance-Rumely Thresher Co. v. Jacobs, 4 P.2d 657, 51 Idaho 160—Peck v. Nixon, 277 P. 1112, 47 Idaho 675.

Ill.—Foreman Trust & Savings Bank v. Cohn, 174 N.E. 419, 342 Ill. 280—Kochorimbus v. Maggos, 154 N. E. 235, 323 Ill. 510.

Moyers v. Illinois Cent. R. Co., 197 Ill.App. 179. See Pryde v. Chicago-Sandoval Coal Co., 210 Ill. App. 615—City of Alton v. Miller, 206 Ill.App. 155—Sherman v. Ash, 187 Ill.App. 578.

Ind.—Louisville, etc., R. Co. v. Phillips, 13 N.E. 132, 112 Ind. 59, 2 Am. S.R. 155.

Reedy v. Reedy, 98 N.E.2d 256, 121 Ind.App. 356—Coffman v. State ex rel. Edwards, 94 N.E.2d 547, 121 Ind.App. 90—Hull v. Burress, 93 N.E.2d 213, 120 Ind.App. 507—Olsen v. Edgerly, 18 N.E.2d 937, 106 Ind.App. 223—Morris v. Kesler, 5 N.E.2d 128, 103 Ind.App. 38—Fast v. Judy, 147 N.E. 728, 83 Ind. App. 85—Federal Life Ins. Co. v. Weedon, 118 N.E. 842, 68 Ind.App. 529—Louisville & S. I. Traction Co. v. Lloyd, 105 N.E. 519, 58 Ind. App. 39.

Iowa.—In re Nelson's Guardianship, 294 N.W. 922, 229 Iowa 666.

Kan.—Wilson v. Walt, 25 P.2d 343, 138 Kan. 205, 89 A.L.R. 473—Hoppas v. Bremer, 239 P. 961, 119 Kan. 411—Fabac v. St. Louis & S. F. Ry. Co., 237 P. 1019, 119 Kan. 58—Debus v. Missouri State Life Ins. Co., 225 P. 91, 115 Kan. 773—Continental Supply Co. v. Bankers' Oil Co., 204 P. 692, 110 Kan. 468—Nordboe v. Frye, 191 P. 282, 107 Kan. 291—McCue v. Hope, 170 P. 1051, 102 Kan. 147, 390—Clark v. Townsend, 153 P. 555, 96 Kan. 650, rehearing denied 154 P. 1009, 97 Kan. 161—Scheidel-Western X-Ray Coil Co. v. Ross, 141 P. 1007, 92 Kan. 798—Palin v. Insurance Co. of North America, 140 P. 886, 92 Kan. 401.

Ky.—City of Paducah v. Vinson, 127 S.W.2d 828, 277 Ky. 804—Clover Splint Coal Co. v. Lorenz, 110 S. W.2d 457, 270 Ky. 676—Moody's Adm'r v. Commonwealth, 97 S.W. 2d 816, 265 Ky. 780—Chesapeake & O. Ry. Co. v. Carroll's Adm'r, 61 S.W.2d 41, 249 Ky. 703—City of Grenville v. Johnston, 52 S.W.2d 716, 244 Ky. 782—Justice v. Brunson, 42 S.W.2d 542, 240 Ky. 428—Louisville & N. R. Co. v. Nickell, 270 S.W. 487, 208 Ky. 60.

La.—Chapman-Storm Lumber Co. v. Board of Com'rs for Atchafalaya Basin Levee Dist., 200 So. 445, 196 La. 1039.

Landry v. Truxillo, App., 191 So. 751.

Md.—Clautice v. Murphy, 26 A.2d 406, 180 Md. 558—Board of Education for Washington County v. Cearfoss, 166 A. 732, 165 Md. 178.

Mass.—Sandler v. Elliott, 141 N.E.2d 367—Reuter v. Ballard, 166 N.E. 822, 267 Mass. 557.

Mich.—Anderson v. Conterio, 5 N.W. 2d 572, 303 Mich. 75—Bolibrzuch v. Gaffke, 230 N.W. 922, 251 Mich. 92—Close v. Ann Arbor R. Co., 135 N.W. 346, 169 Mich. 392.

Miss.—Westbrook v. Cornell, 23 So. 2d 753, 199 Miss. 118—Young v. Columbus & G. Ry. Co., 147 So. 342, 165 Miss. 287—Thomas v. B. Rosenberg & Sons, 120 So. 732, 153 Miss. 314.

are those which are extremely slight,[54] or relate | to unnecessary or immaterial matters,[55] or have

Mo.—Browne v. Creek, 209 S.W.2d 900, 357 Mo. 576.
Murray v. St. Louis Public Service Co., App., 201 S.W.2d 775—Schaeffer v. Northern Assur. Co., App., 177 S.W.2d 688—Collins v. Leahy, App., 102 S.W.2d 801—First Nat. Bank v. Aquamsi Land Co., App., 70 S.W.2d 90, certiorari quashed State ex rel. Aquamsi Land Co. v. Hostetter, Mo., 79 S.W.2d 463—Riner v. Riek, App., 57 S.W.2d 724—Irwin v. McDougal, 274 S.W. 923, 217 Mo.App. 645—Buchholz v. Standard Oil Co. of Indiana, 244 S.W. 973, 211 Mo.App. 397—Yarbrough v. Wisconsin Lumber Co., App., 211 S.W. 713.

Mont.—McGrath v. Dubs, 257 P.2d 899, 127 Mont. 101—Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co., 190 P.2d 55, 121 Mont. 1—St. George v. Boucher, 274 P. 489, 84 Mont. 158—Morrison v. Concordia Fire Ins. Co. of Milwaukee, Wis., 231 P. 905, 72 Mont. 97—Matoole v. Sullivan, 177 P. 254, 55 Mont. 363.

N.J.—Palkoski v. Garcia, 115 A.2d 539, 19 N.J. 175.
Gribbin v. Fox, 35 A.2d 719, 131 N.J.Law 187.
Bishop v. Cadman, 159 A. 536, 10 N.J.Misc. 454—Lehigh Stove Mfg. Co. v. Kessler, 135 A. 335, 5 N.J.Misc. 8.

N.M.—Shaffer v. McCulloh, 29 P.2d 486, 38 N.M. 179.

N.Y.—Babbett v. Young, 51 N.Y. 238—Bennett v. Judson, 21 N.Y. 238.
Saracena v. Preisler, 167 N.Y.S. 871, 180 App.Div. 348.
Tomlinson v. Miller, 7 Abb.Pr., N.S., 364, affirmed Sheld. 197.

N.C.—Dixson v. C. E. Johnson Realty Co., 183 S.E. 382, 209 N.C. 354—Carstarphen v. Carstarphen, 137 S.E. 658, 193 N.C. 541.

N.D.—Braaten v. Grabinski, 43 N.W.2d 381, 77 N.D. 422—Whittier v. Leifert, 9 N.W.2d 402, 72 N.D. 528.

Ohio.—Siegle v. Lee, App., 81 N.E.2d 809—Merrill Coal Mines v. Logan & Kanawha Coal Co., App., 31 N.E.2d 440—Kolberg v. Central Fruit & Grocery Co., 174 N.E. 144, 37 Ohio App. 64.
Weber v. Lucas, 12 Ohio Supp. 121.
Flynn v. Wiltshire, 19 Ohio Cir. Ct.,N.S., 433.

Okl.—W. L. Hulett Lumber Co. v. Viking Freight Co., 252 P.2d 1017, 208 Okl. 26—Lincoln Health & Accident Ins. Co. v. Jones, 52 P.2d 793, 175 Okl. 211—Harris v. Davis, 38 P.2d 562, 170 Okl. 35—Jefferson Standard Life Ins. Co. v. Poulter, 6 P.2d 665, 154 Okl. 86—McGrath v. Durham, 1 P.2d 718, 151 Okl. 55—Sorter v. Newton State Bank & Trust Co., 295 P. 209, 147 Okl. 135—Hunt v. Van Sicien, 276 P. 182, 136 Okl. 69—National Bank of Commerce of Porum v. Jackson, 170 P. 474, 69 Okl. 93.

Or.—Mitchell v. City of Portland, 78 P.2d 582, 159 Or. 91—Easton v. Quackenbush, 168 P. 631, 86 Or. 374.

Pa.—Pennsylvania R. Co. v. City of Pittsburgh, 6 A.2d 907, 335 Pa. 449—Snyder v. McGill, 108 A. 410, 265 Pa. 122.
Shaffer v. Bahr, 57 Pa.Super. 48.

R.I.—Thomas v. Newport Oil Corp., 133 A.2d 631—Greenstein v. Singer, 112 A.2d 525.

S.D.—Rees v. Williams Distributing Co., 81 N.W.2d 883—Dalton v. Snyder, 179 N.W. 493, 43 S.D. 401.

Tenn.—McMahan v. McMahan, 276 S.W.2d 738, 38 Tenn.App. 498.

Tex.—Robinson v. Draper, 127 S.W.2d 181, 133 Tex. 280.
Austin Stone Industries, Inc. v. Capitol Powder Co., Civ.App., 290 S.W.2d 689, error refused no reversible error—Texas Emp. Ins. Ass'n v. Patterson, Civ.App., 231 S.W.2d 898, error refused—Johnson Aircrafts v. Eichholtz, Civ.App., 194 S.W.2d 815, error refused no reversible error—Normandie Oil Corp. v. Oil Trading Co., Civ.App., 147 S.W.2d 557, reversed on other grounds 163 S.W.2d 179, 139 Tex. 402—Oil Country Pipe & Supply Co. v. Carter, Civ.App., 143 S.W.2d 831, error dismissed, judgment correct—Texas Indemnity Ins. Co. v. Godsey, Civ.App., 143 S.W.2d 639, error refused—Central Nat. Bank of San Angelo v. Cox, Civ.App., 96 S.W.2d 746, error dismissed—Kent v. National Supply Co. of Texas, Civ.App., 36 S.W.2d 811—Scanlan v. Gulf Bitulithic Co., Civ.App., 27 S.W.2d 877, reversed on other grounds, Com.App., 44 S.W.2d 967, 80 A.L.R. 852—First Nat. Bank v. Winfree, Civ.App., 24 S.W.2d 768—McMillan v. Rutherford, Civ.App., 14 S.W.2d 132—Ball v. Farmersville Nat. Bank of Farmersville, Civ.App., 4 S.W.2d 603—Grosse v. Runge Lumber Co., Civ.App., 257 S.W. 310—Houston Ice & Brewing Ass'n v. Armour & Co., Civ.App., 253 S.W. 635—Galveston, H. & S. A. Ry. Co. v. Henry, Civ.App., 252 S.W. 210—Farmers' Mill & Elevator Co. v. Hodges, Civ.App., 248 S.W. 72, reversed on other grounds, Com.App., 260 S.W. 166—Western Union Telegraph Co. v. Morrow, Civ.App., 208 S.W. 689, error refused—Missouri, K. & T. Ry. Co. of Texas v. Rogers, Civ.App., 201 S.W. 417—Grand Prairie Gravel Co. v. Joe B. Wills Co., Civ.App., 188 S.W. 680, error refused—Kerbow v. Wooldridge, Civ.App., 184 S.W. 746, error refused.

Va.—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203—Marcus v. Broad-Grace Arcade Corporation, 180 S.E. 227, 164 Va. 553.

Wash.—Whalen v. Lanier, 186 P.2d 919, 29 Wash.2d 299—Hubbard v. Hartford Fire Ins. Co., 238 P. 569, 135 Wash. 558, reheard 240 P. 565, 135 Wash. 558—Umpqua Valley Fruit Union v. North Pacific Fruit Distributors, 183 P. 101, 108 Wash. 265.

Wis.—Behr v. Larson, 83 N.W.2d 157, 275 Wis. 620—Martin v. Ebert, 13 N.W.2d 907, 245 Wis. 341, 152 A.L.R. 1142.

Wyo.—Johnson v. Johnson, 229 P.2d 918, 68 Wyo. 61—Chesney v. Valley Live Stock Co., 244 P. 216, 34 Wyo. 378, 44 A.L.R. 1255.

4 C.J. p 946 note 14—37 C.J. p 113 note 4 [c]—46 C.J. p 632 note 36 [b].

54. Conn.—Reciprocal Exchange v. Altherm, Inc., 115 A.2d 460, 142 Conn. 545.

Ga.—Haslerig v. Watson, 54 S.E.2d 413, 205 Ga. 668.

Kan.—Matthews v. Langhofer, 202 P. 634, 110 Kan. 360.

N.D.—Whittier v. Leifert, 9 N.W.2d 402, 72 N.D. 528.

Trivial variance

Wyo.—Board of Com'rs of Natrona County v. Casper Nat. Bank, 105 P.2d 578, 56 Wyo. 132, 130 A.L.R. 727.

Clerical errors

Mo.—J. M. Batterton Estate v. Edwards, App., 115 S.W.2d 1.

Tex.—Oil Country Pipe & Supply Co. v. Carter, Civ.App., 143 S.W.2d 831, error dismissed, judgment correct.

Harmless variance

Tex.—Central Nat. Bank of San Angelo v. Cox, Civ.App., 96 S.W.2d 746, error dismissed.

55. Ark.—Missouri Pac. R. Co. v. Smith, 117 S.W.2d 1068, 196 Ark. 405.

Cal.—Young v. Lo Presti, 272 P. 310, 95 C.A. 79—Tropical Inv. Co. v. Brown, 187 P. 133, 45 C.A. 205.

Conn.—Brower v. Perkins, 68 A.2d 146, 135 Conn. 675.

Mo.—Laster v. R. & V. Motor Co., 269 S.W. 665, 219 Mo.App. 211.

Or.—Henningsen v. Title & Trust Co., 49 P.2d 458, 151 Or. 318.

Pa.—Normile v. Martell, 95 Pa.Super. 139.

Tex.—Pitts v. Zavala-Dimmit Counties Water Improvement Dist. No. 1, Civ.App., 81 S.W.2d 801—Gulf, C. & S. F. Ry. Co. v. Tarver, Steele & Co., Civ.App., 295 S.W. 320—Peyton v. Sturgis, Civ.App., 202 S.W. 205.

Immaterial variation

Ala.—Bankers Fire & Marine Ins. Co. v. Draper, 18 So.2d 409, 245 Ala. 653.

Mont.—Pritchard Petroleum Co. v. Farmers Co-op. Oil & Supply Co.,

been,[56] or are capable of being,[57] cured by amendment in accordance with the rules stated in § 1895 infra. Factors or circumstances often regarded as showing that the variance is harmless are that there has been a full trial on the merits without appellant objecting, expressing surprise at, or asking a continuance because of, the variance;[58] or that he was fully apprised of the issues to be tried and given ample opportunity to present his case;[59] or that he in fact showed himself to be able to meet the varying proof with contradicting evidence.[60]

It is, of course, apparent that no harm has resulted from the variance if the issue or matter to which the variant proof related has in some manner been eliminated or restricted so as not to enter into the final verdict or judgment.[61] Failure to make proof of unnecessary and immaterial allegations of a pleading is harmless and not ground for reversal,[62]

190 P.2d 55, 121 Mont. 1—Metcalf v. Barnard-Curtiss Co., 180 P.2d 363, 120 Mont. 50.
N.Y.—Fanning v. Maggi, 126 N.Y.S.2d 551, 282 App.Div. 1067.
Tex.—Hidalgo Distributing Co. v. Safeway Stores, Civ.App., 204 S.W.2d 523.

56. Ark.—Augusta Cooperage Co. v. Plant, 259 S.W. 12, 163 Ark. 49.
Cal.—Lyon v. Lyon, 303 P.2d 39, 145 C.A.2d 660.
Ill.—See Smith v. Marubio, 202 Ill. App. 183.
Mont.—Walsh v. Kennedy, 147 P.2d 425, 115 Mont. 551—Backer v. Parker-Morelli-Barclay Motor Co., 289 P. 571, 87 Mont. 595.
Okl.—Lewis v. Bandy, 144 P. 624, 45 Okl. 45.
Vt.—Niles v. Danforth, 122 A. 498, 97 Vt. 88.
W.Va.—Napier v. Mozena Coal Co., 103 S.E. 125, 86 W.Va. 220.

57. U.S.—Meade Fibre Co. v. Varn, C.C.A.S.C., 3 F.2d 520, certiorari denied 46 S.Ct. 23, 269 U.S. 564, 70 L.Ed. 414.
Cal.—Sparks v. Mauk, 148 P. 926, 170 C. 122.
Lompoc Product & Real Estate Co. v. Browne, 183 P. 166, 41 C.A. 607.
Colo.—Barsch v. Hammond, 135 P.2d 519, 110 Colo. 441.
Ind.—Kist v. Coughlin, 1 N.E.2d 602, 210 Ind. 622, motion denied 4 N.E.2d 533, 210 Ind. 622.
Ladoga Canning Co. v. Taylor, 7 N.E.2d 52, 104 Ind.App. 1.
Mich.—Anderson v. Conterio, 5 N.W.2d 572, 303 Mich. 75—Brooks v. Bellows, 158 N.W. 152, 192 Mich. 109.
Ohio.—Creamer v. Payer, App., 113 N.E.2d 883.
Okl.—Ward v. Coleman, 39 P.2d 113, 170 Okl. 201—Harris v. Newcombe, 156 P. 666, 56 Okl. 741—Sims v. Central State Bank, 155 P. 878, 56 Okl. 129.
46 C.J. p 632 note 36 [b].

58. Cal.—Gudelj v. Gudelj, 259 P.2d 656, 41 C.2d 202—Chelini v. Nieri, 196 P.2d 915, 32 C.2d 480.
Martin v. Henderson, 269 P.2d 117, 124 C.A.2d 602—Gerstner v. Scheuer, 204 P.2d 937, 91 C.A.2d 123—Crown Products Co. v. California Food Products Corp., 175 P.2d 861, 77 C.A.2d 543—Fitzsimmons v. Fitzsimmons, 164 P.2d 934, 72 C.A.2d 545—Fatta v. Catalano, 183 P. 224, 41 C.A. 630.
Colo.—Barsch v. Hammond, 135 P.2d 519, 110 Colo. 441.
Ky.—Salisbury v. Wellman Electrical Co., 191 S.W. 289, 173 Ky. 462.
Okl.—Rogers v. Jones, 147 P.2d 164, 194 Okl. 50.
Pa.—Glou v. Security Ben. Ass'n, 173 A. 83, 114 Pa.Super. 139.
Tex.—Tunstill v. Pelton, Civ.App., 155 S.W.2d 653, error refused—Oil Country Pipe & Supply Co. v. Carter, Civ.App., 143 S.W.2d 831, error dismissed, judgment correct.

New issues injected by both parties
Idaho.—Kingsford v. Bennion, 199 P. 2d 625, 68 Idaho 501.

Issues tried by parties' express or implied consent
Mo.—Biehle v. Frazier, 232 S.W.2d 465, 360 Mo. 1068.

59. Cal.—Jones v. Martin, 256 P.2d 905, 41 C.2d 23.
Keeble v. Brown, 266 P.2d 569, 123 C.A.2d 126—Neel v. Ramelli, 32 P.2d 177, 138 C.A. 366.
La.—Madison v. Prudential Ins. Co. of America, 181 So. 871, 190 La. 103.
Fidelity & Deposit Co. of Md. v. Rednour, App., 44 So.2d 215.
Tenn.—McMahan v. McMahan, 276 S.W.2d 738, 38 Tenn.App. 498—State ex rel. v. Seals, 171 S.W.2d 836, 26 Tenn.App. 333.

60. U.S.—American Lumber & Mfg. Co. v. Berthold & Jennings Lumber Co., Pa., 233 F. 971, 147 C.C.A. 645.
Cal.—Kaiser v. Kaiser, 289 P. 875, 106 C.A. 668.
Mo.—Davis v. Kansas City Public Service Co., 233 S.W.2d 679, 361 Mo. 61—Crockett v. City of Mexico, 77 S.W.2d 464, 336 Mo. 145.
Ohio.—O'Brien v. Small, 122 N.E.2d 701, 101 Ohio App. 408.

61. Cal.—Spinak v. Pridham, 266 P. 612, 91 C.A. 71.
Idaho.—Hansen v. Standard Oil Co. of California, 44 P.2d 709, 55 Idaho 483.
Kan.—Griffith v. Atchison, T. & S. F. Ry. Co., 169 P. 546, 102 Kan. 23.
La.—Dewil v. Union Indemnity Co., 120 So. 654, 10 La.App. 224.
Mo.—Maloney v. United Rys. Co. of St. Louis, 237 S.W. 509.
Gurley Bros. v. Swaffer, App., 51 S.W.2d 187.
Pa.—Hunsicker v. Waidelich, 158 A. 335, 302 Pa. 224, 84 A.L.R. 211.
Tenn.—Phifer v. Mutual Ben. Health & Accident Ass'n, 148 S.W.2d 17, 24 Tenn.App. 600.

Basing judgment entirely on evidence conforming to the pleadings renders harmless the admission of proof at variance with the pleadings.
Tex.—Texas City Terminal Co. v. Showalter, Civ.App., 257 S.W. 621.

Error rendered harmless or cured by instruction
Iowa.—Taylor v. City of Sibley, 29 N.W.2d 251, 238 Iowa 1010.
Mo.—Collins v. Leahy, App., 102 S.W.2d 801.
Ohio.—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87.
Tenn.—Olson v. Sharpe, 259 S.W.2d 867, 36 Tenn.App. 557.

Issue clearly presented to jury by instructions
Ala.—Crane Co. v. Davies, 8 So.2d 189, 30 Ala.App. 471, reversed on other grounds 8 So.2d 196, 242 Ala. 570.

Issue not submitted to jury
Ark.—Missouri Pac. R. Co. v. Smith, 117 S.W.2d 1068, 196 Ark. 405.

62. Ala.—City of Albany v. Black, 112 So. 433, 216 Ala. 4.
Cal.—Lombera v. Union Paving Co., 38 P.2d 871, 3 C.A.2d 268.
Ill.—Chicago Title & Trust Co. v. Edens, 187 Ill.App. 238.
Iowa.—Colby v. Forbes, 216 N.W. 722, 207 Iowa 9.
Tex.—Bales v. Jones, Civ.App., 288 S.W.2d 266, error refused no reversible error.
Va.—Kennedy v. Mullins, 154 S.E. 568, 155 Va. 166.

Holding held erroneous
Where defendant's exception did not expressly attack in limine litis plaintiff's allegations that he was elector and as such entitled to bring suit to prevent enforcement of ordinance prohibiting sale of beverages of high alcoholic content, holding that such fact was not adequately proved was erroneous and prejudicial.
La.—White v. Morehouse Parish Police Jury, App., 95 So.2d 356.

as is also failure to make proof of allegations not entering into the trial court's decision,[63] or facts which have been admitted by the opposing party.[64]

The fact that the trial is partly on an erroneous or immaterial issue will not work a reversal of a judgment against defendant, when such issue was brought in by defendant's plea on which plaintiff joined issue, the case was tried also on other material and valid issues, and the rights of defendant were not prejudiced.[65]

4. Interlocutory Proceedings

§ 1695. In General

A case will not be reversed because of harmless error in interlocutory proceedings.

Interlocutory orders, although erroneous, which do not prejudice the rights of the party against whom they are made, are insufficient to reverse a cause.[66] For example, although a consolidation of causes may have been technically erroneous, the judgment will not be reversed on this account where the consolidation does not appear to have been in any way prejudicial to the rights of the complaining party.[67]

Bonds. Orders with respect to bonds, although erroneous, which do not prejudice the rights of the party against whom they are made do not furnish grounds for reversal.[67.5] So, where the cause is decided against him, defendant cannot complain that plaintiff failed to furnish the required bond,[67.10] or that plaintiff's bond was irregular[68] or insufficient;[69] nor will the verdict and judgment be set aside on appeal by plaintiff for error of the court in requiring him to give additional security in the action by increasing the penalty of the bond.[70]

Physical examination. The denial of a timely motion for the physical examination of plaintiff may constitute reversible error.[70.5]

63. Cal.—Bryson v. Byrer, 262 P. 461, 87 C.A. 320.

64. Kan.—Keystone Impl. Co. v. Welsheimer, 55 P. 348, 8 Kan.App. 861.

65. Fla.—Atlantic Coast Line R. Co. v. Holliday, 74 So. 479, 73 Fla. 269.

66. Cal.—Fisher v. Nash Bldg. Co., 248 P.2d 466, 113 C.A.2d 397—Rio Del Mar Country Club v. Superior Court in and for Santa Cruz County, 190 P.2d 295, 84 C.A.2d 214.
Colo.—Town of Palisade v. Orchard Mesa Irr. Dist., 273 P. 646, 85 Colo. 57.
Ga.—Ayers v. Swall, 87 S.E. 763, 17 Ga.App. 519.
Ind.—Sohl v. Wainwright Trust Co., 130 N.E. 282, 76 Ind.App. 198.
Iowa.—Elson v. Nickles, 36 N.W.2d 343, 240 Iowa 292.
Ky.—Williams' Adm'r v. Vonderhaar's Ex'x, 89 S.W.2d 321, 262 Ky. 68.
Stith v. Carter, 60 S.W. 725, 22 Ky.L. 1488.
Me.—Bond v. Bond, 141 A. 833, 127 Me. 117.
Md.—Farrell Lines, Inc. v. Devlin, 127 A.2d 640, 211 Md. 404.
Mass.—Corey v. Tuttle, 144 N.E. 230, 249 Mass. 135.
Miss.—Bell v. Percy, 59 So.2d 76, 214 Miss. 456.
Nev.—Douglas Milling & Power Co. v. Rickey, 217 P. 590, 47 Nev. 148.
N.D.—State v. One Buick Automobile, 185 N.W. 305, 48 N.D. 348.
Ohio.—Cameron v. Gordon, App., 33 N.E.2d 1016.
Okl.—Cox v. Kelley, 295 P.2d 1061—Eagle Loan & Investment Co. v. Turner, 241 P. 138, 113 Okl. 251—Missouri, O. & G. Ry. Co. v. Vandivere, 141 P. 799, 42 Okl. 427.
Pa.—Park v. Beaver Valley Traction Co., 106 A. 106, 262 Pa. 561.
Tex.—Glasscock v. Bryant, Civ.App., 185 S.W.2d 595, refused for want of merit—Hawkins v. Everts, Civ. App., 91 S.W.2d 1086, error refused—Kenney v. La Grone, Civ.App., 62 S.W.2d 600.
Utah.—Lepasiotes v. Dinsdale, 242 P. 2d 297, 121 Utah 359.
Wash.—Stewart v. Moss, 192 P.2d 362, 30 Wash.2d 535.
Wis.—Holmlund v. Zierke, 63 N.W. 2d 45, 266 Wis. 219.
4 C.J. p 946 note 15.

Arbitration proceedings
In an action on an award, and also on the merits of the controversy, where the jury sustained the award, and, independently thereof, found for plaintiff on the merits, the award, or any errors in the arbitration proceedings, became immaterial.
Tex.—Slaughter v. Crisman & Nesbit, Civ.App., 178 S.W. 1.

Reading original pleading
Refusal to allow reading of the original petition and amendment at an interlocutory hearing is not reversible error, where the same judge sanctioned the same.
Ga.—Jolly v. Catoosa County Board of Education, 154 S.E. 788, 171 Ga. 193.

Detaching a supporting affidavit from a motion for transfer for prejudice of the judge was not prejudicial, where the moving party was permitted to offer evidence in support of the motion.
Me.—Bond v. Bond, 141 A. 833, 127 Me. 117.

67. S.D.—In re Olson, 94 N.W. 421, 17 S.D. 1.
1 C.J. p 1139 note 62.

67.5 Tex.—Allen v. Gulf Oil Corp., Civ.App., 139 S.W.2d 207, error refused.

Where injunctive feature of judgment is superseded, the error, if any, in failing to require party in whose favor injunction issued to furnish bond is harmless.
Tex.—Allen v. Gulf Oil Corp., supra.

67.10 Ala.—Sauls v. Hand, 7 So.2d 762, 242 Ala. 643.

68. Mich.—Pistorius v. Swarthout, 34 N.W. 547, 67 Mich. 186.

69. Iowa.—Kennedy v. Roberts, 75 N.W. 363, 108 Iowa 521.

70. Iowa.—Prichard v. Hopkins, 2 N.W. 1028, 52 Iowa 120.

Reason for rule
"The decision of the court in no manner affected the rights of the parties in the trial of the case. The verdict and judgment could not have been different had the motion been overruled. It cannot be said that there is any error in the judgment by reason of the court's ruling."
Iowa.—Prichard v. Hopkins, supra.

70.5 Ind.—Templin v. Erkekedis, 84 N.E.2d 728, 119 Ind.App. 171.
Okl.—Jewel Tea Co. v. Ransdell, 69 P.2d 69, 180 Okl. 203.

Error in refusing to direct X-ray examination of insured suing for disability benefits when such examination would not impose unreasonable hardship on insured was reversible error.
Ark.—Mutual Life Ins. Co. of New

§ 1696. Continuance

a. In general
b. Amendment of pleadings
c. Absence of witness
d. Absence of counsel

a. In General

Granting or refusing a continuance is not reversible error where the complaining party is not prejudiced thereby.

Any error in continuing, or refusing to continue, a cause is not ground for reversal where no substantial rights of the party objecting are affected thereby.[71] Accordingly, where the issue which the moving party claimed he was not ready to try was found in his favor,[72] or where no testimony was in-

York v. Phillips, 137 S.W.2d 910, 200 Ark. 77.

71. Ala.—Underwood v. Smith, 73 So.2d 717, 261 Ala. 181.
Ark.—Missouri Pac. R. Co. v. Berry, 83 S.W.2d 531, 191 Ark. 1165—Mammoth Spring School Dist. No. 2 v. Fairview School Dist. No. 7, 80 S.W.2d 615, 190 Ark. 769.
Cal.—Culver v. Superior Court In and For Los Angeles County, 270 P.2d 78, 125 C.A.2d 76—Lynch v. Defino, 249 P.2d 615, 114 C.A.2d 128—Vallera v. Vallera, 166 P.2d 893, 73 C.A.2d 466—Rypka v. Field, 115 P.2d 521, 46 C.A.2d 225—Hillwig v. Boyer, 264 P. 556, 89 C.A. 314.
Colo.—Acker v. Johns, 216 P.2d 426, 121 Colo. 336.
Conn.—Toletti v. Bidizcki, 173 A. 223, 118 Conn. 531.
Fla.—Waln v. Howard, 196 So. 210, 142 Fla. 736.
Ga.—Mayor and Council of Buford v. Medley, 197 S.E. 494, 58 Ga.App. 48.
Ill.—Votrian v. Quick, 271 Ill.App. 259.
Ind.—Freimann v. Gallmeier, 63 N.E.2d 150, 116 Ind.App. 170—City of Lebanon v. De Bard, 37 N.E.2d 718, 110 Ind.App. 79—Esch v. Esch, 159 N.E. 555, 87 Ind.App. 507.
Iowa.—Andrew v. Shimerda, 253 N.W. 845, 218 Iowa 27—In re Cooper's Estate, 194 N.W. 218, 196 Iowa 116.
Kan.—Fodor v. Interstate Transit Lines, 86 P.2d 574, 149 Kan. 174—Quinton v. Kendall, 253 P. 600, 122 Kan. 814.
Ky.—Stanley v. Brown, 198 S.W.2d 35, 303 Ky. 481.
Mich.—City of Dearborn v. Michigan Turnpike Authority, 73 N.W.2d 544, 344 Mich. 37—Sams v. O'Sheskey, 35 N.W.2d 234, 323 Mich. 177—Michigan Mut. Home Ins. Co. v. Pere Marquette Ry. Co., 160 N.W. 599, 193 Mich. 429.
Miss.—Vail v. City of Jackson, 41 So. 2d 357, 206 Miss. 299.
Mo.—Commercial Nat. Bank of Kansas City, Kan. v. White, 254 S.W. 2d 605.
Neb.—Aron v. Mid-Continent Co., 8 N.W.2d 682, 143 Neb. 87.
N.Y.—Kalmayer v. Twietmayer, 283 N.Y.S. 856, 157 Misc. 418.
Ohio.—Talbot v. Resler, App., 113 N.E.2d 21—Schaeffer v. Davis, App., 83 N.E.2d 651.
Okl.—City of Wagoner v. Black, 97 P.2d 21, 186 Okl. 207—Yellow Cab Operating Co. of Oklahoma City v. Thompson, 86 P.2d 310, 184 Okl. 179—Jones v. Webb, 67 P.2d 801, 180 Okl. 6—Maisch v. State, 262 P. 203, 128 Okl. 226—Ratzlaff v. State, 249 P. 934, 122 Okl. 263—Jackson v. Levy, 183 P. 505, 75 Okl. 256.
Pa.—McClelland v. Copeland, 50 A.2d 221, 355 Pa. 405.
Santomieri v. Boyajian, 89 Pa. Super. 175.
S.C.—Moore v. Southern Ry. Co., 161 S.E. 525, 163 S.C. 342, reversed on other grounds Southern Ry. Co. v. Moore, 52 S.Ct. 38, 284 U.S. 581, 76 L.Ed. 503.
Tex.—Hays v. Department of Public Safety, Civ.App., 301 S.W.2d 276, error dismissed—Sherman v. Stein, Civ.App., 173 S.W.2d 732, error refused—Dittmar v. St. Louis Union Trust Co., Civ.App., 155 S.W.2d 388, error refused—Baker v. Walston, Civ.App., 141 S.W.2d 409, error dismissed, judgment correct—Williams v. Humble Oil & Refining Co., Civ.App., 139 S.W.2d 346, error dismissed, judgment correct—Younger Bros. v. Power, Civ.App., 118 S.W.2d 954, error dismissed—Shipman v. Wright, Civ.App., 3 S.W.2d 519—Levy v. Rosenthal, Civ.App., 288 S.W. 845—Blair v. Paggi, Civ. App., 219 S.W. 287, reversed on other grounds, Com.App., 238 S.W. 639—Lefevre v. Lefevre, Civ.App., 205 S.W. 842.
Vt.—Senecal v. Bleau, 189 A. 139, 108 Vt. 486.
Wash.—Margett v. Wilson, 147 P. 628, 85 Wash. 98.
Wis.—March v. Voorsanger, 21 N.W. 2d 275, 248 Wis. 225.
4 C.J. p 947 note 16.

Error in unduly limiting continuance is not ground for reversal where at expiration of time given no request for additional time is made.
Ga.—Aiken v. Richardson, 68 S.E.2d 228, 85 Ga.App. 180, appeal dismissed 73 S.Ct. 15, 344 U.S. 802, 97 L.Ed. 625, rehearing denied 73 S. Ct. 282, 344 U.S. 905, 97 L.Ed. 699.

Error cured

Where alleged abuse of discretion in denial of continuance was cured by subsequent proceedings, alleged error was without prejudice.
Colo.—Boyer v. Boyer, 175 P.2d 92, 115 Colo. 429.

Absence of party

(1) A reasonable excuse for a party's absence will not require a reversal of order denying continuance on ground of absence where no prejudice is shown.
Tex.—Erback v. Donald, Civ.App., 170 S.W.2d 289, error refused.

(2) Denial of continuance on ground party was ill and unable to appear at trial was not reversible error where party did in fact appear and testified in his own behalf.
Cal.—Fejer v. Paonessa, 231 P.2d 507, 104 C.A.2d 190.
Tex.—Sherman v. Stein, Civ.App., 173 S.W.2d 732, error refused.

(3) Fact that one denied continuance because of his absence was deprived of the right to aid in selecting a jury was immaterial, where the court directed a verdict.
Tex.—Costley v. Chapman, Civ.App., 262 S.W. 543.

Evidence of good defense

In an action to set aside a judgment denying continuance requested to secure evidence that plaintiff had a good defense in the original action, is not prejudicial, where no equitable reason for not presenting such defense in the original action was established.
Tex.—Dickinson v. Comstock, Civ. App., 199 S.W. 863.

Taking of deposition

Where the taking of a deposition of any one witness necessitated a continuance, no prejudice could possibly result because in the time granted by the continuance a cumulative deposition was also taken.
Iowa.—Robinson v. Hawkeye Commercial Men's Ass'n, 171 N.W. 118, 186 Iowa 759.

Withdrawal of issue

Denying a continuance because of the adversary's having withdrawn an allegation and eliminated an issue is not prejudicial error.
Iowa.—State v. Carney, 217 N.W. 472, 208 Iowa 133.

72. Tex.—Joy v. Fakes Furniture & Carpet Co., Civ.App., 286 S.W. 611. 4 C.J. p 947 note 17.

No recovery

Refusal to grant an intervener a continuance after plaintiff had been permitted to amend the complaint so as to ask damages against the intervener was not ground for reversal,

troduced by the opposite party on the issue which the moving party claimed that he was unprepared to try,[73] or where the party obtained all the relief to which his pleadings entitled him,[74] no prejudicial error results in refusing to grant a continuance. On the other hand, erroneous refusal to grant a continuance will afford ground for reversal where substantial rights are prejudiced thereby.[74.5] Where the court refused to grant a continuance until after a decision of a case involving similar issues had been reached, it was held that the denial of the continuance was prejudicial error, entitling appellant to a retrial in order to determine the effect of the final decision in the other case.[75]

Refusal of a continuance on account of matters arising during the progress of the trial is harmless error when no surprise or injury is shown.[76]

b. Amendment of Pleadings

Refusal to grant a continuance because of an amendment to the pleadings is not ground for reversal where no harm results.

The failure or refusal of the court to grant a continuance because of an amendment to the pleadings, if error, is not a ground for reversal where no prejudice results.[76.50] So, refusal of a continuance for such reason, if error, is harmless where the amendment does not change, but merely amplifies, the original petition,[77] where the issue introduced by the amendment is not submitted to the jury,[78] where the judgment was not predicated on the issue introduced by the amendment,[79] where the amendment was unnecessary,[80] where it is apparent from the evidence introduced under the amended petition that there was no new and different cause of action,[81] or where the change by amendment is merely immaterial.[82] On the other hand, error in refusing to grant a continuance because of an amendment to the pleadings may afford grounds for reversal where prejudice results.[82.5]

c. Absence of Witness

Error in granting or refusing a continuance because of the absence of a witness, if not prejudicial, is not ground for reversal.

In accordance with the general rule discussed supra subdivision a of this section, error in granting[82.50] or refusing[82.55] a continuance because of the absence of a witness, if not prejudicial, is not ground for reversal. So, error in refusing a continuance because of the absence of a witness is not prejudicial where his testimony is merely cumula-

where no judgment for damages was rendered against the intervener.
Ark.—Brown & Hackney v. Loveless, 239 S.W. 21, 152 Ark. 540.

73. Tex.—Chicago, etc., R. Co. v. Clements, 115 S.W. 664, 53 Tex.Civ. App. 143.

74. Neb.—Southwick v. Reynolds, 156 N.W. 775, 99 Neb. 393.
Tex.—John F. Buckner & Sons v. Allen, Civ.App., 289 S.W.2d 387.

74.5 Ky.—Louisville & N. R. Co. v. Gregory, 144 S.W.2d 519, 284 Ky. 297.
La.—Seale v. Stephens, Employers Cas. Co., Interveners, App., 24 So. 2d 651, affirmed 29 So.2d 65, 210 La. 1068.
N.J.—Steiginga v. Thron, 105 A.2d 10, 30 N.J.Super. 423.
N.Y.—Jay-Washington Realty Corp. v. Koondel, 49 N.Y.S.2d 306, 268 App.Div. 116.
Pa.—Bierstein v. Whitman, 50 A.2d 334, 355 Pa. 515.

Pending executive action on legislation

Denial of a continuance pending the executive's signature or veto of act affecting cause of action sued on was an abuse of discretion and prejudicial error.
Iowa.—Kemp v. Day & Zimmerman, 33 N.W.2d 569, 239 Iowa 829.

75. Cal.—Robinson v. El Centro Grain Co., 24 P.2d 554, 133 C.A. 567.

76. Tex.—Gulf, etc., R. Co. v. Conder, 58 S.W. 58, 23 Tex.Civ.App. 488.

76.50 Mo.—Haynie v. Jones, 127 S. W.2d 105, 233 Mo.App. 948.
Mont.—Walsh v. Kennedy, 147 P.2d 425, 115 Mont. 551.
N.C.—Nassaney v. Culler, 30 S.E.2d 226, 224 N.C. 323.
Pa.—Maric v. City of Pittsburgh, 194 A. 902, 328 Pa. 253.

77. Ky.—Proctor Coal Co. v. Price's Adm'r, 189 S.W. 923, 17 Ky. 627.

78. Mo.—Jenkins v. Wabash Ry. Co., 73 S.W.2d 1002, 335 Mo. 748.
Okl.—Mills v. Williams, 209 P. 771, 87 Okl. 190.
Tex.—Chicago, R. I. & G. Ry. Co. v. Trout, Com.App., 206 S.W. 829, rehearing denied 208 S.W. 656.
Texas & P. Ry. Co. v. Hughes, Civ.App., 192 S.W. 1091, error refused.

79. Cal.—Kuck v. McConnell, 178 P. 533, 39 C.A. 266.
Tex.—American Surety Co. v. Camp, Civ.App., 202 S.W. 798.

80. Tex.—South Plains Coaches v. Behringer, Civ.App., 32 S.W.2d 959 —Hahl v. Davidson, Civ.App., 202 S.W. 792.

81. Tex.—Galveston, H. & S. A. Ry. Co. v. Brewer, Civ.App., 4 S.W.2d 320.

82. Okl.—Maisch v. State, 262 P. 203, 128 Okl. 226—Ratzlaff v. State, 249 P. 934, 122 Okl. 263.

Similar evidence under original petition

Where a wife's original petition for divorce alleged that defendant was adjudged guilty of adultery in a former suit for divorce brought by him, and hence was estopped to deny the fact, and substantial evidence of his guilt was received without objection, defendant was not prejudiced by refusal of a continuance for surprise when the petition was amended by interlineation embodying such charge directly.
Mo.—Nolker v. Nolker, 257 S.W. 798.

82.5 Miss.—Philley v. Toler, 95 So. 2d 783.
Wis.—Puccio v. Mathewson, 50 N.W. 2d 390, 260 Wis. 258.

82.50 **Permitting taking of deposition**

Action of trial court in permitting a continuance after trial was started in order to enable plaintiff to take a deposition, if erroneous, did not affect substantial rights of defendant.
Ky.—Hensley v. Lewis, 128 S.W.2d 917, 278 Ky. 510, 123 A.L.R. 537.

82.55 Ind.—Freimann v. Gallmeier, 63 N.E.2d 150, 116 Ind.App. 170.
Tex.—Oliphant v. Buie, Civ.App., 134 S.W.2d 751, error dismissed, judgment correct.
Vt.—O'Connor v. Vermont Transit Co., 68 A.2d 699, 116 Vt. 6.

tive;[83] where the witness appears and testifies before the close of the trial;[84] where the testimony expected from the absent witness is otherwise put into evidence, as by deposition,[85] a written statement,[86] a written certificate,[87] or deed,[88] at least where it did not appear that greater benefit would have been obtained from the oral testimony of the absent witness;[89] where every fact which the witness would testify to is shown by the evidence offered by the opposite party;[90] where it is admitted that the witness if present would swear to the facts set out in the affidavit for continuance;[91] where the facts which it is claimed that the witness would testify to are admitted to exist by the opposite party;[92] or where the witness had testified on a former trial and such testimony was admitted by agreement and was to the same effect that the application stated that he would testify.[93]

It is likewise true that error in refusing a continuance because of the absence of a witness is not prejudicial where the testimony of the witness could not change the result;[94] where the affidavit of the absent witness produced on a motion for new trial showed that his testimony would not have been of material benefit to the party moving for a continuance;[95] where it appeared that the absent witness subsequently died;[96] where the request is for a continuance until the following day and the witness does not then appear;[97] or the trial did not close until the following day;[98] where it was shown that the witness had no personal knowledge of the transaction in suit;[99] where the disposition of the case rendered the absence of the witness immaterial;[1] where the court in refusing a continuance because of the absence of a witness directed the witnesses to be summoned to appear on the next day to which time the case was adjourned, it not appearing that the witness did not appear in obedience to

83. Mont.—Roy v. Clark, 215 P. 232.
Tex.—Texas & N. O. R. Co. v. Cummins, Civ.App., 193 S.W. 161.
4 C.J. p 947 note 19.

Absence not entitled to much weight
Where testimony of absent witness would have been merely cumulative, and where movant made no effort to read affidavit for continuance as deposition of the witness, absence of the witness was not entitled to much weight in determining whether denial of continuance was prejudicial.
Ky.—Commonwealth v. Hall, 258 S.W.2d 479.

Medical testimony
The denial of a continuance to procure medical testimony was not prejudicial where four experts testified for defendant and one of them was the first physician who saw plaintiff after the injury.
Ky.—Cumberland Telephone & Telegraph Co. v. Laird, 171 S.W. 386, 161 Ky. 800.

84. Tex.—Leija v. Concha, Civ.App., 39 S.W.2d 948—El Paso & S. W. Ry. Co. v. Havens, Civ.App., 216 S.W. 444, error refused—Springfield Fire & Marine Ins. Co. v. Barnett, Civ.App., 213 S.W. 365, dismissed for want of jurisdiction—El Paso & S. W. R. Co. v. Lovick, Civ.App., 210 S.W. 283, affirmed 218 S.W. 489, 110 Tex. 244, appeal dismissed 41 S.Ct. 6, 254 U.S. 659, 65 L.Ed. 462.
4 C.J. p 947 note 20.

Evidence given at witness' home
Refusal of a continuance because of illness of a witness was not error where before the trial was closed the court, with the jury and counsel, proceeded to the home of the witness where his testimony was given in full.
Tex.—Barlow v. Greer, Civ.App., 222 S.W. 301.

Party as witness
In an action for partition, where a party was present and testified fully on the second day of the trial, any error in refusing to her continuance on the ground that she could not be present through illness, although she was a necessary witness, was harmless, it not appearing that her cause suffered because she was not present during examination of two of her witnesses on the first day of trial.
Ind.—Ruddick v. Hollowell, 125 N. E. 82, 71 Ind.App. 442.

Two of three testify
Failure of trial court to grant continuance because of three witnesses' absence does not warrant reversal, where two of such witnesses appeared and testified, record does not disclose whether third witness did so, and party complaining filed no statement of facts, in absence of which no prejudice to him appears.
Tex.—Oliphant v. Buie, Civ.App., 134 S.W.2d 751, error dismissed, judgment correct.

85. Cal.—Welsh v. Mercy Hospital, 151 P.2d 17, 65 C.A.2d 473—Sonstelie v. Bush, 283 P. 336, 102 C.A. 396.
Ohio.—Moody v. Vickers, 72 N.E.2d 280, 79 Ohio App. 218.

86. Pa.—Parkin v. Philadelphia Rapid Transit Co., 151 A. 362, 300 Pa. 569.

87. Tex.—Missouri, K. & T. Ry. Co. of Texas v. Cornelius, Civ.App., 188 S.W. 34, dismissed for want of jurisdiction.

88. Tex.—Hahl v. Davidson, Civ. App., 202 S.W. 792.

89. Ky.—Nolan v. Jeffries, 245 S.W. 273, 196 Ky. 691.

90. Mo.—Carp v. Queen Ins. Co., 92 S.W. 1137, 116 Mo.App. 528.

91. Iowa.—Cavanagh v. O'Connor, 186 N.W. 907, 194 Iowa 670.
4 C.J. p 947 note 22.

92. Tex.—Camden F. Ins. Assoc. v. Puett, Civ.App., 164 S.W. 418.

93. Tex.—Kansas City So. R. Co. v. Carter, Civ.App., 166 S.W. 115.

94. Cal.—Reclamation Dist. No. 70 v. Sherman, 105 P. 277, 11 C.A. 399.
Tex.—Maughmer v. Behring, 46 S.W. 917, 19 Tex.Civ.App. 299.

Insufficient defense
Where defendant did not allege, prove, or offer to prove sufficient facts to establish a defense, defendant was not prejudiced by refusal of court to grant a continuance because of inability of defendant to secure testimony.
Kan.—State v. Goldberg, 166 P.2d 664, 161 Kan. 174.

95. Cal.—Patterson v. Almond City Land & Development Co., 180 P. 823, 40 C.A. 285.
Fla.—Pastorius v. Whidby, 80 So. 513, 76 Fla. 571.
4 C.J. p 948 note 26.

96. Tex.—Ferrell v. May, Civ.App., 262 S.W. 802.

97. S.C.—Watkins v. South Carolina W. Ry., 85 S.E. 377, 100 S.C. 458.

98. S.D.—Rathgaber v. Horton, 218 N.W. 148, 52 S.D. 436.

99. Mont.—Meredith v. Bitter Root Valley Irr. Co., 141 P. 643, 49 Mont. 204.
4 C.J. p 948 note 27.

1. Tex.—Texas, etc., R. Co. v. Bancroft, Civ.App., 56 S.W. 606.

the summons;[2] or where no diligence was used to procure the testimony of the witness.[3]

On the other hand, where the refusal to grant a continuance because of the absence of a witness results in prejudicial error, the case may be reversed for such reason.[4] Accordingly, where the moving party has used due diligence to obtain evidence, the materiality of which is apparent, and has been unable to obtain it in time for trial, a refusal of the continuance to enable the moving party to obtain the evidence is reversible error.[5]

d. Absence of Counsel

Error in a refusal to grant a continuance because of the absence of one of the attorneys is not ground for reversal where no harm results.

Error in refusing to continue a cause because of the absence of one of several of the attorneys of either plaintiff or defendant is not reversible where no substantial rights of the party objecting are affected.[6] Also a denial of a continuance because of the absence of associate counsel will not authorize a reversal when the attorney present was a witness and the case was tried without a jury and all the defenses were presented.[7]

§ 1697. Venue

Error in granting or denying a change of venue, if not prejudicial to the complaining party, is not ground for reversal.

Error on the part of the court below in granting or denying a change of venue is not ground for reversal where no substantial rights of the objecting party are affected thereby.[8] Accordingly, granting

2. Va.—Atlantic, etc., R. Co. v. Peake, 12 S.E. 348, 87 Va. 130.

3. Tex.—American Nat. Ins. Co. v. Hammond, Civ.App., 91 S.W.2d 432, error dismissed—Costley v. Chapman, Civ.App., 262 S.W. 543.
4 C.J. p 948 note 30.

4. Ky.—Kentucky Virginia Stages v. Tackett's Adm'r, 171 S.W.2d 4, 294 Ky. 189—Vincennes Bridge Co. v. Poulos, 15 S.W.2d 271, 228 Ky. 446.
N.Y.—Murphy v. City of New York, 78 N.Y.S.2d 191, 273 App.Div. 292.
Va.—Bradley v. Poole, 47 S.E.2d 341, 187 Va. 432.

Consent to reading affidavit to avoid continuance

Where plaintiff, in order to avoid a continuance, consented that affidavit of one of defendants as to what two absent witnesses would testify, if present, should be read as their depositions, refusal of trial court to admonish that affidavit should be considered as depositions of the absent witnesses, after argument between counsel as to its effect, and holding that it was an affidavit constituted prejudicial error.
Ky.—Whittaker v. Thornberry, 209 S.W.2d 498, 306 Ky. 830.

Reference to failure to testify

That defendant was prejudiced by the refusal to postpone or to allow a reading of an affidavit of what the absent witness, defendant's only eyewitness, would testify, is indicated by reference, in closing argument of plaintiff's counsel, to his failure to testify.
Ky.—Louisville & N. R. Co. v. Pugh's Adm'x, 216 S.W. 69, 186 Ky. 38.

Trial at unusual hour

Where a case was called for trial at an unusual hour, 6 P. M., and a witness of one of the parties who had attended all day had left, the refusal of an adjournment was held to constitute prejudicial error.
N.Y.—Schwarzschild v. New York City R. Co., 90 N.Y.S. 374.

5. Ill.—See Potter v. Eagle Creek Tp., 173 Ill.App. 357.
Mo.—Campbell v. McCaskill, 88 Mo. App. 44.

Refusal of expert witness to testify, first communicated to plaintiffs on the Saturday preceding the Monday set for trial, required that the motion of plaintiffs to adjourn the trial of the case be granted, and the circumstances presented such a clear case for an adjournment that denial of adjournment constituted error for which reviewing court would reverse.
N.J.—Steiginga v. Thron, 105 A.2d 10, 30 N.J.Super. 423.

6. Ga.—Sutherland v. Donovan, 130 S.E. 688, 34 Ga.App. 643.
Kan.—Farmers' State Bank of Ellis v. Crawford, 37 P.2d 14, 140 Kan. 295.
Ky.—Eureka Elkhorn Coal Co. v. Lawson, 241 S.W. 335, 195 Ky. 14.
Miss.—Koestler v. Burton, 41 So.2d 362, 207 Miss. 40.
Tex.—Springfield Fire & Marine Ins. Co. v. Barnett, Civ.App., 213 S.W. 365, dismissed for want of jurisdiction.
Utah.—Lundgreen v. Lundgreen, 184 P.2d 670, 112 Utah 31.
Va.—Big Sandy & C. R. Co. v. Ball, 113 S.E. 722, 133 Va. 431.

Insufficient affidavit

Where plaintiff moved for a continuance because of the absence of his attorney of record, and before ruling thereon the attorney, representing plaintiff, withdrew the affidavit, and the court thereafter held that he had no right to represent plaintiff at the hearing, in view of the insufficiency of the affidavit to entitle plaintiff to a continuance, permitting its withdrawal, if erroneous, was not such as would entitle plaintiff to relief on appeal.
Cal.—Corbin v. Howard, 215 P. 920, 61 C.A. 715.

7. Cal.—Peachy v. Witter, 63 P. 468, 131 C. 316.
4 C.J. p 948 note 33.

8. Cal.—Mills Sales Co. v. Gonzales, 304 P.2d 274, 146 C.Super.2d 899.
Fla.—Pepple v. Rogers, 140 So. 205, 104 Fla. 462.
Ind.—State ex rel. Janelle v. Lake Superior Court, 143 N.E.2d 288—Straus Bros. Co. v. Fisher, 163 N.E. 225, 200 Ind. 307.
Iowa.—Lex v. Selway Steel Corporation, 206 N.W. 586, 203 Iowa 792.
La.—Hayes v. Oertel, App., 195 So. 388.
N.D.—State v. Bloom, 190 N.W. 812, 49 N.D. 224.
S.C.—Smith v. Atlantic Coast Line R. Co., 63 S.E.2d 311, 218 S.C. 481—Sanders v. Atlantic Coast Line R. Co., 103 S.E. 564, 114 S.C. 164.
S.D.—Oldham v. Reiley, 184 N.W. 250, 44 S.D. 428.
Tex.—Gilmer v. Graham, Com.App., 52 S.W.2d 263.
Tri-Service Drilling Co. v. Adams, Civ.App., 287 S.W.2d 711—Reed v. Garlington, Civ.App., 233 S.W.2d 185—Holmes v. Jackson, Civ.App., 200 S.W.2d 276—Smith v. Abernathy, Civ.App., 6 S.W.2d 147—Peters v. Allen, Civ.App., 296 S.W. 929.
Va.—James v. Powell, 152 S.E. 539, 154 Va. 96.
Wis.—Kalb v. Luce, 1 N.W.2d 176, 239 Wis. 256.
67 C.J. p 225 note 48.

Defaulting codefendant

A codefendant defaulting was not injured by a failure to serve him with a copy of plaintiff's controverting affidavit before the hearing on a plea of privilege.
Tex.—Pope v. Litwin, Civ.App., 57 S.W.2d 1105.

a change of venue to defendant without hearing evidence for and against such change, where plaintiff's own pleadings show it should be granted,[9] or refusing a change of venue where no motion therefor was made,[10] is not ground for reversal. Error in denying a motion for change of venue is also harmless where the judgment was clearly for the right party,[11] or where, after a mistrial, the party made no further motion for change of venue before a second trial;[12] and permitting the correction of a clerical mistake in certifying the transcript on a change of venue is not prejudicial in the absence of surprise or injury.[13] Granting a change of venue to a defendant is harmless error where he was entitled to a peremptory instruction;[14] and failure to submit a plea of venue separately, although erroneous, is not alone ground for reversal in the absence of a showing that appellant was injured thereby.[15] Where a district court properly transferred a case to another district court for trial on the merits, any error leading to the transfer was harmless.[16] Error in granting[16.5] or refusing[17] a change of venue is reversible error where substantial harm results or is not negated, where there is clear bias on the part of the trial judge,[18] where the evidence resisting a motion for a change of venue is insufficient,[19] or where there is a refusal on the part of the trial court to hear movant's tendered proof in support of his affidavit for a change of venue.[20] It has also been held that a case will be reversed because of the denial of a change of venue where there is no evidence in the record and the court cannot determine whether or not substantial justice was had at the trial below.[21] Likewise it has been held, where a case was improperly transferred, that the fact that the party against whose objection the transfer was made has had an impartial trial did not cure the error.[22]

§ 1698. Depositions

Harmless error with respect to depositions is not ground for reversal.

It may be stated as a general rule that harmless error with respect to depositions is not a ground for reversal.[22.50] Accordingly, a reversal cannot be had for nonprejudicial error in the taking,[23] admis-

Plea not timely
A defendant, in a libel action, was deprived of no substantial right where the case was fully heard upon the merits by the court in which he appeared without objection, even though he might have pleaded to jurisdiction and have had the case removed to another county if the plea had been timely filed.
Va.—James v. Powell, 152 S.E. 539, 154 Va. 96.

Waiver of jury
Denying a motion for a change of venue for prejudice of inhabitants was not prejudicial error where defendant subsequently waived a jury trial.
Colo.—Western Wood Products v. Tittle, 246 P. 791, 79 Colo. 473.

9. Tex.—Evans v. Heldenfels, Civ. App., 70 S.W.2d 283.

10. Cal.—Hanovia Chemical & Mfg. Co. v. Keller, 255 P. 884, 82 C.A. 499.

11. Tex.—Woodson Independent School Dist. v. State ex rel. Cox, Civ.App., 130 S.W.2d 1038, error dismissed, judgment correct—Ramirez v. Sanchez, Civ.App., 97 S.W.2d 1034.
Utah.—Floor v. Mitchell, 41 P.2d 281, 86 Utah 203.
4 C.J. p 948 note 35.

12. Ind.—Federal Cement Tile Co. v. Korff, 97 N.E. 185, 50 Ind.App. 608.

13. Mo.—Haxton v. Kansas City, 88 S.W. 714, 190 Mo. 53.

14. Ky.—Georgetown v. Cantrill, 164 S.W. 929, 158 Ky. 378.

Failure to state cause of action
The denial of a change of venue will not be reversed if complaint fails to state a cause of action.
Utah.—Felt v. Judd, 4 P. 243, 3 Utah 414.

15. Tex.—Merchants', etc., Oil Co. v. Burow, Civ.App., 69 S.W. 435—Caswell v. Hopson, Civ.App., 47 S.W. 54.
4 C.J. p 948 note 39.

16. Tex.—Wolf v. Sahm, Civ.App., 135 S.W. 733.

16.5 Va.—MacPherson v. Green, 87 S.E.2d 785, 197 Va. 27.

17. Cal.—Joe Lowe Corp. v. Rasmusson, 127 P.2d 1002, 53 C.A.2d 490.
Mo.—Padberg v. Padberg, App., 78 S.W.2d 555.
N.Y.—Levine v. Poughkeepsie Recreation, 25 N.Y.S.2d 193, 261 App. Div. 907.
S.C.—Smith v. Atlantic Coast Line R. Co., 63 S.E.2d 311, 218 S.C. 481.
Tex.—J. C. Wooldridge Lumber Co. v. Moss, Civ.App., 100 S.W.2d 736—Rogers v. Alexander, Civ.App., 289 S.W. 1070.
Utah.—Buckle v. Ogden Furniture & Carpet Co., 216 P. 684, 61 Utah 559.
Wash.—State ex rel. Gamble v. Superior Court for King County, 66 P.2d 1135, 190 Wash. 127.

18. Or.—Rugenstein v. Ottenheimer, 152 P. 215, 78 Or. 371, Ann.Cas. 1917E 953.

19. Tex.—Poe Motor Co. v. Martin, Civ.App., 201 S.W.2d 102—Jones Fine Bread Co. v. Smith, Civ.App., 136 S.W.2d 234—Humphrey v. Mirike, Civ.App., 134 S.W.2d 749—Welsh v. Chapman, Civ.App., 87 S.W.2d 293.

20. N.M.—Schultz v. Young, 24 P.2d 276, 37 N.M. 427.

21. Ind.—Davidson v. Lemontree, 123 N.E. 177, 71 Ind.App. 215.

22. Ky.—Powers v. Reynolds, 12 S. W. 298, 553, 89 Ky. 259, 11 Ky.L. 460.

22.50 **Action of trial judge in reading** before trial certain depositions which were not offered in evidence at trial without objection on part of either party furnished no basis for reversal even if reading of depositions was error.
Md.—Rippon v. Mercantile Safe Deposit & Trust Co. of Baltimore, 131 A.2d 695, 213 Md. 215.

Permitting testimony by unnamed witness
Error, if any, of trial court in permitting a witness to testify in violation of a rule in that he had not been named in an answer to an interrogatory, was not prejudicial where his testimony went toward proof of an issue not submitted to the jury.
N.J.—Gibson v. Kennedy, 128 A.2d 480, 28 N.J. 150.

23. Ala.—Sovereign Camp of Woodmen of the World v. Keefe, 84 So. 810, 203 Ala. 636.
Ark.—Upshaw v. Wilson, 257 S.W. 2d 279, 222 Ark. 78.
Fla.—Florida Power & Light Co. v. Robinson, 68 So.2d 406.
Ill.—See Fischer v. Haxtun, 210 Ill. App. 506.

sion,[24] exclusion,[25] or attempted correction by one | of the parties of an alleged mistake in the record-

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Baker, 128 N.E. 836, 190 Ind. 633.
City of Indianapolis v. Williams, 108 N.E. 387, 58 Ind.App. 447.
Ky.—Hutchins v. Foley, 111 S.W.2d 586, 271 Ky. 104.
La.—Bailey v. Central Commission Co., App., 161 So. 325.
Mass.—Hammond v. Boston Terminal Co., 4 N.E.2d 328, 295 Mass. 566—Banca Italiana Di Sconto v. Columbia Counter Co., 148 N.E. 105, 252 Mass. 552.
Mich.—Hallett v. Michigan Consol. Gas Co., 299 N.W. 723, 298 Mich. 582.
Mo.—Smith v. Kansas City Southern R. Co., 213 S.W. 481, 279 Mo. 173, certiorari denied Kansas City Southern R. Co. v. Smith, 40 S. Ct. 56, 251 U.S. 552, 64 L.Ed. 410.
N.M.—Rubalcava v. Garst, 293 P.2d 656, 61 N.M. 10.
N.Y.—Leonard v. Home Owners Loan Corp., 39 N.Y.S.2d 127.
Okl.—Oklahoma State Bank of Cushing v. Buzzard, 175 P. 750, 73 Okl. 250.
Or.—Wallace v. American Toll Bridge Co., 264 P. 351, 124 Or. 179.
Pa.—Pennsylvania Publications v. Pennsylvania Public Utility Commission, 32 A.2d 40, 152 Pa.Super. 279, reversed on other grounds 36 A.2d 777, 349 Pa. 184, 153 A.L.R. 457.
Tex.—Thomas v. Smith, Civ.App., 60 S.W.2d 514—Massachusetts Bonding & Insurance Co. v. Le May, Civ.App., 28 S.W.2d 259—Western Union Telegraph Co. v. Gold, Civ. App., 235 S.W. 331.
Wash.—Garratt v. Dailey, 279 P.2d 1091, 46 Wash.2d 197.

Rulings on requests for admissions

Tex.—Cruse v. Daniels, Civ.App., 293 S.W.2d 616, error refused no reversible error—McGuire v. Bond, 271 S.W.2d 508, error refused no reversible error—Wilkinson v. Paschall, Civ.App., 210 S.W.2d 215—Texas Indem. Ins. Co. v. Halliburton, Civ.App., 209 S.W.2d 775, reversed on other grounds 213 S.W. 2d 677, 147 Tex. 133.

24. Cal.—Cohen v. Metropolitan Life Ins. Co., 89 P.2d 732, 32 C.A. 2d 337—Insured Life Fund Co. v. Ward, 77 P.2d 890, 25 C.A.2d 476.
Colo.—Lowell's Estate v. Arnett, 90 P.2d 957, 104 Colo. 343.
Ill.—Hyman-Michaels Co. v. Massachusetts Bonding & Ins. Co., 132 N.E.2d 347, 9 Ill.App.2d 13—Koll v. Mitchell, 69 N.E.2d 703, 330 Ill. App. 132—Downing v. Metropolitan Life Ins. Co., 41 N.E.2d 297, 314 Ill.App. 222.
Ind.—New York, C. & St. L. R. Co. v. Connaughton, 5 N.E.2d 904, 211 Ind. 419—Yellow Cab Co. v. Kuryczak, 174 N.E. 434, 92 Ind.App. 524.
Ky.—In re Edge, 282 S.W.2d 830—Kravitz v. Grimm, 115 S.W.2d 368, 273 Ky. 18—Reddy Cab Co. v. Harris, 90 S.W.2d 1004, 262 Ky. 661.
Mo.—Mayne v. Kansas City Rys. Co., 229 S.W. 386, 287 Mo. 235.
Platte Valley Bank of Cosby v. Farmers' & Traders' Bank, 14 S. W.2d 12, 223 Mo.App. 500—A. M. Legg Shoe Co. v. Brown Leather Co., App., 249 S.W. 147—Ford v. Stevens Motor Car Co., 232 S.W. 222, 209 Mo.App. 144.
Mont.—Healy v. First Nat. Bank, 89 P.2d 555, 108 Mont. 180.
Ohio.—Grzywna v. Youngstown Municipal Ry. Co., App., 77 N.E.2d 84.
Okl.—Threadgill v. Anderson, 303 P. 2d 297—Chase v. Watson, 294 P.2d 801.
R.I.—Guarantee Food Co. v. Burke, 113 A. 789, 43 R.I. 535, motion denied 114 A. 401.
Tex.—Farmers' Gin Co-op. Ass'n v. Mitchell, Civ.App., 233 S.W.2d 948—McClelland v. Great Southern Life Ins. Co., Civ.App., 220 S.W.2d 515, error refused no reversible error—Hicks v. Southwestern Settlement & Development Corp., Civ.App., 214 S.W.2d 315—Hamill & Smith v. Parr, Civ.App., 173 S.W.2d 725—St. Louis, S. F. & T. Ry. Co. v. Williams, Civ.App., 104 S.W.2d 103, error dismissed—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122—Southern Travelers' Ass'n v. Cole, Civ.App., 45 S.W.2d 675—Massachusetts Bonding & Insurance Co. v. Le May, Civ.App., 28 S.W.2d 259.
Wash.—Moore v. Keesey, 173 P.2d 130, 26 Wash.2d 31.
Wis.—Lange v. Heckel, 175 N.W. 788, 171 Wis. 59.
Wyo.—Cassas v. Cassas, 276 P.2d 456, 73 Wyo. 147.

No opportunity to file objections

The fact that plaintiff was not afforded an opportunity to file objections to a deposition before offered in evidence, it not having been reduced to writing until that day, was harmless where each objection was ruled on as the questions were read, and no answer to any question, objection to which was sustained, having been read to the jury.

Wyo.—Wyoming Cent. Irr. Co. v. Laporte, 182 P. 485, 26 Wyo. 249.

Effect of introduction of party's deposition

Ruling that party by introducing part of deposition of adverse party made adverse party his witness and was bound by his testimony, although error, did not injuriously affect substantial rights.

N.J.—Hirschberg v. Glattly, 76 A.2d 912, 10 N.J.Super. 199.

Transmission of exhibit

Alleged error in manner whereby exhibit identified by witness in deposition was transmitted to trial court was harmless if exhibit was in same condition when presented at trial court as it was when examined by witness at time deposition was taken.

Okl.—Sooner Beverage Co. v. G. Heileman Brewing Co., 150 P.2d 72, 194 Okl. 252.

25. Cal.—California Canning Peach Growers v. Williams, 78 P.2d 1154, 11 C.2d 221—Johnson v. Ulrey, 257 P. 505, 201 C. 456.
Barr v. Scott, 286 P.2d 552, 134 C.A.2d 823—Hanna v. Pipes, 206 P.2d 399, 92 C.A.2d 106—Newsom v. Smiley, 135 P.2d 24, 57 C.A.2d 627.
Del.—South Atlantic S. S. Co. of Delaware v. Munkacsy, 187 A. 600, 7 W.W.Harr. 580, certiorari denied 57 S.Ct. 233, 299 U.S. 607, 81 L. Ed. 448.
Ga.—Reid v. Torrence, 124 S.E. 537, 158 Ga. 846.
Ky.—Southeastern Greyhound Line v. Burris, 216 S.W.2d 920, 309 Ky. 150—Hilliker v. Thorndale, 173 S. W.2d 977, 295 Ky. 148—Raidt v. Blount, 171 S.W.2d 233, 294 Ky. 172—Stevens' Adm'r v. Watt, 99 S.W.2d 753, 266 Ky. 608.
N.Y.—Tieman v. Davies, Turner & Co., 25 N.Y.S.2d 608, 261 App.Div. 376—Robertson v. Charles Frohman, Inc., 191 N.Y.S. 55, 198 App. Div. 782, appeal dismissed 135 N.E. 905, 233 N.Y. 530.
Okl.—In re Hamm's Estate, 99 P.2d 895, 186 Okl. 610.
R.I.—G. W. McNear, Inc., v. American & British Mfg. Co., 115 A. 709, 44 R.I. 190, certiorari denied American & British Mfg. Co. v. G. W. McNer, Inc., 42 S.Ct. 462, 258 U.S. 629, 66 L.Ed. 800.
Tex.—Butterick Pub. Co. v. Jones, Civ.App., 83 S.W.2d 718.
Va.—Lewis v. Stroebel, 27 S.E.2d 218, 181 Va. 882, reheard 28 S.E.2d 9, 182 Va. 125.
Wash.—Mohney v. Davis, 176 P. 31, 104 Wash. 209.

Deponent examined at trial

Excluding a deposition taken in another case was harmless where deponent was examined at length at the trial.

Cal.—Woolsey v. Woolsey, 9 P.2d 605, 121 C.A. 576.

Other evidence available

(1) Exclusion of plaintiff's deposition offered at the opening of his case was not prejudicial to plaintiff where he could have been present but chose not to do so and plaintiff's attorney knew the facts and could have testified thereto.

Cal.—Arnett v. Nall, 196 P. 291, 51 C.A. 194.

ing,[26] of a deposition; in an order to take the deposition,[27] or denying a motion to have a case tried on depositions;[28] in an order suppressing,[29] or refusing to suppress,[30] a deposition; in an order compelling,[31] or refusing to compel,[32] answers to interrogatories; in excluding or striking,[33] or admitting or refusing to strike,[34] portions thereof; in failing to rule that unanswered requests for admissions be taken as confessed;[34.5] in extending,[35] or shortening,[36] the time to answer interrogatives; or in overruling answers made to questions.[37] Also a decree will not be reversed for an informality in the pro-

(2) Likewise excluding a deposition as to the value of land two years before the time in question was not prejudicial where there was no difficulty in obtaining evidence of value at the particular time.
Kan.—Davies v. Lutz, 205 P. 637, 110 Kan. 657.

(3) So, alleged error in refusing to admit deposition of physician taken by defendant as to plaintiff's competency to sign release was harmless, where deposition was cumulative of another deposition and other testimony, and there was testimony that plaintiff had been taking large doses of nembutal for two months after he was discharged from physician's observation.
Fla.—Putnam Lumber Co. v. Berry, 2 So.2d 133, 146 Fla. 595.

Where deposition was excluded on broadside objection, and much testimony of deponent was admissible, supreme court would determine only whether admissible portions contained testimony of sufficient materiality for exclusion to be prejudicial error, and would not rule on competency and admissibility of each question and answer in deposition.
N.C.—Grandy v. Walker, 68 S.E.2d 807, 234 N.C. 734.

26. Mo.—Scott v. Missouri Pac. R. Co., 62 S.W.2d 834, 333 Mo. 374.
4 C.J. p 963 note 58.

27. Ind.—Hendry v. Hendry, 32 Ind. 349.

Refusal to permit taking
The trial court's refusal to allow an absent witness' deposition to be taken at the close of the trial pursuant to stipulation was harmless where such testimony would not have affected the result.
Tex.—Palm v. Theumann, Civ.App., 201 S.W. 421, dismissed for want of jurisdiction.

28. Ark.—Cook v. Dobbs, 65 S.W. 2d 544, 188 Ark. 393.
4 C.J. p 963 note 53.

29. Ind.—Travelers' Ins. Co. v. Fletcher American Nat. Bank of Indianapolis, 150 N.E. 825, 84 Ind. App. 563.
4 C.J. p 963 note 54.

Suppression of part
Action of the court in suppressing only that part of defendant's answer to interrogatories propounded by plaintiff which was illegal and not responsive, and allowing the remainder to be read, was harmless, where there was other legal testimony as to the same facts.
Ala.—Brotherhood of Painters, Decorators and Paperhangers of America v. Trimm, 97 So. 770, 19 Ala. App. 429.

30. Fla.—Storm v. Houghton, 24 So. 2d 519, 156 Fla. 793—Routh v. Richards, 138 So. 69, 103 Fla. 752.
Ill.—Ogren v. Rockford Star Printing Co., 237 Ill.App. 349.
Miss.—Lipscomb v. Dalton, 68 So.2d 430, 219 Miss. 354.
Tex.—Morris County Nat. Bank v. First State Bank of Naples, Civ. App., 245 S.W. 86.
4 C.J. p 963 note 55.

31. Tex.—Samuels v. Finkelstein, Civ.App., 25 S.W.2d 923.
Wyo.—Richards v. Richards, 186 P. 1107, 26 Wyo. 421.
4 C.J. p 963 note 56.

32. Cal.—Fanning v. Yoland Productions, Inc., App., 310 P.2d 85.
Ill.—Resnick v. Varouxakis, 48 N.E. 2d 555, 319 Ill.App. 51.
Mass.—National Shawmut Bank v. McGlinn, 150 N.E. 151, 254 Mass. 308.
N.J.—Handelman v. Handelman, 109 A.2d 797, 17 N.J. 1.
N.Y.—In re Leary's Will, 76 N.Y.S. 2d 415, 273 App.Div. 801, appeal dismissed 82 N.E.2d 41, 298 N.Y. 652.
Tex.—Harcrow v. W. T. Rawleigh Co., Civ.App., 145 S.W.2d 925.
Va.—Short v. Long, 87 S.E.2d 776, 197 Va. 104.
Wash.—Brooke v. Boyd, 141 P. 357, 80 Wash. 213, Ann.Cas.1916B 359.
Wyo.—Goodson v. Smith, 244 P.2d 805, 69 Wyo. 439.
4 C.J. p 963 note 57.

Recall of order
Recalling of an order for the issuance of a commission to take irrelevant testimony is harmless.
La.—Stallings v. Stallings, 154 So. 729, 179 La. 663.

33. Ala.—Acme Lumber Co. v. Shaw, 10 So.2d 285, 243 Ala. 421—Louisville & N. R. Co. v. Phillips, 80 So. 790, 202 Ala. 502.
Cal.—Staples v. Hawthorne, 283 P. 67, 208 C. 578.
Ind.—Carson v. Miami Coal Co., 141 N.E. 810, 194 Ind. 49.
Mo.—Adkins v. Boss, 290 S.W.2d 139.
Neb.—Elliott v. Swift & Co., 39 N.W. 2d 617, 151 Neb. 787.
N.J.—Hirschberg v. Glattly, 76 A.2d 912, 10 N.J.Super. 199.
Vt.—Johnson v. Hardware Mut. Cas. Co., 1 A.2d 817, 109 Vt. 481.
Wash.—Will v. Domer, 236 P. 104, 134 Wash. 576.

No influence on determination
Exclusion of defendant's answers to interrogatories, if error, was harmless, where the facts stated could have no possible influence on determination of the issue.
Ala.—Cable Co. v. Shelby, 81 So. 818, 203 Ala. 28.

Parts covered by admitted portion
Striking portions of a deposition fully covered by a portion admitted was not prejudicial to appellant.
Cal.—Staples v. Hawthorne, 283 P. 67, 208 C. 578.

Ruling retracted
Where the court retracted rulings striking parts of answers to interrogatories made by defendant, defendant was not prejudiced thereby, although the subjects thereof were not read to the jury after such retraction, it being for defendant to offer them in evidence.
Ala.—Louisville & N. R. Co. v. Pettis, 89 So. 201, 206 Ala. 96.

34. Ind.—Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298.
La.—Tate v. Gullett Gin Co. & Liberty Mut. Ins. Co., App., 86 So.2d 698.
Me.—Picken v. Richardson, 77 A.2d 191, 146 Me. 29.
Mass.—Kelley v. City of Boston, 6 N.E.2d 371, 296 Mass. 463.
Mo.—Weil Clothing Co. v. National Garment Co., App., 148 S.W.2d 586—Birkey v. Burguard, App., 146 S.W.2d 65.
Or.—Berkshire v. Harem, 178 P.2d 133, 181 Or. 42.
4 C.J. p 963 note 59.

34.5 Tex.—King v. Moberley, Civ. App., 301 S.W.2d 202.

35. Iowa.—Big Grove Tp. Independent School Dist. No. 5 v. Solon Independent School Dist. No. 8, 125 N.W. 184, 148 Iowa 154.

Delay in filing
Where defendant's interrogatories were answered by plaintiff well before trial, defendant was not harmed by delay in filing answers until after filing of defendant's motion to strike complaint for failure to answer interrogatories by date specified.
Ind.—Esarey v. Buhner Fertilizer Co., 69 N.E.2d 755, 117 Ind.App. 291.

36. Cal.—H. G. B. Alexander & Co. v. Martz, 290 P. 300, 107 C.A. 277.

37. Ill.—Tompkins v. Tompkins, 100 N.E. 965, 257 Ill. 557, Ann.Cas. 1914B 158.

ceedings where it appears that there has been a full and fair hearing upon the merits and that substantial justice has been done.[38]

On the other hand, however, substantial error in the taking, admission, or exclusion of depositions is ground for reversal.[39]

§ 1699. Discovery

Error in making or denying an order of discovery, which does not result in substantial injury, is not ground for reversal.

A case will not be reversed because of an error committed in discovery proceedings where such error does not result in any substantial injury to the objecting party.[40] Accordingly, the striking of an interrogatory for discovery is harmless error where all the matters sought to be elicited in the interrogatories are otherwise fully testified to and put in evidence.[41] Where, however, the rulings of the judge on interrogatories or applications for discovery result in a substantial denial of a right to the objecting party, the ruling will be reviewed,[42] and the mere circumstance that there has been a trial at which the facts sought by the interrogatories might have been the subject of evidence does not necessarily render harmless the refusal of the trial court to give an order requiring answers.[43]

§ 1700. Security for Costs

Error in allowing or refusing security for costs, which does not prejudice substantial rights, is not ground for reversal.

Error in refusing security for costs, which does not prejudice the rights of the party entitled thereto, is not ground for reversal.[43.50] So, error in re-

38. Mo.—Cantor v. Insurance Co. of North America, App., 285 S.W. 803.
W.Va.—Carroll-Cross Coal Co. v. Abrams Creek Coal & Coke Co., 98 S.E. 148, 83 W.Va. 205.
4 C.J. p 963 note 62.

39. Fla.—Seaboard Air Line R. Co. v. Ford, 92 So.2d 160.
Ky.—Wilson v. Gregory, 231 S.W.2d 14, 313 Ky. 326—Applegate v. Johnson, 208 S.W.2d 77, 306 Ky. 358.
Mo.—Wilt v. Moody, 254 S.W.2d 15. Edwards v. Metropolitan Life Ins. Co., App., 137 S.W.2d 591—Davis v. Swenson, 46 S.W.2d 224, 226 Mo.App. 743.
N.Y.—Mill Basin Asphalt Corp. v. Picone, 67 N.Y.S.2d 131, 271 App. Div. 891.
N.C.—Grandy v. Walker, 68 S.E.2d 807, 234 N.C. 734.
Pa.—Shugats v. Metropolitan Life Ins. Co., 33 A.2d 650, 153 Pa. Super. 51.
Tex.—Merriman v. Lary, Civ.App., 196 S.W.2d 652.
Vt.—Streeter's Dependents v. Hunter, 108 A. 394, 93 Vt. 483.
Va.—Wilson v. Stowers, 170 S.E. 745, 161 Va. 418.
Wash.—O'Mara v. Kroetch, 16 P.2d 818, 170 Wash. 440.

Cumulative testimony

(1) The fact that testimony in a deposition of a nonresident disinterested witness was cumulative did not render erroneous admission of a deposition harmless where the witness' testimony tended strongly to support plaintiffs' claim.
N.Y.—Baumeister v. Durham Realty Corporation, 264 N.Y.S. 672, 238 App.Div. 424.

(2) On the other hand, where defendant in trespass to try title insisted in introducing depositions taken in another case to establish the lost deed under which he claimed notwithstanding testimony of six uncontradicted witnesses to that effect, it cannot be held that the erroneous admission of the depositions in evidence was harmless.
Tex.—Martinez v. Bruni, Com.App., 235 S.W. 549.

Insufficient notice

Where the notice merely informed codefendant that plaintiffs intended to take defendant's deposition as a party, error in admitting the deposition as against codefendant required reversal of the judgment for defendant where defendant was enabled by the deposition to cast all blame on codefendant and withdrew from the case himself.
N.Y.—Nixon v. Beacon Transp. Corporation, 264 N.Y.S. 114, 239 App. Div. 830.

Insufficient or evasive answers

Under a statute, providing that when the answers to interrogatories are not full or are evasive, the court may either attach the party and cause full answer to be made in open court, or tax him with costs and continue the cause until full answer is made, or direct a nonsuit or judgment by default or enter an appropriate decree, the failure of the court to compel answers to pertinent interrogatories calling for information material and necessary to plaintiff's case is reversible error.
Ala.—Collins v. Mobile & O. R. Co., 97 So. 631, 210 Ala. 234.

Sole contradicting testimony

The denial of a motion to strike out or suppress opinions or legal conclusions in a deposition was harmful, where it was the only testimony contradicting that of plaintiffs.
Ind.—Johnson v. Gephart, 117 N.E. 270, 65 Ind.App. 322.

40. Conn.—O'Keefe v. Bassett, 46 A. 2d 847, 132 Conn. 659.
La.—Chicago Mill & Lumber Co. v. Lewis, App., 76 So.2d 625.
Md.—Hawk v. Wil-Mar, Inc., 123 A. 2d 328, 210 Md. 364.
Mich.—Tropical Paint & Oil Co. v. Hall, 196 N.W. 354, 225 Mich. 293.
Miss.—Boxwell v. Champagne, 91 So. 2d 256.
Or.—Abraham v. Mack, 273 P. 711, 130 Or. 32, rehearing denied 278 P. 972, 130 Or. 32.
S.C.—Norris v. Bryant, 60 S.E.2d 844, 217 S.C. 389.
Wyo.—Swanson v. Johnson, 122 P. 2d 423, 58 Wyo. 1.
Production and inspection of books and documents see infra § 1717.

Where defendant had no good reason for not appearing and giving deposition as requested by plaintiff, defendant should not have been permitted to offer his defense in the case, but inasmuch as plaintiff failed to establish his cause of action the error was harmless.
Tex.—Villanueva v. Rodriguez, Civ. App., 300 S.W.2d 668, error refused no reversible error.

41. Wash.—Moberg v. McCauley, 273 P. 739, 150 Wash. 494.

42. Mass.—Cutter v. Cooper, 125 N. E. 634, 234 Mass. 307.
Ohio.—Driver v. F. W. Woolworth Co., 16 N.E.2d 548, 58 Ohio App. 299.
Tex.—Oehler v. Dallas Ry. & Terminal Co., Civ.App., 290 S.W.2d 945, reversed on other grounds Dallas Ry. & Terminal Company v. Oehler, Sup., 296 S.W.2d 757.

43. Mass.—Cutter v. Cooper, 125 N. E. 634, 234 Mass. 307.

43.50 Okl.—Mead v. Hellams, 286 P. 2d 498, 205 Okl. 174.

State not liable

Refusal to require persons filing petition in proof of heirship, opposed

fusing to require plaintiff to furnish security for costs is rendered harmless where judgment is for plaintiff,[44] particularly where it is affirmed;[45] where, on a final hearing, the costs are rightly taxed to defendant;[46] where plaintiff thereafter gave such security;[47] where, after a verdict for plaintiff, he files a motion and affidavit for leave to prosecute as a poor person, which is granted;[48] or where it appears from the affidavit used on motion to require security for costs that a judgment for some amount should be rendered against defendant.[49] Likewise the sustaining, after judgment, of a motion requiring plaintiff to give security for costs, made before trial, will not authorize a reversal where judgment for costs had already been entered against plaintiff and the action dismissed.[50]

5. Extraordinary or Provisional Remedies

§ 1701. In General

Nonprejudicial error in proceedings related to extraordinary or provisional remedies does not warrant a reversal.

The fact that error is committed in proceedings relating to extraordinary or provisional remedies does not, as a rule, justify a reversal of the final judgment or decree, where the error does not prejudicially affect the substantial rights of the complaining party.[50.50] Accordingly, an erroneous ruling of the court on a writ of sequestration, if not prejudicial to the complaining party, is not ground for a reversal.[51]

§ 1702. Injunctions

A judgment or decree will not be reversed because of harmless error in granting or refusing an injunction.

An error in a proceeding related to an injunction does not justify a reversal of the final judgment or decree where such order does not prejudicially affect the substantial rights of the complaining party.[52] Accordingly, error in granting either a

by the state, to file cost bond as nonresidents, was not error which was harmful to state, inasmuch as state is not liable for costs in suit where it is a party, in absence of statute.
Ind.—State v. Schaller, 40 N.E.2d 976, 111 Ind.App. 128.

44. Ala.—Smith v. Dannelly, 141 So. 569, 224 Ala. 592.
Ark.—**Corpus Juris Secundum quoted in** Fulks v. Walker, 283 S.W.2d 347, 349, 225 Ark. 390.
Ill.—Peoples Nat. Bank of Kansas City v. Cosden, 283 Ill.App. 31—People v. Morgan, 188 Ill.App. 250.
Ind.—Briles v. Prudential Ins. Co., 25 N.E.2d 240, 216 Ind. 627.
Iowa.—Powell v. Overton, 181 N.W. 24, 191 Iowa 574.
Ky.—Lexington & E. Ry. Co. v. Sexton, 235 S.W. 773, 193 Ky. 201.
Tenn.—Landress v. Silva, 6 Tenn. App. 286.

45. Ark.—**Corpus Juris Secundum quoted in** Fulks v. Walker, 283 S. W.2d 347, 349, 225 Ark. 390.
Iowa.—Walker v. Russell, 35 N.W. 443, 73 Iowa 340.
4 C.J. p 963 note 63.

46. Tex.—Busby v. Busby, Civ.App., 64 S.W.2d 392—Jaffe v. Deckard, Civ.App., 261 S.W. 390—Davidson v. Jones, Sullivan & Jones, Civ. App., 196 S.W. 571.
4 C.J. p 963 note 64.

47. Ala.—Southern Ry. Co. v. Bailey, 125 So. 403, 220 Ala. 385.

48. Ill.—Baltimore, etc., R. Co. v. Keck, 84 Ill.App. 159, affirmed 57 N.E. 197, 185 Ill. 400.

49. Ill.—Purcell v. Henry, 67 Ill. App. 256.

Amount only dispute
Error, if any, in allowing a nonresident plaintiff to give security for costs after the filing of the complaint was without injury where there was no dispute but that defendant owed the amount claimed and the only dispute was as to credits on which the case was tried.
Ala.—Colley v. Atlanta Brewing & Ice Co., 72 So. 45, 196 Ala. 374.

50. Neb.—Elliott v. Carter White-Lead Co., 73 N.W. 948, 53 Neb. 458.

50.50 **Accounting in advance of trial**
Tex.—Amberson v. Horton, Civ.App., 255 S.W.2d 580, error refused no reversible error.

Appointment of surveyor to establish line
S.C.—Metze v. Meetze, 97 S.E.2d 514.

51. Tex.—White v. Texas Motorcar & Supply Co., Civ.App., 203 S.W. 441, affirmed in part and reversed in part on other grounds, Com.App., 228 S.W. 138.

Refusal to quash
The erroneous refusal of the trial court to quash a writ of sequestration was cured where a special issue was submitted as to the damages caused by the sequestration and the jury found there were no damages.
Tex.—Banner Oil & Gas Co. v. Gordon, Civ.App., 235 S.W. 945, dismissed for want of jurisdiction.

52. Ala.—City of Mobile v. Mobile Electric Co., 84 So. 816, 203 Ala. 574.
Cal.—Laura Vincent Co. v. City of Selma, 111 P.2d 17, 43 C.A.2d 473.
Ill.—Western-United Dairy Co. v. Nash, 12 N.E.2d 47, 293 Ill.App. 162.
Kan.—State ex rel. Oyler v. Lawrence Woman's Club, 285 P.2d 770, 178 Kan. 308—Bavuso v. Angwin, 201 P.2d 1057, 166 Kan. 469.
La.—Lambert v. Lass, App., 25 So. 2d 913.
Minn.—Detroit Lakes Realty Co. v. McKenzie, 284 N.W. 60, 204 Minn. 490.
N.Y.—Hunt v. Stirone, 249 N.Y.S. 591, 232 App.Div. 262.
Utah.—Salisbury v. Rockport Irr. Co., 7 P.2d 291, 79 Utah 398.
4 C.J. p 948 note 41.

Injunction bond too small
That too small an injunction bond was originally required is not reversible error, where the injunction was properly issued and the final decree released the surety.
Tex.—Mansfield v. Ramsey, Civ.App., 196 S.W. 330.

Modification of rule nisi
Modification of a rule nisi why a restraining order should not be granted, by advancing the time for hearing without notice, is harmless to plaintiff, where a demurrer to his petition was properly sustained.
Ga.—Ford v. Prudential Inv. Co., 162 S.E. 382, 174 Ga. 163—Ficken v. Haas, 161 S.E. 616, 173 Ga. 813, followed in Ficken v. Stern, 164 S. E. 182, 174 Ga. 804.

Requirement of bond
(1) Failure of court to require party obtaining an injunction to file bond or undertaking to pay damages resulting from the injunction is harmless error where it is finally de-

permanent or a temporary injunction,[53] or refusing,[54] dissolving,[55] continuing,[56] or refusing to dissolve[57] an injunction will not justify a reversal where the rights of the complaining party are not prejudicially affected thereby. Granting an injunction against past acts is not harmful error, as no step can be taken thereunder,[58] and enjoining a party from going upon land and cutting timber is harmless, when a writ of possession has been awarded to the other party.[59]

On the other hand, prejudicial error in granting, refusing, or dismissing an injunction is ground for reversal,[60] and a decree awarding an injunction

termined that the granting of the injunction was proper.
Ohio.—Lavin v. Barbini, App., 88 N.E.2d 417.
S.C.—De Pass v. City of Spartanburg, 1 S.E.2d 904, 190 S.C. 22.

(2) Fact that clerk and master of court signed injunction and attachment bond as surety did not require reversal of decree on appeal, where bond was also signed by two others whose solvency was not questioned.
Tenn.—Walsh v. Rose, 193 S.W.2d 118, 29 Tenn.App. 78.

(3) Defendant was not prejudiced because court, instead of requiring only one bond on granting temporary injunction, required bond of each plaintiff.
Ill.—Western-United Dairy Co. v. Nash, 12 N.E.2d 47, 293 Ill.App. 162.

(4) Plaintiff not entitled to injunction is not prejudiced by order granting injunction on condition that plaintiff should execute a bond.
Ga.—Reeve v. Hicks, 28 S.E.2d 649, 197 Ga. 181.

(5) The requirement that plaintiff file a bond as a condition to permission to ask for an injunction in an amended bill is harmless error, where there is nothing in the record to warrant the reviewing court in holding that it would have been an abuse of discretion if the exclusion of the right to ask for an injunction in the amended bill had been made absolute.
Md.—Kearney v. Beverly Hills Corporation, 145 A. 385, 157 Md. 136.

(6) Failure of plaintiff to post a bond prior to trial in a lease cancellation case in which a restraining order was granted was not ground for reversal of judgment for plaintiff, where answer to question of whether restraining order ripened into temporary injunction which required posting of a bond by plaintiff, because of delay between granting of order and trial, could not affect the only issue litigated.
Kan.—Runyan v. Bangs, 208 P.2d 600, 167 Kan. 691.

53. Cal.—New Method Laundry Co. v. McCann, 161 P. 990, 174 C. 26, Ann.Cas.1918C 1022.
Fla.—Moore v. City Dry Cleaners & Laundry, 41 So.2d 865.
Ill.—Deir v. Retirement Board of Municipal Employees' Annuity and Benefit Fund of Chicago, 36 N.E.2d 278, 311 Ill.App. 369.
La.—Reinecke v. Pelham, App., 199 So. 521.
Mont.—Goriez v. Rock Creek Ditch Co., 216 P. 778, 67 Mont. 566.
Tenn.—Menefee v. Davidson County, 260 S.W.2d 283, 195 Tenn. 547.
Tex.—Winfield v. State, Civ.App., 231 S.W.2d 896—Vance v. State, Civ. App., 179 S.W.2d 436, error refused—Shugart v. Rogers, Civ. App., 170 S.W.2d 813, error refused—Pois v. Langford, Civ.App., 75 S.W.2d 971—D. F. Connolly Agency, Inc. v. Popejoy, Civ.App., 290 S.W. 831.
Wash.—Thomle v. Soundview Pulp Co., 42 P.2d 19, 181 Wash. 1.
Wyo.—Olson v. Leith, 257 P.2d 342, 71 Wyo. 316.
4 C.J. p 948 note 42.

Judgment superseded
Where there was error in granting plaintiffs' injunction, it was rendered harmless, where defendant superseded the judgment by appeal, whereby the restraining influence of the injunction ceased.
Ky.—Sowders v. Gingell, 191 S.W. 896, 174 Ky. 127.

Not authorized by complaint
Where the judgment in a claim and delivery adjudicating plaintiff's ownership and right of possession was supported by the evidence and the finding, it is harmless error that a temporary injunction or an injunction pendente lite which was given to plaintiff was not authorized by the complaint.
Cal.—Beggs v. Smith, 147 P. 585, 26 C.A. 532.

Where a permanent injunction is correct, error in issuing a preliminary injunction is not prejudicial.
Cal.—Benson v. Harriman, 204 P. 255, 55 C.A. 483.
Ind.—Detamore v. Roberts, 57 N.E. 2d 585, 223 Ind. 12.
Wallace v. Simpson, 27 N.E.2d 130, 108 Ind.App. 54.
Tex.—Blair v. Paggi, Civ.App., 282 S.W. 627.
Wyo.—Peterson v. Johnson, 28 P.2d 487, 46 Wyo. 473, 91 A.L.R. 723.

54. Cal.—Farm Land Inv. Co. v. Eich, 29 P.2d 416, 220 Cal. 89.
La.—Hankins v. Police Jury Natchitoches Parish, 95 So. 102, 152 La. 1000.
Tex.—May v. Donalson, Civ.App., 141 S.W.2d 702.

Fixtures belonging to tenant
Where, in a lessor's action against a tenant for damages from removal of fixtures from a building, if the object of temporary injunction was to restrain defendant from removing such fixtures, failure to grant the injunction was harmless where it was found that the fixtures belonged to the tenant.
Cal.—Alden v. Mayfield, 166 P. 377, 33 C.A. 684.

Action of court in deferring, until after adjournment of term, rendition of injunctive order, if error, did not warrant reversal.
S.C.—Richardson v. Register, 87 S.E.2d 40, 227 S.C. 81.

55. Ariz.—Engelbrecht v. McCullough, 292 P.2d 845, 80 Ariz. 77.
N.C.—State Highway & Public Works Commission v. Brown, 77 S.E.2d 780, 238 N.C. 293.
S.D.—Hyde v. Gearhart, 168 N.W. 719, 41 S.D. 77.
4 C.J. p 948 note 43.

56. Ky.—Ramey v. Weddington, 105 S.W.2d 824, 268 Ky. 675.
Tex.—Nimmo v. O'Keefe, Civ.App., 204 S.W. 883.
4 C.J. p 948 note 44.

57. Ala.—Union Central Life Ins. Co. of Cincinnati, Ohio v. Thompson, 157 So. 852, 229 Ala. 433.
Tex.—Hinckley-Tandy Leather Co. v. Hazelwood, Civ.App., 35 S.W.2d 209.
4 C.J. p 948 note 45.

Continuance of motion to dissolve
The continuance of a motion to dissolve an injunction, on motion of the party enjoined, the injunction remaining in force, will not amount to reversible error unless prejudicial to the interests of some party affected.
W.Va.—Woodcock v. Barrick, 91 S.E. 396, 79 W.Va. 449.

58. N.Y.—Matter of Hempstead, 55 N.Y.S. 345, 36 App.Div. 321, affirmed 55 N.E. 1101, 160 N.Y. 685.

59. Tenn.—Stark v. Murphy, Ch. App., 52 S.W. 736.

60. Ind.—McNelis v. Wheeler, 73 N.E.2d 339, 225 Ind. 148.
N.C.—Tomlinson v. Cranor, 184 S.E. 554, 209 N.C. 688.
Tex.—City of Waco v. Marstaller, Civ.App., 271 S.W.2d 722—City of Fort Worth v. Tarlton, Civ.App., 151 S.W.2d 268.

When an interlocutory injunction is issued without notice in a case

against an innocent party has been held in and of itself reversible;[61] and, furthermore, where the law and the facts did not justify an injunction, it has been held that such injunction could not be sustained on appeal on the theory that it was harmless to defendant as long as he did not do the acts the order prohibited.[62]

§ 1703. Attachment and Garnishment

Harmless error in proceedings relative to an attachment or garnishment is not cause for reversal.

A judgment or decree will not be reversed because of harmless error committed in any of the proceedings relating to an attachment,[63] or in the proceedings relating to a garnishment.[64] Accordingly, the making of an order sustaining an attachment will not justify a reversal where no substantial rights of the party complaining are affected thereby.[65] An error in refusing to vacate an attachment is no ground for reversing a judgment on the merits.[66] Where the original affidavit contains a sufficient statement, an order permitting an amendment is without prejudice.[67] Error in sustaining a motion to quash an attachment is not a ground for reversal where no prejudice resulted therefrom.[68]

where notice should have been given, appellate court will reverse order on that ground without regard to any other question.
Ill.—Pearson v. Behrens, 112 N.E.2d 521, 350 Ill.App. 254—Republican Central Committee of Cook County v. Cook County Regular Republican Organization, 108 N.E.2d 524, 348 Ill.App. 189—Skarpinski v. Veterans of Foreign Wars of U. S., 98 N.E.2d 858, 348 Ill.App. 271.

Failure to state reasons
Granting an injunction without stating the reasons therefor, as required by statute, has been held reversible error.
Tex.—Rothermel v. Goodrich, Civ. App., 292 S.W.2d 882—Robertson Transports, Inc. v. Transport Co. of Tex., Civ.App., 256 S.W.2d 134, reversed on other grounds Transport Co. of Texas v. Robertson Transports, Inc., 261 S.W.2d 549, 152 Tex. 551.

61. Pa.—Titusville Amusement Co. v. Titusville Iron Works Co., 134 A. 481, 286 Pa. 561.

62. N.Y.—Howell v. Branigan, 263 N.Y.S. 598, 239 App.Div. 789, affirmed 189 N.E. 733, 263 N.Y. 635.

63. Ala.—Hicks v. Peterson, 180 So. 133, 28 Ala.App. 170.
Ark.—Fair v. Beal-Burrow Dry Goods Co., 230 S.W. 23, 148 Ark. 340.
Idaho.—Citizens Auto. Inter-Insurance Exchange v. Andrus, 212 P. 2d 406, 70 Idaho 114.
Ky.—Eigelbach v. Roppel, 92 S.W. 2d 764, 263 Ky. 604.
Mass.—Redfield v. Abbott Shoe Co., 132 N.E.2d 165, 333 Mass. 551—Crowley v. Holdsworth, 162 N.E. 334, 264 Mass. 303.
Miss.—Small v. Sturgis Lumber Co., 62 So.2d 765, 216 Miss. 515.
Or.—Hudelson v. Sanders-Swafford Co., 227 P. 310, 111 Or. 600.
S.C.—J. W. Copeland Co. v. Brown, 87 S.E. 1002, 103 S.C. 177.
S.D.—People's State Bank v. Karlen, 182 N.W. 531, 44 S.D. 82.
Tenn.—Walsh v. Rose, 193 S.W.2d 118, 29 Tenn.App. 78.
Tex.—Ford v. Marsden, Civ.App., 54 S.W.2d 833.
Wash.—Yamada v. Hall, 260 P. 243, 145 Wash. 365.

Attachment by both parties
Where, in an action for the price of an automobile sold to a minor, coupled with attachment, when the minor brought action to recover the portion of the price already paid, also attaching the automobile, the seller was not prejudiced by the fact that the car was under attachment in both suits, since ordering judgment on the verdict for defendant in the first suit discharged the attachment therein, and payment of judgment for plaintiff in the second suit would discharge that attachment.
N.H.—Wooldridge v. Lavoie, 104 A. 346, 79 N.H. 21.

Date of execution
Where the statutes providing for property claimant's affidavit and bond do not require that the date of the execution be stated, the fact that incorrect dates were included in forms used is of no consequence in the absence of a showing of injury by the error.
Tex.—Rodgers v. Murray, Civ.App., 247 S.W. 888.

Error in discharge harmless
Where plaintiff, on his own showing, was not entitled to an attachment, he was not prejudiced by an order discharging the attachment after he had appealed from a judgment of nonsuit.
Cal.—Lapique v. Plummer, 142 P. 1079, 168 C. 310.

64. Colo.—Johnson v. Elliott, 231 P. 675, 76 Colo. 358.
Kan.—Titus v. Vansickle, 50 P.2d 972, 142 Kan. 552.
Mo.—Aach v. Pippart, App., 261 S.W. 929.
Tex.—Bridewell v. Clay, Civ.App., 185 S.W.2d 170, error refused—Clay Bldg. Material Co. v. First Nat. Bank of Midland, Civ.App., 161 S.W.2d 799—Foos Gas Engine Co. v. Fairview Land & Cattle Co., Civ.App., 185 S.W. 382, error refused.

Number of case
Where the number of the case in which a judgment was rendered was incorrectly given in an application for garnishment under it, but there was no question as to its identity, the mistake was not reversible error.
Tex.—Citizens' Bank & Trust Co. v. Rogers, Civ.App., 170 S.W. 258.

Judgment against principal debtor
Where, in a suit against husband and wife to recover balance, with garnishment against a bank admitting its possession of money claimed by the wife, in which the judgment was against her claim, the case will not be reversed because the record did not show a judgment against the husband as the principal debtor, since it cannot make any difference to the garnishee about the payment of it, so far as the wife's claim is concerned, she having been adjudicated to be without the right to the money.
Ark.—Loyd v. Bennett, 185 S.W. 292, 124 Ark. 403.

Submitting equitable issue to jury
Error in improperly submitting an equitable issue to jury in a garnishment proceedings is harmless, since a finding thereon would be merely advisory, where record shows that court correctly made same finding on the issue and based its judgment thereon.
Colo.—Johnson v. Elliott, 231 P. 675, 76 Colo. 358.

65. Ky.—Caumiser v. Humpich, 64 S.W. 851, 23 Ky.L. 1133.
4 C.J. p 949 note 48.

Refusal to consider motion to quash
Refusal to consider motion to quash attachment is harmless, where the motion was without merit.
Tex.—Stringfellow v. Patterson, Civ. App., 192 S.W. 555, error refused.

66. N.Y.—Tuller v. Howard, 40 N. Y.S. 739, 17 Misc. 105.
Bump v. Daheny, 12 N.Y.S. 901.
4 C.J. p 949 note 49.

67. S.D.—Ask v. Armstrong, 68 N. W. 743, 9 S.D. 265.

68. Tex.—Farmers', etc., State Bank,

A sale of attached property in bulk, instead of at retail, is not a reversible error.[69] Where defendant denied the grounds of attachment and pleaded to the merits, and plaintiff takes only a general judgment, errors as to issues raised concerning the attachment are immaterial.[70] Where, however, substantial error is committed in the proceedings for an attachment,[71] or in the proceedings for a garnishment,[72] the case will be reversed for such reason.

§ 1704. Appointment of Receiver

A case will not be reversed for a harmless error in the proceedings for, or appointment of, a receiver.

The fact that error is committed in the appointment of a receiver, or in any of the proceedings relative thereto, is not cause for reversing the case on appeal where the objecting party is not substantially injured thereby.[73] Where a case is a proper one for the appointment of a receiver, an order appointing him will not be reversed, after he has performed his duties, for failure to give notice to the adverse party;[74] nor where the propriety of the court's action in appointing him was considered and argued by both parties before the trial court on motion to discharge the receiver, and where the court sustained the original order by refusing to dis-

etc., Co. v. Sliger, Civ.App., 145 S.W. 252.

4 C.J. p 949 note 52.

69. Iowa.—Webster City Grocery Co. v. Losey, 78 N.W. 75, 108 Iowa 687.

4 C.J. p 949 note 53.

70. Ga.—Henderson v. Phillips, 65 S.E. 40, 6 Ga.App. 368.

71. Ohio.—Wilder v. Martin, 81 N.E.2d 630, 83 Ohio App. 209.

Tex.—Lancaster v. Corsicana Nat. Bank, Com.App., 240 S.W. 307.

Error in vacating

Where, by virtue of statute, if an attachment is set aside for any reason plaintiff and his sureties become liable for all damages defendant may have suffered by reason thereof, whether or not plaintiff prevails in the action, plaintiff's rights are prejudiced by an order vacating an attachment.

S.D.—Noziska v. Aten, 154 N.W. 445, 36 S.D. 222.

72. Ark.—Henslee v. Mobley, 230 S.W. 17, 148 Ark. 181.

73. Cal.—Moore v. Wimmer, 174 P.2d 640, 77 C.A.2d 199—Moore v. Oberg, 142 P.2d 443, 61 C.A.2d 216—Gibson v. River Farms Co. of California, 83 P.2d 966, 28 C.A.2d 757—Davies v. Ramsdell, 183 P. 702, 40 C.A. 432.

Fla.—Prichett v. Brevard Naval Stores Co., 190 So. 430, 139 Fla. 204—Welch v. Gray Moss Bondholders Corp., 175 So. 529, 128 Fla. 722.

Ga.—Merritt v. George, 148 S.E. 334, 168 Ga. 497.

Ill.—Kaplan v. Kaplan, 89 N.E.2d 434, 339 Ill.App. 247—Graffeo v. O'Brien, 77 N.E.2d 350, 333 Ill.App. 332.

Ky.—Title Insurance & Trust Co. v. Clark, 111 S.W.2d 409, 271 Ky. 22.

Mass.—Pouliot v. West India Fruit Co., 186 N.E. 52, 283 Mass. 141.

Minn.—Tasler v. Peerless Tire Co., 174 N.W. 731, 144 Minn. 150.

Ohio.—Hartley v. Tigner, App., 125 N.E.2d 360.

Pa.—Haas v. Howard Lanin Music, 192 A. 257, 126 Pa.Super. 546.

Tex.—Ferguson v. Ferguson, Civ.App., 210 S.W.2d 268, certiorari denied 69 S.Ct. 1498, 337 U.S. 943, 93 L.Ed. 1747, rehearing denied 70 S.Ct. 81, 338 U.S. 853, 94 L.Ed. 523, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341—Boger v. Moore, Inc., Civ.App., 196 S.W.2d 646—McCarty Motor Co. v. R. F. Finance Corporation, Civ.App., 41 S.W.2d 258—Stuart v. E. M. Goodwin, Inc., Civ.App., 25 S.W.2d 166—Sunshine Consol. Oil Co. v. Prechel, Civ.App., 268 S.W. 1051.

Deficiency judgment revived by reversal

Where payment of a judgment for deficiency in foreclosure proceedings, in order to protect debtor's homestead, is ordered as a condition to granting of a motion to discharge the receiver, such a requirement does not necessitate reversal, even though the foreclosure petition contained no allegation as basis of appointment of receiver, since reversal of such order would merely revive deficiency judgment.

Iowa.—Cedar Rapids Nat. Bank v. Todd, 203 N.W. 399, 199 Iowa 957.

Irregular entry not considered

Where there may have been error in irregularly entering a receipt in a receiver's report, but where such receipt was not considered in a suit against the receiver, the receiver cannot complain of such irregular entry.

Ga.—Merritt v. George, 148 S.E. 334, 168 Ga. 497.

Petition not verified

Where a verified answer to an unverified petition for a receiver admits a state of facts requiring, or rendering proper, the appointment of a receiver, an order appointing a receiver will not be reversed on the ground that the petition was not verified.

Okl.—Ward v. Inter-Ocean Oil & Gas Co., 153 P. 115, 52 Okl. 490.

Plaintiff without interest

Where, in a suit to set aside a conveyance by the husband to his wife as fraudulent, it was finally determined that plaintiff had no interest in the property, he was not prejudiced by an order setting aside an order appointing the receiver.

Ky.—Koch's Ex'r v. Hall, 221 S.W. 1077, 188 Ky. 378.

Questions moot

Where all the questions became moot, any error in findings in an order denying petition for revocation of receiver's appointment was immaterial.

Cal.—Reeves v. Watson, 12 P.2d 1050, 124 C.A. 534.

Failure to appoint not "fundamental error"

Where judgment was warranted by the pleadings, mere failure of court to appoint a receiver as prayed in plaintiff's petition did not constitute "fundamental error."

Tex.—Kitchen v. Commercial Credit Co., Civ.App., 158 S.W.2d 595.

In Indiana the denial of a motion to dismiss a petition for a receiver does not constitute error warranting reversal.

Ind.—Hodgin v. Hodgin, 93 N.E. 849, 175 Ind. 157.

74. W.Va.—Wright v. Pittman, 79 S.E. 1091, 73 W.Va. 81.

Appointment affirmed

In a suit by minority stockholders against defendant corporation that a receiver was appointed without notice to it was immaterial, where the order of appointment was subsequently confirmed after due notice.

N.J.—Morse v. Metropolitan S. S. Co., 102 A. 524, 88 N.J.Eq. 325.

Hearing

Where defendant upon his motion to vacate the order appointing a receiver is afforded a hearing which serves all the purposes of a notice in the first instance, the objection that the receiver was appointed without notice is not tenable.

N.D.—Ingwalson v. Aney, 210 N.W. 498, 54 N.D. 627.

charge the receiver.[75] Also, rulings made by the court during the progress of the hearing, which in all probability did not affect its decision in appointing a receiver, will not, even though erroneous, require a reversal of the judgment.[76] On the other hand, error in receivership proceedings which is prejudicial to the objecting party will furnish ground for reversal.[76.5]

6. References

§ 1705. Grant or Refusal

In the absence of any substantial harm a case will not be reversed because of the granting or refusing of a reference.

Mere technical objections, which are without merit, to an order of reference are not grounds for reversal,[77] and where an unnecessary reference was had, if no prejudice results, other than additional costs, the reviewing court will not reverse.[78] Error in submitting the case to a referee, instead of to a jury, is harmless and is not ground for reversal at the instance of plaintiff where plaintiff does not have a cause of action.[79] Likewise, a refusal or failure to refer a case will not work a reversal where appellant is not damaged by the refusal.[80] Where, however, the erroneous submission of the case deprives the complaining party of his right to a trial by jury, the error is prejudicial and ground for reversal.[81] Also, the granting of a compulsory reference, where it is unauthorized, may be ground for reversal.[82]

§ 1706. Other Questions Relating to References

Harmless error in proceedings relating to a reference is not ground for a reversal of the case.

A case will not be reversed because of any errors committed in proceedings relating to a reference, where no substantial harm results therefrom to the objecting party;[83] and so irregularity in the

75. W.Va.—Simons v. Simons, 123 S.E. 449, 96 W.Va. 605.
4 C.J. p 949 note 56.

76. Ga.—McGarrah v. Southwestern Georgia Bank, 43 S.E. 987, 117 Ga. 556.

76.5 **Failure to provide for bond**
Ala.—Hunter v. Parkman, 34 So.2d 221, 250 Ala. 312.
Tex.—Low Cost Homes Bldg. Co. v. Banks, Civ.App., 228 S.W.2d 535.

77. Ill.—Abbott v. Stone, 50 N.E. 328, 172 Ill. 634, 64 Am.S.R. 60.
N.Y.—Gotham Factors Co. v. Ifan Realty Corp., 148 N.Y.S.2d 789, 1 A.D.2d 805.

Before issue joined
Defendant was not prejudiced by the granting of an order of reference before issue joined, where the answer was filed after the order of reference, and showed that defendant was not deprived of a mode of trial to which he was legally entitled.
S.C.—Mayfield v. Bessinger, 69 S.E. 673, 87 S.C. 369.

78. Ill.—Prindiville v. Curran, 156 Ill.App. 279.
Tenn.—State v. Bolt, 169 S.W. 761, 130 Tenn. 212.
Va.—Bresee v. Bradfield, 88 S.E. 196, 99 Va. 331.

79. Mo.—Rolla Produce Co. v. American Railway Express Co., 226 S. W. 582, 205 Mo.App. 646.
"What sense would there be in reversing this judgment because the case was referred, and remanding this cause for trial by a jury; there being no cause for a jury to try?"
Mo.—Arensmeyer v. Metropolitan L. Ins. Co., 162 S.W. 261, 266, 254 Mo. 363.

80. Ky.—Wilkerson v. Duerson, 198 S.W. 13, 177 Ky. 696.
Tex.—Peters v. Brookshire, Civ.App., 195 S.W.2d 181, error refused no reversible error.
4 C.J. p 949 note 61.

81. Mo.—Snyder v. Crutcher, 118 S. W. 489, 137 Mo.App. 121.
Tex.—Creglar v. Hyde, Civ.App., 280 S.W.2d 783, error refused no reversible error.

82. Mo.—Durwood v. Dubinsky, 291 S.W.2d 909.
W.Va.—Rosier v. McDaniel, 28 S.E. 2d 908, 126 W.Va. 434.
Wis.—Killingstad v. Meigs, 133 N.W. 632, 147 Wis. 511, 517, Ann.Cas. 1912D 1133, overruling Commercial Bank v. McAuley, 66 N.W. 110, 92 Wis. 242, and Gilbank v. Stephenson, 31 Wis. 592—Knips v. Stefan, 6 N.W. 877, 50 Wis. 286—Oatman v. Bond, 15 Wis. 23—Brown v. Runals, 14 Wis. 693.

83. Ark.—Kelley v. Ballard, 93 S.W. 2d 1256, 192 Ark. 663—Greenfield v. Peay, 209 S.W. 730, 137 Ark. 552.
Fla.—Cohlen v. Fincke, 39 So.2d 65.
Ga.—Owen v. S. P. Richards Paper Co., 3 S.E.2d 660, 188 Ga. 258—Callan Court Co. v. Citizens & Southern Nat. Bank, 190 S.E. 831, 184 Ga. 87.
Ill.—Argus Press, Inc. v. Lindhout, 268 Ill.App. 465.
Mass.—Arey v. George Associates, 12 N.E.2d 84, 299 Mass. 130—Kneisys v. Stone, 7 N.E.2d 425, 297 Mass. 31—Ritson v. Atlas Assur. Co., 171 N.E. 448, 272 Mass. 73—Hines v. Eastern S. S. Lines, 139 N.E. 823, 245 Mass. 385.
N.Y.—Gotham Factors Co. v. Ifan Realty Corp., 148 N.Y.S.2d 789, 1 A.D.2d 805—Metropolitan Life Ins. Co. v. Union Trust Co. of Rochester, 51 N.Y.S.2d 318, 268 App.Div. 474, affirmed 62 N.E.2d 59, 294 N. Y. 254, motion denied 63 N.E.2d 187, 294 N.Y. 962.
S.C.—Citizens' Bank v. Davis, 119 S. E. 580, 126 S.C. 175—Murphy v. Valk, 9 S.E. 101, 30 S.C. 262.
Vt.—Burlington Light & Power Co. v. City of Burlington, 106 A. 513, 93 Vt. 27.

Charge proper
In an action against a steamship owner for damage to a canal bridge, the admission of portions of the auditor's report objected to, as based on an erroneous finding of law with respect to the applicability of the doctrine of res ipsa loquitur and presumptions from unexplained facts, is not injurious, where the trial court properly charged upon the matter.
Mass.—Hines v. Eastern S. S. Lines, 139 N.E. 823, 245 Mass. 385.

Refusal to recommit
(1) Refusal to recommit case to auditor because of errors committed by the auditor is not ground for reversal where the party objecting was not prejudiced.
Mass.—Ryder v. Town of Lexington, 21 N.E.2d 382, 303 Mass. 281.

(2) So, error, if any, in refusal to recommit case to auditor was held harmless where auditor's finding approved by judge appeared to be correct and reached proper result.
Ga.—Callan Court Co. v. Citizens &

appointment of a referee,[84] or failure of a referee to follow a statute,[85] where harmless, is not cause for reversal of the case. Irregularity in the master's report is harmless, where it is merely advisory;[86] and, similarly, error by the referee in interpreting an ordinance,[87] or of an order recommitting a case to him,[88] or error in the conclusions of law by the master,[89] is harmless where it is not binding upon the court. Admission of improper evidence by the master is harmless, where such evidence does not affect the substantial rights of the objecting party.[90] Likewise, where the error is harmless, failure to give proper notice in reference proceedings will not cause a reversal of the case.[91] The premature entry of an order of reference,[92] the setting aside of an order of reference without notice,[93] or error or irregularities in directions[94] or rulings[95] of the referee or in proceedings before the referee[96] or in the report or findings of the referee,[97] or in rulings on the referee's report or findings,[98] will

Southern Nat. Bank, 190 S.E. 831, 184 Ga. 87.

(3) So too, refusal to recommit case to the auditor for the auditor's failure to rule on the evidence is not ground for reversal, where the auditor's decision is upheld, regardless of such evidence. Also refusal to recommit a case for the auditor's failure to rule on an amendment to the answer is not ground for reversal, where such matter is passed on in the final decree. Likewise, the refusal to recommit a case for the auditor's failure to pass on demurrer is not ground for reversal, where the final decree rules on the demurrer.

Ga.—Norton v. Brown, 159 S.E. 702, 173 Ga. 146.

84. Cal.—Sandoval v. Salazar, 207 P. 937, 57 C.A. 756.

85. Del.—Phœnix Oil Co. v. Mackenzie Oil Co., 154 A. 894, 4 W.W. Harr. 460.

Ill.—Home for Destitute Crippled Children v. Boomer, 51 N.E.2d 830, 320 Ill.App. 541.

86. Ky.—Howell v. Chaney, 203 S. W. 536, 180 Ky. 646.

87. Vt.—Burlington Light & Power Co. v. City of Burlington, 106 A. 513, 93 Vt. 27.

88. S.C.—Savannah Guano Co. v. Home Bank of Barnwell, 111 S.E. 788, 119 S.C. 25.

89. Mass.—O'Brien v. Logan, 128 N. E. 878, 236 Mass. 507.

90. Mass.—American Mut. Liability Ins. Co. v. Condon, 183 N.E. 106, 280 Mass. 517.

Me.—Lipman Bros. v. Hartford Acc. & Indem. Co., 100 A.2d 246, 149 Me. 199.

N.J.—Hilbig v. National Asbestos Mfg. Co., 134 A. 185, 4 N.J.Misc. 667.

Evidence not considered

Although the court found as did the master, appellant cannot object that the master admitted incompetent evidence, where the court informed the parties that it did not consider it in reaching its decision.

S.C.—Pressley v. Pressley, 86 S.E. 377, 102 S.C. 174.

91. Mo.—Vannoy v. Swift & Co., 201 S.W.2d 350, 356 Mo. 218.

W.Va.—State v. Haymond, 100 S.E. 81, 84 W.Va. 292.

Defect waived

Where a total lack of notice is insufficient to impeach a commissioner's report, when harmless, a mere defect in a notice, waived by appearance and procedure under it, by taking of full proof as if notice had been perfect, is no ground for reversal of a decree founded upon the evidence.

W.Va.—State v. Haymond, supra.

Of filing report

(1) Where notice of the application to confirm a report was given, and appellant filed what were denominated objections to the confirmation, which were heard and fully considered, no injury could have resulted by reason of failure, if any, to comply with the rule of court in respect of notice of filing the report.

N.J.—Appel v. Fleuchaus, 151 A. 97, 8 N.J.Misc. 501.

(2) Where no notice of the filing of the referee's report was given defendant, but defendant's attorney had knowledge of the filing, the failure to give notice is harmless.

N.J.—Zanzonica v. Miller, 155 A. 10, 9 N.J.Misc. 597.

(3) Where testimony was introduced before master in presence of plaintiff who as attorney represented his wife and himself and he offered no testimony, the absence of notice of the filing of the master's report as required by statute was harmless.

Fla.—Williams v. Smith, 6 So.2d 853, 149 Fla. 735.

92. Colo.—H. C. Lallier Construction & Engineering Co. v. Morrison, 25 P.2d 729, 93 Colo. 305.

W.Va.—Teter v. Moore, 93 S.E. 342, 80 W.Va. 443.

4 C.J. p 950 note 62.

93. Va.—Arnold v. Jackson, 6 Munf. 106, 20 Va. 106.

94. Wis.—Griffiths v. Cretney, 126 N.W. 875, 143 Wis. 143.

95. Conn.—Berger v. Town of Guilford, 68 A.2d 371, 136 Conn. 71—Seymour Trust Co. v. Hershowitz, 131 A. 399, 103 Conn. 532.

Fla.—Ellis v. Everett, 84 So. 617, 79 Fla. 493.

Ga.—Wilkes v. Carter, 99 S.E. 860, 149 Ga. 240.

Ill.—Prange v. City of Marion, 48 N.E.2d 980, 319 Ill.App. 136—Vieth v. Chicago Title & Trust Co., 30 N.E.2d 126, 307 Ill.App. 99.

Mass.—U. S. Fidelity & Guaranty Co. v. English Const. Co., 20 N.E.2d 939, 303 Mass. 105.

N.H.—U. S. Fidelity & Guaranty Co. v. Dunn, 7 A.2d 246, 90 N.H. 236.

N.J.—Rogers Ebert Co. v. Century Const. Co., 15 A.2d 94, 125 N.J. Law 125, affirmed 18 A.2d 8, 126 N.J.Law 68.

96. Ala.—Johnson v. Inman, 137 So. 293, 223 Ala. 513—People's Sav. Bank of Tallassee v. Union Bank & Trust Co., 85 So. 694, 204 Ala. 406.

Ill.—Cook v. Wolf, 129 N.E. 556, 296 Ill. 27.

American Radiator Co. v. Walker, 276 Ill.App. 150.

Mass.—U. S. Fidelity & Guaranty Co. v. English Const. Co., 20 N.E. 2d 939, 303 Mass. 105—Budris v. New Amsterdam Casualty Co., 197 N.E. 479, 292 Mass. 46—Peter Bent Brigham Hospital v. McClure, 139 N.E. 484, 245 Mass. 370—Fay v. Corbett, 124 N.E. 73, 233 Mass. 403.

4 C.J. p 950 note 65.

Filing late

Where a referee appointed under McClellan Dig. p 858 § 4 reduces his findings to writing, and signs and dates them on the same day on which the judgment is rendered by him, it is not reversible error that he does not file them until after he passes on a motion for new trial.

Fla.—Arnau v. State First Nat. Bank, 18 So. 786, 36 Fla. 398.

97. Ill.—Prange v. City of Marion, 48 N.E.2d 980, 319 Ill.App. 136.

N.J.—Bozorth v. Pricket, 2 N.J.Law 268.

N.C.—McCormick v. Smith, 98 S.E.2d 448, 246 N.C. 425.

S.C.—Locklair v. Raybourn, 8 S.E.2d 349, 193 S.C. 214.

4 C.J. p 950 note 66.

98. Ark.—Kelley v. Ballard, 93 S. W.2d 1256, 192 Ark. 663.

Conn.—Colburn v. Puzio, 68 A.2d 136, 135 Conn. 673.

Ga.—Burgess v. Simmons, 61 S.E.2d 410, 207 Ga. 291—Hightower v.

not constitute ground for reversal where no prejudice resulted therefrom. Ruling pro forma on the report of an assessor, although erroneous, is harmless.[99]

If, however, prejudicial error is committed in the reference, or in the proceedings relating thereto, a case will be reversed;[1] and so a prejudicial failure to give the statutory notice of a trial before a referee,[2] or the giving of a hurried and improper decision under a reference,[3] will be cause for reversal of the case where substantial injury results.

7. Selection and Impaneling of Jurors

§ 1707. In General

a. In general

b. Examination of jurors

a. In General

Harmless error in the selection or impaneling of a jury is not cause for reversal.

Error in selecting,[4] impaneling,[5] swearing or

Phillips, 18 S.E.2d 848, 193 Ga. 444—Owen v. S. P. Richards Paper Co., 3 S.E.2d 660, 188 Ga. 258—Miller & Co. v. Gibbs, 132 S.E. 626, 161 Ga. 698.

Haygood v. Smith, 56 S.E.2d 310, 80 Ga.App. 461—Marks v. Steinberg, 190 S.E. 808, 55 Ga.App. 561.

Ill.—Stasch v. Romza, 55 N.E.2d 81, 387 Ill. 67.

Morris Inv. Co. v. Weaver, 53 N.E.2d 27, 321 Ill.App. 301.

Mass.—City of Lowell v. Massachusetts Bonding & Insurance Co., 47 N.E.2d 265, 313 Mass. 257, 146 A.L.R. 750—Kurland v. Massachusetts Amusement Corp., 29 N.E.2d 749, 307 Mass. 131—Ryder v. Town of Lexington, 21 N.E.2d 382, 303 Mass. 281—Ferrairs v. Hewes, 16 N.E.2d 674, 301 Mass. 116—Arey v. George Associates, 12 N.E.2d 84, 299 Mass. 130—Kneizys v. Stone, 7 N.E.2d 425, 297 Mass. 31.

N.Y.—Wasson v. Kowsky, 50 N.Y.S.2d 693, 268 App.Div. 879.

4 C.J. p 950 note 67.

Refusal to strike exceptions

Any error in the refusal of the court to strike exceptions of law to the report of an auditor on motion is cured by overruling and disallowing the exceptions.

Ga.—Miller County v. Wilkin, 110 S.E. 518, 28 Ga.App. 137—Miller County v. Bush, 110 S.E. 515, 28 Ga.App. 130.

99. Mass.—Speirs v. Union Drop Forge Co., 61 N.E. 825, 180 Mass. 87.

1. Cal.—Rice v. Brown, 231 P.2d 65, 104 C.A.2d 100—Balkins v. Los Angeles County, 183 P.2d 137, 81 C.A.2d 42.

Ga.—Rabun v. Wynn, 88 S.E.2d 478, 92 Ga.App. 228—Manry v. Hendricks, 18 S.E.2d 97, 66 Ga.App. 442.

Miss.—Merchants Fertilizer & Phosphate Co. v. Standard Cotton Gin, 23 So.2d 906, 199 Miss. 201.

N.Y.—Keystone Co-op. Grape Ass'n v. Perdue, 40 N.Y.S.2d 213, 265 App.Div. 1035.

N.C.—Macon v. Murray, 55 S.E.2d 807, 231 N.C. 61.

N.D.—Colter v. Lowe, 239 N.W. 619, 61 N.D. 621.

2. N.D.—Colter v. Lowe, supra.

3. N.Y.—Farm Supplies Corporation v. Goldstein, 270 N.Y.S. 430, 240 App.Div. 330.

4. Ala.—Alabama Great Southern R. Co. v. Bolton, 7 So.2d 296, 242 Ala. 562.

Ark.—Falcon Zinc Co. v. Flippin, 287 S.W. 394, 171 Ark. 1151.

Cal.—Livesey v. Stock, 281 P. 70, 208 C. 315.

Ga.—Georgia Northern Ry. Co. v. Home Mercantile Co., 88 S.E. 413, 17 Ga.App. 755.

Ill.—People v. Brogan, 73 N.E.2d 133, 331 Ill.App. 404. See Smiley v. Barnes, 196 Ill.App. 536.

Kan.—Burley v. Missouri Pac. R. Co., 237 P. 903, 119 Kan. 95—Murray v. Empire Dist. Electric Co., 162 P. 1145, 99 Kan. 507.

Ky.—Louisville & N. R. Co. v. Gregory, 158 S.W.2d 1, 289 Ky. 211.

Minn.—Kieger v. St. Paul City Ry. Co., 11 N.W.2d 757, 216 Minn. 38.

Miss.—Kouvarakis v. Hawver, 45 So.2d 278, 208 Miss. 697.

Mo.—McCormack v. McNamee, 274 S.W.2d 272—Lee v. Baltimore Hotel Co., 136 S.W.2d 695, 345 Mo. 458, 127 A.L.R. 711—Kidd v. Chicago, R. I. & P. Ry. Co., 274 S.W. 1079, 310 Mo. 1, certiorari denied 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424.

N.J.—Meszaros v. Gransamer, 128 A.2d 449, 23 N.J. 179.

N.C.—Reed v. Madison County, 195 S.E. 620, 213 N.C. 145.

Ohio.—Hanes v. Block, 65 N.E.2d 86, 78 Ohio App. 394.

Okl.—Georgia State Sav. Ass'n of Savannah, Ga., v. Elias, 164 P.2d 627, 196 Okl. 256—Latson v. McCollom, 134 P.2d 130, 192 Okl. 48.

S.C.—O'Shields v. Caldwell, 37 S.E.2d 665, 208 S.C. 245.

S.D.—Carpenter v. Union Baking Co., 290 N.W. 322, 67 S.D. 151.

Tex.—Herrin Transp. Co. v. Peterson, Civ.App., 216 S.W.2d 245, error refused—Peters v. Brookshire, Civ.App., 195 S.W.2d 181, error refused no reversible error—Bennett v. Jackson, Civ.App., 172 S.W.2d 395, error refused—Woodmen of the World v. Holmes, Civ.App., 232 S.W. 575.

Wis.—Ernst v. Ernst, 49 N.W.2d 427, 259 Wis. 495.

4 C.J. p 951 note 75.

Case withdrawn from jury

Where the case was properly withdrawn from the jury, or where plaintiff was not entitled to recover in any event, any error in selecting the jury is harmless.

Ala.—Collins v. Brotherhood of Railroad Trainmen, 148 So. 133, 226 Ala. 659.

Ga.—Jeanes v. Mayor, etc., of Milledgeville, 165 S.E. 900, 45 Ga.App. 755, followed in Wall v. Mayor, etc., of Milledgeville, 166 S.E. 218, 45 Ga.App. 840.

Ky.—Rowland v. Burley Tobacco Growers' Co-op. Ass'n, 270 S.W. 784, 208 Ky. 300.

4 C.J. p 952 note 83.

Proper verdict

Acceptance of veniremen whose competency was challenged did not require reversal, where the jury could not have returned a different verdict.

Va.—Hentz v. Wallace's Adm'r, 150 S.E. 389, 153 Va. 437.

Subpœna for jurors

The issuance of a subpœna for certain jurors on the regular panel who were not called as witnesses, although not prejudicial error, is improper.

Kan.—Smith Bros. & Cooper v. Hanson, 165 P. 852, 101 Kan. 237, rehearing denied 166 P. 497, 101 Kan. 240.

5. Ill.—Mitchell v. Louisville & N. R. Co., 35 N.E.2d 81, 310 Ill.App. 563, reversed on other grounds 42 N.E.2d 86, 379 Ill. 522.

Ky.—Harper v. Crawford, 275 S.W.2d 897.

Miss.—Kouvarakis v. Hawver, 45 So.2d 278, 208 Miss. 697.

Mo.—Mannon v. Frick, 295 S.W.2d 158.

Mont.—Watson v. City of Bozeman, 156 P.2d 178, 117 Mont. 5.

N.Y.—Chaffee v. Marsh, 156 N.Y.S.2d 376, 2 A.D.2d 934—Verdow

administering the appropriate statutory oath to[6] a jury does not require a reversal of a judgment where no prejudice resulted therefrom to the party complaining. Also the fact that a juror is selected who is incompetent because of relationship to counsel[7] or party,[8] because of his acquaintance with one of the witnesses,[9] because he has failed to pay taxes,[10] or who is for any other reason incompetent,[11] is not ground for reversal, in the absence of prejudice to the complaining party. Likewise, irregularities of the clerk in calling jurors will not be ground for disturbing the judgment unless the complaining party is prejudiced.[12]

On the other hand, substantial prejudice resulting from error in the selection or impaneling of the jury is ground for reversal,[13] and, according to some authority, where a statute enacted for the purpose of securing fair and impartial jurors has been substantially disregarded and the question has been properly raised, the court will not stop to speculate on whether the complaining party was actually prejudiced or not by the method employed, it being sufficient to say that he has been deprived of a statutory right, and this of itself is prejudicial error authorizing a reversal of the judgment.[14]

Chevrolet v. Dean, 132 N.Y.S.2d 202, 284 App.Div. 517, appeal denied 133 N.Y.S.2d 557, 284 App. Div. 860.
Ohio.—Bolser v. Smalley, 101 N.E. 2d 147, 89 Ohio App. 161.
Pa.—Bausewine v. Norristown Herald, 41 A.2d 736, 351 Pa. 634, certiorari denied 66 S.Ct. 29, 326 U.S. 724, 90 L.Ed. 429.
S.C.—Graham v. Columbia Ry., Gas & Electric Co., 86 S.E. 952, 102 S.C. 468.
Tex.—Texas & N. O. R. Co. v. Wilkerson, Civ.App., 260 S.W.2d 912—Southwestern Telegraph & Telephone Co. v. Clark, Civ.App., 192 S.W. 1077, error refused.
Va.—Watson v. Coles, 195 S.E. 506, 170 Va. 141.
W.Va.—Tawney v. Kirkhart, 44 S.E. 2d 634, 130 W.Va. 550.
4 C.J. p 952 note 76—35 C.J. p 363 note 80.

Case taken from jury

Error in impaneling the jury was harmless where the court took the case from the jury.
N.Y.—In re Hall's Will, 184 N.Y.S. 322, 193 App.Div. 362.

6. Ga.—Dye v. Hirsch, 90 S.E.2d 332, 92 Ga.App. 803.
Ill.—Gallay v. Mathis, 204 Ill.App. 356.
Kan.—Wisecarver v. Wells, 197 P. 219, 108 Kan. 842.
Pa.—Ott v. Duplan Silk Corporation, 114 A. 630, 271 Pa. 322.
4 C.J. p 952 note 77.

In equity

The fact that the jury was sworn generally was harmless where the suit was in equity and the verdict had no controlling force.
Colo.—Order of Railway Conductors v. Jones, 239 P. 882, 78 Colo. 80.

Verdict for claimant

Where the verdict was for claimant, it was held that plaintiff in fieri facias was not injured through a failure to administer to the jury the oath prescribed by statute.
Ga.—Hawes v. Smith, 85 S.E. 616, 16 Ga.App. 458.

7. Cal.—Mast v. Claxton, 290 P. 48, 107 C.A. 59.

8. Ga.—Hickox v. Griffin, 55 S.E.2d 351, 205 Ga. 859.
Tenn.—Nashville, C. & St. L. Ry. v. Williams, 46 S.W.2d 815, 164 Tenn. 144.
Sutherland v. Keene, 203 S.W.2d 917, 29 Tenn.App. 303.

Mandatory evidence

(1) Where a directed verdict was warranted as a matter of law, the incompetency of a juror because of relationship to the prevailing party is harmless error.
Ga.—Davis v. W. P. Tittle & Co., 133 S.E. 285, 35 Ga.App. 412.

(2) Also, where the evidence in an action to recover land demanded a verdict for plaintiff, the fact that one of the jurors was related to one of the parties within the prohibited degrees was harmless error.
Ga.—Frazier v. Swain, 95 S.E. 211, 147 Ga. 654.

9. Mo.—Zein v. Pickel Stone Co., App., 273 S.W. 165.

Nondisclosure honest mistake

Where a juror on voir dire failed to disclose his acquaintance with a witness, through honest mistake, but subsequently testified that he knew the witness slightly, and recognized him only after he came into court, but would not be prejudiced in any way thereby, the refusal of the court to discharge the jury merely because defendant's counsel stated that he would have peremptorily challenged such juror if his acquaintance had been disclosed as witness was plaintiff's chief witness as to damages, was not error, in the absence of any showing of substantial prejudice.
Mo.—Zein v. Pickel Stone Co., supra.

10. Miss.—Pan American Petroleum Corporation v. Pate, 138 So. 349, 162 Miss. 638.

11. Ill.—Bade v. Commissioners of Union Drainage Dist. No. 2, 134 N. E.2d 260, 8 Ill.2d 444.
Tex.—Baker v. Grace, Civ.App., 213 S.W. 299, error refused.

12. Kan.—Hanson v. Kendt, 146 P. 1190, 94 Kan. 310.
4 C.J. p 952 note 84.

13. Ariz.—Coca Cola Bottling Co. of Flagstaff v. Jones, 250 P.2d 586, 74 Ariz. 393.
Ark.—Aluminum Ore Co. v. George, 186 S.W.2d 656, 208 Ark. 419—Baldwin v. Hunnicut, 93 S.W.2d 131, 192 Ark. 441.
Ga.—Pickering v. Wagnon, 86 S.E.2d 621, 91 Ga.App. 610—Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793—Coleman v. Newsome, 176 S. E. 103, 49 Ga.App. 529.
Ky.—Connecticut Fire Ins. Co. v. Roberts, 11 S.W.2d 148, 226 Ky. 534—Louisville & N. R. Co. v. Messer, 176 S.W. 1200, 165 Ky. 506—Louisville & N. R. Co. v. King, 170 S.W. 938, 161 Ky. 324.
Mo.—Trower v. Missouri-Kansas-Texas R. Co., 184 S.W.2d 428, 353 Mo. 757—Bass v. Durand, 136 S.W. 2d 988, 345 Mo. 870.
Ohio.—Monetta v. Metropolitan Life Ins. Co., 115 N.E.2d 845, 94 Ohio App. 399.
Okl.—Williams v. Bumpers, 241 P. 2d 945, 206 Okl. 143.
35 C.J. p 363 notes 78, 79.

Failure to receive evidence in support of plaintiffs' challenge to array on the ground that defendant assisted in the selection of jurors was reversible error.
Vt.—Vermont Box Co. v. Hanks, 102 A. 91, 92 Vt. 92.

Insurance employees or stockholders

In a personal injury suit, a refusal to qualify the jury by purging the panel of employees, stockholders, and relatives of stockholders, of defendant's liability insurer, which was not a party to the suit, was reversible error, without an affirmative showing that some of the jurors were employees, stockholders, or related to stockholders, of insurer.
Ga.—Tatum v. Croswell, 174 S.E. 258, 49 Ga.App. 27.

14. Ga.—Shipman v. Johnson, 80 S. E.2d 717, 89 Ga.App. 620.
Ky.—Tennessee Products & Chemical Corp. v. Miller, 282 S.W.2d 52—Martin v. Stumbo Elkhorn Coal Co., 287 S.W. 539, 216 Ky. 147.
N.J.—Meszaros v. Gransamer, 128 A. 2d 449, 23 N.J. 179.

Excusing jurors. It is not error for the court to excuse a juror of its own motion, over objection, where it is not shown that the jury which was finally impaneled was not an impartial one.[15]

b. Examination of Jurors

Nonprejudicial error in the examination of a juror is not cause for reversal.

A case will not be reversed because error is committed in the examination of the jurors, where the complaining party is not harmed by such error.[16] Consequently, where the error is nonprejudicial, a case will not be reversed because of the allowance of improper questions on the examination of jurors,[17] because of the refusal to permit a juror to answer questions touching his competency,[18] or where the error is immaterial because appellant did not exhaust his peremptory challenges[19] or immaterial because each juror on his voir dire examination stated in response to the questions of the court that he was free from prejudice and would try the case fairly on the evidence and the law.[20]

Erroneous refusal to allow examination of jurors in civil cases under a statute allowing it does not require the reviewing court to grant a new trial, the statute conferring no substantive right, but amounting merely to a detail of procedure.[21] On the other hand, substantial prejudice resulting from error in the examination of jurors is ground for reversal.[21.5]

Reference to insurance or other indemnity. Whether misconduct in referring to insurance of defendant on voir dire examination of the jury is so prejudicial as to require reversal depends on the circumstances of each particular case.[22] The test to be applied is whether plaintiff's counsel was acting in good faith and without intention to secure advantage, by injecting the matter into the case;[23] where he is, there is no reversible error,[24] otherwise,

Tex.—Heflin v. Wilson, Civ.App., 297 S.W.2d 864, error granted.

Bystanders filling vacancies

Action of trial court in summoning five persons as bystanders to fill vacancies on jury panel which was seasonably objected to by defendant was error requiring reversal.

Ky.—Tennessee Products & Chemical Corp. v. Miller, 282 S.W.2d 52.

15. Iowa.—Johnson v. Waterloo, 119 N.W. 70, 140 Iowa 670.
Md.—Grossfeld v. Braverman, 101 A. 2d 824, 203 Md. 498.
Mo.—Hieber v. Thompson, App., 252 S.W.2d 116.
Tex.—Texas Emp. Ins. Ass'n v. Lane, Civ.App., 251 S.W.2d 181, error refused no reversible error—King v. King, Civ.App., 242 S.W.2d 925, reversed on other grounds, In re King's Estate, 244 S.W.2d 660, 150 Tex. 662.
4 C.J. p 953 note 99.

16. Ala.—Louisville & N. R. Co. v. Davis, 181 So. 695, 236 Ala. 191.
Ariz.—Alabam Freight Lines v. Thevenot, 204 P.2d 1050, 68 Ariz. 260.
Colo.—Rains v. Rains, 46 P.2d 740, 97 Colo. 19.
Conn.—Sherman v. William M. Ryan & Sons, 13 A.2d 134, 126 Conn. 574.
Ill.—Muenter v. Moline Plow Co., 193 Ill.App. 261.
Mo.—Ternetz v. St. Louis Lime & Cement Co., 252 S.W. 65.
Calhoun v. McMahan, App., 257 S.W.2d 205—Harris v. St. Louis-San Francisco Ry. Co., App., 60 S.W.2d 652.
Neb.—Brown v. Mulready, 300 N.W. 421, 140 Neb. 500.
Ohio.—Benjamin v. Lawson, 83 N.E. 2d 95, 83 Ohio App. 159.
Utah.—Burton v. Zions Co-op. Mercantile Institution, 249 P.2d 514, 122 Utah 360.
Wash.—Heitfeld v. Benevolent and Protective Order of Keglers, 220 P.2d 655, 36 Wash.2d 685, 18 A.L.R. 2d 983.

Examination by court

Where appellant suffered no apparent injury from the court's investigation of a charge of misconduct made against a juror by appellants' witness, the verdict sanctioned by the trial court will not be disturbed.

Cal.—Miller v. Southern California Telephone Co., 14 P.2d 519, 216 C. 391.

17. Ala.—Louisville & N. R. Co. v. Davis, 181 So. 695, 236 Ala. 191—Hunt v. Murdock, 156 So. 841, 229 Ala. 277.
Mich.—Ballance v. Dunnington, 224 N.W. 434, 246 Mich. 36.
Miss.—Curry & Turner Const. Co. v. Bryan, 185 So. 256, 184 Miss. 44.
N.D.—Loveland v. Nieters, 54 N.W.2d 533, 79 N.D. 1—Roles v. Roles, 225 N.W. 809, 58 N.D. 310.
Wash.—Wiseman v. Skagit County Dairymen's Ass'n, 19 P.2d 662, 172 Wash. 95.
4 C.J. p 952 note 78.

18. Cal.—Walker v. Greenberger, 147 P.2d 105, 63 C.A.2d 457—Kern County Finance Co. v. Iriart, 79 P.2d 763, 26 C.A.2d 483.
Ky.—Lowe v. Webster, 43 S.W. 217, 19 Ky.L. 1208.
Minn.—Mickelson v. Kernkamp, 42 N.W.2d 18, 230 Minn. 448.

Venireman later discharged

The improper exclusion of questions to a venireman who was later discharged for cause is harmless.

Mich.—William R. Roach & Co. v. Blair, 155 N.W. 696, 190 Mich. 11.

19. Ark.—St. Louis, etc., R. Co. v. Aiken, 140 S.W. 698, 100 Ark. 437.
4 C.J. p 952 note 80.

20. Mo.—Rolla Nat. Bank v. Romine, 136 S.W. 21, 154 Mo.App. 624.

21. Conn.—Zalewski v. Waterbury Mfg. Co., 92 A. 682, 89 Conn. 46.

21.5 Ark.—Baldwin v. Hunnicut, 93 S.W.2d 131, 192 Ark. 441.

Names of jurors

A refusal to permit visiting counsel who was not acquainted with the jurors to ask their names was reversible error.

Ark.—Baldwin v. Hunnicut, supra.

22. Cal.—Eldridge v. Clark & Henery Const. Co., 243 P. 43, 75 C.A. 516.
Mo.—Grimm v. Gargis, 303 S.W.2d 43.

A reference to insurance which leaves in doubt what kind of insurance or whose insurance is referred to is generally regarded as harmless.

N.D.—Smith v. Knutson, 47 N.W.2d 537, 78 N.D. 43.

23. Mich.—Holman v. Cole, 218 N. W. 795, 242 Mich. 402.

24. Ala.—Vredenburgh Saw Mill Co. v. Black, 37 So.2d 212, 251 Ala. 302.
Cal.—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Jones v. Bayley, 122 P.2d 293, 49 C.A.2d 647.
Ill.—Dossett v. Anderson, 41 N.E.2d 313, 314 Ill.App. 376.
Ind.—King v. Ransburg, 39 N.E.2d 882, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523.
Iowa.—Kaufman v. Borg, 242 N.W. 104, 214 Iowa 293.
Mo.—Becker v. Koester, App., 295 S. W. 818—Willis v. Buchanan County Quarries Co., 268 S.W. 102, 218 Mo.App. 698.
Ohio.—Cohen v. Smith, 159 N.E. 329, 26 Ohio App. 32.

there is.[25] So, refusal to permit interrogation of jurors on the subject of their affiliation or connection with a liability insurer is not ground for reversal when not prejudicial;[25.5] otherwise it may constitute reversible error.[25.10] The case will not ordinarily be reversed because of questions touching on the interest of jurors in insurance or the fact of their carrying insurance where the questions could not have prejudiced appellant in any way,[26] as where defendant's liability under the evidence is not a close question[27] and the damages awarded are not excessive,[28] where it did not appear that defendant carried any insurance,[29] where the questions merely gave to the jury cumulative or subsidiary information regarding a fact already established, and of which they had been fully advised,[30]

Wis.—Walker v. Pomush, 288 N.W. 859, 206 Wis. 45.

Interest in insurance company

(1) The refusal to have the jurors examined as to their being officers, stockholders, or employees of an insurance company which had become subrogated to plaintiff's rights was not prejudicial error, in the absence of any proof that any juror so disqualified was placed on the panel.

Ga.—Atlanta Cadillac Co. v. Manley, 116 S.E. 35, 29 Ga.App. 522.

(2) Whether the judgment will be reversed because plaintiff's counsel asked jurors concerning past and present connections with automobile liability and other insurance companies depends also on the good faith of the questions.

N.C.—Johnson v. Hoffler & Boney Transfer Co., 168 S.E. 495, 204 N.C. 420.

Local company

Where a surety company was local, and had a large number of stockholders and employees in and about the place where a personal injury action was tried, it was not reversible error to permit plaintiff's counsel to ask the jurors on their examination whether they were interested in the company, the question probably having been asked in good faith.

Mo.—Burrows v. Likes, 166 S.W. 643, 180 Mo.App. 447.

What constitutes "good faith"

"It is true that this court has held it proper to inquire as was here done of jurors on the voir dire when such inquiry is made 'in good faith.' Lozon v. Leamon Bakery Co., 202 N.W. 296, 186 Wis. 84. This seems to imply that, if counsel had any reason to believe or suspected that any juror had stock in or was insured in the insurance company named, it was proper to make the inquiry here made, but, if no such reason or suspicion existed, the inquiry was improper."

Wis.—Walker v. Pomush, 288 N.W. 859, 861, 206 Wis. 45.

25. Mich.—Holman v. Cole, 218 N. W. 795, 242 Mich. 402.

Utah.—Morrison v. Perry, 140 P.2d 772, 104 Utah 151.

W.Va.—Bradfield v. Board of Ed. of Pleasants County, 36 S.E.2d 512, 368 Ill. 588.

25.5 Ark.—Gill v. Whiteside-Hemby Drug Co., 122 S.W.2d 597, 197 Ark. 425.

Ill.—Sarelas v. Meyer, 46 N.E.2d 140, 317 Ill.App. 382—Patryn v. Zaccaria, 23 N.E.2d 378, 302 Ill.App. 84.

Tenn.—Lunn v. Ealy, 141 S.W.2d 893, 176 Tenn. 374.

Discretion of court

Okl.—Belford v. Allen, 80 P.2d 671, 183 Okl. 256.

25.10 Mich.—Campbell v. Osterland, 277 N.W. 875, 283 Mich. 175.

Ohio.—Salerno v. Oppman, 3 N.E.2d 801, 52 Ohio App. 416.

26. Ark.—A. S. Barboro & Co. v. James, 168 S.W.2d 202, 205 Ark. 53.

Cal.—Shriver v. Silva, 151 P.2d 528, 65 C.A.2d 753—Roselle v. Beach, 125 P.2d 77, 51 C.A.2d 579—North v. Vinton, 61 P.2d 950, 17 C.A.2d 214—Smith v. Sabin, App., 31 P.2d 230, 137 C.A. 567.

Colo.—Independence Coffee & Spice Co. v. Kalkman, 156 P. 135, 61 Colo. 98.

Ill.—Edwards v. Hill-Thomas Lime & Cement Co., 37 N.E.2d 801, 378 Ill. 180—Smithers v. Henriquez, 15 N.E.2d 499, 368 Ill. 588.

Simpson v. Marks, 111 N.E.2d 370, 349 Ill.App. 527—Handley v. Erb, 41 N.E.2d 222, 314 Ill.App. 207—Bellomy v. Bruce, 25 N.E.2d 428, 303 Ill.App. 349.

Ind.—Henrich v. Ellis, 48 N.E.2d 96, 113 Ind.App. 478.

Iowa.—Mortrude v. Martin, 172 N.W. 17, 185 Iowa 1319.

Mo.—McCaffery v. St. Louis Public Service Co., 252 S.W.2d 361, 363 Mo. 545.

White v. Teague, App., 177 S.W. 2d 517, affirmed 182 S.W.2d 288, 353 Mo. 247.

Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.

N.M.—Olguin v. Thygesen, 143 P.2d 585, 47 N.M. 377.

N.C.—Bell v. Denny Roll & Panel Co., 188 S.E. 621, 210 N.C. 813.

Tex.—El Paso Electric Co. v. Perkins, Civ.App., 292 S.W. 935.

Discretion of trial court

Form of interrogatory used on voir dire examination of prospective jurors to ascertain whether they are interested in any insurance company, the circumstances of its being used, and the manner of its presentation are largely in the trial court's discretion, which will not be disturbed in the absence of a clear showing of abuse.

N.M.—Olguin v. Thygesen, 143 P.2d 585, 47 N.M. 377.

No purpose of influencing jury

If a question asked jurors on the voir dire as to whether any of them were insured with a named company was not brought into case for purpose of influencing jury, such a question would not constitute reversible error.

Mich.—Marth v. Lambert, 287 N.W. 916, 290 Mich. 557.

Slightly suggestive inquiry

Questions as to whether the jurors would be influenced by the fact that either defendant carried liability insurance are not prejudicial to a codefendant objecting thereto where the inquiry was as slightly suggestive as it could be.

Wash.—Todd v. Alexander, 294 P. 545, 160 Wash. 3.

Verdict not affected

Unless it appears that the verdict was affected by consideration of the fact that defendant was protected by insurance, reversal will not be had because the jury was informed that the amount of a verdict against defendant would be paid by an insurance company.

Mich.—Holman v. Cole, 218 N.W. 795, 242 Mich. 402.

27. Cal.—Girard v. Irvine, 275 P. 840, 97 C.A. 372.

Colo.—Parkdale Fuel Co. v. Taylor, 144 P. 1138, 26 Colo.App. 304.

4 C.J. p 952 note 78 [b].

28. Cal.—Pate v. Pickwick Stages System, 14 P.2d 174, 125 C.A. 670—McVea v. Nickols, 286 P. 761, 105 C.A. 28—Daniel v. Asbill, 276 P. 149, 97 C.A. 731—Girard v. Irvine, 275 P. 840, 97 C.A. 377—Eldridge v. Clark & Henery Const. Co., 243 P. 43, 75 C.A. 516.

Ill.—Edwards v. Hill-Thomas Lime & Cement Co., 37 N.E.2d 801, 378 Ill. 180.

See Devine v. L. Fish Furniture Co., 199 Ill.App. 539.

Mich.—Marth v. Lambert, 287 N.W. 916, 290 Mich. 557.

4 C.J. p 952 note 78 (a).

29. Minn.—Eichhorn v. Lundin, 216 N.W. 537, 172 Minn. 591.

30. Mo.—Clayton v. Metalcrafts Corporation, App., 12 S.W.2d 938.

as where the court or counsel had previously made similar inquiry without objection[31] or where evidence that defendant carried insurance was subsequently admitted without objection.[32] Similarly the case will not be reversed when the improper question was withdrawn and the jury cautioned to eradicate any impression made by it;[33] where it is not shown that the question objected to conveyed to the jury the idea that defendant was insured,[34] as where it does not appear that the persons who actually served on the jury heard the questions;[35] or where the appellate court has power to render such judgment as the evidence may warrant.[36]

On the other hand, where prejudice to the other party results from such misconduct, reversal must follow,[37] as where the verdict rendered was larger than it would have otherwise been,[38] or where the case was a close one and the injection of an insurance company into it might easily have been a determining factor in the verdict,[39] or where counsel persisted after adverse rulings of the court.[40]

It has been held that a judgment will not be reversed because the court, in good faith, questioned a prospective juror on the voir dire, as to his interest in insurance or indemnity companies who might be interested in the verdict;[41] but it is prejudicial error for the court unduly to stress, in a closely contested case, its insurance feature in the voir dire examination of a prospective juror.[42]

False or misleading information by juror. Where false or misleading information of such character as to indicate probable bias is given by a juror on voir dire a reversal may result,[42.5] but if informa-

31. Ind.—Henrich v. Ellis, 48 N.E. 2d 96, 113 Ind.App. 478.
Mont.—Robinson v. F. W. Woolworth Co., 261 P. 253, 80 Mont. 431.
Vt.—MacDonald v. Orton, 134 A. 599, 99 Vt. 425.

32. Cal.—Murphy v. Shaffer, 208 P. 1003, 58 C.A. 453—De Liere v. Goldberg, Bowen & Co., 159 P. 197, 30 C.A. 612.
Idaho.—Faris v. Burroughs Adding Mach. Co., 282 P. 72, 48 Idaho 310.

33. Mich.—Walz v. Peninsular Fire Ins. Co. of America, 191 N.W. 230, 221 Mich. 326, reheard 194 N.W. 124, 223 Mich. 417.
Mo.—Northern v. Chesapeake & Gulf Fisheries Co., 8 S.W.2d 982, 320 Mo. 1011.
Stegemann v. Heil Packing Co., App., 2 S.W.2d 169.

Securing statement from jurors
In an action for injuries when struck by defendant's automobile where a question to jurors by plaintiffs' attorneys was erroneous as informing the jurors that defendant was insured against liability, such error was cured by the action of the court in calling attention to its prejudicial character, and in securing a statement from the jurors that they could and would disregard the information.
Cal.—Baldarachi v. Leach, 186 P. 1060, 44 C.A. 603.

34. Ariz.—Selaster v. Simmons, 7 P. 2d 258, 39 Ariz. 432.
Cal.—Shriver v. Silva, 151 P.2d 528, 65 C.A.2d 753.

Acquaintance with certain person
In an automobile collision case, counsel's asking the jurors if they knew a certain person is harmless where it was not shown that the jurors knew he was an insurance agent.
Ariz.—Selaster v. Simmons, 7 P.2d 258, 39 Ariz. 432.

35. Tex.—Carter-Mullaly Transfer Co. v. Bustos, Civ.App., 187 S.W. 396, error refused.

36. La.—Driefus v. Levy, App., 140 So. 259.

37. Ark.—Williams v. Cantwell, 170 S.W. 250, 114 Ark. 542.
Cal.—Curtis v. McAuliffe, 288 P. 675, 106 C.A. 1.
Ill.—Kavanaugh v. Parret, 40 N.E. 2d 500, 379 Ill. 273—Smithers v. Henriquez, 15 N.E.2d 499, 368 Ill. 588.
Handley v. Erb, 41 N.E.2d 222, 314 Ill.App. 207—Bunch v. Abbott, 256 Ill.App. 33.
Ind.—Helton v. Mann, 40 N.E.2d 395, 111 Ind.App. 487.
Kan.—Witt v. Roper, 96 P.2d 643, 150 Kan. 722.
Ky.—Helton v. Prater's Adm'r, 114 S. W.2d 1120, 272 Ky. 574.
Miss.—Shearron v. Shearron, 68 So. 2d 71, 219 Miss. 27, suggestion of error overruled in part and sustained in part on other grounds 69 So.2d 801, 70 So.2d 922, 219 Miss. 27.
Mont.—Wilson v. Thurston Co., 267 P. 801, 82 Mont. 492.
N.C.—Starr v. Southern Cotton Oil Co., 81 S.E. 776, 165 N.C. 587.
N.J.—Hansson v. Catalytic Const. Co., 127 A.2d 431, 43 N.J.Super. 23.
Or.—Leishman v. Taylor, 263 P.2d 605, 199 Or. 546.
Utah.—Morrison v. Perry, 140 P.2d 772, 104 Utah 151—Saltas v. Affleck, 105 P.2d 176, 99 Utah 381.
4 C.J. p 952 note 78 [c].

Error not cured by instructions
In a suit for injuries caused by defendant's automobile, misconduct of plaintiff's counsel in offering, on the voir dire examination of prospective jurors, and in their presence, to prove that defendant carried an indemnity insurance, and that his attorneys were paid by insurer, was not cured by instructions, that defendant was not liable unless at the time of the accident the car was used in his business.
Ind.—Martin v. Lilly, 121 N.E. 443, 188 Ind. 139.

Showing that statement was made by juror in presence of prospective jurors that a "man that had his neck broke was trying contractor and insurance company for $20,000" required reversal, where it appeared that injury to plaintiff consisted in fracture of vertebrae in neck and during trial he was wearing a high collar which prevented his moving head and causing fresh injury, and recovery sought was twenty thousand dollars.
Miss.—Odom v. Walker, 11 So.2d 452, 193 Miss. 862.

38. Mich.—Grubaugh v. Simon J. Murphy Co., 177 N.W. 217, 209 Mich. 551.

39. Cal.—Swift v. Winkler, App., 307 P.2d 666—Arnold v. California Portland Cement Co., 183 P. 171, 41 C.A. 420.
Ky.—Helton v. Prater's Adm'r, 114 S.W.2d 1120, 272 Ky. 574.
Mich.—Palazzolo v. Sackett, 222 N.W. 83, 245 Mich. 97.
N.Y.—Gebo v. Findlay, 11 N.Y.S.2d 950, 257 App.Div. 66.

40. Mich.—Palazzolo v. Sackett, 222 N.W. 83, 245 Mich. 97.

41. Ala.—Louis Pizitz Dry Goods Co. v. Cusimano, 91 So. 779, 206 Ala. 689.
Mich.—Oliver v. Ashworth, 214 N.W. 85, 239 Mich. 53.

42. Cal.—Robbins v. Roques, 16 P.2d 695, 128 C.A. 1.

42.5 Ind.—Brinkman v. Hovermale, 13 N.E.2d 885, 106 Ind.App. 70.
Ky.—Cincinnati, N. & C. Ry. Co. v. Peluso, 293 S.W.2d 556.
Harmless error in conduct and deliberations of jury generally see infra § 1780.

tion innocently withheld or given, although false, is so insignificant or trifling as to indicate only a remote or speculative influence on the juror, there is no prejudice or ground for reversal.[42.10]

§ 1708. Challenges

a. In general
b. Peremptory challenges

a. In General

Error in a ruling on a challenge for cause is not ground for reversal where prejudice is not shown.

Error in refusing to sustain a challenge for cause is not a ground for reversal where it is clear that no prejudice resulted,[42.50] and, ordinarily, error in this respect is not prejudicial where the peremptory challenges were not exhausted;[43] where the objectionable juror was removed by peremptory challenge;[44] where a nonsuit was properly granted;[44.5] where the verdict was directed;[45] where the verdict showed that no prejudice resulted;[46] where, for other reasons, the juror did not sit in the case;[47] or where an impartial jury was obtained.[48]

While there are decisions which hold that error in refusing to sustain a challenge for cause will require a reversal where all the peremptory challenges were exhausted,[49] it is generally held that the

Relations with counsel

(1) Where juror, on voir dire examination, denied that he had ever been represented by plaintiff's counsel in a legal proceeding although he had been so represented, and defendants' counsel was thereby deprived of right to exercise a peremptory challenge to juror, misconduct of juror required a reversal.
Ky.—Eads v. Stockdale, 220 S.W.2d 971, 310 Ky. 446.

(2) So, where attorney for certain prevailing parties had represented a juror's son in action against the son which was dismissed, and was plaintiff's attorney in an action by the son in which juror was appointed guardian ad litem, and juror failed to disclose such facts on voir dire, although he stated that he knew attorney as an attorney, judgment was required to be reversed for new trial in interest of substantial justice, even though the attorney was free from fault and did not know, and had not met the juror prior to trial.
N.Y.—McCann v. Kile, 28 N.Y.S.2d 40, 262 App.Div. 852.

42.10 Ky.—Cincinnati, N. & C. Ry. Co. v. Peluso, 293 S.W.2d 556—Johnson v. Mutual Ben. Health & Acc. Ass'n, 229 S.W.2d 758, 312 Ky. 776—Whitehead v. Stith, 131 S.W. 2d 455, 279 Ky. 556.
Mich.—Anderson v. Lavelle, 280 N. W. 729, 285 Mich. 194.
Mo.—Harrison v. St. Louis Public Service Co., App., 251 S.W.2d 348.
Ohio.—Rice v. Cleveland Ry. Co., App., 56 N.E.2d 524—Elkenberry v. McFall, App., 36 N.E.2d 27.
Tex.—Frontier Theatre, Inc. v. Whisenant, Civ.App., 291 S.W.2d 395.

Where the voir dire was not reported, and reviewing court could not ascertain what questions were asked of juror or what answers he made thereto, the fact that the father of the foreman of the jury had served on the jury at a prior trial of the case did not require reversal.
Ky.—Louisville & N. R. Co. v. Gregory, 158 S.W.2d 1, 289 Ky. 211.

42.50 Cal.—Leibman v. Curtis, 291 P.2d 542, 138 C.A.2d 222, rehearing denied 292 P.2d 270, 138 C.A.2d 222.
Mo.—Webb v. Missouri-Kansas-Texas R. Co., 116 S.W.2d 27, 342 Mo. 394.
Neb.—In re Frazier's Estate, 267 N. W. 181, 131 Neb. 61.
Okl.—Cox v. Sarkeys, 304 P.2d 979.
Tex.—Jaques v. Ellis, Civ.App., 219 S.W.2d 104.
Wis.—Good v. Farmers Mut. Ins. Co., 62 N.W.2d 425, 265 Wis. 596.

In reviewing denial of motion to grant a mistrial because of presence of prejudiced jurors on jury, function of reviewing court is to determine whether discretionary denial of motion so prejudicially affected substantial rights of defendant as to require a nullification of judgment.
N.J.—Hoblin v. Wyckoff General Supply Co., 126 A.2d 365, 42 N.J.Super. 364.

43. Ala.—Sorter v. Austen, 129 So. 51, 221 Ala. 481.
Ark.—Sovereign Camp, W. O. W., v. Cole, 90 S.W.2d 769, 192 Ark. 268—Missouri Pac. R. Co. v. Riley, 49 S.W.2d 397, 185 Ark. 699.
Ga.—Robinson v. Murray, 32 S.E.2d 496, 198 Ga. 690.
Iowa.—Tharp v. Rees, 277 N.W. 758, 224 Iowa 962.
Ky.—Carrithers v. Jean's Ex'r, 61 S. W.2d 323, 249 Ky. 695.
La.—State v. West, 15 So. 418, 46 La.Ann. 1009.
Mich.—Mellinger v. Prudential Ins. Co., 34 N.W.2d 450, 322 Mich. 596—Church v. Stoldt, 184 N.W. 469, 215 Mich. 469—McGrail v. Kalamazoo, 53 N.W. 955, 94 Mich. 52—Grand Rapids Booming Co. v. Jarvis, 30 Mich. 308.
Nev.—Quinn v. Quinn, 13 P.2d 221, 54 Nev. 262.
N.Y.—People v. Decker, 51 N.E. 1018, 157 N.Y. 186.
D'Allessandro v. Tonucci, 139 N. Y.S.2d 736, 285 App.Div. 1111, appeal denied 145 N.Y.S.2d 446, 286 App.Div. 1142.
Tex.—Horn v. Price, Civ.App., 200 S. W. 590.
Utah.—Van Wagoner v. Union Pac. R. Co., 186 P.2d 293, 112 Utah 189, rehearing denied 189 P.2d 701, 112 Utah 218.
Wash.—Rich v. Campbell, 2 P.2d 886, 164 Wash. 393.
4 C.J. p 952 note 85.
Cal.—Wolfsen v. Hathaway, 198 P. 2d 1, 32 C.2d 632.

44. Ark.—Roark Transp. v. West, 68 S.W.2d 1000, 188 Ark. 941.
Iowa.—Tobin, Tobin & Tobin v. Budd, 251 N.W. 720, 217 Iowa 904—Ingebretsen v. Minneapolis & St. L. R. Co., 155 N.W. 327, 176 Iowa 74.
Kan.—Bailey v. McLeod, 56 P.2d 460, 143 Kan. 638.
Mo.—Parlon v. Wells, 17 S.W.2d 528, 322 Mo. 1001.
Knudsen v. Kansas City Public Service Co., App., 141 S.W.2d 252.
Nev.—Los Angeles & S. L. R. Co. v. Umbaugh, 123 P.2d 224, 61 Nev. 214.
Okl.—Cox v. Sarkeys, 304 P.2d 979—Rodgers v. Oklahoma Wheat Pool Terminal Corp., 96 P.2d 1040, 186 Okl. 171.
Or.—Twitchell v. Thompson, 153 P. 45, 78 Or. 285.

44.5 Idaho.—Willis v. Western Hospital Ass'n, 182 P.2d 950, 67 Idaho 435.

45. Wyo.—Richardson v. Midwest Refining Co., 270 P. 154, 39 Wyo. 58.

46. Ark.—Rumping v. Arkansas Nat. Bank of Hot Springs, 180 S.W. 749, 121 Ark. 202.
Mo.—Knudsen v. Kansas City Public Service Co., App., 141 S.W.2d 252.
Mont.—Watson v. City of Bozeman, 156 P.2d 178, 117 Mont. 5.
4 C.J. p 952 note 86.

47. Tex.—Sellers v. Galveston, H. & S. A. Ry. Co., Civ.App., 208 S.W. 397, error refused.

48. Nev.—Los Angeles & S. L. R. Co. v. Umbaugh, 123 P.2d 224, 61 Nev. 214—Quinn v. Quinn, 13 P.2d 221, 54 Nev. 262.

49. Colo.—Denver City Tramway

erroneous overruling of a challenge for cause even though the peremptory challenges are thereafter exhausted, will not warrant a reversal of the judgment unless it is further shown on appeal that an objectionable juror was forced upon the challenging party and sat on the jury after such party had exhausted his peremptory challenges.[50] It has further been held that notwithstanding the exhaustion of peremptory challenges the overruling of a challenge to a juror will not constitute ground for reversal where by statute a three-fourths verdict could have been rendered and the verdict was unanimous.[51]

On the other hand, where the circumstances indicate that the error in overruling the challenge for cause was prejudicial to the complaining party, the judgment should be reversed.[52]

Overruling a challenge to the array or panel will not be held reversible error where no positive injury resulted in consequence thereof.[53]

Rejection of juror. It has been frequently held that the erroneous rejection of a juror challenged for cause is harmless error where no substantial injury results from his rejection,[54] especially where his competency is doubtful,[55] or where it was done by consent of the parties.[56] According to some authority, however, the rejection of a competent juror may be deemed ground of error, although the jurors who actually try the case are competent.[57]

Co. v. Kennedy, 117 P. 167, 50 Colo. 418—Grand Lodge A. O. U. W. v. Taylor, 99 P. 570, 44 Colo. 373.
Denver City Tramway Co. v. Carson, 123 P. 680, 21 Colo.App. 604.
Miss.—Hubbard v. Rutledge, 57 Miss. 7.
Wash.—McMahon v. Carlisle-Pennell Lumber Co., 236 P. 797, 135 Wash. 27.

50. Cal.—Leibman v. Curtis, 291 P. 2d 542, 138 C.A.2d 222, rehearing denied 292 P.2d 270, 138 C.A.2d 222—Scott v. McPheeters, 125 P.2d 868, 52 C.A.2d 61—Scragg v. Sallee, 140 P. 706, 24 C.A. 133.
Ga.—Robinson v. Murray, 32 S.E.2d 496, 198 Ga. 690.
La.—State v. Carries, 3 So. 56, 39 La.Ann. 931.
N.M.—Colbert v. Journal Pub. Co., 142 P. 146, 19 N.M. 156.
N.C.—Oliphant v. Atlantic Coast Line R. Co., 88 S.E. 425, 171 N.C. 303.
Okl.—Carney v. Chapman, 158 P. 1125, 60 Okl. 49.
Tex.—Russell v. Bailey, Civ.App., 290 S.W. 1108—Kansas City, M. & O. Ry. Co. of Texas v. Weaver, Civ. App., 191 S.W. 591, error refused—Lockney State Bank v. Bolin, Civ. App., 184 S.W. 553.
4 C.J. p 952 note 88.

51. Okl.—Smith v. Maher, 202 P. 321, 84 Okl. 49, 23 A.L.R. 270—City of Guthrie v. Snyder, 143 P. 8, 43 Okl. 334.
4 C.J. p 953 note 89.
Ala.—Southern Ry. Co. v. Milan, 199 So. 711, 240 Ala. 333.
Cal.—Leibman v. Curtis, 291 P.2d 542, 138 C.A.2d 222, rehearing denied 292 P.2d 270, 138 C.A.2d 222.
Ga.—McRee v. Atlanta Paper Co., 65 S.E.2d 832, 84 Ga.App. 181.
Mo.—Moore v. Middlewest Freightways, 266 S.W.2d 578.
N.C.—Peanut Growers' Exch. v. Bobbitt, 124 S.E. 625, 188 N.C. 335—Oliphant v. Atlantic Coast Line R. Co., 88 S.E. 425, 171 N.C. 303.
Ohio.—Lingafelter v. Moore, 117 N. E. 16, 95 Ohio St. 384.
Tex.—Preston v. Ohio Oil Co., Civ. App., 121 S.W.2d 1039, error refused.
4 C.J. p 953 note 90.

Other peremptory challenges needed
Where it stands unquestioned that counsel would have exercised other peremptory challenges, if they had not been exhausted, an erroneous denial of a challenge for cause, requiring counsel to exercise one of his peremptory challenges, is ground for reversal.
Cal.—Lombardi v. California Street Cable R. Co., 57 P. 66, 124 C. 311.

53. Ill.—Mitchell v. Louisville & N. R. Co., 35 N.E.2d 81, 310 Ill.App. 563, reversed on other grounds 42 N.E.2d 86, 379 Ill. 522.
Mo.—Mannon v. Frick, 295 S.W.2d 158.
Okl.—Ramsey Oil Co. v. Burbage, 46 P.2d 538, 172 Okl. 573.
S.D.—State v. Weaver, 159 N.W. 884, 38 S.D. 44.
Tex.—Murphey v. Blankenship, Civ. App., 120 S.W.2d 309.
4 C.J. p 953 note 97.

54. Ariz.—City of Prescott v. Sumid, 247 P. 122, 30 Ariz. 347.
Cal.—McKernan v. Los Angeles Gas, etc., Co., 116 P. 677, 16 C.A. 280.
Hawaii.—Territory v. Wright, 37 Hawaii 40.
Idaho.—Hoffer v. City of Lewiston, 85 P.2d 238, 59 Idaho 538.
Ind.—Highshew v. Kushto, App., 133 N.E.2d 76—Buddenberg v. Morgan, 38 N.E.2d 287, 110 Ind.App. 609.
Md.—Bluthenthal & Bickart v. May Advertising Co., 96 A. 434, 127 Md. 277.
Mich.—Church v. Stoldt, 184 N.W. 469, 215 Mich. 469.
Miss.—City of Jackson v. McFadden, 177 So. 755, 181 Miss. 1.
Neb.—Omaha, etc., R. Co. v. Cook, 55 N.W. 943, 37 Neb. 435.
Ohio.—Miller v. Loy, 140 N.E.2d 38, 101 Ohio App. 405.
Okl.—Elk City v. Rice, 286 P.2d 275—Webb v. Shelton, 158 P. 1128, 59 Okl. 224.
Pa.—Seeherman v. Wilkes-Barre Co., 99 A. 174, 255 Pa. 11.
S.C.—Fender v. New York Life Ins. Co., 155 S.E. 577, 158 S.C. 331.
W.Va.—Burcham v. City of Mullens, 83 S.E.2d 505, 139 W.Va. 399—Ritz v. Kingdon, 79 S.E.2d 123, 139 W. Va. 189.
4 C.J. p 953 note 91.

In the absence of a showing that some biased or incompetent juror was thrust on party, the allegedly erroneous rejection of a competent juror is not prejudicial.
Ark.—Lewis v. Phillips, 266 S.W.2d 68, 223 Ark. 380.

55. Hawaii.—Territory v. Wright, 37 Hawaii 40.
Neb.—Omaha, etc., R. Co. v. Cook, 55 N.W. 943, 37 Neb. 435.

56. Pa.—Lillie v. American Car, etc., Co., 58 A. 272, 209 Pa. 161.

57. N.Y.—Torelli v. Eastman Kodak Co., 23 N.Y.S.2d 895, 260 App.Div. 553.
De Puy v. Quinn, 16 N.Y.S. 708, 61 Hun 237.

Class of persons
The erroneous exclusion by a judge, on the trial, from a particular panel, of a class of persons regularly drawn, such as the citizens of a certain town, constitutes reversible error, without a showing that the complaining party was deprived of an impartial jury.
Ky.—City of Pikeville v. Riddle, 230 S.W. 37, 191 Ky. 231.
N.Y.—Hildreth v. Troy, 4 N.E. 559, 101 N.Y. 234, 54 Am.R. 686.

Relationship to witness
In an action against a railroad company for their former employee's insulting language to plaintiff, where such employee was not financially or directly interested in the case, the excusing of five jurors related to him within what would be the prohibited degree were he a party was error requiring new trial, where verdict was not demanded by evidence.

b. Peremptory Challenges

Harmless error in a ruling on a peremptory challenge is not ground for reversal of the case, but denial of a right of peremptory challenge may be regarded as prejudicial per se.

A case will not be reversed because error is committed by the court in a ruling on a peremptory challenge where no harm results to the objecting party from such ruling.[58] Accordingly the fact that a party is allowed more[59] or less[60] than the legal number of peremptory challenges, or that a peremptory challenge is improperly overruled,[61] is not cause for reversal of the case in the absence of prejudice to the complaining party. Sustaining a challenge after both parties had expressed themselves satisfied with the juror on its subsequently being learned, before the completion of the jury, that, although the juror had been discharged by, he expected to go back to work for, defendant is not reversible error,[62] nor will a case be reversed because one of the parties is allowed to exercise a permptory challenge after once having passed the jury.[63]

On the other hand, however, if the complaining party is prejudiced by an erroneous ruling on peremptory challenges, the error is not harmless. Accordingly, a prejudicial error in depriving a party of his legal number of peremptory challenges,[64] or allowing to one of the parties additional peremptory challenges,[65] is ground for reversal. Moreover, it has been held that the denial of a right of peremptory challenge is prejudicial per se and harmful, and a party is not required to make an affirmative showing that the denial actually influenced the result, but whether it had the capacity for doing so.[65.10]

8. Conduct of Trial or Hearing in General

§ 1709. General Statement

Unless it is prejudicial to the rights of the parties, a judgment will not be reversed for error in the conduct of the trial or hearing and this rule has been applied to a wide variety of matters.

A judgment will not be reversed for errors oc-

Ga.—Atlantic Coast Line R. Co. v. Mead, 95 S.E. 476, 22 Ga.App. 70.

58. Conn.—Farrell v. L. G. De Felice & Son, 42 A.2d 697, 132 Conn. 81.
Ga.—Dye v. Hirsch, 90 S.E.2d 332, 92 Ga.App. 803—Felker v. Johnson, 186 S.E. 144, 53 Ga.App. 390.
Idaho.—Hurt v. Monumental Mercury Mining Co., 206 P. 184, 35 Idaho 295.
Ill.—See Smiley v. Barnes, 196 Ill. App. 536.
Mass.—Matthews v. New York Cent. & H. R. R. Co., 120 N.E. 185, 231 Mass. 10.
Tex.—Burnett v. Rutledge, Civ.App., 284 S.W.2d 944, error refused no reversible error—Ralston v. Toomey, 246 S.W.2d 308, error refused no reversible error.

59. Cal.—National Sanitary Rag Co. v. Lawrence, 91 P.2d 120, 33 C.A.2d 198.
Ill.—See Smiley v. Barnes, 196 Ill. App. 536.
Mich.—Reynolds v. Knowles, 193 N. W. 900, 223 Mich. 70.
Mo.—Kidd v. Chicago, R. I. & P. Ry. Co., 274 S.W. 1079, 310 Mo. 1, certiorari denied Chicago, R. I. & P. Ry. Co. v. Kidd, 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424.
Mont.—Ashley v. Safeway Stores, 47 P.2d 53, 100 Mont. 312.
Tenn.—Clinchfield R. Co. v. Harvey, 64 S.W.2d 513, 16 Tenn.App. 324.
Tex.—Gussett v. Nueces County, Com.App., 235 S.W. 857.
Ralston v. Toomey, Civ.App., 246 S.W.2d 308, error refused no reversible error—Standard v. Texas Pacific Coal & Oil Co., Civ.App., 47 S.W.2d 443—City of San Antonio v. Reed, Civ.App., 192 S.W. 549, error refused.
4 C.J. p 953 note 94—35 C.J. p 419 note 50.

Allowance to both parties

Allowing both parties the same number of peremptory challenges in excess of those to which they are entitled cannot be complained of by either.
Ill.—Freiberg v. South Side El. R. Co., 77 N.E. 920, 221 Ill. 508.

60. Miss.—Meridian City Lines v. Baker, 39 So.2d 541, 206 Miss. 58, 8 A.L.R.2d 854—Mississippi Cent. R. Co. v. Aultman, 160 So. 737, 173 Miss. 622, appeal dismissed 56 S. Ct. 108, 296 U.S. 537, 80 L.Ed. 382.
N.J.—Roberts v. Saunders, 194 A. 1, 118 N.J.Law 548.
4 C.J. p 953 note 96.

Two defendants

Error, if any, in a ruling allowing to two defendants four peremptory challenges jointly, is not prejudicial where the defendants fail to exhaust the challenges allowed them.
Miss.—Mississippi Cent. R. Co. v. Aultman, 160 So. 737, 173 Miss. 622, appeal dismissed 56 S.Ct. 108, 296 U.S. 537, 80 L.Ed. 382.

61. Tex.—Southland - Greyhound Lines v. Cotten, Civ.App., 55 S.W. 2d 1066.

Case taken from jury

The refusal to allow a peremptory challenge to the jury, if error, was harmless, where the court took the case from the jury and instructed a verdict.
Tex.—Brown v. City of Amarillo, Civ. App., 180 S.W. 654.

62. Ala.—Western Steel Car, etc., Co. v. Cunningham, 48 So. 109, 158 Ala. 369.

63. Cal.—Switzler v. Atchison, T. & S. F. Ry. Co., 285 P. 918, 104 C.A. 138.

64. Fla.—Paris v. Barthfield, 33 So. 2d 713, 160 Fla. 87.
Ga.—Dye v. Hirsch, 90 S.E.2d 332, 92 Ga.App. 803.
Mich.—Edgerton v. Lynch, 233 N.W. 377, 252 Mich. 451.
W.Va.—Tawney v. Kirkhart, 44 S.E. 2d 634, 130 W.Va. 550.

65. Tex.—Glazier v. Roberts, Civ. App., 108 S.W.2d 829—Smith v. El Paso & N. E. R. Co., Civ.App., 67 S.W.2d 362.

Required to accept former employees

Allowing defendants more peremptory challenges than they were entitled to constitutes reversible error, where plaintiff exhausted his challenges and was required to accept on the jury former employees of defendant.
Tex.—Smith v. El Paso & N. E. R. Co., Civ.App., 67 S.W.2d 362.

65.5 N.J.—Wright v. Bernstein, 129 A.2d 19, 23 N.J. 284.

65.10 N.J.—Wright v. Bernstein, supra.

Fact that juror acted fairly in weighing the evidence in the case is immaterial.
N.J.—Wright v. Bernstein, supra.

curring on the trial where it is apparent that substantial justice has been done between the parties.[66]

66. Ala.—Richards v. William Beach Hardware Co., 7 So.2d 492, 242 Ala. 535—Guarenire v. Bessemer Lumber Co., 106 So. 49, 214 Ala. 8—Porter v. Louisville & N. R. Co., 79 So. 605, 202 Ala. 139.

Ariz.—United Verde Copper Co. v. Kovacovich, 22 P.2d 1085, 42 Ariz. 159.

Cal.—In re Friedman's Estate, 172 P. 140, 178 C. 27.

Eley v. Curzon, 263 P.2d 86, 121 C.A.2d 280—Rosenbloom v. Western Auto Transports, 261 P.2d 21, 120 C.A.2d 335—Brooks v. Brooks, 147 P.2d 417, 63 C.A.2d 671—Lady v. Worthingham, 135 P.2d 205, 57 C.A.2d 557, motion denied 143 P.2d 1000, 61 C.A.2d 780—Plott v. York, 91 P.2d 924, 33 C.A.2d 460—Nicholls Grain & Milling Co. v. Jersey Farm Dairy Co., 24 P.2d 925, 134 C.A. 126.

Colo.—Uinta Oil Refining Co. v. Ledford, 244 P.2d 881, 125 Colo. 429—Duffy v. Gross, 214 P.2d 498, 121 Colo. 198—Alsup v. Alsup, 230 P. 796, 76 Colo. 260—Wagman v. Knorr, 195 P. 1034, 69 Colo. 468.

Conn.—Carney v. De Wees, 70 A.2d 142, 136 Conn. 256.

Fla.—Markell v. Hilpert, 192 So. 392, 140 Fla. 842.

Ga.—Hortman v. Vissage, 19 S.E.2d 523, 193 Ga. 596.

Jackson v. Moultrie Production Credit Ass'n, 47 S.E.2d 127, 76 Ga. App. 768.

Idaho.—Cardoza v. Cardoza, 282 P.2d 475, 76 Idaho 347—In re Brown's Estate, 15 P.2d 604, 52 Idaho 286, motion denied Fite v. French, 30 P.2d 360, 54 Idaho 104—Fritcher v. Kelley, 201 P. 1037, 34 Idaho 471.

Ill.—Lipman v. Goebel, 192 N.E. 203, 357 Ill. 315, certiorari denied 55 S. Ct. 508, 294 U.S. 712, 79 L.Ed. 1246.

Bessette v. Loevy, 138 N.E.2d 56, 11 Ill.App.2d 482—Alexander v. Stern, 252 Ill.App. 286—Home Bank & Trust Co. v. Szostowski, 247 Ill. App. 207—Sinaiko v. Illinois Smelting & Refining Co., 215 Ill.App. 108. See McFarland v. Jackson, 189 Ill. App. 453.

Ind.—Lake Erie & W. R. Co. v. Huffman, 97 N.E. 434, 177 Ind. 126, Ann. Cas.1914C 1272.

Pinkus v. Pittsburgh, C., C. & St. L. Ry. Co., 114 N.E. 36, 65 Ind.App. 38.

Iowa.—Merritt v. Leuck, 2 N.W.2d 49, 231 Iowa 777—Sheimo v. Nelson, 198 N.W. 649, 198 Iowa 490—A. G. Graben Motor Co. v. Brown Garage Co., 195 N.W. 752, 197 Iowa 453, 31 A.L.R. 832—McMillan v. Metcalfe, 174 N.W. 481.

Kan.—Unruh v. Kansas Turnpike Authority, 313 P.2d 286, 181 Kan. 521—Laughlin Motors v. Universal C. I. T. Credit Corp., 251 P.2d 857, 173 Kan. 600—Wood v. McKeever, 41 P.2d 989, 141 Kan. 323.

Ky.—Whitehead v. Stith, 131 S.W.2d 455, 279 Ky. 556—Glens Falls Ins. Co. v. Hall, 79 S.W.2d 383, 259 Ky. 25—Baker's Trustee v. People's Bank of Mt. Vernon, 288 S.W. 1030, 217 Ky. 56.

La.—Hall v. St. Paul Mercury Indem. Co., App., 86 So.2d 751—Finkelstein v. Naihaus, App., 151 So. 686—Seawell v. Louisiana Coca-Cola Bottling Co., 133 So. 176, 15 La.App. 704.

Md.—County Com'rs of Prince George's County v. Timmons, 133 A. 322, 150 Md. 511.

Mass.—Gouzoulas v. F. W. Stock & Sons, 112 N.E. 221, 223 Mass. 537.

Mich.—Lepley v. Bryant, 57 N.W.2d 507, 336 Mich. 224—Rich v. Daily Creamery Co., 6 N.W.2d 539, 303 Mich. 344.

Minn.—Barnes v. Northwest Airlines, 47 N.W.2d 180, 233 Minn. 410—Hack v. Johnson, 275 N.W. 381, 201 Minn. 9.

Mo.—Pettis v. St. Louis Public Service Co., 240 S.W.2d 909—Kansas City v. Halvorson, 177 S.W.2d 495, 352 Mo. 280—In re Thomasson's Estate, 148 S.W.2d 757, 347 Mo. 748.

Howard v. Fred Schmitt Realty & Investment Co., App., 7 S.W.2d 448—Merkel v. Railway Mail Ass'n, 254 S.W. 368, 212 Mo.App. 632.

Mont.—Meinecke v. Intermountain Transp. Co., 55 P.2d 680, 101 Mont. 315.

Neb.—Egenberger v. National Alfalfa Dehydrating & Milling Co., 83 N.W.2d 523, 164 Neb. 704—Fischer v. Adams, 38 N.W.2d 337, 151 Neb. 512.

N.J.—Borough of Hawthorne v. Jowett, 1 A.2d 431, 121 N.J.Law 38.

N.Y.—Jones v. S. T. Palay Textile Corp., 110 N.Y.S.2d 170, 279 App. Div. 337—Nardone v. Miller, 33 N.Y.S.2d 271, 263 App.Div. 994, appeal denied 34 N.Y.S.2d 412, 263 App.Div. 1009.

Ohio.—Fabish v. Smith, App., 140 N.E.2d 822—Neff v. Kester, App., 107 N.E.2d 215—Pierce v. Aid Inv. & Discount Co., 98 N.E.2d 316, 88 Ohio App. 193—Maggart v. Deaton, 87 N.E.2d 352, 84 Ohio App. 327—Kight v. Boren, App., 67 N.E.2d 48.

Cohn v. Cincinnati Traction Co., 26 Ohio Cir.Ct.,N.S., 267.

Okl.—Ferguson-Beese, Inc. v. Young, 240 P.2d 780, 205 Okl. 579—Champlin Refining Co. v. Brooks, 42 P.2d 811, 172 Okl. 124—Sharp v. Pawhuska Ice Co., 217 P. 214, 90 Okl. 211.

Or.—Dalk v. Lachmund, 70 P.2d 558, 157 Or. 152.

Pa.—Hutchison v. Pennsylvania R. Co., 105 A.2d 356, 378 Pa. 24.

S.C.—McCrae v. McCoy, 52 S.E.2d 403, 214 S.C. 343.

Tenn.—Hime v. Sullivan, 221 S.W. 2d 893, 188 Tenn. 605.

Eslick v. Wodicka, 215 S.W.2d 12, 31 Tenn.App. 333—McCuiston v. Haggard, 109 S.W.2d 413, 21 Tenn. App. 277.

Tex.—Jones v. Hortenstine, Civ.App., 291 S.W.2d 761—John F. Buckner & Sons v. Allen, Civ.App., 289 S.W.2d 387—White v. Lilley, Civ. App., 286 S.W.2d 296—Caufield v. El Paso Times, Inc., Civ.App., 280 S.W.2d 766—Rial v. Curtis, Civ. App., 274 S.W.2d 117, error refused no reversible error—McFarlin v. State ex rel. Barnard, Civ.App., 272 S.W.2d 630, error refused no reversible error—Railway Exp. Agency v. Spain, Civ.App., 249 S.W.2d 644, appeal dismissed 255 S.W.2d 509, 152 Tex. 198—Hudspeth v. v. Hudspeth, Civ.App., 206 S.W.2d 863—Standard Supply & Hardware Co. v. Christian-Carpenter Drilling Co., Civ.App., 183 S.W.2d 657, error refused—Airline Motor Coaches v. Fields, Civ.App., 159 S.W.2d 187, reversed on other grounds 166 S.W.2d 917, 140 Tex. 221—Ellsworth v. Ellsworth, Civ.App., 151 S.W.2d 628, error refused—Pierson v. Galveston County, Civ.App., 131 S.W. 2d 27—Isbill v. Stovall, Civ.App., 92 S.W.2d 1067—Daniel v. Sharpe, Civ.App., 69 S.W.2d 508—Morris v. Standard Accident Ins. Co., Civ. App., 35 S.W.2d 207—Husbands v. Fore, Civ.App., 27 S.W.2d 610—Grant v. Pendley, Civ.App., 22 S.W. 2d 467, reversed on other grounds, Com.App., 39 S.W.2d 596, 78 A.L.R. 638—Green v. Enen, Civ.App., 270 S.W. 929—Hines v. Kelly, Civ.App., 222 S.W. 648.

Va.—Norfolk & P. B. L. R. Co. v. Jones, 32 S.E.2d 720, 183 Va. 536—Yeary v. Holbrook, 198 S.E. 441, 171 Va. 266—Norfolk Southern R. Co. v. Fentress, 102 S.E. 588, 127 Va. 87.

Wash.—In re Deming's Guardianship, 73 P.2d 764, 192 Wash. 190—Lohse v. Spokane & Eastern Trust Co., 15 P.2d 271, 170 Wash. 46—Samples v. Kergan, 187 P. 383, 109 Wash. 503.

Wis.—Leslie v. Knudson, 238 N.W. 397, 205 Wis. 517—Hanes v. Hermsen, 236 N.W. 646, 205 Wis. 16—Corti v. Cooney, 211 N.W. 274, 191 Wis. 464—Zeidler v. Goelzer, 195 N.W. 849, 182 Wis. 57—Nelson v. Pauli, 186 N.W. 217, 176 Wis. 1—Columbus Institute of Milwaukee v. Conohan, 159 N.W. 720, 164 Wis. 219.

4 C.J. p 950 note 69—40 C.J. p 517 note 40 [a] (6)—42 C.J. p 1289 note 41—64 C.J. p 70 note 8.

Harmless errors. Where appellant has not been prejudiced, the court will not reverse the judgment because of the failure of the clerk to make out a trial docket;[67] the appearance of a prosecuting attorney as a counsel for plaintiff in a civil case;[68] the arrest in the court room, on a criminal charge, of a party to a civil action;[69] the trial of the case by a jury instead of by the court,[70] or by the court without a jury;[71] the consolidation or joint trial, or the refusal to permit a consolidation or joint trial,

Error may be harmful or harmless
Misconduct of the jury, improper argument of counsel, and other proceedings constituting error can be material and immaterial, or harmful or prejudicial and harmless.
Tex.—Williams v. Rodocker, Civ. App., 84 S.W.2d 556.

67. Okl.—Hawkins v. Central Foundry Co., 50 P.2d 685, 174 Okl. 397. 4 C.J. p 950 note 69 [m].

68. Okl.—Bank of Buffalo v. Venn, 171 P. 450, 68 Okl. 43.
S.D.—Knutsen v. Dilger, 253 N.W. 459, 62 S.D. 474.

69. Ky.—Wheeler's Adm'r v. Sullivan's Adm'r, 86 S.W.2d 1023, 260 Ky. 814.

Jury not informed
In an action for the death of a child struck by an automobile, where defendant was arrested for manslaughter growing out of the automobile accident, the fact that the arrest took place in the court room, after the evidence was concluded, does not require reversal of plaintiff's verdict, where there was no demonstration and it was not shown that the jury learned what had taken place, although some of the jurors were close enough to have seen and heard the proceedings.
Ky.—Wheeler's Adm'r v. Sullivan's Adm'r, supra.

70. Cal.—Walters v. Bank of America Nat. Trust & Savings Ass'n, 52 P.2d 232, reheard 59 P.2d 983, 106 A.L.R. 55, and 69 P.2d 839, 9 C.A. 2d 46—Burbank v. McIntyre, 27 P. 2d 400, 135 C.A. 482.
Ky.—Foley's Adm'r v. Robertson's Guardian, 286 S.W. 851, 215 Ky. 647.
Mo.—Hastings v. Swindle, 226 S.W. 71, 206 Mo.App. 74.
Okl.—Lee v. Terrell, 40 P.2d 10, 170 Okl. 310.
S.C.—Anderson v. Ætna Casualty & Surety Co., 178 S.E. 819, 175 S.C. 254.
Utah.—New York Life Ins. Co. v. Grow, 135 P.2d 120, 103 Utah 285.

Jury trial of equity case or equitable issues
(1) If the court finally disposes of the case as if it is in equity, the use of a jury therein is not ground for reversal.
U.S.—Federal Reserve Bank of San Francisco v. Idaho Grimm Alfalfa Seed Growers' Ass'n, C.C.A.Idaho, 8 F.2d 922, certiorari denied 46 S. Ct. 347, 270 U.S. 646, 70 L.Ed. 778.
S.C.—Anderson v. Aetna Casualty & Surety Co., 178 S.E. 819, 175 S.C. 254.

(2) "Where an equity case is tried to a jury without objection by any party thereto, and the verdict returned by the jury is adopted and approved by the trial judge as his own findings of fact and conclusions of law, and judgment is rendered by the court thereon, and said findings, conclusions, and judgments are such as the court, sitting without a jury, should and would have found, made and rendered in the case and are correct in the light of the entire record, no error may be predicated thereon."
Okl.—Lee v. Terrell, 40 P.2d 10, 14, 15, 170 Okl. 310.

(3) Fact that an equitable issue has been submitted to, and decided by, a jury will not cause a reversal where the court has reached at law the conclusion which should have been reached in equity.
U.S.—Atlantic Greyhound Lines of West Virginia v. Metz, C.C.A.Va., 70 F.2d 166, certiorari denied 55 S.Ct. 73, 293 U.S. 562, 79 L.Ed. 662.

Ordering issue out of chancery by chancellor, without knowledge of evidential facts, was error, but harmless, where jury's verdict on issue was set aside.
Va.—Fitchette v. Cape Charles Bank, 133 S.E. 492, 146 Va. 715.

Preliminary ruling that certain issues were triable by a jury was harmless, where no issue was in fact submitted to the jury.
S.C.—National City Bank v. Huey & Martin Drug Co., 102 S.E. 516, 113 S.C. 333.

Advisory jury
(1) Erroneous use by trial court of advisory jury in trial of action which was triable of right by jury and in which both parties had waived right to jury and requested trial without jury was not prejudicial, in view of fact that trial judge made his own independent findings of fact and conclusions of law.
Ky.—Brock v. Farmer, 291 S.W.2d 531.

(2) Where parties agreed to try case without jury, plaintiff was not prejudiced by granting of defendants' motion to try case to jury made on morning of trial, where continuance was not asked and jury was merely advisory.
Ky.—Smith v. Brown, 251 S.W.2d 881.

(3) Defendant in suit for declaratory judgment could not complain of use of jury where court treated jury as merely advisory, and findings and judgment did not depend on verdict.
Colo.—Equitable Life Assur. Soc. of U. S. v. Hemenover, 67 P.2d 80, 100 Colo. 231, 110 A.L.R. 1270.

71. Ark.—Shelton v. Landers, 270 S. W. 522, 167 Ark. 638.
Cal.—Pacific Western Oil Co. v. Bern Oil Co., 87 P.2d 1045, 13 C.2d 60—Wilson v. Brown, 55 P.2d 485, 5 C.2d 425.
Phelps v. Pacific Gas & Elec. Co., 246 P.2d 997, 112 C.A.2d 558.
Kan.—Kansas Wheat Growers Ass'n v. Goering, 256 P. 119, 123 Kan. 508—Central Trust Co. v. Mahin, 233 P. 1022, 118 Kan. 49.
Ky.—Southern Holding & Securities Corporation v. Commonwealth, 53 S.W.2d 974, 245 Ky. 602, certiorari denied Southern Holding & Securities Corporation v. Commonwealth of Kentucky, 33 S.Ct. 788, 289 U.S. 757, 77 L.Ed. 1501—Rice v. Kelly, 10 S.W.2d 1112, 226 Ky. 347.
Mich.—Kaiser v. North, 289 N.W. 325, 292 Mich. 49—Zoski v. Gaines, 260 N.W. 99, 271 Mich. 1.
Minn.—Coughlin v. City of St. Paul, 18 N.W.2d 87, 219 Minn. 372.
Neb.—Neighbors & Danielson v. West Nebraska Methodist Hospital, 77 N. W.2d 667, 162 Neb. 816—Garbark v. Newman, 51 N.W.2d 315, 155 Neb. 188—Hoerler v. Prey, 252 N. W. 327, 125 Neb. 822.
N.D.—Baird v. Nelson, 235 N.W. 351, 60 N.D. 503.
Okl.—Morrison v. Perry, 30 P.2d 670, 167 Okl. 459—Oxley v. Southland Life Ins. Co., 15 P.2d 43, 159 Okl. 287—Lackey v. Wagner, 213 P. 742, 89 Okl. 48.
Pa.—Davidson v. Mylish, 182 A. 868, 320 Pa. 275—Schaaf v. Politowski, 119 A. 748, 276 Pa. 31.
Tenn.—Edwards v. State ex rel. Kimbrough, 250 S.W.2d 19, 194 Tenn. 64.
Tex.—Erback v. Donald, Civ.App., 170 S.W.2d 289, error refused—Buttrill v. Occidental Life Ins. Co., Civ. App., 45 S.W.2d 636—Tucker v. Lingo, Civ.App., 248 S.W. 1097.
Utah.—Thompson v. Bown Live Stock Co., 276 P. 651, 74 Utah 1.
Va.—Bath Hardwood Lumber Co. v. Back Creek Mountain Corporation, 125 S.E. 213, 140 Va. 280.
Wash.—McClure v. Calispell Duck Club, 288 P. 217, 157 Wash. 136—

of separate actions or issues;[72] the temporary absence from the court room, during the trial, of the clerk,[73] or a party,[74] or the temporary absence from

Solomon Valley Dredging Co. v. Berg, 264 P. 421, 146 Wash. 628.

Denial of jury trial held not prejudicial error

(1) Where there is no issue of fact to be submitted to a jury and nothing to be decided by a jury.

Kan.—Western Fire Ins. Co. v. Phelan, 295 P.2d 675, 179 Kan. 327.

Tex.—Dallas Joint Stock Land Bank of Dallas v. State ex rel. Cobb, Civ. App., 133 S.W.2d 827, affirmed 137 S.W.2d 993, 135 Tex. 25.

Va.—Quick v. Southern Churchman Co., 199 S.E. 489, 171 Va. 403.

Wash.—Great Northern Life Ins. Co. v. Johnson, 60 P.2d 109, 187 Wash. 347.

(2) Where no rights are lost thereby, and there is no claim that the trial to the court was not a fair and impartial one.

Mich.—Zoski v. Gaines, 260 N.W. 99, 271 Mich. 1.

4 C.J. p 950 note 69 [d].

(3) Where judgment was supported by conclusive evidence.

Tex.—San Angelo Country Club v. State, Civ.App., 210 S.W.2d 855.

(4) Where plaintiff was entitled to recover as a matter of law.

Neb.—In re Kopac's Estate, 299 N.W. 489, 140 Neb. 346.

N.D.—Baird v. Nelson, 235 N.W. 351, 60 N.D. 503.

(5) Where under the evidence defendant appellant had no legal defense.

N.Y.—A. D. Realty Corp. v. Doell, 292 N.Y.S. 775, 249 App.Div. 854, appeal dismissed 12 N.E.2d 165, 276 N.Y. 477.

Okl.—Board of Trustees of Firemen's Relief and Pension Fund of City of Marietta v. Brooks, 67 P.2d 4, 179 Okl. 600—Wilson v. Federal Tax Co., 54 P.2d 363, 176 Okl. 90—Oxley v. Southland Life Ins. Co., 15 P.2d 43, 159 Okl. 287.

(6) Where there was no substantial conflict in testimony as to the decisive facts.

Va.—Bath Hardwood Lumber Co. v. Back Creek Mountain Corporation, 125 S.E. 213, 140 Va. 280.

(7) Where in an action on a note and to foreclose a mortgage, in which the only defense set up in answer was the want of consideration, defendant admitted receiving consideration in full, and did not controvert that payments were in default, or amount due.

Kan.—Central Trust Co. v. Mahin, 238 P. 1022, 118 Kan. 49.

(8) Where it would have been the duty of the court to have directed a verdict or given binding instructions.

Iowa.—Brown v. Schmitz, 22 N.W.2d 340, 237 Iowa 418.

Kan.—Kansas Wheat Growers Ass'n v. Goering, 256 P. 119, 123 Kan. 508.

Ky.—Olney Trust & Banking Co. v. Vickers, 218 S.W.2d 684, 309 Ky. 657—Slusher v. Ward, 144 S.W.2d 226, 284 Ky. 204—Petrey v. Adkins, 255 S.W. 87, 200 Ky. 463.

Neb.—Burke v. Munger, 292 N.W. 53, 138 Neb. 74—Hoerler v. Prey, 252 N.W. 327, 125 Neb. 822.

Pa.—Schaaf v. Politowski, 119 A. 748, 276 Pa. 31.

Tex.—Kegans v. Williams, Civ.App., 214 S.W.2d 799, error refused no reversible error—Erback v. Donald, Civ.App., 170 S.W.2d 289, error refused—Buttrill v. Occidental Life Ins. Co., Civ.App., 45 S.W.2d 636.

Utah.—Thompson v. Bown Live Stock Co., 276 P. 651, 74 Utah 1.

Wash.—McClure v. Calispell Duck Club, 288 P. 217, 157 Wash. 136—Solomon Valley Dredging Co. v. Berg, 264 P. 421, 146 Wash. 628.

(9) Where request for jury trial was denied because of noncompliance with rule requiring application and deposit of money in advance, and there was no showing that granting of request for jury would not have resulted in an interference with orderly handling of docket, would not have delayed trial, or would not have operated to injury of opposing party.

Tex.—Lebman v. Sullivan, Civ.App., 198 S.W.2d 280, error refused no reversible error.

(10) However, it is prejudicial and reversible error to deny a jury trial where the right thereto is not waived and the jury might properly have reached a different result.

Ark.—Bassett v. Mutual Ben. Health & Accident Ass'n, 12 S.W.2d 893, 178 Ark. 906.

Ohio.—Norris v. Brotherhood of Railway Clerks' Nat. Bank of Cincinnati, 183 N.E. 92, 43 Ohio App. 396.

Okl.—Estes v. Oklahoma City, 52 P. 2d 873, 175 Okl. 278.

Wash.—Reed v. Reeves, 294 P. 995, 160 Wash. 282.

72. Ark.—Quattlebaum v. Plant, 181 S.W.2d 13, 207 Ark. 87—Mueller v. Breckenridge, 181 S.W. 145, 121 Ark. 633.

Cal.—Peters v. Binnard, 25 P.2d 834, 219 C. 141.

Jud Whitehead Heater Co. v. Obler, 245 P.2d 608, 111 C.A.2d 861—Chamberlain v. Wakefield, 213 P. 2d 62, 95 C.A.2d 280—McArthur v. Shaffer, 139 P.2d 959, 59 C.A.2d 724—Johnson v. Western Air Express Corp., 114 P.2d 688, 45 C.A.2d 614—Wright v. Salsberger & Sons, 254 P. 671, 81 C.A. 690.

Colo.—Willy v. Atchison, T. & S. F. Ry. Co., 172 P.2d 958, 115 Colo. 306.

Ga.—Hutcheson Mfg. Co. v. Chandler, 116 S.E. 849, 29 Ga.App. 726.

Ill.—Lewis v. West Side Trust & Savings Bank, 32 N.E.2d 907, 376 Ill. 23.

Ind.—Englehart's Estate v. Larimer, App., 1 N.E.2d 677—Locomotive Engineers' Mut. Life & Accident Ins. Ass'n v. Higgs, 135 N.E. 353, 79 Ind.App. 427.

Iowa.—Groen v. Ferris, 176 N.W. 213, 189 Iowa 21—Baadte v. Walgenbach, 171 N.W. 146, 185 Iowa 773.

Ky.—Williams' Adm'r v. Vonderhaar's Ex'x, 89 S.W.2d 321, 262 Ky. 68—Herrell v. Davenport's Ex'x, 82 S.W.2d 506, 259 Ky. 514—Hirsch v. Warren, 68 S.W.2d 767, 253 Ky. 62—Harkey v. Haddox, 50 S.W.2d 955, 244 Ky. 380.

N.C.—In re Atkinson's Will, 35 S.E. 2d 638, 225 N.C. 526.

N.D.—Coan v. Plaza Equity Elevator Co., 249 N.W. 104, 63 N.D. 426.

Okl.—Smith v. Stock Yards Loan Co., 96 P.2d 55, 186 Okl. 152.

Tex.—Airline Motor Coaches v. Bennett, Civ.App., 184 S.W.2d 524, reversed on other grounds 187 S.W. 2d 982, 144 Tex. 36—Pierson v. Galveston County, Civ.App., 131 S. W.2d 27—Regester v. Lang, Civ. App., 33 S.W.2d 230, reversed on other grounds, Com.App., 49 S.W. 2d 715—Saulsbury v. Clay, Civ. App., 25 S.W.2d 200.

W.Va.—State v. R. M. Hudson Paving & Construction Co., 122 S.E. 173, 95 W.Va. 610.

Wis.—Walter v. Wyk, 274 N.W. 152, 225 Wis. 310—Peck v. Hartford Accident & Indemnity Co., 241 N. W. 372, 207 Wis. 344—Schmidt v. Riess, 203 N.W. 362, 186 Wis. 574.

Refusal of separate trial

In a suit to cancel a lease, refusing the sublessee a separate trial because he was not connected with the alleged fraud of the lessees was not prejudicial where the court made no finding on the issue of fraud.

Colo.—Lanham v. Jones, 268 P. 521, 84 Colo. 129.

73. Miss.—National Box Co. v. Bradley, 154 So. 724, 171 Miss. 15, suggestion of error overruled 157 So. 91, 171 Miss. 15.

74. Cal.—Pedrow v. Federoff, 247 P. 212, 77 C.A. 164.

Defendant ill

In personal injury action fact that defendant who had come to court while not feeling well, became ill and was taken out of courtroom, was not, of itself, and in absence of some special circumstance or reason, prejudicial to plaintiff.

Vt.—Leonard v. Henderson, 99 A.2d 698, 118 Vt. 29.

the courtroom of his attorney or counsel;[74.5] refusing request for separation and sequestration of witnesses;[74.10] or the exclusion [74.15] or failure to exclude[74.20] witnesses from the courtroom.

Likewise, where appellant has not been prejudiced, the court will not reverse the judgment because of the misconduct of a party,[75] interpreter,[76] a spectator or the audience;[77] confusion resulting from the inability of an interpreter to speak English well;[78] the presence, in the capacity of bailiff, of a person who was on the jury on a former trial of the case;[79] refusal of a party, while on the witness stand, to answer questions put to him;[80] punishing a witness for contempt for refusing to answer per-

Exclusion by court

In an action against a taxicab driver and its owner for injuries to a passenger, requiring the latter, for indecorous conduct, to leave the court room during the examination of witnesses of the accident by defendants' attorney was not prejudicial to defendants, where such owner was not present when the accident occurred and later testified as to statements made by the injured plaintiff after the accident which were inconsistent with her testimony as to how it happened, and the judge, trying the case without a jury, weighed the testimony carefully and declared that, but for the other witnesses' testimony, he would be disposed to order judgment against plaintiffs.

Cal.—Pedrow v. Federoff, 247 P. 212, 77 C.A. 164.

Imprisoned defendant

In an action for death due to shooting by defendant, overruling of defendant's motion that an order be entered for the production of defendant in the trial court, defendant being confined in the state penitentiary at the time, was held not reversible error, where there had been no attempt to procure the deposition of defendant.

Iowa.—Collings v. Gibson, 220 N.W. 338.

74.5 Wash.—Ball v. Kauffman, 83 P. 2d 746, 196 Wash. 517.

74.10 Mo.—Crews v. Kansas City Public Service Co., 111 S.W.2d 54, 341 Mo. 1090.

74.15 Ga.—Ginn v. City of Atlanta, 35 S.E.2d 777, 73 Ga.App. 162.

Mont.—Smith v. Armstrong, 198 P. 2d 795, 121 Mont. 377.

74.20 Fla.—Florida Motor Lines Corp. v. Barry, 27 So.2d 753, 158 Fla. 123.

Tex.—Medrano v. City of El Paso, Civ.App., 231 S.W.2d 514.

Permitting alleged owner to remain

In suit to try title to realty wherein the rule was invoked as to witnesses, action of trial court in permitting a witness who was alleged to be owner of land at time of trial to remain in courtroom and participate in the trial and testify, over objection of defendant, was not an abuse of discretion, so as to require reversal, especially in absence of a statement of facts in the reviewing court.

Tex.—Vaughn v. Gulf Ins. Co., Civ. App., 151 S.W.2d 227.

75. Ariz.—Alabam Freight Lines v. Thevenot, 204 P.2d 1050, 68 Ariz. 260.

Ill.—Cooper v. Safeway Lines, 26 N. E.2d 632, 304 Ill.App. 302—Bellomy v. Bruce, 25 N.E.2d 428, 303 Ill. App. 349.

Ky.—Whitehead v. Stith, 131 S.W.2d 455, 279 Ky. 556.

Mich.—Bryant v. Brown, 271 N.W. 566, 278 Mich. 686.

Mo.—Gardner v. Turk, 123 S.W.2d 158, 343 Mo. 899.

Tex.—City of Winters v. Bethune, Civ.App., 111 S.W.2d 797, error dismissed.

Wis.—Johnson v. Sipe, 56 N.W.2d 852, 263 Wis. 191.

Holding child in lap

The act of a widow, suing under the federal Employers' Liability Act for the death of her husband, in holding in her lap, while testifying, her infant child is not ground for reversal, unless an excessive verdict was induced thereby.

U.S.—Louisville & N. R. Co. v. Stewart's Adm'x, 174 S.W. 744, 163 Ky. 823, affirmed Louisville & N. R. Co. v. Stewart, 36 S.Ct. 586, 241 U.S. 261, 60 L.Ed. 989.

Use of the word "robbed" by plaintiff, relative to defendant's conduct, is not ground for complaint where jury did not appear to have been influenced thereby.

Or.—Rogers v. Blumauer, 255 P. 324, 122 Or. 352.

Weeping of party or witness

(1) Mere fact that a party weeps in the presence of the jury does not justify reversal of a judgment or verdict in his favor.

Ill.—Williams v. Yellow Cab Co., 136 N.E.2d 582, 11 Ill.App.2d 112—Starczynski v. Miltenberg, 55 N.E. 2d 299, 323 Ill.App. 283—Menolascino v. Superior Felt & Bedding Co., 40 N.E.2d 813, 313 Ill.App. 557.

Ky.—Walden v. Jones, 158 S.W.2d 609, 289 Ky. 395, 141 A.L.R. 105.

N.J.—Dolid v. Leatherkraft Corp., 120 A.2d 617, 39 N.J.Super. 194—Schuttler v. Reinhardt, 86 A.2d 438, 17 N.J.Super. 480.

Tex.—Younger Bros. v. Marino, Civ. App., 198 S.W.2d 109, error refused no reversible error.

(2) In an action for death, where counsel placed the widow of deceased, who was a party to action, on the stand, fact that she wept in view of the jury was not prejudicial misconduct, where court instructed jury not to be influenced by sympathy in their verdict.

Cal.—Asbury v. Goldberg, 47 P.2d 311, 8 C.A.2d 70.

(3) So, in an action for her son's death, improper examination of the mother concerning his injuries and her exhibition of emotion were held not to warrant reversal, where the verdict of the jury was for a sum less than the statutory amount.

Kan.—Peters v. Cavanah, 295 P. 693, 132 Kan. 244.

Going under assumed name

Failure of a witness at the trial of an automobile accident case to be summoned by, or to give, her correct name, was held no ground for reversal, when it did not appear that plaintiff would be prejudiced and plaintiff did not allege that the witness was unworthy of belief or that he was surprised by her testimony.

La.—Thomas v. Thomas, App., 155 So. 67.

Destruction of evidence

In an action for injuries, defendant's alleged destruction of X-ray pictures was held not prejudicial where plaintiff used other X-ray pictures, which were taken before and after the time when the lost pictures were taken, and the doctor who took the lost plates was permitted to testify as to what they showed.

Okl.—Chapman v. Red Ball Bus & Baggage Co., 49 P.2d 685, 173 Okl. 599.

76. Vt.—Collette v. Edgerton, 175 A. 227, 107 Vt. 6.

77. Ill.—Hemphill v. Miller, 84 N.E. 2d 660, 336 Ill.App. 601.

N.H.—Moulton v. Gaidmore, Poultry Co., 120 A.2d 135.

Tex.—Cole v. Waite, 246 S.W.2d 849, 151 Tex. 175.

Vt.—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91.

78. Neb.—Caniglia v. Vacanti, 184 N.W. 813, 106 Neb. 793.

79. Colo.—Kimmins v. City of Montrose, 151 P. 434, 59 Colo. 578, Ann. Cas.1917A 407.

80. Tex.—Gulf, C. & S. F. Ry. Co. v. Rodriquez, Civ.App., 185 S.W. 311.

tinent questions;[80.5] unresponsive answers or uncalled for remarks by a witness;[81] or permitting jurors to ask improper questions not objected to.[82]

So too, the judgment will not be reversed because of harmless error in permitting or refusing to permit an experiment or demonstration;[82.5] permitting or refusing to permit plaintiff to exhibit his injuries to the jury;[83] permitting or refusing to permit a view;[84] permitting an improper view of the prem-

80.5 Ga.—Elliott v. Georgia Power Co., 197 S.E. 914, 58 Ga.App. 151.

81. Cal.—Rannard v. Harris, 8 P.2d 864, 121 C.A. 281.
Ind.—Helton v. Mann, 40 N.E.2d 395, 111 Ind.App. 487.
Ky.—Kentucky Midland Coal Co. v. Vincent, 166 S.W. 800, 159 Ky. 100.
Mich.—Secrist v. City of Detroit, 300 N.W. 137, 299 Mich. 393.
Miss.—Ramsey v. Natchez Coca-Cola Bottling Co., 51 So.2d 779.
Mo.—Pogue v. Rosegrant, 98 S.W.2d 528.
Funke v. St. Louis-San Francisco Ry. Co., 35 S.W.2d 977, 225 Mo.App. 347.
Or.—Webb v. Hoover-Guernsey Dairy Co., 4 P.2d 631, 138 Or. 24.
Tex.—Cole v. Waite, 246 S.W.2d 849, 151 Tex. 175—Russell v. Martin, 49 S.W.2d 699, 121 Tex. 488.
Continental Ins. Co. v. Scott, Civ. App., 254 S.W. 499—Texas & P. Ry. Co. v. Shaw, Civ.App., 218 S.W. 814, dismissed for want of jurisdiction.
Vt.—Enos v. Owens Slate Co., 160 A. 185, 104 Vt. 329—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Underwood v. Cray, 108 A. 513, 94 Vt. 58, petition dismissed 111 A. 509, 94 Vt. 402—Sanders v. Burnham, 100 A. 905, 91 Vt. 480.
Va.—Yeary v. Holbrook, 198 S.E. 441, 171 Va. 266.
Wash.—King v. Cann, 52 P.2d 900, 184 Wash. 554—Jones v. McQuesten, 20 P.2d 838, 172 Wash. 480.

Incomplete answer

The failure of witnesses, testifying as to the market value of mortgaged realty in an action for damages by the taking of an elevator from a building, to state that such value was at the place where the realty was located, was held not ground for reversal.
Tex.—Edmondson v. Carroll, Civ. App., 65 S.W.2d 1107.

On cross-examination

(1) In an action for personal injuries, the fact that a witness for one of the defendants, under cross-examination, made an irresponsive answer, indicating that defendant was insured, is not ground for reversing a verdict for plaintiff.
Mass.—Kennedy v. Armstrong, 111 N.E. 886, 223 Mass. 354.
Tex.—Carter-Mullaly Transfer Co. v. Bustos, Civ.App., 187 S.W. 396, error refused.

(2) The fact that a witness, examined as to his conviction of a crime, gives details, not called for by the question is not reversible error.
Miss.—Bufkin v. Grisham, 128 So. 563, 157 Miss. 746.

(3) In an action for breach of contract for personal services, the refusal by the court to order a mistrial because of plaintiff's witness' voluntary statement on cross-examination by defendant that an answer was filed by defendant in the hope of obtaining a settlement was not prejudicial error, where the court struck out the voluntary statement, and neither plaintiff nor his counsel were instrumental in causing it, and defendant's question to which the statement was a response was not specific.
Mo.—Scharff v. Standard Tank Car Co., 264 S.W. 56, 214 Mo.App. 658.

(4) Where a witness has been examined, cross-examined, and excused from the stand, and thereafter is recalled for further cross-examination in reply to a question relating to a summary of his former testimony as to what he desired the court and jury to understand, and the witness gave an answer in part incompetent, irrelevant, and prejudicial, which the court on motion promptly withdrew from the consideration of the jury, and cautioned them to disregard, and expressly reprimanded the witness in the presence of the jury, and later, in its general charge, admonished the jury to exclude such answer, it was not erroneous to overrule a motion of the cross-examiner for a mistrial, withdrawing a juror and continuing the case.
Ohio.—Logan v. Cleveland Ry. Co., 140 N.E. 652, 107 Ohio St. 211.

82. Ky.—Louisville Bridge & Terminal Co. v. Brown, 277 S.W. 320, 211 Ky. 176.

82.5 Cal.—Grupe v. Glick, 160 P.2d 832, 26 C.2d 680.
Fla.—City of Miami v. Williams, 40 So.2d 205.
Iowa.—Turner v. Hansen, 75 N.W.2d 341, 247 Iowa 669.
Minn.—Timmerman v. March, 271 N. W. 697, 199 Minn. 376.
Ohio.—Fabish v. Smith, App., 140 N. E.2d 822.

Permitting use of skeleton to illustrate testimony with respect to injuries sustained by plaintiff held not prejudicial.
Minn.—Timmerman v. March, 271 N. W. 697, 199 Minn. 376.
Va.—Worcester v. McClurkin, 5 S.E. 2d 509, 174 Va. 221.

View of articles introduced for purpose of demonstration was not prejudicial where demonstration was refused.
N.M.—Johnson v. Mercantile Ins. Co. of America, 133 P.2d 708, 47 N.M. 47.

83. Ariz.—Alabam Freight Lines v. Thevenot, 204 P.2d 1050, 68 Ariz. 260.
Idaho.—Roy v. Oregon Short Line R. Co., 42 P.2d 476, 55 Idaho 404, certiorari denied Oregon v. Short Line R. Co., 56 S.Ct. 89, 296 U.S. 579, 80 L.Ed. 409.
Mo.—Lang v. St. Louis-San Francisco Ry. Co., 273 S.W.2d 270, 364 Mo. 1147—Browne v. Creek, 209 S.W. 2d 900, 357 Mo. 576—Smith v. Thompson, 142 S.W.2d 70, 346 Mo. 502—Cluck v. Abe, 40 S.W.2d 558, 328 Mo. 81—Lamport v. General Accident, Fire & Life Assur. Corp., 197 S.W. 95, 272 Mo. 19.
Ohio.—Bluebird Baking Co. v. McCarthy, App., 36 N.E.2d 801.
Okl.—Magnolia Petroleum Co. v. Angelly, 306 P.2d 309.
S.C.—Edwards v. Union Buffalo Mills Co., 159 S.E. 811, 162 S.C. 17.
S.D.—Cass v. Pacific Mut. Life Ins. Co. of California, 253 N.W. 626, 62 S.D. 509.
Wyo.—McCoy v. Clegg, 257 P. 484, 36 Wyo. 473.

Act of physician

In a motorist's action for injuries sustained in a collision, the fact that a physician testifying for the motorist showed the injury to the motorist's arm to the jury, after counsel for some of defendants had offered to stipulate that medical evidence was not being questioned, was not prejudicial.
Cal.—Mounts v. Tzugares, 49 P.2d 883, 9 C.A.2d 327.

84. Cal.—Ross v. Atchison, T. & S. F. Ry. Co., 296 P.2d 372, 141 C.A. 2d 178—Rau v. Redwood City Woman's Club, 245 P.2d 12, 111 C.A.2d 546—Houghton v. Pickwick Stages, Northern Division, 262 P. 770, 87 C.A. 669.
Fla.—Hammond v. Carlyon, 96 So.2d 219—Panama City v. Eytchison, 184 So. 490, 134 Fla. 833.
Ky.—Browning's Adm'x v. Louisville & N. R. Co., 171 S.W.2d 448.
Minn.—Ball v. Twin City Motor Bus Co., 30 N.W.2d 523, 225 Minn. 274, 9 A.L.R.2d 933.
Miss.—Brinkley v. Eaton, 39 So.2d 491, 205 Minn. 815—Miller v. Ervin, 6 So.2d 910, 192 Miss. 712—Yorkshire Ins. Co. v. Brewer, 166 So. 361, 175 Miss. 538.
N.C.—Hine v. Blumenthal, 80 S.E.2d 458, 239 N.C. 537.

ises or property by the jury;[84.5] forcing a party claiming damages to admit that he had been partially indemnified therefor;[85] the denial of a hearing on a motion;[86] error in the order of the trial or submission of issues;[87] the want of notice;[88] presentation or argument of law questions in the presence of the jury or a juror;[89] error in placing the right to open and close;[90] or adjourn-

R.I.—Muirhead v. Fairlawn Enterprise, 48 A.2d 414, 72 R.I. 163, reargument denied 49 A.2d 316, 72 R.I. 163—Kulpa v. General Ice Cream Corp., 43 A.2d 60, 71 R.I. 168.
S.C.—Sanders v. State Highway Department, 47 S.E.2d 306, 212 S.C. 224.
W.Va.—Thrasher v. Amere Gas Utilities Co., 75 S.E.2d 376, 138 W.Va. 166, appeal dismissed Amere Gas Utilities Co. v. Public Service Commission of State of W. Va., 74 S.Ct. 478, 347 U.S. 910, 98 L.Ed. 1067—Daugherty v. Baltimore & O. R. Co., 64 S.E.2d 231, 135 W.Va. 688.

Inspection of similar objects

(1) Alleged error in permitting jury to be taken out to observe an automobile similar to one involved, to ascertain where the hinges were on door, was not prejudicial, notwithstanding it would have been better to have required testimony as to location of hinges.
Ohio.—Martin v. Hooffstetter, App., 42 N.E.2d 556.

(2) On the other hand, in an action, under the federal Employers' Liability Act, for an injury to the hand of an employee, sustained in attempting to remove ashes and cinders from a locomotive with a defective shaker bar, the denial of defendant's request for a jury inspection of a similar engine was not prejudicial.
U.S.—Missouri Pac. R. Co. v. Hendrix, 277 S.W. 337, 169 Ark. 825, certiorari denied 46 S.Ct. 351, 270 U.S. 651, 70 L.Ed. 781.

Request in jury's presence

In an action on a fire policy, plaintiff's request in the jury's presence to have the jury view the premises was held not prejudicial error, where each of the parties had introduced pictures of the ruins into the evidence.
Mich.—Judson v. Manhattan Fire & Marine Ins. Co., 220 N.W. 783, 243 Mich. 458.

84.5 Ark.—Missouri Pac. R. Co. v. Radley, 191 S.W.2d 467, 209 Ark. 532.

View by court

(1) It was not reversible error for trial judge, as trier of fact, to visit area involved in suit and observe same without notice to, and presence of, parties and their counsel.
Ala.—Mutual Service Funeral Homes v. Fehler, 58 So.2d 770, 257 Ala. 354.

(2) Conduct of trial court in viewing the premises without the consent of, or in the presence of, counsel was improper but not shown to be prejudicial.
N.Y.—Nead v. Di Leva, 56 N.Y.S.2d 209, 269 App.Div. 873, affirmed 66 N.E.2d 174, 295 N.Y. 768.

(3) In action against city for injuries caused by defective sidewalk, action of trial court in viewing premises after jury had returned verdict for plaintiff and prior to ruling on defendant's motion and supplemental motion for new trial was harmless.
Okl.—City of Norman v. Lewis, 69 P.2d 377, 180 Okl. 344.

85. **Reduction of claim**

Where defendant, counterclaiming for damages in an automobile collision, in a discussion in the jury's absence of the propriety of a cross-question, admitted that he had received indemnity insurance for two hundred fifty dollars of his total alleged loss of three hundred fifty dollars caused by plaintiff's negligence, such forced admission is not reversible error where he then asked only one hundred dollars.
Mich.—Northern Auto Co. v. Rink, 201 N.W. 214, 229 Mich. 148.

86. Or.—Robinson v. Oregon City Sand & Gravel Co., 20 P.2d 1073, 143 Or. 177.

87. Cal.—Alton v. Rogers, 274 P.2d 487, 127 C.A.2d 667, certiorari denied 75 S.Ct. 573, 348 U.S. 982, 99 L.Ed. 764.
Tex.—Gilmer v. Graham, Civ.App., 26 S.W.2d 687, reversed on other grounds, Com.App., 52 S.W.2d 263—Pittsburgh Plate Glass Co. v. Beck, Civ.App., 298 S.W. 915—Halliday v. Crews, Civ.App., 237 S.W. 600, dismissed for want of jurisdiction.

Hearing pleas of privilege and merits at same time

Tex.—Universal Credit Co. v. Richey, Civ.App., 123 S.W.2d 963.

88. Colo.—Alsup v. Alsup, 230 P. 796, 76 Colo. 260.
Iowa.—Lex v. Selway Steel Corporation, 296 N.W. 586, 203 Iowa 792.
La.—State v. Bozeman, 101 So. 4, 156 La. 635.

89. Ariz.—Carr v. Florian, 29 P.2d 728, 43 Ariz. 149.
Cal.—Jensen v. Hansen, 55 P.2d 1201, 12 C.A.2d 678.
Ga.—Shahan v. American Tel. & Tel. Co., 35 S.E.2d 5, 72 Ga.App. 749.
Tex.—Parker v. Hoyt, Civ.App., 105 S.W.2d 1112, error dismissed.
Wash.—Gilcher v. Seattle Electric Co., 144 P. 530, 82 Wash. 414.
4 C.J. p 950 note 69 [s].

Refusal to exclude talesmen from the court room while a motion to quash a demand for a jury was argued was held not prejudicial.
Wash.—Taylor v. Industrial Ins. Commission of Washington, 206 P. 973, 120 Wash. 4.

Reading judge's fiat

Action of the court in permitting a judge's fiat to the petition, writ, and service thereof to be read to the jury, if error, was held harmless.
Tex.—Tabet v. Tabet, Civ.App., 282 S.W. 947.

90. D.C.—Newman v. United States, 43 App.D.C. 53.
Fla.—Umatilla Fruit Co. v. Campbell, 167 So. 370, 123 Fla. 484.
Ga.—Milligan v. Milligan, 70 S.E.2d 459, 209 Ga. 14.
Davis v. Potts, 100 S.E. 231, 24 Ga.App. 184.
Ill.—Carterville Coal Co. v. Covey-Durham Coal Co., 186 Ill.App. 163.
Ind.—New York Life Ins. Co. v. Skinner, 14 N.E.2d 566, 214 Ind. 384.
Maxwell Implement Co. v. Fitzgerald, 146 N.E. 883, 85 Ind.App. 206.
Iowa.—In re Cocklin's Estate, 5 N.W.2d 577, 232 Iowa 266—Louisa County Nat. Bank v. Burr, 199 N.W. 359, 198 Iowa 4—City Bank of Mitchellville v. Alcorn, 176 N.W. 628, 188 Iowa 592.
Kan.—Boutross v. Palatine Ins. Co., Limited, of London, England, 164 P. 1069, 100 Kan. 574.
Ky.—Home Ins. Co. of New York v. Crowder, 176 S.W. 344, 164 Ky. 792.
Minn.—Parlin & Orendorff Plow Co. v. Evenson, 197 N.W. 489, 158 Minn. 348.
Mo.—Gillespie v. Holland, 31 S.W. 2d 774.
McDonald v. Redemeyer, 198 S.W. 483, 197 Mo.App. 630.
Neb.—Horney v. McKay, 293 N.W. 98, 138 Neb. 309—Thompson v. Wall, 199 N.W. 114, 112 Neb. 196.
N.H.—Lynch v. Bissell, 116 A.2d 121, 99 N.H. 473—Glidden v. Brown, 110 A.2d 277, 99 N.H. 323.
N.Y.—Regan v. Kelley, 154 N.Y.S. 139, 91 Misc. 4.
N.J.—Panko v. Grimes, 123 A.2d 799, 40 N.J.Super. 588.
S.C.—Witsell v. Nettles, 126 S.E. 429, 131 S.C. 140—Pinson v. Bowles, 106 S.E. 775, 116 S.C. 47.
Tex.—Sutton v. Schoellkopf, Civ. App., 62 S.W.2d 318—Mayfield v. Son, Civ.App., 278 S.W. 462—Carter v. Brown, Civ.App., 219 S.W. 292—Rowe v. Daugherty, Civ.App., 196 S.W. 240—Abernathy Rigby Co. v.

ment subject to call instead of to a day certain.[91]

Prejudicial errors. Where the error in procedure is such that the judgment was not obtained by due process of law,[92] as where a party is deprived of a jury trial[93] or of the right of trial by the court of equitable issues when properly demanded,[94] it is not harmless. So the case will be reversed for prejudicial error in the conduct of the trial or hearing,[95] as where a party is deprived of the right to

McDougle, Cameron & Webster Co., Civ.App., 187 S.W. 503.
Vt.—Johnson v. Moore, 196 A. 246, 109 Vt. 282.
Wash.—Spokane State Bank v. Pitner, 194 P. 969, 114 Wash. 177.
Wis.—Stowell Co. v. South Side Malleable Casting Co., 180 N.W. 813, 173 Wis. 216.

Denial of opening statement

Refusal by court to permit plaintiff's counsel to make an opening statement to jury other than the reading of declaration was not reversible error where declaration set out in detail alleged facts on which plaintiff relied for recovery and thus portrayed the theory of plaintiff's case.
Fla.—Juhasz v. Barton, 1 So.2d 476, 146 Fla. 484.

Verdict demanded by evidence

While the right to open and conclude the argument is generally an important and valuable right, yet, where the verdict as rendered was demanded by the evidence, error in permitting a party to open and conclude the argument was not reversible error.
Ga.—Kenney v. Armour Fertilizer Works, 131 S.E. 915, 34 Ga.App. 820, reversed on other grounds Armour Fertilizer Works v. Kenney, 131 S.E. 281, 161 Ga. 477.
Hall v. McLendon, 100 S.E. 726, 24 Ga.App. 292—West v. Henderson, 97 S.E. 100, 22 Ga.App. 701—Bank of Omega v. Youmans, 94 S.E. 279, 21 Ga.App. 284.

91. Wash.—Empens v. Tomer, 17 P.2d 21, 170 Wash. 524.

92. Cal.—Hammett v. McIntyre, 249 P.2d 885, 114 C.A.2d 148.
Ohio.—K & S Realty Co. v. Rosen, App., 72 N.E.2d 116.
Wash.—Bartel v. Brockerman, 306 P.2d 237, 49 Wash.2d 679.
W.Va.—Westover Volunteer Fire Dept. v. Barker, 95 S.E.2d 807.

Deprivation of essence of fundamental right

Where error or irregularity complained of patently fails to take into account the substance of a fundamental right of a party and deprives the party of the essence of such right, in a way that is plainly ineradicable either by an instruction or other action of the court subsequent to the motion for the mistrial, a mistrial must be granted as a matter of right, and a denial of mistrial in such situation is a mistaken exercise of judicial discretion and hence harmful error, since such action would clearly and unequivocally be a manifest denial of justice under the law.
N.J.—Wright v. Bernstein, 129 A.2d 19, 23 N.J. 284.

Having issues of liability and damages tried separately or before different juries may result in prejudice to defendant.
N.C.—Parker v. Belotta, 200 S.E. 887, 215 N.C. 87.

Granting judgment on merits on preliminary hearing

Error in granting declaratory judgment on merits on hearing for temporary injunction could not be considered to be harmless although petitioners did not establish that they were not ready at time of injunction hearing for hearing on merits and record did not disclose that new trial might result in different judgment.
Tex.—Houston Belt & Terminal Ry. Co. v. Texas & N. O. R. Co., 289 S.W.2d 217.

Refusal to enter appearance by new counsel

Where trial judge permitted plaintiff's original counsel to withdraw and denied request of new counsel to enter their appearances because not ready to try cause on a peremptory setting, refusal was fundamental error and was not harmless because the dismissal was without prejudice to the institution of another action.
Mo.—Magerstadt v. La Forge, 303 S.W.2d 130.

93. Cal.—People v. One 1941 Chevrolet Coupe, 231 P.2d 832, 37 C.2d 283—In re Baird's Estate, 160 P. 1078, 173 C. 617.
Mortimer v. Loynes, 168 P.2d 481, 74 C.A.2d 160—Peterson v. Peterson, 168 P.2d 474, 74 C.A.2d 312.
Conn.—Swanson v. Boschen, 120 A.2d 546, 143 Conn. 159.
Ill.—North American Provision Co. v. Kinman, 6 N.E.2d 235, 288 Ill. App. 414.
Ohio.—Monroe v. Golner, 139 N.E.2d 483, 101 Ohio App. 290—McCuskey v. Budnick, App., 129 N.E.2d 400—Bellows v. Bowlus, 82 N.E.2d 429, 83 Ohio App. 90—Crellin v. Armstrong, App., 32 N.E.2d 60.
Okl.—Jackson v. General Finance Corp., 253 P.2d 166, 208 Okl. 44—Estes v. Oklahoma City, 52 P.2d 873, 175 Okl. 278.
Tex.—Pate v. Woodville Mercantile Co., Civ.App., 229 S.W. 916.
Vt.—Shapiro v. Gore, 174 A. 860, 106 Vt. 337.
35 C.J. p 226 note 32.

94. N.Y.—Golran Realty Corporation v. James Butler Grocery Co., 245 N.Y.S. 492, 230 App.Div. 661.

95. Cal.—McVey v. McVey, 281 P.2d 898, 132 C.A.2d 120—Rosenfield v. Vosper, 114 P.2d 29, 45 C.A.2d 365.
Fla.—Blanton v. Butler, 81 So.2d 745.
Ill.—Bennett v. Gray, 76 N.E.2d 798, 333 Ill.App. 143—Hall v. Chicago & A. R. Co., 188 Ill.App. 95. See Buyers Index Pub. Co. v. Triner Scale & Mfg. Co., 194 Ill.App. 427.
Ind.—De Armond v. Carter, App., 134 N.E.2d 239.
Iowa.—Brooks v. Paulson, 291 N.W. 144, 227 Iowa 1359.
Ky.—Martin v. Tipton, 261 S.W.2d 809—McGuire v. East Ky. Beverage Co., 238 S.W.2d 1020—Kentucky-Tennessee Light & Power Co. v. Priest's Adm'r, 127 S.W.2d 616, 277 Ky. 700—Cincinnati, N. O. & T. P. Ry. Co. v. McWhorter, 275 S.W. 363, 210 Ky. 108.
Mo.—Taylor v. Kansas City Southern Ry. Co., 266 S.W.2d 732, 364 Mo. 693.
Crapson v. United Chautauqua Co., App., 27 S.W.2d 722—Powell v. Bierman, App., 22 S.W.2d 854.
N.J.—Tanenbaum Textile Co. v. Vogue Foundations, Inc., 116 A.2d 697, 36 N.J.Super. 572—Pepe v. Urban, 78 A.2d 406, 11 N.J.Super. 385—Binder v. Green, 73 A.2d 357, 8 N.J.Super. 88.
N.M.—Pugh v. Tidwell, 199 P.2d 1001, 52 N.M. 386.
N.Y.—Kutnerian v. Sagui, 140 N.Y.S.2d 759, 285 App.Div. 1134.
Goldberg v. Mutual Life Ins. Co. of New York, 24 N.Y.S.2d 929, reversed on other grounds 31 N.Y.S.2d 154, 263 App.Div. 10, appeal dismissed 43 N.E.2d 69, 288 N.Y. 662.
Or.—Frangos v. Edmunds, 173 P.2d 596, 179 Or. 577.
S.C.—Robinson v. Saxon Mills, 117 S.E. 424, 124 S.C. 415.
Tenn.—Seals v. Sharp, 212 S.W.2d 620, 31 Tenn.App. 75.
Tex.—Utilities Natural Gas Corp. v. Hill, Civ.App., 239 S.W.2d 431, refused no reversible error—State ex rel. Lukovich v. Johnston, Civ.App., 228 S.W.2d 327, error dismissed—Republic Ins. Co. v. Dickson, Civ.App., 110 S.W.2d 642, error dismissed—Teague Sewer Co. v. Benbrook, Civ.App., 38 S.W.2d 845.
Wis.—Caesar v. Wegner, 55 N.W.2d 371, 262 Wis. 429—Johannsen v. Peter P. Woboril, Inc., 51 N.W.2d 53, 260 Wis. 341.
64 C.J. p 70 note 9.

open and close the argument before the jury,[96] or of the benefit of the evidence of a material witness,[97] or is excluded from the court room while evidence was being heard;[98] where a party injured by an improper remark of a witness is not protected by the court;[99] where misconduct of a party prevents a fair and impartial hearing;[99.5] or where the due administration of justice was made impossible by the heat of feeling between the court and defendant and his counsel.[1] Failure or refusal of a court to require a witness to be sworn before testifying has been held prejudicial error.[1.5]

Reference to insurance or indemnity. It is ordinarily reversible error to adduce evidence on the trial or hearing of an action which informs the jury

Denial of right to comment

In action for injuries, denial to defendant's counsel of right to comment on plaintiff's failure to call one of his doctors who was not equally available to defendant as to plaintiff, notwithstanding plaintiff's waiver of his privilege as to such doctor, was prejudicial error, which was not rendered harmless by fact that evidence was sufficient to support verdict for plaintiff.

Mo.—McInnis v. St. Louis-Southern, 108 S.W.2d 113, 341 Mo. 677.

Refusal to segregate witnesses

Refusal by trial court to segregate witnesses as requested by defendants at beginning of hearing and before introduction of any evidence, was reversible error.

Ga.—Poultryland, Inc., v. Anderson, 37 S.E.2d 785, 200 Ga. 549.

Permitting jury to view premises

Miss.—Poteete v. City of Water Valley, 42 So.2d 112, 207 Miss. 173—Great Atlantic & Pacific Tea Co. v. Davis, 171 So. 550, 177 Miss. 562.

View by court or judge

Miss.—Wisdom v. Stegall, 70 So.2d 43, 219 Miss. 776.

Tex.—Conner v. Parker, Civ.App., 181 S.W.2d 873.

Substantial noncompliance with rules

A failure substantially to comply with the ordinary procedure prescribed by the code and rules for making up issues and the conduct of trials is a denial of a substantial right entitling a party to a reversal.

Colo.—Creighton v. Campbell, 149 P. 448, 27 Colo.App. 120.

Exhibiting plaintiff's child

(1) It is reversible error to exhibit to the jury a crippled child of plaintiff, suing for a personal injury negligently inflicted by defendant, whereby excessive damages are awarded.

N.Y.—Bardelli v. Pittsburg Contracting Co., 148 N.Y.S. 389, 163 App. Div. 45.

(2) In action for injuries, plaintiff's permitting her two children of tender years to re-enter courtroom and again exhibit themselves before jury after opposing counsel and trial judge had requested that they be excluded from courtroom held to require new trial.

Ariz.—Western Truck Lines v. Berry, 87 P.2d 484, 53 Ariz. 216.

Judge acting as attorney

For a judge during his term of office to be allowed to appear as attorney or counsel in the cause of another is error prejudicial to the other party.

Vt.—Cady v. Lang, 115 A. 140, 95 Vt. 287.

Judge sitting alone in banc

Where the three regular judges of the court believed themselves disqualified and a judge from another county was called in to try the case, the action of the invited judge in sitting alone for the purpose of hearing exceptions to his own adjudication was error, requiring reversal, since a judge from another county should have been called in to sit with him in banc.

Pa.—Stone v. New Schiller Building & Loan Ass'n, 142 A. 293, 293 Pa. 161.

Use of skeleton and surgical instruments

Ill.—Winters v. Richerson, 132 N.E. 2d 673, 9 Ill.App.2d 359.

96. Ga.—Milligan v. Milligan, 70 S.E.2d 459, 209 Ga. 14—Payne v. Thebaut, 180 S.E. 725, 180 Ga. 758. Jones v. Chambers, 95 S.E.2d 335, 94 Ga.App. 433—Phillips v. Smith, 47 S.E.2d 156, 76 Ga.App. 705—Smith v. Dickens, 155 S.E. 510, 42 Ga.App. 168—Atlantic Coast Line R. Co. v. Hogrefe, 147 S.E. 397, 39 Ga.App. 400—Fite v. Hooks, 130 S.E. 692, 34 Ga.App. 629—Nalley v. Taylor, 107 S.E. 611, 27 Ga.App. 147—Little v. Dolvin, 103 S.E. 35, 25 Ga.App. 264.

Ind.—Salt Springs Nat. Bank v. Schlosser, 171 N.E. 202, 91 Ind. App. 295.

Ky.—Massie's Ex'x v. Massie's Ex'x, 156 S.W.2d 195, 288 Ky. 370—Polley v. Cline's Ex'r, 113 S.W.2d 1133, 272 Ky. 147—Moss v. Mittel, 69 S.W.2d 1046, 253 Ky. 504—Johnson v. Taylor, 57 S.W.2d 540, 247 Ky. 472—Black Mountain Corporation v. Appleman, 33 S.W.2d 327, 236 Ky. 510—Security Life Ins. Co. of America v. Duncan's Adm'r, 211 S.W. 758, 184 Ky. 443.

Mo.—Farmers Bank of Trenton v. Ray & Son, App., 148 S.W.2d 120—Powell v. Bierman, App., 22 S.W. 2d 854—Ferguson v. Rittman, App., 180 S.W. 1046.

N.Y.—Herreshoff v. American & British Mfg. Co., 149 N.Y.S. 703, 164 App.Div. 238. Goldberg v. Alois, 154 N.Y.S.2d 273, 3 Misc.2d 154—James Conforti Const. Co. v. Neek Realty Corporation, 212 N.Y.S. 393, 125 Misc. 876. Nagel Realty Co. v. Freund, 151 N.Y.S. 517.

Ohio.—Mates v. Spitzig, App., 122 N.E.2d 639.

Okl.—Rennie v. J. I. Case Threshing Mach. Co., 220 P. 626, 94 Okl. 26.

Tex.—Trice v. Stamford Builders Supply, Civ.App., 248 S.W.2d 213—Stolpher v. Bowen Motor Coaches, 190 S.W.2d 376, refused for want of merit—Mullins v. Auto Securities Co., Civ.App., 281 S.W. 257—Mayfield v. Son, Civ.App., 278 S.W. 462—Kennedy v. McCauley, Civ.App., 236 S.W. 752—Houston & T. C. R. Co. v. Montgomery, Civ.App., 185 S.W. 633, motion denied 189 S.W. 350—J. W. Carter Music Co. v. Bailey, Civ.App., 179 S.W. 547—First State Bank of Amarillo v. Cooper, Civ.App., 179 S.W. 295.

Wis.—Carmody v. Kolecheski, 194 N.W. 584, 181 Wis. 394.

Error not cured

Error in denying plaintiff the right to open and close in an action on notes was held not cured by defendant's dismissal of his affirmative defense and a general instruction to disregard the evidence introduced thereunder.

Ind.—Salt Springs Nat. Bank v. Schlosser, 171 N.E. 202, 91 Ind. App. 295.

97. Miss.—Morse v. Phillips, 123 So. 336, 15 Miss. 452.

Disqualifying interpreter

Where the trial court's action, in refusing to permit a competent interpreter to act, deprives a party of the benefit of evidence of a material witness, the error is reversible.

Miss.—Morse v. Phillips, supra.

98. N.J.—Smillie v. Lerner, 159 A. 808, 10 N.J.Misc. 484.

President of defendant corporation

N.Y.—Sherman v. Irving Merchandise Corp., 26 N.Y.S.2d 645.

99. Md.—Pugaczewska v Maszko, 163 A. 205, 163 Md. 355.

99.5 N.Y.—Clarke v. Levine, 31 N.Y.S.2d 571, 263 App.Div. 836.

1. N.Y.—Meehan v. Kaufman, 226 N.Y.S. 734, 222 App.Div. 456.

1.5 Neb.—In re Godden, 63 N.W.2d 151, 158 Neb. 246.

that the loss will fall on an insurance company;[2] but each case must be determined on its own facts,[2.5] and the mere mention of liability insurance in the examination of witnesses or presentation of evidence does not always constitute reversible error.[2.10]

The error is harmless where the jury presumably understood that insurers were interested in the case or were otherwise properly informed thereof, or the reference was merely incidental;[3] and the case will not be reversed in the absence of a showing

2. Ala.—Thorne v. Parrish, 90 So. 2d 781.
Ariz.—Dunipace v. Martin, 242 P.2d 543, 73 Ariz. 415—Northern Ariz. Supply Co. v. Stinson, 238 P.2d 937, 73 Ariz. 109—Blue Bar Taxicab & Transfer Co. v. Hudspeth, 216 P. 246, 25 Ariz. 287.
Ark.—Ward v. Haralson, 120 S.W.2d 322, 196 Ark. 785.
Cal.—Hatfield v. Levy Bros., 117 P. 2d 841, 18 C.2d 798.
Crawford v. Alioto, 233 P.2d 148, 105 C.A.2d 15—Sheldon v. River Lines, 205 P.2d 37, 91 C.A.2d 478—Schellenberg v. Southern California Music Co., 35 P.2d 156, 139 C.A. 777—Nichols v. Smith, 28 P. 2d 693, 136 C.A. 272—Hodge v. Weinstock, Lubin & Co., 293 P. 80, 109 C.A. 393.
D.C.—Brooke v. Croson, 61 App.D.C. 159, 58 F.2d 885.
Ga.—Minnick v. Jackson, 13 S.E.2d 891, 64 Ga.App. 554.
Ill.—Johnson v. Stotts, 101 N.E.2d 880, 344 Ill.App. 614—Galek v. Winters, 92 N.E.2d 360, 340 Ill. App. 635—Kelley v. Call, 57 N.E.2d 501, 324 Ill.App. 143—Monblatt v. Young, 199 Ill.App. 312.
Ind.—J. C. Penney, Inc., v. Kellermeyer, 19 N.E.2d 882, 107 Ind.App. 253, rehearing denied 22 N.E.2d 899, 107 Ind.App. 253.
Iowa.—Floy v. Hibbard, 287 N.W. 829, 227 Iowa 149—Ryan v. Simeons, 229 N.W. 667, 209 Iowa 1090.
Kan.—Witt v. Roper, 96 P.2d 643, 150 Kan. 722—Pool v. Day, 40 P.2d 396, 141 Kan. 195—Coffman v. Shearer, 34 P.2d 97, 140 Kan. 176.
Ky.—Dunaway v. Darnell, 302 S.W. 2d 122—Austin Powder Co. v. Langdon, 226 S.W.2d 775, 312 Ky. 141—Stott v. Hinkle, 150 S.W.2d 655, 286 Ky. 143—Rose v. Edmonds, 111 S.W.2d 427, 271 Ky. 36—Danville Light, Power & Traction Co. v. Baldwin, 198 S.W. 713, 178 Ky. 184.
Me.—Poland v. Dunbar, 157 A. 381, 130 Me. 447.
Mich.—Van Dyke v. Knoll, 247 N.W. 768, 262 Mich. 644.
Minn.—Jeddeloh v. Hockenhull, 18 N.W.2d 582, 219 Minn. 541.
Miss.—Snowden v. Skipper, 93 So.2d 834—Whatley v. Boolas, 177 So. 1, 180 Miss. 372.
Mo.—McCaffery v. St. Louis Public Service Co., 252 S.W.2d 361, 363 Mo. 545—Carter v. Rock Island Bus Lines, 139 S.W.2d 458, 345 Mo. 1170.
Boyne v. Schulte, App., 222 S.W. 2d 503—Landau v. Fred Schmitt Contracting Co., 179 S.W.2d 138, 237 Mo.App. 908—Weigel v. Reinties, App., 154 S.W.2d 412—Wininger v. Bennett, App., 104 S.W.2d 413—Crapson v. United Chatauqua Co., App., 27 S.W.2d 722.
Neb.—Haight v. Nelson, 59 N.W.2d 576, 157 Neb. 641.
N.H.—Gerry v. Neugebauer, 136 A. 751, 83 N.H. 23.
N.Y.—Hegeman v. Hegeman, 12 N.Y. S.2d 462, 257 App.Div. 852, reargument denied 14 N.Y.S.2d 159, 257 App.Div. 977—Dietz v. Dinkel, 246 N.Y.S. 623, 230 App.Div. 699.
Okl.—Reddick v. Gilliam, 263 P.2d 742—Dolliver v. Lathion, 82 P.2d 675, 183 Okl. 329—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487.
R.I.—Lavigne v. Ballantyne, 17 A. 2d 845, 66 R.I. 123.
S.C.—Duke v. Parker, 118 S.E. 802, 125 S.C. 442.
Tex.—Page v. Thomas, Com.App., 71 S.W.2d 234.
Pattison v. Highway Ins. Underwriters, Civ.App., 278 S.W.2d 207, error refused no reversible error—Musslewhite v. Gillette, Civ.App., 258 S.W.2d 104—Moore v. Dallas Ry. & Terminal Co., Civ.App., 238 S.W.2d 741, error dismissed—M. J. Const. Co. v. Deatherage, Civ.App., 231 S.W.2d 501—Eden v. Feller, Civ.App., 229 S.W.2d 408—William Cameron Co. v. Downing, Civ.App., 147 S.W.2d 963—Standard Paving Co. v. McClinton, Civ.App., 146 S. W.2d 466—South Texas Coaches v. Woodard, Civ.App., 123 S.W.2d 395—Murphey v. Blankenship, Civ. App., 120 S.W.2d 309—Water, Light & Ice Co. of Weatherford v. Barnett, Civ.App., 212 S.W. 236.
Utah.—Gittens v. Lundberg, 284 P. 2d 1115, 3 Utah 2d 392—Morrison v. Perry, 140 P.2d 772, 104 Utah 151.
Vt.—McCutcheon v. Leonard, 39 A. 2d 348, 114 Vt. 38—Bliss v. Moore, 22 A.2d 315, 112 Vt. 185—Ryan v. Barrett, 162 A. 793, 105 Vt. 21.
Wash.—Gaskill v. Amadon, 38 P.2d 229, 179 Wash. 375.
W.Va.—Bradfield v. Board of Ed. of Pleasants County, 36 S.E.2d 512, 128 W.Va. 228.
36 C.J. p 1128 note 76.
2.5 Ky.—National Linen Supply Co. v. Snowden, 156 S.W.2d 186, 288 Ky. 374.
Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.
Pa.—Lear v. Kash, Com.Pl., 18 Wash. Co. 133.
Tex.—Finck Cigar Co. v. Campbell, Civ.App., 114 S.W.2d 348, affirmed 133 S.W.2d 759, 134 Tex. 250.
2.10 Cal.—Baker v. Rodriguez, 105 P.2d 1018, 41 C.A.2d 58.
Md.—Association of Independent Taxi Operators v. Kern, 13 A.2d 374, 178 Md. 252, 131 A.L.R. 792.
Mich.—White v. Makela, 8 N.W.2d 123, 304 Mich. 425.
Minn.—Jaenisch v. Vigen, 297 N.W. 29, 209 Minn. 543.
Mo.—Pitcher v. Schoch, 139 S.W.2d 463, 345 Mo. 1184.
Adams v. Le Bow, 172 S.W.2d 874, 237 Mo.App. 1191—Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830.
Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.
Neb.—Jones v. McCully, 285 N.W. 551, 136 Neb. 206.
N.H.—Heilman v. Whalley, 6 A.2d 168, 90 N.H. 215.
Okl.—Coker v. Moose, 68 P.2d 504, 180 Okl. 234.
Pa.—Fleischman v. City of Reading, 130 A.2d 429, 388 Pa. 183.
Tex.—National Biscuit Co. v. Lawrence, Civ.App., 152 S.W.2d 882, error refused—Texas Coca-Cola Bottling Co. v. Lovejoy, Civ.App., 138 S.W.2d 254, error refused.

Lack of insurance

Admission of testimony of one of two defendants in negligence action that witness was not protected by insurance is not prejudicial error, if his lack of insurance is not featured or made basis for appeal to increase or decrease damages recovered by plaintiff.
Minn.—Anderson v. Enfield, 70 N.W. 2d 409, 244 Minn. 474.

3. Ariz.—Holbrook Light & Power Co. v. Gordon, 148 P.2d 360, 61 Ariz. 256—Fike v. Grant, 8 P.2d 242, 39 Ariz. 549.
Ark.—Ft. Smith-Spadra Mining Co. v. Shirley, 13 S.W.2d 14, 178 Ark. 1007.
Cal.—Packard v. Moore, 71 P.2d 922, 9 C.2d 571.
Adams v. Southern Pac. Co., 186 P.2d 729, 82 C.A.2d 560—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Shriver v. Silva, 151 P.2d 528, 65 C.A.2d 753—Martin, Continental Casualty Co., Intervener, v. Clinton Const. Co., 105 P.2d 1029, 41 C.A.2d 35, rehearing denied 106 P. 2d 629, 41 C.A.2d 35—Corral v. Sager, 77 P.2d 303, 25 C.A.2d 322—McCullough v. Langer, 73 P.2d 649, 23 C.A.2d 510—Berlin v. Violett, 18 P.2d 737, 129 C.A. 337—Rannard v. Harris, 8 P.2d 864, 121 C.A. 281—Coursault v. Schwebel, 5 P.2d 77, 118 C.A. 259—Elsey v. Domecq, 299 P. 794, 114 C.A. 42—

of prejudice where the answer was promptly stricken[4] and the jury was at once instructed to disregard what was said about the insurance,[5] where the verdict was proper and not excessive[6] or a dif-

Levy v. Berner, 293 P. 896, 110 C.A. 65.
Colo.—Rains v. Rains, 46 P.2d 740, 97 Colo. 19.
Ill.—Smallen v. Aronson, 253 Ill.App. 540. See Forrest v. Roper Furniture Co., 187 Ill.App. 504, affirmed 108 N.E. 328, 267 Ill. 331.
Ind.—Gamble v. Lewis, 85 N.E.2d 629, 227 Ind. 455—Bates Motor Transport Lines v. Mayer, 14 N.E. 2d 91, 213 Ind. 664.
Kickels v. Fein, 10 N.E.2d 297, 104 Ind.App. 606.
Kan.—Olsen v. Lambert, 145 P.2d 159, 158 Kan. 94—Billings v. Aldridge, 3 P.2d 639, 133 Kan. 769.
Ky.—Crawford v. Alexander, 259 S. W.2d 476—Toppass v. Perkins' Adm'x, 104 S.W.2d 423, 268 Ky. 186—Park v. Schell, 295 S.W. 161, 220 Ky. 317.
Mass.—Burgess v. Giovannucci, 49 N.E.2d 907, 314 Mass. 252.
Mich.—Watroba v. City of Detroit, 54 N.W.2d 212, 334 Mich. 182—Layton v. Cregan & Mallory Co., 248 N.W. 539, 263 Mich. 30—Stehouwer v. Lewis, 227 N.W. 759, 249 Mich. 76, 74 A.L.R. 844.
Miss.—Lancaster v. Lancaster, 57 So.2d 302, 213 Miss. 536.
Mo.—Fisher v. Duster, App., 245 S. W.2d 172—Blech v. Berzon, App., 61 S.W.2d 201—Fortner v. Kelly, 60 S.W.2d 642, 327 Mo.App. 933—Howard v. Fred Schmitt Realty & Investment Co., App., 7 S.W.2d 448—Wulze v. Aquardo, App., 6 S. W.2d 1017—Edwards v. Smith, App., 286 S.W. 428—Haggard v. Rogers-Schmitt Wire & Iron Co., App., 249 S.W. 712.
Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.
Neb.—Haight v. Nelson, 59 N.W.2d 576, 157 Neb. 641—Nichols v. Owens Motor Co., 236 N.W. 169, 121 Neb. 105.
N.Y.—Rowlands v. Parks, 149 N.Y.S. 2d 690, 1 App.Div.2d 925—Amundsen v. Consolidated Forwarding & Building Material Co., 198 N.Y.S. 704, 206 App.Div. 601, affirmed 142 N.E. 329, 236 N.Y. 670.
N.C.—Hoke v. Atlantic Greyhound Corp., 42 S.E.2d 593, 227 N.C. 412.
Ohio.—Tighe v. Diamond, 80 N.E.2d 122, 149 Ohio St. 520.
Shadwick v. Hills, 69 N.E.2d 197, 79 Ohio App. 143—Humphreys v. Madden, App., 68 N.E.2d 562.
Okl.—Reddick v. Gilliam, 263 P.2d 742—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487—Fike v. Peters, 52 P.2d 700, 175 Okl. 334—Lakeview, Inc., v. Davidson, 26 P.2d 760, 166 Okl. 171.
Pa.—Keefer v. Lombardi, 102 A.2d 695, 376 Pa. 367, certiorari denied Lombardi v. Keefer, 74 S.Ct. 871, 347 U.S. 1016, 98 L.Ed. 1138.
S.C.—Parker v. Simmons, 161 S.E. 169, 163 S.C. 42.
S.D.—O'Connor v. Sioux Falls Motor Co., 232 N.W. 904, 57 S.D. 397.
Tenn.—Lasater Lumber Co. v. Harding, 189 S.W.2d 583, 28 Tenn.App. 296.
Tex.—Herrin Transp. Co. v. Peterson, Civ.App., 216 S.W.2d 245, error refused—Scottino v. Ledbetter, Civ.App., 56 S.W.2d 282.
Utah.—Gittens v. Lundberg, 284 P. 2d 1115, 3 Utah 2d 392.
Wash.—Hines v. Foster, 6 P.2d 597, 166 Wash. 165—Todd v. Alexander, 294 P. 545, 160 Wash. 3—Colvin v. Auto Interurban Co., 232 P. 365, 132 Wash. 591.
Wis.—Sheehan v. Lewis, 260 N.W. 633, 218 Wis. 588.
"This question of a reference to the fact of a defendant carrying insurance has been before the courts on many occasions; sufficient, it would be surmised, to have established a definite rule. Yet no hard and fast rule has been announced. A fair conclusion, from a résumé of the cases, would be to class such a reference under the head of misconduct of counsel. It might be conceded that where it is obvious or fairly deducible that the sole purpose was to impress that fact of insurance on the minds of the jury, for no other reason than to create a prejudice, then a reversal will follow. But where the reference, as indicated in the cited cases, is merely incidental, misconduct will not be found. And it would seem a fair corollary of the rule that where the point is debatable and offers an open field for legitimate argument, a reviewing court should not arbitrarily undo the results of a trial had under the supervision of the trial judge, whose opportunity of approximating the situation was in the first instance, and who had refused a new trial."
Cal.—Noble v. Bacon, 18 P.2d 699, 702, 129 C.A. 177.

Questioning insurance agent

In an action for damages in an automobile collision, questioning a witness relative to being engaged in the insurance business, and whether he had insurance business with defendant, while not relevant, was held not so prejudicial as to warrant granting a new trial because of being intended to impress on the jury the fact that defendant carried insurance on his car.
Ky.—Fenley Model Dairy v. Secuskie, 290 S.W. 1044, 218 Ky. 59.

Evidence of settlement

"The admission of evidence tending to show that defendant had received a settlement from an insurance company presumably for injuries received in an accident was not so prejudicial as to require a new trial in a suit against him to recover for medical services rendered in the treatment of such injuries."
Minn.—Sahr v. Juul, 232 N.W. 717, 181 Minn. 415.

Mention of plaintiff's insurance was not prejudicial where nothing was said or developed in presence of jury that defendant had insurance.
Ill.—Goad v. Phipps, 57 N.E.2d 528, 324 Ill.App. 160.

4. Ill.—Ryan v. Harry's New York Cabaret, 12 N.E.2d 905, 293 Ill.App. 534.
Mich.—Morris v. Markey, 201 N.W. 496, 229 Mich. 509.
Minn.—Knudson v. Nagel, 56 N.W.2d 420, 238 Minn. 186.

Where answer was promptly stricken
Wis.—Vaningan v. Mueller, 243 N.W. 424, 208 Wis. 542—Vaningan v. Mueller, 243 N.W. 419, 208 Wis. 527.

5. Del.—Lord v. Poore, 108 A.2d 366, 9 Terry 595.
Ky.—Rose v. Edmonds, 111 S.W.2d 427, 271 Ky. 36.
Mich.—Trafamczak v. Anys, 31 N.W. 2d 832, 320 Mich. 653.
Mo.—Pitcher v. Schoch, 139 S.W.2d 463, 345 Mo. 1184.
Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830.
Ohio.—Frank v. Corcoran, 158 N.E. 501, 25 Ohio App. 356.
R.I.—McGinn v. J. F. Comstock & Son Co., 106 A. 222.
Tex.—National Biscuit Co. v. Lawrence, Civ.App., 152 S.W.2d 882, error refused.

6. Ill.—Smithers v. Henriquez, 15 N.E.2d 499, 368 Ill. 588.
Mont.—Meinecke v. Intermountain Transp. Co., 55 P.2d 680, 101 Mont. 315.
Wis.—Smith v. Yellow Cab Co., 180 N.W. 125, 173 Wis. 33.

Where proof supported amount of judgment after remittitur and evidence justified verdict holding defendant liable, plaintiff's reference to insurance, although it may have affected allowance of damages, was not reversible error.
Ill.—Kamienski v. Bluebird Air Service, 53 N.E.2d 131, 321 Ill. App. 340, error dismissed 59 N.E. 2d 853, 389 Ill. 462.

Effect on liability

Although verdict for plaintiff was conservative, court was required on defendants' appeal to consider whether repeated reference to insurance influenced jury not only in determining amount of verdict but also in deciding issue of contributory negligence in plaintiff's favor.

that the loss will fall on an insurance company;[2] but each case must be determined on its own facts,[2.5] and the mere mention of liability insurance in the examination of witnesses or presentation of evidence does not always constitute reversible error.[2.10]

The error is harmless where the jury presumably understood that insurers were interested in the case or were otherwise properly informed thereof, or the reference was merely incidental;[3] and the case will not be reversed in the absence of a showing

2. Ala.—Thorne v. Parrish, 90 So. 2d 781.
Ariz.—Dunipace v. Martin, 242 P.2d 543, 73 Ariz. 415—Northern Ariz. Supply Co. v. Stinson, 238 P.2d 937, 73 Ariz. 109—Blue Bar Taxicab & Transfer Co. v. Hudspeth, 216 P. 246, 25 Ariz. 287.
Ark.—Ward v. Haralson, 130 S.W.2d 322, 196 Ark. 785.
Cal.—Hatfield v. Levy Bros., 117 P. 2d 841, 18 C.2d 798.
Crawford v. Alioto, 233 P.2d 148, 105 C.A.2d 15—Sheldon v. River Lines, 205 P.2d 37, 91 C.A.2d 478—Schellenberg v. Southern California Music Co., 35 P.2d 156, 139 C.A. 777—Nichols v. Smith, 28 P. 2d 693, 136 C.A. 272—Hodge v. Weinstock, Lubin & Co., 293 P. 80, 109 C.A. 393.
D.C.—Brooke v. Croson, 61 App.D.C. 159, 58 F.2d 885.
Ga.—Minnick v. Jackson, 13 S.E.2d 891, 64 Ga.App. 554.
Ill.—Johnson v. Stotts, 101 N.E.2d 880, 344 Ill.App. 614—Galek v. Winters, 92 N.E.2d 360, 340 Ill. App. 635—Kelley v. Call, 57 N.E.2d 501, 324 Ill.App. 143—Monblatt v. Young, 199 Ill.App. 312.
Ind.—J. C. Penney, Inc., v. Kellermeyer, 19 N.E.2d 882, 107 Ind.App. 253, rehearing denied 22 N.E.2d 899, 107 Ind.App. 253.
Iowa.—Floy v. Hibbard, 287 N.W. 829, 227 Iowa 149—Ryan v. Simeons, 229 N.W. 667, 209 Iowa 1090.
Kan.—Witt v. Roper, 96 P.2d 643, 150 Kan. 722—Pool v. Day, 40 P.2d 396, 141 Kan. 195—Coffman v. Shearer, 34 P.2d 97, 140 Kan. 176.
Ky.—Dunaway v. Darnell, 302 S.W. 2d 122—Austin Powder Co. v. Langdon, 236 S.W.2d 775, 312 Ky. 141—Stott v. Hinkle, 150 S.W.2d 655, 286 Ky. 143—Rose v. Edmonds, 111 S.W.2d 427, 271 Ky. 36—Danville Light, Power & Traction Co. v. Baldwin, 198 S.W. 713, 178 Ky. 184.
Me.—Poland v. Dunbar, 157 A. 381, 130 Me. 447.
Mich.—Van Dyke v. Knoll, 247 N.W. 768, 262 Mich. 644.
Minn.—Jeddeloh v. Hockenhull, 18 N.W.2d 582, 219 Minn. 541.
Miss.—Snowden v. Skipper, 93 So.2d 834—Whatley v. Boolas, 177 So. 1, 180 Miss. 372.
Mo.—McCaffery v. St. Louis Public Service Co., 252 S.W.2d 361, 363 Mo. 545—Carter v. Rock Island Bus Lines, 139 S.W.2d 458, 345 Mo. 1170.
Boyne v. Schulte, App., 222 S.W. 2d 503—Landau v. Fred Schmitt Contracting Co., 179 S.W.2d 138, 237 Mo.App. 908—Weigel v. Reinties, App., 154 S.W.2d 412—Wininger v. Bennett, App., 104 S.W.2d 413—Crapson v. United Chatauqua Co., App., 27 S.W.2d 722.
Neb.—Haight v. Nelson, 59 N.W.2d 576, 157 Neb. 641.
N.H.—Gerry v. Neugebauer, 136 A. 751, 83 N.H. 23.
N.Y.—Hegeman v. Hegeman, 12 N.Y.S.2d 462, 257 App.Div. 852, reargument denied 14 N.Y.S.2d 159, 257 App.Div. 977—Dietz v. Dinkel, 246 N.Y.S. 623, 230 App.Div. 699.
Okl.—Reddick v. Gilliam, 263 P.2d 742—Dolliver v. Lathion, 82 P.2d 675, 183 Okl. 329—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487.
R.I.—Lavigne v. Ballantyne, 17 A. 2d 845, 66 R.I. 123.
S.C.—Duke v. Parker, 118 S.E. 802, 125 S.C. 442.
Tex.—Page v. Thomas, Com.App., 71 S.W.2d 234.
Pattison v. Highway Ins. Underwriters, Civ.App., 278 S.W.2d 207, error refused no reversible error—Musslewhite v. Gillette, Civ.App., 258 S.W.2d 104—Moore v. Dallas Ry. & Terminal Co., Civ.App., 238 S.W.2d 741, error dismissed—M. J. Const. Co. v. Deatherage, Civ.App., 231 S.W.2d 501—Eden v. Feller, Civ.App., 229 S.W.2d 408—William Cameron Co. v. Downing, Civ.App., 147 S.W.2d 963—Standard Paving Co. v. McClinton, Civ.App., 146 S.W.2d 466—South Texas Coaches v. Woodard, Civ.App., 123 S.W.2d 395—Murphey v. Blankenship, Civ. App., 120 S.W.2d 309—Water, Light & Ice Co. of Weatherford v. Barnett, Civ.App., 212 S.W. 236.
Utah.—Gittens v. Lundberg, 284 P. 2d 1115, 3 Utah 2d 392—Morrison v. Perry, 140 P.2d 772, 104 Utah 151.
Vt.—McCutcheon v. Leonard, 39 A. 2d 348, 114 Vt. 38—Bliss v. Moore, 22 A.2d 315, 112 Vt. 185—Ryan v. Barrett, 162 A. 793, 105 Vt. 21.
Wash.—Gaskill v. Amadon, 38 P.2d 229, 179 Wash. 375.
W.Va.—Bradfield v. Board of Ed. of Pleasants County, 36 S.E.2d 512, 128 W.Va. 228.
36 C.J. p 1128 note 76.

2.5 Ky.—National Linen Supply Co. v. Snowden, 156 S.W.2d 186, 288 Ky. 374.
Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.
Pa.—Lear v. Kash, Com.Pl., 18 Wash. Co. 133.
Tex.—Finck Cigar Co. v. Campbell, Civ.App., 114 S.W.2d 348, affirmed 133 S.W.2d 759, 134 Tex. 250.

2.10 Cal.—Baker v. Rodrigues, 105 P.2d 1018, 41 C.A.2d 58.
Md.—Association of Independent Taxi Operators v. Kern, 13 A.2d 374, 178 Md. 252, 131 A.L.R. 792.
Mich.—White v. Makela, 8 N.W.2d 128, 304 Mich. 425.
Minn.—Jaenisch v. Vigen, 297 N.W. 29, 209 Minn. 543.
Mo.—Pitcher v. Schoch, 139 S.W.2d 463, 345 Mo. 1184.
Adams v. Le Bow, 172 S.W.2d 874, 237 Mo.App. 1191—Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830.
Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.
Neb.—Jones v. McCully, 285 N.W. 551, 136 Neb. 206.
N.H.—Heilman v. Whalley, 6 A.2d 168, 90 N.H. 215.
Okl.—Coker v. Moose, 68 P.2d 504, 180 Okl. 234.
Pa.—Fleischman v. City of Reading, 130 A.2d 429, 388 Pa. 183.
Tex.—National Biscuit Co. v. Lawrence, Civ.App., 152 S.W.2d 882, error refused—Texas Coca-Cola Bottling Co. v. Lovejoy, Civ.App., 138 S.W.2d 254, error refused.

Lack of insurance

Admission of testimony of one of two defendants in negligence action that witness was not protected by insurance is not prejudicial error, if his lack of insurance is not featured or made basis for appeal to increase or decrease damages recovered by plaintiff.
Minn.—Anderson v. Enfield, 70 N.W. 2d 409, 244 Minn. 474.

3. Ariz.—Holbrook Light & Power Co. v. Gordon, 148 P.2d 360, 61 Ariz. 256—Fike v. Grant, 8 P.2d 242, 39 Ariz. 549.
Ark.—Ft. Smith-Spadra Mining Co. v. Shirley, 13 S.W.2d 14, 178 Ark. 1007.
Cal.—Packard v. Moore, 71 P.2d 922, 9 C.2d 571.
Adams v. Southern Pac. Co., 186 P.2d 729, 82 C.A.2d 560—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Shriver v. Silva, 151 P.2d 528, 65 C.A.2d 758—Martin, Continental Casualty Co., Intervener, v. Clinton Const. Co., 105 P.2d 1029, 41 C.A.2d 35, rehearing denied 106 P. 2d 629, 41 C.A.2d 35—Corral v. Sager, 77 P.2d 303, 25 C.A.2d 322—McCullough v. Langer, 73 P.2d 649, 23 C.A.2d 510—Berlin v. Violett, 18 P.2d 737, 129 C.A. 337—Rannard v. Harris, 8 P.2d 864, 121 C.A. 281—Coursault v. Schwebel, 5 P.2d 77, 118 C.A. 259—Elsey v. Domecq, 299 P. 794, 114 C.A. 42—

of prejudice where the answer was promptly stricken[4] and the jury was at once instructed to disregard what was said about the insurance,[5] where the verdict was proper and not excessive[6] or a different one would have been rendered in the absence of the statement.[7]

Levy v. Berner, 293 P. 896, 110 C.A. 65.
Colo.—Rains v. Rains, 46 P.2d 740, 97 Colo. 19.
Ill.—Smallen v. Aronson, 253 Ill.App. 540. See Forrest v. Roper Furniture Co., 187 Ill.App. 504, affirmed 108 N.E. 328, 267 Ill. 331.
Ind.—Gamble v. Lewis, 85 N.E.2d 629, 227 Ind. 455—Bates Motor Transport Lines v. Mayer, 14 N.E. 2d 91, 213 Ind. 664.
Kickels v. Fein, 10 N.E.2d 297, 104 Ind.App. 606.
Kan.—Olsen v. Lambert, 145 P.2d 159, 158 Kan. 94—Billings v. Aldridge, 3 P.2d 639, 133 Kan. 769.
Ky.—Crawford v. Alexander, 259 S. W.2d 476—Toppass v. Perkins' Adm'x, 104 S.W.2d 423, 268 Ky. 186—Park v. Schell, 295 S.W. 161, 220 Ky. 317.
Mass.—Burgess v. Giovannucci, 49 N.E.2d 907, 314 Mass. 252.
Mich.—Watroba v. City of Detroit, 54 N.W.2d 212, 334 Mich. 182—Layton v. Cregan & Mallory Co., 248 N.W. 539, 263 Mich. 30—Stehouwer v. Lewis, 227 N.W. 759, 249 Mich. 76, 74 A.L.R. 844.
Miss.—Lancaster v. Lancaster, 57 So.2d 302, 213 Miss. 536.
Mo.—Fisher v. Duster, App., 245 S. W.2d 172—Blech v. Berzon, App., 61 S.W.2d 201—Fortner v. Kelly, 60 S.W.2d 642, 327 Mo.App. 933—Howard v. Fred Schmitt Realty & Investment Co., App., 7 S.W.2d 448—Wulze v. Aquardo, App., 6 S. W.2d 1017—Edwards v. Smith, App., 286 S.W. 428—Haggard v. Rogers-Schmitt Wire & Iron Co., App., 249 S.W. 712.
Mont.—Francis v. Heidel, 68 P.2d 583, 104 Mont. 580.
Neb.—Haight v. Nelson, 59 N.W.2d 576, 157 Neb. 641—Nichols v. Owens Motor Co., 236 N.W. 169, 121 Neb. 105.
N.Y.—Rowlands v. Parks, 149 N.Y.S. 2d 690, 1 App.Div.2d 925—Amundsen v. Consolidated Forwarding & Building Material Co., 198 N.Y.S. 704, 206 App.Div. 601, affirmed 142 N.E. 329, 236 N.Y. 670.
N.C.—Hoke v. Atlantic Greyhound Corp., 42 S.E.2d 593, 227 N.C. 412.
Ohio.—Tighe v. Diamond, 80 N.E.2d 122, 149 Ohio St. 520.
Shadwick v. Hills, 69 N.E.2d 197, 79 Ohio App. 143—Humphreys v. Madden, App., 68 N.E.2d 562.
Okl.—Reddick v. Gilliam, 263 P.2d 742—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487—Fike v. Peters, 52 P.2d 700, 175 Okl. 334—Lakeview, Inc., v. Davidson, 26 P.2d 760, 166 Okl. 171.
Pa.—Keefer v. Lombardi, 102 A.2d 695, 376 Pa. 367, certiorari denied Lombardi v. Keefer, 74 S.Ct. 871, 347 U.S. 1016, 98 L.Ed. 1138.
S.C.—Parker v. Simmons, 161 S.E. 169, 163 S.C. 42.
S.D.—O'Connor v. Sioux Falls Motor Co., 232 N.W. 904, 57 S.D. 397.
Tenn.—Lasater Lumber Co. v. Harding, 189 S.W.2d 583, 28 Tenn.App. 296.
Tex.—Herrin Transp. Co. v. Peterson, Civ.App., 216 S.W.2d 245, error refused—Scottino v. Ledbetter, Civ.App., 56 S.W.2d 282.
Utah.—Gittens v. Lundberg, 284 P. 2d 1115, 3 Utah 2d 392.
Wash.—Hines v. Foster, 6 P.2d 597, 166 Wash. 165—Todd v. Alexander, 294 P. 545, 160 Wash. 3—Colvin v. Auto Interurban Co., 232 P. 365, 132 Wash. 591.
Wis.—Sheehan v. Lewis, 260 N.W. 633, 218 Wis. 588.
"This question of a reference to the fact of a defendant carrying insurance has been before the courts on many occasions; sufficient, it would be surmised, to have established a definite rule. Yet no hard and fast rule has been announced. A fair conclusion, from a résumé of the cases, would be to class such a reference under the head of misconduct of counsel. It might be conceded that where it is obvious or fairly deducible that the sole purpose was to impress that fact of insurance on the minds of the jury, for no other reason than to create a prejudice, then a reversal will follow. But where the reference, as indicated in the cited cases, is merely incidental, misconduct will not be found. And it would seem a fair corollary of the rule that where the point is debatable and offers an open field for legitimate argument, a reviewing court should not arbitrarily undo the results of a trial had under the supervision of the trial judge, whose opportunity of approximating the situation was in the first instance, and who had refused a new trial."
Cal.—Noble v. Bacon, 18 P.2d 699, 702, 129 C.A. 177.

Questioning insurance agent

In an action for damages in an automobile collision, questioning a witness relative to being engaged in the insurance business, and whether he had insurance business with defendant, while not relevant, was held not so prejudicial as to warrant granting a new trial because of being intended to impress on the jury the fact that defendant carried insurance on his car.
Ky.—Fenley Model Dairy v. Secuskie, 290 S.W. 1044, 218 Ky. 59.

Evidence of settlement

"The admission of evidence tending to show that defendant had received a settlement from an insurance company presumably for injuries received in an accident was not so prejudicial as to require a new trial in a suit against him to recover for medical services rendered in the treatment of such injuries."
Minn.—Sahr v. Juul, 232 N.W. 717, 181 Minn. 415.

Mention of plaintiff's insurance was not prejudicial where nothing was said or developed in presence of jury that defendant had insurance.
Ill.—Goad v. Phipps, 57 N.E.2d 528, 324 Ill.App. 160.

4. Ill.—Ryan v. Harry's New York Cabaret, 12 N.E.2d 905, 293 Ill.App. 534.
Mich.—Morris v. Markey, 201 N.W. 496, 229 Mich. 509.
Minn.—Knudson v. Nagel, 56 N.W.2d 420, 238 Minn. 186.

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5. Del.—Lord v. Poore, 108 A.2d 366, 9 Terry 595.
Ky.—Rose v. Edmonds, 111 S.W.2d 427, 271 Ky. 36.
Mich.—Trafamczak v. Anys, 31 N.W. 2d 832, 320 Mich. 653.
Mo.—Pitcher v. Schoch, 139 S.W.2d 463, 345 Mo. 1184.
Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830.
Ohio.—Frank v. Corcoran, 158 N.E. 501, 25 Ohio App. 356.
R.I.—McGinn v. J. F. Comstock & Son Co., 106 A. 222.
Tex.—National Biscuit Co. v. Lawrence, Civ.App., 152 S.W.2d 882, error refused.

6. Ill.—Smithers v. Henriquez, 15 N.E.2d 499, 368 Ill. 588.
Mont.—Meinecke v. Intermountain Transp. Co., 55 P.2d 680, 101 Mont. 315.
Wis.—Smith v. Yellow Cab Co., 180 N.W. 125, 173 Wis. 33.

Where proof supported amount of judgment after remittitur and evidence justified verdict holding defendant liable, plaintiff's reference to insurance, although it may have affected allowance of damages, was not reversible error.
Ill.—Kamienski v. Bluebird Air Service, 53 N.E.2d 131, 321 Ill. App. 340, error dismissed 59 N.E. 2d 853, 389 Ill. 462.

Effect on liability

Although verdict for plaintiff was conservative, court was required on defendants' appeal to consider whether repeated reference to insurance influenced jury not only in determining amount of verdict but also in deciding issue of contributory negligence in plaintiff's favor.

ferent verdict would not otherwise have resulted,[7] where the testimony was given in good faith,[8] where the matter was unexpectedly brought out by a witness, not plaintiff, in response to a question asked in good faith by plaintiff's counsel,[9] or where the trial was before the court without a jury[9.5] and the offensive testimony was stricken.[10] So, it has been held that defendant cannot complain of a question relating to his insurance when an objection to the question was sustained,[11] or a nonprejudicial negative answer was given.[11.5]

Permitting[11.10] or refusing to permit[12] disclosure of the interest of an insurance company in plaintiff's case is not necessarily prejudicial error. However, reference to plaintiff's insurance may be ground for reversal when prejudice results.[12.5] Harmless or prejudicial error in referring to insurance on the voir dire examination of the jury is discussed supra § 1707, and such errors in argument of counsel infra § 1713 c.

§ 1710. Time or Term of Trial

Errors or irregularities in connection with the time or term of trial are not ground for reversal where no prejudice results.

The fact that a cause or issues therein were prematurely set for trial[13] or tried,[14] that a party was

Minn.—Jeddeloh v. Hockenhull, 18 N.W.2d 582, 219 Minn. 541.

7. Cal.—D'Avanzo v. Manno, 60 P. 2d 524, 16 C.A.2d 346—Rowe v. Rennick, 297 P. 603, 112 C.A. 576.
Ohio.—Sweeney v. Schneider, 53 N. E.2d 820, 73 Ohio App. 157—Knutzen Motor Trucking Co. v. Steiner, 166 N.E. 243, 31 Ohio App. 46.

8. Ky.—Rose v. Edmonds, 111 S.W. 2d 427, 271 Ky. 36.
Mich.—Watroba v. City of Detroit, 54 N.W.2d 212, 334 Mich. 182.
Minn.—Ostrowski v. Mockridge, 65 N.W.2d 185, 242 Minn. 265.
Miss.—Petermann v. Gary, 49 So.2d 828, 210 Miss. 438.
Mo.—Pitcher v. Schoch, 139 S.W.2d 463, 345 Mo. 1184.
Moss v. Nehman, App., 247 S. W.2d 305—Kroell v. Lutz, App., 210 S.W. 926.
Tex.—Allmon v. Texas Elec. Service Co., Civ.App., 242 S.W.2d 806, error refused no reversible error—Texas Coca-Cola Bottling Co. v. Lovejoy, Civ.App., 138 S.W.2d 254, error refused—Finck Cigar Co. v. Campbell, Civ.App., 114 S. W.2d 348, affirmed 133 S.W.2d 759, 134 Tex. 250.

Rule not flagrantly violated
The rule of exclusion of evidence that one being sued for injuries carries insurance should not be employed to set aside judgments except in case of flagrant violation.
Mich.—Gegan v. Kemp, 4 N.W.2d 525, 302 Mich. 218—Morris v. Montgomery, 201 N.W. 496, 229 Mich. 509.

9. Ky.—Nichols v. Luster's Adm'r, 82 S.W.2d 498, 259 Ky. 379.
Mich.—Reardon v. Buck, 55 N.W.2d 847, 335 Mich. 318—Vaas v. Schrotenboer, 46 N.W.2d 416, 329 Mich. 642—Deffenbaugh v. Inter-State Motor Freight Corporation, 235 N.W. 896, 254 Mich. 180.
Ohio.—Watt v. Feuerlicht, App., 41 N.E.2d 719.
Tex.—Texas Textile Mills v. Gregory, 177 S.W.2d 938, 142 Tex. 308.
Stein v. Boehme, Civ.App., 302 S.W.2d 663—White v. Lilley, Civ. App., 286 S.W.2d 296—Langham v. Talbott, Civ.App., 211 S.W.2d 987, error refused no reversible error—Finck Cigar Co. v. Campbell, Civ. App., 114 S.W.2d 348, affirmed 133 S.W.2d 759, 134 Tex. 250.
Wash.—King v. Cann, 52 P.2d 900, 184 Wash. 554.

9.5 Okl.—Berry v. Barbour, 279 P. 2d 335.

10. Cal.—McPhee v. Lavin, 191 P. 23, 183 C. 264.

11. Minn.—Schultz v. Swift & Co., 299 N.W. 7, 210 Minn. 533.
Utah.—Coke v. Timby, 192 P. 624, 57 Utah 53.

11.5 Md.—Takoma Park Bank v. Abbott, 19 A.2d 169, 179 Md. 249, certiorari denied 62 S.Ct. 134, 314 U.S. 672, 86 L.Ed. 538.

11.10 Iowa.—Mongar v. Barnard, 82 N.W.2d 765.
N.H.—Fine v. Parella, 25 A.2d 121, 92 N.H. 81.
Tex.—Moore v. Dallas Ry. & Terminal Co., Civ.App., 238 S.W.2d 741, error dismissed.

Plaintiff's testimony that he had reported collision to his insurance agent was not prejudicial to defendants as suggesting to jury that defendants were protected by insurance.
Tex.—H. J. Heinz Co. v. Ashley, Civ. App., 291 S.W.2d 427.

Insurance on both sides
Fact that defendant brought out fact that insurer was interested in plaintiff's side of automobile accident case held not prejudicial, where jurors also were informed that one likewise was interested in defendant's claim of no liability.
Minn.—Tri-State Transfer Co. v. Nowotny, 270 N.W. 684, 198 Minn. 537.

12. S.D.—Stratton v. Sioux Falls Traction System, 226 N.W. 644, 55 S.D. 464.

Plaintiff could not be prejudicially affected by a ruling which prevented a disclosure of fact that an insurance company was interested in a recovery in action.
Kan.—Mehl v. Carter, 237 P.2d 240, 171 Kan. 597.

Workmen's compensation insurer
In an administrator's action for, and on behalf of, a casualty insurance company and the father of deceased for decedent's death, sustaining a motion of plaintiff to forbid defendant making reference to an interest of the insurance company in the action because it paid workmen's compensation after recovery of a prior judgment under the Workmen's Compensation Act was held erroneous, but not prejudicial, since the father's recovery depended on a verdict for more than the amount due the insurer, and keeping the insurer in the background was as likely to be favorable to defendant as to be prejudicial.
S.D.—Stratton v. Sioux Falls Traction System, 226 N.W. 644, 55 S. D. 464.

Objection sustained
Where objection to cross-examination question whether plaintiff's automobile insurance had been canceled as result of accident was sustained, rule that reference to insurance is prejudicial was inapplicable.
Ohio.—Bachman v. Ambos, 79 N.E.2d 177, 83 Ohio App. 141.

12.5 Miss.—Ward v. Mitchell, 62 So. 2d 388, 216 Miss. 379.
N.Y.—Lutz v. John J. Casale, Inc., 95 N.Y.S.2d 807.

13. Ark.—Buckner v. Sewell, 225 S. W.2d 525, 216 Ark. 221.
N.M.—Owen v. Thompson, 224 P. 405, 29 N.M. 517.

14. Ark.—Lane v. Stitt, 219 S.W. 340, 143 Ark. 27.
Cal.—Hahn v. Walter, 141 P.2d 925, 60 C.A.2d 837.
Colo.—Champion v. Champion, 132 P.2d 185, 110 Colo. 153.
Kan.—Runyan v. Bangs, 208 P.2d 600, 167 Kan. 691.
Ky.—Northern Kentucky Transp. Co. v. City of Bellevue, 285 S.W.

not properly notified of the time set for trial,[14.5] or that the court held a night session[15] will not operate to reverse where no prejudice results, as where the party complaining on his own showing was not entitled to the relief sought,[16] or where the issues submitted were found in his favor.[17] So it has been held that the trial of an equitable action at the trial term instead of at the special term does not prejudice the rights of either party where the jury are mutually waived and the cause tried by a judge so that the mode of trial is identical with that at special term.[18]

§ 1711. Transfer of Cause

Error in the transfer of a cause is not ground for reversal where the result is not affected.

Erroneously transferring or refusing to transfer a case to or from the law or equity docket is harmless and not ground for reversal where the result must have been the same;[19] but where plaintiff had a right to have his case submitted to the jury and there were no grounds for the assertion of any right by defendant in a court of equity, a transfer to such court is prejudicial error.[20]

241, 215 Ky. 514—Briggs v. Muir, Wilson & Muir, 263 S.W. 740, 204 Ky. 135.
La.—Wheeler v. Britton, 69 So. 766, 137 La. 975.
Okl.—Whelan v. Adams, 145 P. 1158, 44 Okl. 696, L.R.A.1915D 551.
4 C.J. p 951 note 70.

Trial before prior case on docket
Ga.—Jones Mercantile Co. v. Copeland, 188 S.E. 586, 54 Ga.App. 647.

Forcing plaintiffs to trial two minutes after answer had been filed afforded no basis for error on ground of surprise to plaintiffs in absence of showing as to how answer constituted surprise to plaintiffs.
Tex.—Roberts v. Jolly, Civ.App., 282 S.W.2d 436.

Prejudicial error
Compelling parties, over their objection, to proceed to trial less than the statutory ten days after the reply was filed and the issues made up is prejudicial error.
Okl.—Boorigie v. Boorigie, 265 P. 761, 130 Okl. 131.

14.5 Ala.—Minor v. A. B. Legg & Sons Burial Ins. Co., 56 So.2d 408, 256 Ala. 577.

15. N.J.—Handelman v. Handelman, 109 A.2d 797, 17 N.J. 1.
Tex.—Kirkland v. Rutherford, Civ. App., 171 S.W. 1031.
Utah.—Xenakis v. Garrett Freight Lines, Inc., 265 P.2d 1007, 1 Utah 2d 299.

No error shown
No harm from the holding of a night session of the court, when plaintiff's leading counsel was unable to be present from illness, appeared, where the bill of exceptions failed to show what transpired at the night session, but did show that plaintiff was represented by two other attorneys.
Tex.—Kirkland v. Rutherford, Civ. App., 171 S.W. 1031.

Fact that case was called for trial late in afternoon and that plaintiff was required to proceed, was not prejudicial to plaintiff, where there was still time before usual hour of adjournment for counsel to open to jury and to complete direct examination of plaintiff.
Pa.—Palmer v. Sunshine Family Laundry Service Co., 112 A.2d 449, 177 Pa.Super. 595.

16. Ky.—Vowell v. Conway, 9 Ky. L. 53.

Compelling trial without counsel
Where plaintiff's own testimony conclusively established that he was not entitled to the relief sought, the fact that trial court compelled plaintiff to go to trial without counsel after having previously granted him one continuance, after which counsel employed by plaintiff withdrew their appearance, was not prejudicial to plaintiff.
Colo.—Champion v. Champion, 132 P.2d 185, 110 Colo. 153.

17. Ky.—Atkins v. Globe Bank, etc., Co., 124 S.W. 879.

18. N.Y.—German-American Ins. Co. v. Standard Gaslight Co., 73 N.Y.S. 973, 67 App.Div. 539, affirmed 66 N.E. 1109, 174 N.Y. 508.
4 C.J. p 951 note 73.

19. Ala.—Peterson v. Drennen Motor Car Co., 53 So.2d 375, 256 Ala. 99—Perry v. Warnock, 20 So.2d 867, 246 Ala. 470—Mutual Life Ins. Co. of N. Y. v. Brunson, 20 So.2d 214, 246 Ala. 233.
Ark.—Kelly v. DeWees, 140 S.W.2d 1011, 200 Ark. 770—Warren County Oil & Mfg. Co. v. Sullivan, 20 S.W.2d 626, 180 Ark. 90—Hunt v. Boyce, 8 S.W.2d 342, 176 Ark. 303—Standard Rice Milling Co. v. Scott, 295 S.W. 401, 174 Ark. 1180—Chapman & Dewey Land Co., v. Board of Directors of St. Francis Levee Dist., 288 S.W. 910, 172 Ark. 414—Suhs v. Homewood Rice Land Syndicate, 193 S.W. 271, 128 Ark. 19—Eagle v. Oldham, 174 S.W. 1176, 1199, 116 Ark. 565—Yutterman v. Grier, 166 S.W. 749, 112 Ark. 366—Harris v. Remmel, 102 S.W. 716, 83 Ark. 1.
Iowa.—Friedman v. Forest City, 30 N.W.2d 752, 239 Iowa 112—Olmstead v. Lee, 200 N.W. 690—Mitchell v. Beck, 160 N.W. 232, 178 Iowa 786—Olmstead v. Taylor, 158 N.W. 557, 177 Iowa 186.
Ky.—Will B. Miller Co. v. Laval, 140 S.W.2d 376, 283 Ky. 55—Pennington v. Pennington's Adm'r, 124 S.W.2d 460, 276 Ky. 353—Hogan v. General News Bureau, 26 S.W. 2d 11, 233 Ky. 485—Lewis v. Hatcher-Power Shoe Co., 24 S.W. 2d 925, 233 Ky. 55—Charles v. Hopkins, 290 S.W. 720, 217 Ky. 842—Queen Ins. Co. v. Marks, 265 S.W. 30, 204 Ky. 662.
Mullins v. Pendleton County Ct., 13 Ky.Op. 273.
Mich.—Gauthier v. Peiter, 255 N.W. 385, 267 Mich. 667, 93 A.L.R. 1522.
Minn.—**Corpus Juris cited in** Wilcox v. Hedwall, 239 N.W. 763, 765, 185 Minn. 8—O'Neil v. Davidson, 180 N.W. 102, 147 Minn. 240.
Miss.—Taylor v. Hines, 74 So.2d 834, 221 Miss. 759—Dilworth v. Federal Reserve Bank of St. Louis, 154 So. 535, 170 Miss. 373, 92 A.L.R. 1076, followed in Galyean Bros. v. Federal Reserve Bank of St. Louis, 150 So. 825, and Galtney Motor Co. v. Federal Reserve Bank of St. Louis, 150 So. 825, followed in 154 So. 541, and Galyean v. Federal Reserve Bank of St. Louis, 154 So. 542.
Neb.—Garbark v. Newman, 51 N.W. 2d 315, 155 Neb. 188.
Va.—Quick v. Southern Churchman Co., 199 S.E. 489, 171 Va. 403—Colvin v. Butler, 143 S.E. 333, 150 Va. 672.
4 C.J. p 951 note 74.

Reversing parties on transfer
Where defendant procured a transfer of a law case to the equity side of the court, the court's action in requiring defendants to become complainants on the equity side was not prejudicial to defendants, where the burden of allegation and proof was the same as it would have been under a plea or answer to plaintiff's complaint made in conformity with chancery practice.
Ala.—Warren v. Crow, 81 So. 636, 202 Ala. 680.

20. Ark.—Berg v. Johnson, 213 S. W. 393, 139 Ark. 243, 8 A.L.R. 489—Suhs v. Homewood Rice Land Syndicate, 193 S.W. 271, 128 Ark. 19.

§ 1712. Remarks and Conduct of Judge

a. Harmless error

b. Prejudicial error

a. Harmless Error

Improper remarks or conduct of the court at the trial is not ground for reversal where no prejudice results to the complaining party.

Improper remarks[21] or misconduct of the court,

21. Ala.—Jefferson Standard Life Ins. Co. v. Smith, 42 So.2d 584, 252 Ala. 668—Williams v. John C. Webb & Sons, 179 So. 528, 235 Ala. 433—Faulkner v. Gilchrist, 143 So. 803, 225 Ala. 391—Kearley v. Cowan, 116 So. 145, 217 Ala. 295—Finney v. Long, 114 So. 200, 216 Ala. 628—Louisville & N. R. Co. v. Bouchard, 67 So. 265, 190 Ala. 157.

Roughton v. Jackson, 64 So.2d 112, 37 Ala.App. 17, certiorari denied 64 So.2d 115, 258 Ala. 579.

Ariz.—Allied Van Lines v. Parsons, 293 P.2d 430, 80 Ariz. 88—Stephens v. Foster, 51 P.2d 248, 46 Ariz. 391.

Ark.—Hull v. Hull, 205 S.W.2d 211, 212 Ark. 808—Tucker v. Ford, 146 S.W.2d 542, 201 Ark. 680—Sharp v. West, 3 S.W.2d 692, 176 Ark. 616—Petrie v. Spooner, 223 S.W. 383, 145 Ark. 138.

Cal.—Hurtado v. San Diego Electric Ry. Co., 268 P. 620, 204 C. 446—Roth v. Moeller, 197 P. 62, 185 C. 415.

Zinn v. Ex-Cell-O Corp., App., 306 P.2d 1017—Bowman v. Davis, 305 P.2d 939, 147 C.A.2d 638—Mendoza v. Gomes, 299 P.2d 707, 143 C.A.2d 172—Hanover v. McCausland, 299 P.2d 308, 142 C.A.2d 632—Alwood v. City of Los Angeles, 293 P.2d 69, 139 C.A.2d 49—Gist v. French, 288 P.2d 1003, 136 C.A.2d 247—Pure Foods Corp. v. Vogel, 268 P.2d 33, 123 C.A.2d 837—In re Wieboldt's Estate, 259 P.2d 31, 119 C.A.2d 10—Wilson v. Kopp, 250 P. 2d 166, 114 C.A.2d 198—Costa v. Regents of University of Cal., 247 P.2d 21, reheard 254 P.2d 85, 116 C.A.2d 445—Associated Tel. Co. v. Greenman, 244 P.2d 15, 111 C.A.2d 193—Van Der Most v. Workman, 236 P.2d 842, 107 C.A.2d 274—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404—Mosconi v. Ryan, 210 P.2d 259, 94 C.A.2d 227—Luis v. Cavin, 191 P. 2d 527, subsequent opinion on other grounds 198 P.2d 563, 88 C.A.2d 107—Paolini v. City and County of San Francisco, 164 P.2d 916, 72 C. A.2d 579—In re Creely, 160 P.2d 870, 70 C.A.2d 186—Singleton v. Singleton, 157 P.2d 886, 68 C.A.2d 681—Graham v. Griffin, 151 P.2d 879, 66 C.A.2d 116—Lowrey v. Rego, 149 P.2d 706, 65 C.A.2d 16—Hunt v. Pacific Electric Ry. Co., 124 P.2d 89, 51 C.A.2d 11—Jones v. Bayley, 122 P.2d 293, 49 C.A.2d 647—Farmer v. Matsutani, 119 P.2d 740, 48 C.A.2d 332—Ries v. Reinard, 117 P.2d 386, 47 C.A.2d 116—Scott v. Sheedy, 102 P.2d 575, 39 C.A.2d 96—In re Dargie's Estate, 91 P.2d 126, 33 C.A.2d 148—Huffines v. Standard Brands of California, 90 P.2d 599, 32 C.A.2d 634—Palmer v. Friedman, 77 P.2d 239, 25 C.A.2d 262—Moniz v. Bettencourt, 76 P.2d 535, 24 C.A.2d 718—Lucerne Country Club v. Beal, 68 P.2d 408, 21 C.A.2d 121—Manuel v. Calistoga Vineyard Co., 61 P.2d 1204, 17 C.A.2d 377—Gilmore v. Paris Inn, 51 P.2d 1103, 10 C.A.2d 353—Edwards v. Bodenhamer, 46 P.2d 202, 7 C.A.2d 305—Feder v. Bryson, 295 P. 546, 111 C.A. 448—Dawson v. San Diego Electric Ry. Co., 255 P. 215, 82 C.A. 141—Long v. Chronicle Pub. Co., 228 P. 873, 68 C.A. 171.

Colo.—Keller v. Miller, 165 P. 774, 63 Colo. 304.

Conn.—Jacobs v. Connecticut Co., 82 A.2d 151, 138 Conn. 80—Brower v. Perkins, 68 A.2d 146, 135 Conn. 675—**Corpus Juris Secundum cited in** Gillette v. Schroeder, 54 A.2d 498, 500, 133 Conn. 682—Coy v. Town of Milford, 12 A.2d 641, 126 Conn. 484—Burke v. Yencsik, 182 A. 135, 120 Conn. 618—Paskewicz v. Hickey, 149 A. 671, 111 Conn. 219.

Fla.—Burns v. Freund, 49 So.2d 592.

Ga.—Lankford v. Milhollin, 37 S.E. 2d 197, 200 Ga. 512—Manry v. First Nat. Bank of Barnesville, 23 S.E. 2d 662, 195 Ga. 163—Washburn v. Washburn, 4 S.E.2d 35, 188 Ga. 468—Durrett v. McWhorter, 129 S.E. 870, 161 Ga. 179.

Tifton Brick & Block Co. v. Meadow, 88 S.E.2d 569, 92 Ga.App. 328—Steinmetz v. Chambley, 83 S. E.2d 318, 90 Ga.App. 519—Head v. Georgia Power Co., 27 S.E.2d 339, 70 Ga.App. 32—Cauthern v. Gresham Lumber Co., 196 S.E. 242, 57 Ga. App. 497—Interstate Life & Accident Co. v. Brewer, 193 S.E. 458, 56 Ga.App. 599—Trammell v. Atlanta Coach Co., 181 S.E. 315, 51 Ga.App. 705—Seaboard Air Line Ry. Co. v. Young, 148 S.E. 757, 40 Ga.App. 4—Saunders & McMullian v. Hudson, 131 S.E. 115, 34 Ga.App. 758—Georgia Ry. & Power Co. v. Murphy, 110 S.E. 680, 28 Ga.App. 173.

Idaho.—Application of Big Lost River Irr. Dist., 307 P.2d 788, 78 Idaho 591—Cardoza v. Cardoza, 282 P.2d 475, 76 Idaho 347—McLaughlin's Store v. Copeman, 294 P. 523, 50 Idaho 214.

Ill.—Anderson v. Inter-State Business Men's Accident Ass'n of Des Moines, Iowa, 188 N.E. 844, 354 Ill. 538—Elgin, etc., R. Co. v. Lawlor, 82 N.E. 407, 229 Ill. 621—Fitzgerald v. Benner, 76 N.E. 709, 219 Ill. 485—Spohr v. Chicago, 69 N.E. 515, 206 Ill. 441—Skelly v. Boland, 78 Ill. 438.

Reed v. Sands, 137 N.E.2d 553, 11 Ill.App.2d 355—Burkholder v. Burkholder, 135 N.E.2d 504, 10 Ill.App. 2d 565—Weber v. Weber, 64 N.E. 2d 239, 327 Ill.App. 411—Katsinas v. Colgate-Palmolive Peet Co., 20 N.E.2d 127, 299 Ill.App. 347—Aequaviva v. Madison County Mut. Automobile Ins. Co., 2 N.E.2d 334, 285 Ill.App. 431—Cash v. Cleveland, C., C. & St. L. Ry. Co., 244 Ill.App. 1—Stocker v. Leonard Machinery & Tool Co., 231 Ill.App. 206—Ringering v. Wood River Drainage & Levee Dist. of Madison County, Ill., 212 Ill.App. 170. See Smidt v. Dubois, 190 Ill.App. 563—Schaffner v. C. F. Massey Co., 189 Ill.App. 391, affirmed 110 N.E. 381, 270 Ill. 207.

Iowa.—Wheeler v. Woods, 219 N.W. 407, 205 Iowa 1240—Whitlatch v. City of Iowa Falls, 201 N.W. 83, 199 Iowa 73—Johnston v. Delano, 154 N.W. 1013, 175 Iowa 498—Smith v. Beck, 153 N.W. 76.

Ind.—Red Cab v. White, 12 N.E.2d 356, 213 Ind. 269.

Schrenker v. Grimshaw, 119 N. E.2d 432, 124 Ind.App. 493—Van Drake v. Thomas, 38 N.E.2d 878, 110 Ind App. 586.

Kan.—Shore v. Cantor, 157 P.2d 528, 159 Kan. 642—Tovey v. Geiser, 92 P.2d 3, 150 Kan. 149—Howard v Jones Store Co., 256 P. 1019, 123 Kan. 620, 53 A.L.R. 139—American Automobile Ins. Co. v. Clark, 252 P. 215, 122 Kan. 445—Blakeslee v. Morgan, 235 P. 1042, 118 Kan. 486—Juznik v. Kansas City Southern Ry. Co., 199 P. 90, 109 Kan. 359—Simpson v. Schiff, 197 P. 857, 109 Kan. 9—Daniels v. Hummel, 195 P. 604, 108 Kan. 422.

Ky.—Brumley v. Mary Gail Coal Co., 246 S.W.2d 148—Jones v. Miller, 213 S.W.2d 933—Ernst v. Acy, 95 S.W.2d 574, 264 Ky. 777—Equitable Life Assur. Soc. of U. S. v. Kazee, 79 S.W.2d 208, 257 Ky. 803—Louisville Trust Co. v. Heimbuecher, 66 S.W.2d 96, 252 Ky. 217—Breathitt County v. Turner, 4 S. W.2d 695, 223 Ky. 727—Smith's Adm'r v. Louisville Ry. Co., 192 S. W. 875, 174 Ky. 784.

Md.—Havre De Grace Banking & Trust Co. v. Mitchell, 199 A. 843, 175 Md. 68—Western Maryland Dairy Corporation v. Brown, 181 A. 468, 169 Md. 257.

Mass.—Dillon v. Plimpton, 132 N.E. 415, 239 Mass. 588—Taylor v. Weingartner, 111 N.E. 909, 223 Mass. 243.

Mich.—Marian v. Chemical Products, Inc., 75 N.W.2d 55, 344 Mich. 551—

Meyers v. Fort, 73 N.W.2d 898, 344 Mich. 312—Howard v. Burton, 61 N.W.2d 77, 338 Mich. 178—Robb v. Booms, 60 N.W.2d 469, 337 Mich. 583—Jakubiec v. Hasty, 59 N.W.2d 385, 337 Mich. 205—Grenawalt v. Nyhuis, 55 N.W.2d 736, 335 Mich. 76—White v. Grismore, 53 N.W.2d 499, 333 Mich. 568—Covell v. Colburn, 13 N.W.2d 275, 308 Mich. 240—Grzelka v. Chevrolet Motor Car Co., 281 N.W. 568, 286 Mich. 141—Madalinski v. Hill, 269 N.W. 147, 277 Mich. 219—Cusick v. Feldpausch, 243 N.W. 226, 259 Mich. 349—Brackett's Estate v. Burnham's Estate, 191 N.W. 34, 221 Mich. 370—Rucklich v. American Car & Foundry Co., 188 N.W. 440, 218 Mich. 561—C. A. S. Engineering Co. v. H. J. Walker Co., 184 N.W. 431, 216 Mich. 113—Detroit United Ry. v. City of Pontiac, 160 N.W. 751, 193 Mich. 466—Newton v. Consolidated Const. Co., 150 N.W. 348, 184 Mich. 63—Logan v. Lenawee County Agricultural Soc., 121 N.W. 485, 156 Mich. 537—Lee v. Huron Indemnity Union, 97 N.W. 709, 135 Mich. 291.

Minn.—Mutual Service Cas. Ins. Co. v. Overholser, 58 N.W.2d 268, 239 Minn. 243—Lewerenz v. E. W. Wylie Co., 51 N.W.2d 834, 236 Minn. 94—Dose v. Yager, 42 N.W.2d 420, 231 Minn. 90—Krienke v. Citizens' Nat. Bank of Faribault, 235 N.W. 24, 182 Minn. 549—Monroe v. Thulin, 233 N.W. 241, 181 Minn. 496—In re Speiss' Estate, 212 N.W. 167, 170 Minn. 221—Sargent v. Bryan, 207 N.W. 178, 166 Minn. 45—Northern Rock Island Plow Co. v. Hackett-Gates-Hurty Co., 206 N.W. 446, 165 Minn. 282—Burns v. Essling, 203 N.W. 605, 163 Minn. 57—McGuire v. Village of Caledonia, 167 N.W. 425, 140 Minn. 151, L.R.A. 1918D 943—McKay v. Minnesota Commercial Men's Ass'n, 165 N.W. 1061, 139 Minn. 192.

Miss.—Haynes-Walker Lumber Co. v. Hankins, 105 So. 858, 141 Miss. 55.

Mo.—Maryland Cas. Co. v. Spitcaufsky, 178 S.W.2d 368, 352 Mo. 547—Poague v. Kurn, 140 S.W.2d 13, 346 Mo. 153—Grubbs v. Kansas City Public Service Co., 45 S.W.2d 71, 329 Mo. 390—Rose v. St. Louis-San Francisco Ry. Co., 289 S.W. 913, 315 Mo. 1181—Heriford v. Kansas City Rys. Co., 220 S.W. 899—Costello v. Kansas City, 219 S.W. 386, 280 Mo. 576.

Schroeder v. Zykan, App., 255 S.W.2d 105—Lindsey v. Rogers, App., 220 S.W.2d 937—Pfiffner v. Kroger Grocer & Baking Co., App., 140 S.W.2d 79—Coleman v. Metropolitan Life Ins. Co., App., 127 S.W.2d 764—Scott v. Western Union Telegraph Co., App., 109 S.W.2d 912—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180—Cable v. Johnson, App., 63 S.W.2d 433—Heier v. Funsch, App., 61 S.W.2d 253—Isreal v. Fanchon & Marco, App., 58 S.W.2d 774—Kaiser v. Jaccard, App., 52 S.W.2d 18—State ex rel. State Highway Commission of Missouri v. Caruthers, App., 51 S.W.2d 126, certiorari quashed State ex rel. State Highway Commission v. Haid, 59 S.W.2d 1051, 332 Mo. 606—Berlau v. Metropolitan Life Ins. Co., 24 S.W.2d 686, 224 Mo.App. 938—Burton v. Phillips, App., 7 S.W.2d 712—Henry Evers Mfg. Co. v. Grant, App., 284 S.W. 525—Hertzman v. Drazen, App., 253 S.W. 431—Merchants' & Mfrs.' Bank v. S. W. Morten Lumber Co., App., 247 S.W. 432—Whitaker v. Bell Oil Co., 167 S.W. 619, 182 Mo.App. 229—Herndon v. Springfield, 119 S.W. 467, 137 Mo. App. 513.

Neb.—In re Lodge's Estate, 243 N.W. 781, 123 Neb. 531.

Nev.—Peterson v. Pittsburg Silver Peak Gold Mining Co., 140 P. 519, 37 Nev. 117.

N.J.—Jardine Estates, Inc. v. Koppel, 133 A.2d 1, 24 N.J. 536.

McStay v. Przychocki, 77 A.2d 276, 10 N.J.Super. 455, affirmed 81 A.2d 761, 7 N.J. 456.

Higgins v. County Seat Building & Loan Ass'n, 8 A.2d 101, 123 N.J.Law 116.

Moss Industries v. Irving Metal Co., 61 A.2d 159, 142 N.J.Eq. 704.

Gray v. Sheffield Farms Co., 180 A. 403, 13 N.J.Misc. 635—Leach v. People's Fire Ins. Co., 155 A. 773, 9 N.J.Misc. 909—Reid v. Tansey, 153 A. 713, 9 N.J.Misc. 333.

N.Y.—Arney v. Kramer, 83 N.Y.S.2d 47, 274 App.Div. 903—Ford v. Manville, 42 N.Y.S.2d 645, 266 App.Div. 911—Levering & Garrigues Co. v. Century Holding Co., 150 N.Y.S. 649, 165 App.Div. 174—Yunkeich v. Brooklyn Heights R. Co., 75 N.Y.S. 86, 69 App.Div. 619.

Reilly v. Eastman's Co., 58 N.Y.S. 1089, 28 Misc. 125.

N.C.—Pegram-West, Inc. v. Winston Mut. Life Ins. Co., 56 S.E.2d 607, 231 N.C. 277—McCartha v. Colonial Ice Co., 17 S.E.2d 479, 220 N.C. 367—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106—Garrett v. Southern Ry. Co., 90 S.E. 903, 172 N.C. 737, L.R.A.1917F 885.

N.D.—Tice v. Mandel, 76 N.W.2d 124—Nevland v. Njust, 51 N.W.2d 845, 78 N.D. 747—Hamilton v. Charlebois, 248 N.W. 676, 63 N.D. 504—Edwards v. McKechnie, 243 N.W. 923, 62 N.D. 472.

Ohio.—Kopelove Iron & Metal Co. v. Lawson, App., 139 N.E.2d 72—Melville v. Greyhound Corp., 133 N.E. 2d 436, 99 Ohio App. 411—Klarman v. Snyder, App., 123 N.E.2d 65—Benjamin v. Lawson, 83 N.E.2d 95, 83 Ohio App. 159—Curran v. Hanselman, App., 67 N.E.2d 790—Morgan v. Hunsicker, App., 60 N.E.2d 509—Buckeye Union Casualty Co. v. Strashun, 194 N.E. 384, 48 Ohio App. 483—W. H. Davis Die Co. v. Beitzhoover Electric Co., 178 N.E. 418, 40 Ohio App. 308.

Okl.—Chase v. Watson, 294 P.2d 801—Layton v. Purcell, 267 P.2d 547—Gulf Oil Corp. v. Lemmons, 181 P. 2d 568, 198 Okl. 596—Holzbierlein v. State, 172 P.2d 1007, 197 Okl. 509—Empire Oil & Refining Co. v. Fields, 112 P.2d 395, 188 Okl. 666, appeal dismissed 62 S.Ct. 79, 314 U.S. 572, 86 L.Ed. 463—Equitable Life Assur. Soc. of U. S. v. Robbins, 64 P.2d 273, 179 Okl. 1—Rowland v. Morgan, 63 P.2d 712, 178 Okl. 600—Wirt Franklin Petroleum Corporation v. Page, 53 P.2d 676, 175 Okl. 616—Pine v. Independent Natural Gas Co., 52 P.2d 1051—Atchison, T. & S. F. Ry. Co. v. Wood & Co., 43 P.2d 727, 171 Okl. 510—Ambrosy v. Oklahoma Union Ins. Co., 42 P.2d 849, 171 Okl. 223—Bristow v. Bristow, 282 P. 154, 140 Okl. 8—Atlas Assur. Co., Limited, of London, England v. Leonard, 234 P. 771, 108 Okl. 150—Tulsa Hospital Ass'n v. Juby, 175 P. 519, 73 Okl. 243, 22 A.L.R. 333—Brownell v. Moorehead, 165 P. 408, 65 Okl. 218—Brown v. Tull, 164 P. 785, 65 Okl. 119—Guthrie v. Carey, 81 P. 431, 15 Okl. 276.

Or.—**Corpus Juris Secundum cited in** Best v. Tavenner, 218 P.2d 471, 476, 189 Or. 46—Sertic v. McCullough, 63 P.2d 884, 155 Or. 216—Lamb v. Woodry, 58 P.2d 1257, 154 Or. 30, 105 A.L.R. 914—Hooper v. Pennick, 202 P. 743, 102 Or. 382—Miller Lumber Co. v. Davis, 185 P. 462, 94 Or. 507, rehearing denied 185 P. 1107, 94 Or. 507—Hoag v. Washington-Oregon Corporation, 147 P. 756, 75 Or. 588.

Pa.—Keating v. Belcher, 119 A.2d 535, 384 Pa. 129—Palmgreen v. Palmer's Garage, 117 A.2d 721, 383 Pa. 105—Cassidy v. Evans, 23 A. 2d 449, 343 Pa. 483—Fortis v. City of Pittsburgh, 22 A.2d 652, 344 Pa. 121—Fischer v. Commercial Nat. Bank, 184 A. 57, 321 Pa. 200—Gold v. Fox Film Corporation, 155 A. 287, 304 Pa. 114—Steininger v. Spaid, 150 A. 620, 300 Pa. 428—Jarvis v. Bell, 146 A. 153, 296 Pa. 568—Boyle v. Philadelphia Rapid Transit Co., 134 A. 446, 286 Pa. 536.

Major v. Mac Lloyd, 98 A.2d 454, 174 Pa.Super. 22—Simkins v. Barcus, 77 A.2d 717, 168 Pa.Super. 195—Goldstein v. Goldstein, 33 A.2d 83, 152 Pa.Super. 573—Cockcroft v. Metropolitan Life Ins. Co., 3 A. 2d 184, 133 Pa.Super. 598—Kearney v. Security Ins. Co., 67 Pa.Super. 179.

R.I.—Ziegler v. Providence Biltmore Hotel Co., 195 A. 397, 59 R.I. 326—Clark v. Morgan, 193 A. 518, 58 R.I. 422—Wordell v. Shepard Co., 192 A. 464, 58 R.I. 263—Cowan v. Carpenter, 169 A. 485.

while conducting the trial,[22] will not be ground for reversal where no prejudice resulted therefrom. Before any remarks can be deemed reversible error, it must appear that there were in law erroneous, unjustified and clearly prejudicial, and such as could not be cured by instructions to disregard them.[23]

S.C.—Smith v. Bulman, 15 S.E.2d 635, 197 S.C. 357—Cook v. Atlantic Coast Line R. Co., 13 S.E.2d 1, 196 S.C. 230, 133 A.L.R. 1144—Edge v. Town of Cayce, 197 S.E. 216, 187 S. C. 171—Bosdell v. Dixie Stores Co., 167 S.E. 834, 168 S.C. 520—General Motors Acceptance Corporation v. Chestnut, 155 S.E. 231, 158 S.C. 42—Green v. Smith, 147 S.E. 333, 149 S.C. 303—Hildebrand v. High School Dist. No. 32, 136 S.E. 757, 138 S.C. 445—Rumler v. Gantt, 113 S.E. 581, 121 S.C. 117—Phillips v. Piedmont & N. Ry. Co., 96 S.E. 960, 110 S.C. 428—Tyler v. Atlantic Coast Line R. Co., 88 S.E. 541, 104 S.C. 107—Willis v. Western Union Tel. Co., 53 S.E. 639, 73 S.C. 379—Pratt v. Frasier, 51 S.E. 983, 72 S.C. 368.

Tenn.—Union Traction Co. v. Anderson, 242 S.W. 876, 146 Tenn. 476, 25 A.L.R. 1496.

Stepp v. Black, 14 Tenn.App. 153—Grace v. Curley, 3 Tenn.App. 1.

Tex.—Cole v. Waite, 246 S.W.2d 849, 151 Tex. 175—Conner v. Littlefield, 15 S.W. 217, 79 Tex. 76.

Pride of Dallas Taxicab Co. v. Plouche, Civ.App., 267 S.W.2d 473, error refused no reversible error—Texas Mexican R. Co. v. Bunn, Civ. App., 264 S.W.2d 518, error refused no reversible error—Railway Exp. Agency v. Spain, Civ.App., 249 S.W. 2d 644, appeal dismissed 255 S.W. 2d 509, 152 Tex. 198—Lynn v. Haecker, Civ.App., 244 S.W.2d 539—Airline Motor Coaches v. Green, Civ.App., 217 S.W.2d 70, error refused no reversible error—Williams v. Merchants Fast Motor Lines, Civ.App., 214 S.W.2d 307—Motley v. Mielsch, Civ.App., 199 S. W.2d 552, reversed on other grounds 200 S.W.2d 622, 145 Tex. 557—Goldstein Hat Mfg. Co. v. Cowen, Civ.App., 136 S.W.2d 867, error dismissed, judgment correct—Peveto v. Smith, Civ.App., 113 S.W.2d 216, modified on other grounds 133 S.W. 2d 572, 134 Tex. 308—Holden v. Gibbons, Civ.App., 101 S.W.2d 837, error dismissed—Cheney v. Cheney, Civ.App., 82 S.W.2d 1024, reversed on other grounds 113 S.W.2d 162, 131 Tex. 212, rehearing denied 114 S.W.2d 533, 131 Tex. 212—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072—Gersdorf-Sloan Ambulance Service v. Kenty, Civ. App., 75 S.W.2d 903—City of Houston v. Pillot, Civ.App., 73 S.W.2d 585, reversed on other grounds, Com.App., 105 S.W.2d 870—Ellis v. Holcombe, Civ.App., 69 S.W.2d 449—Houston Belt & Terminal Ry. Co. v. Davis, Civ.App., 19 S.W.2d 77—Park v. Sullivan, Civ.App., 12 S. W.2d 265—Jaffe v. Deckard, Civ. App., 261 S.W. 390—O'Neil v. Quilter, Civ.App., 236 S.W. 116—Midkiff v. Benson, Civ.App., 235 S.W. 292—American Nat. Ins. Co. v. Nussbaum, Civ.App., 230 S.W. 1102, dismissed for want of jurisdiction—Harrison v. Harrison, Civ.App., 230 S.W. 803—Cohn v. Saenz, Civ.App., 211 S.W. 492, error refused—Morales v. Cline, Civ.App., 202 S.W. 754, dismissed for want of jurisdiction—First Nat. Bank v. Mangum, Civ.App., 194 S.W. 647, error refused—Coker v. Cooper's Estate, Civ.App., 176 S.W. 145—Sterling v. De Laune, 105 S.W. 1169, 47 Tex. Civ.App. 470.

Utah.—Woodward v. Spring Canyon Coal Co., 63 P.2d 267, 90 Utah 578.

Vt.—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216—Macauley v. Hyde, 42 A.2d 482, 114 Vt. 198—Williams v. Marini, 162 A. 796, 105 Vt. 11—Donovan v. Towle, 134 A. 588, 99 Vt. 464.

Va.—Petcosky v. Bowman, 89 S.E.2d 4, 197 Va. 240—Montgomery Ward & Co. v. Nance, 182 S.E. 264, 165 Va. 363—Norfolk & W. Ry. Co. v. Spates, 94 S.E. 195, 122 Va. 69—Carpenter v. Smithey, 88 S.E. 321, 118 Va. 533.

Wash.—Blackburn v. Groce, 283 P.2d 115, 46 Wash.2d 529—Wiseman v. Skagit County Dairymen's Ass'n, 19 P.2d 662, 172 Wash. 95—Wilcox v. Hubbard, 282 P. 218, 154 Wash. 344—Kayser v. Foster, 244 P. 708, 138 Wash. 484—Williamson Inv. Co. v. Williamson, 165 P. 385, 96 Wash. 529—Zech v. Bell, 162 P. 363, 94 Wash. 344—Cummings v. Weir, 79 P. 487, 37 Wash. 42—Nunn v. Jordan, 72 P. 124, 31 Wash. 506.

W.Va.—State Road Commission of West Virginia v. McMurray, 137 S. E. 530, 103 W.Va. 346.

Wis.—Blom v. Kumbier, 81 N.W.2d 528, 275 Wis. 227—London & Lancashire Indem. Co. v. Phoenix Indem. Co., 56 N.W.2d 777, 263 Wis. 171—Doering v. Knudsen, 53 N.W. 2d 445, 261 Wis. 442—Cohen v. Bridges, 39 N.W.2d 373, 255 Wis. 535—Langer v. Chicago, M., St. P. & P. Ry. Co., 265 N.W. 851, 220 Wis. 571—Philip v. Schlager, 253 N.W. 394—Vaningan v. Mueller, 243 N.W. 424, 208 Wis. 542—Vaningan v. Mueller, 243 N.W. 419, 208 Wis. 527—Olson v. Solverson, 38 N. W. 329, 71 Wis. 668.

4 C.J. p 955 note 35.

22. Ala.—Jefferson County Burial Soc. v. Curry, 187 So. 723, 237 Ala. 548.

Cal.—Frazure v. Fitzpatrick, 136 P. 2d 566, 21 C.2d 851.

Zinn v. Ex-Cell-O Corp., App., 306 P.2d 1017—Karwoski v. Grant, 85 P.2d 944, 30 C.A.2d 171—Sullivan v. Barra, 70 P.2d 495, 22 C.A.2d 20.

Conn.—Coy v. Town of Milford, 12 A. 2d 641, 126 Conn. 484.

Ga.—Steinmetz v. Chambley, 83 S.E. 2d 318, 90 Ga.App. 519—Hinesley v. Anderson, 43 S.E.2d 736, 75 Ga. App. 394—Simmons Co. v. Hardin, 43 S.E.2d 553, 75 Ga.App. 420.

Ill.—McGowen v. McGowen, 105 N. E.2d 136, 346 Ill.App. 472—Kutrzeba v. Solewski, 87 N.E.2d 370, 311 Ill.App. 603. See Healy v. Chicago City Ry. Co., 196 Ill.App. 1—Parks v. Western, 193 Ill.App. 284—Smidt v. Dubois, 190 Ill.App. 563.

Ky.—Reynolds v. Coburn, 148 S.W. 2d 705, 285 Ky. 544.

Mich.—Lane v. B. & J. Theatres, 23 N.W.2d 130, 314 Mich. 666—Jolman v. Alberts, 158 N.W. 886, 192 Mich. 365.

Mo.—Harris v. St. Louis Public Service Co., 270 S.W.2d 850—Hoffman v. St. Louis Public Service Co., 255 S.W.2d 736—Harper v. St. Joseph Lead Co., 233 S.W.2d 835, 361 Mo. 129.

Clayton v. St. Louis Public Service Co., App., 276 S.W.2d 621.

N.J.—Melone v. Jersey Cent. Power & Light Co., 113 A.2d 13, 18 N.J. 163.

N.Y.—Jacobs v. Jacobs, 299 N.Y.S. 187, 252 App.Div. 794.

N.C.—Brewer v. Brewer, 78 S.E.2d 719, 238 N.C. 607, 40 A.L.R.2d 763—Pegram-West Inc. v. Winston Mut. Life Ins. Co., 56 S.E.2d 607, 231 N.C. 277.

Ohio.—Hudson v. Hoster, App., 47 N. E.2d 895.

Okl.—Empire Oil & Refining Co. v. Fields, 112 P.2d 395, 188 Okl. 666, appeal dismissed 62 S.Ct. 79, 314 U.S. 572, 86 L.Ed. 463—Maxwell v. Yancy, 28 P.2d 989, 167 Okl. 158.

R.I.—De Robbio v. De Robbio, 14 A. 2d 19, 65 R.I. 188, reargument denied 16 A.2d 327, 65 R.I. 443.

Tenn.—Allen v. Goldstein, App., 291 S.W.2d 596.

Tex.—State v. Humble Oil & Refining Co., Civ.App., 187 S.W.2d 93, opinion supplemented on other grounds 194 S.W.2d 811—Texas & N. O. R. Co. v. McGinnis, Civ.App., 81 S.W. 2d 200, affirmed 109 S.W.2d 160, 130 Tex. 338—Texas & N. O. R. Co. v. McGinnis, Civ.App., 81 S.W.2d 200.

Wash.—Butler v. Ringrose, 15 P.2d 1117, 170 Wash. 211.

4 C.J. p 956 note 36.

23. Cal.—Petersen v. Rieschel, 252 P.2d 986, 115 C.A.2d 758.

Conn.—Felix v. Hall-Brooke Sanitarium, 101 A.2d 500, 140 Conn. 496.

Applying this principle, remarks of the following character have been held harmless: That objections to the evidence were disrespectful to the court and in violation of counsel's duty;[24] disparaging or critical remarks concerning counsel or counsel's presentation or argument;[24.5] disapproving of unnecessary repetition in counsel's opening statement;[25] that the court considered the presentation or examination unduly protracted,[26] and that it wished it knew how to curb it;[27] that, if defendant had any defense, he would have no difficulty in procuring other counsel, where defendant did in fact procure other counsel of good standing;[28] erroneously characterizing a question asked as improper;[29] commenting or stating an opinion on the evidence;[30] stating that the preponderance of the

Me.—Page v. Hemingway Bros. Interstate Trucking Co., 114 A.2d 238.
Mich.—Marian v. Chemical Products, Inc., 75 N.W.2d 55, 344 Mich. 551.
Minn.—Dahlin v. Kron, 45 N.W.2d 833, 232 Minn. 312.
Or.—Best v. Tavenner, 218 P.2d 471, 476, 189 Or. 46.
Pa.—Fischer v. Commercial Nat. Bank, 184 A. 57, 321 Pa. 200.
Wash.—Turner v. Wenatchee Vinegar Co., 298 P. 683, 162 Wash. 313.
"Whether or not reversible error resulted depends upon the nature of the comments and the circumstances in which they were made."
Mo.—McNeill v. Fidelity & Casualty Co. of New York, 82 S.W.2d 582, 586, 336 Mo. 1142.

24. Mo.—Hutchinson v. Richmond Safety Gate Co., 152 S.W. 52, 247 Mo. 71.

Remark that time was being lost by objections was not prejudicial under record.
Ill.—Fisher v. Illinois Terminal R. Co., 113 N.E.2d 344, 350 Ill.App. 555.

Remarks directed to both counsel
(1) Remarks of trial court, made during trial and directed to both counsel for purpose of obtaining orderly trial procedure, were not prejudicial.
Minn.—Ryan v. City of Crookston, 30 N.W.2d 351, 225 Minn. 129.

(2) Taking counsel to task for making objections to testimony was not so prejudicial as to warrant a reversal, where the court explained to the jury that the purpose of the remarks was to expedite the trial and not have it prolonged by so many groundless objections, and that his remarks were made to apply to counsel for both parties.
R.I.—Moran v. Moran, 160 A. 619, 52 R.I. 291.

24.5 Cal.—Mendoza v. Gomes, 299 P. 2d 707, 143 C.A.2d 172—In re Hampton's Estate, 127 P.2d 38, reheard 131 P.2d 565, 55 C.A.2d 543.
Fla.—Florida Motor Lines Corp. v. Barry, 27 So.2d 753, 158 Fla. 123.
Iowa.—Johnson v. Johnson, 65 N.W. 2d 157, 245 Iowa 1216.
Mich.—Jakubiec v. Hasty, 59 N.W. 2d 385, 337 Mich. 205.
Minn.—Wentz v. Guaranteed Sand & Gravel Co., 287 N.W. 113, 205 Minn. 611.
Okl.—Key v. British Am. Oil Producing Co., 167 P.2d 657, 196 Okl. 663—Empire Oil & Refining Co. v. Fields, 112 P.2d 395, 188 Okl. 666, appeal dismissed 62 S.Ct. 79, 314 U.S. 572, 86 L.Ed. 463.
Pa.—Lomkin v. Geasey, 12 A.2d 117, 338 Pa. 2.
Tex.—Howard v. Sears, Civ.App., 196 S.W.2d 105.

Remark to both sides
Remark of the court that "This case is not being conducted very well" was harmless, where it was made to both sides.
Pa.—Slocock v. Liggit, 192 A. 671, 326 Pa. 492.

25. Mo.—Lord v. Austin, App., 39 S. W.2d 575.

26. Ind.—Fabian v. Goldstone, 103 N.E.2d 920, 123 Ind.App. 49.
Miss.—Vail v. City of Jackson, 41 So.2d 357, 206 Miss. 299.
Okl.—Empire Oil & Refining Co. v. Fields, 112 P.2d 395, 188 Okl. 666, appeal dismissed 62 S.Ct. 79, 314 U. S. 572, 86 L.Ed. 463.
Or.—In re Prince's Estate, 246 P. 713, 118 Or. 210.
S.C.—Autrey v. Bell, 103 S.E. 749, 114 S.C. 370.
Wis.—McMahon v. Eau Claire Water-Works Co., 70 N.W. 829, 95 Wis. 640.
4 C.J. p 956 note 38.

Facts not in dispute
(1) The court's suggestion that the number of cars parked near the curb at the place of the accident was already sufficiently established is harmless, where there was no dispute on the matter.
Cal.—De Nardi v. Palanca, 8 P.2d 220, 120 C.A. 371.

(2) The court's remarks, during an extended interrogation of a witness concerning the gravity of plaintiff's condition, that nobody disputed the seriousness of injury, so "why try to embroider it," were not prejudicial.
U.S.—Brumberger v. Burke, C.C.A.N. J., 56 F.2d 54.

27. Ga.—Georgia Ry. & Power Co. v. Murphy, 110 S.E. 680, 28 Ga. App. 173.

28. Vt.—Fitzgerald v. Connors, 92 A. 456, 88 Vt. 365.

29. Ark.—Swift & Co. v. Mabry, 159 S.W.2d 61, 203 Ark. 818.
Tex.—Houston, etc., R. Co. v. Shapard, 118 S.W. 596, 54 Tex.Civ.App. 596.

30. Cal.—Gist v. French, 288 P.2d 1003, 136 C.A.2d 247—Bates v. Zampelli, 129 P.2d 126, 54 C.A.2d 451—Del Carlo v. Oberti, 37 P.2d 1050, 2 C.A.2d 304.
Conn.—Buonanno v. Cameron, 41 A. 2d 107, 131 Conn. 513.
Fla.—Florida Greyhound Lines v. Jones, 60 So.2d 396.
Ga.—Royal Crown Bottling Co. of Gainesville v. Stiles, 60 S.E.2d 815, 82 Ga.App. 254—Jennings v. Gibson, 47 S.E.2d 779, 77 Ga.App. 28.
Ill.—Reed v. Sands, 137 N.E.2d 553, 11 Ill.App.2d 355—Haberer v. Moorman Mfg. Co., 94 N.E.2d 611, 341 Ill.App. 521.
Iowa.—Coonley v. Lowden, 12 N.W. 2d 870, 234 Iowa 731—King v. Gold, 276 N.W. 774, 224 Iowa 890.
Ky.—Whitehead v. Stith, 131 S.W.2d 455, 279 Ky. 556.
Md.—McKay v. Paulson, 126 A.2d 296, 211 Md. 90.
Mich.—Heiman v. Kolle, 27 N.W.2d 92, 317 Mich. 548—Black v. Ambs, 12 N.W.2d 381, 307 Mich. 644—Pulford v. Mouw, 272 N.W. 713, 279 Mich. 376.
Minn.—Tilbury v. Welberg, 55 N.W. 2d 685, 238 Minn. 91.
Mo.—Eisenbarth v. Powell Bros. Truck Lines, 161 S.W.2d 263—Goyette v. St. Louis-San Francisco Ry. Co., 37 S.W.2d 552.
Neb.—Bush v. James, 40 N.W.2d 667, 152 Neb. 189—Souchek v. Karr, 120 N.W. 210, 83 Neb. 649.
N.C.—Brewer v. Brewer, 78 S.E.2d 719, 238 N.C. 607, 40 A.L.R.2d 763.
Ohio.—Ellis v. Horn, App., 120 N.E. 2d 893.
Okl.—Sinclair Oil & Gas Co. v. Crane, 51 P.2d 711, 175 Okl. 198.
Or.—Frangos v. Edmunds, 173 P.2d 596, 179 Or. 577.
Pa.—Karavas v. Poulos, 113 A.2d 300, 381 Pa. 358.
Harrison v. Metropolitan Life Ins. Co., 79 A.2d 115, 168 Pa.Super. 474—D'Allura v. Perri, 10 A.2d 124, 138 Pa.Super. 261.
Rothschild v. Dilts, Com.Pl., 24 Erie Co. 336.
S.C.—Cook v. C. I. T. Corp., 4 S.E. 2d 801, 191 S.C. 440, 125 A.L.R. 306—Pinkussohn v. Great Atlantic & Pacific Tea Co., 192 S.E. 283, 184 S.C. 171.
Tex.—Texas Mexican R. Co. v. Bunn, Civ.App., 264 S.W.2d 518, error refused no reversible error.

evidence was contrary to the verdict;[31] remarks made while ruling on questions of evidence expressing the opinion of the court on the law applicable to the case;[32] remarks indicating court considered excluded evidence;[32.5] a remark characterizing an objection as technical;[33] remarks, made in the jury's presence, in a discussion with counsel as to the law applicable to the case, which announce a correct rule of law;[34] statements not addressed to the jury expressly declared to be dependent on the existence of certain assumed facts and, on that assumption, correctly stating the law;[35] an incorrect statement of law addressed to counsel cured by a subsequent correct statement or ruling;[36] an admonition to the jury with reference to the argument of counsel;[37] comments reflecting on the business capacity of one of the parties as shown by the evidence, general in character and not in any way limiting the action of the jury;[38] and comments reflecting on the character of one of the parties where the remarks were sustained by the evidence.[39]

The rule has also been applied under the following circumstances: Where the verdict, findings, or judgment showed that no prejudice resulted;[40]

Wash.—Blackburn v. Groce, 283 P. 2d 115, 46 Wash.2d 529—Duvall v. Pioneer Sand & Gravel Co., 71 P. 2d 567, 191 Wash. 417.
Wis.—Doan v. Willow Springs, 76 N. W. 1104, 101 Wis. 112.
4 C.J. p 956 note 41.

Case tried without jury

Trial court's making uncalled-for, disparaging comments about quality of party's evidence was not prejudicial where case was tried without jury.
N.J.—Handelman v. Handelman, 109 A.2d 797, 17 N.J. 1.

Calling witness liar

(1) Where the depositions of a witness for both parties were palpably conflicting, it was not prejudicial error for the court to remark that the witness "must be an awful liar."
Kan.—Connor v. Wilkie, 41 P. 71, 1 Kan.App. 492.

(2) Remarks of trial court, before whom case was tried without a jury, including statement that defendant was a liar, did not constitute prejudicial misconduct where at time remarks were made the witness had been thoroughly impeached by a disinterested witness.
Cal.—Jaffe v. Vitz, 191 P.2d 802, 84 C.A.2d 810.

Interpreting testimony

Statements, made in response to a motion to strike testimony, merely giving the court's understanding of the witness' testimony, were held not prejudicial error under the circumstances of the case.
Mo.—Stelmach v. Saul, App., 50 S.W. 2d 721.

31. S.C.—Forbes v. Pearson, 68 S.E. 964, 87 S.C. 67.
4 C.J. p 956 note 42.

32. Ala.—Buzzanca v. Hagwood, 91 So.2d 703, 265 Ala. 404.
Ark.—Toulmin & Toulmin v. Underwood, 290 S.W. 377, 172 Ark. 813.
Cal.—Singleton v. Singleton, 157 P. 2d 886, 68 C.A.2d 681.
Mo.—McNeill v. Fidelity & Casualty Co. of New York, 82 S.W.2d 582, 336 Mo. 1142.
4 C.J. p 956 note 43.

Explanation addressed to counsel

In an action on contracts for the manufacture of automobile truck wheels, comment of the court on the evidence as to a certain letter and blueprints and specifications, addressed to counsel and explaining a ruling on the admissibility of a copy of the letter and secondary evidence of the specifications, if error, is not reversible.
Wash.—Lenape Hydraulic Pressing & Forging Co. v. Ellis Resilient Wheel Corporation, 251 P. 885, 141 Wash. 571.

32.5 Cal.—Ziegler v. Reuze, 164 P. 2d 494, 27 C.2d 389.

33. Mo.—Rollins v. Schawacker, 133 S.W. 409, 153 Mo.App. 284.

Reference to "foolish technicalities"

R.I.—Neves v. Nemtzow, 12 A.2d 660, 64 R.I. 395.

34. Iowa.—Krueger v. Sylvester, 69 N.W. 1059, 100 Iowa 647.
Pa.—Palmgreen v. Palmer's Garage, 117 A.2d 721, 383 Pa. 105.

35. Md.—Reinhart v. Cunningham, 157 A. 896, 162 Md. 698.

Presence of jury

The judge's statement, made in the presence of the jury, that publication exists "if a person composes a libel" and sends it to his agent, who reads it, was held not prejudicial as a comment on the facts, the quoted words not being such as would reasonably be construed by the jury as expressing the judge's view on the merits of the case.
S.C.—Bosdell v. Dixie Stores Co., 167 S.E. 834, 168 S.C. 520.

36. Cal.—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404.
Ill.—Reilly Tar & Chemical Corp. v. Lewis, 92 N.E.2d 807, 341 Ill.App. 69.
Vt.—Donovan v. Towle, 134 A. 588, 99 Vt. 464.

37. Ky.—Potter's Adm'x v. Mansard Garage & Service Station, 38 S.W. 2d 233, 238 Ky. 439.

38. Pa.—Swing v. Walker, 27 Pa. Super. 366.

39. N.Y.—Metcalf v. Gordon, 83 N. Y.S. 808, 86 App.Div. 368.

40. U.S.—New York, N. H. & H. R. Co. v. Fruchter, C.C.A.N.Y., 271 F. 419, reversed on other grounds 43 S.Ct. 38, 260 U.S. 141, 67 L.Ed. 173.
Ariz.—Gibson v. McLane, 148 P. 288, 17 Ariz. 61.
Cal.—Crummer v. Besser Mfg. Co., 223 P.2d 100, 100 C.A.2d 189—Farmer v. Matsutani, 119 P.2d 740, 48 C.A.2d 332.
Conn.—Keeler v. General Products, 75 A.2d 486, 137 Conn. 247.
Ga.—H. L. Singer Co. v. Y. S. B. Gray & Son, 129 S.E. 555, 34 Ga. App. 345.
Ill.—See Hallissey v. Rothschild & Co., 203 Ill.App. 283—Heincke v. Chicago Rys. Co., 199 Ill.App. 399, affirmed 116 N.E. 761, 279 Ill. 210—Kushner v. Perlman, 189 Ill. App. 59.
Iowa.—Charles v. Hart, 182 N.W. 668, 191 Iowa 418.
Mich.—Larson v. Feeney, 162 N.W. 275, 196 Mich. 1, L.R.A.1917D 694
Minn.—Wentz v. Guaranteed Sand & Gravel Co., 287 N.W. 113, 205 Minn. 611.
Mo.—Vaughn v. May, App., 9 S.W. 2d 156.
Mont.—Loncar v. National Union Fire Ins. Co. of Pittsburgh, Pa., 274 P. 844, 84 Mont. 141.
N.H.—Semprini v. Boston & M. R. R., 179 A. 349, 87 N.H. 279.
N.Y.—Baevitz v. Levison, 220 N.Y.S. 162, 219 App.Div. 741.
N.C.—McMahan v. Carolina Spruce Co., 105 S.E. 439, 180 N.C. 636—In re Finch's Will, 102 S.E. 737, 179 N.C. 696.
Okl.—National Farmers Union Property & Cas. Co. v. Watson, 298 P. 2d 762—Chuck's Bar v. Wallace, 176 P.2d 484, 198 Okl. 152—Sinclair Oil & Gas Co. v. Crane, 51 P. 2d 711, 175 Okl. 198—Reynolds v. Reynolds, 50 P.2d 1088, 174 Okl. 443—Shoemaker v. Gilstrap, 18 P. 2d 1051, 162 Okl. 299—Phillips v. Mitchell, 172 P. 85, 68 Okl. 128, error dismissed 39 S.Ct. 7, 248 U.S. 531, 63 L.Ed. 405.

where the remarks were not shown to have been heard by, or communicated to, the jury;[41] where the case or the issue affected was withdrawn from the jury,[42] or a peremptory charge was proper;[43] where the remarks had no bearing on the controlling issue;[44] where relief was properly denied the complaining party on the merits;[45] where the matter as to which the remark was made was not submitted to the jury;[46] where the evidence to which the improper remarks were directed was properly excluded;[47] where the complaint of the complaining party did not state a cause of action;[48] where the court corrected the remark and cautioned the jury not to be influenced by it;[49] where, notwith-

Pa.—Karavas v. Poulos, 113 A.2d 300, 381 Pa. 358—McGarity v. New York Life Ins. Co., 59 A.2d 47, 359 Pa. 308.

Drake v. Emhoff, 21 A.2d 492, 145 Pa.Super. 498—Young v. Freeman, 164 A. 114, 108 Pa.Super. 399.

R.I.—Dupraw v. Dupraw, 31 A.2d 474, 69 R.I. 144—Frost v. Industrial Trust Co., 159 A. 326.

S.C.—Jones v. Elbert, 34 S.E.2d 796, 206 S.C. 508.

Tenn.—City of Knoxville v. Hargis, 198 S.W.2d 555, 184 Tenn. 262.

Tex.—Hornsby v. Hornsby, Civ. App., 60 S.W.2d 489—Shaw v. Harris, Civ.App., 8 S.W.2d 194—Shuttles v. Butcher, Civ.App., 1 S.W. 2d 661—Western Union Telegraph Co. v. Oakley, Civ.App., 181 S.W. 507.

Wash.—Van Allen v. Post, 226 P. 721, 130 Wash. 224—Aura v. Markle, 178 P. 814, 105 Wash. 654.

W.Va.—State Road Commission of West Virginia v. McMurray, 137 S. E. 530, 103 W.Va. 346.

Wis.—Chessman v. Werner, 210 N.W. 820, 191 Wis. 330.

4 C.J. p 956 note 48.

"Unless it is manifest that the remarks of the court . . . unduly influenced the jury, the verdict and judgment will not be disturbed."

Tex.—A. J. Anderson Co. v. Reich, Civ.App., 249 S.W. 298, 303, reversed on other grounds, Com.App., 260 S.W. 162.

Judgment supported by law

Where a cause is tried to the court, and the judgment rendered is supported by the evidence and law applicable, stinging criticisms of the court against the losing party are not sufficient to work a reversal of the case.

Okl.—Taylor v. Harmon, 250 P. 887, 120 Okl. 145.

41. Ga.—Duren v. Clark, 170 S.E. 693, 47 Ga.App. 429.

Ill.—Borrowdale v. Sugarman, 123 N. E.2d 854, 4 Ill.App.2d 164—Cash v. Cleveland, C., C. & St. L. Ry. Co., 244 Ill.App. 1.

Minn.—Mutual Service Cas. Ins. Co. v. Overholser, 58 N.W.2d 268, 239 Minn. 243—Ryan v. City of Crookston, 30 N.W.2d 351, 225 Minn. 129.

Ohio.—Ellis v. Horn, App., 120 N.E. 2d 893.

S.C.—Jennings v. Clearwater Mfg. Co., 172 S.E. 870, 171 S.C. 498.

Tex.—Texas Life Ins. Co. v. Jordan, Civ.App., 253 S.W.2d 906, error refused—Texas Associates v. Joe Bland Const. Co., Civ.App., 222 S. W.2d 413, error refused no reversible error.

W.Va.—Stenger v. Hope Natural Gas Co., 90 S.E.2d 261.

42. Conn.—Newell v. Weisman, 156 A. 886, 113 Conn. 744.

Ga.—Campbell Tile & Mantel Co. v. S. A. Lynch Enterprise Finance Corporation, 165 S.E. 457, 45 Ga. App. 555.

Pa.—Mitchell v. Mione Mfg. Co., 171 A. 114, 112 Pa.Super. 394.

4 C.J. p 956 note 49.

43. Ala.—White v. Haralson, 124 So. 417, 220 Ala. 189—Roth v. Scruggs, 106 So. 182, 214 Ala. 32.

Ga.—State Farm Mut. Auto. Ins. Co. v. Collins, 43 S.E.2d 277, 75 Ga. App. 335.

Ill.—Village of Atwood v. Otter, 129 N.E. 573, 296 Ill. 70.

Sarelas v. Fagerburg, 45 N.E.2d 690, 316 Ill.App. 606—Specht v. Chicago City Ry. Co., 233 Ill.App. 384—Bartkowski v. Albert Hoefeld, Inc., 226 Ill.App. 198.

Iowa.—Swift v. Clarinda Trust & Savings Bank, 177 N.W. 519.

Ky.—Cumberland River Oil Co. v. Dicken, 131 S.W.2d 927, 279 Ky. 700.

Mich.—Steinhoff v. Bullock, 183 N. W. 31, 214 Mich. 473.

N.Y.—Jacobs v. Jacobs, 299 N.Y.S. 187, 252 App.Div. 794.

Tex.—Stine v. Oasis Oil Co., Civ. App., 290 S.W. 302—Cauble v. Cauble, Civ.App., 283 S.W. 914.

4 C.J. p 956 note 50.

44. Okl.—Wirt Franklin Petroleum Corporation v. Page, 53 P.2d 676, 175 Okl. 616.

Comment having no relevancy to any issue in case was not prejudicial.

Ariz.—Kauffroath v. Wilbur, 185 P. 2d 522, 66 Ariz. 152.

Other issues probably determinative

Observations made by trial judge when making order for judgment would not be considered on appeal where it appeared that cause was probably determined on issues foreign to observations.

Ariz.—Huish v. Lopez, 218 P.2d 727, 70 Ariz. 201.

45. Ga.—H. M. Patterson & Son v. Payne, 83 S.E.2d 841, 90 Ga.App. 699.

Mo.—Miles v. Miles, 119 S.W. 456, 137 Mo.App. 38.

N.Y.—Cleary v. Sweeney Realty Corp., 291 N.Y.S. 570, 249 App. Div. 651.

Pa.—Dystrek v. Asphalt Industries, Com.Pl., 36 Del.Co. 243.

Wis.—Martin v. Barry Transfer & Storage Co., 27 N.W.2d 719, 250 Wis. 574.

46. Mich.—Harper v. Concrete Pub. Co., 131 N.W. 1112, 166 Mich. 429.

Neb.—Hillebrand v. Nelson, 95 N.W. 1068, 1 Neb.(Unoff.) 783.

Or.—Tycer v. Hartsell, 198 P.2d 263, 184 Or. 310.

Tex.—Lammers v. Wolfertz, Civ. App., 164 S.W. 1102.

47. Ill.—See Barnett v. Stanton, 205 Ill.App. 382, 384.

Iowa.—Griswold v. Dugane, 127 N.W. 664, 148 Iowa 504.

Md.—Fletcher v. Dixon, 77 A. 326, 113 Md. 101.

Mich.—Smith v. Maticka, 8 N.W.2d 900, 305 Mich. 32.

Pa.—Corrigan v. Wilkes-Barre, etc., Tract. Co., 74 A. 420, 225 Pa. 560.

Tex.—Alamo Cas. Co. v. Trafton, Civ.App., 231 S.W.2d 474, error dismissed.

Wash.—Halverson v. Seattle Electric Co., 77 P. 1058, 35 Wash. 600.

4 C.J. p 956 note 53.

48. Or.—Batdorff v. Oregon City, 100 P. 937, 53 Or. 402, 18 Ann.Cas. 287.

49. U.S.—New York, N. H. & H. R. Co. v. Fruchter, C.C.A.N.Y., 271 F. 419, reversed on other grounds 43 S.Ct. 38, 260 U.S. 141, 67 L.Ed. 173.

Ala.—City of Ozark v. Thomas, 166 So. 424, 231 Ala. 538.

Ark.—J. T. Fargason Co. v. Driver, 284 S.W. 20, 171 Ark. 15.

Cal.—Loper v. Morrison, 145 P.2d 1, 23 C.2d 600—Scarlett v. Atchison, T. & S. F. Ry., 54 P.2d 465, reheard 60 P.2d 462, 7 C.2d 181, reversed on other grounds 57 S.Ct. 541, 300 U.S. 471, 81 L.Ed. 748, rehearing denied 57 S.Ct. 787, 301 U.S. 712, 81 L.Ed. 1365—Richman v. San Francisco N. & C. Ry., 181 P. 769, 180 C. 454.

Karageozian v. Bost, 294 P.2d 778, 139 C.A.2d 874—Pure Foods Corp. v. Vogel, 268 P.2d 33, 123 C.A.2d 837—Petersen v. Rieschel, 252 P.2d 986, 115 C.A.2d 758—Rednall v. Thompson, 239 P.2d 693, 108 C.A.2d 662—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404—Jones v. Bay-

standing the inaccuracy of an expression used, the intended meaning of the court was plain;[50] where the remarks were calculated and intended simply to offset an irrelevant suggestion that had been made in the presence of the jury by counsel of the adverse party;[51] and where amendments were permitted to obviate criticisms directed against pleadings.[52]

So, with respect to misconduct of the trial judge, it has been held that, in the absence of a showing of harm or prejudice to the complaining party, no ground for reversal results from the following circumstances: Absence of the judge from the courtroom during the trial[52.5] or the deliberations of the jury,[53] or the fact that he slept for a few minutes while testimony was being taken;[54] that he interrupted counsel during the argument,[55] or that he displayed irritation;[56] that he examined or

ley, 122 P.2d 293, 49 C.A.2d 647—Hughes v. Quackenbush, 37 P.2d 99, 1 C.A.2d 349—Couchman v. Snelling, 295 P. 845, 111 C.A. 192—Dawson v. San Diego Electric Ry. Co., 255 P. 215, 82 C.A. 141—Moreno v. Los Angeles Transfer Co., 186 P. 800, 44 C.A. 551.

D.C.—Herzog v. Kincade, 66 F.2d 210, 62 App.D.C. 230.

Ga.—Banks v. Kilday, 76 S.E.2d 642, 88 Ga.App. 307.

Ill.—Wicks v. Cuneo-Henneberry Co., 150 N.E. 276, 319 Ill. 344.

Neering v. Illinois Cent. R. Co., 53 N.E.2d 271, 321 Ill.App. 625.

Ind.—Swanson v. Slagal, 8 N.E.2d 993, 212 Ind. 394.

Kan.—Security Nat. Bank v. McCutchan, 208 P. 636, 111 Kan. 682.

Md.—Western Maryland Dairy Corporation v. Brown, 181 A. 468, 169 Md. 257.

Mass.—Runels v. Lowell Sun Co., 62 N.E.2d 121, 318 Mass. 466.

Mich.—City of Detroit v. Fidelity Realty Co., 182 N.W. 140, 213 Mich. 448.

Mont.—Batchoff v. Craney, 172 P.2d 308, 119 Mont. 157—Cenway v. Monidah Trust, 149 P. 711, 51 Mont. 113.

N.J.—Laurino Co. v. Daly Bldg. Corp., 91 A.2d 492, 21 N.J.Super. 556.

James Beraldino & Sons v. Great American Indemnity Co., 174 A. 563, 113 N.J.Law 313—Vinik v. Niagara Fire Ins. Co., 171 A. 555, 112 N.J.Law 462, affirmed 174 A. 753, 113 N.J.Law 406—American Well Works v. Royal Indemnity Co., 160 A. 560, 109 N.J.Law 104.

Waller v. Sterner Coal & Lumber Co., 135 A. 342, 5 N.J.Misc. 19.

N.Y.—Peterson v. Eighmie, 161 N.Y.S. 1065, 175 App.Div. 113.

N.C.—Richert v. James Supply Co., 138 S.E. 345, 194 N.C. 11.

N.D.—Lofthouse v. Galesburg State Bank, 188 N.W. 585, 48 N.D. 1019.

Or.—Best v. Tavenner, 218 P.2d 471, 189 Or. 46—Santoro v. Brooks, 254 P. 1019, 121 Or. 424—Richardson v. Portland Trackless Car Co., 233 P. 540, 113 Or. 544—Verrell v. First Nat. Bank of Roseburg, 157 P. 813, 80 Or. 550.

Pa.—Grollman v. Metropolitan Life Ins. Co., 198 A. 10, 329 Pa. 270—Partridge v. Scott Bros., 158 A. 790, 306 Pa. 60.

R.I.—Horaho v. Wanelik, 184 A. 323, 56 R.I. 193, reargument denied 185 A. 256, 56 R.I. 264.

S.C.—Jennings v. Clearwater Mfg. Co., 172 S.E. 870, 171 S.C. 498—Harry v. Barnett, 99 S.E. 822, 112 S.C. 301.

S.D.—Bartlett v. Bartlett, 168 N.W. 633, 40 S.D. 544.

Tex.—Dilger v. Dilger, Civ.App., 271 S.W.2d 169—U. S. Fidelity & Guaranty Co. v. Rochester, Civ.App., 281 S.W. 306, affirmed 283 S.W. 135, 115 Tex. 404—Taylor v. Butler, Civ.App., 168 S.W. 1004.

Wash.—Heitfeld v. Benevolent and Protective Order of Keglers, 220 P.2d 655, 36 Wash.2d 685, 18 A.L.R.2d 983—Kellerher v. Porter, 189 P.2d 223, 29 Wash.2d 650—Turner v. Wenatchee Vinegar Co., 298 P. 683, 162 Wash. 313.

W.Va.—De Luz v. Board, 65 S.E.2d 201, 135 W.Va. 806.

Wis.—Williams v. Duluth St. Ry. Co., 171 N.W. 939, 169 Wis. 261.

4 C.J. p 956 note 55.

50. U.S.—Johnson v. Roy, N.J., 112 F. 256, 50 C.C.A. 237.

51. Pa.—Warne v. Johnston, 48 Pa. Super. 98.

52. Ohio.—Suhr v. Hoover, 15 Ohio Cir.Ct. 690, 8 Ohio Cir.Dec. 738.

52.5 Ill.—Dickson v. Mendenhall, 129 N.E.2d 275, 7 Ill.App.2d 295.

Ohio.—Bobbitt v. Maher Beverage Co., 89 N.E.2d 583, 152 Ohio St. 246.

Where there are actually no jury questions no reversible error results from departure of judge from courtroom during progress of trial, including argument of counsel.

Wis.—Caesar v. Wegner, 55 N.W.2d 371, 262 Wis. 429.

During part of argument to jury

Tex.—Bryan v. Strouss, Civ.App., 121 S.W.2d 419, error dismissed.

53. Ill.—See Truman's Pioneer Stud Farm v. Baker, 193 Ill.App. 598.

Neb.—Rogers v. J. C. Penney Co., 257 N.W. 252, 127 Neb. 885.

N.Y.—Ciccolini v. Vocafilm Corporation of America, 171 N.E. 794, 253 N.Y. 588.

Carroll v. Blum, 157 N.Y.S. 7.

4 C.J. p 956 note 59—64 C.J. p 68 notes 66–71.

54. Ill.—Chicago City R. Co. v. Anderson, 93 Ill.App. 419, affirmed 61 N.E. 999, 193 Ill. 9.

4 C.J. p 957 note 60.

55. Mich.—Grenawalt v. Nyhuis, 55 N.W.2d 736, 335 Mich. 76.

Wash.—International Mercantile, etc., Co. v. Shaw-Wells Co., 121 P. 834, 67 Wash. 369.

56. Cal.—In re Morrison's Estate, 242 P. 939, 198 C. 1.

Colo.—L. J. Mueller Furnace Co. v. J. A. Battin Stove Supply Co., 246 P. 272, 79 Colo. 418.

D.C.—Michael v. Smith, 68 F.2d 378, 62 App.D.C. 331.

Ill.—Dorian v. Dorian, 131 N.E. 129, 298 Ill. 24.

Kan.—Howard v. Jones Store Co., 256 P. 1019, 123 Kan. 620, 53 A.L.R. 139—Bowers v. Mildren, 193 P. 318, 107 Kan. 584.

Mich.—Dembicki v. Melin, 225 N.W. 508, 247 Mich. 361—William R. Roach & Co. v. Blair, 155 N.W. 696, 190 Mich. 11.

Miss.—Missouri Pac. R. Co. v. Hanna, 152 So. 282, 168 Miss. 867.

Mo.—Rose v. St. Louis-San Francisco Ry. Co., 289 S.W. 913, 315 Mo. 1181—Hill v. Kansas City Rys. Co., 233 S.W. 205, 289 Mo. 193.

Heier v. Funsch, App., 61 S.W.2d 253—Hickman v. Nelson, App., 211 S.W. 131.

Or.—Shepherd v. Inman-Poulsen Lumber Co., 168 P. 601, 86 Or. 652.

S.C.—Carter v. Seaboard Air Line Ry. Co., 104 S.E. 186, 114 S.C. 517.

Tex.—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072.

Wash.—Wiseman v. Skagit County Dairymen's Ass'n, 19 P.2d 662, 172 Wash. 95—Fitzgerald v. City of Centralia, 173 P. 631, 102 Wash. 586.

4 C.J. p 957 note 62.

Sarcastic comments

Cal.—Bate v. Jolin, 274 P. 971, 206 C. 504.

Rebuking witness

(1) The court's remarks to a witness that the witness had avoided several easy questions, and that the court would like to have the witness answer the question before him, were held not reversible error, in view of subsequent instructions cautioning the jury to disregard remarks of the court thought to be comments on the facts.

cross-examined a witness,[57] and made objections and ruled thereon in behalf of an absent party financially unable to employ counsel;[58] that he failed to refresh the memory of counsel charged with misquoting a witness and to advise the jury of the exact words used;[59] that he instructed the jury to disregard certain statements of counsel pertaining to matters not in issue;[60] that he ordered the case resubmitted for consideration without the knowledge, stipulation, or consent of counsel;[61] that he jailed plaintiff's witness for intoxication before his cross-examination, where defendant thereafter made no effort to have him recalled for cross-examination;[62] that he viewed premises in absence of parties and counsel;[62.5] or that he impartially advised both parties to settle the case,[63] or agree on a particular matter arising in the case.[63.5] So it has been held that remarks by the judge, in a trial without a jury, denominating the transaction between the parties as a plain steal by defendant and likening plaintiff to the man that fell among thieves are not ground for reversal.[64]

Wash.—Turner v. Wenatchee Vinegar Co., 298 P. 683, 162 Wash. 313.

(2) The fact that the court told defendant to conduct himself like a gentleman, when defendant stated that plaintiff was "a straight out liar" when she gave certain testimony, was held not inflammatory nor prejudicial, but only a lenient discharge of an imperative duty invoked by defendant's remark.
Tex.—Daniels v. Starnes, Civ.App., 61 S.W.2d 548.

(3) The fact that the court in the presence of the jury asked a witness, who had given false testimony with regard to his qualifications as a physician, if he understood an oath, telling him that he was old enough to know better, and that it would be his duty to call the attention of the grand jury to the testimony, is not ground for reversal.
Cal.—Bossert v. Southern Pac. Co., 157 P. 597, 172 C. 504.

Answering for witness

Where defendant's counsel persisted in asserting his right to a "yes or no" answer by plaintiff to the question whether defendant in his testimony "got anything right that plaintiff said to him," after the court had ruled the question out, the court's direction to plaintiff, to say "yes and that will settle it," was held not reversible error on the ground that the court answered for the witness, the remark being more in the nature of a rebuke for the counsel's contumacy.
R.I.—Lemos v. Avila, 145 A. 100.

57. Ark.—Wood v. Wood, 264 S.W. 2d 407, 223 Ark. 82.
Cal.—Wilson v. Brown, 55 P.2d 485, 5 C.2d 425.
Lynch v. Defino, 249 P.2d 615, 114 C.A.2d 128—Wallace v. La Vine, 97 P.2d 879, 36 C.A.2d 450—Karwoski v. Grant, 85 P.2d 944, 30 C.A.2d 171—Gerson v. Kelsey, 40 P.2d 543, 4 C.A.2d 158, rehearing denied 43 P.2d 266, 4 C.A.2d 158—Levy v. Berner, 293 P. 896, 110 C.A. 65.
Colo.—Vickroy v. General Outdoor Advertising Co., 22 P.2d 642, 92 Colo. 574.
Conn.—Iannello v. Town of West Haven, New Haven County, 42 A. 2d 833, 132 Conn. 148.
Ga.—Williams v. Smith, 31 S.E.2d 873, 71 Ga.App. 632.
Ill.—See Pridmore v. Chicago, R. I. & P. R. Co., 192 Ill.App. 446, affirmed 114 N.E. 176, 275 Ill. 386.
Iowa.—King v. Gold, 276 N.W. 774, 224 Iowa 890—Luther v. Ullritch, 166 N.W. 85, 182 Iowa 745.
Mich.—Howard v. Burton, 61 N.W.2d 77, 338 Mich. 178—Stehouwer v. Lewis, 227 N.W. 759, 249 Mich. 76, 74 A.L.R. 844.
Minn.—In re Wagner's Estate, 163 N. W. 975, 138 Minn. 37.
Mo.—Maryland Cas. Co. v. Spitcaufsky, 178 S.W.2d 368, 352 Mo. 547.
Vernon v. Rife, App., 294 S.W. 747.
Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655.
N.Y.—Morello v. Brookfield Const. Co., 156 N.Y.S.2d 163, 2 A.D.2d 849, appeal denied 158 N.Y.S.2d 760, 3 A.D.2d 3.
N.C.—Pegram-West, Inc. v. Winston Mut. Life Ins. Co., 56 S.E.2d 607, 231 N.C. 277—Caulder v. Gresham, 30 S.E.2d 312, 224 N.C. 402.
N.D.—Buchanan v. Occident Elevator Co., 157 N.W. 122, 33 N.D. 346.
Okl.—Carpenters' Local 1686 v. Wallis, 237 P.2d 905, 205 Okl. 285.
Pa.—Davidson v. Mylish, 182 A. 368, 320 Pa. 275.
R.I.—Peters v. United Electric Rys. Co., 189 A. 901, 57 R.I. 311.
S.C.—General Motors Acceptance Corporation v. Chestnut, 155 S.E. 231, 158 S.C. 42.
Tenn.—Provident Life & Accident Ins. Co. v. Prieto, 83 S.W.2d 251, 169 Tenn. 124.
Va.—Rudlin v. Parker, 43 S.E.2d 918, 186 Va. 647.
Wash.—Lyle v. Ginnold, 24 P.2d 449, 174 Wash. 104.
Wis.—London & Lancashire Indem. Co. v. Phoenix Indem. Co., 56 N.W. 2d 777, 263 Wis. 171.

Implication of usury

The court's questions to defendant, who demanded more than was due for an automobile, as to whether he knew of the usury law, was held not reversible error, the jury being entitled to draw their own inferences from the facts before them.
Conn.—Kuzemka v. Gregory, 146 A. 17, 109 Conn. 117.

Interruption of examination

In the cross-examination of plaintiff's witness an interruption of the cross-examination by the court asking if the witness understood a question relative to the purpose of the witness and deceased going to the building they were directed to repair, and a further remark that the court "purposed to see that the witness understands questions," were not error.
Mo.—Stratton v. Nafziger Baking Co., App., 237 S.W. 538.

Failure to question witnesses

Notwithstanding the right of the trial court to elicit testimony by questioning a witness, failure of the court to do so, in order to bring out more evidence on a particular point, is not prejudicial error, where there is already some evidence in the case on which the jury may determine the particular point. Thus in an action against a partnership for conversion of cattle, failure of the trial court to question witnesses so as to show that the partnership was engaged in buying and selling cattle was held not reversible error.
Ala.—J. R. Kilgore & Son v. Shannon & Co., 60 So. 520, 6 Ala.App. 537.

58. Cal.—Laugharn v. Chamberlain, 34 P.2d 756, 139 C.A. 601.
59. Ky.—Moss v. Mittel, 69 S.W.2d 1046, 253 Ky. 504.
60. Mo.—Malone v. Small, App., 291 S.W. 163.
61. Nev.—Ratliff v. Sadlier, 299 P. 674, 53 Nev. 292.
62. Okl.—Dickinson v. Abb, 176 P. 523, 73 Okl. 322.
62.5 Ala.—Watt v. Lee, 191 So. 628, 238 Ala. 451.
63. Iowa.—Githens v. Johnson, 192 N.W. 270, 195 Iowa 646.
Nev.—Peterson v. Wiesner, 146 P.2d 739, 62 Nev. 184.
W.Va.—De Lus v. Board, 65 S.E.2d 201, 135 W.Va. 806.
63.5 Okl.—Gulf Oil Corp. v. Lemmons, 181 P.2d 568, 198 Okl. 596.
64. Or.—Smith v. Hurley, 143 P. 1123, 73 Or. 268.

b. Prejudicial Error

The judgment will be reversed for remarks or misconduct preventing a fair trial.

Where the conduct or remarks of the judge do not permit a fair trial for the complaining party, the judgment must be reversed.[65] This principle has

65. U.S.—**Corpus Juris Secundum cited in** Williams v. U. S., C.C.A. Cal., 93 F.2d 685, 692—Atlantic Refining Co. v. Jones, C.C.A.W.Va., 70 F.2d 89.

Ark.—Missouri Pac. R. Co. v. Moore, 197 S.W.2d 284, 210 Ark. 643—Roe Rice & Land Co. v. Strobhart, 184 S.W. 461, 123 Ark. 146—Southwestern Tel., etc., Co. v. Myane, 111 S. W. 987, 86 Ark. 548.

Cal.—Delzell v. Day, 223 P.2d 625, 36 C.2d 349.

Forte v. Schiebe, 302 P.2d 336, 145 C.A.2d 296—Podlasky v. Price, 196 P.2d 608, 87 C.A.2d 151—Etzel v. Rosenbloom, 189 P.2d 848, 83 C. A.2d 758—Rosenfield v. Vosper, 114 P.2d 29, 45 C.A.2d 365—Nicholas v. Crosetti, 60 P.2d 335, 16 C.A.2d 376—Davis v. Pezel, 20 P.2d 982, 131 C.A. 46—Stinson Canal & Irrigation Co. v. Lemoore Canal & Irrigation Co., 188 P. 77, 45 C.A. 241.

Colo.—Larison v. Taylor, 266 P. 217, 83 Colo. 430—Reeves & Co. v. Currier, 155 P. 320, 60 Colo. 594.

Conn.—Pentino v. Gallo, 140 A. 105, 107 Conn. 242.

Ga.—Moss v. Moss, 93 S.E. 875, 147 Ga. 311—Gray v. Ray, 91 S.E. 901, 19 Ga.App. 510.

Ill.—Andreas v. Ketcham, 77 Ill. 377—Deshler v. Beers, 32 Ill. 368, 83 Am.D. 274.

Martin v. Blackburn, 38 N.E.2d 939, 312 Ill.App. 549—Day v. Thomson, 26 N.E.2d 429, 305 Ill. App. 29—Gadsky v. Bentley, 15 N. E.2d 67, 295 Ill.App. 619—Coulson v. Wenzel Hotel, Inc., 248 Ill.App. 540—Corning Glass Works v. Adelman, 248 Ill.App. 39—Chicago City R. Co. v. Enroth, 113 Ill.App. 285—Swenson v. Erickson, 90 Ill.App. 358. See Galewski v. Clover Leaf Casualty Co., 205 Ill.App. 247—City of Chicago v. Moser, 203 Ill. App. 259—Roherty v. Chicago Rys. Co., 189 Ill.App. 139.

Ind.—Brunker v. Cummins, 32 N.E. 732, 133 Ind. 443.

Iowa.—Pickerell v. Griffith, 29 N.W. 2d 588, 238 Iowa 1151—Coldren v. Le Gore, 91 N.W. 1066, 118 Iowa 212—Shakman v. Potter, 66 N.W. 1045, 98 Iowa 61.

Ky.—Martin v. Tipton, 261 S.W.2d 809—City of Prestonsburg v. Mellon, 295 S.W. 1064, 220 Ky. 808.

Mass.—Garnick v. Eastern Mass. St. Ry. Co., 109 N.E.2d 114, 329 Mass. 520.

Mich.—Wilkinson v. City of Grand Rapids, 199 N.W. 600, 228 Mich. 120—Hewitt v. Flint, etc., R. Co., 84 N.W. 659, 67 Mich. 61.

Minn.—I. J. Bartlett Co. v. Ness, 195 N.W. 39, 156 Minn. 407.

Mo.—Schmidt v. St. Louis, etc., R. Co., 50 S.W. 921, 149 Mo. 269, 73 Am.S.R. 380.

Caldwell v. Barnsdall Refining Corp., App., 135 S.W.2d 1105—Wair v. American Car & Foundry Co., App., 285 S.W. 155—Stratton v. Barnum, App., 263 S.W. 476—Parris v. Deering Southwestern Ry. Co., App., 227 S.W. 1071.

Neb.—Riley v. National Auto. Ins. Co., 77 N.W.2d 241, 162 Neb. 658.

N.J.—La Rocca v. Ench, 113 A.2d 66, 35 N.J.Super. 53.

Wright v. General Ceramics Co., 197 A. 899, 120 N.J.Law 33.

N.Y.—Demacopoulos v. Mattiello, 58 N.Y.S.2d 910, 270 App.Div. 173—Benjamin v. Bank for Savings in City of New York, 42 N.Y.S.2d 530, 266 App.Div. 486—Rohatiner v. Travelers Ins. Co., 34 N.Y.S.2d 20, 264 App.Div. 726—Kaminsky v. American Newspapers, 7 N.Y.S.2d 986, 255 App.Div. 882—Laedke v. Truesdale, 2 N.Y.S.2d 708, 253 App. Div. 921—Brown v. Board of Education of City of New York, 2 N. Y.S.2d 31, 253 App.Div. 318—Hyman v. Dworsky, 267 N.Y.S. 539, 239 App.Div. 413—Trupin v. New York City Interborough Ry. Co., 262 N.Y.S. 284, 237 App.Div. 515—Cooke v. Glassheim, 202 N.Y.S. 599, 207 App.Div. 592—Falcone v. National Casket Co., 180 N.Y.S. 455, 190 App.Div. 651—Bauman v. Norfolk & W. Ry. Co., 175 N.Y.S. 804, 187 App.Div. 452—Griessel v. Adeler, 171 N.Y.S. 183, 183 App.Div. 816.

Feldman v. Klosk Bros., 209 N. Y.S. 764, 124 Misc. 879—Howe v. T. M. & J. M. Fox, 208 N.Y.S. 463, 124 Misc. 505—Adler v. Nelson, 205 N.Y.S. 336, 123 Misc. 531.

Rabinowitz v. Equitable Life Assur. Soc. of the U. S., 146 N.Y.S.2d 324—Marchant v. Fred F. French Management Co., 90 N.Y.S.2d 5—Nelson v. Epstein, 56 N.Y.S.2d 341.

N.C.—In re Bartlett's Will, 70 S.E.2d 482, 235 N.C. 489—Thompson v. Angel, 197 S.E. 618, 214 N.C. 3—Morris v. Kramer Bros. Co., 108 S.E. 381, 182 N.C. 87.

Ohio.—Miller v. Hesseldon, 152 N.E. 666, 115 Ohio St. 266.

Ribarin v. Kessler, 70 N.E.2d 107, 78 Ohio App. 289—Emery v. City of Toledo, 173 N.E. 635, 36 Ohio App. 488.

P., etc., R. Co. v. Burroughs, 6 Ohio S. & C.P. 530, 5 Ohio N.P. 12.

Okl.—Pressley v. Incorporated Town of Sallisaw, 154 P. 660, 54 Okl. 747.

Or.—Bank of California Nat. Ass'n v. Schmaltz, 9 P.2d 113, 139 Or. 163—Richey v. Robertson, 169 P. 99, 86 Or. 525.

Pa.—Fischer v. Commercial Nat. Bank, 184 A. 57, 321 Pa. 200.

Hambleton v. Selden, 60 A.2d 369, 163 Pa.Super. 269—Duffy v. Griffith, 4 A.2d 170, 134 Pa.Super. 447.

S.C.—Lusk v. State Highway Department, 186 S.E. 786, 181 S.C. 101.

Tex.—Wichita Valley Ry. Co. v. Southern Casualty Co., Com.App., 284 S.W. 940.

Thompson v. Janes, Civ.App., 227 S.W.2d 330—Rathbun v. Miller, Civ.App., 266 S.W. 818—Alamo Iron Works v. Prado, Civ.App., 220 S. W. 282—City of Ft. Worth v. Burton, Civ.App., 193 S.W. 228.

Wash.—Heitfeld v. Benevolent and Protective Order of Keglers, 220 P.2d 655, 36 Wash.2d 685, 18 A.L. R.2d 983—Eckhart v. Peterson, 162 P. 551, 94 Wash. 379—Schneider v. Great Northern R. Co., 91 P. 565, 47 Wash. 45.

Wis.—Knickerbocker v. Beaudette Garage Co., 209 N.W. 763, 190 Wis. 474.

4 C.J. p **957** note 64—64 C.J. p 67 note 64.

Court may not minimize

When complaint is made that conduct of trial judge was prejudicial to litigant, reviewing court may not ignore or minimize assignments of misconduct made with conviction and in good faith, notwithstanding its lack of disposition to be critical of conduct of trial judge.

Cal.—Hays v. Viscome, 264 P.2d 173, 122 C.A.2d 135, 39 A.L.R.2d 1435.

Cumulative effect prejudicial

Although numerous comments or remarks by trial judge taken separately did not justify reversal of judgment on grounds of judicial misconduct, the record showed that their cumulative effect did prejudice plaintiff's case.

Cal.—Delzell v. Day, 223 P.2d 625, 36 C.2d 349.

Comment on evidence violating constitution

Comment by trial judge on the evidence violates constitutional provision that judges shall not charge with respect to matters of fact or comment thereon, and such comment constitutes reversible error.

Ariz.—Glowacki v. A. J. Bayless Markets, Inc., 263 P.2d 799, 76 Ariz. 295.

Reference to insurance

It is reversible error for trial court needlessly to bring to jury's attention fact that insurance company or other indemnitor is defending action.

Vt.—McCutcheon v. Leonard, 39 A.2d 848, 114 Vt. 38.

been applied to remarks which exhibit a bias against a party,[66] show a manifestly hostile attitude to an attorney who was proceeding entirely within his rights and in accordance with his duty to his client,[67] tend to discredit a witness[68] or evidence offered,[69] or take away from the jury a question which is properly for their consideration;[70] misstate the evidence with respect to an important question of fact;[70.5] and to misconduct of the judge in calling the clerk to preside at the argument and temporarily leaving the courtroom,[71] taking part in the cross-examination to such an extent as to prejudice the jury,[72] saying "Objection sustained" when no objection had been interposed,[73] and refusing to permit counsel to read the pleadings to the jury.[74] Even though the jury were instructed to disregard the erroneous remarks, the case must be reversed if the instruction was insufficient to overcome the impression which the jury must have received from the statement.[75]

66. U.S.—Mason v. U. S., C.C.A.Vt., 63 F.2d 791.

Cal.—Crooks v. Glens Falls Indem. Co., 268 P.2d 203, 124 C.A.2d 113—Etzel v. Rosenbloom, 189 P.2d 848, 83 C.A.2d 758—In re Melvin's Estate, 159 P. 980, 85 C.A. 691.

N.Y.—Kaminsky v. American Newspapers, 7 N.Y.S.2d 986, 255 App.Div. 882.

Stein v. Eckert, 188 N.Y.S. 469.

N.C.—Thompson v. Angel, 197 S.E. 618, 214 N.C. 3.

Ohio.—Whitaker v. French-Bauer, Inc., 58 N.E.2d 64, 74 Ohio App. 197.

Okl.—Twin City Fire Ins. Co. of Minneapolis, Minn. v. First Nat. Bank, 292 P. 833, 145 Okl. 293—Fidelity-Phœnix Fire Ins. Co. of New York v. First Nat. Bank, 292 P. 829, 145 Okl. 289.

Pa.—Bloom v. Hopman, 98 A.2d 414, 173 Pa.Super. 292—Shappel v. City of Philadelphia, 176 A. 69, 115 Pa. Super. 529.

Tex.—Gulf, C. & S. F. Ry. Co. v. Metcalf, Civ.App., 100 S.W.2d 389.

4 C.J. p 957 note 64 [a] (1).

67. Cal.—Davis v. Pezel, 20 P.2d 982, 131 C.A. 46.

Minn.—Hansen v. St. Paul City Ry. Co., 43 N.W.2d 260, 231 Minn. 354.

Mont.—Pilgeram v. Haas, 167 P.2d 339, 118 Mont. 431.

Pa.—Fischer v. Commercial Nat. Bank, 184 A. 57, 321 Pa. 200.

R.I.—Roy v. United Electric Rys. Co., 159 A. 637, 52 R.I. 173.

Tex.—Travelers Ins. Co. v. Simon, Civ.App., 126 S.W.2d 674.

68. U.S.—Town of Bolivar, Tenn., v. Kelly, C.C.A.Tenn., 69 F.2d 58—Mason v. U. S., C.C.A.Vt., 63 F.2d 791.

Cal.—Berguin v. Pacific Electric Ry. Co., 263 P. 220, 203 C. 116.

Steele v. Wardwell, 135 P.2d 628, 57 C.A.2d 642—Davis v. Pozel, 20 P.2d 982, 131 C.A. 46.

Ill.—Katz v. Goldberg, 82 N.E.2d 73, 335 Ill.App. 379. See De Tarnowsky v. Walker, 191 Ill.App. 610.

Neb.—Stoffel v. Metcalfe Const. Co., 17 N.W.2d 3, 145 Neb. 450—McCulley v. Anderson, 227 N.W. 321, 119 Neb. 105.

N.Y.—Brown v. Frederick Loeser & Co., 280 N.Y.S. 115, 244 App.Div. 819.

Okl.—Phillips Petroleum Co. v. Johnson, 72 P.2d 488, 181 Okl. 256.

Pa.—Bloom v. Hopman, 98 A.2d 414, 173 Pa.Super. 292—Shappel v. City of Philadelphia, 176 A. 69, 115 Pa. Super. 529.

S.C.—Crenshaw v. Southern Ry. Co., 53 S.E.2d 789, 214 S.C. 553.

Tex.—Hargrove v. Fort Worth Elevator Co., Com.App., 276 S.W. 426.

Va.—Spence v. Miller, 90 S.E.2d 131, 197 Va. 477.

Wash.—Eckhart v. Peterson, 162 P. 551, 94 Wash. 379.

4 C.J. p 957 note 64 [a] (2).

Requiring apology

In trespass to try title for land sold by defendant under a trust deed after a note secured thereby had been paid and the lien extinguished, the court's requirement of an apology from defendant for shaking his finger in the face of the attorney for plaintiff, while repeatedly denying a fact upon which he was being questioned, after an assertion by plaintiff's attorney that he was a "damned liar," is reversible error.

Tex.—Coleman v. Moore, Civ.App., 87 S.W.2d 300.

69. Pa.—Marcu v. Gottlieb, 153 A. 719, 302 Pa. 398.

4 C.J. p 957 note 64 [a] (3).

70. Conn.—La Chase v. Sanders, 111 A.2d 690, 142 Conn. 122.

Ill.—Bailey v. Babcock, 185 N.E. 602, 352 Ill. 231—Genslinger v. New Illinois Athletic Club of Chicago, 171 N.E. 514, 339 Ill. 426.

N.C.—Hyder v. Asheville Storage Battery Co., 89 S.E.2d 124, 242 N.C. 553.

Tex.—Stafford v. Powell, Civ.App., 148 S.W.2d 965.

4 C.J. p 957 note 64 [a] (4).

Assuming fact to be proved

Ill.—Coulson v. Wenzel Hotel, Inc., 248 Ill.App. 540.

Comment on weight of evidence

Ark.—Lisko v. Uhren, 196 S.W. 816, 130 Ark. 111.

Ga.—West v. Black, 65 Ga. 647.

N.Y.—Broderick v. Brooklyn, Q. C. & S. R. Co., 174 N.Y.S. 571, 186 App. Div. 546.

Okl.—Durell v. Public Service Co. of Oklahoma, 51 P.2d 517, 174 Okl. 268.

Tex.—McDaniel v. Orr, Com.App., 33 S.W.2d 427—American Express Co. v. Chandler, Com.App., 231 S.W. 1085.

Commercial Standard Ins. Co. v. Billings, Civ.App., 114 S.W.2d 709, error dismissed—Connecticut General Life Ins. Co. v. Moore, Civ. App., 75 S.W.2d 329—Murray v. Morris, Civ.App., 17 S.W.2d 110.

W.Va.—State Road Commission v. Young, 130 S.E. 478, 100 W.Va. 394.

70.5 Ark.—Folsom v. Watson, 228 S.W.2d 1006, 217 Ark. 158.

Mich.—Hammock v. Sims, 21 N.W. 2d 118, 313 Mich. 248.

Ohio.—Scarinzi v. Farkas, 75 N.E.2d 86, 80 Ohio App. 409.

71. Kan.—Fiechter v. Fiechter, 155 P. 42, 97 Kan. 166, rehearing denied 155 P. 936, 97 Kan. 166.

72. U.S.—**Corpus Juris Secundum cited in** Williams v. United States, C.C.A.Cal., 93 F.2d 685, 692.

N.Y.—Dlugoff v. Tecklin, 33 N.Y.S. 2d 539, 263 App.Div. 998—Kaminsky v. American Newspapers, 7 N. Y.S.2d 986, 255 App.Div. 882.

Moscahlades v. Montagnino, 172 N.Y.S. 332.

N.C.—Andrews v. Andrews, 92 S.E.2d 180, 243 N.C. 779.

73. Ill.—Coulson v. Wenzel Hotel, Inc., 248 Ill.App. 540.

74. Minn.—Hork v. Minneapolis St. Ry. Co., 258 N.W. 576, 193 Minn. 366.

75. Cal.—Forte v. Schiebe, 302 P.2d 336, 145 C.A.2d 296—Crooks v. Glens Falls Indem. Co., 268 P.2d 203, 124 C.A.2d 113—Steele v. Wardwell, 135 P.2d 628, 57 C.A.2d 642—Carlston v. Shenson, 117 P.2d 408, 47 C.A.2d 52.

Mont.—Pilgeram v. Haas, 167 P.2d 339, 118 Mont. 431.

N.C.—Thompson v. Angel, 197 S.E. 618, 214 N.C. 3.

Tex.—Stafford v. Powell, Civ.App., 148 S.W.2d 965.

Wash.—Kluge v. Northern Pac. Ry. Co., 9 P.2d 74, 167 Wash. 294.

§ 1713. Arguments and Conduct of Counsel

a. In general
b. Presentation of evidence
c. Reference to defendant's insurance or other indemnity

a. In General

(1) Harmless error
(2) Prejudicial error

(1) Harmless Error

(a) In general
(b) Absence of effect on verdict
(c) Correction by court

(a) In General

Improper remarks, argument, or conduct is no ground for reversal if the complaining party is not prejudiced thereby.

Unless it appears that the acts complained of resulted in substantial prejudice to the party complaining, a cause will not ordinarily be reversed for improper remarks;[76] nor will a cause be reversed for

76. Ala.—Birmingham Elec. Co. v. Perkins, 31 So.2d 640, 249 Ala. 426—Smith v. Tripp, 20 So.2d 870, 246 Ala. 421—Jewel Tea Co. v. Sklivis, 179 So. 532, 235 Ala. 510—O'Bar v. Southern Life & Health Ins. Co., 168 So. 580, 232 Ala. 459—Britling Cafeteria Co. v. Shotts, 162 So. 378, 230 Ala. 597—Birmingham News Co. v. Payne, 162 So. 116, 230 Ala. 524—**Corpus Juris cited in** Birmingham Electric Co. v. Mann, 147 So. 165, 166, 226 Ala. 379—Dixie Stage Lines v. Anderson, 134 So. 23, 222 Ala. 673—Feore v. Trammel, 102 So. 529, 212 Ala. 325—Street v. Browning, 98 So. 203, 210 Ala. 331—Louisville & N. R. Co. v. Watson, 94 So. 551, 208 Ala. 319—Woodward Iron Co. v. Williams, 93 So. 523, 207 Ala. 600—Howell v. Smith, 91 So. 496, 206 Ala. 646—Headley v. Harris, 71 So. 695, 196 Ala. 520—Walker v. Gunnels, 66 So. 45, 188 Ala. 206.

American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 89, certiorari denied 58 So.2d 478, 257 Ala. 238—Thompson v. Southern Ry. Co., 85 So. 591, 17 Ala.App. 406—Anders v. Wallace, 82 So. 644, 17 Ala.App. 154.

Ariz.—Lane v. Mathews, 245 P.2d 1025, 74 Ariz. 201, reheard 251 P.2d 303, 75 Ariz. 1—Wolff v. First Nat. Bank, 53 P.2d 1077, 47 Ariz. 97.

Ark.—Dr. Pepper Bottling Co. of Newport v. Whidden, 296 S.W.2d 432—McSpadden v. Marshall, 252 S.W.2d 65, 221 Ark. 86—Briley v. White, 193 S.W.2d 326, 209 Ark. 941—Coca Cola Bottling Co. v. Jordan, 54 S.W.2d 403, 186 Ark. 1006—McCaskey Register Co. v. McCurry, 26 S.W.2d 1103, 181 Ark. 649—Des Arc Oil Mill v. McLeod, 206 S.W. 655, 137 Ark. 615—Lusk v. Osborne, 191 S.W. 944, 127 Ark. 170.

Cal.—Hobbs v. Transport Motor Co., 141 P.2d 738, 22 C.2d 773.

Ross v. Lightner, 294 P.2d 59, 139 C.A.2d 756—Paolini v. City and County of San Francisco, 164 P.2d 916, 72 C.A.2d 579—Scott v. Sheedy, 102 P.2d 575, 39 C.A.2d 96—Rogers v. Foppiano, 72 P.2d 239, 23 C.A.2d 87—Atchison, T. & S. F. Ry. Co. v. Southern Pac. Co., 57 P.2d 575, 13 C.A.2d 505—Steers v. City and County of San Francisco, 5 P.2d 32, 118 C.A. 361—Couchman v. Snelling, 295 P. 845, 111 C.A. 192—Liberty Bank v. Nonnenmann, 274 P. 568, 96 C.A. 478.

Colo.—Averch v. Johnston, 9 P.2d 291, 90 Colo. 321.

Del.—Prettyman v. Topkis, 8 A.2d 708, 9 W.W.Harr. 568.

D.C.—Washington & O. D. Ry. v. Slyder, 43 App.D.C. 95.

Ga.—Dictograph Products v. Cooper, 69 S.E.2d 821, 85 Ga.App. 421.

Idaho.—Sweeney v. Hanmer, 162 P.2d 387, 66 Idaho 462—Stewart v. City of Idaho Falls, 103 P.2d 697, 61 Idaho 471—Baldwin v. Singer Sewing Mach. Co., 287 P. 944, 49 Idaho 231.

Ill.—Plambeck v. Chicago Rys. Co., 128 N.E. 513, 294 Ill. 302—Kenna v. Calumet, H. & S. E. R. Co., 120 N.E. 259, 284 Ill. 301—Chicago, etc., R. Co. v. Vipond, 72 N.E. 22, 212 Ill. 199.

Nowell v. Chicago Transit Authority, 120 N.E.2d 243, 3 Ill.App.2d 114—Smith v. Johnson, 120 N.E.2d 58, 2 Ill.App.2d 315—Thomas v. Mosheim, 102 N.E.2d 555, 345 Ill. App. 184—Darnell v. Strand Hotel Corp., 99 N.E.2d 583, 343 Ill.App. 517—Reinmueller v. Chicago Motor Coach Co., 93 N.E.2d 120, 341 Ill. App. 178—Grissom v. Goad, 80 N.E.2d 380, 335 Ill.App. 120—Lazarus v. Friel, 73 N.E.2d 647, 331 Ill.App. 552—Koll v. Mitchell, 69 N.E.2d 703, 330 Ill.App. 132—Powell v. Myers Sherman Co., 32 N.E.2d 663, 309 Ill.App. 12—Jannusch v. Weber Bros. Metal Works, 249 Ill.App. 1—Waiswila v. Illinois Cent. R. Co., 220 Ill.App. 113—Cleveland, etc., R. Co. v. Davis, 56 Ill.App. 41. See O'Rourke v. City of Minonk, 208 Ill.App. 522—Deming v. Prudential Ins. Co. of America, 190 Ill. App. 604.

Ind.—New York Cent. R. Co. v. Milhiser, 106 N.E.2d 453, 231 Ind. 180, rehearing denied 108 N.E.2d 57, 231 Ind. 180.

Castor v. McDole, 148 N.E. 643, 80 Ind.App. 556.

Kan.—Marley v. Arkansas City, 11 P.2d 704, 135 Kan. 688—Wheeler v. Jackson, 297 P. 427, 132 Kan. 742—Garcia v. Slater-Breitag Yeamans Motor Co., 278 P. 22, 128 Kan. 365—Underwood v. Fosha, 150 P. 571, 96 Kan. 240.

Ky.—H. P. Selman & Co. v. Goldstein, 278 S.W.2d 713—National Sur. Marine Ins. Corp. v. Wheeler, 257 S.W.2d 573—Martin v. Webb, 187 S.W.2d 828, 300 Ky. 11—R. B. Tyler Co. v. Cantrell, 137 S.W.2d 401, 281 Ky. 718—Huber & Huber Motor Express v. Martin's Adm'r, 96 S.W.2d 595, 265 Ky. 228—Life & Casualty Co. of Tennessee v. Gream, 68 S.W.2d 402, 252 Ky. 801—Town of Wingo v. Rhodes, 28 S.W.2d 465, 234 Ky. 385—Caledonian Ins. Co. v. Naifeh, 16 S.W.2d 1046, 229 Ky. 293—Connecticut Fire Ins. Co. v. Colker, 16 S.W.2d 761, 229 Ky. 113—Standard Sanitary Mfg. Co. v. Brian's Adm'r, 6 S.W.2d 491, 224 Ky. 419—Muller v. Swann, 175 S.W. 15, 164 Ky. 159—Louisville & N. R. Co. v. Mitchell, 172 S.W. 527, 162 Ky. 253.

Me.—Towne v. Larson, 51 A.2d 51, 142 Me. 301.

Md.—Maryland & P. R. Co. v. Knight, 89 A. 1091, 122 Md. 576.

Mich.—Leeds v. Masha, 43 N.W.2d 92, 328 Mich. 137—Ehlers v. Barbeau, 289 N.W. 241, 291 Mich. 528—Taliaferro v. Pere Marquette Ry. Co., 228 N.W. 778, 249 Mich. 281—Marsh v. Burnham, 179 N.W. 300, 211 Mich. 675—Case v. Rudolph Wurlitzer Co., 152 N.W. 977, 186 Mich. 81—Sweikhart v. Hanrahan, 150 N.W. 833, 184 Mich. 201—Bales v. Evans, 148 N.W. 790, 182 Mich. 383—Gould v. Gregory, 95 N.W. 414, 133 Mich. 382.

Minn.—Rappaport v. Boyer & Gilfillan Motor Co., 59 N.W.2d 302, 239 Minn. 477—Eichten v. Central Minn. Co-op. Power Ass'n of Redwood County, 28 N.W.2d 862, 224 Minn. 180—Parris v. McKay, 206 N.W. 893, 165 Minn. 241—Burns v. Essling, 203 N.W. 605, 163 Minn. 57—Leonczak v. Minneapolis, St. P. & S. S. M. Ry. Co., 201 N.W. 551, 161 Minn. 304—Haney v. Ferch, 185 N.W. 397, 150 Minn. 323—Gunderson v. Minneapolis St. Ry. Co., 148 N.W. 61, 126 Minn. 168.

Miss.—Nelms & Blum Co. v. Fink, 131 So. 817, 159 Miss. 372—Jackson & E. Ry. Co. v. Thames, 114 So.

611, 148 Miss. 857—Yazoo, etc., R. Co. v. Rivers, 46 So. 705, 93 Miss. 557, 565.

Mo.—Marler v. Pinkston, 293 S.W.2d 385—Cleghorn v. Terminal R. Ass'n of St. Louis, 289 S.W.2d 13—Parmley v. Henks, 285 S.W.2d 710—Williams v. Thompson, 251 S.W.2d 89—Joice v. Missouri-Kansas-Texas R. Co., 189 S.W.2d 568, 354 Mo. 439, 161 A.L.R. 383—Atchison v. Weakley, 169 S.W.2d 914, 350 Mo. 1092—Miller v. Collins, 40 S.W.2d 1062, 328 Mo. 313—Bobos v. Krey Packing Co., 19 S.W.2d 630, 323 Mo. 224—Dees v. Skrainka Const. Co., 8 S.W.2d 873, 320 Mo. 839—Kersten v. Hines, 223 S.W. 586, 283 Mo. 623—Fiori v. Dolph, 192 S.W. 949.

Heggeman v. St. Louis Public Service Co., App., 255 S.W.2d 99—Miller v. Gotsman, App., 253 S.W. 2d 407—Saffran v. Rhode Island Ins. Co. of Providence, R. I., App., 141 S.W.2d 98—O'Gorman v. Kansas City, 93 S.W.2d 1132, 233 Mo. App. 124—Arnold v. Metropolitan Life Ins. Co., App., 89 S.W.2d 81—McWhorter v. Dahl Chevrolet Co., App., 88 S.W.2d 240—Klinginsmith v. Mutual Ben. Health & Accident Ass'n, App., 64 S.W.2d 705—Rose v. Western Union Telegraph Co., App., 38 S.W.2d 483—Lally v. Morris, App., 26 S.W.2d 52—Becker v. Koester, App., 295 S.W. 818—Andrews v. Bulldog Auto Fire Ins. Ass'n of Chicago, App., 291 S.W. 508—Merchants' & Mfrs.' Bank v. S. W. Morten Lumber Co., App., 247 S.W. 432—Quint v. Loth-Hoffman Clothing Co., App., 247 S.W. 236—Muehlebach v. Muehlebach Brewing Co., App., 242 S.W. 174—Wojciechowski v. Coryell, App., 217 S.W. 638—Brown v. Missouri, K. & T. Ry. Co., 212 S.W. 26, 201 Mo. App. 316—Wilkerson v. City of Sedalia, App., 205 S.W. 877—Waterfield v. Wabash Ry. Co., App., 190 S.W. 981—Hawkins v. City of Independence, App., 184 S.W. 927—Hays v. Miller's Estate, 173 S.W. 1096, 189 Mo.App. 72.

N.H.—Charles v. McPhee, 26 A.2d 30, 92 N.H. 111—Williams v. Williams, 182 A. 172, 87 N.H. 430—Wilcomb v. Dustin, 131 A. 596, 82 N.H. 180—Bellveau v. John B. Varick Co., 120 A. 884, 81 N.H. 57—Lariviere v. Stratton, 120 A. 846, 81 N.H. 17—Robertson v. Monroe, 116 A. 92, 80 N.H. 258—Williams v. United Box & Lumber Co., 114 A. 817, 80 N.H. 137—Jordan v. Boston & M. R. R., 113 A. 390, 80 N.H. 105—Guaranty Trust Co. v. U. S. Fidelity & Guaranty Co., 112 A. 247, 79 N.H. 480—Wright v. Woodward, 111 A. 494, 79 N.H. 474—Voulgaris v. Gianaris, 109 A. 838, 79 N.H. 408—Hamlin v. Philbrook, 97 A. 977, 78 N.H. 144.

N.J.—Nightengale v. Public Service Co-ordinated Transport, 149 A. 526, 8 N.J.Misc. 238.

N.Y.—Beneke v. Palazzi, 10 N.Y.S.2d 163, 256 App.Div. 946.

Ohio.—Herrman v. Levy, 9 Ohio App. 269.

Cincinnati Union Terminal Co. v. Banning, 27 Ohio N.P.,N.S., 548.

Okl.—Conliff v. Hall, 305 P.2d 1041—Sharp v. Henry, 298 P.2d 1058—Jamison v. Oklahoma Power & Water Co., 90 P.2d 419, 185 Okl. 103—Clanton v. Mundell, 51 P.2d 760, 174 Okl. 428—Teeters v. Frost, 292 P. 356, 145 Okl. 273, 71 A.L.R. 179—Charley v. Norvell, 221 P. 255, 97 Okl. 114.

Or.—Halton v. Fellows, 73 P.2d 680, 157 Or. 514—Lamb v. Woodry, 58 P.2d 1257, 154 Or. 30, 105 A.L.R. 914—Fletcher v. Saunders, 284 P. 276, 132 Or. 67.

Pa.—Public Nat. Bank & Trust Co. of Houston v. Enameled Metals Co., 188 A. 143, 324 Pa. 186—Rinehuls v. Ely, 92 A. 1078, 247 Pa. 1—City of Pittsburg v. Newell, 72 A. 793, 223 Pa. 420.

Boyle v. Lehigh Valley Transit Co., Com.Pl., 19 Leh.L.J. 309—Deshon v. Harrison, Com.Pl., 54 Montg. Co. 84.

R.I.—Parkinson v. Murphy, 107 A. 235—Walker v. Walker, 67 A. 519.

S.C.—Holman v. City of Orangeburg, 110 S.E. 674, 118 S.C. 361.

Tenn.—Tri-State Transit Co. of Louisiana v. Duffey, 173 S.W.2d 706, 27 Tenn.App. 731—Pruitt v. Williams, 106 S.W.2d 892, 21 Tenn.App. 171—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512—Petway v. Hoover, 12 Tenn.App. 618.

Tex.—Texas Emp. Ins. Ass'n v. Kennedy, Civ.App., 303 S.W.2d 440—Angelina Cas. Co. v. Ryan, Civ. App., 282 S.W.2d 310, error refused no reversible error—Myers v. Continental Panhandle Lines, Civ.App., 278 S.W.2d 365—Clifton v. Lostutter, Civ.App., 268 S.W.2d 323, error refused no reversible error—Railway Exp. Agency v. Spain, Civ. App., 249 S.W.2d 644, appeal dismissed 255 S.W.2d 509, 152 Tex. 198—Gillespie v. Rossi, Civ.App., 238 S.W.2d 547, error refused no reversible error—Tripp v. Watson, Civ.App., 235 S.W.2d 677, error refused no reversible error—Alamo Cas. Co. v. Trafton, Civ.App., 231 S.W.2d 474, error dismissed—Texon Drilling Co. v. Eliff, Civ.App., 216 S.W.2d 824, error refused no reversible error—Airline Motor Coaches v. Campbell, Civ.App., 184 S.W.2d 532, error refused—Airline Motor Coaches v. Bennett, Civ.App., 184 S.W.2d 524, reversed on other grounds 187 S.W.2d 982, 144 Tex. 36—Stout v. Oliveira, Civ.App., 153 S.W.2d 590, error refused—Carson v. Amberson, Civ.App., 148 S.W.2d 972, error dismissed, judgment correct—Coats v. Stewart, Civ.App., 135 S.W.2d 1026, error dismissed, judgment correct—McMillion v. Wilkinson, Civ.App., 135 S.W.2d 231, error dismissed, judgment correct—Jackson v. Edmondson, Civ. App., 129 S.W.2d 369, reversed on other grounds 151 S.W.2d 794, 136 Tex. 405—National Life & Accident Ins. Co. v. Harris, Civ.App., 118 S.W.2d 838—National Life & Accident Co. v. Dickinson, Civ.App., 115 S.W.2d 1180, error dismissed—Walker v. Money, Civ.App., 93 S.W. 2d 602, affirmed 120 S.W.2d 428, 132 Tex. 132—Traders & General Ins. Co. v. Parker, Civ.App., 91 S.W.2d 503, error dismissed—El Paso Electric Co. v. Beckman, Civ.App., 89 S.W.2d 470, error dismissed—Traders & General Ins. Co. v. Ross, Civ. App., 88 S.W.2d 543, reversed on other grounds 117 S.W.2d 423, 131 Tex. 562—C. W. Hahl Co. v. Burch, Civ.App., 74 S.W.2d 1040—National Newspaper Enterprises v. Chitwood, Civ.App., 68 S.W.2d 264—Texas Employers' Ins. Ass'n v. Cheek, Civ.App., 63 S.W.2d 1103—Weiss v. Gaines, Civ.App., 51 S.W. 2d 428, set aside on other grounds 81 S.W.2d 39, 125 Tex. 106—Abilene & S. Ry. Co. v. Herman, Civ.App., 47 S.W.2d 915—Republic Production Co. v. Collins, Civ.App., 41 S. W.2d 100—Marcus v. Huguley, Civ. App., 37 S.W.2d 1100—Jackson v. Jackson, Civ.App., 35 S.W.2d 830—City of Beaumont v. Kane, Civ. App., 33 S.W.2d 234—U. S. Fidelity & Guaranty Co. v. Brandon, Civ. App., 31 S.W.2d 846—Harmon v. Ketchum, Civ.App., 299 S.W. 682—Galveston, H. & S. A. Ry. Co. v. Easton, Civ.App., 257 S.W. 924—Settegast v. Meyer, Civ.App., 257 S.W. 343—Galveston, H. & S. A. Ry. Co. v. Henry, Civ.App., 252 S. W. 210—A. J. Anderson Co. v. Reich, Civ.App., 249 S.W. 298, reversed on other grounds, Com.App., 260 S.W. 162—Schmidt v. Willmann, Civ.App., 235 S.W. 629—Texas Electric Ry. Co. v. Whitmore, Civ.App., 222 S.W. 644, dismissed for want of jurisdiction—Beaumont, S. L. & W. Ry. Co. v. Myrick, Civ.App., 208 S.W. 935, dismissed for want of jurisdiction—San Antonio & A. P. Ry. Co. v. Moore, Civ.App., 208 S.W. 754—Hall v. Collier, Civ.App., 200 S.W. 880—Baldwin v. Drew, Civ.App., 195 S.W. 636, reversed on other grounds, Com.App., 244 S.W. 987—Chicago, R. I. & G. Ry. Co. v. Faulkner, Civ.App., 194 S.W. 651—Varn v. Gonzales, Civ.App., 193 S.W. 1132, reversed on other grounds, Com.App., 222 S.W. 543—Houston Oil Co. of Texas v. Jones, Civ.App., 184 S.W. 611, error refused 198 S.W. 290, 109 Tex. 89—Wolnitzek v. Lewis, Civ.App., 183 S.W. 819, error refused—St. Louis Southwestern R. . Co. v. Browning, 118 S.W. 245, 54 Tex.Civ. App. 521—Southern Pacific R. Co. v. Hort, 116 S.W. 415, 53 Tex.Civ. App. 536.

improper argument.[77] Likewise, unless substantial | prejudice results to the party complaining, an order

Vt.—Foundry Mfg. Co. v. Farr, 119 A. 885, 96 Vt. 382—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Le Clair v. Montpelier & W. R. R. Co., 106 A. 587, 93 Vt. 92—Douglass & Varnum v. Village of Morrisville, 95 A. 810—Baker v. Sherman, 46 A. 57, 71 Vt. 439.

Va.—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203—P. Lorillard Co. v. Clay, 104 S.E. 384, 127 Va. 734.

Wash.—George E. Miller Lumber Co. v. Holden, 273 P.2d 786, 45 Wash. 2d 237—Clampett v. Sisters of Charity of House of Providence in Territory of Washington, 136 P.2d 729, 17 Wash.2d 652—Marlowe v. Patrick, 44 P.2d 776, 181 Wash. 647—Bennett v. Seattle Electric Co., 105 P. 825, 56 Wash. 407.

W.Va.—Sigmon v. Mundy, 25 S.E.2d 636, 125 W.Va. 591.

Wis.—Frion v. Craig, 80 N.W.2d 808, 274 Wis. 550—Roeske v. Schmitt, 64 N.W.2d 394, 266 Wis. 557—Becker v. Luick, 264 N.W. 242, 220 Wis. 481.

4 C.J. p 957 notes 65, 68 [a] (1), (2), (6)-(15), (20), (21), (23), (25)—52 C.J. p 535 note 43.

"Courts should exercise great caution in setting aside judgments because of inadvertent remarks made by litigants or counsel during a hotly contested trial, even though improper, unless it clearly appears that they aroused the sympathy or prejudice of the jury and influenced the verdict."

U.S.—Chicago & N. W. Ry. Co. v. Kelly, C.C.A.Minn., 74 F.2d 31, 35.

Trial by referee

Improper statements of counsel are not prejudicial error where apparently they had no effect upon the decision of the referee.

N.Y.—Shepard v. New York El. R. Co., 15 N.Y.S. 175.

77. Ala.—International Union, United Auto., Aircraft and Agr. Implement Workers of America, C. I. O. v. Russell, 88 So.2d 175, 264 Ala. 456, certiorari granted 77 S.Ct. 213, 352 U.S. 915, 1 L.Ed.2d 121—Louisville & N. R. Co. v. Tucker, 80 So. 2d 288, 262 Ala. 570—Stidham v. Southern Ry. Co., 77 So.2d 640, 262 Ala. 153—Waters v. American Cas. Co. of Reading, Pa., 73 So.2d 524, 261 Ala. 252—Birmingham Elec. Co. v. Perkins, 31 So.2d 640, 249 Ala. 426—Piper v. Halford, 25 So. 2d 264, 247 Ala. 530—Provident Life & Accident Ins. Co., of Chattanooga, Tenn., v. Downey, 7 So. 2d 17, 242 Ala. 482—Jewel Tea Co. v. Sklivis, 179 So. 532, 235 Ala. 510—Sovereign Camp., W. O. W., v. Roland, 168 So. 576, 232 Ala. 541—Brotherhood of Railroad Trainmen v. Jennings, 168 So. 173, 232 Ala. 438—Alabama Power Co. v. Berry, 130 So. 541, 222 Ala. 20—Birmingham Amusements v. Turner, 128 So. 211, 221 Ala. 242—Davis v. Teague, 125 So. 51, 220 Ala. 309, appeal dismissed 50 S.Ct. 248, 281 U.S. 695, 74 L.Ed. 1123—Mississippi Fire Ins. Co. v. Perdue, 116 So. 142, 217 Ala. 292, 62 A.L.R. 626—Drummond v. Drummond, 102 So. 112, 212 Ala. 242—Kuykendall v. Edmondson, 94 So. 546, 208 Ala. 553—Kuykendall v. Edmondson, 77 So. 24, 200 Ala. 650—Dorough v. Alabama Power Co., 76 So. 963, 200 Ala. 605—Clinton Mining Co. v. Bradford, 76 So. 74, 200 Ala. 308—Louisville, etc., R. Co. v. Orr, 8 So. 360, 91 Ala. 548, 555, affirmed 94 Ala. 602, 10 So. 167.

Miller v. Bryant, 151 So. 362, 25 Ala.App. 564, certiorari denied 151 So. 366, 227 Ala. 570.

Ariz.—Scott v. Scott, 252 P.2d 571, 75 Ariz. 116.

Ark.—Tri-State Transit Co. of Louisiana v. Westbrook, 180 S.W.2d 121, 207 Ark. 270—Reed v. Baldwin, 92 S.W.2d 392, 192 Ark. 491—Browne v. Dugan, 74 S.W.2d 640—Barnett v. Bank of Malvern, 39 S.W.2d 1014, 183 Ark. 1030.

Cal.—Lynch v. Birdwell, 285 P.2d 919, 44 C.2d 839—Grossetti v. Sweasey, 169 P. 687, 176 C. 793.

Eggleston v. Liberty Mut. Ins. Co., 300 P.2d 867, 144 C.A.2d 302—Gonsalves v. Coito, 300 P.2d 742, 144 C.A.2d 138—Hawke v. Burns, 294 P.2d 1008, 140 C.A.2d 158—Bryant v. Tulare Ice Co., 270 P.2d 880, 125 C.A.2d 566—Nelson v. Porterville Union High School Dist., 254 P.2d 945, 117 C.A.2d 96—Covely v. C. A. B. Const. Co., 242 P.2d 87, 110 C.A.2d 30—Music v. Southern Pac. Co., 204 P.2d 422, 91 C.A. 2d 93—Ravettino v. City of San Diego, 160 P.2d 52, 70 C.A.2d 37—Pierce v. Sinner, 140 P.2d 474, 60 C.A.2d 259—Atchley v. Finley, 133 P.2d 823, 57 C.A.2d 21—Cordi v. Garcia, 102 P.2d 820, 39 C.A.2d 189—Gerberich v. Southern California Edison Co., 79 P.2d 783, 26 C.A.2d 471—Melikian v. Independent Paper Stock Co., 47 P.2d 539, 8 C.A.2d 166—Fleming v. Flick, 35 P.2d 210, 140 C.A. 14—Coppock v. Pacific Gas & Electric Co., 30 P.2d 549, 137 C.A. 80—Alvernaz v. H. P. Garin Co., 16 P.2d 683, 127 C.A. 681—Perez v. Wilson, 260 P. 838, 86 C.A. 288.

Colo.—Staley v. Nazarenus, 281 P. 358, 86 Colo. 326.

Conn.—Miller v. Adkisson, 153 A. 774, 112 Conn. 658.

Fla.—Duval Laundry Co. v. Reif, 177 So. 726, 130 Fla. 276.

Ga.—Jordan v. Hancock, 86 S.E.2d 11, 91 Ga.App. 467—Criswell Baking Co. v. Milligan, 50 S.E.2d 136, 77 Ga.App. 861—Southern Ry. Co. v. Heaton, 6 S.E.2d 339, 61 Ga.App. 386—Mauldin v. Gainey, 83 S.E. 276, 15 Ga.App. 353.

Idaho.—Lightner v. Russell & Pugh Lumber Co., 17 P.2d 349, 52 Idaho 616—In re Brown's Estate, 15 P. 2d 604, 52 Idaho 286, motion denied Fite v. French, 30 P.2d 360, 54 Idaho 104.

Ill.—Jackson County v. Wayman, 15 N.E.2d 854, 369 Ill. 123—Plambeck v. Chicago Rys. Co., 128 N.E. 513, 294 Ill. 302.

Fizerman v. Behn, 132 N.E.2d 788, 9 Ill.App.2d 263—Leone v. Spath, 124 N.E.2d 599, 4 Ill.App. 2d 586—Julian Foundry Co. v. Fidelity & Cas. Co. of N. Y., 124 N. E.2d 48, 4 Ill.App.2d 301—Durkin v. Lewitz, 123 N.E.2d 151, 3 Ill. App.2d 481—McKinney v. Nathan, 117 N.E.2d 886, 1 Ill.App.2d 536—Carson v. Weston Hotel Corp., 115 N.E.2d 800, 351 Ill.App. 523—Hall v. Chicago & N. W. Ry. Co., 110 N. E.2d 654, 349 Ill.App. 175—Seaholm v. Davis, 105 N.E.2d 795, 347 Ill. App. 73—Rasmussen v. Clark, 104 N.E.2d 325, 346 Ill.App. 181—Van Cleave v. Illini Coach Co., 100 N. E.2d 398, 344 Ill.App. 127—Smith v. Illinois Cent. R. Co., 99 N.E.2d 717, 343 Ill.App. 593—Tomlin v. Miller, 81 N.E.2d 760, 335 Ill.App. 267—Montgomery v. Atchison, T. & S. F. Ry. Co., 71 N.E.2d 105, 330 Ill.App. 334—Raimondi v. Ziffrin Truck Lines, 70 N.E.2d 221, 329 Ill. App. 650—Szalacha v. Landsman, 60 N.E.2d 643, 325 Ill.App. 691—Smith v. Chicago Motor Coach Co., 46 N.E.2d 176, 317 Ill.App. 462—Lancy v. Rosenberg, 45 N.E.2d 187, 316 Ill.App. 452—Hall v. McNair, 42 N.E.2d 305, 314 Ill.App. 672—McInerney v. Boysen Baking Co., 27 N.E.2d 482, 305 Ill.App. 489—Styburski v. Riverview Park Co., 18 N.E.2d 92, 298 Ill.App. 1—Uhls v. Old Ben Coal Corporation, 281 Ill.App. 254—McCusker v. Curtiss Wright Flying Service, 269 Ill.App. 502. See Parker v. Chicago Rys. Co., 200 Ill.App. 9—Barker v. Danville St. Ry. & Light Co., 193 Ill. App. 639.

Ind.—American Carloading Corporation v. Voight, 21 N.E.2d 453, 107 Ind.App. 267—Castor v. McDole, 148 N.E. 643, 80 Ind.App. 556.

Iowa.—Connelly v. Nolte, 21 N.W.2d 811, 237 Iowa 114—Johnson v. Kinney, 7 N.W.2d 188, 232 Iowa 1016, 144 A.L.R. 997—Gose v. True, 198 N.W. 528, 197 Iowa 1094—Butkovitch v. Centerville Block Coal Co., 177 N.W. 479, 188 Iowa 1176—Petterman v. City of Burlington, 153 N.W. 154, 170 Iowa 555.

Kan.—Hill v. Citizens' Nat. Bank of Emporia, 29 P.2d 1075, 139 Kan. 19—Atkinson v. Wichita Gas Co., 18 P.2d 127, 136 Kan. 854—Marley v.

Arkansas City, 11 P.2d 704, 135 Kan. 688—Stotts v. Taylor, 285 P. 571, 130 Kan. 158—Garcia v. Slater-Breitag Yeamans Motor Co., 278 P. 23, 128 Kan. 365—Harding v. Henderson, 255 P. 969, 123 Kan. 533—Stone v. City of Pleasanton, 223 P. 312, 115 Kan. 378.

Ky.—Wedding v. Duncan, 220 S.W.2d 564, 310 Ky. 374—Ken-Ten Coach Lines v. Hughes, 202 S.W.2d 172, 304 Ky. 692—Decker v. Commonwealth, 198 S.W.2d 212, 303 Ky. 511—Rogers v. Price, 160 S.W.2d 371, 290 Ky. 153—Brink v. Kennedy, 151 S.W.2d 58, 286 Ky. 566—Hermitage Land & Timber Co. v. Scott's Ex'rs, 93 S.W.2d 1, 263 Ky. 651—J. J. Newberry Co. v. Judd, 82 S.W.2d 359, 259 Ky. 309—Domestic Life & Accident Ins. Co. v. Smith, 82 S.W. 2d 293, 259 Ky. 158—Glens Falls Ins. Co. v. Hall, 79 S.W.2d 383, 259 Ky. 25—Independent Life Ins. Co. of America v. Downey, 72 S.W.2d 1008, 255 Ky. 95—Colston's Adm'r v. Cincinnati, N. O. & T. P. Ry. Co., 69 S.W.2d 1072, 253 Ky. 512—Equitable Life Assur. Soc. of U. S. v. Fannin, 67 S.W.2d 964, 252 Ky. 600—McGraw v. Ayers, 58 S.W.2d 378, 248 Ky. 166—W. H. Simmons & Co. v. Price's Adm'r, 38 S.W.2d 6, 238 Ky. 332—City of Providence v. Young, 13 S.W.2d 1022, 227 Ky. 690—Standard Sanitary Mfg. Co. v. Brian's Adm'r, 6 S.W.2d 491, 224 Ky. 419—Hartford Fire Ins. Co. v. Conway, 4 S.W.2d 697, 223 Ky. 745—Illinois Cent. R. Co. v. Heimerdinger, 291 S.W. 1027, 218 Ky. 600—Majestic Theater Co. v. Lutz, 275 S.W. 16, 210 Ky. 92—Louisville & N. R. Co. v. Allen's Adm'r, 192 S. W. 863, 174 Ky. 736.

Covington v. Glennon, 11 Ky.Op. 9.

La.—Bankston Bros. v. Morrison, App., 190 So. 195.

Mich.—Torma v. Montgomery Ward & Co., 58 N.W.2d 149, 336 Mich. 468—American Hotels Corp. v. Schmidt, 22 N.W.2d 54, 314 Mich. 15—Gleason v. Hanafin, 13 N.W.2d 196, 308 Mich. 31—Millar v. Macey Co., 257 N.W. 821, 269 Mich. 265—Church v. Larned, 172 N.W. 551, 206 Mich. 77—Fishell v. Fishell, 172 N.W. 432, 206 Mich. 308—Case v. Rudolph Wurlitzer Co., 152 N.W. 977, 186 Mich. 81.

Minn.—Greenberg v. Holfeltz, 69 N. W.2d 369, 244 Minn. 175—James v. Chicago, St. P., M. & O. Ry. Co., 16 N.W.2d 188, 218 Minn. 333—Waters v. Fiebelkorn, 13 N.W.2d 461, 216 Minn. 489—Olson v. Purity Baking Co., 242 N.W. 283, 185 Minn. 571—Sargent v. Bryan, 207 N.W. 178, 166 Minn. 45.

Miss.—Montgomery Ward & Co. v. Harland, 38 So.2d 771, 210 Miss. 438—Nelms & Blum Co. v. Fink, 131 So. 817, 159 Miss. 372—Lamar Life Ins. Co. v. Kemp, 124 So. 62, 154 Miss. 890—Interstate Co. v. Garnett, 122 So. 373, 154 Miss. 325, suggestion of error overruled 122 So. 756, 154 Miss. 325, 63 A.L.R. 1402.

Mo.—Silverstein v. St. Louis Public Service Co., 295 S.W.2d 37—Collins v. Cowger, 283 S.W.2d 554—Redick v. M. B. Thomas Auto Sales, 273 S.W.2d 228, 364 Mo. 1174—Daniels v. Brown, 266 S.W.2d 680—Peterson v. Kansas City Public Service Co., 259 S.W.2d 789—Hoffman v. St. Louis Public Service Co., 255 S. W.2d 736—Clark v. McKeone, 234 S.W.2d 574—Harrell v. Berberich, 222 S.W.2d 733, 359 Mo. 551—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220—Van Campen v. St. Louis-San Francisco Ry. Co., 216 S.W.2d 443, 358 Mo. 655—Sollenberger v. Kansas City Public Service Co., 202 S.W.2d 25, 356 Mo. 454—Corley v. Kroger Grocery & Baking Co., 193 S.W.2d 897, 355 Mo. 4—Kelley v. Illinois Cent. R. Co., 177 S.W.2d 435, 352 Mo. 301, certiorari denied 64 S.Ct. 1055, 322 U.S. 738, 88 L.Ed. 1572—Gillioz v. Missouri State Highway Commission, 169 S.W.2d 901, 350 Mo. 1077—Sibert v. Litchfield & M. Ry. Co., 159 S.W.2d 612—Monsour v. Excelsior Tobacco Co., 144 S.W.2d 62—Poague v. Kurn, 140 S.W.2d 13, 346 Mo. 153—Cordray v. City of Brookfield, 88 S.W.2d 161—Osby v. Tarlton, 85 S.W.2d 27, 336 Mo. 1240—State ex rel. Kansas City Public Service Co. v. Bland, 30 S.W.2d 445, 325 Mo. 505—Evans v. General Explosives Co., 239 S.W. 487, 293 Mo. 364.

Shelley v. St. Louis Public Service Co., App., 279 S.W.2d 182—Hancock v. Crouch, App., 267 S.W. 2d 36—Schraedel v. St. Louis Public Service Co., App., 248 S.W.2d 25—Naylor v. St. Louis Public Service Co., App., 235 S.W.2d 72—Legger v. Great Northern Life Ins. Co., App., 216 S.W.2d 106—White v. Teague, App., 177 S.W.2d 517, affirmed 182 S.W.2d 288, 353 Mo. 247—Cheatham v. Chartrau, 176 S. W.2d 865, 237 Mo.App. 793—Salmons v. Dun & Bradstreet, App., 153 S.W.2d 556, modified on other grounds 162 S.W.2d 245, 349 Mo. 498, 141 A.L.R. 674—Raymore v. Kansas City Public Service Co., App., 141 S.W.2d 103—Smith v. Producers Cold Storage Co., App., 128 S.W.2d 299—Fields v. Metropolitan Life Ins. Co., App., 119 S. W.2d 463—Fitzgerald v. Colorado Life Co., 116 S.W.2d 242, 233 Mo. App. 235—Garnett v. S. S. Kresge Co., App., 85 S.W.2d 157—Peppas v. H. Ehrlich & Sons Mfg. Co., App., 71 S.W.2d 821—Robison v. Chicago Great Western R. Co., App., 66 S. W.2d 180—Blaco v. Kansas City, App., 56 S.W.2d 1062—Hankins v. St. Louis-San Francisco Ry. Co., App., 31 S.W.2d 596, certiorari quashed State ex rel. St. Louis-San Francisco Ry. Co. v. Cox, 46 S.W. 2d 849, 329 Mo. 292—Grubbs v. Kansas City Public Service Co., App., 30 S.W.2d 441, certiorari quashed State ex rel. Kansas City Public Service Co. v. Bland, 30 S. W.2d 445, 325 Mo. 505—Davis v. Wells, App., 27 S.W.2d 714—Burston v. Fennewald, 2 S.W.2d 824, 222 Mo.App. 128—Hall v. Fulton Iron Works Co., App., 296 S.W. 851, affirmed 31 S.W.2d 81, 326 Mo. 20—Adkins v. Chicago, R. I. & P. Ry. Co., 292 S.W. 1075, 222 Mo.App. 578—Stotler v. Blanton-Sims Co., App., 273 S.W. 137—O'Connell v. Kansas City, 231 S.W. 1040, 208 Mo.App. 174.

Mont.—Larson v. Great Falls City Lines, 178 P.2d 410, 119 Mont. 593.

Neb.—Patton v. Rapp, 275 N.W. 315, 133 Neb. 308.

N.H.—McLaughlin v. Union-Leader Corp., 116 A.2d 489, 99 N.H. 492—Amundsen v. Boston & Maine Transp. Co., 70 A.2d 486, 96 N.H. 85, 17 A.L.R.2d 1125—Evans v. Foster, 60 A.2d 130, 95 N.H. 194—Lemire v. Haley, 39 A.2d 10, 93 N.H. 206—Walsh v. Public Service Co. of New Hampshire, 30 A.2d 494, 92 N.H. 331—La Perle v. Swanson, 24 A.2d 269, 92 N.H. 5—Halley v. Brown, 24 A.2d 267, 92 N. H. 1—Smith v. Bailey, 23 A.2d 363, 91 N.H. 507—Whipple v. Boston & Maine R. R., 7 A.2d 239, 90 N.H. 261—Humphreys v. Ash, 6 A.2d 436, 90 N.H. 223—Heilman v. Whalley, 6 A.2d 168, 90 N.H. 215—Buttrick v. Woman's Hospital Aid Ass'n, 177 A. 416, 87 N.H. 194—Stevens v. Mutual Protection Fire Ins. Co., 149 A. 498, 84 N.H. 275, 69 A.L.R. 624—Dube v. Sevigne, 123 A. 894, 81 N.H. 221—Romani v. Boston & M. R. R., 123 A. 233, 81 N.H. 206—Parker v. Town of New Boston, 104 A. 345, 79 N.H. 54.

N.M.—Barfield v. Damon, 245 P.2d 1032, 56 N.M. 515.

N.Y.—Arney v. Kramer, 83 N.Y.S.2d 47, 274 App.Div. 903—Spatz v. Pulensky, 52 N.Y.S.2d 27, 268 App. Div. 1012, appeal denied 52 N.Y.S. 2d 959, 268 App.Div. 1076—Swint v. Wm. McEwan Coal Co., 40 N.Y.S. 2d 425, 266 App.Div. 701, affirmed 52 N.E.2d 961, 291 N.Y. 748.

N.D.—Tice v. Mandel, 76 N.W.2d 124—Hamilton v. Charlebois, 248 N.W. 676, 63 N.D. 504—Holmes v. Anderson, 198 N.W. 544, 50 N.D. 959—Reichert v. Northern Pac. Ry. Co., 167 N.W. 127, 39 N.D. 114.

Ohio.—Golamb v. Layton, 95 N.E.2d 681, 154 Ohio St. 305.

Ellis v. Horn, App., 120 N.E.2d 893—Humphreys v. Madden, App., 68 N.E.2d 562—Manchester v. Youngstown Sheet & Tube Co., App., 46 N.E.2d 780—Lubric Oil Co. v. Drawe, 160 N.E. 93, 26 Ohio App. 478.

Okl.—Oklahoma Transp. Co. v. Phillips, 265 P.2d 467—Juckes v. Rog-

ers, 246 P.2d 335, 206 Okl. 663—National Valve & Mfg. Co. v. Wright, 240 P.2d 769, 205 Okl. 565—Buck Creek Coal Min. Co. v. Johnson, 181 P.2d 1003, 198 Okl. 664—City of Duncan v. Woods, 151 P.2d 923, 194 Okl. 371—Tri-State Casualty Ins. Co. v. McDuff, 134 P.2d 342, 192 Okl. 105—American Fidelity & Casualty Co. of Richmond, Va., v. Bennett, 76 P.2d 245, 182 Okl. 71—White v. Burton, 71 P.2d 694, 180 Okl. 499—Safe-Way Cab Service Co. of Oklahoma City v. Gadberry, 67 P.2d 434, 180 Okl. 51—Ruth Fuel Co. v. Nichter, 51 P.2d 502, 174 Okl. 601—Quinn v. State ex rel. King, 49 P.2d 98, 173 Okl. 536—St. Louis-San Francisco Ry. Co. v. Stuart, 47 P.2d 177, 173 Okl. 221—Barnsdall Nat. Bank v. Dykes, 277 P. 219, 136 Okl. 226.

Or.—McKay v. Pacific Building Materials Co., 68 P.2d 127, 156 Or. 578—Lamb v. Woodry, 58 P.2d 1257, 154 Or. 30, 105 A.L.R. 914—Kuehl v. Hamilton, 297 P. 1043, 136 Or. 240.

Pa.—Gibson v. Allegheny Garbage Co., 178 A. 463, 318 Pa. 478.

R.I.—Grygiel v. Grygiel, 26 A.2d 743, 68 R.I. 155—Houghton v. Baillargeon, 167 A. 115, 53 R.I. 475.

Tenn.—Simpkins v. Manners, 236 S.W.2d 984, 34 Tenn.App. 244—J. Avery Bryan, Inc. v. Hubbard, 225 S.W.2d 282, 22 Tenn.App. 648—Stanford v. Holloway, 157 S.W.2d 864, 25 Tenn.App. 379—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn. App. 512.

Tex.—Houseman v. De Cuir, 283 S.W. 2d 732—Cole v. Waite, 246 S.W.2d 849, 151 Tex. 175—Smith v. United Gas Pipe Line Co., 228 S.W.2d 139, 149 Tex. 69—Moncada v. Snyder, 152 S.W.2d 1077, 137 Tex. 112—Morton v. Burton-Lingo Co., 150 S. W.2d 239, 136 Tex. 263—Campbell v. Paschall, 121 S.W.2d 593, 132 Tex. 226—Walker v. Money, 120 S. W.2d 428, 132 Tex. 132—Texas & N. O. R. Co. v. McGinnis, 109 S.W. 2d 160, 130 Tex. 338—Ochoa v. Winerich Motor Sales Co., 94 S. W.2d 416, 127 Tex. 542.

Karotkin Furniture Co. v. Decker, Com.App., 50 S.W.2d 795—Norwich Union Indemnity Co. v. Smith, Com.App., 12 S.W.2d 558—U. S. Fidelity & Guaranty Co. v. Henderson County, Com.App., 276 S.W. 203, motion overruled 276 S. W. 1119.

City of Amarillo v. Attebury, Civ.App., 303 S.W.2d 804—Hogan v. Cunningham, Civ.App., 278 S.W. 2d 265—Alamo Motor Lines v. Maldonado, Civ.App., 271 S.W.2d 693, error refused no reversible error—Southwestern Freight Lines v. McConnell, Civ.App., 269 S.W.2d 427, error refused no reversible error—Lloyds Cas. Insurer v. Castle, Civ. App., 268 S.W.2d 498, error refused no reversible error—Turner v. Gossett, Civ.App., 267 S.W.2d 877—Davidson v. Whitfield Transp. Co., Civ.App., 258 S.W.2d 170, error refused no reversible error—Benoit v. Wilson, Civ.App., 258 S.W.2d 134, error refused no reversible error—Texas Emp. Ins. Ass'n v. Thames, Civ.App., 252 S.W.2d 228, error refused no reversible error—Williams v. Pettigrew, Civ.App., 251 S.W.2d 183, error refused no reversible error—Brewer v. Dallas Ry. & Terminal Co., Civ.App., 247 S.W.2d 435—Ravel v. Couravallos, Civ.App., 245 S.W.2d 731—Thornton v. Morgan, Civ.App., 245 S.W. 2d 379—Texas Livestock Marketing Ass'n v. Rogers, Civ.App., 244 S.W.2d 859 error refused no reversible error—Southwest Stone Co. v. Symons, Civ.App., 237 S.W. 2d 380, error refused no reversible error—Kimbell v. Noel, Civ.App., 228 S.W.2d 980, error refused no reversible error—Rutherford v. Hughes, Civ.App., 228 S.W.2d 909—Dallas Ry. & Terminal Co. v. Farnsworth, Civ.App., 221 S.W.2d 981, reversed on other grounds 227 S.W.2d 1017, 148 Tex. 584—Wagers v. Swilley, Civ.App., 220 S.W.2d 673, error refused no reversible error—Scoggins v. Curtiss & Taylor, Civ.App., 219 S.W.2d 445, reversed on other grounds 219 S.W. 2d 451, 148 Tex. 15—Jaques v. Ellis, Civ.App., 219 S.W.2d 104—McClure v. May, Civ.App., 217 S.W.2d 44, error dismissed—Texon Drilling Co. v. Eliff, Civ.App., 216 S.W. 2d 824, error refused no reversible error—Bernard River Land Development Co. v. Sweeny, Civ.App., 216 S.W.2d 597, error refused no reversible error—Highway Ins. Underwriters v. Lufkin-Beaumont Motor Coaches, Civ.App., 215 S.W. 2d 904, error refused no reversible error—Alexander Trust Estate v. Lindsey Drug Co., Civ.App., 214 S. W.2d 475—Williams v. Fast Motor Lines, Civ.App., 214 S.W.2d 307—Greenspun v. Greenspun, Civ.App., 211 S.W.2d 977, error refused no reversible error—McCown v. Jennings, Civ.App., 209 S.W.2d 408—Texas Emp. Ins. Ass'n v. Wells, Civ.App., 207 S.W.2d 693, error refused no reversible error—Pan-American Life Ins. Co. v. American Indus. Inv. Co., Civ.App., 207 S.W.2d 173, error refused no reversible error—Stevenson v. Wilson, Civ.App., 206 S.W.2d 613, error refused no reversible error—Dallas Ry. & Terminal Co. v. Bishop, Civ.App., 203 S.W.2d 651, error refused no reversible error—Alpine Tel. Corp. v. McCall, Civ.App., 195 S.W.2d 585, error refused no reversible error—Texas, N. M. & Okl. Coaches v. Williams, Civ.App., 191 S.W.2d 66, error refused for want of merit—Airline Motor Coaches v. Campbell, Civ.App., 184 S.W.2d 532, error refused—Service Refining Co. v. Hutcherson, Civ.App., 179 S.W. 2d 772, error refused—Blaugrund v. Gish, Civ.App., 179 S.W.2d 257, affirmed 179 S.W.2d 266, 142 Tex. 379—Sorsby v. Thom, Civ.App., 168 S.W.2d 873—Barrington v. Duncan, Civ.App., 162 S.W.2d 1025, reversed on other grounds 169 S.W. 2d 462, 140 Tex. 510—Price v. Humble Oil & Refining Co., Civ. App., 152 S.W.2d 804, error refused—Cage v. Nueces County, Civ.App., 149 S.W.2d 190, error dismissed—Patterson v. Peel, Civ. App., 149 S.W.2d 284, error refused, certiorari denied 62 S.Ct. 297, 314 U.S. 686, 86 L.Ed. 549, rehearing denied 62 S.Ct. 411, 314 U.S. 715, 86 L.Ed. 570—Metropolitan Life Ins. Co. v. Butler, Civ.App., 149 S.W.2d 187, error dismissed—Carson v. Amberson, Civ.App., 148 S. W.2d 972, error dismissed, judgment correct—Northern Ins. Co. of New York v. Molloy, Civ.App., 146 S.W.2d 231, error dismissed, judgment correct—Butler v. Butler, Civ.App., 144 S.W.2d 956, error dismissed, judgment correct—Hankamer v. Roberts Undertaking Co., Civ.App., 139 S.W.2d 865, error dismissed 141 S.W.2d 587, 135 Tex. 139—Martinez v. Pena, Civ. App., 139 S.W.2d 337, error dismissed, judgment correct—Maass v. Sefcik, Civ.App., 138 S.W.2d 897—A. B. C. Storage & Moving Co. v. Herron, Civ.App., 138 S.W.2d 211, error dismissed, judgment correct—Petroleum Producers Co. v. Stolley, Civ.App., 137 S.W.2d 207, error dismissed, judgment correct—Justiss v. Naquin, Civ.App., 137 S.W.2d 72, error dismissed, judgment correct—Blunt v. New Amsterdam Casualty Co., Civ.App., 134 S.W.2d 305—Parker v. Jones, Civ. App., 130 S.W.2d 1072—Pegues v. Dilworth, Civ.App., 104 S.W.2d 558, affirmed 132 S.W.2d 582, 134 Tex. 169—Geistmann v. Schkade, Civ. App., 121 S.W.2d 494—Cawthon v. Cochell, Civ.App., 121 S.W.2d 414, error dismissed—Zurich General Accident & Liability Ins. Co. v. Moss, Civ.App., 118 S.W.2d 410, error dismissed—Southland Life Ins. Co. v. Gatewood, Civ.App., 115 S.W.2d 723, affirmed 141 S.W.2d 588, 135 Tex. 177—Meaders v. Moore, Civ.App., 113 S.W.2d 689, affirmed 132 S.W.2d 256, 134 Tex. 127, 125 A.L.R. 817—Peveto v. Smith, Civ.App., 113 S.W.2d 216, modified on other grounds 133 S.W. 2d 572, 134 Tex. 308—Rountree Motor Co. v. Smith Motor Co., Civ. App., 109 S.W.2d 296, error dismissed—Dallas Railway & Terminal Co. v. Little, Civ.App., 109 S. W.2d 289, error dismissed—Bates v. J. D. McCollum Lumber Co., Civ. App., 107 S.W.2d 1107—Traders & General Ins. Co. v. Hill, Civ.App., 104 S.W.2d 603, error dismissed—Harris v. Thornton's Department

or judgment will not generally be reversed for misconduct of counsel.[78]

Store, Civ.App., 94 S.W.2d 849—Keels v. Metzler, Civ.App., 94 S.W.2d 799, error dismissed—Texas Employers Ins. Ass'n v. McNorton, Civ.App., 92 S.W.2d 562, error dismissed 122 S.W.2d 1043, 132 Tex. 168—Traders & General Ins. Co. v. Parker, Civ.App., 91 S.W.2d 503, error dismissed—Schlottmann v. Wiese, Civ.App., 86 S.W.2d 44, error dismissed—Ringling Bros. and Barnum & Bailey Combined Shows v. Wilkinson, Civ.App., 83 S.W.2d 705—Union Deposit Co. v. Moseley, Civ.App., 75 S.W.2d 190—C. W. Hahl Co. v. Burch, Civ.App., 74 S.W.2d 1040—Federal Crude Oil Co. v. Yount-Lee Oil Co., Civ.App., 73 S.W.2d 969, certiorari denied 55 S.Ct. 655, 295 U.S. 741, 79 L.Ed. 1687—Regan v. Elizondo, Civ.App., 73 S.W.2d 900—Republic Underwriters v. Howard, Civ.App., 69 S.W.2d 584—Texas Employers' Ins. Ass'n v. Ray, Civ.App., 68 S.W.2d 290—National Newspaper Enterprises v. Chitwood, Civ.App., 68 S.W.2d 264—Wood v. Texas & P. Ry. Co., Civ.App., 67 S.W.2d 1109—Commercial Credit Co. v. Groseclose, Civ.App., 66 S.W.2d 709—Bookhout v. McGeorge, Civ.App., 65 S.W.2d 512—Lloyds Casualty Co. of New York v. Grilliett, Civ.App., 64 S.W.2d 1005—Texas Co. v. Tunnell, Civ.App., 62 S.W.2d 171—Texas Employers' Ins. Ass'n v. Williams, Civ.App., 57 S.W.2d 218—Standard Accident Ins. Co. v. State, Civ.App., 57 S.W.2d 191—Texas Employers' Ins. Ass'n v. Kelly, Civ.App., 56 S.W.2d 1108—Hunt v. Robinson, Civ.App., 55 S.W.2d 166—**Corpus Juris cited in** Humphreys v. Roberson, Civ.App., 52 S.W.2d 932, 936, reversed on other grounds 83 S.W.2d 311, 125 Tex. 558—Dallas Ry. & Terminal Co. v. Garner, Civ.App., 42 S.W.2d 665, reversed on other grounds, Com.App., 63 S.W.2d 542—Republic Production Co. v. Collins, Civ.App., 41 S.W.2d 100—Marcus v. Huguley, Civ.App., 37 S.W.2d 1100—Price v. Steel Const. Co., Civ.App., 36 S.W.2d 775—Employers' Liability Assur. Corporation v. Young, Civ.App., 34 S.W.2d 622—Dallas Ry. & Terminal Co. v. Bankston, Civ.App., 33 S.W.2d 500, reversed on other grounds, Com.App., 51 S.W.2d 304—City of Beaumont v. Kane, Civ.App., 33 S.W.2d 234—Niagara Fire Ins. Co. v. Pool, Civ.App., 31 S.W.2d 850—Texas Indemnity Ins. Co. v. McCurry, Civ.App., 27 S.W.2d 296, reversed on other grounds, Com.App., 41 S.W.2d 215, 78 A.L.R. 760—Magnolia Pipe Line Co. v. Leach, Civ.App., 17 S.W.2d 471—Middleton v. Brawley, Civ.App., 12 S.W.2d 257—Eastern Texas Electric Co. v. Rhymes, Civ.App., 1 S.W.2d 688—Winters Mut. Aid Ass'n v. Corum, Civ.App., 297 S.W. 238—Nacklinger & Rayburn v. Prewitt, Civ.App., 294 S.W. 977—Reeh v. Reeh, Civ.App., 288 S.W. 276—Texas Indemnity Ins. Co. v. Wilson, Civ.App., 281 S.W. 289—Galveston, H. & S. A. Ry. Co. v. Summers, Civ.App., 278 S.W. 881—Grimes v. Tracy-Mayfield Oil & Gas Co., Civ.App., 257 S.W. 636—Wilson Co. v. Gordon, Civ.App., 224 S.W. 703, dismissed for want of jurisdiction—Galveston, H. & S. A. Ry. Co. v. White, Civ.App., 216 S.W. 265—Houston Ice & Brewing Co. v. Harlan, Civ.App., 212 S.W. 779, reversed on other grounds, Com.App., 228 S.W. 1090—Texas & P. Ry. Co. v. Moody, Civ.App., 169 S.W. 1057.

Utah.—Emery v. Prudential Ins. Co. of America, 57 P.2d 747, 89 Utah 430.

Vt.—Silveira v. Croft, 77 A.2d 911, 116 Vt. 420—Long v. Leonard, 32 A.2d 679, 113 Vt. 258—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Northern Trust Co. v. Perry, 156 A. 906, 104 Vt. 44—Button v. Knight, 115 A. 499, 95 Vt. 381—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Carleton v. E. & T. Fairbanks & Co., 93 A. 462, 88 Vt. 537.

Va.—Norfolk Southern Ry. Co. v. Harris, 59 S.E.2d 110, 190 Va. 966—Cohen v. Power, 32 S.E.2d 64, 183 Va. 258—Hamrick v. Fahrney, 161 S.E. 43, 157 Va. 396—Norfolk & W. Ry. Co. v. Lumpkins, 144 S.E. 485, 151 Va. 173.

Wash.—Auerbach v. Webb, 17 P.2d 1, 170 Wash. 567—Borland v. Pacific Meat & Packing Co., 279 P. 94, 153 Wash. 14—Johnson v. Hunter, 251 P. 123, 141 Wash. 190.

W.Va.—Burk v. Huntington Development & Gas Co., 58 S.E.2d 574, 133 W.Va. 817—Tredway v. New River & Pocahontas Consol. Coal Co., 135 S.E. 253, 102 W.Va. 135.

Wis.—Ninneman v. Schwede, 46 N.W.2d 230, 258 Wis. 408—Bailey v. Bach, 44 N.W.2d 631, 257 Wis. 604—Teichmiller v. Du Frane Moving Co., 37 N.W.2d 83, 254 Wis. 525—Horgen v. Chaseburg State Bank, 279 N.W. 33, 227 Wis. 510—McCaffrey v. Minneapolis, St. P. & S. S. M. Ry. Co., 267 N.W. 326, 222 Wis. 311, mandate modified on other grounds 268 N.W. 872, 222 Wis. 311—Carson v. Leet, 203 N.W. 394, 186 Wis. 566.

4 C.J. p 957 notes 66, 68 [a] (3), (24)—42 C.J. p 1289 note 46.

"It is not every improper argument made to a jury that will necessitate a reversal."

Tex.—City of Pampa v. Todd, Civ.App., 39 S.W.2d 636, 638, reversed on other grounds, Com.App., 59 S.W.2d 114.

Reason for rule

"It is the presumption of law that jurors are intelligent, honest, fearless and just. Courts are not justified in assuming that the mind of the jury is of such plastic and unreliable material as to at any unjustified word of debate neglect the instructions, abandon the evidence and disregard their oaths."

Ill.—Devine v. Chicago City R. Co., 167 Ill.App. 361, 364.

Fair construction of language used

Legal consequences of argument of counsel must be determined by a fair construction of language used, rather than by imaginative guesses as to inferences which jury might have drawn from it.

N.H.—Whipple v. Boston & Maine R. R., 7 A.2d 239, 90 N.H. 261.

Partisan zeal

In determining whether the argument of counsel to the jury was prejudicial, the appellate court must recognize that allowance should be made for the zeal of partisan counsel.

Tex.—Commercial Standard Ins. Co. v. Shudde, Civ.App., 76 S.W.2d 561.

Renewing discussion after ruling

It is not reversible error for an attorney to renew his appeal to the court to permit a line of argument which has been held improper.

Ohio.—Cincinnati, etc., R. Co. v. Tafelski, 13 Ohio Cir.Ct.,N.S., 260.

78. Cal.—Deevy v. Tassi, 130 P.2d 389, 21 C.2d 109—Taylor v. Oakland Scavenger Co., 110 P.2d 1044, 17 C.2d 594.

Darveau v. KVVC The Voice of Ventura County, 272 P.2d 881, 126 C.A.2d 795—Fulton v. Huguet, 248 P.2d 954, 113 C.A.2d 692—Shaff v. Baldwin, 236 P.2d 634, 107 C.A.2d 81—Burr v. Goss, 205 P.2d 61, 91 C.A.2d 351—Jonte v. Key System, 201 P.2d 562, 89 C.A.2d 654—Healy v. Market St. Ry. Co., 107 P.2d 488, 41 C.A.2d 733—Gerberich v. Southern California Edison Co., 79 P.2d 783, 26 C.A.2d 471—Rogers v. Foppiano, 72 P.2d 239, 23 C.A.2d 87—Haverty v. Hartwell, App., 33 P.2d 883, 139 C.A. 265—Langford v. Kosterlitz, 290 P. 80, 107 C.A. 175—Eliet v. Los Altos Country Club Properties, 264 P. 270, 88 C.A. 740.

Conn.—Doerr v. Woodland Transp. Co., 136 A. 693, 105 Conn. 689.

Idaho.—Kerby v. Oregon Short Line R. Co., 264 P. 377, 45 Idaho 636—Haverland v. Potlatch Lumber Co., 200 P. 129, 34 Idaho 237—Theriault v. Springfield Fire & Marine Ins. Co., 149 P. 722, 27 Idaho 485—Theriault v. California Ins. Co. of San Francisco, 149 P. 719, 27 Idaho 476, Ann.Cas.1917D 818.

Ill.—Brunner v. Yellow Cab Co., 141 N.E.2d 658, 13 Ill.App.2d 255—

Generally, to be reversible error the misconduct must be of a willful or persistent nature[79] and it must appear probable that the acts complained of influenced the jury in arriving at their verdict.[80]

Petrosky v. Great Atlantic & Pac. Tea Co., 105 N.E.2d 128, 346 Ill. App. 470—Beery v. Breed, 86 N.E. 2d 591, 311 Ill.App. 469.

Ind.—Swanson v. Slagal, 8 N.E.2d 993, 212 Ind. 394—Indiana Pipe Line Co. v. Christensen, 143 N.E. 596, 195 Ind. 106.

Kelley v. Hocutt, 128 N.E.2d 879, 125 Ind.App. 617—Evansville City Coach Lines v. Roger, 102 N.E.2d 504, 122 Ind.App. 119—Freeman v. Grand Trunk Western R. Co., 51 N.E.2d 375, 114 Ind.App. 356—King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523—Pinkus v. Pittsburgh, C., C. & St. L. Ry. Co., 114 N.E. 36, 65 Ind.App. 38.

Iowa.—Nielsen v. Wessels, 73 N.W.2d 83, 247 Iowa 213—Connelly v. Nolte, 21 N.W.2d 311, 237 Iowa 114—Duncan v. Rhomberg, 236 N.W. 638, 212 Iowa 389—Peterson v. McManus, 172 N.W. 460, 187 Iowa 522—Sullenbarger v. Ahrens, 150 N. W. 71, 168 Iowa 288.

Kan.—Loftin v. City of Kansas City, 190 P.2d 378, 164 Kan. 412—Murphy v. Edgar Zinc Co., 278 P. 764, 128 Kan. 524, 65 A.L.R. 1213—Mansfield v. William J. Burns International Detective Agency, 171 P. 625, 102 Kan. 687, L.R.A.1918D 571.

Ky.—Royal Ins. Co. v. Ward, 68 S. W.2d 9, 252 Ky. 687.

Mich.—McKenzie v. Detroit, J. & C. Ry. Co., 161 N.W. 970, 195 Mich. 218.

Minn.—Randall v. Goodrich-Gamble Co., 70 N.W.2d 261, 244 Minn. 401—Walker v. Stecher, 17 N.W.2d 317, 219 Minn. 152—Vondrashek v. Dignan, 274 N.W. 609, 200 Minn. 530—Wyatt v. Wyett, 273 N.W 600, 200 Minn. 106—Horsman v. Bigelow, 239 N.W. 250, 184 Minn. 514—James v. Suess, 194 N.W. 5, 155 Minn. 489.

Miss.—4-County Elec. Power Ass'n v. Clardy, 73 So.2d 144, 221 Miss. 403, 44 A.L.R.2d 1191.

Mo.—Pioneer Const. Co. v. Schmidt, 192 S.W.2d 859—Petty v. Kansas City Public Service Co., 191 S.W. 2d 653, 354 Mo. 823—Hancock v. Kansas City Terminal R. Co., 146 S.W.2d 627, 347 Mo. 166—Moore v. St. Joseph & G. I. Ry. Co., 186 S. W. 1035, 268 Mo. 31, affirmed St. Joseph & G. I. R. Co. v. Moore, 37 S.Ct. 278, 243 U.S. 311, 61 L.Ed. 741.

Van Orman v. J. C. Penney Co., App., 60 S.W.2d 409—Granneman v. Commercial Auto Body Co., App., 296 S.W. 437—Adkins v. Chicago, R. I. & P. Ry. Co., 292 S.W. 1075, 222 Mo.App. 578.

Neb.—Miller v. Crosson, 277 N.W. 796, 133 Neb. 893—Stroud v. Payne, 247 N.W. 595, 124 Neb. 612—Rankin v. Northern Assur. Co. of Michigan, 152 N.W. 324, 98 Neb. 172.

N.D.—Attleson v. Boomgarden, 73 N. W.2d 448—Hoffer v. Burd, 49 N.W. 2d 282, 78 N.D. 278.

Ohio.—Fry v. Lebold, App., 31 N.E. 2d 257—Meuer v. Doerflein, 5 N. E.2d 948, 53 Ohio App. 536—Ohio Exchange for Educational Films Co. v. P. & R. Amusement Co., 186 N.E. 746, 45 Ohio App. 10.

Cleveland Worsted Mills Co. v. Coates, 26 Ohio Cir.Ct.,N.S., 353.

Okl.—Beck v. Day, 62 P.2d 1014, 178 Okl. 310.

Or.—Cholia v. Kelty, 63 P.2d 895, 155 Or. 287.

Pa.—Haun v. McCabe, 162 A. 906, 308 Pa. 431.

R.I.—Keefe v. United Electric Rys. Co., 195 A. 599, 59 R.I. 423—Parkinson v. Murphy, 107 A. 235.

Tenn.—Stepp v. Black, 14 Tenn.App. 153.

Tex.—Gulf, C. & S. F. Ry. Co. v. Giun, 116 S.W.2d 693, 131 Tex. 548, 116 A.L.R. 795.

Western Cottonoil Co. v. Brecheen, Civ.App., 274 S.W.2d 767—D. T. Carroll Corp. v. Carroll, Civ.App., 256 S.W.2d 429, error refused no reversible error—Meadolake Foods v. Estes, Civ.App., 218 S.W.2d 862, error refused 219 S.W. 2d 441, 148 Tex. 13—Herndon v. Halliburton Oil Well Cementing Co., Civ.App., 154 S.W.2d 163, error refused—Dallas Joint Stock Land Bank of Dallas v. Magee, Civ.App., 117 S.W.2d 473, affirmed 136 S.W. 2d 1117, 134 Tex. 620—Stribling v. Stribling, Civ.App., 85 S.W.2d 315, error dismissed and followed in 85 S.W.2d 322—Decatur Cotton Seed Oil Co. v. Belew, Civ.App., 178 S. W. 607.

Vt.—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216—Prouty v. Pellett & Skinner, 117 A. 373, 96 Vt. 53.

Wash.—George E. Miller Lumber Co. v. Holden, 273 P.2d 786, 45 Wash. 2d 237—Hatcher v. Globe Union Mfg. Co., 35 P.2d 32, 178 Wash. 411—Leopold v. Livermore, 197 P. 778, 115 Wash. 481—Bentley v. Western Union Telegraph Co., 167 P. 1127, 98 Wash. 431, L.R.A.1918B 965, reheard 172 P. 1172, 102 Wash. 433—Jensen v. Schlenz, 154 P. 159, 89 Wash. 268.

Wis.—Ninneman v. Schwede, 46 N. W.2d 230, 258 Wis. 408—Biersach v. Wolf River Paper & Fiber Co., 20 N.W.2d 658, 247 Wis. 536.

4 C.J. p 957 notes 67, 68 [a] (4), (5), (16), (18), (19)—45 C.J. p 1371 note 12.

Furnishing informal brief

In an action on a fire policy, that plaintiff's attorneys, after argument, tendered to the judge and he read an accountant's report concerning books and matters of account which had been introduced in evidence to show the amount and value of plaintiff's stock when the fire occurred, and also sent to the judge, without serving it on opposing counsel, a summary of plaintiff's testimony as to the value of the destroyed property, the whole being in the nature of a written argument and informal brief, was held not reversible error, where plaintiff's counsel made no closing argument, and there was no order that the case stand submitted, and subsequently defendant's counsel furnished the court with a "memoranda of figures used on argument."

Cal.—Coniglio v. Connecticut Fire Ins. Co., 182 P. 275, 180 C. 596, 5 A.L.R. 805.

Reading excluded depositions

A judgment will not be set aside for misconduct of counsel in reading parts of a deposition which were excluded, where it appears that they were read while arguing the question of their admissibility to the court.

Iowa.—Rogers v. Winch, 41 N.W. 214, 76 Iowa 546.

Testifying in behalf of client

Breach of canon of professional ethics providing that when lawyer is witness for client, except as to merely formal matters, he should leave trial of case to other counsel, and except when essential to ends of justice lawyer should avoid testifying in court in behalf of his client, is not reversible error.

Mich.—Vozbut v. Pomputis, 269 N.W. 149, 277 Mich. 212.

79. Cal.—Atchley v. Finley, 133 P.2d 823, 57 C.A.2d 21—Willoughby v. Zylstra, 42 P.2d 685, 5 C.A.2d 297.

Mich.—Baker v. Wetherald, 289 N. W. 282, 291 Mich. 646.

Ohio.—Jahraus v. Fryman, App., 129 N.E.2d 200.

80. Ala.—Williams v. City of Anniston, 58 So.2d 115, 257 Ala. 191—Birmingham Elec. Co. v. Perkins, 31 So.2d 640, 249 Ala. 426.

American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 39, certiorari denied 58 So.2d 478, 257 Ala. 238.

Ariz.—Broderick v. Coppinger, 14 P. 2d 714, 40 Ariz. 524.

Ark.—McCaskey Register Co. v. McCurry, 26 S.W.2d 1108, 181 Ark. 649—St. Louis, etc., R. Co. v. Boback, 75 S.W. 473, 71 Ark. 427.

Cal.—Fogel v. San Francisco, etc., R. Co., 42 P. 565, 110 C. xvii—Morgan v. Hugg, 5 C. 409.

Bergan v. Ormsby, 281 P.2d 70, 131 C.A.2d 505.

Conn.—Lebas v. Patriotic Assur. Co., 137 A. 241, 106 Conn. 119.

The probability of injury is to be measured by the relation of the argument or misconduct to the entire case and to facts well known to the jury.[81] If it consists of a misstatement or improper state-

Idaho.—Stewart v. City of Idaho Falls, 103 P.2d 697, 61 Idaho 471.

Ill.—Maywood Co. v. Maywood, 29 N. E. 704, 140 Ill. 216—Dorsett v. Clother, 24 N.E. 525, 133 Ill. 195. Reinmueller v. Chicago Motor Coach Co., 93 N.E.2d 120, 341 Ill. App. 178—Eckels v. Donohue, 137 Ill.App. 106—Springfield Mut. County F. Ins. Co. v. Merriman, 134 Ill. App. 249—Chicago City R. Co. v. Foster, 128 Ill.App. 571, affirmed 80 N.E. 762, 226 Ill. 288—Eldorado Coal, etc., Co. v. Swan, 128 Ill.App. 237, affirmed 81 N.E. 691, 227 Ill. 586.

Ind.—Roose v. Roose, 44 N.E. 1, 145 Ind. 162—Buscher v. Scully, 5 N.E. 738, 8 N.E. 37, 107 Ind. 246—Carter v. Carter, 101 Ind. 450. Haskell & Barker Car Co. v. Timm, 122 N.E. 788, 73 Ind.App. 612—Southern Indiana R. Co. v. Baker, 77 N.E. 64, 37 Ind.App. 405.

Iowa—Connelly v. Nolte, 21 N.W.2d 311, 237 Iowa 114—Aken v. Clark, 123 N.W. 379, 146 Iowa 436—Miller v. Boone County, 63 N.W. 352, 95 Iowa 5.

Ky.—Illinois Cent. R. Co. v. McGuire's Adm'r, 38 S.W.2d 913, 239 Ky. 1—Town of Wingo v. Rhodes, 28 S.W.2d 465, 234 Ky. 385.

Me.—Stephenson v. Portland R. Co., 68 A. 453, 103 Me. 57.

Md.—County Com'rs of Prince George's County v. Timmons, 133 A. 322, 150 Md. 511.

Mich.—Jeffries v. Union Trust Co., 227 N.W. 684, 248 Mich. 652—Burgess v. Stowe, 96 N.W. 29, 134 Mich. 204—Avery v. Burrall, 77 N. W. 272, 118 Mich. 672—Baumier v. Antiau, 44 N.W. 939, 79 Mich. 509—Porter v. Throop, 11 N.W. 174, 47 Mich. 313.

Minn.—Murphy v. Barlow Realty Co., 7 N.W.2d 684, 214 Minn. 64—Rheiner v. Stillwater St. R. etc., Co., 17 N.W. 279, 31 Minn. 193.

Mo.—Sollenberger v. Kansas City Public Service Co., 202 S.W.2d 25, 356 Mo. 454—Sparks v. Auslander, 182 S.W.2d 167, 353 Mo. 177—Bobos v. Krey Packing Co., 19 S.W.2d 630, 323 Mo. 224. Reutner, Klaus & Co. v. Nelson Chesman & Co., App., 9 S.W.2d 655—Union Sav. Assoc. v. Clayton, 6 Mo.App. 587.

Neb.—Angle v. Bilby, 41 N.W. 397, 25 Neb. 595—Heater v. Penrod, 89 N.W. 762, 2 Neb.(Unoff.) 711.

N.H.—Bellveau v. John B. Varick Co., 120 A. 884, 81 N.H. 57.

N.Y.—Kunz v. Troy, 48 Hun 619, 1 N.Y.S. 596.

N.D.—Hoffer v. Burd, 49 N.W.2d 282, 78 N.D. 278.

Ohio.—Jahraus v. Fryman, App., 129 N.E.2d 200. Hayes v. Smith, 15 Ohio Cir.Ct. 300, 8 Ohio Cir.Dec. 92. American Bonding Co. v. Conroy, 11 Ohio N.P.,N.S., 382.

Okl.—City of Tulsa v. Hodge, 293 P. 2d 344—Juckes v. Rogers, 246 P. 2d 335, 206 Okl. 663—Ketch v. Smith, 268 P. 715, 131 Okl. 263—Tankersley v. Webster, 243 P. 745, 116 Okl. 208—Knights and Ladies of Security v. Bell, 220 P. 594, 93 Okl. 272—Columbia Carbon & Ribbon Co. v. White, 217 P. 420, 91 Okl. 218—Producers' & Refiners' Corporation v. Castile, 214 P. 121, 89 Okl. 261—Hooker v. Wilson, 169 P. 1097, 69 Okl. 43—Ditzler Dry Goods Co. v. Sanders, 146 P. 17, 44 Okl. 678.

Pa.—Huffman v. McIlvaine, 13 Pa. Super. 108.

Tenn.—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512.

Tex.—Missouri Pac. R. Co. v. White, 15 S.W. 808, 80 Tex. 202—McLane v. Paschal, 11 S.W. 837, 74 Tex. 20—Gulf, etc., R. Co. v. Witte, 4 S.W. 490, 68 Tex. 295—Willis v. Lowry, 2 S.W. 449, 66 Tex. 540.

Texas Emp. Ins. Ass'n v. Sevier, Civ.App., 279 S.W.2d 473, error refused no reversible error—Plains Creamery v. Denny, Civ.App., 277 S.W.2d 755, error refused no reversible error—Rogers v. Broughton, Civ.App., 277 S.W.2d 121, error refused no reversible error—McCorstin v. Mayfield, Civ.App., 274 S.W.2d 874, error refused—Western Cottonoil Co. v. Patterson, Civ.App., 271 S.W.2d 106, error refused no reversible error—Turner v. Gossett, Civ.App., 267 S. W.2d 877—Sternenberg v. Marshall, Civ.App., 257 S.W.2d 312, error refused no reversible error—Texas Employers Ins. Ass'n v. McNorton, Civ.App., 92 S.W.2d 562, error dismissed 122 S.W.2d 1043, 132 Tex. 168—Texas, etc., R. Co. v. Zink, Civ.App., 92 S.W. 812—Houston Electric Co. v. Robinson, Civ.App., 76 S.W. 209—Cook v. Carroll Land, etc., Co., Civ.App., 39 S.W. 1006—Texas, etc., R. Co. v. Beckworth, Civ.App., 32 S.W. 809—Western Union Tel. Co. v. Jobe, 25 S.W. 168, 1036, 6 Tex.Civ.App. 403—Galveston, etc., R. Co. v. Croskell, 25 S.W. 486, 6 Tex.Civ.App. 160.

Vt.—Laferriere v. Gray, 160 A. 270, 104 Vt. 366.

Wash.—Slattery v. City of Seattle, 13 P.2d 464, 169 Wash. 144—Gallagher v. Buckley, 72 P. 79, 31 Wash. 380—Chezum v. Parker, 54 P. 22, 19 Wash. 645.

Wis.—Boltz v. Sullivan, 77 N.W. 870, 101 Wis. 608—Tucker v. Cole, 11 N. W. 703, 54 Wis. 539.

Burden on party in fault

The party in fault is bound, after verdict in his favor, to obtain a finding that the result was not affected by his tort, and ought not to be annulled on account of it; and a verdict will be set aside for unwarranted remarks of counsel to the jury unless the presiding judge finds as a matter of fact that the jury were not influenced thereby, or that the effect upon their minds was wholly removed by a retraction of counsel, the charge of the court, or in some other way.

N.H.—Benoit v. Perkins, 104 A. 254, 79 N.H. 11—Jordon v. Wallace, 32 A. 174, 67 N.H. 175—Bullard v. Boston, etc., R. Co., 5 A. 838, 64 N.H. 27, 10 Am.S.R. 367.

Substantial injustice

To warrant reversal, substantial injustice must have been done by the remarks or misconduct.

Ill.—Chicago, etc., R. Co. v. Pillsbury, 14 N.E. 22, 123 Ill. 9, 5 Am. S.R. 483.

Tex.—Blum v. Simpson, 17 S.W. 402, 66 Tex. 84.

Improbability of prejudice

Statements of plaintiff's counsel are not ground for reversal where it appears improbable that defendant was prejudiced.

Ind.—Ætna Life Ins. Co. of Hartford, Conn. v. Huffstetter, 195 N.E. 598, 101 Ind.App. 355.

4 C.J. p 958 note 79.

81. Mo.—Nelson v. O'Leary, 291 S. W.2d 142.

Ohio.—Moknach v. New York Life Ins. Co., 36 N.E.2d 529, 67 Ohio App. 293.

Tex.—Stafford v. Steward, Civ.App., 295 S.W.2d 665, agreement dismissed—Southern Pac. Co. v. Hubbard, Civ.App., 290 S.W.2d 547, reversed on other grounds, Sup., 297 S.W.2d 120—Stephens v. Mendenhall, Civ. App., 287 S.W.2d 259, error refused no reversible error—Texas Emp. Ins. Ass'n v. Logsdon, Civ.App., 278 S.W.2d 893, error refused no reversible error—Thornburg v. Manskey, Civ.App., 219 S.W.2d 720—Whitten v. Dethloff, Civ.App., 214 S.W.2d 480—Roe v. Chapman, Civ.App., 153 S.W.2d 634, error dismissed—Commercial Standard Ins. Co. v. Shudde, Civ.App., 76 S.W.2d 561—Moore v. Parrish, Civ.App., 70 S.W.2d 315—Humphreys v. Roberson, Civ.App., 52 S.W.2d 932.

Entire record regarded

The harmful effect of argument which was not based on evidence, and which was not objected to during the trial, must be appraised in the light of the entire record.

Tex.—St. Paul Fire & Marine Ins.

ment, it must relate to material facts;[82] and not only must the statement of counsel be considered, but also the action of the court in regard thereto.[83] Each case must be determined on its own facts.[84]

Applying these principles, the court will not reverse, in the absence of prejudice, for improper opening statements,[84.5] comments on matters not in evidence,[85] improper comment on the testimony,[86]

Co. v. Burton, Civ.App., 92 S.W.2d 270, error dismissed.

82. Cal.—Baker v. Market St. Ry. Co., 11 P.2d 912, 123 C.A. 688—Gregoriev v. Northwestern Pac. R. Co., 273 P. 76, 95 C.A. 428.
Ky.—Lawler v. Copelin, 258 S.W.2d 913.
Minn.—Le May v. Minneapolis St. Ry. Co., 71 N.W.2d 826, 245 Minn. 192.
N.H.—Bullard v. McCarthy, 195 A. 355, 89 N.H. 158—Prescott v. Yurchus, 164 A. 218, 86 N.H. 108.
Tex.—Texas Emp. Ins. Ass'n v. Sevier, Civ.App., 279 S.W.2d 473, error refused no reversible error—White Cabs v. Moore, Civ.App., 199 S.W.2d 202, reversed on other grounds 203 S.W.2d 200, 146 Tex. 101—Hamill & Smith v. Parr, Civ. App., 173 S.W.2d 725—Phœnix Refining Co. v. Muller, Civ.App., 109 S.W.2d 766, error dismissed.

83. Cal.—Healy v. Market St. Ry. Co., 107 P.2d 488, 41 C.A.2d 733.
Iowa.—Thompson v. Butler, 274 N.W. 110, 223 Iowa 1085.
Mo.—Asadorian v. Sayman, App., 282 S.W. 507.
N.Y.—Bowen v. Mahoney Coal Corp., 10 N.Y.S.2d 454, 256 App.Div. 485.
Ohio.—Plas v. Holmes Const. Co., 104 N.E.2d 689, 157 Ohio St. 95.
W.Va.—State ex rel. Harrah v. Walker, 74 S.E.2d 679, 137 W.Va. 849.

84. Ala.—Birmingham Electric Co. v. Cleveland, 113 So. 403, 216 Ala. 455.
Ill.—Illinois Tuberculosis Ass'n v. Springfield Marine Bank, 282 Ill. App. 14.
Mo.—Dunn v. Terminal R. Ass'n of St. Louis, 285 S.W.2d 701.
Ohio.—Golamb v. Layton, 95 N.E. 2d 681, 154 Ohio St. 305.
Petticrew v. Petticrew, 129 N.E. 2d 194, 98 Ohio App. 260, appeal dismissed 117 N.E.2d 706, 161 Ohio St. 110.
Pa.—Gibbons v. Pennsylvania R. Co., 139 A. 743, 291 Pa. 141.
Tex.—Southwestern Greyhound Lines v. Dickson, 236 S.W.2d 115, 149 Tex. 599.
Texas & N. O. R. Co. v. Wilkerson, Civ.App., 260 S.W.2d 912—Texas Emp. Ins. Ass'n v. Ferguson, Civ.App., 204 S.W.2d 197, error refused no reversible error—Shaw v. Porter, Civ.App., 190 S.W. 2d 396, refused for want of merit—Wooten v. Chaney, Civ.App., 105 S.W.2d 510, error dismissed—St. Paul Fire & Marine Ins. Co. v. Burton, Civ.App., 92 S.W.2d 270, error dismissed—Houston & T. C. R. Co. v. Long, Civ.App., 219 S.W. 212.
Va.—Brann v. F. W. Woolworth Co., 24 S.E.2d 424, 181 Va. 213.
Wash.—Droiesbaugh v. Market Operating Corporation, 24 P.2d 627, 174 Wash. 299.
W.Va.—State ex rel. Harrah v. Walker, 74 S.E.2d 679, 137 W.Va. 849.

84.5 Cal.—Mudrick v. Market Street Ry. Co., 81 P.2d 950, 11 C.2d 724, 118 A.L.R. 533.
Lafrenz v. Stoddard, 122 P.2d 374, 50 C.A.2d 1.
Mo.—Burow v. Red Line Service, 122 S.W.2d 919, 343 Mo. 605.

85. Ala.—Louisville & N. R. Co. v. Tucker, 80 So.2d 288, 262 Ala. 570.
Cal.—Tingley v. Times-Mirror Co., 89 P. 1097, 151 C. 1.
Darveau v. KVVC The Voice of Ventura County, 272 P.2d 881, 126 C.A.2d 795—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404—Woebbe v. Sperry, 119 P.2d 743, 48 C.A.2d 340—Howard v. Clark, 84 P.2d 529, 29 C. A.2d 374.
Del.—Prettyman v. Topkis, 8 A.2d 708, 9 W.W.Harr. 568.
Ind.—Montgomery-Ward & Co. v. Wooley, 94 N.E.2d 677, 121 Ind. App. 60—Indianapolis Rys. v. Boyer, 26 N.E.2d 62, 108 Ind.App. 161.
Iowa.—Shull v. Arle, 84 N.W. 1031, 113 Iowa 170.
Kan.—Martin v. National Mut. Cas. Co., 217 P.2d 1055, 169 Kan. 110.
Ky.—Burk v. Commonwealth, 217 S. W.2d 634, 309 Ky. 271—Bruner v. Gordon, 214 S.W.2d 997, 309 Ky. 29—McFarland v. Bruening, 185 S. W.2d 247, 299 Ky. 267—Henry v. Fields, 131 S.W.2d 467, 279 Ky. 513.
Campbell Turnpike Road Co. v. Maxfield, 91 S.W. 1135, 28 Ky.L. 1198.
Mich.—Samuelson v. Olson Transp. Co., 36 N.W.2d 917, 324 Mich. 278—Winchester v. Chabut, 32 N.W.2d 358, 321 Mich. 114—Kerlin v. Swart, 106 N.W. 710, 143 Mich. 228—Benedict v. Port Huron, 83 N.W. 614, 124 Mich. 600.
Minn.—James v. Chicago, St. P. M. & O. Ry. Co., 16 N.W.2d 188, 218 Minn. 333.
Mo.—Schwinegruber v. St. Louis Public Service Co., App., 241 S.W. 2d 782.
N.H.—Blake v. Lord, 4 A.2d 360, 90 N.H. 42—Trudeau v. Manchester Coal & Ice Co., 192 A. 491, 89 N.H. 83.
N.Y.—Waite v. Mosconi, 78 N.Y.S.2d 615, 273 App.Div. 1040.
N.C.—Tarkington v. Rock Hill Printing & Finishing Co., 53 S.E.2d 269, 230 N.C. 354.
Okl.—Buck Creek Coal Min. Co. v. Johnson, 181 P.2d 1003, 198 Okl. 664.
Tex.—Brewer v. Dallas Ry. & Terminal Co., Civ.App., 247 S.W.2d 435—Kimbell v. Noel, Civ.App., 228 S. W.2d 980, error refused no reversible error—Texas Emp. Ins. Ass'n v. Crow, Civ.App., 218 S.W.2d 230, affirmed 221 S.W.2d 235, 148 Tex. 113, 10 A.L.R.2d 913—Cage v. Nueces County, Civ.App., 149 S.W. 2d 190, error dismissed—Marvin Drug Co. v. Couch, Civ.App., 134 S.W.2d 356, error dismissed, judgment correct—National Life & Accident Co. v. Dickinson, Civ.App., 115 S.W.2d 1180, error dismissed—San Antonio Traction Co. v. Davis, Civ.App., 101 S.W. 554.

86. Colo.—Rains v. Rains, 46 P.2d 740, 97 Colo. 19.
Ky.—Sears v. Frost's Adm'r, 279 S. W.2d 776—Hollis v. Fisk, 242 S.W. 2d 1012—Louisville Taxicab & Transfer Co. v. Tungent's Adm'r, 229 S.W.2d 985, 313 Ky. 1—McCoy v. Kilgore's Adm'r, 209 S.W.2d 66, 306 Ky. 678—Cable v. McCoun, 126 S.W.2d 818, 277 Ky. 410.
Mich.—Hayes v. Coleman, 61 N.W.2d 634, 338 Mich. 371.
Minn.—Lee v. Lee, 80 N.W.2d 529, 248 Minn. 496—Bocchi v. Karnstedt, 56 N.W.2d 628, 238 Minn. 257.
Mo.—Stiebert v. May Dept. Stores Co., 218 S.W.2d 113, 358 Mo. 919.
N.H.—Halley v. Brown, 24 A.2d 267, 92 N.H. 1—Prokey v. Hamm, 23 A. 2d 327, 91 N.H. 513.
Okl.—Mid-Continent Petroleum Corp. v. Jamison, 171 P.2d 976, 197 Okl. 387.
Pa.—Uram v. American Steel & Wire Co. of N. J., 108 A.2d 912, 379 Pa. 375.
Tenn.—Finks v. Gillum, 273 S.W.2d 722, 38 Tenn.App. 304.
Tex.—Garrett v. Brock, Civ.App., 144 S.W.2d 408, error dismissed, judgment correct.

Innocent misstatement of testimony by counsel in argument does not require reversal.
Ill.—Bolle v. Chicago & N. W. Ry. Co., 258 Ill.App. 545, certiorari denied Chicago & N. W. Ry. Co. v. Bolle, 52 S.Ct. 6, 76 L.Ed. 1299, and reversed on other grounds 52 S.Ct. 59, 284 U.S. 74, 76 L.Ed. 173.
Mont.—Mitchell v. Carlson, 313 P.2d 717.
N.H.—Prokey v. Hamm, 23 A.2d 327, 91 N.H. 513—Robertson v. Monroe, 116 A. 92, 80 N.H. 258.

stating unwarranted inferences from the facts,[87] exaggerated statements,[88] comment on the failure of opponent to offer evidence,[88.5] or to call a witness,[89] challenging opposing attorney to call a witness known to be intoxicated,[90] statements outside the record,[91] or ridiculing or making derogatory remarks about opposing counsel[92] or witnesses.[93]

So, in the absence of prejudice, the court will

Tex.—Oil Belt Power Co. v. Touchstone, Civ.App., 266 S.W. 432.

Side bar remarks made by counsel in examining a witness who indicated a disposition not to answer directly the question asked have been held not reversible error.

Tex.—First Nat. Bank v. Rush, Civ. App., 227 S.W. 378, modified on other grounds, Com.App., 246 S.W. 349, motion granted 249 S.W. 183.

Withdrawal of remarks

Error in permitting counsel to comment on evidence is harmless where the evidence was admitted without objection and the remarks were by way of recital and description and were withdrawn when objected to.

Ind.—Peerless Stone Co. v. Wray, 51 N.E. 326, 152 Ind. 27.

87. Ky.—Elliott v. Drury's Adm'x, 219 S.W.2d 3, 309 Ky. 814.

Minn.—Boutang v. Twin City Motor Bus Co., 80 N.W.2d 30, 248 Minn. 240.

Mo.—Andrews v. Bulldog Auto Fire Ins. Ass'n of Chicago, App., 291 S. W. 508—Fledderman v. Manufacturers' Ry. Co., App., 254 S.W. 717.

N.H.—Blake v. Lord, 4 A.2d 360, 90 N.H. 42—Maravas v. American Equitable Assur. Corporation of New York, 136 A. 364, 82 N.H. 533—Potter v. Moody, 104 A. 889, 79 N.H. 87.

N.Y.—Goldstein v. Albany Yellow Cab Co., 291 N.Y.S. 328, 249 App. Div. 701.

S.C.—Johnson v. Life Ins. Co. of Ga., 88 S.E.2d 260, 227 S.C. 351.

Tex.—Massie v. City of Floydada, Civ.App., 112 S.W.2d 243—City of Abilene v. Luhn, Civ.App., 65 S.W. 2d 370.

Wyo.—Templar v. Tongate, 255 P.2d 223, 71 Wyo. 148.

Unnecessarily harsh words

In a suit against a city for injuries from a defective sidewalk, the reply argument of codefendant's attorney that the attorney for the city, in admitting the city's liability, had turned traitor to the city, was held not prejudicially erroneous.

Tex.—City of Abilene v. Luhn, Civ. App., 65 S.W.2d 370.

88. Ala.—Hilburn v. McKinney, 96 So. 61, 209 Ala. 229.

N.H.—Evans v. Foster, 60 A.2d 130, 95 N.H. 194.

88.5 Ohio.—Dickerhoff v. Athey, App., 79 N.E.2d 377.

89. Ala.—Hinton & Sons v. Strahan, 96 So.2d 426.

Cal.—Houser v. Bozwell, 182 P.2d 314, 80 C.A.2d 702—Wills v. J. J. Newberry Co., 111 P.2d 346, 43 C.A. 2d 595.

Ill.—Carney v. Sheedy, 128 N.E. 810, 295 Ill. 78.

Mass.—Williamson v. Feinstein, 41 N.E.2d 185, 311 Mass. 322.

Mich.—Gibbons v. Delta Contracting Co., 4 N.W.2d 39, 301 Mich. 638—Anderson v. Detroit Motorbus Co., 214 N.W. 172, 239 Mich. 390.

Mo.—Harrell v. Berberich, 222 S.W. 2d 733, 359 Mo. 551—Herring v. Franklin, 98 S.W.2d 619, 339 Mo. 571.

Caffey v. St. Louis-San Francisco Ry. Co., App., 292 S.W.2d 611—Arnold v. Metropolitan Life Ins. Co., App., 89 S.W.2d 81—Waeckerley v. Colonial Baking Co., App., 67 S.W.2d 779.

Tex.—Turner v. Gossett, Civ.App., 267 S.W.2d 877—Thornton v. Morgan, Civ.App., 245 S.W.2d 379—El Paso Electric Co. v. Gregston, Civ.App., 170 S.W.2d 515—Kimmey v. Gulf, C. & S. F. R. Co., Civ.App., 128 S.W.2d 539—Houston Belt & Terminal Ry. Co. v. Davis, Civ. App., 19 S.W.2d 77—Veazey v. Galveston, H. & S. A. Ry. Co., Civ. App., 290 S.W. 283—St. Louis Southwestern Ry. Co. of Texas v. Aston, Civ.App., 179 S.W. 1128.

90. Cal.—In re Golden's Estate, 48 P.2d 962, 4 C.2d 300.

91. Ala.—Spry v. Pruitt, 54 So.2d 701, 256 Ala. 341.

Okl.—Mid-Continent Petroleum Corporation v. Lunger, 18 P.2d 547, 161 Okl. 266.

Tex.—Airline Motor Coaches v. Owens, Civ.App., 199 S.W.2d 802, error refused no reversible error—Coleman v. Cook, Civ.App., 195 S.W.2d 1020—Jones v. State, Civ.App., 109 S.W.2d 244—Saenger v. Dallas Ry. & Terminal Co., Civ. App., 67 S.W.2d 351.

92. Cal.—Oakes v. Baker, 192 P.2d 460, 85 C.A.2d 168—Johnson v. McRee, 152 P.2d 526, 66 C.A.2d 524—Jayne, Occidental Indemnity Co., Intervener, v. Morck, 111 P.2d 696, 43 C.A.2d 743.

Colo.—Expansion Gold Mining & Leasing Co. v. Campbell, 163 P. 968, 62 Colo. 410.

Ill.—Williams v. Yellow Cab Co., 136 N.E.2d 582, 11 Ill.App.2d 112.

Iowa.—Johnson v. Kinney, 7 N.W. 2d 188, 232 Iowa 1016, 144 A.L.R. 997.

Kan.—Johnson v. Olson, 67 P.2d 422, 145 Kan. 779.

Ky.—Kentucky & West Virginia Power Co. v. Saulsbury, 22 S.W. 2d 281, 231 Ky. 788.

Minn.—Tri-State Transfer Co. v. Nowotny, 270 N.W. 684, 198 Minn. 537.

Mo.—Maurizi v. Western Coal & Mining Co., 11 S.W.2d 268, 321 Mo. 378.

Pa.—Hopper v. Travelers Ins. Co., Com.Pl., 58 Montg.Co. 401.

Tex.—Airline Motor Coaches v. Bennett, Civ.App., 184 S.W.2d 524, reversed on other grounds 187 S. W.2d 982, 144 Tex. 36—Marcus v. Huguley, Civ.App., 37 S.W.2d 1100.

Attorney testifying in case

Informing the jury as to what the supreme court has said about an attorney testifying in the case for his client, while improper, has been held not so prejudicial as to require a reversal.

Ill.—Baker v. Ellis, 244 Ill.App. 330.

Charging combination against defendant.

In a suit against a city for injuries from a defective sidewalk, the argument of a cross defendant's attorney that the attorneys for plaintiffs and for defendant had gone in "cahoots" and tried to "stick" a codefendant was not prejudicially erroneous.

Tex.—City of Abilene v. Luhn, Civ. App., 65 S.W.2d 370.

93. Cal.—Grossetti v. Sweasey, 169 P. 687, 176 C. 793.

Del.—Prettyman v. Topkis, 3 A.2d 708, 9 W.W.Harr. 568.

Ill.—Plambeck v. Chicago Rys. Co., 128 N.E. 513, 294 Ill. 302.

Metz v. Yellow Cab Co., 248 Ill. App. 609—Frechett v. Illinois Cent. R. Co., 197 Ill.App. 213.

Ind.—Indiana Pipe Line Co. v. Christensen, 143 N.E. 596, 195 Ind. 106.

Kan.—Johnson v. Olson, 67 P.2d 422, 145 Kan. 779.

Ky.—H. P. Selman & Co. v. Goldstein, 278 S.W.2d 713—Chesapeake & O. Ry. Co. v. Shirley's Adm'x, 291 S.W. 395, 218 Ky. 337.

Mich.—Hayes v. Coleman, 61 N.W.2d 634, 338 Mich. 371.

Mo.—Johnson v. Terminal R. Ass'n of St. Louis, 191 S.W.2d 676, 345 Mo. 800.

Jones v. Central States Oil Co., App., 170 S.W.2d 153—Goodson v. Luce, App., 24 S.W.2d 682.

N.Y.—Reyes v. Arthur Tickle Eng. Works, Inc., 152 N.Y.S.2d 698, 2 A.D.2d 703, affirmed 144 N.E.2d 723, 3 N.Y.2d 837—Cohen v. Covelli, 94 N.Y.S.2d 782, 276 App.Div. 375, appeal and reargument denied 95 N.Y.S.2d 905, 276 App.Div. 1011.

Ohio.—Petticrew v. Petticrew, 129 N.E.2d 194, 98 Ohio App. 260, appeal dismissed 117 N.E.2d 706, 161 Ohio St. 110.

not reverse because of the action of counsel in appealing to race prejudice,[94] referring to the poverty or wealth of the parties,[95] reading part of the pleadings to the jury,[96] reading law to the jury,[97] telling

Tex.—Williams v. Merchants Fast Motor Lines, Civ.App., 214 S.W.2d 307—Red Arrow Freight Lines v. Matz, Civ.App., 182 S.W.2d 725, error dismissed—Texas & N. O. R. Co. v. Sturgeon, Civ.App., 177 S. W.2d 340, reversed on other grounds 177 S.W.2d 264, 142 Tex. 223—Imperial Underwriters v. Dillard, Civ.App., 146 S.W.2d 1105, error refused—Southern Underwriters v. Weddle, Civ.App., 118 S.W.2d 1008, error dismissed by agreement—Traders & General Ins. Co. v. Parker, Civ.App., 91 S. W.2d 503, error dismissed—El Paso Electric Co. v. Beckman, Civ. App., 89 S.W.2d 470, error dismissed.

Vt.—Paska v. Saunders, 153 A. 451, 103 Vt. 204.

Wis.—Becker v. Luick, 264 N.W. 242, 220 Wis. 481—Carson v. Leet, 203 N.W. 394, 186 Wis. 566.

Untruthful professional witness

An argument in a personal injury action that a doctor who testified in the case was a professional witness for defendant and that he was careless of the truth was held not reversible error under the facts.

Ill.—Metz v. Yellow Cab Co., 248 Ill.App. 609.

Attack on deposition

An argument attacking a deposition, because the jury could not see the deposing witness, and did not know whether he was a half-wit, yellow man, or black man, or whether the deposing witness suffered from defendant's claim agent's hands, referring to evidence regarding plaintiff's statement to the claim agent, was held not prejudicial.

Tex.—Dallas Ry. & Terminal Co. v. Garner, Civ.App., 42 S.W.2d 665, reversed on other grounds, Com. App., 63 S.W.2d 542.

Facetious reference

Reference by plaintiff's attorney to defendant's witness as "son" in a question on cross-examination, although facetious and unwarranted, is not prejudicial misconduct.

Cal.—Elsey v. Domecq, 299 P. 794, 114 C.A. 42.

94. Fla.—Daylight Grocery Co. v. Jackson, 28 So.2d 871, 158 Fla. 314.

Kan.—Hunter v. Joplin & P. Ry. Co., 197 P. 1092, 109 Kan. 169.

Tex.—Carson v. Amberson, Civ.App., 148 S.W.2d 972, error dismissed, judgment correct.

Wis.—Drexler v. Zohlen, 257 N.W. 675, 216 Wis. 483.

95. Ala.—Colquett v. Williams, 86 So.2d 381, 264 Ala. 214.

Ariz.—Valley Nat. Bank v. Witter, 121 P.2d 414, 58 Ariz. 491.

Ark.—Oyler v. Semple, 260 S.W. 744, 163 Ark. 620.

Cal.—House v. Pacific Greyhound Lines, 95 P.2d 465, 35 C.A.2d 336—Hodge v. Weinstock, Lubin & Co., 293 P. 80, 109 C.A. 393.

Colo.—Fanstiel v. Wright, 222 P.2d 1001, 122 Colo. 451.

Ill.—St. Clair County Housing Authority v. Quirin, 39 N.E.2d 363, 379 Ill. 52—Lyons v. Kanter, 120 N.E. 764, 285 Ill. 336.

Coken v. Peterson, 92 N.E.2d 352, 340 Ill.App. 518—Cuneo v. City of Chicago, 11 N.E.2d 16, 292 Ill.App. 235.

Ind.—Montgomery-Ward & Co. v. Wooley, 94 N.E.2d 677, 121 Ind. App. 60.

Ky.—Wright's Ex'r v. Craft, 217 S. W.2d 228, 309 Ky. 198.

Mich.—Nelson v. City of Dearborn, 66 N.W.2d 78, 340 Mich. 544.

Miss.—Savery v. Gray, 51 So.2d 922.

Mo.—Williams v. Springfield Gas & Electric Co., 202 S.W. 1, 274 Mo. 1—Myers v. City of Independence, 189 S.W. 816.

Okl.—Wray v. Ferris, 103 P.2d 942, 187 Okl. 428, 128 A.L.R. 1079.

Or.—Jones v. Setera, 164 P.2d 448, 177 Or. 615—Lamb v. Woodry, 58 P.2d 1257, 154 Or. 30, 105 A.L.R. 914.

Tex.—Sterrett v. East Tex. Motor Freight Lines, 236 S.W.2d 776, 150 Tex. 12.

First Nat. Bank v. Brown, Civ. App., 111 S.W.2d 806, reversed on other grounds 131 S.W.2d 958, 134 Tex. 38—Redwine v. Coleman, Civ. App., 71 S.W.2d 921.

Calling attention to salary

In a suit to cancel a contract of merger of cooking schools, an argument of plaintiff's attorney directed against an officer of defendant company because he was drawing one thousand dollars per month salary and not devoting his entire time to the company's business was held not reversible error.

Tex.—National Newspaper Enterprises v. Chitwood, Civ.App., 68 S.W.2d 264.

Plaintiff covered by workmen's compensation

In employee's personal injury action against employer, action of trial court in allowing employer's counsel to make statements allegedly having the effect of informing jury that employee was covered by workmen's compensation was not prejudicial where there was no explicit mention of workmen's compensation.

N.Y.—Dickinson v. Delaware, L. & W. R. Co., 158 N.Y.S.2d 127, 3 A. D.2d 629.

96. Ky.—Belcher v. Sandy Valley & E. Ry. Co., 269 S.W. 729, 207 Ky. 560.

Minn.—Bullock v. New York Life Ins. Co., 233 N.W. 858, 182 Minn. 192.

Mo.—Van Campen v. St. Louis-San Francisco Ry. Co., 216 S.W.2d 443, 358 Mo. 655.

Boggs v. Missouri-Kansas-Texas R. Co., App., 50 S.W.2d 164, transferred, see, 80 S.W.2d 141, 336 Mo. 528.

S.C.—McLane v. Reliance Life Ins. Co. of Pittsburgh, 6 S.E.2d 13, 192 S.C. 245.

Tex.—Blanks v. Southland Hotel, 229 S.W.2d 357, 149 Tex. 139.

Jackson-Strickland Transp. Co. v. Seyler, Civ.App., 123 S.W.2d 928, error dismissed by agreement—City of Corsicana v. Albritton, Civ.App., 20 S.W.2d 363—Shipman v. Wright, Civ.App., 3 S.W.2d 519—Kuehn v. Kuehn, Civ.App., 259 S.W. 290—Galveston, H. & S. A. Ry. Co. v. Packard, Civ.App., 193 S.W. 397, error refused.

97. Ark.—Chicago, R. I. & P. Ry. Co. v. Porterfield, 118 S.W.2d 276, 196 Ark. 339—Missouri Pac. R. Co. v. Maxwell, 109 S.W.2d 1254, 194 Ark. 938.

Cal.—Balkwill v. City of Stockton, 123 P.2d 596, 50 C.A.2d 661.

Mo.—Merrick v. Bridgeways, Inc., 241 S.W.2d 1015, 362 Mo. 476—Lewis v. Barnes, 220 S.W. 487.

Or.—Mason v. Allen, 195 P.2d 717, 183 Or. 638—Lang v. Camden Iron Works, 146 P. 964, 77 Or. 137.

S.C.—Haynes v. Graham, 6 S.E.2d 903, 192 S.C. 382—McKinney v. Saluda Lumber Co., 120 S.E. 234, 126 S.C. 503.

Tenn.—Huber v. Wilson, 126 S.W.2d 893, 23 Tenn.App. 109—Marion Const. Co. v. Steepleton, 14 Tenn. App. 127.

Tex.—Goidl v. Advance Neckwear Co., Civ.App., 98 S.W.2d 364, affirmed 123 S.W.2d 865, 132 Tex. 308—Watson v. Watson, Civ.App., 229 S.W. 899.

Reading instructions later given

Minn.—Curran v. Chicago, Great Western Ry. Co., 159 N.W. 955, 134 Minn. 392.

Extract of court opinion

Counsel's reading of an extract from a court opinion, merely stating the parties' pleadings and discussing questions not involved in the instant case in his opening argument to the jury, which found issues for and against each party, was held not prejudicial error.

Tex.—Springfield Fire & Marine Ins. Co. v. Hubbs-Johnson Motor Co., Civ.App., 28 S.W.2d 1088, reversed on other grounds, Com.App., 42 S.W.2d 248.

Erroneous unconfirmed statement

Even though a statement of the law by the counsel for the adverse

the jury the effect on the judgment of their answers to questions where the jury must have known the effect[98] or cautioning them to harmonize the general verdict and special findings,[99] stating an opinion as to the amount of the verdict that the jury should award,[1] or failing to reveal that a juror was a former client of an associate of counsel, where such counsel did not recognize him at the trial.[2]

Nor will the case be reversed where remarks which were not necessarily prejudicial were addressed to the court and were made in good faith,[3] where it does not appear that the jury heard the remarks,[4] where the facts in the improper statement are related without objection,[5] where attorneys for both parties made improper argument,[6] where the jury acted in an advisory capacity only and the findings were finally made by the court,[7] or when the language and conduct of counsel is not connected with some judicial error on the part of the trial judge.[8] So, improper conduct in arguing after opposing counsel had waived argument is immaterial where appellant did not object.[9]

party is not correct, it does not require reversal, unless such erroneous statement of the law was confirmed by the court.

N.H.—Robertson v. Monroe, 116 A. 92, 80 N.H. 258.

98. Tex.—Pioneer Mut. Compensation Co. v. Diaz, 177 S.W.2d 202, 142 Tex. 184—Lowrance v. Kenworthy, 157 S.W.2d 879, 138 Tex. 132—New England Fire Ins. Co. v. Burke, 128 S.W.2d 19, 133 Tex. 175.
Galveston, H. & S. A. Ry. Co. v. Harling, Com.App., 260 S.W. 1016.
Holt v. City of San Marcos, Civ.App., 288 S.W.2d 802, error refused no reversible error—Texas Emp. Ins. Ass'n v. Sevier, Civ. App., 279 S.W.2d 473, error refused no reversible error—Pacific Mut. Ins. Co. v. Talbort, Civ. App., 271 S.W.2d 487—Elam v. Barrett, Civ.App., 245 S.W.2d 765—Dallas Ry. & Terminal Co. v. Baughman, Civ.App., 243 S.W.2d 233—Burrow v. Davis, Civ.App., 226 S.W.2d 199, error refused no reversible error—Arando v. Higgins, 220 S.W.2d 291, error refused no reversible error—Joplin v. South Texas Coaches, Civ.App., 119 S.W.2d 1060—Phœnix Refining Co. v. Muller, Civ.App., 109 S.W. 2d 766, error dismissed—Bates v. J. D. McCollum Lumber Co., Civ. App., 107 S.W.2d 1107—Dale v. Stevens, Civ.App., 90 S.W.2d 873, error dismissed—C. W. Hahl Co. v. Burch, Civ.App., 74 S.W.2d 1040—Galbraith-Foxworth Lumber Co. v. Gerneth, Civ.App., 66 S.W.2d 471—U. S. Fidelity & Guaranty Co. v. Brandon, Civ.App., 31 S.W.2d 846—Prim v. Farmers' Nat. Bank of Dublin, Civ.App., 28 S.W.2d 941, affirmed in part and reversed in part on other grounds, Com.App., 44 S.W.2d 943, amended on other grounds 51 S.W.2d 684—Oilmen's Reciprocal Ass'n v. Hayes, Civ. App., 295 S.W. 675—Insurance Co. of Pennsylvania v. Couch, Civ. App., 290 S.W. 274—Payne v. McIntyre, Civ.App., 263 S.W. 1100—Texas Power & Light Co. v. Central Texas Battery Co., Civ.App., 256 S.W. 644—Thornton v. Athens Nat. Bank, Civ.App., 252 S.W. 278—Hall v. Henry, Civ.App., 239 S.W. 1015, dismissed for want of jurisdiction—Merchants' Life Ins. Co. v. Griswold, Civ.App., 212 S. W. 807, reversed on other grounds Com.App., 237 S.W. 232—Galveston, H. & H. R. Co. v. Fleming, Civ.App., 203 S.W. 105, dismissed for want of jurisdiction.

99. Kan.—Lynch v. Payne, 230 P. 85, 117 Kan. 5.

1. Ala.—Yellow Cab Co. v. Pressberg, 117 So. 156, 22 Ala.App. 438, certiorari denied 117 So. 156, 217 Ala. 563.
Ky.—Louisville & N. R. Co. v. Cayce, 112 S.W.2d 682, 271 Ky. 467.
Minn.—Tuttle v. Wicklund, 227 N.W. 203, 178 Minn. 353.
N.J.—Kulodzej v. Lehigh Val. R. Co., 120 A.2d 763, 39 N.J.Super. 268.
Tex.—Younger Bros. v. Moore, Civ. App., 135 S.W.2d 780, error dismissed, judgment correct.
W.Va.—Yuncke v. Welker, 36 S.E.2d 410, 128 W.Va. 299.

2. Cal.—Mast v. Claxton, 290 P. 48, 107 C.A. 59.

3. Neb.—Rawlings v. Anheuser-Busch Brewing Assoc., 95 N.W. 792, 1 Neb.(Unoff.) 555.

4. Ga.—Finn v. McAllister, 167 S. E. 309, 46 Ga.App. 230.
Okl.—Drummond v. Corbin, 77 P.2d 692, 182 Okl. 338.
Vt.—Strong & Jarvis v. Oldsmobile Co. of Vermont, 120 A. 100, 96 Vt. 355.
4 C.J. p 957 note 68 [a] (22).

5. Ariz.—City of Phœnix v. Mubarek Ali Khan, 229 P.2d 949, 72 Ariz. 1.
Conn.—Fierberg v. Whitcomb, 177 A. 135, 119 Conn. 390.
Tex.—Smith v. Surtees, Civ.App., 143 S.W.2d 90.
4 C.J. p 958 note 78.

6. Cal.—Freedman v. Willeford, 262 P.2d 642, 121 C.A.2d 145.
Ill.—Bartosh v. Ryan, 100 N.E.2d 330, 344 Ill.App. 214—Paciorek v. Cummings, 58 N.E.2d 742, 324 Ill. App. 589—Humphreys v. East St. Louis & Suburban Ry. Co., 253 Ill. App. 450—Purinton v. Belt Ry. Co. of Chicago, 204 Ill.App. 382.
Ky.—Sears v. Frost's Adm'r, 279 S. W.2d 776.
Mo.—Clark v. Powell, 175 S.W.2d 842, 351 Mo. 1121—Devine v. Kroger Grocery & Baking Co., 162 S.W.2d 813, 349 Mo. 621.
Brunskill v. Farabi, App., 181 S.W.2d 549.
Pa.—Davalle v. Sworcheck, Com.Pl., 18 Wash.Co. 56.
Tex.—Clifton v. Lostutter, Civ.App., 268 S.W.2d 323, error refused no reversible error—McCown v. Jennings, Civ.App., 209 S.W.2d 408.
Wash.—Kellerher v. Porter, 189 P. 2d 223, 29 Wash.2d 650.
"If counsel for defendant did deliberately make a statement not warranted by the record, while it would not relieve the plaintiff of the charge of deliberately making a misstatement of the record for the purpose of prejudicing the jury, a court in passing upon the objection of the defendant would take into consideration the unwarranted conduct of the defendant in his argument to the jury."
Ill.—Illinois Tuberculosis Ass'n v. Springfield Marine Bank, 282 Ill. App. 14, 35.

7. Cal.—Cutter Laboratories, Inc. v. R. W. Ogle & Co., App., 311 P.2d 627—Myrick v. Bruetsch, 56 P.2d 591, 13 C.A.2d 219.
Utah.—Tuttle v. Pacific Intermountain Exp. Co., 242 P.2d 764, 121 Utah 420.

8. Or.—Watts v. Spokane, P. & S. Ry. Co., 171 P. 901, 88 Or. 192.

9. Ariz.—**Corpus Juris Secundum cited in** Stewart v. Smith, 237 P. 2d 803, 805, 73 Ariz. 70.
Iowa.—**Corpus Juris Secundum cited in** Johnson v. Kinney, 7 N.W.2d 188, 194, 232 Iowa 1016, 144 A.L.R. 997.
N.D.—**Corpus Juris Secundum cited in** Huus v. Ringo, 47 N.W.2d 216, 219, 77 N.D. 837.
Okl.—**Corpus Juris Secundum cited in** Hart v. Lewis, 103 P.2d 65, 69, 187 Okl. 394.
Wash.—Crumrine v. Grubb, 17 P.2d 887, 171 Wash. 274.

(b) Absence of Effect on Verdict

A judgment will not be reversed for improper acts, arguments, or remarks of counsel which had no influence on the verdict.

It is very generally held that a judgment will not be reversed because of improper acts, arguments, or remarks of counsel where the verdict is right or shows that they had no influence thereon,[10]

10. Ala.—Southern Ry. Co. v. Pullen, 29 So.2d 228, 248 Ala. 665.
Alaska.—Bruner v. Knickerbocker, 4 Alaska 387.
Cal.—Dietlin v. General American Life Ins. Co., 49 P.2d 590, 4 C.2d 336.
De Young v. Haywood, 292 P.2d 917, 139 C.A.2d 16—Norden v. Hartman, 285 P.2d 977, 134 C.A.2d 333—Shaff v. Baldwin, 236 P.2d 634, 107 C.A.2d 81—Russell v. Andersen, 226 P.2d 350, 101 C.A.2d 684—Spillers v. Silver, 158 P.2d 617, 69 C.A.2d 231—Williams v. Layne, 127 P.2d 582, 53 C.A.2d 81—Langford v. Kosterlitz, 290 P. 80, 107 C.A. 175—Daniel v. Asbill, 276 P. 149, 97 C.A. 731—Dougherty v. Ellingson, 275 P. 456, 97 C.A. 87—Walters v. Evick, 268 P. 1061, 93 C.A. 1—Perez v. Wilson, 260 P. 838, 86 C.A. 288.
Colo.—Capitol Syndicate v. Green, 230 P. 1007, 76 Colo. 315—Railway Mail Ass'n v. Jeffrey, 195 P. 644, 69 Colo. 569.
Ga.—Hughes v. State Board of Medical Examiners, 142 S.E. 285, 165 Ga. 892, error dismissed 49 S.Ct. 36, 278 U.S. 562, 563, 73 L.Ed. 507.
Hawaii.—Saiki v. Lee Sing, 27 Hawaii 399.
Idaho.—Bates v. Price, 166 P. 261, 30 Idaho 521.
Ill.—Eldorado Coal, etc., Co. v. Swan, 81 N.E. 691, 227 Ill. 586—Chicago Union Traction Co. v. Lawrence, 71 N.E. 1024, 211 Ill. 373.
Kos v. Linden, 45 N.E.2d 105, 316 Ill.App. 450—Shea v. Cassidy, 257 Ill.App. 557—Chicago Great Western R. Co. v. American McKenna Process Co., 200 Ill.App. 166—Metzger v. Manlove, 145 Ill. App. 419, affirmed 89 N.E. 249, 241 Ill. 113—Savage v. Hayes Bros. Co., 142 Ill.App. 316—Salem v. Webster, 95 Ill.App. 120, affirmed 61 N.E. 323, 192 Ill. 369. See Boyd v. Schnell, 209 Ill.App. 187—Village of Bolton v. Lewis, 194 Ill. App. 71—Granite City Lime & Cement Co. v. Hanover Fire Ins. Co. of New York, 194 Ill.App. 68—Barker v. Danville St. Ry. & Light Co., 193 Ill.App. 639—Murphy v. Chicago City Ry. Co., 191 Ill.App. 431—Swan v. Boston Store of Chicago, 191 Ill.App. 84—Dunne v. Bernardy, 184 Ill.App. 89.
Ind.—Ætna Life Ins. Co. of Hartford, Conn., v. Huffstetter, 195 N. E. 598, 101 Ind.App. 355.
Ky.—National Sur. Marine Ins. Corp. v. Wheeler, 257 S.W.2d 573—Droppelman v. Willingham, 169 S.W.2d 811, 293 Ky. 614—West Kentucky Coal Co. v. Hazel's Adm'x, 129 S. W.2d 1000, 279 Ky. 5—People's Store v. Ledford, 65 S.W.2d 1011, 252 Ky. 122—Reo Bus Lines Co. v. Dickey, 292 S.W. 791, 219 Ky. 307—Chesapeake & O. Ry. Co. v. Shirley's Adm'x, 291 S.W. 395, 218 Ky. 337—Kentucky Wagon Mfg. Co. v. Duganics, 113 S.W. 128.
Illinois Cent. R. Co. v. Whittaker, 57 S.W. 465, 22 Ky.L. 395.
Mich.—Anthony v. Cochrane, 295 N. W. 197, 295 Mich. 386—Marsh v. Burnham, 179 N.W. 300, 211 Mich. 675—Daniels v. Weeks, 51 N.W. 273, 90 Mich. 190.
Minn.—McGuiggan v. St. Paul City Ry. Co., 40 N.W.2d 435, 229 Minn. 534.
Miss.—Seward v. First Nat. Bank in Meridian, 8 So.2d 236, 193 Miss. 656.
Mo.—Sparks v. Auslander, 182 S.W. 2d 167, 353 Mo. 177—Irons v. American Ry. Express Co., 300 S. W. 283, 318 Mo. 318—Rainier v. Quincy, O. & K. C. R. Co., 271 S.W. 500—Wagner v. Gilsonite Const. Co., 220 S.W. 890.
Yankoff v. Allied Mut. Ins. Co., App., 289 S.W.2d 471—White v. American Life & Accident Ins. Co. of St. Louis, App., 90 S.W.2d 118—Jones v. Missouri Freight Transit Corporation, 40 S.W.2d 465, 225 Mo.App. 1076—Daniel v. Ætna Life Ins. Co., 36 S.W.2d 688, 225 Mo. App. 357—Sullivan v. Hines, App., 218 S.W. 406—Tuck v. Springfield Traction Co., 124 S.W. 1079, 140 Mo. App. 335—Beatty v. Clarkson, 83 S. W. 1033, 110 Mo.App. 1—Orscheln v. Scott, 80 S.W. 982, 106 Mo.App. 583.
N.H.—Winslow v. Dietlin, 121 A.2d 573, 100 N.H. 147—Wright v. Woodward, 111 A. 494, 79 N.H. 474—Voulgaris v. Gianaris, 109 A. 838, 79 N.H. 408.
N.Y.—Brown v. Ratner, 33 N.Y.S.2d 199, 263 App.Div. 395.
N.D.—Geier v. Tjaden, 74 N.W.2d 361—Hoffer v. Burd, 49 N.W.2d 282, 78 N.D. 278.
Ohio.—Palmer v. Peak, 136 N.E. 884, 104 Ohio St. 603.
Bongiorno v. Bonacci, App., 127 N.E.2d 536—Major v. Liggett, 50 N. E.2d 795, 72 Ohio App. 71—Al McCullough Transfer Co. v. Pizzulo, 5 N.E.2d 796, 53 Ohio App. 470.
American Contracting Co. v. Sammon, 27 Ohio Cir.Ct. 337.
Sawyer v. National Label Co., 11 Ohio N.P.,N.S., 237.
Okl.—Lance v. Smith, 306 P.2d 298—Oklahoma Transp. Co. v. Phillips, 265 P.2d 467—Hazelrigg Trucking Co. v. Duvall, 261 P.2d 204—Magnolia Petroleum Co. v. Sutton, 257 P.2d 307, 208 Okl. 488—Safeway Stores v. Whitehead, 125 P.2d 194, 190 Okl. 464—Fast v. Gilbert, 57 P. 2d 846, 177 Okl. 132—Producers' Oil Co. v. Eaton, 143 P. 9, 44 Okl. 55.
Or.—Rogers v. Blumauer, 255 P. 324—Tompkins v. Portland Ry., Light & Power Co., 150 P. 758, 77 Or. 174.
Pa.—Faber v. Gimbel Bros., 107 A. 222, 264 Pa. 1.
Tenn.—Fortune v. McGinn, 134 S.W. 2d 898, 23 Tenn.App. 504, rehearing denied 139 S.W.2d 256, 24 Tenn. App. 36—Stone v. O'Neal, 90 S.W. 2d 548, 19 Tenn.App. 512—Bourne v. Barlar, 67 S.W.2d 751, 17 Tenn. App. 375.
Tex.—Schmidt v. Houston Electric Co., Com.App., 242 S.W. 1019.
Berry v. Lowery, Civ.App., 266 S.W.2d 917, affirmed in part and reversed in part on other grounds 269 S.W.2d 795—Benson v. Missouri, K. & T. R. Co., Civ.App., 200 S. W.2d 233, certiorari denied 68 S.Ct. 206, 332 U.S. 830, 92 L.Ed. 403, error refused no reversible error—Pool v. Gilbert, Civ.App., 199 S.W. 2d 798, error refused no reversible error—Alpine Tel. Corp. v. McCall, Civ.App., 195 S.W.2d 585, error refused no reversible error—Krause v. Krause, Civ.App., 186 S.W.2d 106, refused for want of merit—Myers v. Thomas, Civ.App., 182 S.W.2d 266, reversed on other grounds 186 S.W.2d 811, 143 Tex. 502—Peurifoy v. Wiebusch, Civ.App., 174 S.W.2d 619—McMillion v. Wilkinson, Civ. App., 135 S.W.2d 231, error dismissed, judgment correct—Olivares v. San Antonio Public Service Co., Civ.App., 134 S.W.2d 821, error refused—Zurich General Accident & Liability Ins. Co. v. Moss, Civ.App., 118 S.W.2d 410, error dismissed—Bush v. Gaffney, Civ.App., 84 S.W. 2d 759—Ringling Bros. and Barnum & Bailey Combined Shows v. Wilkinson, Civ.App., 83 S.W.2d 705—Temple Trust Co. v. Stobaugh, Civ.App., 59 S.W.2d 916—England v. Pitts, Civ.App., 56 S.W.2d 493—Hunt v. Robinson, Civ.App., 55 S. W.2d 166—Houston Electric Co. v. Potter, Civ.App., 51 S.W.2d 754—Abbott v. Andrews, Civ.App., 29 S. W.2d 885, reversed on other grounds, Com.App., 45 S.W.2d 568—Jordan v. Liddell, Civ.App., 29 S. W.2d 799—Vincent v. Bell, Civ. App., 22 S.W.2d 753—El Paso Electric Co. v. Collins, Civ.App., 10 S. W.2d 397, reversed on other grounds, Com.App., 23 S.W.2d 295, rehearing denied 25 S.W.2d 807—Smith v. Irwin, Civ.App., 7 S.W.2d 926—Southern Properties v. Car-

as where they were irrelevant to the issues actually decided,[11] where a verdict against the party complaining would or should have resulted in any event,[12] where the verdict is not excessive,[13] where

penter, Civ.App., 300 S.W. 963—Vilbig v. Faison, Civ.App., 296 S.W. 669—Veazey v. Galveston, H. & S. A. Ry. Co., Civ.App., 290 S.W. 283—U. S. Fidelity & Guaranty Co. v. Weir, Civ.App., 286 S.W. 565—City of Mart v. Hasse, Civ.App., 281 S.W. 318—Galveston, H. & S. A. Ry. Co. v. Duty, Civ.App., 267 S.W. 744, affirmed, Com.App., 277 S.W. 1057—Schaff v. Copass, Civ. App., 262 S.W. 234—Mach v. Halve, Civ.App., 248 S.W. 95—Petty v. Griffin, Civ.App., 241 S.W. 252—Raney & Hamon v. Hamilton & White, Civ.App., 234 S.W. 229—Evans v. McKay, Civ.App., 212 S.W. 680, dismissed for want of jurisdiction—St. Louis, B. & M. Ry. Co. v. Vick, Civ.App., 210 S.W. 247—City of Lubbock v. Bagwell, Civ. App., 206 S.W. 371, error refused—Thornton v. Daniel, Civ.App., 199 S.W. 831—St. Louis, B. & M. Ry. Co. v. Green, Civ.App., 196 S.W. 555—La Grone v. Chicago, R. I. & G. Ry. Co., Civ.App., 189 S.W. 99, error refused—St. Louis, B. & M. Ry. Co. v. Green, Civ.App., 183 S. W. 829—San Antonio & A. P. Ry. Co. v. Jaramilla, Civ.App., 180 S. W. 1126—Kettler Brass Mfg. Co. v. O'Neil, 122 S.W. 900, 57 Tex.Civ. App. 568—Gulf, etc., R. Co. v. Adams, Civ.App., 121 S.W. 876—Chicago, etc., R. Co. v. Barnes, 111 S.W. 447, 50 Tex.Civ.App. 46—Missouri, etc., R. Co. v. Wall, Civ.App., 110 S.W. 453, reversed on other grounds, 116 S.W. 1140, 102 Tex. 362—Crawford v. Johnson, Civ. App., 107 S.W. 553—Ft. Worth, etc., R. Co. v. Walker, 106 S.W. 400, 48 Tex.Civ.App. 86—Kentucky Mut. L. Ins. Co. v. Mellott, Civ.App., 57 S. W. 887—Western Union Tel. Co. v. Clark, Civ.App., 25 S.W. 990.

Vt.—Duchaine v. Ray, 6 A.2d 28, 110 Vt. 313—Prouty v. Pellett & Skinner, 117 A. 373, 96 Vt. 53.

Wash.—Davies v. Maryland Casualty Co., 154 P. 1116, 89 Wash. 571, L. R.A.1916D 395, rehearing denied 155 P. 1035, 89 Wash. 571.

W.Va.—Jeffries v. Ashcraft, 141 S.E. 14, 104 W.Va. 636.

Wis.—Roeske v. Schmitt, 64 N.W.2d 394, 266 Wis. 557—Bailey v. Bach, 44 N.W.2d 631, 257 Wis. 604—McCaffrey v. Minneapolis, St. P. & S. S. M. Ry. Co., 267 N.W. 326, 222 Wis. 311, mandate modified on other grounds 268 N.W. 872, 222 Wis. 311—Lehner v. Chicago, M., St. P. & P. R. Co., 236 N.W. 572, 204 Wis. 558.

4 C.J. p 958 note 70.

"The reasonable test and most pertinent inquiry always is whether or not, under all the circumstances, the verdict of the jury has probably been affected."

Tex.—Niagara Fire Ins. Co. v. Pool, Civ.App., 31 S.W.2d 850, 853.

No objection to verdict

Defendant could not complain that the argument of plaintiff's counsel was prejudicial where the only point to the contention was that the argument caused the jury to render an incorrect verdict, and defendant urged no objection to the verdict.

Tex.—Ringling Bros. and Barnum & Bailey Combined Shows v. Wilkinson, Civ.App., 83 S.W.2d 705.

Remark sustained by record

In an action against the widow and her transferee to recover property fraudulently obtained by the widow under a promise of marriage made without intention of performing, the statement of plaintiff's counsel, "These two thieves did not trust each other," was held not to require reversal, in view of the showing of fraud and the transferee's participation therein, although the court failed to instruct the jury not to consider counsel's remark, where there was no evidence of passion or prejudice on the part of the jury.

Tex.—Hillmer v. Asher, Civ.App., 19 S.W.2d 89, reversed on other ground, Com.App., 29 S.W.2d 1011.

11. N.H.—Bogrett v. Hromada, 19 A.2d 432, 91 N.H. 351—Cutler v. Young, 6 A.2d 162, 90 N.H. 203—Higgins v. Town of Carroll, 167 A. 270, 86 N.H. 312—Maravas v. American Equitable Assur. Corporation of New York, 136 A. 364, 82 N.H. 533.

Mo.—Arnold v. Alton R. Co., 154 S. W.2d 58, 348 Mo. 516.

Tex.—McKinney v. Watts, Civ.App., 99 S.W.2d 673—McClure v. Fall, Civ.App., 42 S.W.2d 821, affirmed, Com.App., 67 S.W.2d 231—Smith v. Irwin, Civ.App., 7 S.W.2d 926—First Nat. Bank v. American Trust & Savings Bank of El Paso, Civ. App., 1 S.W.2d 437—El Paso Times Co. v. Eicke, Civ.App., 292 S.W. 594—McDonald v. Stafford, Civ.App., 213 S.W. 732.

12. Ala.—Gay v. Steverson, 110 So. 411, 215 Ala. 309.

Ill.—Ind v. Davis, 125 N.E.2d 852, 5 Ill.App. 483—Merenkow v. Richardson, 26 N.E.2d 722, 304 Ill.App. 577.

Mich.—Gagush v. Hoeft, 171 N.W. 437, 208 Mich. 147, reheard 175 N. W. 170, 208 Mich. 147.

Minn.—Renn v. Wendt, 241 N.W. 581, 185 Minn. 461.

Mo.—Vitale v. Biando, App., 52 S.W. 2d 24, certiorari quashed State ex rel. Biando v. Haid, 60 S.W.2d 38—Porterfield v. American Surety Co. of New York, 210 S.W. 119, 201 Mo.App. 8.

Neb.—Patterson v. Hawley, 50 N.W. 324, 33 Neb. 440.

Okl.—Webb v. Aetna Casualty & Surety Co., 147 P.2d 169, 194 Okl. 30.

Pa.—Benedict v. Bondi, 122 A.2d 209, 384 Pa. 574.

Tenn.—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512.

Tex.—McClure v. Fall, Com.App., 67 S.W.2d 231.

Sorsby v. Thom, Civ.App., 168 S.W.2d 873—Jones v. State, Civ. App., 109 S.W.2d 244—Texas & P. Ry. Co. v. Gillette, Civ.App., 100 S. W.2d 170, error dismissed.

Vt.—Goupiel v. Grand Trunk Ry. Co., 118 A. 586, 96 Vt. 191, 30 A.L.R. 690.

Wis.—Ninneman v. Schwede, 46 N. W.2d 230, 258 Wis. 408.

4 C.J. p 958 note 71.

13. Ala.—Alabama Power Co. v. Bowers, 39 So.2d 402, 252 Ala. 49—Jewel Tea Co. v. Sklivis, 179 So. 532, 235 Ala. 510.

Southern Finance Co. v. Foster, 95 So. 338, 19 Ala.App. 109, certiorari denied Ex parte Southern Finance Co., 95 So. 340, 209 Ala. 113.

Ariz.—Aiken v. Protis, 123 P.2d 169, 59 Ariz. 101.

Ark.—Missouri Pac. R. Co. v. Fikes, 200 S.W.2d 97, 211 Ark. 256—Missouri Pac. R. Co. v. Shell, 185 S.W. 2d 81, 208 Ark. 70—Cohen v. Ramey, 147 S.W.2d 338, 201 Ark. 713—Bruner Ivory Handle Co. v. West, 86 S.W.2d 919, 191 Ark. 479—Southern Anthracite Coal Mining Co. v. Rice, 245 S.W. 805, 156 Ark. 94—Chess & Wymond Co. v. Wallis, 203 S.W. 274, 134 Ark. 136—Texas & P. Ry. Co. v. Krieger, 185 S.W. 448, 123 Ark. 619—Arkansas Land & Lumber Co. v. Manning, 180 S.W. 474, 121 Ark. 633—Chicago, R. I. & P. Ry. Co. v. Gunn, 166 S.W. 568, 112 Ark. 401, Ann.Cas.1916E 648.

Cal.—Lynch v. Birdwell, 285 P.2d 919, 44 C.2d 839.

Williams v. Layne, 127 P.2d 582, 53 C.A.2d 81—Haverty v. Hartwell, 33 P.2d 883, 138 C.A. 528—Langford v. Kosterlitz, 290 P. 80, 107 C.A. 175—Fiori v. Agnew, 164 P. 899, 33 C.A. 284.

Ill.—Smithers v. Henriquez, 15 N.E. 2d 499, 368 Ill. 588—Collins v. Sanitary Dist. of Chicago, 110 N.E. 318, 270 Ill. 108.

Monroe v. Illinois Terminal R. Co., 105 N.E.2d 549, 346 Ill.App. 307—Palmer v. Miller, 35 N.E.2d 104, 310 Ill.App. 582, reversed on other grounds 43 N.E.2d 973, 380 Ill. 256—See Kreeb v. Lake Erie & W. R. Co., 211 Ill.App. 630—Parker v. Chicago Rys. Co., 200 Ill.App. 9—Bates v. Danville St. Ry. & Light Co., 190 Ill.App. 486.

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Locke, 123 N.E. 814, 71 Ind. App. 35.

the evidence would have warranted a verdict greater than that returned by the jury,[14] where the verdict was for less than the minimum amount suggested as a verdict by plaintiff's counsel in argument which he said would be sustained[15] or is only a very small percentage of the amount asked as damages in the complaint,[16] or where on the facts the party complaining was not entitled to a recovery.[17] Under these circumstances it is immaterial that the court failed to instruct the jury not to consider improper arguments or remarks of counsel.[18]

(c) Correction by Court

Improper arguments or remarks of counsel may be rendered harmless by corrective action by the court.

It has very frequently been held that improper arguments or remarks of counsel may be rendered harmless by corrective action taken by the court, as by an instruction to the jury to disregard them;[19]

Iowa.—Benson v. Williams, 32 N.W. 2d 813, 239 Iowa 742.

Kan.—Donley v. Amerada Petroleum Corp., 106 P.2d 652, 152 Kan. 518—Holloway v. Telfer, 12 P.2d 826, 136 Kan. 80.

Ky.—Louisville Water Co. v. Robinson, 228 S.W.2d 444, 312 Ky. 786—Wilson v. Dalton's Adm'r, 223 S.W. 2d 978, 311 Ky. 285—Dennert v. Dee, 215 S.W.2d 575, 308 Ky. 687—Square Deal Cartage Co. v. Smith's Adm'r, 210 S.W.2d 340, 307 Ky. 135—Cincinnati, N. O. & T. P. Ry. Co. v. King's Adm'x, 145 S.W. 2d 1053, 284 Ky. 694—Wheeler's Adm'r v. Sullivan's Adm'r, 86 S.W. 2d 1023, 260 Ky. 814—Davis v. Graves, 63 S.W.2d 803, 250 Ky. 654—Illinois Cent. R. Co. v. McGuire's Adm'r, 38 S.W.2d 913, 239 Ky. 1—Melton v. Allen, 278 S.W. 1095, 212 Ky. 310.

Mich.—Greene v. Richer, 270 N.W. 194, 278 Mich. 1—Haynes v. Clark, 233 N.W. 321, 252 Mich. 295—Webster v. Stewart, 177 N.W. 230, 210 Mich. 13—Church v. Larned, 172 N. W. 551, 206 Mich. 77—Veenstra v. Farmers' Mut. Fire Ins. Co. of Ottawa and Allegan Counties, 161 N. W. 824, 195 Mich. 55.

Minn.—Serr v. Biwabik Concrete Aggregate Co., 278 N.W. 355, 202 Minn. 165, 117 A.L.R. 1009.

Minn.—Erickson v. Kuehn, 262 N.W. 56, 195 Minn. 164.

Mo.—Davis v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 460—Sparks v. Auslander, 182 S.W.2d 167, 353 Mo. 177—Crews v. Kansas City Public Service Co., 111 S.W.2d 54, 341 Mo. 1090—Kilburn v. Chicago, M. & St. P. Ry. Co., 232 S.W. 1017, 289 Mo. 75—Williams v. Springfield Gas & Electric Co., 202 S.W. 1, 274 Mo. 1.

Smiley v. Bergmore Realty Co., App., 73 S.W.2d 836—Garrett v. Missouri Pac. R. Co., 267 S.W. 91, 216 Mo.App. 21—Allen v. Quercus Lumber Co., App., 190 S.W. 86, certiorari quashed State ex rel. Quercus Lumber Co. v. Robertson, Mo., 197 S.W. 79.

N.C.—White v. McCabe, 180 S.E. 704, 208 N.C. 301—Holt v. Oval Oak Mfg. Co., 98 S.E. 369, 177 N.C. 170.

Ohio.—Bongiorno v. Bonacci, App., 127 N.E.2d 536.

Okl.—Lance v. Smith, 306 P.2d 298—City of Tulsa v. Hodge, 293 P.2d 344—Hart v. Lewis, 103 P.2d 65, 187 Okl. 394—American Fidelity & Casualty Co. of Richmond, Va., v. Bennett, 76 P.2d 245, 182 Okl. 71.

Pa.—Wyatt v. Russell, 162 A. 256, 308 Pa. 366—Shaw v. Newingham, 123 A. 783, 279 Pa. 180.

Tex.—Airline Motor Coaches v. McCormick, Civ.App., 186 S.W.2d 689—Loyd v. Herrington, Civ.App., 178 S.W.2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135—Sherwin-Williams Co. of Texas v. Delahoussaye, Civ.App., 124 S.W.2d 870, error dismissed—Belcher v. Bullion, Civ.App., 121 S. W.2d 483—Traders & General Ins. Co. v. Parker, Civ.App., 91 S.W.2d 503, error dismissed—Ringling Bros. and Barnum & Bailey Combined Shows v. Wilkinson, Civ. App., 83 S.W.2d 705—Barnhart Mercantile Co. v. Bengel, Civ.App., 77 S.W.2d 295—Levy v. Rogers, Civ.App., 75 S.W.2d 304—City of Pampa v. Todd, Civ.App., 39 S.W. 2d 636, reversed on other grounds, Com.App., 59 S.W.2d 114—Texas Indemnity Ins. Co. v. Carson, Civ. App., 21 S.W.2d 691—El Paso Electric Co. v. Collins, Civ.App., 10 S. W.2d 397, reversed on other grounds, Com.App., 23 S.W. 2d 295, rehearing denied 25 S.W.2d 807—Texas & N. O. R. Co. v. Tilley, Civ. App., 297 S.W. 1063, affirmed, Com. App., 6 S.W.2d 86, certiorari denied 49 S.Ct. 36, 278 U.S. 642, 73 L.Ed. 556—U. S. Fidelity & Guaranty Co. v. Weir, Civ.App., 286 S. W. 565—St. Louis, S. F. & T. Ry. Co. v. Allen, Civ.App., 262 S.W. 1066, reversed on other grounds, Com.App., 278 S.W. 186—Cisco & N. E. Ry. Co. v. Wood, Civ.App., 244 S.W. 834—Panhandle & S. F. Ry. Co. v. Thompson, Civ.App., 235 S.W. 913, dismissed for want of jurisdiction—Northern Texas Traction Co. v. Smith, Civ.App., 223 S. W. 1013—San Antonio Portland Cement Co. v. Gschwender, Civ.App., 207 S.W. 967, error refused—Galveston, H. & S. A. Ry. Co. v. Brune, Civ.App., 181 S.W. 547—San Antonio & A. P. Ry. Co. v. Littleton, Civ.App., 180 S.W. 1194.

Vt.—Duchaine v. Ray, 6 A.2d 28, 110 Vt. 313—Parizo v. Wilson, 144 A. 856, 101 Vt. 514.

Wash.—Colburn v. Great Northern Ry. Co., 6 P.2d 635, 166 Wash. 200.

Wis.—Roeske v. Schmitt, 64 N.W.2d 394, 266 Wis. 557—Plautz v. Kubasta, 295 N.W. 667, 237 Wis. 198.

4 C.J. p 958 note 72.

14. Minn.—Elkins v. Minneapolis St. Ry. Co., 270 N.W. 914, 199 Minn. 63.

Miss.—Richton Tie & Timber Co. v. Smith, 48 So.2d 618, 210 Miss. 148.

Tex.—Jaques v. Ellis, Civ.App., 219 S.W.2d 104—Belcher v. Bullion, Civ.App., 121 S.W.2d 483—Collier & Love v. Welborn, Civ.App., 206 S.W. 708.

4 C.J. p 958 note 73.

15. Minn.—Shockman v. Union Transfer Co., 19 N.W.2d 812, 220 Minn. 334.

Tex.—Yellow Pine Paper Mill Co. v. Lyons, Civ.App., 159 S.W. 909.

16. Ill.—Dunne v. Bernardy, 184 Ill. App. 89.

Ky.—Louisville & N. R. Co. v. Laswell, 187 S.W.2d 732, 299 Ky. 799.

17. Cal.—Davis v. Franson, 296 P.2d 600, 141 C.A.2d 263.

4 C.J. p 958 note 76.

18. Va.—Crosswhite v. Barnes, 124 S.E. 242, 139 Va. 471, 40 A.L.R. 54.

4 C.J. p 958 note 77.

19. Ala.—Birmingham Elec. Co. v. Latham, 32 So.2d 515, 249 Ala. 592—Brewer v. Varner, 93 So. 448, 207 Ala. 466.

Ark.—Progressive Life Ins. Co. v. Hulbert, 118 S.W.2d 268, 196 Ark. 352.

Cal.—Deevy v. Tassi, 130 P.2d 389, 21 C.2d 109.

Meloy v. Texas Co., 263 P.2d 897, 121 C.A.2d 691—Miller v. Pacific Constructors, 157 P.2d 57, 68 C.A. 2d 529—Woebbe v. Sperry, 119 P. 2d 743, 48 C.A.2d 340—Hodge v. Weinstock, Lubin & Co., 293 P. 80, 109 C.A. 393.

Colo.—Louden Irrigating Canal & Reservoir Co. v. Neville, 227 P. 562, 75 Colo. 536.

Ga.—City of Commerce v. Bradford, 94 S.E.2d 160, 94 Ga.App. 284—Caldwell v. Brown, 57 S.E.2d 618, 80 Ga.App. 858.

Ill.—Carroll v. Krause, 15 N.E.2d 323, 295 Ill.App. 552—Fitzgerald v. Davis, 237 Ill.App. 488—Dale v. Chicago Junction Ry. Co., 174 Ill.App. 495.

and that error in making improper remarks is cured where the court instructs the jury to disregard the objectionable language,[20] or where the court reproves offending counsel and the remarks are withdrawn.[21] So, where an objection to an improper remark in argument is sustained, the judgment will not be reversed because of such argument unless substantial rights are prejudiced thereby.[22]

(2) Prejudicial Error

A judgment will be reversed for prejudicial acts, arguments, or remarks of counsel.

Although reversal will be granted only in extreme cases,[23] if it is apparent or probable that the act, argument, or remarks of counsel complained of were prejudicial, the cause must be reversed,[24] as,

Ind.—Industrial Casualty Ins. Co. v. Alspaugh, 44 N.E.2d 321, 112 Ind. App. 569.

Kan.—De Hardt v. Atchison, T. & S. F. Ry. Co., 163 P. 650, 100 Kan. 24, L.R.A.1917D 549.

Mich.—Gagush v. Hoeft, 171 N.W. 437, 208 Mich. 147, reheard 175 N. W. 170, 208 Mich. 147—Sergeant v. Grand Rapids & I. Ry. Co., 164 N.W. 500, 198 Mich. 385—City of Kalamazoo v. Standard Paper Co., 148 N.W. 743, 182 Mich. 476—Schock v. Cooling, 141 N.W. 675, 175 Mich. 313—Bruce v. Michigan Cent. R. Co., 138 N.W. 362, 172 Mich. 441—O'Connor v. City of Detroit, 125 N.W. 277, 160 Mich. 193—Reese v. Detroit United Ry., 124 N.W. 539, 159 Mich. 600.

Minn.—Lee v. Lee, 80 N.W.2d 529, 248 Minn. 496—**Corpus Juris quoted in** Krenik v. Westerman, 275 N. W. 849, 853, 201 Minn. 255.

Mo.—Pettis v. St. Louis Public Service Co., 240 S.W.2d 909—Pandjiris v. Oliver Cadillac Co., 98 S.W.2d 969, 339 Mo. 711.

Phelps v. Montgomery Ward & Co., 107 S.W.2d 939, 231 Mo.App. 595—Adams v. Carlo, App., 101 S. W.2d 753.

N.Y.—McGarry Contracting Co. v. Board of Education of City of New York, 34 N.Y.S.2d 29, 264 App.Div. 725, affirmed 45 N.E.2d 459, 289 N. Y. 706.

N.C.—Watson v. Whiteville Lumber Co., 69 S.E. 257, 153 N.C. 384.

Okl.—Hazelrigg Trucking Co. v. Duvall, 261 P.2d 204.

Pa.—Herb v. Hallowell, 154 A. 582, 304 Pa. 128, 85 A.L.R. 1004—Rutalonis v. Rospieski, 137 A. 606, 289 Pa. 456.

S.C.—Merritt v. Great Atlantic & Pacific Tea Co., 184 S.E. 145, 179 S.C. 474.

Tex.—Western Cottonoil Co. v. Patterson, Civ.App., 271 S.W.2d 106, error refused no reversible error—Dofner v. Branard, Civ.App., 236 S.W.2d 544, error refused no reversible error—Ricks v. Culp, Civ. App., 206 S.W.2d 285, error refused no reversible error—Peden Iron & Steel Co. v. Claflin, Civ.App., 146 S.W.2d 1062, error dismissed, judgment correct—Marvin Drug Co. v. Couch, Civ.App., 134 S.W.2d 356, error dismissed, judgment correct.

Utah.—Wright v. Downing, 211 P.2d 211, 116 Utah 465.

Vt.—Ryder's Adm'r v. Hayward, 126 A. 491, 98 Vt. 106, 36 A.L.R. 453.

Wis.—Gerbing v. McDonald, 229 N. W. 860, 201 Wis. 214, followed in 229 N.W. 864, 201 Wis. 222.

4 C.J. p 958 note 80.

Failure to stop argument

An instruction to consider the evidence without prejudice removes any objection to arguments of counsel, where the court was not requested to interpose during such argument.

N.C.—Reavis v. Orenshaw, 10 S.E. 907, 105 N.C. 369.

20. Ala.—Brewer v. Varner, 93 So. 448, 207 Ala. 466—W. T. Smith Lumber Co. v. McLain, 79 So. 370, 202 Ala. 32.

Cal.—Miller v. Pacific Constructors, 157 P.2d 57, 68 C.A.2d 529—Johns v. Mecchi, 2 P.2d 452, 116 C.A. 31.

Colo.—Tanner v. Harper, 75 P. 404, 32 Colo. 156.

Hawaii.—Saiki v. Lee Sing, 27 Hawaii 339.

Idaho.—De Lamater v. Little, 182 P. 853, 32 Idaho 358.

Ill.—Spiers v. Anderson Motor Service Co., 271 Ill.App. 178—Herberger v. Anderson Motor Service Co., 268 Ill.App. 403.

Iowa.—Bashaw-Joy Co. v. Walsh, 174 N.W. 399, 187 Iowa 574.

Mich.—Howie Co. v. Fibre Package Co., 196 N.W. 199, 225 Mich. 308.

Mo.—Wulsch v. Inland Valley Coal Co., App., 63 S.W.2d 423.

N.Y.—Chesebrough v. Conover, 35 N. E. 633, 140 N.Y. 382.

Young v. Fox, 49 N.Y.S. 634, 26 App.Div. 261, motion denied 50 N. E. 279, 155 N.Y. 615, 27 N.Y.Civ. Proc. 253, 5 N.Y.Ann.Cas. 189.

N.D.—Huus v. Ringo, 47 N.W.2d 216, 77 N.D. 837—Steen v. Neva, 163 N. W. 272, 37 N.D. 40—Lee v. St. Anthony & Dakota Elevator Co., 157 N.W. 689, 33 N.D. 567.

Okl.—Sharum v. Sharum, 200 P. 176, 82 Okl. 266.

Tex.—Darling v. Panhandle & Santa Fe Ry. Co., Civ.App., 209 S.W.2d 660, error refused no reversible error.

Vt.—Le Clair v. Montpelier & W. R. R. Co., 106 A. 587, 93 Vt. 92—Green v. Laclair, 99 A. 244, 91 Vt. 23—Seeley v. Central Vermont Ry. Co., 92 A. 28, 83 Vt. 178.

4 C.J. p 959 note 81.

21. Ala.—Birmingham Electric Co. v. Mann, 147 So. 165, 226 Ala. 379.

Ga.—O'Neill v. Pruitt, 36 S.E. 59, 110 Ga. 577.

N.H.—Heilman v. Whalley, 6 A.2d 168, 90 N.H. 215.

Tex.—Gulf Casualty Co. v. Taylor, Civ.App., 67 S.W.2d 415—Texas Employers' Ins. Ass'n v. Cheek, Civ.App., 63 S.W.2d 1103—Schnick v. Morris, Civ.App., 24 S.W.2d 491—Galveston, H. & S. A. Ry. Co. v. Watts, Civ.App., 182 S.W. 412.

Vt.—In re Sawyer's Will, 150 A. 128, 102 Vt. 473.

4 C.J. p 959 note 82.

Repeatedly offering evidence

In an action for commissions on a contract for the exclusive sale of defendant's farm, notwithstanding repeated offers of incompetent evidence by defendant that he had paid another for selling the farm, such offers, being excluded each time by the court, and defendant severely criticized for volunteering statements were not prejudicial to plaintiff.

Mich.—Bresee v. Lewis, 188 N.W. 385, 219 Mich. 41.

22. Idaho.—Labonte v. Davidson, 175 P. 588, 31 Idaho 644.

Ill.—Little v. Peoria Ry. Co., 215 Ill. App. 385—Reeb v. Bronson, 196 Ill.App. 518.

Mo.—Nelson v. O'Leary, 291 S.W.2d 142.

4 C.J. p 959 note 83.

23. Mo.—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180.

W.Va.—Burk v. Huntington Development & Gas Co., 58 S.E.2d 574, 133 W.Va. 817.

24. Ala.—Commonwealth Life Ins. Co. v. Brandon, 167 So. 723, 232 Ala. 265—Birmingham News Co. v. Payne, 162 So. 116, 230 Ala. 524—Adams v. Stewart, 153 So. 401, 228 Ala. 194.

City of Birmingham v. Kircus, 99 So. 780, 19 Ala.App. 614.

Cal.—Keena v. United Railroads of San Francisco, 239 P. 1061, 197 C. 148.

Bandoni v. Walston, 179 P.2d 365, 79 C.A.2d 178—Pennix v. Winton, 143 P.2d 940, 61 C.A.2d 33, hearing denied 145 P.2d 561, 61 C. A.2d 33—Weaver v. Shell Co. of California, 57 P.2d 571, 13 C.A.2d 643—Taylor v. Ætna Life Ins. Co., 22 P.2d 775, 132 C.A. 434—Deibler v. Wright, 6 P.2d 344, 119 C.A. 277.

Colo.—Irvin v. Blair, 68 P.2d 28, 100 Colo. 349.

Fla.—Seaboard Air Line R. Co. v. Ford, 92 So.2d 160—Blackwood v. Jones, 149 So. 600, 111 Fla. 528.

Ga.—Railway Exp. Agency v. Mathis, 63 S.E.2d 921, 83 Ga.App. 415.

Idaho.—Cogswell v. C. C. Anderson Stores Co., 192 P.2d 383, 68 Idaho 205—Stewart v. City of Idaho Falls, 103 P.2d 697, 61 Idaho 471.

Ill.—Daly v. New Staunton Coal Co., 117 N.E. 413, 280 Ill. 175.

Wagner v. Illinois Cent. R. Co., 129 N.E.2d 771, 7 Ill.App.2d 445—Baratta v. Chicago, R. I. & P. R. Co., 128 N.E.2d 581, 7 Ill.App.2d 17—Raucci v. Connelly, 91 N.E.2d 735, 340 Ill.App. 280—Perry v. Pitman, 80 N.E.2d 376, 335 Ill.App. 120—Goad v. Grissom, 57 N.E.2d 514, 324 Ill.App. 123—Paliokaitis v. Checker Taxi Co., 57 N.E.2d 216, 324 Ill.App. 21—Keehn v. Braubach, 30 N.E.2d 156, 307 Ill.App. 339—Sundquist v. Illinois Fire Ins. Co. of Peoria, 26 N.E.2d 750, 305 Ill.App. 160—Wayland v. City of Chicago, 21 N.E.2d 55, 300 Ill.App. 608—Holy v. Hitchcock, 17 N.E.2d 79, 297 Ill.App. 632—National Builders Bank of Chicago v. Sprague, 7 N.E.2d 471, 289 Ill.App. 618—Franko v. Crosby, 278 Ill.App. 416—Springfield Consol. R. Co. v. Bell, 134 Ill.App. 426—Thompson v. Hoppert, 120 Ill.App. 588—Holloway v. Johnson, 28 Ill.App. 463, reversed on other grounds in 21 N. E. 798, 129 Ill. 367. See Felan v. Lake Sand Co., 210 Ill.App. 244—Dawson v. Allen, 191 Ill.App. 399—McFadden v. Adams Express Co., 185 Ill.App. 572.

Iowa.—Pierce v. Heusinkveld, 14 N. W.2d 275, 234 Iowa 1348.

Kan.—Loftin v. City of Kansas City, 190 P.2d 378, 164 Kan. 412—Taylor v. F. W. Woolworth Co., 98 P.2d 114, 151 Kan. 233.

Ky.—Gray v. Bailey, 299 S.W.2d 126—Boden v. Rogers, 249 S.W.2d 707—Rucker v. Clark, 239 S.W.2d 80—Stacy v. Williams, 69 S.W.2d 697, 253 Ky. 353—Southern-Harlan Coal Co. v. Gallaier, 41 S.W.2d 661, 240 Ky. 106—Fidelity & Deposit Co. of Maryland v. Commonwealth, 21 S. W.2d 452, 231 Ky. 346—Connecticut Fire Ins. Co. v. Colker, 16 S.W. 2d 761, 229 Ky. 113—Kentucky Public Service Co. v. Topmiller, 263 S.W. 706, 204 Ky. 196—Gunterman v. Cleaver, 263 S.W. 683, 204 Ky. 62.

Mass.—Gardner v. State Taxi, Inc., 142 N.E.2d 586—Doherty v. Levine, 180 N.E. 168, 278 Mass. 418.

Mich.—Mitchell v. Perkins, 54 N.W. 2d 293, 334 Mich. 192—Saums v. Parfet, 258 N.W. 235, 270 Mich. 165—Ray v. Knowles, 255 N.W. 295, 267 Mich. 456—Van Hartesveldt v. Westrate, 250 N.W. 302, 264 Mich. 538—Pettersch v. Grand Rapids Gas Light Co., 222 N.W. 123, 245 Mich. 277—Fitzgerald v. Detroit United Ry., 172 N.W. 608, 206 Mich. 273.

Minn.—Hubred v. Wagner, 14 N.W.2d 115, 217 Minn. 129.

Miss.—Mississippi Power Co. v. Stribling, 3 So.2d 807, 191 Miss. 832.

Mo.—Dunn v. Terminal R. Ass'n of St. Louis, 285 S.W.2d 701—State ex rel. S. S. Kresge Co. v. Shain, 101 S.W.2d 14, 340 Mo. 145—Kirkpatrick v. Wells, 6 S.W.2d 591, 319 Mo. 1040—Brown v. Conser Laundry Co., 246 S.W. 166.

Hoffman v. Illinois Terminal R. Co., App., 274 S.W.2d 591—Schwinegruber v. St. Louis Public Service Co., App., 241 S.W.2d 782—Casto v. Railway Exp. Co., App., 219 S.W.2d 276—Klinginsmith v. Mutual Ben. Health & Accident Ass'n, App., 64 S.W.2d 705—Harris v. Chouteau Shoe Mfg. Co., App., 16 S.W.2d 633—City Trust Co. v. Cunningham, App., 7 S.W.2d 456—Junge v. Pehl, App., 240 S. W. 278—Jackman v. St. Louis & H. Ry. Co., App., 206 S.W. 244.

Neb.—Bergendahl v. Rabeler, 268 N. W. 459, 131 Neb. 538.

N.H.—Bruton v. Leavitt Stores Corporation of New Hampshire, 179 A. 185, 87 N.H. 304—Boyle v. Dudley, 179 A. 11, 87 N.H. 282—Smith v. Boston & M. R. R., 177 A. 729, 87 N.H. 246—Wason v. Nashua, 155 A. 681, 85 N.H. 192—McDonnell v. Merrill, 109 A. 264, 79 N.H. 379.

N.Y.—Smith v. Majestic Iron Works, Inc., 161 N.Y.S.2d 425, 2 N.Y.2d 544, 141 N.E.2d 818.

Katona v. Jennings, 157 N.Y.S. 2d 773, 3 A.D.2d 642—Arkport State Bank v. Nutter, 130 N.Y.S.2d 343, 284 App.Div. 86—Luther v. Jacobs, 122 N.Y.S.2d 518, 282 App. Div. 809—Kopp v. Hoffman, 116 N. Y.S.2d 194, 280 App.Div. 954—Flamm v. Noble, 86 N.Y.S.2d 253, 274 App.Div. 1037—Bart v. City of New York, 84 N.Y.S.2d 1, 274 App. Div. 946—Tropp v. Jacobs, 77 N. Y.S.2d 179, 273 App.Div. 274—Clark v. Marth, 60 N.Y.S.2d 844, 270 App. Div. 895—Jacobsen v. Wisotsky, 60 N.Y.S.2d 409, 270 App.Div. 849—O'Hara v. Derschug, 272 N.Y.S. 189, 241 App.Div. 513—Copp v. Ross, 261 N.Y.S. 187, 236 App.Div. 636—Regan v. Frontier Elevator & Mill Co., 208 N.Y.S. 239, 211 App. Div. 164—Boutet v. City of New York, 192 N.Y.S. 608, 199 App.Div. 835—Shea v. Shea, 188 N.Y.S. 693, 197 App.Div. 126—Hughes v. Lehigh Valley R. Co., 173 N.Y.S. 893, 186 App.Div. 92—Wolff v. United Drug Co., 168 N.Y.S. 862, 181 App. Div. 628—Amsler v. Soraci Contracting Co., 158 N.Y.S. 219, 172 App.Div. 63.

Secor v. Heyman, 205 N.Y.S. 348, 123 Misc. 168.

N.C.—Edwards v. Perry, 185 S.E. 425, 210 N.C. 24.

Ohio.—Plas v. Holmes Const. Co., 104 N.E.2d 689, 157 Ohio St. 95—Book v. Erskine & Sons, 96 N.E.2d 289, 154 Ohio St. 391, 32 A.L.R.2d 1.

Hubach v. Cole, App., 31 N.E.2d 736—Franklin v. Nowak, 4 N.E.2d 232, 53 Ohio App. 44—Breymann v. Pennsylvania, O. & D. R. Co., 183 N.E. 771, 43 Ohio App. 473—Industrial Commission of Ohio v. Gillard, 179 N.E. 514, 41 Ohio App. 297—Machaterre v. Dusha, 164 N. E. 783, 30 Ohio App. 242.

American Bonding Co. v. Conroy, 11 Ohio N.P.,N.S., 382.

Okl.—Green Const. Co. v. Lampe, 50 P.2d 286, 174 Okl. 351—Tulsa Street Ry. Co. v. Beauchamp, 223 P. 636, 98 Okl. 52—St. Louis & S. F. R. Co. v. Stacy, 171 P. 870, 77 Okl. 165.

Or.—Arnett v. Scherer, 20 P.2d 803, 142 Or. 494.

Pa.—Bullock v. Chester & Darby Telford Road Co., 113 A. 379, 270 Pa. 295—Joyce v. Smith, 112 A. 549, 269 Pa. 439.

S.C.—Lemons v. Pilot Life Ins. Co., 13 S.E.2d 278, 196 S.C. 297—Baker v. Southern Cotton Oil Co., 159 S. E. 822, 161 S.C. 479—Edwards v. Union Buffalo Mills Co., 159 S.E. 811, 162 S.C. 17.

S.D.—Egan v. Dotson, 155 N.W. 783, 36 S.D. 459, Ann.Cas.1917A 296.

Tex.—Galveston, etc., R. Co. v. Cooper, 8 S.W. 68, 70 Tex. 67.

Regester v. Lang, Com.App., 49 S.W.2d 715—Robbins v. Wynne, Com.App., 44 S.W.2d 946—Houston E. & W. T. Ry. Co. v. Sherman, Com.App., 42 S.W.2d 241—Texas & P. Ry. Co. v. Edwards, Com.App., 36 S.W.2d 477—Lottman v. Cuilla, Com.App., 288 S.W. 123—Parker v. Miller, Com.App., 268 S.W. 726.

Stafford v. Steward, Civ.App., 295 S.W.2d 665, agreement dismissed—Plains Creamery v. Denny, Civ. App., 277 S.W.2d 755, error refused no reversible error—Warren Petroleum Corp. v. Pyeatt, Civ.App., 275 S.W.2d 216, error refused no reversible error—United Fidelity Life Ins. Co. v. Holliday, Civ.App., 226 S.W.2d 139, error refused no reversible error—Stewart v. Shoemake, Civ.App., 225 S.W.2d 873, error refused no reversible error—Mosey v. Texas & P. Ry. Co., Civ. App., 191 S.W.2d 55—Wagley v. Fambrough, Civ.App., 163 S.W.2d 1072, affirmed 169 S.W.2d 478, 140 Tex. 577—Crow v. Levine, Civ.App., 165 S.W.2d 117, error refused—Tucker v. Newth, Civ.App., 157 S. W.2d 1010, error refused—Texas & Pac. Ry. Co. v. Cassaday, Civ. App., 148 S.W.2d 471, error dismissed, judgment correct—McMullen v. Coleman, Civ.App., 135 S.W. 2d 776, followed in McMullen v. Scott, 135 S.W.2d 779—State v. Lone Star Gas Co., Civ.App., 129 S.W.2d 1164, modified on other grounds 153 S.W.2d 681, 137 Tex.

for instance, where the verdict is excessive[25] or against the preponderance of the evidence,[26] especially where the court refuses to take corrective action,[27] or where the court approves of such act,

279, petition denied Ex parte State of Texas, 62 S.Ct. 418, 315 U.S. 8, 86 L.Ed. 579—State v. Guardian Foundation of Texas, Civ.App., 128 S.W.2d 880, error dismissed, judgment correct—Southern Underwriters v. Thompson, Civ.App., 127 S.W.2d 389, error dismissed—Federal Underwriters Exchange v. Crow, Civ.App., 118 S.W.2d 1073, error dismissed—Gulf Casualty Co. v. Archer, Civ.App., 118 S.W.2d 976, error dismissed—Johnson v. Durst, Civ.App., 115 S.W.2d 1000, error dismissed—Texas Employers' Ins. Ass'n v. Rowell, Civ.App., 104 S.W.2d 613—The Maccabees v. Rector, Civ.App., 103 S.W.2d 232, error dismissed—Liberty Mut. Ins. Co. v. McDaniel, Civ.App., 102 S.W.2d 493—Trinity-Universal Ins. Co. v. Maxwell, Civ.App., 101 S.W.2d 606, error dismissed—Johnson v. Universal Life & Accident Ins. Co., Civ.App., 96 S.W.2d 674—MacFadden's Publications v. Hardy, Civ.App., 95 S.W.2d 1023, error refused—Traders & General Ins. Co. v. Childers, Civ.App., 95 S.W.2d 461, error dismissed—Allen v. Denk, Civ.App., 87 S.W.2d 303—Campbell Paint & Varnish Co. v. Ladd Furniture & Carpet Co., Civ.App., 83 S.W.2d 1095, error dismissed—O'Neal Furniture Co. v. Laughlin, Civ.App., 80 S.W.2d 814—Southern Enterprises of Texas v. Marek, Civ.App., 68 S.W.2d 384, reversed on other grounds 99 S.W.2d 594, 128 Tex. 377, conformed to 101 S.W.2d 591—Sovereign Camp, W. O. W. v. Barnes, Civ.App., 67 S.W.2d 417—Herd v. Wade, Civ.App., 63 S.W.2d 253—City Packing Co. v. Brooks Paper Co., Civ.App., 62 S.W.2d 622—Industrial Ins. Co. v. Frazier, Civ.App., 62 S.W.2d 287—Hudson Ins. Co. v. McKnight, Civ.App., 58 S.W.2d 1088—Wichita Falls & S. R. Co. v. Wade, Civ.App., 57 S.W.2d 332—Pacific Fire Ins. Co. v. Fain, Civ.App., 54 S.W.2d 226—Texas & N. O. R. Co. v. Bass, Civ.App., 54 S.W.2d 172—Indemnity Ins. Co. of North America v. Harris, Civ.App., 53 S.W.2d 631—Dallas Ry. & Terminal Co. v. Curtis, Civ.App., 53 S.W.2d 85—Gray v. Cheatham, Civ.App., 52 S.W.2d 762—Byrne v. Williams, Civ.App., 45 S.W.2d 336—West Texas Transp. Co. v. Hash, Civ.App., 43 S.W.2d 152—Dallas Ry. & Terminal Co. v. Smith, Civ.App., 42 S.W.2d 794—Morgan v. Maunders, Civ.App., 37 S.W.2d 791—Monzingo v. Jones, Civ.App., 34 S.W.2d 662—Hewitt v. Buchanan, Civ.App., 4 S.W.2d 169—Security Union Ins. Co. v. Alsop, Civ.App., 1 S.W.2d 921—Eastern Texas Electric Co. v. Rhymes, Civ.App., 1 S.W.2d 688—Bankers' & Shippers' Ins. Co. of New York v. Sharber Grocery Co., Civ.App., 297 S.W. 474—Texas Employers' Ins. Ass'n v. McGrady, Civ.App., 296 S.W. 920—Hull & Kennedy v. Christian, Civ.App., 283 S.W. 568—Wieser v. Oates, Civ.App., 234 S.W. 553—Ft. Worth, etc., R. Co. v. Burton, 60 S.W. 316, 25 Tex.Civ.App. 63.

Vt.—Wilson v. Dyer, 75 A.2d 677, 116 Vt. 342—Russell v. Pilger, 37 A.2d 403, 113 Vt. 537.

Va.—Norfolk & W. R. Co. v. Eley, 148 S.E. 678, 152 Va. 773.

Wash.—Sumpter v. National Grocery Co., 78 P.2d 1087, 194 Wash. 598, 116 A.L.R. 1166.

Wis.—Horgen v. Chaseburg State Bank, 279 N.W. 33, 227 Wis. 510.

4 C.J. p 959 note 84.

Case tried to court

Ordinarily, courts hesitate to reverse a case tried to a court for misconduct of appellee's counsel, but will do so where he went beyond the limits permissible even in such trial.

Ariz.—Frankel v. Frankel, 18 P.2d 911, 41 Ariz. 396.

Effect on verdict not sole test

Fact that attorney's statement before jury may have had some effect on verdict would not of itself make statement "prejudicial" in the legal sense if it was not otherwise subject to objection.

Ga.—Grice v. Grice, 30 S.E.2d 183, 197 Ga. 686.

25. Ala.—American Ry. Express Co. v. Reid, 113 So. 507, 216 Ala. 479.

Ga.—Wood v. Venable, 64 S.E.2d 387, 83 Ga.App. 498.

Ill.—Eshelman v. Rawalt, 131 N.E. 675, 298 Ill. 192, 16 A.L.R. 1311.

Frye v. Illinois Power & Light Corp., 22 N.E.2d 232, 301 Ill.App. 617—Nicholson v. O'Donald, 79 Ill. App. 195.

Kan.—Rouse v. Walker, 64 P.2d 47, 145 Kan. 133.

Mich.—Toutloff v. King, 5 N.W.2d 542, 302 Mich. 689—Layton v. Cregan & Mallory Co., 257 N.W. 888, 269 Mich. 574.

Minn.—Baird v. Chicago, M., St. P. & P. R. Co., 228 N.W. 552, 179 Minn. 127.

Miss.—Mississippi Power Co. v. Stribling, 3 So.2d 807, 191 Miss. 832—New Orleans & N. E. R. Co. v. Jackson, 105 So. 770, 140 Miss. 375.

Mo.—Bartch v. Terminal R. Ass'n of St. Louis, App., 264 S.W.2d 937.

N.Y.—Helmeyer v. City of New York, 293 N.Y.S. 350, 250 App.Div. 723.

Ohio.—Franklin v. Nowak, 4 N.E.2d 232, 53 Ohio App. 44.

Pa.—Bullock v. Chester & Darby Telford Road Co., 113 A. 379, 270 Pa. 295.

Emery v. Eagle Printing Co., 19 Pa.Dist. 128, 36 Pa.Co. 419.

Tex.—Nicholson v. Nicholson, Civ. App., 22 S.W.2d 514—Southwestern Telegraph & Telephone Co. v. Long, Civ.App., 183 S.W. 421—Southern Pac. Co. v. Hart, 116 S.W. 415, 53 Tex.Civ.App. 536.

4 C.J. p 959 note 86.

26. Fla.—Griffith v. Shamrock Village, Inc., 94 So.2d 854.

Tex.—Cannady v. Dallas Ry. & Terminal Co., Civ.App., 219 S.W.2d 816—Southwestern Land & Loan Co. v. Burr, Civ.App., 285 S.W. 675.

Vt.—Wilson v. Dyer, 75 A.2d 677, 116 Vt. 342.

4 C.J. p 959 note 87.

27. Ala.—Britling Cafeteria Co. v. Shotts, 162 So. 378, 230 Ala. 597—MacArthur Bros. Co. v. Middleton, 75 So. 895, 200 Ala. 147.

Ark.—Tri-State Transit Co. of Louisiana v. Westbrook, 180 S.W.2d 121, 207 Ark. 270—St. Louis, etc., R. Co. v. Harrison, 89 S.W. 53, 76 Ark. 430.

Ga.—Atlanta Coca Cola Bottling Co. v. Childers, 5 S.E.2d 388, 60 Ga. App. 868—Georgia R., etc., Co. v. Dougherty, 62 S.E. 158, 4 Ga.App. 614.

Ill.—Westbrook v. Chicago & N. W. Ry. Co., 248 Ill.App. 446.

Mass.—Heina v. Broadway Fruit Market, 24 N.E.2d 510, 304 Mass. 608—Hart v. Morris & Co., 156 N. E. 15, 259 Mass. 211.

Mich.—McDonald v. Hall, 170 N.W. 68, 203 Mich. 431—Jolman v. Alberts, 153 N.W. 11, 186 Mich. 643.

Minn.—Anderson v. Hawthorn Fuel Co., 277 N.W. 259, 201 Minn. 580—In re Judicial Ditch No. 4 of Traverse and Big Stone Counties, 142 N.W. 802, 122 Minn. 392.

Mo.—Goucher v. Woodmen Accident Co. v. Lincoln, Neb., 104 S.W.2d 289, 231 Mo.App. 573—Cooper v. Metropolitan Life Ins. Co., App., 94 S.W.2d 1070—Sculley v. Rolwing, App., 88 S.W.2d 394—Smith v. St. Louis Public Service Co., App., 84 S.W.2d 161—Graesser v. St. Louis Public Service Co., App., 78 S.W.2d 551—Davis v. Quermann, App., 22 S.W.2d 58—Primmer v. America Car & Foundry Co., App., 299 S.W. 825—Johnson v. Atchison, T. & S. F. Ry. Co., App., 290 S. W. 462—Stroud v. Doe Run Lead Co., App., 272 S.W. 1080—Stubenhaver v. Kansas City Rys. Co., App., 213 S.W. 144—Bergfeld v. Dunham, App., 201 S.W. 640.

N.H.—Duplessis v. Guyon, 116 A. 342, 80 N.H. 317.

N.J.—Leffler v. Ætna Life Ins. Co., 196 A. 732, 119 N.J.Law 370.

N.Y.—Kraus v. Sobel, 196 N.Y.S. 845, 203 App.Div. 582.

argument, or remarks.[28]

The cause must be reversed where there is reasonable or substantial doubt as to the influence upon the jury of the matter complained of,[29] or where the case is closely contested or there is a doubt as to the sufficiency of the evidence to sustain the verdict;[30] and that too, notwithstanding the court takes

Ohio.—Plas v. Holmes Const. Co., 104 N.E.2d 689, 157 Ohio St. 95—Herman v. Teplitz, 148 N.E. 641, 113 Ohio St. 164.
Souder v. Hassenfeldt, 194 N.E. 47, 48 Ohio App. 377.
L. S. & M. S. R. Co. v. Latto, 17 Ohio Cir.Ct.,N.S., 160.
Okl.—Green Const. Co. v. Lampe, 50 P.2d 286, 174 Okl. 351.
Pa.—Glasco v. Green, 117 A. 79, 273 Pa. 353—Bullock v. Chester & Darby Telford Road Co., 113 A. 379, 270 Pa. 295.
S.C.—Rivers v. Industrial Life & Health Ins. Co., 174 S.E. 595, 173 S.C. 45.
S.D.—Cooper v. Holscher, 243 N.W. 739, 60 S.D. 83.
Tex.—Texas & N. O. R. Co. v. Sturgeon, 177 S.W.2d 264, 142 Tex. 222.
Kahn v. Green, Civ.App., 234 S.W.2d 131—Stephens v. Smith, Civ. App., 208 S.W.2d 689, error refused no reversible error—Daily v. Sugarland Industries, Civ.App., 124 S.W.2d 199, reversed on other grounds 143 S.W.2d 931, 135 Tex. 532—Black v. Lowe, Civ.App., 123 S.W.2d 955—Carter Publications v. Fleming, Civ.App., 79 S.W.2d 1105, reversed on other grounds 106 S.W.2d 672, 129 Tex. 667—Sanders v. Lowrimore, Civ.App., 73 S.W.2d 148, reversed on other grounds 103 S.W.2d 739, 129 Tex. 563, reheard, 106 S.W.2d 266, 129 Tex. 563—Elgin v. Banks, Civ.App., 38 S.W.2d 149—Watson v. Watson, Civ. App., 28 S.W.2d 1100—Krause v. Young, Civ.App., 6 S.W.2d 800—Missouri-Kansas-Texas R. Co. of Texas v. Thomason, Civ.App., 3 S.W.2d 106—U. S. Fidelity & Guaranty Co. v. Weir, Civ.App., 286 S.W. 565—Western Indemnity Co. v. Corder, Civ.App., 249 S.W. 316—Huston v. Scarborough, Civ.App., 221 S.W. 703—Dean v. Dean, Civ. App., 214 S.W. 505—S. A. Pace Grocery Co. v. Guynes, Civ.App., 204 S.W. 794—Galveston, H. & H. R. Co. v. Hodnett, Civ.App., 182 S.W. 7.
Vt.—Tyrrell v. Prudential Ins. Co. of America, 192 A. 184, 109 Vt. 6, 115 A.L.R. 392.
Va.—Eagle, Star and British Dominions Ins. Co. v. Heller, 140 S.E. 314, 149 Va. 82, 57 A.L.R. 490.
4 C.J. p 959 note 85.

Reason for rule

Refusal to withdraw from the jury or instruct them not to regard improper argument is a tacit approval thereof.
Tex.—Missouri-Kansas-Texas R. Co. of Texas v. Thomason, Civ.App., 3 S.W.2d 106.

Merely allowing exception

Allowing an exception to the argument, without warning the jury to disregard it, is, in effect, a ruling that the argument was proper.
N.H.—Bruton v. Leavitt Stores Corporation of New Hampshire, 179 A. 185, 87 N.H. 304.
Vt.—Landry v. Hubert, 137 A. 97, 100 Vt. 268—Hall v. Fletcher, 136 A. 388, 100 Vt. 210—Mount Ida School v. Gilman, 116 A. 71, 96 Vt. 13.

Failure to interfere

Failure on request to restrain counsel from indulging in improper and unwarranted argument is error, although the court states that it will charge the jury on the law of the case.
N.Y.—Jennings v. Kosmak, 45 N.Y. S. 802, 20 Misc. 300.

Insufficient instruction

Error in overruling objection to counsel's argument based on the failure of the executor's lawyer who drew the will to testify is not cured by an instruction that it is a reprehensible practice in lawyers to testify.
Ill.—Ravenscroft v. Stull, 117 N.E 602, 280 Ill. 406, Ann.Cas.1918B 1130.

28. Ill.—Chicago City R. Co. v. Reddick, 139 Ill.App. 160.
Mo.—Prague v. Eddy, 214 S.W.2d 521, 358 Mo. 327.
Villinger v. Nighthawk Freight Service, App., 104 S.W.2d 740.
N.H.—Humphreys v. Ash, 6 A.2d 436, 90 N.H. 223.
Tex.—Bell v. Bell, Civ.App., 248 S.W.2d 978, error refused no reversible error.

29. Kan.—Powell v. Kansas Yellow Cab Co., 131 P.2d 686, 156 Kan 150, opinion supplemented on other grounds 133 P.2d 755, 156 Kan. 406.
N.H.—Ferris v. Saulnier, 4 A.2d 651, 90 N.H. 96.
N.Y.—Freeman v. Manhattan Cab Corp., 150 N.Y.S.2d 674, 1 Misc.2d 601.
Tenn.—Tubb v. Boyd, 13 Tenn.App. 432.
Tex.—Traders & General Ins. Co. v. Ross, 117 S.W.2d 423, 131 Tex. 562—Hubb Diggs Co. v. Bell, 293 S.W. 808, 116 Tex. 427.
McClintic v. J. D. Young Corporation, Com.App., 66 S.W.2d 676—Rio Grande, E. P. & S. F. R. Co. v. Dupree, Com.App., 55 S.W.2d 522—West Texas Utilities Co. v. Renner, Com.App., 53 S.W.2d 451—Floyd v. Fidelity Union Casualty Co., Com.App., 39 S.W.2d 1091.
Armstrong v. Missouri-K.-T.-R. Co. of Tex., Civ.App., 233 S.W.2d 942, certiorari denied 72 S.Ct. 62, 342 U.S. 837, 96 L.Ed. 633, error refused no reversible error—Panhandle & Santa Fe Ry. Co. v. Ray, Civ.App., 221 S.W.2d 936, error refused no reversible error—Texas Emp. Ins. Ass'n v. Cooper, Civ.App., 194 S.W.2d 819, error refused no reversible error—American Emps.' Ins. Co. v. Kellum, Civ.App., 185 S.W.2d 113, refused for want of merit—Texas Employers' Ins. Ass'n v. Drayton, Civ. App., 173 S.W.2d 782, error refused—Ragsdale v. Ragsdale, Civ. App., 172 S.W.2d 381, affirmed 179 S.W.2d 291, 142 Tex. 476—Texas & Pac. Ry. Co. v. Cassaday, Civ. App., 148 S.W.2d 471, error dismissed, judgment correct—Fort Worth Hotel Co. v. Waggoman, Civ.App., 126 S.W.2d 578, error dismissed, judgment correct—Presley v. Wilson, Civ.App., 125 S.W.2d 654, error dismissed, judgment correct—Texas Cab Co. v. Patton, Civ.App., 125 S.W.2d 411—Black v. Lowe, Civ.App., 123 S.W. 2d 955—Johnson v. Durst, Civ. App., 115 S.W.2d 1000, error dismissed—Trinity-Universal Ins. Co. v. Maxwell, Civ.App., 101 S.W. 2d 606, error dismissed—Ringling Bros. and Barnum & Bailey Combined Shows v. Wilkinson, Civ. App., 83 S.W.2d 705—Dale v. Stevens, Civ.App., 75 S.W.2d 129—Gulf States Utilities Co. v. Cauthen, Civ.App., 72 S.W.2d 370—Lamar Life Ins. Co. v. Bauer, Civ.App., 70 S.W.2d 600—Sovereign Camp, W. O. W. v. Barnes, Civ. App., 67 S.W.2d 417—Vaughan v. Kishineff, Civ.App., 63 S.W.2d 1081—Hudson Ins. Co. v. McKnight, Civ.App., 58 S.W.2d 1088—Texas & N. O. R. Co. v. Owens, Civ. App., 54 S.W.2d 848—Pacific Fire Ins. Co. v. Fain, Civ.App., 54 S.W. 2d 226—Tabor v. McKenzie, Civ. App., 49 S.W.2d 874—Nicholson v. Nicholson, Tex.Civ.App., 22 S.W.2d 514—Thetford v. Modern Woodmen of America, Civ.App., 273 S.W. 666.
4 C.J. p 959 note 88.

Question of law

Whether there is reasonable doubt of the harmful effect of an improper argument is a question of law.
Tex.—Saenger v. Dallas Ry. & Terminal Co., Civ.App., 67 S.W.2d 351—Hudson Ins. Co. v. McKnight, Civ.App., 58 S.W.2d 1088.

30. Ark.—St. Louis, I. M. & S. R. Co. v. Hairston, 188 S.W. 838, 125 Ark. 314.

such steps as are possible to eradicate the improper effect of the action complained of.[31] So, if remarks are in fact prejudicial, it is of no consequence that they are not designedly so;[32] but in determining whether they are prejudicial, it has been held that the test is whether there was such a lack of good faith on the part of counsel, under all the circumstances, that it cannot reasonably be said that appellant's rights were not prejudiced thereby.[32.5]

In accordance with these principles the judgment has been reversed for misconduct of counsel in making inflammatory and unjustified remarks,[33] for

Cal.—Boyd v. Theetgee, 177 P.2d 637, 78 C.A.2d 346.
Ill.—Ind. v. Davis, 125 N.E.2d 852, 5 Ill.App. 483.
Ky.—Chappell v. Doepel, 192 S.W.2d 809, 301 Ky. 622.
Mo.—Johnson v. St. Louis Public Service Co., 251 S.W.2d 70, 363 Mo. 380.
Tex.—Metropolitan Life Ins. Co. v. Moss, Civ.App., 109 S.W.2d 1035, error dismissed—Coleman v. Moore, Civ.App., 87 S.W.2d 300—Crutcher v. Swindler, Civ.App., 250 S.W. 1078—Colorado Canal Co. v. Sims, Civ.App., 82 S.W. 531.
Wis.—Plautz v. Kubasta, 295 N.W. 667, 237 Wis. 198.
4 C.J. p 959 note 89.

31. Ala.—City of Birmingham v. Williams, 164 So. 101, 231 Ala. 232.
Ill.—Westbrook v. Chicago & N. W. Ry. Co., 248 Ill.App. 446—Weakley v. Mizell, 193 Ill.App. 494.
Mich.—Van Hartesveldt v. Westrate, 250 N.W. 302, 264 Mich. 538—Ellsworth v. Massacar, 184 N.W. 408, 215 Mich. 511.
N.D.—Stoskoff v. Wicklund, 193 N.W. 312, 49 N.D. 708.
R.I.—Pontes v. United Electric Rys. Co., 170 A. 674, 54 R.I. 139.
4 C.J. p 959 note 90.

32. Ill.—Chicago Union Traction Co. v. Lauth, 74 N.E. 738, 216 Ill. 176.
Mich.—Ward v. Reed, 96 N.W. 438, 134 Mich. 392.

32.5 Ind.—Kickels v. Fein, 10 N.E. 2d 297, 104 Ind.App. 606.

33. Ala.—British General Ins. Co. v. Simpson Sales Co., 93 So.2d 763, 265 Ala. 683.
Colo.—Denver & R. G. R. Co. v. Caddo Realty Co., 182 P. 877, 66 Colo. 403.
Fla.—Seaboard Air Line R. Co. v. Strickland, 88 So.2d 519.
Idaho.—Bates v. Price, 166 P. 261, 30 Idaho 521.
Ill.—Osborn v. Albers, 7 N.E.2d 447, 365 Ill. 631.
Wilson v. Esch, 105 N.E.2d 313, 346 Ill.App. 466—Johnson v. Stotts, 101 N.E.2d 880, 344 Ill.App. 614—Polk v. Kavelin, 76 N.E.2d 353, 332 Ill.App. 660—Hayes v. New York Cent. R. Co., 67 N.E.2d 215, 328 Ill.App. 631—Paliokaitis v. Checker Taxi Co., 57 N.E.2d 216, 324 Ill.App. 21—Keehn v. Braubach, 30 N.E.2d 156, 307 Ill.App. 339—Lyons v. Haumiller, 23 N.E. 2d 942, 302 Ill.App. 172—Wayland v. City of Chicago, 21 N.E.2d 55, 300 Ill.App. 608—Cooney v. F. Landon Cartage Co., 16 N.E.2d 561, 296 Ill.App. 474—Gadsky v. Bentley, 15 N.E.2d 67, 295 Ill.App. 619—Collins v. Hastings, 283 Ill. App. 304—Franko v. Crosby, 278 Ill.App. 416—Christie v. Sanitary Dist. of Chicago, 256 Ill.App. 63—Westbrook v. Chicago & N. W. Ry. Co., 248 Ill.App. 446—Paulsen v. McAvoy Brewing Co., 220 Ill.App. 273—Foster v. Smith, 184 Ill.App. 255. See McCormick v. Decker, 193 Ill.App. 451—Martin v. Adams Exp. Co., 187 Ill.App. 214.
Iowa.—Howard v. Porter, 35 N.W.2d 837, 240 Iowa 153—Iowa Automobile & Supply Co. v. Manbeck, 165 N.W. 309, 183 Iowa 159.
Kan.—Taylor v. F. W. Woolworth Co., 98 P.2d 114, 151 Kan. 233.
Ky.—Wagner v. Emmett, 280 S.W.2d 210—Boden v. Rogers, 249 S.W.2d 707—Spencer v. Matthews, 247 S. W.2d 515—Louisville & N. R. Co. v. Gregory, 144 S.W.2d 519, 284 Ky. 297—Equitable Life Assur. Soc. of U. S. v. Witten, 77 S.W.2d 53, 256 Ky. 766—Southern-Harlan Coal Co. v. Gallaier, 41 S.W.2d 661, 240 Ky. 106—Consolidated Coach Corporation v. Garmon, 26 S.W.2d 20, 233 Ky. 464.
Mich.—Sherwood v. Evening News Ass'n, 239 N.W. 305, 256 Mich. 318—Johnson v. Michigan Mut. Sav. Ass'n, 219 N.W. 736, 242 Mich. 558—Master Spark Co. v. Hickerson, 179 N.W. 232, 211 Mich. 411.
Minn.—James v. Chicago, St. P., M. & O. Ry. Co., 16 N.W.2d 188, 218 Minn. 333—Ferraro v. Taylor, 265 N.W. 829—Jovaag v. O'Donnell, 249 N.W. 676, 189 Minn. 315.
Miss.—Morrell Packing Co. v. Branning, 124 So. 356, 155 Miss. 376.
Mo.—Wood v. St. Louis Public Service Co., 246 S.W.2d 807, 362 Mo. 1103—Calloway v. Fogel, 213 S.W. 2d 405, 358 Mo. 47—Carpenter v. Kurn, 136 S.W.2d 997, 345 Mo. 877—State ex rel. S. S. Kresge Co. v. Shain, 101 S.W.2d 14, 340 Mo. 145—Hancock v. Kansas City Terminal Ry. Co., 100 S.W.2d 570, 339 Mo. 1237—Amsinger v. Najim, 73 S.W.2d 214, 335 Mo. 528—Nelson v. Heine Boiler Co., 20 S.W.2d 906, 323 Mo. 826—Chawkley v. Wabash Ry. Co., 297 S.W. 20, 317 Mo. 782—Atkinson v. United Rys. Co., 228 S. W. 483, 286 Mo. 634.
Fisher v. John Hancock Mut. Life Ins. Co. of Boston, Mass., App., 229 S.W.2d 246—Foster v. Kurn, 133 S.W.2d 1114, 234 Mo. App. 909—Huggins v. City of Hannibal, App., 280 S.W. 74.
Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655—Sandomierski v. Fixemer, 81 N.W.2d 142, 163 Neb. 716.
N.H.—Ferris v. Saulnier, 4 A.2d 651, 90 N.H. 96.
N.Y.—Loughlin v. Brassil, 79 N.E. 854, 187 N.Y. 128.
Holmes v. City of New York, 45 N.Y.S.2d 469, 267 App.Div. 782, resettlement denied 47 N.Y.S.2d 320, 267 App.Div. 878—Pearson v. Esdo Bldg. Corporation, 35 N.Y.S.2d 365, 264 App.Div. 862—Bowen v. Mahoney Coal Corp., 10 N.Y.S.2d 454, 256 App.Div. 485—Ercolino v. New York Rapid Transit Corporation, 7 N.Y.S.2d 815, 255 App.Div. 877—Havern v. Hoffmann, 299 N.Y.S. 530, 252 App.Div. 486—Price v. Mullen, 288 N.Y.S.2d 828, 247 App. Div. 532—O'Hara v. Derschug, 272 N.Y.S. 189, 241 App.Div. 513—Romeo v. United Traction Co., 212 N.Y.S. 435, 214 App.Div. 337.
Zemliansky v. United Parcel Service, 24 N.Y.S.2d 672, 175 Misc. 829.
Marshall v. City of New York, 100 N.Y.S.2d 388, affirmed 105 N.Y. S.2d 399, 278 App.Div. 812—Marchant v. Fred F. French Management Co., 90 N.Y.S.2d 5.
N.D.—Crosby v. Minneapolis, St. P. & S. S. M. Ry. Co., 237 N.W. 803, 61 N.D. 293.
Ohio.—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87.
Okl.—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845.
Pa.—Mittleman v. Bartikowsky, 129 A. 566, 283 Pa. 485.
Bloom v. Hopman, 98 A.2d 414, 173 Pa.Super. 292—City of Philadelphia v. Cline, 44 A.2d 610, 158 Pa.Super. 179, certiorari denied 66 S.Ct. 1120, 328 U.S. 848, 90 L.Ed. 1621.
S.C.—Major v. Alverson, 190 S.E. 449, 183 S.C. 123.
S.D.—Kloppenburg v. Kloppenburg, 280 N.W. 209, 66 S.D. 174.
Tex.—Southwestern Greyhound Lines v. Dickson, 236 S.W.2d 115, 149 Tex. 599—Airline Motor Coaches v. Bennett, 187 S.W.2d 982, 144 Tex. 36—Ramirez v. Acker, 138 S. W.2d 1054, 134 Tex. 647—Southern Ice & Utilities Co. v. Richardson, 95 S.W.2d 956, 128 Tex. 82—Woodard v. Texas & P. R. Co., 86 S.W.2d 38, 126 Tex. 30—Humphreys v.

example, appealing to racial and class prejudices,[34] calling attention to the poverty or wealth of the contending parties,[35] charging without foundation opposing counsel with unprofessional conduct,[36]

Roberson, 83 S.W.2d 311, 125 Tex. 558.

Plains Creamery v. Denny, Civ. App., 277 S.W.2d 755, error refused no reversible error—Texas & N. O. R. Co. v. Wilkerson, Civ.App., 260 S.W.2d 912—Dallas Ry. & Terminal Co. v. Aultman, Civ.App., 253 S.W. 2d 900, affirmed 260 S.W.2d 596, 152 Tex. 509—Rogers v. Broughton, Civ.App., 250 S.W.2d 606, error refused no reversible error—Bell v. Bell, Civ.App., 248 S.W.2d 978, error refused no reversible error—Allmon v. Texas Elec. Service Co., Civ.App., 242 S.W.2d 806, error refused no reversible error—Kahn v. Green, Civ.App., 234 S.W.2d 131—Sherwood v. Murray, Civ.App., 233 S.W.2d 879—Panhandle & Santa Fe Ry. Co. v. Ray, 221 S.W.2d 936, error refused no reversible error—Stephens v. Smith, Civ.App., 208 S.W.2d 689, error refused no reversible error—Western Union Telegraph Co. v. Sligar, Civ.App., 173 S.W.2d 220—Brooks v. Enriquez, Civ.App., 172 S.W.2d 794, error refused—Ragsdale v. Ragsdale, Civ.App., 172 S.W.2d 381, affirmed 179 S.W.2d 291, 142 Tex. 476—Foster v. Langston, Civ.App., 170 S.W.2d 250—Bennett v. Jackson, Civ.App., 157 S.W.2d 158—Morrison v. Smith, Civ.App., 138 S.W.2d 280—Texas & P. Ry. Co. v. Jefferson, Civ.App., 131 S.W.2d 175—State v. Lone Star Gas Co., Civ.App., 129 S.W.2d 1164, modified on other grounds Lone Star Gas Co. v. State, 153 S.W.2d 681, 137 Tex. 279, petition denied Ex parte State of Texas, 62 S.Ct. 418, 315 U.S. 8, 86 L.Ed. 579—Southern Underwriters v. Thompson, Civ.App., 127 S.W.2d 389, error dismissed—Fort Worth Hotel Co. v. Waggoman, Civ.App., 126 S.W.2d 578, error dismissed, judgment correct—Allis-Chalmers Mfg. Co. v. Board, Civ.App., 118 S. W.2d 996—Johnson v. Universal Life & Accident Ins. Co., Civ.App., 96 S.W.2d 674—Thorn v. Dunn, Civ.App., 94 S.W.2d 1229—City of Dallas v. Firestone Tire & Rubber Co., Civ.App., 66 S.W.2d 729—Herd v. Wade, Civ.App., 63 S.W.2d 253—Industrial Ins. Co. v. Frazier, Civ.App., 62 S.W.2d 287—Dallas Ry. & Terminal Co. v. Curtis, Civ. App., 53 S.W.2d 85—Dallas Ry. & Terminal Co. v. Moore, Civ.App., 52 S.W.2d 104—Guardian Securities Corporation v. Mahoney, Civ. App., 49 S.W.2d 963—Tabor v. McKenzie, Civ.App., 49 S.W.2d 874—Brown Cracker & Candy Co. v. Castle, Civ.App., 26 S.W.2d 435, error dismissed Castle v. Brown Cracker & Candy Co., 31 S.W.2d 630, 119 Tex. 447—Coleman v. Miller, Civ.App., 19 S.W.2d 829, affirmed C. R. Miller Mfg. Co. v. Coleman, Com.App., 29 S.W.2d 991—McMahan v. City of Abilene, Civ. App., 8 S.W.2d 554—Hewitt v. Buchanan, Civ.App., 4 S.W.2d 169—City of Waco v. Odle, Civ.App., 257 S.W. 310, rehearing denied 258 S. W. 559—Houston Ice & Brewing Co. v. Harlan, Civ.App., 212 S.W. 779, reversed on other grounds, Com.App., 228 S.W. 1090—Anderson & Day v. Darsey, Civ.App., 171 S. W. 1089.

Vt.—Wilson v. Dyer, 75 A.2d 677, 116 Vt. 342—Hall v. Fletcher, 136 A. 388, 100 Vt. 210.

Va.—Coopersmith v. Mahoney, 143 S. E. 313, 150 Va. 685.

Wash.—Eckhart v. Peterson, 162 P. 551, 94 Wash. 379—Johnston v. Seattle Taxicab & Transfer Co., 148 P. 900, 85 Wash. 551, modified on other grounds 154 P. 787, 89 Wash. 494.

W.Va.—Darling v. Baltimore & O. R. Co., 69 S.E.2d 139, 136 W.Va. 303—Slaven v. Baltimore & O. R. Co., 171 S.E. 818, 114 W.Va. 315.

Wis.—McGaw v. Wassmann, 57 N. W.2d 920, 263 Wis. 486, rehearing denied 58 N.W.2d 663, 263 Wis. 486—Horgen v. Chaseburg State Bank, 279 N.W. 33, 227 Wis. 510—Ogodziski v. Gara, 181 N.W. 227, 173 Wis. 371.

Failure to call witness

It is reversible error for counsel in argument to draw unfavorable inference or make unfavorable comment on failure of opposite party to call as a witness one whose testimony is equally accessible and available to both parties.

Mo.—Hancock v. Union Pacific R. Co., App., 231 S.W.2d 225.

Misstating defense

Repeated statements of plaintiffs' counsel in his argument to the jury, in an action against a railroad company for injuries resulting from negligent operation of its trains, that syphilis was the defense, after denial thereof by defendant, coupled with vituperative language and statements that defendant had charged plaintiff with indecency, was held so prejudicial as to require reversal of judgments for plaintiffs, in view of the trial judge's failure to sustain an objection or otherwise make certain that the jury would disregard such appeal to passion and prejudice.

U.S.—New York Cent. R. Co. v. Johnson, Mo., 49 S.Ct. 300, 279 U.S. 310, 73 L.Ed. 706, amended on other grounds 49 S.Ct. 417.

Offense by experienced attorney

An old and experienced lawyer is charged with knowledge of the effect on the jury of unjustifiably attempting to destroy the credibility of defendant as a witness.

Wis.—Corti v. Cooney, 211 N.W. 274, 191 Wis. 464.

34. N.Y.—Abbate v. Solan, 15 N.Y. S.2d 332, 257 App.Div. 776, reargument denied 16 N.Y.S.2d 704, 258 App.Div. 886.

Okl.—Mashunkashey v. Brewer, 58 P. 2d 564, 177 Okl. 253.

Tex.—Hinojosa v. Jones, Civ.App., 154 S.W.2d 275—Panhandle & S. F. Ry. Co. of Texas v. Sedberry, Civ. App., 46 S.W.2d 719.

35. Ill.—Westbrook v. Chicago & N. W. Ry. Co., 248 Ill.App. 446. See Moore v. Murphy, 183 Ill.App. 499.

Iowa.—Vanarsdol v. Farlow, 203 N. W. 794, 200 Iowa 495.

Ky.—Murphy v. Cordle, 197 S.W.2d 242, 303 Ky. 229—Walden v. Jones, 158 S.W.2d 609, 289 Ky. 395, 141 A. L.R. 105—Strother v. McClave, 94 S.W.2d 310, 264 Ky. 121—Southern-Harlan Coal Co. v. Gallaier, 41 S.W. 2d 661, 240 Ky. 106.

Miss.—Robinson v. Sims, 86 So.2d 318.

Mo.—Foster v. Kurn, 133 S.W.2d 1114, 234 Mo.App. 909—Smith v. St. Louis Southwestern Ry. Co., App., 31 S.W.2d 105.

N.Y.—Gray v. Eisemann, 80 N.Y.S. 2d 43.

Tex.—Walgreen-Texas Co. v. Shivers, 154 S.W.2d 625, 137 Tex. 493—Texas Co. v. Gibson, 116 S.W.2d 686, 131 Tex. 598.

Stewart Oil Co. v. Brown, Civ. App., 134 S.W.2d 375—Sanders v. Lowrimore, Civ.App., 73 S.W.2d 148, reversed on other grounds 103 S.W.2d 739, 129 Tex. 563, reheard 106 S.W.2d 266, 129 Tex. 563—Southwestern Bell Telephone Co. v. Burris, Civ.App., 68 S.W.2d 542—Gonzalez v. Davila, Civ.App., 26 S.W.2d 718—Hewitt v. Buchanan, Civ.App., 4 S.W.2d 169—Davis v. Hill, Civ.App., 272 S.W. 291—Western Indemnity Co. v. MacKechnie, Civ.App., 214 S.W. 456—Southern Pac. Co. v. Miller, Civ. App., 207 S.W. 554.

Vt.—Northern Trust Co. v. Perry, 156 A. 906, 104 Vt. 44.

Va.—Norfolk & W. Ry. Co. v. A. C. Allen & Sons, 95 S.E. 406, 122 Va. 603.

36. Ala.—Sinclair v. Taylor, 171 So. 728, 233 Ala. 304.

Cal.—Emery v. Southern Cal. Gas Co., 165 P.2d 695, 72 C.A.2d 821.

Ill.—O'Gallagher v. Finkel, 129 N. E.2d 345, 7 Ill.App.2d 296—Hayes v. New York Cent. R. Co., 67 N.E. 2d 215, 328 Ill.App. 631.

Ohio.—Machaterre v. Dusha, 164 N.E. 783, 30 Ohio App. 242.

characterizing proceedings as a game at concealing facts,[37] commenting adversely on party's refusal to disclose privileged information,[37.5] or making assertions unsupported by evidence[38] or comments on excluded evidence[39] or evidence improperly admitted.[40]

So, the case will be reversed for prejudicial misconduct in requesting the court, in the jury's presence, to permit the jury to view the premises, locale, or object involved,[41] making an incorrect or misleading statement of the law,[42] informing the jury

37. Okl.—Green Const. Co. v. Lampe, 50 P.2d 286, 174 Okl. 351.

37.5 Ohio.—McLaughlin v. Massachusetts Indem. Ins. Co., 84 N.E. 2d 114, 85 Ohio App. 511.

38. Ala.—Commonwealth Life Ins. Co. v. Brandon, 167 So. 723, 232 Ala. 265.
Ark.—Tri-State Transit Co. of Louisiana v. Westbrook, 180 S.W.2d 121, 207 Ark. 270.
Cal.—Hays v. Viscome, 264 P.2d 173, 122 C.A.2d 135, 39 A.L.R.2d 1435—King v. Kaplan, 211 P.2d 578, 94 C.A.2d 697.
Colo.—Lewis v. Oliver, 271 P.2d 1055, 129 Colo. 479.
Fla.—Loftin v. Howard, 82 So.2d 125—Tampa Transit Lines v. Cordin, 62 So.2d 10.
Idaho.—Cogswell v. C. C. Anderson Stores Co., 192 P.2d 383, 68 Idaho 205.
Ill.—Andrews v. Votaw, 240 Ill.App. 311.
Ky.—Chappell v. Doepel, 192 S.W.2d 809, 301 Ky. 622—Service Fire Ins. Co. v. Roundtree, 165 S.W.2d 973, 292 Ky. 59—Louisville & N. R. Co. v. Gregory, 144 S.W.2d 519, 284 Ky. 297—Horton v. Herndon, 70 S.W.2d 975, 254 Ky. 86.
Mich.—Seabury v. Detroit United Ry., 160 N.W. 570, 194 Mich. 423—Pruner v. Detroit United Ry., 154 N.W. 4, 187 Mich. 602.
Minn.—Westwell v. Oleson, 230 N.W. 792, 180 Minn. 340.
Mo.—Jackman v. St. Louis & H. Ry. Co., App., 206 S.W. 244—Barnes v. City of St. Joseph, 123 S.W. 541, 139 Mo.App. 545.
N.H.—Beaule v. Weeks, 66 A.2d 148, 95 N.H. 453—Stanley v. Kelley, 8 A.2d 740, 90 N.H. 210—Wood v. Manufacturers & Merchants Mut. Ins. Co., 195 A. 667, 89 N.H. 213—Carbone v. Boston & Maine R. R., 192 A. 858, 89 N.H. 12—J. P. Goddard Realty & Bakery Co. v. Bugbee, 192 A. 154, 89 N.H. 34—Maravas v. American Equitable Assur. Corporation of New York, 136 A. 364, 82 N.H. 533—Byron v. Boston & M. R. R., 136 A. 250, 82 N.H. 434—Cote v. Michou, 113 A. 210, 80 N.H. 41—Chellis Realty Co. v. Boston & M. R. R., 106 A. 742, 79 N. H. 231—Kelsea v. Phœnix Ins. Co., 101 A. 362, 78 N.H. 422.
N.M.—Griego v. Conwell, 222 P.2d 606, 54 N.M. 287.
N.Y.—Globerman v. Lederer, 117 N. Y.S.2d 549, 281 App.Div. 39—Snitzer v. Goldstein, 100 N.Y.S.2d 339, 277 App.Div. 1012—Cohen v. Covelli, 94 N.Y.S.2d 782, 276 App.Div. 875, appeal and reargument denied 95 N.Y.S.2d 905, 276 App.Div. 1011—Fuller v. Hudson Transp. Co., 90 N.Y.S.2d 129, 275 App.Div. 985—O'Hara v. Derschug, 272 N.Y.S. 189, 241 App.Div. 513—Kovitz v. Klein, 237 N.Y.S. 90, 227 App.Div. 31—Getty v. Roger Williams Silver Co., 180 N.Y.S. 275, 190 App.Div. 672.
Ohio.—Maggio v. City of Cleveland, 84 N.E.2d 912, 151 Ohio St. 136.
Hubach v. Cole, App., 31 N.E.2d 736—Augusta v. Paradis, 22 N.E. 2d 578, 61 Ohio App. 323—Ferstman v. Fidelity & Casualty Co., 177 N.E. 487, 39 Ohio App. 318.
Tex.—Guest v. Guest, Civ.App., 235 S.W.2d 710, error refused no reversible error—Airline Motor Coaches v. Howell, Civ.App., 195 S. W.2d 713, error refused no reversible error—Ellis v. Lewis, Civ. App., 142 S.W.2d 294—Ortiz Oil Co. v. Luttes, Civ.App., 141 S.W.2d 1050, error dismissed by agreement—Stewart Oil Co. v. Brown, Civ. App., 134 S.W.2d 375—Ward v. Brown, Civ.App., 122 S.W.2d 684—Sommers v. Weilbacher, Civ.App., 99 S.W.2d 651—Thorn v. Dunn, Civ. App., 94 S.W.2d 1229—St. Paul Fire & Marine Ins. Co. v. Burton, Civ.App., 92 S.W.2d 270, error dismissed—Rutherford v. Dallas Joint Stock Land Bank, Civ.App., 91 S. W.2d 1182, error dismissed—Gulf, C. & S. F. Ry. Co. v. Carson, Civ. App., 63 S.W.2d 1096—Pacific Fire Ins. Co. v. Fain, Civ.App., 54 S.W. 2d 226—St. Louis Southwestern Ry. Co. of Texas v. Osborne, Civ.App., 270 S.W. 922—Federal Life Ins. Co. v. Herring, Civ.App., 269 S.W. 255, affirmed Herring v. Federal Life Ins. Co., Com.App., 280 S.W. 742—Texarkana & Ft. S. Ry. Co. v. Terrell, Civ.App., 172 S.W. 742.
Vt.—Landry v. Hubert, 137 A. 97, 100 Vt. 268—Ward v. Ward, 99 A. 635, 91 Vt. 157.
Wis.—McGaw v. Wassmann, 57 N.W. 2d 920, 263 Wis. 486, rehearing denied 58 N.W.2d 663, 263 Wis. 486—Heddles v. Chicago, etc., R. Co., 42 N.W. 237, 74 Wis. 239.

Ex parte discussions with court

Although information supplied ex parte by plaintiff's attorney in a series of ex parte discussions with the court concerning facts allegedly not in the record may not have influenced the result, such practice is so inherently dangerous that judgment for plaintiff was reversed and a new trial ordered.
N.Y.—Sloss v. Warner Tool Design Corp., 71 N.Y.S.2d 847.

39. Cal.—Cordi v. Garcia, 102 P.2d 820, 39 C.A.2d 189.
Colo.—Prell v. Gormley, 38 P.2d 775, 95 Colo. 579.
Ill.—Enderle v. Lindsay, 114 N.E.2d 675, 351 Ill.App. 271.
Ky.—Bonta v. Bonta, 193 S.W. 648, 175 Ky. 26.
Mich.—Van Hartesveldt v. Westrate, 250 N.W. 302, 264 Mich. 538.
Minn.—Brown v. Saint Paul City Ry. Co., 62 N.W.2d 688, 241 Minn. 15—Burmeister v. Minneapolis St. Ry. Co., 240 S.W. 359, 185 Minn. 167.
Mo.—Maurizi v. Western Coal & Mining Co., 11 S.W.2d 268, 321 Mo. 378.
N.H.—Monroe v. Sterling, 26 A.2d 21, 92 N.H. 11.
S.C.—Rivers v. Industrial Life & Health Ins. Co., 174 S.E. 595, 173 S.C. 45—Edwards v. Union Buffalo Mills Co., 159 S.E. 818, 162 S.C. 17.
Tenn.—Stone v. O'Neal, 90 S.W.2d 548, 19 Tenn.App. 512.
Tex.—Texas Indemnity Ins. Co. v. McCurry, Com.App., 41 S.W.2d 215, 78 A.L.R. 760.
Dale v. Stevens, Civ.App., 75 S. W.2d 129—Tallabas v. Wing Chong, Civ.App., 72 S.W.2d 636.
Va.—Coopersmith v. Mahoney, 143 S. E. 313, 150 Va. 685.
Wash.—Braseth v. Farrell, 29 P.2d 680, 176 Wash. 365—Shaw v. Prudential Ins. Co. of America, 8 P.2d 431, 166 Wash. 652.

40. Cal.—De Gruchy v. City and County of San Francisco, 290 P. 491, 107 C.A. 622.
Mo.—Better Roofing Materials Co. v. Sztukouski, App., 183 S.W.2d 400.
N.Y.—Standard Utility Co. v. New York Rys. Co., 153 N.Y.S. 948, 90 Misc. 633.
Va.—Selfe v. Hale, 69 S.E.2d 434, 193 Va. 543.

41. Tex.—Woodrum Truck Lines v. Bailey, Com.App., 57 S.W.2d 92.
Bradshaw v. White, Civ.App., 294 S.W.2d 736, error refused no reversible error—Railway Exp. Agency v. Spain, Civ.App., 249 S.W.2d 644, appeal dismissed 255 S.W.2d 509, 152 Tex. 198.

42. Ill.—Mattice v. Klawans, 143 N. E. 866, 312 Ill. 299, certiorari denied 46 S.Ct. 637, 271 U.S. 685, 70 L.Ed. 1151.

of the effect on the judgment of their answers to questions which have a significance which a mind untrained in law may not grasp,[43] discussing the legal significance of a definition given by the court,[44] or violating rules of court governing opening statements or arguments,[44.5] as by not presenting his whole case in his opening argument as required by rule of court,[45] and for persistently overindulging in misconduct or unguarded remarks which otherwise would not require a reversal.[46]

b. Presentation of Evidence

Misconduct in the presentation of evidence is not ground for reversal unless prejudice results therefrom.

In order for misconduct of counsel in the presentation of evidence to effect a reversal of the judgment it must appear that substantial prejudice resulted therefrom, and that the jury were influenced thereby to the material detriment of the party complaining.[47] Accordingly, in the absence of a showing of prejudice, the case will not be reversed because of the misconduct of counsel in

Mo.—Courter v. George W. Chase & Son Mercantile Co., 299 S.W. 622, 222 Mo.App. 43.

N.H.—Morin v. Champlin, 43 A.2d 772, 93 N.H. 422.

Tex.—Texas Life Ins. Co. v. Plunkett, Civ.App., 75 S.W.2d 313.

43. Tex.—Texas & P. Ry. Co. v. Edwards, Com.App., 36 S.W.2d 477—Behringer v. South Plains Coaches, Com.App., 13 S.W.2d 334. Texas Emp. Ins. Ass'n v. Sevier, Civ.App., 279 S.W.2d 473, error refused no reversible error—Hodges v. Alford, Civ.App., 194 S.W.2d 293—Martinez v. Pena, Civ.App., 139 S.W.2d 337, error dismissed, judgment correct—Bates v. J. D. McCollum Lumber Co., Civ.App., 107 S.W.2d 1107—Galbraith-Foxworth Lumber Co. v. Gerneth, Civ. App., 66 S.W.2d 471—Green v. Crouch, Civ.App., 57 S.W.2d 867—South Plains Coaches v. Behringer, Civ.App., 4 S.W.2d 1003, affirmed Behringer v. South Plains Coaches, Com.App., 13 S.W.2d 334—Rowley v. Braly, Civ.App., 286 S.W. 241.

Wis.—Pecor v. Home Indemnity Co. of New York, 291 N.W. 313, 234 Wis. 407.

44. Tex.—Wichita Falls & S. R. Co. v. Wade, Civ.App., 57 S.W.2d 332.

44.5 Ohio.—Hatsio v. Red Cab Co., 67 N.E.2d 553, 77 Ohio App. 301.

45. Tex.—Bender v. Mettler, Civ. App., 17 S.W.2d 182.

When plaintiff is permitted to discuss in the closing argument matters which should have been discussed in the opening argument, reversible error is presented by violation of rule referred to.

Tex.—Dallas Joint Stock Land Bank of Dallas v. Magee, Civ.App., 117 S.W.2d 473, affirmed 136 S.W.2d 1117, 134 Tex. 620.

46. Ala.—Alabama Power Co. v. Berry, 130 So. 541, 222 Ala. 20.

Ill.—Rost v. F. H. Noble & Co., 147 N.E. 258, 316 Ill. 357—Mattice v. Klawans, 143 N.E. 866, 312 Ill. 299, certiorari denied 46 S.Ct. 637, 271 U.S. 685, 70 L.Ed. 1151—Bell v. McDonald, 139 N.E. 613, 308 Ill. 329—Peters v. Chicago Rys. Co., 138 N.E. 629, 307 Ill. 202—Wright v. Upson, 135 N.E. 209, 303 Ill. 120—Eshelman v. Rawalt, 131 N. E. 675, 298 Ill. 192, 16 A.L.R. 1311—Bishop v. Chicago Junction Ry. Co., 124 N.E. 312, 289 Ill. 63. Franko v. Crosby, 278 Ill.App. 416—Krone v. Chicago National Life Ins. Co., 253 Ill.App. 426—Haupt v. Chicago City Ry. Co., 197 Ill.App. 400. See Roherty v. Chicago Rys. Co., 189 Ill.App. 139.

Iowa.—Riggins v. Chicago, M. & St. P. Ry. Co., 186 N.W. 856, 193 Iowa 266.

Kan.—Bouchey v. Gillilan, 4 P.2d 412, 134 Kan. 29.

Mich.—Easton v. Medema, 224 N.W. 636, 246 Mich. 130—Johnson v. Michigan Mut. Sav. Ass'n, 219 N. W. 736, 242 Mich. 558—Adams v. Grand Trunk Western Ry. Co., 215 N.W. 375, 240 Mich. 300.

Mo.—Moore v. Shelly Motors, App., 225 S.W.2d 953—Popejoy v. Hydraulic Press Brick Co., 186 S.W. 1133, 193 Mo.App. 612—Wilburn v. St. Louis, etc., R. Co., 48 Mo.App. 224.

N.H.—Palmer v. Dimick, 94 A. 268, 77 N.H. 565.

N.Y.—Holmes v. City of New York, 45 N.Y.S.2d 469, 267 App.Div. 782, resettlement denied 47 N.Y.S.2d 320, 267 App.Div. 878—Sweeney v. Denney, 25 N.Y.S.2d 60, 261 App. Div. 881—Sercer v. Employers' Liability Assur. Corp., 298 N.Y.S. 110, 251 App.Div. 873—Kraus v. Fifth Ave. Coach Co., 253 N.Y.S. 230, 233 App.Div. 357—McCormick v. Merritt, 250 N.Y.S. 443, 232 App. Div. 619.

S.D.—Kloppenburg v. Kloppenburg, 280 N.W. 209, 66 S.D. 174—Lindsay v. Pettigrew, 72 N.W. 574, 10 S.D. 228.

Tex.—Southern Pac. Co. v. Hubbard, 297 S.W.2d 120.

Vt.—Calliguiri v. Marro, 106 A. 780, 93 Vt. 186.

Wis.—Brown v. Swineford, 44 Wis. 282, 28 Am.R. 582, 7 Cent.Law.J. 208.

47. Ariz.—Posner v. New York Life Ins. Co., 106 P.2d 488, 56 Ariz. 202.

Cal.—Lynch v. Birdwell, 285 P.2d 919, 44 C.2d 839.

Ga.—Elliot v. Georgia Power Co., 197 S.E. 914, 58 Ga.App. 151.

Ill.—Algozino v. Welch Fruit Products Co., 102 N.E.2d 555, 345 Ill. App. 135—Mills & Co. v. Duke, 232 Ill.App. 277.

Iowa.—Duncan v. Rhomberg, 236 N. W. 638, 202 Iowa 389.

Kan.—Carter v. City of Wichita, 122 P.2d 768, 155 Kan. 60.

Ky.—Schneider v. Rolf, 278 S.W. 100, 211 Ky. 669.

Minn.—Harning v. City of Duluth, 28 N.W.2d 659, 224 Minn. 299—Scholte v. Brabec, 224 N.W. 259, 177 Minn. 13.

Mo.—Reeves v. Thompson, 211 S.W. 2d 23, 357 Mo. 847.

Bootee v. Kansas City Public Service Co., App., 199 S.W.2d 59, 239 Mo.App. 1065.

N.M.—Stout v. Bartlett, 192 P.2d 311, 52 N.M. 100.

Ohio.—Estridge v. Cincinnati St. Ry. Co., 63 N.E.2d 823, 76 Ohio App. 220.

Okl.—State ex rel. Department of Highways v. Weaver, 297 P.2d 549—Grooms v. Johnson, 138 P.2d 98, 192 Okl. 527—Jenkins v. Davis, 239 P. 135, 111 Okl. 191.

R.I.—Peters v. United Electric Rys Co., 189 A. 901, 57 R.I. 311.

S.D.—Gartner v. Mohan, 170 N.W. 640, 41 S.D. 406.

Tex.—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error—Watchtower Mut. Life Ins. Co. v. Davis, Civ.App., 99 S.W.2d 693.

"Some allowance must be made for the fact that in the progress of a jury trial, where there is little time for deliberation, things will be said and done that would be omitted on second thought. Besides, much that occurs on a trial is not included in the transcript of evidence, or is not seen in its true light when all that occurred is not before this court. So the rule is that a new trial will not be granted on this ground, unless there was a clear abuse of the privilege of counsel, preventing a fair trial of the case."

Ky.—Payne v. Bowman's Adm'x, 252 S.W. 1010, 1011, 200 Ky. 171.

merely asking incompetent questions or offering improper evidence,[48] persisting in improper lines of questioning,[49] or for the misconduct of counsel in

48. Ala.—Alabama Great Southern R. Co. v. Ensley Transfer & Supply Co., 100 So. 342, 211 Ala. 298.
Ariz.—Mong Ming Club v. Tang, 266 P.2d 1091, 77 Ariz. 63.
Ark.—Board of Directors of St. Francis Levee Dist. v. Permenter, 92 S.W.2d 391, 192 Ark. 521.
Cal.—Huddy v. Chronicle Pub. Co., 103 P.2d 421, 15 C.2d 554.
Store of Happiness v. Carmona & Allen, Inc., App., 312 P.2d 1104—Norden v. Hartman, 285 P.2d 977, 134 C.A.2d 333—Post v. Alameda Amusement Co., 256 P.2d 580, 117 C.A.2d 588—Williams v. Gurwitz, 222 P.2d 673, 99 C.A.2d 801—Bobbio v. Bertone, 220 P.2d 578, 98 C.A. 2d 434—Gluckstein v. Lipsett, 209 P.2d 98, 93 C.A.2d 391—Burr v. Goss, 205 P.2d 61, 91 C.A.2d 351—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Miller v. Lee, 153 P.2d 190, 66 C.A.2d 778—Weddle v. Loges, 125 P.2d 914, 52 C.A.2d 115—Shebley v. Peters, 200 P. 364, 53 C.A. 288.
Ill.—Best v. Best, 116 N.E.2d 920, 1 Ill.2d 186.
Hammer v. Shaffer, 86 N.E.2d 672, 338 Ill.App. 19—Rzeszewski v. Barth, 58 N.E.2d 269, 324 Ill. App. 345—Wrenn v. Warble Storage & Furniture Co., 236 Ill.App. 601.
Iowa.—Sparks v. Long, 11 N.W.2d 716, 234 Iowa 21.
Kan.—Long v. Shafer, 174 P.2d 88, 162 Kan. 21.
Ky.—Burke v. Fischer, 182 S.W.2d 638, 298 Ky. 157—Louisville & N. R. Co. v. Rowland's Adm'r, 14 S.W.2d 174, 227 Ky. 841—Rex Red Ash Coal Co. v. Barley's Adm'r 6 S.W.2d 724, 224 Ky. 485.
Mich.—Wolfe v. Marks, 269 N.W. 125, 277 Mich. 154—Krulikowski v. Tide Water Oil Sales Corporation, 241 N.W. 148, 257 Mich. 225.
Minn.—Randall v. Goodrich-Gamble Co., 70 N.W.2d 261, 244 Minn. 401—Pietrus v. Watkins Co., 38 N.W. 2d 799, 229 Minn. 179—Fraser v. Farmers' Co-op. Co., 209 N.W. 33, 167 Minn. 369, reargument denied 209 N.W. 913, 167 Minn. 369—Carson v. Turrish, 168 N.W. 349, 140 Minn. 445, L.R.A.1918F 154.
Mo.—Reeves v. Thompson, 211 S.W. 2d 23, 357 Mo. 847—Mauck v. Atchison, T. & S. F. Ry. Co., 154 S.W.2d 73—Westover v. Wabash Ry. Co., 6 S.W.2d 843, certiorari denied Wabash Ry. Co. v. Westover, 49 S.Ct. 31, 278 U.S. 632, 73 L.Ed. 550.
Riley v. St. Louis Public Service Co., App., 245 S.W.2d 666—Buchanan v. Wolff, App., 105 S.W. 2d 26.
Neb.—Miller v. Crosson, 277 N.W. 796, 133 Neb. 892.
N.H.—U. S. Fidelity & Guaranty Co. v. Minault, 72 A.2d 161, 96 N.H. 168—Williams v. Williams, 182 A. 172, 87 N.H. 430—Pope v. Boston & M. R. R., 104 A. 403, 79 N.H. 52.
N.Y.—DeQuelin v. Nellis, 100 N.Y.S. 2d 572, 277 App.Div. 1064—Schwab v. Globe Indemnity Co., 290 N.Y.S. 983, 249 App.Div. 627, affirmed 10 N.E.2d 582, 274 N.Y. 623—Holland v. Peterkin, 216 N.Y.S. 464, 217 App.Div. 57.
N.C.—Jones v. City of High Point, 164 S.E. 119, 202 N.C. 721.
N.D.—Mevorah v. Goodman, 57 N.W. 2d 600, 79 N.D. 443—Ferderer v. Northern Pac. Ry. Co., 42 N.W.2d 216, 77 N.D. 169.
Ohio.—Lindemann v. Eyrich, 153 N. E. 221, 21 Ohio App. 314.
Rothschild v. Hudson, 8 Ohio Dec.(Reprint) 259, 6 Cinc.L.Bul. 752, affirmed 12 Cinc.L.Bul. 263.
Okl.—Zickefoose v. Franks Mfg. Corp., 274 P.2d 776—Oklahoma Ry. Co. v. State ex rel. Dept. of Highways, 237 P.2d 878, 205 Okl. 325—Grooms v. Johnson, 138 P.2d 98, 192 Okl. 527—Drummond v. Corbin, 77 P.2d 692, 182 Okl. 338—Beck v. Day, 62 P.2d 1014, 178 Okl. 310—Fike v. Peters, 52 P.2d 700, 175 Okl. 334.
Or.—Stool v. Southern Pac. Co., 172 P. 101, 88 Or. 350.
S.C.—Bryan v. Bryan, 61 S.E.2d 177, 217 S.C. 555.
S.D.—Flaherty v. Bank of Kimball, 68 N.W.2d 105, 75 S.D. 468—Clendennen v. Bainbridge, 187 N. W. 727, 45 S.D. 410.
Tenn.—Herstein v. Kemker, 94 S.W. 2d 76, 19 Tenn.App. 681.
Tex.—Texas Employers' Ins. Ass'n v. Brock, Com.App., 36 S.W.2d 704.
Denning v. Republic Nat. Bank Bldg. Co., Civ.App., 294 S.W.2d 888, error refused no reversible error—John F. Buckner & Sons v. Allen, Civ.App., 289 S.W.2d 387—Plains Creamery v. Denny, Civ.App., 277 S.W.2d 755, error refused no reversible error—Southwestern Freight Lines v. McConnell, Civ. App., 269 S.W.2d 427, error refused no reversible error—Railway Exp. Agency v. Spain, Civ.App., 249 S. W.2d 644, appeal dismissed 255 S. W.2d 509, 152 Tex. 198—Colls v. Price's Creameries, Civ.App., 244 S.W.2d 900, error refused no reversible error—York v. Glenn, Civ. App., 242 S.W.2d 653—McClain v. State, Civ.App., 235 S.W.2d 947, error refused no reversible error—Tripp v. Watson, Civ.App., 235 S. W.2d 677, error refused no reversible error—Coastal Coaches v. Ball, Civ.App., 234 S.W.2d 474, 22 A.L.R.2d 955, error refused no reversible error—Coleman v. Cook, Civ.App., 195 S.W.2d 1020—Airline Motor Coaches v. Bennett, Civ. App., 184 S.W.2d 524, reversed on other grounds 187 S.W.2d 982, 144 Tex. 36—State v. Layton, Civ.App., 147 S.W.2d 515—Culpepper v. Lloyds America, Civ.App., 140 S. W.2d 330, error dismissed, judgment correct—McMillion v. Wilkinson, Civ.App., 135 S.W.2d 231, error dismissed, judgment correct—Clark-Daniel's v. Deathe, Civ. App., 131 S.W.2d 1091, error refused—Larnce v. Massachusetts Bonding & Insurance Co., Civ.App., 121 S.W.2d 392, error dismissed—Watchtower Mut. Life Ins. Co. v. Davis, Civ.App., 99 S.W.2d 693—Hess v. Millsap, Civ.App., 72 S.W. 2d 923—Huff v. Reber, Civ.App., 13 S.W.2d 995—Galveston, H. & S. A. Ry. Co. v. Hill, Civ.App., 202 S.W. 358, dismissed for want of jurisdiction—E. Alkemeyer Co. v. McCardell, Civ.App., 183 S.W. 416, dismissed for want of jurisdiction.
Vt.—Paul v. Drown, 189 A. 144, 108 Vt. 458, 109 A.L.R. 1085—Shores v. Simanton, 130 A. 697, 99 Vt. 191—Bagley v. Mason, 37 A. 287, 69 Vt. 175.
Wash.—Carstens v. Western Pipe & Steel Co. of California, 252 P. 939, 142 Wash. 259.
W.Va.—Tennessee Gas Transmission Co. v. Fox, 58 S.E.2d 584, 134 W. Va. 106.
Wis.—Paepcke v. Sears, Roebuck & Co., 57 N.W.2d 352, 263 Wis. 290—Wedge v. Gapinski, 188 N.W. 476, 177 Wis. 471.

Withdrawal on objection

Permitting counsel to ask questions and withdraw them on objection without answer was held not prejudicial.
Tex.—Galveston, H. & S. A. Ry. Co. v. Contois, Civ.App., 279 S.W. 929, affirmed, Com.App., 288 S.W. 154, certified denied 47 S.Ct. 659, 274 U. S. 747, 71 L.Ed. 1328.

Calling incompetent witness

A cause will not be reversed because a party called his wife as a witness when an objection to her competency was properly sustained and she was not permitted to testify.
Okl.—Felt v. Westlake, 174 P. 1041, 68 Okl. 294.

49. Cal.—Schediwy v. McDermott, 298 P. 107, 113 C.A. 218.
Kan.—Thompson v. W. C. Howard Motors Co., 252 P. 468, 122 Kan. 339.
Ky.—City of Louisville v. Hale's Adm'r, 37 S.W.2d 20, 238 Ky. 182.
Mo.—Higgins v. Terminal R. R. Ass'n of St. Louis, 241 S.W.2d 380, 362 Mo. 264—Osby v. Tarlton, 85 S.W.2d 27, 336 Mo. 1240.

propounding leading questions to a witness,[50] or in asking questions directed to issues not passed on by the jury,[51] presenting papers for identification without subsequently offering them in evidence,[52] nor for persistent objections to cross-examination,[53] improper remarks in offering evidence,[53.5] or in urging objections to evidence,[54] or in consenting to the striking of testimony,[55] particularly where it is not shown that counsel was not acting in good faith.[56] So the error is harmless where the court sustained objections to the questions or evidence,[57] and instructed the jury to disregard the questions propounded or evidence offered,[57.5] or eradicated the error in admitting testimony by emphatic direction to the jury to disregard such evidence;[58] and it will not be assumed that the trial court, sitting without a jury, in the trial of a civil action, was prejudiced by suggestions of fact contained in questions or offers of evidence to which objections were sustained.[59]

Where no effort was made to withdraw objectionable testimony put into the record before the court could rule on its admissibility, however, and it is apparent that the jury gave it some weight, the case must be reversed;[60] and likewise it will be reversed for misconduct in asking questions or offering evidence conveying improper information to the jury and tending to render the trial unfair,[61] persistently injecting or seeking to inject incompetent or irrelevant evidence into the case,[62] or asking questions in defiance of the court's rulings[63] or in vio-

Buzan v. Kansas City Rys. Co., App., 212 S.W. 905.
Ohio.—Mastran Const. Co. v. Mahoning Exp. Co., App., 96 N.E.2d 30.
Wash.—Hagstrom v. Linbeck, 130 P. 2d 895, 15 Wash.2d 399—Edwards v. Washkuhn, 119 P.2d 905, 11 Wash.2d 425—Hatcher v. Globe Union Mfg. Co., 35 P.2d 32, 178 Wash. 411.
Wis.—Paepcke v. Sears, Roebuck & Co., 57 N.W.2d 352, 263 Wis. 290.
4 C.J. p 957 note 68 [a] (17).

50. Okl.—Ruth Fuel Co. v. Nichter, 51 P.2d 502, 174 Okl. 601.
S.D.—State v. Wold, 203 N.W. 508, 48 S.D. 242.

51. Tex.—Huff v. Reber, Civ.App., 13 S.W.2d 995.

Damages

Questions asked a witness relative to damages were harmless, where the jury found for defendant.
Tex.—Huff v. Reber, supra.

52. Cal.—Smith v. Smith, 46 P.2d 232, 7 C.A.2d 271.

53. Iowa.—Keeney v. Arp De La Gardee, 235 N.W. 745, 212 Iowa 45.

53.5 Ill.—De Mont v. Mertes, 113 N. E.2d 487, 350 Ill.App. 590.
N.M.—Hall v. Stiles, 258 P.2d 386, 57 N.M. 281.

54. Or.—Wychgel v. States S. S. Co., 296 P. 863, 135 Or. 475, certiorari denied States S. S. Co. v. Wychgel, 52 S.Ct. 11, 284 U.S. 635, 76 L.Ed. 533.

55. Ariz.—Tom Reed Gold Mines Co. v. Berd, 260 P. 191, 32 Ariz. 479, 57 A.L.R. 55.

56. Mich.—Rucklich v. American Car & Foundry Co., 188 N.W. 440, 218 Mich. 561—De Saddler v. Yellow Taxicab Co., 184 N.W. 419, 216 Mich. 45.
Tex.—Panhandle & S. F. Ry. Co. v. Daldorf, Civ.App., 266 S.W. 208.

57. Ala.—Central of Georgia Ry. Co. v. Grover, 118 So. 506, 218 Ala. 290.
Cal.—Blair v. Williams, 240 P.2d 1043, 109 C.A.2d 516—Fintel v. Engelbrecht, 81 P.2d 1044, 28 C.A.2d 23.
Mich.—Csircsu v. Muir, 6 N.W.2d 531, 303 Mich. 323.
Minn.—Ness v. Fischer, 292 N.W. 196, 207 Minn. 558.
S.C.—Collins v. Atlantic Coast Line R. Co., 190 S.E. 817, 183 S.C. 284.
Tex.—Clark-Daniel's v. Deathe, Civ. App., 131 S.W.2d 1091, error refused.

On trial by court

Trial having been by the court, no harm resulted from a reflection on plaintiff in his cross-examination which the court promptly held improper.
Vt.—Powell v. Merrill, 103 A. 259, 92 Vt. 124.

57.5 Cal.—Dragovich v. Slosson, 242 P.2d 945, 110 C.A.2d 370.

58. Ark.—Missouri Pac. R. Co. v. Kellar, 271 S.W. 7, 168 Ark. 626.
Mich.—Morris v. Montgomery, 201 N. W. 496, 229 Mich. 509.
Mo.—Stephens v. City of Eldorado Springs, App., 190 S.W. 1004.

59. Cal.—Troy v. Troy, 238 P. 143, 72 C.A. 757.

60. N.H.—Richardson v. Adams, 94 A. 967, 77 N.H. 571.

61. Ariz.—Fike v. Grant, 8 P.2d 242, 39 Ariz. 549.
Ark.—Derrick v. Rock, 236 S.W.2d 726, 216 Ark. 337.
Cal.—King v. Kaplan, 211 P.2d 578, 94 C.A.2d 697—Yates v. Morotti, 8 P. 2d 519, 120 C.A. 710.
Ill.—Falcon v. La Roche, 123 N.E.2d 587, 4 Ill.App.2d 112—Miller v. Chicago Transit Authority, 121 N.E.2d 348, 3 Ill.App.2d 223—Borucki v. McLaughlin, 101 N.E.2d 624, 344 Ill.App. 550—Monahan v. Chicago Transit Authority, 93 N.E.2d 169, 341 Ill.App. 250—Biniakiewicz v. Wojtasik, 90 N.E.2d 568, 339 Ill. App. 574—Gordon v. Checker Taxi Co., 79 N.E.2d 632, 334 Ill.App. 313—Bejnarowicz v. Bakos, 74 N.E.2d 614, 332 Ill.App. 151.
Mo.—Lewellen v. Haynie, 287 S.W. 634.
Allen v. Wilkerson, App., 87 S.W. 2d 1056.
N.Y.—Nicholas v. Rosenthal, 126 N.Y. S.2d 34, 283 App.Div. 9—Saunders v. Chaplain Bus Corporation, 34 N. Y.S.2d 447, 263 App.Div. 683—Lawson v. Nyman, 16 N.Y.S.2d 946, 258 App.Div. 1032—Baird v. Douglass, 192 N.Y.S. 287, 199 App.Div. 818.
Tex.—Price v. Pelton, Civ.App., 199 S.W.2d 249—Coleman v. Cook, Civ. App., 195 S.W.2d 1020.
Vt.—Paul v. Drown, 189 A. 144, 108 Vt. 458, 109 A.L.R. 1085.
Va.—Hopkins v. Gromovsky, 94 S.E. 2d 190, 198 Va. 389.

62. Ala.—Rivers v. Black, 68 So.2d 2, 259 Ala. 528—City of Birmingham v. Williams, 164 So. 101, 231 Ala. 232.
Ill.—Smith v. Ohio Oil Co., 134 N.E. 2d 526, 10 Ill.App.2d 67—Parker v. Peoria Transp. Co., 86 N.E.2d 862, 338 Ill.App. 210.
N.Y.—Doyle v. City of New York, 119 N.Y.S.2d 71, 281 App.Div. 821.
S.C.—Entzminger v. Seigler, 195 S. E. 244, 186 S.C. 194.

Form of question

In a tenant's action for assault with a pistol by a landlord, improper questions by plaintiff's counsel in cross-examining the landlord as to whether he had ejected a former tenant and assaulted him while he was confined to his bed, which were so worded that each succeeding question assumed, despite exclusion of the answer, that the prior question had been answered favorably to plaintiff, when the testimony elicited would have been incompetent, constituted such misconduct of the attorney as to warrant reversal.
S.D.—Hansen v. Boots, 168 N.W. 798, 41 S.D. 96.

63. Ala.—Porter Coal Co. v. Davis,

lation of stipulations made by counsel.[64] So, notwithstanding instructions of the court to the jury to disregard the objectionable questions, the case must be reversed where the questions were highly inflammatory and apparently influenced the jury in making up their verdict.[65]

c. Reference to Defendant's Insurance or Other Indemnity

Reference to defendant's insurance or lack of insurance is not ground for reversal unless prejudicial to the complaining party.

Under the general rule that error is to be regarded as harmless where not prejudicial to the complaining party, an improper reference on the part of counsel to the fact that defendant is protected by insurance may be harmless,[66] as where it is cured by instructions that it be disregarded,[66.5] or where the reference is merely incidental or it may be presumed that the jury understood that defendant was insured or were properly informed of such fact.[67] Further, a judgment for plaintiff will not be reversed where misconduct of counsel with reference to the allusion to insurance occurred in a colloquy between the attorneys of codefendants in which plaintiff's attorney took no part.[68] Where prejudice results therefrom, however, a remark or argument of counsel which refers to the fact that

165 So. 93, 231 Ala. 359—Birmingham Baptist Hospital v. Blackwell, 128 So. 389, 221 Ala. 225.
Ill.—Emich v. Citizens' Trust & Savings Bank, 152 N.E. 580, 321 Ill. 518.
Ill.—Baratta v. Chicago, R. I. & P. R. Co., 128 N.E.2d 581, 6 Ill.App.2d 517—Parker v. Peoria Transp. Co., 86 N.E.2d 862, 338 Ill.App. 210. See Sullivan v. A. H. Andrews Co., 205 Ill.App. 590.
Ky.—Triplett v. Napier, 286 S.W.2d 87.
Mo.—Houck v. L. A. Tucker Truck Lines, App., 131 S.W.2d 366—Crocker v. Jett, App., 93 S.W.2d 74.
Ohio.—Brown v. Jacoby, 9 N.E.2d 693, 55 Ohio App. 250—Watkins v. Linver, 193 N.E. 77, 48 Ohio App. 268.
Okl.—Harrod v. Sanders, 278 P. 1102, 137 Okl. 231.
Tex.—Ragsdale v. Ragsdale, 179 S. W.2d 291, 142 Tex. 476.
Vt.—Niebyski v. Welcome, 108 A. 341, 93 Vt. 418.

Improper imputations

If an improper statement is made by counsel and improper questions asked by him and rulings of the court disregarded, all for the purpose of casting an imputation of unlawful conduct against one of the parties, such unlawful conduct not being a question material to the issue, such harm is done as requires the setting aside of the verdict obtained by such means.
Ill.—Tole v. Tole, 149 Ill.App. 311.

64. N.Y.—Szunyog v. Kiss, 182 N.Y. S. 898.

65. Mo.—Lewellen v. Haynie, 287 S. W. 634.

66. Cal.—Mize v. Davy, 165 P.2d 26, 72 C.A.2d 607—Mullanix v. Basich, 155 P.2d 130, 67 C.A.2d 675.
Ill.—Rutherford v. Bentz, 104 N.E.2d 343, 345 Ill.App. 532.
Ky.—Edwards v. Whitley City Sales, 246 S.W.2d 1018—Gividen v. Sullenger, 243 S.W.2d 883—Rogers v. Price, 160 S.W.2d 371, 290 Ky. 153.
Mich.—Samuelson v. Olson Transp. Co., 36 N.W.2d 917, 324 Mich. 278—Nicewander v. Diamond, 4 N.W.2d 533, 302 Mich. 239.
Minn.—Jaenisch v. Vigen, 297 N.W. 29, 209 Minn. 543.
Neb.—Triplett v. Lundeen, 272 N.W. 307, 132 Neb. 434.
Tenn.—Lasater Lumber Co. v. Harding, 189 S.W.2d 583, 28 Tenn.App. 296.
Tex.—Montgomery v. Vinzant, Civ. App., 297 S.W.2d 350—Reeves v. Tittle, Civ.App., 129 S.W.2d 364, error refused.
Wis.—Pedek v. Wegemann, 81 N.W. 2d 49, 275 Wis. 57—Roeske v. Schmitt, 64 N.W.2d 394, 266 Wis. 557—Peterson v. General Cas. Co. of Wis., 48 N.W.2d 459, 259 Wis. 370.

Custom of automobile owners to carry liability insurance against loss or damage has become so general that jurors must be assumed to be cognizant of the fact, and the tendency to refuse reversals for bringing before jury carrying of indemnity insurance by defendant is proper, especially where it appears that no improper practice has been resorted to.
Tenn.—Lasater Lumber Co. v. Harding, 189 S.W.2d 583, 28 Tenn.App. 296.

Test in determining whether reference to insurance in tort action is reversible error is not whether such reference is calculated to influence jurors possessing stern and discriminating dispositions, but whether there are qualifying facts fixing a legal excuse for the interjection of the insurance issue.
Ky.—Turpin v. Scrivner, 178 S.W.2d 971, 297 Ky. 365—Star Furniture Co. v. Holland, 117 S.W.2d 603, 273 Ky. 617.

Defendant not much concerned

Remark of plaintiff's counsel, in argument to jury, that defendant was not very much concerned about what happened on the trial was not prejudicial misconduct on theory that, standing alone or in connection with testimony which indicated that defendant carried insurance, it indicated that defendant carried liability insurance.
Wash.—Gephart v. Stout, 118 P.2d 801, 11 Wash.2d 184.

66.5 Ky.—Rose v. Edmonds, 111 S. W.2d 427, 271 Ky. 36.
Wis.—Ertel v. Milwaukee Electric Ry. & Light Co., 160 N.W. 263, 164 Wis. 380.

67. Ariz.—City of Phœnix v. Parker, 67 P.2d 226, 49 Ariz. 382.
Cal.—Charter v. Olson, 290 P.2d 867, 137 C.A.2d 636—Corral v. Sager, 77 P.2d 303, 25 C.A.2d 322—McCullough v. Langer, 73 P.2d 649, 23 C. A.2d 510—Walter v. England, 24 P.2d 930, 133 C.A. 676—Nichols v. Nelson, 252 P. 739, 80 C.A. 590.
Ill.—Dinger v. Rudow, 142 N.E.2d 128, 13 Ill.App.2d 444.
Ind.—Jones v. Cary, 37 N.E.2d 944, 219 Ind. 268.
Ky.—Struetker v. Neiser, 290 S.W. 2d 781—Rose v. Edmonds, 111 S. W.2d 427, 271 Ky. 36.
Miss.—Allen v. Friedman, 125 So. 539, 156 Miss. 77.
Mo.—Moss v. Mindlin's, Inc., 301 S. W.2d 761.
Lindsey v. Rogers, App., 220 S. W.2d 937.
Mont.—Pascoe v. Nelson, 158 P. 317, 52 Mont. 405.
N.Y.—Sheridan v. Sheridan, 142 N.Y. S.2d 819, 286 App.Div. 926.
Ohio.—Portney v. Frank, 65 N.E.2d 290, 77 Ohio App. 357.
Or.—Goodale v. Hathaway, 89 P.2d 678, 149 Or. 237.
Wis.—Pedek v. Wegemann, 81 N.W. 2d 49, 275 Wis. 57.

68. Cal.—De Martini v. Wheatley, 14 P.2d 869, 126 C.A. 230.

Statement of counsel of codefendant to jury that he represented an insurer was not prejudicial to plaintiff where plaintiff made no objection to statement and in closing argument to plaintiff jury made several impassioned references to insurer.
Mo.—Mavrakos v. Mavrakos Candy Co., 223 S.W.2d 383, 359 Mo. 649.

defendant is covered by insurance may be reversible error,[69] as where the jury are informed that the loss will fall on an insurance company;[70] and misconduct in claiming in the argument that defendant was protected by insurance when the evidence failed to show that he was so protected, and after being admonished by the trial court to eliminate the subject of insurance from the argument, is error requiring a reversal of the case.[71]

It has been held to be reversible error to suggest in argument that defendant, if found liable, would be required to pay personally, his insurer not being liable,[72] although a suggestion that no insurance company was interested in the case has also been held not prejudicial to plaintiff.[72.5]

Other phases of harmless or prejudicial error with reference to comments on, or allusions to, the fact of insurance have been considered in § 1707 in connection with the making of such comments or allusions on the voir dire examination of prospective jurors, and in § 1709 in connection with the introduction of testimony.

§ 1714. Refusal to Hear Argument

Unless prejudice results, refusal to hear argument is not ground for a reversal.

Refusal to hear argument will not be ground for reversal where no prejudice results therefrom,[73]

69. Ala.—Hinton & Sons v. Strahan, 96 So.2d 426—Thorne v. Parrish, 90 So.2d 781, 265 Ala. 193—Colquett v. Williams, 86 So.2d 381, 264 Ala. 214.
Ark.—Ward v. Haralson, 120 S.W.2d 322, 196 Ark. 785.
Cal.—Stevenson v. Link, 275 P.2d 782, 128 C.A.2d 564—Freeman v. Nickerson, 174 P.2d 688, 77 C.A.2d 40—Corral v. Sager, 77 P.2d 303, 25 C.A.2d 322.
Ga.—Burel v. Dempsey, 78 S.E.2d 58, 88 Ga.App. 864.
Ill.—Kelley v. Call, 57 N.E.2d 501, 324 Ill.App. 143—Briggs v. Golden Cream Dairy, 19 N.E.2d 126, 298 Ill.App. 628.
Ind.—J. C. Penney, Inc., v. Kellermeyer, 19 N.E.2d 882, 107 Ind.App. 253, rehearing denied 22 N.E.2d 899, 107 Ind.App. 253.
Iowa.—McCornack v. Pickerell, 283 N.W. 899, 225 Iowa 1076.
Ky.—Struetker v. Neiser, 290 S.W.2d 781—Triplett v. Napier, 286 S.W. 2d 87—Maddox v. Grauman, 265 S.W.2d 939—Wright v. Kinslow, 264 S.W.2d 673—Crawford v. Alexander, 259 S.W.2d 476—Bybee v. Shanks, 253 S.W.2d 257—Banks v. Corder, 243 S.W.2d 661—Turner v. Beleyn, 243 S.W.2d 482—Turner v. Smith, 232 S.W.2d 1006, 313 Ky. 635—Nickell v. Stewart, 163 S.W. 2d 39, 291 Ky. 4—Walden v. Jones, 158 S.W.2d 609, 289 Ky. 395, 141 A. L.R. 105—Stott v. Hinkle, 150 S.W. 2d 655, 286 Ky. 143—Star Furniture Co. v. Holland, 117 S.W.2d 603, 273 Ky. 617.
Mich.—Dewey v. Perkins, 295 N.W. 333, 295 Mich. 611.
Miss.—Byram v. Snowden, 79 So.2d 541, 224 Miss. 74—Chilcutt v. Keating, 71 So.2d 472, 220 Miss. 545—Lancaster v. Lancaster, 57 So.2d 302, 213 Miss. 536.
Mo.—Murphy v. Graves, 294 S.W.2d 29—Carter v. Rock Island Bus Lines, 139 S.W.2d 458, 345 Mo. 1170—Buehler v. Festus Mercantile Co., 119 S.W.2d 961, 343 Mo. 139. Gray v. Williams, App., 289 S. W.2d 463—Hatton v. Sidman, App., 169 S.W.2d 91—Page v. Unterreiner, App., 106 S.W.2d 528—Allen v. Wilkerson, App., 87 S.W.2d 1056.
N.Y.—Kuznicki v. Kuszowski, 153 N. Y.S.2d 705, 2 A.D.2d 216.
N.C.—Jordan v. Maynard, 56 S.E.2d 26, 231 N.C. 101.
Okl.—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487—Leonard v. Stepp, 53 P.2d 1110, 175 Okl. 487—Brotherhood of Railroad Trainmen v. Brown, 38 P.2d 529, 170 Okl. 67.
R.I.—Walling v. Jenks, 194 A. 600, 59 R.I. 129.
S.C.—Entzminger v. Seigler, 195 S.E. 244, 186 S.C. 194.
S.D.—Kloppenburg v. Kloppenburg, 280 N.W. 209, 66 S.D. 174.
Tex.—Plains Creamery v. Denny, Civ. App., 277 S.W.2d 755, error refused no reversible error—Le May v. Young, Civ.App., 217 S.W.2d 862—Chapman v. Evans, Civ.App., 186 S.W.2d 827, refused for want of merit—William Cameron Co. v. Downing, Civ.App., 147 S.W.2d 963—Murphey v. Blankenship, Civ. App., 120 S.W.2d 309.
Vt.—McCutcheon v. Leonard, 39 A. 2d 348, 114 Vt. 38.
W.Va.—Bradfield v. Board of Ed. of Pleasants County, 36 S.E.2d 512, 128 W.Va. 228.

Reference to witness as "adjuster"
In automobile case, where plaintiff's attorney alluded three times by question and in argument, allegedly inadvertently, to witness as an "adjuster," although on objection he stated that there was no insurance company in case and that by "adjuster" he meant anyone who takes statements, defendant was entitled to new trial on ground that jury had been informed that defendant was probably protected by insurance, since an "adjuster" in the insurance business is an agent of the company charged with investigation and adjustment of claims and intervention of "adjuster" suggests an insurance company.

Tex.—William Cameron Co. v. Downing, Civ.App., 147 S.W.2d 963.

70. Mich.—Sherwood v. Babcock, 175 N.W. 470, 208 Mich. 536.

Right of action against insurer
Although plaintiffs had right to proceed only against automobile liability insurer in action based on guest's injuries sustained in automobile accident, argument made by plaintiff's counsel after motorist was made a party defendant, that the lawsuit did not involve the motorist but was a suit between the plaintiffs and insurer, was improper and prejudicial even though motorist was in default at time of trial, since argument tended to eliminate motorist from liability for damages and emphasized that insurer alone would be liable.
Wis.—Pecor v. Home Indemnity Co. of New York, 291 N.W. 313, 234 Wis. 407.

71. Neb.—Lewis v. Beckard, 225 N. W. 462, 118 Neb. 533.

72. Ill.—Humkey v. Huesimann Quarry, 99 N.E.2d 351, 343 Ill.App. 377.
Ohio.—Hatsio v. Red Cab Co., 67 N. E.2d 553, 77 Ohio App. 301.
Wis.—Scharine v. Huebsch, 234 N.W. 358, 203 Wis. 261.

72.5 Cal.—Roselle v. Beach, 125 P. 2d 77, 51 C.A.2d 579.

Statement defendant did not insure
In action against several defendants, including bus company, for injuries sustained by bus passengers in accident, statement by bus company's counsel, in argument, that bus company did not insure passengers, was not, under the circumstances, a prejudicial injection of matter of liability insurance.
Tex.—Myers v. Continental Panhandle Lines, Civ.App., 278 S.W.2d 365.

73. U.S.—Bunker Hill & Sullivan Mining & Concentrating Co. v. Polak, C.C.A.Idaho, 7 F.2d 583, certiorari denied 46 S.Ct. 106, 269 U. S. 581, 70 L.Ed. 423.

although the rule is otherwise where the error was sufficiently prejudicial to warrant the conclusion that the litigant has not had a fair and impartial trial.[74]

9. Rulings as to Evidence in General

§ 1715. General Statement

In the absence of prejudice to the complaining party, erroneous rulings as to evidence will not require a reversal.

Rulings as to evidence, although technically erroneous, will not constitute a ground for reversal where no prejudice results to the party complaining.[75]

Ala.—Adams v. Queen Ins. Co. of America, 88 So.2d 331, 264 Ala. 572—Pacific Fire Ins. Co. v. Overton, 55 So.2d 123, 256 Ala. 400.

Cal.—Givens v. Johnson, 166 P.2d 67, 73 C.A.2d 139—Kling v. Crown Finance Corp., 146 P.2d 54, 63 C.A. 2d 33—Motor Service Express v. Cowan, 7 P.2d 763, 120 C.A. 284—Jones v. Lewis, 126 P. 853, 19 C.A. 575.

Ga.—Jolly v. Catoosa County Board of Education, 154 S.E. 788, 171 Ga. 193.

Williams v. Tennessee Chemical Co., 145 S.E. 470, 38 Ga.App. 681.

Ill.—Vieceli v. Cummings, 54 N.E.2d 717, 322 Ill.App. 559.

Md.—Levi v. Schwartz, 95 A.2d 322, 201 Md. 575, 36 A.L.R.2d 1241.

Mich.—Akema v. Andruska, 226 N.W. 246, 247 Mich. 593.

Mo.—Redick v. M. B. Thomas Auto Sales, 273 S.W.2d 228, 364 Mo. 1174.

Legger v. Great Northern Life Ins. Co., App., 216 S.W.2d 106.

Okl.—Kinder v. Barnett Tank Line, 194 P.2d 864, 200 Okl. 370.

Or.—Hammons v. Schrunk, 305 P.2d 405—Hubbard v. Lamford Lumber Co., 304 P.2d 943.

Tex.—Gulf, C. & S. F. Ry. Co. v. Morris, Civ.App., 241 S.W. 235, affirmed, Com.App., 250 S.W. 1017.

Vt.—Wilson v. Dyer, 75 A.2d 677, 116 Vt. 342.

Va.—Cohen v. Power, 32 S.E.2d 64, 183 Va. 258—Lavenstein Bros. v. Hartford Fire Ins. Co., 101 S.E. 331, 125 Va. 191.

Wash.—Crowl v. West Coast Steel Co., 186 P. 866, 109 Wash. 426.

4 C.J. p 960 note 91—64 C.J. p 287 note 58.

Absence of request

That counsel, by reason of the court's withdrawal of the issue of punitive damages, made no argument thereon to the jury, although the court later decided to submit such issue, is not ground for reversal, in the absence of a request for leave to make further argument.

S.C.—Lumpkin v. Mankin, 134 S.E. 503, 136 S.C. 506.

Where record precludes recovery

It is unnecessary to consider plaintiff's assignment of error concerning a restriction on argument of counsel, where plaintiff's failure of proof prevented recovery in any event.

Or.—Rosenwald v. Oregon City Transp. Co., 163 P. 831, 84 Or. 15, modified on other grounds 164 P. 189, 84 Or. 15.

Erroneous limitation of time allotted counsel for argument did not require reversal where evidence demanded verdict rendered.

Ga.—Morris v. City Council of Augusta, 48 S.E.2d 855, 204 Ga. 26.

Where parties stipulated as to time limit for argument, with understanding that only the stipulated time would be allowed to argue both the main case and the damages, refusal of court to allow defendants additional time to argue question of damages was not arbitrary, and did not, under the circumstances, constitute reversible error.

Utah.—Lodder v. Western Pac. R. Co., 259 P.2d 589.

Request to inform jury of absence of insurance

In action by taxicab passenger for personal injuries against cab company and driver of automobile which struck cab, where, before selection of jury, passenger's counsel had been informed that automobile driver carried liability policy, and on voir dire examination counsel had inquired if any member of panel was employed by, or had any direct interest in, company issuing liability policy, denial of cab company's request to inform jury that cab company did not carry insurance was not prejudicial error.

Mo.—Martin v. Manzella, App., 298 S. W.2d 453.

74. Ala.—Vida Lumber Co. v. Courson, 112 So. 737, 216 Ala. 248.

Cal.—King v. Kaplan, 211 P.2d 578, 94 C.A.2d 697.

Ky.—Ætna Oil Co. v. Metcalf, 183 S. W.2d 637, 298 Ky. 706—Moss v. Mittel, 69 S.W.2d 1046, 253 Ky. 504—Schachleiter v. Watson, 21 S.W. 2d 656, 231 Ky. 416—Louisville Woolen Mills v. Kindgen, 231 S.W. 202, 191 Ky. 568.

Me.—Young v. Carignan, 129 A.2d 216, 152 Me. 332.

Minn.—Givans v. Chicago, St. P., M. & O. Ry. Co., 56 N.W.2d 306, 238 Minn. 161, 38 A.L.R.2d 1393.

Mo.—McInnis v. St. Louis-Southern, 108 S.W.2d 113, 341 Mo. 677.

Chavaries v. National Life & Accident Ins. Co. of Tennessee, App., 110 S.W.2d 790.

N.H.—Alukonis v. Kashulines, 70 A. 2d 202, 96 N.H. 107.

N.Y.—Cohen v. Leon A. Axel, Limited, 69 N.Y.S.2d 250, 272 App.Div. 753.

Tenn.—Burkett v. Johnston, App., 282 S.W.2d 647.

Tex.—Stolpher v. Bowen Motor Coaches, Civ.App., 190 S.W.2d 376, refused for want of merit.

Time limitations

In suit for injuries, etc., sustained by bus passenger when bus collided with rear end of truck, it was prejudicial error for trial court to limit argument of bus company to thirty minutes and argument of truck owner to twenty minutes after fifty minutes had been allowed for plaintiffs' argument.

Tex.—Dallas Ry. & Terminal Co. v. Aultman, Civ.App., 253 S.W.2d 900, affirmed 260 S.W.2d 596, 152 Tex. 509.

75. Ala.—Navco Hardwood Co. v. Bass, 108 So. 452, 214 Ala. 553—Irwin v. Morrow, 95 So. 496, 19 Ala.App. 115, certiorari denied Ex parte Irwin, 95 So. 498, 209 Ala. 164.

Ariz.—Inspiration Consol. Copper Co. v. Bryan, 252 P. 1012, 31 Ariz. 302.

Ark.—Almand v. Alexander, 23 S.W. 2d 611, 180 Ark. 947—Bankers' Fire Ins. Co. v. Williams, 5 S.W.2d 916, 176 Ark. 1188.

Cal.—**Corpus Juris Secundum cited in** Physicians Electric Service Corporation v. Adams, 180 P.2d 422, 423, 79 C.A.2d 550—Hill v. Fresno County, 35 P.2d 593, 140 C.A. 272—Reynolds v. Struble, 18 P.2d 690, 128 C.A. 716—Church of Christ of Long Beach v. Harper, 256 P. 476, 83 C.A. 41—Smith v. Pacific Electric Ry. Co., 226 P. 626, 66 C.A. 485—Balcom v. F. A. Shipley Co., 204 P. 39, 55 C.A. 474—Foley v. Hornung, 169 P. 705, 35 C.A. 304—Montgomery & Mullen Lumber Co. v. Ocean Park Scenic Ry. Co., 161 P. 1171, 32 C.A. 32—Valencia v. Milliken, 160 P. 1086, 31 C.A. 533—Standard American Dredging Co. v. City of Oakland, 157 P. 833, 30 C.A. 237—Bannister v. H. Jevne Co., 151 P. 546, 28 C.A. 133.

Colo.—Cooper v. Newmyer, 250 P. 559, 80 Colo. 246.

Conn.—African Methodist Episcopal Church of Bridgeport v. Jenkins, 94 A.2d 618, 139 Conn. 418.

This rule has been followed where the controlling | facts are so fully established as to leave no question

Fla.—Prince v. Aucilla River Naval Stores Co., 137 So. 886, 103 Fla. 605.
Ga.—Hunt v. Western & A. R. R., 174 S.E. 222, 49 Ga.App. 33.
Ill.—Bolle v. Chicago & N. W. Ry. Co., 258 Ill.App. 545, certiorari denied Chicago & N. W. Ry. Co. v. Bolle, 52 S.Ct. 6, 76 L.Ed. 1299, and 52 S.Ct. 59, 284 U.S. 74, 76 L.Ed. 173.
Ind.—Hauch v. Fritch, 189 N.E. 639, 99 Ind.App. 65—Cline v. Rodabaugh, 179 N.E. 6, 97 Ind.App. 258—Willis v. Knauth, 137 N.E. 557, 79 Ind.App. 114—Caldwell v. Alley, 123 N.E. 432, 70 Ind.App. 313.
Iowa.—Neyens v. Gehl, 15 N.W.2d 888, 235 Iowa 115—Mortimer v. Farmers' Mut. Fire & Lightning Ins. Ass'n, 249 N.W. 405, 217 Iowa 1246—Hanson v. City of Anamosa, 158 N.W. 591, 177 Iowa 101.
Kan.—Laupheimer v. Buck, 11 P.2d 721, 135 Kan. 631.
Md.—Brotman v. McNamara, 29 A.2d 264, 181 Md. 224—Christian v. Johnson Const. Co., 155 A. 181, 161 Md. 87.
Mass.—Hutchinson v. Plant, 105 N.E. 1017, 218 Mass. 148.
Mich.—Buys v. Michigan Mut. Liability Co., 1 N.W.2d 513, 300 Mich. 206—Degens v. Langridge, 183 N.W. 28, 214 Mich. 573.
Minn.—Bullock v. New York Life Ins. Co., 233 N.W. 858, 182 Minn. 192.
Miss.—Brookhaven Lumber & Mfg. Co. v. Adams, 97 So. 484, 132 Miss. 689.
Mo.—Ingram v. Prairie Block Coal Co., 5 S.W.2d 413, 319 Mo. 644—Kidd v. Chicago, R. I. & P. Ry. Co., 274 S.W. 1079, 310 Mo. 1, certiorari denied Chicago, R. I. & P. Ry. Co. v. Kidd, 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424.
Elstroth v. Karrenbrock, App., 285 S.W. 525—Dempsey v. McGinnis, App., 249 S.W. 662—Fuerstenberg v. Kram, App., 249 S.W. 143—Pyle v. Kansas City Light & Power Co., App., 246 S.W. 979—Grohmann v. The Maccabees, App., 237 S.W. 875.
Mont.—Johnson v. Blyberg, 266 P. 1103, 82 Mont. 336—Anderson v. Wirkman, 215 P. 224, 67 Mont. 176—Lingquist v. Seibold, 199 P. 709, 62 Mont. 162, reheard Lingquist v. Loble, 204 P. 170, 62 Mont. 166.
Neb.—Trute v. Skeede, 75 N.W.2d 672, 162 Neb. 266—State ex rel. Sorensen v. State Bank of Omaha, 253 N.W. 356, 126 Neb. 343—In re O'Connor's Estate, 222 N.Y. 57, 117 Neb. 636—Murray v. Bailey, 193 N.W. 259, 110 Neb. 114—Johnston v. Aden, 192 N.W. 220, 109 Neb. 625—Prairie Life Ins. Co. v. Heptonstall, 182 N.W. 483, 105 Neb. 829—Henry v. City of Lincoln, 151 N.W. 933, 97 Neb. 865.
N.H.—Harvey v. Provandie, 141 A. 136, 83 N.H. 236.
N.Y.—John William Bldg. Corp. v. Union Trust Co. of Rochester, 9 N.Y.S.2d 14, 256 App.Div. 885.
N.C.—Chesson v. Kieckhefer Container Co., 26 S.E.2d 904, 223 N.C. 378—In re Nicholson's Will, 167 S.E. 820, 204 N.C. 223—Peyton v. Hamilton-Brown Shoe Co., 83 S.E. 487, 167 N.C. 280—Lynch v. Rosemary Mfg. Co., 83 S.E. 6, 167 N.C. 98.
Ohio.—Campbell v. Monumental Life Ins. Co., App., 34 N.E.2d 268—Liberty Highway Co. v. Callahan, 157 N.E. 708, 24 Ohio App. 374—Hine v. Hine, 157 N.E. 308, 25 Ohio App. 120.
Okl.—Whitney v. Douglas, 307 P.2d 154—City of Tulsa v. Pearson, 296 P.2d 788—Jones v. City of Oklahoma City, 250 P.2d 17, 207 Okl. 431—Larkins-Warr Trust v. Watchorn Petroleum Co., 174 P.2d 589, 198 Okl. 12—Williams v. Slaughter, 15 P.2d 27, 159 Okl. 254—Schaff v. Coyle, 249 P. 947, 121 Okl. 228—Maupin v. Binnion, 227 P. 390, 100 Okl. 32—Kimmell v. Goehler, 226 P. 576, 99 Okl. 273—Nolan v. Clift, 221 P. 430, 97 Okl. 100—Oklahoma City v. Stewart, 184 P. 779, 76 Okl. 211—Carden v. Humble, 184 P. 104, 76 Okl. 165—O'Neil Engineering Co. v. City of Lehigh, 182 P. 659, 75 Okl. 227—Bartlesville Zinc Co. v. James, 166 P. 1054, 66 Okl. 24—Cox v. Kirkwood, 158 P. 930, 59 Okl. 183—Parker v. Hamilton, 154 P. 65, 49 Okl. 693.
Or.—Lucas v. Kaylor, 299 P. 297, 136 Or. 541—Abraham v. Mack, 273 P. 711, 130 Or. 32, rehearing denied 278 P. 972, 130 Or. 32—Guthrie v. J. K. Lumber Co., 195 P. 173, 99 Or. 158.
Pa.—Goldberg v. Philadelphia Rapid Transit Co., 149 A. 104, 299 Pa. 79—Robinson v. American Ice Co., 141 A. 244, 292 Pa. 366.
Jordan v. Clearfield County, 164 A. 98, 107 Pa.Super. 441—Findley v. Bryans, 58 Pa.Super. 399—Hoober v. New Holland Water Co., 56 Pa.Super. 536.
R.I.—Psaty & Fuhrman v. Housing Authority of City of Providence, 68 A.2d 32, 76 R.I. 187, 10 A.L.R.2d 789—Talon v. Jackson, 30 A.2d 96, 68 R.I. 488.
S.C.—James v. Atlantic Coast Line R. Co., 18 S.E.2d 616, 199 S.C. 45—Scott v. Atlantic Coast Line R. Co., 96 S.E. 305, 109 S.C. 471.
S.D.—Pinches v. New Farmers' Grain Co., 217 N.W. 190, 52 S.D. 198—Reinhard Bros. Co. v. Swanson, 207 N.W. 102, 49 S.D. 256—Mallery v. Griffin, 177 N.W. 818, 43 S.D. 71—Kahney v. Thayer, 154 N.W. 1103, 36 S.D. 385.
Tex.—Texas & N. O. R. Co. v. H. Rouw Co., Civ.App., 225 S.W.2d 425, error dismissed—City Grocery Co. v. Hallmark, Civ.App., 123 S.W.2d 988, error dismissed—Clay v. Maxwell, Civ.App., 84 S.W.2d 785—England v. Pitts, Civ.App., 56 S.W.2d 493—Jackson v. First Nat. Bank, Civ.App., 290 S.W. 276—Texas & P. Ry. Co. v. Sherer, Civ.App., 183 S.W. 404, error refused.
Utah.—Thomas v. Frost, 27 P.2d 459, 83 Utah 207.
Vt.—McAllister v. Benjamin, 121 A. 263, 96 Vt. 475—Arnold v. Somers, 105 A. 260, 92 Vt. 512.
Va.—Updike v. Texas Co., 136 S.E. 591, 147 Va. 208—Schmidt v. Wallinger, 99 S.E. 680, 125 Va. 361—McClung v. Folkes, 94 S.E. 156, 122 Va. 48.
Wis.—Falkner v. Schultz, 150 N.W. 424, 160 Wis. 594.
4 C.J. p 963, note 68—38 C.J. p 518 note 30.

Burden of proof

(1) Error in placing the burden of proof is not ground for reversal where no harm results to appellant therefrom.
Ala.—Louisville & N. R. Co. v. Strickland, 122 So. 693, 219 Ala. 581—Stover v. Hill, 94 So. 826, 208 Ala. 575.
Ariz.—Alger v. Brighter Days Min. Corp., 160 P.2d 346, 63 Ariz. 135.
Cal.—Goodale v. Thorn, 249 P. 11, 199 C. 307.
Hutchings v. Post, 265 P. 968, 90 C.A. 382.
Conn.—Leitzes v. F. L. Caulkins Auto Co., 196 A. 145, 123 Conn. 459—Noll v. Moran, 109 A. 241, 94 Conn. 452.
Ind.—Jenkins v. Vincennes Bridge Co., 146 N.E. 863, 82 Ind.App. 572.
Iowa.—Dye Produce Co. v. Davis, 209 N.W. 744, 202 Iowa 1008.
Kan.—Childress v. Lucky Jew Lead & Zinc Co., 8 P.2d 376, 134 Kan. 743—Quinton v. Kendall, 253 P. 600, 122 Kan. 814—Appeal of Board of County Com'rs, 187 P. 694, 106 Kan. 315—Title Loan & Investment Co. v. Fuller, 184 P. 727, 105 Kan. 395—Smith v. Griffith, 184 P. 725, 105 Kan. 357—Gemienhardt v. Ward, 167 P. 1141, 101 Kan. 250—In re Holloway's Estate, 164 P. 298, 100 Kan. 368—Henning v. Wichita Natural Gas Co., 164 P. 297, 100 Kan. 255—State Bank of Eudora v. Brecheisen, 157 P. 259, 98 Kan. 193.
Ky.—Silver v. Overhead Door Co., 225 S.W.2d 115, 311 Ky. 650—United Ben. Life Ins. Co. v. Schott, 177 S.W.2d 581, 296 Ky. 789, 150 A.L.R. 1359—Woods v. Madden's Adm'x, 170 S.W.2d 877, 294 Ky. 14—Deep v. Farmers' Nat. Bank of Lebanon, 57 S.W.2d 1002, 247 Ky. 801—Niagara Ins. Co. of New York v. Jeffrey, 286 S.W. 846, 215 Ky. 644—

Equity Life Assur. Soc. of U. S. v. Bailey, 284 S.W. 403, 214 Ky. 754—White v. Ponder, 202 S.W. 867, 180 Ky. 386—Ditto v. Hopkins, 175 S. W. 658, 164 Ky. 412.
Mass.—Pickard v. Clancy, 113 N.E. 838, 225 Mass. 89.
Mich.—Thon v. Stiles, 242 N.W. 869, 259 Mich. 145.
Mont.—Gibbons v. Huntsinger, 74 P. 2d 443, 105 Mont. 562—Wood v. Robbins, 215 P. 1101, 67 Mont. 409.
Neb.—Exchange Nat. Bank v. Schultz, 203 N.W. 496, 113 Neb. 346.
N.Y.—Title Guarantee & Trust Co. v. Pam, 232 N.Y. 441, 134 N.E. 525, argument denied 135 N.E. 904, 233 N.Y. 530.
N.C.—Anderson v. Town of Albemarle, 109 S.E. 262, 182 N.C. 434.
Okl.—Metropolitan Casualty Ins. Co. of New York v. Dolese Bros. Co., 20 P.2d 569, 163 Okl. 36—Forbes v. Becker, 1 P.2d 721, 150 Okl. 281, 80 A.L.R. 1—Austin v. Evans, 270 P. 26, 132 Okl. 238.
Pa.—Ryan v. MacDonald, 30 A.2d 662, 151 Pa.Super. 607—Adams v. Tamaqua Underwear Co., 161 A. 416, 105 Pa.Super. 339.
S.C.—Lanham v. Jennings, 113 S.E. 791, 122 S.C. 461.
Tex.—Texas Real Estate Commission v. Sandefur, Civ.App., 279 S.W.2d 954—Porter v. Guggenheim, Civ. App., 107 S.W.2d 891, error dismissed—Fort Worth Sand & Gravel Co. v. Peters, Civ.App., 103 S.W.2d 407, error dismissed.
Utah.—Miller v. Marks, 148 P. 412, 46 Utah 257.
Wis.—Premier Refining Co. v. Falkenberg, 193 N.W. 1001, 181 Wis. 117.

(2) So, where the court ruled that the burden of proof on a certain point was on defendant, no harm ensued to defendant thereby, when, as a matter of fact, plaintiff actually assumed such burden.
Fla.—Hartford Fire Ins. Co. v. Brown, 53 So. 838, 60 Fla. 115.

(3) Even where a party erroneously assumes the burden of proof as to a particular matter or the burden of evidence as to particular facts, the mistake will not be corrected on appeal.
N.M.—Citizens Finance Co. v. Cole, 134 P.2d 550, 47 N.M. 73.

(4) Also, where at trial a party voluntarily assumes burden of proof, it is not cause for reversal of a judgment rendered against him that burden of proof was cast by pleadings on the other party.
Kan.—Bradbury v. Wise, 208 P.2d 209, 167 Kan. 737.

(5) In equity case heard orally by chancellor, it is immaterial whether or when burden of proof shifts, provided chancellor hears all the testimony offered and renders a correct decision.
Ky.—Saylor v. Saylor, 138 S.W.2d 316, 282 Ky. 246.

Error favorable to appellant

(1) Defendant railroad company is not prejudiced by a ruling that evidence as to a conversation between plaintiff and its flagman, part of the res gestæ was admissible only to impeach the flagman, who had denied such conversation, such conversation being admissible as substantive evidence.
Ky.—Louisville & N. R. Co. v. Messer, 175 S.W. 360, 164 Ky. 218, reheard 176 S.W. 1200, 165 Ky. 506.

(2) So, the erroneous ruling of the court, in an action by a teacher for breach of a contract of employment, that plaintiff should show the amount realized from other employment, instead of leaving such matters for defendant to show, was not harmful to defendant, who brought out the facts on cross-examination.
Colo.—School Dist. No. 3 in Clear Creek County v. Nash, 140 P. 473, 27 Colo.App. 551.

(3) Error in preventing documentary evidence, which was admitted over defendant's objection, from being read or commented on to the jury was not prejudicial to him.
Okl.—Bilby v. Brockman, 155 P. 257, 55 Okl. 714.

Failure to produce evidence

(1) Error, if any, for failure to introduce in evidence documents showing the appointment of a guardian ad litem was held not prejudicial where the documents were part of the files in the case.
Cal.—Henry v. Garden Grove Union High School Dist. of Orange County, 7 P.2d 192, 119 C.A. 638.

(2) Failure to offer testimony as to facts which are within common observation and general knowledge of men requiring no special proof was not prejudicial error.
Ohio.—Miller v. Beard, App., 136 N. E.2d 366.

Judicial notice

(1) Appellate court will not reverse for error in taking of judicial notice where no prejudice results.
Cal.—Baggesi v. Baggesi, 224 P.2d 894, 100 C.A.2d 828—Townsend v. Perry, 110 P.2d 1019, 43 C.A.2d 380.
Colo.—Patch v. Boman, 257 P.2d 418, 127 Colo. 424.
Minn.—Patterson v. Consumers Roofing Co., 295 N.W. 401, 209 Minn. 50.

(2) Refusal of the court to take judicial notice of proclamations of the president was error, although harmless, where corrected by notice taken by the reviewing court.
Mass.—Phillips v. Davis, 147 N.E. 96, 251 Mass. 263, certiorari denied Davis v. Phillips, 46 S.Ct. 101, 269 U.S. 573, 70 L.Ed. 418.

(3) In action by building contractor's assignee for breach of plumbing sub-contract, admission of defendants' testimony concerning matters of which plaintiff maintained that court should have taken judicial notice was not error, where court expressly limited testimony to what was then custom in plumbing business and did not permit witness to testify as to law with respect to priorities required to obtain plumbing materials.
Cal.—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723.

Matters already in evidence

(1) Where documents have been introduced in evidence without objection, a second offer is superfluous, and hence it is not prejudicial to permit the documents to be read in evidence.
Ala.—National Surety Co. v. Citizens' Light, Heat & Power Co., 78 So. 834, 201 Ala. 456.

(2) Failure formally to introduce contracts in evidence, in a suit to recovery money paid thereunder, is not reversible error, where they were marked as exhibits, identified, and handed to the court, and their binding force was proved by testimony.
Mich.—McKenzie v. West Detroit Land Co., 216 N.W. 438, 241 Mich. 129.

(3) Where three witnesses were permitted without objection to give their opinions as to husband's fitness to raise his son, examination of fourth witness calling for opinion as to husband's fitness to raise son was not prejudicial error.
Cal.—Munson v. Munson, 166 P.2d 268, 27 C.2d 659.

(4) In action by police officer against taxicab company for injuries sustained when motorcycle which officer was riding collided with cab, where record of cab driver's plea of guilty to offense of aggravated assault with motor vehicle was received in evidence, no error was disclosed by showing that cab driver was questioned about the plea of guilty or that inquiry as to record was made of clerk of county court at law.
Tex.—Fisher v. Leach, Civ.App., 221 S.W.2d 384, error refused no reversible error.

(5) Fact that defendant had been directed by trial court to furnish a specimen of her handwriting, to be used as aid in determining whether defendant had written a document which plaintiff testified was in defendant's handwriting, could not have been prejudicial to defendant, where there were in evidence at the time two admittedly genuine specimens of defendant's handwriting which could have been used for purpose of making the comparison.
Wash.—Mitchell v. Mitchell, 166 P. 2d 938, 24 Wash.2d 701.

as to the justice of the verdict;[76] where the evi- | dence was immaterial[77] or where the evidence was

Offer of proof

(1) Refusal of the judge to receive an offer of proof was harmless, where an inclusive offer was thereafter received.

Mass.—Starks v. O'Hara, 165 N.E. 127, 266 Mass. 310.

(2) In action to recover the unpaid balance due on a building contract, rulings on respondent's various objections to appellant's offers of proof with respect to the alleged cutting off of words "final payment" on a check sent by respondent to appellant was not prejudicial, where respondent did not attempt to prove an accord and satisfaction based on alleged notation and court made no finding as to who trimmed check or when it was done.

Wash.—Kellogg v. Wilcox, 283 P.2d 677, 46 Wash.2d 558, rehearing denied 286 P.2d 114, 46 Wash.2d 558.

Purpose of offer

(1) The error of trial court in concluding that plaintiff offered regulator in evidence for limited purpose of determining its outward appearance and in perhaps misleading defendant to believe that mechnical aspect would not be considered was harmless, where regulator was properly identified and proper foundation was laid by plaintiff before mechanical operation of regulator was presented to jury.

Ariz.—Witt Ice & Gas Co. v. Bedway, 231 P.2d 952, 72 Ariz. 152.

(2) In action against truck owner for injuries sustained by brakeman in collision between truck and train, trial court did not commit reversible error in limiting brakeman's petition in prior actions and in admitting them only for the purpose of impeaching the brakeman rather than for all purposes.

Tex.—Gillette Motor Transp. Co. v. Whitfield, Civ.App., 197 S.W.2d 157, affirmed 200 S.W.2d 624, 145 Tex. 571.

Preliminary matters

(1) Error cannot be predicated on the claim that preliminary to the introduction of certain photographs offered by plaintiff the court was more exacting of him than of defendant under similar circumstances, where the ultimate fact appears that the photographs in both cases were admitted in evidence.

Cal.—De La Torre v. Johnson, 264 P. 485, 203 C. 374.

(2) Where letter report of company engineer was admissible in evidence, and court was aware of contents from counsels' discussion, although it were better practice for court to have examined letter before its introduction, party suffered no prejudice from failure of court to so examine letter.

N.H.—Derby v. Public Service Co. of N. H., 119 A.2d 335, 100 N.H. 53.

Treating matter as in evidence

(1) Where suits to enforce liens were tried together, and in one of the suits one of defendants testified to a written agreement between him and the principal contractors for the construction of the building, and identified it as an exhibit offered and received in one of the other cases, it is not reversible error for the court to regard it as in evidence in such case, although it was not formally reoffered therein.

Wyo.—Phelan v. Cheyenne Brick Co., 188 P. 354, 26 Wyo. 493, rehearing denied 189 P. 1103, 26 Wyo. 493.

(2) So in an action on an official bond, failure formally to introduce the bond in evidence was harmless, where the parties and the court treated it as in evidence.

Okl.—Hughes v. Board of Com'rs of Oklahoma County, 150 P. 1029, 50 Okl. 410, error dismissed 37 S.Ct. 400, 243 U.S. 625, 61 L.Ed. 527.

(3) Statement by trial court, "No, it is in the record already," after plaintiff's counsel, during examination of one of defendants, directed witness' attention to certain pages of his deposition and asked him to read a question commencing on certain line of first of such pages, did not establish that deposition was in evidence, so that court did not commit prejudicial error in failing to read it, where court, immediately after such statement, said to counsel, "Let the witness read and then, of course, you can read such portions into the record as you desire," and counsel made no suggestion that such deposition was already in evidence when he offered depositions of all defendants in evidence during his closing argument.

Cal.—Stafford-Lewis v. Wain, 276 P. 2d 157, 128 C.A.2d 614.

Subsequent failure to object

In an action for personal injuries, a layman's testimony as to the physical appearance of plaintiff and conversations with him, admitted only on the question of his ability to come into court to testify, if error, was not prejudicial to defendant, where defendant did not object to the introduction of testimony of plaintiff given at a former trial.

Mo.—Slinkard v. Lamb Const. Co., App., 212 S.W. 61, affirmed 225 S.W. 352, 286 Mo. 623.

Tentative rulings

Separate rulings which were merely tentative and became merged in the final ruling on the evidence cannot serve to bring about a reversal of the judgment.

Ala.—Finney v. Bouchelle, 124 So. 423, 220 Ala. 194.

76. Fla.—Maule Ojus Rock Co. v. Lumpkin, 151 So. 505, 113 Fla. 195. 4 C.J. p 964 note 69.

Identification of photograph

In an action for damages for the death of a seven-year-old boy, admitting a photograph of deceased, and permitting the mother on the witness stand to identify the photograph, where the mother wept as she identified her son's picture, was harmless error, the case not being closely contested and the evidence clearly establishing that the death was due to defendant's negligence.

Cal.—O'Meara v. Haiden, 268 P. 334, 204 C. 354, 60 A.L.R. 1381.

Strongly corroborated witness

Error, if any, in permitting the examination of an expert witness as to whether he had not been complimented in an opinion of another court, was held not to require reversal, where his testimony was strongly corroborated.

Ind.—Liggett & Meyer Tobacco Co. v. Meyer, 194 N.E. 206, 101 Ind. App. 420.

77. Ala.—Meshow v. Agee, 87 So. 95, 204 Ala. 621.

Colo.—Groth v. Kersting, 4 Colo.App 395, 36 P. 156.

Ind.—Whitacker v. Low, 197 N.E 690, 102 Ind.App. 47.

Ky.—Key v. Duffin, 194 S.W. 355, 175 Ky. 348.

Md.—Michlovitz & Co. v. Eastern Rolling Mill Co., 148 A. 836, 158 Md. 486.

Mass.—Brand v. Suburban Land Co., 12 N.E.2d 737, 299 Mass. 336—Eisenhauer v. Ceppi, 131 N.E. 184, 238 Mass. 458.

N.Y.—I. & I. Holding Corp. v. Gainsburg, 12 N.E.2d 532, 276 N.Y. 427, 115 A.L.R. 582.

Citizens' Trust Co. of Utica v. R. Prescott & Son, 229 N.Y.S. 687, 224 App.Div. 280.

4 C.J. p 964 note 70.

Matters not in dispute

(1) Error in limiting proof of defendant in malicious prosecution action of general bad reputation of plaintiff to issue of mitigation of damages was not reversible error when the proof pertaining to the matter of probable cause was not in dispute.

Ala.—Roughton v. Jackson, 64 So.2d 112, 37 Ala.App. 17, certiorari denied 64 So.2d 115, 258 Ala. 579.

(2) Limitation of testimony of plaintiff's physician to matters covered by plaintiff's testimony, which showed waiver of privilege, was not prejudicial, where amount of recovery was not in controversy.

Ark.—Missouri Pacific Transp. Co. v. Moody, 134 S.W.2d 868, 199 Ark. 483.

merely cumulative of other competent evidence;[78] where part of the evidence was incompetent and immaterial or based on hearsay and a general objection was made to all of it;[78.5] where the ruling was made in the absence of the jury;[79] where the error was cured by instructions to the jury;[79.5] where the issues to which the evidence related were properly taken from the jury;[80] where the evidence other than that involved in the objection is sufficient to sustain the judgment;[81] where the finding of the jury is such as to render the error harmless;[82] where the evidence is such as to require a verdict for the successful party;[83] where on all the evidence the complaining party was not entitled to recover;[84] where the result would not have been changed if the court had ruled as requested by the

78. Ark.—Missouri Pacific Transp. Co. v. Moody, supra.
Cal.—Mutch v. San Diego Electric Ry. Co., 102 P.2d 1100, 39 C.A.2d 327—Knaugh v. Baender, 257 P. 606, 84 C.A. 142.
Idaho.—Baldwin v. Mittry, 102 P.2d 643, 61 Idaho 427.
Ill.—Illinois Tuberculosis Ass'n v. Springfield Marine Bank, 282 Ill. App. 14.
Kan.—Watson v. Watson, 180 P. 242, 104 Kan. 578, modified on other grounds 182 P. 643, 104 Kan. 578.
Mich.—Baumgarten v. Tasco, 20 N.W. 2d 144, 312 Mich. 161.
Tenn.—Yellow Cab v. Gattuso, 11 Tenn.App. 109.

Limiting number of witnesses

(1) Harmless error in limiting the number of witnesses for a party on a particular issue does not require reversal.
Neb.—Luchsinger v. Loup River Public Power Dist., 299 N.W. 549, 140 Neb. 179.

(2) An erroneous ruling of the court at the beginning of a trial limiting each party to two witnesses was not prejudicial as to a party who introduced three witnesses and did not offer more.
Ark.—Henson & Sons Coal Co. v. Strickland, 238 S.W. 5, 152 Ark. 203, 21 A.L.R. 328.

(3) Limiting the number of witnesses on the proposition whether a fence as now located is on the former fence line was not prejudicial, in the absence of a showing of what the testimony of proposed additional witnesses would have been.
Iowa.—Harkrader v. Cadwell, 229 N. W. 236.

(4) Limiting each side to five witnesses as to the value of property and damages by the operation of an elevated railroad was held not prejudicial to defendant where plaintiff called only three witnesses and defendant called five.
Ill.—Geohegan v. Union Elevated R. Co., 107 N.E. 786, 266 Ill. 482, Ann. Cas.1916B 762.

Matters not in dispute

Permitting plaintiff to introduce in evidence only a part of a paragraph of defendants' answer, if erroneous, was harmless, where there was no real controversy as to existence of the fact admitted in the part of the paragraph not introduced.
N.C.—Merchants' Nat. Bank of Winston v. Pack, 100 S.E. 615, 178 N.C. 388.

78.5 Ala.—Hunt v. Ward, 79 So.2d 20, 262 Ala. 379.
Ga.—Lewis v. Seabolt, 71 S.E.2d 519, 209 Ga. 253.
Minn.—Zuber v. Northern Pac. Ry. Co., 74 N.W.2d 641, 246 Minn. 157.

79. Mo.—Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180.

79.5 Ala.—Woodward Iron Co. v. Mumpower, 28 So.2d 625, 248 Ala. 502.
Okl.—Fleming v. Pattillo, 167 P.2d 40, 196 Okl. 557.
R.I.—Lianos v. Andreucci, 48 A.2d 343, 72 R.I. 123.
Tex.—Burnett v. Amicable Life Ins. Co., Civ.App., 195 S.W.2d 237, error refused no reversible error.
Vt.—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216.

80. Mass.—Brown v. Wimpenny, 132 N.E. 43, 239 Mass. 278.
N.C.—Miller v. Garner, 90 S.E. 771, 172 N.C. 865.
4 C.J. p 964 note 71.

Right of plaintiff to sue

Where defendants denied that plaintiff was a proper party to bring the action, the error, if any, in connection with the admission in evidence of a probate court's order, offered by plaintiff, authorizing plaintiff as administrator to sue for the amount allegedly owed by defendants, was harmless where it was not contended that the order in question was read into the record to the jury, or sent to the jury room as an exhibit, or that the contents thereof were in any manner brought to the jury's attention.
Iowa.—Farris v. Iltis, 243 N.W. 195.

81. Fla.—Graham v. Holmes, 74 So. 5, 73 Fla. 85.
Ill.—See Lundell v. Schultz, 186 Ill. App. 245.
Kan.—Smith v. St. Louis & S. F. R. Co., 148 P. 759, 95 Kan. 451.
Me.—Pelletier v. Central Maine Power Co., 126 A. 836, 124 Me. 193.
N.C.—Moore v. Rowland Lumber Co., 95 S.E. 175, 175 N.C. 205.
S.C.—Maxwell v. Epton, 181 S.E. 16, 177 S.C. 184.
Tex.—Abeel v. Weil, 283 S.W. 769, 115 Tex. 490.
Wash.—In re Quick's Estate, 297 P. 198, 161 Wash. 537.
4 C.J. p 964 note 72.

Failure to produce witness did not constitute reversible error where there was ample evidence to sustain findings, even in absence of such witness.
Minn.—Bowman v. Plumb, 20 N.W. 2d 493, 220 Minn. 547.

82. Ala.—Houston v. Town of Waverly, 142 So. 80, 225 Ala. 98—May Hosiery Mills v. Munford Cotton Mills, 87 So. 674, 205 Ala. 27.
Md.—State v. Phillinger, 120 A. 878, 142 Md. 365.
Vt.—Arnold v. Somers, 105 A. 260, 92 Vt. 512.
4 C.J. p 964 note 73.

Measure of damages

Rulings on evidence as to measure of damages in action for assault were rendered harmless, if erroneous, by jury's negative answer to issue whether defendants wrongfully assaulted plaintiff.
N.C.—Rooks v. Bruce, 195 S.E. 26, 213 N.C. 58.

83. Ala.—McConnell v. Free, 89 So. 170, 206 Ala. 83.
Green v. Munson S. S. Line, 88 So. 27, 17 Ala.App. 641—Hayes v. Atlanta, B. & A. Ry. Co., 84 So. 556, 17 Ala.App. 220.
Ga.—Martin v. Turner, 152 S.E. 112, 170 Ga. 62.
Md.—Wegefarth v. Wiessner, 107 A. 364, 134 Md. 555, 6 A.L.R. 396.
Wash.—Bromley v. McHugh, 210 P. 809, 122 Wash. 361.
4 C.J. p 964 note 74.

Burden of proof

Defendant in an action on a note was not prejudiced by an alleged erroneous ruling as to the burden of proof on the issue of holder for value, where plaintiff was entitled to a peremptory instruction under any view of the evidence on such issue.
Ky.—Campbell v. Fourth Nat. Bank, 126 S.W. 114, 137 Ky. 555.

84. Ala.—Sovereign Camp, W. O. W., v. Turner, 191 So. 473, 238 Ala. 436.
Iowa.—Crull v. Louisa County, 151 N.W. 88, 169 Iowa 199.
Ky.—Lilly v. Marcum, 283 S.W. 1059, 214 Ky. 514.
Mass.—Howe v. City of Boston, 41 N.E.2d 1, 311 Mass. 278.

complaining party;[85] where the rulings do not relate to matters that could change the result;[86] where the rulings do not affect the conclusion of the reviewing court;[86.5] where the court limited the effect of the evidence;[86.10] where the court, although failing properly to limit the effect of the evidence at the time it was received subsequently did so,[87] or where no request to limit its effect was made;[87.5] where the court, although not restricting the effect of the evidence made statements purporting to do so;[87.10] or where no proof was offered of facts which the court erroneously ruled might be shown.[88] So error in limiting the time for taking testimony is harmless in the absence of some showing that appellants had testimony to offer.[89]

Where errors have occurred in rulings on evidence of such a character as to have deprived the party of the opportunity to present his case fairly to the jury on the legitimate evidence in the case, the court should reverse the judgment.[90] Accord-

Tex.—Overton Refining Co. v. F. W. Merrick, Inc., Civ.App., 161 S.W. 2d 856, error refused.
4 C.J. p 964 note 75.

Failing to take entire evidence in presence of jury was harmless where a verdict for defendant would have been without evidence to support it.
Va.—Douglas v. United Co., 31 S.E. 2d 889, 183 Va. 263.

Judicial notice

Any error in refusing to take judicial notice of safety code showing that defendant was guilty of negligence per se, was without prejudice where evidence established that plaintiff's deceased was guilty of contributory negligence more than slight as a matter of law, proximately causing accident, and thus barring recovery for death.
Neb.—Wertz v. Lincoln Liberty Life Ins. Co., 41 N.W.2d 740, 152 Neb. 451, 17 A.L.R.2d 629.

Nonsuit or judgment notwithstanding verdict

Where trial court could, or should have, entered a compulsory nonsuit, or should have entered judgment notwithstanding verdict, any rulings on admissibility of evidence become immaterial.
Pa.—Peters v. Colonial Life Ins. Co. of America, 193 A. 460, 128 Pa. Super. 21.

85. Ala.—Southern Natural Gas Co. v. Davidson, 142 So. 63, 225 Ala. 171—Dorough v. Alabama Great Southern R. Co., 128 So. 602, 221 Ala. 305.
Underwood v. Duskin & Stewart Realty Co., 85 So. 845, 17 Ala.App. 543.
Cal.—Church of Christ of Long Beach v. Harper, 256 P. 476, 83 C.A. 41.
Conn.—Carroll v. Arnold, 141 A. 657, 107 Conn. 535.
Fla.—Boyd v. University Athletic Ass'n, 157 So. 576, 117 Fla. 188.
Idaho.—Blaine County Nat. Bank v. Timmerman, 245 P. 389, 42 Idaho 338.
Ill.—Blunt v. Kelly, 219 Ill.App. 327. See Hunt v. Keating, 201 Ill.App. 587—Carden v. Chicago Rys. Co., 183 Ill.App. 168.
Iowa.—Citizens' State Bank of Mt. Vernon v. Hendrix, 175 N.W. 17, 187 Iowa 1192—Sackett v. Chicago Great Western R. Co., 174 N.W. 658, 187 Iowa 994.
N.H.—Groulx v. Groulx, 103 A.2d 188, 98 N.H. 481.
N.J.—Garven v. Finch, 116 A. 771, 97 N.J.Law 329.
Roe v. Eggleston, 142 A. 366, 6 N.J.Misc. 630.
Tex.—Sheek v. Texas Co., Civ.App., 286 S.W. 336—Pickens v. Rankin, Civ.App., 258 S.W. 847.
Vt.—Ryder's Adm'r v. Hayward, 126 A. 491, 98 Vt. 106, 36 A.L.R. 453.
Va.—Eastern Public Service Corporation v. Funkhouser, 149 S.E. 503, 153 Va. 128.
4 C.J. p 964 note 76.

Burden of proof

Where, on the issue whether a contract between attorney and client was unfair to the client, the attorney introduced evidence of fairness, and the client did not show any unfairness, the error in placing on the client the burden to show unfairness did not affect the result.
S.C.—Whittle v. Tompkins, 77 S.E. 929, 94 S.C. 237.

Swearing witness to identify

Action of the court, in requiring a witness on whom a subpœna duces tecum had been served to be sworn merely for the purpose of identifying the books and papers produced, where the court offered to give the party producing the witness time and opportunity to examine the books after the swearing of the witness, was held harmless, since the adverse party could not have cross-examined the witness as to matters not brought out on the examination in chief.
Va.—Duncan v. Carson, 103 S.E. 665, 127 Va. 306, reheard 105 S.E. 62, 127 Va. 306.

86. Ala.—Whitlow v. Moore, 21 So. 2d 253, 246 Ala. 472.
C. M. McMahen & Sons v. Louisville & N. R. Co., 106 So. 56, 21 Ala.App. 66, certiorari denied Ex parte C. M. McMahen & Sons, 106 So. 57, 213 Ala. 642.
Conn.—LaFrance v. LaFrance, 14 A. 2d 739, 127 Conn. 149.
Ill.—Harlan E. Moore & Co. v. Champaign Nat. Bank, 141 N.E.2d 97, 13 Ill.App.2d 232.
Ind.—Guthrie School Tp., Lawrence County, v. Wilcox, 5 N.E.2d 666, 103 Ind.App. 116.
Okl.—Union Mortg. Co. v. Taylor, 177 P.2d 1014, 198 Okl. 290.
4 C.J. p 964 note 77.

Identification of exhibit

Assignment of error to a ruling permitting a witness to identify an exhibit is unavailing, it not appearing that it was introduced in evidence or seen by the jury.
Ala.—Mobile Light & R. Co. v. Fuller, 92 So. 90, 18 Ala.App. 308.
Iowa.—Jacobsen v. Greeley, 178 N. W. 357.
Mo.—Gieske v. Redemeyer, App., 224 S.W. 92.

Judicial notice

Where alleged facts, as to which trial court erroneously took judicial notice, were not essential to decision, which was in accord with the clear preponderance of admissible evidence received, error, if any, in taking judicial notice of those alleged facts was not reversible error.
Mich.—Hindy v. Avedisian, 64 N.W. 2d 676, 339 Mich. 616.

86.5 Pa.—Ringer v. Finfrock, 19 A. 2d 157, 341 Pa. 419.

86.10 Tex.—Sherman v. Stein, Civ. App., 173 S.W.2d 732, error refused.

87. Cal.—McNeill v. A. Teichert & Son, Inc., 289 P.2d 595, 137 C.A.2d 5.
Tex.—Wichita Falls Compress Co. v. Moody, Civ.App., 154 S.W. 1032.

87.5 Ga.—Wade v. Hopper, 78 S.E. 2d 809, 89 Ga.App. 87.

87.10 Mont.—Butler Bros. Development Co. v. Butler, 108 P.2d 1041, 111 Mont. 329.

88. Cal.—Mutch v. San Diego Electric Ry. Co., 102 P.2d 1100, 39 C.A. 2d 327.
Miss.—Gulf, etc., R. Co. v. Hartley, 88 Miss. 674, 41 So. 382.
Tex.—Cubine v. Morgan, Civ.App., 288 S.W.2d 537, error dismissed.

89. Fla.—Young v. Curtis, 146 So. 543, 108 Fla. 348.
Nev.—Wittenberg v. Wittenberg, 55 P.2d 619, 56 Nev. 442.

90. Ill.—Bell v. McDonald, 139 N.E. 613, 308 Ill. 329.

ingly, erroneous rulings will operate to reverse where the case is close on the facts,[91] where the ruling was made in accordance with an erroneous theory of the issues in the case,[92] where the result of the ruling is to confuse the issue,[93] or where a ruling on the scope and effect of the evidence was not made[93.5] or where such a ruling was made and it was too restrictive.[94]

Error in admitting or excluding depositions is without prejudice where they could not have affected the result;[95] but the rule is otherwise where appellant was thereby deprived of a fair trial.[96]

In equity judgments are not ordinarily reversed on appeal because of erroneous rulings on evidence.[97]

Proceedings before referee. Erroneous rulings as to evidence by a referee in proceedings before him are not ground for reversal if the parties are not prejudiced thereby,[98] as where the referee reports in favor of the complaining party,[99] where, although evidence is improperly admitted, there is sufficient evidence properly in the record to sustain the findings,[1] or where evidence improperly admitted was not taken into consideration in making the decision.[2] So, where the report is merely advisory, the admission of improper evidence is not fatal on appeal, the trial court having power to reject the conclusions of the referee and draw its own conclusions from the legal evidence in the case.[3]

The admission of incompetent evidence constitutes reversible error, however, where there is no competent evidence to sustain the finding of the referee as to a material fact,[4] or where the other evidence is not so conclusive as to have justified the direction of a verdict were the trial before a jury.[5]

The admission of evidence not within the plead-

Rothenberg v. Kaiser, 67 N.E.2d 314, 329 Ill.App. 183—Simon v. Balasic, 55 N.E.2d 109, 323 Ill.App. 280.

Mich.—Hilliker v. Farr, 149 Mich. 444, 112 N.W. 1116.

N.J.—Galbraith v. Smith, 1 A.2d 84, 120 N.J.Law 515.

N.C.—Starr v. Southern Cotton Oil Co., 81 S.E. 776, 165 N.C. 587.

R.I.—Rhode Island Hospital Trust Co. v. Letendre, 75 A.2d 203, 77 R.I. 411.

Tenn.—Nashville Railway & Light Co. v. Owen, 11 Tenn.App. 19.

Burden of proof

Where the burden of proof is erroneously placed, and appellant is injured thereby, the judgment must be reversed.

Ark.—Brackville v. Holt, 241 S.W. 32, 153 Ark. 248—Brackville v. Holt, 239 S.W. 1059, 153 Ark. 248.

Fla.—Powell v. Race, 10 So.2d 142, 151 Fla. 536.

Ky.—Massie's Ex'x v. Massie's Ex'x, 156 S.W.2d 195, 288 Ky. 370.

Mont.—Gibbons v. Huntsinger, 74 P. 2d 443, 105 Mont. 562.

Nev.—Long Valley Land & Development Co. v. Hunt, 266 P. 917, 51 Nev. 5.

N.C.—Williams v. Philadelphia Life Ins. Co., 193 S.E. 728, 212 N.C. 516—DeHart v. Jenkins, 190 S.E. 218, 211 N.C. 314—McPherson v. Williams, 170 S.E. 662, 205 N.C. 177.

Ohio.—Crellin v. Parish, App., 136 N.E.2d 454.

Okl.—Martin v. Pribil, 95 P.2d 853, 186 Okl. 27.

Tex.—Golden State Mut. Life Ins. Co. v. Summers, Civ.App., 301 S.W. 2d 491—White v. Fowler, Civ.App., 149 S.W.2d 1022.

Wis.—Kausch v. Chicago & Milwaukee Electric Ry. Co., 180 N.W. 808, 173 Wis. 220.

Judicial notice

In action against drainage district for services rendered, taking judicial notice of unpleaded chancery order, outside record in case, appointing receiver of defendant, was reversible error.

Fla.—Cassels v. Ideal Farms Drainage Dist., 23 So.2d 247, 156 Fla. 152.

Offer of proof; answering evidence

(1) In pedestrian's action for injuries received when struck by automobile, exclusion of reference to, and evidence of, subsequent injury received in fall which was allegedly caused by original injury, without permitting counsel for pedestrian to make offer of proof, held reversible error.

Mich.—Campbell v. Brown, 267 N.W. 877, 276 Mich. 449.

(2) Where material evidence which has been excluded is placed before the jury by action of the court without giving the opposing party an opportunity to answer it, a new trial is required.

N.C.—Smith v. Stanfield Hosiery Mill, 194 S.E. 83, 212 N.C. 661.

Reading exhibits

Erroneous refusal of the court to allow counsel to read certain letters which were properly admitted in evidence to the jury, and directing the jury to take them as exhibits into the jury room, is prejudicial.

N.Y.—Novelty Showcase Co. v. Samuel I. Davis & Co., 155 N.Y.S. 345, 92 Misc. 210.

91. Ind.—Chicago, S. S. & S. B. R. Co. v. Pacheco, 181 N.E. 7, 94 Ind. App. 353.

Iowa.—Pickerell v. Griffith, 29 N.W. 2d 588, 238 Iowa 1151.

N.Y.—Elmendorf v. Ross, 222 N.Y.S. 737, 221 App.Div. 376.

4 C.J. p 964 note 80.

92. N.D.—German-American State Bank of Balfour v. Erickson, 170 N.W. 854, 41 N.D. 548.

93. Mich.—International Text-Book Co. v. Roberts, 134 N.W. 460, 168 Mich. 501.

93.5 N.H.—Ætna Life Ins. Co. v. Chandler, 193 A. 233, 89 N.H. 95.

94. Ga.—Moate v. Rives, 91 S.E. 420, 146 Ga. 425.

95. Idaho.—McGrath v. West End Orchard & Land Co., 251 P. 623, 43 Idaho 255.

4 C.J. p 964 notes 82, 83.

96. Cal.—Unruh v. Nelson, 297 P. 888, 212 C. 130.

97. Mo.—Devoto v. Devoto, 19 S.W. 2d 662, 323 Mo. 716—Koger v. Black, Mo., 220 S.W. 904.

98. N.Y.—Ashley v. Marshall, 29 N.Y. 494.

99. N.Y.—Germania L. Ins. Co. v. Rae, 2 N.E. 152, 99 N.Y. 674.

1. N.Y.—Woodruff v. McGrath, 32 N.Y. 255.

Kemeys v. Richards, 11 Barb. 312.

Wis.—Duffy v. Hickey, 32 N.W. 54, 68 Wis. 380.

2. Cal.—Bee v. San Francisco, etc., R. Co., 46 C. 248.

N.Y.—Whitman v. Foley, 26 N.E. 725, 125 N.Y. 651.

3. Ind.—Lewis v. Godman, 27 N.E. 563, 129 Ind. 359.

4. N.Y.—Torrance v. Conger, 46 N. Y. 345.

5. N.Y.—Warner v. Warren, 46 N. Y. 228.

ings is not cured by a subsequent order of the court allowing an amendment of the pleadings.[6]

§ 1716. Rulings on Objections to Questions

a. In general
b. Questions improper in form
c. On cross-examination
d. On redirect examination

a. In General

(1) Overruling objections
(2) Sustaining objections

(1) Overruling Objections

Error in overruling an objection to a question is ground for reversal only if the appellant is prejudiced thereby.

Although a judgment will be reversed for prejudicial error in permitting or requiring a witness to answer an incompetent question,[7] error in overruling an objection to a question will not constitute a ground for reversal where no prejudice results to the party complaining.[8]

This rule has been applied where the answer was

6. N.Y.—Johnson v. McIntosh, 31 Barb. 267.

7. Ala.—Johnson-Brown Co. v. Dominey Produce Co., 102 So. 606, 212 Ala. 377.
Shelton v. Hacelip, 60 So. 471, 6 Ala.App. 564.
Cal.—McGuire v. Baird, 70 P.2d 915, 9 C.2d 353.
Mantonya v. Bratlie, 240 P.2d 667, 109 C.A.2d 244.
Ga.—Georgia R. & Banking Co. v. Flynt, 79 S.E.2d 377, 89 Ga.App. 315.
Ill.—Teece v. Beiber, 56 N.E.2d 665, 323 Ill.App. 647.
Ky.—Elam v. Woolery, 258 S.W.2d 452.
N.H.—Holman v. Boston, etc., R. Co., 84 A. 979, 76 N.H. 496.
N.J.—Ciardella v. Parker, 77 A.2d 496, 10 N.J.Super. 537.
N.Y.—Landt v. Kingsway Equipment Leasing Corp., 159 N.Y.S.2d 453.
Tex.—Jones v. Texas Electric Ry., Civ.App., 210 S.W. 749.

8. Ala.—Johnson v. Day, 160 So. 340, 230 Ala. 165—Alaga Coach Line v. Foy, 150 So. 493, 227 Ala. 506—St. Louis-San Francisco Ry. Co. v. Curtis, 113 So. 54, 216 Ala. 296—Louisville & N. R. Co. v. Allegri, 109 So. 881, 215 Ala. 148—Harvey v. Bodman, 103 So. 569, 212 Ala. 503—Meadows v. Du Bose Iron Co., 102 So. 431, 212 Ala. 288—Southern Ry. Co. v. Dickson, 100 So. 665, 211 Ala. 481—American Ry. Express Co. v. Compton, 87 So. 810, 205 Ala. 298—Knowlton v. Central of Georgia Ry. Co., 68 So. 281, 192 Ala. 456.
Simonetti v. Carlton, 82 So. 553, 17 Ala.App. 105.
Ark.—Hardy v. New Rocky Grocery Co., 251 S.W. 865, 159 Ark. 109—Prange v. Young, 207 S.W. 445, 137 Ark. 30.
Cal.—Bagdasarian v. Gragnon, 192 P. 2d 935, 31 C.2d 744.
Ervin v. City of Los Angeles, 256 P.2d 25, 117 C.A.2d 303—Bochner v. Equitable Life Assur. Soc. of U. S., 41 P.2d 865, 4 C.A.2d 670—Harlan v. Taylor, App., 33 P. 2d 422, 139 C.A. 30—Mayer v. Malloy, 268 P. 453, 92 C.A. 464—Joseph Musto Sons-Keenan Co. v. Pacific States Corporation, 192 P. 138, 48 C.A. 452.
Conn.—Homewood v. O'Neill, 158 A. 233, 114 Conn. 247.
Ga.—Southern Ry. Co. v. Ray, 113 S. E. 590, 28 Ga.App. 792, reversed on other grounds 118 S.E. 53, 155 Ga. 579, conformed to 118 S.E. 411, 30 Ga.App. 376.
Idaho.—Quillin v. Colquhoun, 247 P. 740, 42 Idaho 522.
Ill.—Nickell v. Baltimore & O. R. Co., 106 N.E.2d 738, 347 Ill.App. 202—Acme Waste Paper Co. v. U. S. Paper Supply Co., 233 Ill.App. 262. See Williams v. Moehlman, 199 Ill.App. 35.
Ind.—Bartley v. Chicago & E. I. Ry. Co., 41 N.E.2d 805, 220 Ind. 354.
Iowa.—Hassett v. Foster, 193 N.W. 552, 195 Iowa 1173—Fisher v. Skidmore Land Co., 179 N.W. 152, 189 Iowa 833—Little v. Maxwell, 166 N.W. 760, 183 Iowa 164—Stutsman v. Des Moines City Ry. Co., 163 N. W. 580, 180 Iowa 524.
Md.—McClees v. Cohen, 148 A. 124, 158 Md. 60—Martin Fertilizer Co. v. Thomas & Co., 109 A. 458, 135 Md. 633.
Mich.—Schaibly v. Vinton, 61 N.W. 2d 122, 338 Mich. 191.
Minn.—Bank v. Eagan, 60 N.W.2d 257, 240 Minn. 192.
Mo.—Ingram v. Prairie Block Coal Co., 5 S.W.2d 413, 319 Mo. 644.
Granberg v. King Candy Co., App., 81 S.W.2d 981—Moran v. Kansas City Rys. Co., App., 232 S.W. 1111—Hill v. Meyer, App., 221 S.W. 171—Lockhart v. Lion Bonding & Surety Co., App., 195 S.W. 540.
Mont.—McCarthy v. Anaconda Copper Mining Co., 225 P. 391, 70 Mont. 309.
Neb.—Holtz v. Plumer, 277 N.W. 589, 133 Neb. 878.
N.J.—A. Hollander & Son v. Ruder, 137 A. 405, 103 N.J.Law 658—Rubin v. L. H. Trowbridge Sign Co., 122 A. 763, 99 N.J.Law 216—Briggs v. Public Service Ry. Co., 102 A. 382, 91 N.J.Law 1.
Thompson v. West Jersey & S. S. R. Co., 140 A. 887, 6 N.J.Misc. 300.
N.M.—Cornell v. Morrison, 274 P. 50, 33 N.M. 623.
N.Y.—Fitzgerald v. Ladabouch, 299 N.Y.S. 880, 252 App.Div. 912, affirmed 14 N.E.2d 212, 277 N.Y. 669.
N.C.—Hollifield v. Southern Bell Telephone & Telegraph Co., 90 S.E. 996, 172 N.C. 714, error dismissed Southern Bell Telephone & Telegraph Co. v. Hollifield, 38 S.Ct. 222, 245 U.S. 680, 62 L.Ed. 544.
Or.—Brown v. National Liberty Ins. Co. of America, 244 P. 873, 117 Or. 608—Call v. Linn, 228 P. 127, 112 Or. 1—Cole v. Johnson, 205 P. 282, 103 Or. 319—Shepherd v. Inman-Poulsen Lumber Co., 168 P. 601, 86 Or. 652.
R.I.—Greenstein v. Singer, 93 A.2d 306, 80 R.I. 141, reargument denied 96 A.2d 623, 80 R.I. 141—Peters v. United Electric Rys. Co., 189 A. 901, 57 R.I. 311—McHugh v. Williams & Payton, 110 A. 607, 43 R.I. 170.
S.D.—Tufty v. Sioux Transit Co., 17 N.W.2d 700, 70 S.D. 352.
Tenn.—Barnes v. Scott, 243 S.W.2d 133, 35 Tenn.App. 135.
Tex.—City Transp. Co. of Dallas v. Davis, Civ.App., 257 S.W.2d 476, error refused no reversible error—Pacific Mut. Life Ins. Co. of California v. Schlakzug, Civ.App., 180 S.W.2d 980, reversed on other grounds 183 S.W.2d 709, 143 Tex. 264—Haworth v. Texas & P. Ry. Co., Civ.App., 7 S.W.2d 611—Benson v. Gregston, Civ.App., 253 S. W. 684—St. Louis Southwestern Ry. Co. of Texas v. Miller & White, Civ.App., 190 S.W. 819.
Vt.—Hambleton v. U. Aja Granite Co., 115 A. 102, 95 Vt. 295—Gilfillan v. Gilfillan's Estate, 96 A. 704 90 Vt. 94.
Va.—Director General of Railroads v. Gordon, 114 S.E. 668, 134 Va. 381—Norfolk & W. Ry. Co. v. Arrington, 109 S.E. 303, 131 Va. 564.
Wash.—Miller v. Edwards, 171 P.2d 821, 25 Wash.2d 635—Rosenkranz v. Yakima Valley Bank & Trust Co., 271 P. 85, 149 Wash. 409.

favorable to the complaining party,[9] where only proper evidence was elicited,[10] where the question was not answered[11] or no evidence was elicited which could have influenced the decision of the

Wis.—Herbert A. Nieman & Co. v. Holton & Hunkel Greenhouse Co., 21 N.W.2d 637, 248 Wis. 324.

Wyo.—Platte County State Bank v. Frantz, 239 P. 531, 33 Wyo. 326.

4 C.J. p 964 note 85.

Rulings as to admission of evidence as prejudicial or harmless error generally see infra §§ 1724–1738.

Test in determining error

Test in determining whether the admission of answers of expert witnesses to objectionable questions resulted in prejudicial error is whether the result would have been different had objections been sustained and answers excluded.

Cal.—Weaver v. Shell Co. of California, 94 P.2d 364, 34 C.A.2d 713.

9. Ala.—Page v. Hawk, 33 So.2d 8, 250 Ala. 26—McPherson v. Martin, 174 So. 791, 234 Ala. 244—Sloss-Sheffield Steel & Iron Co. v. Underwood, 85 So. 441, 204 Ala. 286.

Md.—Bloecher & Schaaf v. Pennsylvania R. Co., 160 A. 281, 162 Md. 463.

Mich.—Madalinski v. Hill, 269 N.W. 147, 277 Mich. 219.

Mo.—Cox v. Wrinkle, 267 S.W.2d 648.

Day v. Banks, Mo.App., 102 S.W.2d 946, opinion quashed in part on other grounds State ex rel. Banks v. Hostetter, 125 S.W.2d 835, 344 Mo. 155—McKnight v. Batrick, App., 49 S.W.2d 277.

Tex.—City of Abilene v. Luhn, Civ. App., 65 S.W.2d 370.

4 C.J. p 964 note 86.

10. Ala.—Butler v. Hughes, 88 So. 2d 195, 264 Ala. 532—Barfield v. South Highland Infirmary, 68 So. 30, 191 Ala. 553, Ann.Cas.1916C 1097.

American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 39, certiorari denied 58 So.2d 478, 257 Ala. 238.

Ind.—Murphy Auto Sales, Inc. v. Coomer, 112 N.E.2d 589, 123 Ind. App. 709.

Md.—Gordon v. Opalecky, 137 A. 299, 152 Md. 536.

Mo.—McQuary v. Quincy, O. & K. C. Ry. Co., 269 S.W. 605, 306 Mo. 697.

Wright v. Stickler, App., 96 S.W.2d 932.

Tex.—Adamson v. Burgle, Civ.App., 186 S.W.2d 388, refused for want of merit.

4 C.J. p 964 note 87.

11. Ala.—Killian v. Everett, 79 So. 2d 17, 262 Ala. 434—Dorsey Trailers, Inc. v. Foreman, 69 So.2d 459, 260 Ala. 141—Chandler v. Goodson, 48 So.2d 223, 254 Ala. 293—Page v. Hawk, 33 So.2d 8, 250 Ala. 26—Allison v. Owens, 27 So.2d 785, 248 Ala. 412—Gilliland v. Dobbs, 174 So. 784, 234 Ala. 364—Northern Alabama Ry. Co. v. Winchester, 142 So. 661, 225 Ala. 197—Atlantic Pacific Stages v. Yandle, 140 So. 603, 224 Ala. 481—Mobile & O. R. Co. v. Williams, 139 So. 337, 224 Ala. 125—Burgin v. Stewart, 114 So. 182, 216 Ala. 663—Coffee County v. Marsh, 96 So. 891, 209 Ala. 566—Birmingham Infirmary v. Coe, 91 So. 604, 206 Ala. 687—Montgomery Light & Water Power Co. v. Thombs, 87 So. 205, 204 Ala. 678—Huntsville Knitting Mills v. Butner, 76 So. 54, 200 Ala. 288—Shepherd v. Butcher Tool & Hardware Co., 73 So. 498, 198 Ala. 275—Corry v. Sylvia y Cia, 68 So. 891, 192 Ala. 550, Ann.Cas.1917E 1052.

Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala. App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10—Broglan v. Owen, 41 So.2d 434, 34 Ala.App. 480—Glenn v. Blackman, 35 So.2d 698, 33 Ala.App. 571, certiorari denied 35 So.2d 702, 250 Ala. 664—Keeton v. Parker, 144 So. 119, 25 Ala.App. 236—Kelly v. Cook, 73 So. 220, 15 Ala.App. 350.

Ariz.—Daly v. Williams, 280 P.2d 701, 78 Ariz. 383.

Cal.—Pemberton v. Arny, 182 P. 964, 180 C. 762.

Feder v. Bryson, 295 P. 546, 111 C.A. 448.

Conn.—Samasko v. Davis, 64 A.2d 682, 135 Conn. 377—Gillette v. Schroeder, 54 A.2d 498, 133 Conn. 682.

Ga.—Elliott v. Georgia Power Co., 197 S.E. 914, 58 Ga.App. 151.

Iowa.—Thomas v. Wyckoff, 174 N.W. 26, 187 Iowa 148.

Ky.—Metropolitan Life Ins. Co. v. Ackan, 187 S.W.2d 1005, 300 Ky. 218.

Me.—Ross v. Reynolds, 91 A. 952, 112 Me. 223.

Md.—Von Schlegell, Inc. v. Ford, 175 A. 589, 167 Md. 584—McClees v. Cohen, 148 A. 124, 158 Md. 60—Lockerman v. Eastern Shore Trust Co., 126 A. 140, 146 Md. 330—City of Baltimore v. State, 126 A. 130, 146 Md. 440—Krymski v. Kupidlowski, 116 A. 470, 139 Md. 656—Packard Iron & Metal Co. v. H. P. Pearl & Co., 115 A. 761, 139 Md. 498—Beam Motor Car Co. v. Loewer, 102 A. 908, 131 Md. 552—Bavington v. Robinson, 95 A. 1067, 127 Md. 46.

Mass.—Noyes v. Gagnon, 114 N.E. 949, 225 Mass. 580—Nelligan v. Fontaine, 114 N.E. 303, 225 Mass. 329.

Mich.—Pacey v. Strange, 18 N.W.2d 269, 311 Mich. 40—Matthews v. Lamberton, 165 N.W. 748, 198 Mich. 746.

Miss.—Kouvarakis v. Hawver, 45 So. 2d 278, 208 Miss. 697.

Mo.—Jones v. Levee Dist. No. 2 of Dunklin County, 183 S.W. 697.

Day v. Banks, App., 102 S.W.2d 946, opinion quashed in part on other grounds State ex rel. Banks v. Hostetter, 125 S.W.2d 835, 344 Mo. 155—Jordan v. Daniels, 27 S.W.2d 1052, 224 Mo.App. 749—Smith v. Wilson, App., 296 S.W. 1036—F. G. Barton Cotton Co. v. Vardell, 275 S.W. 62, 217 Mo.App. 691—Fletcher v. Kansas City Rys. Co., App., 221 S.W. 1070—Shock v. Price, App., 207 S.W. 834—Eisenman v. Griffith, 167 S.W. 1142, 181 Mo.App. 183.

N.H.—Smith v. Boston & M. R. R., 177 A. 729.

N.J.—Tooker v. Lonky, 147 A. 445, 106 N.J.Law 110—Halliwell v. Trans-States Finance Corporation, 118 A. 837, 98 N.J.Law 133.

Southard v. Wilson, 183 A. 202, 14 N.J.Misc. 171—Conover v. Solar Oil Co., 182 A. 868, 14 N.J.Misc. 127—Winters v. Dorovitz, 167 A. 220, 11 N.J.Misc. 616—Levy v. Hampton, 130 A. 536, 3 N.J.Misc. 1050.

N.Y.—Fischer v. W. C. Ritchie & Co., 161 N.Y.S. 118, 174 App.Div. 604.

N.C.—M. P. Hubbard Co. v. Brown, 118 S.E. 896, 186 N.C. 96—Peterson v. Tidewater Power Co., 111 S.E. 8, 183 N.C. 243—Borden v. Carolina Power & Light Co., 93 S.E. 442, 174 N.C. 73—Hollifield v. Southern Bell Telephone & Telegraph Co., 90 S.E. 996, 172 N.C. 714, error dismissed Southern Bell Telephone & Telegraph Co. v. Hollifield, 38 S.Ct. 222, 245 U.S. 680, 62 L.Ed. 544.

Ohio.—Madison v. Caledonian-American Ins. Co. of New York, App., 43 N.E.2d 245.

Or.—Cole v. Johnson, 205 P. 282, 103 Or. 319.

R.I.—Conneally v. Gemma, 107 A.2d 308, 82 R.I. 136—Dawley v. Congdon, 105 A. 393, 42 R.I. 64.

S.C.—Wakefield v. Spoon, 84 S.E. 418, 100 S.C. 100—Watkins v. Atlantic Coast Line R. Co., 81 S.E. 426, 97 S.C. 148.

Tenn.—Short Way Lines v. Thomas, 241 S.W.2d 875, 34 Tenn.App. 641.

Tex.—Firestone Tire & Rubber Co. v. Rhodes, Civ.App., 256 S.W.2d 448, error refused no reversible error—Brazos River Conservation and Reclamation Dist. v. Costello, Civ.App., 169 S.W.2d 977, error refused—Texas & N. O. R. Co. v. McGinnis, Civ.App., 81 S.W.2d 200, affirmed 109 S.W.2d 160, 130 Tex. 338—Dallas Ry. & Terminal Co. v. Garrison, Civ.App., 30 S.W.2d 1108, reversed on other grounds, Com.

case,[12] where the answer was not responsive,[13] where the question did not necessarily call for an incompetent answer,[14] where the answer was in the negative,[15] where it discloses the ignorance of the witness on the subject,[16] or where the an-

App., 45 S.W.2d 183—El Paso Electric Co. v. Whitenack, Civ.App., 297 S.W. 258, affirmed, Com.App., 1 S.W.2d 594—W. C. Munn Co. v. Westfall, Civ.App., 197 S.W. 328.
Utah.—Requa v. Daly-Judge Mining Co., 148 P. 448, 46 Utah 92.
Vt.—Stone v. Wood, 157 A. 829, 104 Vt. 105—Ford v. Hersey, 104 A. 875, 92 Vt. 405—Raymond v. Sheldon's Estate, 104 A. 106, 92 Vt. 396.
Va.—Adams v. Ristine, 122 S.E. 126, 138 Va. 273, 31 A.L.R. 1413.
4 C.J. p 965 note 88.

12. Cal.—Singer Metals, Inc. v. Industrial Management Corp., 253 P. 2d 515, 116 C.A.2d 85—Brown v. Southern Pac. Co., 207 P.2d 632, 92 C.A.2d 639.
Ill.—Crowley v. Elgin, J. & E. R. Co., 117 N.E.2d 843, 1 Ill.App.2d 481, certiorari denied Elgin, J. & E. R. Co. v. Crawley, 75 S.Ct. 340, 348 U.S. 927, 99 L.Ed. 727.
Iowa.—Bashaw-Joy Co. v. Walsh, 174 N.W. 399, 187 Iowa 574.
Mich.—Schaibly v. Vinton, 61 N.W.2d 122, 338 Mich. 191.
Mont.—Gardiner v. Eclipse Grocery Co., 234 P. 490, 72 Mont. 540.
N.Y.—Mailler v. Express Propeller Line, 61 N.Y. 312.
N.Y.—Hughes v. Wilson Sullivan Co., 24 N.Y.S.2d 534, 261 App.Div. 39.
Or.—Valdin v. Holteen, 260 P.2d 504, 199 Or. 134.
Pa.—Galente v. West Penn Power Co., 37 A.2d 548, 349 Pa. 616.
Tex.—Texas & N. O. Ry. Co. v. Tiner, Civ.App., 262 S.W.2d 769, error refused no reversible error—Naylor v. Lack, Civ.App., 243 S.W 2d 240.

13. Ala.—Southern Building & Loan Ass'n v. Dinsmore, 144 So. 21, 225 Ala. 550.
Bank of Loretto v. Bobo, 67 So. 2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374.
Idaho.—Lightner v. Russell & Pugh Lumber Co., 17 P.2d 349, 52 Idaho 616.
Ind.—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62.
Norris v. West, 129 N.E. 862, 78 Ind.App. 391.
Ky.—Glasgow Ice Cream Co. v. Fults' Adm'r, 105 S.W.2d 135, 268 Ky. 447.
Md.—State v. Phillinger, 120 A. 878, 142 Md. 365.
Mo.—Welch v. McNeely, 269 S.W.2d 871.
Mo.—Esstman v. United Rys. Co. of St. Louis, 232 S.W. 725.
Grisham v. Freewald, 95 S.W.2d 349, 230 Mo.App. 1203, opinion quashed on other grounds State ex rel. Grisham v. Allen, 124 S.W.2d 1080, 344 Mo. 66, conformed to 130 S.W.2d 653—Ingle System Co. v. Coil, App., 211 S.W. 904.
N.H.—Bullard v. McCarthy, 195 A. 355, 89 N.H. 158.
Or.—Schiffmann v. Hickey, 200 P. 1035, 101 Or. 596.
R.I.—Newman v. Burrillville Racing Ass'n, 100 A.2d 847, 81 R.I. 200.
4 C.J. p 965 note 89.

14. N.Y.—Mollineaux v. Clapp, 90 N. Y.S. 880, 99 App.Div. 543.

15. Ala.—National Surety Co. v. Boone, 151 So. 447, 227 Ala. 599—Ballard v. Baker, 148 So. 835, 227 Ala. 143—Birmingham Electric Co. v. Ryder, 144 So. 18, 225 Ala. 369—Hamilton v. O'Rear, 141 So. 565, 224 Ala. 625—Standard Paint & Lead Works v. Ingram Hardware Co., 129 So. 20, 221 Ala. 374—Central of Georgia Ry. Co. v. Wilson, 111 So. 901, 215 Ala. 612—Jefferson v. Republic Iron & Steel Co., 93 So. 890, 208 Ala. 143—Republic Iron & Steel Co. v. Smith, 86 So. 908, 204 Ala. 607—Grand Lodge of Alabama, A. F. & A. M. v. Goodwin, 85 So. 553, 204 Ala. 213.
Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala. App. 237, certiorari denied 47 So. 2d 245, 254 Ala. 10—Mullis v. Parker, 46 So.2d 852, 35 Ala.App. 369—Grissom v. Dahart Ice Cream Co., 40 So.2d 333, 34 Ala.App. 282, certiorari denied 40 So.2d 339, 252 Ala. 235—National Life & Accident Ins. Co. v. Hannon, 118 So. 170, 22 Ala. App. 483, certiorari denied 118 So. 172, 218 Ala. 174—Hill v. Elmore, 79 So. 148, 16 Ala.App. 474.
Ark.—Harrelson v. Eureka Springs Electric Co., 181 S.W. 922, 121 Ark. 269.
Cal.—Ingalls v. Monte Cristo Oil & Development Co., 167 P. 857, 176 C. 128.
London Guarantee & Accident Co. v. Southern Pac. Co., 200 P. 805, 53 C.A. 599.
Ind.—Murphy Auto Sales, Inc. v. Coomer, 112 N.E.2d 589, 123 Ind. App. 709—Crane Co. v. Newman, 37 N.E.2d 732, 111 Ind.App. 273—Freyberger v. Ziegler, 36 N.E.2d 941, 109 Ind.App. 507.
Iowa.—Cleophas v. Walker, 233 N.W. 257, 211 Iowa 122.
Md.—Ottenberg v. Ryan & Riley Co., 99 A. 984, 130 Md. 38.
Mo.—Hunter v. Fleming, App., 7 S. W.2d 749.
N.J.—Yeston v. Hudson & M. R. Co., 197 A. 662, 119 N.J.Law 590.
Quinn v. Amendola, 138 A. 693, 5 N.J.Misc. 932—Posner v. Nutkis, 137 A. 716, 5 N.J.Misc. 593—Haeussler v. Consolidated Stone & Sand Co., 127 A. 602, 3 N.J.Misc. 159.
N.D.—Powell v. Meiers, 209 N.W. 547, 54 N.D. 336.
R.I.—Adams v. John R. White & Son, 103 A. 230, 41 R.I. 157.
Tex.—Hall v. Hayter, Civ.App., 209 S.W. 436.
W.Va.—Bragg v. C. I. Whitten Transfer Co., 26 S.E.2d 217, 125 W. Va. 722.
4 C.J. p 965 note 91.

16. Ala.—Tankersley v. Webb, 82 So.2d 259, 263 Ala. 234—Motley v. Page, 34 So.2d 201, 250 Ala. 265—Louisville & N. R. Co. v. Benton Mercantile Co., 121 So. 716, 219 Ala. 223—Porter v. Louisville & N. R. Co., 79 So. 605, 202 Ala. 139—Reliance Life Ins. Co. v. Russell, 94 So. 748, 208 Ala. 559.
Powell v. Bingham, 196 So. 154, 29 Ala.App. 248, certiorari dismissed 196 So. 160, 239 Ala. 515—Herzfeld Lumber Co. v. Langley, 93 So. 378, 18 Ala.App. 485.
Conn.—Di Blasi v. Di Blasi, 159 A. 477, 114 Conn. 539.
Ga.—Georgia Power Co. v. Chapman, 168 S.E. 134, 46 Ga.App. 589.
Ind.—Kaczmarczyk v. Dolato, 142 N. E. 415, 82 Ind.App. 437.
Ky.—Breathitt County v. Turner, 4 S.W.2d 695, 223 Ky. 727—Louisville & N. R. Co. v. Sandlin, 272 S. W. 912, 209 Ky. 442—Louisville & N. R. Co. v. Vaughan's Adm'r, 210 S.W. 938, 183 Ky. 829.
Md.—Pennsylvania R. Co. v. Quality Products, 189 A. 200, 171 Md. 291—Cronin v. Kimble, 144 A. 698, 156 Md. 489—Leckie v. Clemens, 108 A. 684, 135 Md. 264.
Mass.—Omansky v. Shain, 46 N.E.2d 524, 313 Mass. 129—Reardon v. Marston, 38 N.E.2d 644, 310 Mass. 461—Guinan v. Famous Players-Lasky Corporation, 167 N.E. 235, 267 Mass. 501—Noyes v. Gagnon, 114 N.E. 949, 225 Mass. 580.
Mo.—Kuenzel v. City of St. Louis, 212 S.W. 876, 278 Mo. 277.
Central Coal & Coke Co. v. Kansas City Southern R. Co., App., 215 S.W. 914.
N.J.—Maisto v. Maisto, 12 A.2d 890, 124 N.J.Law 565—Halliwell v. Trans-States Finance Corporation, 118 A. 837, 98 N.J.Law 133.
N.C.—Hardison v. Jones, 146 S.E. 804, 196 N.C. 712—Dunn v. John L. Roper Lumber Co., 90 S.E. 18, 172 N. C. 129—Brinkley & Lassiter v. Norfolk Southern R. Co., 84 S.E. 700, 168 N.C. 428.
Ohio.—Wm. Heffron Constr. Co. v. Coleman, 13 Ohio Cir.Ct.,N.S., 47.
Or.—Schiffmann v. Hickey, 200 P. 1035, 101 Or. 596.
R.I.—Verhasselt v. National Wholesale Grocery Co., 105 A. 367.

swers desired were not elicited from the witness.[17]

Likewise, the rule has been applied where the answer was meaningless,[18] innocuous or harmless,[18.5] or incomplete,[18.10] or so indefinite that the jury could not have been aided or misled thereby[19] or related to immaterial facts,[20] where the fact elicited by the improper question was shown by competent evidence[21] or was merely a repetition of what the witness[22] or other witnesses[22.5] had already testified to without objection, where the answer to a question calling for a conclusion merely stated a fact,[23] where the answer to a question asking the opinion of a witness on a matter on which expert evidence was inadmissible was a matter of common knowledge,[24] where the court instructed the jury to disregard the evidence elicited by the improper question,[25] or where counsel explains and limits the subject of the inquiry.[25.5]

Any error in allowing a question to be propounded to a witness, as to contradictory statements made to a third person, would be cured by the evidence of such third person when called to prove the contradictory statement that no such statement was made.[26] So permitting a question merely preliminary or introductory in character to be answered is generally deemed harmless.[27]

Tex.—Tolivar v. Howth, Civ.App., 100 S.W.2d 1090, error dismissed—International-Great Northern R. Co. v. Hailey, Civ.App., 9 S.W.2d 182, certiorari denied 50 S.Ct. 17, 280 U.S. 558, 74 L.Ed. 613.
Vt.—Twombly v. Piette, 134 A. 700, 99 Vt. 499.
4 C.J. p 965 note 92.

17. Cal.—Yasukochi, Inc. v. McKibbin, App., 312 P.2d 770.
Tex.—Blue Bonnet Life Ins. Co. v. Connaway, Civ.App., 183 S.W.2d 1015—Galveston, etc., R. Co. v. Fitzpatrick, Civ.App., 91 S.W. 355.

18. Ala.—Donald v. S. S. Howze Motor Co., 115 So. 221, 22 Ala.App. 282, certiorari denied 115 So. 223, 217 Ala. 225.
Cal.—Sansom v. Ross-Loos Medical Group, 134 P.2d 927, 57 C.A.2d 549—Gonzalez v. Nichols, 294 P. 758, 110 C.A. 738.
Ga.—Rhodes v. Mutual Ben. Health & Accident Ass'n, 8 S.E.2d 685, 62 Ga.App. 208.
Mo.—Horrell v. St. Louis Public Service Co., 277 S.W.2d 612.
4 C.J. p 965 note 94.

18.5 Ala.—Bank of Loretto v. Bobo, 67 So.2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374—American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 39, certiorari denied 58 So.2d 478, 257 Ala. 238.
Cal.—Brown v. Southern Pac. Co., 207 P.2d 632, 92 C.A.2d 639.
Ky.—Coleman v. Daniel, 166 S.W.2d 978, 292 Ky. 553.
Md.—Prudential Ins. Co. of America v. Shumaker, 12 A.2d 618, 178 Md. 189.
N.J.—Clayton v. Clayton, 23 A.2d 560, 127 N.J.Law 605.
N.C.—Virginia Truck Growers Mfg. Corp. v. Moore County Mut. Exchange, 197 S.E. 196, 213 N.C. 658.
Ohio.—Guarantee Title & Trust Co. v. Moores, App., 68 N.E.2d 378.

18.10 Ga.—City of Summerville v. Sellers, 94 S.E.2d 69, 69 Ga.App. 152.
Vt.—Boguski v. City of Winooski, 187 A. 808, 108 Vt. 380.

19. Conn.—Jenkins v. Reichert, 5 A. 2d 6, 125 Conn. 258.
Ky.—Kentucky Virginia Stages v. Tackett's Adm'r, 171 S.W.2d 4, 294 Ky. 189.
N.H.—Fuller v. Maine Cent. R. R., 100 A. 546, 78 N.H. 366.
Va.—Adams v. Ristine, 122 S.E. 126, 138 Va. 273, 31 A.L.R. 1413.
4 C.J. p 965 note 95.

20. Md.—Pennsylvania R. Co. v. Quality Products, 189 A. 200, 171 Md. 291.
Mass.—McDonough v. Horan, 130 N. E.2d 551, 333 Mass. 319.
Mont.—Sanders v. McDonald, 111 P. 2d 1043, 111 Mont. 604.
Tex.—Planters' Oil Co. v. Hill Printing & Stationery Co., Civ.App., 208 S.W. 192.
4 C.J. p 965 note 96.

21. Tex.—Texas & N. O. R. Co. v. McGinnis, Civ.App., 81 S.W.2d 200.
Utah.—Campbell v. Los Angeles & S. L. R. Co., 263 P. 495, 71 Utah 173.
4 C.J. p 966 note 97.

22. Ala.—Butler v. Hughes, 88 So.2d 195, 264 Ala. 532.
Cal.—Weaver v. Shell Co. of California, 94 P.2d 364, 34 C.A.2d 713.
Md.—Wolfe v. State, for Use of Brown, 194 A. 832, 173 Md. 103—Ottenberg v. Ryan & Riley Co., 99 A. 984, 130 Md. 38.
N.H.—Hebert v. Boston & M. R. R., 8 A.2d 744, 90 N.H. 324.
R.I.—Gerace v. Rossi, 102 A.2d 518, 81 R.I. 298.
Tex.—Texas Emp. Ins. Ass'n v. Pillow, Civ.App., 268 S.W.2d 716, error refused no reversible error.
4 C.J. p 966 note 98.

22.5 Ala.—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala.App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10.
Cal.—Weaver v. Shell Co. of California, 94 P.2d 364, 34 C.A.2d 713.
Ky.—Greyhound Terminal of Louisville v. Thomas, 209 S.W.2d 478, 307 Ky. 44.
R.I.—Motte v. First Nat. Stores, 70 A.2d 822, 76 R.I. 349, 20 A.L.R.2d 88.

23. Ill.—Vogler v. Chicago & Carterville Coal Co., 196 Ill.App. 574.
Mo.—Baker v. Chicago, B. & Q. R. Co., 39 S.W.2d 535, 327 Mo. 986.
Okl.—**Corpus Juris cited in** Cook v. Sheffield, 75 P.2d 1101, 1102, 181 Okl. 635—Sulzberger & Sons Co. v. Hoover, 149 P. 887, 46 Okl. 792.
4 C.J. p 966 note 99.

Stating basis of conclusion

Overruling an objection to a question calling for conclusion of the witness, if error, was held harmless, where the witness stated the facts on which he based his conclusion.
Ala.—Huffstutler v. Edge, 47 So.2d 191, 35 Ala.App. 276, affirmed 47 So.2d 197, 254 Ala. 102.
Tex.—Perkins v. Norris, Civ.App., 25 S.W.2d 979—Williams v. Gardner, Civ.App., 215 S.W. 981.

24. N.C.—Jones v. American Warehouse Co., 49 S.E. 355, 137 N.C. 337, rehearing denied 51 S.E. 106, 138 N.C. 546.
Va.—Lane v. Bauserman, 48 S.E. 857, 103 Va. 146, 106 Am.S.R. 872.

25. Ala.—Mullis v. Parker, 46 So.2d 852, 35 Ala.App. 369.
Ill.—Haas v. Hines, 219 Ill.App. 524.
Ky.—Louisville & N. R. Co. v. Louisville Provision Co., 279 S.W. 1100, 212 Ky. 709.
Miss.—Kouvarakis v. Hawver, 45 So. 2d 278, 208 Miss. 697.
N.C.—De Laney v. Henderson-Gilmer Co., 135 S.E. 791, 192 N.C. 647.
Tex.—Folse v. Monroe, Civ.App., 190 S.W.2d 604, refused for want of merit.
4 C.J. p 966 note 2.

25.5 Nev.—Scott v. Chapman, 291 P. 2d 422, 71 Nev. 329.

26. Ala.—Birmingham R., etc., Co. v. Mason, 39 So. 590, 144 Ala. 387, 6 Ann.Cas. 929.

27. Conn.—Sofas v. McKee, 124 A. 380, 100 Conn. 541.
4 C.J. p 966 note 4.

(2) Sustaining Objections

A ruling sustaining an objection is not reversible error if the complaining party is not prejudiced thereby.

When an incompetent question is asked and the court sustains an objection to it, there is no cause for reversal.[28]

Error in sustaining an objection to a question will not operate to reverse when not prejudicial to the party complaining,[29] as where the question is answered notwithstanding the objection,[30] where it does not appear that the answer was within the knowledge of the witness[31] or what the testimony of the witness would have been in answer to the question,[32] where the question was put to an expert who declined to express an opinion when all of the facts were hypothesized,[33] where the hypothetical question did not include one of the determinative facts of the proof,[34] where the fact assumed in a hypothetical question was clearly disproved by the manifest weight of the evidence,[35] where the matter sought to be elicited by the answer was not material,[36] where the question was not answered,[36.5]

28. Cal.—Glenn v. Cook, 239 P.2d 680, 108 C.A.2d 784.
Minn.—Abernethy v. Halk, 166 N.W. 218, 139 Minn. 252.
4 C.J. p 966 note 5.
Misconduct of counsel in propounding prejudicial questions see supra § 1713.

Leading question

Cal.—Church v. Payne, 97 P.2d 819, 36 C.A.2d 382.
Minn.—Skinner v. Neubauer, 74 N.W. 2d 656, 246 Minn. 291.
Tex.—Rosborough v. Cerveni, Civ. App., 197 S.W. 319.

29. Ala.—Waldrop v. Langham, 69 So.2d 440, 260 Ala. 82.
Wert v. Geeslin, 69 So.2d 718, 37 Ala.App. 351, certiorari denied 69 So.2d 724, 260 Ala. 701—Hudson v. Repton State Bank, 75 So. 695, 16 Ala.App. 101.
Cal.—Scott v. Del Monte Properties, Inc., 295 P.2d 947, 140 C.A.2d 756—Rozelle v. Watts, 234 P.2d 724, 160 C.A.2d 185—Church v. Payne, 97 P. 2d 819, 36 C.A.2d 382.
Idaho.—Evans v. Bannock County, 83 P.2d 427, 59 Idaho 442.
Ill.—Barnhart v. Martin, 64 N.E.2d 743, 327 Ill.App. 551—Stollery v. Sprague, 22 N.E.2d 276, 301 Ill. App. 209—Tindall v. Chicago & N. W. Ry. Co., 200 Ill.App. 556. See Parker v. Crane Co., 185 Ill.App. 377.
Md.—Nocar v. Greenberg, 124 A.2d 757, 210 Md. 506.
Mass.—Mahoney v. Gooch, 141 N.E. 605, 246 Mass. 567.
Mich.—Firemen's Ins. Co. v. Sterling Coal Co., 83 N.W.2d 319, 348 Mich. 564—White v. Grismore, 53 N.W.2d 499, 333 Mich. 568.
Minn.—Berg v. Ullevig, 70 N.W.2d 133, 244 Minn. 390.
Mo.—Thompson v. A. Morgan Hauling & Express Co., App., 26 S.W.2d 807.
N.J.—Vassar Realty Corporation v. Hillman, 174 A. 340, 12 N.J.Misc. 709.
N.C.—In re Holmes' Will, 32 S.E.2d 614, 224 N.C. 830.
Okl.—Pendegraph v. Edwards, 283 P. 2d 823—Layton v. Purcell, 267 P.2d 547.
Pa.—Ferreira v. Borough of Wilson, 26 A.2d 342, 344 Pa. 567.
R.I.—Baker v. Baker, 4 A.2d 911, 62 R.I. 234.
Wis.—Briggs Transfer Co. v. Farmers Mut. Auto. Ins. Co., 61 N.W.2d 305, 265 Wis. 369.
4 C.J. p 966 note 6.
Rulings as to exclusion of evidence as prejudicial or harmless error generally see infra §§ 1739–1758.

Rulings held prejudicial error

Cal.—Lawless v. Calaway, 147 P.2d 604, 24 C.2d 81.
Conn.—Goodrich Oil Burner Mfg. Co. v. Cooke, 12 A.2d 833, 126 Conn. 551.
Ky.—Bowles v. Katzman, 214 S.W.2d 1021, 308 Ky. 490.
Miss.—Jenkins v. Jenkins, 91 So.2d 708.
Mo.—Price v. Schnitker, 239 S.W.2d 296, 361 Mo. 1179.
N.J.—Thorpe v. Floremoore Corp., 89 A.2d 275, 20 N.J.Super. 34.
N.Y.—Polebaum v. National House & Farms Ass'n, 97 N.Y.S.2d 831, 277 App.Div. 849.
Maranzano v. Associated Hospital Service of New York, 164 N.Y.S. 2d 386.
Va.—Davis v. Scarborough, 97 S.E.2d 731, 199 Va. 100.
Wyo.—Hawkey v. Williams, 261 P.2d 48, 72 Wyo. 20.

30. Ala.—Knowlton v. Central of Georgia Ry. Co., 68 So. 281, 192 Ala. 456—Thompson v. Alexander City Cotton Mills Co., 67 So. 407, 190 Ala. 184, Ann.Cas.1917A 721.
Ill.—Tindall v. Chicago & N. W. Ry. Co., 200 Ill.App. 556. See Anderson v. Chicago City Ry. Co., 207 Ill. App. 427.
Iowa.—Ducummon v. Johnson, 47 N. W.2d 231, 242 Iowa 488—Livingstone v. Dole, 167 N.W. 639, 184 Iowa 1340.
Mich.—Sullivan v. Truszkowski, 151 N.W. 665, 185 Mich. 17, L.R.A.1918A 617.
Mo.—Speer v. Southwest Missouri R. Co., 177 S.W. 329, 190 Mo.App. 328.
N.J.—Rickel v. Stockman, 168 A. 467, 111 N.J.Law 294—Casey v. Atlantic City & S. R. Co., 126 A. 293, 100 N.J.Law 376.
S.C.—Outlaw v. National Council Junior Order United American Mechanics, 92 S.E. 469, 107 S.C. 225.
Vt.—Aldrich v. Boston & M. R. R., 100 A. 765, 91 Vt. 379.
4 C.J. p 966 note 7.

31. Ala.—Crescent Amusement Co. v. Knight, 82 So.2d 919, 263 Ala. 445—Sovereign Camp, W. O. W. v Davis, 5 So.2d 480, 242 Ala. 235.
Atlantic Coast Line R. Co. v. Vise, 78 So.2d 656, affirmed 78 So.2d 661, 262 Ala. 329.
Miss.—McMullan v. State, 176 So. 598, 179 Miss. 749.
Tenn.—Boston Mar. Ins. Co. v. Scales, 49 S.W. 743, 101 Tenn. 628.
4 C.J. p 967 note 8.

32. U.S.—Louisville & N. R. Co. v. White, Ala., 100 F. 239, 40 C.C.A 352.
Ark.—**Corpus Juris Secundum cited in** Newell v. Arlington Hotel Co., 252 S.W.2d 611, 614, 221 Ark. 215
Iowa.—Porter v. Moles, 131 N.W. 23, 151 Iowa 279.

33. Ala.—Southern Bitulithic Co. v. Perrine, 67 So. 601, 191 Ala. 411.

34. Ohio.—Clos v. Chapman, App., 34 N.E.2d 811.
Tenn.—Haskins v. Howard, 16 S.W. 2d 20, 159 Tenn. 86.

35. Ohio.—Rogers v. Monroe, 26 Ohio Cir.Ct.,N.S., 193.

36. Cal.—Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church, 245 P.2d 481, 39 C.2d 121, certiorari denied 73 S.Ct. 828, 345 U.S. 938, 97 L.Ed. 1365.
Cal.—Oakes v. Baker, 192 P.2d 460, 85 C.A.2d 168—Petersen v. Donegani, 80 P.2d 1001, 27 C.A.2d 431.
Ind.—Whitacker v. Low, 197 N.E 690, 102 Ind.App. 47.
Tenn.—Boston Mar. Ins. Co. v. Scales, 49 S.W. 743, 101 Tenn. 628.
Va.—Jackson v. Hough, 18 S.E. 575, 38 W.Va. 236.
Wis.—Wagner v. Peiffer, 49 N.W.2d 739, 259 Wis. 566, followed in 49 N. W.2d 747, 259 Wis. 583.
4 C.J. p 967 note 11.

36.5 Ky.—Leming's Adm'r v. Leachman, 105 S.W.2d 1043, 268 Ky. 781.
Tex.—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error.

where the question is elsewhere answered by the same witness[37] or the error cured by subsequent testimony,[38] or replacement by a proper question,[38.5] where the witness in answering other questions testified substantially as he would have done in answering the question to which objection was sustained,[39] or where the matter sought to be elicited is established by other witnesses[40] or evidence.[40.5]

It was not prejudicial error to refuse to allow a question to an expert as not sufficiently specific, where the court in its ruling intimated that it would entertain a specific question.[41]

b. Questions Improper in Form

The allowance of a question which is in improper form is not reversible error unless substantial rights of the complaining party are thereby affected.

Allowing a question improper in form does not constitute reversible error where no substantial rights of the party objecting were affected thereby.[42]

This principle has been applied where the question is in form leading,[43] calls for a conclusion of

37. Ala.—Sovereign Camp, W. O. W. v. Davis, 5 So.2d 480, 242 Ala. 235—Sloss-Sheffield Steel & Iron Co. v. City of Birmingham, 78 So. 896, 201 Ala. 542—Wells v. Parker, 75 So. 914, 200 Ala. 166.
Butler v. Walton, 56 So.2d 369, 36 Ala.App. 319, certiorari denied 56 So.2d 379, 257 Ala. 714.
Cal.—Taliaferro v. Taliaferro, 270 P. 2d 1036, 125 C.A.2d 419—Hairston v. Studio Amusements, 195 P.2d 498, 86 C.A.2d 735—In re Lenci's Estate, 288 P. 841, 106 C.A. 171.
Iowa.—Nielsen v. Wessels, 73 N.W.2d 83, 247 Iowa 213.
Neb.—Cotner College v. Hester's Estate, 51 N.W.2d 612, 155 Neb. 279.
N.C.—Hatcher v. Clayton, 88 S.E.2d 104, 242 N.C. 450.
Ohio.—Rogers v. Anchor Motor Freight, Inc., 117 N.E.2d 451, 95 Ohio App. 62.
Wis.—Borkenhagen v. Baertschi, 300 N.W. 742, 239 Wis. 21.
4 C.J. p 967 note 12.

38. Cal.—Germ v. City and County of San Francisco, 222 P.2d 122, 99 C.A.2d 404.
N.C.—Tide Water Power Co. v. Cross, 188 S.E. 859, 210 N.C. 844.
Ohio.—Davider v. Wheeling & Lake Erie Ry. Co., 20 Ohio Cir.Ct.,N.S., 165.
Tex.—Hensley v. Waco Drug Co., Civ. App., 18 S.W.2d 778, reversed on other grounds Waco Drug Co. v. Hensley, Com.App., 34 S.W.2d 832.
4 C.J. p 967 note 13.

38.5 Conn.—Clark v. George B. Wuestefeld Co., 46 A.2d 841, 132 Conn. 653.

39. Mo.—Curtis v. Fruin-Colnon Contracting Co., 253 S.W.2d 158, 363 Mo. 676.
Tex.—Missouri, etc., R. Co. v. McCormick, Civ.App., 160 S.W. 429.

40. Md.—State v. Flanigan, 74 A. 818, 111 Md. 481.
Pa.—Cramer v. Aluminum Co., 86 A. 654, 239 Pa. 120.
Tex.—Southland-Greyhound Lines v. Cotten, Civ.App., 55 S.W.2d 1066.
Wis.—Guse v. Power, etc., Mach. Co., 139 N.W. 195, 151 Wis. 400.
4 C.J. p 967 note 15.

40.5 Cal.—Garrick v. J. M. P., Inc., App., 309 P.2d 896—Keeble v. Brown, 266 P.2d 569, 123 C.A.2d 126—Taylor v. Continental Southern Corp., 233 P.2d 577, 104 C.A.2d 425.
Mont.—Sanders v. McDonald, 111 P. 2d 1043, 111 Mont. 604.

41. Cal.—Schalich v. Bell, 161 P. 983, 173 C. 773.
Church v. Payne, 97 P.2d 819, 36 C.A.2d 382.

42. Ala.—Central of Georgia Ry. Co. v. Grover, 118 So. 506, 218 Ala. 290.
Ariz.—Carrillo v. Murray & Layne Co., 216 P. 689, 25 Ariz. 303.
Cal.—Reynolds v. Struble, 18 P.2d 690, 128 C.A. 716.
Fla.—Atlantic Coast Line R. Co. v. Brash, 74 So. 503, 73 Fla. 478.
Idaho.—Reinhold v. Spencer, 26 P.2d 796, 53 Idaho 688.
Ill.—Rich v. Hartford Accident & Indemnity Co., 208 Ill.App. 506. See Devine v. L. Fish Furniture Co., 199 Ill.App. 539.
Ind.—Baltimore & O. Ry. Co. v. Sliger, 141 N.E. 467, 194 Ind. 442, rehearing denied 143 N.E. 282, 194 Ind. 442.
Kan.—Van Pelt v. Richards Paint & Paper Co., 14 P.2d 632, 136 Kan. 212.
Ky.—Louisville & N. R. Co. v. Blanton, 200 S.W.2d 133, 304 Ky. 127—Benefit Ass'n of Railway Employees v. Hancock, 58 S.W.2d 578, 248 Ky. 315.
Md.—Sline & Sons v. Hooper, 164 A. 548, 164 Md. 244—Stiegler v. Eureka Life Ins. Co. of Baltimore, 127 A. 397, 146 Md. 629—Bramble v. Shields, 127 A. 44, 146 Md. 494—Martin Fertilizer Co. v. Thomas & Co., 109 A. 458, 135 Md. 633.
Mich.—Shannon v. Jamestown Tp., 232 N.W. 371, 251 Mich. 597.
Mo.—Acker v. Kansas City, App., 104 S.W.2d 1055—Adams v. Carlo, App., 101 S.W.2d 753.
N.C.—Dempster v. Fite, 167 S.E. 33, 203 N.C. 697—Raulf v. Elizabeth City Electric Light & Power Co., 97 S.E. 236, 176 N.C. 691.
Pa.—Jones v. Manhattan Life Ins. Co. of New York, 4 A.2d 220, 134 Pa.Super. 437.
Tex.—Galveston, H. & S. A. Ry. Co. v. Vogt, Civ.App., 181 S.W. 841.
Va.—Tate v. Chumbley, 57 S.E.2d 151, 190 Va. 480.
Vt.—Shores v. Simanton, 130 A. 697, 99 Vt. 191—Bonazzi v. Fortney, 110 A. 439, 94 Vt. 263.
Wash.—Bromley v. Heffernan Engine Works, 182 P. 929, 108 Wash. 31.
4 C.J. p 967 note 16.

Hearsay

(1) It is not usual for the supreme court to disturb a verdict merely because a witness was asked a question calling for relevant hearsay, the objection being to form, not substance.
N.H.—Pope v. Boston & M. R. R., 104 A. 403, 79 N.H. 52.

(2) Prejudicial error did not result from the admission of hearsay evidence used as a basis for forming an expert medical opinion, where such hearsay evidence pertained only to facts which were otherwise established and corroborated by independent and competent testimony.
Minn.—In re Forsythe's Estate, 22 N.W.2d 19, 221 Minn. 303, 167 A.L.R. 1.

43. Ala.—McQueen v. Jones, 145 So. 440, 226 Ala. 4—Brown v. Thomas, 81 So. 635, 202 Ala. 679.
Cal.—In re Cesare's Estate, 279 P.2d 607, 130 C.A.2d 557—Nylund v. Madsen, 271 P. 374, 94 C.A. 441—Latky v. Wolfe, 259 P. 470, 85 C.A. 332.
Conn.—Wright v. Blakeslee, 128 A. 113, 102 Conn. 162.
Fla.—Florida Motor Lines Corp. v. Barry, 27 So.2d 753, 158 Fla. 123.
Ga.—Varn v. Chapman, 82 S.E. 641, 142 Ga. 243.
Ill.—See Kime v. Kime, 196 Ill.App. 344.
Iowa.—Wildeboer v. Peterson, 203 N. W. 284, 201 Iowa 1202.
Ky.—Ross v. McLain, 246 S.W.2d 1012—Overstreet v. Thomas, 239 S.W.2d 939—Benefit Ass'n of Railway Employees v. Hancock, 58 S. W.2d 578, 248 Ky. 315—Consolidated Coach Corporation v. Saunders, 17 S.W.2d 233, 229 Ky. 284—Hall v. Mengel Box Co., 169 S.W. 985, 160 Ky. 586.

the witness,[44] or amounts to a departure from the ordinary and better form,[45] or where a question hypothetical in its nature was needlessly long and complicated,[46] did not contain a clear statement of the facts on which the opinion of the witness was to be based,[47] or was objectionable for omission of facts,[48] for not requiring the witness to assume the truth of the testimony on which the question was based,[49] for improperly assuming facts[50] or for

Md.—Philipsborn Co. v. Fineman, 129 A. 31, 148 Md. 188.
Mo.—Harrison v. St. Louis-San Francisco Ry. Co., 99 S.W.2d 841, 339 Mo. 821—Anderson v. Sutton, 243 S.W. 643, 295 Mo. 195—Bleish v. Rhodes, 242 S.W. 971.
Baker v. Norris, App., 248 S.W. 2d 870—Elmore v. Cox, App., 9 S. W.2d 681—Phœnix Cotton Oil Co. v. Morrow-Stout Wholesale Grocer Co., App., 236 S.W. 415.
Nev.—Van Fleet v. O'Neil, 192 P. 384, 44 Nev. 216.
N.D.—Crosby v. Minneapolis, St. P. & S. S. M. Ry. Co., 237 N.W. 803, 61 N.D. 293.
Okl.—In re Free's Estate, 75 P.2d 476, 181 Okl. 564—Missouri Pac. R. Co. v. Steel, 284 P. 21, 141 Okl. 133.
Pa.—Stompler v. Richman, 189 A. 730, 125 Pa.Super. 385.
Tenn.—Hager v. Hager, 66 S.W.2d 250, 17 Tenn.App. 143.
Tex.—W. T. Rawleigh Co. v. Cook, Civ.App., 107 S.W.2d 625, error dismissed—Karotkin Furniture Co. v. Decker, Civ.App., 32 S.W.2d 703, affirmed, Com.App., 50 S.W.2d 795—Whaley Lumber Co. v. Reliance Brick Co., Civ.App., 2 S.W.2d 911—Oilmen's Reciprocal Ass'n v. Hayes, Civ.App., 295 S.W. 675—Great West Mill & Elevator Co. v. Hess, Civ.App., 281 S.W. 234—Western Union Telegraph Co. v. Polick, Civ.App., 250 S.W. 440—Donoho v. Hunter, Civ.App., 242 S. W. 282, affirmed, Com.App., 276 S. W. 174, reheard 287 S.W. 47—Houston, E. & W. T. Ry. Co. v. Jackman, Civ.App., 217 S.W. 410, dismissed for want of jurisdiction.
Va.—Southern Ry. Co. v. Watts, 114 S.E. 736, 134 Va. 503—Abernathy v. Emporia Mfg. Co., 95 S.E. 418, 122 Va. 406.
W.Va.—Gilbert v. American Cas. Co., 27 S.E.2d 431, 126 W.Va. 142.
4 C.J. p 967 note 17.

44. Ga.—Head v. Pollard Lumber Sales, Inc., 77 S.E.2d 827, 88 Ga. App. 757.
Ill.—Knox Engineering Co. v. Rock Island Southern Ry. Co., 106 N.E. 188, 264 Ill. 198.
Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559.
Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298.
4 C.J. p 967 note 18.

Prejudicial conclusion of expert

Where, in an action for personal injury, the evidence was conflicting on the question whether the injury caused tuberculosis of plaintiff and there was evidence that several members of his family had died from tuberculosis, error in allowing a question put a physician as to whether or not in his judgment as a physician the tuberculosis would be the natural and proximate result of the injury, because calling for a conclusion and not for an opinion merely, was prejudicial to defendant.
Ky.—Taylor Coal Co. v. Miller, 182 S.W. 920, 168 Ky. 719.

45. Ga.—Progressive Life Ins. Co. v. Archer, 37 S.E.2d 713, 73 Ga.App. 639.
Ill.—Elliott v. Bulk Service Stations, 54 N.E.2d 772, 323 Ill.App. 71.
Ohio.—Schaal v. Heck, 17 Ohio Cir. Ct. 38, 8 Ohio Cir.Dec. 596.
N.J.—Brice v. Austin, 105 A.2d 680, 31 N.J.Super. 10.
Va.—Clayton v. Taylor, 69 S.E.2d 424, 193 Va. 555—Southern Ry. Co. v. Barker, 4 S.E.2d 395, 173 Va. 313.

Hypothetical question

In a malpractice action, a hypothetical question asked a physician whether in his opinion this doctor, in treating this baby, exercised that degree of skill, care, and learning ordinarily possessed and exercised by physicians and surgeons practicing in the city in the treatment of a similar condition, although incorrect in form because of the reference to "this physician" instead of "a physician," was not prejudicial error in absence of a showing of prejudice or objection at the time specifically pointing out the vice in the question.
Cal.—Criss v. Angelus Hospital Ass'n of Los Angeles, 56 P.2d 1274, 13 C.A.2d 412.

46. Cal.—In re Jacobson's Guardianship, 182 P.2d 537, 30 C.2d 312.
Ill.—Stresenreuter Bros. v. Bowes, 233 Ill.App. 143.
4 C.J. p 967 note 20.

Oral question

While it is better practice to reduce a hypothetical question to writing, where the facts are confusing and complicated, allowance of an oral hypothetical question, based on previous questions, amendments, objections, and colloquy, cannot be treated as reversible error.
Mich.—Matthews v. Lamberton, 165 N.W. 748, 198 Mich. 746.

47. R.I.—Oliver v. Pettaconsett Constr. Co., 90 A. 764, 36 R.I. 477.

48. Cal.—Hoffman v. Southern Pac. Co., 281 P. 681, 101 C.A. 218.
Conn.—Livingstone v. City of New Haven, 3 A.2d 836, 125 Conn. 123.
Iowa.—Blakely v. Cabelka, 212 N.W. 348, 203 Iowa 5.
Kan.—Miller v. National Council of Knights and Ladies of Security, 175 P. 397, 103 Kan. 579.
Ky.—Black Mountain Corporation v. Black, 294 S.W. 820, 220 Ky. 85.
Mo.—Lang v. St. Louis-San Francisco Ry. Co., 273 S.W.2d 270, 364 Mo. 1147—Gillick-Fruin-Colnon Const. Co., 65 S.W.2d 927, 334 Mo. 135.
Thomas v. St. Louis-San Francisco Ry. Co., App., 293 S.W. 1051—Riggle v. Wells, App., 287 S.W. 803.
Ohio.—Mutschman v. Petry, 189 N. E. 658, 46 Ohio App. 525.
4 C.J. p 967 note 22.

49. Md.—Pennsylvania R. Co. v. Lord, 151 A. 400, 159 Md. 518.

50. Conn.—Hemingway v. Cozzolino, 169 A. 621, 117 Conn. 689.
Ky.—Louisville & N. R. Co. v. Cayce, 112 S.W.2d 682, 271 Ky. 467—Baxter v. Hubbard, 47 S.W.2d 743, 242 Ky. 751.
Mass.—Shumaker v. Lucerne-In-Maine Community Ass'n, 175 N.E. 469, 275 Mass. 201.
Mich.—Matthews v. Lamberton, 165 N.W. 748, 198 Mich. 746.
Minn.—Boutang v. Twin City Motor Bus Co., 80 N.W.2d 30, 248 Minn. 240—Storbakken v. Soderberg, 75 N.W.2d 496, 246 Minn. 434.
Miss.—Birchett v. Hundermark, 110 So. 237, 145 Miss. 683.
Mo.—Stephenson v. American Nat. Ins. Co., App., 78 S.W.2d 876—Lampe v. St. Louis Brewing Ass'n, 221 S.W. 447, 204 Mo.App. 373, certiorari quashed State ex rel. St. Louis Brewing Ass'n v. Reynolds, Sup., 226 S.W. 579.
Ohio.—McKee v. New Idea, App., 44 N.E.2d 697.
Wash.—Aronson v. City of Everett, 239 P. 1011, 136 Wash. 312.
4 C.J. p 967 note 23.

Facts subsequently testified to

Admission of the answer to a question to a medical witness assuming that the witness had testified to a certain condition of an injury was not prejudicial where such witness later testified that such condition existed.
Iowa.—Jeffries v. Iowa Ry. & Light Co., 167 N.W. 608, 183 Iowa 858.

Testing ability of expert

An alleged error in that a hypothetical question relating to tuberculosis did not correctly reflect the evidence is immaterial, where no effort was made to establish that insured had tuberculosis, and no re-

permitting a witness to assume a fact.[51] No complaint can be made of a hypothetical question where the only difference between the facts proved and those embraced in the question is a matter of phraseology and not of substance.[52]

This rule has been applied under the following circumstances: Where the matter sought to be established was otherwise sufficiently proved,[53] was not questioned in the pleadings or evidence,[54] or would have been presumed if the question had not been asked;[55] where another question objectionable on the same grounds was asked without objection;[56] where the issue on which an answer to an improper question was allowed was subsequently gone into fully by both parties;[57] where, notwithstanding the defective form of the question, it was apparent that the witness and the jury were not misled,[58] or where the finding is such as to render the error harmless;[58.5] where the decision of the case was not based on such matter;[58.10] where facts omitted from a hypothetical question were brought to the attention of the witness and the jury on examination or cross-examination,[59] or where they were undisputed;[59.5] where the witness stated that he did not understand the question;[59.10] where the complaining party was given an opportunity to

covery was sought because of such disease, and the hypothetical question was asked merely to test the ability of the witness as an expert.
Ky.—Equitable Life Assur. Soc. of U. S. v. Reynolds, 82 S.W.2d 509, 259 Ky. 504.

51. Cal.—Los Angeles v. Hunter, 105 P. 755, 156 C. 603.

52. Ky.—McGraw v. Ayers, 58 S.W. 2d 378, 248 Ky. 166.

53. Ala.—Adams v. Queen Ins. Co. of America, 88 So.2d 331, 264 Ala. 572—Mahone v. Birmingham Elec. Co., 73 So.2d 378, 261 Ala. 132—Finney v. Bouchelle, 124 So. 423, 220 Ala. 194.
Ark.—Ætna Life Ins. Co. v. Norman, 117 S.W.2d 728, 196 Ark. 381—Jim Fork Coal Co. v. Rhotenberry, 35 S.W.2d 590, 183 Ark. 319.
Cal.—Inyo Chemical Co. v. City of Los Angeles, 55 P.2d 850, 5 C.2d 525—Pemberton v. Arny, 182 P. 964, 180 C. 762.
Bochner v. Equitable Life Assur. Soc. of U. S., App., 41 P.2d 365—Inyo Chemical Co. v. City of Los Angeles, App., 34 P.2d 165.
Ga.—Hamilton v. Pulaski County, 72 S.E.2d 487, 86 Ga.App. 705.
Ill.—Douvia v. City of Ottawa, 200 Ill.App. 131—Hatcher v. Quincy Horse Ry. & Carrying Co., 193 Ill. App. 590, affirmed 111 N.E. 1005, 272 Ill. 347.
Md.—Stewart & Co. v. Howell, 110 A. 899, 136 Md. 423.
Mo.—Schrader v. Kessler, 178 S.W. 2d 355.
Fitzgerald v. Thompson, 184 S. W.2d 198, 238 Mo.App. 546.
Neb.—McNaught v. New York Life Ins. Co., 12 N.W.2d 108, 143 Neb. 213.
N.Y.—Gilmore v. McPherson, 119 N. Y.S.2d 603, 281 App.Div. 924.
N.C.—Bank of Chapel Hill v. Rosenstein, 177 S.E. 643, 207 N.C. 529.
Okl.—Comar Oil Co. v. Blagden, 35 P. 2d 954, 169 Okl. 78.
Or.—Coates v. Slusher, 222 P. 811, 109 Or. 612.
S.C.—Pinkussohn v. Great Atlantic & Pacific Tea Co., 192 S.E. 283, 184 S.C. 171.
Tex.—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error—City of Corpus Christi v. McMurrey, Civ. App., 145 S.W.2d 664, error dismissed, judgment correct—Phillips v. Bowie, Civ.App., 127 S.W.2d 522, error dismissed, judgment correct—Maytag Southwestern Co. v. Moore, Civ.App., 74 S.W.2d 183.
4 C.J. p 968 note 25.

Repetition of previous testimony

(1) Asking and answering an improperly formed question resulting in a mere repetition of a previous answer was held not prejudicial.
Ky.—Metropolitan Life Ins. Co. v. Ackan, 187 S.W.2d 1005, 300 Ky. 218.
Tex.—Republic Production Co. v. Collins, Civ.App., 3 S.W.2d 1113, reheard 7 S.W.2d 187.

(2) Violation of the rule against leading questions was, however, held not rendered immaterial because the witness had already testified to the same facts, since the question also breached the rule against repetition.
Tex.—Capitol Hotel Co. v. Rittenberry, Civ.App., 41 S.W.2d 697.

54. Tex.—San Antonio Tract. Co. v. Crawford, Civ.App., 71 S.W. 306.

55. Tex.—San Antonio v. Porter, 59 S.W. 922, 24 Tex.Civ.App. 444.

56. Me.—Reid v. Eastern Steamship Co., 90 A. 609, 112 Me. 34.

57. Cal.—Stockton Iron Works v. Walters, 123 P. 240, 18 C.A. 373.

58. Ky.—Caudill v. Caudill, 257 S. W.2d 557—Jefferson Standard Life Ins. Co. v. Cheek's Adm'r, 80 S.W. 2d 518, 258 Ky. 621—Grant v. Adams, 291 S.W. 785, 218 Ky. 535.
Ohio.—Hudson v. Hoster, App., 47 N.E.2d 895.
Wash.—Hill v. Great Northern Life Ins. Co., 57 P.2d 405, 186 Wash. 167.
4 C.J. p 968 note 30.

Matter admitted in argument to jury

S.C.—Pinkussohn v. Great Atlantic & Pacific Tea Co., 192 S.E. 283, 184 S.C. 171.

Piecemeal method

Md.—Clautice v. Murphy, 26 A.2d 406, 180 Md. 558.

Question not answered differently

Cal.—George v. Bekins Van & Storage Co., 205 P.2d 1037, 33 C.2d 834.
Okl.—Provident Life & Accident Ins. Co. of Chattanooga, Tenn., v. Everett, 61 P.2d 679, 177 Okl. 588.
Tex.—Whatley v. McKanna, Civ.App., 207 S.W.2d 645, error refused no reversible error.

58.5 Tenn.—McKamey v. Andrews, App., 289 S.W.2d 704.

58.10 R.I.—Atlantic Rayon Corp. v. Macedo, 53 A.2d 756, 73 R.I. 157.

59. Cal.—Forbis v. Holzman, 55 P. 2d 201, 5 C.2d 407.
Mo.—Gillick v. Fruin-Colnon Const. Co., 65 S.W.2d 927, 334 Mo. 135.
Or.—Cobb v. Spokane, P. & S. Ry. Co., 44 P.2d 731, 150 Or. 226—Goldfoot v. Lofgren, 296 P. 843, 135 Or. 533.
R.I.—Oliver v. Pettaconsett Const. Co., 90 A. 764, 36 R.I. 477.
Tex.—Fidelity & Cas. Co. of New York v. Van Arsdale, Civ.App., 108 S.W.2d 550, error dismissed.
Utah.—Carter v. Standard Acc. Ins. Co., 238 P. 259, 65 Utah 465, 41 A. L.R. 1495.
Va.—Tate v. Chumbley, 57 S.E.2d 151, 190 Va. 480—Hogan v. Miller, 157 S.E. 540, 156 Va. 166.
4 C.J. p 968 note 31.

Technical variation from evidence

In a malpractice action against a surgeon, a technical variation from the evidence in stating a fact for the hypothetical question, if error, was held not prejudicial in view of testimony on cross-examination.
W.Va.—Dudley v. Grace Hospital, 164 S.E. 670, 112 W.Va. 461.

59.5 Mo.—Lang v. St. Louis-San Francisco Ry. Co., 273 S.W.2d 270, 364 Mo. 1147.

59.10 Mo.—Cunningham v. Union Elec. Co. of Mo., App., 221 S.W.2d 758.

supply omitted facts[60] and failed to do so;[60.5] or where rebuttal evidence sustained the hypothetical case;[61] where the court instructed the jury that the answer to a hypothetical question assuming facts not proved should not be considered if there was a failure to prove such facts,[62] or where the error was cured on cross-examination;[62.5] or where the error in overruling an objection to the question is cured by the nature of the answer itself.[63] The fact that the court subsequently withdrew from the consideration of the jury some of the elements that entered into the question did not render a hypothetical question improper at the time it was asked.[64]

Reversible error. Permitting answers to leading questions will constitute reversible error where the answers elicited are the only basis in the evidence for an instruction given on a material issue,[65] where the question properly objected to is on the controverted material issue,[66] or where aside from the answers it cannot be said that there is sufficient evidence to warrant the verdict.[67] So the case must be reversed where facts improperly assumed in a hypothetical question were of a prejudicial nature.[68]

c. On Cross-Examination

Error in ruling on objections to questions asked on cross-examination is not ground for reversal where no harm resulted.

Although the rule is otherwise where the error is prejudicial to the complaining party,[69] rulings on

60. Ill.—McManimen v. Public Service Co. of Northern Illinois, 47 N.E.2d 385, 317 Ill.App. 649.
Mo.—Cunningham v. Union Elec. Co. of Mo., App., 221 S.W.2d 758—Standefer v. Fleming, App., 298 S.W. 134.
Utah.—Stoker v. Ogden City, 54 P.2d 849, 88 Utah 389.

60.5 Ill.—Will v. 1527-31 Wicker Park Ave. Bldg. Corp., 65 N.E.2d 594, 328 Ill.App. 214, reversed on other grounds 75 N.E.2d 314, 398 Ill. 60.

61. Ala.—Independent Life Ins. Co. of America v. Butler, 129 So. 466, 221 Ala. 501.

62. Ind.—Lincoln Nat. Life Ins. Co. v. Jensen, 189 N.E. 169, 99 Ind. App. 397.
Iowa.—In re Telsrow's Estate, 22 N.W.2d 792, 237 Iowa 672.
Utah.—Smith v. Payne, 206 P. 715, 60 Utah 89.
4 C.J. p 968 note 32.

Instruction to "absolutely disregard"
In an action for injury to an automobile struck by a street car at an intersection, plaintiff's improper hypothetical question to his expert witness, with his answer, as to the distance a street car must travel to attain twelve miles an hour after stopping, intended to disprove defendant's testimony that it had stopped, was cured by the court's injunction to the jury to "absolutely disregard" the testimony, the verdict not indicating noncompliance.
Mo.—Smith v. Kansas City Rys. Co., App., 258 S.W. 458.

62.5 Okl.—Cities Service Gas Co. v. Eggers, 98 P.2d 1114, 186 Okl. 466, 126 A.L.R. 1278.

63. Ala.—Alabama Power Co. v. Carroll, 94 So. 743, 208 Ala. 426.
Ark.—Alldread v. Mills, 199 S.W.2d 571, 211 Ark. 99.
Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559.
Ky.—Ross v. McLain, 246 S.W.2d 1012.
Md.—Gordon v. Opalecky, 137 A. 299, 152 Md. 536.
Mo.—Mickel v. Thompson, 156 S.W.2d 721, 348 Mo. 991.
N.H.—Whelton v. Daly, 37 A.2d 1, 93 N.H. 150.
Vt.—Baldwin v. Gaines, 102 A. 338, 92 Vt. 61.

64. Wash.—Jones v. McQuesten, 20 P.2d 838, 172 Wash. 480.

65. U.S.—Baldi v. Cedar Hill Coal, etc., Co., Colo., 173 F. 781, 97 C.C.A. 505.

66. Minn.—Hohenstein v. Dodds, 10 N.W.2d 236, 215 Minn. 348.
Tex.—Gully v. Nystel, Civ.App., 233 S.W. 122.

Hypothetical question
Ill.—Hughes v. Wabash R. Co., 95 N.E.2d 735, 342 Ill.App. 159.

67. Tex.—Chicago, R. I. & G. Ry. Co. v. Taylor, Civ.App., 203 S.W. 90.
4 C.J. p 968 note 35.

68. Ala.—Life & Cas. Ins. Co. of Tenn. v. Garrett, 35 So.2d 109, 250 Ala. 521—Southern Ry. Co. v. Simmons, 186 So. 566, 237 Ala. 246.
Cal.—Citron v. Fields, 85 P.2d 534, 30 C.A.2d 51.
Colo.—Enyart v. Orr, 238 P. 29, 78 Colo. 6.
Ky.—Kentucky Traction & Terminal Co. v. Humphrey, 182 S.W. 854, 168 Ky. 611.
Md.—Mathiesen Alkali Works v. Redden, 10 A.2d 699, 177 Md. 560.
Mich.—Bosch v. Damm, 296 N.W. 669, 296 Mich. 522.
N.Y.—Socony-Vacuum Oil Co. v. Seaman, 120 N.Y.S.2d 122, 281 App. Div. 911—Forame v. Metropolitan Life Ins. Co., 288 N.Y.S. 212, 248 App.Div. 621.
Ohio.—Squire v. Industrial Commission, App., 70 N.E.2d 95.
Wis.—Schnetzky v. Zanto, 182 N.W. 751, 174 Wis. 160.

Gruesome claim
The inclusion in a hypothetical question in the trial of an action for malpractice of the element that the flesh stuck to the plates, where plaintiff did not so testify, is prejudicial.
Mich.—Sima v. Wright, 256 N.W. 349, 268 Mich. 352.

Evidence improperly in case
Permitting a medical expert to base a hypothetical opinion in part on notes of a medical witness, improperly read to the jury, was held prejudicial.
Mass.—McKenna v. Fielding, 172 N.E. 224, 272 Mass. 341.

69. Ala.—Stinson v. Richardson, 194 So. 508, 239 Ala. 161—Alabama Coca-Cola Bottling Co. v. Stanfield, 173 So. 392, 234 Ala. 44—Morgan Hill Paving Co. v. Fonville, 130 So. 807, 222 Ala. 120—South Brilliant Coal Co. v. McCollum, 76 So. 901, 200 Ala. 543—Dominy v. Dowling-Martin Grocery Co., 73 So. 381, 197 Ala. 685.
Cal.—Scott v. Del Monte Properties, Inc., 295 P.2d 947, 140 C.A.2d 756—Lannan v. Garrett, 73 P.2d 620, 23 C.A.2d 367—Gackstetter v. Market St. Ry. Co., 285 P. 409, 104 C.A. 89—Larson v. Larsen, 236 P. 979, 72 C.A. 169.
Colo.—Kansas City Life Ins. Co. v. Lathrop, 101 P.2d 29, 106 Colo. 87.
Conn.—Fahey v. Clark, 3 A.2d 313, 125 Conn. 44, 120 A.L.R. 517.
Fla.—Florida Coastal Theatres v. Bellflower, 32 So.2d 738, 159 Fla. 741—Johnson v. Reynolds, 121 So. 793, 97 Fla. 591.
Ga.—Rabun v. Wynn, 70 S.E.2d 745, 209 Ga. 80.
Smith v. Davis, 45 S.E.2d 237, 76 Ga.App. 154—Williamson, Inman & Co. v. Thompson, 179 S.E. 289, 50 Ga.App. 564.
Idaho.—Giraney v. Oregon Short Line R. Co., 33 P.2d 359, 54 Idaho 535.
Ill.—Stone v. Warehouse & Terminal Cartage Co., 127 N.E.2d 260, 6 Ill.App.2d 229—Horton v. Mozin, 92

questions asked a witness on cross-examination, although erroneous, will not constitute ground for reversal where no substantial prejudice results therefrom.[70]

N.E.2d 671, 341 Ill.App. 66—Raucci v. Connelly, 91 N.E.2d 735, 340 Ill.App. 280—Breitmeier v. Sutera, 63 N.E.2d 667, 327 Ill.App. 221—Cobean v. Richardson, 4 N.E.2d 769, 287 Ill.App. 618—Davidson v. Loomis, 282 Ill.App. 515—Carroll v. Krause, 280 Ill.App. 52—Cox v. Ætna Casualty & Surety Co. of Hartford, Conn., 248 Ill.App. 209. See Terrault v. Chicago City Ry. Co., 195 Ill.App. 60—Roherty v. Chicago Rys. Co., 189 Ill.App. 139.

Iowa.—Pickerell v. Griffith, 29 N.W. 2d 588, 238 Iowa 1151—Pierce v. Heusinkveld, 14 N.W.2d 275, 234 Iowa 1348—Eno v. Adair County Mut. Ins. Ass'n, 294 N.W. 323, 229 Iowa 249—Stickling v. Chicago, R. I. & P. Ry. Co., 232 N.W. 677, 212 Iowa 149—Kraft v. Tenningkeit, 214 N.W. 562, 204 Iowa 15—Glassman v. Chicago, R. I. & P. Ry. Co., 147 N.W. 757, 166 Iowa 254.

Kan.—Kelly v. Meyer, 134 P.2d 658, 156 Kan. 429—Harmon v. Electric Theater Co., 192 P. 732, 107 Kan. 528.

Ky.—Triplett v. Napier, 286 S.W.2d 87—Bowles v. Katzman, 214 S.W. 2d 1021, 308 Ky. 490—Alexander v. Cincinnati, N. O. & T. P. R. Co., 260 S.W. 14, 202 Ky. 475.

Md.—Plank v. Summers, 109 A.2d 914, 205 Md. 598.

Mass.—Wilson v. Jeffrey, 102 N.E.2d 426, 328 Mass. 192—Karasek v. Bockus, 199 N.E. 726, 293 Mass. 371.

Mich.—Berke v. Murphy, 274 N.W. 356, 280 Mich. 633—Van Dyke v. Knoll, 247 N.W. 768, 262 Mich. 644—De Haan v. Winter, 247 N.W. 151, 262 Mich. 192—Sykes v. Village of Portland, 159 N.W. 325, 193 Mich. 86.

Miss.—M. & A. Motor Freight Lines v. Villere, 1 So.2d 788, 190 Miss. 848.

Mo.—Jones v. Terminal R. R. Ass'n of St. Louis, 258 S.W.2d 643, 363 Mo. 1210—Wilt v. Moody, 254 S.W. 2d 15—Hungate v. Hudson, 185 S.W.2d 646, 353 Mo. 944, 157 A.L. R. 598—Wiener v. Mutual Life Ins. Co. of New York, 179 S.W.2d 39, 352 Mo. 673—Holden v. Berberich, 174 S.W.2d 791, 351 Mo. 995, 149 A.L.R. 929—Bright v. Wheelock, 20 S.W.2d 684, 323 Mo. 840, 66 A.L.R. 263.

Hoffman v. Illinois Terminal R. Co., App., 274 S.W.2d 591—Edwards v. Bethany Hospital, App., 148 S.W.2d 97—Federal Chemical Co. v. Farmers Produce Exchange, App., 123 S.W.2d 612—Hill v. Missouri Packing Co., App., 24 S.W.2d 196—Watson v. Aronberg, App., 15 S.W.2d 356—Summers v. Tarpley, App., 208 S.W. 266.

Neb.—Brown v. Mulready, 300 N.W. 421, 140 Neb. 500—Larson v. Hafer, 179 N.W. 1013, 105 Neb. 257.

N.J.—Mitilenes v. Snead, 132 A.2d 321, 45 N.J.Super. 246—Liberatori v. Yellow Cab Co. of Philadelphia, 114 A.2d 469, 35 N.J.Super. 470.

N.Y.—Lizzo v. O'Connor, 145 N.Y.S. 2d 101, 286 App.Div. 1021—McQuage v. City of New York, 136 N.Y.S.2d 111, 285 App.Div. 249—Anderson v. Loblaw Groceterias, Inc., 120 N.Y.S.2d 69, 281 App. Div. 950—Philipp v. Shaw, 116 N. Y.S.2d 889, 280 App.Div. 999—Walther v. News Syndicate Co., 93 N.Y.S.2d 537, 276 App.Div. 169—Chopak v. Walker, 86 N.Y.S.2d 202, 275 App.Div. 669, motion denied 88 N.Y.S.2d 922, 275 App.Div. 781—Phass v. MacClenathen, 85 N.Y.S. 2d 643, 274 App.Div. 535—Hastings v. Chrysler Corp., 77 N.Y.S.2d 524, 273 App.Div. 292—Grenadier v. Surface Transp. Corp. of N. Y., 66 N.Y.S.2d 130, 271 App.Div. 460—George v. Owners Trucking Corp., 35 N.Y.S.2d 475, 264 App.Div. 831, appeal denied 36 N.Y.S.2d 800, 264 App.Div. 947, motion dismissed 49 N.E.2d 625, 290 N.Y. 669—Metlin v. Globe & Republic Ins. Co. of America, 26 N.Y.S.2d 513, 261 App. Div. 1048—Cottrell v. Prudential Ins. Co. of America, 23 N.Y.S.2d 335, 260 App.Div. 986—Wooding v. Commons, 299 N.Y.S. 911, 252 App. Div. 913—Zimber v. Kress, 232 N. Y.S. 46, 225 App.Div. 16—McWharf v. Webber, 225 N.Y.S. 761, 222 App. Div. 347—Veeldorano v. Union Ry. Co. of New York City, 178 N.Y.S. 576, 189 App.Div. 238.

Baxter v. Swanton, 252 N.Y.S. 272, 141 Misc. 479—Nitzberg v. Kapilow-Hyers, Inc., 245 N.Y.S. 695, 138 Misc. 671—Loewinger v. Winternitz, 204 N.Y.S. 825, 123 Misc. 166—Felstiner v. Widelitz, 191 N.Y. S. 296, 117 Misc. 289.

Marchant v. Fred F. French Management Co., 90 N.Y.S.2d 5—Leibowitz v. Massachusetts Indemnity Ins. Co., 48 N.Y.S.2d 167—Baum v. Kelly, 176 N.Y.S. 22.

N.C.—Piper v. Ashburn, 89 S.E.2d 762, 243 N.C. 51—Cuthrell v. Greene, 50 S.E.2d 525, 229 N.C. 475—U. S. Fidelity & Guaranty Co. v. P. & F. Motor Express, 18 S.E.2d 116, 220 N.C. 721—Citizens Bank & Trust Co. v. Reid Motor Co., 5 S.E.2d 318, 216 N.C. 432—Morris v. Beaty Service Co., 199 S.E. 922, 214 N.C. 562.

N.D.—Mevorah v. Goodman, 57 N.W. 2d 600, 79 N.D. 443—Haggard v. First Nat. Bank of Mandan, 8 N.W. 2d 5, 72 N.D. 434—Piechotta v. Fried, 181 N.W. 602, 46 N.D. 620.

Ohio.—Stover v. Yoakum, App., 109 N.E.2d 877—Kemp v. Lormer, 94 N. E.2d 702, 87 Ohio App. 307—Bates v. Flath, 78 N.E.2d 56, 81 Ohio App. 188—Tarian v. City of Alliance, 32 N.E.2d 578, 66 Ohio App. 423—Kessler v. Metropolitan Life Ins. Co., 22 N.E.2d 508, 61 Ohio App. 240—Ferstman v. Fidelity & Casualty Co., 177 N.E. 487, 39 Ohio App. 318.

Okl.—Oklahoma Natural Gas Co. v. McFarland, 229 P. 216, 103 Okl. 6—Smith v. Missouri, K. & T. Ry. Co., 185 P. 70, 76 Okl. 303.

Pa.—Grutski v. Kline, 43 A.2d 142, 352 Pa. 401—Tolomeo v. Harmony Short Line Motor Transp. Co., 37 A.2d 511, 349 Pa. 420—Kane v. Philadelphia Rapid Transit Co., 93 A. 1001, 248 Pa. 160.

Keiter v. Miller, 170 A. 364, 111 Pa.Super. 594.

R.I.—Fahy v. New England Transp. Co., 32 A.2d 157, 69 R.I. 181.

S.C.—Baxter v. Camp Mfg. Co., 175 S.E. 513, 173 S.C. 194.

S.D.—Hochgraber v. Balzer, 287 N.W. 585, 66 S.D. 630.

Tex.—Johnson v. Johnson, Civ.App., 272 S.W.2d 939, error refused no reversible error—Evans v. Jacobs, Civ.App., 228 S.W.2d 545—Peek v. Parker, Civ.App., 210 S.W.2d 619—Springer v. Strahan, Civ.App., 180 S.W.2d 654—Tabor v. McKenzie, Civ.App., 49 S.W.2d 874—Reef v. Hamblen, Civ.App., 47 S.W.2d 375—Murray v. Morris, Civ.App., 17 S. W.2d 110.

Utah.—Clark v. Los Angeles & S. L. R. Co., 275 P. 582, 73 Utah 486.

Vt.—Glass v. Bosworth, 34 A.2d 113, 113 Vt. 303—Farmér v. Williams, 102 A. 932, 92 Vt. 132.

Wash.—Field v. North Coast Transp. Co., 2 P.2d 672, 164 Wash. 123, 76 A.L.R. 1114.

Wis.—Voss v. Metropolitan Cas. Ins. Co., 63 N.W.2d 96, 266 Wis. 150—Jesse v. Tinkham, 239 N.W. 455, 207 Wis. 49—Christiansen v. Schenkenberg, 236 N.W. 109, 204 Wis. 323.

4 C.J. p 968 note 36 [a].

70. Ala.—Poole v. Evergreen Livestock Co., 77 So.2d 475, 262 Ala. 131—Howell v. Greyhound Corp., 59 So.2d 587, 257 Ala. 492—Davis v. Radney, 38 So.2d 867, 251 Ala. 629—Bates v. Chilton County, 13 So.2d 186, 244 Ala. 297—Alabama Power Co. v. Pierre, 183 So. 665, 236 Ala. 521—Williams v. Alabama Fuel & Iron Co., 102 So. 136, 212 Ala. 159—Wildman v. Means, 94 So. 823, 208 Ala. 487.

Pacific Mut. Life Ins. Co. v. Yeldell, 62 So.2d 805, 36 Ala.App. 652.

Ark.—Missouri Pac. R. Co. v. Rance, 93 S.W.2d 317, 192 Ark. 532—St. Louis San Francisco Ry. Co. v. Bishop, 33 S.W.2d 383, 182 Ark. 763, certiorari denied 51 S.Ct. 647, 283

Where appellant was not prejudiced, there is no ground for reversal for error, if any, in limiting cross-examination,[71] in allowing too great latitude

U.S. 854, 75 L.Ed. 1461—Zorub v. Missouri Pac. R. Co., 81 S.W.2d 421, 182 Ark. 232—Prange v. Young, 207 S.W. 445, 137 Ark. 30.

Cal.—Loeb v. Kimmerle, 9 P.2d 199, 215 C. 143—Schumann v. Karrer, 192 P. 849, 184 C. 50.

Clay v. Lagiss, 299 P.2d 1025, 143 C.A.2d 650—Frampton v. Stoloff, 298 P.2d 10, 142 C.A.2d 175—Hawkinson v. Oesdean, 143 P.2d 967, 61 C.A.2d 712—Elsey v. Domecq, 299 P. 794, 114 C.A. 42—Harlow v. Feder, 264 P. 782, 89 C.A. 435—Dahne v. Dahne, 193 P. 785, 49 C.A. 501.

Conn.—A. W. Carlson, Inc., v. Judd, 48 A.2d 269, 133 Conn. 74—Lusas v. St. Patrick's Roman Catholic Church Corp., 4 A.2d 333, 125 Conn. 206—Henowitz v. Rockville Sav. Bank, 173 A. 221, 118 Conn. 527—Amato v. Desenti, 169 A. 611, 117 Conn. 612—Tilden v. Century Realty Co., 152 A. 707, 112 Conn. 439.

Fla.—Pandula v. Fonseca, 199 So. 358, 145 Fla. 395.

Ga.—Peretzman v. Simon, 196 S.E. 471, 185 Ga. 681.

Idaho.—Jensen v. Boise-Kuna Irr. Dist., 269 P.2d 755, 75 Idaho 133—Byington v. Horton, 102 P.2d 652, 61 Idaho 389.

Ill.—Julian Foundry Co. v. Fidelity & Cas. Co. of N. Y., 124 N.E.2d 48, 4 Ill.App.2d 301. See Noonen v. Gebhardt, 186 Ill.App. 276.

Iowa.—Williamson v. Craig, 215 N. W. 664, 204 Iowa 555—Adami v. Fowler & Wilson Coal Co., 179 N. W. 422, 189 Iowa 995.

Kan.—Chapman v. Watson, 295 P. 654, 132 Kan. 324—Bowhan v. Collinson Auto Co., 231 P. 69, 117 Kan. 189.

Ky.—McDonald v. Lunsford, 57 S.W. 2d 1018, 247 Ky. 828.

Me.—Falmouth v. Windham, 63 Me. 44.

Md.—Gavin v. Tinkler, 184 A. 903, 170 Md. 461—Western Maryland Dairy Corporation v. Brown, 181 A. 468, 169 Md. 257—Zipus v. United Rys. & Electric Co. of Baltimore City, 108 A. 884, 135 Md. 297—Shawmut Mining Co. v. Padgett, 104 A. 40, 132 Md. 397.

Mass.—Kelley v. City of Boston, 6 N. E.2d 371, 296 Mass. 463.

Minn.—Simon v. Carroll, 62 N.W.2d 822, 241 Minn. 211—Ludwig v. Haugen Motor Co., 245 N.W. 371, 187 Minn. 315—Ruud v. Hendrickson, 222 N.W. 904, 176 Minn. 138—Farmers' Elevator Co. of Lansford, N. D. v. Great Northern Ry. Co., 154 N.W. 954, 131 Minn. 152.

Miss.—Magnolia Miss Dress Co. v. Zorn, 36 So.2d 795, 204 Miss. 1—Mississippi Utilities Co. v. Smith, 145 So. 896, 166 Miss. 105.

Mo.—Kelso v. W. A. Ross Const. Co., 85 S.W.2d 527, 337 Mo. 202—Sennert v. McKay, 56 S.W.2d 105—Rath v. Knight, 55 S.W.2d 682—Heriford v. Kansas City Rys. Co., 220 S.W. 899.

Legger v. Great Northern Life Ins. Co., App., 216 S.W.2d 106—Stewart v. Steinoff, App., 119 S.W. 2d 76—Lally v. Morris, App., 26 S. W.2d 52—Terry v. Kansas City Rys. Co., App., 228 S.W. 885.

Neb.—O'Dell v. Goodsell, 41 N.W.2d 123, 152 Neb. 290—Litwiller v. Graff, 246 N.W. 922, 124 Neb. 460.

N.H.—Precourt v. Driscoll, 157 A. 525, 85 N.H. 280, 78 A.L.R. 874.

N.Y.—Bristol v. Kittinger, 34 N.Y. S.2d 861, 264 App.Div. 808.

N.M.—**Corpus Juris quoted in** State v. Borrego, 195 P.2d 622, 627, 52 N.M. 202.

N.C.—Hoke v. Atlantic Greyhound Corp., 42 S.E.2d 593, 227 N.C. 412—Patterson v. Allen, 197 S.E. 168, 213 N.C. 632—Rosenmann v. Belk-Williams Co., 132 S.E. 282, 191 N.C. 493.

N.D.—Morstad v. Kopald Electric Co., 234 N.W. 56, 60 N.D. 325—Acker v. Jardine, 226 N.W. 483, 58 N.D. 430—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N. D. 734.

Ohio.—Melville v. Greyhound Corp., 133 N.E.2d 436, 99 Ohio App. 411—State v. Liff, 87 N.E.2d 917, 86 Ohio App. 396.

Okl.—Harrell v. London, 264 P. 172, 129 Okl. 240.

Or.—York v. Western Savings & Loan Ass'n, 14 P.2d 1003, 140 Or. 574—MacMillan v. Christensen, 9 P.2d 1034, 139 Or. 255.

Pa.—Fortis v. City of Pittsburgh, 22 A.2d 652, 344 Pa. 121—Niebauer v. Schultz, 178 A. 285, 318 Pa. 266.

Niebauer v. Schultz, 174 A. 812, 114 Pa.Super. 538, opinion adopted 178 A. 285, 318 Pa. 266—Valentine v. Federal Life Ins. Co., 169 A. 387, 111 Pa.Super. 311—March v. Evans, 98 Pa.Super. 510.

Rothschild v. Dilts, Com.Pl., 24 Erie Co., 336.

R.I.—Owens v. Hagenbeck-Wallace Shows Co., 192 A. 158, 58 R.I. 162, 112 A.L.R. 113, reargument denied 192 A. 464, 58 R.I. 268, 112 A.L.R. 113—Zannelle v. Pettine, 155 A. 236, 51 R.I. 359.

S.C.—Porter-Constructors v. Dixon Motor Service Co., 172 S.E. 419, 171 S.C. 396—Green v. McDaniel, 168 S.E. 197, 168 S.C. 533—Fowler v. New York Life Ins. Co., 91 S.E. 1043, 107 S.C. 21.

Tex.—Dismuke v. Reid, Civ.App., 188 S.W.2d 255—De Velin v. Carter, Civ.App., 135 S.W.2d 747—Geistmann v. Schkade, Civ.App., 121 S. W.2d 494—National Life & Accident Ins. Co. of Nashville, Tenn., v. Jackson, Civ.App., 108 S.W.2d 738, error dismissed—Mills v. Browning, Civ.App., 59 S.W.2d 219—Rust v. Page, Civ.App., 52 S.W.2d 937.

Utah.—Whatcott v. Continental Casualty Co., 39 P.2d 733, 85 Utah 388.

Vt.—Murray v. Nelson, 122 A. 519, 97 Vt. 101.

Va.—Bath Hardwood Lumber Co. v. Back Creek Mountain Corporation, 125 S.E. 213, 140 Va. 280.

Wash.—Kellogg v. Wilcox, 283 P.2d 677, 46 Wash.2d 558, rehearing denied 286 P.2d 114, 46 Wash.2d 558—Lankford v. Tombari, 213 P. 2d 627, 35 Wash.2d 412, 19 A.L.R. 2d 462—Miller v. Edwards, 171 P. 2d 821, 25 Wash.2d 635—Jones v. McQuesten, 20 P.2d 838, 172 Wash. 480.

4 C.J. p 968 note 36.

71. Ala.—Alaga Coach Line v. McCarroll, 151 So. 834, 227 Ala. 686—John Dodd Wholesale Grocery Co. v. Burt, 143 So. 832, 225 Ala. 438—Central of Georgia Ry. Co. v. Wilson, 111 So. 901, 215 Ala. 612—Williams v. Alabama Fuel & Iron Co., 102 So. 136, 212 Ala. 159—Drummond v. Drummond, 102 So. 112, 212 Ala. 242—Jones v. Tennessee Coal, Iron & R. Co., 80 So. 463, 202 Ala. 381—Caravella Shoe Co. v. Hubbard, 78 So. 899, 201 Ala. 545.

Bank of Loretto v. Bobo, 67 So. 2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374—Southern Ry. Co. v. White, 198 So. 759, 29 Ala.App. 512, certiorari denied 198 So. 762, 240 Ala. 283—Gulf, M. & N. R. Co. v. Fowler, 96 So. 87, 19 Ala.App. 163.

Ariz.—Ruth v. Rhodes, 185 P.2d 304, 66 Ariz. 129.

Ark.—St. Louis, I. M. & S. Ry. Co. v. Coke, 175 S.W. 177, 118 Ark. 49.

Cal.—Loeb v. Kimmerle, 9 P.2d 199, 215 C. 143—Murnane v. Le Mesnager, 279 P. 800, 207 C. 485—Schumann v. Karrer, 192 P. 849, 184 C. 50.

Hickenbottom v. Jeppesen, 300 P.2d 689, 144 C.A.2d 115—Costa v. Regents of University of Cal., 254 P.2d 85, 116 C.A.2d 445—Alvarez v. Van Camp Sea Food Co., 248 P.2d 943, 113 C.A.2d 647—Rozelle v. Watts, 234 P.2d 724, 106 C.A.2d 185—Bardin v. Case, 221 P.2d 292, 99 C.A.2d 137—Bennett v. Chandler, 126 P.2d 173, 52 C.A.2d 255—Lafrenz v. Stoddard, 122 P.2d 374, 50 C.A.2d 1—Boyes v. Evans, 58 P. 2d 922, 14 C.A.2d 472—Hibernia Savings & Loan Soc. v. Ellis Estate Co., 22 P.2d 806, 132 C.A. 408—Smellie v. Southern Pac. Co., 18 P.2d 97, 128 C.A. 567, hearing denied 19 P.2d 982, 128 C.A. 567—Silvey v. Harm, 8 P.2d 570, 120

therein,[72] or in recalling a party after he has closed his case for further cross-examination by his op-

C.A. 561—Pietrofitta v. Southern Pac. Co., 290 P. 597, 107 C.A. 575—Hargrove v. Wilson, 275 P. 979, 97 C.A. 605—Pontecorvo v. Clark, 272 P. 591, 95 C.A. 162—Ramsdell v. Krehmke, 272 P. 333, 95 C.A. 195—Kruger v. Vernon, 238 P. 1062, 73 C.A. 476—Celnar v. Hawes, 211 P. 849, 59 C.A. 687—Grover v. Morrison, 190 P. 1078, 47 C.A. 521—People v. Burch, 189 P. 716, 46 C.A. 391—Mitchell v. Mitchell, 188 P. 585, 46 C.A. 87.

Conn.—Amato v. Desenti, 169 A. 611, 117 Conn. 612—Oviatt v. Woicicky, 111 A. 837, 95 Conn. 566.

Ga.—Hamilton v. Pulaski County, 72 S.E.2d 487, 86 Ga.App. 705—Caldwell v. Brown, 57 S.E.2d 618, 80 Ga.App. 858—Jennings v. Gibson, 47 S.E.2d 779, 77 Ga.App. 28—Jones v. Blackburn, 44 S.E.2d 555, 75 Ga.App. 791—Paschal v. Godley, 129 S.E. 565, 34 Ga.App. 321.

Ill.—People ex rel. De Rosa v. Chicago & N. W. Ry. Co., 63 N.E.2d 401, 391 Ill. 347.

Krupp v. National Fur Dressing & Dyeing Co., 250 Ill.App. 282—Chester v. Chicago, B. & Q. R. Co., 247 Ill.App. 505—Scofield v. Wabash Ry. Co., 214 Ill.App. 353. See Hall v. Chicago & A. R. Co., 208 Ill.App. 102—O'Hair v. Watson, 202 Ill.App. 439.

Ind.—Essex v. Millikan, 164 N.E. 284, 88 Ind.App. 399.

Iowa.—Pond v. Anderson, 44 N.W. 2d 372, 241 Iowa 1038—Main v. Ellsworth, 23 N.W.2d 429, 237 Iowa 970—Burbridge v. Briggs, 15 N.W.2d 909, 235 Iowa 12—Colburn v. Krabill, 3 N.W.2d 154, 232 Iowa 290—Eilers v. Frieling, 234 N.W. 275, 211 Iowa 841—Valentine v. Morgan, 222 N.W. 412, 207 Iowa 232—Rumelhart v. Schnoebelen, 186 N.W. 641—Hirsch v. Butler, 164 N.W. 745, 181 Iowa 345.

Kan.—Leavens v. Hoover, 145 P. 877, 93 Kan. 661.

Md.—L & S Const. Co. v. Bradbury Homes, 118 A.2d 681, 208 Md. 476—Caroline County Com'rs v. Beulah, 145 A. 177, 156 Md. 680—Nussear v. Hazard, 129 A. 506, 148 Md. 345.

Mass.—Donahue v. Kenney, 110 N.E. 2d 846, 335 Mass. 9—Kenyon v. Hathaway, 174 N.E. 463, 274 Mass. 47, 73 A.L.R. 156—Ginns v. C. T. Sherer Co., 106 N.E. 600, 219 Mass. 18.

Mich.—Bennett v. Hill, 71 N.W.2d 220, 342 Mich. 754—People for Use and Benefit of Youngs v. U. S. Fidelity & Guaranty Co. of Baltimore, 249 N.W. 20, 263 Mich. 638.

Minn.—Brodsky v. Brodsky, 215 N. W. 181, 172 Minn. 250—Cookson v. Hill, 178 N.W. 591, 146 Minn. 165—McGuire v. Village of Caledonia, 167 N.W. 425, 140 Minn. 151, L.R.A. 1918D 943.

Mo.—Hinds v. Chicago, B. & Q. R. Co., App., 85 S.W.2d 165—Kane v. Metropolitan Life Ins. Co., 73 S. W.2d 826, 228 Mo.App. 649, quashal denied State ex rel. Metropolitan Life Ins. Co. v. Allen, Mo., 85 S. W.2d 469—Troxell v. De Shon, App., 279 S.W. 438.

Mont.—Loncar v. National Union Fire Ins. Co. of Pittsburgh, Pa., 274 P. 844, 84 Mont. 141.

Neb.—In re Potts' Estate, 14 N.W.2d 323, 144 Neb. 729—Schreiner v. Shanahan, 181 N.W. 536, 105 Neb. 525.

Nev.—Barcellos v. Gompertz, 245 P. 700, 49 Nev. 326.

N.J.—Ruth v. Fenchel, 121 A.2d 373, 21 N.J. 171.

Volpe v. Perruzzi, 3 A.2d 892, 122 N.J.Law 57, affirmed 8 A.2d 580, 123 N.J.Law 323—Doherty v. American Employers' Ins. Co. of Boston, Mass., 169 A. 652, 112 N.J.Law 52—American Farm Agency v. Investors' Management Corporation, 158 A. 392, 108 N.J.Law 255.

Lewis v. Schlicting, 141 A. 163, 6 N.J.Misc. 340.

Ohio.—Di Marzo v. Columbus Transit Co., 137 N.E.2d 766, 100 Ohio App. 521—Northern Sav. & Loan Co. v. Fillo, App., 134 N.E.2d 86—Rutledge v. Hoffman, 75 N.E.2d 608, 81 Ohio App. 85—Acme Meter Service Corp. v. Olentangy Village Housing Corp., App., 68 N.E.2d 389—National Guarantee & Finance Co. v. Russel, App., 36 N.E.2d 1015—O'Hara v. Cincinnati St. Ry. Co., 36 N.E. 2d 823, 68 Ohio App. 7—Sullivan v. Cassidy, 163 N.E. 728, 29 Ohio App. 457, affirmed 161 N.E. 540, 118 Ohio St. 508.

Okl.—Mid-Continent Petroleum Corp. v. Epley, 250 P.2d 861, 207 Okl. 577—Anderson v. Scanlon, 50 P.2d 615, 174 Okl. 403.

Or.—Fahlstrom v. Denk, 23 P.2d 325, 143 Or. 514—MacMillan v. Christensen, 9 P.2d 1034, 139 Or. 255.

Pa.—Ferreira v. Borough of Wilson, 26 A.2d 342, 344 Pa. 567—Wagner-Taylor Co. v. Spinelli, 145 A. 505, 295 Pa. 455.

Pantano v. Zamer Motor Sales Co., 85 A.2d 681, 170 Pa.Super. 317—Murphy v. Wolverine Express, 38 A.2d 511, 155 Pa.Super. 125—Nichols v. Kreinson, 160 A. 135, 105 Pa.Super. 85—Kellogg v. Mack Paving & Const. Co., 66 Pa.Super. 399.

R.I.—Morrison v. Bitting, 198 A. 355, 60 R.I. 325—Parenteau v. Parenteau, 153 A. 872, 51 R.I. 263.

S.C.—Porter-Constructors v. Dixon Motor Service Co., 172 S.E. 419, 171 S.C. 396—Williamson v. Pike, 138 S.E. 831, 140 S.C. 376.

S.D.—Sioux Falls Motor Co. v. Styke, 235 N.W. 111, 58 S.D. 101.

Tex.—Nichols v. Red Arrow Freight Lines, Civ.App., 300 S.W.2d 740, error refused no reversible error—Lobstein v. Watson, Civ.App., 186 S.W.2d 999—Osterloh v. San Antonio Public Service Co., Civ.App., 77 S.W.2d 290—King v. Kloh, Civ. App., 10 S.W.2d 1043—Calvin Coal Co. v. First Nat. Bank, Civ.App., 286 S.W. 901—Skeeters v. Hodges, Civ.App., 270 S.W. 907—St. Louis, B. & M. Ry. Co. v. Lane, Civ.App., 248 S.W. 59—Ft. Worth & D. C. Ry. Co. v. Hapgood, Civ.App., 201 S.W. 1040, dismissed for want of jurisdiction.

Utah.—Connell v. Oregon Short Line R. Co., 168 P. 337, 51 Utah 26.

Vt.—Bennett v. Robertson, 177 A. 625, 107 Vt. 202—Arnold v. Somers, 105 A. 260, 92 Vt. 512.

Va.—Norfolk Southern R. Co. v. Fentress, 102 S.E. 588, 127 Va. 87.

Wash.—McMullen v. Warren Motor Co., 25 P.2d 99, 174 Wash. 454—Haaga v. Saginaw Logging Co., 5 P.2d 505, 165 Wash. 367, reheard 14 P.2d 55, 169 Wash. 547, petition granted 15 P.2d 655, 170 Wash. 93—Swiger v. Reinier, 290 P. 842, 158 Wash. 101—Duggins v. International Motor Transit Co., 280 P. 50, 153 Wash. 549—Van Allen v. Post, 226 P. 721, 130 Wash. 224—Utterback v. Johnson, 187 P. 369, 110 Wash. 57.

Wis.—Topham v. Casey, 55 N.W.2d 892, 262 Wis. 580—Peurala v. Hurley, 46 N.W.2d 855, 258 Wis. 592.

Wyo.—Benham Const. Co. v. Rentz, 238 P.2d 927, 69 Wyo. 176.

4 C.J. p 968 note 37.

72. Ala.—Penton v. Favors, 78 So. 2d 278, 262 Ala. 262—Montgomery City Lines v. Callahan, 22 So.2d 339, 247 Ala. 23—Sauls v. Hand, 7 So.2d 762, 242 Ala. 643—Johnson v. Day, 160 So. 340, 230 Ala. 167—Cobb v. York Ice Machinery Corporation, 159 So. 811, 230 Ala. 95—Louisville & N. R. Co. v. Smith, 133 So. 905, 222 Ala. 618—Union Indemnity Co. v. Webster, 118 So. 794, 218 Ala. 468—Sovereign Camp, W. O. W. v. Graham, 107 So. 98, 214 Ala. 239—Woodmen of the World v. Maynor, 96 So. 352, 209 Ala. 443—Sorrell v. Scheuer, 96 So. 216, 209 Ala. 268—Blumberg v. Speilberger, 96 So. 191, 209 Ala. 278—Lehman v. Austin, 70 So. 653, 195 Ala. 244.

Ariz.—Simpson v. Shaw, 226 P.2d 557, 71 Ariz. 293—Cox v. Enloe, 70 P.2d 331, 50 Ariz. 201—United Verde Copper Co. v. Kovacovich, 22 P.2d 1085, 42 Ariz. 159—First Nat. Bank v. Perez, 213 P. 692, 25 Ariz. 110.

Ark.—Jordan v. Adams, 232 S.W. 14, 149 Ark. 104—St. Louis, I. M. & S.

Ry. Co. v. Fitzhugh, 180 S.W. 490, 121 Ark. 633.

Cal.—Lafargue v. United Railroads of San Francisco, 192 P. 538, 183 C. 720—Blanc v. Connor, 141 P. 217, 167 C. 719.

Eggleston v. Liberty Mut. Ins. Co., 300 P.2d 867, 144 C.A.2d 302—Cooper v. National Motor Bearing Co., 288 P.2d 581, 136 C.A.2d 229—Lynch v. Defino, 249 P.2d 615, 114 C.A.2d 128—Lewis v. Western Truck Line, 112 P.2d 747, 44 C.A. 2d 455—Durante v. City of Oakland, 65 P.2d 1326, 19 C.A.2d 543—Von Stetten v. Yellow-Checker Cab Co., Consolidated, 281 P. 95, 100 C.A. 775—Saylor v. Taylor, 183 P. 845, 42 C.A. 800—Saylor v. Taylor, 183 P. 843, 42 C.A. 474.

Colo.—American Min. Co. v. Himrod-Kimball Mines Co., 235 P.2d 804, 124 Colo. 186—London Guarantee & Accident Co. v. Officer, 242 P. 989, 78 Colo. 441—Ward v. Teller Reservoir & Irrigation Co., 153 P. 219, 60 Colo. 47.

Conn.—Henowitz v. Rockville Sav. Bank, 173 A. 221, 118 Conn. 527.

Ga.—Griffin v. Welch, 79 S.E.2d 527, 210 Ga. 300.

Baldwin v. Anglin, 87 S.E.2d 230, 91 Ga.App. 818—Henry & Hutchinson, for Use and Ben. of Henry v. V. M. C. Products, Inc., 66 S.E.2d 775, 84 Ga.App. 613—First Bancredit Corp. v. J. G. McKenzie Lumber Co., 16 S.E.2d 191, 65 Ga.App. 595.

Idaho.—Curtis v. Ficken, 16 P.2d 977, 52 Idaho 426.

Ill.—Koester v. Jennings, 165 N.E. 650, 334 Ill. 107—Plambeck v. Chicago Rys. Co., 128 N.E. 513, 294 Ill. 302.

Roadruck v. Schultz, 77 N.E.2d 874, 333 Ill.App. 476—Cochran v. Koller, 33 N.E.2d 910, 310 Ill.App. 91—Wilson v. Glens Falls Ins. Co., 32 N.E.2d 961, 309 Ill.App. 286—Branch v. Woulfe, 21 N.E.2d 148, 300 Ill.App. 472—Spelina v. Sporry, 279 Ill.App. 376—Northern Trust Co. v. Chicago Rys. Co., 232 Ill.App. 246, reversed on other grounds 149 N.E. 422, 318 Ill. 402—Sisters of the Third Order of St. Francis v. Frances Guillaume's Estate, 222 Ill.App. 543—Malmgren v. Aurora, E. & C. R. Co., 193 Ill. App. 241—First Nat. Bank v. Heeb, 188 Ill.App. 194. See Simkus v. Superior Coal Co., 208 Ill.App. 104—Bonner v. Milwaukee Mechanics' Ins. Co., 199 Ill.App. 166.

Ind.—Essex v. Millikan, 164 N.E. 284, 88 Ind.App. 399.

Iowa.—Henney v. Lambert, 21 N.W. 2d 301, 237 Iowa 146—W. T. Rawleigh Medical Co. v. Bane, 254 N. W. 18, 218 Iowa 154—Higgins v. Haagensen, 220 N.W. 38—Dille v. Longwell, 197 N.W. 439, 198 Iowa 540—Jacobsen v. Greeley, 178 N. W. 357—Johnson v. Lincoln Hotel Co., 177 N.W. 550, 189 Iowa 291—Hearn v. City of Waterloo, 169 N.W. 392, 185 Iowa 995—Waltham Piano Co. v. Lindholm Furniture Co., 150 N.W. 1040, 168 Iowa 728.

Kan.—Wood v. McKeever, 41 P.2d 989, 141 Kan. 323—Chapman v. Watson, 295 P. 654, 132 Kan. 324—Macmillan v. Carlton, 250 P. 308, 121 Kan. 797—Cusick v. Miller, 171 P. 599, 102 Kan. 663, L.R.A.1918D 1086.

Ky.—Ætna Life Ins. Co. v. Daniel, 65 S.W.2d 1025, 251 Ky. 760.

La.—Driefus v. Levy, App., 140 So. 259.

Md.—Western Maryland Dairy Corporation v. Brown, 181 A. 468, 169 Md. 257—State v. Lupton, 161 A. 393, 163 Md. 180—Airey v. Airey, 152 A. 430, 160 Md. 41—Mills v. Pritchett, 150 A. 787, 159 Md. 248—Deckelman v. Lake, 131 A. 762, 149 Md. 533—Shawmut Mining Co. v. Padgett, 104 A. 40, 132 Md. 397—Furness-Withy & Co. v. Fahey, 96 A. 619, 127 Md. 333.

Mass.—Cucchiara v. Settino, 102 N. E.2d 430, 328 Mass. 116—Foley v. O'Flynn, 193 N.E. 44, 288 Mass. 504—Noel v. Archidacono, 192 N.E. 153, 288 Mass. 20—Dwyer v. Boston Elevated Ry. Co., 172 N.E. 71, 272 Mass. 294—Puccia v. Sevigne, 154 N.E. 765, 258 Mass. 234—Childs v. Erhard, 115 N.E. 924, 226 Mass. 454.

Mich.—Anthony v. Cochrane, 295 N. W. 197, 295 Mich. 386—Pratt v. Van Rensselaer, 209 N.W. 807, 235 Mich. 633—Marsh v. Burnham, 179 N.W. 300, 211 Mich. 675.

Minn.—Loring v. Swanson, 230 N.W. 277, 180 Minn. 104—Brodsky v. Brodsky, 215 N.W. 181, 172 Minn. 250—Lustik v. Walters, 211 N.W. 311, 169 Minn. 313.

Miss.—Adams v. Bounds, 81 So.2d 235, 224 Miss. 518—Masonite Corp. v. Steede, 23 So.2d 756, 198 Miss. 530—Williams v. Larkin, 147 So. 337, 166 Miss. 837.

Mo.—Holmes v. Terminal R. R. Ass'n of St. Louis, 257 S.W.2d 922, 363 Mo. 1178—Donk v. Francis, 174 S.W.2d 840, 351 Mo. 1053—Mauck v. Atchison, T. & S. F. Ry. Co., 154 S.W.2d 73—Wahl v. Cunningham, 56 S.W.2d 1052, 332 Mo. 21—Dodd v. Independence Stove & Furnace Co., 51 S.W.2d 114, 330 Mo. 662—Grodsky v. Consolidated Bag Co., 26 S.W.2d 618, 324 Mo. 1067—Woodard v. Stowell, 222 S.W. 815.

Farmer v. Kansas City Public Service Co., App., 186 S.W.2d 766—Tueteberg v. St. Louis Public Service Co., App., 41 S.W.2d 956—Farmers' Nat. Bank v. Haning, App., 10 S.W.2d 351—Morrow v. Wabash Ry. Co., App., 6 S.W.2d 628—Wright v. Missouri Pac. R. Co., 286 S.W. 709, 220 Mo.App. 303—Bertig Mercantile Co. v. Williams, App., 286 S.W. 150—Crews v. Bogy, App., 285 S.W. 549—Crow v. Winston, App., 219 S.W. 91—Davis v. Otto, App., 206 S.W. 409—Moore v. McCutchen, App., 190 S.W. 350—Williams v. Kansas City, App., 177 S.W. 783.

Mont.—Wortman v. Luna Park Amusement Co., 201 P. 570, 61 Mont. 89.

Neb.—Brown v. Blackwood, 187 N.W. 911, 108 Neb. 288—Koran v. Cudahy Packing Co., 161 N.W. 245, 100 Neb. 693.

N.H.—Blake v. Lord, 4 A.2d 360, 90 N.H. 42.

N.J.—Marchese Auto Sales Co. v. Van Keuren, 153 A. 94, 9 N.J. Misc. 219—J. K. Larkin & Co. v. Murphy, 138 A. 704, 5 N.J.Misc. 921.

N.C.—Creech v. Sovereign Camp, W. O. W., 191 S.E. 840, 211 N.C. 658.

N.C.—Bryant v. Welch Furniture Co., 119 S.E. 823, 186 N.C. 441—Ledford v. Valley River Lumber Co., 112 S.E. 421, 183 N.C. 614—Ferebee v. Norfolk-Southern R. Co., 83 S.E. 360, 167 N.C. 290, affirmed Norfolk Southern R. Co. v. Ferebee, 35 S.Ct. 781, 238 U.S. 269, 59 L.Ed. 1303.

N.D.—Killmer v. Duchscherer, 72 N. W.2d 650—Morstad v. Kopald Electric Co., 234 N.W. 56, 60 N.D. 325—Acker v. Jardine, 226 N.W. 483, 58 N.D. 430—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N.D. 734.

Ohio.—Gates v. Wise, App., 77 N.E. 2d 716—Ruffo v. Randall, 52 N.E. 2d 750, 72 Ohio App. 396—Frey v. E. G. Buchseib, Inc., App., 33 N.E. 2d 862.

Okl.—Greene v. Humphrey, 274 P.2d 535—Galt v. Sykes, 51 P.2d 764, 174 Okl. 591—Beggs Oil Co. v. Deardorf, 222 P. 535, 97 Okl. 33.

Or.—York v. Western Savings & Loan Ass'n, 14 P.2d 1003, 140 Or. 574—Hoag v. Washington-Oregon Corporation, 147 P. 756, 75 Or. 588—Lang v. Camden Iron Works, 146 P. 964, 77 Or. 137.

Pa.—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55—Rice v. Shenk, 148 A. 231, 293 Pa. 524.

De Rose v. Metropolitan Life Ins. Co., 200 A. 888, 132 Pa.Super. 212—King v. Myers, 60 Pa.Super. 345.

S.C.—Tate v. Le Master, 99 S.E.2d 39—Robinson v. Duke Power Co., 48 S.E.2d 808, 213 S.C. 185.

S.D.—Seubert v. Seubert, 299 N.W. 873, 68 S.D. 195.

Tex.—Alamo Cas. Co. v. William Reeves & Co., Civ.App., 258 S.W. 2d 211—Browning v. Nesting, Civ. App., 219 S.W.2d 712, error refused, no reversible error—Swanson v. Fort Worth Transit Co., Civ.App., 209 S.W.2d 772—W. T. Rawleigh Co. v. Cook, Civ.App., 107 S.W.2d 625, error dismissed—Texas Employers Ins. Ass'n v. McNorton, Civ.App., 92 S.W.2d 562, error dismissed 122 S.W.2d 1043, 132 Tex. 168—Texas & P. Ry. Co. v. Van

ponent.[72]

The improper limiting of cross-examination will not be considered prejudicial where evidence as to the facts sought to be elicited by the cross-examination is subsequently admitted;[74] where the matter

Zandt, Civ.App., 30 S.W.2d 503, reversed on other grounds, Com. App., 44 S.W.2d 950—Mims v. Hunken, Civ.App., 262 S.W. 930, error dismissed National Compress Co. v. Hamlin, 269 S.W. 1024, 114 Tex. 375—Gulf, C. & S. F. Ry. Co. v. Rodriquez, Civ.App., 185 S.W 311—Briggs-Weaver Machinery Co. v. Pratt, Civ.App., 184 S.W. 732, error refused.

Utah.—Thompson v. Bown Live Stock Co., 276 P. 651, 74 Utah 1—Central Bank of Bingham v. Stephens, 199 P. 1018, 58 Utah 358—Kipros v. Uintah Ry. Co., 146 P. 292, 45 Utah 389.

Vt.—Fairbanks v. Frank, 176 A. 294, 107 Vt. 45—Shedrick v. Lathrop, 172 A. 630, 106 Vt. 311—Crossman v. Perkins, 141 A. 594, 101 Vt. 94—Miles v. Vermont Fruit Co., 124 A. 559, 98 Vt. 1—Kimball v. New York Life Ins. Co., 116 A. 119, 96 Vt. 19—Thayer v. Glynn, 106 A. 834, 93 Vt. 257—Williams Mfg. Co. v. Insurance Co. of North America, 106 A. 657, 93 Vt. 161—Baldwin v. Gaines, 102 A. 338, 92 Vt. 61—Frederick v. Morse, 92 A. 16, 88 Vt. 126.

Va.—Wilkinson v. Allen, 118 S.E. 94, 136 Va. 607—Abernathy v. Emporia Mfg. Co., 95 S.E. 418, 122 Va. 406.

Wash.—Miller v. Edwards, 171 P.2d 821, 25 Wash.2d 635—Curtis v. Perry, 18 P.2d 840, 171 Wash. 542.

W.Va.—Jones v. Ambrose, 38 S.E. 2d 263, 128 W.Va. 715.

Wis.—Peurala v. Hurley, 46 N.W.2d 855, 258 Wis. 592—Doepke v. Reimer, 258 N.W. 345, 217 Wis. 49—Karney v. Boyd, 203 N.W. 371, 186 Wis. 594—Shine v. Hagemeister Realty Co., 172 N.W. 750, 169 Wis. 343.

Wyo.—McDonald v. Mulkey, 231 P. 662, 32 Wyo. 144.

4 C.J. p 968 note 38.

73. Mo.—Wyrick v. Missouri, etc., R. Co., 74 Mo.App. 406.

74. Ala.—Rosenbush Feed Co. v. Garrison, 37 So.2d 106, 251 Ala. 245—McDowell v. Hutto, 135 So. 322, 223 Ala. 307—Tennessee Coal, Iron & R. Co. v. King, 76 So. 982, 200 Ala. 624.

Ark.—Watson v. Davidson, 217 S.W. 777, 141 Ark. 591.

Cal.—Costa v. Regents of University of Cal., 254 P.2d 85, 116 C.A.2d 445—In re Krause's Estate, 163 P.2d 505, 71 C.A.2d 719—Lopez v. Wisler, 136 P.2d 816, 58 C.A.2d 455—Zellerbach Paper Co. v. Virden Packing Co., 53 P.2d 163, 10 C.A.2d 635, hearing denied 54 P.2d 18, 10 C.A.2d 635—Hibernia Savings & Loan Soc. v. Ellis Estate Co., 22 P.2d 806, 132 C.A. 408—Anderson v. Ott, 15 P.2d 526, 127 C.A. 122—Fisher v. Brotherton, 255 P. 854, 82 C.A. 532—Clarkson v. United Railroads of San Francisco, 227 P. 710, 67 C.A. 372—Lincoln v. Pacific Electric Ry. Co., 164 P. 412, 33 C. A. 83.

Conn.—Morache v. Greenberg, 165 A. 684, 116 Conn. 549.

Ga.—Huell v. Southeastern Stages, 50 S.E.2d 745, 78 Ga.App. 311—Weathers Bros. Transfer Co. v. Jarrell, 33 S.E.2d 805, 72 Ga.App. 317—Lambright v. Everett, 94 S.E. 593, 21 Ga.App. 488.

Idaho.—Colorado Milling & Elevator Co. v. Proctor, 76 P.2d 438, 58 Idaho 578.

Ill.—Bradley v. Shore Line Yellow Cab Co., 71 N.E.2d 101, 330 Ill. App. 330—Skomoroske v. Marcotte, 255 Ill.App. 1—Warput v. Reading Coal Co., 250 Ill.App. 450—Muenter v. Moline Plow Co., 193 Ill. App. 261. See Thorpe v. Weber, 191 Ill.App. 2.

Ind.—McGary v. Stephen, 7 N.E.2d 542, 103 Ind.App. 285—Whitacker v. Low, 197 N.E. 690, 102 Ind.App. 47—Essex v. Millikan, 164 N.E. 284, 88 Ind.App. 399—City of Terre Haute v. O'Neal, 126 N.E. 26, 72 Ind.App. 485.

Iowa.—Goben v. Des Moines Asphalt Paving Co., 252 N.W. 262, 218 Iowa 829—Handlon v. Henshaw, 221 N. W. 489, 206 Iowa 771—Swift v. Clarinda Trust & Savings Bank, 177 N.W. 519—Colsch v. Chicago, M. & St. P. Ry. Co., 153 N.W. 327, 171 Iowa 78.

Md.—State v. Emerson & Morgan Coal Co., 133 A. 601, 150 Md. 429.

Mass.—Davis v. Hotels Statler Co., 97 N.E.2d 187, 327 Mass. 28—Earle v. New York Cent. & H. R. R. Co., 126 N.E. 274, 235 Mass. 61.

Mich.—Mitchell v. De Vitt, 21 N.W. 2d 111, 313 Mich. 428.

Minn.—Davies v. Village of Madelia, 287 N.W. 1, 205 Minn. 526, 123 A. L.R. 569.

Mo.—Gately v. St. Louis-San Francisco Ry. Co., 56 S.W.2d 54, 332 Mo. 1—McMillan v. Bausch, 234 S. W. 835, 261 Mo. 129.

Butner v. Union Pac. R. Co., 163 S.W.2d 100, 236 Mo.App. 1134—Shaw v. Mutual Protective Ins. Co., App., 9 S.W.2d 685—Diehl v. Bestgen, App., 217 S.W. 555—Sparks v. Harvey, App., 214 S.W. 249—Cantrell v. Davidson, 168 S.W. 271, 180 Mo.App. 410.

Mont.—Conway v. Monidah Trust, 149 P. 711, 51 Mont. 113.

Nev.—Wright v. Starr, 179 P. 877, 42 Nev. 441, 6 A.L.R. 981.

N.J.—Vargo v. P. Ballantine & Sons, 197 A. 52, 119 N.J.Law 561.

Stelwagon Mfg. Co. v. Harrison, 141 A. 584, 6 N.J.Misc. 417.

N.D.—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N.D. 734.

Okl.—Whale v. Rice, 49 P.2d 737, 173 Okl. 530.

Or.—Richer v. Burke, 34 P.2d 317, 147 Or. 465.

Pa.—Trustees of Second Presbyterian Congregation of Pittsburgh v. Public Parking Authority of Pittsburgh, 119 A.2d 79, 383 Pa. 383—Davis v. Southern Surety Co., 153 A. 119, 302 Pa. 21—Wagner-Taylor Co. v. Spinelli, 145 A. 505, 295 Pa. 455.

Knoble v. Ritter, 20 A.2d 848, 145 Pa.Super. 149.

R.I.—White v. Alexion, 87 A.2d 853, 79 R.I. 297—Lianos v. Andreucci, 48 A.2d 343, 72 R.I. 123—Petrarca v. Nigro, 148 A. 316.

S.C.—Brazeale v. Piedmont Mfg. Co., 193 S.E. 39, 184 S.C. 471—Porter-Constructors v. Dixon Motor Service Co., 172 S.E. 419, 171 S.C. 396.

S.D.—Sandbo v. Sandbo, 290 N.W. 325, 67 S.D. 157.

Utah.—Fredrickson v. Maw, 227 P.2d 772, 119 Utah 385—Treadway v. Glenn, 221 P.2d 598, 118 Utah 246.

Vt.—Prazak v. Burzeiko, 160 A. 189, 104 Vt. 457—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Baldwin v. Gaines, 102 A. 338, 92 Vt. 61.

Wash.—Scoccia v. Streeter, 207 P. 1044, 121 Wash. 21—Shultz v. Crewdson, 163 P. 734, 95 Wash. 266—Marks v. City of Seattle, 152 P. 706, 88 Wash. 61.

W.Va.—Kelley v. Ætna Ins. Co., 84 S.E. 502, 75 W.Va. 637.

4 C.J. p 969 note 40.

Impeaching testimony

Any error in not permitting further cross-examination of witness was harmless where party seeking further cross-examination introduced in evidence impeaching testimony for which further cross-examination was sought.

Mo.—Marczuk v. St. Louis Public Service Co., 196 S.W.2d 1000, 355 Mo. 536.

Questions answered

Ala.—Louisville & N. R. Co. v. Martin, 198 So. 141, 240 Ala. 124—Harvey v. Bodman, 103 So. 569, 212 Ala. 503.

Mo.—Smith v. Smith, App., 241 S.W. 968.

N.J.—Levenstein v. Squires, 73 A.2d 209, 8 N.J.Super. 53.

Or.—Smith v. Williams, 205 P.2d 566, 186 Or. 155.

Refusal of statutory examination

Error, if any, in forbidding plaintiff to examine a witness under the statute was harmless where plaintiff

sought to be elicited was immaterial;[75] where the direct testimony on the matter sought to be elicited was very full[76] or proved the matter sought to be elicited on cross-examination;[77] where the adverse party admitted the matter sought to be elicited on cross-examination,[78] or the matter was not in dispute;[79] where the witness gave a negative answer;[79.5] where the question was not answered;[79.10] where the party aggrieved afterward has opportunity to question the witness on direct examination with reference to the matter sought to be elicited on cross-examination, or could have produced other evidence as to such matter, and fails to do so;[80] where in a subsequent examination of the witness he disclaimed knowledge concerning

was allowed extremely wide latitude in cross-examination of the witness.
Cal.—French v. Orange County Inv. Corporation, 13 P.2d 1046, 125 C.A. 587.

75. Cal.—Costa v. Regents of University of Cal., 254 P.2d 85, 116 C.A.2d 445.
Conn.—Fredericks v. Thatcher, 102 A.2d 882, 140 Conn. 605—Wadell v. Board of Zoning Appeals of City of New Haven, 68 A.2d 152, 136 Conn. 1—Farrell v. L. G. De Felice & Son, 42 A.2d 697, 132 Conn. 81.
Fla.—Allen v. Hooper, 171 So. 513, 126 Fla. 458.
Ill.—Bolton v. Bolton, 138 N.E. 158, 306 Ill. 473.
Iowa.—Maxfield v. Maxfield, 30 N.W. 2d 740, 239 Iowa 596.
Kan.—Siegrist v. Wheeler, 286 P.2d 169, 178 Kan. 286—Myers v. Mills, 201 P. 856, 109 Kan. 734.
Mass.—Ripley v. Taft, 149 N.E. 311, 253 Mass. 490.
Mo.—Deskin v. U. S. Reserve Ins. Corporation, 298 S.W. 103, 221 Mo. App. 1151.
R.I.—White v. Alexion, 87 A.2d 853, 79 R.I. 297—Cecca v. Marotto, 87 A.2d 421, 79 R.I. 246.
Tex.—Trinity Universal Ins. Co. v. Daniel, Civ.App., 202 S.W.2d 266.
Utah.—Malia for Use and Benefit of Creditors of North Sanpete Bank v. Seeley, 57 P.2d 357, 89 Utah 262.
4 C.J. p 969 note 41.

76. Ala.—Jewel Tea Co. v. Sklivis, 179 So. 532, 235 Ala. 510.
Cal.—Long v. California-Western States Life Ins. Co., 279 P.2d 43, 43 C.2d 871.
Schorr v. Southern Pac. Co., 254 P.2d 579, 117 C.A.2d 13—Costa v. Regents of University of Cal., 254 P.2d 85, 116 C.A.2d 445.
Ohio.—Streeton v. Roehm, 81 N.E.2d 133, 83 Ohio App. 148.
R.I.—Ficocelli v. Yellow Cab Co., 3 A.2d 246, 62 R.I. 73.
Vt.—Thurston v. Batchellor, 137 A. 199, 100 Vt. 334.
4 C.J. p 969 note 42.

77. Ala.—Balls v. Crump, 56 So.2d 108, 256 Ala. 512—Jackson Lumber Co. v. Butler, 13 So.2d 294, 244 Ala. 348.
Cal.—Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church, 245 P.2d 481, 39 C.2d 121, certiorari denied 73 S.Ct. 828, 345 U.S. 938, 97 L.Ed. 1365.
Williams v. Elliott, 273 P.2d 953, 127 C.A.2d 357—In re McCollum's Estate, 140 P.2d 176, 59 C.A.2d 744—Keller v. Cleaver, 67 P.2d 131, 20 C.A.2d 364.
Ill.—McMahon v. Opatkiewicz, 91 N.E.2d 735, 340 Ill.App. 337.
Iowa.—Dow v. Incorporated Town of Nora Springs, 160 N.W. 897.
Mont.—Bingham v. National Bank of Montana, 72 P.2d 90, 105 Mont. 159, 113 A.L.R. 315.
Tex.—Lubbock Bus Co. v. Pearson, Civ.App., 277 S.W.2d 186, error refused no reversible error.
Vt.—In re Delligan's Estate, 13 A.2d 282, 111 Vt. 227.
4 C.J. p 969 note 43.

78. Cal.—Rios v. Chand, 280 P.2d 47, 130 C.A.2d 833—Marr v. Whistler, 193 P. 600, 49 C.A. 364.
Md.—Maryland Cas. Co. v. Sause, 57 A.2d 801, 190 Md. 135.
S.D.—Clements v. Keith, 221 N.W. 675, 53 S.D. 588.
Wis.—Ziegler v. Hustisford Farmers Mut. Ins. Co., 298 N.W. 610, 238 Wis. 238.
4 C.J. p 969 note 44.

79. Ga.—Hudgins Transfer Co. v. Law, 29 S.E.2d 107, 70 Ga.App. 659.
Ill.—Rzeszewski v. Barth, 58 N.E.2d 269, 324 Ill.App. 345.
Iowa.—Korf v. Fleming, 32 N.W.2d 85, 239 Iowa 501, 3 A.L.R.2d 270—Thomsen v. Springdale Mut. Fire Ins. Ass'n, 171 N.W. 592.
Mich.—Edwin S. George Foundation v. Allen, 31 N.W.2d 716, 320 Mich. 552.
Minn.—Davies v. Village of Madelia, 287 N.W. 1, 205 Minn. 526, 123 A.L.R. 569.
S.D.—In re Annexing Territory to School Dist. No. 28, in Yankton County, 209 N.W. 343, 50 S.D. 226.
Tex.—Ray v. Gage, Civ.App., 269 S.W.2d 411, error refused no reversible error—Ray v. Fowler, Civ.App., 144 S.W.2d 665, error dismissed, judgment correct.
Vt.—Glass v. Bosworth, 34 A.2d 113, 113 Vt. 303.

79.5 Pa.—Commonwealth ex rel. Kolish v. Kolish, 36 A.2d 857, 154 Pa. Super. 591.

79.10 Mich.—Winchester v. Chabut, 32 N.W.2d 358, 321 Mich. 114.

80. Ariz.—Bowser v. Sandige, 250 P. 2d 589, 74 Ariz. 397.
Cal.—Larson v. Blue & White Cab Co., 75 P.2d 612, 24 C.A.2d 576.
Conn.—Richmond v. City of Norwich, 115 A. 11, 96 Conn. 582.
Idaho.—Manion v. Waybright, 86 P. 2d 181, 59 Idaho 643—Colorado Milling & Elevator Co. v. Proctor, 76 P.2d 438, 58 Idaho 578.
Ill.—Hammer v. Shaffer, 86 N.E.2d 672, 338 Ill.App. 19—Mortvedt v. Western Austin Co., 50 N.E.2d 764, 320 Ill.App. 337.
Ind.—Terre Haute, I. & E. Traction Co. v. Stevenson, 123 N.E. 785, 189 Ind. 100, rehearing denied 126 N. E. 3, 189 Ind. 100.
Iowa.—Maxfield v. Maxfield, 30 N.W. 2d 740, 239 Iowa 596.
Kan.—Ruth v. Witherspoon-Engler Co., 164 P. 1064, 100 Kan. 609, rehearing denied Ruth v. Witherspoon-Englar Co., 166 P. 481, 101 Kan. 406.
La.—Bryant v. Travelers Ins. Co., App., 88 So.2d 480—Himes v. Avinger, App., 85 So.2d 304.
Minn.—Skinner v. Neubauer, 74 N.W. 2d 656, 246 Minn. 291—In re Christ's Estate, 208 N.W. 22, 166 Minn. 374.
N.J.—Gibson v. Pennsylvania R. Co., 82 A.2d 635, 14 N.J.Super. 425.
Robbins v. Thies, 189 A. 67, 117 N.J.Law 389.
Pa.—Kline v. Kachmar, 61 A.2d 825, 360 Pa. 396.
Wash.—Repanich v. Columbia & Northern Fishing & Packing Co., 237 P. 1012, 135 Wash. 429.
4 C.J. p 969 note 45.

Change of ruling

A ruling denying a defendant the right to cross-examine a codefendant after cross-examination under the statute was not prejudicial, where the court later changed the ruling and defendant failed to avail himself of the privilege offered.
Minn.—Lund v. Olson, 234 N.W. 310, 182 Minn. 204, 75 A.L.R. 371.

Dual question

Sustaining an objection to question on cross-examination of plaintiff on ground that question was dual did not constitute error, where record showed that defendant did not press for an answer by proper questions which could easily have been framed, and especially where subject matter had been inquired about and an answer, if given, would have shed no light on the controversy.
Ind.—Newman v. Newman, 48 N.E. 2d 455, 221 Ind. 432.

the matter inquired about;[81] where the ruling did not affect the result;[81.5] where the facts proved clearly preponderate in support of the verdict or judgment;[82] or where the jury found in favor of the complaining party on the issue involved,[83] or on the main issue involved in the case.[83.5]

Error in allowing too great latitude in cross-examination is not prejudicial where the facts elicited are not material;[84] where a verdict is properly directed on motion of the opposite party;[85] where the evidence clearly preponderates in support of the verdict or judgment;[85.5] where the jury found in favor of the complaining party on the issue involved in the improper cross-examination,[86] or on the main issue involved in the case;[86.5] where the cross-examination was not misleading or confusing to the jury;[86.10] where the jury would have arrived at the same conclusion if the question had not been answered;[87] where the testimony was merely cumulative[87.5] or the answer was not responsive;[87.10] where the party cross-examining might have called the witness in his own behalf and elicited the same testimony;[88] where the adverse party called the witness in his own behalf and elicited the same testimony;[88.5] where the adverse party admitted the matter sought to be elicited[88.10] or the matter was not in dispute;[88.15] where evidence as to the facts sought to be elicited is subsequently admitted;[88.20] where the question was not answered;[89] where

81. Cal.—McGuffin v. Maurer, 222 P.2d 486, 99 C.A.2d 183.
Colo.—Idaho Gold Coin Min., etc., Co. v. Colorado Iron Works Co., 111 P. 553, 49 Colo. 66.

81.5 Miss.—McCormick v. McKinnon, 68 So.2d 301, 219 Miss. 184.
Mo.—Davis v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 460.

82. Pa.—Knoble v. Ritter, 20 A.2d 848, 145 Pa.Super. 149.
Wis.—Greene v. Agnew, 151 N.W. 268, 160 Wis. 224.

83. Tex.—First Nat. Bank v. Price, Civ.App., 262 S.W. 797.

83.5 Vt.—Macauley v. Hyde, 42 A. 2d 482, 114 Vt. 198.

84. Ala.—Bank of Loretto v. Bobo, 67 So.2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374.
Ariz.—Brown v. Karas, 237 P.2d 799, 73 Ariz. 62.
Conn.—Duncan v. Milford Sav. Bank, 58 A.2d 260, 134 Conn. 395.
Me.—Sweeney v. Lebel, 29 A.2d 746, 139 Me. 280.
Md.—Penrose v. Canton Nat. Bank of Canton, 127 A. 852, 147 Md. 200.
Mich.—Bailey v. Loomis, 200 N.W. 148, 228 Mich. 338.
Minn.—Gibbon Farmers' Elevator Co. v. Herschmann, 200 N.W. 293, 160 Minn. 326.
Mo.—Daniels v. Brown, 266 S.W.2d 680—Kunz v. Munzlinger, 242 S.W. 2d 536.
Okl.—Beggs Oil Co. v. Deardorf, 222 P. 535, 97 Okl. 33.
Tex.—Welch v. Ada Oil Co., Civ. App., 302 S.W.2d 175.
Wash.—Rung v. Radke, By and Through Gates, 269 P.2d 584, 44 Wash.2d 590—Reynolds v. Donoho, 236 P.2d 552, 39 Wash.2d 451.
W.Va.—Toler v. Cassinelli, 41 S.E. 2d 672, 129 W.Va. 591.
4 C.J. p 969 note 48.

Invited error

Where plaintiff in error invites error by immaterial and irrelevant evidence in chief, the cause will not be reversed for the admission, on cross-examination, of incompetent and irrelevant evidence as to the matter brought out in chief, where no miscarriage of justice has resulted.
Okl.—Smith v. Morton, 173 P. 520, 70 Okl. 157.

85. Wash.—Carr v. Bell, 225 P. 230, 129 Wash. 413.
4 C.J. p 969 note 49.

85.5 Idaho.—Willes v. Palmer, 298 P.2d 972, 78 Idaho 104.
Miss.—Seward v. First Nat. Bank in Meridian, 8 So.2d 236, 193 Miss. 656.

86. Colo.—Russell v. Russell, 202 P. 711, 70 Colo. 487.
Pa.—Karavas v. Poulos, 113 A.2d 300, 381 Pa. 358.

86.5 Mo.—Monsour v. Excelsior Tobacco Co., 144 S.W.2d 62.

86.10 Mo.—Brunner v. Stix, Baer & Fuller Co., 181 S.W.2d 643, 352 Mo. 1225.
Va.—Collins v. Smith, 96 S.E.2d 818, 198 Va. 778.

87. Mo.—Durbin v. St. Louis-San Francisco Ry. Co., App., 275 S.W. 358.
Tex.—Shock v. Mrs. Ragsdale's Foods Co., Civ.App., 228 S.W.2d 353, error refused no reversible error.
Va.—City of Portsmouth v. Culpepper, 64 S.E.2d 799, 192 Va. 362.

Fact proved by other evidence

In an action for land rent, improperly permitting cross-examination of an alleged agent of the corporate defendant was without prejudice where defendant's liability was clearly established without consideration of such testimony.
N.D.—Jacobson v. National Tea Co., 200 N.W. 910, 51 N.D. 889.

Testimony not warranting submission of case

Where testimony of codefendants, regardless of when given, would not have warranted submission of case to jury, error, if any, in permitting cross-examination of codefendants after their depositions were read was not prejudicial to plaintiff.
Ky.—Henry's Adm'x v. Illinois Cent. R. Co., 137 S.W.2d 1081, 282 Ky. 101.

87.5 Cal.—Sandoval v. Southern Cal. Enterprises, 219 P.2d 928, 98 C.A. 2d 240.
N.D.—Killmer v. Duchscherer, 72 N. W.2d 650.

87.10 Md.—Pennsylvania R. Co. v. Quality Products, 189 A. 200, 171 Md. 291.

88. S.D.—Ellwein v. Town of Roscoe, 174 N.W. 748, 42 S.D. 298.
4 C.J. p 969 note 50.

88.5 Ill.—Shapleigh Hardware Co. v. Enterprise Foundry Co., 27 N.E.2d 1012, 305 Ill.App. 180.
Iowa.—Augusta v. Jensen, 42 N.W.2d 383, 241 Iowa 697.
Mo.—Asbury v. Fidelity Nat. Bank & Trust Co., 100 S.W.2d 946, 231 Mo.App. 437.
N.J.—Chmiel v. Yatsko, 13 A.2d 219, 124 N.J.Law 508.

88.10 Tenn.—Tevis v. Proctor & Gamble Distributing Co., 113 S.W. 2d 64, 21 Tenn.App. 494.

88.15 Mo.—Cooper v. Atchison, T. & S. F. R. Co., 148 S.W.2d 773, 347 Mo. 555, certiorari denied 61 S.Ct. 1116, 313 U.S. 591, 85 L.Ed. 1546.
N.H.—Charles G. Clapp Co. v. McCleary, 192 A. 572, 89 N.H. 65.

88.20 Ala.—Nelson v. Johnson, 88 So.2d 358, 264 Ala. 422.
Ark.—Duke v. Life & Cas. Ins. Co. of Tenn., 238 S.W.2d 631, 218 Ark. 686.
Md.—Hazlitt v. Dewlow, 189 A. 213, 171 Md. 398.
Mo.—Parkhurst v. Lebanon Pub. Co., 204 S.W.2d 241, 356 Mo. 934.
Vt.—Ellison v. Colby, 8 A.2d 637, 110 Vt. 431.

89. Ala.—Poole v. Evergreen Livestock Co., 77 So.2d 475, 262 Ala. 131.
Cal.—Cordi v. Garcia, 102 P.2d 820, 39 C.A.2d 189.

the witness gave a negative answer;[90] where the answer was not unfavorable to the complaining party;[91] where the witness testified that he did not know[92] or did not remember;[93] or where the error was corrected by prompt and adequate instructions by the court to the jury,[94] or by admonishment to counsel.[94.5]

d. On Redirect Examination

In the absence of resulting prejudice, a case will not be reversed for erroneous admission or exclusion of testimony on redirect examination.

Rulings on objections to questions asked a witness on redirect examination, even though erroneous, are not ground for reversal[95] in the absence

Conn.—Crowley v. Dix, 68 A.2d 366, 136 Conn. 97.
Ga.—Sapp v. Callaway, 69 S.E.2d 734, 208 Ga. 805.
N.H.—Blake v. Lord, 4 A.2d 360, 90 N.H. 42.
N.J.—Murphy v. Borough of Point Pleasant Beach, 8 A.2d 116, 123 N.J.Law 88, affirmed 12 A.2d 891, 124 N.J.Law 565—Hahn v. Metropolitan Life Ins. Co., 183 A. 146, 116 N.J.Law 126.
Tex.—Casstevens v. Childre, Civ.App., 235 S.W.2d 703—De Velin v. Carter, Civ.App., 135 S.W.2d 747—Larnce v. Massachusetts Bonding & Insurance Co., Civ.App., 121 S.W.2d 392, error dismissed.
Utah.—Ludlow v. Los Angeles & S. L. R. Co., 275 P. 592, 73 Utah 513.
Wash.—Kellogg v. Wilcox, 283 P.2d 677, 46 Wash.2d 558, rehearing denied 286 P.2d 114, 46 Wash.2d 558.
4 C.J. p 969 note 51.

90. Ala.—Tankersley v. Webb, 82 So. 2d 259, 263 Ala. 234.
Cal.—Hanna v. O'Connor, 236 P.2d 181, 106 C.A.2d 760—Johnson v. Coyne, 277 P. 1093, 99 C.A. 153.
Ga.—Caldwell v. Brown, 57 S.E.2d 618, 80 Ga.App. 858.
Ky.—French v. Elkhorn City Land Co., 168 S.W.2d 746, 293 Ky. 250.
Md.—Association of Independent Taxi Operators v. Kern, 13 A.2d 374, 178 Md. 252, 131 A.L.R. 792—Mills v. Pritchett, 150 A. 787, 159 Md. 248—Penrose v. Canton Nat. Bank of Canton, 127 A. 852, 147 Md. 200.
Mich.—Connor v. McRae, 160 N.W. 479, 193 Mich. 682.
Mo.—Williamson v. St. Louis Public Service Co., 252 S.W.2d 295, 363 Mo. 508.
Brim v. Alexander, App., 186 S.W. 544.
Ohio.—Meuer v. Doerflein, 5 N.E.2d 948, 53 Ohio App. 536.
S.D.—Langeberg v. Interstate Business Men's Accident Ass'n of Des Moines, Iowa, 231 N.W. 930, 57 S.D. 226.
Tex.—Colls v. Price's Creameries, Civ.App., 244 S.W.2d 900, error refused no reversible error—Tennessee Dairies v. Seibenhausen, Civ. App., 99 S.W.2d 323, error dismissed.
Utah.—Mulliner v. McCornick & Co., Bankers, 257 P. 658, 69 Utah 557.
Vt.—Miles v. Vermont Fruit Co., 124 A. 559, 98 Vt. 1.
4 C.J. p 969 note 52.

91. Ala.—Tankersley v. Webb, 82 So. 2d 259, 263 Ala. 234—St. Louis & S. F. Ry. Co. v. Trice, 80 So. 434, 202 Ala. 352.
Colo.—McBrayer v. Zordel, 257 P.2d 962, 127 Colo. 438.
Ga.—Clay v. Howington, 41 S.E.2d 571, 74 Ga.App. 794.
Md.—Western Maryland Dairy Corporation v. Brown, 181 A. 468, 169 Md. 257—Carlin v. Biddison, 109 A. 316, 135 Md. 458—Sappington v. Fairfax, 108 A. 575, 135 Md. 186.
Mass.—Di Rienzo v. Goldfarb, 153 N.E. 784, 257 Mass. 272.
Mich.—Cook v. Vineyard, 289 N.W. 181, 291 Mich. 375—Connor v. McRae, 160 N.W. 479, 193 Mich. 682.
Minn.—Neeson v. Murphy, 277 N.W. 916, 202 Minn. 234—Northern Oil & Gas Co. v. Birkeland, 206 N.W. 380, 164 Minn. 466—Wrabek v. Suchomel, 177 N.W. 764, 145 Minn. 468.
Mo.—Scneder v. Wabash R. Co., 272 S.W.2d 198.
Beckner v. Kansas City Rys. Co., App., 232 S.W. 745.
N.H.—Heilman v. Whalley, 6 A.2d 168, 90 N.H. 215.
Ohio.—Watt v. Feuerlicht, App., 41 N.E.2d 719.
Wyo.—First Nat. Bank v. Ford, 216 P. 691, 30 Wyo. 110, 31 A.L.R. 1441.
4 C.J. p 969 note 53.

Witness speaking for himself
N.H.—Bogrett v. Hromada, 19 A.2d 432, 91 N.H. 351.

92. Ala.—Walker v. Bailey, 33 So. 2d 891, 33 Ala.App. 284, certiorari denied 33 So.2d 898, 250 Ala. 287.
Cal.—Goldson Co. v. Thomas Haverty Co., 9 P.2d 508, 122 C.A. 41—Jedlicka v. Atwell Land Co., 269 P. 665, 93 C.A. 455, rehearing denied 270 P. 232, 93 C.A. 455.
Ga.—Carroll v. Hill, 56 S.E.2d 821, 80 Ga.App. 576.
N.J.—Haeussler v. Consolidated Stone & Sand Co., 127 A. 602, 3 N.J.Misc. 159.
Ohio.—Netzel v. Todd, 165 N.E. 47, 30 Ohio App. 300.
Utah.—Thomas v. Spiers, 237 P. 233, 65 Utah 256.
Vt.—Russ v. Good, 102 A. 481, 92 Vt. 202.
4 C.J. p 969 note 54.

93. Ala.—City of Jasper v. Lacy, 112 So. 307, 216 Ala. 26.
N.H.—Bennett v. Bennett, 31 A.2d 374, 92 N.H. 379.
4 C.J. p 969 note 55.

94. Ala.—W. M. Smith & Co. v. Harris, 42 So.2d 623, 253 Ala. 78.
Cal.—Hickenbottom v. Jeppesen, 300 P.2d 689, 144 C.A.2d 115—Gersick v. Shilling, 218 P.2d 583, 97 C.A.2d 641—Dean v. Feld, 175 P.2d 278, 77 C.A.2d 327—McCullough v. Langer, 73 P.2d 649, 23 C.A.2d 510—Atkinson v. United Railroads of San Francisco, 234 P. 863, 71 C.A. 82.
Ill.—Baranofski v. Holleb, 86 N.E.2d 886, 338 Ill.App. 205—Miller v. Baltimore & O. S. W. R. Co., 70 N.E.2d 263, 330 Ill.App. 129.
Mass.—Fegan v. Quinlan, 152 N.E. 97, 256 Mass. 10.
Minn.—Klingman v. Loew's Inc., 296 N.W. 528, 209 Minn. 449.
Mo.—Gate City Nat. Bank v. Bunton, 296 S.W. 375, 316 Mo. 1338.
Wood v. Metropolitan Life Ins. Co., App., 161 S.W.2d 737—Sculley v. Rolwing, App., 88 S.W.2d 394.
Mont.—Gardiner v. Eclipse Grocery Co., 234 P. 490, 72 Mont. 540.
N.Y.—Stepp v. Tyne-Willey, 292 N.Y.S. 577, 249 App.Div. 892.
Tex.—Colls v. Price's Creameries, Civ.App., 244 S.W.2d 900, error refused, no reversible error—Casstevens v. Childre, Civ.App., 235 S.W.2d 703—Browning v. Nesting, Civ.App., 219 S.W.2d 712, error refused no reversible error.
Utah.—Spencer v. Santa Fe Trail Transp. Co., 151 P.2d 461, 107 Utah 10.
Va.—Bell v. Kenney, 23 S.E.2d 781, 181 Va. 24.
Wash.—Wilkins v. Knox, 253 P. 797, 142 Wash. 571—Pallis v. Kusumi, 184 P. 789, 108 Wash. 641.

94.5 Mo.—Hutchison v. Moerschel Products Co., 133 S.W.2d 701, 234 Mo.App. 518.

95. Cal.—Brown v. Los Angeles Transit Lines, 287 P.2d 810, 135 C.A.2d 709.
Ga.—Georgia Ry. & Power Co. v. Shaw, 149 S.E. 657, 40 Ga.App. 341.
Ill.—Moran v. Gatz, 64 N.E.2d 564, 327 Ill.App. 480.
Kan.—Hill v. Citizens' Nat. Bank of Emporia, 29 P.2d 1075, 139 Kan. 19.
Mich.—Kalinowski v. Odlewany, 287 N.W. 344, 289 Mich. 684.
N.C.—Swinson v. Nance, 15 S.E.2d 284, 219 N.C. 772—Colvard v. Nantahala Power & Light Co., 167 S.E. 472, 204 N.C. 97.
Okl.—Mid-Continent Petroleum Corp. v. Jamison, 171 P.2d 976, 197 Okl. 387.

of substantial prejudice resulting therefrom to the complaining party.[95.5] So a party is not prejudiced by the action of the court in sustaining an objection to a question as to irrelevant matters[96] or matters which were thoroughly covered in the direct and cross-examination of the witness;[97] nor can a reversal be predicated on allowing a witness to repeat on redirect examination a statement made in response to a question on cross-examination which was not prejudicial to the opposite party.[98] Any error in refusing to permit defendant to examine a witness called for cross-examination by plaintiff was harmless, where defendant subsequently introduced the same witness for direct examination.[99]

§ 1717. Rulings Relating to Production and Inspection of Books and Documents

Error in requiring or refusing to require the production of books or documents is harmless where no prejudice results therefrom.

Error in ordering the production of books or documents is harmless where it did not have any prejudicial effect on the disposition of the case on its merits,[1] where a certified copy thereof was attached to appellee's pleadings and had been read to the jury, and appellant later introduced the documents in evidence,[2] where the order was made after appellant's unresponsive answer to an improper question brought out the facts,[3] where the party objecting to the production waived his objection,[4] where the order was not enforced,[5] or where no use was made of the books or documents as evidence.[6]

Va.—Anchor Motor Freight, Inc., of Del. v. Paul, 95 S.E.2d 179, 198 Va. 480.
Wyo.—Cronberg Bros. v. Johnson, 208 P. 446, 29 Wyo. 11.

Anticipated reply

Sustaining objection to question asked plaintiff on redirect examination, even if improper, was not prejudicial, where plaintiff was afforded full benefit of the anticipated reply.
Ala.—Grissom v. Dahart Ice Cream Co., 40 So.2d 333, 34 Ala.App. 282, certiorari denied 40 So.2d 339, 252 Ala. 235.

Question answered

Refusal of trial court to permit witness on redirect examination to answer question, if error was harmless, where immediately following ruling witness in substance answered question without objection.
Ala.—Moore-Handley Hardware Co. v. Williams, 189 So. 757, 238 Ala. 189.

Question not answered

Ala.—Porter v. Porter, 12 So.2d 186, 244 Ala. 132.

95.5 Ga.—Owens v. Shugart, 6 S.E. 2d 121, 61 Ga.App. 177.
Mich.—Beattie v. Great Atlantic & Pacific Tea Co., 251 N.W. 388, 265 Mich. 108.
Miss.—Cole v. Tullos, 90 So.2d 32.
Mo.—Borrson v. Missouri-Kansas-Texas R. Co., 172 S.W.2d 826, 351 Mo. 214.

96. Utah.—Mulliner v. McCormick & Co., Bankers, 257 P. 658, 69 Utah 557.

97. Ala.—Goodwin v. Aaron, 85 So. 17, 203 Ala. 677.
Cal.—Moore v. Belt, 212 P.2d 509, 34 C.2d 525.
Ga.—Progressive Life Ins. Co. v. Archer, 37 S.E.2d 713, 73 Ga.App. 639.
Mo.—Renner v. Wolverton, 273 S.W. 2d 325—Hemminghaus v. Ferguson, 215 S.W.2d 481, 358 Mo. 476.
Utah.—Mulliner v. McCormick & Co., Bankers, 257 P. 658, 69 Utah 557.

Mere repetition

It is not reversible error to exclude evidence constituting mere repetition.
Minn.—Kallusch v. Kavli, 240 N.W. 108, 185 Minn. 3.

98. Ill.—Carbone v. Pennsylvania Fire Ins. Co., 222 Ill.App. 560.
Mo.—Dickerson v. St. Louis Public Service Co., 286 S.W.2d 820.
N.J.—Tooker v. Lonky, 147 A. 445, 106 N.J.Law 110.
Drexler v. Gotham Card & Paper Co., 159 A. 534, 10 N.J.Misc. 452, affirmed 164 A. 20, 110 N.J. Law 22.
Tex.—Texas Employers' Ins. Ass'n v. Trotter, Civ.App., 54 S.W.2d 1023.

99. Ga.—Macon Baseball Ass'n v. Pennington, 166 S.E. 35, 45 Ga.App. 611.

1. Conn.—Gillette v. Schroeder, 54 A.2d 498, 133 Conn. 682.
Tex.—Caraway v. Flagg, Civ.App., 277 S.W.2d 803, error refused no reversible error.
Wash.—Graff v. Geisel, 234 P.2d 884, 39 Wash.2d 131—Weaver v. Blochberger, 199 P.2d 589, 31 Wash.2d 877.
4 C.J. p 962 note 48.

Absence of jury

In an action against officers for false imprisonment, in connection with an investigation of a murder charge, it was error to require defendant's counsel to furnish plaintiff's counsel with the transcript of the testimony taken on a hearing before a magistrate, but, as it did not occur in the jury's presence, the error was not prejudicial.
Mich.—Bailey v. Loomis, 200 N.W. 148, 228 Mich. 338.

Prejudicial error

Ohio.—Bluestein v. Thompson, 139 N. E.2d 668, 102 Ohio App. 157.
Wis.—Wojciechowski v. Baron, 80 N. W.2d 434, 274 Wis. 364.

2. Tex.—Postal Savings & Loan Ass'n v. Powell, Civ.App., 47 S.W. 2d 343.

3. Wis.—Kellner v. Christiansen, 172 N.W. 796, 169 Wis. 390.

4. Ga.—Tatum v. Padrosa, 100 S.E. 653, 24 Ga.App. 259.

Proving same facts

Any error in not quashing a summons requiring the production of a writing in the adversary's possession, was held harmless, in view of defendant's action in insisting plaintiff was bound by the data produced and in introducing evidence in its own behalf to prove the same facts.
Va.—Norfolk & W. Ry. Co. v. A. J. Steele & Son, 86 S.E. 124, 117 Va. 788.

5. Ala.—Southern Car, etc., Co. v. Calhoun County, 37 So. 425, 141 Ala. 250.
Conn.—Jenner v. Brooks, 59 A. 508, 77 Conn. 384.
S.C.—Parker v. South Carolina, etc., R. Co., 26 S.E. 669, 48 S.C. 364.

6. Ga.—Atlantic Coast Line R. Co. v. Hill, 77 S.E. 316, 12 Ga.App. 392.
4 C.J. p 963 note 50.

Books not introduced in evidence

Error, if any, in ordering production of books was error without prejudice where books were not introduced in evidence and findings by court were not based on them.
Cal.—Manteca Veal Co. v. Corbari, 254 P.2d 884, 116 C.A.2d 896.

On the other hand, the case will not be reversed for error in denying a motion for the production of books and documents where appellant fails to show that he was prejudiced thereby;[7] and the error is harmless where the documents[8] or similar documents[8.5] were afterwards produced and introduced in evidence, where the document was available to both parties,[8.10] where the error is cured on cross-examination,[8.15] where appellants set out a purported verbatim copy of the documents in their pleadings,[9] or where appellee admitted liability to appellant thereunder.[10]

Where a photographic copy was produced at the trial, failure to permit appellant to examine the original there is not ground for reversal where examination was permitted in the appellate court and appellant was unable to show how he had been injured;[11] and prejudicial error cannot be predicated on refusal to permit counsel for defendant to see and inspect a paper shown a witness for the plaintiff and read by him while on the stand at the close of the redirect examination of the witness, but not offered in evidence, where the brief cross-examination of the witness was of such a nature as not to be affected thereby.[12]

§ 1718. Order of Proof, Rebuttal, and Reopening Case

In the absence of prejudice to the complaining party, irregularities in the order of proof are not cause for reversal.

Since there is a presumption that the jury consider the evidence in its entirety, irrespective of the time when, and the order in which, it is introduced,[13] the action of the court in requiring, or permitting, evidence to be introduced out of its proper, logical, and regular order is not ground for reversal unless it appears to be a great abuse of discretion, as discussed supra § 1605, and unless the other party is prejudiced thereby.[14]

7. Ala.—Watkins v. Reinhart, 9 So. 2d 113, 243 Ala. 243.
Ariz.—Keen v. Clarkson, 108 P.2d 573, 56 Ariz. 437.
Ark.—Barrett v. Berryman, 193 S. W. 95, 127 Ark. 609.
Cal.—Cordi v. Garcia, 102 P.2d 820, 39 C.A.2d 189—Inouye v. McCall, 96 P.2d 386, 35 C.A.2d 634.
Ohio.—Collins v. McClure, 26 N.E.2d 780, 63 Ohio App. 312.
Minn.—Selover v. Hedwall, 184 N. W. 180, 149 Minn. 302.
Tex.—Campbell v. Jones, Civ.App., 230 S.W. 710—Benavides v. Houston Ice & Brewing Ass'n, Civ. App., 224 S.W. 385, error refused.
Prejudicial error
Cal.—Freeman v. Jergins, 271 P.2d 210, 125 C.A.2d 536—Kelliher v. Ray, 110 P.2d 712, 43 C.A.2d 252.
Fla.—Nottingham v. Schulhof, 61 So. 2d 912.

8. Ala.—Lambert v. Jefferson, 36 So.2d 583, 39 Ala.App. 67, reversed on other grounds 36 So.2d 594, 251 Ala. 5.
Cal.—Gopcevic v. Gopcevic, 178 P. 734, 39 C.A. 306.
Ga.—Richardson v. Du Pree, 122 S. E. 707, 32 Ga.App. 3.
Ky.—Yeary's Adm'r v. Hignite Coal Co., 102 S.W.2d 19, 267 Ky. 265.
S.C.—Galphin v. Pioneer Life Ins. Co., 154 S.E. 855, 157 S.C. 469.
Va.—Maryland Casualty Co. v. Clintwood Bank, 154 S.E. 492, 155 Va. 181—Duncan v. Broadway Nat. Bank, 102 S.E. 577, 127 Va. 34.
4 C.J. p 963 note 51.

8.5 N.Y.—Bloodgood v. Lynch, 45 N. Y.S.2d 530, 267 App.Div. 797, appeal denied 47 N.Y.S.2d 282, 267 App.Div. 853, reversed on other grounds 56 N.E.2d 718, 293 N.Y. 808.

8.10 Ky.—C. W. Jacobs Chevrolet Co. v. Bennett, 197 S.W.2d 776, 303 Ky. 341.
S.D.—Federal Farm Mortg. Corp. v. Smith, 299 N.W. 237, 68 S.D. 136.

8.15 Cal.—Freeman v. Jergins, 271 P.2d 210, 125 C.A.2d 536.

9. Wash.—Saar v. Weeks, 178 P. 819, 105 Wash. 628.

10. Tex.—Weeks v. Lipp, Civ.App., 48 S.W.2d 716.

11. Cal.—U. S. Fidelity & Guaranty Co. v. Smith, 275 P. 878, 97 C.A. 492.

12. D.C.—Capital Traction Co. v. Hoover, 45 App.D.C. 247.

13. Colo.—Beach v. Schroeder, 107 P. 271, 47 Colo. 312.

14. Ala.—Winn v. Cudahy Packing Co. of Alabama, 4 So.2d 135, 241 Ala. 581.
Butler Cotton Oil Co. v. G. H. Campbell & Son, 78 So. 643, 16 Ala. App. 445.
Ariz.—Podol v. Jacobs, 173 P.2d 758, 65 Ariz. 50.
Cal.—Land v. Del Mar Turf Club, 262 P.2d 54, 120 C.A.2d 829.
Colo.—In re Wartenbee's Estate, 26 P.2d 101, 93 Colo. 347.
Conn.—Lawton v. Herrick, 76 A. 986, 83 Conn. 417.
Ga.—Mutual Furniture Co. v. Moore, 4 S.E.2d 711, 60 Ga.App. 655.
Idaho.—Howay v. Howay, 264 P.2d 691, 74 Idaho 492.
Ill.—Havill v. Darch, 52 N.E.2d 64, 320 Ill.App. 667—Lawler v. Herren, 210 Ill.App. 203.
Iowa.—Snakenberg v. Minneapolis & St. L. Ry. Co., 188 N.W. 935, 194 Iowa 215—Noyes v. Des Moines Club, 170 N.W. 461, 186 Iowa 378, 3 A.L.R. 605—Peterson v. Phillips Coal Co., 157 N.W. 194, 175 Iowa 223.
Ky.—Straney v. Smith, 255 S.W.2d 653—Pollard v. Vandivir, 26 S.W. 2d 495, 233 Ky. 563—Ohio Valley Electric Ry. Co. v. Payne, 3 S.W.2d 223, 223 Ky. 197—Hines v. Kough, 225 S.W. 1082, 189 Ky. 806—Louisville & N. R. Co. v. Briggs, 215 S. W. 529, 185 Ky. 676.
Md.—Bradford v. Eutaw Sav. Bank of Baltimore City, 46 A.2d 284, 186 Md. 127—Standard Oil Co. of New Jersey v. Stern, 173 A. 205, 167 Md. 211—Dorsey v. Winters, 122 A. 257, 143 Md. 399.
Mich.—Nelson v. Witte, 79 N.W.2d 906, 347 Mich. 411—Coburn v. Goldberg, 40 N.W.2d 150, 326 Mich. 280—Miller v. Beasley, 237 N.W. 47, 255 Mich. 15.
Minn.—Dittrich v. Brown County, 9 N.W.2d 510, 215 Minn. 234.
Miss.—Mississippi Cent. R. Co. v. Aultman, 160 So. 737, 173 Miss. 622, appeal dismissed 56 S.Ct. 108, 296 U.S. 537, 80 L.Ed. 382—Stevens v. Locke, 125 So. 529, 156 Miss. 182.
Mo.—Sugarwater v. Fleming, 293 S. W. 111, 316 Mo. 742—Lewellen v. Haynie, 287 S.W. 634.
Neb.—Horney v. McKay, 293 N.W. 98, 138 Neb. 309—Marble v. Nicholas Senn Hospital Ass'n of Omaha, 167 N.W. 208, 102 Neb. 343.
N.H.—Lee v. Hustis, 111 A. 627, 79 N.H. 434.
N.J.—American Well Works v. Royal Indemnity Co., 160 A. 560, 109 N.J.Law 104.
N.C.—Pearson v. Simon, 177 S.E. 124, 207 N.C. 351.
Ohio.—Lamarand v. National Life & Accident Ins. Co., 16 N.E.2d 701, 58 Ohio App. 415.

Thus it has been held that no prejudicial error results from the consent of the court to the introduction, as part of the party's case, of evidence which is, strictly speaking, rebuttal evidence;[15] to the introduction, in rebuttal, of evidence which should have been given in chief;[16] to the reception in surrebuttal, of testimony which more properly should have been received in rebuttal;[17] or to the introduction of evidence requiring the establishment of a preliminary foundation to render it admissible before the foundation has been laid;[17.5] nor will there be a reversal for the action of the court in reopening[18] or refusing to reopen the

Okl.—Austin v. Evans, 270 P. 26, 132 Okl. 238.
Or.—York v. Western Savings & Loan Ass'n, 14 P.2d 1003, 140 Or. 574.
Pa.—Parkin v. Philadelphia Rapid Transit Co., 151 A. 362, 300 Pa. 569.
S.C.—Smith v. Smith, 9 S.E.2d 584, 194 S.C. 247—Intendant and Wardens of Town of Port Royal v. Charleston & W. C. Ry. Co., 134 S. E. 497, 136 S.C. 525.
Tex.—Texas Employers' Ins. Ass'n v. Adcock, Civ.App., 52 S.W.2d 781, affirmed, Com.App., 83 S.W.2d 310—International-Great Northern R. Co. v. Hailey, Civ.App., 9 S.W.2d 182, certiorari denied 50 S.Ct. 17, 280 U.S. 558, 74 L.Ed. 613—Rhodes v. Meloy, Civ.App., 289 S.W. 159—Rhodes v. Bryson, Civ.App., 272 S.W. 517.
Utah.—In re Blodgett's Estate, 70 P. 2d 742, 93 Utah 1.
Vt.—Perkins v. Vermont Hydro-Electric Corporation, 177 A. 631, 106 Vt. 367.
Wash.—Lund v. Johnson, 298 P. 702, 162 Wash. 525—In re Campbell's Estate, 167 P. 905, 98 Wash. 295.
Wis.—Sheafor v. Standard Acc. Ins. Co. of Detroit, Mich., 174 N.W. 916, 170 Wis. 307.
Wyo.—Mahoney v. Pearce, 265 P. 446, 38 Wyo. 151.
4 C.J. p 962 note 43.

After special verdict

Since Rev.St. art. 1952, authorizing the court at any time before the argument is closed to permit either party to supply an omission in the testimony, is merely directory, a judgment is not required to be reversed because the court, after the special verdict of the jury had been received and the jury discharged, permitted plaintiff to introduce its permit to do business within the state.
Tex.—Prescott-Phœnix Oil & Gas Co. v. Gilliland Oil Co., Civ.App., 241 S.W. 775.

15. Cal.—Williams v. Kidd, 151 P. 1, 170 C. 631, Ann.Cas.1916E 703.
Mo.—Ward v. American Ry. Express Co., App., 259 S.W. 514.
N.J.—Johnson v. Central R. Co. of New Jersey, 166 A. 180, 111 N.J. Law 93.
Okl.—Colby v. Daniels, 257 P. 298, 125 Okl. 202.
Pa.—Hoffman v. Mutual Fire Ins. Co. of Reading, Pa., 117 A. 917, 274 Pa. 292.
4 C.J. p 960 note 63, p 962 note 44.

16. Ark.—City of Fayetteville v. Stone, 106 S.W.2d 158, 194 Ark. 218.
Cal.—Baillargeon v. Myers, 182 P. 37, 180 C. 504.
Ill.—Cooper v. Shaffer, 40 N.E.2d 622, 313 Ill.App. 392.
Ind.—City of Huntingburg v. Morgen, 163 N.E. 599, 90 Ind.App. 573.
Iowa.—Lowman v. Kuecker, 71 N.W. 2d 586, 246 Iowa 1227—Robson v. Barnett, 44 N.W.2d 382, 241 Iowa 1066—Hoegh v. See, 246 N.W. 787, 215 Iowa 733—Fair v. Ida County, 216 N.W. 952, 204 Iowa 1046—International Harvester Co. of America v. Chicago, M. & St. P. Ry. Co., 172 N.W. 471, 186 Iowa 86.
Miss.—Wigley v. Wigley, 58 So.2d 59—Illinois Cent. R. Co. v. Brown, 115 So. 115, 149 Miss. 42.
Mo.—Jones v. Chicago, B. & Q. R. Co., 125 S.W.2d 5, 343 Mo. 1104.
Ohio.—A. Macaluso Fruit Co. v. Commercial Motor Freight, App., 57 N. E.2d 692.
Or.—Metzler-Hegsted Lumber Co. v. Farmers' Union Warehouse & Mercantile Co., 153 P. 56, 78 Or. 551.
Pa.—Snyder v. Morrill, Com.Pl., 59 Montg.Co. 95.
R.I.—Milliken v. Weybosset Pure Food Market, 44 A.2d 723, 71 R.I. 312.
Tenn.—Long v. Tomlin, 125 S.W.2d 171, 22 Tenn.App. 607.
Tex.—Lubbock Bus Co. v. Pearson, Civ.App., 266 S.W.2d 439, error refused no reversible error—Cameron Compress Co. v. Jacobs, Civ. App., 10 S.W.2d 1040.
4 C.J. p 962 note 45.

Evidence not affecting result

Ariz.—Podol v. Jacobs, 173 P.2d 758, 65 Ariz. 50.
Tenn.—Hammonds v. Mansfield, App., 296 S.W.2d 652.

Evidence repetitious or cumulative

Ala.—Magic City Bottling Co. v. Tolbert, 41 So.2d 619, 24 Ala.App. 516.
Cal.—Burch v. Levy Bros. Box Co., 117 P.2d 435, 47 C.A.2d 104.
Ky.—Prudential Ins. Co. of America v. Asbury, 164 S.W.2d 957, 291 Ky. 400.
Mo.—Hanson v. Tucker, 303 S.W.2d 126.
Wash.—Hardman v. Younkers, 131 P.2d 177, 15 Wash.2d 483, 151 A.L.R. 868.

17. Iowa.—In re Winslow, 122 N.W. 971.

17.5 R.I.—Di Biase v. Nardolillo, 68 A.2d 89, 76 R.I. 143.

18. Ala.—Alabama Great Southern R. Co. v. Smith, 96 So. 239, 209 Ala. 301.
Kan.—Foley v. Schmidt, 224 P. 489, 115 Kan. 621.
Mo.—Waters v. Gallemore, App., 41 S.W.2d 870.
Neb.—Filley v. Mancuso, 20 N.W.2d 318, 146 Neb. 493.
Nev.—Zasucha v. Allen, 51 P.2d 1029, 56 Nev. 339.
N.Y.—Curie v. Boles, 112 N.Y.S.2d 518, 279 App.Div. 1128.
S.C.—Armour Fertilizer Works v. Hyman, 113 S.E. 330, 120 S.C. 375.
Tex.—Southland Life Ins. Co. v. Greenwade, Civ.App., 143 S.W.2d 648, affirmed, 159 S.W.2d 854, 138 Tex. 450—F. C. Crane Co. v. Gosdin, Civ.App., 94 S.W.2d 221, followed in F. C. Crane Co. v. Bozarth, 94 S.W.2d 223 and F. C. Crane Co. v. Williams, 94 S.W.2d 224—Galveston, H. & S. A. Ry. Co. v. Cook, Civ.App., 214 S.W. 539, dismissed for want of jurisdiction.
Wyo.—Wyoming Stockmen's Loan Co. v. Johnston, 240 P. 449, 33 Wyo. 457.

After verdict

In a death action against a railroad, permitting plaintiff, after verdict, to introduce an ordinance requiring the maintenance of a flagman at a street crossing, if error, was not prejudicial, where there was no issue of fact with respect to the ordinance, and its admission did not affect the submission of the cause to the jury, and where the fact that defendant hired a flagman and stationed him at the crossing was conceded.
Wis.—Clark v. Chicago, M., St. P. & P. R. Co., 252 N.W. 685, 214 Wis. 295.

Deposition

Ky.—Daniel v. Powell, 199 S.W.2d 715, 304 Ky. 52.

Evidence also presented by complaining party

Where, on reopening of case on plaintiff's motion for taking of additional evidence, defendant also presented additional evidence, no prejudice to defendant was shown.
Iowa.—Dobler v. Bawden, 25 N.W.2d 866, 238 Iowa 76.

case to receive evidence[19] where the complaining party is unable to show himself prejudiced thereby. There will be no reversal for a refusal of the court to admit certain evidence at a particular stage of the case where no harm resulted.[20]

Reversible error. Where the irregularity, under the circumstances of the case, was prejudicial to appellant, however, reversal is required.[21] So, where testimony which should have been given in chief has been allowed to go in rebuttal, it is reversible error to refuse to permit the adversary to reply thereto in surrebuttal.[22] The judgment will be reversed, where the action of the court in reopening or refusing to reopen the case to receive evidence is prejudicial to the party complaining.[22.5]

§ 1719. Striking or Withdrawing Evidence

a. Striking
b. Withdrawing

a. Striking

Error in ruling on motions to strike evidence is not ground for reversal where the complaining party was not prejudiced thereby.

Error in granting,[23] or denying a motion by a

Proper instruction given
Wash.—Shephard v. Smith, 88 P.2d 601, 198 Wash. 395.

Where evidence was rejected
Reopening the case on plaintiff's motion was not prejudicial to defendant, where the evidence offered at that time was rejected.
R.I.—Staples v. Spelman, 165 A. 783, 53 R.I. 244.

Where no new evidence introduced
Order reopening case for introduction of further evidence, if error, was harmless, inasmuch as no new evidence was actually introduced.
Ga.—Sessions v. Oliver, 50 S.E.2d 54, 204 Ga. 425.

19. Cal.—Wolfsen v. Smyer, 175 P. 10, 178 C. 775.
Giomi v. Viotti, 301 P.2d 597, 144 C.A.2d 714—Mendelson v. Peton, 287 P.2d 378, 135 C.A.2d 390—Pocock v. Deniz, 286 P.2d 466, 134 C.A.2d 758.
La.—Richey v. Swink, App., 4 So.2d 749.
Ohio.—Sumner v. Lambert, 121 N.E. 2d 159, 96 Ohio App. 53.
Pa.—Brener v. City of Philadelphia, 157 A. 466, 305 Pa. 182.

Evidence not affecting decision or result
Cal.—Willett & Crane v. City of Palos Verdes Estates, 216 P.2d 85, 96 C.A.2d 757.
La.—Finkelstein v. Naihaus, App., 151 So. 686.

Evidence repetitious and cumulative
Okl.—Townsend v. Cotten, 68 P.2d 790, 180 Okl. 128.

Variance with pleadings
Refusal to permit plaintiff to reopen the case after plaintiff had rested was harmless, where the additional testimony proffered would have been clearly at variance with plaintiff's pleadings.
Tex.—Cross v. Texas Military College, Civ.App., 65 S.W.2d 794.

20. Ark.—Debin v. Texas Co., 81 S.W.2d 935, 190 Ark. 849.
Cal.—Hanton v. Pacific Electric Ry. Co., 174 P. 61, 178 C. 616.
Jordan v. Harvey, 142 P.2d 83, 61 C.A.2d 134.
Colo.—Kline v. Slater, 87 P.2d 381, 95 Colo. 489.
Ind.—Forrester v. Somerlott, 163 N. E. 121, 88 Ind.App. 61.
Ky.—Lawyers' Realty Co. v. Bank of Ludlow, 76 S.W.2d 920, 256 Ky. 675.
Mass.—Finnegan v. Checker Taxi Co., 14 N.E.2d 127, 300 Mass. 62—Lariviere v. Boucher, 8 N.E.2d 353, 297 Mass. 27.
Minn.—Netzer v. Northern Pac. Ry. Co., 57 N.W.2d 247, 238 Minn. 416, certiorari denied 74 S.Ct. 26, 346 U.S. 831, 98 L.Ed. 355.
Mo.—I. H. Lawrence & Son v. Merchants' & Mechanics' Mut. Aid Soc., App., 277 S.W. 588.
N.Y.—Sacco v. Delaware & H. Co., 210 N.Y.S. 668, 213 App.Div. 471, affirmed 150 N.E. 553, 241 N.Y. 556, certiorari denied 46 S.Ct. 484, 271 U.S. 669, 70 L.Ed. 1142.
Okl.—Layton v. Purcell, 267 P.2d 547—Caughlin v. Sheets, 242 P.2d 724, 206 Okl. 283.
Tenn.—Hansard v. Ferguson, 132 S. W.2d 221, 23 Tenn.App. 306.
Tex.—Woods v. Bost, Civ.App., 26 S.W.2d 299.
Utah.—Malia for Use and Benefit of Creditors of North Sanpete Bank v. Seeley, 57 P.2d 357, 89 Utah 262.
Wash.—Krussow v. Stixrud, 205 P. 2d 637, 33 Wash.2d 287.
4 C.J. p 962 note 47.

21. Ala.—Darling v. Hanlon, 73 So. 20, 197 Ala. 455.
Iowa.—Luce v. Service Life Ins. Co., 288 N.W. 681, 227 Iowa 532.
Okl.—Atchison, T. & S. F. Ry. Co. v. Aynes, 271 P.2d 312.
Or.—Devine v. Southern Pac. Co., 295 P.2d 201, 207 Or. 261.
Tex.—Copeland v. Williams, Civ. App., 282 S.W. 261.
Utah.—Christenson v. Nielsen, 54 P. 2d 430, 88 Utah 336.

Evidence in defeat of issue
It is harmful to require evidence in defeat of an issue to be presented before all the evidence in support of the issue is submitted.
N.H.—Brooks v. Nason, 24 A.2d 493, 92 N.H. 66.

Unduly impressing jury
The rule of the text has been applied where a lawyer witness for defendant was allowed unduly to impress the defendant's contentions on the jury by repeating on rebuttal practically his entire testimony in chief.
Ga.—Cowart Co. v. Sheffield, 89 S. E. 1101, 18 Ga.App. 512.

22. Miss.—Illinois Cent. R. Co. v. Brown, 115 So. 115, 149 Miss. 42.

22.5 Ala.—Gustin v. Dinsmore, 14 So.2d 741, 31 Ala.App. 238.
Cal.—Foster v. Keating, 261 P.2d 529, 120 C.A.2d 435.
N.J.—Magich v. John Hancock Mut. Life Ins. Co., 107 A.2d 665, 32 N. J.Super. 33—Deverman v. Stevens Builders, Inc., 106 A.2d 557, 31 N.J.Super. 347.
N.Y.—M. Schottenfeld & Sons, Inc. v. Kasabali, 158 N.Y.S.2d 814, 5 Misc.2d 562.
Sirico v. Four Wheels, Inc., 51 N.Y.S.2d 425.
Vt.—Mott v. Bourgeois, 1 A.2d 701, 109 Vt. 514.

23. Ala.—O'Neal v. Lovett, 73 So. 329, 197 Ala. 628.
American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 39, certiorari denied 58 So.2d 478, 257 Ala. 238.
Cal.—Bloomquist v. Haley, 268 P. 367, 204 C. 251.
Kohle v. Sinnett, 257 P.2d 483, 118 C.A.2d 126, motion denied 288 P.2d 139, 136 C.A.2d 34—Flynn v. Young, 78 P.2d 245, 25 C.A.2d 614—Dunphy v. Guaranty Building & Loan Ass'n, 53 P.2d 1036, 11 C.A. 2d 419—Coyne v. Pacific Mut. Life Ins. Co. of California, 47 P.2d 1079, 8 C.A.2d 104—B. Nicoll & Co. v. National Surety Co., 295 P. 1065, 111 C.A. 333—Dean v. McNerney, 266 P. 975, 91 C.A. 206—Ramsey v. California Packing Corporation, 201 P. 481, 51 C.A. 517—Alameda County v. Tieslau, 186 P. 398, 44 C.A. 332.

party to strike evidence which has been admitted | either over or without objection,[24] or in failing

Del.—Lewes Sand Co. v. Graves, 8 A.2d 21, 1 Terry 189.
Idaho.—Anderson v. Foster, 252 P. 2d 199, 73 Idaho 340—Hughes v. Hudelson, 169 P.2d 712, 67 Idaho 10—Caravelis v. Cacavas, 220 P. 110, 38 Idaho 123.
Ill.—Beatrice Creamery Co. v. Missouri Pac. R. Co., 247 Ill.App. 325.
Ind.—Rephan v. City of Evansville, 102 N.E.2d 514, 122 Ind.App. 271.
Iowa.—Glass v. Hutchinson Ice Cream Co., 243 N.W. 352, 214 Iowa 825—In re Workman's Estate, 156 N.W. 438, 174 Iowa 222.
Me.—Stewart v. Winter, 174 A. 456, 133 Me. 136—Appeal of Look, 152 A. 84, 129 Me. 359.
Md.—Gore v. Jarrett, 64 A.2d 550, 192 Md. 513—McAdoo v. Hanway, 109 A. 446, 135 Md. 656—Leland v. Empire Engineering Co., 108 A. 570, 135 Md. 208—Ottenberg v. Ryan & Riley Co., 99 A. 984, 130 Md. 38.
Mass.—Everett Trust Co. v. Morris, 160 N.E. 251, 262 Mass. 422.
Mich.—Degens v. Langridge, 183 N. W. 28, 214 Mich. 573—Champaign v. Detroit United Ry., 148 N.W. 201, 181 Mich. 672.
Mo.—Adams v. Le Bow, 172 S.W.2d 874, 237 Mo.App. 1191—Friedman v. Maryland Casualty Co., App., 21 S.W.2d 880.
Neb.—Hall v. Ballard, 167 N.W. 62, 102 Neb. 286.
Nev.—Fry v. O'Keefe, 299 P.2d 202.
N.H.—Cutler v. Young, 6 A.2d 162, 90 N.H. 203.
N.J.—Max v. Max, 10 A.2d 163, 123 N.J.Law 580, affirmed 15 A.2d 616, 125 N.J.Law 271.
N.D.—Powell v. Meiers, 209 N.W. 547, 54 N.D. 336.
Pa.—In re Goehring's Estate, 106 A. 60, 263 Pa. 47.
R.I.—Baker v. Baker, 4 A.2d 911, 62 R.I. 234—Chase v. Hurdis, 142 A. 375, 49 R.I. 358.
S.D.—Kraft v. Security State Bank of Winner, 223 N.W. 208, 54 S.D. 325—Clark v. Gustafson, 192 N.W. 760, 46 S.D. 329—Jordan v. Anderson, 155 N.W. 769, 36 S.D. 508.
Tex.—Callaway v. Callaway, Civ. App., 23 S.W.2d 808—Brown v. Brown, Civ.App., 280 S.W. 918.
Vt.—Smith v. Reynolds, 108 A. 697, 94 Vt. 28.
Va.—Kroger Grocery & Baking Co. v. Dunn, 25 S.E.2d 254, 181 Va. 390—Hawkins v. Eason, 180 S.E. 177, 164 Va. 350—Richeson v. Wood, 163 S.E. 339, 158 Va. 269, 82 A.L.R. 1189—Crum v. Hanna, 125 S.E. 219, 140 Va. 366.
Wash.—Dahl v. Moore, 14 P.2d 28, 169 Wash. 443—Libbee v. Handy, 1 P.2d 312, 163 Wash. 410—Eckhart v. Peterson, 162 P. 551, 94 Wash. 379—Chambers v. Independent Asphalt Paving Co., 156 P. 14, 90 Wash. 380.
Wis.—Plainse v. Engle, 56 N.W.2d 89, 262 Wis. 506, modified on other grounds 57 N.W.2d 586, 262 Wis. 506—In re Harnischfeger's Will, 242 N.W. 153, 208 Wis. 317, rehearing denied 243 N.W. 453, 208 Wis. 317, and appeal dismissed Harnischfeger v. Wisconsin Tax Commission, 53 S.Ct. 23, 287 U.S. 567, 77 L.Ed. 499—Marsh Wood Products Co. v. Babcock & Wilcox Co., 240 N.W. 392, 207 Wis. 209.
4 C.J. p 1002 note 40—52 C.J. p 535 note 45.

Where plaintiff's claim was barred by failure to assert it in previous litigation between parties, error of trial court in striking entire testimony of witness would not require reversal of plaintiff's judgment.
N.Y.—Beldac Realty Corp. v. Shaffer, 146 N.Y.S.2d 310.

On motion of court

(1) Where an objection to a witness' answer is sustained, it is not reversible error for court to strike the objectionable answer on its own motion.
Cal.—Bank of America Nat. Trust & Sav. Ass'n v. O'Shields, 275 P.2d 153, 128 C.A.2d 212.

(2) Trial court did not commit prejudicial error, on its own motion, in striking complex questions which had gone unanswered and which witness had asked counsel to repeat.
Cal.—Church v. Payne, 97 P.2d 819, 36 C.A.2d 382.

Evidence held not in effect stricken

Where trial court merely found that testimony of defendant's expert witnesses was outweighed by testimony of plaintiffs' experts, defendant could not complain that trial court in effect struck the testimony of defendant's experts.
Wash.—Clifford v. State, 148 P.2d 302, 20 Wash.2d 527.

In equity

Error, if any, in striking testimony in an equity case is not reversible error, as the appellate court will read it as though not stricken.
Mo.—Woodard v. Stowell, Mo., 222 S.W. 815.

24. Ala.—Waller v. Harris, 128 So. 606, 221 Ala. 313—McClellan v. Lyle-Taylor Grain Co., 87 So. 596, 205 Ala. 59.
Ariz.—Ollason v. Glasscock, 224 P. 284, 26 Ariz. 193.
Ark.—Payne v. McDonald, 233 S.W. 813, 150 Ark. 12.
Cal.—Hamilton v. Abadjian, 179 P.2d 804, 30 C.2d 49—De Cou v. Howell, 214 P. 444, 190 C. 741—Herdan v. Hanson, 189 P. 440, 182 C. 538.
Heslop v. Kinyoun, 136 P.2d 621, 58 C.A.2d 287—High v. Pacific Gas & Electric Co., 126 P.2d 911, 52 C.A.2d 701, rehearing denied 127 P.2d 588, 52 C.A.2d 701—People v. Lang Transp. Corp., 110 P. 2d 464, 43 C.A.2d 134—Hill v. Peres, 28 P.2d 946, 136 C.A. 132—Pray v. Trower Lumber Co., 281 P. 1036, 101 C.A. 482—State Compensation Insurance Fund v. Lamb, 273 P. 1080, 96 C.A. 236—Meyer v. Hellman Commercial Trust & Savings Bank, 257 P. 103, 83 C.A. 578—Careaga v. Moore, 234 P. 121, 70 C.A. 614—Camp v. Boyd, 182 P. 60, 41 C.A. 83.
Idaho.—Groefsema v. Mountain Home Co-op. Irr. Co., 190 P. 356, 33 Idaho 86.
Ill.—Hutton v. Morgan Packing Co., 117 N.E.2d 405, 1 Ill.App.2d 222—Howland v. Newton Ice & Cold Storage Co., 240 Ill.App. 307—Donohue v. George W. Stiles Const. Co., 214 Ill.App. 82. See Devine v. L. Fish Furniture Co., 189 Ill.App. 136.
Ind.—Silver v. Newcomer, 140 N.E. 455, 80 Ind.App. 406.
Iowa.—Weilbrenner v. Owens, 68 N. W.2d 293, 246 Iowa 580—Ipsen v. Ruess, 41 N.W.2d 658, 241 Iowa 730—Coonley v. Lowden, 12 N.W. 2d 870, 234 Iowa 731—Rupener v. Cedar Rapids & Iowa City Railway & Light Co., 159 N.W. 1048, 178 Iowa 615.
Kan.—Brandtjen & Kluge v. Lucas, 109 P.2d 197, 153 Kan. 138.
Ky.—Ætna Life Ins. Co. of Hartford, Conn., v. Wells, 72 S.W.2d 33, 254 Ky. 650—Bass v. City of Louisville, 26 S.W.2d 1039, 233 Ky. 734.
Md.—State v. Lupton, 161 A. 393, 163 Md. 180—County Com'rs of Prince George's County v. Timmons, 133 A. 322, 150 Md. 511—Poland v. Chessler, 125 A. 536, 145 Md. 66—Peter v. Peter, 110 A. 211, 136 Md. 157—National Life Ins. Co. of United States v. Fleming, 96 A. 281, 127 Md. 179.
Mass.—Nelson v. Hamlin, 155 N.E. 18, 258 Mass. 331.
Mich.—Krzywosz v. Crummett, 282 N.W. 853, 286 Mich. 649—Schlussel v. Commercial Casualty Ins. Co., 211 N.W. 749, 237 Mich. 182—Alt v. Konkle, 211 N.W. 661, 237 Mich. 264—Hubbell v. North American Union, 203 N.W. 477, 230 Mich. 668—Corey v. Hartel Bros., 194 N.W. 413, 224 Mich. 181—Kangas v. New York Life Ins. Co., 193 N.W. 867, 223 Mich. 238—Jones v. Brookfield Tp., 190 N.W. 733, 221 Mich. 235—Darling v. Grand Rapids, G. H. & M. Ry. Co., 151 N.W. 701, 184 Mich. 607.
Minn.—Farwell v. Stambaugh, 281 N.W. 526, 203 Minn. 392—Schorr v. Minnesota Utilities Co., 281 N.W. 523, 203 Minn. 384—Quinn v. Zim-

to rule on[25] a motion to strike evidence will not constitute ground for reversal where the party complaining has not been prejudiced thereby.

Thus, it has been held that error in striking testimony is not prejudicial, where the evidence, or its substance, was subsequently admitted,[26] where there is other adequate testimony to the same facts,[27] where the evidence in no way inured to the benefit of the party complaining,[28] where the matter stricken was subsequently conceded,[29] where the complaining party might have elicited the testimony by another question[30] or on redirect examina-

mer, 239 N.W. 902, 184 Minn. 589—State Bank of Reading v. Ronan, 174 N.W. 892, 144 Minn. 236.

Mo.—**Corpus Juris Secundum cited in** Winkler v. Macon Gas Co., 238 S.W.2d 386, 392, 361 Mo. 1017—Anderson v. Asphalt Distributing Co., 55 S.W.2d 688, 86 A.L.R. 1033—Nahorski v. St. Louis Electric Terminal Rys. Co., 271 S.W. 749—Gaty v. United Rys. Co., 251 S.W. 61—Heriford v. Kansas City Rys. Co., 220 S.W. 899.

Vortriede v. St. Louis Public Service Co., App., 58 S.W.2d 492—Vitale v. Biando, App., 52 S.W.2d 24, certiorari quashed State ex rel. Biando v. Haid, Mo., 60 S.W.2d 38—Becker v. Malpe, App., 50 S.W.2d 695—Anderson v. Herrick, App., 268 S.W. 711—Owens v. Fanning, App., 205 S.W. 69—Webb v. Deering Southwestern Ry. Co., App., 196 S.W. 86.

Mont.—Flint Creek Lodge No. 11, A. F. & A. M. v. Brown, 264 P. 394, 81 Mont. 573.

Nev.—Hough v. Reserve Gold Mining Co., 35 P.2d 742, 55 Nev. 375—Kline v. Vansickle, 217 P. 585, 47 Nev. 139.

N.J.—Gribbin v. Fox, 35 A.2d 719, 131 N.J.Law 187—Volpe v. Perruzzi, 3 A.2d 892, 122 N.J.Law 57, affirmed 8 A.2d 580, 123 N.J.Law 323.

Cohen v. Public Service Transp. Co., 145 A. 106, 7 N.J.Misc. 237.

N.C.—Young v. Stewart, 131 S.E. 735, 191 N.C. 297—Hudson v. Seaboard Air Line Ry. Co., 97 S.E. 388, 176 N.C. 488.

N.D.—Bryngelson v. Farmers' Grain Co., 210 N.W. 19, 54 N.D. 543.

Ohio.—Bobbitt v. Maher Beverage Co., 89 N.E.2d 583, 152 Ohio St. 246.

Senn v. Lackner, 100 N.E.2d 419, rehearing denied 100 N.E.2d 432, 91 Ohio App. 83, affirmed 105 N.E. 2d 49, 157 Ohio St. 206, and motion sustained 107 N.E.2d 558, 91 Ohio App. 83—Henderson v. Daniels, App., 36 N.E.2d 876.

Pa.—Yentis v. Mills, 148 A. 909, 299 Pa. 25.

Massiah v. Hood, 10 A.2d 79, 138 Pa.Super. 90—Yordy v. Northumberland County, 158 A. 607, 104 Pa. Super. 237.

R.I.—Perry v. New England Transp. Co., 45 A.2d 481, 71 R.I. 352—Lancaster v. Marshall, 34 A.2d 718, 69 R.I. 422.

S.C.—Willcox, Ives & Co. v. Jeffcoat, 132 S.E. 463, 135 S.C. 149.

Tenn.—Sloan v. Nevil, 229 S.W.2d 350, 33 Tenn.App. 100.

Tex.—J. I. Case Threshing Mach. Co. v. Manes, Com.App., 254 S.W. 929.

Kuehn v. Kuehn, Civ.App., 259 S.W. 290.

Utah.—Campbell v. Los Angeles & S. L. R. Co., 263 P. 495, 71 Utah 173—Jackson v. Harries, 236 P. 234, 65 Utah 282.

Vt.—Patton v. Ballam, 58 A.2d 817, 115 Vt. 308—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107.

Wash.—Holmes v. Strong, 147 P. 434, 85 Wash. 7.

W.Va.—Mills v. Miller, 64 S.E.2d 111, 135 W.Va. 627—Montgomery v. Chesapeake & Potomac Telephone Co. of West Virginia, 3 S.E. 2d 58, 121 W.Va. 163.

4 C.J. p 1002 note 41.

Answer prior to objection

Where an objection to a witness' answer is sustained but no motion to strike is made, it is not reversible error for court not to strike answer given prior to objection.

Cal.—Bank of America Nat. Trust & Sav. Ass'n v. O'Shields, 275 P.2d 153, 128 C.A.2d 212.

Rulings of chancellor

Where testimony was taken before special master who made no rulings on objections to questions, error, if any, in chancellor's denial of motion to strike testimony as immaterial, irrelevant, or incompetent was harmless, there being adequate competent testimony to sustain final decree, not shown to be erroneous.

Fla.—Addis v. Hoagland, 8 So.2d 655, 150 Fla. 694.

25. Cal.—Churchill Co. v. Beal, 278 P. 894, 99 C.A. 482.

R.I.—Lianos v. Andreucci, 48 A.2d 343, 72 R.I. 123.

4 C.J. p 1002 note 42.

26. Cal.—Sepulveda v. Ayako Ishimaru, App., 308 P.2d 809—Martyn v. Leslie, 290 P.2d 58, 137 C.A.2d 41.

Idaho.—Williams v. Idaho Potato Starch Co., 245 P.2d 1045, 73 Idaho 13.

Ill.—Barnett v. Levy, 213 Ill.App. 129.

Ind.—Northern Indiana Public Service Co. v. W. J. & M. S. Vesey, 200 N.E. 620, 210 Ind. 338.

Schutz v. Leary, 106 N.E.2d 705, 123 Ind.App. 100.

Iowa.—Brady v. McQuown, 40 N.W. 2d 25, 241 Iowa 34—State Sav. Bank of Sharpsburg v. Universal Credit Co., 12 N.W.2d 890, 234 Iowa 443—Olson v. Shafer, 221 N. W. 949, 207 Iowa 1061—In re Workman's Estate, 156 N.W. 438, 174 Iowa 222.

Md.—Hettleman v. Frank, 110 A. 715, 136 Md. 351.

Mich.—Dembicki v. Melin, 225 N.W. 508, 247 Mich. 361.

N.C.—Rose v. Bank of Wadesboro, 9 S.E.2d 2, 217 N.C. 600.

N.D.—Morstad v. Kopald Electric Co., 234 N.W. 56, 60 N.D. 325.

Or.—Pitts v. Crane, 236 P. 475, 114 Or. 593.

Wash.—Poropat v. Olympic Peninsula Motor Coach Co., 299 P. 979, 163 Wash. 78.

W.Va.—Myers v. Charleston Transit Co., 37 S.E.2d 281, 128 W.Va. 564.

4 C.J. p 1002 note 43.

27. Cal.—Maxon v. Avery, 110 P.2d 446, 43 C.A.2d 155.

Iowa.—Fagen Elevator v. Pflester, 56 N.W.2d 577, 244 Iowa 633—O'Dell v. O'Dell, 26 N.W.2d 401, 238 Iowa 434—Anderson v. Strack, 17 N.W. 2d 719, 236 Iowa 1—McCollister v. Showers, 248 N.W. 363, 216 Iowa 108—Stilwell v. Stilwell, 172 N.W. 177, 186 Iowa 177—Lawrence v. Sioux City, 154 N.W. 494, 172 Iowa 320.

Mich.—Wallace v. Skrzycki, 61 N.W. 2d 106, 338 Mich. 165—Paul v. De Carrie, 163 N.W. 67, 196 Mich. 434.

Minn.—Peterson v. Langsten, 242 N. W. 549, 186 Minn. 101.

Mo.—Clark v. Prue, App., 151 S.W. 2d 487.

N.H.—Rancourt v. Boston & M. R. R., 30 A.2d 453, 92 N.H. 284.

Vt.—In re Clogston's Estate, 106 A. 594, 93 Vt. 46.

Va.—Cook v. Hayden, 31 S.E.2d 625, 183 Va. 203.

Wash.—Blodgett v. Lowe, 167 P.2d 997, 24 Wash.2d 931—In re Ward's Estate, 292 P. 737, 159 Wash. 252—Ham, Yearsley & Ryrie v. Northern Pac. Ry. Co., 197 P. 43, 115 Wash. 286, error dismissed Northern Pac. R. Co. v. Ham, Yearsley & Ryrie, 42 S.Ct. 588, 259 U.S. 591, 66 L.Ed. 1079.

4 C.J. p 1002 note 44.

28. N.Y.—Hubner v. Metropolitan St. R. Co., 79 N.Y.S. 153, 77 App. Div. 290, affirmed 69 N.E. 1124, 177 N.Y. 523.

29. Iowa.—Vernon v. Iowa State Traveling Men's Assoc., 138 N.W. 696, 158 Iowa 597.

30. Mo.—Larkin v. Wells, App., 44 S.W.2d 882.

tion,[30.5] where the answer was in the negative,[30.10] where the matter stricken was immaterial,[30.15] where the evidence was reinstated before submission of the case to the jury or court,[31] where admissions of appellant had the effect of relieving the other party from making any proof to sustain the allegation in his petition,[32] where the evidence, if permitted to remain, would not have affected the result or decision,[32.5] where the court afterward correctly directed a verdict,[33] where the error was cured by the findings or verdict,[34] or where the court in its instructions assumed the only fact which the stricken evidence was competent to prove.[35]

So, it has been held that error in refusing to strike evidence is harmless, where the evidence which the complaining party asked to have stricken was merely cumulative;[36] where other evidence to the same effect was admitted without objection;[37] where the objectionable evidence dealt only with preliminary

S.D.—Davis v. Davis, 154 N.W. 799, 36 S.D. 336.
4 C.J. p 1002 note 47.

30.5 Vt.—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351.

30.10 Cal.—Jolton v. Minster-Graf & Co., 128 P.2d 101, 53 C.A.2d 516.

30.15 Kan.—Cox v. Kellogg's Sales Co., 95 P.2d 531, 150 Kan. 561.

31. Md.—Johnson & Higgins v. Simpson, 163 A. 832, 163 Md. 574.
Mo.—E. C. Robinson Lumber Co. v. Ladman, App., 255 S.W.2d 72.
Utah.—Ashton v. Skeen, 39 P.2d 1073, 85 Utah 489, rehearing denied 44 P.2d 688, 85 Utah 508.
4 C.J. p 1002 note 48.

32. Tex.—Galloway v. Floyd, 81 S. W. 805, 36 Tex.Civ.App. 379.

32.5 Cal.—Cooper v. McDonald, 89 P.2d 412, 32 C.A.2d 114—Central Land Co. v. City of Grand Rapids, 4 N.W.2d 485, 302 Mich. 105, 144 A.L.R. 478—Selected Investments Co. v. Brown, 284 N.W. 918, 288 Mich. 383.

33. Mo.—Bello v. Stuever, 44 S.W. 2d 619.
4 C.J. p 1003 note 50.

34. Cal.—Byerley v. Conlin, 161 P. 1150, 174 C. 40.
Abel v. O'Hearn, 218 P.2d 827, 97 C.A.2d 747.
Mont.—Espeland v. Espeland, 109 P. 2d 792, 111 Mont. 365.
N.H.—Cutler v. Young, 6 A.2d 162, 90 N.H. 203.
N.Y.—Marques v. Mossop Trucking Co., 269 N.Y.S. 810, 241 App.Div. 740.
R.I.—Sak v. Pytel, 128 A. 554, 46 R.I. 380.
Tex.—Jambers v. Woods, Civ.App., 85 S.W.2d 353.
4 C.J. p 1003 note 51.

35. Wash.—Marks v. City of Seattle, 152 P. 706, 88 Wash. 61.

36. Cal.—Frazier v. David, 204 P. 17, 187 C. 724.
Tillandy v. Title Guarantee & Trust Co., 33 P.2d 706, 139 C.A. 107.
Fla.—Stigletts v. McDonald, 186 So. 233, 135 Fla. 385.
Ill.—Scofield v. Wabash Ry. Co., 214 Ill.App. 353.
Md.—Homeseekers' Realty Co. v. Silent Automatic Sales Corporation, 163 A. 841, 163 Md. 541.
Mo.—Russell Co. v. Spurgeon, App., 258 S.W. 10—McCann v. United Rys. Co. of St. Louis, App., 249 S.W. 156—Ertl v. Wagner Electric Mfg. Co., App., 238 S.W. 577.
N.J.—Borough of Chatham v. Sisters of Charity of St. Elizabeth, 105 A. 204, 92 N.J.Law 409.
Bellesheim v. Police Pension Fund Commission, 136 A. 717, 5 N.J.Misc. 430.
N.C.—Prater Pulverizer Co. v. Jennings, 179 S.E. 893, 208 N.C. 234.
Wis.—Hommel v. Badger State Inv. Co., 165 N.W. 20, 166 Wis. 235.
Wyo.—Huber v. Thomas, 19 P.2d 1042, 45 Wyo. 440.
4 C.J. p 1003 note 52.

Admission in pleadings
Or.—Johnson v. Steele, 59 P.2d 237, 154 Or. 137.

Conclusion necessarily drawn from facts
Ill.—Bennett v. W. M. McAllister Co., 241 Ill.App. 502.

Failure to emphasize ruling
Where a witness testified that "we had been telling everybody for months we were moving," it was not reversible error that the court did not use emphasis in excluding the statement "it was publicly known," immediately following.
Ala.—Bell v. Seals Piano & Organ Co., 78 So. 806, 201 Ala. 428.

37. Ala.—Alabama Power Co. v. Brown, 87 So. 608, 205 Ala. 167.
Cal.—De Cou v. Howell, 214 P. 444, 190 C. 741—Schumann v. Karrer, 192 P. 849, 184 C. 50.
Astone v. Oldfield, 155 P.2d 398, 67 C.A.2d 702—Honeyman v. Lawrie, 95 P.2d 166, 35 C.A.2d 200—Boyes v. Evans, 58 P.2d 922, 14 C.A.2d 472—State Compensation Insurance Fund v. Lamb, 273 P. 1080, 96 C.A. 236—Kennedy v. Scally, 217 P. 96, 62 C.A. 367.
Ill.—Lindquist v. Friedman's, Inc., 8 N.E.2d 625, 366 Ill. 232.
Illinois Tuberculosis Ass'n v. Springfield Marine Bank, 282 Ill. App. 14.
Ind.—Myers v. Sparks, 154 N.E. 39, 85 Ind.App. 342.
Iowa.—Lane v. Varlamos, 239 N.W. 689, 213 Iowa 795.
Md.—Wolfe v. State, for Use of Brown, 194 A. 832, 173 Md. 103—Roycraft v. Nellis, 188 A. 20, 171 Md. 136—Sharp v. State, 109 A. 454, 135 Md. 551—Rasst v. Morris, 108 A. 787, 135 Md. 243.
Minn.—Arnold v. Northern States Power Co., 297 N.W. 182, 209 Minn. 551—Gerlich v. Thompson Yards, 225 N.W. 273, 177 Minn. 425.
Mo.—De Moss v. Baudo, App., 79 S. W.2d 766—Marx v. Parks, App., 39 S.W.2d 570—Willis v. Buchanan County Quarries Co., 268 S.W. 102, 218 Mo.App. 698.
Mont.—Rasmussen v. O. E. Lee & Co., 66 P.2d 119, 104 Mont. 278.
Neb.—Lewelling v. McElroy, 27 N. W.2d 268, 148 Neb. 309.
N.J.—Hoffman v. Goldfield, 29 A.2d 876, 129 N.J.Law 359.
Haeussler v. Consolidated Stone & Sand Co., 127 A. 602, 3 N.J.Misc. 159.
N.C.—Colvard v. Nantahala Power & Light Co., 167 S.E. 472, 204 N.C. 97—Bryant v. Burns-Hammond Const. Co., 150 S.E. 122, 197 N.C. 639.
Or.—Coates v. Slusher, 222 P. 311, 109 Or. 612.
Pa.—Wilson v. Metropolitan Petroleum Corp., 188 A. 151, 324 Pa. 321.
McKee v. Elliott-Lewis Electrical Co., 11 A.2d 551, 139 Pa.Super. 325—National Bond & Investment Co. v. Gill, 187 A. 75, 123 Pa.Super. 341.
R.I.—G. H. Waterman & Co. v. Dwares, 27 A.2d 327, 68 R.I. 303—David v. Hanna, 2 A.2d 630, 62 R.I. 19.
Tex.—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error—Sparks v. Humble Oil & Refining Co., Civ.App., 129 S.W.2d 468, error refused—First Nat. Bank v. Crossett, Civ.App., 268 S.W. 997.
Vt.—Miles v. Vermont Fruit Co., 124 A. 559, 98 Vt. 1.
Va.—J. Maury Dove Co. v. New River Coal Co., 143 S.E. 317, 150 Va. 796.
Wash.—Bounds v. Galbraith, 200 P. 1082, 117 Wash. 225.
Wyo.—Cronberg Bros. v. Johnson, 208 P. 446, 29 Wyo. 11.

matters;[38] where the witness whose testimony was asked to be stricken was recalled by the party objecting and testified to the same effect without objection;[39] where the complaining party offered no evidence in rebuttal of that which he asked to have stricken;[40] where the answer was not responsive,[40.5] or where it was a conclusion of the witness;[40.10] where the evidence, although not touching vital issues, tended to refute false issues raised by other witnesses;[41] where the evidence related to the credibility of a witness;[41.5] where the evidence did not affect the decision or result,[41.10] even though the evidence was stricken;[41.15] where the court thereafter struck the evidence,[42] instructed the jury to disregard it,[43] gave other instructions rendering such refusal nonprejudicial,[44] or directed a verdict for the party complaining;[45] or where the error was cured by the findings or verdict.[46] Furthermore, a refusal to strike an answer which, while not directly responsive, stated facts which plaintiff was entitled to prove was not reversible error.[47]

Reversible error. The judgment will be reversed, where the ruling of the court granting or denying a motion to strike evidence is prejudicial to the party complaining.[48]

38. Wyo.—Kuhn v. McKay, 49 P. 473, 51 P. 205, 7 Wyo. 42.

39. Mich.—Antosik v. Michigan Alkali Co., 132 N.W. 80, 166 Mich. 415.

40. Ariz.—Hageman v. Vanderdoes, 138 P. 1053, 15 Ariz. 312, Ann.Cas. 1915D 1197.
Cal.—Astone v. Oldfield, 155 P.2d 398, 67 C.A.2d 702.

40.5 Cal.—Rau v. Redwood City Woman's Club, 245 P.2d 12, 111 C.A.2d 546.

Case close on the facts
While the failure to strike irresponsive answer on proper motion is not reversible error in a case not close on the facts such error calls for reversal in a close case.
Ill.—Janowski v. Great Lakes Tank Truck Line, 64 N.E.2d 387, 327 Ill. App. 553.

40.10 Cal.—Rau v. Redwood City Woman's Club, 245 P.2d 12, 111 C.A.2d 546.
Iowa.—Colburn v. Krabfill, 3 N.W.2d 154, 232 Iowa 290.
Utah.—Whiteley v. De Vries, 209 P. 2d 206, 116 Utah 165.

41. Minn.—Cohoon v. Lake Region Produce Co., 247 N.W. 520, 188 Minn. 429.

41.5 Kan.—Atkinson v. Wiard, 109 P.2d 160, 153 Kan. 96.

41.10 Cal.—People v. Pay Less Drug Store, 153 P.2d 9, 25 C.2d 108—Ward Redwood Co. v. Fortain, 104 P.2d 813, 16 C.2d 34.
Tex.—Brown v. Smith, Civ.App., 168 S.W.2d 513, affirmed in part and reversed in part on other grounds 174 S.W.2d 43, 141 Tex. 425.

41.15 Tex.—San Antonio Transit Co. v. McCurry, Civ.App., 212 S.W. 2d 645, error refused no reversible error.

42. Ill.—Ehrenheim v. Yellow Cab Co., 239 Ill.App. 403.

43. Ariz.—Miller Cattle Co. v. Francis, 298 P. 631, 38 Ariz. 197.
Minn.—Arnold v. Northern States Power Co., 297 N.W. 182, 209 Minn. 551.
N.H.—Watkins v. Boston & M. R. R., 138 A. 315, 83 N.H. 10.
N.J.—Eggert v. Binder, 125 A. 106, 100 N.J.Law 174, 1 N.J.Misc. 555.
R.I.—Ives v. Lee, 111 A. 765.
Tex.—El Paso Electric Ry. Co. v. Jennings, Civ.App., 224 S.W. 1113, dismissed for want of jurisdiction.
4 C.J. p 1003 note 55.

44. Conn.—Proto v. Bridgeport Herald Corp., 72 A.2d 820, 136 Conn. 557.
Ind.—Helton v. Mann, 40 N.E.2d 395, 111 Ind.App. 487.
Iowa.—Cody v. Toller Drug Co., 5 N. W.2d 824, 232 Iowa 475.
Minn.—Moeller v. Hauser, 54 N.W. 2d 639, 237 Minn. 368—Poppleston v. Pantages Minneapolis Theater Co., 220 N.W. 418, 175 Minn. 153.
Mo.—Morrow v. Franklin, 233 S.W. 224, 289 Mo. 549.
Texas Empire Pipe Line Co. v. Stewart, App., 35 S.W.2d 627, reversed on other grounds 55 S.W.2d 283, 331 Mo. 525.
R.I.—Kulpa v. General Ice Cream Corp., 43 A.2d 60, 71 R.I. 168—Guadagno v. Folco, 6 A.2d 450, 62 R.I. 404.
Tex.—Service Mut. Ins. Co. of Texas v. Territo, Civ.App., 147 S.W.2d 846.
W.Va.—Underwood v. Goff, 49 S.E. 2d 860, 131 W.Va. 662.
Wis.—Williams v. Duluth St. Ry. Co., 171 N.W. 939, 169 Wis. 261.
4 C.J. p 1003 note 56.

Characterizing evidence as incompetent
Where the court declared in the presence of the jury that testimony that another had said defendant was liable was incompetent and hearsay, failure to strike was held not prejudicial.
Mich.—Ewing v. Klatt, 209 N.W. 838, 235 Mich. 536.

45. Mont.—Bean v. Missoula Lumber Co., 104 P. 869, 40 Mont. 31.

46. Ind.—Cousins v. Glassburn, 24 N.E.2d 1013, 216 Ind. 431.
Iowa.—Fiske-Marshall Mfg. Co. v. Rabus & Toeller, 191 N.W. 90, 194 Iowa 1193.
Mich.—Alt v. Konkle, 211 N.W. 661, 237 Mich. 264—Jewell v. Rogers Tp., 175 N.W. 151, 208 Mich. 318.

47. Ind.—Southern Indiana R. Co. v. Davis, 69 N.E. 550, 32 Ind.App. 569.

48. Ala.—Loeb v. Webster, 104 So. 25, 213 Ala. 99.
Cal.—In re Peters' Estate, 244 P.2d 88, 110 C.A.2d 723—Wysock v. Borchers Bros., 232 P.2d 531, 104 C. A.2d 571, 29 A.L.R.2d 948—Broder v. Epstein, 225 P.2d 10, 101 C.A.2d 197—Bourne v. Root, 13 P.2d 1066, 125 C.A. 461.
Ill.—Virgil v. New York, C. & St. L. R. Co., 106 N.E.2d 749, 347 Ill.App. 281—Home Life Ins. Co. v. Franklin, 24 N.E.2d 874, 303 Ill.App. 146. See City of Chicago v. Moser, 203 Ill.App. 259.
Kan.—Burkhalter v. Matteson, 246 P. 673, 121 Kan. 281.
Md.—Lockerman v. Eastern Shore Trust Co., 126 A. 140, 146 Md. 330—Dashiell v. Jacoby, 120 A. 751, 142 Md. 330.
Mich.—Germiquet v. Hubbard, 41 N. W.2d 531, 327 Mich. 225.
Mo.—Robinson v. Trimble, App., 68 S.W.2d 732—Caruthersville Lumber Co. v. Taylor, App., 281 S.W. 97—Maughiman v. National-Ben Franklin Fire Ins. Co., 194 S.W. 893, 196 Mo.App. 367.
Neb.—Cunningham v. Scott, 191 N. W. 673, 109 Neb. 586.
N.H.—Lamb v. U. S. Fire Ins. Co., 184 A. 169, 88 N.H. 21—Emerson v. Twin State Gas & Electric Co., 174 A. 779, 87 N.H. 108.
N.J.—Templin v. Trautmann, 12 A.2d 254, 124 N.J.Law 338.
N.Y.—Hirsch v. Safian, 12 N.Y.S.2d 568, 257 App.Div. 212—Wynne v. Litchfield Const. Co., 172 N.Y.S. 347, 184 App.Div. 685.
Okl.—Globe Oil & Refining Co. v. Jones, 41 P.2d 830, 171 Okl. 33.
S.D.—Sprick v. Schreiner, 220 N.W. 860, 53 S.D. 392.
Tex.—Kerr v. Dorchester, Civ.App., 93 S.W.2d 758, error dismissed—Felker v. Gulf Coast Orchards Co., Civ.App., 81 S.W.2d 1044, error dismissed—St. Louis Southwestern

b. Withdrawing

A judgment will not be reversed for harmless error in ruling on motions to withdraw evidence.

An erroneous ruling on a motion to withdraw evidence will not be ground to reverse, where the complaining party suffered no substantial prejudice,[49] but such an error constitutes ground for reversal where it results in substantial prejudice.[49.5]

§ 1720. Failure to Rule on Objections to Evidence

In the absence of prejudice to the complaining party, error in failing to rule on objections to evidence is not ground for reversal.

Failure to rule on objections to evidence is not ground for reversal where no prejudice results to the complaining party,[50] as for instance where the court fails to rule on an objection to competent evidence,[51] or where in a chancery case it did not appear that a consideration of the testimony was necessary to a decree for the successful party.[52] Whether a failure to make such a ruling is harmless depends on the particular circumstances of the case,[52.5] but the error will be considered harmless unless substantial injury results.[52.10]

10. Rulings in Respect to Witnesses

§ 1721. Examination and Rulings as to Competency

Erroneous rulings as to the competency of witnesses do not constitute ground for reversal unless substantial injury resulted to the party complaining.

The rulings of the trial court as to the competency of witnesses are usually final and will not be disturbed by the appellate court except in clear cases of abuse of discretion resulting in prejudice to the complaining party.[53] Accordingly, a ruling as to

Ry. Co. of Texas v. Anderson, Civ. App., 171 S.W. 806.
Vt.—Bliss v. Moore, 22 A.2d 315, 112 Vt. 185—Tinney v. Crosby, 22 A.2d 145, 112 Vt. 95.
Va.—Hudson v. Galyean, 19 S.E.2d 893, 179 Va. 434.
Wis.—August Brandt & Co. v. Verhagen, 152 N.W. 448, 161 Wis. 3.
4 C.J. p 1003 note 59.

Evidence not curing error
Cal.—Schubkegel v. Gordino, 133 P. 2d 475, 56 C.A.2d 667.
Tex.—Lamar v. Panhandle & S. F. Ry. Co., Com.App., 248 S.W. 34.

49. Colo.—Thomas v. Johnson, 205 P. 273, 71 Colo. 200.
Ind.—Queen Coal & Mining Co. v. Epple, 113 N.E. 19, 64 Ind.App. 235.
Iowa.—Githens v. Great American Ins. Co. of New York, 207 N.W. 243, 201 Iowa 266, 44 A.L.R. 863.
Kan.—Berry v. Dewey, 172 P. 27, 102 Kan. 593—Avery v. Howell, 171 P. 628, 102 Kan. 527.
Ky.—Hines v. Price, 221 S.W.2d 673, 310 Ky. 758—Baskett v. Jones, 225 S.W. 158, 189 Ky. 391.
Mo.—Mahmet v. American Radiator Co., 294 S.W. 1014.
Panke v. Shannon, App., 207 S. W.2d 854, reversed on other grounds 212 S.W.2d 792, 357 Mo. 1195.
Ohio.—Springfield Gas Co. v. Herman, 188 N.E. 733, 46 Ohio App. 309.
Tex.—Hicks Rubber Co. v. Harper, Civ.App., 131 S.W.2d 749, error dismissed 132 S.W.2d 579, 134 Tex. 89—Freeman v. Cleary, Civ.App., 136 S.W.2d 521.
Wis.—Hagen v. Badger Petroleum Co., 47 N.W.2d 739, 259 Wis. 175.
4 C.J. p 1003 note 60.

49.5 Or.—Bennett v. Spagele, 113 P.2d 207, 166 Or. 449.

50. Cal.—Hazard Gould & Co. v. Rosenberg, 170 P. 612, 177 C. 295—Stanwood v. Carson, 147 P. 562, 169 C. 640.
Bank of America Nat. Trust & Sav. Ass'n v. O'Shields, 275 P.2d 153, 128 C.A.2d 212—De Tray v. Higgins, 88 P.2d 241, 31 C.A.2d 482—Howard v. Howard, 226 P. 984, 67 C.A. 56—Ebner v. West Hollywood Transfer Co., 187 P. 114, 45 C.A. 186—Fissel v. Monroe, 166 P. 607, 33 C.A. 756—Hanke v. Martin, 162 P. 427, 32 C.A. 88.
Ky.—Roots v. Merriwether, 8 Bush 397.
Mont.—Langston v. Currie, 26 P.2d 160, 95 Mont. 57.
N.Y.—Hopkins v. Clark, 35 N.Y.S. 360, 90 Hun 4.
N.D.—Northwestern Nat. Bank of Minneapolis, Minn. v. Howlett, 255 N.W. 574, 64 N.D. 664.
Va.—Motley v. Frank, 13 S.E. 26, 87 Va. 432.
4 C.J. p 1002 note 37.

Question not answered or renewed
Failure of trial court to rule on objection to question propounded to adverse witness on ground that such question was "improperly phrased" was not prejudicial error where question was not answered or renewed by counsel.
Minn.—Ryan v. City of Crookston, 30 N.W.2d 351, 225 Minn. 129.

51. Cal.—Johnston v. Courtial, 14 P.2d 771, 216 C. 506.
Schorr v. Southern Pac. Co., 254 P.2d 579, 117 C.A.2d 13—Hess v. Moodey, 95 P.2d 699, 35 C.A.2d 401.
Mont.—Smith v. Gunniss, 144 P.2d 186, 115 Mont. 362.
Wyo.—Miracle v. Barker, 136 P.2d 678, 59 Wyo. 92.
4 C.J. p 1002 note 38.

Specific ruling on each objection
Failure of trial court to make specific ruling on each objection to admission of certain evidence which was all admitted was not prejudicial error.
Cal.—Ames v. Employers Cas. Co., 60 P.2d 347, 16 C.A.2d 255.

52. Ala.—Sewell v. Holley, 66 So. 506, 189 Ala. 553.
W.Va.—Lindner v. Daniels, 2 S.E.2d 267, 121 W.Va. 210.

52.5 Cal.—De Tray v. Higgins, 82 P.2d 241, 31 C.A.2d 482.

52.10 Cal.—De Tray v. Higgins, supra.

53. Ark.—Firemen's Ins. Co. v. Little, 74 S.W.2d 777, 189 Ark. 640.
Cal.—Church v. Payne, 97 P.2d 819, 36 C.A.2d 382.
Ill.—Taylor v. City of Berwyn, 22 N. E.2d 930, 372 Ill. 124.
Mo.—Westlake v. Westlake, 201 S. W.2d 964.
Hill v. Johnson, App., 178 S.W. 2d 801—Burns v. Plaza Bank of Commerce, App., 141 S.W.2d 209.
Okl.—Chickasha Cotton Oil Co. v. Hancock, 306 P.2d 330.
Review of discretionary ruling of trial court as to competency of witnesses generally see supra § 1604.

Failure to lay proper foundation
Ariz.—Gilliland v. Rodriquez, 268 P. 2d 334, 77 Ariz. 163.
Neb.—Carnes v. Deklotz, 291 N.W. 490, 137 Neb. 787—Daggett v. Drainage Dist. No. 1 of Richardson County, 160 N.W. 82, 100 Neb. 879.

the competency of a witness on the question of value, made when no question was pending and merely anticipating counsel, was not prejudicial to defendant,[54] and submitting to the jury the question of the competency of a witness for plaintiff is not prejudicial to defendant where the witness is clearly competent.[55]

Error in permitting an incompetent witness to testify may not be ground for reversal where no substantial injury resulted to the party complaining,[56] as where the testimony was immaterial,[57] not in dispute,[58] such as would probably not influence the jury,[59] or where the case or the issue was tried before the court without a jury.[60] Also, error in permitting an incompetent witness to testify may be harmless where the witness subsequently obviated any prejudicial effect by his explanation in testifying to the same matter;[61] or where the testimony was in substantial accord with that produced by the objecting party,[62] or was conceded by

Qualifications of expert witness

(1) Qualifications of expert witness are to be determined by trial judge, and his determination will not be disturbed where it is supported by evidence, unless shown to be clearly erroneous as a matter of law.

N.J.—Robbins v. Thies, 189 A. 67, 117 N.J.Law 389.

(2) Denial to defendant of opportunity to examine plaintiffs' expert witnesses on voir dire would not be held to be prejudicial to defendant where nothing indicated that defendant was prejudiced and defendant fully cross-examined the expert witnesses and no question was raised as to their qualifications.

Cal.—George v. Bekins Van & Storage Co., 205 P.2d 1037, 33 C.2d 834. Rich v. Paramount Pictures, 279 P.2d 782, 130 C.A.2d 775.

54. Mich.—Leder v. National Union F. Ins. Co., 141 N.W. 646, 175 Mich. 470.

55. Okl.—Western Nat. L. Ins. Co. v. Williamson-Halsell-Frazier Co., 131 P. 691, 37 Okl. 213.

56. Cal.—Leemhuis v. Leemhuis, 289 P.2d 852, 137 C.A.2d 117—Hastings v. Serleto, 143 P.2d 956, 61 C.A.2d 672—Chichester v. Mason, 111 P. 2d 362, 43 C.A.2d 577—Foxe v. Southern Pac. Co., 9 P.2d 514, 121 C.A. 633.

Colo.—National Surety Co. v. Wilson, 168 P. 751, 63 Colo. 460.

Idaho.—Dedman v. Oregon Short Line R. Co., 63 P.2d 667, 57 Idaho 160.

Ill.—Club Aluminum Co. for Use of Frazier v. American Indemnity Co., 8 N.E.2d 526, 290 Ill.App. 487. See Chicago, I. & L. Ry. Co. v. Monarch Lumber Co., 202 Ill.App. 20.

Kan.—Tovey v. Geiser, 92 P.2d 3, 150 Kan. 149.

Ky.—Life & Casualty Co. of Tennessee v. Gream, 68 S.W.2d 402, 252 Ky. 801.

Md.—Pennsylvania R. Co. v. Simmons, 150 A. 263, 159 Md. 114.

Mass.—Leave v. Boston Elevated Ry. Co., 28 N.E.2d 483, 306 Mass. 391.

Mich.—Mullaney v. Woodruff, 273 N. W. 395, 280 Mich. 66.

Mo.—Feigenbaum v. Bockrath, App., 191 S.W.2d 999—Tourkakis v. Billman, App., 71 S.W.2d 1084.

Mont.—Daly v. Kelley, 187 P. 1022, 57 Mont. 306.

Neb.—Elliott v. Swift & Co., 39 N. W.2d 617, 151 Neb. 787.

Okl.—In re Wagner's Estate, 62 P. 2d 1186, 178 Okl. 384—Tibbets & Pleasant v. Cook, 287 P. 1014, 143 Okl. 101.

Or.—Keller v. Johnson, 194 P. 185, 99 Or. 113.

Pa.—Mannella v. City of Pittsburgh, 6 A.2d 70, 334 Pa. 396—Tibbetts v. Prudential Ins. Co. of America, 169 A. 382, 313 Pa. 310.

Finkelston v. Kapnek, 133 A.2d 310, 184 Pa.Super. 174—Keller v. Porta, 94 A.2d 140, 172 Pa.Super. 651.

Tex.—San Benito Bank & Trust Co. v. Wait, Civ.App., 300 S.W. 659.

Wash.—Ryder v. Harris, 60 P.2d 79, 187 Wash. 195.

Wis.—Nelson v. Christensen, 172 N. W. 741, 169 Wis. 373.

4 C.J. p 960 note 94—42 C.J. p 1289 note 42.

Accepted as expert

The exclusion of testimony in qualifying witness as an expert, if erroneous, was harmless, where the witness was accepted as an expert.

Vt.—Shields v. Vermont Mut. Fire Ins. Co., 147 A. 352, 102 Vt. 224.

Clear and coherent manner of testifying

Alleged erroneous action of trial court in permitting witness, who had been adjudged mentally incompetent, to testify as a witness without qualifying examination, did not constitute reversible or prejudicial error, in view of clear and coherent manner in which testimony of witness was given, and his evident capacity as a witness.

Fla.—Florida Power & Light Co. v. Robinson, 68 So.2d 406.

Evidence not affecting result

Wis.—Plainse v. Engle, 56 N.W.2d 89, 262 Wis. 506, modified on other grounds 57 N.W.2d 586, 262 Wis. 506.

Possible evidentiary value

Ariz.—Eldredge v. Miller, 277 P.2d 239, 78 Ariz. 140.

57. Ind.—Pettibone v. Howard, 34 N.E.2d 12, 218 Ind. 543.

Ky.—Miller v. Walsh's Adm'x, 43 S. W.2d 42, 240 Ky. 822.

Mont.—Walker v. Hill, 300 P. 260, 90 Mont. 111.

N.C.—White v. Mitchell, 144 S.E. 526, 196 N.C. 89.

Okl.—Woodrow v. Ewing, 263 P.2d 167.

4 C.J. p 960 note 95.

58. Cal.—Southern Pac. Co. v. Hyman-Michaels Co., 147 P.2d 692, 63 C.A.2d 757.

Iowa.—Brierly v. Dunnick, 39 N.W. 2d 645, 240 Iowa 1359—Nortman v. Lally, 215 N.W. 713, 204 Iowa 638.

Mo.—Geisendorfer v. Geisendorfer, App., 227 S.W.2d 470—Baumhoer v. McLaughlin, App., 205 S.W.2d 274.

4 C.J. p 960 note 96.

59. N.D.—McCurdy v. Aylor, 170 N. W. 523, 41 N.D. 187.

4 C.J. p 960 note 97.

60. Ill.—Metcalf v. Metcalf, 219 Ill. App. 96.

Mo.—Eastin v. Bank of Harrisonville, 246 S.W. 991, 213 Mo.App. 130.

N.J.—Russell v. Second Nat. Bank of Paterson, 55 A.2d 211, 136 N.J. Law 270.

Okl.—De Brow v. Wolleson, 146 P.2d 124, 193 Okl. 691—Bush v. Bush, 286 P. 322, 142 Okl. 152.

Or.—In re Fulton's Estate, 58 P.2d 604, 154 Or. 72.

Wash.—Rainey v. Pearce, 173 P. 328, 102 Wash. 536.

Wyo.—Macy v. Billings, 289 P.2d 422, 74 Wyo. 404.

61. Pa.—Llewellyn v. Duquesne Light Co., 116 A. 530, 278 Pa. 17.

Stating basis of opinion

Miss.—Southern Beverage Co. v. Barbarin, 69 So.2d 395, 219 Miss. 493—Blalock v. Magee, 38 So.2d 708, 205 Miss. 209.

62. Cal.—Woodbine v. Van Horn, 173 P.2d 17, 29 C.2d 95.

Kan.—In re Langdon's Estate, 195 P.2d 317, 165 Kan. 267.

N.J.—Tully v. Gibbs & Hill, 171 A. 313, 12 N.J.Misc. 275.

4 C.J. p 960 note 98.

counsel for the adverse party to be unprejudicial;[63] where there was other sufficient competent evidence to prove the facts testified to;[64] or where the evidence was otherwise sufficient to sustain the claim of the party for whom the incompetent witness testified.[65]

Further, error in ruling that a witness is incompetent is not prejudicial where the facts to which he would have testified are admitted to exist,[66] where there was other adequate testimony to the same facts,[66.5] where notwithstanding the ruling the witness' testimony is permitted to stand,[67] where subsequently the court offers to permit the party to recall and examine the witness on the subject previously inquired about, which the party refused to do,[68] where the witness is recalled and examined to the party's satisfaction,[69] where the court finds the facts sought to be put in evidence by such witness as claimed by the offering party,[70] where no proof was offered of facts which the witness would testify to,[70.5] where the testimony which would have been adduced was not important or material to the issues in the case[71] or was merely cumulative,[71.5] or where the opinions sought were questions for the jury's determination;[71.10] and a party may not complain of an opinion given by a witness for his adversary who had not at the time shown himself qualified to express such an opinion where such party himself established the witness' qualifications on cross-examination.[72]

Error in sustaining objections to questions on the ground of incompetency of witness after the ques-

63. Cal.—Rahr Malting Co. v. Koch Brewing Co., 50 P.2d 476, 9 C.A. 2d 457.

64. Ala.—Adams v. Queen Ins. Co. of America, 88 So.2d 331, 264 Ala. 572.
Cal.—Lockhart v. Lockhart, 31 P.2d 452, 137 C.A. 713.
Ill.—Scales v. McMahon, 4 N.E.2d 872, 364 Ill. 413.
Iowa.—Scott v. Brenton, 150 N.W. 56, 168 Iowa 201.
Ky.—Louisville & N. R. Co. v. Gregory, 130 S.W.2d 745, 279 Ky. 295—Elcomb Coal Co. v. Coffman, 113 S.W.2d 847, 272 Ky. 93—Howard v. Howard, 38 S.W.2d 441, 238 Ky. 533—U. S. Trust Co. v. Fidelity & Columbia Trust Co., 281 S.W. 530, 213 Ky. 575.
Mich.—Edwin S. George Foundation v. Allen, 31 N.W.2d 716, 320 Mich. 552.
Minn.—Noe v. Great Northern Ry. Co., 209 N.W. 905, 168 Minn. 259.
Miss.—Clapper v. Powers, 77 So.2d 808, 222 Miss. 873—Stovall v. Stovall, 67 So.2d 391, 218 Miss. 364.
Mo.—White v. Atchison, T. & S. F. Ry. Co., 244 S.W.2d 26, certiorari denied 72 S.Ct. 648, 343 U.S. 915, 96 L.Ed. 1330—Thompson v. City of Lamar, 17 S.W.2d 960, 322 Mo. 514—Adams v. Quincy, O. & K. C. R. Co., 229 S.W. 790, 287 Mo. 535. Cantley v. American Surety Co. of New York, 38 S.W.2d 739, 225 Mo.App. 1146—Paul v. St. Louis-San Francisco Ry. Co., App., 275 S.W. 575, certiorari quashed State ex rel. St. Louis-San Francisco Ry. Co. v. Cox, Sup., 293 S.W. 122—Holman v. Modern Woodmen of America, App., 243 S.W. 250.
N.J.—Giehrach v. Rupp, 164 A. 465, 112 N.J.Eq. 296.
N.Y.—Razauckas v. New York Dugan Bros., 33 N.Y.S.2d 411, 263 App. Div. 1002, affirmed 43 N.E.2d 722, 289 N.Y. 592.
N.C.—Sawyer v. Weskett, 160 S.E. 575, 201 N.C. 500.
Okl.—Chickasha Cotton Oil Co. v. Hancock, 306 P.2d 330.
Or.—In re Fulton's Estate, 58 P.2d 604, 154 Or. 72.
Pa.—Minner v. City of Pittsburgh, 69 A.2d 384, 363 Pa. 199.
S.D.—Heimes v. Heimes, 16 N.W.2d 921, 70 S.D. 265—Fuller v. Anderson, 223 N.W. 717, 54 S.D. 501, followed in Hofemann v. Anderson, 223 N.W. 719, 54 S.D. 506, Payne v. Anderson, 223 N.W. 719, 54 S.D. 506, and Warfield v. Anderson, 223 N.W. 720, 54 S.D. 508.
Tex.—Grayce Oil Co. v. Peterson, 98 S.W.2d 781, 128 Tex. 550. Moody v. Castleberry, Civ.App., 151 S.W.2d 960—American Ry. Express Co. v. Times Pub. Co., Civ. App., 295 S.W. 639—Early-Foster Co. v. Gottlieb, Civ.App., 214 S.W. 520, dismissed for want of jurisdiction.
Utah.—Olson v. Scott, 210 P. 987, 61 Utah 42.
W.Va.—Averill v. Hart & O'Farrell, 132 S.E. 870, 101 W.Va. 411.
Wis.—In re Getchell's Estate, 247 N. W. 859, 211 Wis. 644.
4 C.J. p 960 note 99.

65. Fla.—Montgomery v. Stary, 84 So.2d 34.
Ind.—Feucht v. Corbett, 12 N.E.2d 957, 214 Ind. 103.
Tex.—Dunnagan v. Lackey, Civ.App., 283 S.W. 927.
W.Va.—Kuhn v. Shreeve, 89 S.E.2d 685.
Wis.—Morrill v. Komasinski, 41 N. W.2d 620, 256 Wis. 417.

66. Mo.—Thierry v. Thierry, 249 S. W. 946, 298 Mo. 25.
4 C.J. p 960 note 1.

Admission in pleadings
The admission of appellee's testimony as to transactions with a decedent was not error, where the point testified to was admitted by the appellant's pleading and proved by other testimony of appellee not objected to and by appellant's own testimony.
Mo.—Thierry v. Thierry, supra.

66.5 Cal.—Waters v. Lanigan, 290 P.2d 370, 137 C.A.2d 268.
Ga.—Wade v. Drinkard, 45 S.E.2d 231, 76 Ga.App. 159.
Iowa.—O'Dell v. O'Dell, 26 N.W.2d 401, 238 Iowa 434.
N.Y.—Eiss v. Eiss, 16 N.Y.S.2d 599, 258 App.Div. 936.

67. Mo.—Smith v. Smith, App., 241 S.W. 968.
4 C.J. p 960 note 2.

68. Mo.—Carpenter v. Coats, 81 S. W. 1089, 183 Mo. 52.

69. Tex.—San Benito Bank & Trust Co. v. Wait, Civ.App., 300 S.W. 659.

70. N.Y.—In re Sheldon, 144 N.Y. S. 94, 158 App.Div. 843.

70.5 Wyo.—Cooley v. Frank, 235 P. 2d 446, 68 Wyo. 436.

71. Ga.—Jackson v. Jackson, 132 S. E. 79, 161 Ga. 837.
Ind.—Southern Indiana Gas & Electric Co. v. Storment, 188 N.E. 313, 206 Ind. 25.
Iowa.—Crowe v. Merchants' Life & Casualty Co., 209 N.W. 406, 202 Iowa 43.
Ky.—Brooks v. New Albany & L. Electric Ry. Corp., 132 S.W.2d 777, 280 Ky. 157.
Tex.—Loggins v. Gates, Civ.App., 301 S.W.2d 525, error refused no reversible error—Davis v. Adkins, Civ.App., 251 S.W. 285.

71.5 Cal.—Sooy v. Kunde, 181 P.2d 758, 80 C.A.2d 347.
Pa.—Gallagher v. Frederick, 77 A.2d 427, 366 Pa. 450.

71.10 Ga.—Whatley v. Henry, 16 S. E.2d 214, 65 Ga.App. 668.

72. Or.—Rice v. Wallowa County, 81 P. 358, 46 Or. 574.
4 C.J. p 998 note 2.

tions have been answered is not reversible in absence of motion to strike answers given to the questions.[73]

Where it does not appear that a witness, rejected as incompetent, knew or could testify to anything relevant to the issue on trial, such rejection, although erroneous, is not ground for reversal.[74]

Reversible error. The rulings of the trial court in permitting[75] or refusing to permit[75.5] a witness to testify, or permitting him to refuse to testify,[76] when erroneous and clearly prejudicial, constitute ground for reversal.

§ 1722. Credibility, Impeachment, Contradiction, and Corroboration

Harmless error in admitting or excluding evidence bearing on the credibility, impeachment, contradiction, or corroboration of a witness is not ground for reversal.

Error in admitting incompetent evidence in support of the credibility of a witness is harmless where the verdict is in contradiction of the witness' testimony.[77]

Admission of incompetent impeaching evidence. The admission of incompetent evidence, for the purpose of impeaching a witness, may, under the circumstances, be prejudicial and thus constitute ground for reversal.[78] Nevertheless, error in admitting or excluding evidence bearing on the credibility, impeachment, contradiction, or corroboration of a witness is not ground for reversal.

73. Mo.—Boyd v. Kansas City, 237 S.W. 1001, 291 Mo. 622.
Or.—La Grande Nat. Bank of La Grande v. Crum, 11 P.2d 553, 139 Or. 530.

74. Mass.—Bates v. Barber, 4 Cush. 107.

75. Cal.—Citron v. Fields, 85 P.2d 534, 30 C.A.2d 51.
Fla.—Seaboard Air Line R. Co. v. Ford, 92 So.2d 160.
Ill.—Marsh v. O'Flaherty, 48 N.E.2d 806, 319 Ill.App. 250—Hughes v. Medendorp, 13 N.E.2d 1015, 294 Ill.App. 424.
Iowa.—In re Newson's Estate, 219 N.W. 305, 206 Iowa 514.
Ky.—Fortney v. Elliott's Adm'r, 273 S.W.2d 51—Stovall's Ex'r v. Slaughter, 268 S.W.2d 943—Beddow's Adm'r v. Barbourville Water, Ice & Light Co., 66 S.W.2d 821, 252 Ky. 267—Elkhorn Coal Corporation v. Case, 278 S.W. 570, 212 Ky. 146—Jett v. Linville, 259 S.W. 43, 202 Ky. 198—Mutual Protective League v. Cole, 170 S.W. 184, 160 Ky. 805.
Mich.—In re Lergner's Estate, 67 N.W.2d 703, 341 Mich. 552—In re Einfeldt's Estate, 282 N.W. 235, 286 Mich. 537—Burns v. Kieley's Estate, 219 N.W. 743, 242 Mich. 668.
Mo.—Lang v. Wishart, 273 S.W. 768, 217 Mo.App. 119.
N.Y.—Duncan v. Clarke, 125 N.E.2d 569, 308 N.Y. 282.
Arico v. New York Cent. R. Co., 265 N.Y.S. 503, 240 App.Div. 721.
N.C.—Wilder v. Medlin, 2 S.E.2d 549, 215 N.C. 542.
N.D.—Hedrick v. Stockgrowers' Credit Corporation, 250 N.W. 539, 64 N.D. 101.
Ohio.—Manning v. Prudential Ins. Co. of America, 118 N.E.2d 421, 95 Ohio App. 172.
Okl.—Oklahoma Transp. Co. v. Owens, 226 P.2d 946, 204 Okl. 77—Jayne v. Bateman, 129 P.2d 188, 191 Okl. 272—Hartsell v. Davis, 53 P.2d 264, 175 Okl. 446—Hartsell v. Davis, 53 P.2d 261, 175 Okl. 446.
Pa.—Potter v. Glosser Bros. Department Store, 22 A.2d 28, 146 Pa. Super. 129.
Furman v. Commonwealth, Com. Pl., 15 Northumb.Leg.J. 45.
Tex.—International Travelers' Ass'n v. Bettis, 35 S.W.2d 1040, 120 Tex. 67.
Potier v. Cook, Civ.App., 158 S.W.2d 582, error refused—Hall v. Collins, Civ.App., 151 S.W.2d 338, error refused—Texas & N. O. R. Co. v. East, Civ.App., 74 S.W.2d 1052—Hines v. Howell, Civ.App., 15 S.W.2d 1060—Perez v. Maverick, Civ.App., 202 S.W. 199, reversed on other grounds Maverick v. Perez, Com.App., 228 S.W. 148.
4 C.J. p 960 note 6.

Although testimony merely cumulative
Okl.—Mitchell v. Koch, 143 P.2d 811, 193 Okl. 342.

Cross-examination not curing error
Error in permitting lay witnesses to testify to opinion that testator was insane, without first stating facts on which such opinion was based, was prejudicial and was not cured by giving opportunity for cross-examination.
Mo.—Lee v. Ullery, 140 S.W.2d 5, 346 Mo. 236.

Evidence held not to cure error
Tex.—Grayce Oil Co. v. Peterson, 98 S.W.2d 781, 128 Tex. 550.

Handwriting witness
It was an unfair test of knowledge and observation of nonexpert handwriting witness to require him to testify as to whose handwriting was shown in enlarged photographs of handwriting, and interrogating the witness was not harmless because he testified that he did not know and could not say whose signatures were shown in the photograph.
Va.—Adams v. Ristine, 122 S.E. 126, 138 Va. 273, 31 A.L.R. 1413.

"Yes" or "no" answer
In malpractice action, error in requiring medical expert to answer "yes" or "no," without explanation, long hypothetical question whether defendant used degree of skill and care ordinarily exercised by physicians in vicinity, was prejudicial to plaintiff, since such manner of answering was not approved by proper procedure.
Cal.—McGuire v. Baird, 70 P.2d 915, 9 C.2d 353.

75.5 Ind.—Gwinn v. Hobbs, 141 N.E. 812, 144 N.E. 648, 83 Ind.App. 263.
Iowa.—Cross v. Equitable Life Assur. Soc. of U. S., 293 N.W. 464, 228 Iowa 800.
Kan.—In re Henry's Estate, 137 P.2d 222, 156 Kan. 788, modified on other grounds 142 P.2d 717, 157 Kan. 471.
Mich.—Tyler v. Weed, 280 N.W. 827, 285 Mich. 460—De Pagter v. Boyer's Estate, 275 N.W. 652, 281 Mich. 618.
Mo.—Wahl v. Cunningham, 6 S.W.2d 576, 320 Mo. 57, 67 A.L.R. 489
Neb.—Beebe & Runyan Furniture Co. v. Board of Equalization of Douglas County, 296 N.W. 764, 139 Neb. 158.
N.J.—Hare v. Pennell, 117 A.2d 637, 37 N.J.Super. 558.
N.Y.—Paulovico v. Moller, 179 N.Y.S. 224, 190 App.Div. 3.
Ohio.—Torrance v. Torrance, 70 N.E.2d 365, 147 Ohio St. 169.
Okl.—Winchester v. Guyer, 216 P.2d 589, 202 Okl. 651.
Utah.—Dahlquist v. Denver & R. G. R. Co., 174 P. 833, 52 Utah 438.
Wash.—Maciejczak v. Bartell, 60 P.2d 31, 187 Wash. 113.

Cumulative effect of evidence not curing error
Ind.—Buuck v. Kruckeberg, 95 N.E.2d 304, 121 Ind.App. 262, 22 A.L.R.2d 1145.

Qualifications of expert witness
Cal.—Eble v. Peluso, 181 P.2d 680, 80 C.A.2d 154.

76. Ill.—Cronin v. Court of Honor, 187 Ill.App. 480.

77. Mich.—Weitzel v. Fowler, 107 N.W. 451, 143 Mich. 700.

78. Ala.—Simon v. Wyler, 130 So. 778, 222 Ala. 91.

mitting incompetent testimony for the purpose of impeaching a witness will not constitute ground for reversal where it is apparent that no prejudice resulted to the party complaining thereof,[79] as where

Ark.—Thacker v. Hicks, 212 S.W.2d 713, 213 Ark. 822.
Cal.—Gonzales v. Pacific Greyhound Lines, 214 P.2d 809, 34 C.2d 749.
Vise v. Rossi, App., 309 P.2d 538.
Ill.—Levinson v. Fidelity & Casualty Co. of New York, 181 N.E. 321, 348 Ill. 495.
Polatsek v. Cohen, 21 N.E.2d 55, 300 Ill.App. 608.
Miss.—Kennedy v. Aron, 176 So. 127, 179 Miss. 458.
Mo.—Ulmann v. Union Pac. Ry. Co., App., 211 S.W. 910—Kribs v. United Order of Foresters, 177 S.W. 766, 191 Mo.App. 524.
N.Y.—Goodwin v. Amtorg Trading Corporation, 257 N.Y.S. 419, 235 App.Div. 505—Smith v. Chile Exploration Co., 218 N.Y.S. 428, 218 App.Div. 422—Reisig v. International Ry. Co., 180 N.Y.S. 151, 190 App.Div. 262—Kawanov v. Gottlieb, 169 N.Y.S. 928, 182 App.Div. 589.
Duggan v. Williams, 149 N.Y.S. 908.
Or.—Peters v. Consolidated Freight Lines, 73 P.2d 713, 157 Or. 605.
Tex.—Johnson v. Poindexter, Com. App., 293 S.W. 558.
Franzetti v. Franzetti, Civ.App., 174 S.W.2d 65—Continental Supply Co. v. Forrest E. Gilmore Co. of Texas, Civ.App., 55 S.W.2d 622—Clark v. Merchants' Realty Co., Civ.App., 20 S.W.2d 226—Bernard's Inc. v. Austin, Civ.App., 300 S.W. 256—Texas Pipe Line Co. v. Higgs, Civ.App., 243 S.W. 633—Burchill v. Hermsmeyer, Civ.App., 230 S.W. 809, dismissed for want of jurisdiction.
Vt.—Foundry Mfg. Co. v. Farr, 119 A. 885, 96 Vt. 382.
4 C.J. p 960 note 9.

Close case

N.Y.—De Stasio v. Janssen Dairy Corp., 18 N.E.2d 833, 279 N.Y. 501.

Evidence of criminal prosecution

Mo.—Marrah v. J & R Motor Supply Co., App., 165 S.W.2d 271.

Impeaching own witness

(1) Where prejudice results it is reversible error to permit a party to impeach his own witness.
Ark.—Milum v. Clark, 287 S.W.2d 460, 225 Ark. 1040.
Ga.—Jeens v. Wrightsville & T. R. Co., 85 S.E. 1055, 144 Ga. 48.
Mo.—Hayes v. Kansas City Southern Ry. Co., 260 S.W.2d 491.

(2) On the other hand, where defendant motorist, called as a witness by plaintiffs but not sworn in his own behalf in action for injuries sustained by passenger in defendant's automobile, testified on direct examination that he was acquainted with passenger, permitting a witness called by defendant to testify that he heard defendant tell state trooper after accident that he did not know passenger's name was not error as permitting defendant to impeach his own witness.
N.Y.—Van Epps v. Carpenter, 122 N.Y.S.2d 719, 282 App.Div. 799, appeal denied 124 N.Y.S.2d 358, 282 App.Div. 845.

Method of impeachment

The asking of irrelevant questions, insinuating that a litigant-witness is a person of bad character, tending to degrade him and thus prejudice him in the eyes of the jury, is not an approved method of impeaching the witness' credibility, and on objection it may be the cause of a reversal.
Wis.—Scrafield v. Rudy, 64 N.W.2d 189, 266 Wis. 530.

Impeachment unresponsive to previously laid foundation

Ohio.—Thorp v. Maatz, 10 N.E.2d 236, 56 Ohio App. 212.

79. Ark.—Ft. Smith Lumber Co. v. Shackleford, 171 S.W. 99, 115 Ark. 272.
Cal.—Garrick v. J. M. P., Inc., App., 309 P.2d 896—Szarapski v. Joaquin, 292 P.2d 950, 139 C.A.2d 27.
Conn.—Trasacco v. New York, N. H. & H. R. Co., 155 A. 493, 113 Conn. 355.
Idaho.—Idaho-Western Ry. Co. v. Columbia Conference of Evangelical Lutheran Augustana Synod, 119 P. 60, 20 Idaho 568, 38 L.R.A.,N.S., 497.
Ill.—See Barker v. Danville St. Ry. & Light Co., 193 Ill.App. 639.
Iowa.—Kruidenier's Estate v. Bankers' Trust Co., 209 N.W. 452, 203 Iowa 776.
Ky.—Slate v. Witt, 221 S.W. 217, 188 Ky. 133.
Minn.—Dix v. Harris Machinery Co., 60 N.W.2d 628, 240 Minn. 218.
Mo.—State ex rel. Berberich v. Haid, 64 S.W.2d 667, 333 Mo. 1224—Given v. Midwest Paving Co., 53 S.W.2d 23.
Slaughter v. Sweet & Piper Horse & Mule Co., App., 259 S.W. 131—Piper v. Wayne Mfg. Co., App., 253 S.W. 437—Jepson v. Shaw Transfer Co., 243 S.W. 370, 211 Mo.App. 366, certiorari quashed State ex rel. Shaw Transfer Co. v. Trimble, Sup., 250 S.W. 396—Baxter v. Campbell Lumber Co., 171 S.W. 955, 186 Mo.App. 352.
N.H.—Thompson v. J. P. Morin & Co., 114 A. 274, 80 N.H. 144.
N.C.—Bowen v. Worthington, 132 S.E. 151, 191 N.C. 468—Barnett v. Smith, 88 S.E. 770, 171 N.C. 535.
N.D.—Killmer v. Duchscherer, 72 N.W.2d 650.
Ohio.—Ogden v. Transcontinental Airport of Toledo, 177 N.E. 536, 39 Ohio App. 301.
Okl.—Bouton v. Carson, 152 P. 131, 51 Okl. 579.
Pa.—Marshall v. Carr, 118 A. 621, 275 Pa. 86.
Ruttenberg v. Fire Ass'n of Philadelphia, 186 A. 194, 122 Pa.Super. 363.
S.D.—Doolin v. City of Winner, 204 N.W. 899, 48 S.D. 400.
Tex.—Mahone v. Bowman, Civ.App., 70 S.W.2d 323—McCarthy v. Valdez, Civ.App., 10 S.W.2d 1051—Kansas City, M. & O. Ry. Co. of Texas v. Durrett, Civ.App., 187 S.W. 427, error refused—Houston Chronicle Pub. Co. v. Tiernan, Civ. App., 171 S.W. 542.
Vt.—Underwood v. Cray, 108 A. 513, 94 Vt. 58, petition dismissed 111 A. 509, 94 Vt. 402—Cross v. Passumpsic Fiber Leather Co., 98 A. 1010, 90 Vt. 397.
W.Va.—Cheeks v. Virginia-Pocahontas Coal Co., 82 S.E. 756, 74 W.Va. 553.
Wis.—Klein v. Beeten, 172 N.W. 736, 169 Wis. 385, 5 A.L.R. 1237.
4 C.J. p 961 note 10.

Contents of letter

In suit for compensation, where the only part of a letter from defendant's bookkeeper to its president tending to impeach the bookkeeper's testimony, for which the letter was offered, was admitted in evidence, that the court permitted plaintiff to interrogate the bookkeeper as to the letter before the part was admitted was no ground for reversal.
Tex.—E. Alkemeyer Co. v. McCardell, Civ.App., 183 S.W. 416, dismissed for want of jurisdiction.

Correction of deposition

In action for injuries to passenger in defendant's bus, driven by codefendant, as result of collision with third defendant's automobile at street intersection, admission of bus driver's testimony, on examination by plaintiff's counsel, that statement in witness' deposition as to how near automobile was when he first saw it was corrected immediately afterwards by increasing distance, was not reversible error, although corrected statement was not impeaching because deponent had right to correct deposition.
Cal.—Paul v. Key System, 180 P.2d 940, 80 C.A.2d 21.

Explanation not before jury

Trial court's ruling relating to privilege of witness to explain how he came to make prior statements concerning automobile accident was not prejudicial where the explanation was not made before the jury.

the answer denied the existence of the facts which would tend to impeach the witness;[80] where the deposition of the witness impeached was excluded,[81] or the impeaching evidence was treated as ruled out;[82] where a party against whom improper impeaching evidence was admitted testified to substantially the same facts as shown by the impeaching evidence;[83] where the testimony of the witness impeached was not beneficial to the party complaining;[84] where the matter relied on for the purpose of impeaching the witness was satisfactorily established by other and competent evidence;[85] where the matters testified to by the impeached witness were sufficiently established by other evidence;[86] where the matter in respect to which the witness was contradicted was immaterial;[87] where the complaining party could easily have cured the error through the introduction of testimony;[88] where the verdict is clearly right on the whole evidence and is fully supported by competent evidence;[89] or where the attempted impeachment failed or was unsuccessful.[90]

Exclusion of competent impeaching evidence. Error in excluding evidence competent to impeach a witness will not operate to reverse where it is apparent that no prejudice resulted therefrom.[91] Accordingly, where there was a clear preponderance of evidence in favor of the party for whom the witness it was desired to impeach was testifying;[92] where the testimony of the witness sought to be impeached was not accepted by the jury in whole or in part;[92.5] where the issue on which the wit-

Kan.—Leinbach v. Pickwick Greyhound Lines, 10 P.2d 33, 135 Kan. 40.

Reference to deposition

Plaintiff's impeachment of a witness, by reference to a deposition in which it was claimed such witness gave contradictory statements, was rendered harmless by introducing the whole deposition under stipulation.

Cal.—Coos Bay Mfg. Co. v. California Selling Co., 155 P. 817, 29 C.A. 407.

Sufficiency of foundation

Wash.—Kellerher v. Porter, 189 P. 2d 223, 29 Wash.2d 650.

80. Kan.—Minx v. Mitchell, 22 P. 709, 42 Kan. 688.
Md.—Baltimore City Pass. R. Co. v. Baer, 44 A. 992, 90 Md. 97.
N.C.—Blackwell's Durham Tobacco Co. v. McElwee, 5 S.E. 907, 100 N. C. 150.
4 C.J. p 961 note 11.

81. Mo.—Lindsay v. Bates, 122 S.W. 682, 223 Mo. 294.

82. Mass.—O'Brien v. Keefe, 56 N. E. 588, 175 Mass. 274.

83. Colo.—Averch v. Johnston, 9 P. 2d 291, 90 Colo. 321.
4 C.J. p 961 note 14.

84. Pa.—Wright v. Cumpsty, 41 Pa. 102.

85. Cal.—Parlier Fruit Co. v. Fireman's Fund Ins. Co., App., 311 P. 2d 62.
Or.—Hanson v. Johnson Contract Co., 244 P. 875, 117 Or. 541.
Pa.—In re Bridy's Estate, 14 A.2d 273, 339 Pa. 70.
Wash.—Smyser v. Smyser, 137 P.2d 107, 17 Wash.2d 731.
4 C.J. p 961 note 16.

86. Ill.—Joseph v. Peoria, etc., Union R. Co., 183 Ill.App. 56, affirmed 107 N.E. 141, 265 Ill. 563.

87. Iowa.—Friesner Fruit Co. v. Chicago Great Western Ry. Co., 201 N.W. 112, 199 Iowa 1143—Scovel v. Monaghan, 164 N.W. 783, 183 Iowa 581.
Mo.—Luikart v. Miller, 48 S.W.2d 867.
Mont.—Doichinoff v. Chicago, M. & St. P. Ry. Co., 154 P. 924, 51 Mont. 582.
Neb.—Bartek v. Glasers Provisions Co., 71 N.W.2d 466, 160 Neb. 794.
4 C.J. p 961 note 18.

88. Mo.—Warrington v. Byrd, App., 181 S.W. 1079.

89. Ill.—Knight v. Seney, 124 N.E. 813, 290 Ill. 11.
4 C.J. p 961 note 19.

90. Cal.—Kambourian v. Gray, 185 P.2d 27, 81 C.A.2d 783—Formosa v. Yellow Cab Co., 87 P.2d 716, 31 C.A.2d 77.

91. Cal.—Rauer's Law & Collection Co. v. Harrell, 162 P. 125, 32 C. A. 45.
Conn.—De Carufel v. Colonial Trust Co., 118 A.2d 798, 143 Conn. 18.
Fla.—Winner v. Sharp, 43 So.2d 634.
Ga.—City of Atlanta v. Gore, 169 S. E. 776, 47 Ga.App. 70.
Idaho.—Bodenhamer v. Pacific Fruit & Produce Co., 295 P. 243, 50 Idaho 248.
Iowa.—Lang v. Marshalltown Light, Power & Ry. Co., 170 N.W. 463, 185 Iowa 940.
Minn.—Skinner v. Neubauer, 74 N.W. 2d 656, 246 Minn. 291.
Mo.—Jants v. St. Louis Public Service Co., 204 S.W.2d 698, 356 Mo. 985.
Brown v. Adams Transfer & Storage Co., App., 31 S.W.2d 117.
Tex.—Little Rock Furniture Mfg. Co. v. Dunn, Civ.App., 218 S.W.2d 527, affirmed 222 S.W.2d 985, 148 Tex. 197—Missouri, K. & T. Ry. Co. v. Gilcrease, Civ.App., 187 S.W. 714, error refused—Sprinkles v. Missouri Public Utilities Co., App., 183 S.W. 1072.
4 C.J. p 961 note 21.

Failure to make avowal

Refusal to permit defendant to contradict his own witness by introducing evidence that witness had made a statement previous to trial contradictory to testimony given by him at trial, was error, but not reversible where defendant failed to make an avowal to what witness would have testified had he been permitted to answer the question.

Ky.—Wilson v. Dalton's Adm'r, 223 S.W.2d 978, 311 Ky. 285.

Testimony on former trial

In absence of a showing of a material variance between plaintiff's present testimony and testimony at former trial, there was no prejudicial error in refusing defendant the right to use testimony given in former trial involving same accident, for purposes of impeachment.

S.C.—Anderson v. Elliott, 90 S.E.2d 367, 228 S.C. 371.

Question of complete denial of statement

Where plaintiff sought to contradict his own witness by introduction of a statement signed by witness, and there was a fair question whether there was such a complete denial by witness as to make any part of statement competent, excluding statement was not reversible error.

Mass.—Kavanaugh v. Colombo, 24 N. E.2d 14, 304 Mass. 379.

Sufficiency of foundation

Va.—McGehee v. Perkins, 49 S.E.2d 304, 188 Va. 116.
Wash.—McCall v. Washington Co-op. Farmers Ass'n, 212 P.2d 813, 35 Wash.2d 337.

92. Ill.—Smith v. Stover Mfg. Co., 205 Ill.App. 169.
Ky.—Southern R. Co. v. Stewart, 132 S.W. 435, 141 Ky. 270.
Okl.—Layton v. Purcell, 267 P.2d 547.

92.5 Tex.—Nichols v. Adler, Civ. App., 268 S.W.2d 789, error dismissed—Quesada v. Graham Ice Cream Co., Civ.App., 207 S.W.2d 120.

ness was sought to be impeached was immaterial,[93] or was in substantial harmony with that of unattacked witnesses, and was uncontradicted;[94] where the impeaching evidence was subsequently received;[94.5] where the matter with respect to which the witness was to be impeached was cumulative;[94.10] where the facts sought to be established by such evidence were admitted;[95] or where the facts by which the witness was sought to be impeached were otherwise brought out.[96]

On the other hand, the exclusion of competent impeaching evidence, which is prejudicial to the complaining party, is not harmless error.[97] Accordingly, it has been held that the exclusion of competent, impeaching testimony is reversible error where the testimony of the parties to the suit is directly conflicting,[98] where the testimony on the issue relating to which the witness is offered is unsupported by other evidence,[99] where the witness does not admit making the statements attributed to him,[99.5] where the case of the party sought to be impeached rested on vague and unsatisfactory testimony,[1] or where the case turns on the reputation of defendant and his witness for veracity.[2]

Failure to lay foundation for impeaching evidence. The admission of impeaching evidence without laying a foundation therefor will not operate to reverse where no prejudice resulted therefrom,[3]

93. Miss.—Palmer v. Clarksdale Hospital, 57 So.2d 473, 213 Miss. 601—Friedman v. Maryland Casualty Co., 71 S.W.2d 491, 228 Mo. App. 680.
Okl.—Atchison, T. & S. F. Ry. Co. v. Wood & Co., 43 P.2d 727, 171 Okl. 510.
R.I.—Schiano v. McCarthy Freight System, 65 A.2d 462, 75 R.I. 253.
4 C.J. p 961 note 23.

Result not affected
Wash.—Simms v. Ervin, 282 P.2d 291, 46 Wash.2d 417.

94. Okl.—Missouri, etc., R. Co. v. Johnson, 126 P. 567, 34 Okl. 582.

94.5 Or.—Cavett v. Pacific Greyhound Lines, 167 P.2d 941, 178 Or. 363.

94.10 Minn.—Weinstein v. Schwartz, 283 N.W. 127, 204 Minn. 189.

95. Ariz.—Rodgers v. Bryan, 309 P. 2d 773, 82 Ariz. 143.
Mo.—Borrson v. Missouri-Kansas-Texas R. Co., 172 S.W.2d 826, 351 Mo. 214.
Mont.—Williams v. Gray, 203 P. 524, 62 Mont. 1.

96. Ala.—Ex parte South, 88 So. 221, 205 Ala. 31—Qualls v. Qualls, 72 So. 76, 196 Ala. 524—Brown v. Moon, 72 So. 29, 196 Ala. 391—Rhodes v. McWilson, 69 So. 69, 192 Ala. 675.
Cal.—Umemoto v. McDonald, 58 P.2d 1274, 6 C.2d 587.
Sandoval v. Southern Cal. Enterprises, 219 P.2d 928, 98 C.A.2d 240—Collette v. Sarrasin, 230 P. 464, 69 C.A. 114.
Iowa.—Bean v. Bickley, 174 N.W. 675, 187 Iowa 689.
Ky.—Insurance Co. of North America v. Hopper, 69 S.W.2d 728, 253 Ky. 402—Borderland Coal Co. v. Small, 170 S.W. 8, 160 Ky. 738.
Me.—Page v. Hemingway Bros. Interstate Trucking Co., 114 A.2d 238.
Md.—Travelers' Ins. Co. v. Melman, 128 A. 125, 147 Md. 459.
Mo.—Miller v. Collins, 40 S.W.2d 1062, 328 Mo. 313.
Nestlehut v. City of De Soto, App., 202 S.W. 425.
N.Y.—Fowler v. International Ry. Co., 216 N.Y.S. 558, 217 App.Div. 537, affirmed 155 N.E. 910, 224 N.Y. 592.
Pa.—Gibson v. Allegheny Garbage Co., 178 A. 463, 318 Pa. 478.
Tex.—Hines v. Collins, Civ.App., 227 S.W. 332.
Wis.—Hanes v. Hermsen, 236 N.W. 646, 205 Wis. 16.

Stipulated into evidence
Cal.—Rosenbloom v. Western Auto Transports, 261 P.2d 21, 120 C.A.2d 335.

97. Ala.—Bedgood v. T. R. Miller Mill Co., 80 So. 364, 202 Ala. 299.
Ill.—Gadsky v. Bentley, 15 N.E.2d 67, 295 Ill.App. 619.
Ky.—Davis v. Antol, 278 S.W. 573, 212 Ky. 149.
Minn.—Albertson v. Chicago, M., St. P. & P. R. Co., 64 N.W.2d 175, 242 Minn. 50.
Mo.—Merk v. St. Louis Public Service Co., 299 S.W.2d 446.
N.Y.—Kesten v. Forbes, 78 N.Y.S.2d 769, 273 App.Div. 646—Joseph v. Griesman Trucking Co., 40 N.Y.S. 2d 200, 265 App.Div. 590—Judson v. Fielding, 237 N.Y.S. 348, 227 App.Div. 430, affirmed 171 N.E. 798, 253 N.Y. 596, and followed in Johnson v. Palmer, 242 N.Y.S. 763, 229 App.Div. 813.
Utah.—Morton v. Hood, 143 P.2d 434, 105 Utah 484.

Close case
Ill.—Cascio v. Bishop Sewer & Water Co., 119 N.E.2d 531, 2 Ill.App.2d 378.

Impeaching own witness
In negligence action for injuries, where defendant called plaintiff's wife as witness in effort to contradict plaintiff's testimony, and wife's testimony turned out to be favorable to plaintiff, excluding letters previously written by wife which contained statement inconsistent with her testimony was reversible error, since statute authorizes a party to introduce proof that his own witness has made prior statement inconsistent with his or her testimony, providing that such prior inconsistent statement is in writing and subscribed by witness.
N.Y.—Lewis v. Rau, 15 N.Y.S.2d 579, 258 App.Div. 57, reargument denied 16 N.Y.S.2d 1017, 258 App.Div. 876.

Error not cured
N.J.—Miller v. Henderson, 124 A.2d 23, 41 N.J.Super. 15.

98. Ind.—Calahan v. Dunker, 99 N. E. 1021, 51 Ind.App. 436.

Taking of photograph four days after accident
Ill.—Fasching v. Minneapolis, St. P. & S. S. M. R. Co., 114 N.E.2d 463, 351 Ill.App. 191.

99. Tex.—Texas, etc., R. Co. v. Spann, Civ.App., 173 S.W. 600.

99.5 Ohio.—Blackford v. Kaplan, 20 N.E.2d 522, 135 Ohio St. 268.

1. N.Y.—Ellarson v. Ellarson, 190 N.Y.S. 6, 198 App.Div. 103.

2. N.Y.—McAllaster v. Britton, 60 N.Y.S. 39, 43 App.Div. 211.

3. Idaho.—Bumpas v. Moore, 175 P. 339, 31 Idaho 668.
Ill.—Paul v. Garman, 34 N.E.2d 884, 310 Ill.App. 447.
N.D.—Chambers v. Minneapolis, St. P. & S. S. M. Ry. Co., 163 N.W. 824, 37 N.D. 377, Ann.Cas.1918C 954.
4 C.J. p 961 note 28.

Exclusion of foundation for impeachment
The exclusion of questions asked to lay a foundation for the impeachment of the witness by proof of contradictory statements made at another trial is not prejudicial where the witness admitted that, if the record on the other case was as stated to him by counsel, he would concede that he testified that way, and where a comparison of the record showed no substantial conflict.
Mo.—Jablonowski v. Modern Cap Mfg. Co., 279 S.W. 89, 312 Mo. 173.

as where the witness sought to be impeached subsequently goes on the stand and has full opportunity to explain or to contradict the impeaching testimony,[4] where the answer of the impeaching witness is a denial of any knowledge of the matter relied on for impeachment,[5] or where the substance of the impeaching testimony has been previously given without objection.[6] Also, the exclusion of impeaching testimony because of the failure to lay the proper foundation, if error, is harmless,[7] as where such testimony is subsequently admitted after the foundation is properly laid.[7.5]

However, the admission of impeaching evidence without laying a foundation therefor is prejudicial error where the right of recovery of the complaining party depends on the testimony impeached,[8] where the issues are sharply drawn,[9] or where the impeaching testimony goes to the very heart of the controversy.[10]

Matters as to which foundation laid. The failure to establish the impeachment of a witness on all matters as to which a foundation was laid is not reversible error.[10.5]

Qualifying impeaching witness. Although questions to qualify impeaching witnesses were improperly allowed, yet, if they elicited proper testimony, there was no error in allowing it to stand.[11]

Corroborative evidence. The erroneous admission of evidence in corroboration of the testimony of an unimpeached and uncontradicted witness and in respect to a mere matter of detail is not a ground for reversal.[12] Likewise, the erroneous exclusion of corroborative evidence is not reversible error where the testimony sought to be corroborated was not denied.[13] The erroneous admission of evidence in corroboration of a contradicted or discredited witness may be harmless in view of other similar testimony.[13.5] Error in permitting plaintiff's attorney to corroborate the testimony of one of plaintiff's witnesses is not a ground for reversal.[13.10]

Recall for impeachment. Whether a witness shall be recalled for impeachment rests in the sound discretion of the trial court, whose action will not be reviewed on appeal unless abuse of discretion appears.[14]

§ 1723. Refreshing Memory

In the absence of prejudice to the complaining party error in refusing or permitting a witness to refresh his recollection by referring to memoranda is not a ground for reversal.

Error in permitting a witness to refer to books, memoranda, or data, for the purpose of refreshing his memory will not be ground for a reversal where no prejudice results.[15] This rule has been applied where it appears that the witness testified or could testify, from memory, independently of the data, to practically the same facts shown thereby;[16] where the matter testified to is immaterial;[17] where the books or memoranda to which the witness referred

4. Ill.—Cohen v. Weinstein, 231 Ill. App. 84.
Kan.—Pierceville State Bank v. Gray County Bank, 214 P. 788, 113 Kan. 352.
Mo.—Boone County Lumber Co. v. Niedermeyer, 173 S.W. 57, 187 Mo. App. 180.
Okl.—Enid Transfer & Storage Co. v. Fisher, 37 P.2d 825, 169 Okl. 484.
4 C.J. p 961 note 29.

5. Ill.—Foulk v. Eckert, 61 Ill. 318.

6. Ala.—Hesk v. Ellis, 75 So. 329, 200 Ala. 17.

7. Wash.—Simms v. Ervin, 282 P. 2d 291, 46 Wash.2d 417.

7.5 Ind.—Hutchens v. State, 146 N. E. 413, 82 Ind.App. 408.

8. Ark.—Murphy v. St. Louis, etc., R. Co., 122 S.W. 636, 92 Ark. 159.
Ill.—Horton v. Mozin, 92 N.E.2d 671, 341 Ill.App. 66.
Wash.—Mojas v. McNutt, 240 P.2d 928, 40 Wash.2d 61.

9. Mo.—Guidewell v. Patterson, 229 S.W. 225, 207 Mo.App. 437.

10. N.Y.—Penfold v. Barnett & Barse Corp., 169 N.Y.S. 87.
Explanation or reason for failure not given
Neb.—Costello v. Hild, 40 N.W.2d 228, 152 Neb. 1.

10.5 Ill.—Williams v. Yellow Cab Co., 136 N.E.2d 582, 11 Ill.App.2d 112.

11. Tex.—White v. Houston, etc., R. Co., Civ.App., 46 S.W. 382.

12. U.S.—Houston First Nat. Bank v. Wells, Tex., 127 F. 818, 62 C. C.A. 134.
Ill.—Nolte v. Nolte, 190 Ill.App. 469.

13. Ill.—Todd v. Cleland, 209 Ill. App. 194.

13.5 Minn.—Tri-State Transfer Co. v. Nowotny, 270 N.W. 684, 198 Minn. 537.

13.10 Minn.—Hagerty v. Radle, 37 N.W.2d 819, 228 Minn. 487.

14. N.J.—Munson v. Johnson, 166 A. 102, 110 N.J.Law 564.

15. Ala.—Denson v. Acker, 78 So. 76, 201 Ala. 300.
Cortner v. Hill, 110 So. 322, 21 Ala.App. 560.
Cal.—Skelton v. Fekete, 261 P.2d 339, 120 C.A.2d 401.
Fla.—Fred T. Ley & Co. v. Hilker, 148 So. 525, 110 Fla. 129.
Ill.—See Trybon v. Miller, 198 Ill. App. 215.
Ky.—Johnson's Adm'r v. Louisville & I. R. Co., 251 S.W. 843, 199 Ky. 524, rehearing overruled Johnson v. Louisville & I. R. Co., 252 S.W. 122, 200 Ky. 74.
Mo.—Charles H. Fuller Co. v. St. Louis Wholesale Drug Co., 282 S. W. 535, 219 Mo.App. 519.
Pa.—Vrostyak v. Zitko, 112 A. 15, 268 Pa. 413.
Wis.—Olson v. White Star Lumber Co., 150 N.W. 443, 159 Wis. 391.
4 C.J. p 961 note 34.

16. Mass.—Davis v. Hotels Statler Co., 97 N.E.2d 187, 327 Mass. 28.
N.Y.—In re Martin's Estate, 157 N. Y.S. 474, 94 Misc. 81, 16 Mills Surr. 286, reversed on other grounds 158 N.Y.S. 915, 173 App. Div. 1.
4 C.J. p 961 note 35.

17. Iowa.—Doran v. Waterloo, C. F. & N. Ry. Co., 147 N.W. 1100.
Tex.—San Benito Bank & Trust Co. v. Wait, Civ.App., 300 S.W. 659.

were subsequently produced in evidence[18] or were available for inspection;[18.5] where other witnesses testified to substantially the same facts as did the witness who used the memoranda;[19] where the witness was exhaustively cross-examined with reference to his testimony and it does not appear that the witness actually made use of the memorandum to which the judge permitted him to refer;[20] where the error was cured by the findings;[20.5] or where the issue as to which the witness testified was withdrawn from the jury.[21]

Further, error in refusing to permit a witness to refresh his memory will not operate to reverse where no prejudice results,[22] as where the matters as to which he testified were immaterial,[22.5] where the matters testified to were sufficiently established by other evidence,[22.10] where there was no showing that the witness required any refreshing of memory and witness affirmatively testified he remembered the incident inquired about,[23] where it appeared that the witness had sufficiently refreshed his memory by reading the data before testifying,[24] or where the entries from which it was sought to have the witness refresh his memory had already been read to the jury and were before them as evidence.[25]

11. Admission of Evidence

§ 1724. Prejudicial Effect in General

a. When harmless
b. When prejudicial
c. As affected by evidence actually admitted and particular circumstances
d. In particular types of action and with respect to particular matters

a. When Harmless

Error in admitting evidence is not ground for reversal when it was not, or could not have been prejudicial or harmful to the complaining party.

Error in the admission of evidence is not ground for reversal where it was not, or could not have been, prejudicial[25.50] or harmful to the party com-

18. Ky.—Illinois Cent. R. Co. v. Doss, 166 S.W. 785, 159 Ky. 57.
Md.—Adkins v. Hastings, 114 A. 288, 138 Md. 454.
4 C.J. p 961 note 36.

18.5 N.J.—Palatini v. Sarian, 83 A. 2d 24, 15 N.J.Super. 34.

19. Cal.—Shaver v. United Parcel Service, 266 P. 606, 90 C.A. 764.
Ga.—Jones v. Western & A. R. Co., 99 S.E. 388, 23 Ga.App. 725.
Mass.—Davis v. Hotels Statler Co., 97 N.E.2d 187, 327 Mass. 28.
S.C.—Hughes v. Palatine Ins. Co., 126 S.E. 125, 130 S.C. 383.
Tex.—Musslewhite v. Gillette, Civ. App., 258 S.W.2d 104—Pharr v. Coldeway, Civ.App., 256 S.W.2d 917.
4 C.J. p 961 note 37.

20. N.J.—Vinik v. Niagara Fire Ins. Co., 171 A. 555, 112 N.J.Law 462, affirmed 174 A. 753, 113 N.J.Law 406.

20.5 Okl.—Bell Loan Co. v. Taylor, 143 P.2d 820, 193 Okl. 358.
Tex.—Musslewhite v. Gillette, Civ. App., 258 S.W.2d 104.

21. N.Y.—Hart v. Maloney, 91 N.Y. S. 922, 101 App.Div. 37.

22. Mich.—Jakubiec v. Hasty, 59 N. W.2d 385, 337 Mich. 205.
Ohio.—Gibson v. Johnson, 42 N.E.2d 689, 69 Ohio App. 19.

22.5 Cal.—Beers v. California State Life Ins. Co., 262 P. 380, 87 C.A. 440.
La.—Istrouma Mercantile Co. v. Northern Assur. Co., Limited, of London, 165 So. 11, 183 La. 855.
Ohio.—Gibson v. Johnson, 42 N.E.2d 689, 69 Ohio App. 19.
4 C.J. p 961 note 39.

Nature of injury
Error in refusing to permit plaintiff's witness to refresh his recollection as to the nature of the injury was not prejudicial, where the jury returned a general verdict for defendant on the merits of the case.
N.Y.—Fischer v. W. C. Ritchie & Co., 161 N.Y.S. 118, 174 App.Div. 604.

22.10 Idaho.—Albrethson v. Carey Val. Reservoir Co., 186 P.2d 853, 67 Idaho 529.
Wash.—Davies v. Metropolitan Life Ins. Co., 88 P.2d 829, 198 Wash. 482.

23. Cal.—H. D. Taylor Co. v. J. H. Jonas & Sons, 4 P.2d 797, 118 C. A. 208.

Testimony as to all items
Refusal to allow witness to consult a memorandum was not prejudicial, where witness testified to all items.
Tex.—Mantel v. Mitchell, Civ.App., 293 S.W. 835.

24. Tex.—Missouri, etc., R. Co. v. Edwards, Civ.App., 67 S.W. 891.
4 C.J. p 962 note 40.

25. Neb.—Burlington, etc., R. Co. v. Wallace, 49 N.W. 223, 28 Neb. 179.

25.50 Ala.—Houston v. Burke, 44 So.2d 741, 253 Ala. 359.
Ga.—Irwin v. Young, 87 S.E.2d 322, 91 Ga.App. 773, affirmed 90 S.E.2d 22, 212 Ga. 1—Trussell v. Vandiver, 72 S.E.2d 319, 86 Ga.App. 749.
Ill.—Bowman v. Illinois Cent. R. Co., 132 N.E.2d 558, 9 Ill.App.2d 182.
Kan.—Rickel v. Chicago, B. & Q. R. Co., 196 P.2d 243, 165 Kan. 503.
Ky.—McGee v. Taylor, 242 S.W.2d 621—Escott v. Harley, 214 S.W.2d 387, 308 Ky. 298—Brown v. Weathers, 57 S.W.2d 4, 247 Ky. 306.
Mo.—Pioneer Const. Co. v. Schmidt, 192 S.W.2d 859.
N.H.—Ibey v. Ibey, 55 A.2d 872, 94 N.H. 425.
N.D.—Kohler v. Stephens, 24 N.W.2d 64, 74 N.D. 655.
Okl.—Matofsky v. Bishop's Restaurants, Inc., 312 P.2d 446—Schatz v. Wintersteen, 208 P.2d 1136, 201 Okl. 660—Hillery-Atkins Buick Co. v. Cox, 262 P. 694, 128 Okl. 234.
Or.—Tripp v. Renhard, 200 P.2d 644, 184 Or. 622.
R.I.—Zielonka v. U. S. Rubber Co., 65 A.2d 460, 75 R.I. 249—Muirhead v. Fairlawn Enterprise, 48 A.2d 414, reargument denied 49 A.2d 316, 72 R.I. 163—Talon v. Jackson, 30 A.2d 96, 68 R.I. 488.
"Verdicts and judgments are not to be set aside for mere error and no more. To accomplish this result it must be made to appear not only that the ruling complained of is erroneous, but also that it is material and prejudicial."
N.C.—Perkins v. Langdon, 74 S.E.2d 634, 649, 237 N.C. 159.

Errors not substantial
N.Y.—Friedman v. Ladisky, 137 N.Y. S.2d 817, 285 App.Div. 878.

Rulings on minor points
Idaho.—Ford v. Connell, 204 P.2d 1019, 69 Idaho 183.

plaining,[25.55] as where it was so utterly irrelevant or immaterial or unimportant that it was obviously harmless.[26]

Material issue

Admission of incompetent evidence on material issue, over objection, is cause for reversal unless it is apparent that objector was not prejudiced thereby.

W.Va.—Mitchell v. Metropolitan Life Ins. Co., 18 S.E.2d 803, 124 W.Va. 20.

Evidence of poverty

Generally, admission of evidence of poverty of plaintiff in personal injury action is not prejudicial to him.

Or.—Gallagher v. Portland Traction Co., 182 P.2d 354, 181 Or. 385.

Army service

It is not reversible error to show that a party has been in the army, but such fact should not be dwelt on.

Tex.—McCown v. Jennings, Civ.App., 209 S.W.2d 408.

Business engaged in

It is not reversible error for a person to state what business he is in or what business he has been in.

Tex.—McCown v. Jennings, Civ.App., 209 S.W.2d 408.

Particular evidence held not prejudicial

Ark.—Missouri Pac. R. Co. v. Bryant, 209 S.W.2d 690, 213 Ark. 149.

Cal.—Mann v. Mueller, 295 P.2d 421, 140 C.A.2d 481—Spolter v. Four-Wheel Brake Service Co., 222 P.2d 307, 99 C.A.2d 690—McCune v. Pacific Elec. Ry. Co., 196 P.2d 634, 87 C.A.2d 201.

Ga.—Burns v. Brown, 37 S.E.2d 233, 73 Ga.App. 488.

Ill.—Falcon v. La Roche, 123 N.E.2d 587, 4 Ill.App.2d 112.

Ind.—Egbert v. Egbert, 132 N.E.2d 910, 235 Ind. 405.

Ky.—McGregor v. Mills, 280 S.W.2d 161.

Mass.—Turcotte v. DeWitt, 124 N.E.2d 241, 332 Mass. 160.

N.C.—Moyle v. Hopkins, 21 S.E.2d 826, 222 N.C. 33.

Tex.—Cooper Petroleum Co. v. Coghill, Civ.App., 198 S.W.2d 616.

25.55 Conn.—Proto v. Bridgeport Herald Corp., 72 A.2d 820, 136 Conn. 557.

Ga.—Trussell v. Vandiver, 72 S.E.2d 819, 86 Ga.App. 749—Atlantic Greyhound Corp. v. Austin, 33 S.E.2d 718, 72 Ga.App. 19.

Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559.

Perkins v. Sullivan, App., 143 N.E.2d 105—Cynthiana State Bank of Cynthiana v. Murphy, 88 N.E.2d 252, 119 Ind.App. 685—Donnelley v. Thorne, 51 N.E.2d 873, 114 Ind.App. 468.

Neb.—Bresley v. O'Connor Inc., 80 N.W.2d 711, 163 Neb. 565.

Pa.—In re Zoylan's Estate, 46 Pa. Dist. & Co. 74.

Tex.—Coats v. Stewart, Civ.App., 135 S.W.2d 1026, error dismissed, judgment correct.

Utah.—Startin v. Madsen, 237 P.2d 834, 120 Utah 651.

Submission on agreed statement of facts

Where case was submitted principally under an agreed statement of facts, although some additional testimony was introduced on the trial of the case, admission of certain testimony as to alleged fact set out in stipulation to be true was not harmful error.

Tex.—Loring v. Peacock, Civ.App., 236 S.W.2d 876.

Particular evidence held harmless

Ill.—Citizens Nat. Bank of Decatur v. Doran, 122 N.E.2d 450, 3 Ill.App.2d 383.

Ky.—Hilliker v. Thorndale, 173 S.W.2d 977, 295 Ky. 148.

N.M.—Orchard v. Board of Com'rs of Sierra County, 76 P.2d 41, 42 N.M. 172.

N.C.—Dobias v. White, 83 S.E.2d 785, 240 N.C. 680.

Tex.—Daniels v. U. S. Rubber Co., Civ.App., 199 S.W.2d 533, error refused no reversible error—Community Public Service Co. v. Gray, Civ.App., 107 S.W.2d 495—British General Fire Ins. Co. v. Ripy, Civ.App., 80 S.W.2d 424, set aside on other grounds 106 S.W.2d 1047, 130 Tex. 101.

26. Ala.—Gay & Bruce v. W. B. Smith & Sons, 114 So. 468, 217 Ala. 33—Burgin v. Stewart, 114 So. 182, 216 Ala. 663—Alabama Water Co. v. Wilson, 107 So. 821, 214 Ala. 364—Alabama Machinery & Supply Co. v. Caffey, 104 So. 509, 213 Ala. 260—First Nat. Bank v. Morgan, 104 So. 403, 213 Ala. 125—Johns Undertaking Co. v. Hess-Strickland Transfer & Storage Co., 104 So. 250, 213 Ala. 78—Harvey v. Bodman, 103 So. 569, 212 Ala. 503—Johnson-Brown Co. v. Dominey Produce Co., 102 So. 606, 212 Ala. 377—America Mining Co. v. Taylor, 100 So. 761, 211 Ala. 513—Atlanta & St. A. B. R. Co. v. Spivey, 100 So. 759, 211 Ala. 520—McCord v. Bridges, 100 So. 469, 211 Ala. 295—Farrell v. Anderson-Dulin-Varnell Co., 100 So. 205, 211 Ala. 238—Bearden v. State, 100 So. 93, 211 Ala. 241—Fuhrman v. Wolf, 96 So. 193, 209 Ala. 291—Bell v. Hubert, 95 So. 350, 209 Ala. 22—Deal v. Hubert, 95 So. 350, 209 Ala. 22—Riddle v. Hanson, 94 So. 729, 208 Ala. 474—Zimmern v. Southern Ry. Co., 92 So. 437, 207 Ala. 169—Hughes v. Bickley, 89 So. 33, 205 Ala. 619—May Hosiery Mills v. Munford Cotton Mills, 87 So. 674, 205 Ala. 27—Reach v. Roden Coal Co., 87 So. 567, 205 Ala. 369—Watkins v. Roden Coal Co., 87 So. 565, 205 Ala. 367—Monk v. Stuart, 86 So. 529, 204 Ala. 562—Henderson v. Holmes & Dawson, 85 So. 536, 204 Ala. 203—Marbury Lumber Co. v. Wainwright, 80 So. 352, 202 Ala. 266—Alabama City, G. & A. Ry. Co. v. Lee, 76 So. 908, 200 Ala. 550—Wear v. Wear, 76 So. 111, 200 Ala. 345—Maryland Casualty Co. v. McCallum, 75 So. 902, 200 Ala. 154—Shelton v. Larking, 74 So. 971, 199 Ala. 510—Southern States Fire Ins. Co. of Birmingham v. Kronenberg, 74 So. 63, 199 Ala. 164—Southern Ry. Co. v. Rowe, 73 So. 634, 198 Ala. 353—Tyson & Arrington v. Thompson, 70 So. 649, 195 Ala. 230—Ward v. Cotton Seed Products Co., 69 So. 514, 193 Ala. 101—Saxon v. Davie, 68 So. 253, 192 Ala. 10—American Oak Leather Co. v. Atwood, 67 So. 663, 191 Ala. 450—Norvell v. Gilreath, 66 So. 635, 189 Ala. 452—Ward v. Lane, 66 So. 499, 189 Ala. 340—Garrow v. Toxey, 66 So. 443, 188 Ala. 572—Union Marine Ins. Co. v. Charlie's Transfer Co., 65 So. 78, 186 Ala. 443.

City of Birmingham v. Kircus, 99 So. 780, 19 Ala.App. 614—Van Derveer v. Strickland Bros. Mach. Co., 81 So. 197, 16 Ala.App. 677—Kitchens v. Mann, 80 So. 173, 16 Ala.App. 599—Tennessee River Nav. Co. v. J. C. Jacobs Banking Co., 77 So. 438, 16 Ala.App. 288—Dunaway v. Roden, 71 So. 70, 14 Ala.App. 501, certiorari denied Ex parte Dunaway, 72 So. 1019, 196 Ala. 701—Baker v. Lauderdale & Worthy, 69 So. 299, 14 Ala.App. 224.

Ark.—Texas Pipe Line Co. v. Johnson, 275 S.W. 329, 169 Ark. 235—Dyke Bros. v. Stokes, 272 S.W. 663, 168 Ark. 943—Hugue v. Sanders, 261 S.W. 899, 164 Ark. 385—Wisconsin & Arkansas Lumber Co. v. Jackson, 260 S.W. 418, 163 Ark. 436—Knights and Ladies of Security v. Lewellen, 252 S.W. 585, 159 Ark. 400—Brown Shoe Co. v. Collard, 252 S.W. 580, 161 Ark. 665—Arkansas Short Leaf Lumber Co. v. Wilkinson, 243 S.W. 819, 154 Ark. 455—Whipple v. Driver, 215 S.W. 669, 140 Ark. 393—Bank of Hartman v. Eustice, 215 S.W. 664, 144 Ark. 641—Westbrook Grain & Milling Co. v. Johnson, 203 S.W. 1032, 134 Ark. 300—McClintock v. C. E. Skinner & Co., 191 S.W. 230, 126 Ark. 591—Ward v. Ft. Smith Light & Traction Co., 185 S.W. 1085, 123 Ark. 548—St. Louis Southwestern Ry. Co. v. Wilson, 177 S.W. 415, 119 Ark. 36—Kansas City Southern Ry. Co. v. Miller, 175 S.W. 1164,

117 Ark. 396—St. Louis, I. M. & S. R. Co. v. Washington, 169 S.W. 770, 114 Ark. 184—Williams v. Fulks, 167 S.W. 93, 113 Ark. 82—Kansas City Southern Ry. Co. v. Leslie, 167 S.W. 83, 112 Ark. 305, Ann.Cas.1915B 834, reversed on other grounds 35 S.Ct. 844, 238 U.S. 599, 59 L.Ed. 1478.

Cal.—Tuso v. Green, 229 P. 327, 194 C. 574—Stevens v. Storke, 216 P. 371, 191 C. 329—Nelson v. Trounce, 195 P. 393, 184 C. 732—Schumann v. Karrer, 192 P. 849, 184 C. 50—Slankard v. Wagnon, 183 P. 562, 181 C. 135—Neidlein v. Southern Pac. Co., 179 P. 191, 180 C. 63, certiorari denied 40 S.Ct. 10, 250 U.S. 662, 64 L.Ed. 1195—Newman v. City of Alhambra, 175 P. 414, 179 C. 42—Rawlings v. Fuster, 171 P. 955, 177 C. 740—Collins v. Marsh, 169 P. 889, 176 C. 639—District Grand Lodge No. 4, Independent Order B'Nai B'rith, 152 P. 731, 171 C. 260—In re Martin's Estate, 151 P. 138, 170 C. 657—Lynn v. Goodwin, 148 P. 927, 170 C. 112, L.R.A. 1915E 588—C. M. Staub Shoe Co. v. Byrne, 145 P. 1032, 169 C. 122—Hoffman v. Southern Pac. Co., 143 P. 1032, 168 C. 627—Doak Gas Engine Co. v. Fraser, 143 P. 1024, 168 C. 624—Wilmarth v. Pacific Mut. Life Ins. Co. of California, 143 P. 780, 168 C. 536, Ann.Cas.1915B 1120—Provident Gold Mining Co. v. Manhattan Securities Co., 142 P. 884, 168 C. 304.

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Corpus Juris Secundum cited in Kansas City v. Thomson, App., 208 S.W.2d 216, 220—Cooley v. Davis, 286 S.W. 412, 221 Mo.App. 748—Williams v. American Exchange Bank, 280 S.W. 720, 222 Mo.App. 483—Duvall v. Brooklyn Cooperage Co., App., 275 S.W. 586—Carroll v. St. Louis-San Francisco Ry. Co., App., 274 S.W. 837—Citizens' Bank of Edina v. Krieghauser, App., 273 S.W. 764—Miners' & Merchants' Bank of Flat River v. Richards, App., 273 S.W. 415—Laster v. R. & V. Motor Co., 269 S.W. 665, 219 Mo.App. 211—Garvey v. Ladd, App., 266 S.W. 727—Broughton v. Hunter's Bank, App., 264 S.W. 469—Capone v. Wells, App., 261 S.W. 945—Thos. Cusack Co. v. Lubrite Refining Co., App., 261 S.W. 727—Gheens v. Brandt, App., 261 S.W. 694—Long v. Kansas City, C., C. & St. J. Ry. Co., App., 258 S.W. 747—Roussell v. St. Louis-San Francisco Ry. Co., App., 257 S.W. 516—Galba v. Payne, App., 253 S.W. 137—B. F. Sturtevant Co. v. Ford Mfg. Co., App., 253 S.W. 76, 254 S.W. 419, reversed on other grounds 288 S.W. 59, 315 Mo. 1025—Doerr v. National Fire Ins. Co. of Hartford, App., 253 S. W. 39, reversed on other grounds 285 S.W. 961, 315 Mo. 266—Boland v. L. H. Prentice Co., App., 249 S. W. 95—Frazier v. Lucas, App., 247 S.W. 476—Book v. Missouri Public Utilities Co., App., 242 S.W. 433, quashed State ex rel. Missouri Public Utilities Co. v. Cox, 250 S.W. 551, 298 Mo. 427—Harris v. Switchmen's Union of North America, App., 237 S.W. 155—Winkler v. Standard Acc. Ins. Co., App., 236 S.W. 1065—Caruthersville Hardware Co. v. Pierce, App., 229 S.W. 238—Roy v. Kansas City, 224 S.W. 132, 204 Mo.App. 332—Gieske v. Redemeyer, App., 224 S.W. 92—Slupsky v. Starr, App., 223 S.W. 816—Landau Grocery Co. v. Hart, App., 223 S.W. 793—Fletcher v. Kansas City Rys. Co., App., 221 S.W. 1070—Mitchell v. Violette, App., 221 S.W. 777—Edwards v. Morehouse Stave & Mfg. Co., App., 221 S.W. 744—Gunn v. Hemphill Lumber Co., App., 218 S.W. 978—Griffith v. St. Louis Southwestern Ry. Co., App., 217 S.W. 582—Hart v. Brown, App., 216 S. W. 552—Briscoe v. Chicago & A. R. Co., 208 S.W. 885, 200 Mo.App. 691—Saxony Mills v. Huck, App., 208 S.W. 868—Phipps v. Markin, 208 S.W. 106, 203 Mo.App. 187—Schmidt v. Supreme Council of Royal Arcanum, App., 207 S.W. 874—Wilkerson v. City of Sedalia, App., 205 S.W. 877—Patten v. Miller, 202 S.W. 417, 199 Mo.App. 287—La Duke v. Dexter, App., 202 S.W. 254—Brigance v. Bank of Cooter, App., 200 S.W. 668—Feren v. Epperson Inv. Co., App., 196 S. W. 435—Oviatt v. Weber, App., 194 S.W. 75—Blackmer & Post Pipe Co. v. Mobile & O. R. Co., 190 S.W. 1032, 196 Mo.App. 139—Dawson v. Flintom, 190 S.W. 972, 195 Mo.App. 75—Barton v. Faeth, App., 186 S. W. 52—Gueringer v. Fidelity & Deposit Co. of Maryland, App., 184 S.W. 936—Henson v. Pascola Stave Co., 177 S.W. 787, 190 Mo.App. 471—Moore v. Metropolitan St. Ry. Co., 176 S.W. 1120, 189 Mo.App. 555—Schuler v. Metropolitan Life Ins. Co., 176 S.W. 274, 191 Mo.App. 52—Dorris v. Dorris, 174 S.W. 171, 188 Mo.App. 496—Burton v. Kansas City, 168 S.W. 889, 181 Mo.App. 427—Crandall v. Greeves, 168 S.W. 264, 181 Mo.App. 235.

Mont.—Green v. Baker, 214 P. 88, 66 Mont. 568—Snell v. North British & Mercantile Ins. Co. of London &

Edinburgh, 203 P. 521, 61 Mont. 547—Beadle v. Harrison, 194 P. 134, 58 Mont. 606—Montana Live Stock & Loan Co. v. Stewart, 190 P. 985, 58 Mont. 221—Lehrkind v. McDonnell, 153 P. 1012, 51 Mont. 343.

Neb.—Bailey v. Bryant, 257 N.W. 241, 127 Neb. 843—Hays v. Christiansen, 181 N.W. 379, 105 Neb. 586—O'Brien v. Coon, 174 N.W. 513, 103 Neb. 836—In re Gunderman's Estate, 168 N.W. 359, 102 Neb. 590—Watt v. Golay, 152 N.W. 322, 98 Neb. 132.

N.H.—Lariviere v. Stratton, 120 A. 846, 81 N.H. 17—Crowther v. White Mountain Freezer Co., 104 A. 125, 79 N.H. 63—Sleeper v. Smith, 91 A. 866, 77 N.H. 337.

N.J.—Margolis v. Pinnas, 124 A. 529, 99 N.J.Law 515, 1 N.J.Misc. 117—Lewine v. Balter, 116 A. 774, 97 N. J.Law 231.

Holloway v. Hendrick, 129 A. 702, 98 N.J.Eq. 713.

Southard v. Wilson, 183 A. 202, 14 N.J.Misc. 171.

N.M.—**Corpus Juris Secundum cited in** State v. Borrego, 195 P.2d 622, 627, 52 N.M. 202.

N.Y.—McAleenan v. Massachusetts Bonding & Insurance Co., 133 N.E. 444, 232 N.Y. 199.

Andrus v. Lehigh Valley R. Co., 204 N.Y.S. 810, 209 App.Div. 368—Equitable Trust Co. of New York v. A. Salomon, Inc., 201 N.Y.S. 782, 207 App.Div. 226—Humiston v. Wood, 188 N.Y.S. 213, 197 App.Div. 901—Collins v. McWilliams, 173 N.Y.S. 850, 185 App.Div. 712—Boyce v. Greeley Square Hotel Co., 168 N.Y.S. 191, 181 App.Div. 61, dismissal denied 119 N.E. 1032, 223 N.Y. 568, and affirmed 126 N.E. 647, 228 N.Y. 106—Whipple v. Brown Bros. Co., 156 N.Y.S. 63, 170 App.Div. 531, affirmed 121 N.E. 748, 225 N.Y. 237—Meng v. Emigrant Industrial Sav. Bank, 154 N. Y.S. 509, 169 App.Div. 27—Farelli v. Charles T. Wills Co., 151 N.Y.S. 541, 165 App.Div. 715.

Peters v. Adams, 190 N.Y.S. 220, 115 Misc. 689, affirmed 188 N.Y.S. 945, 197 App.Div. 922—Profitos v. Comerma, 158 N.Y.S. 369, 94 Misc. 334.

Tamor v. Ronsheim, 174 N.Y.S. 153—Hovey v. Hovey, 170 N.Y.S. 822, affirmed 170 N.Y.S. 226, 183 App.Div. 184—Kaulbach v. Arthur Walker & Co., 166 N.Y.S. 1062.

N.C.—West v. Satterfield, 129 S.E. 177, 190 N.C. 89—Graham v. Sandhill Power Co., 127 S.E. 429, 189 N. C. 381—Sams v. Cochran & Ross Co., 125 S.E. 626, 188 N.C. 731—Wilson v. Suncrest Lumber Co., 118 S.E. 797, 186 N.C. 56—Rierson v. Carolina Steel & Iron Co., 114 S.E. 467, 184 N.C. 363—Bowman v. Howard, 110 S.E. 98, 182 N.C. 668—Plemmons v. Murphy, 97 S.E. 648, 176 N.C. 671—Muse v. Ford Motor Co., 95 S.E. 900, 175 N.C. 466—Taylor v. Tallassee Power Co., 94 S. E. 432, 174 N.C. 583—Cashwell v. Fayetteville Pepsi-Cola Bottling Co., 93 S.E. 901, 174 N.C. 324—Holmes v. Carr, 90 S.E. 152, 172 N. C. 213—Jenkins v. Sullivan, Long & Hagerty, 87 S.E. 47, 170 N.C. 269—Morgan v. Royal Ben. Society, 86 S.E. 975, 170 N.C. 75—In re Rawlings' Will, 86 S.E. 794, 170 N.C. 58, Ann.Cas.1918A 948—Weeks v. Western Union Telegraph Co., 86 S.E. 631, 169 N.C. 702—Atlantic Fruit Distributors v. Foster, 85 S.E. 130, 169 N.C. 39.

N.D.—Lloyd Mortg. Co. v. Davis, 199 N.W. 869, 51 N.D. 336, 36 A.L.R. 465—Nesvold v. Gerding, 199 N.W. 860, 51 N.D. 237—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N.D. 734—Westerland v. First Nat. Bank, 164 N.W. 323, 38 N.D. 24, 7 A.L.R. 562—Flamer v. Johnson, 162 N.W. 307, 36 N.D. 215.

Ohio.—Mansfield Railway, Light & Power Co. v. Barr, 2 Ohio App. 367, 19 Ohio Cir.Ct.,N.S., 466—Rogers v. Monroe, 26 Ohio Cir.Ct.,N.S., 193—Harlan v. Gunderson, 20 Ohio Cir. Ct.,N.S., 462—Monroe v. Peebles Co., 13 Ohio Cir.Ct.,N.S., 174.

Okl.—Sanders v. Board of Com'rs of Delaware County, 15 P.2d 818, 160 Okl. 52—Stapleton Motor Sales Co. v. Oates, 235 P. 513, 109 Okl. 173—Oklahoma Natural Gas Co. v. Crenshaw, 217 P. 370, 91 Okl. 269—St. Louis & S. F. R. Co. v. McClain, 162 P. 751, 63 Okl. 75—Ballew v. Patrick, 153 P. 675, 52 Okl. 725—Missouri, O. & G. Ry. Co. v. Collins, 150 P. 142, 47 Okl. 761—San Bois Coal Co. v. Resetz, 143 P. 46, 43 Okl. 384.

Or.—Gilbert v. Branchflower, 231 P. 982, 114 Or. 508—Cole v. Johnson, 205 P. 282, 103 Or. 319—Cornely v. Campbell, 186 P. 563, 95 Or. 345, rehearing denied 187 P. 1103, 95 Or. 345—Fuller v. Oregon-Washington R. & Nav. Co., 181 P. 338, 93 Or. 160, rehearing denied 181 P. 991, 93 Or. 160, certiorari denied Oregon-Washington R. & Nav. Co. v. Fuller, 40 S.Ct. 56, 251 U.S. 551, 64 L.Ed. 410—Burdick v. Tum-A-Lum Lumber Co., 179 P. 245, 91 Or. 417—Keeler Bros. v. School Dist. No. 108, Clackamas County, 178 P. 218, 91 Or. 316—Crites v. Willamette Valley Lumber Co., 169 P. 339, 87 Or. 10, Ann.Cas.1918D 1050—Shepherd v. Inman-Poulsen Lumber Co., 168 P. 601, 86 Or. 652—Stoddard Lumber Co. v. Oregon-Washington R. & Nav. Co., 165 P. 363, 84 Or. 339, 4 A.L.R. 1275—McDaniels v. Harington, 157 P. 1068, 80 Or. 628—B. O. Schucking & Co. v. Young, 153 P. 803, 78 Or. 483—Mackay v. Commission of Port of Toledo, 152 P. 250, 77 Or. 611—H. S. Gile Grocery Co. v. Lachmund, 146 P. 519, 75 Or. 122.

Pa.—Roberts v. Cauffiel, 128 A. 670, 283 Pa. 64—Truck, Tractor & Forwarding Co. v. Baker, 126 A. 239, 281 Pa. 145—Thomas-Roberts-Stevenson Co. v. Philadelphia & R. Ry. Co., 100 A. 998, 256 Pa. 549—Clark v. Steele, 99 A. 1001, 255 Pa. 330.

Commonwealth for Use of Croyle Tp. v. Long, 167 A. 433, 110 Pa. Super. 1, followed in 167 A. 435, 110 Pa.Super. 7—Aquetong Hall Ass'n v. James, 100 Pa.Super. 440—H. G. Vogel Co. v. Grape Products Co., 57 Pa.Super. 501.

R.I.—Aspegren v. Tax Assessors of City of Newport, 125 A. 213—Greenhalch v. Barber, 104 A. 769—Newberger v. Feldman, 94 A. 673—Greenough v. Hazard, 94 A. 259—Glenlyon Dye Works v. Interstate Express Co., 91 A. 5, 36 R.I. 558—Bernard v. Smith, 90 A. 657, 36 R.I. 377.

S.C.—National Tire & Rubber Co. v. Hoover, 122 S.E. 858, 128 S.C. 344—Mauldin v. Milford, 121 S.E. 547, 127 S.C. 508—Rumler v. Gantt, 113 S.E. 581, 121 S.C. 117—Burgess v. Germany-Roy-Brown Co., 113 S.E. 118, 120 S.C. 285—Powers v. Rawles, 112 S.E. 78, 119 S.C. 134—Bank of Anderson v. Breedin, 111 S.E. 799, 119 S.C. 39—Woods v. Thrower, 107 S.E. 250, 116 S.C. 165, 15 A.L.R. 1062—Mitchum v. Seaboard Air Line Ry. Co., 106 S. E. 769, 115 S.C. 500—Howell v. Southern Ry. Co., 102 S.E. 856, 114 S.C. 21—McClure v. Home Ins. Co. of New York, 98 S.E. 287, 111 S.C. 463—Wheeler v. Wheeler, 96 S.E. 714, 111 S.C. 87—Lewis v. Williams, 89 S.E. 647, 105 S.C. 165—Piero v. Southern Express Co., 88 S.E. 269, 103 S.C. 467—Dutton v. Atlantic Coast Line R. Co., 88 S.E. 263, 104 S.C. 16, affirmed Atlantic Coast Line R. Co. v. Dutton, 38 S. Ct. 191, 245 U.S. 637, 62 L.Ed. 525—Scott v. Liverpool & London & Globe Ins. Co., 86 S.E. 484, 102 S.C. 115—Pool v. Carolina Traction Co., 85 S.E. 897, 101 S.C. 387—Moore v. Marion Cotton Oil Co., 85 S.E. 52, 100 S.C. 499—Wakefield v. Spoon, 84 S.E. 418, 100 S.C. 100—Ellerbe v. Marion County Lumber Co., 82 S.E. 1049, 99 S.C. 158—Gill v. Ruggles, 81 S.E. 519, 97 S.C. 278.

S.D.—Doolin v. City of Winner, 204 N.W. 899, 48 S.D. 400—In re Barrett's Estate, 204 N.W. 167, 48 S.D. 302—Smith v. Smith, 173 N.W. 843, 42 S.D. 205—Conway v. Burk, 171 N.W. 84, 41 S.D. 454—Meeker v. City of Madison, 164 N.W. 974, 39 S.D. 401—Maupin v. Mobridge State Bank, 161 N.W. 332, 38 S.D. 331—Ekern v. Erickson, 157 N.W. 1062, 37 S.D. 300—Klink v. Quinn, 156 N.W. 797, 37 S.D. 83—Leggett v. Moore, 154 N.W. 804, 36 S.D. 288—Porter v. Lien, 153 N.W. 965, 36 S.D. 18—Korte v. O'Neill, 148 N.W. 12, 34 S.D. 241.

Tex.—U. S. Fidelity & Guaranty Co. v. Henderson County, Com.App., 276 S.W. 203, motion overruled 276 S. W. 1119—Davis v. Sullivan & Opry, Com.App., 258 S.W. 157, 242 S.W. 764—Jackson v. Wallace, Com. App., 252 S.W. 745.

Fort Worth & Denver City Ry. Co. v. Motley, Civ.App., 87 S.W.2d 551—Ullman, Stern & Krausse v. Colson, Civ.App., 58 S.W.2d 1039—Johnston v. Morales, Civ.App., 19 S.W.2d 451—Texas Power & Light Co. v. Hale, Civ.App., 276 S. W. 746, reversed on other grounds, Com.App., 283 S.W. 495—Ran v. City Nat. Bank of Decatur, Civ. App., 272 S.W. 510—Koehler v. Sircovich, Civ.App., 269 S.W. 812—Haynes v. Bernhard, Civ.App., 268 S.W. 509—St. Louis Southwestern Ry. Co. of Texas v. Gross, Civ. App., 268 S.W. 487—Eureka Producing Co. v. Hoyt, Civ.App., 266 S.W. 203—Chicago, R. I. & G. Ry. Co. v. Steele, Civ.App., 264 S.W. 503—Pyeatt v. Anderson, Civ.App., 264 S.W. 302, affirmed, Com.App., 269 S.W. 429—Sealy Cotton Co. v. Gustafson & Spencer, Civ.App., 258 S. W. 911—Strickel v. Brownfield State Bank, Civ.App., 257 S.W. 678—Schaff v. Sanders, Civ.App., 257 S.W. 670, affirmed, Com.App., 269 S.W. 1034—Missouri State Life Ins. Co. v. Woodson, Civ.App., 256 S.W. 988—Merchants' Life Ins. Co. v. Clark, Civ.App., 256 S.W. 969—Barron G. Collier, Inc. v. B. Deutser Furniture Co., Civ.App., 256 S. W. 330—Baker v. Harmon, Civ. App., 254 S.W. 517—Davis v. Clement Grain Co., Civ.App., 251 S.W. 545—Western Union Telegraph Co. v. Polick, Civ.App., 250 S.W. 440—Goldforb v. Gulf, C. & S. F. Ry. Co., Civ.App., 243 S.W. 707—Security Banking & Investment Co. v. Flanagan, Civ.App., 241 S.W. 702, modified on other grounds, Com.App., 254 S.W. 761, corrected on other grounds 262 S.W. 741—Farmer v. Crowley, Civ.App., 239 S.W. 1017—Great Southern Life Ins. Co. v. Dolan, Civ.App., 239 S. W. 236, reversed on other grounds, Com.App., 262 S.W. 475—Von Schoech v. Herald News Co., Civ. App., 237 S.W. 651, dismissed for want of jurisdiction—Davis v. Hudson, Civ.App., 235 S.W. 1109, dismissed for want of jurisdiction—Midkiff v. Benson, Civ.App., 235 S. W. 292—Burke v. Burke, Civ.App., 233 S.W. 990—Golden Rod Mills v. Green, Civ.App., 230 S.W. 1089, dismissed for want of jurisdiction—Lewis v. Harrison, Civ.App., 229 S.W. 691—Vogt v. Guidry, Civ. App., 229 S.W. 656—Howell v. West, Civ.App., 227 S.W. 251—Land v. Dunn, Civ.App., 226 S.W. 801—St. Louis Southwestern Ry. Co. of Texas v. Turner, Civ.App., 225 S.W. 383—Bivins v. Oldham, Civ.App., 224 S.W. 240, error refused—Theuber v. Marek, Civ.App., 222 S.W. 293—J. M. Radford Grocery Co. v. Hamilson, Civ.App., 221 S.W. 998—Moorman v. Small, Civ. App., 220 S.W. 127—Foster v. Guerra, Civ.App., 219 S.W. 295, dismissed for want of jurisdiction—Houston, E. & W. T. Ry. Co. v. Jackman, Civ.App., 217 S.W. 410, dismissed for want of jurisdiction—Westchester Fire Ins. Co. v. Biggs, Civ.App., 216 S.W. 274, error refused—Ft. Worth & R. G. Ry. Co. v. Jones, Civ.App., 212 S. W. 552—Cohn v. Saenz, Civ.App., 211 S.W. 492, error refused—Ft. Worth & D. C. Ry. Co. v. Strickland, Civ.App., 208 S.W. 410—Lester v. Park, Civ.App., 205 S.W. 734—Johnson v. McBee, Civ.App., 205 S.W. 159, dismissed for want of jurisdiction—Thomas v. Wilson, Civ.App., 204 S.W. 1010, error refused—Peden Iron & Steel Co. v. Jenkins, Civ.App., 203 S.W. 180, error refused—Provident Nat. Bank of Waco v. Howard, Civ.App., 199 S.W. 658—American Nat. Ins. Co. v. Hicks, Civ.App., 198 S.W. 616, error refused—Southern Traction Co. v. Owens, Civ.App., 198 S.W. 150, error refused—W. C. Munn Co. v. Westfall, Civ.App., 197 S.W. 328—Security Ins. Co. v. Kelly, Civ. App., 196 S.W. 874, error refused—Winfree v. Winfree, Civ.App., 195 S.W. 245, error refused—Freeman v. Bennett, Civ.App., 195 S.W. 238, error refused—Chapman v. Levy & Levy, Civ.App., 193 S.W. 1101—Dunn v. Land, Civ.App., 193 S.W. 698—First Texas State Ins. Co. v. Burwick, Civ.App., 193 S.W. 165—City of San Antonio v. Reed, Civ.App., 192 S.W. 549, error refused—Gerlach Mercantile Co. v. Hughes-Bozarth-Anderson Co., Civ. App., 189 S.W. 784, error refused—Ehlinger v. Spreckels, Civ.App., 189 S.W. 348, dismissed for want of jurisdiction—San Antonio & A. P. Ry. Co. v. Moerbe, Civ.App., 189 S.W. 128, error refused—Matthews v. Kirkland, Civ.App., 186 S.W. 423, error refused—American Nat. Ins. Co. v. Thompson, Civ.App., 186 S.W. 254, error refused—Texas & P. Ry. Co. v. McMillen, Civ.App., 183 S.W. 773—E. Alkemeyer Co. v. McCardell, Civ.App., 183 S.W. 416, dismissed for want of jurisdiction—Wilson v. Avery Co. of Texas, Civ.App., 182 S.W. 884—Scruggs v. Gage, Civ.App., 182 S.W. 696—Chicago, R. I. & G. Ry. Co. v. Cosio, Civ.App., 182 S.W. 83—Hall v. Ray, Civ.App., 179 S.W. 1135—Bolt v. State Savings Bank of Manchester, Iowa, Civ.App., 179 S.W. 1119—Ft. Worth & D. C. Ry. Co. v. Decatur Cotton Seed Oil Co., Civ. App., 179 S.W. 1104—Missouri, K. & T. Ry. Co. of Texas v. Dale Bros. Land & Cattle Co., Civ.App., 179 S.W. 935—International & G. N. Ry. Co. v. Penney, Civ.App., 178 S.W. 970—Waterhouse v. Gallup, Civ.App., 178 S.W. 773—Rumely Products Co. v. Moss, Civ.App., 175 S.W. 1084—International & G. N. Ry. Co. v. Jones, Civ.App., 175 S.W. 488—Gulf, C. & S. F. Ry. Co. v. Graham, Civ.App., 175 S.W. 472—Hanover Fire Ins. Co. of New York v. Huff, Civ.App., 175 S.W. 465—Fuller v. El Paso Live Stock Commission Co., Civ.App., 174 S.W. 930—Ft. Worth & D. C. Ry. Co. v. Firestone, Civ.App., 173 S.W. 919—Walsh v. Methodist Episcopal Church South of Paducah, Civ. App., 173 S.W. 241, affirmed, Com. App., 212 S.W. 950—Missouri, K. & T. Ry. Co. of Texas v. Empire Express Co., Civ.App., 173 S.W. 222, reversed on other grounds, Com. App., 221 S.W. 590—Jefferson Cotton Oil & Fertilizer Co. v. Pridgen & Congleton, Civ.App., 172 S.W. 739—Ratliff v. Wakefield Iron & Coal Land Improvement Co., Civ. App., 172 S.W. 198—Gulf, T. & W. Ry. Co. v. Dickey, Civ.App., 171 S. W. 1097, reversed on other grounds 187 S.W. 184, 108 Tex. 126—Louisiana & Texas Lumber Co. v. Southern Pine Lumber Co., Civ.App., 171 S.W. 537—Missouri, K. & T. Ry. Co. of Texas v. Interstate Chemical Co., Civ.App., 169 S.W. 1120—Pecos & N. T. Ry. Co. v. Morrison, Civ.App., 169 S.W. 1098—Sanford v. John Finnigan Co., Civ.App., 169 S.W. 624—Supreme Lodge K. P. v. Mims, Civ.App., 167 S.W. 835, reversed on other grounds 36 S.Ct. 702, 241 U.S. 574, 60 L.Ed. 1179, L. R.A.1916F 919—Whited v. Johnson, Civ.App., 167 S.W. 812—Ft. Worth & D. C. Ry. Co. v. Stalcup, Civ. App., 167 S.W. 279—Reserve Loan Life Ins. Co. v. Benson, Civ.App., 167 S.W. 266—Barnard & Moran v. Williams, Civ.App., 166 S.W. 910.

Utah.—McLaughlin v. Chief Consol. Mining Co., 220 P. 726, 62 Utah 532—New York Jobbing House v. Sterling Fire Ins. Co., 182 P. 361, 54 Utah 394—Kipros v. Uintah Ry. Co., 146 P. 292, 45 Utah 389.

Vt.—Laferriere v. Gray, 160 A. 270, 104 Vt. 366—Raithel v. Hall, 130 A. 749, 99 Vt. 65—Berkley v. Burlington Cadillac Co., 122 A. 665, 97 Vt. 260—McClary v. Hubbard, 122 A. 469, 96 Vt. 222—Hambleton v. U. Aja Granite Co., 118 A. 878, 96 Vt. 199—Page v. Cave, 111 A. 398, 94 Vt. 306—Beaulac v. Robie, 107 A. 107, 93 Vt. 275—Smith v. Martin, 106 A. 666, 93 Vt. 111—Williams Mfg. Co. v. Insurance Co. of North America, 106 A. 657, 93 Vt. 161—Burlington Light & Power Co. v. City of Burlington, 106 A. 513, 93 Vt. 27—In re Barron's Estate, 105 A. 255, 92 Vt. 460—Porter Screen Mfg. Co. v. Central Vermont Ry. Co., 102 A. 44, 92 Vt. 1—Goodwin v. Barre Sav. Bank & Trust Co., 100 A. 34, 91 Vt. 228—G. R. Bianchi

This rule has been applied, among other instances, to evidence objected to as secondary, or as not the best evidence,[27] such as copies of agree-

Granite Co. v. Terre Haute Monument Co., 99 A. 875, 91 Vt. 177—Gilman Bros. v. Booth, 99 A. 730, 91 Vt. 123—Town of Barnet v. Town of Norton, 99 A. 238, 90 Vt. 544—Raymond v. Rutland Ry., Light & Power Co., 98 A. 909, 90 Vt. 373—Lynch's Adm'r v. Central Vermont Ry. Co., 95 A. 683, 89 Vt. 363.

Va.—Boyd, Higgins & Goforth v. Mahone, 128 S.E. 259, 142 Va. 690—Davis v. McCall, 113 S.E. 835, 133 Va. 487—White Sewing Mach. Co. v. Gilmore Furniture Co., 105 S.E. 134, 128 Va. 630—Chesapeake & O. Ry. Co. v. Arrington, 101 S.E. 415, 126 Va. 194—Ely v. Gray, 100 S.E. 660, 125 Va. 708—Wright v. Rabey, 86 S.E. 71, 117 Va. 884—Ney v. Wrenn, 84 S.E. 1, 117 Va. 85—Norfolk & W. Ry. Co. v. Perdue, 83 S. E. 1058, 117 Va. 111.

Wash.—Roscoe v. City of Everett, 239 P. 831, 136 Wash. 295—Dyer v. Missouri State Life Ins. Co., 232 P. 346, 132 Wash. 378, reheard 236 P. 807, 135 Wash. 693—Lloyd v. American Can Co., 222 P. 876, 128 Wash. 298—Schweitzer v. Weyerhaeuser Timber Co., 222 P. 460, 128 Wash. 186—Wilcox v. Carroll, 219 P. 34, 127 Wash. 1—Pearson v. Cohen, 209 P. 685, 121 Wash. 496—Bayers v. Barry, 194 P. 993, 114 Wash. 252—Holt v. School Dist. No. 71 of King County, 173 P. 335, 102 Wash. 442—Larson v. McMillan, 170 P. 324, 99 Wash. 626—Perry Bros. v. Diamond Ice & Storage Co., 158 P. 1008, 92 Wash. 105—McCann v. Chicago, M. & P. S. Ry. Co., 158 P. 243, 91 Wash. 626—O'Meara v. Russell, 156 P. 550, 90 Wash. 557, L.R.A.1916E 743—Farley v. Letterman, 152 P. 515, 87 Wash. 641—Town of Kirkland v. Cochrane, 151 P. 1082, 87 Wash. 528—Gardner v. Spalt, 149 P. 647, 86 Wash. 146—S. Yamamoto v. Puget Sound Lumber Co., 146 P. 861, 84 Wash. 411—Cranford v. O'Shea, 145 P. 579, 83 Wash. 508, Ann.Cas.1916C 1081.

W.Va.—Alford v. Kanawha & W. V. R. Co., 100 S.E 402, 84 W.Va. 570—Schaffner v. National Supply Co., 92 S.E. 580, 80 W.Va. 111—Yates v. Crozer Coal & Coke Co., 84 S.E. 626, 76 W.Va. 50—Buckhannon & N. R. Co. v. Great Scott Coal & Coke Co., 83 S.E. 1031, 75 W.Va. 423.

Wis.—Terry v. Schmidt, 201 N.W. 729, 185 Wis. 550—Klieger v. Metropolitan Life Ins. Co., 192 N.W. 1003, 180 Wis. 320—Wisconsin Auto Sales Co. v. Frint Motor Car Co., 192 N.W. 468, 180 Wis. 137—Taylor v. Connors, 192 N.W. 371, 180 Wis. 105—Patek v. Plankinton Packing Co., 190 N.W. 920, 179 Wis. 442—Thomas v. Lockwood Oil Co., 190 N.W. 559, 178 Wis. 599—Kunitz v. Ruske, 182 N.W. 347, 173 Wis. 639—Speakes Lime & Cement Co. v. Duluth St. Ry. Co., 179 N.W. 596, 172 Wis. 475—Shine v. Hagemeister Realty Co., 172 N.W. 750, 169 Wis. 343—Casson v. Shoenfeld, 166 N.W. 23, 166 Wis. 401, L.R.A.1918C 162—Nickel v. Chapman, 158 N.W. 90, 163 Wis. 348—John E. De Wolf Co. v. Harvey, 154 N.W. 988, 161 Wis. 535—Koenig v. Sproesser, 152 N.W. 473, 161 Wis. 8—Czapinski v. Thomas Furnace Co., 149 N.W. 477, 158 Wis. 635.

Wyo.—**Corpus Juris Secundum cited in** Brown v. Wyoming Butane Gas Co., 205 P.2d 116, 123, 66 Wyo. 67—Bentley v. Jenne, 236 P. 509, 33 Wyo. 1—Stockgrowers' Bank of Wheatland v. Gray, 154 P. 593, 24 Wyo. 18.

4 C.J. p 969 note 56—18 C.J. p 597 note 18 [a] (2).

Technical and theoretical errors and errors not involving injustice

(1) Errors assigned on admission of evidence, which are technical and not fundamental, and are harmless in view of the entire record, will not cause a reversal.

Fla.—City of Jacksonville v. Vaughn, 110 So. 529, 92 Fla. 339.

(2) The admission of testimony, not technically proper in the form in which it was offered, was harmless, where it was not apparent that any material injury resulted to appellant from its admission.

Md.—Penn Oil Co. v. Triangle Petroleum & Gasoline Co., 111 A. 482, 136 Md. 559.

(3) Every theoretical error in the admission of evidence is not ground for reversal, and mistakes which do not involve injustice should ordinarily be disregarded.

U.S.—Missouri Valley Bridge & Iron Co. v. Blake, Va., 231 F. 417, 145 C.C.A. 411.

Where no motion to exclude and evidence not prejudicial

A case will not be reversed because of permitting improper testimony, where there was no motion to exclude, and the evidence was not prejudicial.

Ala.—Aiken v. McMillan, 106 So. 150, 213 Ala. 494.

Statement of wrong ground for admission

(1) Admission of evidence otherwise competent is not prejudicial error because the ground authorizing its reception is erroneously stated.

Cal.—Davis v. Tanner, 262 P. 1106, 88 C.A. 67.

(2) Admission of evidence which was admissible as declaration against interest, on wrong theory that evidence was part of res gestæ, did not constitute prejudicial error.

Ohio.—Anderson v. City Cab Co., App., 38 N.E.2d 214.

Criminal convictions; impeachment of witness

Supreme court of appeals on appeal will not consider admission of evidence in civil case of former criminal convictions of witness for purpose of impeaching credibility of witness, reversible error, unless trial court has clearly abused its discretion.

W.Va.—State v. Riss & Co., 80 S.E. 2d 9, 139 W.Va. 1.

27. Ala.—Hosey v. Southport Petroleum Co. of Delaware, 12 So.2d 93, 244 Ala. 45.
Adams v. Rish, 10 So.2d 45, 30 Ala.App. 566.

Cal.—Kessinger v. Organic Fertilizers, Inc., App., 312 P.2d 345.

Ga.—Hicks v. Hicks, 27 S.E.2d 7, 196 Ga. 541—Kniepkamp v. Richards, 16 S.E.2d 24, 192 Ga. 509—Tucker v. Talmadge, 198 S.E. 726, 186 Ga. 798.
Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844—Dawson v. General Discount Corp., 60 S.E.2d 653, 82 Ga.App. 29—American Ry. Express Co. v. Bothwell, 112 S.E. 380, 28 Ga.App. 594.

Idaho.—Picciano v. Miller, 137 P.2d 788, 64 Idaho 759.

Ill.—Billeter v. Halsam Products Co., 38 N.E.2d 994, 313 Ill.App. 145—Rothschild v. Sabath, 17 N.E.2d 354, 297 Ill.App. 638.

Ind.—Ridgway v. Yenny, 57 N.E.2d 581, 223 Ind. 16.

Iowa.—Ducummon v. Johnson, 47 N. W.2d 231, 242 Iowa 488.

Ky.—New York-Kentucky Oil & Gas Co. v. Miller, 220 S.W. 535, 187 Ky. 742.

Mo.—McNatt v. Wabash Ry. Co., 108 S.W.2d 33, 341 Mo. 516.
Eckner v. Western Hair & Beauty Supply Co., 162 S.W.2d 621, 236 Mo.App. 988—Caldwell v. Barnsdall Refining Corp., App., 150 S. W.2d 504.

Mont.—Ely v. Montana State Federation of Labor, 160 P.2d 752, 117 Mont. 609.

Neb.—Powell v. Anderson, 25 N.W.2d 401, 147 Neb. 872.

N.M.—Murray v. Murray, 240 P. 303, 30 N.M. 557.

N.C.—Landis v. Gittlin, 50 S.E.2d 298, 229 N.C. 521—Woody v. Carolina Spruce Co., 95 S.E. 905, 175 N. C. 545.

ments,[27.5] books of account,[28] contracts,[28.5] deeds,[28.10] depositions,[28.15] income tax returns,[28.20] invoices,[28.25] letters,[29] mortgages,[29.5] notes,[29.10] or wills.[29.15] The rule has also been applied to evidence of declarations[30] or of compromise and settlement,[30.5] to statutes[30.10] and ordinances,[30.15] and to demonstrative evidence.[31]

The general rule above stated as to harmless or nonprejudicial error has been applied to the admission of documentary evidence,[32] such as abstracts

Okl.—Moore v. Barker, 97 P.2d 776, 186 Okl. 312.
Or.—Myrtle Point Mill & Lumber Co v. Clarke, 203 P. 588, 102 Or. 533.
Tex.—Woldert v. Skelly Oil Co., Civ. App., 202 S.W.2d 706, error refused no reversible error—Empire Gas & Fuel Co. v. Pendar, Civ. App., 244 S.W. 184—Givens v. Turner, Civ.App., 225 S.W. 403.
Va.—Crist v. Fitzgerald, 52 S.E.2d 145, 189 Va. 109.

Merits of case not materially affected

Mo.—Eckner v. Western Hair & Beauty Supply Co., 162 S.W.2d 621, 236 Mo.App. 988.

Rights and interests of parties

Admission of secondary evidence is not reversible error where it does not affect rights or prejudice interest of parties.
Mo.—Martin v. Martinous, App., 219 S.W.2d 667.

27.5 W.Va.—Doman v. Baltimore & O. R. Co., 22 S.E.2d 703, 125 W.Va. 8.

28. Pa.—Horowitz v. Rosenzweig, 95 Pa.Super. 212.

28.5 Idaho.—Lowther v. Metzker, 203 P.2d 604, 69 Idaho 115.

28.10 La.—Floyd v. Cook, App., 49 So.2d 365.
Tenn.—Pratt v. Duck, 191 S.W.2d 562, 28 Tenn.App. 502.

28.15 Wis.—Morse Chain Co. v. T. W. Meiklejohn, Inc., 4 N.W.2d 162, 241 Wis. 45.

28.20 Ga.—Baldwin v. Davis, 4 S.E. 2d 458, 188 Ga. 587.

28.25 Mo.—St. Louis Hospital Equipment Co. v. Superior Refrigerator Mfg. Co., 246 S.W.2d 532.

29. Ala.—Stremming Veneer Co. v. Jacksonville Blow Pipe Co., 83 So. 2d 224, 263 Ala. 491.
Cal.—Kessinger v. Organic Fertilizers, Inc., App., 312 P.2d 345.
Idaho.—Marshall-Wells Co. v. Kramlich, 267 P. 611, 46 Idaho 355.
Ky.—Sharp v. Culton, 89 S.W.2d 869, 262 Ky. 84.
Mont.—W. J. Lake & Co. v. Montana Horse Products Co., 97 P.2d 590, 109 Mont. 434.
Wash.—Allman Hubble Tugboat Co. v. Reliance Development Co., 74 P.2d 985, 193 Wash. 234.

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S.C.—Gaskins v. Firemen's Ins. Co. of Newark, N. J., 33 S.E.2d 498, 206 S.C. 213.

29.5 Conn.—Lomas & Nettleton Co. v. City of Waterbury, 188 A. 433, 122 Conn. 228.

29.10 Cal.—Stromerson v. Averill, 133 P.2d 617, reheard 141 P.2d 732, 22 C.2d 808.
Colo.—Burton v. Burton, 69 P.2d 307, 100 Colo. 567.

29.15 Cal.—Nunes v. De Faria, 238 P.2d 106, 107 C.A.2d 794.

30. U.S.—Hays v. Stine, C.C.A.W. Va., 289 F. 224.
Ala.—Louisville & N. R. Co. v. Lynne, 71 So 338, 196 Ala. 21.
Cal.—Wilder v. Nicolaus, 195 P. 1068, 50 C.A. 776—Baker v. Western Auto Stage Co., 192 P. 73, 48 C.A. 283.
Ga.—Greenway v. Scoggins, 115 S.E. 99, 154 Ga. 648.
Steinhauer & Wight v. Adair, 93 S.E. 280, 20 Ga.App. 733.
Ind.—Bankers' Surety Co. v. German Investment & Securities Co., 126 N.E. 6, 189 Ind. 311.
Wheeler v. Newkirk, 133 N.E. 509, 77 Ind.App. 292—Walker Hospital v. Pulley, 127 N.E. 559, 74 Ind.App. 659, rehearing denied 128 N.E. 933, 74 Ind.App. 659.
Iowa.—Weir v. Central Nat. Fire Ins. Co., 189 N.W. 794, 194 Iowa 446.
Kan.—McAdow v. Kansas City Western Ry. Co., 164 P. 177, 100 Kan. 309, L.R.A.1917E 539.
Me.—Audibert v. Michaud, 111 A. 305, 119 Me. 295.
Md.—Mahan v. Adams, 124 A. 901, 144 Md. 355.
Mich.—Gallino v. Boland, 191 N.W. 222, 221 Mich. 502.
Mo.—Wrather v. Lawson, 247 S.W. 473.
S.C.—Templeton v. Charleston & W. C. Ry. Co., 108 S.E. 363, 117 S.C. 44.
Tex.—Edward Thompson Co. v. Sawyers, 234 S.W. 873, 111 Tex. 374—Houston Belt & Terminal R. Co. v. Stephens, 203 S.W. 41, 109 Tex. 185, answers to certified questions conformed to, Civ.App., 206 S.W. 223, error refused.
Donoho v. Carwile, Civ.App., 214 S.W. 553.
Vt.—Damon v. Hinckley Fibre Co., 121 A. 579, 96 Vt. 528.
Wis.—Remmel v. Czaja, 198 N.W. 266, 183 Wis. 266.
Wyo.—Cronberg Bros. v. Johnson, 208 P. 446, 29 Wyo. 11.

30.5 Cal.—Luis v. Cavin, 191 P.2d 527, reheard 198 P.2d 563, 88 C.A. 2d 107.

30.10 S.C.—Ellenberg v. Arthur, 183 S.E. 306, 178 S.C. 490, 103 A.L.R. 437.

Statutes and decisions of foreign state

Tex.—Gard v. Gard, Civ.App., 244 S. W.2d 884.

30.15 Cal.—Salas v. Whittington, 174 P.2d 886, 77 C.A.2d 90.
Miss.—Howell v. George, 30 So.2d 603, 201 Miss. 283.
Ohio.—Kunkel v. Cincinnati St. Ry. Co., 80 N.E.2d 442, 82 Ohio App. 341—Boenke v. Cincinnati St. Ry. Co., 10 N.E.2d 232, 56 Ohio App. 227.
R.I.—Drewett v. United Electric Rys. Co., 188 A. 877, 57 R.I. 169.
Tenn.—National Life & Accident Ins. Co. v. Morrison, 162 S.W.2d 501, 179 Tenn. 29.
Tex.—Getzwiller v. Fergeson, Civ. App., 145 S.W.2d 913.

Traffic ordinance

Ga.—Brooks v. Carver, 190 S.E. 389, 55 Ga.App. 362.

31. Kan.—Stone v. City of Pleasonton, 223 P. 312, 115 Kan. 378.
Mich.—Egbert v. Barrett, 193 N.W. 837, 223 Mich. 218.
Mo.—Pohlman v. Town of Wayland, App., 226 S.W. 92.
Neb.—Wright v. Omaha & C. B. St. Ry. Co., 163 N.W. 151, 101 Neb. 292.
Okl.—Matofsky v. Bishop's Restaurants, Inc., 312 P.2d 446.
Or.—Miami Quarry Co. v. Seaborg Packing Co., 204 P. 492, 103 Or. 362.
S.D.—Dean v. Seeman, 176 N.W. 649, 42 S.D. 577.

Nature and extent of injuries

Mo.—Happy v. Walz, App., 244 S.W. 2d 380.

32. Ala.—Hodges & Hewlett v. Martin, 101 So. 55, 211 Ala. 505—Driver v. Fitzpatrick, 95 So. 466, 209 Ala. 34—Goodwin v. Aaron, 85 So. 17, 203 Ala. 677—United Brothers of America and Sisters of True Love v. Kelly, 75 So. 312, 199 Ala. 678.
Brown v. Grayson, 86 So. 121, 17 Ala.App. 463.
Ariz.—Lassetter v. Becker, 224 P. 810, 26 Ariz. 224.
Ark.—Hutchison v. First Nat. Bank, 246 S.W. 484, 156 Ark. 142—Inter-State Business Men's Acc. Ass'n v. Sanderson, 229 S.W. 714, 148 Ark. 195.
Cal.—Varcoe v. Lee, 181 P. 223, 180 C. 338—Cameron v. Ah Quong, 165 P. 961, 175 C. 377—Thompson v. Davis, 157 P. 595, 172 C. 491.

Dolley v. Ragon, 228 P. 52, 66 C. A. 707—Jones v. Peck, 218 P. 1030, 63 C.A. 397—Gaver v. Early, 209 P. 390, 58 C.A. 725—McKey v. MacIntosh, 188 P. 310, 45 C.A. 628.

Colo.—Leven v. Lolcama, 211 P. 870, 72 Colo. 427.

Eagan v. Mahoney, 174 P. 1119, 24 Colo.App. 285.

Conn.—Pratt, Read & Co. v. New York, N. H. & H. R. Co., 130 A. 102, 102 Conn. 735, reargument denied 131 A. 395, 103 Conn. 508.

Fla.—Shearn v. Orlando Funeral Home, 82 So.2d 866.

Ga.—Smith v. White, 108 S.E. 774, 152 Ga. 188.

Bugg v. Perry & Faircloth, 156 S.E. 708, 42 Ga.App. 523—Roberts v. Allen, 122 S.E. 86, 31 Ga.App. 660—Ellis, McKinnon & Brown v. Hopps, 118 S.E. 583, 30 Ga.App. 453—Scott v. Georgia Ry. & Power Co., 97 S.E. 556, 23 Ga.App. 106.

Idaho.—Fritcher v. Kelley, 201 P. 1037, 34 Idaho 468.

Ill.—Bald v. Nuernberger, 113 N.E. 117, 274 Ill. 123. See Shreffler v. Fuller, 208 Ill.App. 630—National Bank of Pawnee v. Hamilton, 202 Ill.App. 516.

Ind.—Brier v. Childers, 148 N.E. 474, 196 Ind. 520.

Castor v. McDole, 148 N.E. 643, 80 Ind.App. 556—First Nat. Bank v. Gibbs, 141 N.E. 264, 84 Ind.App. 491—Mansfield v. Hinckle, 139 N. E. 700, 81 Ind.App. 6.

Iowa.—Acme Hay & Mill Feed Co. v. Metropolitan Nat. Bank of Minneapolis, 201 N.W. 129, 198 Iowa 1337—Geo. Birrell, Inc. v. Fidelity & Casualty Co. of New York, 188 N.W. 26, 193 Iowa 860—Spahn & Rose Lumber Co. v. Chicago, R. I. & P. Ry. Co., 166 N.W. 1045, 183 Iowa 1141—Hirsch v. Butler, 164 N.W. 745, 181 Iowa 345.

Kan.—Sturgeon v. Hanover Fire Ins. Co., 210 P. 342, 112 Kan. 206—Elmo State Bank of Elmo v. Hildebrand, 177 P. 6, 103 Kan. 705, rehearing denied 177 P. 526, 104 Kan. 10—Cook v. Leavenworth Terminal Ry. & Bridge Co., 165 P. 803, 101 Kan. 103, rehearing denied 166 P. 498, 101 Kan. 437—Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co., 158 P. 859, 98 Kan. 478.

Ky.—Penn Mut. Life Ins. Co. v. Roberts, 269 S.W. 736, 207 Ky. 524—Southern Ry. Co. v. Avey, 191 S. W. 460, 173 Ky. 598.

Md.—Heim v. Roberts, 109 A. 329, 135 Md. 600—Shawmut Mining Co. v. Padgett, 104 A. 40, 132 Md. 397—City of Baltimore v. State, 103 A. 426, 132 Md. 113.

Mass.—Hamilton v. Inhabitants of Town of Heath, 140 N.E. 801, 246 Mass. 335—Cosmopolitan Trust Co. v. Lyons, 138 N.E. 325, 244 Mass. 115—Pierce v. Kolikof, 122 N.E. 558, 232 Mass. 479—Jackson & Newton Co. v. Fuller, 115 N.E. 766, 226 Mass. 441.

Mich.—Elizabeth Lake Estates v. Waterford Tp., 26 N.W.2d 788, 317 Mich. 359—Hatton v. Stott, 189 N. W. 850, 220 Mich. 262—Amedeo v. Grand Rapids & I. R. Co., 183 N.W. 929, 215 Mich. 37—Master Spark Co. v. Hickerson, 179 N.W. 232, 211 Mich. 411—Reese v. Dyer, 165 N. W. 714, 199 Mich. 204.

Minn.—Hrdlicka v. Warner, 175 N.W. 299, 144 Minn. 277—Moehlenbrock v. Parke, Davis & Co., 169 N.W. 541, 141 Minn. 154—Fairchild v. Hovland, 165 N.W. 1053, 139 Minn. 187—Grimes v. Minneapolis, St. P., R. & D. Electric Traction Co., 158 N.W. 719, 133 Minn. 442, L.R.A. 1916F 687.

Mo.—Ford v. Dahl, 228 S.W.2d 800, 360 Mo. 437—Connell v. A. C. L. Haase & Sons Fish Co., 257 S.W. 760, 302 Mo. 48—Simpson v. Burnett, 252 S.W. 949, 299 Mo. 232—McDaniel v. Leuer, 230 S.W. 633—U. S. Fashion & Sample Book Co. v. Montrose Cloak & Suit Co., 218 S.W. 867.

Vaughn v. Mountain Grove Creamery, Ice & Electric Co., App., 275 S.W. 592, quashed in part State ex rel. Mountain Grove Creamery, Ice & Electric Co. v. Cox, 286 S.W. 368, 315 Mo. 619—Boyles v. Burnett, 249 S.W. 719, 213 Mo.App. 288—Crump v. Walkup, App., 245 S.W. 222—Tandy v. Wabash Ry. Co., App., 236 S.W. 1086—Munsill v. Atchison, T. & S. F. Ry. Co., App., 234 S.W. 376—Young v. Hoover, App., 233 S.W. 501—Roy v. Kansas City, 224 S.W. 132, 204 Mo.App. 332—Gieske v. Redemeyer, App., 224 S.W. 92—Roper v. Wadleigh, App., 219 S.W. 982—McMickle v. Wabash Ry. Co., App., 209 S.W. 611—Landers v. St. Joseph Hay & Feed Co., App., 208 S.W. 473—International Harvester Co. of America v. Capps, App., 205 S.W. 252—J. B. Evans Const. Co. v. Hatton, App., 185 S. W. 1191.

Mont.—Genzberger v. Adams, 205 P. 658, 62 Mont. 430.

Nev.—Page v. Sutton, 204 P. 881, 145 Nev. 395, rehearing denied 207 P. 1102, 145 Nev. 395.

N.J.—Burke v. Lincoln Transit Co., 117 A.2d 521, 37 N.J.Super. 433.

N.Y.—Bergen v. Morton Amusement Co., 165 N.Y.S. 348, 178 App.Div. 400, affirmed 123 N.E. 855, 226 N.Y. 665.

Iroquois Mfg. Co. v. Davis, 203 N.Y.S. 607, 122 Misc. 272—Builders' Brick & Supply Co. v. Walsh Transp. Co., 174 N.Y.S. 690, 106 Misc. 460, affirmed 178 N.Y.S. 881, 189 App.Div. 898.

N.C.—Shaw Cotton Mills v. Acme Hosiery Mills, 106 S.E. 24, 181 N.C. 33.

N.D.—Bailey v. Davis, 193 N.W. 658, 49 N.D. 838—Lofthouse v. Galesburg State Bank, 188 N.W. 585, 48 N.D. 1019.

Or.—De War v. First Nat. Bank, 171 P. 1106, 88 Or. 541.

Pa.—Gandy v. Klaw, 112 A. 464, 269 Pa. 320—City of Philadelphia v. Conway, 101 A. 472, 257 Pa. 172—McCormick v. Bickerton, 96 A. 1092, 251 Pa. 466.

S.C.—Dowling v. Fenner, 126 S.E. 432, 131 S.C. 62—State v. Columbia Ry., Gas & Electric Co., 123 S.E. 646, 129 S.C. 68, reversed on other grounds Columbia Ry., Gas & Electric Co. v. State of South Carolina, 48 S.Ct. 306, 261 U.S. 236, 67 L.Ed. 629—Bankhead v. Insurance Co. of North America, Philadelphia, 117 S.E. 355, 124 S.C. 119—Glenn v. Walker, 100 S.E. 706, 113 S.C. 1—Floyd v. Montgomery Lumber Co., 98 S.E. 139, 111 S.C. 382.

S.D.—Carlock v. Loyd, 181 N.W. 835, 43 S.D. 611.

Tex.—Coon v. Ewing, Civ.App., 275 S.W. 481—Sciraffa v. Flores, Civ. App., 274 S.W. 260—Campbell v. McLoughlin, Civ.App., 270 S.W. 257, reversed on other grounds, Com.App., 280 S.W. 189—Schaff v. Copass, Civ.App., 262 S.W. 234—Settegast v. Meyer, Civ.App., 257 S.W. 343—McMahon v. Kirby, Civ. App., 256 S.W. 622—Continental Ins. Co. v. Scott, Civ.App., 254 S. W. 499—U. S. Fidelity & Guaranty Co. v. Henderson County, Civ.App., 253 S.W. 835, affirmed, Com.App., 276 S.W. 203, motion overruled 276 S.W. 1119—Galveston, H. & S. A. Ry. Co. v. City of Eagle Pass, Civ.App., 249 S.W. 268, reversed on other grounds, Com.App., 260 S.W. 841—Driscoll v. Dennis, Civ.App., 240 S.W. 1049—Bell v. Gaines, Civ. App., 237 S.W. 346—Canon v. Scott, Civ.App., 230 S.W. 1042, reversed on other grounds Scott & Carmody v. Canon, Com.App., 240 S.W. 804—Irwin v. Jackson, Civ.App., 230 S.W. 522, dismissed for want of jurisdiction—Bomar v. Runge, Civ.App., 225 S.W. 287, error refused—Hines v. Bost, Civ.App., 224 S.W. 698, dismissed for want of jurisdiction—Galveston, H. & S. A. Ry. Co. v. Hartford Fire Ins. Co., Civ.App., 220 S.W. 781, reversed on other grounds Hartford Fire Ins. Co. v. Galveston, H. & S. A. Ry. Co., Com.App., 239 S.W. 919—Varn v. Moeller, Civ.App., 216 S.W. 234—Clark v. Scott, Civ.App., 212 S. W. 728—Cunningham v. Ault, Civ. App., 211 S.W. 477, dismissed for want of jurisdiction—Galveston, H. & S. A. Ry. Co. v. Harris Bros., Civ.App., 211 S.W. 255, error refused—Burnett v. Anderson, Civ. App., 207 S.W. 540—Kenedy Pasture Co. v. State, Civ.App., 196 S. W. 287, affirmed 231 S.W. 683, 111 Tex. 200, certiorari denied Kenedy v. State of Texas, 42 S.Ct. 271, 258 U.S. 617, 67 L.Ed. 793—Nelson v. Butler, Civ.App., 190 S.W. 811, dismissed for want of jurisdiction—International & G. N. Ry. Co. v.

of title,[32.5] affidavits,[32.10] agreements of sale,[33] altered contracts,[34] annuity tables,[34.5] answers to interrogatories,[34.10] bank books,[34.15] bankruptcy schedules,[34.20] bills of sale,[35] book entries or books of account,[36] briefs,[37] catalogues,[37.5] certificates,[38] checks,[39] contracts,[39.5] deeds,[39.10] depositions,[39.15] diagrams,[39.20] drawings or sketches,[39.25] fingerprints,[39.30] invoices,[39.35] judgments, decrees, or or-

Landa & Storey, Civ.App., 183 S.W. 384.
Utah.—Johnson v. Seagull Inv. Co., 237 P. 945, 65 Utah 424—Massachusetts Bonding & Insurance Co. v. Cudahy Packing Co., 211 P. 706, 61 Utah 116.
Vt.—Weinberg v. Roberts, 131 A. 14, 99 Vt. 249—Bennett v. Delphia, 129 A. 234, 98 Vt. 492—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215—Whalley v. Lawrence's Estate, 108 A. 387, 93 Vt. 424.
Va.—Anchor Co. v. Adams, 124 S.E. 438, 139 Va. 388—Honaker Lumber Co. v. Kiser, 113 S.E. 718, 134 Va. 50.
Wash.—Truva v. Goodyear Tire & Rubber Co., 214 P. 818, 124 Wash. 445—Eyers v. Burbank Co., 166 P. 656, 97 Wash. 220.

Matter in bulk or packages and bundles
Miss.—Cannady v. Espey, 93 So.2d 453.

Untranslated exhibits in foreign language
Ky.—Hagedorn v. Reiser, 221 S.W.2d 633, 310 Ky. 657.

32.5 Wash.—Adams v. Mignon, 84 P.2d 1016, 197 Wash. 293.

32.10 Ind.—Heeter v. Hardy, 76 N.E.2d 590, 118 Ind.App. 256.
Minn.—St. Paul Mercury Indemnity Co. v. Lyell, 11 N.W.2d 491, 216 Minn. 7.

33. Md.—Deckelman v. Lake, 131 A. 762, 149 Md. 533.

Conditional sale contract
Cal.—Guillot v. Hagman, 86 P.2d 865, 30 C.A.2d 582.

34. Nev.—Barcellos v. Gompertz, 245 P. 700, 49 Nev. 326.

34.5 N.C.—Hunt v. Wooten, 76 S.E. 2d 326, 238 N.C. 42.

34.10 Ala.—W. M. Smith & Co. v. Harris, 42 So.2d 623, 253 Ala. 78.
Mass.—Diangelo v. United Markets, 64 N.E.2d 619, 319 Mass. 143.

34.15 N.Y.—Waldman v. Wasserman, 79 N.Y.S.2d 46.

34.20 Ill.—Simmons v. Nichols, 5 N.E.2d 109, 287 Ill.App. 635.
Mass.—Kagan v. Levenson, 134 N.E. 2d 415, 334 Mass. 100.

35. Tex.—Shaw v. Porter, Civ.App., 190 S.W.2d 396, refused for want of merit—Counts v. Quinn, Civ. App., 9 S.W.2d 394.
Utah.—Mulliner v. McCornick & Co., Bankers, 257 P. 658, 69 Utah 557.

Book used to refresh memory
Admission of a book used to refresh a witness' memory, where the contents of the book were already before the jury, was harmless error.
R.I.—Joslin v. Rhodes, 136 A. 1, 48 R.I. 123.

36. Colo.—Anderson v. Sterling Lumber & Investment Co., 256 P. 10, 81 Colo. 452.
Ga.—Lumpkin County v. Davis, 195 S.E. 169, 185 Ga. 393.
Mass.—Bendett v. Bendett, 52 N.E. 2d 2, 315 Mass. 59.

37. U.S.—Union Electric Light & Power Co. v. Snyder Estate Co., C.C.A.Mo., 65 F.2d 297.

37.5 Iowa.—Kellogg v. Rhodes, 4 N.W.2d 412, 231 Iowa 1340.

38. Ga.—Caswell v. Vanderbilt, 132 S.E. 123, 35 Ga.App. 34.

Certificate of clerk of court
Tex.—World Oil Co. v. Hicks, Civ. App., 75 S.W.2d 905, certified questions answered 103 S.W.2d 962, 129 Tex. 297.

Certificate of county surveyor
Ind.—Bercot v. Velkoff, 41 N.E.2d 686, 111 Ind.App. 323.

Certificate of incorporation
Md.—De Waters v. Mergler, 39 A.2d 668, 183 Md. 574.

Death certificate
Mass.—Trump v. Burdick, 76 N.E.2d 768, 322 Mass. 253.
N.C.—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106.

39. Colo.—Scofield v. Scofield, 224 P. 230, 75 Colo. 105.
Ga.—Hudgins Transfer Co. v. Law, 29 S.E.2d 107, 70 Ga.App. 659—Mutual Life Ins. Co. of New York v. Childs, 14 S.E.2d 165, 64 Ga.App. 658.
Tex.—Averitt v. Warren, Civ.App., 125 S.W.2d 691.

39.5 Ind.—King v. Winton, 1 N.E.2d 309, 102 Ind.App. 384.
Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142.

39.10 Ark.—Howell v. Baskins, 212 S.W.2d 353, 213 Ark. 665.
Cal.—Ortiz v. Pacific States Properties, 215 P.2d 514, 96 C.A.2d 34.
Conn.—Wambeck v. Lovetri, 107 A. 2d 395, 141 Conn. 558.
Ga.—Hicks v. Hicks, 27 S.E.2d 7, 196 Ga. 541—Anderson v. Black, 13 S.E.2d 650, 191 Ga. 627.
City of Atlanta v. West, 3 S.E. 2d 755, 60 Ga.App. 269.
N.C.—Owens v. Blackwood Lumber Co., 193 S.E. 219, 212 N.C. 133.
Pa.—Campbell v. National-Ben Franklin Fire Ins. Co., 200 A. 701, 132 Pa.Super. 379.
Tenn.—Stockton v. Murray, 157 S.W. 2d 859, 25 Tenn.App. 371.
Tex.—Salazar v. Garcia, Civ.App., 232 S.W.2d 685, error refused—Stephenson v. Ettie, Civ.App., 145 S.W.2d 335, error dismissed, judgment correct.

Improperly attested deed
Ga.—Kinsey v. Avans, 26 S.E.2d 787, 196 Ga. 428.

Partition deed
Tex.—O'Neal v. Terry, Civ.App., 252 S.W.2d 1006, error refused no reversible error.

Security deeds
Ga.—Hicks v. Hicks, 27 S.E.2d 7, 196 Ga. 541—Hobbs v. Houston, 24 S.E.2d 884, 195 Ga. 571—Fountain v. McCallum, 21 S.E.2d 610, 194 Ga. 269—New Winder Lumber Co. v. Guest, 187 S.E. 63, 182 Ga. 859.

Sheriff's deed
Tex.—Tarter v. Frazier, Civ.App., 159 S.W.2d 168, error refused.

Warranty deeds
Ga.—Hobbs v. Houston, 24 S.E.2d 884, 195 Ga. 571.

39.15 Ariz.—Food Jobbers, Inc. v. Ellis, 251 P.2d 651, 75 Ariz. 49.
Ark.—Southern Nat. Ins. Co. v. Williams, 277 S.W.2d 487, 224 Ark. 938.
Cal.—Tierney v. Charles Nelson Co., 64 P.2d 1150, 19 C.A.2d 34.
Tex.—Thompson v. Keene, Civ.App., 281 S.W.2d 167, error refused no reversible error.

Depositions of witnesses not parties
Ohio.—Appel v. Appel, 65 N.E.2d 153, 78 Ohio App. 53.

39.20 R.I.—Hulton v. Phaneuf, 132 A.2d 85.
Tex.—Davis Transport, Inc. v. Bolstad, Civ.App., 295 S.W.2d 941.

39.25 Ark.—Howell v. Baskins, 212 S.W.2d 353, 213 Ark. 665.
Mont.—Gobel v. Rinio, 200 P.2d 700, 122 Mont. 235.
Neb.—Hammond v. Morris, 24 N.W. 2d 633, 147 Neb. 600.
N.D.—Kohler v. Stephens, 24 N.W. 2d 64, 75 N.D. 665.
Or.—Turner v. McCready, 222 P.2d 1010, 190 Or. 28.
R.I.—Segee v. Cowan, 20 A.2d 270, 66 R.I. 445.
Wis.—Dabareiner v. Weisflog, 33 N.W.2d 220, 253 Wis. 23, 12 A.L.R.2d 605.

39.30 Tex.—Mosley v. Harkins, Civ. App., 147 S.W.2d 309.

39.35 Colo.—Aero Enterprises v. Walker, 228 P.2d 811, 123 Colo. 113.
Tex.—Kirkland v. Mission Pipe & Supply Co., Civ.App., 183 S.W.2d 854, error refused.

ders,[39.40] judicial decisions,[40] leases,[40.5] letters of administration,[41] letters or correspondence,[42] letters testamentary,[42.5] lists,[43] log books and charts,[44] maps,[45] memoranda,[45.5] mortality tables,[46] mort-

39.40 Cal.—Newell v. Brawner, 295 P.2d 460, 140 C.A.2d 523—Blume v. MacGregor, 144 P.2d 375, reheard 148 P.2d 656, 64 C.A.2d 244.
Ill.—Ferrell v. Livingston, 101 N.E. 2d 599, 344 Ill.App. 488.
Okl.—Eakers v. Clopton, 184 P.2d 247, 199 Okl. 99, 173 A.L.R. 309.
Tenn.—Monday v. Millsaps, 264 S. W.2d 6, 37 Tenn.App. 371.
Tex.—Stout v. Oliveira, Civ.App., 153 S.W.2d 590, error refused.

Divorce decree

Mass.—Beers v. O'Brien, 55 N.E.2d 931, 316 Mass. 532.

40. Idaho.—Duryea v. Duryea, 269 P. 987, 46 Idaho 512.

40.5 Ga.—Barker v. Life & Cas. Ins. Co. of Tenn., 50 S.E.2d 375, 78 Ga. App. 262.

41. Conn.—Reilly v. Antonio Pepe Co., 143 A. 568, 108 Conn. 436.

42. U.S.—Chevrolet Motor Co. v. Gladding, C.C.A.Md., 42 F.2d 440, certiorari denied 51 S.Ct. 78, 282 U.S. 872, 75 L.Ed. 770.
Ark.—Helena Oil & Gas Co. v. Goodkin, 110 S.W.2d 698, 195 Ark. 7.
Cal.—Stromerson v. Averill, 133 P.2d 617, reheard 141 P.2d 732, 22 C.2d 808—Peccolo v. City of Los Angeles, 66 P.2d 651, 8 C.2d 532.
Willson v. Turner Resilient Floors, 201 P.2d 406, 89 C.A.2d 589—Emigh v. Wood, 253 P. 947, 81 C.A. 347.
Conn.—Delano v. Armstrong Rubber Co., 73 A.2d 828, 136 Conn. 663, certiorari denied 71 S.Ct. 28, 340 U. S. 840, 95 L.Ed. 616.
Del.—Canadian Industrial Alcohol Co. v. Nelson, 188 A. 39, 8 W.W. Harr. 26.
Ga.—Faw v. American Appraisal Co., 78 S.E.2d 846, 89 Ga.App. 62—Pearl Assur. Co. v. Nichols, 37 S.E.2d 227, 73 Ga.App. 452—Arkansas Fuel Oil Co. v. Andrews Point Co., 13 S.E.2d 738, 64 Ga.App. 595.
Ill.—See Babcock v. Regelin, 198 Ill. App. 432.
Ind.—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163.
Shelby Mfg. Co. v. Harris, 44 N. E.2d 315, 112 Ind.App. 627—Talge Mahogany Co. v. New Albany Veneering Co., 147 N.E. 781, 84 Ind. App. 93.
Iowa.—Weyer v. Vollbrecht, 224 N.W. 568, 208 Iowa 914.
Kan.—Priddy-Maer Elevator Co. v. Wenzel, 243 P. 1016, 120 Kan. 423.
Ky.—Brooks v. Tipton, 183 S.W.2d 496, 298 Ky. 490.
Mass.—Bouchard v. Bouchard, 48 N. E.2d 161, 131 Mass. 531.
Mich.—Carey v. Lauhoff, 3 N.W.2d 67, 301 Mich. 168.
Minn.—Olson v. Myrland, 264 N.W. 129, 195 Minn. 626.
Mo.—Orr v. Shell Oil Co., 177 S.W. 2d 608, 352 Mo. 288.
Mont.—Thompson v. Steinkamp, 187 P.2d 1018, 120 Mont. 475.
N.Y.—McKenna v. Williamsburgh Sav. Bank, 16 N.Y.S.2d 206, 258 App.Div. 894, reargument denied In re Lamerdin's Estate, 17 N.Y.S. 2d 480, 258 App.Div. 907.
N.C.—Sisson v. Royster, 45 S.E.2d 351, 228 N.C. 298—Blaylock v. Satterfield, 14 S.E.2d 817, 219 N.C. 771—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106—Porter & Peck v. West Const. Co., 142 S. E. 27, 195 N.C. 328.
N.D.—Lander v. Hartson, 47 N.W.2d 211, 77 N.D. 923.
Ohio.—Lengyel v. Brandmiller, 40 N. E.2d 909, 139 Ohio St. 478.
Larimore v. Brown, App., 57 N. E.2d 313—Savin v. Gholson, 1 N.E. 2d 646, 51 Ohio App. 443.
Okl.—Thomas v. State ex rel. Com'rs of Land Office, 172 P.2d 973, 197 Okl. 450—Gilliland v. Snedden, 159 P.2d 734, 195 Okl. 601—Federal Intermediate Credit Bank of Wichita, Kan. v. Cosby, 272 P. 436, 134 Okl. 1.
Or.—Enco, Inc. v. F. C. Russell Co., 311 P.2d 737.
Pa.—Berry v. Hemel Motors, 56 A.2d 374, 162 Pa.Super. 52.
S.D.—Smith v. Weber, 16 N.W.2d 537, 70 S.D. 232.
Tex.—Hackney Mfg. Co. v. Celum, Com.App., 221 S.W. 577.
Kurtz v. Robinson, Civ.App., 279 S.W.2d 949, error refused no reversible error—Browning v. Nesting, Civ.App., 219 S.W.2d 712, error refused no reversible error—Johnson Aircrafts v. Wilborn, Civ. App., 190 S.W.2d 426, refused for want of merit—American Nat. Ins. Co. v. Ingle, Civ.App., 129 S.W.2d 426, affirmed 152 S.W.2d 1098, 135 A.L.R. 1325, 137 Tex. 189—American Bankers Life Ins. Co. v. Barlow, Civ.App., 127 S.W.2d 1026, error dismissed, judgment correct—Thomas v. Murphy, Civ.App., 91 S. W.2d 810.
Utah.—Baker v. Wycoff, 79 P.2d 77, 95 Utah 199.
Va.—Edgerton v. Norfolk Southern Bus Corp., 47 S.E.2d 409, 187 Va. 642.

Letter dated after filing of suit

W.Va.—Rubenstein v. Metropolitan Life Ins. Co., 190 S.E. 531, 118 W. Va. 367.

42.5 Mo.—Ferril v. Kansas City Life Ins. Co., 137 S.W.2d 577, 345 Mo. 777.

43. Cal.—Holmes v. Southern Cal. Edison Co., 177 P.2d 32, 78 C.A.2d 43—Armstrong v. Kubo & Co., 263 P. 365, 88 C.A. 331.

44. U.S.—The Pescawha, D.C.Or., 45 F.2d 221.

45. Ark.—Howell v. Baskins, 212 S. W.2d 353, 213 Ark. 665.
Cal.—Balasco v. Chick, 192 P.2d 76, 84 C.A.2d 802.
Ga.—Central of Georgia Ry. Co. v. Standard Fuel Supply Co., 86 S.E. 228, 144 Ga. 92.
Parker v. Smith, 18 S.E.2d 559, 66 Ga.App. 567.
Ky.—Short Way Lines v. Sutton's Adm'r, 164 S.W.2d 809, 291 Ky. 541—Rieke v. Kentucky Utilities Co., 22 S.W.2d 98, 231 Ky. 700.
Mich.—Tanis v. Eding, 264 N.W. 375, 274 Mich. 288.
Neb.—Cover v. Platte Val. Public Power and Irr. Dist., 75 N.W.2d 661, 162 Neb. 146.
N.Y.—Kane v. Cayuga County, 2 N. Y.S.2d 812, 254 App.Div. 613.
Ohio.—Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172.
Or.—Hanson v. Schrick, 85 P.2d 355, 160 Or. 397.
Tex.—Younger Bros. v. Ross, Civ. App., 151 S.W.2d 621, error dismissed.

Failure to make stereotyped proffer

Where traced copy of map of lands involved in boundary dispute was presented in open court and identified as correctly depicting property, and was noted as evidence and referred to by witnesses, and complainant testified that original map and copy correctly portrayed properties involved, fact that defendant did not make stereotyped proffer of introducing map in evidence could not result in prejudicial error, since tenor of its proffer was immaterial.
Ala.—Whitlow v. Moore, 21 So.2d 253, 264 Ala. 472.

45.5 N.J.—Chmiel v. Yatsko, 13 A.2d 219, 124 N.J.Law 508.

46. Ill.—Bunch v. Padva, 76 N.E. 2d 544, 333 Ill.App. 24.
Mo.—Sandifer v. Thompson, 280 S. W.2d 412.
N.M.—Rheinboldt v. Fuston, 78 P. 361, 34 N.M. 146.
Ohio.—Haase v. Ryan, App., 136 N.E. 2d 406.
Pa.—McCarthy v. Ference, 58 A.2d 49, 358 Pa. 485.

Held prejudicial

N.Y.—Dibble v. Whipple, 22 N.E.2d 358, 281 N.Y. 247.

gages,[46.5] newspapers,[46.10] notes,[46.15] petitions,[47] pictures or photographs,[48] plans,[49] plats,[49.5] pleadings or motion papers,[50] recapitulations,[51] receipts,[51.5] records,[52] releases or discharges of a

46.5 R.I.—Knight v. Wilcox, 197 A. 446, 60 R.I. 165.

46.10 Mass.—Pihl v. Morris, 66 N.E. 2d 804, 319 Mass. 577.

46.15 Ga.—New Winder Lumber Co. v. Guest, 187 S.E. 63, 182 Ga. 859. Smith v. Counts, 7 S.E.2d 418, 62 Ga.App. 11.

Okl.—Boswell v. Shawnee Production Credit Ass'n, 77 P.2d 740, 182 Okl. 302.

47. Ga.—Griffith v. City of Hapeville, 185 S.E. 522, 182 Ga. 333.

Ky.—Richmond v. Frazier, 44 S.W.2d 530, 241 Ky. 533.

Mo.—State ex rel. Renfrow v. Service Cushion Tube Co., 291 S.W. 106, 316 Mo. 640.
Johnston v. City of St. Louis, App., 138 S.W.2d 666.

48. Ark.—Pinkerton v. Davis, 207 S. W.2d 742, 212 Ark. 796.

Cal.—Hamilton v. Abadjian, 179 P. 2d 804, 30 C.2d 49—Westberg v. Wilde, 94 P.2d 590, 14 C.2d 360.
Douglass v. Douglass, 279 P.2d 556, 130 C.A.2d 609—Barone v. Jones, 176 P.2d 392, 77 C.A.2d 656, rehearing denied and modified on other grounds 177 P.2d 30, 77 C.A. 2d 656—Bateman v. Doughnut Corp. of America, 147 P.2d 404, 63 C.A.2d 711.

Colo.—Riss & Co. v. Anderson, 114 P. 2d 278, 108 Colo. 78—Ryan Gulch Reservoir Co. v. Swartz, 263 P. 728, 83 Colo. 225.

Fla.—Nelson v. McMillan, 10 So.2d 565, 151 Fla. 847—Atlantic Coast Line Co. v. Saffold, 178 So. 288, 130 Fla. 598.

Idaho.—Hooton v. City of Burley, 219 P.2d 651, 70 Idaho 369.

Ill.—Green v. Keenan, 134 N.E.2d 115, 10 Ill.App.2d 53—Bishop v. Iden, 115 N.E.2d 906, 351 Ill.App. 568—Garshon v. Aaron, 71 N.E.2d 799, 330 Ill.App. 540—Johnson v. McKnight, 39 N.E.2d 700, 313 Ill.App. 260—Powell v. Myers Sherman Co., 32 N.E.2d 663, 309 Ill.App. 12.

Iowa.—Coonley v. Lowden, 12 N.W. 2d 870, 234 Iowa 731—Westman v. Bingham, 300 N.W. 525, 230 Iowa 1298.

Ky.—Short Way Lines v. Sutton's Adm'r, 164 S.W.2d 809, 291 Ky. 541.

Md.—State, for Use of Emerson, v. Poe, 190 A. 231, 171 Md. 584.

Mich.—Hoag v. Hyzy, 63 N.W.2d 632, 339 Mich. 163.

Miss.—Koestler v. Burton, 41 So.2d 362, 207 Miss. 40—Maxedon v. City of Corinth, 124 So. 795, 155 Miss. 588.

Mo.—Davis v. Illinois Terminal R. Co., 291 S.W.2d 891—Boulos v. Kansas City Public Service Co., 223 S.W.2d 446, 359 Mo. 768.
Taylor v. Alton R. Co., App., 148 S.W.2d 806—Scott v. City of Marshall, 14 S.W.2d 694, 223 Mo.App. 596.

Mont.—Broberg v. Northern Pac. Ry. Co., 182 P.2d 851, 120 Mont. 280.

Neb.—Costello v. Hild, 40 N.W.2d 228, 152 Neb. 1—Hammond v. Morris, 24 N.W.2d 633, 147 Neb. 600.

N.J.—Lawrence v. Tandy & Allen, 100 A.2d 891, 14 N.J. 1.
Wadell v. Public Service Coordinated Transport, 65 A.2d 766, 3 N. J.Super. 132.

N.Y.—Delmonte v. La Fountain, 298 N.Y.S. 902, 252 App.Div. 806.

N.C.—Steelman v. Benfield, 46 S.E.2d 829, 228 N.C. 651.

Ohio.—Bailey v. Greeley General Warehouse Co., App., 83 N.E.2d 244.

Okl.—Montgomery Ward & Co. v. Curtis, 188 P.2d 199, 199 Okl. 525.

Or.—Mason v. Allen, 195 P.2d 717, 183 Or. 638.

Pa.—West v. Morgan, Com.Pl., 52 Dauph.Co. 361, affirmed 27 A.2d 46, 345 Pa. 61.

R.I.—Owens v. Hagenbeck-Wallace Shows Co., 192 A. 158, 58 R.I. 162, 112 A.L.R. 113, reargument denied 192 A. 461, 58 R.I. 268, 112 A.L.R. 113.

Tenn.—Gordon's Transports, Inc. v. Bailey, App., 294 S.W.2d 313.

Tex.—Roosth & Genecov Production Co. v. White, Civ.App., 281 S.W.2d 333, error refused no reversible error—Lee v. Glad, Civ.App., 267 S. W.2d 230, error dismissed—Driver v. Worth Const. Co., Civ.App., 264 S.W.2d 174, reversed on other grounds 273 S.W.2d 603, 154 Tex. 66—Fort Worth & D. C. Ry. Co. v. Kiel, Civ.App., 195 S.W.2d 405, error refused no reversible error—Mosley v. Harkins, Civ.App., 147 S.W.2d 309.

Wash.—Lamb v. Mason, 176 P.2d 342, 26 Wash.2d 879—Maciejczak v. Bartell, 60 P.2d 31, 187 Wash. 113.

Wis.—Heiden v. City of Milwaukee, 275 N.W. 922, 226 Wis. 92, 114 A. L.R. 420.

X-ray photograph

N.Y.—Torelli v. Eastman Kodak Co., 23 N.Y.S.2d 895, 260 App.Div. 553.

Okl.—Mid-Continent Coaches Inc. v. Guthrie, 257 P.2d 829, 208 Okl. 533.

Photographic enlargement of page of atlas

N.J.—Borough of Stockton, Hunterdon County, v. Frabizio, 31 A.2d 43, 130 N.J.Law 12.

49. Me.—Simoneau v. Inhabitants of Livermore Falls, 159 A. 853, 131 Me. 165.

49.5 Miss.—Jefferson v. Pinson, 69 So.2d 234, 219 Miss. 427.

Tex.—Jackson-Strickland Transp. Co. v. Seyler, Civ.App., 123 S.W.2d 928, error dismissed by agreement.

50. U.S.—Fidelity & Casualty Co. of New York v. Brightman, C.C.A.Mo., 53 F.2d 161.

Ind.—Deep Vein Coal Co. v. Dowdle, 66 N.E.2d 598, 224 Ind. 244—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163.

Mo.—Ingram v. Prairie Block Coal Co., 5 S.W.2d 413, 319 Mo. 644.
Johnston v. City of St. Louis, App., 138 S.W.2d 666—Plater v. W. C. Mullins Const. Co., 17 S.W.2d 658, 223 Mo.App. 650.

N.Y.—Service Fire Ins. Co. of N. Y. v. Lederman, 109 N.Y.S.2d 812, 279 App.Div. 319, affirmed 107 N.E.2d 588, 304 N.Y. 658.

Tex.—Peters v. Brookshire, Civ.App., 195 S.W.2d 181, error refused no reversible error.

51. Ala.—Denson v. Kirkpatrick Drilling Co., 144 So. 86, 225 Ala. 473.

51.5 Tex.—McDonald v. Samford, Civ.App., 116 S.W.2d 1092.

52. U.S.—Ocean Accident & Guarantee Corporation v. Schachner, C. C.A.Ill., 70 F.2d 28—Freeman-Sweet Co. v. Luminous Unit Co., C.C.A.Ill., 264 F. 107, certiorari denied 40 S.Ct. 482, 253 U.S. 486, 64 L.Ed. 1025.

Ala.—Patton v. Russell, 58 So.2d 593, 257 Ala. 319.

Idaho.—Picciano v. Miller, 137 P.2d 788, 64 Idaho 759.

Iowa.—Eaves v. City of Ottumwa, 38 N.W.2d 761, 240 Iowa 956, 11 A.L. R.2d 1164.

Mass.—Jones & Polson v. O'Toole, 199 N.E. 925, 293 Mass. 399.

Mo.—Zook v. City of Louisiana, App., 12 S.W.2d 518—Knickerbocker v. Athletic Tea Co., App., 285 S.W. 797.

Ohio.—DeHart v. Ohio Fuel Gas Co., 85 N.E.2d 586, 84 Ohio App. 62.

Utah.—Mulliner v. McCornick & Co., Bankers, 257 P. 658, 69 Utah 557.

Vt.—Houghton v. Grimes, 151 A. 642, 103 Vt. 54.

Court record

Ala.—Price v. McConnell, 36 So.2d 80, 250 Ala. 686.

Cal.—Singh v. Banes, 277 P.2d 89, 129 C.A.2d 395.

Hospital record

N.Y.—Howard v. City of New York, 113 N.Y.S.2d 563, 280 App.Div. 809, reargument and appeal denied 115 N.Y.S.2d 304, 280 App.Div. 894.

Or.—Gallagher v. Portland Traction Co., 182 P.2d 354, 181 Or. 385.

Records of state industrial commission

Ill.—Feeley v. McAuliffe, 80 N.E.2d 373, 335 Ill.App. 99.

right, claim, or privilege,[52.5] reports,[53] telegrams,[54] transcripts,[55] and wills.[55.5]

Other applications of the general rule are to evidence violative of the rules against the use of parol evidence[56] and to self-serving declarations.[56.5]

Where it appears from the record that the merits

Warehouse receiving record
Idaho.—Union Seed Co. of Burley v. Savage, 283 P.2d 918, 76 Idaho 432.

52.5 Mass.—Zarum v. Brass Mill Materials Corp., 134 N.E.2d 141, 334 Mass. 81.
N.J.—Cauco v. Galante, 84 A.2d 712, 8 N.J. 233.

53. Minn.—Woodrow v. Chicago, M., St. P. & P. R. Co., 60 N.W.2d 49, 239 Minn. 530, followed in 61 N.W.2d 240, 240 Minn. 562, certiorari denied Chicago, M., St. P. & P. R. Co. v. Woodrow, 74 S.Ct. 630, 347 U.S. 935, 98 L.Ed. 1085—Hart Publications v. Kaplan, 37 N.W.2d 814, 228 Minn. 512.
N.J.—Cox v. Wall Tp., 120 A.2d 779, 39 N.J.Super. 243.
Vt.—Residents of Royalton v. Central Vermont Ry. Co., 138 A. 782, 100 Vt. 443.

Coroner's report
N.Y.—Petrozak v. State, 69 N.Y.S.2d 809, 189 Misc. 809.

Deputy sheriff's report
Ariz.—Bean v. Gorby, 292 P.2d 199, 80 Ariz. 25.

Police report
Ga.—Swanson v. Moore, 31 S.E.2d 463, 71 Ga.App. 573.
Md.—Cogswell v. Frazier, 39 A.2d 815, 183 Md. 654.

54. Cal.—Gross v. Maytex Knitting Mills of Cal., 254 P.2d 163, 116 C.A.2d 705.
Ky.—McLellan v. Threlkeld, 129 S.W.2d 977, 279 Ky. 114.
Md.—Pennsylvania R. Co. v. Quality Products, 189 A. 200, 171 Md. 291.
Mass.—Pataskas v. Judeikis, 98 N.E.2d 265, 327 Mass. 258.
Miss.—McCain v. Cochran, 120 So. 823, 153 Miss. 237.
Mont.—Ahlquist v. Pinski, 185 P.2d 499, 120 Mont. 355.
Ohio.—Larimore v. Brown, App., 57 N.E.2d 313.

55. Ala.—Fidelity & Deposit Co. of Maryland v. Torian, 127 So. 829, 221 Ala. 131.

55.5 Cal.—Logan v. Forster, 250 P.2d 730, 114 C.A.2d 587—Walsh v. Parker, 106 P.2d 925, 41 C.A.2d 435.
Mass.—Stevens v. Gross, 117 N.E.2d 159, 331 Mass. 760.
Ohio.—Gorey v. Gregg, 63 N.E.2d 680, 78 Ohio App. 367.
Vt.—In re Pirie's Estate, 71 A.2d 245, 116 Vt. 159.

Unauthenticated will
Mo.—Happy v. Cole County Bank, 93 S.W.2d 870, 338 Mo. 1025.

56. U.S.—Piel Const. Co. v. Commonwealth of Pennsylvania, to Use of Hendricks, C.C.A.Pa., 35 F.2d 265.
East Harlan Coal Co. v. R. E. Hamilton & Sons Co., C.C.A.Ky., 277 F. 337.
Ala.—Foshee v. Kay, 72 So. 391, 197 Ala. 157.
Ariz.—Scoville v. Vail Inv. Co., 103 P.2d 662, 55 Ariz. 486, followed in Vail v. Scoville, 103 P.2d 668, 55 Ariz. 502, and Vail Inv. Co. v. Scoville, 103 P.2d 669, 55 Ariz. 501.
Ark.—Harris & White v. Stone, 207 S.W. 443, 137 Ark. 23.
Cal.—Jacoby v. Wolff, 247 P. 195, 198 C. 667.
Lewis & Queen v. S. Edmondson & Sons, 248 P.2d 973, 113 C.A.2d 705—Taylor v. Odell, 122 P.2d 919, 50 C.A.2d 115—Abney v. Belmont Country Club Properties, 279 P. 829, 100 C.A. 12.
Ga.—Hale v. Hale, 33 S.E.2d 441, 199 Ga. 150.
Rogers Lumber Co. v. Smith, 86 S.E.2d 640, 91 Ga.App. 632—N. C. Foster Lumber Co. v. Sykes, 166 S.E. 61, 45 Ga.App. 826.
Ind.—Unger v. McManus, 130 N.E. 146, 75 Ind.App. 595.
Iowa.—Hruska v. E. F. Rate Estate, 187 N.W. 509, 193 Iowa 588—Compton v. Hites, 169 N.W. 401, 184 Iowa 1074—Sheldon v. Chicago, B. & Q. R. Co., 169 N.W. 189, 184 Iowa 865.
Ky.—Barrowman v. Charles, 28 S.W. 2d 780, 234 Ky. 508.
Md.—Gosman Ginger Ale Co. of Baltimore City v. Keystone Bottle Mfg. Co., 106 A. 747, 134 Md. 360.
Mich.—Cattell v. Evans, 4 N.W.2d 67, 301 Mich. 708.
Mo.—State ex rel. Baepler v. State Board of Health of Missouri, 52 S.W.2d 743, 330 Mo. 1200—City of Puxico v. Harbin, 252 S.W. 393.
Hoelscher v. Pate, App., 79 S.W. 2d 776.
Mont.—Atley v. Streit, 263 P. 967, 81 Mont. 382.
N.C.—Farmers' Banking & Trust Co. v. Tarboro Leaf Tobacco Co., 124 S.E. 158, 188 N.C. 177.
Okl.—Atlas Life Ins. Co. v. Spitler, 63 P.2d 82, 178 Okl. 537—Eldridge v. Vance, 280 P. 570, 138 Okl. 201.
Or.—Woodard v. Willamette Valley Irrigated Land Co., 173 P. 262, 89 Or. 10—West v. Hedges, 171 P. 766, 88 Or. 158.
Tex.—Schwarte v. Bunting, Civ.App., 210 S.W.2d 655, error refused no reversible error—Shell Pipe Line Corporation v. Harris, Civ.App., 68 S.W.2d 236—Walker v. Irby, Civ. App., 229 S.W. 331, reversed on other grounds, Com.App., 238 S.W. 884—Jackson v. Pure Oil Operating Co., Civ.App., 217 S.W. 959.
Utah.—Milford State Bank v. West Field Canal & Irr. Co., 162 P.2d 101, 108 Utah 528.
Vt.—Firestone Tire & Rubber Co. v. Hart, 158 A. 90, 104 Vt. 100.
Va.—Virginia-Lincoln Furniture Corporation v. Southern Factories & Stores Corporation, 174 S.E. 848, 162 Va. 767.
Wash.—Donnelly v. National Bank of Washington, 179 P.2d 333, 27 Wash.2d 622—Petersen v. Graham, 110 P.2d 149, 7 Wash.2d 464.

Explanation of writings
Ariz.—City of Tucson v. Sims, 4 P. 2d 673, 39 Ariz. 168.
Cal.—Newport v. Hatton, 279 P. 134, 207 C. 515.
Tex.—R. W. Wier Lumber Co. v. Eaves, Civ.App., 291 S.W. 337, reversed on other grounds, Com.App., 296 S.W. 481.

Identifying writing in evidence
U.S.—Bickley v. U. S., C.C.A.La., 24 F.2d 481.

Varying terms of written instrument
Iowa.—Jennings v. McKeen, 65 N.W. 2d 207, 245 Iowa 1206.
Miss.—Virginia-Carolina Chemical Co. v. Ruffin, 88 So. 500, 126 Miss. 80.
Okl.—Woods v. Davis, 7 P.2d 905, 155 Okl. 6.

Contents of lost deed
Tex.—Dabney v. Keene, Civ.App., 195 S.W.2d 682, error refused no reversible error.

Warranty
Proving by parol an express warranty which was implied from express terms of contract of sale was not prejudicial.
Mo.—Farmers Bank of Trenton v. Ray & Son, App., 167 S.W.2d 963.

Absence of accounting
Admission of parol evidence which was significant only in the event of an accounting was not prejudicial where no accounting was had.
Cal.—Mealy v. Sunland Refining Corp., 216 P.2d 59, 96 C.A.2d 700.

56.5 Cal.—Castro v. Giacomazzi Bros., 206 P.2d 688, 92 C.A.2d 39.
Ill.—Hunsley v. Wurl, 93 N.E.2d 151, 341 Ill.App. 247.
Miss.—Sample v. Romine, 8 So.2d 257, 193 Miss. 706, suggestion of error overruled 9 So.2d 643, 193 Miss. 706, corrected 10 So.2d 346, 193 Miss. 706.
Ohio.—Neal v. Schmidt, App., 39 N E.2d 859.
Pa.—McAllister v. Pennsylvania R. Co., 182 A. 738, 121 Pa.Super. 131.
Va.—Spicer v. Spicer, 63 S.E.2d 773, 192 Va. 105.

of the cause have been fairly tried in the court below, rulings on the admission of evidence, if erroneous, are harmless.[56.10] Where plaintiff fails to sustain the burden that is on him in the case, no occasion arises for defendant to introduce evidence, so that any error in the admission, for defendant, of testimony from an incompetent witness is not prejudicial.[56.15] No prejudice can result from the reception in evidence of a writing the contents of which have been shown by testimony previously given.[56.20]

b. When Prejudicial

Error in admitting evidence apparently affecting the jury in reaching a verdict, or affecting the result or outcome of the trial, is prejudicial and reversible.

Where, during the trial of a cause, evidence that is not germane to the issues involved creeps into the record, it becomes the duty of an appellate court to determine whether the error is prejudicial to any of the parties involved.[56.50] It has been said to be well settled that the admission of incompetent evidence is prejudicial error.[56.55]

Error in the admission of evidence which apparently, or probably, affected or influenced the jury in their verdict, or affected the result or outcome of the trial, is prejudicial and is ground for reversal.[57]

56.10 Ind.—Walter v. Department of Financial Institutions of Indiana, 22 N.E.2d 891, 107 Ind.App. 29.

56.15 Okl.—Relf v. Thompson, 107 P.2d 536, 188 Okl. 209.

56.20 Minn.—Rice v. New York Life Ins. Co., 290 N.W. 798, 207 Minn. 268.

56.50 Mich.—Marian v. Chemical Products, Inc., 75 N.W.2d 55, 344 Mich. 551.

56.55 Ind.—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind. App. 121.

57. U.S.—Northern Assur. Co. v. Del Moral, C.C.A.Puerto Rico, 300 F. 513—Western Union Telegraph Co. v. Hall, C.C.A.Md., 287 F. 297—Brabham v. Baltimore & O. R. Co., W.Va., 220 F. 35, 136 C.C.A. 117, L. R.A.1915E 1201.

Ala.—Life & Cas. Ins. Co. of Tenn. v. Garrett, 35 So.2d 109, 250 Ala. 521—Nelson v. Lee, 32 So.2d 22, 249 Ala. 549—Loeb v. Webster, 104 So. 25, 213 Ala. 99—Coker v. Coker, 96 So. 201, 209 Ala. 295—Churchill v. Walling, 88 So. 582, 205 Ala. 509—Alabama Great Southern Ry. v. Foley, 70 So. 726, 195 Ala. 391—Steagall-Cheairs Fertilizer Co. v. Kennedy, 68 So. 862, 192 Ala. 548—Watson v. Adams, 65 So. 528, 187 Ala. 490, Ann.Cas.1916E 565.

Sugar Valley Land Co. v. Johnson, 85 So. 871, 17 Ala.App. 409—Dothan Grocery Co. v. White Bros., 69 So. 992, 14 Ala.App. 405.

Ariz.—Silver King of Arizona Mining Co. v. Kendall, 201 P. 102, 23 Ariz. 39.

Ark.—Davison v. Harris, 265 S.W. 67, 165 Ark. 518—Steed v. Henry, 180 S.W. 508, 120 Ark. 583—Merrimac Mfg. Co. v. Bibb, 178 S.W. 403, 119 Ark. 443—St. Louis, I. M. & S. Ry. Co. v. Enlow, 171 S.W. 912, 115 Ark. 584.

Cal.—De Freitas v. Town of Suisun, 149 P. 553, 170 C. 263.

Palladine v. Imperial Valley Farm Lands Ass'n, 225 P. 291, 65 C. A. 727.

Conn.—Richmond v. City of Norwich, 115 A. 11, 96 Conn. 582—St. Martin v. New York, N. H. & H. R. Co., 94 A. 279, 89 Conn. 405, L.R.A. 1916D 1035.

D.C.—Phillips & Sager v. Kern, 271 F. 547, 50 App.D.C. 317.

Fla.—Seaboard Air Line R. Co. v. Ford, 92 So.2d 160.

Ga.—McGriff v. McGriff, 115 S.E. 21, 154 Ga. 560—City of Dublin v. Ogburn, 83 S.E. 939, 142 Ga. 840—Central of Georgia Ry. Co. v. Prior, 83 S.E. 117, 142 Ga. 536—Central of Georgia Ry. Co. v. Stephens, 81 S.E. 900, 141 Ga. 645.

Keebler v. Willard, 86 S.E.2d 379, 91 Ga.App. 551.

Idaho.—Abercrombie v. Stoddard, 228 P. 232, 39 Idaho 146.

Ill.—Moore v. Bloomington, D. & C. R. Co., 128 N.E. 721, 295 Ill. 63—Fellows-Kimbrough v. Chicago City Ry. Co., 111 N.E. 499, 272 Ill. 71.

Paisley v. American Zinc Co. of Illinois, 235 Ill.App. 22—O'Connor v. Kennedy, 186 Ill.App. 277—Obermeyer v. Chicago City Ry. Co., 185 Ill.App. 198—Kendall v. Chicago Rys. Co., 185 Ill.App. 145. See Hurst v. Madison Coal Corp., 201 Ill.App. 205—Butler v. National Live Stock Ins. Co., 200 Ill.App. 280—Reid v. Lingle, 195 Ill.App. 240—DeBeauviere v. Chicago School of Physical Education & Expression, 194 Ill.App. 296.

Ind.—Kreager v. Kreager, 135 N.E. 660, 192 Ind. 242—Cincinnati, I. & W. R. Co. v. Little, 131 N.E. 762, 190 Ind. 662.

Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121—Indiana Union Traction Co. v. Hiatt, 114 N.E. 478, 65 Ind.App. 233, rehearing denied 115 N.E. 101, 65 Ind.App. 233.

Iowa.—In re Cooper's Estate, 194 N. W. 218, 196 Iowa 116—Turkington v. Chicago, R. I. & P. Ry. Co., 194 N.W. 75, 196 Iowa 304—Roberts v. Morse, 181 N.W. 678, 190 Iowa 1344—Lavelleur v. Nugent, 172 N. W. 197, 186 Iowa 234—Carter v. Marshall Oil Co., 170 N.W. 798, 185 Iowa 416—Cammack & Son v. Weimer, 162 N.W. 586, 181 Iowa 1—Hall v. City of Shenandoah, 149 N.W. 831, 167 Iowa 735.

Kan.—Hanks v. Yellow Cab & Baggage Co., 209 P. 977, 112 Kan. 92—Schroth v. Bardrick, 186 P. 749, 106 Kan. 154.

Ky.—Sandy Valley & E. Ry. Co. v. Hughes, 205 S.W. 607, 181 Ky. 558—Commonwealth Life Ins. Co. v. Thornton, 202 S.W. 887, 180 Ky. 472—Louisville & N. R. Co. v. Henry, 180 S.W. 74, 167 Ky. 151—Louisville & N. R. Co. v. Williams, 176 S.W. 1186, 165 Ky. 386, L.R.A.1915E 613—Waddle v. Wilson, 175 S.W. 382, 164 Ky. 228—Louisville Ry. Co. v. Kritzky, 172 S.W. 1051, 162 Ky. 652.

Me.—Varney v. McCluskey, 95 A. 888, 114 Me. 205.

Md.—Mutual Fire Ins. Co. of Montgomery County v. Owen, 129 A. 214, 148 Md. 257—Murrell v. Culver, 118 A. 803, 141 Md. 349—Culver v. Nichols, 117 A. 873, 140 Md. 448.

Mass.—Blodgett v. Springfield St. Ry. Co., 158 N.E. 660, 261 Mass. 333—Johnson v. City of Lowell, 134 N.E. 627, 240 Mass. 546—F. W. Stock & Sons v. Snell, 116 N.E. 263, 226 Mass. 499—Pickard v. Clancy, 113 N.E. 838, 225 Mass. 89—Maloney v. Philpot, 107 N.E. 369, 219 Mass. 480.

Mich.—Jonescu v. Orlich, 175 N.W. 174, 208 Mich. 89—Township School Dist. of Wakefield Tp. v. MacRae, 165 N.W. 618, 198 Mich. 693—Stevens v. Stevens, 148 N.W. 229, 181 Mich. 449.

Minn.—Independent School Dist. No. 35, St. Louis County v. A. Hedenberg & Co., 7 N.W.2d 511, 214 Minn. 82.

Miss.—Harrison v. Gatewood, 51 So 2d 59, 211 Miss. 121.

Mo.—Wilborn v. Desloge Consol. Lead Co., App., 268 S.W. 655—Sinclair v. Missouri, K. & T. Ry. Co., App., 253 S.W. 380—Clark v. Kansas City Light & Power Co., App., 223 S.W. 984—Chavaux v. Brewer, App., 223 S.W. 751—McCall v.

Atchley, App., 194 S.W. 714—Hecke v. Dunham, App., 192 S.W. 120—Morgan v. City of Kirksville, App., 179 S.W. 755—Lauff v. J. Kennard & Sons Carpet Co., 171 S.W. 986, 186 Mo.App. 123.

Mont.—Frost v. J. B. Long & Co., 228 P. 75, 71 Mont. 141—Hillman v. Luzon Café Co., 142 P. 641, 49 Mont. 180.

Neb.—Fries v. Goldsby, 80 N.W.2d 171, 163 Neb. 424—Application of Burt County Public Power Dist., 77 N.W.2d 773, 163 Neb. 1—Higgins v. Loup River Public Power Dist., 68 N.W.2d 170, 159 Neb. 549—State v. Cheyenne County, 60 N.W.2d 593, 157 Neb. 533—Borden v. General Ins. Co. of America, 59 N.W.2d 141, 157 Neb. 98—Pope v. Tapelt, 50 N.W.2d 352, 155 Neb. 10.

Nev.—Peterson v. Pittsburg Silver Peak Gold Mining Co., 140 P. 519, 37 Nev. 117.

N.H.—Beers v. Davidson, 125 A. 260, 81 N.H. 326—Simpson v. Gilbert, 119 A. 798, 80 N.H. 537.

N.J.—Kelly v. Erie R. Co., 92 A. 89, 86 N.J.Law 379.

N.Y.—Gubelman v. Ands Koch, Inc., 138 N.E. 81, 234 N.Y. 425—Bishop v. New York Times Co., 135 N.E. 845, 233 N.Y. 446—Pneumatic Signal Co. v. Texas & P. Ry. Co., 110 N.E. 771, 216 N.Y. 374.

Smith v. Cohen, 279 N.Y.S. 549, 244 App.Div. 761, followed in 279 N.Y.S. 550, 244 App.Div. 762—Braxton v. Mendelson, 179 N.Y.S. 845, 190 App.Div. 278—Senner & Kaplan Co. v. Gera Mills, 173 N.Y.S. 265, 185 App.Div. 562—Costello v. Buffalo General Electric Co., 170 N.Y.S. 1006, 183 App.Div. 48—Mischner v. Thalheim, 170 N.Y.S. 758, 184 App.Div. 883—Murphy v. McMahon, 167 N.Y.S. 270, 179 App.Div. 837—Ross v. McCarthy, 153 N.Y.S. 104, 168 App.Div. 533—Mankes v. Fishman, 149 N.Y.S. 228, 163 App.Div. 789—Fearon v. New York Life Ins. Co., 147 N.Y.S. 644, 162 App.Div. 560.

Eisman v. Consolidated Gas Co. of N. Y., 197 N.Y.S. 251, 119 Misc. 726—Jennings v. Lincoln Nat. Bank, 152 N.Y.S. 1, 89 Misc. 431.

Billett v. Consolidated Edison Co. of N. Y., 95 N.Y.S.2d 768—Sokolof v. Donn, 194 N.Y.S. 580—Standard Alpaca Co. v. Newhouse, 188 N.Y.S. 382—Matthes v. Zimmerman, 170 N.Y.S. 357—Bregstone v. Perlmutter, 154 N.Y.S. 201—Winder v. Pollack, 151 N.Y.S. 870.

N.C.—**Corpus Juris quoted in** State v. Page, 1 S.E.2d 887, 889, 215 N.C. 333—Hearn v. Ostrander, 140 S.E. 724, 194 N.C. 753—White v. Evans, 124 S.E. 194, 188 N.C. 212—Shepherd v. W. T. Mason Lumber Co., 81 S.E. 1064, 166 N.C. 130.

N.D.—Merchants' Nat. Bank v. Reiland, 199 N.W. 945, 51 N.D. 287—First Nat. Bank v. Davidson, 188 N.W. 194, 48 N.D. 944—Brown v. Minneapolis, St. P. & S. S. M. Ry. Co., 180 N.W. 792, 46 N.D. 582.

Ohio.—Jones v. Village of Girard, 144 N.E. 847, 111 Ohio St. 258.

Hovanec v. Ondak, App., 124 N.E. 2d 774—Masters v. Cincinnati Traction Co., 16 Ohio App. 99—Myers v. Sunlight Laundry Co., 10 Ohio App. 275—City of Cincinnati v. August J. Henkel & Bro., 3 Ohio App. 339, 35 Ohio Cir.Ct. 614.

Okl.—Barlow v. Ritchie, 232 P. 391, 105 Okl. 257—Brotherhood of American Yeomen v. Hutchinson, 218 P. 841, 92 Okl. 221—Okmulgee Window Glass Co. v. Bright, 183 P. 898, 65 Okl. 53—Federal Oil & Gas Co. v. Campbell, 183 P. 894, 65 Okl. 49—Marks v. Foreman, 168 P. 237, 67 Okl. 13—Becker v. Fitch, 167 P. 202, 66 Okl. 57, 2 A.L.R. 340—Chicago, R. I. & P. Ry. Co. v. Champlin Lumber Co., 149 P. 119, 47 Okl. 430.

Or.—Boord v. Kaylor, 197 P. 296, 100 Or. 366—Chadwick v. Oregon-Washington R. & Navigation Co., 144 P. 1165, 74 Or. 19.

Pa.—Kelly v. Director General of Railroads, 118 A. 436, 274 Pa. 470.

R.I.—Gustave Fox Co. v. T. F. Hunt Mfg. Co., 121 A. 382—Messler v. Williamsburg City Fire Ins. Co., 108 A. 832, 42 R.I. 460.

S.C.—Hobbs v. Carolina Coca-Cola Bottling Co., 10 S.E.2d 25, 194 S. C. 543.

Tex.—United Employers Cas. Co. v. Marr, Civ.App., 144 S.W.2d 973, error dismissed, judgment correct—Sonken-Galamba Corp. v. Hillman, Civ.App., 111 S.W.2d 853, error dismissed—Spurlock v. Zaring, Civ.App., 270 S.W. 1099—Jones-O'Neal Furniture Co. v. Jones, Civ. App., 269 S.W. 180—City of Waco v. Odle, Civ.App., 257 S.W. 310, rehearing denied 258 S.W. 559—Smith v. Tucker, Civ.App., 248 S.W. 125—Norwood v. Ferguson, Civ. App., 244 S.W. 619—Quanah, A. & P. Ry. Co. v. Lancaster, Civ.App., 207 S.W. 606—Lester v. Park, Civ. App., 205 S.W. 734—Dunn v. Land, Civ.App., 193 S.W. 698—San Antonio & A. P. Ry. Co. v. Shankle & Lane, Civ.App., 183 S.W. 115—Denman v. James, Civ.App., 180 S. W. 1157—Ft. Worth & D. C. Ry. Co. v. Alcorn, Civ.App., 178 S.W. 833.

Utah.—Cleary v. Shand, 161 P. 453, 48 Utah 640—Reese v. Qualtrough, 156 P. 955, 48 Utah 23, 14 A.L.R. 94—Shepherd v. Denver & R. G. R. Co., 145 P. 296, 45 Utah 295.

Vt.—Goodwin v. Barre Sav. Bank & Trust Co., 100 A. 34, 91 Vt. 228—Unadilla Silo Co. v. M. A. Hull & Son, 96 A. 535, 90 Vt. 134—Reed v. Wilmington Savings Bank, 93 A. 265, 89 Vt. 6.

Va.—Riddick v. King, 128 S.E. 462, 142 Va. 350—Mayflower Mills v. Hardy, 120 S.E. 861, 138 Va. 138—Washington-Virginia Ry. Co. v. Deahl, 100 S.E. 840, 126 Va. 141.

Wash.—James v. Weiffenbach, 225 P. 627, 129 Wash. 682—Kotkins v. City of Seattle, 206 P. 11, 119 Wash. 590, reversed on other grounds 212 P. 548, 123 Wash. 434—Moore v. Stetson Mach. Works, 188 P. 769, 110 Wash. 649—Proctor v. Appleby, 188 P. 481, 110 Wash. 403—Clark v. Pacific Power & Light Co., 157 P. 462, 91 Wash. 130.

W.Va.—Pittsonberger v. Andrews, 166 S.E. 367, 112 W.Va. 651—Buckhannon & N. R. Co. v. Great Scott Coal & Coke Co., 83 S.E. 1031, 75 W.Va. 423.

Wis.—Schields v. Frederick, 288 N. W. 241, 232 Wis. 595—Bradley v. Harper, 180 N.W. 130, 173 Wis. 103—Gauerke v. Kiley, 177 N.W. 889, 171 Wis. 543—Klas v. Kuehl, 150 N.W. 973, 159 Wis. 561.

4 C.J. p 972 note 70.

Testimony as to defendant's wealth

N.Y.—Gray v. Eisemann, 80 N.Y.S.2d 43.

Effect on result

(1) If error existed in the admission of evidence which may have contributed to cause the verdict actually returned, the error is not harmless.

Tex.—Albright v. Smith, Com.App., 288 S.W. 178, reversed on other grounds Allbright v. Smith, Com. App., 5 S.W.2d 970.

(2) Admission of improper testimony is ground for reversal, unless it reasonably appears certain that the result would have been the same had it not been admitted.

Tex.—Ferguson v. Ferguson, Com. App., 23 S.W.2d 673.

Intent of introduction

Good intent on the part of a person introducing prejudicial and irrelevant evidence does not render its admission harmless.

Tex.—Walker v. Kellar, Civ.App., 218 S.W. 792.

Possible use

Admission of incompetent evidence having a possible harmless purpose is not harmless error where susceptible of a legally harmful use.

N.H.—Piechuck v. Magusiak, 135 A. 534, 82 N.H. 429.

Prevention of fair trial

Evidence improperly admitted, which may have prevented a fair trial, cannot be held harmless.

Ky.—Dawson v. Shannon, 9 S.W.2d 998, 225 Ky. 635.

Okl.—White v. Burton, 71 P.2d 694, 180 Okl. 499.

Weight of evidence

(1) Appellate court, in determining whether or not error is prejudicial, should not attempt to weigh erroneously admitted testimony, but should merely decide whether or not it could have been given weight by jury, and

This rule has been applied, among other instances, to evidence objected to as not the best evidence,[58] to extrajudicial statements and declarations,[59]

if it could, it automatically follows that it was prejudicial.
N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.

(2) In determining whether improperly admitted and potentially prejudicial evidence prejudices appellant or whether substantial justice has been done, reviewing court should not weigh other evidence or determine credibility and effect of conflicting evidence, unless weight, credibility, and effect of that evidence are substantially in favor of appellee.
Ohio.—Bachtel v. Bachtel, 127 N.E.2d 761, 97 Ohio App. 521.

Plaintiff's testimony at former trial
Ga.—Cantrell v. Byars, 30 S.E.2d 643, 71 Ga.App. 287.

Impeachment of witness
Mo.—City of Gallatin ex rel. Dixon v. Murphy, App., 217 S.W.2d 400.

Whether prejudice must appear
(1) According to one view, error in admitting evidence is not cause for reversal, in the absence of a showing of prejudice.
Ind.—Columbia Grocery Co. v. Schlesinger, 200 N.E. 414, 102 Ind. App. 617.
Ky.—Brown v. Weathers, 57 S.W.2d 4, 247 Ky. 306.
Okl.—Martin v. Arnold, 247 P.2d 517, 207 Okl. 69—White v. Burton, 71 P.2d 694, 180 Okl. 499.

(2) In accordance with this view it is held that, in order that error in the admission of evidence shall constitute reversible error on the ground of the immateriality of such evidence alone, it must be made to appear that the evidence was clearly irrelevant, and prejudice must be made to appear.
Vt.—In re Wells' Will, 113 A. 822, 95 Vt. 16.

(3) Incompetent evidence, to cause reversal, must be shown to have been prejudicial to the objector.
Okl.—Hillery-Atkins Buick Co. v. Cox, 262 P. 694, 128 Okl. 234.

(4) Admission of incompetent evidence will not require reversal unless it affirmatively appears that such admission caused prejudice to objecting party.
Okl.—City of Bethany v. Municipal Securities Co., 274 P.2d 363—Martin v. Arnold, 247 P.2d 517, 207 Okl. 69—Colonial Royalties Co. v. Hinds, 216 P.2d 958, 202 Okl. 660.
Wis.—Voss v. Metropolitan Cas. Ins. Co., 63 N.W.2d 96, 266 Wis. 150.

(5) Mere fact that irrelevant evidence is admitted over objection and subject to exception, in and of itself, does not require vacation of decision against objecting party whether trier of facts be jury, judge, or referee; before a decision will be disturbed for erroneous reception of evidence, it must appear that objecting party was prejudiced thereby.
Me.—Lipman Bros. v. Hartford Acc. & Indem. Co., 100 A.2d 246, 149 Me. 199.

(6) Further, it is held that the admission of incompetent evidence is prejudicial unless it appears, without weighing the evidence, that it could not have prejudiced the complaining party's rights.
N.D.—Huston v. Johnson, 151 N.W. 774, 29 N.D. 546.

(7) Admission of evidence to support an immaterial matter in the petition was not ground for reversal, where it did not appear that defendant was prejudiced thereby.
Neb.—Larson v. Central Nat. Fire Ins. Co. of Illinois, 154 N.W. 721, 98 Neb. 845.

(8) On the other hand, there exists the view that admission of illegal evidence over objection is a cause for setting aside the verdict, unless the absence of prejudice is clearly shown.
W.Va.—Dalton v. Martin, 136 S.E. 47, 102 W.Va. 595.

(9) In accordance with this view, it is held that judgment will be reversed when improper testimony, properly excepted to, has been received, unless it is apparent verdict was not affected thereby.
N.Y.—Wurtzman v. Kalinowski, 251 N.Y.S. 328, 233 App.Div. 187.

(10) Where it does not appear from record that evidence wrongfully admitted in jury trial did not affect result of trial unfavorably to party against whom it was admitted, its reception must be considered prejudicial error.
Neb.—Application of Burt County Public Power Dist., 77 N.W.2d 773, 163 Neb. 1—Higgins v. Loup River Public Power Dist., 68 N.W.2d 170, 159 Neb. 549—State v. Cheyenne County, 60 N.W.2d 593, 157 Neb. 533—Borden v. General Ins. Co. of America, 59 N.W.2d 141, 157 Neb. 98.

(11) "When incompetent evidence which may be prejudicial is received, the verdict is set aside, without proof that the jury gave it any weight in reaching the verdict. To require the losing party to prove actual prejudice would place a difficult and unjust burden on him. Error having been committed, in any event it must be shown to be harmless."
N.H.—Daniels v. Barker, 200 A. 410, 415, 89 N.H. 416.

Clear prejudice
(1) Erroneous rulings on evidence constitute ground for reversal only when clearly prejudicial.
Minn.—In re Paulson's Estate, 150 N.W. 914, 128 Minn. 277.

(2) Introduction of inadmissible evidence, either on direct or cross-examination, unless it is so clearly prejudicial that its ill effects cannot be removed by its exclusion, is not ground for a mistrial.
Ga.—United Motor Freight Terminal Co. v. Hixon, 47 S.E.2d 171, 76 Ga.App. 653.

Probable prejudice and necessity for showing objection
One complaining of alleged error in admitting evidence must show that he objected to the admission of such evidence, and, although the evidence is inadmissible, error is harmless, unless it probably prejudiced the objector.
Okl.—Healdton Oil & Gas Co. v. Regnier, 39 P.2d 973, 170 Okl. 271.

Substantial prejudice
To justify reversal for the erroneous admission of testimony, it must have caused substantial prejudice to appellant.
Neb.—Gross v. Omaha & C. B. St. R. Co., 147 N.W. 1121, 96 Neb. 390, L.R.A.1915A 742.
N.C.—In re Craven's Will, 86 S.E. 587, 169 N.C. 561.
Okl.—Brison v. McKellop, 138 P. 154, 41 Okl. 374.
Utah.—Ogden Commission Co. v. Campbell, 244 P. 1029, 66 Utah 563.

58. Ky.—Home Laundry Co. v. Cook, 125 S.W.2d 763, 277 Ky. 8.
N.C.—Mahoney-Jones Co. v. Osborne, 127 S.E. 533, 189 N.C. 445.
Or.—Hammons v. Schrunk, 305 P.2d 405.
Tex.—Mel-Mar Co. v. Chemical Products Co., Civ.App., 273 S.W.2d 126, error refused no reversible error.

Improper questions of judge
Fact that incompetent testimony as to contents of copy of lease was adduced by improper questions of trial judge without necessary showing of good and sufficient reason for failure to produce copy did not lessen the prejudicial effect of such testimony.
Ill.—Pappa v. Zatz, 92 N.E.2d 494, 340 Ill.App. 642.

59. Ala.—Brittain v. Vickers, 96 So. 438, 209 Ala. 391.
Ark.—Brotherhood of Railroad Trainmen v. Fountaine, 245 S.W. 17, 155 Ark. 578—Security Life Ins. Co. v. Ingram, 225 S.W. 658, 146 Ark. 393.
Fla.—McClellan v. L'Engle, 77 So. 270, 74 Fla. 581.
Ga.—Swift & Co. v. Lawson, 97 S.E. 2d 168, 95 Ga.App. 35.

demonstrative evidence,[60] documentary evidence,[61] | evidence in violation of the rules against the use

Ill.—George J. Cooke Co. v. Fred Miller Brewing Co., 146 N.E. 459, 316 Ill. 46.
Iowa.—Vincent, Albin & Strahl v. Hines, 200 N.W. 1, 198 Iowa 1224—Rice v. Armour & Co., 187 N.W. 588, 194 Iowa 144.
Mass.—Wilson v. Daniels, 145 N.E. 469, 250 Mass. 359—Wagman v. Ziskind, 125 N.E. 633, 234 Mass. 509—Little v. Massachusetts Northeastern St. Ry. Co., 112 N. E. 77, 223 Mass. 501.
Mich.—Hyatt v. Leonard Storage Co., 162 N.W. 951, 196 Mich. 337.
Mo.—Meffert v. Lawson, 233 S.W. 31, 289 Mo. 337.
Monan v. Arkansas Grocer Co., 264 S.W. 486, 216 Mo.App. 289—Austin-Western Road Machinery Co. v. Commercial State Bank, App., 255 S.W. 585—Fore v. Rodgers, App., 216 S.W. 566.
Mont.—Raish v. Orchard Canal Co., 218 P. 655, 67 Mont. 140.
N.Y.—Israel v. Covert, 166 N.Y.S. 731.
N.C.—Norfolk Southern Ry. Co. v. Smitherman, 101 S.E. 208, 178 N.C. 595.
Tex.—Lumbermen's Reciprocal Ass'n v. Adcock, Civ.App., 244 S.W. 645—Howard v. Franklin Ins. Co., Civ.App., 226 S.W. 447—Panhandle & S. F. Ry. Co. v. Laird, Civ.App., 224 S.W. 305, dismissed for want of jurisdiction—Wall & Stabe Co. v. Berger, Civ.App., 212 S.W. 975—Providence-Washington Ins. Co. v. Owens, Civ.App., 207 S.W. 666.
Utah.—Booth v. Nelson, 211 P. 985, 61 Utah 239.
Wis.—McLery v. McLery, 202 N.W. 156, 186 Wis. 137.

60. Ill.—Wagner v. Chicago, R. I. & P. Ry. Co., 115 N.E. 201, 277 Ill. 114.

Dramatizing plaintiff's injuries
Mo.—Happy v. Walz, App., 244 S.W. 2d 380.

61. U.S.—New York Life Ins. Co. v. Neasham, Nev., 250 F. 787, 163 C. C.A. 119.
Ala.—Dawsey v. Kirven, 83 So. 338, 203 Ala. 446, 7 A.L.R. 1658.
Ark.—White v. Hudson, 263 S.W. 779, 165 Ark. 232—Christian & Taylor v. Fancher, 235 S.W. 397, 151 Ark. 102—Donaghey v. Williams, 185 S.W. 778, 123 Ark. 411.
Cal.—Ogilvie v. Ætna Life Ins. Co. of Hartford, Conn., 209 P. 26, 189 C. 406, 26 A.L.R. 116.
Palladine v. Imperial Valley Farm Lands Ass'n, 225 P. 291, 65 C.A. 727.
Ga.—Hoard v. Maddox, 42 S.E.2d 744, 202 Ga. 274.
Ill.—Levinson v. Fidelity & Casualty Co. of New York, 181 N.E. 321, 348 Ill. 495.
Hunt v. Illinois Southern Ry. Co., 196 Ill.App. 539.
Iowa.—Dickson v. Young, 200 N.W. 210, 199 Iowa 589.
N.M.—Keyes v. Keyes, 199 P. 361, 27 N.M. 215.
N.Y.—Orishyn v. Grashow, 136 N.Y. S.2d 572, 285 App.Div. 817, reargument denied 139 N.Y.S.2d 252, 285 App.Div. 893—Turnure v. Breitung, 186 N.Y.S. 620, 195 App.Div. 200—Mormille v. Brooklyn Heights R. Co., 183 N.Y.S. 87, 192 App.Div. 923.
White v. Burke, 174 N.Y.S. 716.
N.C.—Bryant v. Bryant, 100 S.E. 178, 178 N.C. 77—Croom v. Whitehead, 93 S.E. 854, 174 N.C. 305.
Ohio.—Lopresti v. Community Traction Co., 117 N.E.2d 2, 160 Ohio St. 480.
Tex.—Reef v. Hamblen, Civ.App., 47 S.W.2d 375—Lancaster v. Norris, Civ.App., 271 S.W. 401, reversed on other grounds Norris v. Lancaster, Com.App., 280 S.W. 574—State Nat. Bank v. Urrutia, Civ. App., 246 S.W. 404.
Vt.—Capital Garage Co. v. Powell, 131 A. 10, 99 Vt. 244.

Answers to interrogatories
Ohio.—Schuldt v. Associates Inv. Co., 22 N.E.2d 572, 61 Ohio App. 213.

Arbitration award
Idaho.—Southeast Securities Co. v. Christensen, 218 P.2d 342, 70 Idaho 328.

Blueprint of plat
Wis.—Becker v. Highway Trailer Co., 3 N.W.2d 725, 240 Wis. 490.

Court records
(1) Generally.
Idaho.—Southeast Securities Co. v. Christensen, 218 P.2d 342, 70 Idaho 328.
(2) Records in criminal action.
Okl.—Laughlin v. Lamar, 237 P.2d 1015, 205 Okl. 372.

Deed
Ala.—Lowery v. Mines, 45 So.2d 703, 253 Ala. 556.

Financial statement
Tex.—Utilities Natural Gas Corp. v. Hill, Civ.App., 239 S.W.2d 431, error refused no reversible error.

Hospital records
N.Y.—Eder v. Cashin, 120 N.Y.S.2d 165, 281 App.Div. 456.
Ohio.—Lewis v. Woodland, 140 N.E. 2d 322, 101 Ohio App. 442.

Letters
Ala.—Fidelity & Cas. Co. of New York v. Beeland Bros. Mercantile Co., 7 So.2d 265, 242 Ala. 591.
Fla.—Seaboard Air Line R. Co. v. Strickland, 88 So.2d 519.
Ga.—Cantrell v. Byars, 30 S.E.2d 643, 71 Ga.App. 287—Everitt v. Harris, 19 S.E.2d 545, 67 Ga.App. 64.
Ill.—Home Life Ins. Co. v. Franklin, 24 N.E.2d 874, 303 Ill.App. 146.
Mich.—Garey v. Kelvinator Corp., 271 N.W. 723, 279 Mich. 174.
N.Y.—Kalish v. Moskowitz Flour Corp., 90 N.Y.S.2d 708.
Okl.—Noble v. City of Bethany, 241 P.2d 401, 206 Okl. 122.
Pa.—Bednorzenski v. Schrager, 189 A. 690, 124 Pa.Super. 486.
W.Va.—Show v. Mount Vernon Farm Dairy Products, 37 S.E.2d 459, 128 W.Va. 598.
Wis.—Krasno v. Brace, 47 N.W.2d 314, 259 Wis. 12.

Mutilated copy of birth certificate
Iowa.—Evans v. Holsinger, 48 N.W. 2d 250, 242 Iowa 990, 28 A.L.R.2d 1434.

Photographs
Ill.—Mazur v. Chicago Transit Authority, 129 N.E.2d 602, 7 Ill.App. 2d 441.
Mo.—Gignoux v. St. Louis Public Service Co., App., 180 S.W.2d 784.
N.Y.—Leonard v. Home Owners Loan Corp., 60 N.Y.S.2d 78, 270 App.Div. 363—Allen v. Stokes, 23 N.Y.S.2d 443, 260 App.Div. 600, reargument denied 24 N.Y.S.2d 994, 260 App. Div. 1007—Hadges v. New York Rapid Transit Corp., 18 N.Y.S.2d 304, 259 App.Div. 154.
Wash.—French v. Chase, 297 P.2d 235, 48 Wash.2d 825.

Office memorandum in form of shop order
Ala.—Stremming Veneer Co. v. Jacksonville Blow Pipe Co., 83 So.2d 224, 263 Ala. 491.

Pleadings; summons
(1) Pleadings generally.
Tex.—Ragsdale v. Lindsey, Civ.App., 254 S.W.2d 843, error refused no reversible error.
(2) Parts of complaint which were denied in answer and which had no direct explanatory relationship to the specific admissions in the answer.
N.C.—Winslow v. Jordan, 72 S.E.2d 228, 236 N.C. 166.
(3) Admitting in evidence a summons and complaint in a suit against defendants, brought by a realty corporation's agent for plaintiff, was prejudicial error.
Ala.—Kalevas v. Ferguson, 114 So. 292, 216 Ala. 625.

Police records on blotter
(1) Generally.
Mo.—Hoffman v. Graber, App., 153 S.W.2d 817.
(2) The admission of a police blotter in its entirety, containing some entries which were inadmissible, was held to be prejudicial error in a particular case.
N.Y.—Coppola v. Melvin, 268 N.Y.S. 736, 241 App.Div. 611.

Reports
(1) Generally.
Cal.—Reisman v. Los Angeles City School Dist., 267 P.2d 36, 123 C.A. 2d 493.

of parol evidence,[62] ordinances,[62.5] and self-serving declarations.[62.10] Admitting in evidence, after the jury have retired and over a party's objection, an exhibit not offered during the trial has been held prejudicial error.[62.15]

Where evidence is objected to as irrelevant, the action of the trial court in receiving it will not be reversed, unless it can be seen that the evidence is of no weight whatever in determining the issue.[62.20] In a close case, it is reversible error to admit testimony, offered in order to bolster and corroborate a witness, that on other occasions he has made statements out of court conforming to his testimony in court.[62.25]

c. As Affected by Evidence Actually Admitted and Particular Circumstances

(1) Nature of evidence complained of, and purpose for which offered

(2) Operation and effect of admission

(3) Circumstances of particular case

(1) Nature of Evidence Complained of, and Purpose for Which Offered

Error in the admission of evidence may be harmless by reason of its nature, as where it is merely cumulative or is of little or no importance.

Error in the admission of evidence may not constitute ground for reversal where the evidence which has been admitted is not controlling,[62.60] or is without probative force,[63] or of little[63.5] or no[63.10] weight. Likewise, unless the evidence has, or may have, influenced the result, as discussed infra subdivision c (2) of this section, error in admitting evidence is not reversible where the evidence is merely corroborative[64] or where it is cumulative

(2) Police report.

Ill.—Ruppaner v. Waue, 96 N.E.2d 847, 342 Ill.App. 451—Hoskins v. Zimmerman, 79 N.E.2d 531, 334 Ill. App. 395.

N.Y.—Wilson v. Bungalow Bar Corp. of America, 141 N.Y.S.2d 106, 285 App.Div. 1191.

(3) Sketch.

Wis.—Schwellenbach v. Wagner, 46 N.W.2d 852, 258 Wis. 526.

Stipulation

Cal.—Palmer v. City of Long Beach, 199 P.2d 952, 33 C.2d 134.

Will

Mo.—Eichenberg v. Magidson's Estate, App., 170 S.W.2d 105.

62. Ala.—Garrett v. Reid, 13 So.2d 97, 244 Ala. 254.

Cal.—Anderson v. Palladine, 178 P. 553, 39 C.A. 256—Suhr v. Metcalfe, 164 P. 407, 33 C.A. 59.

Colo.—Ownbey v. Silverstein, 194 P. 607, 69 Colo. 325.

N.J.—Hunn v. Meade, 196 A. 700, 119 N.J.Law 333.

N.C.—Bonnett-Brown Corporation v. Coble, 142 S.E. 772, 195 N.C. 491.

Utah.—Harmston v. Labrum, 247 P. 2d 895, 122 Utah 209.

Alteration of terms of written instrument

Tex.—Hastings v. Champer, Civ. App., 139 S.W.2d 863.

Meaning of written contract

N.Y.—Hochstim v. Grossman, 16 N. Y.S.2d 961, 258 App.Div. 445.

Contents of check

Admission of certain parol evidence as to the contents of a check was held to be improper, harmful, and prejudicial.

Ga.—O. W. Waters & Co. v. Whitehurst, 131 S.E. 188, 34 Ga.App. 815.

62.5 Ariz.—Mitchell v. Emblade, 298 P.2d 1034, 80 Ariz. 398, opinion adhered to 301 P.2d 1032, 81 Ariz. 121.

Fla.—Douglass v. Sapotnick, 171 So. 765, 126 Fla. 753, followed in 173 So. 926, 131 Fla. 246.

Ill.—Dina v. Passaglia, 23 N.E.2d 773, 302 Ill.App. 159.

Kan.—Holmes v. Miller Amusement Co., 107 P.2d 736, 152 Kan. 785.

Mo.—Fosmire v. Kansas City, 260 S.W.2d 252.

Von Der Haar v. City of St. Louis, App., 226 S.W.2d 376.

Okl.—Meadors v. Huffman, 127 P.2d 806, 191 Okl. 204.

Tenn.—Life & Cas. Ins. Co. of Tennessee v. City of Nashville, 137 S. W.2d 287, 175 Tenn. 688.

W.Va.—Stenger v. Hope Natural Gas Co., 80 S.E.2d 889, 139 W.Va. 549.

Traffic ordinance

Cal.—Nosbonne v. Brill, 128 P.2d 57, 53 C.A.2d 436.

62.10 Ga.—Cantrell v. Byars, 30 S. E.2d 643, 71 Ga.App. 287.

Ill.—Vujovich v. Chicago Transit Authority, 126 N.E.2d 731, 6 Ill. App.2d 115.

Md.—Heil v. Zahn, 51 A.2d 174, 187 Md. 603.

Mich.—Sexton v. Balinski, 273 N.W. 335, 280 Mich. 28.

Neb.—In re Parvin's Estate, 270 N. W. 470, 131 Neb. 853.

N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.

N.Y.—Kalish v. Moskowitz Flour Corp., 90 N.Y.S.2d 708—Waldman v. Wasserman, 79 N.Y.S.2d 46.

Ohio.—Schuldt v. Associates Inv. Co., 22 N.E.2d 572, 61 Ohio App. 213.

Tex.—Guerrero v. Wright, Civ.App., 225 S.W.2d 609, error refused no reversible error—Averitt v. Warren, Civ.App., 125 S.W.2d 691.

W.Va.—Show v. Mount Vernon Farm Dairy Products, 37 S.E.2d 459, 128 W.Va. 598.

62.15 N.Y.—Daniel & Koff Belt Co. v. Herper Co., 48 N.Y.S.2d 22.

62.20 Cal.—Schomaker v. Provoo, 216 P.2d 562, 96 C.A.2d 738.

62.25 Miss.—Harrison v. Gatewood, 51 So.2d 59, 211 Miss. 121.

62.60 Ill.—Shapleigh Hardware Co. v. Enterprise Foundry Co., 27 N.E. 2d 1012, 305 Ill.App. 180.

63. Mo.—Hungate v. Hudson, 185 S. W.2d 646, 353 Mo. 944, 157 A.L.R. 598—Span v. Jackson Walker Coal & Mining Co., 16 S.W.2d 190, 322 Mo. 158.

Facts not tending to inflame or arouse passions

Admission of facts which are without probative force is not reversible error, particularly if facts are not of a character having tendency to inflame or arouse hostile passions, and their prejudicial effect is not otherwise made to appear.

Mo.—Hayes v. Kansas City Southern Ry. Co., 260 S.W.2d 491—Kunz v. Munzlinger, 242 S.W.2d 536.

63.5 Mich.—Cattell v. Evans, 4 N. W.2d 67, 301 Mich. 708.

Tenn.—Mason v. James, 89 S.W.2d 910, 19 Tenn.App. 479.

63.10 Tex.—Taormina Corp. v. International Playing Card & Label Co., Civ.App., 154 S.W.2d 949, error refused.

No real weight with jury

Tex.—Davis Transport, Inc. v. Bolstad, Civ.App., 295 S.W.2d 941.

64. Ariz.—**Corpus Juris Secundum quoted in** City Transfer Co. v. Johnson, 233 P.2d 1078, 1081, 72 Ariz. 293.

Ill.—Simmons v. Nichols, 5 N.E.2d 109, 287 Ill.App. 635.

Ind.—Shelby Mfg. Co. v. Harris, 44 N.E.2d 315, 112 Ind.App. 627.

Kan.—Briscoe v. Reschke, 226 P.2d 255, 170 Kan. 367.

of other evidence in the record;[65] and with the same qualification this principle applies to evidence

N.C.—Queen City Coach Co. v. Lee, 11 S.E.2d 341, 218 N.C. 320.
Or.—Smith v. National Surety Co., 149 P. 1040, 77 Or. 17.
Wash.—Bond v. Wiegardt, 216 P.2d 196, 36 Wash.2d 41.

Corroboration of competent evidence
Okl.—Gibbs v. Barksdale, 184 P.2d 755, 199 Okl. 141, 2 A.L.R.2d 345.

Other testimony
It was harmless error to permit a witness to corroborate a preceding witness by testifying simply that his testimony was correct, where there was a great amount of other testimony to the same point.
Cal.—People v. Dillman, 174 P. 951, 37 C.A. 415.

Copy of deposition
Error in admitting as evidence copy of deposition merely corroborating undisputed testimony of witness for party offering such copy was not prejudicial to opposite party.
Wis.—Morse Chain Co. v. T. W. Meiklejohn, Inc., 4 N.W.2d 162, 241 Wis. 45.

65. Ala.—Burdett v. Hipp, 39 So.2d 389, 252 Ala. 37—Hosey v. Southport Petroleum Co. of Delaware, 12 So.2d 93, 244 Ala. 45—Birmingham Electric Co. v. Driver, 166 So. 701, 232 Ala. 36—Sovereign Camp, W. O. W. v. Hoehn, 85 So. 696, 204 Ala. 248.
Cal.—Pendell v. Westland Life Ins. Co., 214 P.2d 392, 95 C.A.2d 766—Timm v. Brown, 178 P.2d 10, 78 C.A.2d 609—Alvarez v. Ritter, 155 P.2d 83, 67 C.A.2d 574—In re Craig's Estate, 148 P.2d 100, 64 C.A.2d 132—In re Hollingsworth's Estate, 99 P.2d 599, 37 C.A.2d 432—Tierney v. Charles Nelson Co., 64 P.2d 1150, 19 C.A.2d 34—Benner v. Hooper, 296 P. 660, 112 C.A. 53—Hathaway v. McGillycuddy, 206 P. 108, 56 C.A. 689.
Colo.—McInick v. Bowman, 79 P.2d 368, 102 Colo. 384.
Conn.—Town of West Hartford v. Talcott, 82 A.2d 351, 138 Conn. 82.
Ill.—McNaghten v. Northwestern Life Ins. Co., 48 N.E.2d 200, 318 Ill.App. 390—Bolger v. City of Chicago, 198 Ill.App. 123.
Ind.—Bercot v. Velkoff, 41 N.E.2d 686, 111 Ind.App. 323—Roesner v. American Car & Foundry Co., 5 N.E.2d 688, 104 Ind.App. 55.
Kan.—In re Langdon's Estate, 195 P.2d 317, 165 Kan. 267.
Ky.—McCarty v. McCarty's Adm'r, 81 S.W.2d 8, 258 Ky. 666.
Mass.—Ross v. Ross, 110 N.E.2d 108, 329 Mass. 644—Pataskas v. Judeikis, 98 N.E.2d 265, 327 Mass. 258—La Plante v. Maguire, 89 N.E.2d 1, 325 Mass. 96—Coe v. Coe, 69 N.E.2d 793, 320 Mass. 295, reversed on other grounds 68 S.Ct. 1094, 334 U.S. 378, 92 L.Ed. 1451, 1 A.L.R.2d 1367 and 68 S.Ct. 1097, 334 U.S. 343, 92 L.Ed. 1429, 1 A.L.R.2d 1355—Kurland v. Massachusetts Amusement Corp., 29 N.E.2d 749, 307 Mass. 131—Perivoliotis v. Eveleth, 146 N.E. 724, 251 Mass. 444.
Mich.—Shoemaker v. Trompen, 40 N.W.2d 92, 326 Mich. 120.
Minn.—St. Paul Mercury Indemnity Co. v. Lyell, 11 N.W.2d 491, 216 Minn. 7—Fjellman v. Weller, 7 N.W.2d 521, 213 Minn. 457.
Mo.—McKelly v. Metco Products, 193 S.W.2d 28, 354 Mo. 993—McNatt v. Wabash Ry. Co., 108 S.W.2d 33, 341 Mo. 516—Vitale v. Duerbeck, 92 S.W.2d 691, 338 Mo. 556.
Heiter v. Terminal R. Ass'n of St. Louis, App., 275 S.W.2d 612—Rogers v. City of Deepwater, 219 S.W.2d 750, 240 Mo.App. 795—Zeppenfeld v. Morgan, App., 185 S.W.2d 898—Choplin v. Francis, App., 181 S.W.2d 222—John v. Ætna Life Ins. Co. of Hartford, Conn., App., 100 S.W.2d 936—McCarthy v. Metropolitan Life Ins. Co., App., 90 S.W.2d 158.
N.C.—Wingler v. Miller, 25 S.E.2d 160, 223 N.C. 15.
N.D.—Lander v. Hartson, 47 N.W.2d 211, 77 N.D. 923.
Okl.—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Wistar v. Whitewing, 116 P.2d 565, 189 Okl. 292.
Pa.—McCrory v. Scranton Life Ins. Co., 27 A.2d 723, 150 Pa.Super. 1.
R.I.—Gelineau v. Coutu, 173 A. 76.
S.C.—Neese v. Toms, 12 S.E.2d 859, 196 S.C. 67.
Tenn.—Vest v. Bitner, 241 S.W.2d 438, 34 Tenn.App. 575.
Tex.—Fort Worth & D. C. Ry. Co. v. Kiel, Civ.App., 195 S.W.2d 405, error refused no reversible error—Highway Ins. Underwriters v. Le Beau, Civ.App., 184 S.W.2d 671, reversed on other grounds 187 S.W.2d 73, 143 Tex. 589—Emery v. Emery, Civ.App., 75 S.W.2d 725—Johnson v. Ashby, Civ.App., 18 S.W.2d 726—Armstrong v. City Nat. Bank of Galveston, Civ.App., 16 S.W.2d 954, certiorari denied 50 S.Ct. 333, 281 U.S. 737, 74 L.Ed. 1152.

Question of damages
Okl.—Mid-Continent Petroleum Corp. v. Fisher, 84 P.2d 22, 183 Okl. 638.

Courts hesitate to reverse case merely for erroneous admission of cumulative and similar testimony.
Wyo.—Northwest States Utilities Co. v. Brouillette, 65 P.2d 223, 51 Wyo. 132, rehearing denied 69 P.2d 623, 51 Wyo. 132.

Technical error
Mass.—Bendett v. Bendett, 52 N.E.2d 2, 315 Mass. 59.

Absence of other evidence
Contention that admission of evidence did not constitute reversible error on ground that evidence was merely cumulative would not be sustained where there was no other evidence to sustain the judgment.
Cal.—Fritz v. Metropolitan Life Ins. Co., 123 P.2d 622, 50 C.A.2d 570.

Departure from strict rules of evidence
Where evidence is offered by one party for purpose of corroborating his own witness or contradicting the witness of his adversary, and such evidence is merely cumulative, departure from strict rules of evidence will not be held reversible error unless it appears that prejudice to the complaining party has manifestly resulted.
N.C.—Talley v. Dairymen's Creamery, 7 S.E.2d 502, 217 N.C. 255.

Absence of objection
(1) Admitting certain evidence, if error, was held to be harmless in a particular case because merely cumulative of other evidence not objected to.
Mo.—Green v. American Ry. Express Co., App., 34 S.W.2d 1039.

(2) Any error in permitting witness to read the date of a lease in evidence as corroborative of the date of a partnership dissolution was harmless, where similar testimony was previously admitted without objection.
Tex.—Johnson v. Ashby, Civ.App., 18 S.W.2d 726.

Argument, inference, and opinion
Admission of testimony made up of argument, inference, and opinion, and therefore improper, did not warrant reversal where merely cumulative and the question which elicited such testimony was too general.
Md.—American Stores Co. v. Herman, 171 A. 54, 166 Md. 312.

Conceded point
It was not prejudicial error to admit improper evidence, which was merely cumulative of uncontradicted evidence on a point practically conceded.
Cal.—Barrios v. Pacific States Trading Co., 183 P. 236, 41 C.A. 637.

Matter of trifling importance
Where a statement as to a matter of trifling importance was, through another witness, already before the jury without objection by appellant, its cumulative admission was not prejudicial.
Ala.—Sovereign Camp, W. O. W. v. Hoehn, 85 So. 696, 204 Ala. 248.

Unquestioned evidence
Admission of testimony which was cumulative of other unquestioned evi-

which is immaterial[66] or irrelevant in that such evidence is not pertinent to any issue in the case or

dence of the same import was harmless.

Cal.—Home Fire Ins. Co. v. Southwestern Engineering Corporation, 299 P. 771, 114 C.A. 235.

Evidence held harmless because cumulative or because of other evidence unobjected to

Cal.—In re McNamara's Estate, 183 P. 552, 181 C. 82, 7 A.L.R. 313.

Murray v. Guarantee Trust & Savings Bank, 248 P. 1039, 79 C.A. 69.

Ga.—Daniel v. First Nat. Bank, 179 S.E. 152, 50 Ga.App. 632.

Mass.—Bates v. Town of Cohasset, 182 N.E. 284, 280 Mass. 142.

Minn.—Strommen v. Prudential Ins. Co., 245 N.W. 632, 187 Minn. 381.

Mo.—Steinke v. Palladium Amusement Co., App., 28 S.W.2d 440—Kent v. L. B. Price Mercantile Co., App., 17 S.W.2d 983—Neely v. Chicago Great Western R. Co., App., 14 S.W.2d 972, certiorari quashed State ex rel. Chicago Great Western R. Co. v. Trimble, Sup., 14 S.W.2d 978.

Mont.—McGonigle v. Prudential Ins. Co. of America, 46 P.2d 687, 100 Mont. 203.

N.J.—Marin v. Mitchell, 150 A. 580, 8 N.J.Misc. 450.

N.D.—Powell v. Meiers, 209 N.W. 547, 54 N.D. 336.

Ohio.—Knutzen Motor Trucking Co. v. Steiner, 166 N.E. 243, 31 Ohio App. 46.

Okl.—Big Twelve Oil & Gas Co. v. Eco, 14 P.2d 377, 159 Okl. 110—Kirk v. McClendon, 220 P. 949, 94 Okl. 33.

Or.—Reid v. Yellow Cab Co., 279 P. 635, 131 Or. 27, 67 A.L.R. 1.

Tex.—Highway Motor Freight Lines v. Slaughter, Civ.App., 84 S.W.2d 533—Hinton v. Uvalde Paving Co., Civ.App., 77 S.W.2d 733—National Newspaper Enterprises v. Chitwood, Civ.App., 68 S.W.2d 264—Goodrum v. Hobbs, Civ.App., 60 S.W.2d 298—Keeter v. Davis, Civ.App., 58 S.W.2d 1046—Karnes County v. Carroll, Civ.App., 26 S.W.2d 394—Smith v. Patterson, Civ.App., 294 S.W. 984.

Wash.—Campbell v. Campbell, 263 P. 957, 146 Wash. 478.

Wyo.—Opitz v. Town of City of Newcastle, 249 P. 799, 35 Wyo. 358.

Rule inapplicable

While text rule is ordinarily true, the rules does not apply where character of incompetent evidence is such as to invest it with high persuasive quality and render it more likely to be impressive to jury than evidence properly received.

Mo.—Eichenberg v. Magidson's Estate, App., 170 S.W.2d 105.

66. Ala.—Hancock v. Oliver, 154 So. 571, 228 Ala. 548.

Tidmore v. Mills, 32 So.2d 769, 33 Ala.App. 243, certiorari denied 32 So.2d 782, 249 Ala. 648—Wertheimer Bag Co. v. Hill, 71 So. 618, 14 Ala.App. 623.

Ariz.—M. Karam & Sons Mercantile Co. v. Serrano, 77 P.2d 447, 51 Ariz. 397.

Cal.—Von Goerlitz v. Turner, 150 P. 2d 278, 65 C.A.2d 425—Gutleben Bros. v. Stevenson, 268 P. 379, 92 C.A. 513.

Ga.—Mickle v. Moore, 4 S.E.2d 217, 188 Ga. 444—Mallory v. Clay County, 159 S.E. 578, 173 Ga. 59.

Gaulding v. Courts, 83 S.E.2d 288, 90 Ga.App. 472—Atlantic Greyhound Corp. v. Austin, 33 S.E.2d 718, 72 Ga.App. 19—Columbian Peanut Co. v. Pope, 24 S.E.2d 710, 69 Ga.App. 26.

Idaho.—Whalen v. Valler, 266 P. 1089, 46 Idaho 181.

Ill.—Porter v. Terminal R. Ass'n of St. Louis, 65 N.E.2d 31, 327 Ill. App. 645.

Ind.—Swallow Coach Lines v. Cosgrove, 15 N.E.2d 92, 214 Ind. 532.

Lyon v. Ætna Life Ins. Co., 44 N.E.2d 186, 112 Ind.App. 573.

Iowa.—McDowell v. Bowles, Billing & Kessler Grain Co., 157 N.W. 173, 177 Iowa 744.

Md.—Kennedy v. Crouch, 62 A.2d 582, 191 Md. 580.

Mass.—Greenway Wood Heel Co. v. John Shea Co., 46 N.E.2d 746, 313 Mass. 177.

Mo.—Hayes v. Kansas City Southern Ry. Co., 260 S.W.2d 491—Kunz v. Munzlinger, 242 S.W.2d 536—Crews v. Kansas City Public Service Co., 111 S.W.2d 54, 341 Mo. 1090.

Wood v. Metropolitan Life Ins. Co., App., 161 S.W.2d 737—Globe American Corp. v. Miller, 131 S.W. 2d 340, 234 Mo.App. 253.

Mont.—Chancellor v. Hines Motor Supply Co., 69 P.2d 764, 104 Mont. 603.

Neb.—Mills v. Mills, 252 N.W. 471, 126 Neb. 74.

Pa.—Swartz v. Hefer, 47 A.2d 224, 354 Pa. 320.

R.I.—Roy v. Weiner, 38 A.2d 150, 70 R.I. 238.

Tex.—Hagar v. Martin, Civ.App., 277 S.W.2d 195, error refused, no reversible error—McCann v. Central Forwarding, Civ.App., 211 S.W.2d 794, error dismissed—Texas & P. Ry. Co. v. Duncan, Civ.App., 193 S.W.2d 431—Getzwiller v. Fergesen, Civ.App., 145 S.W.2d 913—Roeser v. Coffer, Civ.App., 98 S.W. 2d 275—Shell Pipe Line Corporation v. Svrcek, Civ.App., 37 S.W.2d 297—Waschman v. Wetterman, Civ.App., 14 S.W.2d 886.

Wash.—Beeson Bros. v. Chambers, 285 P. 433, 155 Wash. 564—Rosenkranz v. Yakima Valley Bank & Trust Co., 271 P. 85, 149 Wash. 409.

Immaterial ruling

Conn.—Zenik v. O'Brien, 79 A.2d 769, 137 Conn. 592.

Testimony immaterial to any issue

Mich.—Ruch v. First Nat. Bank of Three Rivers, 39 N.W.2d 240, 326 Mich. 52.

Mo.—Petrovic v. Standard Fire Ins. Co. v. Hartford, Conn., 167 S.W. 2d 412, 237 Mo.App. 290.

N.Y.—Kronenberg v. City of New York, 33 N.Y.S.2d 429, 263 App. Div. 1000, affirmed 45 N.E.2d 455, 289 N.Y. 694.

Testimony not probative on any issue presented

Ohio.—Green v. Drungold, App., 101 N.E.2d 906.

Testimony relating to immaterial issues

Tex.—Thompson v. Texas Electric Ry. Co., Civ.App., 155 S.W.2d 624, error refused—Texas Co. v. Wylie, Civ.App., 105 S.W.2d 438, error dismissed.

Evidence not pertinent to sole issue

Admission of wholly immaterial evidence not pertinent to the only issue in a case, if erroneous, is harmless.

Tex.—Waschman v. Wetterman, Civ. App., 14 S.W.2d 886.

Wash.—Rosenkranz v. Yakima Valley Bank & Trust Co., 271 P. 85, 149 Wash. 409.

Rule especially applicable

Generally, admission of facts entirely immaterial to issues and without probative force cannot constitute prejudicial error, especially when facts evidenced are of such character that they do not have a natural tendency to inflame or arouse hostile passion and their prejudicial effect is not otherwise made to appear.

Mo.—Hungate v. Hudson, 185 S.W. 2d 646, 353 Mo. 944, 157 A.L.R. 598.

Procedural irregularities

On appeal, procedural irregularities in submitting evidence may be immaterial.

Fla.—Coleman v. Williams, 200 So. 207, 146 Fla. 45.

Influencing minds of jury

Admission of immaterial testimony is not error, unless it is calculated to influence the minds of the jury.

Tex.—Keller v. Downey, Civ.App., 161 S.W.2d 803, affirmed Humble Oil & Refining Co. v. Downey, 183 S.W.2d 426, 143 Tex. 171.

Nonappealing defendant

Admission of immaterial evidence relating to another defendant who secured a directed verdict was held not prejudicial to the appealing defendant.

related to issues submitted to the jury,[66.5] or relates to collateral matters,[67] or agrees with the only competent evidence on the particular point.[68]

Error committed in admitting evidence may be considered to be harmless where the evidence complained of relates to matters of common knowledge,[69] or as to which information is readily available,[69.5] or where the evidence is of little or no importance,[70] or where such evidence is of little con-

Neb.—Ahlstedt v. Smith, 264 N.W. 889, 130 Neb. 372.

66.5 Ga.—Mickle v. Moore, 4 S.E. 2d 217, 188 Ga. 444.
Pa.—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55.
Vt.—Ackerman v. Kogut, 84 A.2d 131, 117 Vt. 40.

Absence of effect on issue

(1) Error in admission of evidence bearing on an issue not tendered by the pleadings, and not bearing on any theory on which the case was tried, and which could not otherwise affect the issues presented, will not be considered on appeal.
Neb.—Mills v. Mills, 252 N.W. 471, 126 Neb. 74.

(2) Any error in the admission of testimony not relating to the issue submitted to the jury or considered by the court was harmless.
Tex.—Shell Pipe Line Corporation v. Svrcek, Civ.App., 37 S.W.2d 297.

(3) Any error in admitting evidence was harmless where the evidence did not relate to any material issue in the case.
Tex.—Tower Contracting Co. v. Flores, Civ.App., 294 S.W.2d 266, modified on other grounds, Sup., 302 S.W.2d 396.

(4) Admission of testimony having no direct bearing on the principal fact in issue was held not reversible error.
Wash.—Beeson Bros. v. Chambers, 285 P. 433, 155 Wash. 564.

(5) Error in the admission of testimony as to matters which had no real bearing on the issue were harmless.
Ala.—Brock v. Shirley, 197 So. 665, 29 Ala.App. 449.

(6) Any error in failing to sustain exceptions to incompetent evidence which added nothing to evidence properly adduced, and was not addressed to the determinative issue, or issues, was not prejudicial.
Ky.—Delong v. Cline, 194 S.W.2d 631, 302 Ky. 358.
N.C.—Elledge v. Welch, 76 S.E.2d 340, 238 N.C. 61.

Absence of harm, prejudice, or injury

Ga.—Deck v. Deck, 24 S.E.2d 303, 195 Ga. 404—A. C. Alexander Lumber Co. v. Bagley, 191 S.E. 446, 184 Ga. 352.
Md.—Kennedy v. Crouch, 62 A.2d 582, 191 Md. 580.
Miss.—Paramount Fire Ins. Co. v. Anderson, 51 So.2d 763, 211 Miss. 372.
N.J.—Rich v. Bongiovanni, 66 A.2d 888, 4 N.J.Super. 243.
R.I.—New England Box & Barrel Co. v. Travelers Fire Ins. Co., 8 A.2d 805, 63 R.I. 315.
Tex.—Texas & P. Ry. Co. v. Duncan, Civ.App., 193 S.W.2d 431.

67. Ala.—Tennessee Valley Bank v. Valley View Farm, 97 So. 62, 210 Ala. 123.
Adams v. Rish, 10 So.2d 45, 30 Ala.App. 566.
Ga.—Upshaw Bros. v. Stephens, 106 S.E. 125, 26 Ga.App. 284.
Ind.—City of East Chicago v. E. B. Lanman Co., 10 N.E.2d 288, 212 Ind. 524.
Tex.—Barish Produce Co. v. Schultz, Civ.App., 279 S.W.2d 702, error dismissed.

Not necessarily error

Admission of testimony on collateral matters does not necessarily constitute reversible error.
Ind.—American Surety Co. of New York v. Jay Lodge No. 87, F. & A. M., 196 N.E. 356, 102 Ind.App. 82.
Mo.—Jones v. Terminal R. R. Ass'n of St. Louis, 242 S.W.2d 473.

Evidence held harmless

Ala.—Tennessee Valley Bank v. Valley View Farm, 97 So. 62, 210 Ala. 123.
Cal.—San Pedro, L. A. & S. L. R. Co. v. Atchison, T. & S. F. Ry. Co., 191 P. 536, 183 C. 342.
Ga—Upshaw Bros. v. Stephens, 106 S.E. 125, 26 Ga.App. 284.
Ill.—Merchants' Loan & Trust Co. v. Ummach, 228 Ill.App. 67.
Iowa.—Crouch v. National Livestock Remedy Co., 231 N.W. 322, 210 Iowa 849—Luther v. Ullritch, 166 N.W. 85, 182 Iowa 745.
Kan.—Martin v. Stillie, 281 P. 925, 129 Kan. 19, 68 A.L.R. 415, adhered to 286 P. 394, 130 Kan. 299—McCue v. Hope, 170 P. 1051, 102 Kan. 147, 390.
Ky.—Colyer v. James, 80 S.W.2d 882, 235 Ky. 197.
Me.—Foster v. Congress Square Hotel Co., 145 A. 400, 128 Me. 50, 67 A.L.R. 239.
Md.—Bright v. Kelley, 176 A. 874, 168 Md. 107.
Mass.—Gauvreau v. Gulf Refining Co., 192 N.E. 220, 288 Mass. 54.
Mo.—Jones v. Terminal R. R. Ass'n of St. Louis, 242 S.W.2d 473—Leimkuehler v. Wessendorf, 18 S.W.2d 445, 323 Mo. 64.
Clabaugh v. Heibner, App., 236 S.W. 396.
Okl.—Indiana Harbor Belt R. Co. v Britton, 156 P. 894, 56 Okl. 750.
Or.—Vale v. Campbell, 263 P. 400, 123 Or. 632—State v. Finnigan, 160 P. 370, 81 Or. 538.
S.D.—Sanders v. Sanders, 234 N.W. 601, 57 S.D. 599.
Tex.—Lloyd v. Silvers, Civ.App., 274 S.W. 253—Woodson v. Westbrook, Civ.App., 272 S.W. 821—Quarles v. Eaton-Blewett Co., Civ. App., 210 S.W. 596, reversed on other grounds, Com.App., 249 S. W. 465.
Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312—Squires v. O'Connell, 99 A. 268, 91 Vt. 35—Wilbur v. Town of Calais, 98 A. 913, 90 Vt. 335.
Va.—Bourne v. Richardson, 113 S.E. 893, 133 Va. 441.

68. Ariz.—**Corpus Juris Secundum quoted in** City Transfer Co. v. Johnson, 233 P.2d 1078, 1081, 72 Ariz. 293.
Tex.—Houston Packing Co. v. Dunn, Civ.App., 176 S.W. 634.

69. U.S.—Ocean Accident & Guarantee Corporation v. Schachner, C.C. A.Ill., 70 F.2d 28.
Ala.—**Corpus Juris Secundum cited in** Tidmore v. Mills, 32 So.2d 769, 778, 33 Ala.App. 243, certiorari denied 32 So.2d 782, 249 Ala. 648—De Bardeleben v. Sellers, 84 So. 403, 17 Ala.App. 247.
Ky.—City of Newport v. Dorsel Co., 136 S.W.2d 11, 281 Ky. 372.
Pa.—Sebok v. Pennsylvania Edison Co., 1 A.2d 680, 331 Pa. 524.

Knowledge of jury

Admission of evidence of a thing, which an intelligent jury would know without evidence, and not in real dispute, was harmless.
N.C.—Brinkley & Lassiter v. Norfolk Southern R. Co., 84 S.E. 700, 168 N.C. 428.

69.5 **Population figures**
Wyo.—Miracle v. Barker, 136 P.2d 678, 59 Wyo. 92.

70. Ala.—Sovereign Camp, W. O. W. v. Hoehn, 85 So. 696, 204 Ala. 248.
Ark.—Dr. Pepper Bottling Co. of Newport v. Whidden, 296 S.W.2d 432.
Cal.—O'Farrell v. American Trust Co., App., 309 P.2d 60.
Ill.—Raxworthy v. Heisen, 113 N.E. 699, 274 Ill. 398.
Jackson v. Thompson, 32 N.E. 2d 967, 309 Ill.App. 187.
Ky.—Tucker v. Ragland-Potter Co., 148 S.W.2d 691, 285 Ky. 533.
Mich.—Merkel v. Consumers' Power Co., 189 N.W. 997, 220 Mich. 128.
Mo.—Weaver v. Mobile & O. R. Co., 120 S.W.2d 1105, 343 Mo. 223.

sequence as far as the result is concerned,[70.5] or where the effect of the error is inconsequential.[70.10] Similarly, the improper admission of evidence to contradict evidence previously erroneously admitted is no ground for reversal.[71]

On the other hand, error in the admission of evidence may be prejudicial and ground for reversal where such evidence is of great importance,[72] or goes to prove a material issue in the case,[72.5] or relates to matters vital to the issues and questions in disputes[72.10] or where such admission is inconsistent with substantial justice.[72.15] In particular circumstances, evidence admitted may be prejudicial when it is not relevant to the issues presented in the particular case,[73] or is too remote,[74] or is offered to establish a fact which such evidence has no tendency to prove,[75] or is of special value to the party offering it for a purpose other than that for which it was received.[76]

At all events, for the admission of evidence to be prejudicial it must not only be material to the issues, but must also be erroneous.[77]

(2) Operation and Effect of Admission

Where error in admitting evidence did not affect the result, or could not have done so, or did not prejudice the rights of the complaining party, such error is harmless.

A judgment will not be reversed because of the erroneous admission of evidence, where it did not, or probably did not, affect the result, conclusion, judgment, or verdict, or could not have done so,[78]

N.C.—Tillett v. Norfolk Southern R. Co.,82 S.E. 866, 166 N.C. 515.
Or.—Zahara v. Brandli, 94 P.2d 718, 162 Or. 666.
Utah.—Shepard v. Payne, 206 P. 1098, 60 Utah 140.

Effect of repetition

Where, when a question calling for evidence was first asked, defendant's counsel considered it of no importance, and did not interpose an objection, it cannot on appeal, because of unnecessary repetition, be magnified into reversible error.
Utah.—Shepard v. Payne, supra.

Issues unaffected

Any error in admitting evidence is not cause for reversal, where its receipt was not of sufficient importance to have affected the issues.
U.S.—In re Bradley, D.C.Conn., 263 F. 446, affirmed, C.C.A., 269 F. 784.

Little importance

Wash.—Griffin v. Lear, 212 P. 271, 123 Wash. 191.

Slight importance

N.C.—Tillett v. Norfolk Southern R. Co., 82 S.E. 866, 166 N.C. 515.
Wash.—Griffin v. Lear, 212 P. 271, 123 Wash. 191.

Trifling importance

Ala.—Sovereign Camp, W. O. W. v. Hoehn, 85 So. 696, 204 Ala. 248.

Unimportant

Ill.—Raxworthy v. Heisen, 113 N.E. 699, 274 Ill. 398.

Application of rules difficult

Where nature of case made application of ordinary rules of evidence difficult, judgment should not be reversed for technical errors in admission of evidence of little moment.
Mich.—Mulvena v. Alexander, 270 N. W. 291, 278 Mich. 265.

70.5 Ky.—Tipton v. Boian, 224 S. W.2d 431, 311 Ky. 465.

70.10 Okl.—Springfield Fire & Marine Ins. Co. v. Simmons, 87 P.2d 941, 184 Okl. 323.

71. Ga.—Camp v. Mapp, 97 S.E.2d 623, 95 Ga.App. 262.
Iowa.—Stutsman v. Des Moines City Ry. Co., 163 N.W. 580, 180 Iowa 524.
4 C.J. p 971 note 61.

Anticipatory evidence

That plaintiff anticipated a deposition favoring defendant by introducing testimony impeaching the anticipated deponent's mental competence was not prejudicial, where testimony was admissible in rebuttal.
Mo.—Kunkel v. Griffith, 29 S.W.2d 64, 325 Mo. 392.

Collateral impeachment

Where defendant introduced certain written exhibits to attack the credibility of plaintiff's witnesses collaterally, the admission of irrelevant evidence as to dates and signatures on such exhibits was not prejudicial error.
S.D.—H. W. Ross Lumber Co. v. Sioux Falls Building & Loan Ass'n, 213 N.W. 946, 51 S.D. 369.

Contradiction of suggested fact

One who by indirection seeks to leave an injurious impression with the jury concerning his adversary is not prejudiced if the suggested fact be denied.
Iowa.—Stutsman v. Des Moines City Ry. Co., 163 N.W. 580, 180 Iowa 524.

72. Ark.—St. Louis, etc., R. Co. v. Enlow, 171 S.W. 912, 115 Ark. 584.
4 C.J. p 974 note 73.

72.5 Ga.—Little v. Georgia Power Co., 52 S.E.2d 322, 205 Ga. 51.
N.C.—Tyndall v. Harvey C. Hines Co., 39 S.E.2d 828, 226 N.C. 620.
Mo.—Martin v. Martinous, App., 219 S.W.2d 667.

72.10 Okl.—Dill v. Maner, 288 P.2d 385.

72.15 N.J.—Hansson v. Catalytic Const. Co., 127 A.2d 431, 43 N.J. Super. 23.

73. Ohio.—Wilson v. Wesler, 160 N. E. 863, 27 Ohio App. 386.

74. Ga.—Dublin v. Ogburn, 83 S.E. 939, 142 Ga. 840.

Damages

Admission in evidence of damages too remote to be the basis of a recovery constitutes reversible error.
Ga.—Dublin v. Ogburn, 83 S.E. 939, 142 Ga. 840.

75. Ark.—Elder Grocery Co. v. Applegate, 237 S.W. 92, 151 Ark. 565.

76. U.S.—Klauder-Weldon Dyeing Mach. Co. v. Gagnon, N.Y., 166 F. 286, 92 C.C.A. 204.

77. Ohio.—Adams v. Foley, 173 N.E. 197, 36 Ohio App. 295.

78. U.S.—Tate v. Baugh, C.C.A. Tenn., 264 F. 892—In re Bradley, D.C.Conn., 263 F. 446, affirmed, C. C.A., 269 F. 784.
Ala.—Crum v. Crum, 43 So.2d 392, 255 Ala. 163—Whitfield v. Birmingham Trust & Savings Co., 14 So.2d 137, 244 Ala. 526—Baker v. Horsley, 101 So. 830, 212 Ala. 181.
Brush v. Rountree, 32 So.2d 244, 33 Ala.App. 227, certiorari denied 32 So.2d 246, 249 Ala. 567—Industrial Sav. Bank v. Mitchell, 140 So. 449, 25 Ala.App. 13, certiorari denied 140 So. 452, 224 Ala. 335.
Ariz.—Rodgers v. Bryan, 309 P.2d 773, 82 Ariz. 143—**Corpus Juris Secundum quoted in** City Transfer Co. v. Johnson, 233 P.2d 1078, 1081, 72 Ariz. 293.
Cal.—Lahti v. McMenamin, 268 P. 644, 204 C. 415.
Store of Happiness v. Carmona & Allen, Inc., App., 312 P.2d 1104—Tierney v. Charles Nelson Co., 64 P.2d 1150, 19 C.A.2d 34.
Conn.—Costello v. Costello, 59 A.2d 520, 134 Conn. 536—Blakeslee v. Board of Water Com'rs of City of Hartford, 183 A. 887, 121 Conn. 163.
Fla.—First Nat. Bank v. Roberts, 109 So. 635, 92 Fla. 18.

Ga.—Clark v. Small, 175 S.E. 475, 179 Ga. 119—Boone v. Loggins, 173 S. E. 715, 178 Ga. 471—Blassingame v. Davies, 157 S.E. 638, 172 Ga. 266—Barnhill v. Georgia Trading & Development Co., 124 S.E. 524, 158 Ga. 898—Union City Realty & Trust Co. v. Wright, 89 S.E. 822, 145 Ga. 730—Strickland v. Babcock Lumber Co., 82 S.E. 531, 142 Ga. 120.

Owens v. Service Fire Ins. Co. of N. Y., 83 S.E.2d 249, 90 Ga. App. 553—Jones v. Andrews, 81 S. E.2d 304, 89 Ga.App. 734, affirmed 82 S.E.2d 503, 210 Ga. 706—City of Atlanta v. West, 3 S.E.2d 755, 60 Ga.App. 269—Gregg v. Fitzpatrick, 187 S.E. 730, 54 Ga.App. 303—Bailey v. McClendon, 101 S.E. 195, 24 Ga.App. 473—Watkins v. Woodberry, 100 S.E. 34, 24 Ga.App. 80—Shores-Mueller Co. v. Bell, 94 S.E. 83, 21 Ga.App. 194—Crockett v. Sibley, 60 S.E. 326, 3 Ga.App. 554.

Idaho.—In re O'Brien's Estate, 262 P. 152, 44 Idaho 729.

Ill.—Clark v. Storchak, 52 N.E.2d 229, 384 Ill. 564, appeal dismissed 64 S.Ct. 1270, 322 U.S. 713, 88 L. Ed. 1555.

Ropiequet v. Ætna Life Ins. Co., 33 N.E.2d 228, 309 Ill.App. 346. See Weinberger v. Werremeyer, 224 Ill.App. 217—Scruggs v. Wood, 215 Ill.App. 267—City of Chicago v. Truax Greene & Co., 192 Ill.App. 524.

Ind.—Powell v. Madison Safe Deposit & Trust Co., 196 N.E. 324, 208 Ind. 432, 101 A.L.R. 1368—Brier v. Childers, 148 N.E. 474, 196 Ind. 520.

Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind.App. 585—Williams v. Padelinetti, 127 N.E. 158, 73 Ind.App. 216—Lake Erie & W. R. Co. v. Howarth, 124 N.E. 687, 73 Ind.App. 454, rehearing denied 127 N.E. 804, 73 Ind.App. 454.

Iowa.—Simmons v. Meservey, 224 N. W. 548—Kasper v. Kasper, 181 N. W. 448.

Kan.—Amerine v. Amerine, 283 P.2d 469, 178 Kan. 79—Kansas Wheat Growers' Ass'n v. Goering, 256 P. 119, 123 Kan. 508—Spencer v. Kansas Casualty & Surety Co., 227 P. 357, 116 Kan. 491—Ogallah Elevator Co. v. Harrison, 154 P. 1016, 97 Kan. 289, L.R.A.1916D 777.

Ky.—Continental Ins. Co. v. Randolph, 11 Ky.Op. 125.

Me.—Reed v. Central Maine Power Co., 172 A. 823, 132 Me. 476.

Md.—Boehm v. Boehm, 34 A.2d 447, 182 Md. 254—Smart v. Graham, 20 A.2d 574, 178 Md. 476—Shriver v. Caples, 133 A. 470, 150 Md. 571—Corbin v. Staton, 115 A. 23, 139 Md. 150—Capital Traction Co. v. McKeon, 103 A. 314, 132 Md. 79—National Life Ins. Co. of U. S. v. Fleming, 96 A. 281, 127 Md. 179.

Mass.—Jones & Polson v. O'Toole, 199 N.E. 925, 293 Mass. 399.

Minn.—In re Klessig's Estate, 189 N. W. 424, 153 Minn. 27—Armour v. Village of Litchfield, 188 N.W. 1006, 152 Minn. 382—Nett v. Bonfig, 185 N.W. 956, 151 Minn. 32.

Miss.—Union & Planters' Bank & Trust Co. v. Rylee, 94 So. 796, 130 Miss. 892.

Mo.—LeGrand v. U-Drive-It Co., 247 S.W.2d 706.

Robinson v. City of Poplar Bluff, App., 293 S.W. 503.

Mont.—Donohoe v. Landoe, 251 P.2d 560, 126 Mont. 351—Buhler v. Loftus, 165 P. 601, 53 Mont. 546.

Nev.—Warren v. De Long, 59 P.2d 1165, 57 Nev. 131, rehearing denied 60 P.2d 608, 57 Nev. 131.

N.Y.—McKenna v. Williamsburgh Sav. Bank, 16 N.Y.S.2d 206, 258 App.Div. 894, reargument denied In re Lamerdin's Estate, 17 N.Y.S.2d 480, 258 App.Div. 907—In re See's Estate, 272 N.Y.S. 111, 241 App. Div. 525.

N.C.—Perkins v. Langdon, 74 S.E.2d 634, 237 N.C. 159—Singleton v. Roebuck, 100 S.E. 313, 178 N.C. 261.

Ohio.—Morris v. C. E. Morris Co., App., 104 N.E.2d 466.

Okl.—Chicago, R. I. & P. Ry. Co. v. Cotton, 162 P. 763, 62 Okl. 168.

Or.—Nelson v. United Rys. Co., 166 P. 763, 85 Or. 427.

Pa.—Ogle v. Barron, 92 A. 1071, 247 Pa. 19.

In re Zolyan's Estate, 46 Pa. Dist. & Co. 74.

S.C.—Holman v. City of Orangeburg, 110 S.E. 674, 118 S.C. 361.

Tenn.—Lea v. Gentry, 73 S.W.2d 170, 167 Tenn. 664.

Olson v. Sharpe, 259 S.W.2d 867, 36 Tenn.App. 557—Vest v. Bitner, 241 S.W.2d 438, 34 Tenn.App. 575—Pratt v. Duck, 191 S.W.2d 562, 28 Tenn.App. 502—Scarbrough v. Pickens, 170 S.W.2d 585, 26 Tenn. App. 213—Dennie v. Isler, 8 Tenn. App. 1.

Tex.—Day v. Townsend, Com.App., 238 S.W. 213.

Raynes v. Germany, Civ.App., 144 S.W.2d 981—McFarlin v. Elliott-Tuck, Inc., Civ.App., 71 S.W. 2d 410—Dial v. Martin, Civ.App., 37 S.W.2d 166, reversed on other grounds Martin v. Dial, Com.App., 57 S.W.2d 75, 89 A.L.R. 571—Robbins v. Wynne, Civ.App., 28 S.W.2d 225, reversed on other grounds, Com.App., 44 S.W.2d 946—Epting v. Nees, Civ.App., 25 S.W.2d 717—Oppenheim v. Swinehart Tire & Rubber Co. of Tennessee, Civ.App., 22 S.W.2d 991—Kennedy v. Wheeler, Civ.App., 268 S.W. 516—U. S. Fidelity & Guaranty Co. v. Summers, Civ.App., 262 S.W. 247—Guarantee Mercantile Co. v. Jefferson Farmers' Union Cotton Warehouse Co., Civ. App., 247 S.W. 601—Donigan v. Emmert, Civ.App., 239 S.W. 659, dismissed for want of jurisdiction—St. Louis, B. & M. Ry. Co. v. Broughton, Civ.App., 212 S.W. 664, error refused—Missouri, K. & T. Ry. Co. of Texas v. Humphries, Civ.App., 200 S.W. 909—Dickinson v. Comstock, Civ.App., 199 S.W. 863—McCormack v. Crawford, Civ.App., 181 S.W. 485—City of El Paso v. Wiley, Civ. App., 180 S.W. 661—Loftus v. Sturgis, Civ.App., 167 S.W. 14—McKenzie v. Imperial Irr. Co., Civ. App., 166 S.W. 495.

Va.—Glidewell v. Murray-Lacy & Co., 98 S.E. 665, 124 Va. 563, 4 A.L.R. 225.

Wash.—Tjosevig v. Wilbourne, 74 P. 2d 489, 193 Wash. 21—Colby v. Nelson, 230 P. 629, 131 Wash 650—Bergen v. Lewis County, 164 P. 73, 95 Wash. 499—Doyle v. Langdon, 141 P. 352, 80 Wash. 175.

W.Va.—Wilson v. West Virginia Amusement Co., 128 S.E. 381, 99 W. Va. 290—Bank of Greenville v. S. T. Lowry & Co., 94 S.E. 985, 81 W. Va. 578.

Wis.—In re Southard's Estate, 242 N.W. 584, 208 Wis. 150—Bell v. Milwaukee Electric Ry. & Light Co., 172 N.W. 791, 169 Wis. 408.

Wyo.—U. S. Fidelity & Guaranty Co. v. Yoder, 25 P.2d 394, 46 Wyo. 293.

4 C.J. p 970 note 57—9 C.J. p 359 note 3.

Other statement of rule

Erroneous admission of evidence is not without prejudice unless it appears from examination of record and judgment that such evidence, alone or in conjunction with all evidence, probably did not influence result either favorably to party adducing it or adversely to opposing party.

Neb.—In re Parvin's Estate, 270 N. W. 470, 131 Neb. 853.

No possible effect on result

To justify appellate court in disregarding erroneous admission of evidence, it is not enough that result might have been the same if improper evidence had been excluded, but it must appear that evidence could not by any possibility have affected the result.

N.Y.—Beach v. Richtmyer, 90 N.Y. S.2d 332, 275 App.Div. 466.

Irrelevant or immaterial evidence

Tex.—Steinkamp v. Erwin, Civ.App., 249 S.W.2d 1012—United Employers Casualty Co. v. Marr, Civ.App., 144 S.W.2d 973, error dismissed, judgment correct.

Where verdict was demanded by the evidence, the intermediate errors, if any, in admission of certain evidence were harmless and required no consideration.

Ga.—Davis v. Davis, 88 S.E.2d 377, 211 Ga. 714.

or was not reasonably calculated to cause a result unfair to the complaining party,[78.5] or was not of such a character as reasonably tended to cause the rendition of an improper verdict,[78.10] or could not have materially affected decisive issues,[78.15] or could not have misled,[78.20] confused,[78.25] influenced,[78.30] or prejudiced the minds of,[78.35] the jury.

Moreover, error in the admission of evidence is not a ground for reversal where such admission did not operate so as to prejudice, deny, or substantially affect, the rights or interests of the complaining party,[79] or where such admission could not have

Testimony of rebuttal witnesses
Ariz.—City Transfer Co. v. Johnson, 233 P.2d 1078, 72 Ariz. 293.

Consideration of proper evidence
Rulings with respect to competency of certain testimony were harmless where results would have been the same considering other evidence which was properly admitted.
S.C.—Allison v. Ideal Laundry & Cleaners, 55 S.E.2d 281, 215 S.C. 344.

Decision on another trial
Where alleged errors in reception of evidence would not change result of decision on another trial, decree would be affirmed.
Miss.—Dunn v. Anderson, 86 So.2d 24.

Case not decided on basis of exhibit
Where engrossed statement of facts on appeal expressly stated that case was not decided on basis of particular exhibit, error in admitting exhibit could not have been prejudicial.
Cal.—Williams v. Goldberg, 151 P. 2d 853, 66 C.A.2d 40.

78.5 Tex.—Tower Contracting Co. v. Flores, Civ.App., 294 S.W.2d 266, modified on other grounds, Sup., 302 S.W.2d 396.

78.10 Tex.—Grocers Supply Co. v. Stuckey, Civ.App., 152 S.W.2d 911, error refused.

78.15 Conn.—Blakeslee v. Board of Water Com'rs of City of Hartford, 183 A. 887, 121 Conn. 163.

78.20 Cal.—Aspen Pictures, Inc. v. Oceanic S. S. Co., App., 306 P.2d 933.
Ind.—Montgomery-Ward & Co. v. Wooley, 94 N.E.2d 677, 121 Ind. App. 60.
Iowa.—Hansen v. Nelson, 39 N.W.2d 292, 240 Iowa 1298.
Mo.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402.
R.I.—Hulton v. Phaneuf, 132 A.2d 85.
Tenn.—Gardner v. Burke, 187 S.W. 2d 25, 28 Tenn.App. 119.

78.25 Okl.—Matofsky v. Bishop's Restaurants, Inc., 312 P.2d 446.
R.I.—Hulton v. Phaneuf, 132 A.2d 85.

78.30 Ariz.—Alabam Freight Lines v. Thevenot, 204 P.2d 1050, 68 Ariz. 260.
Ga.—Gregg v. Fitzpatrick, 187 S.E. 730, 54 Ga.App. 303.
Ind.—Indianapolis Rys. v. Boyer, 26 N.E.2d 62, 108 Ind.App. 161.
Ky.—Smith v. Butt & Hardin, 135 S.W.2d 67, 281 Ky. 127, 157 A.L.R. 648.
Mo.—Scheidegger v. Thompson, App., 174 S.W.2d 216.
Tex.—Schelb v. Sparenberg, 124 S.W. 2d 322, 133 Tex. 17.

Improper influence
N.C.—Sisson v. Royster, 45 S.E.2d 351, 228 N.C. 298.

Material question
The introduction of allegedly irrelevant evidence was not prejudicial to the substantial rights of either party, where it did not affect or influence the jury's determination of the one material question, on which jury were instructed to decide the case.
Ky.—Miller v. Plumbers Supply Co., 122 S.W.2d 477, 275 Ky. 647.

Where other witnesses testified to same things, jury could not be unfavorably influenced by anything one witness stated, and opposing party could not complain of such examination.
Ill.—O'Brien v. Musfeldt, 102 N.E.2d 173, 345 Ill.App. 12.

78.35 Pa.—West v. Morgan, Com. Pl., 52 Dauph.Co. 361, affirmed 27 A.2d 46, 345 Pa. 61.
Tex.—Loyd v. Herrington, Civ.App., 178 S.W.2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135.

Admission of expectancy tables
Neb.—Bresley v. O'Connor Inc., 80 N.W.2d 711, 163 Neb. 565.

79. U.S.—Community Natural Gas Co. v. Henley, C.C.A.Tex., 54 F.2d 59.
Société Nouvelle d'Armement v. Barnaby, Wash., 246 F. 68, 158 C.C.A. 294.
Ala.—Berry v. Barksdale, 1 So.2d 758, 30 Ala.App. 134.
Ariz.—**Corpus Juris Secundum quoted in** City Transfer Co. v. Johnson, 233 P.2d 1078, 1081, 72 Ariz. 293—Kirkland v. Spriggs, 171 P. 992, 19 Ariz. 425.
Ark.—J. I. Case Co. v. Boothe, 296 S.W.2d 894.
Cal.—Shigeru Yamamoto v. Liberman, App., 307 P.2d 695—People By and Through Dept. of Public Works v. J. P. Loubet Co., 305 P. 2d 651, 147 C.A.2d 566—Selby v. Allen, 6 P.2d 285, 119 C.A. 257.
Fla.—Groover v. Hammond, 75 So. 857, 73 Fla. 1155—City of Key West v. Baldwin, 67 So. 808, 69 Fla. 136.
Ga.—Payne v. Lyon, 111 S.E. 226, 28 Ga.App. 246, reversed on other grounds 114 S.E. 892, 154 Ga. 501, conformed to 115 S.E. 138, 29 Ga. App. 327—Atlanta & W. P. R. Co. v. Miller, 98 S.E. 248, 23 Ga.App. 347.
Hawaii.—Berkson v. Post, 38 Hawaii 436.
Ill.—Davis v. Michigan Cent. R. Co., 213 Ill.App. 259.
Ind.—Swallow Coach Lines v. Cosgrove, 15 N.E.2d 92, 214 Ind. 532. Workman v. Workman, 46 N.E. 2d 718, 113 Ind.App. 245—Lyon v. Ætna Life Ins. Co., 44 N.E.2d 186, 112 Ind.App. 573—Columbia Grocery Co. v. Schlesinger, 200 N.E. 414, 102 Ind.App. 617—Hoosier Lumber Co. v. Spear, 189 N.E. 633, 99 Ind.App. 532—Indiana Union Traction Co. v. Hiatt, 114 N.E. 478, 65 Ind.App. 233—Huntington Brewing Co. v. McGrew, 112 N.E. 534, 64 Ind.App. 273—W. McMillen & Son v. Hall, 109 N.E. 424, 59 Ind. App. 545.
Iowa.—In re Tabasinsky's Estate, 293 N.W. 578, 228 Iowa 1102—Comparet v. Urbandale Coal Co., 205 N.W. 779, 200 Iowa 922—Strasberger v. Farmers' Elevator Co., 167 N.W. 184, 184 Iowa 66.
Kan.—Van Arsdale-Osborne Brokerage Co. v. Jones, 156 P. 719, 97 Kan. 646.
Ky.—Farrington Motors, Inc. v. Fidelity & Cas. Co. of N. Y., 303 S.W. 2d 319—Shatz v. American Sur. Co. of N. Y., 295 S.W.2d 809—Colston's Adm'r v. Cincinnati, N. O. & T. P. Ry. Co., 69 S.W.2d 1072, 253 Ky. 512—Honaker v. Crutchfield, 57 S. W.2d 502, 247 Ky. 495—Hazard Dean Coal Co. v. McIntosh, 209 S. W. 364, 183 Ky. 316—U. S. Fidelity & Guaranty Co. v. Travelers' Ins. Mach. Co., 180 S.W. 815, 167 Ky. 382, rehearing denied 183 S.W. 492, 169 Ky. 158.
Me.—Booth Bros. & Hurricane Island Granite Co. v. Smith, 97 A. 826, 115 Me. 89.
Md.—Guyer v. Snyder, 104 A. 116, 133 Md. 19—Chesapeake & Potomac Telephone Co. v. State, 93 A. 11, 124 Md. 527.
Mass.—City of Lawrence v. Commissioners of Public Works, 67 N.E. 2d 482, 319 Mass. 700—Hall v. Henry Thayer & Co., 113 N.E. 644, 225 Mass. 151.
Minn.—Holt v. Rural Weekly .Co., 227 N.W. 491, 178 Minn. 471.
Miss.—Brookhaven Lumber & Mfg. Co. v. Adams, 97 So. 484, 132 Miss. 689.

materially harmed him,[79.5] or where the effect of admitting the evidence in question was only slightly prejudicial,[80] or was actually prejudicial to the

Mo.—Caldwell v. Barnsdall Refining Corp., App., 150 S.W.2d 504—Globe American Corp. v. Miller, 131 S.W. 2d 340, 234 Mo.App. 253—Rouden v. Heisler's Estate, App., 219 S.W. 691—Fuller v. Tootle-Campbell Dry Goods Co., 176 S.W. 1091, 189 Mo.App. 514.

Neb.—Fries v. Goldsby, 80 N.W.2d 171, 163 Neb. 424—Gorman v. Bratka, 296 N.W. 456, 136 Neb. 84—Nelson v. National Automobile Ins. Co., 204 N.W. 55, 113 Neb. 553—Aten v. Quantock, 199 N.W. 551, 112 Neb. 288—Larsen v. Savidge, 170 N.W. 353, 103 Neb. 79—Mohler v. Board of Regents of University of Nebraska, 165 N.W. 954, 102 Neb. 12—Larson v. Central Nat. Fire Ins. Co. of Illinois, 154 N.W. 721, 98 Neb. 845.

N.J.—Cauco v. Galante, 84 A.2d 712, 8 N.J. 233—McStay v. Przychocki, 81 A.2d 761, 7 N.J. 456.

De Santis v. Lange, 60 A.2d 620, 137 N.J.Law 480—Kozlowski v. Pavonia Fire Ins. Co., 183 A. 154, 116 N.J.Law 194.

Southard v. Wilson, 183 A. 202, 14 N.J.Misc. 171.

N.Y.—Hopper v. Comfort Coal-Lumber Co., 105 N.Y.S.2d 874, 278 App. Div. 1007—Lembo v. Andola, 100 N.Y.S.2d 561, 277 App.Div. 1077—Kaufman v. John Abramson & Co., 288 N.Y.S. 305, 248 App.Div. 628.

N.C.—Phillips & Buttorff Mfg. Co. v. Call, 192 S.E. 105, 211 N.C. 730—Young v. Stewart, 131 S.E. 735, 191 N.C. 297.

Ohio.—Flynn v. Sharon Steel Corp., 50 N.E.2d 319, 142 Ohio St. 145.

Okl.—Midland Val. R. Co. v. Manios, 307 P.2d 545—Hostutler v. State ex rel. Com'rs of Land Office, 302 P.2d 983—Boydston v. Roberts, 127 P.2d 808, 191 Okl. 227—Spillers v. Missouri, Kansas & Oklahoma Coach Lines, 88 P.2d 642, 184 Okl. 507—Gilliland v. Yard, 57 P.2d 603, 177 Okl. 49—Lieuallen v. Young, 241 P. 342, 115 Okl. 153—Nelson v. Bateman, 158 P. 1135, 59 Okl. 242—Missouri, O. & G. Ry. Co. v. Collins, 150 P. 142, 47 Okl. 761—Daniel v. John P. London Co., 144 P. 596, 44 Okl. 297.

Pa.—Indian v. Delaware, L. & W. R. Co., 104 A. 871, 262 Pa. 117.

R.I.—McSoley v. Hogan, 40 A.2d 599, 70 R.I. 470.

S.C.—Lanter v. Southern States Life Ins. Co. of Alabama, 104 S.E. 193, 114 S.C. 536.

Tenn.—Ellett v. Embury & Maury, 217 S.W. 818, 142 Tenn. 444.

Tevis v. Proctor & Gamble Distributing Co., 113 S.W.2d 64, 21 Tenn.App. 494.

Tex.—Kroll v. Scott, Civ.App., 155 S.W.2d 985, error refused—Petrolia Supply Co. v. Hemphill, Civ. App., 258 S.W. 861—Fresnos Land & Irrigation Co. v. Box, Civ.App., 233 S.W. 369, dismissed for want of jurisdiction.

Utah.—Thomas v. Ogden Rapid Transit Co., 155 P. 436, 47 Utah 595.

Wash.—Judge v. Lindsay, 174 P. 650, 103 Wash. 700.

W.Va.—Neill v. Fidelity Mut. Life Ins. Co., 195 S.E. 860, 119 W.Va. 694—Osage Gas Co. v. Cleveland & Morgantown Coal Co., 133 S.E. 388, 101 W.Va. 675.

Wis.—Chippewa Falls Hotel Co. v. Employers' Liability Assur. Corporation, Limited, of London, England, 241 N.W. 380, 208 Wis. 86.

Wyo.—Northwest States Utilities Co. v. Brouillette, 65 P.2d 223, 51 Wyo. 132, rehearing denied 69 P.2d 623, 51 Wyo. 132.

No prejudice to legal right

Me.—In re Haley's Estate, 84 A.2d 808, 147 Me. 173—Appeal of Heath, 79 A.2d 810, 146 Me. 229.

Evidence introduced by one of codefendants

Introduction of incompetent evidence by one defendant is prejudicial to codefendant only when it affects the question of the latter's liability to plaintiff.

Mo.—McDonald v. Kansas City Gas Co., 59 S.W.2d 37, 332 Mo. 356.

Miscarriage of justice or violation of right

(1) Error in the admission of evidence may not constitute grounds for reversal unless such error results in a miscarriage of justice or a substantial violation of a constitutional or statutory right of the complaining party.

Okl.—Carver v. Knutson Elevators, Inc., 285 P.2d 391—McCarty v. Occidental Life Ins. Co. of Cal., 268 P.2d 221—Douvas v. Newcomb, 267 P.2d 600—Ridgeway v. Logan, 239 P.2d 778, 205 Okl. 603—Haggard v. Oklahoma City, 218 P.2d 366, 203 Okl. 76—Auten v. Livingston, 207 P.2d 256, 201 Okl. 467—Kansas, O. & G. Ry. Co. v. Rogers, 191 P.2d 209, 200 Okl. 111—Swearingen v. Oldham, 159 P.2d 247, 195 Okl. 532—Keahey v. Craig, 96 P.2d 521, 186 Okl. 162—Bickley v. Parks, 89 P.2d 936, 185 Okl. 74—Graf Packing Co. v. Pelphrey, 42 P.2d 889, 171 Okl. 416—Pierce v. C. I. T. Corporation, 41 P.2d 481, 170 Okl. 633—Kelly v. Watkins, 39 P.2d 975, 170 Okl. 185—Mutual Life & Accident Ass'n of Frederick v. Moore, 20 P.2d 168, 162 Okl. 260—Clover v. Neely, 243 P. 758, 116 Okl. 155.

(2) Moreover, a judgment supported by competent evidence may not be reversed for admission of incompetent evidence unless from the whole record the appellate court is satisfied that there was a probable miscarriage of justice or a denial of a statutory or constitutional right of the complaining party.

Okl.—Federal Storage & Van Co. v. Davis, 41 P.2d 113, 171 Okl. 93—Moore v. Grimes, 35 P.2d 944, 169 Okl. 4—Johnson v. Johnson, 179 P. 595, 72 Okl. 155—Chicago, R. I. & P. Ry. Co. v. Forrester, 177 P. 593, 72 Okl. 8, 8 A.L.R. 163.

Requirement that injury to complaining party appear

(1) The admission of incompetent evidence is not reversible error where no injury to appellant is shown.

Ga.—Manley v. Combs, 30 S.E.2d 485, 197 Ga. 768.

Tex.—Harris v. Shear, Civ.App., 177 S.W.2d 136.

(2) To preclude a reversal, notwithstanding the erroneous admission of evidence, it should clearly appear that no injury could have resulted.

Tex.—International Travelers' Ass'n v. Bettis, 35 S.W.2d 1040, 120 Tex. 67.

(3) Fact that defendant was allowed to have a question as to immaterial matter answered was harmless error, it not appearing how, under the answer, plaintiff could be injured.

Ala.—Southern States Co. v. Long, 73 So. 148, 15 Ala.App. 286.

(4) To justify reversal, in absence of a statement of facts, on ground that trial court erred in admitting certain evidence, reviewing court must ordinarily be able to see not only that trial court erred, but that such error must with reasonable certainty have produced a substantial injury to party complaining.

Tex.—Robinson v. Howard County, Civ.App., 287 S.W.2d 234, error refused no reversible error.

(5) Exceptions to the rulings of a master in admitting evidence will not be sustained unless a material error detrimental to the excepting party is shown.

Mass.—Pickard v. Clancy, 113 N.E 838, 225 Mass. 89.

79.5 Conn.—Proto v. Bridgeport Herald Corp., 72 A.2d 820, 136 Conn. 557.

80. Ariz.—**Corpus Juris Secundum quoted in** City Transfer Co. v. Johnson, 233 P.2d 1078, 1081, 72 Ariz. 293.

Kan.—Sanford v. Chicago, B. & Q. R. Co., 272 P. 151, 127 Kan. 83.

Evidence with respect to damages

Admission of erroneous evidence concerning the measure of damages did not require a reversal, where

party who introduced the evidence.[81] Further, the erroneous admission of evidence is no ground for reversal where the effect of such admission was neither helpful to the party introducing the evidence nor harmful to the opposite party,[82] or where neither advantage nor prejudice has resulted to either party by reason of the admission of the evidence complained of.[83]

On the other hand, the admission of incompetent evidence which operates to the prejudice or injury of the rights of the complaining party is prejudicial or reversible error,[84] as is the admission of evidence which tends to becloud the issues[84.5] or to distract the attention of the jury from the real issues in the case,[85] or to give the jury an opportunity to substitute the finding of a criminal jury for its own independent judgment.[85.5] Likewise, the admission of evidence which, although immaterial or irrelevant, tends to mislead,[86] confuse,[86.5] or prejudice[86.10] the jury, or to provoke sympathy for the party offering the evidence,[87] is ground for reversal. Further, error in the admission of evidence may constitute ground for reversal where such admission tends to inflame the minds of the jury against one of the parties to the cause,[88] or impeaches the evidence of the party cast.[89]

the damages under a different rule would make only a slight difference.
Kan.—Sanford v. Chicago, B. & Q. R. Co., supra.

81. Mont.—Dreeland v. Pascoe, 102 P. 331, 39 Mont. 290.
Va.—Norfolk, etc., R. Co. v. Perdue, 63 S.E. 1058, 117 Va. 186.

82. Okl.—Acme Brick Co. v. U. S. Zinc Co., 278 P. 1083, 137 Okl. 212

83. Kan.—Debus v. Missouri State Life Ins. Co., 225 P. 91, 115 Kan. 773.

84. Ga.—Hoard v. Maddox, 42 S.E. 2d 744, 202 Ga. 274.
Mass.—Nickerson v. Boston Elevated Ry., 66 N.E.2d 193, 319 Mass. 220.
Mo.—Happy v. Walz, App., 244 S.W. 2d 380.
Neb.—Harper v. Young, 298 N.W. 342, 139 Neb. 624.
N.J.—International Dye & Print Works v. Fashion Screen Printing Co., 186 A. 467, 116 N.J.Law 610, affirmed 189 A. 138, 117 N.J.Law 424.
Ohio.—Green v. City of Cleveland, 79 N.E.2d 676, affirmed 83 N.E.2d 63, 150 Ohio St. 441.
Okl.—Atchison, T. & S. F. Ry. Co. v. Aynes, 271 P.2d 312—Cook v. First Nat. Bank, 236 P. 883, 110 Okl. 111.
Tex.—Traders & Gen. Ins. Co. v. Frozen Food Exp., Civ.App., 255 S. W.2d 378, error refused no reversible error.

Evidence highly prejudicial to rights
Okl.—Benzel v. Pitchford, 245 P.2d 1131, 206 Okl. 672.

84.5 Tex.—Myers v. Thomas, 186 S. W.2d 811, 143 Tex. 502.
Carpenter v. Ford, Civ.App., 212 S.W.2d 984, reversed on other grounds 216 S.W.2d 558, 147 Tex. 447.

85. Fla.—Cason v. Baskin, 30 So.2d 635, 159 Fla. 31.
Ill.—Angelos v. Pelias, 150 Ill.App. 527.
N.C.—**Corpus Juris Secundum cited in** State v. Page, 1 S.E.2d 887, 889, 215 N.C. 333.
Pa.—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55.
Tex.—Pennington v. Thompson Bros. Lumber Co., Civ.App., 122 S.W. 923.

85.5 Ky.—Shatz v. American Sur. Co. of N. Y., 295 S.W.2d 809.

86. N.C.—**Corpus Juris Secundum cited in** State v. Page, 1 S.E.2d 887, 889, 215 N.C. 333.
Pa.—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55.
Tex.—Myers v. Thomas, 186 S.W.2d 811, 143 Tex. 502—Carpenter v. Ford, Civ.App., 212 S.W.2d 984, reversed on other grounds 216 S. W.2d 558, 147 Tex. 447.
Wash.—Sudden v. Morse, 92 P. 901, 48 Wash. 101.
W.Va.—Ward v. Smith, 86 S.E.2d 539, 140 W.Va. 791.
4 C.J. p 974 note 76.

Incompetent evidence tending to prove material issue
The admission of incompetent evidence tending a prove a material issue requires a reversal when prejudicial.
Okl.—Harris v. Hart, 151 P. 1038, 49 Okl. 143—State Nat. Bank v. Roseberry, 148 P. 1034, 46 Okl. 708.

Mischievous evidence
Mere immateriality of evidence, if admitted, is not necessarily error, but it may be if the evidence is mischievous and calculated to mislead the jury.
Me.—Torrey v. Congress Square Hotel Co., 75 A.2d 451, 145 Me. 234.

Testimony held not misleading
Tex.—Home Ins. Co. of N. Y. v. Dacus, Civ.App., 239 S.W.2d 182.

86.5 Fla.—Cason v. Baskin, 30 So.2d 635, 159 Fla. 31.
Pa.—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55.
Tex.—Myers v. Thomas, 186 S.W.2d 811, 143 Tex. 502.
Carpenter v. Ford, Civ.App., 212 S.W.2d 984, reversed on other grounds 216 S.W.2d 558, 147 Tex. 447.
W.Va.—Ward v. Smith, 86 S.E.2d 539, 140 W.Va. 791.

86.10 Ga.—Turner v. Warren, 18 S. E.2d 865, 193 Ga. 455.
N.Y.—Macy v. New York World-Telegram Corp., 161 N.Y.S.2d 55, 141 N.E.2d 566, 2 N.Y.2d 416.
Pa.—Short v. Allegheny Trust Co., 198 A. 793, 330 Pa. 55.

87. Cal.—Simoneau v. Pacific Electric R. Co., 166 C. 264, 136 P. 544, 49 L.R.A.,N.S., 737.
Dillon v. Wallace, App., 306 P.2d 1044.
Conn.—Woodbridge Ice Co. v. Semon Ice Cream Corp., 71 A. 577, 81 Conn. 479.
Mo.—Happy v. Walz, App., 244 S.W. 2d 380.
N.Y.—Allen v. Stokes, 23 N.Y.S.2d 443, 260 App.Div. 600, reargument denied 24 N.Y.S.2d 994, 260 App. Div. 1007.
N.C.—**Corpus Juris Secundum cited in** State v. Page, 1 S.E.2d 887, 889, 215 N.C. 333.
4 C.J. p 974 note 77.

88. Cal.—Barsotti v. Imperatrice, 275 P. 892, 97 C.A. 569.
Mo.—Happy v. Walz, App., 244 S.W. 2d 380.
4 C.J. p 974 note 79.

Characterizing dealing of party as "unjust"
Admission of testimony as to an "unjust" deal between defendants and the witness' mother in answer to an impeaching question as to a conversation with defendant was prejudicial error.
Cal.—Barsotti v. Imperatrice, 275 P. 892, 97 C.A. 569.

Evidence introduced to belittle claim
Error in permitting the injection of extraneous matter into the trial, and in admitting incompetent testimony to belittle plaintiff's claim, required reversal.
N.Y.—M. H. Whittier Co. v. Chandler, 237 N.Y.S. 34, 227 App.Div. 70.

89. Ky.—Louisville R. Co. v. Kritzky, 172 S.W. 1051, 162 Ky. 652.
S.C.—Holden v. Cantrell, 70 S.E. 815, 88 S.C. 281.
Wis.—Freeman v. Dells Paper, etc., Co., 135 N.W. 540, 150 Wis. 93.
4 C.J. p 974 note 80.

(3) Circumstances of Particular Case

(a) In general

(b) Conduct of parties or counsel

(c) Evidence of party against whom judgment is not sought

(a) In General

Error in admitting evidence may be rendered harmless by the circumstances existing in the particular case, as where competent evidence established the case or the point sought to be established by the erroneously admitted evidence.

Error claimed to have been committed in admitting evidence may be regarded on appeal as harmless because of the existing circumstances in the particular case, as where it is apparent, or reasonably probable, that the verdict or finding would or must have been the same had the particular evidence not been admitted,[90] or where substantial justice has been rendered.[90.5] Moreover, error committed in the admission of evidence may, on appeal, be considered to be harmless where the legal or competent evidence abundantly established the case,[91] or was sufficient to take the issues to the

90. Ariz.—Bean v. Gorby, 292 P.2d 199, 80 Ariz. 25.
Cal.—Hawkinson v. Oesdean, 143 P.2d 967, 61 C.A.2d 712—Atchley v. Finley, 133 P.2d 823, 57 C.A.2d 21.
Colo.—Walker v. Hunter, 22 P.2d 133, 92 Colo. 473.
Ill.—Allendorf v. Elgin, J. & E. Ry. Co., 133 N.E.2d 288, 8 Ill.2d 164, certiorari denied Elgin, J. & E. Ry. Co. v. Allendorf, 77 S.Ct. 49, 352 U.S. 833, 1 L.Ed.2d 53, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170.
Shapleigh Hardware Co. v. Enterprise Foundry Co., 27 N.E.2d 1012, 305 Ill.App. 180.
Ind.—Ridgway v. Yenny, 57 N.E.2d 581, 223 Ind. 16.
Ky.—Pyramid Life Ins. Co. v. Milner, 158 S.W.2d 429, 289 Ky. 249, 138 A.L.R. 1507.
Me.—Reed v. Central Maine Power Co., 172 A. 823, 132 Me. 476.
Mass.—Warner v. Brown, 121 N.E. 69, 231 Mass. 333.
Miss.—Powell v. J. J. Newman Lumber Co., 165 So. 299, 174 Miss. 685.
Mo.—Brown v. Sloan's Moving & Storage Co., 296 S.W.2d 20.
Okl.—Rosler v. Metropolitan Life Ins. Co., 168 P.2d 302, 192 Okl. 35.
Tex.—Driver v. Worth Const. Co., Civ.App., 264 S.W.2d 174, reversed on other grounds 273 S.W.2d 603.
4 C.J. p 971 note 60.

Amount of verdict not affected

Pa.—McCarthy v. Ference, 58 A.2d 49, 358 Pa. 485.

90.5 Miss.—Powell v. J. J. Newman Lumber Co., 165 So. 299, 174 Miss. 685.
N.J.—Stanley Co. of America v. Hercules Powder Co., 108 A.2d 616, 16 N.J. 295.
Burke v. Lincoln Transit Co., 117 A.2d 521, 37 N.J.Super. 433.
Ohio.—Nicholl v. Bergner, 63 N.E.2d 828, 76 Ohio App. 245.

91. Ala.—Crum v. Crum, 43 So.2d 392, 255 Ala. 163.
Ark.—M. W. Elkins & Co. v. Ashby, 112 S.W.2d 627, 193 Ark. 318.
Cal.—Frazure v. Fitzpatrick, 136 P.2d 566, 21 C.2d 851.
Bailey v. Market St. Ry. Co., 40 P.2d 281, 3 C.A.2d 525.
Ill.—Winger v. Chicago City Bank & Trust Co., 60 N.E.2d 560, 325 Ill. App. 459, reversed on other grounds 67 N.E.2d 265, 394 Ill. 94—Shapleigh Hardware Co. v. Enterprise Foundry Co., 27 N.E.2d 1012, 305 Ill.App. 180. See General Fire Extinguisher Co. v. Seymour, 204 Ill.App. 198.
Ky.—Pyramid Life Ins. Co. v. Milner, 158 S.W.2d 429, 289 Ky. 249, 138 A.L.R. 1507.
Miss.—First Nat. Bank v. Owen, 171 So. 4, 177 Miss. 339.
Mo.—Bixler v. Special Road Dist. No. 1, Newton County, 156 S.W.2d 950, 236 Mo.App. 336—Lewis v. Thompson, 96 S.W.2d 938, 231 Mo. App. 321.
Mont.—Ahlquist v. Pinski, 185 P.2d 499, 120 Mont. 355.
N.C.—Bryant v. Reedy, 200 S.E. 896, 214 N.C. 748.
Okl.—Denco Bus Co. v. Keller, 212 P.2d 469, 202 Okl. 263—Montgomery Ward & Co. v. Curtis, 188 P.2d 199, 199 Okl. 525.
Pa.—Gruskin v. Stitt, 13 A.2d 412, 339 Pa. 137.
S.C.—Gaskins v. Firemen's Ins. Co. of Newark, N. J., 33 S.E.2d 498, 206 S.C. 213—Globe & Rutgers Fire Ins. Co. v. Foil, 200 S.E 97, 189 S. C. 91.
Tenn.—Brown v. Fuqua, 9 Tenn.App. 22.
Tex.—Alexander v. State, Civ.App., 115 S.W.2d 1122, error refused.
4 C.J. p 971 note 58.

Prima facie case

Ga.—Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844.

Ample uncontradicted evidence

Mo.—Zeppenfeld v. Morgan, App., 185 S.W.2d 898.

As depending on whether case is tried by jury

(1) It has been held that the rule that the introduction of incompetent evidence is harmless where sufficient legal evidence is introduced to sustain the verdict does not apply where the trial is before a jury.
Tex.—Texarkana & Ft. S. Ry. Co. v. Wilson, Civ.App., 204 S.W. 491.

(2) There exists, however, authority to the effect that the rule that judgment will not be reversed for admission of incompetent evidence, if there was other competent evidence unless the incompetent evidence affected the result, applies where a jury acts in an advisory capacity, as well as in cases tried without a jury.
Kan.—Sipe v. Sipe, 173 P. 13, 102 Kan. 742, 103 Kan. 181.

Competent evidence supporting finding or finding and conclusion

(1) Error in admitting evidence is held not to require a reversal, where other evidence sustained the findings.
Cal.—Mathieson v. Wallace, 12 P.2d 99, 124 C.A. 25.
Ga.—Knight v. Causby, 23 S.E.2d 458, 68 Ga.App. 572.
Idaho.—Johnson v. Flatness, 211 P.2d 769, 70 Idaho 37—Butler v. Anaconda Copper Mining Co., 268 P. 6, 46 Idaho 326.
Ill.—Cohn v. Cohn, 63 N.E.2d 618, 327 Ill.App. 22—MacAndrews & Forbes Co. v. Mechanical Mfg. Co., 1 N.E.2d 895, 285 Ill.App. 81, affirmed 11 N.E.2d 382, 367 Ill. 288, certiorari denied Mechanical Mfg. Co. v. MacAndrews & Forbes Co., 58 S.Ct. 759, 303 U.S. 655, 82 L.Ed. 1115.
Md.—Winakur v. Sapourn, 145 A. 342, 156 Md. 662.
Miss.—Sample v. Romine, 8 So.2d 257, 193 Miss. 706, suggestion of error overruled 9 So.2d 643, 193 Miss. 706, corrected on other grounds 10 So.2d 346, 193 Miss. 706.
N.M.—Martin v. Village of Hot Springs, 282 P. 273, 34 N.M. 411.

(2) Admitting certain evidence, if error, was harmless, where it was cumulative and other evidence was sufficient to sustain findings and conclusions of law.
Cal.—Ferris v. Emmons, 6 P.2d 950, 214 C. 501.

Incompetent evidence followed by competent corroborating evidence

Admission of a single item of incompetent evidence is not reversible error, if immediately followed by competent corroborating evidence.
Ind.—Davis Const. Co. v. Granite

jury,[91.5] or established the point or issue sought to be established by the evidence claimed to have been erroneously admitted,[92] or where the evidence in question was not necessary to support the

Sand & Gravel Co., 163 N.E. 240, 90 Ind.App. 379.

Objectionable evidence not only evidence

Admitting plaintiff's deposition, where the lower court's action on a motion to suppress was not shown and the deposition was not shown to be the only evidence introduced for plaintiff, if erroneous, was not prejudicial.

Wyo.—Myrin v. Know, 14 P.2d 209, 44 Wyo. 520.

Prima facie case made by other evidence

Admission of testimony, if error, was harmless where prima facie case was made out by other evidence.

Pa.—Aquetong Hall Ass'n v. James, 100 Pa.Super. 440.

Sufficient competent evidence to support verdict, decision, or judgment

(1) Admitting improper evidence is harmless, where sufficient competent evidence supports the verdict, judgment, or decree.

Cal.—Blume v. MacGregor, 144 P.2d 375, reheard 148 P.2d 656, 64 C.A. 2d 244.

Del.—Canadian Industrial Alcohol Co. v. Nelson, 188 A. 39, 8 W.W. Harr. 26.

Ind.—Pleak v. Cottingham, 178 N.E. 309, 94 Ind.App. 365.

Ky.—Conley v. Fannin, 215 S.W.2d 122, 308 Ky. 534.

Okl.—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35—Fairmont Creamery Co. v. Rogers, 116 P.2d 983, 189 Okl. 320.

Tenn.—Inter-City Trucking Co. v. Mason & Dixon Lines, 276 S.W.2d 188, 38 Tenn App. 450—Gardner v. Burke, 187 S.W.2d 25, 28 Tenn.App. 119.

Va.—Eastern Finance Co. v. Gordon, 20 S.E.2d 522, 179 Va. 674.

Wash.—Hansen v. Lindell, 129 P.2d 234, 14 Wash.2d 643.

(2) If there is sufficient evidence to sustain the verdict, the judgment will not be reversed because immaterial facts are admitted, unless such admission probably influenced the jury in their findings.

Tex.—Stein v. Roberts, Civ.App., 217 S.W. 166.

(3) There being evidence to support the verdict for plaintiff, admission of evidence, some of which is but slightly material, if at all, is not ground for reversal.

Colo.—Biggs v. Biggs, 241 P. 539, 78 Colo. 310.

(4) New trial should not be granted if relevant testimony sustains the verdict, although some irrelevant testimony was admitted.

Fla.—Davis v. Ivey, 112 So. 264, 93 Fla. 387, certiorari denied Mellon v. Ivey, 48 S.Ct. 19, 275 U.S. 526, 72 L.Ed. 407.

(5) The admission of incompetent evidence is not a ground of reversal if there was competent evidence to support the decision.

Kan.—Hicks v. Sage, 180 P. 780, 104 Kan. 723.

(6) Judgment entered on trial to court will not be disturbed because of errors in the admission of evidence, if other evidence sustains the judgment.

N.D.—First State Bank of New Salem v. Farmers' Co-op. Elevator Co., 231 N.W. 859, 59 N.D. 699.

(7) Admission of merely cumulative evidence is not reversible error, where there was other ample uncontradicted evidence supporting the judgment and the result would not have been changed.

Mo.—Drake v. Kansas City Public Service Co., 63 S.W.2d 75, 333 Mo. 520.

(8) Errors in the admission of testimony were harmless, where other evidence warrants judgment against defendant and the appellate court can render proper judgment.

La.—Driefus v. Levy, App., 140 So. 259.

(9) Even though the court admits in evidence statements from medical books and reports which are not admissible, such admission is not ground for reversal where the judgment is supported by other evidence.

Ill.—Wilcox v. International Harvester Co. of America, 198 Ill.App. 33, affirmed 116 N.E. 151, 278 Ill. 465.

(10) Rule that admission of illegal evidence over objection requires a reversal unless the remaining evidence is without conflict and sufficient to support judgment applies to equitable proceedings.

Ala.—St. Paul Fire & Marine Ins. Co. v. Johnson, 57 So.2d 80, 256 Ala. 690.

(11) However, it has been held that error in admitting evidence is not rendered nonprejudicial by fact that verdict finds support in the evidence.

Iowa.—Steensland v. Iowa-Illinois Gas & Elec. Co., 47 N.W.2d 162, 242 Iowa 534.

Sufficient record evidence

If there is sufficient competent record evidence, admission of incompetent testimony is harmless.

Mo.—In re Kellam's Estate, 53 S.W. 2d 401, 227 Mo.App. 291.

91.5 Tenn.—Smith v. Sloan, 227 S.W.2d 2, 189 Tenn. 368.

92. Ala.—W. M. Smith & Co. v. Harris, 42 So.2d 623, 253 Ala. 78.

Ariz.—Daily Mines Co. v. Control Mines, 124 P.2d 324, 59 Ariz. 138.

Ark.—Pinkerton v. Davis, 207 S.W.2d 742, 212 Ark. 796.

Cal.—Ex parte Ferguson, 268 P.2d 71, 123 C.A.2d 799—Blume v. MacGregor, 148 P.2d 656, 64 C.A.2d 244—Denovan v. Golden State Woolen Mills, 286 P. 714, 104 C.A. 504.

Fla.—Smith v. Biscayne Park Estates, 42 So.2d 442.

Ga.—Delray, Inc., v. Piedmont Inv. Co., 21 S.E.2d 420, 194 Ga. 319, 142 A.L.R. 1116.

Ill.—Brook v. Rosing, 41 N.E.2d 119, 314 Ill.App. 203.

Ind.—Lyon v. Ætna Life Ins. Co., 44 N.E.2d 186, 112 Ind.App. 573—Bercot v. Velkoff, 41 N.E.2d 686, 111 Ind.App. 323—Smith v. Keyes, 9 N.E.2d 119, 103 Ind.App. 487.

Iowa.—Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R. R., 60 N.W.2d 572, 244 Iowa 1369.

Kan.—Briscoe v. Reschke, 226 P.2d 255, 170 Kan. 367—Marcotte's Estate v. Clay, 224 P.2d 998, 170 Kan. 189.

Ky.—Conley v. Fannin, 215 S.W.2d 122, 308 Ky. 534—Escott v. Harley, 214 S.W.2d 387, 308 Ky. 298—Vaughn v. Taylor, 156 S.W.2d 836, 288 Ky. 558—Sharp v. Culton, 89 S.W.2d 869, 262 Ky. 84.

Md.—Pennsylvania R. Co. v. Quality Products, 189 A. 200, 171 Md. 291.

Mass.—Santarpio v. New York Life Ins. Co., 16 N.E.2d 668, 301 Mass. 207.

Minn.—Physicians & Hospitals Supply Co. v. Johnson, 44 N.W.2d 224, 231 Minn. 548—Aasen v. Aasen, 36 N.W.2d 27, 228 Minn. 1.

Miss.—Koestler v. Burton, 41 So.2d 362, 207 Miss. 40—Gunter v. Reeves, 21 So.2d 468, 198 Miss. 31—Sample v. Romine, 8 So.2d 257, 193 Miss. 706, suggestion of error overruled 9 So.2d 643, 193 Miss. 706, corrected on other grounds 10 So.2d 346, 193 Miss. 706.

Mo.—Happy v. Cole County Bank, 93 S.W.2d 870, 338 Mo. 1025.
Bay v. Elmer, App., 237 S.W.2d 932.

Mont.—Girson v. Girson, 114 P.2d 274, 112 Mont. 183.

N.J.—Wadell v. Public Service Coordinated Transport, 65 A.2d 766, 3 N.J.Super. 132.

N.C.—Collins v. Lamb, 2 S.E.2d 863, 215 N.C. 719.

Ohio.—Bailey v. Greeley General Warehouse Co., App., 83 N.E.2d 244—Savin v. Gholson, 1 N.E.2d 646, 51 Ohio App. 443.

Okl.—Watts v. Elmore, 176 P.2d 220, 198 Okl. 141—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10.

case or the contention of the party offering such evidence.[93]

Similarly, error in admitting evidence may not be ground for reversal where the issue or matter to which the incompetent evidence relates has been eliminated,[94] or where such evidence has not been considered[94.5] or used,[94.10] or where the effect of the incompetent evidence is nullified by a subsequent statement of the witness to the contrary.[95] Error in admitting evidence may likewise be considered to be harmless where the incompetent evidence is in no way inconsistent with the complaining party's contentions,[96] or where, even though the improper evidence is eliminated, a peremptory instruction should be given for the party in whose behalf it was admitted.[97]

On the other hand, error in admitting evidence may be deemed to be prejudicial where it is impossible to determine in the particular case whether or not the jury were, in the admission of the evidence complained of, unduly influenced in reaching the verdict actually returned in the lower court.[98] Moreover, error in the admission of evidence may require a reversal where there is no

Pa.—McAllister v. Pennsylvania R. Co., 182 A. 738, 121 Pa.Super. 131.
Tex.—Coker v. Mitchell, Civ.App., 269 S.W.2d 950—Hess v. Young, Civ.App., 160 S.W.2d 574—Catalani v. Graneri, Civ.App., 153 S.W.2d 1015, error refused—Hartman v. Costales, Civ.App., 145 S.W.2d 603, error dismissed, judgment correct—Williams v. Hall, Civ.App., 111 S.W.2d 803—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122.
Utah.—Merrill v. Bailey & Sons Co., 106 P.2d 255, 99 Utah 323.
Wis.—Kidder v. Kidder, 268 N.W. 221, 222 Wis. 183.

Right established as matter of law
Mass.—Finegan v. Prudential Ins. Co. of America, 14 N.E.2d 172, 300 Mass. 147, 116 A.L.R. 535.

Confidential communication
Action of trial court in compelling counsel to testify to alleged confidential communication, if error, was harmless, in view of other competent evidence to the same effect.
Tex.—United Services Automobile Ass'n v. Zeller, Civ.App., 135 S.W. 2d 161, error dismissed, judgment correct.

93. Kan.—Morgan v. American Surety Co. of New York, 175 P. 675, 103 Kan. 491.
Ky.—Himlar Coal Co. v. Kirk, 6 S. W.2d 480, 224 Ky. 383.
Mo.—Boyle v. Bunting Hardware Co., App., 238 S.W. 155.
Mont.—Dewell v. Northern Pac. Ry. Co., 170 P. 753, 54 Mont. 350.
Tex.—Second Nat. Bank v. McGehee, Civ.App., 241 S.W. 287.
Wyo.—Studebaker Corp. of America v. Hanson, 157 P. 582, 24 Wyo. 222, reheard 160 P. 336, 24 Wyo. 222, Ann.Cas.1917E 557.

Contents of safe deposit box
Where there was no contention that certain bonds sought to be recovered by an administratrix were not in a safety deposit box to which defendant had the keys, admission in evidence of other contents of the box was harmless.
Ind.—Graham v. Plotner, 151 N.E. 735, 87 Ind.App. 462.

Evidence by defendant on issue as to which plaintiff fails to sustain burden of proof
Where plaintiff has the burden of proof on an issue and fails to sustain it, the admission of evidence on the part of defendant on such issue would be harmless.
Ga.—Ray v. Swain, 96 S.E. 209, 148 Ga. 203.

Evidence unnecessary to establish plaintiff's case
Where testimony of a witness was unnecessary to establish a plaintiff's case, the erroneous admission of such testimony was held to be harmless on appeal from a judgment for plaintiff.
Mo.—Farmers' Loan & Trust Co. v. Southern Surety Co., 226 S.W. 926, 285 Mo. 621.

Evidence unnecessary to sustain defense
The erroneous admission of evidence on behalf of defendants is not prejudicial to plaintiff where its only tendency was to establish a fact which was not essential to sustain the defense relied on by defendant.
Tex.—Second Nat. Bank v. McGehee, Civ.App., 241 S.W. 287.

Evidence on question concluded by judgment on former appeal
Admission of testimony on a question concluded by a judgment on a former appeal was held not to have prejudiced any substantial right of appellant.
Ky.—Himlar Coal Co. v. Kirk, 6 S.W. 2d 480, 224 Ky. 383.

94. Tex.—McClure v. Fall, Civ.App., 42 S.W.2d 821, affirmed, Com.App., 67 S.W.2d 231—Federal Life Ins. Co. v. Sweeney, Civ.App., 18 S.W. 2d 702.
4 C.J. p 972 note 63.

94.5 N.C.—Hunt v. Wooten, 76 S.E. 2d 326, 238 N.C. 42.
S.C.—Wells v. Salvation Army of Georgia, 3 S.E.2d 601, 190 S.C. 484.
Tex.—Shell Pipe Line Corporation v. Svrcek, Civ.App., 87 S.W.2d 297.
Wash.—Danz v. Shyvers, 293 P.2d 772, 48 Wash.2d 819.

94.10 Vt.—Allen v. Travelers Indemnity Co., 187 A. 512, 108 Vt. 317.

95. N.C.—Caton v. Toler, 75 S.E. 929, 160 N.C. 104.

96. Vt.—Lynch's Adm'r v. Central Vermont Ry. Co., 95 A. 683, 89 Vt. 363.
4 C.J. p 972 note 66.

Where one not an expert has testified to nothing not in accord with the claims of the objecting party, exceptions to rulings admitting such evidence will not be considered.
Vt.—Lynch's Adm'r v. Central Vermont Ry. Co., 95 A. 683, 89 Vt. 363.

Agreement not to use premises for certain purpose
In the absence of a contention that the use of certain premises as a restaurant would not violate a lease, the admission of testimony concerning an oral agreement not so to use such premises was not reversible error.
Tex.—Tony v. McClelland, Civ.App., 283 S.W. 679.

97. Ky.—Gray v. Garrison, 11 Ky. Op. 19.
4 C.J. p 972 note 67.

98. Ariz.—Hirsh v. Manley, 300 P. 2d 588, 81 Ariz. 94.
Mo.—Young v. Hoover, App., 233 S. W. 501.
N.D.—First Nat. Bank v. Davidson, 188 N.W. 194, 48 N.D. 944.
Okl.—Moore v. Bennett, 312 P.2d 480.
Pa.—Psinakis v. Psinakis, 111 A.2d 163, 177 Pa.Super. 250.
Tex.—Fort Worth & D. S. P. Ry. Co. v. Gilmore, Civ.App., 2 S.W.2d 543.
Wash.—**Corpus Juris Secundum quoted in** Lundberg v. Baumgartner, 106 P.2d 566, 570, 5 Wash.2d 619.

Admission on one of several grounds any of which might have supported general verdict
Where there are several grounds or elements of the case, a verdict on any one of which would entitle plaintiff to the relief prayed for, an error in the admission of evidence on any one of the grounds is prejudicial error where a general verdict is rendered, since it is impossible to de-

competent evidence to sustain the finding or judgment,[99] or where, but for the admission of such evidence, a verdict for the complaining party would have been demanded.[1] Similarly, error in admitting evidence may be regarded as prejudicial and to warrant a reversal where, in the absence of the evidence erroneously admitted, it is doubtful whether the verdict actually rendered in the particular case would be sustained,[2] or where such evidence must have influenced the jury in fixing the amount of the verdict,[2.5] or may have led to an increase in the amount thereof.[2.10]

At all events, error in admitting evidence in any particular case will more readily be deemed to be prejudicial, and to require a reversal, where the case is close on the facts or the point is not clearly established,[3] where the manner of admitting par-

termine on which ground the verdict was rendered.

Idaho.—Jakeman v. Oregon Short Line R. Co., 256 P. 88, 43 Idaho 505.

Where no special findings and verdict may have been predicated on any one of several issues

Where there were no special findings, and the verdict may have been predicated on any one of three issues of fact, and the court erred to appellants' prejudice in reception of evidence on any of the issues, they were entitled to reversal.

N.Y.—Wilsker v. Paul Gerli & Co., 170 N.Y.S. 288, 182 App.Div. 787.

Where finding for either party would have been supported by substantial testimony

Where it appears that a finding for either party would have been supported by substantial testimony, and it is a close question of fact concerning defendant's liability, if incompetent testimony was admitted, and the appellate court cannot say that it did not affect the result, the admission of such testimony will be held reversible error.

Mo.—Young v. Hoover, App., 233 S. W. 501.

Where impossible to determine on which of two defenses jury based verdict

Where it is impossible to determine on which of two defenses the jury based their verdict for defendant, the erroneous admission of evidence affecting one of the defenses was ground for new trial.

N.D.—First Nat. Bank v. Davidson, 188 N.W. 194, 48 N.D. 944.

Where jury might have found either way and evidence admitted adds to weight

Error cannot be held harmless where the jury might have found either way, and illegal testimony adds materially to the weight of the evidence.

N.Y.—Trombly v. Deso, 256 N.Y.S. 225, 235 App.Div. 15.

99. N.Y.—Torrance v. Conger, 46 N. Y. 340.

1. Ga.—Phillips v. Bridges, 93 S.E. 115, 20 Ga.App. 489.

2. Ariz.—Pacific Emp. Ins. Co. v. Morris, 275 P.2d 389, 78 Ariz. 24.
N.Y.—Farmers' Loan & Trust Co. v. Wagstaff, 185 N.Y.S. 812, 194 App. Div. 757.

2.5 Wash.—Cooley v. Ben Paris Sporting Goods & Recreation Co., 105 P.2d 820, 5 Wash.2d 415, amended on other grounds and rehearing denied 107 P.2d 347, 5 Wash.2d 415.

2.10 S.C.—Hobbs v. Carolina Coca-Cola Bottling Co., 10 S.E.2d 25, 194 S.C. 543.

3. Ala.—Lackey v. Thomas, 184 So. 262, 28 Ala.App. 302, certiorari denied Ex parte Thomas, 184 So. 264, 236 Ala. 602.
Ariz.—Tucker v. Reil, 77 P.2d 203, 51 Ariz. 357.
Cal.—George v. McManus, 150 P. 73, 27 C.A. 414.
D.C.—Traver v. Smolik, 43 App.D.C. 150.
Fla.—Eggers v. Phillips Hardware Co., 88 So.2d 507.
Ill.—Lawndale Steam Dye Works v. Chicago Daily News Co., 189 Ill. App. 565—Hawley v. McCormick, 186 Ill.App. 58—Sheppelman v. People, 134 Ill.App. 556—Chicago Union Tract. Co. v. Arnold, 131 Ill. App. 599.
Ky.—Shatz v. American Sur. Co. of N. Y., 295 S.W.2d 809—Occidental Ins. Co. v. Chasteen, 75 S.W.2d 363, 255 Ky. 710.
Mich.—Rice v. Fidelity & Casualty Co. of New York, 230 N.W. 181, 250 Mich. 398.
Miss.—Robinson v. Turfitt, 4 So.2d 884, 192 Miss. 160.
Mo.—National Cash Register Co. v. Kay, App., 119 S.W.2d 437.
N.Y.—Crescenti v. Brooklyn Hospital, 62 N.Y.S.2d 243, 270 App.Div. 951—Wurtzman v. Kalinowski, 251 N.Y.S. 328, 233 App.Div. 187—Judson v. Fielding, 237 N.Y.S. 348, 227 App.Div. 430, affirmed 171 N.E. 798, 253 N.Y. 596, and followed in Johnson v. Palmer, 242 N.Y.S. 763, 229 App.Div. 813—Bloom v. Union Ry. Co. of New York, 150 N.Y.S. 779, 165 App.Div. 257.
Saltzman v. City of New York, 78 N.Y.S.2d 407, 191 Misc. 724.
Gray v. Eisemann, 80 N.Y.S.2d 43—Sass v. Brooklyn & Queens Transit Corp., 24 N.Y.S.2d 663—Hammer v. Eisner-Mendelson Co., 152 N.Y.S. 1003.
Tex.—Stone v. Payne, Civ.App., 168 S.W.2d 503—Rathbun v. Miller, Civ. App., 266 S.W. 818—De Garcia v. Cherokee Life Ins. Co. of Rome, Ga., Civ.App., 180 S.W. 153.
W.Va.—Pittsonberger v. Andrews, 166 S.E. 367, 112 W.Va. 651.
4 C.J. p 973 note 71.
"In such situation it is important that the rulings upon the admission . . . of evidence be accurate and free from any error which might have a tendency to confuse or mislead the jury."
Ill.—Scally v. Flannery, 11 N.E.2d 123, 125, 292 Ill.App. 349.

Equity proceedings

Ala.—Baggett v. State, 34 So.2d 688, 250 Ala. 413.

Conflict in evidence

Where there is such a conflict in the evidence that the determination either way will not be disturbed on appeal, it cannot be said that losing party is not prejudiced by material evidence erroneously admitted.

Iowa.—Steensland v. Iowa-Illinois Gas & Elec. Co., 47 N.W.2d 162, 242 Iowa 534.

Purpose of improper testimony

In close cases of contested fact, where misleading testimony is improperly admitted, supreme court must accept it as having been tendered and admitted for purpose of establishing some fact vitally necessary to prove the case, or as having a tendency to influence jury in reaching a conclusion; and where a verdict is in favor of party insisting on introduction of such testimony, court cannot say testimony had no effect and was harmless.

Fla.—Perper v. Edell, 44 So.2d 78—Atlantic Coast Line R. Co. v. Campbell, 139 So. 890, 104 Fla. 274.

Collateral facts; credibility of witnesses

Where testimony is in conflict, it is not reversible error for courts to admit evidence of collateral facts to determine credibility of witnesses.

Mont.—O'Sullivan v. Simpson, 212 P.2d 435, 123 Mont. 314.

Affidavit executed four months after conversation

Where there was a sharply drawn issue of fact on a point as to a certain conversation, the admission of an affidavit made four months after the conversation was prejudicial error, although several other witness-

ticular evidence or the nature thereof is peculiarly such as to create a situation prejudicial to the party against whom such evidence is introduced,[4] or where a verdict in favor of the party introducing the evidence is excessively large in view of the other evidence in the case.[5]

(b) Conduct of Parties or Counsel

The conduct of parties or counsel may be such as to render error in admitting evidence harmless, as where the party complaining introduces, or fails to object to the admission of, similar evidence.

Error in the admission of evidence is not ground for reversal where the party complaining introduces evidence of the same, or of a similar, kind,[6] or evidence establishing the same fact,[7] or where he has alleged that fact in his own pleadings.[7.5] Similarly, error in the admission of evidence may be harmless where the same or similar evidence has been admitted without objection,[8] or where other

es on the trial which was eight years later gave the same testimony.
Mich.—Rice v. Fidelity & Casualty Co. of New York, 230 N.W. 181, 250 Mich. 398.

4. Or.—Howland v. Fenner Mfg. Co., 206 P. 730, 104 Or. 373.
Wash.—**Corpus Juris Secundum quoted in** Lundberg v. Baumgartner, 106 P.2d 566, 570, 5 Wash.2d 619.

Admission over repeated objections
Defendant was prejudiced by the introduction of numerous exhibits over his objection that they were immaterial and incompetent because the repeated making of such objections, which are overruled, creates a prejudice against him in the minds of the jury.
Or.—Howland v. Fenner Mfg. Co., 206 P. 730, 104 Or. 373.

5. Mich.—Billett v. Michigan Bonding & Surety Co., 161 N.W. 908, 195 Mich. 202.
Or.—Smith v. Pallay, 279 P. 279, 130 Or. 282.

6. Ill.—Schmidt v. Anderson, 21 N.E.2d 825, 301 Ill.App. 28.
Ky.—Manual's Adm'r v. W. E. Caldwell & Co., 109 S.W.2d 635, 270 Ky. 285.
Mich.—Ruch v. First Nat. Bank of Three Rivers, 39 N.W.2d 240, 326 Mich. 52—Ranta v. Newport Mining Co., 147 N.W. 609, 180 Mich. 459.
Mo.—Willis v. Atchison, T. & S. F. Ry. Co., 178 S.W.2d 341, 352 Mo. 490.
Neb.—O'Hare v. Peterson, 33 N.W. 2d 566, 150 Neb. 151.
N.C.—Hanes v. Southern Public Utilities Co., 131 S.E. 402, 191 N. C. 13.
N.D.—**Corpus Juris Secundum cited in** Kohler v. Stephens, 24 N.W.2d 64, 74, 74 N.D. 655.
Ohio.—McClain v. All States Life Ins. Co., 80 N.E.2d 815, 82 Ohio App. 354.
Tex.—McFarlin v. Elliott-Tuck, Inc., Civ.App., 71 S.W.2d 410—Hall v. Ray, Civ.App., 179 S.W. 1135.
4 C.J. p 972 note 62.

Admission of statements against interest
Va.—Carter v. Pickering, 62 S.E.2d 856, 191 Va. 801.

Curative admissibility
Where defendant offered evidence of same character as that offered subsequently by plaintiff, to which defendant objected as inadmissible, court of appeals invoked against defendant the doctrine of curative admissibility, that an opponent may reply with similar evidence whenever it is needed for removing an unfair prejudice which might otherwise have ensued.
Mo.—Biener v. St. Louis Public Service Co., App., 160 S.W.2d 780.

Same testimony or equivalent thereof
Error, if any, in admission of testimony is not prejudicial, where the complaining party thereafter introduced the same testimony or the equivalent thereof.
Iowa.—Morrow v. Downing, 232 N. W. 483, 210 Iowa 1195.

Where other evidence to same effect
Error in admitting plaintiff's testimony was harmless, where defendants' witness testified to the same effect on cross-examination.
Mo.—Whittington v. Westport Hotel Operating Co., 33 S.W.2d 963, 326 Mo. 1117.

Similar testimony
Defendant was not injured by admission of testimony of plaintiff's witness, even if objection had been timely, where defendant's witness gave similar testimony.
Ala.—Bond Bros. v. Kay, 136 So. 817, 223 Ala. 431.

Evidence pertaining to same matter
Where certain evidence introduced by defendant was immaterial, the admission of plaintiff's evidence pertaining to the same matter was harmless.
Mo.—Bennett v. Standard Acc. Ins. Co., App., 264 S.W. 27.

Evidence claimed to be calculated to incite sympathy of jury
Certain evidence was held not prejudicial to defendant, as inciting the sympathy of the jury, where the same testimony was brought out by defendant.
N.C.—Hanes v. Southern Public Utilities Co., 131 S.E. 402, 191 N. C. 13.

Prejudice resulting to complaining party by facts disclosed in his own defense
Prejudice against appellant arising from facts properly brought out in connection with his own defense was not ground for reversal.
Md.—Penrose v. Canton Nat. Bank of Canton, 127 A. 852, 147 Md. 200.

Where complaining party by cross-examination covers same matter fully
On review of judgment for defendant, admission of testimony of defendant's witness, if error, was not reversible, where plaintiff examined the witness fully on cross-examination as to the same matters.
Ga.—General Tire & Rubber Co. v. Brown Tire Co., 168 S.E. 75, 46 Ga. App. 548.

7. Ga.—Jordan v. State, 49 S.E.2d 694, 77 Ga.App. 700.
Minn.—Rahn v. First Nat. Bank, 240 N.W. 529, 185 Minn. 246.
Miss.—**Corpus Juris Secundum cited in** Standard Life Ins. Co. of the South v. Foster, 49 So.2d 391, 394, 210 Miss. 242.
Ohio.—Bickley v. Sears, Roebuck & Co., 23 N.E.2d 505, 62 Ohio App. 180.
Pa.—Berry v. Hemel Motors, 56 A.2d 374, 162 Pa.Super. 52—McKee v. Elliott-Lewis Electrical Co., 11 A. 2d 551, 139 Pa.Super. 325—Woodring v. City of Easton, 164 A. 921, 108 Pa.Super. 431.

Question of reversible error determined by peculiar facts of case
The question of reversible error in admitting evidence concerning a matter opened by appellant must be resolved on the peculiar facts of the individual case.
Cal.—Ashley v. Rivera, 29 P.2d 199, 220 C. 75.

7.5 Ga.—Barbre v. Scott, 43 S.E.2d 771, 75 Ga.App. 540.

8. U.S.—Shell Petroleum Corporation v. Scully, C.C.A.La., 71 F.2d 772—Community Natural Gas Co. v. Henley, C.C.A.Tex., 54 F.2d 59—American Glycerin Co. v. Burleson, C.C.A.Tex., 30 F.2d 811, certiorari denied 49 S.Ct. 481, 279 U. S. 866, 73 L.Ed. 1004—Eteenpain Co-op. Soc. v. Lillback, C.C.A.Mass.,

18 F.2d 912—Hill v. Wabash Ry. Co., C.C.A.Mo., 1 F.2d 626.

Mitchell v. Toole, C.C.A.Miss., 287 F. 25—Western Coal & Mining Co. v. Greeson, C.C.A.Ark., 284 F. 510—Waters v. Guile, Mich., 234 F. 532, 148 C.C.A. 298.

Ala.—Sovereign Camp, W. O. W. v. Gay, 117 So. 78, 217 Ala. 543—Ruffin Coal & Transfer Co. v. Rich, 108 So. 600, 214 Ala. 622—Provident Life & Accident Ins. Co. of Chattanooga, Tenn. v. Priest, 103 So. 678, 212 Ala. 576—Perry v. Marbury Lumber Co., 103 So. 580, 212 Ala. 542—Johnson-Brown Co. v. Dominey Produce Co., 102 So. 606, 212 Ala. 377—Dixie Const. Co. v. McCauley, 101 So. 601, 211 Ala. 683—Corona Coal & Iron Co. v. Spann, 87 So. 827, 205 Ala. 206—Choctaw Coal & Mining Co. v. Dodd, 79 So. 54, 201 Ala. 622—National Surety Co. v. Citizens' Light, Heat & Power Co., 78 So. 834, 201 Ala. 456—Tennessee Coal, Iron & R. Co. v. King, 76 So. 982, 200 Ala. 624—Boshell v. Cunningham, 76 So. 937, 200 Ala. 579—Birmingham Ry., Light & Power Co. v. Hunt, 76 So. 918, 200 Ala. 560—Alabama Great Southern R. Co. v. Taylor, 71 So. 676, 196 Ala. 37.

Corona Coal Co. v. Sexton, 105 So. 716, 21 Ala.App. 51, certiorari denied Ex parte Corona Coal Co., 105 So. 718, 213 Ala. 554—Miller-Brent Lumber Co. v. Ross, 102 So. 792, 20 Ala.App. 402, certiorari denied Ex parte Miller-Brent Lumber Co., 102 So. 793, 212 Ala. 415.

Ark.—Holimon v. Rice, 185 S.W.2d 927, 208 Ark. 279—Arkansas Power & Light Co. v. Boyd, 65 S.W.2d 919, 188 Ark. 254—Dierks Lumber & Coal Co. v. Tollerson, 54 S.W.2d 61, 186 Ark. 429—Wilson-Ward Co. v. Fleeman, 272 S.W. 853, 169 Ark. 88—Payne v. Thurston, 230 S.W. 561, 148 Ark. 456.

Cal.—Perumean v. Wills, 67 P.2d 96, 8 C.2d 578—Siemon v. Finkle, 213 P. 954, 190 C. 611—Union Colonization Co. v. Madera Canal & Irrigation Co., 178 P. 957, 179 C. 774.

Jegen v. Berger, 174 P.2d 489, 77 C.A.2d 1—Farmer v. Fairbanks, 162 P.2d 26, 71 C.A.2d 70—Fowler v. Allen, 121 P.2d 41, 49 C.A.2d 214—Holahan v. McGrew, 295 P. 1054, 111 C.A. 430—Asher v. Martin, 279 P. 810, 100 C.A. 217—Gates v. Pendleton, 236 P. 365, 71 C.A. 752—Western Industries Co. v. Mason Malt Whisky Distilling Co., 205 P. 466, 56 C.A. 355—Lehner v. McLennan, 202 P. 41, 54 C.A. 491—De Bock v. De Bock, 184 P. 890, 43 C. A. 283—Swanton v. Jacks, 157 P. 11, 30 C.A. 66.

Colo.—Rude v. MacCormac, 210 P. 844, 72 Colo. 221.

Conn.—Mirando v. Mirando, 132 A. 910, 104 Conn. 318—Friedler v. Hekeler, 112 A. 651, 96 Conn. 29.

D.C.—Equitable Surety Co. v. National Capital Bank of Washington, D. C., 278 F. 1002, 51 App.D.C. 289—Arnaud v. Langellotti, 269 F. 857, 50 App.D.C. 205.

Ga.—Sapp v. Callaway, 69 S.E.2d 734, 208 Ga. 805—Hicks v. Hicks, 27 S. E.2d 7, 196 Ga. 541—Hobbs v. Houston, 24 S.E.2d 884, 195 Ga. 571—Smaha v. George, 24 S.E.2d 385, 195 Ga. 412—Nash v. Burton, 93 S.E. 203, 147 Ga. 209.

Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844—Jordan v. State, 49 S.E.2d 694, 77 Ga.App. 700—Cato v. Cater, 45 S.E.2d 794, 76 Ga.App. 867—Holsenbeck v. Arnold, 43 S.E.2d 348, 75 Ga.App. 311—Loftin v. Carroll County Bd. of Ed., 35 S.E.2d 309, 72 Ga.App. 823—Louisville & N. R. Co. v. McCamy, 35 S.E.2d 206, 72 Ga.App. 769—Snow v. Snow, 30 S. E.2d 823, 71 Ga.App. 316—Atlanta Enterprises v. James, 24 S.E.2d 130, 68 Ga.App. 773—Mishoe v. Davis, 14 S.E.2d 187, 64 Ga.App. 700—New York Life Ins. Co. v. Ittner, 8 S.E.2d 582, 62 Ga.App. 31—Meads v. Williams, 189 S.E. 718, 55 Ga.App. 224—Dillon v. Sills, 187 S. E. 725, 54 Ga.App. 299—Louisville & N. R. Co. v. Bean, 174 S.E. 209, 49 Ga.App. 4—Milam v. Lewis, 170 S.E. 404, 47 Ga.App. 376—City of Atlanta v. Gore, 169 S.E. 776, 47 Ga.App. 70—City of Atlanta v. Hawkins, 166 S.E. 262, 45 Ga.App. 847—Central of Georgia Ry. Co. v. Dabney, 160 S.E. 818, 44 Ga.App. 143—Cowart & Dancer v. Bush, 139 S.E. 920, 37 Ga.App. 278—M/C. Kiser Co. v. Barbre, 129 S.E. 887, 34 Ga.App. 447—Stewart v. City of Gainesville, 125 S.E. 384, 33 Ga.App. 47—Bullard v. Metropolitan Life Ins. Co., 122 S.E. 75, 31 Ga.App. 641—Atlas Assur. Co. v. Williams, 121 S.E. 135, 31 Ga. App. 536, affirmed 123 S.E. 697, 158 Ga. 421—Hicks v. Smith, 112 S.E. 295, 28 Ga.App. 594—Rome Ry. & Light Co. v. Spratling, 111 S.E. 702, 28 Ga.App. 438—Payne v. Simmons, 109 S.E. 168, 27 Ga.App. 506—Southern Ry. Co. v. Smallwood, 105 S.E. 256, 26 Ga.App. 1—Lamb v. McAfee, 105 S.E. 250, 26 Ga. App. 3—City of Thomasville v. Crowell, 96 S.E. 335, 22 Ga.App. 383—Selman v. Manhattan Life Ins. Co., 93 S.E. 60, 20 Ga.App. 440—Copeland v. Ruff, 92 S.E. 955, 20 Ga.App. 217.

Idaho.—Landholm v. Webb, 205 P.2d 507, 69 Idaho 204.

Ill.—Creek v. Naylor, 33 N.E.2d 740, 309 Ill.App. 601—Herb v. Pitcairn, 29 N.E.2d 543, 306 Ill.App. 583, reversed on other grounds 36 N.E.2d 555, 377 Ill. 405—Beck v. Baltimore & O. R. Co., 244 Ill.App. 441.

Ind.—Terre Haute, I. & E. Traction Co. v. Weddle, 108 N.E. 225, 183 Ind. 305.

Stamets v. Wilson, 164 N.E. 300, 89 Ind.App. 403—C. Callahan Co. v. Dahm, 132 N.E. 599, 76 Ind.App. 492—Howard v. Merker, 127 N.E. 807, 73 Ind.App. 400—Massachusetts Bonding & Ins. Co. v. Free, 124 N.E. 716, 71 Ind.App. 275—Terre Haute, I. & E. Traction Co. v. Hickey, 124 N.E. 412, 72 Ind. App. 423.

Iowa.—Ducummon v. Johnson, 47 N. W.2d 231, 242 Iowa 488—Davelaar v. Marion County, 277 N.W. 744, 224 Iowa 669—Lewis v. Farmers' Grain Co. of Cambridge, 241 N.W. 469, 214 Iowa 143—In re Rich's Estate, 200 N.W. 713, 199 Iowa 902—Lee v. Kirby, 191 N.W. 865, 195 Iowa 441—Parks v. City of Des Moines, 191 N.W. 728, 195 Iowa 972—In re La Grange's Estate, 181 N.W. 807, 191 Iowa 129—Lamson Bros. & Co. v. Mensen, 174 N.W. 688, 187 Iowa 972.

Ky.—Gibraltar Coal Mining Co. v. McCown, 46 S.W.2d 96, 242 Ky. 281—Baker v. Whittaker, 197 S.W. 644, 177 Ky. 197.

Me.—Hoyt v. Tapley, 116 A. 559, 121 Me. 239.

Md.—Francies v. Debaugh, 71 A.2d 455, 194 Md. 448—Christian v. Johnson Const. Co., 155 A. 181, 161 Md. 87—Evening News Co. v. Bowie, 141 A. 416, 154 Md. 604—Mercantile Savings Bank of Baltimore City v. Appler, 135 A. 373, 151 Md. 571—Dennis v. Hearn, 129 A. 354, 148 Md. 391—De Crette v. Mohler, 127 A. 639, 147 Md. 108—Davey Tree Expert Co. v. Dennis, 125 A. 597, 145 Md. 86—Brotherhood of Locomotive Firemen & Engineers v. Nash, 125 A. 441, 144 Md. 623—Mahan v. Adams, 124 A. 901, 144 Md. 355—Brady v. Brady, 117 A. 882, 140 Md. 403—Goldman & Freiman Bottling Co. v. Sindell, 117 A. 866, 140 Md. 488—Packard Iron & Metal Co. v. H. P. Pearl & Co., 115 A. 761, 139 Md. 498—Schlerf v. Bond, 114 A. 739, 139 Md. 10—McAdoo v. Hanway, 109 A. 446, 135 Md. 656—J. L. Robinson Const. Co. v. Barry, 108 A. 688, 135 Md. 275—Murphy v. Stubblefield, 108 A. 523, 135 Md. 158—Castle v. Swift & Co., 104 A. 187, 132 Md. 631—Booth Packing Co. v. Greuner, 99 A. 714, 129 Md. 392—Baltimore & O. R. Co. v. Branson, 98 A. 225, 128 Md. 678, reversed on other grounds 37 S.Ct. 244, 242 U.S. 623, 61 L.Ed. 534—City of Baltimore v. Carroll, 96 A. 1076, 128 Md. 68—Furness-Withy & Co. v. Fahey, 96 A. 619, 127 Md. 333—Parks v. Griffith & Boyd Co., 91 A. 581, 123 Md. 233.

Mass.—Runels v. Lowell Sun Co., 62 N.E.2d 121, 318 Mass. 466—Clark-Rice Corporation v. Waltham Bleachery & Dye Works, 166 N.E. 867, 267 Mass. 402—Finance Corporation of New England v. Maynard, 143 N.E. 908, 249 Mass. 294—Johnson v. City of Lowell,

134 N.E. 627, 240 Mass. 546—Matthews v. New York Cent. & H. R. R. Co., 120 N.E. 185, 231 Mass. 10—Federal Coal & Coke Co. v. Coryell, 111 N.E. 1041, 223 Mass. 430.

Mich.—Ruch v. First Nat. Bank of Three Rivers, 39 N.W.2d 240, 326 Mich. 52—Tanis v. Eding, 264 N. W. 375, 274 Mich. 288—Hatton v. Stott, 189 N.W. 850, 220 Mich. 262—Werney v. Reid, 189 N.W. 30, 219 Mich. 257—Wilson v. Detroit United Ry., 175 N.W. 172, 208 Mich. 411.

Minn.—Manahan v. Jacobson, 33 N. W.2d 606, 226 Minn. 205—Thier v. Farmers' Educational & Co-Operative Union of America, 244 N.W. 815, 187 Minn. 190—In re Farmers' State Bank of Claremont, 244 N. W. 550, 187 Minn. 155—Schnirring v. Stubbe, 225 N.W. 389, 177 Minn. 441—Johnson v. Holmes, 170 N.W. 709, 142 Minn. 54—Haeissig v. Decker, 166 N.W. 1085, 139 Minn. 422—Meagher v. Fogarty, 152 N. W. 833, 129 Minn. 417.

Mo.—Clark v. McKeone, 234 S.W.2d 574—Bennette v. Hader, 87 S.W. 2d 413, 337 Mo. 977—Keyes v. Chicago, B. & Q. R. Co., 31 S.W. 2d 50, 326 Mo. 236—Lewis v. St. Louis Independent Packing Co., 3 S.W.2d 244—Mattice v. Terminal R. R. Ass'n of St. Louis, 270 S.W. 306—Gilchrist v. Kansas City Rys. Co., 254 S.W. 161—Gaty v. United Rys. Co., 251 S.W. 61—Laughlin v. Kansas City Southern Ry. Co., 205 S.W. 3, 275 Mo. 459.

Chapman v. Terminal R. R. Ass'n of St. Louis, App., 137 S.W. 2d 612—Dieterle v. Standard Life Ins. Co., App., 119 S.W.2d 440—Carroll v. Missouri Power & Light Co., 96 S.W.2d 1074, 231 Mo.App. 265—Girvin v. Metropolitan Life Ins. Co., App., 84 S.W.2d 644—Powers v. Kansas City, 18 S.W.2d 545, 224 Mo.App. 70—Bluff City Shoe Co. v. Levy, App., 273 S.W. 1086—Haberman v. Kuhs, App., 270 S.W. 399—Fox v. American Cent. Fire Ins. Co., App., 268 S.W. 396—Fox v. Connecticut Fire Ins. Co. of Hartford, App., 268 S.W. 393—McNulty v. Atlas Portland Cement Co., App., 249 S.W. 730—Ertle v. Wagner Electric Mfg. Co., App., 238 S.W. 577—Vogts v. Kansas City Rys. Co., App., 228 S.W. 526—Wagner v. Wagner, App., 215 S. W. 784—Hagist v. Bart S. Adams Tire Co., App., 213 S.W. 510—Davis v. Geiger, App., 212 S.W. 384—Brown v. Missouri, K. & T. Ry. Co., 212 S.W. 26, 201 Mo.App. 316.

Mont.—Meinecke v. Intermountain Transp. Co., 55 P.2d 680, 101 Mont. 315.

Neb.—In re Kaiser's Estate, 34 N.W. 2d 366, 150 Neb. 295—Beck v. Spring, 195 N.W. 176, 110 Neb. 160.

Nev.—Corpus Juris Secundum quoted in State v. Lindsay, 161 P.2d 351, 354, 63 Nev. 40.

N.H.—Bartis v. Warrington, 20 A.2d 642, 91 N.H. 415—Hall v. Merrimack Mut. Fire Ins. Co., 6 A.2d 172, 90 N.H. 191.

N.J.—Williams v. Guerrari, 54 A.2d 198, 136 N.J.Law 60—Kellan v. Akers Motor Lines, 42 A.2d 261, 133 N.J.Law 1—Collins v. Tansey, 126 A. 536, 100 N.J.Law 170.

Miller v. Richieri, 155 A. 468, 9 N.J.Misc. 710.

N.Y.—Washburn v. Village of Schuylerville, 184 N.Y.S. 472, 193 App. Div. 591.

N.C.—Price v. Whisnant, 62 S.E.2d 56, 232 N.C. 653—White v. Disher, 59 S.E.2d 798, 232 N.C. 260—Landis v. Gittlin, 50 S.E.2d 298, 229 N.C. 521—Steelman v. Benfield, 46 S.E. 2d 829, 228 N.C. 651—Davis v. Davis, 44 S.E.2d 478, 228 N.C. 48—Town of Belhaven v. Hodges, 39 S. E.2d 366, 226 N.C. 485—Hobbs v. Queen City Coach Co., 34 S.E.2d 211, 225 N.C. 323—Merchant v. Lassiter, 30 S.E.2d 217, 224 N.C. 343—Edwards v. National Council, Junior Order United American Mechanics, Beneficiary Degree, 16 S. E.2d 466, 220 N.C. 41—Edgerton v. Johnson, 7 S.E.2d 535, 217 N.C. 314—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106—Broadway v. Cope, 179 S.E. 452, 208 N.C. 85—Nantahala Power & Light Co. v. Rogers, 178 S.E. 575, 207 N.C. 751—Lambert v. Caronna, 175 S.E. 303, 206 N.C. 616—Bateman v. Brooks, 167 S.E. 627, 204 N. C. 176—Colvard v. Nantahala Power & Light Co., 167 S.E. 472, 204 N. C. 97—Citizens' Nat. Bank v. Florida-Carolina Estates, 157 S.E. 424, 200 N.C. 480—Bridgers v. Farmers' Banking & Trust Co., 152 S.E. 393, 198 N.C. 494—Thompson v. Buchanan, 151 S.E. 861, 198 N.C. 278—Tilghman v. Hancock, 147 S.E. 300, 196 N.C. 780—Street v. Erskine-Ramsey Coal Co., 145 S.E. 11, 196 N.C. 178—Gentry v. Southern Public Utilities Co., 117 S.E. 9, 185 N.C. 285—Smith v. Allen, 106 S.E. 143, 181 N.C. 56—Beaver v. Fetter, 97 S.E. 145, 176 N.C. 334—Charles Schaeffer & Son v. Stone Co., 93 S.E. 931, 174 N.C. 781—Ball-Thrash Co. v. McCormick, 90 S.E. 916, 172 N.C. 677—Tillett v. Norfolk Southern R. Co., 82 S.E. 866, 166 N.C. 515.

Okl.—Kurn v. Westheimer & Daube, 73 P.2d 835, 181 Okl. 345—First Nat. Bank v. Beatty, 45 P.2d 158, 172 Okl. 47—Rock Island Coal Mining Co. v. Galvin, 220 P. 832, 96 Okl. 95—Bower-Venus Grain Co. v. Smith, 204 P. 265, 84 Okl. 105—National Bank of Hastings v. Oklahoma State Bank, 195 P. 768, 80 Okl. 239—Whitehead Coal Mining Co. v. Schneider, 183 P. 49, 75 Okl. 175—Missouri, O. & G. Ry. Co. v. Miller, 145 P. 367, 45 Okl. 173.

Or.—Saunders v. A. M. Williams & Co., 62 P.2d 260, 155 Or. 1—Christensen v. Reid, 240 P. 1113, 116 Or. 554, rehearing denied 241 P. 1009, 116 Or. 554—Thomas v. Smith-Wagoner Co., 234 P. 814, 114 Or. 69—Tyler v. Moore, 226 P. 443, 111 Or. 499.

Pa.—Pyle v. Finnessy, 118 A. 568, 275 Pa. 54—Kuhn v. Ligonier Valley R. Co., 104 A. 557, 261 Pa. 147—Levin v. V. Clad & Sons, 90 A. 570, 244 Pa. 194.

Burke v. Prudential Ins. Co. of America, 27 A.2d 523, 150 Pa.Super. 80—Girts v. Shaw, 70 Pa.Super. 345.

R.I.—Baxter v. Lincoln Mills Co., 36 A.2d 106, 70 R.I. 16—Grygiel v. Grygiel, 26 A.2d 743, 68 R.I. 155—Guadagno v. Folco, 6 A.2d 450, 62 R.I. 404.

S.C.—J. A. Fay & Egan Co. v. Mims, 149 S.E. 246, 151 S.C. 484—Knight v. Sullivan Power Co., 138 S.E. 818, 140 S.C. 296—Harwell v. Columbia Mills, 98 S.E. 324, 112 S.C. 177.

S.D.—Ward v. Reisdorf, 226 N.W. 339, 55 S.D. 322.

Tenn.—Pickard v. Berryman, 142 S. W.2d 764, 24 Tenn.App. 263—Marion Const. Co. v. Steepleton, 14 Tenn.App. 127—Hood v. Grooms, 4 Tenn.App. 511.

Tex.—Walker v. Great Atlantic & Pacific Tea Co., 112 S.W.2d 170, 131 Tex. 57—Slayden v. Palmo, 194 S.W. 1103, 108 Tex. 413—Hough v. Grapotte, 90 S.W.2d 1090, 127 Tex. 144.

Missouri Pac. Ry. Co. v. Baldwin, Com.App., 273 S.W. 834, certiorari denied 46 S.Ct. 336, 270 U.S. 645, 70 L.Ed. 777.

W. U. Tel. Co. v. Hinson, Civ. App., 222 S.W.2d 636, error refused no reversible error—Texas Associates v. Joe Bland Const. Co., Civ. App., 222 S.W.2d 413, error refused no reversible error—Texas & P. Ry. Co. v. Crown, Civ.App., 220 S. W.2d 294, error refused no reversible error—Brook v. Morriss, Morriss & Boatwright, Civ.App., 212 S.W.2d 257—Dean v. Safety Cas. Co., Civ.App., 190 S.W.2d 750, refused for want of merit—Culwell v. Shann, Civ.App., 184 S.W.2d 537—Loyd v. Herrington, Civ.App., 178 S.W.2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135—Hilliard v. Watson, Civ.App., 170 S.W.2d 310, error refused—Brazos River Conservation and Reclamation Dist. v. Costello, Civ. App., 169 S.W.2d 977, error refused—McIver v. Gloria, Civ.App., 163 S.W.2d 890, affirmed 169 S.W.2d 710, 140 Tex. 566—Younger Bros. v. Ross, Civ.App., 151 S.W.2d 621, error dismissed—Eakin v. Glenn, Civ.App., 141 S.W.2d 420—Averitt v. Warren, Civ.App., 125 S.W.2d 691—Reed v. James, Civ.App., 118 S.W.2d 580, error dismissed—

Traders & General Ins. Co. v. Rhodabarger, Civ.App., 93 S.W.2d 1180, error dismissed—Carothers v. Cameron, Civ.App., 93 S.W.2d 455—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122—Fort Worth & Denver City Ry. Co. v. Motley, Civ.App., 87 S.W.2d 551—Travelers' Ins. Co. v. Lancaster, Civ. App., 71 S.W.2d 318—Compton v. Republic Building & Loan Ass'n, Civ.App., 67 S.W.2d 1095—Dave Lehr, Inc., v. Brown, Civ.App., 58 S.W.2d 886—Traders' & General Ins. Co. v. Baldwin, Civ.App., 50 S.W.2d 863, modified on other grounds 84 S.W.2d 439, 125 Tex. 577—McElwrath v. Dixon, Civ. App., 49 S.W.2d 995—Chicago, R. I. & G. Ry. Co. v. Harris, Civ. App., 28 S.W.2d 611—Wengenroth v. Agold, Civ.App., 27 S.W.2d 294—Maryland Casualty Co. v. Allen, Civ.App., 22 S.W.2d 329—Hemler v. Hucony Gas Co., Civ.App., 18 S.W.2d 942—Port City Lumber Co. v. Wade, Civ.App., 16 S.W.2d 429—Houston & T. C. R. Co. v. Clement Grain Co., Civ.App., 10 S.W.2d 400—City of Abilene v. Reed, Civ. App., 294 S.W. 913—Sanders v. Blakney, Civ.App., 294 S.W. 238—Butler v. Duffey, Civ.App., 288 S. W. 598—Pace v. Olvey, Civ.App., 282 S.W. 940—Street v. Masterson, Civ.App., 277 S.W. 407—Davis v. Cochran, Civ.App., 275 S.W. 423—Haley v. Ennis, Civ.App., 274 S.W. 215—Lancaster v. Cox, Civ. App., 274 S.W. 200—Burrell v. Michaux, Civ.App., 273 S.W. 874, affirmed, Com.App., 286 S.W. 176, reversed on other grounds Ancient Egyptian Arabic Order Nobles of the Mystic Shrine v. Michaux, 49 S.Ct. 485, 279 U.S. 737, 73 L.Ed. 931—Barnes v. Callaway, Civ.App., 269 S.W. 1085—Texas Employers' Ins. Ass'n v. Jimencz, Civ.App., 267 S.W. 752—Lipshitz v. Earl Fruit Co. of The Northwest, Civ. App., 265 S.W. 1048—Schaff v. Ridlehuber, Civ.App., 261 S.W. 523, certiorari denied 45 S.Ct. 194, 266 U.S. 629, 69 L.Ed. 477—Schaff v. Sanders, Civ.App., 257 S.W. 670, affirmed, Com.App., 269 S.W. 1034—Texas Co. v. Ramsower, Civ. App., 255 S.W. 466, affirmed, Com. App., 7 S.W.2d 872—Farmers' & Merchants' State Bank of Lelia Lake v. Guffey, Civ.App., 255 S.W. 462—Poindexter v. First State Bank of Richland, Civ.App., 252 S.W. 858—St. Louis Southwestern Ry. Co. of Texas v. Bryant, Civ. App., 252 S.W. 322—Guarantee Mercantile Co. v. Jefferson Farmers' Union Cotton Warehouse Co., Civ.App., 247 S.W. 601—Island Lake Oil Co. v. Hewitt, Civ.App., 244 S.W. 193—Farmer v. Crowley, Civ.App., 239 S.W. 1017—City of Dallas v. Maxwell, Civ.App., 231 S.W. 429, reversed on other grounds, Com.App., 248 S.W. 667, 27 A.L.R. 927—Great Southern Oil & Refining Ass'n v. Cooper, Civ. App., 231 S.W. 157—St. Louis Southwestern Ry. Co. of Texas v. Turner, Civ.App., 225 S.W. 383, error refused—Western Union Telegraph Co. v. Gresham, Civ. App., 223 S.W. 1052—Massey v. Allen, Civ.App., 222 S.W. 682—Schwander v. Noble, Civ.App., 220 S.W. 443—Southland Life Ins. Co. v. Hopkins, Civ.App., 219 S.W. 254, reversed on other grounds, Com.App., 244 S.W. 989—Davis v. Burkholder, Civ.App., 218 S.W. 1101—Donoho v. Carwile, Civ.App., 214 S.W. 553, error refused—Railroad Commission of Texas v. Pecos & N. T. Ry. Co., Civ.App., 212 S.W. 535, error refused—Southern Traction Co. v. Coley, Civ.App., 211 S. W. 265, dismissed for want of jurisdiction—Pullman Co. v. McGowan, Civ.App., 210 S.W. 842, error refused—Batson-Milholme Co. v. Faulk, Civ.App., 209 S.W. 837, error denied 211 S.W. 972, 109 Tex. 480—Cochran v. Taylor, Civ. App., 209 S.W. 253—Manton v. City of San Antonio, Civ.App., 207 S.W. 951, error refused—Delaware Underwriters v. Brock, Civ.App., 206 S.W. 377, reversed on other grounds 211 S.W. 779—Pantaze v. Farmer, Civ.App., 205 S.W. 521—Strachbein v. Gilmer, Civ.App., 202 S.W. 333, dismissed for want of jurisdiction—Farmers' Petroleum Co. v. Shelton, Civ.App., 202 S.W. 194, error refused—Southern Pac. Co. v. Stephens, Civ.App., 201 S. W. 1076—Hadnot v. Hicks, Civ. App., 198 S.W. 359, error refused—Texas & P. Ry. Co. v. Max Hahn Packing Co., Civ.App., 197 S.W. 1146—Hackler v. Ingram, Civ. App., 196 S.W. 279, error refused—Missouri, K. & T. Ry. Co. of Texas v. Johnson, Civ.App., 193 S.W. 728, error refused—Galveston, H. & S. A. Ry. Co. v. Packard, Civ.App., 193 S.W. 397, error refused—Andrews v. Wilding, Civ.App., 193 S.W. 192, error refused—Gulf, C. & S. F. Ry. Co. v. Rodriquez, Civ. App., 185 S.W. 311—Texas & P. Ry. Co. v. Sherer, Civ.App., 183 S.W. 404, error refused—Wilson v. Avery Co. of Texas, Civ.App., 182 S.W. 884—Hall v. Ray, Civ.App., 179 S.W. 1135—Gulf, C. & S. F. Ry. Co. v. Graham, Civ.App., 175 S.W. 472—Western Union Telegraph Co. v. Gorman & Wilson, Civ.App., 174 S.W. 925—Houston, E. & W. T. Ry. Co. v. Cavanaugh, Civ.App., 173 S.W. 619—J. H. W. Steele Co. v. Dover, Civ.App., 170 S.W. 809—Ft. Worth & D. C. Ry. Co. v. Stalcup, Civ.App., 167 S.W. 279—Corrigan, Lee & Halpin v. Heubler, Civ.App., 167 S.W. 159—Sockwell v. Sockwell, Civ.App., 166 S.W. 1188.

Vt.—Dansro v. Scribner, 187 A. 803, 108 Vt. 408—People's Nat. Bank v. Brunelle, 140 A. 160, 101 Vt. 42—Residents of Royalton v. Central Vermont Ry. Co., 138 A. 782, 100 Vt. 443—Woodhouse v. Woodhouse, 130 A. 758, 99 Vt. 91—Miles v. Vermont Fruit Co., 124 A. 559, 98 Vt. 1—Murray v. Nelson, 122 A. 519, 97 Vt. 101—Bancroft v. Vail, 115 A. 224, 95 Vt. 304—Lowell v. Wheeler's Estate, 112 A. 361, 95 Vt. 113—Duprat v. Chesmore, 110 A. 305, 94 Vt. 218—Smith v. Reynolds, 108 A. 697, 94 Vt. 28—Wellman v. Mead, 107 A. 396, 93 Vt. 322—Tyrrell v. Goslant, 106 A. 585, 93 Vt. 63.

Va.—Crawford v. Hite, 10 S.E.2d 561, 176 Va. 69—Powell v. Young, 144 S.E. 624, 151 Va. 985, reheard 145 S.E. 731, 151 Va. 985—Whitten v. McClelland, 120 S.E. 146, 137 Va. 726.

Wash.—Salo v. Nelson, 156 P.2d 664, 22 Wash.2d 525—Rieger v. Kirkland, 111 P.2d 241, 7 Wash.2d 326.

Wyo.—Bradburn v. Wyoming Trust Co. of Casper, 63 P.2d 792, 51 Wyo. 73.

4 C.J. p 974 note 82.

Other evidence to identical effect

Ga.—Guyton v. Young, 65 S.E.2d 858, 84 Ga.App. 155.

Similar evidence introduced for same purpose

Ga.—Davis v. Fulton Nat. Bank, 48 S.E.2d 773, 77 Ga.App. 400.

Admission of statements against interest

Va.—Carter v. Pickering, 62 S.E.2d 856, 191 Va. 801.

Documents; exhibits

(1) Erroneous admission of incompetent documents over objection and exception was held not to require a reversal where parol evidence as to incompetent contents of documents was received without objection or exception.

Ohio.—Sandusky Packing Co. v. Hoffman, 195 N.E. 483, 129 Ohio St. 300.

(2) Admission of certain exhibits was harmless where contents thereof had been fully testified about without objection and they were offered and received simply as originals of exhibits which were already in evidence.

Vt.—Springfield Co-op. Freeze Locker Plant v. Wiggins, 63 A.2d 182, 115 Vt. 445.

(3) Where plaintiff permitted reading of certain document to jury, without objection, before its introduction as an exhibit, he could not claim error in admission of such exhibit.

Ohio.—Pfister v. City of Cleveland, 113 N.E.2d 366, 96 Ohio App. 185, appeal dismissed 112 N.E.2d 657, 159 Ohio St. 580.

(4) Admission of exhibit was not error where a large part of items therein had been read into record

evidence tending to establish the same facts is admitted without objection.[9]

without objection prior to the offering and admission of the exhibit.
Neb.—State ex rel. Strange v. School Dist. of Nebraska City, 33 N.W.2d 358, 150 Neb. 109.

Reading instruments

(1) Reading of a letter to the jury was not reversible error, where the facts recited therein have been testified to by others.
U.S.—Clover Valley Lumber Co. v. Sierra Valley Creamery, C.C.A.Cal., 18 F.2d 858.

(2) Where the only objection to the reading of records in former actions was to the verdicts, and objection was sustained, but some verdicts were later read without objection, an objection on appeal to the reading of such records was held to be without merit.
Mo.—Kelly v. City of Cape Girardeau, 72 S.W.2d 880, 228 Mo.App. 865.

Where same witness covers matter without objection

(1) Error, if any, in admitting evidence is harmless where the same witness has already testified to the same effect.
Ala.—Byars v. Hollimon, 153 So. 748, 228 Ala. 494.
Cal.—Masetti v. Madera Canal & Irrigation Co., 68 P.2d 260, 20 C.A. 2d 708.
Ga.—Atlantic Coast Line R. Co. v. Sellars, 79 S.E.2d 35, 89 Ga.App. 293.
Iowa.—Kuiken v. Garrett, 51 N.W. 2d 149, 243 Iowa 785.
Tex.—Cohen v. Lewis, Civ.App., 44 S.W.2d 468.
Vt.—Douglass & Varnum v. Village of Morrisville, 95 A. 810, 89 Vt. 393—Lynch's Adm'r v. Central Vermont Ry. Co., 95 A. 683, 89 Vt. 363.

(2) Admission of testimony as to a fact previously testified to by a witness without objection was not prejudicial error.
Iowa.—First State Bank of Riverside v. Tobin, 215 N.W. 767, 204 Iowa 456.
Tex.—Texas Milk Products Co. v. Birtcher, Civ.App., 138 S.W.2d 285, reversed on other grounds 157 S. W.2d 633, 138 Tex. 178.

(3) Error, if any, in admitting testimony was harmless, where the witness later testified to the same effect, without objection.
Ky.—Smith v. Treacy, 172 S.W.2d 570, 294 Ky. 680—Bailey v. Shrader, 97 S.W.2d 575, 265 Ky. 663.
Vt.—E. L. Stoddard & Son v. Village of North Troy, 150 A. 148, 102 Vt. 462.

(4) Error in permitting witness to testify over objection was immaterial, where the same facts were otherwise testified to by the same witness without objection.
Ga.—Exchange Bank of Savannah v. Pate, 151 S.E. 823, 41 Ga.App. 1.

(5) Error in admitting evidence on direct examination is rendered harmless, where the witness testifies to the same facts without objection on cross-examination.
Ga.—Willis Lumber Co. v. Roddenbery, 77 S.E.2d 110, 88 Ga.App. 352.
Tex.—Roman v. Goldberg, Civ.App., 3 S.W.2d 482.

(6) Defendant, not objecting to testimony showing that certain restrictions were intended for the benefit of all purchasers, cannot complain of the admission of similar testimony on cross-examination of the same witness.
Tex.—Plaster v. Stutzman, Civ.App., 8 S.W.2d 750.

(7) Exceptions to admission of testimony of witness were not subject to review on appeal when he had given substantially same testimony without objection in other portions of his examination.
N.C.—Powell v. Daniel, 73 S.E.2d 143, 236 N.C. 489—Spivey v. Newman, 59 S.E.2d 844, 232 N.C. 281—Star Mfg. Co. v. Atlantic Coast Line R. Co., 23 S.E.2d 32, 222 N.C. 330—McKay v. Bullard, 14 S.E.2d 657, 219 N.C. 589.

(8) Where evidence was admitted without objection and was re-elicited from same witness on redirect examination, admission of evidence was not ground for reversal.
Ga.—State Highway Bd. v. Coleman, 50 S.E.2d 262, 78 Ga.App. 54.

Where same or similar testimony is elicited from another witness

(1) Error in admitting evidence is harmless where the same evidence is elicited from another witness without objection.
N.J.—Burke v. Lincoln Transit Co., 117 A.2d 521, 37 N.J.Super. 433.
Tex.—Desdemona Gasoline Co. of Texas v. Garrett, Civ.App., 90 S.W. 2d 636, error dismissed—Export Ins. Co. v. Axe, Civ.App., 36 S.W. 2d 572, affirmed Export Ins. Co. of New York v. Axe, Com.App., 58 S. W.2d 39—Baker v. Farmers' Welfare Union, Civ.App., 8 S.W.2d 155.

(2) Accordingly, error, if any, in admitting defendant's testimony regarding certain representations by plaintiff's agent, was harmless, where identical testimony by another was admitted without objection.
Tex.—McCaskey Cash Register Co. v. Krause, Civ.App., 31 S.W.2d 858.

(3) Any error in admitting testimony did not require reversal, where the same fact was proved by another witness without objection.
Tex.—Watson Co. v. Bleeker, Civ. App., 10 S.W.2d 394.
Vt.—Burke v. Powers' Estate, 137 A. 202, 100 Vt. 342.

(4) Appellant cannot complain of testimony admitted over objection where another witness gave similar testimony without objection.
Ga.—Wages v. Wages, 42 S.E.2d 481, 202 Ga. 155.
Okl.—H. F. Wilcox Oil & Gas Co. v. Jamison, 190 P.2d 807, 199 Okl. 691—State v. Oklahoma Ry. Co., 4 P.2d 1009, 153 Okl. 76.
Tex.—Fleming Oil Co. v. Watts, Civ App., 193 S.W.2d 979, error refused no reversible error.

Rule limited

Admission of objectionable evidence is not reversible error where same or similar evidence has been previously received without or over objection and it does not appear that the evidence, when admitted the second time, exerts more influence than when admitted the first time, or that other prejudice has resulted.
Tex.—Dillingham v. Currie, Civ App., 92 S.W.2d 1122, error dismissed.

9. Ala.—Resolute Fire Ins. Co. v. O'Rear, 47 So.2d 425, 35 Ala.App. 398.
Cal.—Friis-Hansen v. Thompson, 166 P.2d 867, 73 C.A.2d 580.
Ga.—Boyd v. Summer, 88 S.E.2d 411, 211 Ga. 700.
Faw v. American Appraisal Co., 78 S.E.2d 846, 89 Ga.App. 62—Scott v. Torrance, 25 S.E.2d 120, 69 Ga.App. 309—Patterson v. Baugh, 6 S.E.2d 380, 61 Ga.App 270.
Idaho.—Clark v. Alloway, 170 P.2d 425, 67 Idaho 32.
Ill.—McNaghten v. Northwestern Life Ins. Co., 48 N.E.2d 200, 318 Ill.App. 390. See Kreuser v. Thomas B. Jeffery Co., 191 Ill.App. 598.
Ind.—Eckman v. Funderburg, 108 N. E. 577, 183 Ind. 208.
Kan.—Heller v. Rounkles, 232 P.2d 225, 171 Kan. 323.
Ky.—Miller v. Mills, 257 S.W.2d 520—Manual's Adm'r v. W. E. Caldwell & Co., 109 S.W.2d 635, 270 Ky. 285.
Md.—Francies v. Debaugh, 71 A.2d 455, 194 Md. 448—Clautice v. Murphy, 26 A.2d 406, 180 Md. 558—Lynch v. Rogers, 10 A.2d 619, 177 Md. 478—Blinder v. Monaghan, 188 A. 31, 171 Md. 77—Michael v. Smith, 91 A. 762, 124 Md. 116.
Mass.—Newton Const. Co. v. West & South Water Supply Dist. of Acton, 93 N.E.2d 457, 326 Mass. 171—Kelly v. Boston & M. R. R., 66 N.E.2d 807, 319 Mass. 603.

Moreover, error in the admission of evidence may be deemed to be harmless where the admission of evidence of which a party complains has otherwise been invited by him;[10] or where, if the incompetent evidence was false, the party complaining might have so shown;[11] or where the complaining party has departed from limitations placed on the introduction of evidence fully as much as the opposite party.[12] Further, error in the admission of evidence is not ground for reversal where evidence improperly admitted might well have been excluded in acting on a motion to direct a verdict.[13]

At all events, error in the admission of evidence is not a ground for reversal where the evidence admitted is not prejudicial in view of the testimony given by the parties,[14] or where the parties subsequently agreed as to the facts with respect to the matter to which the evidence related.[15]

Nevertheless, error in admitting evidence may be deemed to be prejudicial and to require a reversal where by reason of the conduct of the court or counsel the evidence in question is given particular emphasis,[16] as where counsel for the prevailing party refers to such evidence in his argument.[17] Moreover, error in admitting evidence may, under particular circumstances, constitute prejudicial error requiring reversal, notwithstanding the admis-

Mich.—Lee v. McCormick, 271 N.W. 579, 279 Mich. 120.

Mo.—Devine v. Kroger Grocery & Baking Co., 162 S.W.2d 813, 349 Mo. 621—Weaver v. Mobile & O. R. Co., 120 S.W.2d 1105, 343 Mo. 223.

Kelly v. Rieth, App., 168 S.W.2d 115—Carroll v. Missouri Power & Light Co., 96 S.W.2d 1074, 231 Mo. App. 265.

N.H.—Dowse v. Maine Cent. R. R., 20 A.2d 629, 91 N.H. 419.

N.J.—Philadelphia Dairy Products Co. v. Zimmer, 186 A. 442, 14 N.J. Misc. 572—Dominquez v. Markowitz, 169 A. 514, 12 N.J.Misc. 90.

N.C.—Gibbs v. Armstrong, 63 S.E. 2d 551, 233 N.C. 279—Moyle v. Hopkins, 21 S.E.2d 826, 222 N.C. 33—Yadkin Valley Motor Co. v. Home Ins. Co. of New York, 16 S.E.2d 847, 220 N.C. 168.

Ohio.—Rippel v. Rippel, App., 82 N.E.2d 140, appeal dismissed 93 N.E. 2d 285, 154 Ohio St. 83.

Okl.—Stow v. Bruce, 61 P.2d 1043, 178 Okl. 127.

Pa.—Berry v. Hemel Motors, 56 A. 2d 374, 162 Pa.Super. 52.

R.I.—Brison v. Frechette, 79 A.2d 360, 78 R.I. 68—Personal Finance Co. of Providence v. Henley-Kimball Co., 1 A.2d 121, 61 R.I. 402, 117 A.L.R. 1476—Cranston Dressed Meat Co. v. Packers Outlet Co., 190 A. 29, 57 R.I. 345.

Tex.—Peerless Oil & Gas Co. v. Teas, 158 S.W.2d 758, 138 Tex. 301.

Houston E. & W. T. Ry. Co. v. Jackson, Com.App., 299 S.W. 885.

Steinkamp v. Erwin, Civ.App., 249 S.W.2d 1012—Henderson v. Jimmerson, Civ.App., 234 S.W.2d 710, error refused no reversible error—American Cent. Ins. Co. v. Harrison, Civ.App., 205 S.W.2d 417, error refused no reversible error—Western Union Tel. Co. v. Lane, Civ.App., 152 S.W.2d 780—Johnson Aircrafts v. Wilborn, Civ.App., 190 S.W.2d 426, refused for want of merit—Wren v. Wilburn, Civ. App., 182 S.W.2d 1007, error refused—Callahan v. Hester, Civ. App., 181 S.W.2d 294, error refused—Frazier Jelke & Co. v. Chapman Minerals Corp., Civ.App., 149 S.W.2d 1101, error dismissed, judgment correct—City of Houston v. Anderson, Civ.App., 115 S.W. 2d 732, error dismissed—Thomas v. Murphy, Civ.App., 91 S.W.2d 810—Norwich Union Indemnity Co. v. Wilson, Civ.App., 43 S.W.2d 473, modified on other grounds, Com. App., 67 S.W.2d 225—Mansell v. Western Union Telegraph Co., Civ.App., 182 S.W. 1178—Houston & T. C. R. Co. v. Lindsey, Civ. App., 175 S.W. 708—Floegge v. Meyer, Civ.App., 172 S.W. 194.

Vt.—Bailey v. Central Vermont Ry., 35 A.2d 365, 113 Vt. 433.

Va.—Philip Greenberg, Inc., v. Dunville, 185 S.E. 892, 166 Va. 398.

Wash.—Hinckel v. Steigers, 191 P. 2d 279, 30 Wash.2d 171.

29 C.J. p 208 note 70.

Hospital record

Mass.—Nash v. Heald, 29 N.E.2d 7, 306 Mass. 518.

If testimony of one of defendants was inadmissible for any cause, its admission, when considered in connection with evidence to same effect, delivered by a witness for plaintiff without objection, would not furnish ground for reversal.

Ga.—First Nat. Bank of Cornelia v. Kelly, 10 S.E.2d 66, 190 Ga. 603.

Where another witness has testified to same facts

Admitting objectionable testimony was harmless, where another witness has testified to same facts without objection.

U.S.—Henry W. Putnam Memorial Hospital v. Allen, C.C.A.Vt., 34 F. 2d 927.

Tex.—Steptore v. San Antonio Transit Co., Civ.App., 198 S.W.2d 273.

Military service of party; medals

Tex.—Texas Bus Lines v. Whatley, Civ.App., 210 S.W.2d 626, error refused no reversible error.

10. Ky.—Williams v. Watson, 268 S.W. 1067, 207 Ky. 256.
Tex.—Babington v. Gray, Civ.App., 71 S.W.2d 293.

11. Iowa.—Risher v. Acken Coal Co., 124 N.W. 764, 147 Iowa 459.

12. Wis.—Nowaczyk v. Marathon County, 238 N.W. 383, 205 Wis. 536.

13. Ill.—Jeffris v. Ayer, etc., Tie Co., 184 Ill.App. 533.

14. Or.—Lee v. Ellis, 253 P. 873, 121 Or. 259.

Conversation between parties

Evidence of a conversation between plaintiff and defendant was not prejudicial to a codefendant, in view of both plaintiff's and defendant's testimony.

Or.—Lee v. Ellis, supra.

15. Pa.—Hunsicker v. Waidelich, 153 A. 335, 302 Pa. 224, 84 A.L.R. 211. 4 C.J. p 971 note 59.

Agreement on amount of claim

Error, if any, in the admission of evidence relating to the proof of a contractor's lien was harmless, where the parties subsequently agreed on the amount of the claim.

Pa.—Hunsicker v. Waidelich, supra.

16. U.S.—Baltimore & O. R. Co. v. Moore, C.C.A.Del., 13 F.2d 364, certiorari denied Moore v. Baltimore & O. R. Co., 47 S.Ct. 238, 273 U.S. 727, 71 L.Ed. 861.

17. Va.—Davis v. Town of Harrisonburg, 83 S.E. 401, 116 Va. 864. 4 C.J. p 974 note 74.

Where mainly relied on in argument

The erroneous admission in evidence of facts outside the proper issues required that the verdict be set aside, where plaintiff's counsel mainly relied thereon in his argument, and it could not be determined to what extent such evidence influenced the jury.

Va.—Davis v. Town of Harrisonburg, supra.

sion of other evidence of the same, or a similar, kind.[18]

(c) Evidence of Party against Whom Judgment Is Not Sought

Error in admitting evidence introduced by one coparty may be considered harmless where the complaining party is not seeking to bind such coparty.

Error in admitting certain evidence introduced by one of several coparties may, on appeal, be considered to be harmless where the complaining party is not seeking to bind the party who introduced the evidence complained of.[19]

d. In Particular Types of Action and with Respect to Particular Matters

The general rules for determining whether error in admitting evidence is harmless or prejudicial have been applied to a great variety of subject matters and types of action.

The general rules, already considered in this section, under which error in the admission of evidence is determined to be harmless or prejudicial have been applied in numerous types of action and with respect to numerous particular matters.[20]

18. Mo.—Dietz v. Nix, 216 S.W. 791, 202 Mo.App. 639.

Where appellate court cannot determine control or effect of particular evidence

Where improper testimony is submitted to a jury, over apt objection, this may constitute prejudicial error requiring a reversal notwithstanding proper testimony on the same subject was also received in a case where the appellate court cannot say which of the two pieces of evidence controlled the jury, nor that the improper testimony had no effect.

Iowa.—Ballou v. Clark, 171 N.W. 682, 187 Iowa 496.

Evidence introduced along same line by plaintiff and defendant

Fact that two of plaintiff's witnesses testified to matters that would have defeated plaintiff's case, if believed, did not render harmless incompetent evidence introduced by defendant along the same line.

Mass.—Luiz v. Falvey, 117 N.E. 308, 228 Mass. 253.

19. Tex.—Shaw v. Whitfield, Civ. App., 35 S.W.2d 1115.

20. Ala.—White Swan Laundry v. Blue, 137 So. 898, 223 Ala. 663.

Walker v. Jones, 34 So.2d 608, 33 Ala.App. 348, certiorari denied 34 So.2d 614, 250 Ala. 396.

Ariz.—People's Produce Co. v. First Nat. Bank, 261 P. 48, 32 Ariz. 596.

Ark.—Ayres & Graves v. Ellis, 49 S.W.2d 1056, 185 Ark. 818.

Cal.—Rose v. State, 123 P.2d 505, 19 C.2d 713, followed in Bettencourt v. State, 123 P.2d 525, 19 C.2d 876, Brandon v. State, 123 P.2d 525, 19 C.2d 877, Jones v. State, 123 P.2d 526, 19 C.2d 874, and Laughlin v. State, 123 P.2d 526, 19 C.2d 875—Noyes v. Chambers & De Golyer, 261 P. 1006, 202 C. 542.

Boswell v. Mount Jupiter Mut. Water Co., 217 P.2d 980, 97 C.A.2d 437—Friis-Hansen v. Thompson, 166 P.2d 867, 73 C.A.2d 580—Taylor v. Odell, 122 P.2d 919, 50 C.A.2d 115—Grace v. Carpenter, 108 P.2d 701, 42 C.A.2d 301—Miller v. San Francisco Church Extension Soc. of M. E. Church, 13 P.2d 824, 125 C.A. 85—Krukow v. Silvius, 288 P. 684, 105 C.A. 724.

Conn.—Sofas v. McKee, 124 A. 380, 100 Conn. 541.

Fla.—Dixie Frozen Foods & Storage v. Cox, 27 So.2d 672, 158 Fla. 88.

Ga.—Waters v. Wells, 117 S.E. 322, 155 Ga. 439.

Schloemer v. Teem, 88 S.E.2d 280, 92 Ga.App. 140—Hudgins Transfer Co. v. Law, 29 S.E.2d 107, 70 Ga.App. 659—Strobel v. Gormley, 178 S.E. 192, 50 Ga.App. 358—Clay v. Austell School Dist., 136 S.E. 540, 36 Ga.App. 354—Central of Georgia Ry. Co. v. Barnett, 134 S.E. 126, 35 Ga.App. 528.

Idaho.—Union Seed Co. of Burley v. Savage, 283 P.2d 918, 76 Idaho 432—Hartley v. Bohrer, 11 P.2d 616, 52 Idaho 72.

Ill.—Jackson v. Hursey, 118 N.E.2d 348, 1 Ill.App.2d 598—Cox v. Hrasky, 47 N.E.2d 728, 318 Ill.App. 287.

Ind.—City of East Chicago v. E. B. Lanman Co., 10 N.E.2d 288, 212 Ind. 524—Paul v. Walkerton Woodlawn Cemetery Ass'n, 184 N.E. 537, 204 Ind. 693.

Iowa.—Peterson v. Johnson, 212 N.W. 138, 205 Iowa 16.

Kan.—Stillie v. Stillie, 244 P. 844, 119 Kan. 816, 120 Kan. 565, modified on other grounds 249 P. 672, 121 Kan. 591.

Ky.—Codell Const. Co. v. Miller, 202 S.W.2d 394, 304 Ky. 708, 172 A.L.R. 546—Hilliker v. Thorndale, 173 S.W.2d 977, 295 Ky. 148—Brown v. Weathers, 57 S.W.2d 4, 247 Ky. 306—Conley v. Boyd Oil & Gas Co., 295 S.W. 1025, 220 Ky. 753—Smith v. W. C. Hutcherson & Co., 259 S.W. 364, 202 Ky. 302.

Md.—Gimbel v. Gimbel, 128 A. 891, 148 Md. 182—Mahan v. Adam, 124 A. 901, 144 Md. 355.

Mass.—Thorndike v. Checker Taxi Co., 191 N.E. 400, 287 Mass. 108.

Mich.—Carey v. Lauhoff, 3 N.W.2d 67, 301 Mich. 168—Goldberg v. Cities Service Oil Co., 266 N.W. 321, 275 Mich. 199.

Minn.—St. Paul Mercury Indemnity Co. v. Lyell, 11 N.W.2d 491, 216 Minn. 7.

Mo.—Lamphere v. Affeld, 99 S.W.2d 36—Leimkuehler v. Wessendorf, 18 S.W.2d 445, 323 Mo. 64.

Wentzel v. Lake Lotawana Development Co., 48 S.W.2d 185, 226 Mo.App. 960—Grant v. Meinholtz, App., 289 S.W. 22.

Mont.—August v. Burns, 255 P. 737, 79 Mont. 198.

N.J.—Dombrowski v. Olowski, 131 A. 898, 4 N.J.Misc. 105.

N.Y.—Milk Bottlers' Federation v. Donald E. Muncy, Inc., 256 N.Y.S. 663, 143 Misc. 436, reversed on other grounds 261 N.Y.S. 514, 237 App.Div. 531.

Okl.—Hostutler v. State ex rel. Com'rs of Land Office, 302 P.2d 983—Oklahoma Transp. Co. v. Seminole Lodge No. 430, I. O. O. F., 217 P.2d 164, 202 Okl. 622—Continental Oil Co. v. Patchell, 180 P.2d 825, 198 Okl. 614—Lasswell v. McNutt, 159 P.2d 739, 195 Okl. 548—McConnell v. Goucher, 108 P.2d 174, 188 Okl. 293.

Or.—Sargent v. Foland, 207 P. 349, 104 Or. 296.

Pa.—Biddle v. Biddle, 70 A.2d 281, 363 Pa. 426—Art Club of Philadelphia v. Heyman & Goodman, 190 A. 922, 325 Pa. 587—Commonwealth Trust Co. of Pittsburgh v. Hachmeister Lind Co., 181 A. 787, 320 Pa. 233.

R.I.—De Fusco v. Laudati, 10 A.2d 346, 64 R.I. 68.

S.C.—Leonard v. Broad River Power Co., 177 S.E. 152, 174 S.C. 199—Davis v. Town of Cayce, 164 S.E. 883, 166 S.C. 372—White v. Southern Ry. Co., 140 S.E. 560, 142 S.C. 284, 57 A.L.R. 634.

S.D.—Sejnoha v. Buchanan, 23 N.W.2d 142, 71 S.D. 220—Kingsbury County v. Andrews, 225 N.W. 216, 55 S.D. 133.

Tex.—Western Cottonoil Co. v. Alexander, Civ.App., 274 S.W.2d 870—Bunnell v. Bunnell, Civ.App., 217 S.W.2d 78—Martin v. Burcham, Civ.App., 203 S.W.2d 807—Johnson Aircrafts v. Wilborn, Civ.App., 190 S.W.2d 426, refused for want of merit—Scott v. Molter, Civ. App., 149 S.W.2d 642—Community Public Service Co. v. Gray, Civ. App., 107 S.W.2d 495—Seale v.

These types of action or matters include actions on account or for accounting,[21] agency,[22] alienation of affections,[22.5] animals,[22.10] assault and battery,[23]

State, Civ.App., 67 S.W.2d 1060—Davidson v. Swanson, Civ.App., 43 S.W.2d 172—Raymer v. Houghton, Civ.App., 39 S.W.2d 941—Zaunbrecher v. Trim, Civ.App., 31 S.W.2d 839—Langerhans v. Pape, Civ.App., 27 S.W.2d 287—Golden v. Wilder, Civ.App., 4 S.W.2d 140—Conley v. Texas Co., Civ.App., 289 S.W. 169.

Utah.—Schofield v. Zion's Co-op. Mercantile Inst., 89 P.2d 342, 96 A.L.R. 1083, 85 Utah 281.

Vt.—Hoadley v. Hoadley, 39 A.2d 769, 114 Vt. 75—Stone v. Wood, 157 A. 829, 104 Vt. 105.

Va.—Nora Coal Corporation v. McArthur, 145 S.E. 366, 153 Va. 261, reheard 149 S.E. 507, 153 Va. 261—Varner's Ex'rs v. White, 140 S.E. 128, 149 Va. 177—Henderson v. Foster, 124 S.E. 463, 139 Va. 543.

Wash.—Maryland Cas. Co. v. City of Tacoma, 90 P.2d 226, 199 Wash. 72, 123 A.L.R. 799, modified on other grounds 94 P.2d 217, 199 Wash. 72, 123 A.L.R. 1521, and 94 P.2d 749, 199 Wash. 72—Julien v. Herren, 271 P. 891, 149 Wash. 573.

Wis.—Berghammer v. Mayer, 207 N.W. 289, 189 Wis. 197.

Wyo.—Hendricks v. School Dist. No. 1, 10 P.2d 970, 44 Wyo. 204.

Held prejudicial

U.S.—Union Electric Light & Power Co. v. Snyder Estate Co., C.C.A.Mo., 65 F.2d 297.

Frey & Son v. Welch Grape Juice Co., Md., 240 F. 114, 153 C.C.A. 150.

Ala.—Alabama Power Co. v. Smith, 155 So. 601, 229 Ala. 105.

Ark.—Boynton Land & Lumber Co. v. Dye, 191 S.W. 13, 126 Ark. 513.

Ga.—Odum v. McArthur, 139 S.E. 870, 165 Ga. 103.

Jenkins v. Best Trading Co., 146 S.E. 512, 39 Ga.App. 214.

Idaho.—Chamberlain v. Amalgamated Sugar Co., 247 P. 12, 42 Idaho 604.

Ill.—Rosenberg v. Ott, 1 N.E.2d 502, 285 Ill.App. 50.

Ky.—Jackson v. Raisor, 248 S.W.2d 905—Clark v. Wells-Elkhorn Coal Co., 284 S.W. 91, 215 Ky. 128.

La.—Willis v. Mills Tooke Properties, App., 42 So.2d 548.

Mass.—Soja v. Fligier, 158 N.E. 273, 261 Mass. 35.

Mich.—Central Iron & Metal Co. v. Smith, 227 N.W. 673, 248 Mich. 534.

Mo.—Rossen v. Rice, App., 87 S.W.2d 213—Gee v. Sherman, 293 S.W. 789, 221 Mo.App. 121—Russo v. Brooks, App., 214 S.W. 429.

N.H.—Kenney v. Wong Len, 128 A. 343, 81 N.H. 427.

N.Y.—Walsh v. Judge, 188 N.E. 280, 263 N.Y. 136, reargument denied 189 N.E. 750, 263 N.Y. 670.

Shea v. Shea, 188 N.Y.S. 693, 197 App.Div. 126.

Marchant v. Fred F. French Management Co., 90 N.Y.S.2d 5—Kraushaar v. Kraushaar, 168 N.Y.S. 619.

Ohio.—Krueger v. Frazier, 166 N.E. 151, 31 Ohio App. 28.

Okl.—Wrightsman Petroleum Co. v. Schwartz, 10 P.2d 695, 157 Okl. 22.

Pa.—Bell v. Fitzgerald, Com.Pl., 31 Del.Co. 3.

R.I.—Coggeshall v. Davis, 142 A. 536, 49 R.I. 332.

Tex.—Andress v. Crump, Com.App., 29 S.W.2d 1038.

Seismic Explorations v. Dobray, Civ.App., 169 S.W.2d 739, error refused—Strack v. Strong, Civ.App., 114 S.W.2d 313, error dismissed—Ward v. Gee, Civ.App., 61 S.W.2d 555—Southwestern Oil Development Co. v. Illinois Torpedo Co., Civ.App., 252 S.W. 334, error dismissed Illinois Torpedo Co. v. Southwestern Oil Development Co., 278 S.W. 1115, 114 Tex. 582.

Vt.—Andrews v. Watkins' Estate, 160 A. 176, 104 Vt. 321.

Wis.—Barrows v. Leath & Co. of Janesville, 44 N.W.2d 918, 258 Wis. 154—Stewart v. Olson, 206 N.W. 909, 188 Wis. 487, 44 A.L.R. 1292.

21. U.S.—Gettys v. Newburger, C.C.A.Okl., 272 F. 209, certiorari denied 42 S.Ct. 56, 257 U.S. 649, 66 L.Ed. 416, and error dismissed 43 S.Ct. 11, 260 U.S. 693, 69 L.Ed. 467.

Ala.—Crum v. Crum, 43 So.2d 392, 255 Ala. 163—Willingham v. Wesley Hardware Co., 149 So. 703, 227 Ala. 280.

Ark.—Barnes v. Little, 132 S.W.2d 651, 199 Ark. 34.

Cal.—Lacy Mfg. Co. v. Gold Crown Min. Co., 126 P.2d 644, 52 C.A.2d 568—Storm & Butts v. Lipscomb, 3 P.2d 567, 117 C.A. 6.

Ga.—Rogers Lumber Co. v. Smith, 86 S.E.2d 640, 91 Ga.App. 632—Faw v. American Appraisal Co., 78 S.E.2d 846, 89 Ga.App. 62—Sanders v. Simms, 63 S.E.2d 271, 83 Ga.App. 226—Hammack v. Davis, 174 S.E. 725, 49 Ga.App. 192—General Tire & Rubber Co. v. Brown Tire Co., 168 S.E. 75, 46 Ga.App. 548.

Minn.—Physicians & Hospitals Supply Co. v. Johnson, 44 N.W.2d 224, 231 Minn. 548—Dale v. Berg, 40 N.W.2d 851, 230 Minn. 128.

Mo.—Great Lakes Coal & Coke Co. v. Segall, 59 S.W.2d 775, 227 Mo.App. 965—Phoenix Cotton Oil Co. v. Morrow-Stout Wholesale Grocer Co., App., 236 S.W. 415.

Tex.—Peters v. Brookshire, Civ.App., 195 S.W.2d 181, error refused no reversible error—Shaw v. Porter, Civ.App., 190 S.W.2d 396, refused for want of merit—Economy Filling Station v. Humble Oil & Refining Co., Civ.App., 3 S.W.2d 832.

Held prejudicial

Mo.—Robert v. Davis, 142 S.W.2d 1111, 235 Mo.App. 974.

22. Ala.—Industrial Sav. Bank v. Mitchell, 140 So. 449, 25 Ala.App. 13, certiorari denied 140 So. 452, 224 Ala. 335.

Cal.—Mitchell v. Monroe, Lyon & Miller, 290 P. 1049, 108 C.A. 57—P. W. Wood, Inc. v. Blalack, 261 P. 737, 86 C.A. 572.

Conn.—Alfred Atmore Pope Foundation v. New York, N. H. & H. R. Co., 138 A. 444, 106 Conn. 423.

Mass.—Phoenix Spring Beverage Co. v. Harvard Brewing Co., 45 N.E.2d 473, 312 Mass. 501.

Mo.—Lewis v. Thompson, 96 S.W.2d 938, 231 Mo.App. 321—Chiles v. Metropolitan Life Ins. Co., App., 91 S.W.2d 164—Weaver Bros. v. Smith, App., 13 S.W.2d 578.

Tex.—Associated Employers' Reciprocal v. Brown, Civ.App., 56 S.W.2d 483—Flynn v. Hayzlett, Civ.App., 32 S.W.2d 212—Brewer v. Ross, Civ.App., 290 S.W. 781.

Va.—Philip Greenberg, Inc., v. Dunville, 185 S.E. 892, 166 Va. 398.

Held prejudicial

Mo.—Briece v. Bosso, App., 158 S.W.2d 463.

22.5 Conn.—Bryant v. Scribner, 60 A.2d 174, 134 Conn. 678.

Md.—Kurdle v. Brookmeyer, 191 A. 416, 172 Md. 246.

Wis.—Paulson v. Scott, 50 N.W.2d 376, 260 Wis. 141, 31 A.L.R.2d 706.

Held prejudicial

Del.—Pilot v. Necastro, Super., 125 A.2d 857.

W.Va.—Ohlinger v. Roush, 193 S.E. 328, 119 W.Va. 272.

22.10 Ohio.—Hill v. Skinner, 79 N.E.2d 787, 81 Ohio App. 375.

Wis.—Tatreau v. Buecher, 40 N.W.2d 509, 256 Wis. 252.

23. Ala.—Badger v. Hollon, 175 So. 700, 27 Ala.App. 534.

Ark.—Dooley v. Sterling Stores, 218 S.W.2d 696, 214 Ark. 895.

Cal.—Seelye v. Harvey, 189 P. 311, 46 C.A. 448.

Ind.—King v. Winton, 1 N.E.2d 309, 102 Ind.App. 384.

Iowa.—Lawyer v. Stansell, 250 N.W. 887, 217 Iowa 111.

Kan.—Chapman v. Watson, 295 P. 654, 132 Kan. 324.

Ky.—Foster v. Dukes, 193 S.W.2d 159, 301 Ky. 752—Brown v. Simpson, 170 S.W.2d 345, 293 Ky. 755—Murphy v. Pettitt, 251 S.W. 179, 199 Ky. 365.

Md.—Galusca v. Dodd, 57 A.2d 313, 189 Md. 666.

Mich.—Anthony v. Cochrane, 295 N.W. 197, 295 Mich. 386.

assignment of dower,[23.5] attachment,[24] attorney and client,[25] bankruptcy,[26] banks and banking,[27] bills and notes,[28] bonds, including brokers bonds and

Miss.—Jessup v. Reynolds, 43 So.2d 753, 208 Miss. 50.
Mo.—Eckner v. Western Hair & Beauty Supply Co., 162 S.W.2d 621, 236 Mo.App. 988.
N.Y.—Litrell v. Klein, 292 N.Y.S. 218, 249 App.Div. 791.
Ohio.—Green v. Drungold, App., 101 N.E.2d 906—Yellow Cab Co. v. Kackloudis, 163 N.E. 633, 29 Ohio App. 438.
Tex.—Jameson v. Zuehlke, Civ.App., 218 S.W.2d 326, error refused no reversible error.
Wash.—Maciejczak v. Bartell, 60 P. 2d 31, 187 Wash. 113—De Phillips v. Neslin, 283 P. 691, 155 Wash. 147.
5 C.J. p 699 note 86.

Held prejudicial

Ill.—Ewald v. Pielet Scrap Iron & Metal Co., 33 N.E.2d 930, 310 Ill. App. 218.
Ky.—Daniel's Adm'r v. Hoofnel, 155 S.W.2d 469, 287 Ky. 834.
Mass.—Brennan v. Bongiorno, 23 N. E.2d 1007, 304 Mass. 476.
Neb.—Hampton v. Westover, 291 N. W. 93, 137 Neb. 695.
Or.—Tauscher v. Doernbecher Mfg. Co., 56 P.2d 318, 153 Or. 152.
Utah.—West v. Bentley, 98 P.2d 361, 98 Utah 248.
Va.—Crowson v. Swan, 178 S.E. 898, 164 Va. 82.

23.5 N.C.—Ballard v. Ballard, 55 S. E.2d 316, 230 N.C. 629.

24. Ala.—Bradford v. Lawrence, 94 So. 103, 208 Ala. 248.
Ga.—Dale v. Beasley, 81 S.E. 849, 141 Ga. 594.
Baker Mercantile Co. v. Hancock Bros. & Co., 93 S.E. 496, 20 Ga.App. 799.
Md.—Annapolis Banking & Trust Co. v. Smith, 164 A. 157, 164 Md. 8—Scheidt v. Schermerhorn, 105 A. 581, 133 Md. 468.
Mass.—Rice v. Rosenberg, 178 N.E. 724, 277 Mass. 334.
Tex.—Farmers' Nat. Bank v. Collis, Civ.App., 197 S.W. 782, error refused.
Wash.—Wise v. Vaughan, 295 P. 126, 160 Wash. 505.

25. Ala.—Alabama Fuel & Iron Co. v. Denson, 94 So. 311, 208 Ala. 337.
Cal.—Cullinan v. McColgan, 263 P. 353, 87 C.A. 684.
Ga.—Powell v. Powell, 127 S.E. 117, 159 Ga. 837.
Iowa.—Graeser v. Jones, 251 N.W. 162, 217 Iowa 499.
Ky.—Sharp v. Culton, 89 S.W.2d 869, 262 Ky. 84—Kentucky & West Virginia Power Co. v. Howes, 56 S.W. 2d 539, 246 Ky. 843.
Minn.—Daly v. Donovan, 278 N.W. 814, 200 Minn. 323—Haedge v. Gaver, 217 N.W. 109, 173 Minn. 207.
Mo.—Amick v. Henman, App., 241 S. W. 988.
Mont.—Baldwin v. Silver, 193 P. 750, 58 Mont. 495.
N.J.—Car & General Ins. Corporation v. Davimos, 173 A. 150, 12 N. J.Misc. 569.
Tex.—Kroll v. Scott, Civ.App., 155 S. W.2d 985, error refused.
Wash.—Danz v. Shyvers, 293 P.2d 772, 48 Wash.2d 319—Bond v. Wiegardt, 216 P.2d 196, 36 Wash.2d 41—Griggs v. Wayne, 171 P. 230, 100 Wash. 459.

26. Conn.—Trenton Trust Co. v. Carlisle Tire Corporation, 147 A. 366, 110 Conn. 125—Robinson v. Dobbins, 142 A. 572, 108 Conn. 58.
Ga.—Richards v. Coweta Fertilizer Co., 135 S.E. 319, 36 Ga.App. 1.
Mass.—Kagan v. Levenson, 134 N.E. 2d 415, 334 Mass. 100.
Neb.—Horn v. Goldberg, 291 N.W. 493, 137 Neb. 813.
N.Y.—Cohen v. Benjamin, 284 N.Y.S. 884, 246 App.Div. 866.
Pa.—Zalesky v. Northwestern Building & Loan Ass'n, 158 A. 604, 104 Pa.Super. 333.
Vt.—Slayton v. Drown, 107 A. 307, 93 Vt. 290.

Held prejudicial

Mo.—Trepp v. Monongah Glass Co., 297 S.W. 108, 220 Mo.App. 1099.
N.C.—Garland v. Arrowood, 94 S.E. 401, 174 N.C. 657.

27. U.S.—Merchants' Bank v. Hanna, C.C.A.Mo., 73 F.2d 818—Roelker v. Bromley-Shepard Co., C.C.A. Mass., 73 F.2d 618, certiorari denied 55 S.Ct. 509, 294 U.S. 713, 79 L.Ed. 1246.
Ark.—Sturgis v. Wylie, 120 S.W.2d 571, 196 Ark. 970.
Cal.—Crow v. Bank of America Nat. Trust & Sav. Ass'n, 212 P.2d 624, 95 C.A.2d 430—Holman v. Stockton Savings & Loan Bank, 122 P. 2d 120, 49 C.A.2d 500.
Iowa.—Farmers' Sav. Bank of New Albin v. Bunge, 231 N.W. 651, 211 Iowa 1357.
Kan.—Riverdale State Bank v. Schmidt, 254 P. 383, 123 Kan. 39, rehearing denied 256 P. 161, 123 Kan. 403—Grosse v. Burkholder, 211 P. 115, 112 Kan. 406—Scoby v. Bird City State Bank, 211 P. 110, 112 Kan. 135.
Ky.—Cook's Adm'r v. Bank Josephine, 191 S.W.2d 209, 301 Ky. 193—Commercial Bank of Grayson v. Arden & Fraley, 197 S.W. 951, 177 Ky. 520, L.R.A.1918B 320.
Md.—Takoma Park Bank v. Abbott, 19 A.2d 169, 179 Md. 249, certiorari denied 62 S.Ct. 134, 314 U.S. 672, 86 L.Ed. 538—Mercantile Savings Bank of Baltimore City v. Appler, 135 A. 373, 151 Md. 571.
Miss.—Citizens Nat. Bank of Meridian v. Allen, 167 So. 627, 176 Miss. 157, certiorari denied 57 S.Ct. 26, 299 U.S. 564, 81 L.Ed. 415.
Mo.—Quaintance v. Moberly, App., 110 S.W.2d 857—Gibson v. First Nat. Bank of Jefferson City, 245 S. W. 1072, 213 Mo.App. 63—Bank of Darlington v. Atwood, 36 S.W.2d 429, 225 Mo.App. 974, motion overruled 47 S.W.2d 1097.
Ohio.—Winters Nat. Bank & Trust Co. v. Grether, 42 N.E.2d 941, 69 Ohio App. 461.
Pa.—Farmers Nat. Bank & Trust Co. of New Holland v. New Holland Nat. Bank, 5 A.2d 198, 333 Pa. 428.
Tenn.—State ex rel. McConnell v. First State Bank, 124 S.W.2d 726, 22 Tenn.App. 577—Robertson v. Ramsey, App., 66 S.W.2d 1022—W. E. Richmond & Co. v. Security Nat. Bank, 64 S.W.2d 863, 16 Tenn. App. 414.
Tex.—Provident Nat. Bank of Waco v. Howard, Civ.App., 199 S.W. 658.
Wis.—Ninoff v. Hazel Green State Bank, 183 N.W. 673, 174 Wis. 560.
Wyo.—Bradburn v. Wyoming Trust Co. of Casper, 63 P.2d 792, 51 Wyo. 73.

Held prejudicial

Colo.—Foster v. Kragh, 103 P.2d 480, 106 Colo. 249.
Miss.—Deposit Guaranty Bank & Trust Co. v. Silver Saver Stores, 148 So. 367, 166 Miss. 882.
Mo.—Beattie v. Kerr, App., 65 S.W.2d 119.
N.H.—Burns v. Nolette, 144 A. 848, 83 N.H. 489, 67 A.L.R. 1071.
Ohio.—Stockyards Bank v. Seal, 161 N.E. 35, 27 Ohio App. 179.

28. Ala.—Hawie v. Kelly, 53 So.2d 609, 256 Ala. 21—Deal v. Atlantic Coast Line R. Co., 144 So. 81, 225 Ala. 533, 86 A.L.R. 455—Walls v. Decatur Fertilizer Co., 111 So. 214, 215 Ala. 426—Cadle v. Bland, 106 So. 170, 213 Ala. 665.
Adams v. Rish, 10 So.2d 45, 30 Ala.App. 566—W. S. Wiles & Son v. Wright, 136 So. 842, 24 Ala.App. 409, certiorari denied 136 So. 843, 223 Ala. 390.
Ark.—Rodgers v. Skow, 84 S.W.2d 611, 191 Ark. 266.
Cal.—Davision v. Finneran, 47 P.2d 271, 4 C.2d 51.
Cotton v. Hudson, 110 P.2d 70, 42 C.A.2d 812—Weiss v. First Sav. Bank of Colusa, 82 P.2d 45, 28 C.A.2d 140, hearing denied 83 P.2d 35, 28 C.A.2d 140—Robinson v. Harry, 46 P.2d 806, 7 C.A.2d 312—Smith v. Armstrong, 260 P. 347, 85 C.A. 624.
Ga.—Jennings v. Gibson, 47 S.E.2d 779, 77 Ga.App. 28—Everitt v. Harris, 19 S.E.2d 545, 67 Ga.App. 64—Dobson v. Monk, 11 S.E.2d 70, 63 Ga.App. 365—Kaiser v. Simmons,

labor and material bonds,[28.5] boundaries,[29] breach of marriage promise,[30] brokers,[31] building and

183 S.E. 343, 52 Ga.App. 355—Hammontree v. Moreland, 179 S.E. 165, 50 Ga.App. 623—Willis v. Seiberling Rubber Co., 161 S.E. 789, 44 Ga.App. 468—Tumlin v. Guest, 120 S.E. 442, 31 Ga.App. 250—Gunn v. A. L. Wilson Co., 92 S.E. 721, 20 Ga.App. 14.

Ind.—George F. Hinrichs, Inc., v. U. S. Bank & Trust Co. of Rochester, 163 N.E. 842, 88 Ind.App. 327—Davis & Holmes Land Co. v. First Nat. Bank, 152 N.E. 723, 85 Ind. App. 161—Cook & Bernheimer Co. v. Hagedorn, 131 N.E. 788, 82 Ind. App. 444.

Iowa.—Farmers' Sav. Bank of New Albin v. Bunge, 231 N.W. 651, 211 Iowa 1357—Anthon State Bank v. Bernard, 201 N.W. 59, 198 Iowa 1345.

Kan.—Oliver Farm Equipment Sales Co. v. Rich, 42 P.2d 604, 141 Kan. 584—Eagan v. Murray, 170 P. 389, 102 Kan. 193.

Ky.—Bailey v. Bailey, 180 S.W.2d 316, 297 Ky. 400—Rakestraw v. Sebree Deposit Bank, 225 S.W. 506, 189 Ky. 668.

La.—Roque v. Henry, App., 189 So. 358.

Mass.—H. H. Brown Shoe Co. v. H. C. Brown Co., 155 N.E. 22, 258 Mass. 343

Mich.—National Surety Co. v. McLeod, 215 N.W. 341, 240 Mich. 360.

Minn.—Olson v. Myrland, 264 N.W. 129, 195 Minn. 626—Keyser v. Roberts, 257 N.W. 503, 192 Minn. 588.

Mo.—Personal Finance Co. of St. Louis v. Endicott, App., 238 S.W.2d 51—Eichenberg v. Magidson's Estate, App., 170 S.W.2d 105—Brown v. Brown, App., 5 S.W.2d 644—La Salle Extension University v. Jones, App., 300 S.W. 1000—Courtney's Estate v. Lanznar's Estate, App., 296 S.W. 269.

Mont.—Commercial Nat. Bank of Great Falls v. Reichelt, 204 P. 1037, 62 Mont. 302.

N.C.—Petree v. Savage, 88 S.E. 725, 171 N.C. 437.

N.D.—First Nat. Bank v. Kopp, 209 N.W. 974, 54 N.D. 439.

Ohio.—Reebel v. Ignat, App., 102 N.E.2d 36—Alexander v. Hair, App., 38 N.E.2d 601.

Okl.—Flanagan v. Oxley, 126 P.2d 707, 190 Okl. 564—Mitchell v. Massey-Harris Co., 113 P.2d 594, 189 Okl. 88—Horn v. Perry, 99 P.2d 143, 186 Okl. 541—Laughlin v. Cheney, 46 P.2d 352, 172 Okl. 562—Jackson v. Bighorse, 293 P. 556, 146 Okl. 1.

Or.—U. S. National Bank of La Grande v. Miller, 250 P. 1098, 119 Or. 682.

R.I.—McLain v. Tripp, 53 A.2d 919, 73 R.I. 105—Knight v. Wilcox, 197 A. 446, 60 R.I. 165.

S.C.—Wolfe v. Brannon, 44 S.E.2d 833, 211 S.C. 282—Lerner v. Bluestein, 178 S.E. 265, 175 S.C. 59—Southern Cotton Oil Co. v. Schafer Co., 138 S.E. 882, 140 S.C. 445.

Tenn.—Unaka & City Nat'l Bk., Mkt. St. Branch v. Campbell, 9 Tenn. App. 192.

Tex.—Caraway v. Flagg, Civ.App., 277 S.W.2d 803, error refused no reversible error—Walker v. Citizens Nat. Bank of Waco, Civ.App., 212 S.W.2d 203, error refused no reversible error—Ross v. Cook, Civ. App., 151 S.W.2d 854, error refused—Elliott v. Elliott, Civ.App., 120 S.W.2d 631, error dismissed—Compere v. Girand, Civ.App., 42 S.W.2d 278—Williams v. Penick-Hughes Co., Civ.App., 36 S.W.2d 1060—Currie v. Dobbs, Civ.App., 10 S.W.2d 438—Cauble v. Cauble, Civ. App., 283 S.W. 914—Carey v. Planters' State Bank, Civ.App., 280 S. W. 251—Townsend, Townsend & Co. v. South Plains Monument Co., Civ.App., 257 S.W. 648—Weston v. General Motors Acceptance Corporation, Civ.App., 250 S.W. 744.

Utah.—Bell v. Jones, 110 P.2d 327, 100 Utah 87.

Vt.—Foss v. Sherwood, 157 A. 834, 104 Vt. 141—Barre Trust Co. v. Ladd, 154 A. 680, 103 Vt. 392.

Va.—Hofheimer v. Booker, 180 S.E. 145, 164 Va. 358.

Wash.—Salo v. Nelson, 156 P.2d 664, 22 Wash.2d 525.

Wyo.—Caldwell v. Roach, 12 P.2d 376, 44 Wyo. 319.

Actions on checks

Cal.—Hamilton v. Abadjian, 179 P.2d 804, 30 C.2d 49.

N.C.—Grayson Shipping Lines v. Young, 52 S.E.2d 12, 230 N.C. 80—Foxman v. Hanes, 12 S.E.2d 258, 218 N.C. 722.

Okl.—Newton v. Paul, 224 P.2d 265, 203 Okl. 556.

Renewal note

Cal.—Imperial-Yuma Production Credit Ass'n v. Shields, 169 P.2d 671, 74 C.A.2d 932.

Ill.—Parish Bank & Trust Co. v. Wennerholm Bros., 39 N.E.2d 383, 313 Ill.App. 121.

Held prejudicial

Ala.—Lackey v. Thomas, 184 So. 262, 28 Ala.App. 302, certiorari denied Ex parte Thomas, 184 So. 264, 236 Ala. 602.

Cal.—National Bank of San Mateo v. Whitney, 183 P. 789, 181 C. 202, 8 A.L.R. 298.

Colo.—Newell v. Newell, 192 P. 505, 68 Colo. 585.

Ga.—Everitt v. Harris, 19 S.E.2d 545, 67 Ga.App. 64—Taff v. Larey, 116 S.E. 866, 29 Ga.App. 631.

Iowa.—Schram v. Johnson, 225 N.W. 369, 208 Iowa 222.

Ky.—Rose v. Callahan, 246 S.W.2d 582.

Me.—Norton v. Smith, 150 A. 494, 129 Me. 127.

Mo.—Casner v. Herrick, 43 S.W.2d 768.

Phœnix Mut. Life Ins. Co. v. Goessling, App., 121 S.W.2d 182.

N.Y.—Arkport State Bank v. Nutter, 130 N.Y.S.2d 343, 284 App.Div. 86.

Ohio.—Bishop v. Deposit Banking Co., 171 N.E. 611, 35 Ohio App. 63.

R.I.—Sixth St. Realty Co. v. Horowitz, 148 A. 597, 50 R.I. 445.

S.C.—Cheraw Motor Sales Co. v. Rainwater, 119 S.E. 237, 125 S.C. 509.

28.5 Cal.—Lewis & Queen v. S. Edmondson & Sons, 248 P.2d 973, 113 C.A.2d 705.

Ga.—Robertson v. Cox, 189 S.E. 844, 183 Ga. 744.

Mass.—Fuller v. Home Indem. Co., 60 N.E.2d 1, 318 Mass. 37.

Held prejudicial

S.D.—Bristow v. Western Sur. Co., 78 N.W.2d 734.

29. Ala.—Ford v. Bradford, 117 So. 429, 218 Ala. 62.

Conn.—Simmons v. Addis, 110 A.2d 457, 141 Conn. 738.

Fla.—Johnson v. Reynolds, 121 So. 793, 97 Fla. 591.

Ga.—Lively v. Lively, 58 S.E.2d 168, 206 Ga. 606.

Ky.—Parsons v. Gibbs, 151 S.W.2d 415, 286 Ky. 488—Dittcher v. Binkley, 64 S.W.2d 502, 251 Ky. 134.

Me.—Borneman v. Milliken, 124 A. 200, 123 Me. 488.

Md.—Dennis v. Hearn, 129 A. 354, 148 Md. 391.

N.C.—Thompson v. Buchanan, 151 S. E. 861, 198 N.C. 278—McQueen v. Graham, 111 S.E. 860, 183 N.C. 491.

Tex.—Craddock v. Humble Oil & Refining Co., Civ.App., 234 S.W.2d 137, error refused no reversible error.

Held prejudicial

Fla.—Akin v. Godwin, 49 So.2d 604.

Ky.—Dupoyster v. Miller, 192 S.W. 23, 174 Ky. 353.

30. Ill.—Stephens v. Nixon, 86 N.E. 2d 278, 338 Ill.App. 275.

Okl.—Roberts v. Van Cleave, 237 P. 2d 892, 205 Okl. 319.

R.I.—Monroe v. Lavimodiere, 167 A. 534, 53 R.I. 500.

Tex.—Freeman v. Bennett, Civ.App., 195 S.W. 238, error refused.

Held prejudicial

Miss.—Lanham v. Wright, 142 So. 5, 164 Miss. 1.

31. Ariz.—Bowser v. Sandige, 250 P. 2d 589, 74 Ariz. 397.

Colo.—Houston v. H. G. Wolff & Son Inv. Co., 28 P.2d 255, 94 Colo. 73—Aslan v. Parker Realty Co., 242 P. 45, 78 Colo. 235.

construction contracts,[32] cancellation of a contract[32.5] or of a lease,[32.10] carriers,[33] character

Fla.—Stewart v. Manget, 187 So. 695, 136 Fla. 710.
Ga.—Smith v. Courts, 7 S.E.2d 418, 62 Ga.App. 11.
Ill.—McGaughey v. Johnson, 91 N.E. 2d 464, 340 Ill.App. 279—Rothschild v. Sabath, 17 N.E.2d 354, 297 Ill.App. 638.
Iowa.—Ducummon v. Johnson, 47 N.W.2d 231, 242 Iowa 488—Kellogg v. Rhodes, 4 N.W.2d 412, 231 Iowa 1340—Roggensack v. Ahlstrom, 209 N.W. 429.
Kan.—Johnson v. Howard, 16 P.2d 474, 136 Kan. 493.
Ky.—Brooks v. Tipton, 183 S.W.2d 496, 298 Ky. 490.
La.—Phillips v. Albrecht, App., 179 So. 629.
Md.—Heslop v. Dieudonne, 120 A.2d 669, 209 Md. 201—Hodgson v. Burroughs, 2 A.2d 407, 175 Md. 413—Bregel v. Cooper, 157 A. 719, 161 Md. 416—Clark v. Banks, 148 A. 238, 158 Md. 24—De Crette v. Mohler, 127 A. 639, 147 Md. 108.
Mass.—Glassman v. Barron, 178 N.E. 628, 277 Mass. 376.
Minn.—MacGregor v. Persha, 218 N. W. 462, 174 Minn. 127—Mooney v. Burgess, 172 N.W. 808, 142 Minn. 406.
Miss.—Pearl Realty Co. v. Wells, 145 So. 102, 164 Miss. 300.
Mo.—Choplin v. Francis, App., 181 S.W.2d 222—Longmire v. Diagraph-Bradley Stencil Mach. Corp., App., 176 S.W.2d 635—Lewis v. Thompson, 96 S.W.2d 938, 231 Mo.App. 321—H. W. Eddy, Insurance, Inc., v. National Union Fire Ins. Co., App., 94 S.W.2d 1062—Bales v. Hendrickson, App., 290 S.W. 638.
N.J.—Boehme v. Shapiro, 169 A. 691, 112 N.J.Law 88—Dietz v. Glasgow, 166 A. 175, 110 N.J.Law 490.
Miller v. Richieri, 155 A. 468, 9 N.J.Misc. 710.
Okl.—Watts v. Elmore, 176 P.2d 220, 198 Okl. 141—Baker v. Heiliger, 156 P.2d 592, 195 Okl. 206.
R.I.—McGair v. Humes, 169 A. 744.
Tex.—Ferguson v. Roberts, Civ.App., 300 S.W. 650—Freeman v. Wooten, Civ.App., 234 S.W. 415.
Utah.—Van Leeuwen v. Huffaker, 280 P. 235, 74 Utah 441.
9 C.J. p 664 note 90.

Held prejudicial

Alaska.—Robertson v. Carvey, 9 Alaska 488.
Ill.—Manxi v. Kimbley, 115 N.E.2d 343, 351 Ill.App. 377.
Kan.—Tischhauser v. Little, 296 P.2d 1118, 179 Kan. 551.
Okl.—Moore v. Bennett, 312 P.2d 480.
R.I.—Gallagher v. Paris, 165 A. 360, 53 R.I. 186.
Tex.—Buerger v. Molts, Civ.App., 43 S.W.2d 127—Brady v. Richey & Casey, Civ.App., 187 S.W. 508.
Va.—Hilleary v. Hubbell, 39 S.E. 111, 119 Va. 123.

32. Ga.—Loftis v. Hubbard, 157 S.E. 704, 42 Ga.App. 829.
Mo.—Schnitzer v. Couch, App., 279 S.W. 165.
N.H.—N. E. Redlon Co. v. Franklin Square Corp., 195 A. 348, 89 N.H. 137, affirmed 197 A. 329, 89 N.H. 137.
Pa.—Hauser v. Hambersky, 84 A.2d 184, 368 Pa. 482.
Tex.—John Maynard Lumber Co. v. Brazell, Civ.App., 28 S.W.2d 877—Roberts v. Roberts, Civ.App., 27 S.W.2d 880.

Held prejudicial

(1) Generally.
N.D.—Olivier v. Olson, 248 N.W. 181, 63 N.D. 316.

(2) Estimate of damages.
N.C.—Rankin v. Helms, 94 S.E.2d 651, 244 N.C. 532.

32.5 Tex.—Lone Star Bldg. & Loan Ass'n v. Larcade, Civ.App., 211 S. W.2d 257, error refused no reversible error.

Held prejudicial

N.C.—Cox v. Hinshaw, 44 S.E.2d 532, 228 N.C. 102.

32.10 Okl.—Bain v. Portable Drilling Corp., 198 P.2d 207, 200 Okl. 569.

33. Ala.—Birmingham Electric Co. v. Driver, 166 So. 701, 232 Ala. 36—Louisville & N. R. Co. v. Benton Mercantile Co., 121 So. 716, 219 Ala. 223—Central of Georgia Ry. Co. v. Grover, 118 So. 506, 218 Ala. 290.
American Ry. Express Co. v. Barnes, 91 So. 912, 18 Ala.App. 295.
Ark.—Railway Exp. Agency v. Shull, 275 S.W.2d 882, 224 Ark. 476—Adams v. Summers, 263 S.W.2d 711, 222 Ark. 924.
Cal.—Duran v. Pickwick Stages System, 35 P.2d 148, 140 C.A. 103—Murray v. Southern Pac. Co., 296 P. 667, 112 C.A. 150.
Conn.—New York, N. H. & H. R. Co. v. Salter, 134 A. 220, 104 Conn. 728.
Ga.—Atlantic Greyhound Corp. v. Austin, 33 S.E.2d 718, 72 Ga.App. 19—Scott v. Torrance, 25 S.E.2d 120, 69 Ga.App. 309—Bugg v. Perry & Faircloth, 156 S.E. 708, 42 Ga. App. 523.
Ill.—Montgomery v. Checker Taxi Co., 57 N.E.2d 231, 324 Ill.App. 83—Jackson v. Thompson, 32 N.E. 2d 997, 309 Ill.App. 187.
Ind.—Chicago, I. & L. Ry. Co. v. Priddy, 115 N.E. 266, 65 Ind.App. 552.
Ky.—Conley v. Jennings, 178 S.W.2d 185, 296 Ky. 652—Consolidated Coach Corporation v. Hopkins, 14 S.W.2d 768, 228 Ky. 184—Cincinnati, N. O. & T. P. Ry. Co. v. Perkins, 266 S.W. 652, 205 Ky. 798—South Covington & C. Ry. Co. v. Goldsmith, 218 S.W. 286, 187 Ky. 68.
Md.—State, for Use of Emerson, v. Poe, 190 A. 231, 171 Md. 584.
Mich.—Steudle v. Yellow and Checker Cab & Transfer Co., 282 N.W. 879, 287 Mich. 1—Evans v. City of Detroit, 238 N.W. 279, 255 Mich. 381.
Minn.—Ball v. Twin City Motor Bus Co., 30 N.W.2d 523, 225 Minn. 274, 9 A.L.R.2d 933.
Mo.—Hulen v. Wheelock, 300 S.W. 479, 318 Mo. 502.
Rooney v. St. Louis-San Francisco Ry. Co., 286 S.W. 153, 220 Mo.App. 273—Randazzo Macaroni Mfg. Co. v. Minneapolis & St. L. R. Co., App., 251 S.W. 466—Rooker v. Deering Southwestern Ry. Co., 226 S.W. 69, 206 Mo.App. 79.
N.J.—Benedetton v. Hudson & M. R. Co., 156 A. 37, 9 N.J.Misc. 758—Galioto v. Erie R. Co., 148 A. 158, 8 N.J.Misc. 41, affirmed 154 A. 631, 107 N.J.Law 377.
N.Y.—Creasy v. Eastern Greyhound Lines of New York, 291 N.Y.S. 746, 249 App.Div. 59.
Ohio.—Grzywna v. Youngstown Municipal Ry. Co., App., 77 N.E.2d 84—Shadwick v. Hills, 69 N.E.2d 197, 79 Ohio App. 143—Pittsburg, C., C. & St. L. Ry. Co. v. Guarantee Finance & Securities Co., 153 N.E. 166, 21 Ohio App. 227.
Pa.—Bickel v. Reed, 179 A. 762, 118 Pa.Super. 335.
S.C.—Hutto v. American Fire & Cas. Ins. Co., 54 S.E.2d 523, 215 S.C. 90—Ellenberg v. Arthur, 183 S.E. 306, 178 S.C. 490, 103 A.L.R. 437.
Tenn.—L. & N. R. R. Co. v. Erby, 7 Tenn.App. 248.
Tex.—Myers v. Continental Panhandle Lines, Civ.App., 278 S.W. 2d 365—Panhandle & S. F. R. Co. v. Ross, Civ.App., 80 S.W.2d 427—Commercial Standard Ins. Co. v. Shudde, Civ.App., 76 S.W.2d 561—Panhandle & S. F. Ry. Co. v. Miller, Civ.App., 64 S.W.2d 1076—San Antonio, U. & G. R. Co. v. Schmidt, Civ.App., 18 S.W.2d 237—Schaff v. Shepherd, Civ.App., 196 S.W. 232, error refused—Houston E. & W. T. Ry. Co. v. Brackin, Civ.App., 191 S.W. 804—Connally v. Missouri, K. & T. Ry. Co., Civ. App., 187 S.W. 376—Weller v. Missouri, K. & T. Ry. Co., Civ.App., 187 S.W. 374.
Utah.—Flora v. Union Pac. R. Co., 237 P. 948, 65 Utah 395—Baird v. Denver & R. G. R. Co., 162 P. 79, 49 Utah 58.
Vt.—Saliba v. New York Cent. R. Co., 144 A. 194, 101 Vt. 427.
Va.—Seaboard Air Line Ry. Co. v. J. E. Bowden & Co., 131 S.E. 245, 144 Va. 154.

or reputation for truth and honesty, care and caution,[34] claim and delivery,[34.5] commissions or fees,[35] conspiracy,[35.5] contempt,[35.10] contracts generally,[35.15] corporations,[36] criminal conversation and

Speed
Cal.—Gritsch v. Pickwick Stages System, 81 P.2d 257, 27 C.A.2d 494.
Held prejudicial
Cal.—Williams v. E. W. Robinson Van Lines, 291 P.2d 453, 46 C.2d 14.
Conn.—Jacobs v. Connecticut Co., 75 A.2d 427, 137 Conn. 189.
Ill.—Mazur v. Chicago Transit Authority, 129 N.E.2d 602, 7 Ill.App. 2d 441.
Iowa.—Rubin Bros. Butter & Egg Co. v. Larson, 63 N.W.2d 908, 245 Iowa 741.
N.J.—Rynar v. Lincoln Transit Co., 30 A.2d 406, 129 N.J.Law 525.
Tallman v. Triangle Bus Co., 132 A. 514, 4 N.J.Misc. 330.
N.M.—Dominguez v. Albuquerque Bus Co., 273 P.2d 756, 58 N.M. 562.
Tex.—Roberts v. Dallas Ry. & Terminal Co., Civ.App., 276 S.W.2d 575, error refused no reversible error—St. Louis Southwestern Ry. Co. of Texas v. Kimmey, Civ.App., 189 S.W. 550.

34. Ill.—Thompson v. City of Bushnell, 109 N.E.2d 346, 348 Ill.App. 395.
Tex.—Grant v. Pendley, Com.App., 39 S.W.2d 596, 78 A.L.R. 638.
Texas Power & Light Co. v. Hill, Civ.App., 27 S.W.2d 842.

34.5 Mont.—Hall v. Hilling, 86 P.2d 648, 107 Mont. 432.

35. Ala.—E. D. Lanford Co. v. Buck, 124 So. 418, 220 Ala. 190—Butler Cotton Oil Co. v. Millican, 113 So. 529, 216 Ala. 472.
Iowa.—Kerns Bros. v. Delacy, 186 N.W. 774, 193 Iowa 10.
Mass.—Byam v. Carlisle-Ayer Co., 172 N.E. 113, 272 Mass. 176.
Mo.—McKelly v. Metco Products, 193 S.W.2d 28, 354 Mo. 993—Anderson v. Herrick, App., 268 S.W. 711.
Tex.—Capitol Hotel Co. v. Rittenberry, Civ.App., 41 S.W.2d 697—Phelps v. Connellee, Civ.App., 278 S.W. 939, reversed on other grounds, Com.App., 285 S.W. 1047.
Held prejudicial
Tex.—Utilities Natural Gas Corp. v. Hill, Civ.App., 239 S.W.2d 431, error refused no reversible error.

35.5 Held prejudicial
Ill.—Barth v. Keller, 42 N.E.2d 871, 315 Ill.App. 200.

35.10 Cal.—Ex parte Ferguson, 268 P.2d 71, 123 C.A.2d 799.

35.5 Ala.—Stremming Veneer Co. v. Jacksonville Blow Pipe Co., 83 So. 2d 224, 263 Ala. 491.
Cal.—Schmidt v. Macco Const. Co., 260 P.2d 230, 119 C.A.2d 717.
Ill.—Billeter v. Halsam Products Co., 88 N.E.2d 994, 313 Ill.App. 145.
Ind.—Kipfer v. Kipfer, 12 N.E.2d 507, 213 Ind. 321.
Ky.—Big Sandy Realty Co. v. Stansifer Motor Co., 294 S.W.2d 529.
Mass.—Newton Const. Co. v. West & South Water Supply Dist. of Acton, 93 N.E.2d 457, 326 Mass. 171.
Minn.—Schutt Realty Co. v. Mullowney, 10 N.W.2d 273, 215 Minn. 340.
Mo.—Richter v. Frieden, App., 243 S.W.2d 783—Hall v. Thompson, App., 170 S.W.2d 934.
Ohio.—Coate v. Hartley, App., 52 N.E.2d 672.
Or.—Enco, Inc. v. F. C. Russell Co., 311 P.2d 737—Edvalson v. Swick, 227 P.2d 183, 190 Or. 473.
Tex.—Jordan Drilling Co. v. Starr, Civ.App., 232 S.W.2d 149, error refused no reversible error—Lone Star Bldg. & Loan Ass'n v. Larcade, Civ.App., 211 S.W.2d 257, error refused no reversible error.
Utah.—Robbins v. Olsen, 292 P.2d 857, 4 Utah 2d 267.
Bailment contract
Tex.—Rust v. Shamrock Oil & Gas Corp., Civ.App., 228 S.W.2d 934.
Employment contract
R.I.—Owens v. Hagenbeck-Wallace Shows Co., 192 A. 158, 58 R.I. 162, 112 A.L.R. 113, reargument denied 192 A. 464, 58 R.I. 268, 112 A.L.R. 113.

Held prejudicial
(1) Generally.
Ill.—Air Conditioning Training Co. v. Hildebrand, 69 N.E.2d 700, 330 Ill. App. 134.
Kan.—Diehm v. Great Lakes Pipe Line Co., 87 P.2d 537, 149 Kan. 334.
Minn.—Foster v. Butler, 291 N.W. 505, 207 Minn. 286.
Neb.—Hansen v. E. L. Bruce Co., 77 N.W.2d 458, 162 Neb. 759.
Ohio.—Groves v. Freedom Oil Works Co., 21 N.E.2d 599, 60 Ohio App. 376.
R.I.—Colavecchio v. Marsello, 9 A.2d 708, 63 R.I. 499.
Wash.—Cooley v. Ben Paris Sporting Goods & Recreation Co., 105 P.2d 820, 5 Wash.2d 415, amended on other grounds and rehearing denied 107 P.2d 347, 5 Wash.2d 415.

Action by subcontractor
(1) Held harmless.
N.J.—Schaefer v. Brunswick Laundry, 183 A. 175, 116 N.J.Law 268.
(2) Held prejudicial.
N.D.—Bale v. Brudevig, 43 N.W.2d 753, 77 N.D. 494.
S.C.—Zemp Const. Co. v. Harmon Bros. Const. Co., 82 S.E.2d 531, 225 S.C. 361.
W.Va.—Ward v. Smith, 86 S.E.2d 539, 140 W.Va. 791.
(3) Proof as to damages.
N.Y.—Eisenberg Indus. Contracting Co. v. Baumwall, 101 N.Y.S.2d 164 277 App.Div. 1128.

36. Ala.—Dreis v. Farmers & Merchants Bank of Foley, 165 So. 842, 231 Ala. 631—Finney v. Bouchelle, 124 So. 423, 220 Ala. 194.
Cal.—Waring v. Pitcher, 27 P.2d 397, 135 C.A. 493—Chapman v. Associated Transit Terminal Corporation, 10 P.2d 1023, 123 C. A. 157—Jedlicka v. Atwell Land Co., 269 P. 665, 93 C.A. 455, rehearing denied 270 P. 232, 93 C.A. 455—Antognini v. Grandi Co., 265 P. 378, 89 C.A. 628—Johnson v. Hulse, 256 P. 551, 83 C.A. 111—Chambers v. Farnham, 179 P. 423, 39 C.A. 17.
Colo.—Melnick v. Bowman, 79 P.2d 368, 102 Colo. 384.
Conn.—Minotte E. Chatfield Co. v. Coffey Laundries, 150 A. 511, 111 Conn. 497.
Ga.—Woodland Hills Co. v. Coleman, 36 S.E.2d 826, 73 Ga.App. 409—Durham Iron Co. v. Durham, 7 S.E.2d 804, 62 Ga.App. 361.
Idaho.—Colorado Milling & Elevator Co. v. Proctor, 76 P.2d 438, 58 Idaho 578.
Ind.—State v. Indiana Mfrs. of Dairy Products, 153 N.E. 499, 198 Ind. 288.
Iowa.—Johannsen v. Mid-Continent Petroleum Corp., 5 N.W.2d 20, 232 Iowa 805—Vrba v. Krall, 175 N.W. 4, 187 Iowa 1221.
Md.—Carter v. Reardon-Smith Line, 129 A. 839, 148 Md. 545—Boswell v. Norton, 93 A. 214, 125 Md. 11.
Mass.—Zarum v. Brass Mill Materials Corp., 134 N.E.2d 141, 334 Mass. 81—Casto v. Wrenn, 150 N.E. 898, 255 Mass. 72—Flint Co. v. Dana, 141 N.E. 567, 246 Mass. 577.
Mo.—Tillotson v. Independent Breweries Co., 268 S.W. 425, 216 Mo. App. 412—Buckman v. Bankers' Mortg. Co., App., 263 S.W. 1046, 1053, 1054.
S.C.—Beckroge v. South Carolina Public Service Co., 193 S.E. 315, 185 S.C. 210—Halsey v. Minnesota-South Carolina Land & Timber Co., 177 S.E. 29, 174 S.C. 97.
Tenn.—Clayton v. Read House Co., 141 S.W.2d 916, 24 Tenn.App. 149.
Vt.—Learmouth v. Caledonia County Co-op. Ass'n, 1 A.2d 732, 109 Vt. 526.
Va.—Riverside & Dan River Cotton Mills v. Thomas Branch & Co., 137 S.E. 620, 147 Va. 509, 52 A.L.R. 213.
Wash.—Allman Hubble Tugboat Co. v. Reliance Development Corp., 74 P.2d 985, 193 Wash. 234—Rockwell v. Peyran, 20 P.2d 841, 172 Wash. 434.
Wis.—Drexler v. Zohlen, 257 N.W. 675, 216 Wis. 483.

damages for civil injury to husband,[36.5] custody of a child,[36.10] custom, usage, or common practice,[37] death by wrongful act,[38] decedents' estates and

Held prejudicial

Ky.—Eversole v. Chandler, 289 S.W. 215, 217 Ky. 148.

Mich.—Garey v. Kelvinator Corp., 271 N.W. 723, 279 Mich. 174—Chicago College of Osteopathy v. Littlejohn, 208 N.W. 691, 234 Mich. 528.

N.Y.—O'Hara v. Derschug, 272 N.Y.S. 189, 241 App.Div. 513.

Tex.—Miller Management Co. v. State, Civ.App., 159 S.W.2d 218, affirmed 167 S.W.2d 728, 140 Tex. 370.

Wis.—Jesse v. Tinkham, 239 N.W. 455, 207 Wis. 49.

36.5 Mass.—Beers v. O'Brien, 55 N.E.2d 931, 316 Mass. 532.

Held prejudicial

Del.—Pilot v. Necastro, Super., 125 A.2d 857.

W.Va.—Ohlinger v. Raush, 193 S.E. 328, 119 W.Va. 272.

36.10 Tex.—Brillhart v. Brillhart, Civ.App., 176 S.W.2d 229, error refused.

37. Ark.—Thudium v. Dickson, 235 S.W.2d 53, 218 Ark. 1.

Cal.—Perumean v. Wills, 67 P.2d 96, 8 C.2d 578.

Conn.—New York, N. H. & H. R. Co. v. First Nat. Bank, 134 A. 223, 105 Conn. 33.

Ga.—Greensboro Bonded Warehouse v. Klein Mfg. Co., 134 S.E. 140, 35 Ga.App. 515.

Ky.—Short v. Metz Co., 176 S.W. 1144, 165 Ky. 319.

Md.—Smart v. Graham, 20 A.2d 574, 178 Md. 476.

Mass.—Phoenix Spring Beverage Co. v. Harvard Brewing Co., 45 N.E. 2d 473, 312 Mass. 501—Phillips v. Vorenberg, 156 N.E. 61, 259 Mass. 46.

Miss.—Robinson v. Turfitt, 4 So.2d 884, 192 Miss. 160.

Mo.—Fisher v. Lape, App., 176 S.W. 2d 871.

Neb.—First Trust Co. of Lincoln v. Carlsen, 268 N.W. 89, 131 Neb. 325.

N.Y.—Pierce v. Village of Ravenna, 36 N.Y.S.2d 42, 264 App.Div. 457.

Ohio.—Schumacher v. Smith, App., 96 N.E.2d 433.

Tex.—Universal Underwriters Lloyds v. Sulik, Civ.App., 301 S.W.2d 690, error refused no reversible error—Gilmore v. Transit Grain & Commission Co., Civ.App., 213 S.W.2d 880—Somerset Pipe Line Co. v. Pioneer Oil & Refining Co., Civ. App., 289 S.W. 155.

Va.—Philip Greenberg, Inc., v. Dunville, 185 S.E. 892, 166 Va. 398.

Wyo.—Brown v. Wyoming Butane Gas Co., 205 P.2d 116, 66 Wyo. 67.

Held prejudicial

Cal.—Miller v. Stults, 300 P.2d 312, 143 C.A.2d 592.

38. U.S.—American Coal Co. of Allegany County v. De Wese, C.C.A. W.Va., 30 F.2d 349.

Ala.—Mobile & G. R. Co. v. Williams, 139 So. 327, 224 Ala. 125—Alabama Power Co. v. Jones, 101 So. 898, 212 Ala. 206.

Cal.—Westberg v. Willde, 94 P.2d 590, 14 C.2d 360.

O'Connor v. City and County of San Francisco, 207 P.2d 638, 92 C.A.2d 626—Hoffart v. Southern Pac. Co., 92 P.2d 436, 33 C.A.2d 591—Gregg v. Manufacturers' Bldg. Corporation, 25 P.2d 1014, 134 C.A. 147—Lindsey v. Pacific Electric Ry. Co., 296 P. 131, 111 C.A. 482—Gorman v. Sacramento County, 268 P. 1083, 92 C.A. 656.

Colo.—Dwinelle v. Union Pac. R. Co., 92 P.2d 741, 104 Colo. 545.

Fla.—Shearn v. Orlando Funeral Home, 82 So.2d 866.

Ga.—Garmon v. Cassell, 52 S.E.2d 631, 78 Ga.App. 730—Seaboard Air Line Ry. Co. v. Young, 148 S.E. 757, 40 Ga.App. 4—Western & A. R. R. v. Townsend, 135 S.E. 439, 36 Ga.App. 70.

Idaho.—Hooton v. City of Burley, 219 P.2d 651, 70 Idaho 369.

Ill.—Schultz v. Stephan, 132 N.E.2d 30, 8 Ill.App.2d 550—Bunch v. Padva, 76 N.E.2d 544, 333 Ill.App. 24. See Devine v. L. Fish Furniture Co., 199 Ill.App. 539.

Ind.—Hahn v. Moore, App., 133 N.E. 2d 900, rehearing denied 134 N.E. 2d 705.

Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142—Henderson v. National Mut. Cas. Co., 215 P.2d 225, 168 Kan. 674—Bagnall v. Hunt, 293 P. 733, 131 Kan. 805—Carl v. Ackard, 220 P. 515, 114 Kan. 640.

Ky.—Bee's Old Reliable Shows v. Maupin's Adm'x, 226 S.W.2d 23, 311 Ky. 837—Reynolds v. Coburn, 148 S.W.2d 705, 285 Ky. 544—Jones v. Hicks, 103 S.W.2d 702, 268 Ky. 38—Ray's Adm'r v. Standard Oil Co., 61 S.W.2d 1067, 250 Ky. 111—Hunt's Ex'x v. Mutter, 38 S.W.2d 215, 238 Ky. 396—Louisville & N. R. Co. v. Smith's Adm'r, 263 S.W. 29, 203 Ky. 513, 35 A.L.R. 1238.

Mich.—Cabana v. City of Hart, 42 N.W.2d 97, 327 Mich. 287, 19 A.L.R. 2d 333—Morris v. Radley, 11 N.W. 2d 291, 306 Mich. 689.

Minn.—Holz v. Pearson, 39 N.W.2d 867, 229 Minn. 395.

Mo.—McDonald v. Kansas City Gas Co., 59 S.W.2d 37, 332 Mo. 356—Menard v. Goltra, 40 S.W.2d 1053, 328 Mo. 368—James v. Bailey Reynolds Chandelier Co., 80 S.W. 2d 118, 325 Mo. 1054.

N.H.—Sweeney v. Willette, 104 A.2d 398, 98 N.H. 512—Kelsea v. Town of Stratford, 118 A. 9, 80 N.H. 148.

N.J.—McStay v. Przychocki, 81 A. 2d 761, 7 N.J. 456.

N.Y.—Eder v. Cashin, 120 N.Y.S.2d 165, 281 App.Div. 456—Allen v. Stokes, 23 N.Y.S.2d 443, 260 App. Div. 600, reargument denied 24 N.Y.S.2d 994, 260 App.Div. 1007.

N.C.—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106—Carpenter v. Asheville Power & Light Co., 131 S.E. 400, 191 N.C. 130.

Okl.—Hurley v. Hurley, 127 P.2d 147, 191 Okl. 194—Tidal Oil Co. v. Forcum, 116 P.2d 572, 189 Okl. 268.

S.D.—Moberg v. Scott, 175 N.W. 559, 42 S.D. 372.

Tenn.—Johnson, Adm'r v. Maury County Trust Co., 15 Tenn.App. 326—Stearns v. Williams & Price, 12 Tenn.App. 427—Oman v. Delius, 10 Tenn.App. 467.

Tex.—Texas Electric Service Co. v. Anderson, Civ.App., 55 S.W.2d 142—Texas & N. O. R. Co. v. Stevens, Civ.App., 15 S.W.2d 200, affirmed Com.App., 24 S.W.2d 9—Carlisle v. West Texas Fair Ass'n, Civ. App., 12 S.W.2d 599—Galveston, H. & S. A. Ry. Co. v. Henry, Civ App., 252 S.W. 210—San Antonio & A. P. Ry. Co. v. McGill, Civ. App., 222 S.W. 699, dismissed for want of jurisdiction—St. Louis Southwestern Ry. Co. of Texas v. Anderson, Civ.App., 206 S.W. 696, error refused.

Wash.—Lamb v. Mason, 176 P.2d 342, 26 Wash.2d 879—Maciejczak v. Bartell, 60 P.2d 31, 187 Wash. 113.

Evidence as to bills or expenses

Cal.—Peterson v. General Geophysical Co., App., 185 P.2d 56, hearing dismissed.

N.M.—Hodgkins v. Christopher, 274 P.2d 153, 58 N.M. 637.

Held prejudicial

(1) Generally.

N.Y.—Dibble v. Whipple, 22 N.E.2d 358, 281 N.Y. 247.

McCormick v. Merritt, 250 N.Y.S. 443, 232 App.Div. 619.

Ahrens v. Delaware & H. R. R. Corp., 63 N.Y.S.2d 671.

Tenn.—Tennessee Central Ry. Co. v. Schutt, 2 Tenn.App. 514.

Tex.—St. Louis, S. F. & T. Ry. Co. v. House, Civ.App., 28 S.W.2d 865.

Wash.—Clason v. Velguth, 11 P.2d 249, 168 Wash. 242.

(2) In action for death and for pain and suffering before death, admitting evidence of names and ages of decedent's brothers and sister and

wills,[38.5] detinue,[39] ejectment,[40] eminent domain,[40.5] | executions,[41] false arrest or imprisonment or mali-

of his father's financial condition was prejudicial error.
N.Y.—Chilelli v. Long Island R. R., 67 N.Y.S.2d 143, 271 App.Div. 894.

38.5 Ala.—Crum v. Crum, 43 So.2d 392, 255 Ala. 163.
Cal.—Strudthoff v. Yates, 170 P.2d 873, 28 C.2d 602—Frazure v. Fitzpatrick, 136 P.2d 566, 21 C.2d 851—Marlenee v. Brown, 134 P.2d 770, 21 C.2d 668.
Stiles v. Nunes, 220 P.2d 792, 98 C.A.2d 739—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334—In re Craig's Estate, 148 P.2d 100, 64 C.A.2d 132—Williamson v. Kinney, 125 P.2d 920, 52 C.A.2d 98—Malinow v. Dorenbaum, 125 P.2d 554, 51 C.A.2d 645—Walsh v. Parker, 106 P.2d 925, 41 C.A.2d 435—In re Hollingsworth's Estate, 99 P.2d 599, 37 C.A.2d 432—Lucy v. Lucy, 71 P.2d 949, 22 C.A.2d 629—Turell v. Anderson, 60 P.2d 906, 16 C.A.2d 445.
Ga.—Hicks v. Hicks, 27 S.E.2d 7, 196 Ga. 541—Hobbs v. Houston, 24 S.E.2d 884, 195 Ga. 571—Smaha v. George, 24 S.E.2d 385, 195 Ga. 412—Hortman v. Vissage, 19 S.E. 2d 523, 193 Ga. 596.
Ga.—Cato v. Cater, 45 S.E.2d 794, 76 Ga.App. 367—Ellison v. Aiken, 40 S.E.2d 441, 74 Ga.App. 541—Snow v. Snow, 30 S.E.2d 823, 71 Ga.App. 316—Meads v. Williams, 189 S.E. 718, 55 Ga.App. 224—Brooks v. Sims, 187 S.E. 254, 54 Ga.App. 71.
Idaho.—Sweeney v. Hanmer, 162 P. 2d 387, 66 Idaho 462—Pierson v. Pierson, 115 P.2d 742, 63 Idaho 1.
Kan.—Marcotte's Estate v. Clay, 224 P.2d 998, 170 Kan. 189—In re Mecke's Estate, 201 P.2d 1030, 166 Kan. 400—In re Langdon's Estate, 195 P.2d 317, 165 Kan. 267.
Ky.—Hall's Adm'r v. Compton, 281 S.W.2d 906.
Md.—Lynch v. Rogers, 10 A.2d 619, 177 Md. 478—Roycroft v. Nellis, 188 A. 20, 171 Md. 136.
Mass.—Stevens v. Gross, 117 N.E.2d 159, 331 Mass. 760.
Mich.—Cattell v. Evans, 4 N.W.2d 67, 301 Mich. 708.
Miss.—First Nat. Bank v. Owen, 171 So. 4, 177 Miss. 339.
Mo.—In re Thomasson's Estate, 171 S.W.2d 553, 350 Mo. 1157.
In re Stein's Estate, App., 177 S.W.2d 678—Eichenberg v. Magidson's Estate, App., 170 S.W.2d 105—Witte v. Smith, App., 162 S.W. 2d 604—Aurien v. Security Nat. Bank Savings & Trust Co. of St. Louis, App., 137 S.W.2d 679.
Mont.—McGrath v. Dubs, 257 P.2d 899, 127 Mont. 101—Ahlquist v. Pinski, 185 P.2d 499, 120 Mont. 355.
N.J.—Cauco v. Galante, 84 A.2d 712, 8 N.J. 233.
Ludlow v. Dwyer, 65 A.2d 74, 3 N.J.Super. 1.
N.Y.—McKenna v. Williamsburgh Sav. Bank, 16 N.Y.S.2d 206, 258 App.Div. 894, reargument denied In re Lamerdin's Estate, 17 N.Y.S. 2d 480, 258 App.Div. 907.
N.C.—Hubbard v. Wiggins, 81 S.E.2d 630, 240 N.C. 197—Wingler v. Miller, 25 S.E.2d 160, 223 N.C. 15—Wilson v. Williams, 2 S.E.2d 19, 215 N.C. 407—Commercial Nat. Bank of Charlotte v. Misenheimer, 191 S.E. 14, 211 N.C. 519, 110 A.L.R. 1310.
Ohio.—Nicholl v. Bergner, 63 N.E.2d 828, 76 Ohio App. 245—Gorey v. Gregg, 63 N.E.2d 680, 78 Ohio App. 367—Wampler v. Staley, App., 59 N.E.2d 65.
Okl.—In re Adams' Estate, 222 P.2d 366, 203 Okl. 377—Wistar v. Whitewing, 116 P.2d 565, 189 Okl. 292.
R.I.—Ash v. Isaacson, 195 A. 700, 59 R.I. 407.
S.C.—Wolfe v. Brannon, 44 S.E.2d 833, 211 S.C. 282—Wells v. Salvation Army of Georgia, 3 S.E.2d 601, 190 S.C. 484.
S.D.—In re Hoisington's Estate, 291 N.W. 921, 67 S.D. 280.
Tex.—Schelb v. Sparenberg, 124 S.W. 2d 322, 133 Tex. 17.
Hoskins v. Carpenter, Civ.App., 201 S.W.2d 606, error refused no reversible error—Savage v. Dressell, Civ.App., 144 S.W.2d 651—Averitt v. Warren, Civ.App., 125 S.W.2d 691—Alexander v. State, Civ.App., 115 S.W.2d 1122, error refused.
Wash.—In re Robinson's Estate, 280 P.2d 676, 46 Wash.2d 298.
Wis.—Kidder v. Kidder, 268 N.W. 221, 222 Wis. 183.

Parol evidence
Tex.—Schwarte v. Bunting, Civ.App., 210 S.W.2d 655, error refused no reversible error.

Held prejudicial
Ariz.—Tucker v. Reil, 77 P.2d 203, 51 Ariz. 357.
Cal.—Reeves v. Vallow, 104 P.2d 1017, 16 C.2d 95.
Ferrari v. Mambretti, 136 P.2d 326, 58 C.A.2d 318.
Ind.—Conrad v. Parks, 44 N.E.2d 503, 112 Ind.App. 301.
Iowa.—In re Conner's Estate, 36 N.W.2d 833, 240 Iowa 479.
Kan.—In re Marteney's Estate, 183 P.2d 210, 163 Kan. 379.
Ky.—Truitt v. Truitt's Adm'r, 162 S.W.2d 31, 290 Ky. 632, 140 A.L.R. 1127.
N.Y.—In re Matheson's Will, 27 N.E. 2d 427, 283 N.Y. 44.
Daily v. Dunn, 16 N.Y.S.2d 597, 258 App.Div. 933.
N.C.—Creech v. Creech, 24 S.E.2d 642, 222 N.C. 656.
Okl.—Schulte v. Winchester, 236 P. 2d 484, 205 Okl. 171.
R.I.—Flint v. Nicholson, 25 A.2d 617, 67 R.I. 513.
Vt.—In re Dugan's Estate, 188 A. 887, 108 Vt. 430.

39. Ala.—T. L. Farrow Mercantile Co. v. Davidson, 77 So. 45, 200 Ala. 671.
Va.—Philip Greenberg, Inc., v. Dunville, 185 S.E. 892, 166 Va. 398.

Held prejudicial
Ala.—Murphy v. Hays, 180 So. 202, 221 Ala. 566.

40. U.S.—People of Puerto Rico v. Livingston, C.C.A.Puerto Rico, 47 F.2d 712, certiorari denied 52 S. Ct. 23, 284 U.S. 642, 76 L.Ed. 546.
Ala.—Patton v. Russell, 58 So.2d 593, 257 Ala. 319.
Ark.—Howell v. Baskins, 212 S.W.2d 353, 213 Ark. 665—Hull v. Hull, 196 S.W.2d 905, 210 Ark. 539.
Kan.—Hinnen v. Artz, 163 P. 141, 99 Kan. 579.
Ky.—Parsons v. Gibbs, 151 S.W.2d 415, 286 Ky. 488.
Mo.—Miller v. Proctor, 49 S.W.2d 84, 330 Mo. 43.
N.C.—Shelly v. Grainger, 168 S.E. 736, 204 N.C. 488.
Pa.—Wilson v. Reiszner, 118 A. 557, 275 Pa. 5.
Tenn.—Stockton v. Murray, 157 S. W.2d 859, 25 Tenn.App. 371.
19 C.J. p 1227 note 29.

Held prejudicial
U.S.—Manjon v. Lebron, C.C.A. Puorto Rico, 23 F.2d 266.
Ala.—Lowrey v. Mines, 45 So.2d 703, 253 Ala. 556—Seaboard Air Line Ry. Co. v. McFry, 128 So. 239, 221 Ala. 296.
Fla.—Akin v. Godwin, 49 So.2d 604.
Pa.—Detwiler v. Coldren, 101 Pa.Super. 189.
R.I.—Reynolds v. Missler, 90 A.2d 779, 80 R.I. 59—Anclair v. Maurice, 51 A.2d 187, 72 R.I. 350.
19 C.J. p 1227 note 29.

40.5 Pa.—Hencken v. Bethlehem Municipal Water Authority, 72 A. 2d 264, 364 Pa. 408.
Tenn.—Board of Mayor and Aldermen, Town of Milan v. Thomas, 178 S.W.2d 772, 27 Tenn.App. 166.
Wis.—Fox Wis. Theatres v. City of Waukesha, 34 N.W.2d 783, 253 Wis. 452.

Held prejudicial
Idaho.—Village of Lapwai v. Alligier, 207 P.2d 1025, 69 Idaho 397.
Neb.—Papke v. City of Omaha, 41 N.W.2d 751, 152 Neb. 491.

41. Ark.—Alcorn v. Singleton, 191 S. W. 932, 127 Ark. 617.
Cal.—Application of Rauer's Collection Co., 196 P.2d 803, 87 C.A.2d 248.
Ga.—Hendricks v. Rogers, 163 S.E. 204, 174 Ga. 423.
Hixon v. Bank of Siloam, 159 S. E. 901, 43 Ga.App. 696.

cious prosecution,[42] foreign judgment,[42.5] fraud or misrepresentation,[43] frauds, statute of,[44] garnishment,[45] guaranty,[46] highways and roads,[46.5] husband and wife,[47] injunctions, both preliminary and

Held prejudicial
Pa.—Berliner v. Schoenberg, 178 A. 330, 117 Pa.Super. 254.

42. Ala.—Price v. McConnell, 36 So. 2d 80, 250 Ala. 686—Sims v. Kent, 130 So. 213, 221 Ala. 589.
Nixon v. Pierce, 111 So. 200, 21 Ala.App. 591, certiorari denied 111 So. 201, 215 Ala. 454.
Ark.—Dooley v. Sterling Stores, 218 S.W.2d 696, 214 Ark. 895.
Cal.—Wilson v. Loustalot, 193 P.2d 127, 85 C.A.2d 316—Robinson v. McKnight, 284 P. 1056, 103 C.A. 718.
Idaho.—Lowther v. Metzker, 203 P. 2d 604, 69 Idaho 115.
Ill.—Ferrell v. Livingston, 101 N.E. 2d 599, 344 Ill.App. 488.
Iowa.—Dedman v. McKinley, 29 N. W.2d 337, 238 Iowa 886.
Ky.—H. S. Leyman Co. v. Short, 283 S.W. 96, 214 Ky. 272.
Md.—Kennedy v. Crouch, 62 A.2d 582, 191 Md. 580.
Mass.—Pihl v. Morris, 66 N.E.2d 804, 319 Mass. 577.
Mich.—Swaney v. John Schlaff Creamery Co., 180 N.W. 599, 212 Mich. 567.
Miss.—Anticich v. Standard Oil Co. of Kentucky, 4 So.2d 226, 191 Miss. 639—Carlisle v. City of Laurel, 124 So. 786, 156 Miss. 410.
Mo.—Pritchett v. Northwestern Mut. Life Ins. Co., 73 S.W.2d 815, 228 Mo.App. 661—Alexander v. Emmke, App., 15 S.W.2d 868.
N.J.—De Candia v. Weisman, 150 A. 414, 106 N.J.Law 455.
N.Y.—Litrell v. Klein, 292 N.Y.S. 218, 249 App.Div. 791.
Nastasi v. State, 86 N.Y.S.2d 635, 194 Misc. 449, reversed on other grounds 90 N.Y.S.2d 377, 275 App. Div. 524, affirmed 88 N.E.2d 658, 300 N.Y. 473.
Ohio.—Thomas v. F. & R. Lazarus & Co., App., 57 N.E.2d 103.
Or.—Bowles v. Creason, 78 P.2d 324, 159 Or. 129.
Tex.—Jameson v. Zuehlke, Civ.App., 218 S.W.2d 326, error refused no reversible error—Mosley v. Harkins, Civ.App., 147 S.W.2d 309—Jurach v. Cox, Civ.App., 92 S.W.2d 1065—Miller v. Fenner, Beane & Ungerleider, Civ.App., 89 S.W.2d 506, error dismissed.

Held prejudicial
Ala.—Birmingham News Co. v. Browne, 153 So. 889, 228 Ala. 414.
Poole v. New, 116 So. 108, 22 Ala.App. 385.
Ariz.—Murphy v. Russell, 9 P.2d 1020, 40 Ariz. 109.
Ill.—Raucci v. Connelly, 91 N.E.2d 735, 340 Ill.App. 280.
Mo.—Polk v. Missouri-Kansas-Texas R. Co., 142 S.W.2d 1061, 346 Mo. 793—Polk v. Missouri-Kansas-Texas R. Co., 111 S.W.2d 138, 341 Mo. 1213, 114 A.L.R. 873—Harbison v. Chicago, R. I. & P. Ry. Co., 37 S. W.2d 609, 327 Mo. 440, 79 A.L.R. 1.
N.Y.—Gill v. Montgomery Ward & Co., 129 N.Y.S.2d 288, 284 App.Div. 36.
N.D.—Rhoads v. First Nat. Bank, 163 N.W. 1046, 37 N.D. 421.
Tex.—Oakland Cemetery Lot Owners Ass'n v. Castleberry, Civ.App., 25 S.W.2d 639.
Wash.—Baer v. Chambers, 121 P. 843, 67 Wash. 357, Ann.Cas.1913D 559.
W.Va.—Show v. Mount Vernon Farm Dairy Products, 37 S.E.2d 459, 128 W.Va. 598.

42.5 Tex.—Gard v. Gard, Civ.App., 244 S.W.2d 884.

43. Cal.—Bagdasarian v. Gragnon, 192 P.2d 935, 31 C.2d 744.
Benner v. Hooper, 296 P. 660, 112 C.A. 53.
Ga.—Boyd v. Summer, 88 S.E.2d 411, 211 Ga. 700.
Kan.—Carver v. Kansas Fraternal Citizens, 176 P. 634, 103 Kan. 824.
Md.—Purdum v. Edwards, 141 A. 550, 155 Md. 178.
Minn.—Dale v. Berg, 40 N.W.2d 851, 230 Minn. 128.
Tex.—Raynes v. Germany, Civ.App., 144 S.W.2d 981—Miller v. Fenner, Beane & Ungerleider, Civ.App., 89 S.W.2d 506, error dismissed—Western Weighing & Inspection Bureau v. Armstrong, Civ.App., 281 S.W. 244, reversed on other grounds, Com.App., 288 S.W. 119.
Vt.—McAllister v. Benjamin, 121 A. 263, 96 Vt. 475.
Wash.—Roslund v. Brownlow, 197 P. 16, 115 Wash. 301.
Wis.—Brenneman v. Reddick, 57 N. W.2d 718, 263 Wis. 454.

Parol evidence
Wash.—Petersen v. Graham, 110 P. 2d 149, 7 Wash.2d 464.

Held prejudicial
Colo.—Bankers Trust Co. v. International Trust Co., 113 P.2d 656, 108 Colo. 15.
Mo.—Briece v. Bosso, App., 158 S.W. 2d 463—Stoltzfus v. Howey, App., 54 S.W.2d 501.
N.Y.—Rockwell v. Straub Bldg. Units, 40 N.Y.S.2d 181, 265 App. Div. 573.

44. Mich.—Rawdon v. Dodge, 40 Mich. 697.
N.J.—Bernstein v. Rosenzweig, 62 A. 2d 147, 1 N.J.Super. 48.

45. Ga.—Bostwick Supply Co. v. Hodgson Cotton Co., 113 S.E. 37, 28 Ga.App. 691.
Tex.—Frazier Jelke & Co. v. Chapman Minerals Corp., Civ.App., 149 S.W.2d 1101, error dismissed, judgment correct—Farmers' Nat. Bank of Dublin v. Carmony, Civ.App., 62 S.W.2d 1115.

Wrongful garnishment
Tex.—Peerless Oil & Gas Co. v. Teas, 158 S.W.2d 758, 138 Tex. 301.

46. U.S.—International Indemnity Co. v. Lehman, C.C.A.Wis., 28 F. 2d 1, certiorari denied 49 S.Ct. 83, 278 U.S. 648, 73 L.Ed. 561—Griffin v. Thompson, C.C.A.Tex., 10 F.2d 127.
Ala.—Furst v. Shows, 110 So. 299, 215 Ala. 133.
Cal.—Zellerbach Paper Co. v. Virden Packing Co., 53 P.2d 163, 10 C.A. 2d 635, hearing denied 54 P.2d 18, 10 C.A.2d 635—Kierulff & Ravenscroft v. Koping, 271 P. 353, 94 C. A. 473.
Mo.—Clukies v. Ryall, App., 280 S. W. 85.
N.J.—Borus Waton, Inc., v. Henn, 158 A. 484, 108 N.J.Law 514, 81 A.L.R. 1208—Jersey City v. Besson, 139 A. 5, 104 N.J.Law 133.
Okl.—Sautbine v. C. I. T. Corporation, 45 P.2d 764, 172 Okl. 526.
28 C.J. p 1036 note 69.

Held prejudicial
Ala.—Furst v. Shows, 110 So. 299, 215 Ala. 133.
Pa.—Bednorzenski v. Schrager, 189 A. 690, 124 Pa.Super. 486.

46.5 Miss.—Picayune Wood Products Co. v. Alexander Mfg. Co., 86 So.2d 480.
Tex.—State v. Schlick, Civ.App., 175 S.W.2d 688, reversed on other grounds 179 S.W.2d 246, 142 Tex. 410.

Held prejudicial
Pa.—Hoff v. Allegheny County, 23 A. 2d 338, 343 Pa. 569.
Tex.—Zellers v. Cloud, Civ.App., 302 S.W.2d 467—Taylor v. State, Civ. App., 158 S.W.2d 881, error refused.

47. U.S.—Richards v. Lorleberg, App.D.C., 79 F.2d 413, certiorari denied 56 S.Ct. 178—Neece v. Durst, C.C.A.Cal., 61 F.2d 591.
Ala.—Pritchett v. Pritchett, 74 So.2d 920, 261 Ala. 536—Taylor v. Taylor, 37 So.2d 645, 251 Ala. 374.
Cal.—Logan v. Forster, 250 P.2d 730, 114 C.A.2d 587—Bryon v. MacDonald, 245 P.2d 545, 112 C.A.2d 57—Application of Rauer's Collection Co., 196 P.2d 803, 87 C.A.2d 248—In re Ades' Estate, 184 P.2d 1, 81 C.A.2d 334.
Colo.—Supperstein v. Woods, 40 P.2d 622, 96 Colo. 120.
Conn.—Bryant v. Scribner, 60 A.2d 174, 134 Conn. 678.
Ga.—Rich v. Belcher, 158 S.E. 643, 43 Ga.App. 377—City of East Point v. Christian, 151 S.E. 42, 40 Ga. App. 633.
Idaho.—Landholm v. Webb, 205 P.2d 507, 69 Idaho 204.
Kan.—In re Langdon's Estate, 195 P.2d 317, 165 Kan. 267—Barry v.

permanent, against injurious acts,[48] innkeepers,[48.5] | and insurance.[49]

Cheuvront, 12 P.2d 823, 135 Kan. 728.

Mass.—Pataskas v. Judeikis, 98 N.E. 2d 265, 327 Mass. 258—Welker v. Welker, 92 N.E.2d 373, 325 Mass. 738—Coe v. Coe, 69 N.E.2d 793, 320 Mass. 295, reversed on other grounds 68 S.Ct. 1094, 334 U.S. 378, 92 L.Ed. 1451, 1 A.L.R.2d 1376 and Coe v. Coe, 68 S.Ct. 1097, 334 U.S. 343, 92 L.Ed. 1429, 1 A.L.R.2d 1355—Sherry v. Moore, 163 N.E. 906, 265 Mass. 189.

Mo.—Farrow v. Roderique, App., 224 S.W.2d 630—Reeve v. Reeve, App., 160 S.W.2d 804—Carder v. Carder, 60 S.W.2d 706, 227 Mo.App. 1005—Elstroth v. Karrenbrock, App., 285 S.W. 525.

Mont.—Wallace v. Wallace, 279 P. 374, 85 Mont. 492, 66 A.L.R. 587.

N.J.—Giardelli v. Public Service Ry. Co., 149 A. 39, 8 N.J.Misc. 104.

N.C.—Hagedorn v. Hagedorn, 189 S. E. 507, 211 N.C. 175—Albritton v. Albritton, 185 S.E. 762, 210 N.C. 111.

Ohio.—Zatko v. Zatko, App., 136 N. E.2d 358—Powell v. Powell, 58 N. E.2d 806, 74 Ohio App. 335.

Okl.—Moore v. Grimes, 35 P.2d 944, 169 Okl. 4.

Pa.—Wagner v. Wagner, 43 A.2d 912, 158 Pa.Super. 93.

S.D.—Boyd v. Strickland, 237 N.W. 729, 58 S.D. 501.

Tex.—Hodge v. Ellis, Civ.App., 268 S.W.2d 275, affirmed in part and reversed in part on other grounds 277 S.W.2d 900—Webb v. Martin, Civ.App., 39 S.W.2d 117—Long v. Crutchfield, Civ.App., 295 S.W. 625—De Beque v. Ligon, Civ.App., 286 S.W. 749, reversed on other grounds, Com.App., 292 S.W. 157.

Vt.—Parker v. Hoefer, 100 A.2d 434, 118 Vt. 1, 38 A.L.R.2d 1216—Shedrick v. Lathrop, 172 A. 630, 106 Vt. 311—Prazak v. Burzeiko, 160 A. 189, 104 Vt. 457—Rasanen v. Viinamaki, 154 A. 691, 103 Vt. 323.

Wash.—Nordlund v. Pearson, 157 P. 875, 91 Wash. 358.

Wyo.—Worth v. Worth, 49 P.2d 649, 48 Wyo. 441.

Held prejudicial

Ga.—Lewis v. Virginia-Carolina Chemical Co., 144 S.E. 921, 38 Ga. App. 582—Smith v. Marbut-Williams Lumber Co., 139 S.E. 590, 37 Ga.App. 239.

Iowa.—Zingg v. Mitterer, 204 N.W. 247, 200 Iowa 403.

Mich.—Van Hartesveldt v. Westrate, 250 N.W. 302, 264 Mich. 538.

N.Y.—Benjamin v. Benjamin, 128 N. Y.S.2d 401, 283 App.Div. 455—Kalman v. Kalman, 87 N.Y.S.2d 9, 275 App.Div. 715, reargument denied 88 N.Y.S.2d 495, 295 App.Div. 770—Hobbs v. Hullman, 171 N.Y.S. 390, 183 App.Div. 743.

Ohio.—Geller v. Geller, 154 N.E. 727, 115 Ohio St. 468.

Wyo.—Worth v. Worth, 49 P.2d 649, 48 Wyo. 441.

30 C.J. p 1163 note 85 [a].

48. Ala.—State v. Brown, 100 So. 224, 211 Ala. 266.

Cal.—Hopkins v. Woodward, 15 P.2d 499, 216 C. 619.

Wilms v. Hand, 226 P.2d 728, 101 C.A.2d 811.

Conn.—Wambeck v. Lovetri, 107 A.2d 395, 141 Conn. 558—Deregibus v. Silberman Furniture Co., 197 A. 760, 124 Conn. 39.

Ga.—S. A. Lynch Corp. v. Stone, 87 S.E.2d 57, 211 Ga. 516—Pugh v. Moore, 62 S.E.2d 153, 207 Ga. 453—Hale v. Hale, 33 S.E.2d 441, 199 Ga. 150—Kinsey v. Avans, 26 S.E. 2d 787, 196 Ga. 428—Adams v. Gray, 178 S.E. 919, 180 Ga. 421—Gulf Refining Co. v. Smith, 139 S. E. 716, 164 Ga. 811.

Ind.—Fisher v. Carey, 119 N.E. 376, 67 Ind.App. 438.

N.M.—Orchard v. Board of Com'rs of Sierra County, 76 P.2d 41, 42 N.M. 172.

N.C.—Evans v. Horne, 39 S.E.2d 612, 226 N.C. 581—Speight v. Anderson, 39 S.E.2d 371, 226 N.C. 492.

Miss.—Picayune Wood Products Co. v. Alexander Mfg. Co., 86 So.2d 480.

Tex.—Maples v. Henderson County, Civ.App., 259 S.W.2d 264, refused no reversible error—Salazar v. Garcia, Civ.App., 232 S.W.2d 685, error refused—Bevil v. Kirby Lumber Co., Civ.App., 58 S.W.2d 843.

Utah.—Draper v. J. B. & R. E. Walker, Inc., 244 P.2d 360.

Vt.—Weinberg v. Norton, 178 A. 913, 107 Vt. 279.

The admission of some secondary evidence, in hearings on interlocutory injunction, will not necessarily require a reversal.

Ga.—Kniepkamp v. Richards, 16 S. E.2d 24, 192 Ga. 509.

Held prejudicial

Ga.—Little v. Georgia Power Co., 52 S.E.2d 322, 205 Ga. 51.

48.5 Cal.—Perrine v. Paulos, 224 P. 2d 41, 100 C.A.2d 655.

49. U.S.—Fidelity & Deposit Co. of Maryland v. Bates, C.C.A.Iowa, 76 F.2d 160—Equitable Life Assur. Soc. of U. S. v. Sieg, C.C.A.Ohio, 74 F.2d 606—Royal Ins. Co. v. Eastham, C.C.A.Ala., 71 F.2d 385, certiorari denied 55 S.Ct. 110, 293 U. S. 557—Prevette v. U. S., C.C.A., N.C., 68 F.2d 112, certiorari denied 54 S.Ct. 633, 292 U.S. 622, 78 L.Ed. 1478—American Cent. Ins. Co. of St. Louis, Mo. v. McHose, D.C.Pa., 66 F.2d 749—U. S. v. Sauls, C.C.A.N.C., 65 F.2d 886—Wilks v. U. S., C.C.A.N.Y., 65 F. 2d 775—U. S. v. Dudley, C.C.A. Idaho, 64 F.2d 743—Standard Accident Ins. Co. v. Rossi, C.C.A.Ark., 52 F.2d 547—Frankel v. New York Life Ins. Co., C.C.A.Okl., 51 F.2d 933—U. S. v. Lawson, C.C.A.Idaho, 50 F.2d 646—U. S. v. Phillips, C.C.A.Mo., 44 F.2d 689—O'Brien v. General Accident, Fire & Life Assur. Corporation, Limited, of Perth, Scotland, C.C.A.Neb., 42 F. 2d 48—Alliance Ins. Co. of Philadelphia v. Brown, C.C.A.Cal., 36 F.2d 625—Standard Accident Ins. Co. v. Rossi, C.C.A.Ark., 35 F.2d 667—Keeton v. Jefferson Standard Life Ins. Co., C.C.A.Va., 5 F.2d 183.

Ala.—Hartford Fire Ins. Co. v. Clark, 61 So.2d 19, 258 Ala. 141—Pacific Fire Ins. Co. v. Overton, 55 So.2d 123, 256 Ala. 400—National Union Fire Ins. Co. v. Morgan, 166 So. 24, 231 Ala. 640—U. S. Fidelity & Guaranty Co. v. State, for Use of City of Gadsden, 165 So. 71, 231 Ala. 375—National Life & Accident Ins. Co. v. Baker, 153 So. 279, 228 Ala. 355—National Union Fire Ins. Co. v. Lassetter, 141 So. 645, 224 Ala. 649—Sovereign Camp, W. O. W. v. Hoehn, 85 So. 696, 204 Ala. 248.

Mutual Life Ins. Co. of New York v. Mankin, 149 So. 873, 25 Ala.App. 501, certiorari denied Ex parte Mutual Life Ins. Co. of New York, 149 So. 875, 227 Ala. 276.

Ariz.—Collison v. International Ins. Co., 118 P.2d 445, 58 Ariz. 156—Mutual Ben. Health & Accident Ass'n v. Neale, 33 P.2d 604, 43 Ariz. 532.

Ark.—Pacific Mut. Life Ins. Co. v. Ware, 33 S.W.2d 46, 182 Ark. 868—Benefit Ass'n of Ry. Employees v. Jacklin, 294 S.W. 353, 173 Ark. 937.

Cal.—Pendell v. Westland Life Ins. Co., 214 P.2d 392, 95 C.A.2d 766—Jacobs v. Farmers' Mut. Fire Ins. Co. of Turlock, 41 P.2d 960, 5 C.A. 2d 1—Nixon v. Indemnity Ins. Co. of North America, 3 P.2d 968, 117 C.A. 410—Zohner v. Sierra Nevada Life & Casualty Co., 299 P. 749, 114 C.A. 85—Bagnall v. Travelers' Ins. Co. of Hartford, Conn., 296 P. 106, 111 C.A. 714—MacGruer v. Fidelity & Casualty Co. of New York, 264 P. 501, 89 C.A. 227.

Conn.—Hartford Steam Boiler Inspection & Insurance Co. v. Firemen's Mut. Ins. Co., 170 A. 151, 118 Conn. 49.

Fla.—Police & Firemen's Ins. Ass'n v. Hines, 183 So. 831, 134 Fla. 298.

Ga.—Rogers Lumber Co. v. Smith, 86 S.E.2d 640, 91 Ga.App. 632—Milwaukee Mechanics Ins. Co. v. Davis, 52 S.E.2d 643, 79 Ga.App. 70, appeal transferred 48 S.E.2d 876, 204 Ga. 67—Barker v. Life & Cas. Ins. Co. of Tenn., 50 S.E.2d 375,

78 Ga.App. 262—Pearl Assur. Co. v. Nichols, 37 S.E.2d 227, 73 Ga. App. 452—Gulf Life Ins. Co. v. Bloodworth, 35 S.E.2d 662, 73 Ga. App. 102—Mutual Life Ins. Co. of New York v. Childs, 14 S.E.2d 165, 64 Ga.App. 658—Rhodes v. Mutual Ben. Health & Accident Ass'n, 8 S.E.2d 685, 62 Ga.App. 208—New York Life Ins. Co. v. Ittner, 8 S.E. 2d 582, 62 Ga.App. 31—Pilgrim Health & Life Ins. Co. v. Gomley, 148 S.E. 666, 40 Ga.App. 30—Hanover Fire Ins. Co. of New York v. Hodges, 139 S.E. 822, 37 Ga.App. 229.

Ill.—Western Cold Storage Co. v. New Amsterdam Casualty Co., 262 Ill.App. 133.

Winger v. Chicago City Bank & Trust Co., 60 N.E.2d 560, 325 Ill.App. 459, reversed on other grounds 67 N.E.2d 265, 394 Ill. 94—Jay-Bee Realty Corp. v. Agricultural Ins. Co., 50 N.E.2d 973, 320 Ill.App. 310—McNaghten v. Northwestern Mut. Life Ins. Co., 48 N. E.2d 200, 318 Ill.App. 390—Sundquist v. Hardware Mut. Fire Ins. Co. of Minnesota, 16 N.E.2d 771, 296 Ill.App. 510, affirmed 21 N.E.2d 297, 371 Ill. 360, 124 A.L.R. 1375.

Ind.—Rushville Nat. Bank of Rushville v. State Life Ins. Co., 1 N.E. 2d 445, 210 Ind. 492—Automobile Underwriters v. White, 191 N.E. 335, 207 Ind. 228.

Oleska v. Kotur, 48 N.E.2d 88, 113 Ind.App. 428—Lyon v. Ætna Life Ins. Co., 44 N.E.2d 186, 112 Ind.App. 573—Prudential Ins. Co. of America v. Robbins, 38 N.E.2d 274, 110 Ind.App. 172—Albright v. Hughes, 26 N.E.2d 576, 107 Ind. App. 651—American Surety Co. of New York v. Jay Lodge No. 87, F. & A. M., 196 N.E. 356, 102 Ind. App. 82—Fidelity Health & Accident Co. v. Holbrook, 169 N.E. 57, 96 Ind.App. 457, rehearing denied 170 N.E. 346, 96 Ind.App. 457—Baggerly v. Supreme Tribe of Ben Hur, 153 N.E. 805, 85 Ind.App. 272—National Fire Ins. Co. v. Gellman, 144 N.E. 154, 83 Ind.App. 219—Massachusetts Bonding & Ins. Co. v. State, 127 N.E. 226, 76 Ind. App. 692—Massachusetts Bonding & Ins. Co. v. State, 127 N.E. 223, 76 Ind.App. 16.

Iowa.—Crandall v. Bankers Life Co., 62 N.W.2d 169, 245 Iowa 540—Range v. Mutual Life Ins. Co. of New York, 249 N.W. 268, 216 Iowa 410—Elmore v. Southern Surety Co., 224 N.W. 32, 207 Iowa 872—Haviriand v. Farmers' Ins. Co. of Cedar Rapids, 213 N.W. 762, 204 Iowa 335—Rogers v. Columbian Nat. Life Ins. Co., 213 N.W. 757, 204 Iowa 804.

Ky.—Mutual Ben. Health & Acc. Ass'n v. Webber, 187 S.W.2d 273, 299 Ky. 846—Prudential Ins. Co. of America v. Asbury, 164 S.W.2d 957, 291 Ky. 400—Woodmen of World Life Ins. Soc. v. Parish, 160 S.W.2d 629, 290 Ky. 141—Pyramid Life Ins. Co. v. Milner, 158 S.W. 2d 429, 289 Ky. 249, 138 A.L.R. 1507—Metropolitan Life Ins. Co. v. Osborne, 150 S.W.2d 479, 286 Ky. 301—Equitable Life Assur. Soc. of U. S. v. Reynolds, 82 S.W. 2d 509, 259 Ky. 504—Equitable Life Assur. Soc. of U. S. v. Kazee, 79 S.W.2d 208, 257 Ky. 803—Equitable Life Assur. Soc. of U. S. v. Goble, 72 S.W.2d 35, 254 Ky. 614—Equitable Life Assur. Soc. of U. S. v. Fannin, 53 S.W.2d 703, 245 Ky. 474—Conservative Life Ins. Co. v. Hutchinson, 52 S.W.2d 709, 244 Ky. 746—Yorkshire Ins. Co. v. Kirtley, 47 S.W.2d 922, 243 Ky. 162—Connecticut Fire Ins. Co. v. Colker, 16 S.W.2d 761, 229 Ky. 113.

La.—Williams v. Washington Nat. Ins. Co., 156 So. 453, 180 La. 423.

Md.—Surratt v. State, to Use of Bollinger, 173 A. 573, 167 Md. 357, reargument denied 175 A. 191, 167 Md. 357.

Mass.—Santarpio v. New York Life Ins. Co., 16 N.E.2d 668, 301 Mass. 207—Glass v. Metropolitan Life Ins. Co., 154 N.E. 563, 258 Mass. 127.

Mich.—Thirkill v. Kansas City Life Ins. Co., 270 N.W. 797, 278 Mich. 588—Cohen v. London Guarantee & Accident Co., Limited, of London, England, 225 N.W. 549, 247 Mich. 226.

Minn.—Anderson v. Royal League, 153 N.W. 853, 130 Minn. 416, L.R. A.1916B 901, Ann.Cas.1917C 691.

Miss.—Paramount Fire Ins. Co. v. Anderson, 51 So.2d 763, 211 Miss. 372.

Mo.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402—Ferril v. Kansas City Life Ins. Co., 137 S.W.2d 577, 345 Mo. 777—Central States Savings & Loan Ass'n v. U. S. Fidelity & Guaranty Co., 66 S.W.2d 550, 334 Mo. 580—Smith v. Ohio Millers' Mut. Fire Ins. Co., 49 S.W.2d 42, 330 Mo. 236—State ex rel. and to Use of City of Maplewood v. Southern Surety Co., 19 S.W.2d 691, 323 Mo. 150—Goffe v. National Surety Co., 9 S.W.2d 929, 321 Mo. 140.

Utterback v. New York Life Ins. Co., App., 191 S.W.2d 421—Britton v. Guardian Life Ins. Co. of America, App., 177 S.W.2d 443—Wood v. Metropolitan Life Ins. Co., App., 161 S.W.2d 737—Chapman v. Metropolitan Life Ins. Co., App., 132 S.W.2d 1096—Delameter v. Home Ins. Co., 126 S.W.2d 262, 233 Mo.App. 645—Dieterle v. Standard Life Ins. Co., App., 119 S.W.2d 440—Fitzgerald v. Colorado Life Co., 116 S.W.2d 242, 233 Mo. App. 235—John v. Ætna Life Ins. Co. of Hartford, Conn., App., 100 S.W.2d 936—H. W. Eddy, Insurance, Inc., v. National Union Fire Ins. Co., App., 94 S.W.2d 1062—Green v. American Life & Accident Ins. Co., App., 93 S.W.2d 1119—McCarthy v. Metropolitan Life Ins. Co., App., 90 S.W.2d 158—McCarthy v. Metropolitan Life Ins. Co., App., 90 S.W.2d 158—Young v. Metropolitan Life Ins. Co., 84 S. W.2d 1065, 229 Mo.App. 823—Hart v. Missouri State Life Ins. Co., 79 S.W.2d 793, 229 Mo.App. 607—McGinnis v. Aetna Life Ins. Co., App., 78 S.W.2d 501—Yancey v. Central Mut. Ins. Ass'n, App., 77 S.W.2d 149—Goodman v. National Liberty Ins. Co. of America, 65 S.W.2d 1061, 228 Mo.App. 327—Thomas v. American Automobile Underwriters' Agency, App., 5 S.W.2d 659.

Mont.—Coover v. Davis, 121 P.2d 985, 112 Mont. 605—Theilbar Realties v. National Union Fire Ins. Co., 9 P.2d 469, 91 Mont. 525, followed in 9 P.2d 474, 91 Mont. 537—Loncar v. National Union Fire Ins. Co. of Pittsburgh, Pa., 274 P. 844, 84 Mont. 141—Mutual Oil Co. v. Hamilton, 236 P. 545, 73 Mont. 385.

Neb.—Clouse v. St. Paul Fire & Marine Ins. Co., 40 N.W.2d 820, 152 Neb. 230, 15 A.L.R.2d 1008—George A. Hoagland & Co. v. Scottish Union & National Ins. Co. of Edinburgh, 267 N.W. 242, 131 Neb. 112.

N.H.—Hall v. Merrimack Mut. Fire Ins. Co., 6 A.2d 172, 90 N.H. 191.

N.J.—De Freitas v. Metropolitan Life Ins. Co., 34 A.2d 233, 131 N.J.Law 5—Chmielowicz v. Prudential Ins. Co. of America, 11 A.2d 741, 124 N.J.Law 317, affirmed 15 A.2d 759, 125 N.J.Law 271—Kozlowski v. Pavonia Fire Ins. Co., 183 A. 154, 116 N.J.Law 194—Honetsky v. Russian Consol. Mut. Aid Soc. of America, 176 A. 670, 114 N.J.Law 240.

Koch v. Franklin Mortgage & Title Guaranty Co., 176 A. 723, 13 N.J.Misc. 139, affirmed 181 A. 219, 115 N.J.Law 562—Schwartz v. H. H. Mondon, Inc., 138 A. 516, 5 N.J. Misc. 828.

N.Y.—Cayne Builders v. Maryland Cas. Co., 8 N.Y.S.2d 51, 255 App. Div. 976, reargument denied 9 N. Y.S.2d 581, 256 App.Div. 818, appeal denied.

N.C.—Rand v. Home Life Ins. Co., 174 S.E. 749, 206 N.C. 760—Green v. Inter-Ocean Casualty Co. of Cincinnati, Ohio, 167 S.E. 38, 203 N.C. 767—Alston v. District Grand Household No. 10 of the G. U. O. O. F. of North Carolina, of Household of Ruth, No. 3836, 126 S.E. 516, 189 N.C. 204—Wooten v. Grand United Order of Odd Fellows, 96 S.E. 654, 176 N.C. 52.

N.D.—Mann v. Policyholders' Nat. Life Ins. Co., 51 N.W.2d 853, 75 N. D. 724.

Ohio.—Travelers Indem. Co. v. Cochrane, 98 N.E.2d 840, 155 Ohio St. 305.

McClain v. All States Life Ins. Co., 80 N.E.2d 815, 82 Ohio App. 354—Jersey Ins. Co. of N. Y. v. Syndicate Parking, App., 78 N.E.2d 692—Shank v. Union Cent. Life Ins. Co., App., 67 N.E.2d 125—Madison v. Caledonian-American Ins. Co. of New York, App., 43 N. E.2d 245—Moknach v. New York Life Ins. Co., 36 N.E.2d 529, 67 Ohio App. 293—U. S. Casualty Co. v. Thrush, 152 N.E. 796, 21 Ohio App. 129.

Okl.—National Sur. Corp. v. Smock, 228 P.2d 659, 204 Okl. 265—Atlas Life Ins. Co. v. Chastain, 178 P.2d 109, 198 Okl. 338—Sanders v. Board of Com'rs of Delaware County, 15 P.2d 818, 160 Okl. 52.

Or.—Zurich General Accident & Liability Ins. Co. v. Carlton & C. R. Co., 291 P. 349, 133 Or. 398.

Pa.—Metz v. Travelers Fire Ins. Co., Hartford, Conn., 49 A.2d 711, 355 Pa. 342.

McCrory v. Scranton Life Ins. Co., 27 A.2d 723, 150 Pa.Super. 1—Burke v. Prudential Ins. Co. of America, 27 A.2d 523, 150 Pa.Super. 80—Coleman v. Shenandoah Life Ins. Co., 24 A.2d 146, 147 Pa. Super. 242—Campbell v. National-Ben Franklin Fire Ins. Co., 200 A. 701, 132 Pa.Super. 379—Hardy v. State Mut. Ben. Soc., 170 A. 704, 111 Pa.Super. 336—Bobereski v. Insurance Co. of Pennsylvania, 161 A. 412, 105 Pa.Super. 585.

R.I.—Davis v. Equitable Life Assur. Soc. of U. S., 1 A.2d 105, 61 R.I. 414—Gomes v. Boston Mut. Life Ins. Co., 193 A. 500, 58 R.I. 428, reargument denied 194 A. 740, 59 R. I. 231.

S.C.—Gaskins v. Firemen's Ins. Co. of Newark, N. J., 33 S.E.2d 498, 206 S.C. 213—Belcher v. Prudential Ins. Co. of America, 31 S.E.2d 1, 205 S.C. 188—Palmer v. Sovereign Camp, W. O. W., 15 S.E.2d 655, 197 S.C. 379—Nock v. Fidelity & Deposit Co., 178 S.E. 839, 175 S.C. 188—Galphin v. Pioneer Life Ins. Co., 154 S.E. 855, 157 S.C. 469—Hydrick v. Milwaukee Mechanics' Fire Ins. Co., 133 S.E. 533, 135 S. C. 62—Crosland v. Hunsucker, 129 S.E. 199, 132 S.C. 398.

Tenn.—Dushan v. Metropolitan Life Ins. Co., 14 Tenn.App. 422.

Tex.—Reliance Ins. Co. v. Smith, Com.App., 66 S.W.2d 675.

Universal Underwriters Lloyd v. Sulik, Civ.App., 301 S.W.2d 690, error refused no reversible error—Traders & Gen. Ins. Co. v. Frozen Food Exp., App., 255 S.W.2d 378, error refused no reversible error—Home Ins. Co. of N. Y. v. Dacus, App., 239 S.W.2d 182—American Cent. Ins. Co. v. Harrison, App., 205 S.W.2d 417, error refused no reversible error—Northern Ins. Co. of New York v. Molloy, App., 146 S.W.2d 231, error dismissed, judgment correct—American Nat. Ins. Co. v. Ingle, App., 129 S.W.2d 426, affirmed 152 S.W.2d 1098, 135 A.L. R. 1325, 137 Tex. 189—American Bankers Life Ins. Co. v. Barlow, App., 127 S.W.2d 1026, error dismissed, judgment correct—Thompson v. Prince, App., 126 S.W.2d 574, error refused—Camden Fire Ins. Ass'n v. Brown, App., 109 S.W.2d 280, error dismissed—International Travelers Ass'n v. Marshall, App., 94 S.W.2d 558, reversed on other grounds 114 S.W.2d 851, 131 Tex. 258—Hanover Fire Ins. Co. v. Nash, Civ.App., 67 S.W.2d 452—U. S. Fidelity & Guaranty Co. v. Inman, Civ.App., 65 S.W.2d 339—Railway Mail Ass'n v. Forbes, Civ. App., 49 S.W.2d 880—Commercial Standard Ins. Co. v. E. P. McKnight Chevrolet Co., Civ.App., 43 S.W.2d 636—Franklin Fire Ins. Co. of Philadelphia v. Orr, Civ.App., 36 S.W.2d 576—U. S. Fire Ins. Co. of New York v. Fife, Civ.App., 6 S.W.2d 211—Wichita Home Ins. Co. v. Montgomery, Civ.App., 4 S. W.2d 1041—Wonderful Workers of the World v. Woods, Civ.App., 297 S.W. 232—Waco Mut. Life & Accident Ass'n v. Hafferkamp, Civ. App., 293 S.W. 250—Home Ben. Ass'n v. Horne, Civ.App., 290 S. W. 226—Firemen's Ins. Co. v. Havron, Civ.App., 277 S.W. 742—Camden Fire Ins. Ass'n v. Yarborough, Civ.App., 229 S.W. 336, dismissed for want of jurisdiction—Gonzales v. Flores, Civ.App., 200 S.W. 851, dismissed for want of jurisdiction—Commonwealth Bonding & Casualty Ins. Co. v. Bryant, Civ.App., 185 S.W. 979, reversed on other grounds 240 S.W. 893, 113 Tex. 21.

Utah.—Schubach v. American Surety Co. of New York, 273 P. 974, 73 Utah 332—Massachusetts Bonding & Insurance Co. v. Cudahy Packing Co., 211 P. 706, 61 Utah 116.

Vt.—Shields v. Vermont Mut. Fire Ins. Co., 147 A. 352, 102 Vt. 224.

Wash.—Sheridan v. Ætna Cas. & Surety Co., 100 P.2d 1024, 3 Wash. 2d 423—Alverson v. Kansas City Life Ins. Co., 82 P.2d 149, 196 Wash. 91—Nicholas v. Granite State Fire Ins. Co., 24 S.E.2d 280, 125 W.Va. 349—Puget Sound Lumber Co. v. Mechanics' & Traders' Ins. Co., 10 P.2d 568, 168 Wash. 46—Askey v. New York Life Ins. Co., 172 P. 887, 102 Wash. 27, L.R.A. 1918F 267.

W.Va.—Leftwich v. Inter-Ocean Cas. Co., 17 S.E.2d 209, 123 W.Va. 577—Neill v. Fidelity Mut. Life Ins. Co., 195 S.E. 860, 119 W.Va. 694.

Wis.—Perkie v. Carolina Ins. Co., 6 N.W.2d 195, 241 Wis. 378—Schwartz v. Woodmen Acc. Co., 223 N.W. 844, 198 Wis. 252.

9 C.J. p 1100 note 97—26 C.J. p 573 note 59—33 C.J. p 145 note 18.

Application for insurance

Ohio.—Lumpkin v. Metropolitan Life Ins. Co., 62 N.E.2d 189, 75 Ohio App. 310, affirmed 64 N.E.2d 63, 146 Ohio St. 25.

Constructive delivery of policy

S.C.—Lemons v. Pilot Life Ins. Co., 13 S.E.2d 278, 196 S.C. 297.

Death certificate

Neb.—McNaught v. New York Life Ins. Co., 18 N.W.2d 56, 145 Neb. 694.

W.Va.—Collins v. Equitable Life Ins. Co., 8 S.E.2d 825, 122 W.Va. 171, 130 A.L.R. 287.

Parol evidence

Okl.—Atlas Life Ins. Co. v. Spitler, 63 P.2d 82, 178 Okl. 537.

Determination of prejudicial effect

Mo.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402.

Held prejudicial

(1) Generally.

U.S.—U. S. v. Blackburn, C.C.A. Wash., 33 F.2d 564—Orient Ins. Co. v. Ariasi, C.C.A.Cal., 28 F.2d 579, certiorari denied Ariasi v. Orient Ins. Co., 49 S.Ct. 251, 279 U.S. 837, 73 L.Ed. 984.

Ala.—Mutual Sav. Life Ins. Co. v. Hall, 49 So.2d 298, 254 Ala. 668—Fidelity & Cas. Co. of New York v. Beeland Bros. Mercantile Co., 7 So. 2d 265, 242 Ala. 591—American Life Ins. Co. v. Carlton, 198 So. 1, 240 Ala. 173—Mutual Life Ins. Co. of New York v. Mankin, 138 So. 265, 223 Ala. 679.

Resolute Fire Ins. Co. v. O'Rear, 38 So.2d 616, 34 Ala.App. 249.

Ark.—Watkins v. Reliance Life Ins. Co., 238 S.W. 10, 152 Ark. 12.

Colo.—Colorado Life Ins. Co. v. Winegarner, 35 P.2d 860, 95 Colo. 261.

Fla.—Atlantic Coast Line R. Co. v. Campbell, 139 So. 886, 104 Fla. 274.

Ga.—Life & Cas. Ins. Co. of Tenn. v. Monday, 86 S.E.2d 689, 91 Ga. App. 656—Rhodes v. Mutual Ben. Health & Accident Ass'n, 194 S.E. 33, 56 Ga.App. 728—Industrial Life & Health Ins. Co. v. Simmons, 152 S.E. 263, 41 Ga.App. 195—Freeman v. Metropolitan Life Ins. Co., 134 S.E. 639, 35 Ga.App. 770.

Ky.—Westchester Fire Ins. Co. of N. Y. v. Gray, 240 S.W.2d 825, 33 A.L.R.2d 608—Occidental Ins. Co. v. Chasteen, 75 S.W.2d 363, 255 Ky. 710—Equitable Life Assur. Soc. of U. S. v. Greene, 13 S.W.2d 279, 227 Ky. 431—Stuyvesant Ins. Co. v. Barkett, 11 S.W.2d 87, 226 Ky. 424—Sovereign Camp, W. O. W., v. Morris, 278 S.W. 554, 212 Ky. 201.

Mass.—Davidson v. Massachusetts Cas. Ins. Co., 89 N.E.2d 201, 325 Mass. 115.

Mo.—Russell v. Metropolitan Life Ins. Co., App., 149 S.W.2d 432—George C. Porter Motor Corporation v. U. S. Casualty Co., App., 18 S.W.2d 133—Yarber v. Connecticut Fire Ins. Co., App., 10 S.W.2d

The general rules have also been applied in cases involving invasion of privacy,[49.5] joint adventure,[49.10] intoxicating liquors,[50] landlord and tenant,[51] libelous, slanderous, or other defamatory writ-

957—Best v. Equitable Life Assur. Soc., App., 299 S.W. 118—Handelman v. Fidelity & Deposit Co. of Maryland, App., 291 S.W. 153.

N.H.—Wood v. Manufacturers & Merchants Mut. Ins. Co., 2 A.2d 305, 89 N.H. 524.

N.Y.—Bressler v. Metropolitan Life Ins. Co., 31 N.Y.S.2d 695, 263 App. Div. 835.

N.Y.—Poses v. Travelers Ins. Co., Hartford, Conn., 281 N.Y.S. 126, 245 App.Div. 304.

Karp v. John Hancock Mut. Life Ins. Co., 137 N.Y.S.2d 7, 206 Misc. 754.

Burkwitt v. New Jersey Fidelity & Plate Glass Ins. Co., 176 N.Y.S. 706.

Ohio.—Mutual Life Ins. Co. of Baltimore, Md. v. Kelly, 197 N.E. 235, 49 Ohio App. 319.

S.C.—Waites v. Brotherhood of Maintenance of Way Employees, 186 S. E. 276, 181 S.C. 215.

S.D.—Honrath v. New York Life Ins. Co., 275 N.W. 258, 65 S.D. 480, 112 A.L.R. 1272—Rumbolz v. American Alliance Ins. Co. of New York, 249 N.W. 316, 61 S.D. 334.

Tex.—Imperial Life Ins. Co. v. Thornton, Civ.App., 138 S.W.2d 295, error dismissed—General Life Ins. Co. v. Potter, Civ.App., 124 S.W. 2d 409—Connecticut General Life Ins. Co. v. Kornegay, Civ.App., 93 S.W.2d 164.

Vt.—Girard v. Vermont Mut. Fire Ins. Co., 154 A. 666, 103 Vt. 330.

W.Va.—Mitchell v. Metropolitan Life Ins. Co., 18 S.E.2d 803, 124 W.Va. 20.

(2) Disclosure of professional information by physician.

N.Y.—Epstein v. Metropolitan Life Ins. Co., 294 N.Y.S. 919, 250 App. Div. 854.

(3) Evidence that insured possessed substantial financial means.

Mich.—Forman v. Prudential Ins. Co. of America, 16 N.W.2d 696, 310 Mich. 145.

(4) Res inter alios.

Vt.—Gero v. John Hancock Mut. Life Ins. Co., 18 A.2d 154, 111 Vt. 462.

(5) Admission of proofs of loss "for all purposes" without restriction and after proper limiting objections may constitute reversible error.

Me.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402.

49.5 Held prejudicial

Fla.—Cason v. Baskin, 30 So.2d 635, 159 Fla. 31.

Mont.—Bennett v. Gusdorf, 53 P.2d 91, 101 Mont. 39.

49.10 Cal.—Danelian v. McLoney, 268 P.2d 775, 124 C.A.2d 435.

Miss.—Sample v. Romine, 8 So.2d 257, 193 Miss. 706, suggestion of error overruled 9 So.2d 643, 193 Miss. 706, corrected on other grounds 10 So.2d 346, 193 Miss. 706.

50. N.Y.—In re Farley, 111 N.E. 479, 217 N.Y. 105.

33 C.J. p 655 note 71 [a] (1).

In proceeding to revoke liquor tax certificate

The admission of certain evidence in a proceeding to revoke a liquor tax certificate was held to be prejudicial and reversible error where it was not apparent on appeal that there was other evidence sufficient to sustain the order of revocation which was entered in the lower court.

N.Y.—In re Farley, supra.

51. U.S.—Newlands Calaveras Min. & Mill Co., C.C.A.Cal., 28 F.2d 89.

Ariz.—M. Karam & Sons Mercantile Co. v. Serrano, 77 P.2d 447, 51 Ariz. 397.

Ark.—Thudium v. Dickson, 235 S.W. 2d 53, 218 Ark. 1.

Cal.—Petroleum Midway Co. v. Moynier, 272 P. 740, 205 C. 733.

Hagenbuch v. Kosky, 298 P.2d 875, 142 C.A.2d 296.

Barr v. Scott, 286 P.2d 552, 134 C.A.2d 823—Bobbio v. Bertone, 220 P.2d 578, 98 C.A.2d 434—Woods v. Corsey, 200 P.2d 208, 89 C.A.2d 105—Alvarez v. Ritter, 155 P.2d 83, 67 C.A.2d 574—Clark v. Elsinore Oil Co., 31 P.2d 476, 138 C.A. 6.

Conn.—Socony-Vacuum Oil Co. v. Elion, 11 A.2d 5, 126 Conn. 310.

Ga.—Hamel v. Elliott, 54 S.E.2d 688, 79 Ga.App. 633—Arkansas Fuel Oil Co. v. Andrews Point Co., 13 S.E. 2d 738, 64 Ga.App. 595—Collins v. Strickland Bros., 94 S.E. 1035, 21 Ga.App. 542.

Iowa.—Walker v. Puck, 8 N.W.2d 701, 236 Iowa 686.

La.—Du Vernay v. Ledbetter, App., 61 So.2d 573.

Mass.—Sodekson v. Lynch, 49 N.E. 2d 901, 314 Mass. 161—Greenway Wood Heel Co. v. John Shea Co., 46 N.E.2d 746, 313 Mass. 177—Kurland v. Massachusetts Amusement Corp., 29 N.E.2d 749, 307 Mass. 131—Burofsky v. Turner, 175 N.E. 90, 274 Mass. 574—Rosenberg v. Peter, 168 N.E. 166, 269 Mass. 32—Noyes v. Gagnon, 114 N.E. 949, 225 Mass. 580.

Mich.—Michigan Trust Co. v. Kraker, 251 N.W. 568, 265 Mich. 518.

Minn.—Waters v. Fiebelkorn, 13 N. W.2d 461, 216 Minn. 489—Murphy v. Barlow Realty Co., 7 N.W.2d 684, 214 Minn. 64.

Mo.—Vitale v. Duerbeck, 92 S.W.2d 691, 338 Mo. 556.

Fisher v. Lape, App., 176 S.W.2d 871—Spencer v. Smith, App., 128 S.W.2d 315—Phillips v. Thompson, 35 S.W.2d 382, 225 Mo.App. 859.

N.H.—Blake v. Lord, 4 A.2d 360, 90 N.H. 42.

N.J.—Underwood v. Katz, 51 A.2d 127, 135 N.J.Law 214.

McArdle Real Estate Co. v. McGowan, 172 A. 786, 12 N.J.Misc. 500.

N.Y.—Scudero v. Campbell, 32 N.Y. S.2d 809, 263 App.Div. 956, appeal denied 34 N.Y.S.2d 139, 263 App. Div. 997, affirmed 43 N.E.2d 66, 288 N.Y. 328—Leventhal v. Savings Bank of Utica, 13 N.Y.S.2d 836, 257 App.Div. 1034.

Ohio.—Cleveland Boat Service v. City of Cleveland, App., 130 N.E.2d 421, affirmed 136 N.E.2d 274, 165 Ohio St. 429.

Schumacher v. Smith, App., 96 N.E.2d 433—Mastran Const. Co. v. Mahoning Exp. Co., App., 96 N.E. 2d 30—Grant v. Herr, App., 57 N. E.2d 263—Savin v. Gholson, 1 N. E.2d 646, 51 Ohio App. 443.

State v. Lampman, 2 Ohio Supp. 301.

Okl.—Hillery-Atkins Buick Co. v. Cox, 262 P. 694, 128 Okl. 234.

Or.—H. S. & D. Investment Co. v. McCool, 9 P.2d 809, 139 Or. 266.

Pa.—Dougherty v. Hebble, 162 A. 450, 308 Pa. 477.

MacHolme v. Cochenour, 167 A. 647, 109 Pa.Super. 563.

S.D.—Smith v. Weber, 16 N.W.2d 537, 70 S.D. 232.

Tenn.—Robinson v. Tate, 236 S.W.2d 445, 34 Tenn.App. 215.

Tex.—Hagar v. Martin, Civ.App., 277 S.W.2d 195, error refused no reversible error—De George v. Rodgers-De Long Hotel Co., Civ. App., 126 S.W.2d 79, error dismissed—Williams v. Hall, Civ. App., 111 S.W.2d 803—Shannon v. Todd, Civ.App., 287 S.W. 517.

Vt.—Needleman v. American Clothing Co., 63 A.2d 201, 115 Vt. 426.

Wash.—Henry v. Bruhn & Henry, 195 P. 20, 114 Wash. 180—Neitzel v. Spokane International Ry. Co., 141 P. 186, 80 Wash. 30.

36 C.J. p 458 note 66 [a] 1.

Held prejudicial

(1) Generally.

Cal.—Miller v. Stults, 300 P.2d 812, 143 C.A.2d 592.

Ga.—Salter v. Salter, 55 S.E.2d 868, 80 Ga.App. 263.

Ill.—Yellow Terminals, Inc., v. Watson Bros. Transp. Co., 120 N.E.2d 74, 2 Ill.App.2d 520—Home Life Ins. Co. v. Franklin, 24 N.E.2d 874, 303 Ill.App. 146.

Ind.—Indianapolis Rys. v. Terminal Motor Inn, 112 N.E.2d 596, 124 Ind.App. 1.

Mass.—Shread v. Breton, 132 N.E.2d 177, 333 Mass. 545.

Mo.—Gilbert v. Bluhm, 291 S.W.2d 125.

ings or statements,[52] liens,[52.5] limitation of actions,[53] and master and servant.[54]

Neb.—Powell v. Anderson, 25 N.W.2d 401, 147 Neb. 872.
N.J.—Notkin v. Brookdale Gardens, Inc., 99 A.2d 825, 28 N.J.Super. 9—Martin v. Mazziotti, 82 A.2d 200, 14 N.J.Super. 340.
N.Y.—Lefcourt v. Jenkinson, 18 N.Y.S.2d 160, 258 App.Div. 1080—Aubry v. Ashland Realty Co., 7 N.Y.S.2d 127, 255 App.Div. 205.
Porter Improvement Corporation v. Schur, 267 N.Y.S. 874, 149 Misc. 662.
N.C.—Winkler v. Appalachian Amusement Co., 79 S.E.2d 185, 238 N.C. 589—Doyle v. Whitley, 200 S.E. 888, 214 N.C. 814.
Okl.—Indian Territory Illuminating Oil Co. v. Rosamond, 120 P.2d 349, 190 Okl. 46, 138 A.L.R. 246.

(2) Hospital record.
Ohio.—Dickson v. Gastl, 28 N.E.2d 688, 64 Ohio App. 346.

(3) Parol testimony.
Ala.—Garrett v. Reid, 18 So.2d 97, 244 Ala. 254.

52. U.S.—New York & Porto Rico S. S. Co. v. Garcia, C.C.A.Porto Rico, 16 F.2d 734.
Ala.—Tidmore v. Mills, 32 So.2d 769, 33 Ala.App. 243, certiorari denied 32 So.2d 782, 249 Ala. 648.
Cal.—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77.
Conn.—Corsello v. Emerson Bros., 137 A. 390, 106 Conn. 127.
D.C.—Arnold v. Collins, 12 F.2d 843, 56 App.D.C. 308, certiorari denied 47 S.Ct. 109, 273 U.S. 717, 71 L.Ed. 856.
Ga.—Van Gundy v. Wilson, 66 S.E.2d 93, 84 Ga.App. 429—Lamb v. Federwitz, 33 S.E.2d 839, 72 Ga.App. 406.
Ky.—Johnson v. Langley, 57 S.W.2d 21, 247 Ky. 387.
Md.—Evening News Co. v. Bowie, 141 A. 416, 154 Md. 604.
Mass.—Pihl v. Morris, 66 N.E.2d 804, 319 Mass. 577—Thompson v. Boston Pub. Co., 189 N.E. 210, 285 Mass. 344.
Mo.—Boehm v. Western Leather Clothing Co., App., 161 S.W.2d 710.
Mont.—Keller v. Safeway Stores, 108 P.2d 605, 111 Mont. 28.
N.Y.—Crane v. New York World Telegram Corp., 119 N.Y.S.2d 199, 203 Misc. 916, reversed on other grounds 126 N.Y.S.2d 17, 282 App.Div. 963, appeal granted 127 N.Y.S.2d 825, 283 App.Div. 670, and reversed on other grounds 126 N.E.2d 753, 308 N.Y. 470.
N.C.—Bryant v. Reedy, 200 S.E. 896, 214 N.C. 748.
Pa.—Bausewine v. Norristown Herald, 41 A.2d 736, 351 Pa. 634, certiorari denied 66 S.Ct. 29, 326 U.S. 724, 90 L.Ed. 429.
Tex.—Maass v. Sefcik, Civ.App., 138 S.W.2d 897—World Oil Co. v. Hicks, Civ.App., 75 S.W.2d 905, certified questions answered 103 S.W.2d 962, 129 Tex. 297—Independent Life Ins. Co. v. Hogue, Civ.App., 70 S.W.2d 629—El Paso Times Co. v. Eicke, Civ.App., 292 S.W. 594—Lawless v. Ellis, Civ.App., 281 S.W. 1090.
Va.—Thalhimer Bros. v. Shaw, 159 S.E. 87, 156 Va. 863.
Wash.—Arnold v. National Union of Marine Cooks and Stewards, 265 P.2d 1051, 44 Wash.2d 183.
Wis.—Lehner v. Berlin Pub. Co., 246 N.W. 579, 211 Wis. 119, 86 A.L.R. 1284—Gagen v. Dawley, 155 N.W. 930, 162 Wis. 152.
87 C.J. p 113 note 4 [a] (2).
Jactitation action
La.—Floyd v. Cook, App., 49 So.2d 365.
Held prejudicial
Ark.—Dunagan v. Upham, 214 S.W.2d 786, 214 Ark. 66.
Ga.—Van Gundy v. Wilson, 66 S.E.2d 93, 84 Ga.App. 429.
Miss.—Scott-Burr Stores Corp. v. Edgar, 177 So. 766, 181 Miss. 486.
Mo.—Hoffman v. Graber, App., 153 S.W.2d 817.
N.Y.—Macy v. New York World-Telegram Corp., 161 N.Y.S.2d 55, 2 N.Y.2d 416, 141 N.E.2d 566.
Longo v. Saratogian, Inc., 48 N.Y.S.2d 140, 267 App.Div. 1017.
S.C.—Johnson v. Western Union Telegraph Co., 179 S.E. 325, 175 S.C. 344.

52.5 Held prejudicial
N.C.—Robbins v. Alexander, 14 S.E.2d 425, 219 N.C. 475.

53. Kan.—In re Mecke's Estate, 201 P.2d 1030, 166 Kan. 400.
S.C.—Wolfe v. Brannon, 44 S.E.2d 833, 211 S.C. 282.
Held prejudicial
N.H.—Wheeler v. Robinson, 50 N.H. 303.
N.Y.—Arkport State Bank v. Nutter, 130 N.Y.S.2d 343, 284 App.Div. 86.

54. U.S.—Sunny Point Packing Co. v. Faigh, C.C.A.Alaska, 63 F.2d 921—James Baird Co. v. Boyd, C.C.A.N.C., 41 F.2d 578—Lehigh & N. E. R. Co. v. Smale, C.C.A.N.J., 19 F.2d 67.
Akalitis v. Philadelphia & Reading Coal & Iron Co., N.Y., 239 F. 299, 152 C.C.A. 287, certiorari denied 38 S.Ct. 581, 247 U.S. 517, 62 L.Ed. 1245.
Ala.—Louisville & N. R. Co. v. Parker, 138 So. 231, 223 Ala. 626, certiorari dismissed 53 S.Ct. 94, 287 U.S. 569, 77 L.Ed. 501—Republic Iron & Steel Co. v. Reed, 137 So. 673, 223 Ala. 617.
Ariz.—Arizona Eastern R. Co. v. Bryan, 157 P. 376, 18 Ariz. 106.
Ark.—Cunningham v. Davis, 159 S.W.2d 751, 203 Ark. 982—Bruner Ivory Handle Co. v. West, 86 S.W.2d 919, 191 Ark. 479—Arkadelphia Sand & Gravel Co. v. Knight, 79 S.W.2d 71, 190 Ark. 886—Dierks Lumber & Coal Co. v. Tollerson, 54 S.W.2d 61, 186 Ark. 429—Southern Lumber Co. v. Green, 53 S.W.2d 229, 186 Ark. 209—Gaster v. Hicks, 25 S.W.2d 760, 181 Ark. 299—St. Louis-San Francisco Ry. Co. v. Miller, 292 S.W. 986, 173 Ark. 597.
Cal.—Gross v. Maytex Knitting Mills of Cal., 254 P.2d 163, 116 C.A.2d 705—Willson v. Turner Resilient Floors, 201 P.2d 406, 89 C.A.2d 589—Bateman v. Doughnut Corp. of America, 147 P.2d 404, 68 C.A.2d 711.
Colo.—Vallery v. Barrett, 167 P. 979, 63 Colo. 548.
Conn.—Delano v. Armstrong Rubber Co., 73 A.2d 828, 136 Conn. 663, certiorari denied 71 S.Ct. 28, 340 U.S. 840, 95 L.Ed. 616.
Idaho.—Weed v. Idaho Copper Co., 10 P.2d 613, 51 Idaho 737.
Ill.—Starck v. Chicago & N. W. Ry. Co., 123 N.E.2d 826, 4 Ill.2d 616—Daly v. New Staunton Coal Co., 117 N.E. 413, 280 Ill. 175.
Welch v. New York, C. & St. L. R. Co., 126 N.E.2d 165, 5 Ill.App.2d 568—Rouse v. New York, C. & St. L. R. Co., 110 N.E.2d 266, 349 Ill. App. 139—Porter v. Terminal R. Ass'n of St. Louis, 65 N.E.2d 31, 327 Ill.App. 645—McGlynn & McGlynn v. Louisville & N. R. Co., 40 N.E.2d 539, 313 Ill.App. 396, reversed on other grounds Smith v. Louisville & N. R. Co., 44 N.E.2d 841, 381 Ill. 55—Herb v. Pitcairn, 29 N.E.2d 543, 306 Ill.App. 583, reversed on other grounds 36 N.E.2d 555, 377 Ill. 405.
Ky.—Watkins, Inc., v. Cochran, 168 S.W.2d 351, 292 Ky. 846—Cumnock-Reed Co. v. Lewis, 128 S.W.2d 926, 278 Ky. 496—Breslin v. Blair, 60 S.W.2d 337, 249 Ky. 178—Rex Red Ash Coal Co. v. Barley's Adm'r, 6 S.W.2d 724, 224 Ky. 485—Chesapeake & O. Ry. Co. v. Kennard, 3 S.W.2d 649, 223 Ky. 262.
Md.—Bethlehem Steel Co. v. Traylor, 148 A. 246, 158 Md. 116, 73 A.L.R. 479—General Automobile Owners' Ass'n v. State, 140 A. 48, 154 Md. 204.
Mass.—Oehme v. Whittemore-Wright Co., 181 N.E. 733, 279 Mass. 558.
Minn.—Woodrow v. Chicago, M., St. P. & P. R. Co., 60 N.W.2d 49, 239 Minn. 530, followed in 61 N.W.2d 240, 240 Minn. 562, certiorari denied Chicago, M., St. P. & P. R. Co. v. Woodrow, 74 S.Ct. 630, 347 U.S. 935, 98 L.Ed. 1085—Keough v. St. Paul Milk Co., 285 N.W. 809, 205 Minn. 96.
Miss.—Texas Co. v. Mills, 156 So. 866, 171 Miss. 231.

Other matters or actions to which the rules have been applied include materials or supplies,[55] me-

Mo.—Scneder v. Wabash R. Co., 272 S.W.2d 198—McDill v. Terminal R. R. Ass'n of St. Louis, 268 S.W.2d 823—Holmes v. Terminal R. R. Ass'n of St. Louis, 257 S.W.2d 922, 363 Mo. 1178—Jones v. Terminal R. R. Ass'n of St. Louis, 242 S.W. 2d 473—Graham v. Thompson, 212 S.W.2d 770, 357 Mo. 1133, certiorari denied 69 S.Ct. 166, 335 U.S. 870, 93 L.Ed. 414—Mickel v. Thompson, 156 S.W.2d 721, 348 Mo. 991—Weaver v. Mobile & O. R. Co., 120 S.W. 2d 1105, 343 Mo. 223—McNatt v. Wabash Ry. Co., 108 S.W.2d 33, 341 Mo. 516—Jenkins v. Wabash Ry. Co., 73 S.W.2d 1002, 335 Mo. 748—Colwell v. St. Louis-San Francisco Ry. Co., 73 S.W.2d 222, 335 Mo. 494—Hiatt v. Wabash Ry. Co., 69 S. W.2d 627, 334 Mo. 895, certiorari denied Wabash Ry. Co. v. Hiatt, 55 S.Ct. 72, 293 U.S. 560, 79 L.Ed. 661—Gately v. St. Louis-San Francisco Ry. Co., 56 S.W.2d 54, 332 Mo. 1—Span v. Jackson, Walker Coal & Mining Co., 16 S.W.2d 190, 322 Mo. 158—Huhn v. Ruprecht, 2 S.W.2d 760—Willgues v. Pennsylvania R. Co., 298 S.W. 817, 318 Mo. 28—Holman v. St. Louis-San Francisco Ry. Co., 278 S.W. 1000, 312 Mo. 342.

Heiter v. Terminal R. Ass'n of St. Louis, App., 275 S.W.2d 612—Johnson v. Thompson, App., 236 S. W.2d 1—Butner v. Union Pac. R. Co., 163 S.W.2d 100, 236 Mo.App. 1134—Wurst v. American Car & Foundry Co., App., 103 S.W.2d 6—McDaniels v. Zink, App., 75 S.W. 2d 78—Stewart v. American Ry. Express Co., App., 18 S.W.2d 520.

Mont.—Ely v. Montana State Federation of Labor, 160 P.2d 752, 117 Mont. 609—Girson v. Girson, 114 P.2d 274, 112 Mont. 183—Chancellor v. Hines Motor Supply Co., 69 P.2d 764, 104 Mont. 603.

Neb.—Ring v. Kruse, 62 N.W.2d 279, 158 Neb. 1.

N.H.—Perreault v. Allen Oil Co., 179 A. 365, 87 N.H. 306.

N.J.—Kahala v. Aldrich, 169 A. 291, 112 N.J.Law 18.

Nestico v. Delaware, L. & W. R. Co., 133 A. 83, 4 N.J.Misc. 418.

N.C.—Durant v. Powell, 2 S.E.2d 884, 215 N.C. 628—Holeman v. Pensacola Shipbuilding Co., 134 S.E. 647, 192 N.C. 236.

Ohio.—DeHart v. Ohio Fuel Gas Co., 85 N.E.2d 586, 84 Ohio App. 62—Fairmont Creamery Co. v. Ewing, 182 N.E. 883, 43 Ohio App. 191.

Okl.—Rodgers v. Oklahoma Wheat Pool Terminal Corp., 96 P.2d 1040, 186 Okl. 171.

Or.—Arnold v. Gardiner Hill Timber Co., 263 P.2d 403, 199 Or. 517—Baldassarre v. West Oregon Lumber Co., 239 P.2d 839, 193 Or. 556—Hovedsgaard v. Grand Rapids Store Equipment Corporation, 5 P. 2d 86, 138 Or. 39—Hollopeter v. Palm, 291 P. 380, 134 Or. 546, appeal dismissed Palm v. Hollopeter, 52 S.Ct. 15, 284 U.S. 572, 76 L.Ed. 497.

Pa.—Padden v. Local 90 United Ass'n of Journeymen Plumbers, 82 A.2d 327, 168 Pa.Super. 611.

R.I.—Soucy v. Alix, 90 A.2d 722, 79 R.I. 499—Holmes v. Hurwitz, 35 A.2d 226, 69 R.I. 472.

S.C.—McGee v. Clearwater Mfg. Co., 53 S.E.2d 393, 214 S.C. 495—Griswold v. Texas Co., 161 S.E. 409, 163 S.C. 156—Cutter v. Mallard Lumber Co., 83 S.E. 595, 99 S.C. 231.

Tex.—St. Louis, Southwestern Ry. Co. of Texas v. Gillenwater, Com. App., 294 S.W. 193.

Texas Emp. Ins. Ass'n v. Hudson Engineering Corp., Civ.App., 245 S.W.2d 523—Thompson v. Brown, App., 222 S.W.2d 442—Benson v. Missouri, K. & T. R. Co., 200 S.W.2d 233, error refused no reversible error, certiorari denied 68 S.Ct. 206, 332 U.S. 830, 92 L.Ed. 403—Callahan v. Hester, Civ.App., 181 S.W.2d 294, error refused—Traders & General Ins. Co. v. Parker, Civ.App., 91 S.W.2d 503, error dismissed—Beck v. Wahlgren, Civ.App., 87 S.W.2d 890—Texas & P. Ry. Co. v. Hesterly, Civ.App., 79 S.W.2d 909—Associated Indemnity Corporation v. Baker, Civ. App., 76 S.W.2d 153—Dixie Motor Coach Corporation v. Ball, Civ. App., 69 S.W.2d 581—Chicago, R. I. & G. Ry. Co. v. Bernnard, Civ. App., 290 S.W. 292—Rhodes v. Bryson, Civ.App., 272 S.W. 517—Sweetman v. Laredo Electric & Ry. Co., Civ.App., 204 S.W. 701, error refused—Burrell Engineering & Construction Co. v. Grisier, Civ.App., 189 S.W. 102, affirmed 240 S.W. 899, 111 Tex. 477—Texas & N. O. R. Co. v. Webster, 70 S.W.2d 394, 123 Tex. 197, certiorari denied 55 S.Ct. 93, 293 U.S. 580, 79 L.Ed. 677, rehearing denied 55 S.Ct. 138, 293 U.S. 630, 79 L.Ed. 716.

Utah.—Kaumans v. White Star Gas & Oil Co., 63 P.2d 231, 92 Utah 24—Moore v. Utah Idaho Cent. R. Co., 174 P. 873, 52 Utah 373.

Vt.—Bailey v. Central Vermont Ry., 35 A.2d 365, 113 Vt. 433, certiorari granted 63 S.Ct. 768, 318 U.S. 751, 87 L.Ed. 1127.

Va.—Du Pont Engineering Co. v. Blair, 106 S.E. 328, 129 Va. 423.

Wis.—Schwade v. Van Bree, 252 N. W. 702, 214 Wis. 250—McHatton v. McDonnell's Estate, 165 N.W. 468, 166 Wis. 323.

Wyo.—Long v. Forbes, 136 P.2d 242, 58 Wyo. 533.

39 C.J. p 108 note 31 [a], [b], p 1262 note 20, p. 1263 note 25.

Injuries or death of seamen

Cal.—Peterson v. Permanente S. S. Corp., 277 P.2d 495, 129 C.A.2d 579, certiorari denied 75 S.Ct. 882, 349 U.S. 953, 99 L.Ed. 1278—Lejeune v. General Petroleum Corporation of California, 18 P.2d 429, 128 C.A. 404.

Wash.—Anelich v. The Arizona, 49 P.2d 3, 183 Wash. 467—Glaser v. Katalinich, 13 P.2d 468, 169 Wash. 133.

Held prejudicial

U.S.—Schroble v. Lehigh Valley R. Co., C.C.A.N.Y., 62 F.2d 993.

Ky.—Hooven & Allison Co. v. Cox' Adm'r, 104 S.W.2d 969, 268 Ky. 266—Louisville & N. R. Co. v. McCoy, 87 S.W.2d 921, 261 Ky. 435—Black Mountain Corporation v. Thomas, 291 S.W. 737, 218 Ky. 497.

Minn.—Ross v. Duluth, Missabe & Iron Range Ry. Co., 281 N.W. 76, 203 Minn. 312.

Miss.—Robinson v. Turfitt, 4 So.2d 884, 192 Miss. 160.

Mo.—Cummings v. Illinois Cent. R. Co., 269 S.W.2d 111—Sconce v. Jones, 121 S.W.2d 777, 343 Mo. 362—Knaup v. Western Coal & Min. Co., 114 S.W.2d 969, 342 Mo. 210—Wolf v. Mallinckrodt Chemical Works, 81 S.W.2d 323, 336 Mo. 746.

N.J.—Farrell v. Diamond Alkali Co., 83 A.2d 900, 16 N.J.Super. 163.

Jackson v. Pioneer Adhesive Works, 40 A.2d 634, 132 N.J.Law 397.

Donohue v. Delaware, L. & W. R. Co., 156 A. 313, 9 N.J.Misc. 989

N.Y.—Chernoff v. Rochester News Corporation, 277 N.Y.S. 45, 243 App.Div. 674.

Or.—Parker v. Norton, 21 P.2d 790, 143 Or. 165.

Tex.—Pattison v. Highway Ins. Underwriters, Civ.App., 278 S.W.2d 207, error refused no reversible error.

Wash.—Thomas v. Inland Motor Freight, 68 P.2d 603, 190 Wash. 428—Hatcher v. Globe Union Mfg. Co., 16 P.2d 824, 170 Wash. 494.

55. Colo.—Collins v. Jenkins-McKay Hardware Co., 222 P. 350, 74 Colo. 432.

Idaho.—Sweeney v. Hanmer, 162 P. 2d 387, 66 Idaho 462.

Iowa.—Granette Products Co. v. Arthur H. Neumann & Co., 221 N.W. 197, 208 Iowa 24.

Kan.—McGuire v. White, 11 P.2d 698, 135 Kan. 517.

Mass.—Flitner-Atwood Co. v. Fidelity Trust Co., 144 N.E. 218, 249 Mass. 333.

Ohio.—Wampler v. Staley, App., 59 N.E.2d 65.

Or.—Sullivan v. Carpenter, 199 P.2d 655, 184 Or. 485—Foott v. Lindstrom & Feigenson, 22 P.2d 321, 143 Or. 309.

Tex.—Hood v. Robertson, Civ.App., 33 S.W.2d 882.

chanics' liens,[56] money loaned,[57] mortgages or | deeds of trust,[58] and motor vehicles.[59]

56. Ill.—Blohm v. Kagy, 106 N.E.2d 141, 347 Ill.App. 78.
Okl.—Pepin v. W. R. Thompson & Sons Lumber Co., 1 P.2d 714, 150 Okl. 295.
Wash.—Willett v. Davis, 193 P.2d 321, 30 Wash.2d 622.
40 C.J. p 517 note 40 [a] (4).

57. Cal.—Miller v. Magill, 20 P.2d 58, 130 C.A. 414.
Ga.—Cato v. Cater, 45 S.E.2d 794, 76 Ga.App. 367.
Kan.—Hoard v. White, 220 P. 296, 114 Kan. 531.
Ky.—People's Bank of Tompkinsville v. Keating Bros., 198 S.W. 8, 177 Ky. 721.
Md.—Crowther v. Hirschmann, 197 A. 868, 174 Md. 100.
Or.—In re Steele's Estate, 52 P.2d 207, 152 Or. 49.
Tex.—Robinson v. Randall, Civ.App., 69 S.W.2d 184.
41 C.J. p 10 note 1.

Held prejudicial
N.Y.—Waldman v. Wasserman, 79 N.Y.S.2d 46.

58. Ala.—Boswell v. Land, 114 So. 470, 217 Ala. 39.
Weil v. Teabo, 70 So. 957, 14 Ala.App. 575.
Ark.—Barnett v. Bank of Malvern, 39 S.W.2d 1014, 183 Ark. 1030.
Cal.—Griffin v. Williamson, 290 P.2d 361, 137 C.A.2d 308—Birkhofer v. Krumm, 81 P.2d 609, 27 C.A.2d 513, certiorari denied 59 S.Ct. 249, 305 U.S. 653, 83 L.Ed. 423—Vaughan v. People's Mortg. Co., 20 P.2d 335, 130 C.A. 632—Hopkins v. J. D. Millar Realty Co., 289 P. 221, 106 C.A. 409—Jump v. Barr, 189 P. 334, 46 C.A. 338.
Colo.—Melnick v. Bowman, 79 P.2d 368, 102 Colo. 384.
Fla.—Smith v. Biscayne Park Estates, 42 So.2d 442.
Ga.—Stanton v. Bank of Thomson, 188 S.E. 702, 183 Ga. 489—Kennedy v. McLean, 187 S.E. 102, 182 Ga. 898—Peterson v. Wilbanks, 137 S.E. 69, 163 Ga. 742.
Jones v. Avant, 152 S.E. 264, 41 Ga.App. 211.
Ind.—Egbert v. Egbert, 132 N.E.2d 910, 132 Ind. 405.
Davis v. Bankers Trust Co., 20 N.E.2d 686, 106 Ind.App. 422.
La.—Love v. Woodard, 190 So. 396, 193 La. 251.
Mass.—State Realty Co. of Boston v. MacNeil Bros. Co., 135 N.E.2d 291, 334 Mass. 294—Geffen v. Paletz, 43 N.E.2d 133, 312 Mass. 48—Waxman v. Cohen, 149 N.E. 413, 253 Mass. 548.
Mo.—Personal Finance Co. of St. Louis v. Endicott, App., 238 S.W.2d 51—Bay v. Elmer, App., 237 S.W.2d 932—Hamrick v. Lasky, App., 107 S.W.2d 201—Campbell v. Miller, App., 226 S.W. 597.
Nev.—Warren v. De Long, 59 P.2d 1165, 57 Nev. 131, rehearing denied 60 P.2d 608, 57 Nev. 131.
N.Y.—Graham v. Denton, 2 N.Y.S.2d 175, 253 App.Div. 910.
N.C.—Garrett v. Stadiem, 18 S.E.2d 178, 220 N.C. 654.
Okl.—Boswell v. Shawnee Production Credit Ass'n, 77 P.2d 740, 182 Okl. 302—Benn v. Trobert, 184 P. 595, 76 Okl. 184.
R.I.—Cheetham v. Ferreira, 56 A.2d 861, 73 R.I. 425.
S.C.—Nabers v. Williams, 174 S.E. 490, 172 S.C. 483.
Tex.—Richards v. Frick-Reid Supply Corp., Civ.App., 160 S.W.2d 282, error refused—Gordon v. Mortgage Realty Co., Civ.App., 153 S.W.2d 707—Hartman v. Costales, Civ.App., 145 S.W.2d 603, error dismissed, judgment correct—Hartman v. First Nat. Bank, Civ.App., 97 S.W.2d 969—Griffay v. Robbins, Civ.App., 91 S.W.2d 1160, error dismissed—Murray Co. v. Gilbert, Civ.App., 80 S.W.2d 805—Wright v. Williamson, Civ.App., 27 S.W.2d 558.

Held prejudicial
(1) Generally.
Cal.—Balkins v. Los Angeles County, 183 P.2d 137, 81 C.A.2d 42.
Idaho.—Ossmen v. Commercial Credit Corp., 241 P.2d 351, 72 Idaho 355.
Kan.—Sparks v. Maguire, 169 P.2d 826, 161 Kan. 520.
Mass.—Prifti v. Hendrick, 51 N.E.2d 322, 314 Mass. 661.
N.J.—Home Owners' Loan Corp. v. Grundy, 4 A.2d 784, 122 N.J.Law 301.
Tex.—White v. Christie, Civ.App., 224 S.W.2d 717—Pioneer Building & Loan Ass'n v. Compton, Civ.App., 138 S.W.2d 884.

(2) Parol evidence.
Utah.—Harmston v. Labrum, 247 P.2d 895, 122 Utah 209.

59. U.S.—William C. Barry, Inc., v. Baker, C.C.A.Me., 82 F.2d 79—Krumm v. Southwest Finance Co. of California, C.C.A.Cal., 67 F.2d 1.
Ala.—Smith v. Lilley, 41 So.2d 175, 252 Ala. 425—Osborn v. Grizzard, 37 So.2d 201, 251 Ala. 275—Dickson v. Dinsmore, 122 So. 437, 219 Ala. 353—City of Birmingham v. Whitworth, 119 So. 841, 218 Ala. 603—Birmingham Stove & Range Co. v. Vanderford, 116 So. 334, 217 Ala. 342—Webb v. O'Kelly, 104 So. 505, 213 Ala. 214.
Hurn v. Reynolds, 36 So.2d 603, 34 Ala.App. 79—Gholston Motor Co. v. Norman, 137 So. 536, 24 Ala.App. 526.
Ariz.—Alabam Freight Lines v. Thevenot, 204 P.2d 1050, 68 Ariz. 260—Phœnix Baking Co. v. Vaught, 156 P.2d 725, 62 Ariz. 222—Beals v. Quigg, 11 P.2d 354, 40 Ariz. 196.
Ark.—Corruthers v. Mason, 277 S.W.2d 60, 224 Ark. 929—Pinkerton v. Davis, 207 S.W.2d 742, 212 Ark. 796—Routt v. Alexander, 78 S.W.2d 828, 190 Ark. 324—Schlosberg v. Doup, 63 S.W.2d 337, 187 Ark. 931—Halbrook v. Williams, 50 S.W.2d 243, 185 Ark. 885—Whittaker v. Kirchman, 287 S.W. 168, 171 Ark. 1029, 49 A.L.R. 316.
Cal.—Martinelli v. Poley, 292 P. 451, 210 C. 450—Cooney v. Pirrelli, 266 P. 273, 204 C. 4—Mella v. Hooper, 254 P. 256, 200 C. 628.
Odian v. Habernicht, 283 P.2d 756, 133 C.A.2d 201—Rednall v. Thompson, 239 P.2d 693, 108 C.A.2d 662—Woods v. Eitze, 212 P.2d 12, 94 C.A.2d 910—Carpenter v. Gibson, 181 P.2d 953, 80 C.A.2d 269—Farmer v. Fairbanks, 162 P.2d 26, 71 C.A.2d 70—Siebel v. Shapiro, 137 P.2d 56, 58 C.A.2d 509—Bickford v. Mauser, 128 P.2d 79, 53 C.A.2d 680—Fowler v. Allen, 121 P.2d 41, 49 C.A.2d 214—Martin v. Miqueu, 98 P.2d 816, 37 C.A.2d 133—Hoffart v. Southern Pac. Co., 92 P.2d 436, 33 C.A.2d 591—Guillot v. Hagman, 86 P.2d 865, 30 C.A.2d 582—Armstrong v. Ford, 86 P.2d 385, 30 C.A.2d 347—Groat v. Walkup Drayage & Warehouse Co., 58 P.2d 200, 14 C.A.2d 350—Flury v. Beeskau, 33 P.2d 1033, 139 C.A. 398—Noah v. Black & White Cab Co., 32 P.2d 437, 138 C.A. 236—Gernhardt v. Rancadore, 24 P.2d 946, 134 C.A. 65—Warnke v. Griffith Co., 24 P.2d 583, 133 C.A. 481—Kellner v. Witte, 23 P.2d 1045, 133 C.A. 231—Hutson v. Gerson, 23 P.2d 816, 132 C.A. 665—Olson v. Meacham, 19 P.2d 527, 129 C.A. 670—Coats v. Hathorn, 8 P.2d 1038, 121 C.A. 257—Yates v. Morotti, 8 P.2d 519, 120 C.A. 710—Kanananakoa v. Badalamente, 6 P.2d 338, 119 C.A. 231—Bowker v. Illinois Electric Co., 297 P. 615, 112 C.A. 740—Villegas v. Strohm, 297 P. 588, 112 C.A. 633—Hayes v. Emerson, 294 P. 765, 110 C.A. 470—Olden v. Babicora Development Co., 290 P. 1062, 107 C.A. 399—Daniel v. Asbill, 276 P. 149, 97 C.A. 731—Fraher v. Eisenmann, 270 P. 704, 94 C.A. 48—Perry v. A. Paladini, Inc., 264 P. 580, 89 C.A. 275—Lloyd v. Boulevard Express, 249 P. 837, 79 C.A. 406.
Colo.—Stahl v. Cooper, 190 P.2d 891, 117 Colo. 468—Calnon v. Sorel, 119 P.2d 615, 108 Colo. 467—Bauserman v. White, 114 P.2d 557, 108 Colo. 101—Oliver v. Weaver, 212 P. 978, 72 Colo. 540.
Conn.—Squires v. Reynolds, 5 A.2d 877, 125 Conn. 366—Dressel v. Gregory, 157 A. 417, 114 Conn. 718—Haugh v. Kirsch, 135 A. 568, 105

Conn. 429—Shea v. Hemming, 115 A. 686, 97 Conn. 149.

Fla.—Nelson v. McMillan, 10 So.2d 565, 151 Fla. 847—Independent Ice & Cold Storage Co. v. Tampa Sand & Material Co., 171 So. 797, 126 Fla. 846.

Ga.—Camp v. Mapp, 97 S.E.2d 623, 95 Ga.App. 262—Whitley Const. Co. v. O'Dell, 94 S.E.2d 784, 94 Ga. App. 426—Lowe v. Meisel, 68 S.E. 2d 390, 85 Ga.App. 69—Thornton v. King, 58 S.E.2d 227, 81 Ga.App. 122—Lamb v. Landers, 21 S.E.2d 321, 67 Ga.App. 588—Parker v. Smith, 18 S.E.2d 559, 66 Ga.App. 567—Brooks v. Carver, 190 S.E. 389, 55 Ga.App. 362—City of Atlanta v. Blackmon, 179 S.E. 842, 51 Ga.App. 165—Chapman v. Independent Laundry Co., 144 S.E. 127, 38 Ga.App. 424—White v. Knapp, 120 S.E. 796, 31 Ga.App. 344.

Idaho.—Neff v. Hysen, 244 P.2d 146, 72 Idaho 470—Hayward v. Yost, 242 P.2d 971, 72 Idaho 415—Shrum v. Wakimoto, 215 P.2d 991, 70 Idaho 252—Byington v. Horton, 102 P.2d 652, 61 Idaho 389.

Ill.—Schultz v. Stephan, 132 N.E.2d 30, 8 Ill.App.2d 550—Johnson v. McKnight, 39 N.E.2d 700, 313 Ill. App. 260—Drummond v. Gleim, 33 N.E.2d 751, 309 Ill.App. 649—Creek v. Naylor, 33 N.E.2d 740, 309 Ill.App. 601—Rapers v. Holmes, 10 N.E.2d 707, 292 Ill.App. 116—Bousiough v. Schumacher, 270 Ill.App. 79—Rutewicz v. United Motor Coach Co., 261 Ill.App. 377.

Ind.—Johnson v. Wilson, 5 N.E.2d 533, 211 Ind. 51.

Norwalk Truck Line Co. v. Kostka, 88 N.E.2d 799, 120 Ind.App. 283, rehearing denied 89 N.E.2d 625, 120 Ind.App. 283—Town of Remington v. Hesler, 41 N.E.2d 657, 111 Ind. App. 404—Vincennes Packing Corp. v. Trosper, 23 N.E.2d 624, 108 Ind. App. 7—Smith v. Keyes, 9 N.E.2d 119, 103 Ind.App. 487—Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind. App. 585—Vockel v. Rhynearson, 197 N.E. 705, 101 Ind.App. 637—Yellow Cab Co. v. Kruszynski, 196 N.E. 136, 101 Ind.App. 187—Repczynski v. Mikulak, 157 N.E. 464, 93 Ind.App. 491.

Iowa.—Weilbrenner v. Owens, 68 N. W.2d 293, 246 Iowa 580—Brady v. McQuown, 40 N.W.2d 25, 241 Iowa 34—Stevens v. Gear, 39 N.W.2d 408, 240 Iowa 1348—Hansen v. Nelson, 39 N.W.2d 292, 240 Iowa 1298—Smith v. Pine, 12 N.W.2d 236, 234 Iowa 256—Uhlenhopp v. Steege, 7 N.W.2d 195, 233 Iowa 368—Westman v. Bingham, 300 N.W. 525, 230 Iowa 1298—Harmon v. Gilligan, 266 N.W. 288, 221 Iowa 605—Harvey v. Borg, 257 N.W. 190, 218 Iowa 1228—O'Hara v. Chaplin, 233 N.W. 516, 211 Iowa 404—Looney v. Parker, 230 N.W. 570, 210 Iowa 85—Schultz v. Starr, 164 N.W. 163, 180 Iowa 1319.

Kan.—Birdsong v. Meyer, 40 P.2d 430, 141 Kan. 140—Balono v. Nafziger, 21 P.2d 896, 137 Kan. 513—Leimbach v. Pickwick Greyhound Lines, 10 P.2d 33, 135 Kan. 40—Smith v. United Warehouse Co., 255 P. 1115, 123 Kan. 515.

Ky.—Mt. Vernon Tel. Co. v. Patrick, 293 S.W.2d 731—Jack Cole Co. v. Hoff, 274 S.W.2d 658—Bowling Green-Hopkinsville Bus Co. v. Adams, 261 S.W.2d 14—Miller v. Mills, 257 S.W.2d 520—Tipton v. Bolan, 224 S.W.2d 431, 311 Ky. 465—Kentucky Virginia Stages v. Tackett's Adm'r, 171 S.W.2d 4, 294 Ky. 189—Short Way Lines v. Sutton's Adm'r, 164 S.W.2d 809, 291 Ky. 541—City of Corbin v. Payne, 156 S.W.2d 850, 288 Ky. 566—Vaughn v. Taylor, 156 S.W.2d 836, 288 Ky. 558—McLellan v. Threlkeld, 129 S.W.2d 977, 279 Ky. 114—Greer v. Richards' Adm'r, 115 S. W.2d 568, 273 Ky. 91—Field v. Collins, 92 S.W.2d 793, 263 Ky. 474—Reddy Cab Co. v. Harris, 90 S.W. 2d 1004, 262 Ky. 661—Owen Motor Freight Lines v. Russell's Adm'r, 86 S.W.2d 708, 260 Ky. 795—Lehr v. Fenton Dry Cleaning & Dyeing Co., 80 S.W.2d 831, 258 Ky. 663—Fry & Kain v. Keen, 59 S.W. 2d 3, 248 Ky. 548—Berryman v. Worthington, 43 S.W.2d 5, 240 Ky. 756—Potter's Adm'x v. Mansard Garage & Service Station, 38 S.W. 2d 233, 238 Ky. 439—Chambers v. Hawkins, 25 S.W.2d 363, 233 Ky. 211—Finnegan v. Floyd Garage & Auto Livery Co., 283 S.W. 402, 214 Ky. 416.

Me.—Frenyea v. Maine Steel Products Co., 170 A. 515, 132 Me. 271—Masse v. Wing, 149 A. 385, 129 Me. 33.

Md.—Yellow Cab Co. v. Henderson, 39 A.2d 546, 183 Md. 546—E. F. Enoch Co. v. Johnson, 37 A.2d 901, 183 Md. 326—Mayor and Council of City of Cumberland v. Turney, 9 A.2d 561, 177 Md. 297—Mahan v. State, to Use of Carr, 191 A. 575, 172 Md. 373—Weissman v. Hokamp, 188 A. 923, 171 Md. 197, followed in Weissman v. Hokamp, 189 A. 813, 171 Md. 197.

Mass.—Le Blanc v. Welch, 129 N.E. 2d 908, 333 Mass. 207—La Plante v. Maguire, 89 N.E.2d 1, 325 Mass. 96—Trump v. Burdick, 76 N.E.2d 768, 322 Mass. 253—Nickerson v. Boston Elevated Ry., 66 N.E.2d 193, 319 Mass. 220—Reardon v. Marston, 38 N.E.2d 644, 310 Mass. 461—Curtin v. Benjamin, 26 N.E.2d 354, 305 Mass. 489, 129 A.L.R. 433—Perrott v. Leahy, 19 N.E.2d 10, 302 Mass. 318—Stowe v. Mason, 194 N.E. 671, 289 Mass. 577—Di Rienzo v. Goldfarb, 153 N.E. 784, 257 Mass. 272.

Mich.—Hoag v. Hyzy, 63 N.W.2d 632, 339 Mich. 163—Shoemaker v. Trompen, 40 N.W.2d 92, 326 Mich. 120—White v. Hultmaster, 40 N.W. 2d 87, 326 Mich. 108—Jacobson v. Carlson, 4 N.W.2d 721, 302 Mich. 448—McDuffie v. Root, 1 N.W.2d 544, 300 Mich. 286—Rugenstein v. Orr's Estate, 297 N.W. 62, 297 Mich. 37—Kemp v. Aldrich, 282 N. W. 833, 286 Mich. 591, reversed on other grounds 286 N.W. 81, 286 Mich. 715—Park v. Gaudio, 281 N. W. 565, 286 Mich. 133—Mulvena v. Alexander, 270 N.W. 291, 278 Mich. 265—Tanis v. Eding, 264 N.W. 875, 274 Mich. 288—Solomon v. Ryder, 241 N.W. 242, 257 Mich. 193.

Minn.—Hatley v. Klingsheim, 53 N. W.2d 123, 236 Minn. 370—Nye v. Bach, 265 N.W. 300, 196 Minn. 330—Hector Const. Co. v. Butler, 260 N.W. 496, 194 Minn. 310—Mills v. Harstead, 248 N.W. 705, 189 Minn. 193—Hanskett v. Broughton, 195 N.W. 794, 157 Minn. 83.

Miss.—Jefferson v. Pinson, 69 So.2d 234, 219 Miss. 427—Rawlings v. Royals, 58 So.2d 820, 214 Miss. 335—Howell v. George, 30 So.2d 603, 201 Miss. 283—Gillespie v. Doty, 135 So. 211, 160 Miss. 684.

Mo.—Davis v. Illinois Terminal Co., 291 S.W.2d 891—Renner v. Wolverton, 273 S.W.2d 325—McCrary v. Ogden, 267 S.W.2d 670—LeGrand v. U-Drive-It Co., 247 S.W.2d 706—Clark v. McKeone, 234 S.W.2d 574—Pulse v. Jones, 218 S.W.2d 553—Cornwell v. Highway Motor Freight Line, 152 S.W.2d 10, 348 Mo. 19—Marlow v. Nafziger Baking Co., 63 S.W.2d 115, 333 Mo. 790—Grodsky v. Consolidated Bag Co., 26 S.W.2d 618, 324 Mo. 1067—State ex rel. Smith v. Trimble, 285 S.W. 729, 315 Mo. 166.

Purdy v. Moore, App., 224 S.W. 2d 838—Ross v. Wilson, 163 S.W. 2d 342, 236 Mo.App. 1178—Grab v. Davis Const. Co., 109 S.W.2d 882, 233 Mo.App. 819—Silsby v. Hinchey, App., 107 S.W.2d 812—Hedrick v. Hurst, App., 104 S.W. 2d 392—Robinson v. Ross, App., 47 S.W.2d 122—Carlton v. Stanek, 38 S.W.2d 505, 225 Mo.App. 646—Cashion v. Wells, App., 35 S.W.2d 909—Sanford v. Gideon-Anderson Co., App., 31 S.W.2d 580—Diehl v. Charles, App., 8 S.W.2d 1082—Banks v. Empire Dist. Electric Co., App., 4 S.W.2d 875.

Mont.—Gobel v. Rinio, 200 P.2d 700, 122 Mont. 235—Meinecke v. Intermountain Transp. Co., 55 P.2d 680, 101 Mont. 315—Backer v. Parker-Morelli-Barclay Motor Co., 289 P. 571, 87 Mont. 595.

Neb.—Danner v. Walters, 48 N.W.2d 635, 154 Neb. 506—Hammond v. Morris, 24 N.W.2d 633, 147 Neb. 600—Holtz v. Plumer, 277 N.W. 589, 133 Neb. 878—Short v. Bollen, 266 N.W. 635, 130 Neb. 728.

N.J.—Jones v. Lahn, 63 A.2d 804, 1 N.J. 358.

Grizzanti v. Miller, 71 A.2d 385, 6 N.J.Super. 388—Wadell v. Pub-

lic Service Coordinated Transport, 65 A.2d 766, 3 N.J.Super. 132.

Williams v. Guerreri, 54 A.2d 198, 136 N.J.Law 60—Wilson v. G. R. Wood, Inc., 1 A.2d 416, 121 N. J.Law 41—Car & General Ins. Corporation v. Davimos, 176 A. 320, 114 N.J.Law 192.

Van Sciver v. Abbott's Alderney Dairies, 143 A. 153, 6 N.J.Misc. 949.

N.H.—Sweeney v. Willette, 104 A.2d 398, 98 N.H. 512—Bartis v. Warrington, 20 A.2d 642, 91 N.H. 415.

N.Y.—Service Fire Ins. Co. of N. Y. v. Lederman, 109 N.Y.S.2d 812, 279 App.Div. 319, affirmed 107 N. E.2d 588, 304 N.Y. 658—Kane v. Cayuga County, 2 N.Y.S.2d 812, 254 App.Div. 613—Delmonte v. La Fountain, 298 N.Y.S. 902, 252 App. Div. 806.

Setzkorn v. City of Buffalo, 215 N.Y.S. 584, 126 Misc. 858, affirmed 219 N.Y.S. 351, 219 App. Div. 416, affirmed 159 N.E. 670, 246 N.Y. 605.

N.C.—Sisson v. Royster, 45 S.E.2d 351, 228 N.C. 298—Jernigan v. Jernigan, 178 S.E. 587, 207 N.C. 831.

Ohio.—Cunningham v. Ogresovich, App., 110 N.E.2d 437—Neff v. Kester, App., 107 N.E.2d 215—Dunleavy v. De Frangia, App., 82 N.E. 2d 288—Bachman v. Ambos, 79 N. E.2d 177, 83 Ohio App. 141—Coate v. Hartley, App., 52 N.E.2d 672—Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172—Neal v. Schmidt, App., 39 N.E.2d 859—Goodyear Tire & Rubber Co. v. Marhofer, 176 N.E. 120, 38 Ohio App. 143.

Okl.—Highway Ins. Underwriters v. Nichols, 255 P.2d 263, 208 Okl. 244—Greenland v. Gilliam, 241 P. 2d 384, 206 Okl. 85—Pinkerton v. Carter, 169 P.2d 192, 197 Okl. 95.

Or.—Mason v. Allen, 195 P.2d 717, 183 Or. 638—Zahara v. Brandli, 94 P.2d 718, 162 Or. 666—Hanson v. Schrick, 85 P.2d 355, 160 Or. 397—Albrecht v. Safeway Stores, 80 P.2d 62, 159 Or. 331—Lynn v. Stinnette, 31 P.2d 764, 147 Or. 105—Mansfield v. Southern Oregon Stages, 1 P.2d 591, 136 Or. 669, followed in Longden v. Southern Oregon Stages, 1 P.2d 596, 136 Or. 684—Martin v. Oregon Stages, 277 P. 291, 129 Or. 435.

Pa.—Harriett v. Ballas, 117 A.2d 693, 383 Pa. 124—Johnson v. Geiger, 76 A.2d 366, 365 Pa. 583—Gruskin v. Stitt, 13 A.2d 412, 339 Pa. 137—Rice v. Shenk, 143 A. 231, 293 Pa. 524.

R.I.—Hulton v. Phaneuf, 132 A.2d 85—Di Biase v. Nardolillo, 68 A.2d 89, 76 R.I. 143—Tillinghast v. Rhode Island Motor Sales Co., 150 A. 753—Lee v. Northway Motor Sales Co., 121 A. 425.

S.C.—Robinson v. Duke Power Co., 48 S.E.2d 808, 213 S.C. 185—Squires v. Henderson, 36 S.E.2d 738, 208 S.C. 58—Neese v. Toms, 12 S.E.2d 859, 196 S.C. 67—Cobb v. Southern Public Utilities Co., 187 S.E. 363, 181 S.C. 310—Smith v. Carolina Milling Co., 167 S.E. 553, 168 S.C. 355.

Tenn.—National Life & Accident Ins. Co. v. Morrison, 162 S.W.2d 501, 179 Tenn. 29.

Vest v. Bitner, 241 S.W.2d 438, 34 Tenn.App. 575—Pratt v. Duck, 191 S.W.2d 562, 28 Tenn.App. 502—Lasater Lumber Co. v. Harding, 189 S.W.2d 583, 28 Tenn.App. 296—Young v. City of Nashville, 176 S.W.2d 377, 26 Tenn.App. 658—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498—Maysay v. Hickman, 97 S.W.2d 662, 20 Tenn.App. 262—Mason v. James, 89 S.W.2d 910, 19 Tenn. App. 479.

Tex.—Sugarland Industries v. Daily, 143 S.W.2d 931, 135 Tex. 532.

Davis Transport, Inc. v. Bolstad, Civ.App., 295 S.W.2d 941—Coker v. Mitchell, Civ.App., 269 S.W.2d 950—Lee v. Glad, Civ.App., 267 S.W.2d 230, error dismissed—Driver v. Worth Const. Co., Civ. App., 264 S.W.2d 174, reversed on other grounds 273 S.W.2d 603, 154 Tex. 66—Western Cotton Oil Co. v. Mayes, Civ.App., 245 S.W.2d 280—Linkenhoger v. Gilbert, Civ. App., 223 S.W.2d 308, error refused no reversible error—Chesshir v. Nall, Civ.App., 218 S.W.2d 248, error refused no reversible error—McIver v. Gloria, Civ.App., 163 S. W.2d 890, affirmed 169 S.W.2d 710, 140 Tex. 566—Younger Bros. v. Ross, Civ.App., 151 S.W.2d 621, error dismissed—Getzwiller v. Fergeson, Civ.App., 145 S.W.2d 913—Wells v. Henderson, Civ.App., 78 S.W.2d 683—Papin v. Japhet, Civ.App., 74 S.W.2d 737—Austin v. De George, Civ.App., 55 S.W.2d 585—Matthews v. Monzingo, Civ. App., 46 S.W.2d 424—Texarkana Motor Co. v. Brashears, Civ.App., 37 S.W.2d 773—Toney v. Herman Hale Lumber Co., Civ.App., 36 S. W.2d 234—Epting v. Nees, Civ. App., 25 S.W.2d 717—Schmoker v. French, Civ.App., 7 S.W.2d 177—American Automobile Ins. Co. v. Baker, Civ.App., 5 S.W.2d 252—Russell v. Bailey, Civ.App., 290 S. W. 1108—Louisiana Ry. & Nav. Co. of Texas v. Taylor, Civ.App., 285 S.W. 925—Foster v. Burgin, Civ. App., 244 S.W. 244—Blevins v. Houston Electric Co., Civ.App., 235 S.W. 987.

Utah.—Hunter v. Michaelis, 198 P.2d 245, 114 Utah 242.

Vt.—Leonard v. Henderson, 99 A.2d 698, 118 Vt. 29—Gregoire v. Willett, 8 A.2d 660, 110 Vt. 459—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351.

Va.—Jessee v. Slate, 86 S.E.2d 821, 196 Va. 1074—Tellis v. Traynham, 78 S.E.2d 581, 195 Va. 447—Edgerton v. Norfolk Southern Bus Corp., 47 S.E.2d 409, 187 Va. 642—Nelson v. Dayton, 36 S.E.2d 535, 184 Va. 754—Crawford v. Hite, 10 S.E.2d 561, 176 Va. 69—Temple v. Moses, 8 S.E.2d 262, 175 Va. 320—Chenman v. Paxson's Adm'r, 195 S.E. 492, 170 Va. 6—Price v. Burton, 154 S.E. 499, 155 Va. 229—Litz v. Harman, 144 S.E. 477, 151 Va. 363.

Wash.—Rutherford v. Deur, 282 P.2d 281, 46 Wash.2d 435—Lamb v. Mason, 176 P.2d 342, 26 Wash.2d 879—Briggs v. United Fruit & Produce, 119 P.2d 687, 11 Wash.2d 466—Rieger v. Kirkland, 111 P.2d 241, 7 Wash.2d 326—Tjosevig v. Wilbourne, 74 P.2d 489, 193 Wash. 21—Comfort v. Penner, 6 P.2d 604, 166 Wash. 177—Skoug v. Minton, 259 P. 15, 145 Wash. 119.

W.Va.—Jones v. Berry, 45 S.E.2d 1, 130 W.Va. 189—Otte v. Miller, 24 S.E.2d 90, 125 W.Va. 317.

Wis.—Czarnetzky v. Booth, 246 N. W. 574, 210 Wis. 536—Tofte v. Crolius, 220 N.W. 225, 196 Wis. 608—Siegl v. Watson, 195 N.W. 867, 181 Wis. 619.

42 C.J. p 1289 note 43.

Insurance generally see supra text and note 49.

Negligence generally see infra text and note 61.

Plaintiff's willingness to settle

Tex.—Hipfner v. Anderson, Civ.App., 258 S.W.2d 357, error refused no reversible error.

Automobile theft insurance

Iowa.—Whisler v. Home Ins. Co. of New York, 276 N.W. 606, 224 Iowa 201.

Tex.—Universal Underwriters Lloyds v. Sulik, Civ.App., 301 S.W. 2d 690, error refused no reversible error—Service Mut. Ins. Co. of Texas v. Territo, Civ.App., 147 S. W.2d 846.

Insurance against conversion or embezzlement

Iowa.—Lozier Auto Exch. v. Interstate Casualty Co., 195 N.W. 885, 197 Iowa 935.

Where proceeding is merely an inquisition, admission of improper and irrelevant evidence will not be regarded as reversible error unless its effect is to admit evidence of damage not traceable to alleged negligence.

Md.—Smith v. Dolan, 185 A. 453, 170 Md. 654.

Held prejudicial

(1) Generally.

U.S.—Hawthorne v. Eckerson Co., C.C.A.Vt., 77 F.2d 844.

Ala.—Holman v. Brady, 3 So.2d 30, 241 Ala. 487—Greenwald v. Russell, 172 So. 895, 233 Ala. 502—Moore v. Oneonta Motor Co., 137 So. 301, 223 Ala. 510—C. C. Snyder Cigar & Tobacco Co. v. Stutts, 107 So. 73, 214 Ala. 132.

Ariz.—Hirsh v. Manley, 300 P.2d 588, 81 Ariz. 94.
Ark.—Williams v. Martin, 290 S.W. 2d 442, 226 Ark. 431—Wright v. Harris, 262 S.W.2d 142, 222 Ark. 661—Hall v. Young, 236 S.W.2d 431, 218 Ark. 348, 20 A.L.R.2d 1207.
Cal.—Lowenthal v. Mortimer, 270 P. 2d 942, 125 C.A.2d 636—Nosbonne v. Brill, 128 P.2d 57, 53 C.A.2d 436—Davis v. Robinson, 123 P.2d 894, 50 C.A.2d 700—Wilkerson v. City of El Monte, 62 P.2d 790, 17 C.A.2d 615—Santina v. Tomlinson, 171 P. 437, 36 C.A. 29.
Colo.—Ripple v. Brack, 286 P.2d 625, 132 Colo. 125.
Conn.—Jacobs v. Connecticut Co., 75 A.2d 427, 137 Conn. 189.
Fla.—Eggers v. Phillips Hardware Co., 88 So.2d 507—Douglass v. Sapotnick, 171 So. 765, 126 Fla. 753, followed in 173 So. 926, 131 Fla. 246.
Ga.—Draffin v. Massey, 92 S.E.2d 38, 93 Ga.App. 329.
Idaho.—Lebak v. Nelson, 107 P.2d 1054, 62 Idaho 96.
Ill.—Minga v. Jack Cole Co., 140 N. E.2d 383, 12 Ill.App.2d 556—Perry Pitman, 80 N.E.2d 376, 335 Ill. App. 120—Handley v. Erb, 41 N.E. 2d 222, 314 Ill.App. 207—Dina v. Passaglia, 23 N.E.2d 773, 302 Ill. App. 159.
Iowa.—Shuck v. Keefe, 218 N.W. 31, 205 Iowa 365.
Ky.—Clay v. Sammons, 239 S.W.2d 927—Smith v. Sanders, 168 S.W.2d 359, 293 Ky. 6—Davis v. Bennett's Adm'r, 132 S.W.2d 334, 279 Ky. 799—Home Laundry Co. v. Cook, 125 S.W.2d 763, 277 Ky. 8—Louisville Auto Supply Co. v. Irvine, 278 S.W. 149, 212 Ky. 60.
Md.—Houlihan v. McCall, 78 A.2d 661, 197 Md. 130—Marshall v. Sellers, 53 A.2d 5, 188 Md. 508.
Mass.—Hall v. Shain, 197 N.E. 437, 291 Mass. 506—Luiz v. Falvey, 117 N.E. 308, 228 Mass. 259.
Mich.—Sexton v. Niewoonder, 296 N. W. 321, 296 Mich. 443—Tanis v. Eding, 264 N.W. 375, 274 Mich. 288.
Mo.—McAboy v. Hulett, App., 112 S.W.2d 86—Fenton v. Missouri Motor Distributing Corporation, App., 52 S.W.2d 213.
Neb.—Fries v. Goldsby, 80 N.W.2d 171, 163 Neb. 424—Lund v. Holbrook, 46 N.W.2d 130, 153 Neb. 706—Ficke v. Gibson, 45 N.W.2d 436, 153 Neb. 478—Harper v. Young, 298 N.W. 342, 139 Neb. 624.
N.H.—Beaule v. Weeks, 66 A.2d 148, 95 N.H. 453.
N.J.—Budden v. Goldstein, 128 A.2d 730, 43 N.J.Super. 340.
Bitterman v. Marino, 158 A. 495, 10 N.J.Misc. 199.
N.Y.—Schenker v. Bourne, 102 N.Y. S.2d 928, 278 App.Div. 699—Beach v. Richtmyer, 90 N.Y.S.2d 332, 275 App.Div. 466—Howell v. Dearling, 85 N.Y.S.2d 620, 274 App.Div. 1069—Kesten v. Forbes, 78 N.Y.S. 2d 769, 273 App.Div. 646—Gadd v. Universal Road Machinery Co., 33 N.Y.S.2d 527, 263 App.Div. 456—Trampusch v. Kastner, 274 N.Y. S. 771, 242 App.Div. 803—Wurtzman v. Kalinowski, 251 N.Y.S. 328, 233 App.Div. 187—Lakin v. Wright, 243 N.Y.S. 597, 230 App.Div. 330—Falcone v. National Casket Co., 180 N.Y.S. 455, 190 App.Div. 651.
N.C.—Caulder v. Kivett Motor Sales, 20 S.E.2d 338, 221 N.C. 437.
N.D.—Hermes v. Markham, 60 N.W. 2d 267.
Ohio.—Salyer v. Oyler Bros., App., 132 N.E.2d 628—Winters v. Pence, 123 N.E.2d 669, 97 Ohio App. 59—Barge v. House, 110 N.E.2d 425, 94 Ohio App. 515—Young v. Swartz, App., 34 N.E.2d 795.
Okl.—Wade v. Wolf, 312 P.2d 493.
Or.—Bracht v. Palace Laundry Co., 65 P.2d 1039, 156 Or. 151.
Pa.—Szwed v. Bruno, Com.Pl., 56 Montg.Co. 21.
Tex.—Missouri-Kansas-Texas R. Co. v. McFerrin, 291 S.W.2d 931.
Zellers v. Cloud, Civ.App., 302 S.W.2d 467—Phenix Dairy v. White, Civ.App., 169 S.W.2d 492, error refused—Orchin v. Fort Worth Poultry & Egg Co., Civ. App., 43 S.W.2d 308, reformed on other grounds 53 S.W.2d 103.
Va.—Greear v. Noland Co., 89 S.E.2d 49, 197 Va. 233—Doss v. Rader, 46 S.E.2d 434, 187 Va. 231—Owen v. Dixon, 175 S.E. 41, 162 Va. 601.
W.Va.—Elswick v. Charleston Transit Co., 36 S.E.2d 419, 128 W.Va. 241—Weismantle v. Petros, 19 S. E.2d 594, 124 W.Va. 180.
Wis.—Dietz v. Goodman, 41 N.W.2d 208, 256 Wis. 370—Schabo v. Wolf-Pepper Transportation & Storage Co., 229 N.W. 549, 201 Wis. 190.

(2) Negotiations for settlement.
Ky.—Howard v. Adams, 246 S.W.2d 1002.

(3) Evidence of previous automobile accidents.
Cal.—Lowenthal v. Mortimer, 270 P. 2d 942, 125 C.A.2d 636.

(4) Evidence of receipt by plaintiff of benefits under Railroad Unemployment Insurance Act.
Colo.—Carr v. Boyd, 229 P.2d 659, 123 Colo. 350.

(5) Statement by plaintiff as to number of his children.
N.J.—Dudek v. Janesko, 193 A. 550, 118 N.J.Law 420, affirmed 199 A. 26, 120 N.J.Law 214.

(6) Indictment arising out of same accident.
Ill.—Johnson v. Stotts, 101 N.E.2d 880, 344 Ill.App. 614.

(7) In civil action for injuries resulting from automobile collision, it was reversible error to allow, over timely objection, introduction in evidence of records in criminal action against defendant predicated on same factual situation, in absence of proof of plea of guilty to criminal charge.
Okl.—Laughlin v. Lamar, 237 P.2d 1015, 205 Okl. 372.

Action by guest or passenger

(1) Admission of evidence held harmless.
Cal.—Peccolo v. City of Los Angeles, 66 P.2d 651, 8 C.2d 532.
Robertson v. Brown, 99 P.2d 288, 37 C.A.2d 189—Schubkegel v. Dunn, 87 P.2d 875, 31 C.A.2d 312.
Colo.—Campbell v. Trate, 149 P.2d 380, 112 Colo. 265.
Ga.—Mishoe v. Davis, 14 S.E.2d 187, 64 Ga.App. 700.
Ill.—Clarke v. Storchak, 52 N.E.2d 229, 384 Ill. 564, appeal dismissed 64 S.Ct. 1270, 322 U.S. 713, 88 L.Ed. 1555.
Green v. Keenan, 134 N.E.2d 115, 10 Ill.App.2d 53—Bishop v. Iden, 115 N.E.2d 906, 351 Ill.App. 568—Wilmoth v. Clutts, 81 N.E.2d 654, 335 Ill.App. 339—Shellabarger v. Nattier, 7 N.E.2d 365, 289 Ill.App. 473—Simmons v. Nichols, 5 N.E.2d 109, 287 Ill.App. 635.
Md.—Reed v. Humphreys, 122 A.2d 756, 210 Md. 178—Hazlitt v. Dewlow, 189 A. 213, 171 Md. 398.
Mass.—Woods v. Woods, 3 N.E.2d 837, 295 Mass. 238.
Mo.—Douglas v. Twenter, 259 S.W. 2d 353, 364 Mo. 71.
Meredith v. Terminal R. R Ass'n of St. Louis, App., 257 S.W 2d 221.
Neb.—Costello v. Hild, 40 N.W.2d 228, 152 Neb. 1.
N.H.—Watkins v. Holmes, 35 A.2d 395, 93 N.H. 53.
N.J.—Decker v. Everson, 187 A. 783, 14 N.J.Misc. 860.
N.Y.—Dawson v. Van Wely, 10 N.Y S.2d 709, 256 App.Div. 1028.
N.C.—Hunt v. Wooten, 76 S.E.2d 326, 238 N.C. 42.
Ohio.—Blackford v. Kaplan, 20 N.E 2d 522, 135 Ohio St. 268.
Melville v. Greyhound Corp., 133 N.E.2d 436, 99 Ohio App. 411.
Or.—Turner v. McCready, 222 P.2d 1010, 190 Or. 28.
Tex.—Wren v. Wilburn, Civ.App., 182 S.W.2d 1007, error refused—Barrington v. Duncan, Civ.App., 162 S.W.2d 1025, reversed on other grounds 169 S.W.2d 462, 140 Tex. 510.
Wis.—Buschman v. Olson, 30 N.W. 2d 252, 251 Wis. 635.

(2) Admission of evidence held prejudicial.
Ill.—Kooyumjian v. Stevens, 135 N. E.2d 146, 10 Ill.App.2d 378.
Ky.—Gream v. Miller, 243 S.W.2d 502—Tipton v. Estill Ice Co., 132 S.W.2d 347, 279 Ky. 793.
Miss.—Ellis v. Hubbard, 87 So.2d 251.
N.C.—Parker v. Belotta, 200 S.E. 887, 215 N.C. 87.
Pa.—Fitzgerald v. Penn Transit Co., 44 A.2d 288, 353 Pa. 43.

Other applications have been made in cases involving municipal corporations and school districts,[60] and in cases involving many phases of the

Tex.—Armstrong Tire & Rubber Co. v. Shearer, Civ.App., 290 S.W.2d 294, error refused no reversible error.
W.Va.—Reall v. Deiriggi, 34 S.E.2d 253, 127 W.Va. 662.
Wis.—Schwellenbach v. Wagner, 46 N.W.2d 852, 258 Wis. 526.

Automobile collision or liability insurance

(1) Admission of evidence held harmless.
Mass.—Sciaraffa v. Debler, 23 N.E. 2d 111, 304 Mass. 240.
Minn.—Gamble-Skogmo, Inc. v. St. Paul Mercury Indem. Co., 64 N.W. 2d 380.
Mo.—Barton v. Farmers Ins. Exchange, App., 255 S.W.2d 451—Henry v. Dubuque Fire & Marine Ins. Co., App., 185 S.W.2d 658—Chiles v. Metropolitan Life Ins. Co., 91 S.W.2d 164, 230 Mo.App. 350—Friedman v. Maryland Casualty Co., 71 S.W.2d 491, 228 Mo. App. 680.
N.J.—Car & General Ins. Corporation v. Davimos, 176 A. 320, 114 N.J.Law 192.
N.C.—Yadkin Valley Motor Co. v. Home Ins. Co. of New York, 16 S. E.2d 847, 220 N.C. 168—Rudd v. American Fidelity & Casualty Co., 164 S.E. 345, 202 N.C. 779.
Ohio.—Venditti v. Mucciaroni, 8 N. E.2d 460, 54 Ohio App. 513.
Okl.—Phoenix Ins. Co., Hartford, Conn. v. Diffie, 270 P.2d 634.
Tex.—American Automobile Ins. Co. v. Baker, Civ.App., 5 S.W.2d 252.

(2) Admission of evidence held prejudicial.
Ark.—Southern Farm Bureau Cas. Ins. Co. v. Anderson, 247 S.W.2d 966, 220 Ark. 373.

Hospital record held prejudicial.
N.Y.—Williams v. Alexander, 129 N. E.2d 417, 309 N.Y. 283.

Intoxication

(1) Admission of evidence held harmless.
Ill.—Thomas v. Mosheim, 102 N.E. 2d 555, 345 Ill.App. 184.
Ky.—Tucker v. Ragland-Potter Co., 148 S.W.2d 691, 285 Ky. 533.
Mo.—Purdy v. Moore, App., 224 S. W.2d 838.
Neb.—Zimmerman v. Lindblad, 48 N. W.2d 415, 154 Neb. 453.
R.I.—Brison v. Frechette, 79 A.2d 360, 78 R.I. 68.
Tex.—Davis v. United Gas Corp., Civ.App., 191 S.W.2d 685.
W.Va.—Workman v. Wynne, 94 S.E. 2d 665.

(2) Admission of evidence held prejudicial.
Ky.—Gream v. Miller, 243 S.W.2d 502—Tipton v. Estill Ice Co., 132 S.W.2d 347, 279 Ky. 793.
N.Y.—Geroeami v. Fancy Fruit & Produce Corp., 291 N.Y.S. 837, 249 App.Div. 221.
Or.—Christianson v. Muller, 239 P. 2d 835, 193 Or. 548.
Wash.—Lundberg v. Baumgartner, 106 P.2d 566, 5 Wash.2d 619.

Lack of driver's license

(1) In action for death of decedent who was struck by automobile operated by defendant, permitting plaintiff to show that defendant's driver's license had been revoked and that he did not have a license was prejudicial error.
Md.—Davis v. Gordon, 36 A.2d 699, 183 Md. 129, 156 A.L.R. 1109.

(2) In action for damages caused by automobile collision, error in admitting defendant driver's testimony on cross-examination that he had no driver's license at time of accident was not prejudicial to defendants, in view of other testimony abundantly supporting jury's finding of such driver's negligence.
Minn.—Mahowald v. Beckrich, 2 N. W.2d 569, 212 Minn. 78.

Police report

(1) Admission held harmless.
Ga.—Swanson v. Moore, 31 S.E.2d 463, 71 Ga.App. 573.
Md.—Cogswell v. Frazier, 39 A.2d 815, 183 Md. 654.

(2) Admission held prejudicial.
Ill.—Ruppaner v. Waue, 96 N.E.2d 847, 342 Ill.App. 451—Hoskins v. Zimmerman, 79 N.E.2d 531, 334 Ill. App. 395.

Rate of speed

(1) Admission held harmless.
Idaho.—Shrum v. Wakimoto, 215 P. 2d 991, 70 Idaho 252.
Iowa.—Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R. R., 60 N.W.2d 572, 244 Iowa 1369—Roushar v. Dixon, 2 N.W.2d 660, 231 Iowa 993.
Ky.—Roy v. Lyons, 272 S.W.2d 50—Raidt v. Blount, 171 S.W.2d 233, 294 Ky. 172.
Md.—Reid v. Humphreys, 122 A.2d 756, 210 Md. 178.
Minn.—Shuster v. Vecchi, 279 N.W. 841, 203 Minn. 76.
Mo.—Douglas v. Twenter, 259 S.W. 2d 353, 364 Mo. 71.
Reed v. Coleman, App., 167 S.W. 2d 125.
N.H.—Spear v. Penna, 27 A.2d 92, 92 N.H. 190.
Ohio.—Chowning v. Ajax Motor Service, 21 N.E.2d 1021, 60 Ohio App. 470.
Or.—Babcock v. Gray, 107 P.2d 846, 166 Or. 398.
Tex.—Hicks v. Brown, Civ.App., 128 S.W.2d 884, modified on other grounds 151 S.W.2d 790, 136 Tex. 399.

(2) Admission held prejudicial.
Ariz.—Mitchell v. Emblade, 298 P.2d 1034, 80 Ariz. 398, opinion adhered to 301 P.2d 1032, 81 Ariz. 121.
Wash.—Oyster v. Dye, 110 P.2d 863, 7 Wash.2d 674, 133 A.L.R. 720—Sweazey v. Valley Transport, 107 P.2d 567, 6 Wash.2d 324, 140 A.L.R. 1, opinion adhered to 111 P.2d 1010, 6 Wash.2d 324, 140 A.L.R. 20.

60. U.S.—Wabash Ry. Co. v. City of St. Louis, C.C.A.Mo., 64 F.2d 921, certiorari denied Wabash Ry. Co. v. City of St. Louis, Mo., 54 S. Ct. 88, 290 U.S. 668, 78 L.Ed. 577.
Ala.—Moore v. Pettus, 71 So.2d 814, 260 Ala. 616—U. S. Fidelity & Guaranty Co. v. State, for Use of City of Gadsden, 165 So. 71, 231 Ala. 375.
Ariz.—City of Tucson v. Apache Motors, 245 P.2d 255, 74 Ariz. 98—School Dist. No. 6 of Apache County v. Whiting, 79 P.2d 959, 52 Ariz. 207.
Ark.—M. W. Elkins & Co. v. Ashby, 112 S.W.2d 627, 195 Ark. 313.
Cal.—Perumean v. Wills, 67 P.2d 96, 8 C.2d 578.
Lewis v. Contra Costa County, 278 P.2d 756, 130 C.A.2d 176—Bigelow v. City of Ontario, 99 P.2d 298, 37 C.A.2d 198—Thor v. City and County of San Francisco, 34 P.2d 1056, 140 C.A. 64—Uttley v. City of Santa Ana, 28 P.2d 377, 136 C.A. 23.
Conn.—Blakeslee v. Board of Water Com'rs of City of Hartford, 183 A. 887, 121 Conn. 163—Blakeslee v. Board of Water Com'rs of City of Hartford, 183 A. 887, 121 Conn. 163—Sullivan v. Willis, 163 A. 407, 116 Conn. 9—Richmond v. City of Norwich, 115 A. 11, 96 Conn. 582.
Fla.—City of Lakeland v. Douglass, 197 So. 467, 143 Fla. 771.
Ga.—Griffith v. City of Hapeville, 185 S.E. 522, 182 Ga. 333.
City of Albany v. Burt, 76 S.E. 2d 413, 88 Ga.App. 144—Ginn v. City of Atlanta, 35 S.E.2d 777, 73 Ga.App. 162—Southland Coffee Co. v. City of Macon, 3 S.E.2d 739, 60 Ga.App. 253—City of Atlanta v. Gore, 169 S.E. 776, 47 Ga.App. 70.
Idaho.—Hooton v. City of Burley, 219 P.2d 651, 70 Idaho 369.
Ill.—Thompson v. City of Bushnell, 109 N.E.2d 346, 348 Ill.App. 395—Davis v. City of Chicago, 8 N.E.2d 378, 290 Ill.App. 244—Bolger v. City of Chicago, 198 Ill.App. 123.
Ind.—Town of Remington v. Hesler, 41 N.E.2d 657, 111 Ind.App. 404—City of Terre Haute v. Pigg, 27 N. E.2d 137, 108 Ind.App. 68.
Iowa.—Eaves v. City of Ottumwa, 38 N.W.2d 761, 240 Iowa 956, 11 A.L. R.2d 1164—Hill v. City of Winterset, 214 N.W. 592, 203 Iowa 1361,

law of negligence,[61] and, further, in cases dealing | with abatement of nuisance or recovery of damages

followed in Brooker v. City of Winterset, 215 N.W. 668—Travers v. City of Emmetsburg, 180 N.W. 753, 190 Iowa 717.

Kan.—Township of Fall River v. Pratt, 96 P.2d 664, 150 Kan. 890—Phillips v. City of Wichita, 294 P. 911, 132 Kan. 102.

Ky.—City of Corbin v. Payne, 156 S.W.2d 850, 288 Ky. 566—City of Newport v. Dorsel Co., 136 S.W.2d 11, 281 Ky. 372.

Md.—Smart v. Graham, 20 A.2d 574, 178 Md. 476—Mayor and Council of City of Cumberland v. Turney, 9 A.2d 561, 177 Md. 297—Jarvis v. Town of Berlin, 138 A. 7, 153 Md. 156.

Mass.—City of Lawrence v. Commissioners of Public Works, 67 N.E.2d 482, 319 Mass. 700—City of Lowell v. Massachusetts Bonding & Insurance Co., 47 N.E.2d 265, 313 Mass. 257, 146 A.L.R. 750—Kelley v. City of Boston, 6 N.E.2d 371, 296 Mass. 463.

Mich.—Cabana v. City of Hart, 42 N.W.2d 97, 327 Mich. 287, 19 A.L.R.2d 333.

Miss.—City of Meridian v. Sullivan, 45 So.2d 851, 289 Miss. 61—Streckfus Steamers v. Kiersky, 163 So. 830, 174 Miss. 125.

Mo.—Wells v. City of Jefferson, 132 S.W.2d 1006, 345 Mo. 239.

Rogers v. City of Deepwater, 219 S.W.2d 750, 240 Mo.App. 795—Bixler v. Special Road Dist. No. 1, Newton County, 156 S.W.2d 950, 236 Mo.App. 336—Johnston v. City of St. Louis, App., 138 S.W.2d 666—Page v. City of Fayette, 116 S.W.2d 578, 233 Mo.App. 37—Pulsifer v. City of Albany, 47 S.W.2d 233, 226 Mo.App. 529—Proctor v. City of Poplar Bluff, App., 184 S.W. 123.

Mont.—City of Baker v. Montana Petroleum Co., 44 P.2d 735, 99 Mont. 465.

N.J.—Cox v. Wall Tp., 120 A.2d 779, 39 N.J.Super. 243.

Harper v. City of East Orange, 143 A. 435, 105 N.J.Law 193.

N.C.—Rouse v. City of Kinston, 123 S.E. 482, 188 N.C. 1.

Ohio.—Lengyel v. Brandmiller, 40 N.E.2d 909, 139 Ohio St. 478.

Okl.—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10—City of Tulsa v. Macura, 100 P.2d 269, 186 Okl. 674.

Or.—Large v. City of St. Helens, 14 P.2d 628, 140 Or. 564.

Pa.—Scranton Electric Co. v. School Dist. of Borough of Avoca, 37 A.2d 725, 155 Pa.Super. 270.

S.C.—Holliday v. City of Greenville, 78 S.E.2d 279, 224 S.C. 207.

Tex.—City of Houston v. Anderson, Civ.App., 115 S.W.2d 732, error dismissed—City of Dallas v. Firestone Tire & Rubber Co., Civ.App., 66 S.W.2d 729—City of Waco v. Killen, Civ.App., 59 S.W.2d 940—City of Dallas v. Johnson, Civ.App., 54 S.W.2d 1024—City of Beaumont v. Dougherty, Civ.App., 298 S.W. 631, affirmed, Com.App., 9 S.W.2d 1030—City of Dallas v. Early, Civ.App., 281 S.W. 883—City of Waco v. Ballard, Civ.App., 277 S.W. 441.

Vt.—Spaulding v. City of Rutland, 3 A.2d 556, 110 Vt. 186—Town of Brattleboro v. Carpenter, 158 A. 73, 104 Vt. 158.

Wash.—Kennedy v. City of Everett, 103 P.2d 371, 4 Wash.2d 729.

W.Va.—Burdick v. City of Huntington, 57 S.E.2d 885, 133 W.Va. 724.

Wis.—Heiden v. City of Milwaukee, 275 N.W. 922, 226 Wis. 92, 114 A.L.R. 420.

43 C.J. p 1325 note 55—44 C.J. p 739 note 36.

Negligence see infra text and note 61.

Held prejudicial

Cal.—Reisman v. Los Angeles City School Dist., 267 P.2d 36, 123 C.A.2d 493—Sischo v. City of Los Banos, 80 P.2d 116, 26 C.A.2d 642, rehearing denied 80 P.2d 1020, 26 C.A.2d 642.

Fla.—City of Miami Beach v. Wolfe, 83 So.2d 774.

Ga.—City of Atlanta v. Atlanta Title & Trust Co., 164 S.E. 224, 45 Ga.App. 265.

Ill.—Kane v. City of Chicago, 64 N.E.2d 506, 392 Ill. 172.

Ky.—Board of Councilmen of City of Frankfort v. Ballew, 175 S.W.2d 16, 295 Ky. 614.

Mo.—Fosmire v. Kansas City, 260 S.W.2d 252.

N.Y.—Danielson v. City of New York, 131 N.Y.S.2d 136, 283 App.Div. 1019—Pierce v. Village of Ravena, 36 N.Y.S.2d 42, 264 App.Div. 457.

Saltzman v. City of New York, 78 N.Y.S.2d 407, 191 Misc. 724.

Okl.—Noble v. City of Bethany, 241 P.2d 401, 206 Okl. 122.

S.D.—Cole v. City of Britton, 260 N.W. 266, 63 S.D. 428.

Tenn.—Life & Cas. Ins. Co. of Tennessee v. City of Nashville, 137 S.W.2d 287, 175 Tenn. 688.

Wis.—Northern Assur. Co. v. City of Milwaukee, 277 N.W. 149, 227 Wis. 124.

61. Ala.—Central of Georgia Ry. Co. v. Grover, 118 So. 506, 218 Ala. 290.

Ark.—Coca-Cola Bottling Co. v. Davidson, 102 S.W.2d 833, 193 Ark. 825.

Cal.—Hatfield v. Levy Bros., 117 P.2d 841, 18 C.2d 798—Ashley v. Rivera, 29 P.2d 199, 220 C. 75.

Seedborg v. Lakewood Gardens Civic Ass'n, 233 P.2d 942, 105 C.A.2d 449—Eger v. May Dept. Stores, 261 P.2d 281, 120 C.A.2d 554—Peterson v. General Geophysical Co., App., 185 P.2d 56, hearing dismissed—Salas v. Whittington, 174 P.2d 886, 77 C.A.2d 90—Tomey v. Dyson, 172 P.2d 739, 76 C.A.2d 212—Atchley v. Finley, 133 P.2d 823, 57 C.A.2d 21—Armstrong v. Ford, 86 P.2d 385, 30 C.A.2d 347—Hughes v. Quackenbush, 37 P.2d 99, 1 C.A.2d 349—Simpson v. Steinhoff, 21 P.2d 960, 131 C.A. 660.

Colo.—Drake v. Slessor, 176 P. 301, 65 Colo. 292.

D.C.—Altemus v. Talmadge, 61 App.D.C. 148, 58 F.2d 874, certiorari denied 53 S.Ct. 16, 287 U.S. 614, 77 L.Ed. 533.

Fla.—Florida Power & Light Co. v. Brinson, 67 So.2d 407.

Ga.—McGee v. Bennett, 33 S.E.2d 577, 72 Ga.App. 271—Atlanta Enterprises v. James, 24 S.E.2d 130, 68 Ga.App. 773—Trammell v. Atlanta Coach Co., 181 S.W. 315, 51 Ga.App. 705—Great Atlantic & Pacific Tea Co. v. De Moran, 169 S.E. 247, 46 Ga.App. 764.

Ill.—Blue v. St. Clair Country Club, 134 N.E.2d 540, 10 Ill.App.2d 151—Schmidt v. Anderson, 21 N.E.2d 825, 301 Ill.App. 28—Blumb v. Getz, 13 N.E.2d 1019, 294 Ill.App. 432—Lill v. Murphy Door Bed Co. of Chicago, 8 N.E.2d 714, 290 Ill.App. 328—Steinberg v. Northern Illinois Telephone Co., 260 Ill.App. 538—Cornwell v. Leiter Bldg. Stores, 259 Ill.App. 460. See Johnson v. Chicago & A. R. Co., 202 Ill.App. 369—Anderson v. Decatur Ry. & Light Co., 200 Ill.App. 646.

Ind.—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163.

Indianapolis Power & Light Co. v. Moore, 5 N.E.2d 118, 103 Ind.App. 521—State Storage v. Scheper, 181 N.E. 385, 95 Ind.App. 157—Stamets v. Wilson, 164 N.E. 300, 89 Ind.App. 403.

Iowa.—Sutton v. Moreland, 242 N.W. 75, 214 Iowa 337—Legler v. Muscatine Clinic, 223 N.W. 405, 207 Iowa 720—Burke v. Town of Lawton, 223 N.W. 397, 207 Iowa 585.

Kan.—Corbett v. Kansas Gas & Electric Co., 27 P.2d 234, 138 Kan. 691—Whetstine v. Atchison, T. & S. F. Ry. Co., 7 P.2d 501, 134 Kan. 509—Ellis v. Kansas City Public Service Co., 292 P. 939, 131 Kan. 555.

Ky.—Niles v. Steiden Stores, 190 S.W.2d 876, 301 Ky. 80—Manual's Adm'r v. W. E. Caldwell & Co., 109 S.W.2d 635, 270 Ky. 285—Great Atlantic & Pacific Tea Co. v. Eiseman, 81 S.W.2d 900, 259 Ky. 103.

Me.—Johnson v. Bangor Ry. & Electric Co., 131 A. 1, 125 Me. 88.

Md.—Clautice v. Murphy, 26 A.2d 406, 180 Md. 558—Sline & Sons v. Hooper, 164 A. 548, 164 Md. 244—County Com'rs of Prince George's Coun-

ty v. Timmons, 133 A. 322, 150 Md. 511.

Mass.—Laskowski v. Manning, 91 N. E.2d 231, 325 Mass. 393—Flynn v. Growers Outlet, 80 N.E.2d 250, 307 Mass. 373—Leave v. Boston Elevated Ry. Co., 28 N.E.2d 483, 306 Mass. 391—Dunbar v. Ferrera Bros., 27 N.E.2d 675, 306 Mass. 90—McDonald v. Employers' Liability Assur. Corporation, 192 N.E. 608, 288 Mass. 170—Hendler v. Coffey, 179 N.E. 801, 278 Mass. 339—Harrington v. Alessi, 169 N.E. 495, 269 Mass. 433.

Mich.—Harrison v. Lorenz, 6 N.W.2d 554, 303 Mich. 382—Lee v. McCormick, 271 N.W. 579, 279 Mich. 120—Harker v. Bushouse, 236 N.W. 222, 254 Mich. 187.

Minn.—Manteuffel v. Theo. Hamm Brewing Co., 56 N.W.2d 310, 238 Minn. 140—Standafer v. First Nat. Bank of Minneapolis, 52 N.W.2d 718, 236 Minn. 123—Fjellman v. Weller, 7 N.W.2d 521, 213 Minn. 457—Gilbert v. Megears, 257 N.W. 73, 192 Minn. 495.

Mo.—Stallman v. Robinson, 260 S. W.2d 743—Johnson v. Terminal R. Ass'n of St. Louis, 191 S.W.2d 676, 354 Mo. 800—Orr v. Shell Oil Co., 177 S.W.2d 608, 352 Mo. 288—Pandjiris v. Oliver Cadillac Co., 98 S.W.2d 969, 339 Mo. 711—Hutchcraft v. Laclede Gaslight Co., 282 S.W. 38.

Grace v. Union Elec. Co., 200 S. W.2d 364, 239 Mo.App. 1210—Grab v. Davis Const. Co., 109 S.W.2d 882, 233 Mo.App. 819—Dewey v. Kline's, 86 S.W.2d 622, 229 Mo.App. 1079—Mick v. John R. Thompson Co., App., 77 S.W.2d 470—Wilson v. Frankel, App., 61 S.W.2d 363—Murphy v. Fidelity Nat. Bank & Trust Co., 49 S.W.2d 668, 226 Mo. App. 1181—Brashear v. Missouri Power & Light Co., 49 S.W.2d 639, 226 Mo.App. 1160—Shouse v. Dubinsky, App., 38 S.W.2d 530.

Mont.—Chancellor v. Hines Motor Supply Co., 69 P.2d 764, 104 Mont. 603.

N.J.—Scott v. Hoboken Bank for Sav. in City of Hoboken, 19 A.2d 327, 126 N.J.Law 294, affirmed Scott v. Hoboken Bank for Savings, 23 A.2d 399, 127 N.J.Law 564—Chmiel v. Yatsko, 13 A.2d 219, 124 N.J. Law 508—Jaeger v. Elizabethtown Consolidated Gas Co., 11 A.2d 746, 124 N.J.Law 420—Mimnagh v. Falato, 164 A. 393, 110 N.J.Law 266.

Sutton v. Lerner Stores Corporation, 162 A. 645, 10 N.J.Misc. 1126.

N.M.—Mares v. New Mexico Public Service Co., 82 P.2d 257, 42 N.M. 473.

N.Y.—Torelli v. Eastman Kodak Co., 23 N.Y.S.2d 895, 260 App.Div. 553—Green v. Ontario County Agricultural Soc., 15 N.Y.S.2d 669, 258 App. Div. 843—Kaufman v. John Abramson & Co., 288 N.Y.S. 305, 248 App. Div. 628—Halvorsen v. W. T. Mitchell Trucking Corporation, 272 N.Y.S. 881, 242 App.Div. 686.

N.C.—Webb v. Statesville Theatre Corp., 38 S.E.2d 84, 226 N.C. 342—Sparks v. Holland, 184 S.E. 552, 209 N.C. 705.

N.D.—Braun v. Martin, 293 N.W. 317, 70 N.D. 216—Olson v. Wetzstein, 225 N.W. 459, 58 N.D. 263.

Ohio.—Cincinnati & Suburban Bell Tel. Co. v. City of Cincinnati, 85 N.E.2d 393, 84 Ohio App. 521—Dodson v. New England Trust Co., 71 N.E.2d 503, 78 Ohio App. 503—Witham v. Kroger Grocery & Baking Co., 1 N.E.2d 949, 51 Ohio App. 499.

Okl.—Matofsky v. Bishop's Restaurants, Inc., 312 P.2d 446—Independent Eastern Torpedo Co. v. Gage, 240 P.2d 1119, 206 Okl. 108—Montgomery Ward & Co. v. Curtis, 188 P.2d 199, 199 Okl. 525.

Or.—Saunders v. A. M. Williams & Co., 62 P.2d 260, 155 Or. 1—Personius v. Asbury Transp. Co. of Oregon, 53 P.2d 1065, 152 Or. 286—Mitchell v. Ausplund, 47 P.2d 256, 150 Or. 572—Cobb v. Spokane, P. & S. Ry. Co., 44 P.2d 731, 150 Or. 226—Benson v. Birch, 10 P.2d 1050, 139 Or. 459—Kelley v. Stout Lumber Co., 263 P. 881, 123 Or. 647.

Pa.—Sebok v. Pennsylvania Edison Co., 1 A.2d 680, 331 Pa. 524—MacDougall v. Pennsylvania Power & Light Co., 166 A. 589, 311 Pa. 387—Herb v. Hallowell, 154 A. 582, 304 Pa. 128, 85 A.L.R. 1004.

McAllister v. Pennsylvania R. Co., 182 A. 738, 121 Pa.Super. 131—Yordy v. Northumberland County, 158 A. 607, 104 Pa.Super. 237.

R.I.—Roy v. Weiner, 38 A.2d 150, 70 R.I. 238—Carrara v. Noonan, 31 A. 2d 424, 69 R.I. 111—Hayman v. Union Corp., 17 A.2d 30, 66 R.I. 11—Roy v. United Electric Rys. Co., 157 A. 428.

S.C.—Bradley v. Fowler, 42 S.E.2d 234, 210 S.C. 231—Hill v. Carolina Power & Light Co., 28 S.E.2d 545, 204 S.C. 83.

Tenn.—Memphis Commercial Appeal Co. v. Landis, 126 S.W.2d 318, 174 Tenn. 424.

Illinois Cent. R. R. v. Exum, App., 296 S.W.2d 372—Fleshman v. Trolinger, 74 S.W.2d 1069, 18 Tenn. App. 208.

Tex.—Roosth & Genecov Production Co. v. White, Civ.App., 281 S.W.2d 333, error refused no reversible error—Jones v. Elliott, Civ.App., 259 S.W.2d 288, error refused 263 S.W. 2d 250, 153 Tex. 68—Brewer v. Dallas Ry. & Terminal Co., Civ.App., 247 S.W.2d 435—Gray County Gas Co. v. Oldham, Civ.App., 238 S.W. 2d 596—Dofner v. Branard, Civ. App., 236 S.W.2d 544, error refused no reversible error—Houston Lighting & Power Co. v. Taber, Civ.App., 221 S.W.2d 339, error refused no reversible error—Loyd v. Herrington, Civ.App., 178 S.W. 2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135—Germann v. Kaufman's Inc., Civ. App., 155 S.W.2d 969, error refused—Pound v. Popular Dry Goods Co., Civ.App., 139 S.W.2d 341—Desdemona Gasoline Co. of Texas v. Garrett, Civ.App., 90 S.W. 2d 636, error dismissed—Gifford-Hill & Co. v. Henderson, Civ.App., 81 S.W.2d 274—Independent-Eastern Torpedo Co. v. Herrington, Civ.App., 59 S.W.2d 1108—Independent-Eastern Torpedo Co. v. Herrington, Civ.App., 59 S.W.2d 222—Harris v. Sadler, Civ.App., 55 S.W.2d 173—Houston Electric Co. v. Potter, Civ.App., 51 S.W.2d 754—Cabaniss v. Grayburg Oil Co., Civ.App., 50 S.W.2d 437—Dallas Hotel Co. v. Davidson, Civ.App., 12 S.W.2d 633, reversed on other grounds Dallas Hotel Co. v. Davison, Com.App., 23 S.W.2d 708—U. S. Torpedo Co. v. Liner, Civ.App., 300 S.W. 641, reversed on other grounds Liner v. U. S. Torpedo Co., Com.App., 12 S.W.2d 552, reheard 16 S.W.2d 519.

Vt.—Ackerman v. Kogut, 84 A.2d 131, 117 Vt. 40—Emerson v. Hickens, 164 A. 381, 105 Vt. 197—Cole v. North Danville Co-op. Creamery Ass'n, 151 A. 568, 103 Vt. 32.

Wash.—Haugen v. First Nat. Bank, 244 P. 574, 138 Wash. 370—Perry Bros. v. Diamond Ice & Storage Co., 158 P. 1008, 92 Wash. 105.

W.Va.—Stenger v. Hope Natural Gas Co., 80 S.E.2d 889, 139 W.Va. 549.

Wis.—Zimmers v. St. Sebastian's Congregation, 46 N.W.2d 820, 258 Wis. 496—Vaningan v. Mueller, 243 N.W. 424, 208 Wis. 542—Vaningan v. Mueller, 243 N.W. 419, 208 Wis. 527—Bielke v. Knaack, 242 N.W. 176, 207 Wis. 490—Bugajski v. Milwaukee Western Fuel Co., 157 N.W. 521, 163 Wis. 116.

45 C.J. p. 1371 note 8.

History of medical case

Not every reference, in personal injury action, to history of plaintiff's medical case by physician, who is a witness, requires reversal of judgment for plaintiff.

Kan.—Cain v. Steely, 252 P.2d 909, 173 Kan. 866.

Held prejudicial

(1) Generally.

U.S.—Southern Pac. Co. v. Ralston, C.C.A.Utah, 67 F.2d 958, adhering to 62 F.2d 1026.

Quinette v. Pullman Co., Okl., 229 F. 333, 143 C.C.A. 453, rehearing denied 233 F. 980, 147 C.C.A. 654.

Ala.—Atlantic Pacific Stages v. Yandle, 140 So. 603, 224 Ala. 481.

on account of nuisance,[61.5] officers,[61.10] partition,[62] partnership,[63] patents,[63.5] physicians and surgeons,[64] quieting title, or removing cloud on

Ariz.—Montgomery Ward & Co. v. Wright, 220 P.2d 225, 70 Ariz. 319.
Conn.—Esposito v. Hospital of St. Raphael, 111 A.2d 545, 142 Conn. 95—Wade v. Yale University, 80 A.2d 545, 129 Conn. 615.
D.C.—District of Columbia v. Chessin, 73 F.2d 663, 64 App.D.C. 23.
Ga.—Rich's Inc., v. Empire Gold Buying Service, 25 S.E.2d 88, 69 Ga.App. 279.
Ill.—Robinson v. Peoples Gas Light & Coke Co., 64 N.E.2d 556, 327 Ill. App. 412—Gaydos v. Peterson, 20 N.E.2d 837, 300 Ill.App. 219.
Kan.—Chapman v. Gas Service Co., 190 P.2d 367, 164 Kan. 359—Holmes v. Miller Amusement Co., 107 P.2d 736, 152 Kan. 785.
Ky.—Sohio Petroleum Co. v. Duke, 232 S.W.2d 348, 313 Ky. 498—Kentucky & West Virginia Power Co. v. Stacy, 164 S.W.2d 537, 291 Ky. 325—Moorman Mfg. Co. v. Harris, 134 S.W.2d 936, 280 Ky. 845.
Mich.—Sykes v. Village of Portland, 159 N.W. 325, 193 Mich. 86.
Mo.—Bequette v. National Lead Co., App., 31 S.W.2d 575.
N.H.—Palmer v. Edgerly, 181 A. 419, 87 N.H. 391.
N.J.—Hansson v. Catalytic Const. Co., 127 A.2d 431, 43 N.J.Super. 23.
N.Y.—Hovell v. The Evergreens, 242 N.Y. 216, 151 N.E. 212.
Katona v. Jennings, 157 N.Y.S.2d 773, 3 A.D.2d 642—Grenadier v. Surface Transp. Corp. of N. Y., 66 N.Y.S.2d 130, 271 App.Div. 460—Crescenti v. Brooklyn Hospital, 62 N.Y.S.2d 243, 270 App.Div. 951—Hadges v. New York Rapid Transit Corp., 18 N.Y.S.2d 304, 259 App. Div. 154.
N.C.—Fox v. Asheville Army Store, 5 S.E.2d 436, 216 N.C. 468.
Ohio.—Bosjnak v. Superior Sheet Steel Co., 62 N.E.2d 305, 145 Ohio St. 538—New York Cent. R. Co. v. Stevens, 185 N.E. 542, 126 Ohio St. 395, 87 A.L.R. 884.
Pearlstein v. A. M. McGregor Home, 73 N.E.2d 106, 79 Ohio App. 526—Quiel v. Wilson, App., 34 N. E.2d 590.
Okl.—McGrath v. Furr, 293 P.2d 609—Meadors v. Huffman, 127 P.2d 806, 191 Okl. 204.
Or.—Peters v. Hockley, 53 P.2d 1059, 152 Or. 434.
Pa.—Ingram v. City of Pittsburgh, 29 A.2d 32, 346 Pa. 45.
R.I.—Kane v. Burrillville Racing Ass'n, 54 A.2d 401, 73 R.I. 264.
S.C.—Hobbs v. Carolina Coca-Cola Bottling Co., 10 S.E.2d 25, 194 S. C. 543.
Tex.—Ragsdale v. Lindsey, Civ.App., 254 S.W.2d 843, error refused no reversible error—U. S. Torpedo Co. v. Liner, Civ.App., 300 S.W. 641, reversed on other grounds Liner v. U. S. Torpedo Co., Com.App., 12 S. W.2d 552, reheard 16 S.W.2d 519.
Utah.—Simmons v. Wilkin, 15 P.2d 321, 80 Utah 362.
Wash.—French v. Chase, 297 P.2d 235, 48 Wash.2d 825.
W.Va.—Stenger v. Hope Natural Gas Co., 80 S.E.2d 889, 139 W.Va. 549—Coates v. Montgomery Ward & Co., 57 S.E.2d 265, 133 W.Va. 455—Cooper v. Anheuser Busch, Inc., 13 S.E.2d 276, 123 W.Va. 63.
Wis.—Markowitz v. Milwaukee Electric Railway & Light Co., 284 N.W. 31, 230 Wis. 312.
(2) Evidence of prior accidents.
N.Y.—Sass v. Brooklyn & Queens Transit Corp., 24 N.Y.S.2d 663.

(3) Evidence as to precautions taken by defendant after accident.
N.Y.—Ambrosino v. Cie De Navagacao Lloyd Brasileiro, 47 N.Y.S.2d 61, 267 App.Div. 910, reargument denied 48 N.Y.S.2d 439, 267 App. Div. 961.

61.5 Ga.—Southland Coffee Co. v. City of Macon, 3 S.E.2d 739, 60 Ga. App. 253.
Ill.—Kugel v. Village of Brookfield, 54 N.E.2d 92, 322 Ill.App. 349.
Ky.—Board of Councilmen of City of Frankfort v. Ballew, 175 S.W.2d 16, 295 Ky. 614.
Minn.—Jones v. Al Johnson Const. Co., 300 N.W. 447, 211 Minn. 123.
N.C.—Andrews v. Andrews, 92 S.E. 2d 180, 243 N.C. 779.
Okl.—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10.

Held prejudicial
N.J.—Waggener v. Fidelity Union Trust Co., 21 A.2d 668, 127 N.J. Law 146.
N.Y.—Leonard v. Home Owners Loan Corp., 60 N.Y.S.2d 78, 270 App.Div. 363.

61.10 Va.—Commonwealth ex rel. Davis v. Malbon, 78 S.E.2d 683, 195 Va. 368.

62. N.C.—Peel v. Corey, 144 S.E. 559, 196 N.C. 79.
R.I.—Kenyon v. Kenyon, 101 A.2d 477, 81 R.I. 223.
Tex.—Peters v. Brookshire, Civ.App., 195 S.W.2d 181, error refused no reversible error—Buse v. Buse, Civ.App., 287 S.W. 141.
Vt.—Aldrich v. Stevers, 61 A.2d 551, 115 Vt. 379.
47 C.J. p 596 note 22.

63. Ala.—Crum v. Crum, 43 So.2d 392, 255 Ala. 163.
Ga.—F. E. Nellis & Co. v. Green & Stallworth, 137 S.E. 843, 36 Ga. App. 684.
Ky.—Hignite v. Nantz, 71 S.W.2d 442, 254 Ky. 214.
Minn.—Hart Publications v. Kaplan, 37 N.W.2d 814, 228 Minn. 512.
Miss.—Crosby v. Keen, 28 So.2d 322, 200 Miss. 590.
N.Y.—Thayer v. Schley, 121 N.Y.S. 1064, 137 App.Div. 166.
N.C.—Thompson v. Davis, 28 S.E.2d 556, 223 N.C. 792—Wingler v. Miller, 25 S.E.2d 160, 223 N.C. 15.
Okl.—Gilliland v. Snedden, 159 P.2d 734, 195 Okl. 601.
Or.—Lee v. Ellis, 253 P. 873, 121 Or. 259.
Tex.—Peters v. Brookshire, Civ.App., 195 S.W.2d 181, error refused no reversible error—Shaw v. Porter, Civ.App., 190 S.W.2d 396, refused for want of merit—Roberts v. Burleson, Civ.App., 284 S.W. 632.
Wis.—Kidder v. Kidder, 268 N.W. 221, 222 Wis. 183.

Held prejudicial
Ga.—Harper v. Sutherland, 162 S.E. 412, 44 Ga.App. 594.
N.Y.—Sangster v. Lefrak, 82 N.Y.S. 2d 636, 274 App.Div. 898, appeal denied 84 N.Y.S.2d 916, 274 App. Div. 928.

63.5 Mass.—Morin v. Clark, 6 N.E. 2d 830, 296 Mass. 479.

64. Ala.—Torrance v. Wells, 122 So. 322, 219 Ala. 384.
Cal.—Division of Labor Enforcement, Dept. of Indus. Relations v. Gifford, 290 P.2d 281, 137 C.A.2d 259—Gist v. French, 288 P.2d 1003, 136 C.A.2d 247.
Ga.—Hughes v. Weaver, 148 S.E. 12, 39 Ga.App. 597.
Ind.—Iterman v. Baker, 15 N.E.2d 365, 214 Ind. 308.
Md.—State, for Use of Kalives, v. Baltimore Eye, Ear and Throat Hospital, 10 A.2d 612, 177 Md. 517.
Mass.—Coburn v. Moore, 68 N.E.2d 5, 320 Mass. 116.
N.C.—Ross v. Brenizer, 138 S.E. 135, 193 N.C. 798.
Ohio.—Larimore v. Brown, App., 57 N.E.2d 313.
Okl.—Johnson v. Gaines, 96 P.2d 68, 186 Okl. 91.
Utah.—Baker v. Wycoff, 79 P.2d 77, 95 Utah 199.
Wash.—Rae v. Nelson, 277 P. 75, 152 Wash. 10.
Wyo.—Miracle v. Barker, 136 P.2d 678, 59 Wyo. 92—McCoy v. Clegg, 257 P. 784, 36 Wyo. 473.
48 C.J. p 1156 note 29 [a].
Negligence see supra text and note 61.

Held prejudicial
Ala.—Moore v. Holroyd, 122 So. 349, 219 Ala. 392.
Cal.—Bowers v. Olch, 260 P.2d 997, 120 C.A.2d 108.
Mo.—Reeves v. Luts, 177 S.W. 764, 191 Mo.App. 550.

title,[65] quo warranto,[65.5] railroads,[66] recovery of | possession, or establishment of ownership, of prop-

65. Cal.—Frazure v. Fitzpatrick, 136 P.2d 566, 21 C.2d 851—Stromerson v. Averill, 133 P.2d 617, reheard 141 P.2d 732, 22 Cal.2d 808.
Singh v. Banes, 277 P.2d 89, 129 C.A.2d 395—Ortiz v. Pacific States Properties, 215 P.2d 514, 96 C.A.2d 34—Williamson v. Kinney, 125 P. 2d 920, 52 C.A.2d 98—Johnston v. Johnston, 119 P.2d 158, 48 C.A.2d 23—Durrell v. Bacon, 5 P.2d 961, 119 C.A. 31—Penn v. Dyba, 1 P.2d 461, 115 C.A. 67—Dockstader v. First Nat. Bank, 285 P. 715, 104 C. A. 169.
Idaho.—Gould v. Frazier, 285 P. 673, 48 Idaho 798.
Idaho.—Selph v. Illinois Pipe Line, 190 N.E. 191, 206 Ind. 490.
Ind.—Heeter v. Hardy, 76 N.E.2d 590, 118 Ind.App. 256—Seaver v. Vonderahe, 127 N.E. 206, 74 Ind.App. 631.
Kan.—Hoult v. Rich, 170 P.2d 834, 161 Kan. 587.
Miss.—Henry v. Toney, 64 So.2d 904, 217 Miss. 716—Rosenbaum v. Bohannon, 36 So.2d 798, 204 Miss. 9.
N.C.—Combs v. Porter, 58 S.E.2d 100, 231 N.C. 585.
Okl.—Wade v. Burkhart, 167 P.2d 357, 196 Okl. 615—Meyers v. Lackey, 153 P.2d 1020, 194 Okl. 586.
Utah.—Merrill v. Bailey & Sons Co., 106 P.2d 255, 99 Utah 323.
Wash.—Adams v. Mignon, 84 P.2d 1016, 197 Wash. 293.
W.Va.—Farley v. Farley, 68 S.E.2d 353, 136 W.Va. 598.
Held prejudicial
Cal.—Balkins v. Los Angeles County, 183 P.2d 137, 81 C.A.2d 42.

65.5 Ga.—Cloud v. Maxey, 23 S.E.2d 668, 195 Ga. 90.

66. Ala.—Louisville & Nashville R. Co. v. Sullivan, 13 So.2d 877, 244 Ala. 485—Louisville & N. R. Co. v. Davis, 181 So. 695, 236 Ala. 191—Southern R. Co. v. Montgomery, 157 So. 854, 229 Ala. 456.
St. Louis-San Francisco Ry. Co. v. Poor, 104 So. 343, 20 Ala.App. 582.
Ark.—Missouri Pac. R. Co. v. Shell, 185 S.W.2d 81, 208 Ark. 70.
Cal.—Barrett v. Southern Pac. Co., 277 P. 481, 207 C. 154.
Jensen v. Southern Pac. Co., 276 P.2d 703, 129 C.A.2d 67—Hoffart v. Southern Pac. Co., 92 P.2d 436, 33 C.A.2d 591—Hoffman v. Southern Pac. Co., 281 P. 681, 101 C.A. 218.
Fla.—Atlantic Coast Line R. Co. v. Saffold, 178 So. 288, 130 Fla. 598—Atlantic Coast Line R. Co. v. Lamphear, 146 So. 847, 109 Fla. 25.
Ga.—Atlantic Coast Line R. Co. v. Godard, 92 S.E.2d 626, 93 Ga.App. 671—Atlantic Coast Line R. Co. v. Sellars, 79 S.E.2d 35, 89 Ga.App. 293—Fowler v. Western & A. R. R., 42 S.E.2d 499, 75 Ga.App. 156—Georgia Railroad & Banking Co. v. Lokey, 25 S.E.2d 921, 69 Ga.App. 403—Southern Ry. Co. v. Leonard, 199 S.E. 433, 58 Ga.App. 574—Gay v. Smith, 181 S.E. 129, 51 Ga.App. 615—Southern Ry. Co. v. Thacker, 179 S.E. 225, 50 Ga.App. 706.
Idaho.—Girany v. Oregon Short Line R. Co., 58 P.2d 841, 56 Idaho 740.
Ill.—Pridmore v. Chicago, R. I. & P. Ry. Co., 114 N.E. 176, 275 Ill. 386.
Ind.—Chicago, S. S. & S. B. R. Co. v. Luca, 170 N.E. 564, 91 Ind.App. 521—Cleveland, C., C. & St. L. Ry. Co. v. Woodbury Glass Co., 120 N.E. 426, 80 Ind.App. 298.
Iowa.—Coonley v. Lowden, 12 N.W. 2d 870, 234 Iowa 731—Ceretti v. Des Moines Ry. Co., 293 N.W. 45, 228 Iowa 548—McAdams v. Davis, 202 N.W. 515, 200 Iowa 204.
Ky.—Louisville & N. R. Co. v. Thomas, 183 S.W.2d 19, 298 Ky. 494—Chesapeake & O. Ry. Co. v. Pittman, 166 S.W.2d 443, 292 Ky. 331—Illinois Cent. R. Co. v. Applegate's Adm'x, 105 S.W.2d 153, 268 Ky. 458—Colston's Adm'r v. Cincinnati, N. O. & T. P. Ry. Co., 69 S.W.2d 1072, 253 Ky. 512—Chicago, St. L. & N. O. R. Co. v. Adkins, 56 S.W.2d 969, 247 Ky. 241—Louisville & N. R. Co. v. Curtis' Adm'r, 25 S.W.2d 398, 233 Ky. 276—Louisville & N. R. Co. v. Muncey, 17 S. W.2d 422, 229 Ky. 538—Louisville & N. R. Co. v. Deaton, 294 S.W. 149, 219 Ky. 715—Ohio & K. Ry. Co. v. Whitt, 202 S.W. 899, 180 Ky. 418—Chesapeake & O. Ry. Co. v. Meek, 185 S.W. 160, 169 Ky. 775.
Md.—State, for Use of Emerson, v. Poe, 190 A. 231, 171 Md. 584.
Mass.—Kelly v. Boston & M. R. R., 66 N.E.2d 807, 319 Mass. 603.
Mich.—Adams v. Grand Trunk Western Ry. Co., 215 N.W. 375, 240 Mich. 300.
Minn.—Thompson v. Byram, 228 N. W. 546, 179 Minn. 67.
Miss.—Smith v. Gulf, M. & N. R. Co., 129 So. 599, 158 Miss. 188.
Mo.—Davis v. Illinois Terminal R. Co., 291 S.W.2d 891—Gould v. Chicago, B. & Q. R. Co., 290 S.W. 135, 315 Mo. 713.
Meredith v. Terminal R. R. Ass'n of St. Louis, App., 257 S.W. 221—Hillhouse v. Thompson, App., 240 S.W.2d 224, affirmed 243 S.W.2d 531, 362 Mo. 700—Taylor v. Alton R. Co., App., 148 S.W.2d 806—Chapman v. Terminal R. R. Ass'n of St. Louis, App., 137 S.W.2d 612—Green v. Terminal R. Ass'n of St. Louis, App., 135 S.W.2d 652—Anderson v. Chicago Great Western R. Co., App., 71 S.W.2d 508—Raindge v. Wabash Ry. Co., App., 206 S.W. 395.
N.H.—Fissette v. Boston & Maine R. R., 96 A.2d 303, 98 N.H. 136—McCarthy v. Boston & M. R. R., 27 A.2d 97, 92 N.H. 149—Smith v. Boston & M. R. R., 190 A. 697, 88 N.H. 430, reheard 191 A. 833, 88 N.H. 430.
N.J.—Gibson v. Pennsylvania R. Co., 82 A.2d 635, 14 N.J.Super. 425.
Ohio.—St. Paul Fire & Marine Ins. Co. v. Baltimore & O. R. Co., 195 N.E. 861, 129 Ohio St. 401.
Toledo Terminal R. Co. v. Mauk, 9 Ohio App. 438.
S.C.—McElveen v. Atlantic Coast Line R. Co., 43 S.E.2d 485, 210 S.C. 556—Cook v. Atlantic Coast Line R. Co., 13 S.E.2d 1, 196 S.C. 230, 133 A.L.R. 1144—Collins v. Atlantic Coast Line R. Co., 190 S.E. 817, 183 S.C. 284—Pinckney v. Atlantic Coast Line R. Co., 145 S.E. 135, 147 S.C. 227—White v. Southern Ry. Co., 140 S.E. 560, 142 S.C. 284, 57 A.L.R. 634—Southern Pac. R. Co. v. Day, 138 S.E. 870, 140 S.C. 388—Harsey v. Southern Ry. Co., 115 S.E. 324, 122 S.C. 347.
Tenn.—Illinois Cent. R. R. v. Exum, App., 296 S.W.2d 372—Southern Ry. Co. v. Jackson, 129 S.W.2d 1094, 23 Tenn.App. 173—Cincinnati, N. O. & T. P. Ry. Co. v. Crain, 64 S.W.2d 531, 16 Tenn.App. 356.
Tex.—Houston E. & W. T. Ry. Co. v. Browder, Com.App., 283 S.W. 154.
Texas & N. O. R. Co. v. Darton, Civ.App., 241 S.W.2d 181, error refused—Texas & N. O. R. Co. v. H. Rouw Co., Civ.App., 225 S. W.2d 425, error dismissed—Fort Worth & D. C. Ry. Co. v. Kiel, Civ. App., 195 S.W.2d 405, error refused no reversible error—Texas & P. Ry. Co. v. Duncan, Civ.App., 193 S.W.2d 431—Texas & P. Ry. Co. v. Edwards, Civ.App., 21 S.W.2d 754, reversed on other grounds, Com. App., 36 S.W.2d 477—Gulf, C. & S. F. Ry. Co. v. Tarver, Steele & Co., Civ.App., 295 S.W. 320—Goldforb v. Gulf, C. & S. F. Ry. Co., Civ.App., 243 S.W. 707—Rhodes v. Panhandle & S. F. Ry. Co., Civ. App., 243 S.W. 516—Houston B. & T. Ry. Co. v. Lewis, Civ.App., 176 S.W. 68.
Utah.—Smith v. Utah-Idaho Cent. R. Co., 209 P. 235, 60 Utah 563.
Vt.—Webster v. Canadian Pac. Ry. Co., 156 A. 524, 103 Vt. 460.
Va.—Southern Ry. Co. v. Whetzel, 167 S.E. 427, 159 Va. 796—Virginian Ry. Co. v. London, 139 S. E. 328, 148 Va. 699—Chesapeake & O. Ry. Co. v. May, 92 S.E. 801, 120 Va. 790.
W.Va.—Doman v. Baltimore & O. R. Co., 22 S.E.2d 703, 125 W.Va. 8.
51 C.J. p 1253 note 91—52 C.J. p 154 note 85, p 535 note 44, p 756 note 97.
Carriers generally see supra text and note 33.

erty,[67] reformation of instruments,[67.5] replevin,[68] | and sales.[69]

Negligence see supra text and note 61.

Speed

Pa.—Foley v. Reading Co., 35 A.2d 315, 348 Pa. 485.

Held prejudicial

Ala.—Alabama City, G. & A. Ry. Co. v. Avenue Bank & Trust Co., 87 So. 195, 204 Ala. 602—Alabama City, G. & A. Ry. Co. v. Kyle, 87 So. 191, 204 Ala. 597.

Fla.—Seaboard Air Line R. Co. v. Strickland, 88 So.2d 519—Trabulsy v. Loftin, 76 So.2d 143—Powell v. Horne, 5 So.2d 451, 149 Fla. 240—Florida East Coast Ry. Co. v. Young, 140 So. 467, 104 Fla. 541.

Ill.—Willett v. Baltimore & O. S. W. R. Co., 1 N.E.2d 748, 284 Ill. App. 307.

Ky.—Cincinnati, N. O. & T. P. Ry. Co. v. Hare's Adm'x, 178 S.W.2d 835, 297 Ky. 5—Chesapeake & O. Ry. Co. v. Coates, 113 S.W.2d 28, 271 Ky. 736.

Miss.—Yazoo & M. R. Co. v. Pittman, 153 So. 382, 169 Miss. 667.

Mo.—Albertson v. Wabash R. Co., 253 S.W.2d 184, 363 Mo. 696—Chawkley v. Wabash Ry. Co., 297 S.W. 20, 317 Mo. 782.

N.H.—Stocker v. Boston & M. R. R., 143 A. 68, 83 N.H. 801.

Ohio.—Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483.

Pa.—Anstine v. Pennsylvania R. Co., 20 A.2d 774, 342 Pa. 423.

S.D.—Kraushaar v. Great Northern Ry. Co., 240 N.W. 348, 59 S.D. 416.

67. Ark.—Jones v. Fowler, 285 S.W. 363, 171 Ark. 594.

Cal.—Newell v. Brawner, 295 P.2d 460, 140 C.A.2d 523.

Ga.—Hobbs v. Houston, 24 S.E.2d 884, 195 Ga. 571—Holton v. Mercer, 23 S.E.2d 166, 195 Ga. 47—Fountain v. McCallum, 21 S.E.2d 610, 194 Ga. 269—Hortman v. Vissage, 19 S.E.2d 523, 193 Ga. 596—Tucker v. Talmadge, 198 S.E. 726, 186 Ga. 798—Sikes v. Mutual Ben. Life Ins. Co., 187 S.E. 61, 182 Ga. 858—Widincamp v. Brigman, 143 S.E. 149, 166 Ga. 209—Henderson v. James, 139 S.E. 34, 164 Ga. 575—National Bauxite Co. v. Republic Min. & Mfg. Co., 91 S.E. 781, 146 Ga. 530—Hamilton v. Duvall, 83 S.E. 103, 142 Ga. 432.

Ind.—Conrad v. Parks, 44 N.E.2d 503, 112 Ind.App. 301.

Mich.—Underwood v. Slaght, 182 N. W. 106, 213 Mich. 391.

Mo.—Fisher v. Lape, App., 176 S.W. 2d 871.

Nev.—Kitselman v. Rautzahn, 232 P. 2d 1008, 68 Nev. 342.

N.Y.—McKenna v. Williamsburgh Sav. Bank, 16 N.Y.S.2d 206, 258 App.Div. 894, reargument denied In re Lamerdin's Estate, 17 N.Y. S.2d 480, 258 App.Div. 907.

N.C.—Gibbs v. Armstrong, 63 S.E.2d 551, 233 N.C. 279—Combs v. Porter, 58 S.E.2d 100, 231 N.C. 585—Wilson v. Williams, 2 S.E.2d 19, 215 N.C. 407.

Ohio.—Grant v. Herr, App., 57 N.E. 2d 263.

S.D.—Security Nat. Bank of Sisseton, S. D., v. Crawford, 210 N.W. 982, 50 S.D. 561.

Tex.—Salazar v. Garcia, Civ.App., 232 S.W.2d 685, error refused—Pasha v. Schell, Civ.App., 229 S.W.2d 818, error refused—Hearon v. Jackson, Civ.App., 109 S.W.2d 230, error dismissed—Thomas v. Murphy, Civ. App., 91 S.W.2d 810—Calvin v. Olschewske, Civ.App., 62 S.W.2d 574.

Wash.—Johnson v. Chittenden, 264 P. 425, 146 Wash. 645.

Adverse possession

Ky.—Gillis v. Martin, 145 S.W.2d 1051, 284 Ky. 714.

Tex.—Thomas v. Murphy, Civ.App., 91 S.W.2d 810.

Compelling conveyance

Mass.—Bouchard v. Bouchard, 48 N. E.2d 161, 131 Mass. 531.

Held prejudicial

N.Y.—Moore v. Dennis, 36 N.Y.S.2d 167, 264 App.Div. 604.

Tex.—Segal v. Saunders, Civ.App., 220 S.W.2d 339, error refused no reversible error—Coe v. Widener, Civ.App., 122 S.W.2d 258.

67.5 Mo.—Spencer v. Smith, App., 128 S.W.2d 315.

68. Ariz.—Valley Chevrolet Co. v. O. S. Stapley Co., 72 P.2d 945, 50 Ariz. 417.

Ark.—Haynes v. Gwin, 209 S.W. 67, 137 Ark. 387.

Iowa.—State Sav. Bank of Sharpsburg v. Universal Credit Co., 12 N. W.2d 890, 234 Iowa 443—Walker v. Puck, 8 N.W.2d 701, 236 Iowa 686.

Me.—Gleason v. Sanborn, 119 A. 200, 122 Me. 147.

Mich.—O'Dell v. Day, 183 N.W. 17, 214 Mich. 566.

Miss.—King v. Monaghan, 85 So.2d 911—Fanning v. C. I. T. Corp., 192 So. 41, 187 Miss. 45.

Mo.—Baird v. Wilks, App., 218 S.W. 918.

N.J.—Barenson v. Zaritsky, 167 A. 671, 11 N.J.Misc. 530.

Okl.—Martin v. Arnold, 247 P.2d 517, 207 Okl. 69—Horn v. Perry, 99 P.2d 143, 186 Okl. 541.

S.D.—Arlt v. Langley, 227 N.W. 469, 56 S.D. 79.

Wis.—Laabs v. Heitzinger, 294 N.W. 537, 236 Wis. 355.

54 C.J. p 606 note 9.

Held prejudicial

Ariz.—Lee v. Standard Cement Pipe Co., 103 P.2d 457, 55 Ariz. 463.

Ark.—White v. Williams, 55 S.W.2d 66, 186 Ark. 697.

N.Y.—Public Operating Corp. v. Weingart, 13 N.Y.S.2d 182, 257 App.Div. 879.

69. U.S.—Lord & Spencer v. M. N. Stout Co., C.C.A.Mass., 33 F.2d 60—Moss v. Sherburne, C.C.A.Mass., 11 F.2d 579, certiorari denied 47 S. Ct. 100, 273 U.S. 710, 71 L.Ed. 852.

Ala.—Homewood Dairy Products Co. v. Robinson, 48 So.2d 28, 254 Ala. 197, 22 A.L.R.2d 1059—Hosey v. Southport Petroleum Co. of Delaware, 12 So.2d 93, 244 Ala. 45—Jones v. Gantt, 167 So. 264, 232 Ala. 242—Bentley v. Smith, 2 So. 2d 107, 241 Ala. 229—Bevill v. Wilkins, 113 So. 28, 216 Ala. 299—Johnson-Brown Co. v. Dominey Produce Co., 102 So. 606, 212 Ala. 377.

American Discount Co. v. Wyckroff, 191 So. 790, 29 Ala.App. 82—Northwestern Rug Mfg. Co. v. Russellville Furniture & Mercantile Co., 116 So. 314, 22 Ala.App. 404—Cortner v. Hill, 110 So. 322, 21 Ala.App. 560.

Ariz.—Valley Chevrolet Co. v. O. S. Stapley Co., 72 P.2d 945, 50 Ariz. 417—Glaspie v. Williams, 51 P.2d 254, 46 Ariz. 381.

Cal.—Jegen v. Berger, 174 P.2d 489, 77 C.A.2d 1—Garcia v. Berman, 144 P.2d 55, 62 C.A.2d 112—Henry H. Cross Co. of California v. Prentice, 30 P.2d 1017, 137 C.A. 497—Laurence v. Los Angeles Junk Co., 18 P.2d 985, 129 C.A. 499—Dolan v. Carmel Canning Co., 234 P. 926, 71 C.A. 197.

Colo.—Aero Enterprises v. Walker, 228 P.2d 811, 123 Colo. 113.

Ga.—Riggens v. Pomona Products Co., 61 S.E.2d 682, 82 Ga.App. 636—Knight v. Causby, 23 S.E.2d 458, 68 Ga.App. 572—Electric Paint & Varnish Co. v. Lunsford, 198 S.E. 277, 58 Ga.App. 270—Barrow County Cotton Mills v. Sams, 172 S.E. 820, 48 Ga.App. 357—Major v. Atlanta Flying Club, 156 S.E. 723, 42 Ga.App. 561—Stewart & Griffin v. Blalock, 93 S.E. 116, 20 Ga.App. 488.

Idaho.—Bischoff v. Steele, 274 P.2d 986, 75 Idaho 485.

Ill.—National Malleable Castings Co. v. Iroquois Steel & Iron Co., 165 N.E. 199, 333 Ill. 588.

Dick v. Campbell Soup Co., Central Division, 38 N.E.2d 359, 312 Ill.App. 261—Pass v. Briggs & Turivas, 231 Ill.App. 214.

Ind.—Noblesville Milling Co. v. Johnson, 65 N.E.2d 250, 116 Ind.App. 437—Roesner v. American Car & Foundry Co., 5 N.E.2d 688, 104 Ind. App. 55.

Iowa.—Waterman v. Gaynor Lumber Co., 215 N.W. 641.

The general rules have also been applied in cases | involving seduction,[70] services,[71] street railroads

Ky.—Smith v. Butt & Hardin, 135 S. W.2d 67, 281 Ky. 127, 157 A.L.R. 648—Johnson v. Wyan, 258 S.W. 949, 202 Ky. 33.
Me.—Frye v. E. I. Du Pont De Nemours & Co., 151 A. 537, 129 Me. 289.
Md.—Precision Development Co. v. Fast Bearing Co., 37 A.2d 905, 183 Md. 399—J. A. Laporte Corporation v. Pennsylvania-Dixie Cement Corporation, 165 A. 195, 164 Md. 642, reargument denied 168 A. 844, 164 Md. 642—Frey & Son v. Magness, 157 A. 400, 161 Md. 375—Carlin v. Biddison, 109 A. 316, 135 Md. 458.
Mass.—Jones & Polson v. O'Toole, 199 N.E. 925, 293 Mass. 399—Calvin Hosmer, Stolte Co. v. Paramount Cone Co., 189 N.E. 192, 285 Mass. 278—Raymond Syndicate v. American Radio & Research Corporation, 160 N.E. 821, 263 Mass. 147—Technical Economist Corporation v. Moors, 152 N.E. 83, 255 Mass. 591.
Mich.—Burtch v. Child, Hulswit & Co., 174 N.W. 170, 207 Mich. 205.
Mo.—Great Eastern Oil Co. v. DeMert & Dougherty, 166 S.W.2d 490, 350 Mo. 535.
American Paper Products Co. v. Morton Salt Co., App., 279 S.W. 761—Boyajian Bros. v. Reinheimer, App., 229 S.W. 441, affirmed, Mo., 250 S.W. 864—Moody v. Cowherd, App., 199 S.W. 586.
Mont.—W. J. Lake & Co. v. Montana Horse Products Co., 97 P.2d 590, 109 Mont. 434.
Neb.—Conley v. Hays, 45 N.W.2d 900, 153 Neb. 733.
N.J.—Kingston Trap Rock Co. v. Eastern Engineering Co., 39 A.2d 422, 132 N.J.Law 254.
N.C.—Virginia Truck Growers Mfg. Corp. v. Moore County Mut. Exchange, 197 S.E. 196, 213 N.C. 658.
Ohio.—Goosmann v. Hitchcock, 118 N.E.2d 680, 95 Ohio App. 247—Sharpsville Boiler Works Co. v. Queen City Petroleum Products Co., 156 N.E. 149, 23 Ohio App. 319.
Okl.—Richardson v. Lawler, 231 P. 2d 671, 204 Okl. 484—Pierce v. C. I. T. Corporation, 41 P.2d 481, 170 Okl. 633.
Or.—Duncan Lumber Co. v. Willapa Lumber Co., 182 P. 172, 93 Or. 386, rehearing denied 183 P. 476, 93 Or. 386.
Pa.—Horowitz v. Rosenzweig, 95 Pa. Super. 212—Gallagher v. Hurwitz, 66 Pa.Super. 69.
R.I.—Cinquegrano v. T. A. Clarke Motors, 30 A.2d 859, 69 R.I. 28.
S.C.—Reliance Varnish Co. v. Mullins Lumber Co., 48 S.E.2d 653, 213 S.C. 84—Webster v. Texas Co., 155 S.E. 842, 158 S.C. 507.
Tex.—Barish Produce Co. v. Schultz, Civ.App., 279 S.W.2d 702, error dismissed—Caraway v. Flagg, Civ. App., 277 S.W.2d 803, error refused no reversible error—F. H. Woodruff & Sons v. Schuster, Civ.App., 248 S.W.2d 196—Ginsberg v. Selbest Dress, Inc., Civ.App., 238 S.W. 2d 621, error refused no reversible error—Taormina Corp. v. International Playing Card & Label Co., Civ.App., 154 S.W.2d 949, error refused—Thomas v. Fitts-Smith Dry Goods Co., Civ.App., 151 S.W.2d 243—Lawrence v. Cananea Consol. Copper Co., S. A., Civ.App., 237 S. W. 959, dismissed for want of jurisdiction—Raney & Hamon v. Hamilton & White, Civ.App., 234 S. W. 229—Avery v. Llano Cotton Seed Oil Mill Ass'n, Civ.App., 196 S.W. 351, error refused.
Utah.—Tanner v. Childers, 160 P. 2d 965, 108 Utah 455—Mollerup v. Daynes-Beebe Music Co., 24 P.2d 306, 133 C.A. 342.
Wash.—Foster v. Montgomery Ward & Co., 163 P.2d 838, 24 Wash.2d 248—Walker v. Herke, 147 P.2d 255, 20 Wash.2d 239—Clements v. Cook, 191 P. 874, 112 Wash. 217.
Wis.—Brenneman v. Reddick, 57 N. W.2d 718, 263 Wis. 454—Scaramelli & Co. v. Courteen Seed Co., 217 N.W. 298, 194 Wis. 520.
55 C.J. p 866 note 87 [a], p 1020 note 43, p 1152 note 14.

Held prejudicial

Ariz.—Lee v. Standard Cement Pipe Co., 103 P.2d 457, 55 Ariz. 463.
Ga.—J. H. Phipps Lumber Co. v. Albany Hardware & Mill Supply Co., 157 S.E. 702, 42 Ga.App. 820—Render v. Hill Bros., 117 S.E. 258, 30 Ga.App. 239.
Ill.—Dixon v. Montgomery Ward & Co., 114 N.E.2d 44, 351 Ill.App. 75.
Mich.—Grannis v. Tobias, 220 N.W. 654, 243 Mich. 373.
Miss.—W. T. Rawleigh Co. v. Turner, 166 So. 344, 175 Miss. 41.
Mo.—National Cash Register Co. v. Kay, App., 119 S.W.2d 437—Sexton v. Lockwood, App., 207 S.W. 856.
N.Y.—Foreign Import Co. v. Tilzer, 171 N.Y.S. 226.
S.C.—Childers v. Judson Mills Store Co., 200 S.E. 770, 189 S.C. 224—Carter v. American Fruit Growers, 134 S.E. 292, 136 S.C. 389.
S.D.—Housman v. Geiman, 213 N.W. 19, 51 S.D. 214.
Tex.—Mel-Mar Co. v. Chemical Products Co., Civ.App., 273 S.W.2d 126, error refused no reversible error—Ross & Sensibaugh v. McLelland, Civ.App., 262 S.W.2d 205, error refused no reversible error—Stone v. Payne, Civ.App., 168 S.W.2d 503—C. A. Bryant Co. v. Hamlin Independent School Dist., Civ.App., 18 S.W.2d 750, certified questions answered 14 S.W.2d 53, 118 Tex. 255—Dunlap Hardware Co. v. E. F. Elmberg Co., Civ.App., 252 S.W. 1098, affirmed E. F. Elmberg v. Dunlap Hardware Co., Com.App., 267 S.W. 258—W. T. Wilson Grain Co. v. Hunt County Oil Co., Civ. App., 235 S.W. 638.
Wis.—Krasno v. Brace, 47 N.W.2d 314, 259 Wis. 12.

Breach of warranty

(1) Held harmless.

Cal.—Bracker v. American Nat. Food, 284 P.2d 163, 133 C.A.2d 338.
Mass.—Sokoloski v. Splann, 40 N.E. 2d 874, 311 Mass. 203.
N.Y.—Lembo v. Andola, 100 N.Y.S. 2d 561, 277 App.Div. 1077.
R.I.—Dwares v. Clifton Yarn Mills, 16 A.2d 501, 65 R.I. 471.

(2) Held prejudicial.

N.J.—Cook v. Rice, 51 A.2d 428, 135 N.J.Law 240.
N.Y.—Rockwell v. Straub Bldg. Units, 40 N.Y.S.2d 181, 265 App. Div. 573.

70. Ky.—Collis v. Hoskins, 208 S. W.2d 70, 306 Ky. 391.
Miss.—Stone v. Bang, 122 So. 95, 153 Miss. 892.
R.I.—Guadagno v. Folco, 6 A.2d 450, 62 R.I. 404.
57 C.J. p 41 note 25.

71. Ala.—Copeland v. Dabbs, 129 So. 88, 221 Ala. 489.
Ariz.—Arizona Superior Mining Co. v. Andersen, 262 P. 489, 33 Ariz. 64, error dismissed 49 S.Ct. 177, 278 U.S. 578, 73 L.Ed. 516.
Cal.—Stiles v. Nunes, 220 P.2d 792, 98 C.A.2d 739—Downs v. Sherry, 202 P.2d 101, 90 C.A.2d 1—Lucy v. Lucy, 71 P.2d 949, 22 C.A.2d 629—Turell v. Anderson, 60 P.2d 906, 16 C.A.2d 445.
Ga.—Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844—Meads v. Williams, 189 S.E. 718, 55 Ga.App. 224—Brooks v. Sims, 187 S.E. 254, 54 Ga.App. 71—Townsend v. Hague, 159 S.E. 748, 43 Ga. App. 595.
Idaho.—Sweeney v. Hanmer, 162 P. 2d 387, 66 Idaho 462—Pierson v. Pierson, 115 P.2d 742, 63 Idaho 1.
Ind.—Bowers v. Starbuck, 116 N.E. 301, 186 Ind. 309.
Kan.—Marcotte's Estate v. Clay, 224 P.2d 998, 170 Kan. 189.
Ky.—Sharp v. Culton, 89 S.W.2d 869, 262 Ky. 84.
Me.—Gordon v. Keene, 107 A. 849, 118 Me. 269.
Md.—Heil v. Zahn, 51 A.2d 174, 187 Md. 603—De Waters v. Mergler, 39 A.2d 668, 183 Md. 574—Lynch v. Rogers, 10 A.2d 619, 177 Md. 478—Roycroft v. Nellis, 188 A. 20, 171 Md. 136.
Mass.—Stegeman v. Kelley, 166 N. E. 768, 267 Mass. 450—Butler v. Butler, 113 N.E. 577, 225 Mass. 22
Minn.—Daly v. Donovan, 273 N.W. 814, 200 Minn. 323.

and their duties to passengers and others,[72] taking | or destruction of property,[73] taxation of personal

Miss.—First Nat. Bank v. Owen, 171 So. 4, 177 Miss. 339.
Mo.—Wandling v. Broaddus, 10 S.W. 2d 651.
St. Louis Hospital Equipment Co. v. Superior Refrigerator Mfg. Co., App., 246 S.W.2d 532—In re Stein's Estate, App., 177 S.W.2d 678—Witte v. Smith, App., 162 S.W. 2d 604—White v. Kershaw, App., 259 S.W. 805.
Neb.—Clute v. Mach, 45 N.W.2d 897, 153 Neb. 772.
N.J.—Ludlow v. Dwyer, 65 A.2d 74, 3 N.J.Super. 1.
Moore v. Borough of Pitman, 160 A. 559, 109 N.J.Law 225.
Ohio.—Gorey v. Gregg, 63 N.E.2d 680, 78 Ohio App. 367—Wampler v. Staley, App., 59 N.E.2d 65—Stupp v. Lear, App., 42 N.E.2d 681.
Okl.—Cravens v. Hughes, 250 P.2d 877, 207 Okl. 503.
Or.—Sullivan v. Carpenter, 199 P.2d 655, 184 Or. 485—Miller v. Howard, 188 P. 160, 95 Or. 426.
R.I.—Perry v. Feeney, 150 A. 79.
S.D.—Fehlhafer v. Reiners, 157 N.W. 1058, 37 S.D. 289.
Tex.—Jordan Drilling Co. v. Starr, Civ.App., 232 S.W.2d 149, error refused no reversible error—Montgomery v. Gay, Civ.App., 222 S.W. 2d 922, error dismissed—Bueche v. Eickenroht, Civ.App., 220 S.W.2d 911—Kroll v. Scott, Civ.App., 155 S.W.2d 985, error refused—Savage v. Dressell, Civ.App., 144 S.W.2d 651—Lange Cable Tool Drilling Co. v. Barnett Petroleum Corp., Civ. App., 142 S.W.2d 833—Averitt v. Warren, Civ.App., 125 S.W.2d 691—Martin v. De la Garza, Civ.App., 38 S.W.2d 157—C. W. Hahl Co. v. Cunningham & Hardy, Civ.App., 246 S.W. 108.
Wash.—Kubey v. Coast Athletic Club, 20 P.2d 21, 172 Wash. 305.
W.Va.—Keys v. Keys, 116 S.E. 681, 93 W.Va. 33.
Wis.—Thoni v. McDonnell's Estate, 165 N.W. 290, 166 Wis. 319.

Held prejudicial

Ariz.—Tucker v. Reil, 77 P.2d 203, 51 Ariz. 357.
Cal.—Reeves v. Vallow, 104 P.2d 1017, 16 C.2d 95—Long v. Rumsey, 77 P.2d 1064, reheard 84 P.2d 146, 12 C.2d 334.
Miller v. Stults, 300 P.2d 312, 143 C.A.2d 592—Ferrari v. Mambretti, 136 P.2d 326, 58 C.A.2d 318.
Conn.—Doyle v. Reeves, 152 A. 882, 112 Conn. 521.
N.Y.—Rinaudo v. Erichsen, 78 N.Y. S.2d 569, 273 App.Div. 1040.

72. U.S.—Tacoma Ry. & Power Co. v. Cothary, Wash., 235 F. 872, 149 C.C.A. 184.
Ala.—Mobile Light & Railroad Co. v. Nicholas, 167 So. 298, 232 Ala. 213—Birmingham Electric Co. v. Driver, 166 So. 701, 232 Ala. 86—Alabama Power Co. v. Lewis, 141 So. 229, 224 Ala. 594.
Birmingham Elec. Co. v. Woodward, 35 So.2d 369, 33 Ala.App. 526.
Cal.—Chappell v. San Diego & A. Ry. Co., 258 P. 73, 201 C. 560.
O'Connor v. City and County of San Francisco, 207 P.2d 638, 92 C. A.2d 626—Bailey v. Market St. Ry. Co., 40 P.2d 281, 3 C.A.2d 525—Dawson v. San Diego Electric Ry. Co., 255 P. 215, 82 C.A. 141.
Colo.—Denver Tramway Corporation v. Kuttner, 35 P.2d 852, 95 Colo. 312.
Conn.—Ireland v. Connecticut Co., 150 A. 520, 111 Conn. 521.
Ga.—Head v. Georgia Power Co., 27 S.E.2d 339, 70 Ga.App. 32.
Ill.—Schiro v. Cummings, 53 N.E.2d 489, 321 Ill.App. 640—Valuch v. Rawson, 270 Ill.App. 583.
Md.—Baltimore Transit Co. v. State for Use of Castranda, 71 A.2d 442, 194 Md. 421.
Mass.—Hanley v. Boston Elevated Ry., 156 N.E. 532, 259 Mass. 557.
Mo.—McGinley v. St. Louis Public Service Co., 239 S.W.2d 321—Drake v. Kansas City Public Service Co., 63 S.W.2d 75, 333 Mo. 520.
Gignoux v. St. Louis Public Service Co., App., 180 S.W.2d 784—Frye v. St. Joseph Ry., Light, Heat & Power Co., 99 S.W.2d 540, 231 Mo.App. 407—Maher v. St. Louis Public Service Co., App., 53 S. W.2d 1099.
Mont.—Batch v. Helena Light & Ry. Co., 159 P. 411, 52 Mont. 517.
Neb.—McCann v. Omaha & Council Bluffs Street Ry. Co., 222 N.W. 633, 117 Neb. 786.
Ohio.—Kunkel v. Cincinnati St. Ry. Co., 80 N.E.2d 442, 82 Ohio App. 341.
R.I.—Drewett v. United Electric Rys. Co., 188 A. 877, 57 R.I. 169.
S.C.—Leitner v. Columbia Ry., Gas & Electric Co., 143 S.E. 273, 145 S.C. 489.
Tex.—San Antonio Public Service Co. v. Murray, Civ.App., 59 S.W.2d 851—Baker v. Adkins, Civ.App., 278 S.W. 272—Smith v. Galveston-Houston Electric Ry. Co., Civ. App., 265 S.W. 267, reversed on other grounds, Com.App., 277 S.W. 103—Blevins v. Houston Electric Co., Civ.App., 235 S.W. 987.
Utah.—Jackson v. Utah Rapid Transit Co., 290 P. 970, 77 Utah 21.
Carriers generally see supra text and note 33.
Negligence see supra text and note 61.

Held prejudicial

(1) Generally.
Cal.—Brown v. Pacific Elec. Ry. Co., 180 P.2d 424, 79 C.A.2d 613.
Conn.—City of Hartford v. Connecticut Co., 140 A. 734, 107 Conn. 312.
Ill.—Monahan v. Chicago Transit Authority, 93 N.E.2d 169, 341 Ill. App. 250.
Ind.—Indianapolis Railways v. Waters, 12 N.E.2d 119, 213 Ind. 527.
Mo.—Smith v. East St. Louis Ry. Co., 123 S.W.2d 198, 234 Mo.App. 1220.
Pa.—Fisher v. Philadelphia Rapid Transit Co., 110 A. 149, 267 Pa. 99.
Tex.—Dallas Railway & Terminal Co. v. Hendricks, 166 S.W.2d 116, 140 Tex. 93.
San Antonio Public Service Co. v. Jackson, Civ.App., 103 S.W.2d 251, error dismissed.
Wis.—Hadrian v. Milwaukee Electric Railway & Transport Co., 1 N. W.2d 755, 241 Wis. 122, modified on other grounds 5 N.W.2d 765, 241 Wis. 122.

(2) Accountant's testimony as to profits lost by plaintiff as result of injury.
Tex.—Dallas Ry. & Terminal Co. v. Guthrie, 210 S.W.2d 550, 146 Tex. 585.

73. Ala.—De Bardeleben v. Sellers, 84 So. 403, 17 Ala.App. 247.
Ga.—Southern Ry. Co. v. Leonard, 199 S.E. 433, 58 Ga.App. 574.
Iowa.—Gregory v. Sorenson, 242 N. W. 91, 214 Iowa 374.
Ky.—Moll Co. v. Holstner, 67 S.W. 2d 1, 252 Ky. 249—Carr v. Hanners, 24 S.W.2d 570, 232 Ky. 670—Davisworth v. S. T. & J. M. Wright, 17 S.W.2d 756, 229 Ky. 572—Shatz Realty Co. v. King, 10 S.W.2d 456, 225 Ky. 846, 60 A.L.R. 1374.
Mo.—Eckner v. Western Hair & Beauty Supply Co., 162 S.W.2d 621, 236 Mo.App. 988—Iven v. Winston Bros. Co., App., 48 S.W.2d 125.
N.H.—Davenport v. White Mountain Power Co., 24 A.2d 274, 92 N.H. 20.
N.C.—Owens v. Blackwood Lumber Co., 193 S.E. 219, 212 N.C. 133—Roberts v. Massey, 116 S.E. 407, 185 N.C. 164.
Or.—Kerns v. Couch, 12 P.2d 1011, 141 Or. 147, opinion adhered to 17 P.2d 323, 141 Or. 147.
S.C.—Baynham v. State Highway Department of South Carolina, 187 S. E. 528, 181 S.C. 435.
Tex.—Driscoll v. Nolan, Civ.App., 130 S.W.2d 400, set aside 131 S. W.2d 1025—Freeport Town-Site Co. v. S. H. Hudgins & Sons, Civ.App., 212 S.W. 287, error refused.
Wash.—Peterson v. King County, 252 P.2d 797, 41 Wash.2d 907.
Wyo.—Tompkins v. Byrtus, 267 P.2d 753, 72 Wyo. 537.

Held prejudicial

Ill.—Dixon v. Montgomery Ward & Co., 114 N.E.2d 44, 351 Ill.App. 75.
Okl.—Stanolind Oil & Gas Co. v. McGeeley, 273 P.2d 1007—Skelly Oil Co. v. Johnson, 120 P.2d 626, 190 Okl. 45.

property and business corporations,[73.5] telegraphs and telephones,[74] trespass,[75] trespass to try title,[76] trover and conversion,[77] trusts, including express

Or.—Moss v. People's California Hydro-Electric Corporation, 293 P. 606, 134 Or. 227.
Pa.—Diksajtsz v. Brosz, 158 A. 620, 104 Pa.Super. 246.
R.I.—Hervey v. City of Providence, 133 A. 618, 47 R.I. 378.
S.D.—Pennington v. Beatty, 246 N. W. 109, 61 S.D. 73.
Tex.—Lusk v. Onstott, Civ.App., 178 S.W.2d 549—Taylor v. State, Civ. App., 158 S.W.2d 881, error refused—Cameron Compress Co. v. Jacobs, Civ.App., 10 S.W.2d 1040—Smith v. Roberts, Civ.App., 218 S.W. 27.

73.5 Conn.—Spector Motor Service v. Walsh, 61 A.2d 89, 135 Conn. 37—Lomas & Nettleton Co. v. City of Waterbury, 188 A. 433, 122 Conn. 228.

Held prejudicial

Ark.—Scurlock v. Clark, 272 S.W.2d 58, 224 Ark. 160.

74. Tex.—Western Union Telegraph Co. v. Eckhardt, Civ.App., 2 S.W. 2d 505, modified on other grounds, Com.App., 11 S.W.2d 777, rehearing denied 20 S.W.2d 759.
62 C.J. p 224 note 65.

75. Ala.—Smith and Gaston Funeral Directors v. Dean, 80 So.2d 227, 262 Ala. 600—Harden v. Conwell, 87 So. 673, 205 Ala. 191.
American Discount Co. v. Wyckroff, 191 So. 790, 29 Ala.App. 82.
Cal.—Fetterly v. Salyer, 215 P.2d 64, 96 C.A.2d 240.
Ga.—Hale v. Hale, 33 S.E.2d 441, 199 Ga. 150—Anderson v. Black, 13 S. E.2d 650, 191 Ga. 627—Baldwin v. Davis, 4 S.E.2d 458, 188 Ga. 587.
Ill.—Sherburne v. McGuire, 197 Ill. App. 486.
Me.—Colby v. Tarr, 36 A.2d 357, 140 Me. 237.
Md.—Tyler v. Cedar Island Club, 122 A. 38, 143 Md. 214—Ewing v. Rider, 93 A. 409, 125 Md. 149.
Mo.—Curtis v. Fruin-Colnon Contracting Co., App., 270 S.W.2d 537—Robertson v. Welch, App., 246 S.W.2d 828.
Neb.—Kochenthal v. Omaha & Council Bluffs St. Ry. Co., 240 N.W. 295, 122 Neb. 244.
N.C.—Price v. Whisnant, 62 S.E.2d 56, 232 N.C. 653—Speight v. Anderson, 39 S.E.2d 371, 226 N.C. 492.
Utah.—Taylor v. Weber County, 293 P.2d 925, 4 Utah 2d 328.

Trespass to person; threat

Ala.—May v. Lewis, 184 So. 203, 28 Ala.App. 330, certiorari denied 184 So. 204, 236 Ala. 584.

Held prejudicial

Ala.—Brown v. Leek, 128 So. 608, 221 Ala. 319.
Miss.—Gulf, etc., R. Co. v. Hartley, 41 So. 382, 88 Miss. 674.
R.I.—Reynolds v. Missler, 90 A.2d 779, 80 R.I. 59—Auclair v. Maurice, 51 A.2d 187, 72 R.I. 350.
S.C.—Childers v. Judson Mills Store Co., 200 S.E. 770, 189 S.C. 224.

76. Tex.—Kurtz v. Robinson, Civ. App., 279 S.W.2d 949, error refused no reversible error—O'Neal v. Terry, Civ.App., 252 S.W.2d 1006, error refused no reversible error—Woldert v. Skelly Oil Co., Civ. App., 202 S.W.2d 706, error refused no reversible error—Jones v. Parker, Civ.App., 193 S.W.2d 863, error refused no reversible error—Kirby Lumber Corp. v. Southern Lumber Co., Civ.App., 192 S.W.2d 460, affirmed 196 S.W. 2d 387, 145 Tex. 151, 169 A.L.R. 174—Stallings v. Slaughter, Civ. App., 159 S.W.2d 562, error refused—Tarter v. Frazier, Civ.App., 159 S.W.2d 168, error refused—Stout v. Oliveira, Civ.App., 153 S. W.2d 590, error refused—Stephenson v. Ettie, Civ.App., 145 S.W.2d 335, error dismissed, judgment correct—Petroleum Producers Co. v. Stolley, Civ.App., 137 S.W.2d 207, error dismissed, judgment correct—Cochran v. William M. Rice Institute for Advancement of Literature, Science and Art, Civ. App., 123 S.W.2d 359, error refused—McDonald v. Samford, Civ. App., 116 S.W.2d 1092—O'Connor v. Presswood, Civ.App., 76 S.W.2d 799—Brittain v. Dickson, Civ.App., 60 S.W.2d 1093—Fertitta v. Toler, Civ.App., 43 S.W.2d 467, reversed on other grounds Toler v. Fertitta, Com.App., 67 S.W.2d 229—Hoover v. McFarland, Civ.App., 27 S.W. 2d 568—Bechert v. Cowen, Civ. App., 19 S.W.2d 175, affirmed Savage v. Cowen, Com.App., 33 S.W.2d 433—Freestone County v. McKinney, Civ.App., 285 S.W. 340, reversed on other grounds McKinney v. Freestone County, Com. App., 291 S.W. 529—Battle v. Wolfe, Civ.App., 283 S.W. 1073—Dancy v. Peyton, Civ.App., 282 S. W. 819—Ammerman v. Bourland, Civ.App., 230 S.W. 804.
63 C.J. p 1206 note 95 [a] (2), (3), (5).

Held prejudicial

Tex.—Gordon v. Mortgage Realty Co., Civ.App., 153 S.W.2d 707—Hastings v. Champer, Civ.App., 139 S.W.2d 863.

77. Ala.—Bentley v. Smith, 2 So. 2d 107, 241 Ala. 229.
American Discount Co. v. Wyckroff, 191 So. 790, 29 Ala.App. 82—McLeod Lumber Co. v. Neighbors, 114 So. 176, 22 Ala.App. 204.
Ark.—Helena Oil & Gas Co. v. Goodkin, 110 S.W.2d 698, 195 Ark. 7.
Cal.—Fetterly v. Salyer, 215 P.2d 64, 96 C.A.2d 240—Deaux v. Trinidad Bean & Elevator Co., 47 P.2d 535, 8 C.A.2d 149—James Mills Orchard Co. v. Bank of American Nat. Trust & Savings Ass'n, 30 P.2d 626, 137 C.A. 299, hearing denied 32 P.2d 342, 137 C.A. 299.
Conn.—Filosi v. Crossman, 149 A. 774, 111 Conn. 178.
Ga.—Crozier v. Goldman, 111 S.E. 666, 153 Ga. 162.
Jones v. Liberty Mut. Fire Ins. Co., 83 S.E.2d 837, 90 Ga.App. 667—Smith v. Counts, 7 S.E.2d 418, 62 Ga.App. 11—Brooks v. Hartsfield Co., 192 S.E. 459, 56 Ga.App. 184—Boss v. Ed. & Al. Matthews, Inc., 181 S.E. 688, 51 Ga.App. 889.
Ind.—Curtis Storage & Transportation Co. v. Rosenberg, 21 N.E.2d 440, 106 Ind.App. 622—Salvation Army v. Ellerbush, 161 N.E. 638, 87 Ind.App. 682.
Ky.—Louisville & N. R. Co. v. Johnson, 10 S.W.2d 1104, 226 Ky. 322—Nussbaum v. Standard By-Products Co., 287 S.W. 353, 216 Ky. 119.
Me.—McCully v. Bessey, 49 A.2d 230, 142 Me. 209—Sweeney v. Lebel, 29 A.2d 746, 139 Me. 280.
Mass.—Jones & Polson v. O'Toole, 199 N.E. 925, 293 Mass. 399—Perivoliotis v. Eveleth, 146 N.E. 724, 251 Mass. 444.
Mo.—Morris Plan Co. v. Universal Credit Co., 168 S.W.2d 136, 237 Mo.App. 365—Deer v. People's Bank of Springfield, App., 47 S.W. 2d 787—Cox v. McKinney, 258 S. W. 445, 212 Mo.App. 522.
Or.—Sutherland v. Wickey, 289 P. 375, 133 Or. 266.
R.I.—Personal Finance Co. of Providence v. Henley-Kimball Co., 1 A.2d 121, 61 R.I. 402, 117 A.L.R. 1476.
S.C.—Globe & Rutgers Fire Ins. Co. v. Foil, 200 S.E. 97, 189 S.C. 91.
Tex.—Staats v. Miller, Civ.App., 240 S.W.2d 342, reversed on other grounds 243 S.W.2d 686, 150 Tex. 581—Myatt v. Elliott, Civ.App., 143 S.W.2d 205, error dismissed, judgment correct—Stuart Motor Co. v. Burroughs Adding Mach. Co., Civ. App., 47 S.W.2d 637—Douglass v. Wallace, Civ.App., 211 S.W. 530.
Utah.—Haycraft v. Adams, 24 P.2d 1110, 82 Utah 347.
Vt.—Dansro v. Scribner, 187 A. 803, 108 Vt. 408—Green v. Laclair, 99 A. 244, 91 Vt. 23.
Wis.—Russell Timber Co. v. Kenfield-Lamoreux Co., 161 N.W. 358, 165 Wis. 136.

Bailor's action against bailee

Tex.—Kirkland v. Mission Pipe & Supply Co., Civ.App., 182 S.W.2d 854, error refused.

Held prejudicial

(1) Generally.
Idaho.—Southeast Securities Co. v.

trusts and resulting trusts,[78] unlawful detainer,[78.5] vacating or setting aside conveyances or canceling instruments thereof,[79] vendor and purchaser,[80] and water.[81]

Christensen, 218 P.2d 342, 70 Idaho 328.

Tex.—Bartlesville Zinc Co. v. Compania Minera Ygnacio Rodriguez Ramos, S. A., Civ.App., 202 S.W. 1048, modified on other grounds Cia Minerva Ygnacio Rodriguez Ramos, S. A. v. Bartlesville Zinc Co., 275 S.W. 388, 115 Tex. 21, 41 A.L.R. 737.

(2) In bail-trover action.

Ga.—Light v. Smith, 71 S.E.2d 844, 86 Ga.App. 591.

78. Cal.—Strudthoff v. Yates, 170 P.2d 873, 28 C.2d 602.

Wood v. Brown, 162 P.2d 859, 71 C.A.2d 544—In re Henshaw's Estate, 157 P.2d 390, 68 C.A.2d 627—Malinow v. Dorenbaum, 125 P.2d 554, 51 C.A.2d 645.

Conn.—Stevenson v. Moeller, 152 A. 889, 112 Conn. 491.

Idaho.—Picciano v. Miller, 137 P.2d 788, 64 Idaho 759.

Ind.—In re Lowe's Estate, 70 N.E.2d 187, 117 Ind.App. 554.

Mass.—Judge of Probate v. Mackintosh, 165 N.E. 881, 267 Mass. 86—Boston Safe Deposit & Trust Co. v. Lerned, 163 N.E. 902, 265 Mass. 339.

Mo.—Happy v. Cole County Bank, 93 S.W.2d 870, 338 Mo. 1025.

Mont.—Thompson v. Steinkamp, 187 P.2d 1018, 120 Mont. 475.

N.J.—Central Hanover Bank & Trust Co. v. Herbert, 64 A.2d 75, 1 N.J. 426.

N.C.—Thompson v. Davis, 28 S.E.2d 556, 223 N.C. 792—Wilson v. Williams, 2 S.E.2d 19, 215 N.C. 407.

Ohio.—Craft v. Shroyer, 74 N.E.2d 589, 81 Ohio App. 253.

Tex.—Postal Savings & Loan Ass'n v. Powell, Civ.App., 47 S.W.2d 343.

65 C.J. p 1077 note 46.

Parol testimony

Wash.—Donnelly v. National Bank of Wash., 179 P.2d 333, 27 Wash.2d 622.

Held prejudicial

Neb.—First Trust Co. of Lincoln v. Carlsen, 268 N.W. 89, 131 Neb. 325.

N.C.—Creech v. Creech, 24 S.E.2d 642, 222 N.C. 656.

78.5 Mont.—Mahoney v. Lester, 168 P.2d 339, 118 Mont. 551.

79. Ark.—Wood v. Wood, 264 S.W.2d 407, 223 Ark. 82.

Cal.—Nunes v. De Faria, 238 P.2d 106, 107 C.A.2d 794—Pellerito v. Dragna, 105 P.2d 1011, 41 C.A.2d 85—Melvin v. Carl, 4 P.2d 954, 118 C.A. 249.

Colo.—Burton v. Burton, 69 P.2d 307, 100 Colo. 567.

Ga.—Nobles v. Webb, 29 S.E.2d 158, 197 Ga. 242—Smaha v. George, 24 S.E.2d 385, 195 Ga. 412—Bowen v. Bowen, 185 S.E. 312, 182 Ga.App. 299—Davie v. Tanner, 105 S.E. 355, 150 Ga. 770.

Kan.—Calkins v. Hadley, 281 P. 919, 128 Kan. 140.

Md.—Messick v. Pennell, 35 A.2d 143, 182 Md. 531.

Mass.—Marble v. Bloom, 159 N.E. 735, 262 Mass. 191.

Mo.—Farmers & Merchants Bank of Festus v. Funk, 92 S.W.2d 587, 338 Mo. 508.

N.Y.—Cohen v. Benjamin, 284 N.Y.S. 884.

N.C.—Anderson v. Anderson, 99 S.E. 106, 177 N.C. 401.

Ohio.—Rippel v. Rippel, 82 N.E.2d 140, appeal dismissed 93 N.E.2d 285, 154 Ohio St. 83.

Okl.—Schatz v. Wintersteen, 208 P.2d 1136, 201 Okl. 660.

S.D.—Hirning v. Timm, 258 N.W. 130, 63 S.D. 286.

Tenn.—Scarbrough v. Pickens, 170 S.W.2d 585, 26 Tenn.App. 213.

Tex.—Chandler v. Welborn, 294 S.W. 2d 801.

Browning v. Nesting, Civ.App., 219 S.W.2d 712, error refused no reversible error—Santos v. Morgan, Civ.App., 195 S.W.2d 927, error refused no reversible error—Maxwell v. Campbell, Civ.App., 102 S.W.2d 471—Evans v. First Nat. Bank, Civ.App., 65 S.W.2d 366—Haskins v. Henderson, Civ.App., 2 S.W.2d 864—Sherrod v. City Nat. Bank of Wichita Falls, Civ.App., 294 S.W. 295.

Mineral deed

Tex.—Roeser v. Coffer, Civ.App., 98 S.W.2d 275.

80. U.S.—Sacramento Suburban Fruit Lands Co. v. La Gue, C.C.A.Cal., 40 F.2d 897.

Garwood v. Scheiber, Cal., 246 F. 74, 158 C.C.A. 300, certiorari denied 38 S.Ct. 427, 247 U.S. 506, 62 L.Ed. 1240.

Cal.—Vineland Homes v. Barish, 292 P.2d 941, 138 C.A.2d 747—Fellner v. Steinbaum, 282 P.2d 584, 132 C.A.2d 509—Poetker v. Dyck, 257 P. 185, 83 C.A. 771.

Ga.—Lively v. Lively, 58 S.E.2d 168, 206 Ga. 606—Smith v. Hedenberg, 7 S.E.2d 234, 189 Ga. 678.

Southern Ry. Co. v. Reed, 149 S.E. 582, 40 Ga.App. 332—Lott-Lewis Co. v. Bingham-Hewett Grain Co., 113 S.E. 222, 28 Ga.App. 728.

Iowa.—Dimon v. Wright, 214 N.W. 673, 206 Iowa 693.

Md.—Christian v. Johnson Const. Co., 155 A. 181, 161 Md. 87—White v. Northup, 132 A. 258, 150 Md. 18.

Mass.—Moskow v. Burke, 165 N.E. 416, 266 Mass. 286—Lagorio v. Lewenberg, 115 N.E. 979, 226 Mass. 464.

Mich.—Drysdale v. P. J. Christy Land Co., 226 N.W. 882, 248 Mich. 184.

Mo.—Shupe v. A. J. King Realty Co., App., 29 S.W.2d 230.

N.J.—Lawrence v. Tandy & Allen, 100 A.2d 891, 14 N.J. 1.

Or.—Rands v. Ewing, 250 P.2d 921, 197 Or. 454, rehearing denied 253 P.2d 908, 197 Or. 454.

Tex.—Nance v. McClellan, Com.App., 89 S.W.2d 774.

Nelson v. Jenkins, Civ.App., 214 S.W.2d 140, error refused no reversible error—Gambill v. Snow, Civ.App., 189 S.W.2d 33, refused for want of merit—McDonald v. Samford, Civ.App., 116 S.W.2d 1092—Ley v. Patton, Civ.App., 81 S.W. 2d 1087, error dismissed—Norton v. Lea, Civ.App., 283 S.W. 316—Crossland v. Hart, Civ.App., 234 S.W. 558.

Wash.—West v. Hoffman, 245 P. 419, 139 Wash. 13.

Wis.—Weidner v. Hyland, 255 N.W. 134, 216 Wis. 12, modified on other grounds and rehearing denied 256 N.W. 244, 216 Wis. 12.

66 C.J. p 1576 note 49.

Breach of warranty

Ga.—State Mut. Ins. Co. v. McJenkins Ins. & Realty Co., 71 S.E.2d 670, 86 Ga.App. 442.

Held prejudicial

Tex.—Tashnek v. Hefner, Civ.App., 282 S.W.2d 298, error refused no reversible error.

Va.—Pittsonberger v. Andrews, 166 S.E. 367, 112 W.Va. 651.

81. U.S.—Manhattan Oil Co. v. Mosby, C.C.A.Mo., 72 F.2d 840, certiorari denied 55 S.Ct. 237, 293 U.S. 623, 79 L.Ed. 710.

Ark.—Eldridge v. Bemis, 43 S.W.2d 755, 184 Ark. 1193.

Idaho.—Idaho Gold Dredging Corporation v. Boise Payette Lumber Co., 37 P.2d 407, 54 Idaho 765—South Boise Water Co. v. McDonald, 296 P. 591, 50 Idaho 409.

Mo.—Patten v. Thomas, 246 S.W. 61, 212 Mo.App. 367.

N.C.—James v. Western Carolina Power Co., 150 S.E. 699, 198 N.C. 812.

Okl.—Gypsy Oil Co. v. Brightwell, 49 P.2d 800, 174 Okl. 519.

Or.—Brown v. Jones, 278 P. 981, 130 Or. 424.

Tex.—Nash & Windfohr Oil Corporation v. Johnson, Civ.App., 81 S.W. 2d 749, error dismissed—Longenecker v. Ward County Water Improvement Dist. No. 3, Civ.App., 8 S.W.2d 306—Humble Oil & Refining Co. v. Woods, Civ.App., 277 S.W. 152, reversed on other grounds Humble Oil & Refining Co. v. Woods, Com.App., 292 S.W. 200, and rehearing denied 294 S.W. 197.

§ 1725. —— Evidence Admitted without Preliminary Proof

Error in admitting evidence without preliminary proof may or may not be ground for reversal, depending on whether the complaining party is prejudiced.

Error in admitting evidence without the necessary preliminary proof to render it competent, or the laying of a foundation, is not ground for reversal, where the complaining party was not prejudiced thereby,[82] or was not deprived of substantial justice.[82.5] On the other hand the admission of evidence incompetent for want of preliminary proof, which results in prejudice to the complaining party, is a ground for reversal.[83]

The rule that error in admitting evidence without preliminary proof may be harmless has been applied to cases wherein the error in question concerned admissions,[84] opinion evidence,[85] best or secondary evidence,[86] documentary evidence,[87] ex-

Held prejudicial

Tex.—Hidalgo County Water Control and Improvement Dist. No. 1 v. Goodwin, Com.App., 25 S.W.2d 813.

82. Ga.—Columbia Peanut Co. v. Pope, 24 S.E.2d 710, 69 Ga.App. 26.

Ill.—Hunsley v. Wurl, 93 N.E.2d 151, 341 Ill.App. 247.

Iowa.—Denecke v. West, 169 N.W. 97, 184 Iowa 600.

N.Y.—Wolfe v. Madison Ave. Coach Co., 13 N.Y.S.2d 741, 171 Misc. 707.

Okl.—Mid-Continent Coaches, Inc. v. Guthrie, 257 P.2d 829, 208 Okl. 533.

Tex.—Cooke v. Loew's Houston Co., Civ.App., 130 S.W.2d 869.

4 C.J. p 996 note 68.

Testimony by absent witnesses at former trial

Failure of plaintiff to file, prior to trial, affidavit showing necessity for use of testimony given by absent witnesses at former trial was not prejudicial to defendant, where court consented to delay in filing affidavit so as not to delay the case.

Ky.—Coca Cola Bottling Works of Lexington v. Scale, 185 S.W.2d 685, 299 Ky. 409.

82.5 Wash.—Lunz v. Neuman, 290 P.2d 697, 46 Wash.2d 905.

83. Mass.—Karpowicz v. Manasas, 176 N.E. 497, 275 Mass. 413.

Mont.—Richardson v. Farmers Union Oil Co., 312 P.2d 134.

Neb.—Knoche v. Pease Grain & Seed Co., 277 N.W. 798, 134 Neb. 130.

N.Y.—Vertullo v. Commonwealth Ins. Co. of N. Y., 84 N.Y.S.2d 759, 274 App.Div. 1021.

N.C.—Chatham v. C. C. Disher Chevrolet Co., 1 S.E.2d 117, 215 N.C. 88.

Or.—**Corpus Juris Secundum cited in** Menefee v. Blitz, 179 P.2d 550, 561, 181 Or. 100.

Utah.—West v. Bentley, 98 P.2d 361, 98 Utah 248.

4 C.J. p 997 note 84.

84. Kan.—Webb v. Boulanger, 229 P. 754, 116 Kan. 711.

85. Ala.—Standard Oil Co. v. Carter, 98 So. 575, 210 Ala. 572.

Cal.—Banks v. Pann, 254 P. 937, 82 C.A. 20.

Minn.—McKay v. Minnesota Commercial Men's Ass'n, 165 N.W. 1061, 139 Minn. 192—Bergh v. Calmenson, 162 N.W. 353, 136 Minn. 322.

Mo.—Hill v. Kansas City Rys. Co., 233 S.W. 205, 289 Mo. 193.

Neb.—Crecelius v. Gamble-Skogmo, Inc., 13 N.W.2d 627, 144 Neb. 394.

N.H.—Chatman v. Maine Cent. R. R., 167 A. 559, 86 N.H. 317.

Ohio.—Cleveland Ry. Co. v. Merk, 180 N.E. 51, 124 Ohio St. 596.

Or.—Ross v. Robinson, 124 P.2d 918, 169 Or. 293, reheard 128 P.2d 956, 169 Or. 293.

Tex.—United Fidelity Life Ins. Co. v. Holliday, Civ.App., 226 S.W.2d 139, error refused no reversible error—American Nat. Ins. Co. v. Points, Civ.App., 131 S.W.2d 983, error dismissed, judgment correct—Houston & T. C. R. Co. v. Long, Civ.App., 219 S.W. 212.

4 C.J. p 996 note 70.

Admission of opinion evidence generally see infra § 1726.

86. Ala.—Commercial Casualty Ins. Co. v. Hubert, 147 So. 134, 226 Ala. 357—Grand Lodge of Alabama, A. F. & A. M. v. Goodwin, 85 So. 553, 204 Ala. 213—Philip Olim & Co. v. C. A. Watson & Sons, 85 So. 460, 204 Ala. 179.

Cal.—Lemm v. Stillwater Land & Cattle Co., 19 P.2d 785, 217 C. 474—Gibson v. McReynolds, 165 P. 921, 175 C. 263.

Silveyra v. Harper, 187 P.2d 83, 82 C.A.2d 761—Forman v. Goldberg, 108 P.2d 983, 42 C.A.2d 308—Palma v. Leslie, 45 P.2d 391, 6 C.A.2d 702—Henry H. Cross Co. of California v. Prentice, 30 P.2d 1017, 137 C.A. 497—Bailey v. Moshier, 169 P. 913, 35 C.A. 345.

Fla.—Zepatos v. Tragas, 154 So. 330, 114 Fla. 604.

Idaho.—Penn Mut. Life Ins. Co. v. Ireton, 65 P.2d 1032, 57 Idaho 466.

Ill.—City of Chicago v. Atwood, 110 N.E. 127, 269 Ill. 624.

Sanders v. Jarbis, 221 Ill.App. 550—Chicago Great Western R. Co. v. American McKenna Process Co., 200 Ill.App. 166. See Millett v. McDonald, 200 Ill.App. 149.

Iowa.—Fisher & Ball v. Carter, 160 N.W. 15, 178 Iowa 636.

Kan.—City of Dunlap v. Waters, 161 P. 641, 99 Kan. 257.

Ky.—Ocean Accident & Guarantee Corporation v. Milford Bank, 33 S.W.2d 312, 236 Ky. 457—Davis v. Williams Bros. Const. Co., 269 S.W. 289, 207 Ky. 404.

La.—Texas Co. v. Mattison, 125 So. 147, 12 La.App. 186.

Md.—Lansburgh v. M. P. Howlett Fish & Oyster Co., 138 A. 269, 153 Md. 312.

Mich.—Kalamazoo Tank & Silo Co. v. Shiek, 226 N.W. 832, 248 Mich. 118.

Mo.—W. T. Raleigh Medical Co. v. Modde, App., 209 S.W. 958.

Mont.—Howard v. Fraser, 271 P. 444, 83 Mont. 194—Hawley v. Richardson, 198 P. 450, 60 Mont. 118.

N.J.—Korman v. Livezey, 103 A. 381, 91 N.J.Law 699.

N.C.—Turner v. C. C. Disher Chevrolet Co., 183 S.E. 742, 209 N.C. 587—Morrison v. Southern States Finance Co., 148 S.E. 458, 197 N.C. 322—Proffitt v. State Mutual Fire Ins. Co., 97 S.E. 635, 176 N.C. 680.

Ohio.—Windermere Savings & Loan Co. v. Cleveland Citizens' Pub. Co., 159 N.E. 127, 26 Ohio App. 213.

Okl.—Lieuallen v. Young, 241 P. 342, 115 Okl. 153.

Tex.—Crawford v. Ramsey, Civ. App., 73 S.W.2d 1064—Boaz v. Ledenham, Civ.App., 53 S.W.2d 335—Abilene Christian College v. Wright, Civ.App., 1 S.W.2d 720—Ellerd v. Newcom, Civ.App., 203 S.W. 408.

Utah.—**Corpus Juris cited in** Van Leeuwen v. Huffaker, 5 P.2d 714, 719, 78 Utah 521—Consolidated Wagon & Machine Co. v. Wright, 190 P. 937, 56 Utah 382.

Wyo.—Studebaker Corp. of America v. Hanson, 160 P. 336, 24 Wyo. 222, Ann.Cas.1917E 557.

4 C.J. p 997 note 74.

Copy of birth certificate

Alleged error in the admission of a copy of plaintiff's purported birth certificate, on ground that a proper foundation had not been laid for admission, was harmless, since plaintiff was competent to testify as to his age.

Ill.—Shellabarger v. Jacobs, 45 N.E. 2d 184, 316 Ill.App. 191.

Copy of letter

Ala.—Stremming Veneer Co. v. Jacksonville Blow Pipe Co., 83 So.2d 224, 263 Ala. 491.

N.C.—Turner v. C. C. Disher Chevrolet Co., 183 S.E. 742, 209 N.C. 587

87. Ala.—Abbeville State Bank v.

hibits,[88] evidence of character and reputation,[89] unsworn declarations,[90] and ordinances.[90.5]

On the other hand, error in admitting evidence without preliminary proof has been held to be reversible in situations where the evidence erroneously admitted was documentary evidence,[91] secondary, or not the best, evidence,[92] opinion evi-

Wiley Fertilizer Co., 140 So. 431, 224 Ala. 421—Mitchell v. Birmingham News Co., 137 So. 422, 223 Ala. 568.

Cal.—Richmond Dredging Co. v. Atchison, T. & S. F. Ry. Co., 160 P. 862, 31 C.A. 399.

Conn.—Pepe v. Aceto, 175 A. 775, 119 Conn. 282.

Ga.—Tyus v. Duke, 174 S.E. 527, 178 Ga. 800—City Bank & Trust Co. v. Pollock, 163 S.E. 154, 174 Ga. 541—Smithloff v. Weinman, 141 S. E. 205, 165 Ga. 449.

Columbian Peanut Co. v. Pope, 24 S.E.2d 710, 69 Ga.App. 26—Beth Eden Baptist Church v. Ellis, 112 S.E. 382, 28 Ga.App. 596.

Idaho.—Kleinschmidt v. Scribner, 80 P.2d 362, 54 Idaho 185.

Ill.—Wicks v. Cuneo-Henneberry Co., 150 N.E. 276, 319 Ill. 344—Carter v. Cairo, etc., R. Co., 88 N.E. 493, 240 Ill. 152.

Union R., etc., Co. v. Shacklett, 19 Ill.App. 145.

Iowa.—Faatz v. Sullivan, 200 N.W. 321, 199 Iowa 875.

Md.—Conowingo Land Co. v. McGaw, 93 A. 222, 124 Md. 643.

Mass.—McCarthy v. Brockton Nat. Bank, 50 N.E.2d 196, 314 Mass. 318—Benuliewicz v. Berger, 139 N.E. 784, 245 Mass. 137.

Mich.—Board of Road Com'rs of Lapeer County v. Markley, 245 N.W. 496, 260 Mich. 455—Transport Utilitor Sales Co. v. Zwergel, 199 N.W. 668, 228 Mich. 132.

Minn.—Bowers v. Chicago, M. & St. P. Ry. Co., 170 N.W. 226, 141 Minn. 385.

Miss.—Rea v. McLeod, 109 So. 706, 144 Miss. 256.

Mo.—Chilton v. Metcalf, 136 S.W. 701, 234 Mo. 27.

Welch-Sandler Cement Co. v. Mullins, App., 31 S.W.2d 86—Buckman v. Bankers' Mortg. Co., App., 263 S.W. 1046, 1053, 1054—B. Roth Tool Co. v. Champ Spring Co., 123 S.W. 513, 146 Mo.App. 1.

N.J.—Marcus v. St. Paul Mercury Indemnity Co. of St. Paul, Minn., 163 A. 663, 110 N.J.Law 12.

N.Y.—Litchfield Const. Co. v. City of New York, 155 N.E. 116, 244 N.Y. 251, motion denied 155 N.E. 898, 244 N.Y. 563.

N.C.—Buckner v. C. I. T. Corporation, 153 S.E. 254, 198 N.C. 698—Ball-Thrash Co. v. McCormick, 90 S.E. 916, 172 N.C. 677.

Ohio.—Long v. Taplin-Rice-Clerkin Co., 177 N.E. 55, 38 Ohio App. 546.

Tex.—National Aid Life v. Self, Civ. App., 140 S.W.2d 606—Clay v. Maxwell, Civ.App., 84 S.W.2d 785—Commercial Standard Ins. Co. v. E. P. McKnight Chevrolet Co., Civ. App., 43 S.W.2d 636—Kin Kaid v. Lee, 119 S.W. 342, 54 Tex.Civ.App. 622.

Vt.—Dent v. Bellows Falls & S. R. St. Ry. Co., 116 A. 83, 95 Vt. 523.

Wis.—Bielke v. Knaack, 242 N.W. 176, 207 Wis. 490.

4 C.J. p 996 notes 69, 72.

Death certificate

N.C.—McClamroch v. Colonial Ice Co., 6 S.E.2d 850, 217 N.C. 106.

Deed

Ga.—Gormley v. Brazil, 187 S.E. 62, 182 Ga. 883.

Delivery invoices

Ohio.—Sinclair Refining Co. v. Lecrone Motor Transport Line, App., 34 N.E.2d 822.

Drawing

S.D.—Rowan v. Becker, 41 N.W.2d 836, 73 S.D. 273.

Map

Ga.—Parker v. Smith, 18 S.E.2d 559, 66 Ga.App. 567.

N.Y.—D'Onfro v. State, 59 N.Y.S.2d 194, reversed on other grounds 59 N.Y.S.2d 205, 270 App.Div. 9.

Photograph

Ark.—Reynolds v. Nutt, 230 S.W.2d 949, 217 Ark. 543.

Ind.—Perry v. Perry, 27 N.E.2d 133, 108 Ind.App. 93.

Records

Okl.—Colonial Royalties Co. v. Hinds, 216 P.2d 958, 202 Okl. 660.

Uncertified transcript of previous trial

Cal.—Kuehn v. Carlos, 89 P.2d 672, 32 C.A.2d 295.

X-ray pictures not identified

Okl.—O. C. Cab Service Co. v. Askew, 79 P.2d 811, 183 Okl. 6.

88. Cal.—Progressive Finance Corporation v. Vining, 1 P.2d 1004, 115 C.A. 423—Meier v. Wagner, 150 P. 797, 27 C.A. 579.

Idaho.—C. I. T. Corp. v. Elliott, 159 P.2d 891, 66 Idaho 384.

Ind.—Hull v. Burress, 93 N.E.2d 213, 120 Ind.App. 507.

89. Ga.—New York Life Ins. Co. v. Cobb, 132 S.E. 122, 35 Ga.App. 84.

90. Ala.—Dixie Const. Co. v. McCauley, 101 So. 601, 211 Ala. 683.

Cal.—Swanson v. Siem, 12 P.2d 1053, 124 C.A. 519.

Ind.—Lemond v. Astrike, 185 N.E. 867, 97 Ind.App. 106.

Iowa.—Tero-Petroff & Co. v. Equity Fire Ins. Co., 167 N.W. 660, 183 Iowa 906.

Md.—Bracey v. McGary, 106 A. 622, 134 Md. 267.

Mo.—Hardy v. Stork, App., 17 S.W.2d 562—Detroit Beef Co. v. Holstein Commission Co., App., 223 S.W. 790.

Mont.—Exchange State Bank of Glendive v. Occident Elevator Co., 24 P.2d 126, 95 Mont. 78, 90 A.L.R. 740.

S.C.—White v. Southern Ry. Co., 140 S.E. 560, 142 S.C. 284, 57 A.L.R. 634.

4 C.J. p 996 note 71.

90.5 Ky.—Moody's Adm'r v. Commonwealth, 97 S.W.2d 816, 265 Ky. 780.

91. Fla.—Kight v. American Eagle Fire Ins. Co. of New York, 170 So. 664, 125 Fla. 608.

Ill.—Wolf v. People's Bank, 255 Ill. App. 127.

Me.—McPhee v. Lawrence, 122 A. 675, 123 Me. 264.

Mass.—Karpowicz v. Manasas, 176 N.E. 497, 275 Mass. 413.

Mont.—Richardson v. Farmers Union Oil Co., 312 P.2d 134.

N.Y.—Walsh v. Frankenthaler, 173 N.Y.S. 764, 186 App.Div. 62.

Hofstetter v. Goldenberg, 230 N. Y.S. 353, 132 Misc. 772.

Contract

Tex.—City of Corpus Christi v. Live Oak County, Civ.App., 103 S.W.2d 226.

Letter

Mo.—Lentz v. New York Life Ins. Co., App., 100 S.W.2d 588.

Mineral deeds

Tex.—Johnson v. Stickney, Civ.App., 152 S.W.2d 921.

Report on water samples

Mo.—Martin v. Springfield City Water Co., App., 128 S.W.2d 674.

Telegram

Okl.—Lubell v. King, 216 P.2d 325, 202 Okl. 517.

92. U.S.—**Corpus Juris Secundum cited in** Watson v. U. S., C.A.Fla., 224 F.2d 910, 912.

Ala.—Denson v. Kirkpatrick Drilling Co., 144 So. 86, 225 Ala. 473—Acree v. Shaw, 80 So. 817, 202 Ala. 433.

Fla.—Kight v. American Eagle Fire Ins. Co. of New York, 170 So. 664, 125 Fla. 608.

Ill.—Ford v. M. Piowaty & Sons, 197 Ill.App. 417.

Pa.—Muncey v. Pullman Taxi Service Co., 112 A. 30, 269 Pa. 97.

S.D.—Housman v. Gelman, 252 N.W. 857, 62 S.D. 310—Adams v. Scott, 157 N.W. 321, 37 S.D. 212.

Wis.—Federal Asbestos Co. v. Zimmermann, 177 N.W. 881, 171 Wis. 594, 25 A.L.R. 5.

Copy of account books

Ind.—Kelsch v. Eldridge, 87 N.E.2d 664, 119 Ind.App. 229.

dence,[92.5] evidence of reputation,[92.10] or unsworn declarations.[93]

The rule that error committed by admitting evidence without first requiring preliminary proof, to make the admitted evidence competent, is not ground for reversal when such error is harmless has been applied to cases wherein the error in question consisted in admitting, without preliminary proof, evidence which is merely corroborative,[94] immaterial,[95] irrelevant,[96] of little probative force,[96.5] or impeaching.[97]

Error in admitting evidence without first requiring preliminary proof to make such evidence competent may be regarded as harmless error, depending on the circumstances of the particular case, as where the fact sought to be thus proved was conclusively established by other evidence which is competent,[98] or was admitted by the objecting party in his testimony[99] or pleadings,[1] where there is no dispute on the only point to which such evidence relates,[2] or where there was full opportunity to cross-examine.[2.5] Moreover, error, if any, in admitting evidence without preliminary proof may be deemed to be harmless where the verdict is clearly right on the whole evidence and is fully supported by competent evidence;[3] where parol evidence improperly admitted is in exact accord with written evidence subsequently introduced;[4] where the evidence alleged to be erroneously admitted was introduced to establish a point which the complaining party was required to prove;[5] where in view of other evidence in the case error in not requiring preliminary proof is harmless;[6] or where the evi-

92.5 Idaho.—Village of Lapwai v. Alligier, 207 P.2d 1025, 69 Idaho 397.

Opinion as to speed

Neb.—Piechota v. Rapp, 27 N.W.2d 682, 148 Neb. 442.

Opinion of physician

(1) Generally.

Ohio.—Holt v. Hartschuk, 122 N.E. 2d 653, 96 Ohio App. 491.

Tex.—Cantu v. Casas, Civ.App., 265 S.W.2d 175, error refused no reversible error.

(2) In automobile negligence action, permitting plaintiff's expert medical witness to testify, over defendants' objection, to matters shown by X-rays without introducing X-ray pictures in evidence constituted prejudicial error.

N.Y.—Gurssiin v. Helenboldt, 21 N. Y.S.2d 269, 259 App.Div. 1064.

92.10 Pa.—Simpson v. Montgomery Ward & Co., 46 A.2d 674, 354 Pa. 87.

93. Idaho.—Hample v. McKinney, 258 P. 179, 44 Idaho 435.

Mich.—Sanborn v. Income Guaranty Co., 221 N.W. 162, 244 Mich. 99.

N.J.—Ferraro v. Public Service Ry. Co., 141 A. 590, 6 N.J.Misc. 463.

N.Y.—Styles v. Huber, 249 N.Y.S. 590, 233 App.Div. 745.

Utah.—Looney v. Bingham Dairy, 282 P. 1030, 75 Utah 53, 73 A.L.R. 427.

94. Ill.—Rehfuss v. Hill, 90 N.E. 187, 243 Ill. 140.

Pa.—Clark v. Philadelphia Rapid Transit Co., 88 A. 683, 241 Pa. 437.

95. U.S.—Chicago First Unitarian Soc. v. Faulkner, Ill., 91 U.S. 415, 23 L.Ed. 283.

4 C.J. p 997 note 75.

Evidence of fraud without proof that indorsee of note was not holder in due course

Where a maker, sued on a note, alleged facts constituting fraud at common law which would be a defense against a payee but not against a holder in due course, permitting the maker to introduce evidence of fraud sufficient as a defense at common law without first producing affirmative proof that the indorsee was not the holder in due course was not prejudicial error.

Minn.—M & M Securities Co. v. Dirnberger, 250 N.W. 801, 190 Minn. 57.

96. Ind.—State Storage v. Scheper, 181 N.E. 385, 95 Ind.App. 157.

Tex.—West Side Oil Co. v. McDorman, Civ.App., 244 S.W. 167.

96.5 Ind.—Hull v. Burress, 93 N.E. 2d 213, 120 Ind.App. 507.

97. U.S.—McLeod Lumber Co. v. Western Redwood Co., C.C.A.Cal., 8 F.2d 930.

Minn.—Shuster v. Vecchi, 279 N.W. 841, 203 Minn. 76.

Okl.—Brownell v. Moorehead, 165 P. 408, 65 Okl. 218.

Or.—Peters v. Hockley, 53 P.2d 1059, 152 Or. 434, 103 A.L.R. 1347.

98. Ala.—Alabama Lumber Co. v. Cross, 44 So. 563, 152 Ala. 562, 126 Am.S.R. 55.

Cal.—Hemet Valley Growers v. Parssinen, 201 P.2d 577, 89 C.A.2d 695, rehearing denied 202 P.2d 326, 89 C.A.2d 695—Kuehn v. Carlos, 89 P. 2d 672, 32 C.A.2d 295.

Okl.—O. C. Cab Service Co. v. Askew, 79 P.2d 811, 183 Okl. 6.

S.D.—Rowan v. Becker, 41 N.W.2d 836, 73 S.D. 273.

4 C.J. p 997 note 77.

99. Ill.—Soaps v. Eichberg, 42 Ill. App. 375.

Iowa.—Borden v. Isherwood, 94 N.W. 1128, 120 Iowa 677.

Ky.—Lyons Lumber Co. v. Stewart, 145 S.W. 376, 147 Ky. 653.

N.Y.—Newcombe v. Hyman, 37 N.Y. S. 649, 16 Misc. 25.

Ohio.—Cities Service Oil Co. v. Dayton Reliable Motors, App., 65 N.E. 2d 727.

Or.—Ross v. Robinson, 124 P.2d 918, 169 Or. 293, reheard 128 P.2d 956, 169 Or. 293.

Utah.—Van Leeuwen v. Huffaker, 5 P.2d 714, 78 Utah 521.

4 C.J. p 997 note 78.

1. Cal.—Hemet Valley Growers v. Parssinen, 201 P.2d 577, 89 C.A.2d 695, rehearing denied 202 P.2d 326, 89 C.A.2d 695.

Mo.—Valle v. North Missouri R. Co., 37 Mo. 445.

4 C.J. p 997 note 79.

2. Ill.—McGregor v. Filer, 69 Ill. 514.

King v. Meeker, 269 Ill.App. 57.

Iowa.—Borden v. Isherwood, 94 N.W. 1128, 120 Iowa 677.

N.Y.—Eisenbud v. Gellert, 55 N.Y.S. 952, 26 Misc. 367.

Okl.—O. C. Cab Service Co. v. Askew, 79 P.2d 811, 183 Okl. 6.

2.5 Pa.—Offensend v. Atlantic Refining Co., 185 A. 745, 322 Pa. 399.

3. Miss.—Mitchell v. Tishomingo Sav. Inst., 56 Miss. 444.

4. Ind.—Bragg v. Eagan, 98 N.E. 835, 51 Ind.App. 513.

5. Iowa.—Denecke v. West, 169 N. W. 97, 184 Iowa 600.

6. Cal.—Soto v. Spring Valley Water Co., 178 P. 305, 39 C.A. 187.

Ill.—Gorden v. Gorden, 119 N.E. 312, 283 Ill. 182.

Iowa.—Dice v. Johnson, 199 N.W. 346, 198 Iowa 1093.

N.J.—Interstate Corrugated Box Co. v. Steiger, 128 A. 607, 3 N.J.Misc. 430.

Or.—York v. Western Savings & Loan Ass'n, 14 P.2d 1003, 140 Or. 574.

Pa.—Sollenberger v. Pennsylvania R. Co., 139 A. 127, 290 Pa. 415, 417.

Vt.—Rutland Sash & Door Co. v. Gleason, 126 A. 577, 98 Vt. 215.

Wash.—Poole's Seed & Implement Co. v. Rudene, 200 P. 1104, 117 Wash. 150.

dence is true and the production of the primary proof would necessarily lead to the same result.[7] Further, admitting evidence prematurely offered without preliminary proof may be harmless where the same evidence is subsequently admitted after proper preliminary proof.[8]

On the other hand, error in the admission of evidence without preliminary proof may be regarded as prejudicial where the actual influence of such error cannot be known,[9] or where the evidence is admitted subject to a promise that the party introducing the evidence would prove facts making the evidence competent, but he fails so to do.[10]

Error committed in admitting evidence without preliminary proof may be cured by subsequent matters.[11]

§ 1726. —— Admission of Opinion Evidence

Error in admitting opinion evidence may or may not be ground for reversal, depending on whether such error is prejudicial.

Error in the admission of opinion evidence is not ground for reversal when not prejudicial to the complaining party;[12] nor will it operate to reverse

7. Kan.—Bridges v. Vann, 127 P. 604, 88 Kan. 98.

8. Okl.—First State Bank of Putnam v. Harris, 158 P. 911, 59 Okl. 150.

9. Me.—McPhee v. Lawrence, 122 A. 675, 123 Me. 264.

10. Conn.—Antel v. Poli, 123 A. 272, 100 Conn. 64.

11. Ala.—National Surety Co. v. Boone, 151 So. 447, 227 Ala. 599—Tingle v. Worthington, 110 So. 143, 215 Ala. 126—Gay & Bruce v. Citizens' Nat. Bank of Lineville, 110 So. 19, 215 Ala. 114—Disheroon v. Brock, 105 So. 899, 213 Ala. 637—Rike v. McHugh & Groom, 66 So. 452, 188 Ala. 237.

Cal.—Smith v. Lombard, 258 P. 55, 201 C. 518.

Ga.—Milner v. Allgood, 191 S.E. 132, 184 Ga. 288.

Ill.—Wagner v. Chicago, R. I. & P. Ry. Co., 200 Ill.App. 305, affirmed 115 N.E. 201, 277 Ill. 114.

Ind.—W. A. Flint Co. v. John V. Farwell Co., 134 N.E. 664, 192 Ind. 439, rehearing denied 136 N.E. 839, 192 Ind. 439.

Anthony Wayne Oil Co. v. Barall, 42 N.E.2d 370, 111 Ind.App. 670—Finch v. McClellan, 130 N.E. 13, 77 Ind.App. 533, rehearing denied 131 N.E. 236, 77 Ind.App. 533.

N.C.—Pack v. Katzin, 1 S.E.2d 566, 215 N.C. 233.

N.D.—Thede v. Rusch, 256 N.W. 409, 65 N.D. 137.

Okl.—Moore v. Leigh-Head & Co., 149 P. 1129, 48 Okl. 228.

Cure generally see infra §§ 1734–1738.

12. Ala.—Lucas E. Moore Stave Co. v. Woodley, 105 So. 878, 213 Ala. 570—Nashville Broom & Supply Co. v. Alabama Broom & Mattress Co., 100 So. 132, 211 Ala. 192—Connors-Weyman Steel Co. v. Harless, 80 So. 399, 202 Ala. 317—Dominey v. Dowling-Martin Grocery Co., 76 So. 977, 200 Ala. 619—City of Huntsville v. Pulley, 65 So. 405, 187 Ala. 367.

Ark.—La Grand v. Arkansas Oak Flooring Co., 245 S.W. 38, 155 Ark. 585—L. J. Smith Const. Co. v. Tate, 237 S.W. 83, 151 Ark. 278—Mutual Aid Union v. Blacknall, 196 S.W. 792, 129 Ark. 450—Nixon v. Fulkerson, 193 S.W. 500, 128 Ark. 172.

Cal.—Sheehan v. Board of Police Com'rs of City and County of San Francisco, 239 P. 844, 197 C. 70.

Campbell, State Compensation Ins. Fund, Intervener, v. Fong Wan, 141 P.2d 43, 60 C.A.2d 553—Bell v. Kelly, 238 P. 719, 73 C. A. 189—Kennedy v. Scally, 217 P. 96, 62 C.A. 367—Hallawell v. Union Oil Co. of California, 173 P. 177, 36 C.A. 672—Valencia v. Milliken, 160 P. 1086, 31 C.A. 533—St. Paul Fire & Marine Ins. Co. v. Southern Pac. Co., 157 P. 247, 30 C. A. 140—Meier v. Wagner, 150 P. 797, 27 C.A. 579.

Colo.—National Surety Co. v. Wilson, 168 P. 751, 63 Colo. 460.

D.C.—Newman v. Newman, 42 App. D.C. 588.

Fla.—Rott v. City of Miami Beach, 94 So.2d 168—Loftin v. Dagley, 13 So.2d 311, 152 Fla. 831.

Ga.—Statham v. Council, 9 S.E.2d 768, 190 Ga. 517—Thompson v. Ammons, 129 S.E. 539, 160 Ga. 886—Turner Bros. v. Clarke, 84 S.E. 116, 143 Ga. 44—Stephenson v. Meeks, 81 S.E. 851, 141 Ga. 561.

Aiken v. Mitchell, 28 S.E.2d 389, 70 Ga.App. 351—Standard Growers' Exchange v. G. O. Harris & Son, 125 S.E. 782, 33 Ga.App. 195.

Ill.—Osborn v. Albers, 7 N.E.2d 447, 365 Ill. 631—Bremer v. Lake Erie & W. R. Co., 148 N.E. 862, 318 Ill. 11, 41 A.L.R. 1345.

Pontius v. Commercial Nat. Safe Deposit Co., 187 Ill.App. 20—Whitley v. Wright Carriage Body Co., 186 Ill.App. 300. See Skinner v. Illinois Third Vein Coal Co., 225 Ill.App. 158—In re Hayhurst's Estate, 215 Ill.App. 315—Cyrulik v. Ritchey Coal Co., 215 Ill.App. 254—Williams v. Louis, 204 Ill.App. 62—Pugh v. Palmer, 201 Ill.App. 371.

Ind.—Sax v. Zanger, 111 N.E. 1, 184 Ind. 262—Terre Haute, I. & E. Traction Co. v. Weddle, 108 N.E. 225, 183 Ind. 305.

Brown v. Ogle, 130 N.E. 147, 75 Ind.App. 90—City of Terre Haute v. O'Neal, 126 N.E. 26, 73 Ind.App. 485—Blish v. Greer, 120 N.E. 606, 74 Ind.App. 469.

Iowa.—Snyder v. Sargeant, 196 N.W. 22, 197 Iowa 475—Stillman v. Chicago, R. I. & P. Ry. Co., 192 N.W. 860, 196 Iowa 612—Turner v. Hartford Fire Ins. Co., 172 N.W. 166, 185 Iowa 1363—Monahan v. Roderick, 166 N.W. 725, 183 Iowa 1—Ingwersen v. Carr & Brannon, 164 N.W. 217, 180 Iowa 988—Woodworth v. Iowa Cent. Ry. Co., 149 N. W. 522, 170 Iowa 697.

Kan.—Lewis v. Harvey, 168 P. 856, 101 Kan. 673—Hessen v. Sapp, 160 P. 220, 98 Kan. 737—Root v. Cudahy Packing Co., 147 P. 69, 94 Kan. 339.

Ky.—Kentucky Traction & Terminal Co. v. Wilburn, 267 S.W. 1090, 206 Ky. 510—Anderson v. Standard Acc. Ins. Co., 266 S.W. 237, 205 Ky. 587—Cincinnati, N. O. & T. P. R. Co. v. Owsley, 231 S.W. 210, 191 Ky. 661—Louisville & N. R. Co. v. Hunter, 214 S.W. 914, 185 Ky. 165—Lexington & E. Ry. Co. v. Napier, 211 S.W. 756, 184 Ky. 331—Robinson v. Louisville & N. R. Co., 169 S.W. 831, 160 Ky. 235.

Me.—Johnson v. Bangor Ry. & Electric Co., 131 A. 1, 125 Me. 88.

Md.—Ottenberg v. Ryan & Riley Co., 99 A. 984, 130 Md. 38—Nelson v. Patrick, 97 A. 633, 128 Md. 504.

Mass.—Godfrey v. Old Colony St. Ry. Co., 111 N.E. 878, 223 Mass. 419.

Mich.—Anthony v. Cochrane, 295 N. W. 197, 295 Mich. 386—Harnau v. Haight, 155 N.W. 563, 189 Mich. 600.

Minn.—McGray v. Cobb, 152 N.W. 262, 130 Minn. 434, reheard 153 N. W. 736, 130 Minn. 434.

Mo.—Diehl v. A. P. Green Fire Brick Co., 253 S.W. 984, 299 Mo. 641—Hudson v. Kansas City Rys. Co., 246 S.W. 576—Phillips v. East St. Louis & S. Ry. Co., 226 S.W. 863—Threadgill v. United Rys. Co. of St. Louis, 214 S.W. 161, 279 Mo. 466.

Grisham v. Freewald, 95 S.W.2d 349, 230 Mo.App. 1203, opinion quashed on other grounds State ex rel. Grisham v. Allen, 124 S.W.2d

1080, 344 Mo. 66, conformed to, App., 130 S.W.2d 653—Petty v. Boeving, 264 S.W. 66, 216 Mo.App. 271, opinion quashed on other grounds State ex rel. Boeving v. Cox, 276 S.W. 869, 310 Mo. 367—Cecil v. Wells, 259 S.W. 844, 214 Mo.App. 193—Cox v. McKinney, 258 S.W. 445, 212 Mo.App. 522—Vogt v. United Rys. Co. of St. Louis, App., 251 S.W. 416—Hamm v. Chicago, B. & Q. R. Co., 245 S.W. 1109, 211 Mo.App. 460—Murphy v. Electric Park Amusement Co., 241 S.W. 651, 209 Mo.App. 638—Greer v. Springfield Creamery Co., App., 240 S.W. 833—Mummaw v. Southwestern Telegraph & Telephone Co., App., 208 S.W. 476—Nitchman v. United Rys. Co. of St. Louis, App., 203 S.W. 491—Fairbanks, Morse & Co. v. Merchants' & Consumers' Market House Ass'n, 202 S.W. 596, 199 Mo.App. 317—Montgomery v. Deering Southwestern Ry., 194 S. W. 894, 198 Mo.App. 12—Thomas v. St. Louis, I. M. & S. Ry. Co., 173 S.W. 728, 187 Mo.App. 420.

Nev.—Kline v. Vansickle, 217 P. 585, 47 Neb. 139.

N.J.—Scott v. Hoboken Bank for Sav. in City of Hoboken, 19 A.2d 327, 126 N.J.Law 294, affirmed Scott v. Hoboken Bank for Savings, 23 A. 2d 399, 127 N.J.Law 564.

N.Y.—Christastie v. Elmira Water, Light & R. Co., 195 N.Y.S. 156, 202 App.Div. 270.

N.C.—West Const. Co. v. Atlantic Coast Line Ry. Co., 116 S.E. 3, 185 N.C. 48—Comer v. City of Winston-Salem, 100 S.E. 619, 178 N.C. 383—Meeder & Co. v. Seaboard Air Line Ry., 91 S.E. 704, 173 N.C. 70—Brabble v. Brumsey, 89 S.E. 1008, 172 N.C. 832—Ferebee v. Norfolk-Southern R. Co., 83 S.E. 360, 167 N.C. 290, affirmed Norfolk Southern R. Co. v. Ferebee, 35 S.Ct. 781, 238 U.S. 269, 59 L.Ed. 1303—Tillett v. Norfolk Southern R. Co., 82 S.E. 866, 166 N.C. 515.

Ohio.—Ross v. Stricker, 88 N.E.2d 80, 85 Ohio App. 56, reversed on other grounds 91 N.E.2d 18, 153 Ohio St. 153—Cincinnati St. Ry. Co. v. Hickey, 163 N.E. 310, 29 Ohio App. 399.

Okl.—Choctaw Cotton Oil Co. v. Pope, 148 P. 170, 47 Okl. 383—Missouri, O. & G. Ry. Co. v. Miller, 145 P. 367, 45 Okl. 173—Chicago, R. I. & G. Ry. Co. v. Bentley, 143 P. 179, 43 Okl. 469.

Or.—Ahonen v. Hryszko, 175 P. 616, 90 Or. 451—Evansen v. Grande Ronde Lumber Co., 149 P. 1035, 77 Or. 1—Macchi v. Portland Ry., Light & Power Co., 148 P. 72, 76 Or. 216.

S.C.—Coleman v. Stevens, 117 S.E. 305, 124 S.C. 8.

S.D.—Sheehan v. Minneapolis & St. L. R. Co., 193 N.W. 597, 46 S.D. 429.

Tex.—Dallas Ry. & Terminal Co. v. Bailey, 250 S.W.2d 379, 151 Tex. 359.

Coker v. Mitchell, Civ.App., 269 S.W.2d 950—East Tex. Const. Co. v. Reno, Civ.App., 231 S.W.2d 799, error refused no reversible error—Portilla Drilling Co. v. Miller, Civ. App., 144 S.W.2d 936, error dismissed, judgment correct—Lloyd v. Silvers, Civ.App., 274 S.W. 253—San Antonio Public Service Co. v. Alexander, Civ.App., 270 S.W. 199, affirmed, Com.App., 280 S.W. 753—San Marcos Oil Mill v. Soyars, Civ. App., 265 S.W. 173—Ford v. Wichita Falls & S. Ry. Co., Civ.App., 253 S.W. 932—Dunlap Hardware Co. v. E. F. Elmberg Co., Civ.App., 252 S.W. 1098, affirmed E. F. Elmberg Co. v. Dunlap Hardware Co., Com.App., 267 S.W. 258—Corn v. McNutt, Civ.App., 230 S.W. 1052, dismissed for want of jurisdiction—Southwestern Settlement & Development Co. v. Village Mills Co., Civ.App., 230 S.W. 869—Chicago, R. I. & G. Ry. Co. v. Trout, Civ.App., 224 S.W. 472, dismissed for want of jurisdiction—Bobbitt v. Bobbitt, Civ.App., 223 S.W. 478, dismissed for want of jurisdiction—Western Union Telegraph Co. v. Carver, Civ.App., 222 S.W. 333, error refused—Lee v. Buie, Civ.App., 212 S.W. 230—Houston E. & W. T. Ry. Co. v. Lynch, Civ.App., 208 S.W. 714—St. Louis Union Trust Co. v. Harbaugh, Civ.App., 205 S. W. 496, error refused—Palatine Ins. Co. v. Griffin, Civ.App., 202 S.W. 1014, reversed on other grounds Griffin v. Palatine Ins. Co., Com.App., 235 S.W. 202, set aside on other grounds 238 S.W. 637—Moore v. Coleman, Civ.App., 195 S.W. 212, error refused—Panhandle & S. F. Ry. Co. v. Vaughn, Civ. App., 191 S.W. 142, affirmed, Com. App., 222 S.W. 206—Townsend v. Pilgrim, Civ.App., 187 S.W. 1021—Ft. Worth & D. C. Ry. Co. v. Hapgood, Civ.App., 184 S.W. 1075—Pierce Fordyce Oil Ass'n v. Woods, Civ.App., 180 S.W. 1181—Hall v. Ray, Civ.App., 179 S.W. 1135—Corrigan, Lee & Halpin v. Heubler, Civ.App., 167 S.W. 159.

Utah.—Kirchgestner v. Denver & R. G. W. R. Co., 218 P.2d 685, 118 Utah 20, reheard 233 P.2d 699, 118 Utah 41—Barker v. Savas, 172 P. 672, 52 Utah 262—Ruping v. Oregon Short Line R. Co., 171 P. 145, 51 Utah 480.

Vt.—Baldwin v. Gaines, 102 A. 338, 92 Vt. 61.

Va.—Ashby v. Virginia Ry. & Power Co., 122 S.E. 104, 138 Va. 310—Norfolk & W. Ry. Co. v. Henderson, 111 S.E. 277, 132 Va. 297—Washington & O. D. Ry. v. Warner, 97 S.E. 799, 124 Va. 452.

Wash.—Myers v. Little Church by the Side of the Road, 227 P.2d 165, 37 Wash.2d 897—Edwards v. Washkuhn, 119 P.2d 905, 11 Wash.2d 425.

4 C.J. p 997 note 85—47 C.J. p 596 note 22.

Admitted or undisputed facts see infra § 1732.

Cure by evidence subsequently admitted see infra § 1735.

Failure to lay foundation see supra § 1725.

Rulings on objections to questions see supra § 1716.

Discrimination

In an action on a hail insurance policy covering crops, the trial court's admitting opinions on certain matters when offered by insured and excluding them when offered by insurer was not reversible error, although there were no extraneous circumstances preventing the rules of evidence from working the same way when invoked by either party.

Iowa.—Slinger v. Farmers' Mut. Hail Ins. Ass'n of Iowa, 258 N.W. 101, 219 Iowa 329.

In hearings on interlocutory injunction, the admission of some opinion evidence will not necessarily require a reversal.

Ga.—Kniepkamp v. Richards, 16 S.E. 2d 24, 192 Ga. 509.

Handwriting expert's opinion held not prejudicial

Tex.—Schnaufer v. Price, Civ.App., 124 S.W.2d 940, error refused.

Opinion as to custom and usage

Cal.—Peterson v. Permanente S. S. Corp., 277 P.2d 495, 129 C.A.2d 579, certiorari denied 75 S.Ct. 882, 349 U.S. 953, 99 L.Ed. 1278.

Opinion as to understanding or belief of another

Cal.—Central Heights Imp. Co. v. Memorial Parks, 105 P.2d 596, 40 C.A.2d 591.

Particular opinions held harmless

(1) Opinion of lay witness as to physical condition of insured.

Ky.—Travelers Ins. Co. v. Mahon, 117 S.W.2d 909, 273 Ky. 691—Jefferson Standard Life Ins. Co. v. Pierce, 95 S.W.2d 579, 264 Ky. 698.

(2) Witness' statement with respect to probability of collision.

Ga.—Southeastern Greyhound Lines v. Durham, 8 S.E.2d 99, 62 Ga.App. 99.

(3) Opinion as to point of impact in collision.

Ala.—Allen v. Zickos, 68 So.2d 841, 37 Ala.App. 361.

Cal.—Hooper v. Bronson, 266 P.2d 590, 123 C.A.2d 243.

(4) Opinion as to speed.

Wis.—Swanson v. State Farm Mut. Auto. Ins. Co. of Bloomington, Ill., 58 N.W.2d 664, 264 Wis. 274.

(5) Opinion of lay witness as to testamentary capacity.

Utah.—In re Hanson's Estate, 52 P.2d 1103, 87 Utah 580.

when not of a determinative character,[12.5] or when such admission did not cause a failure of substantial justice.[12.10] So, in particular circumstances the admission of the opinions of medical experts has been held harmless.[12.15]

On the other hand, the judgment must be re-

(6) Opinion as to soundness of mind.

Cal.—Maxon v. Avery, 110 P.2d 446, 43 C.A.2d 155.

(7) Testimony of nonexpert as to mental condition.

Ill.—Rigdon v. Crosby, 66 N.E.2d 190, 328 Ill.App. 399.

(8) Testimony of expert as to construction of foreign statutes.

Cal.—In re Keig's Estate, 140 P.2d 163, 59 C.A.2d 812.

(9) Other opinions.

Ala.—Moore v. Holroyd, 122 So. 349, 219 Ala. 392—Fraser v. State, 113 So. 289, 216 Ala. 426—Ashville Sav. Bank v. Lee, 108 So. 335, 214 Ala. 501.

Cal.—In re Arbulich's Estate, 257 P. 2d 433, 41 C.2d 86—Munson v. Munson, 166 P.2d 268, 27 C.2d 659.

Hairston v. Studio Amusements, 195 P.2d 498, 86 C.A.2d 735—People v. Lang Transp. Corp., 110 P. 2d 464, 43 C.A.2d 134—Johnston v. Peairs, 3 P.2d 617, 117 C.A. 208.

Colo.—Riant Amusement Co. v. Bailey, 255 P. 628, 81 Colo. 389.

Ga.—Georgia Ry. & Power Co. v. Shaw, 149 S.E. 657, 40 Ga.App. 341.

Idaho.—Mason v. Hillsdale Highway Dist., 154 P.2d 490, 65 Idaho 833.

Ill.—Coby v. Turner, 133 N.E.2d 46, 9 Ill.App.2d 416.

Iowa.—Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R. R., 60 N.W.2d 572, 244 Iowa 1364.

Kan.—McKenzie v. Ruggles Const. Co., 284 P. 407, 129 Kan. 759.

Ky.—Combs v. Shields' Ex'r, 109 S. W.2d 601, 270 Ky. 232.

La.—Paquet v. Renken, App., 30 So. 2d 218.

Md.—O'Keefe v. Baltimore Transit Co., 94 A.2d 26, 201 Md. 345—State v. Emerson & Morgan Coal Co., 133 A. 601, 150 Md. 429.

Mich.—Muth v. W. P. Lahey's, Inc., 61 N.W.2d 619, 338 Mich. 513.

Minn.—Supornick v. National Retailers Mut. Ins. Co., 296 N.W. 904, 209 Minn. 500.

Mo.—Kloeckener v. St. Louis Public Service Co., 53 S.W.2d 1043, 331 Mo. 396—James v. Bailey Reynolds Chandelier Co., 30 S.W.2d 118, 325 Mo. 1054—Denkman v. Prudential Fixture Co., 289 S.W. 591.

N.H.—Dowling v. L. H. Shattuck, Inc., 17 A.2d 529, 91 N.H. 234.

N.J.—Stiles v. MacLean, 138 A. 119, 103 N.J.Law 537.

Ohio.—Cleveland, C., C. & St. L. Ry. Co. v. Lindner, 178 N.E. 322, 40 Ohio App. 265.

Okl.—Kurn v. Manley, 153 P.2d 623, 194 Okl. 574.

Pa.—Keystone Paper Mills Co. v. Pennsylvania Fire Ins. Co., 139 A. 627, 291 Pa. 119.

Reese v. Kegerreis, Com.Pl., 54 Dauph.Co. 344—Hauser v. Hambersky, Com.Pl., 33 West.L.J. 140, affirmed 84 A.2d 184, 368 Pa. 482.

R.I.—Malfetano v. United Electric Rys. Co., 191 A. 491, 58 R.I. 129.

Tex.—Coca-Cola Bottling Co. v. Krueger, Civ.App., 239 S.W.2d 669—Harris v. Levy, Civ.App., 217 S. W.2d 154—Schonrock v. Taylor, Civ.App., 212 S.W.2d 260, error refused.

Utah.—In re Hanson's Estate, 52 P. 2d 1103, 87 Utah 580.

Vt.—Leonard v. Henderson, 99 A.2d 698, 118 Vt. 29.

W.Va.—Stokey v. Norfolk & Western Ry. Co., 55 S.E.2d 102, 132 W. Va. 771—Menafee v. Monongahela Ry. Co., 148 S.E. 109, 107 W.Va. 245.

Wyo.—Rafferty v. Northern Utilities Co., 278 P.2d 605, 73 Wyo. 287—American Surety Co. of New York v. Broadway Improvement & Investment Co., 271 P. 19, 39 Wyo. 195, rehearing denied 274 P. 13, 39 Wyo. 195.

12.5 Cal.—Metropolitan Water Dist. of Southern California v. Adams, 116 P.2d 7, motion denied 122 P. 2d 257, 19 C.2d 463.

12.10 Okl.—Auten v. Livingston, 207 P.2d 256, 201 Okl. 467.

Verdict or judgment amply supported

Idaho.—Jensen v. Boise-Kuna Irr. Dist., 269 P.2d 755, 95 Idaho 133.

N.Y.—Lowery v. Syracuse University, 15 N.Y.S.2d 677, 258 App.Div. 844, followed in 15 N.Y.S.2d 678, 258 App.Div. 845, affirmed 27 N.E. 2d 203, 282 N.Y. 793.

12.15 U.S.—U. S. v. Roberts, C.C.A. Colo., 62 F.2d 594.

Ark.—Missouri Pac. R. Co. v. Ross, 202 S.W.2d 365, 211 Ark. 784.

Cal.—Forbis v. Holzman, 55 P.2d 201, 5 C.2d 407.

In re Brast's Estate, 160 P.2d 193, 69 C.A.2d 704—Hedlund v. Sutter Medical Service Co., 124 P.2d 878, 51 C.A.2d 327—Hurwit v. Prudential Ins. Co. of America, 113 P.2d 691, 45 C.A.2d 74—Nelson v. Parker, 286 P. 1078, 104 C.A. 770.

Conn.—Tappan v. Knox, 162 A. 7, 115 Conn. 508.

Ill.—Heil v. Kastengren, 65 N.E.2d 579, 328 Ill.App. 301—Goad v. Grissom, 57 N.E.2d 514, 324 Ill.App. 123—Mitchell v. Louisville & N. R. Co., 35 N.E.2d 81, 310 Ill.App. 563, reversed on other grounds 42 N.E. 2d 86, 379 Ill. 522.

Kan.—Tarter v. Missouri, K. & T. R. Co., 241 P. 246, 119 Kan. 738, certiorari denied Missouri-Kansas-Texas R. Co. v. Tarter, 46 S.Ct. 355, 270 U.S. 659, 70 L.Ed. 785.

Ky.—Nashville, C. & St. L. Ry. v. Williams, 147 S.W.2d 93, 285 Ky. 211.

Me.—Hall v. Crosby, 160 A. 878, 131 Me. 253.

Mo.—Blinder v. Monoghan, 188 A. 31, 171 Md. 77—Smith v. Dolan, 185 A. 453, 170 Md. 654—Scheller v. Schindel, 138 A. 415, 153 Md. 547—Gordon v. Opalecky, 137 A. 299, 152 Md. 536.

Miss.—Metropolitan Life Ins. Co. v. Moss, 192 So. 343.

Mo.—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220.

Fortner v. Kelly, 60 S.W.2d 642, 227 Mo.App. 933—Hellums v. Randol, 40 S.W.2d 500, 225 Mo.App 1092—Seewald v. Gentry, 286 S.W. 445, 220 Mo.App. 367.

Neb.—Piechota v. Rapp, 27 N.W.2d 682, 148 Neb. 442.

N.Y.—Selleck v. Board of Ed. of Central School Dist. No. 1 of Towns of Jay, Keene, Chesterfield, Wilmington, Essex County, 94 N. Y.S.2d 318, 276 App.Div. 263—Towne v. Stukey, 86 N.Y.S.2d 740, 275 App.Div. 689, affirmed 89 N.E. 2d 517, 300 N.Y. 547.

Ohio.—Shackelford v. Commercial Motor Freight, App., 65 N.E.2d 879—Neal v. Schmidt, App., 39 N.E. 2d 859—Pletcher v. Younker, 184 N. E. 404, 44 Ohio App. 80.

Or.—Chatfield v. Zeller, 147 P.2d 222, 174 Or. 59—Personius v. Asbury Transp. Co. of Oregon, 53 P.2d 1065, 152 Or. 286.

Pa.—McAllister v. Pennsylvania R. Co., 187 A. 415, 324 Pa. 65.

Lutz v. City of Scranton, 13 A. 2d 121, 140 Pa.Super. 139.

Tenn.—U. S. Rubber Products Co. v. Cannon, 113 S.W.2d 1184, 172 Tenn. 665.

Tex.—Gilmer v. Griffin, Civ.App., 265 S.W.2d 252, error refused no reversible error—Traders & General Ins. Co. v. Bass, Civ.App., 193 S.W. 2d 848, error refused no reversible error—Panhandle Stages v. Aston, Civ.App., 171 S.W.2d 911, error refused—Metropolitan Life Ins. Co. v. Greene, Civ.App., 93 S.W.2d 1241—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122, error dismissed—Texas Indemnity Ins. Co. v. Wilson, Civ.App., 281 S.W.2d 289.

Utah.—Spackman v. Benefit Ass'n of Ry. Employees, 89 P.2d 490, 97 Utah 91.

Vt.—Domina v. Pratt, 13 A.2d 198, 111 Vt. 166, followed in 13 A.2d 204, 111 Vt. 178.

versed where the improper admission of opinion evidence was prejudicial to the party complaining,[13] or where such admission was inconsistent with substantial justice.[13.5]

Error in admitting opinion evidence may be regarded as harmless where such evidence is not material to the point in issue[14] where the opinion is not pertinent to the point to be decided,[15] where the testimony, taken at face value, proved nothing,[15.5] or where the testimony had no appreciable influence on the findings and judgment.[15.10] Moreover, error in the admission of opinion evidence may be

Issue of testamentary capacity

N.C.—In re McDowell's Will, 52 S.E. 2d 807, 230 N.C. 259.

13. Ala.—Stremming Veneer Co. v. Jacksonville Blow Pipe Co., 83 So. 2d 224, 263 Ala. 491—Houston v. Elrod, 81 So. 831, 203 Ala. 41—Troy Lumber & Construction Co. v. Boswell, 65 So. 141, 186 Ala. 409.

Ill.—City of Elmhurst v. Rohmeyer, 130 N.E. 761, 297 Ill. 430.

Shoore v. Jenisch, 1 N.E.2d 534, 284 Ill.App. 98. See Told v. Madison Bldg. Co., 216 Ill.App. 29—Felan v. Lake Land Co., 210 Ill.App. 244—Borkowsky v. Chicago City Ry. Co., 205 Ill.App. 573.

Ind.—Mounsey v. Bower, 136 N.E. 41, 78 Ind.App. 647—Adams Express Co. v. Heagy, 122 N.E. 603, 69 Ind. App. 652.

Iowa.—Rice v. Armour & Co., 187 N. W. 588, 194 Iowa 144.

Kan.—In re Schaffner's Estate, 141 P. 251, 92 Kan. 570.

Ky.—Louisville & N. R. Co. v. Davis, 250 S.W. 978, 199 Ky. 275—Harp v. Brookshire, 248 S.W. 177, 197 Ky. 794.

Mo.—Wabash R. Co. v. Cockrell, 192 S.W. 443.

Mont.—In re Miller's Estate, 229 P. 851, 71 Mont. 330.

Neb.—Knoche v. Pease Grain & Seed Co., 277 N.W. 798, 134 Neb. 130—Berliner v. Director General of Railroads, 184 N.W. 914, 106 Neb. 801.

N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.

Rendino v. Davis, 122 A. 757, 99 N.J. 213, 3 N.J.Misc. 100.

N.Y.—Bothner v. Keegan, 89 N.Y.S. 2d 288, 275 App.Div. 470—Hunt v. Johnson, 19 N.Y.S.2d 191, 259 App. Div. 292—Freebold v. Town of Glen, 207 N.Y.S. 440, 211 App.Div. 249, affirmed 150 N.E. 578, 241 N.Y. 615.

N.C.—Marshall v. Interstate Telephone & Telegraph Co., 107 S.E. 498, 181 N.C. 410.

Ohio.—Cleveland Boat Service v. City of Cleveland, App., 130 N.E.2d 421, affirmed 136 N.E.2d 274, 165 Ohio St. 429—Staunton v. Provident Life & Accident Ins. Co., 42 N.E.2d 687, 69 Ohio App. 27—Schuldt v. Associates Inv. Co., 22 N.E.2d 572, 61 Ohio App. 213.

Or.—Everant v. Fischer, 147 P. 189, 75 Or. 316.

Pa.—Bowles v. City of Pittsburgh, 20 A.2d 783, 343 Pa. 39—Kuhn v. Ligonier Valley R. Co., 100 A. 142, 255 Pa. 445.

Tex.—Hartford Fire Ins. Co. v. Galveston, H. & S. A. Ry. Co., Com. App., 239 S.W. 919.

Curtis v. Adams, Civ.App., 275 S.W. 206—Hines v. Collins, Civ. App., 227 S.W. 332—Montgomery v. Gallas, Civ.App., 225 S.W. 557.

Vt.—Dutchburn v. Dutchburn, 115 A. 228, 95 Vt. 417.

Va.—Southern Ry. Co. v. Mason, 89 S.E. 225, 119 Va. 256—Virginian Ry. Co. v. Bell, 87 S.E. 570, 118 Va. 492.

W.Va.—Fisher v. Flanagan Coal Co., 103 S.E. 359, 86 W.Va. 460.

4 C.J. p 998 note 3.

Expert opinion

Minn.—Independent School Dist. No. 35, St. Louis County, v. A. Hedenberg & Co., 7 N.W.2d 511, 214 Minn. 82.

Held prejudicial

(1) Auditor's report containing opinions and conclusions.

Tex.—Bush v. Davis, Civ.App., 147 S. W.2d 888, error dismissed.

(2) Opinion of physician.

Mich.—Kemp v. Aldrich, 286 N.W. 81, 286 Mich. 715.

Mo.—Berry v. Kansas City Public Service Co., 121 S.W.2d 825, 343 Mo. 474.

Gurwell v. Jefferson City Lines, 192 S.W.2d 683, 239 Mo.App. 305—Zarisky v. Kansas City Public Service Co., App., 186 S.W.2d 854—Gladney v. Mutual Life Ins. Co. of N. Y., App., 186 S.W.2d 538—Murray v. De Luxe Motor Stages of Illinois, App., 133 S.W.2d 1074.

N.Y.—Fuller v. Hudson Transp. Co., 90 N.Y.S.2d 129, 275 App.Div. 985.

Pa.—Carey v. Schwartz, 3 A.2d 203, 133 Pa.Super 604.

(3) Opinion as to mental capacity.

Tex.—Dodson v. Kuykendall, Civ. App., 127 S.W.2d 348, error dismissed, judgment correct.

(4) Opinion as to place of collision.

Ohio.—Ross v. Stricker, 88 N.E.2d 80, 85 Ohio App. 56, reversed on other grounds 91 N.E.2d 18, 153 Ohio St. 153.

(5) Opinion as to speed of automobile.

Or.—Bailey v. Rhodes, 276 P.2d 713, 202 Or. 511.

(6) Other evidence.

U.S.—Harrison v. New York Life Ins. Co., C.C.A.Ohio, 78 F.2d 421.

Ark.—Johnston v. Order of United Commercial Travelers of America, 33 S.W.2d 375, 182 Ark. 964.

Cal.—Carter v. City of Los Angeles, 154 P.2d 907, 62 C.A.2d 524.

Ill.—Thomas v. Illinois Power & Light Corporation, 247 Ill.App. 378.

Neb.—Bowers v. Kugler, 1 N.W.2d 299, 140 Neb. 684.

N.J.—Stanley Co. of America v. Hercules Powder Co., 108 A.2d 616, 16 N.J. 295.

Reliable Newspaper Delivery v. Maryland Cas. Co., 37 A.2d 40, 131 N.J.Law 424—Kreig v. Timken, 131 A. 905, 102 N.J.Law 307.

Okl.—National Zinc Co. v. Crow, 103 P.2d 560, 187 Okl. 513.

Pa.—McMinis v. Philadelphia Rapid Transit Co., 135 A. 722, 288 Pa. 377.

R.I.—Edward Wilkinson & Co. v. Universal Safety Ash Tray Co., 133 A. 658.

S.D.—Stratton v. Sioux Falls Traction System, 226 N.W. 644, 55 S.D. 464.

Tex.—Wilderspin v. Bewley Mills, Inc., Civ.App., 298 S.W.2d 636, error refused no reversible error—Dallas Hotel Co. v. McCue, Civ. App., 25 S.W.2d 902—Houston Chronicle Pub. Co. v. Martin, Civ. App., 5 S.W.2d 170.

13.5 N.J.—Stanley Co. of America v. Hercules Powder Co., 108 A.2d 616, 16 N.J. 295.

14. Cal.—Stoddard v. Fiske, 170 P. 663, 35 C.A. 607.

Mo.—Timmermann v. St. Louis Architectural Iron Co., 1 S.W.2d 791, 318 Mo. 421.

N.J.—Johnson v. Central R. Co. of New Jersey, 166 A. 180, 111 N.J. Law 93.

Ohio.—Tyler v. Hocking Valley Ry. Co., 162 N.E. 623, 28 Ohio App. 88.

Vt.—Laferriere v. Gray, 160 A. 270, 104 Vt. 366.

15. Cal.—Gasquet v. Pechin, 77 P. 481, 143 C. 515.

Conn.—Kennenberg v. Neff, 49 A. 53, 74 Conn. 62.

Tex.—Wortman v. Young, Civ.App., 221 S.W. 660, reversed on other grounds, Com.App., 235 S.W. 559.

Little, if any, bearing on issue

N.D.—Murphy v. Farmers Educational and Co-op. Union of America, North Dakota Division, 72 N. W.2d 636.

15.5 Wash.—Windsor v. Bourcier, 150 P.2d 717, 21 Wash.2d 313.

15.10 Tenn.—U. S. Rubber Products Co. v. Cannon, 113 S.W.2d 1184, 172 Tenn. 665.

held harmless where such evidence is merely corroborative,[16] cumulative,[17] or impeaching,[18] although in particular circumstances cumulative evidence has been held prejudicial.[18.5] On the other hand, error in the admission of opinion evidence may be prejudicial, and ground for reversal, where the opinion relates to a material fact, or one which the jury are required to determine,[19] or which is not a subject for expert opinion,[19.5] or where the testimony went to the controlling issue in the case and probably, if not necessarily, induced the jury's finding thereon;[19.10] and the admission of opinion evidence which is based, or largely based, on hearsay is reversible error.[19.15]

The form in which opinion evidence is admitted may be such that error in such admission shall be regarded as harmless, as where the opinion is stated as a mere possibility[20] or where the answer of the witness, while purporting to state his opinion, does not in fact indicate what his opinion was.[21] Similarly, error in admitting a conclusion of a witness may be deemed to be harmless where the conclusion given is a mere matter of computation[22] or comparison,[23] or a mere estimate.[24]

Error committed in admitting opinion evidence is harmless where there was no room for difference of opinion,[25] where the jury must have reached the same conclusion as the witness,[26] where the opinion could not have affected prejudicially the knowledge or the views of the jury,[26.5] or where the testimony is merely the opinion of the witness on a matter which the physical facts rendered conclusive.[26.10]

Matter of common knowledge or basis on facts in evidence. Error in admitting opinion evidence may be held harmless where the matter testified to

16. Pa.—Brown, for Use of McArdle v. Borough of Castle Shannon, 178 A. 678, 318 Pa. 363.

17. Ky.—Jefferson Standard Life Ins. Co. v. Pierce, 95 S.W.2d 579, 264 Ky. 698.
Miss.—Western Union Telegraph Co. v. Goodman, 146 So. 128, 166 Miss. 782.
Mo.—Chicago, R. I. & P. Ry. Co. v. Hosman, 57 S.W.2d 434, 227 Mo. App. 659.
Okl.—Clark v. Ellison, 71 P.2d 609, 180 Okl. 630.
Tex.—Turner v. Stoker, Civ.App., 289 S.W. 190.

18. Tex.—Hess v. Millsap, Civ.App., 72 S.W.2d 923.

18.5 Mo.—Zarisky v. Kansas City Public Service Co., App., 186 S.W. 2d 854.

19. Ala.—Capital Motor Lines v. Gillette, 177 So. 881, 235 Ala. 157.
Cal.—Stuart v. Dotts, 201 P.2d 820, 89 C.A.2d 683.
Ill.—Smith v. Mammen, 158 Ill.App. 360.
Mich.—Bowerman v. Detroit Free Press, 272 N.W. 876, 279 Mich. 480.
Minn.—Beckman v. Schroeder, 28 N. W.2d 629, 224 Minn. 370.
Neb.—Wert v. Equitable Life Assur. Soc. of U. S., 283 N.W. 506, 135 Neb. 654.
N.Y.—Weiz v. Commercial Travelers Mut. Accident Ass'n of America, 40 N.Y.S.2d 128, 266 App.Div. 668.
Ohio.—Tarian v. City of Alliance, 32 N.E.2d 578, 66 Ohio App. 423.
Okl.—Washita Val. Grain Co. v. McElroy, 262 P.2d 133.
Wash.—Montgomery v. Hyatt, 282 P. 2d 277, 46 Wash.2d 375—Oyster v. Dye, 110 P.2d 863, 7 Wash.2d 674, 133 A.L.R. 720.
W.Va.—Redman v. Community Hotel Corp., 76 S.E.2d 759, 138 W.Va. 456.

Cause of accident
Colo.—Weng v. Schleiger, 273 P.2d 356, 130 Colo. 90, reheard 296 P. 2d 748, 133 Colo. 441.

Speed of motor vehicles
Wash.—Warren v. Hynes, 102 P.2d 691, 4 Wash.2d 128.

Testamentary capacity
(1) Generally.
Tex.—Wiseman v. Robbins, Civ.App., 230 S.W.2d 371.

(2) Opinions of lay witnesses.
Ohio.—Gottfried v. Yochum, 98 N.E. 2d 821, 155 Ohio St. 283.
W.Va.—Snodgrass v. Weaver, 199 S. E. 1, 120 W.Va. 444.

19.5 Ga.—Cone v. Davis, 17 S.E.2d 849, 66 Ga.App. 229.

Excessiveness of speed; reckless driving
Ga.—Cone v. Davis, supra.

19.10 Tex.—Reed v. Barlow, Civ. App., 157 S.W.2d 933, error refused.

19.15 Ill.—Monahan v. Chicago Transit Authority, 93 N.E.2d 169, 341 Ill.App. 250.
Ky.—Denny v. Rudy, 121 S.W.2d 951, 275 Ky. 467.
Mich.—Bowerman v. Detroit Free Press, 272 N.W. 876, 279 Mich. 480.
Ohio.—Lindsay v. Baltimore & O. R. Co., 128 N.E.2d 242, 98 Ohio App. 63—Bluebird Baking Co. v. McCarthy, App., 36 N.E.2d 801.
Tex.—Reed v. Barlow, Civ.App., 157 S.W.2d 933, error refused.
Wis.—Schields v. Frederick, 288 N. W. 241, 232 Wis. 595.

Hearsay evidence of another physician
Mo.—Zarisky v. Kansas City Public Service Co., App., 186 S.W.2d 854.

Highway patrolman's report based on hearsay
Okl.—Hadley v. Ross, 154 P.2d 939, 195 Okl. 89.

20. Minn.—Albrecht v. Potthoff, 257 N.W. 377, 192 Minn. 557, 96 A.L.R. 471.

21. Tex.—Freeman v. Vetter, Civ. App., 130 S.W. 190.

22. Ala.—Mobile & O. R. Co. v. Williams, 139 So. 337, 224 Ala. 125.
Or.—L. B. Menefee Lumber Co. v. MacDonald, 260 P. 444, 122 Or. 579.
4 C.J. p 998 note 87.

23. U.S.—Fidelity & Deposit Co. of Maryland v. People's Bank of Sanford, C.C.A.N.C., 72 F.2d 932, certiorari denied 55 S.Ct. 348, 293 U.S. 627, 79 L.Ed. 714.

24. Or.—City of La Grande v. Rumelhart, 246 P. 707, 118 Or. 166.

Speed of automobile
Ordinarily, it is not error to permit an eyewitness to estimate speed of an automobile, although usual foundational requirements have not been in all respects met, where other evidence in record sustains finding by the jury of excessive speed.
Neb.—Koutsky v. Grabowski, 34 N. W.2d 893, 150 Neb. 508.

25. Cal.—Orton v. Dabney, 255 P. 532, 82 C.A. 281.
Ill.—Karkowski v. La Salle County Carbon Coal Co., 93 N.E. 780, 248 Ill. 195.

26. Iowa.—Citizens' Bank v. Whinery, 81 N.W. 694, 110 Iowa 390.
4 C.J. p 998 note 90.

Only reasonable conclusion
Cal.—Baccus v. Kroger, 262 P.2d 849, 120 C.A.2d 802.

26.5 Miss.—Billups Petroleum Co. v. Entrekin, 46 So.2d 781, 209 Miss. 302.

26.10 N.M.—Miller v. Marsh, 301 P. 2d 341, 53 N.M. 5.

is one of common knowledge,[27] or is an obvious fact,[27.5] or where the facts on which the opinion is based are in evidence,[28] and particularly where it is apparent that the jury acted on the facts alone on which the opinion was given.[29]

On the other hand, admitting expert opinion evidence on a matter of common knowledge has been held reversible error on the ground that such evidence invades the province of the jury;[29.5] and error committed in the admission of opinion evidence may be considered to be prejudicial and ground for reversal where no facts on which the opinion was based were adduced in evidence,[30] or where the facts in evidence standing alone were insufficient to establish the ultimate fact which the witness testified in his opinion existed.[31]

Effect of other evidence. Error in admitting opinion evidence is harmless where, in view of other evidence in the case, the opinion of the witness was not material,[32] or not necessary,[32.5] where the effect of the evidence which has been admitted is nullified by other evidence,[33] or where the opinion evidence erroneously admitted did not conflict with other evidence in the case,[34] or was supported by such other evidence.[34.5] Moreover, the admission of opinion evidence may be harmless notwithstanding such evidence is adduced by a hypothetical question which omits certain evidence where such evi-

27. Ill.—Armstrong v. Chicago & W. I. R. Co., 183 N.E. 478, 350 Ill. 426, certiorari denied Chicago & W. I. R. Co. v. Armstrong, 53 S.Ct. 523, 289 U.S. 724, 77 L.Ed. 1475.
Mo.—Capra v. Phillips Inv. Co., 302 S.W.2d 924.
Neb.—Piechota v. Rapp, 27 N.W.2d 682, 148 Neb. 442.
W.Va.—Underwood v. Goff, 49 S.E.2d 860, 131 W.Va. 662.
Wis.—Williams v. Williams, 246 N. W. 322, 210 Wis. 304.
4 C.J. p 998 note 93.

27.5 Ga.—Milligan v. Georgia Power Co., 22 S.E.2d 662, 68 Ga.App. 269.
Minn.—Schorr v. Minnesota Utilities Co., 281 N.W. 523, 203 Minn. 384.
Or.—Cavett v. Pacific Greyhound Lines, 167 P.2d 941, 178 Or. 363.

Where contract was not ambiguous as to the meaning of a particular paragraph, an expert witness' testimony stating the meaning thereof was harmless.
Ariz.—Pioneer Constructors v. Symes, 267 P.2d 740, 77 Ariz. 107.

28. U. S.—Sun Oil Co. v. Rhodes, C. C.A.Ark., 15 F.2d 790.
Ala.—Ritter v. Gibson, 116 So. 158, 217 Ala. 304.
Cal.—Morton v. Albers Bros. Milling Co., 276 P. 883, 98 C.A. 75.
Ga.—Barron v. Chamblee, 34 S.E.2d 828, 199 Ga. 591.
Harper v. Sutherland, 162 S.E. 412, 44 Ga.App. 594.
Ky.—Hartman v. Dyer, 182 S.W.2d 646, 298 Ky. 173—Louisville & N. R. Co. v. Cayce, 112 S.W.2d 682, 271 Ky. 467—Svea Fire & Life Ins. Co. v. Walker, 56 S.W.2d 967, 247 Ky. 273.
Mo.—Kelso v. W. A. Ross Const. Co., 85 S.W.2d 527, 337 Mo. 202.
N.H.—McCarthy v. Souther, 137 A. 445, 83 N.H. 29.
Ohio.—Cleveland, C., C. & St. L. Ry. Co. v. Lindner, 178 N.E. 322, 40 Ohio App. 265.
Pa.—Miller v. Borough of Exeter, 77 A.2d 395, 366 Pa. 336.
Tex.—Shely v. Harney, Civ.App., 163 S.W.2d 839, error refused.
4 C.J. p 997 note 86.

Evidence prejudicial
However, even opinion testimony of lay witnesses accompanied by such facts supporting opinion as witnesses may be able to place intelligently before the jury may be prejudicial.
Ohio.—Staunton v. Provident Life & Accident Ins. Co., 42 N.E.2d 687, 69 Ohio App. 27.

29. W.Va.—Neeley v. Cameron, 75 S. E. 113, 71 W.Va. 144.

29.5 Ala.—Alabama Great Southern R. Co. v. Bishop, 89 So.2d 738, 265 Ala. 118.

30. Ill.—Hoffman v. Ernest Tosetti Brewing Co., 100 N.E. 531, 257 Ill. 185, reversing 167 Ill.App. 291.
Mo.—Turner v. Missouri-Kansas-Texas R. Co., 142 S.W.2d 455, 346 Mo. 28, 129 A.L.R. 829.
Vt.—Fowlie v. McDonald, 72 A. 989, 82 Vt. 230.

31. Ala.—Brandon v. Progress Distilling Co., 52 So. 640, 167 Ala. 365.

32. U.S.—Niagara Fire Ins. Co. of New York, N. Y. v. Raleigh Hardware Co., C.C.A.W.Va., 62 F.2d 705.
Cal.—Weaver v. Shell Co. of California, App., 49 P.2d 857, reheard 57 P.2d 571, 13 C.A.2d 643—Sherwood v. Thomas, 12 P.2d 676, 124 C.A. 450.
Ind.—Charles M. Oberlin Co. v. Woolverton, 157 N.E. 445, 86 Ind.App. 331.
Kan.—Witte v. Hutchins, 12 P.2d 724, 135 Kan. 776.
Md.—Washington, B. & A. Electric R. Co. v. State, 137 A. 484, 153 Md. 119—Opecello v. Meads, 135 A. 488, 152 Md. 29, 50 A.L.R. 1385.
Mo.—Dick v. Puritan Pharmaceutical Co., App., 46 S.W.2d 941.
Neb.—Roberts v. Kubik, 263 N.W. 143, 129 Neb. 795.
Okl.—City of Pawhuska v. Martin, 1 P.2d 638, 151 Okl. 24.
Pa.—Devlin v. McCauley, 144 A. 828, 295 Pa. 101.
Tex.—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122, error dismissed—City of Brady v. Cox, Civ.App., 48 S.W.2d 511—Standard Accident Ins. Co. of Detroit v. Richmond, Civ.App., 297 S.W. 879—Niles v. Houston Oil Co. of Texas, Civ.App., 288 S.W. 614.
Utah.—Stoker v. Ogden City, 54 P.2d 849, 88 Utah 389—Moss v. Taylor, 273 P. 515, 73 Utah 277.
Va.—R. F. Trant, Inc. v. Upton, 165 S.E. 404, 159 Va. 355.
4 C.J. p 998 note 89.

32.5 Md.—Smith v. Dolan, 185 A. 453, 170 Md. 654.

33. Mich.—Steinberg v. Builders' Lumber & Wrecking Co., 212 N.W. 960, 238 Mich. 181.
Tex.—San Antonio Public Service Co. v. Murray, Civ.App., 59 S.W.2d 851.

34. Iowa.—Walters v. Iowa Electric Co., 211 N.W. 886, 203 Iowa 467.
Ky.—Travelers Ins. Co. v. Mahon, 117 S.W.2d 909, 273 Ky. 691.
Mo.—Murphy v. Kroger Grocery & Baking Co., App., 185 S.W.2d 62.
Ohio.—Shackelford v. Commercial Motor Freight, App., 65 N.E.2d 879.

34.5 Ky.—Stark's Adm'x v. Herndon's Adm'r, 166 S.W.2d 828, 292 Ky. 469.
Tex.—Coker v. Mitchell, Civ.App., 269 S.W.2d 950—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122, error dismissed.
Opinion evidence as to facts established by other evidence see infra § 1731.

Conclusion after detailed testimony
Where an expert witness testifies in detail and at length prior to being asked objectionable questions, and in response to such questions states an opinion or conclusion on the ultimate fact in issue conclusion is harmless error since it adds nothing to weight of his testimony, and it is for jury to determine true probative value thereof.
Okl.—Maben v. Lee, 260 P.2d 1064.

dence and conclusions therefrom are conflicting.[35] Allowing a witness to state his conclusion is not necessarily reversible error where he has previously stated the facts on which his conclusion is based.[35.5]

On the other hand, error in admitting may be prejudicial and ground for reversal where the evidence on the question in regard to which the testimony was admitted was evenly balanced[36] or sharply conflicting,[37] or where other evidence in the case, on the point in question, was not coextensive with the evidence claimed to be erroneously admitted.[38] Similarly, the erroneous admission of opinion evidence may constitute reversible error where the basis for such opinion is not in conformity with other evidence in the case,[39] or where, on the question of the value of certain property in suit, there was no other evidence.[40]

Effect of conduct of parties. Error in admitting opinion evidence may be considered to be harmless by reason of the conduct of the parties in the particular case, as where there was no objection to the admission of the opinion evidence complained of,[41] where other evidence to the same effect, or of the same nature, has been admitted without objection,[42] where the fact in respect of which the opinion was given was admitted by the opposite party,[43] or where such party introduced similar testimony.[43.5]

Opportunity to cross-examine. Error in admitting opinion evidence may be regarded as harmless where the objecting party has an opportunity to cross-examine the witness and to show the real value of his testimony.[44]

Amount of verdict or judgment. Error in the admission of opinion evidence may be regarded as harmless where the opinion relates to the amount of damages recoverable, and the verdict is for a much less sum than the witness testified should be allowed,[45] where the verdict is not excessive,[46]

35. Cal.—Forbis v. Holzman, 55 P. 2d 201, 5 C.2d 407.

35.5 Ala.—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala.App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10.

Facts inadequate to sustain conclusion

Error in permitting a witness to state his conclusion as to the very fact in issue is not rendered harmless by fact that elsewhere in his testimony he has detailed some facts which tend toward such conclusion, but which standing alone, are wholly inadequate to sustain the conclusion.

Ala.—Louisville & N. R. Co. v. Manning, 50 So.2d 153, 255 Ala. 43.

36. Cal.—Wilkerson v. City of El Monte, 62 P.2d 790, 17 C.A.2d 615.

N.Y.—Ferndon v. New York, etc., R. Co., 115 N.Y.S. 352, 131 App.Div. 880.

37. Ill.—Keefe v. Armour, 101 N.E. 252, 258 Ill. 28, Ann.Cas.1914B 188.

Ovens v. Chicago City R. Co., 171 Ill.App. 647.

Tenn.—Nashville, etc., R. Co. v. Brundidge, 84 S.W. 805, 114 Tenn. 31, 4 Ann.Cas. 887.

Utah.—Lee v. Salt Lake City, 83 P. 562, 30 Utah 35.

38. Tex.—Peterson v. Grayce Oil Co., Civ.App., 37 S.W.2d 367.

39. N.H.—Clark v. Boston & Maine R. R., 182 A. 175, 87 N.H. 434.

40. Tex.—Rotan Grocery Co. v. Jackson, Civ.App., 153 S.W. 687.

41. Ill.—Mahannah v. Bergfeld, 274 Ill.App. 97.

N.C.—Nance v. Merchants' Fertilizer & Phosphate Co., 158 S.E. 486, 200 N.C. 702.

Or.—Mount v. Welsh, 247 P. 815, 118 Or. 568.

42. Ark.—Missouri Pac. R. Co. v. Ross, 202 S.W.2d 365, 211 Ark. 784.

Cal.—Hurwit v. Prudential Ins. Co. of America, 113 P.2d 691, 45 C.A. 2d 74—McLennan v. Holder, 36 P. 2d 448, 1 C.A.2d 305.

Ga.—Lankford v. Milhollin, 37 S.E. 2d 197, 200 Ga. 512—Barron v. Chamblee, 34 S.E.2d 828, 199 Ga. 591.

Hertz Driv-Ur-Self Stations v. Benson, 65 S.E.2d 191, 83 Ga.App. 866—Atlanta & W. P. R. Co. v. Truitt, 16 S.E.2d 273, 65 Ga.App. 320—Mishoe v. Davis, 14 S.E.2d 187, 64 Ga.App. 700—Malleable Iron Range Co. v. Caffey, 13 S.E. 2d 722, 64 Ga.App. 497.

Iowa.—Waterman v. Gaynor Lumber Co., 215 N.W. 641.

Md.—Blinder v. Monaghan, 188 A. 31, 171 Md. 77.

Mich.—Cabana v. City of Hart, 42 N. W.2d 97, 327 Mich. 287, 19 A.L.R. 2d 333.

Mo.—Rose v. National Lead Co., App., 94 S.W.2d 1047.

N.C.—Leonard v. Pacific Mut. Life Ins. Co. of California, 193 S.E. 166, 212 N.C. 151—Street v. Erskine-Ramsey Coal Co., 145 S.E. 11, 196 N.C. 178.

Okl.—Oskison v. Bagby, 46 P.2d 331, 172 Okl. 569.

Tex.—Traders & General Ins. Co. v. Bass, Civ.App., 193 S.W.2d 848, error refused no reversible error.

Tex.—Snelling v. Harper, Civ.App., 137 S.W.2d 222, error dismissed, judgment correct—Home Ins. Co. v. Collins, Civ.App., 55 S.W.2d 898—Assurance Co. of America v. Continental Sav. & Bldg. Ass'n, Civ.App., 8 S.W.2d 787.

Vt.—Wakefield v. Levin, 110 A.2d 712, 118 Vt. 394, followed in 110 A.2d 716, 118 Vt. 400.

Testimony of other expert witnesses

(1) Other doctor.

Mo.—Hill v. St. Louis Public Service Co., 221 S.W.2d 130, 359 Mo. 220.

N.Y.—Towne v. Stukey, 86 N.Y.S.2d 740, 275 App.Div. 689, affirmed 89 N.E.2d 517, 300 N.Y. 547.

(2) Admission of expert witness' statements which were allegedly conjectural and speculative and without basis in the evidence was not ground for reversal, where other expert witnesses had testified to essentially the same thing without objection.

Tex.—Grocers Supply Co. v. Stuckey, Civ.App., 152 S.W.2d 911, error refused.

43. Wis.—Winkler v. Power, etc., Mach. Co., 124 N.W. 273, 141 Wis. 244.

43.5 Ill.—Westinghouse Elec. Elevator Co. v. La Salle Monroe Bldg. Corp., 63 N.E.2d 411, 326 Ill.App. 598, affirmed 70 N.E.2d 604, 395 Ill. 429.

S.C.—Kneece v. Southern Ry. Co., 197 S.E. 673, 187 S.C. 195.

Tex.—Snelling v. Harper, Civ.App., 137 S.W.2d 222, error dismissed, judgment correct.

44. Ill.—Maton Bros. v. Central Illinois Public Service Co., 191 N.E. 321, 356 Ill. 584.

S.C.—Kneece v. Southern Ry. Co., 197 S.E. 673, 187 S.C. 195.

Tex.—Dallas Gas Co. v. Bankers' & Shippers' Ins. Co., Civ.App., 53 S. W.2d 130—Stedman Fruit Co. v. Smith, Civ.App., 28 S.W.2d 622.

4 C.J. p 998 note 91.

45. Minn.—Wood v. Chicago, etc., R. Co., 136 N.W. 1095, 118 Minn. 362.

46. Mo.—Leine v. Kellerman Contracting Co., 114 S.W. 1147, 134 Mo. App. 557.

or where the jury might properly have rendered a verdict for a greater amount.[47]

On the other hand, error which must have resulted in an apparently excessive judgment is prejudicial.[47.5]

§ 1727. —— Admission of Hearsay Evidence

Error committed in admitting hearsay evidence may or may not be ground for reversal, depending on whether such error is prejudicial.

The admission of hearsay evidence is not ground for reversal where no prejudice resulted.[48] On the

47. Ill.—Sellars v. Peabody Coal Co., 173 Ill.App. 220.
10 C.J. p 303 note 32.

47.5 Cal.—Edgar v. Bank of America Nat. Trust & Savings Ass'n, 123 P.2d 885, 50 C.A.2d 827.

Injured plaintiff's estimate of future expenses and time loss
Ohio.—Tully v. Mahoning Exp. Co., 119 N.E.2d 831, 161 Ohio St. 457.

48. U.S.—Cross v. Ramdullah, C.C.A.Cal., 274 F. 762, certiorari denied 42 S.Ct. 96, 257 U.S. 655, 66 L.Ed. 419.
Ala.—John R. Thompson & Co. v. Vildibill, 100 So. 139, 211 Ala. 199—Southern Ry. Co. v. Fisher, 74 So. 580, 199 Ala. 377.
Cal.—Owens v. Ring, 256 P.2d 1040, 117 C.A.2d 672—Watterson v. Owens River Canal Co., 183 P. 816, 42 C.A. 372.
Ga.—Koch v. Chemical Specialties Co., 87 S.E. 697, 17 Ga.App. 455.
See Pridmore v. Chicago, R. I. & P. R. Co., 192 Ill.App. 446, affirmed 114 N.E. 176, 275 Ill. 386.
Ky.—Kentucky Utilities Co. v. Consolidated Tel. Co., 252 S.W.2d 437—Louisville & N. R. Co. v. Roberts, 218 S.W. 713, 187 Ky. 192, 9 A.L.R. 94—East Jellico Coal Co. v. Closterides, 178 S.W. 1152, 166 Ky. 100.
Md.—Washington B. & E. R. Co. v. Faulkner, 112 A. 820, 137 Md. 451.
Mich.—Bernadich v. Bernadich, 283 N.W. 5, 287 Mich. 137—Bailey v. Loomis, 200 N.W. 148, 228 Mich. 338.
Mo.—Andersen v. Wells, App., 261 S.W. 952—Bloom v. Union Electric Light & Power Co., App., 251 S.W. 411—Williams v. Gideon-Anderson Lumber Co., App., 224 S.W. 51—McMahon v. United Rys. Co. of St. Louis, App., 203 S.W. 500—Fuller v. Tootle-Campbell Dry Goods Co., 176 S.W. 1091, 189 Mo.App. 514.
N.H.—Berounsky v. Ogden, 21 A.2d 838, 91 N.H. 424.
N.J.—McKeeby v. Arthur, 81 A.2d 1, 7 N.J. 174.
N.Y.—Newcomb v. Whitehouse, 162 N.Y.S. 249.
Tex.—Renshaw v. Countess, Civ.App., 289 S.W.2d 621—Bolton v. Stewart, Civ.App., 191 S.W.2d 798—Burchill v. Hermsmeyer, Civ.App., 262 S.W. 511—Baker v. Pierce, Civ.App., 248 S.W. 439, reversed on other grounds, Com.App., 259 S.W. 921—Houston, E. & W. T. Ry. Co. v. Lynch, Civ.App., 208 S.W. 714—Jones v. Schnaufer, Civ.App., 202 S.W. 367—J. I. Case Threshing Mach. Co. v. Webb, Civ.App., 181 S.W. 853.
Vt.—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Newton v. American Car Sprinkler Co., 92 A. 831, 88 Vt. 487.
Va.—Southern Ry. Co. v. Watts, 114 S.E. 736, 134 Va. 503—Reliance Life Ins. Co. v. Gulley's Adm'x, 114 S.E. 551, 134 Va. 468.
Wyo.—Davis v. Graham, 225 P. 789, 31 Wyo. 239.
4 C.J. p 999 note 10.
Admitted or undisputed facts see infra § 1732.
Cure by evidence subsequently admitted see infra § 1735.

Abstract error
Case will not be reversed for a mere abstract error in the admission of hearsay evidence.
Tex.—Service Mut. Ins. Co. of Texas v. White, Civ.App., 138 S.W.2d 273, error refused.

Self-serving declarations
Ohio.—Neal v. Schmidt, App., 39 N.E. 2d 859.
Va.—Spicer v. Spicer, 63 S.E.2d 773, 192 Va. 105.

In hearings on interlocutory injunction, admission of some hearsay evidence will not necessarily require a reversal.
Ga.—Kniepkamp v. Richards, 16 S.E. 2d 24, 192 Ga. 509.

Evidence held harmless
(1) Generally.
U.S.—Schnerb v. Caterpillar Tractor Co., C.C.A.N.Y., 43 F.2d 920, certiorari denied 51 S.Ct. 182, 282 U.S. 898, 75 L.Ed. 791—James Baird Co. v. Boyd, C.C.A.N.C., 41 F.2d 578.
Ark.—Citrus Products Co. v. Tankersley, 50 S.W.2d 582, 185 Ark. 965.
Cal.—Hughes v. Hartman, 273 P. 560, 206 C. 199.
Rollins v. Hedin, 250 P.2d 728, 114 C.A.2d 488—Leboire v. Royce, 224 P.2d 106, 100 C.A.2d 610—Hoffart v. Southern Pac. Co., 92 P.2d 436, 33 C.A.2d 591—Gonzalez v. Nichols, 294 P. 758, 110 C.A. 738.
Colo.—Hadden v. Gateway West Pub. Co., 273 P.2d 733, 130 Colo. 73.
Conn.—Mower v. State Department of Health, 142 A. 473, 108 Conn. 74, appeal dismissed Mower v. State Department of Health for State of Connecticut, 49 S.Ct. 82, 278 U.S. 570, 73 L.Ed. 511.
D.C.—Western Union Telegraph Co. v. Scrivener, 18 F.2d 162, 57 App. D.C. 120.
Ga.—Hines v. Donaldson, 20 S.E.2d 134, 193 Ga. 783.
J. R. Watkins Co. v. Ellington, 29 S.E.2d 300, 70 Ga.App. 722—McDaniel v. Richards, 13 S.E.2d 710, 64 Ga.App. 612.
Ind.—Hamilton v. Meiks, App., 198 N.E. 833, reversed on other grounds 4 N.E.2d 536, 210 Ind. 610—Cline v. Rodabaugh, 179 N.E. 6, 97 Ind.App. 258.
Kan.—Ligiejko v. Niczyperowicz, 271 P. 282, 126 Kan. 675.
Ky.—Ætna Life Ins. Co. of Hartford, Conn. v. Castle, 67 S.W.2d 17, 252 Ky. 228.
Md.—McKay v. Paulson, 126 A.2d 296, 211 Md. 90.
Mass.—Walker v. E. William & Merrill C. Nutting, 26 N.E.2d 441, 302 Mass. 535.
Mich.—Bristol v. Mutual Benefit Health & Accident Ass'n, 9 N.W.2d 38, 305 Mich. 145—Domzalski v. Ver Hoven, 235 N.W. 232, 253 Mich. 497.
Minn.—Shuster v. Vecchi, 279 N.W. 841, 203 Minn. 76.
Mo.—Teel v. May Department Stores Co., 176 S.W.2d 440, 352 Mo. 127.
Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356—Kansas City Wholesale Grocery Co. v. H. T. Poindexter & Sons Merchandise Co., 107 S.W.2d 841, 232 Mo.App. 378—Young v. Metropolitan Life Ins. Co., 84 S.W.2d 1065, 229 Mo.App. 823, certiorari quashed State ex rel. Metropolitan Life Ins. Co. v. Allen, 100 S.W.2d 487, 339 Mo. 1156.
N.H.—Grogan v. York, 38 A.2d 295, 93 N.H. 184.
N.J.—Busche v. New York, S. & W. R. Co., 159 A. 789, 10 N.J.Misc. 511.
N.Y.—Osgood v. D. W. Winkelman Co., 87 N.Y.S.2d 110, 274 App.Div. 694, reargument and appeal denied 89 N.Y.S.2d 520, 275 App.Div. 865, appeal dismissed 87 N.E.2d 67, 299 N.Y. 679—Foiles v. Marco, 30 N.Y.S.2d 234, 262 App.Div. 1024.
N.C.—Harris v. Singletary, 137 S.E. 724, 193 N.C. 583.
N.D.—Sullivan v. Minneapolis, St. P. & S. S. M. Ry. Co., 213 N.W. 841, 55 N.D. 353.
Okl.—Jones v. Denton, 135 P.2d 53, 192 Okl. 234.
Or.—In re Steele's Estate, 52 P.2d 207, 152 Or. 49.
S.C.—Crouch v. Cudd, 155 S.E. 136, 158 S.C. 1.
Tenn.—Evans v. Boggs, 245 S.W.2d 641, 35 Tenn.App. 354.
Tex.—Nance v. McClellan, 89 S.W.2d 774, 126 Tex. 580, 106 A.L.R. 117.
White v. Lilley, Civ.App., 286 S.W.2d 296—Williams v. Ritcheson,

other hand, the admission of such evidence when | prejudicial will be ground for reversal;[49] to avoid

Civ.App., 212 S.W.2d 813, error refused—Davis v. United Gas Corp., Civ.App., 191 S.W.2d 685—Atlas Metal Works v. Republic Nat. Bank, Civ.App., 176 S.W.2d 350, error refused.

Utah.—Kirchgestner v. Denver & R. G. W. R. Co., 218 P.2d 685, 118 Utah 20, on rehearing 233 P.2d 699, 118 Utah 41.

Va.—Marrow v. Ferguson, 30 S.E.2d 563, 182 Va. 820—Reed v. Church, 8 S.E.2d 285, 175 Va. 284.

W.Va.—Farley v. Farley, 68 S.E.2d 353, 136 W.Va. 598.

Wis.—Widness v. Central States Fire Ins. Co., 47 N.W.2d 879, 259 Wis. 159.

(2) Letter.

Ga.—Arrington v. Awbrey, 8 S.E.2d 648, 190 Ga. 193.

Miss.—Tipps Tool Co. v. Holifield, 67 So.2d 609, 218 Miss. 670.

49. U.S.—Interstate Compress Co. v. Agnew, C.C.A.Okl., 276 F. 882—Klein v. Darnell, Tex., 239 F. 844, 152 C.C.A. 630.

Ark.—State Nat. Bank v. Lark, 204 S.W. 101, 134 Ark. 432.

Cal.—Fireman's Fund Ins. Co. v. Romero, 275 P.2d 83, 128 C.A.2d 331.

Ga.—First Nat. Bank v. City of Sparta, 114 S.E. 221, 154 Ga. 25.

Bruce v. Brown, 129 S.E. 118, 34 Ga.App. 240.

Idaho.—Frederick v. Brainard, 182 P. 351, 32 Idaho 296.

Kan.—Jones v. Gill, 66 P.2d 1033, 145 Kan. 482—Scoby v. Bird City State Bank, 211 P. 110, 112 Kan. 135.

Mich.—Oceana Canning Co. v. King, 166 N.W. 847, 200 Mich. 268.

Mo.—Wilson v. St. Louis-San Francisco R. Co., 247 S.W.2d 644, 362 Mo. 1168—Kinchlow v. Kansas City, K. V. & W. Ry. Co., 264 S.W. 416.

Moon Distributing Co. v. Marable, App., 287 S.W.2d 635—O'Shaughnessy v. Rogers, App., 202 S.W.2d 92—Petrovic v. Standard Fire Ins. Co. of Hartford, Conn., 167 S.W.2d 412, 237 Mo.App. 290—Zaring v. Bauman, App., 223 S.W. 947—Fuller v. Tootle-Campbell Dry Goods Co., 176 S.W. 1091, 189 Mo. App. 514.

Mont.—First Nat. Bank v. Middleton, 201 P. 683, 61 Mont. 209.

Neb.—Riverton State Bank v. Walker, 204 N.W. 520, 113 Neb. 718.

N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.

N.J.—Cohen v. Borough of Bradley Beach, 50 A.2d 882, 135 N.J.Law 276.

N.Y.—Piccininni v. Ætna Life Ins. Co., 294 N.Y.S. 880, 250 App.Div. 498—Kelly v. United Dressed Beef Co. of New York, 293 N.Y.S. 446, 249 App.Div. 586.

Gulotta v. Fifth Avenue Coach Co., 300 N.Y.S. 648, 165 Misc. 101.

Cohen v. M. G. M. Realty Co., 51 N.Y.S.2d 402.

Okl.—McBee v. Dennis, 229 P.2d 179, 204 Okl. 296—Wrightsman Petroleum Co. v. Schwartz, 10 P.2d 695, 157 Okl. 22—Brotherhood of American Yeomen v. Hutchinson, 218 P. 841, 92 Okl. 221—Lash v. Ten Eyck, 157 P. 924, 59 Okl. 82.

S.D.—Spiry v. Spiry, 199 N.W. 778, 47 S.D. 500.

Tex.—Houston & T. C. Ry. Co. v. Fox, 166 S.W. 693, 106 Tex. 317.

Bush v. Davis, Civ.App., 147 S.W. 2d 888, error dismissed—Paschall v. Gulf, C. & S. F. Ry. Co., Civ. App., 100 S.W.2d 183, modified on other grounds Campbell v. Paschall, 121 S.W.2d 593, 132 Tex. 226—Raymond v. Merchants' State Bank & Trust Co. of Laredo, Civ. App., 270 S.W. 943—Rathbun v. Miller, Civ.App., 266 S.W. 818—Navar v. First Nat. Bank, Civ.App., 254 S.W. 126—Ravel v. Haymon Krupp & Co., Civ.App., 206 S.W. 211—Texas & N. O. R. Co. v. Stephens, Civ.App., 198 S.W. 396—Cherbonnier v. Shirley, Civ.App., 185 S.W. 641—Pulkrabeck v. Griffith & Griffith, Civ.App., 179 S.W. 282.

Va.—Selfe v. Hale, 69 S.E.2d 434, 193 Va. 543.

4 C.J. p 999 note 16.

A verdict or judgment resting in any degree on hearsay testimony cannot be supported.

N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.

Reynolds v. Zisette Co., 155 A. 132, 9 N.J.Misc. 624.

Self-serving declarations

Ill.—Vujovich v. Chicago Transit Authority, 126 N.E.2d 731, 6 Ill.App. 2d 115.

Md.—Heil v. Zahn, 51 A.2d 174, 187 Md. 603.

Mich.—Sexton v. Balinski, 273 N.W. 335, 280 Mich. 28.

N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.

Tex.—Averitt v. Warren, Civ.App., 125 S.W.2d 691.

Quantum of damages

In personal injury action, admitting hearsay testimony which went to quantum of damages in addition to nature of injury, rather than requiring expert testimony, was reversible error.

Miss.—Johns-Manville Products Corp. v. Cather, 44 So.2d 405, 208 Miss. 268.

Testimony given in former trial

Permitting testimony given in former trial to be read in evidence, was prejudicial error.

Tex.—Stohn v. Bryant, Civ.App., 283 S.W.2d 299, error refused no reversible error.

Held prejudicial

(1) Generally.

U.S.—U. S. v. Nickle, C.C.A.Mo., 60 F.2d 372.

Ala.—Stremming Veneer Co. v. Jacksonville Blow Pipe Co., 83 So.2d 224, 263 Ala. 491.

Ark.—McCurry v. Griffin, 279 S.W. 995, 170 Ark. 421.

Cal.—Buchanan v. Nye, 275 P.2d 767, 128 C.A.2d 582—Anderson v. Hagen, 66 P.2d 168, 19 C.A.2d 714.

Ga.—Rymer v. Fidelity & Guaranty Fire Corp., 58 S.E.2d 471, 81 Ga. App. 308—Broadwell v. Maxwell, 134 S.E. 808, 35 Ga.App. 769.

Idaho.—Intermountain Ass'n of Credit Men v. Milwaukee Mechanics' Ins. Co., 258 P. 362, 44 Idaho 491.

Ky.—Alexander v. Jones, 249 S.W.2d 35—Commonwealth, for Use and Benefit of Eversole v. West, 87 S. W.2d 385, 261 Ky. 204.

Md.—Buch v. Hulcher, 28 A.2d 829, 180 Md. 309.

Mich.—Paquin v. Van Houtum, 72 N. W.2d 169, 343 Mich. 111.

Minn.—Edie v. School Dist. No. 1 for Unorganized Territory of Koochiching County, 237 N.W. 177, 183 Minn. 522.

Mo.—Janis v. Jenkins, 58 S.W.2d 298.

Neb.—Triplett v. Western Public Service Co., 263 N.W. 229, 129 Neb. 799.

N.Y.—Bothner v. Keegan, 89 N.Y.S. 2d 288, 275 App.Div. 470—Robinson v. Zappas, 237 N.Y.S. 235, 227 App. Div. 208.

Simon v. Pullman Co., 215 N.Y.S. 798, 127 Misc. 272.

N.C.—Towe v. Penland, 57 S.E.2d 652, 231 N.C. 504.

N.D.—Grand Forks Bldg. & Development Co. v. Implement Dealers Mut. Fire Ins. Co., 31 N.W.2d 495, 75 N.D. 618.

Pa.—Johnson v. Peoples Cab Co., 126 A.2d 720, 386 Pa. 513.

Selden v. Metropolitan Life Ins. Co., 43 A.2d 571, 157 Pa.Super. 500.

R.I.—Jurgiewicz v. Adams, 43 A.2d 310, 71 R.I. 239.

Tex.—King v. Roberts, Com.App., 84 S.W.2d 718.

Rogers v. Russell, Civ.App., 277 S.W.2d 166—Oliver v. Corzelius, Civ.App., 223 S.W.2d 271, error dismissed—Mattiza v. Lachs, Civ. App., 204 S.W.2d 848—Dallas Hotel Co. v. McCue, Civ.App., 25 S.W.2d 902—Oakland Cemetery Lot Owners Ass'n v. Castleberry, Civ.App., 25 S.W.2d 639—Longenecker v. Ward County Water Improvement Dist. No. 3, Civ.App., 8 S.W.2d 306—Chism v. C. W. Hall Motor Co., Civ.App., 278 S.W. 350.

Utah.—Bucher v. Equitable Life Assur. Soc. of U. S., 63 P.2d 604, 91 Utah 179.

Vt.—Belock v. State Mut. Fire Ins. Co., 185 A. 100, 108 Vt. 252, follow-

reversal it must manifestly appear that the admission of hearsay evidence could not have prejudiced the party against whom it was offered.[49.5]

Error in admitting hearsay evidence may be considered to be harmless where such evidence is not material to the point in issue[50] or where the evidence admitted threw little, if any, light on the point in controversy,[51] or relates to a matter which would not have materially affected the result,[51.5] or does not bring in any fact on which the liability of defendant is dependent.[51.10] Error in the admission of hearsay evidence is likewise deemed to be harmless where such evidence is merely cumulative[52] or corroborative.[53] However, error in admitting hearsay evidence may be prejudicial and require reversal where the evidence is admitted on a material point in dispute,[54] or is material to vital issues,[54.5] or where the evidence admitted is the sole testimony on the issue to which it relates[55] or corroborates testimony on which alone the right of recovery depends.[56]

Error committed in the admission of hearsay evidence may be harmless by reason of particular circumstances, as where the other evidence in the case is such that the jury could not have been misled by the admission of the hearsay evidence of which complaint is made,[57] or where the same or similar evidence, or other evidence to the same effect, was admitted without objection or exception.[58] On the other hand, the circumstances existing in a

ed in Belock for Benefit of Cranton v. Union Mut. Fire Ins. Co., 185 A. 106, 108 Vt. 264, and Belock for Benefit of Cranton v. Vermont Mut. Fire Ins. Co., 185 A. 106, 108 Vt. 265.

(2) Letters.

Ill.—Kane v. City of Chicago, 64 N.E. 2d 506, 392 Ill. 172.

N.J.—Wilkie v. Lash, Inc., 197 A. 39, 119 N.J.Law 335.

N.C.—Jackson v. Parks, 18 S.E.2d 138, 220 N.C. 680.

49.5 Ohio.—Bachtel v. Bachtel, 127 N.E.2d 761, 97 Ohio App. 521.

Controverted fact issue; objection

Where hearsay evidence is offered in support of controverted fact issue and permitted to go to jury over objection of party against whom judgment is subsequently entered, the judgment will be reversed unless it manifestly appears that admission of such evidence could not have been prejudicial.

Ohio.—Lindsay v. Baltimore & O. R. Co., 128 N.E.2d 242, 98 Ohio App. 63.

50. Ark.—Rice v. Moudy, 233 S.W. 2d 378, 217 Ark. 816.

Iowa.—Polk County v. Owen, 174 N. W. 99, 187 Iowa 220.

Ky.—Louisville & N. R. Co. v. Roberts, 269 S.W. 333, 207 Ky. 310.

Mo.—Anderson v. Herrick, App., 268 S.W. 711.

Pa.—Major v. Mac Lloyd, 98 A.2d 454, 174 Pa.Super. 22.

Tex.—Northern Assur. Co. v. Gross, Civ.App., 1 S.W.2d 369.

4 C.J. p 999 note 12.

51. Pa.—Illig v. Monongahela Natural Gas Co., 238 Pa. 324, 86 A. 196.

51.5 Ark.—Missouri Pac. R. Co. v. Shell, 185 S.W.2d 81, 208 Ark. 70.

51.10 Ohio.—Pugh v. Akron-Chicago Transp. Co., 28 N.E.2d 1015, 64 Ohio App. 479, affirmed 28 N.E.2d 501, 137 Ohio St. 164.

52. Cal.—Baar v. Smith, 275 P. 861, 97 C.A. 398.

Ill.—Little v. Gogotz, 58 N.E.2d 336, 324 Ill.App. 516. See Kniat v. Tiedge, 201 Ill.App. 457.

Ky.—Pfuelb v. Pfuelb, 122 S.W.2d 128, 275 Ky. 588.

Mo.—Louisiana Lumber Co. v. Burbridge, App., 220 S.W.2d 760.

4 C.J. p 999 note 13.

Hearsay evidence as to facts established by other evidence see infra § 1731.

53. Mo.—Fuller v. Tootle-Campbell Dry Goods Co., 176 S.W. 1091, 189 Mo.App. 514.

Wash.—Dunn v. Buschmann, 13 P.2d 69, 169 Wash. 395.

9 C.J. p 1100 note 98.

54. S.C.—Cooper Corp. v. Jeffcoat, 61 S.E.2d 53, 217 S.C. 489.

Tex.—Payne v. Price, Civ.App., 203 S.W.2d 544, error refused no reversible error—Gulf, C. & S. F. Ry. Co. v. Baldwin, Civ.App., 2 S.W.2d 520.

4 C.J. p 999 note 17.

54.5 Tex.—Taylor v. McLennan County, Civ.App., 120 S.W.2d 134.

55. Ga.—Smith v. Johnson, 13 Ga. App. 837, 80 S.E. 1051.

Ohio.—Marolt v. Lisitz, 115 N.E.2d 169, 94 Ohio App. 298.

Agency

Ohio.—Brazis v. National Telephone Supply Co., App., 48 N.E.2d 873.

56. Tex.—Houston & T. C. Ry. Co. v. Fox, 166 S.W. 693, 106 Tex. 317.

57. U.S.—Louisville & N. R. Co. v. Chatters, C.C.A.La., 26 F.2d 403, reversed on other grounds 49 S.Ct. 329, 279 U.S. 320, 73 L.Ed. 711.

Ala.—Hackney v. Dudley, 113 So. 401, 216 Ala. 400.

Ark.—Arkansas Power & Light Co. v. Orr, 298 S.W. 1029, 175 Ark. 246.

Cal.—McKinley v. Smith, 17 P.2d 1032, 128 C.A. 591—Baar v. Smith, 275 P. 861, 97 C.A. 398.

Conn.—Vitakunas v. The Mastco, 137 A. 753, 106 Conn. 286.

Ga.—Emory University v. Shadburn, 171 S.E. 192, 47 Ga.App. 643, affirmed 180 S.E. 137, 180 Ga. 595—Walton County Bank v. Stanton, 144 S.E. 815, 38 Ga.App. 591, affirmed Stanton v. Walton County Bank, 149 S.E. 573, 169 Ga. 40.

Ky.—Gorrell, Barrow & Kirkpatrick v. South's Adm'r, 83 S.W.2d 518, 260 Ky. 28—Louisville & N. R. Co. v. Jackson's Adm'r, 61 S.W.2d 1104, 250 Ky. 92.

Mass.—Blake v. Great Atlantic & Pacific Tea Co., 164 N.E. 486, 266 Mass. 12.

Mo.—Smiley v. Bergmore Realty Co., App., 73 S.W.2d 836.

Tex.—Texas Employers' Ins. Ass'n v. Harbuck, Civ.App., 73 S.W.2d 113—Commonwealth Ins. Co. v. Evans, Civ.App., 42 S.W.2d 1088.

58. Ark.—Sakaba Oil Corporation v. Parish, 299 S.W. 1016, 175 Ark. 618.

Ga.—Braswell v. Palmer, 22 S.E.2d 93, 194 Ga. 484—City of Atlanta v. Carroll, 21 S.E.2d 86, 194 Ga. 172—Hines v. Donaldson, 20 S.E.2d 134, 193 Ga. 783.

Lassiter v. Poss, 70 S.E.2d 411, 85 Ga.App. 785.

Md.—Eureka-Maryland Assur. Corporation v. Scalco, 148 A. 267, 158 Md. 73.

Mo.—Louisiana Lumber Co. v. Burbridge, App., 220 S.W.2d 760.

N.C.—Brown v. Montgomery Ward & Co., 8 S.E.2d 199, 217 N.C. 368—Wolfe v. Smith, 1 S.E.2d 815, 215 N.C. 286.

Tex.—Parker v. Bains, Civ.App., 194 S.W.2d 569, error refused no reversible error—Dean v. Safety Cas. Co., Civ.App., 190 S.W.2d 750, refused for want of merit—Eakin v. Glenn, Civ.App., 141 S.W.2d 420—Hart v. Harrell, Civ.App., 17 S.W. 2d 1093.

Other testimony of same witness

Mo.—Ackerman v. Thompson, 202 S. W.2d 795, 356 Mo. 558.

Ohio.—Glenny v. Wright, 4 N.E.2d 158, 53 Ohio App. 1.

Subsequent testimony not connecting party

However, in action for alienation of affections and criminal conversa-

particular case may be such that the admission of hearsay evidence must be deemed to be prejudicial, as where the evidence in question has been admitted on a point, or issue which is sharply contested,[59] or as to which the evidence is close,[59.5] or sharply conflicting,[59.10] or where the evidence was calculated to inflame the jury against the party against whom it was introduced.[59.15]

§ 1728. —— Admission of Evidence in Trial by Court

Ordinarily error in admitting evidence in a trial by a court without a jury is harmless, as where there is other sufficient legal evidence to support the findings, judgment, or decree; on the other hand, the admission of incompetent evidence may be prejudicial error where it influences the decision of the court.

Error in admitting evidence in a trial before a court is ordinarily regarded as harmless and not ground for reversal where the evidence is admitted in the trial of a suit in equity,[60] unless substantial justice requires a reversal,[60.5] as well as in an action tried by the court without a jury.[61]

In trial by court, the nature of evidence admitted

tion, admission of husband's testimony as to statements of wife, not uttered in defendant's presence, that she was ill from an abortion operation, was prejudicial error as hearsay, notwithstanding subsequent testimony relating to same conversation was admitted without objection, where subsequent testimony did not connect defendant with wife's illness.

R.I.—Cabana v. Olivo, 192 A. 302, 58 R.I. 252.

59. Mo.—Conduitt v. Trenton Gas & Electric Co., 31 S.W.2d 21, 326 Mo. 133.

N.Y.—Saxton v. Yannuzzi, 224 N.Y.S. 209, 221 App.Div. 817.

Tex.—Payne v. Price, Civ.App., 203 S.W.2d 544, error refused no reversible error.

4 C.J. p 999 note 18.

59.5 N.Y.—Sheehy v. McKesson & Robbins, 77 N.Y.S.2d 855, 273 App. Div. 942.

59.10 N.Y.—Del Re v. City of New York, 42 N.Y.S.2d 825, 180 Misc. 525.

59.15 N.C.—Jackson v. Parks, 18 S.E.2d 138, 220 N.C. 680.

60. Ga.—State Highway Board of Georgia v. City of Baxley, 9 S.E.2d 266, 190 Ga. 292.

Mo.—Linders v. Linders, 204 S.W.2d 229, 356 Mo. 852—Bell v. Gaertner, 197 S.W.2d 611, 355 Mo. 617—Edinger v. Kratzer, 175 S.W.2d 807—Blackiston v. Russell, 44 S.W.2d 22, 328 Mo. 1164—Nordquist v. Nordquist, 14 S.W.2d 583, 321 Mo. 1244—Lowe v. Montgomery, 11 S.W.2d 41, 321 Mo. 330—Roberts v. Roberts, 291 S.W. 485.

Kerr v. Prudential Ins. Co. of America, 194 S.W.2d 706, 238 Mo. App. 972—Breit v. Bowland, App., 127 S.W.2d 71.

N.Y.—McSorley v. Hughes, 58 Hun 360, 12 N.Y.S. 179, affirmed 30 N.E. 65, 129 N.Y. 659.

McCarthy v. Gallagher, 4 Misc. 188, 23 N.Y.S. 884.

Tenn.—Mecone v. Memphis Cotton Refining Co., 3 Tenn.App. 574.

4 C.J. p 660 note 62[a], p 999 note 21.

Disregard of rulings on admission of evidence

(1) Generally.

Mo.—Kramer v. Johnson, 238 S.W.2d 416, 361 Mo. 1085—Farr v. Lineberger, 207 S.W.2d 455—Steinhoff v. Kinder, 186 S.W.2d 600—Butler County v. Campbell, 182 S.W.2d 589, 353 Mo. 413—Marr v. Marr, 117 S.W.2d 230, 342 Mo. 656—Milligan v. Bing, 108 S.W.2d 108, 341 Mo. 648.

(2) On appeal in equity cases, the appellate court renders such judgment as the pleadings and evidence warrant, irrespective of erroneous rulings in the admission of evidence preserved in the record.

Mo.—Cunningham v. Kinnerk, App., 74 S.W.2d 1107.

(3) Admission of incompetent evidence will not be held prejudicial on appeal in an injunction suit, since the appellate court may disregard the lower court's rulings.

Mo.—Lademan v. Lamb Const. Co., App., 297 S.W. 184.

Evidence held harmless

Cal.—Weiss v. First Sav. Bank of Colusa, 82 P.2d 45, 28 C.A.2d 140, hearing denied 83 P.2d 35, 28 C.A. 2d 140—Ventura County Title Co. v. Constance, 78 P.2d 225, 25 C.A. 2d 642.

Idaho.—McKeehan v. Vollmer-Clearwater Co., 166 P. 256, 30 Idaho 505, Ann.Cas.1918E 1197.

Kan.—Weaver v. Graham, 199 P. 924, 109 Kan. 450—Holloway v. People's Water Co., 167 P. 265, 100 Kan. 414, 2 A.L.R. 161.

Ky.—Deep v. Farmers' Nat. Bank of Lebanon, 57 S.W.2d 1002, 247 Ky. 801.

Miss.—Hartness v. Nix, 67 So.2d 718, 218 Miss. 750.

Mo.—Clay v. Walker, App., 6 S.W. 2d 961—Brown v. Bland, App., 229 S.W. 448.

Pa.—Grosso v. Englert, 113 A.2d 250, 381 Pa. 351.

Tex.—Holland v. De Walt, Civ.App., 225 S.W. 216, dismissed for want of jurisdiction.

Wash.—Arden Farms Co. v. City of Seattle, 99 P.2d 415, 2 Wash.2d 640.

60.5 Mass.—Malm v. Dubrey, 88 N. E.2d 900, 325 Mass. 63.

61. Ark.—Walsh v. Fairhead, 219 S. W.2d 941, 215 Ark. 218.

Cal.—Wood v. Brown, 162 P.2d 859, 71 C.A.2d 544.

Colo.—Crocker v. Burns, 56 P. 199, 13 Colo.App. 54—Washburn v. Williams, 50 P. 223, 10 Colo.App. 153.

Fla.—Prince v. Aucilla River Naval Stores Co., 137 So. 886, 103 Fla. 605.

Ill.—Illinois Steel Co. v. Preble Mach. Works Co., 76 N.E. 574, 219 Ill. 403—Podolski v. Stone, 58 N.E. 340, 186 Ill. 540. See People v. Elbert, 217 Ill.App. 394—Beggs v. Chicago Bonding & Surety Co., 207 Ill.App. 621—Doubet v. Doubet, 196 Ill.App. 289—Giachas v. Cable Co., 190 Ill.App. 285.

Iowa.—Keenhold v. Dudley, 151 N.W. 1076.

Kan.—Kansas City v. Burns, 22 P. 2d 444, 137 Kan. 905.

Me.—Lipman Bros. v. Hartford Acc. & Indem. Co., 100 A.2d 246, 149 Me. 199.

Mich.—Bowman v. Emery's Estate, 298 N.W. 321, 297 Mich. 663—In re Heiler's Estate, 284 N.W. 641, 288 Mich. 49.

Minn.—Klessig v. Lea, 196 N.W. 655, 158 Minn. 14.

Mo.—Gillip v. Butts, App., 77 S.W.2d 1014—Katz v. Dreyfoos, App., 26 S.W.2d 999—Brunke v. Salinger, App., 8 S.W.2d 88—Johnson v. Murray, App., 289 S.W. 977—Roberts v. Hodges, App., 222 S.W. 859.

Neb.—Crinkley v. Rogers, 160 N.W. 974, 100 Neb. 647.

N.M.—Crawford v. Gurley, 170 P. 736, 23 N.M. 659—Hopkins v. Norton, 167 P. 425, 23 N.M. 187—Williams v. Dockwiler, 145 P. 475, 19 N.M. 623.

N.D.—Whittier v. Leifert, 9 N.W.2d 402, 72 N.D. 528.

Okl.—Bouse v. Johnston, 16 P.2d 125, 160 Okl. 168—Eggstaff v. Phelps, 226 P. 82, 99 Okl. 54.

Or.—Klinge v. Farris, 273 P. 954, 128 Or. 142.

Tex.—Sparks v. Gandy, Civ.App., 213 S.W.2d 559—Leonard v. Smith, Civ.

and the influence or effect thereof on the court trying the case or on the complaining party are factors to be considered in determining whether the admission of evidence in particular instances is to be deemed harmless and not ground for reversal on appeal.[61.5] For example, the admission of evidence is harmless where the evidence related to an immaterial matter and could not have had weight with the trial court,[62] or where the questions of evidence

App., 186 S.W.2d 284—J. M. Huber Petroleum Co. v. Quillin, Civ.App., 60 S.W.2d 261—Saunders v. Zumwalt, Civ.App., 52 S.W.2d 955—Green v. Hagens, Civ.App., 51 S.W. 2d 771—Fireman's Fund Ins. Co. v. Galloway, Civ.App., 281 S.W. 283—Wilson v. Hunt, Civ.App., 270 S.W. 263—Johnson v. Frost, Civ.App., 229 S.W. 558—Cooper Grocery Co. v. H. T. Hamrick & Co., Civ.App., 229 S.W. 356—Cummins v. Cummins, Civ.App., 224 S.W. 903—Westchester Fire Ins. Co. v. Thomas Goggan & Bro., Civ.App., 203 S.W. 163.

Utah.—Ogden Savings & Trust Co. v. Blakely, 241 P. 221, 66 Utah 229.

Wash.—Barnes v. Cole, 244 P. 728, 138 Wash. 481—Dillabough v. Okanogan County, 178 P. 802, 105 Wash. 609.

W.Va.—Maxwell v. Ford, 136 S.E. 777, 103 W.Va. 124.

Wis.—Monark Metal & Supply Co. v. General Metal & Refining Co., 218 N.W. 179, 195 Wis. 294.

Wyo.—Russell v. Curran, 206 P.2d 1159, 66 Wyo. 173—Alaska Development Co. v. Brannan, 275 P. 115, 40 Wyo. 106.

4 C.J. p 999 note 22.

Presumption that court renders its decision on legally admissible evidence must be rebutted before reception of inadmissible evidence will be deemed prejudicial.

Me.—Lipman Bros. v. Hartford Acc. & Indem. Co., 100 A.2d 246, 149 Me. 199.

Evidence held harmless

Ala.—Parrish v. Davis, 92 So.2d 897, 265 Ala. 522—Pearce v. Hubbard, 135 So. 179, 223 Ala. 231—Alabama Fidelity & Casualty Co. v. Alabama Penny Sav. Bank, 76 So. 103, 200 Ala. 337.

Cal.—Colburn Biological Institute v. De Bolt, 59 P.2d 108, 6 C.2d 631.

Reina v. Erassarret, 229 P.2d 92, 103 C.A.2d 258—Wilson v. Fredericksen, 210 P.2d 741, 94 C.A.2d 361—Tomcy v. Dyson, 172 P.2d 739, 76 C.A.2d 212—City of Napa v. Navoni, 132 P.2d 566, 56 C.A.2d 289—Richardson v. Michel, 113 P.2d 916, 45 C.A.2d 188—Siskin v. Dembroff, 9 P.2d 908, 121 C.A. 730—Marshall v. Golden State Milk Products Co., 297 P. 109, 113 C.A. 43.

Conn.—Peterson v. Thomas, 136 A. 687, 105 Conn. 625.

Ga.—Lockridge-Rogers Lumber Co. v. Lord, 54 S.E.2d 914, 80 Ga.App. 37.

Ill.—People ex rel. Nelson v. Crane Packing Co., 91 N.E.2d 391, 405 Ill. 470—Morgan v. National Trust Bank of Charleston, 162 N.E. 888, 331 Ill. 182.

Ind.—Oberlin v. Pyle, 49 N.E.2d 970, 114 Ind.App. 21—Van Dyke v. Repogle, 8 N.E.2d 95, 103 Ind.App 372—Seymour Improvement Co. v. Viking Sprinkler Co., 161 N.E. 389, 87 Ind.App. 179.

Iowa.—Madsen v. Obermann, 22 N.W. 2d 350, 237 Iowa 461.

Kan.—Magee v. Snyder, 175 P. 597, 103 Kan. 558.

Ky.—Rosenblatt v. Clements, 236 S. W.2d 261, 314 Ky. 450—Parrish v. Karr, 74 S.W.2d 937, 255 Ky. 573—Newberry's Adm'x v. Rhinehart, 167 S.W. 674, 159 Ky. 513.

La.—Paquet v. Renken, App., 30 So. 2d 218.

Mich.—Sharrar v. Wayne Sav. Ass'n, 236 N.W. 833, 254 Mich. 456.

Minn.—Hawkins v. Hayward, 254 N. W. 809, 191 Minn. 543.

Mo.—Kimpton v. Spellman, 173 S.W. 2d 886, 351 Mo. 674—Journey v. Vikturek, 8 S.W.2d 975.

Schrum v. Sovereign Camp, W. O. W., App., 132 S.W.2d 1091—Gregar v. Broadway Auto Laundry, App., 83 S.W.2d 142—Nevil v. Wahl, App., 65 S.W.2d 123—U. S. Fidelity & Guaranty Co. v. Goodson, 54 S.W.2d 754, 227 Mo.App. 456—Katz v. Dreyfoos, App., 26 S.W.2d 999—State ex rel. Concrete & Steel Const. Co. v. Southern Surety Co., 294 S.W. 123, 221 Mo. App. 67—Chicago, B. & Q. R. Co. v. Evans, 288 S.W. 73, 221 Mo.App. 757—In re Means' Estate, App., 284 S.W. 186—Cut Rate Woolen Co. v. U. S. Tailoring Co., App., 267 S.W. 969.

N.H.—American Employers' Ins. Co. v. Liberty Mut. Ins. Co., 36 A.2d 284, 93 N.H. 101.

N.J.—Gallagher v. Decker, 52 A.2d 680, 135 N.J.Law 435.

Ohio.—Faller v. Massachusetts Bonding & Insurance Co., App., 168 N.E. 394.

Okl.—Ewing v. Trawick, 256 P.2d 182, 208 Okl. 311—M. E. Trapp, Associated, v. Tankersley, 191 P.2d 202, 200 Okl. 117—Jones v. Denton, 135 P.2d 53, 192 Okl. 234.

Pa.—Bisceglia v. Bisceglia, 17 A.2d 182, 340 Pa. 293.

Tenn.—State ex rel. McConnell v. First State Bank, 124 S.W.2d 726, 22 Tenn.App. 577.

Tex.—Texas Christian University v. Burgett, Civ.App., 267 S.W.2d 439, error refused no reversible error—Gard v. Gard, Civ.App., 244 S.W.2d 884—Associates Inv. Co. v. Thomas, Civ.App., 210 S.W.2d 413—Massachusetts Bonding & Insurance Co. v. Wooley, Civ.App., 179 S.W.2d 329—Menefee v. National Aid Life Ass'n, Civ.App., 161 S.W.2d 508, error refused—Dunn v. Peters, Civ. App., 126 S.W.2d 997—Humphrey v. Stidham, Civ.App., 124 S.W.2d 921—City Grocery Co. v. Hallmark, Civ.App., 123 S.W.2d 988, error dismissed—Compton v. Trico Oil Co., Civ.App., 120 S.W.2d 534, error refused—Nash & Windfohr Oil Corporation v. Johnson, Civ. App., 81 S.W.2d 749, error dismissed—State Life Ins. Co. v. Barner, Civ.App., 58 S.W.2d 189—Western Royalty Corporation v. White, Civ.App., 51 S.W.2d 1097—Southern Travelers' Ass'n v. Cole, Civ.App., 45 S.W.2d 675—Miller v. Brand, Civ.App., 32 S.W.2d 874—Zetsche v. Lawler, Civ.App., 25 S.W.2d 907—Magnolia Petroleum Co. v. Caswell, Civ.App., 295 S.W. 653, reversed on other grounds, Com.App., 1 S.W.2d 597, rehearing denied 7 S.W.2d 867, certiorari denied Caswell v. Magnolia Petroleum Co., 49 S.Ct. 34, 278 U.S. 640, 63 L.Ed. 555—Lewis Bros. v. Pendleton, Civ.App., 227 S.W. 502, error granted—Cooper v. Newsom, Civ.App., 224 S.W. 568, dismissed for want of jurisdiction—McAllen v. Wood, Civ.App., 201 S.W. 433, error refused—Lawson v. Port Arthur Canal & Dock Co., Civ.App., 185 S.W. 600, error refused.

Utah.—In re Blodgett's Estate, 70 P. 2d 742, 93 Utah 1.

Wash.—Wood v. Washington Nav. Co., 95 P.2d 1019, 1 Wash.2d 324—Pacific County ex rel. Hamilton v. Continental Casualty Co., 51 P.2d 1078, 184 Wash. 521—Clark v. Parker, 285 P. 652, 155 Wash. 624—In re Hildebrand's Estate, 248 P. 390, 140 Wash. 212—O'Neill v. Dunning, 231 P. 449, 132 Wash. 138.

W.Va.—Wolfe v. Ohio State Life Ins. Co., 170 S.E. 182, 113 W.Va. 884.

Wyo.—Bruch v. Benedict, 165 P.2d 561, 62 Wyo. 213—Campbell v. Wyoming Development Co., 100 P. 2d 124, 55 Wyo. 347, rehearing denied 102 P.2d 745, 55 Wyo. 347—Williams v. Yocum, 263 P. 607, 37 Wyo. 432.

61.5 Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P. 2d 550, 563, 181 Or. 100.

62. Ala.—Pigford v. Billingsley, 84 So.2d 661, 38 Ala.App. 28, affirmed 84 So.2d 664, 264 Ala. 29.

Cal.—Fernandez v. Watt, 146 P. 47, 26 C.A. 86.

involved are unimportant.[62.5] Moreover, the improper admission of evidence in a trial by court is deemed to be harmless, unless the admission of the evidence may have affected the result,[63] or where there is nothing to show that the court considered the evidence complained of in reaching its decision.[64] A fortiori, error, if any, in admitting evidence is considered to be harmless where it affirmatively appears that the admission of the particular evidence objected to did not influence the judgment of the court,[65] as where the judge states, or the findings show, that he did not consider the erroneously admitted evidence in arriving at his decision.[66]

Ill.—Reid v. Chicago Rys. Co., 231 Ill.App. 58—In re Teeple's Estate, 196 Ill.App. 378.
Ind.—Winfrey v. State Life Ins. Co., 85 N.E.2d 821, 227 Ind. 449.
Mass.—Wentworth v. Manhattan Market Co., 106 N.E. 118, 218 Mass. 91.
Minn.—Holford v. Crowe, 161 N.W. 213, 136 Minn. 20.
Mo.—Hoshaw v. Fenton, 110 S.W.2d 1140, 232 Mo.App. 137.
Okl.—Woodruff v. Brady, 72 P.2d 709, 181 Okl. 105, 113 A.L.R. 391.
Or.—Hamilton v. Hamilton Mammoth Mines, 223 P. 926, 110 Or. 546.
Tex.—Wooten v. Clark, Civ.App., 276 S.W.2d 391—Mann v. Mitchell, Civ. App., 241 S.W. 715—National Bank of Garland v. Gough, Civ.App., 197 S.W. 111.
Utah.—Olson v. Gaddis Inv. Co., 39 P.2d 744, 85 Utah 430.
W.Va.—Lindner v. Daniels, 2 S.E.2d 267, 121 W.Va. 210.
4 C.J. p 1001 note 25.

62.5 Mass.—Trustees of Church of the Disciples v. Benevolent Fraternity of Unitarian Churches, 64 N.E.2d 623, 319 Mass. 38.

63. Ala.—Reed v. Banister, 80 So. 410, 202 Ala. 328.
Ariz.—First Baptist Church of Willcox v. Connor, 245 P. 932, 30 Ariz. 234.
Ark.—Standard Rice Milling Co. v. Scott, 295 S.W. 401, 174 Ark. 1180.
Cal.—Owens v. Ring, 256 P.2d 1040, 117 C.A.2d 672.
Mich.—E. Clemens Horst Co. v. Grand Rapids Brewing Co., 273 N.W. 388, 280 Mich. 49.
Mo.—In re Scott's Estate, 173 S.W.2d 115, 237 Mo.App. 1260—Magee v. Pope, 112 S.W.2d 891, 234 Mo.App. 191—Geisert v. Chicago, R. I. & P. Ry. Co., 42 S.W.2d 954, 226 Mo.App. 121.
N.M.—L. & B. Equipment Co. v. McDonald, 275 P.2d 639, 58 N.M. 709—Keil v. Wilson, 133 P.2d 705, 47 N.M. 43, 148 A.L.R. 397—J. B. Colt Co. v. Gavin, 262 P. 529, 33 N.M. 169.
N.C.—Woodard v. Mordecai, 67 S.E. 2d 639, 234 N.C. 463.
Okl.—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10—Bell Loan Co. v. Taylor, 143 P.2d 820, 193 Okl. 358—Thompson v. Taylor, 100 P.2d 860, 187 Okl. 2—Travis v. McCully, 98 P.2d 595, 186 Okl. 378—In re Miller's Estate, 78 P.2d 819, 182 Okl. 534—Woodruff v. Brady, 72 P.2d 709, 181 Okl. 105, 113 A.L.R. 391.
Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P.2d 550, 563, 181 Or. 100.
Pa.—Appeal of Liggett, 139 A. 619, 291 Pa. 109.
S.C.—Green v. Green, 90 S.E.2d 253, 228 S.C. 364.
Tex.—Green v. White, Civ.App., 203 S.W.2d 960.
Wis.—McCoy v. May, 38 N.W.2d 15, 255 Wis. 20.
Wyo.—Cooley v. Frank, 235 P.2d 446, 68 Wyo. 436.

Overruling of objection

Where evidence is given ore tenus in equity case, overruling of objection is not in itself sufficient to show that court allowed testimony objected to, if irrelevant, immaterial, or incompetent to exert any influence on it.
Ala.—Joiner v. State, 168 So. 885, 232 Ala. 522.

64. Ark.—City of Stuttgart v. Elms, 249 S.W.2d 829, 220 Ark. 722.
Colo.—Swedish Evangelical Free Church of U. S. of America v. Benson, 237 P. 165, 77 Colo. 370.
Idaho.—Morton Realty Co. v. Big Bend Irr. & Min. Co., 218 P. 433, 37 Idaho 311.
Ill.—Allen v. McGill, 142 N.E. 470, 311 Ill. 170.
Kan.—Crum v. Guffey-Gillespi Oil Co., 230 P. 299, 117 Kan. 54—Reddy v. Graham, 205 P. 362, 110 Kan. 753.
Mich.—Wilson v. Potter, 63 N.W.2d 413, 339 Mich. 247.
Mo.—Broyles v. Achor, App., 78 S. W.2d 459—Cantley v. American Surety Co. of New York, 38 S.W. 2d 739, 225 Mo.App. 1146.
Nev.—Backer v. Gowen, 307 P.2d 765.
N.J.—Armstrong v. Francis Corp., 120 A.2d 4, 20 N.J. 320.
N.M.—Romero v. Herrera, 228 P. 604, 30 N.M. 139—Espy v. Union Trust & Savings Bank, 222 P. 200, 29 N. M. 225—Moore v. Moore, 214 P. 585, 28 N.M. 463—Armstrong v. Concklin, 202 P. 985, 27 N.M. 550.
N.Y.—Robins Dry Dock & Repair Co. v. Navigazione Libera Triestina, S. A., 185 N.E. 698, 261 N.Y. 455, certiorari denied Moran Towing & Transp. Co. v. Robins Dry Dock & Repair Co., 54 S.Ct. 72, 290 U.S. 656, 78 L.Ed. 568.
N.D.—Quinn Wire & Iron Works v. Boyd, 202 N.W. 852, 52 N.D. 273.
Okl.—Stekoll v. Wilson, 250 P.2d 454, 207 Okl. 456—In re Graham's Estate, 37 P.2d 964, 169 Okl. 568—Ealy v. General Motors Acceptance Corporation, 36 P.2d 4, 169 Okl. 95—Russell v. Lennox Furnace Co., 277 P. 915, 136 Okl. 249—Hoodenpyl v. Champion, 225 P. 160, 101 Okl. 239—Johnson v. Alexander, 167 P. 989, 66 Okl. 128.
Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P.2d 550, 563, 181 Or. 100.
Tex.—Shosid v. Hughes Tool Co., Civ.App., 258 S.W.2d 945, error refused no reversible error—Suit v. Taylor, Civ.App., 218 S.W.2d 243—Texas Cotton Growers Ass'n v. McGuffey, Civ.App., 131 S.W.2d 771, error dismissed—O'Connor v. Presswood, Civ.App., 76 S.W.2d 799—Sibley v. Perkins Bros. Dry Goods Co., Civ.App., 12 S.W.2d 601—National Grand Lodge, Loyal Friends of America Benev. Ass'n v. Wilson, Civ.App., 6 S.W.2d 206—McWhorter v. Oliver, Civ.App., 2 S.W.2d 281—Biggs v. Doak, Civ. App., 259 S.W. 665, second motion overruled 260 S.W. 882—Frost v. Thomas, Civ.App., 238 S. W. 305—Pate v. Woodville Mercantile Co., Civ.App., 229 S.W. 916.
Vt.—Platt v. Shields, 119 A. 520, 96 Vt. 257.
Wash.—Olsen v. Kemoe, 231 P. 778, 132 Wash. 249.

65. Ind.—Donner v. Griffith, 122 N. E. 23, 71 Ind.App. 693.
Minn.—Pearson v. Bertelson, 82 N.W. 2d 66, 249 Minn. 218.
Tex.—Hallam v. Duckworth, Civ. App., 209 S.W. 222.

66. Cal.—Anglin v. Cutler, 146 P.2d 254, 63 C.A.2d 42—Zvolanek v. Bodger Seeds, 42 P.2d 92, 5 C.A.2d 106.
Ill.—Quigley v. Quigley, 18 N.E.2d 186, 370 Ill. 151.
Ind.—Winfrey v. State Life Ins. Co., 85 N.E.2d 821, 227 Ind. 449.
Iowa.—In re Stockham's Estate, 186 N.W. 650, 193 Iowa 823, 22 A.L.R. 765.
Mass.—Keith v. Thomas, 165 N.E. 679, 266 Mass. 566.
Okl.—Grand Lodge of the Independent Order of Odd Fellows v. Stubbs, 298 P.2d 1056—In re Miller's Estate, 78 P.2d 819, 182 Okl. 534—Crews v. State ex rel. Barnett, 49 P.2d 761, 174 Okl. 128—Security Nat. Bank of Oklahoma City v. Martin, 241 P. 812, 113 Okl. 295.

Moreover, error in admitting evidence in an action tried by a court may be regarded as harmless where the decree indicates that the evidence admitted was not considered by the court in reaching its conclusion,[67] or where a general finding and the judgment show that the evidence complained of was not considered.[68] Similarly, the admission of evidence in a case tried by a court is regarded as harmless where the court did not actually consider such evidence in deciding the case,[69] did not give any weight to the evidence complained of,[70] or did not base the decision on such evidence,[71] or where there is no reasonable ground for inferring that the incompetent evidence was a material factor in the determination of the court.[71.5]

Further error, if any, in the admission of evidence by a court trying a case without a jury may be regarded as harmless where it did not actually result in harm to the complaining party,[72] as where the finding was contrary to the testimony;[72.5] or where there is nothing to indicate that the complain-

Pa.—In re Richey's Estate, 96 A. 748, 251 Pa. 324.
Lion Yarn Co. v. Flock, 36 A.2d 246, 154 Pa.Super. 528.
Tex.—Santos v. Morgan, Civ.App., 195 S.W.2d 927, error refused no reversible error—Phillips v. Bowie, Civ.App., 127 S.W.2d 522, error dismissed, judgment correct—Cox v. McClave, Civ.App., 22 S.W.2d 961—Findlay v. State, Civ.App., 238 S. W. 956, second rehearing denied 239 S.W. 996, affirmed 250 S.W. 651, 113 Tex. 30.
4 C.J. p 1001 note 29.

67. Ala.—Patterson v. Lovelady, 172 So. 646, 233 Ala. 554.
Mich.—Ladies Auxiliary of Ancient Order of Hibernians of Michigan v. Flanigan, 157 N.W. 355, 190 Mich. 675.

68. Okl.—Russell v. Lennox Furnace Co., 277 P. 915, 136 Okl. 249.

69. Ariz.—Leigh v. Swartz, 245 P.2d 262, 74 Ariz. 108.
Cal.—Scott v. McPherson, 145 P. 529, 168 C. 783.
In re Cazaurang's Estate, 110 P. 2d 138, 42 C.A.2d 796.
Ga.—Harris v. Hines, 133 S.E. 294, 35 Ga.App. 414.
Ind.—Fast v. Baker, 131 N.E. 57, 76 Ind.App. 677—Thompson v. Fesler, 123 N.E. 188, 74 Ind.App. 80.
La.—Kelly, Weber & Co. v. Metcalf, App., 177 So. 444.
Mass.—Jameson v. Hayes, 145 N.E. 457, 250 Mass. 302—Manning v. Woodlawn Cemetery Corporation, 139 N.E. 830, 245 Mass. 250.
Mich.—Lapachin v. Standard Oil Co., 256 N.W. 490, 268 Mich. 477.
Mo.—Breit v. Bowland, App., 127 S. W.2d 71—Lindsay v. Smith, 166 S. W. 820, 178 Mo.App. 189.
N.M.—McGonigle v. Eagle Town-Site Co., 187 P. 546, 25 N.M. 625.
N.Y.—Lamborn v. National Park Bank of New York, 208 N.Y.S. 428, 212 App.Div. 25, affirmed 148 N.E. 664, 240 N.Y. 520.
Okl.—Hartford Fire Ins. Co. v. Smith, 284 P. 624, 141 Okl. 90.
Pa.—Reading City Pass. Ry. Co. v. Berks County, 91 A. 1045, 246 Pa. 44.
R.I.—New England Box & Barrel Co. v. Travelers Fire Ins. Co., 8 A.2d 805, 63 R.I. 315.
Tex.—Brewer v. Ross, Civ.App., 275 S.W.2d 132—Texas Emp. Ins. Ass'n v. Polk, Civ.App., 269 S.W.2d 582, error refused no reversible error—Wood v. Wood, Civ.App., 253 S.W. 2d 90—Gillham v. City of Dallas, Civ.App., 207 S.W.2d 978, error refused no reversible error—Phillips v. Bowie, Civ.App., 127 S.W.2d 522, error dismissed, judgment correct—Vitopil v. Gray, Civ.App., 111 S. W.2d 1202—Green v. Hagens, Civ. App., 51 S.W.2d 771.
Utah.—Pingree Nat. Bank of Ogden v. Weber County, 183 P. 334, 54 Utah 599.
Wash.—Ikeda v. Curtis, 261 P.2d 684, 43 Wash.2d 449—In re Shaner's Estate, 248 P.2d 560, 41 Wash.2d 236—Goodwin Co. v. National Discount Corp., 105 P.2d 805, 5 Wash. 2d 521, 135 A.L.R. 801—Marrazzo v. Orino, 78 P.2d 181, 194 Wash. 364—McCarty v. California Farms Co., 192 P. 882, 112 Wash. 337.
4 C.J. p 1001 note 28.

70. Cal.—Rolinson v. Rolinson, 282 P.2d 98, 132 C.A.2d 387—Del Barrio v. Sherman, 60 P.2d 559, 16 C.A. 2d 407.
Kan.—Jones v. Jones, 167 P.2d 634, 161 Kan. 284—Theno v. Cuthbertson, 36 P.2d 79, 140 Kan. 233.
La.—Gladney v. deBretton, 49 So.2d 18, 218 La. 296.
Miss.—Chatman v. Carter, 84 So.2d 926.
Tex.—Pruett v. First Nat. Bank of Temple, Civ.App., 175 S.W.2d 658—Taormina Corporation v. International Playing Card & Label Co., Civ.App., 154 S.W.2d 949—Murphy v. Jamison, Civ.App., 117 S.W.2d 127, error refused—Texas & N. O. R. Co. v. Whisenant, Civ.App., 105 S.W.2d 706.
Vt.—Bloomstrand v. Stevens, 156 A. 414, 104 Vt. 1.
Wash.—Stahly v. Emonds, 50 P.2d 908, 184 Wash. 207.

71. Cal.—Prince v. Hill, 149 P. 578, 170 C. 192.
Shyvers v. Mitchell, 284 P.2d 826, 133 C.A.2d 569—Spath v. Seager, 102 P.2d 350, 39 C.A.2d 10.
Ind.—Romey v. Glass, 91 N.E.2d 850, 120 Ind.App. 279.
La.—Gladney v. deBretton, 49 So.2d 18, 218 La. 296.
Me.—Jolovitz v. Redington & Co., 88 A.2d 589, 148 Me. 23.
Md.—Vocci v. Ambrosetti, 94 A.2d 437, 201 Md. 475.
Mass.—Bornbaum v. Employers Liability Assur. Co., 41 N.E.2d 54, 311 Mass. 282.
N.J.—Amusement Supply Co. v. Kaybe Amusement Co., 24 A.2d 570, 128 N.J.Law 98.
Pa.—Art Club of Philadelphia v. Heyman & Goodman, 190 A. 922, 325 Pa. 587—In re Kvist's Estate, 100 A. 523, 256 Pa. 30.
R.I.—New England Transp. Co. v. Doorley, 197 A. 205, 60 R.I. 50.
Tenn.—Mathis v. Campbell, 117 S.W. 2d 764, 22 Tenn.App. 40.
Tex.—Suit v. Taylor, Civ.App., 218 S. W.2d 243.
Wash.—Forrester v. Fisher, 133 P.2d 516, 16 Wash.2d 325.

71.5 Minn.—In re Palmer's Estate, 57 N.W.2d 409, 238 Minn. 549—Bjerketvedt v. Jacobson, 44 N.W.2d 775, 232 Minn. 152—Sullivan v. Brown, 31 N.W.2d 439, 225 Minn. 524—Fleetham v. Lindgren, 22 N. W.2d 637, 221 Minn. 544.

72. Ill.—Atwood Vacuum Mach. Co. v. Varner Well & Pump Co., 122 N. E.2d 834, 3 Ill.App.2d 571.
La.—Nobles v. Meyer Greenwald Const. Co., 137 So. 576, 18 La.App. 548.
Okl.—**Corpus Juris Secundum cited in** Lee v. National Refining Co., 75 P.2d 406, 409, 181 Okl. 556.
Or.—Portland Pulley Co. v. Breeze, 199 P. 957, 101 Or. 239—Puffer v. Badley, 181 P. 1, 92 Or. 360, 4 A.L. R. 1561.
S.D.—Byrne v. Northwestern Life Ins. Co., 162 N.W. 387, 38 S.D. 600.
Tex.—Howard v. Howard, Civ.App., 48 S.W.2d 489—Hallam v. Duckworth, Civ.App., 209 S.W. 222.
Wash.—Manahan v. Aumiller, 188 P. 789, 110 Wash. 673.

72.5 Ohio.—Taylor v. Shields, App., 111 N.E. 595.
Okl.—Leland v. Oklahoma Const. Co., 55 P.2d 1013, 176 Okl. 216.

ing party was prejudicially affected by the admission of the evidence in question.[73]

On the other hand, the admission of incompetent evidence which influences the court in arriving at its decision may be regarded as prejudicial error requiring reversal.[74] Similarly, prejudicial error results from the admission of incompetent evidence where the reviewing court cannot determine what weight and influence such evidence had on the trial court.[74.5] Moreover, where the view is taken that error in admitting evidence in a trial by a court will not be considered unless it affirmatively appears that the evidence admitted was disregarded by the court in reaching its decision, the improper admission of evidence in a trial by a court may be deemed to be prejudicial error and ground for reversal in the absence of a showing that such evidence was disregarded.[75] Similarly, it has been held that in the absence of a showing that no prejudice resulted from the admission of incompetent evidence, such admission is reversible error.[76]

At all events, the judgment of a trial court hearing a case without a jury will ordinarily be reversed for the admission of improper evidence only where it appears that the court was influenced by the improper evidence, or that the evidence admitted was essential to the findings,[77] that the evidence affected the decision,[77.5] that the decision was based in whole or in part on such evidence,[77.10] or that appellant was harmed by the error,[78] or where the appellate court cannot determine whether or not the trial court was influenced by the evidence erroneously admitted.[79] It is immaterial that evidence improperly admitted under conditions making such admission prejudicial error would, under other conditions, have been admissible.[80]

Error, if any, in admitting evidence in the trial of a suit by a court may be harmless by reason of

73. Cal.—Kohler v. Bristow, 281 P. 2d 352, 131 C.A.2d 692.
Idaho.—State ex rel. Good v. Boyle, 186 P.2d 859, 67 Idaho 512.
Ind.—Shira v. State, 119 N.E. 833, 187 Ind. 441.
Tex.—Lawther Grain Co. v. Winniford, Com.App., 249 S.W. 195.
McNeal v. McCraw, Civ.App., 15 S.W.2d 139.

74. Ala.—Jennings v. Provident Life & Acc. Ins. Co., 22 So.2d 319, 246 Ala. 689—Schwab v. Powers, 153 So. 423, 228 Ala. 205.
Bowdon Lime Works v. Moss, 70 So. 292, 14 Ala.App. 433.
Cal.—Marot v. Capital Brush Co., 280 P.2d 238, 131 C.A.2d Supp. 847.
Conn.—Bailey v. Bobecki, 166 A. 677, 117 Conn. 653.
Ga.—Little v. Georgia Power Co., 52 S.E.2d 322, 205 Ga. 51.
Md.—Conservation Co. v. Stimpson, 110 A. 495, 136 Md. 314.
Mass.—In re Poole, 116 N.E. 227, 227 Mass. 29.
Miss.—In re Grimes' Estate, 34 So.2d 197, 203 Miss. 416.
Mo.—Barton v. Faeth, 186 S.W. 52, 193 Mo.App. 402.
Mont.—Demos v. Doepker, 149 P.2d 544, 116 Mont. 264.
N.J.—Ockford v. Steinmeyer, 127 A. 576, 3 N.J.Misc. 166.
N.Y.—Fatato v. Railway Exp. Agency, 144 N.Y.S.2d 560.
N.C.—Reid v. Johnston, 85 S.E.2d 114, 241 N.C. 201.
Ohio.—Stoltz v. Carroll, 124 N.E. 226, 99 Ohio St. 289.
Okl.—Cudjo v. Smith, 196 P. 698, 81 Okl. 74.
Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P.2d 550, 563, 181 Or. 100.
R.I.—New England Transp. Co. v. Doorley, 197 A. 205, 60 R.I. 50.
Tex.—Brown v. Fore, Com.App., 12 S. W.2d 114, 63 A.L.R. 435.
Wooten v. Clark, Civ.App., 276 S.W.2d 391—Foster v. Buchele, Civ.App., 213 S.W.2d 738, error refused no reversible error—Sparks v. Gandy, Civ.App., 213 S.W.2d 559—Bankers' Nat. Life Ins. Co. v. First Nat. Bank, Civ.App., 77 S.W. 2d 547—Hood v. Robertson, Civ. App., 33 S.W.2d 882—Zetsche v. Lawler, Civ.App., 25 S.W.2d 907—Scruggs Buick Co. v. Stewart, Civ. App., 21 S.W.2d 701—Gulf, C. & S. F. Ry. Co. v. Bogy, Civ.App., 178 S.W. 577—Texas & P. Ry. Co. v. Dickson Bros., Civ.App., 167 S.W. 33.
Wyo.—Cooley v. Frank, 235 P.2d 446, 68 Wyo. 436—State Bank of Wheatland v. Bagley Bros., 11 P.2d 572, 44 Wyo. 244, rehearing denied 13 P.2d 564, 44 Wyo. 456.

74.5 Cal.—In re James' Estate, 57 P. 578, 1008, 124 C. 653.
Dolton v. Green, 164 P.2d 795, 72 C.A.2d 427—Nishi v. Inoguchi, 2 P. 2d 864, 116 C.A. 398.

75. Ind.—Kaczmarczyk v. Dolato, 133 N.E. 829, 191 Ind. 540.

76. N.Y.—Abramowitz v. Wisch, 159 N.Y.S. 738.

77. Nev.—Caye v. Caye, 211 P.2d 252, 66 Nev. 78.
N.D.—George v. Odenthal, 225 N.W. 323, 58 N.D. 209.
Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P.2d 550, 563, 181 Or. 100.
Wyo.—**Corpus Juris cited in** State Bank of Wheatland v. Bagley Bros., 11 P.2d 572, 588, 44 Wyo. 244.
4 C.J. p 1001 note 32.

77.5 Minn.—Werner v. Miller, 78 N. W.2d 63, 248 Minn. 75.
Tex.—Lawther Grain Company v. Winniford, Com.App., 249 S.W. 195.
Leonard v. Smith, Civ.App., 186 S.W.2d 284—Green v. Hagens, Civ. App., 51 S.W.2d 771.

77.10 Me.—In re Knapp's Estate, 99 A.2d 331, 149 Me. 130—Jolovitz v. Redington & Co., 88 A.2d 589, 148 Me. 23—Haskell v. Hervey, 74 Me. 192.
Okl.—Liles v. Bigpond, 121 P.2d 596, 190 Okl. 112.

78. N.Y.—Granger v. Brooks, 39 N. Y.S. 355, 3 App.Div. 129.
Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P.2d 550, 563, 181 Or. 100—Williams v. Burdick, 125 P. 844, 126 P. 603, 63 Or. 41.
Tex.—Swan v. Price, Civ.App., 162 S. W. 994.

Clear showing
Minn.—Otter Tail Power Co. v. Village of Wheaton, 49 N.W.2d 804, 235 Minn. 123.

79. Ind.—Rushville Nat. Bank of Rushville v. State Life Ins. Co., 1 N.E.2d 445, 210 Ind. 492.
Portland Body Works v. McCullough Motor Supply Co., 119 N.E. 180, 72 Ind.App. 216, rehearing denied 119 N.E. 1005, 72 Ind.App. 216.
Mont.—State v. Martin, 219 P. 632, 68 Mont. 392.
Or.—**Corpus Juris Secundum quoted in** Menefee v. Blitz, 179 P.2d 550, 563, 181 Or. 100.

80. Vt.—Farmers' Feed & Grain Co. v. Longway, 154 A. 674, 103 Vt. 327.

the conduct of the parties, as where the complaining party introduces similar evidence,[81] withdraws an objection previously entered to evidence on the same subject,[82] or proves substantially the same facts by his own witnesses.[83] Moreover, error, if any, in admitting evidence in a trial by court may be deemed to be harmless where the complaining party neither objected to such evidence nor made a motion to strike it.[84]

In trials without a jury, the admission of evidence as to an issue found in appellant's favor,[85] or where there is no finding on the issue covered by such evidence,[86] is not ground for reversal.

The admission of evidence in the trial of an action had before a court is not ordinarily ground for reversal notwithstanding special issues in the case are submitted to a jury.[87]

Effect of other evidence. Whether or not error in the admission of evidence in a case tried by a court without a jury is harmless may depend on the presence of other evidence in the case; for example, the improper admission of evidence in a case tried by a court may be considered harmless where evidence properly admitted is sufficient,[88] where there is sufficient legal evidence to support the judgment or finding,[89] or where the court could not

81. Idaho.—Duthweiler v. Hanson, 28 P.2d 210, 54 Idaho 46.

82. Okl.—Askin v. Taylor-Skinner Pub. Co., 56 P.2d 379, 176 Okl. 438.

83. Tex.—Halff Co. v. Jones, Civ. App., 169 S.W. 906.

84. Wis.—Milwaukee County v. H. Neidner & Co., 263 N.W. 468, 220 Wis. 185, modified on other grounds 265 N.W. 226, 220 Wis. 185, motion denied 266 N.W. 238, 220 Wis. 185.

Necessity of objections to admission of evidence and motions to strike evidence in trial court generally see supra § 290.

85. Okl.—Leland v. Oklahoma Const. Co., 55 P.2d 1013, 176 Okl. 216.

4 C.J. p 1002 note 35.

86. Tex.—Cassin v. La Salle County, 21 S.W. 122, 1 Tex.Civ.App. 127.

Wash.—Haynes v. Seattle, 125 P. 147, 69 Wash. 419—Carl v. West Aberdeen Land, etc., Co., 43 P. 890, 13 Wash. 616.

87. Ky.—Early v. Early, 207 S.W. 466, 182 Ky. 757.

Minn.—Johnson v. Holmes, 170 N.W. 709, 142 Minn. 54.

Case in equity or admission of evidence on equitable issue

(1) In an equity case it cannot be held that prejudice resulted to plaintiff, appellant, because jury, on a directed issue of fact, heard evidence upon issues reserved for court's determination.

Minn.—Johnson v. Holmes, supra.

(2) Where the verdict in an equity case is clearly proper and has been affirmed by the trial court, an appellate court will not grant a new trial merely because improper evidence has been admitted.

N.D.—Merritt v. Adams County Land & Investment Co., 151 N.W. 11, 29 N.D. 496.

(3) The admission of incompetent evidence on an equitable issue being considered by jury was not prejudicial, since the verdict of the jury on such an issue was merely advisory.

Ky.—Early v. Early, 207 S.W. 466, 182 Ky. 757.

(4) In a suit to set aside an executed contract of sale by an alleged incompetent, which suit was exclusively of equitable jurisdiction, any error in allowing the vendor to testify after the committee and the wife of the alleged incompetent had testified was not prejudicial, where the vendor's testimony was cumulative.

Ky.—Acree's Committee v. Bialock, 277 S.W. 464, 211 Ky. 450.

Where different verdict would not have resulted

Erroneous admission of evidence is not prejudicial, where a different verdict would not have resulted if the evidence in question had not been admitted and the verdict rendered was merely advisory.

Cal.—In re Boole's Estate, 277 P. 759, 98 C.A. 714.

88. Cal.—Khatchadourian v. Davidian, 191 P.2d 484, 84 C.A.2d 694—Miller & Lux v. Pinelli, 257 P. 573, 84 C.A. 42.

Colo.—Taylor v. Taylor, 247 P. 174, 79 Colo. 487.

Ill.—Higgins v. Chicago Title & Trust Co., 143 N.E. 482, 312 Ill. 11. People v. Ludwig, 258 Ill.App. 268.

Iowa.—State v. Certain Intoxicating liquors, 185 N.W. 145, 192 Iowa 629—G. J. Stewart & Co. v. Whicher, 150 N.W. 64, 168 Iowa 269.

Kan.—Peyton v. Waters, 177 P. 525, 104 Kan. 81.

Minn.—Fleetham v. Lindgren, 22 N.W.2d 637, 221 Minn. 544.

Mo.—Barron v. H. D. Williams Cooperage Co., 171 S.W. 683, 185 Mo. App. 625.

Nev.—Jones v. Golick, 206 P. 679, 46 Nev. 10.

N.Y.—Ludlam v. Ludlam, 185 N.Y.S. 343, 194 App.Div. 411, affirmed Ludlam v. Connecticut Trust & Safe Deposit Co. of Hartford, Conn., 134 N.E. 594, 232 N.Y. 615.

Or.—Ex parte Bryant, 210 P. 454, 106 Or. 359.

S.D.—Knapp v. Brett, 222 N.W. 297, 54 S.D. 1.

Tex.—Prichard v. Farmers Co-op. Soc. No. 1 of Markel, Civ.App., 183 S.W.2d 240—O'Connor v. Spears, Civ.App., 13 S.W.2d 419—Floyd Willis & Co. v. Rorrison, Civ.App., 11 S.W.2d 354—Taylor v. Gossett, Civ.App., 269 S.W. 230—Johnson v. Frost, Civ.App., 229 S.W. 558.

Utah.—Thatcher v. Merriam, 240 P. 2d 266, 121 Utah 191—Romney v. Covey Garage, 111 P.2d 545, 100 Utah 167—Western Securities Co. v. Spiro, 221 P. 856, 62 Utah 623.

Wis.—Vogel v. Delaware, L. & W. R. Co., 171 N.W. 198, 168 Wis. 567.

Deed in evidence

Testimony of witnesses with respect to their interpretation of deeds before execution of deeds did not require reversal of judgment, where the deeds were properly before court trying case without jury.

Tex.—Humphrey v. Stidham, Civ. App., 124 S.W.2d 921.

89. Ill.—Morgan v. National Trust Bank of Charleston, 162 N.E. 888, 331 Ill. 182.

Okl.—Thompson v. Coker, 241 P. 486, 112 Okl. 268.

Tex.—McElwrath v. Dixon, Civ.App., 49 S.W.2d 995—Massachusetts Bonding & Insurance Co. v. Le May, Civ.App., 28 S.W.2d 259.

4 C.J. p 1000 note 24.

Question on review

Reviewing court will not reverse because of error in admission of evidence, but will determine whether there is enough competent evidence to sustain judgment.

Ill.—Perry v. Waddelow, 115 N.E.2d 348, 351 Ill.App. 356—Agnell v. Illinois Bell Tel. Co., 109 N.E.2d 398, 348 Ill.App. 503.

Requirement that incompetent evidence support essential feature of judgment

In cases tried by the court, the reception of incompetent evidence will not be held prejudicial, unless it is the only evidence supporting some essential feature of the judgment.

Wis.—Bell v. Milwaukee Electric Ry.

& Light Co., 172 N.W. 791, 169 Wis. 408—Hannah v. Knuth, 154 N.W. 985, 161 Wis. 467, Ann.Cas. 1917C 681.

View that absence of competent evidence to support judgment must appear

A judgment rendered in a case heard without the intervention of a jury may not be reversed on account of the admission of incompetent evidence, unless the record discloses that there was no competent evidence to support it, or in some other way shows affirmatively that the improper evidence affected the result.

Okl.—Stone v. Spencer, 191 P. 197, 79 Okl. 85.

Where conclusions supported by sufficient evidence

(1) The admission of testimony over objection is not reversible error in a trial before a court without a jury, if there is competent testimony to justify the conclusions made.

Tex.—Willis v. First Nat. Bank, Civ. App., 22 S.W.2d 475.

(2) Reception of inadmissible evidence, where a case was heard without a jury, is not reversible error, where other abundant evidence sustained the sitting justice's conclusions.

U.S.—Alksne v. U. S., C.C.A.Mass., 89 F.2d 62, certiorari denied 50 S. Ct. 467, 281 U.S. 768, 74 L.Ed. 1175.

Cal.—Greene v. Fickert, 122 P.2d 93, 49 C.A.2d 511.

Ind.—Kostas v. Zaracostas, 75 N.E. 2d 423, 118 Ind.App. 425.

Ohio.—Taylor v. Shields, App., 111 N.E.2d 595.

Okl.—Brazelton v. Lewis, 137 P.2d 905, 192 Okl. 568.

Tex.—Puckett v. Hoover, Civ.App., 197 S.W.2d 602, affirmed 202 S.W. 2d 209, 146 Tex. 1—Humble Oil & Refining Co. v. Mullican, Civ.App., 190 S.W.2d 392, affirmed 192 S.W. 2d 770, 144 Tex. 609—Thorpe v. Wilks, Civ.App., 176 S.W.2d 1019.

(3) Reception in the evidence of letters between parties to a divorce action, which were inadmissible as confidential communications, was not prejudicial, where the court disregarded the letters in making a decision, and other competent evidence sustained its conclusions.

N.Y.—Hall v. Hall, 208 N.Y.S. 814, 211 App.Div. 832.

Where findings based on uncontroverted evidence

Error in admitting testimony in a nonjury case did not require reversal by the court of civil appeals, where the findings were based on uncontroverted testimony.

Tex.—Ferguson v. Ferguson, Com. App., 23 S.W.2d 673.

Where both findings and judgment or findings and decree supported by competent evidence

(1) The admission of incompetent evidence is not reversible error in a case tried without a jury, where there is sufficient competent evidence to sustain the court's finding and judgment.

Ariz.—In re Guardianship of Sorrells, 117 P.2d 96, 58 Ariz. 25.

Cal.—Division of Labor Enforcement, Dept. of Indus. Relations v. Gifford, 290 P.2d 281, 137 C.A.2d 259—Jaffe v. Vitz, 191 P.2d 802, 84 C.A.2d 816.

Idaho.—State ex rel. Good v. Boyle, 186 P.2d 859, 67 Idaho 512.

Ill.—Olds v. Adams Clark Bldg. Corporation, 277 Ill.App. 157.

Kan.—Marcotte's Estate v. Clay, 224 P.2d 998, 170 Kan. 189—Starbuck v. Kingore, 210 P. 930, 112 Kan. 102.

Mont.—Murphy v. La Chapelle, 24 P. 2d 131, 95 Mont. 36.

Tex.—Green v. White, Civ.App., 203 S.W.2d 960.

Wash.—Cooper v. Department of Labor and Industries of Washington, 80 P.2d 830, 195 Wash. 315.

(2) The erroneous admission of testimony in a chancery case does not necessitate a reversal, where, ignoring the objectionable testimony, there still remains sufficient evidence to support the chancellor's finding and decree.

Ill.—Bontz v. Stear, 121 N.E. 176, 285 Ill. 599.

Mo.—Joseph S. Baum Mercantile Co. v. Levin, 174 S.W. 442, 189 Mo. App. 237.

Wash.—Coe v. Wormell, 152 P. 716, 88 Wash. 119, Ann.Cas.1917C 679.

(3) If there is sufficient legal and competent evidence to sustain findings and judgment, judgment will not be reversed because of erroneous evidence unless it affirmatively appears that it affected judgment.

Ariz.—Anderson v. Artesia Inv. Co., 188 P.2d 455, 66 Ariz. 335—Anderson v. Alabam Freight Lines, 169 P.2d 865, 64 Ariz. 313—Murphy v. Yeast, 126 P.2d 313, 59 Ariz. 281.

Where finding supported by other sufficient evidence

In cases tried by a court without a jury the admission of incompetent or improper evidence is not ground for reversal where there is other sufficient evidence to sustain findings made by the court.

Ala.—Pfingstl v. Solomon, 197 So. 12, 240 Ala. 58—Robinson v. Solomon Bros., 155 So. 553, 229 Ala. 137—Evans Bros. Const. Co. v. Steiner Bros., 94 So. 361, 208 Ala. 306.

Peppers v. Agee Mercantile Co., 149 So. 876, 25 Ala.App. 548.

Ariz.—Duncan v. Mack, 122 P.2d 215, 59 Ariz. 36.

Cal.—Spoerer v. Baker, 254 P.2d 113, 116 C.A.2d 664—Bisno v. Herzberg, 170 P.2d 973, 75 C.A.2d 235—Hildebrand v. Delta Lumber & Box Co., 153 P.2d 377, 67 C.A.2d 88—Burford v. Baker, 127 P.2d 941, 53 C.A.2d 301—Saecker v. Metropolitan Life Ins. Co., 125 P.2d 105, 51 C.A.2d 479—Gould v. Van Horne, 187 P. 35, 43 C.A. 145—Brinkley-Douglas Fruit Co. v. Silman, 166 P. 371, 33 C.A. 643.

Colo.—McDonald v. McFerson, 249 P. 496, 80 Colo. 4—Swedish Evangelical Free Church of U. S. of America v. Benson, 237 P. 165, 77 Colo. 370—Rogers v. Nevada Canal Co., 151 P. 923, 60 Colo. 59, Ann.Cas. 1917C 669.

Del.—Bennett v. Barber, 79 A.2d 363, 7 Terry 132.

Ill.—Murphy v. Sampson, 174 N.E. 393, 342 Ill. 305—Sterling-Midland Coal Co. v. Great Lakes Coal & Coke Co., 165 N.E. 793, 334 Ill. 281—Allen v. McGill, 142 N.E. 470, 311 Ill. 170.

Gillespie v. Gillespie, 66 N.E.2d 481, 328 Ill.App. 582—MacAndrews & Forbes Co. v. Mechanical Mfg. Co., 1 N.E.2d 895, 285 Ill.App. 81, affirmed 11 N.E.2d 382, 367 Ill. 288, certiorari denied Mechanical Mfg. Co. v. MacAndrews & Forbes Co., 58 S.Ct. 759, 303 U.S. 655, 82 L.Ed. 1115—Gold v. Rousso, 238 Ill.App. 427—Goldsmith v. Standard Automatic Mach. Co., 236 Ill.App. 84. See Rosengren v. Manufacturers' Nat. Bank of Rockford, 220 Ill.App. 608—Linn v. Moore, 208 Ill.App. 524—Donovan v. Ingoldsby, 186 Ill. App. 335.

Ind.—Winfrey v. State Life Ins. Co., 85 N.E.2d 821, 227 Ind. 449—Federal Life Ins. Co. of Chicago, Ill. v. Bower, 198 N.E. 104, 102 Ind. App. 65—Schemmel v. Hill, 169 N. E. 678, 91 Ind.App. 373—George F. Hinrichs, Inc., v. U. S. Bank & Trust Co. of Rochester, 163 N.E. 842, 88 Ind.App. 327—Seymour Improvement Co. v. Viking Sprinkler Co., 161 N.E. 389, 87 Ind.App. 179.

Kan.—Kelley v. Kelley, 150 P.2d 347, 158 Kan. 719—Gentry v. Hornung, 15 P.2d 445, 136 Kan. 340—Sparks v. Kinseder, 255 P. 28, 123 Kan. 226—Crum v. Guffey-Gillespi Oil Co., 230 P. 299, 117 Kan. 54.

Ky.—Fidelity Mut. Life Ins. Co. v. Gardner's Adm'r, 25 S.W.2d 69, 233 Ky. 88.

Mich.—Edwin S. George Foundation v. Allen, 31 N.W.2d 716, 320 Mich. 552.

Minn.—Pearson v. Bertelson, 32 N.W. 2d 66, 249 Minn. 218—In re Palmer's Estate, 57 N.W.2d 409, 238 Minn. 549—Bjerketvedt v. Jacobson, 44 N.W.2d 775, 232 Minn. 152—Pump-It, Inc. v. Alexander, 42 N. W.2d 337, 230 Minn. 564—Sullivan v. Brown, 31 N.W.2d 439, 225 Minn. 524.

Mo.—Hydraulic Press Brick Co. v. R. B. Winn Contracting Co., App., 219 S.W. 681.

Neb.—Dorcey v. Thurston County, 170 N.W. 499, 103 Neb. 43—In re Enyart's Estate, 160 N.W. 120, 100 Neb. 337.

N.M.—First State Bank of Alamogordo v. McNew, 269 P. 56, 33 N.M. 414—Grissom v. Grissom, 185 P. 64, 25 N.M. 518—Springer v. Wasson, 183 P. 398, 25 N.M. 379.

N.D.—Quinn Wire & Iron Works v. Boyd, 202 N.W. 852, 52 N.D. 278.

Okl.—Metropolitan Casualty Ins. Co. of New York v. Dolese Bros. Co., 20 P.2d 569, 168 Okl. 36—Insurance Co. of North America v. Cochran, 159 P. 247, 59 Okl. 200.

Or.—Wakefield, Fries & Co. v. Sherman, Clay & Co., 17 P.2d 319, 141 Or. 270—Johnson v. Hattrem, 275 P. 913, 129 Or. 32—Lowell v. Pendleton Auto Co., 261 P. 415, 123 Or. 383.

Pa.—Art Club of Philadelphia v. Heyman & Goodman, 190 A. 922, 325 Pa. 587.

S.C.—People's Nat. Bank of Greenville v. Manos Bros., Inc., 84 S.E.2d 857, 226 S.C. 257, 45 A.L.R.2d 1070.

S.D.—Patrick v. Blake, 19 N.W.2d 220, 70 S.D. 494—Svang v. Clutterbuck, 240 N.W. 339, 59 S.D. 398—Reedy v. Davidson, 235 N.W. 710, 58 S.D. 274—Murdo Independent School Dist. v. Litzenberg, 235 N.W. 606, 58 S.D. 162—City of Wessington Springs v. Smith, 223 N.W. 723, 54 S.D. 515—Marquette v. Williams, 222 N.W. 496, 54 S.D. 54—Clancey v. G. F. Buche Co., 221 N.W. 601, 53 S.D. 565—Little v. Plummer, 211 N.W. 972, 51 S.D. 27—Colomb v. First Nat. Bank, 208 N.W. 404, 50 S.D. 69—Sherman v. Harris, 153 N.W. 925, 36 S.D. 50, Ann.Cas.1917C 675, affirmed 167 N.W. 325, 40 S.D. 341.

Tex.—Akin v. Deberry, Civ.App., 290 S.W.2d 388, error refused no reversible error—Renshaw v. Countess, Civ.App., 289 S.W.2d 621—Hampton v. Nix, Civ.App., 281 S.W.2d 126—Curry v. Abbott, Civ.App., 265 S.W.2d 139, error refused no reversible error—Garza v. De Leon, Civ.App., 193 S.W.2d 844—Greenville Nat. Exchange Bank v. Nussbaum, Civ.App., 154 S.W.2d 672, error refused—Cantrell v. Woods, Civ.App., 150 S.W.2d 838—Southland Life Ins. Co. v. Greenwade, Civ.App., 143 S.W.2d 648, affirmed 159 S.W.2d 854, 138 Tex. 450—State Life Ins. Co. v. Barnes, Civ.App., 58 S.W.2d 189—National Mut. Acc. Ins. Co. v. Davis, Civ.App., 46 S.W.2d 351—Biggs v. Doak, Civ.App., 259 S.W. 665, motion overruled 260 S.W. 882—Boyd v. Jancik, Civ.App., 245 S.W. 770—Andrus v. Hornsby, Civ.App., 238 S.W. 314, error refused—Lacoma v. Canto, Civ.App., 236 S.W. 1013—Pease v. State, Civ.App., 228 S.W. 269, error refused—Early-Foster Co. v. El Campo Rice Milling Co., Civ.App., 212 S.W. 964, dismissed for want of jurisdiction—Cantwell v. Suttles, Civ.App., 196 S.W. 656—Wadsworth v. Powell, Civ.App., 191 S.W. 169—Keeling v. Poindexter, Civ.App., 188 S.W. 1018—United States Fidelity & Guaranty Co. v. Hall, Civ.App., 173 S.W. 892.

Utah.—Baird v. Upper Canal Irr. Co., 257 P. 1060, 70 Utah 57—Western Securities Co. v. Spiro, 221 P. 856, 62 Utah 623—Peek v. Bailey, 195 P. 206, 57 Utah 546—In re Slater's Estate, 184 P. 1017, 55 Utah 252—Fenstermaker v. Jorgensen, 178 P. 760, 53 Utah 325—Bartholomew v. Pickett, 170 P. 65, 51 Utah 312—Mower v. Olsen, 164 P. 482, 49 Utah 373.

Wash.—Philadelphia Fire & Marine Ins. Co. v. City of Grandview, 255 P.2d 540, 42 Wash.2d 357—Olsen v. Kemoe, 231 P. 778, 132 Wash. 249.

Wis.—In re Cogan's Estate, 64 N.W.2d 454, 267 Wis. 20—Plainse v. Engle, 56 N.W.2d 89, 262 Wis. 506, modified on other grounds 57 N.W.2d 586, 262 Wis. 506—Roche v. DuBois, 271 N.W. 84, 223 Wis. 438—Behnke v. Kroening, 182 N.W. 837, 174 Wis. 224—Patulski v. Belmont Realty Co., 164 N.W. 841, 166 Wis. 188.

Wyo.—Macy v. Billings, 289 P.2d 422, 74 Wyo. 404—Williams v. Yocum, 263 P. 607, 37 Wyo. 432.

Where judgment, order, or decree supported by competent evidence

Error in admitting evidence on the trial of an action at law by a judge without a jury is not ground for reversal where there is sufficient legal evidence to support the judgment.

Ala.—Mitchell v. Kinney, 5 So.2d 788, 242 Ala. 196—Joiner v. State, 168 So. 885, 232 Ala. 522—W. P. Brown & Sons Lumber Co. v. Crossley, 161 So. 536, 230 Ala. 403, followed in 161 So. 538, 230 Ala. 407—Pope v. Howle, 149 So. 222, 227 Ala. 154—Springer v. Sullivan, 119 So. 851, 218 Ala. 645.

Ariz.—American Eagle Fire Ins. Co. v. Van Denburgh, 257 P.2d 856, 76 Ariz. 1—Murphy v. Yeast, 126 P.2d 313, 59 Ariz. 281—Home Owners' Loan Corp. v. Bank of Arizona, 94 P.2d 437, 54 Ariz. 146—Hoover v. Odle, 250 P. 993, 31 Ariz. 147.

Cal.—Kohler v. Bristow, 281 P.2d 352, 131 C.A.2d 692—Bixby v. Bixby, 261 P.2d 286, 120 C.A.2d 495—Stiles v. Nunes, 220 P.2d 792, 98 C.A.2d 739—Keating v. Basich Bros. Const. Co., 151 P.2d 892, 66 C.A.2d 258.

Colo.—Vanadium Corp. of America v. Wesco Stores Co., 308 P.2d 1011.

Ga.—Savannah River Terminals Co. v. Southern Ry. Co., 96 S.E. 257, 148 Ga. 180.

Exchange Ins. Ass'n v. Mathews, 92 S.E.2d 121, 93 Ga.App. 470.

Idaho.—Goody v. Maryland Casualty Co., 25 P.2d 1045, 53 Idaho 523—Seeley v. Security Nat. Bank of Fairfield, 235 P. 976, 40 Idaho 574.

Ill.—Newman v. Youngblood, 69 N.E.2d 309, 394 Ill. 617—Brady v. Paine, 63 N.E.2d 721, 391 Ill. 596, 162 A.L.R. 138—Negley v. Ingleman, 166 N.E. 477, 335 Ill. 52—National Malleable Castings Co. v. Iroquois Steel & Iron Co., 165 N.E. 199, 333 Ill. 588—Lingle v. Bulfer, 153 N.E. 589, 322 Ill. 606.

First Nat. Bank of Jonesboro v. Road Dist. No. 8, Union County, 65 N.E.2d 396, 328 Ill.App. 122—Jentink v. Lake County, 244 Ill. App. 370.

Iowa.—McMahon v. Hassett, 176 N.W. 707.

Kan.—Mingenback v. Mingenback, 271 P.2d 782, 176 Kan. 471—Hilgenfeld v. Johnson, 270 P.2d 293, 176 Kan. 339—Giacomini v. Giacomini, 280 P. 916, 128 Kan. 699.

Ky.—Evans v. Payne, 258 S.W.2d 919—White Const. Co. v. City of Madisonville, 121 S.W.2d 55, 275 Ky. 416.

Me.—Lipman Bros. v. Hartford Acc. & Indem. Co., 100 A.2d 246, 149 Me. 199—In re Knapp's Estate, 99 A.2d 331, 149 Me. 130—Jolovitz v. Redington & Co., 88 A.2d 589, 148 Me. 23.

Mich.—Mayala v. Underwood Veneer Co., 275 N.W. 198, 281 Mich. 434.

Minn.—Bjerketvedt v. Jacobson, 44 N.W.2d 775, 232 Minn. 152.

Neb.—Koehn v. Koehn, 81 N.W.2d 900, 164 Neb. 169—Peterson v. State, 80 N.W.2d 688, 163 Neb. 669—Peterson v. State, 61 N.W.2d 263, 157 Neb. 618—In re Hendricksen's Estate, 56 N.W.2d 711, 156 Neb. 463, certiorari denied Kelley v. Rohn, 74 S.Ct. 68, 346 U.S. 854, 98 L.Ed. 368—Snyder v. Lincoln, 55 N.W.2d 614, 156 Neb. 190—Thomas v. C. H. Sheldon Co., 288 N.W. 546, 137 Neb. 181—Hawe v. Johnson, 264 N.W. 760, 130 Neb. 320—Elmcreek Ditch Co. v. St. John, 255 N.W. 16, 127 Neb. 253—In re Black's Estate, 249 N.W. 84, 125 Neb. 75—Laurie v. State, 188 N.W. 110, 108 Neb. 239.

N.D.—First State Bank of New Salem v. Farmers' Co-op. Elevator Co., 231 N.W. 859, 59 N.D. 699.

Okl.—Buxbaum v. Priddy, 312 P.2d 961—Krumme v. Walker, 181 P.2d 835, 199 Okl. 6—Dungey v. Dowdy, 159 P.2d 231, 195 Okl. 361—Thompson v. Taylor, 100 P.2d 860, 187 Okl. 2—Aldridge v. Anderson, 229 P. 262.

Or.—Wakefield, Fries & Co. v. Sherman, Clay & Co., 17 P.2d 319, 141 Or. 270—In re Thompson's Estate, 298 P. 907, 136 Or. 311.

S.D.—Wilmarth v. Hill, 226 N.W. 560, 55 S.D. 417.

Tex.—Rubenstein & Son Produce v. State, Civ.App., 272 S.W.2d 613, error refused no reversible error—Griffin v. McCullough Tool Co., Civ.App., 265 S.W.2d 131, error refused no reversible error—Montgomery v. Gibbens, Civ.App., 245 S.W.2d 311—Williams v. Ritche-

have done otherwise than find for plaintiff on the other evidence in the case.[90] Also, the admission of incompetent evidence is harmless unless the remaining evidence on a material issue is conflicting.[90.5]

On the other hand, while it is only where the competent evidence fails to support the findings of fact[91] or judgment[91.5] that the improper admission of evidence will constitute prejudicial error, in the absence of competent evidence to support the finding of the trial court, error in admitting evidence will constitute reversible error.[92] It has also been held that the admission of illegal evidence over objection requires a reversal, unless the remaining evidence is without conflict and is sufficient to support the decree or judgment;[92.5] a fortiori, the judgment will be reversed where the evidence as a whole is conflicting and the incompetent evidence was received over objections.[92.10] The admission of incompetent evidence is reversible error even though there is sufficient evidence to support a judgment, if the competent evidence in the case does not demand such a judgment.[92.15]

Error committed in admitting evidence in a trial without a jury is not rendered harmless by the court's finding that other evidence alone would have convinced it,[93] or by a certificate of the court that its decision was based on other and competent evidence.[94]

Other circumstances. In addition to the factors heretofore considered in this section, other particular circumstances which may be considered in determining that the admission of evidence in a trial by court is harmless are that the result of the case would have been the same if the evidence in question had not been admitted,[95] or that such evidence

son, Civ.App., 212 S.W.2d 813, error refused—Davis v. United Gas Corp., Civ.App., 191 S.W.2d 685—Foster v. Gainesville Bus Lines, Civ.App., 187 S.W.2d 144, error dismissed—Harris v. Elm Oil Co., Civ. App., 183 S.W.2d 216, error refused—Texas-New Mexico Utilities Co. v. State ex rel. City of Teague, Civ.App., 174 S.W.2d 57, error refused—Lone Star Building & Loan Ass'n v. State, Civ.App., 153 S.W. 2d 219, error dismissed—Southland Life Ins. Co. v. Greenwade, Civ. App., 143 S.W.2d 648, affirmed 159 S.W.2d 854, 138 Tex. 450—Phillips v. Bowie, Civ.App., 127 S.W.2d 522, error dismissed, judgment correct—Humphrey v. Stidham, Civ. App., 124 S.W.2d 921—Fowler v. Maytag Southwestern Co., Civ. App., 82 S.W.2d 699, error dismissed—Fort Worth & R. G. Ry. Co. v. Thompson, Civ.App., 77 S. W.2d 289—Smith v. Schoellkopf, Civ.App., 68 S.W.2d 346—Rippy v. Rippy, Civ.App., 49 S.W.2d 494—Nagy v. Bennett, Civ.App., 24 S.W. 2d 778—Evans v. Ball, Civ.App., 6 S.W.2d 180—Haskins v. Henderson, Civ.App., 2 S.W.2d 864—Johnson v. Adams, Civ.App., 291 S.W. 578, reversed on other grounds Adams v. Johnson, Com.App., 298 S.W. 265—Harkrider-Keith-Cooke Co. v. Smith, Civ.App., 284 S.W. 612—Sweeney Drilling Co. v. Adams & Co., Civ.App., 284 S.W. 337—Foster v. Spearman Equity Exch., Civ. App., 266 S.W. 583—Davis v. Bowen, Civ.App., 256 S.W. 621—J. R. Watkins Co. v. Myers, Civ. App., 255 S.W. 1002—Lacoma v. Canto, Civ.App., 236 S.W. 1013—Kanner v. Startz, Civ.App., 203 S.W. 603, error refused—Cline v. Booty, Civ.App., 175 S.W. 1081.

Utah.—Paxton v. Fisher, 45 P.2d 903, 86 Utah 408—Amussen v. Hansen, 173 P. 127, 52 Utah 113.

Wash.—Evich v. Kovacevich, 204 P. 2d 839, 33 Wash.2d 151—McJannet v. Strehlow Supply Co., 171 P.2d 173, 25 Wash.2d 468—McVeety v. Hayes, 191 P. 401, 111 Wash. 457.

W.Va.—Weiss v. Soto, 98 S.E.2d 727—Rohrbaugh v. Rohrbaugh, 68 S E.2d 361, 136 W.Va. 708—Lindner v. Daniels, 2 S.E.2d 267, 121 W.Va. 210.

Wyo.—Arnold v. Jennings, 296 P.2d 989, 75 Wyo. 463—**Corpus Juris Secundum cited in** Miracle v. Barker, 136 P.2d 678, 680, 59 Wyo. 92.

90. Mont.—Lenahan v. Casey, 128 P. 601, 46 Mont. 367.

90.5 Ala.—W. P. Brown & Sons Lumber Co. v. Yarbrough, 169 So. 337, 27 Ala.App.2d 229.

91. Ala.—Dolan v. Dolan, 7 So. 425, 89 Ala. 256.

4 C.J. p 1001 note 31.

91.5 Nev.—Caye v. Caye, 211 P.2d 252, 66 Nev. 78.

Okl.—Stekoll v. Wilson, 250 P.2d 454, 207 Okl. 456—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10—Bell Loan Co. v. Taylor, 143 P.2d 820, 193 Okl. 358—Liles v. Bigpond, 121 P.2d 596, 190 Okl. 112—Travis v. McCully, 98 P.2d 595, 186 Okl. 378—In re Miller's Estate, 78 P.2d 819, 182 Okl. 534.

Tex.—Campbell v. La Due, Civ.App., 273 S.W.2d 450.

92. Mo.—Hornsey v. De Voto, 16 S.W.2d 630, 223 Mo.App. 340.

Okl.—State Nat. Bank of Oklahoma City v. Wood, 142 P. 1002, 43 Okl. 251.

S.D.—McKay v. Brink, 275 N.W. 72, 65 S.D. 472.

Tex.—Gulf, C. & S. F. Ry. Co. v. Bogy, Civ.App., 178 S.W. 577.

Wyo.—State Bank of Wheatland v. Bagley Bros., 11 P.2d 572, 44 Wyo. 244, rehearing denied 13 P.2d 564, 44 Wyo. 456.

Where not sufficient competent evidence to support necessary findings

Admission of incompetent evidence is ground for reversal where it appeared that the court's findings were based thereon and there was not sufficient competent evidence to support the necessary findings.

Tex.—Orient Land Co. v. Reeder, Civ.App., 173 S.W. 939.

92.5 Ala.—Pigford v. Billingsley, 84 So.2d 664, 264 Ala. 29—Livingston v. Powell, 57 So.2d 521, 257 Ala. 38—Low v. Low, 52 So.2d 218, 255 Ala. 536—Roubicek v. Roubicek, 21 So.2d 244, 246 Ala. 442—Pfingstl v. Solomon, 197 So. 12, 240 Ala. 58—Springer v. Sullivan, 119 So. 851, 218 Ala. 645—Deal v. Houston County, 78 So. 809, 201 Ala. 431—Harwood v. Harper, 54 Ala. 659.

Lackey v. Thomas, 184 So. 262, 28 Ala.App. 302, certiorari denied Ex parte Thomas, 184 So. 264, 236 Ala. 602.

92.10 Iowa.—In re Conner's Estate, 36 N.W.2d 833, 240 Iowa 479.

92.15 Ga.—Thigpen v. Batts, 33 S. E.2d 424, 199 Ga. 161.

93. N.H.—Doe v. Lucy, 139 A. 750, 83 N.H. 160.

94. Cal.—McLaughlin v. Los Angeles Ry. Corporation, 182 P. 44, 180 C. 527.

95. Cal.—In re Cazaurang's Estate, 110 P.2d 138, 42 C.A.2d 796.

Fla.—Rice v. Jessup, 110 So. 126, 92 Fla. 750.

Ga.—Exchange Ins. Ass'n v. Mathews, 92 S.E.2d 121, 93 Ga.App. 470.

Kan.—McCrum v. Whitaker, 61 P.2d 909, 144 Kan. 469.

was stricken.[96] Moreover, the admission of particular evidence may be deemed to be harmless where consideration of the evidence was made to depend on its being proved to be competent,[97] or where the trial judge states that he admitted the evidence in question merely for what it was worth.[98]

However, the admission of incompetent evidence of a prejudicial nature is reversible error where the state of the record is such that the court could well have found for either party.[98.5]

§ 1729. Facts Otherwise Established

The admission of improper or objectionable evidence, as will be noted in the following sections, is not prejudicial error where the same or substantially the same evidence has already been admitted without objection or over objection as discussed infra § 1730; or where the fact sought to be proved by the incompetent evidence is fully established by other and competent evidence, infra § 1731, or has already been established by such evidence before the incompetent evidence is admitted, infra § 1731 b.

Examine Pocket Parts for later cases.

§ 1730. —— By Prior Admission of Same Evidence

Error in admitting incompetent evidence is generally harmless where the same, or substantially the same, evidence has been previously received without, or over, objection.

The admission of objectionable evidence is generally not prejudicial error where the same, or substantially the same, evidence has been previously received without, or over, objection,[99] as by ad-

Ky.—Taylor v. Taylor, 109 S.W.2d 570, 270 Ky. 203.

Mich.—Bruso v. Pinquet, 33 N.W.2d 100, 321 Mich. 630.

Nev.—Rehling v. Brainard, 144 P. 167, 38 Nev. 16, Ann.Cas.1917C 656.

Okl.—**Corpus Juris Secundum cited in** Lee v. National Refining Co., 75 P.2d 406, 409, 181 Okl. 556.

R.I.—Young v. Godin, 56 A.2d 554, 73 R.I. 380.

Wash.—Boozer v. Boozer, 245 P. 403, 139 Wash. 34.

Error held not to be cured by decision on motion for new trial

Prejudicial error in the reception and consideration of incompetent evidence was not cured by a decision on a motion for a new trial that the same facts would have been found without consideration of the incompetent evidence.

N.D.—Board of Education of City of Edmore v. Anderson, 243 N.W. 817, 62 N.D. 364.

Where result would be the same

In equity, the erroneous admission of evidence does not necessarily require a reversal of a decree where, on consideration of the whole record, the result must have been the same, even if the rulings admitting the evidence had been without error.

U.S.—Hays v. Harris, C.C.A.Ark., 78 F.2d 66, certiorari denied 56 S.Ct. 134, 296 U.S. 613, 80 L.Ed. 435.

Where competent evidence sufficient

On a trial to the court, the admission of hearsay testimony does not require a reversal, if there be legitimate evidence sufficient to support the judgment and the result would have been the same had the hearsay testimony been excluded.

Tex.—Wells Fargo & Co. v. Long, Civ.App., 190 S.W. 530.

Incompetent evidence not shown to affect result

Error could not be predicated on the admission of allegedly incompetent testimony in a trial by a court, in the absence of a showing that such testimony affected the result.

U.S.—U. S. v. Northern Pac. Ry. Co., C.C.A.Mont., 77 F.2d 587.

Where conclusion of court correct

Even though the admission of evidence on behalf of a carrier as to the technical distinction between the words "delivering railroad" and "carrier," as used in the company's tariff, was technical error because it was immaterial and irrelevant, it was not prejudicial error where the trial court reached the conclusion as to the construction of the tariff which would be right if such testimony were disregarded.

Mich.—New York Cent. Ry. Co. v. Calvert, 193 N.W. 295, 222 Mich. 488.

96. Ill.—Winterland v. Winterland, 54 N.E.2d 409, 322 Ill.App. 186, reversed on other grounds 59 N.E.2d 661, 389 Ill. 384.

Iowa.—Morrow v. Hall, 151 N.W. 482, 169 Iowa 534.

4 C.J. p 1001 note 27.

97. Tex.—Harkrider - Keith - Cooke Co. v. Smith, Civ.App., 284 S.W. 612.

98. Nev.—O'Banion v. Simpson, 191 P. 1083, 44 Nev. 188.

Action to quiet title

A judgment in an action to quiet title will not be reversed for the admission of evidence relating to the possession of another tract of land not in controversy, but used in connection with the tract in controversy, where the trial court stated it had admitted such evidence merely for what it might be worth in considering the ultimate conclusions of the case.

Nev.—O'Banion v. Simpson, supra.

98.5 Minn.—Johnson v. Hanson, 267 N.W. 486, 197 Minn. 496.

99. Ala.—Butler v. Hughes, 88 So. 2d 195, 264 Ala. 532—Mobile City Lines, Inc. v. Hardy, 86 So.2d 393, 264 Ala. 247—Lindsey v. Barton, 70 So.2d 633, 260 Ala. 419—Southern Wood Preserving Co. v. McCamey, 118 So. 393, 218 Ala. 201—Whaley v. Wynn, 95 So. 16, 208 Ala. 342—Baker v. Shoemaker, 78 So. 826, 201 Ala. 448.

Southern Steam Carpet Cleaning Co. v. Goldman, 84 So. 478, 17 Ala. App. 218.

Cal.—Frampton v. Stoloff, 298 P.2d 10, 142 C.A.2d 175—Kalfus v. Fraze, 288 P.2d 967, 136 C.A.2d 415—Friis-Hansen v. Thompson, 166 P.2d 867, 73 C.A.2d 580—Farmer v. Fairbanks, 162 P.2d 26, 71 C.A.2d 70—Henderson v. Cochran, 34 P.2d 1071, 140 C.A. 113—Reclamation Dist. No. 730 v. Inglin, 160 P. 1098, 31 C.A. 495.

Conn.—Ezzo v. Geremiah, 142 A. 461, 107 Conn. 670.

Ga.—Parker & Co. v. Glenn, 83 S.E. 2d 263, 90 Ga.App. 500—Sammons v. Webb, 71 S.E.2d 832, 86 Ga.App. 382—Kell v. Hunter, 67 S.E.2d 597, 84 Ga.App. 792—Louisville & N. R. Co. v. McCamy, 35 S.E.2d 206, 72 Ga.App. 769—Lipshitz v. New Zealand Ins. Co., 132 S.E. 131, 34 Ga.App. 825.

Ill.—Graham v. Mattoon City R. Co., 84 N.E. 1070, 234 Ill. 483, 14 Ann. Cas. 853.

Alpe v. Superior Coal Co., 208 Ill.App. 67.

Iowa.—Hunt v. Dubuque, 65 N.W. 319, 96 Iowa 314.

Ky.—Louisville & N. R. Co. v. Bryant's Adm'r, 285 S.W. 245, 215 Ky. 401.

Md.—Baltimore & O. R. Co. v. Branson, 98 A. 225, 128 Md. 678, reversed on other grounds 37 S.Ct. 244, 242 U.S. 623, 61 L.Ed. 534.

Mass.—Newton Const. Co. v. West & South Water Supply Dist. of

missions and stipulations[1] or witnesses[1.5] of the opposite party. The admission of objectionable evidence is not a cause for reversal where it does not appear that the evidence, when admitted the second time, exerts more influence than when admitted the first time,[2] or that other prejudice has resulted.[3]

The drawing out of improper testimony from a witness on cross-examination is harmless where the witness has testified to the same effect on direct examination,[4] and it is also harmless for a witness to reassert, when called in rebuttal, a statement which he had made on his examination in chief,[5] or to restate, on redirect examination, substantially what he testified to on cross-examination.[6]

§ 1731. —— By Other Evidence

a. In general
b. Evidence already admitted

a. In General

The admission of incompetent evidence is harmless where the fact thereby sought to be proved is fully established by other and competent evidence, especially where the competent evidence is received without objection.

The admission of improper and objectionable evidence is harmless error where the fact thereby sought to be shown is fully and clearly established by other evidence which is competent.[7] This rule

Acton, 93 N.E.2d 457, 326 Mass. 171—Runels v. Lowell Sun Co., 62 N.E.2d 121, 318 Mass. 466.

Mo.—Morris v. Union Depot Bridge & Terminal R. Co., 8 S.W.2d 11, 320 Mo. 371.
Porterfield v. American Surety Co. of New York, 210 S.W. 119, 201 Mo.App. 8—Monahan v. Kansas City Clay, etc., Co., 58 Mo. App. 68.

Nev.—**Corpus Juris Secundum cited in** State v. Lindsay, 161 P.2d 351, 354, 63 Nev. 40.

N.J.—Gudnestad v. Seaboard Coal Dock Co., 104 A.2d 313, 15 N.J. 210.

N.C.—Woodard v. Mordecai, 67 S.E. 2d 639, 234 N.C. 463—Spivey v. Newman, 59 S.E.2d 844, 232 N.C. 281—Hobbs v. Queen City Coach Co., 34 S.E.2d 211, 225 N.C. 323.

Okl.—Yellow Transit Freight Lines, Inc. v. Allred, 302 P.2d 985—Bean v. Harris, 219 P. 300, 93 Okl. 10.

Tex.—Wallis v. Schneider, 15 S.W. 492, 79 Tex. 479.
Reeves v. Southwest Flying Service, Civ.App., 258 S.W.2d 848, error refused no reversible error—Roosth & Genecov Production Co. v. White, Civ.App., 257 S.W.2d 140, affirmed in part and reversed in part on other grounds 262 S.W.2d 99, 152 Tex. 619—Poole v. State Highway Dept., Civ.App., 256 S. W.2d 168, error dismissed—Traders & General Ins. Co. v. Bass, Civ.App., 193 S.W.2d 848, error refused no reversible error—**Corpus Juris quoted in** Dillingham v. Currie, Civ.App., 92 S.W.2d 1122, 1126—Texas Electric Ry. v. Blank, Civ.App., 247 S.W. 314—Werthan Bag Co. v. Houston Bag & Bagging Co., Civ.App., 230 S.W. 1055, dismissed for want of jurisdiction—Pate v. Woodville Mercantile Co., Civ.App., 229 S.W. 916—Sugarland Ry. Co. v. Dew Bros., Civ.App., 212 S.W. 190, dismissed for want of jurisdiction—Ft. Worth, etc., R. Co. v. Harlan, Civ.App., 62 S.W. 971.

Vt.—Leonard v. Henderson, 99 A.2d 698, 118 Vt. 29.

Wyo.—Marken v. Empire Drilling Co., 293 P.2d 406, 75 Wyo. 121.

4 C.J. p 974 note 82.

Trial by court

R.I.—Ostroff v. Stephen Girard, Inc., 85 A.2d 174, 79 R.I. 158.

Tex.—Waller Peanut Co. v. Lee County Peanut Co., Civ.App., 209 S.W.2d 405.

Self-serving declarations

(1) Generally.

Ga.—Pearl Assurance Co. v. Nichols, 37 S.E.2d 227, 73 Ga.App. 452.

Ill.—Feeley v. McAuliffe, 80 N.E.2d 373, 335 Ill.App. 99.

Tex.—Cubine v. Morgan, Civ.App., 288 S.W.2d 537, error dismissed.

(2) Error in allowing the repetition by plaintiff's medical witness regarding the circumstances of injuries as related to witness by plaintiff is harmless, where plaintiff testified directly to the circumstances and to facts repeated by witness.

Or.—Reid v. Yellow Cab Co., 279 P. 635, 131 Or. 27, 67 A.L.R. 1.

1. Cal.—Kalfus v. Fraze, 288 P.2d 967, 136 C.A.2d 415—Henderson v. Cochran, 34 P.2d 1071, 140 C.A. 113.

1.5 Cal.—Greene v. Fickert, 122 P. 2d 93, 49 C.A.2d 511.

2. Ala.—Lewis v. Paull, 42 Ala. 136. Ill.—Covenant Mut. Ben. Assoc. v. Spies, 2 N.E. 482, 114 Ill. 463.

Tex.—**Corpus Juris quoted in** Dillingham v. Currie, Civ.App., 92 S.W.2d 1122, 1126.

3. Iowa.—Woods v. Miller, 7 N.W. 484, 55 Iowa 168.

Tex.—**Corpus Juris quoted in** Dillingham v. Currie, Civ.App., 92 S. W.2d 1122, 1127.

4 C.J. p 975 note 84.

4. Ky.—Palmer Corporation v. Collins, 284 S.W. 95, 214 Ky. 838.

Tex.—Texas & N. O. R. Co. v. Landrum, Civ.App., 264 S.W.2d 530, error refused no reversible error—Ft. Worth & D. C. Ry. Co. v. Hapgood, Civ.App., 201 S.W. 1040, dismissed for want of jurisdiction.

Wash.—Young v. Smith, 7 P.2d 1, 166 Wash. 411.

4 C.J. p 975 note 85.

In deposition

Where in a suit for libel with defendant putting in evidence witness' answers to direct interrogatories propounded to him by defendant in a deposition, any error in admitting witness' answers to cross-interrogatories propounded by plaintiff is harmless, where defendant brought out substantially the same facts in its direct examination of such witness.

Tex.—Express Pub. Co. v. Keeran, Civ.App., 274 S.W. 335, reversed on other grounds, Com.App., 284 S.W. 913.

5. Iowa.—Hirsch v. Butler, 164 N. W. 745, 181 Iowa 345.

Md.—Baltimore, etc., Turnp. Road v. Parks, 22 A. 399, 74 Md. 282.

Secondary evidence

Iowa.—Ducummon v. Johnson, 47 N. W.2d 231, 242 Iowa 488.

6. Iowa.—Hirsch v. Butler, 164 N. W. 745, 181 Iowa 345.

Mo.—Dunham v. Wabash R. Co., 105 S.W. 21, 126 Mo.App. 643.

Rebuttal testimony

Where in a lessor's action for breach of the lessee's covenant with respect to the care of the crop, plaintiff testified, on cross-examination as to whether he permitted defendant to retain possession after such breaches because the rental was more than the value of the crop, that, "There was plenty there to pay the rent if I did put them off," admission of plaintiff's rebuttal testimony as to the value of the crop is not erroneous, being substantially the same as that brought out by defendant, and unimportant in any event.

Cal.—Barkhaus v. Producers' Fruit Co., 219 P. 435, 192 C. 200.

7. Ala.—Guarenire v. Bessemer Lumber Co., 106 So. 49, 214 Ala. 8—United States Lumber & Cot-

ton Co. v. Cole, 81 So. 664, 202 Ala. 688—Jones v. White, 66 So. 605, 189 Ala. 622.

Riley v. Srofe, 45 So.2d 328, 35 Ala.App. 222—Farmers' Mut. Ins. Ass'n of Alabama v. Tankersley, 69 So. 410, 13 Ala.App. 524—Park-Robertson Hardware Co. v. Copeland, 66 So. 880, 11 Ala.App. 447.

Ark.—Coca-Cola Bottling Co. of Southwest Arkansas v. Carter, 154 S.W.2d 824, 202 Ark. 1026—H. Rouw Co. v. American Ry. Express Co., 291 S.W. 1001, 173 Ark. 84—Underdown v. Desha, 219 S.W. 19, 142 Ark. 258—Carter v. Younger, 185 S.W. 435, 123 Ark. 266—Chicago Mill, etc., Co. v. Ross, 139 S.W. 632, 99 Ark. 597.

Cal.—Baker v. Southern Pac. Co., 193 P. 765, 184 C. 357—Allan v. Guaranty Oil Co., 168 P. 884, 176 C. 421—Central Pac. Ry. Co. v. Droge, 151 P. 663, 171 C. 32—White v. Spreckels, 17 P. 715, 75 C. 610.

Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Murphy v. Lake County, 234 P.2d 712, 106 C.A.2d 61—Sanger v. Southworth, 195 P.2d 482, 87 C.A.2d 16—Ottney v. Finnie, 42 P.2d 714, 5 C.A.2d 356—Villegas v. Strohm, 297 P. 588, 112 C.A. 633—Olds & Stoller v. Seifert, 254 P. 289, 81 C.A. 423—Ehlers v. Bihn, 235 P. 673, 71 C.A. 479—Williams v. Williams, App., 218 P. 783, 63 C.A. 482—Braden v. Cline, 196 P. 913, 51 C.A. 424—Gintjee v. Knieling, 170 P. 641, 35 C.A. 563.

Fla.—Equitable Life Assur. Soc. of U. S. v. Mittelhauser, 178 So. 559, 130 Fla. 794.

Ga.—Colaparchee Club v. Macon Nat. Bank, 144 S.E. 663, 166 Ga. 893—Alaculsey Lumber Co. v. Flemister, 91 S.E. 104, 146 Ga. 310—Hope v. First Nat. Bank of Walsenburg, 82 S.E. 929, 142 Ga. 310.

Ga.—Hise v. Morgan, 86 S.E.2d 374, 91 Ga.App. 555—Eason v. Crews, 77 S.E.2d 245, 88 Ga.App. 602—Warnell v. Ponder, 187 S.E. 261, 54 Ga.App. 1—C. J. Kamper Grocery Co. v. Sauls, 144 S.E. 403, 38 Ga.App. 487—Ladd Lime & Stone Co. v. MacDougald Const. Co., 124 S.E. 551, 32 Ga.App. 709—Chastain v. Winn, 95 S.E. 473, 22 Ga.App. 53—E. Matthews & Son v. Richards, 91 S.E. 914, 19 Ga.App. 489.

Idaho.—**Corpus Juris cited in** Hartley v. Bohrer, 11 P.2d 616, 619, 52 Idaho 72.

Ill.—Smith v. Smith, 172 N.E. 32, 340 Ill. 34—Simpson v. Wrate, 169 N.E. 324, 337 Ill. 520—Thomas v. Chapin, 113 N.E. 82, 274 Ill. 95—People v. Lefens' Estate, 109 N.E. 965, 269 Ill. 472.

Jaffe v. Chicago Warehouse Lumber Co., 124 N.E.2d 618, 4 Ill.App.2d 415—Kretschmar v. Goven, Eddins & Co., 21 N.E.2d 932, 301 Ill.App. 8—Steinberg v. Kloster Steel Corporation, 266 Ill.App. 60—Rayborn v. Grand Lodge of State of Illinois of Independent Order of Odd Fellows, 234 Ill.App. 183—Lenartz v. Funk, 224 Ill.App. 180—Bane v. Pritchett, 223 Ill.App. 617—Odom v. Norwodowski, 211 Ill.App. 135—Van Vlissingen v. Rigby, 207 Ill.App. 57—Kenna v. Calumet, H. & S. E. R. Co., 206 Ill. App. 17, affirmed, Ill., 120 N.E. 259. See Clouston v. Galesburg & K. Electric Ry. Co., 186 Ill.App. 375—Whitney v. Chicago Rys. Co., 185 Ill.App. 211.

Ind.—New York Life Ins. Co. v. Lahr, 137 N.E. 673, 192 Ind. 613—Keener School Tp. v. Eudaly, 175 N.E. 363, 93 Ind.App. 627—Berns v. Usrey, 155 N.E. 717, 86 Ind.App. 38—Vandalia Coal Co. v. Butler, 119 N.E. 34, 68 Ind.App. 245.

Iowa.—**Corpus Juris Secundum cited in** State v. Mabrey, 60 N.W.2d 889, 892, 245 Iowa 428—Crawford v. Emerson Const. Co., 269 N.W. 334, 222 Iowa 378—Independent School Dist. of Dubuque in Dubuque County v. Sass, 261 N.W. 30, 220 Iowa 1.

Kan.—Brown v. Dye, 195 P.2d 607, 165 Kan. 507—Eresch v. Guipre, 51 P.2d 1016, 142 Kan. 747—Huycke v. Kramer, 298 P. 787, 133 Kan. 41—Stewart Poultry Co. v. Erie R. Co., 163 P. 448, 99 Kan. 540.

Ky.—Farrington Motors, Inc. v. Fidelity & Cas. Co. of N. Y., 303 S.W.2d 319—City of Paducah v. Vinson, 127 S.W.2d 828, 277 Ky. 804—Rhoad's Ex'r v. Heck, 279 S.W. 621, 212 Ky. 443—Asher v. Gibson, 250 S.W. 860, 199 Ky. 175—Benge's Adm'r v. Fouts, 192 S.W. 703, 174 Ky. 654—Chesapeake Stone Co. v. Holbrook, 181 S.W. 953, 168 Ky. 128, L.R.A.1916D 311.

Hale v. Powell, 13 Ky.Op. 1006—Burks v. Strader, 13 Ky.Op. 101.

Me.—Ross v. Maine Cent. R. Co., 96 A. 223, 114 Me. 287.

Md.—Ortel v. Gettig, 116 A.2d 145, 207 Md. 594—Burton v. Jennings, 148 A. 424, 158 Md. 254—Burrier v. Cunningham Piano Co., 108 A. 492, 135 Md. 135—Capital Traction Co. v. McKeon, 103 A. 314, 132 Md. 79—Epstein v. Ruppert, 99 A. 685, 129 Md. 432.

Newton Const. Co. v. West & South Water Supply Dist. of Acton, 93 N.E.2d 457, 326 Mass. 171.

Mich.—Interstate Const. Co. v. United States Fidelity & Guaranty Co., 174 N.W. 173, 207 Mich. 265—Edgerly v. Ladies of the Modern Maccabees, 151 N.W. 692, 185 Mich. 148.

Minn.—Ward v. Bandel, 231 N.W. 244, 181 Minn. 32.

Miss.—McTighe, Hughey & McTighe v. Johnson, 75 So. 600, 114 Miss. 862.

Mo.—Griffith v. Continental Casualty Co., 253 S.W. 1043, 299 Mo. 426—McDermott v. Claas, 15 S.W. 995, 104 Mo. 14.

Jones v. Farm Bureau Mut. Ins. Co., App., 284 S.W.2d 11—Heiter v. Terminal R. Ass'n of St. Louis, App., 275 S.W.2d 613—Mahon v. Fletcher's Estate, App., 245 S.W. 372—Stag Mining Co. v. Missouri Fidelity & Casualty Co., App., 209 S.W. 321—Avery Co. v. Kemp, App., 196 S.W. 1069.

Mont.—Hartse v. Korneychuk, 312 P.2d 795—Hill v. Chappel Bros. of Montana, 33 P.2d 819, 97 Mont. 305.

Neb.—Smith v. Bankers Nat. Life Ins. Co., 265 N.W. 546, 130 Neb. 552—Hawe v. Johnson, 264 N.W. 760, 130 Neb. 320—Keeler v. Hiles' Estate, 172 N.W. 363, 103 Neb. 465—Shaul v. Mann, 166 N.W. 619, 102 Neb. 265.

N.J.—Feldhamer v. Lipsky, 166 A. 709, 11 N.J.Misc. 459.

N.M.—**Corpus Juris quoted in** State v. Apodaca, 82 P.2d 641, 645, 42 N.M. 544.

N.Y.—Manhattan Life Ins. Co. v. Schwartz, 9 N.E.2d 16, 274 N.Y. 374.

Wilson v. Kane, 167 N.Y.S. 51, 180 App.Div. 77—McGuire v. Bonat, 282 N.Y.S. 638.

N.C.—Kirkman v. Baucom, 98 S.E.2d 922, 246 N.C. 510—Waddell v. Carson, 97 S.E.2d 222, 245 N.C. 669—Carpenter v. Boyles, 196 S.E. 850, 213 N.C. 432—Ingle v. Green, 162 S.E. 476, 202 N.C. 116—Currie v. Malloy, 116 S.E. 564, 185 N.C. 206—Renn v. Seaboard Air Line Ry., 86 S.E. 964, 170 N.C. 128, affirmed Seaboard Air Line Ry. v. Renn, 36 S.Ct. 567, 241 U.S. 290, 60 L.Ed. 1006.

N.D.—Blandin v. Benefit Ass'n of Ry. Emp., 75 N.W.2d 135—International Shoe Co. v. Hawkinson, 18 N.W.2d 761, 73 N.D. 677—Flamer v. Johnson, 162 N.W. 307, 36 N.D. 215.

Ohio.—Wadsworth v. Dambach, 133 N.E.2d 158, 99 Ohio App. 269.

Okl.—McElroy v. Frost, 268 P.2d 273.

Pa.—Ferne v. Chadderton, 100 A.2d 854, 375 Pa. 302—Kelly v. Martino, 99 A.2d 901, 375 Pa. 244—Levin v. V. Clad & Sons, 90 A. 570, 244 Pa. 194.

S.C.—Watson v. Watson, 95 S.E.2d 266, 230 S.C. 247—Holder v. Sovereign Camp, W. O. W., 185 S.E. 547, 180 S.C. 242—Rainwater v. Bonnette, 149 S.E. 254, 151 S.C. 474.

S.D.—Usletten v. City of Brookings, 235 N.W. 705, 58 S.D. 303, affirmed 240 N.W. 851, 59 S.D. 477—Hennegan v. Wiley, 178 N.W. 294, 43 S.D. 149—Farmers' State Bank of Parker v. Tri-State Mut. Grain Dealers' Fire Ins. Co. of Luverne, Minn., 170 N.W. 638, 41 S.D. 398—Higgs v. Bigelow, 164 N.W. 89, 39 S.D. 359.

Tenn.—McMahan v. McMahan, 276 S.W.2d 738, 38 Tenn.App. 498—Barnes v. Scott, 243 S.W.2d 133, 35 Tenn.App. 135—Erwin Nat. Bank v. Riddle, 79 S.W.2d 1032, 18 Tenn. App. 561—Lovier v. City of Nashville, 1 Tenn.App. 401—Chicago, M. & G. R. Co. v. Wheeler, 1 Tenn. App. 100.

applies not only where the evidence improperly admitted consists of oral testimony in general, but

Tex.—Abeel v. Weil, 283 S.W. 769, 115 Tex. 490.

Davis Transport, Inc. v. Bolstad, Civ.App., 295 S.W.2d 941—Texas Emp. Ins. Ass'n v. Moore, Civ.App., 284 S.W.2d 175, error refused no reversible error—Pruett v. Mabry, Civ.App., 268 S.W.2d 532, error refused no reversible error—Clayton v. Canida, Civ.App., 223 S.W.2d 264—Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S.W.2d 857, error dismissed, judgment correct—Sonken - Galamba Corp. v. Hillman, Civ.App., 111 S.W.2d 853, error dismissed—Texas Employers' Ins. Ass'n v. Phillips, Civ.App., 109 S.W.2d 1088, error dismissed—Continental Ins. Co. of New York v. Guerson, Civ.App., 93 S.W.2d 591—Traders & General Ins. Co. v. Milliken, Civ.App., 87 S.W.2d 503—Smith v. Schoellkopf, Civ. App., 68 S.W.2d 346—Hurley v. Hirsch, Civ.App., 66 S.W.2d 387—Texas & P. Ry. Co. v. Mercer, Civ. App., 58 S.W.2d 896—Kuntz v. Spence, Civ.App., 48 S.W.2d 413, reversed on other grounds, Com.App., 67 S.W.2d 254—Capitol Hotel Co. v. Rittenberry, Civ.App., 41 S.W.2d 697—Johnson v. Ashby, Civ.App., 18 S.W.2d 726—Head v. Texas State Bank, Civ.App., 16 S.W.2d 298—Gooch v. Sparkman, Civ.App., 285 S.W. 897—Bernard Gloekler Co. v. Westbrook Hotel Co., Civ.App., 258 S.W. 870—Smith v. Harris, Civ. App., 252 S.W. 836, reversed on other grounds Harris v. Smith, Com. App., 265 S.W. 546—Carleton-Ferguson Dry Goods Co. v. McFarland, Civ.App., 230 S.W. 208, dismissed for want of jurisdiction—International & G. N. Ry. Co. v. Reed, Civ. App., 203 S.W. 410—Tompkins v. Hooker, Civ.App., 200 S.W. 193—McKinley v. Bone, Civ.App., 199 S.W. 298—Powell v. Archer County, Civ.App., 198 S.W. 1037, error refused—Missouri, K. & T. Ry. Co. of Texas v. Storey, Civ.App., 195 S.W. 350—Wilson v. J. W. Crowdus Drug Co., Civ.App., 190 S.W. 194, affirmed, Com.App., 222 S.W. 223—Houston Oil Co. of Texas v. Jones, Civ.App., 184 S.W. 611, error refused 198 S.W. 290, 109 Tex. 89—Zavala Land & Water Co. v. Tolbert, Civ.App., 184 S.W. 523, error refused—Crum v. Thomason, Civ.App., 181 S.W. 803—McCormack v. Crawford, Civ.App., 181 S.W. 485—Rumely Products Co. v. Moss, Civ.App., 175 S.W. 1084—Rowan v. Hodges, Civ.App., 175 S.W. 847—Hanover Fire Ins. Co. of New York v. Huff, Civ.App., 175 S.W. 465—American Nat. Ins. Co. v. Bird, Civ.App., 174 S.W. 939—Holman v. Houston Oil Co., Civ. App., 174 S.W. 886—Denton v. English, Civ.App., 171 S.W. 248—Alexander v. Garcia, Civ.App., 168 S.W. 376—Amarillo Nat. Life Ins. Co. v. Brown, Civ.App., 166 S.W. 658.

Utah.—Growers' Exchange v. John A. Eck Co., 242 P. 391, 66 Utah 340—Arnold v. Huntington Canal & Reservoir Ass'n, 231 P. 622, 64 Utah 534—Utah State Building & Loan Ass'n v. Perkins, 173 P. 950, 53 Utah 474—Baird v. Denver & R. G. R. Co., 162 P. 79, 49 Utah 58—Spratt v. Paulson, 161 P. 1120, 49 Utah 9.

Vt.—Leonard v. Henderson, 99 A.2d 698, 118 Vt. 29—Waterman v. Moody, 103 A. 325, 92 Vt. 218—McCarthy's Adm'r v. Village of Northfield, 94 A. 298, 89 Vt. 99, Ann.Cas. 1918A 943.

Va.—Virginian Ry. Co. v. London, 139 S.E. 328, 148 Va. 699.

Wash.—Bond v. Wiegardt, 216 P.2d 196, 36 Wash.2d 41—Jacobs v. Burke, 13 P.2d 30, 168 Wash. 644—Harris v. Saunders, 194 P. 533, 113 Wash. 482, affirmed 198 P. 393, 113 Wash. 482—Askey v. New York Life Ins. Co., 172 P. 887, 102 Wash. 27, L.R.A.1918F 267—Kennedy v. Burr, 171 P. 1022, 101 Wash. 61—Peterson v. Tull, 148 P. 598, 85 Wash. 546.

W.Va.—Starcher v. South Penn Oil Co., 95 S.E. 28, 81 W.Va. 587.

Wis.—Walter v. Four Wheel Drive Auto Co., 252 N.W. 346, 213 Wis. 559—Allen v. Ross, 225 N.W. 831, 199 Wis. 162, 64 A.L.R. 180—A. & S. Wilson Co. v. Matthews Bros. Mfg. Co., 159 N.W. 714, 164 Wis. 152.

4 C.J. p 975 note 88.

Trial by court

Idaho.—Penn Mut. Life Ins. Co. v. Ireton, 65 P.2d 1032, 57 Idaho 466.

Kan.—Marcotte's Estate v. Clay, 224 P.2d 998, 170 Kan. 189.

Okl.—Goodall v. City of Clinton, 161 P.2d 1011, 196 Okl. 10.

Wash.—Commercial Waterway Dist. No. 1 of King County v. King County, 94 P.2d 491, 200 Wash. 538.

Admission of an unsigned resolution of a corporation is harmless where all the evidence tends to show there was in fact such a resolution.

Tex.—Great Southern Oil & Refining Ass'n v. Cooper, Civ.App., 231 S.W. 157.

Admission of declarations of an agent to prove his agency or authority is harmless where the agency, or ratification thereof, is established by other evidence.

Ariz.—Douglas v. Parker Commercial Co., 235 P. 148, 28 Ariz. 47.

Ark.—Cotton States Life Ins. Co. v. Tanner, 23 S.W.2d 268, 180 Ark. 877.

Cal.—Lusitanian-American Development Co. v. Seaboard Dairy Credit Corporation, 84 P.2d 139, 1 C.2d 121.

Forrest v. Royal Ins. Co., 262 P. 820, 88 C.A. 88—McGowan v. Burg Bros., 210 P. 545, 59 C.A. 219.

Idaho.—Hayward v. Yost, 242 P.2d 971, 72 Idaho 415.

Iowa.—Kirkwood v. Perry Town Lot & Improvement Co., 159 N.W. 774, 178 Iowa 248.

Ky.—Armour v. Haskins, 275 S.W.2d 580.

Md.—Conservation Co. v. Stimpson, 110 A. 495, 136 Md. 314.

R.I.—Baldwin v. Higgins, 27 A.2d 345, 68 R.I. 324.

Tenn.—Shelby County v. Adams, 15 Tenn.App. 66.

Tex.—Crutcher v. Swindler, Civ.App., 250 S.W. 1078.

Vt.—Bailey v. Saunders, 98 A. 902, 90 Vt. 396—Whalen v. Saunders, 98 A. 901, 90 Vt. 393.

Rate of speed

(1) Generally.

Cal.—Breland v. Traylor Engineering & Mfg. Co., 126 P.2d 455, 52 C.A.2d 415.

Ind.—Pennsylvania R. Co. v. Patesel, 76 N.E.2d 595, 118 Ind.App. 233.

Tex.—Archibald v. Perry, Civ.App., 258 S.W.2d 173.

(2) Error in permitting plaintiff's witnesses to testify as to the rate of speed of an automobile, when they were not qualified to judge the speed of a car, is not reversible or material, where the physical facts conclusively show that the car was moving at a dangerous speed at the time of the accident.

Mo.—Irwin v. McDougal, 274 S.W. 923, 217 Mo.App. 645.

(3) Introduction of the words "fast" and "terrific" in describing a streetcar's speed is harmless, where a moderate speed of the car is established.

Pa.—Galliano v. East Penn Electric Co., 154 A. 805, 303 Pa. 498.

(4) Where it is plain from the evidence that defendant's chauffeur was exceeding the speed limit, permitting a witness to testify that the chauffeur had stated shortly after accident that he was driving a little fast, and that the passenger had stated that she had requested the chauffeur not to drive so fast, is without prejudice to defendant.

Tex.—Burnett v. Anderson, Civ.App., 207 S.W. 540.

(5) Error in admitting testimony that automobile was traveling at "pretty good speed" when about one mile from scene of accident was not prejudicial, in view of other evidence tending to establish that automobile was traveling at high rate of speed both near to and at point of accident.

Ky.—Roy v. Lyons, 272 S.W.2d 50.

also where it consists of hearsay[8] or opinion[9] evi- | dence.

(6) Admitting testimony with respect to speed of automobile over objection that it was a conclusion was harmless where other testimony and physical facts established that automobile was being operated in violation of city speed ordinance.

Ga.—Hill v. Kirk, 50 S.E.2d 785, 78 Ga.App. 310.

Void ordinance

In an action for injury sustained when struck by defendant's automobile, admission in evidence of a void ordinance prescribing the rate of speed is not prejudicial to defendant, where the evidence proved that the automobile driver at the time of the accident was violating the Motor Vehicle Act.

Cal.—Humphrey v. U. S. Macaroni Co., 193 P. 609, 49 C.A. 395.

8. Ala.—Prince v. Lowe, 82 So.2d 606, 263 Ala. 410.

Ariz.—Kengla v. Stewart, 313 P.2d 424, 82 Ariz. 365—Rio Grande Oil Co. v. Upton Oil Co., 266 P. 3, 33 Ariz. 474.

Cal.—Pfingsten v. Westenhaver, 244 P.2d 395, 39 C.2d 12.

Karageozian v. Bost, 294 P.2d 778, 139 C.A.2d 874—Leboire v. Royce, 224 P.2d 106, 100 C.A.2d 610—Mullanix v. Basich, 155 P.2d 130, 67 C.A.2d 675—Hiner v. Olson, 72 P.2d 890, 23 C.A.2d 227, rehearing denied 73 P.2d 945, 23 C.A.2d 227—Tierney v. Charles Nelson Co., 64 P.2d 1150, 19 C.A.2d 34—People v. Dillman, 174 P. 951, 37 C.A. 415.

Fla.—Clark v. Orr, 173 So. 155, 127 Fla. 411.

Ga.—J. R. Watkins Co. v. Ellington, 29 S.E.2d 300, 70 Ga.App. 722—Long v. Dye, 157 S.E. 359, 42 Ga. App. 726.

Ill.—Dunne v. Boland, 199 Ill.App. 308.

Ky.—Adams v. Shelton, 203 S.W.2d 62, 305 Ky. 113—Taylor v. Moseley, 186 S.W. 634, 170 Ky. 592, Ann.Cas. 1918B, 1125.

Md.—Adams v. Benson, 117 A.2d 881, 208 Md. 261—Adams Express Co. v. White, 104 A. 110, 132 Md. 626.

Mich.—Bristol v. Mutual Benefit Health & Accident Ass'n, 9 N.W.2d 38, 305 Mich. 145.

Minn.—Briggs v. Chicago Great Western Ry. Co., 80 N.W.2d 625, 248 Minn. 418—Lacheck v. Duluth-Superior Transit Co., 273 N.W. 366, 199 Minn. 519.

Mo.—York v. Daniels, App., 259 S.W. 2d 109—Baker v. Atkins, App., 258 S.W.2d 16—McSkimming v. St. Louis Public Service Co., App., 257 S.W.2d 176—Exchange Nat. Bank of Jefferson City v. Hinkel, 171 S. W.2d 104, 237 Mo.App. 1156.

N.J.—Rudensey v. Hoffman, 177 A. 433, 13 N.J.Misc. 259.

N.C.—Tolley v. Dairymen's Creamery, 7 S.E.2d 502, 217 N.C. 255—Observer Co. v. Remedy Sales Corporation, 85 S.E. 33, 169 N.C. 251.

Or.—Pitts v. Crane, 236 P. 475, 114 Or. 593.

Pa.—Donaldson, to Use of Bielski v. Bielski, 17 A.2d 616, 340 Pa. 528, certiorari denied Bielski v. Samuels, 61 S.Ct. 1112, 313 U.S. 589, 85 L.Ed. 1544.

Timlin v. City of Scranton, 12 A. 2d 502, 139 Pa.Super. 503.

R.I.—Conneally v. Gemma, 107 A.2d 308—Ostroff v. Stephen Girard, Inc., 85 A.2d 174, 79 R.I. 158.

Tex.—Nance v. McClellan, 89 S.W.2d 774, 126 Tex. 580, 106 A.L.R. 117.

Panhandle & Santa Fe Ry. Co. v. Welch, Civ.App., 259 S.W.2d 269—Small v. Morris, 252 S.W.2d 772, reversed on other grounds 225 S.W.2d 174, 152 Tex. 192—Kahn v. Harris, Upham & Co., Civ.App., 247 S.W.2d 139, affirmed 253 S.W.2d 647, 151 Tex. 655—Bolton v. Stewart, Civ. App., 191 S.W.2d 798—McDonald v. McDonald, Civ.App., 143 S.W.2d 142, error dismissed, judgment correct—Saigh v. Laechelin, Civ.App., 17 S.W.2d 838—Chicago, R. I. & G. Ry. Co. v. Jenkins, Civ.App., 196 S.W. 679, error refused—Texas City Transp. Co. v. Winters, Civ. App., 193 S.W. 366, reversed on other grounds, Com.App., 222 S.W. 541, rehearing overruled 224 S.W. 1087—Wolnitzek v. Lewis, Civ. App., 183 S.W. 819.

Utah.—Hardman v. Thurman, 239 P. 2d 215—Knowlton v .Thompson, 218 P. 117, 62 Utah 142.

Wash.—Rorabaugh v. Great Eastern Casualty Co., 200 P. 587, 117 Wash. 7.

W.Va.—Rubenstein v. Metropolitan Life Ins. Co., 190 S.E. 531, 118 W. Va. 367.

Wis.—Widness v. Central States Fire Ins. Co., 47 N.W.2d 879, 259 Wis. 159—Lanferman v. Maryland Casualty Co. of Baltimore, 267 N.W. 300, 222 Wis. 406.

Admission of hearsay evidence as harmless error generally see supra § 1727.

Hearsay in sketch made by surveyor

Va.—Marrow v. Ferguson, 30 S.E.2d 563, 182 Va. 820.

9. Ala.—Stouts Mountain Coal & Coke Co. v. Tedder, 66 So. 619, 189 Ala. 637.

Cal.—Blackwell v. American Film Co., 209 P. 999, 189 C. 689.

Karageozian v. Bost, 294 P.2d 778, 139 C.A.2d 874—Brock v. Newmark Grain Co., 222 P. 195, 64 C.A. 577.

Colo.—City of Boulder v. Burns, 313 P.2d 712.

Conn.—Falso v. Poli-New England Theatres, 17 A.2d 5, 127 Conn. 367—Meech v. Malcolm, 92 A. 657, 88 Conn. 720.

Ga.—Healan v. Powell, 87 S.E.2d 332, 91 Ga.App. 787—Sammons v. Webb, 71 S.E.2d 832, 86 Ga.App. 382—E. Matthews & Son v. Richards, 91 S.E. 914, 19 Ga.App. 489.

Ill.—Harmon v. Callahan, 187 Ill.App. 312.

Ind.—Fort Wayne Transit, Inc., v. Shomo, App., 143 N.E.2d 431—Archer v. Ostemeier, 105 N.E. 522, 56 Ind.App. 385.

Iowa.—Weilbrenner v. Owens, 68 N. W.2d 293, 246 Iowa 580.

Kan.—Nave v. Hixenbaugh, 304 P.2d 482, 180 Kan. 370—Moseley v. Garden City Irr. Power Co., 152 P.2d 799, 159 Kan. 194—Hinnen v. Artz, 163 P. 141, 99 Kan. 579—Chandler v. Bowensock, 106 P. 54, 81 Kan. 606.

Ky.—Hazelwood v. Woodward, 126 S. W.2d 857, 277 Ky. 447.

Md.—Carter v. Reardon-Smith Line, 129 A. 839, 148 Md. 545.

Mich.—Miller v. Wykoff, 77 N.W.2d 264, 346 Mich. 24.

Mo.—Parker v. Ætna Life Ins. Co., 232 S.W. 708, 289 Mo. 42.

Mont.—Noyes Estate v. Granite-Alaska Co., 210 P. 96, 64 Mont. 406.

Okl.—Maben v. Lee, 260 P.2d 1064.

Or.—Tyler v. Moore, 226 P. 443, 111 Or. 499.

S.C.—Holder v. Sovereign Camp, W. O. W., 185 S.E. 547, 180 S.C. 242.

Tex.—Elliott v. Elliott, Civ.App., 120 S.W.2d 631, error dismissed—McClintic v. J. D. Young Corporation, Civ.App., 41 S.W.2d 686, reversed on other grounds, Com.App., 66 S. W.2d 676—Jones v. Roche, Civ. App., 244 S.W. 227—Texas & P. Ry. Co. v. Stivers, Civ.App., 211 S.W. 319—Kansas City, M. & O. Ry. Co. of Texas v. Bomar, Civ.App., 207 S.W. 570—Chicago, R. I. & G. Ry. Co. v. Hensley, Civ.App., 196 S.W. 974—Galveston, H. & S. A. Ry. Co. v. Brune, Civ.App., 181 S.W. 547—Pecos & N. T. Ry. Co. v. Winkler, Civ.App., 179 S.W. 691—Chicago, R. I. & G. Ry. Co. v. Core, Civ.App., 176 S.W. 778.

Vt.—Kinsley v. Willis, 132 A.2d 163—Wakefield v. Levin, 110 A.2d 712, 118 Vt. 394, followed in 110 A.2d 716, 118 Vt. 394.

Wis.—Behr v. Larson, 83 N.W.2d 157, 275 Wis. 620.

Admission of opinion evidence as harmless error generally see supra § 1726.

Expert testimony

Error in admitting incompetent expert testimony respecting a certain fact is not reversible, where the fact is established by competent proof.

N.Y.—Gastiger v. Horowitz, 221 N.Y. S. 481, 220 App.Div. 284.

Questions calling for conclusions of law if error in permitting testimony are harmless, where the facts are before the court.

The general rule is also applicable where the evidence consists of a census report,[9.5] a certificate of birth,[9.10] death,[9.15] or marriage,[9.20] declarations,[9.25] deeds,[9.30] a demonstration of a chemical experiment,[9.35] depositions,[10] documentary evidence generally,[10.5] a family record book,[10.15] hospital records,[10.20] letters,[11] maps,[12] photographs,[13] pamphlets,[13.5] police records,[13.10] a record in criminal

Cal.—Humphreys v. City and County of San Francisco, 268 P. 388, 92 C.A. 69.

Truth of conclusion

It is harmless error to permit a witness to testify as to a conclusion, where the truth of the conclusion is established by the testimony of other witnesses.

Tex.—Walker v. Kellar, Civ.App., 218 S.W. 792.

9.5 S.C.—Richards v. City of Columbia, 88 S.E.2d 683, 227 S.C. 538.

9.10 N.J.—Bartholdi v. Dumbeky, 117 A.2d 518, 37 N.J.Super. 418.

9.15 Ill.—Moyer v. John Hancock Mut. Life Ins. Co., 126 N.E.2d 157, 6 Ill.App.2d 1.

Neb.—O'Neil v. Union Nat. Life Ins. Co., 75 N.W.2d 739, 162 Neb. 284.

9.20 Ky.—Martin v. Coburn, 98 S. W.2d 483, 266 Ky. 176.

9.25 Extrajudicial declarations of agent as proof of extent of authority

Cal.—Vind v. Asamblea Apostolica De La Feen Christo Jesus, App., 307 P. 2d 85.

9.30 Trial by court

Tex.—Salazar v. Garcia, Civ.App., 232 S.W.2d 685, error refused.

9.35 Tex.—Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S. W.2d 857, error dismissed, judgment correct.

10. Cal.—Tierney v. Charles Nelson Co., 64 P.2d 1150, 19 C.A.2d 34—Hopkins v. J. D. Millar Realty Co., 289 P. 221, 106 C.A. 409.

Ind.—Bates Motor Transport Lines v. Mayer, 14 N.E.2d 91, 213 Ind. 664.

Tex.—Express Pub. Co. v. Keenan, Civ.App., 274 S.W. 335, reversed on other grounds, Com.App., 284 S.W. 913.

Vt.—Manley Bros. v. Boston & M. R. R., 97 A. 674, 90 Vt. 218.

Va.—Chesapeake & O. Ry. Co. v. Timber-Lake, Currie & Co., 137 S.E. 507, 147 Va. 304.

4 C.J. p 976 note 91.

10.5 Ala.—Chenault v. City of Russellville, 169 So. 706, 233 Ala. 60.

Cal.—Abney v. City and County of San Francisco, 252 P.2d 654, 115 C. A.2d 506—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925.

Ga.—Boyd v. Summer, 88 S.E.2d 411, 211 Ga. 700—Chamblee v. Johnson, 38 S.E.2d 721, 200 Ga. 838.

Okl.—Snyder v. Tulsa Engineering & Const. Co., 312 P.2d 488.

Tenn.—Pickard v. Berryman, 142 S. W.2d 764, 24 Tenn.App. 263.

Information in another case

Iowa.—Tuthill v. Alden, 30 N.W.2d 726, 239 Iowa 181.

10.15 N.J.—Bartholdi v. Dumbeky, 117 A.2d 518, 37 N.J.Super. 418.

10.20 Mich.—Yager v. Yager, 21 N. W.2d 138, 313 Mich. 300.

Miss.—Standard Life Ins. Co. of the South v. Foster, 49 So.2d 391, 210 Miss. 242.

Mo.—Hook v. St. Louis Public Service Co., App., 296 S.W.2d 123.

Pa.—Kanatas v. Home Life Ins. Co. of America, 189 A. 293, 325 Pa. 93.

W.Va.—Keller v. Wonn, 87 S.E.2d 453, 140 W.Va. 860.

11. Cal.—Kenyon v. Hartford Accident & Indemnity Co., 260 P. 952, 86 C.A. 269.

Ga.—Parker & Co. v. Glenn, 83 S.E. 2d 263, 90 Ga.App. 500—Faw v. American Appraisal Co., 78 S.E.2d 846, 89 Ga.App. 62—Christopher v. Georgian Co., 97 S.E. 97, 22 Ga.App. 707.

Ill.—Chicago, I. & L. Ry. Co. v. Monarch Lumber Co., 202 Ill.App. 20.

Iowa.—Koht v. Dean, 261 N.W. 491, 220 Iowa 86.

Ohio.—J. T. Fish & Co. v. States Coal Co., App., 129 N.E.2d 657.

Okl.—City of Sand Springs v. Gray, 77 P.2d 56, 182 Okl. 248—McCurtain Cotton Oil Co. v. Guthrie, 294 P. 133, 146 Okl. 144—Gutenberg Mach. Co. v. Husonian Pub. Co., 154 P. 346, 54 Okl. 369.

Tex.—Drane v. Jefferson Standard Life Ins. Co., 161 S.W.2d 1057, 139 Tex. 101.

Texas Rural Communities v. Avary, Civ.App., 113 S.W.2d 597, error dismissed—Jacobsen v. Van Syckel, Civ.App., 248 S.W. 124.

Va.—Krikorian v. Dailey, 197 S.E. 442, 171 Va. 16.

Trial by court

Wash.—Patricio v. Scott, 65 P.2d 215, 189 Wash. 302.

12. Ky.—Illinois Cent. R. Co. v. Nelson, 127 S.W. 520.

4 C.J. p 976 note 90.

Map as conclusion of individual

Error in admitting a map which was no more than the conclusions of a deceased person as to the location of lines was harmless, where an official map made by the same person which was identical with reference to the location of the line in controversy was admitted in evidence.

Tex.—Land v. Dunn, Civ.App., 226 S. W. 801.

Technical error, if any, in the admission of maps is harmless, where the boundaries shown thereby are otherwise clearly established.

N.C.—Alsworth v. Richmond Cedar Works, 89 S.E. 1008, 172 N.C. 17.

13. Ala.—Gulf States Steel Co. v. Law, 141 So. 641, 224 Ala. 667.

Ga.—Trammell v. Matthews, 72 S.E. 2d 132, 86 Ga.App. 661.

Iowa.—Anderson v. Elliott, 57 N.W. 2d 792, 244 Iowa 670.

Miss.—Cinderella Foods, Division of Stevens Industries v. Miller, 52 So. 2d 641.

Mo.—Hutchison v. Moerschel Products Co., 133 S.W.2d 701, 234 Mo. App. 518.

N.J.—Wilson v. Greenacres Country Club, 125 A.2d 539, 41 N.J.Super. 530.

4 C.J. p 976 note 89.

Of injuries

(1) In a personal injury case, a judgment for the plaintiff will not necessarily be reversed for error in receiving in evidence photographs of the wounds of plaintiff taken a few days before the trial, where the scars and wounds are exhibited to the jury on the trial.

Kan.—Stone v. City of Pleasanton, 223 P. 312, 115 Kan. 378.

(2) Admission of X-ray photographs as exhibits in connection with depositions in an action for injuries to plaintiff's leg is harmless error where other expert evidence is given, showing from such photographs that the leg would improve and again become serviceable.

Tex.—San Antonio & A. P. Ry. Co. v. Stuart, Civ.App., 178 S.W. 17.

Scene of accident

(1) Admission of a picture of the scene of an automobile collision, if error, is not reversible, where the place is described by a plat or disinterested witnesses.

Md.—Snibbe v. Robinson, 135 A. 838, 151 Md. 658, 50 A.L.R. 280.

Mo.—Myerson v. People's Motorbus Co. of St. Louis, App., 297 S.W. 451.

(2) Where collision occurred in spring when shrubbery had already grown, admission of photograph taken by defendant when there was no such shrubbery was not reversible error when there was no great difference between it and one introduced by plaintiffs as true reflection of situation at time of accident.

Tenn.—Little v. Nashville, C. & St. L. Ry. Co., App., 281 S.W.2d 284.

13.5 Cal.—Physicians Elec. Service Corp. v. Adams, 180 P.2d 422, 79 C. A.2d 550.

13.10 R.I.—Parrillo v. De Libero, 106 A.2d 732.

proceedings involving both parties,[13.15] secondary evidence,[14] telegrams,[14.5] a topographical survey,[14.10] a transcript of evidence given at a former trial,[14.15] or X-ray pictures.[14.20]

The rule has even greater force where the evidence properly received is admitted without objection,[15] is of a more conclusive character than that improperly admitted,[16] or, as will be noted infra § 1736d, is sufficient not only to prove the fact in question, but also to sustain the verdict, finding, or judgment for the prevailing party. Similarly, the rule has greater force where the complaining party himself adduces evidence to the same effect as that improperly admitted.[17]

13.15 Ohio.—Cottrell v. Gehle, App., 114 N.E.2d 482.

14. Cal.—Budget Way Cleaners & Laundry, Inc. v. Simon, App., 311 P.2d 591.

Ga.—Boddie v. Ridley, 28 S.E.2d 773, 197 Ga. 221.

Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844.

Ky.—Reynolds v. Cooper, 237 S.W. 667, 193 Ky. 763.

Md.—Farmer v. Associated Professors of Loyola College in City of Baltimore, 171 A. 361, 166 Md. 455.

Mo.—Housden v. Berns, App., 273 S.W.2d 794—York v. Daniels, App., 259 S.W.2d 109—Baker v. Atkins, App., 258 S.W.2d 16.

Mont.—Parham v. Chicago, M. & St. P. Ry. Co., 189 P. 227, 57 Mont. 492.

N.C.—Waddell v. Carson, 97 S.E.2d 222, 245 N.C. 669.

S.C.—Peoples Nat. Bank of Greenville v. Manos Bros., Inc., 84 S.E.2d 857, 226 S.C. 257.

Tex.—Fain v. Fain, Civ.App., 6 S.W.2d 403.

Confirmation of unrebutted presumption

Wis.—Spalding v. Williams, 82 N.W.2d 187, 275 Wis. 394.

14.5 N.Y.—Dickinson v. Delaware, L. & W. R. Co., 158 N.Y.S.2d 127, 3 A.D.2d 629.

14.10 Miss.—City of Hattiesburg v. Hillman, 76 So.2d 368, 222 Miss. 443.

14.15 Cal.—Long v. California-Western States Life Ins. Co., 279 P.2d 43, 43 C.2d 871.

14.20 Okl.—Mid-Continent Coaches, Inc. v. Guthrie, 257 P.2d 829, 208 Okl. 533—O. C. Cab Service Co. v. Askew, 79 P.2d 811, 183 Okl. 6.

15. Ala.—Foster & Creighton Co. v. St. Paul Mercury Indem. Co., 88 So.2d 825, 264 Ala. 581.

Cal.—Vind v. Asamblea Apostolica De La Feen Christo Jesus, 307 P.2d 85, 148 C.A.2d 597—Lail v. Lail, 284 P.2d 907, 133 C.A.2d 610.

Conn.—Cooke v. Weed, 97 A. 765, 90 Conn. 544.

Ga.—First Nat. Bank of Cornelia v. Kelly, 10 S.E.2d 66, 190 Ga. 603.

Healan v. Powell, 87 S.E.2d 332, 91 Ga.App. 787—Dumas v. Abercrombie, 85 S.E.2d 50, 91 Ga.App. 178—Parker & Co. v. Glenn, 83 S.E.2d 263, 90 Ga.App. 500—Bibb Transit Co. v. Scarborough, 83 S.E.2d 221, 90 Ga.App. 427—Faw v. American Appraisal Co., 78 S.E.2d 846, 89 Ga.App. 62—Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793—Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844—Hamilton v. Pulaski County, 72 S.E.2d 487, 86 Ga.App. 705—Warnell v. Ponder, 187 S.E. 261, 54 Ga.App. 1—E. Matthews & Son v. Richards, 91 S.E. 914, 19 Ga.App. 489.

Idaho.—Naccarato v. Village of Priest River, 195 P.2d 370, 68 Idaho 368.

Ill.—Moyer v. John Hancock Mut. Life Ins. Co., 126 N.E.2d 157, 6 Ill.App.2d 1—Buckley v. City of Chicago, 120 N.E.2d 375, 3 Ill.App.2d 39—Herb v. Pitcairn, 29 N.E.2d 543, 306 Ill.App. 583, reversed on other grounds 36 N.E.2d 555, 377 Ill. 405—Baker v. Stoner, 213 Ill. App. 571.

Ind.—Wachstetter v. Johnson, 108 N.E. 624, 61 Ind.App. 659.

Iowa.—Bohnsack v. Driftmier, 52 N.W.2d 79, 243 Iowa 383—Tuthill v. Alden, 30 N.W.2d 726, 239 Iowa 181.

Md.—O'Keefe v. Baltimore Transit Co., 94 A.2d 26, 201 Md. 345.

Mass.—Chandler v. Prince, 105 N.E. 1076, 217 Mass. 451.

Minn.—Meemken v. O'Hara, 66 N.W.2d 601, 243 Minn. 138.

Mo.—Kansas City Trunk Co. v. Bush, App., 208 S.W. 625.

Mont.—Becwar v. McNicol, 296 P. 1027, 89 Mont. 318.

N.C.—Spears v. Randolph, 86 S.E.2d 263, 241 N.C. 659—Spencer v. Bynum, 85 S.E. 216, 169 N.C. 119.

Ohio.—Relyea v. Neal, App., 136 N.E.2d 91—Green v. Drungold, App., 101 N.E.2d 906.

Okl.—City of Altus v. Martin, 268 P.2d 228—Dippel v. Hargrave, 240 P.2d 1070, 206 Okl. 26—Ridgeway v. Logan, 239 P.2d 778, 205 Okl. 603—Kinkade v. Simpson, 197 P.2d 968, 200 Okl. 507—In re Giordano's Estate, 174 P.2d 236, 197 Okl. 693.

Pa.—Kmiotek v. Anost, 49 A.2d 695, 355 Pa. 349.

R.I.—Smith v. Smith, 118 A.2d 618—Brison v. Frechette, 79 A.2d 360, 78 R.I. 68—D'Ambra v. Ohanian, 74 A.2d 646, 77 R.I. 218—Cranston Dressed Meat Co. v. Packers Outlet Co., 190 A. 29, 57 R.I. 345.

S.C.—Turner v. Wilson, 86 S.E.2d 867, 227 S.C. 95.

Tex.—Vrazel v. Bieri, Civ.App., 294 S.W.2d 148, error refused no reversible error—Cubine v. Morgan, Civ.App., 288 S.W.2d 537, error dismissed—Novita Oil Co. v. Smith, Civ.App., 247 S.W.2d 151—Henderson v. Jimmerson, Civ.App., 234 S.W.2d 710, error refused no reversible error—Gulf, C. & S. F. Ry. Co. v. Besser, Civ.App., 200 S.W. 263, dismissed for want of jurisdiction—Houston B. & T. Ry. v. Lewis, Civ.App., 176 S.W. 68—Kell v. Ross, Civ.App., 175 S.W. 752.

Va.—Crawford v. Hite, 10 S.E.2d 561, 176 Va. 69.

Wash.—Yakima First Nat. Bank v. Pettibone, 47 P.2d 997, 182 Wash. 663.

4 C.J. p 976 note 92.

Trial by court

Cal.—Spoerer v. Baker, 254 P.2d 113, 116 C.A.2d 664.

Immaterial fact

The admission of evidence as to an immaterial fact is not prejudicial, where the fact otherwise appeared, and was not controverted.

Ala.—Moore v. Whitmire, 66 So. 601, 189 Ala. 615.

16. Cal.—Conner v. Garrett, 224 P. 786, 65 C.A. 661.

Ky.—United Casket Co. v. Reeves, 267 S.W. 1108, 206 Ky. 581.

Minn.—Moody v. Canadian Northern Ry. Co., 194 N.W. 639, 156 Minn. 211.

4 C.J. p 977 note 93.

17. Ala.—Hughes v. Merchants Nat. Bank of Mobile, 53 So.2d 386, 256 Ala. 88—Simmons v. Cochran, 41 So.2d 579, 252 Ala. 461.

Southern Steam Carpet Cleaning Co. v. Goldman, 84 So. 478, 17 Ala. App. 218.

Cal.—Gill v. Clark, 244 P.2d 965, 111 C.A.2d 559.

Colo.—Hurst v. Bruin, 219 P. 779, 74 Colo. 157.

Idaho.—Hayward v. Yost, 242 P.2d 971, 72 Idaho 415—Hartley v. Bohrer, 11 P.2d 616, 52 Idaho 72.

Ind.—Piggly-Wiggly Stores v. Lowenstein, 147 N.E. 771, 197 Ind. 62.

Iowa.—Tuthill v. Alden, 30 N.W.2d 726, 239 Iowa 181.

Kan.—Briscoe v. Reschke, 226 P.2d 255, 170 Kan. 367.

Ky.—Benge's Adm'r v. Creech, 192 S.W. 817, 175 Ky. 6.

Md.—Nichols v. Meyer, 115 A. 786, 139 Md. 450—Hettleman v. Frank, 110 A. 715, 136 Md. 351.

Miss.—City of Hattiesburg v. Hillman, 76 So.2d 368, 222 Miss. 443—Cinderella Foods, Division of Stevens Industries v. Miller, 52 So.2d

Limitations of rule. It must be borne in mind, however, that error in admitting improper evidence is harmless only where the other evidence is sufficient to establish the fact involved,[18] or the jury are not influenced by the illegal evidence;[19] or, as otherwise stated, only where the incompetent evidence has no tendency to establish any fact not admitted or fully established by competent evidence.[20] There is prejudice where the improperly admitted evidence is the strongest evidence introduced in the case,[21] or where it is likely that it impressed the jury equally as much as, if not more than, the competent evidence,[22] or that the jury gave some weight to the erroneously admitted evidence because of the remaining evidence being in sharp conflict[23] or the other witnesses being discredited or impeached.[24]

b. Evidence Already Admitted

The admission of incompetent evidence which is merely cumulative or corroborative of competent evidence already received on the same matter is not prejudicial error.

No prejudice attaches to the erroneous admission of evidence, where the fact involved has already been established by competent evidence and the evidence erroneously received is merely cumulative,[25] or the evidence erroneously received is mere-

641—Standard Life Ins. Co. of the South v. Foster, 49 So.2d 391, 210 Miss. 242.

Mo.—York v. Daniels, App., 259 S.W. 2d 109—Baker v. Atkins, App., 258 S.W.2d 16—Krummenacher Drug Co. v. Chouteau, App., 296 S.W. 255—Blass v. Missouri State Life Ins. Co., App., 202 S.W. 270.

N.H.—Goddard v. Berlin Mills Co., 131 A. 601, 82 N.H. 225—Tilton v. Tilton, 41 N.H. 479.

N.C.—Smith v. Ritch, 144 S.E. 537, 196 N.C. 72, 59 A.L.R. 1084.

Pa.—Nalevanko v. Marie, 195 A. 49, 328 Pa. 586.

Yost v. Erie Cooperative Milk Producers, Com.Pl., 20 Erie Co. 58.

R.I.—Di Orio v. Venditti, 97 A. 599, 39 R.I. 101.

S.C.—Sample v. Gulf Refining Co., 191 S.E. 209, 183 S.C. 399.

Tex.—Airline Motor Coaches v. Howell, Civ.App., 195 S.W.2d 713, error refused no reversible error—Security Union Casualty Co. v. O'Pry, Civ.App., 12 S.W.2d 1054—Texas & P. Ry. Co. v. Moore, Civ.App., 7 S.W.2d 902—Werthan Bag Co. v. Houston Bag & Bagging Co., Civ. App., 230 S.W. 1055.

Va.—Krikorian v. Dailey, 197 S.E. 442, 171 Va. 16.

W.Va.—Keller v. Wonn, 87 S.E.2d 453, 140 W.Va. 860.

4 C.J. p 977 note 95.

18. Ala.—Buye v. Alabama Marble Quarries, 75 So. 9, 199 Ala. 589.

Mo.—Marshall v. Hall, App., 200 S.W. 770.

Okl.—Snyder v. Tulsa Engineering & Const. Co., 312 P.2d 488.

4 C.J. p 977 note 96.

Contract

In an action to establish a lien for improvements on a house of a wife, evidence that the wife accepted the work is insufficient to establish a contract, so as to render harmless evidence of the contractor as to a contract made with deceased husband.

Mo.—Marshall v. Hall, App., 200 S.W. 770.

19. Fla.—Davis v. Ivey, 112 So. 264, 93 Fla. 387, certiorari denied Mellon v. Ivey, 48 S.Ct. 19, 275 U.S. 526, 72 L.Ed. 407.

Admission of hearsay evidence is harmless, where, in view of the great mass of testimony upon the same issue, it is not probable that it influenced the jury.

Tex.—Wolnitzek v. Lewis, Civ.App., 183 S.W. 819, error refused.

20. N.Y.—Havholm v. Whale Creek Iron Works, 147 N.Y.S. 856, 162 App.Div. 354.

21. Ky.—Wall v. Dimmett, 117 S.W. 299, 132 Ky. 747.

22. Mo.—Robinson v. Bush, 200 S.W. 757, 199 Mo.App. 184.

Okl.—Maben v. Lee, 260 P.2d 1064.

Wash.—**Corpus Juris cited in** Cooley v. Ben Paris Sporting Goods & Recreation Co., 105 P.2d 820, 821, 5 Wash.2d 415.

23. Tex.—Richardson v. Cantrell, Civ.App., 201 S.W. 702.

4 C.J. p 977 note 97.

24. N.Y.—In re Blair, 91 N.Y.S. 378, 99 App.Div. 81.

25. Ala.—Resolute Fire Ins. Co. v. O'Rear, 47 So.2d 425, 35 Ala.App. 398.

Ark.—O'Leary v. Keith, 203 S. W. 38, 134 Ark. 36.

Cal.—Mayfield v. Fidelity & Casualty Co. of New York, 61 P.2d 83, 16 C.A.2d 611—Steinhofer v. Georgeson, 202 P. 350, 54 C.A. 550.

Conn.—Dejon v. Smedley Co., 144 A. 473, 108 Conn. 659.

Fla.—Sea Crest Corp. v. Burley, 38 So.2d 434.

Ga.—Claude S. Bennett, Inc. v. Vanneman, 97 S.E.2d 375, 95 Ga.App. 140—Collins v. Griffin, 91 S.E.2d 369, 93 Ga.App. 282—E. Matthews & Son v. Richards, 91 S.E. 914, 19 Ga.App. 489.

Idaho.—Naccarato v. Village of Priest River, 195 P.2d 370, 68 Idaho 368.

Ill.—Wawryszyn v. Illinois Cent. R. Co., 135 N.E.2d 154, 10 Ill.App.2d 394—Stansfield v. Wood, 231 Ill. App. 586—Follett v. Illinois Cent. R. Co., 209 Ill.App. 81—Alpe v. Superior Coal Co., 208 Ill.App. 67.

Ind.—Lowenstine v. Citro, 129 N.E. 280, 74 Ind.App. 516.

Ky.—Cody v. Nortof, 267 S.W.2d 403—Pfuelb v. Pfuelb, 122 S.W.2d 128, 275 Ky. 588—Grigsby v. Smith, 192 S.W. 856, 174 Ky. 819.

Md.—Williams v. Dawidowicz, 120 A.2d 399, 209 Md. 77—Eastern Shore Trust Co. v. Lockerman, 129 A. 915, 148 Md. 628.

Mass.—Jewett v. Dow, 129 N.E.2d 895, 333 Mass. 187—Ross v. Nourse, 116 N.E.2d 323, 330 Mass. 666—Abele v. Dietz, 45 N.E.2d 970, 312 Mass. 685, 144 A.L.R. 1015.

Miss.—Tanner v. Foreman, 54 So.2d 483, 212 Miss. 355.

Mo.—Evinger v. Thompson, 265 S.W. 2d 726, 364 Mo. 658—Griffith v. Continental Casualty Co., 253 S.W. 1043, 299 Mo. 426.

Corpus Juris cited in Carroll v. Missouri Light & Power Co., App., 96 S.W.2d 1074, 1079—Shouse v. Dubinsky, App., 38 S.W.2d 530.

N.Y.—Lorensen v. Klebansky, 193 N. Y.S. 224, 118 Misc. 247.

Okl.—Parish v. Ned, 264 P.2d 762—Hazelrigg Trucking Co. v. Duvall, 261 P.2d 204—Gutenberg Mach. Co. v. Husonian Pub. Co., 154 P. 346, 54 Okl. 369.

Or.—Savage v. Palmer, 280 P.2d 982, 204 Or. 257.

S.D.—Pemberton v. Fritts, 228 N.W. 409, 56 S.D. 374.

Tenn.—Vest v. Bitner, 241 S.W.2d 438, 34 Tenn.App. 575.

Tex.—Whitener v. Traders & General Ins. Co., 289 S.W.2d 233.

Vrazel v. Bieri, Civ.App., 294 S. W.2d 148, error refused no reversible error—Holt v. City of San Marcos, Civ.App., 288 S.W.2d 802, error refused no reversible error—Texas Emp. Ins. Ass'n v. Moore, Civ.App., 284 S.W.2d 175, error refused no reversible error—Commonwealth Ins. Co. v. Evans, Civ.App., 42 S.W. 2d 1088—Johnson v. Ashby, Civ. App., 18 S.W.2d 726—Stone v. Light, Civ.App., 228 S.W. 1108—Alling v. Vander Stucken, Civ.App., 194 S.W. 443, error refused—Black

ly subsidiary and corroborative.[26] Thus, the erroneous admission of documentary evidence is harmless where testimony concerning the contents thereof has previously been given,[27] and, conversely, it is not reversible error to receive secondary evidence where proper primary evidence has already been introduced.[28]

The fact that incompetent testimony on a material

v. Wilson, Civ.App., 187 S.W. 493, dismissed for want of jurisdiction.
Wash.—Turnbull v. Shelton, 286 P.2d 676, 47 Wash.2d 70—Reynolds v. Donoho, 236 P.2d 552, 39 Wash.2d 451—Hinckel v. Steigers, 191 P.2d 279, 30 Wash.2d 171.
4 C.J. p 977 note 99.

Trial by court
Kan.—Hilgenfeld v. Johnson, 270 P. 2d 293, 176 Kan. 339.
Ky.—Taylor v. Taylor, 109 S.W.2d 570, 270 Ky. 203.
Tex.—Pacific Mut. Life Ins. Co. of California v. Schlakzug, Civ.App., 180 S.W.2d 980, reversed on other grounds 183 S.W.2d 709, 143 Tex. 264—Drane v. Jefferson Standard Life Ins. Co., Civ.App., 146 S.W.2d 526, modified on other grounds 161 S.W.2d 1057, 139 Tex. 101.

Hearsay
Cal.—Davis v. Sturgis, 299 P.2d 408, 142 C.A.2d 840.
Ga.—McDaniel v. Richards, 13 S.E. 2d 710, 64 Ga.App. 612.
Mo.—Horrell v. St. Louis Public Service Co., 277 S.W.2d 612.

Rate of speed
La.—Skinner v. Poston, App., 71 So. 2d 702.

Admissions of agent
In an action against railroad company for injuries to a shipment of live stock, the erroneous reception of evidence of the admissions of the railroad company's agent, not made in the course of his employment, cannot be treated as harmless, on the ground of being cumulative of other evidence showing the company's negligence.
Mo.—Robinson v. Bush, 200 S.W. 757, 199 Mo.App. 184.

As to sanity
In an action on an accident policy, permitting lay witnesses to give their opinion as to the sanity of insured is harmless error, where defendant offered no evidence, and where the sanity of insured is established by competent evidence the testimony of the lay witnesses being cumulative.
Mo.—Trembley v. Fidelity & Casualty Co. of New York, App., 243 S.W. 201.

26. Ala.—Western Union Telegraph Co. v. Hughston, 67 So. 670, 191 Ala. 424.
Ind.—Marcisz v. Osborne, 118 N.E. 2d 378, 124 Ind.App. 574.
Kan.—Briscoe v. Reschke, 226 P.2d 255, 170 Kan. 367.
Ky.—Pfuelb v. Pfuelb, 122 S.W.2d 128, 275 Ky. 588.
Mass.—Ovington v. Racine, 113 N.E. 2d 833, 330 Mass. 333.
Mo.—Miller v. Brunson Const. Co., 250 S.W.2d 958.
Vt.—Smith v. De Metre, 118 A.2d 346.
4 C.J. p 978 note 1.

X-ray pictures
Where the jury examine a personal injury and physicians testify to the injuries to bones, the admission of X-ray pictures of the injury is harmless, if erroneous, being corroborated by the medical testimony.
Ky.—City of Covington v. Bowen, 230 S.W. 532, 191 Ky. 376.

Drunkometer test
Ala.—Rivers v. Black, 68 So.2d 2, 259 Ala. 528.

27. Cal.—In re Newman's Estate, 94 P.2d 356, 34 C.A.2d 706.
Ga.—Oglesby v. South Georgia Grocery Co., 89 S.E. 436, 18 Ga.App. 401.
Ind.—De Armond v. Carter, App., 134 N.E.2d 239—Clarke Auto Co. v. Fyffe, 116 N.E.2d 532, 124 Ind. App. 222.
Ohio.—Better Homes Equipment Co. v. Nixon, App., 134 N.E.2d 850.
Okl.—City of Bethany v. Municipal Securities Co., 274 P.2d 363.
S.C.—Town of Belton v. American Employers Ins. Co. of Boston, Mass., 18 S.E.2d 612, 199 S.C. 88—Rouk v. Virginia-Carolina Chemical Co., 95 S.E. 79, 108 S.C. 397.
Tex.—Galveston, H. & S. A. Ry. Co. v. Hartford Fire Ins. Co., Civ.App., 220 S.W. 781, reversed on other grounds Hartford Fire Ins. Co. v. Galveston, H. & S. A. R. Co., Com. App., 239 S.W. 919.
4 C.J. p 978 note 2.

Book account
Mass.—Abele v. Dietz, 45 N.E.2d 970, 312 Mass. 685, 144 A.L.R. 1015.

Hospital record
Mo.—Melton v. St. Louis Public Service Co., 251 S.W.2d 663, 363 Mo. 474.

Newspaper clipping
Cal.—Darnold v. Voges, App., 300 P. 2d 255.

Letter
The admission of a letter containing self-serving declarations is not prejudicial, where the writer testified to the same facts and the adverse party had an opportunity to deny them.
Kan.—United States Tire Co. of New York v. Kirk, 159 P. 392, 97 Kan. 531.

Admission of ledger sheets, showing debits and credits of account against defendant, is harmless, where the items are verified by plaintiff's president.
Ala.—Guarenire v. Bessemer Lumber Co., 106 So. 49, 214 Ala. 8.

Certificate of death
Admission of the certificate of death, filed with the board of health, is not prejudicial, where there is abundant testimony that the cause of death is as stated in such certificate, and no other reasonable inference could be drawn from the evidence, and defendant does not seriously contend in the lower court that there is any different cause, especially where the doctor making such certificate is in court before the case is submitted to the jury, but defendant makes no request that he be sworn for examination or cross-examination.
S.C.—Rouk v. Virginia-Carolina Chemical Co., 95 S.E. 79, 108 S.C. 397.

Certificate of office
The admission of a copy of a certificate certifying that a certain officer of a corporation was president thereof was not reversible error, where there was ample evidence to show who the president was.
Nev.—Sirbeck v. Sunbeam Divide Mining Co., 249 P. 865, 50 Nev. 46.

Telegram
The erroneous admission of a telegram in evidence was harmless, where the telegram was merely a restatement of the facts shown by sender's deposition, which was in evidence.
Ark.—Chancellor v. Stephens, 206 S.W. 145, 136 Ark. 175.

Photograph
(1) Generally.
Tex.—Zeek v. Gaddy, Civ.App., 287 S.W.2d 490, error refused no reversible error.

(2) Evidence shown by other photographs.
Fla.—Atlantic Coast Line R. Co. v. Gary, Civ.App., 57 So.2d 10.

28. Ark.—Cotton States Life Ins. Co. v. Tanner, 23 S.W.2d 268, 180 Ark. 877.
Mo.—Adamack v. Herman, App., 33 S.W.2d 135.
Tex.—Byrd v. Dennis, Civ.App., 222 S.W.2d 926—Biggerstaff v. McGill, Civ.App., 175 S.W. 711.
4 C.J. p 978 note 3.

Bankruptcy
The admission of testimony of a bank employee as to a bankrupt being an indorser on certain paper of the bank, although erroneous, for the reason that the notes themselves

issue is cumulative to some extent does not relieve it of its prejudicial effect,[28.5] even though the previous testimony had been introduced without objection.[28.10]

Counsel's statement to the court of the fact that opposing counsel was seeking to elicit, in order to urge his objection to its competency, is not such establishment of the fact as to render harmless a subsequent proving of the fact.[29]

§ 1732. Admitted or Undisputed Facts

a. In general

b. Admissions in pleadings

a. In General

Admission of improper evidence relating to a fact which is admitted, conceded, or uncontroverted, or has been placed beyond dispute by uncontradicted evidence or agreement of the parties is harmless error.

It is harmless error for a court to permit the introduction of irrelevant, incompetent, or other improper evidence relating to a fact which is admitted, conceded, uncontroverted, or which has been placed beyond the realm of dispute by uncontradicted evidence which has been adduced,[30] or where

were the best evidence, is not prejudicial, where, without considering the amount so proved, the bankrupt under the evidence was still insolvent.

Idaho.—Peacock v. Fairbairn, 264 P. 281, 45 Idaho 628.

Meaning of lines on map

Testimony of one who prepared a map as to the meaning of certain lines is not prejudicial, where the map shows the same facts and is on record.

Tex.—Coates v. Thomas, Civ.App., 285 S.W. 700.

28.5 Okl.—Maben v. Lee, 260 P.2d 1064.

28.10 Okl.—Douvas v. Newcomb, 267 P.2d 600.

29. Mo.—Hill v. Missouri Packing Co., App., 24 S.W.2d 196.

30. Ala.—Daniel v. Motes, 153 So. 727, 228 Ala. 454—Abbeville State Bank v. Wiley Fertilizer Co., 140 So. 431, 224 Ala. 421—Griswold v. Duke, 140 So. 427, 224 Ala. 402—Walker v. Stephens, 127 So. 668, 221 Ala. 18—Chitwood v. Blackwood, 124 So. 110, 220 Ala. 75—Alabama Power Co. v. Shaw, 111 So. 17, 215 Ala. 436—Bank of Kennedy v. Dorroh, 96 So. 611, 209 Ala. 511—Southern Ry. Co. v. Hall, 96 So. 73, 209 Ala. 237—Williams v. Holder, 81 So. 608, 202 Ala. 652—W. B. Paterson Lumber Co. v. Patrick, 80 So. 445, 202 Ala. 363—Archer v. Sibley, 78 So. 849, 201 Ala. 495—Windham v. Newton, 76 So. 24, 200 Ala. 258—Pennsylvania Fire Ins. Co. v. Draper, 65 So. 923, 187 Ala. 103.

W. U. Tel. Co. v. Tatum, 49 So.2d 673, 35 Ala.App. 478, certiorari denied 49 So.2d 678, 255 Ala. 13—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala.App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10—Riley v. Srofe, 45 So. 2d 328, 35 Ala.App. 222—White v. White, 34 So.2d 182, 33 Ala.App. 403—Cosby-Hodges Milling Co. v. Nance, 29 So.2d 575, 33 Ala.App. 48—Cary v. Bynum, 136 So. 877, 24 Ala.App. 510—Hill Grocery Co. v. Hameker, 89 So. 850, 18 Ala.App. 84—Baker v. Lauderdale & Worthy, 69 So. 299, 14 Ala.App. 224.

Ark.—Jackson County Gin Co. v. McCuistion, 5 S.W.2d 729, 177 Ark. 60—Hayes v. Gammon, 272 S.W. 644, 168 Ark. 1116—Southern Express Co. v. Couch, 249 S.W. 559, 157 Ark. 604—Carter v. Younger, 185 S.W. 435, 123 Ark. 266—United States Express Co. v. Rea, 181 S.W. 888, 121 Ark. 284—Steed v. Henry, 180 S.W. 508, 120 Ark. 583.

Cal.—Price v. Northern Electric Ry. Co., 142 P. 91, 168 C. 173.

Flury v. Beeskau, 33 P.2d 1033, 139 C.A. 398—Douglas v. Lewin, 20 P.2d 959, 131 C.A. 159—Barker v. Southern Pac. Co., 5 P.2d 970, 118 C.A. 748, rehearing denied 6 P.2d 982, 118 C.A. 748—Atkinson v. Charles Nelson Co., 182 P. 759, 41 C.A. 304.

Colo.—Arkansas Valley Bank v. Esser, 224 P. 227, 75 Colo. 110—Alamo Hotel & Garage Co. v. Toledo Scale Co., 208 P. 476, 71 Colo. 577.

Ga.—Zellner v. Hall, 87 S.E.2d 395, 211 Ga. 572—Altman v. Strouse, 79 S.E.2d 801, 210 Ga. 282—Davies v. Blasingame, 181 S.E. 763, 181 Ga. 128—Rowe v. Cole, 155 S.E. 473, 171 Ga. 391—Massell Realty Co. v. Hanbury, 141 S.E. 653, 165 Ga. 534—Deal v. Anderson, 141 S.E. 51, 165 Ga. 416—Kent v. Central of Georgia Ry. Co., 85 S.E. 1017, 144 Ga. 7—McNatt v. Clarke Bros., 84 S.E. 447, 143 Ga. 159—Alabama Great Southern R. Co. v. Hardy, 62 S.E. 71, 131 Ga. 238.

C. J. Howard, Inc. v. C. V. Nalley & Co., 178 S.E. 174, 50 Ga. App. 343—Downs v. Brandon, 174 S.E. 647, 49 Ga.App. 198—Macon Union Co-op. Ass'n v. Chance, 122 S.E. 66, 31 Ga.App. 636—American Ry. Express Co. v. Estroff, 121 S. E. 711, 31 Ga.App. 577, affirmed 125 S.E. 40, 159 Ga. 58—Atlantic Coast Line R. Co. v. Stovall-Pace Co., 118 S.E. 62, 30 Ga.App. 326—Waller v. Dawson Nat. Bank, 96 S.E. 333, 22 Ga.App. 477.

Ill.—Fray v. National Fire Ins. Co. of Hartford, 173 N.E. 479, 341 Ill. 431—Dietz v. Big Muddy Coal & Iron Co., 105 N.E. 289, 263 Ill. 480.

Barango v. E. L. Hedstrom Coal Co., 138 N.E.2d 829, 12 Ill.App.2d 118—Harris v. Lipman, 212 Ill.App. 499—Shreffler v. Fuller, 208 Ill.App. 630—People v. Snyder, 192 Ill.App. 641.

Ind.—Bayh v. Ellis, 200 N.E. 455, 101 Ind.App. 572—Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298—Great Atlantic & Pacific Tea Co. v. McNew, 189 N.E. 641, 99 Ind. App. 229—Louisville & S. I. Traction Co. v. Lottich, 106 N.E. 903, 59 Ind.App. 426.

Iowa.—Butler Mfg. Co. v. Elliott & Cox, 233 N.W. 669, 211 Iowa 1068—Farmers' & Merchants' State Bank v. Barnes, 200 N.W. 430, 198 Iowa 805—Monahan v. Roderick, 166 N. W. 725, 183 Iowa 1.

Ky.—Hardesty v. Sparrow, 275 S.W. 2d 587—Central Contractors Service v. Ohio County Stone Co., 255 S.W.2d 17—Kentucky-West Virginia Gas Co. v. Slone, 238 S.W.2d 476—Brown v. Simpson, 170 S.W.2d 345, 293 Ky. 755—Short Way Lines v. Sutton's Adm'r, 164 S.W.2d 809, 291 Ky. 541—Thronton v. Phillips, 90 S.W.2d 347, 262 Ky. 346—Prudential Ins. Co. of America v. Dudderer, 65 S.W.2d 745, 251 Ky. 627—Murphy v. Phelps, 43 S.W.2d 1010, 241 Ky. 339—Consolidated Coach Corporation v. Saunders, 17 S.W. 2d 233, 229 Ky. 284—Rex Red Ash Coal Co. v. Barley's Adm'r, 6 S.W. 2d 724, 224 Ky. 485—Louisville Woolen Mills v. Kindgen, 231 S.W. 202, 191 Ky. 568—Felty v. Felty, 175 S.W. 643, 164 Ky. 355.

La.—Continental Oil Co. v. Tate, 30 So.2d 858, 211 La. 852.

Me.—Fitzmaurice v. McGinn, 162 A. 701, 131 Me. 496.

Md.—LaFontaine v. Wilson, to Use of Ugast, 45 A.2d 729, 185 Md. 673, 162 A.L.R. 1218—Schenuit v. International Finance Corporation, 130 A. 331, 148 Md. 403—McCrory Stores Corporation v. Satchell, 129 A. 348, 148 Md. 279—Canton Co. of Baltimore v. Seal, 125 A. 63, 144

Md. 174—Herbert v. Davis, 115 A. 808, 139 Md. 522.

Mich.—Pacey v. Strange, 18 N.W.2d 269, 311 Mich. 40—U. S. Trust Co. v. Tuchowska, 227 N.W. 539, 249 Mich. 16—Bresch v. Wolf, 220 N. W. 737, 243 Mich. 638—Tregonning v. Castantini, 220 N.W. 171, 243 Mich. 233—Ballance v. Dunnington, 217 N.W. 329, 241 Mich. 383, 57 A.L.R. 262—Pearson v. Wallace, 170 N.W. 72, 203 Mich. 622.

Minn.—Krueger v. City of Faribault, 18 N.W.2d 777, 220 Minn. 89.

Miss.—Stanton v. Cox, 139 So. 458, 162 Miss. 438—Ruffin v. J. & M. Schwabacher, 126 So. 14, 156 Miss. 326.

Mo.—Homan v. Missouri Pac. R. Co., 70 S.W.2d 869, 335 Mo. 30—Klaber v. Lahar, 63 S.W.2d 103—Margulis v. National Enameling & Stamping Co., 23 S.W.2d 1049, 324 Mo. 420—Mississippi Valley Trust Co. v. Begley, 275 S.W. 540, 310 Mo. 287—In re McMenamy's Guardianship, 270 S.W. 662, 307 Mo. 98—Moyer v. Chicago & A. R. Co., 198 S.W. 839—Schofield v. Harrison Land & Mining Co., 187 S.W. 61.

Tarzian v. Metropolitan Life Ins. Co., App., 160 S.W.2d 490—Venters v. Bunnell, App., 93 S.W.2d 70, 230 Mo.App. 1190—Yawitz v. Laughlin's Estate, App., 68 S.W.2d 830—Kelso v. Lincoln Nat. Life Ins. Co., 51 S.W.2d 203, 227 Mo.App. 184—Fry v. T. J. Moss Tie Co., 35 S.W.2d 962, 225 Mo.App. 389—Hartman v. Warner, App., 35 S.W. 2d 938—Thompson v. A. Morgan Hauling & Express Co., App., 26 S.W.2d 807—Vernon v. Rife, App., 294 S.W. 747—Miller v. Walsh Fire Clay Products Co., 282 S.W. 141, 219 Mo.App. 590—Producers' Packing Co. v. Fischer, 275 S.W. 979, 219 Mo.App. 429—Schleef v. Schoen, 270 S.W. 410, 216 Mo.App. 499—In re Kelley's Estate, 255 S. W. 1064, 213 Mo.App. 492—Stasiak v. Kalucki, App., 255 S.W. 978—England v. Hall, App., 246 S.W. 69—Liebel v. Metropolitan Life Ins. Co., App., 241 S.W. 647—Bloomcamp v. Missouri Pac. R. Co., 236 S.W. 388, 208 Mo.App. 464.

N.H.—Ibey v. Ibey, 55 A.2d 872, 94 N.H. 425—State v. Hutchins, 105 A. 519, 79 N.H. 132, 2 A.L.R. 1685—Atto v. Saunders, 93 A. 1037, 77 N. H. 527.

N.J.—Richard v. Spagna, 135 A. 468, 5 N.J.Misc. 33, affirmed 137 A. 918, 103 N.J.Law 711—Interstate Corrugated Box Co. v. Steiger, 128 A. 607, 3 N.J.Misc. 430.

N.M.—James v. Hood, 142 P. 162, 19 N.M. 234.

N.Y.—Kittredge v. Grannis, 155 N.E. 88, 244 N.Y. 168.

N.C.—In re Crawford's Will, 98 S.E. 2d 29, 246 N.C. 322—Whitley v. Jones, 78 S.E.2d 147, 238 N.C. 332—Rudd v. American Fidelity & Casualty Co., 164 S.E. 345, 202 N.C. 779—Nelson v. Nelson, 149 S.E. 585, 197 N.C. 465—Nowell v. Basnight, 116 S.E. 87, 185 N.C. 142—A. J. Higgins Export & Lumber Co. v. Elizabeth City Shipyard Co., 107 S.E. 449, 181 N.C. 442—Costin v. Tidewater Power Co., 106 S.E. 568, 181 N.C. 196.

Okl.—Deichman v. Harris, 182 P.2d 751, 199 Okl. 33—Alper v. Duffy, 173 P.2d 444, 197 Okl. 589—Sharp v. Young, 78 P.2d 815, 182 Okl. 596—Kelly v. Watkins, 39 P.2d 975, 170 Okl. 185—Menten v. Richards, 153 P. 1177, 54 Okl. 418.

Or.—La Grande Nat. Bank of La Grande v. Crum, 11 P.2d 553, 139 Or. 530—Sather v. Giaconi, 220 P. 740, 110 Or. 433.

Pa.—Vescio v. Pennsylvania Electric Co., 9 A.2d 546, 336 Pa. 502—Robinson v. American Ice Co., 141 A. 244, 292 Pa. 366—American Trust Co. v. Kaufman, 135 A. 210, 287 Pa. 461—Roberts v. Cauffiel, 128 A. 670, 283 Pa. 64—Wally v. Jones, 119 A. 75, 275 Pa. 250.

Pinkerton's Nat. Detective Agency v. Rosedale Silk Co., 184 A. 282, 121 Pa.Super. 496—Pearson v. Central Nat. Bank of Philadelphia, 156 A. 560, 102 Pa.Super. 111—Strauch v. City of Pittsburgh, 70 Pa.Super. 251—Goldberg v. Crown Mut. Fire Ins. Co., 61 Pa.Super. 360.

R.I.—Child v. Greene, 160 A. 920—Finlay v. Plante, 160 A. 865, 52 R. I. 325—Russell v. Cavaca, 137 A. 778.

S.C.—Funderburk v. Sovereign Camp, W. O. W., 183 S.E. 462, 179 S.C. 80—Salley v. Western Mut. Fire Ins. Co., 181 S.E. 74, 177 S.C. 168—Nock v. Fidelity & Deposit Co., 178 S.E. 839, 175 S.C. 188.

S.D.—Lee v. American Hide & Fur Co., 219 N.W. 890, 53 S.D. 29.

Tenn.—Friedman v. Georgia Showcase Co., 183 S.W.2d 9, 27 Tenn. App. 574—Fulmer v. Jennings, 148 S.W.2d 39, 24 Tenn.App. 635—**Corpus Juris cited in** Stone v. O'Neal, 90 S.W.2d 548, 553, 19 Tenn. App. 512—Pigg v. Houston & Liggett, 8 Tenn.App. 613—American Trust & Banking Co. v. Fairbanks, 5 Tenn.App. 296.

Tex.—Chandler v. Darwin, Civ.App., 281 S.W.2d 363—Roadway Express v. Gaston, Civ.App., 90 S.W.2d 874—Fort Worth & Denver City Ry. Co. v. Motley, Civ.App., 87 S.W. 2d 551—San Antonio, U. & G. R. Co. v. Clarke & Keller, Civ.App., 81 S.W.2d 113—Smith v. Schoellkopf, Civ.App., 68 S.W.2d 346—Commercial Credit Co. v. Groseclose, Civ. App., 66 S.W.2d 709—Bragg v. Hughes, Civ.App., 53 S.W.2d 151—Reilly v. Buster, Civ.App., 52 S.W.2d 521, reversed on other grounds, Com.App., 82 S.W.2d 931—Dixie Motor Coach Corporation v. Meredith, Civ.App., 45 S.W.2d 364—San Antonio, U. & G. R. Co. v. Schmidt, Civ.App., 18 S.W.2d 237—American Indemnity Co. v. Venegas, Civ.App., 17 S.W.2d 858—Massachusetts Bonding & Insurance Co. v. Worthy, Civ.App., 9 S. W.2d 388—Tarbutton v. Ambriz, Civ.App., 282 S.W. 891—Silvers v. Payne, Civ.App., 282 S.W. 876—Simmons v. Lemons, Civ.App., 258 S.W. 868—City of Magnolia Park v. Crooker, Civ.App., 252 S.W. 341—Galveston, H. & S. A. Ry. Co. v. Henry, Civ.App., 252 S.W. 210—Alderete v. First Real Estate & Investment Co., Civ.App., 247 S.W. 620—Stahlman v. Riordan, Civ. App., 227 S.W. 726, dismissed for want of jurisdiction—Padgett v. Hines, Civ.App., 224 S.W. 558, dismissed for want of jurisdiction—American Automobile Ins. Co. v. Struwe, Civ.App., 218 S.W. 534, error refused—McDonald v. Stafford, Civ.App., 213 S.W. 732—Kansas City, M. & O. Ry. Co. of Texas v. Corn, Civ.App., 186 S.W. 807—McCollom v. Dollar, Civ.App., 176 S.W. 876, reversed on other grounds. Com.App., 213 S.W. 259—Texas & P. Ry. Co. v. Graham & Price, Civ.App., 174 S.W. 297—Spires v. McElroy, Civ.App., 166 S. W. 457.

Vt.—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Bradley v. Kelley, 168 A. 554, 105 Vt. 478—University of Vermont and State Agr. College v. Ward, 158 A. 773, 104 Vt. 239—Burlington Grocery Co. v. M. & F. C. Dorn, 119 A. 883, 96 Vt. 409—First Nat. Bank v. Bertoli, 92 A. 970, 88 Vt. 421.

Wash.—Lubin v. Cowell, 170 P.2d 301, 25 Wash.2d 171—Klock Produce Co. v. Diamond Ice & Storage Co., 168 P. 476, 98 Wash. 676—Bickford v. Hupp, 145 P. 454, 83 Wash. 427.

W.Va.—Starcher v. South Penn Oil Co., 95 S.E. 28, 81 W.Va. 587.

Wis.—Zastrow v. Schaumburger, 245 N.W. 202, 210 Wis. 116—Olk v. Marquardt, 234 N.W. 723, 203 Wis. 479—Dormeyer v. Hall, 212 N.W. 257, 192 Wis. 197—Scheuer v. Manitowoc & Northern Traction Co., 159 N.W. 901, 164 Wis. 333—Pirie v. Le Saulnier, 154 N.W. 993, 161 Wis. 503.

Wyo.—Granlick v. Johnston, 213 P. 98, 29 Wyo. 349.

4 C.J. p 978 note 4, p 979 notes 7, 9.

Trial by court

Ala.—Pigford v. Billingsley, App., 84 So.2d 661, affirmed 84 So.2d 664, 264 Ala. 29.

Similar statement of rule

The admission of incompetent evidence is not available as error on appeal when appellant on his own behalf introduces evidence which admits, confesses, or otherwise sufficiently establishes the facts sought to be shown by the said incompetent evidence.

the facts are admitted by an agreement or stipulation entered into by the parties;[31] since, under the circumstances, the evidence could not mislead the jury.[32]

Various applications of this general rule have been made, among them cases in which the evidence improperly received consisted of hearsay,[33] secondary,[34] expert,[35] or opinion[36] evidence, evidence

Miss.—**Corpus Juris Secundum cited in** Standard Life Ins. Co. of the South v. Foster, 49 So.2d 391, 394, 210 Miss. 242—Ruffin v. J. & M. Schwabacher, 126 So. 14, 156 Miss. 326.

Handwriting

Ind.—Rushville Nat. Bank of Rushville v. State Life Ins. Co., 1 N.E.2d 445, 210 Ind. 492.

Accuracy of an account being admitted or undisputed, the erroneous admission of evidence in support of the account is harmless.

Ala.—Bevill v. Henegar-Dooley Shoe Co., 96 So. 133, 209 Ala. 262.

Ark.—Ferguson Lumber Co. v. Logan Long Co., 26 S.W.2d 569, 181 Ark. 1146.

Ga.—Hearn v. Weathers, 126 S.E. 877, 33 Ga.App. 503.

Miss.—Ruffin v. J. & M. Schwabacher, 126 So. 14, 156 Miss. 326.

Tex.—Alexander Marketing Co. v. Medford, Civ.App., 170 S.W.2d 809—Walzell v. Schuhmacher Co., Civ. App., 52 S.W.2d 696—Joy v. Fakes Furniture & Carpet Co., Civ.App., 286 S.W. 611—E. Alkemeyer Co. v. McCardell, Civ.App., 183 S.W. 416, dismissed for want of jurisdiction.

Evidence as to the danger of an operation is harmless, in a personal injury action, where it is admitted that the injury was permanent.

Ill.—Feldman v. Chicago Rys. Co., 124 N.E. 334, 289 Ill. 25, 6 A.L.R. 1291.

31. Ga.—Georgia, F. & A. R. Co. v. Purviance, 156 S.E. 731, 42 Ga.App. 519.

Ill.—People v. Lefens' Estate, 109 N.E. 965, 269 Ill. 472.

Tex.—Texas, etc., R. Co. v. Graham, Civ.App., 174 S.W. 297.

Certified copies of deeds

Ill.—Van Amburg v. Reynolds, 23 N.E.2d 694, 372 Ill. 317.

Admission in contract

In a suit for specific performance of a land sale contract, there is no error in allowing parol proof as to a mortgage and its foreclosure, which are conclusively admitted by the contract itself.

Ala.—Dabbs v. Letson, 98 So. 4, 210 Ala. 306.

Copies of memoranda, made in the general land office, if erroneously admitted, are harmless, where the facts shown thereby are fully embraced in an agreed statement of facts put in evidence.

Tex.—Allen v. Clearman, Civ.App., 128 S.W. 1140.

32. Mo.—Proctor v. Sutherland, 148 S.W. 127, 162 Mo.App. 641.

33. Ariz.—Inspiration Consol. Copper Co. v. Bryan, 252 P. 1012, 31 Ariz. 302.

Cal.—Crudo v. Guida, 110 P.2d 109, 43 C.A.2d 26—Eaton v. Thieme, 59 P.2d 638, 15 C.A.2d 458—Irwin v. Shuford, 87 S.E. 674, 144 Ga. 532.

Sconyers v. Pierce, 61 S.E.2d 439, 82 Ga.App. 436—C. J. Howard, Inc. v. C. V. Nalley & Co., 178 S.E. 174, 50 Ga.App. 343—American Mills Co. v. Hudson & Thompson, 92 S.E. 760, 20 Ga.App. 34.

Idaho.—In re O'Brien's Estate, 262 P. 152, 44 Idaho 729.

Ill.—Raxworthy v. Heisen, 191 Ill. App. 457, affirmed 113 N.E. 699, 274 Ill. 398.

Ind.—Iterman v. Baker, 15 N.E.2d 365, 214 Ind. 308.

Ind.—Hamilton v. Meiks, App., 198 N.E. 833, reversed on other grounds 4 N.E.2d 536, 210 Ind. 610.

Ky.—Louisville Lozier Co. v. Sallee, 180 S.W. 841, 167 Ky. 499.

Mich.—Dreyfus v. Daronco, 234 N.W. 587, 253 Mich. 235—Newton v. Consolidated Const. Co., 150 N.W. 348, 184 Mich. 63.

Minn.—Swanson v. Lindstrom, 185 N. W. 950, 151 Minn. 19.

Mo.—Day v. Lusk, 219 S.W. 597.

York v. Daniels, App., 259 S.W. 2d 109—Jansen v. Aholt, App., 189 S.W.2d 121—Brown v. Terminal R. Ass'n of St. Louis, App., 164 S.W. 2d 120.

S.D.—Christiansen v. Bankers' & Shippers' Ins. Co., 207 N.W. 108, 49 S.D. 225.

Tex.—Texas & N. O. R. Co. v. Stumberg, Civ.App., 115 S.W.2d 1126—Brotherhood of Locomotive Firemen and Enginemen v. Raney, Civ. App., 101 S.W.2d 863, error dismissed—American Life Ins. Co. v. Nabors, Civ.App., 48 S.W.2d 459, reversed on other grounds, 76 S.W. 2d 497, 124 Tex. 221—City of Brownsville v. Crixell, Civ.App., 275 S.W. 430—Brown v. Gray & Wilmerding, Civ.App. 256 S.W. 977—Western Union Telegraph Co. v. Fulton, Civ.App., 211 S.W. 285.

Vt.—Joly v. Jones, 55 A.2d 181, 115 Vt. 174—Bradley v. Blandin, 110 A. 309, 94 Vt. 243.

Va.—City of Richmond v. Jackson, 88 S.E. 49, 118 Va. 674.

4 C.J. p 999 note 11.

Admission by stipulation in trial by court

Cal.—Shyvers v. Mitchell, 284 P.2d 826, 133 C.A.2d 569.

34. Ark.—Texas Pipe Line Co. v. Johnson, 275 S.W. 329, 169 Ark. 235.

Ga.—Blassingame v. Davies, 157 S. E. 638, 172 Ga. 266.

Brooks v. Hartsfield Co., 192 S.E. 459, 56 Ga.App. 184.

Ind.—Sangster v. Bricker, 118 N.E. 383, 66 Ind.App. 409.

Ky.—Prudential Ins. Co. of America v. Downs, 64 S.W.2d 902, 251 Ky. 208.

S.D.—Owen-Fields, Inc., v. Sudow, 292 N.W. 110, 67 S.D. 297.

Tex.—American Indemnity Co. v. W. C. Munn Co., Civ.App., 278 S.W. 956—State Banking Board v. Pilcher, Civ.App., 256 S.W. 996, reversed on other grounds, Com.App., 270 S.W. 1004—Black v. Wilson, Civ.App., 187 S.W. 493, dismissed for want of jurisdiction.

4 C.J. p 979 note 8.

Admission in letter

Where defendant in a letter acknowledging receipt of goods stated "these were purchased by us," any error in admitting secondary evidence to show they were ordered by defendant is not prejudicial.

N.C.—Cleveland Akron Bag Co. v. A. F. Messick Grocery Co., 88 S.E. 512, 171 N.C. 764.

35. Ill.—Schachner v. Employers' Liability Assur. Corporation, 268 Ill.App. 503.

Ky.—Palmer Corporation v. Collins, 284 S.W. 95, 214 Ky. 838.

Mo.—Schleef v. Schoen, 270 S.W 410, 216 Mo.App. 499—Andrews v. Parker, App., 259 S.W. 807.

N.J.—Brown v. Coast Cities Ry. Co., 165 A. 866, 11 N.J.Misc. 347.

Tex.—Sternenberg v. Marshall, Civ. App., 257 S.W.2d 312, error refused no reversible error.

4 C.J. p 979 note 10.

36. Ariz.—Inspiration Consol. Copper Co. v. Bryan, 252 P. 1012, 31 Ariz. 302.

Cal.—Frinier v. C. J. Kubach Co., 171 P. 952, 177 C. 722.

Ga.—Seaboard Air Line Ry. Co. v. Young, 148 S.E. 757, 40 Ga.App. 4.

Mich.—Ford v. Maney's Estate, 232 N.W. 393, 251 Mich. 461, 70 A.L.R. 1315.

Mo.—McCollum v. Smith, App., 199 S.W. 271.

N.Y.—Conti v. Luchs, 73 N.Y.S.2d 763, 272 App.Div. 1025.

Tex.—Moody v. Castleberry, Civ.App., 151 S.W.2d 960—San Angelo Water, Light & Power Co. v. Baugh, Civ. App., 270 S.W. 1101—Lancaster v. Faskin, Civ.App., 248 S.W. 754—Kurz v. Soliz, Civ.App., 231 S.W. 424.

W.Va.—Merrill v. Marietta Torpedo Co., 92 S.E. 112, 79 W.Va. 669, L. R.A.1917F 1043.

for which a complete foundation has not been established,[36.5] and the testimony of an incompetent witness.[37]

The general rule also applies where the improper evidence consists of a bill of exceptions filed in an ancillary proceeding,[38] abstracts of title,[39] an auditor's report,[39.5] books of account,[40] copies of checks,[40.5] conclusions,[41] a copy of a contract,[41.5] conversations,[42] declarations,[43] a decree,[43.5] depositions,[44] and judgments.[45]

Further, the general rule is applicable where the improper evidence consists of letters[46] or copies of

Wis.—Winkler v. Power & Mach. Co., 124 N.W. 273, 141 Wis. 244.
4 C.J. p 979 note 11.

Intoxication
Iowa.—Bohnsack v. Driftmier, 52 N.W.2d 79, 243 Iowa 383.

Cumulative
(1) Error in the admission of a witness' opinion as to a fact is harmless, where it is merely cumulative of other uncontradicted evidence of that fact.
Ala.—Alabama Machinery & Supply Co. v. Caffey, 104 So. 509, 213 Ala. 260.

(2) Admission of opinion evidence, incompetent because of the lack of scientific knowledge on the subject by the witness giving it, is harmless, where his testimony conforms to that of a competent witness whose testimony is not contradicted or impeached.
Ill.—Raxworthy v. Heisen, 191 Ill. App. 457, 463, affirmed 113 N.E. 699, 274 Ill. 398.

36.5 R.I.—Moss v. Rocky Point Park, Inc., 103 A.2d 72, 41 A.L.R. 2d 657.

37. Ill.—See Tollar v. Bohemian Bldg. & Loan Ass'n, 187 Ill.App. 405.
Ky.—Prudential Ins. Co. of America v. Dudderer, 65 S.W.2d 745, 251 Ky. 627.
Mo.—Ruddy v. Gunby, App., 180 S.W. 1043.
Tex.—St. Louis, etc., R. Co. v. Blocker, Civ.App., 138 S.W. 156.
W.Va.—Merrill v. Marietta Torpedo Co., 92 S.E. 112, 79 W.Va. 669, L.R.A.1917F 1043.

Facts admitted at former trial
N.C.—Allen v. Allen, 195 S.E. 801, 213 N.C. 264.

38. Ga.—Young v. Germania Sav. Bank, 66 S.E. 925, 133 Ga. 699.

39. Tex.—Harry v. Hamilton, Civ. App., 154 S.W. 637.

39.5 Tex.—Victoria Gravel Co. v. Neyland, Civ.App., 114 S.W.2d 415, error dismissed.

40. Ala.—White v. W. B. Bean & Co., 77 So. 924, 16 Ala.App. 330.
Cal.—Preston v. Dunn, 166 P. 603, 33 C.A. 747.
Ga.—Hearn v. Weathers, 126 S.E. 877, 33 Ga.App. 503.
Iowa.—Council Bluffs Commercial Nat. Bank v. Flickinger, 135 N.W. 416, 156 Iowa 97.
Miss.—Geoghegan v. Krauss, 87 So. 2d 461.
N.Y.—Kittredge v. Grannis, 155 N.E. 88, 244 N.Y. 168.

40.5 Ala.—Hosey v. Southport Petroleum Co. of Delaware, 12 So.2d 93, 244 Ala. 45.

41. Ala.—Alabama Power Co. v. Fergusen, 87 So. 796, 205 Ala. 204.
Ill.—Skinner v. Illinois Third Vein Coal Co., 225 Ill.App. 158.
Iowa.—Iowa Windmill & Pump Co. v. Tobin, 195 N.W. 989.
Mo.—Grohmann v. The Maccabees, App., 237 S.W. 875—Barton v. Faeth, 186 S.W. 52, 193 Mo.App. 402.
Tex.—American Employers' Ins. Co. v. Singleton, Civ.App., 14 S.W.2d 939, reversed on other grounds Com.App., 24 S.W.2d 26—Brady v. Richey & Casey, Civ.App., 202 S.W. 170, dismissed for want of jurisdiction.
4 C.J. p 979 note 13.

Established by documentary evidence
Allowing a witness to give his conclusions is without prejudice, where the conclusions are conclusively established by unimpeachable documentary evidence.
Cal.—Brittan v. Fisher, 163 P. 874, 32 C.A. 616.

41.5 Okl.—O'Banion v. Morris Plan Indus. Bank, 204 P.2d 872, 201 Okl. 256.

42. Ind.—Chrysler Corp. v. Bolser, 200 N.E. 417, 102 Ind.App. 310.
Minn.—Young v. Great Northern Ry. Co., 282 N.W. 691, 204 Minn. 122.
Miss.—Henry v. Toney, 64 So.2d 904, 217 Miss. 716.
Mo.—Roberts v. Harmount Tie & Lumber Co., App., 264 S.W. 448—Cox v. McKinney, 258 S.W. 445, 212 Mo.App. 522.
N.J.—Hollander v. Smith & Smith, 76 A.2d 697, 10 N.J.Super. 82, 21 A.L.R.2d 902.
Okl.—Harden v. Kifer, 111 P.2d 490, 188 Okl. 538.
Pa.—Harris v. Botti, Com.Pl., 98 Pittsb.Leg.J. 91.
S.C.—Reliance Varnish Co. v. Mullins Lumber Co., 48 S.E.2d 653, 213 S.C. 84.
S.D.—Grant v. Matson, 3 N.W.2d 118, 68 S.D. 402.
Tenn.—Marable v. State ex rel. Wackernie, 222 S.W.2d 234, 32 Tenn.App. 238.
Tex.—Texas & P. Ry. Co. v. Mercer, Civ.App., 58 S.W.2d 896.
Wis.—In re Lauburg's Will, 175 N.W. 925, 170 Wis. 502.

Trial by court
Ohio.—Steiner v. Fecycz, 50 N.E.2d 617, 72 Ohio App. 18.

43. Ala.—Mobile Light & R. Co. v. Portiss, 70 So. 136, 195 Ala. 320.
Cal.—Wilcox v. Salomone, 258 P.2d 845, 118 C.A.2d 704.
Conn.—Cooke v. Weed, 97 A. 765, 90 Conn. 544.
Ind.—Chrysler Corporation v. Bolser, 200 N.E. 417, 102 Ind.App. 310.
Iowa.—Lozier Automobile Exch. v. Interstate Casualty Co., 195 N.W. 885, 197 Iowa 935.
Pa.—Gosh v. Lehigh & Wilkes-Barre Coal Co., 68 Pa.Super. 63.
Tex.—Dixie Motor Coach Corperation v. Meredith, Civ.App., 45 S.W.2d 364.
Wis.—Fillbach v. First Nat. Bank, 188 N.W. 655, 177 Wis. 520.
4 C.J. p 979 note 14.

Trial by court
Error, if any, in admission of self-serving declarations would not require reversal where appellants had, in their own testimony, admitted greater part of what was contained therein, especially where case was tried to court.
Cal.—Wilcox v. Salomone, 258 P.2d 845, 118 C.A.2d 704.

43.5 Neb.—From v. General American Life Ins. Co., 273 N.W. 36, 132 Neb. 731.

44. Ill.—Soibel v. Oconto Co., 20 N.E.2d 309, 299 Ill.App. 518.
Tex.—Martinez v. Bruni, Civ.App., 216 S.W. 655, modified on other grounds, Com.App., 235 S.W. 549—Hartford F. Ins. Co. v. Becton, Civ. App., 124 S.W. 474, error denied 125 S.W. 883.
Wash.—Scribner v. Palmer, 156 P. 531, 90 Wash. 595—Bickford v. Hupp, 145 P. 454, 83 Wash. 427.
Finley v. Pew, 205 P. 310, 28 Wyo. 342, rehearing denied 206 P. 148, 28 Wyo. 342.

45. Cal.—McAlvay v. Consumers' Salt Co., 297 P. 135, 112 C.A. 383.
Ind.—Prudential Ins. Co. of America v. Citizens Trust & Savings Bank of Evansville, 198 N.E. 116, 101 Ind. App. 168.
Iowa.—Hornish v. Overton, 221 N.W. 483, 206 Iowa 780.
Ky.—Gatton v. Dobbin, 144 S.W. 757, 147 Ky. 624.

46. Cal.—Chaplin v. Sullivan, 155 P. 2d 368, 67 C.A.2d 728.
Ind.—Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298.

letters,[47] a license application,[47.5] maps,[48] a copy of a mortgage,[48.5] ordinances,[49] patents from the United States government,[50] photographs,[51] pleadings,[52] records or copies thereof,[53] a report of an automobile accident[53.5] or of an investigation made by a government agency,[53.10] a resolution of a city council,[53.15] a statement of money due,[53.20] telegrams,[54] warehouse receipts,[54.5] and writings generally.[54.10]

The general rule applies where the improper evidence consists of evidence relating to safe or unsafe conditions[55] or defendant's knowledge there-

Iowa.—Porter v. Tenant, 197 N.W. 79, 197 Iowa 200—Lozier Automobile Exch. v. Interstate Casualty Co., 195 N.W. 885, 197 Iowa 935.
Pa.—O'Bara v. Bielecka, 123 A. 812, 279 Pa. 307.
Tex.—More v. More, Civ.App., 7 S.W. 2d 1096.
Utah.—Schofield v. Zion's Co-op. Mercantile Inst., 39 P.2d 342, 85 Utah 281, 96 A.L.R. 1083.
4 C.J. p 979 note 15.

As repetition

The erroneous admission of a letter in evidence is harmless, where it is a mere repetition of uncontradicted evidence received without objection.
Minn.—Bragg & Co. v. Johnson, 150 N.W. 223, 128 Minn. 64.

Admission of a letter of a justice of the peace, advising defendant that its action against plaintiff had been dismissed, is not prejudicial to defendant, where dismissal was conceded.
Mo.—Foley v. Union House Furnishing Co., 60 S.W.2d 725, 228 Mo.App. 1063.

47. Colo.—Ferch v. Morris, 151 P.2d 187, 112 Colo. 515.
Ga.—Investors' Realty Co. v. Thomson, 109 S.E. 524, 27 Ga.App. 700.
Mo.—Whitaker v. Bell Oil Co., 167 S. W. 619, 182 Mo.App. 229.
R.I.—Kirk v. Ball, 120 A. 165, 45 R.I. 93.

47.5 Idaho.—State ex rel. Good v. Boyle, 186 P.2d 859, 67 Idaho 512.

48. Colo.—Phillips v. City of Golden, 14 P.2d 1013, 91 Colo. 331.
4 C.J. p 979 note 17.

Map of premises

Error in admitting a map made by one acquainted with the premises after they were torn down is harmless, where there is no conflict as to the condition of the premises.
Ark.—Harrelson v. Eureka Springs Electric Co., 181 S.W. 922, 121 Ark. 269.

Testimony as to contents of map

Testimony of a witness as to the contents of a map, the loss of which had been duly established, is admissible over objection that parol evidence could not be admitted to vary the description in a certain exhibit, and its admission is harmless where the only matter thereby proved is not really in dispute.
Conn.—Torrington Electric Light Co. v. Stedman, 123 A. 261, 100 Conn. 217.

48.5 Conn.—Lomas & Nettleton Co. v. City of Waterbury, 188 A. 433, 122 Conn. 228.

49. Ga.—Smith v. Savannah Electric Co., 102 S.E. 548, 25 Ga.App. 59.
Mo.—City of Macon v. Fidelity & Deposit Co. of Maryland, 189 S.W. 645, 194 Mo.App. 677.

50. Cal.—Hohn v. Pauly, 106 P. 266, 11 C.A. 724.

51. Ky.—Consolidated Coach Corporation v. Saunders, 17 S.W.2d 233, 229 Ky. 284.

52. Okl.—Kelly v. Watkins, 39 P.2d 975, 170 Okl. 185.

Answers

(1) The admission of an answer in another cause over defendant's objection that it had not been properly certified, if error, is cured by defendant's admission that he authorized such answer to be filed.
Tex.—Mead v. King, Civ.App., 285 S. W. 832.

(2) Any error in admitting in evidence an abandoned answer as an admission of abandonment of land for the purpose for which it was deeded is harmless, where all the circumstances show the abandonment.
Tex.—Red River, T. & S. Ry. Co. v. Davis, Civ.App., 195 S.W. 1160, error refused.

Complaint

Admission in evidence of interpleading complaint filed by certain parties made defendants in bill for interpleader filed by insurer was not error, where it merely corroborated already admitted fact that there was controversy as to payment of proceeds of policy.
Md.—Miller v. Massachusetts Mut. Life Ins. Co., 36 A.2d 517, 183 Md. 19.

53. Ill.—Braude v. Wardy, 172 N.E. 161, 340 Ill. 180.
Okl.—Gilliland v. Snedden, 159 P.2d 734, 195 Okl. 601.

Admission of a Bible record to show that a person was under sixteen was not prejudicial, even if the record was not properly verified, where there was ample competent and uncontradicted parol testimony as to his age.
Ky.—Elkhorn Seam Collieries Co. v. Craft, 270 S.W. 460, 207 Ky. 849.

Certified copy of proceedings

The erroneous admission of a certified copy of proceedings before commissioners is harmless, where the facts sought to be proved thereby are conclusively proven by other competent and uncontradicted evidence.
Ind.—Massachusetts Bonding & Insurance Co. v. State, 131 N.E. 398, 191 Ind. 595.

53.5 N.Y.—Bloomer v. New York Tel. Co., 78 N.Y.S.2d 582, 273 App. Div. 1041.

53.10 Minn.—Krueger v. City of Faribault, 18 N.W.2d 777, 220 Minn. 89.

53.15 Ill.—Schillo v. City of Chicago, 62 N.E.2d 22, 326 Ill.App. 463.

53.20 Cal.—Chaplin v. Sullivan, 155 P.2d 368, 67 C.A.2d 728.
Okl.—Gilliland v. Yard, 57 P.2d 603, 177 Okl. 49.

54. Minn.—Flick v. Ellis-Hall Co., 165 N.W. 135, 138 Minn. 364.
Tex.—Taylor v. Hearn, Civ.App., 133 S.W. 301.
Utah.—B. T. Moran, Inc. v. First Sec. Corporation, 24 P.2d 384, 82 Utah 316.

54.5 Tex.—Panhandle Compress & Warehouse Co. v. Borum, Civ.App., 95 S.W.2d 185, error dismissed.

54.10 Ala.—Huffstutler v. Edge, 47 So.2d 191, 35 Ala.App. 276, affirmed 47 So.2d 197, 254 Ala. 102.
Ga.—Prothro v. Walker, 42 S.E.2d 114, 202 Ga. 71.
Hamel v. Elliott, 54 S.E.2d 688, 79 Ga.App. 633.

Rules for operation of electric trains
Cal.—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925.

55. Cal.—Hall v. Bakersfield Community Hotel Corp., 125 P.2d 889, 52 C.A.2d 158.
Ky.—Illinois Cent. R. Co. v. McGuire's Adm'r, 38 S.W.2d 913, 239 Ky. 1.
Okl.—City of Cushing v. Bowdlear, 177 P. 561, 74 Okl. 138.
Tex.—City of Abilene v. Luhn, Civ. App., 65 S.W.2d 370—Chicago, R. I. & G. Ry. Co. v. Steele, Civ.App., 264 S.W. 503.
4 C.J. p 979 note 26.

Sparks from locomotive

In an action for death in a fire claimed to have been set by sparks from a particular locomotive, admission of testimony as to sparks from other locomotives on other occasions in the same neighborhood and of other fires in such neighborhood, if error, was harmless, where it was conceded that, if a locomotive spark caused the fire in which plaintiff's intestate lost his life, it was from the particular locomotive.
Ky.—Louisville & N. R. Co. v. Hobbs, 221 S.W. 539, 188 Ky. 291.

of,[56] to payment,[57] partnership agreements,[58] repairs made after an accident,[58.5] the speed of a vehicle,[58.10] and to the agency or authority of an agent or deputy.[59]

Support of judgment. The erroneous admission of evidence is harmless where other undisputed facts amply support the judgment.[59.5]

b. Admissions in Pleadings

The admission of improper evidence as to facts which are admitted in the adverse party's pleading is harmless error.

As matters admitted in the pleadings of an opponent require no proof, as discussed in Pleading § 523, it is harmless error to admit improper evidence tending to prove or to disprove facts so admitted.[60] The rule applies, not only where facts are expressly admitted in the pleadings, but also where they are admitted by being properly pleaded by one party and not properly denied by the other.[61]

56. Mo.—Beckwith v. City of Malden, 253 S.W. 17, 212 Mo.App. 488—Perry v. Sedalia, 153 S.W. 536, 168 Mo.App. 235.

57. Ark.—Heard v. Farmers' Bank of Hardy, 295 S.W. 38, 174 Ark. 194.
Ga.—Butler v. McClure, 170 S.E. 678, 177 Ga. 552.
Tex.—Pease v. State, Civ.App., 228 S.W. 269, error refused.
4 C.J. p 980 note 28.

58. Mont.—Chealey v. Purdy, 171 P. 926, 54 Mont. 489.
4 C.J. p 980 note 29.

58.5 Mo.—Cordray v. City of Brookfield, 88 S.W.2d 161.

58.10 Cal.—Smith v. Schwartz, 96 P. 2d 816, 35 C.A.2d 659.
Iowa.—Stein v. Sharpe, 295 N.W. 155, 229 Iowa 812.

59. Ala.—Cosby-Hodges Milling Co. v. Nance, 29 So.2d 575, 33 Ala.App. 48.
Ariz.—Clark v. Adams, 5 P.2d 413, 39 Ariz. 257.
Cal.—Fernandez v. Watt, 146 P. 47, 26 C.A. 86.
Ind.—Swarthout v. McDonald Mortgage & Realty Co., 199 N.E. 467, 102 Ind.App. 298.
Tex.—Carr v. Wright, Civ.App., 190 S.W. 254.
Wyo.—Studebaker Corp. of America v. Hanson, 157 P. 582, 24 Wyo. 222, Ann.Cas.1917E 557, affirmed 160 P. 336, 24 Wyo. 222, Ann.Cas.1917E 557.
4 C.J. p 980 note 30.

Allowing an agent to testify as to the agency relationship is harmless error, where there is other uncontradicted testimony establishing the fact.
Ind.—Bright Nat. Bank v. Hanson, 113 N.E. 434, 68 Ind.App. 61.

Power of attorney
Where the possession of property is otherwise established without conflict, the rejection of a power of attorney offered to show possession was not prejudicial.
Ala.—Davis v. Morgan, 91 So. 318, 206 Ala. 576.

59.5 Cal.—Spiegelman v. Metropolitan Life Ins. Co., 68 P.2d 1006, 21 C.A.2d 299.
N.C.—Lupton v. Day, 190 S.E. 722, 211 N.C. 443.

60. Ala.—Ex parte Woodward Iron Co., 102 So. 103, 212 Ala. 220.
Hill Grocery Co. v. Hameker, 89 So. 850, 18 Ala.App. 84.
Cal.—Nevin v. Mercer Casualty Co., 55 P.2d 251, 12 C.A.2d 222—Hopkins v. J. D. Millar Realty Co., 289 P. 221, 106 C.A. 409.
Ga.—Moss v. Youngblood, 200 S.E. 689, 187 Ga. 188.
Collins v. Strickland Bros., 94 S. E. 1035, 21 Ga.App. 542—May v. Subers, 91 S.E. 435, 19 Ga.App. 306.
Idaho.—Elson v. Jones, 245 P. 95, 42 Idaho 349.
Ky.—Sebree Deposit Bank v. Rakestraw, 197 S.W. 522, 177 Ky. 74.
Mo.—Bonney v. Diamond Wood Heel Mfg. Co., 266 S.W. 1024, 216 Mo. App. 42—George v. Kansas City American Ass'n Baseball Co., App., 219 S.W. 134.
Mont.—Stone-Ordean-Wells Co. v. Strong, 20 P.2d 639, 94 Mont. 20—Meredith v. Bitter Root Valley Irr. Co., 141 P. 643, 49 Mont. 204.
Okl.—Gilliland v. Yard, 57 P.2d 603, 177 Okl. 49—Farmers' State Bank of Olustee v. Gravelle, 195 P. 1092, 80 Okl. 276.
Tenn.—**Corpus Juris cited in** Stone v. O'Neal, 90 S.W.2d 548, 553, 19 Tenn. App. 512.
Tex.—Campbell v. Hicks, Civ.App., 83 S.W.2d 1013, error dismissed—Republic Ins. Co. v. Highland Park Independent School Dist., Civ.App., 74 S.W.2d 422—Marcus v. Huguley, Civ.App., 37 S.W.2d 1100—Haugen v. Johnson, Civ.App., 282 S.W. 1115, error dismissed 283 S.W. 480, 115 Tex. 489—State Banking Board v. Pilcher, Civ.App., 256 S.W. 996, reversed on other grounds, Com.App., 270 S.W. 1004.
Vt.—Girard v. Vermont Mut. Fire Ins. Co., 154 A. 666, 103 Vt. 380.
4 C.J. p 980 note 32.
Improper evidence of matters requiring no proof as harmless error generally see infra § 1733.

Trial by court
Ind.—Oberlin v. Pyle, 49 N.E.2d 970, 114 Ind.App. 21.

Offer of compromise
Tex.—Tompkins v. Vickers, Civ.App., 243 S.W.2d 257, error refused no reversible error.

In counterclaim
Permitting plaintiff to testify that defendants, with whom he first had a conversation about drilling a well, said that they were acting for all defendants was erroneous, but without prejudice to defendants, whose counterclaim alleged that they were copartners.
Mont.—Chealey v. Purdy, 171 P. 926, 54 Mont. 489.

Traffic ordinances
Any error in permitting the introduction of traffic ordinances, in an action arising out of a collision between an automobile and a streetcar, is not prejudicial, where the pleadings show the substance of the ordinances.
Ark.—Arkansas Power & Light Co. v. Cummins, 28 S.W.2d 1077, 181 Ark. 1145, 182 Ark. 1.

Transcript of pleadings
If it is error to admit a transcript of the pleadings of another case in evidence, it is harmless, where it is averred in the complaint and admitted in the answer that a certain judgment was entered in such case.
N.J.—Castelbaum v. Wolfson, 104 A. 84, 92 N.J.Law 165.

Withdrawn answer as evidence
Admission in evidence of an answer, which had been filed and then withdrawn, is harmless where the fact sought to be proved thereby was admitted in the substituted answer.
Conn.—Baker v. Paradiso, 169 A. 272, 117 Conn. 539.

61. Fla.—Panama City v. York, 26 So.2d 184, 157 Fla. 425.
Ind.—Hamilton v. Meiks, App., 198 N.E. 833, reversed on other grounds 4 N.E.2d 536, 210 Ind. 610.
Ky.—Dowdy v. Preston, 11 Ky.Op. 623.
Mo.—Cordray v. City of Brookfield, 88 S.W.2d 161.
Okl.—Federal Life Ins. Co. v. Lewis, 183 P. 975, 76 Okl. 142, 5 A.L.R. 1637—St. Louis & S. F. R. Co. v. Wm. Bondies & Co., 166 P. 179, 64 Okl. 88.
S.C.—Leonard v. People's Tobacco Warehouse Co., 122 S.E. 678, 128 S.C. 155.
Tex.—Galveston, H. & S. A. Ry. Co. v. Kellogg, Civ.App., 172 S.W. 180.
4 C.J. p 980 note 33.

§ 1733. Matters Requiring No Proof

a. Matters of common and judicial knowledge
b. Construction of writing in evidence

a. Matters of Common and Judicial Knowledge

The erroneous admission of evidence as to a matter of law, or a matter which is of common knowledge and of which the court may take judicial notice, or which follows as a legal conclusion or presumption from other facts, is harmless error.

As matters of law, such as the contents of a statute, and rights and liabilities fixed by law, require no proof, the admission of evidence tending to prove them is harmless error.[62] So, also, it is not prejudicial error to admit evidence to establish matters which in the absence of any evidence to the contrary, the court or jury would be presumed to know,[63] or which necessarily follow as legal conclusions or presumptions from the facts already established.[64]

It is not prejudicial error to receive evidence relating to a matter which is common knowledge and of which the court may take judicial notice,[65] or for a witness to express an opinion on a matter of common knowledge, experience, or observation.[66] Presumption of ownership, however, does not render harmless the erroneous admission of evidence of a gift.[67]

Admission of evidence for the purpose of showing knowledge or lack of knowledge is not reversible error, where, as a matter of law, a person is bound to know a certain thing;[68] and admission of evidence to show lack of knowledge is not reversible error where by reason of other holdings in the case knowledge is unnecessary.[69]

b. Construction of Writing in Evidence

The erroneous admission of evidence involving the construction of an unambiguous written instrument which is before the court is harmless where it is in consonance with the plain meaning of the instrument and the interpretation thereof by the court.

The admission of testimony tending to show the intent of the parties to a clear and unambiguous instrument, their understanding of its terms, or the

Accounts

Where defendant does not question the correctness of sworn itemized accounts filed with complaints, he is not prejudiced by the testimony respecting such accounts.

Ark.—Moore v. Rogers Wholesale Grocery Co., 8 S.W.2d 457, 177 Ark. 993.

62. Okl.—Gillis v. First Nat. Bank of Frederick, 148 P. 994, 47 Okl. 411.

4 C.J. p 980 note 34.

63. N.C.—Brinkley v. Norfolk So. R. Co., 84 S.E. 700, 168 N.C. 428.

4 C.J. p 981 note 35.

Sobriety

In view of the presumption of sobriety, the erroneous admission of evidence tending to show that deceased, killed by defects in a highway, was sober, is harmless.

Iowa.—Richardson v. Sioux City, 154 N.W. 430, 172 Iowa 260, Ann.Cas. 1918A 618.

Reputation and character

The admission of evidence as to a person's reputation and character is harmless, since such evidence merely tends to prove a fact which the law will presume.

Kan.—Conrad v. Roberts, 147 P. 795, 95 Kan. 180, L.R.A.1915E 131, Ann. Cas.1917E 891.

Okl.—National Council, Knights and Ladies of Security, v. Owen, 149 P. 231, 47 Okl. 464.

64. Ala.—American Automobile Ins. Co. v. Watts, 67 So. 758, 12 Ala. App. 518, certiorari denied Ex parte American Automobile Ins. Co., 67 So. 1017.

Mo.—Sudmeyer v. United Rys. Co. of St. Louis, 228 S.W. 64.

N.C.—Pennell v. Brookshire, 136 S.E. 257, 193 N.C. 73.

Okl.—Rice v. Theimer, 146 P. 702, 45 Okl. 618.

Tex.—Elmendorf v. City of San Antonio, Civ.App., 223 S.W. 631, reversed on other grounds, Com. App., 242 S.W. 185—Hughes v. Robinson, Civ.App., 214 S.W. 946, reversed on other grounds Roberson v. Hughes, Com.App., 231 S.W. 734.

Wash.—Holt v. School Dist. No. 71 of King County, 173 P. 335, 102 Wash. 442.

4 C.J. p 981 note 36.

Disclosure of information to principal

In a libel action, admission of plaintiff's testimony that defendant's reporter said he reported plaintiff's warning not to publish the article, although hearsay, is harmless, in view of the conclusive presumption that the reporter disclosed such information to his principal.

Conn.—Corsello v. Emerson Bros., 137 A. 390, 106 Conn. 127.

Presumption of death from absence

Erroneous admission of hearsay evidence as to insured's death does not require a reversal where his death is proved by the presumption arising from seven-year absence.

Tex.—Heralds of Liberty v. Fern, Civ.App., 289 S.W. 87, affirmed, Com.App., 296 S.W. 498.

65. N.H.—Weiss v. Wasserman, 15 A.2d 861, 91 N.H. 164.

N.D.—Evenson v. Nelson, 168 N.W. 36, 39 N.D. 523.

Tenn.—**Corpus Juris cited in** Stone v. O'Neal, 90 S.W.2d 548, 553, 19 Tenn.App. 512.

Tex.—Saur v. South Texas Bank & Trust Co., Civ.App., 85 S.W.2d 265, error dismissed.

4 C.J. p 981 note 37.

Mortuary table

In an action for injuries due to a fall on a sidewalk, admission of a mortuary table is harmless, the table conveying no information that is not the common knowledge of mankind.

Wash.—Fisher v. City of Anacortes, 186 P. 271, 109 Wash. 191.

66. Vt.—Boynton v. Hunt, 92 A. 153, 88 Vt. 187.

Wash.—Holt v. School Dist. No. 71 of King County, 173 P. 335, 102 Wash. 442.

4 C.J. p 981 note 38.

"F. O. B."

The admission of the opinion of a witness as to the meaning of the term "f. o. b." is not prejudicial error, where the meaning is not extended beyond what is commonly understood and accepted in the commercial world and by the courts as the true signification.

Cal.—Whitaker v. Dunlap-Morgan Co., 186 P. 181, 44 C.A. 140.

67. Mo.—McCune v. Daniels, App., 225 S.W. 1020.

68. Ind.—Union Tract. Co. v. Barnett, 67 N.E. 205, 31 Ind.App. 467.

4 C.J. p 981 note 39.

69. N.Y.—Skinner v. Norman, 59 N. E. 309, 165 N.Y. 565, 80 Am.S.R. 776.

construction put on it by them, is harmless error when in consonance with the plain meaning of the instrument, which is before the court, and the interpretation given it by the court.[70] So, also, where one instrument is before the court for construction, the introduction in evidence of other written instruments to show the same construction as the court derives from the instrument itself is error without prejudice.[71]

§ 1734. Cure of Errors

Error in admitting evidence may be cured by subsequent acts or proceedings in the case.

Error in the admission of evidence as to improper matters is not ground for reversal where such matters were explained to the jury and no relief was sought as to them.[71.50] Error in admitting letters in evidence is harmless where the views expressed therein are orally argued before the jury by counsel for each party;[72] and error in the admission of evidence as to a particular fact is harmless where the assignment of error involving such fact is waived.[73] So, also, error in the admission of preliminary proof is harmless where the final evidence is not introduced;[74] error in the admission of photographs is cured by the jurors' inspection of the objects and localities photographed;[75] and an erroneous admission in ejectment on disclaimer of evidence, admissible only to show adverse possession, is cured by the subsequent injection of the general issue.[76]

Error, however, in the admission of incompetent evidence, aggravated by the statement of the court emphasizing its importance, is not cured by the subsequent proposal of the court to set aside the swearing of the jury.[77]

70. Cal.—Rudneck v. Southern California Metal & Rubber Co., 193 P. 775, 184 C. 274.
Marlin v. Robinson, 11 P.2d 70, 123 C.A. 373—In re Hunsicker, 223 P. 411, 65 C.A. 114.
Ill.—People v. Sylvester, 242 Ill.App. 565. See Russell v. Mahaffey Co., 199 Ill.App. 388.
Ky.—Canewood Oil Co. v. Cox, 63 S.W.2d 945, 250 Ky. 800.
Mich.—McNamara v. E. W. Ross Co., 196 N.W. 336, 225 Mich. 335.
Minn.—Stanton v. Morris Const. Co., 199 N.W. 104, 159 Minn. 380.
Mo.—Karr & Conn v. Cade School Co-op. Drainage District, App., 297 S.W. 730—Vogel v. Bushnell, 221 S.W. 819, 203 Mo.App. 623.
N.J.—Thompson v. Briscoe, 156 A. 488, 108 N.J.Law 387.
Or.—Ashley & Rumelin v. Lance, 171 P. 561, 88 Or. 109.
Pa.—Wolverine Glass Co. v. Miller, 123 A. 672, 279 Pa. 138.
Tex.—Byrd v. Dennis, Civ.App., 222 S.W.2d 926—Porter v. Shaw, Civ. App., 12 S.W.2d 595—Werthan Bag Co. v. Houston Bag & Bagging Co., Civ.App., 230 S.W. 1055, dismissed for want of jurisdiction—Houston Oil Co. v. Bunn, Civ.App., 209 S.W. 830, error granted, reversed on other grounds, Com.App., 256 S.W. 259—Dunn v. Land, Civ.App., 193 S.W. 698—Boerger v. Vandegrift, Civ.App., 188 S.W. 948—Molloy v. Brower, Civ.App., 171 S.W. 1079.
Vt.—Williams Mfg. Co. v. Insurance Co. of North America, 106 A. 657, 93 Vt. 161.
Va.—Triplett v. Nichols, 123 S.E. 339, 139 Va. 321.
Wash.—Chapin v. American Can Co., 222 P. 882, 128 Wash. 316.
Wis.—Gerkhardt v. Mandarin Co., 195 N.W. 910, 182 Wis. 11—Carlock v. Johnson, 160 N.W. 1053, 165 Wis. 49.
4 C.J. p 982 note 42.

Lease
Cal.—Frank Taylor, Inc. v. Bomalick, 271 P.2d 188, 125 C.A.2d 753.
Ky.—Akins v. City of Covington, 97 S.W.2d 588, 265 Ky. 740.

Mere conclusion of a witness that an instrument clearly expressed the intention of the parties and was to settle all controversies which they had against an estate is harmlessly admitted in the evidence, where the instrument is unambiguous and its construction is for the court.
Tex.—Nesbit v. Richardson, Civ.App., 229 S.W. 595, dismissed for want of jurisdiction.

Assignment pursuant to power of attorney
Reception of testimony as to the ratification of an assignment of the balance of a mortgage debt, assigned pursuant to a power of attorney, if erroneous, is harmless, where the power of attorney was sufficient to authorize the assignment.
Ala.—Dawsey v. Kirven, 103 So. 866, 212 Ala. 652.

Consideration
In an action involving a deed, which recites a consideration, testimony confirmatory as to the consideration is harmless, in the absence of evidence impeaching the consideration.
Tex.—De Shazo v. Eubank, Civ.App., 191 S.W. 369, reversed on other grounds, Com.App., 222 S.W. 976.

Contents of note
Where a mortgage introduced in evidence without objection substantially describes a note it secures, admission of parol testimony to show the contents of the note is harmless.
Tex.—T. W. Marse & Co. v. Flockinger, Civ.App., 189 S.W. 1017.

Letters and telegrams
Where the interpretation to be placed on letters and telegrams constituting a contract of sale is clear, the admission of oral evidence as to the terms of the agreement and the preliminary negotiations is harmless error.
Cal.—Doran, Brouse & Price v. Henry Cowell Lime & Cement Co., 174 P. 90, 37 C.A. 478.

Provisions of policy
Error, if any, in permitting insurer's district agent to explain the provision of a policy sued on is not prejudicial to insurer, where the testimony and the policy were the same in legal effect.
Ala.—American Nat. Ins. Co. v. Few, 141 So. 234, 224 Ala. 576.

71. Mo.—Skinner v. Skinner, 77 Mo. 148.
4 C.J. p 982 note 43.

71.50 Okl.—Parkade Corp. v. Locke, 260 P.2d 1084.

Invoice and bill of repair
Admission of invoice and bill of repair which included repairs not occasioned by defendant's negligence held cured, where such additional charges were explained to jury and no effort was made to recover for them.
Okl.—Parkade Corp. v. Locke, supra.

72. N.J.—Baylor v. State Mut. Life Assur. Co. of Worcester, Mass., 174 A. 526, 113 N.J.Law 389.

73. Ind.—Chesapeake & O. Ry. Co. of Indiana v. Perry, 118 N.E. 548, 66 Ind.App. 532.

74. Ill.—Tidholm v. Tidholm, 74 N.E.2d 514, 397 Ill. 363.
N.C.—White v. Hines, 109 S.E. 31, 182 N.C. 275.

75. Colo.—Vickroy v. General Outdoor Advertising Co., 22 P.2d 642, 92 Colo. 574.

76. Ala.—First Nat. Bank v. Johnson, 67 So. 234, 190 Ala. 566.

77. Ky.—Occidental Ins. Co. v. Chasteen, 75 S.W.2d 363, 255 Ky. 710.

Agreed state of case. Where the parties agree as to the state of the case on which the improper evidence was admitted, any error in the admission of evidence as to such matters is cured.[77.5]

§ 1735. —— By Evidence Subsequently Admitted

a. In general
b. Evidence admitted in favor of adverse party
c. Evidence rendering incompetent evidence admissible

a. In General

(1) Same or similar evidence

(2) Evidence curing defects or supplying omissions

(1) Same or Similar Evidence

Error in admitting improper evidence may be cured by the subsequent establishment of the same facts by proper evidence of the same or similar effect.

If the same facts are afterward substantially established by proper evidence of the same or similar effect, the admission of improper evidence is harmless;[78] and this is especially so where the later evidence is admissed without contradiction[78.5] or objection.[79]

This rule has been applied to error in the admis-

77.5 N.J.—Van Horn v. Burgi, 44 A. 2d 390, 133 N.J.Law 371.

Price ceiling

Any error in receiving improper evidence as to price ceiling was cured by agreement of parties as to rents charged and legal rent which should have been charged.
N.J.—Van Horn v. Burgi, supra.

78. Ala.—Alabama Great Southern R. Co. v. Baum, 31 So.2d 366, 249 Ala. 442.
Commonwealth Life Ins. Co. v. Wilkinson, 129 So. 300, 23 Ala.App. 561.
Cal.—Barlow v. Frink, 152 P. 290, 171 C. 165.
Basye v. Craft's Golden State Shows, 111 P.2d 746, 43 C.A.2d 782.
Colo.—Anderson v. Sterling Lumber & Investment Co., 256 P. 10, 81 Colo. 452.
Ga.—Arrington v. Thompson, 88 S.E. 2d 402, 211 Ga. 734.
Willis Lumber Co. v. Roddenbery, 77 S.E.2d 110, 88 Ga.App. 352—Bedgood v. Jeffcoat, 50 S.E.2d 260, 78 Ga.App. 104.
Idaho.—Penn Mut. Life Ins. Co. v. Ireton, 65 P.2d 1032, 57 Idaho 466.
Ill.—Garner v. Burns Mid-Town, Inc., 104 N.E.2d 506, 346 Ill.App. 162. See St. Louis, I. M. & S. Ry. Co. v. H. H. Hall Const. Co., 194 Ill.App. 146.
Iowa.—Lone Tree Bank v. Timmerman, 188 N.W. 856, 193 Iowa 1320.
Me.—Baker v. Petrin, 95 A.2d 806, 148 Me. 473.
Md.—Baltimore & O. R. Co. v. Branson, 98 A. 225, 128 Md. 678, reversed on other grounds 37 S.Ct. 244, 242 U.S. 623, 61 L.Ed. 534.
Minn.—Donlin v. Wamsley, 223 N.W. 98, 176 Minn. 234—Wright v. Waite, 148 N.W. 50, 126 Minn. 115.
Mo.—Marty v. Security Ben. Ass'n, App., 99 S.W.2d 132—Schuler v. Metropolitan Life Ins. Co., 176 S. W. 274, 191 Mo.App. 52.
N.H.—Duteny v. Pennichuck Water Co., 146 A. 161, 84 N.H. 65.
N.Y.—Sahoff Corporation v. William B. May Co. Real Estate, 15 N.Y.S. 2d 795, 258 App.Div. 157, reargument denied 16 N.Y.S.2d 1016, 258 App.Div. 877.
N.C.—Smith Builders Supply, Inc. v. Dixon, 97 S.E.2d 767, 246 N.C. 136 —**Corpus Juris Secundum cited in** Spivey v. Newman, 59 S.E.2d 844, 847, 232 N.C. 281—W. I. Anderson & Co. v. American Mut. Liability Ins. Co. of Boston, 194 S.E. 281, 212 N.C. 672—Gaffney v. Phelps, 178 S.E. 231, 207 N.C. 553.
Or.—Meridianal Co. v. Moeck, 253 P. 525, 121 Or. 133.
Pa.—Mellott v. Mellott, 55 Pa.Super. 614.
S.C.—Bense v. O'Neill, 151 S.E. 228, 154 S.C. 126.
S.D.—Holmberg v. Dunkelberger, 164 N.W. 72, 39 S.D. 283.
Tex.—Mitchell v. City of Temple, Civ.App., 152 S.W.2d 1116, error refused—Robinson v. Fort Worth Hospitals Holding Corp., Civ.App., 109 S.W.2d 1077, error dismissed.
Wash.—Hinckel v. Steigers, 191 P. 2d 279, 30 Wash.2d 171—Marrazzo v. Orino, 78 P.2d 181, 194 Wash. 364.
4 C.J. p 982 note 44.

Privileged communications

If an attorney in a suit for alienation of affections of plaintiff's wife testified to privileged communications made by one of defendants, any error committed therein was rendered harmless, where defendants all voluntarily testified as witnesses in their own behalf, fully and at length, as to the particular matters of the objectionable communication.
Or.—Cole v. Johnson, 205 P. 282, 103 Or. 319.

78.5 Tex.—Robinson v. Fort Worth Hospitals Holding Corp., Civ.App., 109 S.W.2d 1077, error dismissed.

79. Ala.—Southern Wood Preserving Co. v. McCamey, 118 So. 393, 218 Ala. 201.
Hill v. Condon, 70 So. 208, 14 Ala.App. 332.
Cal.—Fernandez v. Watt, 146 P. 47, 26 C.A. 86.
Ga.—Arrington v. Thompson, 88 S. E.2d 402, 211 Ga. 734.
Willis Lumber Co. v. Roddenbery, 77 S.E.2d 110, 88 Ga.App. 352—Kell v. Hunter, 67 S.E.2d 597, 84 Ga.App. 792—Southeastern Greyhound Lines v. Hancock, 31 S.E.2d 59, 71 Ga.App. 471—Beaver v. Magid, 192 S.E. 497, 56 Ga.App. 272—Bullard v. Metropolitan Life Ins. Co., 122 S.E. 75, 31 Ga.App. 641—Fletcher v. Southern Loan Co., 93 S.E. 313, 20 Ga.App. 653—McLeod v. Travelers' Ins. Co., 92 S.E. 1014, 20 Ga.App. 228.
Ill.—Sundquist v. Hardware Mut. Fire Ins. Co. of Minnesota, 16 N.E. 2d 771, 296 Ill.App. 510, affirmed 21 N.E.2d 297, 371 Ill. 360, 124 A.L.R. 1375.
Ind.—Meshberger v. Thomas, 193 N. E. 392, 99 Ind.App. 519.
Ky.—Campbell v. Chitwood, 176 S.W. 36, 164 Ky. 638.
Me.—Reid v. Eastern S. S. Co., 90 A. 609, 112 Me. 34.
Md.—Shpritz v. Baltimore Trust Co., 135 A. 369, 151 Md. 503.
Mass.—Newton Const. Co. v. West & South Water Supply Dist. of Acton, 93 N.E.2d 457, 326 Mass. 171.
Minn.—Tremont v. General Motors Acceptance Corporation, 223 N.W. 137, 176 Minn. 294.
N.C.—Davis v. Vaughn, 91 S.E.2d 165, 243 N.C. 486—Spears v. Randolph, 86 S.E.2d 263, 241 N.C. 659 —**Corpus Juris Secundum cited in** Spivey v. Newman, 59 S.E.2d 844, 847, 232 N.C. 281—Union Indemnity Co. v. Perry, 158 S.E. 560, 200 N.C. 765—Smathers v. Jennings, 87 S.E. 534, 170 N.C. 601.
Or.—Warner v. Ellison, 276 P. 1108, 129 Or. 197.
R.I.—Haas v. Simeone, 21 A.2d 13, 67 R.I. 108.
S.C.—Snipes v. Augusta-Aiken Ry. & Electric Corporation, 149 S.E. 111, 151 S.C. 391.

sion or reception of hearsay evidence,[80] depositions,[81] admissions,[82] declarations,[83] improperly certified records or other documents,[84] documents not filed among the papers in the case,[84.5] offers of compromise and settlement,[84.10] the transcript of a related appeal,[84.15] hospital records,[84.20] and evidence of custom.[85]

In order, however, to effect a cure in such cases, the subsequent evidence must be substantially the same as that improperly admitted,[86] and such error is not cured by the admission of incompetent evidence duly objected to,[87] even though such evidence is admitted to counter the prejudicial effect

Tex.—Sanger v. Craddock, 2 S.W. 196.
Kothmann v. Phipps, Civ.App., 214 S.W.2d 201, error refused no reversible error—Austin v. De George, Civ.App., 55 S.W.2d 585—Wolf v. Wolf, Civ.App., 269 S.W. 488—Burge v. Broussard, Civ.App., 258 S.W. 502—Southland Life Ins. Co. v. Hopkins, Civ.App., 219 S.W. 254, reversed on other grounds, Com.App., 244 S.W. 989—Texas Cent. R. Co. v. Claybrook, Civ.App., 178 S.W. 580—International Travelers' Ass'n v. Branum, Civ.App., 169 S.W. 389, reversed on other grounds 212 S.W. 630, 109 Tex. 543—St. Louis Southwestern Ry. Co. v. Huffman, Civ.App., 32 S.W. 30.
Va.—Portner v. Portner's Ex'rs, 112 S.E. 762, 133 Va. 251.
Wash.—Lynch v. Republic Pub. Co., 243 P.2d 636, 40 Wash.2d 379.
4 C.J. p 982 note 45.

Letters

Error, if any, in the admission of a letter is cured by the introduction, without objection, of a subsequent letter in which the first letter becomes incorporated by reference.
Mass.—Economy Grocery Stores Corporation v. Hart, 174 N.E. 184, 274 Mass. 11.

Maps

Error, if any, in admitting uncertified copy of a map, the original of which is a public document, is cured by the subsequent introduction by consent of counsel of another map on which is delineated the property involved.
Hawaii.—City and County of Honolulu v. Ward, 31 Hawaii 184.

80. Ala.—Roubicek v. Roubicek, 21 So.2d 244, 246 Ala. 442.
Hill v. Condon, 70 So. 208, 14 Ala.App. 332.
Ariz.—Shute v. Fidelity Savings & Loan Ass'n, 185 P. 646, 21 Ariz. 111.
Colo.—Capital Live Stock Ins. Co. v. Campion, 204 P. 604, 71 Colo. 156.
Ga.—Rabun v. Wynn, 70 S.E.2d 745, 209 Ga. 80.
Strickland v. Strickland, 116 S.E. 556, 29 Ga.App. 783—Central of Georgia Ry. Co. v. Brinson, 88 S.E. 1003, 18 Ga.App. 113.
Iowa.—Zalesky v. Fidelity & Casualty Co. of New York, 157 N.W. 858, 176 Iowa 267.
Mass.—Connery v. Cass, 179 N.E. 164, 277 Mass. 545.
N.C.—Hester v. Horton Motor Lines, 14 S.E.2d 794, 219 N.C. 743.
S.C.—Alexander v. Seaboard Air Line R. Co., 71 S.E.2d 299, 221 S.C. 477.
Tex.—City of Beaumont v. Kane, Civ.App., 33 S.W.2d 234.
Wash.—Bennett v. King County Cab Co., 27 P.2d 125, 175 Wash. 216—Monroe Water Co. v. Snohomish County, 213 P. 926, 124 Wash. 216.
4 C.J. p 999 note 14.
Harmless error in admission of hearsay evidence generally see supra § 1727.

Letter from stranger to suit

Ga.—Rogers v. Manning, 38 S.E.2d 724, 200 Ga. 844.

81. D.C.—New Arcade Co. v. Owens, 258 F. 965, 49 App.D.C. 65.
4 C.J. p 983 note 47.

Impeachment of deposition

Ill.—Little v. Gogotz, 58 N.E.2d 336, 324 Ill.App. 516.

Portion of deposition

Any error in permitting one party to introduce only a portion of a deposition taken by his opponent becomes immaterial, where the party taking the deposition subsequently introduces all of it.
D.C.—New Arcade Co. v. Owens, 258 F. 965, 49 App.D.C. 65.
4 C.J. p 983 note 47 [a] (4).

82. Iowa.—Worsley v. Ayres, 123 N.W. 353, 144 Iowa 676.

83. Mich.—Spears v. Black, 157 N.W. 382, 190 Mich. 693—Andries v. Everitt-Metzger-Flanders Co., 142 N.W. 1067, 177 Mich. 110.

Of agent

Error in admitting evidence of an agent's statement that he was agent is cured by his testimony to the same effect.
N.J.—Inter-State Machinery Corporation v. Agabiti, 153 A. 249, 9 N.J. Misc. 166.

84. Conn.—Fish v. Smith, 47 A. 711, 73 Conn. 377, 84 Am.S.R. 161.
4 C.J. p 983 note 50.

84.5 Tex.—Cochran v. William M. Rice Institute for Advancement of Literature, Science and Art, Civ. App., 123 S.W.2d 359, error refused.

84.10 Tex.—Kothmann v. Phipps, Civ.App., 214 S.W.2d 201, error refused no reversible error.

84.15 Cal.—Neblett v. Pacific Mut. Life Ins. Co. of California, 139 P.2d 934, 22 C.2d 393, certiorari denied 64 S.Ct. 428, 320 U.S. 802, 88 L.Ed. 484.

84.20 N.J.—Opdyke v. Halbach, 7 A. 2d 635, 123 N.J.Law 123.

85. Iowa.—Basham v. Chicago & G. W. Ry. Co., 154 N.W. 1019, 178 Iowa 998, modified on other grounds 157 N.W. 192, 178 Iowa 998, error dismissed 39 S.Ct. 213, 249 U.S. 164, 63 L.Ed. 534.
Mich.—Slack v. Curry, 143 N.W. 602, 177 Mich. 437.

Custom of promotion

Where, in an action for libel of a member of the national guard, defendant testified as to customary promotion, over plaintiff's objection that the best evidence was the military regulations, error, if any, in admitting such testimony was harmless, where the military regulations were then admitted.
Conn.—Gray v. Mossman, 99 A. 1062, 91 Conn. 430.

86. Ill.—Anderson v. Mitchell, 253 Ill.App. 509.
N.Y.—Halloran v. N. & C. Contracting Co., 164 N.E. 324, 249 N.Y. 381.
4 C.J. p 983 note 56.

As to payment

In an action on a note, the erroneous admission of hearsay declarations of plaintiff's officer as to part payment, tolling statute of limitations, is not cured by defendant's testimony that he paid such amount, where he stated that it was payment in settlement of the whole debt.
Colo.—Manby v. Sweet Inv. Co., 242 P. 51, 78 Colo. 371.

Insurance

Where an injured servant sued a third party for injuries, it was prejudicial to admit evidence that his employer had workmen's compensation insurance, creating an inference that he had been, or could be, compensated for the injuries, where no evidence that he had been compensated was subsequently produced.
N.Y.—Posnick v. Crystal, 168 N.Y.S. 868, 181 App.Div. 660.

87. Iowa.—Yarcho v. Chicago, R. I. & P. Ry. Co., 168 N.W. 336, 337, 183 Iowa 1180.
Wash.—Corson v. Corson, 283 P.2d 673, 46 Wash.2d 611.
"Prejudice from receiving improper testimony is not cured by admitting incompetent evidence duly objected to, even though no affirmative relief may be had on account of the reception of said incompetent matter."
Iowa.—Yarcho v. Chicago, R. I. & P. Ry. Co., supra.

of the improperly admitted evidence.[87.5] Also, such error is not cured by evidence which is not sufficient to overcome the prejudicial effect of the improper evidence;[88] and error in the admission of evidence which is not admissible under the pleadings is not cured by the admission of evidence of the same kind, even without objection.[89]

Opinion or conclusion. Error, if any, in permitting a witness to testify as to his opinion or conclusion is cured by the subsequent admission of proper evidence showing the facts with respect to which the opinion or conclusion is given,[90] or by the witness' testimony as to the same fact being admitted at another point without objection.[91]

Secondary evidence. The admission of secondary evidence as to a fact is harmless where the same fact is subsequently proved by primary competent evidence;[92] and, accordingly, secondary evidence as to the contents of a writing is not prejudicial where the writing is thereafter admitted in evidence,[93] or

87.5 Wash.—Corson v. Corson, 283 P.2d 673, 46 Wash.2d 611.

88. Ky.—Sumrall's Ex'rs v. James, 299 S.W. 207, 221 Ky. 498.
Mich.—Rytkonen v. Lojacono, 257 N. W. 703, 269 Mich. 270.
N.C.—Price v. Pyatt, 167 S.E. 69, 203 N.C. 799.
Tex.—Fort Worth & D. C. Ry. Co. v. Helm, Civ.App., 30 S.W.2d 492—Richardson v. Cantrell, Civ.App., 201 S.W. 702.
Wis.—Schields v. Frederick, 288 N. W. 241, 232 Wis. 595.

As to negligence of surgeon

In a malpractice action against a physician who inserted, in a patient's chest, a drainage tube fastened only by adhesive tape, which tube slipped into the body and was lost therein, admission of testimony of a medical witness that witness usually put a safety pin at the end of the tube and had seen such method used at certain famous clinics is error as not testing defendant's care by an applicable standard, and the error is not cured by witness' general statement that his methods had been used by physicians in same and similar communities, where he did not say other methods were not recognized as proper; nor is it cured by testimony of plaintiff's other witnesses that the customary practice was to use a safety pin, where no witness testifies that defendant's method was not recognized as proper.
Mich.—Rytkonen v. Lojacono, 257 N. W. 703, 269 Mich. 270.

Testimony by police officers

Ky.—Lincoln Taxi Co. v. Rice, 251 S.W.2d 867.

89. Tex.—Poutra v. Martin, Civ. App., 135 S.W. 725.

90. Ark.—Luce v. Arkansas Brick & Mfg. Co., 188 S.W. 566, 125 Ark. 219.
Cal.—Briggs v. Jess Mead, Inc., 270 P. 263, 93 C.A. 666—Fernandez v. Watt, 146 P. 47, 26 C.A. 86.
Ill.—Williams v. Kaplan, 242 Ill.App. 166.
Iowa.—Dille v. Longwell, 197 N.W. 439, 198 Iowa 540.
Kan.—Baird v. Shaffer, 168 P. 836, 101 Kan. 585, L.R.A.1918D 638—Miller v. Kerr, 146 P. 1159, 94 Kan. 545.
Ky.—Illinois Cent. R. Co. v. Williams, 174 S.W. 741, 163 Ky. 831.
Miss.—Blalock v. Magee, 38 So.2d 708, 205 Miss. 209.
Mo.—Brockman v. Robinson, App., 48 S.W.2d 128—Nestlehut v. City of De Soto, App., 202 S.W. 425—Moore v. Metropolitan St. Ry. Co., 176 S.W. 1120, 189 Mo.App. 555.
Mont.—Burns v. Eminger, 276 P. 437, 84 Mont. 397.
N.D.—Dalen v. Coddington, 167 N.W. 334, 39 N.D. 321.
Tex.—Fort Worth & R. G. Ry. Co. v. Thompson, Civ.App., 77 S.W.2d 289—Dave Lehr, Inc. v. Brown, Civ. App., 58 S.W.2d 886—Slaughter & Veal v. Schneider, Civ.App., 289 S. W. 414—Baker v. Harmon, Civ. App., 254 S.W. 517.
4 C.J. p 983 note 52.
Harmless error in admission of opinion evidence generally see supra § 1726.

As to automobile tracks

Error, if any, in admitting opinion evidence, based on wheel tracks, that the car which struck plaintiff was a Ford, she having been struck by a Ford, is not prejudicial, where the witness proceeded to testify to certain facts, which if believed would show conclusively that defendant's car made such tracks.
Cal.—Idemoto v. Scheidecker, 226 P. 922, 193 C. 653.

Condition of sidewalk

Error, if any, in permitting a witness to describe a sidewalk as "in bad shape" is not prejudicial, where he subsequently details its condition.
Iowa.—Blake v. City of Bedford, 151 N.W. 74, 170 Iowa 128.

91. Tex.—Texas Cent. R. Co. v. Claybrook, Civ.App., 178 S.W. 580.

92. Ala.—Birmingham Bottling Co. v. Morris, 69 So. 85, 193 Ala. 627.
Conn.—J. E. Smith & Co. v. Say, 129 A. 538, 102 Conn. 558.
Ga.—Andrews v. Butts County, 114 S. E. 912, 29 Ga.App. 302.
Tex.—Jaffe v. Deckard, Civ.App., 261 S.W. 390—International & G. N. Ry. Co. v. Ash, Civ.App., 204 S.W. 668, dismissed for want of jurisdiction.
Vt.—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312.
Wyo.—Huber v. Glenrock State Bank, 231 P. 63, 32 Wyo. 357, rehearing denied 234 P. 81, 32 Wyo. 357.
Harmless error in admission of secondary evidence generally see supra § 1724.

Check

Ky.—Massie's Ex'x v. Massie's Ex'x, 156 S.W.2d 195, 288 Ky. 370.

Docket

Error, if any, in admitting secondary evidence of contents of grand jury docket, is cured by introduction of a transcript of the docket.
Ala.—Morgan v. Baird, 121 So. 526, 219 Ala. 225.

Where transcript of judgment roll used in related appeal was certified by clerk of supreme court as true copy of original transcript which theretofore had been certified by clerk of trial court in related appeal, error, if any, in admitting transcript was not prejudicial.
Cal.—Neblett v. Pacific Mut. Life Ins. Co. of California, 139 P.2d 934, 22 C.2d 393, certiorari denied 64 S.Ct. 428, 320 U.S. 802, 88 L.Ed. 484.

93. Ala.—Powell v. Pickett, 121 So. 23, 219 Ala. 18—Southern Wood Preserving Co. v. McCamey, 118 So. 393, 218 Ala. 201—Royal Exchange Assurance of London v. Almon, 80 So. 456, 202 Ala. 374—Cummings v. McDonnell, 66 So. 717, 189 Ala. 96.
Royal Ins. Co. v. Story, 40 So.2d 719, 34 Ala.App. 363, certiorari denied 40 So.2d 724, 252 Ala. 275—Baker v. Green, 84 So. 545, 17 Ala. App. 290.
Cal.—Horton v. Winbigler, 165 P. 423, 175 C. 149.
Fernandez v. Watt, 146 P. 47, 26 C.A. 86.
Idaho.—Shillingford v. Benewah County, 282 P. 864, 48 Idaho 447.
Ill.—Hartley v. Red Ball Transit Co., 176 N.E. 751, 344 Ill. 534.
Iowa.—Porter v. Tenant, 197 N.W. 79, 197 Iowa 200.
Nev.—Schmaling v. Johnston, 13 P. 2d 1111, 54 Nev. 293, reheard 27 P.2d 1059, 55 Nev. 164.
Pa.—Wagner-Taylor Co. v. Spinelli, 145 A. 505, 295 Pa. 455.
Tex.—Jaffe v. Deckard, Civ.App., 261 S.W. 390—Wrather v. Parks, Civ.

is shown to be unavailable;[94] and this rule has been held to apply where the original writing is discovered after trial and presented at the argument of exceptions.[95] Conversely, the erroneous admission of written evidence may be cured by proper oral testimony on the same point,[96] or by the admission, without objection, of copies of the written evidence.[97]

(2) Evidence Curing Defects or Supplying Omissions

Error in admitting incompetent evidence is cured by its being explained, or by deficiencies therein being supplied, by subsequent evidence.

Where incompetent evidence testimony is explained by subsequent evidence, so as to work no prejudice, the improper admission of such evidence is cured;[98] likewise, it is cured where matters as

App., 227 S.W. 513—Haynie v. Stovall, Civ.App., 212 S.W. 792, dismissed for want of jurisdiction—Hart-Parr Co. v. Alvin-Japanese Nursery Co., Civ.App., 179 S.W. 697.

Vt.—Arnold v. Somers, 105 A. 260, 92 Vt. 512.

4 C.J. p 983 note 53.

Books of account

Tex.—Johnson Aircrafts v. Wilborn, Civ.App., 190 S.W.2d 426, refused for want of merit.

Lease

R.I.—Goggin v. Goggin, 194 A. 730, 59 R.I. 145, 113 A.L.R. 569.

Duplicate

Where an exhibit which was a duplicate of an order is admitted by defendant to be correct, and the original is subsequently put in evidence, any error in receiving duplicate is cured.

Ind.—Coca-Cola Bottling Co. v. International Filter Co., 113 N.E. 17, 62 Ind.App. 421.

Photostatic copies

Where original documents were produced and filed before case was considered, exceptions as to the competency of photostatic copies of records filed as exhibits with a deposition no longer had merit.

Ky.—Cooper v. Baker, 194 S.W.2d 173, 302 Ky. 142.

Rules of railroad company

Any error in admitting testimony with respect to the rules of a railroad company is cured by the introduction of the written rules.

Tex.—Texas & P. Ry. Co. v. Wylie, Civ.App., 36 S.W.2d 238.

Statute

The admission of plaintiff's testimony as to the law of another state is not reversible error, where witness' competency is not challenged and such state's statute is later introduced in evidence and presented in argument to the jury by defendant.

Iowa.—Richmond v. Whitaker, 255 N.W. 681, 218 Iowa 606.

Telegram

Error in the reception of self-serving declarations contained in a telegram is rendered harmless by appellant's subsequent introduction of the telegram as matter of defense.

Tex.—Humble Oil & Refining Co. v. McLean, Civ.App., 268 S.W. 179, reversed on other grounds, Com. App., 280 S.W. 557.

94. Kan.—Warren v. City of Bonner Springs, 224 P. 447, 115 Kan. 429.

4 C.J. p 983 note 54.

95. N.H.—Richardson v. Boston & M. R. R., 117 A. 733, 80 N.H. 370.

Original document, found after rendition of a verdict and presented at the argument on the exceptions, cures the insufficiency of evidence as to the verity of the copy to warrant admission thereof, without sending the case back to the trial court for the determination of the verity of the copy in the light of newly discovered evidence, where there is no dispute as to the verity of the document presented as the original, since in such case the sending of the case back would be a useless proceeding.

N.H.—Richardson v. Boston & M. R. R., supra.

96. Colo.—Denver & R. G. R. Co. v. Wright, 171 P. 499, 64 Colo. 310.

Del.—Lippman v. Kehoe Stenograph Co., 102 A. 988, 11 Del.Ch. 412.

Tex.—Witherspoon v. Cory, Civ. App., 250 S.W. 199—McDonald v. McCrabb, 105 S.W. 238, 47 Tex.Civ. App. 259.

Letter

Where a letter containing statements material to the issues of fact involved is improperly admitted in evidence, such erroneous admission does not constitute reversible error, if the author of the letter, or the person responsible for the statements in it, later testifies in person in the case, and to the same effect, and submits himself to cross-examination on the matters in question.

W.Va.—A. F. Thompson Mfg. Co. v. Chesapeake & O. Ry. Co., 115 S.E. 877, 93 W.Va. 3.

97. Colo.—Jagger Produce Co. v. Gylling, 10 P.2d 942, 90 Colo. 517.

98. Ala.—Colquett v. Williams, 86 So.2d 381, 264 Ala. 214—Louisville & N. R. Co. v. Benton Mercantile Co., 121 So. 716, 219 Ala. 223.

Cal.—Norman v. Tully, App., 308 P. 2d 875—Poor v. W. P. Fuller & Co., 159 P. 233, 30 C.A. 650.

Ga.—Boddie v. Ridley, 28 S.E.2d 773, 197 Ga. 221.

Ill.—Miller v. Baltimore & O. S. W. R. Co., 70 N.E.2d 263, 330 Ill.App. 129.

Iowa.—McCord v. Mitchell, 165 N.W. 453, 182 Iowa 196.

Ky.—South Covington & C. St. Ry. Co. v. Heinrich, 186 S.W. 187, 170 Ky. 499.

Mo.—Marshall v. Hall, App., 200 S. W. 770—Burton v. Kansas City, 168 S.W. 889, 181 Mo.App. 427.

Neb.—Travis v. Omaha & Council Bluffs St. Ry. Co., 152 N.W. 395, 98 Neb. 200.

Tex.—Lynch Oil Co. v. Shepard, Civ. App., 242 S.W.2d 217, error refused.

Vt.—Dent v. Bellows Falls & S. R. St. Ry. Co., 116 A. 83, 95 Vt. 523.

Va.—Flannagan v. Northwestern Mut. Life Ins. Co., 146 S.E. 353, 152 Va. 38.

Wis.—Sempier v. Goemann, 161 N. W. 354, 165 Wis. 103, Ann.Cas. 1918C 670.

4 C.J. p 983 note 57.

Error in admitting an unresponsive answer is cured by a subsequent explanation making the answer responsive and relevant.

Ala.—Carbon Hill Consol. Coal Co. v. Sanborn, 110 So. 131, 215 Ala. 118.

Of flood conditions

In an action for damages resulting from overflow, admitting photographs taken during flood conditions of the next year is not error, where evidence subsequently admitted shows that there was slight, if any, difference between the two years.

Ala.—Gulf States Steel Co. v. Law, 141 So. 641, 224 Ala. 667.

Retraction of statement

In an action to recover from partners on an order accepted by them and assigned to plaintiff, any error in permitting a witness to testify that certain store accounts were kept in the joint names of defendants is cured by his retraction of such statement as a mistake.

Cal.—Behrenfeld v. Breedlove, 150 P. 71, 27 C.A. 419.

"Think" explained as "best judgment"

In an action on a fire policy, use of the word "think" by a witness, instead of "best judgment," in connection with the amount of the loss, is harmless, where it is subsequently explained as meaning best judgment.

Ala.—Exchange Underwriters' Agency of Royal Exchange Assur. of

to which the proof is deficient are subsequently introduced in evidence.[99] The admission of a paper defective for want of fullness and particularity is cured where the deficiencies are supplied by written documents subsequently produced in evidence.[1]

b. Evidence Admitted in Favor of Adverse Party

Error in admitting evidence offered by one party is cured where the adverse party introduces practically the same evidence, or brings it out on cross-examination, but not by his offering evidence in rebuttal.

Error in admitting evidence which has been presented by or on behalf of one party is cured where practically the same evidence or evidence having essentially the same probative effect is afterward introduced by the adverse or objecting party[2] or is elicited on cross-examination[3] or redirect examina-

London, England v. Bates, 69 So. 956, 195 Ala. 161.

Date on insurance policy

Ala.—Life & Cas. Ins. Co. of Tenn. v. Latham, 50 So.2d 727, 255 Ala. 160.

99. Ala.—New York Life Ins. Co. v. Turner, 104 So. 643, 213 Ala. 286.

Mo.—Marshall v. Kansas City, 249 S.W. 82, 297 Mo. 304.

Portion of letter

Any error in overruling objection to the translation of a letter, on the ground that the translation about to be read by the interpreter is of only a part of the letter, is cured when the interpreter translates and reads the rest of the letter with apparent acquiescence of defendant's counsel.

N.J.—Margues v. Mir, 130 A. 516, 3 N.J.Misc. 1080.

1. Ga.—Metropolitan Casualty Ins. Co. v. McAuley, 67 S.E. 393, 134 Ga. 165.

2. U.S.—**Corpus Juris Secundum quoted in** Great American Indemnity Company v. Rose, C.A.La., 242 F.2d 269, 273.

Ala.—Baker v. Green, 84 So. 545, 17 Ala.App. 290.

Ark.—Burden v. Hughes, 55 S.W.2d 502, 186 Ark. 707.

Cal.—Ervin v. City of Los Angeles, 256 P.2d 25, 117 C.A.2d 303—Mullanix v. Basich, 155 P.2d 130, 67 C.A.2d 675—Graham v. Consolidated Motor Transport Co., 297 P. 617, 112 C.A. 648.

Colo.—Capital Live Stock Ins. Co. v. Campion, 204 P. 604, 71 Colo. 156.

Ill.—**Corpus Juris Secundum cited in** Porter v. Terminal R. Ass'n of St. Louis, 65 N.E.2d 31, 35, 327 Ill. App. 645.

Iowa.—Richmond v. Whitaker, 255 N.W. 681, 218 Iowa 606.

Ky.—Payne v. Raymond's Adm'r, 248 S.W. 224, 198 Ky. 74.

Md.—La Fontaine v. Wilson, 45 A.2d 729, 185 Md. 673, 162 A.L.R. 1218.

Mich.—Whittemore v. Walter, 159 N.W. 525, 193 Mich. 365.

Minn.—Marion v. Miller, 55 N.W.2d 52, 237 Minn. 306.

Mo.—Leimkuehler v. Wessendorf, 18 S.W.2d 445, 323 Mo. 64—Siberell v. St. Louis-San Francisco Ry. Co., 9 S.W.2d 912, 320 Mo. 916.

Bergman v. Service Caster & Truck Co., App., 249 S.W. 973—Strother v. Dunham, App., 193 S. W. 882.

N.J.—Batts v. Joseph Newman, Inc., 67 A.2d 348, 4 N.J.Super. 393, affirmed 71 A.2d 121, 3 N.J. 503.

N.C.—Nance v. Norfolk Southern R. Co., 127 S.E. 635, 189 N.C. 638.

Okl.—City of Muskogee v. Magee, 57 P.2d 252, 177 Okl. 39.

S.C.—Wright v. Gilbert, 88 S.E.2d 72, 227 S.C. 334—**Corpus Juris Secundum cited in** Bowden v. Powell, 10 S.E.2d 8, 10, 194 S.C. 482—**Corpus Juris Secundum quoted in** Smith v. Metropolitan Life Ins. Co., 4 S.E.2d 270, 271, 191 S.C. 310.

Tex.—Commercial Casualty Ins. Co. v. Hamrick, Civ.App., 60 S.W.2d 247—American Surety Co. of New York v. North Texas Nat. Bank, Civ.App., 14 S.W.2d 88, reversed on other grounds Royal Indemnity Co. v. North Texas Nat. Bank, Com.App., 25 S.W.2d 822, modified on other grounds 34 S.W.2d 249.

Wyo.—**Corpus Juris Secundum cited in** Brown v. Wyoming Butane Gas Co., 205 P.2d 116, 123, 66 Wyo. 67.

4 C.J. p 983 note 59.

Opportunity to cross-examine

Error in admitting evidence without opportunity to cross-examine is cured by the objecting party later calling the witness and examining him fully.

Pa.—Ohlbaum v. Mayer, 131 A. 858, 285 Pa. 260.

Photographs

The admission of photographs of the scene of an accident, taken by plaintiff three years after the accident, is not prejudicial error, where photographs introduced by defendant show no substantial changes had occurred during the three years.

Mo.—Moore v. St. Louis & S. F. Ry. Co., App., 267 S.W. 945.

Police report

Error, if any, in admitting a police report of an accident in evidence is cured by testimony of appellants' witnesses as to the same facts.

Wash.—Bennett v. King County Cab Co., 27 P.2d 125, 175 Wash. 216.

3. U.S.—**Corpus Juris Secundum quoted in** Great American Indemnity Company v. Rose, C.A.La., 242 F.2d 269, 273.

Ga.—Rabun v. Wynn, 70 S.E.2d 745, 209 Ga. 80.

Willis Lumber Co. v. Roddenberry, 77 S.E.2d 110, 88 Ga.App. 352—Kell v. Hunter, 67 S.E.2d 597, 84 Ga.App. 792—Southeastern Greyhound Lines v. Hancock, 31 S. E.2d 59, 71 Ga.App. 471—Carter v. Ray, 28 S.E.2d 361, 70 Ga.App. 419—A. B. & C. Railroad Ben. Ass'n v. South, 175 S.E. 924, 49 Ga.App. 659.

Idaho.—**Corpus Juris cited in** Hartley v. Bohrer, 11 P.2d 616, 618, 52 Idaho 72—McCarthy v. Harrop, 3 P.2d 458, 51 Idaho 107.

Iowa.—Bauer v. Reavell, 260 N.W. 39, 219 Iowa 1212.

Mo.—Meade v. Kansas City Public Service Co., 250 S.W.2d 513.

Grimes v. American League Baseball Co., App., 78 S.W.2d 520.

N.J.—Kolmetsky v. Pellicoff, 143 A. 336, 105 N.J.Law 240.

N.C.—Bryant v. Reedy, 200 S.E. 896, 214 N.C. 748—Keller v. Southern Ry. Co., 171 S.E. 73, 205 N.C. 269—Tyler v. Howell, 135 S.E. 133, 192 N.C. 433.

Okl.—Eldridge v. Vance, 280 P. 570, 138 Okl. 201.

Pa.—McCabe v. Cannoe, 156 A. 77, 304 Pa. 497.

S.C.—Wright v. Gilbert, 88 S.E.2d 72, 227 S.C. 334—**Corpus Juris Secundum cited in** Bowden v. Powell, 10 S.E.2d 8, 10, 194 S.C. 482—**Corpus Juris Secundum quoted in** Smith v. Metropolitan Life Ins. Co., 4 S.E.2d 270, 271, 191 S.C. 310—Chantry v. Pettit Motor Co., 152 S.E. 753, 156 S.C. 1.

S.D.—Robertson v. Hall, 255 N.W. 803, 62 S.D. 599.

Tex.—Ball v. Yowell, Civ.App., 222 S.W.2d 277, error refused no reversible error—Mitchell v. City of Temple, Civ.App., 152 S.W.2d 1116, error refused—Gulf States Security Life Ins. Co. v. Edwards, Civ. App., 109 S.W.2d 1125, error dismissed—Missouri, K. & T. R. Co. of Texas v. Long, Civ.App., 23 S. W.2d 401—Louisiana Ry. & Nav. Co. of Texas v. Kimball, Civ.App., 23 S.W.2d 398—Andress v. Crump, Civ.App., 12 S.W.2d 1077, reversed on other grounds, Com.App., 29 S.W.2d 1038.

4 C.J. p 983 note 60.

In Illinois

(1) Rule stated in text has been applied.

Ill.—Elzerman v. Behn, 132 N.E.2d 788, 9 Ill.App.2d 263—**Corpus Juris Secundum cited in** Porter v. Ter-

tion.[3.5] Similarly, defects or omissions in evidence introduced by one party may be cured or supplied by evidence subsequently introduced by his adversary[4] or brought out on cross-examination.[5]

However, an error in admitting evidence is not cured by the offering of evidence in rebuttal thereof by the objecting party,[6] or by his failure to object to evidence properly introduced for the purpose of impeaching the improper testimony.[7]

c. Evidence Rendering Incompetent Evidence Admissible

(1) In general

(2) Supplying necessary preliminary proof

(1) In General

Error in admitting incompetent evidence is cured by the subsequent admission of evidence rendering it competent.

Error in admitting incompetent evidence is cured by the subsequent introduction of evidence which renders it admissible,[8] as by the subsequent introduction of evidence by the adverse party which removes the objection to the admissibility of the evidence.[9] Error in admitting evidence as part of the cause of action which can be relevant only in rebuttal is harmless where it afterward becomes rele-

minal R. Ass'n of St. Louis, 65 N.E.2d 31, 35, 327 Ill.App. 645.

(2) However, it has also been held that this is not the law.

Ill.—Bowman v. Illinois Central Railroad Company, 132 N.E.2d 558, 9 Ill.App.2d 182.

3.5 N.H.—Kelly v. Simoutis, 4 A.2d 868, 90 N.H. 87.

4. U.S.—**Corpus Juris Secundum quoted in** Great American Indemnity Company v. Rose, C.A.La., 242 F.2d 269, 273.

Cal.—Watson v. Anderson, 173 P. 394, 36 C.A. 778.

Ind.—Reserve Loan Life Ins. Co. v. Leising, 134 N.E. 667, 78 Ind.App. 197.

Kan.—Webb v. City of Oswego, 86 P. 2d 553, 149 Kan. 156.

Md.—Miller v. Hall, 155 A. 327, 161 Md. 111.

Mass.—Letchworth v. Boston & M. R. R., 108 N.E. 500, 220 Mass. 560.

N.C.—Young v. Gruner, 92 S.E. 618, 173 N.C. 622.

Pa.—McKenzie Co. v. Fidelity & Deposit Co. of Maryland, Com.Pl., 52 Dauph.Co. 210.

4 C.J. p 984 note 61.

Altered note

Although the court erroneously introduced an altered note in evidence, it was not prejudicial where the defendant later introduced evidence making the note competent to go to the jury.

S.D.—Davis & Daniels Co. v. McKillip, 165 N.W. 380, 39 S.D. 544.

Copy of judgment

If clerical error in the copy of a judgment offered by plaintiff in evidence renders the judgment inadmissible, defendant by offering a correct copy cures any such error.

Tex.—Wigham v. Wilson, Civ.App., 211 S.W. 469.

Oral declarations of agency

Error in admitting an agent's oral declarations to prove agency becomes immaterial by the principal's testimony proving the fact of agency.

Tex.—Brown Cracker & Candy Co. v. Castle, Civ.App., 26 S.W.2d 435, error dismissed Castle v. Brown Cracker & Candy Co., 31 S.W.2d 630, 119 Tex. 447.

Portions of testimony at former trial

In a personal injury action, wherein a former trial had been had, it is not error to permit defendant to read portions of plaintiff's testimony, taken at the former trial and transcribed by the reporter, when plaintiff's counsel is permitted to read the balance of plaintiff's testimony relating to the same subject given at such former trial.

Mo.—Marshall v. Kansas City, 249 S. W. 82, 297 Mo. 304.

5. U.S.—**Corpus Juris Secundum quoted in** Great American Indemnity Company v. Rose, C.A.La., 242 F.2d 269, 273.

Ga.—A. B. & C. Railroad Ben. Ass'n v. South, 175 S.E. 924, 49 Ga.App. 659.

Vt.—Dernier v. Rutland Ry., Light & Power Co., 110 A. 4, 94 Vt. 187.

4 C.J. p 984 note 62.

6. Ky.—**Corpus Juris Secundum cited in** Lincoln Taxi Co. v. Rice, 251 S.W.2d 867, 869.

Mont.—**Corpus Juris Secundum cited in** Richardson v. Farmers Union Oil Co., 312 P.2d 134, 145.

S.C.—**Corpus Juris Secundum cited in** Bowden v. Powell, 10 S.E.2d 8, 10, 194 S.C. 482.

S.D.—Foldager v. Atwood-Stone Co., 159 N.W. 891, 38 S.D. 16.

4 C.J. p 984 note 63.

7. Tex.—Gause-Ware Funeral Home v. McGinley, Civ.App., 21 S.W.2d 347.

8. Ala.—Hawie v. Kelly, 53 So.2d 609, 256 Ala. 31—Sovereign Camp, W. O. W. v. Gunn, 158 So. 192, 229 Ala. 508—Blackwood v. Standridge, 102 So. 108, 212 Ala. 156—U. S. Fidelity & Guaranty Co. v. Millonas, 89 So. 732, 206 Ala. 147, 29 A.L.R. 520—Page & Jones v. Barry, 73 So. 22, 197 Ala. 449.

Ga.—Holland v. Bell, 96 S.E. 419, 148 Ga. 277.

Carter v. Ray, 28 S.E.2d 361, 70 Ga.App. 419.

Mich.—Judson v. Pratt, 175 N.W. 184, 208 Mich. 286.

N.C.—Hopkins v. Colonial Stores, 29 S.E.2d 455, 224 N.C. 137—D'Armour v. Beeson Hardware Co., 9 S.E.2d 12, 217 N.C. 568—Smathers v. Jennings, 87 S.E. 534, 170 N.C. 601.

Pa.—Williams v. Penn State Building & Loan Ass'n of Harrisburg, Pennsylvania, Com.Pl., 44 Dauph. Co., 435.

S.C.—Hunt v. Atlantic Coast Lumber Corporation, 85 S.E. 229, 101 S.C. 64.

Tex.—Baker v. Harmon, Civ.App., 254 S.W. 517.

W.Va.—Osage Gas Co. v. Cleveland & Morgantown Coal Co., 133 S.E. 388, 101 W.Va. 675.

4 C.J. p 984 note 64.

Prima facie incompetency of evidence at the time of admission may be removed by subsequent examination of the witness touching the fact in question and cross-examination.

Ala.—S. H. Kress & Co. v. Barratt, 147 So. 386, 226 Ala. 455.

Diagnosis of doctor who did not testify

Any error in permitting diagnosis of doctor who did not testify to be read from hospital record was cured by subsequent introduction in evidence of hospital record itself.

Ala.—Bailey v. Tennessee Coal, Iron & R. Co., 75 So.2d 117, 261 Ala. 526.

9. Ala.—Lucas E. Moore Stave Co. v. Woodley, 105 So. 878, 213 Ala. 570.

Tex.—Wigham v. Wilson, Civ.App., 211 S.W. 469.

4 C.J. p 984 note 64 [a].

vant in rebuttal.[10] Similarly cross-examination on a fact not brought out on direct examination is harmless where the fact is subsequently shown.[11]

The fact, however, that evidence, incompetent for the purpose for which it was offered and admitted, subsequently becomes admissible for another purpose, as the case is developed, does not render the ruling harmless;[12] and it has been held that the erroneous admission of incompetent evidence over objection is not cured by cross-examination on the same subject, as for the purpose of testing the credibility of the witness or revealing the objectionable nature of the testimony.[13]

(2) Supplying Necessary Preliminary Proof

Error in admitting evidence without the necessary preliminary or connecting proof is cured by the subsequent introduction of such proof.

Since the order of proof is largely within the discretion of the trial court, the admission of evidence without the requisite preliminary or connecting proof is not prejudicial error where such proof is subsequently introduced,[14] or where it is offered and is withdrawn only on the opposite party's objection that it is immaterial.[15]

This rule has been applied to error in the admission in evidence of the acts[16] or declarations[17] of an agent without proof of agency; of a written instrument,[18] or of the contents of a lost instrument, without proof of execution;[19] of the contents of an instrument, without proof of its loss or destruction;[20] of opinion or expert evidence, without proof of competency,[21] or of the facts on which the opinion is based,[22] or, in case of a hypothetical question, without evidence to support facts stated therein;[23] of evidence dependent on a conspiracy, without proof of a conspiracy;[24] of a note of a corporation, without proof of authority to issue it;[25] of court records, without proper authentication;[26] of a plat, without proof of its correctness;[27] of handwriting, without proof of its genuineness;[28] of newspaper market quotations, without proof of the authenticity thereof and the reliability of the newspaper's source of information;[28.5] or of fires other than the one involved in the action, without evidence tending to connect them with defendant.[28.10]

10. Md.—City of Hagerstown v. Crowl, 97 A. 544, 128 Md. 556.
4 C.J. p 984 note 66.

11. Cal.—Williams v. Myer, 89 P. 972, 150 C. 714.

12. Cal.—In re Boyes, 90 P. 454, 151 C. 143.

13. S.C.—Green v. Shaw, 134 S.E. 226, 136 S.C. 56.
Tex.—Navar v. First Nat. Bank, Civ. App., 254 S.W. 126.

14. Ala.—Alabama Great Southern R. Co. v. Baum, 31 So.2d 366, 249 Ala. 442.
Ga.—Columbian Peanut Co. v. Pope, 24 S.E.2d 710, 69 Ga.App. 26.
Mo.—Spidell v. Tilghmon, App., 40 S.W.2d 719.
Vt.—Ross v. Hamilton, 113 A. 781, 95 Vt. 234.
4 C.J. p 984 note 68–69.
Harmless error in admitting evidence without preliminary proof generally see supra § 1725.

General objection to the admission of evidence becomes merely an objection to the order of proof, where it appears later in the trial that the evidence is relevant, and hence admitting the evidence, when offered over such general objection, if error, is harmless.
Mass.—Karjavainen v. Buswell, 194 N.E. 295, 289 Mass. 419.

Of condition
Error in admitting evidence of condition, competent only if shown similar to condition on an earlier date, without previous showing of such similarity, can be cured only by subsequent showing of the similarity, or by exclusion of the admitted evidence.
Ala.—Tennessee Coal, Iron & R. Co. v. Kimball, 96 So. 329, 209 Ala. 466.

15. Mo.—Ridgeway v. Herbert, 51 S.W. 1040, 150 Mo. 606, 73 Am.S.R. 464.

16. Cal.—Pacific Factors v. St. Paul Hotel, 299 P. 88, 113 C.A. 657.
4 C.J. p 985 note 71.

17. Cal.—Alexander v. State Capital Co., 70 P.2d 619, 9 C.2d 304.
Ind.—First Nat. Bank of Josefoff, 105 N.E. 175, 57 Ind.App. 320.
4 C.J. p 985 note 72.

Subsequent ratification of transaction by principal
Md.—Hodgson v. Burroughs, 2 A.2d 407, 175 Md. 413.

18. Cal.—Thomas v. Fursman, 178 P. 870, 39 C.A. 278.
Ga.—Rushton v. Hall & Brown Wood Working Mach. Co., 106 S.E. 196, 26 Ga.App. 370—Fletcher v. Southern Loan Co., 93 S.E. 313, 20 Ga. App. 653.
Neb.—Jones v. Loree, 56 N.W. 390, 37 Neb. 816.
N.H.—Richardson v. Boston & M. R. R., 117 A. 733, 80 N.H. 370.
4 C.J. p 985 note 73.

19. Conn.—Ely v. Cavanaugh, 74 A. 1122, 82 Conn. 681.
Ga.—Ray v. Camp, 36 S.E. 242, 110 Ga. 818.

20. Wash.—Loving v. Maltbie, 116 P. 1086, 64 Wash. 336.
4 C.J. p 985 note 75.

21. Ill.—See Gray Coal Co. v. Danville, U. & C. Ry. Co., 194 Ill.App. 11.
Mass.—Thornhill v. Carpenter-Morton Co., 108 N.E. 474, 220 Mass. 593.
Mo.—Hulsey v. Tower Grove Quarry & Construction Co., 30 S.W.2d 1018, 326 Mo. 194.
Vt.—Dernier v. Rutland Ry., Light & Power Co., 110 A. 4, 94 Vt. 187.
4 C.J. p 985 note 76.

22. Ala.—Blakeney v. Alabama Power Co., 133 So. 16, 222 Ala. 394.
Cal.—Schulmeyer's Guardianship v. McAllister, 153 P. 233, 171 C. 340.

23. Ala.—Snow v. Allen, 151 So. 468, 227 Ala. 615.
Ind.—Mounsey v. Bower, 136 N.E. 41, 78 Ind.App. 647.

24. Ind.—Daniels v. McGinnis, 97 Ind. 549.
Benjamin v. McElwaine-Richards Co., 37 N.E. 362, 10 Ind.App. 76.

25. Kan.—St. Louis, etc., R. Co. v. Tiernan, 15 P. 544, 37 Kan. 606.

26. Mo.—Carp v. Queens Ins. Co., 101 S.W. 78, 203 Mo. 295.

27. Ill.—Williams v. Carterville, 97 Ill.App. 160.
N.C.—Greenleaf v. Bartlett, 60 S.E. 419, 146 N.C. 495, 14 L.R.A.,N.S., 660.

28. Cal.—In re Marchall, 58 P. 449, 126 C. 95.

28.5 Ga.—Columbian Peanut Co. v. Pope, 24 S.E.2d 710, 69 Ga.App. 26.

28.10 Va.—Southern Ry. Co. v. Barker, 4 S.E.2d 395, 173 Va. 313.

§ 1736. —— By Verdict, Judgment, or Findings

a. In general
b. Direction of verdict
c. Special findings
d. Appellant not entitled to favorable decision in any event
e. As to damages

a. In General

Error in admitting evidence is harmless where the determination of the action shows that the evidence had no prejudicial effect on the verdict or judgment.

Errors in admitting evidence may be regarded as immaterial where the verdict is undoubtedly right, and the result would clearly be the same with or without the correction of such errors.[28.50] Error in the admission of evidence which is shown by the determination of the action, as apparent from the record, to have had no prejudicial effect on the verdict or judgment is harmless.[29] Such error is harmless where other and competent evidence in the case is sufficient to sustain the verdict and judgment,[30] →

28.50 Ga.—Lewis v. Adams, 61 Ga. 559.
Gay v. Jenkins County, 191 S.E. 389, 55 Ga.App. 757.

29. Ala.—McGilvery v. J. B. Peake & Son, 80 So. 49, 202 Ala. 227.
Cal.—Bardeen v. Commander Oil Co., 104 P.2d 875, 40 C.A.2d 341—Diener v. Shaul, 213 P. 706, 60 C.A. 633.
Conn.—Spivack v. Connecticut Smiles, 20 A.2d 731, 128 Conn. 146—Lupatin v. Shine, 169 A. 916, 117 Conn. 698.
Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437—Wm. D. Cleveland & Sons v. Evans, 128 S.E. 589, 34 Ga.App. 165.
Ill.—Tidholm v. Tidholm, 74 N.E.2d 514, 397 Ill. 363.
Washington v. Peterson, 49 N.E.2d 883, 320 Ill.App. 140—Costello v. City of Aurora, 15 N.E.2d 38, 295 Ill.App. 510. See Richard v. Brunner Foundry & Machinery Co., 203 Ill.App. 514—Guminski v. Tarrant, 192 Ill.App. 634.
Iowa.—Freeby v. Incorporated Town of Sibley, 186 N.W. 685, 195 Iowa 200, modified on other grounds 191 N.W. 867, 195 Iowa 1032—Lektric Sales Co. v. Hammer, 166 N.W. 593, 182 Iowa 1228.
Kan.—Moseman v. L. M. Penwell Undertaking Co., 100 P.2d 669, 151 Kan. 610—Smith v. Smith, 180 P. 231, 104 Kan. 629—Jones v. City of Kingman, 168 P. 1099, 101 Kan. 625.
Ky.—Dennert v. Dee, 215 S.W.2d 575, 308 Ky. 687—**Corpus Juris Secundum cited in** Wilkins v. Hopkins, 128 S.W.2d 772, 773, 278 Ky. 280—Felder v. Wilbers, 271 S.W. 1096, 208 Ky. 830—Nolan v. Jeffries, 245 S.W. 273, 196 Ky. 691—Chesapeake & O. Ry. Co. v. Ryan's Adm'r, 209 S.W. 538, 183 Ky. 428.
Me.—Booth Bros. & Hurricane Island Granite Co. v. Smith, 97 A. 826, 115 Me. 89.
Mass.—Attorney General v. Book Named "Serenade", 94 N.E.2d 259, 326 Mass. 324—Bergson v. H. P. Hood & Sons, 15 N.E.2d 196, 300 Mass. 340, 116 A.L.R. 951.
Miss.—Mississippi Power & Light Co. v. Garner, 176 So. 280, 179 Miss. 588.
Mo.—Anderson v. Bell, 303 S.W.2d 93—Harrington v. National Outdoor Advertising Co., 196 S.W.2d 786, 355 Mo. 524.
Muller v. Mutual Benefit Health & Accident Ass'n, 68 S.W.2d 873, 228 Mo.App. 492—Brown v. St. Louis-San Francisco Ry. Co., App., 268 S.W. 678—Freeman v. Ruth, 257 S.W. 500, 215 Mo.App. 398.
Neb.—Combs v. Owens Motor Co., 235 N.W. 682, 121 Neb. 5.
N.J.—Ferry v. Settle, 78 A.2d 260, 6 N.J. 254.
Gribbin v. Fox, 32 A.2d 853, 130 N.J.Law 357, affirmed 35 A.2d 719, 131 N.J.Law 187.
N.C.—Hunt v. Wooten, 76 S.E.2d 326, 238 N.C. 42.
Okl.—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35.
Pa.—Craig v. Cosgrove, 121 A. 406, 277 Pa. 580.
In re Culhane's Estate, 2 A.2d 567, 133 Pa.Super. 339, affirmed 5 A.2d 377, 334 Pa. 124.
R.I.—Smith v. Koretsky, 114 A. 3.
S.D.—Bordwell v. Mission Hill Tp., Yankton County, 166 N.W. 229, 40 S.D. 78.
Tenn.—International Harvester Co. v. Sartain, 222 S.W.2d 854, 32 Tenn. App. 425.
Tex.—King v. Keystone-Fleming Transport, Inc., Civ.App., 299 S.W.2d 747, error refused no reversible error—Harris v. Allstate Ins. Co., Civ.App., 249 S.W.2d 669, error refused—Loyd v. Herrington, Civ.App., 178 S.W.2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135—Green v. South Texas Coaches, Civ.App., 116 S.W.2d 799—Traders' & General Ins. Co. v. Hurst, Civ.App., 55 S.W.2d 1057—Sherrod v. City Nat. Bank of Wichita Falls, Civ.App., 294 S.W. 295—Hanks v. Hamman, Civ.App., 282 S.W. 935, reversed on other grounds, Com.App., 288 S.W. 143, and set aside 289 S.W. 993—Commonwealth Casualty Co. v. Holyfield, Civ.App., 264 S.W. 157—Davis v. Gee, Civ.App., 238 S.W. 735—Southern Traction Co. v. Frazier, Civ.App., 186 S.W. 864, error refused.
Utah.—Davis v. Heiner, 181 P. 587, 54 Utah 428.
Vt.—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107.
Va.—Going's Adm'x v. Norfolk & W. Ry. Co., 89 S.E. 914, 119 Va. 543, affirmed Going v. Norfolk & W. R. Co., 39 S.Ct. 22, 248 U.S. 538, 63 L. Ed. 409.
Wash.—Holland Furnace Co. v. Korth, 262 P.2d 772, 43 Wash.2d 618—Reed Logging Co. v. Marenakos, 196 P.2d 737, 31 Wash.2d 32—Blonden v. General Petroleum Corporation of California, 300 P. 1058, 163 Wash. 382.
W.Va.—Adkins v. Smith, 98 S.E.2d 712.
Wis.—Jackson v. Robert L. Reisinger & Co., 263 N.W. 641, 219 Wis. 535—McNaughton v. McClure, 171 N.W. 936, 169 Wis. 288.
Wyo.—Snyder v. Ryan, 270 P. 1072, 39 Wyo. 266, rehearing denied 275 P. 127, 39 Wyo. 266.
4 C.J. p 985 note 83.

Admission of ancient judgment
Tex.—State v. Humble Oil & Refining Co., Civ.App., 194 S.W.2d 811.

Construction of contract
Where the interpretation placed on a written contract by the trial court is correct, and the proper result is reached, the admission of parol evidence to aid in its construction or to vary it, if error, is harmless.
Cal.—Hollman v. Hollman, 264 P. 289, 88 C.A. 748—Wurdeman v. Waller, 263 P. 558, 88 C.A. 393—White v. Ardzrooni, 235 P. 461, 71 C.A. 393.
Ky.—Coles v. Morrison, 261 S.W. 600, 202 Ky. 834.

Omission of revenue stamps from a note not affecting its negotiability, any error in the admission of evidence on the issue of a note having been stamped, determined by the jury in the affirmative, is harmless.
Iowa.—Richardson v. Cheshire, 188 N.W. 146, 193 Iowa 930.

30. Cal.—Raichart v. Phillips, 261 P.2d 777, 120 C.A.2d 645.
Fla.—Shearn v. Orlando Funeral Home, 82 So.2d 866—Holmberg v. Hardee, 108 So. 211, 90 Fla. 787.

where the judgment was not based on the improper evidence,[30.5] substantial justice has been done by the verdict and judgment,[31] the record discloses no evidence of prejudice or passion on the part of the jury,[32] or where the record discloses a series of contradictory statements by the complaining party which probably accounts for the jury's refusal to accept his testimony.[32.5]

Error also is harmless where it consists in admitting evidence on an issue as to which no finding is made[33] or relief granted,[34] or on an issue which is found in favor of the complaining party,[35] or which

Ill.—Benj. Harris & Co. v. Western Smelting & Refining Co., 45 N.E. 2d 639, 381 Ill. 443.
Iowa.—Bachelder v. Woodside, 9 N. W.2d 464, 233 Iowa 967.
Miss.—Brock v. Crawford, 72 So.2d 202, 221 Miss. 105.
S.C.—Beaufort Truck Growers' Ass'n v. Seaboard Air Line Ry. Co., 121 S.E. 554, 128 S.C. 1.
Tenn.—De Kalb County v. Tennessee Electric Power Co., 67 S.W.2d 555, 17 Tenn.App. 343.
Tex.—Pokorny v. Yudin, Civ.App., 188 S.W.2d 185—McMillion v. Wilkinson, Civ.App., 135 S.W.2d 231, error dismissed, judgment correct—Gross v. Dallas Railway & Terminal Co., Civ.App., 131 S.W.2d 113, error dismissed, judgment correct—Roadway Express v. Gaston, Civ.App., 90 S.W.2d 874—Sovereign Camp, W. O. W. v. Helm, Civ.App., 70 S.W.2d 213—Youngblood v. Hoeffle, Civ.App., 201 S.W. 1057—Commonwealth Bonding & Casualty Ins. Co. v. Brannin, Civ.App., 186 S.W. 862, error refused—Commonwealth Bonding & Casualty Ins. Co. v. Beavers, Civ.App., 186 S.W. 859.
Va.—Slate v. Saul, 40 S.E.2d 171, 185 Va. 700.
Wash.—Gleason v. Brown, 224 P. 930, 129 Wash. 196.

Complaining party's own testimony
Minn.—Bellman v. Posnick, 46 N.W. 2d 475, 233 Minn. 268.

Copy of decision of foreign court
It was not prejudicial error to receive copy of decision rendered by supreme court of Federal People's Republic of Yugoslavia, even though it did not contain seal of court or signature of legal keeper of original, where other evidence was ample to sustain determination on issue of reciprocity.
Mont.—In re Spoya's Estate, 282 P. 2d 452, 129 Mont. 83.

30.5 Cal.—Johnson v. Taft School Dist., 65 P.2d 912, 19 C.A.2d 405.

Evidence barred by limitations
Cal.—Johnson v. Taft School Dist., 65 P.2d 912, 19 C.A.2d 405.

31. Ill.—Convert v. Bishop, etc., Co., 152 Ill.App. 516.
Miss.—Powell v. J. J. Newman Lumber Co., 165 So. 299, 174 Miss. 685.
Mo.—McCormack v. McNamee, 274 S.W.2d 272.
Okl.—Bronaugh v. Pratt, 148 P. 1044, 46 Okl. 303.

For right party
A judgment will not be reversed for the admission of evidence, where, regardless of the evidence, the judgment was for the right party.
Mo.—Havens v. Brown, 287 S.W. 126, 208 Mo.App. 473.

32. Tex.—Hines v. Kelley, Civ.App., 226 S.W. 493, reversed on other grounds, Com.App., 252 S.W. 1033.
Wis.—Pisarek v. Singer Talking Mach. Co., 200 N.W. 675, 185 Wis. 92.

32.5 Ohio.—Hayhurst v. Embrey, App., 65 N.E.2d 660.

33. Cal.—Wells Fargo Bank & Union Trust Co. v. Dowd, 294 P.2d 159, 139 C.A.2d 561—Kennedy v. Johnson, 293 P. 698, 109 C.A. 662.
Ind.—National Fire Ins. Co. v. Gellman, 144 N.E. 154, 83 Ind.App. 219.
Tex.—Equitable Life Assur. Soc. of the U. S. v. Murdock, Civ.App., 219 S.W.2d 159, error refused no reversible error—Drane v. Humble Oil & Refining Co., Civ.App., 4 S. W.2d 241.
Utah.—Corey v. Roberts, 25 P.2d 940, 82 Utah 445.
Wis.—Roberts v. Gerber, 202 N.W. 701, 187 Wis. 282.
4 C.J. p 985 note 85.

As to contract
Whether the court erred in admitting a contract in evidence need not be determined where the court based no conclusion and no material finding thereon.
Mich.—Van Orman v. Puffer, 170 N. W. 9, 203 Mich. 632.

34. Idaho.—Advance-Rumely Thresher Co. v. Brady, 278 P. 224, 47 Idaho 726.
Md.—Shriver v. Caples, 133 A. 470, 150 Md. 571.
Mass.—Country Club Soda Co. v. Arbuckle, 181 N.E. 256, 279 Mass. 121.
Mich.—Sweeney v. Adam Groth Co., 257 N.W. 855, 269 Mich. 436.
Mo.—Ozias v. South Side Bank of Kansas City, App., 128 S.W.2d 283.
N.C.—Crisp v. Nantahala Power & Light Co., 158 S.E. 845, 201 N.C. 46.
S.D.—Burt v. Gage, 208 N.W. 985, 50 S.D. 208.
Tex.—Sherman Ice Co. v. Klein, Civ. App., 195 S.W. 918.
4 C.J. p 985 note 86.

Cross action
Any error against plaintiff in admitting evidence bearing only on defendant's cross action is harmless, where no recovery was had on such cross action.
Tex.—De Bruin v. Santo Domingo Land & Irrigation Co., Civ.App., 194 S.W. 654, error refused.

35. Ariz.—Valley Bank v. Malcolm, 204 P. 207, 23 Ariz. 395.
Cal.—Griffin v. Williamson, 290 P.2d 361, 137 C.A.2d 308—French v. Orange County Inv. Corporation, 13 P.2d 1046, 125 C.A. 587—Moe v. Gier, 2 P.2d 852, 116 C.A. 403—Lippman v. Subway Terminal Corporation, 1 P.2d 1056, 115 C.A. 363—Arocena v. Sawyer, 213 P. 523, 60 C.A. 581.
Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437.
Ill.—Edmonds v. Heil, 77 N.E.2d 863, 333 Ill.App. 497—Froemke v. Massman, 215 Ill.App. 86—Sutherland v. White, 201 Ill.App. 47.
Ind.—Voorhees v. Cragan, 112 N.E. 826, 61 Ind.App. 690.
Ky.—**Corpus Juris Secundum cited in** Wilkins v. Hopkins, 128 S.W.2d 772, 773, 278 Ky. 280—Union Charcoal & Chemical Co. v. McIntosh, 294 S.W. 798, 220 Ky. 74.
Md.—Ewell v. Payne, 85 A.2d 452, 199 Md. 73.
Mass.—Jordan v. Adams Gaslight Co., 120 N.E. 654, 231 Mass. 186.
Minn.—Oldenburg v. Petersdorff, 200 N.W. 446, 160 Minn. 402—Klessig v. Lea, 196 N.W. 655, 158 Minn. 14—Northern Timber Products Co. v. Stone-Ordean-Wells Co., 180 N. W. 920, 148 Minn. 69.
Miss.—Gee v. Rimmer, 105 So. 342, 138 Miss. 460.
Mo.—Conser v. Atchison, T. & S. F. Ry. Co., 266 S.W.2d 587, certiorari denied 75 S.Ct. 45, 348 U.S. 828, 99 L.Ed. 653—United Brick & Tile Co v. Ault, 123 S.W.2d 39, 343 Mo. 724—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 210.
Mackey v. First Nat. Bank, App., 293 S.W. 66.
N.C.—Ray v. Ray, 95 S.E. 550, 175 N. C. 290—Brimmer v. M. H. Brimmer Co., 93 S.E. 984, 174 N.C. 435.
R.I.—Jefferds v. Chapman, 141 A. 330—Gardner v. Gardner, 129 A. 3.
Tex.—Donaldson v. Meyer, Com. App., 261 S.W. 369.
Powell v. Whited, Civ.App., 277 S.W.2d 819, reversed on other grounds, Sup., 285 S.W.2d 364—Rowan & Hope v. Valadez, Civ. App., 258 S.W.2d 395, error refused no reversible error—Railway Exp. Agency v. Spain, Civ.App., 249 S.W. 2d 644, appeal dismissed 255 S.W.

is rendered immaterial by a verdict or finding on another issue or issues,[36] or where a finding was

2d 509, 152 Tex. 198—Welch v. Woodmen of the World Life Ins. Soc., Civ.App., 175 S.W.2d 94, error refused—Luck v. Buffalo Lakes, Civ.App., 144 S.W.2d 672, error dismissed, judgment correct—Chandler v. Stewart, Civ.App., 90 S.W. 2d 590, error dismissed—Canadian Mill & Elevator Co. v. King, Civ. App., 79 S.W.2d 876—Small v. Daily, Civ.App., 72 S.W.2d 663—Anderson v. Texas & N. O. R. Co., Civ.App., 63 S.W.2d 1079—Bragg v. Hughes, Civ.App., 53 S.W.2d 151—Toney v. Herman Hale Lumber Co., Civ.App., 36 S.W.2d 234—Mitchell v. Dillingham, Civ.App., 22 S.W.2d 971—Foster v. Burgin, Civ.App., 244 S.W. 244—Texas & P. Ry. Co. v. Eddleman, Civ.App., 175 S.W. 775—Memphis Cotton Oil Co. v. Tolbert, Civ.App., 171 S.W. 309.

Utah.—Smith v. Gilbert, 164 P. 1026, 49 Utah 510.

Vt.—Sparrow v. Vermont Sav. Bank, 112 A. 205, 95 Vt. 29—Green v. Laclair, 95 A. 499, 89 Vt. 346.

Wis.—Joyce v. Sauk County, 246 N. W. 413, 210 Wis. 243—Siegel v. Watson, 195 N.W. 867, 181 Wis. 619—Walters v. Sentinel Co., 169 N.W. 564, 168 Wis. 196—Koenig v. Sproesser, 152 N.W. 473, 161 Wis. 8.

4 C.J. p 985 note 87.

Payment

Error, if any, in the admission of evidence to show that a note sued on was unpaid at the date of a mortgage given to secure it, was harmless, where the jury found for defendant, on his plea of payment.

Ga.—Campbell v. Walker, 92 S.E. 545, 20 Ga.App. 88.

Rescission of contract

Error in the admission of evidence tending to prove the rescission of a contract of sale was cured by verdict on that point in appellant's favor.

Idaho.—Downing v. Panata, 193 P. 849, 33 Idaho 300.

Wash.—Hardinger v. Till, 96 P.2d 262, 1 Wash.2d 335.

Under cross complaint

Admission of incompetent testimony, material only in meeting a party's case under his cross complaint, is harmless, where the verdict is for him under the cross complaint.

Cal.—Consolidated Irr. Dist. v. Crawshaw, 20 P.2d 119, 130 C.A. 455, followed in 20 P.2d 122, 130 C.A. 463.

36. Ala.—Alabama Fidelity & Casualty Co. v. Jefferson County Savings Bank, 73 So. 918, 198 Ala. 557.

Cal.—MacLean v. City and County of San Francisco, App., 311 P.2d 158—Hill v. Matthews Paint Co., App., 308 P.2d 865—Hagenbuch v. Kosky, 298 P.2d 875, 142 C.A.2d 296—Lippman v. Subway Terminal Corporation, 1 P.2d 1056, 115 C.A. 363—Wagg v. Toler, 251 P. 973, 80 C. A. 501—Smith v. Sharp, 233 P. 374, 70 C.A. 336.

Colo.—Denver Tramway Corporation v. Ancker, 291 P. 1019, 88 Colo. 49—Snapp v. Manning, 236 P. 131, 77 Colo. 268.

D.C.—Washington & O. Ry. Co. v. Dulany, 288 F. 421, 53 App.D.C. 67.

Ga.—Pearl Assur. Co. v. Nichols, 37 S.E.2d 227, 73 Ga.App. 452.

Idaho.—Galvin v. Appleby, 305 P.2d 309, 78 Idaho 457.

Ill.—City of Kewanee v. Puskar, 139 N.E. 60, 308 Ill. 167.

Blumb v. Getz, 13 N.E.2d 1019, 294 Ill.App. 432. See Filippi v. Spring Valley Coal Co., 202 Ill.App. 61.

Kan.—Wilsey State Bank v. Amend, 190 P. 739, 107 Kan. 25.

Ky.—Reams v. City of London, 168 S.W.2d 994, 293 Ky. 473.

Mass.—Aste v. Putnam's Hotel Co., 141 N.E. 666, 247 Mass. 147, 31 A. L.R. 149—Cotter v. Nathan & Hurst Co., 110 N.E. 1037, 222 Mass. 433.

Mich.—Kutschinski v. Zank, 11 N.W. 2d 881, 307 Mich. 260—McLaughlin v. Ætna Life Ins. Co. of Hartford, Conn., 191 N.W. 224, 221 Mich. 479—Case v. Rudolph Wurlitzer Co., 152 N.W. 977, 186 Mich. 81.

Minn.—Heinrich Chemical Co. v. Bennes' Estate, 205 N.W. 948, 165 Minn. 146—Nichols v. Atwood, 149 N.W. 672, 127 Minn. 425.

Nev.—Herring-Hall-Marvin Safe Co. v. Balliet, 145 P. 941, 38 Nev. 164.

N.H.—Hatch v. Hillsgrove, 139 A. 366, 83 N.H. 91—Laird v. Boston & M. R. R., 114 A. 275, 80 N.H. 58, 16 A.L.R. 243.

N.J.—Dombrowski v. Olowski, 131 A. 898, 4 N.J.Misc. 105.

N.C.—Marbury Lumber Co. v. Briggs-Shaffner Co., 119 S.E. 484, 186 N. C. 347.

Okl.—National Ins. Underwriters v. Walker, 245 P.2d 737, 206 Okl. 629—Camp v. Whitney, 12 P.2d 500, 158 Okl. 32.

Tenn.—Central Truckaway System v. Waltner, 253 S.W.2d 985, 36 Tenn. App. 202.

Tex.—Valdez v. Yellow Cab Co., Civ. App., 260 S.W.2d 715—Panhandle & Santa Fe Ry. Co. v. Welch, Civ. App., 259 S.W.2d 269—Jones v. St. John, Civ.App., 178 S.W.2d 181—Universal Credit Co. v. O'Neal, Civ.App., 140 S.W.2d 596—McMillion v. Wilkinson, Civ.App., 135 S. W.2d 231, error dismissed, judgment correct—Gross v. Dallas Railway & Terminal Co., Civ.App., 131 S.W.2d 113, error dismissed, judgment correct—Green v. South Texas Coaches, Civ.App., 116 S.W. 2d 799—Cabaniss v. Grayburg Oil Co., Civ.App., 50 S.W.2d 437—Toney v. Herman Hale Lumber Co., Civ.App., 36 S.W.2d 234—Turner v. Parker, Civ.App., 4 S.W.2d 639—Crossland v. Hart, Civ.App., 234 S.W. 558—Ireland v. Abbott, Civ. App., 234 S.W. 552, dismissed for want of jurisdiction—Taylor v. Davis, Civ.App., 234 S.W. 104—Southern Gas & Gasoline Engine Co. v. Adams & Peters, Civ.App., 198 S.W. 676, reversed on other grounds, Com.App., 227 S.W. 945.

4 C.J. p 986 note 88.

As to ownership of automobile

In an action for negligently causing the death of plaintiff's intestate against a father as owner and a son as driver of an automobile which ran into him while the son was on the father's business, where the jury found the son not negligent, error in the admission of evidence as to the ownership of the automobile in the son was harmless.

N.J.—Gromer v. George, 101 A. 263, 90 N.J.Law 644.

General verdict for plaintiff imports a finding in his favor on all averments of complaint material to his recovery; and where evidence supporting one cause of action is untainted, error in the admission of evidence as to another cause of action is immaterial.

Cal.—Price v. Bekins Van & Storage Co., 176 P. 452, 179 C. 326.

In an action of trover and assumpsit, where the court finds for plaintiff on the trover count only, any error in admitting a verified account against defendant, if erroneous, is harmless to him.

Ala.—Bronaugh v. Evans, 85 So. 556, 204 Ala. 153.

"Two-issue" rule

(1) Where evidence was erroneously admitted on issue of contributory negligence but a general verdict was returned for defendant without interrogatories, the "two-issue" rule was applicable.

Ohio.—Bachman v. Ambos, 79 N.E. 2d 177, 83 Ohio App. 141.

(2) Within purview of "two-issue" rule, erroneous admission of evidence reflecting on any of elements of actionable negligence constitutes an erroneous admission of evidence reflecting on issue of negligence.

Ohio.—Holt v. Hartschuk, 122 N.E.2d 653, 96 Ohio App. 491.

(3) Contributory negligence as a defense to a cause of action for negligence exists only where there is actionable negligence.

Ohio.—Holt v. Hartschuk, supra.

not challenged by the complaining party,[36.5] or where the finding is contrary to the issue or theory on which the evidence was improperly admitted,[37] or where a finding based on evidence of the intention of the parties to the instrument in suit is in harmony with the legal construction thereof.[38] So, also, such an error is harmless even though the illegal evidence may have influenced the verdict, if the appellate court does not rely on the verdict, but on the record as brought up, and is not influenced by such evidence.[39]

Where the finding of the jury is not determinative of the controversy between the parties, the admission of incompetent evidence is not rendered harmless.[39.5] Error in admitting evidence is not harmless where an appellate court cannot say that the jury did not, in part, base their verdict on that evidence.[39.10]

b. Direction of Verdict

The direction of a verdict for one of the parties, under competent evidence in the case, renders harmless any error in the admission of evidence.

Where it appears that the trial court which directed a verdict against the complaining party did not give any binding effect to certain evidence, that party cannot complain of the admission of such evidence.[39.50] Error in the admission of evidence during the trial is harmless where the court, in accordance with competent evidence in the case, instructs the jury to return a verdict in favor of one party to an action, without submitting to their determination any issue in the case,[40] or directs a verdict on the count or issue on which the improper evidence is admitted,[41] the same rule governing in such

(3) Judgment in negligence action is not subject to affirmation under "two-issue" rule where issue of contributory negligence was submitted without error intervening but issue of actionable negligence was erroneously submitted.
Ohio.—Holt v. Hartschuk, supra.

(4) Even though issue of contributory negligence had been submitted without error, in automobile accident case, erroneous admission of evidence as to plaintiff's injuries constituted erroneous admission of evidence on issue of defendant's negligence and general verdict for defendant was not subject to affirmation under "two-issue" rule.
Ohio.—Holt v. Hartschuk, supra.

Where recovery is sought on two grounds and the jury find for defendant on the second ground, errors in rulings on questions of evidence offered in support of the second cause, are harmless, since they could not have prejudiced defendant during the trial under the first cause.
Mont.—Fowlie v. Cruse, 157 P. 958, 52 Mont. 222.

36.5 Vt.—Bethel Mills v. Whitcomb, 76 A.2d 548, 116 Vt. 357—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471.

37. Ariz.—Gila Land & Water Co. v. Page, 181 P. 457, 20 Ariz. 400.
Ark.—Reiff v. Interstate Business Men's Acc. Ass'n of Des Moines, Iowa, 192 S.W. 216, 127 Ark. 254.
Cal.—Pemberton v. Arny, 182 P. 964, 180 C. 762.
Ga.—Lanier v. Council, 176 S.E. 614, 179 Ga. 568.
Kan.—Kouns v. Myers, 235 P. 122, 118 Kan. 221.
Mass.—Strachan v. Beacon Oil Co., 146 N.E. 787, 251 Mass. 479—Bird v. Johnston, 119 N.E. 354, 230 Mass. 28—Philip Carey Co. v. Pingree, 111 N.E. 857, 223 Mass. 352
Minn.—Otterstetter v. Steenerson Bros. Lumber Co., 174 N.W. 305, 143 Minn. 442.
Tex.—Rio Grande & E. P. Ry. Co. v. T. A. Austin & Co., Civ.App., 12 S.W.2d 1070, reversed on other grounds, Com.App., 25 S.W.2d 306—Crowley Mercantile Co. v. Brenard Mfg. Co., Civ.App., 287 S.W. 127—Dancy v. Peyton, Civ.App., 282 S.W. 819—Clay-Butler Lumber Co. v. W. R. Pickering Lumber Co., Civ.App., 264 S.W. 267, affirmed Clay-Butler Lumber Co. v. W. H. Pickering Lumber Co., Com.App., 276 S.W. 664—Rhodes v. Panhandle & S. F. Ry. Co., Civ.App., 243 S.W. 516—Bivins v. Oldham, Civ.App., 224 S.W. 240, error refused—La Grone v. Chicago, R. I. & G. Ry. Co., Civ.App., 189 S.W. 99, error refused.
Vt.—Burlington Grocery Co. v. Lines, 120 A. 169, 96 Vt. 405.
Wash.—Amann v. City of Tacoma, 16 P.2d 601, 170 Wash. 296.
4 C.J. p 986 note 89.

Validity of deed
In an action to quiet title admission of evidence of a tax deed, if error is harmless, where the court finds that the deed is void and of no effect.
Cal.—Mondine v. Labaig, 186 P. 1047, 44 C.A. 781.

38. Or.—Van Groos v. District School Board for School Dist. No. 91 in Jackson County, 12 P.2d 316, 140 Or. 223—Gile v. Lasselle, 171 P. 741, 89 Or. 107.
4 C.J. p 986 note 90.

39. La.—Melson v. Calhoun, 120 So. 115, 10 La.App. 492.

39.5 N.C.—Ballard v. Ballard, 55 S.E.2d 316, 230 N.C. 629.

Nondelivery of deed
N.C.—Ballard v. Ballard, supra.

39.10 N.M.—Downer v. Southern Union Gas Co., 208 P.2d 815, 53 N.M. 354.

Lack of chauffeur's license
N.M.—Downer v. Southern Union Gas Co., supra.

39.50 Tex.—Haskell Independent School Dist. v. Ferguson, Civ.App., 178 S.W.2d 130, error refused.

Documentary evidence
Tex.—Haskell Independent School Dist. v. Ferguson, supra.

40. Ill.—Buchanan v. Scottish Union & Nat. Ins. Co., 210 Ill.App. 523—Allen v. U. S. Fidelity & Guaranty Co. of Baltimore, Md., 193 Ill.App. 193, affirmed 109 N.E. 1035, 269 Ill. 234. See Lencki v. Schultz, 198 Ill.App. 294.
Iowa.—James v. School Tp. of Troy in Iowa County, 229 N.W. 750, 210 Iowa 1059.
Ky.—Niagara Ins. Co. of New York v. Jeffrey, 286 S.W. 846, 215 Ky. 644.
Mich.—Labadie v. Village of Ford, 151 N.W. 1046, 185 Mich. 402.
Mont.—Dick v. King, 236 P. 1093, 73 Mont. 456.
Ohio.—Scott v. Wingenberg, 26 Ohio Cir.Ct.,N.S., 1.
Tenn.—De Kalb County v. Tennessee Electric Power Co., 67 S.W.2d 555, 17 Tenn.App. 343.
Tex.—Sovereign Camp W. O. W. v. Helm, Civ.App., 70 S.W.2d 213—Traders' & General Ins. Co. v. Hurst, Civ.App., 55 S.W.2d 1057—Planters' Oil Co. v. Gresham, Civ.App., 202 S.W. 145, error refused.
4 C.J. p 986 note 91.

Admission of record of confession of judgment offered by defendant is harmless to plaintiffs, particularly where the court directs a verdict for defendant.
Pa.—Beers v. Fallen Timber Coal Co., 161 A. 409, 307 Pa. 261.

41. D.C.—Washington & O. D. Ry. Co. v. Dulany, 288 F. 421, 53 App. D.C. 67.

case as if the trial had been to the court without a jury.[42]

The admission of evidence of the oral negotiations preceding a written contract is harmless, where both parties move for a directed verdict.[43]

c. Special Findings

Error in the admission of evidence is rendered harmless by a special finding, as where that finding shows that such evidence had no effect on the verdict.

Objections, otherwise tenable, to the admission of evidence may be rendered unavailable by a special finding by the court or jury,[44] as where the finding renders immaterial the issue on which the improper evidence was admitted,[45] or shows that the verdict was not affected by such evidence,[46] or that it was based on other evidence.[47]

If, however, there is but a single issue in a case and a general verdict, and there are no findings on subordinate questions, error in admitting evidence as tending to prove the main issue is not cured by a statement of the jury that they have not considered it;[48] and where the finding indicates that the inadmissible evidence had some influence on the jury, the error is prejudicial.[49]

d. Appellant Not Entitled to Favorable Decision in Any Event

Where an appellant is not entitled to a favorable decision in any event, error in the admission of evidence is harmless.

The erroneous admission of evidence is harmless, and not ground for reversal, where the competent evidence in the case is such that the complaining party could not recover in any event, or the prevailing party was entitled to the verdict, finding, or judgment rendered in his favor in any event,[50]

Ga.—Mendenhall v. Adair Realty & Loan Co., 19 S.E.2d 740, 67 Ga.App. 154.

42. Neb.—Simons v. Fagan, 87 N.W. 21, 62 Neb. 287.
Wash.—Gault v. Bradshaw, 93 P. 534, 48 Wash. 364.

43. Or.—John Deere Plow Co. of Moline v. Silver Mfg. Co., 245 P. 1083, 118 Or. 62.

44. Cal.—Bracker v. American Nat. Food, 284 P.2d 163, 133 C.A.2d 338.
Me.—Wood v. Finson, 39 A. 1007, 91 Me. 280.
N.Y.—Thomson v. New York Trust Co., 56 N.E.2d 32, 293 N.Y. 58, motion denied 56 N.E.2d 746, 293 N.Y. 751.
Tex.—Myers v. Thomas, Civ.App., 182 S.W.2d 266, reversed on other grounds 186 S.W.2d 811, 143 Tex. 502—McCrory's Stores Corp. v. Murphy, Civ.App., 164 S.W.2d 735, error refused.

Improper admission of opinion evidence is not cured by a finding of the court to the effect that such evidence is disregarded "except where the opinion is a matter of personal experience and knowledge to the expert, as shown by prior and later testimony," the appellate court having no means of determining how much of such testimony the trial court considered to be so fortified.
N.Y.—American Bank-Note Co. v. Metropolitan El. R. Co., 18 N.Y.S. 532, 63 Hun 506.

45. Ariz.—Queen Ins. Co. v. Jones, 262 P.2d 241, 76 Ariz. 198.
Cal.—Mayfield v. Fidelity & Casualty Co. of New York, 61 P.2d 83, 16 C.A.2d 611.
Iowa.—Walsh v. Thompson, 3 N.W. 563.
Kan.—Davies v. Lutz, 205 P. 637, 110 Kan. 657.
Me.—Dresden School Dist. No. 6 v. Ætna Ins. Co., 62 Me. 330.

46. Ind.—Sterling Fire Ins. Co. v. Comision Reguladora Del Mercado De Henequen, 143 N.E. 2, 195 Ind. 29.
Iowa.—Freeby v. Incorporated Town of Sibley, 186 N.W. 685, 195 Iowa 200, modified on other grounds 191 N.W. 867, 195 Iowa 1032.
Kan.—Griffin v. Kaufman, 203 P. 924, 110 Kan. 182.
Mo.—Producers' Packing Co. v. Fischer, 275 S.W. 979, 219 Mo.App. 429.
Tex.—Earhart v. Agnew, Civ.App., 190 S.W. 1140, reversed on other grounds, Com.App., 222 S.W. 188—West Texas Supply Co. v. Dunivan, Civ.App., 182 S.W. 425.
4 C.J. p 986 note 94.

Documentary evidence
The admission of documentary evidence, if error, is harmless, where a special finding determined that plaintiff had no cause of action regardless of such issue.
Minn.—Nichols v. Atwood, 149 N.W. 672, 127 Minn. 425.

47. Ind.—Sterling Fire Ins. Co. v. Comision Reguladora Del Mercado De Henequen, 143 N.E. 2, 195 Ind. 29.
4 C.J. p 987 note 95.

Error in admitting letter
Error in admitting in an action for breach of warranty a letter which accompanied the written contract is harmless, where the special findings, not based on that evidence, were sufficient to sustain the judgment.
Tex.—Phillip-Carey Co. v. Manes, Civ. App., 177 S.W. 158.

48. Mass.—Commonwealth v. Keenan, 25 N.E. 32, 152 Mass. 9.

49. Mich.—Millar v. Macey Co., 248 N.W. 879, 263 Mich. 484—Crane v. Reeder, 25 Mich. 303.
Tex.—Haley v. Lee, Civ.App., 241 S.W. 567.

Judgment held not sustained by interrogatory and answer
Cal.—Reisman v. Los Angeles City School Dist., 267 P.2d 36, 123 C.A.2d 493.

50. Ala.—Watts v. Atlantic Coast Line R. Co., 54 So.2d 601, 256 Ala. 352—Harris v. Eller, 10 So.2d 284, 243 Ala. 415—Ritter v. Hewitt, 181 So. 289, 236 Ala. 205—McDuff v. Kurn, 172 So. 886, 233 Ala. 619—Smith v. Smith, 103 So. 557, 212 Ala. 522—Contorno v. Ensley Lumber Co., 100 So. 127, 211 Ala. 211—Manegold v. Beaven, 77 So. 695, 201 Ala. 169—Snead v. Patterson, 66 So. 664, 190 Ala. 43.
Foster v. Crittenden, 179 So. 922, 28 Ala.App. 154.
Ariz.—Anderson v. Alabam Freight Lines, 169 P.2d 865, 64 Ariz. 313—Anthony v. Phoenix Union High School Dist. Maricopa County, 100 P.2d 988, 55 Ariz. 265—Mutual Ben. Health & Accident Ass'n v. Neale, 33 P.2d 604, 43 Ariz. 532.
Ark.—Jonesboro, L. C. & E. R. Co. v. Ashabranner, 174 S.W. 548, 117 Ark. 317.
Cal.—Leavitt v. Gibson, 43 P.2d 1091, 3 C.2d 90—Flach v. Fikes, 267 P. 1079, 204 C. 329—Wood v. Longyear, 242 P. 932, 197 C. 723—Conaway v. Toogood, 158 P. 200, 172 C. 706.
Bergan v. Ormsby, 281 P.2d 70, 131 C.A.2d 505—Hensley v. Popkin, 171 P.2d 916, 75 C.A.2d 852—Jones v. Tierney-Sinclair, 162 P.2d 669, 71 C.A.2d 366—Booth v. Bond, 132 P.2d 520, 56 C.A.2d 153—Breland v. Traylor Engineering & Mfg. Co., 126 P.2d 455, 52 C.A.2d 415—Conner v. East Bay Municipal Util-

as where the other evidence is admitted or undisputed, and is sufficient to justify the verdict, finding,

ity Dist., 47 P.2d 774, 8 C.A.2d 613, rehearing denied 48 P.2d 982, 8 C.A.2d 613—Dowd v. Joyce, 259 P. 368, 85 C.A. 377—Western Steel & Engineering Co. v. Feykert, 232 P. 465, 69 C.A. 763—Hunt v. Sutter-Butte Canal Co., 225 P. 884, 66 C. A. 363—Tiefel v. Chant, 186 P. 382, 44 C.A. 433—People v. Laine, 182 P. 986, 41 C.A. 345.

Colo.—Hagadorn Inv. Co. v. Rieke, 155 P. 381, 60 Colo. 555.

Conn.—General Auto Sales Co. v. Capitol Motor Car Co., 40 A.2d 767, 131 Conn. 424—Croughwell v. Chase Brass & Copper Co., 20 A.2d 619, 128 Conn. 110.

Fla.—Fisher v. Guidy, 142 So. 818, 106 Fla. 94—City of Jacksonville v. Vaughn, 110 So. 529, 92 Fla. 339.

Ga.—McKee v. Hubert, 85 S.E.2d 757, 211 Ga. 329—Lankford v. Milhollin, 47 S.E.2d 70, 203 Ga. 491, followed in 47 S.E.2d 74, 203 Ga. 497, and Lankford v. Tanner, 47 S.E.2d 75, 203 Ga. 497, two cases, and Lankford v. Holton, 47 S.E.2d 75, 203 Ga. 498—Snow v. Johnston, 28 S.E.2d 270, 197 Ga. 146—Parker v. Harling, 5 S.E.2d 755, 189 Ga. 224—McWilliams v. Parker, 121 S.E. 818, 157 Ga. 645—Maxwell v. Meyers, 95 S.E. 693, 148 Ga. 50.

Dye v. Hirsch, 90 S.E.2d 332, 92 Ga.App. 803—Alpha Kappa Psi Bldg. Corp. v. Kennedy, 83 S.E.2d 580, 90 Ga.App. 587—Ulmer v. Ulmer, 186 S.E. 433, 53 Ga.App. 417—Chafin v. Cox, 147 S.E. 154, 39 Ga. App. 301—Anestos v. Simons, 110 S.E. 30, 27 Ga.App. 808—Wiggins v. L. Jonas & Co., 106 S.E. 927, 26 Ga.App. 706—Ward v. Ward, 102 S.E. 35, 24 Ga.App. 695—Christopher v. Georgian Co., 97 S.E. 97, 22 Ga.App. 707—Glauson v. Collier, 94 S.E. 77, 21 Ga.App. 96.

Ill.—Bittner v. Field, 188 N.E. 342, 354 Ill. 215—Augustus v. Lydig, 187 N.E. 278, 353 Ill. 215—Marnik v. Cusack, 148 N.E. 42, 317 Ill. 362—Cales v. Dressler, 146 N.E. 162, 315 Ill. 142.

Loucks v. Pierce, 93 N.E.2d 372, 341 Ill.App. 253—Standard Oil Co. of Ind. v. Daniel Burkhartsmeier Cooperage Co., 77 N.E.2d 526, 333 Ill.App. 338—Schmahl v. Ackerson, 74 N.E.2d 614, 332 Ill.App. 278—Rockwood Sprinkler Co. v. Phillips Co., 265 Ill.App. 267—Lino v. Northwestern Pac. R. Co., 246 Ill. App. 451, reversed on other grounds 163 N.E. 316, 332 Ill. 93—McNamara v. Melson, 237 Ill.App. 279—Rosenfeld v. Ehrhart, 202 Ill.App. 617—Warnock v. Fleming, 200 Ill. App. 22—Dunne v. Boland, 199 Ill. App. 308. See Holler v. Chicago City Ry. Co., 209 Ill.App. 140—J. Austin Dunn Specialty Co. v. Dunn, 202 Ill.App. 206—University Hospital v. De Voney, 199 Ill.App. 307—Lemon v. Snell, 188 Ill.App. 101.

Ind.—Cousins v. Glassburn, 24 N.E. 2d 1013, 216 Ind. 431.

Keener School Tp. v. Eudaly, 175 N.E. 363, 93 Ind.App. 627—Butsch v. Swallow, 134 N.E. 877, 78 Ind. App. 101.

Iowa.—Independent School Dist. of Dubuque in Dubuque County v. Sass, 261 N.W. 30, 220 Iowa 1—Millard v. Curtis, 223 N.W. 489, 208 Iowa 682.

Kan.—Condon Nat. Bank of Coffeyville v. Krigel, 294 P.2d 241, 179 Kan. 274—Allen v. Waddle, 208 P. 551, 111 Kan. 690—Collins v. Union Pac. R. Co., 152 P. 649, 96 Kan. 581.

Ky.—Southern Express Co. v. Commonwealth, 198 S.W. 207, 177 Ky. 767—Southern Ry. in Kentucky v. Owen, 176 S.W. 25, 164 Ky. 571—Illinois Cent. R. Co. v. Williams, 174 S.W. 741, 163 Ky. 831.

La.—Succession of Land, 31 So.2d 609, 212 La. 103.

Butler v. Oswald, App., 4 So.2d 241.

Mass.—Graustein v. Barry, 53 N.E. 2d 568, 315 Mass. 518—Factory Realty Corporation v. Corbin-Holmes Shoe Co., 44 N.E.2d 671, 312 Mass. 325, 166 A.L.R. 384.

Mich.—Sun Life Assur. Co. of Canada v. Allen, 259 N.W. 281, 270 Mich. 272.

Minn.—McGuiggan v. St. Paul City Ry. Co., 40 N.W.2d 435, 229 Minn. 534—Webster Lumber Co. v. Roedter, 217 N.W. 933, 173 Minn. 529.

Miss.—Reynolds v. Snowden, 92 So. 2d 232—Mabry v. Winding, 90 So. 2d 175.

Mo.—Biggs v. Oerly, 257 S.W. 104.

Phillips v. American Nat. Assur. Co., 58 S.W.2d 814, 227 Mo.App. 1136—Smith v. Gaskill, App., 272 S.W. 1087—Cradick v. John Hancock Mut. Life Ins. Co. of Boston, Mass., App., 256 S.W. 501, certiorari quashed State ex rel. John Hancock Mut. Life Ins. Co. of Boston v. Allen, 267 S.W. 832, 306 Mo. 197—Merchants' & Mfrs.' Bank v. S. W. Morten Lumber Co., App., 247 S.W. 432—Kribs v. United Order of Foresters, App., 233 S.W. 89.

Mont.—Mineral County v. Hyde, 111 P.2d 284, 111 Mont. 535—Williard v. Campbell, 11 P.2d 782, 91 Mont. 493—Noyes Estate v. Granite-Alaska Co., 210 P. 96, 64 Mont. 406—Noe v. Matlock, 208 P. 591, 64 Mont. 35.

Nev.—Brockbank v. Reorganized Silver King Divide Mining Co., 237 P. 377, 49 Nev. 80.

N.Y.—Dougherty v. City of New York, 45 N.Y.S.2d 868, 267 App. Div. 828, affirmed 66 N.E.2d 299, 295 N.Y. 786—Hochstim v. Grossman, 16 N.Y.S.2d 961, 258 App. Div. 445—Caccetta v. Oakley, 16 N.Y.S.2d 96, 258 App.Div. 888.

N.D.—State v. Van Horne, 2 N.W.2d 1, 71 N.D. 455.

Ohio.—Sweeney v. Schneider, 53 N. E.2d 820, 73 Ohio App. 157—Usher v. Zuber, 182 N.E. 43, 42 Ohio App. 355.

Okl.—Lee v. National Refining Co., 75 P.2d 406, 181 Okl. 556—McLaughlin v. Cheney, 46 P.2d 352, 172 Okl. 562—Camden Fire Ins. Ass'n of Camden, N. J. v. Kouri, 42 P.2d 844, 171 Okl. 264.

Or.—Meier & Frank Co. v. Mitlehner, 146 P. 796, 75 Or. 331.

Pa.—Shaffer v. Torrens, 58 A.2d 439, 359 Pa. 187—In re Wood's Estate, 93 A. 483, 247 Pa. 377.

R.I.—Di Orio v. Cenci, 173 A. 537, 54 R.I. 441—Commonwealth of Massachusetts v. Martin, 125 A. 219.

S.C.—Miller v. Atlantic Coast Line R. Co., 138 S.E. 675, 140 S.C. 123, certiorari denied Camp Mfg. Co. v. Miller, 48 S.Ct. 117, 275 U.S. 556, 72 L.Ed. 424—Smoak v. Martin, 94 S.E. 869, 108 S.C. 472.

S.D.—Pfleger v. Wilhelm, 274 N.W. 872, 65 S.D. 464—Morton v. Holscher, 243 N.W. 89, 60 S.D. 50—Lane Independent Consol. School Dist. No. 1 of Jerauld County v. Endahl, 224 N.W. 951, 55 S.D. 73—Marker v. Van Gerpen, 166 N.W. 151, 39 S.D. 648.

Tenn.—Boykin v. Chose Bottling Works, 222 S.W.2d 889, 32 Tenn. App. 508—Greene County Union Bank v. Miller, 75 S.W.2d 49, 18 Tenn.App. 239.

Tex.—Bertrand v. Pate, Civ.App., 284 S.W.2d 802—Gilmer v. Griffin, Civ. App., 265 S.W.2d 252, error refused no reversible error—Harris v. Levy, Civ.App., 217 S.W.2d 154—Warren v. Fort Worth & D. C. Ry. Co., Civ.App., 208 S.W.2d 569, error refused no reversible error—Elmore v. J. S. Hunt Lumber Co., Civ.App., 194 S.W.2d 808, error dismissed—Weart v. Mahone, Civ. App., 176 S.W.2d 197—Burton v. Wheeler, Civ.App., 150 S.W.2d 321, error dismissed, judgment correct—Langlitz v. American Nat. Ins. Co., Civ.App., 146 S.W.2d 484, error dismissed, judgment correct—Russell v. General Sports Mfg. Co., Civ.App., 110 S.W.2d 1253, error dismissed—Continental Ins. Co. of New York v. Guerson, Civ.App., 93 S.W.2d 591, error dismissed—Kaderli v. Zimmerman, Civ.App., 72 S.W.2d 964—King v. Sieber, Civ. App., 50 S.W.2d 473—Louisiana Ry. & Nav. Co. of Texas v. Kimball, Civ.App., 23 S.W.2d 398—Evans v. Ball, Civ.App., 6 S.W.2d 180—International Travelers' Ass'n v. Bettis, Civ.App., 3 S.W.2d 478, reversed on other grounds 35 S.W.2d

or judgment complained of,[51] or where the evidence | offered by plaintiff is not sufficient to maintain his

1040, 120 Tex. 67—Benavides v. Garcia, Civ.App., 283 S.W. 611, affirmed, Com.App., 290 S.W. 739—International Travelers' Ass'n v. Melaun, Civ.App., 270 S.W. 246—Gulf, C. & S. F. Ry. Co. v. Gardner, Civ.App., 266 S.W. 809—Elmendorf v. City of San Antonio, Civ.App., 223 S.W. 631, reversed on other grounds, Com.App., 242 S.W. 185—Jefferson County Traction Co. v. Giles, Civ.App., 206 S. W. 224—Slaughter v. Crisman & Nesbit, Civ.App., 178 S.W. 1—Dunn v. Epperson, Civ.App., 175 S.W. 837.

Va.—Twohy v. Harris, 72 S.E.2d 329, 194 Va. 69—Richardson v. Breeding, 187 S.E. 454, 167 Va. 30—Seaboard Air Line Ry. Co. v. Huling, 141 S.E. 237, 149 Va. 360—Seaboard Air Line Ry. Co. v. Twine, 141 S.E. 236, 149 Va. 362—Seaboard Air Line Ry. Co. v. Terrell, 141 S.E. 231, 149 Va. 344—Chesapeake & O. Ry. Co. v. Ware, 95 S.E. 183, 122 Va. 246—Wood v. Phillips, 86 S.E. 101, 117 Va. 878.

Wash.—Comstock v. Smith, 48 P.2d 255, 183 Wash. 94—White v. Armstrong, 7 P.2d 12, 166 Wash. 346—Elliott v. Roberts, 252 P. 131, 141 Wash. 689—Roberts v. Anderson, 238 P. 989, 136 Wash. 35—Percy v. Miller, 197 P. 638, 115 Wash. 440.

W.Va.—Rothwell v. Summit Coal Co., 126 S.E. 581, 98 W.Va. 180—Robinette v. Hubbard Coal Mining Co., 107 S.E. 285, 88 W.Va. 514.

Wis.—Throm v. Koepke Sand & Gravel Co., 51 N.W.2d 49, 260 Wis. 479.

4 C.J. p 977 note 94, p 987 note 98.

Admission of results of lie detector tests

Mich.—Stone v. Earp, 50 N.W.2d 172, 331 Mich. 606.

Hearsay

(1) Admission of hearsay evidence is harmless where there is sufficient competent evidence to support the verdict or finding.

Cal.—Martin Music Co. v. Robb, 1 P. 2d 1000, 115 C.A. 414.

Mont.—Conway v. Fabian, 89 P.2d 1022, 108 Mont 287, certiorari denied 60 S.Ct. 94, 308 U.S. 578, 84 L.Ed. 484.

N.M.—Colbert v. Journal Pub. Co., 142 P. 146, 19 N.M. 156.

Tex.—Galveston, H. & S. A. Ry. Co. v. Friedrichs, Civ.App., 252 S.W. 346—Houston, E. & W. T. Ry. Co. v. Brackin, Civ.App., 191 S.W. 804.

Va.—Jones v. Galleher & Co., 47 S. E.2d 333, 187 Va. 602.

(2) Error in admitting for defendant, in action for personal injuries, a hearsay statement concerning stopping distance, applicable only to defendant's automobile, was not prejudicial to plaintiff where jury found both parties were negligent and where evidence on question of humanitarian negligence was not sufficient for jury.

Mo.—Breshears v. Myers, 266 S.W. 2d 638.

(3) Admission of hearsay evidence is harmless where it was not contended that the evidence did not make a prima facie case and order overruling demurrer was not assigned as error.

Kan.—State v. Steele, 187 P.2d 382, 164 Kan. 123.

(4) Harmless error in admission of hearsay evidence generally see supra § 1727.

On different theory

The admission of evidence in support of a theory other than that on which the jury bases their verdict is not prejudicial.

Okl.—Kimmell v. Goehler, 226 P. 576, 99 Okl. 273.

One of several defenses

Where there is evidence sufficient to sustain one of several distinct defenses, alleged error as to matters of evidence relating wholly to other defenses is irrelevant, and becomes immaterial, and the wrongful exclusion or admission of such evidence would be nonprejudicial error.

S.D.—Mundon v. Greenameyer, 184 N. W. 257, 44 S.D. 440.

Opinion evidence

Error in the admission of opinion evidence is not reversible error where other and competent evidence is sufficient to support the verdict or finding.

Ind.—Montgomery v. Pierson, 145 N. E. 771, 195 Ind. 475.

Iowa.—Lukin v. Marvel, 259 N.W. 782, 219 Iowa 773.

Mass.—Koch v. Lynch, 141 N.E. 677, 247 Mass. 459.

Minn.—George T. Ross Lodge No. 831, Brotherhood of Railroad Trainmen v. Brotherhood of Railroad Trainmen, 254 N.W. 590, 191 Minn. 373—General Motors Truck Co. v. Phillips, 254 N.W. 580, 191 Minn. 467.

Pa.—Compton v. Hoffman, 108 A. 626, 265 Pa. 257.

Tex.—Freeport Town-Site Co. v. S. H. Hudgins & Sons, Civ.App., 212 S.W. 287, error refused.

51. Ala.—Robinson v. Solomon Bros. Co., 155 So. 553, 229 Ala. 137—Little v. People's Bank of Mobile, 96 So. 763, 209 Ala. 620.

Robinson v. Wampold-Loeb Shoe Co., App., 155 So. 312, 26 Ala.App. 157.

Ark.—O'Bar v. Hight, 277 S.W. 533, 169 Ark. 1008.

Cal.—Selig Cahn, Inc., v. California Wrecking Co., 71 P.2d 1113, 9 C. 2d 617—Yoakam v. Hogan, 243 P. 21, 198 C. 16.

Jaffe v. Vitz, 191 P.2d 802, 84 C. A.2d 810—Mullanix v. Basich, 155 P.2d 130, 67 C.A.2d 675—Bridges v. Tefft, 200 P. 71, 53 C.A. 117.

Ga.—Childers v. Ackerman Const. Co., 86 S.E.2d 227, 211 Ga. 350—Jones v. Dean, 3 S.E.2d 894, 188 Ga. 319—Sigman v. Adams, 106 S.E. 82, 151 Ga. 88.

Lewis v. Joyner, 113 S.E. 829, 29 Ga.App. 92.

Idaho.—Dahlberg v. Johnson's Estate, 211 P.2d 764, 70 Idaho 51, 11 A.L.R.2d 1365.

Ill.—Eckart v. City of Belleville, 13 N.E.2d 641, 294 Ill.App. 144—Oswald v. Standard Trust & Savings Bank, 227 Ill.App. 138—Watts v. Wabash Ry. Co., 219 Ill.App. 549.

Iowa.—Ft. Dodge Culvert & Steel Co. v. Miller, 206 N.W. 141, 200 Iowa 1169.

Ky.—Payne-Baber Coal Co. of Kentucky v. Butler, 123 S.W.2d 273, 276 Ky. 211.

Mo.—Stephan Coal Co. v. Lloyd, App., 240 S.W. 1092.

Mont.—Daly v. Swift & Co., 300 P. 265, 90 Mont. 52.

N.J.—Miller v. Trans Oil Co., 113 A. 2d 777, 18 N.J. 407.

N.M.—Colbert v. Journal Pub. Co., 142 P. 146, 19 N.M. 156.

Ohio.—Sweeney v. Schneider, 53 N. E.2d 820, 73 Ohio App. 157.

Okl.—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35—Impson v. Kelley, 163 P.2d 984, 195 Okl. 666.

Pa.—Kissell v. Motor Age Transit Lines, 53 A.2d 593, 357 Pa. 204—Ebensburg Trust Co. v. Pike, 146 A. 122, 296 Pa. 462, followed in 146 A. 149, 296 Pa. 500.

Tenn.—De Kalb County v. Tennessee Electric Power Co., 67 S.W.2d 555, 17 Tenn.App. 343.

Tex.—B. L. Satterwhite & Co. v. Eardley, Civ.App., 294 S.W.2d 412—Howard v. Sears, Civ.App., 196 S.W.2d 105.

Utah.—Anderson v. Thomas, 159 P. 2d 142, 108 Utah 252.

Wash.—Cannon v. Miller, 155 P.2d 500, 22 Wash.2d 227, 157 A.L.R. 530.

W.Va.—Mills v. Miller, 64 S.E.2d 111, 135 W.Va. 621—Boyd v. Pancake Realty Co., 46 S.E.2d 633, 131 W. Va. 150—Shearer v. Gauley Mountain Coal Co., 114 S.E. 363, 92 W. Va. 29.

Wis.—Rowland v. City of Racine, 271 N.W. 86, 223 Wis. 488.

Admission of accident report held harmless

Okl.—Astle v. Olmstead, 187 P.2d 997, 199 Okl. 498.

Admission in pleadings

The reviewing court need not consider exceptions to an admission of

cause of action,[52] or make a case for the jury[52.5] or for the trier of the facts.[52.10]

Error in the admission of evidence is harmless where, notwithstanding the illegal evidence, the competent evidence is such that the prevailing party is entitled to the verdict or judgment as a matter of law, as being the only proper verdict or judgment that could be rendered,[53] or where the prevailing party is entitled to a directed verdict,[54] or where he

evidence where the judgment was supported by admissions in the pleadings.
N.C.—Rosenberg v. Equitable Life Assur. Soc. of U. S., 136 S.E. 364, 193 N.C. 126.

52. Cal.—Browne v. Los Angeles Ry. Corporation, 4 P.2d 279, 117 C. A. 559—Freeman Electric Co. v. MacMillan, 264 P. 491, 89 C.A. 264—United Canneries Co. of California v. Seelye, 192 P. 341, 48 C.A. 747.
Colo.—Gibson v. Brown, 152 P. 1160, 60 Colo. 494.
Fla.—Powell v. Wilson Lumber Co. of Florida, 155 So. 116, 115 Fla. 13.
Ga.—Sigman v. Adams, 106 S.E. 82, 151 Ga. 88.
Columbian Nat. Life Ins. Co. v. Buntin, 159 S.E. 891, 43 Ga.App. 698.
Ill.—Marnik v. Cusack, 148 N.E. 42, 317 Ill. 362.
Ky.—Cavanaugh v. Kirkman, 262 S. W. 944, 203 Ky. 541.
Md.—Brady v. Brady, 117 A. 882, 140 Md. 403.
Minn.—Harmer v. Holt, 195 N.W. 637, 157 Minn. 102.
Mo.—Beauchamp v. Consolidated School Dist. No. 4, Livingston County, 247 S.W. 1004, 297 Mo. 64.
Massey v. Butts, 221 S.W. 153, 204 Mo.App. 55.
Neb.—Neal v. Union Transfer Co., 255 N.W. 544, 127 Neb. 443—Miller v. Great Western Commission Co., 152 N.W. 787, 98 Neb. 392.
N.J.—Robertson v. Hackensack Trust Co., 63 A.2d 515, 1 N.J. 304.
S.D.—Maher v. Wagner, 252 N.W. 647, 62 S.D. 227.
Tex.—Westbrook v. Texas & P. Ry. Co., Civ.App., 203 S.W.2d 279, error refused no reversible error—Austin v. Pool, Civ.App., 299 S.W. 935—Morrison v. Orange & N. W. Ry. Co., Civ.App., 258 S.W. 510—Ball v. McDuffie, Civ.App., 212 S. W. 844.
4 C.J. p 987 note 99.

As to damages
Where damages are sought and the evidence is insufficient to show damages, any error in the admission of evidence not relating to the extent of damages is harmless.
Ga.—Coffee v. Worsham & Weaver, 119 S.E. 665, 31 Ga.App. 62.

Where plaintiff fails to make a prima facie case, improper evidence admitted for defendant, if any, is immaterial.
Mo.—Thomas v. Land, 30 S.W.2d 1035, 225 Mo.App. 216.

52.5 Mo.—Gilbert v. Bluhm, 291 S. W.2d 125—O'Dell v. Dean, 204 S. W.2d 248, 356 Mo. 861—Bootee v. Kansas City Public Service Co., 183 S.W.2d 892, 353 Mo. 716.

52.10 Mo.—Hughes v. Patriotic Ins. Co. of America, App., 193 S.W.2d 958.

53. Ala.—Hill v. Hooper, 110 So. 323, 21 Ala.App. 584.
Ark.—St. Louis, I. M. & S. Ry. Co. v. Cunningham Commission Co., 188 S.W. 1177, 125 Ark. 577.
Cal.—Youngberg v. South End Warehouse Co., 171 P. 97, 177 C. 504.
In re Doyle's Estate, 14 P.2d 909, 126 C.A. 446—Cliff v. California Spray-Chemical Co., 257 P. 99, 83 C.A. 424—Coats v. Stephens, 228 P. 365, 67 C.A. 753—Quinn v. Rike, 194 P. 761, 50 C.A. 243—City of San Diego v. Kerckhoff, 193 P. 801, 49 C.A. 473.
Colo.—Fidelity Mut. Life Ins. Co. v. Cochrane, 185 P. 465, 66 Colo. 547.
Ga.—May v. Sorrell, 101 S.E. 535, 149 Ga. 610—McTyer v. Stearns, 83 S.E. 955, 142 Ga. 850.
Union Relief Ass'n v. Evans, 169 S.E. 264, 46 Ga.App. 806—Lane v. Happ Bros. Co., 162 S.E. 519, 44 Ga.App. 577—Columbian Nat. Life Ins. Co. v. Buntin, 159 S.E. 891, 43 Ga.App. 698—Seaboard Air Line Ry. Co. v. Wright, 122 S.E. 900, 32 Ga.App. 256—South Georgia Grocery Co. v. Virginia Baking Co., 119 S.E. 918, 31 Ga.App. 16—Stansel v. Ford Motor Co., 86 S.E. 412, 16 Ga.App. 782—Hill Bros. v. Bazemore, 86 S.E. 397, 17 Ga.App. 107.
Ill.—Kesl v. Cobine, 145 N.E. 148, 313 Ill. 438.
Iowa.—**Corpus Juris Secundum cited in** Steensland v. Iowa-Illinois Gas & Electric Co., 47 N.W.2d 162, 166, 242 Iowa 534—Butler Mfg. Co. v. Elliott & Cox, 233 N.W. 669, 211 Iowa 1068.
Minn.—McGuiggan v. St. Paul City Ry. Co., 40 N.W.2d 435, 229 Minn. 534—Stibal v. First Nat. Bank, 250 N.W. 718, 190 Minn. 1—Corn v. Sheppard, 229 N.W. 869, 179 Minn. 490.
Mo.—Summers v. Peoples Elevator Co., App., 136 S.W.2d 81—Wakefield v. Dinger, 135 S.W.2d 17, 234 Mo.App. 407—Havens v. Brown, 237 S.W. 126, 208 Mo.App. 473—Sutton v. North American Acc. Ins. Co., App., 208 S.W. 499—Morton v. Manchester Inv. Co., 168 S. W. 904, 181 Mo.App. 364.
Neb.—Wertz v. Lincoln Liberty Life Ins. Co., 41 N.W.2d 740, 152 Neb. 451, 17 A.L.R.2d 629—Leichner v. First Trust Co. of Lincoln, 274 N. W. 475, 133 Neb. 170—In re Tilton's Estate, 263 N.W. 217, 129 Neb. 872.
N.C.—Johnson v. Johnson, 50 S.E.2d 569, 229 N.C. 541.
S.C.—Bignon v. Reliance Life Ins. Co., 116 S.E. 427, 123 S.C. 338.
S.D.—Steensland v. Steensland, 179 N.W. 495, 43 S.D. 416.
Tex.—Killingsworth v. Rembert Nat. Bank of Longview, Com.App., 32 S.W.2d 645.
First State Bank of Ovalo v. Ovalo Warehouse Ass'n, Civ.App., 276 S.W. 773—Youngblood v. Hoeffle, Civ.App., 201 S.W. 1057—Peil v. Warren, Civ.App., 187 S.W. 1052, error refused.
Va.—Bloxom v. Rose, 144 S.E. 642, 151 Va. 590.
Wash.—Cascade Finance Co. v. Commercial Securities Corporation, 260 P. 251, 145 Wash. 372—Gleason v. Brown, 224 P. 930, 129 Wash. 196.
W.Va.—Shearer v. Gauley Mountain Coal Co., 114 S.E. 363, 92 W.Va. 29.

54. Ala.—Weaver v. Blackmon, 103 So. 889, 212 Ala. 681—Warten v. Weatherford, 67 So. 667, 191 Ala. 31.
Anderson v. City of Montgomery, 89 So. 857, 18 Ala.App. 233.
Ga.—State Farm Mut. Auto. Ins. Co. v. Collins, 43 S.E.2d 277, 75 Ga. App. 335—Harmon v. Adolph Block & Co., 124 S.E. 548, 32 Ga.App. 700—Beck & Gregg Hardware Co. v. Hall Hardware Co., 117 S.E. 271, 30 Ga.App. 224—Miller v. C. H. D. Robbins Co., 107 S.E. 600, 27 Ga. App. 245.
Iowa.—Lambert v. Reisman Co., 223 N.W. 541, 207 Iowa 711.
Ky.—Dolle v. Melrose Properties, 67 S.W.2d 706, 252 Ky. 482—Citizens' Ins. Co. v. Whitley, 67 S.W. 2d 488, 252 Ky. 360—Kelly v. Harlan Nat. Bank, 281 S.W. 823, 213 Ky. 689—Russell v. McIntosh, 201 S.W. 33, 179 Ky. 677.
Mich.—Conant v. Bosworth, 50 N.W. 2d 842, 332 Mich. 51.
Mo.—Porterfield v. American Surety Co. of New York, 210 S.W. 119, 201 Mo.App. 8.
N.H.—A. Perley Fitch Co. v. Phœnix Ins. Co., 133 A. 340, 82 N.H. 318.
N.D.—Sorg v. Brost, 150 N.W. 455, 29 N.D. 124.
Pa.—Ebensburg Trust Co. v. Pike, 146 A. 122, 296 Pa. 462, followed in 146 A. 149, 296 Pa. 500.

is entitled to a nonsuit without an adjudication of the issues,[54.5] or a peremptory instruction on each issue.[54.10] Where the action is such that plaintiff cannot sustain it on legal principles, error in the admission of evidence cannot be prejudicial.[55] So, also defendant, who by reason of the insufficiency of his pleading of an affirmative defense has no right to produce testimony, cannot complain of error in rulings thereon.[56]

e. As to Damages

(1) In general
(2) Remittitur

(1) In General

Error in admitting evidence as to the measure of damages is harmless where the amount awarded shows that the improper evidence had no appreciable effect on the verdict or judgment, or the amount awarded, as justified by the evidence, is not excessive.

Where the amount of the verdict is not questioned,[56.50] or where the verdict indicates that the correct measure of damages was applied,[56.55] error in admitting improper evidence as to damages is harmless. Error in the admission of evidence on the measure of damages is harmless where the amount awarded shows that such evidence did not have any effect, or at least no appreciable effect, on the verdict or judgment,[57] as where the record

S.C.—Sadler v. Pure Oil Co., 173 S.E. 640, 172 S.C. 220.

Tex.—Evans v. Houston Printing Corp., Civ.App., 217 S.W.2d 85, error refused no reversible error—Peyton Packing Co. v. Sweetwater Cotton Oil Co., Civ.App., 70 S.W.2d 829—Austin v. Pool, Civ. App., 299 S.W. 935—Calvin Coal Co. v. First Nat. Bank, Civ.App., 286 S.W. 901—Wilkins v. Gulf, C. & S. F. Ry. Co., Civ.App., 260 S.W. 214—Moore v. Moore, Civ.App., 259 S.W. 322.

Vt.—Campbell v. Bryant, 129 A. 299, 98 Vt. 486.

Wis.—Zuleger v. Zeh, 150 N.W. 406, 160 Wis. 600.

4 C.J. p 987 note **1.**

Deposition

(1) Where the court might properly have directed a verdict for plaintiff without receiving in evidence a deposition made by plaintiff's president, any error in admission of such deposition is unimportant.

Mich.—Cohn-Goodman Co. v. People's Sav. Bank of Grand Haven, 168 N.W. 1042, 203 Mich. 307.

(2) Admitting an unauthenticated duplicate original of a deposition is error but harmless, where plaintiff was entitled to a directed verdict because a misrepresentation on which defendant predicated case was immaterial.

Minn.—Edward Thompson Co. v. Peterson, 252 N.W. 438, 190 Minn. 566.

54.5 N.C.—Montgomery v. Blades, 23 S.E.2d 844, 222 N.C. 463, rehearing denied 26 S.E.2d 567, 223 N.C. 331—Chinnis v. Atlantic Coast Line R. Co., 14 S.E.2d 500, 219 N.C. 528.

54.10 N.C.—Clark v. Henrietta Mills, 12 S.E.2d 682, 219 N.C. 1.

55. Vt.—Miller v. Warner, Brayt. 168.

56. Colo.—Dowdey v. Maxwell, 215 P. 146, 73 Colo. 268.

Where defendant presents no legal defense, he cannot be prejudiced by the erroneous admission of evidence.

Tex.—Gannaway v. Closner, Civ. App., 44 S.W.2d 790.

56.50 Minn.—Jablinske v. Eckstrom, 76 N.W.2d 654, 247 Minn. 140.

56.55 Ky.—Allen v. Ferguson, 253 S.W.2d 8.

57. Ala.—Davis v. Erwin, 107 So. 903, 214 Ala. 341—Columbia Motors Co. v. Williams, 96 So. 900, 209 Ala. 640—Jones v. White, 66 So. 605, 189 Ala. 622.

Central of Georgia Ry. Co. v. Burkett, 124 So. 404, 23 Ala.App. 294.

Ariz.—Phœnix Baking Co. v. Vaught, 156 P.2d 725, 62 Ariz. 222—First Nat. Bank v. Standard Accident Ins. Co., 297 P. 864, 38 Ariz. 77.

Ark.—J. T. Fargason Co. v. Driver, 284 S.W. 20, 171 Ark. 15.

Cal.—Union Colonization Co. v. Madera Canal & Irrigation Co., 178 P. 957, 179 C. 774.

Gardiner v. Burket, 40 P.2d 279, 3 C.A.2d 666—McKay v. Hedger, 34 P.2d 221, 139 C.A. 266—City of Los Angeles v. Los Angeles-Inyo Farms Co., 25 P.2d 224, 134 C.A. 268—Gregoriev v. Northwestern Pac. R. Co., 273 P. 84, 95 C.A. 447—Cohn v. Rudneck, 192 P. 461, 49 C.A. 1—Reclamation Dist. No. 730 v. Inglin, 160 P. 1098, 31 C.A. 495—Roughton v. Brookings Lumber & Box Co., 148 P. 539, 26 C. A. 752.

Colo.—Shafer v. King, 259 P. 1042, 82 Colo. 258.

Conn.—Wilson v. Town of Darien, 33 A.2d 320, 130 Conn. 318.

Ga.—Field v. C. L. Hardwick & Co., 83 S.E. 93, 142 Ga. 424.

Idaho.—Basye v. Hayes, 76 P.2d 435, 58 Idaho 569.

Ill.—Wawryszyn v. Illinois Cent. R. Co., 135 N.E.2d 154, 10 Ill.App.2d 394—Hanson v. Trust Co. of Chicago, 38 N.E.2d 365, 312 Ill.App. 261, reversed on other grounds 43 N.E.2d 931, 380 Ill. 194—Ferguson v. City of Springfield, 37 N.E.2d 563, 311 Ill.App. 655. See Hoehn v. East Side Levee & Sanitary Dist., 203 Ill.App. 48—Hutchison v. Chicago City Ry. Co., 192 Ill. App. 464—Bates v. Danville St. Ry. & Light Co., 190 Ill.App. 486—Razor v. Bloomington & N. Ry. & Light Co., 190 Ill.App. 451—Miller v. Spreyne, 189 Ill.App. 384.

Ind.—**Corpus Juris Secundum cited in** Ott v. Perrin, 63 N.E.2d 163, 166, 116 Ind.App. 315—Reitemeier v. Linard, 150 N.E. 797, 90 Ind.App. 363.

Iowa.—Golden v. Bilbo, 184 N.W. 643, 192 Iowa 319.

Kan.—Moseman v. L. M. Penwell Undertaking Co., 100 P.2d 669, 151 Kan. 610.

Ky.—Harlan Water Co. v. Carter, 295 S.W. 426, 220 Ky. 493.

Md.—Adams v. Benson, 117 A.2d 881, 208 Md. 261—Abromatis v. Amos, 96 A. 554, 127 Md. 394.

Mass.—Cotter v. Nathan & Hurst Co., 110 N.E. 1037, 222 Mass. 433.

Mich.—Baldwin v. Nall, 34 N.W.2d 539, 323 Mich. 25—Couyoumjian v. Brimage, 33 N.W.2d 755, 322 Mich. 191—Herzberg v. Knight, 286 N. W. 145, 289 Mich. 29—Cord v. Pless, 184 N.W. 427, 216 Mich. 33—Sauer v. McClintic-Marshall Const. Co., 155 N.W. 586, 189 Mich. 577—Peklenk v. Isle Royale Copper Co., 153 N.W. 1068, 187 Mich. 644.

Minn.—Thorson v. Albert Lea Pub. Co., 251 N.W. 177, 190 Minn. 200, 90 A.L.R. 1169.

Miss.—Myers v. Giroir, 84 So.2d 525—Memphis Steam Laundry-Cleaners v. Lindsey, 5 So.2d 227, 192 Miss. 224—Mississippi Power & Light Co. v. Garner, 176 So. 280, 179 Miss. 588.

Mo.—Joyner v. Kimmell, App., 217 S.W.2d 724—De Maria & Janssen v. Baum, 52 S.W.2d 418, 227 Mo. App. 212—Amick v. Henman, App., 241 S.W. 988—Stephan Coal Co. v. Lloyd, App., 240 S.W. 1092—Tinsley v. Ætna Ins. Co. of Hartford, Conn., 205 S.W. 78, 199 Mo. App. 693.

Neb.—Flood v. Omaha & C. B. St. Ry. Co., 152 N.W. 293, 98 Neb. 124.

shows that the verdict was based on the competent, and not the incompetent, evidence as to damages.[58]

However, the admission of incompetent evidence as to damages may be prejudicial error,[58.5] as where such evidence must have been taken into consideration in order to make the damages equal the verdict;[59] and, accordingly, the admission of opinion evidence as to the amount of damage is reversible error, unless the verdict is so small that it is apparent that the error is harmless.[60] Error in admitting evidence as to damages is not cured by the introduction of other evidence where it cannot be determined to what extent the trier of facts relied on the erroneous testimony.[60.5] On a general verdict, the admission of improper elements of damages is prejudicial error, since it is impossible to say of what items the verdict is made up.[61] Appellant is entitled to complain of objectionable testimony which goes to the amount of damages notwithstanding the fact that he did not object to the verdict as being excessive.[61.5]

N.J.—Jaeger v. Elizabethtown Consolidated Gas Co., 11 A.2d 746, 124 N.J.Law 420.

Ohio.—Rospert v. Old Fort Mills, 78 N.E.2d 909, 81 Ohio App. 241.

Okl.—Pattison v. Pattison, 247 P. 2d 514, 207 Okl. 46—Swisher v. Clark, 209 P.2d 880, 202 Okl. 25—Fixico v. Harmon, 70 P.2d 114, 180 Okl. 412—Talla v. Anderson, 156 P. 670, 53 Okl. 418—Choctaw Cotton Oil Co. v. Pope, 148 P. 170, 47 Okl. 383.

Or.—Franconi v. Graham, 174 P. 548, 89 Or. 619.

Pa.—Knoble v. Ritter, 20 A.2d 848, 145 Pa.Super. 149—Abrams v. C. Schmidt & Sons, 17 A.2d 681, 143 Pa.Super. 339—Diksajtsz v. Brosz, 158 A. 620, 104 Pa.Super. 246.

S.C.—W. L. Brissey Lumber Co. v. Crowther, 133 S.E. 208, 135 S.C. 131.

Tenn.—Rosenbaum v. Herron, 5 Tenn.Civ.App. 630.

Tex.—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error—Winn v. Warner, Civ.App., 199 S.W.2d 560, error refused no reversible error—Pure Foods Products v. Gibson, Civ.App., 118 S.W.2d 925, error dismissed—Sprowls v. Youngblood, Civ.App., 23 S.W.2d 879, reversed on other grounds Harveson v. Youngblood, Com. App., 38 S.W.2d 781—Milby Auto Co. v. Kendrick, Civ.App., 8 S.W. 2d 743—Wallace v. First Nat. Bank, Civ.App., 246 S.W. 737—Commercial Acceptance Trust v. Parmer, Civ.App., 241 S.W. 586—Gulf, C. & S. F. Ry. Co. v. Hicks, Civ.App., 202 S.W. 778—Panhandle & S. F. Ry. Co. v. Tisdale, Civ. App., 199 S.W. 347, affirmed Tisdale v. Panhandle & S. F. R. Co., Com.App., 228 S.W. 133, 16 A.L.R. 1264—Texas & P. Ry. Co. v. Max Hahn Packing Co., Civ.App., 197 S.W. 1146—Baker v. East, Civ. App., 197 S.W. 1123—Illinois Cent. R. Co. v. Freeman, Civ.App., 182 S.W. 369—Missouri, O. & G. Ry. Co. of Texas v. Webb, Civ.App., 178 S.W. 728—International & G. N. R. Co. v. Davis, Civ.App., 175 S.W. 509—International & G. N. Ry. Co. v. Jones, Civ.App., 175 S.W. 488—Missouri, K. & T. Ry. Co. of Texas v. Empire Express Co., Civ.App., 173 S.W. 222, reversed on other grounds, Com.App., 221 S.W. 590.

Vt.—Berkley v. Burlington Cadillac Co., 131 A. 16, 99 Vt. 227.

Wash.—Dunseath v. Hallauer, 253 P.2d 408, 41 Wash.2d 895.

Wis.—Boldig v. Urban Telephone Co., 271 N.W. 88, 224 Wis. 93—Nelson v. Ballestad, 176 N.W. 766, 171 Wis. 162.

4 C.J. p 987 note 3.

Admission of evidence as to the customary price for doing certain work, if error, is harmless, where the jury find in accordance with the contract price.

Tex.—Eldora Oil Co. v. Thompson, Civ.App., 230 S.W. 738, reversed on other grounds, Com.App., 244 S.W. 505.

Mortality tables

(1) In a suit for personal injuries resulting in plaintiff's insanity, error in admitting mortality tables is harmless where the jury did not apply such tables.

Pa.—Dauphin Deposit Trust Co. v. Standard Oil Co. of Pennsylvania, 167 A. 287, 312 Pa. 229.

(2) Admission of American Experience Table of Mortality held harmless error, although plaintiff in personal injury suit failed to show conclusively that he sustained permanent injury, in view of size of verdict for plaintiff and admission that recovery should be limited to compensation for loss of time and medical expenses.

Fla.—Atlanta & St. Andrews Bay Ry. Co. v. Pittman, 178 So. 297, 130 Fla. 624.

58. Mont.—Shipler v. Potomac Copper Co., 220 P. 1097, 69 Mont. 86.

Neb.—O'Brien v. Coon, 174 N.W. 513, 103 Neb. 836.

W.Va.—Riddle v. Baltimore & O. R. Co., 73 S.E.2d 793, 137 W.Va. 733, 34 A.L.R.2d 1228.

Hearsay and self-serving testimony

Ohio.—Huntsman v. Chesapeake & O. Ry. Co., 81 N.E.2d 118, 82 Ohio App. 79.

58.5 Mass.—Du Bois v. Atlantic Corp., 78 N.E.2d 185, 322 Mass. 512.

59. Ky.—Main Jellico Mountain Coal Co. v. Young, 169 S.W. 841, 160 Ky. 397.

Md.—Trustees of Aitz Chaim Hebrew Congregation of Baltimore v. Butterhoff, 118 A. 658, 141 Md. 267.

Mo.—Foley v. Union House Furnishing Co., 60 S.W.2d 725, 228 Mo. App. 1063—King v. Oklahoma Gypsum Co., 216 S.W. 992, 202 Mo.App. 667.

Tex.—Panhandle & S. F. Ry. Co. v. Reynolds, Civ.App., 33 S.W.2d 249.

Wash.—Grays Harbor Boom Co. v. Lownsdale, 102 P. 1041, 54 Wash. 83, rehearing denied 104 P. 267, 54 Wash. 83.

4 C.J. p 988 note 10.

As influenced by misleading instruction

In an action for assault, error in admitting deed to defendant and her husband, to show defendant's financial status, is not rendered harmless by the failure of the jury to assess punitive damages, where the instruction was liable to mislead the jury to consider the financial status in assessing actual damages.

Mo.—Traw v. Heydt, 216 S.W. 1009.

60. Or.—Coos Bay Logging Co. v. Barclay, 79 P.2d 672, 159 Or. 272—Smith v. Pallay, 279 P. 279, 130 Or. 282.

Tex.—Pure Foods Products v. Gibson, Civ.App., 118 S.W.2d 925, error dismissed.

4 C.J. p 988 note 10 [b].

60.5 N.J.—Berkowitz v. Pierce, 29 A.2d 552, 129 N.J.Law 299.

Opinion testimony of nonexpert

N.J.—Berkowitz v. Pierce, supra.

61. Colo.—Kellihan v. McHutt, 201 P. 37, 70 Colo. 318.

Contract or quantum meruit

Where, in an action for commissions, it does not appear whether the verdict was rendered under the count on contract or one on quantum meruit, it is prejudicial error to admit, as to value of the services, evidence which furnished no criterion therefor.

Ga.—Boyd Co. v. Davis, 93 S.E. 261, 20 Ga.App. 620.

61.5 Tex.—Pure Foods Products v. Gibson, Civ.App., 118 S.W.2d 925, error dismissed.

Error in the admission of evidence as to the measure of damages is harmless where the amount of damages awarded is only nominal[62] or is the smallest amount to which plaintiff is entitled;[63] or where the amount claimed exceeded the amount of the verdict;[63.5] or where the amount awarded, as justified by the evidence, is moderate and not excessive,[64] or is not contested as being excessive[65] or is less than the amount of damages shown by the evidence;[66] and particularly where it is for a smaller

62. Ala.—Lowery v. Jones, 121 So. 704, 219 Ala. 201, 64 A.L.R. 553—Buford v. Christian, 42 So. 997, 149 Ala. 343.
N.J.—Rockaway Rolling Mill v. Delaware, L. & W. R. Co., 149 A. 532, 8 N.J.Misc. 193.
Or.—Coos Bay Logging Co. v. Barclay, 79 P.2d 672, 159 Or. 272.

63. Ariz.—Maryland Casualty Co. v. Sweek, 236 P. 720, 28 Ariz. 258.
Ga.—Peninsular Naval Stores Co. v. State, 93 S.E. 159, 20 Ga.App. 501.
Wash.—Merila v. Brhorich, 278 P. 423, 152 Wash. 560.

63.5 Ohio.—Accurate Die Casting Co. v. City of Cleveland, App., 113 N.E.2d 401.

64. Ark.—Missouri Pac. R. Co. v. Mobley, 91 S.W.2d 611, 192 Ark. 396—Dierks Lumber & Coal Co. v. Tollerson, 54 S.W.2d 61, 186 Ark. 429—Glick v. Daniel, 42 S.W.2d 1007, 184 Ark. 576.
Cal.—Martin v. Pacific Gas & Electric Co., 264 P. 246, 203 C. 291.
Anderson v. State, 142 P.2d 88, 61 C.A.2d 140—Chardon v. Alameda Park Co., 36 P.2d 136, 1 C.A.2d 18—Dunlop v. Farmer, 222 P. 640, 64 C.A. 691—Laiblin v. San Joaquin Agric. Corporation, 213 P. 529, 60 C.A. 516.
Fla.—Baruch v. Giblin, 164 So. 831, 122 Fla. 59.
Ill.—Ranson v. Wilson, 80 N.E.2d 381, 335 Ill.App. 7—Heil v. Kastengren, 65 N.E.2d 579, 328 Ill.App. 301—Meltzer v. Shklowsky, 53 N.E. 2d 272, 321 Ill.App. 400—Phenix Banking Co. v. Owens, 250 Ill.App. 1—Watters v. P. E. Kroehler Mfg. Co., 187 Ill.App. 548. See Schiller v. Madden, 190 Ill.App. 624.
Ind.—**Corpus Juris Secundum cited in** Ott v. Perrin, 63 N.E.2d 163, 166, 116 Ind.App. 315—Marshall v. Temperley, 192 N.E. 106, 100 Ind. App. 131.
Ky.—Square Deal Cartage Co. v. Smith's Adm'r, 210 S.W.2d 340, 307 Ky. 135—Louisville & N. R. Co. v. Blanton, 200 S.W.2d 133, 304 Ky. 127—Gartrell v. Harris' Coadm'xs, 187 S.W.2d 1019, 300 Ky. 82—Proctor Coal Co. v. Price's Adm'r, 189 S.W. 923, 172 Ky. 627.
Mich.—Cord v. Pless, 184 N.W. 427, 216 Mich. 33.
Miss.—Mississippi Power & Light Co. v. Garner, 176 So. 280, 179 Miss. 588.
Mo.—Vaughn v. Wabash R. Co., App., 188 S.W.2d 352—Granberg v. King Candy Co., App., 81 S.W.2d 981—Smiley v. Bergmore Realty Co., 73 S.W.2d 836, 229 Mo.App. 141.
Mont.—Davis v. Desch, 164 P.2d 1015, 118 Mont. 252—Gallatin County Farmers' Alliance v. Flannery, 197 P. 996, 59 Mont. 534.
Neb.—Morris v. Erskine, 248 N.W. 96, 124 Neb. 754.
N.Y.—Stone v. Thomas, 96 N.Y.S.2d 887, 277 App.Div. 810, affirmed 95 N.E.2d 411, 301 N.Y. 741.
Ohio.—Paduchik v. Mikoff, 110 N.E. 2d 562, 158 Ohio St. 533.
Okl.—Kurn v. Mundy, 120 P.2d 995, 190 Okl. 71—Dierksen v. Hollingworth, 89 P.2d 358, 184 Okl. 611—St. Louis-San Francisco Ry. Co. v. Routh, 271 P. 835, 133 Okl. 168.
Or.—Lidfors v. Pflaum, 236 P. 1059, 115 Or. 142—Weygandt v. Bartle, 171 P. 587, 88 Or. 310.
Pa.—West v. Morgan, Com.Pl., 52 Dauph.Co. 361, affirmed 27 A.2d 46, 345 Pa. 61.
R.I.—Bennett v. E. Rosen Co., 139 A. 301.
Tenn.—Green v. Arnold, 150 S.W.2d 1075, 25 Tenn.App. 67.
Tex.—Loyd v. Herrington, Civ.App., 178 S.W.2d 694, reversed on other grounds 182 S.W.2d 1003, 143 Tex. 135—Richards v. Westmoreland, Civ.App., 63 S.W.2d 715—Hawkins v. Black, Civ.App., 23 S.W.2d 755—International-Great Northern R. Co. v. Motley, Civ.App., 18 S.W.2d 782—Telles v. Esparza, Civ.App., 14 S.W.2d 304—Galveston, H. & S. A. Ry. Co. v. Summers, Civ.App., 278 S.W. 881—Galveston, H. & S. A. Ry. Co. v. Henry, Civ.App., 252 S.W. 210—Halff Co. v. Waugh, Civ. App., 183 S.W. 839, error refused.
Utah.—Boeddcher v. Frank, 159 P. 634, 48 Utah 363.
Wis.—Pisarek v. Singer Talking Mach. Co., 200 N.W. 675, 185 Wis. 92.
Wyo.—Northwest States Utilities Co. v. Brouilette, 65 P.2d 223, 51 Wyo. 132, rehearing denied 69 P.2d 623, 51 Wyo. 132.
4 C.J. p 988 note 5.

65. Ark.—Southern Lumber Co. v. Green, 53 S.W.2d 229, 186 Ark. 209—Redman v. Hudson, 186 S.W. 312, 124 Ark. 26.
Cal.—Osterode v. Almquist, 200 P.2d 169, 89 C.A.2d 15.
Ill.—Gauger v. Mills, 90 N.E.2d 790, 340 Ill.App. 1—Slovinski v. Beasley, 45 N.E.2d 42, 316 Ill.App. 273—Ferguson v. City of Springfield, 37 N.E.2d 563, 311 Ill.App. 655—Coleman v. Hait, 13 N.E.2d 188, 293 Ill.App. 615—Swigert v. Chicago, B. & Q. R. Co., 203 Ill.App. 98.
Ind.—Polk Sanitary Milk Co. v. Qualiza, 172 N.E. 576, 92 Ind.App. 72—Steelman v. Byrne, 129 N.E. 631, 75 Ind.App. 26—Scottish Union & National Ins. Co. v. B. E. Linkenheit & Co., 121 N.E. 373, 70 Ind. App. 324.
Ky.—South Covington & C. St. Ry. Co. v. Heinrich, 186 S.W. 187, 170 Ky. 499.
Mich.—Couyoumjian v. Brimage, 33 N.W.2d 755, 322 Mich. 191—Cornell v. City of Ypsilanti, 180 N.W. 405, 212 Mich. 540.
Mo.—Beetschen v. Shell Pipe Line Corp., App., 248 S.W.2d 66, affirmed 253 S.W.2d 785, 363 Mo. 751—Sharon v. Kansas City Granite & Monument Co., 125 S.W.2d 959, 233 Mo. App. 547.
N.Y.—Spinelli v. Arthur Tickle Engineering Works, 74 N.Y.S.2d 11, 272 App.Div. 1032, affirmed 78 N.E. 2d 612, 297 N.Y. 818.
Okl.—Century Ins. Co., Limited, of Edinburgh, Scotland, v. Rice, 144 P.2d 953, 193 Okl. 418—Kurn v. Mundy, 120 P.2d 995, 190 Okl. 71—Chicago, R. I. & P. Ry. Co. v. Owens, 186 P. 1092, 78 Okl. 50, certiorari denied 40 S.Ct. 485, 253 U.S. 489, 64 L.Ed. 1027.
Tex.—Moody v. Castleberry, Civ. App., 151 S.W.2d 960—Milby Auto Co. v. Kendrick, Civ.App., 8 S.W. 2d 743—City of Fort Worth v. Jones, Civ.App., 278 S.W. 871.
Wash.—Wright v. Zido, 276 P. 542, 151 Wash. 486—Eckhart v. Peterson, 162 P. 551, 94 Wash. 379.
Wyo.—Northwest States Utilities Co. v. Brouilette, 65 P.2d 223, 51 Wyo. 132, rehearing denied 69 P.2d 623, 51 Wyo. 132.

Mental suffering

Error, if any, in admitting testimony concerning plaintiff's mental suffering, is not prejudicial, where the damages are not claimed to be excessive.
Me.—Trumpfeller v. Crandall, 155 A. 646, 130 Me. 279.

Mortality tables

Where defendant did not urge that verdict for plaintiff was excessive, defendant could not complain that admission of mortality table was improper.
Ill.—Hann v. Brooks, 73 N.E.2d 624, 331 Ill.App. 535.

66. Ala.—Smith v. Sharp, 98 So. 566, 210 Ala. 587.
Ariz.—Jacobson v. Laurel Canyon Mining Co., 234 P. 823, 27 Ariz. 546.
Cal.—Joint Highway Dist. No. 9 v. Ocean Shore R. Co., 18 P.2d 413, 128 C.A. 743—Fay v. Cox, 188 P. 623, 45 C.A. 696.

amount than that shown by the evidence objected to,[67] or less than is warranted by the complaining party's own evidence.[68]

Error in the admission of evidence as to the measure of damages is also harmless where the jury render a verdict or finding against plaintiff and for defendant on the main issue,[69] unless such evidence prejudices the jury on such issue;[70] or where the

Colo.—Expansion Gold Mining & Leasing Co. v. Campbell, 163 P. 968, 62 Colo. 410.

D.C.—District of Columbia v. Leys, 63 F.2d 646, 62 App.D.C. 3, followed in 63 F.2d 648, 62 App.D.C. 5, and certiorari denied 53 S.Ct. 787, 289 U.S. 756, 77 L.Ed. 1500.

Ill.—Benj. Harris & Co. v. Western Smelting & Refining Co., 45 N.E.2d 639, 381 Ill. 443.

Ray v. Hasterlik, 35 N.E.2d 434, 311 Ill.App. 246.

Iowa.—Kirkwood v. Perry Town Lot & Improvement Co., 159 N.W. 782, 178 Iowa 270.

Minn.—Oldenburg v. Petersdorff, 200 N.W. 446, 160 Minn. 402.

Miss.—Texas Co. v. Jackson, 165 So. 546, 174 Miss. 737.

Mo.—Thomas v. Boone Elec. Co-op., App., 277 S.W.2d 640.

Ohio.—Accurate Die Casting Co. v. City of Cleveland, App., 113 N.E.2d 401.

City of Cincinnati v. Roettinger, 11 Ohio Cir.Ct.R., N.S., 501.

Or.—Rands v. Ewing, 250 P.2d 921, 197 Or. 454, rehearing denied 253 P.2d 908, 197 Or. 454.

Pa.—Wilk v. Borough of Mt. Oliver, 33 A.2d 73, 152 Pa.Super. 539—Pavloff v. City of Clairton, 22 A.2d 74, 146 Pa.Super. 158.

Tex.—Moody v. Castleberry, App., 151 S.W.2d 960—Texas Mfg. Co. v. Fitzgerald, Civ.App., 176 S.W. 891.

Utah.—Stuck v. Delta Land & Water Co., 227 P. 791, 63 Utah 495.

W.Va.—Franklin v. Pence, 36 S.E.2d 505, 128 W.Va. 353.

On expert testimony

Testimony of an expert as to the value of services rendered, based on plaintiff's testimony, when the expert did not hear all of plaintiff's cross-examination, is not prejudicial to defendant, where other experts who did hear all of the cross-examination fix a higher value for the services, and the verdict is for a sum less than that fixed by any of the experts.

Colo.—Expansion Gold Mining & Leasing Co. v. Campbell, 163 P. 968, 62 Colo. 410.

67. Ark.—M. C. Brown & Co. v. Bennett, 184 S.W. 35, 122 Ark. 570.

Cal.—City of Los Angeles v. Los Angeles-Inyo Farms Co., 25 P.2d 224, 134 C.A. 268.

Ga.—Globe & Rutgers Fire Ins. Co. v. Jewel-Loudermilk Co., 137 S.E. 286, 36 Ga.App. 538—Atlantic Coast Line R. Co. v. Willis, 90 S.E. 288, 18 Ga.App. 674.

Ill.—See Stewart v. Illinois Cent. R. Co., 201 Ill.App. 187.

Kan.—Case v. Union Pac. R. Co., 241 P. 693, 119 Kan. 706.

Ky.—Watson v. Chesapeake & O. Ry. Co., 56 S.W.2d 699, 247 Ky. 135.

Miss.—City of Kosciusko v. Jenkins, 144 So. 467, 164 Miss. 235.

Mo.—Knight v. Lauer, App., 253 S.W. 454.

Tenn.—Memphis Commercial Appeal Co. v. Landis, 126 S.W.2d 318, 174 Tenn. 424.

Tex.—Gulf, C. & S. F. Ry. Co. v. Morris, Com.App., 250 S.W. 1017.

Hilker v. Agricultural Bond & Credit Corp., Civ.App., 96 S.W.2d 544, error dismissed—Panhandle & S. F. R. Co. v. Ross, Civ.App., 80 S.W.2d 427—McCaskill v. Clay, Civ. App., 284 S.W. 643—Montgomery v. Gallas, Civ.App., 225 S.W. 557—Powell v. Archer County, Civ.App., 198 S.W. 1037, error refused.

68. Ill.—Stoddard v. Illinois Improvement & Ballast Co., 113 N.E. 913, 275 Ill. 199.

N.C.—Ferebee v. Berry, 84 S.E. 262, 168 N.C. 281.

69. Ala.—Kern v. Friedrich, 126 So. 857, 220 Ala. 581—Roll v. Dockery, 122 So. 630, 219 Ala. 374, 65 A.L.R. 1473—H. J. Crenshaw & Co. v. Seaboard Air Line Ry. Co., 121 So. 736, 219 Ala. 206—Orr v. Burleson, 107 So. 825, 214 Ala. 257—Brothers v. Norris, 96 So. 328, 209 Ala. 426—Wilson Bros. v. Mobile & O. R. Co., 94 So. 721, 208 Ala. 581—Hamilton v. Cranford Mercantile Co., 78 So. 401, 201 Ala. 403—Walker v. John Smith, T., 74 So. 451, 199 Ala. 514.

Cal.—Hagenbuch v. Kosky, 298 P.2d 875, 142 C.A.2d 296—Lewis v. Contra Costa County, 278 P.2d 756, 130 C.A.2d 176—Hurd v. City and County of San Francisco, 193 P. 507, 49 C.A. 361.

Conn.—Buravski v. Di Meola, 109 A.2d 867, 141 Conn. 726—General Auto Sales Co. v. Capitol Motor Car Co., 40 A.2d 767, 131 Conn. 424—Lupatin v. Shine, 169 A. 916, 117 Conn. 698.

Idaho.—Hurt v. Monumental Mercury Mining Co., 206 P. 184, 35 Idaho 295.

Ill.—Hack v. Lange, 92 N.E.2d 346, 340 Ill.App. 640.

Iowa.—Brady v. Crowley, 164 N.W. 178.

Ky.—Reams v. City of London, 168 S.W.2d 994, 293 Ky. 473—Powers' Adm'r v. Wiley, 44 S.W.2d 591, 241 Ky. 645.

Mass.—Foley v. Middlesex & Boston St. Ry. Co., 140 N.E.2d 460—O'Neill v. Ross, 145 N.E. 60, 250 Mass. 92—Quimby v. Boston Elevated Ry. Co., 142 N.E. 925, 248 Mass. 364—McGreevey v. Boston Elevated Ry. Co., 122 N.E. 278, 232 Mass. 347.

Mich.—Wojtaszek v. Department of Street Railways of City of Detroit, 276 N.W. 457, 282 Mich. 302.

Mo.—Poague v. Kurn, 140 S.W.2d 13, 346 Mo. 153.

Neb.—Perrine v. Hokser, 62 N.W.2d 677, 158 Neb. 190.

N.H.—Beckley v. Alexander, 90 A. 878, 77 N.H. 255.

N.Y.—Grabowsky v. Ossining Hospital Ass'n, 38 N.Y.S.2d 503, 265 App. Div. 938.

N.C.—Carolina Coach Co. v. Central Motor Lines, 50 S.E.2d 909, 229 N.C. 650—West Const. Co. v. Atlantic Coast Line Ry. Co., 116 S.E. 3, 185 N.C. 43.

Ohio.—Sherer v. Smith, 99 N.E.2d 763, 155 Ohio St. 567.

Pa.—Harkinson v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 198 A. 11, 329 Pa. 209—Gallagher v. Hildebrand, 132 A. 174, 285 Pa. 350.

Tex.—Lee v. Galbreath, Civ.App., 234 S.W.2d 91—Thompson v. Texas Electric Ry. Co., Civ.App., 155 S.W.2d 624, error refused—Garrett v. Brock, Civ.App., 144 S.W.2d 408, error dismissed, judgment correct—Davis v. Jarnigan, Civ.App., 59 S.W.2d 281—Smith v. Galveston-Houston Electric Ry. Co., Civ.App., 265 S.W. 267, reversed on other grounds, Com.App., 277 S.W. 103.

4 C.J. p 988 note 7.

Evidence of value is material only in the event of recovery by plaintiff, and, therefore, error, if any, in admitting testimony as to the value of property in an action of detinue is rendered harmless by a verdict for defendant.

Ala.—Strength v. Thornton, 98 So. 206, 19 Ala.App. 475.

Mitigation of damages

Where the issue of liability was answered in the negative, any error in admitting evidence in mitigation of damages was harmless.

N.C.—Ward v. Atlantic Coast Line R. R., 32 S.E.2d 221, 224 N.C. 696—Allred v. Kirkman, 76 S.E. 244, 160 N.C. 392.

Finding for plaintiff on defendant's counterclaim

Mo.—Bowers v. Etherton, 216 S.W. 2d 83.

70. N.H.—Laird v. Boston & M. R. R., 114 A. 275, 80 N.H. 58, 16 A.L.R. 243.

Ohio.—Sherer v. Smith, 99 N.E.2d 763, 155 Ohio St. 567.

Pa.—Gallagher v. Hildebrand, 132 A. 174, 285 Pa. 350.

jury find that plaintiff is not entitled to recover any damages[71] or the issue to which the improper evidence related;[72] or where no specific finding as to damages is made on such issue;[73] or the question of damages is not reached and considered by the jury.[74]

Exemplary damages. The erroneous admission of evidence as to exemplary or punitive damages is harmless where actual damages only are awarded.[75]

Waiver. Where it cannot be determined whether or not the incompetent evidence affected the amount of damages, error in admitting incompetent evidence which would only affect the amount of the verdict is not waived by a failure to object specifically to the excessiveness of the verdict.[75.5]

(2) Remittitur

Error in admitting evidence as to the measure of damages may generally be cured by a remittitur or reduction of the amount of the damages, but not in such situations as where the extent to which the jury were influenced by the improper evidence cannot be shown.

Error in the admission of evidence bearing on the measure of damages is cured by an order reducing the amount awarded to a sum to which the successful party is clearly entitled,[76] where the item of damages in respect of which the improper evidence was introduced is remitted from the verdict recovered,[77] or where more than any possible increase because of the error is remitted from the verdict.[78]

Such error, however, cannot be cured by remittitur where there is nothing in the evidence by which

71. Ala.—Jefferson v. Republic Iron & Steel Co., 93 So. 890, 208 Ala. 143.
Ark.—Batte Bros. v. Battle, 213 S.W. 379, 139 Ark. 302.
Iowa.—Strever v. Woodard, 158 N. W. 504, 178 Iowa 30.
Mo.—Stapleton v. Hummel Mfg. Co., 202 S.W. 369.
Tex.—Canadian Mill & Elevator Co. v. King, Civ.App., 79 S.W.2d 876.
4 C.J. p 988 note 8.

72. Minn.—Harris Machinery Co. v. Heiner, 230 N.W. 114, 180 Minn. 19.
Miss.—Jones v. Griffin, 126 So. 35, 157 Miss. 256.
Mo.—Nicket v. St. Louis, etc., R. Co., 116 S.W. 477, 135 Mo.App. 661.
Or.—Dippold v. Cathlamet Timber Co., 225 P. 202, 111 Or. 199.
Pa.—Westinghouse Air Brake Co. v. City of Pittsburgh, 176 A. 13, 316 Pa. 372.
Tex.—Dixie Motor Coach Corporation v. Meredith, Civ.App., 45 S.W.2d 364—Turner v. Stoker, Civ.App., 289 S.W. 190—Davis v. Simmons, Civ.App., 240 S.W. 970, dismissed for want of jurisdiction.
Va.—Vandergrift v. Summerall, 164 S.E. 718, 158 Va. 725.
W.Va.—Stallard v. Stepp, 112 S.E. 184, 91 W.Va. 60.
4 C.J. p 988 note 9.

Breach of warranty

Error in admission of evidence as to the measure of damages for a breach of warranty is harmless, where the jury find no breach.
Okl.—People's Ice & Fuel Co. v. Serat, 149 P. 870, 46 Okl. 762.

73. N.Y.—Adamo v. State, 256 N.Y. S. 424, 235 App.Div. 12.

74. Mich.—Spiegel v. Straw, 163 N. W. 4, 196 Mich. 581.
N.H.—Laird v. Boston & M. R. R., 114 A. 275, 80 N.H. 58, 16 A.L.R. 243.
N.Y.—Lustig v. Naday, 193 N.Y.S. 685, 200 App.Div. 688.

Issue of negligence

The rule stated in the text is ordinarily true; but where the complaining party claims that the rulings on evidence as to damages not only were erroneous on such issue but also were prejudicial on the issue of negligence, because of the nature of the evidence admitted, an appellate court will consider an assignment of error as to damages although the question of damages was not reached and considered by the jury.
Conn.—Delfino v. Warners Motor Exp., 114 A.2d 205, 142 Conn. 301.

75. Mich.—Thomas v. Dansby, 41 N.W. 1088, 74 Mich. 398.
Mo.—**Corpus Juris Secundum cited in** Brown v. Payne, 264 S.W.2d 341, 346.
Okl.—Schmuelback v. Shaw, 14 P.2d 226, 159 Okl. 79.
S.C.—Stevenson v. B. B. Kirkland Seed Co., 180 S.E. 197, 176 S.C. 345.

Malice

Ohio.—Bowser v. Bembo, App., 36 N. E.2d 998.

75.5 Mo.—Zarisky v. Kansas City Public Service Co., App., 186 S.W. 2d 854.

76. Ala.—Strange v. Miller, 63 So.2d 669, 258 Ala. 388.
Cal.—Smith v. Atchison, T. & S. F. Ry. Co., 178 P. 501, 179 C. 611.
Ill.—Amann v. Chicago Consol. Traction Co., 90 N.E. 673, 243 Ill. 263. Bryant v. Cairns, 118 N.E.2d 60, 2 Ill.App.2d 51. See Rose v. Morton, 204 Ill.App. 108.
Iowa.—In re Willmott's Estate, 243 N.W. 634, 215 Iowa 546.
Mich.—Fortner v. Koch, 261 N.W. 762, 272 Mich. 273—Gungrich v. Anderson, 155 N.W. 379, 189 Mich. 144.
Okl.—St. Louis-San Francisco Ry. Co. v. King, 278 P.2d 845—Greis v. Mitchell, 90 P.2d 894, 185 Okl. 136.
R.I.—Parrillo v. De Libero, 106 A.2d 732, 82 R.I. 207.
S.C.—Bass v. Western Union Telegraph Co., 90 S.E. 155, 105 S.C. 487.
Tenn.—Lasater Lumber Co. v. Harding, 189 S.W.2d 583, 28 Tenn.App. 296—Hoge v. Southern Cities Power Co., 8 Tenn.App. 636.
Tex.—Pecos & N. T. Ry. Co. v. McMeans, Civ.App., 188 S.W. 692.
Wis.—Bakula v. Schwab, 168 N.W. 378, 167 Wis. 546—Hommel v. Badger State Inv. Co., 165 N.W. 20, 166 Wis. 235.
4 C.J. p 988 note 11.

Mortality tables

Admission of American Experience Table of Mortality held harmless error, although plaintiff in action for personal injuries failed to show conclusively that he sustained permanent injuries, where ends of justice would be best served by entering a remittitur and closing the litigation.
Fla.—Atlanta & St. Andrews Bay Ry. Co. v. Pittman, 178 So. 297, 130 Fla. 624.

77. Ga.—Zellars v. Orr, 95 S.E. 6, 147 Ga. 607.
Md.—Eastern Shore Brokerage & Commission Co. v. Messenger, 122 A. 18, 143 Md. 221.
Mo.—Flack v. Wahl, 193 S.W. 56, 197 Mo.App. 10, certiorari quashed State ex rel. Wahl v. Reynolds, 199 S.W. 978, 272 Mo. 588.
Ohio.—Loos v. Wheeling & L. E. Ry. Co., 22 N.E.2d 217, 60 Ohio App. 527.
R.I.—Douglas v. Newport County Electric Co., 132 A. 886.
Tex.—Southwestern Greyhound Lines v. Dickson, Civ.App., 219 S.W.2d 592—Jones v. Myers, Civ.App., 165 S.W. 523.
4 C.J. p 988 note 12.

78. Mo.—Good v. West Min. Co., 136 S.W. 241, 154 Mo.App. 591.
Pa.—Saunders v. Commonwealth, 29 A.2d 62, 345 Pa. 423.

the excessive portion of the verdict can be segregated from the damages to be allowed,[79] where there is no possibility of showing to what extent the jury were influenced by such improper evidence,[80] or where the only evidence to prove the fact on which the excess was based was that improperly admitted and it was in no sense cumulative.[80.5] A remittitur cannot stand where the verdict is based on improper or prejudicial error.[80.10]

Technical errors do not require the reduction of a verdict.[80.15]

§ 1737. —— By Withdrawal, Striking Out, or Instructions to Jury

a. By withdrawal or striking out
b. By withdrawal and instructions to disregard
c. By instructions

a. By Withdrawal or Striking Out

(1) In general
(2) Requisites of withdrawal or striking out

(1) In General

Error in admitting evidence is generally cured where it is distinctly withdrawn or stricken by the court, except where the prejudicial effect of the evidence on the jury manifestly remained despite its exclusion and influenced their verdict.

"It is . . . the right [and] the duty of a court to correct an error arising from the erroneous admission of evidence when the error is discovered,"[81] and the general rule is that, if evidence erroneously admitted during the progress of a trial is distinctly stricken out or withdrawn by the court from the consideration of the jury, the error is cured,[82] especially where the evidence is not ob-

79. Ill.—Joliet Trust & Savings Bank v. Schmidt, 232 Ill.App. 165.

80. Ariz.—**Corpus Juris Secundum cited in** Hirsh v. Manley, 300 P.2d 588, 593, 81 Ariz. 94.
Ill.—Isbitz v. Chicago City Ry. Co., 192 Ill.App. 487—Newcomb v. Chicago City Ry. Co., 192 Ill.App. 74. See Moffett v. Calumet & S. C. Ry. Co., 209 Ill.App. 243.
Iowa.—Paup v. Paup, 225 N.W. 251, 208 Iowa 215.
Mo.—Zarisky v. Kansas City Public Service Co., App., 186 S.W.2d 854. 4 C.J. p 988 note 14.

80.5 Mo.—Hart v. Kansas City Public Service Co., App., 154 S.W.2d 600.

80.10 Ill.—Bryant v. Cairns, 118 N.E.2d 60, 2 Ill.App.2d 51.

80.15 N.Y.—Stone v. Thomas, 96 N.Y.S.2d 887, 277 App.Div. 810, affirmed 95 N.E.2d 411, 301 N.Y. 741.
Opinion evidence as to effect of injuries
N.Y.—Stone v. Thomas, 96 N.Y.S.2d 887, 277 App.Div. 810, affirmed 95 N.E.2d 411, 301 N.Y. 741.

81. U.S.—Waldron v. Waldron, Ill., 15 S.Ct. 383, 156 U.S. 361, 383, 39 L. Ed. 453.

82. Ala.—Adams v. Queen Ins. Co. of America, 88 So.2d 331, 264 Ala. 572—Killian v. Everett, 79 So.2d 17, 262 Ala. 434—Reese v. Mackentepe, 140 So. 550, 224 Ala. 372—Alabama Power Co. v. Edwards, 121 So. 543, 219 Ala. 162—Central of Georgia Ry. Co. v. Grover, 118 So. 506, 218 Ala. 290—Farabee v. Wade, 76 So. 941, 200 Ala. 583.
Ark.—Hanson v. Louisiana Oil Refining Corporation, 53 S.W.2d 430, 186 Ark. 331—Bank of Hatfield v. Chatham, 255 S.W. 31, 160 Ark. 530—C. A. Rees & Co. v. Overton, 230 S.W. 565, 148 Ark. 655—McNeal v. Millar, 220 S.W. 62, 143 Ark. 253.
Cal.—Rystinki v. Central California Traction Co., 165 P. 952, 175 C. 336.
Rowe v. Rennick, 297 P. 603, 112 C.A. 576—Moranda v. Mapes, 280 P. 713, 100 C.A. 629—Carleton v. Bonham, 214 P. 503, 60 C.A. 725.
Conn.—Proto v. Bridgeport Herald Corp., 72 A.2d 820, 136 Conn. 557.
D.C.—Knuckles v. Weathersby, 63 App.D.C. 276, 72 F.2d 69.
Ga.—Park v. Reid, Strong & Robertson, 81 S.E. 1105, 141 Ga. 681.
Eubanks v. Taylor, 39 S.E.2d 449, 74 Ga.App. 243—Thurmond v. State, 122 S.E. 793, 32 Ga.App. 210.
Idaho.—Baldwin v. Mittry, 102 P.2d 643, 61 Idaho 427—McCoy v. Krengel, 17 P.2d 547, 52 Idaho 626—Big Springs Land & Live Stock Co. v. Beck, 263 P. 477, 45 Idaho 509.
Ill.—McKenna v. Chicago City Ry. Co., 129 N.E. 814, 296 Ill. 314—Greenacre v. Filby, 114 N.E. 536, 276 Ill. 294.
Petersen v. Midwest Transfer Co., 100 N.E.2d 388, 344 Ill.App. 167—Edmonds v. Heil, 77 N.E.2d 863, 333 Ill.App. 497—Starczynski v. Miltenberg, 55 N.E.2d 299, 323 Ill.App. 283—Kaylor v. Smith, 229 Ill.App. 140. See Vos v. Franke, 202 Ill.App. 133.
Ind.—Northern Indiana Public Service Co. v. Millender, 24 N.E.2d 817, 108 Ind.App. 212—Blish v. Greer, 120 N.E. 606, 74 Ind.App. 469—Howard v. Merker, 127 N.E. 807, 73 Ind.App. 400—Wheatcraft v. Myers, 107 N.E. 81, 57 Ind.App. 371.
Iowa.—Bachelder v. Woodside, 9 N.W.2d 464, 233 Iowa 967—**Corpus Juris cited in** In re Iwers' Estate, 280 N.W. 579, 587, 225 Iowa 389—McKee v. Iowa Ry. & Light Co., 214 N.W. 564, 204 Iowa 44—Anthon State Bank v. Bernard, 201 N.W. 59, 198 Iowa 1345—Neddermeyer v. Crawford County, 175 N.W. 339, 190 Iowa 883—Boyd v. City of Oskaloosa, 161 N.W. 491, 179 Iowa 387.
Kan.—In re Greenleaf's Estate, 217 P.2d 275, 169 Kan. 22—Cox v. Chase, 163 P. 184, 99 Kan. 740—Dunn v. Jaffray, 13 P. 781, 36 Kan. 408.
Ky.—City of Harlan v. Eversole, 58 S.W.2d 371, 248 Ky. 131—Illinois Cent. R. Co. v. McGuire's Adm'r, 38 S.W.2d 913, 239 Ky. 1—Bishop v. People's Bank & Trust Co., 291 S.W. 718, 218 Ky. 508, 51 A.L.R. 1258—Louisville & N. R. Co. v. Williams, 217 S.W. 915, 186 Ky. 680.
Me.—Keeling-Easter Co. v. R. B. Dunning & Co., 92 A. 929, 113 Me. 34.
Md.—La Fontaine v. Wilson, to Use of Ugast, 45 A.2d 729, 185 Md. 673, 162 A.L.R. 1218—State v. Emerson & Morgan Coal Co., 133 A. 601, 150 Md. 429—Stiegler v. Eureka Life Ins. Co. of Baltimore, 127 A. 397, 146 Md. 629—Brotherhood of Locomotive Firemen & Engineers v. Nash, 125 A. 441, 144 Md. 623.
Mass.—Stevens v. Thissell, 134 N.E. 398, 240 Mass. 541—Kennedy v. Armstrong, 111 N.E. 886, 223 Mass. 354.
Mich.—Wallace v. Skrzycki, 61 N.W. 2d 106, 338 Mich. 165—Trafamczak v. Anys, 31 N.W.2d 832, 320 Mich. 653—Phillips v. Fotheringham, 269 N.W. 600, 277 Mich. 566—Cobinco v. Robinson, 219 N.W. 704, 243 Mich. 170—Morris v. Montgomery, 201 N.W. 496, 229 Mich. 509—Johnston Gravel Co. v. Borck, 201 N.W. 224, 229 Mich. 64—Turner v. Ridgeway Tp., 63 N.W. 406, 105 Mich. 409.

jected to when first given,[83] or where the fact to which the objectionable evidence relates is afterward proved without objection.[84] Admission of evidence which the court later excludes is not error as against the contention that the evidence was considered by the jury and necessarily affected the verdict, where the evidence was admissible in the first instance.[85]

However, an exception to the general rule exists, and the error is not cured, where it is manifest that the prejudicial effect of the evidence on the jury remained despite its exclusion and influenced their verdict,[86] as where such a strong impression has

Minn.—Drabek v. Wedrickas, 234 N. W. 6, 182 Minn. 217—Koch v. Spieser, 176 N.W. 754, 145 Minn. 227—Nelson v. Berkner, 166 N.W. 347, 139 Minn. 301.

Mo.—Welch v. Thompson, 210 S.W. 2d 79, 357 Mo. 703—Stein v. Mercantile Home Bank & Trust Co., 148 S.W.2d 570, 347 Mo. 732—Snyder v. American Car & Foundry Co., 14 S.W.2d 603, 322 Mo. 147—Spencer v. Quincy, O. & K. C. R. Co., 297 S.W. 353, 317 Mo. 492—Gray v. Shelton, 282 S.W. 53—Gaty v. United Rys. Co., 251 S.W. 61.

Spears v. Schantz, App., 246 S.W. 2d 399—Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W. 2d 356—Reaves v. Kramer, 97 S. W.2d 136, 231 Mo.App. 368—O'Gorman v. Kansas City, 93 S.W.2d 1132, 233 Mo.App. 124—Hunter v. Pryor, App., 292 S.W. 1062—Spillman v. Freymann, App., 246 S.W. 976—Vogel v. Bushnell, 221 S.W. 819, 203 Mo.App. 623—Hoagland v. Kansas City Rys. Co., App., 209 S.W. 569—Utz v. Chicago, B. & Q. Ry. Co., App., 208 S.W. 640—Baxter v. Campbell Lumber Co., 171 S.W. 955, 186 Mo.App. 352.

Mont.—Kotsakis v. Williamson, 231 P. 1104, 72 Mont. 158—Bush v. Chilcott, 215 P. 1001, 64 Mont. 346.

Neb.—Danner v. Walters, 48 N.W.2d 635, 154 Neb. 506—Kuhlman v. Farmers Union Co.-op. Ass'n of Memphis, Neb., 42 N.W.2d 182, 152 Neb. 597—Bush v. James, 40 N.W. 2d 667, 152 Neb. 189.

Nev.—Boydstun v. Jacobs, 147 P. 447, 38 Nev. 175.

N.H.—Davenport v. White Mountain Power Co., 24 A.2d 274, 92 N.H. 20—Emerson v. Cobb, 186 A. 12, 88 N.H. 199.

N.J.—Boniewsky v. Polish Home of Lodi, 136 A. 741, 103 N.J.Law 323—Bahrey v. Poniatishin, 112 A. 481, 95 N.J.Law 128.

Krause v. Emanuel E. Katz, Inc., 185 A. 537, 14 N.J.Misc. 424—Brown v. Coast Cities Ry. Co., 165 A. 866, 11 N.J.Misc. 347.

N.C.—Star Mfg. Co. v. Atlantic Coast Line R. Co., 23 S.E.2d 32, 222 N. C. 330—Munden v. Metropolitan Life Ins. Co., 196 S.E. 872, 213 N. C. 504—Hagedorn v. Hagedorn, 189 S.E. 507, 211 N.C. 175—Hyatt v. McCoy, 140 S.E. 807, 194 N.C. 760—Raulf v. Elizabeth City Electric Light & Power Co., 97 S.E. 236, 176 N.C. 691—In re Staub's Will, 90 S.E. 119, 172 N.C. 138—McAllister v. McAllister, 34 N.C. 184.

N.D.—Pipan v. Ætna Ins. Co., 235 N.W. 719, 60 N.D. 657—Carr v. Neva, 164 N.W. 729, 38 N.D. 158—Dowd v. McGinnity, 152 N.W. 524, 30 N.D. 308.

Okl.—Green v. Votaw, 134 P.2d 367, 192 Okl. 136.

Or.—Green Mountain Log Co. v. Columbia & N. R. R., 30 P.2d 1047, 146 Or. 461—McCulley v. Homestead Bakery, 18 P.2d 226, 141 Or. 460—Large v. City of St. Helens, 14 P.2d 628, 140 Or. 564—Dietrich v. Giebisch, 171 P. 1177, 88 Or. 418.

Pa.—Haun v. McCabe, 162 A. 906, 308 Pa. 431—Llewellyn v. Duquesne Light Co., 116 A. 530, 273 Pa. 17.

Dante Club of Rankin v. Allegheny County, 85 A.2d 875, 170 Pa. Super. 302.

Tex.—Freeman v. Huffman, Com. App., 206 S.W. 819.

Karotkin Furniture Co. v. Decker, Civ.App., 32 S.W.2d 703, affirmed, Com.App., 50 S.W.2d 795—Jones v. Hester, Civ.App., 16 S.W.2d 399—W. T. Carter & Bro. v. Treadway, Civ.App., 299 S.W. 293—Russell v. Bailey, Civ.App., 290 S.W. 1108—El Paso Electric Ry. Co. v. Buttrey, Civ.App., 260 S.W. 897—Missouri, K. & T. Ry. Co. of Texas v. Graham, Civ.App., 168 S.W. 55, reversed on other grounds, Com.App., 209 S.W. 399.

Vt.—Donovan v. Towle, 134 A. 588, 99 Vt. 464.

Va.—**Corpus Juris Secundum cited in** Coffey v. Commonwealth, 51 S. E.2d 215, 218, 188 Va. 629—Bourne v. Richardson, 113 S.E. 893, 133 Va. 441—Washington & O. D. Ry. v. Ward's Adm'r, 89 S.E. 140, 119 Va. 334.

Wash.—Lally v. Reilly, 255 P. 923, 143 Wash. 522—Hoon v. City of Seattle, 162 P. 584, 94 Wash. 470—Welch v. Creech, 153 P. 355, 88 Wash. 429, L.R.A.1918A 353, 88 Wash. 429.

W.Va.—Barna v. Gleason Coal & Coke Co., 98 S.E. 158, 83 W.Va. 216.

Wis.—Ninneman v. Schwede, 46 N. W.2d 230, 258 Wis. 408.

4 C.J. p 989 note 16.

Withdrawal of exhibit

Ohio.—Benjamin v. Lawson, 83 N.E. 2d 95, 83 Ohio App. 159.

Exclusion of memorandum

Wash.—In re Shaner's Estate, 248 P.2d 560, 41 Wash.2d 236.

Letter not disclosed to jury

Defendant cannot predicate error on the admission of a letter in a foreign language, the contents of which was not disclosed to the jury, where the court, on a translation being offered, reverses its ruling and excludes the letter.

Wash.—Backman v. Holman, 159 P. 125, 92 Wash. 227.

Withdrawing question

Permitting an objectionable question over objection is not error where the question is withdrawn.

Idaho.—In re Brown's Estate, 15 P. 2d 604, 52 Idaho 286, motion denied Fite v. French, 30 P.2d 360, 54 Idaho 104.

83. Tex.—Parker v. Allison, Civ. App., 22 S.W.2d 338.

84. Mo.—Stussy v. Kansas City Rys. Co., App., 228 S.W. 531.

85. Iowa.—Townsend v. Armstrong, 260 N.W. 17, 220 Iowa 396.

86. Ill.—McKenna v. Chicago City Ry. Co., 129 N.E. 814, 296 Ill. 314.

Edmonds v. Heil, 77 N.E.2d 863, 333 Ill.App. 497—Olson v. North, 276 Ill.App. 457—Randall Dairy Co. v. Pevely Dairy Co., 274 Ill.App. 474—Franks v. Baltimore & O. S. W. R. Co., 269 Ill.App. 129—Ford v. Union Automobile Indemnity Ass'n, 229 Ill.App. 264.

Iowa.—**Corpus Juris cited in** In re Iwers' Estate, 280 N.W. 579, 587, 225 Iowa 389.

Kan.—Cox v. Chase, 163 P. 184, 99 Kan. 740.

Mich.—Faber v. Eastman, Dillon & Co., 259 N.W. 880, 271 Mich. 142.

Mo.—Spears v. Schantz, App., 246 S. W.2d 399—Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W. 2d 356—Utz v. Chicago, B. & Q. Ry. Co., App., 208 S.W. 640.

Nev.—Boydstun v. Jacobs, 147 P. 447, 38 Nev. 175.

N.Y.—Eder v. Cashin, 120 N.Y.S.2d 165, 281 App.Div. 456—R. & R. Candy Co. v. City of New York, 215 N.Y.S. 521, 216 App.Div. 468.

N.D.—Crisp v. State Bank of Rolla, 155 N.W. 78, 32 N.D. 263.

Tex.—Fort Worth & Denver City Ry. Co. v. Walters, Civ.App., 154 S.W.2d 177, error refused—Burchill v. Hermsmeyer, Civ.App., 262 S.W. 511—Bright v. Briscoe, Civ.App., 193 S.W. 156.

Wash.—Shaw v. Prudential Ins. Co. of America, 8 P.2d 431, 166 Wash. 652.

4 C.J. p 989 note 17.

been made upon the minds of the jury by the illegal and improper testimony that its subsequent withdrawal will not remove the effect caused by its admission;[87] these have been said to be extreme instances.[87.5] Furthermore, it has been held that error in admitting improper evidence is not cured by striking it, unless it "appears" that such evidence did not affect the verdict,[88] or unless the striking is accompanied by an instruction to disregard the evidence.[89]

(2) Requisites of Withdrawal or Striking Out

To effect a cure, the withdrawal must be definite, explicit, unequivocal, and as broad as the admission; it may be made on the motion of the court or at a party's request.

In order to effect a cure of error in admitting evidence, the withdrawal thereof must be as broad as the admission,[90] sufficiently definite to identify clearly the evidence to be withdrawn,[91] and so explicit and unequivocal as to preclude the inference that the jury may have been influenced by the evidence;[92] and it must be made in the presence of, or communicated to, the jury.[93] Moreover, the withdrawal must be by act of court and not of counsel;[94] but it may be made on the motion of the court itself or at the request of a party,[95] and it has been held

Failure to register car

In an action for damages in a collision with an automobile, the admission of evidence as to the failure to register the car and place the number thereon is not cured by the attempt to withdraw the matter from the jury.

Tex.—Mumme v. Sutherland, Civ. App., 198 S.W. 395.

Questions creating unfair inference

(1) Where the statute of frauds is pleaded as a defense, an interrogation whether defendant learned about the statute of frauds when he studied law could only be intended to create an unfair inference in the minds of the jury and is prejudicial error, although the interrogatory is withdrawn before it is answered.

Mich.—Vanderhoef v. Parker Bros. Co., 255 N.W. 449, 267 Mich. 672.

(2) A question whether a witness for will contestants knew of the bar association grievance committee's finding of improper conduct of attorney, testifying for proponent, is reversible error, although stricken on objection.

Mich.—In re Fine's Estate, 228 N.W. 687, 249 Mich. 391.

Testimony volunteered against admonition

After an admonition that the matter of insurance should not be brought into the case, plaintiff's volunteering information, while testifying in his own behalf, that defendant said he carried indemnity insurance, although stricken out by court, is reversible error.

W.Va.—Atkins v. Bartlett, 132 S.E. 885, 101 W.Va. 263.

87. U.S.—Throckmorton v. Holt, D. C., 21 S.Ct. 474, 180 U.S. 552, 45 L. Ed. 663.

Mo.—Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356.

Va.—**Corpus Juris Secundum cited in** Coffey v. Commonwealth, 51 S.E.2d 215, 218, 188 Va. 629.

87.5 Iowa.—In re Iwers' Estate, 280 N.W. 579, 225 Iowa 389.

88. Ill.—Scott v. Wright, 138 Ill. App. 105—Chicago City R. Co. v. White, 110 Ill.App. 23.

Mich.—Maxted v. Fowler, 53 N.W. 921, 94 Mich. 106.

N.Y.—Rubenstein v. Radt, 117 N.Y.S. 893, 133 App.Div. 57.

Eldredge v. Eldredge, 29 N.Y.S. 911, 79 Hun 511.

89. Ill.—City of Chicago v. Cunnea, 160 N.E. 559, 329 Ill. 288.

90. Mich.—Seligman v. Ten Eyck, 13 N.W. 377, 49 Mich. 104.

N.D.—Kneeland v. Great Western El. Co., 81 N.W. 67, 9 N.D. 49.

Error in admission of a medical certificate of death as prima facie evidence of suicide is not cured by the fact that a coroner's verdict that the death wound was self-inflicted attached to plaintiff's proofs of death was excluded.

Minn.—Backstrom v. New York Life Ins. Co., 236 N.W. 708, 183 Minn. 384.

Striking out definition but admitting testimony of fact

Erroneous admission of testimony that plaintiff was suffering from insanity, irrationality, and traumatic neurosis is not cured by the action of the court in striking out a detailed statement of the "factors" of traumatic neurosis, where there is other testimony not stricken that plaintiff was suffering from traumatic neurosis, since the action of the court in striking out the definition of a thing does not cure the error in admitting testimony as to the thing itself.

Mo.—Connor v. Kansas City Rys. Co., 250 S.W. 574, 298 Mo. 18.

91. S.C.—Powers v. Rawles, 112 S. E. 78, 119 S.C. 134—Templeton v. Charleston & W. C. Ry. Co., 108 S. E. 363, 117 S.C. 44.

4 C.J. p 990 note 21.

92. Ala.—Watson v. Adams, 65 So. 528, 187 Ala. 490, Ann.Cas.1916E 565.

Wash.—Welch v. Creech, 153 P. 355, 88 Wash. 429, L.R.A.1918A 353.

4 C.J. p 990 note 22.

Insufficiency of exclusion not waived

(1) The insufficiency of an attempt to exclude evidence that had been erroneously admitted, so as to remove its prejudicial effect, was not waived by the excepting party's failure to deny its sufficiency, upon the party causing the admission of the evidence stating that, if the other was not satisfied with the exclusion, he would have the questions and answers read by the stenographer.

Ala.—Watson v. Adams, 65 So. 528, 187 Ala. 490, Ann.Cas.1916E 565.

(2) That appellant may complain that the prejudice from admission of improper evidence was not removed, it was not necessary that he should have called the trial judge's attention to the insufficiency of his withdrawal thereof from the jury's consideration.

S.C.—Templeton v. Charleston & W. C. Ry. Co., 108 S.E. 363, 117 S.C. 44.

Mere direction as to record

A mere formal direction that the record should show that testimony impeaching a witness was excluded before the case went to the jury does not cure error in rulings in plaintiff's favor on the impeaching questions.

Ala.—Maryland Casualty Co. v. McCallum, 75 So. 902, 200 Ala. 154.

93. Md.—Rosenburg v. State, 99 A. 680, 129 Md. 418.

N.Y.—Austin v. Rochester Folding Box Co., 185 N.Y.S. 108, 194 App. Div. 952.

94. N.Y.—Allen-Kingston Motor Car Co. v. New York Cons. Nat. Bank, 129 N.Y.S. 1070, 145 App.Div. 294.

4 C.J. p 990 note 23.

95. Ark.—C. A. Rees & Co. v. Overton, 230 S.W. 565, 148 Ark. 655.

Ga.—Heinz v. Backus, 128 S.E. 915, 34 Ga.App. 203.

Ind.—Howard v. Merker, 127 N.E. 807, 73 Ind.App. 400.

Iowa.—Neddermeyer v. Crawford County, 175 N.W. 339, 190 Iowa 883.

that a withdrawal by counsel after a motion is made to exclude the evidence is sufficient.[96]

b. By Withdrawal and Instructions to Disregard

Error in admitting evidence is generally cured by withdrawing it with an instruction to the jury to disregard it, unless the evidence is so impressive that its prejudicial effect on the minds of the jury cannot be thus removed.

The general rule is that, if inadmissible evidence has been received during a trial, the error of its admission is cured by its being subsequently withdrawn or stricken out before the close of the trial and by an instruction being given to the jury to disregard it,[97]

Minn.—Koch v. Speiser, 176 N.W. 754, 145 Minn. 227.
Or.—Green Mountain Log Co. v. Columbia & N. R. R. R., 30 P.2d 1047, 146 Or. 461.
Tex.—Yellow Cab Co. v. Treadwell, Civ.App., 87 S.W.2d 276—Missouri, K. & T. Ry. Co. of Texas v. Graham, Civ.App., 168 S.W. 55, reversed on other grounds, Com.App., 209 S.W. 399.
4 C.J. p 990 note 24.

Withdrawal by party

(1) Where defendant's counsel objected to improper evidence offered by plaintiff, but it went in on assurance of plaintiff's counsel that it would be made relevant, and plaintiff later withdrew it, and there was no further objection or exception by defendant, no reversible error appears.
Ala.—Alabama Power Co. v. Alford, 97 So. 224, 210 Ala. 98.

(2) Where questions objected to by defendant were withdrawn by plaintiff with court's permission, there was no reversible error.
Ga.—New York Life Ins. Co. v. Jennings, 6 S.E.2d 431, 61 Ga.App. 557.

(3) Where trial court erroneously admitted evidence submitted by plaintiffs, but subsequently sustained objection thereto, and plaintiffs withdrew evidence, initial ruling admitting evidence was not prejudicial.
Ala.—Bear v. Swift & Co., 68 So.2d 718, 259 Ala. 668.

Striking preliminary evidence

Evidence whose admissibility depends on other evidence subsequently to be introduced may be stricken out by the trial court, on motion, or of its own volition, where the later evidence is not forthcoming.
Tex.—Bivins v. Oldham, Civ.App., 224 S.W. 240.

96. Ala.—Whatley v. Nesbitt, 85 So. 550, 204 Ala. 334.

In Wisconsin, it has been held, in an action for libel, that the admission of evidence of a defendant's financial condition as bearing upon the question of punitory damages was not prejudicial error, where counsel for plaintiff told the jury that since they would be instructed not to assess punitory damages against the particular defendant they must disregard all evidence of his financial condition.
Wis.—Gagen v. Dawley, 155 N.W. 930, 162 Wis. 152.

97. Ala.—Fortson v. Hester, 39 So. 2d 649, 252 Ala. 143—Hammond Motor Co. v. Acker, 122 So. 173, 219 Ala. 291—Alabama Power Co. v. Bruce, 96 So. 346, 209 Ala. 423.
Ariz.—Tom Reed Gold Mines Co. v. Berd, 260 P. 191, 32 Ariz. 479, 57 A.L.R. 55.
Ark.—Horton v. Smith, 245 S.W.2d 386, 219 Ark. 918—Thudium v. Dickson, 235 S.W.2d 53, 218 Ark. 1—Bockman v. Rorex, 208 S.W.2d 991, 212 Ark. 948—John Hancock Mut. Life Ins. Co. v. Magers, 132 S.W.2d 841, 199 Ark. 104—Williams-Echols Dry Goods Co. v. Wallace, 219 S.W. 732, 142 Ark. 363.
Cal.—Middleton v. Post Transp. Co., 235 P.2d 855, 106 C.A.2d 703—Zelayeta v. Pacific Greyhound Lines, 232 P.2d 572, 104 C.A.2d 716—Downey v. Bay Cities Transit Co., 210 P.2d 713, 94 C.A.2d 373—Young v. Tassop, 118 P.2d 371, 47 C.A.2d 557—Cope v. Goble, 103 P. 2d 598, 39 C.A.2d 448—Smith v. Dean, 78 P.2d 448, 25 C.A.2d 671—Dutro v. Castoro, 60 P.2d 182, 16 C.A.2d 116—Nagamatsu v. Roher, 53 P.2d 174, 10 C.A.2d 752—Mounts v. Tzugares, 49 P.2d 883, 9 C.A.2d 327—Fleming v. Flick, 35 P.2d 210, 140 C.A. 14—McKay v. Hedger, 34 P.2d 221, 139 C.A. 266—Day v. Pickwick Stages System, 25 P.2d 16, 134 C.A. 92—Carlson v. Sun-Maid Raisin Growers' Ass'n, 9 P.2d 546, 121 C.A. 719—Elliott v. Federated Fruit & Vegetable Growers, 291 P. 681, 108 C.A. 412—Shaver v. United Parcel Service, 266 P. 606, 90 C.A. 764.
Colo.—Simon v. Williams, 232 P.2d 181, 123 Colo. 505.
Conn.—Banks v. Watrous, 73 A.2d 329, 136 Conn. 597—Woodward v. City of Waterbury, 155 A. 825, 113 Conn. 457—Drazen v. New Haven Taxicab Co., 111 A. 861, 95 Conn. 500.
Ga.—Blount v. Beall, 22 S.E. 52, 95 Ga. 182.
Progressive Life Ins. Co. v. Archer, 37 S.E.2d 713, 73 Ga.App. 639—Southern Ry. Co. v. Williamson, 186 S.E. 902, 53 Ga.App. 856—Ficklen v. Watkins, 176 S.E. 541, 49 Ga.App. 779—Western & A. R. R. v. Hughes, 142 S.E. 185, 37 Ga. App. 771, certiorari granted 49 S. Ct. 18, 278 U.S. 588, 73 L.Ed. 522, and affirmed 49 S.Ct. 231, 278 U.S. 496, 73 L.Ed. 473—Fresh v. Weinberg, 107 S.E. 361, 27 Ga.App. 91.
Idaho.—Henderson v. Allis-Chalmers Mfg. Co., 149 P.2d 133, 65 Idaho 570.
Ill.—Siddons v. Covich, 126 N.E.2d 726, 6 Ill.App.2d 207—Sankey v. Interstate Dispatch, 90 N.E.2d 265, 339 Ill.App. 420—Edmonds v. Heil, 77 N.E.2d 863, 333 Ill.App. 497—Johnson v. McKnight, 39 N.E.2d 700, 313 Ill.App. 260—Warren v. City of Waukegan, 20 N.E.2d 832, 300 Ill.App. 614—Mattice v. Klawans, 228 Ill.App. 126, reversed on other grounds 143 N.E. 866, 312 Ill. 299—Purinton v. Belt Ry. Co. of Chicago, 204 Ill.App. 382. See Johnson v. Chicago & A. R. Co., 202 Ill.App. 369.
Ind.—Shepherd v. Goben, 39 N.E. 506, 142 Ind. 318—Blizzard v. Applegate, 77 Ind. 516—Gebhart v. Burkett, 57 Ind. 378, 26 Am.R. 61—Zehner v. Kepler, 16 Ind. 290.
Helton v. Mann, 40 N.E.2d 395, 111 Ind.App. 487—Boyd v. Miller, 117 N.E. 559, 68 Ind.App. 454—Chicago, L. S. & S. B. Ry. Co. v. Brown, 115 N.E. 368, 66 Ind.App. 126—La Fayette Telephone Co. v. Cunningham, 114 N.E. 227, 63 Ind. App. 136.
Iowa.—Sexton v. Lauman, 57 N.W.2d 200, 244 Iowa 670, 37 A.L.R.2d 353—Glatstein v. Grund, 51 N.W.2d 162, 243 Iowa 541, 36 A.L.R.2d 531—Bachelder v. Woodside, 9 N.W. 2d 464, 233 Iowa 967—Eller v. Paul Revere Life Ins. Co., 291 N.W. 866, 228 Iowa 1247—In re Iwers' Estate, 280 N.W. 579, 225 Iowa 389—Dewey v. Abraham Lincoln Life Ins. Co., 257 N.W. 308, 218 Iowa 1220—Richmond v. Whitaker, 255 N.W. 681, 218 Iowa 606—McDonald v. Padzensky, 224 N.W. 824, 207 Iowa 1327—McDonald v. Robinson, 224 N.W. 820, 207 Iowa 1293, 62 A.L.R. 1419—McKee v. Iowa Ry. & Light Co., 214 N.W. 564, 204 Iowa 44—Robbins v. Weed, 169 N.W. 773, 187 Iowa 64—Woodard v. City of Des Moines, 165 N.W. 313, 182 Iowa 1102—Toney v. Interstate Power Co., 163 N.W. 394, 180 Iowa 1362.
Kan.—Thompson v. Barnette, 227 P. 2d 120, 170 Kan. 384—Ligiejko v. Niczyperowicz, 271 P. 282, 126 Kan. 675—Wallace v. Wallace, 165 P. 838, 101 Kan. 32.
Ky.—Prudential Ins. Co. of America v. Downs, 64 S.W.2d 902, 251 Ky. 208—Hauck v. Jordan, 31 S.W.2d 624, 235 Ky. 388—Royal Collieries Co. v. Wells, 276 S.W. 515, 210 Ky. 600.

Md.—La Fontaine v. Wilson, to Use of Ugast, 45 A.2d 729, 185 Md. 673, 162 A.L.R. 1218.

Mass.—Hall v. Shain, 197 N.E. 437, 291 Mass. 506—McKenna v. Fielding, 172 N.E. 224, 272 Mass. 341—Mikkelson v. Connolly, 118 N.E. 649, 229 Mass. 360.

Mich.—Gibson v. Traver, 44 N.W.2d 834, 328 Mich. 698—City of Detroit v. Porath, 260 N.W. 114, 271 Mich. 42—Russell v. Continental Sugar Co., 193 N.W. 842, 223 Mich. 38—Morain v. Tesch, 183 N.W. 899, 214 Mich. 699—Miller v. Lachman, 75 N.W. 284, 117 Mich. 68.

Minn.—Zuber v. Northern Pac. Ry. Co., 74 N.W.2d 641, 246 Minn. 157—Martin v. Schiska, 236 N.W. 312, 183 Minn. 256—Evans v. Chicago, M. & St. P. Ry. Co., 158 N.W. 335, 133 Minn. 293.

Miss.—New Orleans & N. E. R. Co. v. Brooks, 165 So. 804, 175 Miss. 147.

Mo.—Krone v. Snapout Forms Co., 230 S.W.2d 865, 360 Mo. 821—**Corpus Juris Secundum cited in** Holtz v. Daniel Hamm Drayage Co., 209 S.W.2d 883, 886, 357 Mo. 538—Orr v. Shell Oil Co., 177 S.W.2d 608, 352 Mo. 288—Evans v. Missouri Pac. R. Co., 116 S.W.2d 8, 342 Mo. 420—Simmons v. Kroger Grocery & Baking Co., 104 S.W.2d 357, 340 Mo. 1118—Stith v. J. J. Newberry Co., 79 S.W.2d 447, 336 Mo. 467—Consolidated School Dist. No. 3 of Grain Valley v. West Missouri Power Co., 46 S.W.2d 174, 329 Mo. 690—Grott v. Johnson, Stephens & Shinkle Shoe Co., 2 S.W.2d 785—Salmons v. St. Joseph & G. I. Ry. Co., 197 S.W. 35, 271 Mo. 395—Griffith v. Hanks, 4 S.W. 508, 91 Mo. 109—Sparr & Green v. Wellman, 11 Mo. 230.

Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356—Delcour v. Wilson, App., 245 S.W. 2d 467—Moses v. Kansas City Public Service Co., App., 188 S.W.2d 538—Zeppenfeld v. Morgan, App., 185 S.W.2d 898—Berkstresser v. Finnell, App., 181 S.W.2d 37—**Corpus Juris Secundum cited in** Hanson v. City Light & Traction Co., 178 S.W.2d 804, 812, 238 Mo.App. 182—Stearns v. Prudential Life Ins. Co. of America, 140 S.W.2d 766, 235 Mo.App. 135—**Corpus Juris cited in** National Cash Register Co. v. Kay, App., 119 S.W.2d 437, 440—Todd v. Libby, McNeill & Libby, App., 110 S.W.2d 830—Grab v. Davis Const. Co., 109 S.W.2d 882, 233 Mo.App. 819—Asbury v. Fidelity Nat. Bank & Trust Co., 100 S.W.2d 946, 231 Mo.App. 437—Eth v. Kansas City, App., 62 S.W.2d 203—Robinson v. McVay, App., 44 S.W.2d 238—Stewart v. Eveland, App., 38 S.W.2d 801—Newman v. City of Marceline, 6 S.W.2d 659, 222 Mo.App. 980—Hamm v. Chicago, B. & Q. R. Co., 245 S.W. 1109, 211 Mo. App. 460, transferred, Mo., 235 S.W. 1046—Weinlein v. Peoples, App., 241 S.W. 645—Robbins v. Olson-Schmidt Const. Co., App., 215 S.W. 779—Leahy v. Lemp, App., 214 S. W. 228—Smith v. Mallory, App., 188 S.W. 934.

Mont.—Sanborn Co. v. Powers, 190 P. 990, 58 Mont. 214.

Neb.—Danner v. Walters, 48 N.W.2d 635, 154 Neb. 506—Conley v. Hays, 45 N.W.2d 900, 153 Neb. 733—Kuhlman v. Farmers Union Co-op. Ass'n of Memphis, Neb., 42 N.W.2d 182, 152 Neb. 597.

N.H.—Chouinard v. Shaw, 104 A.2d 522, 99 N.H. 26—Leonard v. City of Manchester, 70 A.2d 915, 96 N. H. 115—Emerson v. Cobb, 186 A. 12, 88 N.H. 199—Fuller v. Maine Cent. R. R., 100 A. 546, 78 N.H. 366.

N.J.—Rempfer v. Deerfield Packing Corp., 72 A.2d 204, 4 N.J. 135.

N.M.—Villareal v. Billings, 294 P. 1111, 35 N.M. 267.

N.Y.—Straker v. Erie R. Co., 201 N. Y.S. 243, 206 App.Div. 338, certiorari denied Erie R. Co. v. Straker, 44 S.Ct. 335, 264 U.S. 587, 68 L.Ed. 863.

N.C.—Mintz v. Atlantic Coast Line R. Co., 72 S.E.2d 38, 236 N.C. 109—Hoke v. Atlantic Greyhound Corp., 42 S.E.2d 593, 227 N.C. 412—Graham v. Spaulding, 36 S.E.2d 727, 226 N.C. 86—Hobbs v. Queen City Coach Co., 34 S.E.2d 211, 225 N.C. 323—Cauley v. General American Life Ins. Co., 17 S.E.2d 221, 220 N.C. 304—Munden v. Metropolitan Life Ins. Co., 196 S.E. 872, 213 N. C. 504—Hagedorn v. Hagedorn, 189 S.E. 507, 211 N.C. 175—Eaker v. International Shoe Co., 154 S.E. 667, 199 N.C. 379—In re Yelverton's Will, 153 S.E. 319, 198 N.C. 746—Hyatt v. McCoy, 140 S.E. 807, 194 N.C. 760—Bridgers v. Dill, 1 S. E. 767, 97 N.C. 222—McAllister v. McAllister, 34 N.C. 184.

N.D.—Burt v. Lake Region Flying Service, 54 N.W.2d 339, 78 N.D. 928—Dowd v. McGinnity, 152 N.W. 524, 30 N.D. 308.

Ohio.—Friedl v. Lackman, 28 N.E.2d 950, 136 Ohio St. 110.

Stires v. Park Bar Restaurant, App., 130 N.E.2d 369—Greenwood v. Shipka, App., 127 N.E.2d 224, appeal dismissed 112 N.E.2d 336, 159 Ohio St. 395—Bowser v. Bembo, App., 86 N.E.2d 998—Central Pub. House of Reformed Church in U. S. v. Flury, 157 N.E. 794, 25 Ohio App. 214, affirmed Flury v. Central Pub. House of Reformed Church in U. S., 160 N.E. 679, 118 Ohio St. 154.

Lee v. Benedict, 28 Ohio Cir.Ct., N.S., 561.

Okl.—Andrews v. Moery, 240 P.2d 447, 205 Okl. 635—West v. Clopine, 198 P.2d 742, 200 Okl. 625—A. & A. Cab Operating Co. v. Mooneyham, 142 P.2d 974, 193 Okl. 238—Spillers v. Missouri, Kansas & Oklahoma Coach Lines, 88 P.2d 642, 184 Okl. 507—Anglo-Texas Oil Co. v. Manatt, 256 P. 740, 125 Okl. 92—Letcher v. Skiver, 226 P. 1022, 99 Okl. 269.

Or.—Hamilton v. Redeman, 97 P.2d 194, 163 Or. 324.

Pa.—Saunders v. Com., 29 A.2d 62, 345 Pa. 423—Reach v. National Bedding Co., 120 A. 471, 276 Pa. 467—Walker v. Walker, 98 A. 890, 254 Pa. 220.

McJunkin v. Kiner, 43 A.2d 608, 157 Pa.Super. 578—Brady v. Phillips, 60 Pa.Super. 520.

R.I.—Horaho v. Wanelik, 184 A. 323, 56 R.I. 193, reargument denied 185 A. 256, 56 R.I. 264.

S.C.—Boylston v. Armour & Co., 12 S.E.2d 34, 196 S.C. 1—Estridge v. Metropolitan Life Ins. Co., 182 S. E. 834, 178 S.C. 310—Veronee v. Charleston Consol. Ry. & Lighting Co., 149 S.E. 753, 152 S.C. 178—Gortz v. Ravenel, 121 S.E. 369, 127 S.C. 505.

S.D.—Boyd v. Strickland, 237 N.W. 729, 58 S.D. 501.

Tenn.—Mofield v. Haynes, 230 S.W. 2d 200, 33 Tenn.App. 127—Fiske v. Grider, 156 S.W.2d 82, 25 Tenn. App. 235.

Tex.—Missouri Pac. R. Co. v. Mitchell, 12 S.W. 810, 75 Tex. 77.

Hooper v. Courtney, Civ.App., 256 S.W.2d 462—Colls v. Price's Creameries, Civ.App., 244 S.W.2d 900, error refused no reversible error—Fort Worth & D. C. Ry. Co. v. Gifford, Civ.App., 244 S.W.2d 848, reversed on other grounds Gifford v. Fort Worth & D. C. Ry. Co., 249 S.W.2d 190, 151 Tex. 282—Dallas Ry. & Terminal Co. v. Baughman, Civ.App., 243 S.W.2d 233—Gillespie v. Rossi, Civ.App., 238 S.W.2d 547, error refused no reversible error—Tripp v. Watson, Civ.App., 235 S.W. 2d 677, error refused no reversible error—Coca Cola Bottling Co. of Fort Worth v. Tannahill, Civ.App., 235 S.W.2d 224, error dismissed—McLean v. McCollum, Civ.App., 209 S.W.2d 959, error refused no reversible error—McCown v. Jennings, Civ.App., 209 S.W.2d 408—M-K-T Ry. Co. v. Jaffee Cotton Products Mfg. Co., Civ.App., 193 S.W.2d 986, error dismissed—Texas & N. O. R. Co. v. Grace, Civ.App., 185 S.W.2d 219, reversed on other grounds 188 S.W.2d 378, 144 Tex. 71—Gatlin v. Fisher, Civ.App., 178 S.W.2d 870—Jones v. St. John, Civ. App., 178 S.W.2d 181—Magnolia Petroleum Co. v. Johnson, Civ.App., 176 S.W.2d 774—Panhandle & S. F. Ry. Co. v. Montgomery, Civ.App., 140 S.W.2d 241—Goldstein Hat Mfg. Co. v. Cowen, Civ.App., 136 S.W.2d 867, error dismissed, judgment correct—Local No. 65, Musicians Protective Ass'n v. Sammons, Civ.App., 127 S.W.2d 226, error dismissed, judgment correct—Dallas Joint Stock Land Bank of Dallas v. Britton, Civ.App., 114 S.W.2d

especially where there is no motion for a mistrial[98] or a continuance;[98.5] and it has been held that, where the withdrawal is not made promptly, it must be accompanied by an instruction to the jury to disregard the improper testimony.[99]

In a close case, however, the withdrawal of incompetent evidence or instruction to the jury to disregard it does not cure the error in admitting it;[99.5] and where it affirmatively appears that the evidence admitted is so impressive that in the opinion of the appellate court its prejudicial effect is not removed from the minds of the jury by its subsequent withdrawal and by instruction of the court to disregard it, the error is not cured and the judgment will be reversed because of its admission and a new trial will be granted,[1] as where the improper

907, reversed on other grounds Dallas Joint Stock Land Bank of Dallas v. Britton, 135 S.W.2d 981, 134 Tex. 529—Yellow Cab Co. v. Treadwell, Civ.App., 87 S.W.2d 276—Owen v. King, Civ.App., 84 S.W.2d 743, reversed on other grounds 111 S.W.2d 695, 130 Tex. 614, 114 A.L.R. 859—Falls County v. Young, Civ.App., 77 S.W.2d 912—Peterson v. Martin, Civ.App., 69 S.W.2d 484—South Texas Cotton Oil Co. v. Baugh, Civ.App., 68 S.W.2d 539—Hurley v. Hirsch, Civ.App., 66 S.W.2d 387—Chronister Lumber Co. v. Williams, Civ.App., 28 S.W.2d 844—In re Ramon's Estate, Civ.App., 20 S.W.2d 351, reversed on other grounds, Com.App., 35 S.W.2d 699, modified on other grounds 42 S.W.2d 1010—International-Great Northern R. Co. v. Hailey, Civ.App., 9 S.W.2d 182, certiorari denied 50 S. Ct. 17, 280 U.S. 558, 74 L.Ed. 613—Northern Texas Traction Co. v. Armour & Co., Civ.App., 290 S.W. 544, certified question answered 288 S. W. 145, 116 Tex. 176—El Paso Sash & Door Co. v. Crawford, Civ. App., 283 S.W. 232, reversed on other grounds, Com.App., 288 S.W. 169, modified on other grounds 289 S.W. 994—Texas Co. v. Ramsower, Civ.App., 255 S.W. 466, affirmed, Com.App., 7 S.W.2d 872—Driscoll v. Dennis, Civ.App., 240 S.W. 1049—El Paso Electric Ry. Co. v. Benjamin, Civ.App., 202 S.W. 996, dismissed for want of jurisdiction—E. Alkemeyer Co. v. McCardell, Civ. App., 183 S.W. 416, dismissed for want of jurisdiction—Jones v. Reus, 24 S.W. 674, 5 Tex.Civ.App. 628.

Va.—Washington-Virginia Ry. Co. v. Deahl, 100 S.E. 840, 126 Va. 141.

Wash.—Ewer v. Johnson, 270 P.2d 813, 44 Wash.2d 746—Bradshaw v. City of Seattle, 264 P.2d 265, 43 Wash.2d 766—Rettinger v. Bresnahan, 257 P.2d 633, 42 Wash.2d 631—Sullivan v. Pacific Finance Corp. of California, 72 P.2d 590, 192 Wash. 70—Bates v. Tirk, 31 P.2d 525, 177 Wash. 286—Smelser v. Barnes, 215 P. 869, 125 Wash. 126—Bayers v. Barry, 194 P. 993, 114 Wash. 252—Klock Produce Co. v. Diamond Ice & Storage Co., 168 P. 476, 98 Wash. 676.

W.Va.—Smith v. Gould, 159 S.E. 53, 110 W.Va. 579—Covington v. Navarre, 129 S.E. 313, 99 W.Va. 431.

Wis.—Rasmussen v. Milwaukee Elec. Ry. & Transport Co., 47 N.W.2d 730, 259 Wis. 130, mandate modified as to costs and rehearing denied 49 N.W.2d 272, 259 Wis. 130—Alesch v. Haave, 189 N.W. 155, 178 Wis. 19.

Wyo.—Montgomery v. Empey, 253 P. 17, 36 Wyo. 37.

4 C.J. p 990 note 25.

Where evidence on nonvital issue was stricken, instruction to disregard it cured error, if any, in its admission.

Okl.—State ex rel. City of Ardmore v. Mock, 156 P.2d 802, 195 Okl. 246—Spillers v. Missouri, Kansas & Oklahoma Coach Lines, 88 P.2d 642, 184 Okl. 507—Anglo-Texas Oil Co. v. Manatt, 256 P. 740, 125 Okl. 92.

Exhibit

Overruling objection to an offer of an exhibit, a paper from which a witness had stated that he refreshed his memory, is harmless; where the offer is withdrawn just after the reading of the exhibit has started, and the jury are admonished not to consider it.

Iowa.—Wiley v. Fleck, 178 N.W. 410, 189 Iowa 614.

In Vermont error in admitting testimony objected to, bearing directly on the issue, is not cured by an instruction to disregard, but it is not necessarily reversible error.

Vt.—Squires v. O'Connell, 99 A. 268, 91 Vt. 35.

98. Ga.—Ficklen v. Watkins, 176 S. E. 541, 49 Ga.App. 779.

Md.—LaFontaine v. Wilson, to Use of Ugast, 45 A.2d 729, 185 Md. 673, 162 A.L.R. 1218.

Mo.—Moses v. Kansas City Public Service Co., App., 188 S.W.2d 538—**Corpus Juris Secundum quoted in** Hanson v. City Light & Traction Co., 178 S.W.2d 804, 812, 238 Mo. App. 182.

98.5 Md.—LaFontaine v. Wilson, to Use of Ugast, 45 A.2d 729, 185 Md. 673, 162 A.L.R. 1218.

99. Ill.—City of Chicago v. Cunnea, 160 N.E. 559, 329 Ill. 288.

Statements on following day

Where incompetent testimony is admitted over objections of adverse party, statements of the court on the following day that the testimony must be withdrawn from the jury do not cure the erroneous admission of evidence, in the absence of an instruction directed to the jury to disregard the testimony.

S.C.—Powers v. Rawles, 112 S.E. 78, 119 S.C. 134.

99.5 Mo.—City of Gallatin ex rel. Dixon v. Murphy, App., 217 S.W.2d 400.

1. U.S.—**Corpus Juris Secundum cited in** Scarborough v. United States, C.A.Ala., 232 F.2d 412, 415.

Ala.—Alabama City, G. & A. Ry. Co. v. Kyle, 87 So. 191, 204 Ala. 597.

Cal.—Alyce Gee v. Fong Poy, 264 P. 564, 88 C.A. 627.

Conn.—Drazen v. New Haven Taxicab Co., 111 A. 861, 95 Conn. 500.

Ill.—Bell v. Highland, 113 N.E.2d 79, 350 Ill.App. 501—Thillman v. State Farm Mut. Auto. Ins. Agency, 92 N.E.2d 346, 340 Ill.App. 538—Keehn v. Braubach, 30 N.E.2d 156, 307 Ill.App. 339—Beard v. Baxter, 258 Ill.App. 340—Peters v. Howard, 206 Ill.App. 610.

Iowa.—Devore v. Schaffer, 65 N.W.2d 553, 245 Iowa 1017—McDonald v. Robinson, 224 N.W. 820, 207 Iowa 1293, 62 A.L.R. 1419.

Mass.—McKenna v. Fielding, 172 N. E. 224, 272 Mass. 341.

Mich.—Tanis v. Eding, 264 N.W. 375, 274 Mich. 288—McPeake v. Grand Trunk Western Ry. Co., 219 N.W. 734, 242 Mich. 676—Hertzler v. Manshum, 211 N.W. 754, 237 Mich. 289.

Minn.—Evans v. Chicago, M. & St. P. Ry. Co., 158 N.W. 335, 133 Minn. 293.

Mo.—Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356—City of Gallatin ex rel. Dixon v. Murphy, App., 217 S.W.2d 400—**Corpus Juris cited in** National Cash Register Co. v. Kay, App., 119 S.W.2d 437, 440—**Corpus Juris cited in** Sculley v. Rolwing, App., 88 S. W.2d 394, 396.

Mont.—Sanborn Co. v. Powers, 190 P. 990, 58 Mont. 214.

N.J.—Boniewsky v. Polish Home of Lodi, 136 A. 741, 103 N.J.Law 323.

N.Y.—Resech v. Columbia Mach. Works & Malleable Iron Co., 163 N.Y.S. 453, 176 App.Div. 780.

N.C.—In re Yelverton's Will, 153 S. E. 319, 198 N.C. 746—Parrott v. Atlantic & N. C. R. Co., 53 S.E. 432, 140 N.C. 546.

Okl.—Spillers v. Missouri, Kansas & Oklahoma Coach Lines, 88 P.2d

evidence is deliberately offered prior to adjournment of the court for the day, and the withdrawal and instruction are made the next day.[2]

In any event, whether error in admitting evidence is cured depends on the circumstances under which the evidence was given and its probable effect on the jury,[2.5] and whether or not the improper reception of evidence is prejudicial depends on the relation of the evidence withdrawn to all the evidence in the case, how long it is left with the jury, and the surrounding circumstances.[3]

Where the incompetent evidence thus admitted is the only evidence bearing directly on the question at issue, its withdrawal by instructions will not cure the error.[4] Where, however, there is other evidence to support the verdict, it will be presumed that the instructions were obeyed and the error, in its admission, is cured.[5]

The withdrawal or cautionary instruction in such a case must be absolute and positive,[6] and broad

642, 184 Okl. 507—Anglo-Texas Oil Co. v. Manatt, 256 P. 740, 125 Okl. 92.

Pa.—Saunders v. Com., 29 A.2d 62, 345 Pa. 423—Lilly v. Metropolitan Life Ins. Co., 177 A. 779, 318 Pa. 248.

McJunkin v. Kiner, 43 A.2d 608, 157 Pa.Super. 578.

R.I.—Horaho v. Wanelik, 184 A. 323, 56 R.I. 193, reargument denied 185 A. 256, 56 R.I. 264.

Tex.—Radford v. Hill, Civ.App., 185 S.W.2d 129, refused for want of merit—Gulf Pipe Line Co. v. Hurst, Civ.App., 230 S.W. 1024—Cosgrove v. Smith, Civ.App., 183 S.W. 109—Jones v. Reus, 24 S.W. 674, 5 Tex.Civ.App. 628.

Wash.—Rettinger v. Bresnahan, 257 P.2d 633, 42 Wash.2d 631—Bates v. Tirk, 31 P.2d 525, 177 Wash. 286—Smelser v. Barnes, 215 P. 369, 125 Wash. 126.

Wis.—Gauerke v. Kiley, 177 N.W. 889, 171 Wis. 543—Posey v. Rice, 29 Wis. 93—Castleman v. Griffin, 13 Wis. 535—Remington v. Dailey, 13 Wis. 332.

4 C.J. p 990 note 26.

Evidence received de bene esse

When party offering evidence, which is received de bene esse, fails to furnish necessary connecting links, a distinct ruling which lays the defective evidence out of the case will leave the objecting party no substantial cause for complaint unless evidence improperly received is so prejudicial that striking it, coupled with such instruction, will not cure its wrongful admission.

Me.—Lipman Bros. v. Hartford Acc. & Indem. Co., 100 A.2d 246, 149 Me. 199.

As to amount paid under Workmen's Compensation Act

In an action for the wrongful death of a servant against another, in which the employer intervened and evidence was erroneously admitted as to the amount paid under the Workmen's Compensation Act, an instruction that the jury should not consider such evidence did not cure the error.

Iowa.—Cawley v. People's Gas & Electric Co., 187 N.W. 591, 193 Iowa 536.

As to defendant's being insured

(1) Unwarranted intrusion before a jury that defendant is insured is highly prejudicial, and striking out such testimony and admonishing the jury to disregard it will not ordinarily cure the error.

Cal.—Dei v. Bava, 266 P. 956, 204 C. 697—Citti v. Bava, 266 P. 954, 204 C. 136.

McKinney v. Red Top Cab Co., 299 P. 113, 113 C.A. 637.

Colo.—Phelps v. Loustalet, 14 P.2d 1011, 91 Colo. 350.

Ind.—Taggart v. Keebler, 154 N.E. 485, 198 Ind. 633.

W.Va.—Wilkins v. Schwartz, 132 S.E. 887, 101 W.Va. 337.

4 C.J. p 993 note 45 [a].

(2) It has been held that the error is cured in such a case, unless the injection of the fact of defendant's carrying insurance had been designedly done or persisted in.

Iowa.—Letcher v. Skiver, 226 P. 1029, 99 Okl. 269.

(3) In automobile accident case, tesimony of sheriff with respect to conversation with driver of defendant's car, which disclosed that he had insurance, did not require reversal where what was said about insurance was unintentional, and was given by witness not knowing just what true effect would be and where reference to insurance was stricken and jury admonished to disregard it.

Iowa.—Brady v. McQuown, 40 N.W. 2d 25, 241 Iowa 34.

Self-serving declaration

The erroneous admission of a letter containing a self-serving declaration is not cured by instructions to disregard the same.

N.D.—Crisp v. State Bank of Rolla, 155 N.W. 78, 32 N.D. 263.

2. Wis.—Gauerke v. Kiley, 177 N.W. 889, 171 Wis. 543.

2.5 Pa.—Saunders v. Com., 29 A.2d 62, 345 Pa. 423.

McJunkin v. Kiner, 43 A.2d 608, 157 Pa.Super. 578.

3. S.C.—Templeton v. Charleston & W. C. Ry. Co., 108 S.E. 363, 117 S.C. 44.

Tex.—Philadelphia Underwriters' Agency of Fire Ass'n of Philadelphia v. Cheeves, Civ.App., 193 S.W. 1091.

4 C.J. p 990 note 27.

4. Ark.—Missouri Pac. R. Co. v. Kellar, 271 S.W. 7, 168 Ark. 626.

Iowa.—Robbins v. Weed, 169 N.W. 773, 187 Iowa 64.

4 C.J. p 990 note 28.

5. U.S.—Pennsylvania Co. v. Roy, C.C.A.Ill., 102 U.S. 451, 26 L.Ed. 141.

Ark.—Missouri Pac. R. Co. v. Kellar, 271 S.W. 7, 168 Ark. 626.

Cal.—Couchman v. Snelling, 295 P. 845, 111 C.A. 192.

Ind.—Shepherd v. Goben, 39 N.E. 506, 142 Ind. 318.

Tex.—Western Weighing & Inspection Bureau v. Armstrong, Civ. App. 281 S.W. 244, reversed on other grounds, Com.App., 288 S.W. 119—Philadelphia Underwriters' Agency of Fire Ass'n of Philadelphia v. Cheeves, Civ.App., 193 S.W. 1091.

4 C.J. p 991 note 29.

6. Ariz.—Brandon v. Carr, 237 P. 642, 28 Ariz. 454.

Ark.—Missouri Pac. R. Co. v. Kellar, 271 S.W. 7, 168 Ark. 626.

4 C.J. p 991 note 30.

Directing stenographer to strike

Error in admitting evidence of statement of engineer some time after the accident to plaintiff brakeman, that the accident was due to the fault of the conductor in calling plaintiff brakeman down from the car, on the establishment of which fact plaintiff's case depended, is not cured by the judge later directing the stenographer to strike out "such declarations as the engineer and conductor made" and then telling the jury, "Don't consider that testimony that I told the stenographers to strike out."

S.C.—Templeton v. Charleston & W. C. Ry. Co., 108 S.E. 363, 117 S.C. 44.

Discrediting ruling

A remark by the court, in excluding from evidence a record of conviction introduced to discredit a witness for defendant, that it recalled its former ruling somewhat against its own better judgment, did not so discredit the ruling as to prevent

enough to cover all the evidence improperly admitted.[7]

c. By Instructions

(1) In general

(2) Limiting scope and effect of evidence

(3) Submitting proper issues and ignoring others

(4) Withdrawing issue on which evidence improperly admitted

(1) In General

(a) General rules

(b) As to damages

(a) General Rules

Under most authorities, error in admitting evidence may be cured by an instruction which directs the jury to disregard the improper evidence, or which has the effect of removing from the minds of the jury the prejudicial or harmful effect of such evidence.

The practice of permitting illegal evidence to go to the jury, and afterward endeavoring, by the giving of oral or written directions, to divert their minds from the consideration of such evidence has been said to be one that cannot be proved effective and should not be encouraged,[8] and, according to some decisions, such error cannot be cured by an instruction merely to disregard the improper evidence.[9] Nevertheless, the general rule deducible from the weight of authority is that error in the admission of evidence may be cured by an instruction to disregard, or not to consider, the evidence improperly admitted,[10] the view being taken that

curing the original admission of the evidence.

Conn.—Drazen v. New Haven Taxicab Co., 111 A. 861, 95 Conn. 500.

7. Cal.—Citti v. Bava, 266 P. 954, 204 C. 136.
Elliott v. Federated Fruit & Vegetable Growers, 291 P. 681, 108 C.A. 412.
Iowa.—Simons v. Mason City, etc., R. Co., 103 N.W. 129, 128 Iowa 139.

Injury to insured

In an action on an accident policy, error in admitting testimony of insured's physician, as to what insured said as to the cause of his sickness being a fall while on a train, was not rendered harmless by an instruction that the jury could not consider testimony that the fall was caused by a sudden starting of the train, the vice of the evidence being the mentioning of the train, which brought the injury within the terms of the policy.

Ky.—North American Acc. Ins. Co. v. Hill's Adm'x, 206 S.W. 170, 182 Ky. 125.

8. Ala.—Maryland Casualty Co. v. McCallum, 75 So. 902, 200 Ala. 154—Green v. State, 11 So. 479, 96 Ala. 32.
Kan.—Zecha v. Citizens' State Bank, 230 P. 1058, 117 Kan. 287.
Tex.—Cosgrove v. Smith, Civ.App., 183 S.W. 109.
4 C.J. p 991 note 32.

After timely objection, permitting ncompetent answers in depositions .o be read and then instructing the ury to disregard them, is error.
Ohio.—Baillie v. Heimsath, 151 N.E. 788, 20 Ohio App. 216.

Care and caution are to be exercised in the delicate, difficult, and mportant matter of removing the prejudicial effect of evidence improperly admitted, the burden of which rests upon the party causing its admission, and no duty rests upon the other party in that connection after seasonably and properly reserving his exception to its admission.
Ala.—Watson v. Adams, 65 So. 528, 187 Ala. 490, Ann.Cas.1916E 565.

9. Vt.—Berkley v. Burlington Cadillac Co., 122 A. 665, 97 Vt. 260—Smith v. Martin, 106 A. 666, 93 Vt. 111.
4 C.J. p 991 note 33 [c] (1).

As to damages

It has been held, however, that in an action for failure to furnish adequate electric power pursuant to contract, admitting testimony regarding inadequate power furnished previous to the contract's execution is reversible error, where the jury were not instructed to disregard it, although the court stated that damages could not be recovered for a period antedating the contract.
Vt.—Roben v. Ryegate Light & Power Co., 100 A. 768, 91 Vt. 402.

10. Ala.—McHugh v. Harrison, 94 So.2d 756—W. T. Smith Lumber Co. v. McKenzie, 55 So.2d 919, 256 Ala. 496—Jennings v. Jennings, 33 So.2d 251, 250 Ala. 130—Adler v. Miller, 120 So. 153, 218 Ala. 674—Empire Coal Co. v. Goodhue, 76 So. 31, 200 Ala. 265—Maryland Casualty Co. v. McCallum, 75 So. 902, 200 Ala. 154.
Farmer v. State ex rel. Killcrease, 187 So. 735, 28 Ala.App. 398, certiorari denied 187 So. 737, 237 Ala. 555.
Ark.—Coley v. Westbrook, 178 S.W. 2d 991, 206 Ark. 1111—Hall v. Jones, 195 S.W. 399, 129 Ark. 18.
Cal.—MacLean v. City and County of San Francisco, App., 311 P.2d 158—Wood v. Davenport, 273 P.2d 564, 127 C.A.2d 247—Shimmon v. Moore, 232 P.2d 22, 104 C.A.2d 554—Holder v. Key System, 200 P.2d 98, 88 C.A.2d 925—Foster v. A. P. Jacobs & Associates, 193 P.2d 971, 85 C.A.2d 746.
Conn.—Weimer v. Brock-Hall Dairy Co., 40 A.2d 277, 131 Conn. 361.
Del.—Pilot v. Necastro, Super., 125 A.2d 857.
Fla.—Wall v. Little, 136 So. 676, 102 Fla. 1015.
Ga.—Pritchard v. Gardner, 60 S.E.2d 627, 207 Ga. 104.
Robinson v. Gray, 95 S.E. 324, 22 Ga.App. 25.
Idaho.—Union Seed Co. of Burley v. Savage, 283 P.2d 918, 76 Idaho 432—Smith v. Hines, 196 P. 1032, 33 Idaho 582.
Ill.—McKenna v. Chicago City Ry. Co., 129 N.E. 814, 296 Ill. 314.
Wacker-Wabash Corp. v. City of Chicago, 112 N.E.2d 903, 350 Ill. App. 343—Edmons v. Heil, 77 N.E. 2d 863, 333 Ill.App. 497—Miller v. Baltimore & O. S. W. R. Co., 70 N.E.2d 263, 330 Ill.App. 129—Spies v. Sussman, 264 Ill.App. 528—Arkansas Sweet Potato Growers' Exchange v. Wignall-Moore Co., 249 Ill.App. 34—Smith v. Stover Mfg. Co., 205 Ill.App. 169. See Hanecy v. Read, 207 Ill.App. 197—Fanning v. City of Chicago, 194 Ill.App. 574.
Ind.App.—Evansville City Coach Lines v. Roger, 99 N.E.2d 435, 122 Ind.App. 119, rehearing denied 102 N.E.2d 504, 122 Ind.App. 119—Baker v. Pritchard, 194 N.E. 781, 100 Ind.App. 509.
Iowa.—Christensen v. Boucher, 24 N. W.2d 782, 237 Iowa 1170—Olson v. Shuler, 210 N.W. 453, 203 Iowa 518.
Kan.—Cherry v. State Auto. Ins. Ass'n, 310 P.2d 907, 181 Kan. 205—Groff v. Automobile Owners Safety Ins. Co., 306 P.2d 130, 180 Kan. 518—Griffin v. Kaufman, 203 P. 924, 110 Kan. 182.
Ky.—Ellis v. Glenn, 269 S.W.2d 234—Marcum v. Noble, 242 S.W.2d 866—Kentucky & W. Va. Power Co. v.

such an instruction is equivalent to striking the improper evidence out of the case,[11] and the presumption obtaining that the jury obeyed the court and did not consider the evidence,[12] and that no prejudice

Kilburn, 201 S.W.2d 896, 304 Ky. 635—Purcell v. Michigan Fire & Marine Ins. Co. of Detroit, 173 S.W. 2d 134, 295 Ky. 232—Tucker v. Ragland-Potter Co., 148 S.W.2d 691, 285 Ky. 533—Whitehead's Adm'r v. Peter Knopf's Sons, 90 S.W.2d 709, 262 Ky. 493—Thronton v. Phillips, 90 S.W.2d 347, 262 Ky. 346—Monohan v. Grayson County Supply Co., 54 S.W.2d 311, 245 Ky. 781, followed in Monohan v. Moorman, 54 S.W.2d 315, 245 Ky. 789, Monohan v. Decker, 54 S.W.2d 315, 245 Ky. 790, and Monohan v. Whitely, 54 S.W.2d 315, 245 Ky. 790—Yates v. Mullins, 26 S.W.2d 757, 233 Ky. 781—J. I. Case Threshing Mach. Co. v. Haynes, 199 S.W. 786, 178 Ky. 644—Weaver v. Ficke, 192 S.W. 515, 174 Ky. 432.

Md.—Snyder v. Cearfoss, 57 A.2d 786, 190 Md. 151.

Mass.—Watson v. Forbes, 30 N.E.2d 228, 307 Mass. 383—Stricker v. Scott, 186 N.E. 45, 283 Mass. 12—Waxler v. Bottcher, 153 N.E. 535, 257 Mass. 249—Washburn v. R. F. Owens Co., 147 N.E. 564, 252 Mass. 47—Bilodeau v. Fitchburg & L. St. Ry. Co., 128 N.E. 872, 236 Mass. 526—Halloran v. Boston Elevated St. Ry. Co., 112 N.E. 849, 224 Mass. 280.

Mich.—Vigo American Clay Co. v. L. C. Monroe Co., 245 N.W. 778, 260 Mich. 462—Norris v. Detroit United Ry., 160 N.W. 574, 196 Mich. 578.

Minn.—Lorberbaum v. Christopher, 269 N.W. 646, 198 Minn. 289—Town of Wells v. Sullivan, 147 N.W. 244, 125 Minn. 353.

Miss.—Poteete v. City of Water Valley, 57 So.2d 565.

Mo.—Stutte v. Brodtrick, 259 S.W.2d 820—Mavrakos v. Mavrakos Candy Co., 223 S.W.2d 383, 359 Mo. 649—Schneider v. Dubinsky Realty Co., 127 S.W.2d 691, 344 Mo. 654—Evans v. Missouri Pac. R. Co., 116 S.W. 2d 8, 342 Mo. 420—Sallee v. St. Louis-San Francisco Ry. Co., 12 S.W.2d 476, 321 Mo. 798—Grott v. Johnson, Stephens & Shinkle Shoe Co., 2 S.W.2d 785—Harrison v. Kansas City Electric Light Co., 93 S.W. 951, 195 Mo. 606, 7 L.R.A.,N.S., 293.

Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356—State ex rel. Nelson v. Hammett, 203 S.W.2d 115, 240 Mo.App. 307—Moses v. Kansas City Public Service Co., App., 188 S.W.2d 538—Hanson v. City Light & Traction Co., 178 S.W.2d 804, 238 Mo.App. 182—Lindsay v. Evans, App., 174 S.W.2d 390—Balsano v. Madden, App., 138 S.W.2d 660—Holman v. Terminal R. Ass'n of St. Louis, App., 125 S.W.2d 527—Asbury v. Fidelity Nat. Bank & Trust Co., 100 S.W.2d 946, 231 Mo.App. 437—Karst v. Chicago Fraternal Life Ass'n, App., 40 S.W.2d 732, certiorari denied Chicago Fraternal Life Ass'n v. Karst, 52 S.Ct. 40, 284 U.S. 664, 76 L.Ed. 562—McCarter v. Burger, App., 6 S.W.2d 979.

Mont.—Brown v. Homestake Exploration Corporation, 39 P.2d 168, 98 Mont. 305—Kotsakis v. Williamson, 231 P. 1104, 72 Mont. 158—Newton v. City of Roundup, 198 P. 441, 60 Mont. 24.

Neb.—Danner v. Walters, 48 N.W.2d 635, 154 Neb. 506.

N.H.—Emerson v. Cobb, 186 A. 12, 88 N.H. 199.

N.J.—Meszaros v. Gransamer, 128 A. 2d 449, 23 N.J. 179—Rempfer v. Deerfield Packing Corp., 72 A.2d 204, 4 N.J. 135.

Benedetto v. Hudson & M. R. Co., 156 A. 37, 9 N.J.Misc. 758.

N.M.—Villareal v. Billings, 294 P. 1111, 35 N.M. 267.

N.Y.—Cole v. Fall Brook Coal Co., 53 N.E. 670, 159 N.Y. 65.

Greenberg v. Prudential Ins. Co. of America, 40 N.Y.S.2d 494, 266 App.Div. 685—Lendrum v. Village of Cobleskill, 183 N.Y.S. 215, 192 App.Div. 828.

N.C.—Hagedorn v. Hagedorn, 189 S. E. 507, 211 N.C. 175—McAllister v. McAllister, 34 N.C. 184—Gray v. City of High Point, 166 S.E. 911, 203 N.C. 756.

Ohio.—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87.

Okl.—Continental Oil Co. v. Elias, 307 P.2d 849—Sample v. Campbell, 305 P.2d 1033—Lindley v. Kelly, 147 P. 1015, 47 Okl. 328.

Or.—McCulley v. Homestead Bakery, 18 P.2d 226, 141 Or. 460—Egli v. Hutton, 294 P. 347, 135 Or. 175—Thomas v. Smith-Wagoner Co., 234 P. 814, 114 Or. 69—Coates v. Slusher, 222 P. 311, 109 Or. 612—Ramaswamy v. Hammond Lumber Co., 152 P. 223, 78 Or. 407.

S.C.—Harwell v. Mutual Ben. Health & Acc. Ass'n, 35 S.E.2d 160, 207 S.C. 150, 161 A.L.R. 183—Cobb v. Southern Public Utilities Co., 187 S.E. 363, 181 S.C. 310—Simon v. Ætna Casualty & Surety Co., 148 S.E. 648, 151 S.C. 44.

Tex.—Montgomery v. Vinzant, Civ. App., 297 S.W.2d 350—Hayter Lumber Co. v. Winder, Civ.App., 295 S.W.2d 730, error dismissed—H. J. Heinz Co. v. Ashley, Civ.App., 291 S.W.2d 427—Southwestern Freight Lines v. McConnell, Civ.App., 269 S.W.2d 427, error refused no reversible error—Little Rock Furniture Mfg. Co. v. Dunn, Civ.App., 218 S.W.2d 527, affirmed 222 S.W. 2d 985, 148 Tex. 197—Loughry v. Hodges, Civ.App., 215 S.W.2d 669, error refused no reversible error—Jones v. Mercer, Civ.App., 209 S.W. 2d 216, error refused no reversible error—Ligon v. Green, Civ.App., 206 S.W.2d 629, error refused no reversible error—Good v. Born, Civ.App., 197 S.W.2d 589, error refused no reversible error—Gillette Motor Transport Co. v. Whitfield, Civ.App., 186 S.W.2d 90, refused for want of merit—Griffith v. Gadberry, Civ.App., 182 S.W.2d 739—Dallas Ry. & Terminal Co. v. Whitcomb, Civ.App., 153 S.W.2d 527, affirmed 163 S.W.2d 616, 139 Tex. 467—International-Great Northern R. Co. v. Acker, Civ.App., 128 S. W.2d 506, error dismissed, judgment correct—Sharp v. American Nat. Ins. Co., Civ.App., 126 S.W. 2d 50—Camden Fire Ins. Ass'n v. Brown, Civ.App., 109 S.W.2d 280, error dismissed—Dendy v. Cockerham, Civ.App., 82 S.W.2d 756—Panhandle & S. F. Ry. Co. v. Arnett, Civ.App., 219 S.W. 232, dismissed for want of jurisdiction—Western Union Telegraph Co. v. Oakley, Civ. App., 181 S.W. 507—Texas & P. Ry. Co. v. Rasmussen, Civ.App., 181 S.W. 212—Texas & P. Ry. Co. v. Hardin, Civ.App., 168 S.W. 1017.

Utah.—Burtenshaw v. Bountiful Irr. Co., 61 P.2d 312, 90 Utah 196.

Va.—Greear v. Noland Co., 89 S.E.2d 49, 197 Va. 233—Norfolk & W. Ry. Co. v. James, 136 S.E. 660, 147 Va. 178—Washington-Virginia Ry. Co. v. Deahl, 100 S.E. 840, 126 Va. 141.

Wash.—Inashima v. Wardall, 258 P. 839, 145 Wash. 77—Christianson v. Shepherd, 255 P. 942, 143 Wash. 537—Tribble v. Missionary Sisters of the Sacred Heart, 242 P. 372, 137 Wash. 326—Edwards v. Lambert, 209 P. 694, 121 Wash. 380—Nollmeyer v. Tacoma Ry. & Power Co., 164 P. 229, 95 Wash. 595.

W.Va.—Show v. Mount Vernon Farm Dairy Products, 37 S.E.2d 459, 128 W.Va. 598.

Wis.—Jensen v. Town of Oconto Falls, 202 N.W. 676, 186 Wis. 386.

4 C.J. p 991 note 33—9 C.J. p 370 note 4.

11. N.Y.—Holmes v. Moffat, 24 N.E. 275, 120 N.Y. 159.

4 C.J. p 992 note 34.

12. Ga.—Cozart v. Johnson, 182 S.E. 502, 181 Ga. 337.

Idaho.—Smith v. Hines, 196 P. 1032, 33 Idaho 582.

Mass.—Hall v. Shain, 197 N.E. 437, 291 Mass. 506.

Mo.—Evans v. Missouri Pac. R. Co., 116 S.W.2d 8, 342 Mo. 420—Grott v. Johnson, Stephens & Shinkle Shoe Co., 2 S.W.2d 785—Harrison v. Kansas City Electric Light Co., 93 S.W. 951, 195 Mo. 606, 7 L.R.A., N.S., 293.

resulted from its reception.[12.5] Such an instruction may be oral as well as in writing.[13]

According to some decisions, error in the admission of illegal evidence can be cured only by its being explicitly withdrawn, as by a direct and unequivocal charge to the jury that they must disregard the illegal evidence.[14] On the other hand, it has been held in many cases that an error in admitting improper evidence may be cured by an instruction which in effect directs or impels the jury to disregard such evidence;[15] which renders it imma-

Moses v. Kansas City Public Service Co., App., 188 S.W.2d 538—Hanson v. City Light & Traction Co., 178 S.W.2d 804, 238 Mo.App. 182.

Mont.—Newton v. City of Roundup, 198 P. 441, 60 Mont. 24.

Ohio.—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87.

Tex.—Galveston, etc., R. Co. v. Harper, 114 S.W. 1168, 1199, 53 Tex.Civ. App. 614.

Wash.—Armstrong v. Spokane International Ry. Co., 172 P. 578, 101 Wash. 525, L.R.A.1918E 460.

12.5 Minn.—Lorberbaum v. Christopher, 269 N.W. 646, 198 Minn. 289.

13. Tex.—Missouri Valley Bridge, etc., Co. v. Ballard, 116 S.W. 93, 53 Tex.Civ.App. 110.

14. Ala.—Burk v. Knott, 101 So. 811, 20 Ala.App. 316.

Mass.—Conry v. Boston & M. R. R., 116 N.E. 733, 227 Mass. 411.

N.Y.—Mulder v. U. S. Slicing Mach. Co., 126 N.E. 517, 228 N.Y. 88.

Wurtzman v. Kalinowski, 251 N.Y.S. 328, 233 App.Div. 187—Martin v. Paddelford, 170 N.Y.S. 684, 182 App.Div. 354—Kennedy v. National Jewelers' Board of Trade, 162 N.Y.S. 635, 175 App.Div. 735.

N.C.—De Bruhl v. State Highway & Public Works Commission, 95 S.E. 2d 553, 245 N.C. 139.

Ohio.—Aftel v. Cound, 167 N.E. 402, 32 Ohio App. 270.

Pa.—Boyd v. Smith, 94 A.2d 44, 372 Pa. 306.

Va.—Greear v. Noland Co., 89 S.E.2d 49, 197 Va. 233—Washington-Virginia Ry. Co. v. Deahl, 100 S. E. 840, 126 Va. 141—Chesapeake & O. Ry. Co. v. May, 92 S.E. 801, 120 Va. 790—Norfolk & W. Ry. Co. v. A. J. Steele & Son, 86 S.E. 124, 117 Va. 788—Southern Ry. Co. v. Simmons, 55 S.E. 459, 105 Va. 651.

4 C.J. p 992 note 37.

Jury should be told that the evidence was admitted improperly and explicitly enjoined to disregard it for any purpose of proof of the fact it related to.

Mass.—Conry v. Boston & M. R. R., 116 N.E. 733, 227 Mass. 411.

Hearsay

An instruction that an expert opinion is merely advisory, and before giving it any value facts on which it was based must be found true, does not cure the erroneous admission of a physician's hearsay evidence that plaintiff's condition was caused by a blow, where such evidence is not withdrawn nor the jury warned against considering hearsay as proof of the facts.

Mo.—Kinchlow v. Kansas City, K. V. & W. Ry. Co., 264 S.W. 416.

Instruction improperly modified

In an action for a broker's commission, where evidence of fraud in procuring the contract had been admitted improperly, in that fraud was not pleaded by defendant, plaintiffs' offered instruction "that there is no evidence in this case that any fraud was practiced upon the defendant * * * in procuring him to sign the written list of the land read in evidence" was improperly modified by striking out the additional clause, "and you will disregard and not be influenced in any manner by the testimony offered in the case for the purpose of showing such alleged facts, nor by any statement of counsel in regard thereto," and such error was prejudicial to plaintiffs' rights.

Mo.—Lyell v. Cox, App., 245 S.W. 343.

15. Ark.—Arkansas Burial Soc. v. Hough, 104 S.W.2d 809, 193 Ark. 1105—Bryant Truck Lines v. Silver Fleet of Memphis, Tenn., 91 S.W.2d 287, 192 Ark. 286.

Cal.—Hoffman v. Southern Pac. Co., 11 P.2d 387, 215 C. 454.

Hawke v. Burns, 294 P.2d 1008, 140 C.A.2d 158.

Ga.—Miller v. Everett, 14 S.E.2d 449, 192 Ga. 26—Cozart v. Johnson, 182 S.E. 562, 181 Ga. 337.

Hudgins Contracting Co. v. Smith, 188 S.E. 732, 54 Ga.App. 687.

Iowa.—Peterson v. McManus, 172 N. W. 460, 187 Iowa 522—Jeffries v. Iowa Ry. & Light Co., 167 N.W. 608, 183 Iowa 858.

Kan.—Smith Bros. & Cooper v. Hanson, 187 P. 262, 106 Kan. 32.

Ky.—Dennert v. Dee, 215 S.W.2d 575, 308 Ky. 687.

Mich.—In re Kerckel's Estate, 257 N. W. 742, 269 Mich. 528.

Minn.—Wiest v. Twin City Motor Bus Co., 52 N.W.2d 442, 236 Minn. 225—Farmers' & Merchants' State Bank of New York Mills v. National Surety Co., 203 N.W. 969, 163 Minn. 257—Nichols v. Atwood, 149 N.W. 672, 127 Minn. 425.

Mont.—Mosback v. Smith Bros. Sheep Co., 210 P. 910, 65 Mont. 42.

N.H.—Chagnon v. Metropolitan Life Ins. Co., 75 A.2d 167, 96 N.H. 256.

N.J.—Malinowski v. Phillips, 138 A. 896, 104 N.J.Law 130—Eggert v. Binder, 125 A. 106, 100 N.J.Law 174, 1 N.J.Misc. 555.

Levy v. Hampton, 130 A. 536, 3 N.J.Misc. 1050.

N.C.—Clark v. Federal Life Ins. Co., 136 S.E. 291, 193 N.C. 166—Jordan v. Interurban Motor Lines, 109 S. E. 566, 182 N.C. 559.

Ohio.—Lucente v. Philipedes, App., 68 N.E.2d 558.

Or.—Ramaswamy v. Hammond Lumber Co., 152 P. 223, 78 Or. 407.

Pa.—Lilly v. Metropolitan Life Ins. Co., 177 A. 779, 318 Pa. 248—Lamont v. West Penn Power Co., 150 A. 155, 300 Pa. 78.

McJunkin v. Kiner, 43 A.2d 608, 157 Pa.Super. 578.

Commonwealth v. Hauck, Quar. Sess., 49 Lanc.L.Rev. 151, 58 York Leg.Rec. 113.

S.C.—Rhodus v. Dukes, 122 S.E. 872, 128 S.C. 354.

Tenn.—Tennessee Coach Co. v. Young, 80 S.W.2d 107, 18 Tenn. App. 592.

Tex.—Montgomery v. Vinzant, Civ. App., 297 S.W.2d 350—Rowan & Hope v. Valadez, Civ.App., 258 S. W.2d 295, error refused no reversible error—Colls v. Price's Creameries, Civ.App., 244 S.W.2d 900, error refused no reversible error—Postal Savings & Loan Ass'n v. Powell, Civ.App., 47 S.W. 2d 343—Houston Electric Co. v. Pearce, Civ.App., 192 S.W. 558, dismissed for want of jurisdiction.

Utah.—Salt Lake Inv. Co. v. Oregon Short Line R. Co., 148 P. 439, 46 Utah 203, affirmed 38 S.Ct. 348, 246 U.S. 446, 62 L.Ed. 823.

Wash.—Besoloff v. Whatcom County, 248 P. 331, 140 Wash. 180—Pacific Commercial Co. v. Northwestern Fisheries Co., 197 P. 930, 115 Wash. 608—Bundy v. Dickinson, 182 P. 947, 108 Wash. 52—Armstrong v. Spokane International Ry. Co., 172 P. 578, 101 Wash. 525, L.R.A.1918E 460.

Wis.—Engen v. Chippewa Valley Ry., Light & Power Co., 156 N.W. 460, 162 Wis. 515.

4 C.J. p 992 note 38.

Expert testimony

Exceptions to expert evidence on the grounds that the conditions assumed were not shown to exist are unavailing, where the jury are instructed to base their verdict on the evidence and not on conjecture.

N.H.—Hussey v. Boston & M. R. R., 138 A. 9, 82 N.H. 236—Brito v.

terial[16] or no more prejudicial to one party than to the other;[17] which so explains it that it can work no prejudice to appellant;[18] which takes away from the party offering it all possible advantage which he might have gained from its introduction;[19] or which renders it impossible that the jury could have been misled.[20]

The admission of improper evidence is no cause

Newmarket Mfg. Co., 106 A. 224, 79 N.H. 163.

16. Ala.—Western Union Telegraph Co. v. Holland, 66 So. 926, 11 Ala. App. 510.
Ark.—Nelson v. Forbes & Sons, 261 S.W. 910, 164 Ark. 460—Newport Levee Dist. v. Price, 229 S.W. 12, 148 Ark. 122.
Cal.—Shupe v. Rodolph, 197 P. 57, 185 C. 371—Richman v. San Francisco, N. & C. Ry., 181 P. 769, 180 C. 454—Duluz v. Alaska Packers' Ass'n, 170 P. 1133, 177 C. 465.
Conn.—Antel v. Poli, 123 A. 272, 100 Conn. 64.
Ill.—Connor v. Greenberg, 198 Ill. App. 129.
Kan.—Griffith v. Atchison, T. & S. F. Ry. Co., 169 P. 546, 102 Kan. 23.
Md.—Mercantile Trust & Deposit Co. v. Rode, 112 A. 574, 137 Md. 362.
Mass.—Mikkelson v. Connolly, 118 N. E. 649, 229 Mass. 360.
Mo.—Harper v. Wilson, App., 191 S. W. 1024—Kolkmeyer v. Chicago & A. R. Co., 182 S.W. 794, 192 Mo. App. 188.
Or.—McCulley v. Homestead Bakery, 18 P.2d 226, 141 Or. 460.
Pa.—Frederick v. Strouse, 149 A. 318, 299 Pa. 268.
R.I.—Korn v. Congdon, 136 A. 11.
S.C.—RCA Photophone v. Carroll, 177 S.E. 23, 174 S.C. 183—Clark v. Columbia Ry., Gas & Electric Co., 108 S.E. 178, 117 S.C. 11.
Tex.—Thatcher v. Matthews, Civ. App., 183 S.W. 810—Illinois Cent. R. Co. v. Freeman, Civ.App., 182 S.W. 369.
Wash.—Bergen v. Lewis County, 164 P. 73, 95 Wash. 499.
4 C.J. p 992 note 39.

17. Ky.—Louisville & N. R. Co. v. Locker's Adm'rs, 206 S.W. 780, 182 Ky. 578.

18. Ala.—City of Birmingham v. Bowen, 47 So.2d 174, 254 Ala. 41.
Ark.—Reisinger v. Dulaney, 271 S. W. 951, 168 Ark. 875.
Cal.—Newman v. E. E. Overholtzer Sons' Co., 190 P. 175, 182 C. 778.
Bridge v. New Amsterdam Casualty Co., 19 P.2d 76, 129 C.A. 355.
Colo.—Denver Tramway Co. v. Orbach, 172 P. 1063, 64 Colo. 511.
Fla.—Ake v. Birnbaum, 25 So.2d 213, 156 Fla. 735, followed in 25 So.2d 225, 156 Fla. 760.
Ga.—Albany Federal Sav. & Loan Ass'n v. Henderson, 36 S.E.2d 330, 200 Ga. 79.
Idaho.—Union Seed Co. of Burley v. Savage, 283 P.2d 918, 76 Idaho 432.
Ill.—Hanson v. Rand, 101 N.E.2d 119, 344 Ill.App. 418.
Ind.—Ailes v. Ailes, 11 N.E.2d 73, 104 Ind.App. 302—Standard Oil Co. v. Baughman, 187 N.E. 843, 97 Ind. App. 672—Johnson v. Gephart, 117 N.E. 270, 65 Ind.App. 322.
Iowa.—Ballard v. Ballard, 285 N.W. 165, 226 Iowa 699—Kness v. Kommes, 222 N.W. 436, 207 Iowa 137—Porter v. Tenant, 197 N.W. 79, 197 Iowa 200—Sullenbarger v. Ahrens, 150 N.W. 71, 168 Iowa 288.
Kan.—Clark v. Howe, 247 P. 113, 121 Kan. 204.
Ky.—Bowling Green-Hopkinsville Bus Co. v. Montgomery, 129 S.W.2d 535, 278 Ky. 837.
Me.—Kimball v. Davis, 103 A. 154, 117 Me. 187.
Mass.—Monaghan v. Keith Oil Corporation, 183 N.E. 252, 281 Mass. 129—Harvard Trust Co. v. City of Cambridge, 169 N.E. 74, 270 Mass. 403—Koch v. Lynch, 141 N.E. 677, 247 Mass. 459—Bloustein v. Shindler, 126 N.E. 774, 235 Mass. 440.
Mich.—Pearo v. City of Mackinac Island, 11 N.W.2d 893, 307 Mich. 290—Gembolis v. Rydeski, 243 N. W. 44, 258 Mich. 521—Redmon v. Sieber's Estate, 183 N.W. 3, 214 Mich. 253.
Minn.—State Bank of Mora v. Billstrom, 299 N.W. 199, 210 Minn. 497.
Mo.—Moore v. Mansfield, 286 S.W. 353.
Jackson v. City of Malden, App., 72 S.W.2d 850—Wentzel v. Lake Lotawana Development Co., 48 S. W.2d 185, 226 Mo.App. 960—Beckerleg v. Locomotive Engineers' Mut. Life & Accident Ins. Ass'n, App., 274 S.W. 917—Adelman v. Altman, 240 S.W. 272, 209 Mo. App. 583.
Mont.—Cline v. Tait, 155 P.2d 752, 116 Mont. 571.
Neb.—Citizens' State Bank v. State Bank of Oelrichs, 197 N.W. 607, 111 Neb. 571.
Nev.—Fredrickson & Watson Const. Co. v. Boyd, 102 P.2d 627, 60 Nev. 117.
N.H.—Abbott v. Hayes, 26 A.2d 842, 92 N.H. 126.
N.J.—Allen v. Tatum, 167 A. 668, 11 N.J.Misc. 666.
N.Y.—People v. Pollock, 235 N.Y.S. 553, 226 App.Div. 406.
N.C.—Zollicoffer v. Zollicoffer, 84 S. E. 349, 168 N.C. 326.
Ohio.—Shackelford v. Commercial Motor Freight, App., 65 N.E.2d 879—Decker v. Mitchell, 10 Ohio App. 438.
Okl.—Public Service Co. of Oklahoma v. Hawkins, 149 P.2d 783, 194 Okl. 272.
Or.—Macchi v. Portland Ry., Light & Power Co., 148 P. 72, 76 Or. 215.
Pa.—Swartz v. Bortree, 98 A. 597, 253 Pa. 304.
Yulis v. Borough of Ebensburg, 128 A.2d 118, 182 Pa.Super. 423—Eves v. Tritch, 58 A.2d 364, 162 Pa.Super. 443—McAllister v. Pennsylvania R. Co., 182 A. 738, 121 Pa.Super. 131, affirmed 187 A. 415, 324 Pa. 65.
Tenn.—(Blue) Star Service, Inc. v. McCurdy, 251 S.W.2d 139, 36 Tenn. App. 1.
Tex.—Union City Transfer v. Adams, Civ.App., 248 S.W.2d 256, certiorari denied 73 S.Ct. 334, 344 U.S. 912, 97 L.Ed. 703—Houston & T. C. R. Co. v. Lindsey, Civ.App., 175 S.W. 708—Funk v. House, Civ.App., 168 S.W. 481.
Va.—Worcester v. McClurkin, 5 S.E. 2d 509, 174 Va. 221—City of Danville v. Lipford, 91 S.E. 168, 120 Va. 280.
Wash.—Burgin v. Universal Credit Co., 98 P.2d 291, 2 Wash.2d 364.
W.Va.—Yuncke v. Welker, 36 S.E.2d 410, 128 W.Va. 299.
4 C.J. p 992 note 40.

As to usury

The jury being correctly instructed as to the facts necessary to constitute usury, defendant was not harmed by the incidental introduction in the evidence of a person's characterization of the transaction.
Mo.—Quinn v. Van Raalte, 205 S.W. 59, 276 Mo. 71.

Representations

Any question as to the reception of evidence for appellees that they did not authorize representations by another is removed by a charge, requested by appellant, that if the representations were made they were binding on appellees.
N.Y.—Gallogly v. Whitmore, 158 N. Y.S. 830, 172 App.Div. 381.

19. Ark.—Lawson v. Road Improvement Dist. No. 7, 259 S.W. 747, 163 Ark. 303.
Pa.—Harriett v. Ballas, 117 A.2d 693, 383 Pa. 124.
Tex.—Quanah, A. & P. Ry. Co. v. Bone, Civ.App., 199 S.W. 332.
4 C.J. p 992 note 41.

Distance within which train could be stopped

N.H.—Smith v. Boston & M. R. R., 190 A. 697, 88 N.H. 430, reheard 191 A. 833, 88 N.H. 430.

20. Ga.—B. F. Goodrich Rubber Co. v. Capital City Tire & Supply Co., 129 S.E. 875, 34 Ga.App. 462.
Kan.—Hamilton v. De Camp, 244 P. 1057, 120 Kan. 645.
Md.—Smith v. Whitman, 150 A. 856, 159 Md. 478.

for reversing a judgment if the court afterward peremptorily instructs the jury that it is insufficient to establish the fact for which it was introduced,[21] or that the facts sought to be established by such testimony, if proved, would not warrant a recovery, or constitute a defense, as the case may be.[22]

Error in admitting incompetent evidence, however, is not cured by giving an instruction showing that it is incompetent or irrelevant, where the effect is to mislead the jury to the prejudice of a party;[23] or by giving an instruction as to the weight to be given to the improper evidence,[24] as by instructing that such evidence is not conclusive,[25] or is of a doubtful character;[26] or by giving an instruction which is not responsive to the evidence,[27] which does not clearly indicate what, if any, evidence is to be disregarded,[28] which amounts to nothing more than a qualified direction to disregard the evidence,[29] which is not specific in character and which is not given until after the argument;[30] or which is not sufficient to overcome the influence of the testimony on the jury;[31] or where it is not clear that the remarks relating to the evidence were intended as instructions to the jury or that the jury would have been warranted in accepting and acting on them as such.[32]

(b) As to Damages

Error in admitting improper evidence on the question of damages is cured by an instruction fully stating the correct rule for assessing damages, and eliminating the improper evidence from consideration or stating the matters to be considered in fixing damages, not including items on which the improper evidence has been admitted.

Where all the evidence introduced on the question of damages was erroneously admitted, such error cannot be entirely removed by instructions.[32.50]

Mich.—White v. Livingston County, 200 N.W. 973, 229 Mich. 153—Clark v. Detroit & M. Ry. Co., 169 N.W. 863, 204 Mich. 121.
Okl.—Aderhold v. Stewart, 46 P.2d 340, 172 Okl. 72.
Pa.—Lilly v. Metropolitan Life Ins. Co., 177 A. 779, 318 Pa. 248.
Brady v. Phillips, 60 Pa.Super. 520.
Tex.—Houston Electric Co. v. Pearce, Civ.App., 192 S.W. 558.
4 C.J. p 993 note 42.

21. Ark.—J. R. Watkins Medical Co. v. Martin, 200 S.W. 283, 132 Ark. 108, 2 A.L.R. 1230.
Mich.—Fox v. John F. Ivory Storage Co., 246 N.W. 147, 261 Mich. 358.
4 C.J. p 993 note 43.

22. Ky.—Jefferson v. Watson, 13 Ky.Op. 282.
4 C.J. p 993 note 44.

Denying right to recover
Error, if any, in admitting evidence which should have been excluded is neutralized by an affirmative instruction denying plaintiff's right to recover for losses sustained in the transaction covered by the erroneously admitted evidence.
Ala.—Berry v. Wooddy, 77 So. 942, 16 Ala.App. 348, certiorari denied 78 So. 988, 201 Ala. 698.

23. Fla.—Perper v. Edell, 44 So.2d 78.
Ill.—Anderson v. Chicago, R. I. & P. Ry Co., 243 Ill.App. 337.
Mich.—French v. Detroit Free Press Co., 48 N.W. 615, 85 Mich. 463—McAllister v. Detroit Free Press Co., 48 N.W. 612, 85 Mich. 453.
Mo.—Lyell v. Cox, App., 245 S.W. 343—Traw v. Heydt, App., 216 S. W. 1009.
Nev.—Mikulich v. Carner, 240 P.2d 873, 69 Nev. 50, 28 A.L.R.2d 1.
N.Y.—Zizzi v. Evans, 157 N.Y.S.2d 1021, 3 A.D.2d 644.
N.C.—In re Lomax' Will, 81 S.E.2d 369, 224 N.C. 459, 155 A.L.R. 278.
Ohio.—Gray v. Gordon, 117 N.E. 891, 96 Ohio St. 490.
Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87—Masters v. Cincinnati Traction Co., 16 Ohio App. 99.
Pa.—Lengle v. North Lebanon Tp., 117 A. 403, 274 Pa. 51—Stybr v. Walter, 116 A. 159, 272 Pa. 202.
R.I.—Demara v. Rhode Island Co., 107 A. 89, 42 R.I. 215.
Wis.—Helminiak v. Przekurat, 198 N. W. 746, 184 Wis. 417—Ogodziski v. Gara, 181 N.W. 227, 173 Wis. 371.
4 C.J. p 993 note 45.

24. Mich.—Clark v. Detroit & M. Ry. Co., 163 N.W. 964, 197 Mich. 489, L.R.A. 1917F 851, Ann.Cas. 1918E 1068.
N.Y.—Broderick v. Brooklyn, Q. C. & S. R. Co., 174 N.Y.S. 571, 186 App. Div. 546.
Admissions by employees
Wis.—Klein v. Montgomery Ward & Co., 57 N.W.2d 188, 263 Wis. 317.

25. Ala.—Atlanta, etc., Air Line R. Co. v. Brown, 48 So. 73, 158 Ala. 607.
Conn.—Ferrie v. Sperry, 82 A. 577, 85 Conn. 337.

26. Ga.—Stewart v. Fisher, 89 S. E. 1052, 18 Ga.App. 519.
N.Y.—Meyer v. Gans, 114 N.Y.S. 584, 130 App.Div. 236.

27. D.C.—Karrick v. Holloway, 54 App.D.C. 252, 296 F. 999.

28. Cal.—Richman v. San Francisco, N. & C. Ry., 181 P. 769, 180 C. 454.
N.H.—Palmer v. Edgerly, 181 A. 419, 87 N.H. 391.
N.Y.—Sessa v. Shevers Ice Cream Co., 213 N.Y.S. 697, 215 App.Div. 390.
Or.—Swank v. Elwert, 105 P. 901, 55 Or. 487.
S.C.—Templeton v. Charleston & W. C. Ry. Co., 108 S.E. 363, 117 S.C. 44.
Instruction merely as to the issues
does not cure error in the admission of evidence as to a matter not in controversy.
N.Y.—Shongut v. Meyers, 168 N. Y.S. 2.

29. Ala.—Winter v. Phelan, 27 Ala. 649—Carlisle v. Hunley, 15 Ala. 523.
Ill.—Ivanhoe v. Buda Co., 251 Ill. App. 192.
4 C.J. p 993 note 49.
As to agency
Error in admitting an offer of an agent to convey land without any evidence of his authority is not cured by an instruction that the jury should not consider the offer, unless they were satisfied the agent had authority, since that necessarily assumed that the evidence might be found sufficient to prove the agency.
Mass.—Institution for Savings in Newburyport v. Town of Brookline, 107 N.E. 939, 220 Mass. 300.

30. Pa.—Heron v. Phipps, 92 A. 206, 246 Pa. 294.

31. Idaho.—Foster v. Warner, 249 P. 771, 42 Idaho 729.
Or.—Devine v. Southern Pac. Co., 295 P.2d 201.
Wash.—Miller v. Mohr, 89 P.2d 807, 198 Wash. 619.

32. S.C.—Hiller v. Columbia Bank, 79 S.E. 899, 96 S.C. 74.

32.50 Ohio.—Riehle v. City of Cheviot, App., 62 N.E.2d 350.
Diminution of rental values
Ohio.—Riehle v. City of Cheviot, supra.

The admission of improper testimony on the question of damages is not cured by an instruction in general terms on the measure of damages,[33] unless it is apparent from the verdict that appellant was not harmed by the improper evidence.[34] Such error, however, is cured by an instruction which fully states the correct rule for the assessment of damages, and which either in terms eliminates from consideration the improperly admitted evidence or explicitly states the matters to be considered in fixing damages, not including items on which the improper evidence has been admitted.[35]

(2) Limiting Scope and Effect of Evidence

Error in admitting evidence for an improper purpose may generally be cured by an instruction limiting its consideration to an issue or a purpose for which it is competent.

Error in admitting evidence is harmless where the

33. Ala.—Murphy v. Hays, 130 So. 203, 221 Ala. 566.
Ariz.—Silver King of Arizona Mining Co. v. Kendall, 201 P. 102, 23 Ariz. 39.
Cal.—Ensign v. Southern Pac. Co., 223 P. 953, 193 C. 311.
Ill.—See McCormick v. Decker, 193 Ill.App. 451.
N.H.—Ernshaw v. Roberge, 170 A. 7, 86 N.H. 451.
Pa.—Murdoch v. Biery, 112 A. 772, 269 Pa. 577.
Wash.—Wappenstein v. Schrepel, 142 P.2d 897, 19 Wash.2d 371—Armstrong v. Spokane International Ry. Co., 172 P. 578, 101 Wash. 525, L.R.A.1918E 460.
4 C.J. p 994 note 52.

Creating sympathy

Error in the admission of evidence calculated to create sympathy for plaintiff is not cured by a general instruction as to the measure of damages.
Ala.—New Morgan County Building & Loan Ass'n v. Plemmons, 97 So. 46, 210 Ala. 16—Johnson v. Johnson, 77 So. 335, 201 Ala. 41, 6 A.L.R. 1031.
D.C.—Zinkhan v. District of Columbia, 50 App.D.C. 312, 271 F. 542.

Instruction authorizing recovery for mental suffering caused only by physical injuries does not cure error in admitting evidence regarding mental suffering improperly admitted.
Mo.—Chawkley v. Wabash Ry. Co., 297 S.W. 20, 317 Mo. 782.

34. Wash.—Blonden v. General Petroleum Corporation of California, 300 P. 1058, 163 Wash. 382.
4 C.J. p 994 note 54.

35. Ariz.—General Petroleum Corp. v. Barker, 269 P.2d 729, 77 Ariz. 235—Brandon v. Carr, 237 P. 642, 28 Ariz. 454.
Ark.—Newport Levee Dist. v. Price, 229 S.W. 12, 148 Ark. 122—Williams v. Newkirk, 181 S.W. 304, 121 Ark. 439—Burdette Cooperage Co. v. Bunting, 167 S.W. 77, 113 Ark. 45.
Cal.—Anderson v. State, 142 P.2d 88, 61 C.A.2d 140—Setsuko Nitta v. Haslam, 33 P.2d 678, 138 C.A. 736.
Conn.—Banks v. Watrous, 73 A.2d 329, 136 Conn. 597.
Fla.—McEwing v. McCulloch, 196 So. 851, 142 Fla. 844.
Idaho.—Boulton v. Telfer, 12 P.2d 767, 52 Idaho 185, 83 A.L.R. 1341, certiorari denied Telfer v. Boulton, 53 S.Ct. 115, 287 U.S. 655, 77 L.Ed. 565.
Ill.—Levy v. City of Chicago, 73 N.E.2d 643, 331 Ill.App. 612—Budek v. City of Chicago, 279 Ill.App. 410.
Ind.—Murphy Auto Sales, Inc. v. Coomer, 112 N.E.2d 589, 123 Ind. App. 709—City of Terre Haute v. Pigg, 27 N.E.2d 137, 108 Ind.App. 68—Vandalia Coal Co. v. Butler, 119 N.E. 34, 68 Ind.App. 245.
Kan.—Case v. State Highway Commission, 131 P.2d 696, 156 Kan. 163.
Md.—Adams v. Benson, 117 A.2d 881, 208 Md. 261—Baltimore Transit Co. v. State for Use of Castranda, 71 A.2d 442, 194 Md. 421—Petrol Corp. v. Curtis, 59 A.2d 329, 190 Md. 652.
Mich.—Bishop v. Gaudio, 253 N.W. 292, 266 Mich. 267—Nicholas v. Maxwell Motor Corporation, 213 N.W. 128, 237 Mich. 612—Gutov v. Clark, 157 N.W. 49, 190 Mich. 381.
Minn.—Shepard v. Alden, 201 N.W. 537, 161 Minn. 135, 39 A.L.R. 1094, affirmed 202 N.W. 71, 161 Minn. 135, 39 A.L.R. 1094.
Miss.—Illinois Cent. R. Co. v. Perkins, 79 So.2d 459, 223 Miss. 891, applying Tennessee law.
Mo.—Heppner v. Atchison, T. & S. F. Ry. Co., 297 S.W.2d 497—Meade v. Kansas City Public Service Co., 250 S.W.2d 513.
Thomas v. Boone Elec. Co-op., App., 277 S.W.2d 640—Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356—State ex rel. State Highway Commission v. Bailey, 115 S.W.2d 17, 234 Mo.App. 168—Nemela v. Coca-Cola Bottling Co. of St. Louis, App., 104 S.W.2d 773—Funke v. St. Louis-San Francisco Ry. Co., 35 S.W.2d 977, 225 Mo.App. 347—Shannon v. People's Motorbus Co. of St. Louis, App., 20 S.W.2d 580—Newell v. St. Louis Transfer Co., 226 S.W. 80, 205 Mo.App. 543—Kolkmeyer v. Chicago & A. R. Co., 182 S.W. 794, 192 Mo.App. 188.
N.C.—Hodgin v. Town of Liberty, 161 S.E. 94, 201 N.C. 658—Shaw Cotton Mills v. Acme Hosiery Mills, 106 S.E. 24, 181 N.C. 33.
Okl.—Spillers v. Missouri, Kansas & Oklahoma Coach Lines, 88 P.2d 642, 184 Okl. 507—Stewart v. Bowser, 62 P.2d 1195, 178 Okl. 382.
Or.—Schmalz v. Arnwine, 246 P. 718, 118 Or. 300.
Pa.—Goodman v. City of Bethlehem, 185 A. 719, 323 Pa. 58.
Keown v. Mallissee, 57 Pa.Super. 592.
S.C.—Rogers v. Wunderlich, 133 S.E. 545, 135 S.C. 307.
Tex.—Galveston Electric Co. v. Biggs, Civ.App., 14 S.W.2d 307.
Va.—Virginian Ry. Co. v. London, 139 S.E. 328, 148 Va. 699.
Wash.—Blonden v. General Petroleum Corporation of California, 300 P. 1058, 163 Wash. 382—Armstrong v. Spokane International Ry. Co., 172 P. 578, 101 Wash. 525, L.R.A. 1918E 460.
4 C.J. p 994 note 53.

In an action for damages to an automobile, the admission of evidence as to the value of the time lost by plaintiff as a result of the collision is cured by an instruction to the jury to limit the damages to recovery for the loss of the automobile.
Mo.—Hamilton v. Kansas City Rys. Co., App., 239 S.W. 164.

Injury to earning capacity

In an action for injuries sustained in an automobile collision, admission of testimony on damages to injured party's diminished capacity to earn livelihood, if any, is harmless where the court instructs to the effect that, in determining the extent of the injury, the jury are not to consider any merely possible damages or results or conditions, if any, and that they should disregard all testimony as to any possible future development.
Ark.—Duckworth v. Stephens, 30 S.W.2d 840, 182 Ark. 161.

Sentimental value

In action against a railroad for loss by fire, the admission of plaintiff's testimony of the sentimental value of certain articles destroyed was not prejudicial, where jury were instructed that in estimating damages they could not consider any sentimental value.
Va.—Chesapeake & O. Ry. Co. v. May, 92 S.E. 801, 120 Va. 798.

jury are instructed not to consider such evidence unless it is supported by other competent evidence.[35.50] Especially where the evidence was stricken from the record,[35.55] error in admitting evidence for an improper purpose is cured by an instruction that the jury cannot consider it for such purpose, but only on another issue or for another purpose as to which it is competent,[36] unless the evi-

35.50 Tenn.—Central Truckaway System v. Waltner, 253 S.W.2d 985, 36 Tenn.App. 202.

Physician's testimony as to consequences of injuries

Tenn.—Central Truckaway System v. Waltner, supra.

35.55 S.C.—Johnston v. Life & Casualty Ins. Co., 7 S.E.2d 463, 192 S.C. 518.

36. Ala.—White v. Williams, 69 So. 2d 847, 260 Ala. 182.

Ark.—Bankers' Fire Ins. Co. v. Williams, 5 S.W.2d 916, 176 Ark. 1188—Casey v. Wisconsin & Arkansas Lumber Co., 219 S.W. 12, 142 Ark. 584—Polk v. Maynard, 183 S.W. 971, 122 Ark. 611.

Cal.—Boa v. San Francisco-Oakland Terminal Rys., 187 P. 2, 182 C. 93. Pierson v. Holly Sugar Corp., 237 P.2d 28, 107 C.A.2d 298—Fachadio v. Krovitz, 144 P.2d 646, 62 C.A.2d 862—Hedlund v. Sutter Medical Service Co., 124 P.2d 878, 51 C.A.2d 327—Martin, Continental Casualty Co., Intervener, v. Clinton Const. Co., 105 P.2d 1029, 41 C.A.2d 35, rehearing denied 106 P.2d 629, 41 C.A.2d 35—Scott v. Sheedy, 102 P. 2d 575, 39 C.A.2d 96—McElligott v. Freeland, 33 P.2d 430, 139 C.A. 143—Larimer v. Smith, 19 P.2d 825, 130 C.A. 98—Shaver v. United Parcel Service, 266 P. 606, 90 C.A. 764.

Colo.—Curtis v. Farrar, 211 P. 386, 72 Colo. 355.

Conn.—Schiller v. Orange Hall Corp., 130 A.2d 798, 144 Conn. 327—Ingeneri v. Makris, 37 A.2d 865, 131 Conn. 77.

Ill.—Green v. Keenan, 134 N.E.2d 115, 10 Ill.App.2d 53—Clark v. A. Bazzoni & Co., 129 N.E.2d 435, 7 Ill.App.2d 334—Hight v. City of Chicago, 11 N.E.2d 842, 293 Ill.App. 621.

Ind.—Town of Argos v. Harley, 49 N.E.2d 552, 114 Ind.App. 290—Ziffrin v. Bolitho, 25 N.E.2d 675, 108 Ind.App. 44—Indiana Mfg. Co. v. Coughlin, 115 N.E. 260, 65 Ind.App. 268.

Iowa.—In re Cheney's Estate, 274 N. W. 5, 223 Iowa 1076—Chase v. City of Winterset, 214 N.W. 591, 203 Iowa 1361, followed in Brooker v. City of Winterset, 215 N.W. 668, 204 Iowa 619—Tabler v. Evans, 212 N.W. 161, 202 Iowa 1386—Hawn v. Malone, 176 N.W. 393, 188 Iowa 439—Witthauer v. Wheeler, 150 N. W. 46, 172 Iowa 225, modified on other grounds 154 N.W. 423, 172 Iowa 180.

Ky.—Greer v. Richards' Adm'r, 115 S.W.2d 568, 273 Ky. 91—Watkins v. Carter, 101 S.W.2d 932, 267 Ky. 241—Equitable Life Assur. Soc. of U. S. v. McDonald, 87 S.W.2d 123, 261 Ky. 148—Johnson v. Langley, 57 S.W.2d 21, 247 Ky. 387—Louisville & N. R. Co. v. Jones, 1 S.W. 2d 972, 222 Ky. 531—Louisville & N. R. Co. v. Payne's Adm'r, 197 S.W. 928, 177 Ky. 462, L.R.A.1918C 376—North River Ins. Co. v. Dyche, 173 S.W. 784, 163 Ky. 271.

Mass.—Glover v. Callahan, 12 N.E.2d 194, 299 Mass. 55—Comstock v. Biltmore Amusement Co., 116 N.E. 581, 227 Mass. 146—Kennedy v. Armstrong, 111 N.E. 886, 223 Mass. 354—Thomas v. Inhabitants of Town of Winthrop, 111 N.E. 173, 222 Mass. 456.

Mich.—Vandenberg v. Prosek, 56 N. W.2d 227, 335 Mich. 382—Laughlin v. Michigan Motor Freight Lines, 258 N.W. 887, 276 Mich. 545—Johnson v. Gratiot County State Bank, 160 N.W. 544, 193 Mich. 452, reversed on other grounds Gratiot County State Bank v. Johnson, 39 S.Ct. 263, 249 U.S. 246, 63 L.Ed. 587.

Minn.—Kolars v. Delnik, 266 N.W. 705, 197 Minn. 183.

Mo.—Ford v. Dahl, 228 S.W.2d 800, 360 Mo. 437—Brunk v. Hamilton-Brown Shoe Co., 66 S.W.2d 903, 334 Mo. 517—Stein v. Rainey, 286 S.W. 53, 315 Mo. 535. Jones v. Terminal R. R. Ass'n of St. Louis, App., 246 S.W.2d 356—Thayer v. Williams, 65 Mo.App. 673.

Nev.—Fredrickson & Watson Const. Co. v. Boyd, 102 P.2d 627, 60 Nev. 117.

N.H.—Stanley v. Bowen Bros., 79 A. 2d 1, 96 N.H. 467—Archibald v. Boston & M. R. R., 28 A.2d 593, 92 N.H. 184—Tetreault v. Gould, 138 A. 544, 83 N.H. 99.

N.C.—Keith v. Wilder, 86 S.E.2d 444, 241 N.C. 672—Hobbs v. Queen City Coach Co., 34 S.E.2d 211, 225 N.C. 323—Rouse v. City of Kinston, 123 S.E. 482, 188 N.C. 1—Boyden v. Hagaman, 85 S.E. 411, 169 N.C. 199.

N.D.—Olson v. Armour & Co., 280 N.W. 200, 68 N.D. 272, followed in Weir v. Armour & Co., 280 N.W. 204, 68 N.D. 281, Haugen v. Armour & Co., 280 N.W. 204, 68 N.D. 282, and Paseka v. Armour & Co., 280 N.W. 205, 68 N.D. 283.

Ohio.—Rehklau v. Bourne, 161 N.E. 534, 118 Ohio St. 494. State Auto. Mutual Ins. Co. v. Kaffenberger, 83 N.E.2d 916, 84 Ohio App. 304—Weigel v. Cottage Building & Loan Co., 42 N.E.2d 171, 68 Ohio App. 467—City of Cincinnati v. Metze, 178 N.E. 222, 40 Ohio App. 110.

Okl.—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35—Houghton v. Duffner-Cravens Co., 51 P.2d 817, 175 Okl. 148.

Or.—Coast Fir Lumber Co. v. Parker, 213 P. 617, 106 Or. 641.

R.I.—Paradise v. Rick, 7 A.2d 713, 63 R.I. 207.

S.C.—Richardson v. Register, 87 S.E. 2d 40, 227 S.C. 81.

Tex.—Montgomery v. Gay, Civ.App., 222 S.W.2d 922, error dismissed—Snow v. Harding, Civ.App., 180 S. W.2d 965, error refused—Jackson-Strickland Transp. Co. v. Seyler, Civ.App., 123 S.W.2d 928, error dismissed by agreement—City of Wichita Falls v. Crummer, Civ. App., 71 S.W.2d 583—O'Brien v. McDow, Civ.App., 8 S.W.2d 561—Southern Gas & Gasoline Engine Co. v. Adams & Peters, Civ.App., 198 S.W. 676, reversed on other grounds, Com.App., 227 S.W. 945.

Vt.—McAndrews v. Leonard, 134 A. 719, 99 Vt. 512.

Va.—Norfolk & W. Ry. Co. v. Lumpkins, 144 S.E. 485, 151 Va. 173—Anchor Co. v. Adams, 124 S.E. 438, 139 Va. 388.

Wash.—Maciejczak v. Bartell, 60 P. 2d 31, 187 Wash. 113—Samuels v. Hiawatha Holstein Dairy Co., 197 P. 24, 115 Wash. 343.

Wis.—East Wis. Trustee Co. v. O'Neil, 39 N.W.2d 369, 255 Wis. 528—Wussow v. Badger State Bank of Milwaukee, 234 N.W. 720, 204 Wis. 467, rehearing denied 236 N. W. 687, 204 Wis. 467.

4 C.J. p 994 note 55.

Evidence held admissible to show malice but not in proof of damages.

S.C.—Johnston v. Life & Casualty Ins. Co., 7 S.E.2d 463, 192 S.C. 518.

Insurance

The admission in evidence of a rider showing that both defendants were covered by an automobile liability policy is not reversible error in an automobile accident case, where the court limits the evidence to the issue then involved as to ownership of the truck and thereafter withdraws the evidence from the jury when that issue passes out of the case.

Ohio.—Reserve Trucking Co. v. Fairchild, 191 N.E. 745, 128 Ohio St. 519.

Letter

In a depositor's action against his bank for refusal to honor a check, the admission in evidence of a letter from plaintiff depositor's attorney to the bank, stating that he was handling a claim against the bank for

dence is not admissible for any purpose,[37] or is so radically wrong and of such a prejudicial character that it must be assumed that injury resulted.[38]

Such error is not cured by an instruction which limits consideration of the improper evidence to an immaterial issue,[39] or to a matter not in issue;[40] or which limits its consideration as throwing light on the only issues in the case,[41] or accentuates the prejudicial effect of the improper evidence,[42] or otherwise improperly or insufficiently limits its scope.[43] So, also, the giving of an instruction which limits the consideration of evidence to a designated purpose for which the evidence may properly be considered does not cure error in admitting such evidence generally where another instruction advises the jury that they may consider the evidence for a purpose for which it is not admissible.[44]

(3) Submitting Proper Issues and Ignoring Others

Error in admitting evidence is cured where the instructions submit only the specific issue or issues in the case, and not the issue on which the evidence was improperly admitted.

Error in admitting evidence is cured where the instructions of the court direct the attention of the jury only to the specific issue or issues in the case,[45] and do not submit to the jury the issue sought to be proved by the improper evidence.[46]

damages for refusal to honor the check, under instructions not to consider the letter as evidence for any purpose except to show when the bank had notice of the depositor's claim, is not reversible error, although it would have been better to have had only the material portion of it read to the jury.
S.C.—Wilson v. Palmetto Nat. Bank of Columbia, 101 S.E. 841, 113 S.C. 508.

37. Or.—Georges v. Sheridan & W. R. Co., 194 P. 1114, 99 Or. 122.

38. Ga.—May v. Leverette, 139 S.E. 31, 164 Ga. 552.
Iowa.—Hawn v. Malone, 176 N.W. 393, 188 Iowa 439.
Mo.—Warren v. Pulitzer Pub. Co., 78 S.W.2d 404, 336 Mo. 184.
N.Y.—Gilmore v. Butts, 189 N.Y.S. 712, 198 App.Div. 108.
Ohio.—Rowley v. Ferguson, App., 48 N.E.2d 243.
4 C.J. p 994 note 56.

Parts of deposition against codefendant

Where a deposition of one defendant taken in another case is offered as an admission against interest as to such defendant alone, this did not justify the introduction of many parts of the deposition which relate wholly to the liability of his codefendant, such parts being easily separable; and, such parts being highly injurious, their prejudicial effect could not be removed by the court's oral direction to the jury, at the close of plaintiff's case, not to consider anything in the deposition as to such codefendant.
Mo.—Vest v. S. S. Kresge Co., App., 213 S.W. 165.

39. Mass.—Hughes v. Williams, 105 N.E. 1056, 218 Mass. 448.
Va.—Hilleary v. Hubbell, 89 S.E. 111, 119 Va. 123.

40. N.H.—Shea v. Hillsborough Mills, 96 A. 293, 78 N.H. 57.
N.Y.—Martin v. Paddelford, 170 N.Y.S. 684, 183 App.Div. 354.

41. Okl.—School Dist. No. 39, Mayes County, v. Hicks, 280 P. 606, 138 Okl. 143, 65 A.L.R. 1092.

42. Minn.—Thompson v. Byram, 228 N.W. 546, 179 Minn. 67.

43. Fla.—City of Miami Beach v. Wolfe, 83 So.2d 774.
Neb.—Rushart v. Department of Roads and Irrigation, 5 N.W.2d 884, 142 Neb. 301.
N.Y.—Fred W. Hoch Associates v. Western Newspaper Union, 126 N.E.2d 749, 308 N.Y. 461.
Tex.—Stockwell v. Snyder, Com.App., 84 S.W.2d 705.
Va.—Whitten v. McClelland, 120 S.E. 146, 137 Va. 726.
Wash.—Young v. Liddington, 309 P. 2d 761.

44. Mass.—Boyle v. Boston El. R. Co., 94 N.E. 247, 208 Mass. 41, 21 Ann.Cas. 1020.

45. Ark.—H. Rouw Co. v. American Ry. Express Co., 291 S.W. 1001, 173 Ark. 84.
Cal.—Johnson v. Du Four, 51 P.2d 449, 10 C.A.2d 119.
Ga.—Spillar v. Dickson, 95 S.E. 994, 148 Ga. 90.
Mendenhall v. Adair Realty & Loan Co., 19 S.E.2d 740, 67 Ga.App. 154—Tuggle v. Fisk Rubber Co. of New York, 106 S.E. 594, 26 Ga.App. 493.
Ky.—French v. Elkhorn City Land Co., 168 S.W.2d 746, 293 Ky. 250.
Mich.—Chambers v. Beckwith, 225 N.W. 605, 247 Mich. 255—Jaworski v. Detroit Edison Co., 178 N.W. 71, 210 Mich. 317—Spiegel v. Straw, 163 N.W. 4, 196 Mich. 581.
Minn.—Wilson v. Metropolitan Life Ins. Co., 245 N.W. 826, 187 Minn. 462—Hoch v. Byram, 230 N.W. 823, 180 Minn. 298.
Miss.—Jefferson v. Pinson, 69 So.2d 234, 219 Miss. 427.
Mo.—Pandjiris v. Oliver Cadillac Co., 98 S.W.2d 969, 339 Mo. 711—Gould v. Chicago, B. & Q. R. Co., 290 S.W. 135, 315 Mo. 713—Kidd v. Chicago, R. I. & P. Ry. Co., 274 S.W. 1079, 310 Mo. 1, certiorari denied Chicago, R. I. & P. Ry. Co. v. Kidd, 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424—Dietzman v. St. Louis Screw Co., 254 S.W. 59, 300 Mo. 196.
Wissmann v. Pearline, 135 S.W. 2d 1, 235 Mo.App. 314—State Bank of Sarcoxie v. Harp, App., 282 S.W. 737—Roberts v. Harmount Tie & Lumber Co., App., 264 S.W. 448—Mackey v. Queen City Wood Works & Lumber Co., 261 S.W. 132, 216 Mo.App. 205.
Mont.—Stokes v. Long, 159 P. 28, 52 Mont. 470.
N.J.—Parsippany-Troy Hills Tp., Morris County, v. Bowman, 69 A. 2d 199, 3 N.J. 97.
N.Y.—Hopewell Bldg. Co. v. Callan, 193 N.Y.S. 504, 200 App.Div. 588.
N.C.—Rutledge v. A. T. Griffin Mfg. Co., 111 S.E. 774, 183 N.C. 430.
Okl.—Tulsa Petroleum Corp. v. Westmoreland, 70 P.2d 110, 180 Okl. 459—Chicago, R. I. & P. Ry. Co. v. Taylor, 49 P.2d 721, 173 Okl. 454—World Pub. Co. v. Minahan, 173 P. 815, 70 Okl. 107, L.R.A. 1918F 283—McKemie v. Albright, 144 P. 1027, 44 Okl. 405.
Pa.—Wolverine Glass Co. v. Miller, 123 A. 672, 279 Pa. 138.
S.C.—Bray v. Kress & Mays, 96 S.E. 135, 109 S.C. 365.
S.D.—Privat v. Grand Bay Land Co., 171 N.W. 327, 41 S.D. 494—Hulm v. Chicago, M. & St. P. Ry. Co., 171 N.W. 210, 41 S.D. 422.
Tex.—Justiss v. Naquin, Civ.App., 137 S.W.2d 72, error dismissed, judgment correct—Texas & P. Ry. Co. v. Moore, Civ.App., 7 S.W.2d 902—Johnson v. Wise, Civ.App., 293 S.W. 644—Wortman v. Young, Civ.App., 221 S.W. 660, reversed on other grounds, Com.App., 235 S.W. 559—Sugarland Ry. Co. v. Dew Bros., Civ.App., 212 S.W. 190, dismissed for want of jurisdiction—Memphis Cotton Oil Co. v. Tolbert, Civ.App., 171 S.W. 309.
4 C.J. p 995 note 58.

46. Ark.—Nelson v. Forbes & Sons, 261 S.W. 910, 164 Ark. 460.

Such error, however, is not cured by such an instruction where it is on another branch of the case,[47] or where the evidence thus improperly admitted must have been misleading to the jury and prejudicial to the complaining party.[48] So, also, where the testimony legally before the jury does not warrant their verdict, the ignoring in the charge of testimony erroneously admitted does not cure the error in its admission.[49]

(4) Withdrawing Issue on Which Evidence Improperly Admitted

Error in admitting evidence on a particular issue is cured by the subsequent abandonment of such issue, or its withdrawal or elimination from the consideration of the jury.

Where the issue, claim, or cause of action on which evidence was improperly admitted is subsequently abandoned,[49.50] withdrawn,[50] or dis-

Conn.—Stevenson v. Moeller, 152 A. 889, 112 Conn. 491.
Iowa.—Droullard v. Rudolph, 223 N. W. 100, 207 Iowa 367.
Kan.—Phipps v. Consolidated Flour Mills Co., 213 P. 637, 113 Kan. 118—Chicago Great Western R. Co. v. Bailey, 71 P. 246, 66 Kan. 115.
Ky.—Gus Datillo Fruit Co. v. Louisville & N. R. Co., 11 S.W.2d 953, 226 Ky. 813—Louisville & N. R. Co. v. Slusher's Adm'r, 290 S.W. 677, 217 Ky. 738—Lawrence v. Fielder, 216 S.W. 1068, 186 Ky. 324.
Md.—Mullan v. Belbin, 100 A. 384, 130 Md. 313—Peninsula Produce Exchange of Maryland v. New York, P. & N. R. Co., 100 A. 107, 130 Md. 106.
Mich.—Spiegel v. Straw, 163 N.W. 4, 196 Mich. 581—Simmons v. National Live Stock Ins. Co., 153 N. W. 696, 187 Mich. 551, Ann.Cas. 1917D 42.
Miss.—Illinois Central Railroad Company v. Perkins, 79 So.2d 459, 223 Miss. 891, applying Tennessee law.
Mo.—Ostertag v. Union Pac. R. Co., 169 S.W. 1, 261 Mo. 457.
Wissmann v. Pearline, 135 S.W. 2d 1, 235 Mo.App. 314—Granberg v. King Candy Co., App., 81 S.W. 2d 981—McCarthy v. Wells, App., 296 S.W. 823—State Bank of Sarcoxie v. Harp, App., 282 S.W. 737—Flack v. Wahl, 193 S.W. 56, 197 Mo.App. 10, certiorari quashed State ex rel. Wahl v. Reynolds, 199 S.W. 978, 272 Mo. 588—Walker v. Guthrie, 76 S.W. 675, 102 Mo. App. 420.
Ohio.—Arnold v. Wylie, 157 N.E. 571, 25 Ohio App. 10.
Okl.—Chicago, R. I. & P. Ry. Co. v. Brooks, 179 P. 924, 72 Okl. 208.
Pa.—Wolverine Glass Co. v. Miller, 123 A. 672, 279 Pa. 138.
Tex.—Southern Casualty Co. v. Freeman, Com.App., 24 S.W.2d 370.
Missouri-Kansas-Texas R. Co. of Tex. v. Bruton, Civ.App., 290 S. W.2d 282, error refused no reversible error—Stedman Fruit Co. v. Smith, Civ.App., 28 S.W.2d 622—Northern Texas Traction Co. v. Bryan, Civ.App., 299 S.W. 325—American Ry. Express Co. v. Home Star Produce Co., Civ.App., 276 S. W. 790—Humble Oil & Refining Co. v. McLean, Civ.App., 268 S.W. 179, reversed on other grounds, Com. App., 280 S.W. 557—Missouri State Life Ins. Co. v. Woodson, Civ.App., 256 S.W. 988—Wortman v. Young, Civ.App., 221 S.W. 660, reversed on other grounds, Com.App., 235 S.W. 559—Rachofsky v. Rachofsky, Civ. App., 203 S.W. 1134—Sherman Ice Co. v. Klein, Civ.App., 195 S.W. 918—Missouri, K. & T. Ry. Co. of Texas v. Churchill, Civ.App., 171 S. W. 517, affirmed, Com.App., 212 S. W. 155, rehearing overruled 213 S. W. 253.
Wash.—Carmin v. Port of Seattle, 116 P.2d 338, 10 Wash.2d 139.
4 C.J. p 995 note 59.

Hearsay

Tex.—Tebay v. Morrison, Civ.App., 139 S.W.2d 226, error dismissed.

47. Wash.—Kotkins v. City of Seattle, 206 P. 11, 119 Wash. 590, reheard 212 P. 548, 123 Wash. 434.

48. Mo.—Williams v. Modern Woodmen of America, App., 243 S.W. 272.
S.C.—Johnson v. Western Union Telegraph Co., 179 S.E. 325, 175 S.C. 344.
Tex.—Humble Oil & Refining Co. v. Strauss, Civ.App., 243 S.W. 528.
Wash.—Wappenstein v. Schrepel, 142 P.2d 897, 19 Wash.2d 371.
4 C.J. p 995 note 60.

49. Tex.—Dallas Homestead, etc., Assoc. v. Thomas, 81 S.W. 1041, 36 Tex.Civ.App. 268.

49.50 N.J.—Reynier v. Associated Dyeing & Printing Co., 184 A. 780, 116 N.J.Law 481, 104 A.L.R. 1002.

Abandonment of issue of:

(1) Defective steps.

Mo.—Weinel v. Hesse, App., 174 S. W.2d 903.

(2) Claim on quantum meruit.

N.J.—Reynier v. Associated Dyeing & Printing Co., 184 A. 780, 116 N. J.Law 481, 104 A.L.R. 1002.

50. Ala.—Hendrix v. Hendrix, 112 So. 219, 215 Ala. 646—Rivers v. Paterson & Edey Lumber Co., 101 So. 652, 212 Ala. 96.
Ark.—Eaves v. Lamb, 193 S.W.2d 328, 209 Ark. 987—Northwestern Rug Mfg. Co. v. Leftwich Hardware & Furniture Co., 2 S.W.2d 1109, 176 Ark. 212—Western Cabinet & Fixture Mfg. Co. v. Davis, 181 S.W. 273, 121 Ark. 370.
Colo.—Swaim v. Swanson, 197 P.2d 624, 118 Colo. 509.
Ill.—Bowman v. O'Brien, 25 N.E.2d 544, 303 Ill.App. 630—Anderson v. Chicago, R. I. & P. Ry. Co., 243 Ill.App. 337—Bender v. Bender, 221 Ill.App. 494.
Iowa.—L. Terry & H. Rosenberg v. American Ins. Co., 203 N.W. 17, reheard 211 N.W. 716, 202 Iowa 1291—Kiliebenstein v. Iowa Ry. & Light Co., 188 N.W. 129, 193 Iowa 892—Walmer-Roberts v. Hennessey, 181 N.W. 798, 191 Iowa 86—Rupener v. Cedar Rapids & Iowa City Railway & Light Co., 159 N. W. 1048, 178 Iowa 615.
Ky.—Roberts v. White, 99 S.W.2d 447, 266 Ky. 488.
Mich.—Johnson v. Union Carbide Co., 148 N.W. 432, 181 Mich. 403.
Minn.—McKnight v. City of Duluth, 232 N.W. 795, 181 Minn. 450.
Mo.—McKerall v. St. Louis-San Francisco Ry. Co., App., 257 S.W. 166—Huckshold v. United Rys. Co. of St. Louis, App., 234 S.W. 1072.
Mont.—Brown v. Homestake Exploration Corporation, 39 P.2d 168, 98 Mont. 305.
N.C.—Davis v. Vaughn, 91 S.E.2d 165, 243 N.C. 486.
N.D.—Raich v. Lindebek, 161 N.W. 1026, 36 N.D. 133.
Okl.—Missouri Pac. R. Co. v. Steel, 284 P. 21, 141 Okl. 133—Sinclair v. Stringer, 195 P. 771, 80 Okl. 218.
Or.—Sather v. Giaconi, 220 P. 740, 110 Or. 433.
Tenn.—Friedman v. Georgia Showcase Co., 183 S.W.2d 9, 27 Tenn. App. 574.
Tex.—Wolf v. Wolf, Civ.App., 269 S.W. 488.
Utah.—Campbell v. Los Angeles & S. L. R. Co., 263 P. 495, 71 Utah 173—Jenkins v. Stephens, 262 P. 274, 71 Utah 15.
Vt.—Tetreault v. Campbell, 61 A.2d 591, 115 Vt. 369—Dailey v. Town of Ludlow, 147 A. 771, 102 Vt. 312—Berkley v. Burlington Cadillac Co., 122 A. 665, 97 Vt. 260—De Nottbeck v. Chapman, 108 A. 338, 93 Vt. 378.
Wash.—Robinson v. Ebert, 39 P.2d 992, 180 Wash. 387—Hoon v. City of Seattle, 162 P. 584, 94 Wash. 470.
4 C.J. p 995 note 62.

Withdrawal of allegation

Error in admitting evidence to support a particular allegation of negligence is ordinarily cured by the withdrawal of such allegation.

missed,[51] error in the admission of such evidence is cured; and this is especially so where the improper evidence is also withdrawn or the jury are instructed to disregard it.[52] Error in admitting evidence concerning particular items of damages is cured where such items are withdrawn or excluded from the consideration of the jury.[53]

Similarly, the erroneous admission of evidence is not prejudicial where the court instructs the jury to the effect that the question on which such evidence was admitted is not in issue,[54] is out of the case,[55] or has been eliminated.[56]

On the other hand, where evidence wholly inadmissible is as much applicable to one of two causes of action or issues alleged as to the other, or is of such a character that the court cannot say that it had no influence in the determination of the issues submitted, the error is not cured by the mere withdrawal of one of the causes of action or issues which it was offered to support;[57] nor is it cured where, although the issue on which it was admitted is withdrawn, the court instructs the jury that the evidence may be considered, but cautions them as to its use.[58]

§ 1738. —— By Amendment of Pleadings

Error in admitting evidence not competent under the pleadings is cured by an amendment of the pleadings which renders it competent.

Error in admitting evidence which is not competent under the pleadings is cured by a subsequent amendment of the pleadings, by permission of the court, rendering the evidence admissible.[59]

12. Exclusion of Evidence

§ 1739. Prejudicial Effect in General

If the exclusion of evidence did not prejudice the complaining party, and could not have affected the result, the error is harmless.

Generally, the exclusion of competent material evidence on a question in issue is reversible error,[60] unless the facts are undisputed or the evi-

Kan.—Sappenfield v. National Zinc Co., 145 P. 862, 94 Kan. 22.

Waiver of defense

Error in admitting evidence is harmless, where the defense against which the evidence was received has been waived.

Vt.—Town of Brattleboro v. Carpenter, 158 A. 73, 104 Vt. 158.

51. Colo.—Farmers' Reservoir & Irrigation Co. v. Fulton Inv. Co., 255 P. 449, 81 Colo. 69.

Cross action dismissed

Where a contract is introduced in evidence to support defendant's cross action, error, if any, in the introduction of such evidence, is rendered harmless, where the cross action is dismissed.

Tex.—Kanner v. Starts, Civ.App., 203 S.W. 603, error refused.

Dismissal of one count

Error in the admission of evidence applicable only to one count is harmless, where such count is dismissed by plaintiff, and no element of liability thereunder is submitted to the jury.

Mo.—Johnson v. Ambursen Hydraulic Const. Co., 173 S.W. 1081, 188 Mo.App. 105.

52. Mich.—Bolibrzuch v. Gaffke, 230 N.W. 922, 251 Mich. 92—Bamlet Realty Co. v. Doff, 150 N.W. 307, 183 Mich. 694—Johnson v. Union Carbide Co., 148 N.W. 432, 181 Mich. 403.

Mo.—Simmons v. Kroger Grocery & Baking Co., 104 S.W.2d 357, 340 Mo. 1118.

Grab v. Davis Const. Co., 109 S.W.2d 882, 233 Mo.App. 819.

Utah.—Jenkins v. Stephens, 262 P. 274, 71 Utah 15.

Wash.—Robinson v. Ebert, 39 P.2d 992, 180 Wash. 387—De Honey v. Gjarde, 236 P. 290, 134 Wash. 647—Hoon v. City of Seattle, 162 P. 584, 94 Wash. 470.

53. Ala.—Birmingham Ry., Light & Power Co. v. Littleton, 77 So. 565, 201 Ala. 141.

D.C.—Wagar v. Stalcup, 64 App.D.C. 50, 73 F.2d 986.

Md.—Fisher v. Vandevanter, 112 A. 296, 137 Md. 249.

Mo.—Snyder v. American Car & Foundry Co., 14 S.W.2d 603, 322 Mo. 147.

Mont.—Schwab v. Peterson, 260 P. 711, 80 Mont. 214.

Or.—Sather v. Giaconi, 220 P. 740, 110 Or. 433.

Tex.—Grand Prairie Gravel Co. v. Joe B. Wills Co., Civ.App., 188 S.W. 680, error refused—Texas & P. Ry. Co. v. McMillen, Civ.App., 183 S.W. 773—McLean v. Breen, Civ.App., 183 S.W. 394, reversed on other grounds, Com.App., 219 S.W. 1089, 9 A.L.R. 459—Texas Midland R. R. v. Simmons, Civ.App., 152 S.W. 1106.

Wash.—Terry v. U. S. Fidelity & Guaranty Co., 82 P.2d 532, 196 Wash. 206, 119 A.L.R. 1276.

4 C.J. p 995 note 62 [d].

54. Ala.—Baugh v. North Alabama Coal & Mineral Co., 124 So. 528, 220 Ala. 242.

Iowa.—Windahl v. Hasselman, 200 N.W. 583, 198 Iowa 1001.

Neb.—Masonic Bldg. Corporation v. Carlsen, 258 N.W. 44, 128 Neb. 108.

4 C.J. p 996 note 63.

55. Cal.—Sundberg v. Ringel, 280 P. 557, 100 C.A. 545.

Mich.—Bamlet Realty Co. v. Doff, 150 N.W. 307, 183 Mich. 694.

Wis.—Pireaux v. Simon, 48 N.W. 674, 79 Wis. 392.

56. Conn.—Gates v. Crane Co., 139 A. 782, 107 Conn. 201.

Ky.—Humble Bros. Lumber Co. v. Robertson, 20 S.W.2d 82, 230 Ky. 449.

Neb.—Forbes v. Thomas, 35 N.W. 411, 22 Neb. 541.

Wash.—Dudley v. Duval, 70 P. 68, 29 Wash. 528.

57. Colo.—Denver City Tramway Co. v. Cowan, 116 P. 136, 51 Colo. 64.

Iowa.—Dille v. Longwell, 197 N.W. 439, 198 Iowa 540.

Mo.—Fowler v. Missouri, K. & T. R. Co., 84 S.W.2d 194, 229 Mo.App. 561.

58. Vt.—Berkley v. Burlington Cadillac Co., 122 A. 665, 97 Vt. 260.

59. N.Y.—General Electric Co. v. National Contracting Co., 70 N.E. 928, 178 N.Y. 369.

4 C.J. p 996 note 67.

60. Ala.—Bell v. Birmingham Broadcasting Co., 82 So.2d 345, 263 Ala. 355—Birmingham Terminal Co. v. Wilson, 31 So.2d 563, 249 Ala. 397—Woodmen of the World Life Ins. Soc. v. Guyton, 194 So. 655, 239 Ala. 216—Poole v. Fletcher, 169 So. 868, 233 Ala. 54—Lawrence v. Tennessee Valley Bank, 141 So. 664, 224 Ala. 692—Garing v. Boyn-

ton, 138 So. 279, 224 Ala. 22—St. Paul Fire & Marine Ins. Co. v. Armstrong, 122 So. 25, 219 Ala. 211, followed in Springfield Fire & Marine Ins. Co. v. Armstrong, 121 So. 906, 23 Ala.App. 126—Hartford Fire Ins. Co. v. Armstrong, 122 So. 23, 219 Ala. 208—Sales Corporation v. U. S. Fidelity & Guaranty Co., 110 So. 277, 215 Ala. 198—Long v. Pittman, 95 So. 18, 208 Ala. 621—Reynolds v. Trawick, 72 So. 378, 197 Ala. 165—Ray v. Brannan, 72 So. 16, 196 Ala. 113—Manley v. Same, 68 So. 60, 191 Ala. 531.

Gray v. T. S. Compton & Co., 7 So.2d 37, 30 Ala.App. 407—National Life & Accident Ins. Co. v. Blanchard, 196 So. 171, 29 Ala.App. 372—Enzor v. Rushton, 69 So. 909, 13 Ala.App. 550.

Ariz.—Farnsworth v. Hubbard, 277 P.2d 252, 78 Ariz. 160.

Ark.—Beauchamp v. Hayes Stores Co., 262 S.W. 993, 165 Ark. 126—St. Louis & S. F. R. Co. v. Keathley, 187 S.W. 319, 124 Ark. 410—City of Jonesboro v. Pribble, 166 S.W. 576, 112 Ark. 554.

Cal.—Ponce v. Marr, 301 P.2d 837, 47 C.2d 159—Armenta v. Churchill, 267 P.2d 303, 42 C.2d 448—California Home Extension Ass'n v. Hilborn, 235 P.2d 369, 37 C.2d 459—Fowler v. Key System Transit Lines, 230 P.2d 339, 37 C.2d 65—Mayers v. Loew's, Inc., 221 P.2d 26, 35 C.2d 822—Stock v. Meek, 221 P.2d 15, 35 C.2d 809—Gonzales v. Pacific Greyhound Lines, 214 P.2d 809, 34 C.2d 147—Laurenzi v. Vranizan, 155 P.2d 633, 25 C.2d 806—Ferroni v. Pacific Finance Corp. of California, 135 P.2d 569, 21 C. 2d 773—Pacific States Savings & Loan Co. v. Warden, 117 P.2d 877, 18 C.2d 757—Morrison v. Mutual Life Ins. Co. of New York, 103 P. 2d 963, 15 C.2d 579—Herbert v. Lankershim, 71 P.2d 220, 9 C.2d 409—Atkins Corp. v. Tourny, 57 P.2d 480, 6 C.2d 206—Linforth v. Montgomery, 231 P. 735, 195 C. 49—Hirshfeld v. Dana, 223 P. 451, 193 C. 142—Cripe v. Cripe, 148 P. 520, 170 C. 91.

Goren v. Griffin, App., 312 P.2d 743—Mortimer v. Martin, App., 308 P.2d 840—Bank of America Nat. Trust & Sav. Ass'n v. Arakelian, App., 307 P.2d 746—Verdi Development Co. v. Dono-Han Min. Co., 296 P.2d 429, 141 C.A.2d 149—Bradburn v. Peacock, 286 P.2d 972, 135 C.A.2d 161—Camperi v. Chiechi, 286 P.2d 399, 134 C.A.2d 485—Jones v. Johnston Testers, Inc., 281 P.2d 602, 132 C.A.2d 162—Hays v. Viscome, 264 P.2d 173, 122 C.A.2d 135, 39 A.L.R.2d 1435—Gross v. Maytex Knitting Mills of Cal., 254 P.2d 163, 116 C.A.2d 705—Costa v. Regents of University of Cal., 254 P.2d 85, 116 C.A.2d 445—Loucks v. Luckel, 236 P.2d 905, 107 C.A.2d 217—Chambers v. Silver, 230 P.2d 146, 103 C.A.2d 633—Flynn v. Flynn, 229 P.2d 5, 103 C.A.2d 91—Gursey v. Campus Camera Shop, 219 P.2d 884, 98 C.A.2d 257—Agnew v. City of Los Angeles, 218 P.2d 66, 97 C.A.2d 557—Shurman v. Fresno Ice Rink, 205 P.2d 77, 91 C. A.2d 469—Westman v. Clifton's Brookdale, 200 P.2d 814, 89 C.A.2d 307—Suidow v. Hill, 197 P.2d 801, 87 C.A.2d 803—Lori, Limited, v. Wolfe, 192 P.2d 112, 85 C.A.2d 54—Emery v. Southern Cal. Gas Co., 165 P.2d 695, 72 C.A.2d 821—Whittemore v. Lockheed Aircraft Corp., 151 P.2d 670, 65 C.A.2d 737—Viner v. Civil Service Commission of City and County of San Francisco, 139 P.2d 88, 59 C.A.2d 458—West Coast Life Ins. Co. v. Crawford, 138 P.2d 384, 58 C.A.2d 771—Schubkegel v. Gordino, 133 P.2d 475, 56 C.A.2d 667—Barnes v. Cahill, 133 P.2d 433, 56 C.A.2d 780—Moul v. McVey, 121 P.2d 83, 49 C.A.2d 101—Hicks v. Scott, 120 P.2d 107, 48 C.A.2d 481—Horsman v. Maden, 120 P.2d 92, 48 C.A.2d 635—Travelers Fire Ins. Co. v. Brock & Co., 85 P. 2d 905, 30 C.A.2d 112—Harper v. French, 84 P.2d 216, 29 C.A.2d 214—Mintzer v. Wilson, 68 P.2d 370, 21 C.A.2d 85—Frederick v. Federal Life Ins. Co., 57 P.2d 235, 13 C.A. 2d 585—Farrar v. Policy Holders' Life Ins. Ass'n, 39 P.2d 229, 3 C.A. 2d 87—Davis v. Pezel, 20 P.2d 982, 131 C.A. 46—Woodson v. Torgerson, 291 P. 663, 108 C.A. 386—Wallace v. Oswald, 207 P. 51, 57 C.A. 333.

Hill v. Dominquez, 291 P.2d 203, 138 C.A.2d Supp. 891—Bay Shore Motors v. Baker, 202 P.2d 865, 90 C.A.2d Supp. 895.

Colo.—Sherry v. Jones, 292 P.2d 746, 133 Colo. 160—Barlow v. Hoffman, 86 P.2d 239, 103 Colo. 286, 120 A. L.R. 552—Irvin v. Blair, 68 P.2d 28, 100 Colo. 349—West Colfax Loan Corporation v. Culp, 13 P.2d 257, 91 Colo. 168—C. H. Parker & Son Electrical Co. v. Prince, 225 P. 856, 75 Colo. 311—Love v. Cotten, 179 P. 806, 65 Colo. 593—Scott v. Watkins, 157 P. 3, 61 Colo. 244—Martinez v. Martinez, 141 P. 469, 57 Colo. 292—Washington Gold Min. & Mill. Co. v. O'Laughlin, 105 P. 1092, 46 Colo. 503.

Conn.—Iannello v. Town of West Haven, New Haven County, 42 A. 2d 833, 132 Conn. 148—Reynolds v. Vroom, 42 A.2d 336, 132 Conn. 53—Dobosz v. Nyren, 38 A.2d 684, 131 Conn. 270—Wray v. Fairfield Amusement Co., 10 A.2d 600, 126 Conn. 221—Miller v. Urban, 195 A. 193, 123 Conn. 331, 118 A.L.R. 951—Rowell v. Ross, 93 A. 236, 89 Conn. 201.

Fla.—State Assur. Underwriters of Provident Fire Ins. Co. v. Miller, 58 So.2d 532—Pritchett v. Brevard Naval Stores Co., 170 So. 610, 126 Fla. 156—Atlantic Coast Line R. Co. v. Turman, 86 So. 199, 80 Fla. 285—First Nat. Bank v. Williams, 82 So. 296, 77 Fla. 840.

Ga.—Richardson v. Milikin, 52 S.E. 2d 451, 204 Ga. 885—Cooper v. Reeves, 131 S.E. 63, 161 Ga. 232.

Pope v. Associated Cab Co., 33 S.E.2d 310, 90 Ga.App. 560—Columbus Wine Co. v. Sheffield, 64 S. E.2d 356, 83 Ga.App. 593—Gill v. Skinker, 45 S.E.2d 818, 76 Ga.App. 315—Hicks v. Wadsworth, 196 S.E. 251, 57 Ga.App. 529—Rhodes v. Mutual Ben. Health & Accident Ass'n, 194 S.E. 33, 56 Ga.App. 728—New York Life Ins. Co. v. Ittner, 188 S.E. 920, 54 Ga.App. 714—Brooks v. Sessoms, 171 S.E. 222, 47 Ga.App. 554—Lundy v. Tucker, 130 S.E. 924, 34 Ga.App. 721—Lee v. Cox, 82 S.E. 941, 15 Ga.App. 249.

Hawaii.—Goo v. Goo, 36 Hawaii 530.

Idaho.—Murphy v. Mutual Life Ins. Co. of New York, 112 P.2d 993, 62 Idaho 362.

Ill.—Creighton v. Elgin, 56 N.E.2d 825, 387 Ill. 592, 162 A.L.R. 883—Giddings v. Williams, 168 N.E. 514, 336 Ill. 482.

Van Huss v. Allen, 133 N.E.2d 727, 9 Ill.App.2d 418—Virgil v. New York, C. & St. L. R. Co., 118 N.E.2d 61, 2 Ill.App.2d 46—Algozino v. Welch Fruit Products Co., 102 N.E.2d 555, 345 Ill.App. 135—Hapke v. Brandon, 99 N.E.2d 636, 343 Ill.App. 524—Grodzins v. Novadel-Agene Corp., 76 N.E.2d 342, 332 Ill.App. 659—Guffey v. Gale, 74 N. E.2d 730, 332 Ill.App. 207—Collins v. Elgin, J. & E. Ry. Co., 60 N.E.2d 279, 325 Ill.App. 572—Teece v. Bieber, 56 N.E.2d 665, 323 Ill.App. 647—Polatsek v. Cohen, 21 N.E. 2d 55, 300 Ill.App. 608—Parillo v. Bernstein, 18 N.E.2d 106, 297 Ill. App. 648—People v. Mitchell, 240 Ill.App. 281—Paisley v. American Zinc Co. of Illinois, 235 Ill.App. 22—Gray v. Stein, 221 Ill.App. 427—Toledo, St. L. & W. R. Co. v. East St. Louis & S. Ry. Co., 197 Ill.App. 230—Surface v. Chicago, M. & St. P. Ry. Co., 191 Ill.App. 261—Carterville Coal Co. v. Covey-Durham Coal Co., 186 Ill.App. 163. See Moffett v. Calumet & S. C. Ry. Co., 209 Ill.App. 243—Hedrich v. U. S. Brewing Co., 205 Ill.App. 266—Skahen v. Strauss, 199 Ill.App. 403—Tait v. Chicago Structural Tile Co., 185 Ill.App. 522—Drago v. Prudential Ins. Co. of America, 184 Ill.App. 618.

Ind.—Dollman v. Pauley, 174 N.E. 729, 202 Ind. 387.

Northern Indiana Public Service Co. v. McClure, 24 N.E.2d 788, 108 Ind.App. 253—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121—Luhring Lumber Co. v. Bean, 163 N.E. 620, 88 Ind.App. 554—Plymouth Saving & Loan Ass'n No. 2 v. Kassing, 125 N.E. 488, 72 Ind.App. 1—Keller v. Cox,

118 N.E. 543, 67 Ind.App. 381—Central Indiana Ry. Co. v. Wishard, App., 108 N.E. 35, transferred, see, 114 N.E. 970, 186 Ind. 262.

Iowa.—Gibson v. Shelby County Fair Ass'n, 65 N.W.2d 433, 246 Iowa 147—Bash v. Hade, 62 N.W.2d 180, 245 Iowa 332—Furst-McNess Co. v. Kielly, 8 N.W.2d 730, 233 Iowa 77—Haines v. Mahaska Bottling Works, 288 N.W. 70, 227 Iowa 228—Wieneke v. Steinke, 233 N.W. 535, 211 Iowa 477—Falcon v. Falcon, 222 N.W. 869, 208 Iowa 8—Bartholemew v. Billmeyer, 198 N.W. 51, 197 Iowa 861—Osnes v. Scanlon, 179 N.W. 869, 189 Iowa 1364—Fidelity & Deposit Co. of Maryland v. Mansfield, 175 N.W. 528, 187 Iowa 1250—Wildeboer v. Petersen, 175 N.W. 349, 187 Iowa 1169.

Kan.—Braly v. Commercial Cas. Ins. Co., 227 P.2d 571, 170 Kan. 531—Kelly v. Meyer, 134 P.2d 658, 156 Kan. 429—Wood v. McKeever, 41 P.2d 989, 141 Kan. 323—Winslow v. Crete State Bank of Crete, Neb., 256 P. 975, 123 Kan. 722—Mackie v. Grand Lodge A. O. U. W. of Kansas, 164 P. 263, 100 Kan. 345.

Ky.—**Corpus Juris Secundum cited in** McHargue v. Perkins, 295 S.W. 2d 301, 302—Marshall v. Harter, 262 S.W.2d 180—Quin v. Quin, 259 S.W.2d 23—W. G. Duncan Coal Co. v. Jones, 254 S.W.2d 720—Ewing-Von Allmen Dairy Co. v. Fowler's Ex'r, 228 S.W.2d 449, 312 Ky. 547—Simpson v. Halcomb, 210 S.W.2d 758, 307 Ky. 228—Jackson v. Schine Lexington Corp., 205 S.W.2d 1013, 305 Ky. 823—Dix v. Gross, 128 S.W.2d 753, 278 Ky. 348—Commonwealth Life Ins. Co. v. Clarke, 123 S.W.2d 811, 276 Ky. 151—Louisville & N. R. Co. v. Crockett's Adm'x, 24 S.W.2d 580, 232 Ky. 726—Coleman v. Sowders, 268 S.W. 579, 206 Ky. 841—Robson v. Zumstein Taxicab Co., 248 S.W. 872, 198 Ky. 365—Coleman v. McIntosh, 211 S.W. 872, 184 Ky. 370.

La.—Algiers Homestead Ass'n v. Salathe, App., 188 So. 202—Robinson v. Standard Oil Co. of Louisiana, App., 180 So. 237—Builliard v. N. O. Terminal Co., App., 166 So. 640, set aside on other grounds 171 So. 78, 185 La. 924, conformed to 174 So. 659.

Me.—Tobey v. Quick, 101 A.2d 187, 149 Me. 313—Grant v. Jack, 102 A. 38, 116 Me. 342.

Md.—Shirks Motor Exp. v. Oxenham, 106 A.2d 46, 204 Md. 626—Haile v. Dinnis, 40 A.2d 363, 184 Md. 144—Patterson v. Baltimore & O. R. Co., 105 A. 159, 133 Md. 276.

Mass.—Paratore v. John Hancock Mut. Life Ins. Co., 141 N.E.2d 511—Conningford v. Cote, 32 N.E.2d 692, 308 Mass. 472—Walcott v. Sumner, 32 N.E.2d 685, 308 Mass. 413—Gentile Flour & Products Co. v. Moschella, 146 N.E. 721, 251 Mass. 512—Reidy v. Kennedy, 124 N.E. 289, 233 Mass. 514—Chandler v. Prince, 105 N.E. 1076, 217 Mass. 451.

Mich.—Marschall v. Glaeser, 282 N.W. 832, 284 Mich. 56—Carter v. C. F. Smith Co., 281 N.W. 380, 285 Mich. 621—Foote v. Huelster, 261 N.W. 296, 272 Mich. 194—Behr v. Baker, 238 N.W. 473, 255 Mich. 607—Frolich v. Walbridge-Aldinger Co., 210 N.W. 488, 236 Mich. 425.

Minn.—Local 1142 v. United Elec., Radio and Mach. Workers of America, 76 N.W.2d 481, 247 Minn. 71—Mockler v. City of Stillwater, 74 N.W.2d 118, 246 Minn. 39—Dahlin v. Kron, 45 N.W.2d 833, 232 Minn. 312—Independent School Dist. No. 35, St. Louis County v. A. Hedenberg & Co., 7 N.W.2d 511, 214 Minn. 82—McIntyre v. Peterson, 298 N.W. 713, 210 Minn. 419—Olstad v. Fahse, 282 N.W. 694, 204 Minn. 118—Taylor v. Northern States Power Co., 256 N.W. 674, 192 Minn. 415—Wolf v. Chicago, M., St. P. & P. R. Co., 230 N.W. 826, 180 Minn. 310—Thaden v. Bagan, 165 N.W. 864, 139 Minn. 46—Bruce v. Ryan, 164 N.W. 982, 138 Minn. 264—Palon v. Great Northern Ry Co., 160 N.W. 670, 135 Minn. 154.

Miss.—Salitan v. Stewart, 69 So.2d 840, 219 Miss. 735—Bennett v. Hardwell, 59 So.2d 82, 214 Miss. 390.

Mo.—Capra v. Phillips Inv. Co., 302 S.W.2d 924—Mistele v. Ogle, 293 S.W.2d 330—Davis v. Illinois Terminal R. Co., 291 S.W.2d 891—Jackson v. Thompson, 218 S.W.2d 97, 358 Mo. 1001—Foster v. Norman, 143 S.W.2d 248, 346 Mo. 850—Fogle v. Fidelity-Phoenix Fire Ins. Co. of New York, 111 S.W.2d 154, 342 Mo. 1—Wills v. Berberich's Delivery Co., 98 S.W.2d 569, 339 Mo. 856—Stephens v. Fowlkes, 92 S.W.2d 617, 338 Mo. 527—Moss v. Wells, 249 S.W. 411—Roper v. Greenspon, 198 S.W. 1107, 272 Mo. 288, L.R.A.1918D 126.

Barrickman v. National Utilities Co., App., 191 S.W.2d 265—Ganahl Lumber Co. v. Travelers Indemnity Co., App., 133 S.W.2d 1050—Blair v. Acacia Mut. Life Ins. Co., App., 121 S.W.2d 193—Singman v. Kotsrean Realty Co., App., 107 S.W. 2d 196—Booker v. Kansas City Gas Co., 96 S.W.2d 919, 231 Mo. App. 214—Kendrick v. Kendrick, App., 88 S.W.2d 209—H. W. Underhill Const. Co. v. Nilson, App., 3 S.W.2d 399—Krodinger v. Citizens' Bank of Maplewood, App., 300 S.W. 311—Welp v. Bogy, 277 S.W. 600, 218 Mo.App. 414—Kotsrean Realty Co. v. Steimke, 263 S.W. 448, 215 Mo.App. 30—Furst v. Scally, App., 256 S.W. 158—Mueller v. Rock, App., 249 S.W. 435—Galli v. Wells, 239 S.W. 894, 209 Mo.App. 460—St. Louis Taxicab Co. v. Greenspon, App., 200 S.W. 680—Lee v. Ireland, App., 185 S.W. 1173.

Mont.—Erdmann v. Erdmann, 261 P. 2d 367, 127 Mont. 252—Tobacco River Power Co. v. Public Service Commission, 98 P.2d 886, 109 Mont. 521.

Neb.—Gorman v. Bratka, 298 N.W. 691, 139 Neb. 718, modified on other grounds 300 N.W. 807, 140 Neb. 575—Mason v. Reynolds, 284 N.W. 257, 135 Neb. 773—Bergendahl v. Rabeler, 268 N.W. 459, 131 Neb. 538—Craver v. McPherson, 194 N.W. 674, 110 Neb. 431—Stratbucker v. Bankers' Realty Inv. Co., 185 N.W. 271, 107 Neb. 194.

Nev.—Peterson v. Pittsburg Silver Peak Gold Mining Co., 140 P. 519, 37 Nev. 117.

N.H.—Perry v. Champlain Oil Co., 114 A.2d 885, 99 N.H. 451.

N.J.—Simon v. Graham Bakery, 111 A.2d 884, 17 N.J. 525—Stanley Co. of America v. Hercules Powder Co., 108 A.2d 616, 16 N.J. 295—Carbone v. Warburton, 94 A.2d 680, 11 N.J. 418—Johnson v. Hoffman, 80 A.2d 624, 7 N.J. 123, 26 A.L.R.2d 1001.

John Roach, Jr., Inc. v. Pingpank, 121 A.2d 32, 39 N.J.Super. 336—Corbett v. Van Kirk, 119 A.2d 467, 38 N.J.Super. 478—Gretowski v. Hall Motor Exp., 95 A.2d 759, 25 N.J.Super. 192—Keaveney v. Newark Ladder & Bracket Co., 92 A.2d 632, 23 N.J.Super. 99—Dolan v. Newark Iron & Metal Co., 87 A. 2d 444, 18 N.J.Super. 450.

Schloss v. Trounstine, 49 A.2d 677, 135 N.J.Law 11—Frazen v. Equitable Life Assur. Soc. of U. S., 33 A.2d 599, 130 N.J.Law 457—Katz v. New York Life Ins. Co., 15 A.2d 898, 125 N.J.Law 358, affirmed 19 A.2d 830, 126 N.J.Law 370—Roberts v. Saunders, 194 A. 1, 118 N.J.Law 548—MacWhinney v. Jacobson, 162 A. 401, 109 N.J. Law 477—Donohue v. Campbell, 121 A. 700, 98 N.J.Law 755.

Krueger v. Vogel's Farm, 190 A. 98, 15 N.J.Misc. 209—Caiola v. Ætna Life Ins. Co., 172 A. 819, 12 N.J.Misc. 484.

N.M.—Williams v. Miller, 300 P.2d 480, 61 N.M. 326—Delgado v. Rivera, 57 P.2d 1141, 40 N.M. 217.

N.Y.—Moore v. Leventhal, 104 N.E. 2d 892, 303 N.Y. 534—African Metals Corp. v. Bullowa, 41 N.E.2d 466, 288 N.Y. 78, motion denied 43 N.E.2d 75, 288 N.Y. 673—Bachand v. Daniel Reeves, Inc., 18 N.E.2d 23, 279 N.Y. 179—Mironchik v. Sagadahoc S. S. Corporation, 174 N.E. 69, 255 N.Y. 81—Klein v. Smith, 142 N.E. 336, 237 N.Y. 13.

Tyson v. Bittner, 161 N.Y.S.2d 710, 3 A.D.2d 861—Davis v. Davis, 146 N.Y.S.2d 630, 1 A.D.2d 675—Eisenberg v. City of New York, 137 N.Y.S.2d 103, 285 App.Div. 831—LaBarge v. LaBarge, 135 N.Y.S. 2d 317, 284 App.Div. 996—Liebrecht

v. Gotham Sanitarium, 184 N.Y.S. 2d 762, 284 App.Div. 781—Bellinger v. Town of Salisbury, 102 N.Y.S. 2d 385, 278 App.Div. 631—Lotito v. City of New York, 101 N.Y.S.2d 963, 278 App.Div. 581—Tenpas v. Uhl, 97 N.Y.S.2d 566, 276 App.Div. 641—Marcucci v. Bird, 88 N.Y.S. 2d 333, 275 App.Div. 127—Morse v. Allstate Ins. Co., 85 N.Y.S.2d 47, 274 App.Div. 965—Fulton Packing Co. v. Beekman, 82 N.Y.S.2d 638, 274 App.Div. 894—Burns v. City of New York, 76 N.Y.S.2d 439, 272 App.Div. 1063—Baltic Marine Supplies v. Hansen, 70 N.Y.S.2d 613, 272 App.Div. 277—Margrander v. Fox, 70 N.Y.S.2d 207, 272 App.Div. 788, reargument denied 72 N.Y.S. 2d 277, 272 App.Div. 866—Baumann v. Newspaper Enterprises, 69 N.Y. S.2d 474, 272 App.Div. 773—Holder v. Abramson, 67 N.Y.S.2d 224, 271 App.Div. 649—Kelly v. Brandt, 44 N.Y.S.2d 776, 267 App.Div. 104—Murphy v. La Rocque, 42 N.Y.S.2d 531, 266 App.Div. 903—Reischer v. Jack Herzog & Bro., 40 N.Y.S.2d 318, 266 App.Div. 681—Day v. Johnson, 39 N.Y.S.2d 203, 265 App. Div. 383—Garnham v. Haloid Co., 38 N.Y.S.2d 445, 265 App.Div. 904, followed in 38 N.Y.S.2d 446, 265 App.Div. 904—Nagel v. Paige, 35 N.Y.S.2d 321, 264 App.Div. 231—Albert v. Albert, 35 N.Y.S.2d 128, 264 App.Div. 819—Shoupe v. 2525 Amsterdam Avenue Corp., 25 N.Y. S.2d 584, 261 App.Div. 393—Sandy v. Wicks, 24 N.Y.S.2d 424, 260 App. Div. 1046—Tacktill v. Eastern Capitol Lines, 21 N.Y.S.2d 14, 260 App. Div. 58—Brown v. City of New York, 16 N.Y.S.2d 203, 258 App. Div. 878—Nagel v. Paige, 10 N.Y. S.2d 470, 256 App.Div. 487—King v. Daru, 298 N.Y.S. 982, 252 App. Div. 767—Garber v. Central School Dist. No. 1 of Town of Sharon, Schoharie County, 295 N.Y.S. 850, 251 App.Div. 214—Leitch v. Cummins, 295 N.Y.S. 368, 251 App.Div. 224—Munden v. McDaniel, 292 N.Y. S. 841, 249 App.Div. 849—Guntzer v. Adolph Suesskind, Inc., 285 N.Y. S. 459, 246 App.Div. 231—Mayfield v. Bacu Ice, 280 N.Y.S. 625, 245 App.Div. 764—Andrew P. Koeszegi, Inc. v. Kizer, 280 N.Y.S. 618, 245 App.Div. 701—Harry L. Cohen, Inc. v. People's Nat. Bank of Brooklyn, 277 N.Y.S. 641, 243 App.Div. 775—Sebring v. Firemen's Ins. Co. of Newark, N. J., 237 N.Y.S. 120, 227 App.Div. 103—Dydkiewicz v. Unterberg Realty Corporation, 226 N. Y.S. 698, 222 App.Div. 485—Schuldt v. Chuckrow, 226 N.Y.S. 220, 222 App.Div. 441—L. Seletzky Co. v. Ehrlich, 218 N.Y.S. 605, 218 App. Div. 557—William L. Schupp & Sons v. Barnett, 206 N.Y.S. 553, 210 App.Div. 546—William A. White & Sons v. U. S. Food Products Corporation, 197 N.Y.S. 391, 203 App. Div. 787—Rubin v. Siegel, 177 N.Y. S. 342, 188 App.Div. 636—Sproul v. Beskin, 166 N.Y.S. 606, 179 App. Div. 275—Wills v. National Carbon Co., 160 N.Y.S. 158, 173 App. Div. 844—Mack v. Dock Contractor Co., 155 N.Y.S. 1002, 171 App.Div. 931—McLoughlin v. Duffney Brick Co., 145 N.Y.S. 199, 160 App.Div. 115.

Solomaon v. Commonwealth Associates, 225 N.Y.S. 690, 131 Misc. 43—J. Witkin, Inc. v. Louis Dejonge & Co., 205 N.Y.S. 80, 123 Misc. 298.

B. Altman & Co. v. Lewis, 160 N. Y.S.2d 897—Tally v. Rubin, 118 N. Y.S.2d 798—Wiener v. Regent Brand Clothes, Inc., 118 N.Y.S.2d 647—Henry v. Supreme Transmitter Corp., 76 N.Y.S.2d 556—Yan Yee v. Randel, 17 N.Y.S.2d 661—Abraham v. Sabbatino, 169 N.Y.S. 40, 102 Misc. 511—Beggs v. New York Cent. R. Co., 162 N.Y.S. 387, 97 Misc. 652—Dan Sax Dress Co. v. Goodman, 181 N.Y.S. 742—Duff & Conger v. Makley, 175 N.Y.S. 777—182d Street Realty Co. v. Swartz, 169 N.Y.S. 444—Second United Cities Realty Corp. v. Hare, 165 N. Y.S. 371—Hutter v. Stokes, 164 N. Y.S. 755—H. Hurwitz Co. v. Pepe, 159 N.Y.S. 199—Lehrer v. Supreme Lodge Knights and Ladies of Honor, 151 N.Y.S. 991—Ruppel v. Donohue, 10 N.Y.S. 100.

N.C.—Jackson v. Mountain Sanitarium & Asheville Agriculture School, 67 S.E.2d 57, 234 N.C. 222, rehearing denied 69 S.E.2d 29, 235 N.C. 758—Ethridge v. Atlantic Coast Line R. Co., 183 S.E. 539, 209 N.C. 326—Hanna v. Howard, 183 S.E. 297, 209 N.C. 161.

N.D.—Mischel v. Harnden, 246 N.W. 644, 63 N.D. 107—Bentler v. Brynjolfson, 165 N.W. 553, 38 N.D. 401—Lake Grocery Co. v. Chiostri, 158 N.W. 998, 34 N.D. 386—Walker & Co. v. Hoopes, 152 N.W. 666, 30 N. D. 398—Remington v. Geiszler, 152 N.W. 661, 30 N.D. 346.

Ohio.—Cloverdale Dairy Co. v. Briggs, 2 N.E.2d 592, 131 Ohio St. 261.

Weigle v. Snider, App., 137 N.E. 2d 901—Cleveland Boat Service v. City of Cleveland, App., 130 N.E.2d 421, affirmed 136 N.E.2d 274, 165 Ohio St. 429—Mente v. Albers Super Markets, Inc., 109 N.E.2d 527, 92 Ohio App. 152—Hall v. Carter, 101 N.E.2d 13, 90 Ohio App. 191—Mohler v. Baker, 97 N.E.2d 683, 88 Ohio App. 461—Bradshaw v. Wilson, 94 N.E.2d 706, 87 Ohio App. 319—Dornan v. Yavorsky, App., 92 N.E.2d 613—Cassidy v. Ohio Public Service Co., 83 N.E.2d 908, 83 Ohio App. 404—Byrum v. Red Star Transit Co., 80 N.E.2d 616, 81 Ohio App. 495—Ætna Cas. & Sur. Co. v. Higbee Co., 76 N.E.2d 404, 80 Ohio App. 437, 174 A.L.R. 1429—Whitaker v. French-Bauer, Inc., 58 N.E. 2d 64, 74 Ohio App. 197—Hrvatin v. Cleveland R. Co., 44 N.E.2d 283, 69 Ohio App. 499—Russell v. Penn. Mut. Life Ins. Co., 41 N.E.2d 251, 70 Ohio App. 113—Hutchinson v. Rubel Baking Co., App., 34 N.E.2d 472—Rea v. Forman, 24 N.E.2d 295, 62 Ohio App. 385—Bowman v. Delaney, 187 N.E. 788, 46 Ohio App. 109—Breymann v. Pennsylvania, O. & D. R. Co., 183 N.E. 771, 43 Ohio App. 473—W. H. Davis Die Co. v. Beltzhoover Electric Co., 178 N.E. 418, 40 Ohio App. 308—Eisenzimmer v. Connecticut Fire Ins. Co., 161 N.E. 553, 27 Ohio App. 366.

Sherman v. Toledo & Ohio Central Ry. Co., 20 Ohio Cir.Ct.,N.S., 464.

Okl.—Snyder v. Tulsa Engineering & Const. Co., 312 P.2d 488—Britton v. Gannon, 285 P.2d 407, certiorari denied 76 S.Ct. 140, 350 U.S. 886, 100 L.Ed. 781—Mud Products, Inc. v. Gutowsky, 274 P.2d 389—Hankins v. Hankins, 155 P.2d 720, 195 Okl. 160—Knox v. Champlin Refining Co., 45 P.2d 119, 172 Okl. 396—Manglesdorf Seed Co. v. Williams, 247 P. 413, 118 Okl. 258—Manglesdorf Seed Co. v. Busby, 247 P. 410, 118 Okl. 255—Twin City Co. v. Gerlach, 247 P. 408, 118 Okl. 264—Producers' Supply Co. v. Sinclair Oil & Gas Co., 231 P. 279, 105 Okl. 47—Goff v. Goff, 231 P. 204, 104 Okl. 257—Hackley v. Tradesmen's Nat. Bank, Oklahoma City, 223 P. 163, 110 Okl. 91—Sand Springs Ry. Co. v. Woods, 217 P. 363, 95 Okl. 179—Waggoner v. Koon, 168 P. 217, 67 Okl. 25—Ft. Smith & W. R. Co. v. Seran, 143 P. 1141, 44 Okl. 169, L.R.A.1915C 813.

Or.—Frangos v. Edmunds, 173 P.2d 596, 197 Or. 577.

Pa.—Capozi v. Hearst Pub. Co., 92 A. 2d 177, 371 Pa. 503—Graham Farm Land Co. v. Com., 70 A.2d 219, 363 Pa. 571—In re Gaston's Estate, 62 A.2d 904, 361 Pa. 105—Williams v. Moodhard, 19 A.2d 101, 341 Pa. 273—Royer v. Pennsylvania R. Co., 103 A. 276, 259 Pa. 438.

Helmick v. Rankin, 70 A.2d 362, 166 Pa.Super. 189—Foster v. Sol. Greisler & Sons, 29 A.2d 103, 150 Pa.Super. 509—Stewart v. Prudential Ins. Co. of America, 24 A.2d 83, 147 Pa.Super. 296—Fulcomer v. Pennsylvania R. Co., 14 A.2d 593, 141 Pa.Super. 264—McKinley v. Wainstein, 74 Pa.Super. 482.

Davidson v. John Hancock Mut. Life Ins. Co., 45 Pa.Dist. & Co. 481, affirmed 31 A.2d 585, 152 Pa.Super. 63.

R.I.—Carpenter v. United Elec. Rys. Co., 100 A.2d 850, 81 R.I. 196.

S.C.—Lee v. Southern Ry. Co., 89 S. E.2d 431, 228 S.C. 240—Williams v. Texas Co., 24 S.E.2d 873, 202 S.C. 333—Gantt v. Columbia Coca-Cola Bottling Co., 7 S.E.2d 641, 193 S.C. 51, 127 A.L.R. 1185—Currie v. Davis, 126 S.E. 119, 130 S.C. 408, cer-

dence so conclusive as to make additional evidence merely cumulative.[61] The rejection of competent evidence for a party, against whom a verdict was directed, which, if admitted, would require that the case be submitted to the jury, is conclusively prejudicial.[62]

Nevertheless it is not every erroneous exclusion of evidence that will suffice to reverse a judgment,[63] and a case will not be reversed for error in the rejection of evidence unless the error results in a miscarriage of justice or constitutes a substantial

tiorari dismissed Davis v. Currie, 45 S.Ct. 88, 266 U.S. 182, 69 L.Ed. 234.

S.D.—Dunlap v. Thiele, 265 N.W. 593, 64 S.D. 150—Fitzpatrick v. Tobiassen, 227 N.W. 882, 56 S.D. 186—Stokes v. Christenson, 213 N.W. 950, 51 S.D. 365—Pyne v. Risager, 203 N.W. 994, 48 S.D. 265—Webster v. First State Bank of Peever, 193 N.W. 675, 46 S.D. 460—Kirk v. Thompson, 167 N.W. 399, 40 S.D. 392.

Tenn.—City of Nashville v. Drake, 281 S.W.2d 681—American Barge Line Co. v. Jones & Laughlin Steel Corp., 163 S.W.2d 502, 179 Tenn. 156—Middle Tennessee R. Co. v. McMillan, 184 S.W. 20, 134 Tenn. 490.

Tex.—Weaver v. Benson, 254 S.W.2d 95, 152 Tex. 50.

First Texas Prudential Ins. Co. v. Pedigo, Com.App., 50 S.W.2d 1091—Lamar v. Panhandle & S. F. Ry. Co., Com.App., 248 S.W. 34.

Blanchard v. Blanchard, Civ.App., 293 S.W.2d 825, error refused no reversible error—Marino v. Lombardo, Civ.App., 277 S.W.2d 749, error refused no reversible error—Benson v. Weaver, Civ.App., 250 S.W.2d 770, affirmed 254 S.W.2d 95, 152 Tex. 50—Smulcer v. Rogers, Civ.App., 236 S.W.2d 172, error refused no reversible error—P. & M. Sales Co. v. Kenmare Jewelry Mfg. Co., Civ.App., 235 S.W.2d 515—McEntire v. Baygent, Civ. App., 229 S.W.2d 866, 20 A.L.R.2d 300—Missouri-Kansas-Texas R. Co. of Tex. v. Webb, Civ.App., 229 S. W.2d 204, error refused no reversible error—Erwin v. Welborn, Civ. App., 207 S.W.2d 124, error refused no reversible error—Gray v. Mills, Civ.App., 206 S.W.2d 278, affirmed 210 S.W.2d 985, 147 Tex. 33—Stone v. Fitts, Civ.App., 160 S.W.2d 1013, reversed on other grounds 166 S. W.2d 897, 140 Tex. 206—In re Williams' Estate, Civ.App., 135 S.W.2d 1078—Safeway Stores of Texas v. Brigance, Civ.App., 118 S.W.2d 812, error dismissed—Brockman v. J. Weingarten, Inc., Civ.App., 115 S. W.2d 753, affirmed 135 S.W.2d 698, 134 Tex. 451—Tyreco Refining Co. v. Cook, Civ.App., 110 S.W.2d 219, error dismissed—Kansas City Life Ins. Co. v. Welfare, Civ.App., 110 S.W.2d 184, error refused—Avant v. Poteet, Civ.App., 95 S.W.2d 741—Edwards v. West Texas Hospital, Civ.App., 89 S.W.2d 801, error dismissed—Star Refining Co. v. Butcher, Civ.App., 84 S.W.2d 303—Bankers' Nat. Life Ins. Co. v. First Nat. Bank, Civ.App., 77 S.W.2d 547—Simmons v. Eakin, Civ.App., 54 S.W.2d 1045—National Life & Accident Ins. Co. v. Baughman, Civ. App., 54 S.W.2d 537—E. C. Palmer & Co. v. First Nat. Bank, Civ.App., 2 S.W.2d 939—Royall v. Webster, Civ.App., 279 S.W. 895—Bayliss v. Raney, Civ.App., 273 S.W. 932—Koethe v. Huggins, Civ.App., 271 S.W. 143—Clopton v. Flowers, Civ. App., 183 S.W. 68—West Texas Supply Co. v. Dunivan, Civ.App., 182 S.W. 425—Houston & T. C. R. Co. v. Corsicana Fruit Co., Civ.App., 170 S.W. 849—McFarlin v. Leaman, Civ.App., 29 S.W. 44.

Utah.—Golden v. American Keene Cement & Plaster Co., 95 P.2d 755, 98 Utah 23—Apostolos v. Chelemes, 298 P. 399, 77 Utah 587—Johnson v. Shelley, 180 P. 430, 54 Utah 305.

Vt.—Ripley v. Spaulding, 80 A.2d 375, 116 Vt. 531—Purington v. Newton, 49 A.2d 98, 114 Vt. 490—Berkley v. Burlington Cadillac Co., 131 A. 16, 99 Vt. 227—Carpenter v. Central Vermont Ry. Co., 96 A. 373, 90 Vt. 35—J. H. Silsby & Co. v. Kinsley, 95 A. 634, 89 Vt. 263.

Va.—McNeir v. Greer-Hale Chinchilla Ranch, 74 S.E.2d 165, 194 Va. 623—Torbert v. Atlantic Coast Line R. Co., 95 S.E. 635, 122 Va. 682.

Wash.—Halbach v. Luckenbach S. S. Co., 278 P. 178, 152 Wash. 492.

W.Va.—Carpenter v. Ohio River Sand & Gravel Corp., 60 S.E.2d 212, 134 W.Va. 587—Warren v. Thompson, 160 S.E. 297, 111 W.Va. 48—Fairview Fruit Co. v. H. P. Brydon & Bro., 102 S.E. 231, 85 W.Va. 609—Mulvay v. Hanes, 86 S.E. 758, 76 W.Va. 721.

Wis.—Thompson v. Princeton, 76 N. W.2d 273, 272 Wis. 589—Prisuda v. General Cas. Co. of America, 74 N.W.2d 777, 272 Wis. 41—Perma-Stone Corp. v. Merkel, 39 N.W.2d 730, 255 Wis. 565—Fox v. Kaminsky, 2 N.W.2d 199, 239 Wis. 559—Raddant v. Labutzke, 289 N.W. 659, 233 Wis. 381—Huebner v. Advance Refrigerator Co., 227 N.W. 868, 200 Wis. 233, 66 A.L.R. 1325—Heliniak v. Przekurat, 198 N.W. 746, 184 Wis. 417—Morse v. Modern Woodmen of America, 164 N.W. 829, 166 Wis. 194, Ann.Cas.1918D 480—Eviston v. Cramer, 11 N.W. 556, 54 Wis. 220.

Wyo.—Metcalfe v. Winchester, 262 P.2d 404, 72 Wyo. 142.

4 C.J. p 1003 note 61—25 C.J. p 1114 note 25 [a] (2).

Agency relationship

Where the jurisdiction of the court depended on a showing that the driver of the truck causing the injury was defendant's agent, the exclusion of evidence to show that the driver was not defendant's agent was reversible error.

Tex.—Beard v. Clark, Civ.App., 83 S. W.2d 1023.

Defendant's intoxication

In an action for injuries in an automobile collision, the erroneous exclusion of evidence whether defendant was intoxicated was prejudicial.

Cal.—Finn v. Sullivan, 293 P. 639, 110 C.A. 38.

Where the evidence is in direct conflict, the exclusion of competent and material evidence is reversible error.

N.Y.—Cutler v. Earl, 234 N.Y.S. 425, 226 App.Div. 102.

4 C.J. p 1003 note 61 [b].

61. Ala.—Lowery v. Zorn, 9 So.2d 872, 243 Ala. 285—Armour & Co. v. Cartledge, 176 So. 334, 234 Ala. 644.

Conn.—Sacks v. Connecticut Co., 146 A. 494, 109 Conn. 221.

Mo.—Becker v. Farmers' Mut. Fire Ins. Co. of Rock Tp., App., 99 S.W. 2d 148.

62. Ohio.—Skoczylas v. McGowan, 185 N.E. 539, 44 Ohio App. 277.

Note signed by mark

Where plaintiff was granted a directed verdict on a note executed by a mark, rejection of testimony of defendant's daughter that her mother could write her name was prejudicial error.

Ohio.—Skoczylas v. McGowan, supra.

63. Ga.—**Corpus Juris Secundum cited in** Hall v. State, 44 S.E.2d 234, 235, 202 Ga. 619.

N.J.—Murphy v. Core Joint Concrete Pipe Co., 164 A. 262, 110 N.J.Law 83—Klie v. Hollstein, 120 A. 16, 98 N.J.Law 473.

Ohio.—Weaver v. City of Mt. Vernon, 173 N.E. 249, 36 Ohio App. 358.

Tex.—Evans v. Garrison, Civ.App., 155 S.W.2d 659.

Vt.—Laferriere v. Gray, 160 A. 270, 104 Vt. 366.

Wyo.—**Corpus Juris Secundum cited in** Campbell v. Wyoming Development Co., 100 P.2d 124, 141, 55 Wyo. 347, rehearing denied 102 P.2d 745, 55 Wyo. 347.

violation of a constitutional or statutory right.[64] It is for the reviewing court to determine whether prejudice has resulted;[65] and if such exclusion did not prejudice the complaining party the error is harmless.[66] Accordingly, the error is considered as harmless where the evidence, if admitted, could

64. Ala.—Berry v. Barksdale, 1 So. 2d 758, 30 Ala.App. 134.
Ga.—Corpus Juris Secundum cited in Hall v. State, 44 S.E.2d 234, 235, 202 Ga. 619.
Hawaii.—Berkson v. Post, 38 Hawaii 436.
Ind.—Williams v. Bent, 87 N.E.2d 883, 119 Ind.App. 374.
Mass.—Abele v. Dietz, 45 N.E.2d 970, 312 Mass. 685, 144 A.L.R. 1015.
N.J.—Stanley Co. of America v. Hercules Powder Co., 108 A.2d 616, 16 N.J. 295.
Corbett v. Van Kirk, 119 A.2d 467, 38 N.J.Super. 478—Jonitz v. Jonitz, 96 A.2d 782, 25 N.J.Super. 544.
Young v. National Bank of New Jersey, 188 A. 453, 15 N.J.Misc. 5, reversed on other grounds 191 A. 848, 118 N.J.Law 171.
Okl.—Little v. Echols, 269 P.2d 984—Kelly v. Oklahoma Turnpike Authority, 269 P.2d 359—McCarty v. Occidental Life Ins. Co. of Cal., 268 P.2d 221—Ridgeway v. Logan, 239 P.2d 778, 205 Okl. 603—Haggard v. Oklahoma City, 218 P.2d 366, 203 Okl. 76—Hill v. Hill, 215 P.2d 553, 202 Okl. 483—Ratcliff v. Lee, 192 P.2d 843, 200 Okl. 253—Kansas, O. & G. Ry. Co. v. Rogers, 191 P.2d 209, 200 Okl. 111—Jackson v. Cleage, 142 P.2d 111, 193 Okl. 210—Woodside v. Mullen, 136 P.2d 871, 192 Okl. 480—Byrd v. McKoy, 81 P.2d 315, 183 Okl. 209—Pierce v. C. I. T. Corporation, 41 P.2d 481, 170 Okl. 633—Mutual Life & Accident Ass'n of Frederick v. Moore, 20 P.2d 168, 162 Okl. 260—Johnson v. Johnson, 179 P. 595, 72 Okl. 155—Cox v. Gettys, 156 P. 892, 53 Okl. 58.
Tex.—Robinson v. Howard County, Civ.App., 287 S.W.2d 234, error refused no reversible error.

If the entire record does not disclose that the improper rejection of evidence probably resulted in a miscarriage of justice or a denial of substantial rights of litigants, the judgment will not be reversed.
Okl.—Texas Co. v. Alred, 28 P.2d 556, 167 Okl. 128.

65. Ga.—Corpus Juris Secundum cited in Hall v. State, 44 S.E.2d 234, 235, 202 Ga. 619.
Ill.—Lannon v. Chicago, 159 Ill.App. 595.
Md.—Reid v. Humphreys, 122 A.2d 756, 210 Md. 178.
Tex.—Robinson v. Howard County, Civ.App., 287 S.W.2d 234, error refused no reversible error.
Wyo.—Corpus Juris Secundum quoted in Campbell v. Wyoming Development Co., 100 P.2d 124, 141, 55 Wyo. 347, rehearing denied 102 P.2d 745, 55 Wyo. 347.

66. Ala.—Roberts Const. Co. v. Henry, 93 So.2d 498, 265 Ala. 608—Ray v. Fowler, 89 So.2d 573, 265 Ala. 65—Killian v. Everett, 79 So.2d 17, 262 Ala. 434—Waldrop v. Langham, 69 So.2d 440, 260 Ala. 82—Lambert v. Jefferson, 36 So.2d 594, 251 Ala. 5—Crutchfield v. Vogel, 171 So. 889, 233 Ala. 306—Mobile Light & Railroad Co. v. Nicholas, 167 So. 293, 232 Ala. 213—Louisville & N. R. Co. v. Scott, 167 So. 572—Adams v. Stewart, 153 So. 401, 228 Ala. 194—Willingham v. Wesley Hardware Co., 149 So. 703, 227 Ala. 280—Braswell v. Fleming, 140 So. 389, 224 Ala. 339—Smith v. Dollar, 138 So. 277, 223 Ala. 661—Southern Ry. Co. v. Smith, 137 So. 398, 223 Ala. 583—McDowell v. Hutto, 135 So. 322, 223 Ala. 307—Southern Ry. Co. v. McCourry, 130 So. 216, 221 Ala. 600—Alabama Lime & Stone Co. v. Adams, 119 So. 853, 218 Ala. 647—Ritter v. Gibson, 116 So. 158, 217 Ala. 304—Penney v. Warren, 115 So. 16, 217 Ala. 120—Sheehan v. Wilmot, 105 So. 909, 213 Ala. 687—Louisville & N. R. Co. v. Whitley, 105 So. 661, 213 Ala. 525—Feore v. Trammel, 104 So. 808, 213 Ala. 293—Perry v. Marbury Lumber Co., 103 So. 580, 212 Ala. 542—Crabtree v. Price, 102 So. 605, 212 Ala. 387—Williams v. Alabama Fuel & Iron Co., 102 So. 136, 212 Ala. 159—Conecuh Naval Stores Co. v. Castillow, 96 So. 142, 209 Ala. 271—Louisville & N. R. Co. v. Holmes, 87 So. 574, 205 Ala. 47—Whatley v. Nesbitt, 85 So. 550, 204 Ala. 334—Huey v. Dykes, 82 So. 481, 203 Ala. 231—Parker v. Newman, 75 So. 479, 200 Ala. 103—Dickey v. Vaughn, 73 So. 507, 198 Ala. 283—Florence Hotel Co. v. Bumpus, 69 So. 566, 194 Ala. 69, Ann.Cas.1918E 252—Hubbard v. Coffin & Leake, 67 So. 697, 191 Ala. 494—Southern Bitulithic Co. v. Perrine, 67 So. 601, 191 Ala. 411—Southern Ry. Co. v. Harrison, 67 So. 597, 191 Ala. 436.
Tidmore v. Mills, 32 So.2d 769, 33 Ala.App. 243, certiorari denied 32 So.2d 782, 249 Ala. 648—Laney v. Blackburn, 144 So. 126, 25 Ala.App. 248—Union Mut. Ins. Co. v. Peavy, 133 So. 300, 24 Ala.App. 116, certiorari denied 133 So. 302, 222 Ala. 537—Kinney Bros. v. Johnson, 110 So. 561, 21 Ala.App. 609—American Tar Products Co. v. Jones, 86 So. 113, 17 Ala.App. 481—Steel Cities Chemical Co. v. Jenkins, 84 So. 408, 17 Ala.App. 221—Pratt Consol. Coal Co. v. Morton, 63 So. 1015, 14 Ala.App. 194—Hilley v. Central of Georgia Ry. Co., 66 So. 883, 11 Ala.App. 695—Birmingham R., etc., Co. v. Demmins, 57 So. 404, 3 Ala.App. 359.
Ariz.—Borrow v. El Dorado Lodge, 252 P.2d 791, 75 Ariz. 139, opinion supplemented 254 P.2d 1027, 75 Ariz. 218—Smith v. Latourrette-Fical Co., 293 P. 973, 37 Ariz. 265—Gila Water Co. v. Gila Land & Cattle Co., 249 P. 751, 30 Ariz. 569—Brown v. Armenta, 188 P. 260, 21 Ariz. 334.
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Ga.—Rabun v. Wynn, 70 S.E.2d 745, 209 Ga. 80—**Corpus Juris Secundum cited in** Hall v. State, 44 S.E.2d 234, 235, 202 Ga. 619—Northwestern Mut. Life Ins. Co. v. Suttles, 38 S.E.2d 786, 201 Ga. 84, certiorari denied 67 S.Ct. 490, 329 U.S. 801, 91 L.Ed. 685, rehearing denied 67 S. Ct. 631, 329 U.S. 835, 91 L.Ed. 707—Cloud v. Maxey, 23 S.E.2d 668, 195 Ga. 90—Hogan v. Hogan, 9 S.E.2d 891, 190 Ga. 555—Heaton v. Hayes, 4 S.E.2d 570, 188 Ga. 632—Bond v. Harrison, 194 S.E. 549, 185 Ga. 260—Mitchell v. Miller, 189 S.E. 523, 183 Ga. 703—Harvard v. Davis, 89 S.E. 740, 145 Ga. 580.

Parker & Co. v. Glenn, 83 S.E.2d 263, 90 Ga.App. 500—Gainesville Feed & Poultry Co. v. Waters, 73 S.E.2d 771, 87 Ga.App. 354—Cato v. Cater, 45 S.E.2d 794, 76 Ga.App. 367—Standard Sur. & Cas. Co. of N. Y. v. Johnson, 41 S.E.2d 576, 74 Ga.App. 823—Weathers Bros. Transfer Co. v. Jarrell, 33 S.E.2d 805, 72 Ga.App. 317—Walker v. Southeastern Stages, 22 S.E.2d 742, 68 Ga.App. 320—Fenner & Beane v. Nelson, 13 S.E.2d 694, 64 Ga.App. 600—Craddock v. Woods, 3 S.E.2d 924, 60 Ga.App. 377—Elliott v. Georgia Power Co., 197 S.E. 914, 58 Ga.App. 151—Williamson-Inman & Co. v. Thompson, 187 S.E. 194, 53 Ga.App. 521—American Surety Co. of New York v. Citizens' Bank of Colquitt, 172 S.E. 801, 48 Ga.App. 448, affirmed 180 S.E. 635, 180 Ga. 827, rehearing denied 181 S.E. 240, 180 Ga. 827—Carder v. Arundel Mortg. Co., 170 S.E. 312, 47 Ga. App. 309—City of Atlanta v. Gore, 169 S.E. 776, 47 Ga.App. 70—Wachtel v. Leonard, 163 S.E. 512, 45 Ga.

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Idaho.—Cooper v. Wesco Builders, 281 P.2d 669, 76 Idaho 278—Charpentier v. Welch, 259 P.2d 811, 74 Idaho 242—Fulgham v. Gatfield, 241 P.2d 824, 72 Idaho 367—American Surety Co. of New York v. Blake, 27 P.2d 972, 91 A.L.R. 153, 54 Idaho 1—Servel v. Corbett, 290 P. 200, 49 Idaho 536—In re O'Brien's Estate, 262 P. 152, 44 Idaho 729.

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Ind.—Lennox & Matthews & Associates v. Rozzelle, 108 N.E.2d 621, 231 Ind. 343—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559—Northern Indiana Public Service Co. v. W. J. & M. S. Vesey, 200 N.E. 620, 210 Ind. 338.

Perkins v. Sullivan, App., 143 N. E.2d 105—Washington Theatre Co. v. Marion Theatre Corp., 81 N.E. 2d 688, 119 Ind.App. 114—Lyon v. Ætna Life Ins. Co., 44 N.E 2d 186, 112 Ind.App. 573—Chicago, I. & L. Ry. Co. v. Downey, 5 N.E.2d 656, 103 Ind.App. 672—Western & Southern Life Ins. Co. v. Spencer, 179 N.E. 794, 95 Ind.App. 281—Southern Indiana Gas & Electric Co. v. Vaughn, 163 N.E. 107, 88 Ind.App. 561—Christ v. Jovanoff, 151 N.E. 26, 84 Ind.App. 676, rehearing denied 152 N.E. 2, 84 Ind. App. 676—Kline v. Indiana Trust Co., 125 N.E. 434, 74 Ind.App. 351—McKay v. Corwine, 119 N.E. 471, 69 Ind.App. 298—Looney v. Prest-O-Lite Co., 117 N.E. 678, 65 Ind. App. 617.

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N.C.—Adrews v. Andrews, 92 S.E.2d 180, 243 N.C. 779—Reese v. Piedmont, Inc., 82 S.E.2d 365, 240 N.C. 391—State ex rel. Freeman v. Ponder, 67 S.E.2d 292, 234 N.C. 294—Hansley v. Tilton, 65 S.E.2d 300, 234 N.C. 3—Browder v. City of Winston-Salem, 57 S.E.2d 318, 231 N.C. 400—Deaton v. Board of Trustees of Elon College, 38 S.E.2d 561, 226 N.C. 433—McMichael v. Pegram, 35 S.E.2d 174, 225 N.C. 400—Johnson v. Mutual Benefit Life Ins. Co. of Newark, N. J., 20 S.E. 2d 327, 221 N.C. 441—O'Neil v. Braswell, 8 S.E.2d 817, 217 N.C. 561—Rees v. Jefferson Standard Life Ins. Co., 5 S.E.2d 154, 216 N. C. 428—Durant v. Powell, 2 S.E.2d 884, 215 N.C. 628—Anderson v. Reidsville Amusement Co., 195 S. E. 386, 213 N.C. 130—Doe v. Wachovia Bank & Trust Co., 190 S.E. 223, 211 N.C. 319—McGraw v. Southern Ry. Co., 184 S.E. 31, 209 N.C. 432, certiorari denied 57 S.Ct. 117, 299 U.S. 591, 81 L.Ed. 435—Cordell v. Brotherhood of Locomotive Firemen and Enginemen, 182 S.E. 141, 208 N.C. 632—Phipps v. Royal Indemnity Co., 166 S.E. 327, 203 N.C. 420—Flythe v. Eastern Carolina Coach Co., 143 S.E. 865, 195 N.C. 777—Potter v. Norwood Lumber Co., 101 S.E. 553, 179 N.C. 131—Powell v. Seaboard Air Line Ry. Co., 100 S.E. 424, 178 N.C. 243—Brewer v. Ring, 99 S.E. 358, 177 N.C. 476—Winborne & Co. v. Fulton Mills, 87 S.E. 953, 171 N.C. 62—W. M. Ritter Lumber Co. v. Montvale Lumber Co., 85 S.E. 438, 169 N.C. 80.

N.D.—Harmden v. Mischel, 246 N.W. 646, 63 N.D. 122—Hampton v. Ross, 217 N.W. 845, 56 N.D. 423—Hrabek v. Patocka, 194 N.W. 691, 49 N.D. 1119.

Ohio.—Sherer v. Smith, 99 N.E.2d 763, 155 Ohio St. 567—Claypool v. Mohawk Motor, 97 N.E.2d 32, 155 Ohio St. 8.

Mink v. Cincinnati St. Ry. Co., 131 N.E.2d 606, 99 Ohio App. 123—Gault v. Hall, App., 127 N.E.2d 533—Thomas v. Merchants Nat. Bank, App., 114 N.E.2d 863—Accurate Die Casting Co. v. City of Cleveland, App., 113 N.E.2d 401—Buffenbarger v. Sidney Grain Machinery Co., App., 99 N.E.2d 809—Fritz v. New York Cent. R. Co., App., 98 N.E.2d 852—Cincinnati & Suburban Bell Tel. Co. v. City of Cincinnati, 85 N.E.2d 393, 84 Ohio App. 521—Paulson v. Hall, App., 80 N.E.2d 193—Fox v. Crawford, App., 80 N.E.2d 187—Lyle v. Olentangy Corp., 75 N.E.2d 251, 80 Ohio App. 351—Frieman v. Greaves, 74 N.E. 2d 860, 80 Ohio App. 341—Geisler v. Arnovitz, App., 68 N.E.2d 406—Chastang v. Mutual Life Ins. Co. of N. Y., 65 N.E.2d 873, 77 Ohio App. 433, rehearing denied 68 N.E. 2d 240, affirmed 71 N.E.2d 270, 147 Ohio St. 341—Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172—Madison v. Caledonian-American Ins. Co. of New York, App., 43 N.E.2d 245—Stupp v. Lear, App., 42 N.E.2d 681—Houston v. Schrieber, 170 N.E. 661, 34 Ohio App. 244—Tyler v. Hocking Valley Ry. Co., 162 N.E. 623, 28 Ohio App. 88—Cleveland Ry. Co. v. Hoynes, 9 Ohio App. 1—Sherman v. Toledo & O. C. Ry., 1 Ohio App. 279, 35 Ohio Cir.Ct. 449.

Miller v. Piqua Transfer & Storage Co., Com.Pl., 92 N.E.2d 452.

Okl.—West Edmond Hunton Lime Unit v. Lillard, 265 P.2d 730—Boone v. State ex rel. Dept. of Highways, 261 P.2d 581—Gantz v. Matthews, 219 P.2d 631, 203 Okl. 225—Haggard v. Oklahoma City, 218 P.2d 366, 203 Okl. 76—Schatz v. Wintersteen, 208 P.2d 1136, 201 Okl. 660—Bell v. Protheroe, 188 P.2d 868, 199 Okl. 562, 1 A.L.R.2d 315—Cravens v. Holliday, 177 P.2d 495, 198 Okl. 264—Larkins-Warr Trust v. Watchorn Petroleum Co., 174 P. 2d 589, 198 Okl. 12—Towne v. Martin, 166 P.2d 98, 196 Okl. 510—City of Holdenville v. Kiser, 156 P.2d 363, 195 Okl. 189—Boydston v. Roberts, 127 P.2d 808, 191 Okl. 227—Moorhead v. Fidelity Building & Loan Ass'n, 292 P. 71, 145 Okl. 215—Echols v. Hurt, 243 P. 493, 116 Okl. 43—Baldridge v. Zigler, 229 P. 831, 103 Okl. 219—Sutton v. Whiteside, 222 P. 974, 101 Okl. 79—Horrigan v. Gibson, 206 P. 219, 87 Okl. 1.

Or.—McKinnon v. Chenoweth, 155 P. 2d 944, 176 Or. 74—Haltom v. Fellows, 73 P.2d 680, 157 Or. 514—Tomihiro v. United Hotel Corporation, 28 P.2d 880, 145 Or. 629—Philomath State Bank v. Gates, 264 P. 855, 124 Or. 494—F. C. Austin Co. v. J. H. Tillman Co., 209 P. 131, 104 Or. 541, 30 A.L.R. 293—Heckela v. Coos Bay Liquor Co., 142 P. 547, 71 Or. 149.

Pa.—Moore v. Keystone Macaroni Mfg. Co., 87 A.2d 295, 370 Pa. 172, 29 A.L.R.2d 1256—Radobersky v. Imperial Volunteer Fire Dept., 81 A.2d 865, 368 Pa. 235—Kline v. Kachmar, 61 A.2d 825, 360 Pa. 396—Travellers Ins. Co. v. Heppenstall Co., 61 A.2d 809, 360 Pa. 433—Durdella v. Trenton-Philadelphia Coach Co., 37 A.2d 481, 349 Pa. 482—Cody v. Metropolitan Life Ins. Co., 5 A.2d 887, 334 Pa. 137—Kish v. Bakaysa, 199 A. 321, 330 Pa. 533—Harkinson v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 198 A. 11, 329 Pa. 209—Downing v. Marks, 178 A. 676, 318 Pa. 289—Wesolowski v. John Hancock Mut. Life Ins. Co., 162 A. 166, 308 Pa. 117, 87 A.L.R. 783, followed in 162 A. 168, 308 Pa. 123—Harrison v. Welsh, 145 A. 507, 295 Pa. 501—Bittenbender Co. v. Bergen, 120 A. 658, 277 Pa. 27—Federal Sales Co. of Philadelphia v. Kiefer, 116 A. 545, 273 Pa. 42—Curtis v. Miller, 112 A. 747, 269 Pa. 509—Crawford v. Travelers' Ins. Co., Hartford, Conn., 106 A. 206, 263 Pa. 232—Thomas-Roberts-Stevenson Co. v. Philadelphia & R. Ry. Co., 100 A. 998, 256 Pa. 549.

Harrison v. Metropolitan Life Ins. Co., 79 A.2d 115, 168 Pa.Super. 474—Cohen v. Hempfield Foundries Co., 77 A.2d 687, 168 Pa.Super. 172—Perletto v. Lancaster Ave. Bldg. & Loan Ass'n, 41 A.2d 886, 157 Pa. Super. 21, affirmed 45 A.2d 10, 353 Pa. 366—Mawn v. Prudential Ins. Co. of America, 19 A.2d 300, 144 Pa.Super. 200—D'Allura v. Perri, 10 A.2d 124, 138 Pa.Super. 261—Stein v. New York Life Ins. Co., 176 A. 538, 116 Pa.Super. 109, affirmed 179 A. 589, 319 Pa. 225—Kittelberger v. Clearfield County Grange Mut. Fire Ins. Co., 163 A. 367, 106 Pa.Super. 333—Bayuk Bros. v. Wilson Martin Co., 81 Pa.Super. 195.

R.I.—Muirhead v. Fairlawn Enterprise, 48 A.2d 414, 72 R.I. 163, reargument denied 49 A.2d 316, 72 R.I. 163—Randall v. Holmes, 31 A. 2d 17, 69 R.I. 41—Cinquegrano v. T. A. Clarke Motors, 30 A.2d 859, 69 R.I. 28—Talon v. Jackson, 30 A. 2d 96, 68 R.I. 488—General Wine Co. v. Del Nigro, 10 A.2d 678, 64 R. I. 103—Myers v. Myers, 7 A.2d 785, 63 R.I. 264—Baker v. Baker, 4 A.2d 911, 62 R.I. 234—Ficocelli v. Yellow Cab Co., 3 A.2d 246, 62 R.I. 73—David v. Hanna, 2 A.2d 630, 62 R.I. 19—Muscente v. R. S. Brine Transp. Co., 196 A. 259, 59 R.I. 482—Sheltra v. O'Rourke, 155 A. 401, 51 R.I. 392—Zannelle v. Pettine, 155 A. 236, 51 R.I. 359—McCoart v. Rhode Island Co., 108 A. 585—Tavares v. Dewing, 98 A. 54, 39 R.I. 174—Rice v. Sheldon, 94 A. 711, 38 R.I. 161.

S.C.—Coffee v. Anderson County, 80 S.E.2d 51, 224 S.C. 477—Godfrey v. Godfrey, 188 S.E. 653, 182 S.C. 117—Welch v. Edisto Realty Co., 169 S.E. 667, 170 S.C. 31—Saluda Land & Lumber Co. v. Fortner, 160 S.E. 594, 162 S.C. 246—Fitchette v. Sumter Hardwood Co., 142 S.E. 828, 145 S.C. 53—Johnson v. Atlantic Coast Line R. Co., 140 S.E. 443, 142 S.C.

125—Atlantic Coast Line R. Co. v. Columbia Salvage Corporation, 135 S.E. 877, 138 S.C. 113—Griggs-Paxton Shoe Co. v. A. Friedheim & Bro., 131 S.E. 620, 133 S.C. 458—Fielder & Brown v. Jennings, 126 S.E. 448, 131 S.C. 26—Marlow v. Conway Iron Works, 125 S.E. 569, 130 S.C. 256—Barkshadt v. Gresham, 113 S.E. 923, 120 S.C. 219—Gibson v. Atlantic Coast Line R. Co., 96 S.E. 519, 110 S.C. 331—Clayton v. Southern Ry. Co., 96 S.E. 479, 110 S.C. 122—Cutter v. Mallard Lumber Co., 83 S.E. 595, 99 S.C. 231.

S.D.—Shirley v. Madsen, 216 N.W. 601, 52 S.D. 43—Relf v. Cameron, 215 N.W. 881, 51 S.D. 554—Hanson v. Friesler, 207 N.W. 449, 49 S.D. 442—Blankenbaker v. Chicago, M. & St. P. Ry. Co., 168 N.W. 744, 40 S.D. 588, 10 A.L.R. 720.

Tenn.—Huber v. Wilson, 126 S.W.2d 893, 23 Tenn.App. 109—Tevis v. Proctor & Gamble Distributing Co., 113 S.W.2d 64, 21 Tenn.App. 494.

Tex.—Wilderspin v. Bewley Mills, Inc., Civ.App., 298 S.W.2d 636, error refused no reversible error—Southwestern Settlement & Development Corp. v. State, Civ.App., 282 S.W.2d 78, error refused no reversible error—Ray v. Gage, Civ. App., 269 S.W.2d 411, error refused no reversible error—Douty v. Delta Drilling Co., Civ.App., 264 S.W.2d 164, error refused no reversible error—Beene v. Anthony, Civ.App., 263 S.W.2d 285, error refused no reversible error—Ferris v. Stableford, Civ.App., 248 S.W.2d 186—Morgan v. Empire Southern Gas Co., Civ.App., 236 S.W.2d 198—Howell v. Knox, Civ.App., 211 S. W.2d 324, error refused no reversible error—Darling v. Panhandle & Santa Fe Ry. Co., Civ. App., 209 S.W.2d 660, error refused no reversible error—Montgomery Ward & Co. v. Scharrenbeck, Civ. App., 199 S.W.2d 830, affirmed 204 S.W.2d 508, 146 Tex. 153—Associated Emp. Lloyds v. Tullos, Civ.App., 197 S.W.2d 210, error refused no reversible error—Russell Const. Co. v. Ponder, Civ.App., 182 S.W.2d 857, affirmed 186 S.W. 2d 233, 143 Tex. 412—Service Refining Co. v. Hutcherson, Civ.App., 179 S.W.2d 772, error refused—Sanders v. Midstates Oil Corp., Civ.App., 166 S.W.2d 716—Emmons v. Texas & P. Ry. Co., Civ.App., 149 S.W.2d 167, error dismissed, judgment correct—Zavala County Water Imp. Dist. No. 3 v. Rogers, Civ.App., 145 S.W.2d 919—Portilla Drilling Co. v. Miller, Civ.App., 144 S.W.2d 936. Error dismissed, judgment correct—Jones v. State Fair of Texas, Civ.App., 127 S.W. 2d 948, error dismissed, judgment correct—Kincaid v. Chicago, R. I. & G. Ry. Co., Civ.App., 119 S.W.2d 1084, error dismissed—Twichell v. Smith, Civ.App., 117 S.W.2d 163—Moore v. Conway, Civ.App., 108 S.W.2d 954—Jurach v. Cox, Civ. App., 92 S.W.2d 1065—Goeke v. Baumgart, Civ.App., 92 S.W.2d 1047—Southwestern Bell Telephone Co. v. Ferris, Civ.App., 89 S.W.2d 229, error dismissed—Van Meter v. American Central Life Ins. Co., Civ.App., 78 S.W.2d 251—Williams v. National Bank of Commerce, Civ.App., 62 S.W.2d 1108, reversed on other grounds National Bank of Commerce v. Williams, Sup., 84 S.W.2d 691—Bevil v. Kirby Lumber Co., Civ. App., 58 S.W.2d 843—Gulf, C. & S. F. Ry. Co. v. Cobb, Civ.App., 45 S.W.2d 323—Yett v. Houston Farms Development Co., Civ.App., 41 S.W.2d 305—Commercial Standard Ins. Co. v. McGee, Civ.App., 40 S.W.2d 1105—Fires v. Kinney-Shotts Inv. Co., Civ.App., 40 S.W. 2d 911, affirmed, Com.App., 59 S. W.2d 827—Glens Falls Ins. Co. v. Bendy, Civ.App., 39 S.W.2d 628, affirmed, Com.App., 58 S.W.2d 1—Calhoun v. Dotson, Civ.App., 32 S. W.2d 656—First Texas Prudential Ins. Co. v. Pedigo, Civ.App., 31 S. W.2d 854, reversed on other grounds, Com.App., 50 S.W.2d 1091—Evans v. Bryant, Civ.App., 29 S.W.2d 484—Husbands v. Fore, Civ.App., 27 S.W.2d 610—Knight v. Texas & N. O. R. Co., Civ.App., 26 S.W.2d 672—Colvard v. Goodwin, Civ.App., 24 S.W.2d 786—Davey v. Coleman, Civ.App., 6 S.W.2d 227—Pandem Oil Corporation v. McKinney, Civ.App., 3 S.W.2d 466—Texas & P. Ry. Co. v. Crockett, Civ.App., 298 S.W. 654—Quanah, A. & P. Ry. Co. v. Hogland, Civ.App., 297 S.W. 761—Ferguson Seed Farms v. McMillan, Civ.App., 296 S.W. 902, reversed on other grounds, Com. App., 18 S.W.2d 595, 63 A.L.R. 1009—Houston & T. C. R. Co. v. Clement Grain Co., Civ.App., 295 S. W. 234—Chicago, R. I. & G. Ry. Co. v. Bernnard, Civ.App., 290 S.W. 292—Pondrom v. Gray, Civ.App., 289 S.W. 79, reversed on other grounds Pondrum v. Gray, Com. App., 298 S.W. 409, modified on other grounds and rehearing denied Pondrum v. Gray, 1 S.W.2d 278—Guaranty State Bank v. Shirey, Civ.App., 258 S.W. 1109—Wright v. Allen, Civ.App., 257 S.W. 980—Barrow v. Bement, Civ.App., 239 S.W. 273—Todd v. Hand, Civ. App., 225 S.W. 770, error refused—Athens Electric Light & Power Co. v. Tanner, Civ.App., 225 S.W. 421—Ft. Worth & R. G. Ry. Co. v. Ellis, Civ.App., 225 S.W. 409, dismissed for want of jurisdiction—Bobbitt v. Bobbitt, Civ.App., 223 S.W. 478, dismissed for want of jurisdiction—Meyers v. Ables, Civ. App., 222 S.W. 339—Nicholson v. Houston Electric Co., Civ.App., 220 S.W. 632, dismissed for want of jurisdiction—Farmers' & Merchants' State Bank & Trust Co. v. Cole, Civ.App., 220 S.W. 354, error refused—Chicago, R. I. & G. Ry. Co. v. Wentzel, Civ.App., 214 S.W. 710—Western Union Telegraph Co. v. Fulton, Civ.App., 211 S.W. 285—Funderburgh v. Skinner, Civ.App., 209 S.W. 452, error refused—Goffinet v. Broome & Baldwin, Civ. App., 208 S.W. 567—Burlington State Bank v. Marlin Nat. Bank, Civ.App., 207 S.W. 954—Lancaster v. Snider, Civ.App., 207 S.W. 560—Frost v. Smith, Civ.App., 207 S.W. 392, reversed on other grounds Smith v. Frost, Com.App., 254 S. W. 926—Hopkins v. King, Civ. App., 204 S.W. 360—Ellerd v. Newcom, Civ.App., 203 S.W. 408—Rowe v. Daugherty, Civ.App., 196 S.W. 240—Bomar v. Smith, Civ. App., 195 S.W. 964, error granted—Kennedy v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 192 S.W. 1114, dismissed for want of jurisdiction—Fox v. Houston & T. C. Ry. Co., Civ.App., 186 S.W. 852—Appelbaum v. Spinner-Hay Lumber Co., Civ.App., 186 S.W. 810—Burchett v. Bristow, Civ.App., 185 S.W. 349, error refused—Turner v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 177 S.W. 204—McCullough v. Hurt, Civ.App., 175 S.W. 781—Missouri, K. & T. Ry. Co. of Texas v. Dellmon, Civ.App., 171 S. W. 799—Gulf, C. & S. F. Ry. Co. v. Boger, Civ.App., 169 S.W. 1093—Good v. Texas & P. Ry. Co., Civ. App., 166 S.W. 670.

Utah.—Adams v. Lamicq, 221 P.2d 1037, 118 Utah 209—Ayres v. Union Pac. R. Co., 176 P.2d 161, 111 Utah 104—Intermill v. Nash, 75 P.2d 157, 94 Utah 271—Ricks v. Budge, 64 P.2d 208, 91 Utah 307—Mary Jane Stevens Co. v. First Nat. Bldg. Co., 57 P.2d 1099, 89 Utah 456—George B. Leavitt Co. v. Couturier, 23 P.2d 1101, 82 Utah 256—P. A. Sorensen Co. v. Denver & R. G. R. Co., 164 P. 1020, 49 Utah 548—McLoughlin v. Diamond Coal, etc., Co., 72 P. 385, 26 Utah 115.

Vt.—Loomis v. Graves, 77 A.2d 838, 116 Vt. 438—Tetreault v. Campbell, 61 A.2d 591, 115 Vt. 369—Beattie v. Traynor, 49 A.2d 200, 114 Vt. 495—Bennett v. Robertson, 177 A. 625, 107 Vt. 202—Commercial Finance Corporation v. Gale, 162 A. 899, 105 Vt. 3—Ravine House Co. v. Bradstreet, 148 A. 481, 102 Vt. 370—Mt. Ida School v. Gilman, 123 A. 198, 97 Vt. 331—Capital Garage Co. v. Powell, 118 A. 883, 96 Vt. 227—Smith & Nye v. Munsel, 110 A. 12, 94 Vt. 201—Pope v. Hogan, 102 A. 937, 92 Vt. 250—Pette's Adm'r v. Old English Slate Co., 96 A. 596, 90 Vt. 87—Burlington Paper Stock Co. v. Diamond, 92 A. 19, 88 Vt. 160.

Va.—Sweat v. Stinnett, 37 S.E.2d

not have affected the result.[67] The fact that the | trial court may have excluded the evidence on an

855, 185 Va. 42—Chandler v. Russell, 180 S.E. 313, 164 Va. 318—Woody v. Abrams, 169 S.E. 915, 160 Va. 683—Thalhimer Bros. v. Shaw, 159 S.E. 87, 156 Va. 863—Powell v. John E. Hughes Orphanage, 138 S. E. 637, 148 Va. 331—W. S. Hoge & Bro. v. Prince William Co-op. Exch., 126 S.E. 687, 141 Va. 676—Ellis v. Virginia Ry. & Power Co., 110 S.E. 382, 132 Va. 24—Hilleary v. Hubbell, 89 S.E. 111, 119 Va. 123.

Wash.—Hatzenbuhler v. Harrison, 306 P.2d 745, 49 Wash.2d 691—Morin v. Johnson, 300 P.2d 569, 49 Wash.2d 279—Ferris v. Blumhardt, 293 P.2d 935, 48 Wash.2d 395—Nielsen v. Northern Equity Corp., 286 P.2d 1031, 47 Wash.2d 171—Union Elec. & Plumbing Supply, Inc. v. United Ass'n of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of U. S. and Canada, Local Union 32, 272 P.2d 144, 45 Wash.2d 17—Snavely v. City of Goldendale, 144 P.2d 269, 19 Wash.2d 741—Dittmar v. Frye, 93 P.2d 709, 200 Wash. 451, 124 A.L.R. 708—Baker v. Royal Blue Cab & Blue Line Sightseeing Co., 300 P. 167, 163 Wash. 95—Poropat v. Olympic Peninsula Motor Coach Co., 299 P. 979, 163 Wash. 78—Katich v. Evich, 297 P. 762, 161 Wash. 581—Ohlson v. Sawbridge, 287 P. 206, 156 Wash. 430—Bock v. Siefert, 253 P. 1081, 143 Wash. 4—Wendell v. Brown, 253 P. 452, 142 Wash. 391—Lian v. Huglen, 251 P. 585, 141 Wash. 369—Gessner v. Ramwell, 248 P. 61, 140 Wash. 78—Lee v. Willman, 230 P. 148, 131 Wash. 279—Young v. Travelers' Ins. Co., 215 P. 383, 125 Wash. 118—Puget Mill Co. v. North Seattle Improvement Co., 206 P. 954, 120 Wash. 198—Oriental Express Co. v. Puget Sound Traction, Light & Power Co., 194 P. 781, 113 Wash. 520—Van Delinder v. Richmond, 191 P. 850, 112 Wash. 191—Champneys v. Irwin, 180 P. 405, 106 Wash. 438—Armstrong v. Modern Woodmen of America, 178 P. 1, 105 Wash. 356—Clough v. Monro, 150 P. 1190, 86 Wash. 507.

W.Va.—Farley v. Farley, 68 S.E.2d 353, 136 W.Va. 598—Osage Gas Co. v. Cleveland & Morgantown Coal Co., 133 S.E. 388, 101 W.Va. 675.

Wis.—Knowles v. Stargel, 52 N.W. 2d 387, 261 Wis. 106—In re Dobson's Will, 46 N.W.2d 758, 258 Wis. 587—Western Industries v. Vilter Mfg. Co., 43 N.W.2d 430, 257 Wis. 268—Coryell v. Bluett, 29 N.W.2d 741, 251 Wis. 458—Jansen v. Herkert, 23 N.W.2d 503, 249 Wis. 124—In re Lee's Will, 23 N.W.2d 405, 249 Wis. 59—Bellrichard v. Chicago & N. W. Ry. Co., 20 N.W. 2d 710, 247 Wis. 569—Perkie v. Carolina Ins. Co., 6 N.W.2d 195, 241 Wis. 378—Sater v. Cities Service Oil Co., 291 N.W. 355, 235 Wis. 32—Drexler v. Zohlen, 257 N.W. 675, 216 Wis. 483—Goetz v. Herzog, 246 N.W. 573, 210 Wis. 494—Vaningan v. Mueller, 243 N.W. 424, 208 Wis. 542—Vaningan v. Mueller, 243 N.W. 419, 208 Wis. 527—Douglass v. Ransom, 237 N.W. 260, 205 Wis. 439—Thomson v. Chicago, M. & St. P. Ry. Co., 217 N.W. 927, 195 Wis. 78—Dugenske v. Wyse, 215 N.W. 829, 194 Wis. 159—Campbell v. Germania Fire Ins. Co. of New York, 158 N.W. 63, 163 Wis. 329—Marcus v. Town of Medford, 152 N.W. 816, 161 Wis. 155—Schroeder v. City of Watertown, 152 N.W. 470, 161 Wis. 13—Rogers v. Rosenfeld, 149 N.W. 33, 158 Wis. 285—Merriam v. Lynch, 10 N.W. 1, 53 Wis. 82.

Wyo.—Ohio Oil Co. v. Wyoming Agency, 179 P.2d 773, 63 Wyo. 187—Campbell v. Wyoming Development Co., 100 P.2d 124, 55 Wyo. 347, rehearing denied 102 P.2d 745, 55 Wyo. 347—Yellowstone Sheep Co. v. Diamond Dot Live Stock Co., 297 P. 1107, 43 Wyo. 15, 75 A.L.R. 1151.

4 C.J. p 1004 note 63—26 C.J. p 573 note 59—37 C.J. p 113 note 4 [a] (2)—42 C.J. p 1289 note 45—55 C. J. p 1020 note 43—62 C.J. p 224 note 65.

In actions relating to wills and probate thereof see Wills § 556.

In proceedings to probate will see Wills § 542.

Hearsay of questionable character

Judgment will not be reversed for exclusion of hearsay testimony of a questionable character by interested parties in plaintiff's behalf in an action involving an alleged agreement to adopt with right of inheritance.

Cal.—Erickson v. Geranson, 11 P.2d 907, 123 C.A. 575.

Introductory evidence

Rejection of evidence which was simply introductory was harmless to plaintiff.

Md.—Epstein v. Ruppert, 99 A. 685, 129 Md. 432.

Manner of making objection

Where the objection was sustained, error could not be predicated on the fact that an objection to evidence stated no ground.

Iowa.—Mitchell v. Beck, 156 N.W. 428, 178 Iowa 786, rehearing denied 160 N.W. 232, 178 Iowa 786.

Possession of liquor

Appellate court could not assume jurors in an automobile collision suit were prejudiced against defendant by excluded evidence that defendant had possessed a liquor flask and was intoxicated, or that such evidence affected the amount of the verdict.

Ariz.—Beals v. Quigg, 11 P.2d 354, 49 Ariz. 196.

Rejecting photograph of the place where an accident occurred did not constitute prejudicial error, where there was nothing shown in the photograph that was in dispute.

Colo.—Chicago, R. I. &. P. Ry. Co. v. Cline, 14 P.2d 495, 91 Colo. 255.

67. Ala.—Lipscomb v. Moore, 150 So. 907, 227 Ala. 547—Hill v. Decatur Ice & Coal Co., 122 So. 338, 219 Ala. 380—Hurst v. Fitz Water Wheel Co., 72 So. 314, 197 Ala. 10.

Ariz.—Wigley v. Whitten, 278 P.2d 412, 78 Ariz. 224—J. & B. Motors v. Margolis, 257 P.2d 588, 75 Ariz. 392, 38 A.L.R.2d 946.

Cal.—Fish v. Security-Nat. Bank of Los Angeles, 189 P.2d 10, 31 C.2d 378—Steiner v. Long Beach Local No. 128 of Oil Workers International Union, 123 P.2d 20, 19 C.2d 676—Palmer v. Wells Fargo Bank & Union Trust Co., 2 P.2d 771, 213 C. 535—Cheda v. Bodkin, 158 P. 1025, 173 C. 7.

Bush v. Lane, 293 P.2d 465, 139 C.A.2d 376—Textile v. Coleman, 265 P.2d 571, 122 C.A.2d 756—Taylor v. Clarke, 140 P.2d 985, 60 C.A.2d 438—Kort v. City of Los Angeles, 127 P.2d 66, 52 C.A.2d 804—Bingham v. Bingham, 120 P. 2d 713, 48 C.A.2d 744—Garris v. Carpenter, 92 P.2d 688, 33 C.A.2d 649—Bailey v. Market St. Ry. Co., 40 P.2d 281, 3 C.A.2d 525.

Colo.—Walker v. Hunter, 22 P.2d 133, 92 Colo. 473—In re Danikas' Estate, 230 P. 608, 76 Colo. 191—Northwestern Mut. Life Ins. Co. v. Farnsworth, 153 P. 699, 60 Colo. 324.

Conn.—Garris v. Calechman, 170 A. 789, 118 Conn. 112—City of New London v. Pequot Point Beach Co., 152 A. 136, 112 Conn. 340.

D.C.—District of Columbia v. Chessin, 61 F.2d 523, 61 App.D.C. 260.

Fla.—Rance v. Hutchinson, 179 So. 777, 131 Fla. 460.

Ga.—Moore v. Robinson, 55 S.E.2d 711, 206 Ga. 27—**Corpus Juris Secundum cited in** Hall v. State, 44 S.E.2d 234, 235, 202 Ga. 619—Nelms v. Venable, 33 S.E.2d 418, 199 Ga. 109—MacGregor v. Roux, 32 S.E.2d 289, 198 Ga. 520—Fairchilds v. Hartsfield, 87 S.E. 285, 144 Ga. 348—George W. Muller Bank Fixture Co. v. Georgia State Savings Ass'n, 85 S.E. 1018, 143 Ga. 840.

Owens v. Service Fire Ins. Co. of N. Y., 83 S.E.2d 249, 90 Ga.App. 553—Jones v. Andrews, 81 S.E. 2d 304, 89 Ga.App. 734, affirmed 82 S.E.2d 503, 210 Ga. 706—Lancaster v. Ralston, 198 S.E. 839, 58 Ga.App. 404—Bugg v. Perry & Faircloth, 156 S.E. 703, 42 Ga.App.

objection that was not good in itself,[68] or for an erroneous reason,[69] affords no reason for disturbing the ruling; but it is otherwise where a witness is erroneously excluded as incompetent for a

523—Beasley Motor Co. v. Cowart, 154 S.E. 458, 41 Ga.App. 684.

Ill.—Baker v. Baker, 107 N.E.2d 711, 412 Ill. 511—People v. Illinois Cent. R. Co., 179 N.E. 879, 347 Ill. 377.

Steiner v. Rig-A-Jig Toy Co., 135 N.E.2d 166, 10 Ill.App.2d 410—Crain v. Burnett, 190 Ill.App. 407. See Bandy v. Litchfield & M. Ry. Co., 183 Ill.App. 492.

Ind.—Central Indiana Ry. Co. v. Wishard, App., 108 N.E. 35, transferred, see, 114 N.E. 970, 186 Ind. 262.

Iowa.—Potter v. Robinson, 9 N.W. 2d 457, 233 Iowa 479—Benson v. Incorporated Town of Le Claire, 170 N.W. 747, 185 Iowa 506—Stacy v. Brown-Hurley Hardware Co., 156 N.W. 693, 174 Iowa 675.

Kan.—Meyer-Bridges Co. v. American Warehouse Co., 146 P. 361, 94 Kan. 288.

Ky.—Davenport v. Brewer, 265 S.W. 2d 451—Hall's Ex'rs v. Robinson, 165 S.W.2d 163, 291 Ky. 631.

La.—Succession of McDermott, 68 So. 616, 137 La. 295.

Fuqua v. Martin, App., 40 So.2d 404—Young's Heirs v. Veillon, App., 192 So. 545.

Md.—Evans v. Buchanan, 38 A.2d 81, 183 Md. 463—Singewald v. Singewald, 166 A. 441, 165 Md. 136.

Mass.—Greenway Wood Heel Co. v. John Shea Co., 46 N.E.2d 746, 313 Mass. 177—Simon v. Berkshire Street Ry. Co., 11 N.E.2d 485, 298 Mass. 454—Standard Rice Co. v. P. R. Warren Co., 159 N.E. 508, 262 Mass. 261.

Mich.—Harris v. Specialties Distributing Co., 9 N.W.2d 645, 305 Mich. 373—Welsby v. Cheliabinsk Tractor Plant, 241 N.W. 835, 257 Mich. 683—Central Steel & Wire Co. v. Farber, 233 N.W. 384, 252 Mich. 472—Bell v. Hayes-Ionia Co., 158 N.W. 179, 192 Mich. 90—Hannula v. Cleveland-Cliffs Iron Mining Co., 155 N.W. 499, 188 Mich. 543—Guentherodt v. Ross, 79 N.W. 920, 121 Mich. 47—Beeman v. Black, 14 N. W. 560, 49 Mich. 598.

Minn.—Meyer v. Mitchell, 80 N.W.2d 450, 248 Minn. 397—Porter v. Grennan Bakeries, 16 N.W.2d 906, 219 Minn. 14—Martin v. Tucker, 14 N. W.2d 105, 217 Minn. 104—In re Kiessig's Estate, 189 N.W. 424, 153 Minn. 27—Nelson v. Farrish, 173 N.W. 715, 143 Minn. 368—Norton v. Duluth Transfer Ry. Co., 151 N. W. 907, 129 Minn. 126, Ann.Cas. 1916E 760—Green v. Northwestern Trust Co., 150 N.W. 229, 128 Minn. 30, L.R.A.1916D 739.

Miss.—Dunn v. Anderson, 86 So.2d 24—Ross v. Biggs, 40 So.2d 293, 206 Miss. 542—Bradley v. Howell, 134 So. 843, 161 Miss. 346.

Mo.—Genteman v. Sutter, 215 S.W.2d 477—Look v. French, 144 S.W.2d 128, 346 Mo. 972.

Hourigan v. McBee, App., 130 S. W.2d 661—Chavaries v. National Life & Accident Ins. Co. of Tennessee, App., 110 S.W.2d 790—Boyd v. Farmers' Bank, 14 S.W.2d 6, 223 Mo.App. 442—Dubowsky v. Binggeli, 171 S.W. 12, 184 Mo.App. 361.

Mont.—Donohoe v. Landoe, 251 P.2d 560, 126 Mont. 351.

Neb.—Halligan v. Elander, 25 N.W. 2d 13, 147 Neb. 709.

N.H.—Cousins v. Roy, 71 A.2d 416, 96 N.H. 126.

N.Y.—Jermyn v. Searing, 122 N.E. 706, 225 N.Y. 525.

In re Clark's Estate, 65 N.Y.S.2d 394, 271 App.Div. 804.

N.C.—Young v. Stewart, 131 S.E. 735, 191 N.C. 297—Weathersbee v. Goodwin, 95 S.E. 491, 175 N.C. 234—Winborne & Co. v. Fulton Mills, 87 S.E. 953, 171 N.C. 62.

Ohio.—Gregoris v. Manos, App., 40 N.E.2d 466.

Okl.—Hill v. Hill, 215 P.2d 553, 202 Okl. 483—In re Hamm's Estate, 99 P.2d 895, 186 Okl. 610—Springfield Fire & Marine Ins. Co. v. Simmons, 87 P.2d 941, 184 Okl. 323—Nolan v. Mathis, 272 P. 868, 134 Okl. 79—Loyal Union Circle v. Rose, 245 P. 624, 117 Okl. 25.

Pa.—Prenzel v. Apex Hosiery Co., 148 A. 915, 299 Pa. 17.

S.C.—Matthews v. Matthews, 35 S.E. 2d 157, 207 S.C. 170—Dubose v. Sullivan, 152 S.E. 699, 155 S.C. 526.

Tex.—Tidy Didy Wash v. Barnett, Civ.App., 246 S.W.2d 303, error refused no reversible error—P. & M. Sales Co. v. Kenmare Jewelry Mfg. Co., Civ.App., 235 S.W.2d 515—Cruse v. Reinhard, Civ.App., 208 S. W.2d 598, error refused no reversible error—Team v. Texas & P. Ry. Co., Civ.App., 199 S.W.2d 274, error refused no reversible error—Nettles v. Doss, Civ.App., 161 S.W. 2d 138, error refused—Hays v. Dumraese, Civ.App., 153 S.W.2d 225, error refused—McMillion v. Wilkinson, Civ.App., 135 S.W.2d 231, error dismissed, judgment correct—Connellee v. Magnolia Petroleum Co., Civ.App., 54 S.W.2d 577—Pennant Oil & Gas Co. v. Lightfoot, Civ.App., 286 S.W. 249, reversed on other grounds, Com.App., 292 S.W. 517.

Utah.—Muehl v. Smoot, 63 P.2d 563, 91 Utah 45.

Va.—Maddux v. Buchanan, 92 S.E. 830, 121 Va. 102.

Wash.—Niemeier v. Rosenbaum, 63 P.2d 424, 189 Wash. 1—Hearron v. John Severyns & Co., 293 P. 458, 159 Wash. 486—Tyrell v. Leege, 178 P. 467, 105 Wash. 438.

Wis.—In re Bannelli's Estate, 68 N. W.2d 791, 269 Wis. 192, followed in 68 N.W.2d 804, 269 Wis. 192—Widness v. Central States Fire Ins. Co., 47 N.W.2d 879, 259 Wis. 159—Green Bay-Wausau Lines v. Mangel, 42 N.W.2d 493, 257 Wis. 92—Morris F. Fox & Co. v. Lisman, 240 N.W. 809, 208 Wis. 1—In re Skinner's Will, 152 N.W. 172, 160 Wis. 554, Ann.Cas.1917A 817.

Wyo.—Ruegamer v. Rocky Mountain Cementers, Inc., 263 P.2d 146, 72 Wyo. 258—**Corpus Juris cited in** Lonabaugh v. Lonabaugh, 22 P.2d 199, 203, 46 Wyo. 23—U. S. Fidelity & Guaranty Co. v. Yoder, 25 P.2d 394, 46 Wyo. 293.

4 C.J. p 1004 note 64.

Damages

Errors in rulings on evidence adverse to plaintiff obtaining a verdict are not prejudicial unless they resulted in the exclusion of evidence which, if admitted, would have justified greater damages than those awarded.

Ala.—Hilley v. Central of Georgia Ry. Co., 66 So. 883, 11 Ala.App. 605.

Evidence of little or without probative value

The exclusion of evidence of little, or without, probative value is harmless.

Ga.—Stanfill v. Hiers, 57 S.E.2d 851, 80 Ga.App. 874.

Ill.—Steiner v. Rig-A-Jig Toy Co., 135 N.E.2d 166, 10 Ill.App.2d 410.

Mo.—Johnson v. Lee Way Motor Freight, Inc., 261 S.W.2d 95.

N.Y.—Santos v. John Hancock Mut. Life Ins. Co., 281 N.Y.S. 35, 245 App.Div. 198.

Tex.—Texas Pipe Line Co. v. Hunt, Civ.App., 222 S.W.2d 128, affirmed 228 S.W.2d 151, 149 Tex. 33—Dallas Railway & Terminal Co. v. Little, Civ.App., 109 S.W.2d 289, error dismissed.

Wis.—Tiemann v. May, 292 N.W. 612, 235 Wis. 100.

4 C.J. p 1004 note 64 [c].

Complaining party not entitled to favorable decision in any event see infra § 1747.

68. Ga.—Corker v. Stafford, 54 S.E. 92, 125 Ga. 428.

N.Y.—Vaughn Mach. Co. v. Quintard, 55 N.Y.S. 1114, 37 App.Div. 368, affirmed 59 N.E. 1132, 165 N.Y. 649.

69. Ind.—**Corpus Juris Secundum cited in** Roler v. Roler, 96 N.E.2d 284, 285, 120 Ind.App. 693—Vandalia Ry. Co. v. Keys, 91 N.E. 173, 46 Ind.App. 353.

4 C.J. p 1005 note 66.

specified reason, although he was also incompetent on another ground, since his incompetency on such latter ground might have been removed by a release.[70]

To secure a reversal for the exclusion of evidence, it must have been admissible when offered,[71] and, although admissible when offered, if subsequent evidence would require that it be stricken, the refusal to admit it is harmless error.[72]

§ 1740. —— Evidence Immaterial to Issue

The exclusion of immaterial evidence is harmless error and not ground for reversal.

Where the evidence is immaterial, its exclusion is not ground for reversal,[73] even if it would have

70. Ala.—Leslie v. Sims, 39 Ala. 161.

71. Vt.—Girard v. Vermont Mut. Fire Ins. Co., 154 A. 666, 103 Vt. 330.

72. Md.—Wilmer v. Placide, 111 A. 822, 137 Md. 107.
Mont.—Loncar v. National Union Fire Ins. Co. of Pittsburgh, Pa., 274 P. 844, 84 Mont. 141.
N.M.—Ferguson v. Gusdorf, 290 P. 214, 35 N.M. 1.

73. Ala.—Jackson Lumber Co. v. Butler, 13 So.2d 294, 244 Ala. 348—Louisville & N. R. Co. v. Scott, 167 So. 572, 232 Ala. 284—Denson v. Kirkpatrick Drilling Co., 144 So. 86, 225 Ala. 473—Braswell v. Fleming, 140 So. 389, 224 Ala. 339—White Swan Laundry v. Blue, 137 So. 898, 223 Ala. 663—Mosely v. Verner, 110 So. 895, 215 Ala. 420—Cooper v. Kulp, 107 So. 808, 214 Ala. 286—McGill v. Varin, 106 So. 44, 213 Ala. 649—Perry v. Marbury Lumber Co., 103 So. 580, 212 Ala. 542—Gillespie, Shields & Co. v. I. Berman & Son, 101 So. 681, 212 Ala. 72—Washam v. Beaty, 99 So. 163, 210 Ala. 635—Grauer v. Alabama Great Southern R. Co., 96 So. 915, 209 Ala. 568—Alabama Power Co. v. Bruce, 96 So. 346, 209 Ala. 423—Goodwin v. Georgia Loan & Trust Co., 81 So. 611, 202 Ala. 655—Green v. Stephens, 73 So. 532, 198 Ala. 325—Sloss-Sheffield Steel & Iron Co. v. Scivally, 72 So. 349, 197 Ala. 103.
Atlanta & St. A. B. Ry. Co. v. Hodges, 94 So. 252, 19 Ala.App. 42.
Ark.—Erwin v. Stith, 263 S.W. 376, 165 Ark. 613.
Cal.—Steiner v. Long Beach Local No. 128 of Oil Workers International Union, 123 P.2d 20, 19 C.2d 676—Adams v. Cook, 101 P.2d 484, 15 C.2d 352—Neher v. Kauffman, 242 P. 713, 197 C. 674—Hotaling v. Hotaling, 203 P. 745, 187 C. 695—Laux v. Bekins Van & Storage Co., 169 P. 1012, 177 C. 63.
Dankert v. Lamb Finance Co., 304 P.2d 199, 146 C.A.2d 499—Bush v. Lane, 293 P.2d 465, 139 C.A.2d 376—Rench v. Watsonville Meat Co., 292 P.2d 85, 138 C.A.2d 482—Lewis v. Johnson, 282 P.2d 953, 132 C.A.2d 635—In re Buchman's Estate, 281 P.2d 608, 132 C.A.2d 81, certiorari denied Buchman v. Morse, 76 S.Ct. 118, 350 U.S. 873, 100 L.Ed. 772—Neider v. Dardi, 279 P.2d 598, 130 C.A.2d 646—Gottbehuet v. Fox, 278 P.2d 925, 130 C.A.2d 336—Stafford-Lewis v. Wain, 276 P.2d 157, 128 C.A.2d 614—Ho Gate Wah v. Fong Wan, 257 P.2d 674, 118 C.A.2d 159—Crowder v. Atchison, T. & S. F. Ry. Co., 256 P.2d 85, 117 C.A.2d 568—Scribner v. Carrell, 254 P.2d 622, 117 C.A.2d 1—Abalian v. Townsend Social Center, 246 P.2d 965, 112 C.A.2d 441—Wood v. Shipp, 233 P.2d 193, 105 C.A.2d 335—McNulty v. Southern Pac. Co., 216 P.2d 534, 96 C.A.2d 841—Wilson v. Loustalot, 193 P.2d 127, 85 C.A.2d 316—People v. One 1941 Chrysler 6 Tour Sedan, 183 P.2d 368, 81 C.A.2d 18—Holmes v. Southern Cal. Edison Co., 177 P.2d 32, 78 C.A.2d 43—Karr v. Powell, 151 P.2d 576, 66 C.A.2d 28—Kee v. Becker, 129 P.2d 159, 54 C.A.2d 466—Lindsey v. De Vaux, 123 P.2d 144, 50 C.A.2d 445—Martin v. Pacific Southwest Royalties, 106 P.2d 443, 41 C.A.2d 161—Dunn v. Shamoon, 99 P.2d 1113, 37 C.A.2d 486—Citizens' Nat. Trust & Savings Bank of Los Angeles v. Bessolo & Gualano, 33 P.2d 73, 139 C.A. 89—Belm v. Patrick, 293 P. 847, 109 C.A. 599—City of Los Angeles v. Oliver, 283 P. 298, 102 C.A. 299—Fish v. Rasor, 276 P. 363, 98 C.A. 143—Francisco & Ellington v. Pasadena Tournament of Roses Ass'n, 252 P. 652, 80 C.A. 450—Du Val v. Boos Bros. Cafeteria Co., 187 P. 767, 45 C.A. 377.
Colo.—Johns v. Shinall, 86 P.2d 605, 103 Colo. 381—Hoskins v. Dawe, 253 P. 27, 80 Colo. 545—Watson v. Woodley, 207 P. 335, 71 Colo. 391.
Conn.—Bridgeport Hydraulic Co. v. Town of Stratford, 94 A.2d 1, 139 Conn. 388—Zenik v. O'Brien, 79 A.2d 769, 137 Conn. 592—Volpe v. Gunder, 26 A.2d 13, 129 Conn. 14—Southern New England Ice Co. v. Town of West Hartford, 159 A. 470, 114 Conn. 496—Collins v. Lewis, 149 A. 668, 111 Conn. 299—Gray v. Mossman, 99 A. 1062, 91 Conn. 430.
Ga.—Mickle v. Moore, 4 S.E.2d 217, 188 Ga. 444—Henderson v. Kemp, 117 S.E. 244, 155 Ga. 489—Deal v. Mosely, 94 S.E. 1013, 147 Ga. 523.
Healan v. Powell, 87 S.E.2d 332, 91 Ga.App. 787—Parker & Co. v. Glenn, 83 S.E.2d 263, 90 Ga.App. 500—Crump v. Ojay Spread Co., 73 S.E.2d 331, 87 Ga.App. 250—Richardson v. Coker, 50 S.E.2d 781, 78 Ga.App. 209—Mayor and Council of City of Butler v. Hortman, 29 S.E.2d 811, 70 Ga.App. 848—Sisk v. Landers, 21 S.E.2d 449, 67 Ga.App. 538—J. F. McKinney & Co. v. Darby, 193 S.E. 594, 56 Ga.App. 621—Hamrick v. Haralson County, 152 S.E. 581, 41 Ga.App. 203—Hening & Hagedorn v. Glanton, 108 S.E. 256, 27 Ga.App. 339—Georgia Ry. & Power Co. v. Shaw, 102 S.E. 904, 25 Ga.App. 146.
Ill.—D. I. Felsenthal Co. v. Northern Assur. Co., Limited, of London, 120 N.E. 268, 284 Ill. 343, 1 A.L.R. 602.
Illinois Tuberculosis Ass'n v. Springfield Marine Bank, 282 Ill. App. 14—Avey v. Medaris, 272 Ill. App. 207—Costello v. Federal Life Ins. Co., 259 Ill.App. 321—Van Ameringen v. Cohen, 254 Ill.App. 576—Schuman v. Bader & Co., 227 Ill.App. 28—Harris v. Lipman, 212 Ill.App. 499. See Roberts v. Roberts' Estate, 186 Ill.App. 314.
Ind.—Swallow Coach Lines v. Cosgrove, 15 N.E.2d 92, 214 Ind. 532.
Armstrong v. Azimow, 76 N.E.2d 692, 118 Ind.App. 213—Haverell Distributors v. Haverell Mfg. Corp., 58 N.E.2d 372, 115 Ind.App. 501—Lyon v. Ætna Life Ins. Co., 44 N.E.2d 186, 112 Ind.App. 573—I. Duffey & Son Co. v. Kemmer, 37 N.E.2d 274, 110 Ind.App. 116—Cunningham v. Teague, 11 N.E.2d 525, 105 Ind.App. 46—Seaver v. Vonderahe, 127 N.E. 206, 74 Ind.App. 631—State v. McNelis, 122 N.E. 690, 72 Ind.App. 231.
Iowa.—McWilliams v. Ebling, 35 N.W.2d 768, 240 Iowa 174—Perry Auto Co. v. Mainland, 294 N.W. 281, 229 Iowa 187—McGlothlen v. Mills, 281 N.W. 781—Thomas v. Charter, 278 N.W. 920, 224 Iowa 1278—In re Walton's Estate, 238 N.W. 577, 213 Iowa 104—Mulenix v. Fairfield Nat. Bank of Fairfield, 209 N.W. 432, 203 Iowa 897—Evans v. Oskaloosa Traction & Light Co., 181 N.W. 782, 192 Iowa 1—Isaacs & Co. v. J. R. Lindsey & Co., 176 N.W. 950, 188 Iowa 947—Coad v. Pennsylvania Ry. Co., 175 N.W. 344, 187 Iowa 1025—Polk County v. Owen, 174 N.W. 99, 187 Iowa 220.
Kan.—Jukes v. North Am. Van Lines, Inc., 309 P.2d 692, 181 Kan. 12—Doman Hunting & Fishing Ass'n v. Doman, 155 P.2d 438, 159 Kan. 439—Degnan v. Young Bros. Cattle Co., 103 P.2d 918, 152 Kan. 250—

been pertinent to the case as subsequently developed, | and its rejection, if offered subsequently, would

Lenherr v. Lenherr, 10 P.2d 842, 135 Kan. 289—Barber v. Emery, 167 P. 1044, 101 Kan. 314.

Ky.—Carr v. Kentucky Utilities Co., 301 S.W.2d 894—Bullock v. Gay, 177 S.W.2d 883, 296 Ky. 489—Hilliker v. Thorndale, 173 S.W.2d 977, 295 Ky. 148—Nussbaum v. Wasbutsky, 117 S.W.2d 902, 273 Ky. 661—Phillips' Adm'r v. Tway, 108 S.W. 2d 525, 269 Ky. 583—Hoover v. Hartford Fire Ins. Co., 11 S.W.2d 976, 227 Ky. 88.

La.—Shnaider v. Graffagnini, 97 So. 491, 154 La. 363.

Me.—Everett v. Whitney, 109 A. 386, 119 Me. 128—Inhabitants of Rumford v. Inhabitants of Upton, 95 A. 226, 113 Me. 543.

Md.—State, for Use of Emerson, v. Poe, 190 A. 231, 171 Md. 584—Maryland Wrecking & Equipment Co. v. News Pub. Co., 129 A. 836, 148 Md. 560—Annarina v. Boland, 111 A. 84, 136 Md. 365.

Mass.—Donahue v. Kenney, 110 N.E. 2d 846, 330 Mass. 9—Brown v. A. W. Perry Co., 91 N.E.2d 229, 325 Mass. 479—Johnson v. Johnson, 21 N.E.2d 224, 303 Mass. 204—Beach v. S. S. Kresge Co., 20 N.E.2d 409, 302 Mass. 544—McDonald v. Employers' Liability Assur. Corporation, 192 N.E. 608, 288 Mass. 170—Killard v. Hohmann, 175 N.E. 743, 275 Mass. 344—Kenyon v. Hathaway, 174 N.E. 463, 274 Mass. 47, 73 A.L.R. 156—Bennett v. Corporation Finance Co., 154 N.E. 835, 258 Mass. 306—Waxman v. Cohen, 149 N.E. 413, 253 Mass. 548—Taylor v. Whittier, 138 N.E. 6, 240 Mass. 514—Hafey v. Dwight Mfg. Co., 133 N. E. 107, 240 Mass. 155.

Mich.—Nelson v. City of Dearborn, 66 N.W.2d 78, 340 Mich. 544—Herbert v. Durgis, 267 N.W. 809, 276 Mich. 158—Nickerson v. Nickerson, 176 N.W. 456, 209 Mich. 134—Albrecht v. St. Hedwig's Roman Catholic Benev. Soc., 171 N.W. 461, 205 Mich. 395.

Minn.—State v. Stevens, 80 N.W.2d 22, 248 Minn. 309—Mutual Service Cas. Ins. Co. v. Overholser, 58 N.W. 2d 268, 239 Minn. 243—Halloran v. Tousignant, 41 N.W.2d 874, 230 Minn. 399—Miszewski v. Baxter, 169 N.W. 800, 141 Minn. 224—Petersun v. Mystic Workers of the World, 169 N.W. 598, 141 Minn. 175—Abernethy v. Halk, 166 N.W. 218, 139 Minn. 252—McCoy v. City Nat. Bank of Duluth, 151 N.W. 178, 128 Minn. 455.

Miss.—Central Exploration Co. v. Gray, 70 So.2d 33, 219 Miss. 757—Veazey v. Turnipseed, 69 So.2d 379, 219 Miss. 559.

Mo.—Farmers & Merchants Bank of Festus v. Funk, 92 S.W.2d 587, 338 Mo. 508—Byam v. Kansas City Public Service Co., 41 S.W.2d 945, 328 Mo. 813—Bell v. George, 204 S.W. 516, 275 Mo. 17.

Jones v. Giannola, App., 252 S. W.2d 660—Burneson v. Massachusetts Bonding & Ins. Co., App., 205 S.W.2d 239—Locke v. Warden, App., 179 S.W.2d 624—Clark v. Prue, App., 151 S.W.2d 487—Dewey v. Kline's, App., 86 S.W.2d 622—Friedman v. Maryland Casualty Co., App., 71 S.W.2d 491—Atchison v. Procise, App., 24 S.W.2d 187—McDonald v. Redemeyer, 198 S. W. 483, 197 Mo.App. 630.

Mont.—Schmuck v. Beck, 234 P. 477, 72 Mont. 606—Chealey v. Purdy, 171 P. 926, 54 Mont. 489.

Neb.—Peake v. Omaha Cold Storage Co., 64 N.W.2d 470, 158 Neb. 676—Howerter v. Olson, 17 N.W.2d 483, 145 Neb. 507, opinion set aside on other grounds 19 N.W.2d 346, 145 Neb. 507—Yocum v. Labertew, 15 N.W.2d 384, 145 Neb. 120—Chew v. Coffin, 12 N.W.2d 839, 144 Neb. 170—Mercurio v. Duncan, 269 N.W. 901, 131 Neb. 767—Madison Nat. Bank v. Gross, 154 N.W. 207, 98 Neb. 684.

N.H.—Rancourt v. Boston & M. R. R., 30 A.2d 453, 92 N.H. 284—Steeves v. New England Telephone & Telegraph Co., 24 A.2d 606, 92 N.H. 52.

N.J.—Bosze v. Metropolitan Life Ins. Co., 61 A.2d 499, 1 N.J. 6.

City Nat. Bank & Trust Co. of Salem v. Hassler, 75 A.2d 546, 9 N. J.Super. 153.

Bodner v. Phœnix Indemnity Co., 168 A. 442, 111 N.J.Law 264—Murphy v. Core Joint Concrete Pipe Co., 164 A. 262, 110 N.J.Law 83—Berkowitz v. Lyons, 119 A. 20, 98 N.J.Law 198.

N.M.—Martin v. Village of Hot Springs, 282 P. 273, 34 N.M. 411.

N.Y.—R. J. Sales Corp. v. Marjay Home Equipment Co., 121 N.Y.S.2d 604, 281 App.Div. 1067—Arney v. Kramer, 83 N.Y.S.2d 47, 274 App. Div. 903.

N.C.—Hege v. Sellers, 84 S.E.2d 892, 241 N.C. 240—Newton v. Newton, 108 S.E. 336, 182 N.C. 54—Mechanics' Bank & Trust Co. v. Whilden, 94 S.E. 723, 175 N.C. 52—Ball-Thrash Co. v. McCormick, 90 S.E. 916, 172 N.C. 677—Poe v. Lennon, 89 S.E. 1003, 172 N.C. 67.

N.D.—Engen v. Matthys, 196 N.W. 550, 50 N.D. 487.

Ohio.—Stanley v. Gustin, 83 N.E.2d 235, 86 Ohio App. 133—Kleinhans v. American Gauge Co., 80 N.E.2d 626, 83 Ohio App. 153—In re Copeland's Estate, 58 N.E.2d 64, 74 Ohio App. 164.

Okl.—Tidal Oil Co. v. Forcum, 116 P.2d 572, 189 Okl. 268—Empire Oil & Refining Co. v. Fields, 112 P.2d 395, 188 Okl. 666, appeal dismissed 62 S.Ct. 79, 314 U.S. 572, 86 L.Ed. 463—Chicago, R. I. & P. Ry. Co. v. Bradshaw, 254 P. 725, 122 Okl. 282—National Bank of Commerce v. Fish, 169 P. 1105, 67 Okl. 102, L. R.A.1918F 278.

Or.—Blue v. City of Union, 75 P.2d 977, 159 Or. 5—Foster v. Lake County, 284 P. 830, 132 Or. 374—Forrester v. Hauser Const. Co., 240 P. 873, 116 Or. 222.

Pa.—Slade v. Pennsylvania R. Co., 101 A.2d 894, 376 Pa. 132—Stein v. New York Life Ins. Co., 179 A. 589, 319 Pa. 225.

Kozemchak v. Garner, 61 A.2d 375, 163 Pa.Super. 328—Mammarella v. Rugeriis, 156 A. 549, 102 Pa.Super. 132—Chubb v. Zentz, 80 Pa.Super. 430.

R.I.—Floyd v. Turgeon, 27 A.2d 330, 68 R.I. 218—Higginbotham v. Young, 193 A. 626, 59 R.I. 1—Kitchen v. Barrett, 192 A. 809, 58 R.I. 388—Russell v. Reading Custom Laundry Co., 100 A. 1015—Moore v. Woonsocket St. Ry. Co., 92 A. 980.

S.C.—Woody v. South Carolina Power Co., 24 S.E.2d 121, 202 S.C. 73—Germany v. Kelley, 96 S.E. 959, 110 S.C. 518—Ivester v. Fowler, 96 S.E. 154, 109 S.C. 424.

S.D.—Hines v. Sumner, 186 N.W. 116, 45 S.D. 93—Bordwell v. Mission Hill Tp., Yankton County, 166 N. W. 229, 40 S.D. 78—Stockwell v. German Mut. Ins. Ass'n of Le Mars, 158 N.W. 450, 37 S.D. 348.

Tenn.—Bower v. Lunney, 178 S.W. 2d 91, 27 Tenn.App. 87.

Tex.—Coleman v. Easton, Com.App., 249 S.W. 200.

Farmers Mut. Ins. Ass'n of Erath County v. Gilbreath, Civ.App., 270 S.W.2d 696, error refused no reversible error—Wilson v. Texas Cresoting Co., Civ.App., 270 S.W. 2d 230—Maples v. Henderson County, Civ.App., 259 S.W.2d 264, error refused no reversible error—Vance v. Obadal, Civ.App., 256 S.W.2d 139, error refused—Ditta v. Pogue, Civ.App., 249 S.W.2d 938—Ynsfran v. Burkhart, Civ.App., 247 S.W.2d 907, error refused no reversible error—Capitol Steel & Iron Co. v. Henderson, Civ.App., 239 S.W.2d 851—Barton v. Kuehne, Civ.App., 234 S.W.2d 84—Alexander Trust Estate v. Lindsey Drug Co., Civ. App., 214 S.W.2d 475—Hernandez v. Malakoff Fuel Co., Civ.App., 109 S.W.2d 356, error dismissed—Helland v. Oppenheimer, Civ.App., 102 S.W.2d 299, error refused—Holden v. Gibbons, Civ.App., 101 S.W.2d 837, error dismissed—Miller v. Wyrick, Civ.App., 96 S.W.2d 253, error dismissed—Goeke v. Baumgart, Civ. App., 92 S.W.2d 1047—Grand United Order of Odd Fellows v. Jones, Civ.App., 85 S.W.2d 662—First Texas Prudential Ins. Co. v. Applewhite, Civ.App., 51 S.W.2d 1076—

have been erroneous.[74] Where excluded evidence is not material unless other proof is made, and no evidence is received or offered to establish that proof, such exclusion will not justify a reversal.[75] The exclusion of evidence material, if at all, only on an issue which the court might have withdrawn from the jury is not prejudicial.[76] Where the evidence offered does not tend to prove any issue in the case, its exclusion, even for an improper reason, is not prejudicial error.[77]

§ 1741. —— Evidence Not Beneficial to Appellant

It is not prejudicial error to exclude evidence which could be of no benefit to the complaining party.

If the testimony could have been of no benefit to the complaining party, its exclusion is not prejudicial error.[78] Thus where evidence offered by a

Brigman v. Holt & Bowers, Civ. App., 32 S.W.2d 220—Central Federal Fire Ins. Co. v. Lewis, Civ. App., 26 S.W.2d 474, modified on other grounds, Com.App., 44 S.W. 2d 936—Drane v. Humble Oil & Refining Co., Civ.App., 4 S.W.2d 241—Ellerd v. Burkhalter, Civ.App., 269 S.W. 197—Schaff v. Wright, Civ.App., 251 S.W. 515—Panhandle Grain & Elevator Co. v. Dowlin, Civ.App., 247 S.W. 873—Great Southern Oil & Refining Ass'n v. Cooper, Civ.App., 231 S.W. 157—McBroom v. Weir, Civ.App., 219 S. W. 855—Sullivan v. Masterson, Civ. App., 201 S.W. 194, dismissed for want of jurisdiction—J. Kennard & Sons Carpet Co. v. Houston Hotel Ass'n, Civ.App., 197 S.W. 1139—Wentzell v. Chester, Civ.App., 189 S.W. 304, error refused—Lester v. Hutson, Civ.App., 184 S.W. 268, error dismissed—Weatherford, M. W. & N. W. Ry. Co. v. Thomas, Civ. App., 175 S.W. 822—Texarkana & Ft. S. Ry. Co. v. Terrell, Civ.App., 172 S.W. 742.

Utah.—First Sec. Bank of Utah v. Burgi, 251 P.2d 297, 122 Utah 445—Adams v. Portage Irr., Reservoir & Power Co., 72 P.2d 648, 95 Utah 1, rehearing denied 81 P.2d 368, 95 Utah 20—Ogden Savings & Trust Co. v. Blakely, 241 P. 221, 66 Utah 229—General Motors Acceptance Corporation v. Lund, 208 P. 502, 60 Utah 247—Lombard v. Columbia Nat. Life Ins. Co., 168 P. 269, 50 Utah 554.

Vt.—Staten v. Central Vermont Ry. Co., 102 A. 97, 91 Vt. 531.

Va.—Guntner v. Hughes, 129 S.E. 239, 143 Va. 36—Fielding v. Robertson, 126 S.E. 231, 141 Va. 123.

Wash.—Huttner v. MacKay, 293 P.2d 766, 48 Wash.2d 378—Clampett v. Sisters of Charity of House of Providence in Territory of Washington, 136 P.2d 729, 17 Wash.2d 652—Quackenbush v. Slate, 121 P. 2d 331, 12 Wash.2d 201—Umpqua Valley Fruit Union v. North Pacific Fruit Distributors, 183 P. 101, 108 Wash. 265.

W.Va.—Darling v. Baltimore & O. R. Co., 69 S.E.2d 139, 136 W.Va. 303.

Wis.—Kuroske v. Ætna Life Ins. Co. of Hartford, Conn., 291 N.W. 384, 234 Wis. 394, 127 A.L.R. 1505—De Pas v. Southern Wisconsin Ry. Co., 150 N.W. 408, 159 Wis. 306.

4 C.J. p 1005 note 68.

Cumulative evidence

The exclusion of evidence which was merely cumulative of other undisputed evidence, and which related merely to a transaction, which was remote and entirely collateral in relation to the main issue, was harmless.

Cal.—Hotaling v. Hotaling, 203 P. 745, 187 C. 695.

74. Iowa.—Fey v. King, 190 N.W. 519, 194 Iowa 835.

N.Y.—Heroy v. Kerr, 21 N.Y.Super. 194, 21 How.Pr. 409.

75. Ark.—Ward v. Ft. Smith Light & Traction Co., 185 S.W. 1085, 123 Ark. 548.

Cal.—Pomerantz v. Bryan Motors, 206 P.2d 440, 92 C.A.2d 114.

Ind.—Ewing v. Duncan, 197 N.E. 901, 209 Ind. 33.

Ky.—Hollon v. Weatherford's Adm'r, 82 S.W.2d 208, 259 Ky. 142.

Mass.—Winslow Bros. & Smith Co. v. Universal Coat Co., 146 N.E. 713, 252 Mass. 7.

N.C.—Rhodes v. Raxter, 87 S.E.2d 265, 242 N.C. 206—Childress v. Abeles, 84 S.E.2d 176, 240 N.C. 667, rehearing dismissed 86 S.E.2d 916, 242 N.C. 123.

Okl.—Hobart v. Patrick, 257 P.2d 825, 208 Okl. 560.

Or.—Forrester v. Hauser Const. Co., 240 P. 873, 116 Or. 222.

Tex.—Dakoff v. National Bank of Commerce, Civ.App., 254 S.W.2d 550, error refused.

4 C.J. p 1006 note 70.

76. Iowa.—Commercial Nat. Bank v. Flickinger, 135 N.W. 416, 156 Iowa 97.

77. Tex.—Robert & St. John Motor Co. v. Bumpass, Civ.App., 65 S.W. 2d 399.

78. Ala.—Peinhardt v. Bonner, 169 So. 11, 232 Ala. 566.

American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 39, certiorari denied 58 So.2d 478, 257 Ala. 238.

Ark.—Holt v. Gregory, 260 S.W.2d 459, 222 Ark. 610—National Life & Accident Ins. Co. v. Rogers, 142 S.W.2d 219, 200 Ark. 994—Harrelson v. Eureka Springs Electric Co., 181 S.W. 922, 121 Ark. 269.

Cal.—City of Pasadena v. City of Alhambra, 207 P.2d 17, 33 C.2d 908, followed in 207 P.2d 46, 33 C.2d 956, certiorari denied California-Michigan, Land & Water Co. v. City of Pasadena, 70 S.Ct. 671, 339 U.S. 937, 94 L.Ed. 1354—Caminetti v. Pacific Mut. Life Ins. Co. of California, 139 P.2d 908, 22 C.2d 344, certiorari denied Neblett v. Caminetti, 64 S.Ct. 428, 320 U.S. 802, 88 L.Ed. 484—Haime v. De Beaulieu, 129 P.2d 345, 20 C.2d 849.

Hendershott v. Shipman, 269 P.2d 113, 124 C.A.2d 561—Smpardos v. Piombo Const. Co., 244 P.2d 435, 111 C.A.2d 415—Walker v. Jensen, 212 P.2d 569, 95 C.A.2d 269—Hill v. Fowble, 149 P.2d 862, 65 C.A.2d 25—Wood v. Emig, 137 P.2d 875, 58 C.A.2d 851—Mahar v. Mackay, 132 P.2d 42, 55 C.A.2d 869—Stroud v. Hansen, 120 P.2d 102, 48 C.A.2d 556—Searles v. Maritime Federation of Pacific Coast, 83 P.2d 100, 28 C.A.2d 661—Jenkins v. National Paint & Varnish Co., 61 P.2d 780, 17 C.A.2d 161—Wachner v. Richardson, 58 P.2d 714, 14 C.A.2d 422—Knaugh v. Baender, 257 P. 606, 84 C.A. 142.

Colo.—O'Malley-Kelley Oil & Auto Supply Co. v. Gates Oil Co., 214 P. 398, 73 Colo. 140.

Conn.—Lake Garda Co. v. D'Arche, 66 A.2d 120, 135 Conn. 449—Lukovits v. Palmer, 10 A.2d 761, 126 Conn. 320—Chesebro v. Lockwood, 91 A. 188, 88 Conn. 219.

Fla.—Wood v. Wagner, 55 So.2d 537—Gray v. Callahan, 197 So. 396, 143 Fla. 673.

Ga.—Hines v. Moore, 148 S.E. 162, 168 Ga. 451—Riddle v. Shoupe, 94 S.E. 236, 147 Ga. 387—Avera v. Southern Mortgage Co., 92 S.E. 533, 147 Ga. 24.

Barnett v. Ashley, 81 S.E.2d 11, 89 Ga.App. 679—Life & Cas. Ins. Co. of Tenn. v. Monday, 69 S.E.2d 910, 85 Ga.App. 659—Atlantic Coast Line R. Co. v. Singletary, 55 S.E. 2d 827, 80 Ga.App. 297—Gettis v. Bank of Helen, 8 S.E.2d 177, 61 Ga.App. 888—Stalvey v. Varn Motors & Finance Co., 193 S.E. 627, 56 Ga.App. 696—Parnell v. A. W. Muse Co., 192 S.E. 556, 56 Ga. App. 213—Georgia Mountain Orchards v. Jones & Stewart, 126 S. E. 865, 33 Ga.App. 513—Elder v.

party to prove a certain fact does not tend to es- | tablish that fact,[79] is altogether insufficient for

Hewitt, 126 S.E. 848, 33 Ga.App. 410.

Idaho.—Driesbach v. Lynch, 234 P.2d 446, 71 Idaho 501.

Ill.—Barnes v. Earle, 114 N.E. 168, 275 Ill. 381.

Rath v. Schneider, 102 N.E.2d 355, 345 Ill.App. 82—City of Chicago v. Truax Greene & Co., 192 Ill.App. 524. See Thielman v. Straus, 198 Ill.App. 102—Short v. Oregon Short Line R. Co., 191 Ill. App. 149—Goodwin v. Oregon Short Line R. Co., 191 Ill.App. 146.

Ind.—Rader v. Derby, 89 N.E.2d 724, 120 Ind.App. 202.

Iowa.—In re Smith's Will, 60 N.W.2d 866, 245 Iowa 38—Coonley v. Lowden, 12 N.W.2d 870, 234 Iowa 731—In re Heller's Estate, 11 N.W.2d 586, 233 Iowa 1356—Rauch v. Dengle, 218 N.W. 470—Seymour v. Chicago & N. W. Ry. Co., 164 N.W. 352, 181 Iowa 218—Schultz v. Starr, 164 N.W. 163, 180 Iowa 1319—In re Workman's Estate, 156 N.W. 438, 174 Iowa 222.

Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142.

Ky.—Louisville Taxicab & Transfer Co. v. Tungent's Adm'r, 229 S.W. 2d 985, 313 Ky. 1—Coburn v. North American Refractories Co., 174 S. W.2d 757, 295 Ky. 566—Hilliker v. Thorndale, 173 S.W.2d 977, 295 Ky. 148—Tross v. Bills' Ex'x, 224 S.W. 660, 189 Ky. 115—Ramsey v. Chesapeake & O. Ry. Co., 197 S.W. 796, 177 Ky. 329.

La.—Public Loan Corp. v. Adams, App., 66 So.2d 6.

Md.—Whittington v. Mann, 126 A.2d 617, 211 Md. 199—Levi v. Schwartz, 95 A.2d 322, 201 Md. 575, 36 A.L.R. 2d 1241—Berg v. Plitt, 12 A.2d 609, 178 Md. 155, reargument denied 13 A.2d 364, 178 Md. 155—Iverson v. Illinois Glass Co., 131 A. 834, 149 Md. 522, certiorari denied 48 S.Ct. 34, 275 U.S. 493, 72 L.Ed. 390—Eastern Shore Trust Co. v. Lockerman, 129 A. 915, 148 Md. 628—De Crette v. Mohler, 127 A. 639, 147 Md. 108.

Mass.—Laskowski v. Manning, 91 N. E.2d 231, 325 Mass. 393—Joyce v. London & Lancashire Indemnity Co. of America, 44 N.E.2d 776, 312 Mass. 354—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 392—Bickford v. Boston Elevated Ry. Co., 7 N.E.2d 276, 296 Mass. 580—Brosnan v. Koufman, 2 N.E.2d 441, 294 Mass. 495, 104 A.L.R. 1177—Sullivan v. Morse, 171 N.E. 668, 271 Mass. 501.

Mich.—Neander v. Clampett, 73 N.W. 2d 887, 344 Mich. 292—Carlson v. Brunette, 63 N.W.2d 428, 339 Mich. 188—Fisk v. Fisk, 53 N.W.2d 356, 333 Mich. 513—De Haan v. Winter, 251 N.W. 391, 251 Mich. 101—Hallet & Davis Piano Co. v. Droste, 182 N.W. 123, 213 Mich. 381—Larson v. Feeney, 162 N.W. 275, L.R. A.1917D 694, 196 Mich. 1.

Minn.—Blacktin v. McCarthy, 42 N. W.2d 818, 231 Minn. 303—Anderson v. Birkeland, 38 N.W.2d 215, 229 Minn. 77—Segerstrom v. Holland Piano Mfg. Co., 170 N.W. 930, 142 Minn. 104.

Miss.—Martin v. Martin's Estate, 63 So.2d 827, 217 Miss. 173.

Mo.—Marquand Development Corp. v. Maisak-Handler Shoe Co., 260 S.W. 2d 242—Carlisle v. Tilghmon, 174 S.W.2d 798.

Liederman v. Independent Order Brith Sholom, App., 164 S.W.2d 614, reversed on other grounds 173 S.W.2d 848, 351 Mo. 658—Witte v. Smith, App., 162 S.W.2d 604—Sharon v. Kansas City Granite & Monument Co., 125 S.W.2d 959, 233 Mo. App. 547—Vance v. Morrish, App., 279 S.W. 173—Prindle v. Fidelity & Casualty Co. of New York, App., 233 S.W. 252.

Mont.—Backer v. Parker-Morelli-Barclay Motor Co., 289 P. 571, 87 Mont. 595.

Neb.—Cotner College v. Hester's Estate, 51 N.W.2d 612, 155 Neb. 279—Peters v. Wilks, 39 N.W.2d 793, 151 Neb. 861—In re Stuckey's Estate, 181 N.W. 564, 105 Neb. 641.

N.H.—Emery v. Woodward, 69 A.2d 865, 96 N.H. 61.

N.J.—General Public Loan Corp. v. Director of Division of Taxation, 99 A.2d 796, 13 N.J. 393—Turon v. J. & L. Const. Co., 86 A.2d 192, 8 N.J. 543.

Womack v. Fenton, 100 A.2d 690, 28 N.J.Super. 345.

N.C.—Gillis v. Great Atlantic & Pacific Tea Co., 27 S.E.2d 283, 223 N. C. 470, 150 A.L.R. 1330—Universal Oil & Fertilizer Co. v. Burney, 93 S.E. 912, 174 N.C. 382.

Ohio.—Corriveau v. Defenbaugh, App., 91 N.E.2d 39—Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172.

Okl.—American Fidelity Co. of Montpelier, Vt., v. Echols, 155 P. 1160, 56 Okl. 228, L.R.A.1916D 1176.

Or.—Pond v. Jantzen Knitting Mills, 190 P.2d 141, 183 Or. 256.

Pa.—C. L. McClain Fuel Corporation, to Use of Wayne Title & Trust Co. v. Lineinger, 19 A.2d 478, 341 Pa. 364—Indian v. Delaware, L. & W. R. Co., 104 A. 871, 262 Pa. 117.

Frank v. American Bond & Mortg. Co., 70 Pa.Super. 478.

S.C.—Ingram v. Davis, 131 S.E. 677, 134 S.C. 93—Palmetto Guano Corporation v. McCormick, 103 S.E. 482, 114 S.C. 136—Miller v. Parr Shoals Power Co., 88 S.E. 374, 104 S.C. 129.

Tenn.—Quaker Oats Co. v. Davis, 232 S.W.2d 282, 33 Tenn.App. 373—Brownlow v. Payne, 2 Tenn.App. 154.

Tex.—Hooper v. Courtney, Civ.App., 256 S.W.2d 462—Railway Exp. Agency v. Spain, Civ.App., 249 S. W.2d 644, appeal dismissed 255 S. W.2d 509, 152 Tex. 198—Withers v. Republic Nat. Bank of Dallas, Civ.App., 248 S.W.2d 271—Waddell v. Coleman, Civ.App., 248 S.W.2d 216, reversed on other grounds 249 S.W.2d 912, 151 Tex. 337—Brewer v. Dallas Ry. & Terminal Co., Civ. App., 247 S.W.2d 435—Ricks v. Thielepape, Civ.App., 222 S.W.2d 399, error refused no reversible error—Fisher v. Leach, Civ.App., 221 S.W.2d 384, error refused no reversible error—Shaw v. Ryan, Civ. App., 41 S.W.2d 329, reversed on other grounds, Com.App., 58 S.W. 2d 3—McMurrey v. Standley, Civ. App., 297 S.W. 557, affirmed, Com. App., 1 S.W.2d 592—McFarland v. Martin, Civ.App., 258 S.W. 879.

Utah.—McGowan v. Denver & R. G. W. R. Co., 244 P.2d 628, 121 Utah 587, certiorari denied Denver & R. G. W. R. Co. v. McGowan, 73 S. Ct. 346, 344 U.S. 918, 97 L.Ed. 707—McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115—Lombard v. Columbia Nat. Life Ins. Co., 168 P. 269, 50 Utah 554.

Va.—Bradshaw v. Booth, 105 S.E. 555, 129 Va. 19.

Vt.—O'Connor v. Vermont Transit Co., 68 A.2d 699, 116 Vt. 6.

Wash.—Haveman v. Beulow, 217 P. 2d 313, 36 Wash.2d 185, 19 A.L.R. 2d 763—Hagstrom v. Limbeck, 130 P.2d 895, 15 Wash.2d 399.

Wis.—Millard v. North River Ins. Co., 228 N.W. 746, 201 Wis. 69.

4 C.J. p 1006 note 72.

79. Cal.—Physicians Elec. Service Corp. v. Adams, 180 P.2d 422, 79 C.A.2d 550—Jackson v. Utica Light & Power Co., 149 P.2d 748, 64 C. A.2d 885.

Ga.—Allgood v. Dalton Brick & Tile Corp., 58 S.E.2d 522, 81 Ga.App. 189—Cooper v. American Discount Co., 16 S.E.2d 791, 66 Ga.App. 6.

Ill.—Yellow Cab Co. v. Stafford-Smith Co., 150 N.E. 670, 320 Ill. 294, 43 A.L.R. 1173.

Md.—State v. Consolidated Gas, Electric Light & Power Co. of Baltimore, 150 A. 452, 159 Md. 138.

Mich.—City of Detroit v. City of Highland Park, 39 N.W.2d 325, 326 Mich. 78.

Mo.—Locke v. Warden, App., 179 S. W.2d 624.

Neb.—In re Heineman's Estate, 13 N. W.2d 569, 144 Neb. 442—Tongue v. Perrigo, 265 N.W. 737, 130 Neb. 564.

N.H.—Bennett v. Bennett, 31 A.2d 374, 92 N.H. 379.

N.J.—Clawans v. O'Connor, 143 A. 354, 105 N.J.Law 117.

that purpose,[80] is of very slight evidentiary value,[81] is in any event entitled to little weight in deter-

Tex.—Weart v. Mahone, Civ.App., 176 S.W.2d 197—Sloan v. Sloan, Civ. App., 32 S.W.2d 513.
Vt.—Goodenough's Adm'x v. Vermont-People's Nat. Bank, 168 A. 914, 106 Vt. 5.
Wash.—Pacific Power & Light Co. v. White, 177 P. 313, 104 Wash. 528.
Wis.—Commerce Ins. Co. v. Badger Paint & Hardware Stores, 60 N.W. 2d 742, 265 Wis. 174.
4 C.J. p 1007 note 73.

Opinion evidence of the successor of the assessor who prepared the roll in controversy as to whether the assessment was made according to frontage is of no evidentiary value if not of his own knowledge, and its exclusion is harmless.

Mich.—City of Sault Ste. Marie v. Minneapolis, St. P. & S. S. M. Ry. Co., 158 N.W. 164, 192 Mich. 65.

Quantum of damages

On plaintiff's appeal from a judgment awarding him damages for illness caused by eating food containing a dead insect, as insufficient in amount, exclusion of a companion's testimony that similar articles of food served him by defendant at the same time, made him sick was immaterial error, such testimony shedding no light on quantum of damages.

Ala.—Franklin v. Argyro, 100 So. 811, 211 Ala. 506.

80. Cal.—Ruble v. Richardson, 204 P. 572, 188 C. 150.
Smpardos v. Piombo Const. Co., 244 P.2d 435, 111 C.A.2d 415—Marogna v. Mitchell, 233 P.2d 70, 104 C.A.2d 799—Tabata v. Murane, 174 P.2d 684, 76 C.A.2d 887—Makeig v. United Security Bank & Trust Co., 296 P. 673, 112 C.A. 138.
Fla.—Atlantic Coast Line R. Co. v. Edenfield, 45 So.2d 204.
Ga.—Bradley v. Thompson, 44 S.E. 2d 898, 202 Ga. 785.
Ill.—Waggoner v. Clark, 127 N.E. 436, 293 Ill. 256.
Ind.—Lewis v. Bunnell, 131 N.E. 386, 190 Ind. 585.
Boyd v. Hodson, 72 N.E.2d 46, 117 Ind.App. 296—Insurance Co. of Pennsylvania v. Indiana Reduction Co., 117 N.E. 273, 65 Ind.App. 330.
Iowa.—Richardson v. Cheshire, 188 N.W. 146, 193 Iowa 930—Smay v. Roberts, 164 N.W. 236.
La.—Red River Cotton Oil Co. v. Texas & P. Ry. Co., 44 So.2d 101, 216 La. 519, certiorari denied 70 S.Ct. 841, 339 U.S. 953, 94 L.Ed. 1366.
Mich.—In re Sewart's Estate, 70 N. W.2d 732, 342 Mich. 491.
Miss.—Columbus & G. R. Co. v. Lee, 115 So. 782, 149 Miss. 543.
Mo.—Boneau v. Swift & Co., App., 66 S.W.2d 172.
N.M.—Chavez v. Trujillo, 132 P.2d 713, 47 N.M. 19.
N.C.—Callaham v. Arenson, 80 S.E. 2d 619, 239 N.C. 619—Perry v. Alford, 33 S.E.2d 665, 225 N.C. 146.
Okl.—Mutual Life & Accident Ass'n of Frederick v. Moore, 20 P.2d 168, 162 Okl. 260.
Or.—Scales v. First State Bank, 172 P. 499, 88 Or. 490.
Pa.—Lederer v. Metropolitan Life Ins. Co., 4 A.2d 608, 135 Pa.Super. 61.
R.I.—Grygiel v. Grygiel, 26 A.2d 743, 68 R.I. 155.
Tex.—Thomas v. Southern Lumber Co., Civ.App., 181 S.W.2d 111—Luby v. Hoffman, Civ.App., 54 S.W. 2d 180—Carmichael v. Williams, Civ.App., 268 S.W. 502—Durham v. Scrivener, Civ.App., 259 S.W. 606, affirmed, Com.App., 270 S.W. 161—Graham-Brown Shoe Co. v. Snodgrass, Civ.App., 257 S.W. 632—Dixon v. Winters, Civ.App., 201 S.W. 1103—McCullough v. Hurt, Civ. App., 175 S.W. 781.
Wash.—Goddard v. Northwestern Mut. Fire Ass'n, 148 P. 893, 85 Wash. 585.
4 C.J. p 1007 note 74.

Where the evidence offered does not make a prima facie case, its exclusion is harmless error.

Iowa.—Cary-Platt v. Iowa Electric Co., 224 N.W. 89, 207 Iowa 1052.
Mass.—Coulombe v. Horne Coal Co., 175 N.E. 631, 275 Mass. 226.
N.Y.—Gainer v. Hines, 184 N.Y.S. 768, 194 App.Div. 21.
Wash.—Pacific Mut. Life Ins. Co. of California v. Munson, 196 P. 633, 115 Wash. 119.
Wyo.—**Corpus Juris Secundum quoted in** Campbell v. Wyoming Development Co., 100 P.2d 124, 141, 55 Wyo. 347, rehearing denied 102 P. 2d 745, 55 Wyo. 347.
4 C.J. p 1007 note 74 [b].

Insufficient to make out defense

Exclusion of evidence, which would have made out no defense, was not prejudicial to defendant.

Mass.—Western Newspaper Union v. Dittemore, 161 N.E. 908, 264 Mass. 74.

81. Ala.—Burdett v. Hipp, 39 So.2d 389, 250 Ala. 37—Davis v. Radney, 38 So.2d 867, 251 Ala. 629.
Hurn v. Reynolds, 36 So.2d 603, 34 Ala.App. 79—Lambert v. Jefferson, 36 So.2d 583, 34 Ala.App. 67, reversed on other grounds 36 So.2d 594, 251 Ala. 5.
Cal.—Wood v. Shipp, 233 P.2d 193, 105 C.A.2d 335—Jordan v. Harvey, 142 P.2d 83, 61 C.A.2d 134—Shaw v. Johnson, 59 P.2d 876, 15 C.A.2d 599—Stevens v. Privett, 264 P. 549, 88 C.A. 706.
Conn.—H. O. Canfield Co. v. United Const. Workers, 70 A.2d 547, 136 Conn. 293.
Ill.—Hyman-Michaels Co. v. Massachusetts Bonding & Ins. Co., 132 N.E.2d 347, 9 Ill.App.2d 13—Trimmer v. Franklin Life Ins. Co., 49 N.E.2d 642, 319 Ill.App. 520.
Ky.—Louisville & N. R. Co. v. Calloway, 280 S.W. 966, 213 Ky. 235—Mize v. Boston, 215 S.W. 33, 185 Ky. 275.
Minn.—Kugling v. Williamson, 42 N. W.2d 534, 231 Minn. 135.
Mo.—McComb v. Vaughn, 218 S.W.2d 548, 358 Mo. 951—Tiede v. Tiede, 231 S.W. 950.
N.H.—Emery v. Woodward, 69 A.2d 865, 96 N.H. 61.
N.J.—Moon v. Lewis, 185 A. 12, 116 N.J.Law 521.
Decker v. Everson, 187 A. 783, 14 N.J.Misc. 860.
Tex.—Talbott v. Hogg, Civ.App., 298 S.W.2d 883—Brown v. Shannon West Tex. Memorial Hospital, Civ. App., 222 S.W.2d 248, error refused no reversible error—Smith v. Columbian Carbon Co., Civ.App., 196 S.W.2d 660, reversed on other grounds 198 S.W.2d 727, 145 Tex. 478—Western Union Telegraph Co. v. Armstrong, Civ.App., 207 S.W. 592, error refused.
Va.—Southern Ry. Co. v. Leake, 125 S.E. 314, 140 Va. 438.
Utah.—Perry v. McConkie, 264 P.2d 852, 1 Utah 2d 189.
Wyo.—Hudson v. Erickson, 216 P.2d 379, 67 Wyo. 167.
4 C.J. p 1007 note 75.

Closing of contract

In an action to recover damages for a breach of contract to purchase a car of canned fish, the exclusion of evidence offered by buyer of a local custom that the buyer of canned goods does not consider the contract closed until a formal contract has been signed between the parties, while the evidence was probably competent, was not reversible error, where its weight was insufficient to affect materially the result.

Tenn.—Neilson & Kittle Canning Co. v. F. G. Lowe & Co., 260 S.W. 142, 149 Tenn. 561.

Hearsay

In trespass to try title, any error in excluding certain testimony as hearsay was immaterial, probative value of testimony being small.

Tex.—Ferguson v. Coleman, Civ.App., 208 S.W. 571.

Signature many years before

Any error in exclusion of testimony as to whether sixty-five years before the trial, when witnesses were ten or twelve years old, a person had, or signed his name with, a middle initial was harmless, since such testimony as against the documentary evidence would have had so little weight that it would not sustain a verdict.

mining the case,[82] or tends to prove the issue in favor of his adversary,[83] the exclusion of such evidence is not prejudicial if no other evidence as to the fact is either introduced or offered.[84] Also the exclusion of evidence in behalf of appellant is not prejudicial where other evidence in the case conclusively establishes the contrary of what appellant sought to prove by such evidence.[85]

On the other hand, the exclusion of evidence which may form a link in the chain of testimony is error, although it may not be sufficient of itself to establish the proposition for which it is offered,[86] and even though at the time no disclosure is made by counsel of an intention to prove the additional facts to establish such proposition.[87] The mere fact that the rejected evidence would have been futile if received does not show that its rejection was not prejudicial, because the proposer might have introduced other evidence or have otherwise changed his course at the trial if the ruling of the court had been right and his rejected evidence had been received.[88] Similarly, the fact that the objecting party has not made a case for the jury does not negative the presumption of prejudice, for his failure to make a case may be the result of the error complained of.[89]

§ 1742. —— Evidence Improper for Purpose Offered

The exclusion of evidence improper for the purpose for which it is offered is not prejudicial error.

When evidence is offered for a particular purpose, its rejection is not reversible error because it is admissible for another purpose not called to the attention of the court,[90] especially where such other purpose is wholly inconsistent with the theory on which the proponent is trying the action,[91] or where the evidence, if received, could have but slight effect.[92]

§ 1743. —— Evidence Offered for Improper Purpose

It is not prejudicial error to exclude evidence offered for an improper purpose.

It is not reversible error to exclude evidence offered to establish a void transaction,[93] or as introductory to other evidence which was in itself inadmissible.[94]

§ 1744. —— Facts Which Are Matters of Common Knowledge

It is harmless error to exclude evidence of facts which are matters of common knowledge.

It is harmless error to exclude evidence of obvious facts,[95] especially where the fact sought to be shown is not on the main issue.[96]

§ 1745. —— Effect of Determination

An error in improperly excluding evidence may be rendered harmless by the findings of the court or jury.

The findings of the court or jury may render harmless an improper exclusion of evidence.[97] Thus

Pa.—Jones v. Scranton Coal Co., 118 A. 219, 274 Pa. 312.

82. Iowa.—Aler v. West, 183 N.W. 321.
4 C.J. p 1007 note 76.

83. Ill.—Meyer v. Krohn, 2 N.E. 495, 114 Ill. 574.
Maretick v. South Chicago Community Hospital, 17 N.E.2d 1012, 297 Ill.App. 488.
N.C.—Merchant v. Lassiter, 30 S.E.2d 217, 224 N.C. 343.
Ohio.—Hunt v. Daggett, 7 Ohio Dec. (Reprint) 260, 2 Cinc.L.Bul. 22.
4 C.J. p 1007 note 77.

84. Pa.—In re Moore's Estate, 177 A. 333, 117 Pa.Super. 82.
4 C.J. p 1007 note 78.

85. Idaho.—Puget Sound Nat. Bank of Tacoma v. C. B. Lauch Const. Co., 245 P.2d 800, 73 Idaho 68.
N.Y.—Field v. Sparrow, 255 N.Y.S. 557, 235 App.Div. 689, followed in 255 N.Y.S. 558, 235 App.Div. 690.
Pa.—Giordano v. Clement Martin, Inc., 31 A.2d 504, 347 Pa. 61.
4 C.J. p 1007 note 79.

86. Ala.—Slagle v. Halsey, 15 So.2d 740, 245 Ala. 198.
Colo.—Hoban v. Boyer, 85 P. 837, 37 Colo. 185.
Miss.—Wagley v. Colonial Baking Co., 45 So.2d 717, 208 Miss. 815, suggestion of error overruled 46 So. 2d 925.
Mo.—Budd v. Hoffheimer, 52 Mo. 297.
Neb.—Gartner v. Chicago, etc., R. Co., 98 N.W. 1052, 71 Neb. 444.

87. Mo.—Budd v. Hoffheimer, 52 Mo. 297.
4 C.J. p 1007 note 81.

88. U.S.—Mutual Reserve L. Ins. Co. v. Heidel, Mo., 161 F. 535, 88 C.C.A. 477.
4 C.J. p 1007 note 82.

89. Iowa.—McNamara v. New Melleray Corp., 55 N.W. 822, 88 Iowa 502.

90. Ala.—**Corpus Juris Secundum cited in** Melvin v. State, 21 So.2d 277, 279, 32 Ala.App. 10.
Mo.—Gosnell v. Camden Fire Ins. Ass'n of Camden, N. J., App., 109 S.W.2d 59.
N.J.—Levenson Wrecking Co. v. Gatti-McQuade Co., 107 A. 277, 93 N.J.Law 184.
4 C.J. p 1007 note 84.

91. Minn.—Mareck v. Minneapolis Trust Co., 77 N.W. 428, 74 Minn. 538.
Tex.—Texas Pipe Line v. Hunt, Civ. App., 222 S.W.2d 128, affirmed 228 S.W.2d 151, 149 Tex. 33.

92. N.J.—Levenson Wrecking Co. v. Gatti-McQuade Co., 107 A. 277, 93 N.J.Law 184.
4 C.J. p 1007 note 86.

93. Ala.—Kavanaugh v. Thompson, 16 Ala. 817.

94. N.J.—Perry v. Smith, 29 N.J. Law 74.

95. Cal.—Long v. Bevers, 58 P.2d 1295, 15 C.A.2d 47.
Conn.—Sacks v. Connecticut Co., 146 A. 494, 109 Conn. 221.
Ky.—Dixie Ice Cream Co. v. Ravenna Grocery Co., 206 S.W.2d 824, 306 Ky. 182.
N.Y.—Rothstein v. Monette, 17 N.Y.S. 2d 369.
Cure of error by facts otherwise established by presumptions of law or judicial notice see infra § 1751.

96. Ill.—Harrison v. Chicago City R. Co., 178 Ill.App. 597.
S.C.—McClintock v. Charleston, etc., R. Co., 64 S.E. 1009, 83 S.C. 58.
4 C.J. p 1008 note 89.

97. Ala.—Franklin v. Argyro, 100 So. 811, 211 Ala. 506.
Rhodes v. McWilson, 77 So. 465, 16 Ala.App. 315, certiorari denied

the exclusion of evidence offered by plaintiff is harmless error where a verdict is properly directed

Ex parte Rhodes, 79 So. 462, 202 Ala. 68, 1 A.L.R. 568.

Ark.—Supreme Lodge Woodmen of Union of U. S. v. Montgomery, 8 S.W.2d 446, 177 Ark. 865—C. E. Ferguson Sawmill Co. v. Rhynes, 191 S.W. 920, 127 Ark. 617.

Cal.—Scholle v. Finnell, 159 P. 1179, 173 C. 372.

MacLean v. City and County of San Francisco, App., 311 P.2d 158—Taylor v. Heydenreich, 207 P.2d 599, 92 C.A.2d 684—Del Barrio v. Sherman, 60 P.2d 559, 16 C.A.2d 407—Calistoga Nat. Bank v. Calistoga Vineyard Co., App., 42 P.2d 82, reheard 46 P.2d 246, 7 C.A.2d 65—Layne v. Malmgren, 279 P. 670, 99 C.A. 742—Saner v. Knight, 260 P. 942, 86 C.A. 347—Ball v. Glantz, 248 P. 258, 78 C.A. 49—Mondine v. Labaig, 186 P. 1047, 44 C.A. 781.

Conn.—Lovejoy v. Town of Darien, 41 A.2d 98, 131 Conn. 533—Fine v. Moomjian, 158 A. 241, 114 Conn. 226.

Fla.—Mitchell v. Moore, 13 So.2d 314, 152 Fla. 843.

Ga.—Bacon v. Howard, 110 S.E. 888, 152 Ga. 616—Blakey v. Bank of Richland, 105 S.E. 494, 150 Ga. 782.

Parsons v. Grant, 98 S.E.2d 219, 95 Ga.App. 431—Gav v. Jenkins County, 191 S.E. 389, 55 Ga.App. 757—Chamlee v. Roberts, 110 S.E. 342, 28 Ga.App. 59—Atlantic Coast Line R. Co. v. Willis, 90 S.E. 288, 18 Ga.App. 674.

Hawaii.—Schuman Carriage Co. v. Paxson, 27 Hawaii 161.

Ill.—Kawkes v. Richter Food Products, 49 N.E.2d 852, 320 Ill.App. 134. See Hansen v. Ferree, 195 Ill. App. 27.

Ind.—Perkins v. Sullivan, App., 143 N.E.2d 105—Roesner v. American Car & Foundry Co., 5 N.E.2d 688, 104 Ind.App. 55.

Iowa.—Unmack v. Fosdick, 199 N.W. 339, 198 Iowa 513—Martin v. Interstate Business Men's Acc. Ass'n, 174 N.W. 577, 187 Iowa 869—Peterson v. McManus, 172 N.W. 460, 187 Iowa 522.

Kan.—Gantz v. Bondurant, 155 P.2d 450, 159 Kan. 389—First Nat. Bank v. Jucksch, 225 P. 111, 115 Kan. 762.

Ky.—Fahrenholtz v. Loomis, 132 S.W. 2d 307, 280 Ky. 9—Davis v. Pendennis Club, 19 S.W.2d 1078, 230 Ky. 465.

Me.—Rioux v. Employers Liability Assur. Corp., 187 A. 753, 134 Me. 459.

Md.—State v. Phillinger, 130 A. 878, 142 Md. 365—Willard v. Higdon, 91 A. 577, 123 Md. 447, Ann.Cas.1916C 339.

Mass.—Geffen v. Paletz, 43 N.E.2d 133, 312 Mass. 48—Westminster Nat. Bank v. Graustein, 170 N.E. 621, 270 Mass. 565, certiorari denied Graustein v. Westminster Nat. Bank, 51 S.Ct. 80, 282 U.S. 876, 75 L.Ed. 773—Shapiro v. Park Trust Co., 149 N.E. 313, 253 Mass. 383—Loweth v. Bradford, 116 N.E. 892, 227 Mass. 584.

Mich.—Zook v. Theisen-Clemens Co., 263 N.W. 875, 273 Mich. 536—Miskiewicz v. Smolenski, 227 N.W. 789, 249 Mich. 63—Harley v. Hartford Fruit Growers' & Farmers' Exch., 184 N.W. 507, 216 Mich. 146.

Minn.—Dose v. Yager, 42 N.W.2d 420, 231 Minn. 90—Walsh v. Fawkes Auto Co., 212 N.W. 584, 170 Minn. 370—Abernethy v. Halk, 166 N.W. 218, 139 Minn. 252.

Mo.—Stone v. Farmington Aviation Corp., 232 S.W.2d 495, 360 Mo. 1015—McDonald v. Kansas City Gas Co., 59 S.W.2d 37, 332 Mo. 356—Wolfson v. Cohen, 55 S.W.2d 677—Simmons v. Wells, 20 S.W.2d 659, 323 Mo. 882—Busse v. White, 274 S.W. 1046—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 210.

Missouri Retail Hardware Ass'n v. Planters' Operating Co., App., 294 S.W. 755—Buhler Mill & Elevator Co. v. Jolly, 261 S.W. 353, 217 Mo.App. 240—Ætna Life Ins. Co. v. Kansas City Electric Light Co., 171 S.W. 580, 184 Mo.App. 718—Smith v. Cain, 166 S.W. 653, 180 Mo.App. 457.

N.J.—American Can Co. v. Dornoil Products Co., 19 A.2d 646, 126 N.J. Law 345—Schille v. Budd, 164 A. 564, 110 N.J.Law 150.

N.Y.—Wilson v. Curran, 180 N.Y.S. 337, 190 App.Div. 581.

N.C.—Ingold v. Phoenix Assur. Co., 52 S.E.2d 366, 230 N.C. 142, 8 A.L.R.2d 1437—Brown v. Featherstone, 163 S.E. 558, 202 N.C. 569—Smith v. Myers, 125 S.E. 178, 188 N.C. 551—Planters' Bank & Trust Co. v. Yelverton, 117 S.E. 299, 185 N.C. 314—Brewer v. Ring, 99 S.E. 358, 177 N.C. 476—Carson v. National Life Ins. Co., 88 S.E. 145, 171 N.C. 135.

Ohio.—Whigham v. Bannon, 153 N.E. 252, 21 Ohio App. 496.

Okl.—McKelvy v. Choctaw Cotton Oil Co., 178 P. 882, 72 Okl. 74.

Or.—Pokorny v. Williams, 260 P.2d 490, 199 Or. 17.

Pa.—Isherwood v. Springs-First Nat. Bank in Cambridge Springs, 74 A. 2d 89, 365 Pa. 225—Boyd v. Kilmer, 132 A. 709, 285 Pa. 533.

Bekelja v. James E. Strates Shows, Inc., Com.Pl., 53 Dauph. Co. 141.

R.I.—Gardner v. Gardner, 129 A. 3.

S.C.—Foreman v. Augusta-Aiken Ry. & Electric Corporation, 105 S.E. 893, 115 S.C. 400.

S.D.—In re Johnson's Estate, 283 N.W. 151, 66 S.D. 331, 120 A.L.R. 574.

Tenn.—Roach v. Fransle, 268 S.W.2d 118, 37 Tenn.App. 629—Olson v. Sharpe, 259 S.W.2d 867, 36 Tenn. App. 557.

Tex.—B. F. & C. M. Davis Co. v. W. E. Callaghan Const. Co., Com.App., 298 S.W. 273.

Gross v. Dallas Railway & Terminal Co., Civ.App., 131 S.W.2d 113, error dismissed, judgment correct—Sturdevant v. Hooper, Civ.App., 101 S.W.2d 379, error dismissed—Doss v. Southwestern Transp. Co., Civ. App., 89 S.W.2d 1092, error refused—Parks v. Hines, Civ.App., 68 S.W.2d 364—Jones v. Clements, Civ.App., 41 S.W.2d 1069—Peveto v. Richardson, Civ.App., 38 S.W. 2d 133—American Equitable Assur. Co. of New York v. Martin, Civ. App., 33 S.W.2d 287—Casstevens v. Texas & P. Ry. Co., Civ.App., 28 S.W.2d 288, reversed on other grounds 32 S.W.2d 637, 119 Tex. 456, 73 A.L.R. 89—Knight v. Texas & N. O. R. Co., Civ.App., 26 S.W. 2d 672—Miller-Vidor Lumber Co. v. Schreiber, Civ.App., 24 S.W.2d 524—Great Southern Sulphur Co. v. Mills, Civ.App., 267 S.W. 528—Chicago, R. I. & G. Ry. Co. v. Steele, Civ.App., 264 S.W. 503—Texas Ranger Producing & Refining Co. v. Witt, Civ.App., 256 S.W. 984—McMahon v. Kirby, Civ.App., 256 S.W. 622—Farquharson v. Fresno Oil Co., Civ.App., 248 S.W. 481—Kubena v. Mikulascik, Civ.App., 228 S.W. 1105—Kiehn v. Willmann, Civ.App., 218 S.W. 15, error refused—Sellers v. Galveston, H. & S. A. Ry. Co., Civ.App., 208 S.W. 397, error refused—Youngblood v. Hoeffle, Civ.App., 201 S.W. 1057—Ford v. Cole, Civ.App., 195 S.W. 661—Cline v. Booty, Civ.App., 175 S. W. 1081.

Utah.—Showell v. Upton, 230 P. 1023, 64 Utah 380—James v. Jensen, 167 P. 827, 50 Utah 485.

Vt.—Bagalio v. Hoar, 110 A.2d 719, 118 Vt. 386—Bethel Mills v. Whitcomb, 76 A.2d 548, 116 Vt. 357—Holton v. Ellis, 49 A.2d 210, 114 Vt. 471—Flint v. Davis, 8 A.2d 671, 110 Vt. 401—Jasmin v. Parker, 148 A. 874, 102 Vt. 405.

Wash.—Miller v. United Pac. Casualty Ins. Co., 60 P.2d 714, 187 Wash. 629—McCush v. Whatcom Timber Co., 246 P. 933, 139 Wash. 314, certiorari denied Tubbs v. State of Washington, 47 S.Ct. 242, 273 U.S. 732, 71 L.Ed. 864—Van Allen v. Post, 226 P. 721, 130 Wash. 224.

Wis.—Davis v. Fay, 61 N.W.2d 885, 265 Wis. 426—Maxwell v. Johnson, 161 N.W. 736, 165 Wis. 462—Lloyd Inv. Co. v. Illinois Surety Co., 160 N.W. 58, 164 Wis. 282.

4 C.J. p 1008 note 90.

Testamentary capacity

Erroneous exclusion of testimony

on grounds other than those to which the excluded evidence relates,[98] where the court or jury find as a fact the matter which such evidence would have tended to show,[99] or where a verdict for the party offering the evidence is set aside for reasons not growing out of the rejection of the evidence.[1]

Where the jury find against the existence of a fact, the exclusion of evidence assuming its existence becomes nonprejudicial.[2] Similarly, when an issue of fact is determined in favor of the excepting party, the exclusion of evidence offered by him on that issue is not prejudicial[3] unless it appears that the excluded evidence tended to increase or to diminish in his favor the results of the finding.[4] Exclusion of evidence, although erroneous, is rendered immaterial by a finding on an issue which renders the exclusion of such evidence immaterial.[5]

Exclusion of evidence material only on the question of damages is harmless where the jury find for defendant on the merits,[6] where a verdict is directed

of an attesting witness as to testamentary capacity was without prejudice, in view of a finding of undue influence.

Minn.—In re Olson's Estate, 223 N.W. 677, 176 Minn. 360.

98. Iowa.—Ankeney v. Brenton, 238 N.W. 71, 214 Iowa 357.

Mass.—Busy Bee Confectionery Co. v. Broadway Nat. Bank of Chelsea, 155 N.E. 16, 258 Mass. 360.

Or.—Pokorny v. Williams, 260 P.2d 490, 199 Or. 17.

S.C.—Free v. Life Ins. Co. of Virginia, 180 S.E. 28, 176 S.C. 295.

Tex.—Otto v. Republic Nat. Co., Civ. App., 173 S.W.2d 235, error refused.

4 C.J. p 1008 note 91.

99. Ala.—Ellard v. Goodall, 87 So. 196, 204 Ala. 644.

Cal.—Perelli-Minetti v. Lawson, 272 P. 573, 205 C. 642—Laux v. Bekins Van & Storage Co., 169 P. 1012, 177 C. 63.

Pizer v. Brown, 283 P.2d 1055, 133 C.A.2d 367, certiorari denied 76 S.Ct. 1045, 351 U.S. 932, 100 L.Ed. 1496—Fisher v. Brotherton, 255 P. 854, 82 C.A. 532.

Conn.—Fulton Trust Co. v. Trowbridge, 11 A.2d 393, 126 Conn. 369, 127 A.L.R. 747.

Ind.—Evansville, Mt. C. & N. Ry. Co. v. Scott, 114 N.E. 649, 67 Ind.App. 121.

Iowa.—Quenrud v. Moore-Sieg Const. Co. of Waterloo, 181 N.W. 16, 191 Iowa 580.

Ky.—Owings' Adm'r v. Gradison Const. Co., 43 S.W.2d 327, 241 Ky. 5—Cravens v. Merritt, 199 S.W. 785, 178 Ky. 727.

Mass.—City of Boston v. Santosuosso, 30 N.E.2d 278, 307 Mass. 302—Blabon v. Hay, 169 N.E. 268, 269 Mass. 401—Boston & P. R. Corporation v. Old Colony R. Co., 169 N.E. 157, 269 Mass. 190.

Mich.—Griggs v. Saginaw & F. Ry. Co., 162 N.W. 960, 196 Mich. 258.

N.C.—Lipscomb v. Cox, 147 S.E. 683, 197 N.C. 64.

R.I.—Lucey v. Allen, 117 A. 539, 44 R.I. 379.

S.D.—Tuthill v. Sherman, 165 N.W. 4, 39 S.D. 464.

Tex.—Douty v. Delta Drilling Co., Civ.App., 264 S.W.2d 164, error refused no reversible error—Benson v. Weaver, Civ.App., 250 S.W.2d 770, affirmed Weaver v. Benson, 254 S.W.2d 95, 152 Tex. 50—Humble Oil & Refining Co. v. Martin, Civ.App., 216 S.W.2d 251, affirmed in part and reversed in part on other grounds 222 S.W.2d 995, 148 Tex. 175—Hopkins v. Gunter Hotel Corp., Civ.App., 147 S.W.2d 973, error dismissed, judgment correct.

4 C.J. p 1008 note 92.

1. Mo.—Ham, etc., Inv. Co. v. Catherine Lead Co., 158 S.W. 369, 251 Mo. 721.

2. Cal.—Sievert v. Simonds, 200 P. 2d 95, 89 C.A.2d 34.

Mass.—De Santis v. Massachusetts Bonding & Insurance Co., 194 N.E. 136, 289 Mass. 315.

Tex.—Welch v. Woodmen of the World Life Ins. Soc., Civ.App., 175 S.W.2d 94, error refused—Holden v. Gibbons, Civ.App., 101 S.W.2d 837, error dismissed—Thomasson v. Davis, Civ.App., 74 S.W.2d 557.

4 C.J. p 1008 note 94.

3. Ariz.—Downs v. Sulphur Springs Val. Elec. Co-op., Inc., 297 P.2d 339, 80 Ariz. 286.

Ind.—City of Indianapolis v. Williams, 108 N.E. 387, 58 Ind.App. 447.

Minn.—Bartl v. City of New Ulm, 72 N.W.2d 303, 245 Minn. 148.

Mo.—Waddle v. Commonwealth Ins. Co., 170 S.W. 682, 184 Mo.App. 571.

N.Y.—Barone v. Forgette, 146 N.Y.S. 2d 63, 286 App.Div. 588, reargument and appeal denied 149 N.Y.S. 2d 235, 1 A.D.2d 792.

N.C.—Shuford v. Cook, 85 S.E. 142, 169 N.C. 52.

Tex.—San Augustine Independent School Dist. v. Freelove, Civ.App., 195 S.W.2d 175, error refused no reversible error—Richmond v. Hog Creek Oil Co., Civ.App., 229 S.W. 563, error dismissed, Com.App., 239 S.W. 904—Spadra-Clarksville Coal Co. v. Security Nat. Bank of Dallas, Civ.App., 206 S.W. 200.

Utah.—Smith v. Gilbert, 164 P. 1026, 49 Utah 510.

4 C.J. p 1008 note 95.

4. Me.—Pitcher v. Webber, 71 A. 1031, 104 Me. 401.

5. Cal.—In re Loud's Estate, 161 P. 2d 49, 70 C.A.2d 399.

Ohio.—Gault v. Hall, App., 127 N.E. 2d 533.

Pa.—Oliver v. Industrial Health, Accident & Life Ins. Co., 189 A. 736, 125 Pa.Super. 149.

Tex.—Valdez v. Yellow Cab Co., Civ. App., 260 S.W.2d 715—Davis v. Commercial Standard Ins. Co., Civ. App., 194 S.W.2d 599, error refused no reversible error—Miller v. Estep, Civ.App., 5 S.W.2d 876.

4 C.J. p 1008 note 97.

Several defenses

Where there is evidence sufficient to sustain one of several distinct defenses, alleged error as to matters of evidence relating wholly to other defenses is irrelevant and becomes immaterial, and the wrongful exclusion or admission of such evidence would be nonprejudicial error.

S.D.—Mundon v. Greenameyer, 184 N.W. 257, 44 S.D. 440.

6. U.S.—**Corpus Juris Secundum cited in** Gahimer v. Virginia-Carolina Chemical Corp., C.A.Ind., 241 F.2d 836, 844.

Ala.—Clancy Lumber Co. v. Howell, 70 So.2d 239, 260 Ala. 243—Salvation Army v. Security Roofing Co., 51 So.2d 513, 255 Ala. 349—Reed v. L. Hammel Dry Goods Co., 111 So. 237, 215 Ala. 494—Lewis v. Wallace, 82 So. 127, 203 Ala. 113—Helms v. Central of Georgia Ry. Co., 66 So. 470, 188 Ala. 393.

Cal.—Del Monte Ranch Dairy v. Bernardo, 164 P. 628, 174 C. 757—Barlow v. Barnes, 155 P. 457, 172 C. 98.

Zellers v. State, 285 P.2d 962, 134 C.A.2d 270—Bashford v. A. Levy & J. Zentner Co., 11 P.2d 51, 123 C.A. 204—Motor Service Express v. Cowan, 7 P.2d 763, 120 C.A. 284—Barclay McCowan Co. v. Steele, 225 P. 782, 66 C.A. 216.

Conn.—Delfino v. Warners Motor Exp., 114 A.2d 205, 142 Conn. 301—Sibley v. Krauskopf, 171 A. 4, 118 Conn. 158—Mills v. Davis, 101 A. 657, 92 Conn. 154.

Ga.—Parsons v. Foshee, 55 S.E.2d 386, 80 Ga.App. 127.

Ill.—Geschwindner v. Comer, 222 Ill. App. 417.

Ind.—Sheffield-King Milling Co. v. Spink Milling Co., 141 N.E. 533, 81 Ind.App. 208.

for defendant,[7] or where the damages awarded are not excessive.[8] Also refusal to admit competent evidence tending to relieve from liability for exemplary or punitive damages is harmless error where the verdict allows only actual damages.[9]

§ 1746. On Trial by Court without a Jury

On a trial by the court without a jury an erroneous exclusion of evidence which would not have affected the result is harmless error.

On a trial by the court without a jury, error in excluding competent evidence will be regarded as harmless, if it appears that no other or different judgment could have been rendered if the evidence had been admitted;[10] and if the conclusion of the court is sustained by the legal evidence of the case,

Iowa.—Benson v. Chase Grain Storage Co., 67 N.W.2d 433, 246 Iowa 591—Reimers v. Petersen, 22 N.W. 2d 817, 237 Iowa 550—Shannon v. Gaar, 15 N.W.2d 257, 234 Iowa 1360—Wiley v. Dobbins, 214 N.W. 529, 204 Iowa 174, 62 A.L.R. 432—Royal Tailors v. Stern, 190 N.W. 157—Scott v. Wilson, 179 N.W. 941, 190 Iowa 73—Schultz v. Starr, 164 N. W. 163, 180 Iowa 1319.

Ky.—Levi v. Gonzenbach, 33 S.W.2d 657, 236 Ky. 586—Grimes v. Thompson, 289 S.W. 290, 217 Ky. 389—Lam v. Earlington Mach. Works, 186 S.W. 152, 170 Ky. 384—Yandell v. Anderson & Spilman, 174 S.W. 481, 163 Ky. 702.

Me.—Briggs v. Lake Auburn Crystal Ice Co., 92 A. 185, 112 Me. 344.

Md.—Steinberg v. Pullman Co., 144 A. 363, 156 Md. 329.

Mass.—Thompson v. Globe Newspaper Co., 181 N.E. 249, 279 Mass. 176—Petition of Barnett, 133 N.E. 111, 240 Mass. 228—McNeil v. Middlesex & B. St. Ry. Co., 123 N.E. 676, 233 Mass. 254—Millen v. Gulesian, 118 N.E. 267, 229 Mass. 27.

Mich.—Grzelka v. Chevrolet Motor Car Co., 281 N.W. 568, 286 Mich. 141.

Miss.—Miley v. Foster, 90 So.2d 172—Hart v. Herring, 88 So.2d 108—Bass v. Burnett, 119 So. 827, 151 Miss. 852.

Mo.—Durmeier v. St. Louis County Bus Co., 203 S.W.2d 445—Clark v. Reising, 107 S.W.2d 33, 341 Mo. 282—Denkman v. Prudential Fixture Co., 289 S.W. 591—Gricus v. United Rys. Co. of St. Louis, 237 S.W. 763, 291 Mo. 582.

Williams v. Hyman-Michaels Co., App., 277 S.W. 593—Buhler Mill & Elevator Co. v. Jolly, 261 S.W. 353, 217 Mo.App. 240.

Mont.—Meinecke v. Skaggs, 213 P.2d 237, 123 Mont. 308.

Neb.—Perrine v. Hokser, 62 N.W.2d 677, 158 Neb. 190—Schlaifer v. Omaha & Council Bluffs St. Ry. Co., 152 N.W. 370, 98 Neb. 207.

N.C.—Bullard v. Ross, 171 S.E. 789, 205 N.C. 495.

Ohio.—Boviard & Seyfang Mfg. Co. v. Maitland, 110 N.E. 749, 92 Ohio St. 201.

Robinson v. City of Cleveland, Transit System, App., 113 N.E.2d 118.

Okl.—Salyer v. Central Nat. Bank, 312 P.2d 458—People's Ice & Fuel Co. v. Serat, 149 P. 870, 46 Okl. 762.

Or.—Cade v. Thompson, 225 P.2d 396, 190 Or. 242—Tycer v. Hartsell, 198 P.2d 263, 184 Or. 310.

Pa.—Nyce v. Muffley, 119 A.2d 530, 384 Pa. 107—McMullin v. Philadelphia Rapid Transit Co., 116 A. 832, 273 Pa. 159.

Tex.—Ramsey v. Polk County, Civ. App., 256 S.W.2d 425—Shasta Oil Co. v. Halliburton Oil Well Cementing Co., Civ.App., 10 S.W.2d 597—Gaertner v. Stolle, Civ.App., 238 S. W. 252, error refused.

Vt.—Utley v. Town School Dist. of Woodbury, 9 A.2d 117, 110 Vt. 522—Hutchinson v. Knowles, 184 A. 705, 108 Vt. 195, followed in 184 A. 711, 108 Vt. 208—Sykes v. Bartlett, 106 A. 561, 93 Vt. 70—Boynton v. Hunt, 92 A. 153, 88 Vt. 187.

Wash.—Van Dyke v. Johnson, 144 P. 540, 82 Wash. 377.

4 C.J. p 1009 note 98.

Complaints of pain

In an action for injuries, rejection of evidence of complaints of pain did not warrant a reversal, where the finding absolves defendant of liability.

Ala.—Reed v. L. Hammel Dry Goods Co., 111 So. 237, 215 Ala. 494.

Evidence in mitigation

If only nominal damages are allowed by the jury, the improper exclusion of evidence offered in mitigation of damages is harmless error.

Iowa.—Whitney v. Brownewell, 32 N. W. 285, 71 Iowa 251.

Exemplary damages

The jury having found, in an action for libel, that plaintiff was not entitled to actual damages, exclusion of evidence as to the value of defendant's business, directed to recovery of exemplary damages, was harmless.

Cal.—Chavez v. Times-Mirror Co., 237 P. 1085, 72 C.A. 694.

Losses not recoverable

In an action for wrongful attachment of live stock, where all the losses sustained were due to natural causes, and not to the attachment, plaintiff was only entitled to nominal damages, and he cannot complain of the exclusion of evidence of losses not recoverable.

Ky.—Crawford v. Staples, 212 S.W. 119, 184 Ky. 477.

On counterclaim

Errors predicated on the exclusion of evidence of defendant's damages on his counterclaim are foreclosed by a verdict for plaintiff.

Mo.—U. S. Fashion & Sample Book Co. v. Montrose Cloak & Suit Co., 218 S.W. 867.

7. Mont.—Granier v. Chagnon, 203 P.2d 982, 122 Mont. 322.

Vt.—Nichols v. Central Vermont Ry. Co., 109 A. 905, 94 Vt. 14, 12 A.L.R. 333.

4 C.J. p 1009 note 99.

8. Ariz.—J. & B. Motors v. Margolis, 257 P.2d 588, 75 Ariz. 392, 38 A.L.R. 2d 946.

Ark.—Breece-White Mfg. Co. v. Green, 287 S.W. 173, 171 Ark. 968.

Cal.—Bourdieu v. Seaboard Oil Corp., 146 P.2d 256, 63 C.A.2d 201.

Ky.—Bullock v. Gay, 177 S.W.2d 883, 296 Ky. 489.

Mo.—Linstroth v. Peper, 218 S.W. 431, 203 Mo.App. 278.

Ohio.—Accurate Die Casting Co. v. City of Cleveland, App., 113 N.E.2d 401.

Wash.—Eckhart v. Peterson, 162 P. 551, 94 Wash. 379.

Wis.—Canning v. Chicago & M. Electric Ry. Co., 157 N.W. 532, 163 Wis. 448.

4 C.J. p 1009 note 1.

9. Ala.—Birmingham R., etc., Co. v. Long, 59 So. 382, 5 Ala.App. 510.

Mo.—Hermann v. St. Joseph R., etc., Co., App., 129 S.W. 414.

N.C.—Childress v. Abeles, 84 S.E.2d 176, 240 N.C. 667, rehearing dismissed 86 S.E.2d 916, 242 N.C. 123.

Tex.—Temple v. Duran, Civ.App., 121 S.W. 253—Land v. Klein, 50 S.W. 638, 21 Tex.Civ.App. 3.

10. Ala.—Long v. Mann, 65 So.2d 500, 259 Ala. 17—Foshee v. State, 97 So. 565, 210 Ala. 155.

Cal.—Adams v. Cook, 101 P.2d 484, 15 C.2d 352.

In re Cesare's Estate, 279 P.2d 607, 130 C.A.2d 557—Bille v. Manning, 210 P.2d 254, 94 C.A.2d 142—Melvin v. Mortgage Guarantee Co., 51 P.2d 167, 10 C.A.2d 69—McEwan v. Bryson, 6 P.2d 271, 119 C.A. 219—Streff v. Gold Medal Creamery Co., 273 P. 831, 96 C.A. 18—Joseph Musto Sons-Keenan Co. v. Pacific States Corporation, 192 P. 138, 48 C.A. 452—Curci v. Lagomarsino, 151 P. 31, 27 C.A. 663.

Colo.—Operative Service Corporation v. McIntyre Pump Co., 277 P. 773, 85 Colo. 519.

Conn.—Corriveau v. Jenkins Bros., 132 A.2d 67, 144 Conn. 383—Davis v.

the appellate court will not reverse for erroneous rulings excluding evidence,[11] unless there was evidence excluded which should have been admitted, and which, if admitted and viewed in its most favorable light,[12] would have justified and required a different conclusion.[13] In equity cases where the appellate court renders such judgment as the pleadings and evidence warrant, the erroneous exclusion of evidence preserved in the record is harmless error,[14] particularly where the decree was for the right party.[15]

If, however, material evidence is excluded, and is not a part of the record before the appellate court, the error is not harmless.[16]

§ 1747. Appellant Not Entitled to Favorable Decision in Any Event

Where the complaining party is not entitled to a favorable decision in any event, an erroneous exclusion of evidence is harmless error.

Generally, the improper exclusion of evidence is harmless error where the complaining party would not have been entitled to a favorable decision in any event.[17] Thus, in an action for personal injuries

Greenstein, 153 A. 161, 112 Conn. 530—Town of Newtown v. Town of Southbury, 123 A. 278, 100 Conn. 251—McMahon v. Plumb, 92 A. 113, 88 Conn. 547.

Fla.—Prince v. Aucilla River Naval Stores Co., 137 So. 886, 103 Fla. 605.

Ill.—Brady v. Metropolitan Life Ins. Co., 72 N.E.2d 629, 331 Ill.App. 114—In re Cooper's Estate, 227 Ill. App. 332.

Iowa.—Zinkula v. Zinkula, 154 N.W. 158, 171 Iowa 287—Benjamin v. Petersen Heat, Light & Power Co., 153 N.W. 71, 170 Iowa 461.

Mich.—Jersey Shore Trust Co. v. Owosso Sav. Bank, 194 N.W. 588, 223 Mich. 513, 32 A.L.R. 714.

Minn.—Pump-It, Inc. v. Alexander, 42 N.W.2d 337, 230 Minn. 564.

Mo.—Ferguson v. Stokes, 269 S.W.2d 655—Cottonseed Delinting Corp. v. Roberts Bros., 218 S.W.2d 592—Devoto v. Devoto, 19 S.W.2d 662, 323 Mo. 716.

N.M.—Albuquerque Lumber Co. v. Tomei, 250 P. 21, 32 N.M. 5.

Tex.—St. Louis Southwestern Ry. Co. of Texas v. Culberson, Civ.App., 248 S.W. 111—Wells Fargo & Co. Express v. Powell, Civ.App., 177 S.W. 988.

Utah.—Chournos v. Evona Inv. Co., 93 P.2d 450, 97 Utah 335, rehearing denied 94 P.2d 470, 97 Utah 346—Ashto v. Skeen, 39 P.2d 1073, 85 Utah 489, rehearing denied 44 P.2d 688, 85 Utah 508.

Wash.—Kelly v. Valley Const. Co., 262 P.2d 970, 43 Wash.2d 679—Ness v. Bender, 138 P.2d 864, 18 Wash. 2d 243.

W.Va.—Pickens v. O'Hara, 200 S.E. 746, 120 W.Va. 751.

Wyo.—Arnold v. Jennings, 296 P.2d 989—Campbell v. Wyoming Development Co., 100 P.2d 124, 55 Wyo. 347, rehearing denied 102 P.2d 745, 55 Wyo. 347.

4 C.J. p 1019 note 76.

Absence of verified showing

In a nonjury case, the exclusion of competent evidence, except where a verified showing is made, is not reversible error.

Kan.—Kansas City v. Burns, 22 P.2d 444, 137 Kan. 905.

Cumulative evidence

Error in excluding cumulative evidence is not reversible in a trial to a court.

Cal.—Ginn v. Podesta, 64 P.2d 1090, 8 C.2d 233—Nulty v. Price, 260 P. 291, 202 C. 279.

Rios v. Chand, 280 P.2d 47, 130 C.A.2d 833—Black v. Black, 204 P. 2d 950, 91 C.A.2d 328.

11. Cal.—Lutz v. Merchants' Nat. Bank of San Diego, 177 P. 158, 179 C. 401—Byerley v. Conlin, 161 P. 1150, 174 C. 40.

Ill.—Newman v. Youngblood, 69 N.E. 2d 309, 394 Ill. 617.

Mass.—Maim v. Dubrey, 88 N.E.2d 900, 325 Mass. 63.

Mo.—Ensign v. Home for Jewish Aged, App., 274 S.W.2d 502—Wilson v. White, App., 272 S.W.2d 1—Joseph S. Baum Mercantile Co. v. Levin, 174 S.W. 442, 189 Mo.App. 237.

N.J.—Batts v. Eastern Mut. Life Corp., 8 A.2d 78, 123 N.J.Law 121.

Okl.—Citizens-First Nat. Bank of Independence, Kan. v. Whiting, 240 P. 641, 112 Okl. 221.

Pa.—Banca D'Italia & Trust Co. v. Giordano, 36 A.2d 242, 154 Pa. Super. 452.

R.I.—New England Transp. Co. v. Doorley, 197 A. 205, 60 R.I. 50.

Utah.—Paxton v. Fisher, 45 P.2d 903, 86 Utah 408.

Vt.—Hooker, Corser & Mitchell Co. v. Hooker, 92 A. 443, 88 Vt. 335.

4 C.J. p 1020 note 77.

12. Wash.—In re Ward's Estate, 292 P. 737, 159 Wash. 252.

13. Conn.—Reynolds v. Vroom, 42 A. 2d 336, 132 Conn. 53.

Iowa.—Stevens v. People's Sav. Bank, 171 N.W. 130, 185 Iowa 619.

Miss.—Sutton v. Hayes, 86 So.2d 337.

4 C.J. p 1020 note 78.

14. Mo.—Butler County v. Campbell, 182 S.W.2d 589, 353 Mo. 413—Edinger v. Kratzer, 175 S.W.2d 807—Lowe v. Montgomery, 11 S.W.2d 41, 321 Mo. 330.

Kerr v. Prudential Ins. Co. of America, 194 S.W.2d 706, 238 Mo. App. 972—Magee v. Pope, 112 S.W. 2d 891, 234 Mo.App. 191—Cunningham v. Kinnerk, App., 74 S.W.2d 1107.

S.D.—Bank of Dallas v. Wright, 196 N.W. 300, 47 S.D. 88.

Evidence before court

(1) In a chancery suit, the erroneous rejection of evidence will not be deemed prejudicial, if the facts of the transaction are before the court from other evidence.

S.D.—Bank of Dallas v. Wright, supra.

(2) Rejection of testimony, on cross-examination, pertaining to witness' opinion as to competency of defendant was not prejudicial error in view of fact that chancellor was fully aware of defendant's past history and had made a close personal observation of defendant.

Miss.—Hartness v. Nix, 67 So.2d 718, 218 Miss. 750.

15. N.H.—Lavoie v. North British & Mercantile Ins. Co., 161 A. 376, 85 N.H. 550, reheard 162 A. 182, 85 N. H. 550.

16. Ala.—Woody v. Tucker, Willingham & Co., 110 So. 465, 215 Ala. 278.

17. Ala.—Harris v. Eller, 10 So.2d 284, 243 Ala. 415—Rowe v. Alabama Power Co., 167 So. 324, 232 Ala. 257—Taylor v. General Refrigeration Sales Co., 165 So. 572, 231 Ala. 469—McGifford v. Protective Life Ins. Co., 151 So. 349, 227 Ala. 588—Isbell v. Northern Alabama Ry. Co., 106 So. 145, 213 Ala. 692—Berry v. Marx, 91 So. 583, 206 Ala. 619—Lewis v. Wallace, 82 So. 127, 203 Ala. 113—Lowery v. Mutual Loan Soc., 79 So. 389, 202 Ala. 51.

Box v. Metropolitan Life Ins. Co., 168 So. 209, 27 Ala.App. 21, reversed on other grounds 168 So. 216, 232 Ala. 1, and reversed on other grounds 168 So. 217, 232 Ala. 321, certiorari denied 168 So. 220, 232 Ala. 447—Acha Hermanos y Cia v. Rosengrant, 84 So. 399, 17 Ala.App. 267, certiorari denied Ex parte Acha Hermanos y Cia, 85 So. 265, 204 Ala. 85.

Ark.—Penny v. Gulf Refining Co., 233 S.W.2d 372, 217 Ark. 805—Yarnell v. Mechanics' Ins. Co., 13 S.W.2d

or wrongful death, any error in excluding evidence | of negligence on the part of defendant has been held

303, 178 Ark. 1106—The Famous Store v. Lund-Mauldin Co., 233 S.W. 767, 149 Ark. 658—Dewberry v. Furst & Thomas, 225 S.W. 294, 146 Ark. 26—Arkansas Logging Co. v. Martin, 173 S.W. 184, 116 Ark. 318.

Cal.—Klett v. Security Acceptance Co., 242 P.2d 873, 38 C.2d 770—Pearson v. Hellman Commercial Trust & Savings Bank, 249 P. 10, 199 C. 305—Bayly v. Lee, 162 P. 96, 174 C. 137.

Ideal Hardware & Supply Co. v. Department of Employment, 250 P.2d 353, 114 C.A.2d 443—Walker v. Greenberger, 147 P.2d 105, 63 C.A. 2d 457—Hanley v. Marsh & McLennan-J. B. F. Davis & Son, 117 P. 2d 69, 46 C.A.2d 787—Fuller v. Vista Del Arroyo Hotel, 108 P.2d 920, 42 C.A.2d 400—Wallace v. Kerr, 108 P.2d 754, 42 C.A.2d 182—Prichard v. Southern Pac. Co., 51 P.2d 426, 9 C.A.2d 701—Browne v. Los Angeles Ry. Corporation, 4 P. 2d 279, 117 C.A. 559—Bakos v. Shell Co. of California, 300 P. 982, 115 C.A. 142—Warfield v. Krueger, 274 P. 764, 96 C.A. 671—Tilden v. Tilden, 254 P. 310, 81 C.A. 535—Sherlock v. Alturas State Bank, 238 P. 816, 73 C.A. 391—Careaga v. Moore, 234 P. 121, 70 C.A. 614—Harlow v. Silveria, 225 P. 471, 66 C.A. 91—Hussey v. Loeb, 213 P. 271, 60 C.A. 469—Sellars v. Southern Pac. Co., 166 P. 599, 33 C.A. 701.

Colo.—Parker v. Ullom, 271 P. 187, 84 Colo. 433—Dregman v. Van Bradt, 180 P. 84, 66 Colo. 168.

Conn.—State ex rel. McCarthy v. Watson, 45 A.2d 716, 132 Conn. 518, 164 A.L.R. 1238.

Fla.—Hopkins v. McClure, 45 So.2d 656—Blitch v. Sapp, 194 So. 328, 142 Fla. 166—Powell v. Wilson Lumber Co. of Florida, 155 So. 116.

Ga.—McKee v. Hubert, 85 S.E.2d 757, 211 Ga. 329—Robinson v. Murray, 32 S.E.2d 496, 198 Ga. 690—Archer v. Kelley, 21 S.E.2d 51, 194 Ga. 117—Green v. Atlanta Joint Stock Land Bank, 185 S.E. 342—Hill v. McLendon, 95 S.E. 232, 147 Ga. 733.

Fulton Nat. Bank of Atlanta v. Didschuneit, 88 S.E.2d 853, 92 Ga. App. 527, followed in 88 S.E.2d 862, 92 Ga.App. 539—Campbell v. H. L. Green Co., 46 S.E.2d 351, 76 Ga. App. 477—Reynolds v. Sanders, 8 S.E.2d 792, 62 Ga.App. 572—Kaylor v. Bolton, 173 S.E. 191, 48 Ga.App. 670—Ennis v. Purchase & Sale Co., 160 S.E. 878, 44 Ga.App. 117—Teasley v. Nelson, 148 S.E. 534, 39 Ga.App. 773—Render v. Jones Mercantile Co., 126 S.E. 159, 33 Ga.App. 394—Hill Bro. v. Render, 125 S.E. 79, 33 Ga.App. 13—Coffee v. Worsham & Weaver, 119 S.E. 665, 31 Ga.App. 62—Beck & Gregg Hardware Co. v. Hall Hardware Co., 117 S.E. 271, 30 Ga.App. 224—Five Minute Vulcanizer & Auto Supply Co. v. McMillan, 108 S.E. 478, 27 Ga. App. 381.

Ill.—Brown v. Illinois Terminal Co., 150 N.E. 242, 319 Ill. 326.

Bezouskas v. Kruger, 19 N.E.2d 116, 298 Ill.App. 462—Miller v. Lake View State Bank, 240 Ill.App. 395. See Ferguson v. Steiner, 208 Ill.App. 227.

Ind.—Cousins v. Glassburn, 24 N.E. 2d 1013, 216 Ind. 431—Van Natta v. Van Natta, 121 N.E. 825, 188 Ind. 75.

Kozanjieff v. Petroff, 73 N.E.2d 695, 117 Ind.App. 545—Avery v. Citizens' Loan & Trust Co., 180 N.E. 23, 94 Ind.App. 161—Foster v. North Side Bank, 150 N.E. 807, 85 Ind.App. 70—Price v. Engle, 133 N. E. 755, 77 Ind.App. 439—In re Meyer's Estate, 125 N.E. 219, 71 Ind.App. 564—Shane Bros. & Wilson Co. v. Barrett, 124 N.E. 780, 71 Ind.App. 331—State v. Hillis, 124 N.E. 515, 79 Ind.App. 599.

Iowa.—Goodman v. Gonse, 76 N.W.2d 873—In re Lewman's Estate, 30 N. W.2d 737, 239 Iowa 563—Fortman v. McBride, 263 N.W. 345, 220 Iowa 1310—In re Work's Estate, 233 N.W. 28, 212 Iowa 31—Insell v. McDaniels, 207 N.W. 533, 201 Iowa 533—McMillan v. Jaeger Mfg. Co., 186 N.W. 849.

Kan.—Snodgrass v. Snodgrass, 169 P. 1147, 102 Kan. 281.

Ky.—Pickering v. Simpkins, 111 S. W.2d 650, 271 Ky. 288—Raikes v. Payne, 249 S.W. 1020, 198 Ky. 820—Buckles v. White, 175 S.W. 12, 164 Ky. 140.

La.—Guss v. Mathews, 155 So. 765, 179 La. 1033—Succession of Warren, 110 So. 891, 162 La. 649.

Me.—Dambrosia v. Edwards, 148 A. 673, 128 Me. 458—Guild v. Eastern Trust & Banking Co., 133 A. 164 125 Me. 292.

Md.—Bond v. Forthuber, 84 A.2d 886, 198 Md. 476—City of Baltimore v. State, 126 A. 130, 146 Md. 440—Lambert v. Philadelphia, B. & W. R. Co., 125 A. 765, 145 Md. 662—Charles v. Mayor and City Council of City of Baltimore, 114 A. 565, 138 Md. 523—Deane v. Big Spring Distilling Co., 113 A. 891, 138 Md. 388.

Mass.—Hyland v. Seaver, 45 N.E.2d 835, 312 Mass. 535—Cook v. Farnum, 154 N.E. 577, 258 Mass. 145—Sawyer v. Old Lowell Nat. Bank, 119 N.E. 825, 230 Mass. 342, 1 A.L. R. 269—De Wolfe v. McAllister, 118 N.E. 885, 229 Mass. 410—Bradford v. Boston & M. R. R., 113 N.E. 1042, 225 Mass. 129.

Mich.—Standard Oil Co. v. Gonser, 49 N.W.2d 45, 331 Mich. 29.

Minn.—Porter v. Grennan Bakeries, 16 N.W.2d 906, 219 Minn. 14—Calhoun Beach Holding Co. v. Minneapolis Builders' Supply Co., 252 N. W. 442, 190 Minn. 576—Corn v. Sheppard, 229 N.W. 869, 179 Minn. 490—Erickson v. Macomber, 204 N.W. 313, 163 Minn. 514—Haney v. Ferch, 185 N.W. 397, 150 Minn. 323.

Mo.—Bohnsack v. Hanebrink, 240 S. W.2d 903—Cottonseed Delinting Corp. v. Roberts Bros., 218 S.W.2d 592—Remmers v. Remmers, 239 S. W. 509—Adair v. Kansas City Terminal R. Co., 220 S.W. 920, 282 Mo. 133.

Housden v. Berns, App., 273 S.W. 2d 794—Summers v. Peoples Elevator Co., App., 136 S.W.2d 81—Taylor v. Kansas City Terminal Ry. Co., App., 240 S.W. 512.

Mont.—Vaughn v. Mesch, 87 P.2d 177, 107 Mont. 498, 123 A.L.R. 1106—Willson v. Woodmen of the World, 64 P.2d 1064, 104 Mont. 31—Reid v. Linder, 251 P. 157, 77 Mont. 406—Roberts v. Chicago, M. & St. P. Ry. Co., 216 P. 332, 67 Mont. 472.

Neb.—Bedford v. Herman, 63 N.W. 2d 772, 158 Neb. 400—Weitz v. U. S. Trust Co., 10 N.W.2d 623, 143 Neb. 703.

N.J.—Hart v. New York Sash & Door Co., 46 A.2d 385, 134 N.J.Law 151.

Thirteenth Ward Building & Loan Ass'n of Newark v. Weissberg, 170 A. 662, 115 N.J.Eq. 487.

N.M.—Laughlin v. Laughlin, 155 P.2d 1010, 49 N.M. 20.

N.Y.—Wallace v. Wallace, 109 N.E. 872, 216 N.Y. 28.

Hansell v. Galvani, 144 N.Y.S.2d 852, 286 App.Div. 1019, reargument and appeal denied 146 N.Y.S.2d 926, 286 App.Div. 1104—Paul v. Consolidated Fireworks Co. of America, 163 N.Y.S. 953, 177 App.Div. 85.

Kingston Braid Mills v. Aboff, 179 N.Y.S. 127.

N.C.—Hopkins v. Comer, 81 S.E.2d 368, 240 N.C. 143—Ridenhour v. Miller, 35 S.E.2d 611, 225 N.C. 543—Gibbs v. Russ, 26 S.E.2d 909, 223 N.C. 349—Pate v. Duke University, 1 S.E.2d 127, 215 N.C. 57—Sams v. Hotel Raleigh, 172 S.E. 371, 205 N.C. 758—Wilcox v. McLeod, 109 S.E. 875, 182 N.C. 637.

Ohio.—Sherer v. Smith, 99 N.E.2d 763, 155 Ohio St. 567.

Thomas v. Merchants Nat. Bank, App., 114 N.E.2d 863—Wolf v. Glenn, App., 99 N.E.2d 320—William Taylor Sons & Co. v. Burton, 188 N.E. 874, 46 Ohio App. 398—Breck v. Rollaway Motor Co., 155 N.E. 147, 23 Ohio App. 79.

Okl.—Starmer v. Mid-West Chevrolet Corp., 51 P.2d 786, 175 Okl. 160—**Corpus Juris cited in** Illinois Valley Trust Co. v. Sherley, 14 P.2d 385, 159 Okl. 90—Palmer v. Replogle, 4 P.2d 30, 33, 152 Okl. 140—Tradesmen's Nat. Bank of Oklahoma City

harmless where it appears that plaintiff was guilty of contributory negligence barring recovery,[18] or where plaintiff failed to show that intestate was exercising due care when killed.[19] Similarly, where plaintiff fails to sustain his case, any error in excluding evidence offered by defendant is harmless, since in such case no disproof is necessary.[20]

§ 1748. Facts Otherwise Established

Where the facts sought to be proved are otherwise established, an erroneous exclusion of evidence may be rendered harmless.

Although there is error in the exclusion of evidence, it may be unprejudicial and not cause for reversal,[21] as where the exclusion of evidence complained of affected only the question of damages, and the rule of damages adopted by the trial court was correct;[22] where the facts sought to be established by the evidence excluded were subsequently admitted into evidence by the adverse party;[23] where the

v. Harris, 291 P. 38, 145 Okl. 54—Loyal Union Circle v. Rose, 245 P. 624, 117 Okl. 25—Wrightsman Petroleum Co. v. Martin, 239 P. 663, 111 Okl. 279—First Nat. Bank v. Clay, 177 P. 115, 74 Okl. 112—Fiedler v. Botts, 148 P. 154, 46 Okl. 245.

Or.—O'Brien v. Dunigan, 210 P.2d 567, 187 Or. 227.

Pa.—Petition of Knauer, 134 A. 463, 287 Pa. 115—Justice v. Watkins, 119 A. 824, 276 Pa. 138.

Lang v. Lang, 14 A.2d 216, 140 Pa.Super. 356.

R.I.—Affleck v. Potomac Ins. Co., 140 A. 469, 49 R.I. 112, reargument denied 141 A. 183.

S.C.—Register v. Life Ins. Co. of Va., 50 S.E.2d 197, 213 S.C. 508—Sadler v. Pure Oil Co., 173 S.E. 640, 172 S.C. 220.

S.D.—Chiles v. Rohl, 201 N.W. 154, 47 S.D. 580.

Tenn.—Swift v. Beaty, 282 S.W.2d 655, 39 Tenn.App. 292.

Tex.—Meaney v. Nueces County Nav. Dist. No. 1, Civ.App., 222 S.W.2d 402, error refused—Thornburg v. Manskey, Civ.App., 219 S.W.2d 720, error refused no reversible error—Langston v. Tex-O-Kan Flour Mills Co., Civ.App., 211 S.W.2d 1020, error refused no reversible error—Elmore v. J. S. Hunt Lumber Co., Civ.App., 194 S.W.2d 808, error dismissed—Surkey v. Qua, Civ.App., 173 S.W.2d 230, error refused—Bute v. Duson, Civ.App., 95 S.W.2d 493, error dismissed—Texas-Louisiana Power Co. v. Webster, Civ.App., 59 S.W.2d 902—Whittley v. Howerton, Civ.App., 18 S.W.2d 687—Cunningham v. Buel, Civ.App., 287 S.W. 683—C. E. Parks Grain Co. v. Townsend, Civ.App., 267 S.W. 1011—Illinois Cent. R. Co. v. Ryan, Civ. App., 214 S.W. 642—Burlington Buggy Co. v. Usrey, Civ.App., 209 S.W. 684—Morales v. Cline, Civ. App., 202 S.W. 754, dismissed for want of jurisdiction.

Utah.—Zuniga v. Evans, 48 P.2d 513, 87 Utah 198—Robison v. Kelly, 255 P. 430, 69 Utah 376—Morrissey v. Union Pac. R. Co., 249 P. 1064, 68 Utah 328—Shaw v. O'Byrne, 228 P. 570, 64 Utah 139.

Vt.—Peltier v. Larose, 132 A. 45, 99 Vt. 343—Campbell v. Bryant, 129 A. 299, 98 Vt. 486.

Va.—Twohy v. Harris, 72 S.E.2d 329, 194 Va. 69—Harris v. Howerton, 194 S.E. 692, 169 Va. 647—Richardson v. Breeding, 187 S.E. 454, 167 Va. 30—Richeson v. Wood, 163 S.E. 339, 158 Va. 269, 82 A.L.R. 1189.

Wash.—Sather v. Blodgett, 13 P.2d 60, 169 Wash. 25—Minkove v. Islander, 282 P. 913, 154 Wash. 490—Carey v. Herrick, 263 P. 190, 146 Wash. 283.

W.Va.—Robinette v. Hubbard Coal Mining Co., 107 S.E. 285, 88 W.Va. 514—Koch v. H. R. Wyllie China Co., 92 S.E. 656, 80 W.Va. 331.

Wis.—Nelson v. Ziegler, 220 N.W. 194, 196 Wis. 426.

Wyo.—Spriggs v. Cheyenne Newspapers, 182 P.2d 801, 63 Wyo. 416—Stockgrowers' State Bank v. Shultz, 276 P. 532, 40 Wyo. 274.

4 C.J. p 1009 note 3.

Exclusion of evidence which would not have affected the result generally see supra § 1739.

Where plaintiff fails to make a prima facie case

(1) The judgment will not be reversed because of the exclusion of testimony which would not have tended to make such case.

Ala.—Waldrop v. Langham, 69 So.2d 440, 260 Ala. 82.

Iowa.—Beck v. Wilbois, 190 N.W. 376, 194 Iowa 708.

Minn.—Wilcox v. Hedwall, 243 N.W. 711, 186 Minn. 500.

Tex.—Smith's Heirs v. Hirsch, Civ. App., 197 S.W. 754, error refused.

4 C.J. p 1009 note 3 [a].

(2) Where the recitals in a foreclosure deed of full compliance with the terms of power of sale were prima facie evidence of a valid foreclosure of the mortgage through which defendants claimed title, and, where plaintiffs offered no evidence to overcome the prima facie case, any adverse rulings on parol testimony offered by defendants to prove the same facts were harmless.

Ala.—Crabtree v. Price, 102 So. 605, 212 Ala. 387.

Exemplary damages

Plaintiff, failing to establish a right to compensatory damages for assault, malicious prosecution, and false imprisonment, was not injured by the exclusion of evidence on exemplary damages.

Cal.—Warfield v. Krueger, 274 P. 764, 96 C.A. 671.

18. Cal.—Stuart v. Harper, 284 P.2d 505, 133 C.A.2d 550—Rather v. City and County of San Francisco, 184 P.2d 727, 81 C.A.2d 625.

Ill.—See Devine v. Northwestern Elevated R. Co., 184 Ill.App. 64, affirmed 107 N.E. 118, 265 Ill. 641.

Iowa.—Darden v. Chicago Northwestern R. Co., 239 N.W. 531, 213 Iowa 583.

Kan.—Turner v. St. Louis-San Francisco Ry. Co., 189 P. 376, 106 Kan. 591.

Ky.—Hodge v. Barnard, 262 S.W.2d 668.

N.H.—Rancourt v. Boston & M. R. R., 30 A.2d 453, 92 N.H. 284.

N.Y.—Detzker v. City of New York, 47 N.Y.S.2d 203, 267 App.Div. 912, appeal denied 48 N.Y.S.2d 807, 267 App.Div. 1001.

Pa.—Krenn v. Pittsburgh, C., C. & St. L. Ry. Co., 103 A. 299, 259 Pa. 443.

S.C.—Wright v. Southern Ry. Co., 43 S.E.2d 139, 210 S.C. 432.

Tex.—Connor v. Heard & Heard, Civ. App., 242 S.W.2d 205, error refused no reversible error—Clark v. Beaumont, S. L. & W. R. Co., Civ.App., 64 S.W.2d 1036—Miller v. Estep, Civ.App., 5 S.W.2d 876.

Va.—Gordon v. Virginia Electric & Power Co., 143 S.E. 681, 150 Va. 442.

4 C.J. p 1010 note 4.

19. Mass.—French v. Sabin, 88 N.E. 845, 202 Mass. 240.

20. Ark.—Winn v. Scraper, 131 S.W. 72, 96 Ark. 647—Winn v. Whitehouse, 131 S.W. 70, 96 Ark. 42.

Colo.—Gates Iron Works v. Denver Engineering Works Co., 67 P. 173, 17 Colo.App. 15.

Tex.—Gillock v. Texas & P. Ry. Co., Civ.App., 302 S.W.2d 717.

4 C.J. p 1010 note 6.

21. Minn.—Elness v. Prudential Ins. Co. of America, 251 N.W. 183, 190 Minn. 169.

4 C.J. p 1019 note 69.

22. Mass.—Wier v. American Locomotive Co., 102 N.E. 481, 215 Mass. 303.

23. Iowa.—Liston v. Central Iowa R. Co., 29 N.W. 445, 70 Iowa 714.

Minn.—Loudy v. Clarke, 48 N.W. 25,

claim which the evidence tended to support or defeat was afterward withdrawn[24] or eliminated from the trial by agreement;[25] or where evidence was subsequently admitted which rendered the evidence excluded immaterial.[26]

Where those claiming damages from the death of intestate were allowed to show approximately the amount per annum which he contributed to them, they cannot, on appeal, contend that they were erroneously required to confine their inquiries to specific amounts.[27]

Evidence already admitted. A party cannot be injured by the rejection of cumulative evidence, and it is no ground for review that the court erroneously excluded evidence, where the same, or substantially the same, evidence had already been admitted,[28] especially where the evidence admitted is

45 Minn. 477—Carlson v. Small, 21 N.W. 737, 32 Minn. 492.

Vt.—Towne v. Rizzico, 32 A.2d 129, 113 Vt. 205.

4 C.J. p 1019 note 71.

24. S.C.—McClintock v. Charleston, etc., R. Co., 64 S.E. 1009, 83 S.C. 58.

4 C.J. p 1019 note 72.

25. Ga.—Fuller v. Wood, 72 S.E. 504, 137 Ga. 66.

26. Or.—Graham v. Coos Bay, etc., R. Nav. Co., 139 P. 337, 71 Or. 393.

27. Tex.—Rader v. Galveston, etc., R. Co., Civ.App., 137 S.W. 718.

28. Ala.—Jenkins v. Avery, 59 So.2d 671, 257 Ala. 387—Peinhardt v. Bonner, 169 So. 11, 232 Ala. 566—Pettus v. Louisville & N. R. Co., 106 So. 807, 214 Ala. 187—Thorn v. Henry, 86 So. 466, 204 Ala. 546—Whatley v. Nesbitt, 85 So. 550, 204 Ala. 334—Dickey v. Vaughn, 73 So. 507, 198 Ala. 283.

Ariz.—Solomon v. Solomon, 157 P.2d 605, 62 Ariz. 311.

Ark.—Mason v. Bowen, 183 S.W. 973, 122 Ark. 407.

Cal.—McCarthy v. City of Manhattan Beach, 264 P.2d 932, 41 C.2d 879, certiorari denied 75 S.Ct. 29, 348 U. S. 817, 99 L.Ed. 644—Fish v. Security-First Nat. Bank of Los Angeles, 189 P.2d 10, 31 C.2d 378—Dulux v. Alaska Packers' Ass'n, 170 P. 1133, 177 C. 465.

Neider v. Dardi, App., 313 P.2d 72—In re Levy's Estate and Guardianship, 290 P.2d 320, 137 C.A.2d 237—Zellers v. State, 285 P.2d 962, 134 C.A.2d 270—Brocke v. Naseath, 285 P.2d 291, 134 C.A.2d 23—Dike v. Golden State Co., 269 P.2d 619, 123 C.A.2d 6—Agnew v. Foell, 248 P.2d 758, 113 C.A.2d 595—Flanagan v. San Marcos Silk Co., 235 P.2d 107, 106 C.A.2d 458—Burns v. California Milk Transport, 200 P.2d 43, 89 C.A.2d 70—Moore v. Wimmer, 174 P.2d 640, 77 C.A.2d 199—Lozano v. Pacific Gas & Elec. Co., 161 P. 2d 74, 70 C.A.2d 415—Fuller v. Vista Del Arroyo Hotel, 108 P.2d 920, 42 C.A.2d 460—Winklemen v. Sides, 88 P.2d 147, 31 C.A.2d 387—Back v. Farnsworth, 77 P.2d 295, 25 C.A.2d 212—Armstrong v. Brown, 54 P.2d 1118, 12 C.A.2d 22.

Colo.—In re Livingston's Estate, 77 P.2d 649, 102 Colo. 148.

Conn.—Guhring v. Gumpper, 169 A. 189, 117 Conn. 548—Hydro-Centrifugals v. Crawford Laundry Co., 147 A. 31, 110 Conn. 49—Loethscher v. Campo, 141 A. 652, 107 Conn. 568.

Ga.—Stenger v. Mitchell, 28 S.E.2d 885, 70 Ga.App. 563—Segars v. City of Cornelia, 4 S.E.2d 60, 60 Ga.App. 457.

Idaho.—Blaine County Inv. Co. v. Mays, 291 P. 1055, 49 Idaho 766.

Ill.—People ex rel. Wangelin v. City of St. Louis, 10 N.E.2d 369, 367 Ill. 57.

Louis v. Youngren, 138 N.E.2d 696, 12 Ill.App.2d 198.

Ind.—American Maize Products Co. v. Widiger, 114 N.E. 457, 186 Ind. 227.

Snyder v. New York Cent. R. Co., 194 N.E. 796, 101 Ind.App. 258.

Iowa.—Rohlf v. Struckmeyer, 24 N. W.2d 1, 237 Iowa 1008—Hanna v. Central States Electric Co., 232 N. W. 421, 210 Iowa 864—Thompson v. Illinois Cent. R. Co., 158 N.W. 676, 177 Iowa 328.

Kan.—Big Chief Sales Co. v. Lowe, 283 P.2d 480, 176 Kan. 33—In re Gereke's Estate, 195 P.2d 323, 165 Kan. 249—In re Lightfoot's Estate, 182 P.2d 887, 163 Kan. 369—Glover v. Bux, 90 P.2d 1117, 150 Kan. 55—Hughes v. Vossler, 211 P. 123, 112 Kan. 466.

Ky.—Davenport v. Brewer, 265 S.W. 2d 451—McWhorter v. Ballou, 221 S.W.2d 667, 310 Ky. 764—Denney's Adm'r v. Albright, 183 S.W. 2d 937, 298 Ky. 696—City of Covington v. McKinney, 92 S.W.2d 1, 263 Ky. 131.

La.—Greer v. Pelican Natural Gas Co., App., 163 So. 431.

Md.—White Transp. Co. v. Michelin Tire Co., 161 A. 163, 163 Md. 142—Evening News Co. v. Bowie, 141 A. 416, 154 Md. 604.

Mass.—Jewett v. Dow, 129 N.E.2d 895, 333 Mass. 187—Perry v. Carter, 125 N.E.2d 780, 332 Mass. 508—Ross v. Nourse, 116 N.E.2d 323, 330 Mass. 666—Geffen v. Paletz, 43 N.E.2d 133, 312 Mass. 48—Snow v. Merchants Nat. Bank of New Bedford, 35 N.E.2d 213, 309 Mass. 354—Shachoy v. Chevrolet Motor Co., 182 N.E. 830, 280 Mass. 442.

Minn.—State v. Stevens, 80 N.W.2d 22, 248 Minn. 309—Hartmon v. National Heater Co., 60 N.W.2d 804, 240 Minn. 264—Nubbe v. Hardy Continental Hotel System of Minn., 31 N.W.2d 332, 225 Minn. 496—Scott v. Prudential Ins. Co. of America, 290 N.W. 431, 207 Minn. 131—Wade v. Citizens' State Bank of St. Paul, 206 N.W. 728, 165 Minn. 396.

Miss.—Deposit Guaranty Bank & Trust Co. v. J. F. Weaver Lumber Co., 60 So.2d 598, 215 Miss. 183.

Mo.—Hastey v. Kaime, 297 S.W. 50, 317 Mo. 1010.

Spivack v. Spivack, App., 283 S. W.2d 137—State ex rel. State Highway Commission v. Jacobs, App., 281 S.W.2d 597—Barton v. Farmers Ins. Exchange, App., 255 S.W. 2d 451—Bay v. Elmer, App., 237 S.W.2d 932—Kerby v. Schindell, 146 S.W.2d 670, 235 Mo.App. 691—Stephenson v. American Nat. Ins. Co., App., 78 S.W.2d 876—Vanausdol v. Bank of Odessa, 5 S.W.2d 109, 222 Mo.App. 91—Barnett v. Western Union Telegraph Co., App., 287 S.W. 1064—Edwards v. Yarbrough, App., 201 S.W. 972.

N.H.—Harvey v. Provandie, 141 A. 136, 83 N.H. 236.

N.J.—Barcello v. Biel, 61 A.2d 42, 137 N.J.Law 606—Von Schrader Mfg. Co. v. Rauscher, 15 A.2d 333, 125 N.J.Law 268.

N.Y.—Orent v. Equitable Life Assur. Soc. of U. S., 51 N.Y.S.2d 115, 268 App.Div. 299, amended on other grounds 52 N.Y.S.2d 787, 268 App. Div. 1005, motion granted 52 N.Y. S.2d 795, 268 App.Div. 1051.

N.D.—Baird v. Kottke, 228 N.W. 214, 58 N.D. 846.

Ohio.—Schwarz v. General Elec. Realty Corp., 126 N.E.2d 906, 163 Ohio St. 354.

McGinnis v. Walker, App., 40 N. E.2d 488—Gregoris v. Manos, App., 40 N.E.2d 466.

Okl.—Hudson v. Blanchard, 294 P.2d 554—McCarty v. Occidental Life Ins. Co. of Cal., 268 P.2d 221—Maynard v. Hustead, 90 P.2d 30, 185 Okl. 20—Kile v. Kile, 63 P.2d 753, 178 Okl. 576.

Or.—Dicillo v. Osborn, 282 P.2d 611, 204 Or. 171—Monner v. Starker, 26 P.2d 1097, 145 Or. 168.

Pa.—Clifford v. City of Philadelphia, 159 A. 232, 104 Pa.Super. 338.

R.I.—Grimley v. United Electric Rys. Co., 4 A.2d 373, 62 R.I. 192—Preston v. United Electric Rys. Co., 1

direct and that excluded is indirect.[29] Thus, where a written instrument is already in evidence, it is harmless error to deny a party the privilege of showing matters contained therein, either by oral testimony[30] or by deposition;[31] and conversely the exclusion of documentary evidence is harmless, where testimony has already been given concerning the contents thereof or the matters sought to be shown thereby.[32] Error in excluding photographs will not operate to reverse, where they were merely supplemental to the oral testimony.[33]

In accordance with the rule, it is also frequently held to be error without prejudice to exclude questions and answers which, because of the same witness having already given identically or substantially the same testimony, would amount to a mere repetition;[34] or where the witness has testified to the

A.2d 126, 61 R.I. 378—Bradley v. Quinn, 164 A. 330, 53 R.I. 108, reargument denied 166 A. 814, 53 R.I. 349.
S.D.—Sprick v. Schreiner, 236 N.W. 299, 58 S.D. 394.
Tenn.—Haskins v. Howard, 16 S.W. 2d 20, 159 Tenn. 86.
Monday v. Millsaps, 264 S.W.2d 6, 37 Tenn.App. 371—City of Kingsport v. Lane, 243 S.W.2d 289, 35 Tenn.App. 183—Brownlow v. Payne, 2 Tenn.App. 154.
Tex.—Sharp v. American Nat. Ins. Co., Civ.App., 126 S.W.2d 50—Garabrant v. Burns, Civ.App., 85 S.W.2d 859, reversed on other grounds 111 S.W.2d 1100, 130 Tex. 518—Green v. Hagens, Civ.App., 51 S.W.2d 771—Hatt v. Walker, Civ.App., 33 S.W.2d 489—Cartwright v. Alexander, Civ.App., 252 S.W. 1073.
Utah.—Pack v. Dunn, 37 P.2d 790, 84 Utah 597—Zimmerman v. Auerbach, 17 P.2d 251, 81 Utah 554.
Vt.—Massari v. Bolognani, 162 A. 364, 104 Vt. 474—Le Clair v. Montpelier & W. R. R. Co., 106 A. 587, 93 Vt. 92.
Wash.—Sutton v. Mathews, 247 P.2d 556, 41 Wash.2d 64—Girardi v. Union High School Dist. No. 1, Skagit County, 93 P.2d 298, 200 Wash. 21.
W.Va.—Elswick v. Charleston Transit Co., 36 S.E.2d 419, 128 W.Va. 241—Weaver v. Wheeling Traction Co., 114 S.E. 131, 91 W.Va. 528.
Wis.—Brandt v. Matson, 41 N.W.2d 272, 256 Wis. 314.
4 C.J. p 1012 note 16.

Copies of account book

Exclusion of copies of an account book was not reversible error, where the book was in evidence.
Mo.—Herr v. Graef, App., 267 S.W. 30.

Exclusion of X-ray photograph corroborative of a doctor's testimony as to plaintiff's injuries and cumulative was not prejudicial to defendants.
N.C.—Hamilton v. Southern Ry. Co., 158 S.E. 75, 200 N.C. 543, certiorari denied Southern Ry. Co. v. Hamilton, 52 S.Ct. 19, 284 U.S. 636, 76 L.Ed. 541.

29. Mo.—Homan v. Missouri Pac. R. Co., 64 S.W.2d 617, 334 Mo. 61, certiorari denied Missouri Pac. R. Co. v. Homan, 54 S.Ct. 561, 291 U.S. 683, 78 L.Ed. 1070.
4 C.J. p 1012 note 17.

30. Ala.—Spurlock v. J. T. Knight & Son, 20 So.2d 525, 246 Ala. 283.
Cal.—Tower v. McDowell, 31 P. 843, 3 C.Unrep.Cas. 714.
Ind.—Columbus, etc., R. Co. v. Braden, 11 N.E. 357, 110 Ind. 558.
Mo.—Stillwell v. Patton, 18 S.W. 1075, 108 Mo. 352.
R.I.—New England Transp. Co. v. Doorley, 197 A. 205, 60 R.I. 50.
4 C.J. p 1012 note 18.

31. Md.—Koch v. Wimbrow, 73 A. 896, 111 Md. 21.

32. Conn.—Stitham v. Le Ware, 60 A.2d 658, 134 Conn. 681.
Ill.—Feeley v. McAuliffe, 80 N.E.2d 373, 335 Ill.App. 99.
Ky.—Green River Steel Corp. v. Globe Erection Co., 294 S.W.2d 507.
N.J.—Robinson v. Borough of Edgewater, 119 A. 7, 98 N.J.Law 205.
Neb.—Bedford v. Herman, 63 N.W.2d 772, 158 Neb. 400.
Wash.—Simmons v. Kalin, 116 P.2d 840, 10 Wash.2d 409.
4 C.J. p 1012 note 20.

33. Colo.—Wold v. City of Boulder, 9 P.2d 931, 91 Colo. 44.
Neb.—Bedford v. Herman, 63 N.W.2d 772, 158 Neb. 400.
N.C.—Fleming v. Atlantic Coast Line R. Co., 73 S.E.2d 544, 236 N.C. 568.
4 C.J. p 1012 note 21.

Photographs taken from X-ray plates

Excluding photographs taken from X-ray plates was harmless, where the plates were in evidence.
Ohio.—Beach v. Chollett, 166 N.E. 145, 31 Ohio App. 8.

34. Ala.—Killian v. Everett, 79 So. 2d 17, 262 Ala. 434—Gulf, M. & O. R. Co. v. Sims, 69 So.2d 449, 260 Ala. 258—Watkins v. Reinhart, 9 So.2d 113, 243 Ala. 243—Little v. Sugg, 8 So.2d 866, 243 Ala. 196—Brasfield v. Hood, 128 So. 433, 221 Ala. 240—Burgin v. Stewart, 114 So. 182, 216 Ala. 663—Atlanta & St. A. B. R. Co. v. Spivey, 100 So. 759, 211 Ala. 520—Jefferson v. Republic Iron & Steel Co., 93 So. 890, 208 Ala. 143—New York Life Ins. Co. v. Norris, 91 So. 595, 206 Ala. 656—McMillan v. Aiken, 88 So. 135, 205 Ala. 35.
Becker Roofing Co. v. Carroll, 69 So.2d 295, 37 Ala.App. 385—Resolute Fire Ins. Co. v. O'Rear, 47 So.2d 425, 35 Ala.App. 398—Tennessee Valley Sand & Gravel Co. v. Pilling, 47 So.2d 236, 35 Ala. App. 237, certiorari denied 47 So.2d 245, 254 Ala. 10—Model City Lumber Co. v. Southern Ry. Co., 34 So. 2d 862, 33 Ala.App. 425, certiorari denied 34 So.2d 865, 250 Ala. 444—Blalack v. Blacksher, 66 So. 863, 11 Ala.App. 545.
Ariz.—Daly v. Williams, 280 P.2d 701, 78 Ariz. 382.
Cal.—Darnold v. Voges, 300 P.2d 255, 143 C.A.2d 230—Fesler v. Rawlins, 111 P.2d 380, 43 C.A.2d 541—Crudo v. Guida, 110 P.2d 109, 43 C.A.2d 26—In re De Graaf's Estate, 93 P.2d 199, 34 C.A.2d 120—Coleman v. Edgar, 257 P. 452, 83 C.A. 720—Fishel v. F. M. Ball & Co., 256 P. 493, 83 C.A. 128—Western Indemnity Co. v. Wasco Land & Stock Co., 197 P. 390, 51 C.A. 672—Bailey v. Moshier, 169 P. 913, 35 C.A. 345.
Conn.—Hoffman v. Mohican Co., 71 A.2d 921, 136 Conn. 392.
Del.—Mills Novelty Co. v. Transeau, 8 A.2d 93, 1 Terry 227.
Ga.—Tifton Brick & Block Co. v. Meadow, 88 S.E.2d 569, 92 Ga.App. 328—Davis v. Wing, 33 S.E.2d 725, 72 Ga.App. 380.
Idaho.—Johnson v. Richards, 294 P. 507, 50 Idaho 150.
Ill.—Darnell v. Strand Hotel Corp., 99 N.E.2d 583, 343 Ill.App. 517.
Ind.—Coca Cola Bottling Works of Evansville v. Williams, 37 N.E.2d 702, 111 Ind.App. 502.
Ky.—Commonwealth v. Webb, 216 S.W.2d 893, 309 Ky. 93.
Continental Ins. Co. v. Randolph, 11 Ky.Op. 125.
Md.—Berg v. Plitt, 12 A.2d 609, 178 Md. 155, reargument denied 13 A.2d 364, 178 Md. 155—Peninsula Produce Exch. v. American Ry. Express Co., 128 A. 403, 147 Md. 424.
Mass.—Whalen v. Shivek, 93 N.E.2d 393, 326 Mass. 142, 33 A.L.R.2d 74.
Minn.—Katlaba v. Pfeifer, 56 N.W.2d 725, 238 Minn. 298—Peterson v. Langsten, 242 N.W. 549, 186 Minn. 101—Draves v. Minneapolis & St. P. Suburban R. Co., 172 N.W. 128, 142 Minn. 321.
Mo.—Boring v. Kansas City Life Ins. Co., 274 S.W.2d 233.
Pierce v. Deering Southwestern Ry. Co., App., 219 S.W. 715—Mummaw v. Southwestern Telegraph & Telephone Co., App., 208 S.W. 476.
Mont.—Komposh v. Powers, 244 P.

facts in detail, to exclude further questions calling for a mere summary of his previous testimony,[35] or for a deduction, opinion, or conclusion based thereon.[36]

Nevertheless, if the evidence excluded is of more probative value than that admitted, or is not merely cumulative, the error is ground for reversal.[37]

§ 1749. —— By Other Evidence

Where the facts sought to be proved are clearly established by other evidence, an erroneous exclusion of evidence is harmless error.

No prejudicial error results from the erroneous exclusion of admissible evidence, where the fact sought to be proved or disproved by such evidence is clearly established by other evidence,[38] where the

298, 75 Mont. 493, affirmed Powers v. Komposh, 48 S.Ct. 156, 275 U.S. 504, 72 L.Ed. 396.
Neb.—Griess v. Borchers, 72 N.W.2d 820, 161 Neb. 217—Kunkel v. Cohagen, 39 N.W.2d 609, 151 Neb. 774.
Tex.—Biggs v. Washington Nat. Ins. Co., Civ.App., 275 S.W.2d 566—Cole v. Missouri-Kansas-Texas R. Co. of Texas, Civ.App., 179 S.W.2d 343, error refused—McEwen v. Texas & P. Ry. Co., Civ.App., 92 S.W.2d 308—North Texas Nat. Bank v. Thompson, Civ.App., 23 S.W.2d 494, affirmed Thompson v. North Texas Nat. Bank, Com.App., 37 S.W.2d 735—Duggan v. Merritt, Civ.App., 297 S.W. 1091—Kennedy v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 192 S.W. 1114, dismissed for want of jurisdiction.
Wyo.—Huber v. Thomas, 19 P.2d 1042, 45 Wyo. 440.
4 C.J. p 1012 note 22.

35. Cal.—Scheerer v. Deming, 97 P. 155, 154 C. 138.
Iowa.—Frick v. Kabaker, 90 N.W. 498, 116 Iowa 494.

36. Tex.—Missouri, K. & T. Ry. Co. of Texas v. Johnson, Civ.App., 193 S.W. 728, error refused.
4 C.J. p 1013 note 24.

37. Cal.—Bradburn v. Peacock, 286 P.2d 972, 135 C.A.2d 161.
Colo.—Washington Gold Min. Co. v. O'Laughlin, 105 P. 1092, 46 Colo. 503.
Ind.—New York Life Ins. Co. v. Kuhlenschmidt, 33 N.E.2d 340, 218 Ind. 404, 135 A.L.R. 397.
Tex.—Traders & General Ins. Co. v. Russell, Civ.App., 99 S.W.2d 1079, error dismissed.
Wash.—Fleming v. City of Seattle, 275 P.2d 904, 45 Wash.2d 477.

Matters considered

Mistaken exclusion of legally admissible evidence is not necessarily rendered harmless by event that its subject matter could be inferred from other evidence which was received or that its import otherwise came to jury's general intention, but influential character and relationship of proffered evidence to material point in controversy and substantiality of right of party to have it admitted are considerations of paramount significance, and such considerations must be viewed in light of the entire case.

N.J.—Corbett v. Van Kirk, 119 A.2d 467, 38 N.J.Super. 478.

38. U.S.—Corpus Juris Secundum cited in Sprinkle v. Davis, C.C.A. Va., 111 F.2d 925, 931, 128 A.L.R. 1101.
Ala.—Lemons v. Allison, 91 So.2d 236, 265 Ala. 347—Stewart v. Weaver, 87 So.2d 548, 264 Ala. 286—Ellerbee v. Atlantic Coast Line R. Co., 61 So.2d 89, 258 Ala. 76—Anderson v. Sanders, 180 So. 295, 235 Ala. 618—Ginsberg v. Haas, 124 So. 875, 220 Ala. 308—Atlanta & St. A. B. R. Co. v. Spivey, 100 So. 759, 211 Ala. 520—Johnston v. Warrant Warehouse Co., 99 So. 920, 211 Ala. 165—Grubbs v. Hawkins, 94 So. 484, 208 Ala. 349—Sovereign Camp, W. O. W. v. Hoehn, 85 So. 696, 204 Ala. 248—Gorman-Gammill Seed & Dairy Supply Co. v. Morton, 84 So. 766, 203 Ala. 530—Aiken v. McMillan, 78 So. 56, 201 Ala. 280—Portsmouth Cotton Oil Refining Corp. v. Madrid Cotton Oil Co., 77 So. 8, 200 Ala. 634—Dees v. People's Bank, 76 So. 901, 200 Ala. 543—Gale-Hooper Co. v. Rice, 75 So. 963, 200 Ala. 205—Porter v. Watkins, 71 So. 687, 196 Ala. 333.
Resolute Fire Ins. Co. v. O'Rear, 47 So.2d 425, 35 Ala.App. 398—Royal Ins. Co. v. Story, 40 So.2d 719, 34 Ala.App. 363, certiorari denied 40 So.2d 724, 252 Ala. 275—Tidmore v. Mills, 32 So.2d 769, 33 Ala.App. 243, certiorari denied 32 So.2d 782, 249 Ala. 648—Powell v. Bingham, 196 So. 154, 29 Ala. App. 248, certiorari dismissed 196 So. 160, 239 Ala. 515.
Ark.—Chicago, R. I. & P. Ry. Co. v. Gunn, 166 S.W. 568, 112 Ark. 401, Ann.Cas.1916E 648—Nashville Lumber Co. v. Busbee, 139 S.W. 301, 100 Ark. 76, 38 L.R.A.,N.S., 754.
Cal.—Tossman v. Newman, 233 P.2d 1, 37 C.2d 522—Frazure v. Fitzpatrick, 136 P.2d 566, 21 C.2d 851—Strong v. Hancock, 258 P. 60, 201 C. 530—People v. Ford Motor Co., 204 P. 217, 188 C. 8—Schumann v. Karrer, 192 P. 849, 184 C. 50.
Neider v. Dardi, App., 313 P.2d 72—MacLean v. City and County of San Francisco, App., 311 P.2d 158—Hagenbuch v. Kosky, 298 P.2d 875, 142 C.A.2d 296—Casper v. City of Los Angeles, 295 P.2d 452, 140 C.A. 2d 433—Gold Seal Productions v. R. K. O. Radio Pictures, 286 P.2d 954, 134 C.A.2d 843—Zanotto v. Marogna, 268 P.2d 826, 124 C.A.2d 329—Fall v. Coastwise Lines, 254 P.2d 58, 116 C.A.2d 345—Keppelman v. Heikes, 245 P.2d 54, 111 C.A.2d 475—Fuschi v. Vir Den, 236 P.2d 829, 107 C.A.2d 280—Dorn v. Pichinino, 234 P.2d 307, 105 C.A.2d 796—Rios v. Bennett, 200 P.2d 73, 88 C.A.2d 919—Blinkinsop v. Weber, 193 P.2d 96, 85 C.A.2d 276—Johnson v. McRee, 152 P.2d 526, 66 C.A.2d 524—Armstrong v. Kline, 149 P.2d 445, 64 C.A.2d 704—Mutch v. San Diego Electric Ry. Co., 102 P.2d 1100, 39 C.A.2d 327—Junge v. Midland Counties Public Service Corp., 100 P.2d 1073, 38 C.A.2d 154—Taylor v. Kisner, 91 P.2d 933, 33 C.A.2d 439—McCullough v. Langer, 73 P.2d 649, 23 C.A.2d 510—Almaden Vineyards Corp. v. Arnerich, 70 P.2d 243, 21 C.A.2d 701—Long v. Bevers, 58 P. 2d 1295, 15 C.A.2d 47—Larimer v. Smith, 19 P.2d 825, 130 C.A. 98—Michael v. Key System Transit Co., 276 P. 591, 98 C.A. 189—Ogden v. Lee, 215 P. 122, 61 C.A. 493—Marks v. Reissinger, 169 P. 243, 35 C.A. 44.
Colo.—Millikin v. People, 102 P.2d 901, 106 Colo. 6—Twin Lakes Reservoir & Canal Co. v. Sill, 89 P.2d 1012, 104 Colo. 215.
Conn.—Stitham v. Le Ware, 60 A.2d 658, 134 Conn. 681—Weller v. Fish Transport Co., 192 A. 317, 123 Conn. 49.
Del.—Coca-Cola Co. v. Nehi Corp., 25 A.2d 364, 26 Del.Ch. 140, sustained 36 A.2d 156, 27 Del.Ch. 318.
Ga.—Page v. Jones, 198 S.E. 63, 186 Ga. 485—Eberhardt v. Bennett, 137 S.E. 64, 163 Ga. 796.
Ginsberg v. Wade, 97 S.E.2d 915, 95 Ga.App. 475—Teague v. Adair Realty & Loan Co., 88 S.E.2d 795, 92 Ga.App. 463—Wofford v. Waldrip, 56 S.E.2d 816, 80 Ga.App. 562—Charles S. Jacobowitz Co. v. Ferguson, 51 S.E.2d 581, 78 Ga.App. 589—Weathers Bros. Transfer Co. v. Jarrell, 33 S.E.2d 805, 72 Ga.App. 817—J. H. Schroeter & Bro. v. Slider, 85 S.E. 787, 16 Ga.App. 522.
Idaho.—Fairbanks v. Fairbanks, 80 P.2d 17, 59 Idaho 1.
Ill.—Devine v. Northwestern El. R. Co., 107 N.E. 118, 265 Ill. 641.
Krohn v. O'Bara, 115 N.E.2d 569, 351 Ill.App. 476—Behles v. Chicago Transit Authority, 104 N.E.2d 635, 345 Ill.App. 503—First Galesburg Nat. Bank & Trust Co. v. Federal

the members of the jury are in possession of all the | knowledge or information which could have been

Reserve Bank of Chicago, 15 N.E. 2d 337, 295 Ill.App. 524—Pass v. Briggs & Turivas, 231 Ill.App. 214—Mueller Grain Co. v. Lake Erie & W. R. Co., 213 Ill.App. 108—Westchester Fire Ins. Co. v. Struck, 200 Ill.App. 501. See Cat Tail Drainage Dist. v. Johnson Creek Levee & Drainage Dist., 209 Ill. App. 71—Regelin v. Lothgren, 207 Ill.App. 409.

Ind.—Silvestro v. Walz, 51 N.E.2d 629, 222 Ind. 163—Jackson v. Rutledge, 122 N.E. 579, 188 Ind. 415—Boxell v. Bright Nat. Bank of Flora, 112 N.E. 3, 184 Ind. 631—Owen v. Williams, 15 N.E. 678, 114 Ind. 179.

Sims Motor Transport Lines v. Davis, 130 N.E.2d 82—Costa v. Costa, 115 N.E.2d 516, 124 Ind.App. 128—Coca Cola Bottling Works of Evansville v. Williams, 37 N.E.2d 702, 111 Ind.App. 502—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121—Bayh v. Ellis, 200 N.E. 455, 101 Ind.App. 572—Lincoln Nat. Life Ins. Co. v. Jensen, 189 N.E. 169, 99 Ind.App. 392—McKay v. Corwine, 119 N.E. 471, 69 Ind.App. 208—Briles v. Briles, 112 N.E. 449, 66 Ind.App. 444.

Iowa.—Kuiken v. Garrett, 51 N.W.2d 149, 243 Iowa 785—Jaeger v. Hackert, 41 N.W.2d 42, 241 Iowa 379—Pickerell v. Griffith, 29 N.W.2d 588, 238 Iowa 1151—Hawkins v. Burton, 281 N.W. 342, 225 Iowa 707—Van Gorden v. City of Ft. Dodge, 245 N.W. 736, 216 Iowa 209—Ankeney v. Brenton, 238 N.W. 71, 214 Iowa 357—Handlon v. Henshaw, 221 N. W. 489, 206 Iowa 771—Bean v. Bickley, 174 N.W. 675, 187 Iowa 689—Smay v. Roberts, 164 N.W. 236—In re Workman's Estate, 156 N. W. 438, 174 Iowa 222—Doran v. Waterloo, C. F. & N. Ry. Co., 147 N.W. 1100.

Kan.—Harshaw v. Kansas City Public Service Co., 139 P.2d 141, 157 Kan. 95.

Ky.—Armour v. Haskins, 275 S.W.2d 580—Hutcherson v. Hutcherson's Ex'rs, 232 S.W.2d 995, 313 Ky. 575—Kentucky Virginia Stages v. Tackett's Adm'r, 171 S.W.2d 4, 294 Ky. 189—Williams v. Tarter, 151 S. W.2d 783, 286 Ky. 717—Big Sandy & C. R. Co. v. Measell's Adm'r, 42 S.W.2d 747, 240 Ky. 571—Potter's Adm'x v. Mansard Garage & Service Station, 38 S.W.2d 233, 238 Ky. 439—Carr v. Warford, 249 S.W. 1024, 198 Ky. 690—Taylor v. Moseley, 186 S.W. 634, 170 Ky. 592, Ann.Cas. 1918B 1125—Louisville Ry. Co. v. Frey, 178 S.W. 1137, 166 Ky. 24—Keiner v. Collins, 171 S.W. 399, 161 Ky. 696.

Me.—Perlin v. Rosen, 164 A. 625, 131 Me. 481.

Md.—Frazier v. Waterman S. S. Corp., 112 A.2d 221, 206 Md. 434—Doyle v. Rody, 25 A.2d 457, 180 Md. 471—Wlodarek v. Thrift, 13 A.2d 774, 178 Md. 453—Mayor and City Council of Havre de Grace v. Maxa, 9 A.2d 235, 177 Md. 168—Karwacki v. Holtsberg, 124 A. 410, 144 Md. 98—Martin Fertilizer Co. v. Thomas & Co., 109 A. 458, 135 Md. 633.

Mass.—Sacks v. Martin Equipment Corp., 130 N.E.2d 547, 333 Mass. 274—Mendelsohn v. Leather Mfg. Corp., 93 N.E.2d 537, 326 Mass. 226—Baxter v. Bourget, 42 N.E.2d 2, 311 Mass. 490—Carson v. Boston El. Ry., 33 N.E.2d 701, 309 Mass. 32—Urban v. Central Massachusetts Electric Co., 17 N.E.2d 718, 301 Mass. 519—Paull v. Radio, 200 N.E. 401, 293 Mass. 521.

Mich.—Marian v. Chemical Products, Inc., 75 N.W.2d 55, 344 Mich. 551—Otto v. Hansen Wholesale Lumber Corp., 49 N.W.2d 49, 331 Mich. 37—Gile v. Hudnutt, 272 N.W. 706, 279 Mich. 358—City of Pontiac v. Ducharme, 270 N.W. 754, 278 Mich. 474—Donker v. Powers, 202 N.W. 989, 230 Mich. 237—Steele v. City of Ionia, 177 N.W. 259, 209 Mich. 595.

Minn.—Mutual Service Cas. Ins. Co. v. Overholser, 58 N.W.2d 268, 239 Minn. 243—Schmitt v. Emery, 2 N. W.2d 413, 211 Minn. 547, 139 A.L.R. 1242—Eilola v. Oliver Iron Mining Co., 275 N.W. 408, 201 Minn. 77—Metalak v. Rasmussen, 238 N.W. 478, 184 Minn. 260.

Miss.—City of Meridian v. Tingle, 84 So.2d 388—Hall v. Hall, 24 So.2d 347, 199 Miss. 478—Filtrol Corp. v. Hughes, 23 So.2d 891, 199 Miss. 10.

Mo.—Hamilton v. Patton Creamery Co., 222 S.W.2d 713, 359 Mo. 526—Homan v. Missouri Pac. R. Co., 70 S.W.2d 869, 335 Mo. 30—Hughes v. Mississippi River & B. T. Ry., 274 S.W. 703, 309 Mo. 560—Gricus v. United Rys. Co. of St. Louis, 237 S.W. 763, 291 Mo. 582—Laycock v. United Rys. Co. of St. Louis, 235 S.W. 91, 290 Mo. 344.

Clark v. Prue, App., 151 S.W.2d 487—Massman v. Muehlebach, 95 S. W.2d 808, 231 Mo.App. 72—Riner v. Riek, App., 57 S.W.2d 724—Amos James Grocery Co. v. Prichard, App., 297 S.W. 721—Lemon v. Tompkins, App., 277 S.W. 591—Brayton v. Gunby, App., 267 S.W. 450—Osborne v. Wells, 249 S.W. 705, 213 Mo.App. 319—Winkler v. Standard Acc. Ins. Co., App., 236 S. W. 1065—International Indemnity Co. v. Crandall, App., 235 S.W. 460—Stremph v. Loethen, App., 203 S.W. 238—Coates v. Dunnivant, App., 182 S.W. 821—Thomure v. St. Louis & S. F. R. Co., 177 S.W. 708, 191 Mo.App. 640.

Mont.—Zvanovich v. Gagnon, 122 P. 272, 45 Mont. 180.

Neb.—Klinginsmith v. Allen, 53 N.W. 2d 77, 155 Neb. 674—Danner v. Walters, 48 N.W.2d 635, 154 Neb. 506—Trebelhorn v. Bartlett, 47 N. W.2d 374, 154 Neb. 113—**Corpus Juris cited in** Stump v. State, 271 N.W. 163, 164, 132 Neb. 49.

N.J.—Aetna Life Ins. Co. v. City of Newark, 89 A.2d 385, 10 N.J. 99.

Vanderbeek v. Conlon, 125 A.2d 531, 41 N.J.Super. 574.

Pelinger v. Bernfeld, 42 A.2d 202, 133 N.J.Law 31—Ferber v. Cona, 103 A. 471, 91 N.J.Law 688.

Hindler v. Meadows, 180 A. 899, 13 N.J.Misc. 684.

N.M.—Lillibridge v. Coulter, 192 P.2d 315, 52 N.M. 105.

N.Y.—N. R. M. Garage Corp. v. Morris Feig Garage Corp., 108 N.Y.S.2d 153, 279 App.Div. 126, affirmed 105 N.E.2d 500, 303 N.Y. 922—Boyer v. Scripter, 102 N.Y.S.2d 2, 278 App. Div. 601—Detzker v. City of New York, 47 N.Y.S.2d 203, 267 App.Div. 912, appeal denied 48 N.Y.S.2d 807, 267 App.Div. 1001.

Finn v. Krieger Shoe Co., 156 N. Y.S. 424, 93 Misc. 83.

N.C.—Edgewood Knoll Apartments, Inc. v. Braswell, 80 S.E.2d 653, 239 N.C. 560, rehearing denied 83 S.E. 2d 797, 240 N.C. 760—McCorkle v. Beaty, 38 S.E.2d 102, 226 N.C. 338—Swinson v. Nance, 15 S.E.2d 284, 219 N.C. 772—Cook v. Town of Mebane, 131 S.E. 407, 191 N.C. 1—Elm City Lumber Co. v. Childerhose & Pratt, 83 S.E. 22, 167 N.C. 34.

Ohio.—Fantozzi v. New York, C. & St. L. R. Co., 120 N.E.2d 104, 161 Ohio St. 485.

Patterson v. Henry, App., 136 N. E.2d 764—Parker v. Friendt, App., 118 N.E.2d 216—Kercher v. City of Conneaut, 65 N.E.2d 272, 76 Ohio App. 491—Solomon v. Mote, App., 49 N.E.2d 703—Niedhamer v. Cincinnati St. Ry. Co., App., 42 N.E.2d 460—Youngstown & S. Ry. Co. v. Prigosin, 4 N.E.2d 599, 53 Ohio App. 189.

Davider v. Wheeling & Lake Erie R. Co., 20 Ohio Cir.Ct.,N.S., 165—Morison v. City of Cleveland, 17 Ohio Cir.Ct.,N.S., 427.

Okl.—City of Tulsa v. Pearson, 296 P.2d 788—Midwestern Ins. Co. v. Rapp, 296 P.2d 770—Williams v. Williams, 274 P.2d 359—Defiance Oils v. Hardzog, 61 P.2d 572, 178 Okl. 6.

Or.—Schweiger v. Solbeck, 230 P.2d 195, 191 Or. 454, 29 A.L.R.2d 435—Snyder v. Portland Traction Co., 185 P.2d 563, 182 Or. 344—In re Murray's Estate, 144 P.2d 1016, 173 Or. 209—Gano v. Zidell, 10 P.2d 365, 140 Or. 11, rehearing denied 12

given them by the excluded or rejected evidence,[39] or where the verdict or decree is based on other

P.2d 1118, 140 Or. 11—Coates v. Slusher, 222 P. 311, 109 Or. 612.

Pa.—Adamczuk v. Holloway, 13 A.2d 2, 338 Pa. 263—Suravitz v. Prudential Ins. Co. of America, 104 A. 754, 261 Pa. 390.

Eddyside Co. v. Seibel, 15 A.2d 691, 142 Pa.Super. 174.

Kaplan Furniture Co. v. Glou, Com.Pl., 48 Lack.Jur. 85—Moran v. Gibbs People's Service Stores, Com. Pl., 33 Luz.Leg.Reg. 246.

R.I.—Watson v. Durepo, 71 A.2d 103, 76 R.I. 375, reargument denied 71 A.2d 599, 76 R.I. 375.

S.C.—Southern Ry. Co. v. Order of Ry. Conductors of America, 54 S.E. 2d 816, 215 S.C. 280, reversed on other grounds 70 S.Ct. 585, 339 U.S. 255, 94 L.Ed. 811—James v. Atlantic Coast Line R. Co., 18 S.E.2d 616, 199 S.C. 45.

S.D.—Aberdeen Farmers' Equity Exchange v. Sand, 221 N.W. 597, 53 S. D. 574.

Tenn.—Murray v. City of Nashville, App., 299 S.W.2d 859—Yellow Bus Line v. Brenner, 213 S.W.2d 626, 31 Tenn.App. 205—Stockton v. Murray, 157 S.W.2d 859, 25 Tenn.App. 371—Blue Bird Coaches, Inc. v. McGregor, 14 Tenn.App. 23.

National Life & Accident Ins. Co. v. Bond, 8 Tenn.Civ.App. 510.

Tex.—Reserve Life Ins. Co. v. Miller, Civ.App., 300 S.W.2d 343, error refused no reversible error—Ebberts v. Carpenter Production Co., Civ. App., 256 S.W.2d 601, error refused no reversible error—Black v. Dallas Ry. & Terminal Co., Civ.App., 254 S.W.2d 147, affirmed 257 S.W.2d 416, 152 Tex. 343—Marks v. Calcasieu Lumber Co., Civ.App., 245 S. W.2d 749, error refused no reversible error—Brewning v. Nesting, Civ.App., 219 S.W.2d 712, error refused no reversible error—Hicks v. Southwestern Settlement & Development Corp., Civ.App., 214 S.W.2d 315—Benson v. Missouri, K. & T. R. Co., Civ.App., 200 S.W.2d 233, error refused no reversible error, certiorari denied 68 S.Ct. 206, 332 U.S. 830, 92 L.Ed. 403—Kroll v. Scott, Civ.App., 155 S.W.2d 985, error refused—Gulf Oil Corp. v. Smith, Civ.App., 145 S.W.2d 280, error refused—Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S.W.2d 857, error dismissed, judgment correct—National Life & Accident Ins. Co. of Nashville, Tenn., v. Moore, Civ.App., 118 S.W. 2d 619—Gramm v. Coffield, Civ. App., 116 S.W.2d 1089, error dismissed—Mahone v. Bowman, Civ. App., 70 S.W.2d 323—Gibson & Johnson v. Gist, Civ.App., 35 S.W. 2d 829—Sandifer v. Fort Worth Nat. Bank, Civ.App., 8 S.W.2d 512—Galveston, H. & S. A. Ry. Co. v. Henry, Civ.App., 252 S.W. 210—Galveston, H. & S. A. Ry. Co. v. Hartford Fire Ins. Co., Civ.App., 220 S.W. 781, reversed on other grounds Hartford Fire Ins. Co. v. Galveston, H. & S. A. R. Co., Com. App., 239 S.W. 919—Walker v. Kellar, Civ.App., 218 S.W. 792—Freeman v. Bennett, Civ.App., 195 S.W. 238, error refused—Rossetti v. Benavides, Civ.App., 195 S.W. 208, error refused—Kennedy v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 192 S.W. 1114, dismissed for want of jurisdiction—Kolp v. S. F. Scattergood & Co., Civ.App., 185 S.W. 329—Hawkins v. Western Nat. Bank, Civ.App., 145 S.W. 722.

Utah.—Clark v. George, 234 P.2d 844, 120 Utah 350.

Vt.—Oligny v. Underwood, 71 A.2d 250, 116 Vt. 193—Weinberg v. Norton, 178 A. 913, 107 Vt. 279—Girard v. Vermont Mut. Fire Ins. Co., 154 A. 666, 103 Vt. 336—McAllister v. Benjamin, 121 A. 263, 96 Vt. 475.

Wash.—Ramsey v. Mading, 217 P.2d 1041, 36 Wash.2d 303—**Corpus Juris Secundum cited in** Cooley v. Ben Paris Sporting Goods & R. Co., 105 P.2d 820, 821, 5 Wash.2d 415, amended and rehearing denied 107 P.2d 347, 5 Wash.2d 415—Packard v. Coberly, 265 P. 1082, 147 Wash. 345—Hendrickson v. Sund, 177 P. 808, 105 Wash. 406.

W.Va.—Holmes v. West, 94 S.E. 378, 81 W.Va. 326.

Wis.—Johann v. Milwaukee Elec. Tool Corp., 72 N.W.2d 401, 270 Wis. 573, certiorari denied 76 S.Ct. 711, 351 U.S. 918, 100 L.Ed. 1450—Philip v. Schlager, 253 N.W. 394, 214 Wis. 370—Carson v. Leet, 203 N.W. 394, 186 Wis. 566—Ertel v. Milwaukee Electric Ry. & Light Co., 160 N.W. 263, 164 Wis. 380.

Wyo.—Hein v. Marcante, 113 P.2d 940, 57 Wyo. 81.

4 C.J. p 1010 note 7.

Established by evidence received without objection

Error in excluding evidence to establish a fact established by evidence received without objection is harmless.

Tenn.—De Ark v. Nashville Stone Setting Corp., 279 S.W.2d 518, 38 Tenn.App. 678.

Tex.—Kell v. Ross, Civ.App., 175 S. W. 752.

Lost deed

Rejecting testimony respecting the search for a lost deed was harmless, where the court permitted the contents of the lost deed to be proven.

Ky.—Elkhorn Land & Improvement Co. v. Wallace, 24 S.W.2d 560, 232 Ky. 741.

Photographs

In action for injuries to a section hand riding on a railway motor car which collided with an automobile, the exclusion of photographs of the scene of the accident was not prejudicial error, where several other photographs of the same location were in evidence and the only difference was that, in the photographs excluded, the motor car was shown at various places on the track.

Ind.—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 101 Ind.App. 121.

Uncontradicted evidence

The exclusion of evidence of facts shown by other uncontradicted evidence is harmless error.

Ala.—Catts v. Phillips, 117 So. 34, 217 Ala. 488—Central of Georgia Ry. Co. v. Wilson, 111 So. 901, 215 Ala. 612—Blount County Bank v. Brice, 96 So. 769, 209 Ala. 670.

Jackson v. Bohlin, 75 So. 697, 16 Ala.App. 105—Bricken v. Sikes, 68 So. 891, 14 Ala.App. 187, certiorari denied Ex parte Bricken, 69 So. 425, 194 Ala. 148.

Cal.—Hotaling v. Hotaling, 203 P. 745, 187 C. 695.

Conn.—Chesebro v. Lockwood, 91 A. 188, 88 Conn. 219.

Ill.—Devine v. Northwestern Elevated R. Co., 107 N.E. 118, 265 Ill. 641.

Iowa.—Rodskier v. Northwestern Mut. Life Ins. Co. of Milwaukee, Wis., 248 N.W. 295, 216 Iowa 121—Amick v. Montross, 220 N.W. 51, 206 Iowa 51, 58 A.L.R. 1117.

Me.—Sawyer v. Hillgrove, 146 A. 705, 128 Me. 230.

Ohio.—Marion Development Co. v. Bruce, 177 N.E. 471, 39 Ohio App. 253.

S.C.—Crouch v. Cudd, 155 S.E. 136, 158 S.C. 1.

Tex.—Ischar v. West Texas Utilities Co., Civ.App., 54 S.W.2d 842—Niagara Fire Ins. Co. v. Pool, Civ. App., 31 S.W.2d 850—Hamilton Compress Co. v. Lawson, Civ.App., 175 S.W. 474—Browder v. Memphis Independent School Dist., Civ.App., 172 S.W. 152, affirmed 180 S.W. 1077, 107 Tex. 535.

Vt.—Paska v. Saunders, 153 A. 451, 103 Vt. 204.

Wyo.—Pacific-Wyoming Oil Co. v. Carter Oil Co., 277 P. 807, 40 Wyo. 393.

39. Ala.—American Nat. Ins. Co. v. Few, 141 So. 234, 224 Ala. 576.

Ariz.—Wigley v. Whitten, 278 P.2d 412, 78 Ariz. 224.

Ill.—Huyler v. City of Chicago, 62 N.E.2d 574, 326 Ill.App. 555—Murphy v. Willumsen, 224 Ill.App. 425.

Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559.

Kan.—Stanly v. Buser, 185 P. 39, 105 Kan. 510, 10 A.L.R. 218.

Miss.—McMinn v. Lilly, 60 So.2d 603, 215 Miss. 193.

sufficient evidence.[40]

Illustration of the application of this principle is found in holdings that, where the fact in question is otherwise sufficiently established, no prejudicial effect attaches to the erroneous action of the court in limiting cross-examination[41] or the number of witnesses;[42] that the rejection of the testimony of an interested witness is not prejudicial, where testimony regarding the same fact is given by disinterested witnesses;[43] and that the exclusion of documentary evidence is harmless error, where the contents thereof, or the claim sought to be supported or defeated by such evidence, is clearly established by other evidence.[44]

The rule, however, applies only where the fact involved is clearly established by other evidence, and not where the evidence is conflicting.[45] Where the evidence excluded is of greater probative value than that admitted, the error in excluding it is ground for reversal.[46]

§ 1750. —— By Facts Conceded

Where the facts are conceded, an erroneous exclusion of evidence tending to establish such facts is harmless error.

An erroneous exclusion of admissible evidence to show a fact which is conceded by the party against whom it is offered,[47] or a fact which is not disputed

Mo.—Bryson v. Baum, 278 S.W. 412. Manning v. Prudential Ins. Co., 213 S.W. 897, 202 Mo.App. 124.
N.D.—First Nat. Bank v. Burdick, 209 N.W. 790, 54 N.D. 434.
Or.—Clevenger v. Shallborn, 286 P.2d 651, 205 Or. 209—Joseph v. Meier & Frank Co., 250 P. 739, 120 Or. 117.
4 C.J. p 1010 note 8.

Argued before jury

Defendant cannot complain that certain testimony was excluded by the court, where it was argued before a jury without objection.
N.C.—Parker v. Great Atlantic & Pacific Tea Co., 161 S.E. 209, 201 N.C. 691.

Scene viewed by jury

(1) Error, if any, in excluding an offer to make demonstration in a personal injury action was cured, where the jury subsequently viewed the premises.
S.D.—Usletten v. City of Brookings, 235 N.W. 795, 58 S.D. 393, reheard 240 N.W. 851, 59 S.D. 477.

(2) Error, if any, in excluding opinion of defendant, as an expert bottler, that a mouse could not get in Coca-Cola through the bottling machine, was cured by the jury's inspection of the machinery.
S.C.—Tate v. Mauldin, 154 S.E. 431, 157 S.C. 392.

40. Ark.—Ft. Smith Light & Traction Co. v. Hendrickson, 189 S.W. 1064, 126 Ark. 377.
Conn.—Jacek v. Bacote, 68 A.2d 144, 135 Conn. 702.
4 C.J. p 1011 note 9.

41. Ala.—Birmingham Elec. Co. v. Echols, 32 So.2d 374, 33 Ala.App. 234, certiorari denied 32 So.2d 379, 249 Ala. 589.
Conn.—Forbes v. Orange, 82 A. 559, 85 Conn. 255.
Ga.—Hamilton v. Pulaski County, 72 S.E.2d 487, 86 Ga.App. 705.
Iowa.—Sunberg v. Babcock, 24 N.W. 19, 66 Iowa 515.
Mo.—Wapelhorst v. Lindner, 269 S.W.2d 865.

42. Colo.—Huett v. Clark, 35 P. 671, 4 Colo.App. 231.
Iowa.—Moore v. Chicago, etc., R. Co., 131 N.W. 30, 151 Iowa 353.

43. Tex.—Uecker v. Zuercher, 118 S.W. 149, 54 Tex.Civ.App. 289.

44. Ark.—McComb v. Moss, 199 S.W. 545, 131 Ark. 509.
La.—Chargois v. Grimmett & James, App., 36 So.2d 390.
Mich.—Dorgan v. Robert Oakman Land Co., 197 N.W. 528, 226 Mich. 398.
Minn.—Crawford v. Woodrich Const. Co., 57 N.W.2d 648, 239 Minn. 12.
Mo.—Muench v. South Side Nat. Bank, 251 S.W.2d 1.
Neb.—Scarborough v. Aeroservice, Inc., 53 N.W.2d 902, 155 Neb. 749, 30 A.L.R.2d 1159.
Ohio.—Manchester v. Cleveland Trust Co., 114 N.E.2d 242, 95 Ohio App. 201.
Tex.—Self v. Becker, Civ.App., 195 S.W.2d 701, error refused no reversible error.
4 C.J. p 1011 note 13.

45. Ala.—Routledge v. Schmitt, 195 So. 246, 239 Ala. 436—Hendrix v. Pique, 185 So. 390, 237 Ala. 49—Macon County Lumber Co. v. Jones, 110 So. 1, 215 Ala. 157.
4 C.J. p 1011 note 14.

46. Ark.—Miles v. St. Louis, etc., R. Co., 119 S.W. 837, 90 Ark. 485.
4 C.J. p 1012 note 15.

47. Ala.—Hogg v. Frazier, 100 So. 95, 211 Ala. 218—Howell v. Smith, 91 So. 496, 206 Ala. 646—Portsmouth Cotton Oil Refining Corp. v. Madrid Cotton Oil Co., 71 So. 111, 195 Ala. 256—McKinney v. Darden, 68 So. 269, 192 Ala. 369.
Grissom v. Dahart Ice Cream Co., 40 So.2d 333, 34 Ala.App. 282, certiorari denied 40 So.2d 339, 252 Ala. 235—Vickery v. Baggett, 101 So. 102, 20 Ala.App. 143, reversed on other grounds Ex parte Baggett, 101 So. 104, 211 Ala. 610.
Ariz.—Nighohossian v. State ex rel. Patterson, 253 P.2d 344, 75 Ariz. 162.
Cal.—Billig v. Southern Pac. Co., 209 P. 241, 189 C. 477.
Williams v. Halley, 265 P.2d 60, 122 C.A.2d 350—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495—Malter v. National Fire Ins. Co. of Hartford, 201 P. 605, 54 C.A. 198—Cutting v. Oliphant, 148 P. 940, 27 C.A. 120.
Fla.—Standard Lumber Co. v. Florida Industrial Co., 141 So. 729, 106 Fla. 884, certiorari denied 53 S.Ct. 522, 289 U.S. 723, 77 L.Ed. 1474.
Ga.—Durham v. Crawford, 26 S.E.2d 778, 196 Ga. 381.
McDaniel v. Richards, 13 S.E.2d 710, 64 Ga.App. 612.
Idaho.—Osborn v. Cary, 152 P. 473, 28 Idaho 89.
Ill.—Bontz v. Stear, 121 N.E. 176, 285 Ill. 599.
Edward Thompson Co. v. Hunt, 218 Ill.App. 616—Wilson Grocery Co. v. National Surety Co., 218 Ill. App. 584—Walther v. Chicago & A. R. Co., 188 Ill.App. 221.
Ind.—De Armond v. Carter, App., 134 N.E.2d 239—Miller v. Schaffner, 176 N.E. 860, 93 Ind.App. 156—Thompson v. Divine, 126 N.E. 683, 73 Ind.App. 113.
Iowa.—Rodskier v. Northwestern Mut. Life Ins. Co. of Milwaukee, Wis., 248 N.W. 295, 216 Iowa 121—Ankeney v. Brenton, 238 N.W. 71, 214 Iowa 357—Johnson v. Farmers' Ins. Co., 168 N.W. 264, 184 Iowa 630.
Kan.—Davies v. Lutz, 205 P. 637, 110 Kan. 657.
Ky.—Peirano v. Shapiro, 223 S.W. 1098, 188 Ky. 652.
Me.—Berliawsky v. Burch, 134 A. 801, 125 Me. 471.
Md.—Commonwealth Casualty Co. v. Arrigo, 154 A. 136, 160 Md. 595, 77 A.L.R. 1250—Michael v. Smith, 91 A. 762, 124 Md. 116.
Mass.—Baxter v. Bourget, 42 N.E.2d 2, 311 Mass. 490—Jacobs v. Jacobs, 183 N.E. 147, 281 Mass. 198.
Mich.—Zannis v. Freud Hotel Co., 240 N.W. 83, 256 Mich. 578, 80 A.L.R. 534—Ward v. Carey, 166 N.W.

by him,[48] is harmless, provided the admission is as broad as the evidence excluded.[49] Where plaintiff obtained a verdict and judgment for no more than defendant's admitted liability, error in rejecting certain testimony offered by defendant to reduce the amount of damages claimed is no ground for reversal.[50]

In pleadings. The exclusion of evidence tending to prove facts admitted in the pleadings, if error, is harmless.[51]

952, 200 Mich. 217—Brown v. Mitts, 153 N.W. 714, 187 Mich. 469.
Minn.—Paulos v. Koelsch, 263 N.W. 913, 195 Minn. 603—Saunders v. Commercial Credit Trust, 256 N.W. 142, 192 Minn. 272—Fruen Cereal Co. v. Chenoweth, 184 N.W. 30, 149 Minn. 461—Viita v. Dolan, 155 N. W. 1077, 132 Minn. 128, L.R.A. 1916D 644, Ann.Cas.1917E 678.
Miss.—Bass v. Burnett, 119 So. 827, 151 Miss. 852.
Mo.—Huffman v. Terminal R. Ass'n of St. Louis, 281 S.W.2d 863.
Smith v. Brougher, App., 274 S. W. 532—Shockey v. Fidelity-Phenix Fire Ins. Co. of New York, App., 191 S.W. 1049.
N.Y.—In re Kelly's Estate, 143 N.E. 795, 238 N.Y. 71.
Silverman v. Siegelstein, 173 N. Y.S. 762.
N.C.—West v. Redmond, 88 S.E. 341, 171 N.C. 742—Dunnevent v. Southern Ry. Co., 83 S.E. 347, 167 N.C. 232.
Ohio.—Wimmer v. DeWeese, App., 108 N.E.2d 165.
Okl.—Vogel v. Traders' Compress Co., 264 P. 147, 129 Okl. 200.
Or.—Mannix v. Portland Telegram, 23 P.2d 138, 144 Or. 172, 90 A.L.R. 55—Keadle v. Padden, 20 P.2d 403, 143 Or. 350, rehearing denied 22 P. 2d 892, 143 Or. 350—Johnston v. Fitzhugh, 178 P. 230, 91 Or. 247.
Pa.—Shetler v. Shetler Cash Stores Co., 129 A. 112, 283 Pa. 307—Keller v. Gomery-Schwartz Motorcar Co., 98 A. 690, 253 Pa. 507—Miller v. Reading Hotel Co., 94 A. 225, 248 Pa. 541.
R.I.—Giorgio v. F. S. Payne Co., 101 A.2d 238, 81 R.I. 207.
S.D.—Dacotah Packing Co. v. Bertelson, 217 N.W. 393, 52 S.D. 324.
Tex.—Ynsfran v. Burkhart, Civ.App., 247 S.W.2d 907, error refused no reversible error—Younger Bros. v. Ross, Civ.App., 151 S.W.2d 621, error dismissed—Bishop v. Farm & Home Savings & Loan Ass'n, Civ. App., 75 S.W.2d 285—Odward v. Foster, Civ.App., 5 S.W.2d 240—San Benito Bank & Trust Co. v. Wait, Civ.App., 300 S.W. 659—Peterson v. Clay, Civ.App., 225 S.W. 1112—Moody v. Chesser, Civ.App., 183 S.W. 23—Neville v. Miller, Civ. App., 171 S.W. 1109.
Utah.—Muehl v. Smoot, 63 P.2d 563, 91 Utah 45—Thomas v. Spiers, 237 P. 233, 65 Utah 256.
Vt.—Enequist v. Bemis, 55 A.2d 617, 115 Vt. 209, 1 A.L.R.2d 1, reargument denied 56 A.2d 5, 115 Vt. 209, 1 A.L.R.2d 1—Reid v. Abbiati, 32 A.2d 133, 113 Vt. 233—Conn Boston Co. v. Griswold, 157 A. 57, 104 Vt. 89.
Wyo.—McFadden v. French, 213 P. 760, 29 Wyo. 401.
4 C.J. p 1013 note 26.

Corner as playground

Exclusion of testimony that the corner where the accident occurred was generally known to be a playground for children was not prejudicial error, where an automobile driver admitted seeing children at the corner before the accident.
Wis.—Hanes v. Hermsen, 236 N.W. 646, 205 Wis. 16.

Evidence not denied

Exclusion of photographs showing that the roller coaster was not completed at the time of the accident was not prejudicial to plaintiff, where not denied by defendant.
Cal.—Pontecorvo v. Clark, 272 P. 591, 95 C.A. 162.

48. Ala.—Stewart v. Weaver, 87 So. 2d 548, 264 Ala. 286—World Fire & Marine Ins. Co. v. Edmondson, 12 So.2d 754, 244 Ala. 224—Sovereign Camp, W. O. W., v. Fischer, 183 So. 653, 236 Ala. 494—Burgess v. Jones, 166 So. 683, 231 Ala. 622—Turbeville v. Mobile Light & R. Co., 127 So. 519, 221 Ala. 91—Johnston v. Warrant Warehouse Co., 99 So. 920, 211 Ala. 165—Phillips v. Shotts, 71 So. 94, 195 Ala. 20.
Conn.—Nearing v. City of Bridgeport, 75 A.2d 505, 137 Conn. 205.
Ga.—Macon Union Co-op. Ass'n v. Chance, 122 S.E. 66, 31 Ga.App. 636.
Ind.—Sisk v. Dean Bros. Co., 185 N. E. 158, 96 Ind.App. 366.
Iowa.—Rodskier v. Northwestern Mut. Life Ins. Co. of Milwaukee, Wis., 248 N.W. 295, 216 Iowa 121.
Kan.—Stockyards State Bank v. Merchants' State Bank, 152 P. 769, 96 Kan. 558, rehearing denied 154 P. 240, 97 Kan. 8.
Mass.—Ashton v. Wolstenholme, 137 N.E. 376, 243 Mass. 193.
Mich.—Plankinton Packing Co. v. Berry, 165 N.W. 676, 199 Mich. 212.
Mo.—Becker v. Farmers' Mut. Fire Ins. Co. of Rock Tp., Jefferson County, App., 99 S.W.2d 148—Wilson v. Frankel, App., 61 S.W.2d 363—Coombes v. Knowlson, 182 S.W. 1040, 193 Mo.App. 554.
N.J.—Daniel v. Elmer, 167 A. 751, 11 N.J.Misc. 632, rule discharged 173 A. 911, 113 N.J.Law 227.
Okl.—Antrim Lumber Co. v. Snell, 86 P.2d 920, 169 Okl. 314.
Or.—Mannix v. Portland Telegram, 23 P.2d 138, 144 Or. 172, 90 A.L.R. 55.
Tex.—Taylor v. Callahan, Civ.App., 83 S.W.2d 1072, error dismissed.
Vt.—Northern Trust Co. v. Perry, 156 A. 906, 104 Vt. 44.
4 C.J. p 1014 note 27.

Matters not open to dispute

Error cannot be predicated on the exclusion of evidence relating to matters which are not open to dispute.
Minn.—German v. McKay, 162 N.W. 527, 136 Minn. 433.

Uncontested issue

The exclusion of evidence pertinent only to an admitted or uncontested issue is harmless error.
Minn.—Zimmerman v. Mendelkow, 200 N.W. 297, 160 Minn. 330, reversed on other grounds Zimmerman v. Mandelkow, 201 N.W. 289, 160 Minn. 330.
N.C.—Wachovia Bank & Trust Co. v. Ebert, 172 S.E. 175, 205 N.C. 651.
Tex.—Federal Ins. Co. v. Munden, Civ.App., 203 S.W. 917.
Wash.—Lashbrook v. Spokane-Wallace Stages, 10 P.2d 241, 168 Wash. 24.

49. Ala.—Wilmer Lumber Co. v. Eisely, 50 So. 225, 163 Ala. 290.
4 C.J. p 1014 note 28.

50. Or.—Smith v. Cox, 9 Or. 475.

51. Ala.—Burgess v. Jones, 166 So. 683, 231 Ala. 622.
Colo.—Watson v. Woodley, 207 P. 335, 71 Colo. 391.
Ga.—Associated Cab Co. v. Byars, 88 S.E.2d 329, 92 Ga.App. 73.
Ill.—Kanter v. O'Hara, 99 N.E.2d 391, 343 Ill.App. 463.
Iowa.—Massey v. City Council of City of Des Moines, 31 N.W.2d 875, 239 Iowa 527.
Mass.—Cohen v. James Millar Co., 164 N.E. 820, 266 Mass. 55.
Mont.—McGonigle v. Prudential Ins. Co. of America, 46 P.2d 687, 100 Mont. 203.
Pa.—Thomas v. Metropolitan Life Ins. Co., 200 A. 210, 131 Pa.Super. 588.
Tex.—Galveston County v. Lothrop, Civ.App., 80 S.W.2d 1004—Bonnett-Brown Sales Service Co. v. Denison Morning Gazette, Civ.App., 201 S.W. 1044.
Wash.—Colvin v. Auto Interurban Co., 232 P. 365, 132 Wash. 591.
4 C.J. p 1014 note 30.

§ 1751. —— By Presumptions of Law or Judicial Notice

The exclusion of evidence of facts which the law presumes or the existence of which judicial notice is taken is harmless error.

No prejudicial error results from the exclusion of evidence of a fact which the law presumes,[52] or of which judicial notice is required to be taken.[53]

§ 1752. Subsequent Matters Curing Error

Subsequent events occurring during the trial may render an erroneous exclusion of evidence harmless.

Evidence subsequently brought out in the trial may render a previous erroneous exclusion of evidence harmless.[54] Also, where an opportunity is later given to introduce the excluded evidence, in the absence of circumstances causing prejudice, the error is harmless,[55] and the error may be cured although the excluded evidence is not actually admitted,[56] if the party offering it is subsequently given an opportunity to introduce it, either by express offer and permission of the court,[57] or by the adverse party's withdrawing of his objection,[58] since the party is deemed to waive the original error when he refuses to accept full reparation thereof.[59]

§ 1753. —— By Admission of Same or Similar Evidence

Generally, an erroneous exclusion of evidence may be rendered harmless by the admission of the same or similar evidence.

It is a general rule that a party is not harmed and may not complain of error in the exclusion of certain evidence, when the same, or substantially the same, evidence is subsequently admitted,[60] it be-

52. N.J.—Guarraia v. Metropolitan Life Ins. Co., 101 A. 298, 90 N.J. Law 682.
4 C.J. p 1014 note 31.

Common-law marriage

On an issue whether plaintiff was intestate's widow, excluding testimony that intestate was insane when ceremonially married was not reversible error, where the facts raised the presumption of a valid common-law marriage thereafter.
Ind.—Langdon v. Langdon, 183 N.E. 400, 204 Ind. 321, 85 A.L.R. 1297.

53. Ill.—Village of Catlin v. Tilton, 117 N.E. 999, 281 Ill. 601.
4 C.J. p 1014 note 32.
Exclusion of facts which are matters of common knowledge as harmless error see supra § 1744.

Attorney's fees

Error in excluding testimony as to an attorney's fee was not prejudicial, the court having power to determine the fee from its own knowledge.
Mont.—Alley v. Butte & Western Mining Co., 251 P. 517, 77 Mont. 477.

Dictionary definition of words

In an action for libel, the exclusion of definitions from the dictionary of the words used in the alleged libel was harmless, where the court took judicial notice of them.
Conn.—Gray v. Mossman, 99 A. 1062, 91 Conn. 430.

Ordinances

Ill.—Wilson v. Chicago & Western Indiana R. Co., 3 N.E.2d 346, 286 Ill.App. 616, affirmed 6 N.E.2d 634, 365 Ill. 405.

54. Iowa.—Hemmings v. Home Mut. Ins. Ass'n of Iowa, 203 N.W. 818, 199 Iowa 1311.

Subsequent showing of waiver

In an action on a fire insurance policy, the exclusion of evidence, showing the placing of a mortgage on insured property without the consent of insurer in violation of the policy, was not reversible error, where subsequent evidence established a waiver of policy and by-law provisions rendering the policy void, notwithstanding such waiver had not been shown at the time of the exclusion.
Iowa.—Hemmings v. Home Mut. Ins. Ass'n of Iowa, supra.

55. Canal Zone.—Morales v. Panama Bank Co., 2 Canal Zone 296.
N.J.—James v. Pennsylvania R. Co., 146 A. 52, 105 N.J.Law 504.
Vt.—Parker v. Cone, 168 A. 715, 105 Vt. 426.
4 C.J. p 1015 note 35.

56. Md.—Williams v. U. S. Fidelity, etc., Co., 66 A. 495, 105 Md. 490.
Mich.—Smith's Appeal, 18 N.W. 195, 52 Mich. 415.

57. Ky.—Hardy v. Muensch, 242 S. W. 586, 195 Ky. 398.
Mich.—Moore v. Harneck, 166 N.W. 987, 200 Mich. 642.
Okl.—Frankoma Potteries v. Rettenmeyer, 135 P.2d 977, 192 Okl. 268.
4 C.J. p 1015 note 38.

58. Iowa.—Lemon v. Kessel, 209 N. W. 393, 202 Iowa 273.
4 C.J. p 1015 note 39.

59. Miss.—Alabama, etc., R. Co. v. Lowe, 19 So. 96, 73 Miss. 203.

60. Ala.—Case v. English, 52 So.2d 216, 255 Ala. 555—Spurlock v. J. T. Knight & Son, 20 So.2d 525, 246 Ala. 283—Mobile Light & Railroad Co. v. Nicholas, 167 So. 298, 232 Ala. 213—Newell Contracting Co. v. Lacy, 155 So. 379, 229 Ala. 208—Wolff v. Zurga, 150 So. 144, 227 Ala. 370—McClure v. Pettyjohn, 145 So. 478, 226 Ala. 156—Moore v. Welden, 143 So. 831, 225 Ala. 458—Atlantic Coast Line R. Co. v. J. W. Capps Gin Co., 142 So. 74, 225 Ala. 166—Griswold v. Duke, 140 So. 427, 224 Ala. 402—Wallace v. Elliott, 124 So. 286, 220 Ala. 125—Gaston v. McDonald, 124 So. 208, 220 Ala. 155—Hatcher v. Lammons, 112 So. 120, 215 Ala. 548—Woody v. Tucker, Willingham & Co., 110 So. 465, 215 Ala. 278—Ham Turpentine Co. v. Mizell, 110 So. 372, 215 Ala. 142—Carbon Hill Consol. Coal Co. v. Sanborn, 110 So. 131, 215 Ala. 118—Kartus Department Stores v. Deason, 109 So. 751, 215 Ala. 97—Stark & Oldham Bros. Lumber Co. v. Burford, 109 So. 148, 215 Ala. 68—Copeland Bros. Realty Co. v. Jones, 108 So. 591, 214 Ala. 615—Alabama Trunk & Luggage Co. v. Hauer, 108 So. 339, 214 Ala. 473—Pettus v. Louisville & N. R. Co., 106 So. 807, 214 Ala. 187—Hodges v. Sanderson, 105 So. 652, 213 Ala. 563—Cumbee v. Eady-Baker Grocery Co., 100 So. 336, 211 Ala. 316—Nashville Broom & Supply Co. v. Alabama Broom & Mattress Co., 100 So. 132, 211 Ala. 192—McCormick v. Badham, 85 So. 401, 204 Ala. 2—Miller v. McGuire, 80 So. 483, 202 Ala. 351—Long v. Myers, 80 So. 76, 202 Ala. 238—Douglass v. Central of Georgia Ry. Co., 78 So. 457, 201 Ala. 395—Hamilton v. Cranford Mercantile Co., 78 So. 401, 201 Ala. 403—Kuykendall v. Edmondson, 77 So. 24, 200 Ala. 650—Boshell v. Cunningham, 76 So. 937, 200 Ala. 579—Williams v. Shows, 73 So. 99, 197 Ala. 596—Portsmouth Cotton Oil Refining Corp. v. Madrid Cotton Oil Co., 71 So. 111, 195 Ala. 256—Hoffman v. Birmingham Ry., Light & Power Co., 69 So. 551, 194 Ala. 30—Birmingham Bottling Co. v. Morris, 69 So. 85, 193 Ala. 627—Barker v. Tennessee Coal, Iron & R. Co., 66 So. 600, 189 Ala. 579—Streit v. Wilkerson, 65 So. 164, 186 Ala. 88, Ann. Cas.1917E 378.
Royal Ins. Co. v. Story, 40 So.2d 719, 34 Ala.App. 363, certiorari de-

nied 40 So.2d 724, 253 Ala. 275—Commonwealth Life Ins. Co. v. Wilkinson, 129 So. 300, 23 Ala.App. 561—Northwestern Rug Mfg. Co. v. Russellville Furniture & Mercantile Co., 116 So. 314, 22 Ala.App. 404.

Ariz.—Torosian v. Paulos, 313 P.2d 382, 82 Ariz. 304.

Ark.—Kansas City Southern Ry. Co. v. Diggs, 167 S.W.2d 879, 205 Ark. 150—Keith v. Drainage Dist. No. 7 of Poinsett County, 36 S.W.2d 59, 183 Ark. 384—Harris v. Ashdown Potato Curing Ass'n, 284 S.W. 755, 171 Ark. 399—Miller v. Harris, 281 S.W. 907, 170 Ark. 1193.

Cal.—Stickel v. San Diego Elec. Ry. Co., 195 P.2d 416, 82 C.2d 157—Commercial Union Assur. Co. v. Pacific Gas & Electric Co., 81 P.2d 793, 220 C. 515—Miller & Lux v. Richardson, 187 P. 411, 182 C. 115—Scott v. Jungquist, 175 P. 412, 179 C. 7—Gibson v. Kennedy Extension Gold Mining Co., 156 P. 56, 172 C. 294.

Hercules Powder Co. v. Automatic Sprinkler Corp. of America, App., 311 P.2d 907—Garrick v. J. M. P., Inc., App., 309 P.2d 896—Zellers v. State, 285 P.2d 962, 134 C.A.2d 270—Meloy v. Texas Co., 263 P.2d 897, 121 C.A.2d 691—Reina v. Erassarret, 229 P.2d 92, 103 C.A.2d 258—Edminster v. Thorp, 226 P.2d 373, 101 C.A.2d 756—Stout v. Union Pac. R. Co., 218 P.2d 1001, 98 C.A. 2d 99—Best's Estate, In re, 204 P. 2d 43, 90 C.A.2d 803—Robertson v. Bonelli, 151 P.2d 307, 65 C.A.2d 704—Tillis v. Western Fruit Growers, 113 P.2d 267, 44 C.A.2d 826—Battle v. Niece, 111 P.2d 455, 43 C.A.2d 655—Martin v. Los Angeles Turf Club, 103 P.2d 188, 39 C.A.2d 338—Chinnis v. Pomona Pump Co., 98 P.2d 560, 36 C.A.2d 633—Garris v. Carpenter, 92 P.2d 688, 33 C.A. 2d 649—Berkowitz v. Tyderko, Limited, 57 P.2d 173, 13 C.A.2d 561—Smalley v. Mountain States Life Ins. Co., 37 P.2d 498, 1 C.A.2d 747—McDaniels v. General Ins. Co. of America, 36 P.2d 829, 1 C.A.2d 454—Citizens' Nat. Trust & Savings Bank of Los Angeles v. Bessolo & Gualano, 33 P.2d 73, 139 C.A. 89—Mix v. Yoakum, App., 31 P.2d 1071—In re Horton's Estate, 17 P.2d 184, 128 C.A. 249—Citizens' Nat. Trust & Savings Bank of Los Angeles v. Arrowhead Springs Beverage Co., 14 P.2d 821, 126 C.A. 550—Erickson v. Wilson, 14 P.2d 96, 125 C.A. 779—Vuilleumier v. Kelley, 4 P.2d 557, 117 C.A. 723—Lippman v. Subway Terminal Corporation, 1 P.2d 1056, 115 C.A. 363—San Francisco Iron & Metal Co. v. American Milling & Industrial Co., 1 P.2d 1008, 115 C.A. 238—Bakos v. Shell Co. of California, 300 P. 982, 115 C.A. 142—Gallagher v. Voyce, 279 P. 820, 100 C.A. 797—Asher v. Martin, 279 P. 810, 100 C.A. 217—Gallagher v. Voyce, 279 P. 490, 99 C.A. 791—Pomper v. Behnke, 276 P. 122, 97 C.A. 628—Shepard v. Yale, 270 P. 742, 94 C.A. 104—Milwaukee Bldg. Co. v. Wetzel, 270 P. 382, 93 C.A. 775—Rosander v. Market St. Ry. Co., 265 P. 541, 89 C.A. 721—Wagnitz v. Scharetg, 265 P. 318, 89 C.A. 511—Phillips v. Pacific Electric Ry. Co., 264 P. 538, 89 C.A. 122—Pease, Kolberg & Co. v. Bates, 260 P. 399, 85 C.A. 786—Kruger v. Vernon, 238 P. 1062, 73 C.A. 476—Carleton v. Bonham, 214 P. 503, 60 C.A. 725—Francisco v. Schleischer, 195 P. 691, 50 C.A. 670—McNulty v. Lawley, 184 P. 50, 42 C.A. 747—Mitchell v. Excelsior Water & Mining Co., 182 P. 326, 41 C.A. 240—MacCoy v. Gage, 177 P. 296, 38 C.A. 672—Clark v. Berlin Realty Co., 164 P. 333, 33 C.A. 50—Kuns v. Dias, 163 P. 1052, 32 C.A. 651—Rauer's Law & Collection Co. v. Harrell, 162 P. 125, 32 C.A. 45—Giberson v. Fink, 151 P. 371, 28 C.A. 25—Scragg v. Sallee, 140 P. 706, 24 C.A. 133.

Colo.—Mills v. Sharpe, 272 P.2d 641, 129 Colo. 589—Craig v. Toteve, 110 P.2d 1117, 107 Colo. 254—Weicker Transfer & Storage Co. v. Bedwell, 35 P.2d 1022, 95 Colo. 280—Mountain States Beet Growers' Marketing Ass'n v. Monroe, 269 P. 886, 84 Colo. 300—Wood v. Hazelet, 237 P. 151, 77 Colo. 442.

Conn.—Gillette v. Schroeder, 54 A.2d 498, 133 Conn. 682—Wright v. Blakeslee, 128 A. 113, 102 Conn. 162—Lester v. Ladrigan, 98 A. 124, 90 Conn. 570, L.R.A.1916F 939—Cadwell v. Connecticut Co., 96 A. 153, 89 Conn. 715—Freedman v. Avery, 94 A. 969, 89 Conn. 439.

Fla.—Central Theatres v. Wilkinson, 18 So.2d 755, 154 Fla. 589—Watkins v. Sims, 88 So. 764, 81 Fla. 730—Bland v. Fidelity Trust Co., 71 So. 630, 71 Fla. 499, L.R.A.1916F 209.

Ga.—Cliett v. Metropolitan Life Ins. Co., 24 S.E.2d 59, 195 Ga. 257—Mitchell v. Gunter, 152 S.E. 466, 170 Ga. 135.

Hogg v. First Nat. Bank of West Point, 62 S.E.2d 634, 82 Ga.App. 861—Atlantic Coast Line R. Co. v. Wells, 52 S.E.2d 496, 78 Ga.App. 859—Smith v. Davis, 45 S.E.2d 237, 76 Ga.App. 154—Jones v. Blackburn, 44 S.E.2d 555, 75 Ga.App. 791—Cain v. Dixie Trading Co., 36 S.E.2d 876, 73 Ga.App. 458—Louisville & N. R. Co. v. McCamy, 35 S.E.2d 206, 72 Ga.App. 769—Shahan v. American Tel. & Tel. Co., 35 S.E. 2d 5, 72 Ga.App. 749—General Chemical Co. v. Porter, 24 S.E.2d 140, 68 Ga.App. 780—Magid v. Beaver, 192 S.E. 532, 56 Ga.App. 286, reversed on other grounds 196 S.E. 422, 185 Ga. 669, mandate conformed to 197 S.E. 80, 57 Ga.App. 871—Goodwyn v. Roop, 187 S.E. 127, 53 Ga.App. 847—McCowen v. McCord, 175 S.E. 593, 49 Ga.App. 358—Pybus v. Goldstein, 165 S.E. 866, 45 Ga.App. 669—Southern Ry. Co. v. Watkins, 157 S.E. 522, 42 Ga.App. 772—Sovereign Camp, W. O. W. v. Bell, 156 S.E. 235, 42 Ga.App. 323—Herrington v. Herrington, 155 S.E. 51, 42 Ga.App. 126—Harrison v. Carswell, Moxley & Son, 130 S.E. 694, 34 Ga.App. 630—Hill Bros. v. Render, 125 S.E. 79, 33 Ga.App. 13—Bush v. Cowart & Dancer, 117 S.E. 104, 30 Ga.App. 138, affirmed 121 S.E. 687, 157 Ga. 746—Daniel v. H. H. Fitzpatrick Co., 116 S.E. 544, 29 Ga.App. 750—Hamby v. Carnes, 107 S.E. 615, 26 Ga.App. 788—Drawdy v. Musslewhite, 107 S.E. 549, 27 Ga.App. 84—Holderness v. Hutcheson Mfg. Co., 103 S.E. 838, 25 Ga.App. 612—Jones v. Stiles, 103 S.E. 175, 25 Ga.App. 289—Swift Mfg. Co. v. Cunningham, 100 S.E. 225, 24 Ga.App. 170—Lambright v. Everett, 94 S.E. 593, 21 Ga.App. 488—Mitchell v. J. S. Schofield's Sons Co., 91 S.E. 275, 19 Ga.App. 201—Bowman & Tarpley v. Atlantic Ice & Coal Corp., 91 S.E. 215, 19 Ga.App. 115—Mineola Mill Co. v. Griffin, 90 S.E. 360, 18 Ga. App. 668.

Idaho.—Harbour v. Turner, 282 P. 79, 48 Idaho 364.

Ill.—Stuckrath v. Briggs & Turivas, 161 N.E. 91, 329 Ill. 555.

Reilly Tar & Chemical Corp. v. Lewis, 92 N.E.2d 807, 341 Ill.App. 69—Ernhart v. Elgin, J. & E. Ry. Co., 84 N.E.2d 868, 337 Ill.App. 56, affirmed 92 N.E.2d 96, 405 Ill. 577—Cowher v. Pennsylvania R. Co., 83 N.E.2d 359, 336 Ill.App. 308, certiorari denied 70 S.Ct. 77, 338 U.S. 828, 94 L.Ed. 503—Bituminous Casualty Corporation v. City of Harrisburg, 42 N.E.2d 971, 315 Ill. App. 243—Hertel v. Rebhan, 264 Ill. App. 548—Leeper v. Gay, 253 Ill. App. 176—Richards v. Gundlach, 245 Ill.App. 264—Andrews v. City of White Hall, 184 Ill.App. 298. See Powell v. Alton & S. R. R., 203 Ill.App. 60—Weifenbach v. White City Const. Co., 201 Ill.App. 521—Thoele v. Illinois Traction Co., 188 Ill.App. 214.

Ind.—Klingler v. Ottinger, 22 N.E.2d 895, 216 Ind. 9—Wheeler v. St. Paul Crushed Stone Co., 132 N.E. 1, 191 Ind. 75.

London & Lancashire Indemnity Co. of America v. Community Savings & Loan Ass'n, 4 N.E.2d 688, 102 Ind.App. 665—Yellow Cab Co. v. Kruszynski, 196 N.E. 136, 101 Ind.App. 187—New York Cent. R. Co. v. De Leury, 192 N.E. 125, 100 Ind.App. 140—Carp & Co. v. Meyer, 167 N.E. 151, 89 Ind.App. 490—Commonwealth Casualty Co. v. Kincaid, 156 N.E. 166, 86 Ind.App. 82—Dobbs v. Royer, 142 N.E. 131, 81 Ind.App. 383.

Iowa.—Corpus Juris Secundum cited in Mongar v. Barnard, 82 N.W.2d 765, 770—Korf v. Fleming, 32 N.W.

2d 85, 239 Iowa 501, 3 A.L.R.2d 270—Nickelsen v. Morehead, 29 N.W.2d 195, 238 Iowa 970—Eller v. Preferred Accident Ins. Co., 284 N.W. 406, 226 Iowa 474—West Chester Sav. Bank of West Chester v. Dayton, 250 N.W. 695, 217 Iowa 140—Cleophas v. Walker, 238 N.W. 257, 211 Iowa 122—State v. One Certain Buick Sedan, 229 N.W. 173, 209 Iowa 791—Falcon v. Falcon, 222 N.W. 869, 208 Iowa 8—Nortman v. Lally, 215 N.W. 713, 204 Iowa 638—Plecker v. Knottnerus, 207 N.W. 574, 201 Iowa 550—First Nat. Bank v. Sarvey, 198 N.W. 496, 198 Iowa 1067—Granby v. Friedman, 186 N.W. 628—In re Richardson's Will, 180 N.W. 639, 190 Iowa 586—Graves v. Interstate Power Co., 178 N.W. 376, 189 Iowa 227—Sturgeon v. Minneapolis & St. L. R. Co., 174 N.W. 381, 187 Iowa 645—Polk County v. Owen, 174 N.W. 99, 187 Iowa 220—Miller v. City of Eldon, 170 N.W. 877, 185 Iowa 307—Malloy v. Stoddard Const. Co., 167 N.W. 610, 183 Iowa 881—Zinkula v. Zinkula, 154 N.W. 158, 171 Iowa 287—Doran v. Waterloo, C. F. & N. Ry. Co., 153 N.W. 225, 170 Iowa 614.

Kan.—Muzenich v. Grand Carniolian Slovenian Catholic Union of U. S., 119 P.2d 504, 154 Kan. 537, 138 A.L.R. 818—Fulton v. Menefee, 68 P.2d 1112, 146 Kan. 150—Lutz v. People's State Bank of Minneola, 9 P.2d 997, 135 Kan. 115—Macmillan v. Carlton, 250 P. 308, 121 Kan. 797—Rightmire v. Rightmire, 236 P. 839, 118 Kan. 707—Goddard v. Citizens' First Nat. Bank of Independence, 224 P. 59, 115 Kan. 651—Lyon v. Cary, 206 P. 1109, 111 Kan. 470—Bowers v. Mildren, 193 P. 318, 107 Kan. 584—Jaques v. Order of United Commercial Travelers of America, 180 P. 200, 104 Kan. 612—Richolson v. Ferguson, 142 P. 246, 92 Kan. 1035.

Ky.—Elizabethtown Lincoln-Mercury, Inc. v. Jenkins, 262 S.W.2d 662—Hazelwood v. Woodward, 126 S.W. 2d 857, 277 Ky. 447—Ham v. Miss C. E. Mason's School, The Castle, 61 S.W.2d 7, 249 Ky. 478—Bennett v. Bennett's Ex'r, 51 S.W.2d 241, 244 Ky. 394—Tassone v. Goodin-Barney Coal Co., 272 S.W. 12, 209 Ky. 84—Louisville & N. R. Co. v. Howser's Adm'r, 257 S.W. 1010, 201 Ky. 548, 36 A.L.R. 327—Robinson's Adm'r v. Alexander, 239 S. W. 786, 194 Ky. 494—Home Realty Co. v. Carius, 224 S.W. 751, 189 Ky. 228—Peirano v. Shapiro, 223 S.W. 1098, 188 Ky. 652—Tackitt v. Newsom, 216 S.W. 376, 186 Ky. 188—Doherty v. First Nat. Bank of Louisville, 186 S.W. 937, 170 Ky. 810—Lam v. Earlington Mach. Works, 186 S.W. 152, 170 Ky. 384—Willey v. Howell, 169 S.W. 519, 159 Ky. 805—Stewart & Whitesides v. Mackin, 169 S.W. 469, 159 Ky. 727.

Me.—Burns v. Baldwin-Doherty Co., 170 A. 511, 132 Me. 331—Wilkins v. Waldo Lumber Co., 153 A. 191, 130 Me. 5—Allard v. La Plain, 130 A. 737, 125 Me. 44.

Md.—Lutz v. Lutz, 189 A. 192, 171 Md. 696—Kirsch v. Ford, 183 A. 240, 170 Md. 90—Clark v. Banks, 148 A. 238, 158 Md. 24—Rosenthal v. Heft, 142 A. 598, 155 Md. 410—Weiss v. Northern Dredge & Dock Co., 142 A. 253, 155 Md. 351—State v. Norfolk & W. Ry. Co., 135 A. 827, 151 Md. 679—Penrose v. Canton Nat. Bank of Canton, 127 A. 852, 147 Md. 200—Lambert v. Philadelphia, B. & W. R. Co., 125 A. 765, 145 Md. 662—Griffith v. Pullman Co., 121 A. 362, 142 Md. 514—State v. Phillinger, 120 A. 878, 142 Md. 365—Riley v. State, 117 A. 237, 140 Md. 137—Boggs v. Boggs, 114 A. 474, 138 Md. 422—Stewart & Co. v. Howell, 110 A. 899, 136 Md. 423—Rasst v. Morris, 108 A. 787, 135 Md. 243—Bracey v. McGary, 106 A. 622, 134 Md. 267—Wood v. Hankey, 105 A. 430, 133 Md. 389—Stocksdale v. Jones, 104 A. 416, 133 Md. 176—Stevens v. Northern Cent. Ry. Co., 98 A. 551, 129 Md. 215—Kenly v. Washington County R. Co., 98 A. 232, 129 Md. 1—State v. New York, P. & N. R. Co., 96 A. 812, 127 Md. 675—Bavington v. Robinson, 95 A. 1067, 127 Md. 46—Greer v. Whalen, 93 A. 521, 125 Md. 273—Rice v. Dinsmore, 92 A. 847, 124 Md. 276—Soper v. Michal, 91 A. 684, 123 Md. 542, L.R.A.1915A 232.

Mass.—Whittet v. Hilton, 138 N.E. 2d 596—Horowitz v. S. Slater & Sons, 164 N.E. 72, 265 Mass. 143, followed in Connelly v. S. Slater & Sons, 164 N.E. 77, 265 Mass. 155—Boyd v. Boston Elevated Ry. Co., 162 N.E. 735, 264 Mass. 364, followed in Parker v. Same, 174 N. E. 927, 273 Mass. 345—Hicks v. H. B. Church Truck Service Co., 156 N.E. 254, 259 Mass. 272—Traverse v. Wing, 152 N.E. 354, 256 Mass. 320—Mason v. Albert, 137 N.E. 661, 243 Mass. 433—Miller v. Boston & M. R. R., 134 N.E. 368, 240 Mass. 461—Cotter v. Nathan & Hurst Co., 110 N.E. 1037, 222 Mass. 433.

Mich.—Winchester v. Chabut, 32 N. W.2d 358, 321 Mich. 114—Anderson v. Bliss, 274 N.W. 809, 281 Mich. 323—Weiner v. American Credit-Indemnity Co. of New York, 222 N.W. 699, 245 Mich. 418—Farthing v. Hepinstall, 220 N.W. 708, 243 Mich. 380—Michigan Grey Iron Castings Co. v. Coulson, 203 N.W. 97, 230 Mich. 86—Luckhurst v. Schroeder, 149 N.W. 1009, 183 Mich. 487.

Minn.—Hartmon v. National Heater Co., 60 N.W.2d 804, 240 Minn. 264—Vaegemast v. Hess, 280 N.W. 641, 203 Minn. 207—**Corpus Juris cited in** Eilola v. Oliver Iron Mining Co., 275 N.W. 408, 410, 201 Minn. 77—Bird v. Johnson, 272 N. W. 168, 199 Minn. 252—Miller v. McCarthy, 270 N.W. 559, 198 Minn. 497—Cashman v. Bremer, 262 N.W. 216, 195 Minn. 195—Quarfot v. Security Nat. Bank & Trust Co., 249 N.W. 668, 189 Minn. 451—Schmitt v. U. S. Fidelity & Guaranty Co., 210 N.W. 846, 169 Minn. 106—Riley v. Belleview Trading Co., 202 N. W. 441, 162 Minn. 514—Meagher v. Fogarty, 152 N.W. 833, 129 Minn. 417.

Mo.—Tatum v. Gulf, M. & O. R. Co., 223 S.W.2d 418, 359 Mo. 909—**Corpus Juris cited in** Hicks v. Vieths, 46 S.W.2d 604, 608—Jenkins v. Missouri State Life Ins. Co., 69 S. W.2d 666, 334 Mo. 941—Steffen v. Southwestern Bell Telephone Co., 56 S.W.2d 47, 331 Mo. 574—Wolfson v. Cohen, 55 S.W.2d 677—Grubbs v. Kansas City Public Service Co., 45 S.W.2d 71, 329 Mo. 390—Williams v. Lack, 40 S.W.2d 670, 328 Mo. 32—Irwin v. St. Louis-San Francisco Ry. Co., 30 S.W.2d 56, 325 Mo. 1019—Hecker v. Bleish, 3 S.W.2d 1008, 319 Mo. 149—City Trust Co. v. Crockett, 274 S.W. 802, 309 Mo. 683—Scullin Steel Co. v. Mississippi Valley Iron Co., 273 S.W. 95, 308 Mo. 453—Mullen v. Sensenbrenner Mercantile Co., 260 S.W. 982, 33 A.L.R. 176—Dunsmore v. Hartmann, 256 S.W. 1031—Gilchrist v. Kansas City Rys. Co., 254 S.W. 161—**Kansas** City v. Brown, 227 S.W. 89, 286 Mo. 1—Baker v. J. W. McMurry Contracting Co., 223 S.W. 45, 282 Mo. 685—Britt v. Crebo, 199 S.W. 154—Springfield Crystallized Egg Co. v. Springfield Ice & Refrigerating Co., 168 S.W. 772, 259 Mo. 664.

Corpus Juris Secundum cited in Southall v. Columbia Nat. Bank, App., 244 S.W.2d 577, 582—State ex rel. State Highway Commission v. Devenyns, App., 179 S.W.2d 740—White v. Hasburgh, App., 124 S.W.2d 560—Foman v. Liberty Life Ins. Co., 51 S.W.2d 212, 227 Mo. App. 70—Akin v. Hull, App., 30 S.W.2d 1101—Keena v. Keena, 10 S.W.2d 344, 222 Mo.App. 825—Loughlin v. Marr-Bridger Grocer Co., App., 10 S.W.2d 75—Paxon v. Kregel Casket Co., 9 S.W.2d 856, 223 Mo.App. 151—Burns v. Colley, 9 S.W.2d 159, 223 Mo.App. 76—Diehl v. Charles, App., 8 S.W. 2d 1082—Hinson v. Morris, App., 298 S.W. 254—Elstroth v. Karrenbrock, App., 285 S.W. 525—Randazzo Macaroni Mfg. v. Minneapolis & St. L. R. Co., App. 251 S.W. 466—Clark v. King, 238 S.W. 825, 209 Mo.App. 309—Ray v. Wabash Ry. Co., App., 232 S.W. 268—Keith v. Kansas City Rys. Co., App., 231 S. W. 1046—Radford v. Horton, 227 S.W. 1073, 207 Mo.App. 601—Eckel v. Gruebel, App., 226 S.W. 983—Smoot v. Dennison, App., 196 S.W.

1018—Finnell v. Kellogg, 186 S.W. 1169, 194 Mo.App. 342.

Mont.—Wibaux Realty Co. v. Northern Pac. Ry. Co., 54 P.2d 1175, 101 Mont. 126—Reid v. Linder, 251 P. 157, 77 Mont. 406—State v. American Bank & Trust Co., 243 P. 1093, 75 Mont. 369—Murray v. City of Butte, 151 P. 1051, 51 Mont. 258—Cole v. Helena Light & Ry. Co., 143 P. 974, 49 Mont. 443.

Neb.—Lautenschlager v. Lautenschlager, 279 N.W. 200, 134 Neb. 577—Russo v. Omaha & C. B. St. Ry. Co., 153 N.W. 510, 98 Neb. 436.

Nev.—Jackson v. Harris, 183 P.2d 161, 64 Nev. 339.

N.H.—Sullivan v. Le Blanc, 125 A. 2d 652, 100 N.H. 311—Charles v. McPhee, 26 A.2d 30, 92 N.H. 111.

N.J.—Marano v. Sabbio, 97 A.2d 732, 26 N.J.Super. 201.

George W. Loft Realty Co. v. M. H. Harris, Inc., 174 A. 709, 113 N.J.Law 469—American Well Works v. Royal Indemnity Co., 160 A. 560, 109 N.J.Law 104.

Miko v. Feldman, 181 A. 632, 13 N.J.Misc. 837—Cordery v. American Ry. Express Co., 137 A. 719, 5 N.J.Misc. 600, affirmed 140 A. 416, 104 N.J.Law 434—Helstowski v. Greenberg, 126 A. 615, 2 N.J.Misc. 1094, affirmed 130 A. 918, 101 N.J. Law 560.

N.Y.—Neil v. Thorn, 88 N.Y. 270.

Farhart v. Matuljak, 130 N.Y.S. 2d 611, 283 App.Div. 977, reargument and appeal denied 132 N.Y.S. 2d 347, 284 App.Div. 817—Ellis v. Ellis, 187 N.Y.S. 316, 196 App.Div. 896—Levine v. Orentlich, 152 N.Y. S. 962, affirmed Levine v. Danzig, 155 N.Y.S. 1120, 170 App.Div. 968.

N.C.—Powell v. Daniel, 73 S.E.2d 143, 236 N.C. 489—Fanelty v. Rogers Jewelers, 55 S.E.2d 493, 230 N.C. 694—Metcalf v. Ratcliff, 4 S. E.2d 515, 216 N.C. 216—Bryant v. Reedy, 200 S.E. 896, 214 N.C. 748—Keith Bros. v. Kennedy, 140 S.E. 721, 194 N.C. 784—Roane v. McCoy, 109 S.E. 842, 182 N.C. 727.

N.D.—Bolen v. Dolph, 245 N.W. 259, 62 N.D. 700—Asch v. Washburn Lignite Coal Co., 186 N.W. 757, 48 N.D. 734—Fuchs v. Lehman, 181 N.W. 85, 47 N.D. 58—Ruddick v. Buchanan, 163 N.W. 720, 37 N.D. 132—Soules v. Northern Pac. Ry. Co., 157 N.W. 823, 34 N.D. 7, L.R.A. 1917A 501—Halverson v. Lasell, 157 N.W. 682, 33 N.D. 613—Kersten v. Great Northern Ry. Co., 147 N. W. 787, 28 N.D. 3.

Ohio.—Chapman v. Knickerbocker Amusement Co., 84 N.E.2d 283, 85 Ohio App. 215—Booth v. Krouse, 65 N.E.2d 89, 78 Ohio App. 461—Jones v. Butler, 52 N.E.2d 347, 72 Ohio App. 335—Eikenberry v. McFall, App., 36 N.E.2d 27.

Davider v. Wheeling & Lake Erie Ry. Co., 20 Ohio Cir.Ct.,N.S., 165.

Okl.—Williams v. Williams, 274 P.2d 359—R & S. Auto. Service v. McGill, 238 P.2d 1089, 205 Okl. 495—Casualty Reciprocal Exchange v. Sutân, 166 P.2d 434, 196 Okl. 567—Chickasha Cotton Oil Co. v. Standard Lumber Co., 52 P.2d 816, 175 Okl. 15—Panther Oil & Gas Co. v. Brown, 39 P.2d 150, 170 Okl. 210—Muskogee Sand & Gravel Co. v. Hulbert, 9 P.2d 419, 156 Okl. 112—Moorhead v. Fidelity Building & Loan Ass'n, 292 P. 71, 145 Okl. 215—Minnetonka Oil Co. v. Haviland, 155 P. 217, 55 Okl. 43.

Or.—Monner v. Starker, 26 P.2d 1097, 145 Or. 168—Hanson v. Johnson, 23 P.2d 333, 143 Or. 532—Wemmett v. Mount, 292 P. 93, 134 Or. 305—Frint v. Amato, 284 P. 183, 131 Or. 631—Fenlason v. Pacific Fruit Package Co., 230 P. 547, 112 Or. 633—F. C. Austin Co. v. J. H. Tillman Co., 209 P. 131, 104 Or. 541, 30 A.L. R. 293—In re Andersen's Estate, 198 P. 236, 101 Or. 94—Stricker v. Portland Ry., Light & Power Co., 155 P. 1195, 79 Or. 526.

Pa.—Hutchison v. Pennsylvania R. Co., 105 A.2d 356, 378 Pa. 24—Rodgers v. Fleming, 188 A. 861, 325 Pa. 228—Zimmerman v. Pennsylvania R. Co., 153 A. 721, 302 Pa. 406—Jarvis v. Bell, 146 A. 153, 296 Pa. 568—Curtis v. Miller, 112 A. 747, 269 Pa. 509—McGunnegle v. Pittsburgh & L. E. R. Co., 112 A. 553, 269 Pa. 404—Hartley-Zeigler Co. v. Bacon, 96 A. 257, 251 Pa. 87.

J. J. Pocock, Inc., to Use of General Motors Acceptance Corp. v. Levy, 196 A. 869, 130 Pa.Super. 94—Kraesley v. Rickert, 64 Pa.Super. 308—Kelly v. Kelly, 51 Pa.Super. 603.

Heat and Power Corp. v. Foust Distilling Co., Com.Pl., 67 York Leg.Rec. 61, affirmed 106 A.2d 225, 378 Pa. 133—Vastine v. Brennan, Com.Pl., 43 Lack.Jur. 201, 56 York Leg.Rec. 130.

R.I.—Kinoian v. Brennan, 81 A.2d 697, 78 R.I. 298—Geaber v. Spink, 80 A.2d 882, 78 R.I. 198—Isherwood v. Vendettuoli, 57 A.2d 171, 73 R. I. 437—Grygiel v. Grygiel, 26 A.2d 743, 68 R.I. 155—De Fusco v. Laudati, 10 A.2d 346, 64 R.I. 68—Grande v. Boston Mut. Life Ins. Co., 193 A. 516, 58 R.I. 502—Kitchen v. Barrett, 192 A. 809, 58 R.I. 388—Rhode Island Hospital Trust Co. v. Providence County Court House Commission, 159 A. 642, 52 R.I. 186—La France v. Moquin, 141 A. 307, 49 R.I. 151—National Machinery Co. v. Kirby, 94 A. 149.

S.C.—Goudelock v. Prudential Ins. Co. of America, 65 S.E.2d 114, 219 S.C. 284—Moore v. Atlantic Coast Line R. Co., 7 S.E.2d 4, 192 S.C. 406—Cook v. C. I. T. Corp., 4 S.E.2d 801, 191 S.C. 440, 125 A.L.R. 306—Phillips v. Equitable Life Assur. Soc. of U. S., 191 S.E. 226, 183 S.C. 431—Kirven v. Kirven, 160 S.E. 432, 162 S.C. 162—State v. Gilbert, 150 S.E. 221, 153 S.C. 25—Fitchette v. Sumter Hardwood Co., 142 S.E. 828, 145 S.C. 53—York v. Charles, 138 S.E. 29, 132 S.C. 230—Knight v. Bennett, 121 S.E. 671, 128 S.C. 107—American Fruit Growers v. King, 114 S.E. 861, 122 S.C. 69—Miller v. Parr Shoals Power Co., 88 S.E. 374, 104 S.C. 129—Pressley v. Pressley, 86 S.E. 377, 102 S.C. 174.

S.D.—Smith v. Stevens, 229 N.W. 938, 56 S.D. 583—Clements v. Keith, 221 N.W. 675, 53 S.D. 588—Pierce v. Lyons, 176 N.W. 521, 42 S.D. 543—Barney v. Morrissey, 172 N. W. 501, 42 S.D. 15.

Tenn.—Haskins v. Howard, 16 S.W. 2d 20, 159 Tenn. 86.

Petway v. Hoover, 12 Tenn.App. 618.

Tex.—Caraway v. Flagg, Civ.App., 277 S.W.2d 803, error refused no reversible error—Caswell v. Satterwhite, Civ.App., 277 S.W.2d 237, error refused no reversible error—Utilities Natural Gas Corp. v. Hill, Civ.App., 239 S.W.2d 431, error refused no reversible error—Texas Long Leaf Lumber Co. v. Sabiniewicz, Civ.App., 228 S.W.2d 904—Hawkins v. Texas Co., Civ.App., 203 S.W.2d 1003, affirmed 209 S.W. 2d 338, 146 Tex. 511—Viduarri v. Bruni, Civ.App., 179 S.W.2d 818, error refused—Mansell Bros. v. Kruse, Civ.App., 173 S.W.2d 461—Glover v. Adams, Civ.App., 151 S. W.2d 316—Meinen v. Muesse, Civ. App., 72 S.W.2d 931—Dallas Ry. & Terminal Co. v. Burns, Civ.App., 60 S.W.2d 801—Carlton v. Adams, Civ.App., 54 S.W.2d 1073—Houston Electric Co. v. Settle, Civ. App., 51 S.W.2d 648—Mutual Life & Loan Ass'n of America v. Skidmore, Civ.App., 50 S.W.2d 384—Maxcy v. Norsworthy, Civ.App., 49 S.W.2d 885—Boyd v. Guinn, Civ. App., 44 S.W.2d 1112—Daggett v. Wolff, Civ.App., 44 S.W.2d 1063—Houston Independent School Dist. v. Reader, Civ.App., 38 S.W.2d 610—Texas Interurban Ry. v. Hughes, Civ.App., 34 S.W.2d 1103, affirmed Texas Interurban Ry. Co. v. Hughes, Com.App., 53 S.W.2d 448—Abel v. Maxwell Hardware Co., Civ.App., 28 S.W.2d 312—Wagoner v. Christian, Civ.App., 22 S.W.2d 1085—Schroeder v. Rosenbaum, Civ.App., 21 S.W.2d 694—Port City Lumber Co. v. Wade, Civ.App., 16 S.W.2d 429—Ely v. Lasch, Civ. App., 11 S.W.2d 593—Longenecker v. Ward County Water Improvement Dist. No. 3, Civ.App., 8 S.W. 2d 306—Ramsey v. Crow, Civ.App., 3 S.W.2d 486—King v. Wise, Civ. App., 1 S.W.2d 732—Alsabrook v. Bishop, Civ.App., 295 S.W. 646—Hunt v. Garrett, Civ.App., 275 S.W. 96, modified on other grounds Garrett v. Hunt, Com.App., 283 S.W. 489—W. T. Rawleigh Co. v. Lemon, Civ.App., 247 S.W. 683—Missouri,

ing within the authority of a trial court to revise and correct its rulings on the rejection of evidence at any time before final judgment.[61]

The error in the exclusion of testimony may be cured by a subsequent reception of it in a different form.[62] For example, error committed in rejecting written evidence may be cured by the subsequent reception of oral evidence establishing the fact sought to be proved,[63] while, conversely, re-

K. & T. Ry. Co. of Texas v. St. Louis Southwestern Ry. Co. of Texas, Civ.App., 239 S.W. 337—Richmond v. Hog Creek Oil Co., Civ.App., 229 S.W. 563, error dismissed, Com.App., 239 S.W. 904—Johnson v. Mangum, Civ.App., 227 S.W. 750—Wrather v. Parks, Civ. App., 227 S.W. 513—Aurelius v. Stewart, Civ.App., 219 S.W. 863—Foster v. Guerra, Civ.App., 219 S. W. 295, dismissed for want of jurisdiction—Walker v. Kellar, Civ. App., 218 S.W. 792—Frick v. International & G. N. Ry. Co., Civ. App., 207 S.W. 198, error refused—Kennedy v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 192 S.W. 1114, dismissed for want of jurisdiction—Wilson v. J. W. Crowdus Drug Co., Civ.App., 190 S.W. 194, affirmed, Com.App., 222 S.W. 223—Houston Oil Co. of Texas v. Stepney, Civ.App., 187 S.W. 1078, error refused—Galveston, H. & S. A. Ry. Co. v. Reinhart, Civ.App., 182 S.W. 436—McGraw v. Galveston, H. & S. A. Ry. Co., Civ.App., 182 S.W. 417—Foster v. Atlir, Civ. App., 181 S.W. 520, reversed on other grounds, Com.App., 215 S.W. 955—Gibson v. Dickson, Civ.App., 178 S.W. 44—McCullough v. Hurt, Civ.App., 175 S.W. 781—La Grange & Lockhart Compress Co. v. Hart, Civ.App., 169 S.W. 373.

Utah.—P. A. Sorensen Co. v. Denver & R. G. R. Co., 164 P. 1020, 49 Utah 548.

Vt.—Shastany v. Weeks, 34 A.2d 174, 113 Vt. 363—Nelson v. Bacon, 32 A.2d 140, 113 Vt. 161—Taylor v. Henderson, 22 A.2d 318, 112 Vt. 107—Page v. McGovern, 3 A.2d 543, 110 Vt. 166—Hutchinson v. Knowles, 184 A. 705, 108 Vt. 195, followed in 184 A. 711, 108 Vt. 208—Turgeon v. Baker, 163 A. 588, 105 Vt. 61—Prazak v. Burselko, 160 A. 189, 104 Vt. 457—West Rutland Trust Co. v. Houston, 158 A. 69, 104 Vt. 204, 80 A.L.R. 664—Cummings v. Connecticut General Life Ins. Co., 142 A. 82, 101 Vt. 73—Northeastern Nash Automobile Co. v. Bartlett, 136 A. 697, 100 Vt. 246—Bradley v. Blandin, 110 A. 309, 94 Vt. 243—Goulette's Adm'r v. Grand Trunk Ry. Co., 107 A. 118, 93 Vt. 266.

Va.—Bishop v. Webster, 153 S.E. 832, 154 Va. 771, rehearing denied 155 S.E. 828, 154 Va. 771—Scott v. Moon, 130 S.E. 241, 143 Va. 425—Good v. Dyer, 119 S.E. 277, 137 Va. 114—Deitz v. Whyte, 109 S.E. 212, 131 Va. 19—Powers v. Hamilton, 86 S.E. 98, 117 Va. 810.

Wash.—Lopeman v. Gee, 245 P.2d 183, 40 Wash.2d 586, 32 A.L.R.2d 904—Hoff v. Lester, 200 P.2d 515, 31 Wash.2d 937—Bredemeyer v. Johnson, 36 P.2d 1062, 179 Wash. 225—Monroe St. Lumber Co. v. Garvey, 17 P.2d 904, 171 Wash. 181—Blaine v. Darwin, 295 P. 131, 160 Wash. 327—In re Ward's Estate, 292 P. 737, 159 Wash. 252—Rae v. Nelson, 277 P. 75, 152 Wash. 10—Packard v. Coberly, 265 P. 1082, 147 Wash. 345—In re Krilich's Estate, 210 P. 788, 122 Wash. 306, modified on other grounds 215 P. 9, 122 Wash. 306—Eyers v. Burbank Co., 166 P. 656, 97 Wash. 220—In re Seward Parke Ave. in City of Seattle, 165 P. 971, 96 Wash. 698—In re Northlake Ave., 165 P. 113, 96 Wash. 344—Hicks v. Baumgartner, 164 P. 743, 96 Wash. 71—Seattle, P. A. & L. C. Ry. v. Land, 142 P. 680, 81 Wash. 206—Wild Rose Orchard Co. v. Critzer, 140 P. 561, 79 Wash. 462.

W.Va.—Peck v. Bez, 40 S.E.2d 1, 129 W.Va. 247.

Wis.—Bovi v. Mellor, 34 N.W.2d 780, 253 Wis. 458—Schwenker v. Teasdale, 239 N.W. 434, 206 Wis. 275.

4 C.J. p 1014 note 34.

Maps

(1) The exclusion of one map is harmless error where other adequate maps were subsequently admitted.

Tex.—Falls County v. Young, Civ. App., 77 S.W.2d 912.

4 C.J. p 1014 note 34 [a].

(2) In a boundary case, refusal to admit a map in evidence was harmless, where the maker of the map was permitted to testify to matters material to the issues which were contained in the map.

Tex.—Town of Jacksonville v. Pinkard, Civ.App., 40 S.W.2d 841.

Photographs

An erroneous exclusion of a photograph is harmless where the jury were subsequently permitted to view the object photographed.

Ky.—Coyle v. Elliott, 225 S.W. 489, 189 Ky. 569.

Or.—Archer v. Gage, 270 P. 521, 126 Or. 532.

4 C.J. p 1014 note 34 [c].

Res gestæ statements

The exclusion of certain statements of persons which are relied on as res gestæ statements is harmless error, where the declarants testify at the trial.

Iowa.—Shields v. Holtorf, 201 N.W. 63, 199 Iowa 37.

Tex.—Sanitary Mfg. Co. v. Gamer, Civ.App., 201 S.W. 1068.

4 C.J. p 1014 note 34 [b].

Tax returns

In a condemnation case, the exclusion of a tax return offered for the year 1928 was harmless where the 1927 return, apparently for the same amount, was in evidence.

Ga.—Georgia Power Co. v. Chapman, 168 S.E. 134, 46 Ga.App. 589.

61. Iowa.—Perry Savings Bank v. Fitzgerald, 149 N.W. 497, 167 Iowa 446.

Tex.—Gowan v. Reimers, Civ.App., 220 S.W.2d 331, error refused no reversible error.

4 C.J. p 1015 note 36.

62. Cal.—Hughes v. Pacific Wharf & Storage Co., 205 P. 105, 188 C. 210.

Okl.—Williams v. New Brunswick Fire Ins. Co., 45 P.2d 127, 172 Okl. 136—Fitzgerald v. Caldwell, 259 P. 209, 126 Okl. 162.

Utah.—Jackson v. Jackson, 192 P.2d 397, 113 Utah 249.

Admission of picture

Refusal to permit a witness to describe a curve was not prejudicial, where the pictures in evidence showed the curve.

Md.—Cumberland & Westernport Transit Co. v. Metz, 149 A. 4, 158 Md. 424, reargument denied 149 A. 565, 158 Md. 424, and appeal dismissed American Oil Co. v. Metz, 51 S.Ct. 40, 282 U.S. 801, 75 L.Ed. 720.

63. Ala.—Kennedy v. County Board of Education, 107 So. 907, 214 Ala. 349—Bass v. Green & Yates, 78 So. 869, 201 Ala. 515—Whitehead v. Jasper Oil & Fertilizer Co., 77 So. 42, 200 Ala. 668.

Ark.—Black v. Hogsett, 224 S.W. 439, 145 Ark. 178.

Cal.—California Pear Growers' Ass'n v. Herspring, 213 P. 518, 60 C.A. 503.

Colo.—Losasso v. Cefalu, 227 P. 834, 76 Colo. 12.

Conn.—Turner v. Turner, 98 A. 824, 90 Conn. 676.

Ga.—Cook v. Powell, 129 S.E. 546, 160 Ga. 831—Kirkman v. Ashford, 89 S.E. 411, 145 Ga. 452.

Oxford v. Horsley, 163 S.E. 284, 44 Ga.App. 821.

Iowa.—Jones County Trust & Savings Bank v. Kurt, 182 N.W. 409, 192 Iowa 965.

Md.—Zipus v. United Rys. & Electric Co. of Baltimore City, 108 A. 884, 135 Md. 297.

jected oral evidence may be supplied by documentary evidence,[64] the rule having special application where the evidence subsequently admitted is of a higher and better nature than that excluded.[65] To effect a cure of the error, however, the subsequent evidence must be substantially the same as that excluded,[66] must be admitted for the same purpose,[67] and must not itself be taken from the jury; if this is done, the error is clearly prejudicial and a ground for new trial.[68]

Through same witness. The rule that error in the rejection of evidence is cured by the subsequent reception of the same evidence finds its most frequent application in cases where substantially the same testimony as that objected to and excluded is elicited from the same witness on further examination.[69] Error in rejecting competent evidence is not

Mass.—Freeman v. Sieve, 84 N.E.2d 16, 323 Mass. 652.
Mo.—Burnam v. Chicago Great Western R. Co., 100 S.W.2d 858, 340 Mo. 25.
Dickey v. Supreme Tribe of Ben Hur, 269 S.W. 633, 218 Mo.App. 281.
Mont.—Puckett v. Hopkins, 206 P. 422, 63 Mont. 137.
Nev.—Gattshall v. Sizemore, 281 P. 2d 400, 71 Nev. 106.
Ohio.—Cleveland Ry. Co. v. Hoynes, 9 Ohio App. 1.
Okl.—Miller v. Howard, 184 P. 773, 76 Okl. 237.
Pa.—Travellers Ins. Co. v. Heppenstall Co., 61 A.2d 809, 360 Pa. 433—Penrose v. Penn Forest Coal Co., 137 A. 670, 289 Pa. 519.
Francis v. Shore, 195 A. 913, 129 Pa.Super. 511.
S.C.—LaCount v. General Asbestos & Rubber Co., 192 S.E. 262, 184 S.C. 232—Cross v. Southern Coal & Coke Co., 149 S.E. 14, 151 S.C. 309.
Tex.—Caraway v. Flagg, Civ.App., 277 S.W.2d 803, error refused no reversible error—Caswell v. Satterwhite, Civ.App., 277 S.W.2d 237, error refused no reversible error—Gibralter Colorado Life Co. v. Taylor, Civ.App., 99 S.W.2d 1084, reversed on other grounds 123 S.W. 2d 318, 132 Tex. 328—Sanitary Mfg. Co. v. Gamer, Civ.App., 201 S.W. 1068—Couch v. Biggers, Civ. App., 198 S.W. 1101—North American Accident Ins. Co. v. Miller, Civ.App., 193 S.W. 750, error refused—Brotherhood of American Yeomen v. Hickey, Civ.App., 191 S.W. 162—St. Louis Southwestern Ry. Co. of Texas v. Kerr, Civ.App., 184 S.W. 1058.
Utah.—New York Plate Glass Ins. Co. v. Martines, 184 P. 819, 55 Utah 292.
Va.—Stuart v. Smith-Courtney Co., 96 S.E. 241, 123 Va. 231.
Wash.—Gaffney v. Scott Pub. Co., 248 P.2d 390, 41 Wash.2d 191, certiorari denied Scott Pub. Co. v. Gaffney, 73 S.Ct. 1131, 345 U.S. 992, 97 L.Ed. 1400—O'Neill v. Matthews, 218 P. 222, 126 Wash. 360—Deer Park Lumber Co. v. Oregon-Washington Lumber & Mfg. Co., 177 P. 336, 104 Wash. 531—Shilliam v. Newman, 162 P. 977, 94 Wash. 637.
4 C.J. p 1016 note 41.

Exclusion of affidavit
In an action on an accident policy, excluding an affidavit of the attending physician who took part in the autopsy is without prejudice to a party who called such physician and examined him fully upon the facts covered by such affidavit.
Iowa.—Hatfield v. Iowa State Traveling Men's Ass'n, 161 N.W. 123, 180 Iowa 39.

64. Conn.—Sosnowski v. Lenox, 53 A.2d 388, 133 Conn. 624.
Ga.—Buice v. McCarty Johnstone Co., 110 S.E. 503, 28 Ga.App. 192—Washington v. Jordan, 109 S.E. 923, 28 Ga.App. 18—Central of Georgia Ry. Co. v. Miller & Lipshitz, 106 S.E. 15, 26 Ga.App. 210.
N.C.—Hege v. Sellers, 84 S.E.2d 892, 241 N.C. 240.
S.C.—In re Percival's Estate, 93 S.E. 243, 108 S.C. 39.
4 C.J. p 1016 note 42.

65. Cal.—Longuy v. La Société Francaise De Bienfaisance Mutuelle, 198 P. 1011, 52 C.A. 370.
4 C.J. p 1016 note 43.

Error not cured
In a suit for alienation of affections of plaintiff's husband, plaintiff's testimony concerning her husband's relations with one woman did not cure a previous error in sustaining objections to questions asked her concerning her husband's relations with one A.
Ala.—Parker v. Newman, 75 So. 479, 200 Ala. 103.

66. Ill.—Smith v. National Life & Accident Ins. Co., 4 N.E.2d 128, 286 Ill.App. 566.
Neb.—Prince v. Petersen, 12 N.W.2d 704, 144 Neb. 134.
Va.—Barton v. Camden, 137 S.E. 465, 147 Va. 263.
4 C.J. p 1016 note 44.

67. Colo.—Loloff v. Sterling, 71 P. 1113, 31 Colo. 102.
Mo.—Stoner v. Royar, 98 S.W. 601, 200 Mo. 444.
Tallman v. Nelson, 125 S.W. 1181, 141 Mo.App. 478.
N.Y.—McKown v. Hunter, 30 N.Y. 625.
Haines v. Thompson, 21 N.Y.S. 991, 2 Misc. 385.
Wis.—Packard v. Backus, 47 N.W. 183, 78 Wis. 188.
4 C.J. p 1016 note 45.

68. Cal.—Hicks v. Drew, 49 P. 189, 117 C. 305.
S.D.—Nichols, etc., Co. v. Horstad, 146 N.W. 566, 33 S.D. 370.
4 C.J. p 1016 note 46.

69. Ala.—Butler v. Hughes, 88 So. 2d 195, 264 Ala. 532—Alabama Great Southern R. Co. v. Baum, 31 So.2d 366, 249 Ala. 442—Spurlock v. J. T. Knight & Son, 20 So.2d 525, 246 Ala. 283—Mitchell v. Kinney, 5 So.2d 788, 242 Ala. 196—Capital Motor Lines v. Loring, 189 So. 897, 238 Ala. 260—Armour & Co. v. Cartledge, 176 So. 334, 234 Ala. 644—Walker v. Graham, 172 So. 655, 233 Ala. 539—Lewis v. Linkett, 167 So. 286, 232 Ala. 233—Pacific Mut. Life Ins. Co. of California v. Marks, 161 So. 543, 230 Ala. 417—London & Scottish Assur. Corporation of London, England v. Smith, 158 So. 892, 228 Ala. 556—Lipscomb v. Moore, 150 So. 907, 227 Ala. 547—Alaga Coach Line v. Foy, 150 So. 493, 227 Ala. 506—Wolff v. Zurga, 150 So. 144, 227 Ala. 370—Berry v. Dannelly, 145 So. 663, 226 Ala. 151—Birmingham News Co. v. Moseley, 141 So. 689, 225 Ala. 45—Hill v. Almon, 141 So. 625, 224 Ala. 658—Smith v. Dollar, 138 So. 277, 223 Ala. 661—Jefferson County Burial Soc. v. Cotton, 133 So. 256, 222 Ala. 578—Loreno v. Ross, 133 So. 251, 222 Ala. 567—Baker v. Rainer, 124 So. 737, 220 Ala. 207—Elder v. Ralls Sanitarium, 122 So. 41, 219 Ala. 298—Sovereign Camp, W. O. W. v. Gibbs, 114 So. 915, 217 Ala. 108—Fields v. First Nat. Bank, 113 So. 298, 216 Ala. 381—Carbon Hill Consol. Coal Co. v. Sanborn, 110 So. 131, 215 Ala. 118—Howton v. E. I. Du Pont de Nemours & Co., 108 So. 344, 214 Ala. 479—Pettus v. Louisville & N. R. Co., 106 So. 807, 214 Ala. 187—Jackson v. Lancaster, 104 So. 19, 213 Ala. 97—Holmes v. Holmes, 103 So. 884, 212 Ala. 597—Johnson-Brown Co. v. Dominey Produce Co., 102 So. 606, 212 Ala. 377—Feore v. Trammel, 102 So. 529, 212 Ala. 325—J. R. Watkins Co. v. Pace, 101 So. 758, 212 Ala. 63—Dixie Const. Co. v. McCauley, 101 So. 601, 211 Ala. 683—Southern Ry. Co. v. Dickson, 100 So. 665, 211 Ala. 481—Southern Ry. Co. v. Gantt, 98 So. 192, 210 Ala. 383—Wilson v. Orr, 97 So.

133, 210 Ala. 93—Woodward Iron Co. v. Thompson, 95 So. 270, 209 Ala. 53—Atlantic Coast Line R. Co. v. Carroll, 94 So. 820, 208 Ala. 361—Wilson Bros. v. Mobile & O. R. Co., 94 So. 721, 208 Ala. 581—Alabama Power Co. v. Talmadge, 93 So. 548, 207 Ala. 86, error dismissed 42 S.Ct. 463, 259 U.S. 575, 66 L.Ed. 1071—Wilson Bros. v. Mobile & O. R. Co., 92 So. 246, 207 Ala. 171—Zimmern v. Standard Motor Car Co., 88 So. 743, 205 Ala. 580—Maples v. Douglass, 87 So. 585, 205 Ala. 94—Mixon v. Pennington, 85 So. 562, 204 Ala. 347—Birmingham Southern R. Co. v. Harrison, 82 So. 534, 203 Ala. 284—St. Louis & S. F. Ry. Co. v. Trice, 80 So. 434, 202 Ala. 352—Long v. Myers, 80 So. 76, 202 Ala. 238—Heard v. Burton-Boyd Mercantile Co., 80 So. 40, 202 Ala. 218—Hamilton v. Cranford Mercantile Co., 78 So. 401, 201 Ala. 403—Central of Georgia Ry. Co. v. Mathis, 71 So. 674, 196 Ala. 32—Phillips v. Shotts, 71 So. 94, 195 Ala. 20—Louisville & N. Ry. Co. v. Moorer, 70 So. 277, 195 Ala. 344—Haley v. Miller, 69 So. 564, 193 Ala. 482—Hoffman v. Birmingham Ry., Light & Power Co., 69 So. 551, 194 Ala. 30—Crews & Green v. Parker, 68 So. 287, 192 Ala. 383—Knowlton v. Central of Georgia Ry. Co., 68 So. 281, 192 Ala. 456—Saxon v. Davie, 68 So. 253, 192 Ala. 10—Ward v. Lane, 66 So. 499, 189 Ala. 340—Stewart v. Riley & Johnson, 66 So. 488, 189 Ala. 519.

Bank of Loretto v. Bobo, 67 So. 2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374—American Sur. Co. of N. Y. v. Hooker, 58 So.2d 469, 36 Ala.App. 39, certiorari denied 58 So.2d 478, 257 Ala. 238—Alabama Great Southern R. Co. v. Russell, 48 So. 2d 239, 35 Ala.App. 345, reversed on other grounds 48 So.2d 249, 254 Ala. 701—Birmingham Elec. Co. v. Walden, 31 So.2d 762, 33 Ala.App. 211—Finklea v. Garrick, 147 So. 677, 25 Ala.App. 385, reversed on other grounds 147 So. 680, 226 Ala. 159—Vaughn v. Whiteside, 143 So. 470, 25 Ala.App. 165, certiorari denied 143 So. 471, 225 Ala. 442—Standard Corporation v. Dickerson, 121 So. 499, 23 Ala.App. 112—Commercial Credit Co. v. Chevrolet Motor Co., 114 So. 273, 22 Ala. App. 211—Brown v. Kevorkian, 107 So. 228, 21 Ala.App. 252—Central Iron & Coal Co. v. Wright, 101 So. 815, 20 Ala.App. 82, certiorari denied Ex parte Central Iron & Coal Co., 101 So. 824, 212 Ala. 130—Allison v. Fuller-Smith & Co., 101 So. 626, 20 Ala.App. 216, certiorari denied Ex parte Allison, 101 So. 629, 211 Ala. 616—American Tar Products Co. v. Jones, 86 So. 113, 17 Ala.App. 481—Mobile Light & R. Co. v. R. O. Harris Grocery Co., 84 So. 867, 17 Ala.App. 354—McNutt v. Abercrombie, 84 So. 426, 17 Ala.App. 204—Vaughn v. Vaughn, 81 So. 693, 17 Ala.App. 56—Baskett Lumber & Mfg. Co. v. Gravlee, 73 So. 291, 15 Ala.App. 359—Pratt Consol. Coal Co. v. Morton, 68 So. 1015, 14 Ala.App. 194—Bricken v. Sikes, 68 So. 801, 14 Ala.App. 187, certiorari denied Ex parte Bricken, 69 So. 425, 194 Ala. 148—Lefkovits v. Lester, 66 So. 894, 11 Ala.App. 504.

Ark.—Caddo River Lumber Co. v. White, 239 S.W. 33, 153 Ark. 93—Battle v. Guttrey, 208 S.W. 289, 137 Ark. 228—St. Louis, I. M. & S. Ry. Co. v. Brundidge, 171 S.W. 859, 115 Ark. 606.

Cal.—Brooks v. E. J. Willig Truck Transp. Co., 255 P.2d 802, 40 C.2d 669—Codorniz v. Codorniz, 215 P. 2d 32, 34 C.2d 811—Kayser v. Gorman, 44 P.2d 1041, 3 C.2d 478—Neher v. Kauffman, 242 P. 713, 197 C. 674—Mah See v. North American Acc. Ins. Co. of Chicago, Ill., 213 P. 42, 190 C. 421, 26 A.L.R. 123—Billig v. Southern Pac. Co., 209 P. 241, 189 C. 477—People v. Ford Motor Co., 204 P. 217, 188 C. 8—Ralph v. Anderson, 200 P. 940, 187 C. 45—Gray v. Bekins, 199 P. 767, 186 C. 389—In re Hess' Estate, 192 P. 35, 183 C. 589—Neale v. Atchison, T. & S. F. Ry. Co., 172 P. 1105, 178 C. 225—J. Frank & Co. v. New Amsterdam Casualty Co., 165 P. 927, 175 C. 293—Herrington v. Baker, 163 P. 1009, 174 C. 612—In re Piercy's Estate, 145 P. 88, 168 C. 750.

Provost v. Worrall, 298 P.2d 726, 142 C.A.2d 367—Burns v. California Milk Transport, 200 P.2d 43, 89 C.A.2d 70—Manney v. Housing Authority of City of Richmond, 180 P.2d 69, 79 C.A.2d 453—Linden v. Rubens, 173 P.2d 713, 76 C.A.2d 688—Miller v. Dufau, 172 P.2d 580, 76 C.A.2d 183—Robertson v. Bonelli, 151 P.2d 307, 65 C.A.2d 704—Thompson v. Stoakes, 115 P.2d 830, 46 C.A.2d 285—Metter v. Los Angeles Examiner, 95 P.2d 491, 35 C.A.2d 304—Armstrong v. Brown, 54 P.2d 1118, 12 C.A.2d 22—Howland v. Doyle, 44 P.2d 453, 6 C.A. 2d 311—Betty v. Knapp, 43 P.2d 325, 5 C.A.2d 512—Calistoga Nat. Bank v. Calistoga Vineyard Co., 42 P.2d 82, reheard 46 P.2d 246, 7 C.A.2d 65—Miller v. Magill, 20 P. 2d 58, 130 C.A. 414—Yates v. Morotti, 8 P.2d 519, 120 C.A. 710—Belm v. Patrick, 293 P. 847, 109 C.A. 599—Rapolla v. Goulart, 287 P. 562, 105 C.A. 417—Aydlott v. Key System Transit Co., 286 P. 456, 104 C.A. 621—Service Oil Co. v. Creeden, 277 P. 874, 99 C.A. 13—Carroll v. Central Counties Gas Co., 273 P. 875, 96 C.A. 161, followed in Cobbs v. Central Counties Gas Co., 273 P. 878, 96 C.A. 782, and rehearing denied Carroll v. Central Counties Gas Co., 274 P. 594, 96 C.A. 161—Humphreys v. City and County of San Francisco, 268 P. 388, 92 C.A. 69—Lockhart v. Southern Pac. Co., 267 P. 591, 91 C.A. 770—Dotson v. International Life Ins. Co., 265 P. 857, 89 C.A. 653—Collins v. Sargent, 264 P. 776, 89 C.A. 107—Shasta Lumber Co. v. McCoy, 259 P. 965, 85 C.A. 468—Long v. Chronicle Pub. Co., 228 P. 873, 68 C.A. 171—Leak v. Colburn, 204 P. 249, 55 C.A. 784—Sonoma County Nat. Bank v. Skinner, 183 P. 464, 42 C.A. 202—Lakas v. Archambault, 176 P. 180, 38 C.A. 365—Kendrick v. Hansen, 170 P. 675, 35 C.A. 578—Marks v. Reissinger, 169 P. 243, 35 C.A. 44—Barsi v. Simpson, 161 P. 127, 31 C.A. 612—Pacific Portland Cement Co. Consolidated v. Reinecke, 158 P. 1041, 30 C.A. 501—Rosenthal v. Bauer, 157 P. 1137, 30 C.A. 277—McIntosh v. Hunt, 157 P. 842, 29 C.A. 779, denying rehearing 157 P. 839, 29 C.A. 779—Dean v. Hawes, 157 P. 558, 29 C.A. 689—Phenegar v. Paolini, 149 P. 1008, 27 C.A. 381.

Colo.—Windsor Reservoir & Canal Co. v. Smith, 261 P. 872, 82 Colo. 497.

Conn.—Ziskin v. Confietto, 79 A.2d 816, 137 Conn. 629—Hoffman v. Mohican Co., 71 A.2d 921, 136 Conn. 392—Spelke v. Shaw, 158 A. 809, 114 Conn. 272—Fine v. Moomjian, 158 A. 241, 114 Conn. 226—Harris v. Schuerer, 138 A. 442, 106 Conn. 506.

Fla.—Davis v. Woodward-Crowder Co., 160 So. 189, 118 Fla. 323.

Ga.—Ables v. Motor Contract Co., 36 S.E.2d 148, 200 Ga. 30—Hines v. Donaldson, 20 S.E.2d 134, 193 Ga. 783—Nalley Land & Investment Co. v. Merchants & Planters Bank, 199 S.E. 815, 187 Ga. 142—O'Pry v. Noland Co., 179 S.E. 630, 180 Ga. 565—Adams v. Gray, 178 S.E. 919, 180 Ga. 421—Sherman v. Bird, 139 S.E. 333, 164 Ga. 696—Murray v. Hawkins, 87 S.E. 1068, 144 Ga. 613—Kent v. Central of Georgia Ry. Co., 85 S.E. 1017, 144 Ga. 7—Ogburn v. Jones, 82 S.E. 1070, 142 Ga. 360—Connecticut Mut. Life Ins. Co. v. Mulkey, 82 S.E. 1054, 142 Ga. 358.

Hawkins v. Benton Rapid Exp., 62 S.E.2d 612, 82 Ga.App. 819—Jones v. Cannady, 51 S.E.2d 551, 78 Ga.App. 453—Jones v. Blackburn, 44 S.E.2d 555, 75 Ga.App. 791—Alabama Great Southern R. Co. v. McBryar, 15 S.E.2d 563, 65 Ga. App. 153—Rhodes v. Mutual Benefit Health & Accident Ass'n, 8 S. E.2d 685, 62 Ga.App. 208—Cauthern v. Gresham Lumber Co., 196 S.E. 242, 57 Ga.App. 497—Crawford v. Hall, 192 S.E. 231, 56 Ga. App. 122—Modern Order of Prætorians v. Blackburn, 157 S.E. 331, 42

Ga.App. 690—Macon Nat. Bank v. Smith, 149 S.E. 172, 40 Ga.App. 150, reversed on other grounds 153 S.E. 4, 170 Ga. 382, conformed to 153 S.E. 446, 41 Ga.App. 438—Horine v. Cox, 139 S.E. 591, 37 Ga.App. 216—George v. Rothstein & Nelson, 132 S.E. 414, 35 Ga.App. 126—Conner v. Citizens' Bank, 131 S.E. 188, 34 Ga.App. 771—City of La Grange v. Cotter, 116 S.E. 204, 29 Ga.App. 577—Owen v. Stallings, 114 S.E. 904, 29 Ga.App. 241—City of Gainesville v. White, 107 S.E. 571, 27 Ga.App. 16—Williams v. Hart, 100 S.E. 786, 24 Ga.App. 371—Kennedy v. Ocean S. S. Co. of Savannah, 94 S.E. 583, 21 Ga.App. 427.

Idaho.—O'Brien v. O'Brien, 245 P.2d 785, 73 Idaho 64—McShane v. Quillin, 277 P. 554, 47 Idaho 542—Ruble v. Busby, 149 P. 722, 27 Idaho 486, Ann.Cas.1917D 665.

Ill.—Struve v. Tatge, 120 N.E. 549, 285 Ill. 103.

Johnson v. Country Life Ins. Co., 1 N.E.2d 779, 284 Ill.App. 603—National Lock Co. v. Aldeen, 271 Ill.App. 37—Geschwindner v. Comer, 222 Ill.App. 417—Paden v. Rockford Palace Furniture Co., 220 Ill.App. 534, certiorari denied Rockford Palace Furniture Co. v. Paden, 42 S.Ct. 54, 257 U.S. 645, 66 L.Ed. 413—Haas v. Hines, 219 Ill.App. 524—Rowden v. Travelers Protective Ass'n of America, 201 Ill.App. 295—Cook v. Augustus, 201 Ill.App. 195. See Bailey v. Niebruegge, 211 Ill.App. 82—Williams v. Moehlman, 199 Ill.App. 35—Thoele v. Illinois Traction Co., 188 Ill.App. 214.

Ind.—Louisville & Southern Indiana Traction Co. v. Montgomery, 115 N.E. 673, 186 Ind. 384.

Pennsylvania Ice & Coal Co. v. Elischer, 21 N.E.2d 436, 106 Ind. App. 613—Clevenger v. Kern, 197 N.E. 731, 100 Ind.App. 581—Old Reliable Paint Co. v. Storey, 144 N.E. 562, 83 Ind.App. 203—Folger v. Barnard, 125 N.E. 469, 73 Ind. App. 523—Blish v. Greer, 120 N.E. 606, 74 Ind.App. 469.

Iowa.—Jaeger v. Hackert, 41 N.W.2d 42, 241 Iowa 379—McKinney v. Clark Brown Grain Co., 7 N.W.2d 798, 232 Iowa 1235—Halligan v. Lone Tree Farmers Exchange, 300 N.W. 551, 230 Iowa 1277—Jackson v. Miller, 295 N.W. 173, 229 Iowa 694—Mosher v. Snyder, 276 N.W. 582, 224 Iowa 896—In re Diver's Estate, 240 N.W. 622, 214 Iowa 497—First State Bank of Riverside v. Tobin, 215 N.W. 767, 204 Iowa 456—Antes v. Consumers' Consol. Coal Co., 210 N.W. 767, 203 Iowa 485—Lemon v. Kessel, 209 N.W. 393, 202 Iowa 273—McLaughlin-Gormley-King Co. v. Hauser, 202 N.W. 574, 200 Iowa 210—Henn v. Finley, 201 N.W. 783—Unmack v. Fosdick, 199 N.W. 339, 198 Iowa 518—Porter v. Tenant, 197 N.W. 79, 197 Iowa 200—Howard v. First Nat. Bank, 185 N.W. 105, 192 Iowa 432—Sharpnack v. Schwertley, 181 N.W. 249, 190 Iowa 1037—Curnes, Eddy & Co. v. Maytum, 173 N.W. 923, 187 Iowa 120—Powers v. Iowa Glue Co., 168 N.W. 826, 183 Iowa 1082—Livingstone v. Dole, 167 N.W. 639, 184 Iowa 1040—Stutsman v. Des Moines City Ry. Co., 163 N.W. 580, 180 Iowa 524—Liddle v. Salter, 163 N.W. 447, 180 Iowa 840—Rolfs v. Mullins, 162 N.W. 783, 179 Iowa 1223—Hall v. City of Shenandoah, 162 N.W. 575, 179 Iowa 1192—Dow v. Incorporated Town of Nora Springs, 160 N.W. 897—In re Workman's Estate, 156 N.W. 438, 174 Iowa 222—Purdy v. Waterloo, C. F. & N. Ry. Co., 154 N.W. 881, 172 Iowa 676—Zinkula v. Zinkula, 154 N.W. 158, 171 Iowa 287.

Kan.—Stevens v. Jones, 215 P.2d 653, 168 Kan. 583—Home State Bank v. De Witt, 245 P. 1036, 121 Kan. 29—Koontz v. Weide, 208 P. 651, 111 Kan. 709—Cox v. Chase, 163 P. 184, 99 Kan. 740.

Ky.—Municipal Paving Co. v. Farmer, 255 S.W.2d 618—Floyd v. Blair, 227 S.W.2d 993, 312 Ky. 418—McGraw's Adm'r (Lee) v. McGraw's Adm'r (Davidson), 169 S.W.2d 840, 293 Ky. 722—Powell v. Galloway, 16 S.W.2d 489, 229 Ky. 37—Clark v. Bourbon County Co-op. Live Stock Ass'n, 277 S.W. 493, 211 Ky. 402—Carr v. Warford, 249 S.W. 1024, 198 Ky. 690—Quarles v. Denning, 191 S.W. 493, 173 Ky. 792—Illinois Cent. R. Co. v. Tolar's Adm'r, 183 S.W. 242, 169 Ky. 114.

Me.—Tuck v. Bean, 155 A. 277, 130 Me. 277.

Md.—Riley v. Naylor, 16 A.2d 857, 179 Md. 1—Snyder & Blankfard Co. v. Farmers Bank of Tifton, 16 A. 2d 837, 178 Md. 601—Calder v. Levi, 177 A. 392, 168 Md. 260—Great Eastern Stages v. W. T. Cowan, Inc., 176 A. 613, 167 Md. 690—Bloecher & Schaaf v. Pennsylvania R. Co., 160 A. 281, 162 Md. 463—James L. Kernan Co. v. Cook, 159 A. 256, 162 Md. 137—Newman v. Stocker, 157 A. 761, 161 Md. 552—Cumberland & Westernport Transit Co. v. Metz, 149 A. 4, 158 Md. 424, reargument denied 149 A. 565, 158 Md. 424, and appeal dismissed American Oil Co. v. Metz, 51 S.Ct. 40, 282 U.S. 801, 75 L.Ed. 720—Neavitt v. Lightner, 142 A. 109, 155 Md. 365—Knight v. Knight, 141 A. 706, 155 Md. 243—General Automobile Owners' Ass'n v. State, 140 A. 48, 154 Md. 204—Globe Indemnity Co. of New York v. Reinhart, 137 A. 43, 152 Md. 439—Pen Mar Co. v. Ashman, 136 A. 640, 152 Md. 273—Buehner v. Sehlhorst, 132 A. 70, 149 Md. 474—Singer Const. Co. v. Goldsborough, 128 A. 754, 147 Md. 628—Peninsula Produce Exch. v. American Ry. Express Co., 128 A. 403, 147 Md. 424—City of Baltimore v. State, 126 A. 130, 146 Md. 440—Penrose v. Page, 125 A. 553, 145 Md. 14—Cohen v. Karp, 122 A. 524, 143 Md. 208—Harrington v. Bochenski, 116 A. 836, 140 Md. 24—Lustbader v. Ulman, 116 A. 567, 139 Md. 651—Middendorf, Williams & Co. v. Alexander Milburn Co., 113 A. 348, 137 Md. 583—Dolph v. Stubblefield, 108 A. 488, 135 Md. 147—District Nat. Bank of Washington v. Mordecai, 105 A. 586, 133 Md. 419—Hieston v. National City Bank of Chicago, 104 A. 281, 132 Md. 389—State v. Washington, B. & A. Electric R. Co., 101 A. 546, 130 Md. 603—Bachman v. Clark, 97 A. 440, 128 Md. 245—City of Baltimore v. Carroll, 96 A. 1076, 128 Md. 68—McGrath v. Peterson, 96 A. 551, 127 Md. 412—Baltimore Bridge Co. v. United Rys. & Electric Co. of Baltimore, 93 A. 420, 125 Md. 208—Michael v. Smith, 91 A. 762, 124 Md. 116.

Mass.—Willett v. Willett, 130 N.E.2d 582, 333 Mass. 323—Alphen v. Shadman, 116 N.E.2d 252, 330 Mass. 608—Klein v. Fox, 109 N.E.2d 912, 329 Mass. 623—Puro v. Heikkinen, 55 N.E.2d 762, 316 Mass. 262—Oehme v. Whittemore-Wright Co., 181 N.E. 733, 279 Mass. 558—Beacon Trust Co. v. Ryder, 174 N.E. 725, 273 Mass. 573—Wax v. McGrath, 151 N.E. 317, 255 Mass. 340—Killam v. Standard Oil Co. of New York, 143 N.E. 698, 248 Mass. 575—Mackintosh v. Cioppa, 139 N. E. 445, 245 Mass. 152—McGlinchy v. Henderson, 134 N.E. 264, 240 Mass. 432—Howe v. Johnson, 128 N.E. 634, 236 Mass. 379—Bradford v. Boston & M. R. R., 113 N.E. 1042, 225 Mass. 129.

Mich.—In re Dellow's Estate, 287 N. W. 420, 290 Mich. 167—A. J. Brown & Son v. City of Grand Rapids, 251 N.W. 561, 265 Mich. 465—In re Hayes' Estate, 238 N.W. 245, 255 Mich. 338—Jones v. Dosey, 195 N. W. 129, 224 Mich. 351—Van Sickle v. Grand Rapids, G. H. & M. Ry. Co., 182 N.W. 132, 213 Mich. 261—Vezina v. Shermer, 165 N.W. 697, 198 Mich. 757.

Minn.—Segal v. Bloom Bros. Co., 82 N.W.2d 359—Boutang v. Twin City Motor Bus Co., 80 N.W.2d 30, 248 Minn. 240—Erickson v. Northern Minn. Nat. Bank of Duluth, 50 N. W.2d 489, 235 Minn. 232—Hill v. Northern Pac. Ry. Co., 297 N.W. 627, 210 Minn. 190—Wilcox v. Hedwall, 243 N.W. 711, 186 Minn. 500—Josie v. A. C. Winnor & Co., 205 N.W. 63, 164 Minn. 523—McKenzie v. Duluth St. Ry. Co., 155 N.W. 758, 131 Minn. 482.

Miss.—Eddy v. Clayton, 44 So.2d 395—Floyd v. Williams, 22 So.2d 365, 198 Miss. 350—Smith v. Gulf, M. & N. R. Co., 129 So. 539, 158 Miss. 188.

Mo.—Boring v. Kansas City Life Ins. Co., 274 S.W.2d 233—Ratermann v. Striegel, 273 S.W.2d 304—Sandler v. Schmidt, 263 S.W.2d 35—Hicks v. Vieths, 46 S.W.2d 604—Leimkuehler v. Wessendorf, 18 S.W.2d 445, 323 Mo. 64—Denkman v. Prudential Fixture Co., 269 S.W. 591—Kregain v. Blake, 239 S.W. 495, 292 Mo. 498—Gricus v. United Rys. Co. of St. Louis, 237 S.W. 763, 291 Mo. 582—Parker v. Ætna Life Ins. Co., 232 S.W. 708, 289 Mo. 42—Lowry v. Columbia Cemetery Ass'n, 189 S. W. 1162—Trebbe v. American Steel Foundries, 185 S.W. 179.

Butner v. Union Pac. R. Co., 163 S.W.2d 100, 236 Mo.App. 1134—Gilpin v. Ætna Life Ins. Co., 132 S. W.2d 686, 234 Mo.App. 566—Roberson v. Brotherhood of Locomotive Firemen and Enginemen, 114 S.W. 2d 136, 233 Mo.App. 159, certiorari quashed State ex rel. Brotherhood of Locomotive Firemen and Enginemen v. Shain, 123 S.W.2d 1, 343 Mo. 666—Fischer v. Western & Southern Indemnity Co., 110 S.W. 2d 811, 233 Mo.App. 885—Carl v. Ellis, App., 110 S.W.2d 805—Phelps v. Montgomery Ward & Co., 107 S. W.2d 939, 231 Mo.App. 595—Reed v. Prudential Ins. Co., App., 73 S. W.2d 1027—Peppas v. H. Ehrlich & Sons Mfg. Co., App., 71 S.W.2d 821—Wilkerson v. Missouri Pac. R. Co., App., 69 S.W.2d 299—Weiss v. Continental Ins. Co., App., 61 S. W.2d 392—Daggs v. St. Louis-San Francisco Ry. Co., App., 51 S.W.2d 164—Nickelson v. Cowan, App., 9 S.W.2d 534—Banks v. Empire Dist. Electric Co., App., 4 S.W.2d 876—Hurley v. Illinois Cent. R. Co., 282 S.W. 97, 221 Mo.App. 478—Schwartz v. Mercantile Trust Co., App., 279 S.W. 253—Moore v. St. Louis & S. F. Ry. Co., App., 267 S.W. 945—Merseal-Allee Timber Co. v. Davis, App., 256 S.W. 542—Anger v. McCorkle, App., 253 S.W. 72—Conley v. Lafayette Motor Car Co., 221 S.W. 165, 204 Mo.App. 37—Smoot v. Dennison, App., 196 S. W. 1018—Beurskens v. Dunham, App., 193 S.W. 855.

Mont.—Bray v. Cove Irr. Dist., 284 P. 539, 86 Mont. 562—Roberts v. Oechsli, 172 P. 1037, 54 Mont. 589.

Neb.—Kunkel v. Cohagen, 39 N.W.2d 609, 151 Neb. 774—Gugelman v. Kansas City Life Ins. Co., 289 N.W. 842, 137 Neb. 411—Lautenschlager v. Lautenschlager, 279 N.W. 200, 134 Neb. 577.

Nev.—Adams v. Wagoner, 184 P. 814, 43 Nev. 266.

N.H.—Ineson v. James Ross Associates, 108 A.2d 556, 99 N.H. 230—Cousins v. Roy, 71 A.2d 416, 96 N. H. 126.

N.J.—O'Brien v. Bilow, 3 A.2d 641, 121 N.J.Law 576—Van Dyke v. Harrison, 143 A. 144—Cristofaro v. Brenfleck, 184 A. 619, 116 N.J.Law 357—Doherty v. American Employers' Ins. Co. of Boston, Mass., 169 A. 652, 112 N.J.Law 52—Bodner v. Phœnix Indemnity Co., 168 A. 442, 111 N.J.Law 264—Napier Hat Mfg. Co. v. Essex County Park Commission, 164 A. 484, 110 N.J.Law 213—American Well Works v. Royal Indemnity Co., 160 A. 560, 109 N.J. Law 104—Auer v. Sinclair Refining Co., 137 A. 555, 103 N.J.Law 372, 54 A.L.R. 623—Coll v. Lehigh Valley R. Co., 132 A. 922, 102 N.J. Law 713—Sharkey v. Heymann Bros., 130 A. 920, 102 N.J.Law 224—Spence v. Hutchinson, 130 A. 612, 102 N.J.Law 131—Klie v. Hollstein, 120 A. 16, 98 N.J.Law 473—Finkelstein v. Geismar, 106 A. 209, 91 N.J.Law 46, 92 N.J.Law 251.

Steinberg v. Silk, 183 A. 458, 14 N.J.Misc. 176—Diemer v. Shepard, 140 A. 578, 6 N.J.Misc. 186—Hexamer v. Public Service Ry. Co., 132 A. 310, 4 N.J.Misc. 184—Coll v. Lehigh Valley R. Co., 130 A. 225, 3 N.J.Misc. 869, affirmed 132 A. 922, 102 N.J.Law 713.

N.Y.—Heilbronn v. New York Life Ins. Co., 276 N.Y.S. 81, 243 App. Div. 558.

N.C.—Poole v. Gentry, 49 S.E.2d 464, 229 N.C. 266—Turlington v. Neighbors, 24 S.E.2d 648, 222 N.C. 694—Eaves v. Coxe, 165 S.E. 345, 203 N.C. 173—Hunt v. Meyers Co., 161 S.E. 74, 201 N.C. 636—Blackstone Guano Co. v. Ball, 160 S.E. 769, 201 N.C. 534—Pace v. McAden, 131 S.E. 629, 191 N.C. 137—Cook v. Town of Mebane, 131 S.E. 407, 191 N.C. 1—Rigsbee v. Atlantic Coast Line R. Co., 129 S.E. 580, 190 N.C. 231—Bryant v. Stone, 100 S.E. 578, 178 N.C. 291—Fidelity Bank v. Wysong & Miles Co., 98 S.E. 769, 177 N.C. 284—Perry v. Branning Mfg. Co., 97 S.E. 162, 176 N.C. 68.

N.D.—Geier v. Tjaden, 74 N.W.2d 361—Edwards v. McKechnie, 243 N. W. 923, 62 N.D. 472—Pearce v. Hanlon, 233 N.W. 840, 60 N.D. 231—Erickson v. Wiper, 157 N.W. 592, 33 N.D. 193.

Ohio.—Lyon v. Jackson, App., 132 N. E.2d 779—Taylor v. Ross, App., 78 N.E.2d 395, reversed on other grounds 83 N.E.2d 222, 150 Ohio St. 448, 10 A.L.R.2d 377—Berndt v. Bonacker, 153 N.E. 234, 21 Ohio App. 516.

Okl.—Gulf Oil Corp. v. Miller, 175 P. 2d 335, 198 Okl. 54—Biggs v. Federal Land Bank of Wichita, 95 P. 2d 902, 186 Okl. 99—Fife v. Adair, 47 P.2d 145, 173 Okl. 234—National Life & Accident Ins. Co. v. Ware, 37 P.2d 905, 169 Okl. 618—St. Paul Fire & Marine Ins. Co. v. Otwell, 36 P.2d 52, 169 Okl. 317—Woods v. Sand Springs Ry. Co., 254 P. 703, 124 Okl. 34—Ardizonne v. Archer, 177 P. 554, 71 Okl. 289—Farmers' Product & Supply Co. v. Bond, 161 P. 181, 61 Okl. 244.

Or.—Gwin v. Crawford, 100 P.2d 1012, 164 Or. 215—Blanchard v. Makinster, 1 P.2d 583, 137 Or. 58.

Pa.—Radobersky v. Imperial Volunteer Fire Dept., 81 A.2d 865, 368 Pa. 235—Rex v. Lehigh Valley Transit Co., 199 A. 324, 330 Pa. 275—Curry v. Riggles, 153 A. 325, 302 Pa. 156—Fluke v. Lang, 132 A. 800, 286 Pa. 31—Maloy v. Rosenbaum Co., 103 A. 882, 260 Pa. 466—Bruggeman v. City of York, 98 A. 970, 254 Pa. 430.

Besecker v. General Acceptance Corp., 17 A.2d 916, 146 Pa.Super. 367—D'Allura v. Perri, 10 A.2d 124, 138 Pa.Super. 261—Seiler v. New York Ice Cream & Creameries, 71 Pa.Super. 32.

R.I.—Rivard v. Plante, 96 A.2d 644, 80 R.I. 312—Smith v. Pendleton, 163 A. 738, 53 R.I. 79.

S.C.—Fetner v. Ætna Life Ins. Co., 18 S.E.2d 521, 199 S.C. 79—Southern v. Cudahy Packing Co., 159 S. E. 32, 160 S.C. 496—Leonard v. Atkinson, 130 S.E. 755, 133 S.C. 249—Adams v. Wilkes, 109 S.E. 804, 118 S.C. 93.

S.D.—Boos v. Claude, 9 N.W.2d 262, 69 S.D. 254—In re Olson's Estate, 234 N.W. 619, 57 S.D. 639—Privat v. Grand Bay Land Co., 171 N.W. 327, 41 S.D. 494—Denton v. Butler, 159 N.W. 397, 37 S.D. 648.

Tex.—Rose v. O'Keefe, Com.App., 39 S.W.2d 877.

Taylor v. Taylor, Civ.App., 272 S. W.2d 636, error refused no reversible error—Team v. Texas & P. Ry. Co., Civ.App., 199 S.W.2d 274, error refused no reversible error—McEwen v. Texas & P. Ry. Co., Civ.App., 92 S.W.2d 308—Texas Co. v. Brown, Civ.App., 82 S.W.2d 1101, error dismissed—City of Waco v. Roberts, Civ.App., 12 S.W.2d 263, affirmed 48 S.W.2d 577, 121 Tex. 217—Perkins v. Lightfoot, Civ.App., 10 S.W.2d 1030—U. S. Torpedo Co. v. Liner, Civ.App., 300 S.W. 641, reversed on other grounds Liner v. U. S. Torpedo Co., Com.App., 12 S. W.2d 552, reheard 16 S.W.2d 519—State Nat. Bank v. Davidson, Civ. App., 295 S.W. 311—Whaley v. Whaley, Civ.App., 287 S.W. 145—Harper v. Temple Lumber Co., Civ. App., 259 S.W. 217, reversed on other grounds, Com.App., 290 S.W. 530—Kell v. Mulligan, Civ.App., 254 S.W. 621—Maryland Motor Car Ins. Co. v. Smith, Civ.App., 254 S.W. 526—Payne v. Hill, Civ.App., 242 S.W. 302—Smith v. Thompson, Civ. App., 233 S.W. 876, reversed on other grounds Thompson v. Smith, Com.App., 248 S.W. 1070—Golden Rod Mills v. Green, Civ.App., 230 S.W. 1089, dismissed for want of jurisdiction—Bobbitt v. Bobbitt, Civ.App., 223 S.W. 478, dismissed for want of jurisdiction—Metropolitan Casualty Ins. Co. v. Edwards, Civ.App., 210 S.W. 856, dismissed for want of jurisdiction—Strachbein v. Gilmer, Civ.App., 202 S.W.

prejudicial where the same witness gives the evidence fully on redirect examination[70] or on cross-examination,[71] where the party on whose objection the evidence is excluded questions the witness concerning the same matter,[72] or where the testimony is ruled out on cross-examination and later brought out when the party asking the question makes the witness his own.[73]

The rule is also applicable where the witness answers a question notwithstanding an objection thereto has been sustained,[74] and where no motion to strike is made;[75] where testimony relating to a

333, dismissed for want of jurisdiction—Brewster v. City of Forney, Civ.App., 196 S.W. 636, reversed on other grounds, Com.App., 223 S.W. 175—Missouri, K. & T. Ry. Co. of Texas v. Cornelius, Civ.App., 188 S.W. 34, dismissed for want of jurisdiction—Alexander v. Conley, Civ.App., 187 S.W. 254—Cleburne Peanut & Products Co. v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 184 S.W. 1070, reversed on other grounds, Com.App., 221 S.W. 270—Yeatts v. St. Louis Southwestern Ry. Co. of Texas, Civ.App., 184 S.W. 636, error dismissed Yeatts v. St. Louis Southwestern R. Co. of Texas, Com.App., 244 S.W. 503—Missouri, K. & T. Ry. Co. v. Craddock, Civ.App., 174 S.W. 965—Texarkana & Ft. S. Ry. Co. v. Terrell, Civ.App., 172 S.W. 742.

Utah.—Christensen v. Utah Rapid Transit Co., 27 P.2d 468, 83 Utah 231—Straka v. Voyles, 252 P. 677, 69 Utah 123—Foxley v. Gallagher, 185 P. 775, 55 Utah 298—Dovich v. Chief Consolidated Mining Co., 174 P. 627, 53 Utah 522—Sharp v. Ogden Rapid Transit Co., 160 P. 438, 48 Utah 481—Dunn v. Salt Lake & O. Ry. Co., 151 P. 979, 47 Utah 137.

Vt.—Perkins v. Vesmont Hydro-Electric Corporation, 177 A. 631, 106 Vt. 367—Northern Trust Co. v. Perry, 156 A. 906, 104 Vt. 44—Ætna Chemical Co. v. Spaulding & Kimball Co., 126 A. 582, 98 Vt. 51.

Va.—Sawyer v. Matthews, 184 S.E. 238, 166 Va. 177—Montgomery Ward & Co. v. Nance, 182 S.E. 264, 165 Va. 363—W. S. Forbes & Co. v. Southern Cotton Oil Co., 108 S.E. 15, 130 Va. 245.

Wash.—Akers v. Sinclair, 226 P.2d 225, 37 Wash.2d 693—Ives v. Silvernail, 288 P. 276, 157 Wash. 25—Buell v. Park Auto Transp. Co., 231 P. 161, 132 Wash. 92—Auwarter v. Kroll, 154 P. 438, 89 Wash. 347.

W.Va.—Wingo Mining Co. v. Flanagan Coal Sales Co., 115 S.E. 839, 93 W.Va. 76—Yates v. Crozer Coal & Coke Co., 84 S.E. 626, 76 W.Va. 50.

4 C.J. p 1016 note 47, p 1017 note 48.

Answer immediately thereafter

No injury resulted from sustaining an objection to a question answered immediately thereafter.

Ala.—Pettus v. Louisville & N. R. Co., 106 So. 807, 214 Ala. 187.

Improper question

Sustaining an objection to a leading question was not prejudicial, where the court permitted witness to answer the question when properly put.

Ky.—Mann v. Woodward, 290 S.W. 333, 217 Ky. 491.

Refusal of deposition

Where there were no substantial inconsistencies between plaintiff's testimony and his deposition taken by defendants, the exclusion of such deposition was not prejudicial error.

Wash.—Lashbrook v. Spokane-Wallace Stages, 10 P.2d 241, 168 Wash. 24.

Subsequently improperly admitted

Where, in a personal injury case, declarations of plaintiff an hour after the accident as to the manner of its occurrence were improperly rejected when offered as substantive evidence as part of res gestæ, defendant was not prejudiced when they were subsequently received for the purpose of corroborating plaintiff as witness, although not admissible for such purpose.

Minn.—Perkins v. Great Northern Ry. Co., 199 N.W. 891, 159 Minn. 492.

70. Mass.—Todd v. Pearce, 197 N. E. 156, 291 Mass. 455.
N.C.—Nichols v. Bradshaw, 143 S.E. 469, 195 N.C. 763.
4 C.J. p 1017 note 49.

71. Ala.—Little v. Sugg, 8 So.2d 866, 243 Ala. 196—Louisville & N. R. Co. v. Grizzard, 189 So. 203, 238 Ala. 49, certiorari denied 60 S.Ct. 140, 308 U.S. 603, 84 L.Ed. 504.
Cal.—Pecarovich v. Becker, 248 P.2d 123, 113 C.A.2d 309—First Nat. Bank v. Caldwell, 258 P. 411, 84 C. A. 438.
Iowa.—Maddy v. City Council of City of Ottumwa, 285 N.W. 208, 226 Iowa 941.
Miss.—Henry v. Toney, 64 So.2d 904, 217 Miss. 716—Anderson v. King, 63 So.2d 792, 217 Miss. 140.
N.J.—Carroll v. Prudential Ins. Co. of America, 15 A.2d 810, 125 N.J. Law 397.
N.C.—Redd v. Mecklenburg Nurseries, 85 S.E.2d 311, 241 N.C. 385—Grayson Shipping Lines v. Young, 52 S.E.2d 12, 230 N.C. 80—Bryant v. Reedy, 200 S.E. 896, 214 N.C. 748—McCoy v. Justice, 155 S.E. 452, 199 N.C. 602.
Ohio.—Shadwick v. Hills, 69 N.E.2d 197, 79 Ohio App. 143.
Okl.—Kemp v. Strnad, 268 P.2d 255—Black v. Donelson, 193 P. 424, 79 Okl. 299.
Pa.—Rodgers v. Fleming, 188 A. 861, 325 Pa. 228—Hess v. Vinton Colliery Co., 99 A. 218, 255 Pa. 78.
Wis.—Gauthier v. Carbonneau, 277 N.W. 135, 226 Wis. 527.
4 C.J. p 1017 note 50.

Rule limited

The rule that the improper exclusion of evidence is harmless where it appears that similar evidence was introduced without objection does not necessarily apply when the evidence is brought out on cross-examination, since the probative force of testimony is often affected by the manner in which it is elicited.

Tex.—Niemann v. Garcia, Civ.App., 144 S.W.2d 621, error dismissed judgment correct.

72. Mo.—Doyle v. Kansas City, etc., R. Co., 20 S.W. 970, 113 Mo. 280.
S.D.—Dewey v. Komar, 110 N.W. 90, 21 S.D. 117.
Wis.—Churchill v. Price, 44 Wis. 540.
4 C.J. p 1017 note 51.

73. Or.—Johnson v. Hoffman, 284 P. 567, 132 Or. 46.
4 C.J. p 1017 note 52.

74. Ala.—Woodward Iron Co. v. Goolsby, 6 So.2d 11, 242 Ala. 329. Birmingham Elec. Co. v. Walden, 31 So.2d 762, 33 Ala.App. 211.
Fla.—Vaughan's Seed Store v. Stringfellow, 48 So. 410, 56 Fla. 708.
Ill.—Chicago City R. Co. v. Menely, 79 Ill.App. 679.
Minn.—Nubbe v. Hardy Continental Hotel System of Minn., 31 N.W.2d 332, 225 Minn. 496.
Pa.—Fisher v. Allegheny County, 188 A. 196, 324 Pa. 471.
Tex.—Shook v. Parton, Civ.App., 211 S.W.2d 368.

75. Minn.—Hartmon v. National Heater Co., 60 N.W.2d 804, 240 Minn. 264.
Mo.—Jones v. Austin, App., 154 S.W. 2d 378.
Pa.—O'Hare v. McGee, 176 A. 525, 116 Pa.Super. 318.
Tex.—Shook v. Parton, Civ.App., 211 S.W.2d 368.

Adverse effect on jury

The fact that, before an objection to a question asked a witness could be interposed and ruled upon, the witness had given a negative reply, did not render a subsequent erroneous ruling of the court sustaining the objection harmless, since the practical effect thereof was to exclude such testimony and it was clearly so understood by the jury.

Ala.—Louisville & N. R. Co. v. Jacobson, 118 So. 565, 218 Ala. 384.

particular phase of a matter is ruled out, but the witness is later allowed to tell all he knows about the matter;[76] where the whole testimony of a witness is excluded, but he is subsequently permitted to testify;[77] and where the testimony is by deposition instead of in open court.[78]

Nevertheless, where the testimony admitted is not as broad or as comprehensive as that excluded,[79] or where the jury are shown to be confused by their rejection and subsequent admission,[80] the error still remains.

Through other witnesses. No prejudicial error results from the exclusion of particular evidence when the facts sought to be elicited are subsequently covered in full by the testimony of other witnesses,[81] provided the credibility of such witnesses is

Matter withdrawn

Erroneous exclusion of evidence of defendant's intimidation of a witness was not rendered harmless by the witness' answer, where the objection was sustained and the matter withdrawn from the jury.

Tex.—Johnson v. Whitehand, Civ. App., 21 S.W.2d 41.

76. Ala.—Williams v. Anniston Electric, etc., Co., 51 So. 385, 164 Ala. 84.

Ill.—North Chicago Rolling-Mill Co. v. Johnson, 29 N.E. 186, 114 Ill. 57.

Iowa.—In re Lyons' Guardianship, 33 N.W.2d 423, 239 Iowa 968.

4 C.J. p 1017 note 54.

77. Pa.—Rogers v. Kichline, 36 Pa. 293.

4 C.J. p 1017 note 55.

78. Ala.—Stewart v. Bradford, 26 Ala. 410.

Ga.—Leary v. Leary, 18 Ga. 696.

Me.—Hovey v. Chase, 52 Me. 304, 83 Am.D. 514.

Tex.—Long v. Steiger, 8 Tex. 460.

Jordan v. Johnson, Civ.App., 155 S.W. 1194.

4 C.J. p 1017 note 56.

79. Ala.—Atlantic Coast Line R. Co. v. Hardwick, 193 So. 730, 239 Ala. 58—Lowery v. Jones, 121 So. 704, 219 Ala. 201, 64 A.L.R. 553.

Ill.—Rost v. F. H. Noble & Co., 147 N.E. 258, 316 Ill. 357.

Minn.—Independent School Dist. No. 35, St. Louis County v. A. Hedenberg & Co., 7 N.W.2d 511, 214 Minn. 82.

Mont.—Trenka v. Moos, 168 P.2d 837, 118 Mont. 607.

Nev.—Gerbig v. Gerbig, 128 P.2d 938, 61 Nev. 387.

Tex.—Daggett v. Wolff, Civ.App., 44 S.W.2d 1063.

4 C.J. p 1018 note 57.

Subsequent evidence not responsive to question

Where the makers allegedly delivered a note to a third party solely for his signature, and the third party, without signing the note, delivered the note to the payee, a refusal in the payee's action on the note to permit the makers to testify that they did not intend that the note should be delivered to the payee without a third party's signature was reversible error which was not cured by the answer of one of the makers without the objection that he would not have signed the note had he known that a third party was going to deliver the note to the payee without signing it, where the answer was not responsive to the question.

Cal.—Brown v. Newby, 47 P.2d 1076, 8 C.A.2d 203.

80. Conn.—De Santo v. Burkle, 138 A. 788, 106 Conn. 677.

Direct contrast before jury

The error in the exclusion of a question on cross-examination to defendant's treasurer, called as a witness for plaintiff, was not cured by allowing defendant to give the evidence in its defense, since one has a right to have the direct and cross-examinations placed in direct contrast before the jury.

Vt.—Goodwin v. Barre Sav. Bank & Trust Co., 100 A. 34, 91 Vt. 228.

81. Ala.—Jordan v. Capers, 131 So. 557, 222 Ala. 197—C. C. Snyder Cigar & Tobacco Co. v. Stutts, 107 So. 73, 214 Ala. 132—Pettus v. Louisville & N. R. Co., 106 So. 807, 214 Ala. 187—Morgan v. Virginia-Carolina Chemical Co., 106 So. 136, 213 Ala. 551—Stephenson v. Stephenson, 105 So. 867, 213 Ala. 545—Bierley v. Shelby Iron Co., 93 So. 829, 208 Ala. 25—Fail v. Gulf States Steel Co., 87 So. 612, 205 Ala. 148—Haley v. Miller, 69 So. 564, 193 Ala. 482.

Bank of Loretto v. Bobo, 67 So. 2d 77, 37 Ala.App. 139, certiorari denied 67 So.2d 90, 259 Ala. 374—Grace v. Wooley, 174 So. 799, 27 Ala.App. 464, certiorari denied 174 So. 801, 234 Ala. 248—Smith v. McDonald, 130 So. 516, 24 Ala.App. 88.

Ariz.—Griffen v. Cole, 131 P.2d 989, 60 Ariz. 83.

Ark.—Schwam v. Reece, 210 S.W.2d 903, 213 Ark. 431—Fitzhugh v. Leonard, 19 S.W.2d 1010, 179 Ark. 816.

Cal.—Wilson v. Davis, 81 P.2d 971, 11 C.2d 761—Yates v. Eudemiller, 1 P.2d 434, 213 C. 26—Robinet v. Hawk, 252 P. 1045, 200 C. 265—Williams v. Lockwood, 166 P. 587, 175 C. 598—Vallejo & N. R. Co. v. Reed Orchard Co., 147 P. 238, 169 C. 545.

Pomerantz v. Bryan Motors, 206 P.2d 440, 92 C.A.2d 114—Metter v. Los Angeles Examiner, 95 P.2d 491, 135 C.A.2d 304—Rapolla v. Goulart, 287 P. 562, 105 C.A. 417—Connell v. Crawford, 268 P. 948, 92 C. A. 715—Brown v. Lemon Cove Ditch Co., 171 P. 705, 36 C.A. 94.

Conn.—Sosnowski v. Lenox, 53 A.2d 388, 133 Conn. 624.

Ga.—Jones v. Blackburn, 44 S.E.2d 555, 75 Ga.App. 791—Head v. Georgia Power Co., 27 S.E.2d 339, 70 Ga.App. 32—Oliver v. Wayne, 199 S.E. 841, 58 Ga.App. 787—May v. Subers, 91 S.E. 435, 19 Ga.App. 306.

Ill.—Milner v. Nelson, 91 N.E.2d 111, 340 Ill.App. 21—Smith v. Carter, 23 N.E.2d 738, 302 Ill.App. 235—Floyd v. Galva Electric Light Co., 227 Ill.App. 541. See Aur v. East St. Louis Ry. Co., 194 Ill.App. 193—McCorkle v. McGinnis' Estate, 187 Ill.App. 610.

Ind.—Lahr v. Broyles, 155 N.E. 709, 86 Ind.App. 33.

Iowa.—Baehr-Shive Realty Co. v. Stoner-McCray System, 268 N.W. 53, 221 Iowa 1186—Riddle v. Frankl, 247 N.W. 493, 215 Iowa 1083—Coe v. Moline Power Farming Corporation, 202 N.W. 265—Peterson v. McManus, 172 N.W. 460, 187 Iowa 522—Zinkula v. Zinkula, 154 N.W. 158, 171 Iowa 287.

Kan.—Ferguson v. Stewart, 250 P. 292, 121 Kan. 749.

Ky.—Willingham v. Stevens, 226 S. W.2d 770, 312 Ky. 124—City of Madisonville v. Nisbet's Adm'r, 109 S.W.2d 593, 270 Ky. 248—Wells v. Lockhart, 81 S.W.2d 5, 258 Ky. 698—West v. W. T. B. Williams & Sons, 259 S.W. 1015, 202 Ky. 382—Coons v. Louisville & N. R. Co., 215 S.W. 946, 185 Ky. 741—Evansville Rys. Co. v. Ligon's Adm'r, 189 S. W. 898, 172 Ky. 631—Roberts v. Sandy Valley & Elkhorn Ry. Co., 179 S.W. 228, 166 Ky. 342.

Md.—M. P. Moller Motor Car Co. v. Unger, 170 A. 777, 166 Md. 690—Lohmuller Building Co. of Baltimore City v. Barrett, 127 A. 482, 146 Md. 617—Matthews v. J. B. Colt Co., 125 A. 840, 145 Md. 667—Carlin v. Biddison, 109 A. 316, 135 Md. 458—Zipus v. United Rys. & Electric Co. of Baltimore City, 108 A. 884, 135 Md. 297—Jones Hollowware Co. v. Hawkins, 97 A. 365, 128 Md. 160.

Mass.—Rockport Granite Co. v. Plum Island Beach Co., 142 N.E. 834, 248 Mass. 290.

Mich.—In re Dellow's Estate, 287 N. W. 420, 290 Mich. 167—Grzelka v.

not shaken,[82] and it is clear that no harm has resulted to the party first offering the evidence.[83] This is true even where the excluded evidence is documentary and the admitted evidence is oral testimony,[84] or where the subsequent witnesses are offered by the adverse party, as the proponent of the excluded evidence has the benefit of cross-examination.[85] It has been said that the exclusion of competent evidence is not prejudicial error where the matter could have been proved by other witnesses readily available to the party complaining.[86]

On the other hand, where the evidence excluded is of greater probative force than that admitted,[87] or where the evidence is conflicting and the exclu-

Chevrolet Motor Car Co., 281 N.W. 568, 286 Mich. 141—Moore v. Capital Nat. Bank of Lansing, 264 N. W. 288, 274 Mich. 56—Dembicki v. Melin, 225 N.W. 508, 247 Mich. 361—Phinney v. Detroit United Ry. Co., 205 N.W. 124, 232 Mich. 399.

Minn.—Steele v. Commercial Acc. Ins. Co., 190 N.W. 611, 153 Minn. 429.

Miss.—Rhodes v. Roberts, 78 So.2d 614, 223 Miss. 580—Mississippi Power & Light Co. v. Jordan, 143 So. 483, 164 Miss. 174.

Mo.—Boring v. Kansas City Life Ins. Co., 274 S.W.2d 233—Clark v. Reising, 107 S.W.2d 33, 341 Mo. 282—Kimberling v. Wabash Ry. Co., 85 S.W.2d 736, 337 Mo. 702—Unrein v. Oklahoma Hide Co., 244 S.W. 924, 295 Mo. 353.

Bishop v. Musick Plating Works, 3 S.W.2d 256, 222 Mo.App. 370—Bluff City Shoe Co. v. Levy, App., 273 S.W. 1086—Wills v. Sullivan, 242 S.W. 180, 211 Mo.App. 318—William Wurdack Electric Mfg. Co. v. Elliott & Barry Engineering Co., App., 207 S.W. 877—Boeckmann v. Valier & Spies Milling Co., App., 199 S.W. 457.

Neb.—Welstead v. Jim Ryan Const. Co., 69 N.W.2d 308, 160 Neb. 87.

N.J.—Newark Live Poultry Co. v. Fauer, 194 A. 270, 118 N.J.Law 556, affirmed 199 A. 12, 120 N.J.Law 187—Coombs v. Witte, 140 A. 408, 104 N.J.Law 519.

Friese v. Nagle Packing Co., 160 A. 765, 10 N.J.Misc. 795, affirmed 166 A. 307, 110 N.J.Law 588.

N.Y.—Taggart v. Graby, 286 N.Y.S. 382, 159 Misc. 155.

N.C.—Whedbee v. Ruffin, 131 S.E. 653, 191 N.C. 257—Atkins v. Madry, 93 S.E. 744, 174 N.C. 187—Grant v. Raleigh, etc., R. Co., 13 S.E. 209, 108 N.C. 462.

N.D.—Worlitz v. Miller, 184 N.W. 806, 48 N.D. 335.

Ohio.—Sherer v. Smith, 99 N.E.2d 763, 155 Ohio St. 567—Massachusetts Bonding & Insurance Co. v. Dingle-Clark Co., 52 N.E.2d 340, 142 Ohio St. 346.

Okl.—Kemp v. Strnad, 268 P.2d 255—Oklahoma Ry. Co. v. Parker, 203 P.2d 875, 201 Okl. 193—City of Muskogee v. Magee, 57 P.2d 252, 177 Okl. 39.

Or.—Cosgrove v. Tracey, 64 P.2d 1321, 156 Or. 1—Mount v. Welsh, 247 P. 815, 118 Or. 568.

Pa.—Cohen v. Hempfield Foundries Co., 77 A.2d 687, 168 Pa.Super. 172—Advance-Rumely Thresher Co. v. Rohr, 176 A. 825, 116 Pa. Super. 498.

Rosen v. Railway Exp. Agency, 57 Pa.Dist. & Co. 325, affirmed 50 A.2d 517, 160 Pa.Super. 122.

R.I.—Hargraves v. Ballou, 131 A. 643, 47 R.I. 186.

S.C.—Charles v. Texas Co., 18 S.E.2d 719, 199 S.C. 156—Young v. Hudsex Motor Co., 174 S.E. 489, 172 S.C. 541—Lowie v. Dixie Stores, 174 S.E. 394, 172 S.C. 468—Pierce v. Marion County Lumber Co., 94 S.E. 865, 108 S.C. 387.

Tenn.—Lively v. American Zinc Co. of Tennessee, 191 S.W. 975, 137 Tenn. 261.

Tex.—Parten v. Wilson, Civ.App., 243 S.W.2d 198, error refused no reversible error—Team v. Texas & P. Ry. Co., Civ.App., 199 S.W.2d 274, error refused no reversible error—Cobb v. Texas & N. O. R. Co., Civ.App., 107 S.W.2d 670, error dismissed—Davey v. Coleman, Civ.App., 6 S.W.2d 227—Standard Motor Co. v. Stillians, Civ.App., 1 S.W.2d 332—Pyeatt v. Anderson, Civ.App., 264 S.W. 302, affirmed, Com.App., 269 S.W. 429—West Lumber Co. v. Henderson, Civ. App., 238 S.W. 710, modified on other grounds, Com.App., 252 S.W. 1044—Nesbit v. Richardson, Civ. App., 229 S.W. 595, dismissed for want of jurisdiction—Justice v. McRuffin, Civ.App., 224 S.W. 204, error dismissed—Bobbitt v. Bobbitt, Civ.App., 223 S.W. 478, dismissed for want of jurisdiction—Harlan v. Falfurrias Mercantile Co., Civ.App., 214 S.W. 649—Abilene Steam Laundry Co. v. Carter, Civ.App., 210 S.W. 571, error refused—Missouri, K. & T. Ry. Co. of Texas v. Robertson, Civ. App., 200 S.W. 1120—Freeman v. Bennett, Civ.App., 195 S.W. 238, error refused.

Utah.—Hassing v. Mutual Life Ins. Co. of N. Y., 159 P.2d 117, 108 Utah 198—Tremelling v. Southern Pac. Co., 257 P. 1066, 70 Utah 72.

Vt.—Merrihew v. Goodspeed, 147 A. 346, 102 Vt. 206, 66 A.L.R. 1109—Hopkins v. Sargent's Estate, 97 A. 657, 90 Vt. 185.

Va.—Marshall v. Shaw, 85 S.E.2d 223, 196 Va. 678.

Wash.—Garratt v. Dailey, 279 P.2d 1091, 46 Wash.2d 197—O'Neil v. Pacific States Fire Ins. Co. of Portland, Or., 222 P. 215, 128 Wash. 133—In re West Marginal Way in City of Seattle, 186 P. 644, 109 Wash. 116—Pearson v. Gullans, 142 P. 456, 81 Wash. 57.

Wis.—Holty v. Landauer, 70 N.W.2d 633, 270 Wis. 203, rehearing denied 71 N.W.2d 926, 270 Wis. 203—In re Shinoe's Estate, 250 N.W. 505, 212 Wis. 481—Marsh Wood Products Co. v. Babcock & Wilcox Co., 240 N.W. 392, 207 Wis. 209—In re Keenan's Will, 176 N.W. 857, 171 Wis. 94.

4 C.J. p 1018 note 58.

Extent of injuries

Exclusion of testimony of the deputy keeper of a penitentiary as to what the convict's injuries appeared to be was not injurious to defendant, where the character and extent of his injuries were fully testified to by two physicians.

Md.—Jones Holloware Co. v. Hawkins, 97 A. 365, 128 Md. 160.

82. U.S.—Mohrenstecher v. Westervelt, Neb., 87 F. 157, 30 C.C.A. 584.
Ark.—McDonough v. Williams, 112 S.W. 164, 86 Ark. 600.
Ill.—Bibbins v. Chicago, 61 N.E. 1030, 193 Ill. 359.
4 C.J. p 1018 note 59.

83. Ark.—Buckeye Cotton Oil Co. v. Harris, 186 S.W. 292, 124 Ark. 14.
Ind.—State v. Hamer, 199 N.E. 589, 211 Ind. 570.
Mo.—Moss v. Wells, 249 S.W. 411.
4 C.J. p 1018 note 60.

84. Ind.—Home Ins. Co. of New York v. Strange, 123 N.E. 127, 70 Ind.App. 49.
Minn.—Stanger v. Pandolfo, 175 N. W. 912, 144 Minn. 294.
Pa.—Lilly v. Metropolitan Life Ins. Co., 177 A. 779, 318 Pa. 248.
4 C.J. p 1018 note 61.

85. Ill.—Cowher v. Pennsylvania R. Co., 83 N.E.2d 359, 336 Ill.App. 308, certiorari denied 70 S.Ct. 77, 338 U.S. 828, 94 L.Ed. 503—Bressler v. Beach, 21 Ill.App. 423.
Tex.—Smith v. Eckford, 18 S.W. 210.
4 C.J. p 1018 note 62.

86. R.I.—Warren v. Warren, 80 A. 593, 33 R.I. 71.

87. Ga.—Wilson v. Garrett, 90 S.E. 2d 74, 92 Ga.App. 820.
Mo.—Dorn v. St. Louis Public Service Co., App., 250 S.W.2d 859.
Tex.—Watson v. Watson, Civ.App., 28 S.W.2d 1100.
4 C.J. p 1018 note 64.

sion of testimony of one witness may have affected the result,[88] the error is prejudicial.

§ 1754. —— By Instructions

An erroneous exclusion of evidence may be rendered harmless by instructions to the jury.

The trial court, in its instructions to the jury, may cure whatever error it may have committed in ruling out evidence,[89] as where it so defines the issues and, if involved in the case, the grounds of liability as to render the excluded evidence immaterial and outside the issues,[90] or where it assumes the existence or proof of the fact sought to be established by the evidence in question and thus gives the party all the benefit which he could have derived from its admission.[91]

On the other hand, the error is not eradicated, but is aggravated, by instructions which lay emphasis on the fact which the excluded evidence would have tended to prove or to disprove.[92]

88. Ala.—Great American Ins. Co. v. Dover, 130 So. 335, 221 Ala. 612.
N.J.—Damchuk v. Public Service Ry. Co., 136 A. 604, 5 N.J.Misc. 365.
N.C.—Eaves v. Coxe, 165 S.E. 345, 203 N.C. 173.

89. Cal.—Duff v. Schaefer Ambulance Service, 283 P.2d 91, 132 C.A.2d 655—Scrimsher v. Reliance Rock Co., 36 P.2d 688, 1 C.A.2d 382—Polkinghorn v. Riverside Portland Cement Co., 142 P. 140, 24 C.A. 615.
Fla.—Pendarvis v. Pfeifer, 182 So. 307, 132 Fla. 724.
Ga.—Dyar v. Dyar, 131 S.E. 535, 161 Ga. 615.
Ill.—Wilson v. Chicago & W. I. R. Co., 6 N.E.2d 634, 365 Ill. 405.
Iowa.—Kayser v. Occidental Life Ins. Co. of California, 12 N.W.2d 582, 234 Iowa 310—Faber v. New York Life Ins. Co., 265 N.W. 305, 221 Iowa 740.
Kan.—Harper v. Cox, 264 P. 1075, 125 Kan. 563.
Ky.—Tribble v. Giles, 130 S.W.2d 777, 279 Ky. 358—American Eagle Fire Ins. Co. v. Meredith, 22 S.W.2d 571, 232 Ky. 142.
Me.—Dall v. Bangor Ry. & Electric Co., 137 A. 773, 126 Me. 261.
Mass.—Brown Co. v. Borst, 165 N.E. 115, 266 Mass. 350.
Miss.—Maxedon v. City of Corinth, 124 So. 795, 155 Miss. 588.
Mo.—Baugh v. Life & Cas. Ins. Co. of Tenn., App., 299 S.W.2d 554.
Mont.—Puckett v. Hopkins, 206 P. 422, 63 Mont. 137.
N.C.—Edgewood Knoll Apartments, Inc. v. Braswell, 80 S.E.2d 653, 239 N.C. 560, rehearing denied 83 S.E. 2d 797, 240 N.C. 760—Elliott v. Smith, 91 S.E. 954, 173 N.C. 265.
Ohio.—Vukovic v. Walnut Grove Country Club, App., 124 N.E.2d 463.
Okl.—Mutual Life Ins. Co. v. Johnson, 166 P. 1074, 64 Okl. 222.
Pa.—Lorch v. Eglin, 85 A.2d 841, 369 Pa. 314—Fane v. Philadelphia Rapid Transit Co., 77 A. 806, 228 Pa. 471.
S.C.—Raleigh & C. R. Co. v. Jones, 88 S.E. 896, 104 S.C. 332.
Tex.—San Antonio Public Service Co. v. Alexander, Com.App., 280 S.W. 753.
Va.—Mundy's Ex'rs v. Garland, 83 S.E. 491, 116 Va. 922.
4 C.J. p 1018 note 65.

Failure to admit ordinance

(1) Where plaintiff was injured while riding on the running board of an automobile, the refusal to admit an ordinance prohibiting such riding was not error, where the court included the ordinance in its instructions.
Cal.—Varner v. Hattenhaber, 42 P. 2d 674, 5 C.A.2d 199.

(2) The error, if any, in excluding an ordinance allegedly impliedly requiring the sounding of an automobile horn was nonprejudicial to an injured pedestrian, where the court, in submitting the case under the humanitarian doctrine under which the motorist's duty to sound a horn arose, fully instructed the jury respecting such duty.
Mo.—Wolfson v. Cohen, 55 S.W.2d 677.

(3) The exclusion of an ordinance as to the speed at which a motor vehicle may be driven, set up as bearing upon the contributory negligence of plaintiff precluding a proper instruction based upon it, is prejudicial error.
Mo.—Roper v. Greenspon, 198 S.W. 1107, 272 Mo. 288, L.R.A.1918D 126.

90. Ala.—Birmingham Purchasing Co. v. Colvin, 123 So. 45, 219 Ala. 662—Sloss-Sheffield Steel & Iron Co. v. Underwood, 85 So. 441, 204 Ala. 286.
Iowa.—Eller v. Preferred Accident Ins. Co., 284 N.W. 406, 226 Iowa 474—L. Terry & H. Rosenberg v. American Ins. Co., 203 N.W. 17, reheard 211 N.W. 716, 202 Iowa 1291.
Md.—Evening News Co. v. Bowie, 141 A. 416, 154 Md. 604.
Minn.—Falk v. Chicago & N. W. Ry. Co., 157 N.W. 904, 133 Minn. 41.
N.J.—Wanner v. Columbia Casualty Co., 147 A. 196, 7 N.J.Misc. 753.
Tex.—Jones v. State Fair of Texas, Civ.App., 127 S.W.2d 948, error dismissed, judgment correct—Cartwright v. Alexander, Civ.App., 252 S.W. 1073.
4 C.J. p 1018 note 66.

Issues withdrawn from jury

(1) The rejection of evidence of subscribing a witness as to testator's mental capacity was not cause for reversal, when that issue was in effect withdrawn.
Ga.—Dyar v. Dyar, 131 S.E. 535, 161 Ga. 615.

(2) In an action by a passenger for injuries from being shoved against a platform, the exclusion of testimony by the flagman who shoved her that he held no malice toward plaintiff was without prejudice, where the issue of willful or wanton negligence was withdrawn from the jury.
Ala.—St. Louis & S. F. Ry. Co. v. Trice, 80 So. 434, 202 Ala. 352.

(3) Where the court instructed the jury that, as a matter of law, it was conclusively established that note was obtained by fraud and was without consideration, and that the only issue submitted was whether plaintiff was an innocent purchaser, any errors in refusing requested instructions and in admitting and excluding evidence and the like, not concerning issue of innocent holder, were immaterial.
Iowa.—Windahl v. Hasselman, 200 N.W. 583, 198 Iowa 1001.

91. Ill.—Hardy v. Dobler, 248 Ill. App. 361.
Ky.—Stewart Dry Goods Co. v. Boone, 202 S.W. 489, 180 Ky. 199.
N.M.—Skala v. New York Life Ins. Co., 172 P. 1046, 24 N.M. 78.
Pa.—Kaplan Furniture Co. v. Glou, Com.Pl., 48 Lack.Jur. 85.
Tex.—Carothers v. Finley, Civ.App., 209 S.W. 801, error refused—Swann v. Texas & P. Ry. Co., Civ. App., 200 S.W. 1131, error refused.
4 C.J. p 1019 note 67.

92. Colo.—Lewin v. Barry, 63 P. 121, 15 Colo.App. 461.
Iowa.—Guinn v. Iowa, etc., R. Co., 101 N.W. 94, 125 Iowa 301.
N.Y.—Woodhaven Bank v. Brooklyn Hills Impr. Co., 74 N.Y.S. 1023, 69 App.Div. 489.
Haines v. Thompson, 21 N.Y.S. 991, 2 Misc. 385.
Ohio.—Heintz v. Caldwell, 16 Ohio Cir.Ct. 630, 9 Ohio Cir.Dec. 412.
4 C.J. p 1019 note 68.

§ 1755. Dismissal

If no prejudice to the rights of the complaining party resulted from an error in dismissal or failure to dismiss, the error is not ground for reversal, but reversal generally follows a showing that such an error was prejudicial.

Nonprejudicial error committed by the trial court in acting on a motion to dismiss is not ground for reversal.[93] Accordingly, an erroneous refusal to dismiss is not ground for reversal when the substantial rights of appellant have not been prejudiced,[94] as where an error in refusing to dismiss for want of sufficient proof was cured by evidence subsequently introduced by either party,[95] or by defendant's subsequently admitting liability.[96]

Also, where the final decree dismissed the bill as requested in the motion, which was erroneously denied,[97] or where error in refusing to dismiss a second cause of action set up by amendment was cured by plaintiff's voluntarily dismissing such cause of action and proceeding to trial on the original cause of action,[98] the error is harmless. Any error in denying plaintiff's motion to dismiss a complaint of intervention for delay in prosecution is harmless, where the court, on its own motion, dismissed the entire action on the same ground and plaintiff did not appeal from the latter order.[99] On the other hand, a refusal to dismiss the complaint against a party against whom there was not a particle of evidence is a reversible error.[1]

The erroneous dismissal of an action will not operate to reverse when not prejudicial,[2] as where it

93. Ark.—Southwestern Telegraph & Telephone Co. v. Hill, 215 S.W. 577, 140 Ark. 328.
Cal.—Hand v. Cleese, 258 P. 1090, 202 C. 36.
Ohio.—Major v. Bowes, 136 N.E.2d 763, 101 Ohio App. 95.
Tex.—Ellerd v. Burkhalter, Civ.App., 269 S.W. 197.

Notice of motion

Failure to give eight days' notice of motion to dismiss action for failure to give security for costs as required by statute would be at most a mere irregularity not prejudicial to plaintiff.
Wis.—Sheldon v. Nick & Sons, 33 N.W.2d 260, 253 Wis. 162.

Notice to members of class

Even though order of dismissal of stockholder's derivative action without prejudice was a violation of superior court rule requiring that in certain class actions no order of dismissal could be entered without notice given to all members of class, where no injustice was done to any party by such dismissal, violation of rule would not be ground for reversal.
Ill.—Minarik v. Commonwealth Edison Co., 139 N.E.2d 854, 12 Ill.App.2d 410.

Rule invoked immaterial

Whether trial court considered judgment of dismissal proper under rule relating to judgment on pleadings or under rule relating to summary judgment was immaterial if defendant was entitled to judgment under either rule.
Colo.—Haigler v. Ingle, 200 P.2d 913, 119 Colo. 145.

94. Cal.—Solomon v. Walton, 241 P.2d 49, 109 C.A.2d 381.
Ga.—Camden Fire Ins. Ass'n v. Almand, 147 S.E. 722, 39 Ga.App. 496.
Ky.—Hammonds v. Luster's Adm'r, 82 S.W.2d 500, 259 Ky. 383—Johnson v. Johnson, 291 S.W. 37, 218 Ky. 246.
Minn.—Ellwein v. Holmes, 68 N.W. 2d 220, 243 Minn. 397.
N.J.—Safran v. Smith, 198 A. 396, 120 N.J.Law 108.
N.M.—Marchant v. McDonald, 20 P. 2d 276, 37 N.M. 171.
N.Y.—Hall v. Socony-Vacuum Oil Co., 77 N.Y.S.2d 670, 273 App.Div. 926, appeal denied 79 N.Y.S.2d 892, 273 App.Div. 1042—Phillipson v. Ninno, 179 N.Y.S. 945, 190 App. Div. 895.
Ten Eyck v. Lombard, 296 N.Y. S. 52, 162 Misc. 519.
N.C.—Sparks v. Sparks, 55 S.E.2d 477, 230 N.C. 715.
Ohio.—Turner Printing Machinery, Inc. v. Barco Mach. Products Co., App., 113 N.E.2d 381—Central Nat. Bank of Cleveland v. International Sales Co., 91 N.E.2d 532, 87 Ohio App. 207—Riebel v. Hunt, 185 N. E. 468, 44 Ohio App. 299.
4 C.J. p 1020 note 79.

Forum non conveniens

Failure to dismiss action which was dismissable on ground of forum non conveniens was not reversible error in view of time and expense already devoted to case and impracticability of exhausting appellate remedies before expiration of period of limitations.
Ill.—Peterie v. Thompson, 134 N.E. 2d 534, 10 Ill.App.2d 100.

Motion to dismiss counterclaim

Where in an action on account stated the jury found against defendant on his counterclaim, the denial of plaintiffs' motion to dismiss the counterclaim, if erroneous, was without prejudice.
N.D.—Foster v. Dwire, 199 N.W. 1017, 51 N.D. 581, 51 A.L.R. 21.

95. Minn.—George Gorton Machine Co. v. Grignon, 163 N.W. 748, 137 Minn. 378.
4 C.J. p 1020 note 80.

96. N.J.—Smith v. Red Top Taxi Cab Corporation, 158 A. 326, 10 N. J.Misc. 124, reversed on other grounds 168 A. 796, 111 N.J.Law 439.

97. Ill.—Loomis v. Collins, 111 N. E. 999, 272 Ill. 221.

98. Ind.—Indianapolis Outfitting Co. v. Cheyne Electric Co., 100 N.E. 468, 52 Ind.App. 153.

99. Cal.—Dempsey v. Underhill, 106 P. 73, 156 C. 718.

1. N.Y.—Carson v. Dessau, 18 N.Y. S. 232, 59 N.Y.Super. 79.

2. Cal.—Peluso v. City Taxi Co., 182 P. 808, 41 C.A. 297.
Colo.—Dickinson v. Brotherhood of Locomotive Firemen and Enginemen, 273 P. 884, 85 Colo. 83—Coulter v. Barnes, 205 P. 943, 71 Colo. 243.
Ill.—People v. Craft, 118 N.E. 777, 282 Ill. 483.
Scharlau v. Lombard State Bank, 278 Ill.App. 487—Orr v. Croissant, 253 Ill.App. 396.
Ind.—Pattison v. Grant Trust & Savings Co., 144 N.E. 26, 195 Ind. 313.
Iowa.—Coen & Conway v. Scott County Sav. Bank, 218 N.W. 325, 205 Iowa 483.
Ky.—Rice v. Thomas, 211 S.W. 428, 184 Ky. 168—Williams v. Davenport, 205 S.W. 551, 181 Ky. 496.
Mass.—Finance Corporation of New England v. Parker, 146 N.E. 696, 251 Mass. 372.
Minn.—Stanger v. Thompson, 190 N. W. 897, 153 Minn. 488.
Miss.—Marquette Cement Mfg. Co. v. Fidelity & Deposit Co. of Maryland, 158 So. 924, 173 Miss. 164.
Mo.—Klaiber v. Jorcke, App., 239 S.W. 880.

operated in favor of appellant,[3] where there has been a settlement and there is nothing further to litigate,[4] or where plaintiff is not entitled to recover.[5]

On the other hand, however, an erroneous dismissal, which was prejudicial, is ground for a reversal.[6] A refusal to dismiss an action on timely motion by plaintiff is prejudicial error,[6.5] and where the motion has been granted it may be prejudicial error to reinstate the case on the application of third persons in the absence of a showing of incapacity of plaintiff at the time of dismissal.[6.10] Where the first of two suits between the same parties on the same cause of action had been dismissed on plaintiff's motion after the court indicated its intention to sustain a demurrer to the complaint, it is not prejudicial error to reinstate the first suit on motion of defendant, and to dismiss the second suit.[6.15]

§ 1756. Nonsuit

a. In general
b. Voluntary nonsuit

a. In General

Although error in passing on an application for nonsuit may be ground for reversal where prejudice appears, in the absence of prejudice the error is harmless.

Error in ruling on,[7] or failure of the court to make

Neb.—Braun v. Peet, 150 N.W. 256, 97 Neb. 448.
N.Y.—Cohen v. Brooklyn & Queens Transit Corporation, 285 N.Y.S. 485, 246 App.Div. 276.
N.D.—Thompson v. Hannah Farmers Co-op. Elevator Co., 79 N.W.2d 31—Belt v. City of Grand Forks, 68 N.W.2d 114—Plott v. Kittelson, 228 N.W. 217, 58 N.D. 881—Ouren v. Friswold, 215 N.W. 160, 55 N.D. 664—Rattie v. Minneapolis, St. P. & S. S. M. Ry. Co., 215 N.W. 158, 55 N.D. 686.
Okl.—Ford v. Dancer, 233 P. 465, 106 Okl. 148.
Tex.—Clement v. Producers' Refining Co., Civ.App., 270 S.W. 206, reversed in part and affirmed in part on other grounds, Com.App., 277 S.W. 634—Nystel v. Gully, Civ. App., 257 S.W. 286—Cozier v. Andrews, Civ.App., 206 S.W. 975.
Va.—Gooch v. Suhor, 92 S.E. 843, 121 Va. 35.
Wash.—Zapon Co. v. Bryant, 286 P. 282, 156 Wash. 161.
4 C.J. p 1020 note 84.

Dismissal of counterclaim is not prejudicial where defendant could not have recovered.
La.—Hingle v. Ahten, App., 43 So.2d 550.

Where all facts barring action appear on record, judgment of dismissal can be rendered for defendant without prejudicial error.
Ohio.—Frost v. Blatz, 155 N.E. 158, 23 Ohio App. 40.

3. Ky.—Prewitt v. George, 162 S.W.2d 23, 290 Ky. 559.
Minn.—Welch v. Northern Pac. R. Co., 104 N.W. 894, 96 Minn. 211.

4. Utah.—Beck v. Lee, 172 P. 686, 52 Utah 31.

5. Cal.—Imperial Land Co. v. Imperial Irr. Dist., 161 P. 116, 173 C. 668.
Ga.—Phillips v. Drake Motor Co., 23 S.E.2d 538, 68 Ga.App. 618.
Minn.—Johnson v. Theo. Hamm Brewing Co., 4 N.W.2d 778, 213 Minn. 12.
Mo.—Sutton v. City of St. Joseph, App., 265 S.W.2d 760.
Tenn.—Reed v. Rhea County, 225 S.W.2d 49, 189 Tenn. 247.
Utah.—Rasmussen v. Davis, 262 P.2d 488, 1 Utah 2d 96.
4 C.J. p 1020 note 86.

No formal motion
A dismissal without a formal motion, where appellant is not entitled to recover, is harmless.
Cal.—Justice v. Robinson, 75 P. 776, 142 C. 199.

6. Cal.—Gardner v. Horrall, 238 P. 2d 1021, 108 C.A.2d 417.
Colo.—Platte Val. Motor Co. v. Wagner, 278 P.2d 870, 130 Colo. 365—Leach v. Manhart, 43 P.2d 959, 96 Colo. 397.
Fla.—Rountree v. Rountree, 72 So. 2d 794—Gabel v. Kilgore, 26 So.2d 166, 157 Fla. 420.
Ga.—Holt v. Gloer, 162 S.E. 663, 44 Ga.App. 685.
Ill.—McClay v. Williamson, 247 Ill. App. 141.
N.Y.—Flynn v. Long Island R. Co., 45 N.E.2d 445, 289 N.Y. 283.
Lazar v. Goldfarb, 75 N.Y.S.2d 272, 273 App.Div. 753—Catz Am. Co. v. March, 69 N.Y.S.2d 805, 272 App.Div. 134—Eno v. O'Riordan, 167 N.Y.S. 208, 180 App.Div. 64.
Matovich v. Weiss, 80 N.Y.S.2d 539.
Tenn.—Atchley v. Sims, 128 S.W.2d 975, 23 Tenn.App. 167.
Tex.—Bowers v. Mabry, Civ.App., 159 S.W.2d 529.
Wis.—Marathon Finance Corp. v. Rice Lake Auto Co., 1 N.W.2d 81, 239 Wis. 201.
25 C.J. p 1206 note 53 [a].

Failure to consider alternative right
Where complaint sought to establish either a mechanic's lien or an equitable lien for reasonable value of services rendered and money advanced by plaintiff in the improvement of realty, dismissing suit with prejudice on ground that relation between the parties appeared to be a joint venture and that such relation was not compatible with existence of a mechanic's lien under statute without determining whether plaintiff was entitled to an equitable lien constituted reversible error.
Fla.—Green v. Putnam, 93 So.2d 378.

Neglect in entering judgment
It has been held that on appeal from an erroneous judgment dismissing plaintiff's complaint for neglect in entering judgment, a contention that plaintiff was not injured because the judgment may be set aside if, on appeal, it is found that there was evidence to support his demands, is unavailing, for it assumes that, on appeal from the order of dismissal, the court may consider the case as though a judgment of nonsuit had been entered.
Cal.—San Jose Ranch Co. v. San Jose, Land, etc., Co., 58 P. 824, 126 C. 322.

6.5 Kan.—Henry v. Edde, 79 P.2d 888, 148 Kan. 70.
Ky.—Strode v. Campbell, 224 S.W. 2d 673, 311 Ky. 525.

Motion to strike motion to dismiss
Failure of court to rule on defendant's motion to strike plaintiff's motion to dismiss action was not prejudicial where, although plaintiff did not give notice of his motion, he had absolute right to dismissal.
Kan.—Bavuco v. Angwin, 201 P.2d 1057, 166 Kan. 469.

6.10 Kan.—Henry v. Edde, 79 P.2d 888, 148 Kan. 70.

6.15 Fla.—Hartquist v. Tamiami Trail Tours, 190 So. 533, 139 Fla. 328.

7. Mont.—Stiemke v. Jankovich, 233 P. 904, 72 Mont. 363.
N.C.—Pegram-West, Inc. v. Winston Mut. Life Ins. Co., 56 S.E.2d 607, 231 N.C. 277.
Wash.—Brown v. Wolfe, 56 P.2d 681, 185 Wash. 641.

Analysis of evidence
Trial judge's analysis, on defendants' motion for nonsuit, analyzing the evidence and setting forth his reactions thereto, after which he denied the motion for nonsuit, was

a ruling or take action respecting,[8] a motion for a nonsuit is harmless if the complaining party is not prejudiced thereby. Accordingly, the erroneous denial of a nonsuit for want of sufficient evidence is harmless error, where subsequently to such denial the defect in plaintiff's proof is supplied by evidence introduced by either party.[9] If, however, the evidence is not supplied,[10] or is supplied only in part,[11] the error is not harmless, unless the verdict is in favor of the movant.[12]

Error in denying a motion for nonsuit is also harmless where the court instructs the jury to find for defendant,[13] or recalls its original action in de-

not prejudicial error, on ground that defendants were misled to their detriment and failed to introduce in evidence pertinent testimony.
Cal.—Feckenscher v. Gamble, 85 P. 2d 885, 12 C.2d 482.

Discontinuance at close of case
Any error in refusing to require plaintiff to discontinue as to defendant as to whom case was not at issue was not prejudicial, where plaintiff discontinued as to such defendant at close of plaintiff's evidence.
Mich.—Rimmele v. Huebner, 157 N. W. 10, 190 Mich. 247.

Filing findings, conclusions, and judgment
Procedure of court in filing findings, conclusions, and judgment after granting nonsuit was not prejudicial to defendant.
Utah.—Tintic Standard Mining Co. v. Utah County, 15 P.2d 633, 80 Utah 491.

Judgment warranted by evidence
A judgment of nonsuit, acquiesced in by plaintiff, will not be disturbed, on appeal by defendant, on the ground that the judgment should have been more definitely in favor of defendant so as to put an end to the litigation, where the evidence warranted a judgment as favorable to plaintiff as was rendered.
La.—Berry v. Smith & Son, Inc., 5 La.App. 64.

Party stricken
Where, in suit against city for maintaining and operating nuisance, it did not appear that a coal company, originally joined as defendant and stricken in amended complaint, was either a necessary or proper party, refusal to nonsuit plaintiff because complaint showed stricken defendant should be sued was harmless.
Ala.—City of Bessemer v. Pope, 101 So. 648, 212 Ala. 16.

Proof of payment
Where defendant's liability has been established as a matter of law and the only question of fact for the jury is that of damages which would vary with the amount paid on a note and mortgage, although the trial court committed technical error in the denial of defendant's motion for nonsuit for failure to prove nonpayment, yet the judgment will not be reversed where defendant could easily have proved payment.
Cal.—Lally v. Kuster, 192 P. 78, 48 C.A. 355.

Test
Reversible error appears only when there is a complete absence of probative facts to support the conclusion reached.
N.C.—Garvey v. Atlantic Greyhound Corp., 45 S.E.2d 58, 228 N.C. 166.

8. Motion without merit
Any error in failing to rule on a motion for nonsuit is without prejudice, where the motion was without merit.
Cal.—Reclamation Dist. No. 535 v. Casey, 100 P. 1094, 155 C. XVI—Reclamation Dist. No. 535 v. Clark, 100 P. 1091, 155 C. 345.
Sullivan v. Matt, 278 P.2d 499, 130 C.A.2d 134.

9. Cal.—Cosby v. Cline, 200 P. 801, 186 C. 698—Hughes v. Warman Steel Casting Co., 163 P. 885, 174 C. 556.
California Employment Stabilization Commission v. Matcovich, 168 P.2d 702, 74 C.A.2d 398—Huston v. Schohr, 146 P.2d 730, 63 C.A.2d 267—Farrell v. Miramar Hotel Co., 13 P.2d 945, 125 C.A. 623—Parra v. Cleaver, 294 P. 6, 110 C.A. 168—Long Beach Brick Co. v. De Dodson, 285 P. 382, 104 C.A. 99—Bublitz v. Reeves, 180 P. 28, 40 C.A. 75—Johns v. Pond, 177 P. 293, 38 C.A. 643—Frankfort Marine Accident & Plate Glass Ins. Co. v. California Artistic Metal & Wire Co., 151 P. 176, 28 C. A. 74—Cutting v. Oliphant, 148 P. 940, 27 C.A. 120—Donovan v. Kemper, 146 P. 1044, 26 C.A. 352.
Ga.—Hogan v. Gilbert, 108 S.E. 625, 27 Ga.App. 444.
Mont.—Watterson v. Hill, 276 P. 948, 84 Mont. 549.
N.J.—De Santis v. Lange, 60 A.2d 620, 137 N.J.Law 480—Van Rensselaer v. Viorst, 57 A.2d 49, 136 N.J.Law 628—Le Bavin v. Suburban Gas Co., 45 A.2d 664, 134 N. J.Law 10—S. B. Penick & Co. v. Triple "M" Transp. Co., 34 A.2d 898, 131 N.J.Law 114—Layden v. Goodyear Tire & Rubber Co., 28 A. 2d 96, 129 N.J.Law 54—Rein v. Travelers Ins. Co., 12 A.2d 864, 124 N.J.Law 554—Sefler v. Vanderbeck & Sons, 96 A. 1009, 88 N.J. Law 636—Benoliel v. Homac, 94 A. 605, 87 N.J.Law 375—Van Ness v. North Jersey St. R. Co., 73 A. 509, 77 N.J.Law 551—Farnsworth v. Miller, 60 A. 1100, affirmed 70 A. 1100, 74 N.J.Law 599—Esler v. Camden, etc., R. Co., 58 A. 113, 71 N.J.Law 180—May v. North Hudson R. Co., 9 A. 688, 49 N.J.Law 445—Delaware, etc., R. Co. v. Dailey, 37 N.J.Law 526.
Or.—Hinton v. Roethler, 177 P. 59, 90 Or. 440—Roundtree v. Mount Hood R. Co., 168 P. 61, 86 Or. 147—Scibor v. Oregon-Washington R. & Navigation Co., 140 P. 629, 70 Or. 116.
S.C.—Jones v. American Fidelity & Cas. Co., 43 S.E.2d 355, 210 S.C. 470—Cox v. Atlantic Coast Line R. Co., 41 S.E.2d 380, 210 S.C. 32.
Utah.—Dee v. San Pedro, L. A. & S. L. R. Co., 167 P. 246, 50 Utah 167—Boyd v. San Pedro, L. A. & S. L. R. Co., 146 P. 282, 45 Utah 449.
Wis.—Wescott v. People's State Bank of Reeseville, 238 N.W. 803, 206 Wis. 105.
4 C.J. p 1021 note 96.

Failure to stand on motion
Defendant, by failing to stand its motion for nonsuit, assumes the risk of its own evidence aiding plaintiffs' case, since defendant cannot predicate error on refusal of court to grant nonsuit, if its own evidence thereafter cured defects in plaintiffs' case.
Mont.—Pure Oil Co. v. Chicago, M. & St. P. Ry. Co., 185 P. 150, 56 Mont. 266.

Nonsuit on opening statement
Where plaintiff did in fact prove a case, any error in denying defendants' motion for nonsuit at close of opening statement was not prejudicial.
Cal.—Noble v. Cavalier Restaurant, 235 P.2d 396, 106 C.A.2d 518.
N.J.—Hahn v. Rockingham Riding Stables, 19 A.2d 191, 126 N.J.Law 324.

10. N.J.—Huels v. General Elec. Co., 46 A.2d 654, 134 N.J.Law 165—Rochat, Adm'r, etc., v. North Hudson Co. Ry. Co., 9 A. 688, 49 N.J. Law 445.
N.Y.—Gralton v. Oliver, 101 N.Y.S.2d 109, 277 App.Div. 449, affirmed 100 N.E.2d 49, 302 N.Y. 864.
Wash.—Fraser v. Home Telephone & Telegraph Co., 157 P. 692, 91 Wash. 253.

11. N.Y.—Lambert v. Seely, 17 How.Pr. 432.

12. Ga.—King v. Holt, 122 S.E. 95, 31 Ga.App. 795.

13. Cal.—Pacific Vinegar, etc., Works v. Smith, 93 P. 85, 152 C. 507.

nying the motion for nonsuit and dismisses the action;[14] where the jury's verdict is for defendant;[15] where the case has subsequently been submitted to a jury, a verdict rendered, and a motion for new trial filed;[16] where a verdict for plaintiff is complained of in the motion for new trial as not supported by the evidence;[17] or where both parties demand a judgment on the merits by final submission of the cause.[18]

Further, there is no prejudicial error where, at the close of the entire case, plaintiff voluntarily withdrew the question of punitive damages in respect of which a motion for nonsuit, at the close of plaintiff's testimony, had been denied;[19] or where a judgment for nonsuit at the close of all the evidence is denied.[20] There is no prejudicial error in denying a nonsuit on a count of the complaint where it was eliminated by statements of plaintiff's counsel and by instructions to the jury,[21] or where the cause of action as to which the nonsuit was denied was withdrawn from the jury's consideration by the charge,[22] or where the judgment is sustainable on another cause of action.[22.5] Refusal to nonsuit one of several plaintiffs on defendant's motion may be harmless where granting the motion would not have altered the result.[22.10]

Conversely, an erroneous granting of a nonsuit is harmless error on appeal where it did not prejudice the complaining party.[23] Accordingly, erroneously granting a nonsuit is harmless where the jury, under proper instructions, would have been bound to find against appellant,[24] where defendant was entitled to have a verdict directed,[25] or where plaintiff's case was so radically defective that it

14. Ga.—Grand Rapids School-Furniture Co. v. Morel, 35 S.E. 312, 110 Ga. 321.

15. N.H.—Knighton v. Cushman-Rankin Co., 119 A. 797, 80 N.H. 546.
N.C.—Walls v. Carolina Spruce Co., 96 S.E. 36, 175 N.C. 661.

Counterclaim
Refusal to grant a nonsuit in favor of plaintiff on defendant's counterclaim, if error, was cured by jury's verdict against defendant on counterclaim.
N.J.—Edmondston Supply & Equipment Corp. v. Eisler Electric Corp., 11 A.2d 69, 124 N.J.Law 62.

16. Ga.—Leatherman v. J. Austin Dillon Co., 13 S.E.2d 94, 64 Ga. App. 314—First Nat. Bank v. Roberson, 184 S.E. 887, 53 Ga.App. 142.
4 C.J. p 1021 note 1.

17. Ga.—Smith v. Southern Spring Bed Co., 85 S.E. 612, 16 Ga.App. 449.
4 C.J. p 1021 note 2.

18. Cal.—Reclamation Dist. No. 535 v. Clark, 100 P. 1091, 155 C. 345.

19. S.C.—Horsford v. Carolina Glass Co., 75 S.E. 533, 92 S.C. 236.

20. N.Y.—Van Allen v. Shulenburgh, 110 N.Y.S. 464, 58 Misc. 136.

21. Cal.—Flinn v. Crooks, 83 P. 812, 2 C.A. 335.

22. S.C.—Webb v. Southern Ry. Co., 88 S.E. 297, 104 S.C. 89.

22.5 Cal.—Sutter v. Associated Seed Growers, 88 P.2d 144, 31 C.A.2d 543.

22.10 Mont.—Betor v. Chevalier, 193 P.2d 374, 121 Mont. 337.

23. Ariz.—Piper v. Taylor, 152 P. 863, 17 Ariz. 351.
Cal.—Howard v. General Petroleum Corp., 238 P.2d 145, 108 C.A.2d 25.
Idaho.—**Corpus Juris Secundum cited** in Smith v. Cooper, 245 P.2d 816, 819, 73 Idaho 99.
Wyo.—Fink v. Lewark, 246 P.2d 195, 70 Wyo. 150.

Evidence supporting answer
Where evidence adduced by plaintiffs on trial established the facts alleged in answer, and order which overruled demurrer to answer adjudged that facts alleged in answer constituted a defense to plaintiffs' cause of action, there was no prejudicial error in order of nonsuit.
S.C.—Schreiberg v. Southern Coatings & Chemical Co., 97 S.E.2d 214.

Failure to vacate
Assignment that trial court after both parties had rested should have vacated an order of involuntary nonsuit in favor of one defendant did not disclose error where jury found that plaintiff's charges were without foundation.
Or.—O'Brien v. Dunigan, 210 P.2d 567, 187 Or. 227.

In equity
Although granting a motion for nonsuit is bad practice in a suit in equity, and is proper only in a law action, yet the judgment will not be reversed where plaintiff's whole evidence in the record is insufficient to prove the allegations of his complaint.
Colo.—Boyer v. Tait, 238 P. 59, 78 Colo. 36.

Grant as to one party
In action against owner and real estate broker authorized to sell house for injuries sustained by prospective purchaser in fall down basement stairway, erroneously granting a nonsuit as to broker was not prejudicial error in trial of issues as to owner, in view of instructions to jury.
Cal.—Coughlin v. Harland L. Weaver, Inc., 230 P.2d 141, 103 C.A.2d 602.
Wash.—U. S. Fidelity & Guaranty Co. v. Western Seafood Co., 67 P.2d 892, 190 Wash. 200.

Unconstitutionality of statute authorizing suit renders error in granting nonsuit harmless.
Ga.—Buchanan v. Heath, 80 S.E.2d 393, 210 Ga. 410.

24. Cal.—Reno v. A. L. Boyden Co., 2 P.2d 214, 115 C.A. 697.
4 C.J. p 1021 note 8.

25. Cal.—Jones v. Bullard, 256 P. 555, 83 C.A. 179.
Ga.—Cook v. Attapulgus Clay Co., 184 S.E. 334, 52 Ga.App. 610.
Mo.—Woods v. St. Louis & S. F. R. Co., 187 S.W. 11.
Or.—LaVigne v. Portland Traction Co., 170 P.2d 709, 179 Or. 221.
R.I.—Cranston Print Works Co. v. American Telephone & Telegraph Co., 110 A. 419, 43 R.I. 88.
4 C.J. p 1021 note 9.

Nonsuit as to principal
(1) In an action against a father and son for injuries sustained from the son's alleged negligent operation of the father's automobile, the grant of a nonsuit as to the father, if error, was not ground for reversal, where the jury found that the son was not negligent, since the father is only liable on the principle that the son acting as his agent was guilty of negligence.
N.C.—Burris v. Litaker, 107 S.E. 129, 181 N.C. 376.

(2) Likewise, in action for wrongful death of one killed by an automobile, error in nonsuit as to owner of car, who was father of driver, was immaterial, where deceased was found guilty of contributory negligence.
N.C.—Plott v. Howell, 133 S.E. 167, 191 N.C. 832.

could not have been remedied by further proof.[26] Error in granting a nonsuit as to a certain count in the complaint is harmless where everything which might have been claimed by plaintiff under such count was included in and disposed of by the trial.[27]

Error in nonsuiting a cause of action under the common law, thereby limiting plaintiff's right to recover under a special statute, is cured by subsequently submitting to the jury the common-law cause of action.[28] Although a nonsuit was not the proper remedy under the circumstances, if the result obtained was not different from what would have been obtained if the proper remedy were used, the judgment will not be reversed.[29] Likewise, although the trial court should have entered absolute judgment for defendant, instead of nonsuit, in an action on a note, a judgment of nonsuit will be affirmed, where plaintiff alleged, in motion to remand the case, discovery of material evidence which might alter the result.[30]

Since joint tort feasors are jointly and severally liable for the entire injury, in a suit against both, one whose liability has been established cannot complain that the other's motion for nonsuit was sustained.[31]

Where a nonsuit was properly granted, it is not material that the grounds justifying it were not the ones on which the application therefor was based,[32] or that the motion for nonsuit was defective in that it failed to specify fully the weakness of plaintiff's case.[33] Also, the granting of a nonsuit without a formal motion, while irregular, is without prejudice.[34]

On the other hand, if an erroneous granting of a nonsuit prejudiced the rights of the complaining party, the error was not harmless.[35] Accordingly, if there is any evidence sufficient to go to the jury, the granting of the motion for nonsuit is prejudicial error;[36] and it is likewise prejudicial error to grant a nonsuit on admission of counsel for plaintiff that they could not furnish record evidence in support of their cause of action where the cause of action might have been otherwise proved.[37]

In at least one jurisdiction, while it has been held that the mere entry of a nonsuit, even on the merits of a case, renders none of the issues involved res judicata, and hence the nonsuit injures no one, and cannot be assigned as error,[38] it has also been held that the entry of a compulsory nonsuit without giving plaintiff an opportunity to present all his evidence is reversible error.[38.5]

26. Cal.—Fontana v. Pacific Can Co., 61 P. 580, 129 C. 51.
Hunt v. Sharkey, 130 P. 21, 20 C.A. 690.
N.Y.—Caldwell v. Bodine, 18 N.Y.S. 627, 63 Hun 635.
Pa.—Jordan v. Sun Life Assur. Co. of Canada, 77 A.2d 631, 366 Pa. 495.
4 C.J. p 1021 note 10.

27. Cal.—Taylor v. Pacific Electric Ry. Co., 158 P. 119, 172 C. 638.
Cantor v. Santa Clara County, 293 P.2d 894, 139 C.A.2d 441.

28. N.Y.—Marion v. B. G. Coon Constr. Co., 141 N.Y.S. 647, 157 App.Div. 95.

29. Ga.—Sheppard v. Georgia Ry. & Power Co., 121 S.E. 868, 31 Ga.App. 653.
Me.—Richards v. Tolman, 119 A. 624, 122 Me. 272.
N.C.—Ratledge v. Reynolds, 4 S.E. 2d 512, 216 N.C. 797.

30. La.—Russell v. Sullivan, 186 So. 8, 172 La. 934.

31. N.C.—Raulf v. Elizabeth City Electric Light & Power Co., 97 S. E. 236, 176 N.C. 691.
4 C.J. p 1021 note 12.

32. R.I.—Rogers v. Granger, 41 A. 1010, 21 R.I. 83.
4 C.J. p 1021 note 7.

33. Cal.—Wilson v. Wilson, 130 P. 2d 782, 55 C.A.2d 421—D'Alessandro v. Pickford, 70 P.2d 646, 22 C. A.2d 239—Herrill v. Rugg, 300 P. 140, 114 C.A. 492—Giles v. Reed, 186 P. 614, 44 C.A. 367.
Idaho.—Davis v. Pancheri, 236 P.2d 716, 72 Idaho 28.

34. Cal.—Ford v. Evans, 85 P.2d 214, 29 C.A.2d 623—Gursky v. Rosenberg, 287 P. 575, 105 C.A. 410.

35. Ala.—McKinley v. National Ben. Life Ins. Co., 137 So. 450, 223 Ala. 545.
Cal.—Bowater v. Tassey, 184 P.2d 931, 81 C.A.2d 651—Perkins v. Maiden, 106 P.2d 232, 41 C.A.2d 243.
Colo.—Westwood v. Richards, 122 P. 2d 247, 109 Colo. 17.

Effect of prior error
Where court has erroneously ruled out evidence without which plaintiff could not recover, his failure to go on and prove other essential facts will not cure error and sanctify judgment of nonsuit.
Ga.—Payne v. Nix, 17 S.E.2d 67, 193 Ga. 4—Georgia Iron & Coal Co. v. Ocean Accident & Guarantee Corporation, 65 S.E. 775, 133 Ga. 326—Proctor & Gamble Co. v. Blakely Oil & Fertilizer Co., 57 S.E. 879, 128 Ga. 606—Vaughn v. Burton, 38 S.E. 310, 113 Ga. 103—Miller v. Speight, 61 Ga. 460.
Hutchinson v. Atkins, 96 S.E.2d 619, 95 Ga.App. 33.

Granting affirmative relief
Error of the court in granting affirmative relief to defendant when nonsuiting plaintiff was not harmless.
Wash.—Cloukie v. Semple, 153 P. 319, 88 Wash. 534.

36. Cal.—Orbach v. Zern, 291 P.2d 120, 138 C.A.2d 178—Pignet v. City of Santa Monica, 84 P.2d 166, 29 C. A.2d 286.
Colo.—Baldwin Star Coal Co. v. Quinn, 105 P. 1101, 46 Colo. 590.
Ga.—Hardin v. Nicholas, 84 S.E.2d 110, 90 Ga.App. 738.
Idaho.—Quinn v. Hartford Acc. & Indem. Co., 232 P.2d 965, 71 Idaho 448—Burt v. Blackfoot Motor Supply Co., 186 P.2d 498, 67 Idaho 548—Hill v. Bice, 139 P.2d 1010, 65 Idaho 167.

Although verdict may be set aside, it has been held that a judgment of nonsuit must be reversed, even though the court would be justified in setting aside the verdict as against the weight of the evidence.
N.Y.—Yates v. New York Cent., etc., R. Co., 95 N.Y.S. 497, 107 App.Div. 629.

37. Ga.—McWilliams v. Rome, 75 S.E. 645, 138 Ga. 581.

38. Pa.—Cleary v. Quaker City Cab Co., 132 A. 185, 285 Pa. 241.

38.5 Pa.—Szemis v. Szlachta, 93 A. 2d 892, 172 Pa.Super. 351.

b. Voluntary Nonsuit

Denial of a voluntary nonsuit to which the plaintiff has an absolute right is prejudicial error.

In view of the advantages to plaintiff of a nonsuit over a judgment on a verdict dismissing the complaint, an erroneous refusal to grant plaintiff's voluntary nonsuit is prejudicial and grounds for reversal;[39] and a refusal to permit defendant to dismiss his cross statement of claim before judgment, after permitting plaintiff to dismiss his statement of claim, is prejudicial error.[40] Where, however, no prejudice results to plaintiff, a denial of his motion for a nonsuit is harmless.[40.5]

It is harmless error to allow plaintiff to take a nonsuit after verdict for defendant, since the verdict is still operative as a bar to another action for the same cause,[41] and a refusal to permit an interpleader to take an involuntary nonsuit with leave to move to set it aside instead of submitting the case by peremptory instruction was harmless, where he made no effort to withdraw or dismiss the interplea, and after the verdict was returned made a motion for a new trial, including all of the points made as a reason for a nonsuit.[42]

Likewise, in accordance with the rule that plaintiff may not take a nonsuit where such will prejudice a right defendant may have to a hearing on a claim he has made for affirmative relief, where both plaintiff and defendant sought to have title to land quieted, error in denying plaintiff's motion for nonsuit is harmless.[43] It is not prejudicial after direction of verdict subsequent to the motion for nonsuit, to vacate the direction of verdict and enter an order of nonsuit.[43.5]

§ 1757. Demurrer to Evidence

Error of the trial court in ruling on a demurrer to the evidence is ground for reversal only when prejudice is shown.

A refusal to compel plaintiff to join in a demurrer to his evidence is harmless, even though erroneous, where the evidence set forth in the demurrer shows that plaintiff is entitled to recover.[44] Error in overruling a demurrer to evidence is also harmless where under the circumstances it is not prejudicial,[45] as where evidence supplying the omission is afterward introduced by either party;[46] where the court afterward sets aside its order and allows

39. N.Y.—Schintzuis v. Lackawanna Steel Co., 120 N.E. 137, 224 N.Y. 226.
Tex.—Coke v. Pottorff, Civ.App., 140 S.W.2d 586.

Demurrer to evidence sustained

Where a demurrer to plaintiff's evidence is sustained, it is prejudicial error not to allow plaintiff to take a nonsuit, as authorized by statute, although the demurrer was properly sustained, since the purpose of taking a nonsuit is to put plaintiff in a position to bring another action should he desire to do so and be able to furnish more proof.
Mo.—Grattan v. Suedmeyer, 129 S.W. 1038, 144 Mo.App. 719.

40. Ohio.—Piesekar v. Eschuk, 161 N.E. 355, 27 Ohio App. 439.

40.5 Miss.—Mitchell v. Film Transit Co., 13 So.2d 154, 194 Miss. 550.

41. Tex.—Hume v. Schintz, 42 S.W. 543, 91 Tex. 204.

42. Mo.—Suiter v. Frazer, App., 226 S.W. 622.

43. Tex.—Thompson v. Gaither, Civ. App., 45 S.W.2d 1106.

43.5 Mich.—Wicks v. Cramton, 300 N.W. 75, 299 Mich. 252.

44. Va.—Boyd v. City Sav. Bank, 15 Gratt. 501, 56 Va. 501—Brockenbrough v. Ward, 4 Rand. 352, 25 Va. 352.

45. Mo.—McCollum v. Winnwood Amusement Co., 59 S.W.2d 693, 332 Mo. 779.
Kemp v. Missouri Pac. R. Co., App., 251 S.W. 402.

Defective pleading

Prejudicial error was not committed in overruling a demurrer to the evidence which was based on the ground that, although all the elements of plaintiff's cause of action were established by the facts, they had not been pleaded, where no showing was made that defendant had actually been misled, and the petition was amended to conform to the proof by the amplification of allegations which it already contained.
Kan.—Ludlum v. Northwestern Nat. Ins. Co. of Milwaukee, Wis., 214 P. 619, 113 Kan. 333, rehearing overruled 215 P. 282, 113 Kan. 333.

Failure to reduce to writing

Failure to reduce demurrer to evidence to writing at time of announcement was not prejudicial to plaintiff, where it was agreed by counsel that it might be written out later, and where grounds of demurrer were thereafter delivered in writing to plaintiff's counsel and to court.
Va.—Cooper v. Norfolk Southern R. Co., 99 S.E. 606, 125 Va. 73.

Judgment based on all evidence

In trial by court entry of judgment for plaintiff based on the consideration of all of the evidence, and not on plaintiff's demurrer to defendant's evidence, was not reversible error, where the evidence supported the judgment.
Okl.—Merchants' Transfer & Storage Co. v. Ft. Smith Couch & Bedding Co., 232 P. 79, 105 Okl. 195.

Particular circumstances

In action on beneficiary certificate, where association alleged that certificate sued on had been exchanged for another, and beneficiary wholly failed to prove as ground for invalidating the exchange that association knew of insured's alleged insanity at time of exchange, an instruction in the nature of a demurrer to the evidence should have been given, but judgment in favor of beneficiary would not be reversed outright if beneficiary could amend his reply to allege that prior to action he had sought to place association in statu quo by tendering sufficient money to pay assessments that would have become due on certificate sued on up to the time of insured's death.
Mo.—Byers v. Security Beneficiary Soc. of Topeka, Kan., 147 S.W.2d 116, 235 Mo.App. 840.

46. Kan.—Hayes v. Reid, 64 P.2d 19, 145 Kan. 51—Stilwell v. Faith, 52 P.2d 635, 142 Kan. 730—Park View Hospital Co. v. Randolph Lodge, No. 216, I. O. O. F., 162 P. 302, 99 Kan. 488.
Okl.—American Home Mut. Life Ins. Co. v. Gunn, 184 P.2d 766, 199 Okl. 220—Fairmont Creamery Co. v. Rogers, 116 P.2d 983, 189 Okl. 320—Martin v. McLain, 87 P.2d 1075, 184 Okl. 418—Stagner v. Files, 78 P.2d 418, 182 Okl. 475—Harley v. Paschall, 243 P. 167, 115 Okl. 294—Kali Inla Coal Co. v. Ghinelli, 155 P. 606, 55 Okl. 289.
4 C.J. p 1020 note 90.

plaintiff to take a nonsuit, and reinstates the cause;[47] where the verdict was for defendant, who demurred to the evidence;[48] or where a jury was waived and the court resolved the conflict in the evidence in favor of the party whose demurrer was overruled.[49]

Although a demurrer to evidence is not applicable to proceedings in equity, an order sustaining it is not a ground for reversal, where plaintiff's case is defective for want of equity,[50] and it has been held that error cannot be predicated on either the giving or refusal of a demurrer to the evidence in an equity case.[50.5]

Where, however, the verdict in plaintiff's favor is not supported by competent evidence, the overruling of defendant's demurrer to the evidence is prejudicial error.[51]

Error in sustaining a demurrer to the evidence is not ground for reversal where such error was not prejudicial,[52] as where the facts are found for defendant,[53] or where there was no evidence reasonably tending to support plaintiff's case.[54] A refusal to allow an amendment to the grounds of demurrer to the evidence by adding another ground was not prejudicial to defendant, where it had a right to, and did, argue in its petition for writ of error the point proposed to be made and relied on by the amendment.[55] Where, however, plaintiff's evidence makes a prima facie case, it is reversible error to sustain a demurrer thereto.[56]

§ 1758. Direction of Verdict

In the absence of prejudice to the complaining party, error in directing or failing to direct a verdict is harmless; but where prejudice resulted, the error is ground for reversal.

Where prejudice to the complaining party could not have resulted from error in disposing of a motion for directed verdict,[57] as where the action of

47. Tex.—Oakland Home Ins. Co. v. Davis, Civ.App., 33 S.W. 587.

48. Mo.—Giles v. Michigan Cent. R. Co., 212 S.W. 873, 278 Mo. 350.
Green v. Boothe, App., 188 S.W. 2d 84—Walser v. Missouri Pac. R. Co., App., 6 S.W.2d 632.

49. Okl.—Okmulgee Building & Loan Ass'n v. Cutler, 51 P.2d 709, 174 Okl. 614.

50. Mo.—Powell v. Canaday, 69 S.W. 686, 95 Mo.App. 713.

50.5 Mo.—Galloway v. Galloway, 169 S.W.2d 883—Mays v. Jackson, 145 S.W.2d 392, 346 Mo. 1224—Conrad v. Diehl, 129 S.W.2d 870, 344 Mo. 811.

51. Okl.—Shamblin v. Shamblin, 241 P.2d 941, 206 Okl. 133—Randall v. Paine-Nichols Abstract Co., 238 P. 2d 319, 205 Okl. 430, 28 A.L.R.2d 887—Oklahoma Gas & Electric Co. v. Spiva, 80 P.2d 941, 183 Okl. 253—Dill v. Johnston, 247 P. 349, 121 Okl. 62—Gardner Petroleum Co. v. Looper, 232 P. 949, 105 Okl. 297.

52. Colo.—Langton v. Board of County Com'rs of Eagle County, 300 P. 745, 89 Colo. 285.
Kan.—Ross v. City of Cedarvale, 255 P. 43, 123 Kan. 344—Underwood v. Presgrove, 175 P. 380, 103 Kan. 505.
Okl.—Easley v. American State Bank of Rosedale, 225 P. 926, 99 Okl. 140—City of Enid v. Rector, 223 P. 846, 97 Okl. 280.
Tex.—Morten Inv. Co. v. Trevey, Civ. App., 8 S.W.2d 527.

Instruction treated as demurrer to evidence

Mo.—David v. City of St. Louis, 96 S.W.2d 353, 339 Mo. 241, 106 A.L.R. 849.

Striking evidence as to one defendant

In action against alleged co-owners of truck, where motorist was barred from recovering on ground of contributory negligence, error in striking evidence as to one of alleged owners was immaterial.
Va.—Harris v. Howerton, 194 S.E. 692, 169 Va. 647.

53. W.Va.—Bennett v. Perkins, 35 S.E. 8, 47 W.Va. 425.

Finding for agent

Where principal's liability is based on theory of respondeat superior, and jury finds agent not at fault, prior error in sustaining principal's demurrer to evidence is harmless.
Okl.—Bocock v. Tulsa Stockyards Co., 309 P.2d 279.

54. Okl.—Watts v. Buell, 44 P.2d 928, 172 Okl. 282—Lowrance v. Henry, 182 P. 489, 75 Okl. 250.
4 C.J. p 1020 note 89.

Motion to exclude all evidence

(1) Although the practice of entertaining a motion by defendant, at the conclusion of plaintiff's evidence, to exclude the evidence is to be condemned, yet where plaintiff's evidence fails to make a prima facie case, it is not reversible error for the court to entertain and grant such a motion.
Ala.—Sharpe v. Western Ry. of Alabama, 175 So. 542, 234 Ala. 507—Dorough v. Alabama Great Southern R. Co., 128 So. 602, 221 Ala. 305—Athey v. Tennessee Coal, Iron & R. Co., 68 So. 154, 191 Ala. 646.
64 C.J. p 391 note 1.

(2) Likewise, refusal of motion is not reversible error.
Ala.—McMullen v. Daniel, 155 So. 687, 229 Ala. 194—Snow v. Allen, 151 So. 468, 227 Ala. 615.
64 C.J. p 391 note 99.

55. Va.—Virginia Iron, etc., Co. v. Munsey, 65 S.E. 478, 110 Va. 156.

56. Mo.—Nelson v. Kansas City Public Service Co., App., 30 S.W.2d 1044.
Okl.—McReynolds v. Oklahoma Turnpike Authority, 291 P.2d 341—Gordon v. Continental Ins. Co., 76 P. 2d 1055, 182 Okl. 240—Hasley v. Bunte, 291 P. 569, 145 Okl. 81—Bailey v. Privett, 166 P. 150, 64 Okl. 56.

Motion for judgment

Granting defendant's motion for judgment after plaintiff had rested and without introducing any evidence in defendant's behalf, which motion was in effect a demurrer to plaintiff's evidence, was reversible error where petition properly alleged cause of action against defendant and evidence made out prima facie case in support of petition.
Tex.—Freeman v. Texas Bread Co., Civ.App., 111 S.W.2d 307—Donaldson v. Oak Park Cemetery, Civ. App., 110 S.W.2d 119.

57. Ala.—Alabama Clay Products Co. v. Mathews, 126 So. 869, 220 Ala. 549—New York Life Ins. Co. v. Turner, 104 So. 643, 213 Ala. 286—H. & L. M. Warten Cotton Co. v. Southern Ry. Co., 94 So. 726, 208 Ala. 417—Cooper v. Cooper, 91 So. 32, 206 Ala. 519—Ex parte South, 88 So. 221, 205 Ala. 31—Louisville & N. R. Co. v. Bartee, 86 So. 394, 204 Ala. 539, 12 A.L.R. 251.
State v. Richard Murray & Co., 153 So. 667, 26 Ala.App. 87—Baker v. Green, 84 So. 545, 17 Ala.App. 290.

the trial court on a motion to direct a verdict for | one of several codefendants is not prejudicial to

Ark.—Harris v. Irby, 225 S.W. 635, 146 Ark. 403—Webb v. Van Vleet-Mansfield Drug Co., 179 S.W. 357, 120 Ark. 236.

Cal.—Criss v. Angelus Hospital Ass'n of Los Angeles, 56 P.2d 1274, 13 C.A.2d 412.

Colo.—Walker v. Bennett & Myers Inv. Co., 244 P. 465, 79 Colo. 170.

Fla.—Crews v. Parsons, 188 So. 635, 137 Fla. 395.

Ga.—Sharpe v. Seaboard Air Line Ry. Co., 157 S.E. 875, 43 Ga.App. 51—Bennett v. Gilmer, 84 S.E. 151, 15 Ga.App. 650.

Ill.—Dickson v. Mendenhall, 129 N.E.2d 275, 7 Ill.App.2d 295—Wood v. Brown, 71 N.E.2d 841, 330 Ill. App. 618—Fischer v. Jackson, 239 Ill.App. 322—Crotty v. Horn, 186 Ill.App. 74.

Iowa.—Schmoller & Mueller Piano Co. v. Smith, 215 N.W. 628, 204 Iowa 661—In re Anderson's Estate, 213 N.W. 567, 203 Iowa 985—Security Sav. Bank v. Capp, 186 N.W. 927, 193 Iowa 278—Crozier v. U. S. Railroad Administration, 181 N. W. 695—Sonka v. Yonkers, 180 N. W. 876, 191 Iowa 599.

Ky.—Coca Cola Bottling Co. of Louisville v. Lowe, 275 S.W.2d 47—Monroe v. City of Louisville, 129 S.W. 2d 119, 278 Ky. 648—Louisville Gas & Electric Co. v. Longley & Co., 62 S.W.2d 1036, 250 Ky. 324—Acree's Committee v. Blalock, 277 S.W. 464, 211 Ky. 450—Cripe v. Floyd, 266 S.W. 16, 205 Ky. 498—Husbands v. Paducah & I. R. Co., 195 S.W. 831, 176 Ky. 290, modified on other grounds Houser v. Paducah & I. R. Co., 199 S.W. 3, 178 Ky. 458.

Md.—Kent County Com'rs v. Pardee, 134 A. 33, 151 Md. 68.

Mass.—Silver v. Cushner, 16 N.E.2d 27, 300 Mass. 583—Harding v. Broadway Nat. Bank of Chelsea, 200 N.E. 386, 294 Mass. 13—Meaney v. Doyle, 177 N.E. 6, 276 Mass. 218—Clark-Rice Corporation v. Waltham Bleachery & Dye Works, 166 N.E. 867, 267 Mass. 402—Simmons v. Barns, 161 N.E. 821, 263 Mass. 472—Goldstein v. Slutsky, 150 N.E. 326, 254 Mass. 501.

Mich.—Muth v. W. P. Lahey's, Inc., 61 N.W.2d 619, 338 Mich. 513—Robertson v. United Fuel & Supply Co., 187 N.W. 300, 218 Mich. 271.

Miss.—Gulf & S. I. R. Co. v. Carlson, 102 So. 168, 137 Miss. 613.

Mo.—State ex rel. and to Use of Alport v. Boyle-Pryor Const. Co., 180 S.W.2d 727, 352 Mo. 1061.

Lintz v. Atlanta Life Ins. Co., 49 S.W.2d 675, 226 Mo.App. 1087—State ex rel. Myers v. Mathieson, 232 S.W. 181, 207 Mo.App. 676—State, to Use of Goodman v. Regent Laundry Co., 190 S.W. 951, 196 Mo.App. 627—R. L. Burke Music Co. v. Miller, App., 187 S.W. 141.

Mont.—Mellon v. Kelly, 41 P.2d 49, 99 Mont. 10—Stiemke v. Jankovich, 233 P. 904, 72 Mont. 363.

Neb.—Adams v. City of Omaha, 230 N.W. 680, 119 Neb. 753.

N.J.—Johanson v. Ihle, 102 A. 628, 91 N.J.Law 306.

Caffaro v. Metropolitan Life Ins. Co., 183 A. 200, 14 N.J.Misc. 167, affirmed 187 A. 143, 117 N.J.Law 146.

N.Y.—Beatty v. Rosenberg, 160 N.Y. S. 135, 173 App.Div. 645.

Ohio.—Tracy v. Athens & Pomeroy Coal & Land Co., 152 N.E. 641, 115 Ohio St. 298.

Boyd v. Columbus Transit Co., App., 133 N.E.2d 187—Cincinnati Summer Opera Ass'n v. Williams, 16 N.E.2d 1000, 58 Ohio App. 513—Fach v. Canton Yellow Cab Co., 173 N.E. 245, 36 Ohio App. 247—Leonard v. Mowbray, 153 N.E. 197, 21 Ohio App. 268.

Okl.—McCullough v. Harshman, 226 P. 555, 99 Okl. 262—Jackson v. Norman, 226 P. 570, 99 Okl. 220.

Pa.—Kozemchak v. Garner, 61 A.2d 375, 163 Pa.Super. 328.

S.C.—Dowling v. Fenner, 126 S.E. 432, 131 S.C. 62.

S.D.—Hennegan v. Wiley, 178 N.W. 294, 43 S.D. 149.

Tenn.—Wright v. Lindsay, 140 S.W. 2d 793, 24 Tenn.App. 77.

Tex.—Goldstein Hat Mfg. Co. v. Cowen, Civ.App., 136 S.W.2d 867, error dismissed, judgment correct—Hendricks v. Kopecky, Civ.App., 133 S. W.2d 837, error dismissed judgment correct—Gossett v. L. G. Balfour, Civ.App., 111 S.W.2d 1119, reversed on other grounds 115 S.W. 2d 594, 131 Tex. 348—Robertson v. Melton, Civ.App., 86 S.W.2d 473, reversed on other grounds 115 S.W. 2d 624, 131 Tex. 325, 118 A.L.R. 1505—Rex Supply Co. v. Shepherd, Civ.App., 293 S.W. 342—American Surety Co. of New York v. Hill County, Civ.App., 254 S.W. 241, affirmed, Com.App., 267 S.W. 265—Keton v. Silbert, Civ.App., 250 S. W. 316—Leeper-Curd Lumber Co. v. Barbuzza, Civ.App., 216 S.W. 216, dismissed for want of jurisdiction—Cochran v. Hamblen, Civ. App., 215 S.W. 374, dismissed for want of jurisdiction—Tyler Box & Lumber Mfg. Co. v. City Nat. Bank of Paris, Civ.App., 185 S.W. 352.

4 C.J. p 1022 note 18.

Conditional motion

Whether refusal to accept defendant's motion for instructed verdict because accompanied by reservation of right to go to jury if overruled constituted error prejudicial to defendant depended on whether such motion should have been granted.

Ohio.—Steel Materials Corp. v. Stern, 77 N.E.2d 272, 82 Ohio App. 89.

Discharge of jury

If, instead of directing a verdict in favor of one entitled thereto, where there is no question of fact for the jury, the court discharged the jury and entered the judgment which would have properly followed the directed verdict, the procedure, while irregular, is not ground for reversal.

Idaho.—Bowman v. Bohney, 210 P. 135, 36 Idaho 162.

Neb.—Holmquist Elevator Co. v. Omaha Elevator Co., 194 N.W. 800, 110 Neb. 655.

Tex.—Slay v. Mary Couts Burnett Trust, Civ.App., 180 S.W.2d 480, affirmed in part and reversed in part on other grounds 187 S.W.2d 377, 143 Tex. 621—Clark v. Jones, Civ.App., 164 S.W.2d 62—Peterson v. City of Houston, Civ.App., 224 S.W. 580, dismissed for want of jurisdiction—Watts v. Wofford, Civ.App., 239 S.W. 321, dismissed for want of jurisdiction.

Failure to rule separately on each ground of motion has been held not prejudicial.

Iowa.—Jensma v. Allen, 81 N.W.2d 476—Nesci v. Willey, 75 N.W.2d 257, 247 Iowa 621—Kelly v. Emary, 45 N.W.2d 866, 242 Iowa 683.

Failure to direct as to punitive damages

Where defendant's motion for directed verdict was based on ground that plaintiff had no interest in lost policy certificate sued on, alleged error in not directing a verdict as to punitive damages was not ground for reversal.

S.C.—Bank v. North Carolina Mut. Life Ins. Co., 195 S.E. 649, 186 S. C. 394.

Hearing in chambers

Although ordinarily a motion for directed verdict cannot be heard in chambers, such hearing of motion would be merely a nonprejudicial irregularity and not jurisdictional.

Cal.—Gibson v. Southern Pac. Co., 290 P.2d 347, 137 C.A.2d 337.

Mere ruling not error

(1) Action of court in sustaining defendant's motion for peremptory instruction was not reversible error, since mere sustaining of motion did not injure plaintiff, substantial error, if any, being in instructing jury to find for defendant.

Ind.—Bartley v. Chicago & E. I. Ry. Co., 41 N.E.2d 805, 220 Ind. 354.

Smith v. Cleveland, C., C. & St. L. Ry. Co., 117 N.E. 534, 67 Ind. App. 397.

(2) The mere overruling of a motion for a directed verdict is not reversible error, the available error, if

the others[57.5] or to plaintiff,[57.10] the error is not ground for reversal. With respect to error in directing a verdict it has accordingly been held that the error is harmless where the question involved in the suit is solely one of law on which the court rules correctly;[58] where the only error was that

any, being in refusing to give such an instruction.

Ind.—Cook & Bernheimer Co. v. Hagedorn, 131 N.E. 788, 82 Ind. App. 444.

Oral instruction to jury

Even though instruction directing verdict should have been given in writing on request that the jury be instructed in writing, giving it orally could not have been harmful, where the undisputed evidence required the verdict.

Ind.—Vulcan Ins. Co. v. Johnson, 128 N.E. 664, 74 Ind.App. 62.

Order of ruling on motions

Where evidence showed plaintiff to be entitled to commissions as a matter of law that trial court granted plaintiff's motion for directed verdict before ruling on defendant's motion for directed verdict, although irregular, was not prejudicial to defendant.

N.Y.—Ralph Klonick Corp. v. Security Trust Co. of Rochester, 8 N.Y.S.2d 777, 255 App.Div. 942.

Refusal of insufficient motion

Refusal of purported motion for an instructed verdict containing no grounds therefor was not reversible.

Tex.—Johnson Aircrafts v. Wilborn, Civ.App., 190 S.W.2d 426, refused for want of merit.

Striking from files of a motion for a directed verdict which was filed four days after verdict of jury and was based on evidence was harmless where plaintiff's right to recover was at most an issue for jury.

Mo.—Evans v. York, App., 216 S.W. 2d 124.

Test

Reversible error in refusal to give peremptory instructions in defendant's favor appears only when there is a complete absence of probative facts to support the conclusion reached.

N.C.—Garvey v. Atlantic-Greyhound Corp., 45 S.E.2d 58, 228 N.C. 166.

Waiver of jury

Where, at the close of all the testimony, counsel for both sides stipulated to waive the jury and submit the case to the court, the fact that no verdict was in fact directed or returned, and no findings of fact made by the court is a question of procedure only and not grounds for new trial.

N.D.—Embden State Bank v. Boyle, 196 N.W. 820, 50 N.D. 573.

Where plaintiff failed to give requisite instructions

Permitting plaintiff's action to go to the jury, when he had not submitted instructions giving his theory of liability, is not prejudicial error where the court gave defendant's instructions stating on what grounds recovery could be had.

Mo.—Dorman v. East St. Louis Ry. Co., 75 S.W.2d 854, 335 Mo. 1082.

Writing amount of verdict

Telling jury, on peremptory instruction, they could write down amount of verdict, if unable to remember it, was not prejudicial.

N.C.—Lightner v. Knights of King Solomon, 155 S.E. 158, 199 N.C. 525.

Withdrawal of motion

Permitting one of defendants to withdraw his motion for a directed verdict after court had indicated its ruling thereon was not reversible error where plaintiff thereafter dismissed his action against such defendant.

Okl.—Towne v. Martin, 166 P.2d 98, 196 Okl. 510.

57.5 Iowa.—McCall v. Pitcairn, 6 N.W.2d 415, 232 Iowa 867.

Mo.—Cheffer v. Eagle Discount Stamp Co., 156 S.W.2d 591, 348 Mo. 1023.

Ohio.—Marshman v. Stanley, App., 122 N.E.2d 482.

Or.—R. E. Davis Electric Co. v. Hopkins, 64 P.2d 1317, 155 Or. 510.

Tex.—Railway Exp. Agency v. Spain, Civ.App., 249 S.W.2d 644, appeal dismissed 255 S.W.2d 509, 152 Tex. 198.

Wash.—Wylie v. Stewart, 84 P.2d 1004, 197 Wash. 215.

Statutory duty

In consolidated actions against railroad company and against city by automobile passenger injured because of defect in grade crossing, direction of verdict for city was not prejudicial to the railroad company which had a statutory duty to maintain the crossings as concerned the rights of the public.

Miss.—Mississippi Cent. R. Co. v. Alexander, 152 So. 653, 169 Miss. 620.

Time of motion

In guest passenger's action against her driver and driver of oncoming vehicle with which her driver collided while endeavoring to make left turn off highway, it was within discretion of trial court to permit plaintiff's driver to wait until after argument before moving for directed verdict; and such a procedure could not have been prejudicial to other defendant, who was allowed to re-argue the case and clear up any confusion which might have resulted from belated motion.

Cal.—Quiring v. Zamboni, 307 P.2d 650, 148 C.A.2d 890.

57.10 Ky.—Kentucky Bell Corp. v. Commonwealth, 172 S.W.2d 661, 295 Ky. 21.

Reserving decision on motion

In automobile collision case, reservation of decision on plaintiff's motion for directed verdict in defendant's counter action on ground that defendant was negligent as matter of law was not ground for reversal, where plaintiff did not advise court that reservation prejudiced plaintiff's case by necessitating submission on negligence of both parties, or suggest that in submitting plaintiff's case court declare defendant negligent as matter of law.

Mich.—Leitch v. Getz, 267 N.W. 581, 275 Mich. 645.

58. Ga.—Fenner & Beane v. Nelson, 13 S.E.2d 694, 64 Ga.App. 600—Williams v. Farmers' State Bank of Sparks, 97 S.E. 249, 22 Ga.App. 656.

Iowa.—Prehn v. Kindig, 232 N.W. 812.

Kan.—Van Arsdale-Osborne Brokerage Co. v. Jones, 156 P. 719, 97 Kan. 646.

Okl.—Robbins v. Mid-West Creamery Co., 162 P.2d 541, 196 Okl. 72.

4 C.J. p 1022 note 19.

Effect of objection

Under statute providing that motion for directed verdict must be denied if adverse party objects, direction of verdict over objection is not prejudicial where judgment for moving party must be entered.

N.D.—Union Storage & Transfer Co. v. Baker Mfg. Co., 76 N.W.2d 525—Stone v. Bartsch, 39 N.W.2d 1, 76 N.D. 721—Romkey v. Barnes, 5 N.W.2d 79, 72 N.D. 127—Ellsworth v. Martindale-Hubbell Law Directory, 289 N.W. 101, 69 N.D. 610.

Failure to state reasons

(1) Error in failing to state reasons for directing verdict has been held harmless.

Mich.—Bergstrom v. Staples, 46 N.W. 1035, 82 Mich. 654.

64 C.J. p 505 note 60.

(2) Accordingly, where the facts were stipulated between the parties, and both requested a directed verdict, the failure of the court, in directing a verdict for plaintiff, to state his reason therefor, was not prejudicial error.

Mich.—Winget v. Grand Trunk Western Ry. Co., 177 N.W. 273, 210 Mich. 100, certiorari denied Grand Trunk Western Ry. Co. v. Winget, 41 S.Ct. 6, 254 U.S. 629, 65 L.Ed. 447.

the form of the prayer for the directed verdict was imperfect;[59] where the jury finds a verdict for appellant;[60] or where a motion for a new trial was sustained.[61]

Likewise, it has been held that error in directing a verdict is not ground for reversal where no verdict other than that found could have lawfully been returned;[62] where the party against whom the verdict was directed could not succeed in any event,[63] or failed to make any defense;[64] where the only meritorious defense of defendant against whom the verdict was directed was not proved;[65] where

59. Md.—Rullman v. Rullman, 129 A. 7, 148 Md. 140—Day v. Weinstein, 128 A. 897, 148 Md. 104.
Tex.—Marlin Associates v. Trinity Universal Ins. Co., Civ.App., 226 S.W.2d 190.

Absence of written request
Directing verdict without written request is not prejudicial error where plaintiff has failed to make out his case.
Ala.—Shirley v. Shirley, 73 So.2d 77, 261 Ala. 100—Hyde v. Bains, 22 So.2d 324, 247 Ala. 8—O'Bar v. Southern Life & Health Ins. Co., 168 So. 580, 232 Ala. 459.

Failure of motion to state grounds does not require reversal.
S.D.—Allen v. Line, 34 N.W.2d 835, 72 S.D. 392.
Tex.—Rockett v. Texas State Bd. of Medical Examiners, Civ.App., 287 S.W.2d 190, error refused no reversible error—Harvey v. Elder, Civ.App., 191 S.W.2d 686, error refused—Baylor v. Eastern Seed Co., Civ.App., 191 S.W.2d 689—Peacock v. Harrison, Civ.App., 189 S.W.2d 500.

60. Colo.—Ferris v. Curtis, 127 P. 236, 53 Colo. 340.
Iowa.—Kelly v. Emary, 45 N.W.2d 866, 242 Iowa 683.
Mass.—McClean v. University Club, 97 N.E.2d 174, 327 Mass. 68.

Wanton negligence
Where the evidence was sufficient to take the question of defendant's wanton negligence to the jury, error in directing a verdict for defendant on a wanton negligence count is not rendered harmless by the jury's finding for plaintiff on a simple negligence count.
Ala.—Holmes v. Central of Georgia Ry. Co., 116 So. 323, 22 Ala.App. 355, certiorari denied 116 So. 325, 217 Ala. 333.

Verdict on counterclaim
In action on a check given by defendant to plaintiff for purchase price, direction of verdict for plaintiff on his petition at the close of all the evidence was not prejudicial to jury's determination of counterclaim for breach of warranty.
Iowa.—Kelly v. Emary, 45 N.W.2d 866, 242 Iowa 683.

61. Iowa.—Murray v. Preferred Accident Ins. Co. of New York, 216 N.W. 702, 204 Iowa 1108.
Okl.—Lusk v. Wilson, 197 P. 156, 81 Okl. 152.

62. Conn.—Musco v. Torello, 128 A. 645, 102 Conn. 346, 42 A.L.R. 1032.
Fla.—Gulf Life Ins. Co. v. Weathersbee, 172 So. 235, 126 Fla. 568.
Ga.—Hotchkiss v. McWhorter, 123 S.E. 265, 158 Ga. 259.
Charles S. Jacobowitz Co. v. Ferguson, 51 S.E.2d 581, 78 Ga.App. 589—Callaway v. Hopkinsville Milling Co., 157 S.E. 900, 43 Ga. App. 81—Bond v. Reid, 116 S.E. 318, 29 Ga.App. 558—Lamb v. Gorman, 85 S.E. 981, 16 Ga.App. 663—Witt v. Baker, 84 S.E. 607, 16 Ga. App. 146—Hill v. Driskell, 83 S.E. 859, 15 Ga.App. 458—Swift v. Moore, 82 S.E. 914, 15 Ga.App. 254.
Ind.—Pinkus v. Pittsburgh, C., C. & St. L. Ry. Co., 114 N.E. 36, 65 Ind. App. 38.
Iowa.—Eisentrager v. Great Northern Ry. Co., 160 N.W. 311, 178 Iowa 713, L.R.A.1917B 1245.
Md.—Johnston v. Western Maryland Ry. Co., 135 A. 185, 151 Md. 422.
Minn.—Church of the Immaculate Conception v. Curtis, 153 N.W. 259, 130 Minn. 111.
Neb.—Jordan v. Allen, 168 N.W. 594, 102 Neb. 639.
Pa.—Fidelity Title & Trust Co. v. First Nat. Bank, 121 A. 505, 277 Pa. 401.
Tex.—Fridh v. Giberson & Kempff, Civ.App., 21 S.W.2d 563.
Utah.—Sullivan v. Beneficial Life Ins. Co., 64 P.2d 351, 91 Utah 405—Miller v. Stuart, 253 P. 900, 69 Utah 250.
Vt.—Union Co-op. Store v. Fumagalli, 175 A. 847, 107 Vt. 145.
4 C.J. p 1022 note 21.

Verdict for least possible sum
Where a verdict is directed for plaintiff for the least amount for which a verdict could be returned, based on the pleading and evidence of defendant, it is not prejudicial, and defendant cannot be heard to complain.
Ga.—McKenney v. Woodbury Banking Co., 68 S.E.2d 571, 208 Ga. 616.
Okl.—Harris v. Davis, 221 P. 1009, 97 Okl. 52.

To justify reversal on the ground of erroneous direction of verdict, it must appear from assigned issues or upon the face of the record that under no theory of the case was direction of verdict warranted.
Tex.—Schuyler v. Lacy, Civ.App., 79 S.W.2d 901.

63. Ala.—Kiker v. Hitt, 66 So. 632, 189 Ala. 652.
Cal.—Freeman v. Churchill, 183 P.2d 4, 30 C.2d 453.
Ga.—Blount v. Metropolitan Life Ins. Co., 15 S.E.2d 413, 192 Ga. 325.
Ky.—Rose v. Harris, 253 S.W.2d 399—Miller v. Barnes, 205 S.W. 549, 181 Ky. 473.
Md.—Barone v. Winebrenner, 55 A.2d 505, 189 Md. 142—Blamberg Bros. v. Western Union Telegraph Co., 138 A. 233, 153 Md. 329.
Mich.—Eberbach v. Woods, 205 N.W. 174, 232 Mich. 392.
Minn.—Olson v. Evert, 28 N.W.2d 753, 224 Minn. 528—Mix v. City of Minneapolis, 18 N.W.2d 130, 219 Minn. 389.
N.C.—Carstarphen v. Carstarphen, 137 S.E. 658, 193 N.C. 541.
Ohio.—Lewis v. Kocis, App., 89 N.E. 2d 162.
Tenn.—Supreme Liberty Life Ins. Co. v. Pemelton, 148 S.W.2d 1, 24 Tenn.App. 576.
Tex.—Tinsley v. Danube Oil Corp., Civ.App., 119 S.W.2d 581, error dismissed.
4 C.J. p 1022 note 22.

Direction against counterclaim
(1) Directing of verdict against defendant on counterclaim was not prejudicial, where a verdict for plaintiff involved a finding which would defeat counterclaim.
Ky.—Louisville Grinding & Machine Co. v. Southern Oil & Tar Co., 18 S.W.2d 877, 230 Ky. 39.

(2) Where sellers brought action, buyers filed counterclaim, and at conclusion of opening statement trial court directed verdict on counterclaim for sellers, such directing of verdict was harmless error because motion for directed verdict would have been properly allowed at conclusion of testimony.
Ariz.—Wilson v. Byrd, 288 P.2d 1079, 79 Ariz. 302.

64. Ga.—Bennett v. Gilmer, 84 S.E. 151, 15 Ga.App. 650.

Confession and avoidance
Where defendant by plea of confession and avoidance admitted prima facie case for plaintiff, but failed to allege any valid defense by way of avoidance, any error in failing to allow defendant to support allegations of plea by evidence and in directing a verdict against him was harmless.
Ga.—Gill v. Skinner, 45 S.E.2d 818, 76 Ga.App. 315.

65. U.S.—Breakwater Co. v. Donovan, Ohio, 218 F. 340, 134 C.C.A. 148.

the court would have set aside a verdict for the party against whom it was directed,[66] or a verdict for a less sum than that specified by the court in directing a verdict;[67] or where the right of the party in whose favor verdict is directed to judgment is established either by record evidence or admitted facts so as not to be dependent upon the credibility of oral testimony.[68]

Moreover, error in directing a verdict has been held harmless where the complaint does not state a cause of action;[69] where the evidence would have justified the court in discharging the jury and rendering judgment in favor of the party for whom the verdict was directed;[70] where, pending proceedings for review, a final judgment has been rendered in another proceeding between the same parties which conclusively determines the question at issue in favor of the party for whom the verdict was directed;[71] where the amount erroneously directed by the verdict was corrected by a remittitur and judgment entered for the proper amount;[72] where the directed verdict was for an amount less than the amount defendant admittedly owed plaintiff;[73] or where the court withdraws its direction to find a verdict and the question is left to the jury.[74]

Also, the direction of a verdict on an untenable ground will not be ground for reversal where the evidence is insufficient to sustain a recovery,[75] or where no cause of action was stated against the party in whose favor the verdict was directed.[76] Any error in giving affirmative instructions for defendant as to one count is harmless where plaintiff could have proved the same facts under other counts.[77] Where a demurrer to the evidence would have been sustained, an instruction to find for defendant after the jury indicated an intention to find for plaintiff is not reversible error.[78]

Unwarranted direction. On the other hand, an unwarranted direction of the verdict is prejudicial error.[79] Accordingly, the direction of a verdict is

Ky.—Taylor v. Payne, 122 S.W.2d 964, 276 Ky. 79.

66. Ill.—Quinn v. Illinois Cent. R. Co., 51 Ill. 495.

67. U.S.—Manufacturers' Automatic Sprinkler Co. v. Galbraith, Ill., 196 F. 472, 116 C.C.A. 246.

68. Ala.—Goff v. Sellers, 111 So. 210, 215 Ala. 489.
Colo.—W. H. Swanson Theater Co. v. Pueblo Opera Block Inv. Co., 197 P. 762, 70 Colo. 83.
Ga.—Matthews v. American Textile Co., 99 S.E. 308, 23 Ga.App. 675.
4 C.J. p 1022 note 27.

69. Ariz.—Hidalgo v. McCauley, 70 P.2d 443, 50 Ariz. 178.
Mont.—Cole v. Helena Light, etc., Co., 143 P. 974, 49 Mont. 443.

70. Wash.—National Bank of Commerce v. Galland, 45 P. 35, 14 Wash. 502.

71. U.S.—Lamar v. Spalding, N.J., 154 F. 27, 83 C.C.A. 111.

72. Ga.—Whittle v. Citizens' Bank of Ashburn, 141 S.E. 668, 37 Ga. App. 693.
4 C.J. p 1022 note 30.

73. Ga.—Harvey v. City Finance Co., 153 S.E. 229, 41 Ga.App. 420.

74. N.Y.—Jones v. Perry, 219 N.Y.S. 295, 128 Misc. 263.
4 C.J. p 1022 note 31.

75. Ga.—Phillips v. Drake Motor Co., 23 S.E.2d 538, 68 Ga.App. 618.
Ky.—Payne v. Louisville Ry. Co., 171 S.W.2d 253, 294 Ky. 160.
Md.—Duross v. City of Baltimore, 110 A. 98, 136 Md. 56.
4 C.J. p 1022 note 32.

Erroneous construction by court of answer in passing on motion for directed verdict was harmless, where supreme court sustained ruling on motion for directed verdict on other grounds.
S.C.—Marlow v. Conway Iron Works, 125 S.E. 569, 130 S.C. 256.

76. Tenn.—Stegall v. City of Chattanooga, 66 S.W.2d 266, 16 Tenn. App. 124.

77. Ala.—Davis v. Erwin, 107 So. 903, 214 Ala. 341—Jones v. Woodward Iron Co., 82 So. 26, 203 Ala. 66—Walker v. Alabama, T. & N. Ry., 70 So. 125, 194 Ala. 360.
Burns v. Cline, 77 So. 429, 16 Ala.App. 279.
Tenn.—Llewellyn v. City of Knoxville, 232 S.W.2d 568, 33 Tenn.App. 632.

78. W.Va.—West End Real Est. Co. v. Nash, 41 S.E. 182, 51 W.Va. 341.

79. Ala.—Lambert v. Birmingham Electric Co., 13 So.2d 579, 244 Ala. 333—Federal Automobile Ins. Ass'n v. Meyers, 119 So. 230, 218 Ala. 520.
Fla.—Richardson v. Rogers & Middlebrooks, 4 So.2d 517, 148 Fla. 451.
Ga.—Hayes v. National Life & Acc. Ins. Co., 88 S.E.2d 750, 92 Ga.App. 540.
Idaho.—Shallis v. Fiorito, 240 P. 932, 41 Idaho 653.
Ill.—Hoefler v. Erickson, 73 N.E.2d 448, 331 Ill.App. 577—Martin v. Equitable Life Assur. Soc. of U. S., 54 N.E.2d 899, 323 Ill.App. 69.
Ky.—Hayden v. Boetler, 93 S.W.2d 831, 263 Ky. 722.
Me.—Sanborn v. Elmore Milling Co., 129 A.2d 556, 152 Me. 355.
Mass.—Korsun v. McManus, 63 N.E. 2d 457, 318 Mass. 642.
Minn.—Grossman v. Lockedell & Son, 238 N.W. 893, 184 Minn. 446.
N.J.—White v. Metropolitan Life Ins. Co., 196 A. 654, 119 N.J.Law 348.
N.Y.—Katcher v. Gilbert, 67 N.Y.S.2d 144, 271 App.Div. 899—Hadcock v. Soslow, 12 N.Y.S.2d 138, 257 App. Div. 906.
Gilman v. Prudential Ins. Co. of America, 45 N.Y.S.2d 684, 180 Misc. 729.
N.C.—Haines v. Clark, 55 S.E.2d 693, 230 N.C. 751—Reed v. Madison County, 195 S.E. 620, 213 N.C. 145—East Coast Fertilizer Co. v. Hardee, 191 S.E. 725, 211 N.C. 653.
R.I.—Stedman v. Hinman, 21 A.2d 10, 67 R.I. 123.

Effect of verdict against coparty
Error in granting judgment directing a verdict for defendant as against plaintiff motorist, was not rendered harmless because jury found defendant "not guilty" in case of passenger in automobile.
Ill.—Pfile v. Owens, 73 N.E.2d 445, 331 Ill.App. 390.

Inconsistency with ruling on demurrer
In action against railroad company to recover for killing of cattle on tracks running through plaintiff's farm, where trial court ruled on demurrer that stock law did not require railroad company's acts of negligence to be willful and wrongful and no exceptions pendente lite were filed and court did not withdraw its decision on demurrer, it was reversible error to direct verdict for defendant on ground that evidence did not show willful and wanton negligence.
Ga.—Aycock v. Callaway, 51 S.E.2d 53, 78 Ga.App. 219.

prejudicial error where there was a question of fact for the jury;[79.5] where there was a conflict in the evidence;[80] where reasonable minds might reach different conclusions, although the evidence is uncontradicted;[81] where a verdict for plaintiff could lawfully have been rendered on the evidence;[82] where questions of fact were erroneously eliminated by court's sustaining of objections to admissible evidence;[83] or where a statute prohibits the practice.[84]

Erroneous refusal to direct. In respect of an erroneous refusal to direct a verdict it has been held that the error is not prejudicial where the jury found correctly;[85] where the verdict is for the party making the motion,[86] as to the count to

No proof of accord and satisfaction

Direction of verdict for defendant at close of plaintiff's case, without requiring proof of accord and satisfaction pleaded by defendant, was prejudicial error.

Ohio.—Morton v. Siebler Clothing Co., 153 N.E. 227, 21 Ohio App. 393.

Unwarranted amount

(1) Where plaintiff was entitled to nominal damages only, direction of verdict in his favor for actual damages constituted reversible error.

Okl.—Perkins v. Good, 65 P.2d 1218, 179 Okl. 405.

(2) An instruction, directing verdict for plaintiff in an amount in excess of the amount he was entitled to recover under the evidence, is prejudicial error.

Okl.—First Nat. Bank of Soper v. Beecher, 161 P. 327, 62 Okl. 36.

(3) Direction of verdict for plaintiff for an amount which could not have been legally found and which was less than amount which jury was authorized to find was reversible error.

Ga.—Mathis v. Dalton Auto & Machinery Co., 5 S.E.2d 82, 60 Ga.App. 754.

79.5 Minn.—Kolatz v. Kelly, 69 N.W.2d 649, 244 Minn. 163—Ryan v. Griffin, 62 N.W.2d 504, 241 Minn. 91—Abraham v. Byman, 8 N.W.2d 231, 214 Minn. 355.

hio.—Monaghan v. Rietzke, 89 N.E. 2d 159, 85 Ohio App. 497.

S.C.—Mullikin v. Southern Bleachery & Print Works, 192 S.E. 665, 184 S.C. 449.

Tenn.—Shuler v. Clabough, 274 S.W. 2d 17, 38 Tenn.App. 333.

Tex.—Texas Emp. Ins. Ass'n v. Lee, Civ.App., 254 S.W.2d 902, reversed on other grounds 256 S.W.2d 569, 152 Tex. 227.

80. Ala.—Webb v. Alabama Great Southern R. Co., 1 So.2d 16, 241 Ala. 8—Poole v. Fletcher, 169 So. 868, 233 Ala. 54.

Sanders v. Rogers, 77 So. 69, 16 Ala.App. 231.

Ark.—Hall v. W. E. Cox & Sons, 154 S.W.2d 19, 202 Ark. 909.

Ga.—Livingston v. Livingston, 82 S.E.2d 1, 210 Ga. 607—Duncan v. Mayfield, 76 S.E.2d 805, 209 Ga. 882—Griffin v. Booth, 156 S.E. 586, 171 Ga. 780—Citizens' Bank of Vidalia v. Citizens' & Southern Bank, 127 S.E. 219, 160 Ga. 109.

Ill.—Malmgren v. Aurora, E. & C. R. Co., 193 Ill.App. 241.

Ky.—McDermott v. Byrley Supply Co., 28 S.W.2d 988, 234 Ky. 670.

Mo.—Staehlin v. Major, App., 199 S. W. 427.

Neb.—Schellpeper v. Sporn, 198 N. W. 1012, 112 Neb. 192.

Ohio.—Painesville Utopia Theater Co. v. Lautermilch, 160 N.E. 683, 118 Ohio St. 167—Pittsburgh, C., C. & St. L. Ry. Co. v. Luthy, 147 N.E. 336, 112 Ohio St. 321.

Massaro v. Bashara, 108 N.E.2d 850, 91 Ohio App. 475.

Tex.—Gulf Production Co. v. Warren, Civ.App., 99 S.W.2d 616, error refused, certiorari denied Oakwood Realty Co. v. Gulf Production Co., 58 S.Ct. 27, 302 U.S. 707, 82 L.Ed. 546.

4 C.J. p 1022 note 34.

Error in overruling demurrer

Fact that trial court erred in overruling defendants' general demurrer to petition is no ground for affirming judgment based on verdict erroneously directed for defendant.

Tex.—Hughes v. Buchanan, Civ.App., 271 S.W. 158.

81. Ohio.—Pence v. Kettering, 190 N.E. 216, 128 Ohio St. 52.

Colwell v. Dwyer, App., 35 N.E. 2d 789.

82. Fla.—Bass v. Ramos, 50 So. 945, 58 Fla. 161.

Or.—Fish v. Southern Pac. Co., 143 P.2d 917, 173 Or. 294, rehearing denied 145 P.2d 991, 173 Or. 294.

Tex.—Pharr v. Coldeway, Civ.App., 256 S.W.2d 917—Hood v. Hood, Civ. App., 153 S.W.2d 247—Lipscomp v. Houston Electric Co., Civ.App., 149 S.W.2d 1042—Brockman v. J. Weingarten, Inc., Civ.App., 115 S. W.2d 753, affirmed 135 S.W.2d 698, 134 Tex. 451.

83. Ga.—Gill v. Skinker, 45 S.E.2d 818, 76 Ga.App. 315.

Mont.—Peterson v. Nelson, 252 P. 368, 77 Mont. 539.

84. Va.—Atkinson v. Neblett, 132 S. E. 326, 144 Va. 220.

85. Ky.—Bituminous Cas. Corp. v. Campbell, 224 S.W.2d 692, 311 Ky. 438—Arnold v. Clark County Board of Education, 157 S.W.2d 306, 288 Ky. 700.

Pa.—Presson v. Commonwealth Mut. Fire Ins. Co. of Pa., 77 A.2d 353, 366 Pa. 436.

S.C.—Floyd v. Florence Nehi Bottling Co., 198 S.E. 161, 188 S.C. 98—Williams v. Greenville, S. & A. R. Co., 88 S.E. 131, 103 S.C. 321.

Tex.—Phillips Petroleum Co. v. Capps, Civ.App., 170 S.W.2d 522—Gantt v. McClellan, Civ.App., 252 S.W. 229—Houston, E. & W. T. Ry. Co. v. Hooper, Civ.App., 184 S.W. 347, error refused.

4 C.J. p 1022 note 36.

86. Ala.—Darby v. Fuller, 159 So. 275, 26 Ala.App. 324—Hilley v. Central of Georgia Ry. Co., 66 So. 883, 11 Ala.App. 605.

Cal.—Herbert v. Cassinelli, 166 P.2d 377, 73 C.A.2d 277—Cliff v. California Spray-Chemical Co., 257 P. 99, 83 C.A. 424.

Iowa.—Cunningham v. Court, 82 N. W.2d 292—Bennett v. Ryan, 222 N.W. 16, 206 Iowa 1263—Baker v. Zimmerman, 161 N.W. 479, 179 Iowa 272.

Ky.—Sharp v. Faulkner, 166 S.W.2d 62, 292 Ky. 179—D. L. Walker & Co. v. Lewis, 101 S.W.2d 685, 267 Ky. 107.

Md.—Wright v. Baker, 79 A.2d 159, 197 Md. 315—Mullikin v. City of Baltimore, 102 A. 469, 131 Md. 363.

Mich.—Morrison v. Hall, 22 N.W.2d 838, 314 Mich. 522.

Minn.—**Corpus Juris Secundum cited in** Bartl v. City of New Ulm, 72 N.W.2d 303, 306, 245 Minn. 148.

N.J.—Jordan v. Teaneck Tp. in Bergen County, 137 A. 580, 5 N.J. Misc. 556.

Ohio.—Johnson v. Citizens Nat. Bank of Norwalk, 90 N.E.2d 145, 152 Ohio St. 477, 34 A.L.R.2d 1361.

George v. Youngstown Municipal Ry. Co., App., 76 N.E.2d 916—Pierce v. Isabel, App., 36 N.E.2d 64.

Or.—Gabriel v. Collier, 29 P.2d 1025, 146 Or. 247.

Pa.—Grove v. Polar Water Co., 12 A. 2d 571, 338 Pa. 343—Fornelli v. Pennsylvania R. Co., 164 A. 54, 309 Pa. 365.

Matovich v. Mutual Ben. Health & Accident Ass'n, 43 A.2d 648, 157 Pa.Super. 604.

R.I.—Butler Exch. Co. v. Fess Rotary Oil Burner Co., 125 A. 360.

Vt.—Benoit v. Central Vt. Ry., 73 A.2d 321, 116 Vt. 266, 33 A.L.R.2d 139—Cote v. Boise, 16 A.2d 175, 111 Vt. 343.

4 C.J. p 1023 note 41.

which the motion was directed;[86.5] where the record shows that the final judgment is right;[87] where the court withdrew from the jury's consideration the issue which was the basis of the motion;[88] where the issue as to which the direction was refused was immaterial,[89] or improperly added by amendment;[89.5] or where the verdict rested or could rest on a count in the complaint, other than that for which a directed verdict was requested.[90]

Error in refusing to direct a verdict has also been held harmless where the court required the jury to find in any event for the party, whose motion for directed verdict was refused,[91] or sustained that party's motion for judgment notwithstanding the verdict;[91.5] where no judgment was rendered against the party whose motion was refused;[92] where the judgment shows on its face that no testimony was introduced and no issue tried and that in consequence the judgment formed no bar to another action;[93] where the defects in plaintiff's case are afterward supplied by evidence offered by defendant;[94] where the moving party has been granted a new trial;[95] or where on a motion for a new trial the court eliminated a counterclaim in respect of which it had refused to direct a verdict for plaintiff by reducing the verdict for defendant by the amount of the counterclaim.[96]

Furthermore, it has been held that the action of the trial court in improperly refusing peremptorily to instruct for a defendant on the first trial of a cause is not subject to review on a second appeal from a judgment rendered on a second trial of such cause if the trial court repaired its error on the first trial by awarding a new trial.[97] Any error in

Verdict set aside

Refusal of defendant's motion for verdict was not harmless, where verdict for defendant was set aside because of improper argument.

Vt.—Taplin v. Stanley, 148 A. 750, 102 Vt. 398.

86.5 Mass.—Ryder & Brown Co. v. E. Lissberger Co., 15 N.E.2d 441, 300 Mass. 438, 118 A.L.R. 521.

Mo.—Rodgers v. Levy, App., 199 S.W.2d 79.

87. Iowa.—Pressley v. Stone, 239 N.W. 567, 214 Iowa 449.

Miss.—Louisville & N. R. Co. v. Whisenant, 58 So.2d 908, 214 Miss. 421.

Tex.—Wampler v. Harrington, Civ. App., 261 S.W.2d 883, error refused no reversible error.

4 C.J. p 1022 note 37.

Remission of punitive damages

In action for injuries received when plaintiff was struck by defendants' truck, possible error arising from refusal to direct verdict for defendants as to punitive damages was harmless where plaintiff remitted all punitive damages.

S.C.—Benedict v. Marks Shows, 182 S.E. 299, 178 S.C. 169.

88. Ala.—Cartwright v. Hughes, 147 So. 399, 226 Ala. 464—S. H. Kress & Co. v. Barratt, 147 So. 886, 226 Ala. 455.

Ill.—Cipperly v. Carmack, 258 Ill. App. 593—Kumorowski v. Armour & Co., 198 Ill.App. 306.

Iowa.—Thompson v. Ferrand, 251 N.W. 44, 217 Iowa 160.

N.J.—Saum v. Proudfit, 4 A.2d 35, 122 N.J.Law 96.

Tex.—Texas Pacific Coal & Oil Co. v. Robertson, Civ.App., 39 S.W.2d 912, reversed on other grounds 79 S.W.2d 830, 125 Tex. 4, 98 A.L.R. 262.

89. Ill.—Frechett v. Illinois Cent. R. Co., 197 Ill.App. 213.

Ky.—Pyramid Life Ins. Co. v. Milner, 158 S.W.2d 429, 289 Ky. 249, 138 A.L.R. 1507.

89.5 Ky.—Bessire & Co. v. Day's Adm'x, 103 S.W.2d 644, 268 Ky. 87.

90. Ala.—Navco Hardwood Co. v. Bass, 108 So. 452, 214 Ala. 553—Western Assur. Co. v. Hann, 78 So. 232, 201 Ala. 376—Alabama City, G. & A. Ry. Co. v. Lee, 76 So. 908, 200 Ala. 550—Puffer Mfg. Co. v. Alabama Marble Quarries, 73 So. 415, 198 Ala. 68.

Brown v. Leek, 149 So. 854, 25 Ala.App. 497, certiorari denied 149 So. 855, 227 Ala. 312.

Cal.—Criss v. Angelus Hospital Ass'n of Los Angeles, 56 P.2d 1274, 13 C.A.2d 412.

Ill.—Weifenbach v. White City Const. Co., 201 Ill.App. 521—Kumorowski v. Armour & Co., 198 Ill.App. 306—Wilson v. Baltimore & O. S. W. R. Co., 158 Ill.App. 604.

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Baker, 128 N.E. 836, 190 Ind. 633.

Mass.—Whalen v. Shivek, 93 N.E.2d 393, 326 Mass. 142, 33 A.L.R.2d 74—Shumway v. Home Fire & Marine Ins. Co. of California, 17 N.E.2d 212, 301 Mass. 391—Erickson v. Buckley, 120 N.E. 126, 230 Mass. 467.

Tenn.—Central Truckaway System v. Waltner, 253 S.W.2d 985, 36 Tenn. App. 202—City Transp. Corp. v. Seckler, 225 S.W.2d 288, 32 Tenn. App. 661—Taylor v. Cobble, 187 S.W.2d 648, 28 Tenn.App. 167.

Vt.—Campbell v. Howard Nat. Bank & Trust Co., 103 A.2d 96, 118 Vt. 182.

Wash.—Van Allen v. Post, 226 P. 721, 130 Wash. 224.

W.Va.—Gilkerson v. Baltimore & O. R. Co., 51 S.E.2d 767, 132 W.Va. 133.

4 C.J. p 1023 note 44.

91. N.D.—Northern Trust Co. v. Bruegger, 159 N.W. 859, 35 N.D. 150, Ann.Cas.1917E 447.

Failure to direct verdict as to specific issue

In action for personal injuries, where the court directed a verdict of not guilty, on the ground that the rights of the parties were governed by Workmen's Compensation Act, so that plaintiff, an employee, could not maintain the action, defendant not being his employer, defendant was not prejudiced by failure to direct such verdict on the further ground that plaintiff's negligence, as a matter of law, contributed to his injury.

Ill.—Johnson v. Choate, 119 N.E. 972, 284 Ill. 214.

91.5 Md.—Lutzer v. Washington Suburban Sanitary Commission, 28 A.2d 839, 181 Md. 126.

92. Ala.—Miller v. Bryant, 151 So. 362, 25 Ala.App. 564, certiorari denied 151 So. 366, 227 Ala. 570.

Ky.—Director General of Railroads v. A. C. Schuff & Co., 237 S.W. 410, 193 Ky. 737.

Ohio.—Williams v. Goodwin, 104 N.E.2d 81, 90 Ohio App. 159.

Tex.—Houston & T. C. R. Co. v. Long, Civ.App., 219 S.W. 212.

93. N.D.—Webb v. Wegley, 125 N.W. 562, 19 N.D. 606.

94. Iowa.—Cushman v. Carbondale Fuel Co., 88 N.W. 817, 116 Iowa 618.

Neb.—Lund v. Holbrook, 46 N.W.2d 130, 153 Neb. 706.

4 C.J. p 1023 note 39, p 1053 note 27.

95. R.I.—Tefft v. Reynolds, 113 A. 787, 43 R.I. 538.

4 C.J. p 1023 note 42.

96. S.D.—Northwestern Port Huron Co. v. Zickrick, 141 N.W. 983, 32 S.D. 28, Ann.Cas.1915B 166.

97. Ill.—Nordhaus v. Vandalia R. Co., 147 Ill.App. 274, affirmed 89 N.E. 974, 242 Ill. 166.

overruling a motion for a directed verdict at the close of plaintiff's evidence is immaterial, if a similar motion at the close of all the evidence was properly overruled.[98] In one state it has been held that the reviewing court will under no circumstances reverse because of a refusal of the trial court to direct a verdict.[99]

On the other hand, it is prejudicial error to refuse to instruct the jury to find for plaintiff on the question of defendant's liability where his liability is unquestioned;[1] and, likewise, it may be reversible error to refuse to direct a verdict for defendant where the evidence is insufficient to sustain a judgment for plaintiff,[2] or to refuse a directed verdict on a particular count of the complaint which is insufficient on its face.[2.5] Where demurrers to immaterial pleas were overruled when they should have been sustained and plaintiff joined issue on such pleas, thereby rendering them material, and defendant established them by the evidence, defendant was entitled to the general charge, although inconsistent with the rulings on demurrer, and the refusal of the court to give it cannot be said to be harmless error.[3]

14. Submission or Withdrawal of Issues, Questions, or Special Interrogatories

§ 1759. Submission of Issues of Fact

Whether the improper submission of an issue of fact to the jury constitutes reversible error depends on whether prejudice results to the complaining party.

As a general rule, whether the submission of an issue not pleaded or proved will constitute reversible error will depend on the harm that is done by it,[3.50] and it is reversible error where prejudice results to the complaining party,[4] as where the verdict could not have been reached except by a considera-

98. Iowa.—Newland v. G. McClelland & Son, 250 N.W. 229, 217 Iowa 568.
Mo.—Kester v. Metropolitan Life Ins. Co., 71 S.W.2d 839, 228 Mo.App. 550.
Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655.
S.C.—Gallishaw v. Jackson, 83 S.E. 454, 99 S.C. 342.

99. Ga.—Yancey v. O'Kelley, 68 S. E.2d 574, 208 Ga. 600.
Blockam v. Few, 87 S.E. 607, 17 Ga.App. 440—O'Brien v. Ellarbee, 80 S.E. 864, 14 Ga.App. 333—Savannah Chemical Co. v. D. Bragg & Son, 80 S.E. 858, 14 Ga.App. 371.
4 C.J. p 1023 note 46.

1. Ala.—Tennessee Valley Bank v. Williams, 14 So.2d 368, 244 Ala. 468.
R.I.—Robinson v. Vicksburg, 54 So. 858, 99 Miss. 439.
W.Va.—Ballengee v. Whitlock, 74 S. E.2d 780, 138 W.Va. 58.

2. Ala.—W. B. Smith & Sons v. Gay, 106 So. 214, 21 Ala.App. 130.
Mackey v. Hall Auto Co., 176 So. 318, 27 Ala.App. 557.
Fla.—6345 Collins Ave., Inc. v. Fein, 95 So.2d 577.
Ill.—Sims v. Chicago Transit Authority, 115 N.E.2d 96, 351 Ill.App. 314, reversed on other grounds 122 N.E.2d 221, 4 Ill.2d 60—Strunk v. Stronberg, 62 N.E.2d 27, 326 Ill. App. 265.
Iowa.—Mowrey v. Schulz, 296 N.W. 822, 230 Iowa 102.
Ky.—City of Pineville v. Asher, 154 S.W.2d 545, 287 Ky. 503.
Neb.—Most v. Cedar County, 252 N. W. 465, 126 Neb. 54—Aten v. Quantock, 199 N.W. 551, 112 Neb. 288.
N.J.—Huels v. General Elec. Co., 46 A.2d 654, 134 N.J.Law 165—Falk v. Stanley Fabian Corporation of Delaware, 178 A. 740, 115 N.J.Law 141.
N.M.—Morstad v. Atchison, T. & S. F. Ry. Co., 170 P. 886, 23 N.M. 663.
Ohio.—Davis v. Atlas Assur. Co, 147 NE. 913, 112 Ohio St. 543.
Marolt v. Lisitz, 115 N.E.2d 169, 94 Ohio App. 298.
Pa.—Sloppy v. Pennsylvania R. Co., 77 A. 1010, 228 Pa. 621, 30 L.R.A., N.S., 1049.
R.I.—Reynolds v. Missler, 83 A.2d 914, 79 R.I. 89, adhered to 90 A. 2d 779, 80 R.I. 59.
S.C.—Beaty v. Massachusetts Protective Ass'n, 158 S.E. 206, 160 S. C. 205.
Tex.—Arnold v. Tarrant Beverage Co., Civ.App., 215 S.W.2d 894, error refused no reversible error—Urschel v. Garcia, Civ.App., 164 S. W.2d 804, error refused.
W.Va.—Waddell v. New River Co., 93 S.E.2d 473—Puffer v. Hub Cigar Store, 84 S.E.2d 145, 140 W.Va. 327.

2.5 Fla.—S. H. Kress & Co. v. Powell, 180 So. 757, 132 Fla. 471.

3. Ala.—Black v. Hankins, 60 So. 441, 6 Ala.App. 512.

3.50 Tex.—Morris v. Texas & N. O. R. Co., Civ.App., 269 S.W.2d 565, error refused no reversible error—Pappas v. Wright, Civ.App., 171 S.W.2d 536—McClelland v. Mounger, Civ.App., 107 S.W.2d 901, error dismissed by agreement.

Unnecessary issues resulting in undue prejudice

Ordinarily, submitting of issues which are merely evidentiary or unnecessary does not constitute reversible error, but whenever a party's right to a clear-cut submission of his theories of recovery or defense is unduly prejudiced by use of excessive and unnecessary issues, a reversal of judgment must be ordered.
Tex.—H. E. Butt Grocery Co. v. Johnson, Civ.App., 226 S.W.2d 501, error refused no reversible error.

4. Ala.—Huntsville Knitting Co. v. Butner, 73 So. 907, 198 Ala. 528—Langhorne v. Simington, 66 So. 85, 188 Ala. 337.
Ark.—Suckle v. Missouri Pac. R. Co., 241 S.W. 368, 154 Ark. 168—Cravens & Boren v. Barr, 204 S.W. 618, 134 Ark. 605, 135 Ark. 617—St. Louis, I. M. & S. Ry. Co. v. Middleton, 171 S.W. 869, 116 Ark. 284—St. Louis, etc., R. Co. v. Crowder, 103 S.W. 172, 82 Ark. 562.
Colo.—City of Boulder v. Stewardson, 143 P. 820, 26 Colo.App. 290.
Fla.—Pensacola Electric Terminal R. Co. v. Haussman, 40 So. 196, 51 Fla. 286.
Ga.—Citizens' Bank of Roswell v. Reese, 88 S.E. 570, 145 Ga. 110.
Fuller v. Mills, 136 S.E. 807, 36 Ga.App. 357.
Ill.—Sims v. Chicago Transit Authority, 129 N.E.2d 23, 7 Ill.App. 2d 21—St. Louis Consol. Coal Co. v. Stein, 122 Ill.App. 310.
Iowa.—Barrett v. Wheeler, 24 N.W. 38, 66 Iowa 560.
Ky.—E. J. O'Brien & Co. v. Davis, 288 S.W. 682, 216 Ky. 693.
Mich.—Andrews v. Osius, 168 N.W. 1032, 203 Mich. 195—Dondero v. Frumveller, 28 N.W. 712, 61 Mich. 440.
Mo.—Cunningham v. Reagan, 273 S. W.2d 174—Crow v. Houck's Missouri, etc., R. Co., 111 S.W. 583, 212 Mo. 589—Ely v. St. Louis, etc., R. Co., 77 Mo. 34.
Hoffman v. Illinois Terminal R. Co., App., 274 S.W.2d 591—Ault-

tion of the question erroneously submitted,[5] where the issue submitted is controlling and is decided against appellant,[6] where the issue was not controverted within the meaning of a statute permitting the submission of only controverted issues,[7] or where the submission of the issue has a tendency to mislead the jury.[8] So, a reversal will be granted where the evidence supports a verdict for appellant,

man, etc., Co. v. Smith, 52 Mo.App. 351.

Neb.—Van Wye v. Wagner, 79 N.W. 2d 281, 163 Neb. 205—Oliver v. Oliver, 66 N.W.2d 420, 159 Neb. 218—McCready v. Phillips, 63 N.W. 7, 44 Neb. 790.

N.H.—Moody v. Perley, 95 A. 1047, 78 N.H. 17.

N.J.—Gilliard v. Public Service Ry. Co., 110 A. 688, 94 N.J.Law 288—Sweet v. Excelsior Electric Co., 81 A. 721, 59 N.J.Law 441.

N.M.—Rallis v. Connecticut Fire Ins. Co., 120 P.2d 736, 46 N.M. 77.

N.Y.—Hermance v. Globe Indemnity Co., 223 N.Y.S. 93, 221 App.Div. 394—Palermo v. Erie R. Co., 173 N. Y.S. 456, 185 App.Div. 656—Irwin v. J. J. Steindler Co., 168 N.Y.S. 328, 181 App.Div. 93—Jonasson v. Weir, 115 N.Y.S. 6, 130 App.Div. 528.

N.C.—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478—Allison v. Steele, 17 S.E.2d 339, 220 N.C. 318—Fortiscue v. Crawford, 10 S.E. 910, 105 N.C. 29.

N.D.—Horton v. Wright, Barrett & Stillwell Co., 162 N.W. 939, 36 N. D. 622.

Ohio.—Cincinnati Traction Co. v. Stephens, 79 N.E. 235, 75 Ohio St. 171.

Cincinnati & Suburban Bell Telephone Co. v. Rhoades, 186 N.E. 457, 45 Ohio App. 40—Sharp v. Russell, 174 N.E. 617, 37 Ohio App. 306—Peaney v. Davis, 160 N.E. 486, 26 Ohio App. 414.

Okl.—Kingfisher Nat. Bank v. Johnson, 98 P. 343, 22 Okl. 228.

Or.—Kaiser v. States S. S. Co., 276 P.2d 410, 203 Or. 91.

Tenn.—De Rossett Hat Co. v. London Lancashire Fire Ins. Co., 183 S.W. 720, 134 Tenn. 199.

Tex.—Roosth & Genecov Production Co. v. White, 262 S.W.2d 99, 152 Tex. 619—Dallas Railway & Terminal Co. v. Price, 114 S.W.2d 859, 131 Tex. 319—Graham v. McCarty, 7 S.W. 342, 69 Tex. 323—Loving v. Dixon, 56 Tex. 75—Houston, etc., R. Co. v. Terry, 42 Tex. 451.

Rosenthal Dry Goods Co. v. Hillebrandt, Com.App., 7 S.W.2d 521—Potomac Ins. Co. v. Easley, Com. App., 1 S.W.2d 263.

George S. May Co. v. Stephens Lumber Co., Civ.App., 301 S.W.2d 294—Texas Lime Co. v. Hindman, Civ.App., 300 S.W.2d 112, error granted—Commercial Music Co. v. Klag, Civ.App., 288 S.W.2d 168—Ramey v. Marshall, Civ.App., 279 S.W.2d 382, error dismissed—Texon Drilling Co. v. Elliff, Civ.App., 210 S.W.2d 553, reversed on other grounds 210 S.W.2d 558, 146 Tex. 575, 4 A.L.R.2d 191—Texas & N. O. R. Co. v. Barham, Civ.App., 204 S.W.2d 205—Texas Emp. Ins. Ass'n v. Wright, Civ.App., 196 S.W.2d 837, error refused no reversible error—Texas Employers' Ins. Ass'n v. Neely, Civ.App., 189 S.W.2d 626—Standard Paving Co. v. McClinton, Civ.App., 146 S.W.2d 466—Southern Underwriters v. Dykes, Civ.App., 145 S.W.2d 1105—Lone Star Gas Co. v. Ballard, Civ.App., 138 S.W.2d 633, error refused—Texas & P. Ry. Co. v. Bussing, Civ. App., 130 S.W.2d 416—Texas Employers' Ins. Ass'n v. Cloud, Civ. App., 120 S.W.2d 903, error dismissed—Community Public Service Co. v. Gray, Civ.App., 107 S.W.2d 495—Dalby v. Lyle, Civ.App., 105 S.W.2d 764—Guiff v. Strain, Civ. App., 87 S.W.2d 309—Beckner v. Barrett, Civ.App., 81 S.W.2d 719, error dismissed—Cline-Clark Co. v. State Trust & Savings Bank of Dallas, Civ.App., 81 S.W.2d 541—Roby v. Hawthorne, Civ.App., 77 S.W.2d 923—Commerce Ins. Co. v. Sergi, Civ.App., 60 S.W.2d 1046—Herrin Transfer & Warehouse Co. v. Carter Produce Co., Civ.App., 50 S.W.2d 458—Panhandle & S. F. Ry. Co. v. Miller, Civ.App., 44 S. W.2d 790—El Paso Electric Co. v. Portillo, Civ.App., 37 S.W.2d 219—Theis v. Curts, Civ.App., 33 S.W. 2d 754—Stewart v. Vannatta, Civ. App., 31 S.W.2d 684—Dittman v. Bailey, Civ.App., 31 S.W.2d 513—Magnolia Petroleum Co. v. Ford, Civ.App., 14 S.W.2d 97, error denied Ford v. Magnolia Petroleum Co., 17 S.W.2d 36, 118 Tex. 461—Thomas v. Basden & Carrell, Civ. App., 4 S.W.2d 336—Starnes v. Motsinger, Civ.App., 278 S.W. 496—Texarkana & Ft. S. Ry. Co. v. La Velle, Civ.App., 260 S.W. 248—Skelton & Wear v. Wolfe, Civ.App., 200 S.W. 901—Pullman Co. v. Franks, Civ.App., 187 S.W. 501—Galveston, H. & S. A. Ry. Co. v. Fred, Civ.App., 185 S.W. 896—Houston, etc., R. Co. v. Shepard, Civ.App., 118 S.W. 596—Farenthold v. Tell, 113 S.W. 635, 52 Tex.Civ. App. 110—Gulf, etc., R. Co. v. Walters, 107 S.W. 369, 49 Tex.Civ. App. 71—San Antonio Traction Co. v. Kelleher, 107 S.W. 64, 48 Tex. Civ.App. 421—Walker v. Tomlinson, 98 S.W. 906, 44 Tex.Civ.App. 446—Work v. Cross, Civ.App., 98 S. W. 208—American F. Ins. Co. v. Bell, 75 S.W. 319, 33 Tex.Civ.App. 11—Fouts v. Ayres, 32 S.W. 435, 11 Tex.Civ.App. 338—Missouri, etc., R. Co. v. Wickham, Civ.App., 28 S. W. 917—Galveston, etc., R. Co. v. Silegman, Civ.App., 23 S.W. 298.

Vt.—Weinberg v. Roberts, 131 A. 14, 99 Vt. 249.

Va.—Virginia Ry. & Power Co. v. Wellons, 112 S.E. 843, 133 Va. 350.

W.Va.—Kuykendall v. Fisher, 56 S.E. 48, 61 W.Va. 87, 8 L.R.A.,N.S., 94, 11 Ann.Cas. 700.

Wis.—McCarthy v. Behnke, 79 N.W. 2d 82, 273 Wis. 640—Deaton v. Unit Crane & Shovel Corp., 61 N. W.2d 552, 265 Wis. 349—Kramer v. Chicago, M., St. P. & P. R. Co., 276 N.W. 113, 226 Wis. 118—Allison v. Wm. Doerflinger Co., 242 N. W. 558, 208 Wis. 206.

4 C.J. p 1023 note 49—51 C.J. p 1212 note 8.

Contributory negligence

Cal.—Dutcher v. City of Santa Rosa High School Dist., 290 P.2d 316, 137 C.A.2d 481, rehearing denied 291 P.2d 557.

Neb.—Scott v. Service Pipe Line Co., 65 N.W.2d 219, 159 Neb. 36—Costello v. Hild, 40 N.W.2d 228, 152 Neb. 1.

Okl.—Bison Transports v. Fraley, 238 P.2d 835, 205 Okl. 520.

Counts unsupported by evidence

Ala.—Jordan v. Henderson, 63 So.2d 379, 258 Ala. 419.

Simmons v. McClendon, 39 So.2d 787, 34 Ala.App. 369.

Issue unsupported by evidence

Neb.—State v. Cheyenne County, 60 N.W.2d 593, 157 Neb. 533—Remmenga v. Selk, 42 N.W.2d 186, 152 Neb. 625—Simcho v. Omaha & Council Bluffs St. Ry. Co., 35 N.W. 2d 501, 150 Neb. 634—Melcher v. Murphy, 31 N.W.2d 411, 149 Neb. 541.

Okl.—Empire Oil & Refining Co. v. Fields, 73 P.2d 164, 181 Okl. 231.

Or.—McAdam v. Royce, 272 P.2d 986, 202 Or. 245, reheard 274 P.2d 564, 202 Or. 245.

Where no real conflict in evidence

Neb.—Selig v. Wunderlich Contracting Co., 69 N.W.2d 861, 160 Neb. 215.

5. N.C.—Bowen v. King, 59 S.E. 1044, 146 N.C. 385.

6. Pa.—Du Bois City First Nat. Bank v. Williamsport First Nat. Bank, 6 A. 366, 114 Pa. 1.

Tex.—Hernandez v. Almendarez, Civ. App., 137 S.W.2d 1059—Missouri, etc., R. Co. v. Harrison, 99 S.W. 124, 44 Tex.Civ.App. 58.

7. N.C.—Fairmont School v. Bevis, 185 S.E. 463, 210 N.C. 50.

8. N.M.—Cerrillos Coal R. Co. v. Deserant, 49 P. 807, 9 N.M. 49.

Tex.—Kirk v. Marshall, Civ.App., 247

and a verdict is returned for appellee,[9] where the evidence conclusively negatives the existence of the facts submitted,[10] or where it cannot be said that the jury was not influenced by the improper submission of the issues, as where it is impossible for the court to say whether or not the jury took into consideration, or based its verdict on, the issue improperly submitted.[11]

Nevertheless, where it appears that the objecting party was not injured, errors in submitting issues do not constitute ground for reversal.[12] This principle

S.W.2d 454—St. Louis Southwestern R. Co. v. Lewellen, Civ.App., 116 S.W. 116—Galveston, etc., R. Co. v. Herring, Civ.App., 36 S.W. 129—Hartford F. Ins. Co. v. Josey, 25 S.W. 685, 6 Tex.Civ.App. 290.

4 C.J. p 1023 note 51.

9. Neb.—Paul Schminke Co. v. Holden, 125 N.W. 511, 86 Neb. 303.

10. Minn.—Blied v. Barnard, 139 N. W. 714, 120 Minn. 399.

Tex.—Raney v. Houston Lighting, etc., Co., Civ.App., 153 S.W. 178.

11. Ala.—Jordan v. Henderson, 63 So.2d 379, 258 Ala. 419—Moebes v. Garth, 97 So. 703, 210 Ala. 201—Walling v. Fields, 96 So. 471, 209 Ala. 389—Corona Coal Co. v. Davis, 94 So. 532, 208 Ala. 358.

Cal.—King v. Schumacher, 81 P.2d 999, reheard 89 P.2d 466, 32 C.A.2d 172, certiorari denied 60 S.Ct. 123, 308 U.S. 593, 84 L.Ed. 496.

Ill.—Wende v. Chicago City Ry. Co., 111 N.E. 275, 271 Ill. 437, Ann.Cas. 1918A 222.

Mich.—Clark v. Grand Trunk Western R. Co., 112 N.W. 1121, 149 Mich. 400, 12 Ann.Cas. 559.

Minn.—Cavallero v. Travelers Ins. Co. of Hartford, Conn., 267 N.W. 370, 197 Minn. 417—Lindemann v. Chicago, R. I. & P. Ry. Co., 191 N. W. 825, 154 Minn. 363—Vasey v. Saari, 169 N.W. 478, 141 Minn. 103.

Mo.—Smith v. Greenstone, App., 208 S.W. 628.

N.M.—Curtis v. Schwartzman Packing Co., 299 P.2d 776, 61 N.M. 305.

N.Y.—Helm v. Maryland Cas. Co., 84 N.Y.S.2d 786, 274 App.Div. 966—Piper v. New York State Rys., 172 N.Y.S. 838, 185 App.Div. 184—Gold v. Froman, 162 N.Y.S. 500, 175 App. Div. 815—Weidinger v. Third Ave. R. Co., 57 N.Y.S. 851, 40 App.Div. 197.

Okl.—Kurn v. Kearns, 181 P.2d 249, 198 Okl. 635.

Tex.—Chicago, R. I. & G. Ry. Co. v. Wisdom, Civ.App., 216 S.W. 241, reversed on other grounds Wisdom v. Chicago, R. I. & G. R. Co., Com. App., 231 S.W. 344.

4 C.J. p 1023 note 54, p 1024 note 55.

12. Ala.—Henderson v. Noland, 189 So. 732, 238 Ala. 213, 123 A.L.R. 483.

Ariz.—Phœnix Ry. Co. of Arizona v. Beals, 181 P. 379, 20 Ariz. 386.

Ark.—C. W. Lewis Lumber Co. v. Fletcher, 274 S.W.2d 473, 224 Ark. 464—Stair v. Jones, 269 S.W.2d 297, 223 Ark. 882—Blakemore v. Stevens, 67 S.W.2d 733, 188 Ark. 755—Dyke v. Magdalena, 283 S.W. 374, 171 Ark. 225.

Cal.—Zuckerman v. Underwriters at Lloyd's, London, 267 P.2d 777, 42 C.2d 460.

Colo.—Small v. Clark, 263 P. 933, 83 Colo. 211.

Ga.—Stovall v. New York Underwriters Ins. Co., 185 S.E. 241, 182 Ga. 163—Partain v. Partain, 128 S.E. 903, 160 Ga. 634—Douglas v. McCurdy, 115 S.E. 658, 154 Ga. 814.

Idaho.—Thornton v. Budge, 257 P.2d 238, 74 Idaho 103—Jackman v. Hamersley, 240 P.2d 829, 72 Idaho 301.

Ill.—Povlich v. Glodrich, 142 N.E. 466, 311 Ill. 149—Lyons v. Kanter, 120 N.E. 764, 285 Ill. 336—Devine v. Delano, 111 N.E. 742, 272 Ill. 166, Ann.Cas.1918A 689.

Sims v. Chicago Transit Authority, 129 N.E.2d 23, 7 Ill.App.2d 21—Klonowski v. Crescent Paper Box Mfg. Co., 217 Ill.App. 150.

Ind.—Pittsburgh, C., C. & St. L. Ry. Co. v. Macy, 107 N.E. 486, 59 Ind. App. 125.

Iowa.—Ipsen v. Ruess, 41 N.W.2d 658, 241 Iowa 730—Low v. Ford Hopkins Co., 1 N.W.2d 95, 231 Iowa 251—Robinson v. Meek, 210 N.W. 762, 203 Iowa 185—J. L. Owens Co. v. Leland Farmers' Elevator Co., 185 N.W. 590, 192 Iowa 771—Pelton v. Illinois Cent. R. Co., 150 N. W. 236, 171 Iowa 91, modified on other grounds and rehearing denied 153 N.W. 334.

Kan.—Wheeler v. Jackson, 297 P. 427, 132 Kan. 742—Farmers' State Bank of Cunningham v. Crow, 267 P. 1100, 126 Kan. 395.

Ky.—Pollard v. Vandivir, 26 S.W.2d 495, 233 Ky. 563—Henderson Min. & Mfg. Co. v. Cimini, 213 S.W. 923, 185 Ky. 85—Davis' Adm'r v. Cincinnati, N. O. & T. P. Ry. Co., 188 S.W. 1061, 172 Ky. 55, Ann.Cas. 1918E 414—Le Moyne v. Litton, 167 S.W. 912, 159 Ky. 652—Keeton v. Smith, 166 S.W. 610, 158 Ky. 812—Pioneer Bldg., etc., Assoc. v. Jones, 56 S.W. 657, 22 Ky.L. 41.

Md.—Miller v. James McGraw Co., 42 A.2d 237, 184 Md. 529—Baltimore v. Norman, 4 Md. 352.

Mich.—Corfeld v. Douglas Houghton Hotel Co., 37 N.W.2d 169, 324 Mich. 459—Arnold v. Krug, 273 N.W. 322, 279 Mich. 702—Janunas v. Metropolitan Life Ins. Co., 214 N.W. 117, 239 Mich. 150—Williamson v. Hannan, 166 N.W. 829, 200 Mich. 658—Crowley Bros. v. Grand Trunk Ry. Co. of Canada, 152 N.W. 215, 185 Mich. 482.

Minn.—Nelson v. Anderson, 72 N.W. 2d 861, 245 Minn. 445—Anderson v. Minneapolis, St. P. & S. S. M. Ry. Co., 194 N.W. 762, 156 Minn. 338—Kline v. Minnesota Central Creameries, 193 N.W. 958, 156 Minn. 6.

Miss.—Shearron v. Shearron, 68 So.2d 71, 219 Miss. 27, suggestion of error overruled in part and sustained in part, 69 So.2d 801, 219 Miss. 27, suggestion of error overruled in part and sustained in part 70 So. 2d 922, 219 Miss. 27—Shemper v. Cleveland, 54 So.2d 215, 212 Miss. 113.

Mo.—Timmerman v. Terminal R. R. Ass'n of St. Louis, 241 S.W.2d 477, 362 Mo. 280—Holmes v. Terminal R. R. Ass'n of St. Louis, 257 S.W. 2d 922, 363 Mo. 1178—Sprankle v. Thompson, 243 S.W.2d 510—Guthrie v. City of St. Charles, 152 S. W.2d 91, 347 Mo. 1175—Morgan v. Wabash R. Co., 60 S.W. 195, 159 Mo. 262—Lee v. Dunlap, 55 Mo. 454.

M. F. A. Mut. Ins. Co. v. Quinn, App., 259 S.W.2d 854—Doutt v. Watson, App., 231 S.W.2d 230—Page v. Wabash R. Co., App., 206 S.W.2d 691—Lanasa v. Downey, App., 201 S.W.2d 179—Jurkiewicz v. Millers' Nat. Ins. Co. of Chicago, Ill., 76 S.W.2d 721, 229 Mo.App. 262—Bowman v. Jones, App., 50 S. W.2d 203, modified on other grounds Bowman v. C. D. Jones Bldg. Co., 58 S.W.2d 718, 332 Mo. 520—Wollums v. Mutual Ben. Health & Accident Ass'n, 46 S.W.2d 259, 226 Mo.App. 647—Bigalke v. Mutual Life Ins. Co. of Baltimore, App., 34 S.W.2d 1019—Turner v. Wabash R. Co., 90 S.W. 391, 114 Mo.App. 539.

Neb.—Remmenga v. Selk, 42 N.W. 2d 186, 152 Neb. 625.

Nev.—Crowley v. Chedic, 7 Nev. 336.

N.H.—Winslow v. Dietlin, 121 A.2d 573, 100 N.H. 147—Cote v. Sears, Roebuck & Co., 166 A. 279, 86 N.H. 238.

N.J.—Ziser v. Colonial Western Airways, 162 A. 591, 10 N.J.Misc. 1118.

N.Y.—Rebora v. British & Foreign Marine Ins. Co., 180 N.E. 90, 258 N.Y. 379, motion denied 182 N.E. 157, 259 N.Y. 507.

Trembley v. Coca-Cola Bottling Co., 138 N.Y.S.2d 332, 285 App.Div. 539.

N.C.—Queen City Coach Co. v. Fultz, 98 S.E.2d 860, 246 N.C. 523—Hodges v. Malone & Co., 70 S.E.2d 478, 235 N.C. 512—Whiteman v. Seashore Transp. Co., 58 S.E.2d 752,

231 N.C. 701—Stewart v. Wyrick, 45 S.E.2d 764, 228 N.C. 429—Steele v. Coxe, 36 S.E.2d 288, 225 N.C. 726—Abernethy Land & Finance Co. v. First Security Trust Co., 199 S.E. 733, 214 N.C. 478—Platt v. Town of Hillsboro, 194 S.E.2d 494, 212 N.C. 835—Davis v. Doggett, 194 S.E. 228, 212 N.C. 589—Lewis v. Hunter, 193 S.E. 814, 212 N.C. 504—Gasque v. City of Asheville, 178 S.E. 848, 207 N.C. 821—Virginia-Carolina Joint Stock Land Bank v. First & Citizens' Nat. Bank of Elizabeth City, 150 S.E. 34, 197 N. C. 526—Hill v. Huffines Hotel Co., 125 S.E. 266, 188 N.C. 586—Walker v. Burt, 109 S.E. 43, 182 N.C. 325—Hipp v. Farrell, 91 S.E. 831, 173 N.C. 167—Henderson v. Atlantic Coast Line R. Co., 88 S.E. 626, 171 N.C. 397—J. L. Roper Lumber Co. v. Elizabeth City Lumber Co., 49 S.E. 946, 137 N.C. 431—J. L. Roper Lumber Co. v. Elizabeth City Lumber Co., 47 S.E. 757, 135 N.C. 742—Rosemond v. R. Co., 43 S.E. 1005, 131 N.C. 827—Cumming v. Barber, 5 S.E. 903, 99 N.C. 332—Perry v. Jackson, 88 N.C. 103.

Ohio.—Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483—Berger v. Grandview Bldg. Co., App., 59 N.E.2d 759—Kercher v. City of Conneaut, 65 N.E.2d 272, 76 Ohio App. 491.

Okl.—Maynard v. Hustead, 90 P.2d 30, 185 Okl. 20—Millus v. Lowrey Bros., 164 P. 663, 63 Okl. 261, L.R.A.1918B 336—Chicago, R. I. & P. Ry. Co. v. Martin, 141 P. 276, 42 Okl. 353.

Pa.—Farber v. Perkiomen Mut. Ins. Co., 88 A.2d 776, 370 Pa. 480—Duff v. Hamlin, 115 A. 829, 272 Pa. 245.

Koch v. Ziegler, 196 A. 562, 130 Pa.Super. 158.

Payne v. Lutz, Com.Pl., 67 York Leg.Rec. 65.

S.C.—Brazeale v. Piedmont Mfg. Co., 193 S.E. 39, 184 S.C. 471—Cleveland v. Home Ins. Co. of New York, 148 S.E. 49, 150 S.C. 289—Sanders v. Charleston & W. C. Ry. Co., 145 S.E. 400, 147 S.C. 487—Wilson v. Southern Ry., Carolina Division, 115 S.E. 764, 123 S.C. 399.

S.D.—Steuerwald v. Steuerwald, 218 N.W. 597, 52 S.D. 448.

Tenn.—Murray v. City of Nashville, App., 299 S.W.2d 859—Young v. Cumberland Groc. Co., 15 Tenn. App. 89.

Tex.—Smith v. Allison, 301 S.W.2d 608.

Fenton v. Wade, Civ.App., 303 S. W.2d 816—Sears, Roebuck & Co. v. Jones, Civ.App., 303 S.W.2d 432—Villanueva v. Rodriguez, Civ.App., 300 S.W.2d 668, error refused no reversible error—Hutson v. Chambless, Civ.App., 295 S.W.2d 723, reversed on other grounds, Sup., 300 S.W.2d 943—Alexander Schroeder Lumber Co. v. Corona, Civ.App., 288 S.W.2d 829, error refused no reversible error—Commercial Music Co. v. Klag, Civ.App., 288 S.W.2d 168—Johnson v. Allen, Civ.App., 285 S.W.2d 771—Cozby v. Campbell, Civ.App., 281 S.W.2d 95, error refused no reversible error—Kurtz v. Robinson, Civ.App., 279 S.W.2d 949, error refused no reversible error—Ramey v. Marshall, Civ.App., 279 S.W.2d 382, error dismissed—Missouri-Kansas-Texas R. Co., of Tex. v. Crouch, Civ.App., 273 S.W. 2d 466—Johnson v. East Tex. Motor Freight Lines, Civ.App., 271 S. W.2d 708—McCormick v. King, Civ.App., 268 S.W.2d 552, error refused no reversible error—Hancock v. Sammons, Civ.App., 267 S. W.2d 252, error refused no reversible error—Gilmer v. Griffin, Civ. App., 265 S.W.2d 252, error refused no reversible error—San Antonio Hermann Sons Home Ass'n v. Harvey, Civ.App., 256 S.W.2d 906, error refused no reversible error—Texas Emp. Ins. Ass'n v. Hudson Engineering Corp., Civ.App., 245 S. W.2d 523—Missouri-K.-T. R. Co. v. Evans, Civ.App., 243 S.W.2d 181, reversed on other grounds 250 S. W.2d 385, 151 Tex. 340—Buss v. Shepherd, Civ.App., 240 S.W.2d 382, error refused no reversible error—Coca-Cola Bottling Co. v. Krueger, Civ.App., 239 S.W.2d 669—Ervay-Canton Apartments v. Hatterick, Civ.App., 239 S.W.2d 150, error refused no reversible error—Dofner v. Branard, Civ.App., 236 S. W.2d 544, error refused no reversible error—Romo v. San Antonio Transit Co., Civ.App., 236 S.W.2d 205, error refused no reversible error—Tripp v. Watson, Civ.App., 235 S.W.2d 677, error refused no reversible error—Adkins v. Texas & P. Ry. Co., Civ.App., 233 S.W. 2d 956, error refused—McMahan v. Musgrave, Civ.App., 229 S.W.2d 894, error dismissed—Beckham v. Mayes, Civ.App., 229 S.W.2d 636—Reddick v. Longacre, Civ.App., 228 S.W.2d 264, error refused no reversible error—Hacker v. Whitney Dam Lumber & Const. Co., Civ. App., 225 S.W.2d 225, error refused—Sfair v. Adair, Civ.App., 223 S. W.2d 648, error refused—Thomason v. Burch, Civ.App., 223 S.W. 2d 320, error refused no reversible error—Ricks v. Thielepape, Civ. App., 222 S.W.2d 399, error refused no reversible error—Beaumont City Lines v. Williams, Civ.App., 221 S.W.2d 560, error refused no reversible error—Lone Star Bldg. & Loan Ass'n v. Larcade, Civ.App., 211 S.W.2d 257, error refused no reversible error—Sullins v. Pace, Civ.App., 208 S.W.2d 583—Texas & N. O. R. Co. v. Barham, Civ. App., 204 S.W.2d 205—Morgan v. Young, Civ.App., 203 S.W.2d 837, error refused no reversible error—Missouri-Kansas-Texas R. Co. of Tex. v. Waddles, Civ.App., 203 S.W.2d 350—Texas & N. O. R. Co. v. Burden, Civ.App., 196 S. W.2d 707, reversed on other grounds 203 S.W.2d 522, 146 Tex. 109—Alpine Tel. Corp. v. McCall, Civ.App., 195 S.W.2d 585, error refused no reversible error—Johnson Aircrafts v. Eichholtz, Civ.App., 194 S.W.2d 815, error refused no reversible error—Hunter v. Texas Elec. Ry. Co., Civ.App., 194 S.W. 2d 281, affirmed 68 S.Ct. 203, 332 U.S. 827, 92 L.Ed. 402—American Nat. Ins. Co. v. Fox, Civ.App., 184 S.W.2d 937, error refused—Dedear v. James, Civ.App., 172 S.W.2d 535, error refused—Woodmen of the World Life Ins. Soc. v. Armstrong, Civ.App., 170 S.W.2d 526, error refused—Jones v. Rainey, Civ.App., 168 S.W.2d 507, error refused—Greever v. Persky, Civ.App., 156 S. W.2d 566, affirmed 165 S.W.2d 709, 140 Tex. 64—Federal Underwriters Exchange v. Green, Civ.App., 150 S.W.2d 98, error dismissed, judgment correct—Traders & General Ins. Co. v. Turner, Civ.App., 149 S.W.2d 593, error dismissed, judgment correct—Shultz v. Dallas Power & Light Co., Civ.App., 147 S. W.2d 914, error dismissed, judgment correct—State v. Littlefield, Civ.App., 147 S.W.2d 270, error dismissed, judgment correct—El Paso Electric Co. v. Buck, Civ.App., 143 S.W.2d 438, error dismissed, judgment correct—Southern Underwriters v. Yocham, Civ.App., 140 S.W. 2d 341, error dismissed, judgment correct—Hicks Rubber Co. v. Harper, Civ.App., 131 S.W.2d 749, error dismissed 132 S.W.2d 579, 134 Tex. 89—Dempster Mill Mfg. Co. v. Wiley, Civ.App., 131 S.W.2d 257, error dismissed, judgment correct—International-Great Northern R. Co. v. Acker, Civ.App., 128 S.W.2d 506, error dismissed, judgment correct—De George v. Rodgers-De Long Hotel Co., Civ.App., 126 S.W. 2d 79, error dismissed—Rivers v. Westbrooks, Civ.App., 126 S.W.2d 46, error refused—Wilkinson v. Gordon, Civ.App., 123 S.W.2d 961, error dismissed—National Life & Accident Co. v. Dickinson, Civ.App., 115 S.W.2d 1180, error dismissed—Wentworth v. Collins, Civ.App., 115 S.W.2d 442, error dismissed—National Indemnity Underwriters of America v. Rocamontes, Civ. App., 110 S.W.2d 228, error dismissed—Texas Coca-Cola Bottling Co. v. Kubena, Civ.App., 109 S.W. 2d 1098—Camden Fire Ins. Ass'n v. Brown, Civ.App., 109 S.W.2d 280, error dismissed—Sweatt v. Tarrant County, Civ.App., 108 S. W.2d 700, error dismissed—Texas Employers Ins. Ass'n v. Arnold, Civ.App., 105 S.W.2d 686—City of Aransas Pass v. Hamon & Griffith, Civ.App., 104 S.W.2d 893, error dismissed—Gillingham v. Timmins,

Civ.App., 104 S.W.2d 115, error dismissed—Ætna Life Ins. Co. v. Tipps, Civ.App., 98 S.W.2d 375, affirmed 121 S.W.2d 324, 132 Tex. 213—Keels v. Metzler, Civ.App., 94 S.W.2d 799, error dismissed—Continental Ins. Co. of New York v. Guerson, Civ.App., 93 S.W.2d 591—Dillingham v. Currie, Civ.App., 92 S.W.2d 1122—Lone Star Mut. Life Ass'n v. Klander, Civ.App., 92 S.W.2d 514—Yellow Cab Corporation v. Halford, Civ.App., 91 S.W.2d 801, error dismissed—Garabrant v. Burns, Civ.App., 85 S.W.2d 859, reversed on other grounds 111 S.W.2d 1100, 130 Tex. 518—Dow v. American Liberty Oil Co., Civ.App., 83 S.W.2d 401, error refused—American Nat. Ins. Co. v. Walker, Civ.App., 81 S.W.2d 1061—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072—Associated Indemnity Corporation v. Baker, Civ.App., 76 S.W.2d 153—Dunning v. Badger, Civ.App., 74 S.W.2d 151—Reeves v. Texas & P. Ry. Co., Civ.App., 72 S.W.2d 393—Gray v. Cheatham, Civ.App., 70 S.W.2d 248—Commercial Credit Co. v. Groseclose, Civ.App., 66 S.W.2d 709—L. E. Whitham & Co. v. Allen, Civ.App., 64 S.W.2d 1024—Traders' & General Ins. Co. v. Bailey, Civ.App., 62 S.W.2d 696—Industrial Ins. Co. v. Frazier, Civ.App., 62 S.W.2d 287—McMath Co. v. Staten, Civ.App., 60 S.W.2d 290—Crane v. Colonial Holding Corporation, Civ.App., 57 S.W.2d 316—Lloyds Casualty Co. v. Buckner, Civ.App., 56 S.W.2d 658—Scottino v. Ledbetter, Civ.App., 56 S.W.2d 282—C. & S. Sporting Goods Co. v. Brady Independent School Dist., Civ.App., 54 S.W.2d 1033—Wichita Falls & S. R. Co. v. Holbrook, Civ.App., 50 S.W.2d 428, affirmed, Com.App., 78 S.W.2d 938, 125 Tex. 184, certiorari denied 56 S.Ct. 139, 296 U.S. 618, 80 L.Ed. 439—Texas & P. Ry. Co. v. Bufkin, Civ.App., 46 S.W.2d 714—Gibraltar Sav. & Bldg. Ass'n v Harper, Civ.App., 41 S.W.2d 130—Anderson v. Womack, Civ.App., 35 S.W.2d 843—Jordan v. Liddell, Civ.App., 29 S.W.2d 799—St. Louis, S. F. & T. Ry. Co. v. Houze, Civ.App., 28 S.W.2d 865—American Indemnity Co. v. McCann, Civ.App., 27 S.W.2d 354, modified, Com.App., 45 S.W.2d 174—Gibbs v. Lester, Civ.App., 24 S.W.2d 527, affirmed, Com.App., 41 S.W.2d 28, 80 A.L.R. 431—Texas & P. Ry. Co. v. Edwards, Civ.App., 21 S.W.2d 754, reversed on other grounds, Com.App., 36 S.W.2d 477—West Texas Coaches v. Madi, Civ.App., 15 S.W.2d 170, 178, and affirmed, Com.App., 26 S.W.2d 199—Galveston, H. & S. A. Ry. Co. v. Wells, Civ.App., 15 S.W.2d 46, affirmed 50 S.W.2d 247, 121 Tex. 310—Georgia Casualty Co. v. Gibson, Civ.App., 11 S.W.2d 191—Leal v. Leal, Civ.App., 4 S.W.2d 985, affirmed, Com.App., 14 S.W.2d 797—Cannon v. Freyermuth, Civ.App., 4 S.W.2d 84—New Amsterdam Casualty Co. v. Parham, Civ.App., 2 S.W.2d 866—Totten v. Houghton, Civ.App., 2 S.W.2d 530—Gulf, C. & S. F. Ry. Co. v. Baldwin, Civ.App., 2 S.W.2d 520—Rosenthal Dry Goods Co. v. Hillebrandt, Civ.App., 299 S.W. 665, reversed on other grounds, Com.App., 7 S.W.2d 521—State Nat. Bank v. Davidson, Civ.App., 295 S.W. 311—City of Abilene v. Reed, Civ.App., 294 S.W. 913—Denison v. Nunn, Civ.App., 293 S.W. 838—Houston, E. & W. T. R. Co. v. Kopinitsch, Civ.App., 282 S.W. 884—Byers v. Shelton, Civ.App., 282 S.W. 635—North v. Atlas Brick Co., Civ.App., 281 S.W. 608, modified on other grounds, Atlas Brick Co. v. North, Com.App., 288 S.W. 146—Galveston, H. & S. A. Ry. Co. v. Neville, Civ.App., 272 S.W. 597—Willits & Patterson v. Houston Packing Co., Civ.App., 268 S.W. 237—Speed v. Jay, Civ.App., 267 S.W. 1033—Panhandle & S. F. Ry. Co. v. Van Arsdel, Civ.App., 247 S.W. 920—Davis v. Christensen, Civ.App., 247 S.W. 303, error denied 278 S.W. 1114, 114 Tex. 581—Fischl v. Jones, Civ.App., 244 S.W. 1072—Fort Worth & D. C. Ry. Co. v. Lovett, Civ.App., 243 S.W. 519—Fort Worth & D. C. Ry. Co. v. Amason, Civ.App., 239 S.W. 359—Norman v. Stark Grain & Elevator Co., Civ.App., 237 S.W. 963—Chicago, R. I. & G. Ry. Co. v. Trout, Civ.App., 224 S.W. 472, dismissed for want of jurisdiction—Moss v. Ingram, Civ.App., 224 S.W. 258—Alamo Iron Works v. Prado, Civ.App., 220 S.W. 282—Lancaster v. Mays, Civ.App., 207 S.W. 676, error refused—Penelope Real Estate Co. v. Dawson, Civ.App., 206 S.W. 702—Southern Traction Co. v. Dillon, Civ.App., 199 S.W. 698, error refused—Kansas City, M. & O. Ry. Co. v. Cole, Civ.App., 183 S.W. 137—Moody v. Chesser, Civ.App., 183 S.W. 23—Galveston, H. & S. A. Ry. Co. v. Watts, Civ.App., 182 S.W. 412—Travelers' Ins. Co. v. Harris, Civ.App., 178 S.W. 816, reversed on other grounds, Com.App., 212 S.W. 933—Texas & P. Ry. Co. v. Key, Civ.App., 175 S.W. 492—Martinez v. Gutierrez's Heirs, Civ.App., 172 S.W. 766—Wright v. Wright, 110 S.W. 158, 50 Tex.Civ.App. 459—Gonzales v. Galveston, etc., R. Co., Civ.App., 107 S.W. 896—Ft. Worth, etc., St. R. Co. v. Hawes, 107 S.W. 556, 48 Tex.Civ.App. 487—Texas, etc., R. Co. v. Shoemaker, Civ.App., 81 S.W. 1019, reversed on other grounds 84 S.W. 1049, 98 Tex. 451—Ft. Worth, etc., R. Co. v. Rogers, 60 S.W. 61, 24 Tex.Civ.App. 382—Denison, etc., R. Co. v. Scholz, Civ.App., 44 S.W. 560—Armstrong v. Ames, etc., Co., 43 S.W. 302, 17 Tex.Civ.App. 46.

Vt.—Le Febvre v. Central Vermont Ry. Co., 123 A. 211, 97 Vt. 342.

Va.—Southern Home Ins. Co. of the Carolinas v. Bowers, 161 S.E. 914, 157 Va. 686—Leachman v. Board of Sup'rs of Prince William County, 98 S.E. 656, 124 Va. 616.

Wash.—Mattson v. Cragin, 272 P. 36, 149 Wash. 638.

W.Va.—Miller v. White, 33 S.E. 332, 46 W.Va. 67, 76 Am.S.R. 791.

Wis.—Kanzenbach v. S. C. Johnson & Son, Inc., 79 N.W.2d 249, 273 Wis. 621—Atkinson v. Huber, 68 N.W.2d 447, 268 Wis. 615—Leikness v. Prochaska, 63 N.W.2d 723, 266 Wis. 437—London & Lancashire Indem. Co. v. Phoenix Indem. Co., 56 N.W.2d 777, 263 Wis. 171—Parr v. Douglas, 34 N.W.2d 229, 253 Wis. 311—Nimits v. Motor Transport Co., 34 N.W.2d 116, 253 Wis. 362—Nelson v. Chicago, M., St. P. & Pac. Ry. Co., 32 N.W.2d 340, 252 Wis. 585—Guth v. Fisher, 251 N.W. 223, 213 Wis. 323—Standard Accident Ins. Co. v. Runquist, 244 N.W. 757, 209 Wis. 97—John Hoffman & Sons Co. v. Parks, 184 N.W. 1035, 175 Wis. 303—Meidenbauer v. Town of Pewaukee, 156 N.W. 144, 162 Wis. 326—Murphy v. Interlake Pulp & Paper Co., 155 N.W. 925, 162 Wis. 139—Fandek v. Barnett & Record Co., 150 N.W. 537, 161 Wis. 55—Schroeder v. Wisconsin Cent. R. Co., 93 N.W. 837, 117 Wis. 33.

Wyo.—Boyce v. Northern Utilities Co., 297 P.2d 820, 75 Wyo. 500.

4 C.J. p 1024 note 56.

One proper issue

Where on several defenses a general verdict is found for defendant without showing on which issue based, and there is no error in the submission of at least one of the issues, a finding upon which in favor of the prevailing party would justify a general judgment, error in the submission of other issues will be disregarded.

Ohio.—Niemes v. Niemes, 119 N.E. 503, 97 Ohio St. 145—State v. Hills, 113 N.E. 1045, 94 Ohio St. 171, L.R.A.1917B 684.

Repetition

The fact that an issue submitted to the jury was a mere repetition of another issue is harmless error.

Tex.—Dallas Ry. & Terminal Co. v. Wells, Civ.App., 60 S.W.2d 485.

Submission under improper statute

In an action by a conductor of a railroad work train against the railroad for injuries, submission of the case under the Federal Employers' Liability Act was not prejudicial to defendant; assumption of risk not being involved and rule of comparative negligence, as established by Code Suppl.(1913) § 2071, being same as under the federal act.

Iowa.—Eley v. Chicago Great West-

has been applied to the submission of issues not raised either by the evidence[13] or the pleadings;[14] where the jury made no finding on, or excluded from consideration, the issue improperly submitted;[15] where the record showed that the jury did not consider the issue;[16] where the finding on the issue improperly submitted could not affect the verdict;[17] where the issue submitted was immaterial to a decision;[18] or where the question or issue was rendered immaterial by the verdict or the finding of the jury on issues properly submitted,[19] or by

ern R. Co., 166 N.W. 739, 186 Iowa 312.

Where there is substantial evidence tending to prove an essential fact pleaded, the supreme court will not disturb the action of the trial court in submitting such issuable fact to the jury upon proper instructions.

Mo.—Orblitt v. Bergfeld, 191 S.W. 998.

Will examine record

The supreme court, in determining whether an error in submitting issues justifies a new trial, will look at the whole record and read the verdict with reference to the trial.

N.C.—Cape Lookout Land Co. v. Maxwell, 96 S.E. 895, 176 N.C. 140.

13. Ill.—Julian Foundry Co. v. Fidelity & Cas. Co. of N. Y., 124 N.E.2d 48, 4 Ill.App.2d 301.

Mo.—White v. Scarritt, 111 S.W.2d 18, 341 Mo. 1004.

Tex.—Magnolia Coca Cola Bottling Co. v. Jordan, 78 S.W.2d 944, 124 Tex. 347, 97 A.L.R. 513.

Hodges v. Plasky, Civ.App., 300 S.W.2d 955, error refused no reversible error—Anderson - Berney Bldg. Co. v. Lowry, Civ.App., 143 S.W.2d 401, reversed on other grounds Lowry v. Anderson-Berney Bldg. Co., 161 S.W.2d 459, 139 Tex. 29—Dempster Mill Mfg. Co. v. Wiley, Civ.App., 131 S.W.2d 257, error dismissed, judgment correct—Consolidated Casualty Ins. Co. v. Fortenberry, Civ.App., 103 S.W.2d 1049, error refused.

4 C.J. p 1024 note 57.

14. Mass.—Lemay v. Springfield St. R. Co., 96 N.E. 79, 210 Mass. 63, 37 L.R.A.,N.S., 43.

4 C.J. p 1024 note 58.

15. N.C.—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478—Peel v. Calais, 31 S.E.2d 440, 224 N.C. 421.

Tex.—Mathis v. State, Civ.App., 258 S.W.2d 200, error refused no reversible error—Van Sickle v. Roberson, Civ.App., 68 S.W.2d 530.

4 C.J. p 1024 note 59.

16. Md.—Washington, B. & A. Electric R. Co. v. Weldon, 97 A. 637, 128 Md. 318.

Mo.—Brown v. Payne, 264 S.W.2d 341.

S.C.—Comer v. Atlantic Coast Line R. Co., 90 S.E. 188, 105 S.C. 480.

4 C.J. p 1025 note 67.

17. Neb.—Live Stock Nat. Bank v. Bragonier, 153 N.W. 504, 98 Neb. 506.

Tex.—Colorado County v. J. M. English Truck Line, Civ.App., 265 S.W.2d 865, error refused no reversible error—San Antonio Hermann Sons Home Ass'n v. Harvey, Civ.App., 256 S.W.2d 906, error refused no reversible error—St. Louis, Southwestern Ry. Co. of Tex. v. United Transports, Civ.App., 232 S.W.2d 241, error dismissed—Lancaster v. Browder, Civ.App., 243 S.W. 625, affirmed, Com.App., 256 S.W. 905—O'Farrell v. O'Farrell, 119 S.W. 899, 56 Tex.Civ.App. 51.

18. Tex.—Texas & N. O. R. Co. v. Blake, Civ.App., 175 S.W.2d 683, error refused—Texas Employers' Ins. Ass'n v. Clack, Civ.App., 112 S.W.2d 526, affirmed 132 S.W.2d 399, 134 Tex. 151—Miller v. Fenner, Beane & Ungerleider, Civ. App., 89 S.W.2d 506, error dismissed—Texas Mut. Life Ins. Ass'n v. Adams, Civ.App., 77 S.W.2d 581—Dunning v. Badger, Civ.App., 74 S.W.2d 151—Texas Employers' Ins. Ass'n v. Burnett, Civ.App., 72 S. W.2d 952—Evans v. Hartman, Civ. App., 286 S.W. 326—Davis v. Cochran, Civ.App., 275 S.W. 423.

4 C.J. p 1024 note 61.

19. Ark.—Bartlett v. Yochum, 245 S.W. 27, 155 Ark. 626—St. Louis, I. M. & S. Ry. Co. v. Jackson, 177 S. W. 33, 118 Ark. 391, L.R.A.1915E 668.

Colo.—Squire v. Hill, 66 P.2d 822, 100 Colo. 226—Cookman v. Caldwell, 170 P. 952, 64 Colo. 206.

Ill.—Aftalion v. Stauffer, 119 N.E. 981, 284 Ill. 54.

Halloran v. Chicago & N. W. Ry. Co., 63 N.E.2d 670, 327 Ill.App. 217.

Iowa.—Fiske-Marshall Mfg. Co. v. Rabus & Toeller, 191 N.W. 90, 194 Iowa 1193—Killeen v. Greve, 166 N.W. 731, 182 Iowa 1382.

Kan.—Angell v. Chicago, R. I. & P. Ry. Co., 156 P. 763, 97 Kan. 688, rehearing denied 157 P. 1196, 98 Kan. 268.

Mich.—Quayle v. Billings, 222 N.W. 91, 244 Mich. 649—Thayer v. Thayer, 154 N.W. 32, 188 Mich. 261.

Minn.—Manos v. New York Tea Co., 269 N.W. 839, 198 Minn. 347.

Miss.—Hood v. Moffett, 69 So. 664, 109 Miss. 757, L.R.A.1916B 622, Ann.Cas.1917E 410.

Mo.—Thomure v. St. Louis & S. F. R. Co., 177 S.W. 708, 191 Mo.App. 640.

N.Y.—O'Neil v. Lehigh Valley R. Co., 158 N.Y.S. 530, 172 App.Div. 28—Cornell v. Standard Oil Co., 86 N. Y.S. 633, 91 App.Div. 345.

N.C.—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478—Lewis v. Hunter, 193 S.E. 814, 212 N.C. 504—Creech v. Sovereign Camp, W. O. W., 191 S. E. 840, 211 N.C. 658—Royal v. Pope & Parish, 98 S.E. 599, 177 N. C. 206—Rudisill v. Whitener, 63 S.E. 101, 149 N.C. 439—Hayes v. Southern R. Co., 53 S.E. 847, 141 N.C. 195.

Tex.—Whited v. Powell, 285 S.W.2d 364—Collins v. Smith, 175 S.W.2d 407, 142 Tex. 36.

West Texas Coaches v. Madi, Com.App., 26 S.W.2d 199.

Grady v. Dallas Ry. & Terminal Co., Civ.App., 278 S.W.2d 282, error refused no reversible error—McCormick v. King, Civ.App., 268 S. W.2d 552, error refused no reversible error—City Transp. Co. of Dallas v. Davis, Civ.App., 257 S.W.2d 476, error refused no reversible error—Texas Emp. Ins. Ass'n v. Hudson Engineering Corp., Civ. App., 245 S.W.2d 523—Sunset Motor Lines v. Blasingame, Civ.App., 245 S.W.2d 288, error dismissed—Missouri-K.-T. R. Co. v. Evans, Civ.App., 243 S.W.2d 181, reversed on other grounds 250 S.W.2d 385, 151 Tex. 340—Dofner v. Branard, Civ.App., 236 S.W.2d 544, error refused no reversible error—Tripp v. Watson, Civ.App., 235 S.W.2d 677, error refused no reversible error—Louisiana & A. Ry. Co. v. Chapin, Civ.App., 225 S.W.2d 614, error refused—Dallas Ry. & Terminal Co. v. Orr, Civ.App., 210 S.W.2d 863, affirmed 215 S.W.2d 862, 147 Tex. 383—Harrison v. Southwest Coaches, Civ.App., 207 S.W.2d 159—Blue Bonnet Life Ins. Co. v. Connaway, Civ.App., 183 S.W.2d 1015—McGregor Milling & Grain Co. v. Waren, Civ.App., 175 S.W.2d 476, error refused—Hranicky v. Trojanowsky, Civ.App., 153 S.W.2d 649, error refused—International-Great Northern R. Co. v. Acker, Civ.App., 128 S.W.2d 506, error dismissed, judgment correct—South Texas Coaches v. Woodard, Civ. App., 123 S.W.2d 395—City of Harlingen v. Scroggins, Civ.App., 121 S.W.2d 408, error dismissed—Wells v. Ford, Civ.App., 118 S.W.2d 420, error dismissed—Maryland Casualty Co. v. Crosby, Civ.App., 117 S.W.2d 524, error dismissed—Hom-Ond Food Stores v. Voigt, Civ.App., 115 S.W.2d 981, error dismissed—McClelland v. Mounger, Civ.App., 107 S.W.2d 901, error dismissed by agreement—E. L. Mar-

the evidence on another issue which rendered immaterial the issue improperly submitted.[20]

The rule with respect to harmless error has also been applied where the submission of the issue was favorable to the party complaining;[21] where the evidence relating to the question submitted was undisputed,[22] although on this point it has also been held to the contrary;[23] where the finding on the issue improperly submitted was against the party in whose behalf it was submitted;[24] where no judg-

tin, Inc. v. Kyser, Civ.App., 104 S.W.2d 592, error dismissed—Traders & General Ins. Co. v. Childers, Civ.App., 95 S.W.2d 461, error dismissed—Yellow Cab Co. v. Treadwell, Civ.App., 87 S.W.2d 276—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072—Citizens' Mut. Life Ins. Ass'n v. Miles, Civ.App., 77 S.W.2d 717—Austin Bridge Co. v. Shaw, Civ.App., 73 S.W.2d 547—Lem Smith & Co. v. Sweatt, Civ.App., 72 S.W.2d 313—Mahone v. Bowman, Civ.App., 70 S.W.2d 323—L. E. Whitham & Co. v. Allen, Civ.App., 64 S.W.2d 1024—Thweatt v. Ocean Accident & Guarantee Corporation, Civ.App., 62 S.W.2d 250—Dallas Ry. & Terminal Co. v. Wells, Civ.App., 60 S.W.2d 485—McMath Co. v. Staten, Civ.App., 60 S.W.2d 290—Amberson v. Paramount Famous Lasky Corporation, Civ.App., 59 S.W.2d 875—Scottino v. Ledbetter, Civ.App., 56 S.W.2d 282—Austin v. De George, Civ.App., 55 S.W.2d 585—Bivins v. Proctor, Civ.App., 49 S.W.2d 824, reversed on other grounds 80 S.W.2d 307, 125 Tex. 137—El Paso Electric Co. v. Portillo, Civ.App., 45 S.W.2d 404—Dixie Motor Coach Corporation v. Meredith, Civ.App., 45 S.W.2d 364—El Paso Electric Co. v. Hedrick, Civ.App., 39 S.W.2d 128, reversed on other grounds, Com.App., 60 S.W.2d 761—Stowe v. Wooten, Civ.App., 37 S.W.2d 1055, affirmed, Com.App., 62 S.W.2d 67—Bailey v. Woodrum Truck Lines, Civ.App., 36 S.W.2d 1090, affirmed Woodrum Truck Lines v. Bailey, Com.App., 57 S.W.2d 92—St. Louis Southwestern Ry. Co. of Texas v. Larkin, Civ.App., 34 S.W.2d 693—Northern Texas Traction Co. v. Thetford, Civ.App., 28 S.W.2d 906, modified on other grounds, Com.App., 44 S.W.2d 902—J. Lee Vilbig & Co. v. Lucas, Civ.App., 23 S.W.2d 516—Wortham v. Bull, Civ.App., 19 S.W.2d 211—Wichita Falls, R. & F. W. Ry. Co. v. Crawford, Civ.App., 19 S.W.2d 166—Western Union Telegraph Co. v. Rutledge, Civ.App., 15 S.W.2d 207, reversed on other grounds, Com.App., 15 S.W.2d 210—Galveston, H. & S. A. Ry. Co. v. Wells, Civ.App., 15 S.W.2d 46, affirmed 50 S.W.2d 247, 121 Tex. 310—Shasta Oil Co. v. Halliburton Oil Well Cementing Co., Civ.App., 10 S.W.2d 597—Texas Electric Ry. Co. v. Texas Employers' Ins. Ass'n, Civ.App., 9 S.W.2d 185—Wichita Valley Ry. Co. v. Williams, Civ.App., 6 S.W.2d 439—Golden v. Wilder, Civ.App., 4 S.W.2d 140—Northern Texas Traction Co. v. Bryan, Civ.App., 299 S.W. 325—Jackson v. E. L. Rice & Co., Civ.App., 295 S.W. 352—Russell v. Bailey, Civ.App., 290 S.W. 1108—Davis v. Cochran, Civ.App., 275 S.W. 423—Chicago, R. I. & G. Ry. Co. v. Steele, Civ.App., 264 S.W. 503—Weatherford, M. W. & N. W. Ry. Co. v. Baucom, Civ.App., 262 S.W. 823—Strickel v. Brownfield State Bank, Civ.App., 257 S.W. 678—Schaff v. Beale, Civ.App., 250 S.W. 757—White v. Bell, Civ.App., 242 S.W. 1082—Panhandle & S. F. Ry. Co. v. Haywood, Civ.App., 227 S.W. 347, error refused—Baker v. Streater, Civ.App., 221 S.W. 1039, dismissed for want of jurisdiction—Gulf, C. & S. F. Ry. Co. v. Scripture, Civ.App., 210 S.W. 269, reversed on other grounds Pullman Co. v. Gulf, C. & S. F. R. Co., Com.App., 231 S.W. 741—Dubois v. Lowery, Civ.App., 205 S.W. 858, error refused—Ft. Worth & D. C. Ry. Co. v. Decatur Cotton Seed Oil Co., Civ.App., 193 S.W. 392—Houston Oil Co. of Texas v. Stepney, Civ.App., 187 S.W. 1078, error refused—San Antonio & A. P. Ry. Co. v. Jaramilla, Civ.App., 180 S.W. 1126—Texas & P. Ry. Co. v. Eddleman, Civ.App., 175 S.W. 775—Memphis Coffin Co. v. Patton, Civ.App., 106 S.W. 697—Texas, etc., R. Co. v. Prude, 86 S.W. 1046, 39 Tex.Civ.App. 144.

Utah.—Davis v. Heiner, 181 P. 587, 54 Utah 428.

Wis.—Hagen v. Thompson, 29 N.W.2d 515, 251 Wis. 484.

4 C.J. p 1024 note 62.

Two items of damage

Any error in submitting both of two items of damage to the jury for lack of evidence to support one of them was harmless, where there was ample evidence as to the other to sustain a recovery to the amount of the verdict.

Wash.—Miller v. Eastern Ry. & Lumber Co., 146 P. 171, 84 Wash. 31.

20. N.C.—Cleveland Mill & Power Co. v. Richards, 167 S.E. 815, 204 N.C. 772.

Tex.—Houston & T. C. Ry. Co. v. Roberts, Civ.App., 201 S.W. 674, modified on other grounds 206 S.W. 382, error refused.

4 C.J. p 1025 note 63.

21. Ark.—White River Levee Dist. v. Beeman, 245 S.W.2d 807, 219 Ark. 935.

Ind.—Supreme Tribe of Ben Hur v. Bastian, 151 N.E. 346, 85 Ind.App. 327.

Iowa.—Cunningham v. Court, 82 N.W.2d 292.

Ky.—Dixon v. Mowbray & Robinson Lumber Co., 19 S.W.2d 973, 230 Ky. 303.

Mich.—Pratt v. Duncan, 171 N.W. 337, 204 Mich. 632—Slider v. Pere Marquette R. Co., 161 N.W. 961, 194 Mich. 581—Cutler v. Spens, 158 N.W. 224, 191 Mich. 603.

Mo.—Boesel v. Wells Fargo & Co., 169 S.W. 110, 260 Mo. 463.

Pa.—Pennsylvania R. Co. v. Josephine Furnace & Coke Co., 93 A. 22, 247 Pa. 99.

Esper v. Northwestern Nat. Ins. Co. of Milwaukee, Wis., 173 A. 724, 113 Pa.Super. 243.

4 C.J. p 1025 note 64.

22. Iowa.—Janvrin v. Broe, 33 N.W.2d 427, 239 Iowa 977.

Mich.—McKimmy v. Conductors Protective Assur. Co., 235 N.W. 242, 253 Mich. 521.

Mo.—Grubb v. Kansas City Rys. Co., 230 S.W. 675, 207 Mo.App. 16.

Tex.—Dofner v. Branard, Civ.App., 236 S.W.2d 544, error refused no reversible error—Guffey v. Collier, Civ.App., 203 S.W.2d 812—Wentworth v. Collins, Civ.App., 115 S.W.2d 442, error dismissed—Maryland Casualty Co. v. Frizzell, Civ.App., 58 S.W.2d 135—American Nat. Ins. Co. v. Callahan, Civ.App., 51 S.W.2d 1083, affirmed 81 S.W.2d 504, 125 Tex. 222—Texas & P. Ry. Co. v. Hughes, Civ.App., 192 S.W. 1091, error refused—St. Louis Southwestern Ry. Co. of Texas v. McMichael, Civ.App., 191 S.W. 186, error refused.

4 C.J. p 1025 note 65.

23. Mont.—Davidson v. Stagg, 22 P.2d 152, 94 Mont. 272.

24. Ark.—Voss v. Arthurs, 195 S.W. 680, 129 Ark. 143—Pine Bluff, S. & S. Ry. Co. v. Leatherwood, 175 S.W. 1184, 117 Ark. 524.

Ind.—Chesapeake & O. Ry. Co. of Indiana v. Jordan, 114 N.E. 461, 63 Ind.App. 365.

Kan.—Terleski v. Carr Coal Mining & Mfg. Co., 173 P. 8, 103 Kan. 89.

N.C.—Newton v. Brassfield, 152 S.E. 499, 198 N.C. 536.

Okl.—Hanover Fire Ins. Co. v. Eisman, 146 P. 214, 45 Okl. 639, Ann.Cas.1918D 288.

Tenn.—Gulf Compress Co. v. Insurance Co. of Pennsylvania, 167 S.W. 859, 129 Tenn. 586—Banks v. Robinson, Civ.App., 289 S.W.2d 844

ment was rendered on the issue;[25] where no other determination than that reached by the jury was possible;[26] where the error was cured by instructions of the court;[27] or where the party in whose behalf the issue was submitted was required to remit a sum sufficient to cover the item submitted by the issue.[28]

§ 1760. Submission of Questions of Law

Although the submission of an issue of law to the jury is erroneous, it is not ground for reversal unless it is prejudicial to the complaining party.

In the absence of prejudice resulting to appellant, the erroneous submission of questions of law to the jury does not constitute ground for reversal,[29]

—Grady v. Dallas Ry. & Terminal Co., Civ.App., 278 S.W.2d 282, error refused no reversible error—Morris v. Texas & N. O. R. Co., Civ. App., 269 S.W.2d 565, error refused no reversible error—Valdez v. Yellow Cab Co., Civ.App., 260 S.W.2d 715—Traders & General Ins. Co. v. Garry, Civ.App., 118 S.W.2d 340, affirmed 143 S.W.2d 370, 135 Tex. 290—Southern Old Line Life Ins. Co. v. Mims, Civ.App., 101 S.W. 2d 396, error dismissed—Anderegg v. Anderegg, Civ.App., 67 S.W.2d 1074—Texas Employers' Ins. Ass'n v. Hilderbrandt, Civ.App., 62 S.W. 2d 209—Amberson v. Paramount Famous Lasky Corporation, Civ. App., 59 S.W.2d 875—Galveston, H. & S. A. Ry. Co. v. Burr, Civ.App., 291 S.W. 299—Slaughter & Veal v. Schneider, Civ.App., 289 S.W. 414—Newberry v. Johnson, Civ. App., 274 S.W. 667—Panhandle & S. F. Ry. Co. v. Haywood, Civ.App., 227 S.W. 347, error refused—Texas & Pacific Coal Co. v. Sherbley, Civ. App., 212 S.W. 758—Houston Chronicle Pub. Co. v. Wegner, Civ. App., 182 S.W. 45—Hamilton v. Fireman's Fund Ins. Co., Civ.App., 177 S.W. 173.

4 C.J. p 1024 note 60, p 1025 note 66.

25. Ark.—Jonesboro Trust Co. v. Beaty, 199 S.W. 73, 133 Ark. 599.

Pa.—Esgro v. Gibbons, 82 A.2d 318, 169 Pa.Super. 217.

Tex.—Ames v. Herrington, Civ.App., 139 S.W.2d 183, error dismissed, judgment correct—Wood v. Williams, Civ.App., 46 S.W.2d 332.

26. Mich.—Schneider v. Shepherd, 158 N.W. 182, 192 Mich. 82, L.R.A. 1916F 399.

4 C.J. p 1025 note 68.

Same judgment required as matter of law

Tex.—Cassel v. West, Civ.App., 98 S.W.2d 437, error refused.

27. Ill.—Gore v. O'Keefe Bros. Co., 289 Ill.App. 163.

Mo.—Mackey v. First Nat. Bank, App., 293 S.W. 66.

N.C.—Stadiem v. Harvell, 179 S.E. 448, 208 N.C. 103—Henderson v. Atlantic Coast Line R. Co., 88 S.E. 626, 171 N.C. 397.

Tex.—Gosch v. Vrana, Civ.App., 167 S.W. 757.

4 C.J. p 1025 note 69.

28. Ga.—Davis v. Potts, 100 S.E. 231, 24 Ga.App. 184.

Mich.—Fabbro v. Soderstrom, 233 N. W. 378, 252 Mich. 455.

Mo.—Ott v. Moore, App., 20 S.W.2d 166.

Pa.—Jiles v. Jiles, 64 Pa.Super. 565.

Tex.—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error.

4 C.J. p 1025 note 70.

29. Ark.—O'Bar v. Hight, 277 S.W. 533, 169 Ark. 1008.

Cal.—Sutter v. Associated Seed Growers, 88 P.2d 144, 31 C.A.2d 543—Mace v. Watanabe, 87 P.2d 893, 31 C.A.2d 321.

Ga.—J. R. Harris & Co. v. P. E. Vallee & Co., 116 S.E. 642, 29 Ga.App. 769—Port Wentworth Terminal Corporation v. Leavitt, 110 S.E. 686, 28 Ga.App. 82.

Ill.—Gannon v. Newman, 183 Ill.App. 109.

Ky.—J. B. Colt Co. v. Berry, 290 S. W. 1059, 218 Ky. 119.

Md.—Murrell v. Culver, 118 A. 803, 141 Md. 349.

Minn.—Davis v. Newcombe Oil Co., 281 N.W. 272, 203 Minn. 295—In re Marttinen's Estate, 214 N.W. 469, 171 Minn. 475.

Mo.—**Corpus Juris Secundum quoted in** Webb-Boone Paving Co. v. State Highway Commission, 169 S.W.2d 336, 337, 350 Mo. 896—Abbott v. City of Senath, 243 S.W. 641—McIntyre v. St. Louis & San Francisco Ry. Co., 227 S.W. 1047, 286 Mo. 234, certiorari denied St. Louis-San Francisco R. Co. v. McIntyre, 41 S. Ct. 376, 255 U.S. 573, 65 L.Ed. 792.

Thompson v. Fehlig Bros. Box & Lumber Co., App., 155 S.W.2d 279—Hellmann v. Massmann, App., 53 S.W.2d 1069—Phelps Stone & Supply Co. v. Norton, 52 S.W.2d 413, 227 Mo.App. 268—Linneman v. Hawkins, App., 27 S.W.2d 1046—Fitzwilliams v. Northwestern Trust Co., App., 10 S.W.2d 334—Lehmer v. Smith, 284 S.W. 167, 220 Mo.App. 251—Levering Inv. Co. v. Lewis, 208 S.W. 874, 200 Mo. App. 679—Carson v. Blodgett Const. Co., 174 S.W. 447, 189 Mo. App. 120.

N.J.—Mullen v. Central R. Co. of New Jersey, 162 A. 424, 109 N.J. Law 414—Weidman Silk Dyeing Co. v. East Jersey Water Company, Sup., 91 A. 338, reversed on other grounds 96 A. 1103, 88 N.J. Law 400.

N.Y.—De Angelis v. White-All Corp., 77 N.Y.S.2d 315, 273 App.Div. 873, reargument denied 78 N.Y.S.2d 560, 273 App.Div. 893—Hopewell Bldg. Co. v. Callan, 193 N.Y.S. 504, 200 App.Div. 588.

Ohio.—Community Traction Co. v. Konte, 172 N.E. 533, 35 Ohio App. 361, affirmed 172 N.E. 442, 122 Ohio St. 514—F. D. Lawrence Electric Co. v. Enterprise Lumber Co., 162 N.E. 434, 28 Ohio App. 30—Wiener v. Krumroy, App., 153 N.E. 859.

S.C.—Hampton v. Supreme Lodge, K. P., Courts of Calanthe, Pride of Columbia No. 55, 159 S.E. 923, 161 S.C. 540.

Tenn.—Palatine Ins. Co. v. E. K. Hardison Seed Co., App., 303 S.W. 2d 742.

Tex.—Leal v. Leal, Com.App., 14 S. W.2d 797.

City of Dallas v. Leake, Civ. App., 300 S.W.2d 135, error refused no reversible error—Ramm v. Ramm, Civ.App., 294 S.W.2d 174, error refused no reversible error—Johnson v. Allen, Civ.App., 285 S. W.2d 771—American Cas. & Life Co. v. Mason, Civ.App., 244 S.W.2d 691, error refused no reversible error—Walton v. Smulcer, Civ.App., 222 S.W.2d 918—Barnes v. Archer, Civ.App., 77 S.W.2d 883—Vculek v. Taylor, Civ.App., 63 S.W.2d 893—Dines Bldg. Co. v. Cherry, Civ.App., 49 S.W.2d 913—Magnolia Compress & Warehouse Co. v. Davidson, Civ. App., 38 S.W.2d 634—Texas & Pac. Ry. Co. v. Kelly, Civ.App., 35 S.W. 2d 749, reversed on other grounds, Com.App., 51 S.W.2d 299, certiorari denied Kelly v. Texas & P. R. Co., 53 S.Ct. 90, 287 U.S. 644, 71 L.Ed. 557.

Va.—Conway v. American Nat. Bank of Danville, 131 S.E. 803, 146 Va. 357—M. C. McCorkle & Son v. Kincaid, 93 S.E. 642, 121 Va. 546.

Wash.—Fordney v. King County, 115 P.2d 667, 9 Wash.2d 546.

W.Va.—Davis v. Panetta, 137 S.E. 656, 103 W.Va. 408.

Wis.—Central Lith. & Eng. Co. v. Moore, 43 N.W. 1124, 75 Wis. 170, 17 Am.S.R. 186, 6 L.R.A. 788.

4 C.J. p 1025 note 71.

Adopting verdict as opinion of court

Although the construction of an act establishing boundaries of school districts ought not to be submitted to the jury, such submission is not fatal where, after verdict, the court overruled a motion for new trial thus adopting the verdict of the jury as the opinion of the court.

Ky.—Board of Education of Somerset Public Schools v. Graded Com-

and if the court may or does ignore the answer of the jury to a question of law which has been submitted, the error in submitting the question is immaterial.[29.5]

Error in submitting a question of law to the jury is harmless where the jury decides the question correctly,[30] as for instance where the jury correctly construes a written instrument,[31] decree,[32] advertisement of an administrator's sale,[33] or statute,[34] or correctly decides the question of the sufficiency of certificates of acknowledgment,[35] the materiality of the alteration of a written instrument,[36] the existence of probable cause in a suit for malicious prosecution,[37] whether a railroad regulation is reasonable,[38] whether an attorney rendered legal services to a person,[38.5] the existence of a partnership[39] or agency,[40] or the sufficiency of proof offered to show the loss of an instrument.[41]

Error in submitting a question of law is also harmless where it gives appellant an additional chance for a favorable verdict;[42] where the court in denying a motion for new trial virtually held as

mon School Dist. No. 76, 180 S.W. 54, 167 Ky. 86.

Case disposed of as equitable

Plaintiff cannot complain of court's impaneling jury to try an apparent legal issue, where the case was finally disposed of as an equitable issue.

S.C.—Whetstone v. Dreher, 136 S.E. 209, 138 S.C. 169.

Libel and slander

Where a charge is actionable per se, defendant cannot complain that the question of its actionable quality is submitted to the jury.

N.Y.—Witcher v. Jones, 17 N.Y.S. 491, affirmed 33 N.E. 743, 137 N.Y. 599.

29.5 Ind.—Hinds v. McNair, 129 N.E.2d 553, 235 Ind. 34.

Tex.—Tucker v. Dougherty Roofing Co., Civ.App., 137 S.W.2d 884, error dismissed, judgment correct.

30. Ala.—Foster & Creighton Co. v. Box, 66 So.2d 746, 259 Ala. 474.

Cal.—Griffin v. Williamson, 290 P.2d 361, 137 C.A.2d 308.

Colo.—Heaton v. Nelson, 194 P. 614, 69 Colo. 320.

Conn.—Wallace v. New York, N. H. & H. R. Co., 121 A. 878, 99 Conn. 404—Wladyka v. City of Waterbury, 119 A. 149, 98 Conn. 305.

Ga.—Parks v. Hailey, 83 S.E. 100, 142 Ga. 391.

Lenox Drug Co. v. New England Jewelry Co., 85 S.E. 681, 16 Ga. App. 476.

Iowa.—First Nat. Bank v. Sweeny, 212 N.W. 333, 203 Iowa 35.

Kan.—Moore v. People's State Bank of Whitewater, 217 P. 299, 114 Kan. 100—Hull v. Prairie Queen Mfg. Co., 141 P. 592, 92 Kan. 538.

Ky.—Olive Hill Limestone Co. v. Gay-Coleman Const. Co., 51 S.W. 2d 465, 244 Ky. 822—Likens v. Pate, 169 S.W. 734, 160 Ky. 319.

Mass.—L. E. Fosgate Co. v. Spokane Valley Growers' Union, 160 N.E. 297, 263 Mass. 15.

Mich.—Longcor v. Detroit Homeopathic College, 178 N.W. 222, 210 Mich. 575.

Mo.—**Corpus Juris Secundum quoted in** Webb-Boone Paving Co. v. State Highway Commission, 169 S.W.2d 336, 337, 350 Mo. 896—Tate v. School Dist. No. 11 of Gentry County, 23 S.W.2d 1013, 324 Mo. 477, 70 A.L.R. 771.

Garrett v. Limes, App., 209 S.W. 295.

N.C.—Miller v. Johnston, 91 S.E. 593, 173 N.C. 62.

Okl.—Magnolia Petroleum Co. v. Pierce, 269 P. 1076, 132 Okl. 167, 61 A.L.R. 218.

Pa.—Hugee v. Pennsylvania R. Co., 101 A.2d 740, 376 Pa. 286—Schwartz v. Whelan, 145 A. 525, 295 Pa. 425, 65 A.L.R. 277—Murphy v. Philadelphia Rapid Transit Co., 132 A. 194, 285 Pa. 399.

Tenn.—Pruitt v. Williams, 106 S.W. 2d 892, 21 Tenn.App. 171.

Tex.—Martin v. Burcham, Civ.App., 203 S.W.2d 807—Supreme Forest Woodmen Circle v. Bryant, Civ. App., 109 S.W.2d 1091—Western Medical Arts Bldg. Corporation v. Bryan, Civ.App., 5 S.W.2d 862—Grubstake Inv. Ass'n v. Coyle, Civ. App., 269 S.W. 854—Lancaster v. Jarrett, Civ.App., 267 S.W. 518, certiorari denied Texas & P. Ry. Co. v. Jarrett, 46 S.Ct. 18, 269 U.S. 553, 70 L.Ed. 408.

Utah.—Baird v. Denver & R. G. R. Co., 162 P. 79, 49 Utah 58.

Wash.—Zappala v. Industrial Ins. Commission, 144 P. 54, 82 Wash. 314, L.R.A.1916A 295.

W.Va.—Carbon Fuel Co. v. Gregory, 48 S.E.2d 338, 131 W.Va. 494, 2 A.L.R.2d 1143—Roberts v. United Fuel Gas Co., 99 S.E. 549, 84 W.Va. 368.

Wis.—Fontaine v. Cooley, 162 N.W. 426, 165 Wis. 404.

4 C.J. p 1025 note 72—38 C.J. p 518 note 34.

31. Cal.—Stewart v. Erskine-Bolst, 226 P. 644, 66 C.A. 461.

Ga.—South Georgia Trust Co. v. Neal, 161 S.E. 815, 174 Ga. 24.

Iowa.—Riggs v. Gish, 205 N.W. 833, 201 Iowa 148—Gompert v. Frost, 177 N.W. 71, 188 Iowa 1039.

Ky.—Texas Granite Oil Co. v. Williams, 250 S.W. 818, 199 Ky. 146.

Mo.—**Corpus Juris Secundum quoted in** Webb-Boone Paving Co. v. State Highway Commission, 169 S.W.2d 336, 337, 350 Mo. 896.

Central Flour Mills Co. v. Gateway Milling Co., App., 213 S.W. 131.

N.J.—Booth v. Hartford Accident & Indemnity Co., 17 A.2d 591, 125 N.J.Law 601.

Okl.—Douthitt v. State Nat. Bank of Marlow, 142 P. 1009, 42 Okl. 676.

S.C.—Chatfield-Woods Co. v. Harley, 117 S.E. 539, 124 S.C. 280—Wheeler v. Wheeler, 96 S.E. 714, 111 S.C. 87.

Tenn.—Carter County v. Street, 252 S.W.2d 803, 36 Tenn.App. 166.

Vt.—Wood v. James, 106 A. 566, 93 Vt. 36.

Wash.—Norton v. City of Seattle, 194 P. 373, 115 Wash. 408—Flessher v. Carstens Packing Co., 179 P. 100, 105 Wash. 694.

4 C.J. p 1026 note 73.

32. Mo.—Charles v. St. Louis, etc., R. Co., 101 S.W. 680, 124 Mo.App. 293.

33. Ga.—Parks v. Hailey, 83 S.E. 100, 142 Ga. 391.

34. Wash.—Zappala v. Industrial Ins. Commn., 144 P. 54, 82 Wash. 314.

35. Tex.—Sullivan v. Fant, Civ.App., 160 S.W. 612.

36. Iowa.—Hessig-Ellis Drug Co. v. Todd-Baker Drug Co., 143 N.W. 569, 161 Iowa 535.

37. N.Y.—Pangburn v. Bull, 1 Wend. 345.

38 C.J. p 518 notes 34, 35.

38. Mo.—Chilton v. St. Louis, etc., R. Co., 21 S.W. 457, 114 Mo. 88, 19 L.R.A. 269.

38.5 Cal.—Sloan v. Stearns, 290 P. 2d 382, 137 C.A.2d 289.

39. N.Y.—Cumpston v. McNair, 1 Wend. 457.

40. Ind.—Meridian Mut. Fire Ins. Co. v. Deffendoll, 129 N.E. 253, 74 Ind.App. 501.

41. N.C.—Ellison v. Rix, 85 N.C. 77.

42. Mo.—Tate v. School Dist. No. 11 of Gentry County, 23 S.W.2d 1013, 324 Mo. 477, 70 A.L.R. 771.

4 C.J. p 1026 note 83—56 C.J. p 131 note 99.

matter of law that appellee was entitled to recover;[43] where the questions of law so submitted were not in controversy on the trial;[44] where the verdict of the jury is merely advisory;[45] or where judgment should have been rendered by the court of a verdict directed against the complaining party.[46] It has also been held that an instruction which appears to submit to the jury as a question of fact matter appertaining to a contract is not erroneous where the terms of the contract were conceded.[47]

On the other hand, error in submitting a question of law to the jury may be ground for reversal,[47.5] as where the jury does not decide the question correctly,[48] and error in submitting the construction of a written instrument to the jury is ground for reversal where it cannot be determined how the jury construed the instrument.[49] Furthermore, where, in addition to the submission of a question of law to the jury, the case is submitted on an erroneous theory, the causes which produced the verdict must be largely a matter of conjecture, and the judgment should be reversed.[50]

§ 1761. Failure or Refusal to Submit Issue, or Withdrawal of Issue

Error on the part of the trial court in failing to submit material issues to the jury, or in withdrawing material issues which have been submitted, is ground for reversal only if prejudice results.

If the trial court fails or refuses to submit material issues to the jury, or withdraws material issues which have been submitted, it is ground for reversal if prejudice results to the complaining party;[51] but it is very generally held that failure

43. Mo.—Tate v. School Dist. No. 11 of Gentry County, supra.
4 C.J. p 1026 note 84.

44. Ill.—American Home Circle v. Eggers, 137 Ill.App. 595.

45. Mo.—Cockrell v. McIntyre, 61 S. W. 648, 161 Mo. 59.

46. Ark.—Farmers' Union Mercantile Co. v. Pinkerton, 194 S.W. 709, 128 Ark. 640.
Pa.—Dodson Coal Co. v. New Boston Land Co., 119 A. 173, 276 Pa. 452.

47. Md.—Oehler v. Conrad Schopp Fruit Co., 142 S.W. 811, 162 Mo. App. 446.

47.5 Cal.—Baker v. Novak, 301 P.2d 257, 144 C.A.2d 514.
Ill.—Smith v. Solger, 47 N.E.2d 356, 317 Ill.App. 656.
N.J.—Utility Const. Co. v. Borough of South River, 52 A.2d 802, 135 N.J.Law 488, affirmed 57 A.2d 389, 136 N.J.Law 633.
N.Y.—Hochstim v. Grossman, 16 N. Y.S.2d 961, 258 App.Div. 445—Szalay v. New York American, 4 N.Y.S.2d 620, 254 App.Div. 249.
Ohio.—Plost v. Avondale Motor Car Co., 8 N.E.2d 441, 55 Ohio App. 22.
Or.—Kuhnhausen v. Stadelman, 148 P.2d 239, 174 Or. 290, rehearing denied 149 P.2d 168, 174 Or. 290.

48. Cal.—Huebotter v. Follett, 167 P.2d 193, 27 C.2d 765.
Chalmers v. Ebbert, 275 P.2d 629, 128 C.A.2d 374.
Colo.—Marshall v. Thorson, 197 P. 754, 70 Colo. 75.
Idaho.—Jackman v. Hamersley, 240 P.2d 829, 72 Idaho 301.
Ill.—Apitz v. Supreme Lodge Knights and Ladies of Honor, 196 Ill.App. 278, affirmed 113 N.E. 63, 274 Ill. 196, L.R.A.1917A 183.
Ind.—Burroughs v. Southern Colonization Co., 173 N.E. 716, 96 Ind. App. 93.
Mass.—Horan v. Boston Elevated Ry. Co., 129 N.E. 355, 237 Mass. 245.
N.Y.—Mullen v. U. S. Casualty Co., 231 N.Y.S. 331, 225 App.Div. 719.
William Anderson Textile Mfg. Co. v. Rosenman, 178 N.Y.S. 380.
Ohio.—Schickling v. Post Pub. Co., 155 N.E. 143, 115 Ohio St. 589.
Ogden v. Transcontinental Airport of Toledo, 177 N.E. 536, 39 Ohio App. 301.
38 C.J. p 518 note 39.

49. N.Y.—Northrup v. Porter, 44 N. Y.S. 814, 17 App.Div. 80.

50. Neb.—Hinman v. F. C. Austin Mfg. Co., 90 N.W. 934, 65 Neb. 187.

51. Ariz.—Costello v. Cunningham, 172 P. 664, 19 Ariz. 512.
Ark.—E. L. Bruce Co. v. Yax, 199 S. W. 535, 135 Ark. 480.
Cal.—Langley v. Pacific Gas & Elec. Co., 262 P.2d 846, 41 C.2d 655.
Norton v. Futrell, App., 308 P. 2d 887—Pennington v. Southern Pac. Co., 304 P.2d 22, 146 C.A.2d 605—Minehart v. Southern Pac. Co., 288 P.2d 999, 136 C.A.2d 486—Pacific Elec. Ry. Co. v. Dewey, 212 P.2d 255, 95 C.A.2d 69—Pennix v. Winton, 143 P.2d 940, 61 C.A.2d 761, hearing denied 145 P.2d 561, 61 C.A.2d 761.
Fla.—Holley v. Kelley, 91 So.2d 862—M. F. Comer Bridge & Foundation Co. v. Sheeran, 161 So. 60, 119 Fla. 543.
Ga.—Georgia R. R. & Banking Co. v. Cook, 95 S.E.2d 703, 94 Ga.App. 650.
Ill.—McCray v. Illinois Cent. R. Co., 139 N.E.2d 817, 12 Ill.App.2d 425—Arbogast v. Pennsylvania R. Co., 99 N.E.2d 403, 343 Ill.App. 465.
Iowa.—Lauman v. Dearmin, 69 N.W. 2d 49, 246 Iowa 697.
Ky.—Harmount & Woolf Tie Co. v. Swain, 24 S.W.2d 295, 232 Ky. 639.
Me.—Glazier v. Tetrault, 90 A.2d 809, 148 Me. 127.
Mass.—Parsons v. Dwight State Co., 17 N.E.2d 197, 301 Mass. 324, 118 A.L.R. 1099.
Mich.—Schattilly v. Yonker, 81 N.W. 2d 343, 347 Mich. 660—Gapske v. Hatch, 81 N.W.2d 337, 347 Mich. 648—Kolatz v. Kelly, 69 N.W.2d 649, 244 Minn. 163.
Mo.—Greer v. Clark, App., 96 S.W.2d 513—Smith v. Chicago, R. I. & P. Ry. Co., 71 S.W.2d 842, 228 Mo.App. 600—Dahler v. Meistrell, 24 S.W. 2d 238, 224 Mo.App. 815.
Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655—Zorinsky v. American Legion, Omaha Post No. 1, 79 N.W.2d 172, 163 Neb. 212—Harsche v. Czyz, 61 N.W.2d 265, 157 Neb. 699.
N.Y.—Stellato v. Flagler Park Estates, Inc., 159 N.Y.S.2d 93, 3 A. D.2d 680—James A. Leiter Sons v. Rose, 3 N.Y.S.2d 224, 254 App.Div. 630.
N.C.—Jackson v. Joyner, 72 S.E.2d 589, 236 N.C. 259—Copening v. Winston Mut. Life Ins. Co., 29 S.E.2d 33, 224 N.C. 97—Barker v. Palmer, 8 S.E.2d 610, 217 N.C. 519—Campbell v. Peoples Sav. Bank & Trust Co., 200 S.E. 392, 214 N.C. 680—Caskey v. West, 186 S.E. 324, 210 N.C. 240—Stanback v. Haywood, 184 S.E. 831, 209 N.C. 798—Erskine v. Chevrolet Motor Co., 123 S.E. 193, 187 N.C. 826.
N.D.—Minneapolis Threshing Mach. Co. v. Huncovsky, 194 N.W. 830, 49 N.D. 1086.
Ohio.—Hozian v. Crucible Steel Casting Co., 9 N.E.2d 143, 132 Ohio St. 453, 112 A.L.R. 333.
Arnold v. Grimmeissen, App., 143 N.E.2d 615—Manchester v. Youngstown Sheet & Tube Co., App., 46 N.E.2d 780.
Okl.—Phillips v. Barker, 269 P.2d 337—Reinheimer v. Mays, 174 P. 752, reheard 182 P. 230, 75 Okl. 131—Webster v. Shawnee-Tecumseh Traction Co., 170 P. 1167, 69 Okl. 159.

or refusal to submit, or the withdrawal of issues, will not work a reversal where no prejudice results.[52]

This principle applies where no other verdict

Or.—Nordling v. Johnston, 283 P.2d 994, 205 Or. 315, rehearing denied 287 P.2d 420, 205 Or. 315—Howland v. Iron Fireman Mfg. Co., 213 P.2d 177, 188 Or. 230, rehearing denied 215 P.2d 380, 188 Or. 230.

Pa.—Thomas v. Mills, 130 A.2d 489, 388 Pa. 353.

Pekny v. Hrabosky, 161 A. 749, 106 Pa.Super. 393.

Tex.—Agnew v. Coleman County Elec. Co-op., 272 S.W.2d 877, 153 Tex. 587—Maryland Casualty Co. v. Brown, 115 S.W.2d 394, 131 Tex. 404.

Texas & Pac. Ry. Co. v. Hasting, Civ.App., 282 S.W.2d 758, error refused no reversible error—Coleman County Elec. Co-op. v. Agnew, Civ. App., 265 S.W.2d 911, affirmed Agnew v. Coleman County Elec. Co-op., 272 S.W.2d 877, 153 Tex. 587—Kuykendall v. Doose, Civ.App., 260 S.W.2d 435, error refused no reversible error—Ragsdale v. Lindsey, Civ.App., 254 S.W.2d 843, error refused no reversible error—Texas Power & Light Co. v. Evans, Civ.App., 225 S.W.2d 879—Edgar v. Schmidt, Civ.App., 221 S.W.2d 867—Southwestern Greyhound Lines v. Dickson, Civ.App., 219 S.W.2d 592—Mercer v. Evans, Civ.App., 173 S.W.2d 206—Southern Underwriters v. Waddell, Civ.App., 144 S.W.2d 637—Gillette Motor Transport v. Fine, Civ.App., 131 S.W.2d 817, error dismissed, judgment correct—Federal Underwriters Exchange v. Crow, Civ.App., 118 S.W.2d 1073, error dismissed—Gulf, C. & S. F. Ry. Co. v. Irick, Civ.App., 116 S.W.2d 1099, error dismissed—Johnson v. Smither, Civ.App., 116 S.W.2d 812, error dismissed—City of Corpus Christi v. McMurrey, Civ.App., 109 S.W.2d 366—Peckham v. Johnson, Civ.App., 98 S.W.2d 408, affirmed 120 S.W.2d 786, 132 Tex. 148, 120 A.L.R. 720—Connecticut General Life Ins. Co. v. Warner, Civ.App., 94 S.W.2d 514, error refused—St. Louis Southwestern Ry. Co. of Texas v. Lawrence, Civ. App., 91 S.W.2d 434—American Nat. Ins. Co. v. Briggs, Civ.App., 90 S.W.2d 602, error dismissed—San Jacinto Trust Co. v. Goodwin, Civ.App., 88 S.W.2d 525—Lewis v. Pitts, Civ.App., 275 S.W. 473—Gray v. Hafale, Civ.App., 273 S.W. 647—Lipscomb v. Michaelias, Civ. App., 255 S.W. 630.

Wis.—McAleavy v. Lowe, 49 N.W.2d 487, 259 Wis. 463—Bohren v. Lautenschlager, 1 N.W.2d 792, 239 Wis. 400—Hunter v. Sirianni Candy Co., 288 N.W. 766, 233 Wis. 130—Burant v. Studzinski, 282 N.W. 128, 230 Wis. 455—Waters v. Markham, 235 N.W. 797, 204 Wis. 332—Bennett v. Nebel, 226 N.W. 395, 199 Wis. 334—Kile v. Anderson, 196 N.W. 762, 182 Wis. 467.

Wyo.—Merchants' Nat. Bank of Omaha, Neb., v. Ayers, 259 P. 804, 37 Wyo. 136.

4 C.J. p 1027 note 90.

Request not required

(1) Where trial court erroneously withdrew from jury question whether defendant was negligent, fact that defendant requested no such issue was immaterial and new trial would be ordered on appeal.

Tex.—Sears, Roebuck & Co. v. Kengla, Civ.App., 266 S.W.2d 548, error refused no reversible error.

(2) A trial court has duty to instruct jury on every issue presented by pleadings and evidence, whether or not requested to do so, and failure to do so constitutes prejudicial error.

Neb.—Maska v. Stoll, 81 N.W.2d 571, 163 Neb. 857.

Right to have issues presented

A litigant is entitled to have all issues, pleaded and raised by the evidence, affirmatively presented to jury, with his right to their submission determined before verdict and not afterwards.

Tex.—State v. Schlick, 179 S.W.2d 246, 142 Tex. 410.

Error not cured

Where issue is raised and its submission requested, error in refusing to submit it is not cured or rendered harmless by findings of jury on other issues that were submitted which have effect of negativing favorable answer to requested issue.

Tex.—Byerley v. Bauer, Civ.App., 99 S.W.2d 641, error dismissed.

Opportunity for knowing facts

In close cases it is reversible error to charge on only portion of code provision relating to witnesses' means and opportunity for knowing facts to which they testified and to fail to charge all of it.

Ga.—Sheridan v. Haggard, 99 S.E. 2d 163, 95 Ga.App. 792.

52. Ala.—Kendrick v. Birmingham Southern R. Co., 48 So.2d 320, 254 Ala. 313—Erwin v. Birmingham Ry., Light & Power Co., 76 So. 915, 200 Ala. 557.

Ariz.—Downs v. Sulphur Springs Val. Elec. Co-op., Inc., 297 P.2d 339, 80 Ariz. 286.

Ark.—Carter v. Montgomery, 296 S.W.2d 442, 226 Ark. 989—Kirkpatrick Finance Co. v. Stotts, 51 S.W. 2d 512, 185 Ark. 1089—Stroud v. Henderson, 284 S.W. 45, 171 Ark. 338.

Cal.—Hercules Powder Co. v. Automatic Sprinkler Corp. of America, App., 311 P.2d 907—MacLean v. City and County of San Francisco, App., 311 P.2d 158—Wilson v. Foley, App., 309 P.2d 97—Mortimer v. Martin, App., 308 P.2d 840—Coe v. Kings County Truck Line, 293 P.2d 462, 139 C.A.2d 372—McNulty v. Southern Pac. Co., 216 P.2d 534, 96 C.A.2d 841—Herbert v. Cassinelli, 166 P.2d 377, 78 C.A. 2d 277.

Conn.—Finnegan v. La Fontaine, 191 A. 337, 122 Conn. 561—Katsonas v. W. M. Sutherland Bldg. & Const. Co., 132 A. 553, 104 Conn. 54.

Fla.—Colonial Transfer Co. v. Southern Bell Tel. & Tel. Co., 88 So.2d 289—Phelps v. Gilbreth, 68 So.2d 360—Miller v. Scobie, 11 So.2d 892, 152 Fla. 328.

Ga.—Atlanta v. Alexander, 6 S.E. 25, 80 Ga. 637.

Ill.—Young v. McConnell, 110 Ill. 83.

Ind.—J. Woolley Coal Co. v. Tevault, 119 N.E. 485, 187 Ind. 171—J. Woolley Coal Co. v. Tevault, 118 N.E. 921, 187 Ind. 171.

Iowa.—Bohnsack v. Driftmier, 52 N.W.2d 79, 243 Iowa 383—Anderson v. Ft. Dodge, D. M. & S. R. Co., 226 N.W. 151, 208 Iowa 369—First Nat. Bank v. Schram, 211 N.W. 405, 202 Iowa 791—Whittington v. City of Bedford, 210 N.W. 460, 202 Iowa 442—Richardson v. Cheshire, 188 N.W. 146, 193 Iowa 930—First Bank of Marengo v. Athey, 174 N.W. 347, 188 Iowa 330—Anson v. Fobes, 169 N.W. 85, 184 Iowa 585—Christian v. City of Ames, 149 N.W. 616, 167 Iowa 468—Hunter v. Davis, 103 N.W. 373, 128 Iowa 216.

Kan.—Kiser v. Skelly Oil Co., 18 P. 2d 181, 136 Kan. 812—Forbes v. Madden, 158 P. 850, 98 Kan. 559—Murphree v. Anderson, 140 P. 880, 92 Kan. 370.

Ky.—Cotton States Life Ins. Co. v. Spencer, 295 S.W. 861, 220 Ky. 536—Ferguson v. Akers, 176 S.W. 1149, 165 Ky. 289.

Md.—Frazier v. Waterman S. S. Corp., 112 A.2d 221, 206 Md. 434.

Mich.—Marsh v. Barnard, 210 N.W. 478, 236 Mich. 471.

Miss.—Pearce v. Pierce, 58 So.2d 824, 214 Miss. 344—Ming v. City of Jackson, 31 So.2d 900, 202 Miss. 260.

Mo.—Melton v. St. Louis Public Service Co., 251 S.W.2d 663, 363 Mo. 474—Hodge v. St. Louis Union Trust Co., 261 S.W. 67.

Cable v. Metropolitan Life Ins. Co., 128 S.W.2d 1123, 233 Mo.App. 1093—Zemlick v. A. B. C. Auto Sales & Investment Co., App., 60 S.W.2d 649—Bagnall v. Frank Fehr Brewing Co., 221 S.W. 793, 203 Mo.App. 635.

Neb.—Stewart v. Spade Tp., 58 N.W.

could have been rendered on the evidence,[53] or sustained if rendered;[54] where the issues or questions are not material;[55] where there was no evidence to support them;[56] where the evidence was insuf-

2d 841, 157 Neb. 93—McQuin v. Missouri Pac. R. Corporation, 240 N.W. 515, 122 Neb. 423—Prairie Life Ins. Co. v. Heptonstall, 182 N.W. 483, 105 Neb. 829—Sacca v. Omaha & C. B. St. Ry. Co., 152 N.W. 315, 98 Neb. 73.

N.H.—American Employers Ins. Co. v. Wentworth, 5 A.2d 265, 90 N.H. 112.

N.Y.—Williams v. Boehan, 17 N.Y.S. 484, 60 N.Y.Super. 319.

N.C.—Metcalf v. Ratcliff, 4 S.E.2d 515, 216 N.C. 216—Kluttz v. Allison, 199 S.E. 395, 214 N.C. 379—Albritton v. Albritton, 185 S.E. 762, 210 N.C. 111—Mountain Park Institute v. Lovill, 153 S.E. 114, 198 N.C. 642—McNeill v. McGirt, 142 S.E. 217, 195 N.C. 370—Pierce v. Carlton, 114 S.E. 13, 184 N.C. 175—Barringer v. Faggart, 94 S.E. 523, 174 N.C. 768—Hall v. Piedmont Ry. & Electric Co., 90 S.E. 291, 172 N.C. 347—Bradley v. Ohio River, etc., R. Co., 36 S.E. 181, 126 N.C. 735—Jordan v. Farthing, 23 S.E. 244, 117 N.C. 181—Kimsey v. Munday, 17 S.E. 583, 112 N.C. 816—Smith v. Arthur, 15 S.E. 197, 110 N.C. 400—Horne v. People's Bank, 12 S.E. 840, 108 N. C. 109—Faircloth v. Isler, 75 N.C. 551.

Ohio.—Miller v. Loy, 140 N.E.2d 38, 101 Ohio App. 405—Ellis v. Horn, App., 120 N.E.2d 893—Meyer v. Renner Co., App., 109 N.E.2d 573—Fitzgerald v. Chemical Service Corp., 84 N.E.2d 754, 84 Ohio App. 423—Soukoup v. Republic Steel Corp., 66 N.E.2d 334, 78 Ohio App. 87—Richards v. Cleveland Jewish Orphan Home, 154 N.E. 61, 220 Ohio App. 475.

Okl.—Cook v. Black, 310 P.2d 774—Sample v. Campbell, 305 P.2d 1033.

Or.—Hunt v. Bishop, 229 P.2d 960, 191 Or. 541.

Pa.—Thomas v. Mills, 130 A.2d 489, 388 Pa. 353—Bisk Candy Co. v. Stout, 137 A. 612, 289 Pa. 369.

R.I.—Hulton v. Phaneuf, 132 A.2d 85—G. W. McNear, Inc. v. American & British Mfg. Co., 115 A. 709, 44 R.I. 190, certiorari denied American & British Mfg. Co. v. G. W. McNer, Inc., 42 S.Ct. 462, 258 U.S. 629, 66 L.Ed. 800—Heathcote v. Barbour, 98 A. 49, 39 R.I. 485.

S.C.—Knight v. Bennett, 121 S.E. 671, 128 S.C. 107.

Tenn.—Roach v. Franzle, 268 S.W.2d 118, 37 Tenn.App. 629.

Tex.—Lunsford v. City of Bryan, Civ. App., 292 S.W.2d 852, reversed on other grounds Sup., 297 S.W.2d 115—Coffey v. Fort Worth & D. Ry. Co., Civ.App., 285 S.W.2d 453—City of Austin v. Schmedes, Civ.App., 270 S.W.2d 442, modified on other grounds, 279 S.W.2d 326, 154 Tex. 416, 52 A.L.R.2d 680—Haynes B. Ownby Drilling Co. v. McClure, Civ.App., 264 S.W.2d 204, error refused no reversible error—Valdez v. Yellow Cab Co., Civ.App., 260 S.W.2d 715—Dreeben v. Sidor, Civ. App., 254 S.W.2d 908, error refused no reversible error—South Tex. Water Co. v. Bieri, Civ.App., 247 S.W.2d 268, error refused no reversible error—Jefferson County Drainage Dist. No. 7 v. Hebert, Civ. App., 244 S.W.2d 535, error refused no reversible error—Buss v. Shepherd, Civ.App., 240 S.W.2d 382—Yellow Cab Co. v. Pfeffer, Civ.App., 233 S.W.2d 964—Lincoln County Mut. Fire Ins. Co. v. Smith, Civ. App., 232 S.W.2d 637, error refused no reversible error—Meadolake Foods v. Estes, Civ.App., 218 S.W. 2d 862, error refused 219 S.W.2d 441, 148 Tex. 13—Dallas Hotel Co. v. Lackey, Civ.App., 203 S.W.2d 557, error refused no reversible error—Herrin v. Falcon, Civ.App., 198 S. W.2d 117, error refused no reversible error—Texas Employer's Ins. Ass'n v. Drayton, Civ.App., 173 S.W.2d 782, error refused—Jones v. Rainey, Civ.App., 168 S.W.2d 507, error refused—Bridwell v. Bernard, Civ.App., 159 S.W.2d 981, error refused—Myatt v. Elliott, Civ.App., 143 S.W.2d 205, error dismissed, judgment correct—Ortiz Oil Co. v. Luttes, Civ.App., 141 S.W.2d 1050, error dismissed by agreement—Standard Paving Co. v. Pyle, Civ. App., 131 S.W.2d 200—Tinsley v. Danube Oil Corp., Civ.App., 119 S.W.2d 581, error dismissed—Traders & General Ins. Co. v. Milliken, Civ.App., 110 S.W.2d 108—Jones v. Gibbs, Civ.App., 103 S.W.2d 1011, affirmed 130 S.W.2d 265, 133 Tex. 627, motion overruled 131 S.W.2d 957, 133 Tex. 627—Holden v. Gibbons, Civ.App., 101 S.W.2d 837, error dismissed—Bonner v. Dale, 62 Tex. 300—Pure Oil Co. v. Pope, Civ.App., 75 S.W.2d 175—City of Pampa v. Todd, Civ.App., 11 S.W.2d 247—Wichita Valley Ry. Co. v. Bevering, Civ.App., 272 S.W. 250—Baker v. Crooms, Civ.App., 262 S. W. 104—St. Louis, S. F. & T. Ry. Co. v. Ussery, Civ.App., 259 S.W. 275—Houston Oil Co. of Texas v. Holland, Civ.App., 196 S.W. 668, reversed on other grounds, Com. App., 222 S.W. 546—North American Dredging Co. v. Pugh, Civ. App., 196 S.W. 255, error refused—St. Louis, S. F. & T. Ry. Co. v. Gilliam & Jackson, Civ.App., 166 S.W. 706—Campbell v. Upson, Civ.App., 81 S.W. 358, reversed on other grounds 84 S.W. 817, 98 Tex. 442.

Utah.—Lodder v. Western Pac. R. Co., 259 P.2d 589.

Va.—E. W. Face & Son v. Cherry, 84 S.E. 10, 117 Va. 41, Ann.Cas.1917E 418.

Wash.—R. E. Anderson & Co. v. Montborne Lumber Co., 284 P. 100, 155 Wash. 345—Mohney v. Davis, 176 P. 31, 104 Wash. 209.

Wis.—McGill v. Baumgart, 288 N.W. 799, 233 Wis. 86—Edler v. Algoma Foundry & Machine Co., 229 N.W. 64, 200 Wis. 471—Pionke v. Washburn, 186 N.W. 1012, 176 Wis. 417—Meidenbauer v. Town of Pewaukee, 156 N.W. 144, 162 Wis. 326—Thomas v. Citizens' Nat. Bank of Pocomoke City, Md., 147 N.W. 1005, 157 Wis. 635.

4 C.J. p 1027 note 91.

Time for determining motion to withdraw

Postponement of ruling on motion to withdraw issue of punitive damages from jury's consideration until instructions were given to jury was held not prejudicial.

Or.—Hornby v. Wiper, 63 P.2d 204, 155 Or. 203.

53. N.C.—Sutton v. Walters, 24 S.E. 357, 118 N.C. 495.

Tenn.—Myers v. State Bank, 3 Head 330.

Tex.—Looney v. Linney, Civ.App., 21 S.W. 409.

54. Mich.—Houghton County Supvrs. v. Rees, 34 Mich. 481.

Pa.—Eister v. Paul, 54 Pa. 196—Brewster v. Sterrett, 32 Pa. 115.

55. Ark.—Carter v. Montgomery, 296 S.W.2d 442, 236 Ark. 989.

Cal.—Bryant v. Tulare Ice Co., 270 P.2d 880, 125 C.A.2d 566.

N.C.—Harrison v. Metropolitan Life Ins. Co., 177 S.E. 423, 207 N.C. 487.

Pa.—Kirby v. Carlisle, 116 A.2d 220, 178 Pa.Super. 389.

Tex.—Sunset Motor Lines v. Blasingame, Civ.App., 245 S.W.2d 288, error dismissed—Schuhmacher Co. v. Holcomb, Civ.App., 174 S.W.2d 637, affirmed 177 S.W.2d 951, 142 Tex. 332—Traders & General Ins. Co. v. Burns, Civ.App., 118 S.W.2d 391—Texas Rural Communities v. Avary, Civ.App., 113 S.W.2d 597, error dismissed—Miller v. Fenner, Beane & Ungerleider, Civ.App., 89 S.W.2d 506, error dismissed.

4 C.J. p 1027 note 94.

56. Ark.—Arnold v. Watson, 198 S.W. 119, 131 Ark. 593.

Iowa.—Botna Valley State Bank v. Greig, 180 N.W. 301, 190 Iowa 155.

N.J.—Barnes v. P. & D. Mfg. Co., 8 A.2d 388, 123 N.J.Law 246.

N.C.—Currin v. Currin, 15 S.E.2d 279, 219 N.C. 815—First Nat. Bank v. Waynesville Furniture Co., 157 S. E. 13, 200 N.C. 371.

Tex.—Texas & N. O. R. Co. v. Hayes, Civ.App., 284 S.W.2d 776, affirmed, Sup., 293 S.W.2d 484—Texas Coca-

ficient to establish the issue in appellant's favor[57] or the evidence of the party complaining establishes the contrary;[58] where the evidence on the issue was undisputed;[59] where the judgment was based on findings of the court;[60] where, notwithstanding the withdrawal of the issue, the court gave the party offering the evidence in support thereof the full benefit of the evidence;[61] where the construction placed by the court on a written instrument as a matter of law is shown to be correct by the testimony of the party complaining;[62] where there is no probability that a jury would have determined the question differently if the issue had been submitted;[63] or where the verdict shows that the error was not prejudicial.[64] If the issues submitted sufficiently dispose of the controversy, the party cannot complain because a particular issue was not submitted.[65]

Failure or refusal to withdraw issue. The erroneous refusal or failure of the trial court to withdraw an issue from the jury is not reversible error where it was not prejudicial,[66] as where there were other counts sufficient to sustain the verdict, which were proved by the evidence;[67] where the issue was

Cola Bottling Co. v. Wimberley, Civ.App., 108 S.W.2d 860, error dismissed.

2 C.J. p 1293 note 52—4 C.J. p 1027 note 95.

57. Vt.—Rogers v. Swanton, 54 Vt. 585.

58. Ky.—Harrison v. Greenville, 142 S.W. 219, 146 Ky. 96.

4 C.J. p 1028 note 97.

59. La.—Berger v. Quintero, 127 So. 356, 170 La. 37.

Mo.—Boswell v. Consolidated School Dist. No. 8 of Newton County, App., 10 S.W.2d 665, certiorari dismissed State ex rel. Consol. School Dist. No. 8 of Newton County v. Cox, 18 S.W.2d 61, 323 Mo. 43.

Tenn.—Clark v. Hefley, 238 S.W.2d 513, 34 Tenn.App. 389.

60. Kan.—Fairbank v. Fairbank, 139 P. 1011, 92 Kan. 45, rehearing denied 141 P. 297, 92 Kan. 492.

61. Tex.—Tinkham v. Wright, Civ. App., 163 S.W. 615.

4 C.J. p 1028 note 99.

62. Mich.—Dowagiac Mfg. Co. v. Schneider, 148 N.W. 173, 181 Mich. 538.

63. Tex.—Schuhmacher Co. v. Shooter, Civ.App., 94 S.W.2d 484, reversed on other grounds Schumacher v. Shooter, 124 S.W.2d 857, 132 Tex. 560.

Wis.—Hartford Fire Ins. Co. of Hartford, Conn. v. Szewczykowski, 217 N.W. 655, 195 Wis. 67.

4 C.J. p 1028 note 2.

64. Cal.—Griffin v. Williamson, 290 P.2d 361, 137 C.A.2d 308.

Fla.—McLain v. Pensacola Coach Corp., 13 So.2d 221, 152 Fla. 876.

Ga.—Wilson v. Expressmen's Mut. Life Ins. Co., 3 S.E.2d 795, 60 Ga. App. 296.

Ind.—Citizens' St. R. Co. v. Heath, 62 N.E. 107, 29 Ind.App. 395.

Iowa.—Edgren v. Scandia Coal Co., 151 N.W. 519, 171 Iowa 459—Brooks v. Van Buren County, 135 N.W. 1110, 155 Iowa 282.

Ky.—Mahan v. Able, 251 S.W.2d 994.

Minn.—Meixner v. Buecksler, 13 N.W. 2d 754, 216 Minn. 586—Nickolay v. Orr, 172 N.W. 222, 142 Minn. 346, 6 A.L.R. 1048—Olson v. Moorhead, 171 N.W. 923, 142 Minn. 267.

Mo.—Kemmler v. City of Richmond Heights, 114 S.W.2d 994.

N.J.—Ambrose v. Indemnity Ins. Co. of North America, 12 A.2d 693, 124 N.J.Law 438.

N.C.—Whiteman v. Seashore Transp. Co., 58 S.E.2d 752, 231 N.C. 701—Cozad v. Johnson, 89 S.E. 37, 171 N.C. 637—Sears v. Atlantic Coast Line R. Co., 86 S.E. 176, 169 N.C. 446—Yeates v. Forrest, 67 S.E. 171, 152 N.C. 752—McColman v. Atlantic Coast Line R. Co., 64 S.E. 781, 150 N.C. 707.

Tex.—Havens v. Guetersloh, Civ. App., 255 S.W.2d 233, error refused no reversible error—Tripp v. Watson, Civ.App., 235 S.W.2d 677, error refused no reversible error—Reed v. Beheler, Civ.App., 198 S.W.2d 625—A. F. Day Const. Co. v. Hubbard, Civ.App., 122 S.W.2d 698, reversed on other grounds 141 S.W.2d 945, 135 Tex. 228—St. Louis Southwestern Ry. Co. of Texas v. Rutherford, Civ.App., 184 S.W. 700, error refused—Boettler v. Tumlinson, Civ.App., 77 S.W. 824—Bruce v. Weatherford First Nat. Bank, 60 S.W. 1006, 25 Tex.Civ.App. 295—Sun Mut. Ins. Co. v. Tufts, 50 S.W. 180, 20 Tex.Civ.App. 147—Missouri, etc., R. Co. v. Webb, 49 S.W. 526, 20 Tex.Civ.App. 431—Studebaker Bros. Mfg. Co. v. Santo Tomas Coal Co., 27 S.W. 787, 8 Tex.Civ.App. 194.

Wyo.—George v. Emery, 107 P. 1, 18 Wyo. 352.

4 C.J. p 1028 note 3.

65. N.C.—Hill v. Young, 6 S.E.2d 830, 217 N.C. 114.

Tex.—Reeves v. Southwest Flying Service, Civ.App., 258 S.W.2d 848, error refused no reversible error—Laughman v. Sun Pipe Line Co., 114 S.W. 451, 52 Tex.Civ.App. 485.

4 C.J. p 1028 note 4.

66. Cal.—Reynolds v. Struble, 18 P. 2d 690, 128 C.A. 711.

Ind.—Shown v. Taylor, 88 N.E.2d 783, 120 Ind.App. 154.

Iowa.—Stevens v. Gear, 39 N.W.2d 408, 204 Iowa 1348—Tissue v. Durin, 246 N.W. 806, 216 Iowa 709.

Minn.—Sandberg v. Great Northern Ry. Co., 220 N.W. 949, 175 Minn. 280.

Mo.—Berry v. Baltimore & O. R. Co., 43 S.W.2d 782, reversed on other grounds, Baltimore & O. R. Co. v. Berry, 52 S.Ct. 510, 286 U.S. 272, 76 L.Ed. 1098—Clift v. St. Louis-San Francisco Ry. Co., 9 S.W.2d 972, 320 Mo. 791—Siberell v. St. Louis-San Francisco Ry. Co., 9 S. W.2d 912, 320 Mo. 916—Northern v. Chesapeake & Gulf Fisheries Co., 8 S.W.2d 982, 320 Mo. 1011—Reith v. Tober, 8 S.W.2d 607, 320 Mo. 725.

Buban v. St. Louis Public Service Co., App., 193 S.W.2d 345—Lynn v. Business Men's Assur. Co. of America, 111 S.W.2d 231, 232 Mo. App. 842—J. A. Tobin Const. Co. v. Davis, App., 81 S.W.2d 474—King v. Friederich, App., 43 S.W.2d 840—Walk v. St. Louis Can Co., App., 28 S.W.2d 391—Weber v. Evans, App., 15 S.W.2d 370—Yeager v. St. Joseph Lead Co., 12 S.W.2d 520, 223 Mo.App. 245—Welty v. S. H. Kress & Co., 295 S.W. 501, 221 Mo.App. 1089—Beck v. Wurst Coal & Hauling Co., App., 293 S.W. 449.

N.J.—Hendershot v. New York, S. & W. R. Co., 140 A. 919, 104 N.J.Law 436, certiorari denied New York, S. & W. R. Co. v. Hendershot, 48 S. Ct. 562, 277 U.S. 602, 72 L.Ed. 1009.

Ohio.—Columbus Ry., Power & Light Co. v. Lombard, 168 N.E. 619, 33 Ohio App. 47.

Or.—Cook v. Kinzua Pine Mills Co., 293 P.2d 717, 207 Or. 34—Morris v. Fitzwater, 210 P.2d 104, 187 Or. 191—De Witt v. Sandy Market, 115 P.2d 184, 176 Or. 226.

Vt.—Barre Trust Co. v. Ladd, 154 A. 680, 103 Vt. 392.

67. Ind.—Mays v. Welsh, 32 N.E.2d 701, 218 Ind. 356.

Queen Coal & Mining Co. v. Epple, 113 N.E. 19, 64 Ind.App. 235.

Mo.—Christopher v. Chicago, B. & Q. R. Co., 55 S.W.2d 449.

4 C.J. p 1028 note 5.

abandoned,[68] or was not urged separately;[69] or where the jury were instructed that their decision must be based on admissions in the pleadings, stipulations, or testimony of witnesses, and proper inferences therefrom.[70] Failure expressly to withdraw an issue is also not a reversible error where the instructions limited the right to recover to other issues;[71] but it cannot be said that improper issues were withdrawn where the instructions do not refer to the paragraph tendering such issues.[72] If, however, a failure to withdraw the issue was prejudicial, as where it was unsupported by the evidence, the error is ground for reversal.[73]

§ 1762. Submission or Refusal to Submit Special Interrogatories

a. Submission of special interrogatories or special issues

b. Refusal to submit special interrogatories or special issues

c. Submission or refusal to submit questions in equity cases

a. Submission of Special Interrogatories or Special Issues

Error on the part of the trial court in submitting special interrogatories or special issues to the jury will not constitute ground for reversal unless prejudice results to the party complaining.

Where there is error in the submission of special interrogatories or special issues to the jury, such error is not a ground for reversal if it is not prejudicial to the complaining party;[74] but if the error was clearly prejudicial it may constitute ground for

68. Mo.—Wilday v. Missouri-Kansas-Texas R. Co., 147 S.W.2d 431, 347 Mo. 275—Yerger v. Smith, 89 S.W.2d 66, 338 Mo. 140—Harms v. Emerson Electric Mfg. Co., 41 S.W.2d 375—O'Donnell v. Baltimore & O. R. Co., 26 S.W.2d 929, 324 Mo. 1097.

Whaley v. Milton Const. & Supply Co., App., 241 S.W.2d 23—Walker v. St. Joseph Belt Ry. Co., App., 102 S.W.2d 718—Gardenhire v. St. Louis-San Francisco R. Co., 31 S.W.2d 113, 224 Mo.App. 586—Poppen v. Wagner Electric Corporation, App., 2 S.W.2d 199—Goodwin v. American Car & Foundry Co., App., 285 S.W. 529—Gehbauer v. J. Hahn Bakery Co., App., 285 S.W. 170—Malone v. St. Louis-San Francisco Ry. Co., 285 S.W. 123, 220 Mo.App. 9—Snyder v. Western Union Telegraph Co., App., 277 S.W. 362.

Not submitted on grounds

Refusing defendant's withdrawal instructions as to certain grounds of negligence is harmless, where plaintiff has not submitted the case on such grounds.

Mo.—Yerger v. Smith, 89 S.W.2d 66, 338 Mo. 140.

69. Iowa.—Spicer v. Spicer's Adm'r, 202 N.W. 604, 201 Iowa 99.

70. Mont.—Ashley v. Safeway Stores, 47 P.2d 53, 100 Mont. 312.

71. Tex.—Missouri, etc., R. Co. v. Penny, 87 S.W. 718, 39 Tex.Civ.App. 358.

72. Ind.—Cleveland, etc., R. Co. v. Lindsay, 70 N.E. 283, 998, 33 Ind. App. 404.

73. Ill.—Trumbo v. Chicago, B. & Q. R. Co., 59 N.E.2d 92, 389 Ill. 213—Greene v. Noonan, 23 N.E.2d 720, 372 Ill. 286.

Borrowdale v. Sugarman, 107 N.E.2d 45, 347 Ill.App. 390—Paul v. Garman, 34 N.E.2d 884, 310 Ill.App. 447—Grinestaff v. New York Central R. R., 253 Ill.App. 589.

Ind.—Northern Ind. Transit v. Burk, 89 N.E.2d 905, 228 Ind. 162, 17 A.L.R.2d 572.

New York Cent. R. Co. v. Verkins, 122 N.E.2d 141, 125 Ind.App. 320, rehearing denied 122 N.E.2d 738, 125 Ind.App. 320.

Minn.—Bowers v. Chicago, M. & St. P. Ry. Co., 170 N.W. 226, 141 Minn. 385.

Mo.—Cox v. Terminal Railroad Ass'n of St. Louis, 55 S.W.2d 685, 331 Mo. 910.

Ohio.—Cassidy v. Ohio Public Service Co., 83 N.E.2d 908, 83 Ohio App. 404.

Utah.—Graham v. Ogden Union Ry. & Depot Co., 266 P. 504, 71 Utah 365.

Influence of unsupported issue on jury

Failure to withdraw from jury a count which is not supported by competent evidence, if, on a fair review of all evidence, it reasonably appears that jury would be influenced by considerations arising from allegations of the count which were detrimental to defendant, because such allegations were unsupported by any competent evidence, may result in prejudicial error.

R.I.—Shipman v. United Electric Rys. Co., 40 A.2d 730, 70 R.I. 454.

74. Cal.—Ito v. Watanabe, 2 P.2d 799, 213 C. 487.

Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723.

Conn.—Meglio v. Comeau, 79 A.2d 187, 137 Conn. 551—Ferrigino v. Keasbey, 106 A. 445, 93 Conn. 445.

Ga.—Wimberly v. Toney, 165 S.E. 257, 175 Ga. 360—Wayne v. Blun, 17 S.E. 288, 92 Ga. 338.

Turner v. Little, 28 S.E.2d 871, 70 Ga.App. 567.

Idaho.—Ellis v. Ashton & St. Anthony Power Co., 238 P. 517, 41 Idaho 106.

Ill.—Lindroth v. Walgreen Co., 94 N.E.2d 847, 407 Ill. 121—Devine v. Delano, 111 N.E. 742, 272 Ill. 166, Ann.Cas.1918A 689.

Ernhart v. Elgin, J. & E. Ry. Co., 84 N.E.2d 868, 337 Ill.App. 56, affirmed 92 N.E.2d 96, 405 Ill. 577—Johnson v. Luhman, 78 N.E.2d 107, 333 Ill.App. 418—Petersen v. General Rug & Carpet Cleaners, 77 N.E.2d 58, 333 Ill.App. 47.

Ind.—Baker v. Baltimore & O. S. W. R. Co., 112 N.E. 27, 61 Ind.App. 454.

Iowa.—Martin v. Momyer, 300 N.W. 310, 230 Iowa 1158—Baron v. Eagle Indemnity Co., 255 N.W. 496, 218 Iowa 305—Napier v. Patterson, 196 N.W. 73, 198 Iowa 257—Cram v. City of Des Moines, 172 N.W. 23, 185 Iowa 1292—Manatt v. Scott, 76 N.W. 717, 106 Iowa 203, 68 Am.S.R. 293.

Kan.—Emmerich v. Kansas City Public Service Co., 280 P.2d 615, 177 Kan. 443—Vukas v. Quivira, Inc., 201 P.2d 685, 166 Kan. 439—Tuttle v. Uhl, 195 P.2d 585, 165 Kan. 516—Duncan v. Branson, 110 P.2d 789, 153 Kan. 344—Edgerton v. Morgan, 10 P.2d 885, 135 Kan. 426.

Ky.—Hamilton v. Taylor, 249 S.W.2d 730—Hines v. Gaines, 232 S.W. 624, 192 Ky. 198.

Md.—Bethlehem - Sparrows Point Shipyard v. Damasiewicz, 50 A.2d 799, 187 Md. 474.

Mass.—Matthews v. New York Cent. & H. R. R. Co., 120 N.E. 185, 231 Mass. 10.

Mich.—Brinker v. Koenig Coal & Supply Co., 20 N.W.2d 301, 312 Mich. 534—Covert v. Randall, 298 N.W. 396, 298 Mich. 38—Kingsnorth v. Baker, 182 N.W. 108, 213 Mich. 294.

Minn.—Larson v. Degner, 78 N.W.2d 333, 248 Minn. 59.

N.J.—A. D. Dickerson, Inc. v. Levine, 119 A. 783, 98 N.J.Law 313.
N.C.—Andrews v. Postal Tel. Co., 25 S.E. 955, 119 N.C. 403.
N.D.—Swallow v. First State Bank, 161 N.W. 207, 35 N.D. 608.
Ohio.—McDermott v. Irwin, 73 N.E. 2d 86, 148 Ohio St. 67.

Petticrew v. Petticrew, 129 N.E. 2d 194, 98 Ohio App. 260, appeal dismissed 117 N.E.2d 706, 161 Ohio St. 110—Amicon v. City Ry. Co., 87 N.E.2d 889, 86 Ohio App. 186—Klever v. Reid Bros. Exp., App., 83 N.E.2d 108, reversed on other grounds 86 N.E.2d 608, 151 Ohio St. 467—Howard v. Pennsylvania R. Co., 69 N.E.2d 541, 77 Ohio App. 184, appeal dismissed 70 N.E.2d 373, 147 Ohio St. 248—Hartsock v. George, 17 N.E.2d 667, 59 Ohio App. 249—Cavanaugh v. Prudential Ins. Co. of America, 10 N.E.2d 1010, 56 Ohio App. 393—Meuer v. Doerflein, 5 N.E.2d 948, 53 Ohio App. 536.

Okl.—Latting v. Siddons, 66 P.2d 923, 179 Okl. 582—First Nat. Bank v. Jones, 238 P. 488, 111 Okl. 116—Hutchison Lumber Co. v. Lewis, 214 P. 721, 89 Okl. 145—Prentice v. Freeman, 185 P. 87, 76 Okl. 260.
R.I.—Radoccia v. Goodrich Oil Co., 6 A.2d 746, 63 R.I. 58—Solomon v. Shepard Co., 200 A. 993, 61 R.I. 332.
S.C.—Howell v. Southern Ry. Co., 102 S.E. 856, 114 S.C. 21.
Tex.—Dallas Ry. & Terminal Co. v. Bailey, 250 S.W.2d 379, 151 Tex. 359—Texas & N. O. R. Co. v. Krasoff, 191 S.W.2d 1, 144 Tex. 436—Massingill v. Henwood, 159 S.W.2d 118, 138 Tex. 317—Southern Underwriters v. Boswell, 158 S.W.2d 280, 138 Tex. 255.

Export Ins. Co. of New York v. Axe, Com.App., 58 S.W.2d 39—Hidalgo County Water Control and Improvement Dist. No. 1 v. Peter, Com.App., 37 S.W.2d 133—Lancaster & Wallace v. Gonzales, Com.App., 287 S.W. 1094—St. Louis Southwestern Ry. Co. of Texas v. Preston, Com.App., 228 S.W. 928.

Freed v. Bozman, Civ.App., 304 S.W.2d 235—Chance v. Scarbrough, Civ.App., 303 S.W.2d 832—Milburn v. Blum, Civ.App., 302 S.W.2d 671—Villanueva v. Rodriguez, Civ. App., 300 S.W.2d 668, error refused no reversible error—Thompson v. Robbins, Civ.App., 297 S.W.2d 247, affirmed, Sup., 304 S.W.2d 111—De Kalb Hybrid Seed Co. v. Agee, Civ.App., 293 S.W.2d 64—Lunsford v. City of Bryan, Civ.App., 292 S. W.2d 852, reversed on other grounds, Sup., 297 S.W.2d 115—Pressley v. Smith, Civ.App., 288 S.W.2d 893, error refused no reversible error—Mitchell v. Mills, Civ.App., 264 S.W.2d 749, refused no reversible error—Texas & P. Ry. Co. v. Younger, Civ.App., 262 S.W.2d 557, refused no reversible error—City of El Paso v. Pan Am. Supply Co., Civ.App., 251 S.W. 2d 742, error refused no reversible error—Super-Cold Southwest Co. v. Chowning, Civ.App., 248 S.W.2d 504, error refused no reversible error—Andrews v. Daniel, Civ.App., 240 S.W.2d 1018, error dismissed—Gray County Gas Co. v. Oldham, Civ. App., 238 S.W.2d 596—Patterson v. Hughes, Civ.App., 227 S.W.2d 397—Walton v. Smulcer, Civ.App., 222 S.W.2d 918—Wooten v. Crosby County, Civ.App., 219 S.W.2d 553, error refused—Meadolake Foods v. Estes, Civ.App., 218 S.W.2d 862, error refused 219 S.W.2d 441, 148 Tex. 13—Tri-County Elec. Co-op. v. Clair, Civ.App., 217 S.W.2d 681, error refused no reversible error—Texas Emp. Ins. Ass'n v. Frankum, Civ.App., 215 S.W.2d 899, reversed on other grounds 220 S.W.2d 449, 148 Tex. 95—Whitten v. Dethloff, Civ.App., 214 S.W.2d 480—Highway Ins. Underwriters v. Stephens, Civ.App., 208 S.W.2d 677, refused no reversible error—Associated Emp. Lloyds v. Zellerbach, Civ. App., 208 S.W.2d 136—Wilkinson v. Chambers, Civ.App., 205 S.W.2d 639—Traders & General Ins. Co. v. Heath, Civ.App., 197 S.W.2d 130, error refused no reversible error—Gillette Motor Transport Co. v. Whitfield, Civ.App., 186 S.W.2d 90, refused for want of merit—Kimbriel Produce Co. v. Webster, Civ. App., 185 S.W.2d 198, error refused—Dedear v. James, Civ.App., 184 S.W.2d 319, error refused—City of Denton v. White, Civ.App., 179 S.W.2d 834, error refused—Superior Lloyds of America v. Foxworth, Civ.App., 178 S.W.2d 724, error refused—City of Waco v. Thralls, Civ.App., 172 S.W.2d 142, error refused—Walton v. Steffens, Civ.App., 170 S.W.2d 534, error refused—Postal Mut. Indemnity Co. v. Ellis, Civ.App., 161 S.W.2d 1114, reversed on other grounds 169 S.W. 2d 482, 140 Tex. 570—Texas Employers Ins. Ass'n v. Shackelford, Civ.App., 158 S.W.2d 572, reversed on other grounds 164 S.W.2d 657, 139 Tex. 653—Clayton v. Reamer, Civ.App., 153 S.W.2d 1020, error refused—Clowe & Cowan v. Morgan, Civ.App., 153 S.W.2d 863, error refused—Stayton v. Contreras, Civ. App., 150 S.W.2d 342, error dismissed, judgment correct—United Employers Casualty Co. v. Oden, Civ.App., 150 S.W.2d 114, error dismissed, judgment correct—Horton v. Schultz, Civ.App., 148 S.W.2d 252—Southern Underwriters v. Mowery, Civ.App., 147 S.W.2d 834, error dismissed, judgment correct—Gulf, C. & S. F. R. Co. v. Picard, Civ.App., 147 S.W.2d 303, error dismissed, judgment correct—Southern Underwriters v. Grimes, Civ. App., 146 S.W.2d 1058, error dismissed, judgment correct—Traders & General Ins. Co. v. Boyd, Civ. App., 146 S.W.2d 488, error dismissed, judgment correct—Federal Underwriters Exchange v. Price, Civ.App., 145 S.W.2d 951, error dismissed, judgment correct—Lang v. Harwood, Civ.App., 145 S.W.2d 945—Allied Underwriters v. Spillman, Civ.App., 145 S.W.2d 703, error refused—Southern Underwriters v. Boswell, Civ.App., 141 S.W.2d 442, affirmed 158 S.W.2d 280, 138 Tex. 255—Ames v. Herrington, Civ.App., 139 S.W.2d 183, error dismissed, judgment correct—Hernandez v. Almendarez, Civ.App., 137 S.W.2d 1059—Wright Titus, Inc., v. Swafford, Civ.App., 133 S.W.2d 287, error dismissed, judgment correct—Stevenson v. Wilson, Civ.App., 130 S.W.2d 317, error refused—Traders & General Ins. Co. v. Belcher, Civ. App., 126 S.W.2d 35, error refused—Sherwin-Williams Co. of Texas v. Delahoussaye, Civ.App., 124 S.W. 2d 870, error dismissed—Fitts v. Carpenter, Civ.App., 124 S.W.2d 420—Spears Dairy v. Davis, Civ.App., 124 S.W.2d 159—American Nat. Ins. Co. v. Points, Civ.App., 121 S.W.2d 983, error dismissed, judgment correct—Burks v. Dallas Ry. & Terminal Co., Civ.App., 116 S.W.2d 884—Empire Gas & Fuel Co. v. Muegge, Civ.App., 116 S.W.2d 758, reversed on other grounds 143 S.W.2d 763, 135 Tex. 520—Loving County v. Higginbotham, Civ.App., 115 S.W. 2d 1110, error dismissed—Texas & N. O. R. Co. v. Dingfelder & Balish, Civ.App., 114 S.W.2d 666, affirmed 133 S.W.2d 967, 134 Tex. 156—Anizan v. Paquette, Civ.App., 113 S.W.2d 196, error dismissed—Maryland Casualty Co. v. Brown, Civ. App., 110 S.W.2d 130, reversed on other grounds 115 S.W.2d 394, 131 Tex. 404—Franz v. Lusk, Civ.App., 107 S.W.2d 479, error dismissed—Alamo Downs, Inc., v. Briggs, Civ. App., 106 S.W.2d 733, error dismissed—Texas Employers Ins. Ass'n v. Arnold, Civ.App., 105 S.W. 2d 686—Larsen v. Halliburton Oil Well Cementing Co., Civ.App., 105 S.W.2d 368, error refused—Lozano Newspapers v. Alvarez, Civ.App., 104 S.W.2d 573, error dismissed—Charbonneau v. Hupaylo, Civ.App., 100 S.W.2d 745—Tennessee Dairies v. Seibenhausen, Civ.App., 99 S.W. 2d 323, error dismissed—Hilker v. Agricultural Bond & Credit Corp., Civ.App., 96 S.W.2d 544, error dismissed—Traders & General Ins. Co. v. Parker, Civ.App., 91 S.W.2d 503, error dismissed—St. Paul Fire & Marine Ins. Co. v. Westmoreland, Civ.App., 77 S.W.2d 265, affirmed 105 S.W.2d 203, 130 Tex. 65—Crawford v. Kennedy, Civ.App., 76 S.W.2d 543—Austin Bridge Co. v. Shaw, Civ.App., 73 S.W.2d 547—Citizens' Nat. Bank of Lubbock v. Adams, Civ.App., 67 S.W.2d 421—White v. Haynes, Civ.App., 60 S.W. 2d 275—Austin v. De George, Civ.

App., 55 S.W.2d 585—Indemnity Ins. Co. of North America v. Garsee, Civ.App., 54 S.W.2d 817—Kansas City, M. & O. Ry. Co. of Texas v. Foster, Civ.App., 54 S.W. 2d 270—Rust v. Page, Civ.App., 52 S.W.2d 937—Reilly v. Buster, Civ. App., 52 S.W.2d 521, reversed on other grounds, Com.App., 82 S.W. 2d 931—Curtiss-Wright Flying Service v. Williamson, Civ.App., 51 S.W.2d 1047—Gulf, C. & S. F. Ry. Co. v. Houston, Civ.App., 45 S.W. 2d 771—Ripley v. Dozier Const. Co., Civ.App., 45 S.W.2d 661—Security Ben. Ass'n v. Woods, Civ.App., 45 S.W.2d 409, affirmed, Com.App., 58 S.W.2d 60—Occidental Life Ins. Co. v. Jamora, Civ.App., 44 S.W.2d 808 —English v. Miller, Civ.App., 43 S.W.2d 642—Stolz v. Wells, Civ. App., 43 S.W.2d 163—Hill v. Belnoski, Civ.App., 42 S.W.2d 856—El Paso Electric Co. v. Hedrick, Civ.App., 39 S.W.2d 128, reversed on other grounds, Com.App., 60 S.W.2d 761—Texas Pipe Line Co. v. Cozart, Civ.App., 38 S.W.2d 903 —Globe Indemnity Co. v. McClurg, Civ.App., 38 S.W.2d 125—Universal Transp. Co. v. Ramos, Civ.App., 37 S.W.2d 238—El Paso Electric Co. v. Portillo, Civ.App., 37 S.W.2d 219—Stephens v. Sovereign Camp, W. O. W., Civ.App., 35 S.W.2d 789—Childers v. Eureka Laundry & Dye Works, Civ.App., 33 S.W.2d 784—Karotkin Furniture Co. v. Decker, Civ.App., 32 S.W.2d 703, affirmed Com.App., 50 S.W.2d 795—Spurlock v. Hilburn, Civ.App., 32 S.W.2d 396 —Inter-Ocean Casualty Co. v. Brown, Civ.App., 31 S.W.2d 333—Shaw v. Shaw, Civ.App., 28 S.W.2d 173—Southern Surety Co. v. Eppler, Civ.App., 26 S.W.2d 697—Wilson v. Hagins, Civ.App., 25 S. W.2d 916, affirmed Com.App., 50 S.W.2d 797—Miller v. Diamond, Civ.App., 25 S.W.2d 659, reversed on other grounds Commercial Standard Ins. Co. v. Miller, Com. App., 48 S.W.2d 618—American Surety Co. of New York v. Thompson, Civ.App., 23 S.W.2d 820, reversed on other grounds, Com.App., 38 S.W.2d 576—Dallas Ry. & Terminal Co. v. Darden, Civ.App., 23 S.W.2d 739, affirmed, Com.App., 38 S.W.2d 777—Texas Employers' Ins. Ass'n v. Clark, Civ.App., 23 S.W.2d 405—Dallas Ry. & Terminal Co. v. Nix, Civ.App., 22 S.W.2d 488 —Northwestern Fire & Marine Ins. Co. v. Allred, Civ.App., 19 S.W.2d 916—U. S. Fidelity & Guaranty Co. v. Morgan, Civ.App., 18 S.W.2d 810 —Spencer v. Pettit, Civ.App., 17 S. W.2d 1102, reversed on other grounds, Com.App., 34 S.W.2d 798 —Norwich Union Indemnity Co. v. Wilson, Civ.App., 17 S.W.2d 68 —Columbia Casualty Co. v. Kee, Civ.App., 11 S.W.2d 529—Texas Employers' Ins. Ass'n v. Heuer, Civ.App., 10 S.W.2d 756, second rehearing denied 11 S.W.2d 566—Kirby v. American State Bank of Amarillo, Civ.App., 4 S.W.2d 205, affirmed, Com.App., 18 S.W.2d 599, 63 A.L.R. 1528—Robertson v. Vernon, Civ.App., 3 S.W.2d 573, affirmed, Com.App., 12 S.W.2d 991—Texas & N. O. Ry. Co. v. Hart, Civ.App., 294 S.W. 978—Hofheinz v. Wilson, Civ.App., 286 S.W. 958—Childress v. Pyron, Civ.App., 285 S.W. 1100—Campbell v. Johnson, Civ.App., 284 S.W. 261, affirmed, Com.App., 290 S.W. 526—Tony v. McClelland, Civ.App., 283 S.W. 679 —Texas & N. O. R. Co. v. Rooks, Civ.App., 283 S.W. 622, affirmed, Com.App., 292 S.W. 536, and rehearing denied 293 S.W. 554—Ablon v. King, Civ.App., 279 S.W. 563—Moore v. McLennan County, Civ.App., 278 S.W. 341—Gwyn v. Lyon, Civ.App., 277 S.W. 1116—D. H. Adams & Co. v. Texas Pacific Coal & Oil Co., Civ.App., 275 S.W. 1100—Wichita Falls, R. & Ft. W. Ry. Co. v. Emberlin, Civ.App., 274 S.W. 991, reversed on other grounds Emberlin v. Wichita Falls, R. & Ft. W. R. Co., Com.App., 284 S.W. 539—Texas Employers' Ins. Ass'n v. Drummond, Civ.App., 267 S.W. 335, affirmed, Com.App., 279 S.W. 335—Chicago, R. I. & G. Ry. Co. v. Steele, Civ.App., 264 S.W. 503—Wade v. First Nat. Bank, Civ.App., 263 S.W. 654—Davis v. Teague, Civ. App., 256 S.W. 957—Schaff v. Ellison, Civ.App., 255 S.W. 680, petition dismissed Sumner Sollitt Co. v. Ellison, 45 S.Ct. 10, 266 U.S. 638, 69 L.Ed. 482—Fugitt v. Farrell, Civ. App., 250 S.W. 1108—Western Indemnity Co. v. Toennis, Civ.App., 250 S.W. 1098—Borden v. Pelipchyk, Civ.App., 243 S.W. 1109—Rhoades v. Pointer, Civ.App., 243 S.W. 583—Cecil & Co. v. Stamford Gas & Electric Co., Civ.App., 242 S.W. 536—Security Banking & Investment Co. v. Flanagan, Civ.App., 241 S.W. 702, modified on other grounds 254 S.W. 761, corrected on other grounds, Com.App., 262 S.W. 741—Hines v. Smith, Civ.App., 235 S.W. 654—Payne v. Cummins, Civ. App., 233 S.W. 867, reversed on other grounds, Com.App., 243 S.W. 974—Jemison v. Estes, Civ.App., 231 S.W. 797—Lawson v. Armstrong, Civ.App., 227 S.W. 687, dismissed for want of jurisdiction—Panhandle & S. F. Ry. Co. v. Laird, Civ.App., 224 S.W. 305, dismissed for want of jurisdiction—Dallas Ry. Co. v. Eaton, Civ.App., 222 S.W. 318, dismissed for want of jurisdiction—Neill v. Pryor, Civ. App., 222 S.W. 296—St. Louis Southwestern Ry. Co. of Texas v. Lamkin, Civ.App., 220 S.W. 179, dismissed for want of jurisdiction —Pollack v. Perry, Civ.App., 217 S. W. 967, reversed on other grounds, Com.App., 235 S.W. 541—Kansas City, M. & O. Ry. Co. v. Blackstone & Slaughter, Civ.App., 217 S.W. 208, rehearing denied 218 S.W. 552, error dismissed—Western Indemnity Co. v. MacKechnie, Civ.App., 214 S.W. 456—Evans v. McKay, Civ.App., 212 S.W. 680, dismissed for want of jurisdiction—Hickory Jones Co. v. Mettauer, Civ.App., 208 S.W. 745—Kansas City, M. & O. Ry. Co. v. Swift, Civ.App., 204 S.W. 135—Lasater v. Jamison, Civ.App., 203 S.W. 1151, error refused—San Antonio & A. P. Ry. Co. v. Sutherland, Civ.App., 199 S.W. 521 —Brown v. Houston, E. & W. T. Ry. Co., Civ.App., 198 S.W. 986, dismissed for want of jurisdiction —Robinson v. Aldredge, Civ.App., 198 S.W. 413, error refused—Security Ins. Co. v. Kelly, Civ.App., 196 S.W. 874, error refused—Brewster v. City of Forney, Civ.App., 196 S.W. 636, reversed on other grounds, Com.App., 223 S.W. 175 —Settegast v. Blakely, Civ.App., 196 S.W. 253—Rhome Milling Co. v. Glasgow, Civ.App., 194 S.W. 686, error refused—Brown v. Fisher, Civ.App., 193 S.W. 357, error refused—Varley v. Nichols-Shepard Sales Co., Civ.App., 191 S.W. 611 —American Nat. Ins. Co. v. Van Dusen, Civ.App., 185 S.W. 634—Briggs-Weaver Machinery Co. v. Pratt, Civ.App., 184 S.W. 732, error refused—Missouri, K. & T. Ry. Co. of Texas v. Norris, Civ.App., 184 S.W. 261, reversed on other grounds, Com.App., 222 S.W. 1097 —Petty v. City of San Antonio, Civ.App., 181 S.W. 224—King v. Collins, Civ.App., 179 S.W. 899—Turner v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 177 S.W. 204—Texas Co. v. Alamo Cement Co., Civ.App., 168 S.W. 62.

Utah.—Kunz v. Nelson, 100 P.2d 217, 98 Utah 421.

Wis.—Paulson v. Madison Newspapers, Inc., 80 N.W.2d 421, 274 Wis. 355—Ameche v. Ameche, 72 N.W.2d 744, 271 Wis. 170—Town of Wausaukee v. Lauerman, 3 N.W. 2d 362, 240 Wis. 320—Patterson v. Chicago, St. P., M. & O. Ry. Co., 294 N.W. 63, 236 Wis. 205—Patterson v. Edgerton Sand & Gravel Co., 277 N.W. 636, 227 Wis. 11—Burke v. Tesmer, 272 N.W. 857, 224 Wis. 667—Swanson v. Schultz, 270 N.W. 43, 223 Wis. 278—Schiefelbein v. Chicago, M., St. P. & P. R. Co., 265 N.W. 386, 221 Wis. 35, certiorari denied 57 S.Ct. 20, 299 U.S. 558, 81 L.Ed. 411—Olk v. Marquardt, 234 N.W. 723, 203 Wis. 479—Poneitowcki v. Harres, 228 N.W. 126, 200 Wis. 504—Keller v. City of Port Washington, 227 N.W. 284, 200 Wis. 87—Kealty v. Sponholz, 227 N.W. 247, 200 Wis. 80—London Guarantee & Accident Co. v. Great Northern R. Co., 221 N.W. 762, 197 Wis. 241—Balvoil v. Pinnow, 208 N.W. 466, 189 Wis. 535—Luethe v. Schmidt-Gaertner Co., 176 N.W.

reversal.[75] In determining whether a special issue | or interrogatory was or was not prejudicial its prob-

63, 170 Wis. 590—Flanagan's Estate v. Flanagan's Estate, 173 N.W. 297, 169 Wis. 537—Kellner v. Christiansen, 172 N.W. 796, 169 Wis. 390—Hommel v. Badger State Inv. Co., 165 N.W. 20, 166 Wis. 235—Jurkovic v. Chicago, M. & St. P. R. Co., 164 N.W. 993, 166 Wis. 266—Twentieth Century Co. v. Quilling, 117 N.W. 1007, 136 Wis. 481—Baumann v. C. Reiss Coal Co., 95 N.W. 139, 118 Wis. 330—Shaw v. Gilbert, 86 N.W. 188, 111 Wis. 165.

64 C.J. p 1118 notes 7, 8.

Burden of proving unavoidable accident

Error in placing the burden of proving unavoidable accident on defendants by an issue submitted to the jury in a death action was harmless to defendants, where the evidence did not raise such issue.

Tex.—Texas Public Service Co. v. Laughead, Civ.App., 73 S.W.2d 925.

Framing discretionary

Framing of special issues is addressed largely to the discretion of the trial court and not subject to review except for prejudicial abuse.

Tex.—Luling Oil & Gas Co. v. Edwards, Civ.App., 32 S.W.2d 921.

Implied comment or instruction

Although special issue submitted to jury may constitute an implied comment or instruction, because of assumption or apparent assumption of fact involved in terms in which it propounds a question, such special issue does not always entail a reversal, since under circumstances of particular case force of comment may be so weak that it either is no comment at all or may be said to be harmless.

Tex.—Mason v. Yellow Cab & Baggage Co., 269 S.W.2d 329, 153 Tex. 344.

Improper interrogatories disregarded

Action of trial court in permitting interrogatories, even if improper, to go to jury would not be reversible error because trial court, in ruling on motion to set aside verdict, is presumed to have disregarded any answers of jury to improper interrogatories.

Ind.—Stull v. Davidson, 127 N.E.2d 130, 125 Ind.App. 565.

Reference to pleading

Error in stating special issue so as to refer the jury to the pleadings for information may or may not be material, depending on whether such reference is reasonably calculated to prejudice a party's rights, under the particular facts.

Tex.—Traders & General Ins. Co. v. Weatherford, Civ.App., 124 S.W.2d 423, error dismissed, judgment correct.

Refusal to strike

(1) The court, in determining whether judgment should be rendered on the general verdict or in answers to interrogatories, should consider only facts elicited by proper interrogatories, so that refusal to strike interrogatories is not reversible error.

Ind.—Ft. Wayne & N. I. Traction Co. v. Kumb, 116 N.E. 309, 64 Ind.App. 529.

(2) If special questions to jury were as to matters that were not at issue in the case, it was not prejudicial error for the trial court to refuse to strike the answers.

Kan.—Neiswender v. Board of Com'rs of Shawnee County, 113 P.2d 115, 153 Kan. 634, opinion supplemented on other grounds 120 P.2d 218, 154 Kan. 588.

Special issue informing jury of judgment

It does not constitute reversible error for trial court to submit special issues to be answered, conditioned on how other issues were answered, provided such condition does not have effect of apprising jury of effect their answers will have on judgment to be rendered by court.

Tex.—Kadane v. Clark, Civ.App., 134 S.W.2d 448, reversed on other grounds 143 S.W.2d 197, 135 Tex. 496.

Submitting questions and directing answers

In personal injury action, fact that court submitted two special questions to jury and then directed jury to answer the questions in the affirmative was not prejudicial error, where there was no dispute with respect to the matters submitted.

Mich.—Vitaioli v. Berklund, 295 N.W. 557, 296 Mich. 56.

Time of consideration

Where interrogatories are submitted and answered, it is not reversible error to refuse a requested instruction that the jury may consider and answer them either before or after agreement on the general verdict.

Ind.—S. W. Little Coal Co. v. O'Brien, 113 N.E. 465, 63 Ind.App. 504, rehearing denied 114 N.E. 96, 63 Ind.App. 504.

75. Colo.—Weng v. Schleiger, 273 P.2d 356, 130 Colo. 90.

Ill.—Stone v. Warehouse & Terminal Cartage, 127 N.E.2d 260, 6 Ill.App. 2d 229.

Ind.—Merchants' Reserve Life Ins. Co. v. Richardson, 118 N.E. 576, 66 Ind.App. 567.

Minn.—Employers Mut. Cas. Co. v. Chicago, St. P., M. & O. Ry. Co., 50 N.W.2d 689, 235 Minn. 304.

N.Y.—Whitehead v. Mutual Life Ins. Co. of New York, 87 N.Y.S.2d 261, 264 App.Div. 647.

Ohio.—Anderson v. S. E. Johnson Co., 80 N.E.2d 757, 150 Ohio St. 169.

Wheeling & L. E. Ry. Co. v. Hollywood Cartage Co., App., 93 N.E.2d 708—Alexander v. Hair, App., 38 N.E.2d 601—Ford Motor Co. v. Barry, 165 N.E. 865, 30 Ohio App. 528.

S.D.—Central Loan & Investment Co. v. Loiseau, 239 N.W. 487, 59 S.D. 255.

Tex.—Riley v. Industrial Finance Service Co., 302 S.W.2d 652—Federal Underwriters Exchange v. Lynch, 168 S.W.2d 653, 140 Tex. 516—Texas Indemnity Ins. Co. v. Thibodeaux, 106 S.W.2d 268, 129 Tex. 655.

Northern Texas Traction Co. v. Weed, Com.App., 300 S.W. 41.

George S. May Co. v. Stephens Lumber Co., Civ.App., 301 S.W.2d 294—Gulf States Equipment Co. v. Toombs, Civ.App., 288 S.W.2d 203, error refused no reversible error—Yellow Cab & Baggage Co. v. Mason, Civ.App., 266 S.W.2d 463, reversed on other grounds 269 S.W.2d 329—Pierce v. Westinghouse Elec. Corp., Civ.App., 263 S.W.2d 810, reversed on other grounds Westinghouse Elec. Corp. v. Pierce, 271 S.W.2d 422—Texas & N. O. R. Co. v. Krasoff, Civ.App., 186 S.W.2d 289, reversed on other grounds 191 S.W.2d 1, 144 Tex. 436—McCall v. Alpine Telephone Corp., Civ.App., 183 S.W.2d 205, affirmed 184 S.W.2d 830, 143 Tex. 335—Pappas v. Wright, Civ.App., 171 S.W.2d 536—Graham v. Gatewood, Civ.App., 166 S.W.2d 768, error refused—United Employers Casualty Co. v. Hudson, Civ.App., 152 S.W.2d 451—United Employers Casualty Co. v. Oden, Civ.App., 150 S.W.2d 114, error dismissed, judgment correct—St. Louis Southwestern Ry. Co. of Texas v. Barr, Civ.App., 148 S.W.2d 924, error dismissed, judgment correct—Texas Long Leaf Lumber Co. v. White, Civ.App., 148 S.W.2d 238—Texas Consolidated Theatres v. Slaughter, Civ.App., 143 S.W.2d 659, error dismissed—Page v. Rogers, Civ.App., 142 S.W.2d 716—Pioneer Building & Loan Ass'n v. Compton, Civ.App., 138 S.W.2d 884—Wright v. McCoy, Civ.App., 131 S.W.2d 52—Atkins v. Dodds, Civ.App., 121 S.W.2d 1010, dismissed by agreement—Karr v. Cockerham, Civ.App., 107 S.W.2d 719, error dismissed—Jacobsen v. Brown, Civ.App., 105 S.W.2d 1108, error dismissed—Shannon v. Horn, Civ.App., 92 S.W.2d 1090, error dismissed—Southland Greyhound Lines v. Ashby, Civ.App., 80 S.W.2d 445—Metropolitan Life Ins. Co. v. Greene, Civ.App., 75 S.W.2d 703—Texas & N. O. R. Co. v. East, Civ.App., 74 S.W.2d 1052—Republic Underwriters v. Glover, Civ.App.,

able effect on the minds of the jury in the light of the charge as a whole must be considered,[75.5] and before a case is reversed because of error in a special issue or interrogatory it should clearly and unmistakably appear that an improper judgment was rendered in the case.[75.10]

It is generally considered that error in the submission of special interrogatories or issues is harmless if the verdict was not affected thereby,[76] or where they did not call for ultimate facts;[77] where

72 S.W.2d 314—Wichita Coca Cola Bottling Co. v. Levine, Civ.App., 68 S.W.2d 310—Meinecke v. Fidelity Inv. Co., Civ.App., 62 S.W.2d 623—McAllister v. City of Frost, Civ. App., 62 S.W.2d 232—Texas & N. O. R. Co. v. Ewing, Civ.App., 46 S.W. 2d 398—Texas-Louisiana Power Co. v. Bihl, Civ.App., 43 S.W.2d 294, reversed on other grounds, Com. App., 66 S.W.2d 672—West Texas Transp. Co. v. Hash, Civ.App., 43 S.W.2d 152—Cole v. Butler, Civ. App., 36 S.W.2d 259, affirmed Butler v. Cole, Com.App., 53 S.W.2d 1010—Robert Oil Corporation v. Garrett, Civ.App., 22 S.W.2d 508, affirmed, Com.App., 37 S.W.2d 135—Bagley v. Pollock, Civ.App., 19 S. W.2d 193—Perkins v. Lightfoot, Civ.App., 10 S.W.2d 1030—Texas Employers' Ins. Ass'n v. Heuer, Civ.App., 10 S.W.2d 756, second rehearing denied 11 S.W.2d 566—Galveston, H. & S. A. Ry. Co. v. Burr, Civ.App., 291 S.W. 299—San Antonio & A. P. Ry. Co. v. Biggs, Civ.App., 283 S.W. 627—North v. Atlas Brick Co., Civ.App., 281 S.W. 608, modified on other grounds Atlas Brick Co. v. North, Com.App., 288 S.W. 146—Southland Life Ins. Co. v. Ballew, Civ.App., 268 S.W. 1027—Tippett v. Hickox, Civ.App., 238 S.W. 715, dismissed for want of jurisdiction—Hines v. Popino, Civ.App., 235 S.W. 1095.

Va.—Mathieson Alkali Works v. Virginia Banner Coal Corporation, 124 S.E. 470, 140 Va. 89.

Wis.—Culver v. Webb, 12 N.W.2d 731, 244 Wis. 478—Carlson v. Strasser, 2 N.W.2d 233, 239 Wis. 531—Archer v. Chicago, M., St. P. & P. Ry. Co., 255 N.W. 67, 215 Wis. 509—Mullen v. Larson-Morgan Co., 249 N.W. 67, 212 Wis. 52—Maahs v. Schultz, 242 N.W. 195, 207 Wis. 624—Zimmermann v. Northern Pac. Ry. Co., 147 N.W. 1039, 157 Wis. 514.

Burden of proof

(1) As a general rule, erroneous placing of burden of proof in special interrogatories or special issues is reversible error.

Tex.—Pride of Dallas Taxicab Co. v. Lawrence, Civ.App., 277 S.W.2d 169, error refused no reversible error—City of River Oaks v. Moore, Civ.App., 272 S.W.2d 389, error refused no reversible error—Dallas Ry. & Terminal Co. v. Tucker, Civ. App., 207 S.W.2d 937—Citizens Hotel Co. v. Foley, Civ.App., 131 S.W. 2d 402, error dismissed, judgment correct—Humble Oil & Refining Co. v. Owings, Civ.App., 128 S.W.2d 67—Dallas Ry. & Terminal Co. v. Fuchs, Civ.App., 52 S.W.2d 685.

Wis.—Sloan v. Brown County State Bank, 182 N.W. 363, 174 Wis. 36.

(2) However, where special issue erroneously places burden of proof, error may be harmless in view of facts shown conclusively by record.

Tex.—Republic Underwriters v. Meyer, Civ.App., 127 S.W.2d 538, reversed on other grounds Shoemaker v. Meyer, 152 S.W.2d 741, 137 Tex. 97.

(3) Prior to effective date of rules of civil procedure, submission of special issue which failed to indicate burden of proof would constitute prejudicial error, notwithstanding evidence supporting judgment was overwhelming.

Tex.—Ramin v. Cosio, 113 S.W.2d 524, 131 Tex. 362.

Irreconcilable conflict in answers

Tex.—New St. Anthony Hotel Co. v. Pryor, Civ.App., 132 S.W.2d 620, error refused.

Two controverted issues submitted

Prior to effective date of rules of civil procedure, and under statute repealed by rules of civil procedure, it was reversible error to submit two controverted issues together in one special issue.

Tex.—Page v. Rogers, Civ.App., 142 S.W.2d 716.

75.5 Tex.—Texas Emp. Ins. Ass'n v. McKay, 210 S.W.2d 147, 146 Tex. 569.

Shaddock v. Grapette Co., Civ. App., 259 S.W.2d 231.

75.10 Tex.—Owen Development Co. v. Calvert, 302 S.W.2d 640.

Shaddock v. Grapette Co., Civ. App., 259 S.W.2d 231.

Form of special issue

Case should not be reversed because form of special issue may be objectionable, unless objectionable to extent that it denies a party a valuable right.

Tex.—Traders & General Ins. Co. v. Jenkins, 141 S.W.2d 312, 135 Tex. 232.

Herndon v. Halliburton Oil Well Cementing Co., Civ.App., 154 S.W. 2d 163, error refused.

Repetition of special issues is not necessarily reversible error, especially where there is no reason to believe that confusion resulted from manner of submission.

Tex.—Tripp v. Watson, Civ.App., 235 S.W.2d 677, error refused no reversible error.

76. Ill.—Ogilby v. Schmauss, 52 N. E.2d 293, 321 Ill.App. 161.

Ohio.—Case v. Carter, 142 N.E.2d 670, 103 Ohio App. 11.

Tex.—Dallas Ry. & Terminal Co. v. Bailey, 250 S.W.2d 379, 151 Tex. 359.

Gillock v. Texas & P. Ry. Co., Civ.App., 302 S.W.2d 717—Stout v. Hart, Civ.App., 202 S.W.2d 483—Traders & General Ins. Co. v. Wright, Civ.App., 144 S.W.2d 626, error refused—Federal Underwriters Exchange v. Popnoe, Civ.App., 140 S.W.2d 484, error dismissed—Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S.W.2d 857, error dismissed, judgment correct—Agey v. Barnard, Civ.App., 123 S.W.2d 484, error dismissed, judgment correct—Texas & N. O. Ry. Co. v. Martin, Civ.App., 32 S.W.2d 363—Merchants' Life Ins. Co. v. Griswold, Civ.App., 212 S.W. 807, reversed on other grounds, Com. App., 237 S.W. 232—El Paso Electric Ry. Co. v. Allen, Civ.App., 208 S.W. 739, error refused.

4 C.J. p 1028 note 8.

Unanswered special issues, the giving of which is complained of, are treated on appeal as never having been given.

Tex.—Bryan v. Sinclair Oil & Gas Co., Civ.App., 1 S.W.2d 917.

77. Iowa.—Manatt v. Scott, 76 N.W. 717, 106 Iowa 203, 68 Am.S.R. 293.

Tex.—Farmers Mut. Ins. Ass'n of Erath County v. Gilbreath, Civ. App., 270 S.W.2d 696, error refused no reversible error—City of Dallas v. Rosenthal, Civ.App., 239 S.W.2d 636, error refused no reversible error—McGregor Milling & Grain Co. v. Waren, Civ.App., 175 S.W.2d 476, error refused—Traders & General Ins. Co. v. Boyd, Civ.App., 146 S. W.2d 488, error dismissed, judgment correct.

4 C.J. p 1028 note 9.

Interrogatory pertaining to evidentiary fact

If special interrogatory pertained to evidentiary fact, as distinguished from ultimate fact, it would have no effect on case since, if question was proper, answer would control general verdict, and, if improper, answer could not control general verdict even if inconsistent therewith, and court would disregard such answer and enter judgment on verdict.

Ill.—Stevens v. Kasten, 96 N.E.2d 817, 342 Ill.App. 421.

the findings on proper interrogatories or issues were sufficient to support the judgment;[78] where the error was cured by the proper submission of other questions;[79] where the jury's answers to other questions properly submitted rendered immaterial the improper submission of the questions complained of;[80] where the issue erroneously submitted was immaterial, and could not have influenced the findings on the controlling and main issues;[81] where the jury answered the questions submitted in the

78. Cal.—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 123.
Tex.—Thompson v. Robbins, 304 S.W. 2d 111—Texas & N. O. R. Co. v. McGinnis, 109 S.W.2d 160, 130 Tex. 338.
Jenkins v. Hennigan, Civ.App., 298 S.W.2d 905, error refused no reversible error—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error—Traders & General Ins. Co. v. Gibbs, Civ.App., 229 S.W.2d 410, error refused no reversible error—Roy L. Jones Truck Line v. Johnson, Civ.App., 225 S.W.2d 888, error refused no reversible error—Pope v. Jackson, Civ.App., 211 S.W.2d 958, affirmed Austin Road Co. v. Pope, 216 S.W.2d 563, 147 Tex. 430—Texas Emp. Ins. Ass'n v. McKay, Civ.App., 205 S.W.2d 833, affirmed 210 S.W.2d 147, 146 Tex. 569—Texas & P. Ry. Co. v. Duncan, Civ. App., 193 S.W.2d 431—Karger v. Rio Grande Valley Citrus Exchange, Civ.App., 179 S.W.2d 816, error refused—Texas Indemnity Ins. Co. v. Williamson, Civ.App., 109 S.W.2d 322, error dismissed—Continental Gin Co. v. Tatum, Civ. App., 78 S.W.2d 698—Glens Falls Ins. Co. v. Bendy, Civ.App., 39 S.W.2d 628, affirmed, Com.App., 58 S.W.2d 1—Lane v. Davidson, Civ. App., 31 S.W.2d 1094—Luse v. Gibson, Civ.App., 26 S.W.2d 1081—City of Corsicana v. Albritton, Civ.App., 20 S.W.2d 363—East Texas Public Service Co. v. Johnson, Civ.App., 300 S.W. 975, modified on other grounds, Com.App., 6 S.W.2d 344—State Nat. Bank v. Davidson, Civ. App., 295 S.W. 311—Krenz v. Strohmeir, Civ.App., 177 S.W. 178.
Wis.—Starry v. E. W. Wylie Co., 64 N.W.2d 833, 267 Wis. 258.

79. Tex.—St. Paul Fire & Marine Ins. Co. v. Westmoreland, 105 S.W. 2d 203, 130 Tex. 65.
Federal Underwriters Exchange v. Morton, Civ.App., 167 S.W.2d 267, error refused—El Paso Electric Co. v. Leeper, Civ.App., 42 S.W.2d 863, reversed on other grounds, Com.App., 60 S.W.2d 187—Texas Employers' Ins. Ass'n v. Henson, Civ.App., 31 S.W.2d 669, reversed on other grounds, Com.App., 48 S.W.2d 970, vacated on rehearing 52 S.W.2d 247—Texas Employers' Ins. Ass'n v. Heuer, Civ.App., 10 S.W.2d 756, second rehearing denied 11 S.W.2d 566—O'Brien v. McDow, Civ.App., 8 S.W. 2d 561—Cecil & Co. v. Stamford Gas & Electric Co., Civ.App., 242 S.W. 536—Gulf, C. & S. F. Ry. Co. v. Hines, Civ.App., 239 S.W. 244, affirmed, Com.App., 250 S.W. 1013—Mackenzie v. Pugh, Civ.App., 221 S.W. 1010—Miles v. Harris, Civ. App., 194 S.W. 839, error refused.

80. Cal.—McCune v. Pacific Elec. Ry. Co., 196 P.2d 634, 87 C.A.2d 201.
Mass.—Avila v. Du Pont, 180 N. E. 124, 278 Mass. 83—Bray v. Hickman, 161 N.E. 612, 263 Mass. 409.
N.C.—Newberry v. Willis, 142 S.E. 10, 195 N.C. 302—Poindexter v. Call, 109 S.E. 26, 182 N.C. 366—Belk v. Belk, 94 S.E. 726, 175 N.C. 69.
N.D.—Swallow v. First State Bank, 161 N.W. 207, 35 N.D. 608.
Tex.—Pennsylvania Fire Ins. Co. v. W. T. Waggoner Estate, Com.App., 39 S.W.2d 593.
Jenkins v. Hennigan, Civ.App., 298 S.W.2d 905, error refused no reversible error—Flanigan v. Texas & P. Ry. Co., Civ.App., 273 S.W. 2d 110, error refused no reversible error—Wilkinson v. Chambers, Civ.App., 205 S.W.2d 639—Doornbos v. Looney, Civ.App., 159 S.W. 2d 155, error refused—Dallas Ry. & Terminal Co. v. Whitcomb, Civ. App., 153 S.W.2d 527, affirmed 163 S.W.2d 616, 139 Tex. 467—Frazier Jelke & Co. v. Chapman Minerals Corp., Civ.App., 149 S.W.2d 1101, error dismissed, judgment correct—Peacock v. Missouri-Kansas-Texas R. Co. of Texas, Civ.App., 148 S.W.2d 250—Sherwin-Williams Co. of Texas v. Delahoussaye, Civ. App., 124 S.W.2d 870, error dismissed—Gaines v. Gaines, Civ. App., 119 S.W.2d 427—Austin St. Ry. Co. v. Oldham, Civ.App., 109 S.W.2d 235, error refused—Joy v. Craig, Civ.App., 94 S.W.2d 524, error dismissed—Gulf States Utilities Co. v. Moore, Civ.App., 73 S.W.2d 941, reversed on other grounds 106 S.W.2d 256, 129 Tex. 604—McFarlin v. Elliott-Tuck, Inc., Civ.App., 71 S.W.2d 410—Cabaniss v. Grayburg Oil Co., Civ. App., 50 S.W.2d 437—Central Federal Fire Ins. Co. v. Lewis, Civ. App., 26 S.W.2d 474, modified on other grounds, Com.App., 44 S.W. 2d 936—Sweetwater Progressive Mut. Life & Accident Ass'n v. Allison, Civ.App., 22 S.W.2d 1107—Grant v. Pendley, Civ.App., 22 S. W.2d 467, reversed on other grounds, Com.App., 39 S.W.2d 596, 78 A.L.R. 638—Federal Life Ins. Co. v. Sweeney, Civ.App., 18 S.W. 2d 702—Thomas v. Missouri Pac. R. Co., Civ.App., 289 S.W. 448—Wolf v. Wolf, Civ.App., 269 S.W. 488—Horton v. Benson, Civ.App., 266 S.W. 213, affirmed, Com.App., 277 S.W. 1050—Ford v. Wichita Falls & S. Ry. Co., Civ.App., 253 S.W. 932—Bobbitt v. Bobbitt, Civ. App., 223 S.W. 478, dismissed for want of jurisdiction—Weil v. Miller, Civ.App., 215 S.W. 142, dismissed for want of jurisdiction—Dutton v. Gulf, C. & S. F. Ry. Co., Civ.App., 204 S.W. 352—Bullock v. Galveston, H. & H. R. Co., Civ. App., 178 S.W. 826.
Wis.—Archer v. Chicago, M., St. P. & P. Ry. Co., 255 N.W. 67, 215 Wis. 509—Walker v. Kroger Grocery & Baking Co., 252 N.W. 721—Linden v. Miller, 177 N.W. 909, 172 Wis. 20, 12 A.L.R. 665.

81. Ill.—See Wright v. Wilson, 183 Ill.App. 255.
Kan.—Dick's Transfer Co. v. Miller, 119 P.2d 454, 154 Kan. 574.
Tex.—E. F. Elmberg Co. v. Dunlap Hardware Co., Com.App., 267 S.W. 258.
Grube v. Donnell Exploration Co., Civ.App., 286 S.W.2d 179, error refused no reversible error—Birmingham v. Lindemann, Civ. App., 236 S.W.2d 843—Fisher v. Leach, Civ.App., 221 S.W.2d 384, error refused no reversible error—Humble Oil & Refining Co. v. Martin, Civ.App., 216 S.W.2d 251, affirmed in part and reversed in part on other grounds 222 S.W.2d 995, 148 Tex. 175—Whitten v. Dethloff, Civ.App., 214 S.W.2d 480—Dallas Ry. & Terminal Co. v. Guthrie, Civ.App., 206 S.W.2d 638, reversed on other grounds 210 S. W.2d 550, 146 Tex. 585—Wilkinson v. Chambers, Civ.App., 205 S.W.2d 639—Hayes v. Nichols, Civ.App., 203 S.W.2d 274—Shaw v. Porter, Civ.App., 190 S.W.2d 396, refused for want of merit—Texas & N. O. R. Co. v. Grace, Civ.App., 185 S.W. 2d 219, reversed on other grounds 188 S.W.2d 378, 144 Tex. 71—Texas & N. O. R. Co. v. Blake, Civ.App., 175 S.W.2d 683, error refused—Collins v. Smith, Civ.App., 170 S.W.2d 562, affirmed 175 S.W.2d 407, 142 Tex. 36—Craghead v. United Transports, Civ.App., 170 S.W.2d 325—Food Machinery Corp. v. Moon, Civ.App., 165 S.W.2d 773—Stayton v. Contreras, Civ.App., 150 S.W.2d 342, error dismissed, judgment correct—St. Louis Southwestern Ry. Co. of Texas v. Lowry, Civ.App., 119 S.W.2d 130, error dis-

negative,[82] or favorably to the complaining party;[83] where the trial court could properly have given peremptory instructions on the issue in favor of the party for whom the jury found;[84] where the complaining party introduced no evidence on the issues submitted;[85] where the withholding of the issue would not have affected the verdict;[86] or where the interrogatory improperly submitted was not answered.[87] Where a general verdict is rendered, it has been held that error of the court in contravening statutory prohibitions against requiring answers to special issues as to whether a general verdict was found is not prejudicial.[88]

On the other hand, it may constitute reversible error to submit a special issue or interrogatory which was without any evidence in support of it,[88.5] or which constitutes a comment on the evidence,[88.10] or, if on the question of damages, which does not correctly state the proper measure by which to ascertain the damages.[88.15]

missed—Texas & N. O. R. Co. v. Dingfelder & Balish, Civ.App., 114 S.W.2d 666, affirmed 133 S.W.2d 967, 134 Tex. 156—Franz v. Lusk, Civ.App., 107 S.W.2d 479, error dismissed—Western Union Telegraph Co. v. Scarborough, Civ.App., 44 S.W.2d 751—Texas & N. O. R. Co. v. Goodwin, Civ.App., 40 S.W.2d 182—Wichita Valley Ry. Co. v. Southern Casualty Co., Civ.App., 273 S.W. 680, reversed on other grounds, Com.App., 284 S.W. 940—Haynes v. Bernhard, Civ.App., 268 S.W. 509—Kuehn v. Kuehn, Civ. App., 259 S.W. 290—G. A. Stowers Furniture Co. v. Bichon, Civ.App., 254 S.W. 606—Miller v. Skanes, Civ.App., 253 S.W. 314—San Antonio & A. P. Ry. Co. v. Liggett, Civ.App., 252 S.W. 191—Norwood v. Ferguson, Civ.App., 244 S.W. 619—Greenameyer v. McFarlane, Civ.App., 220 S.W. 613—St. Louis Southwestern Ry. Co. of Texas v. Lamkin, Civ.App., 220 S.W. 179, dismissed for want of jurisdiction—Grice v. Herrick Hardware Co., Civ.App., 219 S.W. 502—Pollack v. Perry, Civ.App., 217 S.W. 967, reversed on other grounds, Com.App., 235 S.W. 541—Smith v. Smith, Civ.App., 213 S.W. 273, error refused—Rowe v. Guderian, Civ.App., 212 S.W. 960, dismissed for want of jurisdiction—Early-Foster Co. v. Mid-Tex Oil Mills, Civ.App., 208 S.W. 224, error refused—Dubois v. Lowery, Civ. App., 205 S.W. 858, error refused—Schaff v. Scoggin, Civ.App., 202 S.W. 758, error refused—Hix v. Tomlinson, Civ.App., 200 S.W. 897—Crafts v. McAllen, Civ.App., 196 S.W. 729, error refused—Frigid Fluid Co. v. Sid Westheimer Co., Civ.App., 189 S.W. 334—Thornton v. Goodman, Civ.App., 185 S.W. 926, reversed on other grounds, Com.App., 216 S.W. 147—Morris v. Brown, Civ.App., 173 S.W. 265.

Wis.—Hoffman v. Regling, 258 N.W. 347, 217 Wis. 66—Thomas v. Lockwood Oil Co., 190 N.W. 559, 178 Wis. 599—Kalashian v. Hines, 177 N.W. 602, 171 Wis. 429—Kolasinski v. Chicago, M. & St. P. Ry. Co., 159 N.W. 563, 164 Wis. 50.

82. N.C.—Veazey v. City of Durham, 57 S.E.2d 377, 231 N.C. 357, rehearing denied 59 S.E.2d 429, 232 N.C. 744.

Tex.—Commercial Casualty Ins. Co. v. Hamrick, 94 S.W.2d 421, 127 Tex. 403.

Colls v. Price's Creameries, Civ. App., 244 S.W.2d 900, error refused no reversible error—Brown v. Brown, Civ.App., 115 S.W.2d 786—Wichita Valley Ry. Co. v. Minor, Civ.App., 100 S.W.2d 1071—Galveston, H. & S. A. Ry. Co. v. Wells, Civ.App., 15 S.W.2d 46, affirmed 50 S.W.2d 247, 121 Tex. 310—Hunt v. Joske Bros. Co., Civ.App., 300 S.W. 201—Canyon Power Co. v. Gober, Civ.App., 192 S.W. 802, error refused—Pecos & N. T. Ry. Co. v. McMeans, Civ.App., 188 S.W. 692.

4 C.J. p 1024 note 60.

83. Tex.—Brown & Root v. Haddad, 180 S.W.2d 339, 142 Tex. 624.

Hutson v. Chambless, Civ.App., 295 S.W.2d 723, reversed on other grounds, Sup., 300 S.W.2d 943—Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S.W.2d 857, error dismissed, judgment correct—Gross v. Dallas Railway & Terminal Co., Civ.App., 131 S.W. 2d 113, error dismissed, judgment correct—Hale v. Herring, Civ.App., 102 S.W.2d 468—First Nat. Bank v. Phillips, Civ.App., 101 S.W.2d 319, error dismissed—Higginbotham v. International-Great Northern R. Co., Civ.App., 99 S.W.2d 338, error dismissed—D. H. Adams & Co. v. Texas Pacific Coal & Oil Co., Civ. App., 275 S.W. 1100—Vogt v. Guidry, Civ.App., 220 S.W. 343, error refused.

84. Tex.—Freeman v. Magnolia Petroleum Co., 171 S.W.2d 339, 141 Tex. 274.

Shepherd v. Sorrells, Civ.App., 182 S.W.2d 1009—Alamo Downs, Inc., v. Briggs, Civ.App., 106 S.W. 2d 733, error dismissed—Ramirez v. Sanchez, Civ.App., 97 S.W.2d 1034—Business Men's Assur. Co. of America v. Bradley, Civ.App., 275 S.W. 622.

Judgment non obstante veredicto subsequently entered

Tex.—Brandtjen & Kluge v. Manney, Civ.App., 238 S.W.2d 609, error refused no reversible error.

85. Iowa.—Fletcher v. Ketcham, 176 N.W. 245, 188 Iowa 340.

86. Wis.—Scheuer v. Manitowoc & Northern Traction Co., 159 N.W. 901, 164 Wis. 333.

87. Kan.—Farmers' State Bank of Speed v. Brenneke, 240 P. 395, 118 Kan. 251, 119 Kan. 508.

Tex.—McClure v. Miller, Civ.App., 116 S.W.2d 470, error dismissed by agreement—Texas-Louisiana Power Co. v. Bihl, Civ.App., 43 S.W. 2d 294, reversed on other grounds, Com.App., 66 S.W.2d 672—Oppenheim v. Swinehart Tire & Rubber Co. of Tennessee, Civ.App., 22 S. W.2d 991—Bryan v. Sinclair Oil & Gas Co., Civ.App., 1 S.W.2d 917.

88. Cal.—Law v. Northern Assur. Co., 132 P. 590, 165 C. 394.

88.5 Ill.—Walsh v. Gazin, 45 N.E.2d 95, 316 Ill.App. 311—Rowley v. Rust, 26 N.E.2d 520, 304 Ill.App. 364.

Tex.—Martin v. Weaver, Civ.App., 161 S.W.2d 812, error refused.

Issue unsupported by evidence

Litigant, who has ample opportunity to attack special finding of jury which is not supported by evidence, may not contend that his rights have been prejudiced by mere submission of issues to jury, unless questions are so inflammatory or suggestive that mere submission would constitute prejudicial error.

Tex.—Horton v. Schultz, Civ.App., 148 S.W.2d 252.

88.10 **Undue prominence to particular testimony**

Special issue which constituted comment on evidence and gave undue prominence to particular testimony would be considered improper.

Tex.—Owen Development Co. v. Calvert, 302 S.W.2d 640.

88.15 Tex.—Winn v. Warner, Civ. App., 172 S.W.2d 526, error refused—Stewart v. Baker, Civ.App., 108 S.W.2d 946—Vetter v. Nicholson, Civ.App., 106 S.W.2d 1064.

b. Refusal to Submit Special Interrogatories or Special Issues

Error in the refusal to submit special interrogatories or special issues to the jury will constitute ground for reversal only if prejudice results to the complaining party.

Refusal to submit special interrogatories in a proper case resulting in prejudice to the party requesting their submission is reversible error,[89] as where by reason thereof the jury failed to understand the case properly and rendered an ambiguous, if not inconsistent, verdict.[90] It has also been held

89. Del.—Lee Tire & Rubber Co. of State of N. Y. v. Dormer, 108 A. 2d 168, 9 Terry 578.

Ind.—Evansville, Mt. C. & N. Ry. Co. v. Scott, 114 N.E. 649, 67 Ind.App. 121.

N.C.—Turnage v. McLawhon, 61 S.E. 2d 336, 232 N.C. 515.

Ohio.—Kennard v. Palmer, 53 N.E. 2d 908, 143 Ohio St. 1—Mellon v. Weber, 152 N.E. 753, 115 Ohio St. 91.

Smith v. Torbett, App., 142 N.E. 2d 868—Webb v. Champion Coated Paper Co., 31 N.E.2d 96, 68 Ohio App. 546.

Pa.—Bertinelli v. Galoni, 200 A. 58, 331 Pa. 73, 118 A.L.R. 398.

R.I.—Currie v. Nathanson, 190 A. 22, 57 R.I. 351.

Tex.—Walgreen-Texas Co. v. Shivers, 154 S.W.2d 625, 137 Tex. 493—Magnolia Petroleum Co. v. Guffry, 102 S.W.2d 408, 129 Tex. 293—Employers' Casualty Co. v. Wolfe City, 25 S.W.2d 320, 119 Tex. 552, modifying Bradshaw v. Wolfe City, Civ.App., 3 S.W.2d 527, and readopted 35 S.W.2d 694, 119 Tex. 552.

Thurman v. Chandler, Com.App., 81 S.W.2d 489—Greer v. Thaman, Com.App., 55 S.W.2d 519—Dallas Ry. & Terminal Co. v. Garrison, Com.App., 45 S.W.2d 183—Davis v. Estes, Com.App., 44 S.W.2d 952—Montrief & Montrief v. Bragg, Com.App., 2 S.W.2d 276, rehearing denied Montrief & Montrief v. Fort Worth Gas Co., Com.App., 4 S.W. 2d 964—Northern Texas Traction Co. v. Woodall, Com.App., 299 S. W. 220—Foster v. Atlir, Com.App., 215 S.W. 955.

Angelina Hardwood Lumber Co. v. Irwin, Civ.App., 276 S.W.2d 407—Manzer v. Barnes, Civ.App., 213 S.W.2d 464, reheard 237 S.W.2d 686—Great Am. Indem. Co. v. Kingsbery, Civ.App., 201 S.W.2d 611, error refused no reversible error—Simmons v. Perkins, Civ. App., 193 S.W.2d 737—Thompson v. Erisman, Civ.App., 157 S.W.2d 439, affirmed 167 S.W.2d 731, 140 Tex. 361—Dallas Ry. & Terminal Co. v. Young, Civ.App., 155 S.W.2d 414, error refused—St. Louis Southwestern R. Co. of Texas v. Daniel, Civ.App., 151 S.W.2d 877—Walker v. Texas & N. O. R. Co., Civ.App., 150 S.W.2d 853, error dismissed, judgment correct—St. Louis Southwestern Ry. Co. of Texas v. Barr, Civ.App., 148 S.W. 2d 924, error dismissed, judgment correct—Ranne v. Jackson, Civ. App., 125 S.W.2d 407—Great Nat. Life Ins. Co. v. Gafford, Civ.App., 108 S.W.2d 917—City of Wheeler v. Southwestern Lloyds, Civ.App., 81 S.W.2d 188, affirmed 109 S.W. 2d 739, 130 Tex. 492—Connecticut General Life Ins. Co. v. Kornegay, Civ.App., 93 S.W.2d 164—Consolidated Underwriters v. Miller, Civ. App., 88 S.W.2d 573—Magnolia Petroleum Co. v. Jackson, Civ.App., 82 S.W.2d 1011, error dismissed—Traders' & General Ins. Co. v. Forrest, Civ.App., 78 S.W.2d 987—Northern Texas Traction Co. v. Bruce, Civ.App., 77 S.W.2d 889—The Fair, Inc. v. Preisach, Civ. App., 77 S.W.2d 725—Connecticut General Life Ins. Co. v. Moore, Civ.App., 75 S.W.2d 329—Texas Employers' Ins. Ass'n v. Kelly, Civ.App., 71 S.W.2d 901—Texas Builders' Supply Co. v. Fannin Inv. Co., Civ.App., 70 S.W.2d 1009—Ferguson Seed Farms v. Fort Worth & D., S. P. Ry. Co., Civ.App., 69 S.W.2d 223—Texas Employers' Ins. Ass'n v. Pearson, Civ.App., 67 S.W.2d 630—Whistler v. Freeman, Civ.App., 62 S.W.2d 674—Home Ben. Ass'n v. Briggs, Civ.App., 61 S.W.2d 867—Sanchez v. Dixon, Civ. App., 59 S.W.2d 425—Spears Dairy v. Bohrer, Civ.App., 54 S.W.2d 872—Southern Iron & Machine Co. v. Portugal, Civ.App., 53 S.W.2d 685—Continental Oil Co. v. Berry, Civ.App., 52 S.W.2d 953—White v. Hutton, Civ.App., 52 S.W.2d 542—Ferguson v. Conklin, Civ.App., 51 S.W.2d 622—Illinois Bankers' Life Assur. Co. v. Garrison, Civ.App., 48 S.W.2d 742—Runnels Chevrolet Co. v. Clifton, Civ.App., 46 S.W.2d 426—Skrobarcek v. Raborn Chevrolet Co., Civ.App., 45 S.W.2d 1110—American Nat. Ins. Co. v. La Blue, Civ.App., 45 S.W.2d 731—Gulf States Utilities Co. v. Grubbs, Civ.App., 44 S.W.2d 1001—Rogers v. Cotton, Civ.App., 42 S.W.2d 173—Jones v. Jones, Civ. App., 41 S.W.2d 496—Brown & Root v. Duncan, Civ.App., 40 S.W.2d 244—Indemnity Ins. Co. of North America v. Boland, Civ.App., 31 S.W.2d 518—Hooks v. Orton, Civ. App., 30 S.W.2d 681—Federal Surety Co. v. Jetton, Civ.App., 29 S.W. 2d 534, modified on other grounds, Com.App., 44 S.W.2d 923—Abel v. Maxwell Hardware Co., Civ.App., 28 S.W.2d 312—Brammer & Wilder v. Limestone County, Civ.App., 24 S.W.2d 99—World Oil Co. v. Hicks, Civ.App., 19 S.W.2d 605, affirmed Hicks v. World Oil Co., Com.App., 34 S.W.2d 581—Humble Pipe Line Co. v. Kincaid, Civ.App., 19 S.W.2d 144—Ford v. Couch, Civ.App., 16 S.W.2d 869—Lanier v. Royals, Civ. App., 14 S.W.2d 863—Texas & P. Ry. Co. v. Guidry, Civ.App., 9 S. W.2d 284, affirmed 50 S.Ct. 159, 280 U.S. 531, 74 L.Ed. 596—Donigan v. Polacek, Civ.App., 5 S.W.2d 792—Wright v. Austin, Civ.App., 1 S. W.2d 703—Missouri, K. & T. R. Co. of Texas v. Mason, Civ.App., 299 S.W. 336—Kelly v. Rozelle, Civ.App., 294 S.W. 699—Thompson v. Van Natta, Civ.App., 277 S.W. 711—North Texas Compress & Warehouse Co. v. Howard, Civ. App., 267 S.W. 1026—Northern Texas Traction Co. v. Adams, Civ. App., 241 S.W. 275—Moye v. Park, Civ.App., 216 S.W. 205—Buckholts State Bank v. Graf, Civ.App., 200 S.W. 858—Langford v. Power, Civ. App., 196 S.W. 662—Wolfe City Milling Co. v. Ward, Civ.App., 185 S.W. 663—Gordon Jones Const. Co. v. Lopez, Civ.App., 172 S.W. 987.

Wis.—Polsfuss v. Price, 74 N.W.2d 612, 272 Wis. 99—Paulson v. Scott, 50 N.W.2d 376, 260 Wis. 141, 31 A. L.R.2d 706—Bohren v. Lautenschalger, 1 N.W.2d 792, 239 Wis. 400—McGuiggan v. Hiller Bros., 253 N.W. 403, 214 Wis. 388—John E. De Wolf Co. v. Harvey, 154 N. W. 988, 161 Wis. 535—Bugajski v. Milwaukee Western Fuel Co., 149 N.W. 277, 158 Wis. 454.

4 C.J. p 1028 note 13.

Subsequent findings not considered

In determining whether defendant's special defense is raised by evidence and entitled to be affirmatively submitted to the jury, subsequent findings of the jury on plaintiff's issues should not be considered.

Tex.—Davis v. Estes, Com.App., 44 S.W.2d 952.

Withdrawal

The erroneous withdrawal of special interrogatories submitted to the jury, if prejudicial, will be grounds for reversal.

Tex.—City of Wheeler v. Southwestern Lloyds, Civ.App., 81 S.W.2d 188—Cook v. Hildebrand, Civ.App., 65 S.W.2d 365.

90. Wis.—Bugajski v. Milwaukee Western Fuel Co., 149 N.W. 277, 158 Wis. 454.

4 C.J. p 1028 note 14.

that error in refusing to submit to the jury a special question whether decedent was ordered not to work in the place where he was killed was not cured by instructions on contributory negligence, under which the jury might infer that decedent was not contributorily negligent, even though the order was given.[91]

A failure or refusal to submit special interrogatories or the withdrawal of a special interrogatory is harmless error, however, where it is apparent that no prejudice could have resulted to appellant,[92] as

91. Wis.—Sadowski v. Thomas Furnace Co., 146 N.W. 770, 157 Wis. 443.

92. Ark.—City of Little Rock v. Holden, 186 S.W. 293, 124 Ark. 599.
Conn.—Reid v. City of New Haven, 52 A.2d 140, 133 Conn. 446.
Ill.—See Hubbard v. Martin, 184 Ill. App. 534.
Ind.—Sterling Fire Ins. Co. v. Comision Reguladora Del Mercado De Henequen, 143 N.E. 2, 195 Ind. 29. Tate v. West, 94 N.E.2d 371, 120 Ind.App. 519—Lake Erie & W. R. Co. v. Halleck, 136 N.E. 39, 78 Ind. App. 495—Traylor v. McCormick, 115 N.E. 346, 63 Ind.App. 695.
Iowa.—Ipsen v. Ruess, 41 N.W.2d 658, 241 Iowa 730—Geagley v. City of Bedford, 16 N.W.2d 252, 235 Iowa 555.
Kan.—Morrison v. Hawkeye Cas. Co., 212 P.2d 633, 168 Kan. 303—Olmstead v. Fidelity & Deposit Co. of Maryland, 28 P.2d 722, 138 Kan. 825—Estes v. Edgar Zinc Co., 156 P. 758, 97 Kan. 774—Ladd v. Chicago, R. I. & P. Ry. Co., 155 P. 943, 97 Kan. 543—Moore v. Wilson, 149 P. 739, 95 Kan. 637—Saunders v. Atchison, T. & S. F. Ry. Co., 148 P. 657, 95 Kan. 537—Missouri Pac. R. Co. v. Moffatt, 55 P. 837, 60 Kan. 113, 72 Am.S.R. 343.
Ky.—Modern Woodmen of America v. Neeley, 111 S.W. 282, 33 Ky.L. 758.
Mich.—Weeks v. Hyatt, 78 N.W.2d 260, 346 Mich. 479.
Minn.—Roske v. Ilykanyics, 45 N.W. 2d 769, 232 Minn. 383.
N.C.—T. J. Carter & Co. v. Town of Leaksville, 94 S.E. 6, 174 N.C. 561.
N.D.—Salewski v. Minneapolis, St. P. & S. S. M. Ry. Co., 181 N.W. 72, 47 N.D. 64.
Ohio.—Novy v. City of Cleveland, App., 140 N.E.2d 19—Mercurio v. Hughes & Looker, App., 103 N.E. 2d 836—Howard v. Pennsylvania R. Co., 69 N.E.2d 541, 79 Ohio App. 184, appeal dismissed 70 N.E.2d 373, 147 Ohio St. 248—Moknach v. New York Life Ins. Co., 36 N.E.2d 529, 67 Ohio App. 293.
Okl.—Smith v. Gillis, 151 P. 869, 51 Okl. 134.
Pa.—St. John v. Kepler, 61 A.2d 875, 360 Pa. 528.
R.I.—De Fusco v. Laudati, 10 A.2d 346, 64 R.I. 68.
Tex.—Schuhmacher Co. v. Holcomb, 177 S.W.2d 951, 142 Tex. 332—St. Paul Fire & Marine Ins. Co. v. Westmoreland, 105 S.W.2d 203, 130 Tex. 65—Southern Surety Co. v. Adams, 84 S.W.2d 789, 119 Tex. 489.
Leal v. Leal, Com.App., 14 S.W. 2d 797—Lumbermen's Reciprocal Ass'n v. Wilmoth, Com.App., 12 S. W.2d 972—Texas & N. O. Ry. Co. v. Thompson, Com.App., 12 S.W.2d 963—Fort Worth & D. C. Ry. Co. v. Amason, Com.App., 276 S.W. 162—American Surety Co. of New York v. Hill County, Com.App., 267 S.W. 265—Texas City Transp. Co. v. Winters, Com.App., 222 S.W. 541, rehearing overruled 224 S.W. 1087.
Reddick v. Longacre, Civ.App., 228 S.W.2d 264, error refused no reversible error—American General Ins. Co. v. Williams, Civ.App., 222 S.W.2d 907, reversed on other grounds 227 S.W.2d 788, 149 Tex. 1—Lone Star Bldg. & Loan Ass'n v. Larcade, Civ.App., 211 S.W.2d 257, error refused no reversible error—Associated Emp. Lloyds v. Zellerbach, Civ.App., 208 S.W.2d 136—Meier v. Murphy, Civ.App., 207 S.W.2d 947, error refused no reversible error—Frierson v. Modern Mut. Health & Accident Ins. Co., Civ.App., 172 S.W.2d 389, error refused—Reavis v. Taylor, Civ. App., 162 S.W.2d 1030, error refused—Shultz v. Dallas Power & Light Co., Civ.App., 147 S.W.2d 914, error dismissed, judgment correct—General Exchange Ins. Corp. v. Arnold, Civ.App., 146 S.W.2d 781—Portilla Drilling Co. v. Miller, Civ.App., 144 S.W.2d 936, error dismissed, judgment correct—Catching v. Bogart, Civ.App., 138 S.W.2d 245, error refused—Butler v. Abilene Mut. Life Ins. Ass'n, Civ.App., 130 S.W.2d 1061, error dismissed, judgment correct—Martin v. Martin, Civ.App., 130 S.W.2d 863, error dismissed, judgment correct—Burlington-Rock Island R. Co. v. Davis, Civ.App., 123 S.W.2d 1002, error dismissed, judgment correct—Chandler v. Stewart, Civ. App., 90 S.W.2d 590, error dismissed—McConnell v. Jorns, Civ.App., 85 S.W.2d 1055, error dismissed—Jackson v. Amador, Civ.App., 75 S. W.2d 892—Pure Oil Co. v. Pope, Civ.App., 75 S.W.2d 175—Oklahoma Wheat Pool Elevator Corporation v. Sylvester, Civ.App., 65 S.W.2d 398—Texas & P. Ry. Co. v. Short, Civ.App., 62 S.W.2d 995—Texas-Louisiana Power Co. v. Daniels, Civ.App., 61 S.W.2d 179—First Nat. Bank v. Jones, Civ.App., 59 S.W. 2d 1103—Wichita County Water Improvement Dist. No. 1 v. Pearce, Civ.App., 59 S.W.2d 183—Texas Electric Service Co. v. Anderson, Civ.App., 55 S.W.2d 142—Pennington Produce Co. v. Wonn, Civ.App., 49 S.W.2d 482—Jewell v. El Paso Electric Co., Civ.App., 47 S.W.2d 328—English v. Miller, Civ.App., 43 S.W.2d 642—Chicago, R. I. & G. Ry. Co. v. Pipes, Civ.App., 33 S.W. 2d 818—Hatt v. Walker, Civ.App., 33 S.W.2d 489—King v. Shawver, Civ.App., 30 S.W.2d 930—Miller v. Winn, Civ.App., 28 S.W.2d 578—Shaw v. Shaw, Civ.App., 28 S.W.2d 173—Gibbs v. Lester, Civ.App., 24 S.W.2d 527, affirmed, Com.App., 41 S.W.2d 28, 80 A.L.R. 431—Williams v. City of Galveston, Civ.App., 14 S.W.2d 1049—National Cash Register Co. v. Rider, Civ.App., 13 S.W. 2d 414, reversed on other grounds, Com.App., 24 S.W.2d 28—Dallas Hotel Co. v. Davidson, Civ.App., 12 S.W.2d 633, reversed on other grounds Dallas Hotel Co. v. Davison, Com.App., 23 S.W.2d 708—Maryland Casualty Co. v. Long, Civ.App., 9 S.W.2d 458—Galveston, H. & S. A. Ry. Co. v. Brewer, Civ. App., 4 S.W.2d 320—Darden v. Denison, Civ.App., 3 S.W.2d 137—Stone v. Few, Civ.App., 300 S.W. 181—Hawkeye Securities Ins. Co. v. Cashion, Civ.App., 293 S.W. 664, reversed on other grounds, Com. App., 299 S.W. 895—Texas & P. Ry. Co. v. Greene, Civ.App., 291 S. W. 929, affirmed, Com.App., 299 S. W. 639—Hazleton v. Holt, Civ. App., 285 S.W. 1115—Stevenson v. Barrow, Civ.App., 285 S.W. 840, reversed on other grounds, Com. App., 291 S.W. 1101—Humble Oil & Refining Co. v. Martarana, Civ. App., 272 S.W. 299—South Chester Tube Co. v. Texhoma Oil & Refining Co., Civ.App., 264 S.W. 108, error dismissed, Com.App., 287 S.W. 1111—Wichita Falls, R. & Fort Worth Ry. Co. v. Emberlin, Civ. App., 255 S.W. 796, reversed on other grounds Emberlin v. Wichita Falls, R. & Ft. W. R. Co., Com. App., 267 S.W. 463—Maryland Motor Car Ins. Co. v. Smith, Civ. App., 254 S.W. 526—City of Graham v. Moseley, Civ.App., 254 S. W. 130—Lankford v. Jetter Drilling Co., Civ.App., 251 S.W. 587—Crews v. Schaff, Civ.App., 250 S. W. 749—Osage Oil & Gas Co. v. Caulk, Civ.App., 243 S.W. 551—Norman v. Stark Grain & Elevator Co., Civ.App., 237 S.W. 963, error refused—Sweet v. Berry, Civ. App., 236 S.W. 531, dismissed for

where all the material matters contained in those asked were covered by the special questions asked by the court;[93] where all the essential facts called for are embodied in others submitted[94] or could be inferred from the answers thereto;[95] or where the verdict fully covered all the inquiries suggested by the rejected questions and by the litigated issues.[96]

Likewise, a refusal to submit special interrogatories or the withdrawal of a special interrogatory is harmless error where the issue embodied in the requested special interrogatory was immaterial;[97] where the findings of the jury rendered the issue embodied in the special interrogatory immaterial;[98] where there was no jury issue and appellee was en-

want of jurisdiction—Colorado & S. Ry. Co. v. Rowe, Civ.App., 224 S.W. 928, reversed on other grounds, Com.App., 238 S.W. 908—Lopez v. Garcia, Civ.App., 221 S.W. 665, dismissed for want of jurisdiction—Farmers' & Merchants' State Bank & Trust Co. v. Cole, Civ.App., 220 S.W. 354, error refused—North Texas Gas Co. v. Young, Civ.App., 220 S.W. 254, dismissed for want of jurisdiction—Galveston, H. & S. A. Ry. Co. v. Cook, Civ.App., 214 S.W. 539, dismissed for want of jurisdiction—Sellers v. Galveston, H. & S. A. Ry. Co., Civ.App., 208 S.W. 397, error refused—Lancaster v. Snider, Civ. App., 207 S.W. 560—Fisheries Co. v. McCoy, Civ.App., 202 S.W. 343, error dismissed—National Fire Ins. Co. of Hartford, Conn. v. Humphrey, Civ.App., 199 S.W. 865—Alexander v. Conley, Civ.App., 187 S.W. 254—Missouri, K. & T. Ry. Co. of Texas v. Norris, Civ.App., 184 S.W. 261, reversed on other grounds, Com.App., 222 S.W. 1097—Currie v. Glasscock County, Civ. App., 183 S.W. 1193, error refused—Texas & Pacific Coal Co. v. Gibson, Civ.App., 180 N.W. 1134.

Wis.—Brophy v. Milwaukee Elec. Ry. & Transport Co., 30 N.W.2d 76, 251 Wis. 558—Derge v. Carter, 22 N. W.2d 505, 248 Wis. 500—Edwards v. Kohn, 241 N.W. 331, 207 Wis. 381—Swiergul v. Town of Suamico, 235 N.W. 548, 204 Wis. 114—Murray v. Yellow Cab Co., 192 N. W. 1021, 180 Wis. 314—Zietlow v. Sweger, 192 N.W. 47, 179 Wis. 462—Nelson v. Pauli, 186 N.W. 217, 176 Wis. 1—Shortle v. Sheill, 178 N.W. 304, 172 Wis. 53—Hakes v. Town of Pine Grove, 172 N.W. 146, 169 Wis. 214—McNaughton v. McClure, 171 N.W. 936, 169 Wis. 288—Schroeder v. City of Watertown, 152 N.W. 470, 161 Wis. 13.

4 C.J. p 1029 note 16.

93. Ind.—Illinois Cent. R. Co. v. Cheek, 53 N.E. 641, 152 Ind. 663.

Iowa.—Livingston v. Heck, 94 N.W. 1098, 122 Iowa 74.

Tex.—Danner v. Walker-Smith Co., Civ.App., 154 S.W. 295—Texas Mach., etc., Co. v. Ayers Ice Cream Co., Civ.App., 150 S.W. 750.

4 C.J. p 1029 note 17.

94. Ill.—Hall v. Hotel Sherman Co., 236 Ill.App. 386.

Kan.—Crowder v. Williams, 226 P. 774, 116 Kan. 241.

N.C.—McNeeley v. W. H. Miles Shoe Co., 87 S.E. 64, 170 N.C. 278.

Pa.—Feigenbaum v. Prudential Ins. Co. of America, 19 A.2d 542, 144 Pa. Super. 412.

Tex.—Villanueva v. Rodriguez, Civ. App., 300 S.W.2d 668, error refused no reversible error—Rowan & Hope v. Valadez, Civ.App., 258 S.W.2d 395, error refused no reversible error—Associated Emp. Lloyds v. Tullos, Civ.App., 197 S.W.2d 210, error refused no reversible error—Federal Underwriters Exchange v. Green, Civ.App., 150 S.W.2d 98, error dismissed, judgment correct—Forrest v. Faust, Civ.App., 110 S.W.2d 147, error dismissed—Schlather v. Grobe, Civ.App., 246 S.W. 414—Wilson v. Avery Co. of Texas, Civ.App., 182 S.W. 884—Consumers' Lignite Co. v. Grant, Civ.App., 181 S.W. 202.

4 C.J. p 1029 note 18.

95. Kan.—Christian v. Union Traction Co., 154 P. 271, 97 Kan. 46.

Tex.—Jones v. Hughes, Civ.App., 265 S.W. 740, affirmed, Com.App., 277 S.W. 624—Payne v. Richards, Civ. App., 248 S.W. 771—American Nat. Ins. Co. v. Nussbaum, Civ.App., 230 S.W. 1102, dismissed for want of jurisdiction—West Lumber Co. v. Keen, Civ.App., 221 S.W. 625, reversed on other grounds, Com. App., 237 S.W. 236—Pyle v. Park, Civ.App., 214 S.W. 652—San Antonio & A. P. Ry. Co. v. Schwethelm, Civ.App., 186 S.W. 414—Taylor v. Jackson, Civ.App., 180 S.W. 1142.

4 C.J. p 1029 note 19.

Striking of interrogatories submitted by defendant to plaintiff to some extent covered by other interrogatories submitted and answered, in view of subsequent amendment of complaint to cover the subject matter inquired about, was not reversible error.

Ind.—Portland Foundry & Machine Co. v. Gibson, 111 N.E. 184, 184 Ind. 342.

96. Iowa.—Maine v. Rittenmeyer, 151 N.W. 499, 169 Iowa 675.

Tex.—General Exchange Ins. Corp. v. Bolles, Civ.App., 143 S.W.2d 635—Panhandle & S. F. Ry. Co. v. Laird, Civ.App., 224 S.W. 305, dismissed for want of jurisdiction.

4 C.J. p 1029 note 20.

97. R.I.—Connolly v. Seitman, 9 A. 2d 866, 64 R.I. 29.

Tex.—Hicks v. Brown, Civ.App., 128 S.W.2d 884, modified on other grounds 151 S.W.2d 790, 136 Tex. 399—Peckham v. Johnson, Civ. App., 98 S.W.2d 408, affirmed 120 S.W.2d 786, 132 Tex. 148, 120 A. L.R. 720—Kenney v. La Grone, Civ.App., 62 S.W.2d 600—McGee v. Cunningham, Civ.App., 17 S.W.2d 494—W. C. Tyrrell Trust v. Lovell, Civ.App., 16 S.W.2d 880, reversed on other grounds, Com. App., 27 S.W.2d 142, modified on other grounds 30 S.W.2d 301.

Wis.—Koepke v. Miller, 6 N.W.2d 670, 241 Wis. 501.

Evidentiary issues

It is not reversible error to refuse submission of evidentiary issues.

Tex.—Browning v. Nesting, Civ.App., 219 S.W.2d 712, error refused no reversible error—Bridwell v. Bernard, Civ.App., 159 S.W.2d 981, error refused—Fidelity & Casualty Co. of New York v. McLaughlin, Civ.App., 106 S.W.2d 815, affirmed 135 S.W.2d 955, 134 Tex. 613—Herbert Oil Co. of Texas v. McCaskey, Civ.App., 40 S.W.2d 834—Missouri, K. & T. Ry. Co. of Texas v. Rockwall County Levee Imp. Dist. No. 3, Civ.App., 266 S.W. 163, reversed on other grounds 297 S. W. 206, 117 Tex. 34—Rio Grande, E. P. & S. F. Ry. Co. v. Guzman, Civ.App., 221 S.W. 1102, dismissed for want of jurisdiction.

4 C.J. p 1029 note 25.

Not calling for ultimate facts

The refusal to submit proposed interrogatories which did not call for ultimate facts, the answers to which would be decisive of the case, was not to the prejudice of appellant.

Iowa.—Risser v. Parr, 172 N.W. 446.

98. Tex.—Cato v. Texas & P. Ry. Co., Com.App., 39 S.W.2d 843—Campbell v. Johnson, Com.App., 290 S.W. 526.

Texas Emp. Ins. Ass'n v. Dillingham, Civ.App., 262 S.W.2d 748, error refused no reversible error—Super-Cold Southwest Co. v. Chowning, Civ.App., 248 S.W.2d 504, error refused no reversible error—Gooch v. Davidson, Civ.App., 245 S.W.2d 989—Allison v. California Petroleum Corporation of Venezuela, Civ.App., 158 S.W.2d 597, error refused—Perez v. San Jacinto Finance Corporation, Civ.App., 154 S.W.2d 298, error refused—General American Life Ins. Co. v. Martinez, Civ.App., 149 S.W.2d 637, error dismissed, judgment correct—

titled to peremptory instructions;[99] where the verdict on the issues submitted amply supports the judgment;[1] where no other general verdict could have been rendered;[2] where the answers to the interrogatories must necessarily have been adverse to appellant[3] or could not have changed the result;[4] where an affirmative answer to the proposed special interrogatory propounded by defendant would not have been inconsistent with the general verdict for plaintiff;[5] where no matter what the answer to the interrogatories might have been they would be entirely consistent with the general verdict returned by the jury;[6] where, if submitted, the jury would not have been required by the terms of the interrogatories to answer them;[7] or where the issues to which the interrogatories related were so simple that analysis was not necessary to require proper consideration thereof.[8]

c. Submission or Refusal to Submit Questions in Equity Cases

Ordinarily, errors in the submission of, or refusal to submit, special interrogatories, special issues, or questions to the jury in actions of an equitable nature are not grounds for reversal.

In equity cases, where the verdict is only advisory, errors in submitting or refusing to submit, issues or questions to the jury will not ordinarily be grounds for reversal,[9] particularly where it appears that the jury reached a correct conclusion,[10] where the finding was favorable to appellants,[11] or where the court disregarded the verdict and made independent findings.[12]

Schumacher Co. v. Shooter, Civ. App., 94 S.W.2d 484, reversed on other grounds Schumacher v. Shooter, 124 S.W.2d 857, 132 Tex. 560—Texas & P. Ry. Co. v. Feagan, Civ.App., 80 S.W.2d 396—Murray v. Missouri, K. & T. R. Co., Civ.App., 79 S.W.2d 334—Anderson v. Texas & N. O. R. Co., Civ.App., 63 S.W.2d 1079—Herd v. Wade, Civ.App., 63 S.W.2d 253—Berryman v. Norfleet, Civ.App., 41 S.W.2d 722—Casstevens v. Texas & P. Ry. Co., Civ.App., 28 S.W.2d 288, reversed on other grounds 32 S.W. 2d 637, 119 Tex. 456, 73 A.L.R. 89—Sloan Lumber Co. v. Davis, Civ. App., 19 S.W.2d 355—Wortham v. Bull, Civ.App., 19 S.W.2d 211—Julian Petroleum Corporation v. Egger, Civ.App., 15 S.W.2d 36—Williams v. City of Galveston, Civ. App., 14 S.W.2d 1049—Fort Worth Gas Co. v. Bragg, Civ.App., 297 S. W. 244, reversed on other grounds Montrief & Montrief v. Bragg, Com.App., 2 S.W.2d 276, rehearing denied Montrief & Montrief v. Fort Worth Gas Co., 4 S.W.2d 964—Baker v. Nance Bros., Civ.App., 294 S.W. 290—El Paso Electric Co. v. Sawyer, Civ.App., 291 S.W. 667, affirmed, Com.App., 298 S.W. 267—Texas Nat. Bank v. Eastland-Desdemona Consol. Oil Co., Civ.App., 287 S.W. 149—Caldwell v. McGarvey, Civ.App., 285 S.W. 859—Jones v. Roche, Civ.App., 244 S.W. 227—Sutherland v. Citizens' State Bank, Civ.App., 220 S.W. 115—Galveston, H. & S. A. Ry. Co. v. Cook, Civ.App., 214 S.W. 539, dismissed for want of jurisdiction—American Nat. Ins. Co. v. Hicks, Civ. App., 198 S.W. 616, error refused—Branham v. Hallam, Civ.App., 191 S.W. 158, error refused—Jenkins v. Morgan, Civ.App., 187 S.W. 1091—Kansas City, M. & O. Ry. Co. of Texas v. Durrett, Civ.App., 187 S.W. 427, error refused.

Wis.—Frings v. Donovan, 63 N.W.2d 105, 266 Wis. 277.

99. Tex.—Smith v. First Nat. Bank, Civ.App., 114 S.W.2d 317—Grand United Order of Odd Fellows v. Massey, Civ.App., 87 S.W.2d 310.

1. Kan.—Muenzenmayer v. Hay, 159 P. 1, 98 Kan. 538.

Tex.—Magnolia Petroleum Co. v. Long, Com.App., 86 S.W.2d 450—Cato v. Texas & P. Ry. Co., Com. App., 39 S.W.2d 843.

Galveston, H. & S. A. Ry. Co. v. Henry, Civ.App., 252 S.W. 210—Hahl v. Davidson, Civ.App., 202 S.W. 792.

2. Ill.—Arnold v. Dodson, 193 Ill. App. 62, affirmed 112 N.E. 70, 272 Ill. 377.

Iowa.—Risser v. Parr, 168 N.W. 865, modified on other grounds 172 N. W. 446.

Kan.—Alexander v. Wehkamp, 232 P.2d 440, 171 Kan. 285—Lutz v. People's State Bank of Minneola, 9 P.2d 997, 135 Kan. 115—Smith Bros. & Cooper v. Hanson, 187 P. 262, 106 Kan. 32.

Tex.—Chicago, R. I. & G. Ry. Co. v. Smith, Civ.App., 197 S.W. 614, affirmed, Com.App., 222 S.W. 1099.

4 C.J. p 1029 note 21.

3. Kan.—Clark v. Missouri Pac. R. Co., 11 P. 134, 35 Kan. 350.

4. Ind.—Tate v. West, 94 N.E.2d 371, 120 Ind.App. 519—Partenheimer v. Southern R. Co., 101 N.E. 103, 54 Ind.App. 125.

Ohio.—Speece v. Industrial Commission, App., 70 N.E.2d 387.

5. Cal.—Ruppel v. United R. Cos., 101 P. 803, 10 C.A. 319.

6. Kan.—Bickford v. Champlin, 44 P. 901, 3 Kan.App. 681—Swift v. Wyatt, 43 P. 984, 2 Kan.App. 544.

7. Ind.—Muncie, etc., Tract. Co. v. Hall, 89 N.E. 484, 173 Ind. 95.

8. Iowa.—Heisler v. Heisler, 127 N. W. 823.

9. Ariz.—Brady v. Brady, 61 P.2d 390, 48 Ariz. 308.

Cal.—Cutter Laboratories, Inc. v. R. W. Ogle & Co., App., 311 P.2d 627.

Kan.—Martin v. Ott, 219 P. 275, 114 Kan. 419.

Ky.—Kentland Coal & Coke Co. v. Pugh, 258 S.W.2d 461—Riffe & Jones v. McKinney Deposit Bank, 188 S.W. 775, 171 Ky. 757.

Mont.—Hoskins v. Scottish Union & National Ins. Co., 195 P. 837, 59 Mont. 50.

Tenn.—Bovay v. Bovay, 181 S.W.2d 157, 27 Tenn.App. 332.

Imperfections in form

Judgment in an equity case will not be reversed for slight imperfections in the form of interrogatories to the jury.

Ariz.—Pawley v. First Nat. Bank, 256 P. 507, 32 Ariz. 135.

No notice of motion

Since the chancellor was not bound by the jury's finding, an irregularity in submitting the issue to the jury on the chancellor's own motion without notice to the parties was harmless.

Ky.—Jones v. Riddell, 5 S.W.2d 1077, 224 Ky. 245.

10. Mo.—Cockrell v. McIntyre, 61 S.W. 648, 161 Mo. 59.

Pa.—Highlands v. Philadelphia, etc., R. Co., 58 A. 560, 209 Pa. 286.

Wash.—Baker v. Bicknell, 44 P. 107, 14 Wash. 29.

11. Ky.—Lamkins v. Cambron's Adm'rs, 238 S.W. 766, 194 Ky. 246.

12. Mont.—Wetzstein v. Largey, 70 P. 717, 27 Mont. 212.

Wash.—Lauman v. Hoofer, 79 P. 953, 37 Wash. 382.

4 C.J. p 1028 note 12.

15. Instructions to Jury

a. Error in Instructions Given

§ 1763(1). Prejudicial Effect in General

a. Harmless error
b. Prejudicial error
c. Actions involving motor vehicles

a. Harmless Error

The giving of an erroneous instruction will not ordinarily constitute a ground for reversal where the complaining party has not been prejudiced.

As a general rule, the giving of an erroneous instruction will not constitute a ground for reversal where the complaining party has not been injured thereby.[13] A judgment will not be reversed for er-

13. Ala.—Nelson v. Lee, 32 So.2d 22, 249 Ala. 549—Birmingham Ice & Cold Storage Co. v. Alley, 25 So.2d 37, 247 Ala. 503—Sawyer v. Stanley, 1 So.2d 21, 241 Ala. 39—McKinney v. Birmingham Electric Co., 193 So. 139, 238 Ala. 627—Harrison v. Mobile Light & Railroad Co., 171 So. 742, 233 Ala. 393—Fraternal Aid Union v. Monfee, 168 So. 891, 232 Ala. 606—O'Bar v. Southern Life & Health Ins. Co., 168 So. 580, 232 Ala. 459—Willingham v. Wesley Hardware Co., 149 So. 703, 227 Ala. 280—Mobile & O. R. Co. v. Williams, 147 So. 819, 226 Ala. 541, certiorari denied 54 S.Ct. 71, 290 U.S. 655, 78 L.Ed. 568—Meadors v. Haralson, 147 So. 184, 226 Ala. 413—Louisville & N. R. Co. v. Parker, 138 So. 231, 223 Ala. 626, certiorari dismissed 53 S.Ct. 94, 287 U.S. 569, 77 L.Ed. 501—McDowell v. Hutto, 135 So. 322, 223 Ala. 307—Thomas v. Carter, 117 So. 634, 218 Ala. 55—St. Louis-San Francisco Ry. Co. v. Swaney, 113 So. 410, 216 Ala. 454—Navco Hardwood Co. v. Bass, 108 So. 452, 214 Ala. 553—Citizens' Bank of Winfield v. Commercial Sav. Bank of Guin, 96 So. 324, 209 Ala. 280—Hammitt v. Birmingham Ry., Light & Power Co., 81 So. 22, 202 Ala. 520—Birmingham Ry., Light & Power Co. v. Hunt, 76 So. 918, 200 Ala. 560—Sims v. Alabama Great Southern Ry. Co., 72 So. 328, 197 Ala. 151—Hoffman v. Birmingham Ry., Light & Power Co., 69 So. 551, 194 Ala. 30—Ogburn-Griffin Grocery Co. v. Orient Ins. Co., 66 So. 434, 188 Ala. 218.

Ariz.—Pacific Const. Co. v. Cochran, 243 P. 405, 29 Ariz. 554—Southwest Cotton Co. v. Clements, 215 P. 156, 25 Ariz. 169—Mesa City v. Lesueur, 190 P. 573, 21 Ariz. 532.

Ark.—**Corpus Juris Secundum cited in** Hanson Motor Co. v. Young, 265 S.W.2d 501, 505, 223 Ark. 191—Scott-Burr Stores Corp. v. Foster, 122 S.W.2d 165, 197 Ark. 232—Paris Purity Coal Co. v. Pendergrass, 104 S.W.2d 455, 193 Ark. 1031—Consolidated Indemnity Ins. Co. v. Dean, 68 S.W.2d 460, 188 Ark. 835—General Talking Pictures Corporation v. Shea, 61 S.W. 2d 430, 187 Ark. 568—Eldridge v. Bemis, 43 S.W.2d 755, 184 Ark. 1193—Sakaba Oil Corporation v. Parish, 299 S.W. 1016, 175 Ark. 618—Missouri Pac. R. Co. v. Nichols, 279 S.W. 354, 170 Ark. 1194—Ozark Mut. Life Ass'n v. Dillard, 273 S. W. 378, 169 Ark. 136—Chicago, R. I. & P. Ry. Co. v. Floyd, 171 S.W. 913, 115 Ark. 607.

Cal.—Pauly v. King, 284 P.2d 487, 44 C.2d 649—Pfingsten v. Westenhaver, 244 P.2d 395, 39 C.2d 12—Ellison v. Lang Transp. Co., 84 P. 2d 510, 12 C.2d 355—Shuey v. Asbury, 55 P.2d 1160, 5 C.2d 712—Parker v. James E. Granger, Inc., 52 P.2d 226, 4 C.2d 668, appeal dismissed 56 S.Ct. 958, 298 U.S. 644, 80 L.Ed. 1375—Treadwell v. Nickel, 228 P. 25, 194 C. 243—Smith v. Atchison, T. & S. F. Ry. Co., 178 P. 501, 179 C. 611.

Tymkowicz v. San Jose Unified School Dist., App., 312 P.2d 388—Montieth v. Atchison, T. & S. F. Ry. Co., App., 311 P.2d 886—MacLean v. City and County of San Francisco, App., 311 P.2d 158—Aspen Pictures, Inc. v. Oceanic S.S. Co., 306 P.2d 933, 148 C.A.2d 238—Eggleston v. Liberty Mut. Ins. Co., 300 P.2d 867, 144 C.A.2d 302—Sarafini v. City and County of San Francisco, 300 P.2d 44, 143 C.A.2d 570—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723—Perbost v. San Marino Hall-School for Girls, 199 P. 2d 701, 88 C.A.2d 796—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495—Dodds v. Stellar, 175 P.2d 607, 77 C.A.2d 411—Huber v. Henry J. Kaiser Co., 162 P.2d 693, 71 C.A.2d 278—Rivera v. Goodenough, 162 P.2d 68, 71 C.A. 2d 223—Radisich v. Franco-Italian Packing Co., 158 P.2d 435, 68 C.A. 2d 825—Astone v. Oldfield, 155 P. 2d 398, 67 C.A.2d 702—Southern Pac. Co. v. Hyman-Michaels Co., 147 P.2d 692, 63 C.A.2d 757—In re Bucher's Estate, 132 P.2d 257, 56 C. A.2d 135—Reed v. Stroh, 128 P.2d 829, 54 C.A.2d 183—Van Rennes v. Southern Counties Gas Co. of California, 124 P.2d 350, 51 C.A.2d 228—Fitch v. Bekins Van & Storage Co., 70 P.2d 670, 22 C.A.2d 101—Dowdall v. Gilmore Oil Co., 62 P.2d 1051, 18 C.A.2d 1—Hilbert v. Olney, 61 P.2d 941, 17 C.A.2d 135—Nightingale v. Birnbaum, 52 P.2d 955, 11 C.A.2d 34—Borges v. Pacific Greyhound Lines, 51 P.2d 1146, 10 C.A. 2d 450—Weaver v. Shell Co. of California, 49 P.2d 857, reheard 57 P. 2d 571, 13 C.A.2d 643—Eveleth v. Goodchap, 43 P.2d 376, 5 C.A.2d 735—Walling v. Rugen, 39 P.2d 827, 3 C.A.2d 471—Smith v. Hale, 39 P.2d 445, 3 C.A.2d 277—Del Carlo v. Oberti, 37 P.2d 1050, 2 C.A.2d 304—Hill v. Fresno County, 35 P.2d 593, 140 C.A. 272—Warnke v. Griffith Co., 24 P.2d 583, 133 C.A. 481—Noble v. Miles, 19 P.2d 265, 129 C.A. 724, followed in Stenovich v. Miles, 19 P. 267, 129 C.A. 793—Holcomb v. Long Beach Inv. Co., 19 P.2d 31, 129 C.A. 285—Koeppel v. Daluiso, 5 P.2d 457, 118 C.A. 442—Argue v. Monte Regio Corporation, 2 P.2d 54, 115 C.A. 575—Conner v. Butler, 298 P. 546, 113 C.A. 502—Ballard v. Krug, 295 P. 871, 111 C.A. 555—Parra v. Cleaver, 294 P. 6, 110 C.A. 168—Truman v. Sutter-Butte Canal Co., 244 P. 923, 76 C.A. 293.

Colo.—Rosenbaum v. Mathews, 156 P.2d 843, 113 Colo. 307—Denver Tramway Corporation v. Kuttner, 35 P.2d 852, 95 Colo. 312—Investors' Finance Co. v. Bodnar, 289 P. 599, 87 Colo. 498—Farmers' Bank & Trust Co. v. Miller, 249 P. 644, 80 Colo. 121.

Conn.—Cackowski v. Jack A. Halprin, Inc., 42 A.2d 838, 132 Conn. 67—Stein v. Nashner, 27 A.2d 801, 129 Conn. 317—Kerin v. Baccei, 5 A.2d 876, 125 Conn. 335—Fierberg v. Whitcomb, 177 A. 135, 119 Conn. 390—Voltz v. Orange Volunteer Fire Ass'n, 172 A. 220, 118 Conn. 307—Simon v. Nelson, 170 A. 796, 118 Conn. 154—Correnti v. Catino, 160 A. 892, 115 Conn. 213—Nourse v. Lycett, 159 A. 277, 114 Conn. 432—Spicer v. Hincks, 155 A. 508, 113 Conn. 366, 76 A.L.R. 1519—Wade v. City of Bridgeport, 145

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D.C.—Newman v. U. S., 43 App.D.C. 53.

Fla.—U. S. Rubber Products v. Clark, 200 So 385, 145 Fla. 631—Winthrop v. Carinhas, 195 So. 399, 142 Fla. 588—Atlantic Greyhound Lines v. Lovett, 184 So. 133, 134 Fla. 505—Fain v. Cartwright, 182 So. 302, 132 Fla. 855—Miami Poultry & Egg Co. v. City Ice & Fuel Co., 172 So. 82, 126 Fla. 563—City of Jacksonville v. Vaughn, 110 So. 529, 92 Fla. 339—First Nat. Bank v. Roberts, 109 So. 635, 92 Fla. 18—Louisville & N. R. Co. v. Norton, 78 So. 982, 75 Fla. 597—Seaboard Air Line Ry. v. Callan, 74 So. 799, 73 Fla. 688.

Ga.—Everett v. Clegg, 97 S.E.2d 689, 213 Ga. 168, conformed to 98 S.E. 2d 198, 95 Ga.App. 661—Davis v. Davis, 88 S.E.2d 377, 211 Ga. 714—Haslenig v. Watson, 54 S.E.2d 413, 205 Ga. 668—Edmiston v. Whitney Land Co., 32 S.E.2d 259, 198 Ga. 546—Taintor v. Rogers, 30 S.E.2d 892, 197 Ga. 872—Lewis v. Patterson, 12 S.E.2d 593, 191 Ga. 348—Mayes v. Simons, 8 S.E.2d 73, 189 Ga. 845, 130 A.L.R. 245—Metropolitan Life Ins. Co. v. Saul, 5 S.E.2d 214, 189 Ga. 1—Walker v. Horton, 191 S.E. 462, 184 Ga. 429—Floyd v. Boss, 163 S.E. 606, 174 Ga. 544—Hill v. Sims, 101 S.E. 541, 149 Ga. 588—Jackson v. Butts, 96 S.E. 630, 148 Ga. 312—Wills Valley Coal & Iron Co. v. Lumpkin, 91 S.E. 683, 146 Ga. 616—Hailey v. McMullan, 86 S.E. 315, 144 Ga. 147—City of Atlanta v. Nelson, 82 S.E. 899, 142 Ga. 324—Brooke v. Lowry Nat. Bank, 81 S.E. 223, 141 Ga. 493.

Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793—Abernathy v. Putnam, 69 S.E.2d 896, 85 Ga.App. 644—Hertz Driv-Ur-Self Stations v. Benson, 65 S.E.2d 191, 83 Ga.App. 866—Roberts v. McClellan, 55 S.E. 2d 736, 80 Ga.App. 199—Milwaukee Mechanics Ins. Co. v. Davis, 52 S.E.2d 643, 79 Ga.App. 70—Colonial Stores v. Coker, 48 S.E.2d 150, 77 Ga.App. 227—Spalding Lumber Co. v. Hemphill, 47 S.E.2d 514, 77 Ga.App. 1—Northern Freight Lines v. Ledford, 43 S.E.2d 757, 75 Ga. App. 508—McGee v. Bennett, 33 S. E.2d 577, 72 Ga.App. 271—Killgo v. Dodson, 26 S.E.2d 554, 69 Ga. App. 673—Kimsey v. Hall, 23 S.E. 2d 196, 68 Ga.App. 409—Rushing v. Jones, 22 S.E.2d 675, 68 Ga.App. 300—Willis v. Whitehead, 21 S.E. 2d 870, 68 Ga.App. 21—Western & A. R. R. v. Frazier, 18 S.E.2d 45, 66 Ga.App. 275—Richter v. Atlantic Co., 16 S.E.2d 259, 65 Ga.App. 605—Thompson v. Lyon, 12 S.E.2d 155, 64 Ga.App. 83—Jill Bros. v. Holmes, 7 S.E.2d 797, 62 Ga.App. 283—New York Life Ins. Co. v. Jennings, 6 S.E.2d 431, 61 Ga.App. 557—Richter Bros. v. Atlantic Co., 200 S.E. 462, 59 Ga.App. 137—Pollard v. Phelps, 193 S.E. 102, 56 Ga. App. 408—Southeastern Greyhound Lines v. Suits, 190 S.E. 417, 55 Ga. App. 371—Camilla Cotton Oil Co. v. Cawley, 183 S.E. 134, 52 Ga.App. 268—Southern Ry. Co. v. Lunsford, 179 S.E. 571, 50 Ga.App. 829, reversed on other grounds 56 S.Ct. 504, 297 U.S. 398, 80 L.Ed. 740, rehearing denied 56 S.Ct. 667, 297 U. S. 729, 80 L.Ed. 1011—Eddleman v. Askew, 179 S.E. 247, 50 Ga.App. 540—Hammontree v. Moreland, 179 S.E. 165, 50 Ga.App. 623—Georgia Power Co. v. Bell, 159 S.E. 589, 43 Ga.App. 559—City of Waycross v. Howard, 157 S.E. 247, 42 Ga.App. 635—Milam v. Mandeville Mills, 151 S.E. 672, 41 Ga.App. 62—New Winder Lumber Co. v. Payne, 149 S.E. 85, 40 Ga.App. 188—Hughes v. Weaver, 148 S.E. 12, 39 Ga.App. 597—Swope v. McKenney, 136 S.E. 89, 36 Ga.App. 168—Barnes v. White, 110 S.E. 683, 28 Ga.App. 171—Southern Hotel Co. v. Evans, 110 S.E. 459, 28 Ga.App. 161—Garrett v. Coweta Fertilizer Co., 93 S. E. 68, 20 Ga.App. 343—Lazenby v. Citizens' Bank, 92 S.E. 391, 20 Ga. App. 53—Home Sav. Bank of Columbus v. Massachusetts Bonding & Ins. Co., 91 S.E. 494, 19 Ga.App. 352—Faires v. Central of Georgia Ry. Co., 91 S.E. 241, 19 Ga.App. 121—Luke v. Mayo, 89 S.E. 1090, 18 Ga.App. 614—Central of Georgia Ry. Co. v. Cooper, 82 S.E. 310, 14 Ga.App. 738.

Idaho.—Grant v. Clarke, 305 P.2d 752, 78 Idaho 412—Ausich v. Frank, 222 P.2d 1073, 70 Idaho 494—Idaho Gold Dredging Corporation v. Boise Payette Lumber Co., 37 P.2d 407, 54 Idaho 765—McMillan v. U. S. Fire Ins. Co., 280 P. 220, 48 Idaho 163—New England Nat. Bank of Kansas City v. Hubbell, 238 P. 308, 41 Idaho 129.

Ill.—Meyer v. German, 95 N.E.2d 368, 407 Ill. 400—Dunn v. Heasley, 30 N.E.2d 628, 375 Ill. 43—Decatur Park Dist. v. Becker, 14 N.E.2d 490, 368 Ill. 442—Seavey v. Glass, 146 N.E. 536, 315 Ill. 611—Daly v. New Staunton Coal Co., 117 N.E. 413, 280 Ill. 175.

Harlan E. Moore & Co. v. Champaign Nat. Bank, 141 N.E.2d 97, 13 Ill.App.2d 232—Leonard v. Murphy, 140 N.E.2d 537, 13 Ill.App.2d 39—Louis v. Youngren, 138 N.E.2d 696, 12 Ill.App.2d 198—De Long v. Whitehead, 137 N.E.2d 276, 11 Ill. App.2d 330—Campbell v. Ragel, 129 N.E.2d 451, 7 Ill.App.2d 301—Wilson v. Hobrock, 100 N.E.2d 412, 344 Ill.App. 147—Reinmueller v. Chicago Motor Coach Co., 93 N.E. 2d 120, 341 Ill.App. 178—Pottel v. Demanes, 87 N.E.2d 332, 338 Ill. App. 287—Karlock v. New York Cent. R. Co., 78 N.E.2d 122, 333 Ill. App. 655—Standard Oil Co. of Ind. v. Daniel Burkhartsmeier Cooperage Co., 77 N.E.2d 526, 333 Ill. App. 338—Jepsen v. Sprout & Davis, 71 N.E.2d 542, 330 Ill.App. 448—Gillette v. Healy Subway Const. Corp., 67 N.E.2d 887, 329 Ill.App. 263—**Corpus Juris Secundum cited in** Kavanaugh v. Washburn, 50 N. E.2d 761, 320 Ill.App. 250, appeal denied 56 N.E.2d 420, 387 Ill. 204—Stein v. Cummings, 49 N.E.2d 868, 319 Ill.App. 646—Walters v. Ind, 48 N.E.2d 791, 319 Ill.App. 162—Bouton v. Harrison, 45 N.E.2d 510, 317 Ill.App. 152—Philpott v. Parham, 44 N.E.2d 934, 316 Ill.App. 278—Palmer v. Miller, 35 N.E.2d 104, 310 Ill.App. 582, reversed on other grounds 43 N.E.2d 973, 380 Ill. 256—Mrdalj v. Public Service Co. of Northern Illinois, 31 N.E.2d 978, 308 Ill.App. 424—Branch v. Woulfe, 21 N.E.2d 148, 300 Ill.App. 472—Scally v. Flannery, 11 N.E.2d 123, 292 Ill.App. 349—Lynch v. Central States Life Ins. Co., 281 Ill.App. 511—Maher v. New York, C. & St. L. R. Co., 280 Ill.App. 222—Simon v. City of Chicago, 279 Ill.App. 80—Straus Nat. Bank & Trust Co. v. Marcus, 274 Ill.App. 597—Bunch v. McAllister, 266 Ill. App. 248—Elliott v. Atchison, T. & S. F. Ry. Co., 262 Ill.App. 466—Steinberg v. Northern Illinois Telephone Co., 260 Ill.App. 538—Baker v. Ellis, 244 Ill.App. 330—Ehrenheim v. Yellow Cab Co., 239 Ill.App. 403—Jones v. Kramer, 235 Ill.App. 362—Weinberger v. Werremeyer, 224 Ill.App. 217—Watts v. Wabash Ry. Co., 219 Ill.App. 549—Girdzus v. Van Etten, 211 Ill. App. 524, 533—Edwards v. Prust, 208 Ill.App. 30—Allison v. Belvidere Screw & Mach. Co., 200 Ill. App. 465—Sutton v. City of Chicago, 195 Ill.App. 261—Gary v. Beadles, 192 Ill.App. 459—Shope v. Laughlin, 191 Ill.App. 38. See Anderson v. Chicago City Ry. Co., 207 Ill.App. 427—Passwaters v. Lake Erie & W. R. Co., 188 Ill.App. 121.

Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559—Automobile Underwriters v. White, 191 N.E. 335, 207 Ind. 228—Engle v. Cleveland, C., C. & St. L. Ry. Co., 149 N.E. 643, 197 Ind. 263.

Lee Bros. v. Jones, 54 N.E.2d 108, 114 Ind.App. 688—Jones v. Kasper, 33 N.E.2d 816, 109 Ind. App. 465—Guardian Life Ins. Co. of America v. Barry, 32 N.E.2d

599, 109 Ind.App. 286—Mellencamp v. Cockerham, 28 N.E.2d 599, 107 Ind.App. 398—Kraning v. Bloxson, 9 N.E.2d 107, 103 Ind.App. 660—Kraning v. Taggart, 1 N.E.2d 689, 103 Ind.App. 62—Chmielewski's Estate v. Chmielewski, 200 N.E. 747, 102 Ind.App. 20—O. F. Busard, Inc., v. Crawford, 198 N.E. 804, 102 Ind.App. 116, rehearing denied and opinion corrected Busard, Inc. v. Crawford, 1 N.E.2d 305, 102 Ind. App. 116—Livingston v. Rice, 184 N.E. 583, 96 Ind.App. 176—Miller v. Rayburn, 117 N.E. 879, 67 Ind. App. 564—Boyd v. Miller, 117 N.E. 559, 68 Ind.App. 454—Nashville, C. & St. L. Ry. Co. v. Johnson, 109 N.E. 912, 60 Ind.App. 416.

Iowa.—Pickerell v. Griffith, 29 N.W. 2d 588, 238 Iowa 1151—Davidson v. Vast, 10 N.W.2d 12, 233 Iowa 534—Merritt v. Leuck, 2 N.W.2d 49, 231 Iowa 777—Bridges v. Welzien, 300 N.W. 659, 231 Iowa 6—Forrest v. Sovereign Camp, W. O. W., 261 N.W. 802, 220 Iowa 478—Ashby v. Nine, 256 N.W. 679, 218 Iowa 953—Basta v. Farm Property Mut. Ins. Ass'n of Iowa, 252 N. W. 125, 217 Iowa 240—Buescher v. Schmidt, 228 N.W. 26, 209 Iowa 300—Granette Products Co. v. Arthur H. Neumann & Co., 221 N.W. 197, 208 Iowa 24—Pullan v. Struthers, 207 N.W. 235, 201 Iowa 1179—International Stock Food Co. v. Beshey, 204 N.W. 265, 200 Iowa 165—McSpadden v. Axmear, 181 N. W. 4, 191 Iowa 547—Frutchey v. Derby, 179 N.W. 519, 190 Iowa 1254—Van Dyk v. Mosterdt, 153 N. W. 206, 171 Iowa 3.

Kan.—Edgerton v. Morgan, 10 P.2d 885, 135 Kan. 426—Hanson v. Opplinger, 245 P. 1012, 121 Kan. 55—Whitesell v. Joplin & P. Ry. Co., 222 P. 133, 115 Kan. 53—First Nat. Bank v. Vaughan, 151 P. 1118, 96 Kan. 402—Mampe v. Kunkel, 148 P. 741, 95 Kan. 602—Healer v. Inkman, 146 P. 1172, 94 Kan. 594—Poinsett v. Marshall Field & Co., 141 P. 1008, 92 Kan. 959.

Ky.—Farrington Motors, Inc. v. Fidelity & Cas. Co. of N. Y., 303 S.W.2d 319—Miller v. Miller, 296 S.W.2d 684—Williams v. Larkin, 268 S.W.2d 394—Jarboe v. Shane, 254 S.W.2d 695—Ball v. Osborne's Adm'r, 226 S.W.2d 789, 312 Ky. 168—Ballback's Adm'r v. Boland-Maloney Lumber Co., 208 S.W.2d 940, 306 Ky. 647—Williams v. Balmut, 182 S.W.2d 776, 298 Ky. 245—Warren's Adm'r v. Stith, 157 S.W. 2d 308, 288 Ky. 833—Indian Refining Co. v. Crain, 132 S.W.2d 750, 280 Ky. 112—W. M. Abbott Transfer Co. v. Kruse, 114 S.W.2d 731, 272 Ky. 479—Illinois Cent. R. Co. v. Applegate's Adm'x, 105 S.W. 2d 153, 268 Ky. 458—Moody's Adm'r v. Commonwealth, 97 S.W.2d 816, 265 Ky. 780—City of Paducah v. McManus, 76 S.W.2d 254, 256 Ky. 405—Prudential Ins. Co. of America v. Harris, 70 S.W.2d 949, 254 Ky. 23—Chesapeake & O. Ry. Co. v. Carroll's Adm'r, 61 S.W.2d 41, 249 Ky. 703—Tente v. Jaglowicz, 44 S.W.2d 845, 241 Ky. 720—Bass v. Simon, 44 S.W.2d 587, 241 Ky. 666—Richmond v. Frazier, 44 S.W.2d 530, 241 Ky. 533—American Ry. Express Co. v. McGee, 4 S.W.2d 679, 223 Ky. 681—Alexander v. Alexander, 298 S.W. 1089, 221 Ky. 439—Louisville & N. R. Co. v. Schaeffer, 280 S.W. 974, 213 Ky. 248—Seaboard Oil Co. v. Britt, 271 S.W. 1038, 208 Ky. 723—Pugh v. Eberlein, 227 S.W. 467, 190 Ky. 386—Louisville Ry. Co. v. Birdwell, 224 S.W. 1065—Hartsfield v. Pace, 224 S.W. 647, 189 Ky. 93—Lindsey v. A. B. Smith Lumber Co., 197 S.W. 1067, 177 Ky. 559—Cincinnati, N. O. & T. P. Ry. Co. v. Jones' Adm'r, 197 S.W. 932, 177 Ky. 485—Roseberry v. Louisville Ry. Co., 181 S.W. 1117, 168 Ky. 277—Givens v. Pierson's Adm'x, 181 S. W. 324, 167 Ky. 574, Ann.Cas.1917C 956—Paducah Wharfboat Co. v. Mechanics' Trust & Savings Bank, 176 S.W. 190, 164 Ky. 729—C. F. Kleiderer & Sons v. Aldridge's Ex'x, 170 S.W. 23, 160 Ky. 638—Illinois Cent. R. Co. v. Smith, 118 S.W. 933, 133 Ky. 732.

Bramel v. Cunningham, 11 Ky. Op. 409.

Me.—Pejepscot Paper Co. v. Town of Lisbon, 142 A. 194, 127 Me. 161—Maxwell v. Dirigo Mut. Fire Ins. Co., 104 A. 812, 117 Me. 431—Maine Mill Supply Co. v. Finkelman, 101 A. 833, 116 Me. 508—Richardson v. Wood, 93 A. 836, 113 Me. 328—Price v. McEachern, 90 A. 486, 111 Me. 573.

Md.—Snyder v. Cearfoss, 57 A.2d 786, 190 Md. 151—Crowther v. Hirschmann, 197 A. 868, 174 Md. 100—Mayor and City Council of Baltimore v. Perticone, 188 A. 797, 171 Md. 268—R. N. McCulloh & Co. v. Restivo, 136 A. 54, 152 Md. 60—Martin v. W. W. Lanahan & Co., 105 A. 777, 133 Md. 525—Taylor v. Commissioners of Perryville, 104 A. 475, 132 Md. 412—Abromatis v. Amos, 96 A. 554, 127 Md. 394—Baltimore & O. R. Co. v. Dever, 75 A. 352, 112 Md. 296, 26 L.R.A.,N.S., 712, 21 Ann.Cas. 169.

Mass.—Cahalane v. Proust, 132 N.E. 2d 660, 333 Mass. 689—Levangie v. Gutterson, 194 N.E. 79, 289 Mass. 287—Selectmen of Town of Brookline v. Boston & A. R. Co., 128 N. E. 97, 236 Mass. 260.

Mich.—Woodley v. Lancaster, 12 N. W.2d 428, 307 Mich. 473—Seymour v. Carr, 11 N.W.2d 344, 307 Mich. 109—Smith v. Maticka, 8 N.W.2d 900, 305 Mich. 32—Olmsted v. Sober, 232 N.W. 353, 251 Mich. 688—Cothran v. Benjamin Cleenewerck & Son, 209 N.W. 132, 235 Mich. 351—Weinberg v. Ladd, 165 N.W. 711, 199 Mich. 164—Debo v. Gamble, 152 N.W. 979, 186 Mich. 583.

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Miss.—Neely v. City of Charleston, 37 So.2d 495, 204 Miss. 360—Meridian Taxicab Co. v. Ward, 186 So. 636, 184 Miss. 499, 120 A.L.R. 1346—Hamilton Bros. Co. v. Narciese, 158 So. 467, 172 Miss. 24—Shell Petroleum Corporation v. Kennedy, 141 So. 335, 167 Miss. 305—Friedman v. Allen, 118 So. 828, 152 Miss. 377—Brewer v. Automobile Sales Co., 111 So. 578, 147 Miss. 603.

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Va.—Edgerton v. Norfolk Southern Bus Corp., 47 S.E.2d 409, 187 Va. 642—Muhleman & Kayhoe v. Marks, 190 S.E. 86, 168 Va. 81—Marcuse v. Broad-Grace Arcade Corporation, 180 S.E. 327, 164 Va. 553, 101 A.L.R. 217—Powell v. John E. Hughes Orphanage, 138 S. E. 637, 148 Va. 331—Belcher v. Goff Bros., 134 S.E. 588, 145 Va. 448—Levine v. Levine, 132 S.E. 320, 144 Va. 330—Vick v. Howard, 116 S.E. 465, 136 Va. 101, 31 A.L.R. 240—Norfolk & W. Ry. Co. v. Perdue, 83 S.E. 1058, 117 Va. 111.

Wash.—Franks v. Department of Labor & Industries, 215 P.2d 416, 35 Wash.2d 763—McPherson v. Toyokaicho Wakamatsu, 62 P.2d 732, 188 Wash. 320—Wold v. Gardner, 8 P. 2d 975, 167 Wash. 191—Hellenthal v. Edmonson, 290 P. 831, 158 Wash. 276—Waddell v. Roberts, 246 P. 755, 139 Wash. 273—Shell v. Svensson, 159 P. 1076, 93 Wash. 40.

W.Va.—Akers v. Norfolk & W. Ry. Co., 164 S.E. 413, 112 W.Va. 388—Neal v. City of Bluefield, 141 S.E. 779, 105 W.Va. 201—Wills v. Montfair Gas Coal Co., 138 S.E. 749, 104 W.Va. 12—Dalton v. Martin, 136 S.E. 47, 102 W.Va. 595.

Wis.—Ramsay v. Biemert, 258 N.W. 355, 216 Wis. 631—Sandeen v. Willow River Power Co., 252 N.W. 706, 214 Wis. 166—Bertschy v. Seng, 195 N.W. 854, 181 Wis. 643—Lange v. Heckel, 175 N.W. 788, 171 Wis. 59—E. L. Essler Machinery Co. v. Milwaukee Motor Co., 151 N.W. 814, 160 Wis. 300—Dishmaker v. Heck, 150 N.W. 951, 159 Wis. 572, Ann.Cas.1917A 400.

Wyo.—**Corpus Juris Secundum cited in** Boyce v. Northern Utilities Co., 297 P.2d 820, 827, 75 Wyo. 500—In re Kiesel's Estate, 249 P. 81, 35 Wyo. 300.

4 C.J. p 1029 note 30—5 C.J. p 699 note 88—9 C.J. p 664 note 91—10 C.J. p 798 note 84—19 C.J. p 1227 note 30—26 C.J. p 573 note 60—27 C.J. p 392 note 33 [a]—28 C.J. p 1036 note 70—33 C.J. p 145 note 19, p 655 note 71 [a] (4)—37 C.J. p 113 note 4 [a] (3), p 1260 note 61—38 C.J. p 518 notes 26, 27—39 C.J. p 1369 note 89 [b]—42 C.J. p 811 note 36, p 1289 note 49—45 C.J. p 1371 note 10—48 C.J. p 1156 note 29 [b]—51 C.J. p 285 note 13, p 1253 note 92—52 C.J. p 535 note 46, p 756 note 98—54 C.J. p 606 notes 16, 17—55 C.J. p 1020 note 44, p 1152 note 15—57 C.J. p 41 note 26—62 C.J. p 224 note 66—63 C.J. p 1206 note 95 [a] (4)—66 C. J. p 1576 note 50—71 C.J. p 160 note 71.

"Errors in instructions which are not prejudicial to substantial rights will be ignored on appeal. Such errors are grounds for reversal only when so contrary to the law and evidence or otherwise so defective as to be calculated to mislead the jury and result in an unjust verdict."

Ky.—Chesapeake & O. Ry. Co. v. Carroll's Adm'r, 61 S.W.2d 41, 44, 249 Ky. 703.

Prejudice to complaining party essential

It is only where the errors complained of in ruling on evidence and instructions, or in matters of pleading or procedure, cause miscarriage of justice, or constitute substantial violation of constitutional or statutory right, that the case will be reversed.

Okl.—Schaff v. Coyle, 249 P. 947, 121 Okl. 228.

Whether errors in instructions were prejudicial must depend on closeness of case on its facts, nature of erroneous instructions and of other instructions given, and other factors.

Cal.—Zollars v. Barber, 295 P.2d 561, 140 C.A.2d 502—Stout v. Southern Pac. R. Co., 274 P.2d 194, 127 C.A. 2d 491—Verhaegen v. Guy F. Atkinson Co., 272 P.2d 855, 126 C.A. 2d 442—Meyers v. G. W. Thomas Drayage & Rigging Co., 239 P.2d 118, 108 C.A.2d 529—Pullen v. Heyman Bros., 162 P.2d 961, 71 C.A.2d 444—Barker v. City of Los Angeles, 135 P.2d 573, 57 C.A.2d 742.

Ill.—Snyder v. Shepard, 25 N.E.2d 531, 303 Ill.App. 423.

Iowa.—Low v. Ford Hopkins Co., 1 N.W.2d 95, 231 Iowa 251.

R.I.—Proctor v. Bak, 65 A.2d 453, 75 R.I. 232.

Tex.—Texas Emp. Ins. Ass'n v. Brown, Civ.App., 226 S.W.2d 233, error refused no reversible error.

Construction of instruction

(1) Test in determining whether instruction is reversibly erroneous is not what meaning ingenuity of counsel can, at leisure, attribute to instruction, but how and in what sense, under evidence before them and circumstances of trial, ordinary men acting as jurors will understand instructions.

Ill.—Ingram v. Tucker, 111 N.E.2d 847, 350 Ill.App. 100.

(2) Real test of meaning and effect of an instruction for purpose of review by reviewing court is idea which language objected to is fairly calculated to convey to minds of jurors drawn from ordinary walks of life, and fact that on a minute, technical or hypercritical analysis some other interpretation can be placed thereon, may be disregarded.

Iowa.—Hackman v. Beckwith, 64 N. W.2d 275, 245 Iowa 791.

(3) Mere fact that meticulous analysis of instructions given may disclose some technical error does not result in prejudicial error, unless it appears that jury was or could have been misled thereby.

Cal.—Popejoy v. Hannon, 231 P.2d 484, 37 C.2d 159.

Coe v. Kings County Truck Line, 293 P.2d 462, 139 C.A.2d 372—Duff v. Schaefer Ambulance Service, 281

ror in the giving of instructions where the instructions are erroneous only as to other parties,[13.5] or when the erroneous instruction is not only not prejudicial but is in fact favorable to the complaining party.[14]

The rule that a judgment will not be reversed for harmless error in the giving of instructions has been applied in a great variety of actions including actions for alienation of affections,[14.1] assault,[14.2] con-

P.2d 91, 132 C.A.2d 655—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608.

(4) Meaning of an instruction, not phraseology, is important consideration, and claim of prejudice will not be sustained if meaning of instruction is reasonably clear.

Neb.—Fridley v. Brush, 73 N.W.2d 376, 161 Neb. 318—Scarborough v. Aeroservice, Inc., 53 N.W.2d 902, 155 Neb. 749, 30 A.L.R.2d 1159—Brown v. Hyslop, 45 N.W.2d 743, 153 Neb. 669.

(5) Supreme court, on determining on appeal whether trial court erred in giving certain instruction and in refusing to give similar requested instruction, was not concerned with niceties of English language, but only with whether jury properly understood terminology used by trial court.

Iowa.—In re Smith's Will, 60 N.W.2d 866, 245 Iowa 38.

Probability of prejudice

In passing on alleged errors in instructions, an appellate court should keep in mind question whether it is reasonably probable that instructions as given misled jury to prejudice of complaining party.

Iowa.—Jaeger v. Hackert, 41 N.W. 2d 42, 241 Iowa 379.

Okl.—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35.

Maxim "de minimis non curat lex" that law is not concerned with trifles has no application to charge of court to jury.

Ohio.—Readnour v. Cincinnati St. Ry. Co., App., 93 N.E.2d 412, affirmed 93 N.E.2d 587, 154 Ohio St. 69.

Size of verdict, although not so excessive as to warrant disturbing on appeal, would serve as an additional incentive for supreme court of appeals to examine instructions with minute care to ascertain whether they were couched in language which may have been calculated to mislead jury or to give them some misconception of merits of case.

Va.—News Leader Co. v. Kocen, 3 S.E.2d 385, 173 Va. 95, 122 A.L.R. 842.

13.5 Cal.—Laubscher v. Blake, 46 P. 2d 836, 7 C.A.2d 376—Rocha v. Hulen, 44 P.2d 478, 6 C.A.2d 245.

Conn.—Caviote v. Shea, 165 A. 788, 116 Conn. 569.

Mo.—Hoelzel v. Chicago, R. I. & P. Ry. Co., 85 S.W.2d 126, 337 Mo. 61.

Or.—Cockerham v. Potts, 20 P.2d 423, 143 Or. 80.

Pa.—Niebauer v. Schultz, 174 A. 812, 114 Pa.Super. 538, affirmed 178 A. 285, 318 Pa. 266.

14. Ark.—Street v. Shull, 58 S.W.2d 932, 187 Ark. 180.

Cal.—Taylor v. Cockrell, 3 P.2d 16, 116 C.A. 596.

Conn.—Waselik v. Ferrie Const. Co., 157 A. 642, 114 Conn. 85—Lentine v. McAvoy, 136 A. 76, 105 Conn. 528—Frechette v. City of New Haven, 132 A. 467, 104 Conn. 83.

Ga.—Louisville & N. R. Co. v. Bean, 174 S.E. 209, 49 Ga.App. 4—Johnson v. Wilson, 171 S.E. 235, 47 Ga. App. 621—Georgia Power Co. v. Davis, 160 S.E. 690, 43 Ga.App. 791—Ætna Ins. Co. v. Waters, 144 S. E. 668, 38 Ga.App. 597—Orange Crush Bottling Co. v. Smith, 132 S.E. 259, 35 Ga.App. 92.

Idaho.—Mitchell v. Atwood, 47 P.2d 680, 55 Idaho 772.

Ill.—Transformer Corporation of America v. Hinchcliff, 279 Ill.App. 152—Rogers v. Rollins, 185 Ill. App. 153.

Ind.—Chmielewski's Estate v. Chmielewski, 200 N.E. 747, 102 Ind.App. 20.

Iowa.—Zieman v. World Amusement Service Ass'n of South Dakota, 228 N.W. 48, 209 Iowa 1298—Bigelow v. Indemnity Ins. Co. of North America, 221 N.W. 661, 206 Iowa 884.

Ky.—Fidelity & Deposit Co. of Maryland v. Commonwealth, 21 S.W.2d 452, 231 Ky. 346—Bickel Coal Co. v. Louisville Tire Co., 14 S.W.2d 775, 228 Ky. 239—Lindsey v. A. B. Smith Lumber Co., 197 S.W. 1067, 177 Ky. 559—Goodin, Brown & Co. v. Skaggs, 195 S.W. 427, 176 Ky. 285.

Flynn v. Sparks, 11 S.W. 206, 10 Ky.L. 960—Menzies v. Farmers' Bank of Kentucky, 11 Ky.Op. 634, 3 Ky.L. 822.

Md.—Merrick v. United Rys. & Electric Co. of Baltimore City, 163 A. 816, 163 Md. 641.

Mich.—Pratt v. Van Rensselaer, 209 N.W. 807, 235 Mich. 633—Brown v. McKimmie, 60 N.W. 298, 102 Mich. 35.

Minn.—Allen v. Florida & Southern Dredging Co., 231 N.W. 204, 180 Minn. 514—Trustees of German Evangelical Lutheran St. John's Congregation v. Merchants' Nat. Bank, 165 N.W. 491, 139 Minn. 32.

Mo.—Willsie v. Thompson, 223 S.W. 2d 458, 359 Mo. 795—Ramey v. Missouri Pac. R. Co., 21 S.W.2d 873, 323 Mo. 662, certiorari denied Missouri Pac. R. Co. v. Ramey, 50 S.Ct. 162, 280 U.S. 614, 74 L.Ed. 655—Brown v. Holman, 286 S.W. 36, 315 Mo. 478.

Yancey v. Central Mut. Ins. Ass'n, App., 77 S.W.2d 149—Kirkpatrick v. American Creosoting Co., 37 S.W.2d 996, 225 Mo.App. 774—American Packing Co. v. Milwaukee Mechanics' Ins. Co., App., 35 S.W.2d 956—Cottier v. Chicago, B. & Q. R. Co., App., 33 S.W.2d 173—Manheimer v. Le Roy, App., 28 S.W.2d 379—Underwood v. Hall, App., 3 S.W.2d 1044—Williams v. Peverly Dairy Co., App., 285 S.W. 149, certiorari quashed State ex rel. Pevely Dairy Co. v. Danes, 289 S.W. 835, 316 Mo. 418—Kribs v. United Order of Foresters, App., 233 S.W. 89.

N.J.—Tooker v. Lonky, 147 A. 445, 106 N.J.Law 110.

Wasil v. Guia, 169 A. 544, 12 N.J.Misc. 53—Petrilla v. Public Service Co-ordinated Transport, 157 A. 89, 9 N.J.Misc. 1178, affirmed 162 A. 589, 109 N.J.Law 350.

N.Y.—People ex rel. Delehanty v. McIntyre, 187 N.Y.S. 897, 196 App. Div. 44.

N.D.—Reimers v. Larson, 202 N.W. 653, 52 N.D. 297, 40 A.L.R. 1177.

Ohio.—Mavromates v. Huchinson, 183 N.E. 291, 43 Ohio App. 365—Steele v. Rail & River Coal Co., 182 N.E. 552, 42 Ohio App. 228.

Okl.—St. Louis-San Francisco Ry. Co. v. Matthews, 49 P.2d 752, 174 Okl. 167—Oklahoma City v. Hill, 50 P. 242, 6 Okl. 114.

Or.—Webb v. Hoover-Guernsey Dairy Co., 4 P.2d 631, 138 Or. 24.

S.C.—Jones v. Carpenter, 158 S.E. 823, 160 S.C. 401—Clary v. Bonnett, 103 S.E. 779, 114 S.C. 452.

Tex.—Louisiana Ry. & Nav. Co. of Texas v. Eldridge, Civ.App., 293 S. W. 901.

Vt.—Kidder v. Kennedy, 43 Vt. 717.

14.1 Conn.—Sheffield v. Beckwith, 96 A. 316, 90 Conn. 93.

Mo.—McKay v. McKay, 182 S.W. 124, 192 Mo.App. 221.

Tenn.—Sweeney v. Carter, 137 S.W. 2d 892, 24 Tenn.App. 6.

Wis.—Baird v. Carle, 147 N.W. 834, 157 Wis. 565.

14.2 Ala.—Burke v. Tidwell, 101 So. 599, 211 Ala. 673.

Conn.—Laffin v. Apalucci, 25 A.2d 60, 128 Conn. 654.

Fla.—Pandula v. Fonseca, 199 So. 358, 145 Fla. 395.

Ga.—Maryland Casualty Co. v. Salmon, 164 S.E. 80, 45 Ga.App. 173—Bugg v. Carter, 131 S.E. 297, 34

version,[14.3] deceit,[14.4] divorce,[14.5] false imprisonment,[14.6] libel and slander,[14.7] malicious prosecution,[14.8] malpractice,[14.9] nuisance,[14.10] replevin,[14.11] trespass,[14.12] and trover.[14.13] The rule has also been applied in probate proceedings,[14.14] in actions for damages for fraud,[14.15] and for damages from fire.[14.16]

Nonprejudicial error in the giving of instruc-

Ga.App. 819—May Bros. v. Srochi, 97 S.E. 277, 23 Ga.App. 33.
Ill.—Branch v. Woulfe, 21 N.E.2d 148, 300 Ill.App. 472.
Iowa.—Morrow v. Scoville, 221 N.W. 802, 206 Iowa 1134.
Ky.—Louisville & N. R. Co. v. Moore's Adm'r, 166 S.W.2d 68, 292 Ky. 223—Walker v. Rogers, 273 S. W. 439, 209 Ky. 619—Souther v. Belleau, 262 S.W. 619, 203 Ky. 508, 36 A.L.R. 956.
La.—Moore v. Blanchard, App., 35 So. 2d 667, reversed on other grounds 43 So.2d 599, 216 La. 253.
Minn.—Leibelb v. Golden, 163 N.W. 991, 138 Minn. 90.
Mo.—Ramsey v. Parks, App., 179 S. W.2d 481.
N.C.—Stewart v. Dixon, 51 S.E.2d 182, 229 N.C. 737.
Ohio.—Green v. Drungold, App., 101 N.E.2d 906.
Okl.—Boston v. Muncy, 233 P.2d 300, 204 Okl. 603, 25 A.L.R.2d 1208—Atchley v. McFadden, 64 P.2d 269, 178 Okl. 303.
Utah.—Johanson v. Huntsman, 209 P. 197, 60 Utah 402.
Va.—Bourne v. Richardson, 113 S.E. 893, 133 Va. 441.

14.3 Ala.—Forbes & Carloss v. Plummer, 73 So. 451, 198 Ala. 162. Hamner & Son v. Johnson, 77 So. 446, 16 Ala.App. 296.
Cal.—Acme Paper Co. v. Goffstein, 270 P.2d 505, 125 C.A.2d 175—Fillmore v. Reilly, 82 P.2d 739, 28 C. A.2d 460—Jolly v. McCoy, 172 P. 618, 36 C.A. 479.
Ga.—Smith v. Smith, 53 S.E.2d 913, 205 Ga. 404.
Shealy v. Wilder, 127 S.E. 805, 33 Ga.App. 745—Haas & Howell v. Godby, 125 S.E. 897, 33 Ga.App. 218—Wilson v. Small, 113 S.E. 238, 28 Ga.App. 587.
N.D.—Mevorah v. Goodman, 68 N.W. 2d 469—Buchanan v. Occident Elevator Co., 157 N.W. 122, 33 N.D. 346.
Okl.—Magic City Steel & Metal Corp. v. Mitchell, 265 P.2d 473.
Mortgagee's suit for conversion.
Mo.—Dorroh v. Holland Bank, App., 7 S.W.2d 374.

14.4 Ala.—Tuscaloosa Truck & Tractor Co. v. Stewart, 67 So.2d 844, 37 Ala.App. 279, certiorari denied 67 So.2d 846, 259 Ala. 528.

14.5 Ga.—Powell v. Powell, 35 S.E. 2d 298, 199 Ga. 723—Hogan v. Hogan, 9 S.E.2d 891, 190 Ga. 555.

14.6 Ala.—Birmingham Ledger Co. v. Buchanan, 65 So. 667, 10 Ala. App. 527.
Cal.—Hill v. Nelson, 162 P.2d 927, 71 C.A.2d 528.
Ill.—Harris v. Schlink, 200 Ill.App. 202.
Mo.—Jackson v. Thompson, App., 188 S.W.2d 853—Jarrett v. St. Francois County Finance Co., App., 185 S.W.2d 855—Hurst v. Montgomery Ward & Co., App., 107 S.W.2d 183—Oliver v. Kessler, App., 95 S.W. 2d 1226—Burke v. Robinson, App., 271 S.W. 1005—Vaughn v. Hines, 230 S.W. 379, 206 Mo.App. 425.

14.7 Ala.—Meadors v. Haralson, 147 So. 184, 226 Ala. 413.
Kan.—Cooper v. Seaverns, 155 P. 11, 97 Kan. 159.
Ky.—Pitman v. Drown, 195 S.W. 815, 176 Ky. 263.
Miss.—Krebs v. McNeal, 76 So.2d 693, 222 Miss. 560.
Mo.—Fisher v. Myers, 100 S.W.2d 551, 339 Mo. 1196.
Davenport v. Armstead, App., 255 S.W.2d 132.
S.C.—Pelot v. Davison-Paxon Co., 62 S.E.2d 95, 218 S.C. 189—Whitaker v. Sherbrook Distributing Co., 200 S.E. 848, 189 S.C. 243.
S.D.—Egan v. Dotson, 155 N.W. 783, 36 S.D. 459, Ann.Cas.1917A 296.
Wash.—Arnold v. National Union of Marine Cooks and Stewards, 265 P. 2d 1051, 44 Wash.2d 183.

14.8 Idaho.—Luther v. First Bank of Troy, 133 P.2d 717, 64 Idaho 416.
Ohio.—Stork v. Evert, 191 N.E. 794, 47 Ohio App. 256.
Okl.—Drakos v. Jones, 118 P.2d 388, 189 Okl. 593.
S.D.—Wren v. Rehfeld, 157 N.W. 323, 37 S.D. 201.

14.9 Cal.—Landsberg v. Kolodny, 302 P.2d 86, 145 C.A.2d 158—McNamara v. Emmons, 97 P.2d 503, 36 C.A.2d 199—Langford v. Kosterlitz, 290 P. 80, 107 C.A. 175.
Ga.—Fincher v. Davis, 108 S.E. 905, 27 Ga.App. 494.
Kan.—James v. Grigsby, 220 P. 267, 114 Kan. 627.
Minn.—Moeller v. Hauser, 54 N.W.2d 639, 237 Minn. 368—Brossard v. Koop, 274 N.W. 241, 200 Minn. 410—Schanil v. Branton, 232 N.W. 708, 181 Minn. 381.
Neb.—In re Johnson's Estate, 16 N. W.2d 504, 145 Neb. 333.
Tenn.—Glover v. Burke, 133 S.W.2d 611, 23 Tenn.App. 350.
Tex.—Miles v. Harris, Civ.App., 194 S.W. 839, error refused.
Wis.—Schultz v. Tasche, 165 N.W. 292, 166 Wis. 561.
Wyo.—Phifer v. Baker, 244 P. 637, 34 Wyo. 415.

14.10 Ariz.—City of Phoenix v. Harlan, 255 P.2d 609, 75 Ariz. 290.
Miss.—City of Meridian v. Tingle, 84 So.2d 388.

14.11 Iowa.—State Sav. Bank of Sharpsburg v. Universal Credit Co., 12 N.W.2d 890, 234 Iowa 443.
Okl.—Huseman v. Universal Credit Co., 62 P.2d 485, 178 Okl. 168.

14.12 Ark.—Wilkerson v. Gerard, 138 S.W.2d 76, 200 Ark. 125.
Ga.—Baldwin v. Davis, 4 S.E.2d 458, 188 Ga. 587.
Utah.—Taylor v. Weber County, 293 P.2d 925, 4 Utah 2d 328.
Wis.—Niedfeldt v. Evans, 75 N.W.2d 307, 272 Wis. 362.

14.13 Ga.—General Acceptance Corp. v. Anthony, 85 S.E.2d 793, 91 Ga. App. 446—Parks v. Parks, 80 S.E. 2d 837, 89 Ga.App. 725—Consolidated Warehouse Co. v. Smith, 189 S.E. 724, 55 Ga.App. 216—Lewis v. Tatum, 189 S.E. 375, 55 Ga.App. 24.

14.14 Ala.—Sawyer v. Stanley, 1 So. 2d 21, 241 Ala. 39.
Ind.—Barger v. Barger, 48 N.E.2d 813, 221 Ind. 530.
Iowa.—In re Iwers' Estate, 280 N.W. 579, 225 Iowa 389.

14.15 Cal.—Conger v. White, 158 P. 2d 415, 69 C.A.2d 28.
Colo.—Pattridge v. Youmans, 109 P. 2d 646, 107 Colo. 122.
Ga.—Flannagan v. Clark, 61 S.E.2d 485, 207 Ga. 345.
Ill.—Stewart v. Clark, 194 Ill.App. 2.
Ind.—Southern Ry. Co. v. Jaynes, 140 N.E. 556, 86 Ind.App. 451.
Iowa.—Neal v. Miller, 280 N.W. 499, 225 Iowa 252.
Minn.—Wolfson v. Northern States Management Co., 299 N.W. 676, 210 Minn. 504.
Mo.—Morrow v. Franklin, 233 S.W. 224, 289 Mo. 549.
Roberts v. Woodmen Accident Co., 129 S.W.2d 1053, 233 Mo.App. 1058—Buck v. Radcliff Motor Co., 125 S.W.2d 888, 233 Mo.App. 750—Enyeart v. Peterson, 170 S.W. 458, 184 Mo.App. 519.
Neb.—Johnson v. Nebraska Bldg. & Inv. Co., 190 N.W. 590, 109 Neb. 235.
Okl.—Finefrock v. Carney, 263 P.2d 744—Calhoun v. Fisher, 215 P.2d 846, 202 Okl. 542.
Pa.—McCommon v. Johnson, 187 A. 445, 123 Pa.Super. 581.
Utah.—Stuck v. Delta Land & Water Co., 227 P. 791, 63 Utah 495.
Wash.—Thoman v. Hearst Consol. Publications, 60 P.2d 106, 187 Wash. 290.

14.16 Ga.—Atlantic Coast Line R. Co. v. McElmurray Bros., 86 S.E. 48, 16 Ga.App. 759.

tions has also been held not to be ground for reversal in actions on contracts,[14.17] such as insurance

N.C.—Fleming v. Atlantic Coast Line R. Co., 73 S.E.2d 544, 236 N.C. 568.

Okl.—Parker-Gordon Cigar Co. v. Chicago, R. I. & P. Ry. Co., 221 P. 711, 94 Okl. 149.

Tex.—Nussbaum & Scharff v. Trinity & B. V. Ry. Co., 194 S.W. 1099, 108 Tex. 407.

26 C.J. p 589 note 66.

14.17 Ala.—Cornett v. Brooks, 90 So. 787, 206 Ala. 566.

Ariz.—Brown v. Karas, 237 P.2d 799, 73 Ariz. 62.

Ark.—Dyke Bros. v. Stokes, 272 S.W. 663, 168 Ark. 943—Jones v. Keebey, 269 S.W. 66, 168 Ark. 84—Augusta Cooperage Co. v. Plant, 259 S.W. 12, 163 Ark. 49—Anglin v. Marr Canning Co., 237 S.W. 440, 152 Ark. 1—Jordan v. Adams, 232 S.W. 14, 149 Ark. 104—Rogers v. Robertson, 218 S.W. 206, 142 Ark. 210—Johnson v. Neeley, 206 S.W. 653, 136 Ark. 357—Harris v. Lemley, 199 S. W. 373, 131 Ark. 471—School Dist. No. 30 v. Roth, 170 S.W. 561, 115 Ark. 606.

Cal.—Klett v. Security Acceptance Co., 242 P.2d 873, 38 C.2d 770—Harned v. Watson, 110 P.2d 431, 17 C.2d 396.

Sloan v. Stearns, 290 P.2d 382, 137 C.A.2d 289—Kennard v. Rosenberg, 273 P.2d 839, 127 C.A.2d 340—Di Maria v. Mitchell, 247 P.2d 60, 112 C.A.2d 691—Sheridan v. Stephenson, 216 P.2d 174, 96 C.A.2d 872—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723—Downs v. Sherry, 202 P.2d 101, 90 C.A.2d 1—Manning v. Gavin, 100 P.2d 350, 37 C.A.2d 591—Klamath Lumber Co. v. Cooperative Land & Trust Co., 145 P. 159, 25 C.A. 678.

International Fishermen & Allied Workers of America v. Stemland, 219 P.2d 554, 97 C.A.2d Supp. 931.

Conn.—McMahon v. Bryant Electric Co., 185 A. 181, 121 Conn. 397—Katz v. Delohery Hat Co., 118 A. 88, 97 Conn. 665—Dean v. Connecticut Tobacco Corporation, 92 A. 408, 88 Conn. 619.

Fla.—Curtiss-Bright Ranch Co. v. Cameron & Barkley Co., 102 So. 495, 88 Fla. 305.

Ga.—City of Summerville v. Sellers, 94 S.E.2d 69, 94 Ga.App. 152—Whitley v. Wilson, 81 S.E.2d 877, 90 Ga.App. 16—Young v. Cedartown Block & Concrete Co., 79 S. E.2d 828, 89 Ga.App. 509—Abernathy v. Putnam, 69 S.E.2d 896, 85 Ga.App. 644—Rushing v. Jones, 22 S.E.2d 675, 68 Ga.App. 300—Richter v. Atlantic Co., 16 S.E.2d 259, 65 Ga.App. 605—Loveland v. Reliable Garage, 125 S.E. 877, 33 Ga. App. 289—Kirkland v. Brewton, 122 S.E. 814, 32 Ga.App. 128—Jester v. Brachin, 116 S.E. 329, 29 Ga.App. 688—Owens v. Fuller, 108 S.E. 312, 27 Ga.App. 368.

Ill.—Reilly Tar & Chemical Corp. v. Lewis, 92 N.E.2d 807, 341 Ill.App. 69—Portable Elevator Mfg. Co. v. Dutton, 224 Ill.App. 123—Steinberg v. Schwartz, 219 Ill.App. 138.

Ind.—Wilson v. Reynolds, 13 N.E.2d 218, 213 Ind. 436.

Bruno v. Phillips & Co., 142 N. E. 21, 80 Ind.App. 658—Moore v. Ohl, 116 N.E. 9, 65 Ind.App. 691.

Iowa.—Merritt v. Leuck, 2 N.W.2d 49, 231 Iowa 777—Ellison v. Stockton, 190 N.W. 7, 195 Iowa 615—Workman v. Sharp, 185 N.W. 920, 192 Iowa 864—W. H. Hoopes & Sons v. F. H. Simpson Fruit Co., 161 N.W. 629, 180 Iowa 833—Kirkwood v. Perry Town Lot & Improvement Co., 159 N.W. 774, 178 Iowa 248.

Kan.—Degnan v. Young Bros. Cattle Co., 103 P.2d 918, 152 Kan. 250—Ratcliff v. Paul, 240 P. 578, 119 Kan. 614—Lenox Hall v. Seelye, 190 P. 737, 107 Kan. 14—Manross v. Uncle Sam Oil Co., 190 P. 619, 107 Kan. 71—Wolverton v. El Dorado-Harper-Emporia Oil & Gas Co., 180 P. 792, 104 Kan. 764.

Ky.—Camp Taylor Development Co. v. Wimberg, 113 S.W.2d 9, 271 Ky. 635—Canewood Oil Co. v. Cox, 63 S.W.2d 945, 250 Ky. 800—Jackson Lumber & Supply Co. v. Deaton, 272 S.W. 717, 209 Ky. 239—Vincennes Bridge Co. v. Walker, 205 S.W. 778, 181 Ky. 651—Jones-Gray Const. Co. v. Stephens, 181 S.W. 659, 167 Ky. 765.

Md.—Finkelstein v. Morganstern, 124 A. 872, 144 Md. 387—Wandell Chocolate Co. v. Goldsmith, 120 A. 372, 142 Md. 148—Martin Fertilizer Co. v. Thomas & Co., 109 A. 458, 135 Md. 633.

Mass.—Brown v. Sandler, 106 N.E. 2d 418, 329 Mass. 763.

Mich.—Moore v. Knapp, 35 N.W.2d 393, 323 Mich. 478—Joseph N. Smith & Co. v. Dickinson, 225 N. W. 580, 246 Mich. 689—Shapiro v. Goodman, 210 N.W. 211, 236 Mich. 412—Saginaw Medicine Co. v. Lee, 198 N.W. 200, 226 Mich. 561—Kennedy v. Ford, 149 N.W. 1013, 183 Mich. 481.

Miss.—Stone-Lowe Cotton Co. v. Weil Bros., 91 So. 859, 129 Miss. 60.

Mo.—Webb-Boone Paving Co. v. State Highway Commission, 169 S. W.2d 336, 350 Mo. 896.

Van Winkle v. Reed, App., 291 S.W.2d 227—Albrecht v. Piper, App., 164 S.W.2d 105—Hyde v. Henman, App., 256 S.W. 1088—Merchants' & Mfgrs.' Bank v. S. W. Morten Lumber Co., App., 247 S. W. 432—Ford v. Stevens Motor Car Co., 220 S.W. 980, 203 Mo.App. 669—Mayo v. J. L. Price Brokerage Co., App., 218 S.W. 932—Yontz v. McVean, 217 S.W. 100, 202 Mo.App. 377—Morrill v. Alexander, App., 215 S.W. 764—Menihan Co. v. Lipschitz Barack Shoe Co., App., 206 S.W. 232—Riverside Fibre & Paper Co. v. Benedict Paper Co., App., 201 S.W. 584—Johnson v. Maier, 187 S.W. 143, 194 Mo.App. 169—Bowen v. Buckner, App., 183 S.W. 704.

Neb.—Heusser v. McAtee, 39 N.W. 2d 802, 151 Neb. 828.

N.J.—Palumbo v. Collito, 127 A.2d 27, 42 N.J.Super. 436.

N.Y.—Rinaldi v. Mohican Co., 121 N. E. 471, 225 N.Y. 70—Stewart v. Newbury, 115 N.E. 984, 220 N.Y. 379, 2 A.L.R. 519.

Gearing v. Harris, 8 N.Y.S.2d 798, 255 App.Div. 941—Gearing v. Harris, 7 N.Y.S.2d 3, 255 App.Div. 824, reargument denied 8 N.Y.S. 2d 798, 255 App.Div. 941, appeal denied, 18 N.E.2d 699, 279 N.Y. 810.

N.C.—Pegram-West, Inc. v. Winston Mut. Life Ins. Co., 56 S.E.2d 607, 231 N.C. 277—Universal Oil & Fertilizer Co. v. Burney, 93 S.E. 912, 174 N.C. 382.

Ohio.—Banks v. Canton Hardware Co., 103 N.E.2d 568, 156 Ohio St. 453.

Kenney v. Spicer Furniture Co., App., 131 N.E.2d 265—De Fiore v. Peffers, App., 124 N.E.2d 733—Tanski v. White, 109 N.E.2d 319, 92 Ohio App. 411.

Okl.—Sunray Packing Co. v. Wilson, 268 P.2d 264—Rogers v. Lassiter, 164 P.2d 632, 196 Okl. 228—Jones v. Cabaniss, 91 P.2d 83, 185 Okl. 175—New York Life Ins. Co. v. Thompson, 72 P.2d 713, 181 Okl. 108—Johnson v. Curlee Clothing Co., 240 P. 632, 112 Okl. 220.

Or.—Cade v. Thompson, 225 P.2d 396, 190 Or. 242—Cornely v. Campbell, 186 P. 563, 95 Or. 345, rehearing denied 187 P. 1103, 95 Or. 345—Naftzger v. Henneman, 185 P. 233, 94 Or. 109—Snow v. Beard, 162 P. 258, 82 Or. 518.

Pa.—Wickerham v. Vitori, 25 A.2d 801, 345 Pa. 111—Baker v. Kaplan, 127 A. 623, 282 Pa. 239.

R.I.—Visgilio v. Schoof, 105 A.2d 470—R. H. Kimball, Inc., v. Rhode Island Hospital Nat. Bank, 48 A. 2d 420, 72 R.I. 144.

S.C.—Moore v. Marion Cotton Oil Co., 85 S.E. 52, 100 S.C. 499.

S.D.—Flaherty v. Bank of Kimball, 68 N.W.2d 105, 75 S.D. 468.

Tex.—Trinity Fire Ins. Co. v. Kerrville Hotel Co., 103 S.W.2d 121, 129 Tex. 310, 110 A.L.R. 442.

Lone Star Bldg. & Loan Ass'n v. Larcade, Civ.App., 211 S.W.2d 257, error refused no reversible error—Russell v. Gleghorn, Civ.App., 96 S. W.2d 728—Henderson v. Rowe, Civ.App., 93 S.W.2d 589, error dis-

contracts[14.18], and has been held not to be ground for reversal in actions on employment

missed—McDonald v. Whaley, Civ. App., 228 S.W. 813, modified on other grounds, Com.App., 244 S.W. 596—Graves v. Haynes, Civ.App., 214 S.W. 665, reversed on other grounds, Com.App., 231 S.W. 383—Kolp v. S. F. Scattergood & Co., Civ.App., 185 S.W. 329.

Va.—Muhleman & Kayhoe v. Marks, 190 S.E. 86, 168 Va. 81—C. G. Blake Co. v. W. R. Smith & Son, 133 S.E. 685, 147 Va. 960—Sun Co. v. Burruss, 123 S.E. 347, 139 Va. 279—Campbell County v. Howard, 112 S.E. 876, 133 Va. 19—Altavista Cotton Mills v. Lane, 112 S.E. 637, 133 Va. 1—Norfolk Hosiery & Underwear Mills Co. v. Ætna Hosiery Co., 98 S.E. 43, 124 Va. 221.

Wash.—Greenwood v. International Harvester Co., 211 P. 727, 122 Wash. 603—Lord v. Miller, 150 P. 631, 86 Wash. 436.

W.Va.—Toney v. Sandy Ridge Coal & Coke Co., 99 S.E. 178, 84 W.Va. 35.

14.18 Ala.—Waters v. American Cas. Co. of Reading, Pa., 73 So.2d 524, 261 Ala. 252—Fraternal Aid Union v. Monfee, 168 So. 891, 232 Ala. 606—Woodmen of the World v. Maynor, 96 So. 352, 209 Ala. 443—Brotherhood of Locomotive Firemen & Engineers v. Milner, 69 So. 10, 193 Ala. 68.

Ariz.—Brandon v. Carr, 237 P. 642, 28 Ariz. 454.

Ark.—Universal Life & Acc. Ins. Co. v. Stuart, 245 S.W.2d 219, 219 Ark. 863—Service Fire Ins. Co. v. Payne, 236 S.W.2d 1020, 218 Ark. 499—Derby v. Blankenship, 230 S.W.2d 481, 217 Ark. 272—Metropolitan Life Ins. Co. v. Williams, 125 S.W.2d 441, 197 Ark. 883—Maryland Motor Car Ins. Co. v. Newell Contracting Co., 271 S.W. 19, 168 Ark. 658—Eminent Household of Columbian Woodmen v. Howle, 206 S.W. 147, 136 Ark. 156.

Cal.—Smith v. American Sur. Co. of N. Y., 306 P.2d 489, 148 C.A.2d 131—Cohen v. Penn Mut. Life Ins. Co., App., 302 P.2d 46—Crooks v. Glens Falls Indem. Co., 268 P.2d 203, 124 C.A.2d 113—Wharton v. Prudential Ins. Co. of America, 265 P.2d 956, 122 C.A.2d 857—Olson v. Standard Marine Ins. Co., 240 P.2d 379, 109 C.A.2d 130.

Conn.—Reardon v. Mutual Life Ins. Co. of N. Y., 86 A.2d 570, 138 Conn. 510, 30 A.L.R.2d 828—Carroll Co. v. New Amsterdam Casualty Co., 185 A. 579, 121 Conn. 486.

Fla.—Mutual Ben. Health & Accident Ass'n v. Bunting, 183 So. 321, 133 Fla. 646.

Ga.—Washburn v. Washburn, 4 S.E.2d 35, 188 Ga. 468.

George Washington Life Ins. Co. v. Smith, 83 S.E.2d 302, 90 Ga.App. 459—Travelers Ins. Co. v. Hill, 46 S.E.2d 755, 76 Ga.App. 640—Life & Casualty Ins. Co. v. Ellis, 28 S.E.2d 326, 70 Ga.App. 280—Metropolitan Life Ins. Co. v. Marshall, 16 S.E.2d 33, 65 Ga.App. 696—New York Life Ins. Co. v. Jennings, 6 S.E.2d 431, 61 Ga.App. 557—Hanover Fire Ins. Co. v. Pruitt, 2 S.E.2d 123, 59 Ga.App. 777—Life & Casualty Ins. Co. of Tennessee v. Blackburn, 1 S.E.2d 450, 59 Ga.App. 479—Gulf Life Ins. Co. v. Fetzer, 200 S.E. 165, 59 Ga.App. 176—Metropolitan Life Ins. Co. v. Kennedy, 190 S.E. 873, 55 Ga.App. 554—Interstate Life & Accident Co. v. Stonecypher, 188 S.E. 294, 54 Ga. App. 497—Alliance Ins. Co. v. Williamson, 137 S.E. 277, 36 Ga.App. 497.

Idaho.—Carroll v. Hartford Fire Ins. Co., 154 P. 985, 28 Idaho 466.

Ill.—Colby v. Metropolitan Life Ins. Co., 49 N.E.2d 830, 320 Ill.App. 120—Scott v. Freeport Motor Casualty Co. of Freeport, 34 N.E.2d 879, 310 Ill.App. 421—Harris v. Sovereign Camp, W. O. W., 23 N.E.2d 793, 302 Ill.App. 310, affirmed 27 N.E.2d 829, 374 Ill. 47—Benatti v. John Hancock Mut. Life Ins. Co., 8 N.E.2d 551, 290 Ill.App. 438—Lynch v. Central States Life Ins. Co., 281 Ill. App. 511—Rowden v. Travelers' Protective Ass'n of America, 201 Ill.App. 295.

Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559—Ætna Ins. Co. of Hartford, Conn., v. Robinson, 10 N.E.2d 601, 213 Ind. 44.

Farmers Conservative Mut. Ins. Co. v. Neddo, 40 N.E.2d 401, 111 Ind.App. 1—Standard Auto Ins. Ass'n v. Reese, 149 N.E. 137, 83 Ind.App. 500—Standard Life Ins. Co. v. Grigsby, 140 N.E. 457, 80 Ind.App. 231—United Automobile Ins. Ass'n of Indianapolis v. Henderson, 139 N.E. 680, 81 Ind.App. 231—National Life & Accident Ins. Co. v. Williams, 138 N.E. 826, 84 Ind.App. 343—Western & Southern Life Ins. Co. v. Angel, 134 N.E. 671, 77 Ind.App. 665—Prudential Ins. Co. of America v. Union Trust Co., 105 N.E. 505, 56 Ind.App. 418.

Iowa.—Kayser v. Occidental Life Ins. Co. of California, 12 N.W.2d 582, 234 Iowa 310—Forrest v. Sovereign Camp, W. O. W., 261 N.W. 802, 220 Iowa 478—Lozier Automobile Exch. v. Interstate Casualty Co., 198 N.W. 501, 197 Iowa 1130.

Kan.—Muzenich v. Grand Carniolian Slovenian Catholic Union of U. S., 119 P.2d 504, 154 Kan. 537, 138 A.L.R. 818.

Ky.—Bituminous Cas. Corp. v. Campbell, 224 S.W.2d 692, 311 Ky. 438—Prudential Ins. Co. of America v. Dismore, 72 S.W.2d 433, 254 Ky. 725—Howton v. Sovereign Camp Woodmen of the World, 172 S.W. 687, 162 Ky. 432.

Mich.—Campbell v. Great Lakes Ins. Co. of Chicago, Ill., 200 N.W. 457, 228 Mich. 636.

Minn.—Cement, Sand & Gravel Co. v. Agricultural Ins. Co. of Watertown, N. Y., 30 N.W.2d 341, 225 Minn. 211—Black v. Central Business Men's Ass'n, 202 N.W. 823, 162 Minn. 265—Rechtzigel v. National Casualty Co., 173 N.W. 670, 143 Minn. 302—Anderson v. Royal League, 153 N.W. 853, 130 Minn. 416, L.R.A.1916B 901, Ann.Cas.1917C 691.

Miss.—Paramount Fire Ins. Co. v. Anderson, 51 So.2d 763, 211 Miss. 872—American Ins. Co. v. Crawford, 70 So. 579, 110 Miss. 493.

Mo.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402—Liles v. Associated Transports, 220 S.W.2d 36, 359 Mo. 87.

King v. Benefit Ass'n of Ry. Emps., App., 184 S.W.2d 793—Williams v. Ætna Life Ins. Co. of Hartford, Conn., App., 154 S.W.2d 426—Bennett v. National Fire Ins. Co. of Hartford, 143 S.W.2d 479, 235 Mo.App. 720—Brown v. Mutual Life Ins. Co. of New York, App., 140 S.W.2d 91—Swihart v. Missouri Farmers Mut. Tornado, Cyclone & Windstorm Ins. Co., 138 S.W.2d 9, 234 Mo.App. 998—Aronson v. Hercules Life Ins. Co., App., 131 S.W.2d 852—Tevlin v. Federal Life Ins. Co. of Chicago, App., 127 S.W.2d 743—Propst v. Capital Mut. Ass'n, 124 S.W.2d 515, 233 Mo.App. 612—Fields v. Metropolitan Life Ins. Co., App., 119 S.W.2d 463—Sullivan v. John Hancock Mut. Life Ins. Co. of Boston, App., 110 S.W.2d 870—John v. Ætna Life Ins. Co. of Hartford. Conn., App., 100 S.W.2d 936—Shelton v. Great American Ins. Co. of New York, App., 100 S.W.2d 591—Bailey v. American Life & Accident Ins. Co., App., 96 S.W.2d 903—McCarthy v. Metropolitan Life Ins. Co., App., 90 S.W.2d 158—Morris v. Washington Nat. Ins. Co., App., 90 S.W.2d 138—Morris v. Washington Nat. Ins. Co., App., 90 S.W.2d 138—Wolpers v. Globe & Rutgers Fire Ins. Co., App., 61 S.W.2d 224—Ash-Grove Lime & Portland Cement Co. v. Southern Surety Co., 39 S.W.2d 434, 225 Mo. App. 712—Hardie v. Metropolitan Life Ins. Co., App., 7 S.W.2d 746—Elliott v. Fidelity-Phenix Fire Ins. Co. of New York, App., 267 S.W. 441—Ricks v. National Fire Ins. Co. of Hartford, Conn., App., 254 S.W. 414—Golding v. Modern Woodmen of America, 250 S.W. 933, 213 Mo.App. 171—Meisenbach v. National Life & Accident Ins. Co., App., 241 S.W. 450—Rabok Mfg. Co. v. Scottish Union & National Ins. Co. of Edinburg, Scotland,

contracts.[14.19] The rule has also been applied in actions for brokers' commissions or compensation,[14.20] actions between a vendor and a purchaser,[14.21] and between a landlord and his tenant;[14.22] actions involving sales[14.23] and mortgag-

App., 236 S.W. 918—Tinsley v. Ætna Ins. Co. of Hartford, Conn., 205 S.W. 78, 199 Mo.App. 693—Dubinsky v. Hartford Fire Ins. Co. of Hartford, Conn., App., 196 S.W. 1045—Mun v. New York Life Ins. Co., App., 181 S.W. 606.

Neb.—Clouse v. St. Paul Fire & Marine Ins. Co., 40 N.W.2d 820, 152 Neb. 230, 15 A.L.R.2d 1008.

Nev.—Truck Ins. Exchange v. Whitaker, 278 P.2d 277, 71 Nev. 1.

N.J.—Fisch v. Insurance Co. of North America, 130 A.2d 891, 44 N.J.Super. 416.

Testa v. Metropolitan Life Ins. Co., 54 A.2d 455, 136 N.J.Law 9.

N.C.—Chamberlain v. Home Sec. Life Ins. Co., 175 S.E. 86, 206 N.C. 622.

Ohio.—Nellas v. Manufacturers Cas. Ins. Co., 121 N.E.2d 651, 96 Ohio App. 196—Equitable Life Assur. Soc. of U. S. v. Burton, 4 N.E.2d 706, 53 Ohio App. 241—Madison v. Caledonian-American Ins. Co. of New York, App., 43 N.E.2d 245—Shoup v. Clemans, App., 31 N.E.2d 103.

Okl.—Richards v. American Sec. Life Ins. Co., 303 P.2d 1110—Rosier v. Metropolitan Life Ins. Co., 168 P.2d 302, 197 Okl. 35.

S.C.—Aiken Petroleum Co. v. National Petroleum Underwriters of Western Millers Mut. Fire Ins. Co. of Kansas City, Mo., 36 S.E.2d 380, 207 S.C. 236—Younginer v. Aetna Life Ins. Co. of Hartford, Conn., 19 S.E.2d 452, 199 S.C. 283—Garvin v. Sovereign Camp, W. O. W., 192 S.E. 267, 184 S.C. 270—Alexander v. Durham Life Ins. Co., 187 S.E. 425, 181 S.C. 331.

Tenn.—Nichols v. Mutual Life Ins. Co. of New York, 156 S.W.2d 436, 178 Tenn. 209.

Tex.—American Cas. & Life Co. v. McCuistion, Civ.App., 202 S.W.2d 474, error refused no reversible error—Southern Life & Health Ins. Co. v. Ramirez, Civ.App., 93 S.W.2d 234—American Nat. Ins. Co. v. Hicks, Civ.App., 198 S.W. 616, error refused—Home Benefit Ass'n of Angelina County v. Jordan, Civ. App., 191 S.W. 725, dismissed for want of jurisdiction.

Utah.—Griffin v. Prudential Ins. Co. of America, 133 P.2d 333, 102 Utah 563, 144 A.L.R. 1402—Ralston v. Metropolitan Life Ins. Co., 62 P.2d 1119, 90 Utah 496.

Vt.—Jacobs v. Loyal Protective Ins. Co., 124 A. 848, 97 Vt. 516.

Va.—Sordelett v. Mercer, 40 S.E.2d 289, 185 Va. 823—Phœnix Ins. Co. v. Shulman Co., 99 S.E. 602, 125 Va. 281.

Wash.—Gillingham v. Phelps, 119 P.2d 914, 11 Wash.2d 492—Sauers v. Mutual Ben. Health & Accident Ass'n, 60 P.2d 103, 187 Wash. 262.

Wis.—Egan v. Preferred Accident Ins. Co. of New York, 269 N.W. 667, 223 Wis. 129, 107 A.L.R. 1107.

Wyo.—Metropolitan Life Ins. Co. v. Harvey, 93 P.2d 930, 54 Wyo. 501.

Fire insurance

Ky.—Wolff v. Niagara Fire Ins. Co., 32 S.W.2d 548, 236 Ky. 1.

14.19 Minn.—Hlubeck v. Beeler, 9 N.W.2d 252, 214 Minn. 484.

Mo.—Fuldner v. Isaac T. Cook Co., App., 127 S.W.2d 726.

Va.—Rudlin v. Parker, 43 S.E.2d 918, 186 Va. 647.

14.20 Ala.—Dancy v. Baker, 96 So. 920, 209 Ala. 684—Clay v. Cummins, 91 So. 790, 207 Ala. 105.

Morrison v. Jackson, 85 So. 573, 17 Ala.App. 338.

D.C.—McManus v. Newcomb, Mun. App., 61 A.2d 36.

Fla.—Stewart v. Manget, 187 So. 695, 136 Fla. 710.

Iowa.—Dunnick v. Hagedorn, 195 N.W. 994, 196 Iowa 1067.

Ky.—Elkhorn Consol. Coal & Coke Co. v. Eaton, Rhodes & Co., 173 S.W. 798, 163 Ky. 306.

Md.—Stembler v. Wilson, 3 A.2d 759, 175 Md. 667—Herbert v. Davis, 115 A. 808, 139 Md. 522.

Mass.—Brand v. Sterling Motor Car Co., 137 N.E. 541, 243 Mass. 303.

Minn.—Lamoreaux & Champlin v. Norman, 187 N.W. 606, 151 Minn. 489—Petrich v. Berkner, 172 N.W. 770, 142 Minn. 451.

Mo.—Fyock v. Riales, App., 251 S.W.2d 102—Evans v. Swetnam, App., 235 S.W. 502.

N.H.—Philbrick v. Chase, 58 A.2d 317, 95 N.H. 82, 3 A.L.R.2d 526.

N.J.—Kaplan v. Meranus, 56 A.2d 589, 136 N.J.Law 425, affirmed 62 A.2d 689, 1 N.J. 219.

Ohio.—Portney v. Frank, 65 N.E.2d 290, 77 Ohio App. 357.

Pa.—Stevenson v. Nichols, 66 A.2d 235, 362 Pa. 25.

Tex.—Powell v. Mulder, Civ.App., 228 S.W. 302—Turner v. Garrard, Civ. App., 198 S.W. 655.

Vt.—Laferriere v. Saliba, 117 A.2d 380, 119 Vt. 25.

14.21 Conn.—Castaldo v. D'Eramo, 98 A.2d 664, 140 Conn. 88.

Ga.—Puckett v. Reese, 48 S.E.2d 297, 203 Ga. 716.

Pa.—Albert v. Schenley Auto Sales, Inc., 100 A.2d 605, 375 Pa. 512.

Sipowicz v. Olivieri, 102 A.2d 175, 174 Pa.Super. 549.

14.22 Ala.—Spry v. Pruitt, 54 So.2d 701, 256 Ala. 341.

Ariz.—M. Karam & Sons Mercantile Co. v. Serrano, 77 P.2d 447, 51 Ariz. 397.

Ga.—Hamel v. Elliott, 54 S.E.2d 688, 79 Ga.App. 633—Barnes v. Thomas, 35 S.E.2d 364, 72 Ga.App. 827—Thomson v. Avery, 21 S.E.2d 331, 67 Ga.App. 671.

Idaho.—Miller v. Belknap, 266 P.2d 662, 75 Idaho 46.

Ill.—Selimos v. Marinos, 54 N.E.2d 836, 323 Ill.App. 144.

Ind.—St. Germain v. Sears, Roebuck & Co., 44 N.E.2d 216, 112 Ind.App. 412—Stewart v. Huff, 14 N.E.2d 322, 105 Ind.App. 447.

Iowa.—Henney v. Lambert, 21 N.W.2d 301, 237 Iowa 146.

Mass.—Kurland v. Massachusetts Amusement Corp., 29 N.E.2d 749, 307 Mass. 131.

Mo.—Monsour v. Excelsior Tobacco Co., 144 S.W.2d 62.

Mo.—Hewitt v. Kellogg, App., 272 S.W.2d 13—Cieslinski v. Clark, App., 223 S.W.2d 139—Morrison v. Terry, App., 205 S.W.2d 902—Longmoor Corp. v. Jeffers, App., 205 S.W.2d 234.

N.J.—Dolid v. Leatherkraft Corp., 120 A.2d 617, 39 N.J.Super. 194.

N.Y.—Antonsen v. Bay Ridge Sav. Bank, 54 N.E.2d 338, 292 N.Y. 143.

Ohio.—Miller v. Beard, App., 136 N.E.2d 366—Mastran Const. Co. v. Mahoning Exp. Co., App., 96 N.E.2d 30.

Tex.—Rainwater v. McGrew, Civ. App., 181 S.W.2d 103, error refused.

Wash.—Mottman Mercantile Co. v. Western Union Telegraph Co., 100 P.2d 16, 3 Wash.2d 62.

14.23 Ariz.—Singleton v. Dunn, 224 P.2d 643, 71 Ariz. 150.

Colo.—Tallman v. Smith, 148 P.2d 581, 112 Colo. 217.

Fla.—Brown v. Faircloth, 66 So.2d 232.

Ga.—Pan-American Wall Paper & Paint Co. v. Tudor, 59 S.E.2d 12, 81 Ga.App. 417—Porter v. Hancock, 46 S.E.2d 597, 76 Ga.App. 534—McGee v. Bennett, 33 S.E.2d 577, 72 Ga.App. 271—Toney v. Everett, 23 S.E.2d 500, 68 Ga.App. 703.

Ind.—Wilson v. Reynolds, 13 N.E.2d 218, 213 Ind. 436.

Iowa.—State Sav. Bank, Sharpsburg, v. Universal Credit Co., 8 N.W.2d 719, 233 Iowa 247.

Ky.—Reynolds Metals Co. v. Barker, 256 S.W.2d 17.

Mo.—Leathers v. Sikeston Coca-Cola Bottling Co., App., 286 S.W.2d 393—Dixon v. Burtrum, App., 258 S.W.2d 24—Russell v. Union Elec. Co. of Mo., 191 S.W.2d 278, 238 Mo. App. 1074—Marra v. Jones Store Co., App., 170 S.W.2d 441, quashed on other grounds 179 S.W.2d 99, 352 Mo. 630—Weil Clothing Co. v. National Garment Co., App., 148 S.W.2d 586—Ralston Purina Co. v. Swaithes, App., 142 S.W.2d 340

es;[14.24] actions on notes,[14.25] actions to cancel instruments,[14.26] and actions to recover property.[14.27]

The principle that a judgment will not be reversed for error in the giving of instructions, where the complaining party was not prejudiced thereby, has also been applied in actions for death[14.28] and personal injuries,[14.29] such as injuries to em-

—Stalcup v. Bolt, 139 S.W.2d 544, 234 Mo.App. 1070.
Neb.—Franks v. Jirdon, 20 N.W.2d 597, 146 Neb. 585.
S.C.—Sample v. Gulf Refining Co., 191 S.E. 209, 183 S.C. 399.
Tenn.—Kidd v. Condry, 154 S.W.2d 530, 25 Tenn.App. 182.
Tex.—De Kalb Hybrid Seed Co. v. Agee, Civ.App., 293 S.W.2d 64.
Wash.—Keeter v. John Griffith, Inc., 241 P.2d 213, 40 Wash.2d 128.

14.24 Ga.—Smith v. Aldridge, 15 S.E.2d 430, 192 Ga. 376—Lester v. Baxter, 191 S.E. 429, 184 Ga. 368, 111 A.L.R. 493.
Jackson v. Moultrie Production Credit Ass'n, 47 S.E.2d 127, 76 Ga.App. 768.
Mo.—Denver Joint Stock Land Bank of Denver, Colo., v. Sherman, 152 S.W.2d 702, 236 Mo.App. 191.
Or.—Harper v. Interstate Brewery Co., 120 P.2d 757, 168 Or. 26.
Pa.—Harkinson v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 198 A. 11, 329 Pa. 209.

14.25 Ala.—R. L. Parsons Lumber & Mfg. Co. v. Farrior, 141 So. 696, 225 Ala. 61—Security Finance Co. v. Kelly's Tire Shop, 114 So. 298, 216 Ala. 642—Clayton v. Jordan, 96 So. 260, 209 Ala. 334.
Ariz.—Hammons v. O'Brien, 259 P. 881, 32 Ariz. 436—Yuma Nat. Bank v. Balsz, 237 P. 198, 28 Ariz. 336.
Ark.—First Nat. Bank v. Lewis, 257 S.W. 730, 162 Ark. 54.
Cal.—Rauer's Law & Collection Co. v. Harrell, 162 P. 125, 32 C.A. 45.
Colo.—Zarlengo v. Zarlengo, 197 P. 1019, 70 Colo. 189.
Ill.—Citizens' Bank of Johnston City v. Carr, 194 Ill.App. 273.
Iowa.—Chariton & Lucas County Nat. Bank v. Wright, 269 N.W. 439, 222 Iowa 417—International Stock Food Co. v. Beshey, 204 N.W. 265, 200 Iowa 165—Bank of Holmes v. Thompson, 185 N.W. 986, 192 Iowa 1032—Frutchey v. Derby, 179 N.W. 519, 190 Iowa 1254.
Kan.—Wilsey State Bank v. Amend, 190 P. 739, 107 Kan. 25—Wallace v. Wallace, 165 P. 838, 101 Kan. 32.
Md.—Engel v. Schloss, 106 A. 169, 134 Md. 72.
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Minn.—Mankato State Bank v. Masters, 192 N.W. 104, 155 Minn. 16.
Mo.—Muench v. South Side Nat. Bank, 251 S.W.2d 1—Villmer v. Household Plastics Co., 250 S.W.2d 964.
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N.D.—Schulenberg v. Long, 221 N.W. 69, 57 N.D. 262.
Ohio.—Parker v. Friendt, 118 N.E. 2d 216, 99 Ohio App. 329.
Pa.—Bittenbender Co. v. Bergen, 120 A. 658, 277 Pa. 27.
R.I.—Orleck v. Nemtzow, 195 A. 234, 59 R.I. 284.
S.C.—Home Bank of Barnwell v. Mixon, 121 S.E. 787, 128 S.C. 310.

14.26 Ga.—Arrington v. Thompson, 88 S.E.2d 402, 211 Ga. 734—Childers v. Ackerman Const. Co., 86 S.E.2d 227, 211 Ga. 350—Marshall v. Marshall, 67 S.E.2d 575, 208 Ga. 527—Batts v. Bedingfield, 48 S.E. 2d 848, 204 Ga. 160—Williford v. Swint, 5 S.E.2d 43, 188 Ga. 830.
Ind.—State Farm Mut. Automobile Ins. Co. v. Kramer, 14 N.E.2d 741, 105 Ind.App. 591.
N.C.—Proctor v. Carolina Fertilizer & Phosphate Co., 126 S.E. 608, 189 N.C. 243.
Okl.—Renegar v. Fleming, 211 P.2d 272, 202 Okl. 197—Mathis v. Guaranty Nat. Bank of Porum, 231 P. 500, 105 Okl. 69.
S.C.—Huguenin v. Adams, 96 S.E. 918, 110 S.C. 407.
Tex.—Gumlock v. Greenwade, Civ. App., 280 S.W.2d 610, error refused no reversible error—Mumsy v. Marnet Oil & Gas Co., Civ.App., 199 S.W. 686.

14.27 Ala.—Bennett v. Albrecht, 78 So. 823, 201 Ala. 445.
Colo.—Benish v. Jones, 190 P. 538, 68 Colo. 484.
Conn.—Ladany v. Assad, 99 A. 762, 91 Conn. 316.
Ga.—Jackson v. Butts, 96 S.E. 630, 148 Ga. 312.
Ky.—Jones v. Sanders, 145 S.W.2d 514, 284 Ky. 571.
Mo.—Peterson v. City of St. Joseph, 156 S.W.2d 691, 348 Mo. 954.
N.C.—McCorkle v. Beaty, 38 S.E.2d 102, 226 N.C. 338.
R.I.—Semonian v. Panoras, 116 A. 417, 44 R.I. 165, 20 A.L.R. 83, reargument denied 117 A. 235, 20 A.L.R. 83.
S.C.—Raleigh & C. R. Co. v. Jones, 88 S.E. 896, 104 S.C. 332.
S.D.—Quackenbush v. Graf, 158 N.W. 409, 37 S.D. 385.
Va.—Spandorfer v. Cooper, 126 S.E. 558, 141 Va. 792.

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Ala.—Calvert v. Bynum, 50 So.2d 731, 255 Ala. 172.
Ga.—Harrison v. Durham, 78 S.E.2d 482, 210 Ga. 187.
Ky.—Waddle v. Williams, 170 S.W. 2d 886, 294 Ky. 66—Jones v. Sanders, 145 S.W.2d 514, 284 Ky. 571.
N.C.—Sweet v. Bomar, 61 S.E.2d 85, 232 N.C. 391.

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Okl.—Gawf v. Gawf, 240 P.2d 1095, 206 Okl. 73.

Boundaries
W.Va.—Huffman v. Mills, 46 S.E.2d 787, 131 W.Va. 218.

14.28 Ala.—Zemczonek v. McElroy, 86 So.2d 824, 264 Ala. 258—Kendrick v. Birmingham Southern R. Co., 48 So.2d 320, 254 Ala. 313—Nelson v. Lee, 32 So.2d 22, 249 Ala. 549—Mobile & O. R. Co. v. Williams, 147 So. 819, 226 Ala. 541, certiorari denied 54 S.Ct. 71, 290 U.S. 655, 78 L.Ed. 568—Sims v. Alabama Great Southern Ry. Co., 72 So. 328, 197 Ala. 151.
Cal.—Tymkowicz v. San Jose Unified School Dist., App., 312 P.2d 388—Burger v. Burger, 288 P.2d 926, 136 C.A.2d 360—Parcher v. City of Los Angeles, 235 P.2d 220, 106 C.A. 2d 421—Martindale v. Atchison, T. & S. F. Ry. Co., 201 P.2d 48, 89 C.A.2d 400—Roselle v. Beach, 125 P.2d 77, 51 C.A.2d 579.
Fla.—Wirt v. Fraser, 30 So.2d 174, 158 Fla. 777.
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Iowa.—Low v. Ford Hopkins Co., 1 N.W.2d 95, 231 Iowa 251—Duncan v. Ft. Dodge Gas & Electric Co., 188 N.W. 865, 193 Iowa 1127.
Ky.—Bruce's Adm'x v. Callahan, 213 S.W. 557, 185 Ky. 1—Mylett's Adm'r v. Burnley, 173 S.W. 759, 163 Ky. 277.
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Miss.—Standard Coffee Co. v. Carr, 157 So. 685, 171 Miss. 714.
Ohio.—Knabb v. Scherer, 187 N.E. 574, 45 Ohio App. 535.
Wis.—Taylor v. Northern Coal & Dock Co., 152 N.W. 465, 161 Wis. 223, Ann.Cas.1916C 167.

14.29 Ala.—McKinney v. Birmingham Electric Co., 193 So. 139, 238 Ala. 627.
Cal.—McNeill v. A. Teichert & Son, Inc., 289 P.2d 595, 137 C.A.2d 5—

ployees,[14.30] and has been applied in actions for personal injuries to persons classified as

Schance v. H. O. Adams Tile Co., 280 P.2d 851, 131 C.A.2d 549—Hession v. City and County of San Francisco, 265 P.2d 542, 122 C.A.2d 592—Whiteside v. United Theatres, 235 P.2d 261, 106 C.A.2d 471—McCune v. Pacific Elec. Ry. Co., 196 P.2d 634, 87 C.A.2d 201—Foster v. A. P. Jacobs & Associates, 193 P.2d 971, 85 C.A.2d 746—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495.

Colo.—Jaeckel v. Funk, 138 P.2d 939, 111 Colo. 179.

Ga.—Atlantic Coast Line R. Co. v. Singletary, 55 S.E.2d 827, 80 Ga.App. 297—Barnes v. Thomas, 35 S.E.2d 364, 72 Ga.App. 827.

Ill.—Poteraske v. Illinois Meat Co., 97 N.E.2d 475, 342 Ill.App. 555—Montgomery v. Atchison, T. & S. F. Ry. Co., 71 N.E.2d 105, 330 Ill.App. 334—Wise v. Kuehne Mfg. Co., 53 N.E.2d 711, 322 Ill.App. 26—Trust Co. of Chicago v. Ancateau, 46 N.E.2d 125, 317 Ill.App. 186—Cooney v. Hughes, 34 N.E.2d 566, 310 Ill.App. 371—Starr v. Rossin, 23 N.E.2d 740, 302 Ill.App. 325—Stollery v. Sprague, 22 N.E.2d 276, 301 Ill.App. 209—Crane v. Railway Express Agency, 12 N.E.2d 672, 293 Ill.App. 328, modified on other grounds 15 N.E.2d 866, 369 Ill. 110.

Ind.—Goldblatt Bros. v. Parish, 38 N.E.2d 255, 110 Ind.App. 368.

Iowa.—Draeger v. Heckman-Reynolds Co., 78 N.W.2d 851, 247 Iowa 1259—Riggs v. Pan-American Wall Paper & Paint Co., 283 N.W. 250, 225 Iowa 1051.

Ky.—Kentucky & West Virginia Power Co. v. Stacy, 164 S.W.2d 537, 291 Ky. 325.

Mass.—Steadfast v. Rebon Realty Co., 130 N.E.2d 595, 333 Mass. 348.

Mich.—Van Arsdale v. Olympia, Inc., 17 N.W.2d 790, 310 Mich. 662.

Mo.—Huffman v. Terminal R. Ass'n of St. Louis, 281 S.W.2d 863—Higgins v. Terminal R. R. Ass'n of St. Louis, 241 S.W.2d 380, 362 Mo. 264—Jensen v. Kansas City, 238 S.W.2d 305, 361 Mo. 967—Ogan v. Perkins, 191 S.W.2d 666—Taylor v. Lumaghi Coal Co., 181 S.W.2d 536, 352 Mo. 1212—Dove v. Atchison, T. & S. F. Ry. Co., 163 S.W.2d 548, 349 Mo. 798.

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Mont.—Shaw v. Kendall, 136 P.2d 748, 114 Mont. 323.

Neb.—Dunn v. Omaha & Council Bluffs St. Ry. Co., 298 N.W. 741, 139 Neb. 765.

N.H.—Bogrett v. Hromada, 19 A.2d 432, 91 N.H. 351.

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Ohio.—Brown v. Cleveland Baseball Co., 106 N.E.2d 632, 158 Ohio St. 1.

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Okl.—Feuquay v. Ecker, 157 P.2d 745, 195 Okl. 285.

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S.D.—Orrison v. City of Rapid City, 74 N.W.2d 489.

Tenn.—East Tennessee Light & Power Co. v. Gose, 130 S.W.2d 984, 23 Tenn.App. 280.

Tex.—Texas Emp. Ins. Ass'n v. Brown, Civ.App., 226 S.W.2d 233, error refused no reversible error—Houston Transp. Co. v. Grimm, Civ.App., 168 S.W.2d 892, error refused—Dulaney Inv. Co. v. Wood, Civ.App., 142 S.W.2d 379, error dismissed, judgment correct.

Utah.—McDonald v. Union Pac. R. Co., 167 P.2d 685, 109 Utah 493—Bruner v. McCarthy, 142 P.2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547.

Wash.—Tuggle v. Anderson, 263 P.2d 822, 43 Wash.2d 721—Richardson v. Pacific Power & Light Co., 118 P.2d 985, 11 Wash.2d 288—Sheridan v. Ætna Casualty & Surety Co., 100 P.2d 1024, 3 Wash.2d 423.

[14.30] Ala.—Brilliant Coal Co. v. Barton, 87 So. 830, 205 Ala. 89.

Ariz.—Salt River Valley Water Users' Ass'n v. Wheeler, 236 P. 1108, 28 Ariz. 350.

Ark.—Boyle-Farrell Land Co. v. Haynes, 256 S.W. 43, 161 Ark. 183—Moline Timber Co. v. Taylor, 222 S.W. 371, 144 Ark. 317—Patterson v. Risher, 221 S.W. 468, 143 Ark. 376.

Cal.—Humphfres v. Western Pac. Ry. Co., 160 P. 415, 173 C. 428.

Peterson v. Permanente S. S. Corp., 277 P.2d 495, 129 C.A.2d 579, certiorari denied 75 S.Ct. 882, 349 U.S. 953, 99 L.Ed. 1278—McGuigan v. Southern Pac. Co., 277 P.2d 444, 129 C.A.2d 482—Lewis v. Union Pac. R. Co., 273 P.2d 706, 127 C.A.2d 280—Standley v. Feather River Pine Mills, 245 P.2d 657, 112 C.A.2d 101—Persson v. James Griffiths & Sons, 194 P.2d 86, 85 C.A.2d 672—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495—Radisich v. Franco-Italian Packing Co., 158 P.2d 435, 68 C.A.2d 825—Karberg v. Southern Pac. Co., 52 P.2d 285, 10 C.A.2d 234—Congdon v. California Drug & Chemical Co., 154 P. 1062, 29 C.A. 200.

Ga.—Southern Ry. Co. v. Hurst, 87 S.E. 1020, 144 Ga. 699.

Atlantic Coast Line R. Co. v. Brown, 62 S.E.2d 736, 82 Ga.App. 889—Atlantic Coast Line R. Co. v. Singletary, 55 S.E.2d 827, 80 Ga.App. 297—Atlantic Coast Line R. Co. v. Anderson, 36 S.E.2d 435, 73 Ga.App. 343—Southern Ry. Co. v. Heaton, 6 S.E.2d 339, 61 Ga.App. 386—Southern R. Co. v. Cowan, 183 S.E. 331, 52 Ga.App. 360.

Ill.—Howard v. Gulf, M. & O. R. Co., 142 N.E.2d 825, 13 Ill.App.2d 482—Nickell v. Baltimore & O. R. Co., 106 N.E.2d 738, 347 Ill.App. 202—Ernhart v. Elgin, J. & E. Ry. Co., 84 N.E.2d 868, 337 Ill.App. 56, affirmed 92 N.E.2d 96, 405 Ill. 577—Speiring v. Chicago & E. I. R. Co., 60 N.E.2d 267, 325 Ill.App. 576—Grosse v. Terminal R. Ass'n of St. Louis, 29 N.E.2d 1018, 307 Ill.App. 414—Kusturin v. Chicago & A. R. Co., 209 Ill.App. 55, affirmed 122 N.E. 512, 287 Ill. 306—Meier v. Cleveland, C., C. & St. L. Ry. Co., 206 Ill.App. 285—Johnson v. Mueller, 192 Ill.App. 422—Schneider v. Nowack, 189 Ill.App. 463.

Ind.—J. Woolley Coal Co. v. Tevault, 119 N.E. 485, 187 Ind. 171—J. Woolley Coal Co. v. Tevault, 118 N.E. 921, 187 Ind. 171—Lavene v. Friedrichs, 115 N.E. 324, 186 Ind. 333, rehearing denied 116 N.E. 421, 186 Ind. 333—Pearcy v. Floyd County Lumber Co., 115 N.E. 90, 186 Ind. 136—Inland Steel Co. v. King, 110 N.E. 62, 184 Ind. 294.

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Iowa.—Platt v. American Cement Plaster Co., 151 N.W. 403, 169 Iowa 330.

Ky.—Coburn v. North American Refractories Co., 174 S.W.2d 757, 295 Ky. 566—High Splint Coal Co. v. Cowans, 155 S.W.2d 488, 288 Ky. 66—W. G. Duncan Coal Co. v. Lock, 266 S.W. 640, 205 Ky. 747—Clark County Const. Co. v. Richard's Adm'r, 259 S.W. 331, 202 Ky. 276—McMurtry's Adm'x v. Kentucky Utilities Co., 239 S.W. 62, 194 Ky. 294—Connelly v. Cincinnati, N. O. & T. P. Ry. Co., 224 S.W. 670, 189 Ky. 123—Consolidation Coal Co. v. Music, 189 S.W. 200, 172 Ky. 153—Watson Contract Co. v. Trumbo, 185 S.W. 518, 170 Ky. 95—Phillips v. Corbin & Fannin, 179 S.W. 586, 166 Ky. 638—McKee

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v. Cincinnati, F. & S. E. R. Co., 171 S.W. 425, 161 Ky. 711.

Minn.—Hallada v. Great Northern Ry., 69 N.W.2d 673, 244 Minn. 81, certiorari denied 76 S.Ct. 119, 350 U.S. 874, 100 L.Ed. 773.

Miss.—Kincade & Lofton v. Stephens, 50 So.2d 587—McLemore & McArthur v. Rogers, 152 So. 883, 169 Miss. 650.

Mo.—Huffman v. Terminal R. Ass'n of St. Louis, 281 S.W.2d 863—Sandifer v. Thompson, 280 S.W.2d 412—Brandock v. Atchison, T. & S. F. R. Co., 269 S.W.2d 93—Jones v. Illinois Terminal R. Co., 260 S.W.2d 487, certiorari denied 74 S.Ct. 682, 347 U.S. 956, 98 L.Ed. 1101—Warner v. Terminal R. Ass'n of St. Louis, 257 S.W.2d 75, 363 Mo. 1082—Curtis v. Atchison, T. & S. F. Ry. Co., 253 S.W.2d 789, 363 Mo. 779—Malone v. Gardner, 242 S.W. 2d 516, 362 Mo. 569—Higgins v. Terminal R. R. Ass'n of St. Louis, 241 S.W.2d 380, 362 Mo. 264—Hayes v. Wabash R. Co., 233 S.W.2d 12, 360 Mo. 1223—Stupp v. Fred J. Swaine Mfg. Co., 229 S.W.2d 681—Schonlau v. Terminal R. Ass'n of St. Louis, 212 S.W.2d 420, 357 Mo. 1108—Ford v. Louisville & N. R. Co., 196 S.W.2d 163, 355 Mo. 362—De Moulin v. Roetheli, 189 S.W. 2d 562, 354 Mo. 425—Gieseking v. Litchfield & Madison Ry. Co., 127 S.W.2d 700, 344 Mo. 672, certiorari denied 60 S.Ct. 104, 308 U.S. 583, 84 L.Ed. 488—Harrison v. Beuce, 270 S.W. 363.

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Neb.—Chambers v. Chicago, B. & Q. R. Co., 293 N.W. 338, 138 Neb. 490.

Nev.—Dearden v. Galli, 277 P.2d 381, 70 Nev. 543.

N.H.—Dervin v. Amoskeag Co., 122 A. 353, 81 N.H. 108.

N.Y.—Jamison v. Henry F. Raab, Inc., 129 N.Y.S.2d 522, 283 App. Div. 884, motion denied 121 N.E.2d 630, 307 N.Y. 807, affirmed 125 N.E. 2d 863, 308 N.Y. 802.

N.C.—Murphy v. Suncrest Lumber Co., 120 S.E. 342, 186 N.C. 746.

Ohio.—Haslem v. Jackson, 40 N.E.2d 692, 68 Ohio App. 433.

Okl.—Donahoe v. Moulton, 300 P.2d 655—Otis Elevator Co. v. Melott, 281 P.2d 408—Buxton v. Hick, 131 P.2d 1015, 191 Okl. 573—Slick Oil Co. v. Coffey, 177 P. 915, 72 Okl. 32—Chicago, R. I. & P. Ry. Co. v. Ward, 173 P. 212, 68 Okl. 201, certiorari granted 39 S.Ct. 10, 248 U. S. 555, 63 L.Ed. 419.

Or.—Hubbard v. Lamford Lumber Co., 304 P.2d 943—Nelson v. Brown & McCabe, 159 P. 1163, 81 Or. 472—Dickerson v. Eastern & Western Lumber Co., 155 P. 175, 79 Or. 281.

Pa.—Rebel v. Standard Sanitary Mfg. Co., 16 A.2d 534, 340 Pa. 313—Pinter v. James Barker, Inc., 116 A. 498, 272 Pa. 541—Chamberseti v. Susquehanna Coal Co., 105 A. 277, 262 Pa. 261.

Tex.—Texas Emp. Ins. Ass'n v. Brown, Civ.App., 226 S.W.2d 233, error refused no reversible error—Southern Underwriters v. Mowery, Civ.App., 147 S.W.2d 834, error dismissed, judgment correct—Butts v. Weaver, Civ.App., 145 S. W.2d 251, error dismissed, judgment correct—Traders & General Ins. Co. v. Harper, Civ.App., 140 S.W.2d 593, error refused—Southern Underwriters v. Dumas, Civ. App., 130 S.W.2d 938, error refused—Rutland v. St. Louis, S. F. & T. Ry. Co., Civ.App., 274 S.W. 284, affirmed St. Louis, S. F. & T. Ry. Co. v. Rutland, Com.App., 292 S.W. 182—Schaff v. Perdue, Civ. App., 254 S.W. 151—Texas & Pacific Coal Co. v. Ervin, Civ.App., 212 S.W. 234—Texas & P. Ry. Co. v. Williams, Civ.App., 200 S.W. 1149, error refused.

Utah.—Coray v. Southern Pac. Co., 223 P.2d 819, 119 Utah 1—Kirchgestner v. Denver & R. G. W. R. Co., 218 P.2d 685, 118 Utah 20, reversed on other grounds 233 P.2d 699, 118 Utah 41—In re Wimmer's Estate, 182 P.2d 119, 111 Utah 444—McDonald v. Union Pac. R. Co., 167 P.2d 685, 109 Utah 493—Bruner v. McCarthy, 142 P.2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547—Miller v. Utah Consol. Mining Co., 178 P. 771, 53 Utah 366.

Va.—Morris & Co. v. Alvis, 121 S.E. 145, 138 Va. 149—Edwards v. Laurel Branch Coal Co., 114 S.E. 108, 133 Va. 534—Carter Coal Co. v. Bates, 105 S.E. 76, 127 Va. 586.

W.Va.—Pritt v. West Virginia Northern R. Co., 51 S.E.2d 105, 132 W. Va. 184, 6 A.L.R.2d 562, certiorari denied West Virginia Northern R. Co. v. Pritt, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113.

Wis.—Johannsen v. Peter P. Woboril, Inc., 51 N.W.2d 53, 260 Wis. 341.

14.31 N.J.—Knapp v. Seton Inn, Inc., 68 A.2d 770, 5 N.J.Super. 226.

14.32 Ala.—Mobile City Lines v. Huffman, 60 So.2d 333, 257 Ala. 603—Bradford v. Birmingham Electric Co., 149 So. 729, 227 Ala. 285—Hammett v. Birmingham Ry., Light & Power Co., 81 So. 22, 202 Ala. 520.

Cal.—Mudrick v. Market Street Ry. Co., 81 P.2d 950, 11 C.2d 724, 118 A.L.R. 533—Worden v. Central Fireproof Bldg. Co., 155 P. 839, 172 C. 94.

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Conn.—Marley v. New England Transp. Co., 53 A.2d 296, 133 Conn. 586.

D.C.—Dixon v. Great Falls & Old Dominion Ry. Co., 43 App.D.C. 206.

Fla.—Florida Motor Lines Corp. v. Wood, 24 So.2d 581, 156 Fla. 838.

Ga.—Central of Georgia Ry. Co. v. Brown, 81 S.E. 857, 141 Ga. 553.

Beardsley v. Suburban Coach Co., 63 S.E.2d 911, 83 Ga.App. 381—Georgia Power Co. v. Braswell, 173 S.E. 763, 48 Ga.App. 654.

Ill.—Rotheli v. Chicago Transit Authority, 130 N.E.2d 172, 7 Ill.2d 17.

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Ind.—Ohio Electric Ry. Co. v. Lease, 121 N.E. 1, 187 Ind. 668.

Iowa.—Waterloo Sav. Bank v. Waterloo, Cedar Falls & Northern R. R., 60 N.W.2d 572, 244 Iowa 1364—Arnett v. Illinois Cent. R. Co., 176 N.W. 322, 188 Iowa 540.

Kan.—Collins v. Safeway Cab Transfer & Storage Co., 97 P.2d 1110, 151 Kan. 242.

Ky.—V. T. C. Lines v. Taylor, 134 S.W.2d 991, 281 Ky. 83—Louisville Ry. Co. v. Schwemmer, 205 S.W. 685, 181 Ky. 641—Kentucky Traction & Terminal Co. v. Humphrey, 182 S.W. 854, 168 Ky. 611—Louisville & N. R. Co. v. Messer, 175 S. W. 360, 164 Ky. 218, reversed on other grounds 176 S.W. 1200, 165 Ky. 506.

Mass.—Hathaway v. Checker Taxi Co., 73 N.E.2d 603, 321 Mass. 406.

patrons;[14.33] injuries from the operation of railroads[14.34] and street railroads;[14.35] injuries at railroad crossings;[14.36] and injuries due to highway,

Minn.—Zuber v. Northern Pac. Ry. Co., 74 N.W.2d 641, 246 Minn. 157—Gillson v. Osborne, 19 N.W.2d 1, 220 Minn. 122—Useman v. Minneapolis St. Ry. Co., 268 N.W. 866, 198 Minn. 79.

Miss.—Evans v. Jackson City Lines, 56 So.2d 80, 212 Miss. 895—Teche Lines v. Britt, 170 So. 294, 176 Miss. 681.

Mo.—Stephens v. St. Louis Public Service Co., 276 S.W.2d 138—Young v. Kansas City Public Service Co., 270 S.W.2d 788—Hammond v. Crown Coach Co., 263 S.W.2d 362, 364 Mo. 508—Thornburgh v. Hunkler, 255 S.W.2d 975—West v. St. Louis Public Service Co., 236 S.W.2d 308, 361 Mo. 740—Piehler v. Kansas City Public Service Co., 226 S.W. 2d 681, 360 Mo. 12—Jarboe v. Kansas City Public Service Co., 220 S.W.2d 27, 359 Mo. 8—Leister v. Wells, 254 S.W. 75, 300 Mo. 262—Mayne v. Kansas City Rys. Co., 229 S.W. 386, 287 Mo. 235.

McCormack v. Gerold, App., 253 S.W.2d 196—Schraedel v. St. Louis Public Service Co., App., 248 S.W. 2d 25—Hale v. St. Louis Public Service Co., App., 238 S.W.2d 876—Hale v. St. Louis Public Service Co., App., 238 S.W.2d 876—Jones v. Kurn, 157 S.W.2d 797, 237 Mo. App. 657—Tureen v. Peoples Motorbus Co. of St. Louis, App., 97 S.W.2d 847—Vogts v. Kansas City Rys. Co., App., 228 S.W. 526—Yates v. United Rys. Co. of St. Louis, App., 222 S.W. 1034—Morris v. St. Louis & S. F. R. Co., 168 S.W. 325, 184 Mo.App. 65.

N.M.—Archuleta v. Jacobs, 94 P.2d 706, 43 N.M. 425.

N.Y.—McLean v. Triboro Coach Corp., 96 N.E.2d 83, 302 N.Y. 49.

N.C.—Dickson v. Queen City Coach Co., 63 S.E.2d 297, 233 N.C. 167.

Ohio.—Fries v. Cincinnati St. Ry. Co., App., 35 N.E.2d 770, affirmed 37 N.E.2d 193, 138 Ohio St. 537.

Okl.—Reddick v. Gilliam, 263 P.2d 742—St. Louis, S. F. Ry. Co. v. Davis, 258 P.2d 612.

Pa.—Nebel v. Burrelli, 41 A.2d 873, 352 Pa. 70—Yost v. West Penn Rys. Co., 9 A.2d 368, 336 Pa. 407.

Madera v. Kester, 124 A.2d 447, 181 Pa.Super. 160.

S.C.—Hutto v. American Fire & Cas. Ins. Co., 54 S.E.2d 523, 215 S.C. 90.

Tex.—Hill v. Texas, New Mexico & Oklahoma Coaches, Inc., 272 S.W. 2d 91, 153 Tex. 581.

Lamar v. Panhandle & S. F. Ry. Co., Civ.App., 234 S.W. 605, reversed on other grounds, Com. App., 248 S.W. 34—Texas & P. Ry. Co. v. Baker, Civ.App., 184 S.W. 664, reversed on other grounds, Com.App., 215 S.W. 556—Smith v. Texas Traction Co., Civ.App., 180 S.W. 933—St. Louis Southwestern Ry. Co. of Texas v. Farris, Civ. App., 166 S.W. 463.

Utah.—Olsen v. Warwood, 255 P.2d 725—Barlow v. Salt Lake & U. R. Co., 194 P. 665, 57 Utah 312.

Wash.—Kiessling v. Northwest Greyhound Lines, 229 P.2d 335, 38 Wash.2d 289.

Wis.—Van Matre v. Milwaukee Elec. Ry. & Transport Co., 67 N.W.2d 831, 268 Wis. 399.

14.33 Cal.—Newman v. Fox West Coast Theatres, 194 P.2d 706, 86 C.A.2d 428.

14.34 Ala.—Kendrick v. Birmingham Southern R. Co., 48 So.2d 320, 254 Ala. 313.

Model City Lumber Co. v. Southern Ry. Co., 34 So.2d 862, 33 Ala. App. 425, certiorari denied 34 So. 2d 865, 250 Ala. 444.

Ark.—Pye v. Lowden, 100 S.W.2d 254, 193 Ark. 388.

Ga.—Powell v. Crowell, 11 S.E.2d 918, 63 Ga.App. 890.

Ill.—Grib v. Chicago Transit Authority, 98 N.E.2d 400, 343 Ill.App. 263.

Ky.—Louisville & N. R. Co. v. Vaughn, 166 S.W.2d 43, 292 Ky. 120—Collins' Adm'r v. Chesapeake & O. Ry. Co., 124 S.W.2d 1039, 276 Ky. 659.

Minn.—Peterson v. Minneapolis St. Ry. Co., 31 N.W.2d 905, 226 Minn. 27.

Mo.—Gray v. St. Louis-San Francisco Ry. Co., 254 S.W.2d 577, 363 Mo. 864—Petty v. Kansas City Public Service Co., 198 S.W.2d 684, 355 Mo. 824—Lankford v. Thompson, 189 S.W.2d 217, 354 Mo. 220—Dove v. Atchison, T. & S. F. Ry. Co., 163 S.W.2d 548, 349 Mo. 798—Wilday v. Missouri-Kansas-Texas R. Co., 147 S.W.2d 431, 347 Mo. 275—Yakubinis, by Flynn, v. Missouri-Kansas-Texas R. Co., 100 S. W.2d 461, 339 Mo. 1124.

Lineker v. Missouri-Kansas-Texas R. Co., App., 142 S.W.2d 356—Bain v. Missouri-Kansas-Texas R. Co., App., 141 S.W.2d 577—Brown v. Alton R. Co., App., 132 S.W.2d 713, record quashed on other grounds State ex rel. Alton R. Co. v. Shain, 143 S.W.2d 233, 346 Mo. 681—Kearley v. St. Louis Car Co., App., 111 S.W.2d 976, certiorari quashed State ex rel. St. Louis Car Co. v. Hostetter, 131 S.W.2d 558, 345 Mo. 102.

Ohio.—Cole v. New York Cent. R. Co., 80 N.E.2d 854, 150 Ohio St. 175.

Kunkel v. Cincinnati St. Ry. Co., 80 N.E.2d 442, 82 Ohio App. 341.

Okl.—St. Louis-San Francisco Ry. Co. v. Withers, 270 P.2d 341—St. Louis-S. F. Ry. Co. v. Van Hoy, 268 P.2d 582.

Tex.—Henwood v. Richardson, Civ. App., 163 S.W.2d 256, error refused.

14.35 Ala.—McKinney v. Birmingham Electric Co., 193 So. 139, 238 Ala. 627.

Mo.—Hart v. Kansas City Public Service Co., App., 142 S.W.2d 348.

14.36 Ala.—Southern Ry. Co. v. Norris, 2 So.2d 899, 241 Ala. 386.

Ark.—Missouri Pac. R. Co. v. Dalby, 132 S.W.2d 646, 199 Ark. 49—Chicago, R. I. & P. Ry. Co. v. Porterfield, 118 S.W.2d 276, 196 Ark. 339.

Cal.—Nelson v. Southern Pac. Co., 67 P.2d 682, 8 C.2d 648.

Hall v. Atchison, T. & S. F. Ry. Co., App., 312 P.2d 739—Montieth v. Atchison, T. & S. F. Ry. Co., App., 311 P.2d 886—Faselli v. Southern Pac. Co., App., 310 P.2d 698—Pennington v. Southern Pac. Co., 304 P.2d 22, 146 C.A.2d 605—Lugo v. Atchison, T. & S. F. Ry., 275 P.2d 605, 128 C.A.2d 402—Hession v. City & County of San Francisco, App., 258 P.2d 50, reheard 265 P.2d 542, 122 C.A.2d 592—Murray v. Southern Pac. Co., 204 P.2d 636, 91 C.A.2d 107—Martindale v. Atchison, T. & S. F. Ry. Co., 201 P.2d 48, 89 C.A.2d 400—Eastman v. Atchison, T. & S. F. Ry. Co., 125 P.2d 564, 51 C. A.2d 653—Gallo v. Southern Pac. Co., 110 P.2d 1062, 43 C.A.2d 339—Ellis v. Central California Traction Co., 174 P. 407, 37 C.A. 390.

Ga.—Ansley v. Atlantic Coast Line R. Co., 71 S.E.2d 434, 86 Ga.App. 152—Atlantic Coast Line R. Co. v. Carpenter, 38 S.E.2d 309, 73 Ga. App. 849—Powell v. Crowell, 11 S.E.2d 918, 63 Ga.App. 890—Southern Ry. Co. v. Lee, 200 S.E. 569, 59 Ga.App. 316—Atlanta & W. P. R. Co. v. McCord, 189 S.E. 403, 54 Ga.App. 811—Bazemore v. Powell, 188 S.E. 282, 54 Ga.App. 444—Sarman v. Seaboard Air Line Ry. Co., 125 S.E. 891, 33 Ga.App. 315.

Ill.—Pridmore v. Chicago, R. I. & P. Ry. Co., 114 N.E. 176, 275 Ill. 386.

Ind.—Pettibone v. Howard, 34 N.E.2d 12, 218 Ind. 543—New York, C. & St. L. R. Co. v. Shields, 112 N.E. 762, 185 Ind. 704.

Pittsburgh, C., C. & St. L. Ry. Co. v. Nichols, 130 N.E. 546, 78 Ind. App. 361—Lake Erie & W. R. Co. v. Howarth, 124 N.E. 687, 73 Ind.App. 454, rehearing denied 127 N.E. 804, 73 Ind.App. 454.

Ky.—Western Collieries Co. v. Rhye, 273 S.W. 91, 209 Ky. 559—Million's Adm'rs v. Louisville & N. R. Co., 271 S.W. 1085, 208 Ky. 788—Louisville & N. R. Co. v. Staebler, 212 S. W. 919, 184 Ky. 730—Louisville & N. R. Co. v. Scott's Adm'r, 211 S.

street, and sidewalk defects.[14.37]

The rule that a judgment will not be reversed for harmless error in the giving of instructions has also been applied in actions for injuries to property[14.38] and actions for killing stock.[14.39] The rule has also operated in actions against members of a partnership,[14.40] actions against carriers relative to the carriage of goods,[14.41] actions against a railroad

W. 747, 184 Ky. 319—Illinois Cent. R. Co. v. Tolar's Admr, 183 S.W. 242, 169 Ky. 114.
Minn.—MacLeod v. Payne, 182 N.W. 718, 149 Minn. 493.
Mo.—Hackett v. Wabash R. Co., 271 S.W.2d 573—Eubank v. Kansas City Terminal Ry. Co., 142 S.W.2d 19, 346 Mo. 436—Poague v. Kurn, 140 S.W.2d 13, 346 Mo. 153—Kick v. Franklin, 137 S.W.2d 512, 345 Mo. 752—Gorman v. Franklin, 117 S.W.2d 289.
Wabash R. Co. v. Dannen Mills, Inc., App., 279 S.W.2d 50—Niedner v. Wabash R. Co., App., 219 S.W.2d 886—Harry v. Thompson, App., 166 S.W.2d 795—Liddle v. Thompson, 162 S.W.2d 614, 236 Mo.App. 1071—Brown v. Alton R. Co., 151 S.W. 2d 727, 236 Mo.App. 26—Benfield v. Thompson, App., 139 S.W.2d 1009—Dobson v. St. Louis-San Francisco Ry. Co., 10 S.W.2d 528, 223 Mo.App. 812—Fledderman v. Manufacturers' Ry. Co., App., 254 S.W. 717—Borgers v. United Rys. Co. of St. Louis, App., 253 S.W. 98—Webb v. Deering Southwestern Ry. Co., App., 196 S.W. 86.
N.J.—Glasemann v. Erie R. Co., 130 A. 445, 3 N.J.Misc. 1020.
Ohio.—Lindsay v. Baltimore & O. R. Co., 128 N.E.2d 242, 98 Ohio App. 63—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87—Sahr v. Chesapeake & O. Ry. Co., App., 40 N.E.2d 492.
Okl.—Atchison, T. & S. F. Ry. Co. v. Raleigh, 154 P.2d 62, 194 Okl. 589.
S.C.—Cook v. Atlantic Coast Line R. Co., 13 S.E.2d 1, 196 S.C. 230, 133 A.L.R. 1144—Pinckney v. Atlantic Coast Line R. Co., 145 S.E. 135, 147 S.C. 227.
Tex.—Missouri, K. & T. R. Co. of Texas v. Young, Civ.App., 127 S. W.2d 489, error dismissed, judgment correct—International & G. N. Ry. Co. v. Isaacs, Civ.App., 168 S.W. 872, reversed on other grounds, Com.App., 208 S.W. 897.
Va.—Norfolk-Southern R. Co. v. Whitehead, 92 S.E. 916, 121 Va. 139.
Wis.—Bellrichard v. Chicago & N. W. Ry. Co., 20 N.W.2d 710, 247 Wis. 569—Todoroff v. Chicago & N. W. Ry. Co., 173 N.W. 214, 169 Wis. 554.

14.37 Cal.—McNeill v. A. Teichert & Son, Inc., 289 P.2d 595, 137 C.A. 2d 5—Lewis v. Contra Costa County, 278 P.2d 756, 130 C.A.2d 176—Silva v. Fresno County, 146 P.2d 520, 63 C.A.2d 253—Ohran v. Yolo County, 104 P.2d 700, 40 C.A.2d 298.
Ga.—City of Decatur v. Robertson, 70 S.E.2d 135, 85 Ga.App. 747—Calhoun v. Dooly County, 15 S.E. 2d 816, 65 Ga.App. 482.
Ill.—Allington v. City of Freeport, 121 N.E.2d 4, 3 Ill.App.2d 208.
Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142.
Mass.—Cipollone v. D'Alessandro-Crognale, Inc., 131 N.E.2d 754, 333 Mass. 469—Nelson v. Economy Grocery Stores, 25 N.E.2d 986, 305 Mass. 383.
Mich.—Hoag v. Hyzy, 63 N.W.2d 632, 339 Mich. 163.
Mo.—McCormick v. Kansas City, 262 S.W.2d 868—Jensen v. Kansas City, 238 S.W.2d 305, 361 Mo. 967—Adams v. City of St. Joseph, 230 S.W.2d 862, 360 Mo. 806—McGarvey v. City of St. Louis, 218 S.W.2d 542, 358 Mo. 940.
Eidson v. Dean Const. Co., App., 233 S.W.2d 820.
Ohio.—Deckant v. City of Cleveland, 99 N.E.2d 609, 155 Ohio St. 498.
Gannon v. City of Columbus, App., 139 N.E.2d 457—Werner v. City of Youngstown, 103 N.E.2d 843, 90 Ohio App. 134.

14.38 Ark.—Missouri Pac. R. Co. v. Campbell, National Liberty Fire Ins. Co., Intervener, 177 S.W.2d 174, 206 Ark. 657.
Colo.—Garden of the Gods Village v. Hellman, 294 P.2d 597, 133 Colo. 286—Bijou Irr. Dist. v. Cateran Land & Live Stock Co., 213 P. 999, 73 Colo. 93.
Ga.—Armor Gas Corp. v. Davis, 92 S.E.2d 244, 93 Ga.App. 563—Richter v. Atlantic Co., 16 S.E.2d 259, 65 Ga.App. 605.
Ill.—Evans v. Williams, 232 Ill.App. 439—Hotel Sherman Co. v. Railway Terminal & Warehouse Co., 210 Ill.App. 191—Arnold v. City of Centralia, 197 Ill.App. 73.
Ind.—Shoemaker v. Indiana Rys. & Light Co., 133 N.E. 591, 77 Ind. App. 261.
Iowa.—Oscar Ruff Drug Co. v. Western Iowa Co., 181 N.W. 408, 191 Iowa 1035, 15 A.L.R. 962.
Kan.—Gilbert v. Davidson Const. Co., 203 P. 1113, 110 Kan. 298.
Ky.—Rice v. Shoemaker, 286 S.W.2d 523—Kentucky Bell Corp. v. Commonwealth, 172 S.W.2d 661, 295 Ky. 21—Martin v. City of Williamsburg, 189 S.W. 422, 172 Ky. 532.
Md.—Levi v. Schwartz, 95 A.2d 322, 201 Md. 575, 36 A.L.R.2d 1241.
Miss.—C. L. Gray Lumber Co. v. Pickard, 71 So.2d 211, 220 Miss. 419—City of Jackson v. Cook, 58 So.2d 498, 214 Miss. 201.
Mo.—Thompson v. Economy Hydro Gas Co., 257 S.W.2d 669, 363 Mo. 1115—Cook v. Kansas City, 214 S. W.2d 430, 358 Mo. 296.
Clark v. City of Springfield, App., 241 S.W.2d 100—Snow v. Thompson, App., 178 S.W.2d 796—Coyne v. Golland, App., 243 S.W. 876—Kretzer Realty Co. v. Thomas Cusack Co., 190 S.W. 1011, 196 Mo.App. 596.
Neb.—Shiman Bros. & Co. v. Nebraska Nat. Hotel Co., 18 N.W.2d 551, 146 Neb. 47.
N.C.—Hodgin v. Town of Liberty, 161 S.E. 94, 201 N.C. 658.
Okl.—Regier v. Hutchins, 298 P.2d 777—Gaffney v. Jordan, 295 P.2d 1059.
S.C.—Baynham v. State Highway Department of South Carolina, 187 S.E. 528, 181 S.C. 435.
Vt.—Gover v. Central Vermont Ry. Co., 118 A. 874, 96 Vt. 208.
Va.—City of Richmond v. Cheatwood, 107 S.E. 830, 130 Va. 76.
Wash.—Curtis v. Puget Sound Bridge & Dredging Co., 233 P. 936, 133 Wash. 323—Fenton v. City of Seattle, 231 P. 795, 132 Wash. 194—Clark Lloyd Lumber Co. v. Puget Sound & C. Ry. Co., 190 P. 226, 111 Wash. 232.

14.39 Ark.—Kansas City Southern Ry. Co. v. Dyer, 234 S.W. 50, 149 Ark. 670—Kansas City Southern Ry. Co. v. Simmons, 215 S.W. 167, 140 Ark. 80—Kansas City Southern Ry. Co. v. McCrossen, 215 S. W. 161, 140 Ark. 68—Kansas City Southern Ry. Co. v. Whitley, 213 S.W. 369, 139 Ark. 255.
Ill.—Brandt v. Joliet & E. Traction Co., 213 Ill.App. 512.
Iowa.—Ruebel Bros. v. American Express Co., 180 N.W. 658, 190 Iowa 600.
Mo.—Schoonover v. St. Louis & S. F. Ry. Co., 233 S.W. 489, 207 Mo.App. 489—Weltch v. St. Louis, I. M. & S. Ry. Co., 176 S.W. 261, 190 Mo. App. 213—White v. Sligo & E. R. Co., 170 S.W. 923, 185 Mo.App. 425.
N.H.—Dowse v. Maine Cent. R. R., 20 A.2d 629, 91 N.H. 419.

14.40 Ark.—New Coronado Coal Co. v. Jasper, 222 S.W. 22, 144 Ark. 58.
Okl.—Carey, Lombard, Young & Co. v. Huckaby, 100 P.2d 894, 186 Okl. 685.

14.41 Ark.—St. Louis-San Francisco Ry. Co. v. A. B. Jones Co., 260 S.W. 34, 163 Ark. 429.
Iowa.—Vander Beek v. Chicago & N. W. Ry. Co., 286 N.W. 452, 226 Iowa 1363.

company for damages to property,[14.42] actions on claims against estates,[14.43] actions involving municipal corporations,[14.44] and actions against sureties.[14.45]

The view that harmless error in the giving of instructions is not ground for reversal has also been applied where the erroneous instruction was as to adverse possession,[14.46] argument of counsel,[14.47] cautioning the jury,[14.48] a counterclaim,[14.49] credibility of witnesses,[14.50] and damages.[14.51] The rule

Kan.—Andrews v. Union Pac. R. Co., 161 P. 600, 99 Kan. 347.
Ky.—Wabash Elevator Co. v. Illinois Cent. R. Co., 130 S.W.2d 76, 279 Ky. 164—Senters v. Ratliff's Adm'r, 128 S.W.2d 724, 278 Ky. 290—Joseph Denunzio Fruit Co. v. Louisville & N. R. Co., 123 S.W.2d 813, 276 Ky. 168.
Miss.—Illinois Cent. R. Co. v. Paxton, 193 So. 915, 187 Miss. 858.
Mo.—Missouri Cobalt Co. v. Missouri Pac. R. Co., App., 255 S.W. 970—Schade v. Missouri Pac. R. Co., 221 S.W. 146, 204 Mo.App. 88.
S.C.—McElveen v. Atlantic Coast Line R. Co., 43 S.E.2d 485, 210 S.C. 556.
S.D.—Gifford v. Payne, 199 N.W. 119, 47 S.D. 410, certiorari denied Davis v. Gifford, 45 S.Ct. 96, 266 U.S. 615, 69 L.Ed. 469.
Tex.—Davis v. Sullivan & Opry, Com.App., 258 S.W. 157.
F. T. Worth & D. C. Ry. Co. v. Atterberry, Civ.App., 190 S.W. 1133.
Vt.—Simpson v. Central Vermont Ry. Co., 115 A. 299, 95 Vt. 388.

14.42 Ga.—Southern R. Co. v. Taylor, 47 S.E.2d 77, 76 Ga.App. 745.
Ill.—Thomas v. South Side Elevated R. Co., 183 Ill.App. 286.
Minn.—Skinner v. Great Northern Ry. Co., 151 N.W. 968, 129 Minn. 113.

14.43 Conn.—Blake v. Torrington Nat. Bank & Trust Co., 37 A.2d 241, 130 Conn. 707.
Ga.—Mickle v. Moore, 17 S.E.2d 728, 193 Ga. 150—Blount v. Dean, 1 S.E.2d 653, 187 Ga. 494—Milner v. Allgood, 191 S.E. 132, 184 Ga. 288.
Quillian v. Tuck, 17 S.E.2d 921, 66 Ga.App. 472.
Ind.—Craig v. Citizens Trust Co., 26 N.E.2d 1006, 217 Ind. 434.
Warner v. Warner, 10 N.E.2d 773, 104 Ind.App. 252—Chmielewski's Estate v. Chmielewski, 200 N.E. 747, 102 Ind.App. 20.
Iowa.—In re McKeon's Estate, 289 N.W. 915, 227 Iowa 1050—In re Rich's Estate, 200 N.W. 713, 199 Iowa 902.
Ky.—Hilliker v. Thorndale, 173 S.W.2d 977, 295 Ky. 148.
Mich.—Croy v. Hawkins' Estate, 199 N.W. 679, 228 Mich. 107.
Mo.—Siegel v. Ellis, 288 S.W.2d 932—Ostmann v. Ostmann, 183 S.W.2d 133.
In re Stein's Estate, App., 177 S.W.2d 678.
Ohio.—Wampler v. Staley, App., 59 N.E.2d 65.
Or.—Sargent v. Foland, 207 P. 349, 104 Or. 296.
R.I.—Flint v. Nicholson, 25 A.2d 617, 67 R.I. 513.

14.44 Ky.—City of Paducah v. Vinson, 127 S.W.2d 828, 277 Ky. 804.
Mass.—Nelson v. Economy Grocery Stores, 25 N.E.2d 986, 305 Mass. 383.
Mo.—Glasgow v. City of St. Joseph, 184 S.W.2d 412, 353 Mo. 740.
Nicholas v. Kansas City, App., 171 S.W.2d 744—Fath v. City of Cape Girardeau, App., 132 S.W.2d 1073.
N.J.—Fisher v. Town of Nutley, 199 A. 40, 120 N.J.Law 290.
Ohio.—Dzuracky v. City of Campbell, 29 N.E.2d 49, 64 Ohio App. 521—Frazier v. Village of Westerville, App., 36 N.E.2d 812—Coyne v. City of Troy, App., 36 N.E.2d 285.
Okl.—City of Muskogee v. Roberts, 141 P.2d 100, 193 Okl. 61—City of Ada v. Criswell, 94 P.2d 838, 185 Okl. 517.

14.45 Minn.—Central Metropolitan Bank of St. Paul v. Fidelity & Casualty Co., 202 N.W. 724, 162 Minn. 206—Milavetz v. Oberg, 164 N.W. 910, 138 Minn. 215.
Neb.—Hauth v. Sambo, 158 N.W. 1036, 100 Neb. 160.

14.46 Ark.—Hutt v. Smith, 175 S.W. 399, 118 Ark. 10.
Ga.—Deaton v. Swanson, 28 S.E.2d 126, 196 Ga. 833.
Fortson v. Caudell, 39 S.E.2d 579, 74 Ga.App. 276—Alabama Great Southern R. Co. v. Bass, 115 S.E. 923, 29 Ga.App. 463.
Mo.—Quisenberry v. Stewart, 219 S.W. 625.
Tex.—Allison v. California Petroleum Corporation of Venezuela, Civ. App., 158 S.W.2d 597, error refused—Didier v. Woodward, Civ.App., 232 S.W. 563—Barkley v. Gibbs, Civ.App., 203 S.W. 161, reversed on other grounds, Com.App., 227 S.W. 1099.
W.Va.—Billups v. Woolridge, 91 S.E. 1082, 80 W.Va. 13.

14.47 Mo.—Hillis v. Rice, App., 151 S.W.2d 717.

14.48 Mo.—Bucks v. Hamill, 216 S.W.2d 423, 358 Mo. 617—Morris v. E. I. Du Pont De Nemours & Co., 173 S.W.2d 39, 351 Mo. 479.
Or.—Schassen v. Columbia Gorge Motor Coach System, 270 P. 530, 126 Or. 363.

14.49 N.D.—Hutchinson v. Kinzley, 262 N.W. 251, 66 N.D. 25.

14.50 N.C.—Styers v. Winston Coca-Cola Bottling Co., 80 S.E.2d 253, 239 N.C. 504.

14.51 Ala.—Birmingham Ry., Light & Power Co. v. Friedman, 65 So. 939, 187 Ala. 562.
Remington Typewriter Co. v. Hall, 115 So. 73, 22 Ala.App. 267, certiorari denied 115 So. 74, 217 Ala. 128.
Ariz.—Rodgers v. Bryan, 309 P.2d 773, 82 Ariz. 143.
Ark.—Missouri Pac. R. Co. v. Yates, 156 S.W.2d 889, 203 Ark. 422—Brown v. Cole, 129 S.W.2d 245, 198 Ark. 417, 122 A.L.R. 1348—Paris Purity Coal Co. v. Pendergrass, 104 S.W.2d 455, 193 Ark. 1031—Franks v. Rogers, 245 S.W. 311, 156 Ark. 120—Bennett v. Snyder, 227 S.W. 402, 147 Ark. 206—St. Louis, I. M. & S. Ry. Co. v. Tilby, 174 S.W. 1167, 117 Ark. 163.
Cal.—Pfingsten v. Westenhaver, 244 P.2d 395, 39 C.2d 12—Asato v. Emirzian, 171 P. 90, 177 C. 493.
Hickenbottom v. Jeppesen, 300 P.2d 689, 144 C.A.2d 115—Guerra v. Balestrieri, 274 P.2d 443, 127 C.A.2d 511—Buswell v. City and County of San Francisco, 200 P.2d 115, 89 C.A.2d 123—Stoltz v. Converse, 172 P.2d 78, 75 C.A.2d 909—Townsend v. Keith, 168 P. 402, 34 C.A. 564.
Conn.—Schrayer v. Bishop & Lynes, 104 A. 349, 92 Conn. 677—Rogers v. City of New London, 94 A. 364, 89 Conn. 343.
Fla.—Smith Engineering & Const. Co. v. Cohn, 94 So.2d 826.
Ga.—Koplin v. Shartle Bros. Mach. Co., 104 S.E. 217, 150 Ga. 509—Central of Georgia Ry. Co. v. James, 85 S.E. 920, 143 Ga. 753—Shore v. Ferguson, 83 S.E. 518, 142 Ga. 657.
Morrow v. Johnston, 68 S.E.2d 906, 85 Ga.App. 261—Wheeler v. Wheeler, 62 S.E.2d 579, 82 Ga.App. 831—Brandt v. Eckman, 52 S.E.2d 665, 79 Ga.App. 47—Northern Freight Lines v. Ledford, 43 S.E.2d 757, 75 Ga.App. 508—Southeastern Stages v. Smith, 41 S.E.2d 554, 74 Ga.App. 810—Pollard v. Balon, 6 S.E.2d 400, 61 Ga.App. 406—Pollard v. Kent, 200 S.E. 542, 59 Ga.App. 118—Briesenick v. Dimond, 134 S.E. 350, 35 Ga.App. 668—Edwards v. McNair & Sellers, 114 S.E. 814, 29 Ga.App. 237—Payne v. Cheshire, 107 S.E. 557, 26 Ga.App. 746—City of Thomaston v. Atkinson, 103 S.E. 876, 25 Ga.App. 615.
Ill.—Edwards v. Hill-Thomas Lime & Cement Co., 37 N.E.2d 801, 378 Ill. 180—Davis v. Michigan Cent. R. Co., 128 N.E. 539, 294 Ill. 355.

Hargis v. Standard Oil Co. of Ind., 134 N.E.2d 518, 10 Ill.App.2d 119—Perry v. Richerson, 122 N.E. 2d 75, 3 Ill.App.2d 338—Burns v. Stouffer, 100 N.E.2d 507, 344 Ill. App. 105—Free v. Chicago Motor Coach Co., 95 N.E.2d 522, 341 Ill. App. 552—Bobalek v. Atlass, 43 N.E.2d 584, 315 Ill.App. 514—Johnson v. McKnight, 39 N.E.2d 700, 313 Ill.App. 260—Castle v. Searles, 28 N.E.2d 619, 306 Ill.App. 304—Bourland v. Louisville & N. R. Co., 199 Ill.App. 126.

Ind.—Dallas & Mavis Forwarding Co. v. Liddell, 130 N.E.2d 459, 234 Ind. 652—Carter v. Caldwell, 109 N.E. 355, 183 Ind. 424.

Southern Ry. Co. v. Ingle, 69 N.E.2d 746, 117 Ind.App. 229.

Iowa.—Cawley v. People's Gas & Electric Co., 187 N.W. 591, 198 Iowa 536—Horst v. Handke, 180 N. W. 762, 190 Iowa 658—Lonnecker v. Van Patten, 179 N.W. 432—Johnston v. Drainage Dist. No. 80 of Palo Alto County, 168 N.W. 886, 184 Iowa 346—Whitsett v. Griffis, 168 N.W. 878—Russell v. Dilley, 159 N.W. 189, 177 Iowa 522.

Kan.—Flaharty v. Reed, 225 P.2d 98, 170 Kan. 215—McArthur v. Independent Torpedo Co., 190 P. 787, 107 Kan. 68—Collins v. Union Pac. R. Co., 152 P. 649, 96 Kan. 581.

Ky.—Miracle v. Flannery's Adm'r, 259 S.W.2d 689—Williams v. Balmut, 182 S.W.2d 779, 298 Ky. 249—Hellmueller Baking Co. v. Risen, 174 S.W.2d 134, 295 Ky. 273—High Splint Coal Co. v. Cowans, 155 S.W. 2d 488, 288 Ky. 66—Walker v. Rogers, 273 S.W. 439, 209 Ky. 619—Louisville & N. R. Co. v. Estes, 261 S.W. 882, 203 Ky. 93—Ohio Valley Electric Ry. Co. v. Brumfield's Adm'r, 203 S.W. 541, 180 Ky. 743, error dismissed Ohio Valley Electric Ry. Co. v. Hall, 39 S.Ct. 491, 250 U.S. 649, 63 L.Ed. 1188—Chesapeake & O. Ry. Co. v. Shaw, 182 S.W. 653, 168 Ky. 537—Louisville & N. R. Co. v. Kenney's Adm'r, 172 S.W. 683, 162 Ky. 403.

Md.—Baltimore Transit Co. v. State for Use of Castranda, 71 A.2d 442, 194 Md. 421—Washington, B. & A. Electric Ry. Co. v. William A. Fingles, Inc., 109 A. 431, 135 Md. 574—Mullan v. Belbin, 100 A. 384, 130 Md. 313.

Mass.—Ouillette v. Sheerin, 9 N.E.2d 713, 297 Mass. 536—McKenzie v. Truesdale, 187 N.E. 117, 284 Mass. 116.

Minn.—McGuire v. Chambers, 180 N. W. 1013, 148 Minn. 57—Steinkemper v. Beckman, 164 N.W. 802, 138 Minn. 477.

Miss.—City of Hattiesburg v. Hillman, 76 So.2d 368, 222 Miss. 443—Kincade & Lofton v. Stephens, 50 So.2d 587.

Mo.—Heppner v. Atchison, T. & S. F. Ry. Co., 297 S.W.2d 497—Brown v. Sloan's Moving & Storage Co., 296 S.W.2d 20—Hogan v. American Transport, 277 S.W.2d 495—Warning v. Thompson, 249 S.W.2d 335, 30 A.L.R.2d 1176—Hilton v. Thompson, 227 S.W.2d 675, 360 Mo. 177—Liles v. Associated Transports, 220 S.W.2d 36, 359 Mo. 87—General Exchange Ins. Corp. v. Young, 212 S.W.2d 396, 357 Mo. 1099—Meierotto v. Thompson, 201 S.W.2d 161, 356 Mo. 32—Young v. City of Farmington, 196 S.W.2d 124—Cooper v. Atchison, T. & S. F. R. Co., 148 S.W.2d 773, 347 Mo. 555, certiorari denied 61 S.Ct. 1116, 313 U.S. 591, 85 L.Ed. 1546—Pogue v. Rosegrant, 98 S.W.2d 528—Dodson v. Gate City Oil Co., 88 S.W.2d 866, 338 Mo. 183—Cassin v. Lusk, 210 S.W. 902, 277 Mo. 663—Holmes v. St. Louis, I. M. & S. Ry. Co., 176 S.W. 1041.

Randall v. Steelman, App., 294 S. W.2d 588—Stevens v. Dickey, App., 222 S.W.2d 563—Jenicek v. Harrigan, App., 217 S.W.2d 764—E. C. Robinson Lumber Co. v. Cottonseed Delinting Corp., App., 207 S. W.2d 63—Sharon v. Kansas City Granite & Monument Co., 125 S.W. 2d 959, 233 Mo.App. 547—Schaefer v. Frazier-Davis Const. Co., App., 125 S.W.2d 897—Brown v. Thompson, App., 108 S.W.2d 423—Bonney v. Diamond Wood Heel Mfg. Co., 266 S.W. 1024, 216 Mo.App. 42—American Fruit Growers v. St. Louis, B. & M. Ry. Co., App., 261 S.W. 949, certiorari denied St. Louis B. & M. R. Co. v. American Fruit Growers, 45 S.Ct. 94, 266 U. S. 611, 69 L.Ed. 467—Cecil v. Wells, 259 S.W. 844, 214 Mo.App. 193—Peerless Lighting Co. v. Bourn Rubber Co., App., 218 S.W. 347—Hayden v. Independent Gravel Co., App., 86 S.W. 1193.

Mont.—McCollum v. O'Neil, 281 P.2d 493, 128 Mont. 584.

Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655—Griess v. Borchers, 72 N.W.2d 820, 161 Neb. 217—Remmenga v. Selk, 42 N.W. 2d 186, 152 Neb. 625—Spaulding v. Howard, 27 N.W.2d 832, 148 Neb. 496—Tate v. Barry, 13 N.W.2d 879, 144 Neb. 517—Ross v. Carroll, 299 N.W. 477, 140 Neb. 350—Bunting v. Oak Creek Drainage Dist., 157 N.W. 1028, 99 Neb. 843, L.R.A. 1918B 1004.

N.H.—Manor v. Gagnon, 32 A.2d 688, 92 N.H. 435.

N.J.—De Palma v. Economy Auto Supply Co., 130 A. 206, 3 N.J.Misc. 827, affirmed 133 A. 919, 102 N.J. Law 714.

N.Y.—Johnson v. Gianino, 108 N.Y.S. 2d 895, 279 App.Div. 760—Gilbert v. Stanton Brewery, 57 N.Y.S.2d 759, 269 App.Div. 944, affirmed in part and reversed in part on other grounds 67 N.E.2d 155, 295 N.Y. 270.

N.C.—Rea v. Simowitz, 38 S.E.2d 194, 226 N.C. 379—Clinard v. Town of Kernersville, 9 S.E.2d 381, 217 N.C. 686—Barnes v. Town of Wilson, 7 S.E.2d 359, 217 N.C. 190—Roth v. Greensboro News Co., 6 S.E.2d 882, 217 N.C. 13—Cauble v. Southern Express Co., 109 S.E. 267, 182 N.C. 448—Ferebee v. Norfolk-Southern R. Co., 83 S.E. 360, 167 N.C. 290, affirmed Norfolk Southern R. Co. v. Ferebee, 35 S.Ct. 781, 238 U.S. 269, 59 L.Ed. 1303.

Ohio.—Silverglade v. Von Rohr, 140 N.E. 669, 107 Ohio St. 75.

Gibson v. City Ry. Co., App., 126 N.E.2d 67—Dietsch v. Burnside Motor Freight Lines, App., 82 N.E.2d 559—Soukoup v. Republic Steel Corp., 66 N.E.2d 334, 78 Ohio App. 87—American Security & Trust Co. of Washington, D. C. v. White, 181 N.E. 918, 42 Ohio App. 272.

Okl.—Jones v. Eppler, 266 P.2d 451—Megert v. Bauman, 246 P.2d 355, 206 Okl. 651—Birchfield v. Eeds, 228 P.2d 642, 204 Okl. 240—Gouge v. Hoge, 218 P.2d 1036, 203 Okl. 149—Public Service Co. of Oklahoma v. Hawkins, 149 P.2d 783, 194 Okl. 272.

Or.—Murphy v. Hawthorne, 244 P. 79, 117 Or. 319, 44 A.L.R. 1397.

Pa.—McKinney v. George, 69 A.2d 83, 363 Pa. 368—Robinson v. Philadelphia Transp. Co., 32 A.2d 26, 347 Pa. 288—Senita v. Marcy, 188 A. 153, 324 Pa. 199—Boggs v. Jewell Tea Co., 109 A. 666, 266 Pa. 428—Moleskey v. South Fork Coal Mining Co., 93 A. 485, 247 Pa. 434—Young v. Pennsylvania R. Co., 91 A. 919, 245 Pa. 551.

S.D.—Sankey v. United Mercantile Agency, 167 N.W. 493, 40 S.D. 444.

Tex.—El Paso City Lines v. Dudney, Civ.App., 280 S.W.2d 303, error refused no reversible error—Ynsfran v. Burkhart, Civ.App., 247 S.W.2d 907, error refused no reversible error—Airline Motor Coaches v. Guidry, Civ.App., 241 S.W.2d 203, error refused no reversible error—Williams v. Long, Civ.App., 106 S.W.2d 378, error dismissed—Texas & P. Ry. Co. v. Moore, Civ.App., 7 S.W.2d 902—Western Union Telegraph Co. v. McCormick, Civ.App., 240 S.W. 697, error refused—City of San Antonio v. Fike, Civ.App., 224 S.W. 911—Northern Texas Traction Co. v. Crouch, Civ.App., 202 S.W. 781.

Utah.—Clawson v. Walgreen Drug Co., 162 P.2d 759, 108 Utah 577—Allison v. McCarthy, 147 P.2d 870, 106 Utah 278.

Va.—L. Bromm Baking Co. v. West, 186 S.E. 289, 166 Va. 357.

Wash.—Blasick v. City of Yakima, 274 P.2d 122, 45 Wash.2d 309—Green v. Floe, 183 P.2d 771, 28 Wash.2d 620—Stevens v. Wilson Creek Union Grain & Trading Co., 261 P. 399, 145 Wash. 624.

W.Va.—Bragg v. C. I. Whitten Transfer Co., 26 S.E.2d 217, 125 W.Va. 722—Carroll v. Fetty, 2 S.E.2d 521,

has also been applied where the erroneous instruction was as to evidence and presumptions,[14.52] expert evidence,[14.53] the form of verdict,[14.54] limitations,[14.55] misrepresentation,[14.56] and proximate cause.[14.57]

The rule that harmless error in instructions does not warrant reversal finds further application where the erroneous instruction was as to negligence[14.58]

121 W.Va. 215, certiorari denied 60 S.Ct. 85, 308 U.S. 571, 84 L.Ed. 479.
Wis.—Dabareiner v. Weisflog, 33 N.W.2d 220, 253 Wis. 23, 12 A.L.R.2d 605—Schulz v. General Casualty Co., 288 N.W. 803, 233 Wis. 118.
Wyo.—Borzea v. Anselmi, 258 P.2d 796, 71 Wyo. 348.

14.52 Ala.—McKinney v. Birmingham Electric Co., 193 So. 139, 238 Ala. 627.
Cal.—Westberg v. Willde, 94 P.2d 590, 14 C.2d 360—Ellison v. Lang Transp. Co., 84 P.2d 510, 12 C.2d 355.
Patterson v. Delta Lines, Inc., 304 P.2d 842, 147 C.A.2d 160—Ching v. Dy Foon, 299 P.2d 668, 143 C.A.2d 129—Beck v. Sirota, 109 P.2d 419, 42 C.A.2d 551—Parker v. Manchester Hotel Co., 85 P.2d 152, 29 C.A.2d 446.
Ga.—Sizemore v. Beeler, 94 S.E.2d 773, 94 Ga.App. 414—New York Life Ins. Co. v. Jennings, 6 S.E.2d 431, 61 Ga.App. 557.
Mo.—Schlemmer v. McGee, 185 S.W. 2d 806.
Neb.—Banks v. Metropolitan Life Ins. Co., 8 N.W.2d 185, 142 Neb. 823.

14.53 Cal.—Frank v. Repp & Mott, 161 P.2d 279, 70 C.A.2d 407.
Ga.—Allen v. Allen, 30 S.E.2d 665, 71 Ga.App. 272.
Iowa.—Low v. Ford Hopkins Co., 1 N.W.2d 95, 231 Iowa 251.
Ohio.—Lavell v. Raskin Hotel Co., 102 N.E.2d 611, 90 Ohio App. 185.
Pa.—Kobak v. Kulonda, Com.Pl., 15 Northumb.Leg.J. 209.

14.54 Ga.—Gray v. Watson, 189 S.E. 616, 54 Ga.App. 885, followed in Robinson v. Watson, 189 S.E. 623, 54 Ga.App. 896.
Idaho.—Judd v. Oregon Short Line R. Co., 44 P.2d 291, 55 Idaho 461.
Ill.—Thomas v. Smith, 137 N.E.2d 117, 11 Ill.App.2d 310.
Ky.—Tinsley's Adm'r v. Slate, 251 S.W.2d 883.
Minn.—Gendler v. S. S. Kresge Co., 263 N.W. 925, 195 Minn. 578.
Or.—Laird v. Frick, 18 P.2d 1029, 142 Or. 639.
Tex.—Southern Underwriters v. Mowery, Civ.App., 147 S.W.2d 834, error dismissed, judgment correct.

14.55 Ky.—Bullock v. Gay, 177 S.W.2d 883, 296 Ky. 489.
Mo.—Davis v. Burke, App., 188 S.W. 2d 765.

14.56 Ala.—Boriss v. Edwards, 77 So.2d 909, 262 Ala. 172.

14.57 Ala.—Honeycutt v. Birmingham Electric Co., 181 So. 772, 236 Ala. 221.
Cal.—Taylor v. Oakland Scavenger Co., 110 P.2d 1044, 17 C.2d 594.
Mich.—White v. Huffmaster, 40 N.W. 2d 87, 326 Mich. 108.
Minn.—Leebens v. Baker Co., 45 N.W.2d 791, 233 Minn. 119.
Neb.—Harstick v. Beckenhauer, 8 N.W.2d 834, 143 Neb. 179—Kielley v. McCauley, 296 N.W. 437, 139 Neb. 60.
Tex.—Rice v. Schiller, Civ.App., 241 S.W.2d 330, affirmed in part Schiller v. Rice, 246 S.W.2d 607, 151 Tex. 116.

14.58 Ala.—Alabama Utilities Service Co. v. Hammond, 144 So. 822, 225 Ala. 657.
Ariz.—Morenci Southern Ry. Co. v. Monsour, 185 P. 938, 21 Ariz. 148.
Ark.—Arkansas Western Ry. Co. v. Currier, 270 S.W.2d 932, 223 Ark. 946—Southwestern Bell Tel. Co. v. Smith, 247 S.W.2d 16, 220 Ark. 223—Missouri Pac. R. Co. v. Story, 265 S.W. 946, 166 Ark. 198—Hines v. Johnson, 236 S.W. 835, 151 Ark. 549—Kansas City Southern Ry. Co. v. Leinen, 223 S.W. 1, 144 Ark. 454, certiorari denied 41 S.Ct. 62, 254 U.S. 648, 65 L.Ed. 456.
Cal.—Hillman v. Garcia-Ruby, 283 P.2d 1033, 44 C.2d 625—Nevis v. Pacific Gas & Elec. Co., 275 P.2d 761, 43 C.2d 626—Roller v. Daleys, Inc., 28 P.2d 345, 219 C. 542—Gerdes v. Pacific Gas & Electric Co., 27 P.2d 365, 219 C. 359, 90 A.L.R. 1071.
Hamlet v. Hook, 236 P.2d 196, 106 C.A.2d 791—Mecchi v. Lyon Van & Storage Co., 102 P.2d 422, 38 C.A.2d 674, hearing denied 104 P.2d 26, 38 C.A.2d 674—Brizzolari v. Market St. Ry. Co., 46 P.2d 783, 7 C.A.2d 246—Straten v. Spencer, 197 P. 540, 52 C.A. 98.
Colo.—Foster v. Redding, 45 P.2d 940, 97 Colo. 4.
Conn.—Di Bernardo v. Connecticut Co., 124 A. 231, 100 Conn. 612—Brown v. Wright, 123 A. 9, 100 Conn. 200—Brown v. Wright, 123 A. 7, 100 Conn. 193.
Fla.—Tampa Electric Co. v. Bazemore, 96 So. 297, 85 Fla. 164.
Ga.—Ergle v. Davidson, 29 S.E.2d 445, 70 Ga.App. 704—Social Circle Cotton Mill Co. v. Ransom, 99 S.E. 238, 23 Ga.App. 605.
Ill.—Segal v. Chicago City Ry. Co., 256 Ill.App. 569, motion denied 171 N.E. 922, 339 Ill. 635—Becker v. Chicago Rys. Co., 216 Ill.App. 324—Kelly v. Chicago City Ry. Co., 207 Ill.App. 464, affirmed 119 N.E. 622, 283 Ill. 640—Casper v. Geck, 185 Ill.App. 155.
Ind.—Terre Haute, I. & E. Traction Co. v. Overpeck, 131 N.E. 543, 77 Ind.App. 273—Evansville & T. H. R. Co. v. Hoffman, 118 N.E. 151, 67 Ind.App. 571.
Iowa.—Anderson v. Strack, 17 N.W. 2d 719, 236 Iowa 1—Williams v. Mason City & Ft. D. Ry. Co., 214 N.W. 692, 205 Iowa 446—Hickey v. Freeman, 198 N.W. 769, 198 Iowa 465—Allen v. City of Ft. Dodge, 167 N.W. 577, 183 Iowa 818—Hanson v. City of Anamosa, 158 N.W. 591, 177 Iowa 101—Johnson v. Plymouth Gypsum Plaster Co., 156 N.W. 721, 174 Iowa 498.
Kan.—Murray v. Empire Dist. Electric Co., 162 P. 1145, 99 Kan. 507.
Ky.—Illinois Cent. R. Co. v. McGuire's Adm'r, 38 S.W.2d 913, 239 Ky. 1.
Md.—Hess v. United Rys. & Electric Co. of Baltimore, 113 A. 101, 137 Md. 605.
Mass.—Dellapenna v. Irwin, 196 N.E. 839, 291 Mass. 221—Altaville v. Old Colony St. Ry. Co., 110 N.E. 970, 222 Mass. 322.
Mich.—Long v. Weare Tp., 162 N.W. 332, 195 Mich. 706.
Minn.—Boutang v. Twin City Motor Bus Co., 80 N.W.2d 30, 248 Minn. 240.
Miss.—Ellington v. Eley, 56 So.2d 796—Meridian Sanatorium v. Scruggs, 83 So. 532, 121 Miss. 330—Gulf & S. I. R. Co. v. Boone, 82 So. 335, 120 Miss. 632, certiorari denied 40 S.Ct. 220, 251 U.S. 561, 64 L.Ed. 415, and dismissed 40 S.Ct. 343, 252 U.S. 567, 64 L.Ed. 719—Mobile & O. R. Co. v. Campbell, 75 So. 554, 114 Miss. 803—Pascagoula St. Ry. & Power Co. v. McEachern, 69 So. 185, 109 Miss. 380.
Mo.—Cudney v. Braniff Airways, Inc., 300 S.W.2d 412—Stephens v. St. Louis Public Service Co., 276 S.W. 2d 138—Nichols v. Bresnahan, 212 S.W.2d 570, 357 Mo. 1126—Petty v. Kansas City Public Service Co., 191 S.W.2d 653, 345 Mo. 823—Lindquist v. Kansas City Public Service Co., 169 S.W.2d 366, 350 Mo. 905—Koebel v. Tieman Coal & Material Co., 85 S.W.2d 519, 337 Mo. 561—Lasky v. Rudman, 85 S.W.2d 501, 337 Mo. 555—Feltz v. Terminal Railroad Ass'n of St. Louis, 81 S.W.2d 616, 336 Mo. 790—Rigg v. Chicago, B. & Q. R. Co., 212 S.W. 878.
Bidleman v. Morrison Motor Freight, App., 273 S.W.2d 745—Paul v. St. Louis-San Francisco Ry. Co., App., 275 S.W. 575, certiorari quashed State ex rel. St. Louis-San Francisco Ry. Co. v. Cox, Sup., 293 S.W. 122—Graham

or as to contributory negligence,[14.59] or as to the degree of care.[14.60] The rule has also been applied where the erroneous instruction was as to wanton or willful negligence,[14.61] nuisance,[14.62] unavoidable accident,[14.63] sudden peril,[14.64] assumption of risk,[14.65] res ipsa loquitur,[14.66] attractive nuisance,[14.67] or the humanitarian or last clear chance doctrine.[14.68]

v. St. Louis & S. F. Ry. Co., App., 273 S.W. 221—Stewart v. Rhodes-Burford Furniture Co., App., 259 S.W. 875—Hudson v. Union Electric Light & Power Co., App., 234 S.W. 869—Francis v. City of West Plains, App., 226 S.W. 969—Carney v. United Rys. Co. of St. Louis, 226 S.W. 808, 205 Mo.App. 495—Blair v. Union Electric Light & Power Co., 213 S.W. 976, 201 Mo. App. 571—Kroell v. Lutz, App., 210 S.W. 926—Cedarland v. Thompson, 209 S.W. 554, 200 Mo.App. 618—Phelan v. Granite Bituminous Paving Co., 167 S.W. 1059, 183 Mo. App. 531.

Neb.—Chew v. Coffin, 12 N.W.2d 839, 144 Neb. 170—Harstick v. Beckenhauer, 8 N.W.2d 834, 143 Neb. 179.

N.Y.—Ursprung v. Winter Garden Co., 169 N.Y.S. 738, 183 App.Div. 718—Hayman v. City of New York, 148 N.Y.S. 63, 163 App.Div. 195.

N.C.—Ward v. Atlantic Coast Line R. R., 32 S.E.2d 221, 224 N.C. 696—Lee v. Southern Ry. Co., 105 S.E. 15, 180 N.C. 413.

Ohio.—J. Livingston & Co. v. Streeter, 150 N.E. 734, 114 Ohio St. 144.
Lucente v. Philipedes, App., 68 N.E.2d 558.

Or.—Allison v. Davidson, 141 P.2d 530, 173 Or. 244—West v. Jaloff, 232 P. 642, 113 Or. 184, 36 A.L.R. 1391.

Pa.—Pryor v. Chambersburg Oil & Gas Co., 103 A.2d 425, 376 Pa. 521.

Tex.—Missouri, K. & T. R. Co. of Texas v. Silber, Civ.App., 209 S.W. 188—Missouri, K. & T. Ry. Co. of Texas v. Whitsett, Civ.App., 185 S.W. 406, error refused.

Wash.—Berry v. Howe, 208 P.2d 1174, 34 Wash.2d 403—Matson v. Pierce County, 161 P. 846, 94 Wash. 38.

W.Va.—Brogan v. Union Traction Co., 86 S.E. 753, 76 W.Va. 698.

14.59 Ala.—Johnson v. Martin, 52 So.2d 688, 255 Ala. 600.

Cal.—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495—Emery v. Pacific Telephone & Telegraph Co., 110 P.2d 1079, 43 C.A.2d 402—Campbell v. City of Los Angeles, 82 P.2d 720, 28 C.A.2d 490—Sitkei v. Ralphs Grocery Co., 77 P.2d 311, 25 C.A.2d 294.

Conn.—Jager v. First Nat. Bank, 7 A.2d 919, 125 Conn. 670.

Ga.—City Council of Augusta v. Drawdy, 43 S.E.2d 569, 75 Ga.App. 543.

Ill.—Sankey v. Interstate Dispatch, 90 N.E.2d 265, 339 Ill.App. 420—Schneff v. Mirring, 69 N.E.2d 352, 329 Ill.App. 511.

Ind.—Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind.App. 585.

Iowa.—Albert v. Maher Bros. Transfer Co., 243 N.W. 561, 215 Iowa 197—Williams v. Mason City & Ft. D. Ry. Co., 214 N.W. 692, 205 Iowa 446.

Minn.—Nepstad v. Lambert, 50 N.W. 2d 614, 235 Minn. 1.

Miss.—Mississippi Cent. R. Co. v. Roberts, 160 So. 604, 173 Miss. 487, appeal dismissed 56 S.Ct. 107, 296 U.S. 536, 80 L.Ed. 381.

Mo.—Huffman v. Terminal R. Ass'n of St. Louis, 281 S.W.2d 863.

N.H.—Holmes v. Clear Weave Hosiery Stores, 66 A.2d 702, 95 N.H. 478.

N.C.—Bruce v. O'Neal Flying Service, 66 S.E.2d 312, 234 N.C. 79.

Ohio.—Fantozzi v. New York, C. & St. L. R. Co., 120 N.E.2d 104, 161 Ohio St. 485—Wood v. General Elec. Co., 112 N.E.2d 8, 159 Ohio St. 273.
Lavell v. Raskin Hotel Co., 102 N.E.2d 611, 90 Ohio App. 185—Cheney v. Garrett, App., 76 N.E.2d 96.

S.C.—Leppard v. Southern Ry. Co., 177 S.E. 129, 174 S.C. 237.

Wash.—Ogilvie v. Hong, 27 P.2d 141, 175 Wash. 209.

4 C.J. p 1029 note 30 [h].

14.60 Cal.—Associated Tel. Co. v. Greenman, 244 P.2d 15, 111 C.A.2d 193—Dickey v. Thornburgh, 187 P. 2d 132, 82 C.A.2d 723—Simpson v. Steinhoff, 21 P.2d 960, 131 C.A. 660—McCormac v. Chancy, 6 P.2d 978, 119 C.A. 470.

Conn.—DeCicco v. Connecticut Co., 168 A. 879, 117 Conn. 677.

Ga.—Wilson v. Harrell, 75 S.E.2d 436, 87 Ga.App. 793—McNew v. Decatur Veterinary Hospital, 68 S.E. 2d 221, 85 Ga.App. 54—Edwards v. Atlantic, B. & C. R. Co., 10 S.E.2d 449, 63 Ga.App. 212—Pollard v. Boatwright, 196 S.E. 215, 57 Ga. App. 565—Pollard v. Duffee, 193 S.E. 258, 56 Ga.App. 523.

Ill.—Keller v. Menconi, 129 N.E.2d 341, 7 Ill.App.2d 250.

Kan.—Davison, by Wilson v. Martin K. Eby Const. Co., 241 P.2d 689, 172 Kan. 411.

Ky.—Cincinnati, N. & C. Ry. Co. v. England, 68 S.W.2d 783, 253 Ky. 86—Kennedy Transfer Co. v. Greenfield's Adm'x, 59 S.W.2d 978, 248 Ky. 708.

Mo.—Gladden v. Missouri Public Service Co., 277 S.W.2d 510.

Neb.—In re Kinsey's Estate, 40 N.W. 2d 526, 152 Neb. 95.

N.H.—Smith v. Boston & M. R. R., 177 A. 729, 87 N.H. 246.

N.J.—Meny v. Carlson, 77 A.2d 245, 6 N.J. 82, 22 A.L.R.2d 1160.

N.C.—Jernigan v. Jernigan, 178 S.E. 587, 207 N.C. 831.

Ohio.—Meuer v. Doerflein, 5 N.E.2d 948, 53 Ohio App. 536.

Tenn.—Norris v. Louisville & N. R. Co., 6 Tenn.Civ.App. 163.

Wis.—Sturm v. Simpson's Garment Co., 74 N.W.2d 137, 271 Wis. 587—Oshogay v. Schultz, 43 N.W.2d 485, 257 Wis. 323.

52 C.J. p 780 note 98 [a].

14.61 Ala.—Austin v. Tennessee Biscuit Co., 52 So.2d 190, 255 Ala. 573.

Ill.—Ingram v. Tucker, 111 N.E.2d 847, 350 Ill.App. 100—Anderson v. Brown, 92 N.E.2d 495, 340 Ill.App. 613.

Ohio.—Greenawalt v. Yuhas, 84 N.E. 2d 221, 83 Ohio App. 426.

14.62 Ga.—Groover v. Hightower, 1 S.E.2d 446, 59 Ga.App. 491.

14.63 Ala.—Conner v. Foregger, 7 So.2d 856, 242 Ala. 275.

Cal.—Smith v. City and County of San Francisco, 256 P.2d 999, 117 C.A.2d 749.

14.64 Minn.—Latourelle v. Horan, 4 N.W.2d 343, 212 Minn. 520.

14.65 Cal.—La Porte v. Houston, 199 P.2d 665, 33 C.2d 169.
Williams v. Stauffer Chemical Co., 304 P.2d 141, 146 C.A.2d 322—Lunsford v. Standard Oil Co. of Cal., 191 P.2d 82, 84 C.A.2d 459—Doggett v. Lacey, 9 P.2d 257, 121 C.A. 395.

Mo.—Wilday v. Missouri-Kansas-Texas R. Co., 147 S.W.2d 431, 347 Mo. 275.

14.66 Cal.—Parker v. James E. Granger, Inc., 52 P.2d 226, 4 C.2d 668, appeal dismissed and certiorari denied 56 S.Ct. 958, 298 U.S. 644, 80 L.Ed. 1375.
Sloboden v. Time Oil Co., 302 P. 2d 34, 145 C.A.2d 197—Nungaray v. Pleasant Val. Lima Bean Growers & Warehouse Ass'n, 300 P.2d 285, 142 C.A.2d 653—Taylor v. Pacific Gas & Electric Co., 134 P.2d 12, 57 C.A.2d 11.

Ohio.—Kuhn v. Bader, 101 N.E.2d 322, 89 Ohio App. 203.

14.67 Ill.—Svienty v. Pennsylvania R. Co., 132 N.E.2d 83, 8 Ill.App.2d 360—Kahn v. James Burton Co., 132 N.E.2d 10, 8 Ill.App.2d 543.

N.Y.—Schmidt v. New York Telephone Co., 294 N.Y.S. 561, 250 App. Div. 788.

Wis.—Nechodomu v. Lindstrom, 77 N.W.2d 707, 273 Wis. 313, rehearing denied 78 N.W.2d 417, 273 Wis. 313.

14.68 Cal.—Wallace v. King, 80 P. 2d 523, 27 C.A.2d 174.

Kan.—Hultberg v. Phillippi, 220 P. 2d 208, 169 Kan. 610.

The doctrine has also been applied where the error consists in the misstatement of facts,[14.69] the definition or the failure to define terms,[14.70] the limitation of defenses,[14.71] the failure to state the issues specifically,[14.72] the reference to ad damnum,[14.73] the explanation of a special charge,[14.74] the inference to be drawn from the failure to produce a witness or evidence,[14.75] or where the error

Ky.—Button v. Pinckley, 69 S.W.2d 347, 253 Ky. 323.
Mo.—Parmley v. Henks, 285 S.W.2d 710—Largo v. Bonadonna, 269 S.W.2d 879—Welch v. McNeely, 269 S.W.2d 871—Silver v. Westlake, 248 S.W.2d 628—Mahan v. Baile, 216 S.W.2d 92, 358 Mo. 625—Thompson v. Quincy, O. & K. C. R. Co., 18 S.W.2d 401.
Phillips v. Prugh, App., 255 S.W.2d 84—Cacioppo v. Kansas City Public Service Co., App., 234 S.W.2d 799—Hinds v. Chicago, B. & Q. R. Co., App., 85 S.W.2d 165.
N.H.—Owen v. Dubois, 66 A.2d 80, 95 N.H. 444.
Wash.—Blackburn v. Groce, 283 P.2d 115, 46 Wash.2d 529.

14.69 Kan.—Malet v. Haney, 157 P. 386, 98 Kan. 20.
Pa.—Sterling v. Huey, 38 A.2d 515, 155 Pa.Super. 398—Drake v. Emhoff, 21 A.2d 492, 145 Pa.Super. 498—Silvano v. Metropolitan Life Ins. Co., 5 A.2d 423, 135 Pa.Super. 260.
S.C.—Case v. Atlanta & C. A. L. Ry., 92 S.E. 472, 107 S.C. 216.
Wash.—Smith v. Drew, 26 P.2d 1040, 175 Wash. 11—Todd v. Alexander, 294 P. 545, 160 Wash. 3.
4 C.J. p 1029 note 30 [c].

14.70 Ga.—Black & White Cab Co. v. Cowden, 13 S.E.2d 724, 64 Ga. App. 477.
Ill.—Anderson v. Brown, 92 N.E.2d 495, 340 Ill.App. 613—McMillian v. McLane, 88 N.E.2d 114, 338 Ill. App. 514.
Ohio.—Green v. Drungold, App., 101 N.E.2d 906.
Tex.—Leap v. Braziel, Com.App., 121 S.W.2d 334.
Liberty Mut. Ins. Co. v. Murphy, Civ.App., 205 S.W.2d 398—Winters Mut. Aid Ass'n, Circle No. 2 v. Reddin, Civ.App., 31 S.W.2d 1103, reversed on other grounds, Com. App., 49 S.W.2d 1095—E. C. Palmer & Co. v. First Nat. Bank, Civ. App., 2 S.W.2d 939.
42 C.J. p 1273 note 72.

Particular terms erroneously defined

(1) Agreement.
Tex.—E. C. Palmer & Co. v. First Nat. Bank, Civ.App., 2 S.W.2d 939.

(2) Burden of proof.
Mo.—Steffen v. Southwestern Bell Telephone Co., 56 S.W.2d 47, 331 Mo. 574.
Anderson v. Ward, App., 21 S.W.2d 886.
Wash.—Hines v. Foster, 6 P.2d 597, 166 Wash. 165.
Wis.—Muska v. Apel, 232 N.W. 593, 203 Wis. 389.

(3) Contract.
Tex.—Flow v. Friesen, Civ.App., 213 S.W.2d 873, error refused no reversible error.

(4) Contributory negligence.
Ky.—Corlew's Adm'r v. Young, 287 S.W. 706, 216 Ky. 237.
Mich.—Rockwell v. Grand Trunk Western Ry. Co., 234 N.W. 159, 253 Mich. 144.
Utah.—Nelson v. Lott, 17 P.2d 272, 81 Utah 265.

(5) Criminal assault.
Tex.—Houston E. & W. T. Ry. Co. v. Mathews, Civ.App., 1 S.W.2d 754, reversed on other grounds, Com.App., 12 S.W.2d 163.

(6) Highest degree of care.
Mo.—Fantin v. L. W. Hays, Inc., 242 S.W.2d 509—State ex rel. Berberich v. Haid, 64 S.W.2d 667, 333 Mo. 1224.
Benoist v. Driveaway Co. of Missouri, App., 122 S.W.2d 86—Allen v. Purvis, App., 30 S.W.2d 196—Ulmer v. Farnham, App., 28 S.W.2d 113.

(7) Immediately.
Iowa.—Harrington v. Southern Surety Co., 221 N.W. 577, 206 Iowa 925.

(8) Inflammable.
Cal.—Dunham v. Cantlay & Tanzola, 49 P.2d 332, 9 C.A.2d 274.

(9) Malice.
Ill.—Nolte v. Nolte, 190 Ill.App. 469.

(10) Negligence.
Ind.—Spickelmeir v. Hartman, 123 N.E. 232, 72 Ind.App. 207.
Mo.—Allen v. Purvis, App., 30 S.W.2d 196.

(11) Notice.
Mo.—Pulsifer v. City of Albany, 47 S.W.2d 233, 226 Mo.App. 529.

(12) Ordinary care.
Ind.—Lafayette St. Ry. v. Ullrich, 168 N.E. 709, 92 Ind.App. 202.
Mo.—Allen v. Purvis, App., 30 S.W.2d 196.
Tex.—Ward v. Cathey, Civ.App., 210 S.W. 289, error refused.

(13) Permanent disability.
Ky.—Prudential Ins. Co. of America v. Kendrick, 90 S.W.2d 52, 262 Ky. 297.

(14) Preponderance of proof or evidence.
Cal.—Lufkin v. City of Bakersfield, 20 P.2d 788, 131 C.A. 21.
Mo.—Anderson v. Ward, App., 21 S.W.2d 886.
Ohio.—East Ohio Gas Co. v. Van Orman, 179 N.E. 147, 41 Ohio App. 56.
Tex.—Trahan v. Smith, Civ.App., 239 S.W. 345.

(15) Probable cause.
Va.—Barton v. Camden, 137 S.E. 465, 147 Va. 263.

(16) Proper lookout.
Neb.—Taulborg v. Andresen, 228 N.W. 528, 119 Neb. 273, 67 A.L.R. 642.

(17) Proximate cause.
Tex.—Hutton v. Burkett, Civ.App., 18 S.W.2d 740.

(18) Quotient verdict.
Idaho.—Hayhurst v. Boyd Hospital, 254 P. 528, 43 Idaho 661.
Iowa.—Zellmer v. McTaigue, 153 N.W. 77, 170 Iowa 534.

(19) Recklessness.
Conn.—Waselik v. Ferrie Const. Co., 157 A. 642, 114 Conn. 85.

(20) Satisfaction.
Tex.—Williams v. Mutual Motor Co., Civ.App., 67 S.W.2d 905.

(21) Total disability.
Ky.—Sun Life Assur. Co. of Canada v. Wiley, 79 S.W.2d 937, 258 Ky. 311.

(22) Unavoidable accident.
Tex.—Galveston, H. & S. A. Ry. Co. v. Waldo, Civ.App., 77 S.W.2d 326—Fort Worth & R. G. Ry. Co. v. Sageser, Civ.App., 18 S.W.2d 246.

(23) Wanton misconduct.
Conn.—Bordonaro v. Senk, 147 A. 136, 109 Conn. 428.

(24) Willfully.
Cal.—Lawrence v. Goodwill, 186 P. 781, 44 C.A. 440.
4 C.J. p 1029 note 30 [g].

14.71 Ky.—Wheeler's Adm'r v. Sullivan's Adm'r, 86 S.W.2d 1023, 260 Ky. 814—Springfield Fire & Marine Ins. Co. v. Blevens, 27 S.W.2d 699, 234 Ky. 183.

14.72 Iowa.—Stingley v. Crawford, 258 N.W. 316, 219 Iowa 509.

14.73 Ill.—Taylor v. Alton & E. R. Co., 258 Ill.App. 293. See Baxter v. Rothschild & Co., 204 Ill.App. 346.
Mo.—Boyer v. Missouri Pac. R. Co., 293 S.W. 386.
Pa.—Hollinger v. York Rys. Co., 74 A. 344, 225 Pa. 419, 17 Ann.Cas. 571.
4 C.J. p 1029 note 30 [b].

14.74 Ohio.—Cincinnati Traction Co. v. Pierce, 3 Ohio App. 1.

14.75 Cal.—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723.
Ind.—Rentschler v. Hall, 69 N.E.2d 619, 117 Ind.App. 255—Fletcher Trust Co. v. Hauser, 11 N.E.2d 1012, 105 Ind.App. 281.
N.J.—Drennan v. Housman, 144 A. 190, 7 N.J.Misc. 91.
N.Y.—Musso v. Miller, 38 N.Y.S.2d 51, 265 App.Div. 57.
Tenn.—Shelton v. Martin, 176 S.W.2d 247, 180 Tenn. 454.

consisted of stating that the instruction was given at the request of a particular party.[14.76]

b. Prejudicial Error

The judgment will be reversed where the case has been submitted on erroneous instructions which operate to the prejudice of the complaining party.

When the case has been submitted on erroneous instructions which operate to the prejudice of the complaining party, the judgment will be reversed,[15]

14.76 Iowa.—Johnson v. McVicker, 247 N.W. 488, 216 Iowa 654.
Minn.—State v. Gavle, 232 N.W. 624, 181 Minn. 374.
Ohio.—Hudson v. City of Cleveland, App., 142 N.E.2d 535—Haney v. Dayton St. Transit Co., App., 67 N.E.2d 794.

15. Ala.—Dixon v. Hotel Tutwiler Operating Co., 108 So. 26, 214 Ala. 396.
Ariz.—Rodgers v. Bryan, 309 P.2d 773, 82 Ariz. 143—Humphrey v. Atchison, T. & S. F. Ry. Co., 70 P.2d 319, 50 Ariz. 167—Arizona Storage & Distributing Co. v. Rynning, 293 P. 16, 37 Ariz. 232—Southern Casualty Co. v. Hughes, 263 P. 584, 33 Ariz. 206.
Ark.—Smith v. Hopf, 240 S.W.2d 2, 219 Ark. 127—Lewis v. Webb, 189 S.W.2d 376, 208 Ark. 1084—Howe v. Hatley, 54 S.W.2d 64, 186 Ark. 366.
Cal.—Clement v. State Reclamation Bd., Sacramento San Joaquin Drainage Dist., 220 P.2d 897, 35 C.2d 628—Ales v. Ryan, 64 P.2d 409, 8 C.2d 82—Martinelli v. Poley, 292 P. 451, 210 C. 450—Berkovitz v. American River Gravel Co., 215 P. 675, 191 C. 195.
Markwalder v. Leonhard, App., 313 P.2d 200—Miller v. Schell, App., 308 P.2d 445—Nova v. Flaherty, 303 P.2d 382, 145 C.A.2d 761—Gladstone v. Matson Nav. Co., 269 P.2d 37, 124 C.A.2d 493—Reagh v. San Francisco Unified School Dist., 259 P.2d 43, 119 C.A. 2d 65—Cole v. Ridings, 212 P.2d 597, 95 C.A.2d 136—Pullen v. Heyman Bros., 162 P.2d 961, 71 C.A. 2d 444—Hanson v. City of Los Angeles, 147 P.2d 109, 63 C.A.2d 426—Tschumy v. Brook's Market, 140 P.2d 431, 60 C.A.2d 158—Allbritton v. Interstate Transit Lines, 87 P.2d 704, 31 C.A.2d 149—Scalf v. Eicher, 53 P.2d 368, 11 C.A.2d 44—Smellie v. Southern Pac. Co., 18 P.2d 97, 128 C.A. 567, hearing denied 19 P.2d 982, 128 C.A. 567—Long v. Barbieri, 7 P.2d 1082, 120 C.A. 207—Chapman v. Pacific Electric Ry. Co., 258 P. 1006, 85 C.A. 69—Morris v. Morris, 258 P. 616, 84 C.A. 599.
Dean v. Niagara Fire Ins. Co., 68 P.2d 1021, 24 C.A.2d Supp. 762.
Colo.—Miller v. Singer, 279 P.2d 846, 131 Colo. 112—Johnsen v. Baugher, 22 P.2d 855, 92 Colo. 588—Cooper v. Newmyer, 250 P. 559, 80 Colo. 246.
Conn.—Ladd v. Burdge, 43 A.2d 752, 132 Conn. 296—Lovell v. City of Bridgeport, 165 A. 795, 116 Conn. 565—Barry v. Leiss, 147 A. 18, 109 Conn. 484—Ferguson v. Connecticut Co., 89 A. 267, 87 Conn. 652.
Fla.—Dowling v. Loftin, 72 So.2d 283—Florida Motor Lines v. Bradley, 164 So. 360, 121 Fla. 591.
Ga.—Calhoun v. Williamson, 18 S.E. 2d 479, 193 Ga. 314—Rivers v. Atlanta Southern Dental College, 1 S.E.2d 750, 187 Ga. 720—Ezell v. Mobley, 103 S.E. 238, 150 Ga. 257.
Sikes v. Wilson, 39 S.E.2d 902, 74 Ga.App. 415—Benton v. Maddox, 16 S.E.2d 141, 65 Ga.App. 540—Farley v. Groover, 3 S.E.2d 135, 60 Ga. App. 169—Shewmake Bros. Co. v. Lummus, 179 S.E. 146, 50 Ga.App. 630—Hutchings v. Snyder, 176 S.E. 794, 49 Ga.App. 551—Penn Mut. Life Ins. Co. v. Blount, 142 S.E. 183, 37 Ga.App. 756—Candler v. Hunnicutt, 132 S.E. 140, 35 Ga.App. 120.
Ill.—Swanson v. Chester Johnson Elec. Co., 125 N.E.2d 304, 5 Ill.App. 2d 175—Pappas v. Peoples Gas Light & Coke Co., 113 N.E.2d 585, 350 Ill.App. 541—Signa v. Alluri, 113 N.E.2d 475, 351 Ill.App. 11—Magill v. George, 105 N.E.2d 808, 347 Ill.App. 6—Rasmussen v. Wiley, 39 N.E.2d 57, 312 Ill.App. 404—Sullivan v. Heyer, 21 N.E.2d 776, 300 Ill.App. 599—Scally v. Flannery, 11 N.E.2d 123, 292 Ill.App. 349—Wood v. Illinois Cent. R. Co., 185 Ill.App. 180.
Ind.—Redd v. Indianapolis Rys., 97 N.E.2d 501, 121 Ind.App. 472—Gary Rys. v. Chumcoff, 96 N.E.2d 685, 122 Ind.App. 139, transfer denied 103 N.E.2d 203, 230 Ind. 309—Andrews v. Palmer, 154 N.E. 34, 85 Ind.App. 354.
Iowa.—Wilson v. Long, 266 N.W. 482, 221 Iowa 668—Hartwig v. Richards Elevator Co., 226 N.W. 116—In re Dolmage's Estate, 213 N.W. 380, 204 Iowa 231—Swan v. Dalbey, 179 N.W. 313, 189 Iowa 1046—Dilly v. Paynsville Land Co., 155 N.W. 971, 173 Iowa 536.
Ky.—Logan v. Porter, 236 S.W.2d 478, 314 Ky. 552—Levisa River R. Co. v. Phillips, 227 S.W.2d 922, 312 Ky. 367—Prudential Ins. Co. of America v. Sisson, 124 S.W.2d 739, 276 Ky. 506—McCulloch's Adm'r v. Abell's Adm'r, 115 S.W.2d 386, 272 Ky. 756—Melton v. Royster, 61 S. W.2d 1099, 250 Ky. 168—E. J. O'Brien & Co. v. Shelton's Adm'r, 55 S.W.2d 352, 246 Ky. 537.
Me.—Levine v. Reynolds, 54 A.2d 514, 143 Me. 15—Cox v. Metropolitan Life Ins. Co., 28 A.2d 143, 139 Me. 167.
Md.—Wolf v. Maryland Trust Co., 20 A.2d 153, 179 Md. 577—Miles v. Webb, 159 A. 782, 162 Md. 269—Richardson v. Malthan, 105 A. 766, 133 Md. 542.
Mich.—Dominick v. Rea, 225 N.W. 548, 247 Mich. 322—Owosso Sugar Co. v. Arntz, 221 N.W. 179, 244 Mich. 351.
Minn.—General Electric Co. v. Florida & Southern Dredging Co., 235 N.W. 876, 183 Minn. 178—Presley Fruit Co. v. St. Louis, I. M. & S. Ry. Co., 153 N.W. 115, 130 Minn. 121—Johnson v. Wild Rice Boom Co., 150 N.W. 218, 127 Minn. 490—Blied v. Barnard, 147 N.W. 1095, 126 Minn. 159.
Mo.—Elmore v. Missouri Pac. R. Co., 301 S.W.2d 776—Sheerin v. St. Louis Public Service Co., 300 S.W. 2d 483—Cunningham v. Thompson, 277 S.W.2d 602—Jones v. Kansas City, 243 S.W.2d 318—Cruce v. Gulf, Mobile & O. R. Co., 216 S.W. 2d 78, 358 Mo. 589—Carson v. Evans, 173 S.W.2d 30, 351 Mo. 376—Satterlee v. St. Louis-San Francisco Ry. Co., 82 S.W.2d 69, 336 Mo. 943—Taylor v. Superior Oxy-Acetylene Co., 73 S.W.2d 186, 335 Mo. 379—Anderson v. Shockley, 181 S.W. 1151, 266 Mo. 543, Ann.Cas. 1918B 500.
Salmon v. Brookshire, App., 301 S.W.2d 48—Dowd v. Schoening, App., 276 S.W.2d 478—Willard v. Bethurem, App., 234 S.W.2d 18—Ledbetter v. Allen's Estate, App., 183 S.W.2d 846—Dehn v. Thompson, App., 181 S.W.2d 171—Schiermeier v. Kroger Grocery & Baking Co., App., 167 S.W.2d 967—Hickey v. Sigillito, App., 162 S.W.2d 638—Fischer v. M-K Express Co., App., 158 S.W.2d 458—Basham v. Prudential Ins. Co. of America, 113 S. W.2d 126, 232 Mo.App. 782—State ex rel. Wolf v. Pumphrey, App., 104 S.W.2d 396—Evans v. Claussen, App., 93 S.W.2d 101—Evans v. Claussen, App., 93 S.W.2d 101—Govro v. Pittsburgh Plate Glass Co., App., 91 S.W.2d 641—Smalley v. Wunderlich, App., 62 S.W. 2d 919—Thomas v. St. Louis, I. M. & S. Ry. Co., App., 180 S.W. 1030—Park v. Culver, 154 S.W. 806, 169 Mo.App. 8.
Neb.—Long v. Whalen, 71 N.W.2d 496, 160 Neb. 813—Oliver v. Oliver, 66 N.W.2d 420, 159 Neb. 218—Rice v. American Protective Health & Acc. Co., 59 N.W.2d 378, 157 Neb. 256—Lund v. Holbrook, 46 N.W.2d 130, 153 Neb. 706—McClelland Interstate Transit Lines, 296 N.W. 757, 139 Neb. 146—Bohmont v.

Moore, 295 N.W. 419, 138 Neb. 784, 133 A.L.R. 270, rehearing denied 297 N.W. 559, 138 Neb. 907, 133 A.L.R. 279.

Nev.—Musser v. Los Angeles & S. L. R. Co., 299 P. 1020, 53 Nev. 304.

N.H.—Davis v. State, 52 A.2d 793, 94 N.H. 321—Upton v. Boston & M. R. R., 129 A. 882, 82 N.H. 94.

N.J.—Guzzi v. Jersey Central Power & Light Co., 96 A.2d 387, 12 N.J. 251.

Isherwood v. Douglas, 112 A.2d 756, 34 N.J.Super. 533.

Corcione v. Zingerman, 166 A. 506, 111 N.J.Law 75.

Reinheimer v. Atlantic City & Shore R. Co., 184 A. 215, 14 N.J. Misc. 253.

N.Y.—Beedenbender v. Midtown Properties, Inc., 164 N.Y.S.2d 276, 4 A.D.2d 276—Katona v. Jennings, 157 N.Y.S.2d 773, 3 A.D.2d 642—Helm v. Maryland Cas. Co., 84 N.Y. S.2d 786, 274 App.Div. 966—James E. Cashman, Inc. v. Spellman, 251 N.Y.S. 240, 233 App.Div. 45—Newborn v. Peart, 219 N.Y.S. 146, 219 App.Div. 249—Wigand v. Bachman-Bechtel Brewing Co., 154 N.Y.S. 840, 169 App.Div. 285, modified on other grounds 118 N.E. 618, 222 N.Y. 272—Fia v. Krcis, 282 N.Y.S. 389, 246 App.Div. 531—Schagger v. Pfeiffer, 278 N.Y.S. 949, 244 App. Div. 739.

Furman v. Goldberg, 54 N.Y.S.2d 24.

N.C.—Burns v. Crump, 95 S.E.2d 906, 245 N.C. 360—Home Finance Co. of Georgetown v. O'Daniel, 74 S.E.2d 717, 237 N.C. 286—Howell v. Harris, 16 S.E.2d 829, 220 N.C. 198—Templeton v. Kelley, 5 S.E.2d 555, 216 N.C. 487, modified on other grounds 7 S.E.2d 380, 217 N.C. 164—Rice v. Swannanoa-Berkeley Hotel Co., 184 S.E. 3, 209 N.C. 519—Lipe v. Citizens' Bank & Trust Co., 173 S.E. 316, 206 N.C. 24—Myers v. Foreman, 162 S.E. 549, 202 N.C. 246—Gurganus v. Greenville Mfg. Co., 126 S.E. 423, 189 N.C. 202.

N.D.—Reitman v. Miller, 54 N.W.2d 477, 78 N.D. 1003—Rott v. Provident Life Ins. Co., 286 N.W. 393, 69 N.D. 335.

Ohio.—Tracy v. Athens & Pomeroy Coal & Land Co., 152 N.E. 641, 115 Ohio St. 298—Cincinnati Traction Co. v. Williams, 152 N.E. 30, 115 Ohio St. 124.

Cleveland Boat Service v. City of Cleveland, App., 130 N.E.2d 421, affirmed 136 N.E.2d 274, 165 Ohio St. 429—Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87—Yates v. Irvin, 85 N.E.2d 404, 85 Ohio App. 164—Ralston v. Stump, 62 N.E.2d 293, 75 Ohio App. 375—Thompson v. Kerr, App., 51 N.E.2d 742—Brown v. Jacoby, 9 N. E.2d 693, 55 Ohio App. 250—City of Cincinnati v. Bachmann, 199 N. E. 853, 51 Ohio App. 108—Anchor Realty Co. v. New York Cent. R. Co., 191 N.E. 330, 47 Ohio App. 319—Pecsok v. Millikin, 173 N.E. 626, 36 Ohio App. 543—F. D. Lawrence Electric Co. v. Enterprise Lumber Co., 162 N.E. 434, 28 Ohio App. 30—Gallup v. Toledo Terminal R. Co., 160 N.E. 493, 26 Ohio App. 447.

B. A. Stevens Co. v. H. Blum, 17 Ohio Cir.Ct., N.S., 115.

Okl.—Pechacek v. Hightower, 269 P. 2d 342—Union Transp. Co. v. Mitchell, 219 P.2d 1015, 203 Okl. 247—Midland Val. R. Co. v. Pettie, 162 P.2d 543, 196 Okl. 52—Great Northern Life Ins. Co. of Milwaukee, Wis., v. Farmers' Union Co-op. Gin Co., 73 P.2d 1155, 181 Okl. 370—McConnell v. Ray, 71 P.2d 975, 180 Okl. 590, 114 A.L.R. 465—Noble v. Johnson, 68 P.2d 838, 180 Okl. 169—Ætna Life Ins. Co. v. Watts, 296 P. 977, 148 Okl. 28—Gordon v. Pollock, 253 P. 1021, 124 Okl. 64—Nero v. Nero, 195 P. 492, 80 Okl. 185—Hopkins v. Stites, 173 P. 449, 70 Okl. 177—Dunnington v. Loeser, 150 P. 874, 48 Okl. 636—Halsell v. First Nat. Bank, 150 P. 489, 48 Okl. 535, L.R.A.1916B 697.

Or.—Cummings v. Pitts, 41 P.2d 804, 149 Or. 512.

Pa.—Williamson v. McCracken, 199 A. 166, 330 Pa. 254—Sears v. Birbeck, 184 A. 6, 321 Pa. 375—Frazier v. Berg, 159 A. 541, 306 Pa. 317—Cummings v. Pennsylvania R. Co., 151 A. 590, 301 Pa. 39, 71 A.L.R. 1156.

Close v. Derbyshire, 82 A.2d 301, 169 Pa.Super. 344—Levin v. Northwestern Nat. Bank, 35 A.2d 769, 154 Pa.Super. 94—Commonwealth, for Use of Schmiedel, v. U. S. Fidelity & Guaranty Co., 20 A.2d 834, 145 Pa.Super. 9—Patton v. Hooks, 61 Pa.Super. 320.

S.C.—Milhous v. State Highway Department, 8 S.E.2d 852, 194 S.C. 33, 128 A.L.R. 1186—Leonard v. Broad River Power Co., 177 S.E. 152, 174 S.C. 199—Payne v. Cohen, 167 S.E. 665, 168 S.C. 459—Mishoe v. Atlantic Coast Line R. Co., 117 S.E. 217, 124 S.C. 195.

S.D.—Federal Land Bank of Omaha v. Matson, 5 N.W.2d 314, 68 S.D. 538.

Tenn.—Boone v. Citizens' Bank & Trust Co., 290 S.W. 39, 154 Tenn. 241, 50 A.L.R. 1369.

Getz v. Weiss, 160 S.W.2d 438, 25 Tenn.App. 520.

Tex.—Traders & General Ins. Co. v. Carlile, 161 S.W.2d 484, 138 Tex. 523, answer to certified question conformed to, Civ.App., Traders & General Ins. Co. v. Carlisle, 162 S.W.2d 751—Texas Motor Coaches v. Palmer, 121 S.W.2d 323, 132 Tex. 77—Gulf States Utilities Co. v. Moore, 106 S.W.2d 256, 129 Tex. 604—Wichita Valley Ry. Co. v. Williams, 288 S.W. 425, 116 Tex. 253.

Becker v. Mollenauer, Civ.App., 234 S.W.2d 690, error refused no reversible error—Houston Press Co. v. Smith, Civ.App., 3 S.W.2d 900—Schaff v. Copass, Civ.App., 262 S.W. 234.

Utah.—Wilcox v. Wunderlich, 272 P. 207, 73 Utah 1.

Vt.—McCutcheon v. Leonard, 39 A.2d 348, 114 Vt. 38.

Va.—Perlin v. Chappell, 96 S.E.2d 805, 198 Va. 861—Banks v. Bradley, 66 S.E.2d 526, 192 Va. 598—Skeen v. Belcher, 104 S.E. 582, 128 Va. 122—Scott's Ex'r v. Chesterman, 85 S.E. 502, 117 Va. 584.

Wash.—Melton v. United Retail Merchants of Spokane, 163 P.2d 619, 24 Wash.2d 145.

W.Va.—Collar v. McMullin, 148 S.E. 496, 107 W.Va. 440.

Wis.—Reuling v. Chicago, St. P., M. & O. Ry. Co., 44 N.W.2d 253, 257 Wis. 485.

Wyo.—Baird v. School Dist. No. 25, Fremont County, 287 P. 308, 41 Wyo. 451.

4 C.J. p 1031 note 31—38 C.J. p 518 note 38—55 C.J. p 1020 note 44 [b].

Only in case which is free of all doubt on point can it be said that an instruction which is erroneous is without prejudicial effect.

Ky.—Southeastern Greyhound Lines v. Buckles, 183 S.W.2d 965, 298 Ky. 681.

Lack of prejudice must appear

If it does not appear from record that incorrect instruction to jury did not affect result of trial of case unfavorably to party affected by it, giving of instruction must be considered to have been prejudicial error.

Neb.—Raile v. Toews, 84 N.W.2d 199, 165 Neb. 184—Van Wye v. Wagner, 79 N.W.2d 281, 163 Neb. 205.

In close case, appellate court must give careful consideration to asserted errors in law relative to instruction.

Cal.—Cedzo v. Bergen, 128 P.2d 683, 53 C.A.2d 667.

Particular errors held prejudicial

(1) Where complaining party is deprived of defense.

Ky.—Metropolitan Life Ins. Co. v. Johnson, 65 S.W.2d 1030, 252 Ky. 153.

Mo.—McGrory v. Thurnau, App., 84 S.W.2d 147.

4 C.J. p 1031 note 31 [e].

(2) Where different verdict might be returned on the evidence in case of correct instructions.

Cal.—Lowenbruck v. Stiglmeier, 46 P.2d 251, 7 C.A.2d 204.

Ind.—Indiana Service Corporation v. Schaefer, 199 N.E. 158, 101 Ind. App. 204.

Utah.—Mulford v. Bamberger Electric R. Co., 287 P. 929, 76 Utah 136.

as where the instruction was misleading.[16] Likewise, the judgment will be reversed where the instruction was confusing,[17] or material and harmful,[18] or where the verdict was in direct response

(3) Where instruction follows overruled decisions.

Ohio.—Bliss v. Hartnett, 192 N.E. 818, 48 Ohio App. 156.

(4) Where instruction was based on unconstitutional statute.

Ga.—Wadley Southern Ry. Co. v. Faglee, 161 S.E. 847, 173 Ga. 814, opinion conformed to 161 S.E. 848, 44 Ga.App. 350.

Ind.—W. T. Rawleigh Co. v. Snider, 194 N.E. 356, 207 Ind. 686.

(5) Where issues are broadened.

Mo.—Pfeiffer v. Independent Plumbing & Heating Supply Co., App., 72 S.W.2d 138.

(6) Where party is belittled or ridiculed.

Pa.—Shappel v. City of Philadelphia, 176 A. 69, 115 Pa.Super. 529.

(7) Where recovery against one of several defendants was improperly authorized.

Va.—Lough v. Price, 172 S.E. 269, 161 Va. 811.

Wis.—Lehner v. Kelley, 254 N.W. 634, 215 Wis. 265.

(8) Where rule stated as to failure to call witnesses was not applicable.

Wash.—Rosenstrom v. North Bend Stage Line, 280 P. 932, 154 Wash. 57.

16. Ala.—Bowles v. Lowery, 62 So. 107, 181 Ala. 603.

Ariz.—Krauth v. Billar, 226 P.2d 1012, 71 Ariz. 298.

Ark.—Jones v. Kansas City Southern Ry. Co., 145 S.W.2d 969, 201 Ark. 523.

Cal.—Petersen v. Klitgaard, 299 P. 54, 212 C. 516, certiorari denied Petersen v. Naknek Packing Co., 52 S.Ct. 128, 284 U.S. 672, 76 L.Ed. 569.

Dodds v. Gifford, 16 P.2d 279, 127 C.A. 629—Catton v. Kerns, 10 P.2d 1036, 123 C.A. 94—White v. Davis, 284 P. 1086, 103 C.A. 531.

Conn.—Bennett v. S. Blumenthal & Co., 155 A. 68, 113 Conn. 223.

Fla.—Orange Belt Auto Line v. Harford, 109 So. 201, 91 Fla. 1011—Seaboard Air Line Ry. v. Minor, 90 So. 611, 82 Fla. 492.

Ga.—Johnson v. Roberson, 77 S.E.2d 232, 88 Ga.App. 548—Milam v. Gray, 56 S.E.2d 168, 80 Ga.App. 356—Georgia Power Co. v. Maxwell, 183 S.E. 654, 52 Ga.App. 430.

Ill.—Stamas v. Waskow, 250 Ill.App. 364.

Ind.—Northern Indiana Power Co. v. West, 32 N.E.2d 713, 218 Ind. 321.

Curnick v. Torbert, 194 N.E. 771, 101 Ind.App. 294—Pittsburgh, C., C. & St. L. Ry. Co. v. Marable, 140 N.E. 443, 81 Ind.App. 46.

Iowa.—Swan v. Dailey-Luce Auto Co., 265 N.W. 143, 221 Iowa 842.

Kan.—Gigoux v. Henderson, 190 P. 1092, 107 Kan. 325.

Ky.—Prestonsburg Water Co. v. Dingus, 111 S.W.2d 661, 271 Ky. 240, followed in Prestonsburg Water Co. v. Neeley, 111 S.W.2d 665, 271 Ky. 247—Appalachian Stave Co. v. Pickard, 86 S.W.2d 685, 260 Ky. 720—Hughett v. Shain, 69 S.W.2d 688, 253 Ky. 330—L. & N. Clothing Co. v. Conder, 58 S.W.2d 221, 248 Ky. 28.

Me.—Selberg v. Bay of Naples, 157 A. 856, 130 Me. 492.

Mich.—Savich v. American State Bank, 225 N.W. 566, 247 Mich. 164.

Miss.—Turnipseed v. Drummond, 63 So.2d 536, 217 Miss. 127—Lizana v. Edward Motor Sales Co., 141 So. 295, 163 Miss. 266.

Mo.—Toburen v. Carter, 273 S.W.2d 161—Harting v. East St. Louis Ry. Co., 84 S.W.2d 914—Freeman v. Berberich, 60 S.W.2d 393, 332 Mo. 831—Causey v. Wittig, 11 S.W.2d 11, 321 Mo. 358—Lewis v. Illinois Cent. R. Co., 3 S.W.2d 371, 319 Mo. 233—B. F. Sturtevant Co. v. Ford Mfg. Co., 288 S.W. 59, 315 Mo. 1025.

Brewer v. Gowin, App., 241 S.W. 2d 275—Hale v. St. Louis Public Service Co., App., 238 S.W.2d 876—White v. National Lead Co., App., 99 S.W.2d 535—Schmitt v. American Press, App., 42 S.W.2d 969—B. F. Sturtevant Co. v. Ford Mfg. Co., App., 254 S.W. 419.

Neb.—Barney v. Adcock, 75 N.W.2d 683, 162 Neb. 179—Howell v. Wilcox, etc., Sewing Mach. Co., 10 N.W. 700, 12 Neb. 177.

N.Y.—Taylor v. Mansfield, 24 N.Y.S. 2d 520, 260 App.Div. 1058—Scott v. Lister, 245 N.Y.S. 313, 230 App. Div. 473—Gilsey v. Lancaster, 150 N.Y.S. 178, 164 App.Div. 663.

N.C.—McKinney v. City of High Point, 79 S.E.2d 730, 239 N.C. 232.

N.D.—Bolen v. Dolph, 245 N.W. 259, 62 N.D. 700.

Ohio.—Simensky v. Zwyer, 178 N.E. 422, 40 Ohio App. 275—Knox County Farm Bureau v. Wagner, 155 N.E. 804, 24 Ohio App. 466.

Cincinnati Union Bethel v. Schy, 26 Ohio Cir.Ct.,N.S., 298.

Okl.—Craig v. Wright, 43 P.2d 1017, 169 Okl. 245—Watkins v. Huff, 222 P. 693, 101 Okl. 5.

Or.—Williams v. Portland General Elec. Co., 247 P.2d 494, 195 Or. 597—Denton v. Davis, 233 P.2d 213, 191 Or. 646.

Pa.—Randolph v. Campbell, 62 A.2d 60, 360 Pa. 453—Sears v. Birbeck, 184 A. 6, 321 Pa. 375.

S.C.—Simon v. Ætna Casualty & Surety Co., 148 S.E. 648, 151 S.C. 44—Hardwick v. Page, 117 S.E. 204, 124 S.C. 111—Perry v. Miller, 94 S.E. 488, 108 S.C. 317.

Va.—Thomas v. Snow, 174 S.E. 837, 162 Va. 654.

Wash.—Ferguson v. City of Yakima, 246 P. 287, 139 Wash. 216, 48 A.L.R. 431.

W.Va.—Hartley v. Crede, 82 S.E.2d 672, 140 W.Va. 133.

4 C.J. p 1031 note 32.

In an action for personal injuries, instructions that if the injuries had been fully paid for in settlement to find for defendant, and that the plea of not guilty denied only breach of duty or wrongful action alleged and nothing more, could have misled the jury to the injury of defendant and require granting a new trial.

Fla.—Orange Belt Auto Line v. Harford, 109 So. 201, 91 Fla. 1011.

Instruction on form of verdict

In an action against a bus driver and his employer in which the liability of the employer depended solely on the doctrine of respondeat superior, submission to the jury of a form of verdict authorizing finding for the driver but against the employer is error, as misleading and prejudicial where the jury returned such verdict.

Mo.—Ruehling v. Pickwick-Greyhound Lines, 85 S.W.2d 602, 337 Mo. 196.

Instruction permitting improper inference

Where, under governing Oregon law, the speed of an automobile in excess of the statutory "indicated speed" of forty five miles per hour was unlawful only if the driver was violating the basic statutory rule respecting reasonable speed, instruction that it was lawful to drive at a speed not exceeding forty five miles is harmfully misleading as permitting inference that a higher speed would necessarily be unlawful.

Idaho.—Kleinschmidt v. Scribner, 30 P.2d 362, 54 Idaho 185.

17. Ala.—Lincoln Reserve Life Ins. Co. v. Armes, 110 So. 818, 215 Ala. 407.

Ariz.—Standard Ins. Agency v. Northeast Rapid Transit Co., 12 P. 2d 777, 40 Ariz. 408.

Cal.—Condon v. Ansaldi, 263 P. 198, 203 C. 180.

Fla.—Florida Motor Lines v. Bradley, 164 So. 360, 121 Fla. 591.

Mo.—Sevedge v. Kansas City, St. L. & C. R. Co., 53 S.W.2d 284, 331 Mo. 312.

Neb.—First Nat. Bank of Hastings v. Davis, 242 N.W. 655, 123 Neb. 304.

Okl.—Gourley v. Jackson, 243 P. 243, 116 Okl. 30.

4 C.J. p 1031 note 33.

18. Cal.—Elmore v. Lassen County, 51 P.2d 481, 10 C.A.2d 229.

to the particular charge.[19]

The view that a judgment will be reversed for prejudicial error in the giving of instructions has been applied in actions for alienation of affections,[19.1] assault,[19.2] conversion,[19.3] deceit,[19.4] detinue,[19.5] false imprisonment,[19.6] libel and slander,[19.7] malicious prosecution,[19.8] malpractice,[19.9] trespass,[19.10] replevin,[19.11] and trover.[19.12] The rule has also been applied in probate proceedings,[19.13] and in actions for damages for fraud[19.14] and for damages from fire.[19.15]

Ohio.—Cincinnati Union Bethel v. Schy, 26 Ohio Cir.Ct.,N.S., 298.
4 C.J. p 1031 note 34.

19. Tex.—McGee v. West, Civ.App., 57 S.W. 928.

19.1 Ohio.—White v. Buchwalter, App., 75 N.E.2d 604.

19.2 Cal.—Lowry v. Standard Oil Co. of California, 146 P.2d 57, 63 C.A.2d 1—Lowry v. Standard Oil Co. of California, 130 P.2d 1, 54 C.A.2d 782.
Conn.—Laffin v. Apalucci, 25 A.2d 60, 128 Conn. 654.
Fla.—Winn & Lovett Grocery Co. v. Archer, 171 So. 214, 126 Fla. 308.
Ga.—Kelly v. Adams, 66 S.E.2d 144, 84 Ga.App. 450.
Iowa.—Bascom v. Hoffman, 203 N.W. 273, 199 Iowa 941.
Miss.—Jackson v. Leggett, 189 So. 180, 186 Miss. 123.
Mo.—Holloway v. Shepardson, 258 S.W.2d 656, 364 Mo. 14.
Cummins v. St. Louis Amusement Co., App., 147 S.W.2d 190.
Nev.—Walker v. Burkham, 222 P.2d 205, 67 Nev. 541, opinion modified on other grounds 229 P.2d 158, 68 Nev. 250.
N.C.—Howell v. Harris, 16 S.E.2d 829, 220 N.C. 198—In re Worsley, 193 S.E. 666, 212 N.C. 320.
Ohio.—Skinner v. Brooks, 58 N.E.2d 697, 74 Ohio App. 288.
Okl.—Boston v. Muncy, 233 P.2d 300, 204 Okl. 603, 25 A.L.R.2d 1208.
S.C.—Herring v. Lawrence Warehouse Co., 72 S.E.2d 453, 222 S.C. 226.
Tex.—McMurrey Corporation v. Yawn, App., 143 S.W.2d 664, error refused.

19.3 Ala.—Moore v. Long, 33 So.2d 6, 250 Ala. 47.
Idaho.—Southeast Securities Co. v. Christensen, 218 P.2d 342, 70 Idaho 328.
Mo.—Exchange Nat. Bank of Tulsa, Okl., v. Daley, App., 237 S.W. 846—Shewalter v. Wood, App., 183 S.W. 1127.

19.4 Cal.—Teague v. Hall, 154 P. 851, 171 C. 668.
Mo.—Ashton v. Buchholz, 221 S.W.2d 496, 359 Mo. 296.
Ohio.—Kerr v. Parsons, 82 N.E.2d 303, 83 Ohio App. 204.

19.5 Ala.—Universal C. I. T. Credit Corp. v. Phenix-Girard Bank, 49 So.2d 273, 254 Ala. 643.

19.6 Cal.—Bettolo v. Safeway Stores, 54 P.2d 24, 11 C.A.2d 430.
Ill.—McFadden v. Adams Express Co., 185 Ill.App. 572.
Ky.—Jefferson Dry Goods Co. v. Stoess, 199 S.W.2d 994, 304 Ky. 73—Southeastern Greyhound Lines v. Bradley, 174 S.W.2d 519, 295 Ky. 363—Illinois Cent. Ry. Co. v. Dennington, 189 S.W. 217, 172 Ky. 325.
N.J.—Jorgensen v. Pennsylvania R. Co., 118 A.2d 854, 38 N.J.Super. 317.
Or.—Brown v. Meier & Frank Co., 86 P.2d 79, 160 Or. 608.

19.7 Cal.—Nova v. Flaherty, 303 P.2d 382, 145 C.A.2d 761.
Colo.—Lininger v. Knight, 226 P.2d 809, 123 Colo. 213.
Ill.—McWilliams v. Sentinel Pub. Co., 89 N.E.2d 266, 339 Ill.App. 83.
Iowa.—McCuddin v. Dickinson, 300 N.W. 308, 230 Iowa 1141—McCuddin v. Dickinson, 283 N.W. 886, 226 Iowa 304.
Mich.—Bowerman v. Detroit Free Press, 272 N.W. 876, 279 Mich. 480.
Miss.—Tipps Tool Co. v. Holifield, 67 So.2d 609, 218 Miss. 670.
Mo.—Grider v. Frable, App., 90 S.W.2d 451.
Ohio.—De Angelo v. W. T. Grant Co., App., 111 N.E.2d 773.
Okl.—Miskovsky v. Vrba, 177 P. 614, 74 Okl. 123.
S.C.—Herring v. Lawrence Warehouse Co., 72 S.E.2d 453, 222 S.C. 226.
Tex.—Bell Pub. Co. v. Garrett Engineering Co., Civ.App., 154 S.W.2d 885, affirmed 170 S.W.2d 197, 141 Tex. 51.
Va.—Slaughter v. Valleydale Packers, Inc., of Bristol, 94 S.E.2d 260, 198 Va. 339.
Wash.—Lynch v. Republic Pub. Co., 243 P.2d 636, 40 Wash.2d 379.

19.8 Ariz.—Murphy v. Russell, 9 P.2d 1020, 40 Ariz. 109.
Cal.—Reinhardt v. Reitz, 167 P. 865, 176 C. 209.
Ind.—Treloar v. Harris, 117 N.E. 975, 66 Ind.App. 59.
Mo.—McDonald v. Goddard Grocery Co., 171 S.W. 650, 184 Mo.App. 432.
N.Y.—Mitchell v. O'Hara, 1 N.Y.S.2d 20, 165 Misc. 630.
N.D.—Johnson v. Huhner, 33 N.W.2d 268, 76 N.D. 13.
Okl.—Dollar Down Furniture Co. v. Blassingame, 11 P.2d 512, 157 Okl. 179.
Or.—Coghlan v. Miller, 211 P. 163, 106 Or. 46.
R.I.—McCreadie v. Biltcliffe, 95 A.2d 458, 80 R.I. 232.
Va.—Virginia-Tennessee Motor Truck Corporation v. Wilson, 124 S.E. 231, 140 Va. 260.

19.9 Cal.—Ales v. Ryan, 64 P.2d 409, 8 C.2d 82—Hesler v. California Hospital Co., 174 P. 654, 178 C. 764.
Friedman v. Dresel, 293 P.2d 488, 139 C.A.2d 333—Lewis v. Hendricks, 284 P.2d 518, 133 C.A.2d 584.
Ga.—Kuttner v. Swanson, 2 S.E.2d 230, 59 Ga.App. 818.
Mass.—King v. Belmore, 142 N.E. 911, 248 Mass. 108.
Neb.—In re Johnson's Estate, 16 N.W.2d 504, 145 Neb. 333.

19.10 Cal.—Bourdieu v. Seaboard Oil Corp., 146 P.2d 256, 63 C.A.2d 201.
Ga.—Young v. Looper, 86 S.E.2d 293, 211 Ga. 470—Baldwin v. Davis, 4 S.E.2d 458, 188 Ga. 587.
Mo.—Welker v. Pankey, App., 225 S.W.2d 505.
W.Va.—McCabe v. City of Parkersburg, 79 S.W.2d 87, 138 W.Va. 830.

19.11 Colo.—Panhandle Pipe & Supply Co. v. S. W. Pressey & Son, 243 P.2d 756, 125 Colo. 355.
Okl.—Jackson, Hunter & Gould Coal Co. v. Holton, 118 P.2d 1018, 189 Okl. 581.

19.12 Ga.—Hayes v. O'Shield Buick Co., 94 S.E.2d 44, 94 Ga.App. 177—Light v. Smith, 71 S.E.2d 844, 86 Ga.App. 591.

19.13 Ga.—Lewis v. Patterson, 12 S.E.2d 593, 191 Ga. 348.

19.14 Cal.—Pullen v. Heyman Bros., 162 P.2d 961, 71 C.A.2d 444.
Mich.—Bartholomew v. Walsh, 157 N.W. 575, 191 Mich. 252.
Mo.—Jos. Greenspon's Son Pipe Corp. v. Hyman-Michaels Co., App., 133 S.W.2d 426—Luchow v. Kansas City Breweries Co., App., 183 S.W. 1123.
Neb.—Harsche v. Czyz, 61 N.W.2d 265, 157 Neb. 699.
N.C.—Kennedy v. High Point Savings & Trust Co., 197 S.E. 130, 213 N.C. 620.
Ohio.—Traverse v. Long, 135 N.E.2d 256, 165 Ohio 249.
Kerr v. Parsons, 82 N.E.2d 303, 83 Ohio App. 204.
Vt.—Lunnie v. Gadapee, 73 A.2d 312, 116 Vt. 261.
Wash.—Stenson v. Thrush, 219 P.2d 977, 36 Wash.2d 726.

19.15 Cal.—Greenleaf v. Pacific Telephone & Telegraph Co., 185 P. 872, 43 C.A. 691.
Mo.—Springfield Fire & Marine Ins. Co. v. Lusk, 223 S.W. 804, 205 Mo. App. 185.
Tex.—Chicago, R. I. & G. Ry. Co. v. Word, Com.App., 207 S.W. 902.
Va.—Torbert v. Atlantic Coast Line R. Co., 95 S.E. 635, 122 Va. 682.

The doctrine that prejudicial error in the giving of instructions is ground for reversal has also been applied in actions on contracts,[19.16] such as insurance contracts[19.17] and employment contracts.[19.18]

19.16 Ala.—McClendon v. Eubanks, 30 So.2d 261, 249 Ala. 170.
Quisenberry v. Grant, 104 So. 284, 20 Ala.App. 576.
Ark.—Wright v. Liberty Cent. Trust Co., 260 S.W. 397, 163 Ark. 458—Holland Banking Co. v. Hearn, 172 S.W. 881, 116 Ark. 238.
Cal.—Gross v. Maytex Knitting Mills of Cal., 254 P.2d 163, 116 C.A.2d 705—Lovinger v. Anglo Cal. Nat. Bank of San Francisco, App., 243 P.2d 561, hearing dismissed.
Colo.—Hise v. Romeo Stores Co., 199 P. 483, 70 Colo. 249.
Ga.—Sellers v. City of Summerville, 85 S.E.2d 56, 91 Ga.App. 105—Carroll v. Taylor, 75 S.E.2d 346, 87 Ga.App. 815—McJenkin Ins. & Realty Co. v. Thompson, 54 S.E.2d 336, 79 Ga.App. 473.
Idaho.—Reddy v. Johnston, 293 P.2d 945, 77 Idaho 402—Abercrombie v. Stoddard, 228 P. 232, 39 Idaho 146.
Ill.—Cabonargi v. Jordan, 100 N.E.2d 496, 344 Ill.App. 276.
Ind.—Rinelli v. Rubino, 120 N.E. 388, 68 Ind.App. 314.
Iowa.—Underwood v. Leichtman, 176 N.W. 683, 188 Iowa 794.
Kan.—Conry v. McLean, 232 P. 1030, 117 Kan. 595.
Md.—Philipsborn Co. v. Fineman, 129 A. 31, 148 Md. 188—Berman v. Littauer, 119 A. 565, 141 Md. 649.
Mich.—Bay State Milling Co. v. Szucs, 196 N.W. 355, 225 Mich. 509.
N.J.—Terminal Const. Corp. v. Bergen County Hackensack River Sanitary Sewer Dist. Authority, 112 A.2d 762, 34 N.J.Super. 478, modified on other grounds 113 A.2d 787, 18 N.J. 294.
N.Y.—Conley v. Westlake Mfg. Corp., 95 N.Y.S.2d 239, 276 App.Div. 1041—Robinson v. Liebman, 202 N.Y.S. 645, 207 App.Div. 614.
Burke's Auto Trucking Co. v. W. A. L. Silver Mfg. Corporation, 207 N.Y.S. 172, 124 Misc. 159.
N.C.—Wheeler v. Wheeler, 80 S.E.2d 755, 239 N.C. 646—Allison v. Steele, 17 S.E.2d 339, 220 N.C. 318—Robinson v. McAlhaney, 199 S.E. 26, 214 N.C. 263.
N.D.—Reitman v. Miller, 54 N.W.2d 477, 78 N.D. 1003.
Ohio.—Alberts v. Dunlavey, 6 N.E.2d 26, 54 Ohio App. 111.
Okl.—Cosden Oil & Gas Co. v. Moss, 61 P.2d 553, 177 Okl. 603.
Pa.—Betzig v. Cook, 103 A.2d 283, 175 Pa.Super. 185—Campbell v. Clark & Melia, 29 A.2d 350, 150 Pa. Super. 635.
S.D.—Steen v. Potts, 61 N.W.2d 825, 75 S.D. 184.
Tex.—Duncan Coffee Co. v. Chiles, Civ.App., 136 S.W.2d 929.
Utah.—Skeen v. Peterson, 196 P.2d 708, 113 Utah 483.
Va.—Rosenbaum Hardware Co. v. Paxton Lumber Co., 97 S.E. 784, 124 Va. 346.
Wash.—Melton v. United Retail Merchants of Spokane, 163 P.2d 619, 24 Wash.2d 145.
W.Va.—Gordon v. Graham, 73 S.E.2d 132, 137 W.Va. 553.

19.17 Ala.—National Life & Accident Ins. Co. v. Hollis, 197 So. 378, 29 Ala.App. 447.
Ariz.—First Nat. Ben. Soc. v. Fiske, 101 P.2d 208, 55 Ariz. 299.
Ark.—Southern Farmers Mut. Ins. Co. v. Motor Finance Co., 222 S.W.2d 981, 215 Ark. 601—Queen of Arkansas Ins. Co. v. Dumas, 168 S.W. 561, 113 Ark. 598.
Cal.—Jensen v. Traders & General Ins. Co., 296 P.2d 434, 141 C.A.2d 162.
Ga.—Mutual Life Ins. Co. v. Langford, 32 S.E.2d 411, 71 Ga.App. 832—Bankers Health & Life Ins. Co. v. Crozier, 16 S.E.2d 65, 65 Ga. App. 329—North British & Mercantile Ins. Co. v. Parnell, 185 S.E. 122, 53 Ga.App. 178.
Idaho.—Murphy v. Mutual Life Ins. Co. of New York, 112 P.2d 993, 62 Idaho 362.
Ill.—Doellefield v. Travelers Ins. Co., 24 N.E.2d 904, 303 Ill.App. 123—Labonowski v. Metropolitan Life Ins. Co., 10 N.E.2d 897, 292 Ill.App. 632.
Ind.—Metropolitan Life Ins. Co. v. Becraft, 12 N.E.2d 952, 213 Ind. 378, 115 A.L.R. 93.
Home Ins. Co. v. Mathis, 32 N.E. 2d 108, 109 Ind.App. 25—Kentucky Central Life & Accident Ins. Co. v. White, 19 N.E.2d 872, 106 Ind.App. 530.
Iowa.—Britven v. Occidental Ins. Co., San Francisco, Cal., 13 N.W.2d 791, 234 Iowa 682.
Ky.—Niagara Fire Ins. Co. v. Huffman, 253 S.W.2d 617—Kentucky Home Mut. Life Ins. Co. v. Watts, 183 S.W.2d 499, 298 Ky. 471—Metropolitan Life Ins. Co. v. Smith's Adm'x, 159 S.W.2d 406, 289 Ky. 531—Prudential Ins. Co. of America v. Sisson, 124 S.W.2d 739, 276 Ky. 506—New York Underwriters' Ins. Co. v. Ray, 54 S.W.2d 627, 246 Ky. 105.
Me.—Cox v. Metropolitan Life Ins. Co., 28 A.2d 143, 139 Me. 167.
Minn.—Nathan v. St. Paul Mut. Ins. Co., 68 N.W.2d 385, 243 Minn. 430—Scott v. Prudential Ins. Co. of America, 282 N.W. 467, 203 Minn. 547—Farmers' Co-op. Exch. Co. of Good Thunder v. Fidelity & Deposit Co. of Maryland, 182 N.W. 1008, 149 Minn. 171.
Miss.—Lipnick v. New York Life Ins. Co., 52 So.2d 916, 211 Miss. 833.
Mo.—State ex rel. Stiers Bros. Const. Co. v. Hughes, 190 S.W.2d 880, 354 Mo. 659—Coleman v. Northwestern Mut. Life Ins. Co., 233 S.W. 187.
Paine v. Albany Ins. Co., App., 299 S.W.2d 897—Ireland v. Manufacturers & Merchants Indem. Co., App., 298 S.W.2d 529—Ganahl Lumber Co. v. Travelers Indemnity Co., App., 133 S.W.2d 1050—Layton v. Metropolitan Life Ins. Co., App., 89 S.W.2d 576—Schultz v. Fidelity & Casualty Co. of New York, App., 274 S.W. 524—Jarnagin v. Queen Ins. Co. of America, App., 272 S.W. 1095—Cromeens v. Sovereign Camp, W. O. W., 233 S.W. 287, 208 Mo. App. 11.
Neb.—Borden v. General Ins. Co. of America, 59 N.W.2d 141, 157 Neb. 98—Chard v. New York Life Ins. Co., 16 N.W.2d 858, 145 Neb. 429.
N.J.—Kirschbaum v. Metropolitan Life Ins. Co., 42 A.2d 257, 133 N.J. Law 5, 158 A.L.R. 743.
N.Y.—Ravich v. Equitable Life Assur. Soc. of U. S., 98 N.Y.S.2d 468, 277 App.Div. 932—Goell v. U. S. Life Ins. Co. in City of New York, 40 N.Y.S.2d 779, 265 App.Div. 735—Piccininni v. Ætna Life Ins. Co., 294 N.Y.S. 880, 250 App.Div. 498.
Doobin v. Kelly, 86 N.Y.S.2d 555.
N.C.—Ammons v. North Am. Acc. Ins. Co., 97 S.E.2d 251, 245 N.C. 655—Whitaker v. Jefferson Standard Life Ins. Co., 196 S.E. 328, 213 N.C. 376.
N.D.—Rott v. Provident Life Ins. Co., 286 N.W. 393, 69 N.D. 335.
Ohio.—Hrybar v. Metropolitan Life Ins. Co., 45 N.E.2d 114, 140 Ohio St. 437.
Grimes v. State Auto. Mut. Ins. Co., 118 N.E.2d 841, 95 Ohio App. 254—Shaffer v. Prudential Ins. Co. of America, 81 N.E.2d 239, 83 Ohio App. 384—Kessler v. Metropolitan Life Ins. Co., 22 N.E.2d 508, 61 Ohio App. 240.
Okl.—Metropolitan Life Ins. Co. v. Rosier, 117 P.2d 793, 189 Okl. 448—Home State Life Ins. Co. v. Jennings, 64 P.2d 304, 179 Okl. 39.
Or.—Dullum v. Northern Life Ins. Co., 127 P.2d 749, 169 Or. 233.
S.C.—Peay v. Durham Life Ins. Co., 193 S.E. 199, 185 S.C. 78.
Tex.—Connell v. Provident Life & Acc. Ins. Co., Civ.App., 219 S.W.2d 835, reversed on other grounds 224 S.W.2d 194, 148 Tex. 311—Connecticut General Life Ins. Co. v. Warner, Civ.App., 94 S.W.2d 514, error refused.
Vt.—Tyrrell v. Prudential Ins. Co. of America, 192 A. 184, 109 Vt. 6, 115 A.L.R. 392.
W.Va.—Frazee v. New York Life Ins. Co., 196 S.E. 556, 120 W.Va. 81.
Wis.—Perkie v. Carolina Ins. Co., 6 N.W.2d 195, 241 Wis. 378.

19.18 Fla.—Haiman v. Gundersheimer, 177 So. 199, 130 Fla. 109.
N.J.—Jorgensen v. Pennsylvania R.

The rule has also been applied in actions for brokers' commissions or compensation;[19.19] actions between vendor and purchaser,[19.20] and between landlord and tenant;[19.21] actions involving sales[19.22] and mortgages;[19.23] actions on notes;[19.24] actions to cancel instruments;[19.25] and actions to recover property.[19.26]

The rule that a judgment will be reversed for error in the giving of instructions where the complaining party is prejudiced thereby has also been applied in actions for death[19.27] and personal in-

Co., 118 A.2d 854, 38 N.J.Super. 317.
Wash.—Lasser v. Grunbaum Bros. Furniture Co., 281 P.2d 832, 46 Wash.2d 408.

19.19 Ga.—Jones v. Love, 21 S.E.2d 254, 67 Ga.App. 594—Williamson-Inman & Co. v. Thompson, 187 S.E. 194, 53 Ga.App. 821.
Mo.—Papen v. Friedmeyer, App., 255 S.W.2d 841—Brewer v. Gowin, App., 241 S.W.2d 275—J. E. Hood & Co. v. McCune, App., 235 S.W. 158.
Neb.—Peters v. Dreger, 21 N.W.2d 436, 146 Neb. 670.
Ohio.—Partlow v. Aaron, App., 109 N.E.2d 20.
Tex.—Adams v. Stanley, Civ.App., 88 S.W.2d 729, error dismissed.
Wash.—Godefroy v. Reilly, 250 P. 59, 140 Wash. 650.

19.20 Mont.—Fink v. Doggett, 214 P. 2d 743, 123 Mont. 324.
Ohio.—Bloodworth v. Rapport, App., 101 N.E.2d 769.

19.21 Ala.—Snead v. Phillips, 13 So. 2d 435, 31 Ala.App. 148.
Cal.—Burroughs v. Ben's Auto Park, 164 P.2d 897, 27 C.2d 449.
Black v. Partridge, 252 P.2d 760, 115 C.A.2d 639.
Ga.—Atlanta Baggage & Cab Co. v. Loftin, 76 S.E.2d 92, 88 Ga.App. 98.
Ill.—Rimmke v. Gierich, 81 N.E.2d 221, 335 Ill.App. 125.
Miss.—Aldridge v. Park, 16 So.2d 41, 195 Miss. 713—Gardner v. Heflin, 196 So. 256, 188 Miss. 790.
Mo.—Murphy v. Bader, App., 128 S. W.2d 281.
N.J.—Slater Realty Corp. v. Meys, 59 A.2d 650, 137 N.J.Law 263.
N.Y.—Kopchinski v. New York City Housing Authority, 93 N.Y.S.2d 199, 276 App.Div. 845, reargument and appeal denied 94 N.Y.S.2d 186, 276 App.Div. 907—Buonono v. Moldenke, 85 N.Y.S.2d 583, 274 App. Div. 603—Berman v. L. L. L. Realty Corp., 39 N.Y.S.2d 222, 265 App. Div. 1006—Trustees of Sailors' Snug Harbor in City of New York v. Sugarman, 35 N.Y.S.2d 196, 264 App.Div. 240—Lowenhar v. Commercial Outfitting Co., 21 N.Y.S.2d 112, 260 App.Div. 211, affirmed 34 N.E.2d 376, 285 N.Y. 671.
Lippman v. Cicala, 74 N.Y.S.2d 864.
Ohio.—Tair v. Rock Inv. Co., 41 N.E. 2d 867, 139 Ohio St. 629.
Okl.—Arbuckle Realty Trust v. Rosson, 67 P.2d 444, 180 Okl. 20.
Pa.—Stapleton v. Horton, 130 A.2d 250, 183 Pa.Super. 198.
Tex.—Perkins v. Mitchell, 268 S.W.2d 907, 153 Tex. 368.
Wash.—Kennett v. Yates, 250 P.2d 962, 41 Wash.2d 558—Coulos v. Desimone, 208 P.2d 105, 34 Wash.2d 87.

19.22 Ark.—Jones v. Caldwell, 225 S. W.2d 323, 216 Ark. 260, 16 A.L.R.2d 1416—Harris v. Hunt, 225 S.W.2d 15, 216 Ark. 300—W. C. Nabors Co. v. Ball Chevrolet Co., 145 S.W.2d 25, 201 Ark. 486.
Cal.—Rutherford v. Standard Engineering Corp., 199 P.2d 354, 88 C.A.2d 554—Bandoni v. Walston, 179 P.2d 365, 79 C.A.2d 178.
Ga.—Meadows Mill Co. v. Yawn, 37 S.E.2d 372, 73 Ga.App. 543—Jones v. Love, 21 S.E.2d 254, 67 Ga.App. 594.
Neb.—Storz Brewing Co. v. Brown, 47 N.W.2d 407, 154 Neb. 204.
N.J.—Cook v. Rice, 51 A.2d 428, 135 N.J.Law 240.
N.C.—Van Gelder Yarn Co. v. Mauney, 44 S.E.2d 601, 228 N.C. 99—Little v. Shores, 17 S.E.2d 503, 220 N.C. 429.
Ohio.—Dignan v. Brandon Oil Co., App., 49 N.E.2d 576.
Okl.—Queen Anne Candy Co. v. Eagle, 101 P.2d 624, 187 Okl. 105—International Harvester Co. of America v. Snider, 88 P.2d 606, 184 Okl. 537.
Pa.—National Container Corp. of Pa. v. Regal Corrugated Box Co., 119 A.2d 270, 383 Pa. 499.
Va.—H. J. Heinz Co. v. W. B. Shafer, Inc., 49 S.E.2d 298, 188 Va. 320.

19.23 Ga.—Zellner v. Hall, 87 S.E.2d 395, 211 Ga. 572.
Potts v. R. F. C., 47 S.E.2d 178, 76 Ga.App. 796.
N.C.—Jones v. Percy, 74 S.E.2d 700, 237 N.C. 239—Meriden Nat. Bank v. Turner, 2 S.E.2d 848, 215 N.C. 665.
Or.—Fowler v. Courtemanche, 274 P. 2d 258, 202 Or. 413.

19.24 Ark.—First Nat. Bank v. Peugh, 255 S.W. 4, 160 Ark. 517—People's Bank of Waldo v. Mendenhall, 243 S.W. 805, 154 Ark. 282.
Cal.—Rackson v. Benioff, 244 P.2d 9, 111 C.A.2d 124.
Conn.—Douglass v. Boulevard Co., 100 A. 1067, 91 Conn. 601.
D.C.—Columbia Federal Sav. and Loan Ass'n v. Jackson, Mun.App., 131 A.2d 404.
Ga.—Arnold v. Darby, 176 S.E. 914, 49 Ga.App. 629.
Iowa.—Farmers' Nat. Bank of Oskaloosa v. Stanton, 182 N.W. 647, 191 Iowa 433, 17 A.L.R. 857—Frutchey v. Derby, 179 N.W. 519, 190 Iowa 1254.
Mo.—Lampe v. Franklin American Trust Co., 96 S.W.2d 710, 339 Mo. 861, 107 A.L.R. 465.
Lueckenhoff v. Wuelling, App., 112 S.W.2d 357—Natural Bridge Trust Co. v. Hannibal, App., 109 S.W.2d 901—Kugman v. Donnell, App., 271 S.W. 535.
Neb.—Johnson v. Hansen, 297 N.W. 643, 139 Neb. 428.
N.D.—Luverne State Bank v. Dailey, 200 N.W. 793, 51 N.D. 688.
Ohio.—Gheen v. Dalonzo, App., 33 N. E.2d 416.
Okl.—Hamre v. Wagnon, 226 P.2d 934, 204 Okl. 18—Dickson v. Joy, 112 P. 2d 355, 188 Okl. 597—Sharp v. Beeler, 80 P.2d 238, 183 Okl. 84.
S.D.—Wilcox v. McCain Land & Live Stock Co., 159 N.W. 49, 37 S.D. 511.
Utah.—Farmers' & Merchants' Sav. Bank v. Jensen, 232 P. 1084, 64 Utah 609.

19.25 Ga.—Livingston v. Barnett, 19 S.E.2d 385, 193 Ga. 640—Strickland v. Davis, 190 S.E. 586, 184 Ga. 76—Morton v. Wallace, 171 S.E. 720, 177 Ga. 856.
Ind.—Gwinn v. Hobbs, 118 N.E. 155, 72 Ind.App. 439.

19.26 Colo.—Hall Hotel Co. v. Stille, 230 P. 125, 76 Colo. 165.
Ga.—Georgia Power Co. v. Green, 61 S.E.2d 146, 207 Ga. 250.
Me.—Coombs v. Fessenden, 101 A. 465, 116 Me. 304.
N.C.—Noble v. Pittman, 86 S.E.2d 89, 241 N.C. 601.
Okl.—Lynch v. Thompson, 238 P. 212, 108 Okl. 295.

Ejectment
Ala.—Golden v. Rollins, 66 So.2d 91, 259 Ala. 286.
Ark.—Lacey v. Humphres, 116 S.W. 2d 345, 196 Ark. 72.
N.C.—De Hart v. Jenkins, 190 S.E. 218, 211 N.C. 314.
Okl.—McKeel v. Mercer, 246 P. 619, 118 Okl. 66.

Eviction
D.C.—Beck v. Bechtel Hotels, Mun. App., 72 A.2d 36.

Boundaries
N.C.—McCanless v. Ballard, 24 S.E.2d 525, 222 N.C. 701.

Action to establish trust
N.C.—Brown v. Vestal, 55 S.E.2d 797, 231 N.C. 56.

19.27 Ark.—Pye v. Lowden, 100 S. W.2d 254, 193 Ark. 388.
Cal.—Dutcher v. City of Santa Rosa, High School Dist., 290 P.2d 316, 137 C.A.2d 481, rehearing denied 291 P.2d 557.

juries,[19.28] included among which are actions for | personal injuries to employees,[19.29] or passen-

Ill.—Grice v. O'Neill, 43 N.E.2d 565, 315 Ill.App. 673.
Ind.—Northern Indiana Public Service Co. v. Howard, App., 139 N.E.2d 558.
Mo.—Lebow v. Missouri Public Service Co., 270 S.W.2d 713—Swain v. Anders, 163 S.W.2d 1045, 349 Mo. 963.
N.J.—Cloyes v. Delaware Tp., 124 A.2d 37, 41 N.J.Super. 27, affirmed 129 A.2d 1, 28 N.J. 324.
N.Y.—Noseworthy v. City of New York, 80 N.E.2d 744, 298 N.Y. 76—Morrison v. New York Telephone Co., 14 N.E.2d 785, 277 N.Y. 444, reargument denied 16 N.E.2d 405, 278 N.Y. 694—Groonstad v. Robins Dry Dock & Repair Co., 139 N.E. 777, 236 N.Y. 52.
Schafer v. Norwood Equipment Corp., 98 N.Y.S.2d 626, 277 App.Div. 933—Butts v. Kouwenhoven, 73 N.Y.S.2d 498, 272 App.Div. 1019, 1071—Clifton v. Patroon Operating Corp., 63 N.Y.S.2d 597, 271 App.Div. 122—Pearson v. Esdo Bldg. Corp., 35 N.Y.S.2d 365, 264 App.Div. 862.
Ohio.—Mitchell v. New York Cent. R. Co., App., 135 N.E.2d 423.
Okl.—Bacon v. Wass, 198 P.2d 423, 200 Okl. 581—Texas Co. v. Jamison, 129 P.2d 85, 191 Okl. 283—Oklahoma Power & Water Co. v. Jamison, 106 P.2d 1097, 188 Okl. 118.
Va.—Banks v. Bradley, 66 S.E.2d 526, 192 Va. 598.
Wash.—Hiscock v. Phinney, 142 P. 461, 81 Wash. 117, Ann.Cas.1916E 1044.

19.28 Cal.—Anderson v. W. R. Chamberlin & Co., 298 P.2d 901, 142 C.A.2d 591—Elm v. McKee, 293 P.2d 827, 139 C.A.2d 353—Staggs v. Atchison, T. & S. F. Ry. Co., 287 P.2d 817, 135 C.A.2d 492—Lilienthal v. Hastings Clothing Co., 280 P.2d 824, 131 C.A.2d 343—Williamson v. Pacific Greyhound Lines, 209 P.2d 146, 93 C.A.2d 484—Baugh v. Beatty, 205 P.2d 671, 91 C.A.2d 786—Pearson v. Tide Water Associated Oil Co., App., 204 P.2d 99, reheard 223 P.2d 669, hearing dismissed—Tschumy v. Brook's Market, 140 P.2d 431, 60 C.A.2d 158—Long v. Barbieri, 7 P.2d 1082, 120 C.A. 207.
Conn.—Carlson v. Connecticut Co., 108 A. 531, 94 Conn. 131, 8 A.L.R. 569—Carl v. City of New Haven, 107 A. 502, 93 Conn. 622, 13 A.L.R. 1.
Fla.—Florida Cities Bus Co. v. Lewis, 146 So. 96, 107 Fla. 248.
Ga.—Pilgreen v. Hanson, 94 S.E.2d 752, 94 Ga.App. 423—Georgia Ry. & Power Co. v. Shaw, 102 S.E. 904, 25 Ga.App. 146—Kendrick v. High Shoals Mfg. Co., 94 S.E. 287, 21 Ga. App. 315.
Ill.—Poteraske v. Illinois Meat Co., 97 N.E.2d 475, 342 Ill.App. 555.
Ind.—Indiana Service Corp. v. Schaefer, 199 N.E. 158, 101 Ind. App. 294.
Iowa.—La Sell v. Tri-States Theatre Corp., 11 N.W.2d 36, 233 Iowa 929—Wegner v. Kelley, 157 N.W. 206.
Ky.—Kentucky Utilities Co. v. Howard, 263 S.W. 360, 203 Ky. 829.
Me.—Brooks v. Jacobs, 31 A.2d 414, 139 Me. 371.
Mo.—Elmore v. Missouri Pac. R. Co., 301 S.W.2d 776—Liddle v. Collins Const. Co., 283 S.W.2d 474—Dill v. Dallas County Farmers' Exchange No. 177, 267 S.W.2d 677—Ezell v. Kansas City, 260 S.W.2d 248—Choate v. City of Springfield, 124 S.W.2d 1127, 343 Mo. 935.
Howell v. Kroger Grocery & Baking Co., App., 178 S.W.2d 101—Smith v. Sears, Roebuck & Co., App., 117 S.W.2d 658—McMahon v. Joseph Greenspon's Sons Iron & Steel Co., App., 267 S.W. 83—Dempsey v. City Light & Traction Co., App., 256 S.W. 155—Calhoun v. Schaff, App., 229 S.W. 277—Rose v. Gunn Fruit Co., 211 S.W. 85, 201 Mo.App. 262—Albritton v. Kansas City, 188 S.W. 239, 192 Mo.App. 574—Bethel v. City of St. Joseph, App., 180 S.W. 401—Dority v. St. Louis & S. F. R. Co., 174 S.W. 209, 188 Mo.App. 365.
N.J.—Reid v. Monmouth Oil Co., 126 A.2d 368, 42 N.J.Super. 355.
N.Y.—Cosby v. City of Rochester, 153 N.Y.S.2d 195, 1 N.Y.2d 396, 135 N.E.2d 706—Schumer v. Caplin, 150 N.E. 139, 241 N.Y. 346.
Koehler v. Grace Line, Inc., 136 N.Y.S.2d 87, 285 App.Div. 154—Cairns v. Matthews, 66 N.Y.S.2d 916, 271 App.Div. 886—Brenna v. Hulkower, 30 N.Y.S.2d 289, 262 App.Div. 1023—Eisenberg v. Irving Kemp, Inc., 11 N.Y.S.2d 449, 256 App.Div. 698—Hochman v. Aronowitz, 297 N.Y.S. 429, 251 App.Div. 914—Schaffron v. Tuttle, 180 N.Y.S. 951, 189 App.Div. 924, affirmed 132 N.E. 875, 231 N.Y. 529.
N.C.—Rice v. Swannanoa-Berkeley Hotel Co., 184 S.E. 3, 209 N.C. 519.
Ohio.—Scheibel v. Lipton, 102 N.E.2d 453, 156 Ohio St. 308—Vaughan v. Industrial Silica Corporation, 42 N.E.2d 156, 140 Ohio St. 17—Scioto Valley Ry. & Power Co. v. Rutter, 147 N.E. 910, 112 Ohio St. 500—Jones v. Village of Girard, 144 N.E. 847, 111 Ohio St. 258.
Donoughe v. East Ohio Gas Co., 102 N.E.2d 881, 89 Ohio App. 411—Dakovich v. Henrich, 80 N.E.2d 800, 82 Ohio App. 121—Giglio v. Lasita, 55 N.E.2d 666, 73 Ohio App. 207—Conor v. Flick, 28 N.E.2d 657, 64 Ohio App. 259—Helton v. Northern Amusement Co., 24 N.E.2d 713, 62 Ohio App. 470.
Okl.—Phillips Petroleum Co. v. Price, 298 P.2d 772—City of Tulsa v. Pearson, 277 P.2d 135—National Life & Accident Ins. Co. v. Anderson, 102 P.2d 141, 187 Okl. 180.
R.I.—Kane v. Burrillville Racing Ass'n, 54 A.2d 401, 73 R.I. 264—Mandella v. Mariano, 200 A. 478, 61 R.I. 163.
S.C.—Boylston v. Armour & Co., 12 S.E.2d 34, 196 S.C. 1.
Tex.—H. E. Butt Grocery Co. v. Johnson, Civ.App., 226 S.W.2d 501, error refused no reversible error.
Va.—Perlin v. Chappell, 96 S.E.2d 805, 198 Va. 861.
Wash.—Kennett v. Federici, 93 P.2d 333, 200 Wash. 156—Hubbard v. Embassy Theatre Corp., 82 P.2d 153, 196 Wash. 155.
W.Va.—Harper v. Cook, 82 S.E.2d 427, 139 W.Va. 917—Miller v. Douglas, 5 S.E.2d 799, 121 W.Va. 638.
Wis.—Brabazon v. Joannes Bros. Co., 286 N.W. 21, 231 Wis. 426—Rump v. Bresnan, 151 N.W. 251, 160 Wis. 179.

19.29 Ark.—Missouri Pac. R. Co. v. Hall, 255 S.W. 707, 161 Ark. 122—Mosley v. Mohawk Lumber Co., 183 S.W. 187, 122 Ark. 227.
Cal.—Anderson v. W. R. Chamberlin & Co., 298 P.2d 901, 142 C.A.2d 591—Pearson v. Tide Water Associated Oil Co., App., 204 P.2d 99, reheard 223 P.2d 669, hearing dismissed—Karberg v. Southern Pac. Co., 52 P.2d 285, 10 C.A.2d 234.
Ga.—Plaspohl v. Atlantic Coast Line R. Co., 74 S.E.2d 491, 87 Ga.App. 506—Southern Ry. Co. v. Goree, 187 S.E. 297, 54 Ga.App. 134.
Ill.—Wagner v. Illinois Cent. R. Co., 129 N.E.2d 771, 7 Ill.App.2d 445—Virgil v. New York, C. & St. L. R. Co., 106 N.E.2d 749, 347 Ill.App. 281—Krayouska v. Spring Valley Coal Co., 205 Ill.App. 144.
Ky.—Happy-Scuddy Coal Co. v. Combs, 219 S.W.2d 968, 310 Ky. 52—Croley v. Huddleston, 192 S.W. 2d 717, 301 Ky. 580—Cincinnati, N. O. & T. P. Ry. Co. v. Gardner, 176 S.W. 351, 165 Ky. 48.
Miss.—Walley v. Williams, 28 So.2d 579, 201 Miss. 84—Hardaway Contracting Co. v. Rivers, 180 So. 800, 181 Miss. 727—Gaines v. Strickland, 170 So. 695, 178 Miss. 308.
Mo.—Boyd v. Terminal R. Ass'n of St. Louis, 289 S.W.2d 33—Hughes v. Terminal R. Ass'n of St. Louis, 265 S.W.2d 273—Murphy v. St. Louis Public Service Co., 244 S.W. 2d 31, 362 Mo. 772—Lefkowitz v. Kansas City Public Service Co., 242 S.W.2d 530—Culver v. Kurn, 193 S.W.2d 602, 354 Mo. 1158, 166 A.L.R. 644—Pritchard v. Thompson, 156 S.W.2d 652, 348 Mo. 832—Choate v. City of Springfield, 124 S.W. 2d 1127, 343 Mo. 935—Schleappe v. Terminal R. R. Ass'n of St. Louis, 98 S.W.2d 616, 339 Mo. 562.

gers;[19.30] injuries from the operation of railroads,[19.31] injuries at railroad crossings,[19.32] and

Mullin v. St. Louis-San Francisco Ry. Co., App., 254 S.W.2d 438—Johnson v. Thompson, App., 236 S.W.2d 1—Jablonski v. May Department Stores Co., App., 153 S.W.2d 786—Forrester v. Walsh Fire Clay Products Co., App., 231 S.W. 668.

Mont.—Hickman v. First Nat. Bank of Great Falls, 117 P.2d 275, 112 Mont. 398.

N.H.—Morin v. Champlin, 43 A.2d 772, 93 N.H. 422.

N.Y.—Griffin v. New York Cent. R. Co., 98 N.Y.S.2d 346, 277 App.Div. 320—Bitterman v. Gluck, 9 N.Y.S.2d 1007, 256 App.Div. 336.

N.C.—Bame v. Palmer Stone Works, 59 S.E.2d 812, 232 N.C. 267.

Ohio.—Elkins v. Wheeling & Lake Erie Ry. Co., 113 N.E.2d 233, 160 Ohio St. 47.

Kay v. Pennsylvania R. Co., App., 102 N.E.2d 855—Logsdon v. Industrial Commission, App., 67 N.E.2d 823, affirmed 67 N.E.2d 75, 143 Ohio St. 508—McKee v. New Idea, App., 44 N.E.2d 697—State ex rel. Leichnam v. Hoff, App., 41 N.E.2d 404, affirmed State ex rel. Herbert v. Hoff, 42 N.E.2d 990, 140 Ohio St. 236.

Okl.—Tway v. Hartman, 75 P.2d 893, 181 Okl. 608—Missouri, K. & T. Ry. Co. v. Lenahan, 171 P. 455, 68 Okl. 73—Dolese Bros. Co. v. Smith, 141 P. 775, 42 Okl. 452.

Or.—Stanfield v. Fletcher, 236 P. 258, 114 Or. 531.

R.I.—Rossi v. Ronci, 195 A. 401, 59 R.I. 307.

Tenn.—Nashville Bridge Co. v. Hudgins, 137 S.W.2d 327, 23 Tenn.App. 677.

Tex.—Denbow v. Standard Acc. Ins Co., 186 S.W.2d 236, 143 Tex. 455.

Maryland Casualty Co. v. Landry, Civ.App., 147 S.W.2d 290, error dismissed, judgment correct—Southern Underwriters v. Waddell, Civ.App., 144 S.W.2d 637—Hines v. Walker, Civ.App., 225 S.W. 837, error refused—Trinity & B. V. Ry. Co. v. Dodd, Civ.App., 167 S.W. 238.

Utah.—Kirchgestner v. Denver & R. G. W. R. Co., 233 P.2d 699, 118 Utah 41—Marshall v. Ogden Union Ry. & Depot Co., 221 P.2d 868, 118 Utah 161—Riding v. Roylance, 224 P. 885, 63 Utah 221.

Wash.—Cantrill v. American Mail Line, 257 P.2d 179, 42 Wash.2d 590.

19.30 Ala.—Lambert v. Birmingham Electric Co., 13 So.2d 579, 244 Ala. 333.

Ariz.—City of Phoenix v. Mubarek Ali Khan, 229 P.2d 949, 72 Ariz. 1.

Ark.—Missouri Pacific Transp. Co. v. Williams, 109 S.W.2d 924, 194 Ark. 852.

Cal.—Wilson v. Los Angeles Trona Stages, 284 P.2d 951, 133 C.A.2d 756—Finley v. City and County of San Francisco, 251 P.2d 687, 115 C.A.2d 116—Williamson v. Pacific Greyhound Lines, 209 P.2d 146, 93 C.A.2d 484.

Conn.—Sampson v. Wilson, 96 A. 163, 89 Conn. 707.

Ga.—Pope v. Associated Cab Co., 83 S.E.2d 310, 90 Ga.App. 560—Johnson v. Roberson, 77 S.E.2d 232, 88 Ga.App. 548—Atlantic Coast Line R. Co. v. Thomas, 64 S.E.2d 301, 83 Ga.App. 477—Southern Ry. Co. v. Smallwood, 99 S.E. 539, 23 Ga.App. 810.

Ill.—Kiesel v. Chicago Transit Authority, 126 N.E.2d 170, 6 Ill.App. 2d 13—Piacente v. Illinois Cent. R. Co., 123 N.E.2d 594, 4 Ill.App.2d 113—Gordon v. Checker Taxi Co., 79 N.E.2d 632, 334 Ill.App. 313—Bilhorn v. Richardson, 11 N.E.2d 241, 292 Ill.App. 639.

Ind.—Gary Rys. v. Chumcoff, 96 N. E.2d 685, 122 Ind.App. 139, transfer denied 103 N.E.2d 203, 230 Ind. 309—Terre Haute, I. & E. Traction Co. v. York, 110 N.E. 999, 60 Ind. App. 399.

Ky.—Bowling Green-Hopkinsville Bus Co. v. Adams, 261 S.W.2d 14—Bridge Transit Co. v. Leseuer, 200 S.W.2d 942, 304 Ky. 403—Warren v. Cumberland R. Co., 193 S.W. 1037, 175 Ky. 92.

Mich.—Fitzgerald v. Detroit United Ry., 172 N.W. 608, 206 Mich. 273.

Mo.—Beahan v. St. Louis Public Service Co., 237 S.W.2d 105, 361 Mo. 807—Piehler v. Kansas City Public Service Co., 226 S.W.2d 681, 360 Mo. 12—Yates v. Manchester, 217 S.W.2d 541, 358 Mo. 894—Lewis v. Zagata, 166 S.W.2d 541, 350 Mo. 446—Berry v. Kansas City Public Service Co., 121 S.W.2d 825, 343 Mo. 474—Carlson v. Wells, 276 S. W. 26, 42 A.L.R. 1319.

Ernest E. Fadler Co. v. Chicago, R. I. & P. R. Co., App., 261 S.W.2d 394—Duncker v. St. Louis Public Service Co., App., 241 S.W. 2d 64—Boulos v. Kansas City Public Service Co., App., 215 S.W.2d 750, reversed on other grounds, 223 S.W.2d 446, 359 Mo. 763—Hughes v. East St. Louis City Lines, App., 149 S.W.2d 440—Axon v. Kansas City Public Service Co., App., 142 S.W.2d 342.

Neb.—Krepcik v. Interstate Transit Lines, 43 N.W.2d 609, 153 Neb. 98—Olson v. Omaha & C. B. St. Ry. Co., 289 N.W. 356, 137 Neb. 216.

N.Y.—McQuage v. City of New York, 136 N.Y.S.2d 111, 285 App.Div. 249—Banner Mfg. Co. v. Long Island R. Co., 97 N.Y.S.2d 730, 277 App. Div. 142, reargument denied 100 N.Y.S.2d 225, 277 App.Div. 974—Bertrand v. Delaware & Hudson R. R. Corp., 46 N.Y.S.2d 78, 267 App.Div. 228.

Scazzafava v. Brooklyn & Queens Transit Corp., 21 N.Y.S.2d 915—Bluestein v. New York Rys. Co., 175 N.Y.S. 740.

N.C.—Smith v. Safe Bus Co., 3 S.E. 2d 362, 216 N.C. 22.

Ohio.—Franck v. Railway Exp. Agency, 112 N.E.2d 381, 159 Ohio St. 343.

Kaltenbach v. Cleveland, Columbus & Cincinnati Highway, 80 N.E. 2d 640, 82 Ohio App. 10—Hudak v. Penn-Ohio Coach Lines Co., 57 N.E.2d 93, 73 Ohio App. 409.

R.I.—Burke v. United Elec. Rys. Co., 83 A.2d 88, 79 R.I. 50.

Tex.—Carpenter v. Trinity & B. V. Ry. Co., 184 S.W. 186, 108 Tex. 52, 1 A.L.R. 1449.

Utah.—Williamson v. Salt Lake & O. Ry. Co., 172 P. 680, 52 Utah 84, L.R.A.1918F 588.

W.Va.—Isabella v. West Virginia Transp. Co., 51 S.E.2d 318, 132 W. Va. 85.

Wis.—Zlino v. Milwaukee Elec. Ry. & Transport Co., 74 N.W.2d 791, 272 Wis. 21.

19.31 Ark.—Chicago, R. I. & P. Ry. Co. v. Caple, 179 S.W.2d 151, 207 Ark. 52.

Cal.—Staggs v. Atchison, T. & S. F. Ry. Co., 287 P.2d 817, 135 C.A.2d 492.

Fla.—Atlantic Coast Line R. Co. v. Voss, 186 So. 199, 136 Fla. 32.

Ga.—Southern Ry. Co. v. Benton, 196 S.E. 256, 57 Ga.App. 520.

Ky.—Louisville & N. R. Co. v. Foust, 118 S.W.2d 771, 274 Ky. 435.

Mo.—Yakubinis, by Flynn, v. Missouri-Kansas-Texas R. Co., 100 S. W.2d 461, 339 Mo. 1124.

Campbell v. Terminal R. Ass'n of St. Louis, 126 S.W.2d 915, 235 Mo. App. 56—McCullough v. Chicago, R. I. & P. R. Co., App., 88 S.W.2d 400.

N.Y.—Noseworthy v. City of New York, 80 N.E.2d 744, 298 N.Y. 76.

Ohio.—Weiler v. Pennsylvania R. Co., 28 N.E.2d 792, 64 Ohio App. 411.

S.C.—Hayes v. Atlantic Coast Line R. Co., 13 S.E.2d 921, 196 S.C. 386.

Wash.—Dick v. Great Northern Ry. Co., 121 P.2d 966, 12 Wash.2d 364.

W.Va.—Payne v. Virginian Ry. Co., 51 S.E.2d 514, 131 W.Va. 767.

19.32 Ariz.—Wolfswinkel v. Southern Pac. Co., 307 P.2d 1040, 82 Ariz. 33—Southern Pac. Co. v. Baca, 268 P.2d 968, 77 Ariz. 173.

Ark.—Missouri Pac. R. Co. v. Frye, 214 S.W.2d 495, 214 Ark. 92—St. Louis-San Francisco Ry. Co. v. Mangum, 136 S.W.2d 158, 199 Ark. 767—Missouri Pac. R. Co. v. Beard, 128 S.W.2d 697, 198 Ark. 346.

Cal.—Pennington v. Southern Pac. Co., 304 P.2d 22, 146 C.A.2d 605—Deshotel v. Atchison, T. & S. F. Ry. Co., 272 P.2d 71, 126 C.A.2d 303

injuries due to highway, street, and sidewalk defects.[19.33]

The principle that a judgment will be reversed for prejudicial error in the giving of instructions has also been applied in actions for injuries to property[19.34] and actions for killing stock.[19.35] The rule has also been applied in actions against carriers with respect to the carriage of goods,[19.36] actions on claims against estates,[19.37] actions involving mu-

—Cortopassi v. California-Western Railroad & Navigation Co., App., 128 P.2d 910.
Fla.—Loftin v. Nolin, 86 So.2d 161—Loftin v. Skelton, 12 So.2d 175, 152 Fla. 437.
Ga.—Georgia R. R. & Banking Co. v. Cook, 95 S.E.2d 703, 94 Ga.App. 650—Savannah & A. Ry. Co. v. Newsome, 83 S.E.2d 80, 90 Ga.App. 390—Sherrill v. Callaway, 61 S.E.2d 548, 82 Ga.App. 499—Atlantic Coast Line R. Co. v. Brand, 54 S.E.2d 312, 79 Ga.App. 552—Chandler v. Pollard, 12 S.E.2d 190, 64 Ga.App. 122—Southern Ry. Co. v. Riley, 4 S.E.2d 54, 60 Ga.App. 475.
Ill.—Linquist v. Illinois Cent. R. Co., 126 N.E.2d 745, 6 Ill.App.2d 209—Chapman v. Gulf, M. & O. R. Co., 86 N.E.2d 552, 337 Ill.App. 611.
Ind.—Henry v. Baltimore & O. R. Co., 37 N.E.2d 190, 219 Ind. 306.
Iowa.—Anderson v. U. S. Railroad Administration, 188 N.W. 826, 193 Iowa 1041.
Ky.—Louisville & N. R. Co. v. Frye, 246 S.W.2d 458.
Miss.—St. Louis & S. F. Ry Co. v. Nichols, 138 So. 364, 161 Miss. 795.
Mo.—Wabash R. Co. v. Dannen Mills, Inc., 288 S.W.2d 926—Cunningham v. Thompson, 277 S.W.2d 602—Hein v. Terminal R. R. Ass'n of St. Louis, 224 S.W.2d 963, 359 Mo. 946—Carson v. Baldwin, 144 S.W.2d 134, 346 Mo. 984—Connole v. East St. Louis & S. Ry. Co., 102 S.W.2d 581, 340 Mo. 690.
Patterson v. Thompson, App., 277 S.W.2d 314—Grotjan v. Thompson, App., 140 S.W.2d 706—Roshel v. Litchfield & M. Ry. Co., App., 112 S.W.2d 876—Yoakum v. Atchison, T. & S. F. Ry. Co., App., 199 S.W. 263.
N.J.—Jelinek v. Sotak, 86 A.2d 684, 9 N.J. 19.
Girardin v. New York & L. B. R. Co., 50 A.2d 872, 135 N.J.Law 135.
N.C.—Southern Ry. Co. v. Akers Motor Lines, 89 S.E.2d 392, 242 N.C. 676.
Ohio.—McLaughlin v. New York Cent. R. Co., 200 N.E. 757, 130 Ohio St. 527.
Mitchell v. New York Cent. R. Co., App., 135 N.E.2d 423—Weiler v. Pennsylvania R. Co., 28 N.E.2d 792, 64 Ohio App. 411—Youngstown & S. Ry. Co. v. Prigosin, 4 N.E.2d 599, 53 Ohio App. 189.
Okl.—Midland Val. R. Co. v. Pettie, 162 P.2d 543, 196 Okl. 52—Atchison, T. & S. F. Ry. Co. v. Bratcher, 225 P. 941, 99 Okl. 74.
S.C.—Collins v. Atlantic Coast Line R. Co., 190 S.E. 817, 183 S.C. 284.
Tex.—Missouri, K. & T. Ry. Co. of Texas v. Merchant, Com.App., 231 S.W. 327—International & G. N. R. Co. v. Isaacs, Com.App., 208 S.W. 897.
Panhandle & S. F. Ry. Co. v. Friend, Civ.App., 91 S.W.2d 922—Louisiana Ry. & Nav. Co. of Texas v. Brewer, Civ.App., 275 S.W. 181.
Va.—Director General of Railroads v. Pence's Adm'x, 116 S.E. 351, 135 Va. 329.
Wis.—Reuling v. Chicago, St. P., M. & O. Ry. Co., 44 N.W.2d 253, 257 Wis. 485.

19.33 Ala.—Luquire Ins. Co. v. McCalla, 13 So.2d 865, 244 Ala. 479.
Cal.—Prescott v. Ralph's Grocery Co., 265 P.2d 904, 42 C.2d 158—Sexton v. Brooks, 245 P.2d 496, 39 C.2d 153.
Ga.—Palefsky v. Mayor of Savannah, 95 S.E.2d 715, 94 Ga.App. 597.
Ill.—Wayland v. City of Chicago, 21 N.E.2d 55, 300 Ill.App. 608.
Mo.—Ezell v. Kansas City, 260 S.W. 2d 248—Guy v. Kansas City, 257 S.W.2d 665—Stubblefield v. Federal Reserve Bank of St. Louis, 204 S. W.2d 718, 356 Mo. 1018.
Schaefer v. Kansas City, App., 270 S.W.2d 84.
N.Y.—Pryga v. Will, 87 N.Y.S.2d 162, 275 App.Div. 52.
N.C.—Ryals v. Carolina Contracting Co., 14 S.E.2d 531, 219 N.C. 479.
Ohio.—Griffin v. City of Cincinnati, 111 N.E.2d 31, 92 Ohio App. 492—Deckant v. City of Cleveland, App., 97 N.E.2d 84, 88 Ohio App. 469, reversed on other grounds 99 N.E.2d 609, 155 Ohio St. 498—Neale v. Village of Tallmadge, App., 35 N.E. 2d 158.
Okl.—Safeway Stores v. Duvall, 252 P.2d 1022, 208 Okl. 21.
Pa.—Davies v. Klipman, 56 A.2d 316, 162 Pa.Super. 82.

19.34 Ala.—Bain v. Culbert, 96 So. 228, 209 Ala. 312.
Ariz.—Mohave County v. Chamberlin, 281 P.2d 128, 78 Ariz. 422.
Cal.—Bacigalupi v. Bagshaw, 196 P. 2d 66, 87 C.A.2d 48.
Fla.—Armour Fertilizer Works v. Crawford, 103 So. 412, 89 Fla. 152.
Ga.—Goodyear Clearwater Mills v. Wheeler, 49 S.E.2d 184, 77 Ga.App. 570—Elliott v. Levy, 49 S.E.2d 179, 77 Ga.App. 562.
Ky.—Norfolk & W. Ry. Co. v. McCoy, 156 S.W.2d 493, 288 Ky. 458.
Md.—Adams v. Carey, 190 A. 815, 172 Md. 173.
Miss.—Hudson v. Landers, 61 So.2d 312, 215 Miss. 447
Mo.—Thompson v. Economy Hydro Gas Co., 257 S.W.2d 669, 363 Mo. 1115.
Moore v. St. Louis Southwestern Ry. Co., App., 301 S.W.2d 395—Lerner v. Yeghishian, App., 271 S. W.2d 588.
N.J.—Guzzi v. Jersey Central Power & Light Co., 96 A.2d 387, 12 N.J. 251.
Guzzi v. Jersey Cent. Power & Light Co., 115 A.2d 629, 36 N.J. Super. 255.
Ohio.—Campanelli v. Gindlesparger, App., 80 N.E.2d 701.
Okl.—Texas Co. v. Taylor, 61 P.2d 574, 178 Okl. 21.
S.D.—Shann v. Rapid City, 35 N.W.2d 399, 72 S.D. 418.
Va.—Jeffress v. Virginia Ry. & Power Co., 104 S.E. 393, 127 Va. 694.

19.35 Ala.—Central of Georgia Ry. Co. v. Williams, 80 So. 880, 202 Ala. 496—Fuqua v. Southern Ry. Co., 77 So. 690, 201 Ala. 164.
Fla.—Powell v. American Sumatra Tobacco Co., 17 So.2d 391, 154 Fla. 227.
Ga.—Atlantic Coast Line R. Co. v. Rowe, 64 S.E.2d 689, 83 Ga.App. 733—Atlantic Coast Line R. Co. v. Rowe, 64 S.E.2d 216, 83 Ga.App. 540—Macon, D. & S. R. Co. v. Stephens, 19 S.E.2d 32, 66 Ga.App. 636.
Mo.—Kidd v. Thompson, App., 242 S. W.2d 585.
Okl.—Atchison, T. & S. F. Ry. Co. v. Lyon, 216 P. 897, 95 Okl. 20.
Tenn.—Tennessee Val. Elec. Co-op. v. Harmon, 286 S.W.2d 593, 39 Tenn. App. 580.

19.36 Ariz.—Southern Pac. Co. v. Itule, 74 P.2d 38, 51 Ariz. 25, 115 A.L.R. 1268.
Ga.—Dixie Freight Lines v. Transportation, Inc., 187 S.E. 281, 53 Ga. App. 832.
N.C.—Bane v. Atlantic Coast Line R. Co., 88 S.E. 477, 171 N.C. 328.
Okl.—Eastern Elevator Co. v. Atchison, T. & S. F. Ry. Co., 219 P. 332, 93 Okl. 20.
Tex.—Hines v. Whiteman, Civ.App., 228 S.W. 979—St. Louis Southwestern Ry. Co. of Texas v. Kerr, Civ. App., 184 S.W. 1058.

19.37 Ala.—Mitchell v. Shelby, 81 So. 346, 17 Ala.App. 10.
Cal.—Tabata v. Murane, 148 P.2d 605, 24 C.2d 221.
Ill.—In re Humphrey's Estate, 9 N.E. 2d 260, 290 Ill.App. 608.
Ind.—Hensley v. Hilton, 131 N.E. 38, 191 Ind. 309.
Mo.—Ross v. Pendergast, 182 S.W.2d 307, 353 Mo. 300—Lampe v. Frank-

nicipal corporations,[19.38] and actions against sureties.[19.39]

The doctrine that prejudicial error in instructions warrants reversal has also been applied where the erroneous instruction was as to adverse possession,[19.40] a counterclaim,[19.41] damages,[19.42] expert

lin American Trust Co., 96 S.W.2d 710, 339 Mo. 361, 107 A.L.R. 465.
Old Bank of Stoutsville v. Curtiss, 260 S.W. 812, 214 Mo.App. 270.
Ohio.—Harding v. Talbott, 11 N.E.2d 266, 57 Ohio App. 21.
Va.—Ricks v. Sumler, 19 S.E.2d 889, 179 Va. 571.

19.38 Cal.—Campbell v. City of Los Angeles, 82 P.2d 720, 28 C.A.2d 490.
Ill.—Wayland v. City of Chicago, 21 N.E.2d 55, 300 Ill.App. 608.
Ind.—Town of Kirklin v. Everman, 29 N.E.2d 206, 217 Ind. 683.
Art Mosaic & Tile Co. v. St. Clair, 13 N.E.2d 317, 105 Ind.App. 423.
Iowa.—Tillotson v. City of Davenport, 4 N.W.2d 365, 232 Iowa 44.
Ky.—City of Marion v. Nunn, 166 S. W.2d 298, 292 Ky. 251.
Mass.—Gower v. Town of Saugus, 54 N.E.2d 53, 315 Mass. 677—Bullard v. Mattoon, 8 N.E.2d 348, 297 Mass. 182.
Miss.—City of Meridian v. Peavy, 194 So. 595, 188 Miss. 168.
Mo.—Kansas City v. Rathford, 186 S.W.2d 570, 353 Mo. 1130—State ex rel. City of Jefferson v. Shain, 124 S.W.2d 1194, 334 Mo. 57—Mengel v. City of St. Louis, 111 S.W.2d 5, 341 Mo. 994.
Bornhoft v. City of Jefferson, App., 128 S.W. 1080—Hunt v. Kansas City, App., 114 S.W.2d 153.
N.J.—Reardon v. Borough of Wanaque, 41 A.2d 379, 132 N.J.Law 536—Borough of Stockton, Hunterdon County, v. Frabizio, 31 A.2d 43, 130 N.J.Law 12.
N.Y.—Delaney v. Philhern Realty Holding Corp., 21 N.E.2d 507, 280 N.Y. 461.
Dea v. Marxhausen, 16 N.Y.S.2d 8, 258 App.Div. 121—Galvano v. S. Klein, Inc., 13 N.Y.S.2d 579, 257 App.Div. 989.
N.C.—Messick v. City of Hickory, 191 S.E. 43, 211 N.C. 531.
Ohio.—Corbin v. City of Cleveland, 57 N.E.2d 427, 74 Ohio App. 199, affirmed 56 N.E.2d 214, 144 Ohio St. 32, 154 A.L.R. 874—Cloud v. City of Fremont, 51 N.E.2d 39, 72 Ohio App. 193—Karle v. Cincinnati St. Ry. Co., 43 N.E.2d 762, 69 Ohio App. 327—Tarian v. City of Alliance, 32 N.E.2d 578, 66 Ohio App. 423—Marziale v. Wilson, App., 31 N.E.2d 480—Pitzer v. Sears, Roebuck & Co., 31 N.E.2d 450, 66 Ohio App. 35—Stephens v. City of Akron, 18 N. E.2d 830, 59 Ohio App. 526—Rudibaugh v. City of Niles, 11 N.E.2d 193, 56 Ohio App. 451—City of Lorain v. Griffith, 198 N.E. 732, 50 Ohio App. 505.
Pa.—Ford v. City of Philadelphia, 24 A.2d 746, 148 Pa.Super. 195.
S.D.—Williams v. Wessington Tp., 14 N.W.2d 493, 70 S.D. 75.

19.39 S.C.—Nilson v. Dowling, 159 S. E. 831, 161 S.C. 515—Thomas Drug Store v. National Surety Co., 88 S.E. 442, 104 S.C. 190.
S.D.—Bristow v. Western Sur. Co., 78 N.W.2d 734.

19.40 Ga.—Lightfoot v. Applewhite, 91 S.E.2d 37, 212 Ga. 136—May v. Sorrell, 101 S.E. 535, 149 Ga. 610.
Lively v. Thompson, 75 S.E.2d 846, 88 Ga.App. 31.
Ky.—Stevens v. Fike, 144 S.W.2d 795, 284 Ky. 371.
N.C.—Vance v. Guy, 27 S.E.2d 117, 223 N.C. 409.
Tex.—Pinchback v. Hockless, 158 S. W.2d 997, 138 Tex. 306.

19.41 Neb.—Olsen v. McMaken & Pentzien, 297 N.W. 830, 139 Neb. 506.

19.42 Ala.—Western Union Telegraph Co. v. Ryan, 90 So. 793, 206 Ala. 511—Climer v. St. Clair County Telephone Co., 77 So. 30, 200 Ala. 656—Louisville & N. R. Co. v. Carter, 70 So. 655, 195 Ala. 382, Ann.Cas.1917E 292.
Worthington v. Cleveland Lumber Co., 80 So. 688, 16 Ala.App. 614.
Ark.—Hines v. Betts, 226 S.W. 165, 146 Ark. 555—Brunson v. Teague, 186 S.W. 78, 123 Ark. 594.
Conn.—Mickel v. New England Coal & Coke Co., 47 A.2d 187, 132 Conn. 671, 171 A.L.R. 1001—Anderson v. Snyder, 99 A. 1032, 91 Conn. 404.
Fla.—Atlantic Coast Line R. Co. v. Saffold, 178 So. 288, 130 Fla. 598—Payne v. Ivey, 93 So. 143, 83 Fla. 436.
Ga.—Western & A. Ry. Co. v. Knight, 83 S.E. 943, 142 Ga. 801.
Draper Canning Co. v. Dempsey, 86 S.E.2d 678, 91 Ga.App. 593—Nipper v. Collins, 84 S.E.2d 497, 90 Ga. App. 827—Atlantic Coast Line R. Co. v. Ansley, 65 S.E.2d 463, 84 Ga.App. 89—John Deere Plow Co. v. Head, 23 S.E.2d 523, 68 Ga.App. 502—Franklin v. Evans, 189 S.E. 722, 55 Ga.App. 177—White & Hamilton Lumber Co. v. Lynch, 121 S.E. 874, 31 Ga.App. 697, affirmed 125 S.E. 472, 159 Ga. 283, 44 A.L.R. 211—Central of Georgia Ry. Co. v. Tribble, 105 S.E. 251, 25 Ga.App. 775.
Idaho.—Hayward v. Yost, 242 P.2d 971, 72 Idaho 415.
Ill.—McCray v. Illinois Cent. R. Co., 139 N.E.2d 817, 12 Ill.App.2d 425—Swearingen v. McGovern, 82 N.E.2d 191, 335 Ill.App. 564—Selimos v. Christ, 73 N.E.2d 152, 331 Ill.App. 412—Jackson v. Thompson, 32 N.E. 2d 997, 309 Ill.App. 187—Fetzer v. Chicago Title & Trust Co., 14 N.E. 2d 966, 295 Ill.App. 425—Levitan v. Chicago City Ry. Co., 203 Ill.App. 441—Thiele v. Hetzel, 184 Ill.App. 633.
Ind.—Neal v. Stafford, 18 N.E.2d 960, 106 Ind.App. 189—Northern Indiana Public Service Co. v. Robinson, 18 N.E.2d 933, 106 Ind.App. 210—Stewart v. Swartz, 106 N.E. 719, 57 Ind.App. 249.
Iowa.—Quillen v. Lessenger, 181 N. W. 8, 190 Iowa 939—Miller v. Economy Hog & Cattle Powder Co., 293 N.W. 4, 228 Iowa 626—Remer v. Takin Bros. Freight Lines, 289 N.W. 477, 227 Iowa 903.
Ky.—Lee v. Stamper, 300 S.W.2d 251—Gassaway Const. Co. v. Gentry, 264 S.W.2d 658—Hayes Freight Lines v. Hamilton, 257 S.W.2d 60—Pape v. Sutherland, 220 S.W.2d 372, 310 Ky. 199—Sedlock v. Trosper, 211 S.W.2d 147, 307 Ky. 369, 13 A.L.R.2d 349—Davis v. Marks, 262 S.W. 613, 203 Ky. 477—Louisville & N. R. Co. v. Briggs, 215 S.W. 529, 185 Ky. 676—Waller v. City of Morganfield, 201 S.W. 459, 180 Ky. 56—Sandy Valley & E. Ry. Co. v. Bentley, 194 S.W. 906, 175 Ky. 736—Louisville & N. R. Co. v. Gillespie, 177 S.W. 451, 165 Ky. 575.
Md.—Levine v. Chambers, 118 A. 798, 141 Md. 336.
Mass.—Whitney v. Lynch, 109 N.E. 826, 222 Mass. 112.
Mich.—Kemp v. Aldrich, 286 N.W. 81, 286 Mich. 715.
Miss.—Transcontinental Gas Pipe Line Corp. v. Hill, 55 So.2d 170, suggestion of error overruled 57 So.2d 162—Southeastern Express Co. v. Thompson, 104 So. 80, 139 Miss. 344—Jackson Coca-Cola Bottling Co. v. Renna, 97 So. 674—J. J. Newman Lumber Co. v. Norris, 94 So. 881, 130 Miss. 751—Louisville & N. R. Co. v. Garnett, 93 So. 241, 129 Miss. 795.
Mo.—Murphy v. St. Louis Public Service Co., 244 S.W.2d 31, 362 Mo. 772—Russell v. Empire Storage & Ice Co., 59 S.W.2d 1061, 332 Mo. 707.
Golden v. Onerem, App., 123 S.W. 2d 617—Kelly v. Kiel, App., 117 S.W.2d 1086—Davis v. Davis, App., 235 S.W. 182—Baldwin v. Kansas City Rys. Co., App., 218 S.W. 955—Consumers' Glue Co. v. Samuel Bingham's Son Mfg. Co., 181 S.W. 1086, 193 Mo.App. 90—Cross v. Chicago, B. & Q. R. Co., 177 S.W. 1127, 191 Mo.App. 202.
Neb.—Lund v. Holbrook, 46 N.W.2d 130, 153 Neb. 706—Krepcik v. Interstate Transit Lines, 43 N.W.2d 609, 153 Neb. 98—Asche v. Loup River Public Power Dist., 296 N.W.

evidence,[19.43] limitations,[19.44] and proximate cause.[19.45]

The rule that prejudicial error in the giving of instructions warrants reversal has also been applied where the erroneous instruction was as to negligence,[19.46] contributory negligence,[19.47] degree of care,[19.48] unavoidable accident which could not

439, 138 Neb. 890—Linch v. Hartford Fire Ins. Co., 292 N.W. 27, 138 Neb. 110, 129 A.L.R. 1063.
N.J.—Stuart v. Burlington County Farmers' Exchange, 97 A. 775, 89 N.J.Law 12, affirmed 101 A. 265, 90 N.J.Law 584.
N.Y.—Gilbert v. Stanton Brewery, 67 N.E.2d 155, 295 N.Y. 270.
Lion v. Lahn, 176 N.Y.S. 823.
N.C.—Faison v. Cribb, 85 S.E.2d 139, 241 N.C. 303—White v. North Carolina R. Co., 3 S.E.2d 310, 216 N.C. 79.
N.D.—Yesel v. Watson, 226 N.W. 624, 58 N.D. 524, 64 A.L.R. 929.
Ohio.—Stemper v. Campbell, 97 N.E. 2d 25, 155 Ohio St. 1—Kennedy v. Byers, 140 N.E. 630, 107 Ohio St. 90.
Yates v. Irvin, 85 N.E.2d 404, 85 Ohio App. 164—Major v. Liggett, 50 N.E.2d 795, 72 Ohio App. 71—Bluebird Baking Co. v. McCarthy, App., 36 N.E.2d 801—City of Cincinnati v. Bachmann, 199 N.E. 853, 51 Ohio App. 108.
Okl.—Western Silo Co. v. Cousins, 184 P. 92, 76 Okl. 154.
Or.—Scott v. Brogan, 73 P.2d 688, 157 Or. 549.
S.C.—Nelson v. Charleston & W. C. Ry. Co., 86 S.E.2d 56, 226 S.C. 516—Shuler v. Heitley, 39 S.E.2d 360, 209 S.C. 198—Sample v. Gulf Refining Co., 191 S.E. 209, 183 S.C. 399—Jones v. Western Union Telegraph Co., 85 S.E. 370, 101 S.C. 181, Ann. Cas.1917C 543.
S.D.—Tufty v. Sioux Transit Co., 10 N.W.2d 767, 69 S.D. 368.
Tex.—Pattison v. Highway Ins. Underwriters, Civ.App., 278 S.W.2d 207, error refused no reversible error—Austin Road Co. v. Thompson, Civ.App., 275 S.W.2d 521, error refused no reversible error—Coastal Transport Co. v. Fisher, Civ. App., 225 S.W.2d 995, reversed on other grounds 230 S.W.2d 522, 149 Tex. 224—Texas & N. O. R. Co. v. Barham, Civ.App., 204 S.W.2d 205—City of Waco v. Teague, Civ.App., 168 S.W.2d 521—Haile v. Coker, Civ.App., 258 S.W. 228.
Vt.—Trombetta v. Champlain Valley Fruit Co., 94 A.2d 797, 117 Vt. 491.
Va.—Perlin v. Chappell, 96 S.E.2d 805, 198 Va. 861—Preston Min. Co. v. Matney, 90 S.E.2d 155, 197 Va. 520—Broudy-Kantor Co. v. Levin, 116 S.E. 677, 135 Va. 283, 32 A.L.R. 249.
Wash.—Lamb v. Mason, 176 P.2d 342, 26 Wash.2d 879.
W.Va.—Skaff v. Dodd, 44 S.E.2d 621, 130 W.Va. 540.
Wis.—Dunham v. Wisconsin Gas & Electric Co., 280 N.W. 291, 228 Wis. 250—Cole v. Christenson, 158 N.W. 56, 163 Wis. 409.
Wyo.—Marcante v. Hein, 67 P.2d 196, 51 Wyo. 389.

19.43 N.J.—Guzzi v. Jersey Cent. Power & Light Co., 115 A.2d 629, 36 N.J.Super. 255.

19.44 Iowa.—Smith v. Middle States Utilities Co. of Delaware, 275 N.W. 158, 224 Iowa 151.

19.45 Ark.—Bockman v. Butler, 271 S.W.2d 918, 224 Ark. 125.
N.C.—Young v. Anchor Co., 79 S.E. 2d 785, 239 N.C. 288.
Tex.—Pride of Dallas Taxicab Co. v. Lawrence, Civ.App., 277 S.W.2d 169, error refused no reversible error.
Wis.—Pfeifer v. Standard Gateway Theater, 55 N.W.2d 29, 262 Wis. 229.

19.46 Ark.—Ford v. Adams, 206 S. W.2d 970, 207 S.W.2d 311, 212 Ark. 458—Debin v. Texas Co., 81 S.W. 2d 935, 190 Ark. 849.
Cal.—Mortensen v. Fairbanks, 35 P. 2d 1030, 1 C.2d 489—Roller v. Daleys, Inc., 28 P.2d 345, 219 C. 542—McComas v. Al. G. Barnes Shows Co., 12 P.2d 630, 215 C. 685—Phillips v. Powell, 290 P. 441, 210 C. 39.
Tomson v. Kischassey, 301 P.2d 55, 144 C.A.2d 363—Rasmus v. Southern Pac. Co., 301 P.2d 23, 144 C.A.2d 264—Verhaegen v. Guy F. Atkinson Co., 272 P.2d 855, 176 C.A. 2d 442—Bickford v. Pacific Electric Ry. Co., 8 P.2d 186, 120 C.A. 542.
Ga.—Rogers, Inc., v. Sutton, 162 S. E. 519, 44 Ga.App. 477.
Iowa.—Despain v. Ballard, 256 N.W. 426, 218 Iowa 863—Ryan v. Perry Rendering Works, 245 N.W. 301, 215 Iowa 363.
Mo.—Vinson v. East Tex. Motor Freight Lines, 280 S.W.2d 124—Mayfield v. Kansas City Southern Ry. Co., 85 S.W.2d 116, 337 Mo. 79—Brown v. Wheelock, 83 S.W.2d 911—Tate v. Western Union Telegraph Co., 76 S.W.2d 1080, 336 Mo. 82—Perkins v. Kansas City Southern Ry. Co., 49 S.W.2d 103, 329 Mo. 1190—Wright v. St. Louis-San Francisco Ry. Co., 37 S.W.2d 591, 327 Mo. 557.
Jablonski v. May Department Stores Co., App., 153 S.W.2d 786—Obert v. City of St. Louis, App., 148 S.W.2d 126.
N.J.—Stahlin v. Lehigh Valley R. Co., 15 A.2d 344, 125 N.J.Law 211—Beatty v. Pennsylvania-Reading Seashore Lines, 195 A. 341, 119 N. J.Law 190.
N.Y.—Ranney v. Habern Realty Corp., 110 N.Y.S.2d 496, 279 App. Div. 426—Vollstedt v. Joseph A. Mollar, Inc., 265 N.Y.S. 552, 238 App.Div. 705.
N.C.—McKeller v. Martin, 187 S.E. 555, 210 N.C. 830.
Ohio.—Freas v. Sullivan, 200 N.E. 639, 130 Ohio St. 486.
Donoughe v. East Ohio Gas Co., 102 N.E.2d 881, 89 Ohio App. 411—Souder v. Hassenfeldt, 194 N.E. 47, 48 Ohio App. 377—Hoge v. Soissons, 192 N.E. 860, 48 Ohio App. 221.
Utah.—Nelson v. Lott, 17 P.2d 272, 81 Utah 265.
Wash.—Berry v. Howe, 208 P.2d 1174, 34 Wash.2d 403.
W.Va.—Holley v. Purity Baking Co., 37 S.E.2d 729, 128 W.Va. 531, 167 A.L.R. 648.

19.47 Ala.—Railway Exp. Agency v. Cunigim, 176 So. 316, 27 Ala.App. 556.
Colo.—Denham Theatre v. Beeler, 109 P.2d 643, 107 Colo. 116.
Ill.—Levin v. Lauterbach Coal & Ice Co., 67 N.E.2d 303, 329 Ill.App. 180.
Mo.—Toburen v. Carter, 273 S.W.2d 161.
McCullough v. Chicago, R. I. & P. R. Co., App., 88 S.W.2d 400.
N.H.—Mullins v. Boston & Maine Transp. Co., 20 A.2d 636, 91 N.H. 402.
N.Y.—Logan v. Jackson, 148 N.Y.S. 2d 466, 1 A.D.2d 146.
S.C.—Coleman v. Lurey, 20 S.E.2d 65, 199 S.C. 442.
Va.—Daniels v. C. I. Whitten Transfer Co., 84 S.E.2d 528, 196 Va. 537—Chesapeake & O. Ry. Co. v. Pulliam, 41 S.E.2d 54, 185 Va. 908.
W.Va.—Payne v. Virginian Ry. Co., 51 S.E.2d 514, 131 W.Va. 767.

19.48 Ala.—Reaves v. Maybank, 69 So. 137, 193 Ala. 614.
Cal.—Beck v. Bel Air Properties, 286 P.2d 503, 134 C.A.2d 834—Reagh v. San Francisco Unified School Dist., 259 P.2d 43, 119 C.A.2d 65.
Conn.—Jackiewicz v. United Illuminating Co., 138 A. 147, 106 Conn. 302.
Ill.—Vasenius v. Melton, 128 N.E.2d 355, 6 Ill.App.2d 434—Lambert v. Paul W. Senne Funeral Home, 98 N.E.2d 519, 343 Ill.App. 136.
Iowa.—Knutson v. Lurie, 251 N.W. 147, 217 Iowa 192.
Ky.—Blackwell's Adm'r v. Union Light, Heat & Power Co., 265 S.W. 2d 462—Codell Const. Co. v. Miller, 202 S.W.2d 394, 304 Ky. 708, 172 A.L.R. 546—W. F. Robinson & Son v. Jones, 72 S.W.2d 16, 254 Ky. 637—River Excursion Co. v. Kuntz, 51 S.W.2d 911, 244 Ky. 587.
Mo.—McGrory v. Thurnau, App., 84

have been forseen and prevented,[19.49] sudden peril,[19.50] assumption of risk,[19.51] res ipsa loquitur,[19.52] and the humanitarian or last clear chance doctrine.[19.53]

The rule has also been applied where the error consists in the misstatement of facts,[19.54] the definition or failure to define terms,[19.55] and the inference to be drawn from the failure to produce evidence or a witness.[19.56]

c. Actions Involving Motor Vehicles

The rule that a judgment will not be reversed because of erroneous instructions, in the absence of prejudice to the complaining party, has been applied in actions involving motor vehicles.

The judgment in an action for injuries resulting from the operation of a motor vehicle will not be reversed for error in the giving of instructions where such error did not prejudice the complaining party.[19.57] This rule has been applied in cases

S.W.2d 147—Fitzpatrick v. Service Const. Co., 56 S.W.2d 822, 227 Mo.App. 1074—Brown v. St. Louis-San Francisco Ry. Co., App., 281 S.W. 452.

N.J.—O'Leary v. Public Service Coordinated Transport, 157 A. 93, 9 N.J.Misc. 1143, affirmed 163 A. 666, 110 N.J.Law 18.

N.Y.—C. I. T. Corporation v. M. & T. Trust Co., 272 N.Y.S. 591, 241 App. Div. 595.

Ohio.—McLaughlin v. New York Cent. R. Co., 200 N.E. 757, 130 Ohio St. 527.

Cousins v. Booksbaum, 200 N.E. 133, 51 Ohio App. 150, error dismissed Booksbaum v. Cousins, 199 N.E. 217, 130 Ohio St. 336—Souder v. Hassenfeldt, 194 N.E. 47, 48 Ohio App. 377—Metzger v. Yellow Taxicab Co., 193 N.E. 75, 48 Ohio App. 275—Rosenberger v. Hearsnip, 182 N.E. 596, 42 Ohio App. 536—Realty Bond & Mortgage Co. v. High, 175 N.E. 747, 38 Ohio App. 289—Peaney v. Davis, 160 N.E. 486, 26 Ohio App. 414—Korona Jewelry & Music House v. Loveland, 157 N.E. 500, 25 Ohio App. 116.

Or.—Houston v. Maunula, 255 P. 477, 121 Or. 552.

Pa.—Steckler v. Luty, 175 A. 481, 316 Pa. 440.

Tenn.—Graham v. Cloar, 205 S.W.2d 764, 30 Tenn.App. 306.

Tex.—Galveston Electric Co. v. Hansen, Com.App., 15 S.W.2d 1022—Galveston Electric Co. v. Marangola, Com.App., 283 S.W. 777.

Utah.—Whatcott v. Continental Casualty Co., 39 P.2d 733, 85 Utah 406.

Va.—Thomas v. Snow, 174 S.E. 837, 162 Va. 654.

Wash.—Cleasby v. Taylor, 28 P.2d 795, 176 Wash. 251.

Wis.—Greunke v. North American Airways Co., 230 N.W. 618, 201 Wis. 565, 69 A.L.R. 295.

19.49 Cal.—Elm v. McKee, 293 P. 2d 827, 139 C.A.2d 353.

Tex.—E. L. Martin, Inc., v. Kyser, Civ.App., 104 S.W.2d 592, error dismissed.

19.50 Mo.—Kick v. Franklin, 137 S.W.2d 512, 345 Mo. 752.

19.51 Cal.—Ward v. Knapp, 286 P. 2d 370, 134 C.A.2d 538—Pearson v. Tide Water Associated Oil Co., 204 P.2d 99, reheard 223 P.2d 669, hearing dismissed.

19.52 Cal.—Pearson v. Tide Water Associated Oil Co., App., 223 P.2d 669—Weaver v. Shell Co. of California, 57 P.2d 571, 13 C.A.2d 643.

N.Y.—Gahan v. Oneida Nat. Bank & Trust Co. of Utica, 138 N.Y.S.2d 44, 285 App.Div. 998.

Or.—Shaw v. Hayden Island Amusement Co., 166 P.2d 128, 178 Or. 210.

19.53 Mo.—Cunningham v. Thompson, 277 S.W.2d 602—Catanzaro v. McKay, 277 S.W.2d 566—Sauer v. Winkler, 263 S.W.2d 370—Murphy v. St. Louis Public Service Co., 244 S.W.2d 31, 362 Mo. 772—Cable v. Chicago, B. & Q. R. Co., 236 S.W.2d 328, 361 Mo. 766.

Feldotto v. St. Louis Public Service Co., App., 285 S.W.2d 30—Fair v. Thompson, 212 S.W.2d 923, 240 Mo.App. 664—Robards v. Kansas City Public Service Co., 177 S. W.2d 709, 238 Mo.App. 165.

Ohio.—Cole v. New York Cent. R. Co., 80 N.E.2d 854, 150 Ohio St. 175.

Cottrell v. Gehle, App., 114 N.E. 2d 482—Patterson v. George F. Alger Co., App., 112 N.E.2d 65.

19.54 Ga.—Atlantic Coast Line R. Co. v. Coxwell, 91 S.E.2d 135, 93 Ga.App. 159.

Kan.—Mitchell v. Dawson, 191 P.2d 913, 164 Kan. 630.

Minn.—Adelmann v. Elk River Lumber Co., 65 N.W.2d 661, 242 Minn. 388.

19.55 Particular terms erroneously defined

(1) Duress.

Okl.—Britton v. Lombard, 152 P. 590, 52 Okl. 41.

(2) Mental capacity.

Tex.—Smith v. Thornhill, Com.App., 34 S.W.2d 803.

(3) Ordinary care.

Tex.—Sullivan & Davis v. Gauna, Civ.App., 5 S.W.2d 242.

(4) Proximate cause.

Tex.—St. Louis, S. F. & T. Ry. Co. v. Green, Com.App., 37 S.W.2d 123.

H. F. Hohlt Co. v. Routt, Civ. App., 48 S.W.2d 386—Hulen v. Ives, Civ.App., 281 S.W. 350.

(5) Procuring cause.

Tex.—Adams v. Stanley, Civ.App., 88 S.W.2d 729, error dismissed.

(6) Undue influence.

Tex.—Andrews v. Brown, Com.App., 10 S.W.2d 707.

19.56 Miss.—Genola v. Ozburn, 11 So.2d 910, 194 Miss. 235.

N.Y.—Potomac Ins. Co. v. Donovan, 112 N.Y.S.2d 714, 279 App.Div. 1135—Raimondo v. Fairchester Bakers, 37 N.Y.S.2d 715, 265 App.Div. 861—Borman v. Henry Phipps Estates, 23 N.Y.S.2d 339, 260 App.Div. 657.

Sacks v. Accomando, 35 N.Y.S.2d 438.

19.57 Ala.—King v. Jackson, 87 So. 2d 623, 264 Ala. 339—Zemczonek v. McElroy, 86 So.2d 824, 264 Ala. 258—Johnson v. Martin, 52 So.2d 688, 255 Ala. 600—Austin v. Tennessee Biscuit Co., 52 So.2d 190, 255 Ala. 573—Williams v. Wicker, 179 So. 250, 235 Ala. 348.

Ark.—Gill v. Schenebeck, 160 S.W.2d 503, 203 Ark. 1053.

Cal.—Speck v. Sarver, 128 P.2d 16, 20 C.2d 585—Shuey v. Asbury, 55 P.2d 1160, 5 C.2d 712—Idemoto v. Scheidecker, 226 P. 922, 193 C. 653—Collins v. Marsh, 169 P. 389, 176 C. 639.

Mulligan v. West Coast Fast Freight, Inc., App., 312 P.2d 59—Swanson v. Bogatin, App., 308 P. 2d 918—Bowman v. Davis, 305 P.2d 939, 147 C.A.2d 638—Altomare, by Altomare, v. Hunt, 224 P.2d 904, 101 C.A.2d 10—Burr v. Goss, 205 P. 2d 61, 91 C.A.2d 351—Yuichi Matsumoto v. Renner, 202 P.2d 1051, 90 C.A.2d 406—Bosserman v. Olmstead, 175 P.2d 49, 77 C.A.2d 236—Primm v. Market St. Ry. Co., 132 P.2d 842, 56 C.A.2d 480—Fowler v. Allen, 121 P.2d 41, 49 C.A.2d 214—Ferguson v. Nakahara, 110 P.2d 1091, 43 C.A.2d 435—Parrett v. Carothers, 53 P.2d 1023, 11 C.A.2d 222—Rogers v. Goodrich, 21 P.2d 122, 131 C.A. 245—Collom v. Bloch, 232 P. 486, 70 C.A. 33—Bibby v. Pacific Electric Ry. Co., 209 P. 387, 58 C.A. 658—Blackwell v. American Film Co., 192 P. 189, 48 C.A. 681—Potter v. Back Country Transp. Co., 164 P. 342, 33 C.A. 24.

Colo.—Jaeckel v. Funk, 138 P.2d 939, 111 Colo. 179.

Conn.—Hensen v. Connecticut Co., 118 A. 464, 98 Conn. 71.

Ga.—Jackson v. Matlock, 74 S.E.2d 667, 87 Ga.App. 593—Clackler v. Barnwell, 64 S.E.2d 384, 83 Ga.App. 515—United Motor Freight Terminals v. Driver, 44 S.E.2d 156, 75 Ga. App. 571—Atlanta Laundries v.

Goldberg, 30 S.E.2d 349, 71 Ga.App. 130—Chitwood v. Stoner, 4 S.E.2d 605, 60 Ga.App. 599—Maner v. Dykes, 190 S.E. 189, 55 Ga.App. 436—McCrackin v. McKinney, 183 S.E. 831, 52 Ga.App. 519—Hudson v. Devlin, 111 S.E. 693, 28 Ga.App. 458.

Idaho.—Moore v. Harland, 233 P.2d 429, 71 Idaho 376.

Ill.—Weiner v. Battista, 135 N.E.2d 113, 10 Ill.App.2d 490—Keller v. Menconi, 129 N.E.2d 341, 7 Ill.App. 2d 250—Bertrand v. Adams, 101 N.E.2d 841, 344 Ill.App. 559—Chicago-Rockford Motor Exp. v. Cagnoni, 79 N.E.2d 839, 334 Ill.App. 623—Johnson v. Mueller, 41 N.E.2d 125, 314 Ill.App. 204—Rasmussen v. Wiley, 39 N.E.2d 57, 312 Ill.App. 404—O'Neal v. Caffarello, 25 N.E. 2d 534, 303 Ill.App. 574—Williams v. Kaplan, 242 Ill.App. 166—Rauen v. Chicago Rys. Co., 205 Ill.App. 464.

Ind.—Cushman Motor Delivery Co. v. McCabe, 36 N.E.2d 769, 219 Ind. 156—Swanson v. Slagal, 8 N.E.2d 993, 212 Ind. 394.

Ind.—Kelley v. Hocutt, 128 N.E.2d 879, 125 Ind.App. 617—Inter State Motor Freight System v. Henry, 38 N.E.2d 909, 111 Ind.App. 179—Buddenberg v. Morgan, 38 N.E.2d 287, 110 Ind.App. 609—Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind. App. 585—Hoeppner v. Saltzgaber, 200 N.E. 458, 102 Ind.App. 458—Detwiler v. Culver Military Academy, 168 N.E. 246, 91 Ind.App. 355.

Iowa.—Reed v. Willison, 65 N.W.2d 440, 245 Iowa 1066—Hayungs v. Falk, 27 N.W.2d 15, 238 Iowa 285—Smith v. Pine, 12 N.W.2d 236, 234 Iowa 256—Janes v. Roach, 290 N. W. 87, 228 Iowa 129—Edwards v. Perley, 274 N.W. 910, 223 Iowa 1119—Cram v. City of Des Moines, 172 N.W. 23, 185 Iowa 1292—Owens v. Iowa County, 169 N.W. 388, 186 Iowa 408—Livingstone v. Dole, 167 N.W. 639, 184 Iowa 1340.

Kan.—Dubourdieu v. Delaware Tp. of Wyandotte County, 189 P. 386, 106 Kan. 650.

Ky.—McGregor v. Mills, 280 S.W.2d 161—Davis v. McFarland, 265 S.W. 2d 66—Victory Cab Co. v. Watson, 238 S.W.2d 1004—Smith v. Bailey, 223 S.W.2d 582, 311 Ky. 118—Moreland's Adm'r v. Stone, 166 S.W.2d 998, 292 Ky. 521—Hughes v. Bates' Adm'r, 129 S.W.2d 138, 278 Ky. 592—Commercial Carriers v. Small, 126 S.W.2d 143, 277 Ky. 189—Sweazy v. King, 58 S.W.2d 659, 248 Ky. 432—American Ry. Express Co. v. Lancaster, 251 S.W. 670, 199 Ky. 584.

Md.—Dashiell v. Jacoby, 120 A. 751, 142 Md. 330.

Mass.—Ouillette v. Sheerin, 9 N.E.2d 713, 297 Mass. 536.

Mich.—Barner v. Kish, 67 N.W.2d 693, 341 Mich. 501—Ter Haar v. Steele, 47 N.W.2d 65, 330 Mich. 167—Slayton v. Boesch, 23 N.W.2d 134, 315 Mich. 1—Hautala v. Cochran, 286 N.W. 663, 289 Mich. 409—Harris v. P. Koenig Coal Co., 194 N.W. 511, 223 Mich. 683—Kovacevic v. Reid, 162 N.W. 1000, 196 Mich. 288.

Minn.—Sumdeen v. Barthel, 63 N.W. 2d 267, 241 Minn. 398—Mickelson v. Kernkamp, 42 N.W.2d 18, 230 Minn. 448—Mueller v. Dewey, 198 N.W. 428, 159 Minn. 173—Lundberg v. Zimmer, 198 N.W. 407, 159 Minn. 179—Allen v. Johnson, 175 N.W. 545, 144 Minn. 333—Carson v. Turrish, 168 N.W. 349, 140 Minn. 445, L.R.A.1918F 154.

Miss.—Canale v. Jones, 87 So.2d 694—Adcock v. McDonald, 79 So.2d 715, 224 Miss. 122—Harris v. McCuiston, 64 So.2d 692, 217 Miss. 601—Friis v. Gahan, 104 So. 170, 139 Miss. 375.

Mo.—Comstock v. Ingles, 296 S.W.2d 68—Wilson v. Kansas City Public Service Co., 291 S.W.2d 110—Ketcham v. Thomas, 283 S.W.2d 642—Hogan v. American Transport, 277 S.W.2d 495—Brawley v. Esterly, 267 S.W.2d 655—White v. Rohrer, 267 S.W.2d 31—Block v. Rackers, 256 S.W.2d 760—Merrick v. Bridgeways, Inc., 241 S.W.2d 1015, 362 Mo. 476—Rembusch v. Prebe, 215 S.W.2d 433, 358 Mo. 409—Crites v. Kansas City Public Service Co., 190 S.W.2d 924—Schlemmer v. McGee, 185 S.W.2d 806—Brinkley v. United Biscuit Co. of America, 164 S.W. 2d 325, 349 Mo. 1227—Schroeder v. Rawlings, 155 S.W.2d 189, 348 Mo. 824—Mendenhall v. Neyer, 149 S. W.2d 366, 347 Mo. 881—Melenson v. Howell, 130 S.W.2d 555, 344 Mo. 1137—Brunk v. Hamilton-Brown Shoe Co., 66 S.W.2d 903, 334 Mo. 517—Stanton v. Jones, 59 S.W.2d 648, 332 Mo. 631—Welp v. Bogy, 8 S.W. 2d 599, 320 Mo. 672—Smith v. Mederacke, 259 S.W. 83, 302 Mo. 538—Hornbuckle v. McCarty, 243 S.W. 327, 295 Mo. 162, 25 A.L.R. 1508.

McCloud v. Saling, App., 259 S. W.2d 699—Lemonds v. Holmes, App., 236 S.W.2d 56—Arnold v. Manzella, App., 186 S.W.2d 882—Conway v. Silver King Oil & Gas Co., App., 94 S.W.2d 942—Davis v. Roth, App., 65 S.W.2d 172—West v. Duncan, App., 249 S.W. 127—Columbia Taxicab Co. v. Englebrecht, App., 247 S.W. 239—Petring v. Albers, App., 241 S.W. 452—Yawitz Dyeing & Cleaning Co. v. Erlenbach, App., 221 S.W. 411—Duffy v. Kansas City Rys. Co., App., 217 S.W. 883—Edwards v. Yarbrough, App., 201 S.W. 972—Lowry v. Smith, 198 S.W. 437, 199 Mo.App. 163.

Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655—Burhoop v. Brackhan, 82 N.W.2d 557, 164 Neb. 382—Fries v. Goldsby, 80 N.W.2d 171, 163 Neb. 424—Fridley v. Brush, 73 N.W.2d 376, 161 Neb. 318—Plumb v. Burnham, 36 N.W.2d 612, 151 Neb. 129—Watson v. Miller, 267 N.W. 230, 131 Neb. 74—Serratore v. Miller, 267 N.W. 159, 130 Neb. 908—Lyons v. Joseph, 246 N.W. 859, 124 Neb. 442.

N.H.—LePage v. St. Johnsbury Trucking Co., 80 A.2d 148, 97 N.H. 46—Mandell v. Dodge-Freedman Poultry Co., 45 A.2d 577, 94 N.H. 1, 163 A.L.R. 1370—Kardasinski v. Koford, 190 A. 702, 88 N.H. 444, 111 A.L.R. 1017.

N.J.—Ristan v. Frantzen, 97 A.2d 726, 26 N.J.Super. 225, affirmed 102 A.2d 614, 14 N.J. 455.

N.M.—Olguin v. Thygesen, 143 P.2d 585, 47 N.M. 377.

N.Y.—Vittori v. City of Rochester, 130 N.Y.S.2d 377, 283 App.Div. 997.

N.C.—Kimsey v. Reaves, 91 S.E.2d 898, 243 N.C. 690—Jyachosky v. Wensil, 81 S.E.2d 644, 240 N.C. 217—Yost v. Hall, 64 S.E.2d 554, 233 N.C. 463—McCartha v. Colonial Ice Co., 17 S.E.2d 479, 220 N.C. 367—Jordan v. Interurban Motor Lines, 109 S.E. 566, 182 N.C. 559.

Ohio.—Gibbs v. Scioto Valley Ry. & Power Co., 145 N.E. 854, 111 Ohio St. 498—Makranczy v. Gelfand, 142 N.E. 688, 109 Ohio St. 325.

Kopelove Iron & Metal Co. v. Lawson, App., 139 N.E.2d 72—Wallace v. Bartlett, App., 58 N.E. 2d 495—Thompson v. Kerr, App., 51 N.E.2d 742.

Okl.—Bowring v. Denco Bus Lines, 162 P.2d 525, 196 Okl. 1—K. C. Motor Co. v. Miller, 90 P.2d 433, 185 Okl. 84.

Or.—Gilman v. Burlingham, 216 P.2d 252, 188 Or. 418—Smith v. Pacific Truck Express, 100 P.2d 474, 164 Or. 318—Cosgrove v. Tracey, 64 P. 2d 1321, 156 Or. 1.

Pa.—Papa v. Helvenston, 25 A.2d 702, 344 Pa. 453.

S.C.—Hallman v. Cushman, 13 S.E. 2d 498, 196 S.C. 402—Denny v. Doe, 108 S.E. 95, 116 S.C. 307—North State Lumber Co. v. Charleston Consol. Ry. & Lighting Co., 105 S.E. 406, 115 S.C. 267.

S.D.—Trousdale v. Schladweiler, 74 N.W.2d 841—Allen v. McLain, 69 N.W.2d 390, 75 S.D. 520.

Tenn.—Ross v. Griggs, App., 296 S. W.2d 641.

Tex.—Roadway Express v. Gaston, Civ.App., 91 S.W.2d 883, error dismissed.

Utah.—Mecham v. Allen, 262 P.2d 285, 1 Utah 2d 79.

Va.—Harvey v. Chesapeake & Potomac Tel. Co. of Va., 93 S.E.2d 309, 198 Va. 213—Reese v. Snelson, 65 S.E.2d 547, 192 Va. 479—Seaboard Air Line Ry. Co. v. Huling, 141 S. E. 237, 149 Va. 360—Seaboard Air Line Ry. Co. v. Twine, 141 S.E. 236, 149 Va. 362—Seaboard Air Line Rv. Co. v. Terrell, 141 S.E. 231, 149 Va. 344.

of intersectional collisions,[19.58] collisions with bicycles or motorcycles,[19.59] and collisions with street railroads or buses.[19.60] The rule has also been applied where the injury was to a pedestrian,[19.61]

Wash.—Atkins v. Churchill, 194 P.2d 364, 30 Wash.2d 859—Colvin v. Auto Interurban Co., 232 P. 365, 132 Wash. 591.
Wis.—Schwartz v. Schneuriger, 69 N.W.2d 756, 269 Wis. 535—Swanson v. Maryland Cas. Co., 63 N.W.2d 743, 266 Wis. 357—Schmallenberg v. Smith, 296 N.W. 597, 237 Wis. 285—Peterson v. Jansen, 295 N.W. 30, 236 Wis. 292—Schmidt v. Leuthener, 227 N.W. 17, 199 Wis. 567—Thomas v. Lockwood Oil Co., 190 N.W. 559, 178 Wis. 599—Linden v. Miller, 177 N.W. 909, 172 Wis. 20, 12 A.L.R. 665—Haswell v. Reuter, 177 N.W. 8, 171 Wis. 228.

19.58 Cal.—Lewis v. Doyle, App., 307 P.2d 965—Bowman v. Davis, 305 P.2d 939, 147 C.A.2d 638—Silverberg v. Terasaki, 286 P.2d 895, 135 C.A.2d 173—Odian v. Habernicht, 283 P.2d 756, 133 C.A.2d 201—Carruthers v. Cunha, 283 P.2d 384, 133 C.A.2d 91—Faeh v. Union Oil Co. of Cal., 236 P.2d 667, 107 C.A.2d 162—Grasso v. Cunial, 235 P.2d 32, 106 C.A.2d 294—Nelson v. Colbeck, 211 P.2d 878, 94 C.A. 792—Labarthe v. McRae, 104 P.2d 75, 39 C.A.2d 565—Parrett v. Carothers, 53 P.2d 1023, 11 C.A.2d 222.
Conn.—Ingeneri v. Makris, 37 A.2d 865, 131 Conn. 77.
Ga.—Richardson v. Coker, 50 S.E.2d 781, 78 Ga.App. 209.
Ill.—Wood v. Reck, 118 N.E.2d 442, 2 Ill.App.2d 189—Partridge v. Enterprise Transfer Co., 30 N.E.2d 947, 307 Ill.App. 386.
Iowa.—Pestotnik v. Balliet, 10 N.W.2d 99, 233 Iowa 1047.
Md.—Shaneybrook v. Blizzard, 121 A.2d 218, 209 Md. 304.
Mo.—Ferguson v. Betterton, 270 S.W.2d 756, 364 Mo. 997.
Watkins v. West, App., 297 S.W.2d 568—Bidleman v. Morrison Motor Freight, App., 273 S.W.2d 745.
Neb.—Bresley v. O'Connor Inc., 80 N.W.2d 711, 163 Neb. 565—Griess v. Borchers, 72 N.W.2d 820, 161 Neb. 217—Granger v. Byrne, 69 N.W.2d 293, 160 Neb. 10—Serratore v. Miller, 267 N.W. 159, 130 Neb. 908.
N.J.—Fornberg v. N. Y. & N. J. Cleaners & Dyers, 65 A.2d 68, 2 N.J.Super. 143.
Neidig v. Fisher, 8 A.2d 564, 123 N.J.Law 242.
Craig v. Morgenweck, 194 A. 188, 15 N.J.Misc. 637.
N.Y.—Morrison v. Lloyd, 57 N.Y.S.2d 854, 269 App.Div. 948—Bailey v. Herrmann, 1 N.Y.S.2d 404, 253 App.Div. 125, followed in 1 N.Y.S.2d 405, 253 App.Div. 126.
N.C.—Hartley v. Smith, 79 S.E.2d 767, 239 N.C. 170.
Okl.—Schultz v. Dillard, 262 P.2d 139—Johnson v. Short, 232 P.2d 944, 204 Okl. 656—Peppers Gasoline Co. v. Weber, 98 P.2d 1087, 186 Okl. 471.
Tex.—Akers v. Morris, Civ.App., 104 S.W.2d 535, error dismissed.
Va.—Shearin v. Virginia Electric & Power Co., 29 S.E.2d 841, 182 Va. 573.
Wash.—Coins v. Washington Motor Coach Co., 208 P.2d 143, 34 Wash.2d 1.
Wis.—Peterson v. General Cas. Co. of Wis., 48 N.W.2d 459, 259 Wis. 370.

19.59 Cal.—Burr v. Goss, 205 P.2d 61, 91 C.A.2d 351—Neff v. Kern County, 134 P.2d 44, 57 C.A.2d 86.
Ga.—Arrington v. Hinesley, 52 S.E.2d 533, 78 Ga.App. 810.
Ill.—Kokan v. Costello, 105 N.E.2d 915, 347 Ill.App. 41.
Iowa.—Jakeway v. Allen, 290 N.W. 507, 227 Iowa 1182.
Ky.—Galloway v. Patterson, 229 S.W.2d 960, 312 Ky. 862.
Miss.—Murchison v. Sykes, 78 So.2d 888, 223 Miss. 754—Craighead v. Operating Cab Co., 70 So.2d 878, 220 Miss. 336.
Mo.—Peterson v. Tiona, 292 S.W.2d 581—Silver v. Westlake, 248 S.W.2d 628—Young v. City of Farmington, 196 S.W.2d 124.
Karnes v. Ace Cab Co., App., 287 S.W.2d 378.
Neb.—Angstadt v. Coleman, 58 N.W.2d 507, 156 Neb. 850.
Va.—Jessee v. Slate, 86 S.E.2d 821, 196 Va. 1074.
Wis.—Leiner v. Kohl, 52 N.W.2d 154, 261 Wis. 159.

19.60 Ala.—Brown v. Southeastern Greyhound Lines, 51 So.2d 524, 255 Ala. 308.
Cal.—Primm v. Market St. Ry. Co., 132 P.2d 842, 56 C.A.2d 480.
Md.—Ager v. Baltimore Transit Co., 132 A.2d 469, 213 Md. 414.
Minn.—Useman v. Minneapolis St. Ry. Co., 268 N.W. 866, 198 Minn. 79.
Mo.—Baker v. Kansas City Public Service Co., 182 S.W.2d 873, 353 Mo. 625—Chamberlain v. Missouri-Arkansas Coach Lines, 173 S.W.2d 57, 351 Mo. 203—Wells v. City of Jefferson, 132 S.W.2d 1006, 345 Mo. 239.
Allen v. Wilkerson, App., 87 S.W.2d 1056.
N.Y.—Gustavson v. Southern Boulevard R. Co., 38 N.Y.S.2d 384, 265 App.Div. 915, reargument denied 39 N.Y.S.2d 1000, 265 App.Div. 1001, motion dismissed 49 N.E.2d 622, 290 N.Y. 662, modified on other grounds 55 N.E.2d 43, 292 N.Y. 309.
N.C.—Queen City Coach Co. v. Fultz, 98 S.E.2d 860, 246 N.C. 523—Dickson v. Queen City Coach Co., 63 S.E.2d 297, 233 N.C. 167.
Ohio.—Haines v. Cleveland Ry. Co., 49 N.E.2d 172, 141 Ohio St. 523.
Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172—Martin v. Cincinnati St. Ry. Co., 22 N.E.2d 735, 61 Ohio App. 375.
Pa.—Anselmo v. Philadelphia Transp. Co., 41 A.2d 550, 351 Pa. 542.

19.61 Ala.—Howell v. Greyhound Corp., 59 So.2d 587, 257 Ala. 492—Smith v. Lilley, 41 So.2d 175, 252 Ala. 425.
Cal.—Taylor v. Pacific Container Co., 306 P.2d 1049, 148 C.A.2d 505—Ferner v. Casalegno, 297 P.2d 91, 141 C.A.2d 467—Nunnemaker v. Headlee, 295 P.2d 438, 140 C.A.2d 666—Bogner v. Eubanks, 289 P.2d 875, 137 C.A.2d 181—Jeffs v. La Gore, 280 P.2d 140, 131 C.A.2d 181—Fernandez v. Consolidated Fisheries, Inc., 255 P.2d 863, 117 C.A.2d 254—Breaks v. Anderson, 213 P.2d 532, 95 C.A.2d 692—La Branch v. Scott, 185 P.2d 823, 82 C.A.2d 1—Jones v. Heinrich, 122 P.2d 304, 49 C.A.2d 702—Fischer v. Keen, 110 P.2d 693, 43 C.A.2d 244—Colburn v. Schilling, 107 P.2d 279, 41 C.A.2d 541—Martin v. Vierra, 93 P.2d 261, 34 C.A.2d 86, hearing denied 94 P.2d 567, 34 C.A.2d 86—Morrow v. Mendleson, 58 P.2d 1302, 15 C.A.2d 15.
Colo.—Sherman v. Ross, 62 P.2d 1151, 99 Colo. 354.
Conn.—Puza v. Hamway, 193 A. 776, 123 Conn. 205.
Ga.—Huell v. Southeastern Stages, 50 S.E.2d 745, 78 Ga.App. 311.
Ill.—Veselich v. Lichtsinn, 135 N.E.2d 823, 11 Ill.App.2d 372—Ind v. Davis, 125 N.E.2d 852, 5 Ill.App.2d 483—Fitzgibbons v. Rue, 97 N.E.2d 584, 342 Ill.App. 712—Anderson v. Samuelson, 97 N.E.2d 353, 342 Ill.App. 516—Padilla v. Walker, 91 N.E.2d 158, 340 Ill.App. 222—Wolfe v. Railway Exp. Agency, 62 N.E.2d 564, 326 Ill.App. 515—Kawkes v. Richter Food Products, 49 N.E.2d 852, 320 Ill.App. 134.
Ind.—Ball v. McPheeters, 5 N.E.2d 885, 211 Ind. 157.
Iowa.—Edwards v. Perley, 274 N.W. 910, 223 Iowa 1119.
Ky.—Straughan's Adm'r v. Fendley, 191 S.W.2d 391, 301 Ky. 209—Moreland's Adm'r v. Stone, 166 S.W.2d 998, 292 Ky. 521—Knight v. Silver Fleet Motor Express, 159 S.W.2d 1002, 289 Ky. 661—Goins v. Slusher, 140 S.W.2d 363, 282 Ky. 710—Trescott's Adm'r v. Morrill, 132 S.W.2d 948, 280 Ky. 201.
Mass.—Rosenblatt v. Percy, 49 N.E.2d 114, 313 Mass. 757.
Mich.—Neander v. Clampett, 73 N.W.2d 887, 344 Mich. 292—Dubeau v.

a child,[19.62] or a guest.[19.63]

The view that the judgment in an action for injuries from the operation of a motor vehicle will not be reversed for harmless error in the giving of instructions has been applied where the erroneous instruction was as to negligence,[19.64] liability for another's negligence,[19.65] contributory negligence,[19.66] imputed negligence attributable to person

Bordeau, 289 N.W. 198, 291 Mich. 418.
Minn.—Mottinger v. Halfman, 76 N.W.2d 689, 247 Minn. 115—Garey v. Michelsen, 35 N.W.2d 750, 227 Minn. 468—St. George v. Lollis, 296 N.W. 523, 209 Minn. 322.
Miss.—Ellington v. Eley, 56 So.2d 796.
Mo.—Parmley v. Henks, 285 S.W.2d 710.
Morhaus v. Hebeler, App., 104 S.W.2d 737.
Neb.—Buhrman v. Smollen, 83 N.W.2d 386, 164 Neb. 655.
Ohio.—Eaton v. Askins, 118 N.E.2d 203, 95 Ohio App. 131—Cunningham v. Ogresovich, App., 110 N.E.2d 437—Cordova v. Youngstown Municipal Ry. Co., App., 95 N.E.2d 391—Closs v. Ball, 22 N.E.2d 141, 60 Ohio App. 513.
Okl.—Oklahoma Ry. Co. v. Benson, 257 P.2d 1084, 208 Okl. 588—Sanders v. C. P. Carter Const. Co., 244 P.2d 822, 206 Okl. 484.
Or.—Falls v. Mortensen, 295 P.2d 182, 207 Or. 130—Larkins v. Utah Copper Co., 127 P.2d 354, 169 Or. 499.
Tenn.—Jones v. Agnew, 274 S.W.2d 821, 38 Tenn.App. 427, certiorari denied 274 S.W.2d 825, 197 Tenn. 499.
Va.—Lloyd v. Andrews, 63 S.E.2d 734, 192 Va. 41—Overton v. Slaughter, 56 S.E.2d 358, 190 Va. 172—Stuart v. Coates, 42 S.E.2d 311, 186 Va. 227.
Wash.—Smith v. Rich, 286 P.2d 1034, 47 Wash.2d 92—Carmin v. Port of Seattle, 116 P.2d 338, 10 Wash.2d 139—Forquer v. Hidden, 71 P.2d 1000, 191 Wash. 638.
Wyo.—Marken v. Empire Drilling Co., 293 P.2d 406, 75 Wyo. 121.

19.62 Ala.—King v. Jackson, 87 So.2d 623, 264 Ala. 339.
Cal.—Porter v. Bakersfield & Kern Elec. Ry. Co., 225 P.2d 223, 36 C.2d 582—Blanton v. Curry, 129 P.2d 1, 20 C.2d 793.
Hughes v. MacDonald, 283 P.2d 360, 133 C.A.2d 74.
Colo.—Seward v. York, 239 P.2d 301, 124 Colo. 512.
Ga.—Sheetz v. Welch, 81 S.E.2d 319, 89 Ga.App. 749—McCrackin v. McKinney, 183 S.E. 831, 52 Ga.App. 519.
Ind.—Mays v. Welsh, 32 N.E.2d 701, 218 Ind. 356.
Rentschler v. Hall, 69 N.E.2d 619, 117 Ind.App. 255.
Kan.—Harvey v. Cole, 153 P.2d 916, 159 Kan. 239.
Ky.—Lundy v. Brown's Adm'x, 205 S.W.2d 498, 305 Ky. 721.
Miss.—Kirkland v. Harrison, 74 So.2d 820, 221 Miss. 714.
Mo.—Boese v. Love, 300 S.W.2d 453—Doherty v. St. Louis Butter Co., 98 S.W.2d 742, 339 Mo. 996.
Conley v. Berberich, App., 300 S.W.2d 844—Bunch v. Mueller, App., 278 S.W.2d 25, reversed on other grounds, Sup., 284 S.W.2d 440—Cramer v. Parker, App., 100 S.W.2d 640.
Neb.—Holtz v. Plumer, 277 N.W. 589, 133 Neb. 878.
N.J.—Schifano v. Kaiser, 41 A.2d 206, 132 N.J.Law 499.
Okl.—Fuller v. Neundorf, 278 P.2d 836.
Tex.—Davis v. Shafer, Civ.App., 222 S.W.2d 145, error refused no reversible error.
Va.—P. L. Farmer, Inc. v. Cimino, 41 S.E.2d 1, 185 Va. 965.
Wash.—Fabbio v. Diesel Oil Sales Co., 95 P.2d 788, 1 Wash.2d 234.

19.63 Ark.—George v. George, 88 S.W.2d 71, 191 Ark. 799.
Cal.—Baker v. Novak, 301 P.2d 257, 144 C.A.2d 514—Duclos v. Tashjian, 90 P.2d 140, 32 C.A.2d 444.
Ga.—Mishoe v. Davis, 14 S.E.2d 187, 64 Ga.App. 700.
Idaho.—Grant v. Clarke, 305 P.2d 752, 78 Idaho 412—Dawson v. Salt Lake Hardware Co., 136 P.2d 733, 64 Idaho 666.
Ill.—Shellabarger v. Nattier, 7 N.E.2d 365, 289 Ill.App. 473.
Iowa.—Martin v. Momyer, 300 N.W. 310, 230 Iowa 1158—Moran v. Kean, 280 N.W. 543, 225 Iowa 329—White v. Zell, 276 N.W. 76, 224 Iowa 359.
Ky.—Buck v. Kleinschmidt, 131 S.W.2d 714, 279 Ky. 569.
Mich.—Herbert v. Durgis, 267 N.W. 809, 276 Mich. 158.
N.C.—Goode v. Barton, 78 S.E.2d 398, 238 N.C. 492—York v. York, 194 S.E. 486, 212 N.C. 695.
Ohio.—Blackford v. Kaplan, 20 N.E.2d 522, 135 Ohio St. 268.
Seekatz v. Sparks, 10 N.E.2d 1007, 56 Ohio App. 397—Casper v. Higgins, 6 N.E.2d 3, 54 Ohio App. 21.
Or.—Willoughby v. Driscoll, 121 P.2d 917, 168 Or. 187.
Pa.—Brewer v. Brodhead, 19 A.2d 117, 341 Pa. 384.
Va.—Smith v. Tatum, 97 S.E.2d 820, 199 Va. 85—Yorke v. Maynard, 3 S.E.2d 366, 173 Va. 183—Barry v. Tyler, 199 S.E. 496, 171 Va. 381.
Wis.—London & Lancashire Indem. Co. v. Phoenix Indem. Co., 56 N.W.2d 777, 263 Wis. 171.

19.64 Cal.—De Ponce v. System Freight Service, 152 P.2d 234, 66 C.A. 295.
Ill.—Teece v. Bieber, 56 N.E.2d 665, 323 Ill.App. 647.
Ind.—Pfisterer v. Key, 33 N.E.2d 330, 218 Ind. 521.
Iowa.—Luse v. Nickolev, 3 N.W.2d 503, 231 Iowa 259—Angell v. Hutchcroft, 3 N.W.2d 147, 231 Iowa 1057.
Ky.—Buck v. Kleinschmidt, 131 S.W.2d 714, 279 Ky. 569.
Mo.—Brinkley v. United Biscuit Co. of America, 164 S.W.2d 325, 349 Mo. 1227.
Ohio.—Sweeney v. Schneider, 53 N.E.2d 820, 73 Ohio App. 157—Casper v. Higgins, 6 N.E.2d 3, 54 Ohio App. 21.
Okl.—Shell Petroleum Corp. v. Perrin, 64 P.2d 309, 179 Okl. 142.
Pa.—Fuller v. Palazzolo, 197 A. 225, 329 Pa. 93.
Utah.—White v. Pinney, 108 P.2d 249, 99 Utah 484.
Wash.—Haney v. Cheatham, 111 P.2d 1003, 8 Wash.2d 310.

19.65 Ala.—Daniel v. Jones, 200 So. 551, 240 Ala. 545, followed in Daniel v. Carter, 200 So. 554, 240 Ala. 549, and Daniel v. Matthews, 200 So. 554, 240 Ala. 549.
Ark.—Rogers v. Crawford, 247 S.W.2d 1005, 220 Ark. 385.
Cal.—Siebel v. Shapiro, 137 P.2d 56, 58 C.A.2d 509.
Ga.—Grady County v. Banker, 59 S.E.2d 732, 81 Ga.App. 701.
Hawaii.—Solomon v. Wong, 34 Hawaii 625.
Ind.—Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind.App. 585.
Mich.—Vitaioli v. Berklund, 295 N.W. 557, 296 Mich. 56.
Minn.—Rampi v. Vevea, 38 N.W.2d 297, 229 Minn. 11.
N.Y.—Barber v. Jewel Tea Co., 300 N.Y.S. 302, 252 App.Div. 362, affirmed 16 N.E.2d 94, 278 N.Y. 540.
Okl.—City of Tulsa v. Washington, 241 P.2d 194, 206 Okl. 61.
Or.—Morey v. Redifer, 282 P.2d 1062, 204 Or. 194.
Pa.—Morgan v. Heinel Motors, 197 A. 920, 329 Pa. 360.
S.C.—Long v. Carolina Baking Co., 8 S.E.2d 326, 193 S.C. 225.
Wash.—Carlson v. Wolski, 147 P.2d 291, 20 Wash.2d 323.

19.66 Ala.—Johnson v. Martin, 52 So.2d 688, 255 Ala. 600.
Ark.—Kendrick v. Rankin, 244 S.W.2d 495, 219 Ark. 736.
Cal.—Kline v. Barkett, 158 P.2d 51, 68 C.A.2d 765—Lam Ong v. Pacific Motor Trucking Corporation, 60 P.2d 480, 16 C.A.2d 274.

in privity with defendant[19.67] concurrent negligence,[19.68] damages,[19.69] evidence and presumptions,[19.70] imminent peril,[19.71] proximate cause,[19.72] res ipsa loquitur[19.73] statutes and ordinances,[19.74]

Colo.—Jaeckel v. Funk, 138 P.2d 939, 111 Colo. 179.
Fla.—Miami Coca Cola Bottling Co. v. Mahlo, 45 So.2d 119.
Ill.—Gulan v. Gabriel, 110 N.E.2d 878, 349 Ill.App. 462—Graves v. Spann, 97 N.E.2d 576, 342 Ill.App. 713.
Iowa.—Brewer v. Johnson, 72 N.W.2d 556, 247 Iowa 483—Miller v. Griffith, 66 N.W.2d 505, 246 Iowa 476.
Ky.—Borders Pure Milk Co. v. Nelson Distributing Co., 247 S.W.2d 214—Ford v. McQueary, 239 S.W. 2d 486.
Mich.—Ter Haar v. Steele, 47 N.W. 2d 65, 330 Mich. 167—Clark v. Naufel, 43 N.W.2d 839, 328 Mich. 249.
Minn.—Shoop v. Peterson, 53 N.W.2d 633, 237 Minn. 61.
Mo.—Patton v. Hanson, 286 S.W.2d 829—Fantin v. L. W. Hays, Inc., 242 S.W.2d 509.
Jackson v. Ricketts, App., 288 S.W.2d 10—Rhees v. Koehler, App., 241 S.W.2d 812.
N.J.—Liberatori v. Yellow Cab Co. of Philadelphia, 114 A.2d 469, 35 N.J.Super. 470.
N.H.—Bourque v. Strusa, 25 A.2d 127, 92 N.H. 94.
Va.—Yeary v. Holbrook, 198 S.E. 441, 171 Va. 266.
W.Va.—Otte v. Miller, 24 S.E.2d 90, 125 W.Va. 317.

19.67 Cal.—Pruitt v. Krovitz, 139 P.2d 992, 59 C.A.2d 666.
Ga.—Service Wholesale Co. v. Reese, 85 S.E.2d 625, 91 Ga.App. 366.
Idaho.—Goetz v. Burgess, 238 P.2d 444, 72 Idaho 186.
Ky.—Williams v. Farmer's Adm'x, 115 S.W.2d 589, 273 Ky. 131.
Mo.—Leaman v. Campbell 66 Exp. Truck Lines, 199 S.W.2d 359, 355 Mo. 939.
Rodenkirch v. Nemnich, App., 168 S.W.2d 977.
N.Y.—Eggelton v. Thompson, 78 N. Y.S.2d 7, 273 App.Div. 987.
Pa.—Fortis v. City of Pittsburgh, 22 A.2d 652, 344 Pa. 121.
Baugh v. McCallum, 14 A.2d 364, 140 Pa.Super. 276.

19.68 Conn.—Ingeneri v. Makris, 37 A.2d 865, 131 Conn. 77.
Iowa.—Pappas v. Evans, 48 N.W.2d 298, 242 Iowa 804.
Ky.—White v. Saunders, 158 S.W.2d 393, 289 Ky. 268.
Mo.—Morris v. Alexander, App., 275 S.W.2d 373.
S.D.—Lapp v. J. Lauesen & Co., 293 N.W. 536, 67 S.D. 411.

19.69 Cal.—Blanton v. Curry, 129 P. 2d 1, 20 C.2d 793.
Del.—Rudnick v. Jacobs, 197 A. 381, 9 W.W.Harr. 169.
Ill.—Lawyer v. L. B. Motors, Inc., 29 N.E.2d 859, 307 Ill.App. 236.
Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655.
Tex.—Wilson v. Barbour, Civ.App., 135 S.W.2d 169, error dismissed.

19.70 Cal.—Zeidman v. Anticouni, 284 P.2d 517, 133 C.A.2d 555—Stuart v. Harper, 284 P.2d 505, 133 C.A.2d 550—Guerra v. Balestrieri, 274 P.2d 443, 127 C.A.2d 511—Hooper v. Bronson, 266 P.2d 590, 123 C.A.2d 243—Koon v. Sher, 220 P.2d 784, 98 C.A.2d 530—La Fleur v. Hernandez, 191 P.2d 95, 84 C.A.2d 569—Root v. Pacific Greyhound Lines, 190 P.2d 48, 84 C.A.2d 135—Ferrula v. Santa Fe Bus Lines, 189 P.2d 294, 83 C.A. 2d 416—Larson v. King, 162 P.2d 974, 71 C.A.2d 421—Yack v. Tiffin, 158 P.2d 620, 69 C.A.2d 226—Duehren v. Stewart, 102 P.2d 784, 39 C.A.2d 201—Stroh v. Bauman, 99 P.2d 337, 37 C.A.2d 241—Medeiros v. Soares, 61 P.2d 501, 17 C.A.2d 176.
Ga.—Bank of Loganville v. Briscoe, 92 S.E.2d 326, 93 Ga.App. 558—Adams v. Evans, 23 S.E.2d 507, 68 Ga.App. 544.
Idaho.—Koch v. Elkins, 225 P.2d 457, 71 Idaho 50.
Ill.—Keller v. Menconi, 129 N.E.2d 341, 7 Ill.App.2d 250—Schuster v. Jefferson Ice Co., 65 N.E.2d 239, 328 Ill.App. 124.
Ind.—Lee Bros. v. Jones, 54 N.E.2d 108, 114 Ind.App. 688.
Minn.—Jurgensen v. Schirmer Transp. Co., 64 N.W.2d 530, 242 Minn. 157.
Miss.—Southland Broadcasting Co. v. Tracy, 50 So.2d 572, 210 Miss. 836—City of Meridian v. McCoy, 43 So.2d 883.
Mo.—Leaman v. Campbell 66 Exp. Truck Lines, 199 S.W.2d 359, 355 Mo. 939.
Wollard v. Pollock, App., 263 S.W.2d 748—Davidson v. Haggard, App., 236 S.W.2d 405.
Neb.—Griess v. Borchers, 72 N.W.2d 820, 161 Neb. 217—Harding v. Hoffman, 62 N.W.2d 333, 158 Neb. 86.
N.J.—O'Neil v. Bilotta, 86 A.2d 705, 18 N.J.Super. 82, affirmed 91 A.2d 231, 10 N.J. 308.
N.C.—Jyachosky v. Wensil, 81 S.E. 2d 644, 240 N.C. 217.
Ohio.—A. Macaluso Fruit Co. v. Commercial Motor Freight, App., 57 N.E.2d 692.
Or.—Clevenger v. Shallhorn, 286 P.2d 651, 205 Or. 209—McVay v. Byars, 138 P.2d 210, 171 Or. 449.
Pa.—Fortis v. City of Pittsburgh, 22 A.2d 652, 344 Pa. 121.
Tenn.—Burkett v. Johnston, 282 S. W.2d 647, 39 Tenn.App. 276.
Utah.—Mecham v. Allen, 262 P.2d 285, 1 Utah 2d 79—Tuttle v. Pacific Intermountain Exp. Co., 242 P.2d 764, 121 Utah 420.
Wis.—Atkinson v. Huber, 68 N.W.2d 447, 268 Wis. 615—Timm v. Rahn, 61 N.W.2d 322, 265 Wis. 280.

19.71 Ga.—Parsons v. Foshee, 55 S. E.2d 386, 80 Ga.App. 127.
N.C.—Newbern v. Leary, 1 S.E.2d 384, 215 N.C. 134.

19.72 Ala.—Acton v. Browne, 80 So. 2d 643, 262 Ala. 615.
Cal.—Landrum v. Severin, 230 P.2d 337, 37 C.2d 24.
Yuichi Matsumoto v. Renner, 202 P.2d 1051, 90 C.A.2d 406.
Ga.—Fountain v. Tidwell, 88 S.E.2d 486, 92 Ga.App. 199.
Neb.—Crandall v. Ladd, 7 N.W.2d 642, 142 Neb. 736.
Okl.—Andrews v. Moery, 240 P.2d 447, 205 Okl. 635.
Wis.—Bengston v. Estes, 51 N.W.2d 539, 260 Wis. 595.

19.73 Cal.—Blanton v. Curry, 129 P.2d 1, 20 C.2d 793.
Ill.—McLaren v. F. Byrd, Inc., 15 N.E.2d 993, 296 Ill.App. 345.
Utah.—White v. Pinney, 108 P.2d 249, 99 Utah 484.

19.74 Cal.—Shuey v. Asbury, 55 P. 2d 1160, 5 C.2d 712.
Sepulveda v. Ayako Ishimaru, App., 308 P.2d 809—Lewis v. Doyle, App., 307 P.2d 965—Clinkscale v. Germershausen, 302 P.2d 23, 147 C.A.2d 76—Powell v. Bartmess, 294 P.2d 150, 139 C.A.2d 394—Stuart v. Harper, 284 P.2d 505, 133 C.A.2d 550—Brown v. Kiely, 271 P.2d 928, 126 C.A.2d 191—Boots v. Potter, 266 P.2d 176, 122 C.A.2d 927, 39 A.L.R.2d 1—Fernandez v. Consolidated Fisheries, Inc., 255 P.2d 863, 117 C.A.2d 254—Petersen v. Rieschel, 252 P.2d 986, 115 C.A.2d 758—McMahon v. Marshall, 244 P. 2d 481, 111 C.A.2d 248—La Fleur v. Hernandez, 191 P.2d 95, 84 C.A. 2d 569—Stoltz v. Converse, 172 P. 2d 78, 75 C.A.2d 909—Kashevaroff v. Webb, 166 P.2d 306, 73 C.A.2d 177—Corbin v. Bedel, 158 P.2d 221, 69 C.A.2d 60—Cedzo v. Bergen, 128 P.2d 683, 53 C.A.2d 667—Callison v. Dondero, 124 P.2d 852, 51 C.A.2d 403—Baldridge v. Cunningham, 87 P.2d 369, 31 C.A.2d 128—Hilbert v. Olney, 61 P.2d 941, 17 C.A.2d 135.
Colo.—Seifried v. Mosher, 268 P.2d 411, 129 Colo. 156.
Conn.—Bysczynski v. McCarthy Freight System, 26 A.2d 853, 129 Conn. 118.
Ga.—Cobb v. Coleman, 93 S.E.2d 801, 94 Ga.App. 86—Griffin v. Ross, 91 S.E.2d 815, 93 Ga.App. 407—Willis v. Jones, 81 S.E.2d 517, 89 Ga.App. 824—Sheetz v. Welch, 81 S.E.2d 319, 89 Ga.App. 749—Smith v. Payne, 70 S.E.2d 163, 85 Ga.App.

unavoidable accident,[19.75] and the last clear chance doctrine.[19.76]

The judgment in an action for injuries resulting from the operation of a motor vehicle will be reversed for error in the giving of instructions where such error is prejudicial to the complaining party.[19.77] This rule has been applied in cases of

693—Hawkins v. Benton Rapid Exp., 62 S.E.2d 612, 82 Ga.App. 819.
Idaho.—Turner v. Purdum, 289 P.2d 608, 77 Idaho 130—Asumendi v. Ferguson, 65 P.2d 713, 57 Idaho 450.
Ill.—Phillips v. Decatur Checker Cab Co., 94 N.E.2d 554, 342 Ill.App. 157—McMahon v. Opatkiewicz, 91 N.E.2d 735, 340 Ill.App. 337.
Ind.—Hancock Truck Lines v. Butcher, 94 N.E.2d 537, 229 Ind. 36.
Lawson v. Cole, 115 N.E.2d 134, 124 Ind.App. 89.
Iowa.—Sanford v. Nesbit, 11 N.W. 2d 695, 234 Iowa 14.
Ky.—Miracle v. Flannery's Adm'r, 259 S.W.2d 689—Reed v. Hostetler, 245 S.W.2d 953.
Mich.—Linendoll v. Te Paske, 41 N. W.2d 345, 327 Mich. 129—Wallace v. Kramer, 296 N.W. 838, 296 Mich. 680.
Minn.—Useman v. Minneapolis St. Ry. Co., 268 N.W. 866, 198 Minn. 79.
Mo.—Jameson v. Fox, App., 269 S.W. 2d 140—Turner v. Dockery, App., 230 S.W.2d 784.
Neb.—Becks v. Schuster, 48 N.W.2d 67, 154 Neb. 360—Gorman v. Dalgas, 36 N.W.2d 561, 151 Neb. 1—Kraft v. Wert, 35 N.W.2d 786, 150 Neb. 719.
N.H.—Sullivan v. Sullivan, 18 A.2d 828, 91 N.H. 341.
N.J.—Davidson v. Fornicola, 118 A. 2d 838, 38 N.J.Super. 365.
N.Y.—Countryman v. Breen, 291 N. Y.S. 432, 249 App.Div. 704, affirmed 8 N.E.2d 608, 274 N.Y. 470.
N.C.—Reid v. City Coach Co., 2 S.E. 2d 578, 215 N.C. 469, 123 A.L.R. 140.
Ohio.—Bennett v. Sinclair Refining Co., 57 N.E.2d 776, 144 Ohio St. 139.
Klarman v. Snyder, App., 123 N. E.2d 65—Dickerhoff v. Athey, App., 79 N.E.2d 377—Sweeney v. Schneider, 53 N.E.2d 820, 73 Ohio App. 157—Weaver v. Liberty Cabs, App., 33 N.E.2d 853—Collins v. McClure, 26 N.E.2d 780, 63 Ohio App. 312—Rutherford v. Huffman, 22 N.E.2d 918, 61 Ohio App. 504.
Okl.—Shayler v. West, 185 P.2d 957, 199 Okl. 386.
Or.—Furrer v. Yew Creek Logging Co., 292 P.2d 499, 206 Or. 382—Dungey v. Fairview Farms, 290 P. 2d 181, 205 Or. 615.
S.C.—Pfaehler v. Ten Cent Taxi Co., 18 S.E.2d 331, 198 S.C. 476.
Wash.—White v. Fenner, 133 P.2d 270, 16 Wash.2d 226.
Wis.—Schmallenberg v. Smith, 296 N.W. 597, 237 Wis. 285.

19.75 Ala.—Socier v. Woodard, 88 So.2d 783, 264 Ala. 514—Tyler v. Drennen, 51 So.2d 516, 255 Ala. 377—Bahakel v. Great Southern Trucking Co., 31 So.2d 75, 249 Ala. 363—Conner v. Foregger, 7 So.2d 856, 242 Ala. 275.
Ark.—Elmore v. Dillard, 298 S.W.2d 338.
Cal.—Parker v. Womack, 230 P.2d 823, 37 C.2d 116.
Davis v. Ewen, Argonaut Ins. Exchange, Intervener, 306 P.2d 908, 148 C.A.2d 410—Shiya v. Reviea, 264 P.2d 190, 122 C.A.2d 155—Turkovich v. Rowland, 235 P.2d 123, 106 C.A.2d 445—Reich v. Long, 218 P.2d 589, 97 C.A.2d 657—Alward v. Paola, 179 P.2d 5, 79 C.A. 2d 1.
Minn.—Farwell v. Stambaugh, 281 N. W. 526, 203 Minn. 392.
Neb.—Harding v. Hoffman, 62 N.W. 2d 333, 158 Neb. 86.
N.M.—Frei v. Brownlee, 248 P.2d 671, 56 N.M. 677.
Ohio.—Kohn v. B. F. Goodrich Co., 38 N.E.2d 592, 139 Ohio St. 141.
Okl.—Fuller v. Neundorf, 293 P.2d 317.
Or.—Holzhauser v. Portland Traction Co., 169 P.2d 127, 178 Or. 607.
Tex.—Horne Motors v. Latimer, Civ. App., 148 S.W.2d 1000, error dismissed, judgment correct.

19.76 Ky.—Ramsey v. Sharpley, 171 S.W.2d 427, 294 Ky. 286.
Mo.—Wyckoff v. Davis, 297 S.W.2d 490.

19.77 Ala.—Crocker v. Lee, 74 So. 2d 429, 261 Ala. 439—McCaa v. Thomas, 92 So. 414, 207 Ala. 211.
Ariz.—Rivera v. Hancock, 286 P.2d 199, 79 Ariz. 199.
Ark.—Lambert v. Saunders, 170 S. W.2d 375, 205 Ark. 717—J. Foster & Co. v. Wooldridge, 134 S.W.2d 526, 199 Ark. 551.
Cal.—Roller v. Daleys, Inc., 28 P.2d 345, 219 C. 542.
Burns v. Churchill, App., 313 P. 2d 575—De Yo v. Umina, 263 P.2d 623, 121 C.A.2d 505—Leader v. Atkinson, 121 P.2d 759, 49 C.A.2d 265—Spear v. Leuenberger, 112 P.2d 43, 44 C.A.2d 236—Ferguson v. Nakahara, 110 P.2d 1091, 43 C.A.2d 435—Head v. Wilson, 97 P.2d 509, 36 C.A.2d 244.
Colo.—Lewis v. Oliver, 271 P.2d 1055, 129 Colo. 479—Healy v. Hewitt, 71 P.2d 63, 101 Colo. 92—Zang v. Wright, 23 P.2d 580, 93 Colo. 80.
Fla.—Bessett v. Hackett, 66 So.2d 694.
Ga.—Atlantic Coast Line R. Co. v. Coxwell, 91 S.E.2d 135, 93 Ga.App. 159—Fountain v. Tidwell, 88 S.E. 2d 486, 92 Ga.App. 199—Smith v. Burks, 79 S.E.2d 52, 89 Ga.App. 278—George A. Rheman Co. v. May, 31 S.E.2d 738, 71 Ga.App. 651—Powell v. Jarrell, 16 S.E.2d 198, 65 Ga.App. 453—Etheridge v. Guest, 12 S.E.2d 483, 63 Ga.App. 637—Carpenter v. Grenade, 1 S.E.2d 589, 59 Ga.App. 540—Snellings v. Rickey, 197 S.E. 44, 57 Ga.App. 836—Jackson v. Smith, 194 S.E. 41, 56 Ga.App. 763.
Idaho.—Ausich v. Frank, 222 P.2d 1073, 70 Idaho 494—Stuart v. McVey, 87 P.2d 446, 59 Idaho 740—Call v. City of Burley, 62 P.2d 101, 57 Idaho 58.
Ill.—Stone v. Warehouse & Terminal Cartage Co., 127 N.E.2d 260, 6 Ill. App.2d 229—Wilson v. Esch, 105 N.E.2d 313, 346 Ill.App. 466—Kanter v. O'Hara, 99 N.E.2d 391, 343 Ill.App. 463—Olson v. Peter Pan Bakery, 78 N.E.2d 843, 334 Ill.App. 208—Rasmussen v. Wiley, 39 N.E. 2d 57, 312 Ill.App. 404—Hill v. Hiles, 32 N.E.2d 933, 309 Ill.App. 321—Snyder v. Shepard, 25 N.E.2d 531, 303 Ill.App. 423.
Ind.—Hoesel v. Cain, 53 N.E.2d 769, 222 Ind. 330—Cousins v. Glassburn, 24 N.E.2d 1013, 216 Ind. 431—Taggart v. Keebler, 154 N.E. 485, 198 Ind. 633.
Iowa.—Brewer v. Johnson, 72 N.W. 2d 556, 247 Iowa 483—Christensen v. Sheldon, 63 N.W.2d 892, 245 Iowa 674—Gookin v. Guy W. Baker & Son, 276 N.W. 418, 224 Iowa 967—Rich v. Herny, 269 N.W.2d 489, 222 Iowa 465—Groshens v. Lund, 268 N.W. 496, 222 Iowa 49—Swan v. Dailey-Luce Auto Co., 265 N.W. 143, 221 Iowa 842—Cram v. City of Des Moines, 172 N.W. 23, 185 Iowa 1292—Owens v. Iowa County, 169 N.W. 388, 186 Iowa 408.
Ky.—Fentress v. Hardin's Adm'x, 273 S.W.2d 575—Cardwell v. Haycraft, 268 S.W.2d 916—Clark v. Finch's Adm'x, 254 S.W.2d 934—Crumbaugh v. Roberts, 217 S.W.2d 974, 309 Ky. 439—Dixie Ohio Exp. Co. v. Vickery, 206 S.W.2d 821, 306 Ky. 171—Vinson v. Kissinger's Adm'r, 119 S.W.2d 628, 274 Ky. 606—Bickel v. Bennett, 101 S.W.2d 943, 267 Ky. 232—Electric Bakeries v. Stacy's Adm'r, 94 S.W.2d 977, 264 Ky. 431—Koltinsky v. Hollowell, 262 S.W. 6, 203 Ky. 218.
Mass.—Teague v. Martin, 117 N.E. 844, 228 Mass. 458—Fairbanks v. Kemp, 115 N.E. 240, 226 Mass. 75.
Minn.—Lipchick v. Ryan, 168 N.W. 49, 140 Minn. 514.
Miss.—Tant v. Fairchild, 87 So.2d 78, suggestion of error overruled in part and sustained in part 87 So.2d 905—McDonough Motor Express v.

intersectional collisions,[19.78] collisions with bi- | cycles or motorcycles,[19.79] and collisions with street

Spiers, 176 So. 728, 180 Miss. 78, suggestion of error overruled 177 So. 655, 180 Miss. 78.

Mo.—Marsh v. Heerlein, 299 S.W.2d 441—Faught v. Washam, 291 S.W. 2d 78—Catanzaro v. McKay, 277 S. W.2d 566—Long v. Mild, 149 S.W. 2d 853, 347 Mo. 1002—Bedsaul v. Feeback, 106 S.W.2d 431, 341 Mo. 50—Taylor v. Superior Oxy-Acetylene Co., 73 S.W.2d 186, 335 Mo. 379.

Shaw v. Griffith, App., 291 S.W.2d 230—Bradley v. Wabash R. Co., App., 227 S.W.2d 93—Rodenkirch v. Nemnich, App., 168 S.W.2d 977—Knebel v. Poese, App., 153 S.W. 2d 844—Feeherty v. Sullivan, App., 129 S.W.2d 926—Eisenbarth v. Powell Bros. Truck Lines, 125 S. W.2d 899, 235 Mo.App. 442, certiorari quashed State ex rel. Powell Bros. Truck Lines v. Hostetter, 137 S.W.2d 461, 345 Mo. 915—Rubick v. Sandler, App., 219 S.W. 401.

Neb.—Egenberger v. National Alfalfa Dehydrating & Milling Co., 83 N.W.2d 523, 164 Neb. 704—Barney v. Adcock, 75 N.W.2d 683, 162 Neb. 179—Fick v. Herman, 68 N.W.2d 622, 159 Neb. 758—Fuss v. Williamson, 68 N.W.2d 139, 159 Neb. 525, rehearing denied 69 N.W.2d 539, 160 Neb. 141—Harding v. Hoffman, 62 N.W.2d 333, 158 Neb 86—Nygaard v. Stull, 21 N.W.2d 595, 146 Neb. 736—Robison v. Union Transfer Co., 4 N.W.2d 558, 141 Neb. 574—McClelland v. Interstate Transit Lines, 296 N.W. 757, 139 Neb. 146.

N.Y.—Smith v. Williams, 104 N.Y. S.2d 236, 278 App.Div. 870—Stieglitz v. Stewart, 300 N.Y.S. 203, 252 App.Div. 378—Kroemer v. Raybestos Manhattan, 286 N.Y.S. 207, 247 App.Div. 105—Walker v. Bradt, 233 N.Y.S. 388, 225 App.Div. 415—Dauch v. Theed, 205 N.Y.S. 306, 209 App.Div. 682—Blauner v. Reeveland, 196 N.Y.S. 457, 203 App.Div. 101—Buckingham v. Eagle Warehouse & Storage Co., 179 N.Y.S. 218, 189 App.Div. 760—Sommerman v. Seal, 163 N.Y.S. 770, 175 App. Div. 598—Blake v. Brown, 180 N. Y.S. 441.

N.C.—Lieb v. Mayer, 94 S.E.2d 658, 244 N.C. 613—Queen City Coach Co. v. Burrell, 85 S.E.2d 688, 241 N.C. 432—Blanton v. Carolina Dairy, Inc., 77 S.E.2d 922, 238 N. C. 382—Harris v. Draper, 63 S.E. 2d 209, 233 N.C. 221—Lewis v. Watson, 47 S.E.2d 484, 229 N.C. 20—Hill v. Lopez, 45 S.E.2d 539, 228 N.C. 433—Conley v. Pearce-Young-Angel Co., 29 S.E.2d 740, 224 N.C. 211.

Ohio.—Johnson v. Hunter, 142 N.E.2d 227, 166 Ohio St. 289.

Kopelove Iron & Metal Co. v. Lawson, App., 139 N.E.2d 72—Clemens v. Bishop, 133 N.E.2d 402, 99 Ohio App. 303—Marchal v. Frankman, App., 58 N.E.2d 679—Thompson v. Kerr, App., 51 N.E.2d 742—Bloomgren v. Morris, 186 N.E. 404, 44 Ohio App. 451, affirmed Morris v. Bloomgren, 187 N.E. 2, 127 Ohio St. 147, 89 A.L.R. 831.

Okl.—Banta v. Hestand, 75 P.2d 415, 181 Okl. 551—Leonard v. Stepp, 53 P.2d 1110, 175 Okl. 487.

Or.—Adkins v. Barrett, 250 P.2d 387, 196 Or. 597—Barnes v. Davidson, 226 P.2d 289, 190 Or. 508—Turner v. McCready, 222 P.2d 1010, 190 Or. 28—Johnson v. Updegrave, 206 P.2d 91, 186 Or. 196.

Pa.—McEwan v. Yellow Cab Co., 126 A.2d 816, 182 Pa.Super. 219.

Tex.—Mitchell v. Gooch, Civ.App., 210 S.W.2d 834.

Va.—Kidd v. Little, 74 S.E.2d 787, 194 Va. 692—Sink v. Masterson, 61 S.E.2d 863, 191 Va. 618.

Wash.—Henderson v. Bahlman, 310 P.2d 1077—Leavitt v. De Young, 263 P.2d 592, 43 Wash.2d 704—Corbaley v. Pierce County, 74 P.2d 993, 192 Wash. 688—Wiseman v. Skagit County Dairymen's Ass'n, 6 P.2d 369, 166 Wash. 57—Bone v. Yellow Cab Co., 225 P. 440, 129 Wash. 503—Walker v. Butterworth, 210 P. 813, 122 Wash. 413—Stoddard v. Smathers, 206 P. 933, 120 Wash. 53.

W.Va.—Moore v. Burriss, 54 S.E.2d 23, 132 W.Va. 757.

Wis.—Ackley v. Farmers Mut. Auto. Ins. Co., 78 N.W.2d 744, 273 Wis. 422—Bush v. Hadley, 69 N.W.2d 261, 269 Wis. 160—Olson v. Milwaukee Auto. Ins. Co., 62 N.W.2d 549, 266 Wis. 106, mandate modified on other grounds 63 N.W.2d 740, 266 Wis. 106—Schulz v. General Casualty Co., 288 N.W. 803, 233 Wis. 118—Liebenstein v. Eisele, 284 N.W. 525, 230 Wis. 521—Booth v. Frankenstein, 245 N.W. 191, 209 Wis. 362.

19.78 Ala.—Acton v. Browne, 80 So. 2d 643, 262 Ala. 615.

Ark.—Williams v. Martin, 290 S.W. 2d 442, 226 Ark. 431.

Cal.—Westberg v. Willde, 94 P.2d 590, 14 C.2d 360.

Larson v. Holland, 257 P.2d 1014, 118 C.A.2d 520—Christensen v. Harmonson, 247 P.2d 956, 113 C.A. 2d 175.

Conn.—Decker v. Roberts, 3 A.2d 855, 125 Conn. 150.

Ill.—Leonard v. Murphy, 140 N.E.2d 537, 13 Ill.App.2d 39—Biniakiewicz v. Wojtasik, 90 N.E.2d 568, 339 Ill. App. 574—Bouton v. Harrison, 45 N.E.2d 510, 317 Ill.App. 152—Delach v. Schuberth, 45 N.E.2d 198, 316 Ill.App. 452—Rasmussen v. Wiley, 39 N.E.2d 57, 312 Ill.App. 404.

Iowa.—Hupp v. Doolittle, 285 N.W. 247, 226 Iowa 814.

Kan.—Bvas v. Dodge City Rendering Co., 279 P.2d 252, 177 Kan. 337.

Ky.—B-Line Cab Co. v. Lake, 110 S. W.2d 1083, 270 Ky. 763.

Md.—Greenfeld v. Hook, 8 A.2d 888, 177 Md. 116, 136 A.L.R. 1485.

Mich.—Hansel v. Hawkins, 40 N.W. 2d 109, 326 Mich. 177.

Minn.—Adelmann v. Elk River Lumber Co., 65 N.W.2d 661, 242 Minn. 388—Draxten v. Brown, 267 N.W. 498, 197 Minn. 511.

Mo.—Hamre v. Conger, 209 S.W.2d 242, 357 Mo. 497.

Folluo v. Gray, App., 256 S.W.2d 273.

Neb.—Harding v. Hoffman, 62 N.W. 2d 333, 158 Neb. 86—Pongruber v. Patrick, 61 N.W.2d 578, 157 Neb. 799.

N.C.—Hartley v. Smith, 79 S.E.2d 767, 239 N.C. 170—Cox v. Hennis Freight Lines, 72 S.E.2d 25, 236 N. C. 72.

Or.—Hanson v. Schrick, 85 P.2d 355, 160 Or. 397.

S.C.—Pruitte v. Machen, 53 S.E.2d 866, 215 S.C. 13.

S.D.—Smith v. Aspaas, 21 N.W.2d 878, 71 S.D. 111.

Utah.—Shields v. Utah Light & Traction Co., 105 P.2d 347, 99 Utah 307.

Wash.—Bailey v. Carver, 286 P.2d 680, 47 Wash.2d 153—Peterson v. Mayham, 116 P.2d 259, 10 Wash.2d 111—Hamilton v. Cadwell, 81 P.2d 815, 195 Wash. 683—Mitchell v. Cadwell, 62 P.2d 41, 188 Wash. 257.

Wis.—Bokelkamp v. Olson, 36 N.W. 2d 93, 254 Wis. 240—McGill v. Baumgart, 288 N.W. 799, 233 Wis. 86.

19.79 Cal.—Rozzen v. Blumenfeld, 255 P.2d 850, 117 C.A.2d 285—Hoover v. Striegel, 222 P.2d 963, 99 C.A.2d 833—Cole v. Ridings, 212 P. 2d 597, 95 C.A.2d 136—Jolley v. Clemens, 82 P.2d 51, 28 C.A.2d 55.

Ill.—Vasenius v. Melton, 128 N.E.2d 355, 6 Ill.App.2d 434.

Ky.—Harris v. Morris, 259 S.W.2d 469.

Mo.—Johnson v. Cox, 262 S.W.2d 13—Graham v. Consolidated Forwarding Co., 221 S.W.2d 733, 359 Mo. 356—Oesterreicher v. Grupp, 119 S.W.2d 307.

Anderson v. Glascock, App., 271 S.W.2d 243.

N.C.—Wooten v. Smith, 200 S.E. 921, 215 N.C. 48.

Or.—Spence v. Rasmussen, 226 P.2d 319, 190 Or. 662—Wheeler v. Nickels, 126 P.2d 32, 168 Or. 604.

Pa.—Crane v. Neal, 132 A.2d 675, 389 Pa. 329.

Wash.—Anderson v. Rohde, 278 P.2d 380, 46 Wash.2d 89.

railroads or buses.[19.80] The rule has also been applied where the injury was to a pedestrian,[19.81] a child,[19.82] or a guest.[19.83]

The view that the judgment in an action for injuries from the operation of a motor vehicle will be reversed for prejudicial error in the giving of instructions has been applied where the erroneous instruction was as to negligence,[19.84] wanton mis-

19.80 Ala.—Birmingham Electric Co. v. Turner, 1 So.2d 299, 241 Ala. 66.
Cal.—Aurens v. Los Angeles Ry. Corporation, 65 P.2d 910, 19 C.A. 2d 401.
Ill.—Witherspoon v. Central Greyhound Lines, 60 N.E.2d 278, 325 Ill. App. 574—Buttner v. Richardson, 8 N.E.2d 217, 290 Ill.App. 601.
Mo.—Johnson v. St. Louis Public Service Co., 255 S.W.2d 815.
Baldwin v. Kansas City Public Service Co., 210 S.W.2d 115, 240 Mo.App. 527—Billingsley v. Kansas City Public Service Co., App., 191 S.W.2d 331—Flaspoler v. Kansas City Public Service Co., 151 S.W.2d 467, 235 Mo.App. 1102—Weishaar v. Kansas City Public Service Co., App., 128 S.W.2d 332.
N.J.—Reinheimer v. Atlantic City & Shore R. Co., 184 A. 215, 14 N.J. Misc. 253.
N.Y.—Mead v. Louer, 33 N.E.2d 534, 285 N.Y. 230.
Taddeo v. Tilton, 289 N.Y.S. 427, 248 App.Div. 290.
Ohio.—Rhoades v. City of Cleveland, App., 100 N.E.2d 705, reversed on other grounds 105 N.E.2d 2, 157 Ohio St. 107—Readnour v. Cincinnati St. Ry. Co., App., 93 N.E.2d 412, affirmed 93 N.E.2d 587, 154 Ohio St. 69—Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172.
Schwartz v. Cincinnati St. Ry. Co., 8 Ohio Supp. 112.

19.81 Ala.—Crocker v. Lee, 74 So.2d 429, 261 Ala. 439.
Cal.—Rangel v. Badolato, 284 P.2d 138, 133 C.A.2d 254—Clark v. State, 222 P.2d 300, 99 C.A.2d 616—Fernandez v. Consolidated Fisheries, 219 P.2d 73, 98 C.A.2d 91—Taha v. Finegold, 184 P.2d 533, 81 C.A.2d 536—Goodwin v. Foley, 170 P.2d 503, 75 C.A.2d 195—Shipway v. Monise, 139 P.2d 60, 59 C.A.2d 565—Kelly v. Fretz, 65 P.2d 914, 19 C.A.2d 356—Morrow v. Mendleson, 58 P.2d 1302, 15 C.A.2d 15.
Ga.—Southland Butane Gas Co. v. Blackwell, 85 S.E.2d 542, 91 Ga. App. 277, reversed on other grounds 88 S.E.2d 6, 211 Ga. 665, vacated 88 S.E.2d 424, 92 Ga.App. 288.
Ill.—Duffy v. Cortesi, 119 N.E.2d 241, 2 Ill.2d 511.
Woolsey v. Rupel, 140 N.E.2d 855, 13 Ill.App.2d 48—Randal v. Deka, 134 N.E.2d 36, 10 Ill.App.2d 10—Parkin v. Rigdon, 118 N.E.2d 342, 1 Ill.App.2d 586—Baker v. Thompson, 85 N.E.2d 924, 337 Ill. App. 327—Cihal v. Carver, 79 N.E. 2d 82, 334 Ill.App. 234—Turzinski v. Pam, 73 N.E.2d 162, 331 Ill.App. 413—Pillow v. Long, 20 N.E.2d 896, 299 Ill.App. 542—Scally v. Flannery, 11 N.E.2d 123, 292 Ill. App. 349—Derner v. Morton, 10 N. E.2d 149, 291 Ill.App. 621.
Iowa.—Griffin v. Stuart, 270 N.W. 442, 222 Iowa 815.
Kan.—Barker v. Seber, 114 P.2d 791, 154 Kan. 24.
Ky.—Cardwell v. Haycraft, 268 S.W. 2d 916—Layne v. Cottle, 150 S.W. 2d 684, 286 Ky. 221—Gilbert's Adm'r v. Allen, 94 S.W.2d 341, 264 Ky. 202.
Minn.—Zurko v. Gilquist, 62 N.W.2d 351, 241 Minn. 1—Nicholas v. Minnesota Milk Co., 4 N.W.2d 84, 212 Minn. 333.
Mo.—Sheerin v. St. Louis Public Service Co., 300 S.W.2d 483—Overy v. St. Louis Public Service Co., 295 S.W.2d 23—Caldwell v. St. Louis Public Service Co., 275 S.W. 2d 288—Bootee v. Kansas City Public Service Co., 183 S.W.2d 892, 353 Mo. 716—White v. Powell, 145 S.W.2d 375, 346 Mo. 1195.
Robinson v. O'Shanzky, App., 96 S.W.2d 895.
N.C.—Webb v. Hutchins, 44 S.E.2d 350, 228 N.C. 1.
N.Y.—D'Alcamo v. Goldbach, 10 N. Y.S.2d 23, 256 App.Div. 948.
Ohio.—Perry v. Baskey, 107 N.E.2d 328, 158 Ohio St. 151.
Micelli v. Hirsch, App., 83 N.E. 2d 240—Brinkley v. Rhea, 4 N.E. 2d 270, 53 Ohio App. 128, petition dismissed 198 N.E. 40, 130 Ohio St. 172.
Okl.—Winn v. Corey, 65 P.2d 522, 179 Okl. 305.
Or.—Zeek v. Bicknell, 78 P.2d 620, 159 Or. 167.
Pa.—Yurkonis v. Dougherty, 115 A. 2d 193, 382 Pa. 387—Logan, to Use of Butz, v. City of Bethlehem, 187 A. 389, 324 Pa. 7.
Tex.—Norris Bros. v. Mattinson, Civ. App., 145 S.W.2d 204.
Utah.—Hunter v. Michaelis, 198 P.2d 245, 114 Utah 242.

19.82 Cal.—Kading v. Willis, 286 P. 2d 861, 135 C.A.2d 82—Scalf v. Eicher, 53 P.2d 368, 11 C.A.2d 44.
Ga.—Corley v. Russell, 88 S.E.2d 470, 92 Ga.App. 417, reversed on other grounds 91 S.E.2d 24, 212 Ga. 121, conformed to 91 S.E.2d 320, 93 Ga.App. 267—Riggs v. Watson, 47 S.E.2d 900, 77 Ga.App. 62.
Ill.—Klimczak v. Druley-O'Brien Co., 17 N.E.2d 266, 297 Ill.App. 635.
Ind.—Banner v. Hohman, 11 N.E.2d 509, 104 Ind.App. 637.
Ky.—United Fuel Gas Co. v. Friend's Adm'x, 270 S.W.2d 946—Ward v. Music, 257 S.W.2d 516—Emerine v. Ford, 254 S.W.2d 938.
Mo.—Bunch v. Mueller, 284 S.W.2d 440.
N.J.—Maccia v. Tynes, 120 A.2d 263, 39 N.J.Super. 1.
N.Y.—Keane v. Felshin, 16 N.Y.S. 2d 448, 258 App.Div. 269.
S.C.—Fisher v. J. H. Sheridan Co., 189 S.E. 356, 182 S.C. 316, 108 A.L. R. 981.
Tenn.—Hadley v. Morris, 249 S.W.2d 295, 35 Tenn.App. 534—Finton v. Mercury Motors, 194 S.W.2d 354, 29 Tenn.App. 150.
Va.—Darden v. Murphy, 11 S.E.2d 579, 176 Va. 511.
Wash.—Ashley v. Ensley, 265 P.2d 829, 44 Wash.2d 74—Wood v. Copeland Lumber Co., 202 P.2d 453, 32 Wash.2d 490—Burson v. Blackwell, 52 P.2d 351, 184 Wash. 669.
W.Va.—McCune v. Crawley Transp. Co., 198 S.E. 516, 120 W.Va. 301.
Wyo.—Ashley v. Ensley, 265 P.2d 829, 44 Wash.2d 74.

19.83 Ill.—Holdoway v. Choisser, 27 N.E.2d 228, 305 Ill.App. 20.
Iowa.—Olson v. Hodges, 19 N.W.2d 676, 236 Iowa 612—Allbaugh v. Ashby, 284 N.W. 816, 226 Iowa 574.
Mo.—Stanich v. Western Union Tel. Co., 153 S.W.2d 54, 348 Mo. 188.
Ohio.—Freas v. Sullivan, 200 N.E. 639, 130 Ohio St. 486.
Clark v. Hiatt, App., 136 N.E.2d 412—Collins v. McClure, App., 49 N.E.2d 181, affirmed 56 N.E.2d 171, 143 Ohio St. 569—Voelkl v. Latin, 16 N.E.2d 519, 58 Ohio App. 245—Cousins v. Booksbaum, 200 N.E. 133, 51 Ohio App. 150, error dismissed Booksbaum v. Cousins, 199 N.E. 217, 130 Ohio St. 336.
Pa.—Bernosky v. Greff, 38 A.2d 35, 350 Pa. 59—Ravis v. Shehulskie, 14 A.2d 70, 339 Pa. 161—Delling v. McKnight, 188 A. 859, 325 Pa. 251.
Va.—Smith v. Smith, 97 S.E.2d 907, 199 Va. 55—Bloxom v. McCoy, 17 S. E.2d 401, 178 Va. 343.
W.Va.—Reall v. Deiriggi, 34 S.E.2d 253, 253 Va. 662.

19.84 Cal.—Bennett v. Robertson, 150 P.2d 547, 65 C.A.2d 378.
Ill.—Wolf v. Budzyn, 27 N.E.2d 571, 305 Ill.App. 603.
Iowa.—Groshens v. Lund, 268 N.W. 496, 222 Iowa 49.
Ky.—Williams v. Coleman's Adm'x, 115 S.W.2d 584, 273 Ky. 122—Lang v. Cooper, 90 S.W.2d 382, 262 Ky. 407.
Miss.—Moore v. Herman Guy Auto Parts, Inc., 92 So.2d 373.
Neb.—Hief v. Roberts Dairy Co., 296 N.W. 331, 138 Neb. 885.
N.Y.—Uliaszek v. Buczkowski, 19 N. Y.S.2d 912, 259 App.Div. 967, fol-

conduct,[19.85] liability for another's negligence,[19.86] contributory negligence,[19.87] imputed negligence,[19.88] damages,[19.89] evidence and presumptions,[19.90] imminent peril,[19.91] proximate cause,[19.92] statutes and ordinances,[19.93] unavoidable acci-

lowed in 19 N.Y.S.2d 914, 259 App. Div. 967—Rutledge v. City of New York, 10 N.Y.S.2d 417, 256 App. Div. 515—Annatto v. Spellicy, 298 N.Y.S. 153, 251 App.Div. 876.

N.C.—Leary v. Norfolk Southern Bus Corp., 18 S.E.2d 426, 220 N.C. 745.

N.D.—Delaloye v. Kaisershot, 10 N. W.2d 593, 72 N.D. 637.

Ohio.—Kopelove Iron & Metal Co. v. Lawson, App., 139 N.E.2d 72.

19.85 Ohio.—Universal Concrete Pipe Co. v. Bassett, 200 N.E. 843, 130 Ohio St. 567, 119 A.L.R. 646.

19.86 Cal.—Pignet v. City of Santa Monica, 115 P.2d 194, 45 C.A.2d 766.

Colo.—American Ins. Co. v. Naylor, 70 P.2d 349, 101 Colo. 34.

Ga.—Studdard v. Turner, 85 S.E.2d 537, 91 Ga.App. 318.

Idaho.—Abbs v. Redmond, 132 P.2d 1044, 64 Idaho 369.

N.Y.—Hennessy v. Walker, 17 N.E. 2d 782, 279 N.Y. 94, 119 A.L.R. 1029.

N.C.—Smart v. Rodgers, 8 S.E.2d 833, 217 N.C. 560—Templeton v. Kelley, 7 S.E.2d 380, 217 N.C. 164.

Ohio.—Shults v. Hinamon, 87 N.E.2d 261, 84 Ohio App. 362.

19.87 Ala.—Terry v. Nelms, 54 So. 2d 282, 256 Ala. 291.

Cal.—Goldstein v. Rogers, 208 P.2d 719, 93 C.A.2d 201—Beck v. Azcarate, 122 P.2d 933, 50 C.A.2d 264.

Idaho.—Call v. City of Burley, 62 P.2d 101, 57 Idaho 58.

Ill.—Kooyumjian v. Stevens, 135 N. E.2d 146, 10 Ill.App.2d 378.

Ind.—Keeshin Motor Express Co. v. Glassman, 38 N.E.2d 847, 219 Ind. 538.

Iowa.—Semler v. Oertwig, 12 N.W.2d 265, 234 Iowa 233—Teufel v. Kaufmann, 6 N.W.2d 850, 233 Iowa 443.

Ky.—Basham v. White, 298 S.W.2d 316—Brock v. Pillion, 277 S.W.2d 27—Richardson v. Hoback, 224 S. W.2d 932, 311 Ky. 574.

Mo.—Mitchell v. Perkins, 54 N.W.2d 293, 334 Mich. 192.

Mo.—Toburen v. Carter, 273 S.W.2d 161—Young v. Anthony, 248 S.W. 2d 864—Burlingame v. Landis, 242 S.W.2d 578, 362 Mo. 523—Jungeblut v. Maris, 172 S.W.2d 861, 351 Mo. 301.

Burlingame v. Landis, App., 234 S.W.2d 808, affirmed 242 S.W.2d 578, 362 Mo. 523—Woods v. Chinn, App., 224 S.W.2d 583.

Neb.—Greyhound Corp. v. Lyman-Richey Sand & Gravel Corp., 72 N.W.2d 669, 161 Neb. 152—Doleman v. Burandt, 71 N.W.2d 521, 160 Neb. 745—Long v. Whalen, 71 N.W.2d 496, 160 Neb. 813—Fuss v. Williamson, 68 N.W.2d 139, 159 Neb. 525, rehearing denied 69 N.W. 2d 539, 160 Neb. 141.

Ohio.—Simko v. Miller, 18 N.E.2d 914, 133 Ohio St. 345.

Thompson v. Kerr, App., 51 N.E. 2d 742.

Okl.—Roadway Express v. Baty, 114 P.2d 935, 189 Okl. 180.

Pa.—Adley Exp. Co. v. Willard, 93 A.2d 676, 372 Pa. 252—Jaski v. West Park Daily Cleaners & Dyers, 5 A.2d 105, 334 Pa. 12.

Utah.—Devine v. Cook, 279 P.2d 1073, 3 Utah 2d 134.

Wash.—Rutherford v. Deur, 282 P.2d 281, 46 Wash.2d 435.

W.Va.—McMicken v. Province, 90 S. E.2d 348—Crookshank v. Hall, 80 S.E.2d 330, 139 W.Va. 355.

Wis.—Groling v. Goltz, 66 N.W.2d 195, 267 Wis. 390.

19.88 Cal.—Bruton v. Villoria, 292 P.2d 638, 138 C.A.2d 642—Barton v. Messmore, 265 P.2d 949, 122 C. A.2d 813, 38 A.L.R.2d 138—Lowe v. Lee, 213 P.2d 767, 95 C.A.2d 685.

Ind.—Keeshin Motor Express Co. v. Glassman, 38 N.E.2d 847, 219 Ind. 538.

Ky.—Emerine v. Ford, 254 S.W.2d 938.

Mich.—White v. Huffmaster, 32 N.W. 2d 447, 321 Mich. 225—Ansaldi v. City of Detroit, 22 N.W.2d 77, 314 Mich. 73.

Mo.—Fawkes v. National Refining Co., 108 S.W.2d 7, 341 Mo. 630.

Greenwood v. Bridgeways, Inc., App., 243 S.W.2d 111—Vogelgesang v. Waelder, App., 238 S.W.2d 849.

Neb.—Scott v. Service Pipe Line Co., 65 N.W.2d 219, 159 Neb. 36—Melcher v. Murphy, 31 N.W.2d 411, 149 Neb. 541—Gorman v. Bratka, 298 N.W. 691, 139 Neb. 718, modified on other grounds 300 N.W. 807, 140 Neb. 575.

Or.—Eid v. Larsen, 264 P.2d 1051, 200 Or. 83—Bartholomew v. Oregonian Pub. Co., 216 P.2d 257, 188 Or. 407.

19.89 Ga.—Rozier v. Folsom, 185 S. E. 140, 53 Ga.App. 53.

Ky.—Harlan Fruit Co. v. Kilbourne, 133 S.W.2d 730, 280 Ky. 511.

19.90 Cal.—Eslick v. Leach, 288 P.2d 38, 135 C.A.2d 455—Hays v. Viscome, 264 P.2d 173, 122 C.A.2d 135, 39 A.L.R.2d 1435—Lopez v. Knight, 263 P.2d 452, 121 C.A.2d 387—Dunn v. Russell, App., 234 P.2d 270, hearing dismissed—Ford v. Chesley Transp. Co., 225 P.2d 997, 101 C.A. 2d 548—Cole v. Ridings, 212 P.2d 597, 95 C.A.2d 136—Boyd v. Theetgee, 177 P.2d 637, 78 C.A.2d 346—Clary v. Lindley, 86 P.2d 920, 30 C.A.2d 571.

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Ill.—Sharp v. Brown, 110 N.E.2d 541, 349 Ill.App. 269—Skamenca v. Reeser, 13 N.E.2d 668, 294 Ill.App. 216.

Iowa.—DeBuhr v. Taylor, 5 N.W.2d 597, 232 Iowa 792.

Mich.—Soltar v. Anderson, 65 N.W. 2d 777, 340 Mich. 242—Wallace v. Skrzycki, 61 N.W.2d 106, 338 Mich. 165—Heiman v. Kolle, 27 N.W.2d 92, 317 Mich. 548.

Minn.—Knuth v. Murphy, 54 N.W.2d 771, 237 Minn. 225—TePoel v. Larson, 53 N.W.2d 468, 236 Minn. 482.

Mo.—Elder v. Phillip, App., 252 S.W. 2d 656.

N.C.—Owens v. Kelly, 84 S.E.2d 163, 240 N.C. 770—Morgan v. Carolina Coach Co., 45 S.E.2d 339, 228 N.C. 280.

Pa.—Teubel v. Aronowitz, 98 A.2d 413, 173 Pa.Super. 308.

Tex.—Mitchell v. Gooch, Civ.App., 210 S.W.2d 834.

Utah.—Mehr v. Child, 61 P.2d 624, 90 Utah 348.

Wash.—Hutton v. Martin, 252 P.2d 581, 41 Wash.2d 780.

Wis.—Atkinson v. Huber, 68 N.W.2d 447, 268 Wis. 615—Papenfus v. Shell Oil Co., 35 N.W.2d 920, 254 Wis. 233.

19.91 Mich.—Garvit v. Krebs, 61 N. W.2d 58, 338 Mich. 256.

Ohio.—Osso v. Hamilton City Lines, 89 N.E.2d 697, 86 Ohio App. 53.

Or.—Swingley v. M. F. Patterson Dental Supply Co. of Delaware, 120 P.2d 968, 168 Or. 60.

19.92 Ark.—Lydon v. Dean, 260 S. W.2d 465, 222 Ark. 367.

Cal.—Sullivan v. City and County of San Francisco, 214 P.2d 82, 95 C. A.2d 745—Ross v. Baldwin, 112 P. 2d 666, 44 C.A.2d 433.

Conn.—Corey v. Phillips, 10 A.2d 370, 126 Conn. 246.

Idaho.—Stuart v. McVey, 87 P.2d 446, 59 Idaho 740.

Mo.—Lix v. Gastian, App., 287 S.W. 2d 354.

Neb.—Welstead v. Jim Ryan Const. Co., 69 N.W.2d 308, 160 Neb. 87.

Ohio.—Marchal v. Frankman, App., 58 N.E.2d 679.

Tex.—Gaines v. Copeland, Civ.App., 209 S.W.2d 231.

19.93 Ariz.—Eldredge v. Miller, 277 P.2d 239, 78 Ariz. 140.

Cal.—Reed v. Simpson, 196 P.2d 895, 32 C.2d 444—Pipoly v. Benson, 125 P.2d 482, 20 C.2d 366, 147 A.L.R. 515.

Ferguson v. Nakahara, 110 P.2d 1091, 43 C.A.2d 435—Ketchum v. Pattee, 98 P.2d 1051, 37 C.A.2d 122—Anderson v. Mothershead, 64 P.

dent,[19.94] and, finally, where the erroneous instruction was as to the last clear chance doctrine.[19.95]

§ 1763(2). —— Instructions Informal, Inaccurate, Incomplete, Uncertain, Etc.

a. In general
b. Using, or referring jury to, pleadings

a. In General

Unless there is prejudice to the complaining party, informal, inaccurate, incomplete, argumentative, or ambiguous instructions will not necessitate reversal.

The giving of an instruction which is informal, inaccurate, incomplete, misleading, or lacking in clearness or certainty will not constitute a ground for reversal where there is no prejudice to the complaining party.[20] In the absence of prejudice, the

2d 995, 19 C.A.2d 97—Adrian v. Guyette, 58 P.2d 988, 14 C.A.2d 493.
Colo.—Clark v. Fellin, 251 P.2d 940, 126 Colo. 519.
Fla.—Marvin v. Byrd, 67 So.2d 415.
Idaho.—Cook v. Lammy, 253 P.2d 244, 73 Idaho 445—Foberg v. Harrison, 225 P.2d 69, 71 Idaho 11.
Ill.—Walker v. Shea-Matson Trucking Co., 101 N.E.2d 449, 344 Ill. App. 466—Schoonveld v. Kankakee Motor Coach Co., 99 N.E.2d 630, 343 Ill.App. 529—Galek v. Winters, 92 N.E.2d 360, 340 Ill.App. 635—Padilla v. Walker, 91 N.E.2d 158, 340 Ill.App. 222—Russell v. Consolidated Forwarding Corp., 71 N.E.2d 853, 330 Ill.App. 529—Colt v. Ormerod, 60 N.E.2d 779, 326 Ill.App. 35—Dina v. Passaglia, 23 N.E.2d 773, 302 Ill.App. 159.
Ind.—Illinois Bell Telephone Co. v. Pappadikis, 17 N.E.2d 494, 106 Ind. App. 504.
Iowa.—Wilson v. Long, 266 N.W. 482, 221 Iowa 668.
Ky.—Bumpus v. Drinkard's Adm'x, 279 S.W.2d 4—Gorman v. Berry, 158 S.W.2d 155, 289 Ky. 88—McCulloch's Adm'r v. Abell's Adm'r, 115 S.W.2d 386, 272 Ky. 756—Nehi Bottling Co. v. Flannery, 94 S.W. 2d 297, 264 Ky. 68.
Mass.—Wallace v. Patey, 139 N.E. 2d 407.
Mich.—Valenti v. Meyer, 4 N.W.2d 5, 301 Mich. 551.
Minn.—Neal v. Neal, 56 N.W.2d 673, 238 Minn. 292.
Miss.—Marx v. Berry, 168 So. 61, 176 Miss. 1.
Mo.—Anderson v. Kraft, App., 129 S.W.2d 85, certiorari quashed State ex rel. Anderson v. Hostetter, 140 S.W.2d 21, 346 Mo. 249.
Neb.—Harding v. Hoffman, 62 N.W. 2d 333, 158 Neb. 86—Hamblen v. Steckley, 27 N.W.2d 178, 148 Neb. 283.
N.H.—Lepage v. Theberge, 89 A.2d 534, 97 N.H. 375.
N.J.—Formichella v. Layton, 95 A. 2d 419, 25 N.J.Super. 1.
Perry v. Public Service Coordinated Transport, 56 A.2d 617, 136 N.J.Law 398.
N.Y.—Uliaszek v. Buczkowski, 19 N. Y.S.2d 912, 259 App.Div. 967, followed in 19 N.Y.S.2d 914, 259 App. Div. 967—Booth v. City of Rochester, 15 N.Y.S.2d 945, 258 App.Div. 849.
N.C.—Citizens Nat. Bank v. Phillips, 73 S.E.2d 323, 236 N.C. 470—Lewis v. Watson, 47 S.E.2d 484, 229 N.C. 20.
Ohio.—Kohn v. B. F. Goodrich Co., 38 N.E.2d 592, 139 Ohio St. 141—Blackford v. Kaplan, 20 N.E.2d 522, 135 Ohio St. 268.
Fitzgerald v. Chemical Service Corp., 84 N.E.2d 754, 84 Ohio App. 423—Marchal v. Frankman, App., 58 N.E.2d 679—Thompson v. Kerr, App., 51 N.E.2d 742.
Okl.—Riss & Co. v. Reed, 301 P.2d 208.
Or.—Kennedy v. Farmers Co-op. Creamery of McMinnville, 295 P.2d 197, 207 Or. 160—Senkirik v. Royce, 235 P.2d 886, 192 Or. 583.
S.C.—Myers v. Evans, 81 S.E.2d 32, 225 S.C. 80.
W.Va.—Moore v. Skyline Cab, 59 S. E.2d 437, 134 W.Va. 121.
Wis.—Bush v. Hadley, 69 N.W.2d 261, 269 Wis. 160—Volland v. McGee, 300 N.W. 506, 238 Wis. 598—Beer v. Strauf, 296 N.W. 68, 236 Wis. 597.

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S.D.—Dwyer v. Christensen, 75 N.W. 2d 650.
Tex.—Schroeder v. Rainboldt, 97 S. W.2d 679, 128 Tex. 269.

19.95 Cal.—Hall v. Atchison, T. & S. F. Ry. Co., App., 312 P.2d 739—Johnson v. Southwestern Engineering Co., 107 P.2d 417, 41 C.A.2d 623.
Idaho.—Stearns v. Graves, 111 P.2d 882, 62 Idaho 312.
Mo.—Teague v. Plaza Exp. Co., 190 S.W.2d 254, 354 Mo. 582—Reiling v. Russell, 134 S.W.2d 33, 345 Mo. 517—Radabaugh v. Williford, 116 S.W.2d 118, 342 Mo. 528.
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20. Ala.—Southern Ry. Co. v. Sanford, 76 So.2d 164, 262 Ala. 5—Mahone v. Birmingham Elec. Co., 73 So.2d 378, 261 Ala. 132—Walker v. Bowling, 72 So.2d 841, 261 Ala. 46—Protective Life Ins. Co. v. Wallace, 161 So. 256, 230 Ala. 338—City of Birmingham v. Jackson, 155 So. 527, 229 Ala. 133—Clay County Abstract Co. v. McKay, 147 So. 407, 226 Ala. 394—City of Birmingham v. Simmons, 130 So. 896, 222 Ala. 111, 74 A.L.R. 766, modification denied 132 So. 322, 222 Ala. 309, 74 A.L.R. 766—Alabama Power Co. v. Elmore, 130 So. 413, 222 Ala. 6—Dismukes v. Trivers Clothing Co., 127 So. 188, 221 Ala. 29—Baugh v. North Alabama Coal & Mineral Co., 124 So. 528, 220 Ala. 242—C. M. McMahen & Sons v. Western Union Telegraph & Cable Co., 123 So. 76, 219 Ala. 636, 63 A.L.R. 805—Batterton v. City of Birmingham, 119 So. 13, 218 Ala. 489—Benefit Ass'n of Ry. Employees v. Armbruster, 116 So. 164, 217 Ala. 282—Birmingham Belt R. Co. v. Hendrix, 110 So. 312, 215 Ala. 285, certiorari denied 47 S.Ct. 472, 273 U.S. 758, 71 L.Ed. 877—Illinois Cent. R. Co. v. Martin, 105 So. 805, 213 Ala. 617—Alabama Power Co. v. Armour & Co., 92 So. 111, 207 Ala. 15—Hammett v. Birmingham Ry., Light & Power Co., 81 So. 22, 202 Ala. 520—Alverson v. Little Cahaba Coal Co., 77 So. 547, 201 Ala. 123—Karpeles v. City Ice Delivery Co., 73 So. 642, 198 Ala. 449.
Republic Steel Corp. v. Gilbert, 83 So.2d 370, 38 Ala.App. 227, certiorari denied 83 So.2d 374, 263 Ala. 700—Emergency Aid Life Ass'n v. Gamble, 40 So.2d 887, 34 Ala.App. 377, certiorari denied 40 So.2d 888, 252 Ala. 282—Trammell v. Robinson, 37 So.2d 142, 34 Ala.App. 91—Allen v. Wilson, 32 So.2d 380, 33 Ala.App. 261—McKenzie v. Minge, 84 So. 475, 17 Ala.App. 269.
Ariz.—Hatchimonji v. Homes, 3 P.2d 271, 38 Ariz. 535.
Ark.—Scott-Burr Stores Corp. v. Foster, 122 S.W.2d 165, 197 Ark. 232—St. Louis-San Francisco Ry. Co. v. Ransom, 32 S.W.2d 436, 182 Ark. 701—Gates v. Plummer, 291 S.W. 816, 173 Ark. 27—Victoria Bank of Strong v. West, 268 S.W. 863, 167 Ark. 507—Grantham v. Walker, 252 S.W. 13, 159 Ark. 351—Kansas City Southern Ry. Co. v. Akin, 210 S.W. 350, 138 Ark. 10—St. Louis, I. M. & S. Ry. Co. v. Cobb, 190 S.W. 107, 126 Ark. 225—Holland Banking Co. v. Booth, 180 S.W. 978, 121 Ark. 171.
Cal.—Miner v. Dabney-Johnson Oil Corporation, 28 P.2d 23, 219 C. 580—Rogers v. Interstate Transit Co., 297 P. 884, 212 C. 36, certiorari denied Interstate Transit Co. v. Rogers, 52 S.Ct. 22, 284 U.S. 640, 76

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186—Huxoll v. Union Pac. R. Co., 155 N.W. 900, 99 Neb. 170, affirmed 38 S.Ct. 187, 245 U.S. 535, 62 L.Ed. 455—Usher v. American Smelting & Refining Co., 150 N.W. 814, 97 Neb. 526.

N.H.—Derby v. Public Service Co. of N. H., 119 A.2d 335, 100 N.H. 53.

N.J.—Davidson v. Fornicola, 118 A. 2d 838, 38 N.J.Super. 365—Brice v. Austin, 105 A.2d 680, 31 N.J. Super. 10.

De Santis v. Lange, 60 A.2d 620, 137 N.J.Law 480—Manhattan Overseas Co. v. Camden County Beverage Co., 19 A.2d 828, 126 N.J.Law 421—Fisher v. Town of Nutley, 199 A. 40, 120 N.J.Law 290—Rothstein's v. Rothstein, 143 A. 366, 105 N.J.Law 134—Coll v. Lehigh Valley R. Co., 132 A. 922, 102 N.J.Law 713—Kanouse v. Donatonia, 111 A. 11, 94 N.J.Law 516.

Lloyd W. Casner, Inc., v. Hartshorne, 177 A. 890, 13 N.J.Misc. 295—Leach v. People's Fire Ins. Co., 155 A. 773, 9 N.J.Misc. 909—Meisler v. Raiken Monument Works, 154 A. 763, 9 N.J.Misc. 664—Brouzell v. Reeves, 152 A. 387, 8 N.J.Misc. 856—Cutler v. Ellis, 134 A. 308, 1 N.J.Misc. 228.

N.C.—Goode v. Barton, 78 S.E.2d 398, 238 N.C. 492—Lance v. Cogdill, 71 S.E.2d 918, 236 N.C. 134—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478—Spivey v. Newman, 59 S.E.2d 844, 232 N.C. 281—Merrell v. Bridges, 195 S.E. 374, 213 N.C. 123—Bradshaw v. Ætna Life Ins. Co., 179 S.E. 665, 129 N.C. 214—Kepley v. Kirk, 132 S.E. 788, 191 N.C. 690—Mangum v. Atlantic Coast Line R. Co., 125 S.E. 549, 188 N.C. 689—Buchanan v. Cranberry Furnace Co., 101 S.E. 518, 178 N.C. 643—Danville Lumber & Mfg. Co. v. Gallivan Bldg. Co., 97 S.E. 718, 177 N.C. 103.

N.D.—Schilling v. Carl Tp., Grant County, 235 N.W. 126, 60 N.D. 480—Munster v. Stoddard, 170 N.W. 871, 44 N.D. 105.

Ohio.—Bobbitt v. Maher Beverage Co., 89 N.E.2d 583, 152 Ohio St. 246.

Mink v. Cincinnati St. Ry. Co., 131 N.E.2d 606, 99 Ohio App. 123—Eller v. Turvene, App., 131 N.E.2d 407—Senn v. Lackner, App., 100 N.E.2d 419, rehearing denied 100 N. E.2d 432, 91 Ohio App. 83, affirmed 105 N.E.2d 49, 157 Ohio St. 206, and motion to certify sustained 107 N.E.2d 558, 91 Ohio App. 83—Schaeffer v. Davis, App., 83 N.E.2d 651—Campanelli v. Gindlesparger, App., 80 N.E.2d 701—Beam v. Baltimore & O. R. Co., 68 N.E.2d 159, 77 Ohio App. 419—Fineberg v. Lincoln-Phelps Apartment Co., 9 N. E.2d 1011, 55 Ohio App. 402—Allen v. Leavick, 182 N.E. 139, 43 Ohio App. 100—Misrach v. Epperson, 168 N.E. 230, 32 Ohio App. 451—Spear & Co. v. Fulton, 3 Ohio App. 40, affirmed 112 N.E. 1086, 92 Ohio St. 529.

Scott v. Emswiler, 26 Ohio Cir. Ct.,N.S., 502—Munro Hotel Co. v. Brough, 26 Ohio Cir.Ct.,N.S., 185.

Okl.—Mulkey v. Morris, 313 P.2d 494—McCasland v. Burton, 292 P.2d 396—St. Louis-San Francisco Ry. Co. v. Withers, 270 P.2d 341—City of Holdenville v. Talley, 240 P.2d 761, 205 Okl. 693—Southwest Ice & Dairy Products Co. v. Faulkenberry, 220 P.2d 257, 203 Okl. 279, 17 A.L.R.2d 1373—Ada Steam Laundry v. Kitchens, 164 P.2d 877, 196 Okl. 235—Pure Oil Co. v. Taylor, 155 P.2d 529, 195 Okl. 93—Pace v. Penny, 147 P.2d 991, 194 Okl. 135—Norton Johnson Buick Co. v. Lindley, 46 P.2d 525, 173 Okl. 93—St. Louis-San Francisco Ry. Co. v. Eakins, 284 P. 866, 141 Okl. 256—Beard v. Bradshaw, 283 P. 990, 141 Okl. 50—Wyatt v. Marinoff, 268 P. 224, 131 Okl. 134—Ed. M. Seamens & Co. v. Overholser & Avey, 244 P. 796, 116 Okl. 276—Peck v. Peck, 228 P. 968, 102 Okl. 184—Finch v. American State Bank of Beggs, 223 P. 631, 97 Okl. 172—Slick Oil Co. v. Coffey, 177 P. 915, 72 Okl. 32—Laurel Oil & Gas Co. v. Anthony, 162 P. 203, 62 Okl. 94—Carney v. Chapman, 158 P. 1125—Missouri, O. & G. Ry. Co. v. Smith, 155 P. 233, 55 Okl. 12—Summers v. Gates, 154 P. 1159, 55 Okl. 96.

Or.—O'Brien v. Dunigan, 210 P.2d 567, 187 Or. 227—Rekdahl v. Cheney, 293 P. 412, 134 Or. 251—Stark v. McKenna, 263 P. 391, 124 Or. 332—Allen v. William J. Burns International Detective Agency, 256 P. 197, 121 Or. 492—Hansen-Rynning v. Oregon-Washington R. & Nav. Co., 209 P. 462, 105 Or. 67.

Pa.—Yost v. West Penn Rys. Co., 9 A.2d 368, 336 Pa. 407—Balin v. Kimmelman, 145 A. 303, 295 Pa. 301—Bowman v. Stouman, 141 A. 41, 292 Pa. 293—Lipshutz v. Lipshutz, 117 A. 796, 274 Pa. 217—Tolson v. Philadelphia Rapid Transit Co., 93 A. 1017, 248 Pa. 227.

Yonker v. Vaneer, 91 Pa.Super. 157—Bright v. Higgins, 76 Pa.Super. 71.

Taylor v. Lyon, 13 A. 739, 10 Pa. Cas. 175.

R.I.—Proctor v. Bak, 65 A.2d 453, 75 R.I. 232.

S.C.—Smith v. Oliver Motor Co., 177 S.E. 791, 174 S.C. 464—Duncan v. Record Pub. Co., 143 S.E. 31, 145 S.C. 196—Battle v. DeVane, 138 S. E. 821, 140 S.C. 305—Waters v. South Carolina Light, Power & Rys. Co., 88 S.E. 289, 103 S.C. 489—Breland v. Ritter, 43 S.E. 960, 65 S.C. 480.

Tenn.—Olins v. Schocket, 215 S.W. 2d 18, 31 Tenn.App. 346—Kurn v. Weaver, 161 S.W.2d 1005, 25 Tenn. App. 556—Nashville, C. & S. L. Ry. v. Reeves, 157 S.W.2d 851, 25 Tenn. App. 359—Tevis v. Proctor & Gamble Distributing Co., 113 S.W.2d 64, 21 Tenn.App. 494.

Tex.—International-Great Northern R. R. v. Lowry, Civ.App., 98 S.W. 2d 383, reversed on other grounds 121 S.W.2d 585, 132 Tex. 272—Lone Star Gas Co. v. Haire, Civ. App., 41 S.W.2d 424—Houston Lighting & Power Co. v. Daily, Civ.App., 291 S.W. 317—Thomas v. Calahan, Civ.App., 229 S.W. 602—Campbell Banking Co. v. Hamilton, Civ.App., 210 S.W. 621—Baker v. Brown, Civ.App., 210 S.W. 312—Akers v. Moore, Civ.App., 209 S. W. 241—Schoellkopf Saddlery Co. v. Crawley, Civ.App., 203 S.W. 1172—Northern Texas Traction Co. v. Crouch, Civ.App., 202 S.W. 781—Meyer v. Monnig Dry Goods Co., Civ.App., 189 S.W. 80, error refused—Just v. Herry, Civ.App., 174 S.W. 1012—Crow v. Ball, Civ.App., 99 S. W. 583—Hanaway v. Wiseman, 88 S.W. 437, 39 Tex.Civ.App. 642.

Utah.—Thomas v. Sadleir, 162 P.2d 112, 108 Utah 552—Zimmerman v. Auerbach, 17 P.2d 251, 81 Utah 554—Skeen v. Skeen, 287 P. 320, 76 Utah 32—Johanson v. Huntsman, 209 P. 197, 60 Utah 402—Consolidated Wagon & Machine Co. v. Wright, 190 P. 937, 56 Utah 382—Dimmick v. Utah Fuel Co., 164 P. 872, 49 Utah 430.

Vt.—Hannon v. Myrick, 111 A.2d 729, 118 Vt. 431—Russell v. Pilger, 37 A.2d 403, 113 Vt. 537—Cobb v. Rutland Sav. Bank, 29 A.2d 705, 113 Vt. 117—Outlaw v. Pearce, 11 S.E.2d 600, 176 Va. 458—Yorke v. Mason, 4 S.E.2d 375, 173 Va. 379—Cocoa Products Co. of America v. Duche, 158 S.E. 719, 156 Va. 86—Gilley v. Simmons, 134 S.E. 550, 145 Va. 549—Old Dominion Coal Corporation v. Snipes, 128 S.E. 518, 142 Va. 331—American Exch. Bank v. Goodlee Realty Corporation, 116 S.E. 505, 135 Va. 204—Bourne v. Richardson, 113 S.E. 893, 133 Va. 441.

Wash.—Leer v. Cohen, 116 P.2d 535, 10 Wash.2d 239—Anderson v. Harrison, 103 P.2d 320, 4 Wash.2d 265—McPherson v. Toyokaicho Wakamatsu, 62 P.2d 732, 188 Wash. 320—McMullen v. Warren Motor Co., 25 P.2d 99, 174 Wash. 454—Bain v. Wallace, 10 P.2d 226, 167 Wash. 583—Pellerin v. Washington Veneer Co., 2 P.2d 658, 163 Wash. 555—Child v. Hill, 283 P. 1076, 155 Wash. 133—Beaulier v. Mahoney, 283 P. 707, 155 Wash. 141—Stewart v. Steelman, 259 P. 1083, 145 Wash. 292—Farley v. Fidelity Rent & Collection Co., 242 P. 1097, 137 Wash. 485—Allbin v. City of Seattle, 227 P. 322, 130 Wash. 342—Anderson v. Rucker Bros., 183 P. 70, 107 Wash. 595, 8 A.L.R. 544, affirmed 186 P. 293, 107

Wash. 595, 8 A.L.R. 544—Brown v. Jamison, 172 P. 853, 102 Wash. 124.
W.Va.—Stone v. Rudolph, 32 S.E.2d 742, 127 W.Va. 335—Morris v. Parris, 157 S.E. 40, 110 W.Va. 102—Menafee v. Monongahela Ry. Co., 148 S.E. 109, 107 W.Va. 245—Leros v. Parker, 91 S.E. 660, 79 W.Va. 700.
Wis.—Olson v. Milwaukee Auto. Ins. Co., 62 N.W.2d 549, 266 Wis. 106, mandate modified on other grounds 63 N.W.2d 740, 266 Wis. 106—Cohen v. Bridges, 39 N.W.2d 873, 255 Wis. 535—Sandeen v. Willow River Power Co., 252 N.W. 706, 214 Wis. 166—Olk v. Marquardt, 234 N.W. 723, 203 Wis. 479—Schweitzer v. Doepke, 218 N.W. 188, 195 Wis. 341—Terry v. Schmidt, 201 N.W. 729, 185 Wis. 550—Manz v. Kippel, 149 N.W. 375, 158 Wis. 557.
Wyo.—**Corpus Juris Secundum cited in** Boyce v. Northern Utilities Co., 297 P.2d 820, 827—Marken v. Empire Drilling Co., 293 P.2d 406—Shikany v. Salt Creek Transp. Co., 45 P.2d 645, 48 Wyo. 190.
4 C.J. p 1032 note 36—10 C.J. p 1086 note 76—26 C.J. p 573 note 61—39 C.J. p 108 note 31(c) (4), (5)—52 C.J. p 174 note 20—53 C.J. p 364 note 18 [a]—54 C.J. p 606 notes 19, 20, 22.

Allegedly erroneous use of particular terms

(1) "Against," in a charge that the jury could in no event find a verdict against defendant generally, where the word "against," if used, was a lapse.
Ga.—Dawson Paper Shell Pecan Co. v. Montezuma Fertilizer Co., 90 S.E. 984, 19 Ga.App. 42.

(2) "Approximate cause" of accident, such expression being practically synonymous with "proximate cause" of accident.
Cal.—Carter v. J. W. Silver Trucking Co., App., 36 P.2d 837, reversed on other grounds 47 P.2d 733, 4 C.2d 198.

(3) "Constantly alert," in an instruction requiring a track laborer to be "constantly alert," where the laborer knew the dangers of the switch-yard where the injury occurred.
Wis.—London Guarantee & Accident Co. v. Great Northern R. Co., 221 N.W. 762, 197 Wis. 241.

(4) "Direct," in a malpractice instruction that the law was for the dentist unless the patient's injuries were the direct or proximate result of the dentist's negligence.
Ky.—Tanner v. Sanders, 56 S.W.2d 718, 247 Ky. 90.

(5) "Evidence of negligence," in an instruction that the accident itself was "evidence of negligence."
N.J.—Hagens v. West Englewood Lumber Co., 138 A. 519, 5 N.J.Misc. 825.

(6) "Fraud," in an instruction relating to additional insurance claimed to have avoided a fire policy.
Minn.—Basa v. Pierz Farmers' Mut. Fire Ins. Co., 227 N.W. 39, 172 Minn. 305, 68 A.L.R. 359.

(7) "High degree of care," in an instruction, in a passenger's action for injuries from defendant's handling of explosives at a station where reasonable care was necessarily a high degree of care, that defendant was required to exercise a "high degree of care."
N.J.—Gallatty v. Central R. of New Jersey, 92 A. 279, 86 N.J.Law 416.

(8) "Materially contributed to the accident," in an instruction that contributory negligence to preclude recovery must have "materially contributed to the accident."
Wash.—Hansen v. Sandvik, 222 P. 205, 128 Wash. 60.

(9) "Offered," in an instruction relative to the weighing of evidence offered.
Ohio.—Travelers' Ins. Co. of Hartford, Conn. v. Gath, 160 N.E. 710, 118 Ohio St. 257.
Cleveland Ry. Co. v. Duralia, 165 N.E. 358, 30 Ohio App. 389.

(10) "Other," qualifying the word "damages" in an instruction without an object to operate upon, therefore being without meaning.
Ariz.—Timmons v. McKinzie, 189 P. 627, 21 Ariz. 433.

(11) "Precaution," in instructions as to an engineer's duty toward a trespasser on the track.
Ky.—McKinney's Adm'x v. Cincinnati, N. O. & T. P. R. Co., 45 S.W. 2d 1031, 242 Ky. 167.

(12) "Prima facie," where the term could not have affected the verdict.
Ill.—Sweney v. Northwestern Mut. Ins. Co., 251 Ill.App. 1.

(13) "Promptly," in an instruction that to avoid a contract on the ground of infancy, the infant must disaffirm it "promptly" within a reasonable time after reaching his majority.
Minn.—Kelly v. Furlong, 261 N.W. 460, 194 Minn. 465.

(14) "Rapidly," in an instruction on negligently causing an elevator "rapidly" to descend.
Iowa.—Dean v. Koolish, 234 N.W. 179, 212 Iowa 238.

(15) "Satisfactory," in an instruction requiring the preponderance of the evidence to be "more satisfactory" to the jury than contrary evidence.
Ohio.—Travelers' Ins. Co. of Hartford, Conn. v. Gath, 160 N.E. 710, 118 Ohio St. 257.

(16) "Set aside for vehicular traffic," in an instruction to find for defendants if an ordinarily prudent person would not have attempted to cross the part of the roadway so set aside.
Or.—Houston v. Maunula, 255 P. 477, 121 Or. 552.

(17) "Unnecessarily," in an instruction on conspiring unnecessarily to ruin plaintiff's business.
Wash.—Eyak River Packing Co. v. Huglen, 255 P. 123, 143 Wash. 229, affirmed 257 P. 638, 143 Wash. 229.

(18) "Utter," in expressions "utter disregard of consequences," and "utter reckless or absolute disregard of safety of others," in an instruction on gross negligence.
Or.—Storla v. Spokane, Portland & Seattle Transp. Co., 297 P. 367, 136 Or. 315, rehearing denied 298 P. 1065, 136 Or. 315.

(19) "Various occasions," in instruction relating to "family purpose doctrine," referring to son's use of father's automobile on "various occasions," instead of habitual use.
N.C.—Grier v. Woodside, 158 S.E. 491, 200 N.C. 759.

Charge that, if the jury "believes" that the ambulance belonged to defendants, the driver was presumably defendants' authorized agent may be held not prejudicial, although not using the words "reasonably satisfied."
Ala.—Jefferson County Burial Soc. v. Cotton, 133 So. 256, 222 Ala. 578.
4 C.J. p 1032 note 36 [q].

Failure to give the full title of the statute, where a complete summary of the Motor Vehicle Bill of Sales Act was given in the trial court's charge, is harmless.
N.J.—Pollitt v. General Credit Corporation, 176 A. 607, 114 N.J.Law 432.

Inadvertent use of affirmative

Oversight of the court in instructions in requiring an affirmative answer to an interrogatory under defendant's evidence, instead of a negative answer, is not prejudicial where the jury could not have been misled.
Ariz.—Strahan v. Haynes, 262 P. 995, 33 Ariz. 128.

Inadvertent use of negative

In an action against an electric company for fire damage, the charge that, where the thing is shown to be under defendant's management and the accident is such as does not happen if proper care is used, a rebuttable presumption of negligence is raised, and that, when evidence on a point is introduced, the presumption is "not" functus officio and "drops out of sight," while possibly misleading in using "not," is not prejudicial.
Ala.—Alabama Power Co. v. Emens, 153 So. 729, 228 Ala. 466.

Including reasons of rule in an instruction correctly stating the law is harmless.
Colo.—National Surety Co. v. Queen

City Land & Mortgage Co., 164 P. 722, 63 Colo. 105.

Incorporating in instructions inapplicable provisions of statutes will not require reversal where no prejudice results to the complaining party.

Ga.—Floyd v. Boss, 163 S.E. 606, 174 Ga. 544.
Standard Oil Co. v. Parrish, 151 S.E. 541, 40 Ga.App. 814—Atlantic Coast Line R. Co. v. Thomas, 82 S.E. 299, 14 Ga.App. 619.
Ill.—Jeffries v. Alexander, 107 N.E. 146, 266 Ill. 49.
Ohio.—Liberty Highway Co. v. Mastin, 170 N.E. 604, 34 Ohio App. 183.
S.C.—Oxner v. Seaboard Air Line Ry. Co., 96 S.E. 559, 110 S.C. 366.
S.D.—Hudson v. Sheafe, 171 N.W. 320, 41 S.D. 475.
4 C.J. p 1032 note 36 [e].

Instructions to the jury that, "if you find" designated facts as pleaded by defendant, are not prejudicially erroneous as impliedly giving defendant the burden of proving contributory negligence, such burden being correctly stated elsewhere.

Iowa.—Dean v. Koolish, 234 N.W. 179, 212 Iowa 238.

Reading or referring to reported decisions

Ga.—Peek v. Irwin, 148 S.E. 88, 168 Ga. 442.
Minn.—Christensen v. Pestorious, 250 N.W. 363, 189 Minn. 548.
Mo.—Sculley v. Rolwing, App., 88 S.W.2d 394.
N.C.—Elliott v. Tallassee Power Co., 128 S.E. 730, 190 N.C. 62.

Reading requested charges of both parties to the jury separately, although improper, is harmless unless the jury were misled.

Conn.—Bridgeport L. A. W. Corporation v. Levy, 147 A. 841, 110 Conn. 255.

Statement that charge was requested

While it is the duty of the court to give a proper requested charge in such manner that the jury will distinctly understand that it is approved by the court as a correct statement of the law, and it may not weaken its effect by any act or words creating the impression that it is given merely as representing counsel's view or contention, and not as its own interpretation of the law, the mere fact that it states it to have been requested is not prejudicial, when it is plainly stated to be a part of the court's instruction on the law.

Ga.—Hines v. Snell, 107 S.E. 349, 27 Ga.App. 92.

Submission of several grounds of negligence

Mo.—Corbin v. Kansas City, C., C. & St. J. Ry. Co., App., 41 S.W.2d 832—Agee v. Herring, 298 S.W. 250, 221 Mo.App. 1022—Barker v. Hemphill Lumber Co., App., 217 S.W. 585.
4 C.J. p 1032 note 36 [c].

Use of singular or plural

Mont.—Rhule v. Thrasher, 295 P. 266, 88 Mont. 468.
N.J.—Montecalvo v. Wahl, 117 A. 621, 97 N.J.Law 554.

Use of synonymous terms or a different method of stating elements of damage as contained in a petition for malicious prosecution is not prejudicial error.

Iowa.—Hepker v. Schmickle, 229 N. W. 177, 209 Iowa 744.

Use of technical terms without definition

Kan.—Barzen v. Kepler, 266 P. 69, 125 Kan. 648.
Ky.—Short v. Metz Co., 176 S.W. 1144, 165 Ky. 319.
Mo.—Head v. M. E. Leming Lumber Co., 281 S.W. 441.
Morris v. St. Louis & S. F. R. Co., 168 S.W. 325, 184 Mo.App. 65.
Tex.—Texas Employers Ins. Ass'n v. Guidry, Civ.App., 93 S.W.2d 508—Frick v. International & G. N. Ry. Co., Civ.App., 207 S.W. 198, error refused.

Misuse of particular terms held not prejudicial

(1) "Account" instead of an "account stated."
S.C.—Meredith v. Fretwell, 122 S.E. 767, 128 S.C. 267.

(2) "Affect" for "effect."
Ill.—O'Connor v. Kennedy, 200 Ill. App. 426.

(3) "Ambiguous" instead of "unambiguous."
Wis.—Mahoney v. Kennedy, 205 N.W. 407, 188 Wis. 30.

(4) "Approximate" cause for "proximate" cause.
Iowa.—Strait v. Bartholomew, 191 N. W. 811, 195 Iowa 377.

(5) "At the time" instead of "on the occasion."
Mo.—Mackey v. Queen City Wood Works & Lumber Co., 261 S.W. 132, 216 Mo.App. 205.

(6) "Burden" instead of "weight."
Tenn.—Yellow Cab Co. v. Maloaf, 3 Tenn.App. 11.

(7) "Can" instead of "has."
Ind.—National Life & Accident Ins. Co. v. Williams, 138 N.E. 826, 84 Ind. 343.

(8) "Careless" in lieu of "negligent."
Ala.—Hester v. Ford, 130 So. 203, 221 Ala. 592.

(9) "Cash market" instead of "market value."
Tex.—West Texas Hotel Co. v. City of El Paso, Civ.App., 83 S.W.2d 772, error dismissed.

(10) "Cause" instead of "proximate cause."
Ga.—City Ice Delivery Co. v. Turley, 160 S.E. 517, 44 Ga.App. 32.

(11) "Concealing" instead of "receiving."
Ala.—Bessemer Feed Mills v. Alabama Great Southern R. Co., 116 So. 796, 217 Ala. 446.

(12) "Conductor" instead of "motorman."
Mo.—Hudson v. Kansas City Rys. Co., 246 S.W. 576.

(13) "Contract price," instead of "market price."
Ky.—Louisville & N. R. Co. v. Schaeffer, 280 S.W. 974, 213 Ky. 248.

(14) "Convince" rather than "satisfy."
Ala.—Bessemer Feed Mills v. Alabama Great Southern R. Co., 116 So. 796, 217 Ala. 446.

(15) "Discretely" instead of "discreetly."
Iowa.—Parks v. City of Des Moines, 191 N.W. 728, 195 Iowa 972.

(16) "Fair cash value" instead of "fair market value."
Okl.—Pulaski Oil Co. v. Edwards, 217 P. 876, 92 Okl. 56.

(17) "False statements" instead of "false representations."
Kan.—Davies v. Lutz, 205 P. 637, 110 Kan. 657.

(18) "From a preponderance of the evidence," instead of "by a preponderance of the evidence."
Ill.—Raxworthy v. Heisen, 191 Ill. App. 457, affirmed 113 N.E. 699, 274 Ill. 398.

(19) "Gross," in applying comparative negligence statute.
U.S.—Cudahy Packing Co. v. Luyben, C.C.A.Neb., 9 F.2d 32.

(20) "Heavy, black soil" instead of "dark sandy loam."
Mich.—Hall v. Proctor, 191 N.W. 205, 221 Mich. 400.

(21) "Injuries alleged," instead of "injuries proved."
Cal.—Hasty v. Trevillian, 283 P. 148, 102 C.A. 405.

(22) "Insulators" instead of "transformers."
Tenn.—Lebanon, Tenn. v. Jackson, 14 Tenn.App. 15.

(23) "Insurance," instead of "bond," or "surety bond."
Okl.—Ed. M. Seamens & Co. v. Overholser & Avey, 244 P. 796, 116 Okl. 276.

(24) "Interstate commerce" instead of "interstate transportation."
Ill.—Maher v. New York, C. & St. L. R. Co., 280 Ill.App. 222.

(25) "Legal" and "illegal" instead of "valid" and "invalid."
Mich.—Robertson v. Hayes, 246 N.W. 69, 261 Mich. 200.

(26) "Manure salts" instead of "muriate of potash."
Ga.—Howard v. Montezuma Fertilizer Co., 130 S.E. 72, 34 Ga.App. 411.

giving of an argumentative[21] or ambiguous[22] instruction is not reversible error.

On the other hand, where the case is close on the facts, the instructions should be accurate,[23] and, where prejudice results, the case will be reversed for the giving of an argumentative,[24] incomplete,[24.5]

(27) "May" instead of "should."
Ind.—Selz, Schwab & Co. v. Gullion, 119 N.E. 209, 187 Ind. 328.

(28) "Presumption" instead of "inference."
Cal.—Hilson v. Pacific Gas & Electric Co., 21 P.2d 662, 131 C.A. 427.

(29) "Proof" instead of "evidence."
Mich.—Schmid v. Kappler, 233 N.W. 352, 252 Mich. 373.

(30) "Proper cause" instead of "probable cause."
Ill.—Reell v. Petritz, 224 Ill.App. 65.

(31) "Proximate cause" where "proximate result" was meant.
Ala.—Thierry v. Oswell, 102 So. 903, 212 Ala. 418.

(32) "Reasonable care" instead of "ordinary care."
Ark.—Natural Gas & Fuel Co. v. Lyles, 294 S.W. 395, 174 Ark. 146.

(33) "Received with care" instead of "scanned with care."
Ga.—Taff v. Larey, 116 S.E. 866, 29 Ga.App. 631.

(34) "Safety" instead of "certainty."
Mo.—Osborne v. Wells, 249 S.W. 705, 213 Mo.App. 319.

(35) "Specially" instead of "specifically."
Iowa —Maguire v. Wm. Grettenberg Grain Co., 186 N.W. 644, 193 Iowa 23.

(36) "Testimony" instead of "evidence."
Cal.—Baillargeon v. Myers, 182 P. 37, 180 C. 504.

(37) "That he must of necessity have known it" instead of that "he must be presumed to have known it."
Utah —McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115.

(38) "The prime moving cause" instead of "a concurring proximate cause."
S.C.—Case v. Atlanta & C. A. L. Ry., 92 S.E. 472, 107 S.C. 216.

(39) "The sheep," instead of "an undivided half interest in the sheep."
Or.—Davidson v. Madden, 173 P. 320, 89 Or. 209.

(40) "To instruct" instead of "to indicate."
Ga.—Western & A. R. R. v. Bennett, 171 S.E. 187, 47 Ga.App. 629.

(41) "Void" instead of "voidable."
Mo.—Van Horn v. Persinger, 215 S. W. 930, 202 Mo.App. 236.

(42) "Warranty" instead of "misrepresentation" or "fraud."
Tex.—Alexander v. Walker, Civ.App., 239 S.W. 309, dismissed for want of jurisdiction.

(43) Fact that the court in charging the jury on burden of proof inserted the word "contributory" before the word "negligence," so that it read, "Was the defendant guilty of contributory negligence?" was not prejudicial, where the jury had the correct written instructions with them.
Wis.—Christl v. Hauert, 160 N.W. 1061, 164 Wis. 624.

21. Ala.—Upton v. Read, 56 So.2d 644, 256 Ala. 593—Ray v. Richardson, 36 So.2d 89, 250 Ala. 705—Bank of Cottonwood v. Hood, 149 So. 676, 227 Ala. 237—Van Tinder v. Birmingham Ry., Light & Power Co., 80 So. 858, 202 Ala. 474—Howton v. Mathias, 73 So. 92, 197 Ala. 457—Cummings v. McDonnell, 66 So. 717, 189 Ala. 96.
Newsome v. Louisville & N. R. Co., 102 So. 61, 20 Ala.App. 349.
Cal.—Montieth v. Atchison, T. & S. F. Ry. Co., App., 311 P.2d 886.
Ill.—Gunn v. Meyer, 267 Ill.App. 592.
Miss.—Southland Co. v. Aaron, 72 So. 2d 161, 221 Miss. 59.
Mo.—Steffen v. Southwestern Bell Telephone Co., 56 S.W.2d 47, 331 Mo. 574.
Alexander v. Wabash Ry. Co., App., 38 S.W.2d 545.
4 C.J. p 1032 note 36 [f].

Prejudice must result

Before judgment should be reversed because the instruction is argumentative, the appellate court should find that the instruction is not only subject to that criticism but that it is also well capable of prejudicing the cause of the complaining party.
Or.—Bronkey v. Olson, 28 P.2d 243, 145 Or. 662.

22. Ala.—Clendenon v. Yarbrough, 171 So. 277, 233 Ala. 269.
Hawaii.—Victor v. Malia Pili, 27 Hawaii 745—Territory v. Louis Lake, 26 Hawaii 764.
Ill.—Ingram v. Tucker, 111 N.E.2d 847, 350 Ill.App. 100.
Ind.—Smith v. McDaniel, 32 N.E. 798, 5 Ind.App. 581.
Iowa.—Ahern v. City of Des Moines, 12 N.W.2d 296, 234 Iowa 113—Harris v. Welch, 29 N.W. 811, 70 Iowa 80—Parkhurst v. Masteller, 10 N. W. 864, 57 Iowa 474.
Minn.—Anderson v. Hegna, 2 N.W.2d 820, 212 Minn. 147.
Miss.—Clary v. Breyer, 13 So.2d 633, 194 Miss. 612.
Mo.—Douglas v. Twenter, 259 S.W.2d 353, 364 Mo. 71.
N.H.—Hoitt v. Holcomb, 32 N.H. 185.
Tex.—Houston, etc., R. Co. v. Anglin, 99 S.W. 897, 45 Tex.Civ.App. 41.

23. Cal.—Pullen v. Heyman Bros., 162 P.2d 961, 71 C.A.2d 444—Thompson v. Dentman, 21 P.2d 1009, 131 C.A. 680.
Ga.—Ray v. McCurdy, 156 S.E. 232, 171 Ga. 554.
Patterson v. Burroughs, 90 S.E. 974, 19 Ga.App. 72.
Ill.—Crisler v. Chicago City Ry. Co., 204 Ill.App. 491—Rynearson v. McCartney, 203 Ill.App. 555—Corbly v. Corbly, 202 Ill.App. 469—Conrad v. St. Louis, S. & P. R. Co., 201 Ill.App. 276—Smidt v. Dubois, 190 Ill.App. 563—Black v. Black, 190 Ill.App. 559—Powers v. Chicago City R. Co., 185 Ill.App. 158.
N.Y.—Kroemer v. Raybestos Manhattan, 286 N.Y.S. 207.
N.C.—Fletcher v. Parlier, 173 S.E. 343, 206 N.C. 904.

Whether an inaccurate statement of law constitutes prejudicial error depends as much on the evidence before the jury as on the abstract accuracy of the language used.
N.D.—**Corpus Juris Secundum cited in** Riott v. Provident Life Ins. Co., 286 N.W. 393, 395, 69 N.D. 335.
Okl.—Drum Standish Commission Co. v. First Nat. Bank & Trust Co. of Oklahoma City, 31 P.2d 843, 168 Okl. 400.

Suit to cancel deed

A charge avoiding conveyance of property by a bankrupt with intent to defraud creditors, omitting the word "his" before property, is reversible error where the evidence makes a close case.
Ga.—Ray v. McCurdy, 156 S.E. 232, 171 Ga. 554.

24. Mich.—Bowmaster v. William H. De Pree Co., 233 N.W. 395, 252 Mich. 505.
Minn.—Freeman v. Morris Const. Co., 228 N.W. 442, 179 Minn. 94—Doucette v. Gagnon, 213 N.W. 537, 171 Minn. 516.
Mo.—Prince v. Kansas City Southern Ry. Co., 214 S.W.2d 707, 358 Mo. 393—Lammert v. Wells, 13 S. W.2d 547, 321 Mo. 952.

An erroneous statement of the law, even in the form of a contention, constitutes prejudicial error.
N.C.—Hartley v. Smith, 79 S.E.2d 767, 239 N.C. 170.

24.5 Mo.—Martin v. First Nat. Bank in St. Louis, 219 S.W.2d 312, 358 Mo. 1199, 8 A.L.R.2d 435.
N.C.—Locke Cotton Mills Co. v. Pate Cotton Co., 59 S.E.2d 570, 232 N.C. 186.

obscure,[25] or ambiguous[26] instruction.

A judgment will not be reversed for what is obviously a clerical or typographical error in an instruction where the jury were not misled.[26.5] Although such an error may be prejudicial and ground for reversal,[26.10] the transposition of the names, or an error in the designation, or description of the parties is not ground for reversal where such error in the instructions did not prejudice the complaining party or mislead the jury.[26.15] Where the jury are not misled, the improper use of "and" or "or" in an instruction will not require reversal.[26.20]

Reversible error cannot be predicated on the length, number, and detail of the instructions.[26.25]

Where no prejudice results from omissions in in-

25. Ill.—Haskin v. Haskin, 41 Ill. 197.
Miss.—Archer v. Sinclair, 49 Miss. 343.
Mo.—Crole v. Thomas, 17 Mo. 329.
Neb.—Mutual Hail Ins. Co. v. Wilde, 1 N.W. 384, 8 Neb. 427.
N.J.—Kauderer v. McAllister Coal Co., 40 A.2d 624, 132 N.J.Law 410.
Pa.—Lackawanna, etc., R. Co. v. Chenewith, 52 Pa. 382, 91 Am.D. 168.
Tex.—Kalamazoo Nat. Bank v. Sides, Civ.App., 28 S.W. 918.
Va.—Gordon v. Richmond, 2 S.E. 727, 83 Va. 436.

26. Mich.—Dodge v. Brown, 22 Mich. 446.
Mo.—Gillette v. Laederich, App., 242 S.W. 112.
Pa.—Lackawanna, etc., R. Co. v. Chenewith, 52 Pa. 382, 91 Am.D. 168.
W.Va.—White v. Sohn, 59 S.E. 890, 63 W.Va. 80—Harman v. Maddy, 49 S.E. 1009, 57 W.Va. 66.

Tendency to mislead

While slight verbal or technical inaccuracies not calculated to mislead will not vitiate the instructions, yet such a misuse of words, although only a clerical error, is ground for reversal, where it might have misled the jury, the test not being so much the precise wording, but whether it tended to mislead.
Mo.—Gillette v. Laederich, App., 242 S.W. 112.

26.5 Mo.—Dorroh v. Holland Bank, App., 7 S.W.2d 374—Murphy v. Great American Ins. Co., 285 S.W. 772, 221 Mo.App. 727—Kearse v. Seyb, 209 S.W. 635, 200 Mo.App. 645.
Wash.—Boyle v. West, 211 P. 871, 122 Wash. 693.
42 C.J. p 831 note 1.

26.10 Ga.—Georgia Power Co. v. Maxwell, 183 S.E. 654, 52 Ga.App. 430.
Mo.—Schipper v. Brashear Truck Co., 132 S.W.2d 993, 125 A.L.R. 674.

26.15 Ark.—Sun Oil Co. v. Hedge, 293 S.W. 9, 173 Ark. 729.
Cal.—Morris v. Cantlay & Tanzola, 39 P.2d 471, 3 C.A.2d 224.
Colo.—Gilligan v. Blakesley, 26 P.2d 808, 93 Colo. 370.
Ga.—Yancey v. Montgomery & Young, 159 S.E. 571, 173 Ga. 178.
Bell v. Proctor, 90 S.E.2d 84, 92 Ga.App. 759, reversed on other grounds 92 S.E.2d 514, 212 Ga. 325, conformed to 92 S.E.2d 807, 93 Ga.App. 816—Empire Mortg. & Inv. Corporation v. Donaldson, 12 S.E.2d 489, 64 Ga.App. 197—Hines v. Green, 101 S.E. 757, 24 Ga.App. 575.
Ind.—New York, C. & St. L. R. Co. v. Coplen, 194 N.E. 789, 100 Ind.App. 171—Fairway Coffee Co. v. Selch, 183 N.E. 323, 98 Ind.App. 136.
Iowa.—Crandall v. Mason, 197 N.W. 454, 198 Iowa 139—Potier v. Winifred Coal Co., 184 N.W. 739, 192 Iowa 1280—Willis v. Schertz, 175 N.W. 321, 188 Iowa 712.
Ky.—Cohen v. Reif, 4 S.W.2d 388, 223 Ky. 603—Davis v. Allen, 251 S. W. 194, 199 Ky. 442.
Mo.—Schipper v. Brashear Truck Co., 132 S.W.2d 993, 125 A.L.R. 674.
Jarrett v. St. Francois County Finance Co., App., 185 S.W.2d 855—Macke v. Harris, App., 27 S.W.2d 1079—Graber v. Wells, App., 7 S. W.2d 719.
Neb.—Tidd v. Stull, 259 N.W. 369, 128 Neb. 506.
N.C.—Spivey v. Newman, 59 S.E.2d 844, 232 N.C. 281.
N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834.
Ohio.—Cottrell v. Gehle, App., 114 N.E.2d 482.
Okl.—Enterline v. Smith, 231 P. 1064, 105 Okl. 200—Knights and Ladies of Security v. Bell, 220 P. 594, 93 Okl. 272.
Tenn.—D. M. Rose & Co. v. Snyder, 206 S.W.2d 897, 185 Tenn. 499.
McMahan v. Tucker, 216 S.W.2d 356, 31 Tenn.App. 429—Talley v. Dalton, 10 Tenn.App. 597.
Tex.—Fort Worth & R. G. Ry. Co. v. Sageser, Civ.App., 18 S.W.2d 246—Cisco & N. E. Ry. Co. v. Proctor, Civ.App., 272 S.W. 308, affirmed Proctor v. Cisco & N. E. Ry. Co., Com.App., 277 S.W. 1047.

26.20 Cal.—Weaver v. Landis, 151 P.2d 884, 66 C.A.2d 34.
Ga.—Brown v. Tankersley, 119 S.E. 459, 31 Ga.App. 23—Hudson v. Devlin, 111 S.E. 693, 28 Ga.App. 458.
Ill.—McConnell v. Chicago Rys. Co., 199 Ill.App. 490.
Iowa.—Grover v. Neibauer, 247 N.W. 298, 216 Iowa 631.
Ky.—Scanlon's Ex'r v. Hinz, 178 S. W.2d 587, 296 Ky. 861—Chesapeake & O. Ry. Co. v. Shanks, 86 S.W. 2d 128, 260 Ky. 416—Life & Casualty Co. of Tennessee v. Gream, 68 S.W.2d 402, 252 Ky. 801—Codell Const. Co. v. Steele, 56 S.W.2d 955, 247 Ky. 173—Shea Bros. Const. Co. v. Smith, 10 S.W.2d 1086, 226 Ky. 338.
Mo.—Lynn v. Business Men's Assur. Co. of America, 111 S.W.2d 231, 232 Mo.App. 842.
Tex.—Richardson v. City Nat. Bank of Olney, Civ.App., 61 S.W.2d 137.
Utah.—McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115.

"And/or"

The use of the term "and/or" in instructions tends to confuse and mislead, and may, in a close case, be ground for reversal.
Ill.—Preble v. Architectural Iron Workers' Union of Chicago, 260 Ill. App. 435.

26.25 Ky.—Davis v. Williams Bros. Const. Co., 269 S.W. 289, 207 Ky. 404.
Md.—Eastern Shore Brokerage & Commission Co. v. Messenger, 122 A. 18, 143 Md. 221.
Mo.—Cotton v. Ship-By-Truck Co., 85 S.W.2d 80, 337 Mo. 270—Streicher v. Mercantile Trust Co., 62 S.W. 2d 461—Block v. U. S. Fidelity & Guaranty Co. of Baltimore, Md., 290 S.W. 429, 316 Mo. 278—Henry v. Illinois Cent. R. Co., 282 S.W. 423.
Baird v. National Health Foundation, 144 S.W.2d 850, 235 Mo.App. 594—Sudduth v. Kansas City Gas Co., 123 S.W.2d 589, 234 Mo.App. 527, certiorari quashed State ex rel. Kansas City Gas Co. v. Shain, 132 S.W.2d 1015, 345 Mo. 233—Mayfield v. Kansas City Southern Ry. Co., App., 101 S.W.2d 769—Carroll v. Missouri Power & Light Co., 96 S. W.2d 1074, 231 Mo.App. 265—Smith v. Greer, App., 257 S.W. 829, certiorari quashed State ex rel. Greer v. Cox, 274 S.W. 373, 216 Mo.App. 155.
Mont.—Bethel v. Giebel, 55 P.2d 1287, 101 Mont. 410, 104 A.L.R. 1150.
Wash.—Sova v. First Nat. Bank of Ferndale, 138 P.2d 181, 18 Wash.2d 88.
4 C.J. p 1032 note 36 [g], [h].

structions, such omissions will be regarded as harmless error.[26.30]

b. Using, or Referring Jury to, Pleadings

In the absence of prejudice, it is not reversible error for the court, in its instructions, to copy the pleadings read them to the jury, or refer the jury to the pleadings for the issues.

Whether an instruction referring the jury to the pleadings constitutes reversible error depends on whether or not prejudice and confusion are likely to result from such instruction.[26.50] While the practice is not to be commended, in the absence of prejudice a cause will not be reversed where the instruction states the issues by copying the pleadings,[27] or consists of a reading of them or a portion of them to the jury,[28] or where the instruction refers the jury to the pleading to ascertain the issues.[29] However, where prejudice results, it is reversible error for the instruction to set out the pleadings[30] or to refer the jury to the pleadings for the issues.[31]

26.30 Ala.—Dismukes v. Trivers Clothing Co., 127 So. 188, 221 Ala. 29—Gulf, M. & N. R. Co. v. Havard, 117 So. 223, 217 Ala. 639—Karpeles v. City Ice Delivery Co., 73 So. 642, 198 Ala. 449.
Ark.—Weigel v. McCloskey, 166 S.W. 944, 113 Ark. 1, Ann.Cas.1916C 503.
Cal.—Boyajian v. Balian, 46 P.2d 199, 7 C.A.2d 174—Wallner v. Pickwick Stages System, 20 P.2d 90, 130 C.A. 472.
Ga.—Seaboard Air Line Ry. Co. v. D'Avignon, 153 S.E. 96, 41 Ga.App. 263, certiorari denied 51 S.Ct. 351, 283 U.S. 827, 75 L.Ed. 1441.
Ill.—McConnell v. Chicago Rys. Co., 199 Ill.App. 490.
Ind.—W. T. Rawleigh Co. v. Snider, 194 N.E. 356, 207 Ind. 686.
Walsh Baking Co. v. Southern Indiana Gas & Electric Co., 186 N.E. 341, 97 Ind.App. 285.
Iowa.—Engle v. Nelson, 263 N.W. 505, 220 Iowa 771.
Kan.—Fisher Mach. Works Co. v. Singletary, 179 P. 328, 104 Kan. 460.
Ky.—Buren v. Louisville Ry. Co., 165 S.W.2d 352, 291 Ky. 641—City of Hazard v. Calhoun, 35 S.W.2d 552, 237 Ky. 406—Jefferson Garage v. Salatin, 26 S.W.2d 525, 233 Ky. 686.
Md.—Mashkes v. Solid Building & Loan Ass'n, 173 A. 54, 167 Md. 270.
Minn.—Merritt v. Stuve, 9 N.W.2d 329, 215 Minn. 44.
Mo.—Calloway v. Fogel, 213 S.W.2d 405, 358 Mo. 47.
Mitchell v. Russell, App., 170 S.W.2d 137—Venters v. Bunnell, 93 S.W.2d 70, 230 Mo.App. 1190—Venters v. Bunnell, App., 93 S.W.2d 70—Fleming v. Joseph F. McMahon Contracting Corporation, App., 45 S.W.2d 952—Wallnitz v. Werner, App., 241 S.W. 668—Dawson v. Flintom, 190 S.W. 972, 195 Mo.App. 75.
Neb.—Pierson v. Jensen, 33 N.W.2d 462, 150 Neb. 86.
N.C.—Locke Cotton Mills Co. v. Pate Cotton Co., 59 S.E.2d 570, 232 N.C. 186.
Pa.—Susser v. Wiley, 39 A.2d 616, 350 Pa. 427.
Tex.—Reilly v. Buster, Civ.App., 52 S.W.2d 521, reversed on other grounds, Com.App., 82 S.W.2d 931—Woodward & Hardie v. McMillan, Civ.App., 34 S.W.2d 357.
Vt.—French v. Nelson, 17 A.2d 323, 111 Vt. 386.

26.50 Miss.—Evans v. Jackson City Lines, 56 So.2d 80, 212 Miss. 895.

No prejudice
An instruction which refers jury to pleadings to identify a thing about which an issue is made by the pleadings, or for purpose of brevity of designation, rather than to ascertain the issues, is not prejudicially erroneous.
Mo.—Adams v. City of St. Joseph, 230 S.W.2d 862, 360 Mo. 806.

27. Ill.—Smoot v. Hollingsworth, 265 Ill.App. 447.
Iowa.—Comfort v. Valley Inv. Co., 5 N.W.2d 180, 232 Iowa 87—Stilson v. Ellis, 225 N.W. 346, 208 Iowa 1157—Granette Products Co. v. Arthur H. Neumann & Co., 221 N.W. 197, 208 Iowa 24—Powell v. Alitz, 182 N.W. 236, 191 Iowa 233.
Kan.—Macy v. Citizens' State Bank, 256 P. 809, 123 Kan. 651.
Neb.—Remmenga v. Selk, 42 N.W.2d 186, 152 Neb. 625—Franks v. Jirdon, 20 N.W.2d 597, 146 Neb. 585—Lowell v. Buffalo County, 242 N.W. 452, 123 Neb. 194—O'Brien v. Sullivan, 186 N.W. 532, 107 Neb. 512.
Okl.—Schmucker v. Clifton, 162 P. 1094, 62 Okl. 249.
Utah.—Dimmick v. Utah Fuel Co., 164 P. 872, 49 Utah 430.

28. Cal.—Martin v. Pacific Gas & Electric Co., 264 P. 246, 203 C. 291.
Ill.—Anderson v. Brown, 92 N.E.2d 495, 340 Ill.App. 613.
Ind.—Cincinnati, I. & W. R. Co. v. Little, 131 N.E. 762, 190 Ind. 662.
Iowa.—Hall v. Carter, 37 N.W. 956, 74 Iowa 364.
Mo.—Brunk v. Hamilton-Brown Shoe Co., 66 S.W.2d 903, 334 Mo. 517.
N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834.
Ohio.—Bruce v. Cook, 171 N.E. 424, 34 Ohio App. 563.
Okl.—Rhodes v. Lamar, 292 P. 335, 145 Okl. 223.
Tenn.—Glover v. Burke, 133 S.W.2d 611, 23 Tenn.App. 350—Blount County v. Perry, 7 Tenn.App. 340.
Tex.—Employers' Liability Assur. Corporation v. Sims, Civ.App., 67 S.W.2d 445.
Utah.—Bruner v. McCarthy, 142 P.2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547—Davis v. Heiner, 181 P. 587, 54 Utah 428.
4 C.J. p 1040 note 23 [h].

29. Cal.—Martinelli v. Poley, 292 P. 451, 210 C. 450.
Ill.—Mowat v. Sandel, 262 Ill.App. 395—Fisher v. Johnson, 238 Ill.App. 25—Weinstein v. Garcinski, 188 Ill. App. 353—Ballance v. Woodmen's Casualty Co., 183 Ill.App. 625. See Johnson v. Chicago Surface Lines, 209 Ill.App. 26.
Ind.—Chicago & E. R. Co. v. Biddinger, 109 N.E. 953, 61 Ind.App. 419.
Minn.—Peery v. Illinois Cent. R. Co., 150 N.W. 382, 1103, 128 Minn. 119, reversed on other grounds Illinois Central Railroad v. Perry, 37 S.Ct. 122, 242 U.S. 292, 61 L.Ed. 309.
Miss.—Jessup v. Reynolds, 43 So.2d 753, 208 Miss. 50.
Mo.—Bradbury v. Hawthorn Coal Co., App., 85 S.W.2d 908—Carroll v. St. Louis-San Francisco Ry. Co., App., 290 S.W. 647—Belt v. Belt, 288 S.W. 100, 224 Mo.App. 780—Elders v. Missouri Pac. R. Co., App., 280 S.W. 1048.
Okl.—Seay v. Plunkett, 145 P. 496, 44 Okl. 794.
Tex.—Washington Fidelity Nat. Ins. Co. v. Williams, Civ.App., 33 S.W. 2d 796, reversed on other grounds, Com.App., 49 S.W.2d 1093—Thomason v. Hawley, Civ.App., 242 S.W. 521, followed in Thomason v. Powers, 242 S.W. 525.

30. Neb.—Kroeger v. Safranek, 72 N.W.2d 831, 161 Neb. 182—Snyder v. Farmers Irr. Dist., 61 N.W.2d 557, 157 Neb. 771—Simcho v. Omaha & Council Bluffs St. Ry. Co., 35 N.W. 2d 501, 150 Neb. 634—Sohl v. Sohl, 207 N.W. 669, 114 Neb. 353.
Utah.—Shields v. Utah Light & Traction Co., 105 P.2d 347, 99 Utah 307.

31. Ill.—Fraider v. Hannah, 87 N.E. 2d 795, 338 Ill.App. 440.
Tex.—Standard Accident Ins. Co. v. Cherry, Civ.App., 36 S.W.2d 807—Hewitt v. Buchanan, Civ.App., 4 S. W.2d 169.

§ 1763(3). —— Instructions on Burden of Proof and Preponderance of Evidence

Unless prejudicial, erroneous instructions as to the burden of proof and the necessity of a preponderance of the evidence do not require reversal, as where the burden is placed on the wrong party, or too great a burden is placed on the appellant, or the proper degree of proof is not required.

An erroneous instruction as to the burden of proof and the necessity of a preponderance of the evidence to sustain such burden is no cause for reversal where not prejudicial.[32] When, however, the

32. Ala.—Sawyer v. Stanley, 1 So.2d 21, 241 Ala. 39—Williams v. Alabama Fuel & Iron Co., 102 So. 136, 212 Ala. 159—Nashville Broom & Supply Co. v. Alabama Broom & Mattress Co., 100 So. 132, 211 Ala. 192—Allen v. Birmingham Southern R. Co., 97 So. 93, 210 Ala. 41—McCaa v. Thomas, 92 So. 414, 207 Ala. 211—Hamilton v. Cranford Mercantile Co., 78 So. 401, 201 Ala. 403—City of Birmingham v. Muller, 73 So. 30, 197 Ala. 554.

Rogers v. Whittle, 74 So. 96, 15 Ala.App. 550.

Ark.—Kansas City Southern Ry. Co. v. Haynie, 272 S.W. 64, 168 Ark. 678—Roach v. Scott, 247 S.W. 1037, 157 Ark. 152—Williams v. Newkirk, 181 S.W. 304, 121 Ark. 439.

Cal.—Polk v. City of Los Angeles, 159 P.2d 931, 26 C.2d 519—Mella v. Hooper, 254 P. 256, 200 C. 628.

Fernquist v. San Francisco Presbytery, App., 313 P.2d 192—Downs v. Sherry, 202 P.2d 101, 90 C.A.2d 1—Miles v. Rosenthal, 266 P. 320, 90 C.A. 390—Blackwell v. American Film Co., 192 P. 189, 48 C.A. 681—Haun v. Tally, 181 P. 81, 40 C.A. 585.

Fla.—Atlantic Coast Line R. Co. v. McIntosh, 198 So. 92, 144 Fla. 356.

Ga.—Georgia State Sav. Ass'n v. Wilson, 5 S.E.2d 14, 189 Ga. 21—Heaton v. Hayes, 4 S.E.2d 570, 188 Ga. 632—Martin v. Martin, 180 S.E. 851, 180 Ga. 782.

Boyd v. Hill, 96 S.E.2d 222, 94 Ga.App. 686—Jarrard v. Wildes, 73 S.E.2d 116, 87 Ga.App. 30—Hinson v. Hooks, 108 S.E. 822, 27 Ga.App. 430—Cheney v. Bank of Bremen, 102 S.E. 903, 25 Ga.App. 114.

Idaho.—Wasson v. Wasson, 253 P.2d 236, 73 Idaho 359—Pearson v. City of Weiser, 206 P.2d 264, 69 Idaho 253—Fairbanks v. Fairbanks, 80 P.2d 17, 59 Idaho 1.

Ill.—Ashton v. Sweeney, 112 N.E.2d 183, 350 Ill.App. 135—Star Service & Petroleum Co. v. Short, 100 N.E.2d 664, 344 Ill.App. 280—Adkins v. Williams, 71 N.E.2d 210, 330 Ill. App. 427—Schuster v. Jefferson Ice Co., 65 N.E.2d 239, 328 Ill. App. 124—Edmiers' Motor Service v. Cummings, 56 N.E.2d 491, 323 Ill.App. 653—Manzeske v. Yellow Cab Co., 54 N.E.2d 239, 322 Ill. App. 280—Shapiro v. Amalgamated Trust & Savings Bank, 283 Ill. App. 243—Strohmeyer v. Jamison, 208 Ill.App. 612—Sexton v. Harrold, 206 Ill.App. 460—Alsdurf v. Big Four Wilmington Coal Co., 198 Ill.App. 15—Fitzgerald v. Sampsell, 191 Ill.App. 366—Christ v. Chicago Rys. Co., 191 Ill.App. 69—Schick v. Smith, 187 Ill.App. 637—O'Connor v. Kennedy, 186 Ill.App. 277—Monahan v. Chicago City Ry. Co., 185 Ill.App. 207—Nelson v. Chicago, R. I. & P. Ry. Co., 184 Ill.App. 489.

Ind.—Davis v. Sharp, 138 N.E. 520, 80 Ind.App. 227—Indianapolis Traction & Terminal Co. v. Thornburg, 125 N.E. 57, 74 Ind.App 642—Kingan & Co. v. Albin, 123 N.E. 711, 70 Ind.App. 493—Brumbaugh v. Mellinger, 120 N.E. 676, 68 Ind.App. 410—Cleveland, C., C. & St. L. Ry. Co. v. Gannon, 112 N.E. 411, 63 Ind.App. 289.

Iowa.—Moran v. Kean, 280 N.W. 543, 225 Iowa 329.

Kan.—Eberle v. Loyal Protective Ins. Co. of Boston, Mass., 239 P. 972, 119 Kan. 399—Williams v. Kansas Flour Mills Co., 176 P. 639, 103 Kan. 842—Meyers v. Acme Iron Co., 175 P. 162, 103 Kan. 362—Carlson v. Mid-Continent Development Co., 173 P. 910, 103 Kan. 464, L.R.A.1918F 318.

Ky.—Torian v. Caldwell, 199 S.W. 35, 178 Ky. 509.

Mass.—Kronoff v. City of Worcester, 125 N.E. 394, 234 Mass. 254.

Mich.—Bewernitz v. Detroit, J. & C. Ry., 161 N.W. 976, 195 Mich. 528, L.R.A.1917E 767.

Minn.—Bailie v. Ridker, 81 N.W.2d 798—Gendreau v. North American Life & Casualty Co., 197 N.W. 257, 158 Minn. 259.

Miss.—Gregory v. Williams, 35 So. 2d 451, 203 Miss. 455—Yazoo & M. V. R. Co. v. Messina, 67 So. 963, 109 Miss. 143, reversed on other grounds Illinois Cent. R. Co. v. Messina, 36 S.Ct. 368, 240 U.S. 395, 60 L.Ed. 709.

Mo.—Warning v. Thompson, 249 S.W.2d 335, 30 A.L.R.2d 1176—Price v. Schnitker, 239 S.W.2d 296, 361 Mo. 1179—Sharp v. City of Carthage, 5 S.W.2d 6, 319 Mo. 1028—Prentiss v. Illinois Life Ins. Co., 225 S.W. 695—Ulrich v. Chicago, B. & Q. R. Co., 220 S.W. 682, 281 Mo. 697—Chapman v. Kansas City Rys. Co., 217 S.W. 290.

Papen v. Friedmeyer, App., 255 S.W.2d 841—Stephens v. Coca-Cola Bottling Co. of St. Louis, App., 215 S.W.2d 50—Hofstatter v. Johnson, App., 208 S.W.2d 924—Ramsey v. Parks, App., 179 S.W. 2d 481—Ritzheimer v. Marshall, App., 168 S.W.2d 159—Kelly v. Rieth, App., 168 S.W.2d 115—Christman v. Reichholdt, App., 150 S.W.2d 527—Sudduth v. Kansas City Gas Co., 123 S.W.2d 589, 234 Mo.App. 527, certiorari quashed State ex rel. Kansas City Gas Co. v. Shain, 132 S.W.2d 1015, 345 Mo. 233—Anderson v. Ward, App., 21 S.W.2d 886—American Tobacco Co. v. Schulenburg, App., 17 S.W.2d 557—State ex rel. Detroit Fire & Marine Ins. Co. v. Ellison, App., 187 S.W. 23—Rice v. Detroit Fire & Marine Ins. Co. of Detroit, Mich., App., 176 S.W. 1113, quashed State ex rel. Detroit Fire & Marine Ins. Co. v. Ellison, 187 S.W. 23, 268 Mo. 239.

Mont.—Pure Oil Co. v. Chicago, M. & St. P. Ry. Co., 185 P. 150, 56 Mont. 266.

Neb.—In re Kinsey's Estate, 40 N.W. 2d 526, 152 Neb. 95

N.C.—Greene v. Greene, 9 S.E.2d 413, 217 N.C. 649—Harrison v. Metropolitan Life Ins. Co., 177 S.E. 423, 207 N.C. 487—Tillotson v. Currin, 97 S.E. 395, 176 N.C. 479.

Ohio.—Crosby v. Powhatan Min. Co., App., 75 N.E.2d 734—Karle v. Cincinnati St. Ry. Co., 13 N.E.2d 762, 69 Ohio App. 327—Steele v. Rail & River Coal Co., 182 N.E. 552, 42 Ohio App. 228.

Okl.—Canning v. Bennett, 245 P.2d 1149, 206 Okl. 675—Star v. Star, 221 P. 721, 94 Okl. 225—Democrat Printing Co. v. Johnson, 175 P. 737, 71 Okl. 150, certiorari denied Glascock v. McDaniel, 39 S.Ct. 257, 249 U.S. 600, 63 L.Ed. 796.

Pa.—Henes v. McGovern, 176 A. 503, 317 Pa. 302.

Di Rosa v. Calliando, 99 Pa. Super. 390.

Tenn.—Kingsul Theatres v. Quillen, 196 S.W.2d 316, 29 Tenn.App. 248

Tex.—Dallas Waste Mills v. Texas Cake & Linter Co., Com.App., 228 S.W. 118.

Texas Emp. Ins. Ass'n v. Hale, Civ.App., 188 S.W.2d 899, affirmed 191 S.W.2d 472, 144 Tex. 432—MacFadden Publications v. Wilson, Civ.App., 121 S.W.2d 430, error refused—Terrell Wells Health Resort v. Severeid, Civ.App., 95 S.W. 2d 526—Southern Life & Health Ins. Co. v. Ramirez, Civ.App., 93 S.W.2d 234—Texas & P. Ry. Co. v. Edwards, Civ.App., 21 S.W.2d 754, reversed on other grounds,

Com.App., 36 S.W.2d 477—Davis v. Wagner, Civ.App., 237 S.W. 612—Kansas City, M. & O. Ry. Co. v. Blackstone & Slaughter, Civ. App., 217 S.W. 208, rehearing denied 218 S.W. 552, error refused—Stafford v. Patterson & Nelson, Civ.App., 184 S.W. 1095.

Vt.—N. Pelaggi & Co. v. Orient Ins. Co., 148 A. 869, 102 Vt. 384.

Va.—Clark v. Hodges, 39 S.E.2d 252, 185 Va. 431.

Wash.—McClanahan v. Fisher, 290 P. 864, 158 Wash. 114—Lander v. Shannon, 268 P. 145, 148 Wash. 93.

Wis.—Schulz v. Chicago, M., St. P. & P. Ry. Co., 51 N.W.2d 542, 260 Wis. 541—Gauthier v. Carbonneau, 277 N.W. 135, 226 Wis. 527—Bursack v. Davis, 225 N.W. 738, 199 Wis. 115—Shear v. Woodrick, 193 N.W. 968, 181 Wis. 30—Kolasinski v. Chicago, M. & St. P. Ry. Co., 159 N.W. 563, 164 Wis. 50—Taylor v. Northern Coal & Dock Co., 152 N.W. 465, 161 Wis. 223, Ann.Cas. 1916C 167.

12 C.J. p 365 note 38—54 C.J. p 606 note 11.

Error in an instruction using the word "satisfaction," as applied to the preponderance of evidence required in an ordinary civil case, is fatal only when it appears that it did, or might reasonably have been supposed to, prejudice the jury.

Ariz.—Brown v. Jerrild, 239 P. 795, 29 Ariz. 121.

Instruction authorizing the jury to "require" defendants to prove claimed gift by a preponderance of evidence merely informed the jury upon whom the burden of proof lay, and could not have harmed defendants.

Mo.—Kunst v. Walker, App., 43 S. W.2d 886.

Instructions in particular actions or proceedings held not prejudicial

(1) Action against bailee for loss of ring.

Minn.—Peet v. Roth Hotel Co., 253 N.W. 546, 191 Minn. 151.

(2) Actions against carriers.

Mo.—Blankenship v. St. Louis Public Service Co., 71 S.W.2d 723.

(3) Actions by lessee.

N.J.—George W. Loft Realty Co. v. M. H. Harris, Inc., 174 A. 709, 113 N.J.Law 469.

N.C.—Greene v. Carroll, 171 S.E. 627, 205 N.C. 459.

(4) Actions for assault.

Ill.—Fordyce v. Elifson, 79 N.E.2d 834, 334 Ill.App. 622.

Wis.—Lang v. Oudenhoven, 252 N.W. 167, 213 Wis. 666.

(5) Actions for death.

Conn.—Rix v. Stone, 163 A. 258, 115 Conn. 658.

Tex.—Fox v. Gulf, C. & S. F. Ry. Co., Civ.App., 80 S.W.2d 1072.

(6) Actions for services.

Iowa.—Wragg v. Rippey, 229 N.W. 237.

(7) Actions for injuries in automobile accidents.

Ala.—Jefferson County Burial Soc. v. Cotton, 133 So. 256, 222 Ala. 578.

Conn.—Tappin v. Rider Dairy Co., 178 A. 428, 119 Conn. 591.

Miss.—Hammond v. Morris, 126 So. 906, 156 Miss. 802.

Mo.—Harke v. Haase, 75 S.W.2d 1001, 335 Mo. 1104.

Murphy v. Tumbrink, App., 25 S.W.2d 133.

N.J.—Cella v. Roth, 174 A. 703, 113 N.J.Law 458.

Ohio.—Woodward v. Gray, 188 N.E. 304, 46 Ohio App. 177.

(8) Actions for injury to cattle shipment.

Tex.—Panhandle & S. F. R. Co. v. Ross, Civ.App., 80 S.W.2d 427.

(9) Actions in replevin.

Cal.—Drinkhouse v. Van Ness, 260 P. 869, 202 C. 359.

(10) Actions on contract of sale.

Ind.—Fletcher v. Stutz Automobile Co. of America, 168 N.E. 585, 96 Ind.App. 398.

(11) Actions on insurance contracts.

Cal.—Farmers' & Merchants' Nat. Bank of Los Angeles v. Cohn-Chernis-Grunsfeld, Inc., 40 P.2d 550, 4 C.A.2d 82.

Mo.—Mitchell v. Washington Fidelity Nat. Ins. Co., App., 81 S.W.2d 377—Williams v. Northeast Mut. Ins. Ass'n, App., 72 S.W.2d 166.

(12) Actions on notes.

Kan.—Skaer v. American Nat. Bank of Augusta, 268 P. 801, 126 Kan. 538, set aside on other grounds 275 P. 185, 127 Kan. 682.

N.Y.—Hoffay v. Hershenstein, 249 N.Y.S. 167, 232 App.Div. 149.

(13) Attachment.

Ga.—Garner v. State Banking Co., 102 S.E. 442, 150 Ga. 6.

(14) Suit against executor for installments due under decedent's agreement to pay annuity.

Ga.—Trust Co. of Georgia v. Kell, 175 S.E. 659, 49 Ga.App. 371.

(15) Trespass.

Ga.—Nissen v. Goodyear Tire & Rubber Co., 82 S.E.2d 253, 90 Ga.App. 175.

Instructions as to negligence

(1) Where no prejudice results, error in an instruction in an action for personal injuries, caused by negligence, that, to entitle plaintiff to recover, plaintiff was only required to make out her case "by a mere preponderance of the evidence" was not ground for reversing the judgment.

Ill.—Gebhardt v. Village of La Grange Park, 268 Ill.App. 556, reversed on other grounds 188 N.E. 372, 354 Ill. 234.

(2) An instruction embodying the res ipsa loquitur doctrine, modified to leave the ultimate burden of proving negligence on plaintiffs, is not prejudicial to defendants.

Cal.—Damgaard v. Oakland High School Dist. of Alameda County, 298 P. 983, 212 C. 316.

(3) Error, if any, in an instruction regarding the presumption that an unusually violent jerk of a street car injuring a passenger was due to the street railroad's negligence, placing the burden on defendant to show freedom from negligence, is not prejudicial.

Mo.—Crenshaw v. St. Louis Public Service Co., App., 52 S.W.2d 1035.

(4) In a case submitted under the humanitarian rule, defendant's instructions concerning the burden of proof and cautionary matters were held not unwarranted or prejudicial as a matter of law.

Mo.—Wolfson v. Cohen, 55 S.W.2d 677.

Instructions as to contributory negligence

(1) An instruction that the burden of proving contributory negligence is on the party alleging it is not reversible error.

Ala.—Mobile & O. R. Co. v. Davis, 137 So. 525, 223 Ala. 600.

Cal.—James v. Frazee, 288 P. 784, 209 C. 456.

Daniel v. Asbill, 276 P. 149, 97 C.A. 731.

(2) In the absence of evidence by plaintiff of contributory negligence when injured, refusal to modify an instruction that contributory negligence cannot be presumed but must be proved by defendant, by adding thereto the phrase "unless it was shown by evidence on behalf of plaintiff," is not prejudicial to defendant.

Ark.—Hope Basket Co. v. Hartsfield, 69 S.W.2d 1076, 189 Ark. 1.

Materiality of allegation

Instructing that an allegation that defendant's truck suddenly turned to the left causing plaintiff's automobile to run into a ditch was material is not reversible error.

Ark.—Coca-Cola Bottling Co. of Helena v. Mattice, 243 S.W.2d 15, 219 Ark. 428, 29 A.L.R.2d 1379.

Cal.—Lilienthal v. Hastings Clothing Co., 280 P.2d 824, 131 C.A.2d 343—Galloway v. United Railroads of San Francisco, 197 P. 663, 51 C.A. 575.

Conn.—Sacks v. Connecticut Co., 146 A. 494, 109 Conn. 221.

Fla.—Lake Hancock & C. R. Co. v. Stinson, 81 So. 512, 77 Fla. 333.

Miss.—Hammond v. Morris, 126 So. 906, 156 Miss. 802.

erroneous instruction is prejudicial, the giving of it is reversible error.[33] It is regarded as reversible error when the instruction places the burden on the wrong party,[34] or places on the proper party a

33. Ala.—Gaither v. Phillips, 75 So. 295, 199 Ala. 689.
Ga.—Everett v. Clegg, 97 S.E.2d 689, 213 Ga. 168, conformed to 98 S.E. 2d 198, 95 Ga.App. 661—Christopher v. Mooty, 117 S.E. 90, 155 Ga. 286.
Justice v. Davis, 10 S.E.2d 267, 62 Ga.App. 872—North British & Mercantile Ins. Co. v. Parnell, 185 S.E. 122, 53 Ga.App. 178.
Ill.—Bilhorn v. Richardson, 11 N.E. 2d 241, 292 Ill.App. 639—Falls City Tannery v. W. D. Allen Mfg. Co., 205 Ill.App. 462—Yanloniz v. Spring Valley Coal Co., 185 Ill. App. 563.
Ind.—Johnson v. Samuels, 114 N.E. 977, 186 Ind. 56.
Peoples Trust & Sav. Co. v. Cohen, 73 N.E.2d 366, 119 Ind.App. 472.
Iowa.—Gregory v. Sorensen, 225 N. W. 342, 208 Iowa 174—Husstead v. Saar, 191 N.W. 795, 195 Iowa 145.
Mass.—Patterson v. Barnes, 60 N.E. 2d 82, 317 Mass. 721.
Mich.—Krisher v. Duff, 50 N.W.2d 332, 331 Mich. 699—Barrett v. Connecticut Fire Ins. Co., 161 N.W. 916, 195 Mich. 209.
Minn.—Knuth v. Murphy, 54 N.W.2d 771, 237 Minn. 225.
Mo.—Newman v. St. Louis Public Service Co., 244 S.W.2d 45—Thompson v. Byers Transp. Co., 239 S.W.2d 498, 362 Mo. 42—Timper v. Missouri Pac. R. Co., 98 S. W.2d 548.
Stephens v. Coca-Cola Bottling Co. of St. Louis, App., 215 S.W.2d 50—Shannon v. Unsell, App., 51 S. W.2d 1038—Roemer v. Wells, App., 257 S.W. 1056—Krause v. Spurgeon, App., 256 S.W. 1072—Union Station Bank of St. Louis v. Wangler, App., 254 S.W. 739—Jennings v. Cooper, App., 230 S. W. 325.
Neb.—Egenberger v. National Alfalfa Dehydrating & Milling Co., 83 N.W.2d 523, 164 Neb. 704—Buhrman v. Smollen, 83 N.W.2d 386, 164 Neb. 655—Wright v. Lincoln City Lines, 71 N.W.2d 182, 160 Neb. 714—Fitzsimons v. Frey, 43 N.W.2d 531, 153 Neb. 124—Umberger v. Sankey, 38 N.W.2d 21, 151 Neb. 488, rehearing denied 38 N.W.2d 551, 151 Neb. 525—Mercer v. Omaha & C. B. St. Ry. Co., 188 N.W. 296, 108 Neb. 532.
N.Y.—Gnichtel v. Stone, 135 N.E. 852, 233 N.Y. 465—Noah v. Bowery Sav. Bank, 122 N.E. 235, 225 N.Y. 284.
McLoughlin v. Bonpark Realty Corp., 23 N.Y.S.2d 156, 260 App. Div. 471—Spinneweber v. Every, 177 N.Y.S. 801, 189 App.Div. 35—Skelton v. Lehigh Valley R. Co., 156 N.Y.S. 835, 171 App.Div. 91.
Brancati v. U. S. Shipping Board Emergency Fleet Corporation, 197 N.Y.S. 298—Hayden v. Purcell, 182 N.Y.S. 293.
N.C.—Acme Mfg. Co. v. McQueen, 127 S.E. 246, 189 N.C. 311.
Ohio.—Doering v. City of Cleveland, App., 114 N.E.2d 273—Leeker v. Koehlke, 84 N.E.2d 110, 84 Ohio App. 174.
Okl.—El Kouri v. Toma, 194 P.2d 872, 200 Okl. 354—Farmers Automobile Inter-Insurance Exchange v. Little, 129 P.2d 70, 191 Okl. 244—Eagle-Picher Mining & Smelting Co. v. Layton, 77 P.2d 1137, 182 Okl. 405—Pugh-Bishop Chevrolet Co. v. Duncan, 55 P.2d 1003, 176 Okl. 310.
Pa.—Black v. A. E. Troutman Co., 122 A.2d 201, 385 Pa. 138—Slavin v. Slavin, 84 A.2d 313, 368 Pa. 559.
Tex.—Weisner v. Missouri, K. & T. Ry. Co. of Texas, Com.App., 207 S.W. 904.
City of Corsicana v. King, Civ. App., 3 S.W.2d 857—Munger v. Hancock, Civ.App., 271 S.W. 228—Sperry v. Moody, Civ.App., 269 S.W. 272—Ballard v. Breigh, Civ. App., 262 S.W. 886—Nussbaum v. Nussbaum, Civ.App., 261 S.W. 512, reversed on other grounds, Com. App., 292 S.W. 189—Holliday v. Bradley, Civ.App., 234 S.W. 941—St. Louis Southwestern Ry. Co. of Texas v. Johnson, Civ.App., 199 S.W. 1175.
Wash.—Aitonen v. Morse, 240 P. 14, 136 Wash. 369—Schmitz v. Mathews, 233 P. 660, 133 Wash. 335.
W.Va.—Campbell v. Campbell, 22 S. E.2d 694, 125 W.Va. 15.
Wis.—Sloan v. Brown County State Bank, 182 N.W. 363, 174 Wis. 36—Ogodziski v. Gara, 181 N.W. 227, 173 Wis. 371—Reiss v. Utter, 180 N.W. 810, 173 Wis. 180—Storma v. Wippich, 174 N.W. 480, 170 Wis. 188.

Conflicting instructions

Confusion between a proper instruction that plaintiff had the burden of establishing by clear and convincing evidence that defendants induced him to purchase a truck by false representations and an erroneous instruction that plaintiff had the burden of establishing such fraud by a fair preponderance of evidence is prejudicial, warranting a new trial.
Wash.—Clark v. Federal Motor Truck Sales Corporation, 27 P.2d 726, 175 Wash. 438.

Instructions as to negligence

Mo.—McCloskey v. Koplar, 46 S.W.2d 557, 329 Mo. 527.
Pennifold v. St. Louis Public Service Co., App., 59 S.W.2d 713.
Tex.—Southland Greyhound Lines v. Frausto, Civ.App., 69 S.W.2d 497.

Instructions as to contributory negligence

N.Y.—Skelton v. Lehigh Valley R. Co., 156 N.Y.S. 835, 171 App.Div. 91.

Instructions as to unavoidable accident

Where, in an action for injuries or damages, the evidence raised the issue of unavoidable accident, an instruction placing the burden of proof of that issue on defendant was reversible error.
Tex.—Thurman v. Chandler, 81 S.W. 2d 489, 125 Tex. 34.
Texas & P. Ry. Co. v. Edwards, Com.App., 36 S.W.2d 477.

Instructions in particular actions or proceedings held prejudicial

(1) Action against carrier for damages during shipment.
Ark.—H. Rouw Co. v. St. Louis-San Francisco Ry. Co., 290 S.W. 936, 172 Ark. 881.
(2) Attachment.
Ga.—Parker v. Boyd, 69 S.E.2d 760, 208 Ga. 829.
(3) Libel and slander.
Ga.—Jordan v. Hancock, 86 S.E.2d 11, 91 Ga.App. 467.
Ohio.—Westropp v. E. W. Scripps Co., 74 N.E.2d 340, 148 Ohio St. 365.
(4) Action for malicious prosecution.
Iowa.—Dobbins v. Todd & Kraft Co., 256 N.W. 282, 218 Iowa 878.
(5) Action of ejectment.
N.C.—Virginia-Carolina Power Co. v. Taylor, 139 S.E. 381, 194 N.C. 231.
(6) Action on insurance contract.
U.S.—Automobile Ins. Co., of Hartford, Conn. v. Central Nat. Bank, Savings & Trust Co., C.C.A.Ohio, 20 F.2d 619.
Mo.—Smith v. Ohio Millers' Mut. Fire Ins. Co., 26 S.W.2d 962, 325 Mo. 51.
Avery v. Mechanics' Ins. Co. of Philadelphia, 280 S.W. 726, 222 Mo.App. 467.
34. Ark.—Gilbert v. Gilbert, 22 S.W. 2d 32, 180 Ark. 596.
Cal.—Wagy v. Brave, 24 P.2d 209, 133 C.A. 413.
Ga.—Life & Casualty Ins. Co. of Tennessee v. Palmer, 172 S.E. 823, 48 Ga.App. 380.
Mass.—Sullivan v. Ward, 24 N.E.2d 672, 304 Mass. 614, 130 A.L.R. 437.
Mich.—Weaver v. Motor Transit Management Company (Greyhound Lines), 233 N.W. 178, 252 Mich. 64.
Mo.—McCloskey v. Koplar, 46 S.W.2d 557, 329 Mo. 527—State ex rel. Stevens v. Arnold, 30 S.W.2d 1015, 326 Mo. 32.
Campbell v. Terminal R. Ass'n of St. Louis, 126 S.W.2d 915, 235 Mo.

greater burden than the law requires,[35] or fails to require the necessary degree of proof,[36] or requires him to assume the burden of proving matters which he need not prove to establish his case or defense,[37] or does not require him to carry the burden of proving all that is necessary.[38] An instruction erroneous as to respondent cannot be complained of by appellant because increasing his burden.[39] In many instances error instruction on the burden of proof will be prejudicial if the case is closely contested,[40] while not so regarded where the case is not close on the facts.[41]

§ 1763(4). —— Instructions on Rules for Weighing Testimony

An erroneous instruction as to the credibility of witnesses and the rules for weighing testimony will not require reversal unless prejudicial to the complaining party.

In the absence of prejudice, erroneous instructions as to the credibility of witnesses and the rules for weighing testimony are not cause for reversal.[42]

App. 56—Bennett v. National Union Fire Ins. Co., App., 80 S.W.2d 914.
Mont.—Currie v. Langston, 16 P.2d 708, 92 Mont. 570.
Neb.—Umberger v. Sankey, 38 N.W. 2d 21, 151 Neb. 488, rehearing denied 38 N.W.2d 551, 151 Neb. 525—Myers v. Willmeroth, 34 N.W.2d 756, 150 Neb. 416—Olson v. Omaha & C. B. St. Ry. Co., 267 N.W. 246, 131 Neb. 94—Salisbury v. Berry Motor Co., 241 N.W. 86, 122 Neb. 605.
N.J.—Gaddis v. Gaddis, 159 A. 679, 10 N.J.Misc. 521.
N.Y.—Martin v. Paddelford, 170 N. Y.S. 684, 183 App.Div. 354—Skelton v. Lehigh Valley R. Co., 156 N.Y.S. 835, 171 App.Div. 91.
Battah v. Prudential Ins. Co. of America, 267 N.Y.S. 682, 151 Misc. 176.
Tenn.—Kingsul Theatres v. Quillen, 196 S.W.2d 316, 29 Tenn.App. 248.
Tex.—Eastland County v. Davisson, Com.App., 298 S.W. 268.
Dennis v. Knox, Civ.App., 18 S. W.2d 1089.
Wis.—Bengston v. Estes, 51 N.W.2d 539, 260 Wis. 595.
4 C.J. p 1031 note 31 [a].

35. Ark.—Neal v. Arkola Bauxite Co., 39 S.W.2d 298, 183 Ark. 857.
Cal.—Pitt v. Southern Pac. Co., 9 P. 2d 273, 121 C.A. 228—Greenleaf v. Pacific Telephone & Telegraph Co., 185 P. 872, 43 C.A. 691.
Fla.—Howells v. Currie, 122 So. 2, 97 Fla. 648.
Ga.—Lane v. Varner, 78 S.E.2d 528, 89 Ga.App. 47—Masonic Relief Ass'n v. Hicks, 171 S.E. 215, 47 Ga. App. 590.
Ill.—Harshaw, Fuller & Goodwin Co. v. Illinois Cent. R. Co., 252 Ill. App. 253.
Mo.—Morris v. E. I. Du Pont de Nemours & Co., 109 S.W.2d 1222, 341 Mo. 821—Sheehan v. Terminal R. Ass'n of St. Louis, 81 S.W.2d 305, 336 Mo. 709.
N.J.—Kresse v. Metropolitan Life Ins. Co., 168 A. 634, 111 N.J.Law 474.
N.Y.—Conover v. Jaffee, 263 N.Y.S. 618, 238 App.Div. 147—Lusthaus v. U. S. Trucking Corporation, 256 N. Y.S. 231, 235 App.Div. 78—Weinfeld v. Riteway Const. Corporation, 250 N.Y.S. 350, 232 App.Div. 453.
Ohio.—Crellin v. Parish, App., 136 N. E.2d 454—Cincinnati St. Ry. Co. v. Keehan, 186 N.E. 812, 45 Ohio App. 75—Korona Jewelry & Music House v. Loveland, 157 N.E. 500, 25 Ohio App. 116—Harig v. McCutcheon, 155 N.E. 701, 23 Ohio App. 500.
Okl.—Bellis v. Smith, 17 P.2d 975, 160 Okl. 294.
4 C.J. p 1031 note 31 [b].

36. Ill.—Bunch v. Abbott, 256 Ill. App. 33—Riddle v. Mansager, 254 Ill.App. 68.
N.C.—Peterson v. Taylor, 166 S.E. 800, 203 N.C. 673—M. P. Hubbard & Co. v. Horne, 165 S.E. 347, 203 N.C. 205.
Tex.—Doty v. Sidall, Civ.App., 16 S. W.2d 295.

37. Mo.—Brewer v. Silverstein, 64 S.W.2d 289.
Layton v. Metropolitan Life Ins. Co. App., 89 S.W.2d 576—Harris v. St. Louis-San Francisco Ry. Co., App., 60 S.W.2d 652.
Tex.—Panhandle & S. F. Ry. Co. v. Friend, Civ.App., 91 S.W.2d 922.

38. Iowa.—Waldman v. Sanders Motor Co., 243 N.W. 555, 214 Iowa 1139.
Neb.—Ficke v. Gibson, 45 N.W.2d 436, 153 Neb. 478.

39. Pa.—Edmondson v. McSorley, 180 A. 95, 118 Pa.Super. 446.

40. Ill.—Tregoning v. Tregoning, 262 Ill.App. 489—Howell v. Empire State Surety Co., 183 Ill.App. 220.
N.J.—Niebel v. Winslow, 95 A. 995, 88 N.J.Law 191.
N.Y.—Levine v. Kass, 149 N.Y.S. 950, 87 Misc. 297.
Steinman v. Henry Morgenthau Co., 151 N.Y.S. 886.
Tenn.—**Corpus Juris Secundum cited in Nashville Bridge Co. v. Hudgins,** 137 S.W.2d 327, 332, 23 Tenn.App. 677.
W.Va.—Buckhannon & N. R. Co. v. Great Scott Coal & Coke Co., 83 S. E. 1031, 75 W.Va. 423.

41. Ill.—Costello v. Federal Life Ins. Co., 259 Ill.App. 321.

42. Ark.—Steptoe v. St. Louis, I. M. & S. Ry. Co., 177 S.W. 417, 119 Ark. 75.
Cal.—In re Ross' Estate, 178 P. 510, 179 C. 629.
Norton v. Futrell, App., 308 P.2d 887—Long v. Standard Oil Co. of Cal., 207 P.2d 837, 92 C.A.2d 455—Paul v. Key System, 180 P.2d 940, 80 C.A.2d 21—Flynn v. Young, 78 P.2d 245, 25 C.A.2d 614—Poor v. W. P. Fuller & Co., 159 P. 233, 30 C.A. 650.
Conn.—Dwyer v. Redmond, 124 A. 7, 100 Conn. 393.
Ga.—Kelley v. Bristol, 119 S.E. 334, 30 Ga.App. 725.
Ill.—McQuillen v. Evans, 187 N.E. 320, 353 Ill. 239—Fowler v. Chicago Rys. Co., 120 N.E. 635, 285 Ill. 196.
Consolidated Wire & Associated Corporations v. Weiss, 63 N.E.2d 669, 327 Ill.App. 219—Christo v. Nicola, 183 Ill.App. 486—Beck v. People, 115 Ill.App. 19—Chicago, etc., R. Co. v. Keely, 103 Ill.App. 205. See Johnson v. Chicago Surface Lines, 209 Ill.App. 26.
Ind.—Kraning v. Taggart, 1 N.E.2d 689, 103 Ind.App. 62—Amen v. Standard Steel Car Co., 123 N.E. 7, 72 Ind.App. 179.
Minn.—Greenfield v. Unique Theatre Co., 177 N.W. 666, 146 Minn. 17—Jacobson v. Chicago, M. & St. P. Ry. Co., 156 N.W. 251, 132 Minn. 181, L.R.A.1916D 144, Ann.Cas. 1918A 355.
Miss.—Gregory v. Williams, 35 So.2d 451, 203 Miss. 455—Hoxie v. Hadad, 11 So.2d 693, 193 Miss. 896.
Mo.—Jones v. St. Louis-San Francisco Ry. Co., 253 S.W. 737.
Stoecker & Price Storage & Auction Co. v. Cooper, App., 220 S.W. 972.
Neb.—Keiserman v. Lydon, 44 N.W. 2d 513, 153 Neb. 279.
N.D.—Worlitz v. Miller, 184 N.W. 806, 48 N.D. 335.

Instructions held not prejudicial

Ark.—Steptoe v. St. Louis, I. M. & S. Ry. Co., 177 S.W. 417, 119 Ark. 75.
Cal.—Hirshfeld v. Dana, 223 P. 451, 193 C. 142.
Harker v. Southern California Edison Co., 256 P. 848, 83 C.A. 204.
Conn.—Land Finance Corporation v. Menzies, 160 A. 168, 114 Conn. 694.

Where prejudice results, however, the giving of such instructions is reversible error.[43]

Expert testimony. Erroneous instructions as to testimony of experts will not require reversal, unless the substantial rights of the complaining party have been affected.[44]

§ 1763(5). —— Conflicting Instructions

Conflicting, contradictory, or inconsistent instructions, if on a material matter and if misleading and confusing, and prejudicial to the complaining party, require reversal.

Conflicting, contradictory, or inconsistent instructions on material matters which are calculated to mislead or confuse the jury and affect their verdict are prejudicially erroneous.[45] However, the con-

Ga.—Georgia, F. & A. Ry. Co. v. Blish Milling Co., 82 S.E. 784, 15 Ga.App. 142, affirmed 36 S.Ct. 541, 241 U.S. 190, 60 L.Ed. 948—Tidwell v. Tidwell, 87 S.E.2d 657, 92 Ga. App. 54.

Ill.—McManaman v. Johns-Manville Products Corp., 81 N.E.2d 137, 400 Ill. 423.

Smith v. Illinois Cent. R. Co., 99 N.E.2d 717, 343 Ill.App. 593—Anderson v. Samuelson, 97 N.E.2d 353, 342 Ill.App. 516—Anderson v. Meyer, 87 N.E.2d 787, 338 Ill.App. 414—Zelinski v. Chicago & N. W. Ry. Co., 82 N.E.2d 905, 336 Ill.App. 49—Galloway v. Atchison, T. & S. F. Ry. Co., 82 N.E.2d 372, 335 Ill.App. 572—Simon v. City of Chicago, 279 Ill.App. 80—Welch v. Chicago City Ry. Co., 195 Ill.App. 146.

Mo.—Ford v. Dahl, 228 S.W.2d 800, 360 Mo. 437—Lewellen v. Haynie, 287 S.W. 634.

Quadlander v. Kansas City Public Service Co., 224 S.W.2d 396, 240 Mo. App. 1134—Ossenberg v. Monsanto Chemical Works, App., 218 S.W. 421—Ozark Sav. Bank v. Bank of Bradleyville, App., 204 S.W. 570.

Ohio.—Phillips v. Sharp, 185 N.E. 562, 44 Ohio App. 311.

R.I.—Reynolds v. Davis, 179 A. 613, 55 R.I. 206.

Wash.—Auerbach v. Webb, 17 P.2d 1, 170 Wash. 567—Martin v. Jansen, 193 P. 674, 113 Wash. 290, reheard 198 P. 393, 113 Wash. 290.

Wis.—In re Cushman's Estate, 250 N.W. 873, 213 Wis. 74.

Instruction to disregard testimony

In the absence of prejudice, it is not reversible error to instruct as to disregarding testimony of witnesses giving false testimony.

Ariz.—Pawley v. First Nat. Bank, 256 P. 507, 32 Ariz. 135.

Ill.—McQuillen v. Evans, 187 N.E. 820, 353 Ill. 239.

Pa.—Western Show Co. v. Mix, 173 A. 183, 315 Pa. 139.

S.D.—Cox v. General Motors Acceptance Corporation, 241 N.W. 609, 59 S.D. 588.

Tenn.—De Grafenreid v. Nashville Ry. & Light Co., 39 S.W.2d 274, 162 Tenn. 558.

Garland v. Mayhall, 68 S.W.2d 482, 17 Tenn.App. 449.

43. Ala.—Powell v. King, App., 96 So.2d 196.

Ga.—Fountain v. McCallum, 21 S.E. 2d 610, 194 Ga. 269—Tucker v. Talmadge, 198 S.E. 726, 186 Ga. 798.

Daniel v. Daniel, 73 S.E.2d 591, 87 Ga.App. 325.

Ill.—Noone v. Olehy, 130 N.E. 476, 297 Ill. 160.

Carlin v. Chicago Rys. Co., 205 Ill.App. 303—Martukis v. Keyt, 186 Ill.App. 279—Powers v. Chicago City Ry. Co., 185 Ill.App. 158.

Mo.—Poague v. Mallory, 235 S.W. 491, 208 Mo.App. 395.

N.Y.—Navis v. City of Rochester, 102 N.Y.S.2d 153, 278 App.Div. 667, reargument denied 103 N.Y.S.2d 671, 278 App.Div. 743—Capolupo v. Horton Wiping Materials Co., 23 N.Y.S.2d 490, 260 App.Div. 575, reargument denied 25 N.Y.S.2d 780, 261 App.Div. 804, appeal denied 33 N.E. 2d 700, 285 N.Y. 855—Ensign v. New York Life Ins. Co., 198 N.Y.S. 624, 204 App.Div. 690.

Okl.—**Corpus Juris Secundum cited in** El Kouri v. Toma, 194 P.2d 872, 874, 200 Okl. 354.

4 C.J. p 1031 note 31 [c].

Instructions held prejudicial

Idaho.—Ausich v. Frank, 222 P.2d 1073, 70 Idaho 494.

Ill.—Walsh v. Chicago Rys. Co., 128 N.E. 647, 294 Ill. 586.

Mo.—George C. Porter Motor Corporation v. U. S. Casualty Co., App., 18 S.W.2d 133—Shartzer v. Atchison, T. & S. F. Ry. Co., App., 250 S.W. 950.

Tex.—Lamar v. Panhandle & S. F. Ry. Co., Com.App., 248 S.W. 34.

Instructions to disregard testimony, so framed as to be prejudicial, require reversal.

Mont.—Vande Veegaete v. Vande Veegaete, 243 P. 1082, 75 Mont. 52.

Wis.—Higgins v. Stang, 218 N.W. 832, 195 Wis. 498.

44. Kan.—Hill v. Union Pac. R. Co., 215 P. 310, 113 Kan. 489.

Instructions held not prejudicial

Cal.—Rosander v. Market St. Ry. Co., 265 P. 536, 89 C.A. 710.

Kan.—Courtright v. Cavert, 262 P. 587, 125 Kan. 66.

Mo.—Lavignon v. Dietzel, 34 S.W. 2d 92—Kunkel v. Griffith, 29 S.W.2d 64, 325 Mo. 392.

N.Y.—Laffin v. Ryan, 162 N.Y.S.2d 730, 4 A.D.2d 21.

Tenn.—Provident Life & Accident Ins. Co. v. Prieto, 83 S.W.2d 251, 169 Tenn. 124.

Instructions held prejudicial

U.S.—Ætna Life Ins. Co. of Hartford, Conn., v. Kelley, C.C.A.Mo., 70 F.2d 589, 93 A.L.R. 471.

Mo.—Phares v. Century Electric Co., 82 S.W.2d 91, 336 Mo. 961—Davis v. City of Independence, 49 S.W. 2d 95, 330 Mo. 201—Scanlon v. Kansas City, 28 S.W.2d 84, 325 Mo. 125.

Allen v. American Life & Accident Ins. Co., App., 83 S.W.2d 192.

45. Ala.—Ditsch v. Baggett Transp. Co., 61 So.2d 98, 258 Ala. 26—Adler v. Miller, 120 So. 153, 218 Ala. 674.

Ark.—Arkansas Baking Co. v. Aaron, 166 S.W.2d 14, 204 Ark. 990—Gilliam v. Bradley Lumber Co. of Arkansas, 67 S.W.2d 595, 188 Ark. 615—Life & Casualty Ins. Co. v. Dunham, 52 S.W.2d 620, 186 Ark 121—Lewis v. Merchants' & Planters' Bank, 15 S.W.2d 977, 179 Ark. 352—Wright v. Liberty Cent. Trust Co., 260 S.W. 397, 163 Ark. 458—Kelly Handle Co. v. Shanks, 225 S.W. 302, 146 Ark. 208.

Cal.—Sebrell v. Los Angeles Ry. Corp., 192 P.2d 898, 31 C.2d 813—Vaughn v. Jonas, 191 P.2d 432, 31 C.2d 586—Intagliata v. Shipowners & Merchants Towboat Co., 159 P.2d 1, 26 C.2d 365—Starr v. Los Angeles Ry. Corporation, 201 P. 599, 187 C. 270.

Miller v. Schell, App., 308 P.2d 445—Rackson v. Benioff, 244 P.2d 9, 111 C.A.2d 124—Carlson v. Shewalter, 243 P.2d 549, 110 C.A.2d 655—Pearson v. Tide Water Associated Oil Co., App., 223 P.2d 669—Wright v. Sniffin, 181 P.2d 675, 80 C.A.2d 358—Stricklin v. Rosemeyer, 126 P.2d 665, 52 C.A.2d 558—Stevenson v. Fleming, 117 P.2d 717, 47 C.A.2d 225—Nance v. Fresno City Lines, 113 P.2d 244, 44 C.A.2d 868—Ross v. Baldwin, 112 P.2d 666, 44 C.A.2d 433—Spear v. Leuenberger, 112 P.2d 43, 44 C.A.2d 236—Ferguson v. Nakahara, 110 P.2d 1091, 43 C.A.2d 435—Robbins v. Roques, 16 P.2d 695, 128 C.A. 1—Noce v. United Railroads of San Francisco, 200 P. 819, 53 C.A. 512.

Colo.—Babcock v. Bouton, 275 P. 908, 85 Colo. 327.

Fla.—Key West Electric Co. v. Albury, 109 So. 223, 91 Fla. 695, followed in Stowers v. Atlantic Coast Line R. Co., 142 So. 882, 106 Fla. 102.

flict must be on a material matter,[46] must be mis- | leading,[47] and must be prejudicial to the complain-

Ga.—Strange v. Boatright, 125 S.E. 721, 33 Ga.App. 108.
Idaho.—State ex rel. McKinney v. Richardson, 277 P.2d 272, 76 Idaho 9—Detroit Fire & Marine Ins. Co. v. Sargent, 246 P. 311, 42 Idaho 369.
Ind.—Metropolitan Life Ins. Co. v. Alterovitz, 14 N.E.2d 570, 214 Ind. 186, 117 A.L.R. 770—Washington Hotel Realty Co. v. Bedford Stone & Construction Co., 143 N.E. 156, 195 Ind. 128, motion denied 148 N.E. 405, 196 Ind. 396.
Bodine v. Justice, 85 N.E.2d 504, 119 Ind.App. 393—Emge v. Sevedge, 76 N.E.2d 687, 118 Ind.App. 277—Chesapeake & O. Ry. Co. v. Boston, 75 N.E.2d 194, 118 Ind.App. 526, vacated on other grounds 82 N.E. 2d 249, 226 Ind. 582—Maddox v. Yocum, 31 N.E.2d 652, 109 Ind.App. 416—Evansville Rys. Co. v. Miller, 111 N.E. 1031, 64 Ind.App. 206.
Iowa.—Pappas v. Evans, 48 N.W.2d 298, 242 Iowa 804.
Ky.—Johnson v. Ratliff, 25 S.W.2d 355, 233 Ky. 187.
Minn.—Le Tourneau v. Johnson, 239 N.W. 768, 185 Minn. 46.
Miss.—Harper Foundry & Mach. Co. v. Cammack, 57 So.2d 490—Life & Casualty Ins. Co. v. Walters, 198 So. 746, 190 Miss. 761.
Mo.—Seithel v. St. Louis Dairy Co., 300 S.W. 280—In re Sixth Street, 207 S.W. 503, 276 Mo. 158—State ex rel. Central Coal & Coke Co. v. Ellison, 195 S.W. 722, 270 Mo. 645—Grady v. Royar, 181 S.W. 428.
Wabash R. Co. v. Dannen Mills, Inc., App., 279 S.W.2d 50—Lasley v. Ridenour, App., 265 S.W.2d 744—McCloskey v. Renne, 37 S.W.2d 950, 225 Mo.App. 810—Gray v. Nations, 23 S.W.2d 1080, 224 Mo.App. 27—Pullam v. Vaughn, App., 218 S.W. 889—Boeckeler Lumber Co. v. Wahlbrink, 177 S.W. 741, 191 Mo.App. 334, affirmed 208 S.W. 840, 276 Mo. 662.
Neb.—Egenberger v. National Alfalfa Dehydrating & Milling Co., 83 N. W.2d 523, 164 Neb. 704—Southwell v. De Boer, 80 N.W.2d 877, 163 Neb. 646—Bramhall v. Adcock, 75 N.W.2d 696, 162 Neb. 198—Barney v. Adcock, 75 N.W.2d 683, 162 Neb. 179—Cover v. Platte Val. Public Power and Irr. Dist., 75 N.W.2d 661, 162 Neb. 146—In re House's Estate, 17 N.W.2d 883, 145 Neb. 670.
N.J.—Marzotto v. Gay Garment Co., 78 A.2d 394, 11 N.J.Super. 368, affirmed 80 A.2d 554, 7 N.J. 116.
Stahlin v. Lehigh Valley R. Co., 15 A.2d 344, 125 N.J.Law 211—Cvelich v. Erie R. Co., 4 A.2d 271, 122 N.J.Law 26, certiorari denied 59 S.Ct. 1033, 307 U.S. 633, 83 L.Ed. 1516.
N.Y.—Gallagher v. City of New York, 52 N.Y.S.2d 219, 268 App.Div. 1044—Burd v. Bleischer, 203 N.Y.S. 754, 208 App.Div. 499.
N.C.—Price v. Gray, 97 S.E.2d 844, 246 N.C. 162—Owens v. Kelly, 84 S. E.2d 163, 240 N.C. 770—Hartley v. Smith, 79 S.E.2d 767, 239 N.C. 170—Morgan v. High Penn Oil Co., 77 S.E.2d 682, 238 N.C. 185—Sumner v. Sumner, 44 S.E.2d 40, 227 N.C. 610—Hubbard v. Southern Ry. Co., 166 S.E. 802, 203 N.C. 675—In re Brown's Will, 157 S.E. 420, 200 N. C. 440—Bonapart v. Nissen, 151 S. E. 94, 198 N.C. 180—J. N. Coe & Co. v. First Realty & Loan Co., 150 S.E. 334, 197 N.C. 689—Warren v. Armour Fertilizer Works, 131 S.E. 723, 191 N.C. 416—Tobacco Growers' Co-op. Ass'n v. Moss, 121 S.E. 738, 187 N.C. 421.
Ohio.—Readnour v. Cincinnati St. Ry. Co., App., 93 N.E.2d 412, affirmed 93 N.E.2d 587, 154 Ohio St. 69—Corbin v. City of Cleveland, 57 N.E.2d 427, 74 Ohio App. 199, affirmed 56 N.E.2d 214, 144 Ohio St. 32, 154 A.L.R. 874.
Okl.—City of Tulsa v. Pearson, 277 P.2d 135.
Okl.—El Kouri v. Toma, 194 P.2d 872, 200 Okl. 354—Southwestern Cotton Oil Co. v. Sawyer, 51 P. 2d 543, 175 Okl. 87—Muskogee Transfer & Storage Co. v. Ward, 300 P. 648, 150 Okl. 58—First Nat. Bank v. Madill Produce Co., 289 P. 714, 144 Okl. 67—Shobe v. Sykes, 288 P. 1072, 144 Okl. 18—Bailey v. Citizens' Bank of Meeker, 247 P. 42, 118 Okl. 118—Midland Valley R. Co. v. White, 234 P. 762, 109 Okl. 60—Folsom Morris Coal Mining Co. v. Scott, 231 P. 512, 107 Okl. 178—Schulte v. Garrett, 225 P. 904, 99 Okl. 52—Helsel v. Fletcher, 225 P. 514, 98 Okl. 285, 33 A.L.R. 792—Hines v. Dean, 220 P. 860, 96 Okl. 107—First Nat. Bank v. Cox, 200 P. 238, 83 Okl. 1—Petroleum Iron Works Co. v. Bullington, 161 P. 538, 61 Okl. 311—First Nat. Bank of Wetumka v. Nolen, 157 P. 754, 59 Okl. 20—Oklahoma Ry. Co. v. Milam, 147 P. 314, 45 Okl. 742.
Or.—Eid v. Larsen, 264 P.2d 1051, 200 Or. 83—Williams v. Portland General Elec. Co., 247 P.2d 494, 195 Or. 597—Barnes v. Davidson, 226 P.2d 289, 190 Or. 508—Houston v. Maunula, 255 P. 477, 121 Or. 552—McCabe v. Kelleher, 175 P. 608, 90 Or. 45.
Pa.—Vogel v. Suburban Const. Co., 20 A.2d 905, 144 Pa.Super. 588.
R.I.—G. W. McNear, Inc. v. American & British Mfg. Co., 107 A. 242, 42 R.I. 302.
S.C.—Wright v. Harris, 89 S.E.2d 97, 228 S.C. 144—Thigpen v. Thigpen, 60 S.E.2d 621, 217 S.C. 322.
Tex.—Wichita Valley Ry. Co. v. Williams, 288 S.W. 425, 116 Tex. 253. Rich v. Park, Civ.App., 177 S.W. 184, reversed on other grounds, Com.App., 212 S.W. 947, rehearing denied 216 S.W. 146.
Utah.—Looney v. Bingham Dairy, 260 P. 855, 70 Utah 398.
Va.—Flanagan v. Harvey, 168 S.E. 448, 160 Va. 214—Green v. Ruffin, 125 S.E. 742, 141 Va. 628, rehearing denied 127 S.E. 486, 141 Va. 628—Windsor v. Carlton, 118 S.E. 222, 136 Va. 652—Virginia Ry. & Power Co. v. Smith & Hicks, 105 S.E. 532, 129 Va. 269.
Wash.—Donner v. Donner, 278 P.2d 780, 46 Wash.2d 130—Otero v. Undi, 259 P.2d 380, 42 Wash.2d 856—Atkins v. Clein, 100 P.2d 1, 3 Wash.2d 168, opinion adhered to 104 P.2d 489, 3 Wash.2d 168—Burson v. Blackwell, 52 P.2d 351, 184 Wash. 669—Paysse v. Paysse, 146 P. 840, 84 Wash. 351.
42 C.J. p 831 note 3.

Instructions held so conflicting as to require reversal

Ark.—Howe v. Hatley, 54 S.W.2d 64, 186 Ark. 366.
Colo.—Glenn v. Halberg, 40 P.2d 240, 96 Colo. 142.
Iowa.—Morse v. Incorporated Town of Castana, 241 N.W. 304, 213 Iowa 1225.
Ky.—Baker v. Clark, 218 S.W. 280, 186 Ky. 816.
Ohio.—Interstate Motor Freight Corporation v. Beecher, 174 N.E. 27, 37 Ohio App. 23.

46. N.C.—May v. Grove, 141 S.E 750, 195 N.C. 235.

Matter sufficiently material

An instruction permitting the jury to find negligence against either or both of defendants sued as joint tort-feasors conflicted on material matter with an instruction that, unless defendant employee was found negligent, the employer was not negligent, and was prejudicial error. N.C.—May v. Grove, supra.

47. Cal.—Parkin v. Grayson-Owen Co., 143 P. 257, 25 C.A. 269.
Md.—Fidelity & Deposit Co. of Maryland v. Sanford & Brooks Co., 149 A. 275, 158 Md. 525.
Mo.—McCarthy v. Metropolitan Life Ins. Co., App., 90 S.W.2d 158—Allen v. Wilkerson, App., 87 S. W.2d 1056.
Wash.—Haaga v. Saginaw Logging Co., 14 P.2d 55, 169 Wash. 547, petition granted 15 P.2d 655, 170 Wash. 93.
64 C.J. p 681 note 72.

Harmless conflict

In an action for insulting words, an instruction that the jury should give them their ordinary and popular meaning, and another that they must so construe them unless used in a different sense, are not necessarily in conflict, but, if conflicting,

ing party.[48]

§ 1764. Applicability to Issues and Evidence

a. Harmless error
b. Prejudicial error
c. Immaterial instructions

a. Harmless Error

In the absence of prejudice to the complaining party, the giving of abstract instructions or instructions not applicable to the issues and evidence will not require reversal.

Notwithstanding the general rule, discussed in Trial § 379, that it is improper to give an instruction announcing a naked legal proposition, however correct it may be, unless it bears on, and is connected with, the issues involved, and unless, further, there has been received some competent evidence to which the jury may apply it, the giving of instructions which are abstract or not authorized by, or applicable to, the pleadings and evidence will not constitute a ground for reversal, where no prejudice results to the complaining party; and this is so whether or not the instructions state correct rules of law.[49]

harmless, where, applied to the facts in the case, both meant the same.
Va.—Fisher v. Fisher, 108 S.E. 872, 89 W.Va. 190.

48. Ark.—Railway Exp. Agency v. Shull, 275 S.W.2d 882, 224 Ark. 476—Arkansas Baking Co. v. Aaron, 166 S.W.2d 14, 204 Ark. 990—Browne-Brun Wholesale Grocery Co. v. Hinton, 18 S.W.2d 369, 179 Ark. 831.
Cal.—Wells v. Lloyd, 132 P.2d 471, 21 C.2d 452.
Wood v. Moore, 148 P.2d 91, 64 C.A.2d 144—Kelley-Clarke Co. v. Leslie, 215 P. 699, 61 C.A. 559.
Ga.—Davis v. Ward, 177 S.E. 560, 179 Ga. 747.
Ill.—Bollenbach v. Bloomenthal, 255 Ill.App. 305, reversed on other grounds, 173 N.E. 670, 341 Ill. 539.
Md.—Tittlebaum v. Pennsylvania R. Co., 174 A. 89, 167 Md. 397—Presstman v. Fine, 159 A. 265, 162 Md. 133.
Mo.—Davis v. Terminal R. Ass'n of St. Louis, 299 S.W.2d 460—Demaray v. Missouri-Kansas-Texas R. Co., 50 S.W.2d 127, 330 Mo. 589, certiorari denied Missouri-Kansas-Texas R. Co. v. Demaray, 53 S.Ct. 20, 287 U.S. 620, 77 L.Ed. 538—Irons v. American Ry. Express Co., 300 S.W. 283, 318 Mo. 318—Bollinger v. Curtis & Co. Mfg. Co., 249 S.W. 907.
Yancey v. Central Mut. Ins. Ass'n, App., 77 S.W.2d 149.
Mont.—Lewis v. New York Life Ins. Co., 124 P.2d 579, 113 Mont. 151.
Neb.—Southwell v. De Boer, 80 N.W. 2d 877, 163 Neb. 646.
N.C.—Stone v. Guion, 23 S.E.2d 907, 222 N.C. 548.
Ohio.—Ohio Stock Food Co. v. Gintling, 153 N.E. 341, 22 Ohio App. 82.
Or.—Dixon v. Raven Diary, 75 P.2d 347, 158 Or. 186.
Pa.—Coleman v. Reading Co., 29 A. 2d 499, 346 Pa. 289.
Va.—Burch v. Virginia Public Service Co., 194 S.E. 698, 169 Va. 460.
Wash.—Miller v. Alaska S. S. Co., 246 P. 296, 139 Wash. 207—Lund v. City of Seattle, 169 P. 820, 99 Wash. 300.

49. Ala.—King v. Jackson, 87 So. 2d 623, 264 Ala. 339—Crescent Amusement Co. v. Knight, 82 So. 2d 919, 263 Ala. 445—Herrington v. Hudson, 80 So.2d 519, 262 Ala. 510—Bailey v. Tennessee Coal, Iron & R. Co., 75 So.2d 117, 261 Ala. 526—McCloud v. Williams, 60 So.2d 339, 257 Ala. 611—Upton v. Read, 56 So.2d 644, 256 Ala. 593—Calvert v. Bynum, 50 So.2d 731, 255 Ala. 172—Ray v. Richardson, 36 So.2d 89, 250 Ala. 705—Southern Home Ins. Co. of the Carolinas v. Boatwright, 164 So. 102, 231 Ala. 198—City of Birmingham v. Jackson, 155 So. 527, 229 Ala. 133—Chambers v. Cox, 130 So. 416, 222 Ala. 1—Central of Georgia Ry. Co. v. Smith, 117 So. 74, 217 Ala. 501, 58 A.L.R. 1058—Southern Ry. Co. v. Beaty, 103 So. 658, 212 Ala. 608—Allen v. Birmingham Southern R. Co., 97 So. 93, 210 Ala. 41—Tennessee Coal, Iron & R. Co. v. Bunn, 79 So. 360, 202 Ala. 22—Howton v. Mathias, 73 So. 92, 197 Ala. 457—Reynolds v. Hardee, 69 So. 553, 193 Ala. 454—International Agr. Corporation v. Burton, 69 So. 417, 194 Ala. 108—Cummings v. McDonnell, 66 So. 717, 189 Ala. 96.
Arrick v. Fanning, 47 So.2d 708, 35 Ala.App. 409—Brilliant Coal Co. v. Sparks, 81 So. 185, 16 Ala.App. 665, certiorari denied Ex parte Brilliant Coal Co., 82 So. 161, 203 Ala. 131—Western Union Telegraph Co. v. Holland, 66 So. 926, 11 Ala.App. 510—Park-Robertson Hardware Co. v. Copeland, 66 So. 880, 11 Ala.App. 447.
Ariz.—Smith v. Elder, 245 P. 274, 30 Ariz. 144.
Ark.—Hanson Motor Co. v. Young, 265 S.W.2d 501, 223 Ark. 191—Reynolds v. Nutt, 230 S.W.2d 949, 217 Ark. 543—Equity Mut. Ins. Co. v. Merrill, 221 S.W.2d 2, 215 Ark. 483—St. Louis-San Francisco Ry. Co. v. Wacaster, 199 S.W.2d 948, 210 Ark. 1080—Walloch v. Heiden, 22 S.W.2d 1020, 180 Ark. 844—Hamilton v. Hamilton, 10 S.W.2d 377, 178 Ark. 241—Bank of Altus v. Burrow, 10 S.W.2d 39, 178 Ark. 90—Franks v. Rogers, 245 S.W. 311, 156 Ark. 120—National Fruit Products Co. v. Garrett, 181 S.W. 926, 121 Ark. 570—Stephens v. Clark, 181 S.W. 895, 121 Ark. 292.
Cal.—Polk v. City of Los Angeles, 159 P.2d 931, 26 C.2d 519—Mehollin v. Yauchiyama, 77 P.2d 855, 11 C.2d 53—Jordan v. Great Western Motorways, 2 P.2d 786, 213 C. 606—Treadwell v. Nickel, 228 P. 25, 194 C. 243—Schumann v. Karrer, 192 P. 849, 184 C. 50—In re Clark's Estate, 181 P. 639, 180 C. 395—Cook v. Los Angeles Ry. Corporation, 145 P. 1013, 169 C. 113.
Lewis v. Doyle, App., 307 P.2d 965—Elliott v. Rodeo Land & Water Co., 297 P.2d 129, 141 C.A.2d 404—Sloan v. Stearns, 290 P.2d 382, 137 C.A.2d 289—Estes v. Smith, 282 P.2d 534, 132 C.A.2d 529—Monastero v. Los Angeles Transit Co., 280 P.2d 187, 131 C.A.2d 156—Washington v. City and County of San Francisco, 266 P.2d 828, 123 C.A.2d 235—Nelson v. Porterville Union High School Dist., 254 P.2d 945, 117 C.A.2d 96—Trelut v. Kazarian, 243 P.2d 104, 110 C.A.2d 506—Sortino v. Loneoak, 153 P.2d 428, 66 C.A.2d 876—Bee v. Tungstar Corp., 151 P.2d 537, 65 C.A.2d 729—Heller v. Melliday, 141 P.2d 447, 60 C.A.2d 689—Purcell v. Goldberg, 93 P.2d 578, 34 C.A.2d 344—Atkinson v. Zarevich, 80 P.2d 110, 26 C.A.2d 590—Valencia v. San Jose Scavenger Co., 69 P.2d 480, 21 C.A.2d 469—Evans v. Mitchell, 38 P.2d 437, 2 C.A.2d 702—Hill v. Fresno County, 35 P.2d 593, 140 C.A. 272—Lynch v. Market St. Ry. Co., 19 P.2d 1009, 130 C.A. 433—Lejeune v. General Petroleum Corporation of California, 18 P.2d 429, 128 C.A. 404—Anderson v. Pickens, 4 P.2d 794, 118 C.A. 212—Neudeck v. Vestal, 3 P. 2d 595, 117 C.A. 266—Salvo v. Market St. Ry. Co., 2 P.2d 585, 116 C. A. 339—Ambrose v. Allen, 298 P. 169, 113 C.A. 107—Neilson v. Walker, 286 P. 1091, 105 C.A. 23—Brandes v. Rucker-Fuller Desk Co., 282 P. 1009, 102 C.A. 221—Lower v. Hughes, 251 P. 952, 80 C.A. 444—Marston v. Pickwick Stages, 248 P.

This principle has been applied to instructions in | various actions and proceedings, such as, for in-

930, 78 C.A. 526—Dillon v. Prudential Ins. Co. of America, 242 P. 736, 75 C.A. 266—Gregg v. McDonald, 239 P. 373, 73 C.A. 748—Ephraim v. Oakland Title Insurance & Guaranty Co., 201 P. 946, 54 C.A. 379—Randolph v. Hunt, 183 P. 358, 41 C.A. 739.

Colo.—Nelson v. Nelson, 146 P. 1079, 27 Colo.App. 104.

Conn.—Seney v. Trowbridge, 16 A.2d 573, 127 Conn. 284—Kulinsky v. Savin, 7 A.2d 436, 125 Conn. 512—Spicer v. Hincks, 155 A. 508, 113 Conn. 366, 76 A.L.R. 1519—Sizer v. City of Waterbury, 154 A. 639, 113 Conn. 145—Schiesel v. S. Z. Poli Realty Co., 142 A. 812, 108 Conn. 115—Matulis v. Gans, 141 A. 870, 107 Conn. 562—Loethscher v. Campo, 141 A. 652, 107 Conn. 568.

Fla.—Woods v. Thompson, 31 So.2d 62, 159 Fla. 112—Hollingsworth v. Norris, 81 So. 782, 77 Fla. 498—Eaton v. Hopkins, 71 So. 922, 71 Fla. 615.

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N.H.—**Corpus Juris Secundum quoted in** Lindberg v. Swenson, 60 A. 2d 458, 460, 95 N.H. 184.

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Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S.W.2d 857, error dismissed, judgment correct—Dallas Ry. Co. v. Skorodynski, Civ.App., 292 S.W. 638—El Paso & S. W. Ry. Co. v. Havens, Civ.App., 216 S.W. 444, error refused—Town of Jacksonville v. Ragsdale, Civ.App., 202 S.W. 774, error refused—Kolp v. S. F. Scattergood & Co., Civ.App., 185 S.W. 329—Galveston, H. & S. A. Ry. Co. v. Reinhart, Civ.App., 182 S.W. 436—King v. Collins, Civ.App., 179 S.W. 899—Decatur Cotton Seed Oil Co. v. Belew, Civ.App., 178 S.W. 607—Southern Pac. Co. v. W. T. Meadors & Co., Civ.App., 176 S.W. 882—Bulloch v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 171 S. W. 808.

Utah.—Bruner v. McCarthy, 142 P. 2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547—Kerr v. Hillyard, 170 P. 981, 51 Utah 364—Wright v. Howe, 150 P. 956, 46 Utah 588, L.R.A.1916B 1104.

Vt.—Jacobs v. Loyal Protective Ins. Co., 124 A. 848, 97 Vt. 516—Standard Oil Co. of New York v. Dolgin, 115 A. 235, 95 Vt. 414, 17 A.L.R. 1218—Pollica v. Twin State Gas & Electric Co., 92 A. 150, 88 Vt. 205, Ann.Cas.1917C 1240.

Va.—Marrow v. Ferguson, 30 S.E.2d 563, 182 Va. 820—Morris & Co. v. Alvis, 121 S.E. 145, 138 Va. 149.

Wash.—Blasick v. City of Yakima, 274 P.2d 122, 45 Wash.2d 309—Bronk v. Davenny, 171 P.2d 237, 25 Wash.2d 443—Auve v. Fagnant, 134 P.2d 454, 16 Wash.2d 669—Herndon v. City of Seattle, 118 P.2d 421, 11 Wash.2d 88—Calkins v. Department of Labor and Industries, 117 P.2d 640, 10 Wash.2d 565—Muskatell v. City of Seattle, 116 P.2d 363, 10 Wash.2d 221—Gooschin v. Ladd, 33 P.2d 653, 177 Wash. 625—Parton v. Barr, 10 P. 2d 566, 168 Wash. 60—Stokes v. Magnolia Milling Co., 5 P.2d 339, 165 Wash. 311—Gabrielsen v. City of Seattle, 272 P. 723, 150 Wash. 157, 63 A.L.R. 200, reheard 278 P. 1071, 152 Wash. 700, 63 A.L.R. 200—Godefroy v. Reilly, 262 P. 639, 146 Wash. 257—Hamm v. City of Seattle, 249 P. 778, 140 Wash. 427, modified on other grounds 255 P. 655. 143 Wash. 700—King v. King, 145 P. 971, 83 Wash. 615.

W.Va.—Wilson v. Edwards, 77 S.E. 2d 164, 138 W.Va. 613—Humphrey v. Virginian Ry. Co., 54 S.E.2d 204, 132 W.Va. 250—Underwood v. Goff, 49 S.E.2d 860, 131 W Va. 662—Elswick v. Charleston Transit Co., 36 S.E.2d 419, 128 W.Va. 241—Browning v. Monongahela Transp. Co., 27 S.E.2d 481, 126 W. Va. 195—Weese v. Rosencrance, 182 S.E. 570, 116 W.Va. 569—Reiser v. Lawrence, 123 S.E. 451, 96 W.Va. 82—Bond v. Baltimore & O. R. Co., 96 S.E. 932, 82 W.Va. 557, 5 A.L.R. 201—Easter v. Virginian Ry. Co., 86 S.E. 37, 76 W. Va. 383.

Wis.—Zeidler v. Goelzer, 211 N.W. 140, 191 Wis. 378—McHatton v. McDonnell's Estate, 165 N.W. 468, 166 Wis. 323.

Wyo.—**Corpus Juris Secundum quoted in** Marken v. Empire Drilling Co., 293 P.2d 406, 413, 75 Wyo. 121—Northwest States Utilities Co. v. Ashton, 65 P.2d 235, 51 Wyo. 168, rehearing denied 69 P.2d 623, 51 Wyo. 132.

4 C.J. p 1033 note 37—60 C.J. p 1131 note 95 [a]—9 C.J. p 497 note 75—10 C.J. p 1086 note 77.

50. Ga.—McCowen v. Aldred, 69 S. E.2d 660, 85 Ga.App. 373.

Utah.—Taylor Motor Car Co. v. Hansen, 282 P. 1040, 75 Utah 80.

51. Ga.—Maryland Casualty Co. v. Salmon, 164 S.E. 80, 45 Ga.App. 173.

pay rent reserved by a contract;[52] in actions against carriers for loss or injury to goods;[53] in actions for claim and delivery;[54] in condemnation proceedings;[55] in actions on contract generally;[56] in actions on contracts of insurance;[57] in actions of

Iowa.—Laveck v. Bonnes, 185 N.W. 462, 192 Iowa 786.
Ky.—Foster v. Dukes, 193 S.W.2d 159, 301 Ky. 752—Mann v. Watson, 283 S.W. 1052, 214 Ky. 729.
S.C.—Shramek v. Walker, 149 S.E. 331, 152 S.C. 89.
Wash.—Auerbach v. Webb, 17 P.2d 1, 170 Wash. 567.
W.Va.—Raines v. Faulkner, 48 S.E. 2d 393, 131 W.Va. 10.
5 C.J. p 700 note 94.

52. Va.—Southwest Motor Co. v. Kendrick, 160 S.E. 31, 157 Va. 251.
Ark.—Payne v. Orton, 234 S.W. 469, 150 Ark. 307.
Ga.—American Ry. Express Co. v. S. & W. Estroff, 125 S.E. 40, 159 Ga. 58.
Atlanta, B. & C. R. Co. v. Patterson, 43 S.E.2d 177, 75 Ga.App. 189.
Ind.—Nashville, C. & St. L. Ry. Co. v. Johnson, 109 N.E. 912, 60 Ind. App. 416.
Minn.—McArdle v. Chicago, M. & St. P. Ry. Co., 165 N.W. 232, 138 Minn. 379.
Mo.—Warner v. St. Louis-San Francisco Ry. Co., 274 S.W. 90, 218 Mo. App. 314.
Tex.—International & G. N. Ry. Co. v. Ash, Civ.App., 204 S.W. 668, dismissed for want of jurisdiction.
Wash.—Bennington v. Northern Pac. Ry. Co., 192 P. 1073, 113 Wash. 1.

54. S.C.—Hamilton v. Stubbs Co., 89 S.E. 554, 105 S.C. 157.

55. Ala.—Stout v. Limestone County, 100 So. 352, 211 Ala. 227.
Mo.—Chicago, R. I. & P. Ry Co. v. Hosman, 57 S.W.2d 434, 227 Mo. App. 659.
W.Va.—State Road Commission v. Riley, 173 S.E. 783, 114 W.Va. 705.

56. U.S.—Whitehurst v. U. S., C.C. A.Va., 272 F. 46—Royal Ins. Co. v. Taylor, W.Va., 254 F. 805, 166 C.C.A. 251—Brawner v. Royal Indemnity Co., Fla., 246 F. 637, 158 C.C.A. 593.
Ark.—Nakdimen v. First Nat. Bank, 6 S.W.2d 505, 177 Ark. 303, certiorari denied 49 S.Ct. 32, 278 U.S. 635, 73 L.Ed. 552—Sims v. Miller, 236 S.W. 828, 151 Ark. 377—Pope County Real Estate Co. v. Clifton, 232 S.W. 579, 148 Ark. 655.
Cal.—Mundoroff v. Ramm, 226 P. 820, 66 C.A. 553.
Conn.—Goldfarb v. Cohen, 102 A. 649, 92 Conn. 277.
Ga.—Southern Auto Co. v. Fletcher, 28 S.E.2d 184, 70 Ga.App. 299—Toney v. Everett, 23 S.E.2d 500, 68 Ga.App. 703—J. R. Harris & Co. v. P. E. Vallee & Co., 116 S.E. 642, 29 Ga.App. 769—Barnes v. White, 110 S.E. 683, 28 Ga.App. 171—Smith Bros. v. Webb & Maury, 93 S.E. 74, 20 Ga.App. 313.
Idaho.—Brown v. Feeler, 204 P. 659, 35 Idaho 57.
Ill.—Blunt v. Kelly, 219 Ill.App. 327—Williams v. American Ins. Co., 196 Ill.App. 370.
Ind.—Shockney v. Marsh, 147 N.E. 292, 83 Ind.App. 407—Cook & Bernheimer Co. v. Hagedorn, 131 N.E. 788, 82 Ind.App. 444.
Iowa.—Jacobs v. Vanderwicken, 218 N.W. 147—Jackson v. Kubias, 211 N.W. 245—Fred S. Todd Shoe Co. v. Pierce Shoe Co., 160 N.W. 827, 179 Iowa 1383.
Kan.—Whalen v. Maresch, 239 P. 1103, 119 Kan. 333.
Ky.—Knights of Maccabees of the World v. Patton, 200 S.W. 614, 179 Ky. 410.
Md.—Austin, Nichols & Co. v. Lingo, 110 A. 509, 136 Md. 183—Carlin v. Biddison, 109 A. 316, 135 Md. 458—Dinsmore v. Rice, 97 A. 537, 128 Md. 209.
Mass.—Parker v. Roberts, 137 N.E. 295, 243 Mass. 174—McDonough v. Almy, 105 N.E. 1012, 218 Mass. 409, Ann.Cas.1915D 855.
Mich.—Walz v. Peninsular Fire Ins. Co. of America, 191 N.W. 230, 221 Mich. 326, affirmed 194 N.W. 124, 223 Mich. 417—Hines v. Pictorial Review, 158 N.W. 894, 192 Mich. 256.
Mo.—Brunner v. Stix, Baer & Fuller Co., 181 S.W.2d 643, 352 Mo. 1225—Hunt v. Sanders, 232 S.W. 456, 288 Mo. 337—Baker v. J. W. McMurry Contracting Co., 223 S.W. 45, 282 Mo. 685—Fay v. Ætna Life Ins. Co., 187 S.W. 861, 268 Mo. 373.
Lasley v. Ridenour, App., 265 S.W.2d 744—Brewer v. Gowin, App., 241 S.W.2d 275—Beebe v. Columbia Axle Co., 117 S.W.2d 624, 233 Mo.App. 212—Wentzel v. Lake Lotawana Development Co., 48 S.W.2d 185, 226 Mo.App. 960—Jensen v. Turner Bros., App., 16 S.W. 2d 742—Chemical Bldg. Bar Co. v. Werbe, App., 263 S.W. 1035—Rosenthal-Sloan Millinery Co. v. Hanover Fire Ins. Co., App., 219 S.W. 669—Frank Hart Realty Co. v. Ryan, App., 218 S.W. 412, affirmed 232 S.W. 126, 288 Mo. 188—Cunningham v. Elvins, App., 194 S.W. 515.
Mont.—Pasherstnik v. Continental Ins. Co., 214 P. 603, 67 Mont. 19.
Nev.—Ramezzano v. Avansino, 189 P. 681, 44 Nev. 72.
N.Y.—Van Horn v. Van Horn, 188 N. Y.S. 98, 196 App.Div. 472—Hodgson v. Preferred Acc. Ins. Co. of New York, 169 N.Y.S. 28, 182 App.Div. 381.
N.C.—Greene v. Carroll, 171 S.E. 627, 205 N.C. 459—M. P. Hubbard & Co. v. Godwin, 95 S.E. 152, 175 N.C. 174.
N.D.—Engen v. Matthys, 196 N.W. 550, 50 N.D. 487.
Ohio.—Goldfarb v. Bruner, 188 N.E. 362, 46 Ohio App. 213—Queen Incubator Co. v. Merrell Co., 153 N.E. 272, 21 Ohio App. 482.
Or.—Hurst v. Hill, 188 P. 973, 96 Or. 311.
Pa.—Kemerer v. Johnstown Bank & Trust Co,, 182 A. 74, 120 Pa.Super. 173.
S.C.—McCall Co. v. Surasky, 128 S. E. 849, 132 S.C. 59—Newell Contracting Co. v. J. F. & J. D. Blankenship, 125 S.E. 420, 130 S.C. 320—Loveland v. Collins, 96 S.E. 124, 109 S.C. 294.
Tex.—Weimer v. Prince & Prince, Civ.App., 246 S.W. 666—Farmers' & Merchants' State Bank & Trust Co. v. Cole, Civ.App., 220 S.W. 354, error refused—McDonald v. Ætna Life Ins. Co. of Hartford, Conn., Civ.App., 187 S.W. 1005, error refused—Lester v. Hutson, Civ.App., 184 S.W. 268, error dismissed—Southern Gas & Gasoline Engine Co. v. Richolson, Civ.App., 181 S.W. 529, reversed on other grounds, Com.App., 216 S.W. 158.
Utah.—Jensen v. Anderson, 167 P. 811, 50 Utah 515.
Vt.—Temple v. Duffy, 117 A. 101, 96 Vt. 114.
Va.—Dupont Engineering Co. v. John P. Harvey Const. Co., 158 S.E. 891, 156 Va. 582.
Wash.—Swanson v. Webb Tractor & Equipment Co., 167 P.2d 146, 24 Wash.2d 631.

Procuring of license

In an action for breach of a contract to enter upon defendant's premises and remove rock, instructions for defendant as to a license for blasting, not appearing to be material to any issue in the case, were not prejudicial to plaintiff.
Mass.—McDonough v. Almy, 105 N.E. 1012, 218 Mass. 409, Ann.Cas.1915D 855.

57. Ala.—Mutual Life Ins. Co. of New York v. Mankin, 138 So. 265, 223 Ala. 679—Sovereign Camp, W. O. W. v. Gay, 117 So. 78, 217 Ala. 543.
Ark.—Locomotive Engineers Mut. Life & Accident Ins. Ass'n v. Vandergriff, 91 S.W.2d 271, 192 Ark. 244.
Cal.—Jacobs v. Farmers' Mut. Fire Ins. Co. of Turlock, 41 P.2d 960, 5 C.A.2d 1.
Conn.—Ursini v. Goldman, 173 A. 789, 118 Conn. 554.

conversion,[58] detinue,[59] ejectment,[60] or for false imprisonment;[61] and in actions for injuries,[62] as in

Ga.—George Washington Life Ins. Co. v. Smith, 83 S.E.2d 302, 90 Ga. App. 459—American Fire & Cas. Co. v. Barfield, 60 S.E.2d 383, 81 Ga.App. 887—Metropolitan Life Ins. Co. v. Marshall, 16 S.E.2d 33, 65 Ga.App. 696—Twin City Fire Ins. Co. v. Wright, 167 S.E. 891, 46 Ga.App. 537—Guaranty Life Ins. Co. v. Johnson, 166 S.E. 422, 46 Ga. App. 13.

Ind.—Farmers Mut. Aid Ass'n of Warrick, Vanderburgh and Gibson Counties v. Yager, 12 N.E.2d 382, 104 Ind.App. 554.

Iowa.—Kayser v. Occidental Life Ins. Co. of California, 12 N.W.2d 582, 234 Iowa 310.

Ky.—Travelers Ins. Co. v. Mahon, 117 S.W.2d 909, 273 Ky. 691—Commonwealth Life Ins. Co. v. Ovesen, 92 S.W.2d 37, 263 Ky. 151—Insurance Co. of North America v. Hopper, 69 S.W.2d 728, 253 Ky. 402.

Mich.—Galkin v. Lincoln Mut. Casualty Co., 272 N.W. 694, 279 Mich. 327.

Miss.—Metropolitan Life Ins. Co. v. Lambert, 128 So. 750, 157 Miss. 759.

Mo.—Readenour v. Motors Ins. Corp., App., 287 S.W.2d 135, affirmed, Sup., 297 S.W.2d 554—Asel v. Order of United Commercial Travelers of America, App., 193 S.W.2d 74, affirmed 197 S.W.2d 639, 355 Mo. 658—Evans v. Great Northern Life Ins. Co., 167 S.W.2d 118, 237 Mo.App. 317—Schmidt v. Central Mut. Ins. Ass'n, App., 153 S.W.2d 99—Hill v. Connecticut Mut. Ins. Co. of Hartford, 146 S.W.2d 651, 235 Mo.App. 752—Calhoon v. Brotherhood's Relief & Compensation Fund, 135 S.W.2d 1096, 234 Mo.App. 946—Smith v. Atlanta Life Ins. Co., App., 102 S.W.2d 757—John v. Ætna Life Ins. Co. of Hartford, Conn., App., 100 S.W. 2d 936—Marty v. Security Ben. Ass'n, App., 99 S.W.2d 132—Wollenberg v. Equitable Life Assur. Soc. of U. S., App., 96 S.W.2d 57—Miller v. Mutual Life Ins. Co. of New York, App., 79 S.W.2d 750—Best v. Liverpool & London & Globe Ins. Co., App., 49 S.W.2d 230—Kelly v. Abraham Lincoln Life Ins. Co., 33 S.W.2d 992, 225 Mo.App. 317—Yellin v. National Surety Co. of New York, App., 282 S.W. 520.

Mont.—Scinski v. Great Northern Life Ins. Co., 99 P.2d 218, 110 Mont. 106.

N.J.—Brooks v. Great American Indemnity Co., 192 A. 86, 15 N.J. Misc. 420, affirmed 196 A. 739, 119 N.J.Law 427.

S.C.—Alexander v. Durham Life Ins. Co., 187 S.E. 425, 181 S.C. 331—Powell v. Equitable Life Assur. Soc. of U. S., 174 S.E. 649, 173 S.C. 50—Gresham v. Ætna Life Ins. Co., 156 S.E. 878, 159 S.C. 326.

Utah.—Griffin v. Prudential Ins. Co. of America, 133 P.2d 333, 102 Utah 563, 144 A.L.R. 1402.

58. Ga.—Haas & Howell v. Godby, 125 S.E. 897, 33 Ga.App. 218.

Ill.—Drain v. La Grange State Bank, 135 N.E. 780, 303 Ill. 330.

Tex.—Magnolia Motor Sales Corp. v. Chaffee, Civ.App., 192 S.W. 562.

Vt.—Hill v. Bedell, 126 A. 493, 98 Vt. 82.

59. Ala.—Baker v. Horsley, 101 So. 830, 212 Ala. 181.

Jones v. Baty, 84 So. 307, 17 Ala.App. 274.

60. Ala.—McDowell v. Hutto, 135 So. 322, 223 Ala. 307—Landers v. Hayes, 72 So. 106, 196 Ala. 533.

Ga.—Calhoun v. Babcock Bros. Lumber Co., 80 S.E.2d 872, 198 Ga. 74.

N.C.—Shelly v. Grainger, 168 S.E. 736, 204 N.C. 488.

61. Utah.—Salisbury v. Poulson, 172 P. 315, 51 Utah 552.

62. Ala.—Continental Gin Co. v. Milbrat, 65 So. 424, 10 Ala.App. 351, certiorari denied Ex parte Continental Gin Co., 66 So. 1008, 191 Ala. 660.

Ark.—Railways Ice Co. v. Howell, 174 S.W. 241, 117 Ark. 198—St. Louis, I. M. & S. Ry. Co. v. Cabiness, 168 S.W. 1116, 113 Ark. 599.

Cal.—Polk v. City of Los Angeles, 159 P.2d 931, 26 C.2d 519.

Rau v. Redwood City Woman's Club, 245 P.2d 12, 111 C.A.2d 546—Whiteside v. United Theatres, 235 P.2d 261, 106 C.A.2d 471—Jewell v. New Hotel U. S. Grant, 221 P. 2d 170, 99 C.A.2d 47—Woodman v. Hemet Union High School Dist. of Riverside County, 29 P.2d 257, 136 C.A. 544—Hodge v. Weinstock, Lubin & Co., 293 P. 80, 109 C.A. 393—Willis v. San Bernardino Lumber & Box Co., 256 P. 224, 82 C.A. 751.

Colo.—W. T. Grant Co. v. Casady, 188 P.2d 881, 117 Colo. 405.

Conn.—Syms v. Harmon, 60 A.2d 166, 134 Conn. 653.

Ga.—Kimpson v. Wingo, 65 S.E.2d 837, 84 Ga.App. 189—Stansfield v. Gardner, 193 S.E. 375, 56 Ga.App. 634.

Ind.—Lincoln Operating Co. v. Gillis, 114 N.E.2d 873, 232 Ind. 551—City of Terre Haute v. Myers, 24 N.E. 2d 698, 216 Ind. 349.

King v. Ransburg, 39 N.E.2d 822, 111 Ind.App. 523, rehearing denied 40 N.E.2d 999, 111 Ind.App. 523.

Iowa.—Garvey v. Boody-Holland & New, 155 N.W. 1027, 176 Iowa 273.

Ky.—Mulloy v. City of Louisville, 171 S.W. 190, 161 Ky. 596—Pine Mountain Mfg. Co. v. Bishop, 169 S.W. 1010, 160 Ky. 575—Hough & Spradlin Co. v. Moreland's Adm'x, 169 S.W. 467, 159 Ky. 722.

Mass.—Hanley v. Boston Elevated Ry., 156 N.E. 532, 259 Mass. 557.

Mich.—Elias v. Hess, 41 N.W.2d 884, 327 Mich. 323.

Miss.—City of Jackson v. Lewis, 108 So. 156, 142 Miss. 806.

Mo.—Coplen v. Zimmerman, 271 S. W.2d 513—Riley v. City of Independence, 167 S.W. 1022, 258 Mo. 671, Ann.Cas.1915D 748.

Conley v. Berberich, App., 300 S.W.2d 844—Myers v. Golloday, App., 104 S.W.2d 1007, opinion quashed on other grounds State ex rel. Golloday v. Shain, 110 S.W. 2d 719, 341 Mo. 889—Hartnett v. May Department Stores Co., App., 85 S.W.2d 644—Leonard v. Rosenthal-Sloan Millinery Co., App., 7 S.W.2d 429—Tierney v. United Rys. Co. of St. Louis, 171 S.W. 977, 185 Mo.App. 720—Shimp v. Woods-Evertz Stove Co., 168 S. W. 811, 182 Mo.App. 448—Welland v. Metropolitan St. Ry. Co., 129 S. W. 441, 144 Mo.App. 205.

N.J.—Brownsey v. General Printing Ink Corp., 193 A. 824, 118 N.J.Law 505.

Giardelli v. Public Service Ry. Co., 149 A. 39, 8 N.J.Misc. 104.

Ohio.—Gibson v. Johnson, 42 N.E.2d 689, 69 Ohio App. 19.

Okl.—City of Duncan v. Woods, 151 P.2d 923, 194 Okl. 371—Oklahoma City v. Jones, 60 P.2d 617, 177 Okl. 432.

Or.—Peck v. Gerber, 59 P.2d 675, 154 Or. 126, 106 A.L.R. 996.

Pa.—Shaffer v. City of Pittsburgh, 9 A.2d 395, 336 Pa. 273—Reppert v. White Star Lines, 186 A. 788, 323 Pa. 346, 106 A.L.R. 413.

Tex.—Brown Cracker & Candy Co. v. Castle, Civ.App., 26 S.W.2d 435, error dismissed Castle v. Brown Cracker & Candy Co., 31 S.W.2d 630, 119 Tex. 447—Angelina & N. R. R. Co. v. Due, Civ.App., 166 S. W. 918.

Utah.—Clawson v. Walgreen Drug Co., 162 P.2d 759, 108 Utah 577—Brooks v. Utah Hotel Co., 159 P.2d 127, 108 Utah 220—Jensen v. Logan City, 57 P.2d 708, 89 Utah 347.

Wash.—Blasick v. City of Yakima, 274 P.2d 122, 45 Wash.2d 309—Shephard v. Smith, 88 P.2d 601, 198 Wash. 395—Gabrielsen v. City of Seattle, 272 P. 723, 150 Wash. 157, 63 A.L.R. 200, reheard 278 P. 1071, 152 Wash. 700, 63 A.L.R. 200—Frye v. Jensen, 258 P. 497, 144 Wash. 553.

Wis.—Behling v. Wisconsin Bridge & Iron Co., 149 N.W. 484, 158 Wis. 584.

actions for injuries to drivers of automobiles and to guests or passengers in automobile accidents,[63] or in

63. Ala.—McCloud v. Williams, 60 So.2d 339, 257 Ala. 611—Johnson v. Martin, 52 So.2d 688, 255 Ala. 600—Moore v. Cruit, 191 So. 252, 238 Ala. 414.

Ariz.—Noel v. Ostlie, 22 P.2d 831, 42 Ariz. 113.

Ark.—Holmes v. Lee, 184 S.W.2d 957, 208 Ark. 114—George v. George, 88 S.W.2d 71, 191 Ark. 799.

Cal.—Raggio v. Mallory, 76 P.2d 660, 10 C.2d 723—Hughes v. Hartman, 273 P. 560, 206 C. 199—Dewhirst v. Leopold, 229 P. 30, 194 C. 424—Idemoto v. Scheidecker, 226 P. 922, 193 C. 653—Griffith v. Oak Ridge Oil Co., 212 P. 913, 190 C. 389—Taylor v. Pacific Electric Ry. Co., 158 P. 119, 172 C. 638.

Lewis v. Doyle, App., 307 P.2d 965—Curtis v. Q. R. S. Neon Corp., 305 P.2d 294, 147 C.A.2d 186—Carruthers v. Cunha, 283 P.2d 384, 133 C.A.2d 91—Hughes v. MacDonald, 283 P.2d 360, 133 C.A.2d 74—Dick v. Schoener, 260 P.2d 965, 120 C.A.2d 230—Cannis v. Di Salvo Trucking Co., 245 P.2d 365, 111 C.A.2d 893—Gill v. Clark, 244 P.2d 965, 111 C.A.2d 559—Folger v. Richfield Oil Corp., 182 P.2d 337, 80 C.A.2d 655—Takako Inai v. Ede, 139 P.2d 76, 59 C.A.2d 549—Fietz v. Hubbard, 138 P.2d 315, 59 C.A.2d 124—Morrison v. Jose, 135 P.2d 586, 57 C.A.2d 795—Angier v. Bruck, 131 P.2d 876, 56 C.A.2d 55—Casalegno v. Leonard, 105 P.2d 125, 40 C.A.2d 575—Stroh v. Bauman, 99 P.2d 337, 37 C.A.2d 241—Bender v. Perry, 99 P.2d 319, 37 C.A.2d 206—Honeyman v. Lawrie, 95 P.2d 166, 35 C.A.2d 200—Smith v. Hale, 39 P.2d 445, 3 C.A.2d 277—Hill v. Fresno County, 35 P.2d 593, 140 C.A. 272—Ackles v. Lane, 35 P.2d 200, 140 C.A. 188—Schatte v. Maurice, 2 P.2d 489, 116 C.A. 161—Wright v. Salzberger & Sons, 254 P. 671, 81 C.A. 690—Marston v. Pickwick Stages, 248 P. 930, 78 C. A. 526—Sinclair v. Pioneer Truck Co., 196 P. 281, 51 C.A. 174—Randolph v. Hunt, 183 P. 358, 41 C.A. 739.

Colo.—Bauserman v. White, 114 P.2d 557, 108 Colo. 101—Sherman v. Ross, 62 P.2d 1151, 99 Colo. 354.

Conn.—Seney v. Trowbridge, 16 A. 2d 573, 127 Conn. 284—Kulinsky v. Savin, 7 A.2d 436, 125 Conn. 512—Middletown Trust Co. v. Armour & Co., 191 A. 532, 122 Conn. 615—Fitzgerald v. Savin, 174 A. 177, 119 Conn. 63.

Ga.—Bell v. Proctor, 90 S.E.2d 84, 92 Ga.App. 759, reversed on other grounds 92 S.E.2d 514, 212 Ga. 320, conformed to 92 S.E.2d 807, 93 Ga. App. 816—Tidwell v. Tidwell, 87 S.E.2d 657, 92 Ga.App. 54—Draper Canning Co. v. Dempsey, 86 S.E.2d 678, 91 Ga.App. 593—Service Wholesale Co. v. Reese, 85 S.E.2d 625, 91 Ga.App. 366—Williams Bros. Lumber Co. v. Meisel, 68 S. E.2d 384, 85 Ga.App. 72—Arrington v. Hinesley, 52 S.E.2d 533, 78 Ga. App. 810—C. J. Kamper Grocery Co. v. Sauls, 144 S.E. 403, 38 Ga. App. 487—Hotel Equipment Co. v. Liddell, 124 S.E. 92, 32 Ga.App. 590—Flowers v. Faughnan, 120 S. E. 670, 31 Ga.App. 364—Georgia Ry. & Power Co. v. Reid, 107 S.E. 100, 26 Ga.App. 720.

Idaho.—Nelson v. Inland Motor Freight Co., 92 P.2d 790, 60 Idaho 443—Evans v. Davidson, 77 P.2d 661, 58 Idaho 600—French v. Tebben, 27 P.2d 474, 53 Idaho 701—Packard v. O'Neil, 262 P. 881, 45 Idaho 427, 56 A.L.R. 317.

Ill.—Curtis v. Lowe, 87 N.E.2d 865, 338 Ill.App. 463—Trull v. Ratner, 84 N.E.2d 843, 337 Ill.App. 45—Shaefer v. Then, 63 N.E.2d 624, 327 Ill.App. 206—Rzeszewski v. Barth, 58 N.E.2d 269, 324 Ill.App. 345—Osinski v. Benson, 56 N.E.2d 665, 323 Ill.App. 562—Rhoden v. Peoria Creamery Co., 278 Ill.App. 452—Wever v. Staggs, 264 Ill.App. 556—Stansfield v. Wood, 231 Ill. App. 586.

Ind.—Red Cab v. White, 12 N.E.2d 356, 213 Ind. 269—Ball v. McPheeters, 5 N.E.2d 885, 211 Ind. 157.

King's Ind. Billiard Co. v. Winters, 106 N.E.2d 713, 123 Ind.App. 110—D. Graff & Sons v. Williams, 61 N.E.2d 72, 115 Ind.App. 597—Jones v. Kasper, 33 N.E.2d 816, 109 Ind.App. 465—Pennsylvania Ice & Coal Co. v. Elischer, 21 N.E. 2d 436, 106 Ind.App. 613—Atkinson v. Davis, 13 N.E.2d 355, 105 Ind. App. 375—Kraning v. Taggart, 1 N.E.2d 689, 103 Ind.App. 62.

Iowa.—McCarthy v. Mandery, 294 N.W. 583, 229 Iowa 372—Gookin v. Guy W. Baker & Son, 276 N.W. 418, 224 Iowa 967—Lukin v. Marvel, 259 N.W. 782, 219 Iowa 773—Lange v. Bedell, 212 N.W. 354, 203 Iowa 1194—McSpadden v. Axmear, 181 N.W. 4, 191 Iowa 547—Robbins v. Weed, 169 N.W. 773, 187 Iowa 64—Monson v. Chicago, R. I. & P. Ry. Co., 159 N.W. 679, 181 Iowa 1354, rehearing denied and modified on other grounds 165 N. W. 305.

Kan.—Nangle v. Cudahy Packing Co., 212 P. 108, 112 Kan. 289.

Ky.—Willett v. Bradas & Gheens, 142 S.W.2d 139, 283 Ky. 525—Roberts v. White, 99 S.W.2d 447, 266 Ky. 483—E. L. Martin & Co. v. Hurt's Adm'r, 62 S.W.2d 465, 250 Ky. 235—Bruce's Adm'x v. Callahan, 213 S.W. 557, 185 Ky. 1.

Md.—Chesapeake & Potomac Telephone Co. of Baltimore City v. Merriken, 128 A. 277, 147 Md. 572, 41 A.L.R. 763.

Mich.—Socony Vacuum Oil Co. v. Marvin, 21 N.W.2d 841, 313 Mich. 528—Smith v. Maticka, 8 N.W.2d 900, 305 Mich. 32—Dubeau v. Bordeau, 289 N.W. 198, 291 Mich. 418—Herzberg v. Knight, 286 N.W. 145, 289 Mich. 29—McLaughlin v. Curry, 218 N.W. 698, 242 Mich. 228.

Minn.—Hardy v. Anderson, 63 N.W. 2d 814, 241 Minn. 478—Chapman v. Dorsey, 49 N.W.2d 4, 235 Minn. 25—Kieffer v. Sherwood, 238 N.W. 331, 184 Minn. 205—Tuttle v. Wicklund, 227 N.W. 203, 178 Minn. 353—Coleman v. Clement's Chevrolet Co., 219 N.W. 92, 174 Minn. 277.

Mo.—Hanson v. Tucker, 303 S.W.2d 126—Anderson v. Bell, 303 S.W.2d 93—Wyckoff v. Davis, 297 S.W.2d 490—Parker v. Ford Motor Co., 296 S.W.2d 35—Snyder v. Jensen, 281 S.W.2d 802—Boatright v. Bruening, 251 S.W.2d 709, 363 Mo. 494—Cuddy v. Schenewark, 231 S.W.2d 689—Heitz v. Voss Truck Lines, 175 S.W.2d 583—Bowman v. Standard Oil Co. of Indiana, 169 S.W.2d 384, 350 Mo. 958—Engleman v. Railway Express Agency, 100 S. W.2d 540, 340 Mo. 360—Byrnes v. Poplar Bluff Printing Co., 74 S.W. 2d 20—State ex rel. Berberich v. Haid, 64 S.W.2d 667, 333 Mo. 1224—Krelitz v. Calcaterra, 33 S.W.2d 909.

Powers v. Seibert, App., 297 S. W.2d 627—Fullington v. Southeastern Motor Truck Lines, App., 254 S.W.2d 246—Baker v. Norris, App., 248 S.W.2d 870—Gresham v. Reed, App., 171 S.W.2d 70—Svehla v. Taxi Owners Ass'n, App., 157 S. W.2d 225—Silsby v Hinchey, App., 107 S.W.2d 812—Pfeiffer v. Schee, App., 107 S.W.2d 170—Grantham v. Turner, App., 52 S.W.2d 223—Curtis v. Harrison, App., 253 S.W. 474—Wells v. Vallo, App., 187 S. W. 621—Freeman v. Green, App., 186 S.W. 1166.

Mont.—Gobel v. Rinio, 200 P.2d 700, 122 Mont. 235.

Neb.—Buhrman v. Smollen, 83 N.W. 2d 386, 164 Neb. 655—Becker v. Hasebroock, 59 N.W.2d 560, 157 Neb. 353.

N.J.—Shrodes v. Ferguson, 168 A. 647, 111 N.J.Law 312—De Palma v. Economy Auto Supply Co., 133 A. 919, 102 N.J.Law 714.

Trussell v. Gibson, 166 A. 698, 11 N.J.Misc. 481.

N.C.—Billings v. Renegar, 84 S.E.2d 268, 241 N.C. 17.

Ohio.—Brush v. Eastern Motor Dispatch, App., 104 N.E.2d 700—Palmer v. Roof, 82 N.E.2d 748, 84 Ohio App. 120—Counter v. Tiedeman, 163 N.E. 915, 29 Ohio App. 489.

Okl.—Threadgill v. Anderson, 303 P. 2d 297—Ruther v. Tyra, 247 P.2d

the operation of railroads or street railroads,[64] and | in actions against carriers for personal injuries

964, 207 Okl. 112—Southwestern Cotton Oil Co. v. Fuston, 47 P.2d 111, 173 Okl. 185.

Or.—Tuite v. Union Pac. Stages, Inc., 284 P.2d 333, 204 Or. 565—Godvig v. Lopez, 202 P.2d 935, 185 Or. 301—DiNucci v. Hager, 200 P.2d 380, 184 Or. 555—Whiting v. Andrus, 144 P.2d 501, 173 Or. 133—Dixon v. Raven Dairy, 75 P.2d 347, 158 Or. 186—Stafford v. Tonkin, 264 P. 863, 124 Or. 534.

Pa.—Kovalish v. Smith, 53 A.2d 534, 357 Pa. 219.

S.C.—Ackerman v. One Mack Truck and Trailer, 3 S.E.2d 684, 191 S.C. 74—Oglesby v. Rhea, 117 S.E. 303, 124 S.C. 57.

S.D.—Anderson v. Lanning, 50 N.W. 2d 57, 74 S.D. 161—Fowler v. Aberdeen R. Co., 171 N.W. 816, 41 S.D. 563.

Tenn.—Russell v. Furniture Renewal, 151 S.W.2d 1066, 177 Tenn. 525. Strickland Transp. Co. v. Douglas, 264 S.W.2d 233, 37 Tenn.App. 421—Garland v. Mayhall, 68 S.W. 2d 482, 17 Tenn.App. 449.

Tex.—Hyde v. Marks, Civ.App., 138 S.W.2d 619, error dismissed, judgment correct—Peters v. Williams, Civ.App., 271 S.W. 430—Texas City Terminal Co. v. McGee, Civ.App., 201 S.W. 673—Auto Sales Co. v. Bland, Civ.App., 194 S.W. 1021, dismissed for want of jurisdiction.

Utah.—Morgan v. Bingham Stage Lines Co., 283 P. 160, 75 Utah 87.

Vt.—Healy v. Moore, 187 A. 679, 108 Vt. 324, followed in 187 A. 692, 108 Vt. 351—Shappy v. McGarry, 174 A. 856, 106 Vt. 466.

Va.—Outlaw v. Pearce, 11 S.E.2d 600, 176 Va. 458—Otey v. Blessing, 197 S.E. 409, 170 Va. 542—Aronovitch v. Ayres, 193 S.E. 524, 169 Va. 308—Twyman v. Adkins, 191 S.E. 615, 168 Va. 456.

Wash.—Nelson v. Fairfield, 244 P.2d 244, 40 Wash.2d 496—Keseleff v. Sunset Highway Motor Freight Co., 60 P.2d 720, 187 Wash. 642—Brammer v. Lappenbusch, 30 P.2d 947, 176 Wash. 625—Stokes v. Magnolia Milling Co., 5 P.2d 339, 165 Wash. 311—Edwards v. Lambert, 209 P. 694, 121 Wash. 380.

Wis.—Olson v. Milwaukee Auto. Ins. Co., 62 N.W.2d 549, 266 Wis. 106, modified on other grounds 63 N.W. 2d 740, 266 Wis. 106—Beck v. Fond Du Lac Highway Committee, 286 N.W. 64, 231 Wis. 593.

42 C.J. p 831 note 2.

Particular instructions held harmless

(1) Instructions as to brakes.

Ala.—Dunklin v. Hanna, 156 So. 768, 229 Ala. 242.

Ga.—Rentz v. Collins, 181 S.E. 678, 51 Ga.App. 782.

(2) Instructions as to duty to render aid after collision.

Cal.—McNally v. Casner, 18 P.2d 94, 128 C.A. 680.

(3) Instructions as to lights.

Wash.—Hiteshue v. Robinson, 16 P. 2d 610, 170 Wash. 272.

(4) Instructions as to overloading.

Cal.—Silvey v. Harm, 8 P.2d 570, 120 C.A. 561.

(5) Instructions as to signals.

Cal.—Fleming v. Flick, 35 P.2d 210, 140 C.A. 14—Wright v. Salzberger & Sons, 254 P. 671, 81 C.A. 690.

Iowa.—Hamilton v. Boyd, 256 N.W. 290, 218 Iowa 885.

Mo.—Hogan v. Fleming, 297 S.W. 404, 317 Mo. 524.

Lanasa v. Downey, App., 201 S. W.2d 179.

S.C.—Carroll v. Lumpkin, 143 S.E. 648, 146 S.C. 178.

Wash.—O'Connell v. Home Oil Co., 40 P.2d 991, 180 Wash. 461—Curtis v. Perry, 18 P.2d 840, 171 Wash. 542—Stokes v. Magnolia Milling Co., 5 P.2d 339, 165 Wash. 311.

(6) Instructions as to speed.

U.S.—Chesapeake & O. Ry. Co. v. Coffey, C.C.A.Va., 37 F.2d 320, certiorari denied 50 S.Ct. 353, 281 U.S. 749, 74 L.Ed 1160.

Cal.—Guinou v. Webster, 22 P.2d 231, 132 C.A. 29—De Lannoy v. Grammatikos, 14 P.2d 542, 126 C.A. 79—Wilson v. Mardakis, 280 P. 989, 100 C.A. 678—Dougherty v. Ellingson, 275 P. 456, 97 C.A. 87—Marston v. Pickwick Stages, 248 P. 930, 78 C.A. 526.

Idaho.—Faris v. Burroughs Adding Mach. Co., 282 P. 72, 48 Idaho 310.

Mich.—Smith v. Maticka, 8 N.W.2d 900, 305 Mich. 32.

Minn.—Eichhorn v. Lundin, 216 N.W. 537, 172 Minn. 591.

Ohio—Houston v. Schrieber, 170 N. E. 661, 34 Ohio App. 244—Misrach v. Epperson, 168 N.E. 230, 32 Ohio App. 451.

Or.—McNab v. O'Flynn, 272 P. 670, 127 Or. 490.

S.C.—Shockley v. Cox Circus Co., 29 S.E.2d 491, 204 S.C. 353—Anderson v. Ballenger, 164 S.E. 313, 166 S.C. 44.

(7) Instructions as to right of way.

Ga.—Sheetz v. Welch, 81 S.E.2d 319, 89 Ga.App. 749.

Ind.—Mattes v. Brugner, 159 N.E. 156, 88 Ind.App. 36.

(8) Instructions as to rights on highway.

Mo.—Steger v. Meehan, 63 S.W.2d 109.

(9) Instructions as to use of intoxicants.

Cal.—May v. Farrell, 271 P. 789, 94 C.A. 703.

64. Ala.—Kendrick v. Birmingham Southern R. Co., 48 So.2d 320, 254 Ala. 313—Johnson v. Louisville & N. R. Co., 198 So. 350, 240 Ala. 219—Bradley v. Powers, 106 So. 799, 214 Ala. 122—Sington v. Birmingham Ry., Light & Power Co., 76 So. 48, 200 Ala. 282.

Mobile Light & R. Co. v. Thomas, 80 So. 693, 16 Ala.App. 629.

Ark.—Missouri Pac. R. Co. v. Wright, 270 S.W. 601, 168 Ark. 259.

Cal.—Bowdoin v. Southern Pac. Co., 174 P. 664, 178 C. 634.

Bencich v. Market St. Ry. Co., 85 P.2d 556, 29 C.A.2d 641—Vaca v. Southern Pac. Co., 267 P. 346, 91 C.A. 470—McKinnon v. United Railroads of San Francisco, 203 P. 122, 55 C.A. 96—Hammond v. Pacific Electric Ry. Co., 164 P. 50, 32 C.A. 756.

Ga.—Smallwood v. Pollard, 188 S.E. 594, 54 Ga.App. 617—Pollard v. Gorman, 182 S.E. 678, 52 Ga.App. 127—Louisville & N. R. Co. v. Pounds, 179 S.E. 235, 50 Ga.App. 611—Sarman v. Seaboard Air Line Ry. Co., 125 S.E. 891, 33 Ga.App. 315—Harden v. Central of Georgia Ry. Co., 94 S.E. 263, 21 Ga.App. 218.

Ind.—Chicago, I. & L. Ry. Co. v. Lake County Savings & Trust Co, 114 N. E 454, 186 Ind. 358.

Grand Trunk Western Ry. Co. v. Cather, 167 N.E. 551, 92 Ind.App. 563—Pittsburgh, C., C. & St. L. Ry. Co. v. Macy, 107 N.E. 486, 59 Ind. App. 125.

Iowa.—Russell v. Chicago, R. I. & P. Ry. Co., 216 N.W. 47, 204 Iowa 810—Glanville v. Chicago, R. I. & P. Ry. Co., 193 N.W. 548, 196 Iowa 456—Monson v. Chicago, R. I. & P. Ry. Co., 165 N.W. 305.

Ky.—Chesapeake & O. Ry. Co. v. Pope, 176 S.W.2d 876, 296 Ky. 254—Louisville & N. R. Co. v. Carter, 10 S.W.2d 1064, 226 Ky. 561—Chesapeake & O. Ry. Co. v. Kennard's Adm'r, 300 S.W. 335, 222 Ky. 115—Paducah Ry. Co. v. Nave, 265 S. W. 289, 204 Ky. 733—Mayer v. Louisville Ry. Co., 233 S.W. 785, 192 Ky. 371.

Minn.—Peterson v. Minneapolis St. Ry. Co., 31 N.W.2d 905, 226 Minn. 27—O'Neill v. Minneapolis St. Ry. Co., 7 N.W.2d 665, 213 Minn. 514.

Mo.—Abernathy v. St. Louis Public Service Co., 240 S.W.2d 914, 362 Mo. 214—Rinderknecht v. Thompson, 220 S.W.2d 69, 359 Mo. 21—Crews v. Kansas City Public Service Co., 111 S.W.2d 54, 341 Mo. 1090—Bumgardner v. St. Louis Public Service Co., 102 S.W.2d 594, 340 Mo. 521—Stottle v. Chicago, R. I. & P. Ry. Co., 18 S.W.2d 433, 321 Mo. 1190, certiorari denied Chicago, R. I. & P. Ry. Co. v. Stottle, 50 S.Ct. 38, 280 U.S. 589, 74 L.Ed. 638.

Rowe v. Kansas City Public Service Co., 248 S.W.2d 445, 241 Mo.App. 1225—Fair v. Thompson,

sustained by passengers,[65] and also in actions against | employers for personal injuries to servants,[66] or for

212 S.W.2d 923, 240 Mo.App. 664—Dehn v. Thompson, App., 181 S.W.2d 171—Adams v. Thompson, App., 178 S.W.2d 779—Foster v. Kurn, 163 S.W.2d 133, 236 Mo.App. 1149—Hill v. Missouri Pac. R. Co., App., 40 S.W.2d 741—Rodgers v. St. Louis-San Francisco Ry. Co., App., 31 S.W.2d 546—Wheaton v. St. Louis Southwestern Ry. Co., App., 257 S.W. 513—James v. United Rys. Co. of St. Louis, App., 236 S.W. 1089—Martin v. St. Louis-San Francisco Ry. Co., App., 227 S.W. 129, judgment and opinion quashed on other grounds, State ex rel. St. Louis-San Francisco Ry. Co. v. Reynolds, 233 S.W. 219, 289 Mo. 479—Montgomery v. Deering Southwestern Ry., 194 S.W. 894, 198 Mo.App. 12.

N.J.—Altieri v. Public Service Ry. Co., 128 A. 547, 101 N.J.Law 241.

Ohio.—New York, C. & St. L. R. Co. v. Van Dorn, 173 N.E. 445, 36 Ohio App. 530—Detroit & I. R. Co. v. Vogeley, 153 N.E. 86, 21 Ohio App. 88.

Okl.—Kurn v. Thompson, 105 P.2d 422, 187 Okl. 664.

Tenn.—Memphis St. Ry. Co. v. Cavell, 187 S.W. 179, 135 Tenn. 462.

Tex.—International-Great Northern R. Co. v. Pence, Civ.App., 113 S.W.2d 206, error dismissed—American Express Co. v. Chandler, Civ.App., 215 S.W. 364, reversed on other grounds, Com.App., 231 S.W. 1085.

Utah.—Bergman v. Denver & R. G. R. Co., 178 P. 68, 53 Utah 213—Denkers v. Southern Pac. Co., 171 P. 999, 52 Utah 18.

Vt.—Meyette v. Canadian Pac. Ry. Co., 6 A.2d 33, 110 Vt. 345.

Wash.—Stotts v. Puget Sound Traction, Light & Power Co., 162 P. 519, 94 Wash. 339, L.R.A.1917D 214.

W.Va.—Humphrey v. Virginian Ry. Co., 54 S.E.2d 204, 132 W.Va. 250.

Trackless trolley

Ga.—Tiller v. Georgia Power Co., 22 S.E.2d 623, 68 Ga.App. 224.

65. Cal.—Riley v. Southern Pac. Co., 207 P. 699, 57 C.A. 477—Fitzgerald v. Southern Pac. Co., 173 P. 91, 36 C.A. 660.

Ga.—Holmes v. Georgia Power Co., 162 S.E. 403, 44 Ga.App. 588, reversed on other grounds 165 S.E. 284, 175 Ga. 487, conformed to Holmes v. Georgia Power Co., 165 S.E. 918, 45 Ga.App. 826.

Ill.—Bain v. Richardson, 29 N.E.2d 868, 307 Ill.App. 238—Crane v. Railway Express Agency, 12 N.E.2d 672, 293 Ill.App. 328—Barretta v. Chicago Rys. Co., 214 Ill.App. 455.

Ind.—Lafayette St. Ry. v. Ullrich, 166 N.E. 257, 92 Ind.App. 202, rehearing denied 168 N.E. 709, 92 Ind.App. 202.

Md.—Yellow Cab Co. v. Bradin, 191 A. 717, 172 Md. 388.

Mo.—Kraus v. Kansas City Public Service Co., 269 S.W.2d 743—Lindquist v. Kansas City Public Service Co., 169 S.W.2d 366, 350 Mo. 905—Jarboe v. Kansas City Public Service Co., 220 S.W.2d 27, 359 Mo. 8—Breen v. United Rys. Co. of St. Louis, 204 S.W. 521.

Shelley v. St. Louis Public Service Co., App., 279 S.W.2d 182—Page v. Wabash R. Co., App., 206 S.W.2d 691—Hillebrand v. Wells, App., 270 S.W. 402—Kelly v. Kansas City Rys. Co., App., 225 S.W. 133—Teske v. Kansas City Rys. Co., App., 204 S.W. 577—Fischbach v. Dunham, App., 203 S.W. 217.

Ohio.—Mansfield Public Utility & Service Co. v. Grogg, 133 N.E. 481, 103 Ohio St. 301.

Okl.—Oklahoma Ry. Co. v. Wilson, 231 P.2d 688, 204 Okl. 488.

Or.—Snyder v. Portland Traction Co., 185 P.2d 563, 182 Or. 344.

Tex.—Tennegkeit v. Galveston Electric Co., Civ.App., 182 S.W. 72.

Utah.—McMaster v. Salt Lake Transp. Co., 159 P.2d 121, 108 Utah 207—Pratt v. Utah Light & Traction Co., 169 P. 868, 57 Utah 7.

Va.—Richmond-Ashland Ry. Co. v. Jackson, 162 S.E. 18, 157 Va. 628.

66. Ala.—Bailey v. Tennessee Coal, Iron & R. Co., 75 So.2d 117, 261 Ala. 526—Louisville & N. R. Co. v. Wright, 80 So. 93, 202 Ala. 255.

Cal.—Peterson v. Permanente S. S. Corp., 277 P.2d 495, 129 C.A.2d 579, certiorari denied 75 S.Ct. 882, 349 U.S. 953, 99 L.Ed. 1278—Blodow v. Pan Pac. Fisheries, 275 P.2d 795, 128 C.A.2d 428—Guay v. American President Lines, 184 P.2d 539, 81 C.A.2d 495—Arundell v. American Oilfields Co., 160 P. 159, 31 C.A. 218.

Colo.—Drake v. Slessor, 176 P. 301, 65 Colo. 292—Vallery v. Barrett, 167 P. 979, 63 Colo. 548.

Ga.—Southern Ry. Co. v. Lunsford, 194 S.E. 602, 57 Ga.App. 53, certiorari denied 59 S.Ct. 78, 305 U.S. 619, 83 L.Ed. 395—Bibb Mfg. Co. v. Snow, 106 S.E. 612, 26 Ga.App. 504.

Ill.—Starck v. Chicago & N. W. Ry. Co., 123 N.E.2d 826, 4 Ill.2d 616—Daly v. New Staunton Coal Co., 117 N.E. 413, 280 Ill. 175.

Donnelly v. Pennsylvania R. Co., 97 N.E.2d 846, 342 Ill.App. 556, affirmed 105 N.E.2d 730, 412 Ill. 115, certiorari denied Pennsylvania R. Co. v. Donnelly, 73 S.Ct. 93, 344 U.S. 855, 97 L.Ed. 663—Thompson v. Elgin, J. & E. Ry. Co., 69 N.E.2d 705, 329 Ill.App. 646—Pedroni v. Illinois Third Vein Coal Co., 205 Ill.App. 119.

Ind.—Chicago, I. & L. Ry. Co. v. Medlock, 118 N.E. 810, 187 Ind. 224—City of Decatur v. Eady, 115 N.E. 577, 186 Ind. 205, L.R.A.1917E 242.

Iowa.—Lynch v. Egypt Coal Co., 181 N.W. 385, 190 Iowa 1272—King v. Chicago, R. I. & P. Ry Co., 172 N.W. 268, 185 Iowa 1227.

Ky.—Chesapeake & O. Ry. Co. v. McCracken, 61 S.W.2d 618, 249 Ky. 767—Connelly v. Cincinnati, N. O. & T. P. Ry. Co., 224 S.W. 670, 189 Ky. 128—Coral Ridge Clay Products Co. v. Collins, 205 S.W. 958, 181 Ky. 818—Louisville & N. R. Co. v. Mink, 201 S.W. 16, 179 Ky. 625—North East Coal Co. v. Setzer, 183 S.W. 553, 169 Ky. 245.

Mass.—Stevens v. Smith, 105 N.E. 375, 217 Mass. 425.

Minn.—Casey v. Illinois Cent. R. Co., 158 N.W. 812, 134 Minn. 109.

Mo.—Taylor v. Kansas City Southern Ry. Co., 293 S.W.2d 894—Reese v. Illinois Terminal R. Co., 273 S.W.2d 217—Hough v. Chicago, R. I. & P. Ry. Co., 100 S.W.2d 499, 339 Mo. 1169—Crane v. Liberty Foundry Co., 17 S.W.2d 945, 322 Mo. 592—Wolfe v. Payne, 241 S.W. 915, 294 Mo. 170, affirmed Davis v. Wolfe, 44 S.Ct. 64, 263 U.S. 239, 68 L.Ed. 284—Hubbard v. Wabash R. Co., 193 S.W. 579—Bowman v. Wabash R. Co., 190 S.W. 579, 269 Mo. 240—Trebbe v. American Steel Foundries, 185 S.W. 179.

Klein v. Curtis & Co. Mfg. Co., App., 10 S.W.2d 322—Bishop v. Musick Plating Works, 3 S.W.2d 256, 222 Mo.App. 370—Struckel v. Busch Sulzer Bros. Diesel Engine Co., App., 300 S.W. 993—Farley v. Lehrack, App., 272 S.W. 987—Stuba v. American Car & Foundry Co., App., 270 S.W. 145—Dickey v. Western Tablet Co., 267 S.W. 431, 218 Mo.App. 253—Hild v. St. Louis Car Co., App., 259 S.W. 838—Brewer v. Missouri Pac. R. Co., App., 259 S.W. 825—Smith v. Greer, 257 S.W. 829, 216 Mo.App. 155, certiorari quashed State ex rel. Greer v. Cox, 274 S.W. 373, 216 Mo.App. 155—Jablonowski v. Modern Cap Mfg. Co., App., 251 S.W. 477, affirmed 279 S.W. 89, 312 Mo. 173—Jeffries v. Walsh Fire Clay Products Co., App., 233 S.W. 259—Wagner v. Chicago & A. R. Co., 232 S.W. 771, 209 Mo.App. 121, certiorari quashed State ex rel. Chicago & A. R. Co. v. Allen, 236 S.W. 868, 291 Mo. 206—Most v. Goebel Const. Co., 203 S.W. 474, 199 Mo.App. 336—Dunn v. Missouri Pac. R. Co., App., 190 S.W. 966.

N.C.—Wallace v. Southern Cotton Oil Co., 108 S.E. 327, 182 N.C. 755—Goodman v. Tallahassee Power Co., 94 S.E. 408, 174 N.C. 661—Howard v. Wright, 91 S.E. 1032, 173 N.C. 339.

injury to property.[67]

The rule has also been applied in actions for damages for libel,[68] actions for ejectment,[69] actions for malpractice,[70] actions for malicious prosecution,[71] actions on quantum meruit,[72] actions to quiet title,[73] actions to recover money,[74] actions for slander,[75] actions for services rendered,[76] actions against a surety,[77] actions of trover,[78] and in workmen's com-

Okl.—Buck Creek Coal Min. Co. v. Johnson, 181 P.2d 1003, 198 Okl. 664—Chicago, R. I. & P. Ry. Co. v. Townes, 143 P. 680, 43 Okl. 568.
Or.—Zimmerman v. West Coast Trans-Oceanic S. S. Lines, 258 P. 2d 1003, 199 Or. 78.
Pa.—Tolson v. Philadelphia Rapid Transit Co., 93 A. 1017, 248 Pa. 227.
Tex.—St. Louis Southwestern Ry. Co. of Texas v. McCalister, Civ. App., 198 S.W. 1082.
Utah.—Bruner v. McCarthy, 142 P. 2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547—Shepard v. Payne, 206 P. 1098, 60 Utah 140—Woodward v. Daly-West Mining Co., 154 P. 782, 47 Utah 411.
Va.—Burruss v. Suddith, 47 S.E.2d 546, 187 Va. 473—Edwards v. Laurel Branch Coal Co., 114 S.E. 108, 133 Va. 534—Du Pont Engineering Co. v. Blair, 106 S.E. 328, 129 Va. 423.
Wash.—Schotis v. North Coast Stevedoring Co., 1 P.2d 221, 163 Wash. 305, 78 A.L.R. 1427—Godley v. Gowen, 154 P. 141, 89 Wash. 124.
W.Va.—Pritt v. West Virginia Northern R. Co., 51 S.E.2d 105, 132 W.Va. 184, 6 A.L.R.2d 562, certiorari denied West Virginia Northern R. Co. v. Pritt, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113.

67. Ala.—Batterton v. City of Birmingham, 119 So. 13, 218 Ala. 489—Earnest v. Corona Coal Co., 102 So. 445, 212 Ala. 303.
Ark.—Kansas City Southern Ry. Co. v. Winter, 228 S.W.2d 1001, 217 Ark. 148.
Conn.—Melin v. Richman, 115 A. 426, 96 Conn. 686.
Ga.—Shellnut v. Carroll County, 117 S.E. 333, 30 Ga.App. 200—Pelham Phosphate Co. v. Daniels, 94 S.E. 846, 21 Ga.App. 547.
Idaho.—Miller v. Belknap, 266 P.2d 662, 75 Idaho 46.
Ill.—Bertrand v. Adams, 101 N.E.2d 841, 344 Ill.App. 559.
Ind.—Capitol Transfer Co. v. Associated Cleaners & Dyers, 197 N.E. 727, 101 Ind.App. 346—Evansville, Mt. C. & N. Ry. Co. v. Scott, 114 N.E. 649, 67 Ind.App. 121.
Iowa.—Darst v. Ft. Dodge, D. M. & S. Ry. Co., 191 N.W. 288, 194 Iowa 1145.
Ky.—Stein v. Louisville Water Co., 249 S.W.2d 750—Williams v. Codell Const. Co., 69 S.W.2d 20, 253 Ky. 166—Louisville & N. R. Co. v. Colombo, 41 S.W.2d 672, 240 Ky. 102—Chesapeake & O. Ry. Co. v. Stephens, 32 S.W.2d 993, 236 Ky. 232.
Mich.—Kiowiatkowski v. Duluth-Superior Dredging Co., 167 N.W. 970, 201 Mich. 251.
Minn.—Hector Const. Co. v. Butler, 260 N.W. 496, 194 Minn. 310.
Miss.—Callicutt v. Adams, 24 So.2d 351, 199 Miss. 181.
Mont.—Eablonski v. Close, 225 P. 129, 70 Mont. 292.
Neb.—Cattin v. City of Omaha, 31 N.W.2d 300, 149 Neb. 434.
N.C.—Wagner v. Town of Conover, 156 S.E. 167, 200 N.C. 82.
N.D.—Hennenfent v. Flath, 66 N.W. 2d 533.
Okl.—Wilcox Oil Co. v. Walters, 284 P.2d 726—Sebranek v. Krivohlavek, 163 P.2d 530, 196 Okl. 132—Oklahoma City v. Shepherd, 51 P.2d 318, 175 Okl. 197.
S.C.—Werts v. Greenwood County, 31 S.E.2d 451, 205 S.C. 258.
Wash.—Hamm v. City of Seattle, 249 P. 778, 140 Wash. 427, modified on other grounds 255 P. 655, 143 Wash. 700—Knapp v. Siegley, 208 P. 13, 120 Wash. 478.
Wyo.—Blessing v. Pittman, 251 P.2d 243, 70 Wyo. 416—Brown v. Wyoming Butane Gas Co., 205 P.2d 116, 66 Wyo. 67.

68. Cal.—Lewis v. Hayes, 171 P. 293, 177 C. 587.
Mass.—Runels v. Lowell Sun Co., 62 N.E.2d 121, 318 Mass. 466.
Mich.—Fortney v. Stephan, 213 N.W. 172, 237 Mich. 603, rehearing denied 214 N.W. 957, 239 Mich. 499.
Mo.—Maescher v. Rosevear, App., 285 S.W. 102.

Erroneous instruction on doctrine of fair comment and criticism which was not pleaded as defense has been held harmless under particular circumstances.
Mich.—Fortney v. Stephan, 213 N.W. 172, 237 Mich. 603, rehearing denied 214 N.W. 957, 239 Mich. 499.

69. Ala.—Calvert v. Bynum, 50 So. 2d 731, 255 Ala. 172.
Kan.—Shreve v. White, 57 P.2d 24, 143 Kan. 838.

70. Colo.—Tadlock v. Lloyd, 173 P. 200, 65 Colo. 40.
Conn.—Wright v. Blakeslee, 128 A. 113, 102 Conn. 162.
Mich.—Harvey v. Silber, 2 N.W.2d 483, 300 Mich. 510.
Mo.—Baird v. National Health Foundation, 144 S.W.2d 850, 235 Mo. App. 594.
Neb.—In re Johnson's Estate, 16 N. W.2d 504, 145 Neb. 333.
Or.—Olsen v. McAtee, 182 P.2d 979, 181 Or. 503.
Wyo.—Phifer v. Baker, 244 P. 637, 34 Wyo. 415.

71. Cal.—Pickering v. Havens, 233 P. 346, 70 C.A. 381.
Iowa.—Hepker v. Schmickle, 229 N. W. 177, 209 Iowa 744.
Ky.—Gray v. McAtee, 25 S.W.2d 65, 233 Ky. 97.

72. Ga.—Georgia, F. & A. R. Co. v. Purviance, 156 S.E. 731, 42 Ga.App 519.
Mo.—Oaks v. Short, App., 292 S.W. 738.

73. Ind.—Seaver v. Vonderahe, 127 N.E. 206, 74 Ind.App. 631.

74. Ariz.—Brown v. Jerrild, 239 P. 795, 29 Ariz. 121.
Ark.—Citizens' Bank & Trust Co. v. Hinkle, 189 S.W. 679, 126 Ark. 266.
Ga.—Barwick v. Walden, 32 S.E.2d 401, 71 Ga.App. 824—Hartley v. Hartley, 179 S.E. 245, 50 Ga.App. 848.
Or.—De War v. First Nat. Bank, 171 P. 1106, 88 Or. 541.
Tex.—Powell v. Archer County, Civ. App., 198 S.W. 1037, error refused.
Wash.—Cormier v. H. H. Martin Lumber Co., 167 P. 1105, 98 Wash. 463.

75. Iowa.—Bond v. Lotz, 243 N.W. 586, 214 Iowa 683.
Mo.—Allen v. Edward Light Co., 233 S.W. 953, 209 Mo.App. 165—Foster v. Aubuchon, App., 221 S.W. 741.
Mont.—Fowlie v. Cruse, 157 P. 958, 52 Mont. 222.
Neb.—Hall v. Vakiner, 248 N.W. 70, 124 Neb. 741.
Wash.—Viss v. Calligan, 158 P. 1012, 91 Wash. 673.

76. Ga.—Haas v. Jaffe, 163 S.E. 226, 45 Ga.App. 11.
Mo.—Wright v. Fick, App., 303 S.W. 2d 157—Papen v. Friedmeyer, App., 255 S.W.2d 841—Borgman v. Boten, App., 225 S.W.2d 360—Love v. Richardson, App., 61 S.W.2d 220—Jennings v. Kinealy, App., 40 S.W. 2d 513.

77. Iowa.—Zalesky v. Fidelity & Casualty Co. of New York, 157 N. W. 858, 176 Iowa 267.
Ky.—Upchurch v. Helton, 265 S.W. 770, 205 Ky. 192.
Minn.—Pete v. Lampi, 203 N.W. 447, 162 Minn. 497.

78. Ga.—Lewis v. Tatum, 189 S.E. 375, 55 Ga.App. 24—Battle v. Kent, 161 S.E. 850, 44 Ga.App. 433.
R.I.—Winslow v. Einhorn, 2 A.2d 390, 62 R.I. 1.

pensation cases.[79]

The rule has been applied to instructions on a wide variety of subjects, such as: Instructions relating to the elements and measure of damages or amount of recovery,[80] agency,[81] agreements of adoption,[82] alteration of instruments,[83] assumption of risk,[84] attractive nuisance,[85] burden of proof of notice of lien in mechanics' lien proceedings,[86] character of dominion over property which an owner must exercise to be in possession,[87] common-law

79. Md.—M. P. Moller Motor Car Co. v. Unger, 170 A. 777, 166 Md. 198.

80. Ala.—Johnson v. Louisville & N. R. Co., 148 So. 822, 227 Ala. 103—Sudduth v. Holloway, 101 So. 733, 212 Ala. 24.

Ariz.—Peppers Fruit Co. v. Charlebois, 4 P.2d 905, 39 Ariz. 195—Ross v. Kay Copper Co., 184 P. 978, 20 Ariz. 576.

Ark.—Yellow Rose Mining Co. v. Strait, 202 S.W. 691, 133 Ark. 206.

Cal.—Blackwell v. American Film Co., 209 P. 999, 189 C. 689.

Guerra v. Balestrieri, 274 P.2d 443, 127 C.A.2d 511—Castro v. Giacomazzi Bros., 206 P.2d 688, 92 C.A.2d 39—Anderson v. Freis, 142 P.2d 330, 61 C.A.2d 159—Roome v. Real Estate Inv. Co., 21 P.2d 599, 131 C.A. 496—Lejeune v. General Petroleum Corporation of California, 18 P.2d 429, 128 C.A. 404—Taylor v. Lowenstein, 298 P. 847, 113 C.A. 665.

Colo.—Cohen v. Fox, 141 P. 504, 26 Colo.App. 55.

Conn.—Flint v. Connecticut Hassam Paving Co., 103 A. 840, 92 Conn. 576.

Del.—Bringhurst v. Harkins, 122 A. 783, 2 W.W.Harr. 324.

Ga.—Toney v. Everett, 23 S.E.2d 500, 68 Ga.App. 703—American Bakeries Co. v. Johnson, 200 S.E. 485, 59 Ga.App. 150—Central of Georgia Ry. Co. v. Dumas, 160 S.E. 814, 44 Ga.App. 152—Martel Mills v. Redwine, 150 S.E. 865, 40 Ga.App. 659—Fertic v. Peeples, 99 S.E. 136, 23 Ga.App. 682—Seaboard Air Line Ry. v. Cooper, 93 S.E. 281, 20 Ga. App. 550.

Ill.—Perry v. Richerson, 122 N.E.2d 75, 3 Ill.App.2d 338—Hall v. McNair, 42 N.E.2d 305, 314 Ill.App. 672—Wicks v. Cuneo-Henneberry Co., 234 Ill.App. 502, affirmed 150 N.E. 276, 319 Ill. 344—Siebert v. Same, 185 Ill.App. 519. See Conrad v. St. Louis, S. & P. R. Co., 201 Ill. App. 276.

Ind.—City of Terre Haute v. Webster, 40 N.E.2d 972, 112 Ind.App. 101—Anthoulis v. Patiniotis, 27 N. E.2d 375, 108 Ind.App. 130—Union Traction Co. of Indiana v. Smith, 123 N.E. 4, 70 Ind.App. 40—City of Terre Haute v. Lauda, 108 N.E. 392, 58 Ind.App. 480.

Iowa.—Miller v. McCoy Truck Lines, 52 N.W.2d 62, 243 Iowa 483—Carpenter v. Wolfe, 273 N.W. 169, 223 Iowa 417—Ashcraft v. Kriv, 223 N. W. 365, 207 Iowa 574—Greenlee v. City of Belle Plaine, 216 N.W. 774, 204 Iowa 1055—Worez v. Des Moines City Ry. Co., 156 N.W. 867, 175 Iowa 1—Parkhill v. Bekin's Van & Storage Co., 151 N.W. 506, 169 Iowa 455.

Ky.—Carnes v. Day, 216 S.W.2d 901, 309 Ky. 163—City of Paris v. Carr, 114 S.W.2d 474, 272 Ky. 378.

Md.—Ihrie v. Anthony, to Use of Government Emp. Ins. Co., 107 A.2d 104, 205 Md. 296.

Mich.—Tozer v. Kerr, 69 N.W.2d 171, 342 Mich. 136—De Groot v. Winter, 251 N.W. 425, 265 Mich. 274.

Minn.—Gilbert v. Megears, 257 N.W. 73, 192 Minn. 495—Young v. Yeates, 190 N.W. 791, 153 Minn. 366—Raski v. Great Northern Ry. Co., 150 N. W. 618, 128 Minn. 129.

Mo.—Grodsky v. Consolidated Bag Co., 26 S.W.2d 618, 324 Mo. 1067—Sallee v. St. Louis-San Francisco Ry. Co., 12 S.W.2d 476, 321 Mo. 798.

Robison v. Chicago Great Western R. Co., App., 66 S.W.2d 180—Carter v. Wells, App., 40 S.W.2d 725—Oliver v. City of Vandalia, App., 28 S.W.2d 1044—Griebel v. Niagara Fire Ins. Co., App., 28 S. W.2d 411—Kingsbury v. Schrader, App., 20 S.W.2d 537—Kemp v. Missouri Pac. R. Co., App., 251 S.W. 402—Colby v. Thompson, App., 207 S.W. 73—Heffernan v. Neumond, 201 S.W. 645, 198 Mo.App. 667—Carter v. Wabash R. Co., 182 S.W. 1061, 193 Mo.App. 223—Erwin v. Jones, 180 S.W. 428, 192 Mo.App. 326—Cook v. Lusk, 172 S.W. 81, 186 Mo.App. 288—McGrath v. Heman Const. Co., 167 S.W. 1086, 183 Mo. App. 522.

Neb.—Fonda v. Northwestern Public Service Co., 292 N.W. 712, 138 Neb. 262.

N.J.—Kalogerakas v. Public Service Co-ordinated Transport, 150 A. 574, 8 N.J.Misc. 462—De Palma v. Economy Auto Supply Co., 130 A. 206, 3 N.J.Misc. 827, affirmed, 133 A. 919, 102 N.J.Law 714.

N.Y.—Yoost v. Farr, 195 N.E. 207, 266 N.Y. 576, reargument denied 195 N.E. 373, 266 N.Y. 666.

N.C.—Poniros v. Nello L. Teer Co., 72 S.E.2d 9, 236 N.C. 145—Horton v. Carolina Coach Co., 5 S.E.2d 828, 216 N.C. 567—Frick Co. v. Shelton, 148 S.E. 318, 197 N.C. 296.

Ohio.—Ben Schaefer Bldg. Co. v. Granada Gardens, 183 N.E. 882, 43 Ohio App. 527.

Okl.—Pine v. Robson, 105 P.2d 530, 187 Okl. 679—Rhodes v. Lamar, 292 P. 335, 145 Okl. 223.

S.C.—Holliday v. City of Greenville, 78 S.E.2d 279, 224 S.C. 207—Howell v. State Highway Department, 166 S.E. 129, 167 S.C. 217—Fredericks v. Commercial Credit Co., 143 S.E. 179, 145 S.C. 380—Thornton v. Seaboard Air Line Ry., 82 S.E. 433, 98 S.C. 348, reversed on other grounds Seaboard Air Line Ry. v. Thornton, 35 S.Ct. 601, 238 U.S. 606, 59 L.Ed. 1485.

Tex.—Red River Valley Pub. Co. v. Bridges, Civ.App., 254 S.W.2d 854, error refused no reversible error—Henderson v. Rowe, Civ.App., 93 S. W.2d 589.

Va.—Henry Myers & Co. v. Lewis, 92 S.E. 988, 121 Va. 50.

Wash.—Auerbach v. Webb, 17 P.2d 1, 170 Wash. 567—Cramer v. Clark, 194 P. 779, 114 Wash. 126—Jensen v. Schlenz, 154 P. 159, 89 Wash. 268.

Wis.—Falkner v. Schultz, 150 N.W. 424, 160 Wis. 594.

Wyo.—Northwest States Utilities Co. v. Ashton, 65 P.2d 235, 51 Wyo. 165, rehearing denied 69 P.2d 623, 51 Wyo. 132.

4 C.J. p 1034 note 38—5 C.J. p 709 notes 90, 92.

81. Ariz.—Douglas v. Parker Commercial Co., 235 P. 148, 28 Ariz. 47.

Cal.—Gould v. Samuels, 282 P.2d 566, 132 C.A.2d 459.

Ga.—East Point Lumber Co. v. Chandler, 167 S.E. 787, 46 Ga.App. 361.

Ind.—Salvation Army v. Ellerbush, 161 N.E. 638, 87 Ind.App. 682.

Utah.—Looney v. Furgis, 2 P.2d 112, 78 Utah 172.

4 C.J. p 1035 note 45.

82. Kan.—Jacks v. Masterson, 160 P. 1002, 99 Kan. 89.

83. Mo.—Forsee v. Zenner, App., 193 S.W. 975.

84. Kan.—Tschreppel v. Missouri-Kansas-Texas R. Co., 5 P.2d 845, 134 Kan. 251, certiorari denied Missouri-Kansas-Texas R. Co. v. Tschreppel, 52 S.Ct. 501, 286 U.S. 549, 76 L.Ed. 1285.

Utah.—Bruner v. McCarthy, 142 P. 2d 649, 105 Utah 399, certiorari dismissed 65 S.Ct. 126, 323 U.S. 673, 89 L.Ed. 547.

4 C.J. p 1035 note 41.

85. Ky.—Meredith v. Fehr, 90 S.W. 2d 1021, 262 Ky. 648.

86. N.C.—Raeford Lumber Co. v. Rockfish Trading Co., 79 S.E. 627, 163 N.C. 314.

87. Iowa.—Sheeler v. Porter Hardware Co., 142 N.W. 1019, 162 Iowa 6.

liability of carrier for loss or injury,[88] conditional promises in seduction,[89] conspiracy,[90] contributory negligence,[91] demand,[92] and death.[92.5] Likewise, the rule has been applied to instructions with respect to duress,[93] effect of written instruments,[94] estoppel,[95] execution and proof of wills,[96] failure of

88. Mo.—Edwards v. Lee, 126 S.W. 194, 147 Mo.App. 38.

89. Mich.—Sullivan v. Truszkowski, 151 N.W. 665, 185 Mich. 17, L.R.A. 1918A 617.

90. Ohio.—Columbus Mut. Life Ins. Co. v. National Life Ins. Co. of the U. S., 125 N.E. 664, 100 Ohio St. 208.
4 C.J. p 1035 note 47.

91. U.S.—Long Island R. Co. v. Darnell, N.Y., 221 F. 191, 136 C.C.A. 1.
Ala.—Alabama Produce Co. v. Smith, 150 So. 148, 227 Ala. 330.
Ariz.—Atchison, T. & S. F. Ry. Co. v. Gutierrez, 249 P. 66, 30 Ariz. 491—Arizona Cotton Oil Co. v. Thompson, 245 P. 673, 30 Ariz. 204—Southwest Cotton Co. v. Clements, 215 P. 156, 25 Ariz. 169.
Cal.—Lahti v. McMenamin, 268 P. 644, 204 C. 415—Young v. Vallejo Electric Light & Power Co., 262 P. 327, 202 C. 638—Shippy v. Peninsula Rapid Transit Co., 240 P. 785, 197 C. 290.
Monastero v. Los Angeles Transit Co., 280 P.2d 187, 131 C.A.2d 156—Sortino v. Loneoak, 153 P.2d 428, 66 C.A.2d 876—Ballard v. Sacramento Northern Ry. Co., 14 P.2d 1045, 126 C.A. 486, rehearing denied 15 P.2d 793, 126 C.A. 486—Phillips v. Pickwick Stages, Northern Division, 259 P. 968, 85 C.A. 571.
Conn.—Yanez v. De Rosa, 172 A. 926, 118 Conn. 471.
Ind.—Payne v. Burnett, 133 N.E. 147, 78 Ind.App. 64—Indianapolis Traction & Terminal Co. v. Peeler, 122 N.E. 600, 69 Ind.App. 645.
Iowa.—Sutton v. Moreland, 242 N.W. 75, 214 Iowa 337—Flesch v. Schlue, 191 N.W. 63, 194 Iowa 1200.
Kan.—Leinbach v. Pickwick Greyhound Lines, 10 P.2d 33, 135 Kan. 40—Harper v. Atchison, T. & S. F. Ry. Co., 147 P. 1106, 95 Kan. 201.
Ky.—Siler v. Renfro Supply Co., 26 S.W.2d 12, 233 Ky. 487—Louisville & N. R. Co. v. Lewis, 291 S.W. 401, 218 Ky. 197—Watkins v. City of Henderson, 182 S.W. 837, 168 Ky. 622—Chesapeake & O. Ry. Co. v. Cooper, 181 S.W. 933, 168 Ky. 137.
Md.—Sieland v. Gallo, 71 A.2d 45, 194 Md. 282.
Mass.—Altaville v. Old Colony St. Ry. Co., 110 N.E. 970, 222 Mass. 322.
Mo.—Clark v. McKeone, 234 S.W.2d 574—Petty v. Kansas City Public Service Co., 191 S.W.2d 653, 354 Mo. 823—Ramey v. Missouri Pac. R. Co., 21 S.W.2d 873, 323 Mo. 662, certiorari denied Missouri Pac. R. Co. v. Ramey, 50 S.Ct. 162, 280 U.S. 614, 74 L.Ed. 655—Denkman v. Prudential Fixture Co., 289 S.W. 591.
Cheatham v. Chartrau, 176 S.W. 2d 865, 237 Mo.App. 793—Wuest v. Dorman, 54 S.W.2d 1000, 227 Mo. App. 405—Quinn v. Berberich, App., 51 S.W.2d 153, quashed State ex rel. Berberich v. Haid, 64 S.W.2d 667, 333 Mo. 1224—Warren v. Giudici, App., 9 S.W.2d 541—Lester v. United Rys. Co. of St. Louis, App., 219 S.W. 666—Sprinkles v. Missouri Public Utilities Co., App., 183 S.W. 1072—Siegel v. Illinois Cent. R. Co., 172 S.W. 420, 186 Mo.App. 645.
N.Y.—Fitzsimons v. Isman, 151 N.Y. S. 552, 166 App.Div. 262, affirmed 114 N.E. 1067, 219 N.Y. 610.
N.C.—Williams v. Cody, 72 S.E.2d 867, 236 N.C. 425—Barnes v. Southern Ry. Co., 84 S.E. 1030, 168 N.C. 667.
N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834.
Ohio.—Lillis v. Horn, App., 120 N.E. 2d 893—Kronenberg v. Whale, 153 N.E. 302, 21 Ohio App. 322.
Okl.—M. & D. Motor Freight Lines v. Kelley, 202 P.2d 215, 201 Okl. 121—Helmerich & Payne v. Nunley, 54 P.2d 1088, 176 Okl. 246—Hurt v. Paredes, 241 P. 772, 115 Okl. 139—Chicago, R. I. & P. Ry. Co. v. Pitchford, 143 P. 1146, 44 Okl. 197.
Pa.—Lyons v. Pittsburgh Rys. Co., 152 A. 687, 301 Pa. 499—Filer v. Filer, 152 A. 567, 301 Pa. 461.
Knoble v. Ritter, 20 A.2d 848, 145 Pa.Super. 149.
S.C.—Chitwood v. Chitwood, 156 S. E. 179, 159 S.C. 109.
Tenn.—Garis v. Eberling, 71 S.W.2d 215, 18 Tenn.App. 1.
Tex.—Western Union Telegraph Co. v. Hicks, Civ.App., 47 S.W.2d 466—Western Union Telegraph Co. v. Morrow, Civ.App., 208 S.W. 689, error refused.
Utah.—White v. Pinney, 108 P.2d 249, 99 Utah 484—Barker v. Savas, 172 P. 672, 52 Utah 262.
Vt.—Steele v. Lackey, 177 A. 309, 107 Vt. 192.
Va.—Chesapeake & O. Ry. Co. v. Meyer, 143 S.E. 478, 150 Va. 656.
Wash.—Nehrbass v. Bullan, 13 P.2d 482, 169 Wash. 377.
Wis.—Sobek v. George H. Smith Steel Casting Co., 149 N.W. 152, 158 Wis. 517.
4 C.J. p 1035 note 40.

92. Ga.—Byrd v. Byrd, 96 S.E. 10, 22 Ga.App. 400.

92.5 Ala.—Kendrick v. Birmingham Southern R. Co., 48 So.2d 320, 254 Ala. 313.
Ark.—Phillips v. Turney, 129 S.W. 2d 963, 198 Ark. 364.
Cal.—Westberg v. Willde, 94 P.2d 590, 14 C.2d 360.
Covely v. C. A. B. Const. Co., 242 P.2d 87, 110 C.A.2d 30—Fowler v. Allen, 121 P.2d 41, 49 C.A.2d 214—Hernandez v. Murphy, 115 P. 2d 565, 46 C.A.2d 201—Lewis v. Western Truck Line, 112 P.2d 747, 44 C.A.2d 455.
Fla.—Orme v. Burr, 25 So.2d 870, 157 Fla. 378.
Ga.—Georgia Southern & F. Ry. Co. v. Wilson, 91 S.E.2d 71, 93 Ga.App. 94—Walker v. Southeastern Stages, 22 S.E.2d 742, 68 Ga.App. 320—Blue's Truck Line v. Harwell, 194 S.E. 399, 57 Ga.App. 136, reversed on other grounds 199 S.E. 739, 187 Ga. 78, mandate conformed to 200 S.E. 500, 59 Ga.App 305.
Idaho.—Gardner v. Hobbs, 206 P.2d 539, 69 Idaho 288, 14 A.L.R.2d 478—Bennett v. Deaton, 68 P.2d 895, 57 Idaho 752.
Ill.—Hann v. Brooks, 73 N.E.2d 624, 331 Ill.App. 535.
Iowa.—Bohnsack v. Driftmier, 52 N. W.2d 79, 243 Iowa 383—Lenth v. Schug, 281 N.W. 510, 226 Iowa 1, reheard 287 N.W. 596, 226 Iowa 1.
Mass.—Bugden v. Trawler Cambridge, 65 N.E.2d 533, 319 Mass. 315.
Mo.—Brewer v. Rowe, 252 S.W.2d 372, 363 Mo. 592—Griffith v. Gardner, 217 S.W.2d 519, 358 Mo. 859—Bolino v. Illinois Terminal R. Co., 200 S.W.2d 352, 355 Mo. 1236—White v. Teague, 182 S.W.2d 288, 353 Mo. 247.
Neb.—Bailey v. Spindler, 74 N.W.2d 344, 161 Neb. 563—Gilliland v. Wood, 63 N.W.2d 147, 158 Neb. 286.
N.C.—Rea v. Simowitz, 38 S.E.2d 194, 226 N.C. 379.
Okl.—Cook v. Knox, 273 P.2d 865—Hartman v. Dunn, 95 P.2d 897, 186 Okl. 9.
Tex.—Community Natural Gas Co. v. Lane, Civ.App., 133 S.W.2d 200, error dismissed 131 S.W.2d 1058, 134 Tex. 255.
Wash.—Cox v. Polson Logging Co., 138 P.2d 169, 18 Wash.2d 49.

93. Ga.—N. C. Foster Lumber Co. v. Sykes, 166 S.E. 61, 45 Ga.App. 826.

94. Mo.—Feil v. First Nat. Bank, App., 269 S.W. 936.

95. Ga.—Parks v. Ash, 149 S.E. 207, 168 Ga. 868.
Mo.—Hanebrink v. Hengst, 209 S.W. 918.
Esty v. Walker, 3 S.W.2d 744, 222 Mo.App. 619.
Or.—York v. Western Savings & Loan Ass'n, 14 P.2d 1003, 140 Or. 574—Gile v. Lasselle, 171 P. 741, 89 Or. 107.

96. Ga.—Bullock v. Martin, 87 S.E. 1058, 144 Ga. 731.

consideration,[97] fellow servant doctrine,[98] fraud,[99] good faith,[1] joint liability of employers for injury to servants,[2] last clear chance,[3] latent defects,[4] location by boundaries of government grants,[5] market value,[6] mental anguish,[7] and negligence.[8]

Ky.—Duff v. May, 54 S.W.2d 4, 245 Ky. 709.

97. Mo.—Rolla Nat. Bank v. Romine, 136 S.W. 21, 154 Mo.App. 624.

98. Ill.—Anderson v. Metropolitan West Side El. Co., 170 Ill.App. 210.
N.H.—Lindberg v. Swenson, 60 A.2d 458, 95 N.H. 184.

99. Cal.—O'Meara v. Haiden, 268 P. 334, 204 C. 354, 60 A.L.R. 1381—Fidelity & Casualty Co. of New York v. Paraffine Paint Co., 204 P. 1076, 188 C. 184.
Pullen v. Heyman Bros., 162 P. 2d 961, 71 C.A.2d 444.
Ga.—Rountree v. Todd, 78 S.E.2d 499, 210 Ga. 226—Battle v. Williford, 127 S.E. 762, 160 Ga. 287.
Aderhold v. Zimmer, 71 S.E.2d 270, 86 Ga.App. 204.
Ill.—McRoberts v. Combination Fountain Co., 147 N.E. 785, 317 Ill. 165.
Iowa.—Grimes Sav. Bank of Grimes v. McHarg, 199 N.W. 365, 197 Iowa 1393.
Ky.—Commonwealth v. Middleton, 266 S.W. 37, 205 Ky. 570.
Mo.—Menke v. Rovin, 180 S.W.2d 24, 352 Mo. 826—Ozias v. South Side Bank of Kansas City, 128 S.W.2d 283—Becker v. Thompson, 76 S.W. 2d 357, 336 Mo. 27.
S.D.—Barker v. Coats, 168 N.W. 797, 41 S.D. 45.
Tex.—Paschal v. Hudson, Civ.App., 169 S.W. 911.
Vt.—Commercial Finance Corporation v. Gale, 162 A. 899, 105 Vt. 3.
Wash.—Dowd v. Morris, 233 P. 320, 133 Wash. 215—Mohney v. Davis, 176 P. 31, 104 Wash. 209.
4 C.J. p 1035 note 46.

1. Mo.—Schofield v. Harrison Land & Mining Co., 187 S.W. 61.

2. Ga.—Georgia R. Co. v. Hunter, 77 S.E. 176, 12 Ga.App. 294.

3. Cal.—Lund v. Pacific Elec. Ry. Co., 153 P.2d 705, 25 C.2d 287—Hoy v. Tornich, 250 P. 565, 199 C. 545.
Ravettino v. City of San Diego, 160 P.2d 52, 70 C.A.2d 37—Milner v. Toliver, 261 P. 1069, 87 C.A. 38.
Ind.—Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 401.
Mo.—Wright v. Spieldoch, 193 S.W. 2d 42, 354 Mo. 1076—Borgstede v. Waldbauer, 88 S.W.2d 373, 337 Mo. 1205—Kloeckener v. St. Louis Public Service Co., 53 S.W.2d 1043, 331 Mo. 396—Gould v. Chicago, B. & Q. R. Co., 290 S.W. 135, 315 Mo. 713.
Neb.—Alles v. White Motors Co., 2 N.W.2d 597, 141 Neb. 78.
Ohio.—Hedges v. Griffith, App., 69 N.E.2d 546.
Utah.—Andersen v. Bingham & Garfield Ry. Co., 214 P.2d 607, 117 Utah 197.
4 C.J. p 1035 note 42.

4. Ga.—Milam v. Mandeville Mills, 151 S.E. 672, 41 Ga.App. 62.

5. N.C.—Caldwell Land, etc., Co. v. Globe Lumber Co., 66 S.E. 310, 151 N.C. 390.

6. Kan.—Boss v. Brown, 294 P. 878, 132 Kan. 86.
Mo.—Slinkard v. Missouri Pac. R. Co., App., 294 S.W. 446.

7. Cal.—Hughes v. Duncan, 300 P. 147, 114 C.A. 576.
4 C.J. p 1035 note 53.

8. Ala.—Macher v. Farmers' & Ginners' Cotton Oil Co., 84 So. 845, 203 Ala. 601.
Ark.—Bruner Ivory Handle Co. v. West, 86 S.W.2d 919, 191 Ark. 479.
Cal.—Reid & Sibell, Inc. v. Gilmore & Edwards Co., 285 P.2d 364, 134 C.A.2d 60—Calder v. City and County of San Francisco, 123 P.2d 897, 50 C.A.2d 837—Evans v. Mitchell, 38 P.2d 437, 2 C.A.2d 702—Day v. Pickwick Stages System, 25 P. 2d 16, 134 C.A. 92—Chalmers v. Hawkins, 248 P. 727, 78 C.A. 733—Judd v. Webster, 195 P. 929, 50 C. A. 743.
Colo.—Knaus v. Yoder, 52 P.2d 1152, 98 Colo. 1—Union Pac. R. Co. v. Gill, 153 P. 762, 60 Colo. 417.
Conn.—Hawthorne v. Blythewood, Inc., 174 A. 81, 118 Conn. 617—Carlson v. Connecticut Co., 112 A. 646, 95 Conn. 724—Di Maio v. Yolen Bottling Works, 107 A. 497, 93 Conn. 597.
Fla.—Staff v. Soreno Hotel Co., 60 So.2d 28.
Ga.—Lamb v. Robinson, 87 S.E. 17, 144 Ga. 334.
McGee v. Bennett, 33 S.E.2d 577, 72 Ga.App. 271—Kinney v. Turnipseed, 164 S.E. 225, 45 Ga.App. 269—West v. Rosenberg, 160 S.E. 808, 44 Ga.App. 211—Bugg v. Carter, 131 S.E. 297, 34 Ga.App. 819—Bonita Theatre v. Bridges, 122 S.E. 255, 31 Ga.App. 798—Williams v. McCranie, 109 S.E. 699, 27 Ga.App. 693.
Idaho.—Matlock v. Citizens' Nat. Bank of Salmon, 250 P. 648, 43 Idaho 214, 50 A.L.R. 1418.
Ill.—Frechett v. Illinois Cent. R. Co., 197 Ill.App. 213.
Ind.—Michigan City v. Werner, 114 N.E. 636, 186 Ind. 149.
Goldblatt Bros. v. Parish, 33 N.E. 2d 835, 110 Ind.App. 368, rehearing denied 38 N.E.2d 255, 110 Ind.App. 368—Lewis v. Pennsylvania R. Co., 165 N.E. 774, 95 Ind.App. 19, rehearing denied 169 N.E. 68, 95 Ind. App. 19—Kanuch v. Prentiss, 164 N.E. 708, 89 Ind.App. 358—Stamets v. Wilson, 164 N.E. 300, 89 Ind.App. 403—Perrine-Armstrong Co. v. Boldt, 161 N.E. 667, 94 Ind.App. 569.
Iowa.—McDougal v. Bormann, 234 N.W. 807, 211 Iowa 950.
Ky.—Consolidated Coal Co. v. Baldridge, 179 S.W. 18, 166 Ky. 187.
Md.—Roneche v. Hotel Braddock, 165 A. 891, 164 Md. 620.
Mich.—Schneider v. C. H. Little Co., 166 N.W. 912, 200 Mich. 361.
Mo.—Corley v. Kroger Grocery & Baking Co., 193 S.W.2d 897, 355 Mo. 4—Byrnes v. Poplar Bluff Printing Co., 74 S.W.2d 20—Roberts v. Schaper Stores Co., 3 S.W. 2d 241, 318 Mo. 1190—Oglesby v. St. Louis-San Francisco Ry. Co., 1 S.W.2d 172, 318 Mo. 79, certiorari denied St. Louis-San Francisco R. Co. v. Oglesby, 48 S.Ct. 434, 277 U. S. 587, 72 L.Ed. 1001—Sisk v. Industrial Track Const. Co., 295 S.W. 751, 316 Mo. 1143—Liggett v. Excelsior Powder Mfg. Co., 202 S.W. 372, 274 Mo. 115.
Russell v. Union Elec. Co. of Mo., 191 S.W.2d 278, 238 Mo.App. 1074—Adams v. Thompson, App., 178 S.W.2d 779—Sanguinett v. May Department Stores Co., App., 65 S.W. 2d 162—Cooper v. Winnwood Amusement Co., 55 S.W.2d 737, 227 Mo.App. 608—Allen v. Chicago, R. I. & P. Ry. Co., 54 S.W.2d 787, 227 Mo.App. 468—Crenshaw v. St. Louis Public Service Co., App., 52 S.W. 2d 1035—Nixon v. Hill, 52 S.W.2d 208, 227 Mo.App. 312—Gettemeyer v. Thies, App., 51 S.W.2d 868—Francis v. Willits, App., 30 S.W. 2d 203—Bopp v. Standard Sanitary Mfg. Co., 299 S.W. 137, 221 Mo.App. 188—Bauer v. Fahr, App., 282 S.W. 150—Roman v. King, App., 268 S.W. 414—Albert v. United Rys. Co. of St. Louis, App., 232 S.W. 793—Curlin v. St. Louis Merchants' Bridge Terminal Ry. Co., App., 232 S.W. 215—Barker v. Hemphill Lumber Co., App., 217 S.W. 585—Barnett v. Kansas City, App., 214 S.W. 240, record quashed State ex rel. Kansas City v. Ellison, 220 S.W. 498, 281 Mo. 667—Proctor v. City of Poplar Bluff, App., 184 S.W. 123.
Mont.—Kansler v. City of Billings, 184 P. 630, 56 Mont. 250.
Neb.—Martin v. Brownell Bldg. Co., 214 N.W. 635, 115 Neb. 749.
N.Y.—Wolinetz v. William Treib, Inc., 53 N.Y.S.2d 499, 269 App.Div. 679.
N.C.—Malphurs v. Ellington, 181 S. E. 266, 208 N.C. 834—Hipps v. Southern Ry., 99 S.E. 335, 177 N.C. 472.

Further, the rule has been applied to instructions with respect to the Negotiable Instruments Law,[9] nondelivery of deed in action to set aside,[10] notice of claim for damages for injury to goods in shipment,[11] notice to employer of defective appliances,[12] nuisances,[13] patent licensees,[14] plea of privilege,[15] probable cause,[16] recklessness,[17] releases,[18] res ipsa loquitur,[19] rights in land of persons claiming title from a common source,[20] safe place to work,[21] self-defense,[22] statute of frauds,[23] statute of limitations,[24] sudden peril,[25] title by prescription,[26] unavoidable accident,[27] undue influence,[28] waiver of breach of contract,[29] warranties,[30] warranty of fitness,[31] and to cautionary instructions.[32]

Ohio.—Humphreys v. Madden, App., 68 N.E.2d 562—Cleveland Ry. Co. v. Duralia, 165 N.E. 358, 30 Ohio App. 389—Krekeler v. Cincinnati Traction Co., 16 Ohio App. 125.
Okl.—Helmerich & Payne v. Nunley, 54 P.2d 1088, 176 Okl. 246—Oklahoma Union Ry. Co. v. Lynch, 242 P. 176, 115 Okl. 146.
Or.—Schamoni v. Semler, 31 P.2d 776, 147 Or. 353.
Pa.—Riff v. Pittsburgh Rys. Co., 148 A. 102, 298 Pa. 256.
S.C.—Hafner v. City of Chester, 94 S.E. 731, 108 S.C. 346.
Tenn.—White v. White, 9 Tenn.App. 654.
Tex.—Booth Termite & Chemical Co. v. Manuel, Civ.App., 138 S.W.2d 857, error dismissed, judgment correct—City of Corsicana v. Mills, Civ.App., 235 S.W. 220, error refused—Athens Electric Light & Power Co. v. Tanner, Civ.App., 225 S.W. 421.
Utah.—Shafer v. Keeley Ice Cream Co., 234 P. 300, 65 Utah 46, 38 A. L.R. 1523—Staton v. Western Macaroni Mfg. Co., 174 P. 821, 52 Utah 426.
Vt.—Steele v. Lackey, 177 A. 309, 107 Vt. 192.
Va.—Chesapeake & O. Ry. Co. v. Steele's Adm'x, 135 S.E. 677, 146 Va. 22—Murphy's Hotel v. Cuddy's Adm'r, 97 S.E. 794, 124 Va. 207.
Wash.—Osborn v. City of Seattle, 252 P. 164, 142 Wash. 25—Roscoe v. City of Everett, 239 P. 831, 136 Wash. 295—Wren v. City of Seattle, 170 P. 342, 100 Wash. 67—Jensen v. Schlenz, 154 P. 159, 89 Wash. 268.
4 C.J. p 1034 note 39.

9. Ga.—National Bank of Wilkes v. Maryland Casualty Co., 146 S.E. 739, 167 Ga. 737.

10. S.C.—Devlin v. Devlin, 71 S.E. 966, 89 S.C. 268.

11. Tex.—Missouri, etc., R. Co. v. McIlhaney, Civ.App., 129 S.W. 153.

12. Ky.—Hough, etc., Co. v. Moreland, 169 S.W. 467, 159 Ky. 722.

13. Ga.—Southern Cotton Oil Co. v. Thomas, 117 S.E. 456, 155 Ga. 99.
Mo.—McCleery v. City of Marshall, App., 65 S.W.2d 1042.

14. Me.—Spinney v. Allen, 140 A. 688, 127 Me. 7.

15. Tex.—Gulf, etc., R. Co. v. Ward, Civ.App., 124 S.W. 130.

16. Cal.—Hill v. Nelson, 162 P.2d 927, 71 C.A.2d 528.
Colo.—Grimes v. Greenblatt, 107 P. 1111, 47 Colo. 495, 19 Ann.Cas. 608.

17. S.D.—Griebel v. Ruden, 249 N.W. 810, 61 S.D. 507, reheard 253 N.W. 447, 62 S.D. 469.
Va.—Poole v. Kelley, 173 S.E. 537, 162 Va. 279.

18. Cal.—Dingman v. J. E. French Co., 39 P.2d 826, 3 C.A.2d 512.

19. Cal.—Edwards v. Gullick, 1 P.2d 11, 213 C. 86.
Cunningham v. Coca-Cola Bottling Co. of Los Angeles, 198 P.2d 333, 87 C.A.2d 106.
Conn.—Bluett v. Eli Skating Club, 48 A.2d 557, 133 Conn. 99.
Ind.—Kickels v. Fein, 10 N.E.2d 297, 104 Ind.App. 606.

20. Va.—Reynolds v. Wallace, 99 S.E. 516, 125 Va. 315.
4 C.J. p 1035 note 61.

21. Minn.—Jacobson v. Chicago & N. W. Ry. Co., 22 N.W.2d 455, 221 Minn. 454.
Miss.—Grenada Dam Constructors v. Patterson, 48 So.2d 480—Hercules Powder Co. v. Thompson, 29 So.2d 823, 201 Miss. 608.
Wash.—Tenneson v. Kadiak Fisheries Co., 2 P.2d 745, 164 Wash. 380—Christansen v. Puget Sound Nav. Co., 244 P. 569, 138 Wash. 239.

22. Wis.—Lang v. Oudenhoven, 252 N.W. 167, 213 Wis. 666.

23. Wash.—Schmitz v. Matthews, 251 P. 571, 141 Wash. 278.

24. Ga.—Napier v. Little, 73 S.E. 3, 137 Ga. 242, 38 L.R.A.,N.S., 91, Ann. Cas.1913A 1013.
Tex.—Wrighton v. Butler, Civ.App., 128 S.W. 472.

25. Cal.—Beuttler v. Mann, 19 P.2d 539, 130 C.A. 38.
Ill.—Smith v. Kroger Grocery & Baking Co., 90 N.E.2d 500, 339 Ill.App. 501, 20 A.L.R.2d 1.
Ky.—Illinois Cent. R. Co. v. McGuire's Adm'r, 38 S.W.2d 913, 239 Ky. 1.

26. Ga.—McElroy v. McElroy, 82 S. E. 442, 142 Ga. 37.
Mich.—Austin v. Crowell, 159 N.W. 504, 198 Mich. 296.
N.C.—Brabble v. Brumsey, 89 S.E. 1008, 172 N.C. 832.
Tex.—Panhandle & S. F. Ry. Co. v. Hoffman, Civ.App., 250 S.W. 246—Padgett v. Hines, Civ.App., 224 S.W. 558, dismissed for want of jurisdiction.
4 C.J. p 1035 note 51.

27. Tex.—Dallas Ry. & Terminal Co. v. Darden, Com.App., 38 S.W.2d 777.
Carle Oil Co. v. Owens, Civ.App., 134 S.W.2d 411—South Plains Coaches v. Behringer, Civ.App., 32 S.W.2d 959.

28. Ohio.—Niemes v. Niemes, 119 N.E. 503, 97 Ohio St. 145.
Tex.—Burchett v. Bristow, Civ.App., 185 S.W. 349, error refused.
4 C.J. p 1035 note 49.

29. Okl.—Protzman v. Rock, 224 P. 495, 101 Okl. 170.
4 C.J. p. 1035 note 52.

30. Iowa.—Norris v. O'Connor, 147 N.W. 752, 166 Iowa 303.
Mich.—Johnston Bros. v. Village of Coopersville, 246 N.W. 551, 261 Mich. 26.
4 C.J. p. 1035 note 44.

31. Mo.—Beyer v. Coca-Cola Bottling Co. of St. Louis, App., 75 S. W.2d 642.

32. Ala.—Iron City Grain Co. v. City of Birmingham, 115 So. 99, 217 Ala. 119.
Cal.—Wilson v. Crown Transfer & Storage Co., 258 P. 596, 201 C. 701—In re Moore's Estate, 182 P. 285, 180 C. 570.
Gammon v. Ealey & Thompson, 275 P. 1005, 97 C.A. 452.
Ga.—Cooper v. Shannon, 141 S.E. 306, 165 Ga. 451—Rosenberg v. Weinstein, 85 S.E. 1042, 144 Ga. 46.
McCommons - Thompson - Boswell Co. v. White, 125 S.E. 76, 33 Ga.App. 20—Sandersville Oil Mill Co. v. Globe & Rutgers Fire Ins. Co., 124 S.E. 728, 32 Ga.App. 722—Taff v. Larey, 116 S.E. 866, 29 Ga. App. 631—Mills v. Pope, 93 S.E. 559, 20 Ga.App. 820—Chamblee v. Farmers' & Merchants' Bank, 93 S.E. 239, 20 Ga.App. 527.
Ill.—See Jasper v. Griffin Wheel Co., 194 Ill.App. 517.
Miss.—Metropolitan Life Ins. Co. v. Lambert, 128 So. 750, 157 Miss. 759.
Mo.—Hurley v. Illinois Cent. R. Co., 282 S.W. 97, 221 Mo.App. 478.
N.D.—McGilvra v. Minneapolis, St. P. & S. S. M. Ry. Co., 159 N.W. 854, 35 N.D. 275.
Tenn.—Stepp v. Black, 14 Tenn.App. 153.
4 C.J. p 1035 note 65.

Impeachment of witnesses

Where no contradictory statements of a witness were proven, the giving of an instruction on impeachment

However erroneous the action of the court may be in permitting the jury, after they have separated, to reconsider and correct a verdict rendered, the court will not reverse unless there are some merits to the case.[33]

b. Prejudicial Error

It is error requiring reversal to give instructions inapplicable to the issues and the evidence where such instructions are prejudicial to the complaining party.

Where an instruction, not applicable to the issues and the evidence, is clearly calculated to mislead, or it appears that the jury have been influenced by it in reaching their verdict and that the complaining party was prejudiced, the giving of such instruction is reversible error.[34]

of witnesses by previous contradictory statements, while inapplicable, was harmless.

Ga.—Rosenberg v. Weinstein, 85 S.E. 1042, 144 Ga. 46.

4 C.J. p 1035 note 65 [a].

33. Ill.—Wickiser-McClure Co. v. Bermingham, etc., Co., 151 Ill.App. 540.

34. Ala.—Harper v. Griffin Lumber Co., 34 So.2d 148, 250 Ala. 339—Lambert v. Birmingham Electric Co., 13 So.2d 579, 244 Ala. 333—Preston v. LaSalle Apartments, 3 So.2d 411, 241 Ala. 540—Western Union Telegraph Co. v. Favish, 71 So. 183, 196 Ala. 4.

Ariz.—Brutinel v. Nygren, 154 P. 1042, 17 Ariz. 491, L.R.A.1918F, 713.

Ark.—Brenard Mfg. Co. v. McRee's Model Pharmacy, 287 S.W. 187, 171 Ark. 978—Moore v. Moss, 175 S.W. 1195, 117 Ark. 593—Spencer & Co. v. Bank of Hickory Ridge, 171 S.W. 128, 115 Ark. 326—Western Union Telegraph Co. v. Wilson, 170 S.W. 998, 115 Ark. 259—Capital Security Co. v. Gray, 169 S.W. 244, 114 Ark. 573.

Cal.—Davenport v. Stratton, 149 P. 2d 4, 24 C.2d 232.

Rasmus v. Southern Pac. Co., 301 P.2d 23, 145 C.A.2d 76—Elm v. McKee, 293 P.2d 827, 139 C.A.2d 353—Pierce v. Black, 280 P.2d 913, 131 C.A.2d 521—Cannis v. Di Salvo Trucking Co., 245 P.2d 365, 111 C. A.2d 893—Rutherford v. Standard Engineering Corp., 199 P.2d 354, 88 C.A.2d 554—Hedding v. Pearson, 173 P.2d 382, 76 C.A.2d 481—Pierce v. Paterson, 123 P.2d 544, 50 C.A. 2d 486—Warwick v. Maneely, 104 P.2d 831, 40 C.A.2d 235, followed in 104 P.2d 838, two cases, 40 C.A.2d 812, and 104 P.2d 838, 40 C.A.2d 813 —Ketchum v. Pattee, 98 P.2d 1051, 37 C.A.2d 122—Evans v. Mitchell, 88 P.2d 437, 2 C.A.2d 702—Buttrick v. Pacific Electric Ry. Co., 260 P. 588, 86 C.A. 136—Phillips v. Pickwick Stages, Northern Division, 259 P. 968, 85 C.A. 571.

Conn.—Smith v. Housing Authority of City of Waterbury, 127 A.2d 45, 144 Conn. 13—Boiselle v. Rogoff, 13 A.2d 753, 126 Conn. 635—Krowka v. Colt Patent Fire Arm Mfg. Co., 8 A.2d 5, 125 Conn. 705.

Fla.—W. T. Rawleigh Co. v. Langford, 150 So. 592, 112 Fla. 487—Seaboard Air Line Ry. v. Minor, 90 So. 611, 82 Fla. 492—Seaboard Air Line Ry. v. Royal Palm Soap Co., 86 So. 835, 80 Fla. 800—Mach v. Mayo, 86 So. 222, 80 Fla. 372.

Ga.—Cochran v. Kendall, 80 S.E.2d 273, 210 Ga. 336—Thornton v. Parker, 68 S.E.2d 695, 208 Ga. 633—Baker v. Goddard, 53 S.E.2d 754, 205 Ga. 477—Orr v. Blalock, 25 S.E. 2d 668, 195 Ga. 863—Livingston v. Barnett, 19 S.E.2d 385, 193 Ga. 640 —Ware v. Mobley, 9 S.E.2d 67, 190 Ga. 249—Hastings v. Hastings, 166 S.E. 192, 175 Ga. 805—Perry v. Hodgson, 148 S.E. 659, 168 Ga. 678, conformed to 149 S.E. 91, 40 Ga. App. 117—Blackwell v. Partridge, 118 S.E. 739, 156 Ga. 119—Mitchell v. Langley, 96 S.E. 430, 148 Ga. 244—Atlantic Coast Line R. Co. v. Arant, 85 S.E. 709, 143 Ga. 561—Smith v. Roberts, 82 S.E. 242, 141 Ga. 841.

Bush v. Skelton, 84 S.E.2d 835, 91 Ga.App. 83—Southern Ry. Co. v. Florence, 57 S.E.2d 856, 81 Ga.App. 1—Nelson v. Huber & Huber Express, 54 S.E.2d 462, 79 Ga.App. 721—Thompson v. Lyon, 12 S.E.2d 155, 64 Ga.App. 83—Barrett v. City of Brunswick, 193 S.E. 450, 56 Ga. App. 575—Smith v. Sherwood, 190 S.E. 205, 55 Ga.App. 395—Cox v. Ware County, 182 S.E. 408, 52 Ga. App. 45—Ryals v. Livingston, 163 S.E. 286, 45 Ga.App. 43—First Nat. Bank v. Langston, 161 S.E. 637, 44 Ga.App. 465—Barker v. Green, 130 S.E. 599, 34 Ga.App. 574—Blackwelder v. Moody, 130 S.E. 367, 34 Ga.App. 493—Brazell v. Hearn, 127 S.E. 479, 33 Ga.App. 490—Atlantic Coast Line R. Co. v. Baker, 123 S.E. 909, 32 Ga.App. 513—Commercial Bank of Jasper v. Dasher, 102 S.E. 177, 24 Ga.App. 736—Postal Telegraph Cable Co. v. Schaefer Cotton Co., 94 S.E. 910, 21 Ga.App. 729.

Idaho.—Lloyd v. Anderson, 227 P. 32, 39 Idaho 314.

Ill.—Dodds v. Chicago Transit Authority, 132 N.E.2d 816, 9 Ill.App. 2d 388—Jackson v. Hursey, 118 N. E.2d 348, 1 Ill.App.2d 598—Magill v. George, 105 N.E.2d 808, 347 Ill. App. 6—Goodwin v. Lamb, 101 N.E. 2d 207, 344 Ill.App. 449—Seybold v. Zimmerman, 13 N.E.2d 675, 294 Ill. App. 138—Mississippi Lime & Material Co. v. Smith, 282 Ill.App. 361 —Jones v. Traver, 275 Ill.App. 181 —Interocean Mercantile Corporation v. Sawyer Biscuit Co., 253 Ill. App. 551—Beard v. Haskell Park Bldg. Corporation, 248 Ill.App. 467 —De Voney v. Chiappe, 192 Ill. App. 435—Wing v. Smith, 190 Ill. App. 275—Leonard v. Excelsior Motor & Mfg. Co., 187 Ill.App. 81—Kendall v. Chicago Rys. Co., 185 Ill.App. 145—Drago v. Prudential Ins. Co. of America, 184 Ill.App. 618—A. H. Andrews Co. v. Pottinger, 184 Ill.App. 445.

Ind.—Hayes Freight Lines v. Wilson, 77 N.E.2d 580, 226 Ind. 1—Hoesel v. Cain, 53 N.E.2d 165, 222 Ind. 330, rehearing denied 53 N.E.2d 769, 222 Ind. 330—Cincinnati, I. & W. R. Co. v. Little, 131 N.E. 762, 190 Ind. 662—Southern Ry. Co. v. Howerton, 105 N.E. 1025, 182 Ind. 208, rehearing denied 106 N.E. 369, 182 Ind. 208.

Automobile Underwriters v. Smith, 133 N.E.2d 72, 126 Ind.App. 332—Dimmick v. Follis, 111 N.E. 2d 486, 123 Ind.App. 701—Allen v. Grabert, 111 N.E.2d 477, 123 Ind. App. 649—Able v. Bane, 110 N.E.2d 306, 123 Ind.App. 585—Hayes Freight Lines v. Oestricher, 66 N.E. 2d 612, 117 Ind.App. 143, rehearing denied 68 N.E.2d 792, 117 Ind.App. 143—Bachus v. Ronnebaum, 186 N.E. 386, 98 Ind.App. 603—Chicago & E. I. Ry. Co. v. Whipking, 170 N.E. 548, 96 Ind.App. 167—Pittsburgh, C., C. & St. L. Ry. Co. v. Marable, 140 N.E. 443, 81 Ind.App. 46—Hatton v. Hodell Furniture Co., 125 N.E. 797, 72 Ind.App. 357—Supreme Lodge of Modern American Fraternal Order v. Miller, 110 N.E. 556, 60 Ind.App. 269.

Iowa.—Hayungs v. Falk, 27 N.W.2d 15, 238 Iowa 285—Harrington v. Fortman, 8 N.W.2d 713, 233 Iowa 92—Graeser v. Jones, 251 N.W. 162, 217 Iowa 499—In re Stencil's Estate, 248 N.W. 18, 215 Iowa 1195—Newcomer v. Ament, 242 N.W. 82, 214 Iowa 307—Ritter v. City of Ft. Madison, 234 N.W. 814, 212 Iowa 564—Granteer v. Thompson, 208 N.W. 497, 203 Iowa 127—Worez v. Des Moines City Ry. Co., 156 N.W. 867, 175 Iowa 1—Farmers' & Merchants' State Bank v. Shaffer, 147 N.W. 851, reheard 154 N.W. 485, 172 Iowa 173.

Ky.—Thoroughbred Motor Court, Inc. v. Allen Co., 296 S.W.2d 690—Jones v. Hargis, 150 S.W.2d 928, 286 Ky. 353.

Md.—State v. Washington, B. & A. Electric R. Co., 131 A. 822, 149 Md. 443.

This principle has been applied to instructions in various actions and proceedings, as, for instance:

Mass.—Taub v. U. S. Trust Co., 21 N.E.2d 943, 303 Mass. 339.

Mich.—Phoenix Assur. Co. v. Tripp, 81 N.W.2d 420, 348 Mich. 59—Burt v. Detroit, G. H. & M. Ry. Co., 247 N.W. 157, 262 Mich. 204—O'Connor v. March Automatic Irr. Co., 218 N.W. 784, 242 Mich. 204, affirmed 223 N.W. 228, 245 Mich. 593—Kiesgen v. Harness, 218 N.W. 667, 242 Mich. 422—Kochin v. Superior Copper Co., 148 N.W. 252, 181 Mich. 543.

Minn.—Hollister v. Hines, 184 N.W. 856, 150 Minn. 185—Schaar v. Comforth, 151 N.W. 275, 128 Minn. 460.

Miss.—Ellis v. Hubbard, 87 So.2d 251—Williams v. City of Gulfport, 141 So. 288, 163 Miss. 334.

Mo.—Elmore v. Missouri Pac. R. Co., 301 S.W.2d 776—Pearson v. Kansas City Ice Co., 234 S.W.2d 783, 361 Mo. 363—Gillioz v. State Highway Commission, 153 S.W.2d 18, 348 Mo. 211—Atchison v. Weakley, 148 S.W.2d 745, 347 Mo. 743—Weiner v. St. Louis Public Service Co., 87 S.W.2d 191—Harting v. East St. Louis Ry. Co., 84 S.W.2d 914—Streicher v. Mercantile Trust Co., 31 S.W.2d 1065—Wallace v. F. Burkhart Mfg. Co., 3 S.W.2d 387, 319 Mo. 52—Hollinghausen v. Ade, 233 S.W. 39, 289 Mo. 362.

McCallum v. Executive Aircraft Co., App., 291 S.W.2d 650—Bourne v. Pratt & Whitney Aircraft Corp. of Mo., App., 207 S.W.2d 533—White v. Thompson, App., 176 S.W.2d 53—Huger v. Doerr, App., 170 S.W.2d 689—Missouri Steel & Wire Co. v. Edmonds & Allgier, 136 S.W.2d 118, 234 Mo.App. 1028—Davis v. Gould, 131 S.W.2d 360, 234 Mo.App. 42—Martin v. Springfield City Water Co., App., 128 S.W.2d 674—Walker v. Klein, App., 127 S.W.2d 51—Bornhoft v. City of Jefferson, App., 118 S.W.2d 93, opinion quashed in part on other grounds State ex rel. City of Jefferson v. Shain, 124 S.W.2d 1194, 344 Mo. 57—Hickman v. St. Louis Dairy Co., App., 90 S.W.2d 177—McCullough v. Chicago, R. I. & P. R. Co., App., 88 S.W.2d 400—McCullough v. St. Louis Public Service Co., App., 86 S.W.2d 334—Roznowski v. East St. Louis Ry. Co., App., 81 S.W.2d 969—Farrell v. Kroger Grocer & Baking Co., App., 71 S.W.2d 1076—Thompson v. Main St. Bank, 42 S.W.2d 56, 226 Mo.App. 246—Charles H. Fuller Co. v. St. Louis Wholesale Drug Co., 282 S.W. 535, 219 Mo.App. 519—Doody v. California Woolen Mills Co., App., 230 S.W. 377—Reynolds v. Union Station Bank of St. Louis, 200 S.W. 711, 198 Mo.App. 323—Collins v. Smith, App., 182 S.W. 1087.

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Mass.—Lockling v. Wiswell, 61 N.E. 2d 15, 318 Mass. 160.

Mich.—Garvit v. Krebs, 61 N.W.2d 58, 338 Mich. 256—Spillman v. Weimaster, 265 N.W. 787, 275 Mich. 93—Walker v. ReBeuhr, 237 N.W. 389, 255 Mich. 204—Rosenberg v. Mageda, 232 N.W. 397, 251 Mich. 696—Granader v. Detroit United Ry., 171 N.W. 362, 206 Mich. 367.

Mo.—O'Leary v. Illinois Terminal R. Co., 299 S.W.2d 873—Marsh v. Heerlein, 299 S.W.2d 441—Martin v. Crabtree, 283 S.W.2d 573—Klecka v. Gropp, 278 S.W.2d 790—Anderson v. Prugh, 264 S.W.2d 358, 364 Mo. 557—Ferdente v. St. Louis Public Service Co., 247 S.W.2d 773—Dahlen v. Wright, 235 S.W.2d 366, 361 Mo. 524—Prague v. Eddy, 214 S.W.2d 521, 358 Mo. 327—Mann v. Payne, 159 S.W.2d 602, 349 Mo. 89—Shields v. Keller, 153 S.W.2d 60, 348 Mo. 326—Shaw v. Fulkerson, 96 S.W.2d 495, 339 Mo. 310.

Politte v. Miller, App., 301 S.W. 2d 839—Berry v. McDaniel, App., 269 S.W.2d 666—Vogelgesang v. Waelder, App., 238 S.W.2d 849—Crites v. Bollinger, App., 238 S.W. 2d 26—Bowman v. Moore, 167 S.W. 2d 675, 237 Mo.App. 1163—Daniels v. Langensand, 96 S.W.2d 911, 231 Mo.App. 777—Wilsch v. Gleiforst, App., 259 S.W. 850—Murray v. St. Louis Wire & Iron Co., App., 238 S.W. 836—Latham v. Harvey, 218 S.W. 401, 203 Mo.App. 363—Priebe v. Crandall, App., 187 S.W. 605.

Mont.—Adami v. Murphy, 164 P.2d 150, 118 Mont. 172.

Neb.—Hendrix v. Vana, 45 N.W.2d 429, 153 Neb. 531—Dunlap v. Welch, 41 N.W.2d 384, 152 Neb. 459—Johnson v. Griepenstroh, 33 N.W.2d 549, 150 Neb. 126—Hansen v. Lawrence, 30 N.W.2d 63, 149 Neb. 26—Blank v. Omaha & Council Bluffs St. Ry. Co., 290 N.W. 464, 137 Neb. 632—Stiefler v. Miller, 231

ation of railroads or street railroads,[42] or for injuries to passengers[43] or to a servant resulting from

N.W. 153, 120 Neb. 6, reheard 232 N.W. 620, 120 Neb. 6—Jessup v. Davis, 211 N.W. 190, 115 Neb. 1, 56 A.L.R. 1403, error dismissed Davis v. Jessup, 48 S.Ct. 300, 276 U.S. 593, 72 L.Ed. 722.

N.J.—Mead v. Wiley M. E. Church, 72 A.2d 183, 4 N.J. 200.

Roberts v. Saunders, 194 A. 1, 118 N.J.Law 548.

N.Y.—Hall v. California Fruit Markets, 52 N.Y.S.2d 853, 268 App.Div. 1021—La Grande v. Abbott, 42 N.Y.S.2d 535, 266 App.Div. 507—Hlavati v. City of Mount Vernon, 38 N.Y.S.2d 511, 265 App.Div. 946—Constantinides v. Manhattan Transit Co., 34 N.Y.S.2d 600, 264 App.Div. 147—Uliaszek v. Buczkowski, 19 N.Y.S.2d 912, 259 App.Div. 967, followed in 19 N.Y.S.2d 914, 259 App. Div. 967—Akin v. Pruyn Lumber & Supply Co., 4 N.Y.S.2d 370, 254 App.Div. 34—Laedke v. Truesdale, 2 N.Y.S.2d 708, 253 App.Div. 921—Caronia v. Muller, 293 N.Y.S. 363, 250 App.Div. 722—Hartford Accident & Indemnity Co. v. Buchanan, 192 N.Y.S. 786, 200 App.Div. 235.

Ohio.—Clemens v. Bishop, 133 N.E.2d 402, 99 Ohio App. 303—Hartman v. Wooley, App., 115 N.E.2d 714—Vogus v. Chase, 112 N.E.2d 349, 93 Ohio App. 164—Scott v. Marshall, 105 N.E.2d 281, 90 Ohio App. 347, appeal dismissed 101 N.E.2d 906, 156 Ohio St. 270—Shimick v. Stearns, App., 91 N.E.2d 292—Francais v. City of Cleveland, App., 85 N.E.2d 522—Zaso v. De Cola, 51 N.E.2d 654, 72 Ohio App. 297—Blaine v. Yeager, App., 44 N.E.2d 481—Dunn v. Curran, 29 N.E.2d 219, 65 Ohio App. 99—Engler v. Reed, 4 N.E.2d 170, 53 Ohio App. 15—Curtis v. Hubbel, 182 N.E. 589, 42 Ohio App. 520—Chapman v. Blackmore, 177 N.E. 772, 39 Ohio App. 425—Cleveland Ry. Co. v. Kuncic, 159 N.E. 96, 26 Ohio App. 275.

Okl.—Fauks v. Garrett, 235 P.2d 921, 205 Okl. 129—Kelly v. Employers Cas. Co., 214 P.2d 925, 202 Okl. 437.

Or.—DiNucci v. Hager, 200 P.2d 380, 184 Or. 555—Snyder v. Portland Traction Co., 185 P.2d 563, 182 Or. 344—Belknap v. Klaumann, 178 P.2d 154, 181 Or. 1—Frame v. Arrow Towing Service, 64 P.2d 1312, 155 Or. 522—Roemhild v. Home Ins. Co., 278 P. 87, 130 Or. 50.

Pa.—Nikisher v. Benninger, 105 A.2d 281, 377 Pa. 564.

Kelly v. Crawford, 8 A.2d 449, 137 Pa.Super. 197.

Tex.—Manlove v. Lavelle, Civ.App., 235 S.W. 324.

Utah.—Caperon v. Tuttle, 116 P.2d 402, 100 Utah 476, 135 A.L.R. 1399.

Vt.—Packard v. Quesnel, 22 A.2d 164, 112 Vt. 175.

Va.—Wallingford v. Karnes, 74 S.E.2d 161, 194 Va. 648—Reese v. Snelson, 65 S.E.2d 547, 192 Va. 479—Chappell v. White, 29 S.E.2d 858, 182 Va. 625—Shearin v. Virginia Electric & Power Co., 29 S.E.2d 841, 182 Va. 573—Russell v. Kelly, 23 S.E.2d 124, 180 Va. 304—Atlantic Co. v. Roberts, 20 S.E.2d 520, 179 Va. 669.

Wash.—Anderson v. Rohde, 278 P.2d 380, 46 Wash.2d 89—Rockey v. Glacier Gravel Co., 209 P.2d 291, 34 Wash.2d 492—Hanford v. Goehry, 167 P.2d 678, 24 Wash.2d 859—Neeley v. Bock, 50 P.2d 524, 184 Wash. 135—McCormick v. Hannenberg, 15 P.2d 939, 170 Wash. 133—Burge v. Anderson, 3 P.2d 131, 164 Wash. 509—Hunter v. Lincoln Stages, 297 P. 179, 161 Wash. 634—Eddy v. Speiger & Hurlbut, 201 P. 898, 117 Wash. 632—Johnson v. City of Seattle, 194 P. 417, 113 Wash. 487.

Wis.—Culver v. Webb, 12 N.W.2d 731, 244 Wis. 478—Beer v. Strauf, 296 N.W. 68, 236 Wis. 597—Scharine v. Huebsch, 234 N.W. 358, 203 Wis. 261.

42. Ala.—Pollard v. Rodgers, 173 So. 881, 234 Ala. 92—Mobile & O. R. Co. v. Williams, 129 So. 60, 221 Ala. 402.

Ariz.—City of Phœnix v. Green, 66 P.2d 1041, 49 Ariz. 376.

Ark.—Davis v. Scott, 235 S.W. 407, 151 Ark. 34.

Cal.—Campagna v. Market Street Ry. Co., 149 P.2d 281, 24 C.2d 304.

Conn.—Fine v. Connecticut Co., 103 A. 901, 92 Conn. 626.

Fla.—Seaboard Air Line Ry. v. Tomberlin, 70 So. 437, 70 Fla. 435.

Ill.—Grubb v. Illinois Terminal Co., 8 N.E. 934, 366 Ill. 330.

Linquist v. Illinois Cent. R. Co., 126 N.E.2d 745, 6 Ill.App.2d 209—Buglio v. Cummings, 45 N.E.2d 542, 317 Ill.App. 73—Zawada v. Lowden, 39 N.E.2d 399, 313 Ill.App. 151.

Ind.—New York Cent. Ry. Co. v. Powell, 47 N.E.2d 615, 221 Ind. 321.

Pittsburgh, C., C. & St. L. Ry. Co. v. Friend, 118 N.E. 598, 70 Ind. App. 366.

Iowa.—Smith v. Chicago, B. & Q. R. Co., 1 N.W.2d 225, 231 Iowa 278.

Ky.—Louisville & N. R. Co. v. Wright, 254 S.W. 204, 202 Ky. 633—Kentucky Traction & Terminal Co. v. Roschi's Adm'r, 216 S.W. 579, 186 Ky. 371.

Miss.—Heafner v. Columbus & G. R. Co., 190 So. 1, 185 Miss. 773—Yazoo & Mississippi Valley R. Co. v. Aultman, 173 So. 280, 179 Miss. 109—Adams-Newell Lumber Co. v. Jones, 139 So. 315, 162 Miss. 517—Gulf, M. & N. R. Co. v. Walters, 134 So. 831, 161 Miss. 313.

Mo.—Terrell v. Missouri-Kansas-Texas R. Co., 303 S.W.2d 641—Fitzpatrick v. St. Louis-San Francisco Ry. Co., 300 S.W.2d 490—Sheerin v. St. Louis Public Service Co., 300 S.W.2d 483—Jones v. Chicago, R. I. & P. Ry. Co., 108 S.W.2d 94, 341 Mo. 640—Phillips v. St. Louis-San Francisco Ry. Co., 87 S.W.2d 1035, 337 Mo. 1068.

Keyton v. Missouri-Kansas-Texas R. R., App., 224 S.W.2d 616—Robinson v. Missouri-Kansas-Texas R. Co., App., 123 S.W.2d 624—Little v. Manufacturers Ry. Co., App., 123 S.W.2d 220—McCullough v. Chicago, R. I. & P. R. Co., App., 88 S.W.2d 400—Smith v. Anderson Motor Service Co., App., 273 S.W. 741—Brimer v. Davis, 245 S.W. 404, 211 Mo.App. 47—Simon v. Metropolitan St. Ry. Co., App., 213 S.W. 147—Isreal v. Wabash R. Co., App., 190 S.W. 1015—Rice v. Jefferson City Bridge & Transit Co., App., 186 S.W. 568.

N.J.—Jelinek v. Sotak, 86 A.2d 684, 9 N.J. 19.

Lambert v. Trenton & Mercer County Traction Corporation, 127 A. 674, 3 N.J.Misc. 237.

N.Y.—Mead v. Louer, 33 N.E.2d 534, 285 N.Y. 230.

Rutkowski v. Lehigh Valley R. Co., 288 N.Y.S. 194, 247 App.Div. 575.

N.C.—Collingwood v. Winston Salem Southbound Ry. Co., 62 S.E.2d 87, 232 N.C. 724.

S.C.—Padgett v. Southern Ry. Co., 65 S.E.2d 297, 219 S.C. 353—Sanders v. Southern Ry. Co., Carolina Division, 81 S.E. 786, 97 S.C. 423.

Va.—Virginia Electric & Power Co. v. Courtney, 27 S.E.2d 917, 182 Va. 175—Norfolk & W. Ry. Co. v. Faris, 157 S.E. 819, 156 Va. 205.

43. Ala.—Alabama Power Co. v. Carroll, 94 So. 743, 208 Ala. 426.

Cal.—Hyman v. Market St. Ry. Co., 107 P.2d 485, 41 C.A.2d 647.

Ill.—Chevalier v. Chicago Transit Authority, 86 N.E.2d 838, 338 Ill. App. 119—Smith v. Illinois Power & Light Corp., 6 N.E.2d 257, 288 Ill.App. 629.

Miss.—Yazoo & M. V. R. Co. v. Alexander, 179 So. 266, 182 Miss. 654—Teche Lines v. Britt, 170 So. 294, 176 Miss. 681.

Mo.—Wagner v. Missouri-Kansas-Texas R. Co., 275 S.W.2d 262, 50 A.L.R.2d 1062—McDonnell v. St. Louis Public Service Co., 249 S.W.2d 412—Grace v. St. Louis Public Service Co., 249 S.W.2d 409—Winston v. Kansas City Public Service Co., 249 S.W.2d 377—Biehle v. Frazier, 232 S.W.2d 465, 360 Mo. 1068.

Hoeller v. St. Louis Public Service Co., App., 199 S.W.2d 7—Hellar v. Kansas City Rys. Co., App., 237 S.W. 811.

N.J.—Hodgson v. Pohl, 83 A.2d 783, 16 N.J.Super. 87, affirmed 89 A.2d 24, 9 N.J. 488.

the negligent operation of a railroad or a street railroad.[44]

The rule has likewise been applied in actions for injury to property,[45] for libel,[46] for malicious prosecution,[47] for malpractice,[48] on contracts,[49] on con-

Or.—Burk v. Portland Traction Co., 164 P.2d 720, 177 Or. 645.
R.I.—Carpenter v. United Elec. Rys. Co., 100 A.2d 850, 81 R.I. 196.
Tex.—San Antonio Traction Co. v. Cox, Civ.App., 184 S.W. 722.
W.Va.—Mulroy v. Co-operative Transit Co., 95 S.E.2d 63.

44. Ark.—Long Bell Lumber Co. v. Tarver, 118 S.W.2d 282, 196 Ark. 275—Ft. Smith, S. & R. I. R. Co. v. Moore, 266 S.W. 971, 166 Ark. 459.
Ga.—Southern Marble Co. v. Pinyon, 86 S.E. 1086, 144 Ga. 259.
Mitchell v. J. S. Schofield's Sons Co., 85 S.E. 978, 16 Ga.App. 686.
Ill.—Lavigne v. Chicago, M., St. P. & P. R. Co., 4 N.E.2d 785, 287 Ill.App. 253, 268, certiorari denied 58 S.Ct. 32, 302 U.S. 688, 82 L.Ed. 532
Ky.—Louisville & N. R. Co. v. Stewart, 142 S.W.2d 119, 283 Ky. 585—Chesapeake & O. Ry. Co. v. Holbrook, 271 S.W. 583, 208 Ky. 488—Central Consumers' Co. v. Lamberg, 242 S.W. 12, 195 Ky. 131—Davis' Adm'r v. Cincinnati, N. O. & T. P. Ry. Co., 188 S.W. 1061, 172 Ky. 55, Ann.Cas.1918E 414.
Mo.—Hatfield v. Thompson, 252 S.W. 2d 534—Jones v. Terminal R. R. Ass'n of St. Louis, 242 S.W.2d 473—Banta v. Union Pac. R. Co., 242 S.W.2d 34, 362 Mo. 421—Seago v. New York Cent. R. Co., 164 S.W.2d 336, 349 Mo. 1249, 147 A.L.R. 372—Steeley v. Kurn, 157 S.W.2d 212, 348 Mo. 1142—Gandy v. St. Louis-San Francisco Ry. Co., 44 S.W.2d 634, 329 Mo. 459—Lopez v. Hines, 254 S.W. 37.
Marsanick v. Luechtefeld, App., 157 S.W.2d 537—Marlow v. American Car & Foundry Co., App., 282 S.W. 522—Reynolds v. Al. G. Barnes Amusement Co., 253 S.W. 140, 214 Mo.App. 391—Hunter v. American Brake Co., App., 231 S.W. 659—Cowan v. Hydraulic Press Brick Co., App., 222 S.W. 924.
Neb.—Ellis v. Union Pac. R. Co., 27 N.W.2d 921, 148 Neb. 515.
N.Y.—Garety v. Charles Meads & Co., 286 N.Y.S. 297, 247 App.Div. 3.
Adelstein v. Roebling Const. Co., 159 N.Y.S. 36, 95 Misc. 125.
Ohio.—Helvich v. George A. Rutherford Co., 114 N.E.2d 514, 96 Ohio App. 367, appeal dismissed Helvich v. Eastman Kodak Stores, 117 N.E. 2d 439, 160 Ohio St. 571—Kay v. Pennsylvania R. Co., App., 102 N.E. 2d 855.
Or.—Hoffman v. Broadway Hazelwood, 10 P.2d 349, 139 Or. 519, 83 A.L.R. 1008, rehearing denied, 11 P.2d 814, 139 Or. 519, 83 A.L.R. 1008.
Tex.—St. Louis Southwestern Ry. Co. of Texas v. Weatherly, Civ.App., 2 S.W.2d 555—Dallas Fair Park Amusement Ass'n v. Barrentine, Civ.App., 187 S.W. 710.

45. Ark.—Ayer-Lord Tie Co. v. Puckett, 273 S.W. 715, 169 Ark. 271.
Ga.—Northern Freight Lines, Inc. v. Turner, 91 S.E.2d 372, 93 Ga.App. 309—Baldwin v. Georgia Automatic Gas Co., 70 S.E.2d 108, 85 Ga.App. 767—Alabama Great Southern R. Co. v. Robertson, 141 S.E. 215, 37 Ga.App. 638.
Ky.—Louisville & N. R. Co. v. Howe, 243 S.W.2d 905—Allen v. Large, 239 S.W.2d 225.
Mass.—Barnes v. Commonwealth, 25 N.E.2d 737, 305 Mass. 339, 127 A.L.R. 104.
Mo.—Neely v. Freeze, 225 S.W.2d 144, 240 Mo.App. 1001—Newkirk v. City of Tipton, 136 S.W.2d 147, 234 Mo. App. 920.
Mont.—Butte Miners' Union v. City of Butte, 194 P. 149, 58 Mont. 391, 13 A.L.R. 746.
Neb.—Clark v. Cedar County, 225 N. W. 235, 118 Neb. 465.
N.Y.—Potomac Ins. Co. v. Donovan, 112 N.Y.S.2d 714, 279 App.Div. 1135.
N.C.—Baxley v. Cavenaugh, 92 S.E. 2d 68, 243 N.C. 677—Childress v. Johnson Motor Lines, 70 S.E.2d 558, 235 N.C. 522—Walker v. American Bakeries Co., 67 S.E.2d 459, 234 N.C. 440.

46. Ky.—McClintock v. McClure, 188 S.W. 867, 171 Ky. 714, Ann.Cas. 1918E, 96.
Okl.—German-American Ins. Co. v. Huntley, 161 P. 815, 62 Okl. 39.
W.Va.—Homes v. Monongahela Power Co., 69 S.E.2d 131, 136 W.Va. 877.

47. Miss.—O'Bryant v. Coleman, 154 So. 259, 169 Miss. 776.
Miss.—Webb v. Byrd, 219 S.W. 683, 203 Mo.App. 589.
S.D.—Vander Linden v. Oster, 156 N. W. 911, 37 S.D. 113.
Utah.—Thomas v. Frost, 27 P.2d 459, 83 Utah 207.
W.Va.—Show v. Mount Vernon Farm Dairy Products, 23 S.E.2d 68, 125 W.Va. 116.

48. Ark.—Black v. Bearden, 268 S. W. 27, 167 Ark. 455.
Cal.—Ales v. Ryan, 64 P.2d 409, 8 C. 2d 82.
Smith v. Makaroff, App., 308 P.2d 912.
Neb.—In re Johnson's Estate, 16 N. W.2d 504, 145 Neb. 333.
Ohio.—Dietsch v. Mayberry, 47 N.E. 2d 404, 70 Ohio App. 527—Manley v. Coleman, 19 Ohio App. 284.

Charge which limited the jury to testimony of plaintiff herself was prejudicial, where testimony had been given by others supporting her claim.
Ohio.—Manley v. Coleman, supra.

49. Ala.—Abercrombie v. Martin & Hoyt Co., 150 So. 497, 227 Ala. 510.
Ark.—O. L. Gregory Vinegar Co. v. National Fruit Canning Co., 268 S. W. 598, 167 Ark. 435—C. A. Rees & Co. v. Road Improvement Dist. No. 1, of Clark County, 267 S.W. 770, 167 Ark. 383—Dierks Special School Dist. v. Van Dyke, 237 S.W. 428, 152 Ark. 27—Worthen v. Smith, 229 S.W. 737, 148 Ark. 278.
Cal.—Steelduct Co. v. Henger-Seltzer Co., 160 P.2d 804, 26 C.2d 634—Davenport v. Stratton, 149 P.2d 4, 24 C.2d 232.
Colo.—O'Done v. Shulman, 238 P.2d 1117, 124 Colo. 445.
Ga.—Lester v. Baxter, 191 S.E. 429, 184 Ga. 368, 111 A.L.R. 493.
Nelson v. Huber & Huber Express, 54 S.E.2d 462, 79 Ga.App. 721—Jessup v. Humphreys, 166 S. E. 681, 46 Ga.App. 68—C. J. Davison & Co. v. Davis, 116 S.E. 15, 29 Ga.App. 422.
Ill.—Palmer v. Mayer, 71 N.E.2d 822, 330 Ill.App. 619—Interocean Mercantile Corporation v. Sawyer Biscuit Co., 253 Ill.App. 551.
Iowa.—Hustead v. Saar, 191 N.W. 795, 195 Iowa 145—W. T. Rawleigh Medical Co. v. Bane, 165 N.W. 42, 181 Iowa 734.
Ky.—Stephens v. Broyles, 225 S.W.2d 319, 311 Ky. 717—Pilcher v. Stadler, 124 S.W.2d 475, 276 Ky. 450.
Me.—Flaherty v. Maine Motor Carriage Co., 104 A. 627, 117 Me. 376.
Mass.—Corbett v. A. Freedman & Sons, 161 N.E. 415, 263 Mass. 391—Mark v. Stuart-Howland Co., 115 N.E. 42, 226 Mass. 35, 2 A.L.R. 678.
Mich.—Murphy v. Gifford, 200 N.W. 263, 228 Mich. 287.
Mo.—Brown v. Green, App., 168 S.W. 2d 464—C. H. Robinson Co. v. Frissell, App., 132 S.W.2d 1049—Law Reporting Co. v. Laredo Electric & Ry. Co., App., 255 S.W. 918—Vance v. Anderson, App., 255 S.W. 322.
Neb.—Hansen v. E. L. Bruce Co., 77 N.W.2d 458, 162 Neb. 759.
N.H.—Daley v. Metropolitan Life Ins. Co., 128 A. 531, 81 N.H. 502.
N.Y.—Walsh v. Braden, 300 N.Y.S. 614, 252 App.Div. 621—Harnick v. Avrum Realty Corp., 288 N.Y.S. 256, 248 App.Div. 385—Zurich General Accident & Liability Ins. Co., Limited, of Zurich, Switzerland v. Union Ferry Co. of New York & Brooklyn, 190 N.Y.S. 468, 198 App. Div. 307—Swift v. Poole, 157 N.Y.S. 928, 172 App.Div. 10.
Harris v. Morton & Co., 167 N.Y. S. 80, 101 Misc. 398.
Heuman v. Kapper, 178 N.Y.S. 315—Higgins & Higgins v. Crane, 166 N.Y.S. 1060—Siegel v. Harrington, 163 N.Y.S. 589.

tracts of insurance,[50] on a note,[51] on open account,[52] to cancel oil leases,[53] to recover money,[54] against a carrier for loss or injury to goods,[55] and against a surety.[56] The rule has been applied in actions of assumpsit,[57] actions involving boundary disputes,[58] actions on claims for services,[59] actions for conversion,[60] actions in detinue[61] or replevin,[61.5] and ac-

Ohio.—First Federal Sav. & Loan Ass'n v. Williams, App., 91 N.E.2d 34.
Okl.—Vogel v. Rushing, 212 P.2d 665, 202 Okl. 279—Western Silo Co. v. Cousins, 184 P. 92, 76 Okl. 154.
Or.—Hunt v. Bishop, 229 P.2d 960, 191 Or. 541—Waller v. City of New York Ins. Co., 164 P. 959, 84 Or. 284.
Pa.—Lowry v. Yutzy, 62 Pa.Super. 173.
R.I.—Mansuete v. Cinquegrano, 130 A. 497.
Utah.—Wilcock v. Baker, 238 P. 253, 65 Utah 435.
Vt.—Mt. Ida School v. Gilman, 123 A. 198, 97 Vt. 331.
Wash.—Lasser v. Grunbaum Bros. Furniture Co., 281 P.2d 832, 46 Wash.2d 408.
Wis.—O'Brien v. Dane County, 292 N.W. 440, 235 Wis. 59—Bradley v. Harper, 180 N.W. 130, 173 Wis. 103.

50. Ala.—Franklin Fire Ins. Co. of Philadelphia, Pa., v. Slaton, 183 So. 865, 236 Ala. 565.
Ark.—Atlas Life Ins. Co. of Tulsa, Okl., v. Bolling, 53 S.W.2d 1, 186 Ark. 218.
Ga.—Concordia Fire Ins. Co. v. Hardman, 11 S.E.2d 79, 63 Ga.App. 320—Riley v. Federal Ins. Co., 5 S.E.2d 246, 60 Ga.App. 764.
Ill.—Olympia Fields Country Club v. Bankers Indem. Ins. Co., 60 N.E.2d 896, 325 Ill.App. 649.
Ind.—Home Ins. Co. v. Mathis, 32 N.E.2d 108, 109 Ind.App. 25.
Ky.—North American Accident Ins. Co. v. McAlister, 160 S.W.2d 385, 290 Ky. 88—Royal Exchange Assur. of London, England, v. Collins, 20 S.W.2d 1023, 231 Ky. 31.
Mass.—Womble v. Dubuque Fire & Marine Ins. Co., 37 N.E.2d 263, 310 Mass. 142.
Miss.—Interstate Life & Accident Co. v. Cooley, 117 So. 267, 150 Miss. 502.
Mo.—Foster v. Ætna Life Ins. Co. of Hartford, Conn., 176 S.W.2d 482, 352 Mo. 166—State ex rel. Mutual Ben. Health & Accident Ass'n v. Hughes, 174 S.W.2d 859, 351 Mo. 1081.
Toler v. Missouri Ins. Co., App., 243 S.W.2d 788—Zips v. Mutual Benefit Health & Accident Ass'n, App., 176 S.W.2d 66—Blue v. Supreme Camp of American Woodmen, App., 135 S.W.2d 373—Stout v. Independent Order of Foresters, App., 115 S.W.2d 32—Kelley v. United Mut. Ins. Ass'n, App., 112 S.W.2d 929—Finley v. Continental Ins. Co. of City of New York, App., 299 S.W. 1107.
N.Y.—Abbott v. Prudential Ins. Co. of America, 8 N.Y.S.2d 957, 255 App.Div. 677, affirmed 24 N.E.2d 87, 281 N.Y. 375, reargument denied 25 N.E.2d 141, 282 N.Y. 585.
Ohio.—John Hancock Mut. Life Ins. Co. v. Hatchie, 182 N.E. 53, 42 Ohio App. 398.
Okl.—Mid-Continent Life Ins. Co. v. Christian, 23 P.2d 672, 164 Okl. 161.
Pa.—Steele v. Armstrong County Mut. Fire Ins. Co., 157 A. 605, 305 Pa. 259.

51. Ga.—Scott v. Gaulding, 8 S.E.2d 766, 60 Ga.App. 306—Virginia-Carolina Chemical Corporation v. Burton, 157 S.E. 384, 42 Ga.App. 711.
Mo.—Atchison v. Weakley, 148 S.W.2d 745, 347 Mo. 743.
Brown v. Perrine, App., 100 S.W.2d 329—Wilcox v. McKinney, App., 68 S.W.2d 741.
N.C.—National Bank of Burlington v. Marshburn, 9 S.E.2d 372, 217 N.C. 688.
Okl.—Waidley v. Smith, 16 P.2d 577, 160 Okl. 185.
R.I.—Aylward v. Rudis, 104 A.2d 557, 81 R.I. 474.

In an action against an indorser

(1) An instruction that, if presentment for payment was made to the indorser, presentment to the makers was not necessary, has been held prejudicial error.
Ohio.—Wehnes v. Schliewe, 192 N.E. 12, 47 Ohio App. 452.

(2) An instruction that notice of dishonor need not be given to the indorser, when the indorser is the person to whom the instrument is presented for payment, has been held prejudicial error.
Ohio.—Wehnes v. Schliewe, supra.

52. Okl.—Branum v. Burns, 247 P. 58, 121 Okl. 5.

53. Tex.—Smith v. Fleming, Civ. App., 231 S.W. 136, motion overruled 231 S.W. 1117.

54. Miss.—Rex Nitrogen & Gas Co. v. Hill, 57 So.2d 173, 213 Miss. 698, suggestion of error overruled 57 So.2d 569, 213 Miss. 698.
Mo.—Martin v. First Nat. Bank in St. Louis, 219 S.W.2d 312, 358 Mo. 1199, 8 A.L.R.2d 435.
Alexander v. Llewellyn, App., 70 S.W.2d 115.
Ohio.—Womack v. Hollon, App., 102 N.E.2d 26.
R.I.—Dante State Bank v. Calenda, 183 A. 873, 56 R.I. 68.
S.C.—Oswald v. Lawton, 196 S.E. 535, 187 S.C. 42.
Utah.—Koutsis v. Zion's Sav. Bank & Trust Co., 225 P. 339, 63 Utah 254.
Vt.—Beauregard v. Orleans Trust Co., 182 A. 182, 108 Vt. 42.

55. Ga.—Louisville & N. R. Co. v. Hogg, 142 S.E. 571, 38 Ga.App. 56—Hines v. Duncan & Nelms, 104 S.E. 519, 25 Ga.App. 712.
Ky.—American Ry. Express Co. v. McGee, 281 S.W. 980, 213 Ky. 736.
Mo.—McFall v. Chicago, B. & Q. R. Co., 168 S.W. 341, 181 Mo.App. 142.
S.D.—Stratton v. Chicago, M. & St. P. Ry. Co., 168 N.W. 757, 41 S.D. 79.
Tex.—San Antonio & A. P. Ry. Co. v. Shankle & Lane, Civ.App., 183 S.W. 115.

56. Ga.—Sherman v. Stephens, 118 S.E. 567, 30 Ga.App. 509.
Tex.—Baker v. Drake, Civ.App., 185 S.W. 879.

57. R.I.—Coop v. Frederick H. Bishop Co., 136 A. 843, 48 R.I. 227.

58. Ala.—Denton v. Corr, 33 So.2d 625, 250 Ala. 149.
Ark.—Dickinson v. Stephenson, 248 S.W.2d 389, 220 Ark. 495—Sherrin v. Coffman, 219 S.W. 348, 143 Ark. 8.

Instruction as to survey

In an action involving a boundary dispute between adjoining owners, an instruction that the county surveyor's survey was prima facie evidence of the correct line, where the official record of such survey was not placed in the evidence, and the only evidence thereof was the county surveyor's oral testimony, is erroneous and prejudicial, there being no evidence to which the instruction could apply.
Ark.—Sherrin v. Coffman, 219 S.W. 348, 143 Ark. 8.

59. Ky.—Ford v. Hurt, 265 S.W.2d 475.
Mich.—Storm v. Eldridge, 58 N.W.2d 129, 336 Mich. 424—Lord v. Winningham, 11 N.W.2d 897, 307 Mich. 300.
Mo.—Roller v. Montgomery's Estate, App., 45 S.W.2d 945.

60. Colo.—Adams v. Guiraud, 169 P. 580, 69 Colo. 112.
Mo.—Cory v. Interstate Securities Co., App., 99 S.W.2d 861.
N.J.—Stannard v. Shell Eastern Petroleum Products, 187 A. 191, 117 N.J.Law 163.
Ohio.—Metropolitan Securities Corporation v. Kalfas, 178 N.E. 848, 40 Ohio App. 438.

61. Va.—Virginia Land Immigration Bureau v. Perrow, 89 S.E. 891, 119 Va. 831.

61.5 Mo.—Ball v. Davis, App., 107 S.W.2d 87.
Neb.—Snyder v. Lincoln, 45 N.W.2d 749, 153 Neb. 611.

tions in ejectment.[62]

This principle has been applied in respect of instructions on the elements and measure of damages or amount recoverable,[63] adverse possession,[64] agency,[65] breach of warranty,[66] character of personal injuries sustained,[67] contributory negligence,[68]

62. Ga.—Smith v. Lanier, 42 S.E.2d 495, 202 Ga. 165.
Kan.—Brinkerhoff v. Home Trust & Savings Bank, 205 P. 779, 109 Kan. 700, 111 Kan. 1.
Miss.—Harris v. McMullan, 54 So.2d 544, 212 Miss. 382.

63. Ala.—Blackmon v. Gilmer, 130 So. 192, 221 Ala. 554—Norman v. Bullock County Bank, 65 So. 371, 187 Ala. 33.
Ark.—Schneider v. Fairmon, 194 S.W. 251, 128 Ark. 425.
Cal.—Edmunds v. Atchison, T. & S. F. Ry. Co., 162 P. 1038, 174 C. 246.
Hall v. Berkell, 279 P.2d 832, 130 C.A.2d 800.
Colo.—Order of Railway Conductors v. Jones, 239 P. 882, 78 Colo. 80—Bijou Irr. Dist. v. Cateran Land & Live Stock Co., 213 P. 999, 73 Colo. 93—Western Light & Power Co. v. Poor, 194 P. 613, 69 Colo. 380.
Roberts v. Lehl, 149 P. 851, 27 Colo.App. 351.
Conn.—Silverman v. Springfield Advertising Co., 179 A. 98, 120 Conn. 55—Adams v. Pierce, 110 A. 50, 94 Conn. 613.
Fla.—Florida East Coast Ry. Co. v. Carter, 65 So. 254, 67 Fla. 335, Ann. Cas.1916E 1299.
Ga.—Mitchell v. Mullen, 164 S.E. 278, 45 Ga.App. 285—West v. Moore, 160 S.E. 811, 44 Ga.App. 214—Georgia Ry. & Power Co. v. Britt, 119 S.E. 460, 31 Ga.App. 54.
Idaho.—Nordquist v. W. A. Simons Co., 28 P.2d 207, 53 Idaho 761—Koch v. Glenn, 27 P.2d 870—Osier v. Consumers' Co., 239 P. 735, 41 Idaho 268.
Ill.—Wilkins v. Benevolent Protective Order of Elks, Lodge No. 623, 125 N.E.2d 549, 5 Ill.App.2d 370—Levinthal v. Chicago Transit Authority, 102 N.E.2d 545, 345 Ill.App. 185—Russell v. Consolidated Forwarding Corp., 62 N.E.2d 44, 327 Ill.App. 204.
Ind.—Conder v. Rowley, 34 N.E.2d 162, 109 Ind.App. 268—Chicago, I. & L. Ry. Co. v. Blankenship, 154 N.E. 44, 85 Ind.App. 332—Vandalia R. Co. v. Topping, 126 N.E. 485, 72 Ind.App. 694.
Iowa.—Hinrichs v. Mengel, 293 N.W. 452, 228 Iowa 1124.
Kan.—Mitchell v. Dawson, 191 P.2d 913, 164 Kan. 630—United Iron Works v. L. J. Smith Const. Co., 227 P. 369, 116 Kan. 482.
Ky.—Kentucky Transport Co. v. Campbell, 186 S.W.2d 409, 299 Ky. 555—V. T. C. Lines v. Taylor, 134 S.W.2d 991, 281 Ky. 83—Chesapeake & O. Ry. Co. v. Caudill, 109 S.W.2d 20, 270 Ky. 107—Middlesboro Coca Cola Bottling Works v. Ball, 89 S.W.2d 875, 262 Ky. 101—Standard Oil Co. of Kentucky v. Bentley, 84 S.W.2d 20, 260 Ky. 185—Louisville & N. R. Co. v. Johnson, 282 S.W. 1087, 214 Ky. 189—Central Consumers' Co. v. Lamberg, 242 S.W. 12, 195 Ky. 131—McHenry Coal Co. v. Taylor, 176 S.W. 976, 165 Ky. 144.
Md.—Atholwood Development Co. v. Houston, 19 A.2d 706, 179 Md. 441.
Minn.—Poynter v. Otter Tail County, 25 N.W.2d 708, 223 Minn. 121.
Miss.—Wells v. Branscome, 74 So.2d 743, 222 Miss. 1—Pascagoula Nat. Bank v. Eberlein, 131 So. 812, 161 Miss. 337.
Mo.—Shelley v. Ozark Pipe Line Corporation, 37 S.W.2d 518, 327 Mo. 238, 75 A.L.R. 1316—Rosenzweig v. Wells, 273 S.W. 1071, 308 Mo. 617—Elliott v. Chicago, M. & St. P. Ry. Co., 236 S.W. 17.
Vogelgesang v. Waelder, App., 238 S.W.2d 849—Svehla v. Taxi Owners Ass'n, App., 157 S.W.2d 225—Farrell v. Kroger Grocer & Baking Co., App., 71 S.W.2d 1076—Wuest v. Dorman, 54 S.W.2d 1000, 227 Mo.App. 405—Stelmach v. Saul, App., 50 S.W.2d 721—Vaughn v. Conran, App., 20 S.W.2d 968—Bruton v. Chicago, R. I. & P. Ry. Co., 16 S.W.2d 604, 223 Mo.App. 583—Tyon v. Wabash Ry. Co., 232 S.W. 786, 207 Mo.App. 322—Shrum v. Brill, App., 230 S.W. 367—Laycock v. United Rys. Co. of St. Louis, App., 227 S.W. 883, certified questions answered 235 S.W. 91, 290 Mo. 344—Berry v. City of Sedalia, App., 221 S.W. 757—Mulloy v. Beal & McNamara Painting Co., App., 214 S.W. 405—Roberts v. Trunk, 166 S.W. 841, 179 Mo.App. 358.
Neb.—Jensen v. Omaha & C. B. St. Ry. Co., 257 N.W. 257, 128 Neb. 21—Gibbons v. Chicago, B. & Q. Ry. Co., 154 N.W. 226, 98 Neb. 696.
N.Y.—Orester v. Dayton Rubber Mfg. Co., 126 N.E. 510, 228 N.Y. 134.
Warren v. Dearstyne Bros. Tobacco Co., 87 N.Y.S.2d 250, 274 App. Div. 664.
Fletcher v. Elliott-Fisher Co., 153 N.Y.S. 885.
N.C.—Marshburn v. Patterson, 85 S.E.2d 683, 241 N.C. 441—Chesson v. Kieckhefer Container Co., 1 S.E.2d 357, 215 N.C. 112—Narron v. Holleman Chevrolet Co., 171 S.E. 93, 205 N.C. 307.
N.D.—Swords v. McDonell, 154 N.W. 258, 31 N.D. 494.
Ohio.—Stemper v. Campbell, 97 N.E. 2d 25, 155 Ohio St. 1.
Brush v. Eastern Motor Dispatch, App., 104 N.E.2d 700—Cleveland Ry. Co. v. Lesko, 177 N.E. 606, 39 Ohio App. 339—Swisher v. Kimbrough, 157 N.E. 823, 25 Ohio App. 233.
Or.—Turner v. McMillan, 14 P.2d 294, 140 Or. 407.
Pa.—Barton v. Saylor, 122 A. 219, 278 Pa. 149.
S.D.—McGovern v. Murray Taxi Co., 60 N.W.2d 211, 75 S.D. 151—Vander Linden v. Oster, 156 N.W. 911, 37 S.D. 113.
Tex.—American Produce Co. v. Gonzales, Com.App., 1 S.W.2d 602—Eastern Texas Electric Co. v. Baker, Com.App., 254 S.W. 933.
Young v. Howell, Civ.App., 236 S.W.2d 247.
Utah.—Littledike v. Wood, 255 P. 172, 69 Utah 323.
Va.—Litton v. Woliver, 100 S.E. 827, 126 Va. 32.
Wash.—Nelson v. Fairfield, 244 P.2d 244, 40 Wash.2d 496—Shaffer v. Walther, 232 P.2d 94, 38 Wash.2d 786—Shay v. Parkhurst, 229 P.2d 510, 38 Wash.2d 341—Lamb v. Mason, 176 P.2d 342, 26 Wash.2d 879—Gosa v. Hyde, 202 P. 274, 117 Wash. 672—Van Liew v. Atwood, 197 P. 921, 115 Wash. 580.
W.Va.—Drummond v. Cook Motor Lines, 67 S.E.2d 337, 136 W.Va. 293.
4 C.J. p 1036 note 68.

64. Ark.—Phelps v. Higgins, 257 S. W.2d 25, 222 Ark. 1.
Ga.—Robertson v. Abernathy, 16 S. E.2d 584, 192 Ga. 694.
N.C.—Matthews v. Myatt, 90 S.E. 150, 172 N.C. 230.

65. Conn.—Pentino v. Gallo, 140 A. 105, 107 Conn. 242.
Ga.—Swint v. Milner Banking Co., 119 S.E. 336, 30 Ga.App. 733.
Iowa.—Conner v. Henry, 207 N.W. 119, 201 Iowa 253.
Okl.—First Nat. Bank v. Madill Produce Co., 289 P. 714, 144 Okl. 67.
4 C.J. p 1036 note 73.

66. Okl.—Meyer & Greenwald Const. Co. v. Salina Gravel Co., 277 P. 274, 136 Okl. 214.

67. Minn.—Schaar v. Conforth, 151 N.W. 275, 128 Minn. 460.
4 C.J. p 1036 note 71.

68. Ala.—Preston v. LaSalle Apartments, 3 So.2d 411, 241 Ala. 540—Johnson v. Louisville & N. R. Co., 127 So. 216, 220 Ala. 649—Allen v. Birmingham Southern R. Co., 97 So. 93, 210 Ala. 41.
Ariz.—Wolfswinkel v. Southern Pac. Co., 305 P.2d 447, 81 Ariz. 302, adhered to 307 P.2d 1040, 82 Ariz. 33.
Cal.—Pierce v. Black, 280 P.2d 913, 131 C.A.2d 521—Kinnear v. Martinelli, 258 P. 686, 84 C.A. 721.
Colo.—Brakhahn v. Hildebrand, 301 P.2d 347, 134 Colo. 197.

conversion,[69] custom,[70] duress,[71] estoppel,[72] | fraud,[73] last clear chance,[74] negligence,[75] presump-

Conn.—Sacks v. Connecticut Co., 146 A. 494, 109 Conn. 221.
Ga.—Woodall v. Georgia Power Co., 165 S.E. 311, 45 Ga.App. 526.
Idaho.—Pearson v. City of Weiser, 206 P.2d 264, 69 Idaho 253.
Ind.—Chicago & E. R. Co. v. Steele, 108 N.E. 4, 183 Ind. 444.
Davis v. Dondanville, 26 N.E.2d 568, 107 Ind.App. 665.
Iowa.—Steward v. Hilton, 77 N.W.2d 637, 247 Iowa 988—Swan v. Dalbey, 179 N.W. 313, 189 Iowa 1046.
Ky.—Allen v. Large, 239 S.W.2d 225—Lamb v. Clark, 138 S.W.2d 350, 282 Ky. 167—Epperson v. Wright, 126 S.W.2d 123, 277 Ky. 205—Adams v. Parrish, 225 S.W. 467, 189 Ky. 628.
Md.—Brooks v. Sun Cab Co., 117 A.2d 554, 208 Md. 236.
Mo.—Toburen v. Carter, 273 S.W.2d 161—Stumpf v. Panhandle Eastern Pipeline Co., 189 S.W.2d 223, 354 Mo. 208—Collins v. Beckmann, 79 S.W.2d 1052—McKenna v. Lynch, 233 S.W. 175, 289 Mo. 16.
Billingsley v. Kansas City Public Service Co., App., 191 S.W.2d 331—Stewart v. Wenger, App., 125 S.W. 2d 537—Tappmeyer v. Ryckoff, App., 45 S.W.2d 890—Yakoboski v. Wells, App., 253 S.W. 72.
Mont.—Adami v. Murphy, 164 P.2d 150, 118 Mont. 172.
Neb.—Fries v. Goldsby, 80 N.W.2d 171, 163 Neb. 424—Anderson v. Nielsen, 75 N.W.2d 372, 162 Neb. 110—Driekosen v. Black, Sivalls & Bryson, Inc., 64 N.W.2d 88, 158 Neb. 531—Weisenmiller v. Nestor, 49 N.W.2d 679, 154 Neb. 839—Hendrix v. Vana, 45 N.W.2d 429, 153 Neb. 531—Novak v. Laptad, 40 N.W.2d 331, 152 Neb. 87—Klause v. Nebraska State Bd. of Agriculture, 35 N.W.2d 104, 150 Neb. 466—Floyd v. Edwards, 33 N.W.2d 555, 150 Neb. 41—Allen v. Clark, 28 N.W.2d 439, 148 Neb. 627—Blank v. Omaha & Council Bluffs St. Ry. Co., 290 N.W. 464, 137 Neb. 632.
N.M.—Blewett v. Barnes, 309 P.2d 976, 62 N.M. 300.
N.Y.—Koenig v. Patrick Const. Corp., 83 N.E.2d 133, 298 N.Y. 313, 10 A.L.R.2d 848.
Grossman v. Hudson Transit Corp., 96 N.Y.S.2d 674, 276 App.Div. 1074—Perry v. Dosch-King Co., 45 N.Y.S.2d 841, 267 App.Div. 350.
N.C.—Darden v. Leemaster, 78 S.E.2d 448, 238 N.C. 573.
Ohio.—Britton v. City of Lakewood, 97 N.E.2d 78, 89 Ohio App. 150—Shults v. Hinamon, 87 N.E.2d 261, 84 Ohio App. 362—Kolp v. Stevens, 186 N.E. 821, 45 Ohio App. 147—Williams v. Burrell, 182 N.E. 889, 43 Ohio App. 341.
Wiley v. Allen, 14 Ohio Supp. 40.
Cincinnati Union Bethel v. Schy, 26 Ohio Cir.Ct.,N.S., 298.
Okl.—Kelly v. Employers Cas. Co., 214 P.2d 925, 202 Okl. 437—Cosden Pipe Line Co. v. Berry, 210 P. 141, 87 Okl. 237.
Or.—Whiting v. Andrus, 144 P.2d 501, 173 Or. 133.
Pa.—Connelly v. Kaufmann & Baer Co., 37 A.2d 125, 349 Pa. 261, 152 A.L.R. 555.
Tex.—Weisner v. Missouri, K. & T. Ry. Co. of Texas, Com.App., 207 S.W. 904.
Utah.—Johnson v. Lewis, 240 P.2d 498, 121 Utah 218.
Wash.—Leavitt v. De Young, 263 P. 2d 592, 43 Wash.2d 701.
W.Va.—Underwood v. Goff, 49 S.E.2d 860, 131 W.Va. 662—Skaff v. Dodd, 44 S.E.2d 621, 130 W.Va. 540.
4 C.J. p 1036 note 70.

69. Ga.—Universal Credit Co. v. Starrett, 6 S.E.2d 80, 61 Ga.App. 132.
Mo.—Kegan v. Park Bank of St. Joseph, 8 S.W.2d 858, 320 Mo. 623, modified on other grounds 15 S.W. 2d 333, 320 Mo. 623.

70. Miss.—Allen v. Gaddis, 100 So. 29, 135 Miss. 293.
Wash.—Washington Brick, Lime & Sewer Pipe Co. v. Anderson, 29 P. 2d 690, 176 Wash. 416.

71. Iowa.—Gray v. Shell Petroleum Corporation, 237 N.W. 460, 212 Iowa 825.

72. Iowa.—Mitchell v. Burgher, 249 N.W. 357, 216 Iowa 869.

73. Ga.—Anderson v. Thornton, 106 S.E. 89, 151 Ga. 141—Pfleiger v. Jones, 94 S.E. 580, 147 Ga. 473.
Ill.—Selimos v. Christ, 73 N.E.2d 152, 331 Ill.App. 412.
Minn.—Knight Soda Fountain Co. v. Dirnberger, 256 N.W. 657, 192 Minn. 387.
Mo.—Wolfersberger v. Miller, 39 S. W.2d 758, 327 Mo. 1150.
Neb.—Falkner v. Sacks Bros., 30 N. W.2d 572, 149 Neb. 121.
Ohio.—Dieterle v. Bourne, App., 57 N.E.2d 405.
Okl.—Hunter v. Jaynes, 157 P. 352, 59 Okl. 10.
Or.—Horner v. Wagy, 146 P.2d 92, 173 Or. 441.
S.C.—Wright v. Harris, 89 S.E.2d 97, 228 S.C. 144.
Tex.—Panhandle & S. F. Ry. Co. v. Bell, Civ.App., 189 S.W. 1097.
4 C.J. p 1036 note 72.

74. Cal.—Galbraith v. Thompson, 239 P.2d 468, 108 C.A.2d 617—Mahnkey v. Bolger, 220 P.2d 824, 98 C.A.2d 628—Rather v. City and County of San Francisco, 184 P.2d 727, 81 C.A.2d 625—Dalley v. Williams, 166 P.2d 595, 73 C.A.2d 427—Poncino v. Reid-Murdoch & Co., 28 P.2d 932, 136 C.A. 223—Giannini v. Southern Pac. Co., 276 P. 618, 98 C.A. 126.
Colo.—Barnes v. Wright, 231 P.2d 794, 123 Colo. 460.
Fla.—Lindsay v. Thomas, 174 So. 418, 128 Fla. 293.
Ky.—Thomas v. Boklage, 170 S.W.2d 348, 293 Ky. 804.
Mo.—Dwinell v. Thompson, 243 S.W. 2d 988—Shields v. Keller, 153 S.W. 2d 60, 348 Mo. 326—Reiling v. Russell, 153 S.W.2d 6, 348 Mo. 279—Ziegelmeier v. East St. Louis & Suburban Ry. Co., 51 S.W.2d 1027, 330 Mo. 1013.
Setser v. St. Louis Public Service Co., App., 209 S.W.2d 746—Miller v. Kansas City Public Service Co., 178 S.W.2d 824, 238 Mo.App. 247—Wright v. Hummel, App., 164 S.W.2d 640—Graham v. St. Louis-Red Bud-Chester Bus & Service Co., App., 147 S.W.2d 205—Day v. Banks, App., 127 S.W.2d 725—Williams v. St. Louis Public Service Co., App., 54 S.W.2d 764—Weddle v. St. Joseph Ry., Light, Heat & Power Co., App., 47 S.W.2d 1098, opinion quashed State ex rel. Weddle v. Trimble, 52 S.W.2d 864, 331 Mo. 1.
Wash.—Crock v. Magnolia Milling Co., 266 P. 727, 147 Wash. 589.
W.Va.—Isgan v. Jenkins, 59 S.E.2d 689, 134 W.Va. 400.

75. U.S.—Thompson v. Missouri Pac. R. Co., C.C.A.Mo., 15 F.2d 28.
Ala.—Mobile & O. R. Co. v. Williams, 139 So. 337, 224 Ala. 125.
Ark.—Martin v. Camden Gas Co., 17 S.W.2d 309, 179 Ark. 481.
Cal.—Palmer v. Tschudy, 218 P. 36, 191 C. 696—Wallis v. Southern Pac. Co., 195 P. 408, 184 C. 662, 15 A.L. R. 117.
Colbert v. Borland, 306 P.2d 53, 147 C.A.2d 704—Preston v. Hubbell, 196 P.2d 113, 87 C.A.2d 53—Prato v. Snyder, 55 P.2d 255, 12 C.A.2d 88.
Ga.—Davis v. Murray, 113 S.E. 827, 29 Ga.App. 120.
Ill.—Henrikson v. Knox, 111 N.E.2d 384, 350 Ill.App. 57—Rigdon v. Crosby, 66 N.E.2d 190, 328 Ill.App. 399.
Ind.—Utterback v. Gootee, 150 N.E. 101, 197 Ind. 206.
Bodine v. Justice, 85 N.E.2d 504, 119 Ind.App. 393.
Iowa.—Rainey v. Riese, 257 N.W. 346—Peckinpaugh v. Engelke, 247 N.W. 822, 215 Iowa 1248—Morse v. Incorporated Town of Castana, 241 N.W. 304, 213 Iowa 1225—Borough v. Minneapolis & St. L. Ry. Co., 184 N.W. 320, 191 Iowa 1216.
Ky.—Phoenix Amusement Co. v. White, 208 S.W.2d 64, 306 Ky. 361—Wright & Taylor v. Ochs, 208 S. W.2d 52, 306 Ky. 396—Huber & Huber v. Noe's Adm'x, 68 S.W.2d 406, 252 Ky. 779.

tion of death from absence,[76] on privilege as a defense to an action for slander,[77] proximate cause,[78] ratification,[79] res ipsa loquitur,[80] rights of parent and child,[81] sudden emergency,[81.5] title by limitation,[82] unavoidable accident,[83] waiver,[84] wanton or reckless conduct,[85] willfulness,[86] willful tort,[87] and cautionary instructions.[88]

c. Immaterial Instructions

In the absence of prejudice the giving of an immaterial instruction, or an instruction on immaterial matters, is no ground for reversal.

An instruction, which is immaterial, or on an immaterial issue or question which could not have misled or confused the jury, constitutes no ground for reversal.[89]

Md.—State v. Lupton, 161 A. 393, 163 Md. 180.

Mo.—Phillips v. Vrooman, 238 S.W. 2d 355, 361 Mo. 1098—Shields v. Keller, 153 S.W.2d 60, 348 Mo. 326—Barber v. Kellogg, 123 S.W.2d 100—Hutchison v. St. Louis-San Francisco Ry. Co., 72 S.W.2d 87, 335 Mo. 82—State ex rel. Burger v. Trimble, 55 S.W.2d 422, 331 Mo. 748—Wallace v. F. Burkhart Mfg. Co., 3 S.W.2d 387, 319 Mo. 52.

Phillips v. Prugh, App., 255 S.W. 2d 84—Engle v. St. Joseph Ry., Light, Heat & Power Co., App., 44 S.W.2d 175—Campbell v. St. Louis Public Service Co., App., 35 S.W. 2d 49—Muser v. Kansas City, App., 249 S.W. 681—Start v. National Newspaper Ass'n, App., 222 S.W. 870—Rosemann v. United Rys. Co. of St. Louis, 194 S.W. 1088, 197 Mo. App. 337.

Neb.—In re Johnson's Estate, 16 N. W.2d 504, 145 Neb. 33.

N.Y.—Zeder v. Church of St. Stanislaus, 88 N.Y.S.2d 617, 275 App.Div. 796—Schongar v. Montgomery Ward & Co., 66 N.Y.S.2d 797, 271 App.Div. 912—Hawn v. Malcolm, 157 N.Y.S. 694, 171 App.Div. 120.

N.C.—Cook v. Hobbs, 75 S.E.2d 322, 237 N.C. 490.

Ohio.—Selden v. City of Cuyahoga Falls, 6 N.E.2d 976, 132 Ohio St. 223.

Dixon v. Yellow Cab Co. of Cleveland, App., 63 N.E.2d 926—Canton Motor Coach v. Hall, 189 N.E. 505, 46 Ohio App. 516—Strobel v. City of Cincinnati, 168 N.E. 543, 32 Ohio App. 333.

Okl.—Meadors v. Huffman, 127 P.2d 806, 191 Okl. 204.

Or.—Williams v. Bryson, 40 P.2d 61, 149 Or. 413.

S.C.—Caines v. Marion Coca Cola Bottling Co., 14 S.E.2d 10, 196 S. C. 502.

Tex.—Texas Public Utilities Corp. v. Martin, Civ.App., 136 S.W.2d 889.

Utah.—Olsen v. Warwood, 255 P.2d 725—Woodward v. Spring Canyon Coal Co., 63 P.2d 267, 90 Utah 578—Industrial Commission of Utah v. Wasatch Grading Co., 14 P.2d 988, 80 Utah 223.

Wash.—Cleasby v. Taylor, 28 P.2d 795, 176 Wash. 251—Clark v. Pacific Power & Light Co., 157 P. 462, 91 Wash. 130.

4 C.J. p 1036 note 69.

76. Ga.—Hansen v. Owens, 132 Ga. 648, 64 S.E. 800.

4 C.J. p 1037 note 75.

77. N.H.—Slocinski v. Radwan, 144 A. 787, 83 N.H. 501, 63 A.L.R. 543.

4 C.J. p 1036 note 74.

78. Ky.—Kentucky-West Virginia Gas Co. v. Slone, 238 S.W.2d 476.

Tex.—Texas General Utilities Co. v. Nixon, Civ.App., 81 S.W.2d 250—Burge v. Batson, Civ.App., 13 S. W.2d 899—Cameron Compress Co. v. Jacobs, Civ.App., 10 S.W.2d 1040.

79. Ga.—Bagley v. Clement, 133 S. E. 648, 35 Ga.App. 508.

Va.—Virginia Ry. & Power Co. v. Deaton, 137 S.E. 500, 147 Va. 576.

80. Ark.—Saunders v. Lambert, 188 S.W.2d 633, 208 Ark. 990.

Cal.—Meyers v. G. W. Thomas Drayage & Rigging Co., 239 P.2d 118, 108 C.A.2d 529—Keller v. Pacific Telephone & Telegraph Co., 38 P. 2d 182, 2 C.A.2d 513—Porter v. Rasmussen, 15 P.2d 888, 127 C.A. 405.

N.Y.—Metropolitan Life Ins. Co. v. Rochester Gas & Elec. Corp., 65 N.Y.S.2d 560, 271 App.Div. 367, reargument denied 69 N.Y.S.2d 358, 271 App.Div. 1053—Whitcher v. Board of Education of Rensselaer, 251 N.Y.S. 611, 233 App.Div. 184.

Wash.—Morner v. Union Pac. R. Co., 196 P.2d 744, 31 Wash.2d 262.

81. Tex.—Rishworth v. Moss, Civ. App., 191 S.W. 843, affirmed Moss v. Rishworth, Com.App., 222 S.W. 225.

81.5 Ill.—Savina v. National Brick Co., 40 N.E.2d 844, 314 Ill.App. 199.

Ky.—Dixon v. Stringer, 126 S.W.2d 448, 277 Ky. 347.

82. Tex.—Buchanan v. Houston & T. C. R. Co., Civ.App., 180 S.W. 625.

83. Ariz.—Glowacki v. A. J. Bayless Markets, Inc., 263 P.2d 799, 76 Ariz. 295.

Cal.—Hyman v. Market St. Ry. Co., 107 P.2d 485, 41 C.A.2d 647—Scandalis v. Jenny, 22 P.2d 545, 132 C. A. 307.

N.J.—Hodgson v. Pohl, 83 A.2d 783, 16 N.J.Super. 87, affirmed 89 A.2d 24, 9 N.J. 488.

In an action for injuries to a child struck by an automobile, an instruction regarding the duty of one put in a situation where collision is imminent is reversible error when not warranted by the evidence.

Cal.—Scandalis v. Jenny, 22 P.2d 545, 132 C.A. 307.

84. Minn.—First Nat. Bank v. Flynn, 250 N.W. 806, 190 Minn. 102.

85. Ohio.—Universal Concrete Pipe Co. v. Bassett, 200 N.E. 843, 130 Ohio St. 567.

S.D.—Wittstruck v. Lee, 252 N.W. 874, 62 S.D. 290.

86. Ill.—Robbins v. Illinois Power & Light Corporation, 255 Ill.App. 106.

87. Ohio.—Denzer v. Terpstra, 193 N.E. 647, 129 Ohio St. 1.

88. U.S.—J. C. Shaffer & Co. v. West Tennessee Grain Co., C.C.A.Tenn., 271 F. 820.

Fla.—Florida Motor Lines v. Bradley, 164 So. 360, 121 Fla. 591.

Ill.—Steiner v. Higgins, 210 Ill.App. 119.

N.C.—Scott v. Cates, 95 S.E. 551, 175 N.C. 336.

Va.—Snyder v. Fatherly, 151 S.E. 149, 153 Va. 762.

Wis.—Suick v. Krom, 177 N.W. 20, 171 Wis. 254.

89. Ark.—Hall v. Burns, 225 S.W. 227, 146 Ark. 157.

Cal.—Holahan v. McGrew, 295 P. 1054, 111 C.A. 430.

Conn.—Voltz v. Orange Volunteer Fire Ass'n, 172 A. 220, 118 Conn. 307.

Ga.—Shinholser v. Henry, 106 S.E. 719, 151 Ga. 237.

J. J. Williamson & Sons v. Smith, 170 S.E. 709, 47 Ga.App. 495—Daniels v. Luton, 151 S.E. 659, 40 Ga.App. 741—Texas Co. v. Brown Tire Co., 146 S.E. 920, 39 Ga.App. 353.

Ill.—Segal v. Chicago City Ry. Co., 256 Ill.App. 569, motion denied 171 N.E. 922, 339 Ill. 635.

Iowa.—**Corpus Juris Secundum cited in** Pappas v. Evans, 48 N.W.2d 298, 302, 242 Iowa 804—Stodgel v. Elder, 154 N.W. 877, 172 Iowa 739.

Mich.—Robertson & Wilson Scale & Supply Co. v. Richman, 180 N.W. 470, 212 Mich. 334.

Mo.—Edwards v. Collins, 199 S.W. 580, 198 Mo.App. 569.

N.J.—Allen v. Tatum, 167 A. 668, 11 N.J.Misc. 666.

Okl.—Great Western Coal & Coke Co. v. Cunningham, 143 P. 26, 43 Okl. 417—Gloyd v. Stansberry, 81 P. 428, 15 Okl. 259.

§ 1765. Invading Province of Jury

Instructions which invade the province of the jury by the improper assumption of material facts upon which there is conflicting evidence or by stating the opinion of the court as to whether such a fact has been established are, as will be seen in the following sections, ordinarily prejudicial error.

S.D.—Barker v. Coats, 168 N.W. 797, 41 S.D. 45.

Tenn.—Hutchinson v. Dobson-Bainbridge Realty Co., 217 S.W.2d 6, 31 Tenn.App. 490.

Tex.—McInnis v. Brown County Water Improvement Dist. No. 1, Civ. App., 41 S.W.2d 741, followed in Cox v. Brown County Water Improvement Dist. No. 1, 45 S.W.2d 1118, and McInnes v. Brown County Water Improvement Dist. No. 1, 45 S.W.2d 1118.

Wash.—Aliverti v. City of Walla Walla, 298 P. 698, 162 Wash. 487.

Wyo.—**Corpus Juris Secundum cited in** Brown v. Wyoming Butane Gas Co., 205 P.2d 116, 123, 66 Wyo. 67. 4 C.J. p 1037 note 76.

Failure to charge entire statute on removal of gasoline tanks under sidewalk is harmless, where illegality in installing tanks was immaterial.

Ga.—Texas Co. v. Brown Tire Co., 146 S.E. 920, 39 Ga.App. 353.

90. Ala.—Ditsch v. Baggett Transp. Co., 61 So.2d 98, 258 Ala. 26—Schock v. Bear, 35 So.2d 97, 250 Ala. 529—Mobile Cab & Baggage Co. v. Akridge, 199 So. 486, 240 Ala. 355—White Dairy Co. v. Sims, 161 So. 812, 230 Ala. 561.

Ark.—Coca-Cola Bottling Co. of Southeast Arkansas v. Mooney, 161 S.W.2d 753, 204 Ark. 281—Missouri Pac. R. Co. v. Dalby, 132 S.W.2d 646, 199 Ark. 49—McDaniel v. Jordan, 262 S.W. 30, 164 Ark. 455—Altman v. Sproles, 255 S.W. 1092, 161 Ark. 128—Altman v. Sproles, 255 S.W. 573, 161 Ark. 128.

Cal.—Huebotter v. Follett, 167 P.2d 193, 27 C.2d 765—Tabata v. Murane, 148 P.2d 605, 24 C.2d 221—Mortensen v. Fairbanks, 35 P.2d 1030, 1 C.2d 489—Salomon v. Meyer, 32 P.2d 631, 1 C.2d 11.

Bragg v. Mobilhome Co. of Los Angeles, 302 P.2d 424, 145 C.A.2d 326—Lopez v. Knight, 263 P.2d 452, 121 C.A.2d 387—Tesone v. Reiman, 255 P.2d 48, 117 C.A.2d 211—Ellis v. McNeese, 293 P. 854, 109 C.A. 667—Harris v. Union Transfer Co. of Long Beach and Los Angeles, 222 P. 632, 64 C.A. 675.

Colo.—American Central Ins. Co. v. Ehrlich, 177 P. 978, 65 Colo. 545.

Conn.—Lutzen v. Henry Jenkins Transp. Co., 54 A.2d 267, 133 Conn. 669—Hyde v. Connecticut Co., 188 A. 266, 122 Conn. 236—Jackiewicz v. United Illuminating Co., 138 A. 147, 106 Conn. 302—Garber v. Goldstein, 102 A. 605, 92 Conn. 226.

Fla.—Hall v. Holland, 47 So.2d 889—Goodbread v. Thomas, 90 So. 156, 82 Fla. 411.

Ga.—Schloemer v. Teem, 88 S.E.2d 280, 92 Ga.App. 140—Travelers Ins. Co. v. Hill, 46 S.E.2d 755, 76 Ga. App. 640—Piedmont Operating Co. v. Cummings, 149 S.E. 814, 40 Ga. App. 397—Dixie Mfg. Co. v. Ricks, 110 S.E. 454, 28 Ga.App. 160.

Ill.—Grifenhan v. Chicago Rys. Co., 132 N.E. 790, 299 Ill. 590—Lavander v. Chicago City Ry. Co., 129 N.E. 757, 296 Ill. 284.

Kelly v. City Nat. Bank & Trust Co., 109 N.E.2d 206, 348 Ill.App. 419—Dees v. Moore, 81 N.E.2d 772, 335 Ill.App. 318—Martin v. Stransenback, 79 N.E.2d 825, 334 Ill.App. 624—Olympia Fields Country Club v. Bankers Indem. Ins. Co., 60 N.E.2d 896, 325 Ill.App. 649—Gray v. Richardson, 40 N.E.2d 598, 313 Ill. App. 626—Moran v. Chicago Title & Trust Co., 29 N.E.2d 299, 306 Ill.App. 581—Skamenca v. Reeser, 13 N.E.2d 668, 294 Ill.App. 216—Parr v. Newell, 8 N.E.2d 959, 290 Ill.App. 615—Murphy v. Willumsen, 224 Ill.App. 425.

Ind.—Michigan City v. Werner, 114 N.E. 636, 186 Ind. 149.

Kolling v. Martin, 33 N.E.2d 808, 109 Ind.App. 184—Pawlisch v. Atkins, 182 N.E. 636, 96 Ind. App. 132.

Iowa.—Dedina v. Chicago, M., St. P. & P. R. Co., 264 N.W. 566, 220 Iowa 1336.

Ky.—Victor's Ex'r v. Monson, 283 S.W.2d 175—Kentucky-West Virginia Gas Co. v. Slone, 238 S.W.2d 476—Wilburn v. Simons, 196 S.W.2d 356, 302 Ky. 752—Turpin v. Scrivner, 178 S.W.2d 971, 297 Ky. 365—Paducah Newspapers v. Bratcher, 118 S.W.2d 178, 274 Ky. 220—Consolidated Coach Corporation v. Bryant, 86 S.W.2d 88, 260 Ky. 452—J. J. Newberry Co. v. Faulconer, 58 S.W.2d 217, 248 Ky. 59.

Mich.—Burt v. Detroit, G. H. & M. Ry. Co., 247 N.W. 157, 262 Mich. 204—Deland v. Michigan Ry. Co., 180 N.W. 389, 213 Mich. 22—Battie v. Roth, 175 N.W. 275, 208 Mich. 173.

Miss.—Durrett v. Mississipian Ry. Co., 158 So. 776, 171 Miss. 899.

Mo.—Niehaus v. Central Mfrs.' Mut. Ins. Co., 293 S.W.2d 355—Banks v. Koogler, 291 S.W.2d 883—Willey v. Fyrogas Co., 251 S.W.2d 635, 363 Mo. 406—Clark v. Atchison & Eastern Bridge Co., 24 S.W.2d 143, 324 Mo. 544—B. F. Sturtevant Co. v. Ford Mfg. Co., 288 S.W. 59, 315 Mo. 1025—Reel v. Consolidated Inv. Co., 236 S.W. 43.

C. H. Robinson Co. v. Frissell, App., 132 S.W.2d 1049—Parks v. Maryland Casualty Co., App., 91 S.W.2d 1186—Hengelsberg v. Cushing, App., 51 S.W.2d 187—Holt v. Bartlett, 1 S.W.2d 1030, 222 Mo. App. 138—Speckard v. Mendenhall, App., 253 S.W. 166—Rosenberg v. General Accident Fire & Life Assur. Co., App., 246 S.W. 1009—Perkins v. United Rys. Co. of St. Louis, App., 243 S.W. 224—Maloy v. St. Louis, I. M. & S. Ry. Co., App., 178 S.W. 224.

Neb.—Hansen v. Village of Ralston, 22 N.W.2d 719, 147 Neb. 251—Markussen v. Mengedoht, 272 N.W. 241, 132 Neb. 472.

N.J.—Marzotto v. Gay Garment Co., 78 A.2d 394, 11 N.J.Super. 368, affirmed 80 A.2d 554, 7 N.J. 116.

N.Y.—Mercatante v. City of New York, 142 N.Y.S.2d 473, 286 App. Div. 265, reargument and appeal denied 144 N.Y.S.2d 914, 286 App. Div. 964—Tauber v. Home Owners' Loan Corp., 45 N.Y.S.2d 293, 267 App.Div. 766—Fardette v. New York & S. Ry. Co., 180 N.Y.S. 179, 190 App.Div. 543.

Salis v. Murray, 28 N.Y.S.2d 171—Yan Yee v. Randel, 17 N.Y.S.2d 661.

N.C.—Sloan v. Glenn, 95 S.E.2d 81, 245 N.C. 55—Tarkington v. Criffield, 124 S.E. 129, 188 N.C. 140—Hair v. McConnell, 119 S.E. 568, 186 N.C. 379—Royal v. Pope & Parish, 98 S.E. 599, 177 N.C. 206—J. L. Smathers & Co. v. Toxaway Hotel Co., 84 S.E. 47, 168 N.C. 69.

Ohio.—Haase v. Ryan, App., 136 N.E.2d 406—Deercreek Local Bd. of Ed. of Deercreek Tp. v. Payne, 88 N.E.2d 226, 86 Ohio App. 319—Johnson v. Eastern Ohio Transport Corp., 50 N.E.2d 1003, 72 Ohio App. 172—Strobel v. City of Cincinnati, 168 N.E. 543, 32 Ohio App. 333—Danner v. Avery, 168 N.E. 52, 32 Ohio App. 301—Harig v. McCutcheon, 155 N.E. 701, 23 Ohio App. 500.

Okl.—Flanagan v. Oklahoma Ry. Co., 206 P.2d 190, 201 Okl. 362—Miller v. Griffin Grocery Co., 136 P.2d 874, 192 Okl. 332—Chicago, R. I.

Examine Pocket Parts for later cases.

§ 1766. —— Improper Assumption of Facts

Unless no prejudice results therefrom, the giving of an instruction which improperly assumes the existence of a material fact is a material error.

Ordinarily the assumption of a material fact where the evidence with regard to it is conflicting,[90]

or where it is unsupported by any evidence,[91] will constitute ground for reversal. It is also a ground for reversal that the assumption of fact is in entire contradiction of all the evidence bearing on the fact assumed,[92] of the testimony of the successful party himself,[93] or of the issues made by the pleadings.[94] An instruction is erroneous and requires reversal where it is likely to mislead the jury into believing that the court had heard and remembered testimony during the trial which they had forgotten.[95]

The improper assumption of facts in an instruction will not be ground for reversal where it is apparent that the party complaining was not injured thereby,[96] as where the verdict in spite of an im-

& P. Ry. Co. v. Odom, 61 P.2d 1083, 178 Okl. 131.
Or.—Brazil v. Dupree, 254 P.2d 1041, 199 Or. 581—Roundtree v. Mount Hood R. Co., 168 P. 61, 86 Or. 147.
R.I.—Lepore v. Fuscellaro, 57 A.2d 442, 73 R.I. 467—Heditsian v. Bertone, 19 A.2d 775, 66 R.I. 416—Grygiel v. Grygiel, 13 A.2d 235, 64 R.I. 444—Scott v. McGroarty, 135 A. 481, 48 R.I. 79.
Tenn.—Sullivan v. Tigert, 1 Tenn. App. 262.
Tex.—Texas Employers Ins. Ass'n v. Hamor, Civ.App., 97 S.W.2d 1041—Joy v. Craig, Civ.App., 81 S.W.2d 261—H. F. Hohlt Co. v. Routt, Civ. App., 48 S.W.2d 386—Besteiro v. Besteiro, Civ.App., 18 S.W.2d 829—Rinker v. Galveston-Houston Electric Ry. Co., Civ.App., 176 S.W. 737.
Va.—Levine v. Levine, 132 S.E. 320, 144 Va. 330.
Wash.—Smith v. Manning's, Inc., 126 P.2d 44, 13 Wash.2d 573.
W.Va.—Charleston Nat. Bank v. Hulme, 188 S.E 225, 117 W.Va. 790.
4 C.J. p 1037 note 77.

91. Ark.—Hays v. McGuirt, 55 S.W. 2d 76, 186 Ark. 702.
Cal.—Hopper v. Bulaich, 164 P.2d 483, 27 C.2d 431.
Albert v. McKay & Co., 200 P. 83, 53 C.A. 325.
Ill.—Duffy v. Cortesi, 119 N.E.2d 241, 2 Ill.2d 511.
Lock v. Chicago & N. W. Ry. Co., 74 N.E.2d 64, 332 Ill.App. 134.
Mo.—Frost v. Jensen, App., 155 S.W. 2d 553—Luechtefeld v. Marglous, App., 151 S.W.2d 710—Smith v. Washington Nat. Ins. Co., App., 91 S.W.2d 169.
Pa.—Betzig v. Cook, 103 A.2d 283, 175 Pa.Super. 185.
W.Va.—Saena v. Zenith Optical Co., 65 S.E.2d 205, 135 W.Va. 795.
Wis.—Spice v. Kuxman, 239 N.W. 497, 206 Wis. 293.
4 C.J. p 1037 note 78.

92. Cal.—Schellenberg v. Southern California Music Co., 35 P.2d 156, 139 C.A. 777.
4 C.J. p 1037 note 79.

93. N.J.—Simon v. Commonwealth Water, etc., Co., 90 A. 288, 85 N.J. Law 648.

94. Mass.—Houle v. Lewonis, 140 N.E. 427, 245 Mass. 254.
4 C.J. p 1037 note 81.

95. Ill.—Meleny v. Library Bureau, 148 Ill.App. 437.

96. Ala.—Mobile & O. R. Co. v. Davis, 137 So. 525, 223 Ala. 600.
Ark.—Coca-Cola Bottling Co. v. Jenkins, 82 S.W.2d 15, 190 Ark. 930—Hines v. Morgan, 218 S.W. 672, 142 Ark. 272—Hart Cotton Mach. Co. v. Swepston, 206 S.W. 62, 136 Ark. 40.
Cal.—Drotleff v. Renshaw, 208 P.2d 969, 34 C.2d 176—Brinck v. Bradbury, 176 P. 690, 179 C. 376—Hanton v. Pacific Electric Ry. Co., 174 P. 61, 178 C. 616.
Stanley v. Columbia Cas. Co., 147 P.2d 627, 63 C.A.2d 724—Taylor v. Joyce, 41 P.2d 967, 4 C.A.2d 612—Hughes v. Quackenbush, 37 P. 2d 99, 1 C.A.2d 349—Wallace v. Pacific Electric Ry. Co., 288 P. 834, 105 C.A. 664—Shaver v. United Parcel Service, 266 P. 606, 90 C.A. 764—City of Sacramento v. Hunger, 249 P. 223, 79 C.A. 234—Chalmers v. Hawkins, 248 P. 727, 78 C.A. 733—Jones v. United Railroads of San Francisco, 202 P. 919, 54 C.A. 744—Hoffman v. Pacific Electric Co., 188 P. 597, 45 C.A. 751.
Colo.—Knaus v. Yoder, 52 P.2d 1152, 98 Colo. 1.
Conn.—Christie v. Eager, 26 A.2d 352, 129 Conn. 62—Stressman v. Vitiello, 158 A. 879, 114 Conn. 370—Andrews v. Dougherty, 112 A. 700, 96 Conn. 40.
Ga.—City of East Point v. Christian, 151 S.E. 42, 40 Ga.App. 633.
Ill.—Paulissen v. Jonas, 35 N.E.2d 958, 311 Ill.App. 346—Miner v. New Amsterdam Casualty Co., 220 Ill. App. 74. See Riggin v. Keck, 203 Ill.App. 87.
Ind.—Craig v. Citizens Trust Co., 26 N.E.2d 1006, 217 Ind. 434.
Southern Indiana Gas & Electric Co. v. Harrison, 151 N.E. 703, 85 Ind.App. 350—United Automobile Ins. Ass'n of Indianapolis v. Henderson, 139 N.E. 680, 81 Ind. App. 231—Evansville Furniture Co. v. Freeman, 105 N.E. 258, 57 Ind. App. 576, rehearing denied 107 N. E. 27, 57 Ind.App. 576—Van Camp Hardware, etc., Co. v. O'Brien, 62 N.E. 464, 28 Ind.App. 152.
Iowa.—Becvar v. Batesole, 256 N.W. 297, 218 Iowa 858—Mortimer v. Farmers' Mut. Fire & Lightning Ins. Ass'n, 249 N.W. 405, 217 Iowa 1246—Heflen v. Brown, 223 N.W. 763, 208 Iowa 325—Powell v. Overton, 181 N.W. 24, 191 Iowa 574—Hess v. McCardell, 166 N.W. 470, 182 Iowa 1121.
Ky.—High Splint Coal Co. v. Cowans, 155 S.W.2d 488, 288 Ky. 66—Prudential Ins. Co. of America v. Dismore, 72 S.W.2d 433, 254 Ky. 725—Chesapeake & O. Ry. Co. v. Carroll's Adm'r, 61 S.W.2d 41, 249 Ky. 703—Day Pulverizer Co. v. Rutledge, 38 S.W.2d 949, 238 Ky. 817—Louisville & N. R. Co. v. Nickell, 270 S.W. 487, 208 Ky. 60.
Mass.—Pritchard v. Uphams Corner Theatre Co., 131 N.E. 70, 238 Mass. 441.
Mich.—Cook v. Vineyard, 289 N.W. 181, 291 Mich. 375.
Minn.—Barnett v. Minneapolis & St. L. R. Co., 153 N.W. 600, 130 Minn. 300.
Miss.—Anderson v. Jenkins, 70 So. 2d 535, 220 Miss. 145—Mississippi Cent. R. Co. v. Lott, 80 So. 277, 118 Miss. 816, certiorari denied 39 S.Ct. 391, 249 U.S. 616, 63 L.Ed. 803.
Mo.—Robinson v. Kansas City Public Service Co., 137 S.W.2d 548, 345 Mo. 764—Luikart v. Miller, 48 S. W.2d 867—Mooney v. Monark Gasoline & Oil Co., 298 S.W. 69, 317 Mo. 1255—Stuart v. Dickinson, 235 S.W. 446, 290 Mo. 516—Stapleton v. Hummel Mfg. Co., 202 S.W. 369.
Morris v. Alexander, App., 275 S.W.2d 373—Scheidegger v. Thompson, App., 174 S.W.2d 216—Ozias v. South Side Bank of Kansas City, App., 128 S.W.2d 283—Drakesmith v. Ryan, App., 57 S. W.2d 727—Van Horn v. Union Fuel & Ice Co., App., 31 S.W.2d 262—Wyse v. Miller, 2 S.W.2d 806, 222 Mo.App. 165—Struckel v. Busch Sulzer Bros. Diesel Engine Co., App., 300 S.W. 993—Speers v. Missouri Pac. R. Co., App., 282 S.W. 131—Roman v. King, App., 268 S.W. 414—Van De Vere v. Kansas City, App., 196 S.W. 785—Young v. Dunlap, 190 S.W. 1041, 195 Mo. App. 119—Bank of Neelyville v. Lee, 168 S.W. 796, 182 Mo.App. 185.
Neb.—Glatfelter v. Security Ins. Co. of New Haven, Conn., 167 N.W. 572, 102 Neb. 464.
N.J.—Wilcox v. Christian and Missionary Alliance, 12 A.2d 709, 124 N.J.Law 527.

proper assumption of facts by the court is just,[97] where the matter assumed was conceded at the trial or was established by uncontradicted and uncontroverted evidence,[98] or but one conclusion could be reached;[99] where the fact assumed in an instruction has been submitted to the jury in another prior instruction,[1] where the instruction was favorable to the party complaining;[2] where the fact which was assumed to exist is shown to be immaterial by uncontradicted evidence,[3] or by the pleadings of the party complaining;[4] where the cause is tried upon the assumption of the particular facts assumed by the instruction;[5] where the jury could not have been misled by the instruction;[6] where there is no evi-

N.C.—Young v. Southern Mica Co. of N. C., 75 S.E.2d 795, 237 N.C. 644.
Ohio.—Liberty Highway Co. v. Mastin, 170 N.E. 604, 34 Ohio App. 183.
Okl.—Rafferty v. Collins, 15 P.2d 600, 160 Okl. 63.
Or.—Snyder v. Portland Traction Co., 185 P.2d 563, 182 Or. 344—Landers v. Safeway Stores, 139 P.2d 788, 172 Or. 116.
S.C.—Tinsley v. Prudential Ins. Co. of America, 191 S.E. 307, 183 S.C. 457—Payne v. Atlantic Greyhound Bus Lines, 188 S.E. 426, 182 S.C. 58—Bosdell v. Dixie Stores Co., 167 S.E. 834, 168 S.C. 520—Norris v. Greenville, S. & A. Ry. Co., 97 S.E. 848, 111 S.C. 322.
Tex.—First Texas State Ins. Co. v. Bell, Civ.App., 184 S.W. 277, dismissed for want of jurisdiction.
Wash.—Forquer v. Hidden, 71 P.2d 1000, 191 Wash. 638—Shanahan v. International Stage Co., 3 P.2d 1092, 164 Wash. 609—Brammer v. Percival, 233 P. 311, 133 Wash. 126—Carroll v. Centralia Water Co., 32 P. 609, 33 P. 431, 5 Wash. 613.
W.Va.—Easter v. Virginian Ry. Co., 86 S.E. 37, 76 W.Va. 383.
4 C.J. p 1037 note 83.

97. Pa.—Crumley v. Pennsylvania R. Co., 116 A. 152, 272 Pa. 226.
4 C.J. p 1038 note 84.

98. Ala.—Shelton v. Gordon, 40 So. 2d 95, 252 Ala. 187—Bradford v. Carson, 137 So. 426, 223 Ala. 594—Orr v. Read Phosphate Co., 112 So. 145, 215 Ala. 562—Atlantic Coast Line R. Co. v. J. W. Maddox & Co., 98 So. 276, 210 Ala. 444.
Ariz.—**Corpus Juris cited in** Wolff v. First Nat. Bank of Winslow, 53 P.2d 1077, 1082, 47 Ariz. 97.
Ark.—Pine Bluff Co. v. Bobbitt, 294 S.W. 1002, 174 Ark. 41—Burke Const. Co. v. St. Louis & S. F. Ry. Co., 214 S.W. 13, 139 Ark. 199—St. Louis, I. M. & S. Ry. Co. v. Cobb, 190 S.W. 107, 126 Ark. 225.
Cal.—Varcoe v. Lee, 181 P. 223, 180 C. 338.
Lindner v. Barkley, 293 P. 112, 109 C.A. 337—De Soto v. Pacific Electric Ry. Co., 193 P. 270, 49 C.A. 285.
Ga.—Craig v. Day, 88 S.E.2d 451, 92 Ga.App. 339.
Ill.—Lindroth v. Walgreen Co., 87 N.E.2d 307, 338 Ill.App. 364, affirmed 94 N.E.2d 847, 407 Ill. 121—Trust Co. of Chicago v. Ancateau, 46 N.E.2d 125, 317 Ill.App. 186—Martens v. Public Service Co. of Northern Illinois, 219 Ill.App. 160.
Ind.—Teegarden v. Brown, 39 N.E.2d 793, 111 Ind.App. 159—McKinnon v. Parrill, 38 N.E.2d 1008, 111 Ind. App. 343—Haskell & Barker Car Co. v. Timm, 122 N.E. 788, 73 Ind. App. 612—Treloar v. Harris, 117 N.E. 975, 66 Ind.App. 59.
Iowa.—Rosander v. Knee, 271 N.W. 292, 222 Iowa 1164—L. Terry & H. Rosenberg v. American Ins. Co., 203 N.W. 17, affirmed 211 N.W. 716, 202 Iowa 1291.
Ky.—Miracle v. Cavins, 72 S.W.2d 25, 254 Ky. 644—Payne v. Stephenson, 244 S.W. 71, 196 Ky. 25.
Mass.—Ross v. Nourse, 116 N.E.2d 323, 330 Mass. 666.
Mich.—Gurn v. Murray, 284 N.W. 676, 288 Mich. 143.
Mo.—Banks v. Koogler, 291 S.W.2d 883—Ferguson v. Union Elec. Co. of Mo., 282 S.W.2d 505—Oglesby v. St. Louis-San Francisco Ry. Co., 1 S.W.2d 172, 318 Mo. 79, certiorari denied St. Louis-San Francisco R. Co. v. Oglesby, 48 S.Ct. 434, 277 U.S. 587, 72 L.Ed. 1001—Orris v. Chicago, R. I. & P. R. Co., 214 S.W. 124, 279 Mo. 1—State ex rel. National Newspapers' Ass'n v. Ellison, 200 S.W. 433.
Wandell v. Ross, 245 S.W.2d 689, 241 Mo.App. 1189—Fleetwood v. Milwaukee Mechanics Ins. Co., App., 220 S.W.2d 614—De Valpine v. New York Life Ins. Co., App., 105 S.W.2d 977—Counts v. Thomas, App., 63 S.W.2d 416—Wendel v. City Ice Co. of Kansas City, 22 S.W.2d 215, 224 Mo.App. 152—Irwin v. McDougal, 274 S.W. 923, 217 Mo.App. 645—Beckerleg v. Locomotive Engineers' Mut. Life & Accident Ins. Ass'n, App., 274 S.W. 917—St. Mary's Mill Co. v. Illinois Oil Co., App., 254 S.W. 735—Steigleder v. Lonsdale, App., 253 S.W. 487—Kemp v. Missouri Pac. R. Co., App., 251 S.W. 402—Curlin v. St. Louis Merchants' Bridge Terminal Ry. Co., App., 232 S.W. 215—Hackleman v. Kansas City Rys. Co., 217 S.W. 618, 203 Mo.App. 125—O'Hara v. Lamb Const. Co., 206 S.W. 253, 200 Mo.App. 292—Burns v. Polar Wave Ice & Fuel Co., App., 187 S.W. 145—Voitsberg v. White River Const. Co., 170 S. W. 685, 185 Mo.App.. 119.
Okl.—Crown Drug Co. v. McBride, 303 P.2d 970—Rich v. Reynolds, 277 P.2d 985.
Pa.—Geiger v. Madden, 58 Pa.Super. 616.
Tenn.—Elrod v. Town of Franklin, 204 S.W. 298, 140 Tenn. 228.
Tex.—Fort Worth Structural Steel Co. v. Griffin, Civ.App., 63 S.W. 2d 887—Horton v. Benson, Civ. App., 266 S.W. 213, affirmed, Com. App., 277 S.W. 1050—St. Louis Southwestern Ry. Co. of Texas v. Barrett, Civ.App., 207 S.W. 557, error refused—Ft. Worth & D. C. Ry. Co. v. Brown, Civ.App., 205 S. W. 378—Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, Civ. App., 182 S.W. 706.
Va.—Atlantic Coast Realty Co. v. Robertson's Ex'r, 116 S.E. 476, 135 Va. 247.
Wis.—Patterson v. Phillips, 256 N. W. 624, 216 Wis. 165.
4 C.J. p 1038 note 85.

99. Cal.—People v. Ricciardi, 144 P. 2d 799, 23 C.2d 390.
Lindsey v. Pacific Electric Ry. Co., 296 P. 131, 111 C.A. 482.
Conn.—Kishalaski v. Sullivan, 108 A. 538, 94 Conn. 196.
Utah.—Olsen v. S. H. Kress & Co., 48 P.2d 430, 87 Utah 51.
4 C.J. p 1038 note 86.

1. Mo.—Browning v. Browning, 41 S.W.2d 860, 226 Mo.App. 322.

2. Cal.—Hoffman v. Pacific Electric Co., 188 P. 597, 45 C.A. 751.
4 C.J. p 1038 note 87.

3. Iowa.—Reinking v. Goodell, 133 N.W. 774, 161 Iowa 404.
Mo.—Redmond v. Quincy, etc., R. Co., 126 S.W. 159, 225 Mo. 721.
4 C.J. p 1038 note 88.

4. Tex.—Scott v. St. Louis Southwestern R. Co., 117 S.W. 890, 54 Tex.Civ.App. 54.

5. Iowa.—Rudd v. Jackson, 213 N. W. 428, 203 Iowa 661.
Mo.—Courtney's Estate v. Lanznar's Estate, App., 296 S.W. 269.
4 C.J. p 1038 note 90.

6. Ariz.—Fisher v. Pendergast, 49 P.2d 1003, 46 Ariz. 242.
Cal.—Sutter Butte Canal Co. v. American Rice & Alfalfa Co., 189 P. 277, 182 C. 549.
Baker v. Market St. Ry. Co., 11 P.2d 912, 123 C.A. 688—Chalmers v. Hawkins, 248 P. 727, 78 C.A. 733.
Conn.—Johnson v. Wheeler, 143 A. 898, 108 Conn. 484.
Ga.—Jackson v. Moultrie Production Credit Ass'n, 47 S.E.2d 127, 76 Ga. App. 768.

dence contrary to the assumption;[7] or where the fact assumed appears to have been established by evidence of the party complaining,[8] or was admitted by him.[9]

Where the evidence, without substantial conflict, showed plaintiff's injury, and the case was tried solely on the question of damages, it is not prejudicial error that the court's instruction implied that a verdict for plaintiff was expected.[10]

§ 1767. —— Charging on Weight of Evidence

Except where no prejudice results therefrom, a charge indicating the opinion of the court as to the weight of the evidence is ordinarily reversible error.

Where such practice is forbidden by organic or statutory law, or where to do so would result in prejudice to the complaining party, it is a ground for reversal for the court to express an opinion on a material fact in charging the jury,[11] and the error is not rendered harmless because in so doing the court correctly stated the testimony.[12] So if evidence on a material issue is undisputed, it is prejudicial error for the court to suggest a doubt as to how such issue should be determined.[13]

On the other hand, the expression of an opinion on the facts by the court has been held not prejudicial where the court was warranted in taking the question from the jury;[14] where the evidence was almost or quite undisputed as to the existence of the

Kan.—Lamb v. Lemon, 177 P. 4, 103 Kan. 607.
Mo.—Luechtefeld v. Marglous, App., 176 S.W.2d 674—Pfeiffer v. Schee, App., 107 S.W.2d 170—American Spectacle Co. v. Denizet, App., 193 S.W. 939.
4 C.J. p 1038 note 91.

7. Vt.—Lang v. Clark, 81 A. 625, 85 Vt. 222.
Va.—Newport News, etc., R. etc., Co. v. Nicolopoolos, 63 S.E. 443, 109 Va. 165.

8. Mo.—Harrison v. White, 56 Mo. App. 175—Dimmitt v. Hannibal, etc., R. Co., 40 Mo.App. 654.

9. Cal.—Rannard v. Harris, 297 P. 623, 113 C.A. 15.
Mass.—MacDonald v. Kavanaugh, 156 N.E. 740, 259 Mass. 439.
Mo.—Bilsky v. Sun Ins. Office, Limited, of London, England, App., 84 S.W.2d 171.
4 C.J. p 1038 note 94.

10. Va.—Wade v. Peebles, 174 S.E. 769, 162 Va. 479.

11. Ala.—Alabama Fuel & Iron Co. v. Minyard, 97 So. 918, 210 Ala. 299—Brilliant Coal Co. v. Barton, 87 So. 830, 205 Ala. 89—Louisville & N. R. Co. v. Godwin, 67 So. 675, 191 Ala. 498.
Ariz.—Mattingly v. Eisenberg, 285 P. 2d 174, 79 Ariz. 135.
Cal.—Rackson v. Benioff, 244 P.2d 9, 111 C.A.2d 124—Mantonya v. Bratlie, 240 P.2d 667, 109 C.A.2d 244—Meyers v. G. W. Thomas Drayage & Rigging Co., 239 P.2d 118, 108 C.A.2d 529.
Fla.—Lithgow Funeral Centers v. Loftin, 60 So.2d 745.
Ga.—Trustees of Jesse Parker Williams Hospital v. Nisbet, 14 S.E. 2d 64, 191 Ga. 821.
Ill.—Winiarski v. Melkovitz, 104 N.E.2d 650, 346 Ill.App. 208—Hayes v. Todd, 84 N.E.2d 654, 336 Ill. App. 602—Hanneken v. Eichler, 75 N.E.2d 244, 332 Ill.App. 437.
Ind.—Warner Gear Co. v. De Peugh, 123 N.E. 363, 70 Ind.App. 264.
Mo.—Lewis v. Kansas City Public Service Co., App., 17 S.W.2d 359.
N.J.—Hare v. Pennell, 117 A.2d 637, 37 N.J.Super. 558—Trecartin v. Mahony-Troast Const. Co., 87 A.2d 349, 18 N.J.Super. 380—King v. Patrylow, 83 A.2d 639, 15 N.J.Super. 429.
N.Y.—Garelick v. Giles, 35 N.Y.S.2d 225, 264 App.Div. 233—Schwartz v. Ebenstein, 260 N.Y.S. 75, 236 App. Div. 420—Nelvan Const. Corporation v. Sanka Realty Corporation, 236 N.Y.S. 87, 227 App.Div. 51.
N.C.—Bryant v. Murray, 79 S.E.2d 243, 239 N.C. 18—Abernethy v. State Planters' Bank & Trust Co., 161 S.E. 705, 202 N.C. 46.
Ohio.—Kubin v. Reineck, 113 N.E.2d 914, 93 Ohio App. 320—Kay v. Pennsylvania R. Co., App., 102 N.E. 2d 855—Cohen v. I. B. Goodman Mfg. Co., 87 N.E.2d 370, 85 Ohio App. 85.
Okl.—City of Norman v. Sallee, 238 P.2d 292, 205 Okl. 419—Flanagan v. Oklahoma Ry. Co., 206 P.2d 190, 201 Okl. 362—Chicago, R. I. & P. Ry. Co. v. Odom, 61 P.2d 1083, 178 Okl. 131—Slagle v. Amos, 238 P. 445, 111 Okl. 71—Grayson v. Damme, 158 P. 387, 59 Okl. 214.
Pa.—In re Cookson's Estate, 188 A. 904, 325 Pa. 81—Haymarket Building & Loan Ass'n v. Smigelsky, 183 A. 802, 321 Pa. 337.
Close v. Derbyshire, 68 A.2d 456, 165 Pa.Super. 419—Acchione v. Canuso, 101 Pa.Super. 286.
R.I.—McCreadie v. Bitcliffe, 95 A.2d 458, 80 R.I. 232.
Tenn.—Southeastern Greyhound Lines v. Groves, 136 S.W.2d 512, 175 Tenn. 584, 127 A.L.R. 1378.
Tex.—City of Houston v. Woolridge, Civ.App., 241 S.W.2d 641, error refused no reversible error—Morriss-Buick Co. v. Pondrom, Civ.App., 84 S.W.2d 272, reversed on other grounds 113 S.W.2d 889, 131 Tex. 98, followed in Morriss-Buick Co. v. Huss, 113 S.W.2d 891, 131 Tex. 102—Besteiro v. Besteiro, Civ.App., 18 S.W.2d 829—Martin v. Rogers, Civ.App., 259 S.W. 1097—Dodson v. Watson, Civ. App., 225 S.W. 586—Buchanan v. Houston & T. C. R. Co., Civ.App., 180 S.W. 625.
Va.—Oliver v. Forsyth, 58 S.E.2d 49, 190 Va. 710.
4 C.J. p 1038 note 96.

General affirmative charge

(1) Where there is a question for the jury, an instruction on the measure of damages for conversion and the form of verdict in effect is a general affirmative charge for plaintiff and prejudicial.
Ala.—Lowery v. Cain, 117 So. 153, 22 Ala.App. 482.

(2) Where the evidence is uncontradicted, a statement amounting to nothing more than a general affirmative charge with hypothesis after the court stated its purpose to give general charge is not reversible error.
Ala.—Kinney v. Cullman County Farm Bureau, 117 So. 189, 217 Ala. 569.

Minority of jury yielding to majority

An instruction specifically telling the jury that, if a majority of the jury was for defendant, the minority ought to doubt the correctness of its judgment, is prejudicial error.
Ark.—J. F. McGehee & Co. v. Fuller, 277 S.W. 39, 169 Ark. 920.

12. Wash.—State v. Hyde, 55 P. 49, 20 Wash. 234.

13. Tex.—Clegg v. Gulf, etc., R. Co., Civ.App., 127 S.W. 1098.

14. Ala.—Dorough v. Alabama Power Co., 76 So. 963, 200 Ala. 605.
Mo.—State ex rel. Kansas City Title & Trust Co. v. Otto, 276 S.W. 96, 220 Mo.App. 429.
4 C.J. p 1039 note 99.

fact on which the opinion was given;[15] where the expression of opinion in no way invades the province of the jury;[16] where the expression of opinion was on an immaterial matter;[17] where the opinion was favorable to the party complaining;[18] where the comment was a mere statement of a matter of common knowledge;[19] where the verdict was clearly not affected by it;[20] or where no other conclusion could have been arrived at on the evidence, and it is apparent that no harm could have resulted.[21]

Also there are decisions which hold that an expression of opinion on the weight of the evidence is cured, where the court subsequently tells the jury that it is their exclusive province to determine on the sufficiency or insufficiency of the evidence and that they are not bound by the opinion with regard thereto;[22] but the weight of authority is to the contrary.[23] A remark, in an instruction, that there was no evidence on a particular matter is prejudicial where the matter was admitted in the pleadings.[24]

§ 1768. Singling Out and Giving Undue Prominence to Issues, Theories, or Evidence

Where prejudice results, singling out and giving undue prominence to particular issues, theories, or portions of the evidence is reversible error.

Singling out and giving undue prominence to particular issues, theories, or portions of the evidence is improper and will operate to reverse when resulting in prejudice to the party complaining.[25] It is not a ground for reversal, however, if it is not likely to operate to the prejudice of appellant,[26] as

15. Minn.—Sward v. Nash, 40 N.W. 2d 828, 230 Minn. 100.
Mo.—Mead v. South Side Bank, App., 14 S.W.2d 664.
N.C.—State v. Gant, 159 S.E. 427, 201 N.C. 211.
Tex.—Schallert v. Boyd, Civ.App., 203 S.W. 940.
4 C.J. p 1039 note 1.

16. Ala.—Howton v. Mathias, 73 So. 92, 197 Ala. 457.
Cal.—La Branch v. Scott, 185 P.2d 823, 82 C.A.2d 1—Rosander v. Market St. Ry. Co., 265 P. 536, 89 C.A. 710.
Conn.—Morro v. Brockett, 145 A. 659, 109 Conn. 87—Di Bernardo v. Connecticut Co., 124 A. 231, 100 Conn. 612.
Ga.—Smith v. Northeast Ga. Fair Ass'n, 67 S.E.2d 836, 85 Ga.App. 32.
Ill.—Darnell v. Strand Hotel Corp., 99 N.E.2d 583, 343 Ill.App. 517—Pottel v. Demanes, 87 N.E.2d 332, 338 Ill.App. 287.
Mich.—Zylstra v. Graham, 221 N.W. 318, 244 Mich. 319, adhered to 224 N.W. 343, 246 Mich. 91—McIntyre v. Grant Tp., 172 N.W. 564, 206 Mich. 223.
Mo.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402—Benham v. McCoy, 213 S.W.2d 914—Good v. Missouri-Kansas-Texas R. Co., 97 S.W.2d 612, 339 Mo. 330, certiorari denied, 57 S.Ct. 231, 299 U.S. 605, 81 L.Ed. 446.
Fisher v. Duster, App., 245 S.W. 2d 172—Jarrett v. St. Francois County Finance Co., App., 185 S. W.2d 855—Harris v. Terminal R. Ass'n of St. Louis, 218 S.W. 686, 203 Mo.App. 324.
N.J.—Davis v. Gibbs, 93 A.2d 206, 23 N.J.Super. 558.
Ohio.—Leeker v. Koehike, 84 N.E.2d 110, 84 Ohio App. 174.
Pa.—Karavas v. Poulos, 113 A.2d 300, 381 Pa. 358—Stewart v. Pen Argyl Nat. Bank, 161 A. 327, 307 Pa. 328.
Chagachbanian v. Fox, 87 Pa. Super. 436.
Wash.—Smith v. Drew, 26 P.2d 1040, 175 Wash. 11.

Reasonable comment

In an action for injuries, plaintiff having claimed a previous earning capacity of one hundred dollars weekly in an ice business, comment of the court as to the probability that, if the claim were correct, he would not have abandoned, but endeavored to have preserved, the business, is not prejudicial but a reasonable criticism.
Conn.—Di Bernardo v. Connecticut Co., 124 A. 231, 100 Conn. 612.

17. S.C.—Clifford v. Southern R. Co., 69 S.E. 513, 87 S.C. 324.
Va.—Pitman v. Breckenridge, 3 Gratt. 127, 44 Va. 127.

18. Conn.—Brown v. Goodwin, 147 A. 673, 110 Conn. 217.
Ky.—Wathen v. Mackey, 187 S.W.2d 1000, 300 Ky. 115.
4 C.J. p 1039 note 3.

19. N.C.—Davis v. Long, 126 S.E. 321, 189 N.C. 129.

20. Ariz.—Pawley v. First Nat. Bank, 256 P. 507, 32 Ariz. 135.
Cal.—In re Walker's Estate, 181 P. 792, 180 C. 478.
Conn.—Vinci v. O'Neill, 131 A. 408, 103 Conn. 647—Di Bernardo v. Connecticut Co., 124 A. 231, 100 Conn. 612.
Ga.—Callaway v. Fischer, 25 S.E.2d 131, 69 Ga.App. 251.
Mo.—Rankin v. Gaugh, App., 6 S. W.2d 640.
Ohio.—Gilbert v. Reardon, 188 N.E. 359, 46 Ohio App. 206.
Tex.—Baccaratt v. Beaumont, S. L. & W. Ry. Co., Civ.App., 285 S.W. 854.
4 C.J. p 1039 note 4.

21. Ind.Terr.—Eddings v. Boner, 38 S.W. 1110, 1 Ind.Terr. 173.
Wash.—Browning v. Bremerton-Charleston Transit Co., 183 P.2d 1005, 28 Wash.2d 713.
4 C.J. p 1039 note 5.

22. Ill.—Humphreys v. Collier, 1 Ill. 297.
Mo.—Craig v. Kelly, 49 Mo.App. 312.
Tex.—Sabine, etc., R. Co. v. Brousard, 12 S.W. 1126, 75 Tex. 597.
Wash.—White v. Territory, 24 P. 447, 1 Wash. 279.

23. Cal.—People v. Kindleberger, 34 P. 852, 100 C. 367.
R.I.—Flint v. Nicholson, 25 A.2d 617, 67 R.I. 513.
4 C.J. p 1039 note 7.

24. Pa.—Solomon v. Ford, 164 A. 92, 108 Pa.Super. 43.

25. Ala.—Atlantic Coast Line R. Co. v. Jackson, 130 So. 388, 221 Ala. 646.
Ark.—Rutland v. P. H. Ruebel & Co., 154 S.W.2d 578, 202 Ark. 987.
Ga.—Roberds v. Eastern Carolina Service Corporation, 166 S.E. 668, 46 Ga.App. 51.
Ill.—Wood v. Illinois Cent. R. Co., 185 Ill.App. 180. See Neville v. City of Chicago, 191 Ill.App. 372.
Mo.—Causey v. Wittig, 11 S.W.2d 11, 321 Mo. 358.
State ex rel. State Highway Commission v. Day, 47 S.W.2d 147, 226 Mo.App. 884.
N.Y.—Freire v. Kaupman, 281 N.Y.S. 408, 245 App.Div. 844.
N.C.—Bailey v. Hayman, 17 S.E.2d 520, 220 N.C. 402.
Pa.—Carr v. Mundorf, 166 A. 789, 311 Pa. 214.
Tenn.—Smithpeters v. Prudential Ins. Co. of America, 81 S.W.2d 392, 18 Tenn.App. 628.
4 C.J. p 1039 note 9.

26. Ala.—Birmingham Purchasing Co. v. Colvin, 123 So. 45, 219 Ala. 662.
Ark.—St. Louis-San Francisco Ry. Co. v. Kirkpatrick, 257 S.W. 368, 162 Ark. 65—Arkadelphia Milling

where the evidence singled out was unimportant and could not have affected the result,[27] was not contradicted,[28] or was undeniable;[29] or where the case is not close upon the issue emphasized;[30] and the singling out of a certain matter for special consideration, if error, is not prejudicial where the jury are further instructed that in determining the question any evidence with relation to it must be considered.[31] So also a charge calling special attention to professional evidence bearing on an injury will be deemed harmless, where the jury are also instructed to determine the question of the injury on all the evidence.[32]

§ 1769. Repetition of Instructions

In the absence of prejudice no reversal can be had because of repetition of instructions.

Ordinarily the mere repetition of instructions is not considered prejudicial error and a ground for reversal,[33] although for obvious reasons the prac-

Co. v. Campbell, 216 S.W. 20, 141 Ark. 25—St. Louis, I. M. & S. Ry. Co. v. Cabiness, 168 S.W. 1116, 113 Ark. 599.

Cal.—Crooks v. Glens Falls Indem. Co., 268 P.2d 203, 124 C.A.2d 113.

Ga.—Evitt v. Evitt, 128 S.E. 661, 160 Ga. 497.

Johnson v. Tifton Buick Co., 149 S.E. 73, 40 Ga.App. 158—Greenfield v. Rhodes, 94 S.E. 1036, 21 Ga.App. 676.

Ky.—Herndon v. Kentucky Traction & Terminal Co., 281 S.W. 1036, 214 Ky. 36.

Mo.—Harris v. St. Louis-San Francisco Ry. Co., App., 60 S.W.2d 652.

N.J.—Meisler v. Raiken Monument Works, 154 A. 763, 9 N.J.Misc. 664.

Pa.—Scranton Lackawanna Trust Co. v. Birbeck, 5 A.2d 196, 333 Pa. 502—Dravo Contracting Co. v. James Rees & Sons Co., 140 A. 148, 291 Pa. 387.

Gibney v. Bright Star Battery Co., 163 A. 921, 107 Pa.Super. 501.

Mears v. Miller, 7 Pa.Dist. & Co. 562.

Petro v. Birtley, Com.Pl., 32 Luz. Leg.Reg. 461, 464.

Tenn.—Kunk v. Howell, App., 289 S.W.2d 874.

4 C.J. p 1039 note 10.

27. Mo.—Barnes-Crosby Co. of Missouri v. T. M. Sayman Products Co., App., 27 S.W.2d 709.

4 C.J. p 1039 note 11.

28. Ariz.—Arizona-Hercules Copper Co. v. Crenshaw, 184 P. 996, 21 Ariz. 15.

Cal.—Heple v. Kluge, 250 P.2d 694, 114 C.A.2d 473.

4 C.J. p 1039 note 12.

29. Ala.—Cummings v. McDonnell, 66 So. 717, 189 Ala. 96.

30. Tex.—Carl v. Settegast, Civ. App., 211 S.W. 506, reversed on other grounds, Com.App., 237 S.W. 238.

4 C.J. p 1039 note 14.

31. Ill.—Wallace v. Farmington, 83 N.E. 180, 231 Ill. 232.

32. Wis.—Tordeck v. Romadka, 48 N.W. 592, 79 Wis. 517.

33. Ala.—Motor Sales Corporation v. Whaley, 101 So. 475, 20 Ala.App. 35, certiorari denied Ex parte Whaley, 101 So. 478, 211 Ala. 624.

Ariz.—Bean v. Gorby, 292 P.2d 199, 80 Ariz. 25—Reah v. Jupin, 206 P. 2d 558, 68 Ariz. 335—S. A. Gerrard Co. v. Couch, 29 P.2d 151, 43 Ariz. 57.

Ark.—Hutcheson v. Clapp, 226 S.W. 2d 546, 216 Ark. 517—Taggart v. Scott, 104 S.W.2d 816, 193 Ark. 930.

Cal.—Lewis v. Doyle, App., 307 P.2d 965—Chambers v. Southern Pac. Co., 307 P.2d 662, 148 C.A.2d 873—Karageozian v. Bost, 294 P.2d 778, 139 C.A.2d 874—Sullivan v. Matt, 278 P.2d 499, 130 C.A.2d 134—Winston v. Penney, 253 P.2d 492, 116 C.A.2d 162—Taylor v. Luxor Cab Co., 246 P.2d 45, 112 C.A.2d 46—Rose v. Tandowsky, 183 P.2d 347, 80 C.A.2d 927—Bickford v. Mauser, 128 P.2d 79, 53 C.A.2d 680—Robertson v. Brown, 99 P.2d 288, 37 C.A.2d 189—Paulos v. Market St. Ry. Co., 28 P.2d 94, 136 C.A. 163—Wagy v. Brave, 24 P.2d 209, 133 C.A. 413—O'Brien v. Edens, 13 P. 2d 754, 125 C.A. 100—Grillich v. Weinshenk, 222 P. 160, 64 C.A. 474.

Colo.—Liutz v. Denver City Tramway Co., 131 P. 258, 54 Colo. 371.

Conn.—Jackiewicz v. United Illuminating Co., 138 A. 147, 106 Conn. 302.

Ga.—Moore v. Mauldin, 35 S.E.2d 511, 199 Ga. 780.

Brown v. Brown, 80 S.E.2d 2, 89 Ga.App. 428—Richter v. Atlantic Co., 16 S.E.2d 259, 65 Ga.App. 605—Smith v. Missouri State Life Ins. Co., 165 S.E. 168, 45 Ga.App. 383.

Ill.—Rockwood v. Andrews, 103 N.E. 2d 663, 345 Ill.App. 451—Loucks v. Pierce, 93 N.E.2d 372, 341 Ill.App. 253—Loverde v. Consumers Petroleum Co., 88 N.E.2d 501, 338 Ill. App. 665—Adkins v. Williams, 71 N.E.2d 210, 330 Ill.App. 427—Consolidated Wire & Associated Corp. v. Weiss, 63 N.E.2d 669, 327 Ill. App. 219—Paris v. East St. Louis Ry. Co., 275 Ill.App. 241—Bunch v. McAllister, 266 Ill.App. 248—Curtin v. Mann, 258 Ill.App. 419—Daubach v. Drake Hotel Co., 243 Ill.App. 298—Raleigh Mfg. Co. v. Great Western Smelting & Refining Co., 227 Ill.App. 221—Chatelle v. Illinois Cent. R. Co., 210 Ill.App. 475—Kravitz v. Chicago City Ry. Co., 210 Ill.App. 287—Lecklieder v. Chicago City Ry. Co., 172 Ill.App. 557—Eggmann v. Nutter, 169 Ill. App. 116—Roman v. Silbertrust, 159 Ill.App. 485—McMahon v. Chicago City Ry. Co., 143 Ill.App. 608, affirmed 88 N.E. 223, 239 Ill. 334.

Ind.—City of Terre Haute v. Myers, 24 N.E.2d 698, 216 Ind. 349—Davis v. Babb, 125 N.E. 403, 190 Ind. 173—Terry v. Davenport, 83 N.E. 636, 170 Ind. 74.

Powell v. Ellis, 105 N.E.2d 348, 122 Ind.App. 700—Rentschler v. Hall, 69 N.E.2d 619, 117 Ind.App. 255—Lindley v. Skidmore, 33 N.E. 2d 797, 109 Ind.App. 178—Baker v. Pritchard, 194 N.E. 781, 100 Ind. App. 509—Chicago, I. & L. Ry. Co. v. Stierwalt, 153 N.E. 807, 87 Ind. App. 478, certiorari denied 49 S.Ct. 32, 278 U.S. 633, 73 L.Ed. 551—Town of Bloomfield v. West, 121 N.E. 4, 68 Ind.App. 568.

Iowa.—Arnold v. Ft. Dodge, D. M. & S. R. Co., 173 N.W. 252, 186 Iowa 538—Livingstone v. Dole, 167 N. W. 639, 184 Iowa 1340—Doran v. Waterloo, C. F. & N. Ry. Co., 153 N.W. 225, 170 Iowa 614—Covert v. Town of Lovilia, 149 N.W. 67, 167 Iowa 163.

Kan.—Long v. Shafer, 174 P.2d 88, 162 Kan. 21.

Ky.—Ken-Ten Coach Lines v. Siler, 197 S.W.2d 406, 303 Ky. 263—Trent v. Chesapeake & O. Ry. Co., 299 S. W. 556, 221 Ky. 622—Morgan v. Moore's Ex'x, 255 S.W. 540, 200 Ky. 684.

Md.—Eastern Shore Trust Co. v. Lockerman, 129 A. 915, 148 Md. 628—Pillard v. Chesapeake S. S. Co. of Baltimore, 92 A. 1040, 124 Md. 468.

Mich.—Tinkler v. Richter, 295 N.W. 201, 295 Mich. 396—In re Evans' Estate, 277 N.W. 893, 283 Mich. 275.

Mo.—Tinsley v. Massman Const. Co., 270 S.W.2d 835—West v. St. Louis Public Service Co., 236 S.W.2d 308, 361 Mo. 740—Lankford v. Thompson, 189 S.W.2d 217, 354 Mo. 220—Ostmann v. Ostmann, 183 S.W.2d 133—Mueller v. Schien, 176 S.W.2d 449, 352 Mo. 180—Brinkley v. United Biscuit Co. of America, 164 S.W. 2d 325, 349 Mo. 1227—Mendenhall v. Neyer, 149 S.W.2d 366, 347 Mo. 881—Wells v. City of Jefferson,

tice is not to be commended;[34] but where the repetition of instructions gives undue prominence to one phase of the case, and such prominence is calculated to prejudice a party by inducing the jury to believe that the issue presented is the controlling one,[35] or where the instruction is objectionable in form,[36] the judgment will be reversed; and instructions objectionable in this regard taken in connection with other instructions may be ground for reversal.[37]

§ 1770. General Instructions with Special Verdict

The giving of a general charge in a case submitted on special questions is always improper; but where there is no resulting prejudice such procedure will not be regarded as reversible error.

While the giving of general instructions to the jury, where they are directed to return a special verdict, has been regarded as improper but harmless,[38] and error in stating general rules of law will

132 S.W.2d 1006, 345 Mo. 239—Stanton v. Jones, 59 S.W.2d 648, 332 Mo. 631—Lavignon v. Dietzel, 34 S.W.2d 92—Hulsey v. Tower Grove Quarry & Construction Co., 30 S.W.2d 1018, 326 Mo. 194—Moffett Bros. & Andrews Commission Co. v. Kent, 5 S.W.2d 395—Schultz v. Schultz, 293 S.W. 105, 316 Mo. 728—Harrison v. Bence, 270 S.W. 363—Mayes v. Mayes, 235 S.W. 100.

Ritchie v. Burton, App., 292 S. W.2d 599—Leathers v. Sikeston Coca-Cola Bottling Co., App., 286 S.W.2d 393—Kieffer v. Bragdon, App., 278 S.W.2d 10—Piburn v. Reed, App., 193 S.W.2d 789—Avery v. Mechanics' Ins. Co. of Philadelphia, 4 S.W.2d 871, 222 Mo.App. 31—Belt v. Belt, 288 S.W. 100, 224 Mo.App. 780—Fowler v. Crockett, App., 281 S.W. 116—Baird v. Wilks, App., 218 S.W. 918—Cunningham v. Elvins, App., 194 S.W. 515.

Mont.—Kansier v. City of Billings, 184 P. 630, 56 Mont. 250.

Neb.—Van Auker v. Steckley's Hybrid Seed Corn Co., 8 N.W.2d 451, 143 Neb. 24—Denise v. Omaha, 69 N.W. 119, 49 Neb. 750.

N.C.—Hanes v. Southern Public Utilities Co., 131 S.E. 402, 191 N.C. 13.

N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834.

Ohio.—Standard Extract Co. v. H. Belmer Co., 26 Ohio Cir.Ct.,N.S., 152.

Okl.—Thompson v. Galion Iron Works & Mfg. Co., 203 P.2d 438, 201 Okl. 182—Cities Service Gas Co. v. Williams, 198 P.2d 204, 200 Okl. 525—Cities Service Gas Co. v. Huebner, 197 P.2d 985, 200 Okl. 521.

Or.—Sine v. Mehlhorn, 126 P.2d 853, 168 Or. 688—Bronkey v. Olson, 28 P.2d 243, 145 Or. 662.

Tex.—Continental Ins. Co. v. Pruitt, 65 Tex. 125—Traylor v. Townsend, 61 Tex. 144.

Smith v. Bryan, Civ.App., 204 S. W. 359—Talley v. Bailey, Civ.App., 181 S.W. 230—Carter v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 160 S.W. 987—Pettithory v. Clarke & Courts, Civ.App., 139 S.W. 989—Sonka v. Sonka, Civ.App., 75 S.W. 325—Smith v. Whiteside, Civ.App., 39 S.W. 381—Galveston, etc., R. Co. v. Tuckett, Civ.App., 25 S.W. 150—Maes v. Texas, etc., R. Co., Civ. App., 23 S.W. 725.

Wash.—Leer v. Cohen, 116 P.2d 535, 10 Wash.2d 239—Rieger v. Kirkland, 111 P.2d 241, 7 Wash.2d 326—American Products Co. v. Villwock, 109 P.2d 570, 7 Wash.2d 246, 132 A.L.R. 1010—Smith v. Bratnober, 62 P.2d 455, 188 Wash. 244—Bredemeyer v. Johnson, 36 P.2d 1062, 179 Wash. 225—Alaska S. S. Co. v. Pacific Coast Gypsum Co., 138 P. 875, 78 Wash. 247.

4 C.J. p 1039 note 16.

Repetition of rule

(1) Where a rule of law has been stated with its qualifications, to repeat the rule without repeating the qualifications will not constitute a fatal defect.

Ill.—Hayward v. Merrill, 94 Ill. 349, 34 Am.R. 2.

N.H.—Saltmarsh v. Bow, 56 N.H. 428—Belknap v. Wendell, 36 N.H. 250.

(2) Where an instruction, although capable of condensation, properly stated the law as applied to varying conditions of the evidence, it could not be held to be fatally defective as unnecessary repetition.

Wash.—Rust v. Washington Tool & Hardware Co., 172 P. 846, 101 Wash. 552.

Exceptional cases

Principle that frequent and unnecessary repetition of correct statements of law in instructions constitutes reversible error will be applied only in exceptional cases, and where from whole record reviewing court cannot fairly say that correct result was reached.

Ind.—Keeshin Motor Express Co. v. Glassman, 38 N.E.2d 847, 219 Ind. 538.

Repetition after correction

Where court had misread instruction, action of court in inserting omission and re-reading instruction after omission had been called to its attention was not error.

Ill.—Stott v. Thompson, 14 N.E.2d 246, 294 Ill.App. 450, certiorari denied 59 S.Ct. 106, 305 U.S. 639, 83 L.Ed. 411.

Ind.—Town of Bloomfield v. West, 121 N.E. 4, 68 Ind.App. 568.

4 C.J. p 1039 note 17.

Ariz.—Reah v. Jupin, 206 P.2d 558, 68 Ariz. 335.

Fla.—Jacksonville Electric Co. v. Hellenthal, 47 So. 812, 56 Fla. 443.

Ill.—O'Gallagher v. Finkel, 129 N.E. 2d 345, 7 Ill.App.2d 296—Triolo v. Frisella, 121 N.E.2d 49, 3 Ill.App.2d 200—Teague v. Hazelwood, 110 N. E.2d 703, 349 Ill.App. 392—Loucks v. Pierce, 93 N.E.2d 372, 341 Ill. App. 253—Alexander v. Sullivan, 78 N.E.2d 333, 334 Ill.App. 42—Pabis v. Friel, 66 N.E.2d 471, 328 Ill. App. 583—Gulich v. Ewing, 48 N. E.2d 537, 318 Ill.App. 506.

Mich.—Resnik v. Trumbull-Chevrolet Sales Co., 16 N.W.2d 723, 310 Mich. 214—Rhoades v. Finn, 284 N.W. 720, 288 Mich. 262.

Mo.—Ostmann v. Ostmann, 183 S.W. 2d 133.

Ohio.—Mitchell v. New York Cent. R. Co., App., 135 N.E.2d 423—Feher v. Motor Exp., App., 68 N.E.2d 140.

Or.—Sine v. Mehlhorn, 126 P.2d 853, 168 Or. 688.

Utah.—Devine v. Cook, 279 P.2d 1073, 3 Utah 2d 134.

4 C.J. p 1039 note 18.

Determining factors

Error in frequently and unnecessarily repeating correct statements of the law in instructions is not prima facie prejudicial as it is where an instruction incorrectly states the law, but it becomes prejudicial by the quantum of the repetition and the relative importance of the issue emphasized; and the number of times an instruction correctly stating the law is repeated is not the criterion for determining whether the repetition constitutes reversible error, but it is rather the probable effect which that repetition will have on the jury's proper consideration of the evidence.

Ind.—Keeshin Motor Express Co. v. Glassman, 38 N.E.2d 847, 219 Ind. 538.

34. Ariz.—Reah v. Jupin, 206 P.2d 558, 68 Ariz. 335.
Ill.—Lecklieder v. Chicago City Ry. Co., 172 Ill.App. 557.

35. Tex.—McBride v. Banguss, 65 Tex. 174.

36. Neb.—Hoskovec v. Omaha St. R. Co., 115 N.W. 312, 80 Neb. 784.

37. Ind.—Huntington County v. Bonebrake, 45 N.E. 470, 146 Ind. 311.

not entitle appellant to a reversal when there was a special verdict and the law was correctly applied to the facts,[39] the submission of a case on both a general charge and special questions is reversible error[40] unless it clearly appears that no injury resulted therefrom,[41] as where the evidence is conclusive or uncontradicted.[42] The giving of a general charge in a special issue case does not constitute reversible error unless it appears that it is unnecessary and is calculated to prejudice one of the parties before the jury.[42.5]

Admonitory instructions are not considered as general charges within the rule prohibiting the giving of such charges in cases submitted on special issues.[43]

§ 1771. Time and Manner of Giving Instructions

a. In general
b. Oral instructions

a. In General

The time or manner of instructing the jury does not constitute reversible error unless prejudice results therefrom.

The time and manner of giving instructions to the jury will not operate to reverse when no prejudice results therefrom to the party.[44] Reading of a

Perrin Nat. Bank v. Thompson, 50 N.E. 410, 20 Ind.App. 649—Lake Erie, etc., R. Co. v. Gould, 47 N.E. 941, 18 Ind.App. 275.

39. Ind.—Roller v. Kling, 49 N.E. 948, 150 Ind. 159—Woollen v. Wire, 11 N.E. 236, 110 Ind. 251.

40. Mich.—Mitchell v. Perkins, 54 N.W.2d 293, 334 Mich. 192.
Tex.—Texas & N. O. R. Co. v. Crow, 123 S.W.2d 649, 132 Tex. 465—Guthrie v. Texas Pac. Coal & Oil Co., 122 S.W.2d 1049, 132 Tex. 180—Grasso v. Cannon Ball Motor Freight Lines, 81 S.W.2d 482, 125 Tex. 154.
Carmichael v. Harrison, Civ. App., 165 S.W.2d 510—Heldenfels v. Montgomery, Civ.App., 157 S.W. 2d 998, error dismissed—City of Corpus Christi v. McMurrey, Civ. App., 145 S.W.2d 664, error dismissed, judgment correct—Maxwell v. Walters Petroleum Corp., Civ.App., 120 S.W.2d 813—Utz v. Sanders, Civ.App., 81 S.W.2d 243—Linn Motor Co. v. Wilson, Civ. App., 14 S.W.2d 867—Fort Worth & D. C. Ry. Co. v. Amason, Civ. App., 239 S.W. 359.
Wis.—De Groot v. Van Akkern, 273 N.W. 725, 225 Wis. 105—Swiergul v. Town of Suamico, 235 N.W. 548, 204 Wis. 114.

Fact that the trial court framed each special issue so as to require an affirmative answer to be based on the preponderance of evidence does not cure, or render harmless, an improper general charge on the burden of proof.
Tex.—Gattegno v. The Parisian, Com.App., 53 S.W.2d 1005.

41. Tex.—Texas & N. O. R. Co. v. Crow, 123 S.W.2d 649, 132 Tex. 465.
Stokes v. Snyder, Com.App., 55 S.W.2d 557.
Corbell v. Koog, Civ.App., 188 S. W.2d 905, refused for want of merit—Southern Underwriters v. Mowery, Civ.App., 147 S.W.2d 834, error dismissed, judgment correct—City of Corpus Christi v. McMurrey, Civ.App., 145 S.W.2d 664, error dismissed, judgment correct—Russell v. Gleghorn, Civ.App., 96 S.W.2d 728—Texas & P. Ry. Co. v. Bufkin, Civ.App., 46 S.W.2d 712—Paris & G. N. R. Co. v. Stafford, Civ.App., 36 S.W.2d 331, reversed on other grounds, Com.App., 53 S. W.2d 1019—Texas Indemnity Ins. Co. v. Davis, Civ.App., 32 S.W.2d 240—Veazey v. Galveston, H. & S. A. Ry. Co., Civ.App., 290 S.W. 283.
Wis.—Edwards v. Kohn, 241 N.W. 331, 207 Wis. 381.

Where the jury obviously knew the effect of an answer to a question of the special verdict, instructing the jury as to such effect was not prejudicial error.
Wis.—Swiergul v. Town of Suamico, 235 N.W. 548, 204 Wis. 114.

42. Tex.—Gulf States Utilities Co. v. Moore, Civ.App., 73 S.W.2d 941, reversed on other grounds 106 S. W.2d 256, 129 Tex. 604—Hartford Accident & Indemnity Co. v. Frye, Civ.App., 55 S.W.2d 1092—Standard v. Texas Pacific Coal & Oil Co., Civ.App., 47 S.W.2d 443—Sewall Paint & Glass Co. of Texas v. Booth Lumber & Loan Co., Civ. App., 34 S.W.2d 650, affirmed, Com. App., 50 S.W.2d 793—St. Louis Southwestern Ry. Co. of Texas v. Hudson, Civ.App., 9 S.W.2d 511, reversed on other grounds, Com. App., 17 S.W.2d 793.

42.5 Tex.—Mosby v. Texas & P. Ry. Co., Civ.App., 191 S.W.2d 55.

43. Tex.—English v. Terry, Civ. App., 85 S.W.2d 1063, affirmed Terry v. English, 112 S.W.2d 446, 130 Tex. 632.

44. Iowa.—Priest v. Hogan, 257 N. W. 403, 218 Iowa 1371—Birmingham Sav. Bank of Birmingham v. Keller, 215 N.W. 649, 205 Iowa 271, corrected on other grounds 217 N. W. 874.
Md.—Wagner v. Klein, 93 A. 446, 125 Md. 229.
N.C.—McCartha v. Colonial Ice Co., 17 S.E.2d 479, 220 N.C. 367.
S.C.—Kirkland v. Southern Ry. Co., 121 S.E. 594, 128 S.C. 47, certiorari denied 44 S.Ct. 453, 264 U.S. 594, 68 L.Ed. 866.
S.D.—Weibel v. Gardner, 187 N.W. 629, 45 S.D. 349, 23 A.L.R. 50.
Tex.—Jenkins v. Anderson, Civ.App., 285 S.W. 1105—Houston E. & W. T. R. Co. v. Kopinitsch, Civ.App., 282 S.W. 884.
4 C.J. p 1040 note 23.

Before argument
Ohio.—Rogers v. Garford, 159 N.E. 334, 26 Ohio App. 244.

During argument
Ohio.—Rubbo v. Hughes Provision Co., 36 N.E.2d 144, 67 Ohio App. 123, affirmed 34 N.E.2d 202, 138 Ohio St. 178.

After argument
Ariz.—Jones v. Stanley, 233 P. 598, 27 Ariz. 381.
Tex.—Texas Electric Ry. v. Shelton, Civ.App., 286 S.W. 526.
Wash.—Wheeler v. Hotel Stevens Co., 127 P. 840, 71 Wash. 120.
4 C.J. p 1040 note 23 [c].

After case closed
N.Y.—Kaplan v. Interborough Rapid Transit Co., 165 N.Y.S. 216.

Filing
(1) Failure of the trial judge to hand his written charge to the clerk of court to be filed immediately after he has read it to the jury, as required by statute, is reversible error, unless the evidence demanded the verdict returned.
Ga.—Ashley-Price Lumber Co. v. Henry, 98 S.E. 185, 23 Ga.App. 93.
(2) Failure of the clerk to place file mark on the charge to jury before the charge was read has been held not reversible error.
Tex.—Compton v. Jennings Lumber Co., Civ.App., 295 S.W. 308.

Failure to mark instructions "Given" until after verdict returned is not reversible error, where the jury read and took the instructions to the jury room.
Ill.—Williams v. Kaplan, 242 Ill. App. 166.
4 C.J. p 1040 note 23 [e].

written charge of the court to the jury, in lieu of specific instructions tendered by the parties, without complying with a statutory or court rule requirement that the charge be submitted to counsel on each side with opportunity to specify and object to any part thereof constitutes prejudicial error.[44.5]

b. Oral Instructions

Where written instructions are required, it is reversible error to instruct orally if prejudice results, or even, according to some authorities, in the absence of prejudice.

Where it is required by statute or rule of court that instructions shall be in writing and such statutes and rules of court are held to be mandatory, the giving of oral instructions is considered reversible error if prejudice results.[45] According to some decisions, noncompliance with the statute will constitute reversible error, even though no prejudice results.[46] Other decisions, however, reach the opposite conclusion.[47] There is no prejudicial error notwithstanding the court's refusal to give instructions in writing, where the instructions as delivered orally were taken down and transcribed by a stenographer, signed by the judge, and delivered to counsel before argument and also delivered to the jury.[48] Oral repetition of parts of written charges already given, and refusal to reduce them to writing has been held not prejudicial where written instructions were not requested.[49]

§ 1772. Instructions in Equity Cases

Error in instructions in equity cases, or where the verdict is purely advisory, is generally no cause for reversal.

In an equity case, or where the verdict is only advisory, error in instructing the jury is not reversible,[50] especially where the court exercised its

Marks showing opinion

Submission of copies of the instruction to the jury is prejudicial, as misleading, in view of marks thereon indicating that a verdict should be found for defendant.

Ill.—Home Bank & Trust Co. v. Szostowski, 247 Ill.App. 207.

Numbering

The giving of instructions not numbered as required by statute is not reversible error, if the rights of the parties are not prejudiced thereby.

N.M.—Miller v. Preston, 17 P. 565, 4 N.M. 396.

Okl.—Atchison, etc., R. Co. v. Calhoun, 89 P. 207, 18 Okl. 75, 11 Ann. Cas. 681, reversed on other grounds 29 S.Ct. 321, 213 U.S. 1, 53 L.Ed. 671.

Order of charging

Ga.—Sarman v. Seaboard Air Line Ry. Co., 125 S.E. 891, 33 Ga.App. 315.

S.C.—Kirkland v. Southern Ry. Co., 121 S.E. 594, 128 S.C. 47, certiorari denied Southern R. Co. v. Kirkland, 44 S.Ct. 453, 264 U.S. 594, 68 L.Ed. 866.

4 C.J. p 1040 note 23 [a].

Use of attorney's stationery

Giving instructions on paper bearing in watermark the card of one party's attorney is not necessarily prejudicial as advising the jury that the court agreed with the contentions of that party.

Ill.—Edwall v. Chicago, R. I. & P. Ry. Co., 208 Ill.App. 489.

Use of intemperate language in the charge of the trial judge is error warranting reversal.

Pa.—Hoagland v. Mulford, 148 A. 864, 298 Pa. 588.

44.5 W.Va.—Iacuone v. Pietranton, 77 S.E.2d 884, 138 W.Va. 776.

Court rule providing that before written instructions are given opposing counsel must be given an opportunity to examine them as well as an opportunity to present and argue objections and exceptions may not be waived, and failure to comply with its provisions is reversible error, even though plaintiff was given an opportunity to make exceptions to instructions after they had been given to jury.

S.D.—Riggs v. Syrovatka, 64 N.W.2d 297, 75 S.D. 338.

45. Ala.—Terry v. Nelms, 54 So.2d 282, 256 Ala. 291.

Ga.—Dixon v. Evans, 193 S.E. 470, 56 Ga.App. 583.

Ill.—Aurora Trust & Savings Bank v. Fidler, 200 Ill.App. 233.

Mo.—Bergfeld v. Dunham, App., 201 S.W. 640.

Ohio.—Cheney v. Garrett, App., 76 N.E.2d 96.

S.D.—Hovland v. Cook, 257 N.W. 43, 63 S.D. 118.

Tex.—Denbow v. Standard Acc. Ins. Co., 186 S.W.2d 236, 143 Tex. 455.

4 C.J. p 1040 note 24.

Cure of error

In a servant's action for injuries, error in giving oral instructions, where the statute required them to be in writing, was cured when such instructions were incorporated in the written instructions on the objecting party's request.

Utah.—Stam v. Ogden Packing & Provision Co., 177 P. 218, 53 Utah 248.

46. Ind.—Huntington v. Hamilton, 73 N.E.2d 352, 118 Ind.App. 88.

Kan.—Jenkins v. Levis, 23 Kan. 255.

Tenn.—Phillips v. Newport, 187 S.W.2d 965, 28 Tenn.App. 187.

4 C.J. p 1040 note 25.

47. Ill.—Welch v. City of Chicago, 154 N.E. 226, 323 Ill. 498.

Cervenka v. Hunter, 185 Ill.App. 547.

Ky.—Justice v. Brunson, 42 S.W.2d 542, 240 Ky. 428—Helge v. Babey, 14 S.W.2d 757, 228 Ky. 197.

Tex.—Jack Jennings Truck Tire Co. v. Texas Warehouse & Forwarding Co., Civ.App., 39 S.W.2d 135—Alamo Trust Co. v. Cunningham, Civ.App., 203 S.W. 413, dismissed for want of jurisdiction—Blair v. Colorado Canal Co., Civ.App., 203 S.W. 176.

Utah.—Van Cott v. Wall, 178 P. 42, 53 Utah 282.

4 C.J. p 1040 note 26.

48. Kan.—Union St. R. Co. v. Stone, 37 P. 1012, 54 Kan. 83.

49. Kan.—Cox v. Chase, 163 P. 184, 99 Kan. 740.

Direction of verdict

There is no injury in not reducing to writing an instruction which is a mere direction of a verdict.

Tex.—Meyer-Forster Realty Co. v. Read, Civ.App., 195 S.W. 987.

50. Ariz.—Amado v. Aguirre, 161 P. 2d 117, 63 Ariz. 213, 160 A.L.R. 1126.

Cal.—Cutter Laboratories, Inc. v. R. W. Ogle & Co., App., 311 P.2d 627—Wells Fargo Bank & Union Trust Co. v. Brady, 254 P.2d 71, 116 C.A. 2d 381—Myrick v. Bruetsch, 56 P. 2d 591, 13 C.A.2d 219—Contra Costa County v. Cowell Portland Cement Co., 14 P.2d 606, 126 C.A. 267.

Colo.—Sheridan Oil Corporation v. Davidson, 227 P. 553, 75 Colo. 584.

Ga.—Horton v. Johnson, 15 S.E.2d 605, 192 Ga. 338—Mickle v. Moore, 4 S.E.2d 217, 188 Ga. 444.

Idaho.—Hill v. Porter, 223 P. 538, 38 Idaho 574.

Ill.—Cope v. Cope, 207 Ill.App. 617—O'Harra v. Graves, 190 Ill.App. 551.

independent judgment in making its own findings of fact.[51] The review on appeal includes both the law and the facts,[52] and, of course, where the verdict was manifestly for the right party the error is immaterial.[53]

It has been held, however, that, if on the trial of an issue out of chancery an instruction is given which is plainly erroneous and prejudicial, a decree based solely on the verdict into which the error and prejudice enter, and not on a consideration of the chancery record independent of the verdict, must be reversed.[54] Where there is a legal claim involved entitling appellant to damages, he may question the soundness of instructions as far as they bear on the legal issues.[55]

§ 1773(1). Error Cured by Verdict or Judgment

Where it is clear from the verdict that it is correct, and that no prejudice resulted from erroneous instructions, the rendition of such a verdict may be regarded as a cure of the errors.

Quoted in: Mont.—Maynard v. City of Helena, 160 P.2d 484, 488, 117 Mont. 402.

In order for an instruction to be prejudicially erroneous, the findings of the jury must give some reflection of that instruction.[55.50] Where it is apparent from the whole testimony that the verdict is correct on the merits, error committed by the trial court in the giving of instructions is harmless.[56]

Kan.—Grannel v. Wakefield, 242 P. 2d 1075, 172 Kan. 685—In re Holloway's Estate, 164 P. 298, 100 Kan. 368—Hessen v. Sapp, 160 P. 220, 98 Kan. 737.

Ky.—Totten v. Stewart, 286 S.W.2d 539—Strong v. Whicker, 117 S.W. 2d 1017, 274 Ky. 10—Acree's Committee v. Blalock, 277 S.W. 464, 211 Ky. 450.

Mo.—Conrad v. Diehl, 129 S.W.2d 870, 344 Mo. 811.

Neb.—In re Warner's Estate, 288 N. W. 39, 137 Neb. 25—Simmons v. Baker, 192 N.W. 511, 109 Neb. 853.

Nev.—Musgrave v. Casey, 235 P.2d 729, 68 Nev. 471—Johnston v. Rosaschic, 194 P. 1063, 44 Nev. 386—Love v. Mt. Oddie United Mines Co., 184 P. 921, 43 Nev. 61.

Okl.—Collmer v. Collmer, 246 P.2d 350, 206 Okl. 661—Jenkins v. Abercrombie, 228 P.2d 657, 204 Okl. 213—Mattingly v. Sisler, 175 P.2d 796, 198 Okl. 107—Chiles v. De Lana, 103 P.2d 63, 187 Okl. 415—White v. Morrow, 100 P.2d 872, 187 Okl. 72—Cline v. McKee, 98 P.2d 25, 186 Okl. 366—Ball v. Fleshman, 83 P.2d 870, 183 Okl. 634—Posey v. Brown, 37 P.2d 633, 169 Okl. 466—Evans v. Local Building & Loan Ass'n, 36 P.2d 895, 169 Okl. 274—Mid-Continent Life Ins. Co. v. Sharrock, 20 P.2d 154, 162 Okl. 127—Tillman v. Gazaway, 261 P. 935, 128 Okl. 183—First Nat. Bank v. Elam, 258 P. 892, 126 Okl. 93—Zwirtz v. Dorl, 253 P. 75, 123 Okl. 284—Exchange Trust Co. v. Ireton, 213 P. 309, 88 Okl. 262—Tobin v. Gantt, 189 P. 170, 78 Okl. 73—McDonald v. Miller, 186 P. 957, 77 Okl. 97—Gamel v. Hynds, 171 P. 920, 69 Okl. 204—Crump v. Lanham, 168 P. 43, 67 Okl. 33—Anderson v. Kelley, 156 P. 1167, 57 Okl. 109—Shufeldt v. Jefcoat, 151 P. 595, 50 Okl. 790—Ball v. White, 150 P. 901, 50 Okl. 429—Success Realty Co. v. Trowbridge, 150 P. 898, 50 Okl. 402—Kentucky Bank & Trust Co. v. Pritchett, 143 P. 338, 44 Okl. 87.

S.C.—Whetstone v. Dreher, 136 S.E. 209, 138 S.C. 169.

Wash.—Owens v. Bausman, 177 P. 792, 105 Wash. 412—Brisky v. Lamb-Davis Lumber Co., 167 P. 118, 98 Wash. 162.

4 C.J. p 1040 note 27.

Where jury findings adopted

Ariz.—Amado v. Aguirre, 161 P.2d 117, 63 Ariz. 213, 160 A.L.R. 1126.

Kan.—Hessen v. Sapp, 160 P. 220, 98 Kan. 737.

51. Ariz.—Wilson v. Coerver, 279 P. 253, 35 Ariz. 488.

Okl.—Miller v. Roberts, 282 P. 1104, 140 Okl. 271—City of Chickasha v. O'Brien, 159 P. 282, 58 Okl. 46.

Wis.—In re Keenan's Will, 176 N.W. 857, 171 Wis. 94.

4 C.J. p 1040 note 28—9 C.J. p 1259 note 72.

Misleading advisory jury

The fact that the trial court gave an incorrect rule to an advisory jury which may have misled them could not be foundation for prejudicial error upon appeal, where the trial court in its opinion declared that such incorrect rule had been given to the jury, but the court then proceeded to make its findings under the evidence upon all the issues in view of such misdirection of the jury.

Wis.—Behnke v. Kroening, 182 N.W. 837, 174 Wis. 224.

52. Cal.—Hewlett v. Pilcher, 24 P. 781, 85 C. 542.

Mo.—Palmer v. Crisle, 92 Mo.App. 510.

Wash.—Collins v. Fidelity Trust Co., 73 P. 1121, 33 Wash. 136.

53. Ariz.—Wilson v. Coerver, 279 P. 253, 35 Ariz. 488.

Tenn.—Nashville Union Stockyards, Inc. v. Grissim, 13 Tenn.App. 115.

4 C.J. p 1041 note 30.

54. W.Va.—Wilson v. Wiggin, 81 S. E. 842, 73 W.Va. 560.

4 C.J. p 1041 note 31.

55. Cal.—Moore v. San Vicente Lumber Co., 165 P. 687, 175 C. 212.

55.50 Ky.—Combs v. Stewart, 190 S.W.2d 861, 301 Ky. 50—Coca Cola Bottling Company of Shelbyville v. Creech, 53 S.W.2d 745, 245 Ky. 414.

56. Ala.—Johnston v. King, 35 So. 2d 202, 250 Ala. 571—Clay v. Cummins, 91 So. 790, 207 Ala. 105—Nelson v. Weekley, 70 So. 661, 195 Ala. 1—Mobile Light & R. Co. v. Portiss, 70 So. 136, 195 Ala. 320—Ward v. Cotton Seed Products Co., 69 So. 514, 193 Ala. 101.

Southern Ry. Co. v. Hartman, 68 So. 557, 12 Ala.App. 483—Smith v. E. T. Davenport & Co., 68 So. 545, 12 Ala.App. 456—Southern Ry. Co. v. Parks, 65 So. 202, 10 Ala. App. 318.

Ark.—Missouri Pac. R. Co. v. Brown, 32 S.W.2d 633, 182 Ark. 722—National Liberty Ins. Co. of America v. Spharler, 290 S.W. 594, 172 Ark. 715—St. Louis, I. M. & S. Ry. Co. v. Allen, 175 S.W. 514, 119 Ark. 266—Western Union Telegraph Co. v. Franklin, 169 S.W. 234, 114 Ark. 469, Ann.Cas.1916D 466—Harbison v. Hammons, 167 S.W. 849, 113 Ark. 120.

Cal.—Shuey v. Asbury, 55 P.2d 1160, 5 C.2d 712—McComas v. Al. G. Barnes Shows Co., 12 P.2d 630, 215 C. 685—Jordan v. Great Western Motorways, 2 P.2d 786, 213 C. 606—Cook v. Los Angeles Ry. Corporation, 145 P. 1013, 169 C. 113.

Freedman v. Willeford, 262 P.2d 642, 121 C.A.2d 145—Nole v. Sixty-Five O Four, Inc., 232 P.2d 288, 104 C.A.2d 632—Caccamo v. Swanston, 212 P.2d 246, 94 C.A.2d 957—Owen v. City of Los Angeles, 187 P.2d 860, 82 C.A.2d 933—Sills v. Forbes, 91 P.2d 246, 33 C.A.2d 219—Hurd v. Standard Gas Engine Co., 47 P. 2d 1085, 8 C.A.2d 459—Fleming v. Flick, 35 P.2d 210, 140 C.A. 14—Warnke v. Griffith Co., 24 P.2d 583, 133 C.A. 481—Gambrel v. Duensing, 16 P.2d 284, 127 C.A.

593—Silvey v. Harm, 8 P.2d 570, 120 C.A. 561—Blair v. Guarantee Title Co. of Long Beach, 284 P. 719, 103 C.A. 260—Byrne v. Western Pipe & Steel Co. of California, 253 P. 776, 81 C.A. 270—Werner v. Southern Pac. Co., 185 P. 1016, 44 C.A. 76—Bronge v. Mowat & Co., 155 P. 827, 29 C.A. 388.

Conn.—Frechette v. City of New Haven, 132 A. 467, 104 Conn. 83—Spring v. Nagle, 131 A. 744, 104 Conn. 23—Knox v. Binkoski, 122 A. 400, 99 Conn. 582—Budovsky v. Hadhazi, 111 A. 179, 95 Conn. 388—Romeo v. Russo, 107 A. 504, 93 Conn. 666—Bernier v. Woodstock Agr. Society, 92 A. 160, 88 Conn. 558.

D.C.—Shortsleeves v. Capital Traction Co., 58 F.2d 516, 61 App.D.C. 111.

Fla.—Powell v. Wilson Lumber Co. of Florida, 155 So. 116, 115 Fla. 13—City of Jacksonville v. Vaughn, 110 So. 529, 92 Fla. 339.

Ga.—Haslerig v. Watson, 54 S.E.2d 413, 205 Ga. 668—Fraser v. Jarrett, 112 S.E. 487, 153 Ga. 441—Scott v. Lay, 104 S.E. 434, 150 Ga. 629—Hand v. Brown, 86 S.E. 1080, 144 Ga. 272—Hendricks & Christian v. Lott, 85 S.E. 843, 143 Ga. 647—Hamilton v. Duvall, 83 S.E. 103, 142 Ga. 432.

Welfare Finance Co. v. Corbin, 85 S.E.2d 819, 91 Ga.App. 485—Story v. Howell, 70 S.E.2d 29, 85 Ga.App. 661—Union Central Life Ins. Co. v. Trundle, 15 S.E.2d 909, 65 Ga.App. 553—Macon County Ass'n of Farmers' Mut. Fire Ins. Co. of Georgia v. Slappey, 134 S.E. 834, 35 Ga.App. 737—English v. Poole, 121 S.E. 589, 31 Ga.App. 581—Dollar v. Boynton, 87 S.E. 827, 17 Ga.App. 540.

Idaho.—Peterson v. Hailey Nat. Bank, 6 P.2d 145, 51 Idaho 427—Washington County v. Fidelity & Deposit Co. of Maryland, 295 P. 1003, 50 Idaho 322.

Ill.—Pridmore v. Chicago, R. I. & P. Ry. Co., 114 N.E. 176, 275 Ill. 386—McCoy v. Union Elevated R. Co., 111 N.E. 517, 271 Ill. 490, affirmed 38 S.Ct. 504, 247 U.S. 354, 62 L.Ed. 1156.

Westinghouse Elec. Elevator Co. v. La Salle Monroe Bldg. Corp., 63 N.E.2d 411, 326 Ill.App. 598, affirmed 70 N.E.2d 604, 395 Ill. 429—Schillo v. City of Chicago, 62 N.E. 2d 22, 326 Ill.App. 463—Kesner v. Faroll, 268 Ill.App. 531—Wever v. Staggs, 264 Ill.App. 556—Holler v. Chicago City Ry. Co., 209 Ill.App. 140—Nix v. Brunswick-Balke-Collender Co., 191 Ill.App. 503—Auto Light & Mfg. Co. v. 35% Automobile Supply Co., 189 Ill.App. 543—McCorkle v. McGinnis' Estate, 187 Ill.App. 610.

Ind.—Kelley v. Dickerson, 13 N.E.2d 535, 213 Ind. 624—City of Logansport v. Green, 135 N.E. 657, 192 Ind. 253—Mishler v. Chicago, S. B. & N. I. Ry. Co., 122 N.E. 657, 188 Ind. 189—Supreme Council Catholic Knights of America v. Logsdon, 108 N.E. 587, 183 Ind. 183—Inland Steel Co. v. Kiessling, 108 N.E. 232, 183 Ind. 117.

Koeneman v. Aldridge, 122 N.E. 2d 345, 125 Ind.App. 176—Borenstein v. Uhl, 20 N.E.2d 189, 107 Ind.App. 67—Central Indiana Ry. Co. v. Mitchell, 199 N.E. 439, 102 Ind.App. 121—Detwiler v. Culver Military Academy, 168 N.E. 246, 91 Ind.App. 355—Rubin & Cherry Shows v. Dinsmore, 164 N.E. 804, 88 Ind.App. 616—Horner v. Boomershine, 161 N.E. 641, 88 Ind.App. 57—City of Terre Haute v. Johns, 145 N.E. 9, 82 Ind.App. 483—Milhollin v. Adams, 115 N.E. 803, 66 Ind.App. 376—Marietta Glass Mfg. Co. v. Bennett, 106 N.E. 419, 60 Ind.App. 435.

Iowa.—Shea v. Biddle Improvement Co., 176 N.W. 948, 188 Iowa 952—Collinson v. Cutter, 170 N.W. 420, 186 Iowa 276—Freed v. Collins, 151 N.W. 471, 169 Iowa 359—Ralston Savings Bank v. Fisher, 147 N.W. 162, 165 Iowa 680.

Kan.—George v. Ayesh, 295 P.2d 660, 179 Kan. 324—Debus v. Missouri State Life Ins. Co., 225 P. 91, 115 Kan. 773—Johnson v. City of Iola, 202 P. 84, 109 Kan. 670—Outcault Advertising Co. v. Kraus, 177 P. 532, 104 Kan. 44—Moore v. Wilson, 149 P. 739, 95 Kan. 637—Yard v. Gibbons, 149 P. 422, 95 Kan. 802.

Ky.—Marcum v. Hedger, 303 S.W. 2d 558—Thronton v. Phillips, 90 S.W.2d 347, 262 Ky. 346—Louisville Ry. Co. v. Lenehan, 69 S.W.2d 1017, 253 Ky. 489—Tente v. Jaglowicz, 44 S.W.2d 845, 241 Ky. 720—Cash v. Bank of Lowes, 245 S.W. 137, 196 Ky. 570.

Mass.—H. W. Robinson Carpet Co. v. Fletcher, 52 N.E.2d 681, 315 Mass. 350—Whitty Mfg. Co. v. Clark, 180 N.E. 315, 278 Mass. 370—Hines v. Eastern S. S. Lines, 139 N.E. 823, 245 Mass. 385.

Mich.—Shoemaker v. Trompen, 40 N. W.2d 92, 326 Mich. 120—Arfman v. Tamarack Mining Co., 153 N.W. 661, 187 Mich. 344—Pennsylvania Rubber Co. v. Detroit Shipbuilding Co., 152 N.W. 1071, 186 Mich. 305—Michigan Hardware Co. v. Merrifield, 152 N.W. 948, 186 Mich. 253.

Minn.—Dahlstrom v. Hurtig, 295 N. W. 508, 209 Minn. 72—Machler v. McMahon, 239 N.W. 605, 184 Minn. 476—Bullock v. New York Life Ins. Co., 233 N.W. 858, 182 Minn. 192—Norman v. Linn, 212 N.W. 605, 170 Minn. 399—Peck v. Chicago, R. I. & P. Ry. Co., 154 N.W. 1075, 131 Minn. 200—McMahon v. Illinois Cent. Ry. Co., 148 N.W. 446, 127 Minn. 1.

Miss.—J. J. Newman Lumber Co. v. Cameron, 174 So. 571, 179 Miss. 217—Hale v. Hinkle Mercantile Co., 132 So. 751, 159 Miss. 796—Hoover Commercial Co. v. Humphrey, 66 So. 214, 107 Miss. 810.

Mo.—Adams v. Atchison, T. & S. F. Ry. Co., 280 S.W.2d 84—Johnson v. Dawidoff, 177 S.W.2d 467, 352 Mo. 343—Herrington v. Hoey, 139 S.W.2d 477, 345 Mo. 1108—Metropolitan Paving Co. v. Brown-Crummer Inv. Co., 274 S.W. 815, 309 Mo. 638.

Hays v. Western Union Telegraph Co., 150 S.W.2d 511, 236 Mo. App. 19—Kling v. Kansas City, 61 S.W.2d 411, 227 Mo.App. 1248—Wolpers v. Globe & Rutgers Fire Ins. Co., App., 61 S.W.2d 224—Trent v. Barber, App., 56 S.W.2d 151—Farmers' State Bank of Ellsinore v. Consolidated School Dist. No. 1, 293 S.W. 453, 220 Mo.App. 1312—Lokey v. Rudy-Patrick Seed Co. of Kansas City, App., 285 S.W. 1028—Miller v. Tallent, App., 212 S.W. 73—Morris v. St. Louis & S. F. R. Co., 168 S.W. 323, 184 Mo. App. 106.

Mont.—Maynard v. City of Helena, 160 P.2d 484, 117 Mont. 402—Girson v. Girson, 114 P.2d 274, 112 Mont. 183.

Neb.—O'Donnell v. Ridgley Protective Ass'n, 153 N.W. 547, 98 Neb. 497—Peterson v. Spence, 153 N.W. 498, 98 Neb. 416.

N.M.—Reed v. Sibley, 296 P. 572, 35 N.M. 307.

N.Y.—Goldstein v. Connecticut General Life Ins. Co., 7 N.E.2d 700, 273 N.Y. 578.

Hochstim v. Grossman, 16 N.Y.S. 2d 961, 258 App.Div. 445—Drucker v. 693 Saratoga Ave. Corporation, 280 N.Y.S. 617, 245 App.Div. 760.

N.C.—Grant v. Tallassee Power Co., 146 S.E. 531, 196 N.C. 617—Weeks v. Adams, 146 S.E. 130, 196 N.C. 512—Rosenberg v. Equitable Life Assur. Soc. of U. S., 136 S.E. 364, 193 N.C. 126—Gambier v. Kimball, 85 S.E. 3, 168 N.C. 642—Ingle v. Southern Ry. Co., 83 S.E. 744, 167 N.C. 636—Embler v. Gloucester Lumber Co., 83 S.E. 740, 167 N.C. 457—McNeill v. Atlantic Coast Line R. Co., 83 S.E. 704, 167 N.C. 390.

N.D.—Nagel v. Emch, 23 N.W.2d 879, 74 N.D. 631—Sorg v. Brost, 150 N.W. 455, 29 N.D. 124.

Ohio.—Binder v. Youngstown Municipal Ry. Co., 180 N.E. 899, 125 Ohio St. 193—West v. Gillette, 116 N.E. 521, 95 Ohio St. 305.

Ross v. Stricker, 88 N.E.2d 80, 85 Ohio App. 56, reversed on other grounds 91 N.E.2d 18, 153 Ohio St. 153—Huffman v. State ex rel. Squire, 200 N.E. 137, 51 Ohio App. 163—Cleveland Ry. Co. v. Owens, 199 N.E. 607, 51 Ohio App. 53—Armour & Co. v. Yoter, 178 N.E. 596, 40 Ohio App. 225—Ferguson v. Pierson, 162 N.E. 677, 29 Ohio App. 393.

This is also true where the verdict returned is the | only one justified by the evidence,[57] or by the plead-

Okl.—City of Tulsa v. Pearson, 296 P.2d 788—Muskogee Electric Traction Co. v. Cox, 153 P. 125, 49 Okl. 365—Dunn v. Modern Foundry & Machine Co., 151 P. 893, 51 Okl. 465—Anderson v. Guymon, 151 P. 863, 51 Okl. 233—Gillis v. First Nat. Bank, 148 P. 994, 47 Okl. 411—Oklahoma City Const. Co. v. Peppard, 140 P. 1084, 43 Okl. 121.

R.I.—Oliver v. Pettaconsett Const. Co., 90 A. 764, 36 R.I. 477.

S.C.—Brown v. Farmers Mut. Fire Ins. Ass'n of Fairfield County, 184 S.E. 670, 179 S.C. 274—Cleveland v. Home Ins. Co. of New York, 148 S.E. 49, 150 S.C. 289.

S.D.—Bruns v. Light, 54 N.W.2d 99, 74 S.D. 418—Winans v. Light, 217 N.W. 635, 52 S.D. 359—Wyant v. Faith Tp. in Meade County, 207 N.W. 87, 49 S.D. 220—Bestak v. Bennett, 184 N.W. 359, 44 S.D. 485—Barnard v. Tidrick, 152 N.W. 690, 35 S.D. 403—Baskerville v. Hughes County Co-op. Store, 151 N.W. 41, 35 S.D. 139.

Tenn.—Holt v. Walsh, 174 S.W.2d 657, 180 Tenn. 307—Chamberlain v. Lee, 257 S.W. 415, 148 Tenn. 637—German-American Monogram Mfrs. v. Johnson, 182 S.W. 595, 133 Tenn. 571.

Hinkle v. Smith, 65 S.W.2d 581, 16 Tenn.App. 593.

Tex.—McEwen v. Texas & P. Ry. Co., Civ.App., 92 S.W.2d 308—Hughes v. Wruble, Civ.App., 88 S.W.2d 661, affirmed 116 S.W.2d 368, 131 Tex. 444—Harris v. Sadler, Civ.App., 55 S.W.2d 173—Miller v. Panhandle & S. F. Ry. Co., Civ.App., 35 S.W.2d 194—Winters Mut. Aid Ass'n, Circle No. 2, v. Reddin, Civ.App., 31 S.W.2d 1103, reversed on other grounds, Com.App., 49 S.W.2d 1095—Goldforb v. Gulf, C. & S. F. Ry. Co., Civ.App., 243 S.W. 707—Croom v. Galveston, H. & S. A. Ry. Co., Civ.App., 238 S.W. 733—Land v. Johnson, Civ.App., 189 S.W. 337, error refused—Bankers' Trust Co. of Amarillo v. Cooper, Merrill & Lumpkin, Civ.App., 179 S.W. 541—Liverpool & London & Globe Ins. Co. v. Lester, Civ.App., 176 S.W. 602—Royal Indemnity Co. v. Schwartz, Civ.App., 172 S.W. 581—Darden v. Southern Traction Co., Civ.App., 172 S.W. 200—St. Louis, S. F. & T. Ry. Co. v. Gilliam & Jackson, Civ.App., 166 S.W. 706—Good v. Texas & P. Ry. Co., Civ. App., 166 S.W. 670.

Va.—Mister v. Mister, 23 S.E.2d 152, 180 Va. 364—Richardson v. Breeding, 187 S.E. 454, 167 Va. 30—Snyder v. Fatherly, 163 S.E. 358, 158 Va. 335—Virginia Iron, Coal & Coke Co. v. Perkey's Adm'r, 130 S. E. 403, 143 Va. 168—New York, P. & N. R. Co. v. Bundick, Taylor, Corbin-Handy Co., 122 S.E. 261, 138 Va. 535—Straus v. Fahed, 85 S.E. 969, 117 Va. 633—Wood v. J. W. Jefferies & Co., 83 S.E. 1074, 117 Va. 193.

Wash.—Snavely v. City of Goldendale, 144 P.2d 269, 19 Wash.2d 741—Hightower v. Union Savings & Trust Co., 152 P. 1015, 88 Wash. 179, Ann.Cas.1918A 489—Briscoe v. Washington-Oregon Corporation, 145 P. 995, 84 Wash. 29—MacLeod v. Aberdeen Brewing Co., 143 P. 440, 82 Wash. 74.

W.Va.—Carnahan v. Monroe, 185 S. E. 234, 117 W.Va. 279—Bennett v. Dayton, 135 S.E. 13, 102 W.Va. 197—Harman v. Appalachian Power Co., 86 S.E. 917, 77 W.Va. 48.

Wis.—Himebauch v. Ludtke, 39 N. W.2d 684, 256 Wis. 1—Fraundorf v. Schmidt, 256 N.W. 699, 216 Wis. 158—Hanson v. Matas, 249 N.W. 505, 212 Wis. 275—Gerbing v. McDonald, 229 N.W. 860, 201 Wis. 214, followed in 229 N.W. 864, 201 Wis. 222—Hamus v. Weber, 226 N.W. 392, 199 Wis. 320—Foley v. Marsch, 154 N.W. 982, 162 Wis. 25—Zuleger v. Zeh, 150 N.W. 406, 160 Wis. 600—Bonnell v. Chicago, St. P., M. & O. Ry. Co., 147 N.W. 1046, 158 Wis. 153.

3 C.J. p 163 note 23—4 C.J. p 1041 note 32, p 1173 note 71—42 C.J. p 1289 note 49 [b].

57. Ala.—McDuff v. Kurn, 172 So. 886, 233 Ala. 619—Holczstein v. Bessemer Trust & Savings Bank, 136 So. 409, 223 Ala. 271—Meyerson v. New Idea Hosiery Co., 115 So. 94, 217 Ala. 153, 55 A.L.R. 1231—Parker v. Gilbert, 106 So. 41, 213 Ala. 699—Beavers v. Southern Ry. Co., 103 So. 887, 212 Ala. 600.

Ariz.—Walker v. Wright, 236 P. 710, 28 Ariz. 235—Hurley v. Wilky, 158 P. 639, 18 Ariz. 270.

Ark.—Southern Express Co. v. Couch, 249 S.W. 559, 157 Ark. 604—Davis v. Kelly, 237 S.W. 698, 152 Ark. 151—Bolen v. Still, 185 S.W. 811, 123 Ark. 308.

Cal.—Gerdes v. Pacific Gas & Electric Co., 27 P.2d 365, 219 C. 459, 90 A.L.R. 1071—Pretzer v. California Transit Co., 294 P. 382, 211 C. 202.

Mehling v. Zigman, 254 P.2d 141, 116 C.A.2d 729—Van Fleet v. Heyler, 125 P.2d 586, 51 C.A.2d 719—Lewin v. Margolis, 59 P.2d 153, 14 C.A.2d 746—Crawford v. Rose, 39 P.2d 217, 2 C.A.2d 734, rehearing denied 40 P.2d 277, 3 C.A.2d 665—Black v. Southern Pac. Co., 12 P.2d 981, 124 C.A. 321—Tyson v. Burton, 294 P. 750, 110 C.A. 428—Leitert v. Pickwick Stages, Northern Division, 229 P. 889, 68 C.A. 504—Lawrence v. Pickwick Stages, Northern Division, 229 P. 885, 68 C.A. 494.

Colo.—Miller v. Campbell, 276 P. 676, 85 Colo. 406—Alley v. Tovey, 242 P. 999, 78 Colo. 532.

Conn.—Staples v. Bernabucci, 177 A. 380, 119 Conn. 443.

D.C.—Campbell v. District of Columbia, 78 F.2d 725, 64 App.D.C. 375.

Fla.—Murden v. Miami Poultry & Egg Co., 152 So. 714, 113 Fla. 870—Garcia v. Borino, 81 So. 155, 77 Fla. 211—Carpenter-O'Brien Co. v. Leach, 74 So. 6, 73 Fla. 82.

Ga.—Tolnas v. Pope, 90 S.E.2d 420, 212 Ga. 50—Hickox v. Griffin, 55 S.E.2d 351, 205 Ga. 859—Wright v. Anthony, 52 S.E.2d 316, 205 Ga. 47—Avary v. Avary, 41 S.E.2d 314, 202 Ga. 22—Parker v. Harling, 5 S.E.2d 755, 189 Ga. 224—Elyea, Inc., v. Cenker, 190 S.E. 585, 184 Ga. 179—American Surety Co. of New York v. Pettie, 171 S.E. 916, 178 Ga. 26—Sherman v. Bird, 139 S.E. 333, 164 Ga. 696—Patterson v. Swift & Co., 136 S.E. 68, 163 Ga. 297—Steele v. Graves, 127 S.E. 465, 160 Ga. 120—Armstrong v. Citizens' & Southern Bank, 90 S.E. 44, 145 Ga. 861—Bridges v. Black, 87 S.E. 20, 144 Ga. 311.

Parsons v. Grant, 98 S.E.2d 219, 95 Ga.App. 431—Ballentine Motors of Ga., Inc. v. Nimmons, 92 S.E.2d 714, 93 Ga.App. 708—Welfare Finance Co. v. Corbin, 85 S.E.2d 819, 91 Ga.App. 485—Fidelity-Phenix Fire Ins. Co. v. Berry, 69 S.E.2d 305, 85 Ga.App. 492—General Elevator Co. v. Rotary Lift Co., 59 S.E.2d 272, 81 Ga.App. 481—Mitchell v. Aiken, 43 S.E.2d 581, 75 Ga. App. 514—Commercial Bank of Crawford v. Pharr, 43 S.E.2d 439, 75 Ga.App. 364—Kenney v. Pitts, 36 S.E.2d 820, 73 Ga.App. 450—Mutual Life Ins. Co. of N. Y. v. Binion, 33 S.E.2d 448, 72 Ga.App. 173—Mutual Life Ins. Co. v. Langford, 32 S.E.2d 411, 71 Ga.App. 832—Hudgins Transfer Co. v. Law, 29 S.E.2d 107, 70 Ga.App. 659—Union Central Life Ins. Co. v. Trundle, 15 S.E.2d 909, 65 Ga.App. 553—Norris v. Macon Terminal Co., 198 S.E. 272, 58 Ga.App. 313—Krasner v. Western Newspaper Union, 198 S.E. 110, 58 Ga.App. 146—Brooks v. Hartsfield Co., 192 S.E. 459, 56 Ga.App. 184—Plowden v. Hall, 190 S.E. 37, 55 Ga.App. 321—Odell v. Wessinger, 189 S.E. 367, 54 Ga.App. 838—May v. Stephens, 184 S.E. 890, 52 Ga.App. 843—Hurst v. Federal Life Ins. Co., 178 S.E. 762, 50 Ga.App. 900—Blackman v. Travelers' Ins. Co., 174 S.E. 384, 49 Ga.App. 137—Union Relief Ass'n v. Evans, 169 S.E. 264, 46 Ga.App. 806—Davies v. Hearn, 164 S.E. 273, 45 Ga.App. 276—Swint v. Adams, 157 S.E. 249, 42 Ga.App. 705—Futrelle v. Karsman, 154 S.E. 714, 41 Ga.App. 765—

First Nat. Bank v. Moore, 141 S.E. 502, 37 Ga.App. 698—Southern Pac. Co. v. Di Cristina, 137 S.E. 79, 36 Ga.App. 433—H. L. Singer Co. v. Y. S. B. Gray & Son, 129 S.E. 555, 34 Ga.App. 345—Loganville Banking Co. v. Lester, 123 S.E. 144, 32 Ga.App. 376—Pendergrass Banking Co. v. T. W. Murphy & Sons, 120 S.E. 670, 31 Ga.App. 386—Anestos v. Simons, 110 S.E. 30, 27 Ga.App. 808—Palmer v. Knoxville Lumber & Mfg. Co., 108 S.E. 557, 27 Ga.App. 386—Commercial Bank of Jasper v. Dasher, 102 S.E. 177, 24 Ga.App. 736—Union Salt Co. v. Boone, 95 S.E. 319, 22 Ga.App. 10—Henderson v. Hardeman & Phinizy, 94 S.E. 317, 21 Ga. App. 297—M. C. Kiser Co. v. Stewart, 92 S.E. 288, 19 Ga.App. 794—Brooke v. Atlanta Woolen Mills, 89 S.E. 598, 18 Ga.App. 505—Hall v. State, 88 S.E. 592, 17 Ga.App. 806—Eagle & Phenix Mills v. Moncrief, 86 S.E. 260, 17 Ga.App. 10.

Idaho.—Kerby v. Oregon Short Line R. Co., 264 P. 377, 45 Idaho 636—Moreland v. Mason, 260 P. 1035, 45 Idaho 143.

Ill.—New York Cent. R. Co. v. Kinsella, 155 N.E. 284, 324 Ill. 339—Farmer v. Davis, 124 N.E. 640, 289 Ill. 392.

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Ind.—Propst v. Spitznagle, 19 N.E.2d 263, 215 Ind. 402—City of Decatur v. Eady, 115 N.E. 577, 186 Ind. 205, L.R.A.1917E 242.

Perkins v. Sullivan, App., 143 N.E.2d 105—Terre Haute City Lines v. Kroeger, 59 N.E.2d 575, 115 Ind.App. 376—Chicago, I & L. Ry. Co. v. Downey, 5 N.E.2d 656, 103 Ind.App. 672—Pittsburgh, C., C. & St. L. R. Co. v. Rushton, 149 N.E. 652, 90 Ind.App. 227—City of Indianapolis v. National City Bank of Indianapolis, 148 N.E. 675, 80 Ind. App. 677, rehearing denied 141 N. E. 249, 80 Ind.App. 677—Fast v. Judy, 147 N.E. 728, 83 Ind.App. 85—Allen Realty Co. v. Uhler, 146 N. E. 766, 83 Ind.App. 103—Craig v. Lee, 142 N.E. 399, 81 Ind.App. 319—Union Traction Co. of Indiana v. Buell, 140 N.E. 62, 80 Ind.App. 222—Hilgemeier v. Bower Mfg. Co., 139 N.E. 691, 81 Ind.App. 191—Adams v. Mutual Life Ins. Co., 132 N.E. 688, 76 Ind.App. 598—City of Huntingburg v. Hocker, 130 N.E. 814, 76 Ind.App. 435—Moriarty v. Hickam, 127 N.E. 459, 73 Ind.App. 329—Union Traction Co. of Indiana v. Barnett, 127 N.E. 287, 75 Ind. App. 19—Easley v. Deer, 121 N.E. 542, 69 Ind.App. 264.

Iowa.—Monoghan v. Bowers, 171 N. W. 38, 185 Iowa 708.

Kan.—Riney v. Doll, 225 P. 1059, 116 Kan. 26.

Ky.—Hutcherson v. Hutcherson's Ex'rs, 232 S.W.2d 995, 313 Ky. 575—Meredith v. Fehr, 90 S.W.2d 1021, 262 Ky. 648—Warfield Natural Gas Co. v. Clark's Adm'x, 79 S. W.2d 21, 257 Ky. 724—Bedinger v. Citizens' Nat. Bank of Covington, 279 S.W. 622, 212 Ky. 486—Commercial Sec. Co. v. Archer, 201 S. W. 479, 179 Ky. 842—Russell v. McIntosh, 201 S.W. 33, 179 Ky. 677.

La.—Fontenelle v. Waguespack, 90 So. 662, 150 La. 316.

Md.—Texas Co. v. Washington, B. & A. Electric R. Co., 127 A. 752, 147 Md. 167, 40 A.L.R. 495.

Mass.—Barber v. Rathyon, 145 N.E. 866, 250 Mass. 479.

Mich.—Cothran v. Benjamin Cleenewerck & Son, 209 N.W. 132, 235 Mich. 351—Halzle v. Hargreaves, 206 N.W. 356, 233 Mich. 234—Mueller Furniture Co. v. Citizens' Telephone Co., 203 N.W. 129, 230 Mich. 173—Purity Ice Cream & Dairy Co. v. Adams Express Co., 187 N.W. 296, 217 Mich. 593.

Minn.—Rodbacken v. Chicago, M. & St. P. Ry. Co., 200 N.W. 747, 161 Minn. 514—Kowalski v. Chicago & N. W. Ry. Co., 199 N.W. 178, 159 Minn. 388.

Miss.—Sikes v. Thomas, 7 So.2d 527, 192 Miss. 647—Powell v. J. J. Newman Lumber Co., 165 So. 299, 174 Miss. 685—Hubbard v. Southern Ry. Co., 83 So. 247, 120 Miss. 834.

Mo.—Chappee v. Lubrite Refining Co., 85 S.W.2d 1034, 337 Mo. 791—Lepchenski v. Mobile & O. R. Co., 59 S.W.2d 610, 332 Mo. 194—Unterlachner v. Wells, 278 S.W. 79—Cadwell v. Wilson Stove & Mfg. Co., 238 S.W. 415—Moloney v. Boatmen's Bank, 232 S.W. 133, 288 Mo. 435—Frick v. Millers' Nat. Ins. Co., 223 S.W. 643.

Green v. Boothe, App., 188 S.W. 2d 84—Summers v. Peoples Elevator Co., App., 136 S.W.2d 81—O'Dell v. Hurt, App., 106 S.W.2d 526—Raw v. Maddox, 93 S.W.2d 282, 230 Mo.App. 515—Berger Mfg. Co. v. Phillips Hotel Operating Co., App., 89 S.W.2d 703—Henry v. Missouri Ins. Co., App., 68 S.W.2d 852—John P. Mills Organization v. Bell, 37 S.W.2d 680, 225 Mo.App. 685—Bigalke v. Mutual Life Ins. Co. of Baltimore, App., 34 S.W.2d 1019—Kinsella v. Marquette Finance Corporation, App., 16 S.W.2d 619—Brown v. American Car & Foundry Co., App., 271 S.W. 540—Garvey v. Ladd, App., 266 S.W. 727—American Ry. Express Co. v. Friedman Loan & Mercantile Co., App., 260 S.W. 1008—Leer v. Continental Ins. Co. of New York, App., 250 S.W. 631—Citizens' Bank of Sikeston v. Scott County Milling Co., 243 S.W. 433, 210 Mo.App. 603—Stephan Coal Co. v. Lloyd, App., 240 S.W. 1092—Connelly v. Cone, 224 S.W. 1011, 205 Mo.App. 395—Hallander v. Jefferson Mut. Fire Ins. Co., App., 218 S.W. 418—Sutton v. North American Acc. Ins. Co., App., 208 S.W. 499—Plummer v. Ford, App., 208 S.W. 489—Johnson v. Kansas City Southern Ry. Co., App., 200 S.W. 685.

Mont.—Fayle v. Camden Fire Ins. Ass'n, 278 P. 509, 85 Mont. 248.

Neb.—Eilts v. Bendt, 76 N.W.2d 623, 162 Neb. 538—Shields v. Buffalo County, 71 N.W.2d 701, 161 Neb. 34—Leichner v. First Trust Co. of Lincoln, 274 N.W. 475, 133 Neb. 170—Stuertz v. L. L. Coryell Bldg. Corp., 234 N.W. 926, 120 Neb. 667—Neal v. Union Transfer Co., 255 N.W. 544, 127 Neb. 443—Lebs v. Mutual Ben. Health & Accident Ass'n, 247 N.W. 19, 124 Neb. 491—Patrick v. Shallcross, 243 N.W. 907, 123 Neb. 742—City of Schuyler v. Verba, 235 N.W. 341, 120 Neb. 729—Stiefler v. Miller, 232 N.W. 620, 120 Neb. 6, reversing 231 N.W. 153, 120 Neb. 6—Advance-Rumely Thresher Co. v. Bartzat, 206 N.W. 7, 114 Neb. 35—Buzzello v. Sramek, 193 N.W. 743, 110 Neb. 262—Fellers v. Howe, 184 N.W. 122, 106 Neb. 495—Gesford v. Star Van & Storage Co., 177 N.W. 794, 104 Neb. 453—Watson v. Chicago, B. & Q. R. Co., 167 N.W. 773, 102 Neb. 546—Wenquist v. Omaha & C. B. St. Ry. Co., 150 N.W. 637, 97 Neb. 554.

N.H.—Ahern v. City of Concord, 132 A. 570, 82 N.H. 246.

N.J.—Peschek v. Teissere, 104 A.2d 58, 30 N.J.Super. 248.

N.C.—Weatherman v. Ramsey, 176 S.E. 568, 207 N.C. 270—Union Central Life Ins. Co. v. Cates, 137 S. E. 324, 193 N.C. 456—Fulcher v. Pine Lumber Co., 132 S.E. 9, 191 N. C. 408—Overton v. Highsmith, 131 S.E. 742, 191 N.C. 376—Faircloth v. Johnson, 127 S.E. 346, 189 N.C. 429—Collins v. Seaboard Air Line Ry. Co., 120 S.E. 824, 187 N.C. 141—Hipps v. Southern Ry., 99 S.E. 835, 177 N.C. 472.

ings and proof;[57.5] where the verdict or decree is warranted by admissions of the party against whom it was entered;[57.10] where appellant was not entitled to a favorable decision in any event;[58] where

N.D.—Cassidy v. Reuter, 247 N.W. 890, 63 N.D. 267.

Ohio.—Interstate Motor Freight Corporation v. Beecher, 174 N.E. 27, 37 Ohio App. 23.

Thompson v. Jones, 13 Ohio Cir. Ct., N.S., 493.

Okl.—Cox v. Sarkeys, 304 P.2d 979—City of Tulsa v. Pearson, 296 P.2d 788—Pankey v. Public Service Co. of Okl., 288 P.2d 373—Renegar v. Bogle, 186 P.2d 820, 199 Okl. 427—Prudential Ins. Co. of America v. Foster, 168 P.2d 295, 197 Okl. 39, 166 A.L.R. 1—Scott v. Folsom-Morris Coal Mining Co., 280 P. 622, 138 Okl. 147—Campbell v. Kirkpatrick, 249 P. 508, 120 Okl. 57—Westlake v. Cole, 241 P. 809, 115 Okl. 109—Schofield v. City of Tulsa, 239 P. 236, 111 Okl. 220—Outcault Advertising Co. v. Union State Bank, 234 P. 724, 109 Okl. 53—Morgan, Baldwin & Co. v. Kanola Oil & Refining Co., 226 P. 335, 102 Okl. 26—Sand Springs Ry. Co. v. Westhafer, 218 P. 525, 92 Okl. 89—Empire Gas & Fuel Co. v. Wainscott, 216 P. 141, 91 Okl. 66—Cosden Pipe Line Co. v. Berry, 210 P. 141, 87 Okl. 237—Liverpool & London & Globe Ins. Co. v. McLaughlin, 174 P. 248, 70 Okl. 237—Ponca City Ice Co. v. Robertson, 169 P. 1111, 67 Okl. 86—Antrim Lumber Co. v. Oklahoma State Bank, 162 P. 723, 65 Okl. 25, L.R.A.1918A 528—Armstrong v. Poland, 156 P. 220, 56 Okl. 663.

Or.—Lawrence Warehouse Co. v. Best Lumber Co., 271 P.2d 661, 202 Or. 77, rehearing denied 273 P.2d 993, 202 Or. 77.

Pa.—Satterwhite v. National Powder Co., 66 A.2d 278, 362 Pa. 133—Miller v. Director General of Railroads, 113 A. 373, 270 Pa. 330.

Fessler v. Schuylkill Haven Gas & Water Co., 69 Pa.Super. 331.

Tex.—St. Louis Southwestern Ry. Co. of Texas v. Seale & Jones, Com.App., 267 S.W. 676—Pullman Co. v. Gulf, C. & S. F. Ry. Co., Com.App., 231 S.W. 741.

Watts v. Mann, Civ.App., 187 S.W.2d 917, error refused—Alamo Downs, Inc., v. Briggs, Civ.App., 106 S.W.2d 733, error dismissed—Beal v. Earhart, Civ.App., 249 S.W. 1093—Baker v. Bridges, Civ.App., 236 S.W. 169—Schoonmaker v. Clardy, Civ.App., 218 S.W. 1112, reversed on other grounds, Com.App., 244 S.W. 124—First Nat. Bank v. Todd, Civ.App., 212 S.W. 219, reversed on other grounds, Com.App., 231 S.W. 322—Saenz v. Hamilton Hotel Co., Civ.App., 207 S.W. 159—Temple Trust Co. v. Pirtle, Civ.App., 198 S.W. 627—Hattaway v. Planters' Cotton Oil Co., Civ.App., 194 S.W. 1119—Jackson v. Home Nat. Bank of Baird, Civ.App., 185 S.W. 893—Houston & T. C. R. Co. v. Walker, Civ.App., 167 S.W. 199, reversed on other grounds 173 S.W. 208, 107 Tex. 241, motion granted 177 S.W. 954, 107 Tex. 241.

Utah.—Broadbent v. Denver & R. G. Ry. Co., 160 P. 1185, 48 Utah 598.

Vt.—Goupiel v. Grand Trunk Ry. Co., 118 A. 586, 96 Vt. 191, 30 A.L.R. 690.

Va.—Meek v. Graybeal, 78 S.E.2d 593, 195 Va. 381—Messick v. Barham, 73 S.E.2d 530, 194 Va. 382—Oliver v. Forsyth, 58 S.E.2d 49, 190 Va. 710—Ward v. Clark, 177 S.E. 212, 163 Va. 770—R. F. Trant, Inc. v. Upton, 165 S.E. 404, 159 Va. 355—Virginia Electric & Power Co. v. Blunt's Adm'r, 163 S.E. 329, 158 Va. 421—Waynick v. Walrond, 154 S.E. 522, 155 Va. 400, 70 A.L.R. 1014—Klingstein v. Vaughan, 140 S.E. 275, 149 Va. 147—Powell v. John E. Hughes Orphanage, 138 S.E. 637, 148 Va. 331—City of Richmond v. Virginia Bonded Warehouse Corporation, 138 S.E. 503, 148 Va. 60, 54 A.L.R. 1485—Moore v. Hermitage Realty Inv. Corporation, 133 S.E. 881, 145 Va. 199—Norfolk Southern R. Co. v. Mabe, 132 S.E. 692, 146 Va. 813—Talley v. Drumheller, 130 S.E. 385, 143 Va. 439—Fielding v. Robertson, 126 S.E. 231, 141 Va. 123—Green v. Ruffin, 125 S.E. 742, 141 Va. 628, rehearing denied 127 S.E. 486, 141 Va. 628—National Mechanics' Bank v. Schmelz Nat. Bank, 116 S.E. 380, 186 Va. 33—Reliance Life Ins. Co. v. Gulley's Adm'x, 114 S.E. 551, 134 Va. 468—Honaker Lumber Co. v. Kiser, 113 S.E. 718, 134 Va. 50—Bradshaw v. Booth, 105 S.E. 555, 129 Va. 19—Standard Red Cedar Chest Co. v. Monroe, 99 S.E. 589, 125 Va. 442—Glidewell v. Murray-Lacy & Co., 98 S.E. 665, 124 Va. 563, 4 A.L.R. 225—Perrow v. Rixet, 89 S.E. 101, 119 Va. 192.

Wash.—National Bank of Commerce of Seattle v. Lutheran Broth., 246 P.2d 843, 40 Wash.2d 790—Ellefsen v. Wilt, 217 P.2d 318, 36 Wash.2d 56—Bromley v. McHugh, 210 P. 809, 122 Wash. 361—Blanchard v. Puget Sound Traction, Light & Power Co., 177 P. 822, 105 Wash. 226.

W.Va.—Vargo v. Cochrane, 152 S.E. 8, 108 W.Va. 607—Lyon v. Grasselli Chemical Co., 146 S.E. 57, 106 W.Va. 518—Harry B. Coal Co. v. Deveny-Murphy Apartment Co., 131 S.E. 354, 100 W.Va. 629—Shearer v. Gauley Mountain Coal Co., 114 S.E. 363, 92 W.Va. 29.

Wis.—Necedah Mfg. Corporation v. Juneau County, 240 N.W. 405, 206 Wis. 316—Stevens v. Montfort State Bank, 198 N.W. 600, 183 Wis. 621.

Wyo.—Burnett v. Taylor, 252 P. 790, 36 Wyo. 12.

4 C.J. p 1041 note 33.

57.5 Neb.—Southwell v. De Boer, 80 N.W.2d 877, 163 Neb. 646.

57.10 Tex.—Watts v. Mann, Civ. App., 187 S.W.2d 917, error refused.

58. Ala.—Gunn v. Palatine Ins. Co., Limited, of London, England, 149 So. 672, 227 Ala. 245—Lawson v. Norris, 112 So. 129, 215 Ala. 666.

Ark.—Smith v. Glover, 205 S.W. 891, 135 Ark. 531.

Cal.—Paulsen v. McDuffie, 47 P.2d 709, 4 C.2d 111.

Sheridan v. Ravn, 204 P.2d 644, 91 C.A.2d 112—Hamm v. San Joaquin & Kings River Canal Co., 111 P.2d 940, 44 C.A.2d 47—Johnston v. Black Co., 91 P.2d 921, 33 C.A.2d 363—Falasco v. Hulen, 44 P.2d 469, 6 C.A.2d 224—Monroe v. Pleasants, 182 P. 330, 41 C.A. 139.

Colo.—Warshauer Sheep & Wool Co. v. Rio Grande State Bank, 247 P. 183, 79 Colo. 540.

Ga.—Tolnas v. Pope, 90 S.E.2d 420, 212 Ga. 50—Grimsley v. Morgan, 172 S.E. 49.

Welfare Finance Co. v. Corbin, 85 S.E.2d 819, 91 Ga.App. 485—Lynch v. Etheridge, 34 S.E.2d 670, 72 Ga.App. 712—Davis v. Wing, 33 S.E.2d 725, 72 Ga.App. 380—Sockwell v. Lucas & Jenkins, 32 S.E.2d 201, 71 Ga.App. 765—Willis v. Whitehead, 21 S.E.2d 870, 68 Ga. App. 21—Cook v. Southern Ry. Co., 9 S.E.2d 123, 62 Ga.App. 613—Morris v. Courts, 1 S.E.2d 687, 59 Ga. App. 666—Citizens' Nat. Bank of Washington v. Jennings, 134 S.E. 114, 35 Ga.App. 553—Coffee v. Worsham & Weaver, 119 S.E. 665, 31 Ga.App. 62.

Hawaii.—Carty v. Jarrett, 21 Hawaii 274.

Idaho.—Applebaum v. Stanton, 276 P. 47, 47 Idaho 395—A. C. White Lumber Co. v. McDonell, 258 P. 555, 44 Idaho 620—Beloit v. Green, 251 P. 621, 43 Idaho 265.

Ill.—Feeley v. McAuliffe, 80 N.E.2d 373, 335 Ill.App. 99. See Taylor v. Hamberg, 183 Ill.App. 241.

Ind.—Federal Life Ins. Co. v. Relias, 185 N.E. 319, 99 Ind. 115.

Iowa.—Rubio Sav. Bank of Brighton v. Acme Farm Products Co., 37 N.W.2d 16, 240 Iowa 547, 90 A.L.R.2d 459—Davidson v. Vast, 10 N.W.2d 12, 233 Iowa 534—W. T. Rawleigh Co. v. Moel, 246 N.W. 782, 215 Iowa 843.

Kan.—Corbett v. Kansas Gas & Electric Co., 27 P.2d 234, 138 Kan. 691—Thirlwell v. Payne, 196 P. 1068, 108 Kan. 700.

Ky.—Zettler v. Hughes, 283 S.W.2d 849—Smith v. Fidelity & Columbia Trust Co., 12 S.W.2d 276, 227 Ky.

plaintiff appellant failed to make out a case submissible to the jury,[58.5] or failed to make out a prima facie case;[58.10] where the court should have entered, or would have been justified in directing, a verdict against him;[59] or where, under the undisputed evidence in the case, the court might have de-

120, 62 A.L.R. 1353—Taylor v. Moseley, 186 S.W. 634, 170 Ky. 592, Ann.Cas.1918B 1125—Bentley v. Ballard & Herring, 172 S.W. 1079, 162 Ky. 622—Wright v. Young & Warnock, 170 S.W. 25, 160 Ky. 636.
Lockridge v. Clark, 4 Ky.Op. 501.

Mass.—Keefe v. McCarthy, 2 N.E.2d 1013, 294 Mass. 567.

Mich.—Rotter v. Detroit United Ry., 187 N.W. 271, 217 Mich. 686.

Minn.—Bellman v. Posnick, 46 N.W. 2d 475, 233 Minn. 268—McGuiggan v. St. Paul City Ry. Co., 40 N.W.2d 435, 229 Minn. 534—Gordon v. Pappas, 34 N.W.2d 293, 227 Minn. 95.

Miss.—Davis v. Elzey, 88 So. 630, 126 Miss. 789, affirmed 89 So. 666, 126 Miss. 789.

Mo.—Conroy v. St. Joseph Ry., Light, Heat & Power Co., 134 S.W.2d 93, 345 Mo. 592—Lappin v. Prebe, 131 S.W.2d 511, 345 Mo. 68—Morris v. E. I. Du Pont de Nemours & Co., 109 S.W.2d 1222, 341 Mo. 821—Shelton v. Wolf Cheese Co., 93 S. W.2d 947, 338 Mo. 1129—Johnson v. Chicago & E. I. Ry. Co., 64 S.W. 2d 674, 334 Mo. 22—Smith v. Wells, 31 S.W.2d 1014, 326 Mo. 525—Hammond v. Emery-Bird-Thayer Dry Goods Co., 240 S.W. 170—Waldmann v. Skrainka Const. Co., 233 S.W. 242, 289 Mo. 622.
Real Estate Enterprises v. Collins, App., 256 S.W.2d 286—Pruzan v. National Sur. Corp., App., 223 S. W.2d 8—Chambers v. Metropolitan Life Ins. Co., 138 S.W.2d 29, 239 Mo.App. 884—Smith v. Thompson, 137 S.W.2d 981, 234 Mo.App. 1151—Gardner v. Queen Ins. Co. of America, 115 S.W.2d 4, 232 Mo. App. 1101—Roehl v. Ralph, App., 84 S.W.2d 405—Peters v. Matthews-Thomas Freight & Express Co., App., 51 S.W.2d 139—Boley v. Bankers' & Shippers' Ins. Co. of New York, App., 23 S.W.2d 1095—Ott v. Moore, App., 20 S.W.2d 166.

Neb.—Nielsen v. Yellow Cab & Baggage Co., 265 N.W. 420, 130 Neb. 457—Edbrooke v. First Nat. Bank, 193 N.W. 158, 110 Neb. 134.

N.H.—Bixby v. Boston & M. R. R., 47 A.2d 575, 94 N.H. 107, 165 A.L.R. 570—Eastman v. Herrick, 173 A. 807, 87 N.H. 58—Prescott v. Yurchus, 164 A. 218, 86 N.H. 108.

N.J.—Vanderbeek v. Conlon, 125 A.2d 531, 41 N.J.Super. 574—Burnstine v. Margulies, 87 A.2d 37, 18 N.J. Super. 259.

N.Y.—Outstanding Artists v. Kenny, 16 N.Y.S.2d 948, 258 App.Div. 973—Beck v. General Neon Tube Corp., 1 N.Y.S.2d 2, 253 App.Div. 765—Jacobs v. Jacobs, 299 N.Y.S. 187, 252 App.Div. 794—Parnell v. Holland Furnace Co., 256 N.Y.S. 323, 234 App.Div. 567, affirmed 184 N.E. 112, 260 N.Y. 604, reargument denied 185 N.E. 735, 261 N.Y. 553—Gotham Const. Corporation v. City of New York, 249 N.Y.S. 570, 233 App.Div. 699.

N.C.—Johnson v. Johnson, 50 S.E.2d 569, 229 N.C. 541.

N.D.—State v. Van Horne, 2 N.W.2d 1, 71 N.D. 455.

Ohio.—Uncapher v. Baltimore & O. R. Co., 188 N.E. 553, 127 Ohio St. 351.
Hartman v. Wooley, App., 115 N. E.2d 714.

Okl.—McKelvey v. Buell, 236 P. 898, 110 Okl. 158.

Or.—Dickson v. King, 49 P.2d 367, 151 Or. 512—Rosenwald v. Oregon City Transp. Co., 163 P. 831, 84 Or. 15, modified on other grounds 164 P. 189, 84 Or. 15.

Pa.—Pears v. Shannon, 198 A. 307, 329 Pa. 278—Bentz v. Barclay, 144 A. 280, 294 Pa. 300.
Hayes v. Marquardt, Com.Pl., 32 Erie Co. 80.

S.C.—Bryan v. Boyd, 84 S.E. 992, 100 S.C. 397.

Tenn.—Southern Ry. Co. v. Jackson, 129 S.W.2d 1094, 23 Tenn.App. 173—Hughes v. Courtright, 11 Tenn. App. 129.

Tex.—Missouri-Kansas-Texas Ry. Co. of Texas v. Cunningham, 23 S. W.2d 343, 118 Tex. 607.
Jenkins v. Hennigan, Civ.App., 298 S.W.2d 905, error refused no reversible error—Burks v. Dallas Ry. & Terminal Co., Civ.App., 116 S.W.2d 884—McEwen v. Texas & P. Ry. Co., Civ.App., 92 S.W.2d 808—Federal Mortg. Co. v. State Nat. Bank of Corsicana, Civ.App., 254 S.W. 1002.

Utah.—Jensen v. Logan City, 57 P.2d 708, 89 Utah 347—Daley v. Salt Lake & U. R. Co., 247 P. 293, 67 Utah 238—Moore v. Utah Idaho Cent. R. Co., 174 P. 873, 52 Utah 373.

Wash.—Thompson v. City of Bellingham, 192 P. 952, 112 Wash. 583, 19 A.L.R. 864—Druse v. Pacific Power & Light Co., 150 P. 1182, 86 Wash. 519.

Wis.—Behr v. Larson, 83 N.W.2d 157, 275 Wis. 620—Holtz v. Fogarty, 72 N.W.2d 411, 270 Wis. 647—Necedah Mfg. Corporation v. Juneau County, 240 N.W. 405, 206 Wis. 316.

4 C.J. p 1042 note 34.

Technical defects

Where only fair inference from record was that jury found plaintiff and defendant negligent, so that neither could recover, complaints by plaintiff on appeal as to technical defects in the charge lost much of their force as grounds of reversible error.

Mich.—Shoemaker v. Trompen, 40 N. W.2d 92, 326 Mich. 120.

58.5 Mo.—Bunch v. Mueller, 284 S. W.2d 440—Coleman v. Ziegler, 248 S.W.2d 610—Latta v. Robinson Erection Co., 248 S.W.2d 569, 363 Mo. 47—Graves v. Atchison, T. & S. F. Ry. Co., 227 S.W.2d 660, 360 Mo. 167—Robinson v. Pattee, 222 S.W.2d 786, 359 Mo. 584—O'Dell v. Dean, 204 S.W.2d 248, 356 Mo. 861—Bootee v. Kansas City Public Service Co., 183 S.W.2d 892, 353 Mo. 716—Milazzo v. Kansas City Gas Co., 180 S.W.2d 1—Lemmon v. Continental Casualty Co., 169 S.W. 2d 920, 350 Mo. 1107—Seago v. New York Cent. R. Co., 155 S.W.2d 126, 348 Mo. 761, reversed on other grounds 62 S.Ct. 806, 315 U.S. 781, 86 L.Ed. 1188—King v. Rieth, 108 S.W.2d 1, 341 Mo. 467—State ex rel. Chicago, R. I. & P. Ry. Co. v. Shain, 89 S.W.2d 654, 338 Mo. 217.
Pollard v J. J. Newberry Co., App., 228 S.W.2d 398—Keen v. City of St. Louis, App., 189 S.W.2d 139—Tom Boy Stores v. Douglas-Guardian Warehouse Corp., 179 S. W.2d 145, 237 Mo.App. 892.

N.C.—Montgomery v. Blades, 23 S. E.2d 844, 222 N.C. 463, rehearing denied 26 S.E.2d 567, 223 N.C. 331.

Okl.—Whitehead v. Erle P. Halliburton, Inc., 121 P.2d 581, 190 Okl. 120.

Wash.—Watson v. Northern Pac. R. Co., 223 P.2d 1057, 37 Wash.2d 374—Sellman v. Hess, 130 P.2d 688, 15 Wash.2d 310.

Where demurrer to evidence should have been sustained

Mo.—Billings v. North Kansas City Bridge & Railroad Co., 93 S.W.2d 994, 338 Mo. 1122.

Okl.—Cook v. Stegall, 166 P.2d 767, 196 Okl. 534.

58.10 Mo.—Hendricks v. Weaver, 183 S.W.2d 74.

N.Y.—Giovagnoni v. Murray, 31 N.Y. S.2d 49, 263 App.Div. 713.

Okl.—Reed v. Ross, 148 P.2d 782, 194 Okl. 195.

Where no substantial evidence in support of plaintiff's claim

N.Y.—Ford v. Manville, 42 N.Y.S.2d 645, 266 App.Div. 911.

59. Ala.—Griffin Lumber Co. v. Harper, 39 So.2d 399, 252 Ala. 93—Birmingham Ice & Cold Storage Co. v. Alley, 25 So.2d 37, 247 Ala. 503—Garry v. Weiss, 195 So. 231, 239 Ala. 431—McCarty v. Skelton, 172 So. 901, 233 Ala. 531—Lawler v. Hyde, 161 So. 523, 230 Ala. 467—Dudley v. Alabama Utilities Service Co., 144 So. 5, 225 Ala. 531—Southern Ry. Co. v. Randle, 128 So. 894, 221 Ala. 435—Daniels v. Milstead, 128 So. 447, 221 Ala. 353

termined the issue erroneously instructed on as a matter of law instead of submitting it to the jury.[59.5] Furthermore, a party cannot complain that the instructions imposed liability on the adverse party under circumstances where liability did not exist, where the jury returned a verdict for such adverse party.[59.10]

A party in whose favor a verdict is found may not complain of error in the instructions,[60] such as er-

—Lambert v. Southern Ry. Co., 108 So. 255, 214 Ala. 438—Hambright v. Birmingham Ry., Light & Power Co., 77 So. 702, 201 Ala. 176.

Ark.—Hignight v. Blevins Implement Co., 247 S.W.2d 996, 220 Ark. 399—United Friends of America v. Avery, 93 S.W.2d 652, 192 Ark. 620—Metropolitan Life Ins. Co. v. Stewart, 68 S.W.2d 1017, 188 Ark. 903—Beene Motor Co. v. Dison, 23 S.W.2d 971, 180 Ark. 1064—Henley v. Redus, 226 S.W. 1058, 148 Ark. 654.

Cal.—Nole v. Sixty-Five O Four, Inc., 232 P.2d 288, 104 C.A.2d 632—Weissman v. Seehusen, 131 P.2d 10, 55 C.A.2d 391—Hass v. Alpert, 295 P. 66, 111 C.A. 26.

Ga.—Tanner v. Peck, 71 S.E.2d 611, 209 Ga. 249.

National Fire Ins. Co. v. Shuman, 178 S.E. 758, 50 Ga.App. 846—Lane v. Happ Bros. Co., 162 S.E. 519, 44 Ga.App. 577—Ennis v. Purchase & Sale Co., 160 S.E. 878, 44 Ga.App. 117.

Ill.—Vieceli v. Cummings, 54 N.E.2d 717, 322 Ill.App. 559—Worley v. The Holding Corporation, 261 Ill. App. 313, reversed on other grounds 181 N.E. 307, 348 Ill. 420—Stimpson Computing Scale Co. v. Ehmsen, 246 Ill.App. 271—National Importing & Trading Co. v. E. A. Bear & Co., 236 Ill.App. 426, reversed on other grounds 155 N.E. 343, 324 Ill. 346.

Iowa.—Neyens v. Gehl, 15 N.W.2d 888, 235 Iowa 115—Butler Mfg. Co. v. Elliott & Cox, 233 N.W. 669, 211 Iowa 1068.

Ky.—Kelley v. Reece, 273 S.W.2d 369—DeLong's Adm'r v. Tackett, 240 S.W.2d 829—Railway Exp. Agency v. Bailey, 220 S.W.2d 997, 310 Ky. 781—Couch's Adm'r v. Black, 190 S.W.2d 681, 301 Ky. 24—Stearns Coal & Lumber Co. v. Douglas, 185 S.W.2d 385, 299 Ky. 314—Greenwell's Adm'r v. Burba, 182 S.W.2d 436, 298 Ky. 255—Cookendorfer v. Pendleton County Farmers Fire Ins. Co., 155 S.W.2d 204, 287 Ky. 735—Henry v. J. B. McCrory Co., 130 S.W.2d 846, 279 Ky. 248—Rider v. Roberts, 87 S.W.2d 611, 261 Ky. 317—Simpson v. Antrobus, 86 S.W. 2d 544, 260 Ky. 641—Suter's Adm'r v. Kentucky Power & Light Co., 76 S.W.2d 29, 256 Ky. 356—City of Ashland v. Queen, 71 S.W.2d 650, 254 Ky. 329—Citizens' Ins. Co. v. Whitley, 67 S.W.2d 488, 252 Ky. 360—Benefit Ass'n of Railway Employees v. Hancock, 58 S.W.2d 578, 248 Ky. 315—Corey v. Niagra Fire Ins. Co., 47 S.W.2d 955, 243 Ky. 34—Springfield Fire & Marine Ins. Co. v. Blevens, 27 S.W.2d 699, 234 Ky. 183—London Assur. Corporation v. Bailey, 2 S.W.2d 397, 222 Ky. 757—Home Ins. Co. v. McCoy, 291 S.W. 353, 218 Ky. 365—Lilly v. Marcum, 283 S.W. 1059, 214 Ky. 514—Kelly v. Harlan Nat. Bank, 281 S.W. 823, 213 Ky. 689.

Md.—Maryland Casualty Co. v. Wolff, 25 A.2d 665, 180 Md. 513—State v. Blumenthal-Kahn Electric Co., 159 A. 106, 162 Md. 84.

Mass.—Klegerman v. New York, N. H. & H. R. Co., 195 N.E. 341, 290 Mass. 268.

Mich.—Conant v. Bosworth, 50 N.W. 2d 842, 332 Mich 51—Moldenhauer v. Smith, 18 N.W.2d 818, 311 Mich. 265—Vitaioli v. Berklund, 295 N. W. 557, 296 Mich. 56—Le Duc v. Beechler, 233 N.W. 440, 252 Mich. 633—McGill v. Coleman, 182 N.W. 76, 214 Mich. 60.

Minn.—Wilson v. Davidson, 17 N.W. 2d 31, 219 Minn. 42—Selover v. Selover, 277 N.W. 205, 201 Minn. 562—Olson v. Nannestad, 203 N.W. 59, 162 Minn. 412.

Miss.—Union Bankers Ins. Co. v. May, 87 So.2d 264—Williams v. McClain, 176 So. 717, 180 Miss. 6—Murry Chevrolet Co. v. Cotten, 152 So. 657, 169 Miss. 521—National Life & Accident Ins. Co. v. Williams, 146 So. 455, 169 Miss. 604—Whitley v. Holmes, 144 So. 48, 164 Miss. 423—Lizana v. Brown Realty Co., 111 So. 867, 146 Miss. 758.

Mo.—State ex rel. Chicago, R. I. & P. Ry. Co. v. Shain, 89 S.W.2d 654, 338 Mo. 217—Bello v. Stuever, 44 S.W.2d 619—Barr v. Missouri Pac. R. Co., 37 S.W.2d 927—Lindman v. Altman, 271 S.W. 512, 308 Mo. 187.

Leick v. Missouri Plating Co., 211 S.W.2d 77, 240 Mo.App. 565—Park v. Park, App., 190 S.W.2d 285.

Mont.—Berthelote v. Loy Oil Co., 28 P.2d 187, 95 Mont. 434.

Neb.—Dunlap v. Welch, 41 N.W.2d 384, 152 Neb. 459—Boomer v. Lancaster County, 218 N.W. 751, 116 Neb. 718—Hashberger v. City of Schuyler, 214 N.W. 66, 115 Neb. 639.

N.J.—Fannick v. Metropolitan Life Ins. Co., 113 A.2d 28, 34 N.J.Super. 556.

N.Y.—Gearns v. Commercial Cable Co., 56 N.E.2d 67, 293 N.Y. 105, 153 A.L.R. 813, reargument denied 56 N.E.2d 749, 293 N.Y. 755—Cundill v. Lewis, 157 N.E. 502, 245 N.Y. 383.

N.C.—Clark v. Henrietta Mills, 12 S. E.2d 682, 219 N.C. 1.

Ohio.—Frudiger v. National Life & Accident Ins. Co., 55 N.E.2d 143, 73 Ohio App. 138—Strobel v. City of Cincinnati, 168 N.E. 543, 32 Ohio App. 333.

Okl.—Buck Creek Coal Co. v. McGarry, 253 P. 1016, 122 Okl. 224.

Pa.—Lundin v. Heilman, 100 A.2d 626, 375 Pa. 315—Heimburger v. Gundy, 34 A.2d 489, 348 Pa. 114—Mathey v. Flory Milling Co., 129 A. 109, 283 Pa. 331.

S.C.—Griggs-Paxton Shoe Co. v. A. Friedheim & Bro., 131 S.E. 620, 133 S.C. 458.

S.D.—Hoidal v. Runchey, 225 N.W. 299, 55 S.D. 171—Braun v. Thuet, 174 N.W. 807, 42 S.D. 491.

Tex.—Evans v. Houston Printing Corp., Civ.App., 217 S.W.2d 85, error refused no reversible error—Lewis v. East Texas Finance Co., Civ.App., 123 S.W.2d 803, reversed on other grounds 146 S.W.2d 977, 136 Tex. 149—Southern Old Line Life Ins. Co. v. Mims, Civ.App., 101 S.W.2d 396, error dismissed—Ramirez v. Sanchez, Civ.App., 97 S.W.2d 1034—Retail Hardware Mut. Ins. Co. v. Collis, Civ.App., 78 S.W.2d 1044—St. Louis Southwestern Ry. Co. of Texas v. Powell, Civ.App., 252 S.W. 268—McDonald v. Henderson, Civ.App., 250 S.W. 463.

Utah.—Butler v. Payne, 203 P. 869, 59 Utah 383.

Va.—Seaboard Air Line Ry. Co. v. Huling, 141 S.E. 237, 149 Va. 360—Seaboard Air Line Ry. Co. v. Twine, 141 S.W. 236, 149 Va. 362—Seaboard Air Line Ry. Co. v. Terrell, 141 S.E. 231, 149 Va. 344.

4 C.J. p 1042 note 35.

Refusal to direct verdict

If the presiding judge erred in refusing defendant's motion for a directed verdict, appellate court should affirm judgment for defendant, any errors in the charge being harmless.

S.C.—Sadler v. Pure Oil Co., 173 S.E. 640, 172 S.C. 220.

59.5 Tenn.—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn. App. 498.

59.10 Ga.—Cedrone v. Beck, 40 S.E. 2d 388, 74 Ga.App. 488.

60. Ala.—Adams v. Queen Ins. Co. of America, 88 So.2d 331, 264 Ala. 572—Alabama Great Southern R. Co. v. Bolton, 7 So.2d 296, 242 Ala. 562—Johnson v. Western Union Telegraph Co., 108 So. 578, 214 Ala. 577—Ellard v. Goodall, 87 So. 196, 204 Ala. 644.

Pitts v. Bethea, 15 So.2d 311, 31 Ala.App. 294.

ror bearing merely on the question of liability or right to recover, and not affecting the amount of recovery or damages,[60.5] or errors in instructions stating a predicate for a finding for the adverse party.[60.10] The failure to instruct on all possible negligent acts of defendant is harmless error where defendant has been found negligent.[60.15] Also, a party may not complain of an erroneous instruction

Ark.—Stockton v. Baker, 213 S.W.2d 896, 213 Ark. 918—Kansas City Fibre Box Co. v. F. Burkart Mfg. Co., 44 S.W.2d 325, 184 Ark. 704—Burton v. Wilson, 205 S.W. 655, 135 Ark. 269—Horton v. Eagle Lumber Co., 181 S.W. 290, 121 Ark. 633.

Cal.—Marshall v. La Boi, 270 P.2d 99, 125 C.A.2d 253—Flynn v. Young, 78 P.2d 245, 25 C.A.2d 614—Vinole v. Caso, 6 P.2d 586, 119 C.A. 226—Daniels v. McGuire, 198 P. 421, 52 C.A. 188.

Colo.—Armstrong v. Gresham, 213 P. 114, 73 Colo. 13.

Conn.—Heslin v. Malone, 165 A. 594, 116 Conn. 471—Barbieri v. Pandiscio, 163 A. 469, 116 Conn. 48—Pape v. Baum, 161 A. 525, 115 Conn. 712—Epstein v. M. Blumenthal & Co., 158 A. 234, 114 Conn. 195—Hubert v. New York, N. H. & H. R. Co., 96 A. 967, 90 Conn. 261.

Ga.—Carter v. Marble Products, 175 S.E. 480, 179 Ga. 122—Bennett v. Cox, 146 S.E. 835, 167 Ga. 843—Ragan v. Carter, 89 S.E. 206, 145 Ga. 320.

Wade v. Roberts, 80 S.E.2d 728, 89 Ga.App. 607—Cox v. Nix, 75 S.E. 2d 331, 87 Ga.App. 837—Kaylor v. Romines, 70 S.E.2d 395, 85 Ga.App. 839—Baggett v. Jackson, 54 S.E. 2d 146, 79 Ga.App. 460—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437—Walker v. Southeastern Stages, 22 S.E.2d 742, 68 Ga.App. 320—Etheridge v. Guest, 12 S.E.2d 483, 63 Ga.App. 637—Herrington v. Herrington, 155 S.E. 51, 42 Ga.App. 126—Upshaw Bros. v. Stephens, 106 S.E. 125, 26 Ga. App. 284.

Ill.—Browder v. Beckman, 275 Ill. App. 193—City of Moline v. Barber Asphalt Pav. Co., 208 Ill.App. 617—Borgerson v. Chicago Rys. Co., 187 Ill.App. 65.

Ind.—Brodt v. Duthie, 186 N.E. 893, 97 Ind.App. 692—Reitemeier v. Linard, 150 N.E. 797, 90 Ind.App. 363—Shaw v. Union Trust Co. of Indianapolis, 137 N.E. 895, 79 Ind. App. 277—Pennsylvania Co. v. Reesor, 108 N.E. 983, 60 Ind.App. 636.

Iowa.—In re Willmott's Estate, 243 N.W. 634, 215 Iowa 546—Wilson v. Else, 216 N.W. 33, 204 Iowa 857—Killeen v. Greve, 166 N.W. 731, 182 Iowa 1382—Thompson v. Illinois Central R. Co., 153 N.W. 174.

Ky.—Gorrell, Barrow & Kirkpatrick v. South's Adm'r, 83 S.W.2d 518, 260 Ky. 28—Drury v. Franke, 57 S. W.2d 969, 247 Ky. 758, 88 A.L.R. 917—Galliaer v. Southern Harlan Coal Co., 57 S.W.2d 645, 247 Ky. 752—Owings' Adm'r v. Gradison Const. Co., 43 S.W.2d 327, 241 Ky. 5—Outland v. Dayer, 31 S.W.2d 725, 235 Ky. 492—Maryland Casualty Co. v. Automatic Fire Protection Co., 255 S.W. 548, 200 Ky. 750—Veach's Adm'r v. Louisville & I. Ry. Co., 228 S.W. 35, 190 Ky. 678.

Md.—Tittlebaum v. Pennsylvania R. Co., 174 A. 89, 167 Md. 397—Murrell v. Culver, 118 A. 803, 141 Md. 349.

Mass.—Taub v. U. S. Trust Co., 21 N.E.2d 943, 303 Mass. 339—Thompson v. Globe Newspaper Co., 181 N.E. 249, 279 Mass. 176.

Mich.—White v. Bye, 70 N.W.2d 780, 342 Mich. 654—Sceba v. Manistee Ry. Co., 155 N.W. 414, 189 Mich. 308, L.R.A.1918C 1090.

Minn.—Schiro v. Raymond, 54 N.W. 2d 329, 237 Minn. 271.

Miss.—Dicus v. Republic Paint & Varnish Works, 90 So. 729, 125 Miss. 189.

Mo.—Stokes v. Godefroy Mfg. Co., 85 S.W.2d 434—Clayton v. Wells, 26 S.W.2d 969, 324 Mo. 1176—Hunt v. Chicago, B. & Q. R. Co., 259 S. W. 481, 303 Mo. 107—Frank Hart Realty Co. v. Ryan, 232 S.W. 126, 288 Mo. 188—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 210—Craton v. Huntzinger, 187 S.W. 48.

Jameson v. Fox, App., 269 S.W. 2d 140—Long v. Rogers, App., 185 S.W.2d 863—Broughton v. S. S. Kresge Co., App., 26 S.W.2d 838—Elmer v. Rubenstein, App., 24 S. W.2d 657—Sullivan v. Wilson, App., 283 S.W. 743—Smith v. Collins, App., 243 S.W. 219—McLeod v. John Hancock Mut. Life Ins. Co., 176 S.W. 234, 190 Mo.App. 653.

Neb.—First Nat. Bank v. Guenther, 252 N.W. 395, 125 Neb. 807—Hauenstine v. Barnett, 152 N.W. 655, 98 Neb. 312.

Nev.—Musser v. Los Angeles & S. L. R. Co., 299 P. 1020, 53 Nev. 304.

N.C.—Mitchem v. Mitchem, 85 S.E. 146, 169 N.C. 48.

N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834.

Ohio.—Burke v. Bader, 151 N.E. 187, 114 Ohio St. 278.

Miller v. Johnson, App., 123 N.E. 2d 61—Hedges v. Griffith, App., 69 N.E.2d 546.

Okl.—McBee v. Dennis, 229 P.2d 179, 204 Okl. 296—Pahlka v. Chicago, R. I. & P. Ry. Co., 161 P. 544, 62 Okl. 223.

Or.—Coleman v. City of La Grande, 144 P. 468, 73 Or. 521.

Pa.—Takac v. Bamford, 88 A.2d 86, 370 Pa. 389.

Palyo v. Western & Southern Life Ins. Co., 174 A. 640, 114 Pa. Super. 583.

Allentown-Easton Motor Exp. v. Lehigh Valley R. Co., Com.Pl., 25 Leh.L.J. 490—French v. Beniscbeck, Com.Pl., 63 Montg.Co. 194.

R.I.—Gardner v. Gardner, 129 A. 3.

S.C.—Ramer v. Hughes, 127 S.E. 565, 131 S.C. 488—Wilson v. Southern Ry., Carolina Division, 115 S.E. 764, 123 S.C. 399.

Tex.—Williams v. Mutual Motor Co., Civ.App., 67 S.W.2d 905—Gulf, C. & S. F. Ry. Co. v. Dunman, Civ. App., 15 S.W.2d 1053, affirmed, Com. App., 27 S.W.2d 116, 72 A.L.R. 90—City of Corsicana v. Mills, Civ. App., 235 S.W. 220, error refused.

Va.—Young v. Dyer, 170 S.E. 737, 161 Va. 434—One Chrysler Roadster v. Commonwealth, 147 S.E. 243, 152 Va. 508—Dexter-Portland Cement Co. v. Acme Supply Co., 133 S.E. 788, 147 Va. 758—Harrison v. Provident Relief Ass'n of Washington, D. C., 126 S.E. 696, 141 Va. 659, 40 A.L.R. 616—Fox v. Mason, 124 S.E. 405, 139 Va. 667.

Wash.—Hinton v. Carmody, 45 P.2d 32, 182 Wash. 123—Baxter v. Ford Motor Co., 35 P.2d 1090, 179 Wash. 123—McPherson v. Twin Harbor Stevedoring & Tug Co., 245 P. 747, 139 Wash. 61—Shead v. Riser, 239 P. 562, 163 Wash. 270—Thompson v. City of Bellingham, 192 P. 952, 112 Wash. 583, 19 A.L.R. 864—Strafford v. Northern Pac. Ry. Co., 164 P. 71, 95 Wash. 450.

W.Va.—Legg v. Jones, 30 S.E.2d 76, 126 W.Va. 757—Holt v. Otis Elevator Co., 90 S.E. 333, 78 W.Va. 785, L.R.A.1917A 1194.

Wis.—Dering v. Milwaukee Electric Ry. & Light Co., 176 N.W. 343, 171 Wis. 8, 14 A.L.R. 809—Koenig v. Sproesser, 152 N.W. 473, 161 Wis. 8.

Wyo.—O'Mally v. Eagan, 2 P.2d 1063, 43 Wyo. 233, 77 A.L.R. 582, rehearing denied O'Malley v. Eagan, 5 P.2d 276, 43 Wyo. 350.

4 C.J. p 1042 note 36.

60.5 Ala.—Bates v. Rentz, 81 So.2d 349, 262 Ala. 681.

Ga.—L. P. Gunson & Co. v. Garrett, 186 S.E. 849, 53 Ga.App. 717.

Even though recovery unsatisfactory in amount

Ga.—Brown v. Service Coach Lines, 31 S.E.2d 236, 71 Ga.App. 437.

60.10 Ala.—Pitts v. Bethea, 15 So.2d 311, 31 Ala.App. 294.

60.15 Ky.—V. T. C. Lines, Inc. v. Chappell's Diary, Inc., 298 S.W.2d 683.

on an issue as to which the jury found in his favor,[61] or which the jury did not answer,[62] or which should not have been submitted to the jury.[62.5]

The giving of an erroneous instruction is harmless error where the verdict shows that the jury disregarded it,[63] or where the verdict shows that the

61. Ala.—Bates v. Rentz, 81 So.2d 349, 262 Ala. 681—Latter v. Schwarz, 137 So. 27, 223 Ala. 438.
Cal.—Kettman v. Levine, 253 P.2d 102, 115 C.A.2d 844—Nix v. Heald, 203 P.2d 847, 90 C.A.2d 723.
Conn.—Morico v. Cox, 56 A.2d 522, 134 Conn. 218—Piascik v. Railway Express Agency, 175 A. 919, 119 Conn. 277.
Ga.—American Associated Companies v. Vaughan, 97 S.E.2d 144, 213 Ga. 119.
Dowdle v. West Lumber Co., 54 S.E.2d 682, 79 Ga.App. 663—Hinesley v. Anderson, 43 S.E.2d 736, 75 Ga.App. 394—Reid v. Morrison, 121 S.E. 860, 31 Ga.App. 613—W. T. Arnold & Son v. Rhodes, 105 S.E. 453, 26 Ga.App. 86.
Ind.—Jackson Hill Coal & Coke Co. v. Merchants' Heat & Light Co., 140 N.E. 532, 193 Ind. 422.
Pennsylvania R. Co. v. Williamson, 157 N.E. 61, 86 Ind.App. 434—State Automobile Ins. Ass'n v. Kurtz, 149 N.E. 367, 87 Ind.App. 642—Wheeler v. Newkirk, 133 N. E. 509, 77 Ind.App. 292.
Iowa.—Hansen v. Nelson, 39 N.W.2d 292, 240 Iowa 1298—Remley v. Taft, 163 N.W. 337—Dunning v. Burt, 162 N.W. 23, 180 Iowa 754.
Ky.—Vandivier v. Tye, 21 S.W.2d 1006, 231 Ky. 630.
Md.—Murrell v. Culver, 118 A. 803, 141 Md. 349.
Mo.—Wollard v. Pollock, App., 263 S.W.2d 748—Rothweiler v. St. Louis Public Service Co., App., 224 S.W. 2d 569, reversed on other grounds 234 S.W.2d 552, 361 Mo. 259—Mackey v. First Nat. Bank, App., 293 S.W. 66.
N.C.—Anderson v. Talman Office Supplies, 73 S.E.2d 141, 236 N.C. 519—Johnson v. Johnson, 50 S.E. 2d 569, 229 N.C. 541—Woods v. Roadway Express, 25 S.E.2d 856, 223 N.C. 269—Walter v. Winecoff, 199 S.E. 274, 214 N.C. 356.
N.D.—Reuter v. Olson, 59 N.W.2d 830, 79 N.D. 834—Rohlik v. Farmers' Ins. Co., 191 N.W. 347, 49 N.D. 235.
Ohio.—Schmalstig v. Taft, 10 Ohio App. 285.
Okl.—Lea v. American Nat. Bank of Pryor Creek, 186 P.2d 321, 199 Okl. 360.
Or.—Howe v. Holger, 291 P.2d 731, 206 Or. 293—Blomquist v. Jennings, 250 P. 1101, 119 Or. 691.
R.I.—Gillis v. Melone, 11 A.2d 442, 64 R.I. 173.
Tex.—Harris v. Phillips, Civ.App., 280 S.W. 895—Moss v. Ingram, Civ.App., 224 S.W. 258—Varn v. Gonzales, Civ.App., 193 S.W. 1132, reversed on other grounds, Com. App., 222 S.W. 543.
Va.—Harris v. Sparrow, 132 S.E. 694, 146 Va. 747.
Wis.—Swanson v. Maryland Cas. Co., 63 N.W.2d 743, 266 Wis. 357—Carr v. Chicago & N. W. R. Co., 43 N.W. 2d 461, 257 Wis. 315.
4 C.J. p 1042 note 37.

Last clear chance

Giving of instruction on last clear chance doctrine was harmless where jury absolved plaintiff of contributory negligence.
Kan.—Claggett v. Phillips Petroleum Co., 92 P.2d 52, 150 Kan. 191.

62. Tex.—Neigut v. McFadden, Civ. App., 278 S.W.2d 218, error refused no reversible error—Harris v. Phillips, Civ.App., 280 S.W. 895.

62.5 Ariz.—Anthony v. Phœnix Union High School Dist., Maricopa County, 100 P.2d 988, 55 Ariz. 265.

63. Ala.—Scott v. Louisville & N. R. Co., 115 So. 171, 217 Ala. 255—White v. Hogland, 96 So. 625, 209 Ala. 537.
Ark.—National Life & Accident Ins. Co. v. Sherod, 244 S.W. 436, 155 Ark. 381—Guardian Life Ins. Co. v. Dixon, 240 S.W. 25, 152 Ark. 597—Bush v. Altschul, 193 S.W. 280, 128 Ark. 103—A. L. Clark Lumber Co. v. Hurst, 186 S.W. 619, 124 Ark. 599.
Cal.—Browne v. Fernandez, 36 P.2d 122, 140 C.A. 689—Brunetto v. Spediacci, 12 P.2d 151, 124 C.A. 252—Allen v. Bay Cities Transit Co., 10 P.2d 520, 122 C.A. 590—Salvo v. Market St. Ry. Co., 2 P.2d 585, 116 C.A. 339—Rosander v. Market St. Ry. Co., 265 P. 536, 89 C.A. 710—Atkinson v. United Railroads of San Francisco, 234 P. 863, 71 C.A. 82—Cole v. Mugridge, 171 P. 827, 36 C.A. 179.
Colo.—Sutton v. Ahart, 252 P. 346, 80 Colo. 420.
Conn.—H. Williamson, Limited, v. Perry, 150 A. 17, 111 Conn. 317.
Fla.—Seaboard Air Line Ry. Co. v. Maige, 147 So. 215, 109 Fla. 229.
Ga.—Smith v. Merck, 57 S.E.2d 326, 206 Ga. 361—Green v. Green, 168 S.E. 266, 176 Ga. 421—Farmers' Bank of Bogart v. Bolton, 134 S. E. 72, 162 Ga. 428—Jackson v. Lipham, 123 S.E. 887, 158 Ga. 557—Durden v. Royster Guano Co., 123 S.E. 603, 158 Ga. 234.
Kolodkin v. Griffin, 75 S.E.2d 197, 87 Ga.App. 725—Republic Truck Sales Corperation v. Padgett, 118 S.E. 435, 30 Ga.App. 474—Fisher v. Shands, 102 S.E. 190, 24 Ga.App. 743.
Idaho.—Austin v. Brown Bros. Co., 164 P. 95, 30 Idaho 167.
Ill.—Wagler v. Norris, 205 Ill.App. 69—Connor v. Greenberg, 198 Ill. App. 129—Kirsch v. Soucy, 194 Ill. App. 260.
Ind.—Farmers Mut. Aid Ass'n of Warrick, Vanderburgh and Gibson Counties v. Yager, 12 N.E.2d 382, 104 Ind.App. 554—Smith v. Mills, 185 N.E. 327, 98 Ind.App. 543—Colt v. Hicks, 179 N.E. 335, 97 Ind.App. 177—Midland Casualty Co. v. Lucas, 164 N.E. 290, 90 Ind.App. 447—Stewart v. Darby, 127 N.E. 568, 75 Ind.App. 120—Lake Erie & W. R. Co. v. Howarth, 124 N.E. 687, 73 Ind.App. 454, rehearing denied 127 N.E. 804, 73 Ind.App. 454—Central Indiana Ry. Co. v. Clark, 112 N.E. 892, 63 Ind.App. 49.
Iowa.—Streblow v. Sylvester, 191 N. W. 788, 195 Iowa 168—Quenrud v. Moore-Sieg Const. Co. of Waterloo, 181 N.W. 16, 191 Iowa 580—Worez v. Des Moines City Ry. Co., 156 N.W. 867, 175 Iowa 1.
Kan.—Elliott v. Aldridge, 289 P. 401, 131 Kan. 29—Whalen v. Maresch, 239 P. 1103, 119 Kan. 333—Smith v. City Ice & Delivery Co., 232 P. 603, 117 Kan. 485—Grosse v. Burkholder, 211 P. 115, 112 Kan. 406—Robertson v. Wangler, 190 P. 788, 107 Kan. 45—Rickel v. Atchison, T. & S. F. Ry. Co., 179 P. 550, 104 Kan. 453—Forbes v. Atchison, T. & S. F. Ry. Co., 168 P. 314, 101 Kan. 477.
Ky.—Cuniffe's Ex'x v. Johnson, 132 S.W.2d 47, 279 Ky. 663—Canewood Oil Co. v. Cox, 63 S.W.2d 945, 250 Ky. 800—Coca Cola Bottling Co. of Shelbyville v. Creech, 53 S.W.2d 745, 245 Ky. 414—*Armstrong* v. Vest, 3 S.W.2d 1073, 223 Ky. 444—E. R. Spotswood & Son v. Piles, 249 S.W. 998, 198 Ky. 702—Fix's Ex'r v. Cook, 234 S.W. 453, 192 Ky. 731—Miller v. Barnes, 205 S.W. 549, 181 Ky. 473—American Nat. Ins. Co. v. Brown, 201 S.W. 326, 179 Ky. 711—Chesapeake & O. Ry. Co. v. Mason, 185 S.W. 71, 169 Ky. 699, L.R.A.1916F 127.
Md.—Atlas Realty Co. v. Galt, 139 A. 285, 153 Md. 586.
Mass.—Winsor School v. Eastman Heat Control Corp., 26 N.E.2d 332, 305 Mass. 420—Whipple v. Commissioner of Corporations and Taxation, 161 N.E. 593, 263 Mass. 476—Viking Mfg. Co. v. Smith, 114 N. E. 863, 226 Mass. 10.
Mich.—Robertson & Wilson Scale & Supply Co. v. Richman, 180 N.W. 470, 212 Mich. 334.
Minn.—Home Ins. Co. v. Chicago, St. P., M. & O. Ry. Co., 178 N.W. 608, 146 Minn. 240—McArdle v. Chicago, M. & St. P. Ry. Co., 165 N.W. 232, 138 Minn. 379.

jury were not misled by the instruction,[63.5] or the jury rejected the theory or matter erroneously authorized,[63.10] or decided the question erroneously instructed on correctly,[63.15] or where the jury's decision could not have been affected by the erroneous instruction.[63.20]

An erroneous instruction is harmless where it was on an issue which played no part in the decision of the case,[63.25] as where the jury were required first

Miss.—Russell v. Williams, 150 So. 528, 168 Miss. 181, suggestion of error overruled 151 So. 372, 168 Miss. 181—Davis v. Waynesboro Hardware Co., 118 So. 541, 151 Miss. 532.

Mo.—Frank Hart Realty Co. v. Ryan, 232 S.W. 126, 288 Mo. 188.

Charlesworth v. I. & L. Typesetting Co., App., 90 S.W.2d 423—State ex rel. State Highway Commission v. Southern Securities Co., App., 60 S.W.2d 632—Roberts v. Wilson, 33 S.W.2d 169, 225 Mo.App. 932—Gorman v. A. R. Jackson Kansas City Showcase Works Co., App., 19 S.W.2d 559—Evy v. Davis, App., 244 S.W. 954—Raines v. Cox, App., 238 S.W. 542—Eckel v. Gruebel, App., 226 S.W. 983—Shawhan v. Shawhan Distillery Co., 197 S.W. 371, 195 Mo.App. 492.

Mont.—**Corpus Juris Secundum quoted in** Maynard v. City of Helena, 160 P.2d 484, 488, 117 Mont. 402.

N.J.—Feldman v. Jacob Branfman & Son, 166 A. 126, 111 N.J.Law 37.

Ohio.—Springfield Gas Co. v. Herman, 188 N.E. 733, 46 Ohio App. 309—Dayton Biscuit Co. v. Aerni, 177 N. E. 775, 40 Ohio App. 49—Seccombe v. Slicker, 174 N.E. 788, 37 Ohio App. 389—Smith v. Cleveland Ry. Co., 164 N.E. 59, 30 Ohio App. 21.

Okl.—Covington State Bank v. Jayne, 229 P. 465, 103 Okl. 55—Hutchinson Lumber Co. v. Scrivener, 217 P. 854, 91 Okl. 293—Fidelity-Phenix Fire Ins. Co. v. School Dist. No. 10, Johnston County, 196 P. 700, 80 Okl. 290.

Or.—Hamilton v. Redeman, 97 P.2d 194, 163 Or. 324.

S.C.—Vollington v. Southern Paving Const. Co., 165 S.E. 184, 166 S.C. 448.

Tenn.—National Life & Accident Ins. Co. v. Lynn, 11 Tenn.App. 64.

Tex.—Maryland Casualty Co. v. Guzman, Civ.App., 79 S.W.2d 330, reversed on other grounds 107 S.W. 2d 356, 130 Tex. 62—Brown v. Dallas Gas Co., Civ.App., 42 S.W.2d 869—Luckel v. De Vor, Civ.App., 17 S.W.2d 1097—Texas Mexican Ry. Co. v. Canales, Civ.App., 299 S.W. 668—McCallum v. Houston Electric Co., Civ.App., 280 S.W. 342—Gwyanne v. Mann, Civ.App., 240 S. W. 1035—Frick v. International & G. N. Ry. Co., Civ.App., 207 S.W. 198, error refused—Youngblood v. Hoeffle, Civ.App., 201 S.W. 1057—First Nat. Bank v. Mangum, Civ.App., 194 S.W. 647, error refused—Charles B. Smith & Co. v. Duncan, Civ.App., 167 S.W. 233, affirmed, Com.App., 209 S.W. 140.

Vt.—Burlington Grocery Co. v. M. & F. C. Dorn, 119 A. 883, 96 Vt. 409—Edmunds Bros. v. Smith, 115 A. 187, 95 Vt. 396.

Va.—Drudge v. Cooper, 58 S.E.2d 878, 190 Va. 843—Rook v. Atlantic Coast Line R. Co., 36 S.E.2d 559, 184 Va. 670—Virginia Ry. & Power Co. v. Cherry, 105 S.E. 657, 129 Va. 262—Queen Ins. Co. of America v. Perkinson, 105 S.E. 580, 129 Va. 216.

Wash.—Schotis v. North Coast Stevedoring Co., 1 P.2d 221, 163 Wash. 305, 78 A.L.R. 1427—Beeson Bros. v. Chambers, 285 P. 433, 155 Wash. 564—Rainier Heat & Power Co. v. City of Seattle, 193 P. 233, 113 Wash. 95.

W.Va.—Burner v. Smith Coal Co., 147 S.E. 545, 107 W.Va. 158.

Wis.—Olk v. Marquardt, 234 N.W. 723, 203 Wis. 479—Holmes v. Racine Furnace & Foundry Co., 200 N.W. 647, 185 Wis. 49—Crowley v. City of Milwaukee, 164 N.W. 833, 166 Wis. 156.

4 C.J. p 1043 note 38—54 C.J. p 606 note 18—64 C.J. p 681 note 75.

However, it has been held that an instruction for the carrier in an action for damages if the shipment was stopped by a stranger to the bill of lading was error requiring reversal, although the jury disregarded the instruction and found against the carrier.

Ky.—Louisville & N. R. Co. v. Hensley, 35 S.W.2d 279, 237 Ky. 224.

Rule is not mechanical

Mo.—Brewer v. Gowin, App., 241 S. W.2d 275.

Showing of no prejudice

Affidavits of jurors submitted by plaintiff in support of his motion for new trial, showing that their verdict was based on plaintiff's contributory negligence, cannot be used by defendant to show that no prejudice resulted from error in the court's instruction as to defendants' negligence.

Iowa.—Blake v. Chicago, R. I. & P. Ry. Co., 149 N.W. 880, 171 Iowa 600.

Verdict by majority vote

(1) An instruction erroneously authorizing a majority, or less than unanimous, verdict constitutes harmless error where the verdict is unanimous.

Ariz.—Arizona Eastern R. Co. v. Bryan, 157 P. 376, 18 Ariz. 106.

Cal.—Murphy v. Shaffer, 208 P. 1003, 58 C.A. 453.

Ky.—Kentucky Game and Fish Commission v. Burnette, 163 S.W.2d 50, 290 Ky. 786—Commonwealth v. Redd, 245 S.W. 507, 196 Ky. 798—Louisville & N. R. Co. v Thomas' Adm'r, 185 S.W. 840, 170 Ky. 145, rehearing denied 188 S.W. 463, 171 Ky. 471.

Minn.—Brown v. Duluth, S. S. & A. Ry. Co., 179 N.W. 1003, 147 Minn. 167.

Miss.—Reith v. Ansley, 140 So. 521, 162 Miss. 886.

Wis.—Guth v. Fisher, 251 N.W. 223, 213 Wis. 323—Theby v. Wisconsin Power & Light Co., 222 N.W. 826, 197 Wis. 601, modified on other grounds 223 N.W. 791, 197 Wis. 601—Bentson v. Brown, 203 N.W. 380, 186 Wis. 629, 38 A.L.R. 1417—In re Hogan, 287 N.W. 725, 232 Wis. 521—Gauthier v. Carbonneau, 277 N.W. 135, 226 Wis. 527.

(2) An erroneous instruction that nine jurors could return verdict was not cured where only eleven jurors returned the verdict.

Ky.—Commonwealth v. Kelley, 236 S. W.2d 695, 314 Ky. 581.

63.5 Cal.—Stickel v. San Diego Elec. Ry. Co., 195 P.2d 416, 32 C.2d 157.

63.10 Ariz.—Eldredge v. Miller, 277 P.2d 239, 78 Ariz. 140.

N.J.—Botta v. Brunner, 126 A.2d 32, 42 N.J.Super. 95.

Pa.—Deli v. Chadderton, 74 A.2d 102, 365 Pa. 102.

63.15 Mo.—Webb-Boone Paving Co. v. State Highway Commission, 169 S.W.2d 336, 350 Mo. 896.

63.20 Mass.—Bugden v. Trawler Cambridge, 65 N.E.2d 533, 319 Mass. 315.

Utah.—Earle v. Salt Lake & Utah R. Corp., 165 P.2d 877, 109 Utah 111.

63.25 Cal.—Hinkle v. Southern Pac. Co., 87 P.2d 349, 12 C.2d 691.

Cucuk v. Payne, 296 P.2d 7, 140 C.A.2d 881.

Ind.—Pennsylvania R. Co. v. Stilabower, 39 N.E.2d 465, 110 Ind.App. 458.

Miss.—Patton v. Nelson, 51 So.2d 752.

Ohio.—Parker v. Friendt, 118 N.E.2d 216, 99 Ohio App. 329.

Tex.—McMurrey Corporation v. Shell Oil Co., Civ.App., 173 S.W.2d 354, error refused.

Weight of expert testimony

Error in instruction as to method of testing weight of expert testimony is harmless where it had nothing to do with main issues of case and they were decided against appellant.

Ind.—Adkins v. Poparad, 51 N.E.2d 476, 222 Ind. 16.

to consider other issues, and having found as they did, had no occasion to consider the erroneous instruction,[63.30] or where the jury by their verdict found that the matter erroneously instructed on was not involved in the case, or that the conditions with respect to which the erroneous instructions were to be applied did not exist.[63.35] Further, an erroneous instruction is harmless where the verdict was returned under another instruction which was not erroneous.[63.40] Also, an error in an instruction is not prejudicial so as to require a reversal where the judgment entered was correct,[64] or where the court directed a verdict,[64.5] or entered a judgment notwithstanding the verdict,[64.10] or vacated a judgment against the complaining party and dismissed the action against him.[65]

Any error by instruction in permitting the jury to find in favor of or against any one or all of several defendants is rendered harmless by a general verdict against all of defendants;[66] and in a case in which liability has been established against at least some of several defendants, any error in charging that the jury could bring a verdict in favor of all of defendants is harmless where the jury brought in a verdict against one, or some, of defendants.[66.5] Any error in charging that the jury could find against two or more defendants in different amounts is rendered harmless where the jury returned a joint verdict against them.[66.10] Where plaintiff acquiesced in a verdict in favor of one or two codefendants, who, if liable, would be liable jointly and severally, error in the charge on concurrent negligence is harmless to the remaining defendant, and not a basis of reversible error.[66.15]

An error in instructing on the "fellow servant" doctrine is harmless if the undisputed evidence shows that such relation did not exist and the jury so find.[67] Error in failing to instruct that a code-

63.30 Mich.—Stewart v. Eghigian, 20 N.W.2d 777, 312 Mich. 699.

Negligence

(1) Erroneous instructions with respect to imputation of negligence of one person to another is harmless where jury find one not negligent.

Cal.—Douglass v. Crabtree, 134 P.2d 912, 57 C.A.2d 568.

N.Y.—Griswold v. Newman, 21 N.Y.S.2d 315, 259 App.Div. 1111.

(2) Any error in submitting a ground for negligence is harmless where jury found defendant negligent on other grounds that proximately caused injury.

Iowa.—Burbridge v. Briggs, 15 N.W. 2d 909, 235 Iowa 12.

Ky.—Davenport v. Brewer, 265 S.W. 2d 451.

Mass.—Gibbons v. Denoncourt, 9 N. E.2d 633, 297 Mass. 448.

Mo.—Oesterle v. Kroger Grocery & Baking Co., 141 S.W.2d 780, 346 Mo. 321.

Tex.—Dallas Ry. & Terminal Co. v. Orr, Civ.App., 210 S.W.2d 863, affirmed 215 S.W.2d 862, 147 Tex. 383.

Proximate cause

Error in instructing on proximate cause is harmless where defendant was found not negligent.

Tex.—Swanson v. Fort Worth Transit Co., Civ.App., 209 S.W.2d 772.

63.35 Ark.—Payne v. Mosley, 162 S.W.2d 889, 204 Ark. 510.

Ga.—Miller v. Deering, 72 S.E.2d 722, 209 Ga. 377.

Joyce v. City of Dalton, 36 S.E. 2d 104, 73 Ga.App. 209—Willis v. Whitehead, 21 S.E.2d 870, 68 Ga. App. 21—Groover v. Cudahy Packing Co., 7 S.E.2d 287, 61 Ga.App. 707.

Ind.—Vanosdol v. Henderson, 22 N.E. 2d 812, 216 Ind. 240.

Kan.—Duncan v. Branson, 110 P.2d 789, 153 Kan. 344.

Ky.—Pursifull v. City of Pineville, 183 S.W.2d 32, 298 Ky. 453—Conley v. Jennings, 178 S.W.2d 185, 296 Ky. 652.

Minn.—Radle v. Hennepin Avenue Theatre & Realty Co., 296 N.W. 510, 209 Minn. 415.

Miss.—McManus v. Horner, 196 So. 239.

N.C.—Nichols v. Wachovia Bank & Trust Co., 56 S.E.2d 429, 231 N.C. 158.

Pa.—Nay Aug Lumber Co. v. Stone, 198 A. 918, 131 Pa.Super. 122.

S.C.—Fisher v. J. H. Sheridan Co., 189 S.E. 356, 182 S.C. 316, 108 A.L.R. 981.

Tex.—Moore v. Norman, Civ.App., 137 S.W.2d 833, error dismissed, judgment correct—South Texas Coaches v. Woodard, Civ.App., 123 S.W.2d 395—Leap v. Braziel, Civ. App., 93 S.W.2d 1213, modified on other grounds 121 S.W.2d 334.

63.40 Ky.—Calvert Fire Ins. Co. v. Vanhoose, 248 S.W.2d 725.

Conflicting instructions

An erroneous instruction which is in conflict with correct instructions on same subject is harmless where verdict was authorized by correct instructions.

Ky.—Louisville & N. R. Co. v. Moore's Adm'r, 166 S.W.2d 68, 292 Ky. 223.

64. Ohio.—Ouzts v. Maloney, App., 109 N.E.2d 45, affirmed 106 N.E.2d 561, 157 Ohio St. 537.

In action against partnership, erroneous instruction as to whom verdict should be against if jury found for plaintiff is harmless where court entered proper judgment.

Okl.—Taft v. Davidson, 45 P.2d 738, 172 Okl. 522.

64.5 Miss.—Illinois Cent. R. Co. v. Paxton, 193 So. 915, 187 Miss. 858.

64.10 Okl.—Self v. Vickery, 207 P.2d 287, 201 Okl. 492.

Error not cured

Ill.—Schultz v. Royal Neighbors of America, 9 N.E.2d 435, 291 Ill. App. 176.

65. Or.—Hewey v. Andrews, 161 P. 108, 82 Or. 448.

66. Ariz.—Eldredge v. Miller, 277 P. 2d 239, 78 Ariz. 140.

Ga.—Brooks v. Hartsfield Co., 192 S. E. 459, 56 Ga.App. 184.

Minn.—Klein v. Pasch, 190 N.W. 338, 153 Minn. 291.

Mo.—Mahany v. Kansas City Rys. Co., 254 S.W. 16, 29 A.L.R. 817—Costello v. Kansas City, 219 S.W. 386, 280 Mo. 576.

Wash.—Lebovitz v. Cogswell, 145 P. 212, 83 Wash. 174.

4 C.J. p 1043 note 39.

Error as to several liability

Where liability of corporation in action against it and employee is dependent on culpability of employee, error in instruction permitting jury to return verdict against corporation alone is harmless where jury returned verdict against both defendants.

Mont.—Harrer v. Montgomery Ward & Co., 221 P.2d 428, 124 Mont. 295.

66.5 Ga.—Auerbach v. Bresee, 89 S. E.2d 536, 92 Ga.App. 591.

Md.—Bloom v. Graff, 63 A.2d 313, 191 Md. 733.

66.10 Ga.—Pittman v. West, 97 S.E. 2d 387, 95 Ga.App. 149.

66.15 Conn.—Rode v. Adley Express Co., 33 A.2d 329, 130 Conn. 274.

67. Neb.—Wenquist v. Omaha, etc., R. Co., 150 N.W. 637, 97 Neb. 554.

fendant was guilty of negligence as a matter of law is harmless where the jury found him guilty of negligence as a matter of fact.[67.5] The submission of an issue not supported by sufficient evidence to authorize the submission of the case on that issue alone is not prejudicial where it was submitted in the conjunctive with another issue supported by sufficient evidence to sustain the verdict.[67.10] Error in submitting alternative theories of tort or contract liability is harmless where the verdict was for plaintiff and necessarily found the facts to be such as would impose liability on defendant under either theory.[67.15]

On the other hand, the judgment must be reversed where it is impossible to tell whether the verdict was based on an erroneous instruction,[68] or whether it influenced the jury in arriving at its verdict,[68.5] where the evidence would have supported a finding either way,[69] or where it appears from the verdict that the instruction influenced the jury in their determination to the prejudice of appellant.[70] Also,

Tenn.—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498.

67.5 Cal.—Angelo v. Essau, 93 P.2d 205, 34 C.A.2d 130.

67.10 Mo.—Wattels v. Marre, 303 S. W.2d 9.

Necessity to determine

In action for injuries sustained in fall on step, where defective condition of step was submitted in conjunction with inadequate lighting and plaintiff had verdict, supreme court need not determine whether there was such substantial evidence of inadequate lighting as to authorize submission of cause on that basis alone.

Mo.—Wattels v. Marre, supra.

67.15 Cal.—Langley v. Pacific Gas & Elec. Co., 262 P.2d 846, 41 C.2d 655.

68. Ark.—Herring v. Bollinger, 29 S. W.2d 676, 181 Ark. 925—S. B. Locke & Co. v. Forrester, 252 S.W. 9, 159 Ark. 224—Martin v. Monger, 166 S.W. 566, 112 Ark. 394.

Cal.—Barrett v. Southern Pac. Co., 277 P. 481, 207 C. 154.

Plotts v. Albert, 260 P.2d 621, 120 C.A.2d 105.

Idaho.—Jakeman v. Oregon Short Line R. Co., 256 P. 88, 43 Idaho 505—Brown v. Hardin, 169 P. 293, 31 Idaho 112.

Ill.—Linquist v. Illinois Cent. R. Co., 126 N.E.2d 745, 6 Ill.App.2d 209—Howell v. Empire State Surety Co., 183 Ill.App. 220.

Ind.—Pennsylvania R. Co. v. Sherron, 105 N.E.2d 334, 230 Ind. 610.

Evansville & T. H. R. Co. v. Hoffman, 105 N.E. 788, 56 Ind.App. 530.

Iowa.—Jakeway v. Allen, 282 N.W. 374, 226 Iowa 13—State Sav. Bank of Missouri Valley v. Behm, 209 N. W. 523, 202 Iowa 192.

Ky.—Fidelity & Deposit Co. of Maryland v. Noger, 53 S.W.2d 746, 245 Ky. 416.

Green v. McGowan, 13 Ky.Op. 997.

Me.—Starkey v. Lewin, 105 A. 858, 118 Me. 87.

Md.—State, to Use of Creasey v. Pennsylvania R. Co., 59 A.2d 190, 190 Md. 586—Schloegel v. Sykes, 142 A. 501, 155 Md. 681.

Mo.—Wright v. Quattrochi, 49 S.W. 2d 3, 330 Mo. 173.

Berry v. Chicago & A. R. Co., App., 208 S.W. 622—Kinney v. National Newspaper Ass'n, 183 S.W. 1086, 193 Mo.App. 340.

Neb.—Siedlik v. Schneider, 241 N.W. 535, 122 Neb. 763.

N.J.—Kelley v. William J. Ryan, Inc., 139 A. 894, 6 N.J.Misc. 69—Lambert v. Trenton & Mercer County Traction Corporation, 127 A. 674, 3 N.J.Misc. 237.

N.Y.—Zeder v. Church of St. Stanislaus, 88 N.Y.S.2d 617, 275 App.Div. 796—Walrath v. American Ry. Express Co., 216 N.Y.S. 545, 217 App. Div. 83—Forbes v. City of Jamestown, 209 N.Y.S. 99, 212 App.Div. 332—West v. Beardsley, 174 N.Y.S. 294, 186 App.Div. 501—Ford v. John Wanamaker, 150 N.Y.S. 795, 165 App.Div. 284.

Schumer v. Max Blum Co., 188 N.Y.S. 462, 120 Misc. 349.

Ohio.—Burton v. Board of Education of Elizabeth Township, 5 Ohio N. P., N.S., 294.

Or.—Hartley v. Berg, 25 P.2d 932, 145 Or. 44.

Pa.—Jones v. MacConochie, 56 A.2d 284, 162 Pa.Super. 124.

Tex.—Osceola Oil Co. v. Stewart Drilling Co., Com.App., 258 S.W. 806—Payne v. Harris, Com.App., 241 S.W. 1008.

Blanch v. Villiva, Civ.App., 22 S. W.2d 490—Ford v. Sims, Civ.App., 190 S.W. 1165—Wichita Valley Ry. Co. v. Somerville, Civ.App., 179 S. W. 671—Voigt v. Hunt, Civ.App., 167 S.W. 745.

Va.—Breedlove v. Hardy, 110 S.E. 358, 132 Va. 11.

Wash.—Medgard v. Shimogaki, 238 P. 574, 135 Wash. 527.

Wis.—Kichefsky v. Wiatrzykowski, 210 N.W. 679, 191 Wis. 319.

4 C.J. p 1043 note 41.

Error held not cured by verdict

Mass.—Hawes Electric Co. v. Angell, 124 N.E.2d 257, 332 Mass. 190.

68.5 Miss.—Poteete v. City of Water Valley, 42 So.2d 112, 207 Miss. 173.

69. Ala.—Purifoy v. Central of Georgia Ry. Co., 117 So. 466, 218 Ala. 11, followed in Wilkey v. Central of Georgia Ry. Co., 118 So. 922, 218 Ala. 708.

Cal.—Langford v. San Diego Electric Ry. Co., 164 P. 398, 174 C. 729.

Johnson v. Gokey, 41 P.2d 193, 4 C.A.2d 497.

Fla.—Davis v. Hirschmann, 126 So. 758, 99 Fla. 590—Tatum Bros. Real Estate & Investment Co. v. Watson, 109 So. 623, 92 Fla. 278.

Ill.—Ind v. Davis, 125 N.E.2d 852, 5 Ill.App.2d 483—Scott v. Vurdulas, 264 Ill.App. 495—Peters v. Madigan, 262 Ill.App. 417—Vukovich v. Sieboda, 261 Ill.App. 416.

Ind.—Terre Haute City Lines v. Kroeger, 59 N.E.2d 575, 115 Ind. App. 376—Midwest Motor Coach Co. v. Elliott, 182 N.E. 541, 95 Ind. App. 64—Indiana Rys. & Light Co. v. Armstrong, 138 N.E. 830, 79 Ind. App. 486.

Miss.—Gardner v. Peters, 131 So. 881, 159 Miss. 420.

Mo.—Pollard v. J. J. Newberry Co., App., 228 S.W.2d 398—Bennett v. National Union Fire Ins. Co., App., 80 S.W.2d 914.

Mont.—Batch v. Helena Light & Ry. Co., 159 P. 411, 52 Mont. 517.

Tex.—Dallas Ry. & Terminal Co. v. Allen, Civ.App., 43 S.W.2d 165.

Va.—Chesapeake & O. Ry. Co. v. Hewin, 148 S.E. 794, 152 Va. 649—Director General of Railroads v. Pence's Adm'x, 116 S.E. 351, 135 Va. 329.

Wis.—Bobrowski v. Henne, 70 N.W. 2d 666, 270 Wis. 173—Janz v. Rounds, 206 N.W. 833, 188 Wis. 612.

4 C.J. p 1043 note 42.

70. Ill.—Garvey v. Chicago Rys. Co., 171 N.E. 271, 339 Ill. 276.

Iowa.—Dedina v. Chicago, M., St. P. & P. R. Co., 264 N.W. 566, 220 Iowa 1336.

Kan.—Burdg v. Scott, 208 P. 668, 111 Kan. 610.

Mo.—Hall v. Clark, 298 S.W.2d 344—McCombs v. Ellsberry, 85 S.W. 2d 135, 337 Mo. 491.

Wolcott & Lincoln v. Humphrey, App., 119 S.W.2d 1022—Rucker v. National Life & Accident Ins. Co., App., 6 S.W.2d 975—Davis v. City Light & Traction Co., 222 S.W. 884, 204 Mo.App. 174.

error in the charge which was harmful to plaintiff will require a reversal where a verdict for defendant was not demanded as a matter of law.[70.5] Where a cause was submitted to a jury by a principal instruction authorizing a recovery on an erroneous theory of the law, plaintiff on securing a verdict could not have it sustained on appeal and have the error declared harmless, because there was a theory which, if submitted, would have sustained a similar verdict.[71]

In an action in which acts by defendant's agents constitute the only possible basis of its liability and plaintiff relies, not on grounds of action which are distinct in the essential basis of the right involved, but rather only on the specific facts which formed a part of the transaction, a general verdict for plaintiff will not render harmless error in instructions with respect to defendant's liability for acts by codefendants as its agents.[71.5]

Where the court may instruct on its own motion, the giving of instructions at the request of plaintiff is not prejudicial to defendant, since he is in a position no worse than he would have been had the court given the instructions without any request by plaintiff's counsel.[71.10]

§ 1773(2). —— Amount of Recovery or Damages

Erroneous instructions as to the measure of damages or amount of recovery do not require reversal where by their verdict the jury show that they were not misled, and no prejudice has resulted to the complaining party.

Erroneous instructions as to the measure of damages or the amount of recovery do not constitute a ground for reversal where it is apparent that the jury were not influenced or misled thereby.[72] Ordi-

N.Y.—Longacre v. Yonkers R. Co., 140 N.E. 215, 236 N.Y. 119, 28 A.L.R. 1030.
May v. Syracuse Newspapers, 294 N.Y.S. 867, 250 App.Div. 155.
Rice v. McAllister Lighterage Line, 187 N.Y.S. 457, 115 Misc. 166.
Okl.—J. Crouch & Son v. Huber, 209 P. 764, 87 Okl. 83.
Tex.—Dallas Ry. & Terminal Co. v. Van Gilder, Civ.App., 301 S.W.2d 724, error refused no reversible error—Hicks v. Frost, Civ.App., 195 S.W.2d 606, error refused no reversible error.
Utah.—Burbidge v. Utah Light & Traction Co., 196 P. 556, 57 Utah 566.
4 C.J. p 1043 note 43.

70.5 Ga.—Palefsky v. Mayor of Savannah, 95 S.E.2d 715, 94 Ga. App. 597.

71. Mo.—Degonia v. St. Louis, etc., R. Co., 123 S.W. 807, 224 Mo. 564.

71.5 Conn.—Krowka v. Colt Patent Fire Arm Mfg. Co., 8 A.2d 5, 125 Conn. 705.

71.10 Cal.—Jennings v. Arata, 188 P.2d 298, 83 C.A.2d 143.

72. Ala.—Lehigh Portland Cement Co. v. Donaldson, 164 So. 97, 231 Ala. 242—Chandler v. Citizens' Bank of Guntersville, 124 So. 234, 220 Ala. 82—Exchange Underwriters' Agency of Royal Exchange Assur. of London, England v. Bates, 69 So. 956, 195 Ala. 161.
Ariz.—Maryland Casualty Co. v. Sweek, 236 P. 720, 28 Ariz. 258.
Ark.—Street v. Shull, 58 S.W.2d 932, 187 Ark. 180—555 Incorporated v. Helmers Mfg. Co., 56 S.W.2d 1016, 186 Ark. 1197—Almand v. Alexander, 23 S.W.2d 611, 180 Ark. 947—Earle v. Boyer, 289 S.W. 490, 172 Ark. 534—Butler County R. Co. v. Lawrence, 250 S.W. 340, 158 Ark. 271—Franks v. Rogers, 245 S.W. 311, 156 Ark. 120—Morrison v. Weinstein, 236 S.W. 585, 151 Ark. 255—Arkansas Land & Lumber Co. v. Fitzhugh, 219 S.W. 1022, 143 Ark. 122—Yelvington v. Polzin, 182 S.W. 278, 121 Ark. 634—United States Express Co. v. Rea, 181 S.W. 888, 121 Ark. 284—Williams v. Newkirk, 181 S.W. 304, 121 Ark. 439—St. Louis, I. M. & S. Ry. Co. v. Brundidge, 171 S.W. 859, 115 Ark. 606.
Cal.—Ferguson v. Dam, 35 P.2d 1072, 140 C.A. 701.
Conn.—Stoll v. Almon C. Judd Co., 138 A. 479, 106 Conn. 551, 53 A.L.R. 1042—Wofsey v. New York & S. Ry. Co., 138 A. 136, 106 Conn. 254—Lenox Const. Co. v. Colonial Const. Co., 105 A. 467, 93 Conn. 234.
Fla.—Prior v. Pounds, 151 So. 890, 113 Fla. 308.
Ga.—Baldwin v. Davis, 4 S.E.2d 458, 188 Ga. 587—Shellnut v. Shellnut, 3 S.E.2d 900, 188 Ga. 306—Woodruff v. Bowers, 140 S.E. 844, 165 Ga. 408—Western & A. R. Co. v. Roberts, 86 S.E. 933, 144 Ga. 250.
Sutton v. Allen, 72 S.E.2d 921, 87 Ga.App. 25—Walker v. Southeastern Stages, 22 S.E.2d 742, 68 Ga. App. 320—Hunt v. Western & A. R. R., 174 S.E. 222, 49 Ga.App. 33—Cooper v. Meaders, 169 S.E. 685, 47 Ga.App. 89—Seaboard Air Line Ry. Co. v. Young, 148 S.E. 757, 40 Ga. App. 4—Atlanta & W. P. R. Co. v. Miller, 98 S.E. 248, 23 GaApp. 347—Bank of Norwood v. Ray, 94 S.E. 819, 21 Ga.App. 620—Wheeler v. Porter, 92 S.E. 952, 20 Ga.App. 234.
Ill.—Miller v. Mobile & O. R. Co., 265 Ill.App. 414—United Flour Mills Co. v. Kryda, 185 Ill.App. 610.
Ind.—Corey v. Smith, 120 N.E.2d 410, 233 Ind. 452.
Pittsburgh, C., C. & St. L. Ry. Co. v. Vance, 108 N.E. 158, 58 Ind. App. 1.
Iowa.—Siesseger v. Puth, 234 N.W. 540, 211 Iowa 775—Daugherty v. Advance-Rumely Thresher Co., 180 N.W. 277, 190 Iowa 424.
Kan.—First M. E. Church of Strong City v. North, 140 P. 888, 92 Kan. 381.
Ky.—Smith v. Kidd, 246 S.W.2d 155—Bituminous Cas. Corp. v. Campbell, 224 S.W.2d 692, 311 Ky. 438—Combs v. Stewart, 190 S.W.2d 861, 301 Ky. 50—Coca Cola Bottling Co. of Shelbyville v. Creech, 53 S.W.2d 745, 245 Ky. 414—Norton Coal Mining Co. v. Wilkey, 23 S.W.2d 942, 232 Ky. 539—R. E. O'Flynn & Son v. Ebelhaar, 222 S.W. 939, 188 Ky. 503—Morgan v. Williams, 200 S.W. 650, 179 Ky. 428—Louisville & N. R. Co. v. Asher's Adm'r, 198 S.W. 548, 178 Ky. 67, L.R.A.1918B 211—Main Jellico Mountain Coal Co. v. Young, 169 S.W. 841, 160 Ky. 397—Moore's Adm'r v. Pierce, 169 S.W. 620, 160 Ky. 107.
Md.—Baltimore Transit Co. v. State for Use of Castranda, 71 A.2d 442, 194 Md. 421—Baltimore Transit Co. v. Worth, 52 A.2d 249, 188 Md. 119, 5 A.L.R.2d 740.
Mass.—Marciniak v. Walz, 132 N.E. 33, 239 Mass. 259.
Mich.—Case v. Bowman, 251 N.W. 333, 265 Mich. 106—Haynes v. Clark, 233 N.W. 321, 252 Mich. 295—Dirkes v. Lenzen, 214 N.W. 84, 239 Mich. 270—Realty Const. Co. v. Kennedy, 208 N.W. 455, 234 Mich. 490—Taylor v. Indiana & Michigan Electric Co., 151 N.W. 739, 184 Mich. 578, L.R.A.1915E 294—Morehouse v. Shepard, 150 N.W. 112, 183 Mich. 472, Ann.Cas.1916E 305.
Minn.—Thompson v. Byram, 228 N. W. 546, 179 Minn. 67—People's Finance Corporation v. Houck, 217 N. W. 505, 173 Minn. 443—Peterson v. Northern Pac. Ry. Co., 156 N.W. 121, 132 Minn. 265.

narily, error in instructions as to such matters will be considered harmless where the jury found for the party complaining,[73] or did not find any dam-

Miss.—Morrimac Veneer Co. v. McCalip, 92 So. 817, 129 Miss. 671—Mobile & O. R. Co. v. Campbell, 75 So. 554, 114 Miss. 803.

Mo.—Mercer v. Millers' Mut. Fire Ins. Ass'n, 249 S.W.2d 402—LeGrand v. U-Drive-It Co., 247 S.W. 2d 706—Cuddy v. Schenewark, 231 S.W.2d 689—Elgin v. Kroger Grocery & Baking Co., 206 S.W.2d 501, 357 Mo. 19—Golden v. National Utilities Co., 201 S.W.2d 292, 356 Mo. 84—Gower v. Trumbo, 181 S. W.2d 653—Rosenzweig v. Wells, 273 S.W. 1071, 308 Mo. 617—Sang v. City of St. Louis, 171 S.W. 347, 262 Mo. 454.

Brewer v. Gowin, App., 241 S.W. 2d 275—Norton v. Lynds, App., 24 S.W.2d 183—Stahlberg v. Brandes, App., 299 S.W. 836—Williams v. Ellis, App., 239 S.W. 157—Stetina v. Bergstein, App., 231 S.W. 1059—McGrath v. Heman Const. Co., 167 S.W. 1086, 183 Mo.App. 522.

Mont.—Cashin v. Northern Pac. Ry. Co., 28 P.2d 862, 96 Mont. 92.

Neb.—Garrison v. Everett, 199 N.W. 30, 112 Neb. 230.

N.M.—Kandelin v. Lee Moor Contracting Co., 24 P.2d 731, 37 N.M. 479.

N.Y.—Clancy v. Toal, 4 N.Y.S.2d 385, 254 App.Div. 166.

N.C.—Garland v. Penegar, 70 S.E.2d 486, 235 N.C. 517—James v. Western Carolina Power Co., 150 S.E. 699, 198 N.C. 812—Winchester v. Byers, 145 S.E. 774, 196 N.C. 383—Federal Finance & Credit Co. v. Teeter, 145 S.E. 8, 196 N.C. 232.

Ohio.—Rowley v. Ferguson, App., 48 N.E.2d 243.

Okl.—National Farmers Union Property & Cas. Co. v. Watson, 298 P. 2d 762—Krieger v. Marshall, 292 P.2d 379—Fairmont Creamery Co. v. Marshall, 105 P.2d 778, 188 Okl. 23—Oklahoma City v. Page, 6 P. 2d 1033, 153 Okl. 285—Cardwell Lyman Sales Co. v. Hollister, 224 P. 966, 98 Okl. 231—Cherry Bros. Trading Co. v. Rock Island Implement Co., 214 P. 559, 89 Okl. 201—Missouri, O. & G. Ry. Co. v. Adams, 153 P. 200, 52 Okl. 557.

Or.—Paine v. Meier & Frank Co., 27 P.2d 315, 146 Or. 40, rehearing denied 29 P.2d 531, 146 Or. 40—Officer v. Cummings, 272 P. 273, 127 Or. 320—Farmers' Bank of Weston v. Ellis, 268 P. 1009, 126 Or. 602—Houk v. Gilmore, 259 P. 891, 122 Or. 498—Madden v. Columbia & N. R. R. R., 200 P. 1038, 101 Or. 562.

Pa.—Dieterich v. City of Philadelphia, 94 A. 274, 248 Pa. 586.

Styborski v. Hartford Fire Ins. Co., 82 A.2d 543, 169 Pa.Super. 452—Goldman v. Lichtenstul, 179 A. 870, 118 Pa.Super. 124—Ryman v. West End Coal Co., 57 Pa.Super. 412.

Nohan v. Scranton Transit Co., Com.Pl., 48 Lack.Jur. 81.

R.I.—Downing v. Grady, 157 A. 573, 52 R.I. 83.

Tenn.—National Funeral Home v. Dalehite, 15 Tenn.App. 482—Tennessee R. R. Co. v. Kingsley, 10 Tenn.App. 637.

Tex.—Traders & General Ins. Co. v. Wilson, Civ.App., 147 S.W.2d 866—Dallas Railway & Terminal Co. v. Harris, Civ.App., 81 S.W.2d 716—Richards v. Westmoreland, Civ. App., 63 S.W.2d 715—Texas & P. Ry. Co. v. Baldwin, Civ.App., 25 S. W.2d 969, affirmed, Com.App., 44 S.W.2d 909, certiorari denied 53 S.Ct. 11, 287 U.S. 606, 77 L.Ed. 527—Texas & P. Ry. Co. v. Edwards, Civ.App., 21 S.W.2d 754, reversed on other grounds, Com.App., 36 S. W.2d 477—Panhandle & S. F. Ry. Co. v. Thompson, Civ.App., 250 S. W. 751—Richard Cocke & Co. v. New Era Gravel & Development Co., Civ.App., 168 S.W. 988—Amarillo Nat. Life Ins. Co. v. Brown, Civ.App., 166 S.W. 658.

Va.—Arkla Lumber & Mfg. Co. v. West Virginia Timber Co., 132 S. E. 840, 146 Va. 641.

Wash.—Western Bond & Mortgage Co. v. Chester, 259 P. 13, 145 Wash. 81—Van Allen v. Post, 226 P. 721, 130 Wash. 224.

Wis.—Bielke v. Knaack, 242 N.W. 176, 207 Wis. 490.

Wyo.—Phifer v. Baker, 244 P. 637, 34 Wyo. 415—Hall Oil Co. v. Barquin, 237 P. 255, 33 Wyo. 92.

4 C.J. p 1043 note 45.

Improper elements or items

Errors in instructions as to particular elements or items of damage are harmless where no recovery was allowed therefor.

Ky.—Franklin County v. Bailey, 63 S.W.2d 622, 250 Ky. 528—Codell Const. Co. v. Steele, 56 S.W.2d 955, 247 Ky. 173.

Minn.—Ball v. Gessner, 240 N.W. 100, 185 Minn. 105.

Mo.—Corbin v. Fidelity Health & Acc. Mut. Ins. Co., App., 265 S.W.2d 440.

Ohio.—Brate v. McDonald, 120 N.E. 2d 748, 95 Ohio App. 448—Collins v. Potasky, App., 111 N.E.2d 599—Humphreys v. Madden, App., 68 N.E.2d 562.

Pa.—Dauphin Deposit Trust Co. v. Standard Oil Co. of Pennsylvania, 167 A. 287, 312 Pa. 229.

Renner v. Sentle, 30 A.2d 220, 151 Pa.Super. 231.

S.D.—Orrison v. City of Rapid City, 74 N.W.2d 489.

Wash.—Boyle v. Lewis, 193 P.2d 332, 30 Wash.2d 665.

4 C.J. p 1044 note 46 [b].

Instruction giving an alternative measure of damages was harmless, although there was insufficient evidence to support the first branch of it, where the verdict showed that the jury followed the second branch of the instruction, which was not objectionable.

Va.—Craddock Lumber Co. v. Jenkins, 97 S.E. 817, 124 Va. 167.

Reference to amount sued for

Mo.—Bales v. Kansas City Public Service Co., 40 S.W.2d 665, 328 Mo. 171.

Woods v. Moore, App., 48 S.W. 2d 202.

4 C.J. p 1043 note 45 [b].

Where correct amount is recovered

Adoption of a wrong rule as to the measure of damage was not prejudicial, where the correct amount was awarded.

S.D.—Sherman v. Harris, 167 N.W. 325, 40 S.D. 341.

73. Ala.—Davis v. Erwin, 107 So. 903, 214 Ala. 341.

Ariz.—Wooley v. Locarnini, 164 P. 319, 18 Ariz. 539.

Cal.—Meyers v. Bradford, 201 P. 471, 54 C.A. 157.

Ind.—Western Brass Mfg. Co. v. Haynes Automobile Co., 112 N.E. 108, 61 Ind.App. 524.

Ky.—Lowery v. Hopkinsville Transfer Co., 61 S.W.2d 23, 249 Ky. 454—Conn v. Lexington Utilities Co., 25 S.W.2d 370, 233 Ky. 230.

Neb.—Fairchild v. Wilson, 164 N.W. 657, 101 Neb. 608.

N.Y.—McGann v. Drennan, 299 N.Y. S. 480, 252 App.Div. 863.

N.C.—Carolina Coach Co. v. Central Motor Lines, 50 S.E.2d 909, 229 N. C. 650—Crisp v. Nantahala Power & Light Co., 158 S.E. 845, 201 N.C. 46.

Okl.—Salyer v. Central Nat. Bank, 312 P.2d 458.

Tex.—Southern Pac. Co. v. Eckenfels, Civ.App., 197 S.W. 1003, error refused—Consumers' Lignite Co. v. Grant, Civ.App., 181 S.W. 202.

Wash.—Fuller v. Friedman, 237 P. 293, 135 Wash. 116.

Wis.—Metzinger v. Perry, 221 N.W. 418, 197 Wis. 16.

4 C.J. p 1044 note 46.

Right of recovery

(1) Giving of erroneous instructions with respect to right of recovery, as distinguished from amount thereof, results in no prejudicial error, where party objecting thereto has verdict.

W.Va.—Legg v. Jones, 30 S.E.2d 76, 126 W.Va. 757.

ages for plaintiff,[73.5] or found for defendant on the | main issue,[74] or for plaintiff, on defendant's cross

(2) Where jury found for plaintiff, errors in instructions concerning defendant's liability, which could not have affected amount recovered, are harmless to plaintiff.

Ga.—Joyce v. City of Dalton, 36 S.E. 2d 104, 73 Ga.App. 209—L. P. Gunson & Co. v. Garrett, 186 S.E. 849, 53 Ga.App. 717.

73.5 Ark.—Treadway v. Arkansas Louisiana Gas Co., 120 S.W.2d 378, 196 Ark. 874.

Ga.—Thompson v. Powell, 5 S.E.2d 260, 60 Ga.App. 796.

Iowa.—Martin v. Momyer, 300 N.W. 310, 230 Iowa 1158.

N.C.—McKay v. Bullard, 14 S.E.2d 657, 219 N.C. 589.

Where nothing is recovered

Ky.—Chesapeake & O. Ry. Co. v. Stump, 178 S.W. 1037, 165 Ky. 708.

Or.—Dippold v. Cathlamet Timber Co., 225 P. 202, 111 Or. 199.

Wash.—Johnston v. Owens, 153 P.2d 879, 21 Wash.2d 892.

74. Ala.—Molloy v. Mitchell, 137 So. 896, 223 Ala. 666—Watson v. Hardaway-Covington Cotton Co., 137 So. 33, 223 Ala. 443—Kern v. Friedrich, 126 So. 857, 220 Ala. 581—Roll v. Dockery, 122 So. 630, 219 Ala. 374, 65 A.L.R. 1473—H. J. Crenshaw & Co. v. Seaboard Air Line Ry. Co., 121 So. 736, 219 Ala. 206—Brothers v. Norris, 96 So. 328, 209 Ala. 426—Wilson Bros. v. Mobile & O. R. Co., 94 So. 721, 208 Ala. 581—Van Tinder v. Birmingham Ry., Light & Power Co., 80 So. 858, 202 Ala. 474.

Ark.—Freidrich v. Southwestern Transp. Co., 32 S.W.2d 613, 182 Ark. 733—Mahor v. Kansas City Southern Ry. Co., 223 S.W. 388, 145 Ark. 111.

Cal.—De La Torre v. Johnson, 264 P. 485, 203 C. 374.

Chavez v. Times-Mirror Co., 237 P. 1085, 72 C.A. 694—Julius Levin Co. v. Commercial Centre Realty Co., 214 P. 248, 60 C.A. 718—Coalinga Mohawk Oil Co. v. R. H. Herron Co., 199 P. 813, 53 C.A. 75—Hurd v. City and County of San Francisco, 193 P. 507, 49 C.A. 361.

Colo.—Flader Land Co. v. Denes, 139 P.2d 875, 111 Colo. 227.

Conn.—Himmelstein v. General Elec. Co., 133 A.2d 617—Cook v. Miller, 130 A. 571, 103 Conn. 267—Sullivan v. Clear, 127 A. 14, 101 Conn. 603—Appleby v. Noble, 124 A. 717, 101 Conn. 54.

Fla.—Saucer v. City of West Palm Beach, 21 So.2d 452, 155 Fla. 659—Varga v. Marcus Conant Co., 89 So. 126, 81 Fla. 780.

Ga.—Mayes v. Simons, 8 S.E.2d 73, 189 Ga. 845, 130 A.L.R. 245.

Willis v. Henry, 98 S.E.2d 150, 95 Ga.App. 593—Beardsley v. Suburban Coach Co., 63 S.E.2d 911, 83 Ga.App. 381—National Sheet Metal Co. v. A A A Highway Express, 190 S.E. 383, 55 Ga.App. 393—Smallwood v. Pollard, 188 S.E. 594, 54 Ga.App. 617—Jones v. Knightstown Body Co., 184 S.E. 427, 52 Ga.App. 667—Folds v. Penn, 181 S.E. 308, 51 Ga.App. 682—Eddleman v. Askew, 179 S.E. 247, 50 Ga.App. 540—Wilkerson v. Edmondson, 176 S.E. 647, 49 Ga.App. 757—Roddy v. Stansbury, 165 S.E. 764, 45 Ga.App. 705—Donaldson v. Central of Georgia Ry. Co., 159 S.E. 738, 43 Ga. App. 480—Southwest Georgia Development Co. v. Griffin, 143 S.E. 784, 38 Ga.App. 276—Cowart & Dancer v. Bush, 139 S.E. 920, 37 Ga.App. 278—Davies v. West Lumber Co., 123 S.E. 757, 32 Ga.App. 460—Cochran v. Anderson, 118 S. E. 450, 30 Ga.App. 427—Cohen Bros. v. Krumbein, 113 S.E. 58, 28 Ga.App. 788—Owens v. Fuller, 108 S.E. 312, 27 Ga.App. 368—Jackson v. Goldin, 106 S.E. 12, 26 Ga.App. 283—Creswell v. Williams, 97 S.E. 869, 23 Ga.App. 190.

Ill.—Gorens v. Bonaparte, 112 N.E. 2d 748, 350 Ill.App. 326—Petrosky v. Great Atlantic & Pac. Tea Co., 105 N.E.2d 128, 346 Ill.App. 470—Jackson v. Fisher, 93 N.E.2d 438, 341 Ill.App. 311—Meng v. Lucash, 69 N.E.2d 367, 329 Ill.App. 512—Borgmier v. Wood, 252 Ill.App. 194—Frink v. Amstadt, 201 Ill.App. 419.

Ind.—**Corpus Juris Secundum cited in** Adkins v. Poparad, 51 N.E.2d 476, 222 Ind. 16.

State v. McNelis, 122 N.E. 690, 72 Ind.App. 231—Bright Nat. Bank v. Hanson, 113 N.E. 434, 68 Ind. App. 61.

Iowa.—McLain v. Risser, 223 N.W. 162, 207 Iowa 490—Ferber v. Great Northern Ry. Co., 217 N.W. 880, 205 Iowa 291—Wiley v. Dobbins, 214 N.W. 529, 204 Iowa 174, 62 A. L.R. 432—Freeby v. Incorporated Town of Sibley, 186 N.W. 685, 195 Iowa 200, modified on other grounds 191 N.W. 867, 195 Iowa 1032—Potier v. Winifred Coal Co., 184 N.W. 739, 192 Iowa 1280—Vandeventer v. Nelson, 163 N.W. 354, 180 Iowa 705—Hanson v. City of Anamosa, 158 N.W. 591, 177 Iowa 101.

Kan.—Baird v. Bureman, 26 P.2d 272, 138 Kan. 381—Ludwig v. Macy, 209 P. 657, 112 Kan. 18—Greisa v. Thomas, 161 P. 670, 99 Kan. 335.

Ky.—Reams v. City of London, 168 S. W.2d 994, 293 Ky. 473—Commonwealth, for Use and Benefit of Eversole v. West, 97 S.W.2d 405, 265 Ky. 550—Levi v. Gonzenbach, 33 S.W.2d 657, 236 Ky. 586—Stegall v. Patton, 21 S.W.2d 488, 231 Ky. 365—Jackson Lumber & Supply Co. v. Deaton, 272 S.W. 717, 209 Ky. 239—Tassone v. Goodin-Barney Coal Co., 272 S.W. 12, 209 Ky. 84—Paducah Grain & Elevator Co. v. Marshall, 246 S.W. 30, 196 Ky. 673—Weitlauf v. Paducah & I. R. Co., 226 S.W. 388, 190 Ky. 143.

Mass.—Carson v. Boston El. Ry., 33 N.E.2d 701, 309 Mass. 32—Dewitt v. Wells, 200 N.E. 574, 294 Mass. 65.

Mich.—Rogers v. City of Detroit, 65 N.W.2d 848, 340 Mich. 291—Pfeiffer v. Haines, 30 N.W.2d 862, 320 Mich. 263—Baker v. Steketee, 255 N.W. 197, 267 Mich. 304—Rotter v. Detroit United Ry., 187 N.W. 271, 217 Mich. 686—Westerhouse v. De Witt, 183 N.W. 711, 215 Mich. 295.

Minn.—Wolfson v. Northern States Management Co., 299 N.W. 676, 210 Minn. 504—Barr v. Olson, 179 N. W. 563, 147 Minn. 49—Mathwig v. Minneapolis, St. P. & S. Ry. Co., 177 N.W. 643, 145 Minn. 429.

Miss.—White v. Weitz, 152 So. 484—Stamps v. Polk, 108 So. 729, 143 Miss. 551—Henderson & Mathis v. Hines, 83 So. 589, 121 Miss. 339.

Mo.—**Corpus Juris Secundum cited in** Gower v. Trumbo, 181 S.W.2d 653, 656—Mendenhall v. Neyer, 149 S.W.2d 366, 347 Mo. 881—Bennette v. Hader, 87 S.W.2d 413, 337 Mo. 977, 101 A.L.R. 1190—Oliver v. Morgan, 73 S.W.2d 993—Schmeer v. Anchor Cold Storage Co., 12 S. W.2d 433—Ulrich v. Chicago, B. & Q. R. Co., 220 S.W. 682, 281 Mo. 697.

Hofstatter v. Johnson, App., 208 S.W.2d 924—Kelly v. Rieth, App., 168 S.W.2d 115—Williams v. Hyman-Michaels Co., App., 277 S.W. 593—J. B. Colt Co. v. Preslar, App., 274 S.W. 1100—N. W. Helm Feed & Coal Co. v. Butler County Milling Co., 269 S.W. 630, 218 Mo.App. 290—Security Printing Co. v. Liverpool & London & Globe Ins. Co., App., 263 S.W. 454—Egan v. United Rys. Co. of St. Louis, App., 227 S.W. 126—Dawson v. Flintom, 190 S.W. 972, 195 Mo.App. 75.

Mont.—Schwartz v. Great Northern Ry. Co., 205 P. 219, 62 Mont. 315.

Neb.—Murphy v. Shibiya, 250 N.W. 746, 125 Neb. 487—Doran v. National Surety Co., 250 N.W. 82, 125 Neb. 299—Leypoldt & Pennington Co. v. Davis, 199 N.W. 463, 112 Neb. 350.

N.H.—Twarog v. Amoskeag Mfg. Co., 113 A. 224, 80 N.H. 89.

N.J.—Meisler v. Raiken Monument Works, 154 A. 763, 9 N.J.Misc. 664.

N.C.—Brady v. Moton, 117 S.E. 339, 185 N.C. 421.

Ohio.—Ochsner v. Cincinnati Traction Co., 140 N.E. 644, 107 Ohio St. 33.

Ohio Exchange for Educational Films Co. v. P. & R. Amusement Co., 186 N.E. 746, 45 Ohio App. 10—Steele v. Rail & River Coal Co., 182 N.E. 552, 42 Ohio App. 228.

action or counterclaim,[75] or where a verdict should have been directed for defendant.[75.5] Erroneous instructions as to the measure of damages in a replevin action is harmless where plaintiff elected to take the article replevied.[75.10]

Furthermore, error in the instructions with respect to the amount of recovery or the measure of damages is harmless where the amount awarded was fully justified by the evidence,[76] or was the amount stipulated by the parties as the proper amount if

Okl.—State ex rel. Dept. of Highways v. Rumsey, 237 P.2d 448, 205 Okl. 307—Equels v. Tulsa City Lines, 147 P.2d 460, 194 Okl. 79—Schofield v. City of Tulsa, 239 P. 236, 111 Okl. 220—McKelvy v. Choctaw Cotton Oil Co., 178 P. 882, 72 Okl. 74—Farmers' Product & Supply Co. v. Bond, 161 P. 181, 61 Okl. 244.

Or.—Penn v. Henderson, 146 P.2d 760, 174 Or. 1.

Pa.—Harkinson v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 198 A. 11, 329 Pa. 209—Gallagher v. Hildebrand, 132 A. 174, 285 Pa. 350—Turner Concrete Steel Co. v. Chester Construction & Contracting Co., 114 A. 760, 271 Pa. 205—McMillen v. Strathmann, 107 A. 332, 264 Pa. 13—Warruna v. Dick, 104 A. 749, 261 Pa. 602.

Conrad v. Gollub, Com.Pl., 21 Leh.L.J. 387.

S.C.—Ellison v. Boyd, 142 S.E. 591, 144 S.C. 349—Moseley v. Carolina, C. & O. Ry. of South Carolina, 91 S.E. 380, 106 S.C. 368.

S.D.—Wyant v. Faith Tp. in Meade County, 207 N.W. 87, 49 S.D. 220—Hudson v. Sheafe, 171 N.W. 320, 41 S.D. 475.

Tex.—Wilson v. Hagins, 295 S.W. 922, 116 Tex. 538.

Chicago, R. I. & G. Ry. Co. v. Smith, Com.App., 222 S.W. 1099.

Travis v. Pratt, Civ.App., 254 S.W. 506—Sutherland v. Citizens' State Bank, Civ.App., 220 S.W. 115—Melton v. Manning, Civ.App., 216 S.W. 488.

Utah.—Malia for Use and Benefit of Creditors of North Sanpete Bank v. Seeley, 57 P.2d 357, 89 Utah 262.

Vt.—Bonazzi v. Fortney, 110 A. 439, 94 Vt. 263.

Wash.—Peerless Pattern Co. v. Whitmore, 188 P. 386, 110 Wash. 457—Deer Park Lumber Co. v. Oregon-Washington Lumber & Mfg. Co., 177 P. 336, 104 Wash. 531.

W.Va.—Martino v. Rotondi, 113 S.E. 760, 91 W.Va. 482.

Wyo.—Hein v. Marcante, 113 P.2d 940, 57 Wyo. 81.

55 C.J. p 866 note 91.

Finding of no liability

Error in instructing on the measure of damages is not ground for reversal, where the jury find that no liability existed.

Ala.—Brown v. Southeastern Greyhound Lines, 51 So.2d 524, 255 Ala. 308—Rogers v. Crow, 14 So.2d 157, 244 Ala. 533—King Mercantile Co. v. Adams, 69 So. 524, 193 Ala. 466—Kimbrell v. Louisville & N. R. Co., 67 So. 586, 191 Ala. 392—Ogburn-Griffin Grocery Co. v. Orient Ins. Co., 66 So. 434, 188 Ala. 218.

Ark.—Keatts v. McAllister, 262 S.W. 2d 136, 222 Ark. 658.

Cal.—Cucuk v. Payne, 296 P.2d 7, 140 C.A.2d 881—Church v. Payne, 97 P.2d 819, 36 C.A.2d 382.

Ga.—Ludwig v. J. J. Newberry Co., 52 S.E.2d 485, 78 Ga.App. 871.

Ill.—Green v. Streitmatter, 183 Ill. App. 25.

Ind.—Carter v. Ætna Life Ins. Co., 27 N.E.2d 75, 217 Ind. 282.

Iowa.—Janvrin v. Broe, 33 N.W.2d 427, 239 Iowa 977—Friedman v. Forest City, 30 N.W.2d 752, 239 Iowa 112—Eller v. Paul Revere Life Ins. Co., 291 N.W. 866, 228 Iowa 1247.

Ky.—Meredith v. Fehr, 90 S.W.2d 1021, 262 Ky. 645—Louisville & N. R. Co. v. Davis, 172 S.W. 966, 162 Ky. 572—Lawrence v. Board of Councilmen of City of Frankfort, 172 S.W. 953, 162 Ky. 528—Lee v. Woods, 171 S.W. 389, 161 Ky. 806.

Minn.—Chase v. Tingdale Bros., 149 N.W. 654, 127 Minn. 401—Johnson v. Church of St. Charles, 148 N.W. 281, 126 Minn. 338.

Miss.—American Creosote Works v. Rose Bros., 51 So.2d 220, 211 Miss. 173.

Mo.—Young v. New York, C. & St. L. Ry. Co., 291 S.W.2d 64—Dryden v. St. Louis Public Service Co., 264 S.W.2d 329—Miller v. Riss & Co., 259 S.W.2d 366—LeGrand v. U-Drive-It Co., 247 S.W.2d 706—Quigley v. St. Louis Public Service Co., 201 S.W.2d 169—Carlisle v. Tilghmon, 174 S.W.2d 798—Gardner v. Turk, 123 S.W.2d 158, 343 Mo. 899.

Brewer v. Gowin, App., 241 S.W. 2d 275.

Neb.—Segebart v. Gregory, 69 N.W. 2d 315, 160 Neb. 64—In re Pott's Estate, 14 N.W.2d 323, 144 Neb. 729—Potach v. Hrauda, 271 N.W. 795, 132 Neb. 288.

N.J.—Livesey v. Helbig, 94 A. 47, 87 N.J.Law 303.

Okl.—People's Ice & Fuel Co. v. Serat, 149 P. 870, 46 Okl. 762.

Or.—Gibson v. Payne, 154 P. 422, 79 Or. 101, Ann.Cas.1918C 383—Fitzhugh v. Nirschl, 151 P. 735, 77 Or. 514.

Pa.—Dupont v. Gallagher, 62 A.2d 28, 360 Pa. 419.

S.D.—Kuhn v. Watertown Cement Products Co., 68 N.W.2d 241, 75 S.D. 491.

Tex.—Lovejoy v. Mutual Broadcasting System, Civ.App., 220 S.W.2d 308—Rainey v. Old, Civ.App., 180 S.W. 923—Rodgers v. Texas & P. Ry. Co., Civ.App., 172 S.W. 1117—Moore v. Cooper Mfg. Co., Civ. App., 171 S.W. 1034—Norton v. Lea, Civ.App., 170 S.W. 267.

Wash.—Fleenor v. Erickson, 215 P.2d 885, 35 Wash.2d 891.

75. Ga.—Hollomon v. Hopson, 166 S. E. 45, 45 Ga.App. 762.

Ky.—Armstrong v. Vest, 8 S.W.2d 1073, 223 Ky. 444.

Mo.—Way v. Raby, App., 49 S.W.2d 672.

N.C.—Price v. Goodman, 37 S.E.2d 592, 226 N.C. 223.

Okl.—Carver v. Knutson Elevators, Inc., 285 P.2d 391.

Pa.—Goldstein v. Aronson, 76 A.2d 217, 365 Pa. 435.

S.D.—Bertolero v. Clark, 170 N.W. 151, 41 S.D. 255.

Wash.—Hansen v. Coldwell, 73 P.2d 351, 192 Wash. 167.

75.5 Iowa.—Comparet v. Wm. H. Metz Co., 271 N.W. 847, 222 Iowa 1328.

75.10 Mo.—Hayes v. Adams, 244 S. W.2d 123, 241 Mo.App. 560.

76. Ala.—North British & Mercantile Ins. Co. v. Sciandra, 54 So.2d 764, 256 Ala. 409, 27 A.L.R.2d 1047—Sovereign Camp, W. O. W. v. Gunn, 158 So. 192, 229 Ala. 508.

Ariz.—Peppers Fruit Co. v. Curry, 226 P. 1089, 26 Ariz. 506.

Ark.—Pool v. Clark, 182 S.W.2d 217, 207 Ark. 635—Peterson v. Jackson, 103 S.W.2d 640, 193 Ark. 880—Lamden v. St. Louis Southwestern Ry. Co., 170 S.W. 1001, 115 Ark. 238.

Cal.—Pedro v. Humboldt County, 19 P.2d 776, 217 C. 493.

McIvor v. Mercer-Fraser Co., 172 P.2d 758, 76 C.A.2d 247—Ades v. Brush, 152 P.2d 519, 66 C.A.2d 436—Walker v. Nelson, 53 P.2d 977, 11 C.A.2d 297.

Ga.—Story v. Howell, 70 S.E.2d 29, 85 Ga.App. 661—Wells v. Steinek, 176 S.E. 42, 49 Ga.App. 482—Seaboard Air Line Ry. Co. v. Young, 148 S.E. 757, 40 Ga.App. 4—Elrod v. Chamblee, 106 S.E. 915, 26 Ga. App. 703.

Idaho.—Boise Ass'n of Credit Men v. U. S. Fire Ins. Co., 256 P. 523, 44 Idaho 250—Tucker v. Palmberg, 155 P. 981, 28 Idaho 693.

Ill.—Campbell v. Ragel, 129 N.E.2d 451, 7 Ill.App.2d 301—Hall v. Flavin, 110 N.E.2d 673, 349 Ill.App. 392.

Ind.—Guardian Life Ins. Co. of

damages were awarded;[76.5] where, although proper items were omitted from the elements of damage authorized, the verdict was sufficient to include all such items shown;[76.10] where the verdict was not excessive,[77] or where the verdict, notwithstanding

America v. Barry, 32 N.E.2d 599, 109 Ind.App. 286.

Iowa.—Rulison v. Victor X-Ray Corporation, 223 N.W. 745, 207 Iowa 895—Farmers' Sav. Bank of Murray v. Planters' Terminal Elevator Co. of Des Moines, 204 N.W. 298, 200 Iowa 434—Van Vliet Fletcher Automobile Co. v. Crowell, 149 N. W. 861, 171 Iowa 64.

Kan.—Musick v. Enos, 148 P. 624, 95 Kan. 397—Williamson v. Prairie Oil & Gas Co., 146 P. 316, 94 Kan. 238.

Ky.—World Fire & Marine Ins. Co. v. Tapp, 151 S.W.2d 428, 286 Ky. 650—Union Charcoal & Chemical Co. v. McIntosh, 294 S.W. 798, 220 Ky. 74—Owensboro City R. Co. v. Owensboro Fuel Co., 216 S.W. 72, 185 Ky. 717—Kinnaird v. E. R. Spotswood & Son, 189 S.W. 904, 172 Ky. 612.

Md.—Angelozzi v. Nelson, 144 A. 705, 156 Md. 558—Gordon v. Opalecky, 137 A. 299, 152 Md. 536—Chicago Bonding & Insurance Co. v. State, 111 A. 772, 137 Md. 132.

Mass.—Snelling v. Dine, 170 N.E. 403, 270 Mass. 501.

Minn.—Ramstedt v. Thunem, 161 N.W. 413, 136 Minn. 222.

Miss.—Moore v. Johnson, 114 So. 734, 148 Miss. 827.

Mo.—Travelers' Ins. Co. v. Beagles, 62 S.W.2d 800, 333 Mo. 568—Hulsey v. Tower Grove Quarry & Construction Co., 30 S.W.2d 1018, 326 Mo. 194.

Finley v. Austin, App., 132 S.W. 2d 1109—Doll v. Purple Shoppe, 90 S.W.2d 181, 230 Mo.App. 256—Williams v. Wells, App., 29 S.W.2d 207—Heisserer v. Missouri Pac. R. Co., App., 294 S.W. 132—Snyder v. Western Union Telegraph Co., App., 277 S.W. 362—Morrison v. St. Louis-San Francisco Ry. Co., App., 264 S.W. 449—Veatch v. Tiernan, App., 251 S.W. 420—McKee v. United Rys. Co. of St. Louis, App., 237 S.W. 865—Newkirk v. Pryor, App., 183 S.W. 682—Miller v. Kansas City Western Ry. Co., 168 S.W. 336, 180 Mo.App. 371.

Mont.—Harding v. H. F. Johnson, Inc., 244 P.2d 111, 126 Mont. 70.

N.H.—Welch v. Boston & M. R. R., 99 A. 296, 78 N.H. 277.

N.Y.—De Maria v. New York Cent. R. Co., 168 N.Y.S. 292, 180 App. Div. 573, affirmed 126 N.E. 904, 227 N.Y. 650.

N.C.—James v. Western Carolina Power Co., 150 S.E. 699, 198 N.C. 812.

Okl.—Mohawk Drilling Co. v. Biffle, 271 P.2d 381—Beam v. Green, 252 P.2d 444, 208 Okl. 10—Eagle-Picher Mining & Smelting Co. v. Drinkwine, 141 P.2d 66, 192 Okl. 662—Oklahoma City Hotel Co. v. Levine, 116 P.2d 997, 189 Okl. 331—Magnolia Petroleum Co. v. Jones, 91 P.2d 769, 185 Okl. 309—Griffin v. Patterson, 80 P.2d 246, 183 Okl. 108—National Sec. Fire Ins. Co. of Omaha, Neb. v. Boatman, 71 P.2d 624, 180 Okl. 492—Tulsa Petroleum Corp. v. Westmoreland, 70 P.2d 110, 180 Okl. 459—City of Holdenville v. Kiser, 64 P.2d 1223, 179 Okl. 216—Whitworth v. Riley, 269 P. 350, 132 Okl. 72, 59 A.L.R. 584—St. Louis-San Francisco Ry. Co. v. Edwards, 248 P. 598, 119 Okl. 84—Gearhardt v. Moulder, 205 P. 141, 85 Okl. 200—Oklahoma City v. Hoke, 182 P. 692, 75 Okl. 211—Wade v. Ray, 168 P. 447, 67 Okl. 39, L.R.A. 1918B 796—Ft. Smith & W. R. Co. v. Harman, 161 P. 1079, 63 Okl. 1.

Or.—Lane v. Hatfield, 143 P.2d 230, 173 Or. 79—Johnson v. Prudential Life Ins. Co. of America, 252 P. 556, 120 Or. 353—Stoddard Lumber Co. v. Oregon-Washington R. & Nav. Co., 165 P. 363, 84 Or. 399, 4 A.L.R. 1275.

S.C.—Gortz v. Ravenel, 121 S.E. 369, 127 S.C. 505.

Tex.—Texas Mexican Ry. Co. v. Slaughter, Civ.App., 122 S.W.2d 1101—Jack Jennings Truck Tire Co. v. Texas Warehouse & Forwarding Co., Civ.App., 39 S.W.2d 135—Weadock v. Denham, Civ. App., 299 S.W. 301—Settegast v. Foley Bros. Dry Goods Co., Civ. App., 297 S.W. 676—Dallas Hotel Co. v. Blanchette, Civ.App., 246 S.W. 1065.

Utah.—Dee v. San Pedro, L. A. & S. L. R. Co., 167 P. 246, 50 Utah 167.

Va.—Campbell County v. Howard, 112 S.E. 876, 133 Va. 19.

Wash.—Handley v. Anacortes Ice Co., 105 P.2d 505, 5 Wash.2d 284—Lucci v. Lucci, 91 P.2d 730, modified on other grounds 99 P.2d 393, 2 Wash.2d 624.

W.Va.—Morris v. Risk, 102 S.E. 725, 86 W.Va. 30.

Wis.—Nelson v. Pauli, 186 N.W. 217, 176 Wis. 1.

Wyo.—Bader v. Mills & Baker Co., 201 P. 1012, 28 Wyo. 191.

4 C.J. p 1044 note 47.

76.5 Neb.—Greyhound Corp. v. Lyman-Richey Sand & Gravel Corp., 72 N.W.2d 669, 161 Neb. 152.

N.J.—Terminal Const. Corp. v. Bergen County Hackensack River Sanitary Sewer Dist. Authority, 113 A.2d 787, 18 N.J. 294.

76.10 Ky.—Rhodes v. Young, 248 S. W.2d 416.

77. Ala.—Lehigh Portland Cement Co. v. Higginbotham, 167 So. 259, 232 Ala. 235—Birmingham Belt R. Co. v. Hendrix, 110 So. 312, 215 Ala. 285, certiorari denied 47 S.Ct. 472, 273 U.S. 758, 71 L.Ed. 877.

Ariz.—Mesa City v. Lesueur, 190 P. 572, 21 Ariz. 532—Inspiration Consol. Copper Co. v. Lindley, 177 P. 24, 20 Ariz. 95—Kirkland v. Spriggs, 171 P. 992, 19 Ariz. 425.

Ark.—Alldread v. Mills, 199 S.W.2d 571, 211 Ark. 99—Briley v. White, 193 S.W.2d 326, 209 Ark. 941—Hutson Motor Co. v. Lake, 98 S.W.2d 947, 193 Ark. 200—Federal Compress & Warehouse Co. v. Parrott, 28 S.W.2d 728, 181 Ark. 946—Williams v. Robinson, 250 S.W. 14, 158 Ark. 327, 28 A.L.R. 734—Kansas City Southern Ry. Co. v. Wilson, 171 S.W. 484, 119 Ark. 143—Ferguson & Wheeler Land, Lumber & Handle Co. v. Good, 165 S.W. 628, 112 Ark. 260.

Cal.—Wilcox v. Sway, 160 P.2d 154, 69 C.A.2d 560—Radisich v. Franco-Italian Packing Co., 158 P.2d 435, 68 C.A.2d 825—Sherman v. Frank, 146 P.2d 704, 63 C.A.2d 278—Murphy v. National Ice Cream Co., 300 P. 91, 114 C.A. 482—Davis v. Renton, 298 P. 834, 113 C.A. 561—Gootar v. Levin, 293 P. 706, 109 C.A. 703—Bogue v. Roeth, 276 P. 1071, 98 C.A. 257.

Colo.—Larson v. Long, 219 P. 1066, 74 Colo. 152.

Del.—Prettyman v. Topkis, 8 A.2d 708, 9 W.W.Harr. 568.

Fla.—Atlantic Peninsular Holding Co. v. Oenbrink, 182 So. 812, 133 Fla. 325.

Ga.—Ætna Ins. Co. v. Young, 49 S.E. 2d 922, 77 Ga.App. 822—Long v. Long, 190 S.E. 434, 55 Ga.App. 449—Briesenick v. Dimond, 134 S.E. 350, 35 Ga.App. 668, certiorari dismissed 142 S.E. 118, 165 Ga. 780—Southeastern Express Co. v. Chambers, 125 S.E. 507, 33 Ga.App. 44—Hines v. Adams, 107 S.E. 618, 27 Ga.App. 155—Seaboard Air Line Ry. v. Brewton, 99 S.E. 226, 23 Ga. App. 621, reversed on other grounds 102 S.E. 439, 150 Ga. 37, and vacated on other grounds 102 S.E. 920, 25 Ga.App. 168—Georgia Northern Ry. Co. v. Sharp, 91 S.E. 1045, 19 Ga.App. 503—Central of Georgia Ry. Co. v. Brinson, 88 S.E. 1003, 18 Ga.App. 113—Gainesville & N. W. R. Co. v. Galloway, 87 S.E. 1093, 17 Ga.App. 702—Georgia, F. & A. Ry. Co. v. Blish Milling Co., 82 S.E. 784, 15 Ga.App. 142, affirmed 36 S.Ct. 541, 241 U.S. 190, 60 L.Ed. 948.

Ill.—Miller v. Cummings, 55 N.E.2d 403, 323 Ill.App. 297—Brown v. Steed, 47 N.E.2d 114, 317 Ill.App. 541—Philpott v. Parham, 44 N.E.2d 934, 316 Ill.App. 278—Hazzard v.

City of Chicago, 259 Ill.App. 166—Gritton v. Illinois Traction, 247 Ill. App. 395—McNamara v. Melson, 237 Ill.App. 279—Hilderbrand v. Baldwin, 233 Ill.App. 278—Moore v. Paul F. Beech Co., 221 Ill.App. 609—Bacon v. Emerson-Brantingham Co., 213 Ill.App. 96—Alpe v. Superior Coal Co., 208 Ill.App. 67—Swigert v. Chicago, B. & Q. R. Co., 203 Ill.App. 98—Greenacre v. Aurora Brewing Co., 200 Ill.App. 193, affirmed Greenacre v. Filby, 114 N.E. 536, 276 Ill. 294, L.R.A.1918A 234—Johnson v. City of St. Charles, 200 Ill.App. 184—Handfelder v. East Side Levee & Sanitary District, 194 Ill.App. 262.

Ind.—Corey v. Smith, 120 N.E.2d 410, 233 Ind. 452.

Highshew v. Kushto, 131 N.E.2d 652, 126 Ind.App. 584, rehearing denied 133 N.E.2d 76, 126 Ind.App. 584, transfer denied 134 N.E.2d 555, 235 Ind. 505, petition denied 135 N.E.2d 251, 235 Ind. 505—Eikman v. Eikman, 137 N.E. 30, 78 Ind.App. 654—Wabash Portland Cement Co. v. Evarts, 135 N.E. 491, 79 Ind.App. 371, rehearing denied 135 N.E. 801, 79 Ind.App. 371—Irwin v. Harbough, 134 N.E. 905, 78 Ind.App. 175—Slifer v. Williard, 131 N.E. 87, 78 Ind.App. 88, petition denied 132 N.E. 321, 78 Ind.App. 88—Union Traction Co. of Indiana v. McTurnan, 129 N.E. 404, 76 Ind. App. 4—Town of Mooresville v. Spoon, 118 N.E. 686, 69 Ind.App. 565—Cleveland, C., C. & St. L. Ry. Co. v. Lutz, 116 N.E. 429, 64 Ind. App. 663—Sovereign Camp of Woodmen of the World v. Latham, 107 N.E. 749, 59 Ind.App. 290—Pittsburgh, C., C. & St. L. Ry. Co. v. Macy, 107 N.E. 486, 59 Ind. App. 125.

Iowa.—Lincoln v. General Cas. Co. of Wis., 55 N.W.2d 321, 243 Iowa 1280—Odegard v. Gregerson, 12 N. W.2d 559, 234 Iowa 325—Angell v. Hutchcroft, 3 N.W.2d 147, 231 Iowa 1057—Windahl v. Hasselman, 200 N.W. 583, 198 Iowa 1001—Akin v. Madison County, 159 N.W. 705, 178 Iowa 161.

Kan.—Blewett v. Errickson, 8 P.2d 357, 134 Kan. 690—Milliken v. Holters Shoe Co., 148 P. 660, 95 Kan. 327—Thomas v. Warrenburg, 141 P. 255, 92 Kan. 576.

Ky.—Gray v. Golden, 192 S.W.2d 371, 301 Ky. 477—Billiter & Shurtleff Coal Co. v. Luster, 190 S.W.2d 683, 301 Ky. 17—Owensboro Undertaking & Livery Ass'n v. Henderson, 115 S.W.2d 563, 273 Ky. 112—Snyder v. Howard's Adm'x, 65 S. W.2d 477, 251 Ky. 592—Corbin Brick Co. v. Walters, 63 S.W.2d 806, 250 Kan. 665—Allender Co. v. Browning's Adm'x, 46 S.W.2d 116, 242 Ky. 273—Louisville & N. R. Co. v. Louisville Provision Co., 279 S.W. 1100, 212 Ky. 709—Hunt v. Callihan, 273 S.W. 555, 209 Ky. 730—Louisville & N. R. Co. v. Bowman, 270 S.W. 471, 208 Ky. 39—Lakes v. Terrell, 251 S.W. 175, 199 Ky. 383—Illinois Cent. R. Co. v. Skinner's Adm'x, 197 S.W. 552, 177 Ky. 62, certiorari denied Illinois Cent. R. Co. v. Skinner, 38 S. Ct. 333, 246 U.S. 663, 62 L.Ed. 928—R. Burleigh & Sons v. Overton, 190 S.W. 472, 173 Ky. 70—Proctor Coal Co. v. Price's Adm'r, 189 S. W. 923, 172 Ky. 627.

Mass.—Doherty v. Ruiz, 18 N.E.2d 542, 302 Mass. 145.

Mich.—Yarington v. Huck, 187 N.W. 298, 218 Mich. 100—Everhart v. Clute, 168 N.W. 952, 203 Mich. 115—Pool v. Montague Tp., 160 N.W. 549, 194 Mich. 476.

Minn.—Romann v. Bender, 252 N.W. 80, 190 Minn. 419.

Miss.—Wells v. Branscome, 74 So.2d 743, 222 Miss. 1—St. Louis-San Francisco Ry. Co. v. Dyson, 43 So.2d 95, 207 Miss. 639—Koestler v. Burton, 41 So.2d 362, 207 Miss. 40—General Geophysical Co. v. Brown, 38 So.2d 703, 205 Miss. 189.

Mo.—Wilson v. Kurn, 183 S.W.2d 553—Simpson v. St. Louis-San Francisco Ry. Co., 70 S.W.2d 904, 334 Mo. 1126—Sherwood v. Grand Ave. R. Co., 33 S.W. 774, 132 Mo. 339.

Hertz v. McDowell, App., 203 S. W.2d 500, affirmed 214 S.W.2d 546, 358 Mo. 383—Ralston Purina Co. v. Swaithes, App., 142 S.W.2d 340—Benfield v. Thompson, App., 139 S. W.2d 1009—Finley v. Austin, App., 132 S.W.2d 1109—Greaves v. Kansas City Junior Orpheum Co., App., 80 S.W.2d 228—Moordale v. Park Circuit & Realty Co., App., 58 S.W.2d 500—Kelly v. Abraham Lincoln Life Ins. Co., 33 S.W.2d 992, 225 Mo.App. 317—Whitehead v. Koberman, App., 299 S.W. 121—Lehmer v. Smith, 284 S.W. 167, 220 Mo.App. 251—Brown v. Zorn, App., 275 S.W. 572—Semper v. American Press, 273 S.W. 186, 217 Mo.App. 55—Karn v. Missouri Pac. R. Co., App., 269 S.W. 407—King v. St. Louis-San Francisco Ry. Co., App., 268 S.W. 409—Martin v. Missouri Pac. R. Co., App., 253 S.W. 1083—Merten v. St. Louis Coffin Co., App., 232 S.W. 201—Williams v. Gideon-Anderson Lumber Co., App., 224 S.W. 51—Lowder v. Kansas City Rys. Co., App., 221 S.W. 800—George v. Kansas City American Ass'n Baseball Co., App., 219 S.W. 134—Barker v. Hemphill Lumber Co., App., 217 S.W. 585—Smoot v. Dennison, App., 196 S.W. 1018—Lauff v. J. Kennard & Sons Carpet Co., App., 195 S.W. 56—Baker v. Bush, App., 194 S.W. 1061—Northcutt v. John O. Long Tie & Lumber Co., App., 193 S.W. 612—Warnke v. A. Leschen & Sons Rope Co., 171 S.W. 643, 186 Mo.App. 30.

Mont.—Cashin v. Northern Pac. Ry. Co., 28 P.2d 862, 96 Mont. 92.

Neb.—DeBus v. Amen, 5 N.W.2d 92, 142 Neb. 109—Morris v. Erskine, 248 N.W. 96, 124 Neb. 754—Sgroi v. Yellow Cab & Baggage Co., 247 N.W. 355, 124 Neb. 525—Acree v. North, 192 N.W. 947, 110 Neb. 92.

N.C.—Lowry v. Barker, 190 S.E. 341, 211 N.C. 613.

Ohio.—Great Atlantic & Pacific Tea Co. v. Hughes, 4 N.E.2d 700, 53 Ohio App. 255, affirmed 3 N.E.2d 415, 131 Ohio St. 501—Community Traction Co. v. Reno, 164 N.E. 429, 30 Ohio App. 143.

Okl.—Jordan v. Peek, 268 P.2d 242—Danner v. Chandler, 236 P.2d 503, 205 Okl. 185—Reinhart & Donovan Co. v. Dunlap, 197 P.2d 958, 200 Okl. 512—Stallings v. McIntire, 179 P.2d 907, 198 Okl. 551—Eagle-Picher Mining & Smelting Co. v. Drinkwine, 141 P.2d 66, 192 Okl. 662—Hart v. Lewis, 103 P.2d 65, 187 Okl. 394—Magnolia Petroleum Co. v. Jones, 91 P.2d 769, 185 Okl. 309—Griffin v. Patterson, 80 P.2d 246, 183 Okl. 108—National Sec. Fire Ins. Co. of Omaha, Neb. v. Boatman, 71 P.2d 624, 180 Okl. 492—City of Holdenville v. Kiser, 64 P. 2d 1223, 179 Okl. 216—Yellow Cab Operating Co. v. Speice, 61 P.2d 672, 177 Okl. 571—Burden v. Stephens, 49 P.2d 1098, 174 Okl. 312—Commercial Drilling Co. v. Kennedy, 45 P.2d 534, 172 Okl. 475—Allen v. Cubbison, 3 P.2d 677, 150 Okl. 116—City of Pawhuska v. Martin, 1 P.2d 638, 151 Okl. 24—Standard Pipe & Supply Co. v. Oil State Pipe Co., 292 P. 12, 145 Okl. 143—Palacine Oil Co. v. Philpot, 289 P. 281, 144 Okl. 123—Hurt v. Paredes, 241 P. 772, 115 Okl. 139—Muskogee Electric Traction Co. v. Richards, 222 P. 265, 97 Okl. 61—Potts v. Zolinger, 192 P. 1099, 79 Okl. 262—McCoy v. Wosika, 180 P. 967, 75 Okl. 3—Dodson & Williams v. Parsons, 162 P. 1090, 62 Okl. 298—St. Louis & S. F. R. Co. v. Walker, 160 P. 79, 61 Okl. 37—Midland Valley R. Co. v. Kersey, 157 P. 139, 59 Okl. 9—Wichita Falls & N. W. Ry. Co. v. Gant, 156 P. 672, 56 Okl. 727—Planters' Cotton & Ginning Co. v. Penny, 155 P. 516, 53 Okl. 136—Great Western Coal & Coke Co. v. Boyd, 143 P. 36, 43 Okl. 438—Great Western Coal & Coke Co. v. Coffman, 143 P. 30, 43 Okl. 404.

Or.—Hecker v. Union Cab Co., 293 P. 726, 134 Or. 385—Holland v. Eugene Hospital, 270 P. 784, 127 Or. 256—Boyd v. Grove, 173 P. 310, 89 Or. 80—Kveset v. W. R. Grace & Co., 150 P. 281, 77 Or. 83.

Pa.—Siegfried v. Lehigh Valley Transit Co., 6 A.2d 97, 334 Pa. 346—Butz v. Manning, 182 A. 390, 320 Pa. 336—Snyder v. Philadel—Engle v. Cleveland, C., C. & St. L. Ry. Co., 149 N.E. 643, 197 Ind.

the error, was reasonable,[77.5] or where appellant did not complain of excessiveness of the verdict;[77.10] where the verdict was for a smaller amount than the evidence showed or tended to show plaintiff was entitled to,[78] or was for less than, or did not exceed, the maximum recovery which, un-

Pesola v. Tremayne, 165 A. 661, 108 Pa.Super. 535.

Tenn.—City of Murfreesboro v. Haynes, 82 S.W.2d 236, 18 Tenn. App. 653.

International Corp. v. Wood, 8 Tenn.Civ.App. 10.

Tex.—Horton v. Benson, Civ.App., 266 S.W. 213, affirmed, Com.App., 277 S.W. 1050—Foster v. Wright, Civ.App., 217 S.W. 1090—Texas Electric Ry. v. Williams, Civ.App., 213 S.W. 730—Lancaster v. Pitzer, Civ.App., 211 S.W. 313, reversed on other grounds, Com.App., 229 S.W. 923—Texas & N. O. R. Co. v. Miller, Civ.App., 211 S.W. 246—Hamilton v. Harris, Civ.App., 204 S.W. 450—St. Louis Southwestern Ry. Co. of Texas v. McCalister, Civ.App., 198 S.W. 1082.

Utah.—Thatcher Milling & Elevator Co. v. Campbell, 231 P. 621, 64 Utah 422.

Wash.—Anderson v. Grandy, 283 P. 186, 154 Wash. 547—Perrault v. Emporium Department Store Co., 145 P. 438, 83 Wash. 578.

Wis.—Gilmore v. Orchard, 187 N.W. 1005, 177 Wis. 149—Zielica v. Worzalla, 156 N.W. 623, 162 Wis. 603.

Wyo.—Eagan v. O'Malley, 21 P.2d 821, 45 Wyo. 505.

4 C.J. p 1045 note 48.

Not in excess of defendant insurer's maximum liability

Okl.—Highway Ins. Underwriters v. Nichols, 255 P.2d 263, 208 Okl. 244.

Verdict of the jury with relation to the evidence is the criterion in determining whether an instruction on the measure of damages worked injury in the particular case.

Mo.—Brackett v. James Black Masonry & Contracting Co., 32 S.W.2d 288, 326 Mo. 387.

77.5 Pa.—Frey v. Nakles, 112 A.2d 329, 380 Pa. 616—Harman v. Chambers, 57 A.2d 842, 358 Pa. 516.

Wash.—Handley v. Anacortes Ice Co., 105 P.2d 505, 5 Wash.2d 284.

77.10 Ala.—Lehigh Portland Cement Co. v. Higginbotham, 167 So. 259, 232 Ala. 235.

Ark.—Warren v. Hale, 158 S.W.2d 51, 203 Ark. 608—Missouri Pac. R. Co. v. Overton, 109 S.W.2d 435, 194 Ark. 754—Standard Oil Co. of Louisiana v. Webb, 108 S.W.2d 1086, 194 Ark. 569.

Cal.—Atchley v. Finley, 133 P.2d 823, 57 C.A.2d 21.

Ill.—Donnelly v. Pennsylvania R. Co., 97 N.E.2d 846, 342 Ill.App. 556, affirmed 105 N.E.2d 730, 412 Ill. 115, certiorari denied Pennsylvania R. Co. v. Donnelly, 73 S.Ct. 93, 344 U.S. 855, 97 L.Ed. 663—Jacklich v. Starks, 87 N.E.2d 802, 338 Ill.App. 433—Lampkin v. Friel, 67 N.E.2d 894, 329 Ill.App. 273—Lenchard v. Friel, 61 N.E.2d 768, 326 Ill.App. 461—Melton v. Heaton, 50 N.E.2d 117, 320 Ill.App. 178—Slovinski v. Beasley, 45 N.E.2d 42, 316 Ill.App. 273.

Kan.—Armer v. Nagels, 87 P.2d 574, 149 Kan. 409.

Mich.—Delfosse v. Bresnahan, 9 N.W.2d 866, 305 Mich. 621.

Mo.—Markovich v. Kansas City Public Service Co., 266 S.W.2d 641—Pogue v. Rosegrant, 98 S.W.2d 528.

Nicholas v. Kansas City, App., 171 S.W.2d 744—Ross v. Wilson, 163 S.W.2d 342, 236 Mo.App. 1178—Carson v. Thompson, App., 161 S.W.2d 995—Benfield v. Thompson, App., 139 S.W.2d 1009—Higgins v. Terminal R. Ass'n of St. Louis, 97 S.W.2d 892, 231 Mo.App. 837.

Okl.—Eagle-Picher Mining & Smelting Co. v. Drinkwine, 141 P.2d 66, 192 Okl. 662.

Tex.—Baker Hotel of Dallas v. Rogers, Civ.App., 157 S.W.2d 940, error refused 160 S.W.2d 522, 138 Tex. 398—Williams v. Long, Civ. App., 106 S.W.2d 378, error dismissed.

Wis.—Eberdt v. Muller, 2 N.W.2d 367, 240 Wis. 341, rehearing denied 3 N.W.2d 763, 240 Wis. 341.

Mere absence of claim

Mere fact that appellant did not claim verdict to be excessive will not cause instruction authorizing permanent damages when not supported by evidence to be considered as harmless error.

Mo.—State ex rel. Kansas City Public Service Co. v. Shain, 165 S.W. 2d 428, 350 Mo. 316.

78. Ala.—Kennedy v. Collins, 35 So. 2d 92, 250 Ala. 503.

Baxter v. Wilson, 45 So.2d 474, 35 Ala.App. 196, certiorari denied 45 So.2d 478, 253 Ala. 501.

Ariz.—Wolff v. First Nat. Bank, 53 P.2d 1077, 47 Ariz. 97.

Ark.—Omohundro v. Ottenheimer, 127 S.W.2d 642, 198 Ark. 137—Missouri Pac. R. Co. v. Bell, 259 S.W. 745, 163 Ark. 284, certiorari denied 45 S.Ct. 125, 266 U.S. 625, 69 L.Ed. 474—Missouri Pac. R. Co. v. L. B. Stone Grocery Co., 259 S.W. 728, 163 Ark. 247.

Cal.—Ferro v. Citizens Nat. Trust & Sav. Bank of Los Angeles, 282 P.2d 849, 44 C.2d 401.

Walker v. Nelson, App., 53 P.2d 977—Pryor v. Fruit Distributors' Service Co., 238 P. 825, 73 C.A. 467—Jones v. United Railroads of San Francisco, 202 P. 919, 54 C.A. 744—Fay v. Cox, 188 P. 623, 45 C.A. 696—Bronge v. Mowat & Co., 155 P. 827, 29 C.A. 388.

Fla.—Atlantic Coast Line R. Co. v. Lamphear, 146 So. 847, 109 Fla. 25.

Ga.—Hudgins Transfer Co. v. Law, 29 S.E.2d 107, 70 Ga.App. 659—Trammell v. Atlanta Coach Co., 181 S.E. 315, 51 Ga.App. 705—Sullivan v. Morris, 178 S.E. 324, 50 Ga.App. 394—Hill v. Cloud, 173 S.E. 190, 48 Ga.App. 506—Herrington v. Coleman, 151 S.E. 925, 41 Ga.App. 88.

Ind.—Carp & Co. v. Meyer, 167 N.E. 151, 89 Ind.App. 490.

Iowa.—Smith v. Pine, 12 N.W.2d 236, 234 Iowa 256—McQuillen v. Meyers, 241 N.W. 442, 213 Iowa 1366—Pugh v. Queal Lumber Co., 188 N.W. 1, 193 Iowa 924.

Kan.—Henderson v. Talbott, 266 P. 2d 273, 175 Kan. 615.

Ky.—Bowling v. Ratliff, 253 S.W.2d 621—Dodd v. Ramey, 211 S.W.2d 395, 307 Ky. 444—Louisville & N. R. Co. v. Ray, 209 S.W.2d 714, 306 Ky. 857—Kentucky Consumers Oil Co. v. General Bonded Warehousing Corp., 184 S.W.2d 972, 299 Ky. 161—City of Harlan v. Eversole, 58 S.W.2d 371, 248 Ky. 131—Trustees of Cincinnati Southern Ry. Co. v. Hanks, 51 S.W.2d 915, 244 Ky. 618—Iseman v. Hayes, 46 S.W.2d 110, 242 Ky. 302, 85 A.L.R. 996—A. Arnold & Son Transfer & Storage Co. v. Weisiger, 6 S.W.2d 1084, 224 Ky. 659—Grant v. Adams, 291 S.W. 785, 218 Ky. 535—Kappa v. Brewer, 268 S.W. 831, 207 Ky. 61—Chesapeake & O. Ry. Co. v. Boren, 259 S.W. 711, 202 Ky. 348.

Louisville & N. R. Co. v. Wilson, 11 Ky.Op. 357.

Mich.—Miller v. Beasley, 237 N.W. 47, 255 Mich. 15—Veenstra v. Farmers' Mut. Fire Ins. Co. of Ottawa and Allegan Counties, 161 N. W. 824, 195 Mich. 55.

Miss.—Johns-Manville Products Corp. v. McClure, 46 So.2d 539.

Mo.—Thompson v. City of Lamar, 17 S.W.2d 960, 322 Mo. 514—Siberell v. St. Louis-San Francisco Ry. Co., 9 S.W.2d 912, 320 Mo. 916—Baker v. J. W. McMurry Contracting Co., 223 S.W. 45, 282 Mo. 685.

Snow v. Thompson, App., 178 S. W.2d 796—Pfeiffer v. Schee, App., 107 S.W.2d 170—Cervillo v. Manhattan Oil Co., 49 S.W.2d 183, 226 Mo.App. 1090—Wilkerson v. St. Louis Southwestern Ry. Co., App., 224 S.W. 72.

Mont.—Gobel v. Rinio, 200 P.2d 700, 122 Mont. 235.

Neb.—DeBus v. Amen, 5 N.W.2d 92, 142 Neb. 109.

Ohio.—Accurate Die Casting Co. v. City of Cleveland, App., 113 N.E.2d 401.

der the pleadings, should have been authorized;[78.5] where the amount of the verdict was less than would be given under the charge claimed by appellant to be correct;[78.10] where, although erroneously authorized to do so, the verdict did not exceed the maximum amount allowed by statute;[78.15] where, although erroneously instructed that they might do so, the jury do not add interest to the verdict;[79] where interest was waived and not allowed;[79.5] where interest at only the proper rate and for the proper time was allowed;[79.10] or where it is apparent that the jury followed the correct rule in assessing damages.[80]

Okl.—Wilder v. Walker, 250 P.2d 442, 207 Okl. 411—Raimer v. Donelson 199 P.2d 1018, 200 Okl. 695—Smith-Horton Drilling Co. v. Brooks, 182 P.2d 499, 199 Okl. 63—City of Altus v. Smalling, 95 P.2d 617, 185 Okl. 601—Shell Petroleum Corporation v. Wood, 32 P.2d 882, 168 Okl. 274—Hillery v. Waurika Nat. Bank, 226 P. 1051, 100 Okl. 34.

Pa.—Headley's Express & Storage Co. v. Pennsylvania Indemnity Corporation, 178 A. 816, 319 Pa. 240.

Berry v. Heinel Motors, 56 A.2d 374, 162 Pa.Super. 52—Audino v. New Castle & Lowell Ry. Co., 83 Pa.Super. 257.

Tenn.—Bradshaw v. Holt, 292 S.W.2d 30.

Green v. Arnold, 150 S.W.2d 1075, 25 Tenn.App. 67—City of Murfreesboro v. Haynes, 82 S.W.2d 236, 18 Tenn.App. 653.

Tex.—Texas Emp. Ins. Ass'n v. Tanner, Civ.App., 218 S.W.2d 277, error refused no reversible error—East Texas Oil Refining Co. v. Mabee Consol. Corp., Civ.App., 103 S.W.2d 795, appeal dismissed 127 S.W.2d 445, 133 Tex. 300—Gulf, C. & S. F. Ry. Co. v. Vasbinder, Civ. App., 172 S.W. 763.

Utah.—Garff v. Myers Cleaning & Dyeing Co., 238 P. 278, 65 Utah 548—Stuck v. Delta Land & Water Co., 227 P. 791, 63 Utah 495—Bergstrom v. Mellen, 192 P. 679, 57 Utah 42.

Wis.—Schultz v. Tasche, 165 N.W. 292, 166 Wis. 561.

4 C.J. p 1045 note 49.

78.5 Cal.—Singleton v. Perry, 289 P. 2d 794, 45 C.2d 489—Eastlick v. City of Los Angeles, 177 P.2d 558, 29 C.2d 661, 170 A.L.R. 225.

Ga.—Davis v. Baldwin, 193 S.E. 892, 185 Ga. 40.

Cooper v. Van Horn, 6 S.E.2d 408, 61 Ga.App. 214.

Iowa.—Smith v. Pine, 12 N.W.2d 236, 234 Iowa 256.

Ky.—McFarland v. Bruening, 185 S.W.2d 247, 299 Ky. 267.

Wash.—Sullivan v. Pacific Finance Corp. of California, 72 P.2d 590, 192 Wash. 70.

Consideration of improper item

Any error with respect to plaintiff's prayer for recovery for future medical expenses was not prejudicial where total recovery was well below amount asked for actual damages.

Okl.—Batts v. Carter, 312 P.2d 472.

Error in not limiting amount

Any error of an instruction in not limiting the recovery to the amount sued for is rendered harmless by the verdict for less than such amount.

Ark.—Gerard B. Lambert Co. v. Fleming, 275 S.W. 912, 169 Ark. 532.

Ind.—Funk v. Bonham, 183 N.E. 312, 204 Ind.App. 170.

Iowa.—Smith v. Pine, 12 N.W.2d 236, 234 Iowa 256.

Kan.—Forbes v. Atchison, T. & S. F. Ry. Co., 168 P. 314, 101 Kan. 477.

Ky.—High Splint Coal Co. v. Payne, 49 S.W.2d 539, 243 Ky. 677—Rice v. Lavin, 251 S.W. 990, 199 Ky. 790.

Mo.—Jones v. Central States Oil Co., 164 S.W.2d 914, 350 Mo. 91—Huhn v. Ruprecht, 2 S.W.2d 760—Jablonowski v. Modern Cap Mfg. Co., 279 S.W. 89, 312 Mo. 173—McQuary v. Quincy, O. & K. C. Ry. Co., 269 S. W. 605, 306 Mo. 697.

Murphy v. Pfeifer, App., 105 S. W.2d 39—Pyle v. McNealy, 62 S.W. 2d 921, 227 Mo.App. 1035—Lord v. Austin, App., 39 S.W.2d 575—Dillen v. Wabash Ry. Co., App., 294 S.W. 439—North v. National Life & Accident Ins. Co. of Nashville, Tenn., App., 231 S.W. 665—Summers v. Chicago, R. I. & P. Ry. Co., App., 187 S.W. 125—Cook v. Lusk, 172 S.W. 81, 186 Mo.App. 288—Winston v. Lusk, 172 S.W. 76, 186 Mo.App. 381.

Okl.—Ingles v. Hotze, 130 P.2d 302, 191 Okl. 378—Missouri, O. & G. Ry. Co. v. Collins, 150 P. 142, 47 Okl. 761.

Tex.—Sproles Motor Freight Lines v. Juge, Civ.App., 123 S.W.2d 919, error dismissed, judgment correct—Texas & P. Ry. Co. v. Umberson, Civ.App., 288 S.W. 251—Sands v. Sedwick, Civ.App., 174 S.W. 894.

4 C.J. p 1043 note 45 [h].

78.10 Tex.—Guillot v. Halman, Civ. App., 91 S.W.2d 402.

78.15 Ill.—Radakovich v. Goldblatt Bros., 95 N.E.2d 528, 342 Ill.App. 200.

79. Ala.—Kinney v. Glenn, 198 So. 250, 29 Ala.App. 478, certiorari denied 198 So. 256, 240 Ala. 202.

Ga.—Hooks v. McCart, 164 S.E. 491, 45 Ga.App. 328.

Ill.—Warner Const. Co. v. Lincoln Park Com'rs, 278 Ill.App. 42.

Ky.—Louisville & N. R. Co. v. Louisville Provision Co., 279 S.W. 1100, 212 Ky. 709.

Md.—Leckie v. Clemens, 108 A. 684, 135 Md. 264—Ess-Arr Knitting Mills v. Fischer, 103 A. 91, 132 Md. 1.

Mich.—Buckner Loan Co. v. Bicher, 190 N.W. 670, 221 Mich. 198.

Mo.—Donnell v. England, 137 S.W. 2d 471, 345 Mo. 726.

McWherter v. Randell, App., 247 S.W. 467.

Okl.—St. Louis-San Francisco Ry. Co. v. Clark, 229 P. 779, 104 Okl. 24.

R.I.—Sharpe v. Cole, 110 A. 385, 43 R.I. 110.

Usury

Any errors of omission or commission in charge with respect to usury are harmless as to defendant sued on open account where jury did not find any interest, thereby finding that there was usury in account.

Ga.—Harrell v. Bennett, 27 S.E.2d 238, 70 Ga.App. 52.

79.5 Wash.—Lucci v. Lucci, 91 P.2d 730, modified on other grounds 99 P.2d 393, 2 Wash.2d 624.

79.10 Ga.—Carroll v. Taylor, 75 S. E.2d 346, 87 Ga.App. 815.

Mont.—McGrath v. Dubbs, 257 P.2d 899, 127 Mont. 101.

80. Ala.—Louisville & N. R. Co. v. Allegri, 109 So. 881, 215 Ala. 148.

Ga.—Roberts v. McClellan, 55 S.E.2d 736, 80 Ga.App. 199.

Ky.—Allen v. Ferguson, 253 S.W.2d 8—Louisville & N. R. Co. v. McCoy, 197 S.W. 801, 177 Ky. 415.

Mass.—Davis v. Elwell, 138 N.E. 833, 244 Mass. 256—Shea v. Manhattan Life Ins. Co., 112 N.E. 631, 224 Mass. 112.

Minn.—Fryberger v. Anderson, 260 N.W. 625, 194 Minn. 443.

Mo.—Yankoff v. Allied Mut. Ins. Co., App., 289 S.W.2d 471—Biggers v. Gonter, App., 54 S.W.2d 783—Cabool School Dist. v. U. S. Fidelity & Guaranty Co., App., 9 S.W.2d 103—Cloos v. Prussman, App., 300 S. W. 315—Sutton v. Libby, App., 201 S.W. 615.

Ohio.—Brate v. McDonald, 120 N.E. 2d 748, 95 Ohio App. 448—Hover v. Inskeep, 189 N.E. 121, 46 Ohio App. 438.

Pa.—Harman v. Chambers, 57 A.2d 842, 358 Pa. 516.

Wis.—Eberdt v. Muller, 2 N.W.2d 367, 240 Wis. 341, rehearing denied 3 N.W.2d 763, 240 Wis. 341.

Wyo.—Cronberg Bros. v. Johnson, 208 P. 446, 29 Wyo. 11.

4 C.J. p 1045 note 50.

An erroneous instruction as to the controlling factors in determining the reasonable value of services sued for is not prejudicial where the jury found that their value was governed by an express contract.[80.5] The withdrawal of an item of damages from the jury is not prejudicial where the verdict is determinative that the basis on which it was claimed did not exist.[80.10] A failure to instruct that a quotient verdict is improper is not error where there is no showing that the verdict was arrived at in that manner.[80.15] Where there was no evidence to support the judgment, it is immaterial whether the court used the correct measure of damages in determining the amount of the judgment.[80.20]

Defendant is not prejudiced by an erroneous instruction on exemplary or punitive damages where no punitive damages were awarded by the jury,[80.25] or by an instruction erroneously authorizing exemplary or punitive damages, where compensatory damages only are allowed,[81] or where the jury determined the issue in favor of appellant,[81.5] or where the verdict was for defendant,[81.10] or where the jury find that no actual damages are recoverable,[82] or award a lump sum and defendant requests no separation of actual from punitive damages;[83] and error in an instruction with respect to the mitigation of exemplary damages is harmless where the jury found against plaintiff on the issue of actual damages.[84]

Similarly, an erroneous instruction permitting the jury to find nominal damages is harmless where the jury did not find such damages,[84.5] as where the jury found actual damages,[85] and a charge on nominal damages is not harmful to a plaintiff who

However, it has been held that, where the instruction states a wrong rule of damages, it requires reversal, notwithstanding a showing that the jurors did not follow such rule, but based their verdict on the correct rule.

N.Y.—Bondy v. Harvey, 217 N.Y.S. 877, 218 App.Div. 126.

80.5 Cal.—Flynn v. Young, 78 P.2d 245, 25 C.A.2d 614.

80.10 Wash.—Easton v. Chaffe, 132 P.2d 1006, 16 Wash.2d 183.

80.15 Idaho.—Bates v. Siebrand Bros. Circus & Carnival, 231 P.2d 747, 71 Idaho 318.

80.20 Cal.—Cumberpatch v. Nolan, 270 P.2d 540, 125 C.A.2d 205, rehearing denied 271 P.2d 519, 125 C.A.2d 205.

80.25 Ill.—Racine Fuel Co. v. Rawlins, 86 N.E.2d 710, 377 Ill. 375.
Miss.—Quinn v. Tillman, 17 So.2d 326.
Okl.—Clanton v. Chrisman, 51 P.2d 748, 174 Okl. 425.

81. Ala.—Corry v. Sylvia y Cia, 68 So. 891, 192 Ala. 550, Ann.Cas. 1917E, 1052.
Ariz.—Carrillo v. Murray & Layne Co., 216 P. 689, 25 Ariz. 303.
Ga.—C. G. Aycock Realty Co. v. Burrowes, 59 S.E.2d 406, 81 Ga.App. 560—Lyle v. Etheridge, 151 S.E. 531, 40 Ga.App. 808—City of Americus v. Ansley, 82 S.E. 159, 14 Ga. App. 707.
Ill.—Gilmore v. Killion, 118 N.E. 36, 281 Ill. 154.
Grace v. Frank G. Wright & Co., 210 Ill.App. 104.
Ind.—Haskell & Barker Car Co. v. Trzop, 128 N.E. 401, 190 Ind. 35.
Kan.—Jackson v. Uncle Sam Oil Co. of Kansas, 156 P. 756, 97 Kan. 674.
Ky.—Combs v. Stewart, 190 S.W.2d 861, 301 Ky. 50—Koltinsky v. Hollowell, 262 S.W. 6, 203 Ky. 218—Carter Coal Co. v. Lay, 206 S.W. 769, 182 Ky. 540—Perks v. McCracken, 184 S.W. 891, 169 Ky. 590—Hunt v. Bullington, 176 S.W. 1156, 165 Ky. 384—St. Bernard Mining Co. v. Ashby, 175 S.W. 626, 164 Ky. 416.
Miss.—Masonite Corp. v. Windham, 48 So.2d 622, 210 Miss. 90.
Mo.—Rodgers v. Schroeder, 287 S.W. 861, 220 Mo.App. 575—Aldridge v. Zorn, App., 287 S.W. 650, quashed State ex rel. Zorn v. Cox, 298 S.W. 837, 318 Mo. 112—Cole v. Long, 227 S.W. 903, 207 Mo.App. 528—Dickensheet v. Chouteau Mining Co., 202 S.W. 624, 200 Mo.App. 150—Kretzer Realty Co. v. Thomas Cusack Co., 190 S.W. 1011, 196 Mo.App. 596.
Mont.—Hill v. Chappel Bros. of Montana, 18 P.2d 1106, 93 Mont. 92—Slifer v. Yorath, 155 P. 1113, 52 Mont. 129.
N.Y.—New York Lubricating Oil Co. v. C. E. Mills Oil Co., 160 N.Y.S. 239, 173 App.Div. 628.
N.D.—Mikkelson v. Snider, 175 N.W. 220, 43 N.D. 416.
Okl.—Clanton v. Chrisman, 51 P.2d 748, 174 Okl. 425—Jones v. Hudson, 224 P. 185, 98 Okl. 116.
Or.—Greig v. Interstate Inv. Co., 253 P. 877, 121 Or. 15.
Pa.—Stady v. Martocello, 40 A.2d 694, 156 Pa.Super. 493.
S.C.—Humphries v. Stokes Bus Line, 18 S.E.2d 675, 199 S.C. 132—Holder v. Sovereign Camp, W. O. W., 185 S.E. 547, 180 S.C. 242—Chesser v. Tyger River Pine Co., 152 S.E. 646, 155 S.C. 356—Thompson v. Thompson, 139 S.E. 182, 141 S.C. 56—Knight v. Bennett, 121 S.E. 671, 128 S.C. 107—Halford v. Southern Ry. Co., 99 S.E. 839, 112 S.C. 266—Coggins v. Cannon, 99 S.E. 823, 112 S.C. 225—Comer v. Atlantic Coast Line R. Co., 90 S.E. 188, 105 S.C. 480.
Tenn.—McParland v. Pruitt, 284 S.W. 2d 299, 39 Tenn.App. 399.
International Corp. v. Wood, 8 Tenn.Civ.App. 10—Knoxville Ry. & Light Co. v. Payne, 5 Tenn.Civ. App. 611.
Tex.—Morriss-Buick Co. v. Huss, Civ.App., 84 S.W.2d 264, reversed on other grounds, Com.App., 113 S.W.2d 891.
Vt.—Parizo v. Wilson, 144 A. 856, 101 Vt. 514.
Va.—Tri-State Coach Corp. v. Walsh, 49 S.E.2d 363, 188 Va. 299—Craddock Lumber Co. v. Jenkins, 97 S. E. 817, 124 Va. 167.
4 C.J. p 1045 note 51.
S.C.—Taylor v. U. S. Cas. Co., 92 S.E.2d 647, 229 S.C. 230.

Where award set aside

In an action for damages for a malicious battery, an instruction that if defendant acted maliciously and violently exemplary damages might be allowed was not prejudicial where an award of five dollars exemplary damages was set aside.
Idaho.—Labonte v. Davidson, 175 P. 588, 31 Idaho 644.

81.5 Ark.—Floyd v. Richmond, 199 S.W.2d 754, 211 Ark. 177.

81.10 Ariz.—Musgrave v. Southern Pac. Co., 68 P.2d 202, 49 Ariz. 512.
Ga.—Story v. Howell, 70 S.E.2d 29, 85 Ga.App. 661.
Mo.—Frank v. Wabash R. Co., 295 S.W.2d 16.

82. N.D.—Stockwell v. Brinton, 142 N.W. 242, 26 N.D. 1.

83. N.C.—Ferrell v. Siegle, 141 S.E. 474, 195 N.C. 102.

84. Tex.—Fessinger v. El Paso Times Co., Civ.App., 154 S.W. 1171.

84.5 Ga.—Taylor v. Allen, 49 S.E. 2d 544, 77 Ga.App. 659—Akers Lumber Co. v. Johnson Lumber Co., 195 S.E. 307, 57 Ga.App. 317.

85. Wash.—Joe Chung v. Louie Fong Co., 226 P. 726, 130 Wash. 154.
4 C.J. p 1046 note 54.

failed to recover any damages.[86] Also, an erroneous instruction on nominal damages is harmless, where the verdict returned is authorized as a recovery of punitive damages and it appears that it was not returned as a verdict for nominal damages.[87] An instruction as to compensatory damages, permitting the jury to consider the pecuniary circumstances of defendant, is not prejudicially erroneous where the evidence supports the theory that punitive damages are allowable.[88]

On the other hand, error in instructing the jury on the measure of damages will be considered prejudicial error and a ground for reversal, where the instruction manifestly has a tendency to mislead the jury;[89] where it is impossible to determine on what basis the jury arrived at a verdict;[89.5] where the verdict appears excessive;[90] where the amount awarded is large, although not necessarily excessive;[91] where compensation for improper items was authorized and the damages awarded were substantial;[91.5] or where the damages assessed by the true rule might have been more or less than those assessed by the jury.[92] The mere fact that an erroneous or improper instruction deals with damages and the verdict is for defendant does not alone make the error or impropriety harmless.[92.5] In a

86. Ga.—Byrd v. Grace, 158 S.E. 467, 43 Ga.App. 255.
Mass.—Krinsky v. Whitney, 54 N.E. 2d 36, 315 Mass. 661.
Mo.—Harrington v. National Outdoor Advertising Co., 196 S.W.2d 786, 355 Mo. 524.

87. Ga.—Southern R. Co. v. Huckaba, 80 S.E. 697, 14 Ga.App. 311.

88. Md.—Maxa v. Neidlein, 163 A. 202, 163 Md. 366.

89. Ala.—First Nat. Bank v. Stewart, 85 So. 529, 204 Ala. 199—Comer v. Advertiser Co., 77 So. 685, 201 Ala. 159.
Ga.—Harris v. Barry Finance C ., 47 S.E. 201, 76 Ga.App. 663—Rozier v. Folsom, 185 S.E. 140, 53 Ga.App. 53—Savannah Electric & Power Co. v. Hines, 141 S.E. 818, 37 Ga.App. 733.
Ill.—Cunningham v. Crane Co., 255 Ill.App. 373.
Ind.—Heed v. Gummere, 136 N.E. 5, 192 Ind. 227.
Mowes v. Robbins, 120 N.E. 51, 68 Ind.App. 82.
Ky.—Bybee v. Shanks, 253 S.W.2d 257—Black v. Bishop, 207 S.W.2d 22, 306 Ky. 524—Watkins v. Carter, 101 S.W.2d 932, 267 Ky. 241.
Miss.—Illinois Cent. R. Co. v. Hickman, 111 So. 588, 146 Miss. 394.
Mo.—Chilcutt v. Le Clair, App., 119 S.W.2d 1—Conaghan v. Dean, App., 96 S.W.2d 924.
Mont.—Hill v. Chappel Bros. of Montana, 18 P.2d 1106, 93 Mont. 92—Hageman v. Arnold, 254 P. 1070, 79 Mont. 91—Hall v. Advance-Rumely Thresher Co., 212 P. 290, 65 Mont. 566.
Neb.—Keyser v. Allen, 31 N.W.2d 309, 149 Neb. 449.
N.Y.—Acme Pattern & Machine Co. v. Ruchte, 229 N.Y.S. 64, 223 App. Div. 493—Devoy v. Irish World & American Industrial Liberator Co., 203 N.Y.S. 369, 208 App.Div. 319.
Kalashetz v. Rafsky, 154 N.Y.S. 218, 90 Misc. 684.
Ohio.—Anchor Realty Co. v. New York Cent. R. Co., 191 N.E. 830, 47 Ohio App. 319.
Or.—Randles v. Nickum & Kelly Sand & Gravel Co., 127 P.2d 347, 169 Or. 284.
R.I.—Barry v. Kettelle, 139 A. 664, 49 R.I. 50, reargument denied 140 A. 3, 49 R.I. 50.
S.C.—Shuler v. Heitley, 39 S.E.2d 360, 209 S.C. 198.
Tex.—Payne v. Shirley, Civ.App., 243 S.W. 285—Houston & T. C. R. Co. v. Gant, Civ.App., 175 S.W. 745.
Vt.—Donovan v. Towle, 134 A. 588, 99 Vt. 464.
Va.—Gallop v. Sharp, 19 S.E.2d 84, 179 Va. 335—Wilkinson v. Allen, 118 S.E. 94, 136 Va. 607.
4 C.J. p 1046 note 56.

89.5 Idaho.—Rino v. Statewide Plumbing & Heating Co., 262 P.2d 1003, 74 Idaho 374.
Minn.—Desforge v. City of West St. Paul, 42 N.W.2d 633, 231 Minn. 205, 19 A.L.R.2d 898.
Mo.—Pelzer v. Zeltmann, App., 108 S.W.2d 980.

90. Ill.—Spelina v. Sporry, 279 Ill. App. 376.
Ind.—Ward Bros. v. Zimmerman, 166 N.E. 545, 89 Ind.App. 353.
Ky.—Louisville & N. R. Co. v. Logan's Adm'x, 198 S.W. 537, 178 Ky. 29.
Minn.—Baird v. Chicago, M., St. P. & P. R. Co., 228 N.W. 552, 179 Minn. 127.
Miss.—Holliman v. Lucas, 32 So.2d 259, 202 Miss. 463—Interstate Co. v. Garnett, 122 So. 373, 154 Miss. 325, suggestion of error overruled 122 So. 756, 154 Miss. 325, 63 A. L.R. 1402.
Mo.—High v. Quincy, O. & K. C. R. Co., 300 S.W. 1102, 318 Mo. 444.
Neb.—Sohl v. Sohl, 207 N.W. 669, 114 Neb. 353.
Okl.—Lone Star Gas Co. v. Parsons, 14 P.2d 369, 159 Okl. 52—Oklahoma Ry. Co. v. Overton, 12 P.2d 537, 158 Okl. 96.
Tenn.—Phillips-Buttorff Mfg. Co. v. McAlexander, 15 Tenn.App. 618.
4 C.J. p 1046 note 57.

Error held not cured

Error of instruction in giving a false measure for actual damages in an action for fraud cannot be met by the fact that in such an action punitive damages may be awarded, as if, contrary to fact, such instruction had been given, it would not have cured the error.
Ind.—Economy Hog & Cattle Powder Co. v. Compton, 135 N.E. 1, 192 Ind. 222.

91. Cal.—Thompson v. Boyer, App., 21 P.2d 472.
4 C.J. p 1046 note 58.

91.5 Ky.—Spencer v. Webster, 202 S.W.2d 752, 305 Ky. 10.

92. Ga.—Arrington v. Horton, 172 S.E. 677, 48 Ga.App. 272.
Iowa.—Dircks v. Tonne, 167 N.W. 103, 183 Iowa 403.
Ky.—Security Benefit Ass'n v. Kibby, 295 S.W. 164, 220 Ky. 330.
Mass.—Thibeault v. Poole, 186 N.E. 632, 283 Mass. 480.
Mich.—Stone v. Sinclair Refining Co., 200 N.W. 948, 229 Mich. 103.
Minn.—Wolf v. Chicago, M., St. P. & P. R. Co., 230 N.W. 826, 180 Minn. 310—Thompson v. Byram, 228 N.W. 546, 179 Minn. 67.
Mo.—Beaber v. Kurn, 91 S.W.2d 70, 231 Mo.App. 22.
N.Y.—Smith v. Foote, 239 N.Y.S. 160, 228 App.Div. 730—Sebring v. Firemen's Ins. Co. of Newark, N. J., 237 N.Y.S. 120, 227 App.Div. 103—Gleason v. Lebolt & Co., 227 N.Y.S. 336, 223 App.Div. 46.
N.C.—Lamont v. Highsmith Hospital, 173 S.E. 46, 206 N.C. 111.
Wash.—Ulvestad v. Dolphin, 278 P. 681, 152 Wash. 580—Brooks v. Herd, 257 P. 238, 144 Wash. 173.
4 C.J. p 1046 note 59.

92.5 Mo.—Gower v. Trumbo, 181 S. W.2d 653.

When general rule not applicable

(1) General rule that a verdict for defendant renders harmless an error made in charges relating to elements and amounts of damages does not apply when a motion to strike has been erroneously granted and which prevents entire matter from being presented to jury.
Ala.—Steward v. Gold Medal Shows, 14 So.2d 549, 244 Ala. 583.

number of decisions the rule has been laid down that erroneous instructions are ground for reversal, unless it clearly appears from the whole record,[93] or unless the verdict shows,[94] that the jury were not misled. In an action in which contributory negligence operated to diminish, but not to bar, recovery, error in the instructions with respect to that issue will constitute prejudicial error, even though plaintiff recovered damages and the amount was not inadequate.[94.5]

§ 1773(3). —— By Special Findings or Findings on Special Issues

Error in instructions is generally regarded as cured where the special findings, or findings on one of a number of issues, show that the appellant was not injured. The authorities are divided on whether or not error in instructions with respect to one of two issues, either of which may be determinative of the case, is prejudicial and will require a reversal where a general verdict is brought in, making it impossible to determine on which of the issues the verdict was founded.

Error in an instruction will be deemed harmless where special findings by the jury,[95] or a finding by

(2) General verdict for defendant did not render harmless an erroneous instruction on measure of damages where jury might have found negligence but nevertheless concluded that damage was not sufficiently proven.

Idaho.—Alesko v. Union Pac. R. Co., 109 P.2d 874, 62 Idaho 235.

93. Mo.—McDonough v. Freund, 19 S.W.2d 285, 323 Mo. 346.

N.Y.—Walker v. Lord & Taylor, 258 N.Y.S. 96, 236 App.Div. 111.

4 C.J. p 1046 note 60.

94. S.D.—Cranmer v. Brothers, 88 N.W. 105, 15 S.D. 234.

4 C.J. p 1046 note 61.

94.5 Mo.—Grosvener v. New York Cent. R. Co., 123 S.W.2d 173, 343 Mo. 611.

95. U.S.—**Corpus Juris Secundum cited in** Bass v. Dehner, C.C.A.N.M., 103 F.2d 28, 34, certiorari denied 60 S.Ct. 100, 308 U.S. 580, 84 L.Ed. 486, rehearing denied 60 S.Ct. 136, 308 U.S. 635, 84 L.Ed. 528.

Cal.—Werner v. Southern Pac. Co., 185 P. 1016, 44 C.A. 76—McEwen v. New York Life Ins. Co., 183 P. 373, 42 C.A. 133.

Ill.—Wheeler v. Chicago & W. I. R. Co., 108 N.E. 330, 267 Ill. 306.

Schmalzl v. Derby Foods, 94 N.E.2d 86, 341 Ill.App. 390—See Hotel Sherman Co. v. Railway Terminal & Warehouse Co., 210 Ill. App. 191.

Ind.—Cleveland, C., C. & St. L. Ry. Co. v. Baker, 128 N.E. 836, 190 Ind. 633—Mishler v. Chicago, S. B. & N. I. Ry. Co., 122 N.E. 657, 188 Ind. 189—Linde Air Products Co. v. First Calumet Trust & Savings Bank, 115 N.E. 91, 186 Ind. 437.

Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 481—Southern Ry. Co. v. Ingle, 69 N.E.2d 746, 117 Ind.App. 229—Heeter v. Fleming, 67 N.E.2d 317, 116 Ind.App. 644—Pennsylvania R. Co. v. Stilabower, 39 N.E.2d 465, 110 Ind.App. 458—Travelers' Ins. Co. v. Fletcher American Nat. Bank of Indianapolis, 150 N.E. 825, 84 Ind. App. 563—Diffenderfer v. City of Jeffersonville, 118 N.E. 836, 67 Ind.App. 10—Treloar v. Harris, 117 N.E. 975, 66 Ind.App. 59—Rock Oil Co. v. Brumbaugh, 108 N.E. 260, 59 Ind.App. 640.

Iowa.—Dosland v. Preferred Risk Mut. Ins. Co., 49 N.W.2d 823, 242 Iowa 1220, 29 A.L.R.2d 712—Wangen v. Upper Iowa Power Co., 169 N.W. 668, 185 Iowa 110—Kennedy v. Roberts, 75 N.W. 363, 105 Iowa 521.

Kan.—Blakeman v. Lofland, 252 P.2d 852, 173 Kan. 725—McKinley v. Hines, 215 P. 301, 113 Kan. 550.

Ky.—Ogden v. Ogden, 13 Ky.Op. 35—Ætna Ins. Co. v. Strickle, 11 Ky. Op. 417.

Mass.—Nelson v. Economy Grocery Stores, 25 N.E.2d 986, 305 Mass. 383—Pierce v. Hutchinson, 136 N. E. 261, 241 Mass. 557—Corcoran v. Batchelder, 18 N.E. 420, 147 Mass. 541.

Mich.—Crook v. Eckhardt, 275 N.W. 739, 281 Mich. 703.

Minn.—Ranwick v. Nunan, 278 N.W. 589, 202 Minn. 415.

Mo.—Kimbrough v. Chervitz, 186 S. W.2d 461, 353 Mo. 1154—Martin v. St. Louis-San Francisco Ry. Co., 46 S.W.2d 149, 329 Mo. 729, certiorari denied St. Louis-San Francisco Ry. Co. v. Martin, 52 S.Ct. 644, 286 U.S. 562, 76 L.Ed. 1294—Berry v. St. Louis-San Francisco Ry. Co., 26 S.W.2d 988, 324 Mo. 775, certiorari denied St. Louis-San Franscisco Ry. Co. v. Berry, 50 S.Ct. 464, 281 U.S. 765, 74 L.Ed. 1173.

N.C.—Randle v. Grady, 45 S.E.2d 35, 228 N.C. 159—Bell v. Harrison, 102 S.E. 200, 179 N.C. 190—Pope v. Pope, 96 S.E. 1034, 176 N.C. 283—Pilkington v. Welch, 83 S.E. 801, 168 N.C. 94.

N.D.—Swallow v. First State Bank, 161 N.W. 207, 35 N.D. 608.

Ohio.—Wolfe v. Baskin, 28 N.E.2d 629, 137 Ohio St. 284.

Hartman v. Wooley, App., 115 N.E.2d 714—Haney v. Dayton St. Transit Co., App., 67 N.E.2d 794—Congregation of St. Augustine Roman Catholic Church of Minister v. Metropolitan Bank of Lima, App., 32 N.E.2d 518—Bert v. City of Alliance, App., 32 N.E.2d 49—Cincinnati Traction Co. v. Woodmansee, 16 Ohio App. 314—Ohio Traction Co. v. Maley, 10 Ohio App. 7.

Wm. Heffron Constr. Co. v. Coleman, 13 Ohio Cir.Ct., N.S. 47.

Okl.—Oklahoma Gas & Electric Co. v. Busha, 66 P.2d 64, 179 Okl. 505.

Or.—Bonnett v. Keiffer, 237 P. 1, 115 Or. 244—O'Brien v. Royce, 227 P. 520, 111 Or. 488.

Tenn.—City Transp. Corp. v. Seckler, 225 S.W.2d 288, 32 Tenn.App. 661.

Tex.—Leap v. Braziel, Com.App., 121 S.W.2d 334—St. Louis Southwestern Ry. Co. of Texas v. Preston, Com.App., 228 S.W. 928.

Bilbrey v. Gentle, Civ.App., 107 S.W.2d 597, error dismissed—Texas Motor Coaches v. Palmer, Civ. App., 97 S.W.2d 253, reversed on other grounds 121 S.W.2d 323, 132 Tex. 77—Fritz Motor Co. v. Gabert, Civ.App., 41 S.W.2d 72—Stepp v. Texas & P. Ry. Co., Civ. App., 20 S.W.2d 324—Arlington Heights Sanitarium v. Deaderick, Civ.App., 272 S.W. 497—Underwood Typewriter Co. v. Shouldis, Civ.App., 253 S.W. 935—Millers' Indemnity Underwriters v. Schrieber, Civ.App., 240 S.W. 963, error refused—Oliver v. Forney Cotton Oil & Ginning Co., Civ.App., 226 S.W. 1094—Yoes v. Texas & P. Ry. Co., Civ.App., 211 S.W. 311, error refused—Dallas Waste Mills v. Texas Cake & Linter Co., Civ.App., 204 S.W. 868, reversed on other grounds, Com.App., 228 S.W. 118—Pecos & N. T. Ry. Co. v. McMeans, Civ.App., 188 S.W. 692.

Wash.—McKinney v. City of Seattle, 245 P. 913, 139 Wash. 148—Colvin v. Auto Interurban Co., 232 P. 365, 132 Wash. 591—Wellman v. Jensen, 214 P. 830, 124 Wash. 442—Miller v. Great Northern Ry. Co., 177 P. 799, 105 Wash. 349.

W.Va.—Carnahan v. Monroe, 185 S. E. 234, 7 W.Va. 279—Wills v. Montfair Gas Coal Co., 138 S.E. 749, 104 W.Va. 12.

Wis.—Schmallenberg v. Smith, 296 N.W. 597, 237 Wis. 285—Krantz v. Krantz, 248 N.W. 155, 211 Wis. 249—Terry v. Schmidt, 201 N.W. 729, 185 Wis. 550—Friedrich v. Boulton, 180 N.W. 127, 173 Wis. 99—Alshuler v. Milwaukee Elec-

them on one of a number of issues,[96] show that appellant was not injured thereby. Thus, where the jury returned its verdict on an issue with respect to which there was no error, error in instructions on other issues is harmless and will not constitute reversible error.[96.5]

Error in instructions with respect to the issue of contributory negligence is harmless where defendant was found not guilty of any actionable negligence,[96.10] or where the verdict of no cause of action is supported by substantial evidence;[96.15] and error in instructions on the issue of last clear chance is harmless where the jury found the person injured was not guilty of negligence,[96.20] or where the verdict was for defendant.[96.25] Moreover, error in submitting the defensive issue of sudden emergency is harmless to plaintiff where defendant was found not negligent,[96.30] or to a defendant who cross-claimed, where the sole cause of the accident was found to be the negligence of an unidentified person.[96.35] Also, where the trial court directed a verdict, or entered judgment, on the answers to special questions, error in the instructions on broad-

tric Ry. & Light Co., 173 N.W. 304, 169 Wis. 477.
4 C.J. p 1046 note 62—64 C.J. p 681 note 74.

96. Ala.—Curb v. Dabbs & Tannehill, 97 So. 109, 19 Ala.App. 149, certiorari denied Ex parte Curb, 97 So. 111, 210 Ala. 45.
Ark.—Arkansas Land & Lumber Co. v. Fitzhugh, 219 S.W. 1022, 143 Ark. 122.
Cal.—Bonelli v. Conrad, 87 P.2d 137, 1 C.A.2d 660—Adams v. Cameron, 151 P. 286, 27 C.A. 625.
Colo.—Colorado Springs & I. Ry. Co. v. Cohun, 180 P. 307, 66 Colo. 149.
Ga.—Oconee County Bank v. Marshall, 126 S.E. 369, 159 Ga. 515—Louisville & N. R. Co. v. Almand, 83 S.E. 516, 142 Ga. 661.
Iowa.—Peterson v. Wilds, 173 N.W. 126.
Kan.—Orr v. Atchison, T. & S. F. Ry. Co., 241 P. 437, 119 Kan. 751—Bollinger v. Schaff, 220 P. 274, 114 Kan. 669—Johnson v. City of Iola, 202 P. 84, 109 Kan. 670—Pittman & Harrison Co. v. Hayes, 157 P. 1193, 98 Kan. 273.
Mass.—Kilroy v. Schimmel, 137 N.E. 366, 243 Mass. 262—Lynch v. Cuihane, 135 N.E. 119, 241 Mass. 219—Crowdis v. Hayward, 124 N.E. 33, 233 Mass. 377—Coles v. Boston & M. R. R., 111 N.E. 893, 223 Mass. 408.
Mo.—Brewer v. Rowe, 252 S.W.2d 372, 363 Mo. 592—Lake Superior Loader Co. v. Huttig Lead & Zinc Co., 264 S.W. 396, 305 Mo. 130.
Whiffen v. Missouri Pac. R. Co., 262 S.W. 460, 216 Mo.App. 224.
Nev.—Nelson v. Smith, 176 P. 261, 42 Nev. 302, rehearing denied 178 P. 625, 42 Nev. 302.
N.J.—Gromer v. George, 101 A. 263, 90 N.J.Law 644.
Halpin v. Tillou, 126 A. 665, 2 N.J.Misc. 1100.
N.C.—Wyatt v. City of Raleigh, 90 S.E. 213, 172 N.C. 847—Parrish v. American Nat. Ins. Co., 88 S.E. 500, 171 N.C. 757—Fourth Nat. Bank v. Wilson, 84 S.E. 866, 168 N.C. 557.
Ohio.—Buschelmann v. City of Cincinnati, 13 Ohio App. 346—Franklin Bond & Inv. Co. v. Long, 18 Ohio App. 235.
Or.—La Follet v. Jones, 193 P. 446, 98 Or. 136.
Pa.—Berliner v. Bee Em Mfg. Co., 119 A.2d 65, 383 Pa. 458—Osterling v. Allegheny Trust Co., 103 A. 528, 260 Pa. 64—Hunter v. Robinson Tp., 96 A. 1036, 251 Pa. 436.
R.I.—Henderson v. Dimond, 110 A. 388, 43 R.I. 60.
Tenn.—Langston v. Memphis Street Ry. Co., 14 Tenn.App. 288—Haley v. Ogilvie, 2 Tenn.App. 607.
Tex.—Thompson v. Gibbons, Civ. App., 290 S.W.2d 396—Havens v. Guetersloh, 255 S.W.2d 233, error refused no reversible error—San Antonio Public Service Co. v. Murray, Civ.App., 59 S.W.2d 851—Malley v. Billings, Civ.App., 36 S.W.2d 537—Dallas Ry. & Terminal Co. v. Darden, Civ.App., 23 S.W.2d 739, affirmed, Com.App., 38 S.W.2d 777—Luginbyhl v. Thompson, Civ. App., 11 S.W.2d 380—Galveston Electric Co. v. Hansen, Civ.App., 7 S.W.2d 934, reversed on other grounds, Com.App., 15 S.W.2d 1022—Panhandle & S. F. Ry. Co. v. Van Arsdel, Civ.App., 247 S.W. 920—Dallas Ry. Co. v. Eaton, Civ. App., 222 S.W. 318, dismissed for want of jurisdiction—Ward v. Cathey, Civ.App., 210 S.W. 289, error refused—Turrentine v. Doering, Civ.App., 203 S.W. 802, error refused—Texas & P. Ry. Co. v. Williams, Civ.App., 200 S.W. 1149, error refused.
Wash.—Garrison v. Anderson, 270 P. 802, 149 Wash. 281.
Wis.—Taylor v. Connors, 192 N.W. 371, 180 Wis. 105—Jurkovic v. Chicago, M. & St. P. R. Co., 164 N.W. 993, 166 Wis. 266.
4 C.J. p 1047 note 63.

Issue framed by party complaining

Plaintiffs, who relied on theory of absolute liability, could not complain on appeal that instructions on negligence were given as well as instructions on absolute liability, where jury found against plaintiffs on issues framed by themselves.
Cal.—Rozewski v. Simpson, 71 P.2d 72, 9 C.2d 515.

Stipulation of parties

Where the parties stipulated that if the jury answered the first issue in favor of plaintiff he would be entitled to judgment, and the case was decided on the first issue, it was immaterial whether instruction of court on second issue was erroneous.
N.C.—Redd v. Mecklenburg Nurseries, 85 S.E.2d 311, 241 N.C. 385.

96.5 Conn.—Moore v. Waterbury Tool Co., 199 A. 97, 124 Conn. 201, 116 A.L.R. 564.
Mo.—Wolfson v. Baltimore Bank of Kansas City, App., 157 S.W.2d 560.
N.C.—Combs v. Porter, 58 S.E.2d 100, 231 N.C. 585.

Grounds of negligence

Where judgment was supported on one ground of negligence with respect to which definition of negligence given in instruction was correct, giving of definition was not error, and it was immaterial whether the definition constituted error as to the other ground of negligence relied on.
Tex.—Houston Transit Co. v. Zimmerman, Civ.App., 200 S.W.2d 848.

96.10 Mo.—Tindall v. Marshall's U. S. Auto Supply Co., 159 S.W.2d 302, 348 Mo. 1189.
N.C.—Call v. Stroud, 61 S.E.2d 342, 232 N.C. 478.
Okl.—Boyett v. Airline Lumber Co., 277 P.2d 676.
Pa.—Whitton v. H. A. Gable Co., 200 A. 644, 331 Pa. 429.
Tex.—Baker v. Walston, Civ.App., 141 S.W.2d 409, error dismissed judgment correct.

96.15 Mich.—Major v. Southwestern Motor Sales, 22 N.W.2d 96, 314 Mich. 122.

96.20 Kan.—Moseman v. L. M. Penwell Undertaking Co., 100 P.2d 669, 151 Kan. 610.

96.25 Cal.—Keller v. Arden Farms, 139 P.2d 47, 59 C.A.2d 506.

96.30 Tex.—Swanson v. Fort Worth Transit Co., Civ.App., 209 S.W.2d 772.

96.35 Ky.—Tillman v. Heard, 302 S. W.2d 835.

er issues of liability are immaterial.[96.40] A verdict finding plaintiff negligent renders error in failing to charge all possible negligent acts of defendant harmless.[96.45] Nevertheless, error in an instruction is not cured by special findings, where such findings indicate that the jury followed the instruction in their general verdict.[97]

Error in a charge on one count of a declaration or complaint may be disregarded if the verdict may be sustained on another count,[98] as where the answers of the jury to interrogatories establish that defendant was found liable on both counts of the complaint;[98.5] and even though the evidence may not be sufficient to sustain a cause of action or defense to which an instruction applies, a reversal may not be had on that ground if the evidence as to the other causes of action or defenses is sufficient to sustain the verdict.[98.10]

General verdict returned on two or more issues. The authorities are divided on whether or not error in instructions with respect to one of two or more issues, each of which may be determinative of the case, is prejudicial and will require a reversal, where a general verdict is brought in making it impossible to determine on which of the issues the verdict is founded. The more general rule is that such error is prejudicial and will require a reversal of the case, even though there is no error in the instructions with respect to the other issue or issues.[99] Under this rule it is held in an action for negligence that error in the charge solely as to defendant's negligence is prejudicial,[99.5] and also that error in the charge as to contributory negligence is prejudicial and will cause a reversal, even though no error was committed in the charge on the issue of defendant's negligence.[99.10]

On the other hand, there is authority that error in instructions with respect to one of two or more issues, each of which may be determinative of the case, is harmless and will be disregarded, where a general verdict is returned.[99.15] In some of these jurisdictions, the error in the instructions may be with respect to one of several grounds of action or defenses, and whether the general verdict is for plaintiff or defendant.[99.20] Under this view, a general verdict for plaintiff which can be sustained under one count or cause of action will not be disturbed, regardless of error in instructions as to another count or cause of action;[1] and, where one

96.40 Ind.—Watson v. Vanosdal, 19 N.E.2d 269, 215 Ind. 149.
Mass.—Krause v. Equitable Life Ins. Co. of Iowa, 129 N.E.2d 617, 337 Mass. 312.

96.45 Ky.—V. T. C. Lines, Inc. v. Chappell's Dairy, Inc., 298 S.W.2d 683.

97. Cal.—Gray v. Los Angeles Ry. Corporation, 230 P. 970, 69 C.A. 123.
Iowa.—Farmers' Nat. Bank of Oskaloosa v. Stanton, 182 N.W. 647, 191 Iowa 433, 17 A.L.R. 857.
Kan.—Gregory v. Nelson, 173 P. 414, 103 Kan. 192, L.R.A.1918F 150.
Tex.—Rowley v. Braly, Civ.App., 286 S.W. 241.
Va.—Powell v. John E. Hughes Orphanage, 138 S.E. 637, 148 Va. 331.
4 C.J. p 1047 note 64.

Error held not cured

Error in an instruction in a cause of action for alienation of a wife's affections required new trial, although a cause of action on another count for criminal conversation was correctly submitted and the jury returned a general verdict.
Conn.—Maggay v. Nikitko, 167 A. 816, 117 Conn. 206.

98. Tenn.—Clinchfield R. Co. v. Harvey, 64 S.W.2d 513, 16 Tenn.App. 324.

98.5 Conn.—McGuire v. Hartford Buick Co., 40 A.2d 269, 131 Conn. 417.

98.10 Cal.—Lewis v. Western Truck Line, 112 P.2d 747, 44 C.A.2d 455—People v. Painetti, 282 P. 1009, 102 C.A. 221.

99. Ariz.—Southern Casualty Co. v. Hughes, 263 P. 584, 33 Ariz. 206.
Cal.—Winn v. Ferguson, 282 P.2d 515, 132 C.A.2d 539—Fink v. Weisman, 23 P.2d 438, 132 C.A. 724—Markart v. Zeimer, 227 P. 683, 67 C.A. 363.
Mich.—Leonard v. Farmers' Mut. Fire Ins. Co. of Monroe and Wayne Counties, 158 N.W. 1041, 192 Mich. 230.
Minn.—Ohrmann v. Chicago & N. W. Ry. Co., 27 N.W.2d 806, 223 Minn. 580—Cavallero v. Travelers Ins. Co. of Hartford, Conn., 267 N.W. 370, 197 Minn. 417—Goldberg v. Globe & Republic Ins. Co. of America, 259 N.W. 402—Funk v. St. Paul City R. Co., 63 N.W. 1099, 61 Minn. 435, 52 Am.S.R. 608, 29 L.R.A. 208.
Nev.—Heinen v. Heinen, 186 P.2d 770, 64 Nev. 527.
N.J.—Maccia v. Tynes, 120 A.2d 263, 39 N.J.Super. 1.
Kelley v. William J. Ryan, Inc., 139 A. 894, 6 N.J.Misc. 894.
N.Y.—Stewart v. Newbury, 115 N.E. 984, 220 N.Y. 379, 2 A.L.R. 519.
Capella v. Southern Pac. Co., 218 N.Y.S. 366, 218 App.Div. 448.
N.C.—Jennings v. White, 51 S.E. 799, 139 N.C. 23.
Tex.—Tisdale v. Panhandle & S. F. Ry. Co., Com.App., 228 S.W. 133, 16 A.L.R. 1264.
Va.—Norfolk & W. Ry. Co. v. Mace, 145 S.E. 362, 151 Va. 458.

Presumption where general verdict is rendered for plaintiff on complaint containing both good and bad counts see supra § 1562 g.

In an action on a fire policy submitted on issues of incendiarism and willful misrepresentation in proofs of loss, error in submitting the issue of misrepresentation required reversal of a general verdict for insurer.
Minn.—Goldberg v. Globe & Republic Ins. Co. of America, 259 N.W. 402, 193 Minn. 600.

99.5 N.J.—Maccia v. Tynes, 120 A. 2d 263, 39 N.J.Super. 1.
Perry v. Public Service Coordinated Transport, 56 A.2d 617, 136 N.J.Law 398.

99.10 N.J.—Maccia v. Tynes, 120 A. 2d 263, 39 N.J.Super. 1.

99.15 Conn.—Lorenc v. Hartford Hospital, 15 A.2d 313, 127 Conn. 194.

99.20 Conn.—Lorenc v. Hartford Hospital, supra.

1. Conn.—Ross v. Koenig, 28 A.2d 875, 129 Conn. 403—Lorenc v. Hartford Hospital, 15 A.2d 313, 127 Conn. 194—Parker v. City of Hartford, 190 A. 866, 122 Conn. 500—Barbieri v. Pandiscio, 163 A. 469, 116 Conn. 48—Ziman v. Whitley, 147 A. 370, 110 Conn. 108—Worth v. Dunn, 118 A. 467, 98 Conn. 51.

cause of action is correctly submitted, and the damages to be awarded would be the same whether plaintiff recovered on one or both counts, a general verdict for plaintiff renders inconsequential any defects in the submission of other issues.[2]

In other of these jurisdictions, this two-issue or general verdict rule, which is a rule of policy, intended to simplify the work of trial courts and to limit the range of error proceedings,[2.5] applies only where the verdict or judgment is for the defense, and not where it is for plaintiff.[2.10] Under this and the preceding view, where two or more separate and distinct issues or defenses are submitted, and a general verdict for defendant is returned without a request for special findings, errors in instructions as to one issue will not be held prejudicial where a finding on either of the issues entitles defendant to judgment.[3]

In its application the two-issue rule has a number of limitations. It has been held restricted to erroneous instructions to the jury, and not applicable to errors relating to the admission or rejection of evidence.[3.5] In order for it to apply the issues or defenses must be separate and distinct,[3.10] and neither must be an element of, or dependent on, the other.[3.15] If two issues constitute a primary and a secondary issue, the rule is applied only if the primary issue is properly submitted.[3.20] The rule

Error as to defense to one cause

Where cause of action for reckless as well as negligent conduct of defendant was in issue and the jury's verdict was general, any error concerned solely with defense of contributory negligence, which defense would not be valid against first cause of action, cannot avail defendant on appeal.

Conn.—Carney v. De Wees, 70 A.2d 142, 136 Conn. 256—Decker v. Roberts, 3 A.2d 855, 125 Conn. 150.

2. Conn.—Altiere v. Peattie Motors, 185 A. 75, 121 Conn. 316—Blake v. City of Waterbury, 136 A. 95, 105 Conn. 482.

2.5 Ohio.—Readnour v. Cincinnati St. Ry. Co., 93 N.E.2d 587, 154 Ohio St. 69—Knisely v. Community Traction Co., 180 N.E. 654, 125 Ohio St. 131—Sites v. Haverstick, 23 Ohio St. 626.

Statements of rule

(1) The two-issue rule is that error in the charge of the court dealing exclusively with one of two or more complete and independent issues required to be presented to the jury will be disregarded if the charge with respect to another independent issue which will support the verdict of the jury is free from prejudicial error, unless it is disclosed by interrogatories or otherwise that the verdict is in fact based on the issue to which the erroneous instruction related.

Ohio.—Bush v. Harvey Transfer Co., 67 N.E.2d 851, 146 Ohio St. 657.

Asteri v. City of Youngstown, App., 121 N.E.2d 143.

(2) "Such rule is that, where a general verdict is returned for one of the parties, and the mental processes of the jury have not been tested by special interrogatories to indicate which issue was determinative of the verdict, it will be presumed that all issues were resolved in favor of the prevailing party. And where a single determinative issue has been presented free from error, error in presenting another issue will be disregarded."

Ohio.—Johnson v. Hunter, 142 N.E. 2d 227, 229, 230, 166 Ohio St. 289—Centrello v. Basky, 128 N.E.2d 80, 86, 164 Ohio St. 41.

Rule not discussed

Where the operation of the two-issue rule is mentioned in appellant's oral argument, but is not raised by assignment of error or argued by brief, it will not be discussed by appellate court.

Ohio.—Feher v. Motor Exp., App., 68 N.E.2d 140.

2.10 Ohio.—Cleveland Ry. Co. v. Masterson, 183 N.E. 873, 126 Ohio St. 42, 92 A.L.R. 15.

Cincinnati St. Ry. Co. v. Keehan, 186 N.E. 812, 45 Ohio App. 75.

3. Conn.—Delfino v. Warners Motor Exp., 114 A.2d 205, 142 Conn. 301—Hasler v. T. H. Canty & Co., 84 A. 2d 577, 138 Conn. 343—Knight Realty Co. v. Caserta, 10 A.2d 597, 126 Conn. 162—Altiere v. Peattie Motors, 185 A. 75, 121 Conn. 316—Spring v. Nagle, 131 A. 744, 104 Conn. 23.

Ohio.—Bush v. Harvey Transfer Co., 67 N.E.2d 851, 146 Ohio St. 657—Swoboda v. Brown, 196 N.E. 274, 129 Ohio St. 512—Sites v. Haverstick, 23 Ohio St. 626.

Coldren v. May, 52 N.E.2d 528, 72 Ohio App. 484—Allen v. Leavick, 182 N.E. 139, 43 Ohio App. 100—Bruce v. Cook, 171 N.E. 424, 34 Ohio App. 563—Matis v. Woodruff, 166 N.E. 203, 31 Ohio App. 73—Cleveland Ry. Co. v. Duralia, 165 N.E. 358, 30 Ohio App. 389—Hodnicki v. Pere Marquette Ry. Co., 158 N.E. 496, 25 Ohio App. 124—Jasionowski v. Industrial Commission, 158 N.E. 195, 25 Ohio App. 319—Remix v. Sisler, 156 N.E. 240, 24 Ohio App. 162—Mulvihill v. Frohmiller, 153 N.E. 115, 21 Ohio App. 210—Hirshberger v. Sinning, 152 N.E. 908, 21 Ohio App. 17—Ochsner v. Cincinnati Traction Co., 16 Ohio App. 204, affirmed 140 N.E. 644, 107 Ohio St. 33—Brown v. Dusha, 1 Ohio App. 232, 35 Ohio Cir.Ct. 437.

Two-issue rule held applicable

Ohio.—Bolser v. Smalley, 101 N.E.2d 147, 89 Ohio App. 161.

3.5 Ohio.—Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483.

3.10 Conn.—Meglio v. Comeau, 79 A.2d 187, 137 Conn. 551.

Ohio.—Stemper v. Campbell, 97 N.E. 2d 25, 155 Ohio St. 1.

Description of default

By describing the default sued for as negligence in one place and as a nuisance in another, two defaults were not created.

Ohio.—Petrey v. Liuzzi, 61 N.E.2d 158, 76 Ohio App. 19.

Rule not extended

Two-issue rule should not be extended.

Ohio.—Stemper v. Campbell, 97 N.E. 2d 25, 155 Ohio St. 1.

Two-issue rule held not applicable

(1) The two-issue rule did not apply in an action for wrongful death of a small child, incapable of contributory negligence, grounded on nuisance, in which the answer in effect pleads a general denial and sole negligence of the child.

Ohio.—Gottesman v. City of Cleveland, 52 N.E.2d 644, 142 Ohio St. 410.

(2) A claim by defendant that plaintiff's injuries were proximately caused solely by acts of a third person was but another form of a general denial, and such claim did not create a separate issue and did not furnish any basis for application of the two-issue rule.

Ohio.—Taylor v. City of Cincinnati, 55 N.E.2d 724, 143 Ohio St. 426, 155 A.L.R. 44.

3.15 Ohio.—Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483.

3.20 Ohio.—Croke v. Chesapeake & O. Ry. Co., supra.

does not apply when there are errors in the instructions as to both or all issues,[4] or where the erroneous charge, as given, disposed of both issues.[4.5]

It is also held that the two-issue rule does not apply to separately stated specifications of negligence involving a single cause of action and damage,[5] or to different elements or items of damage resulting from a single tortious act,[5.5] or where the complaint sets up a single basis of recovery, the negligence of defendant, and then alleges different particulars of negligence.[5.10] The two-issue rule applies only where it cannot be determined on which issue the verdict was predicated.[6]

If prejudicial error is committed in submitting an issue which was clearly determined against plaintiff, the verdict will not be sustained although there may also have been a finding against plaintiff on some other issue submitted without error.[7] In an action based on negligence, where the issue of negligence is correctly submitted but an error occurs in the submission of an issue of contributory negligence, a verdict for defendant may stand because it may rest on a finding of no negligence;[7.5] but it has been held, although there is authority to the contrary,[7.10] that error in the charge of the court on the issue of negligence prejudicial to plaintiff will invalidate a verdict for defendant, even though there was no error in the charge on the issue of contributory negligence.[7.15] It has also been held that where the issues raised under the claims of proof were negligence and creation of a nuisance, a general verdict in favor of defendant does not render harmless error in instructing on the principles of law applicable to one of the issues.[7.20]

Findings. Error in the instructions given may be cured by the findings of the court, where the jury acted only in an advisory capacity.[7.25]

§ 1773(4). —— Error Cured by Remittitur

Error in instructions as to damages may generally be cured by remittitur of the amount erroneously allowed by reason of it, but not where it is impossible to determine the effect of the error on the minds of the jury.

An error in an instruction on the measure of damages may be cured by the entry of a remittitur for the amount erroneously authorized.[8] However, a

4. Ohio.—Johnson v. Hunter, 142 N.E.2d 227, 166 Ohio St. 289—Cowley v. Bolander, 166 N.E. 677, 120 Ohio St. 553.
Hudson v. City of Cleveland, App., 142 N.E.2d 535—Cloud v. City of Fremont, 51 N.E.2d 39, 72 Ohio App. 193—Gallup v. Toledo Terminal R. Co., 160 N.E. 493, 26 Ohio App. 447.

4.5 Ohio.—Huntsman v. Chesapeake & O. R. Co., 80 N.E.2d 645, 82 Ohio App. 65.

5. Ohio.—Claypool v. Mohawk Motor, 97 N.E.2d 32, 155 Ohio St. 8—Stemper v. Campbell, 97 N.E.2d 25, 155 Ohio St. 1—Klever v. Reid Bros. Exp., 96 N.E.2d 781, 154 Ohio St. 491—Readnour v. Cincinnati St. Ry. Co., 93 N.E.2d 587, 154 Ohio St. 69—H. E. Culbertson Co. v. Warden, 175 N.E. 205, 123 Ohio St. 297.
Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483.

Contra

Ohio.—Fritz v. New York Cent. R. Co., App., 98 N.E.2d 852—Knaff v. New York Cent. R. Co., App., 86 N.E.2d 814—Moody v. Vickers, 72 N.E.2d 280, 79 Ohio App. 218—Osman v. Cook, App., 43 N.E.2d 641—Sprung v. E. I. Du Pont De Nemours & Co., App., 34 N.E.2d 41, appeal dismissed 23 N.E.2d 947, 136 Ohio St. 94.

5.5 Ohio.—Stemper v. Campbell, 97 N.E.2d 25, 155 Ohio St. 1.

Compensatory and punitive

The two-issue rule is not applicable to a verdict which may have included both compensatory and punitive damages.

Ohio.—Thomas v. F. & R. Lazarus & Co., App., 57 N.E.2d 103.

5.10 Conn.—Lubenow v. Cook, 79 A.2d 826, 137 Conn. 611.

6. Ohio.—Croke v. Chesapeake & O. Ry. Co., 93 N.E.2d 311, 86 Ohio App. 483—Cincinnati St. Ry. Co. v. Keehan, 186 N.E. 812, 45 Ohio App. 75.

7. Ohio.—Swoboda v. Brown, 196 N.E. 274, 129 Ohio St. 512.

7.5 Conn.—Delfino v. Warners Motor Exp., 114 A.2d 205, 142 Conn. 301—Weinstein v. Hallas, 100 A.2d 733, 140 Conn. 387—Hasler v. T. H. Canty & Co., 84 A.2d 577, 138 Conn. 343.

Ohio.—Bush v. Harvey Transfer Co., 67 N.E.2d 851, 146 Ohio St. 657—Kihlken v. Barber, 196 N.E. 164, 129 Ohio St. 485—Binder v. Youngstown Municipal Ry. Co., 180 N.E. 899, 125 Ohio St. 193—Knisely v. Community Traction Co., 180 N.E. 654, 125 Ohio St. 131.
Jones v. Kline, App., 137 N.E.2d 611—Lavell v. Raskin Hotel Co., 102 N.E.2d 611, 90 Ohio App. 185—Rinkes v. Tyler, 89 N.E.2d 694, 86 Ohio App. 8—Leeker v. Koehlke, 84 N.E.2d 110, 84 Ohio App. 174—Chevalley v. Degar, App., 52 N.E.2d 544—Fries v. Cincinnati St. Ry. Co., App., 35 N.E.2d 770, affirmed 37 N.E.2d 193, 138 Ohio St. 537—Sharpsteen v. Cincinnati St. Ry. Co., App., 31 N.E.2d 885—Witham v. Kroger Grocery & Baking Co., 1 N.E.2d 949, 51 Ohio App. 499.

7.10 Conn.—Meglio v. Comeau, 79 A.2d 187, 137 Conn. 551.

Error on all issues required

In an action in which the parties were at issue on both negligence and contributory negligence, there were no interrogatories propounded, and the jury returned a general verdict, it must appear that the charge was erroneous with respect to both issues in order that there may be a reversal.

Conn.—Ippolito v. Stafford, 106 A.2d 470, 147 Conn. 372.

7.15 Ohio.—Bush v. Harvey Transfer Co., 67 N.E.2d 851, 146 Ohio St. 657.

Reason for rule

Issue of contributory negligence does not arise unless issue of negligence on part of defendant is first found adverse to defendant.

Ohio.—Bush v. Harvey Transfer Co., supra.

Contra

Ohio.—Karle v. Cincinnati St. Ry. Co., 43 N.E.2d 762, 69 Ohio App. 327—Titus v. Stouffer, App., 40 N.E.2d 178—Weaver v. Liberty Cabs, App., 33 N.E.2d 853.

7.20 Conn.—Zatkin v. Katz, 11 A.2d 843, 126 Conn. 445.

7.25 Cal.—Myrick v. Bretsch, 56 P.2d 591, 13 C.A.2d 219.

8. Ala.—Cassels v. Alabama City, G. & A. Ry. Co., 73 So. 494, 198 Ala. 250—Massachusetts Mut. Life Ins.

remittitur is not a cure where the prejudicially erroneous instruction is such that its effect on the minds of the jury is impossible of determination,[9] or where there is nothing on which the court can determine how much should be remitted.[10]

b. Refusal or Modification of Instructions

§ 1774. Prejudicial Effect of Erroneous Refusal

a. In general
b. Harmless error

a. In General

Where it cannot be said that the appellant was not prejudiced thereby, the refusal of a timely request for proper instructions will necessitate a reversal.

As is shown in Trial §§ 299-305, where a timely request is made for instructions which correctly propound the law and which are warranted by the pleadings and the evidence in the case, it is the duty of the court to give them unless covered by other instructions given, or by the general charge, and a noncompliance with this duty will necessitate a reversal where it cannot be said that appellant was not prejudiced,[11] as where the court refuses

Co. v. Crenshaw, 70 So. 768, 195 Ala. 263.

Cal.—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77—Weiner v. Mizuta, App., 44 P.2d 421, 6 C.A. 2d 142—Thompson v. M., K. & T. Oil Co., 42 P.2d 374, 5 C.A.2d 117—Steinbrun v. Smith, 11 P.2d 868, 123 C.A. 697—Grass v. Rindge Co., 258 P. 673, 84 C.A. 635.

Ga.—Smith v. Lemon, 142 S.E. 554, 166 Ga. 93—Durrence v. Groover, 129 S.E. 29, 160 Ga. 680—Southern Lumber Co. v. Edwards, 125 S.E. 847, 159 Ga. 363.

Security Ins. Co. of New Haven, Conn. v. Hudgins, 75 S.E.2d 267, 87 Ga.App. 711—Black & White Cab Co. v. Smith, 173 S.E. 206, 48 Ga. App. 566—Atlantic Ice & Coal Co. v. Wages, 159 S.E. 878, 43 Ga. App. 688—Wheeler v. Lovett, 132 S.E. 921, 35 Ga.App. 325—Savannah & S. Ry. v. Davis, 112 S.E. 908, 28 Ga.App. 655—Dodge Bros. v. Hart, 101 S.E. 693, 24 Ga.App. 633.

Ill.—Kreger v. George W. Diener Mfg. Co., 53 N.E.2d 26, 321 Ill.App. 302—Scott v. Bankers' Auto Ins. Ass'n, 224 Ill.App. 606—Shaffner v. Greenwald, 193 Ill.App. 77. See Harrold v. Clinton Gas & Electric Co., 205 Ill.App. 12.

Ind.—Chicago & E. R. Co. v. Schipper, 131 N.E. 232, 75 Ind.App. 669—Southern Surety Co. v. Kinney, 127 N.E. 575, 74 Ind.App. 205.

Iowa.—Hauser v. Boever, 279 N.W. 137, 225 Iowa 1—In re Willmott's Estate, 243 N.W. 634, 215 Iowa 546—Lee v. Farmers' Mut. Hail Ins. Ass'n of Iowa, 241 N.W. 403, 214 Iowa 932—Starry v. Hanold, 211 N. W. 696, 202 Iowa 1180—Garmon v. Cronk, 195 N.W. 194, 196 Iowa 771—Ward v. Marks, 185 N.W. 37, 193 Iowa 171—Wilder v. Great Western Cereal Co., 109 N.W. 789, 134 Iowa 451.

Kan.—Malet v. Haney, 157 P. 386, 98 Kan. 20.

Ky.—Peters Motors v. Poyner, 243 S.W.2d 893—Equitable Life Assur. Soc. of U. S. v. Patrick, 73 S.W. 2d 49, 255 Ky. 290—Norfolk & W. Ry. Co. v. McCoy, 61 S.W.2d 1080, 250 Ky. 190—Nashville, C. & St. L. Ry. Co. v. Banks, 182 S.W. 660, 168 Ky. 579, affirmed 37 S.Ct. 402, 243 U.S. 626, 61 L.Ed. 936—Nashville, C. & St. L. Ry. Co. v. Henry, 182 S.W. 651, 168 Ky. 453, affirmed 37 S.Ct. 401, 243 U.S. 626, 61 L.Ed. 936.

Mich.—Hamilton v. Stephens, 215 N. W. 321, 240 Mich. 228—Gleason v. Lowe, 205 N.W. 199, 232 Mich. 300—Meyers v. Gearey, 180 N.W. 457, 212 Mich. 449—Miller v. Du Val, 158 N.W. 140, 191 Mich. 386.

Mo.—Roads v. Kelleher Drayage & Warehouse Co., 26 S.W.2d 764.

Hardie v. Metropolitan Life Ins. Co., App., 7 S.W.2d 746—Bates v. Friedman, App., 7 S.W.2d 452—Mackey v. Queen City Wood Works & Lumber Co., 261 S.W. 132, 216 Mo.App. 205—Carney v. United Rys. Co. of St. Louis, 226 S.W. 308, 205 Mo.App. 495—Wolf v. Baum, App., 211 S.W. 697—St. Louis Dairy Co. v. Northwestern Bottle Co., App., 204 S.W. 281—Flack v. Wahl, 193 S.W. 56, 197 Mo.App. 10, certiorari quashed State ex rel. Wahl v. Reynolds, 199 S.W. 978, 272 Mo. 588—Brigham v. T. D. Judy Inv. Co., App., 186 S.W. 15.

Okl.—Kurn v. Manley, 153 P.2d 623, 194 Okl. 574.

Pa.—Fahrer v. Blumenthal, 190 A. 206, 125 Pa.Super. 568.

S.C.—Halsey v. Minnesota-South Carolina Land & Timber Co., 177 S.E. 29, 174 S.C. 97, 100 A.L.R. 1.

S.D.—Moore v. Schnauber, 169 N.W. 234, 41 S.D. 140.

Tenn.—Kurn v. Weaver, 161 S.W.2d 1005, 25 Tenn.App. 556—Jennings v. Riddle, 95 S.W.2d 946, 20 Tenn. App. 89—Nashville, C. & St. L. Ry. v. Hines, 94 S.W.2d 397, 20 Tenn. App. 1.

Tex.—Nations v. Harris, Civ.App., 151 S.W. 334—Citizens' Ry. Co. v. Hall, Civ.App., 138 S.W. 434—Weatherford, M. W. & N. W. Ry. Co. v. White, 118 S.W. 799, 55 Tex. Civ.App. 32—Texas Cent. R. Co. v. Wheeler, 116 S.W. 83, 52 Tex.Civ. App. 603.

Utah.—Kunz v. Nelson, 100 P.2d 217, 98 Utah 421—Campbell v. Los Angeles & S. L. R. Co., 263 P. 495, 71 Utah 173.

W.Va.—Bragg v. C. I. Whitten Transfer Co., 26 S.E.2d 217, 125 W.Va. 722.

Wis.—Williams v. Williams, 246 N. W. 322, 210 Wis. 304—Jacoby v. Chicago, M. & St. P. Ry. Co., 161 N.W. 751, 165 Wis. 610, rehearing denied and mandate amended on other grounds 164 N.W. 88, 165 Wis. 610.

4 C.J. p 1047 note 66.

9. Cal.—Withrow v. Becker, App., 45 P.2d 235, 6 C.A.2d 723.

Ga.—Elliott v. Hodgson & Jackson, 65 S.E. 405, 133 Ga. 209, 134 Am. S.R. 206.

Iowa.—Gardner v. Boland, 227 N.W. 902, 209 Iowa 362—Hughes v. Chicago, R. I. & P. Ry. Co., 129 N.W. 956, 150 Iowa 232.

Mich.—Fortner v. Koch, 261 N.W. 762, 272 Mich. 273.

10. Ill.—Isbitz v. Chicago City Ry. Co., 192 Ill.App. 487.

11. U.S.—**Corpus Juris Secundum quoted in** Gold v. United States, C.C.A.N.J., 102 F.2d 350, 352.

Ala.—Porter Coal Co. v. Davis, 165 So. 93, 231 Ala. 359.

Draughon's Business College v. Battles, 50 So.2d 788, 35 Ala.App. 587—Newsome v. Louisville & N. R. Co., 110 So. 53, 21 Ala.App. 555.

Ariz.—Trauscht v. Lamb, 270 P.2d 1071, 77 Ariz. 276.

Ark.—Hines v. Hines, 14 S.W.2d 1107, 179 Ark. 214—Scott v. Cleveland, 183 S.W. 197, 122 Ark. 259.

Cal.—Adkins v. Brett, 193 P. 251, 184 C. 252.

Tomson v. Kischassey, 301 P.2d 55, 144 C.A.2d 363—Lowenbruck v. Stiglmeier, 46 P.2d 251, 7 C.A. 204—Kananankoa v. Badalamenta, 6

P.2d 338, 119 Cal.App. 231—San Joaquin Grocery Co. v. Trewhitt, 252 P. 332, 80 Cal.App. 371.

Colo.—Cooper v. Newmyer, 250 P. 559, 80 Colo. 246.

Conn.—Sparico v. Munzenmaier, 56 A.2d 165, 134 Conn. 194—Bjorkman v. Town of Newington, 154 A. 346, 113 Conn. 181—Krooner v. City of Waterbury, 136 A. 93, 105 Conn. 476—Ratti v. P. Berry & Sons, 119 A. 894, 98 Conn. 522.

Fla.—Zorn v. Britton, 150 So. 801, 112 Fla. 579, followed in Zorn v. James, 150 So. 803, 112 Fla. 583.

Ga.—People's Bank v. Foster, 177 S. E. 721, 180 Ga. 1—Daniel v. Stinson, 177 S.E. 590, 179 Ga. 701.

Brosnan v. Long, 44 S.E.2d 809, 75 Ga.App. 837—Camilla Cotton Oil Co. v. Cawley, 183 S.E. 134, 52 Ga.App. 268—Camilla Cotton Oil Co. v. Cawley, 183 S.E. 134, 52 Ga. App. 268—Georgia Ry. & Power Co. v. McElroy, 136 S.E. 85, 36 Ga. App. 143—Newton v. Seaboard Air Line Ry., 87 S.E. 908, 17 Ga.App. 624.

Idaho.—Lloyd v. Anderson, 227 P. 32, 39 Idaho 314.

Ill.—Weltz v. Connell, 186 Ill.App. 336. See Schwickrath v. Chicago City R. Co., 189 Ill.App. 352.

Ind.—Indianapolis & Cincinnati Traction Co. v. Sherry, 116 N.E. 594, 65 Ind.App. 1.

Iowa.—Schelldorf v. Cherry, 264 N. W. 54, 220 Iowa 1101.

Kan.—Salisbury v. Wichita R. & Light Co., 175 P. 966, 103 Kan. 714—Hazelwood v. Mendenhall, 156 P. 696, 97 Kan. 116, 635.

Ky.—Kentucky & West Virginia Power Co. v. Riley's Adm'r, 25 S. W.2d 366, 233 Ky. 224—Mowbray & Robinson Co. v. Kelley, 185 S.W. 1130, 170 Ky. 271.

Me.—Levine v. Reynolds, 54 A.2d 514, 143 Me. 15—Starkey v. Lewin, 105 A. 858, 118 Me. 87—Coombs v. Fessenden, 96 A. 242, 114 Me. 347.

Md.—Singleton v. Roman, 72 A.2d 705, 195 Md. 241—Hockaday v. Schloer, 94 A. 526, 125 Md. 677.

Mass.—Labrecque v. Donham, 127 N. E. 537, 236 Mass. 10.

Mo.—Yerger v. Smith, 89 S.W.2d 66, 338 Mo. 140—Dorman v. East St. Louis Ry. Co., 75 S.W.2d 854, 335 Mo. 1082—Hogan v. Fleming, 297 S.W. 404, 317 Mo. 524.

Robinson v. Kincaid, App., 142 S. W.2d 1083—Walnut Park Loan & Investment Ass'n v. Hennkens, App., 121 S.W.2d 179—Sasse v. Sparkman, App., 65 S.W.2d 1067—H. F. Reis Lumber & Material Co. v. Kobermann, App., 43 S.W.2d 894—Rudin Bros. v. Wells, App., 29 S.W.2d 741—Salzman v. Athletic Tea Co., App., 236 S.W. 907—Tanchof v. Metropolitan St. Ry. Co., App., 177 S.W. 813.

Mont.—Carlson v. Northern Pac. Ry. Co., 268 P. 549, 82 Mont. 559, 58 A. L.R. 1304.

Neb.—Hamilton v. Omaha & Council Bluffs St. Ry. Co., 41 N.W.2d 139, 152 Neb. 328—Hackbart v. Rohrig, 287 N.W. 665, 136 Neb. 825—Spittler v. Callan, 255 N.W. 27, 127 Neb. 331—Nichols v. Owens Motor Co., 236 N.W. 169, 121 Neb. 105—Blue Valley State Bank v. Milburn, 232 N.W. 777, 120 Neb. 421—Kron v. J. C. Robinson Seed Co., 195 N.W. 939, 111 Neb. 147—Cunningham v. Scott, 191 N.W. 673, 109 Neb. 586—Mentz v. Omaha & C. B. St. Ry. Co., 170 N.W. 889, 103 Neb. 216, rehearing denied 173 N.W. 478, 103 Neb. 216.

N.H.—Hiltz v. Gould, 105 A.2d 48, 99 N.H. 85—Burke v. Boston & M. R. R., 134 A. 574, 82 N.H. 350.

N.Y.—Batease v. Dion, 90 N.Y.S.2d 851, 275 App.Div. 451—Carotenuto v. Surface Transp. Co., 68 N.Y.S. 2d 519, 271 App.Div. 990—Primoschitz v. Harris Structural Steel Co., 288 N.Y.S. 364, 247 App.Div. 633—Bernawich v. Fishbein Realty Corporation, 274 N.Y.S. 955, 242 App.Div. 351.

N.C.—Williamson v. Clay, 90 S.E.2d 727, 243 N.C. 337—McNeill v. McDougald, 87 S.E.2d 502, 242 N.C. 255—Barnes v. Caulbourne, 83 S. E.2d 898, 240 N.C. 721—Howard v. Carman, 69 S.E.2d 522, 235 N.C. 289—Dillard v. Brown, 64 S.E.2d 843, 233 N.C. 551—Wallin v. Rice, 61 S.E.2d 82, 232 N.C. 371—Van Gelder Yarn Co. v. Mauney, 44 S. E.2d 601, 228 N.C. 99—Whitehurst v. Abbott, 33 S.E.2d 129, 225 N.C. 1, 159 A.L.R. 380—West v. F. W. Woolworth Co., 1 S.E.2d 546, 215 N.C. 211—Calhoun v. State Highway and Public Works Commission, 181 S.E. 271, 208 N.C. 424—Parks v. Security Life & Trust Co., 142 S.E. 473, 195 N.C. 453—Kinsland v. Kinsland, 131 S.E. 369, 191 N.C. 117.

Ohio.—Peleps v. Oliver, 137 N.E.2d 676, 165 Ohio St. 493—Rice v. City of Cleveland, 58 N.E.2d 768, 144 Ohio St. 299—Stark County Agr. Soc. v. Brenner, 172 N.E. 659, 122 Ohio St. 560—Bartson v. Craig, 169 N.E. 291, 121 Ohio St. 371—Payne v. Vance, 133 N.E. 85, 103 Ohio St. 59.

Lindsay v. Baltimore & O. R. Co., 128 N.E.2d 242, 98 Ohio App. 63—Vukovic v. Walnut Grove Country Club, App., 124 N.E.2d 463—Womack v. Hollon, App., 102 N.E.2d 26—Ribarin v. Kessler, 70 N.E.2d 107, 78 Ohio App. 289—Loftus v. Palmer, App., 46 N.E. 2d 312—Dixie Wholesale Grocery v. Baltimore & Ohio Warehouse Co., 28 N.E.2d 694, 64 Ohio App. 241—Booksbaum v. Christian, 5 N.E.2d 177, 53 Ohio App. 384—Lake Shore Electric Ry. Co. v. Shepherd, 192 N.E. 740, 48 Ohio App. 167—Cleveland Ry. Co. v. Smith, 172 N.E. 409, 35 Ohio App. 204—Dunham v. Mulby, 156 N.E. 608, 24 Ohio App. 509—John Bright Shoe Stores Co. v. Scully, 156 N.E. 155, 24 Ohio App. 15—Rogers v. Ziegler, 152 N.E. 781, 21 Ohio App. 186.

Ivory v. Cincinnati St. Ry. Co., 8 Ohio Supp. 22.

City of Cincinnati v. Ryan, 34 Ohio Cir.Ct. 421.

Okl.—Phillips Petroleum Co. v. Price, 298 P.2d 772—Subscribers at Casualty Reciprocal Exchange v. Sims, 293 P.2d 578—Phillips v. Barker, 269 P.2d 337—Bay Petroleum Corp. v. May, 264 P.2d 734—Smith v. Price, 246 P.2d 359, 206 Okl. 659—Union Transp. Co. v. Mitchell, 219 P.2d 1015, 203 Okl. 247—International Harvester Co. of America v. Snider, 88 P.2d 606, 184 Okl. 537—Guarantee Inv. Corp. v. Killian, 67 P.2d 939, 180 Okl. 74—Pugh-Bishop Chevrolet Co. v. Duncan, 55 P.2d 1003, 176 Okl. 310—McMullen v. Holcombe, 256 P. 888, 125 Okl. 178—Schaff v. Richardson, 254 P. 496, 120 Okl. 70—Stokes v. Collum Commerce Co., 252 P. 390, 120 Okl. 133—Younger v. Blanchard Hardware Co., 251 P. 56, 120 Okl. 279—Lindsey v. Phillips, 249 P. 917, 120 Okl. 3—Wherrey v. Luckey, 226 P. 588, 99 Okl. 239—Ragan v. Shannon, 225 P. 672, 98 Okl. 289—Jackson v. Peddycoart, 224 P. 689, 98 Okl. 198—Jones v. Hughes, 223 P. 135, 97 Okl. 126—Mangum Electric Co. v. Border, 222 P. 1002, 101 Okl. 64—Alton Mercantile Co. v. Ozark Cider & Vinegar Co., 219 P. 890, 93 Okl. 151—National Oil & Development Co. v. Keystone Oil Co., 216 P. 450, 91 Okl. 198—New v. Bradshaw, 214 P. 557, 89 Okl. 205—Smith v. Maher, 202 P. 321, 84 Okl. 49, 23 A.L.R. 270—Mills v. Hollinshed, 200 P. 200, 82 Okl. 250—Holmboe v. Neale, 171 P. 334, 69 Okl. 183—Mountcastle v. Miller, 166 P. 1057, 66 Okl. 40—Ingraham v. Byers, 150 P. 905, 50 Okl. 463—Eccleston v. Edens, 150 P. 882, 50 Okl. 237—Atchison, T. & S. F. Ry. Co. v. Jamison, 149 P. 195, 46 Okl. 609.

Or.—Kern v. Pullen, 6 P.2d 224, 138 Or. 222, 82 A.L.R. 434—Kirchner v. Clostermann, 299 P. 995, 136 Or. 557.

Pa.—Wessel v. Montgomery, 163 A. 347, 106 Pa.Super. 341.

O'Brien v. Manley, Com.Pl., 38 Del.Co. 327.

R.I.—Eagle Brewing Co. v. Colaluca, 94 A. 680, 38 R.I. 224.

S.C.—Leonard v. Broad River Power Co., 177 S.E. 152, 174 S.C. 199.

S.D.—Miller v. Sioux Falls Traction System, 220 N.W. 451, 53 S.D. 144, modified on other grounds 222 N. W. 270, 53 S.D. 649.

Tex.—Templin v. State, Civ.App., 274 S.W.2d 171, error refused no re-

correct instructions setting forth the theory of a party's case which there is evidence to support,[12] or where the evidence was conflicting and the verdict general, and it was not possible to say how the jury would have resolved the question if the requested instruction had been given.[13]

The refusal to give a proper instruction is not rendered harmless by admissions made in a motion for a new trial[14] or by the fact that the issue on which the charge was asked below is not urged on appeal.[15]

Applying these rules, judgments have been reversed for prejudicial error in failing or refusing to give instructions in actions: On contracts;[16] for

versible error—Stewart v. Coats, Civ.App., 91 S.W.2d 421—Panhandle & S. F. Ry. Co. v. Napier, Civ. App., 90 S.W2d 926, error dismissed—Dallas Ry. & Terminal Co. v. Allen, Civ.App., 43 S.W.2d 165—Enterprise Co. v. Glenn, Civ.App., 290 S.W. 806—Hannes v. Raube, Civ.App., 210 S.W. 985—Whaley v. McDonald, Civ.App., 194 S.W. 409—Wyatt v. Chambers, Civ.App., 182 S.W. 16—Occident Fire Ins. Co. v. Linn, Civ.App., 179 S.W. 523.

Vt.—Pellon v. Connecticut General Life Ins. Co., 168 A. 701, 105 Vt. 508.

Va.—Chandler v. Satchell, 168 S.E. 744, 160 Va. 160.

Wash.—Bolch v. Chicago, M. & St. P. Ry. Co., 155 P. 422, 90 Wash. 47, error dismissed 37 S.Ct. 211, 242 U.S. 616, 61 L.Ed. 529.

W.Va.—Ward v. Smith, 86 S.E.2d 539, 140 W.Va. 791—Grace v. Smith, 146 S.E. 879, 106 W.Va. 711.

4 C.J. p 1050 note 85—9 C.J. p 370 note 1.

Request not timely

Mo.—Zamora v. Woodmen of the World Life Ins. Soc., App., 157 S.W.2d 601.

Refused requests not designated

Where there was a general finding for defendant, without indicating which of plaintiff's requests, including one which should have been given, was refused, an exception to the refusal to give such requests would be sustained, although another defense was made out.

Mass.—City of Fall River v. Ætna Ins. Co., 107 N.E. 367, 219 Mass. 454.

Request for instructions by jury

Error in giving and refusing to give instructions was prejudicial where jurors, after they retired, returned and sought further instructions on the same subject matter, and their vote in arriving at their verdict was close.

Cal.—Stricklin v. Rosemeyer, 126 P. 2d 665, 52 C.A.2d 558.

12. Ala.—Veitch v. Hard, 75 So. 405, 200 Ala. 77.

Ark.—Hutson Motor Co. v. Lake, 80 S.W.2d 64, 190 Ark. 633—National Equity Life Ins. Co. v. Parker, 69 S.W.2d 280, 188 Ark. 1041.

Conn.—Ross v. Koenig, 28 A.2d 875, 129 Conn. 403.

Ga.—Ashford v. Holliday, 149 S.E. 790, 169 Ga. 237.

Lovelace v. Ivey, 152 S.E. 266, 41 Ga.App. 204.

Ill.—Sims v. Chicago Transit Authority, 129 N.E.2d 23, 7 Ill.App.2d 21—Home Bank & Trust Co. v. Szostowski, 247 Ill.App. 207.

Mass.—Thompson v. Sides, 176 N.E. 623, 275 Mass. 568—Jordan v. Velozo, 164 N.E. 816, 266 Mass. 76.

Mo.—Campbell v. Evens & Howard Sewer Pipe Co., App., 286 S.W.2d 399—J. A. Tobin Const. Co. v. Davis, App., 81 S.W.2d 474—Perkins v. Equitable Life Assur. Soc. of U. S., App., 73 S.W.2d 415—Da Pron v. Neu, App., 43 S.W.2d 915—Wheeler-Motter Mercantile Co. v. Hirsch, App., 253 S.W. 163.

Neb.—Zorinsky v. American Legion, Omaha Post No. 1, 79 N.W.2d 172, 163 Neb. 212—Cover v. Platte Val. Public Power and Irr. Dist., 75 N. W.2d 661, 162 Neb. 146—Wright v. Lincoln City Lines, 71 N.W.2d 182, 160 Neb. 714—Welstead v. Jim Ryan Const. Co., 69 N.W.2d 308, 160 Neb. 87—Application of Platte Val. Public Power & Irr. Dist., 68 N.W. 2d 200, 159 Neb. 609—Harsche v. Czyz, 61 N.W.2d 265, 157 Neb. 699—Krepcik v. Interstate Transit Lines, 48 N.W.2d 839, 154 Neb. 671—Lund v. Holbrook, 46 N.W.2d 130, 153 Neb. 706—Hickman-Williams Agency v. Haney, 40 N.W.2d 813, 152 Neb. 219—Thurow v. Schaeffer, 38 N.W.2d 732, 151 Neb. 651—McKain v. Platte Valley Public Power & Irrigation Dist., 37 N.W.2d 923, 151 Neb. 497—Hansen v. Lawrence, 30 N.W.2d 63, 149 Neb. 26—Blue Valley State Bank v. Milburn, 232 N.W. 777, 120 Neb. 421.

N.M.—Stewart v. Oberholtzer, 258 P. 2d 369, 57 N.M. 253—Clay v. Texas-Arizona Motor Freight, 159 P.2d 317, 49 N.M. 157—Southern Pac. Co. v. Stephens, 6 P.2d 934, 36 N. M. 10.

N.C.—Parks v. Security Life & Trust Co., 142 S.E. 473, 195 N.C. 453.

Ohio.—De Angelo v. W. T. Grant Co., App., 111 N.E.2d 773—Watkins v. Linver, 193 N.E. 77, 48 Ohio App. 268—Hoge v. Soissons, 192 N.E. 860, 48 Ohio App. 221.

Okl.—Thompson v. Galion Iron Works & Mfg. Co., 203 P.2d 438, 201 Okl. 182—Home State Life Ins. Co. v. Turner, 83 P.2d 832, 183 Okl. 575—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487—Forrester v. Jones, 297 P. 810, 148 Okl. 88—St. Louis-San Francisco Ry. Co. v. Floyd, 293 P. 250, 146 Okl. 42, 77 A.L.R. 1431—Gypsy Oil Co. v. Ginn, 241 P. 794, 115 Okl. 76.

Or.—Purdin v. Richardson, 34 P.2d 926, 148 Or. 68—Cole v. Johnson, 205 P. 282, 103 Or. 319.

Tenn.—Nashville, C. & St. L. Ry. v. Nants, 65 S.W.2d 189, 167 Tenn. 1. Nash v. Mitchell, 9 Tenn.App. 134.

Tex.—Hoover v. Smallwood, Civ. App., 45 S.W.2d 702—United Fidelity Life Ins. Co. v. Fowler, Civ. App., 38 S.W.2d 128.

Vt.—Bennett v. Robertson, 177 A. 625, 107 Vt. 202—Morse v. Ward, 150 A. 132, 102 Vt. 433.

Wash.—Owens v. City of Seattle, 299 P.2d 560, 49 Wash.2d 187.

W.Va.—Show v. Mount Vernon Farm Dairy Products, 37 S.E.2d 459, 128 W.Va. 598.

4 C.J. p 1050 note 85.

13. U.S.—**Corpus Juris Secundum quoted in** Gold v. United States, C. C.A.N.J., 102 F.2d 350, 352.

Cal.—Oliphant v. Brown, 46 P.2d 790, 7 C.A.2d 584.

Mass.—Bresnick v. Heath, 198 N.E. 175, 292 Mass. 293.

Neb.—Tighe v. Interstate Transit Lines, 256 N.W. 319, 127 Neb. 633.

Tex.—Western Union Telegraph Co. v. Goodson, Civ.App., 202 S.W. 766.

4 C.J. p 1050 note 86.

14. Mo.—Koerper v. Glennon, 240 S.W. 260, 209 Mo.App. 489.

15. Mich.—Rathbone v. Detroit United Ry., 154 N.W. 143, 187 Mich. 586.

16. Ala.—All States Life Ins. Co. v. Johnson, 194 So. 877, 239 Ala. 392. New York Life Ins. Co. v. Jones, 17 So.2d 879, 31 Ala.App. 417.

Ark.—Weatherly v. Stane, 184 S.W. 41, 122 Ark. 612.

Cal.—Dean v. Niagara Fire Ins. Co., 68 P.2d 1021, 24 C.A.2d Supp. 762.

Ga.—Vaughan v. Vaughan, 93 S.E.2d 743, 212 Ga. 485. George Washington Life Ins. Co. v. Smith, 83 S.E.2d 302, 90 Ga.App. 459—Barnes v. Goodner, 49 S.E.2d 128, 77 Ga.App. 448—C. V. Hill & Co. v. Weinberg, 19 S.E.2d 430, 67 Ga.App. 44—Bankers Health & Life Ins. Co. v. Crozier, 16 S.E.2d 65, 65 Ga.App. 329—Community Loan & Investment Corp. v. Bowden, 12 S. E.2d 421, 64 Ga.App. 175—Allmond v. Mount Vernon Bank, 186 S.E. 581, 53 Ga.App. 565—Colquitt v. Dye, 114 S.E. 643, 29 Ga.App. 247.

personal injuries[17] or for damages for pain and | suffering and wrongful death;[18] for injuries to a

Ill.—Sundquist v. Illinois Fire Ins. Co. of Peoria, 26 N.E.2d 750, 305 Ill.App. 160.
Iowa.—Muntz v. Travelers Mut. Cas. Co., 295 N.W. 837, 229 Iowa 1015.
Ky.—Franklin Nat. Ins. Co. of New York v. Hibbitt, 264 S.W.2d 648—Old Colony Ins. Co. v. Reynolds, 256 S.W.2d 362—Weikel v. Weikel, 133 S.W.2d 541, 280 Ky. 363—Black Motor Co. v. Howard, 126 S.W.2d 1092, 277 Ky. 638—Ætna Life Ins. Co. v. Shemwell, 116 S.W.2d 328, 273 Ky. 264.
Md.—Frenkil v. Hagan, 125 A. 909, 146 Md. 94.
Mass.—Andrade v. Hanley, 194 N.E. 105, 289 Mass. 325.
Mich.—F. M. Sibley Lumber Co. v. Schultz, 297 N.W. 243, 297 Mich. 206.
Mo.—Rutledge v. Weisenborn, App., 142 S.W.2d 884—Gordon v. Royal Neighbors of America, App., 90 S.W.2d 198—Todd v. Security Ins. Co. of New Haven, Conn., 221 S.W. 808, 203 Mo.App. 474.
Mont.—James v. Speer, 220 P. 535, 69 Mont. 100.
Neb.—First Trust Co. of Lincoln v. Carlsen, 268 N.W. 89, 131 Neb. 325.
N.J.—Ball v. Porter, 93 A.2d 223, 23 N.J.Super. 491.
N.Y.—Hunt v. Manufacturers' Cas. Ins. Co., 84 N.Y.S.2d 696, 274 App. Div. 964—Goldberg v. Mutual Life Ins. Co. of New York, 31 N.Y.S.2d 154, 263 App.Div. 10, appeal dismissed 43 N.E.2d 69, 288 N.Y. 662—Golas v. Metropolitan Life Ins. Co., 16 N.Y.S.2d 343, 258 App.Div. 309—Malsby v. Jackson & Tindle, 9 N.Y.S.2d 25, 256 App.Div. 887—Union Trust Co. v. Barnhardt, 281 N.Y.S. 40, 245 App.Div. 829—McNally v. 301 Madison Ave. Corporation, 211 N.Y.S. 25, 213 App.Div. 616—Cohen Bros. Mfg. Co. v. Edmund Wright-Ginsberg Co., 201 N.Y.S. 851, 207 App.Div. 199—Beck v. Only Skirt Co., 163 N.Y.S. 786, 176 App.Div. 867.
Morgan v. Indemnity Ins. Co. of North America, 88 N.Y.S.2d 835, 195 Misc. 53, reversed on other grounds 93 N.Y.S.2d 16, 276 App. Div. 123, reversed on other grounds 99 N.E.2d 228, 302 N.Y. 435, motion denied 100 N.E.2d 192, 302 N.Y. 940—Zahler v. Mann, 160 N.Y.S. 1085, 97 Misc. 19.
Locker v. Equitable Life Assur. Soc. of U. S., 136 N.Y.S.2d 652—Boshes v. Pearlman, 61 N.Y.S.2d 706—Levy v. Wallach, 178 N.Y.S. 216.
N.C.—McConnell v. Jones, 44 S.E.2d 876, 228 N.C. 218.
N.D.—Halverson v. Boehm, 76 N.W. 2d 178.
Ohio.—Mates v. Spitzig, App., 122 N.E.2d 639—Gheen v. Dalonzo, App., 38 N.E.2d 416—Willeke v. Neuenschwander, 9 N.E.2d 1018, 55 Ohio App. 527—Underwood v. Browning, 9 N.E.2d 707, 55 Ohio App. 268—Wehnes v. Schliewe, 192 N.E. 12, 47 Ohio App. 452.
Okl.—Pacific Mut. Life Ins. Co. of California v. Tetirick, 89 P.2d 774, 185 Okl. 37.
Or.—Wyckoff v. Mutual Life Ins. Co. of New York, 147 P.2d 227, 173 Or. 592.
S.C.—Hydrick v. Milwaukee Mechanics' Fire Ins. Co., 133 S.E. 533, 135 S.C. 62.
S.D.—Frana v. Rollins, 238 N.W. 574, 59 S.D. 156—Tuthill v. Sherman, 165 N.W. 4, 39 S.D. 464.
Tex.—New York Cas. Co. v. Remling, Civ.App., 107 S.W.2d 505—Republic Ins. Co. v. Dickson, Civ. App., 69 S.W.2d 599.
Utah.—Armstrong v. Larsen, 186 P. 97, 55 Utah 347.

17. Ala.—Atlantic Coast Line R. Co. v. Barganier, 88 So.2d 823, 264 Ala. 474.
Cal.—Estes v. Smith, 282 P.2d 534, 132 C.A.2d 529—Cole v. Ridings, 212 P.2d 597, 95 C.A.2d 136—Krupp v. Los Angeles Ry. Corp., 135 P.2d 424, 57 C.A.2d 695—Van Noy v. Frank, 51 P.2d 1166, 10 C.A.2d 423.
Conn.—Varley v. Motyl, 90 A.2d 869, 139 Conn. 128, 32 A.L.R.2d 1439—Lubenow v. Cook, 79 A.2d 826, 137 Conn. 611—Tirendi v. City of Waterbury, 23 A.2d 919, 128 Conn. 464.
Ky.—City of Bowling Green v. Peterson, 251 S.W. 187, 199 Ky. 311.
Mich.—Brown v. Nichols, 60 N.W.2d 907, 337 Mich. 684—Pearo v. City of Mackinac Island, 11 N.W.2d 893, 307 Mich. 290.
Miss.—Mason v. United Gas Corp., 75 So.2d 736, 222 Miss. 311—Foster v. City of Meridian, 116 So. 820, 150 Miss. 715.
Mo.—Maisch v. Kansas City Stock Yards Co. of Me., App., 241 S.W.2d 487.
N.H.—Migneault v. St. Germain Motors, Inc., 100 A.2d 901, 98 N.H. 327.
N.Y.—Cairns v. Matthews, 66 N.Y. S.2d 916, 271 App.Div. 886—Schabel v. Onseyga Realty Co., 251 N.Y.S. 280, 233 App.Div. 208.
Calabrese v. James McCreery & Co., 67 N.Y.S.2d 247, 187 Misc. 538.
Ohio.—Donoughe v. East Ohio Gas Co., 102 N.E.2d 881, 89 Ohio App. 411—Hillyer v. City of East Cleveland, App., 94 N.E.2d 216, reversed on other grounds 99 N.E.2d 772, 155 Ohio St. 552.
Okl.—City of Stroud v. Evans, 104 P.2d 241, 187 Okl. 350.
Or.—Hunsaker v. Pacific Northwest Public Service Co., 20 P.2d 433, 143 Or. 583.
Pa.—Coxey v. Guala, 171 A. 484, 112 Pa.Super. 460.
Tex.—Texas Motor Coaches v. Palmer, 121 S.W.2d 323, 132 Tex. 77.
Riley v. Norman, Civ.App., 275 S.W.2d 208, error refused no reversible error—Richards v. Westmoreland, Civ.App., 63 S.W.2d 715.
Wash.—McGinn v. North Coast Stevedoring Co., 270 P. 113, 149 Wash. 1.
Wis.—Haefner v. Batz Seed Farms, 39 N.W.2d 386, 255 Wis. 438.

18. Ala.—City of Birmingham v. Latham, 162 So. 675, 230 Ala. 601—Northern Alabama Ry. Co. v. Winchester, 142 So. 661, 225 Ala. 197.
Cal.—Armenta v. Churchill, 267 P.2d 303, 42 C.2d 448—Gonzales v. Pacific Greyhound Lines, 214 P.2d 809, 34 C.2d 744.
Summers v. Randall, 266 P.2d 217, 123 C.A.2d 113—Cox v. City of Los Angeles, 223 P.2d 868, 100 C.A.2d 378—Clark v. State, 222 P.2d 300, 99 C.A.2d 616—Emery v. Los Angeles R. Corp., 143 P.2d 112, 61 C.A.2d 455—Kelley v. City and County of San Francisco, 137 P.2d 719, 58 C.A.2d 872—Pire v. Gladding McBean & Co., 130 P.2d 143, 55 C.A.2d 108, rehearing denied 130 P.2d 981, 55 C.A.2d 108
Fla.—Brickley v. Atlantic Coast Line R. Co., 13 So.2d 300, 153 Fla. 1—Williams v. Sauls, 9 So.2d 369, 151 Fla. 270.
Ga.—Southern Ry. Co. v. Garland, 41 S.E.2d 925, 75 Ga.App. 98—Atlanta & W. P. R. Co. v. Truitt, 16 S.E.2d 273, 65 Ga.App. 320.
Ill.—Linquist v. Illinois Cent. R. Co., 126 N.E.2d 745, 6 Ill.App.2d 209.
Iowa.—Vance v. Grohe, 274 N.W. 902, 223 Iowa 1109, 116 A.L.R. 332.
Ky.—Smith v. Collins, 277 S.W.2d 38—Harris v. Morris, 259 S.W.2d 469—Coleman v. Hager, 208 S.W.2d 316, 307 Ky. 70—Jones v. Sharp's Adm'r, 139 S.W.2d 731, 282 Ky. 638, followed in Jones v. Vance, 139 S.W.2d 735, 282 Ky. 646—City of Catlettsburg v. Sutherland's Adm'r, 88 S.W.2d 19, 261 Ky. 535—Jefferson's Adm'x v. Baker, 22 S.W.2d 448, 232 Ky. 98.
Mich.—Jenks v. Ingham County, 286 N.W. 93, 288 Mich. 600—Ertzbischoff v. Smith, 282 N.W. 159, 286 Mich. 306.
Mo.—Carpenter v. Kurn, 136 S.W.2d 997, 345 Mo. 877.
Hall v. Baldwin, App., 90 S.W. 2d 146.
Neb.—Hackbart v. Rohrig, 287 N.W. 665, 136 Neb. 825.
N.Y.—Pfarr v. City of New York, 8 N.Y.S.2d 292, 255 App.Div. 495.
N.C.—Williamson v. Clay, 90 S.E.2d 727, 243 N.C. 337—Cox v. Hennis Freight Lines, 72 S.E.2d 25, 236 N.C. 72.

servant[19] or to a passenger;[20] for injuries or damage from operation of a railroad[21] or an automobile;[22] for libel for publication of defamatory state-

N.D.—Hausken v. Coman, 268 N.W. 430, 66 N.D. 633.
Ohio.—Senn v. Lackner, App., 100 N. E.2d 419, rehearing denied 100 N.E. 2d 432, 91 Ohio App. 83, affirmed 105 N.E.2d 49, 157 Ohio St. 206, and motion to certify sustained 107 N. E.2d 558, 91 Ohio App. 83—Thompson v. Kerr, App., 51 N.E.2d 742—Cincinnati St. Ry. Co. v. Keehan, 186 N.E. 812, 45 Ohio App. 75.
Tex.—Simpson v. Barham, Civ.App., 292 S.W.2d 874.
Va.—Marshall v. Shaw, 85 S.E.2d 223, 196 Va. 678.
W.Va.—Town of Nutter Fort ex rel. Queen v. Corbin, 193 S.E. 560, 119 W.Va. 324.
Wis.—Prange v. Rognstad, 236 N.W. 650, 205 Wis. 62.

19. Ark.—Bryant Truck Line v. Nance, 116 S.W.2d 1047, 196 Ark. 1177—Central Coal & Coke Co. v. Charles, 183 S.W. 969, 122 Ark. 401.
Cal.—Minehart v. Southern Pac. Co., 288 P.2d 999, 136 C.A.2d 486—Boucher v. American Bridge Co., 213 P.2d 537, 95 C.A.2d 659—Muskin v. Gerun, 116 P.2d 105, 46 C.A. 2d 404.
Idaho.—Clark v. Union Pac. R. Co., 211 P.2d 402, 70 Idaho 70.
Ill.—Thomas v. Chicago Embossing Co., 138 N.E. 285, 307 Ill. 134.
Kan.—Schaefer v. Lowden, 78 P.2d 48, 147 Kan. 520.
Ky.—Illinois Cent. R. Co. v. Wallis, 152 S.W.2d 288, 287 Ky. 88—Chesapeake & O. Ry. Co. v. Dixon, 280 S. W. 93, 212 Ky. 738—Elkhorn Coal Corporation v. Guttadora, 228 S.W. 420, 190 Ky. 770—Stearns Coal & Lumber Co. v. Williams, 186 S.W. 931, 171 Ky. 46.
Mo.—Frazier v. Ford Motor Co., 276 S.W.2d 95—Wilson v. Thompson, 133 S.W.2d 331, 345 Mo. 319.
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N.C.—Bame v. Palmer Stone Works, 59 S.E.2d 812, 232 N.C. 267—Richardson v. American Cotton Mills, 127 S.E. 834, 189 N.C. 653—Hauser v. Forsyth Furniture Co., 93 S.E. 961, 174 N.C. 463.
Okl.—Southwestern Bell Tel. Co. v. Ward, 193 P.2d 569, 200 Okl. 315.
Tex.—St. Louis, S. F. & T. Ry. Co. v. Green, Com.App., 37 S.W.2d 123.
Roscoe, S. & P. Ry. Co. v. Taylor, Civ.App., 191 S.W. 1175.

20. Cal.—Gigliotti v. Nunes, 286 P. 2d 809, 45 C.2d 85.
Dempsey v. Market St. Ry. Co., 179 P.2d 34, 79 C.A.2d 216—Forbes v. Los Angeles Ry. Corp., 160 P.2d 83, 69 C.A.2d 794—Yates v. J. H. Krumlinde & Co., 71 P.2d 298, 22 C.A.2d 387—Van Noy v. Frank, 51 P.2d 1166, 10 C.A.2d 423.
Colo.—Wilson v. Hill, 86 P.2d 1084, 103 Colo. 409.
Conn.—Ferino v. Palmer, 52 A.2d 433, 133 Conn. 463—Riley v. Connecticut Co., 29 A.2d 759, 129 Conn. 554—Miller v. Connecticut Co., 152 A. 879, 112 Conn. 476.
Ga.—Horne v. Neill, 29 S.E.2d 275, 70 Ga.App. 602, followed in 29 S.E. 2d 280, 70 Ga.App. 610.
Ill.—Williams v. Matlin, 66 N.E.2d 719, 328 Ill.App. 645.
Ky.—Reed v. Hostetler, 245 S.W.2d 953—Chesapeake & O. Ry. Co. v. Thompson, 270 S.W. 464, 208 Ky. 32.
Miss.—Meridian City Lines v. Baker, 39 So.2d 541, 206 Miss. 58, 8 A.L.R. 2d 854.
Mo.—Douglas v. St. Louis Public Service Co., 231 S.W.2d 157, 360 Mo. 869.
Leonard v. United Rys. Co. of St. Louis, App., 239 S.W. 892.
Neb.—Harding v. Hoffman, 62 N.W. 2d 333, 158 Neb. 86—Yorke v. Seddon, 299 N.W. 333, 140 Neb. 101.
N.H.—Legere v. Buinicky, 35 A.2d 508, 93 N.H. 71.
N.Y.—Hegeman v. Hegeman, 12 N. Y.S.2d 462, 257 App.Div. 852, reargument denied 14 N.Y.S.2d 159, 257 App.Div. 977.
Sewell v. Third Ave. Ry. Co., 59 N.Y.S.2d 677—Hessler v. New York Rys. Co., 167 N.Y.S. 863.
N.C.—Kolman v. Silbert, 12 S.E.2d 915, 219 N.C. 134—Robinson v. Standard Transp. Co., 199 S.E. 725, 214 N.C. 489.
Ohio.—Hartman v. Wooley, App., 115 N.E.2d 714—Reiser v. Cincinnati St. Ry. Co., 109 N.E.2d 284, 92 Ohio App. 24—Rice v. Cleveland Ry. Co., App., 56 N.E.2d 524.
Okl.—Riser v. Herr, 102 P.2d 178, 187 Okl. 211—Stillwater Milling Co. v. Templin, 77 P.2d 732, 182 Okl. 309.
Or.—Herzog v. Mittleman, 65 P.2d 384, 155 Or. 624, 109 A.L.R. 662.
Pa.—Finkelstein v. McClain, 200 A. 596, 331 Pa. 198.
Tenn.—Richards v. Parks, 93 S.W.2d 639, 19 Tenn.App. 615.
Va.—Selfe v. Hale, 69 S.E.2d 434, 193 Va. 543.
W.Va.—Koon v. Monongahela West Penn Public Service Co., 192 S.E. 332, 119 W.Va. 76—Rathbone v. Fort Pitt Bridge Works, 191 S.E. 578, 118 W.Va. 479.

21. Ala.—Seaboard Air Line Ry. v. Laney, 75 So. 15, 199 Ala. 654.
Ariz.—Bryan v. Southern Pac. Co., 286 P.2d 761, 79 Ariz. 253.
Fla.—Trabulsy v. Loftin, 76 So.2d 143.
Ill.—Grubb v. Illinois Terminal Co., 8 N.E.2d 934, 366 Ill. 330.
Minn.—Bryant v. Northern Pac. Ry. Co., 23 N.W.2d 174, 221 Minn. 577.
Mo.—Wolverton v. Kurn, App., 149 S.W.2d 62, reversed on other grounds 156 S.W.2d 638, 348 Mo. 908—Higgins v. Terminal R. Ass'n of St. Louis, 97 S.W.2d 892, 231 Mo.App. 837.
N.Y.—Baltimore & O. R. Co. v. Howard Sober, Inc., 93 N.Y.S.2d 617, 276 App.Div. 818, reargument denied 94 N.Y.S.2d 840, 276 App. Div. 944—Matutinovich v. New York Cent. R. Co., 169 N.Y.S. 350, 182 App.Div. 451.
N.C.—Meacham v. Southern Ry. Co., 197 S.E. 189, 213 N.C. 609.
Ohio.—Fink v. New York Cent. R. Co., App., 56 N.E.2d 931—Youngstown & S. Ry. Co. v. Prigosin, 4 N.E.2d 599, 53 Ohio App. 189—Kelting v. Chesapeake & O. R. Co., 199 N.E. 87, 50 Ohio App. 521.
Wis.—Haecker v. Chicago, M. & St. P. Ry. Co., 216 N.W. 528, 194 Wis. 358.

22. Ariz.—Trauscht v. Lamb, 270 P.2d 1071, 77 Ariz. 276.
Cal.—Gigliotti v. Nunes, 286 P.2d 809, 45 C.2d 85—Daniels v. City and County of San Francisco, 255 P.2d 785, 40 C.2d 614—Pope v. Halpern, 223 P. 470, 193 C. 168.
Hopkins v. Carter, 241 P.2d 1063, 109 C.A.2d 912—Fountain v. Bank of America Nat. Trust & Sav. Ass'n, 240 P.2d 414, 109 C.A.2d 90—Crawford v. Alioto, 233 P.2d 148, 105 C.A.2d 45—Burch v. Valley Motor Lines, 179 P.2d 47, 78 C.A. 2d 834—Milton v. Los Angeles Motor Coach Co., 128 P.2d 178, 53 C.A. 2d 566—Frates v. Ghirardi, 120 P. 2d 82, 48 C.A.2d 596—Varner v. Skov, 67 P.2d 123, 20 C.A.2d 232.
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Fla.—Kerr v. Caraway, 78 So.2d 571—Wawner v. Sellic Stone Studio, 74 So.2d 574.
Ga.—Camilla Cotton Oil Co. v. Cawley, 183 S.E. 134, 52 Ga.App. 268.
Idaho.—Elliott v. Lee, 229 P.2d 1000, 71 Idaho 242—Crossler v. Safeway Stores, 6 P.2d 151, 51 Idaho 413, 80 A.L.R. 463.
Ill.—Mann v. Matz, 103 N.E.2d 512, 345 Ill.App. 414—Curtis v. Kaderbek, 53 N.E.2d 277, 321 Ill.App. 471—Scott v. Vurdulas, 264 Ill. App. 495.
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Stavropoulos v. Owens, 93 N.E. 2d 212, 120 Ind.App. 562—Acme-Evans Co. v. Schnepf, 15 N.E.2d 742, 105 Ind.App. 475—Jones v. Bergman, 15 N.E.2d 740, 105 Ind. App. 429.

ments,[23] ejectment,[23.5] assault,[23.10] alienation of affections,[23.15] malpractice,[24] abandonment,[24.5] or false imprisonment;[25] for fraud;[26] for injuries to property,[27] as for injuries to a shipment of

Iowa.—Young v. Hendricks, 283 N. W. 895, 226 Iowa 211—Schelldorf v. Cherry, 264 N.W. 54, 220 Iowa 1101—Keller v. Gartin, 261 N.W. 776—Broderick v. Barry, 237 N.W. 481, 212 Iowa 672, 75 A.L.R. 1530.
Kan.—Dent v. Jefferson County Com'rs, 235 P. 873, 118 Kan. 519.
Ky.—Rogers v. Abbott, 240 S.W.2d 840—Crumbaugh v. Roberts, 217 S.W.2d 974, 309 Ky. 439—Wilburn v. Simons, 196 S.W.2d 356, 302 Ky. 752—Cheatham v. Chabal, 192 S. W.2d 812, 301 Ky. 616—Southern Oxygen Co. v. Martin, 163 S.W.2d 459, 291 Ky. 238—White v. Saunders, 158 S.W.2d 393, 289 Ky. 268.
Md.—Warner v. Markoe, 189 A. 260, 171 Md. 351.
Mass.—Caron v. Lynn Sand & Stone Co., 170 N.E. 77, 270 Mass. 340.
Mich.—Smith v. Maticka, 8 N.W.2d 900, 305 Mich. 32—De Forest v. Soules, 270 N.W. 785, 278 Mich. 557—Crookshank v. Henry Vroom & Son, 270 N.W. 181, 277 Mich. 672.
Minn.—Fisher v. Clarkson, 46 N.W. 2d 665, 233 Minn. 318—Schnore v. Baldwin, 14 N.W.2d 447, 217 Minn. 394.
Mo.—Adams v. Le Bow, 160 S.W.2d 826, 236 Mo.App. 899—Blech v. Berzon, App., 61 S.W.2d 201—Banker v. Wells, App., 274 S.W. 939—St. Louis Taxicab Co. v. Greenspon, App., 200 S.W. 680.
Mont.—Carey v. Guest, 258 P. 236, 78 Mont. 415.
Neb.—Gain v. Drennen, 69 N.W.2d 916, 160 Neb. 263—McGrath v. Nugent, 274 N.W. 549, 133 Neb. 237—Tenborg v. Dillie, 271 N.W. 689, 132 Neb. 203—Bergendahl v. Rabeler, 268 N.W. 459, 131 Neb. 538.
N.H.—Lynch v. Bissell, 116 A.2d 121, 99 N.H. 473—Nickerson v. Bentley, 6 A.2d 142, 89 N.H. 533.
N.J.—Paschel v. Hunter, 97 A. 40, 88 N.J.Law 445.
Kruschka v. Konvitz, 177 A. 839, 13 N.J.Misc. 299.
N.Y.—Mertz v. Connecticut Co., 112 N.E. 166, 217 N.Y. 475.
Friedman v. City of New York, 142 N.Y.S.2d 425, 286 App.Div. 881—O'Neill v. Mitchel Oil Corp., 136 N.Y.S.2d 277, 284 App.Div. 1067—Leonard v. Beach Lumber Co., 128 N.Y.S.2d 438, 283 App. Div. 848—Petoff v. Wilkins, 103 N.Y.S.2d 351, 278 App.Div. 748—Schloupt v. Cobb, 66 N.Y.S.2d 739, 271 App.Div. 418—Shea v. Danna, 62 N.Y.S.2d 81, 270 App.Div. 698—Booth v. City of Rochester, 15 N. Y.S.2d 945, 258 App.Div. 849—Letzter v. Ocean Electric Ry. Co., 182 N.Y.S. 649, 192 App.Div. 114.
Greenebaum v. Mendelsohn, 56 N.Y.S.2d 428—Bloom v. American Beauty Nail Polish Co., 19 N.Y.S. 2d 569, affirmed 26 N.Y.S.2d 317, 261 App.Div. 831.
N.C.—Aldridge v. Hasty, 82 S.E.2d 331, 240 N.C. 353—Stewart v. Yellow Cab Co., 36 S.E.2d 256, 225 N. C. 654—Yellow Cab Co. of Charlotte v. Sanders, 27 S.E.2d 631, 223 N.C. 626—Clarke v. Martin, 8 S. E.2d 230, 217 N.C. 440—Spencer v. Brown, 198 S.E. 630, 214 N.C. 114.
N.D.—Anderson v. Anderson, 285 N. W. 294, 69 N.D. 229—Hustad v. International Oil Co., 202 N.W. 814, 52 N.D. 343.
Ohio.—Stover v. Yoakum, App., 109 N.E.2d 877—Casanova v. Wagner, 88 N.E.2d 312, 85 Ohio App. 278.
Okl.—Subscribers at Casualty Reciprocal Exchange v. Sims, 293 P. 2d 578—Nichols v. Powell, 265 P. 2d 721—Fisher v. Sturgeon, 234 P.2d 375, 205 Okl. 44—Elam v. Beverly, 129 P.2d 838, 191 Okl. 375—McIntire v. Burns, 42 P.2d 143, 172 Okl. 152.
Or.—Senkirik v. Royce, 235 P.2d 886, 192 Or. 583.
S.C.—Wall v. Parker, 74 S.E.2d 418, 223 S.C. 79—Pruitte v. Machen, 53 S.E.2d 866, 215 S.C. 13.
Tex.—Tarry Warehouse & Storage Co. v. Duvall, 115 S.W.2d 401, 131 Tex. 466.
Gersdorf-Sloan Ambulance Service v. Kenty, Civ.App., 46 S.W.2d 469.
Vt.—Dawley v. Nelson, 63 A.2d 866, 115 Vt. 461.
Va.—Frazier v. Conner, 61 S.E.2d 880, 191 Va. 481.
Wash.—Brunner v. John, 274 P.2d 581, 45 Wash.2d 341—McKinney v. Preston Mill Co., 237 P.2d 788, 39 Wash.2d 681—Stubbs v. Allen, 10 P.2d 983, 168 Wash. 156.
Wis.—Jenks v. Hetzel, 285 N.W. 737, 231 Wis. 243—Benedict v. Berg, 281 N.W. 650, 229 Wis. 1—Bittner v. Miller, 270 N.W. 55, 223 Wis. 162.

23. Minn.—Knott v. Hawley, 203 N. W. 785, 163 Minn. 239.
Wis.—Lehner v. Berlin Pub. Co., 246 N.W. 579, 211 Wis. 119, 86 A.L.R. 1284.

23.5 Fla.—Robinson v. Town of Riviera, 25 So.2d 277, 157 Fla. 194.
Ga.—McDonald v. Taylor, 37 S.E.2d 336, 200 Ga. 445.

23.10 Okl.—Boston v. Muncy, 233 P.2d 300, 204 Okl. 603, 25 A.L.R.2d 1208.
Utah.—Webb v. Snow, 132 P.2d 114, 102 Utah 435.
W.Va.—State ex rel. Mullins v. McClung, 17 S.E.2d 621, 123 W.Va. 682.

23.15 Or.—McKinnon v. Chenoweth, 155 P.2d 944, 176 Or. 74.

24. Ala.—Jackson v. Burton, 147 So. 414, 226 Ala. 483.
Vt.—Domina v. Pratt, 13 A.2d 198, 111 Vt. 166, followed in 13 A.2d 204, 111 Vt. 178.

24.5 Ga.—Brock v. State, 187 S.E. 906, 54 Ga.App. 403.

25. Ala.—Loveman, Joseph & Loeb v. Hitt, 57 So.2d 553, 257 Ala. 45—J. J. Newberry Co. v. Smith, 149 So. 669, 227 Ala. 234.
Fla.—S. H. Kress & Co. v. Powell, 180 So. 757, 132 Fla. 471.
N.Y.—Marks v. Brasser, 280 N.Y.S. 435, 244 App.Div. 672.
Ohio.—Johnson v. Reddy, App., 120 N.E.2d 459, reversed on other grounds 126 N.E.2d 911, 163 Ohio St. 347.
Okl.—Swafford v. Vermillion, 261 P. 2d 187.
Tex.—Fort Worth Hotel Co. v. Waggoman, Civ.App., 126 S.W.2d 578, error dismissed, judgment correct.

26. Cal.—Rutherford v. Standard Engineering Corp., 199 P.2d 354, 88 C.A.2d 554.
Idaho.—Weitzel v. Jukich, 251 P.2d 542, 73 Idaho 301.
Mich.—Field v. Steiner, 231 N.W. 109, 250 Mich. 469.
N.M.—Armijo v. National Sur. Corp., 268 P.2d 339, 58 N.M. 166.
Ohio.—Herman v. Teplitz, 148 N.E. 641, 113 Ohio St. 164.
Steiner v. Roberts, App., 131 N. E.2d 238.
Wash.—Cheesman v. Sathre, 273 P. 2d 500, 45 Wash.2d 193.

27. Ala.—Aircraft Sales & Service v. Bramlett, 49 So.2d 144, 254 Ala. 588.
Idaho.—Yearsley v. City of Pocatello, 210 P.2d 795, 69 Idaho 500.
Md.—Adams v. Carey, 190 A. 815, 172 Md. 173.
Mo.—Ferguson v. Union Elec. Co. of Mo., 282 S.W.2d 505.
Fuchs v. Curran Carbonizing & Engineering Co., App., 279 S.W.2d 211.
Neb.—Cover v. Platte Val. Public Power and Irr. Dist., 75 N.W.2d 661, 162 Neb. 146.
N.C.—Calhoun v. State Highway and Public Works Commission, 181 S. E. 271, 208 N.C. 424.
N.D.—Kinnischtzke v. City of Glen Ullin, 57 N.W.2d 588, 79 N.D. 495—Reichert v. Northern Pac. Ry. Co., 167 N.W. 127, 39 N.D. 114.
Ohio.—Hirschauer v. Davis, 126 N.E. 2d 337, 163 Ohio St. 105.
Lytle v. Pennsylvania R. Co., 108 N.E.2d 72, 91 Ohio App. 232—Wheeling & L. E. Ry. Co. v. Hollywood Cartage Co., 93 N.E.2d 708, 86 Ohio App. 513—Breymann v. Pennsylvania, O. & D. R. Co., 183 N.E. 771, 43 Ohio App. 473.

goods or livestock,[28] or for trespass,[29] conversion,[30] or replevin;[31] to fix a boundary line;[31.5] or involving agents or brokers,[31.10] banks,[31.15] decedents' estates,[31.20] or landlords and tenants.[31.25]

So the judgment will be reversed for prejudicial error in refusing or failing to give instructions defining terms,[32] or instructions as to damages,[33] neg-

Okl.—Delaney v. Morris, 145 P.2d 936, 193 Okl. 589.
Tex.—Shellhammer v. Caruthers, Civ. App., 149 S.W.2d 124—Bowie Sewerage Co. v. Chandler, Civ.App., 116 S.W.2d 839.

28. Ky.—Louisville & N. R. Co. v. Gibson, 170 S.W.2d 907, 294 Ky. 55.
Mass.—Houle v. Lewonis, 140 N.E. 427, 245 Mass. 254.

29. S.C.—Holden v. Cantrell, 84 S. E. 826, 100 S.C. 265.

30. Fla.—Wilson Cypress Co. v. Logan, 162 So. 489, 120 Fla. 124.
Ohio.—E. H. Bardes Range & Foundry Co. v. Weaver, App., 44 N.E.2d 130.
Or.—J & J Lumber Co. v. Oregon Fir Lumber Co., 276 P.2d 394, 203 Or. 237.

31. Neb.—Securities Inv. Corp. v. Krejci, 271 N.W. 287, 132 Neb. 146.
Okl.—Cutshall v. Yates, 219 P. 343, 95 Okl. 277.

31.5 N.C.—Greer v. Hayes, 19 S.E.2d 232, 221 N.C. 141.

31.10 Ark.—Murphy v. Bradley, 138 S.W.2d 791, 200 Ark. 208, 128 A.L. R. 427.
Mo.—Ball v. Davis, App., 107 S.W.2d 87.
S.C.—Williams v. Texas Co., 24 S.E. 2d 873, 202 S.C. 333.

31.15 Ala.—Tarrant American Sav. Bank v. Smokeless Fuel Co., 172 So. 603, 233 Ala. 507.
Mo.—Brandt v. Farmers Bank of Chariton County, 182 S.W.2d 281, 353 Mo. 259.

31.20 Cal.—Herbert v. Lankershim, 71 P.2d 220, 9 C.2d 409.
Carlston v. Shenson, 117 P.2d 408, 47 C.A.2d 52.

31.25 Ala.—Longshore v. Maggio, 198 So. 619, 240 Ala. 275.
Ga.—Schloemer v. Teem, 88 S.E.2d 280, 92 Ga.App. 140.
Ill.—Wanamaker v. McIlvaine, 58 N. E.2d 334, 324 Ill.App. 527.
N.Y.—Aubry v. Ashland Realty Co., 7 N.Y.S.2d 127, 255 App.Div. 205.

32. Ga.—Atha v. Atha, 81 S.E.2d 454, 210 Ga. 540.
Tex.—St. Louis, S. F. & T. Ry. Co. v. Green, Com.App., 37 S.W.2d 123.
Texas Public Utilities Corp. v. Edwards, Civ.App., 99 S.W.2d 420, error dismissed—Panhandle & S. F. Ry. Co. v. Lawless, Civ.App., 80 S.W.2d 1109—Texas Pacific Coal & Oil Co. v. Stuard, Civ.App., 7 S.W. 2d 878—Alderete v. First Real Estate & Investment Co., Civ.App., 247 S.W. 620.

Particular terms

(1) "Contributory negligence."
N.J.—Kruscka v. Konvitz, 177 A. 839, 13 N.J.Misc. 299.

(2) "Developing."
Tex.—Hanover Co. v. Hines, Civ. App., 11 S.W.2d 621, affirmed Hines v. Hanover Co., Com.App., 23 S.W. 2d 289.

(3) "Directly and independently of all other causes."
Tex.—Washington Fidelity Nat. Ins. Co. v. Williams, Com.App., 49 S.W. 2d 1093.

(4) "Efficient cause," as used in a definition of "proximate cause."
Tex.—St. Louis, B. & M. Ry. Co. v. Edwards, Civ.App., 48 S.W.2d 360.

(5) "External, violent and accidental means."
Tex.—Washington Fidelity Nat. Ins. Co. v. Williams, supra.

(6) "Market value."
Tex.—Panhandle & S. F. Ry. Co. v. Burt, Civ.App., 50 S.W.2d 922.

(7) "Negligence."
N.J.—Kruscka v. Konvitz, 177 A. 839, 13 N.J.Misc. 299.

(8) "New and independent cause."
Tex.—Greer v. Thaman, Com.App., 55 S.W.2d 519.
Texas Public Utilities Corp. v. Edwards, Civ.App., 99 S.W.2d 420, error dismissed—Jones v. Gibson, Civ.App., 18 S.W.2d 744.

(9) "Personal bodily injuries."
Tex.—Washington Fidelity Nat. Ins. Co. v. Williams, Com.App., 49 S.W. 2d 1093.

(10) "Privity of estate."
Tex.—Overton Refining Co. v. Harmon, Civ.App., 81 S.W.2d 207, reversed on other grounds 109 S.W. 2d 457, 130 Tex. 365, amended 110 S.W.2d 555, 130 Tex. 365, affirmed 110 S.W.2d 555, 130 Tex. 365.

(11) "Proximate cause."
Neb.—Danielsen v. Eickhoff, 66 N.W. 2d 913, 159 Neb. 374—Wagner v. Watson Bros. Transfer Co., 259 N. W. 373, 128 Neb. 535.
N.J.—Kruscka v. Konvitz, 177 A. 839, 13 N.J.Misc. 299.

(12) "Proximate result."
Tex.—Dallas Ry. Co. v. Warlick, Com.App., 285 S.W. 302.

(13) "Reasonable cash market value."
Tex.—Tidal Western Oil Corporation v. Blair, Civ.App., 39 S.W.2d 1103.

(14) "Separate property."
Tex.—Speed v. Gilliland, Civ.App., 18 S.W.2d 762.

(15) "Tenancy at sufferance" and "tenancy at will."
Ga.—Salios v. Swift, 102 S.E. 869, 25 Ga.App. 96.

33. Ala.—Porter Coal Co. v. Davis, 165 So. 93, 231 Ala. 359—Tennessee Coal, Iron & R. Co. v. Franklin, 82 So. 563, 17 Ala.App. 115, certiorari denied Ex parte Franklin, 82 So. 893, 203 Ala. 697.
Woodward Iron Co. v. Hill, 79 So.2d 711, 38 Ala.App. 150, certiorari denied 79 So.2d 714, 262 Ala. 705.
Ariz.—Southern Pac. Co. v. Gastelum, 297 P. 875, 38 Ariz. 127.
Conn.—Sims v. Smith, 161 A. 239, 115 Conn. 279.
Ga.—City of Washington v. Harris, 86 S.E. 220, 144 Ga. 102.
Smith v. Payne, 70 S.E.2d 163, 85 Ga.App. 693—Atlantic Co. v. Taylor, 61 S.E.2d 204, 82 Ga.App. 361—Central Truckaway System v. Harrigan, 53 S.E.2d 186, 79 Ga.App. 117—City of Barnesville v. Parham, 160 S.E. 879, 44 Ga.App. 151—Tennessee, G. & A. R. Co. v. Neely, 103 S.E. 177, 25 Ga.App. 310.
Ill.—Lee v. Louisville & N. R. Co., 110 N.E.2d 691, 349 Ill.App. 276.
Ind.—Western Ind. Gravel Co. v. Opp, 99 N.E.2d 265, 121 Ind.App. 673.
Iowa.—Miller v. Economy Hog & Cattle Powder Co., 293 N.W. 4, 228 Iowa 626.
Ky.—Kentucky Utilities Co. v. Consolidated Tel. Co., 252 S.W.2d 437.
Minn.—Posch v. Payne, 186 N.W. 132, 151 Minn. 111.
Miss.—Kramer Service v. Wilkins, 186 So. 625, 184 Miss. 483.
Mo.—Stepham v. Chicago, B. & Q. R. Co., App., 199 S.W. 273.
Neb.—Benedict v. Eppley Hotel Co., 65 N.W.2d 224, 159 Neb. 23.
N.Y.—Kaplan v. Krauss, 271 N.Y.S. 13, 151 Misc. 123.
N.C.—Kee v. Dillingham, 49 S.E.2d 510, 229 N.C. 262.
Ohio.—Saberton v. Greenwald, 66 N. E.2d 224, 146 Ohio St. 414, 165 A. L.R. 599.
Okl.—Denver Producing & Refining Co. v. Bunch, 45 P.2d 117, 172 Okl. 209.
Pa.—Hockenberry v. New Castle Electric Co., 96 A. 1046, 251 Pa. 394.
Gentile v. Rothermel, Com.Pl., 4 Bucks Co. 61.
S.D.—Tufty v. Sioux Transit Co., 10 N.W.2d 767, 69 S.D. 368—Kerr v. Staufer, 217 N.W. 211, 52 S.D. 223.
Tex.—Fort Worth & Denver City Ry. Co. v. Bozeman, Civ.App., 135 S.W. 2d 275, error dismissed, judgment

ligence,[84] or contributory negligence.[85]

b. Harmless Error

A refusal of proper instructions is not ground for reversal where appellant is not prejudiced thereby.

Appellant cannot complain of the refusal of instructions where no prejudice resulted from such refusal,[86] as, for example, in those cases where the instruction requested by the appellant is already

correct—Gulf States Utilities Co. v. Dillon, Civ.App., 112 S.W.2d 752—Maytag Southwestern Co. v. Almonrode, Civ.App., 70 S.W.2d 358—Branton v. Robertson, Civ.App., 14 S.W.2d 887—Texas Pipe Line Co. v. Vaught, Civ.App., 294 S.W. 865.

Wis.—Diemel v. Weirich, 58 N.W.2d 651, 264 Wis. 265.

34. Ala.—Penton v. Favors, 78 So. 2d 278, 262 Ala. 262.

Cal.—Palmer v. Brown, 273 P.2d 306, 127 C.A.2d 44—Graf v. Garcia, 256 P.2d 995, 117 C.A.2d 792—Stickel v. Durfee, 199 P.2d 16, 88 C.A.2d 402.

Colo.—Union Pac. R. Co. v. Shupe, 280 P.2d 1115, 131 Colo. 271.

Ga.—Johnson v. Roberson, 77 S.E.2d 232, 88 Ga.App. 548—Central of Georgia Ry. Co. v. Cooley, 160 S.E. 812, 44 Ga.App. 118.

Idaho.—French v. Tebben, 27 P.2d 474, 53 Idaho 701.

Iowa.—La Sell v. Tri-States Theatre Corp., 11 N.W.2d 36, 233 Iowa 929.

Ky.—Jarboe v. Shane, 254 S.W.2d 695.

Mass.—Bell v. Dorchester Theatre Co., 31 N.E.2d 10, 308 Mass. 118.

Minn.—Hubbard v Montgomery Ward & Co., 21 N.W.2d 229, 221 Minn. 133.

Mo.—Yerger v. Smith, 89 S.W.2d 66, 338 Mo. 140.

Neb.—Tempero v. Adams, 44 N.W. 2d 604, 153 Neb. 331.

N.M.—Tuso v. Markey, 294 P.2d 1102, 61 N.M. 77.

N.Y.—Epstein v. Cohen, 43 N.E.2d 56, 288 N.Y. 307.

Lagana v. Westchester Elec. R. R., 97 N.Y.S.2d 263, 277 App.Div. 779, reargument denied 98 N.Y.S. 2d 219, 277 App.Div. 878.

Seitz v. Yates Lehigh Coal Co., 255 N.Y.S. 279, 142 Misc. 366.

Ohio.—Dixie Wholesale Grocery v. Baltimore & Ohio Warehouse Co., 28 N.E.2d 694, 64 Ohio App. 241.

Or.—Senkirik v. Royce, 235 P.2d 886, 192 Or. 583.

Utah.—Moore v. James, 297 P.2d 221, 5 Utah 2d 91.

W.Va.—Skaff v. Dodd, 44 S.E.2d 621, 130 W.Va. 540—Bragg v. C. I. Whitten Transfer Co., 26 S.E.2d 217, 125 W.Va. 722.

35. Ala.—Scott v. Louisville & N. R. Co., 115 So. 171, 217 Ala. 255.

Ark.—Hutson Motor Co. v. Lake, 80 S.W.2d 64, 190 Ark. 633.

Cal.—Weeks v. Raper, 294 P.2d 178, 139 C.A.2d 737.

Ga.—Atlantic Coast Line R. Co. v. Shed, 84 S.E.2d 212, 90 Ga.App. 766—Whatley v. Henry, 16 S.E.2d 214, 65 Ga.App. 668.

Ky.—Wootton v. Dixon, 228 S.W.2d 428, 312 Ky. 521—Louisville Baseball Club v. Butler, 160 S.W.2d 141, 289 Ky. 785.

Mass.—Jones v. New York, N. H. & H. R. Co., 175 N.E. 487, 275 Mass. 139.

Mo.—Savage v. Union Electric Light & Power Co., App., 86 S.W.2d 97.

Neb.—Becker v. Hasebroock, 59 N.W. 2d 560, 157 Neb. 353—Tite v. Omaha Coliseum Corp., 12 N.W.2d 90, 144 Neb. 22, 149 A.L.R. 1164.

N.Y.—Washburn v. Erie R. Co., 200 N.Y.S. 266.

Ohio.—Grass v. Ake, 93 N.E.2d 590, 154 Ohio St. 84—Cincinnati Traction Co. v. Young, 152 N.E. 666, 115 Ohio St. 160.

Kish v. City of Cleveland, App., 113 N.E.2d 397—Griffin v. City of Cincinnati, 111 N.E.2d 31, 92 Ohio App. 492—Martin Baking Co. v. Tompkinson, 161 N.E. 288, 27 Ohio App. 355.

Okl.—Blossom Heath Operating Co. v. Pipkin, 63 P.2d 982, 178 Okl. 617—Oklahoma Ry. Co. v. Milam, 147 P. 314, 45 Okl. 742.

Vt.—Roberts v. Gray, 122 A.2d 855, 119 Vt. 153.

Wash.—Schmidt v. Pelz, 87 P.2d 278, 198 Wash. 80.

W.Va.—Frampton v. Consolidated Bus Lines, 62 S.E.2d 126, 134 W. Va. 815.

36. Ala.—Little v. Sugg, 8 So.2d 866, 243 Ala. 196—Lyons v. Taylor, 166 So. 15, 231 Ala. 600—Nauvoo Black Creek Coal Co. v. Johnson, 160 So. 242—Atlanta Life Ins. Co. v. Ash, 153 So. 261, 228 Ala. 184—Central of Georgia Ry. Co. v. Hardman, 147 So. 670, 226 Ala. 515—St. Louis-San Francisco Ry. Co. v. Kimbrell, 145 So. 433, 226 Ala. 114—Southern Building & Loan Ass'n v. Davis, 135 So. 164, 223 Ala. 222—Morgan Hill Paving Co. v. Fonville, 130 So. 807, 222 Ala. 120—Strickland v. Davis, 128 So. 233, 221 Ala. 247—E. D. Lanford Co. v. Buck, 124 So. 418, 220 Ala. 190—Pennsey v. Warren, 115 So. 16, 217 Ala 120—Navco Hardwood Co. v. Bass, 108 So. 452, 214 Ala. 553—Aiken v. McMillan, 106 So. 150, 213 Ala. 494—Thomas Furnace Co. v. Carroll, 85 So. 455, 204 Ala. 263—Reynolds v. Trawick, 78 So. 827, 201 Ala. 449—Tyson & Arrington v. Thompson, 70 So. 649, 195 Ala. 230—Rhodes v. McWilson, 69 So. 69, 192 Ala. 675.

Johnson v. Pruitt, 194 So. 406, 29 Ala.App. 174, reversed on other grounds 194 So. 409, 239 Ala. 44—Elliott v. McCraney, 163 So. 814, 26 Ala.App. 565, reversed on other grounds 163 So. 819, 231 Ala. 50—Smith v. E. T. Davenport & Co., 68 So. 545, 12 Ala.App. 456.

Ariz.—City of Prescott v. Sumid, 247 P. 122, 30 Ariz. 347.

Ark.—Scott v. Columbia Compress Co., 249 S.W. 13, 157 Ark. 521—Walden v. Kirkland, 199 S.W. 385, 131 Ark. 466—St. Louis, I. M. & S. Ry. Co. v. Fitzhugh, 180 S.W. 490, 121 Ark. 633—Pankey v. Little Rock Ry. & Electric Co., 174 S.W. 1170, 117 Ark. 337.

Cal.—In re Walker's Estate, 181 P. 792, 180 C. 478.

Coe v. Kings County Truck Line, 293 P.2d 462, 139 C.A.2d 372—Kritzer v. Citron, 224 P.2d 808, 101 C. A.2d 33—Stark v. Yellow Cab Co., 202 P.2d 802, 90 C.A.2d 217—Wilson v. Loustalot, 193 P.2d 127, 85 C.A.2d 316—Dodds v. Stellar, 175 P.2d 607, 77 C.A.2d 411—Huber v. Henry J. Kaiser Co., 162 P.2d 693, 71 C.A.2d 278—Rivera v. Goodenough, 162 P.2d 498, 71 C.A.2d 223—Van Rennes v. Southern Counties Gas Co. of California, 124 P. 2d 350, 51 C.A.2d 228—Scott v. George A. Fuller Co., 107 P.2d 55, 41 C.A.2d 501—Dowdall v. Gilmore Oil Co., 62 P.2d 1051, 18 C.A.2d 1—Collins v. Welsh, 37 P.2d 505, 2 C. A.2d 103—Colwell v. Gardner, 14 P.2d 825, 126 C.A. 403—Weintraub v. Soronow, 1 P.2d 28, 115 C.A. 145—Parra v. Cleaver, 294 P. 6, 110 C.A. 168—Blackwell v. American Film Co., 192 P. 189, 48 C.A. 681.

Colo.—Brown v. Schoonover, 260 P. 101, 82 Colo. 351.

Conn.—Reynolds v. Land Mortgage & Title Co., 159 A. 282, 114 Conn. 447—Sullivan v. Clear, 127 A. 14, 101 Conn. 603.

Fla.—Edwards v. Doherty, 74 So.2d 686—Maule Ojus Rock Co. v. Lumpkin, 151 So. 505, 113 Fla. 195—City of Jacksonville v. Vaughn, 110 So. 529, 92 Fla. 339—First Nat. Bank v. Roberts, 109 So. 635, 92 Fla. 18—Seaboard Air Line Ry. v. Callan, 74 So. 799, 73 Fla. 688—Atlantic Coast Line R. Co. v. Holliday, 74 So. 479, 73 Fla. 269.

Ga.—Farmers' State Bank v. Kelley, 144 S.E. 258, 166 Ga. 683—Piemmons v. Sharp, 119 S.E. 532, 156 Ga. 571.

Lassiter v. Poss, 70 S.E.2d 411, 85 Ga.App. 785—Reliable Transfer Co. v. Gabriel, 65 S.E.2d 679, 84 Ga.App. 54—Atlantic Coast Line R. Co. v. Brown, 62 S.E.2d 736, 82 Ga. App. 889—American Fidelity & Cas. Co. v. Farmer, 48 S.E.2d 141, 77 Ga.App. 192—Harris v. Berry,

App., 174 S.E. 813, 49 Ga.App. 235—Maryland Casualty Co. v. Salmon, 164 S.E. 80, 45 Ga.App. 173—Union Fire Ins. Co. of Paris, France v. Stone, 152 S.E. 146, 41 Ga.App. 49.

Idaho.—French v. Tebben, 27 P.2d 474, 53 Idaho 701.

Ill.—Clarke v. Storchak, 52 N.E.2d 229, 384 Ill. 564, appeal dismissed 64 S.Ct. 1270, 322 U.S. 713, 88 L.Ed. 1555—Daly v. New Staunton Coal Co., 117 N.E. 413, 280 Ill. 175—Korn v. Chicago Rys. Co., 111 N.E. 85, 271 Ill. 329.

Campbell v. Ragel, 129 N.E.2d 451, 7 Ill.App.2d 301—Jendresak v. Metropolitan Life Ins. Co., 70 N.E.2d 863, 330 Ill.App. 157—Hunt v. Illinois Southern Ry. Co., 196 Ill.App. 539—Stewart v. Clark, 194 Ill.App. 2—Wing v. Smith, 190 Ill.App. 275—Jacobson v. Patterson, 190 Ill.App. 266—Nelson v. City of Rockford, 186 Ill.App. 288—Boyle v. Chicago & E. I. R. Co., 184 Ill.App. 387. See Pryde v. Chicago-Sandoval Coal Co., 210 Ill.App. 615—Schimanski v. Chicago Rys. Co., 205 Ill.App. 364—Hinton v. Muhlman, 201 Ill.App. 177—H. Albrecht & Co. v. Massing, 199 Ill.App. 182—Kleet v. Southern Illinois Coal & Coke Co., 197 Ill.App. 243—Salerno v. Missouri & Illinois Coal Co., 188 Ill.App. 343—Henderson v. Blakesley, 186 Ill.App. 356—Monahan v. Chicago City Ry. Co., 185 Ill.App. 207.

Ind.—Jones v. Bergman, 15 N.E.2d 740, 105 Ind.App. 429—Union City v. Fisher, 173 N.E. 330, 91 Ind.App. 672—Seaver v. Vonderahe, 127 N.E. 206, 74 Ind.App. 631—Metropolitan Life Ins. Co. v. Wathen, 124 N.E. 403, 71 Ind.App. 145—Evansville, Mt. C. & N. Ry. Co. v. Scott, 114 N.E. 649, 67 Ind.App. 121—Miller v. Coulter, 107 N.E. 14, 57 Ind.App. 295.

Iowa.—In re Smith's Will, 60 N.W.2d 866, 245 Iowa 38—Orwig v. Chicago, R. I. & P. Ry. Co., 250 N.W. 148, 217 Iowa 521, 90 A.L.R. 258—Hart v. Hinkley, 247 N.W. 258, 215 Iowa 915—Bell v. Fisher, 168 N.W. 109, 183 Iowa 1208—Strasberger v. Farmers' Elevator Co., 167 N.W. 184, 184 Iowa 66.

Kan.—Grannell v. Wakefield, 242 P.2d 1075, 172 Kan. 685—Stecher v. London Guarantee & Accident Co., Limited, of London, England, 298 P. 754, 133 Kan. 89—Muenzenmayer v. Hay, 159 P. 1, 98 Kan. 538—Christian v. Union Traction Co., 154 P. 271, 97 Kan. 46—Hovis v. Cudahy Refining Co., 148 P. 626, 95 Kan. 505.

Ky.—Deupree v. Walker, 72 S.W.2d 732, 255 Ky. 30—Wallis v. Illinois Cent. R. Co., 56 S.W.2d 715, 247 Ky. 70—Pope-Cawood Lumber & Supply Co. v. Cleet, 33 S.W.2d 360, 236 Ky. 366—Chesapeake & O. Ry. Co. v. Stephens, 32 S.W.2d 993, 236 Ky. 232—Lieberman v. McLaughlin, 26 S.W.2d 753, 233 Ky. 763—Louisville & N. R. Co. v. E. H. Taylor & Sons, 6 S.W.2d 237, 224 Ky. 303—Berry v. Irwin, 295 S.W. 1020, 220 Ky. 708—Carter Coal Co. v. Love, 190 S.W. 481, 173 Ky. 49—Sellars v. Jones, 175 S.W. 1002, 164 Ky. 458—Hough & Spradlin Co. v. Moreland's Adm'x, 169 S.W. 467, 159 Ky. 722.

Me.—Cunningham v. Long, 135 A. 198, 125 Me. 494.

Md.—James L. Kernan Co. v. Cook, 159 A. 256, 162 Md. 137.

Mass.—Morrison v. Medaglia, 191 N.E. 133, 287 Mass. 46—Raymond Syndicate v. American Radio & Research Corporation, 160 S.E. 821, 263 Mass. 147—Short v. Farmer, 156 N.E. 735, 260 Mass. 102—Hines v. Eastern S. S. Lines, 139 N.E. 823, 245 Mass. 385—Treeful v. Mills, 125 N.E. 183, 234 Mass. 141—Viking Mfg. Co. v. Smith, 114 N.E. 863, 226 Mass. 10.

Mich.—Dallas v. Garras, 10 N.W.2d 897, 306 Mich. 313—Mazzolini v. Kalamazoo County, 199 N.W. 648, 228 Mich. 59.

Minn.—Hayday v. Hammermill Paper Co., 237 N.W. 600, 184 Minn. 8—Johnson v. Minnesota Farmers' Mut. Ins. Co., 150 N.W. 174, 128 Minn. 1.

Miss.—Jones v. Griffin, 126 So. 35, 157 Miss. 256.

Mo.—Arnold v. May Department Stores Co., 85 S.W.2d 748, 337 Mo. 727—Kelso v. W. A. Ross Const. Co., 85 S.W.2d 527, 337 Mo. 202—Rockenstein v. Rogers, 31 S.W.2d 792, 326 Mo. 968—Keyes v. Chicago, B. & Q. R. Co., 31 S.W.2d 50, 326 Mo. 236—Irwin v. St. Louis-San Francisco Ry. Co., 30 S.W.2d 56, 325 Mo. 1019—Landau v. Travelers' Ins. Co., 287 S.W. 346, 315 Mo. 760—Hoyt v. Kansas City Stockyards of Missouri, 188 S.W. 106.

Lyons v. St. Joseph Belt Ry. Co., App., 84 S.W.2d 933, certiorari quashed State ex rel. St. Joseph Belt Ry. Co. v. Shain, 108 S.W.2d 351, 341 Mo. 733—Carrow ex rel. Gross v. Pinnell, App., 44 S.W.2d 884—Marquis v. Goldberg, App., 34 S.W.2d 549—Tucker v. Hagan, App., 300 S.W. 301—Fink v. Gregg Realty Co., App., 296 S.W. 838—Hoffman v. Philip A. Rohan Boat, Boiler & Tank Co., App., 294 S.W. 758—Agee v. Missouri Pac. R. Co., App., 288 S.W. 992—Biskup v. Hoffman, 287 S.W. 865, 220 Mo.App. 542—Morton Electric Co. v. Schramm, App., 277 S.W. 368—Jablonowski v. Modern Cap Mfg. Co., App., 251 S.W. 477, affirmed 279 S.W. 89—Carroll v. Wiggains, App., 199 S.W. 280—Daniels v. McDaniels, 171 S.W. 14, 184 Mo.App. 354.

Mont.—Northern Mont. Mustard Growers Coop. v. Britton, 280 P.2d 1078, 128 Mont. 553.

Neb.—Klinginsmith v. Allen, 53 N.W.2d 77, 155 Neb. 674—In re Noren's Estate, 230 N.W. 495, 119 Neb. 653—Aten v. Quantock, 199 N.W. 551, 112 Neb. 288—Murray v. Bailey, 193 N.W. 259, 110 Neb. 114—Prairie Life Ins. Co. v. Heptonstall, 182 N.W. 483, 105 Neb. 829.

N.J.—Levin v. National Ben Franklin Ins. Co., 140 A. 461, 104 N.J.Law 316.

Clark v. Chaisson, 145 A. 226, 7 N.J.Misc. 269.

N.Y.—Powell v. Freeport Bank, 193 N.Y.S. 100, 200 App.Div. 432.

Ludins v. Metropolitan Life Ins. Co., 117 N.Y.S. 156.

N.C.—Richardson v. J. M. Edmunds Co., 183 S.E. 286, 209 N.C. 837—Maxwell v. Proctor & Gamble Distributing Co., 168 S.E. 403, 204 N.C. 309—Anthony v. Poag, 85 S.E. 131, 169 N.C. 250.

Ohio.—Boviard & Seyfang Mfg. Co. v. Maitland, 110 N.E. 749, 92 Ohio St. 201.

Gibbons v. Baltimore & O. R. Co., 109 N.E.2d 511, 92 Ohio App. 87—Scott v. Cismadi, 74 N.E.2d 563, 80 Ohio App. 39—A. Macaluso Fruit Co. v. Commercial Motor Freight, App., 57 N.E.2d 692—Beierla v. Hockenedel, 157 N.E. 573, 25 Ohio App. 186.

Okl.—City of Tulsa v. Pearson, 296 P.2d 788—McCarty v. Occidental Life Ins. Co. of Cal., 268 P.2d 221—Mattingly v. Sisler, 175 P.2d 796, 198 Okl. 107—Larkins-Warr Trust v. Watchorn Petroleum Co., 174 P.2d 589, 198 Okl. 12—**Corpus Juris Secundum quoted in** Key v. British American Oil Producing Co., 167 P.2d 657, 663, 196 Okl. 663—Keahey v. Craig, 96 P.2d 521, 186 Okl. 162—Maynard v. Hustead, 90 P.2d 30, 185 Okl. 20—Defiance Oils v. Hardzog, 61 P.2d 572, 178 Okl. 6—Pittsburg County Ry. Co. v. Palmer, 230 P. 256, 104 Okl. 65—Sand Springs Ry. Co. v. Westhafer, 218 P. 525, 92 Okl. 89—Hub-Wyoming Oil Co. v. Watts, 214 P. 193, 89 Okl. 133—Chowning v. Ledbetter, 208 P. 829, 86 Okl. 269—New v. Hughes, 194 P. 1071, 80 Okl. 129.

Or.—Curtis v. Keller, 298 P. 196, 136 Or. 67—Rekdahl v. Cheney, 293 P. 412, 134 Or. 251—Kitchel v. Gallagher, 270 P. 488, 126 Or. 373—Miami Quarry Co. v. Seaborg Packing Co., 204 P. 492, 103 Or. 362—Hotel Marion Co. v. Waters, 150 P. 865, 77 Or. 426.

Pa.—Lippincott v. Warren Apartment Co., 167 A. 590, 312 Pa. 480—Weller v. Davis, 91 A. 664, 245 Pa. 280.

S.C.—Veronee v. Charleston Consol. Ry. & Lighting Co., 149 S.E. 753, 152 S.C. 178—Calhoun v. Anderson, 146 S.E. 245, 148 S.C. 392—Fitchette v. Sumter Hardwood Co., 142 S.E. 828, 145 S.C. 53—Clary v. Bonnett, 103 S.E. 779, 114 S.C. 452—Koennecke v. Seaboard Air Line Ry., 85 S.E. 374, 101 S.C. 86, affirmed Seaboard Air Line Ry. v. Koennecke,

fully or adequately covered by the charge giv- | en,[37] where appellant was not entitled to recov-

36 S.Ct. 126, 239 U.S. 352, 60 L.Ed. 324.

S.D.—Atlas Lumber Co. v. Steichen, 220 N.W. 497, 53 S.D. 297—Reinhard Bros. Co. v. Swanson, 207 N. W. 102, 49 S.D. 256.

Tenn.—Gulf Compress Co. v. Insurance Co. of Pennsylvania, 167 S.W. 859, 129 Tenn. 586.

Stroud v. State, 279 S.W.2d 82, 38 Tenn.App. 654—DeRossett v. Malone, 239 S.W.2d 366, 34 Tenn.App. 451—Llewellyn v. City of Knoxville, 232 S.W.2d 568, 33 Tenn.App. 632—Hoover Lines v. Whitaker, 120 S.W.2d 983, 22 Tenn.App. 223.

Tex.—McMurrey Corp. v. Shell Oil Co., Civ.App., 173 S.W.2d 354, error refused—Toole v. Christ Church, Houston, Civ.App., 141 S. W.2d 720, error refused—Continental Ins. Co. of New York v. Guerson, Civ.App., 93 S.W.2d 591—Pure Oil Co. v. Pope, Civ.App., 75 S.W. 2d 175—Quanah, A. & P. Ry. Co. v. Eblen, Civ.App., 55 S.W.2d 1060—Rust v. Page, Civ.App., 52 S.W.2d 937—Bacon v. Central Life Assur. Soc., Civ.App., 17 S.W.2d 108—Graham-Brown Shoe Co. v. Snodgrass, Civ.App., 257 S.W. 632—Texas Co. v. Burkett, Civ.App., 255 S.W. 763, affirmed 296 S.W. 273, 117 Tex. 16, 54 A.L.R. 1397—Buchanan v. Williams, Civ.App., 225 S.W. 59—Western Union Telegraph Co. v. McGaughey, Civ.App., 198 S.W. 1084, modified on other grounds 198 S.W. 1174, error refused—Wentzell v. Chester, Civ.App., 189 S.W. 304, error refused—Condit v. Galveston City Co., Civ.App., 186 S.W. 395, error refused—Kolp v. S. F. Scattergood & Co., Civ.App., 185 S.W. 329—Houston, E. & W. T. Ry. Co. v. Hooper, Civ.App., 184 S.W. 347, error refused—Cleburne St. Ry. Co. v. Barber, Civ.App., 180 S.W. 1176—International & G. N. Ry. Co. v. Bartek, Civ.App., 177 S.W. 137, affirmed, Com.App., 213 S.W. 602—McKinney Ice, Light & Coal Co. v. Montgomery, Civ.App., 176 S.W. 767—Atchison, T. & S. F. Ry. Co. v. Hill, Civ.App., 171 S.W. 1028—Cleburne St. Ry. Co. v. Barnes, Civ.App., 168 S.W. 991—Funk v. House, Civ.App., 168 S.W. 481.

Utah.—In re Richards' Estate, 297 P.2d 542, 5 Utah 2d 106, certiorari denied Parker v. Howell, 77 S.Ct. 265, 352 U.S. 943, 1 L.Ed.2d 238, rehearing denied 77 S.Ct. 381, 352 U.S. 982, 1 L.Ed.2d 366—Schubach v. American Surety Co. of New York, 273 P. 974, 73 Utah 332.

Vt.—Proulx v. Parrow, 56 A.2d 623, 115 Vt. 232.

Va.—Ratcliffe v. Walker, 85 S.E. 575, 117 Va. 569, Ann.Cas.1917E 1022.

Wash.—McAbee v. French, 274 P. 713, 150 Wash. 646—Kilgren v. Seattle Leasehold Co., 252 P. 540, 142 Wash. 101—Osborn v. City of Seattle, 252 P. 164, 142 Wash. 25—Kayser v. Foster, 244 P. 708, 138 Wash. 484—Laing v. First Nat. Bank, 244 P. 679, 138 Wash. 227—Fleming v. Red Top Cab Co., 233 P. 639, 133 Wash. 338—Jensen v. Lawrence, 162 P. 40, 94 Wash. 148, reheard 166 P. 793, 97 Wash. 700—Cranford v. O'Shea, 145 P. 579, 83 Wash. 508, Ann.Cas.1916C 1081.

W.Va.—Bank of Greenville v. S. T. Lowry & Co., 94 S.E. 985, 81 W. Va. 578—Phenix Fire Ins. Co. v. Virginia-Western Power Co., 94 S. E. 372, 81 W.Va. 298.

Wis.—Markgraf v. Columbia Bank of Lodi, 233 N.W. 782, 203 Wis. 429—Klitzke v. Davis, 179 N.W. 586, 172 Wis. 425—Sobek v. George H. Smith Steel Casting Co., 149 N.W. 152, 158 Wis. 517.

Wyo.—**Corpus Juris Secundum quoted in** Glover v. Berger, 263 P.2d 498, 511, 72 Wyo. 221.

4 C.J. p 1048 note 76—33 C.J. p 655 note 71 [a] (4)—37 C.J. p 1260 note 61—51 C.J. p 285 note 13—57 C.J. p 41 note 26—62 C.J. p 224 note 66.

Refusal to give "belief" charges not prejudicial

Ala.—Firestone Tire & Rubber Co. v. Nixon, 87 So.2d 829, 264 Ala. 433—Herrington v. Hudson, 80 So. 2d 519, 262 Ala. 510—Walker v. Bowling, 72 So.2d 841, 261 Ala. 46.

Republic Steel Corp. v. Gilbert, 83 So.2d 370, 38 Ala.App. 227, certiorari denied 83 So.2d 374, 263 Ala. 700—Trammell v. Robinson, 37 So.2d 142, 34 Ala.App. 91—Allen v. Wilson, 32 So.2d 380, 33 Ala.App. 261.

Argumentative and abstract instructions

Refusal of argumentative and abstract instructions, stating correct principles, but not the result of such principles on the jury's findings of fact is not reversible error.

Ala.—Johnson v. Louisville & N. R. Co., 127 So. 216, 220 Ala. 649.

Failure to mark "Refused"

Where appellant's requested instruction was erroneous, and there was no dispute that the trial court refused it, appellant was not injured because the court failed to mark it "Refused," as provided by statute.

Ariz.—Red Rover Copper Co. v. Hillis, 185 P. 641, 21 Ariz. 87, rehearing denied 187 P. 576, 21 Ariz. 258.

Refusing time to prepare

The refusal of the court to give a party a reasonable time within which to prepare instructions which he thought he was entitled to, was harmless, where any instructions which the party desired to prepare were not proper.

Ky.—Miller v. Barnes, 205 S.W. 549, 181 Ky. 473.

Proper instruction

The fact that a requested instruction was one which the court might appropriately have given does not of itself establish that it was prejudicial error to refuse such instruction.

Fla.—First Nat. Bank v. Roberts, 109 So. 635, 92 Fla. 18.

Mo.—Hoffman v. Philip A. Rohan Boat, Boiler & Tank Co., App., 294 S.W. 758—Jeffries v. Walsh Fire Clay Products Co., App., 233 S.W. 259.

Nondirection

Failure of plaintiff to request, and of the court to give, instructions for plaintiff other than on the measure of damages constitutes nondirection and is not error prejudicial to defendant.

Mo.—Rose v. Missouri District Telegraph Co., 43 S.W.2d 562, 328 Mo. 1009, 81 A.L.R. 400.

Miller v. W. E. Callahan Const. Co., App., 46 S.W.2d 948—Equity Elevator Co. v. Union Pac. R. Co., App., 191 S.W. 1067.

Finding demanded as a matter of law

In action on life policy where a finding was demanded as a matter of law under the evidence that plaintiff had an insurable interest in life of insured, who was her stepson, failure to charge jury on law of insurable interest was not prejudicial error.

Ga.—National Life & Accident Ins. Co. v. Parker, 19 S.E.2d 409, 67 Ga. App. 1.

37. Cal.—Atherley v. MacDonald, Young & Nelson, Inc., 298 P.2d 700, 142 C.A.2d 575—Hartshorne v. Avery, 279 P.2d 123, 130 C.A.2d 517—Sykes v. City of Los Angeles, 241 P.2d 1004, 110 C.A.2d 57.

Conn.—Markiavicus v. L. E. Bunnell Transp. Co., 175 A. 914, 119 Conn. 310—Morgan v. Marchesseault, 169 A. 609, 117 Conn. 607.

Ga.—Equitable Credit Corp. v. Johnson, 72 S.E.2d 816, 86 Ga.App. 844—Zugar v. Crystal Springs Bleachery, 32 S.E.2d 414, 71 Ga.App. 821—Kaiser v. Simmons, 183 S.E. 343, 52 Ga.App. 355.

Ill.—Reinmueller v. Chicago Motor Coach Co., 93 N.E.2d 120, 341 Ill. App. 178. See Keithley v. City of Peoria, 193 Ill.App. 167.

Ind.—Neuwelt v. Roush, 85 N.E.2d 506, 119 Ind.App. 481—Jones v. Bergman, 15 N.E.2d 740, 105 Ind. App. 429—Klitzke v. Smith, 109 N.E. 412, 59 Ind.App. 461.

Kan.—Laughlin Motors v. Universal C. I. T. Credit Corp., 251 P.2d 857, 173 Kan. 600.

er,[37.5] where the case should not have been submitted to the jury,[37.10] where the issues presented by the requested instructions were eliminated by the court in favor of appellants,[37.15] or where the court gave the charge after its attention was called to the omission.[38]

Likewise there is no prejudice requiring a reversal where the instruction would not have been of any practical value to,[39] or would have confused or misled,[39.5] the jury, where the instruction consisted merely of factual comment,[39.10] where the instructions, if given, would not have changed the verdict,[40] or where there is only a remote possibility that the result would have been changed by the giving of the instruction.[41]

There is no prejudice requiring reversal where the instruction was against appellant's interest,[42] where special questions were submitted to the jury, which fully covered the matter contained in the instruction refused,[43] where there was no evidence on which to base the instruction,[44] where the instruc-

Ky.—Domestic Life & Accident Ins. Co. v. Smith, 82 S.W.2d 293, 259 Ky. 158.
Mass.—New England Novelty Co. v. Sandberg, 54 N.E.2d 915, 315 Mass. 739, certiorari denied 65 S.Ct. 63, 323 U.S. 740, 89 L.Ed. 593, rehearing denied 65 S.Ct. 128, 323 U.S. 815, 89 L.Ed. 648—Short v. Farmer, 156 N.E. 735, 260 Mass. 102.
Mich.—Collins v. Perry, 217 N.W. 32, 241 Mich. 361.
Miss.—Tipps Tool Co. v. Holifield, 67 So.2d 609, 218 Miss. 670.
Mo.—Cassin v. Lusk, 210 S.W. 902, 277 Mo. 663.
Fleetwood v. Milwaukee Mechanics Ins. Co., App., 220 S.W.2d 614—Phillips v. American Car & Foundry Co., App., 287 S.W. 810.
Ohio.—Cottman v. Federman Co., 47 N.E.2d 1009, 71 Ohio App. 89.
Okl.—Hartford Fire Ins. Co. v. Clark, 238 P.2d 327, 205 Okl. 416.
Pa.—Skovran v. Pritz, 126 A.2d 456, 386 Pa. 425.
S.C.—Duncan v. Union-Buffalo Mills Co., 96 S.E. 522, 110 S.C. 302.
Tex.—Texas Employers' Ins. Ass'n v. Hilderbrandt, Civ.App., 80 S.W. 2d 1031—King v. Shawver, Civ. App., 30 S.W.2d 930—North American Accident Ins. Co. v. Miller, Civ.App., 193 S.W. 750, error refused—Cleburne St. Ry. Co. v. Barnes, Civ.App., 168 S.W. 991.
Utah.—Hardman v. Thurman, 239 P. 2d 215, 121 Utah 143.
Va.—Nelson v. Dayton, 36 S.E.2d 535, 184 Va. 754—Norfolk & W. Ry. Co. v. James, 136 S.E. 660, 147 Va. 178—E. I. Du Pont de Nemours & Co. v. Snead's Adm'r, 97 S.E. 812, 124 Va. 177.
Wash.—Blasick v. City of Yakima, 274 P.2d 122, 45 Wash.2d 309.
W.Va.—Davis v. Sargent, 78 S.E.2d 217, 138 W.Va. 861.
Wyo.—**Corpus Juris Secundum** quoted in Glover v. Berger, 263 P.2d 498, 511, 72 Wyo. 221.
3 C.J. p 163 note 24—9 C.J. p 870 notes 2, 3—45 C.J. p 1371 note 11 [a].

Withdrawal of instruction

Anything which promotes or encourages brevity in the records of courts is to be encouraged, and hence, where the court, as requested, in its first and second instruction defined preponderance of the evidence in the same language, but later withdrew instruction No. 1, the avoidance of such repetition of definition was not reversible error as against a contention that the withdrawal of the instruction prejudicially affected the minds of the jury.
Mo.—La Hue v. Bungenstock, 249 S.W. 402, 297 Mo. 577.

Striking part of instruction

Where plaintiff in error admitted that the act of the court in striking part of an instruction offered by him left the substance practically intact, the error, if any, was harmless.
Va.—Deitz v. High, 109 S.E. 215, 131 Va. 7.

37.5 Ill.—Feeley v. McAuliffe, 80 N. E.2d 373, 335 Ill.App. 99.
Neb.—Nielsen v. Yellow Cab & Baggage Co., 265 N.W. 420, 130 Neb. 457.
Okl.—Garrett v. Kennedy, 145 P.2d 407, 193 Okl. 605.
Wyo.—Boyce v. Northern Utilities Co., 297 P.2d 820, 75 Wyo. 500.

37.10 Or.—Brown v. Gessler, 230 P. 2d 541, 191 Or. 503, 23 A.L.R.2d 815.
Tenn.—Home Stores v. Parker, 166 S.W.2d 619, 179 Tenn. 372.
Wash.—Watson v. Northern Pac. R. Co., 223 P.2d 1057, 37 Wash.2d 374.

37.15 Ky.—Bullock v. Gay, 177 S.W. 2d 883, 296 Ky. 489.

38. N.J.—Vitolo v. Nicotera Loan Co., 160 A. 89, 10 N.J.Misc. 624.
Ohio.—Eckroate v. Bauders, 180 N. E. 76, 41 Ohio App. 361.

39. Kan.—Grannell v. Wakefield, 242 P.2d 1075, 172 Kan. 685.
Tex.—Kansas City, M. & O. Ry. Co. of Texas v. Oates, Civ.App., 185 S.W. 1014.

39.5 Ohio.—Withrow v. Waldman, App., 132 N.E.2d 782.
W.Va.—Mulroy v. Co-operative Transit Co., 95 S.E.2d 63.

39.10 N.J.—Clayton v. Clayton, 17 A.2d 496, 125 N.J.Law 537, affirmed 23 A.2d 560, 127 N.J.Law 605.

40. Ala.—Rhodes v. McWilson, 69 So. 69, 192 Ala 675.
Cal.—Horrell v. Santa Fe Tank & Tower Co., 254 P.2d 893, 117 C.A. 2d 114—Jensen v. Hansen, 55 P. 2d 1201, 12 C.A.2d 678—Benussi v. Hannah, 199 P. 1063, 53 C.A. 243.
Ill.—Budds v. Keeshin Motor Exp. Co., 61 N.E.2d 579, 326 Ill.App. 59.
Ky.—Worsham Bros. v. Worley, 295 S.W. 981, 220 Ky. 682.
Me.—Rogers v. Biddeford & Saco Coal Co., 16 A.2d 131, 137 Me. 166.
Miss.—C. L. Gray Lumber Co. v. Pickard, 71 So.2d 211, 220 Miss. 419.
N.C.—Lloyd v. Southern Ry. Co., 81 S.E. 1003, 166 N.C. 24.
Tex.—Cameron v. First Nat. Bank, Civ.App., 194 S.W. 469, error refused—San Antonio, U. & G. R. Co. v. Galbreath, Civ.App., 185 S. W. 901, error refused.
Wash.—National Bank of Commerce of Seattle v. Lutheran Broth., 246 P.2d 843, 40 Wash.2d 790.
W.Va.—Pritt v. West Virginia Northern R. Co., 51 S.E.2d 105, 132 W.Va. 184, 6 A.L.R.2d 562, certiorari denied West Virginia Northern R. Co. v. Pritt, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113.
4 C.J. p 1049 note 77—45 C.J. p 1371 note 11 [b].

41. Colo.—Modern Woodmen of America v. White, 199 P. 965, 70 Colo. 207, 17 A.L.R. 393.
4 C.J. p 1049 note 78.

42. Ind.—Bank of Poneto v. Kimmel, 168 N.E. 604, 91 Ind.App. 325.
Ky.—City of Paintsville v. Spears, 47 S.W.2d 727, 242 Ky. 762.
N.D.—Kalsow v. Grob, 237 N.W. 848, 61 N.D. 119.
W.Va.—Magruder v. Hagen-Ratcliff & Co., 50 S.E.2d 488, 131 W.Va. 679.
4 C.J. p 1049 note 79.

43. Vt.—Hovey v. Cook, 76 A. 144, 83 Vt. 458.

44. Cal.—Gunter v. Claggett, 151 P. 2d 271, 65 C.A.2d 636.
Conn.—Beauton v. Connecticut Light & Power Co., 3 A.2d 315, 125 Conn. 76—Matulis v. Gans, 141 A. 870, 107 Conn. 562.
Ky.—Whitehead's Adm'r v. Peter Knopf's Sons, 90 S.W.2d 709, 262

tion was abstract,[44.5] or where the instruction was unnecessary or related to an immaterial issue.[45] However correct the principles of law stated in instructions refused may have been, a reversal will not be awarded if the merits were not affected by the refusal of such instructions.[46]

These rules have been applied to failure or refusal to give instructions in actions: On contract;[47]

Ky. 493—City of Catlettsburg v. Davis' Adm'r, 74 S.W.2d 341, 255 Ky. 382.
Md.—Commissioners of Baltimore County v. Collins, 148 A. 242, 158 Md. 335.
Mass.—Morrison v. Medaglia, 191 N. E. 133, 287 Mass. 46.
Mo.—Hendon v. Kurn, 174 S.W.2d 806, 351 Mo. 980.
N.J.—Meny v. Carlson, 77 A.2d 245, 6 N.J. 82, 22 A.L.R.2d 1160.
Ohio.—Fry v. Hildreth, App., 99 N.E. 2d 910.
Or.—McNab v. O'Flynn, 272 P. 670, 127 Or. 490.
Pa.—McGill v. Confer, Com.Pl., 34 Erie Co. 95.
Tex.—Butler v. Herring, Civ.App., 34 S.W.2d 307.
4 C.J. p 1049 note 81.

Insufficient evidence

Failure to give requested instructions on a theory of defense as to which the evidence is insufficient as matter of law to raise such issue or sustain such defense is not reversible error.
Okl.—Haubert v. Navajo Refining Co., 264 P. 151, 129 Okl. 195.

44.5 Ala.—All States Life Ins. Co. v. Johnson, 194 So. 877, 239 Ala. 392.
Ohio.—Green v. Acacia Mut. Life Ins. Co., 128 N.E.2d 222, 98 Ohio App. 101—Ornstein v. Chesapeake & O. R. Co., App., 36 N.E.2d 521, appeal dismissed Chesapeake & O. R. Co. v. Ornstein, 13 N.E.2d 909, 133 Ohio St. 385.
W.Va.—Mulroy v. Co-operative Transit Co., 95 S.E.2d 63—Thrasher v. Amere Gas Utilities Co., 75 S. E.2d 376, 138 W.Va. 166—O'Faherty v. Tarrou, 43 S.E.2d 392, 130 W. Va. 326—Deitz v. Nicholas County Court, 8 S.E.2d 884, 122 W.Va. 296.
Wyo.—Branson v. Roelofsz, 70 P.2d 589, 52 Wyo. 101.

45. Ala.—Nauvoo Black Creek Coal Co. v. Johnson, 160 So. 242, 230 Ala. 174—Newton v. Altman, 150 So. 698, 227 Ala. 465.
Ark.—Moore v. Coit, 274 S.W.2d 651, 224 Ark. 490—Chicago, R. I. & P. Ry. Co. v. Lusby, 23 S.W.2d 965, 180 Ark. 1043—Brown v. Arkansas Central Power Co., 9 S.W.2d 325, 177 Ark. 1064—Jones & Harrington v. Scott, 172 S.W. 840, 116 Ark. 108.
Cal.—Cunningham v. Cox, 15 P.2d 169, 126 C.A. 685—Todd v. Meserve, 269 P. 710, 93 C.A. 370—Rosander v. Market St. Ry. Co., 265 P. 541, 89 C.A. 721.
Ga.—Stovall v. New York Underwriters Ins. Co., 185 S.E. 241, 182 Ga. 163—Louisville & N. R. Co. v. Barrett, 85 S.E. 923, 143 Ga. 742. New Winder Lumber Co. v. Payne, 149 S.E. 85, 40 Ga.App. 188.
Idaho.—Marshall-Wells Co. v. Kramlich, 267 P. 611, 46 Idaho 355.
Ill.—Coal Creek Drainage & Levee Dist. v. Sanitary Dist. of Chicago, 167 N.E. 807, 336 Ill. 11—Titley v. Enterprise Stone Co., 20 N.E. 71, 127 Ill. 457.
Ind.—Marietta Glass Mfg. Co. v. Bennett, 106 N.E. 419, 60 Ind.App. 435.
Iowa.—Cox v. Fleisher Const. Co., 223 N.W. 521, 208 Iowa 458—Schipfer v. Stone, 218 N.W. 568, 206 Iowa 328, rehearing denied and modified on other grounds 219 N. W. 933, 206 Iowa 328.
Ky.—City of Bowling Green v. Ford, 92 S.W.2d 744, 263 Ky. 523—Gargotto v. Isenberg, 51 S.W.2d 443, 244 Ky. 493.
Md.—United Rys. & Electric Co. of Baltimore v. Perkins, 136 A. 50, 152 Md. 105.
Mass.—Country Club Soda Co. v. Arbuckle, 181 N.E. 256, 279 Mass. 121—White v. Loftus, 176 N.E. 646, 275 Mass. 559—Simmons v. Carroll, 122 N.E. 408, 232 Mass. 428—McDonough v. Almy, 105 N.E. 1012, 218 Mass. 409.
Mich.—Nelson v. O'Dell, 55 N.W.2d 723, 335 Mich. 50.
Mo.—Arnold v. May Department Stores Co., 85 S.W.2d 748, 337 Mo. 727—Perryman v. Missouri Pac. R. Co., 31 S.W.2d 4, 326 Mo. 176—Lewis v. St. Louis Independent Packing Co., 3 S.W.2d 244—Schroeder v. Wells, 298 S.W. 806. Pactz v. London Guarantee & Accident Co., Limited, of London, England, App., 71 S.W.2d 826—Stevens v. Westport Laundry Co., 25 S.W.2d 491, 224 Mo.App. 955—Hayward v. Globe & Rutgers Fire Ins. Co., App., 6 S.W.2d 648—Berkbigler v. Scott County Milling Co., App., 275 S.W. 599.
N.J.—Runyon v. Monarch Accident Ins. Co., 158 A. 530, 108 N.J.Law 489.
N.D.—Sundahl v. First State Bank of Edmunds, 155 N.W. 794, 32 N.D. 373.
Ohio.—Rogers v. Garford, 159 N.E. 334, 26 Ohio App. 244.
Okl.—**Corpus Juris Secundum quoted in** Key v. British American Oil Producing Co., 167 P.2d 657, 663, 196 Okl. 663.
Tex.—Flow v. Friesen, Civ.App., 213 S.W.2d 873, error refused no reversible error—Matson v. Hatton, Civ.App., 8 S.W.2d 238—Buchanan v. Williams, Civ.App., 225 S.W. 59—Alamo Oil & Refining Co. v. Richards, Civ.App., 172 S.W. 159.
Wash.—Barber v. City of Seattle, 48 P.2d 234, 182 Wash. 672.
Wis.—Czapinski v. Thomas Furnace Co., 149 N.W. 477, 158 Wis. 635.
4 C.J. p 1049 note 82.

Abandoned issue

Refusal of a requested instruction on an abandoned issue, if error, was harmless.
Ala.—Leeper Cleaning & Dyeing Co. v. McKinney, 161 So. 529, 230 Ala. 462.
Mo.—Sisk v. Chicago, B. & Q. R. Co., App., 67 S.W.2d 830—King v. Friederich, App., 43 S.W.2d 840—Roan v. Wells, App., 14 S.W.2d 488—Hutson v. Missouri Stair Co., App., 296 S.W. 216—Berry v. Peacock Coal & Development Co., App., 253 S.W. 456—Janes v. Levee Dist. No. 2 of Dunklin County, App., 183 S.W. 697.
Wis.—Lehner v. Berlin Pub. Co., 246 N.W. 579, 211 Wis. 119, 86 A.L.R. 1284.

Items not submitted to jury

In a personal injury action, the refusal to instruct the jury not to allow damages for medical expenses, hospital bills, drug bills, nurse's hire, or expenses for repairing plaintiff's clothing, was not reversible error, where such items were not submitted to the jury.
Tex.—Cohen v. Hill, Civ.App., 286 S.W. 661.

Undisputed facts

It is not reversible error to omit submitting in an instruction facts which are not disputed.
Iowa.—McClary v. Great Northern Ry. Co., 227 N.W. 646, 209 Iowa 67.
Mo.—Gately v. St. Louis-San Francisco Ry. Co., 56 S.W.2d 54, 332 Mo. 1. Glidewell v. Quincy, O. & K. C. R. Co., 286 S.W. 677, 208 Mo. App. 372.
Tex.—Thweatt v. Ocean Accident & Guarantee Corporation, Civ.App., 62 S.W.2d 250.

46. Ill.—Fonner v. Stamatakos, 153 Ill.App. 147.
Ind.—Kraning v. Bloxson, 9 N.E.2d 107, 103 Ind.App. 660.
N.H.—Perkins v. Public Service Co. of N. H., 45 A.2d 210, 93 N.H. 459.

47. Ala.—Jersey Ins. Co. v. Roddam, 56 So.2d 631, 256 Ala. 634—Sovereign Camp, W. O. W., v. Turner, 191 So. 473, 238 Ala. 436—Bond Bros. v. Kay, 136 So. 817, 223 Ala. 431.

for personal injuries[48] or for damages sustained by | a decedent's heirs at law resulting from wrongful

Night Commander Lighting Co. v. Coleman, 148 So. 749, 25 Ala. App. 454.

Ark.—M. K. Goetz Brewing Co. v. Hill, 199 S.W.2d 959, 210 Ark. 1050—Pacific Mut. Life Ins. Co. v. Riffel, 149 S.W.2d 57, 202 Ark. 94—Bauer v. North Arkansas Highway Improvement Dist. No. 1, 270 S.W. 533, 168 Ark. 220, 38 A.L.R. 1507.

Cal.—Square Deal Mach. Co. v. Garrett Corp., 275 P.2d 46, 128 C.A.2d 286—Schmidt v. Macco Const. Co., 260 P.2d 230, 119 C.A.2d 717—Zohner v. Sierra Nevada Life & Casualty Co., 299 P. 749, 114 C. A. 85.

Colo.—McMahon v. Williams, 250 P. 560, 80 Colo. 249.

Conn.—Knight Realty Co. v. Caserta, 10 A.2d 597, 126 Conn. 162—Cone v. Cullen, 142 A. 674, 108 Conn. 126—Katz v. Delohery Hat Co., 118 A. 88, 97 Conn. 665.

Ga.—Washburn v. Washburn, 4 S.E. 2d 35, 188 Ga. 468—Lester v. Baxter, 191 S.E. 429, 184 Ga. 368, 111 A.L.R. 493—Stovall v. New York Underwriters Ins. Co., 185 S.E. 241, 182 Ga. 163.

Holmes v. Sibley, 22 S.E.2d 413, 68 Ga.App. 133—Megarity v. Gann, 19 S.E.2d 924, 67 Ga.App. 264—Hammontree v. Moreland, 179 S.E. 165, 50 Ga.App. 623—Roberts v. Allen, 122 S.E. 86, 31 Ga.App. 660—Hardy v. Sparks, 101 S.E. 399, 24 Ga.App. 468—Forbes Drug Co. v. Brenard Mfg. Co., 92 S.E. 1009, 20 Ga.App. 270.

Ill.—Sundquist v. Hardware Mut. Fire Ins. Co. of Minnesota, 21 N.E. 2d 297, 371 Ill. 360, 124 A.L.R. 1375.

Ind.—American Emp. Ins. Co. v. Cornell, 76 N.E.2d 562, 225 Ind. 559.

Iowa.—Koonts v. Farmers Mut. Ins. Ass'n of Van Buren County, 16 N. W.2d 20, 235 Iowa 87—Windahl v. Hasselman, 200 N.W. 583, 198 Iowa 1001.

Kan.—Muzenich v. Grand Carniolian Slovenian Catholic Union of U. S., 119 P.2d 504, 154 Kan. 537, 138 A. L.R. 818—Zuspann v. Roy, 170 P. 387, 102 Kan. 188.

Ky.—Proctor Coal Co. v. Price's Adm'r, 189 S.W. 923, 172 Ky. 627.

Md.—Pennsylvania R. Co. v. Quality Products, 189 A. 200, 171 Md. 291.

Mass.—Leonard v. Woodward, 25 N. E.2d 705, 305 Mass. 332, 127 A.L.R. 999—Whitty Mfg. Co. v. Clark, 180 N.E. 315, 278 Mass. 370—Anglim v. Sears-Roebuck Shoe Factories, 151 N.E. 313, 255 Mass. 334—Merciniak v. Walz, 132 N.E. 33, 239 Mass. 259—La France v. Desautels, 114 N.E. 312, 225 Mass. 324.

Mich.—Wiley v. Western & Southern Life Ins. Co., 250 N.W. 313, 264 Mich. 573.

Minn.—Jasinski v. Keller, 11 N.W.2d 436, 216 Minn. 15—Barthelemy v. Foley Elevator Co., 170 N.W. 513, 141 Minn. 423.

Mo.—Bradley Heating Co. v. Thomas M. Sayman Realty & Investment Co., 201 S.W. 864.

Utterback v. New York Life Ins. Co., App., 191 S.W.2d 421—Cochran v. Jefferson County Lumber Co., App., 132 S.W.2d 32—Fernandez v. Mutual Life Ins. Co. of Baltimore, App., 78 S.W.2d 526—Baker v. Lyell, 242 S.W. 703, 210 Mo.App. 230—Grohmann v. The Maccabees, App., 237 S.W. 875—Fuller v. Presnell, App., 233 S.W. 502—Cavender v. B. Johnson & Son, App., 212 S.W. 53.

Mont.—Stiemke v. Jankovich, 233 P. 904, 72 Mont. 363.

Neb.—Brown v. Hyslop, 45 N.W.2d 743, 153 Neb. 669.

N.J.—Schrage v. Liebstein, 84 A.2d 750, 16 N.J.Super. 384.

N.Y.—McAvoy v. Schramme, 264 N. Y.S. 181, 238 App.Div. 225, affirmed 189 N.E. 691, 263 N.Y. 548.

N.C.—Collins v. Lamb, 2 S.E.2d 863, 215 N.C. 719.

N.D.—Rittle v. Woodward, 153 N.W. 951, 31 N.D. 113.

Ohio.—Canton Hardware Co. v. Haller, 53 N.E.2d 509, 142 Ohio St. 541, 151 A.L.R. 892.

Green v. Acacia Mut. Life Ins. Co., 128 N.E.2d 222, 98 Ohio App. 101—Kleinhans v. American Gauge Co., 80 N.E.2d 626, 83 Ohio App. 453.

Okl.—National Sec. Fire Ins. Co. of Omaha, Neb., v. Boatman, 71 P.2d 624, 180 Okl. 492—Mangold & Glandt Bank v. Utterback, 174 P. 542, 70 Okl. 315—First Nat. Bank of Wellston v. Sensebaugh, 160 P. 455, 58 Okl. 462.

Pa.—Big Spring Electric Co. v. Kitzmiller, 110 A. 783, 268 Pa. 34.

R.I.—Russell v. Reading Custom Laundry Co., 100 A. 1015.

S.C.—Elmore v. Middlesex Mut. Fire Ins. Co., 65 S.E.2d 871, 219 S.C. 520—Du Bose v. Durham Life Ins. Co., 14 S.E.2d 349, 197 S.C. 1.

Tex.—National Life & Accident Co. v. Dickinson, Civ.App., 115 S.W.2d 1180, error dismissed—Eureka Producing Co. v. Hoyt, Civ.App., 266 S.W. 203—Lomax v. Trull, Civ. App., 232 S.W. 861, dismissed for want of jurisdiction—Dallas Cotton Mills v. Huguley, Civ.App., 230 S.W. 432—Denby Motor Truck Co. v. Mears, Civ.App., 229 S.W. 994, dismissed for want of jurisdiction—Royal Ins. Co. of Liverpool, England v. Humphrey, Civ.App., 201 S. W. 426, dismissed for want of jurisdiction.

Utah.—Clayton v. Metropolitan Life Ins. Co., 85 P.2d 819, 96 Utah 331, 120 A.L.R. 1117—Schubach v. American Surety Co. of New York, 273 P. 974, 73 Utah 332.

Wash.—Adjustment Dept., Olympia Credit Bureau v. Smedegard, 241 P.2d 203, 40 Wash.2d 76—Simons v. Stokely Foods, 216 P.2d 215, 35 Wash.2d 920.

W.Va.—Klein v. Great Northern Life Ins. Co., 152 S.E. 859, 109 W.Va. 59.

Wyo.—First Nat. Bank v. Ford, 216 P. 691, 30 Wyo. 110, 31 A.L.R. 1441.

26 C.J. p 573 note 60—33 C.J. p 145 note 19—55 C.J. p 1020 note 44—66 C.J. p 1576 note 50.

48. Ala.—Austin v. Tennessee Biscuit Co., 52 So.2d 190, 255 Ala. 573—Birmingham Belt R. Co. v. Nelson, 112 So. 422, 216 Ala. 149.

Ark.—Oliphant v. Hamm, 267 S.W. 563, 167 Ark. 167.

Cal.—Benjamin v. Noonan, 277 P. 1045, 207 C. 279.

Cantor v. Santa Clara County, 293 P.2d 894, 139 C.A.2d 441—Risley v. Lenwell, 277 P.2d 897, 129 C.A.2d 608—Pomerantz v. Bryan Motors, 206 P.2d 440, 92 C.A.2d 114—Baugh v. Beatty, 205 P.2d 671, 91 C.A.2d 786—Ellis v. Central California Traction Co., 174 P. 407, 37 C.A. 390.

Conn.—Hunyadi v. Stratfield Hotel, 119 A.2d 321, 143 Conn. 77.

Ga.—Western & A. R. Co. v. Smith, 88 S.E. 983, 145 Ga. 276.

Candler v. Smith, 179 S.E. 395, 50 Ga.App. 667—Evans v. Sears, Roebuck & Co., 176 S.E. 843, 49 Ga. App. 744—Western Union Telegraph Co. v. Owens, 98 S.E. 116, 23 Ga.App. 169.

Ill.—Lerette v. Director General of Railroads, 137 N.E. 811, 306 Ill. 348.

Doran v. Boston Store of Chicago, 30 N.E.2d 778, 307 Ill.App. 456—Attabella v. Krzepton, 233 Ill. App. 320.

Iowa.—Wells v. Chamberlain, 168 N. W. 238, 185 Iowa 264.

Kan.—Flournoy v. City of Parsons, 155 P.2d 421, 159 Kan. 367.

Ky.—City of Bowling Green v. Ford, 92 S.W.2d 744, 263 Ky. 523.

Mass.—White v. Boston Gear Works, 53 N.E.2d 1, 315 Mass. 496.

Mich.—Judis v. Borg-Warner Corp. (Norge Division), 63 N.W.2d 647, 339 Mich. 313.

Minn.—Schneider v. Texas Co., 69 N. W.2d 329, 244 Minn. 131.

Mo.—Hutchcraft v. Laclede Gaslight Co., 282 S.W. 38.

Eberle v. Koplar, App., 85 S.W. 2d 919—Brown v. Davis, App., 82 S.W.2d 145—Traynor v. Wells, App., 273 S.W. 1100—Flach v. Ball, App., 240 S.W. 469—Davis v. Springfield Hospital, 218 S.W. 696, 204 Mo.App. 626.

death of decedent;[49] for injuries to a servant[50] | or to a passenger;[51] and for injuries or damage

N.Y.—Smith v. Majestic Iron Works, 147 N.Y.S.2d 314, 1 A.D.2d 702, motion granted 154 App.Div. 984, 1 N.Y.2d 925, 136 N.E.2d 923—Taggart v. Vogel, 138 N.Y.S.2d 723, 285 App.Div. 974, appeal denied 143 N.Y.S.2d 610, 285 App.Div. 1184, motion granted 154 N.Y.S.2d 985, 1 N.Y.2d 925, 136 N.E.2d 923.

Ohio.—Haase v. Ryan, App., 136 N.E.2d 406—Scott v. Allied Stores of Ohio, 122 N.E.2d 665, 96 Ohio App. 532—Snow v. Cincinnati St. Ry. Co., 75 N.E.2d 220, 80 Ohio App. 369.

Okl.—Dolliver v. Lathion, 82 P.2d 675, 183 Okl. 329.

R.I.—Wood v. Waldorf System, 83 A.2d 90, 79 R.I. 1—Brickle v. Quinn, 14 A.2d 817, 65 R.I. 418—Malfetano v. United Electric Rys. Co., 191 A. 491, 58 R.I. 129.

Tenn.—Boulineaux v. City of Knoxville, 99 S.W.2d 557, 20 Tenn.App. 404—Rose v. Abeel Bros., 4 Tenn. App. 431.

Tex.—Stayton v. Contreras, Civ.App., 150 S.W.2d 342, error dismissed, judgment correct—Texas Power & Light Co. v. Bristow, Civ.App., 213 S.W. 702, error refused.

Utah.—Olsen v. Warwood, 255 P.2d 725.

Wash.—Hanson v. City of Seattle, 185 P. 581, 108 Wash. 586.

W.Va.—Burcham v. City of Mullens, 83 S.E.2d 505, 139 W.Va. 399.

Wis.—Vaningan v. Mueller, 243 N.W. 424, 208 Wis. 542—Vaningan v. Mueller, 243 N.W. 419, 208 Wis. 527—Schumann v. City of Kaukauna, 158 N.W. 71, 163 Wis. 396.

49. Ala.—Luquire Ins. Co. v. McCalla, 13 So.2d 865, 244 Ala. 479—Mobile & O. R. Co. v. Williams, 147 So. 819, 226 Ala. 541, certiorari denied 54 S.Ct. 71, 290 U.S. 655, 78 L.Ed. 568.

Ark.—Pye v. Lowden, 100 S.W.2d 254, 193 Ark. 388.

Cal.—Brooks v. E. J. Willig Truck Transp. Co., 255 P.2d 802, 40 C.2d 669—Stickel v. San Diego Elec. Ry. Co., 195 P.2d 416, 32 C.2d 157.

Newton v. Thomas, 291 P.2d 503, 137 C.A.2d 748—Burke v. City and County of San Francisco, 244 P.2d 708, 111 C.A.2d 314—Parcher v. City of Los Angeles, 235 P.2d 220, 106 C.A.2d 421—Zelayeta v. Pacific Greyhound Lines, 232 P.2d 572, 104 C.A.2d 716—Clark v. State, 222 P.2d 300, 99 C.A.2d 616—Lasater v. Oakland Scavenger Co., 162 P.2d 486, 71 C.A.2d 217—Garcia v. Conrad, 104 P.2d 527, 40 C.A.2d 167—Hoffart v. Southern Pac. Co., 92 P.2d 436, 33 C.A.2d 591—Duclos v. Tashjian, 90 P.2d 140, 32 C.A.2d 444—Jensen v. Hansen, 55 P.2d 1201, 12 C.A.2d 678.

Colo.—Seward v. York, 239 P.2d 301, 124 Colo. 512.

Fla.—Shearn v. Orlando Funeral Home, 82 So.2d 866.

Ga.—Steinmetz v. Chambley, 83 S.E.2d 318, 90 Ga.App. 519—Atlantic Coast Line R. Co. v. Singletary, 55 S.E.2d 827, 80 Ga.App. 297.

Idaho.—Neff v. Hysen, 244 P.2d 146, 72 Idaho 470.

Ill.—Amenda v. Suits, 137 N.E.2d 278, 11 Ill.App. 344—Hughes v. Medendorp, 13 N.E.2d 1015, 294 Ill.App. 424—Onyschuk v. A. Vincent Sons Co., 277 Ill.App. 414.

Kan.—Soden v. Bennett, 244 P.2d 1204, 173 Kan. 142—Morrison v. Hawkeye Cas. Co., 212 P.2d 633, 168 Kan. 303.

Ky.—Tinsley's Adm'r v. Slate, 251 S.W.2d 883—Whitehead's Adm'r v. Peter Knopf's Sons, 90 S.W.2d 700, 262 Ky. 493.

Minn.—Ferguson v. Kehoe, 71 N.W.2d 168, 245 Minn. 46—Mattfeld v. Nester, 32 N.W.2d 291, 226 Minn. 106, 3 A.L.R.2d 909.

Miss.—Louisville & N. R. Co. v. Whisenant, 58 So.2d 908, 214 Miss. 421—Gulf Refining Co. v. Miller, 121 So. 482, 153 Miss. 741.

Mo.—Adams v. Thompson, App., 178 S.W.2d 779.

N.H.—Dane v. MacGregor, 52 A.2d 290, 94 N.H. 294—Craig v. Boston & Maine R. R., 32 A.2d 316, 92 N.H. 408.

Tex.—Langston v. Tex-O-Kan Flour Mills Co., 211 S.W.2d 1020, Civ. App., error refused no reversible error.

Wash.—Cox v. Polson Logging Co., 138 P.2d 169, 18 Wash.2d 49—Sweazey v. Valley Transport, 107 P.2d 567, 6 Wash.2d 324, 140 A.L.R. 1, opinion adhered to 111 P.2d 1010, 6 Wash.2d 324, 140 A.L.R. 20.

W.Va.—Riley v. West Virginia Northern R. Co., 51 S.E.2d 119, 132 W.Va. 208, certiorari denied West Virginia Northern R. Co. v. Riley, 69 S.Ct. 891, 336 U.S. 961, 93 L.Ed. 1113.

Wis.—Williams v. Monroe County, 73 N.W.2d 501, 271 Wis. 243.

50. Ala.—Southern Ry. Co. v. Fisher, 74 So. 580, 199 Ala. 377.

Ark.—Mama Coal Co. v. Colo, 250 S.W. 327, 158 Ark. 408.

Cal.—Rivera v. Goodenough, 162 P.2d 498, 71 C.A.2d 223.

Ill.—See Kittler v. Chicago & W. I. R. Co., 203 Ill.App. 439.

Ind.—Deep Vein Coal Co. v. Raney, 112 N.E. 392, 62 Ind.App. 608.

Iowa.—Johnson v. Kinney, 7 N.W.2d 188, 232 Iowa 1016, 144 A.L.R. 997.

Ky.—High Splint Coal Co. v. Payne, 49 S.W.2d 539, 243 Ky. 677.

Me.—Hatch v. Portland Terminal Co., 131 A. 5, 125 Me. 96.

Mass.—Moran v. Otis Elevator Co., 197 N.E. 11, 291 Mass. 314.

Mich.—Paxson v. Cass County Road Commission, 38 N.W.2d 315, 325 Mich. 276.

Miss.—Kincade & Lofton v. Stephens, 50 So.2d 587.

Mo.—Cooper v. Atchison, T. & S. F. R. Co., 148 S.W.2d 773, 347 Mo. 555, certiorari denied 61 S.Ct. 1116, 313 U.S. 591, 85 L.Ed. 1546—Wilday v. Missouri-Kansas-Texas R. Co., 147 S.W.2d 431, 347 Mo. 275—Harlan v. Wabash Ry. Co., 73 S.W.2d 749, 335 Mo. 414—Span v. Jackson, Walker Coal & Mining Co., 16 S.W.2d 190, 322 Mo. 158—Dietzman v. St. Louis Screw Co., 254 S.W. 59, 300 Mo. 196.

Engle v. American Car & Foundry Co., App., 287 S.W. 801—Lawbaugh v. McDonald Mining Co., App., 202 S.W. 617.

N.H.—Charles v. McPhee, 26 A.2d 30, 92 N.H. 111.

N.C.—Hill v. Atlantic Coast Line R. Co., 57 S.E.2d 781, 231 N.C. 499, certiorari denied 71 S.Ct. 42, 340 U.S. 814, 95 L.Ed. 598.

Ohio.—Maus v. New York, C. & St. L. R. Co., App., 128 N.E.2d 166, affirmed 135 N.E.2d 253, 165 Ohio St. 281—McKee v. New Idea, App., 44 N.E.2d 697.

Okl.—St. Louis & S. F. R. Co. v. Bateman, 240 P. 110, 112 Okl. 86.

Or.—Emerson v. Portland, E. & E. R. Co., 166 P. 946, 85 Or. 229.

Pa.—Hutchison v. Pennsylvania R. Co., 105 A.2d 356, 378 Pa. 24.

S.C.—Pendergrass v. Southern Ry. Co., 103 S.E. 150, 114 S.C. 78.

Tex.—Commercial Standard Ins. Co. v. Shank, Civ.App., 140 S.W.2d 273, error dismissed judgment correct—Traders & General Ins. Co. v. Childers, Civ.App., 95 S.W.2d 461, error dismissed—Maryland Casualty Co. v. Bryant, Civ.App., 84 S.W.2d 492, error dismissed—Hines v. Kelley, Civ.App., 226 S.W. 493, reversed on other grounds, Com. App., 252 S.W. 1033—Panhandle & S. F. Ry. Co. v. Kornegay, Civ. App., 206 S.W. 708, reversed on other grounds, Com.App., 227 S.W. 1100.

Utah.—Mooney v. Denver & R. G. W. R. Co., 257 P.2d 947.

51. Cal.—Hazelett v. Miller, 252 P.2d 997, 115 C.A.2d 801—Huyck v. Merritt, 240 P.2d 1, 108 C.A.2d 775—Dunn v. Russell, App., 234 P.2d 270, hearing dismissed—Hickson v. Beitel, 229 P.2d 821, 103 C.A.2d 391—Anderson v. Hawkins, 223 P.2d 857, 100 C.A.2d 490—Sale v. Illinois Electric Co., 299 P. 561, 114 C.A. 71—Clarkson v. United Railroads of San Francisco, 227 P. 710, 67 C.A. 372.

Conn.—Lawlor v. Connecticut Co., 186 A. 491, 121 Conn. 511.

Ga.—Davis v. Jones, 129 S.E. 892, 34 Ga.App. 7.

from operation of a railroad[52] or an automobile.[53] The rules have also been applied to fail-

Ill.—Clarke v. Storchak, 52 N.E.2d 229, 384 Ill. 564, appeal dismissed 64 S.Ct. 1270, 322 U.S. 713, 88 L. Ed. 1555—Stanton v. Chicago City Ry. Co., 119 N.E. 291, 283 Ill. 256.
Montgomery v. Checker Taxi Co., 57 N.E.2d 231, 324 Ill.App. 83.
Ind.—Bybee v. Brooks, 106 N.E.2d 693, 123 Ind.App. 129—Trent v. Rodgers, 104 N.E.2d 759, 123 Ind. App. 134—Jay v. Holman, 20 N.E. 2d 656, 106 Ind.App. 413.
Kan.—Nichols v. Derry, 118 P.2d 537, 154 Kan. 305.
Mass.—Woods v. Woods, 8 N.E.2d 837, 295 Mass. 238.
Minn.—Dahlin v. Kron, 45 N.W.2d 333, 232 Minn. 312.
Mo.—Graves v. Missouri Pac. R. Co., 118 S.W.2d 787, 342 Mo. 542, certiorari denied 59 S.Ct. 76, 305 U.S. 617, 83 L.Ed. 394.
McAboy v. Hulett, App., 112 S. W.2d 86.
Neb.—Shiers v. Cowgill, 59 N.W.2d 407, 157 Neb. 265.
N.Y.—Eggelton v. Thompson, 78 N. Y.S.2d 7, 273 App.Div. 987.
Okl.—Breshears v. Wright, 71 P.2d 455, 180 Okl. 553.
Tenn.—Carman v. Huff, 227 S.W.2d 780, 32 Tenn.App. 687.
Tex.—Wheeler v. Glazer, 153 S.W.2d 449, 137 Tex. 341, 140 A.L.R. 1301.
Magnolia Petroleum Co. v. Owen, Civ.App., 101 S.W.2d 354, error dismissed—Fleck v. Missouri, K. & T. Ry. Co. of Texas, Civ.App., 191 S.W. 386.
Wis.—Olson v. Milwaukee Auto. Ins. Co., 62 N.W.2d 549, 266 Wis. 106, mandate modified on other grounds 63 N.W.2d 740, 266 Wis. 106.

52. Ala.—Central of Georgia Ry. Co. v. Pope, 127 So. 835, 221 Ala. 145—Birmingham Belt R. Co. v. Nelson, 112 So. 422, 216 Ala. 149.
Louisville & N. R. Co. v. Ganter, 77 So. 917, 16 Ala.App. 323.
Cal.—Jensen v. Southern Pac. Co., 276 P.2d 703, 129 C.A.2d 67—Davis v. Johnson, 275 P.2d 563, 128 C.A.2d 466—Haber v. Pacific Electric Ry. Co., 248 P. 741, 78 C.A. 617—Jones v. Southern Pac. Co., 239 P. 429, 74 C.A. 10.
Colo.—Welsh v. Union Pac. R. Co., 156 P.2d 844, 113 Colo. 312.
Ga.—Southern Ry. Co. v. Wehunt, 170 S.E. 380, 177 Ga. 444.
Atlantic Coast Line R. Co. v. Clinard, 90 S.E.2d 923, 93 Ga.App. 64—Georgia Railroad & Banking Co. v. Farmer, 164 S.E. 71, 45 Ga. App. 130.
Idaho.—Judd v. Oregon Short Line R. Co., 44 P.2d 291, 55 Idaho 461.
Ky.—Chesapeake & O. Ry. Co. v. Bradford, 258 S.W. 939, 202 Ky. 26.
Mass.—Copithorn v. Boston & M. R. R., 35 N.E.2d 254, 309 Mass. 363.
Mo.—Irwin v. St. Louis-San Francisco Ry. Co., 30 S.W.2d 56, 325 Mo. 1019—Gould v. Chicago, B. & Q. R. Co., 290 S.W. 135, 315 Mo. 713—Hill v. Harvey, 201 S.W. 535.
Wolverton v. Kurn, App., 149 S. W.2d 62, reversed on other grounds 156 S.W.2d 638, 348 Mo. 908—Packer v. Chicago, M. & St. P. Ry. Co., App., 265 S.W. 119—Wheaton v. St. Louis Southwestern Ry. Co., App., 257 S.W. 513—Rucker v. Lusk, App., 221 S.W. 393—Harrington v. Kansas City Rys. Co., App., 217 S.W. 879.
N.Y.—Klumpp v. New York Cent. R. Co., 166 N.Y.S. 333, 179 App.Div. 279, affirmed 123 N.E. 874, 226 N.Y. 666.
Ohio.—Hite v. New York, C. & St. L. R. R., 118 N.E.2d 417, 98 Ohio App. 519.
Okl.—St. Louis-San Francisco Ry. Co. v. Teel, 198 P. 78, 82 Okl. 31.
Or.—Finn v. Spokane, P. & S. Ry. Co., 241 P.2d 876, 194 Or. 288.
Tenn.—Nashville, C. & St. L. Ry. v. Hines, 94 S.W.2d 397, 20 Tenn. App. 1.
Tex.—Fort Worth & D. C. Ry. Co. v. Amason, Com.App., 276 S.W. 162.
Dallas Ry. & Terminal Co. v. Orr, Civ.App., 210 S.W.2d 863, affirmed 215 S.W.2d 862, 147 Tex. 383—International-Great Northern R. Co. v. Pence, Civ.App., 113 S. W.2d 206, error dismissed.
Va.—Atlantic Coast Line R. Co. v. Withers, 65 S.E.2d 654, 192 Va. 493.
W.Va.—Morris v. Baltimore & O. R. Co., 147 S.E. 759, 107 W.Va. 181.
51 C.J. p 1253 note 92—52 C.J. p 535 note 46, p 756 note 98.

53. Ala.—Socier v. Woodard, 88 So. 2d 783, 264 Ala. 514—Roberts v. McCall, 17 So.2d 159, 245 Ala. 359—Brown v. Yielding, 90 So. 499, 206 Ala. 504.
Hurn v. Reynolds, 36 So.2d 603, 34 Ala.App. 79.
Ark.—Standard Materials Corp. v. Johnson, 169 S.W.2d 590, 205 Ark. 562.
Cal.—Thompson v. Fitzgerald, 271 P. 1072, 205 C. 563.
Baker v. Novak, 301 P.2d 257, 144 C.A.2d 514—Newton v. Thomas, 291 P.2d 503, 137 C.A.2d 748—Cook v. Ross, 285 P.2d 25, 134 C. A.2d 202—Gilbert v. Yellow Cab Co., 267 P.2d 392, 123 C.A.2d 782—Hooper v. Bronson, 266 P.2d 590, 123 C.A.2d 243—Winston v. Penney, 253 P.2d 492, 116 C.A.2d 162—McMahon v. Marshall, 244 P.2d 481, 111 C.A.2d 248—Faeh v. Union Oil Co. of Cal., 236 P.2d 667, 107 C.A.2d 163—Jackson v. Lovas, 235 P.2d 232, 106 C.A.2d 426—Reich v. Long, 218 P.2d 589, 97 C.A.2d 657—O'Neal v. Kelly Pipe Co., 173 P.2d 685, 76 C.A.2d 577—Whitfield v. Debrincat, 123 P.2d 591, 50 C.A. 2d 389—Lafrenz v. Stoddard, 122 P.2d 374, 50 C.A.2d 1—Bauer v. Davis, 111 P.2d 715, 43 C.A.2d 764—Bender v. Perry, 99 P.2d 319, 37 C.A.2d 206—Lewin v. Margolis, 59 P.2d 153, 14 C.A.2d 746—Hoover v. King, 24 P.2d 871, 134 C.A. 16—Cunningham v. Cox, 15 P.2d 169, 126 C.A. 685—Brown v. Yocum, 298 P. 845, 113 C.A. 621—Edgar v. Citraro, 297 P. 654, 112 C.A. 178, followed in 297 P. 652, 112 C.A. 761—Tyson v. Burton, 294 P. 750, 110 C.A. 428—Depaoli v. Claus, 293 P. 881, 110 C.A. 145—Von Stetten v. Yellow-Checker Cab Co., Consolidated, 281 P. 95, 100 C.A. 775—State Compensation Insurance Fund v. Lamb, 273 P. 1080, 96 C.A. 236—Judd v. Webster, 195 P. 929, 50 C.A. 743—Lawrence v. Goodwill, 186 P. 781, 44 C.A. 440.
Conn.—Lane v. Ludeman, 38 A.2d 178, 131 Conn. 112—Mathis v. Bzdula, 188 A. 264, 122 Conn. 202—Hedberg v. Cooley, 161 A. 665, 115 Conn. 352—Smith v. Waterbury & Millidale Tramway Co., 121 A. 873, 99 Conn. 446.
Fla.—Tooley v. Margulies, 79 So.2d 421—Frazee v. Gillespie, 124 So. 6, 98 Fla. 582.
Ga.—Motor Convoy, Inc. v. Moore, 88 S.E.2d 727, 92 Ga.App. 551—Roberts v. Foster, 70 S.E.2d 875, 86 Ga.App. 131—Moffett v. McCurry, 67 S.E.2d 807, 84 Ga.App. 853—Edwards v. Ford, 26 S.E.2d 306, 69 Ga.App. 578—Whatley v. Henry, 16 S.E.2d 214, 65 Ga.App. 668—City of Rome v. Alexander, 11 S.E.2d 52, 63 Ga.App. 301—Tharpe v. Cudahy Packing Co., 4 S.E.2d 49, 60 Ga.App. 449—Stewart v. Avery, 144 S.E. 218, 38 Ga.App. 431.
Idaho.—French v. Tebben, 27 P.2d 474, 53 Idaho 701.
Ill.—Bobalek v. Atlass, 43 N.E.2d 584, 315 Ill.App. 514.
Ind.—McCammack v. Harris, 104 N. E.2d 678, 122 Ind.App. 328—Dunbar v. Demaree, 2 N.E.2d 1003, 102 Ind.App. 585—Mayer v. Mellette, 114 N.E. 241, 65 Ind.App. 54.
Iowa.—Reed v. Willison, 65 N.W.2d 440, 245 Iowa 1066—Coon v. Rieke, 6 N.W.2d 309, 232 Iowa 859—McQuillen v. Meyers, 241 N.W. 442, 213 Iowa 1366—Carlson v. Meusberger, 204 N.W. 432, 200 Iowa 65—Schultz v. Starr, 164 N.W. 163, 180 Iowa 1319.
Kan.—Blakeman v. Lofland, 252 P.2d 852, 173 Kan. 725—Long v. Shafer, 174 P.2d 88, 162 Kan. 21.
Ky.—Coe v. Adwell, 244 S.W.2d 737—Ashton v. Roop, 244 S.W.2d 727—Foley's Adm'r v. Witt, 172 S.W. 2d 81, 294 Ky. 498—White v. Saunders, 158 S.W.2d 393, 289 Ky. 268—Tucker v. Ragland-Potter Co., 148 S.W.2d 691, 285 Ky. 533—Haller's Pet Shop v. Pearlman, 69 S.

ure or refusal to give instructions in actions: For assault,[54] malpractice,[54.5] libel,[55] false imprisonment,[56] or malicious prosecution;[57] for fraud;[58] for injuries to property,[59] as for injuries to a ship-

W.2d 9, 253 Ky. 130—H. M. Williams Motor Co. v. Howard, 65 S.W.2d 688, 251 Ky. 557—Mann v. Woodward, 290 S.W. 333, 217 Ky. 491—Rice's Adm'rs v. Kentucky Traction & Terminal Co., 273 S.W. 78, 209 Ky. 538.

Me.—Farnum v. Clifford, 106 A. 344, 118 Me. 145.

Md.—West v. Belle Isle Cab Co., 100 A.2d 17, 203 Md. 244—Vogelsang v. Sehlhorst, 71 A.2d 295, 194 Md. 413.

Mass.—Shear v. Rogoff, 193 N.E. 63, 288 Mass. 357—Falk v. Carlton, 170 N.E. 51, 270 Mass. 213—Conary v. Boston & M. R. R., 147 N.E. 883, 252 Mass. 397.

Mich.—Shotwell v. Bultman, 6 N.W. 2d 481, 303 Mich. 193—Agranowitz v. Levine, 298 N.W. 388, 298 Mich. 18.

Mo.—Renner v. Wolverton, 273 S.W. 2d 325.

Grace v. St. Louis Public Service Co., App., 263 S.W.2d 866—Pelzer v. Zeltmann, App., 108 S.W.2d 980—Borah v. Zoellner Motor Car Co., App., 257 S.W. 145—Bloomcamp v. Missouri Pac. R. Co., 236 S.W. 388, 208 Mo.App. 464—Brooks v. Harris, App., 207 S.W. 293.

Neb.—Harding v. Hoffman, 62 N.W. 2d 333, 158 Neb. 86.

N.H.—Brock v. Robinson, 88 A.2d 306, 97 N.H. 334—Watkins v. Holmes, 35 A.2d 395, 93 N.H. 53—Smith v. Bailey, 23 A.2d 363, 91 N.H. 507.

N.J.—Williamson v. Berger, 95 A.2d 150, 11 N.J. 500.

Robbins v. Thies, 189 A. 67, 117 N.J.Law 389—Barlow v. Sterr, 169 A. 692, 112 N.J.Law 86.

N.Y.—Dougherty v. Braddock Automatic Music Corp., 98 N.Y.S.2d 514, 277 App.Div. 923—Malcolm v. Vedder, 46 N.Y.S.2d 239, 267 App. Div. 804, motion denied 61 N.E.2d 458, 294 N.Y. 735, affirmed 62 N.E. 2d 487, 294 N.Y. 856.

N.C.—Parrish v. Bryant, 74 S.E.2d 726, 237 N.C. 256.

Ohio.—Paduchik v. Mikoff, 140 N.E. 2d 562, 158 Ohio St. 533.

Vorum v. Gorman, 124 N.E.2d 169, 97 Ohio App. 175—Prok v. City of Cleveland, App., 102 N.E.2d 253—Lockett v. Anchor Motor Freight Co., App., 97 N.E.2d 46—A. Macaluso Fruit Co. v. Commercial Motor Freight, App., 57 N.E.2d 692.

Or.—Holzhauser v. Portland Traction Co., 169 P.2d 127, 178 Or. 607—Bracht v. Palace Laundry Co., 65 P.2d 1039, 156 Or. 151.

Pa.—Susser v. Wiley, 39 A.2d 616, 350 Pa. 427—Struppler v. Rexford, 192 A. 886, 326 Pa. 545.

S.C.—North State Lumber Co. v. Charleston Consol. Ry. & Lighting Co., 105 S.E. 406, 115 S.C. 267.

S.D.—Carlson v. Johnke, 234 N.W. 25, 57 S.D. 544, 72 A.L.R. 1352.

Tenn.—DeRossett v. Malone, 239 S.W.2d 366, 34 Tenn.App. 451—Trevathan v. Lynch, 113 S.W.2d 416, 21 Tenn.App. 549.

Tex.—Scott v. Gardner, Civ.App., 159 S.W.2d 121, error refused—Jackson v. Wolff & Marx Co., Civ.App., 116 S.W.2d 467—American Grocery Co. v. Abraham, Civ.App., 94 S.W. 2d 1231, error dismissed.

Utah.—Xenakis v. Garrett Freight Lines, Inc., 265 P.2d 1007, 1 Utah 2d 299.

Va.—Diamond Cab Co. v. Jones, 174 S.E. 675, 162 Va. 412.

Wash.—Wooldridge v. Pacific Coast Coal Co., 155 P.2d 1001, 22 Wash. 2d 314—Glick v. Ropes, 138 P.2d 858, 18 Wash.2d 260—Case v. Peterson, 136 P.2d 192, 17 Wash.2d 523—Settles v. Johnson, 298 P. 690, 162 Wash. 466.

Wis.—Olson v. Milwaukee Auto. Ins. Co., 62 N.W.2d 549, 266 Wis. 106, mandate modified 63 N.W.2d 740, 266 Wis. 106—Gustafson v. Engelman, 49 N.W.2d 410, 259 Wis. 446—Leanna v. Goethe, 300 N.W. 490, 238 Wis. 616—Schulz v. General Cas. Co., 288 N.W. 803, 233 Wis. 118—Beck v. Fond Du Lac Highway Committee, 286 N.W. 64, 231 Wis. 593—Hensel v. Hensel Yellow Cab Co., 245 N.W. 159, 209 Wis. 489—Haggerty v. Rain, 186 N.W. 1017, 177 Wis. 374—Riggles v. Priest, 157 N.W. 755, 163 Wis. 199.

42 C.J. p 1290 note 50.

54. Cal.—Phelps v. Arnold, 297 P. 31, 112 C.A. 518.

Ill.—Branch v. Woulfe, 21 N.E.2d 148, 300 Ill.App. 472.

Minn.—Symalla v. Dusenka, 288 N.W. 385, 206 Minn. 280.

Mo.—Lehmer v. Smith, 284 S.W. 167, 220 Mo.App. 251.

Ohio.—Lowenstein v. Schwallie, 36 N.E.2d 191, 67 Ohio App. 395.

Or.—Lamb v. Woodry, 58 P.2d 1257, 154 Or. 30, 105 A.L.R. 914.

Tex.—Whitaker v. Haynes, Civ.App., 128 S.W.2d 532, error dismissed, judgment correct.

Wis.—Krudwig v. Koepke, 270 N.W. 79, 223 Wis. 244.

5 C.J. p 700 note 89.

Matters clearly understood by jury

In an action for assault, where the testimony and instructions showed that the jury clearly understood which of two assaults was relied on for recovery, the refusal to instruct that a second assault could not be so relied on was not prejudicial error.

Or.—Housman v. Peterson, 149 P. 538, 76 Or. 556.

54.5 Ariz.—Phillips v. Stillwell, 99 P.2d 104, 55 Ariz. 147.

55. Ky.—McClintock v. McClure, 188 S.W. 867, 171 Ky. 714, Ann.Cas. 1918E 96.

Tex.—Light Pub. Co. v. Huntress, Civ.App., 199 S.W. 1168.

Wash.—Arnold v. National Union of Marine Cooks and Stewards, 265 P.2d 1051, 44 Wash.2d 183.

56. Ala.—Sokol Bros. Furniture Co. v. Gate, 93 So. 724, 208 Ala. 107.

Cal.—Wilson v. Loustalot, 193 P.2d 127, 85 C.A.2d 316.

Ga.—Atlantic Coast Line R. Co. v. Wegner, 83 S.E.2d 58, 90 Ga.App. 267.

Vt.—Parker v. Roberts, 131 A. 21, 99 Vt. 219, 49 A.L.R. 1382.

57. Ala.—Penney v. Warren, 115 So. 16, 217 Ala. 120.

Cal.—Carroll v. Pacific Coast Automobile Ass'n, 11 P.2d 660, 123 C.A. 566—Herlihy v. Reilly, 267 P. 721, 92 C.A. 35.

Colo.—Exchange Nat. Bank of Colorado Springs v. Cullum, 161 P.2d 336, 114 Colo. 26.

Okl.—Empire Gas & Fuel Co. v. Wainscott, 216 P. 141, 91 Okl. 66.

Va.—Virginia Electric & Power Co. v. Wynne, 141 S.E. 829, 149 Va. 882.

58. Ga.—Southern Ry. Co. v. Ray, 113 S.E. 590, 28 Ga.App. 792, reversed on other grounds 118 S.E. 53, 155 Ga. 579, conformed to 118 S.E. 411, 30 Ga.App. 376.

Iowa.—Thompson v. Damm, 185 N.W. 115, 192 Iowa 501.

Mass.—O'Connell v. Kennedy, 101 N.E.2d 892, 328 Mass. 90.

Mo.—Menke v. Robin, 180 S.W.2d 24, 352 Mo. 826.

Ozias v. South Side Bank of Kansas City, App., 128 S.W.2d 283.

Tex.—Waggoner v. Zundelowitz, Com.App., 231 S.W. 721.

59. Ala.—Douglass v. N. S. Davenport Co., 110 So. 378, 215 Ala. 265.

Colo.—Northern Colorado Irr. Co. v. Reuter, 186 P. 286, 67 Colo. 483.

Ga.—Jackson v. Shockley, 56 S.E.2d 297, 80 Ga.App. 455.

Ky.—City of Covington v. Willis, 117 S.W.2d 945, 273 Ky. 762—City of Harlan v. Eversole, 58 S.W.2d 371, 248 Ky. 131.

Miss.—City of Jackson v. Cook, 58 So.2d 498, 214 Miss. 201.

Mo.—Smithpeter v. Wabash R. Co., 231 S.W.2d 135, 360 Mo. 835, 19 A.L.R.2d 950.

Stevenson v. A. B. C. Fireproof Warehouse Co., App., 6 S.W.2d 676.

Okl.—Gulf Oil Corp. v. Lemmons, 181 P.2d 568, 198 Okl. 596.

S.C.—Holliday v. City of Greenville, 78 S.E.2d 279, 224 S.C. 207.

ment of goods;[60] for trespass,[60.5] trespass on the case,[60.10] conversion,[61] replevin,[62] or trover;[62.5] and involving agents or brokers,[62.10] decedents' estates,[62.15] and landlords and tenants.[62.20]

Furthermore the rules have been applied to the failure or refusal to give instructions defining terms,[63] and have been applied as well to the failure

60. Mass.—Okin v. Sullivan, 29 N.E.2d 762, 307 Mass. 227.
Mo.—Ward v. American Ry. Express Co., App., 259 S.W. 514.
Tex.—Gulf, C. & S. F. Ry. Co. v. Morris, Com.App., 250 S.W. 1017.
Davis v. Sullivan & Opry, Civ. App., 242 S.W. 764, affirmed, Com. App., 258 S.W. 157—Panhandle & S. F. Ry. Co. v. Vaughn, Civ.App., 191 S.W. 142, affirmed, Com.App., 222 S.W. 206—International & G. N. Ry. Co. v. Landa & Storey, Civ. App., 183 S.W. 384.
Vt.—Simpson v. Central Vermont Ry. Co., 115 A. 299, 95 Vt. 388.

60.5 Ala.—W. E. Belcher Lumber Co. v. Woodstock Land & Mineral Co., 15 So.2d 625, 245 Ala. 5.

60.10 R.I.—Savard v. Industrial Trades Union of America, 72 A.2d 660, 76 R.I. 496.

61. Mo.—Sanderson v. Nunn, App., 259 S.W. 892.
Vt.—Wells v. Blodgett, 104 A. 146, 92 Vt. 330.

62. Iowa.—Hirsch v. Butler, 164 N.W. 745, 181 Iowa 345.

62.5 Ga.—Banks v. Kilday, 76 S.E.2d 642, 88 Ga.App. 307.

62.10 Ind.—Borenstein v. Uhl, 20 N.E.2d 189, 107 Ind.App. 67.
Iowa.—Maher v. Breen, 276 N.W. 52, 224 Iowa 8.
Mass.—Driscoll v. Bunar, 103 N.E.2d 809, 328 Mass. 398.
Minn.—Armstrong v. Brown Bros., Kootz & Co., 277 N.W. 348, 202 Minn. 26.
Ohio.—Portney v. Frank, 65 N.E.2d 290, 77 Ohio App. 357.
Pa.—Rockey v. Ernest, 80 A.2d 783, 367 Pa. 538.
Tenn.—Hutchinson v. Dobson-Bainbridge Realty Co., 217 S.W.2d 6, 31 Tenn.App. 490.

62.15 Cal.—In re Schmidt's Estate, 121 P.2d 104, 46 C.A.2d 86.
Mo.—Balsano v. Madden, App., 138 S.W.2d 660.
Tex.—Lee v. Powell, Civ.App., 285 S.W.2d 291.

62.20 Cal.—Eichhorn v. De La Cantera, 255 P.2d 70, 117 C.A.2d 50.
Fla.—Adelhelm v. Dougherty, 176 So. 775, 129 Fla. 680.
Iowa.—Henney v. Lambert, 21 N.W.2d 301, 237 Iowa 146.
Kan.—Alexander v. Wehkamp, 232 P.2d 440, 171 Kan. 285.
Ohio.—Schumacher v. Smith, App., 96 N.E.2d 433—Mastran Const. Co. v. Mahoning Exp. Co., App., 96 N.E.2d 30.
Wyo.—Diamond Cattle Co. v. Clark, 74 P.2d 857, 52 Wyo. 265, 116 A.L.R. 912.

63. Ark.—Franklin Life Ins. Co. v. Burgess, 245 S.W.2d 210, 219 Ark. 834.
Cal.—Zuckerman v. Underwriters at Lloyd's, London, 267 P.2d 777, 42 C.2d 460.
Ga.—Powell v. Powell, 35 S.E.2d 298, 199 Ga. 723.
Ky.—Herring v. Lunderman, 194 S.W.2d 506, 302 Ky. 271—Warren's Adm'r v. Stith, 157 S.W.2d 308, 288 Ky. 833.
Mo.—Villmer v. Household Plastics Co., App., 250 S.W.2d 964.
Ohio.—Skiba v. New York, C. & St. L. R. Co., App., 125 N.E.2d 551, appeal dismissed 76 S.Ct. 695, 351 U.S. 901, 100 L.Ed. 1439.
Okl.—Roberts v. Van Cleave, 237 P.2d 892, 205 Okl. 319.
Tex.—Massingill v. Henwood, 159 S.W.2d 118, 138 Tex. 317.
Harrison v. Southwest Coaches, Civ.App., 207 S.W.2d 159—Hill v. Thomas, Civ.App., 140 S.W.2d 875, error dismissed, judgment correct—Hicks Rubber Co. v. Harper, Civ. App., 131 S.W.2d 749, error dismissed, 132 S.W.2d 579, 134 Tex. 89—Alamo Downs, Inc., v. Briggs, Civ.App., 106 S.W.2d 733, error dismissed—Harris v. Thornton's Department Store, Civ.App., 94 S.W.2d 849—Commercial Standard Ins. Co. v. Shudde, Civ.App., 76 S.W.2d 561—Miller v. Foard County, Civ. App., 59 S.W.2d 277.
Wis.—Gauthier v. Carbonneau, 277 N.W. 135, 226 Wis. 527.

Particular terms

(1) "Agent."
Tex.—Beaumont Holding Co. v. Sapp, Civ.App., 62 S.W.2d 703.

(2) "Average annual wage."
Tex.—Texas Employers' Ins. Ass'n v. Marsden, Civ.App., 57 S.W.2d 900.

(3) "Burden of proof."
N.C.—Matthews v. Blackwood Lumber Co., 169 S.E. 708, 204 N.C. 725.

(4) "Contributory negligence."
Ariz.—Seiler v. Whiting, 84 P.2d 452, 52 Ariz. 542.
Tex.—Mahone v. Bowman, Civ.App., 70 S.W.2d 323.

(5) "Converted."
Tex.—Posey v. Varnell, Civ.App., 60 S.W.2d 1057.

(6) Distinction between conveyance of "fee-simple estate" and of "royalty interest."
Tex.—Wilkins v. Dagle, Civ.App., 265 S.W. 918.

(7) "Due and proper care and caution."
Ill.—Devine v. Northwestern Elevated R. Co., 107 N.E. 118, 265 Ill. 641.

(8) "Evidence of change of ownership."
Tex.—Vaughan v. Littlefield, Civ. App., 4 S.W.2d 153.

(9) "Expiration."
Pa.—Gold v. Fox Film Corporation, 155 A. 287, 304 Pa. 114.

(10) "Fair market value."
Tex.—Runnels Chevrolet Co. v. Clifton, Civ.App., 46 S.W.2d 426.

(11) "Greater weight of evidence."
N.C.—Matthews v. Blackwood Lumber Co., 169 S.E. 708, 204 N.C. 725.

(12) "Hedges."
S.D.—Aberdeen Farmers' Equity Exchange v. Sand, 221 N.W. 597, 53 S.D. 574.

(13) "Important duty."
Ky.—Metropolitan Life Ins. Co. v. Stanley, 6 S.W.2d 682, 224 Ky. 529.

(14) "In course of employment."
Tex.—Maryland Casualty Co. v. Bryant, Civ.App., 84 S.W.2d 492, error dismissed.

(15) "Market value."
Tex.—Golden v. Stevens, Civ.App., 138 S.W.2d 243, error refused—Ed S. Hughes Co. v. Clark Bros. Co., Civ.App., 63 S.W.2d 230—Graham-Brown Shoe Co. v. Snodgrass, Civ.App., 257 S.W. 632.

(16) "Negligence."
Ill.—Devine v. Northwestern Elevated R. Co., 107 N.E. 118, 265 Ill. 641.
Ky.—Home Laundry Co. v. Cook, 125 S.W.2d 763, 277 Ky. 8.

(17) "New and independent cause."
Tex.—Texas & P. Ry. Co. v. Mercer, Civ.App., 58 S.W.2d 896.

(18) "Ordinary care."
Ill.—Devine v. Northwestern Elevated R. Co., supra.

(19) "Proper lookout."
Tex.—City of Wichita Falls v. Phillips, Civ.App., 87 S.W.2d 544.

(20) "Proximate cause."
Cal.—De Nardi v. Palanca, 8 P.2d 220, 120 C.A. 371.
Ky.—Sherrow v. Watts' Adm'r, 226 S.W.2d 929, 312 Ky. 262.
Neb.—Hildebrand v. McCauley, 296 N.W. 434, 139 Neb. 55.
N.C.—Matthews v. Blackwood Lumber Co., 169 S.E. 708, 204 N.C. 725—Fleming v. Charlotte Electric Ry. Co., 136 S.E. 723, 193 N.C. 262.

or refusal to give instructions failing to define terms,[63.5] and instructions as to negligence,[64] contributory negligence,[65] or damages.[66]

The act of the court in writing on requested

(21) "Qualifiedly privileged communication."
Tex.—Cyrus W. Scott Mfg. Co. v. Millis, Civ.App., 67 S.W.2d 885.
(22) "Reasonable distance."
Ga.—Stewart v. Avery, 144 S.E. 218, 38 Ga.App. 431.
(23) "Reasonable value."
Ky.—Davis v. Pendennis Club, 19 S.W.2d 1078, 230 Ky. 465.
(24) "Sole negligence."
Ohio.—Watkins v. Linver, 193 N.E. 77, 48 Ohio App. 268.
(25) "Strong lights."
Ga.—Stewart v. Avery, 144 S.E. 218, 38 Ga.App. 431.
(26) "Termination."
Pa.—Gold v. Fox Film Corporation, 155 A. 287, 304 Pa. 114.

63.5 Ala.—Lyons v. Taylor, 166 So. 15, 231 Ala. 600.

64. Ala.—Johnson v. Martin, 52 So. 2d 688, 255 Ala. 600—Conner v. Foregger, 7 So.2d 856, 242 Ala. 275.
Cal.—Johnston v. Orlando, 281 P. 2d 357, 131 C.A.2d 705—Laursen v. Tidewater Associated Oil Co., 268 P.2d 104, 123 C.A.2d 813—McMahon v. Marshall, 244 P.2d 481, 111 C.A. 2d 248—Jackson v. Utica Light & Power Co., 149 P.2d 748, 64 C.A. 2d 885.
Ga.—Grant v. McKiernan, 60 S.E.2d 794, 82 Ga.App. 82—Grady County v. Banker, 59 S.E.2d 732, 81 Ga. App. 701.
Ill.—Standard Oil Co. of Ind. v. Daniel Burkhartsmeier Cooperage Co., 77 N.E.2d 526, 333 Ill.App. 338.
Md.—Adams v. Carey, 190 A. 815, 172 Md. 173.
Mo.—Hathaway v. Evans, App., 235 S.W.2d 407—Daugherty v. Spuck Iron & Foundry Co., App., 175 S.W. 2d 45.
Neb.—Shiman Bros. & Co. v. Nebraska Nat. Hotel Co., 18 N.W.2d 551, 146 Neb. 47.
N.J.—Hamrah v. Clements, 69 A.2d 720, 3 N.J. 285.
Burke v. Lincoln Transit Co., 117 A.2d 521, 37 N.J.Super. 433.
N.C.—Brannon v. Sprinkle, 177 S.E. 114, 207 N.C. 398.
Ohio.—Agler v. Schine Theatrical Co., 17 N.E.2d 118, 59 Ohio App. 68.
Okl.—Westgate Oil Co. v. McAbee, 74 P.2d 1150, 181 Okl. 487.
S.C.—Hutchinson v. City of Florence, 200 S.E. 73, 189 S.C. 123.
Tenn.—All v. John Gerber Co., 252 S.W.2d 138, 36 Tenn.App. 134.
Va.—Yates v. Ley, 92 S.E. 837, 121 Va. 265.
Wash.—Richardson v. Pacific Power & Light Co., 118 P.2d 985, 11 Wash. 2d 288—Farmer v. School Dist. No. 214, King County, 17 P.2d 899, 171 Wash. 278.

65. Ala.—Aquilino v. Birmingham Ry., Light & Power Co., 77 So. 328, 201 Ala. 34.
Cal.—Ferrell v. Matranga, 207 P.2d 654, 92 C.A.2d 620—Kroplin v. Huston, 179 P.2d 575, 79 C.A.2d 332—Sale v. Illinois Electric Co., 299 P. 561, 114 C.A. 71.
Ill.—See Devine v. Northwestern Elevated R. Co., 184 Ill.App. 64, affirmed 107 N.E. 118, 265 Ill. 641.
Ind.—Grand Trunk Western Ry. Co. v. Thrift Trust Co., 115 N.E. 685, 68 Ind.App. 198, rehearing denied Grand Trunk Western Ry. Co. v. Thrift Co., 116 N.E. 756, 68 Ind. App. 198.
Ky.—Louisville Gas & Electric Co. v. Beaucond, 224 S.W. 179, 188 Ky. 725.
Me.—Desmond v. Wilson, 60 A.2d 782, 143 Me. 262.
Minn.—Schneider v. Texas Co., 69 N.W.2d 329, 244 Minn. 131.
Mo.—Long v. F. W. Woolworth Co., 159 S.W.2d 619.
N.Y.—Beck v. General Neon Tube Corp., 1 N.Y.S.2d 2, 253 App.Div. 765.
Ohio.—Mudrich v. Standard Oil Co., 90 N.E.2d 859, 153 Ohio St. 31.
Nunn v. Davidson, 9 N.E.2d 732, 55 Ohio App. 297.
Okl.—Kurn v. Thompson, 105 P.2d 422, 187 Okl. 664.
Tenn.—McClard v. Reid, 229 S.W.2d 505, 190 Tenn. 337.
Wash.—Kennedy v. City of Everett, 99 P.2d 614, 2 Wash.2d 650, opinion and denial of rehearing corrected on other grounds 103 P.2d 371, 4 Wash.2d 729.

66. Ala.—City of Birmingham v. Levens, 200 So. 888, 241 Ala. 47—Jewel Tea Co. v. Sklivis, 179 So. 532, 235 Ala. 510—Lehigh Portland Cement Co. v. Higginbotham, 167 So. 259, 232 Ala. 235—Newton v. Altman, 150 So. 698, 227 Ala. 465.
Ark.—St. Louis, I. M. & S. Ry. Co. v. McMichael, 171 S.W. 115, 115 Ark. 101.
Cal.—McMahon v. Hamilton, 267 P. 546, 204 C. 228—Earl v. Times-Mirror Co., 196 P. 57, 185 C. 165.
Sherrillo v. Stone & Webster Engineering Corp., 244 P.2d 70, 110 C. A.2d 785—Parsell v. San Diego Consol. Gas & Electric Co., 115 P. 2d 539, 46 C.A.2d 212.
Colo.—Colorado Springs & I. Ry. Co. v. Marr, 141 P. 142, 26 Colo.App. 48.
Conn.—Kenure v. Brainerd & Armstrong Co., 91 A. 185, 88 Conn. 265.
Ga.—Draper Canning Co. v. Dempsey, 86 S.E.2d 678, 91 Ga.App. 593—American Fidelity & Cas. Co. v. Farmer, 48 S.E.2d 122, 77 Ga.App. 166—Whatley v. Henry, 16 S.E.2d 214, 65 Ga.App. 668—Smoky Mountain Stages v. Wright, 8 S.E.2d 453, 62 Ga.App. 121—Stansfield v. Gardner, 193 S.E. 375, 56 Ga.App. 634—Ingram v. Kendrick, 172 S.E. 815, 48 Ga.App. 278—Farkas v. S. Cohn & Son, 91 S.E. 892, 19 Ga. App. 472.
Idaho.—Black v. Darrah, 233 P.2d 415, 71 Idaho 404—Garrett Freightlines v. Sell, 125 P.2d 1020, 63 Idaho 738.
Ill.—Johnson v. Luhman, 92 N.E.2d 486, 340 Ill.App. 625. See Chisholm v. First Nat. Bank of Le Roy, 206 Ill.App. 493.
Kan.—McArthur v. Independent Torpedo Co., 190 P. 787, 107 Kan. 68—McGuigan v. Jacobson, 180 P. 962, 106 Kan. 744.
Ky.—Jones v. Grief, 131 S.W.2d 487, 279 Ky. 579.
Mich.—Susich v. Michigan Consol. Gas Co., 291 N.W. 26, 292 Mich. 612—Anderson v. Lavelle, 280 N. W. 729, 285 Mich. 194—O'Brien v. Union Telephone Co., 199 N.W. 671, 228 Mich. 156.
Minn.—Nepstad v. Lambert, 50 N.W. 2d 614, 235 Minn. 1—Baufield v. Warburton, 233 N.W. 237, 181 Minn. 506.
Mo.—Long v. F. W. Woolworth Co., 159 S.W.2d 619—State ex rel. Fourcade v. Shain, 119 S.W.2d 788, 342 Mo. 1190.
McDermott v. United Rys. Co. of St. Louis, App., 236 S.W. 1080—Bond v. City of Sedalia, App., 194 S.W. 740.
Mont.—Humber v. Marshall, 198 P. 747, 60 Mont. 267.
Neb.—Heineman v. Wilson, 271 N.W. 2d 346, 132 Neb. 159.
N.J.—Nightengale v. Public Service Co-ordinated Transport, 149 A. 526, 8 N.J.Misc. 238.
N.D.—Geier v. Tjaden, 74 N.W.2d 361.
Okl.—Chowning v. Ledbetter, 208 P. 829, 86 Okl. 269.
Pa.—Palmer v. City of Erie, 9 A.2d 378, 337 Pa. 5.
Tex.—Western Union Tel. Co. v. Homer, 166 S.W.2d 684, 140 Tex. 193.
Motley v. Mielsch, Civ.App., 214 S.W.2d 671—Texas & N. O. R. Co. v. Coe, Civ.App., 102 S.W.2d 465, error dismissed.
Wash.—Tuveson v. J. M. Colman Co., 82 P.2d 579, 196 Wash. 286.
Wyo.—Borzea v. Anselmi, 258 P.2d 796, 71 Wyo. 348.

Nominal damages

(1) Failure to instruct the jury that the buyer is entitled to nominal damages on proof of a breach of contract is not reversible error.
Iowa.—Faulkner v. Closter, 44 N.W. 208, 79 Iowa 15.

charges the reason for their refusal, although a work of supererogation, does not operate prejudicially to the party requesting the instruction.[67]

§ 1775. —— Cautionary Instructions

Generally the refusal of cautionary instructions cannot be assigned as error, although when it is probable that appellant was prejudiced thereby the judgment will be reversed.

The giving of cautionary instructions stands on a different footing from the giving of instructions on the law of the case and is a matter very much within the discretion of the court.[68] It is generally held that their refusal cannot ordinarily be assigned as error.[69]

This principle has been applied with respect to instructions cautioning the jury that the answers given by them when examined by counsel touching their qualifications are binding on them until discharged from the case;[70] or instructing them that a witness false in part of his testimony is to be distrusted in other parts, and that his testimony may be disregarded;[71] or directing them to disregard improper argument of counsel;[72] or cautioning against prejudice, sympathy, or a different treatment of individuals and corporations;[73] or stating that verbal admissions should be received with caution;[74] or stating that there is no evidence on a certain issue, although such is the case;[75] or directing the jury that they should not bring in a verdict arrived at by lot or chance[76] or fix the amount of damages by adding together the sums found by the individual jurors, and then dividing the total by the number of jurors.[77]

So the rule applies to the refusal or failure to give instructions as to the burden of proof,[78] the credi-

(2) Refusal of a charge prohibiting the recovery of nominal damages, recoverable under the pleadings and evidence is not prejudicial error, although no substantial amount is shown.
Ala.—Walker County v. Davis, 128 So. 144, 221 Ala. 195.

Punitive damages

Where plaintiff in libel action remitted that part of the judgment representing award of punitive damages, as a condition to avoiding grant of new trial, and defendant appealed, questions concerning punitive damages were moot, and alleged error in refusing instructions on punitive damages was not prejudicial.
Cal.—Behrendt v. Times-Mirror Co., 85 P.2d 949, 30 C.A.2d 77.

67. Ala.—Ritter v. Gibson, 116 So. 158, 217 Ala. 304.

68. Ariz.—**Corpus Juris Secundum quoted in** Tenney v. Enkeball, 158 P.2d 519, 524, 62 Ariz. 416.
Cal.—**Corpus Juris Secundum quoted in** Hoagland v. Chargin, 286 P.2d 931, 938, 134 C.A.2d 466.
Ill.—Hammond v. Woodruff, etc., Co., 168 Ill.App. 368.
Ind.—Pennsylvania Ice & Coal Co. v. Elischer, 21 N.E.2d 436, 106 Ind. App. 613.

69. Ariz.—**Corpus Juris Secundum quoted in** Tenney v. Enkeball, 158 P.2d 519, 524, 62 Ariz. 416.
Ill.—Thomas v. Buchanan, 277 Ill. App. 393.
Ky.—Bean v. Bevins, 287 S.W.2d 627.
Mo.—Morris v. E. I. DuPont De Nemours & Co., 173 S.W.2d 39, 351 Mo. 479.
4 C.J. p 1050 note 88.

Delay in instructing

Failure to instruct the jury until the close of evidence not to consider defendant's admissions of plaintiff's ownership of cows sought to be replevied as evidence against his co-defendant was held not harmful to defendants.
Vt.—Cameron v. Blanchard, 176 A. 290, 107 Vt. 51.

70. Ill.—Chicago Union Tract. Co. v. Goulding, 8 N.E. 833, 228 Ill. 164.

71. Ala.—Cain v. Skillin, 121 So. 521, 219 Ala. 228, 64 A.L.R. 1022.
Cal.—Wallace v. Pacific Electric Ry. Co., 288 P. 834, 105 C.A. 664.
Conn.—Miles v. Sherman, 166 A. 250, 116 Conn. 678.
4 C.J. p 1050 note 90.

72. Tex.—Thompson v. Goode, Civ. App., 221 S.W.2d 569, error refused no reversible error—Thetford v. Modern Woodmen of America, Civ. App., 273 S.W. 666.

Retracted statement

Refusal to instruct the jury to disregard improper arguments of appellee's counsel to the jury was held harmless, where, on being challenged as to the correctness of a statement made, appellee's counsel admitted his error before the jury and retracted the statement.
Tex.—Thetford v. Modern Woodmen of America, supra.

73. Cal.—Takako Inai v. Ede, 139 P.2d 76, 59 C.A.2d 549.
Mich.—Jakubiec v. Hasty, 59 N.W.2d 385, 337 Mich. 205.
Mo.—Myers v. Chicago, B. & Q. R. Co., 246 S.W. 257, 296 Mo. 239, certiorari denied Chicago, B. & Q. R. Co. v. Myers, 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.
Williams v. Fleming, 267 S.W. 6, 218 Mo.App. 563.
Va.—Norfolk Southern Ry. Co. v. Wood, 28 S.E.2d 15, 182 Va. 30.
4 C.J. p 1050 note 91.

Sympathy not stressed at trial

Refusal to give a proper instruction telling the jury to eliminate sympathy in considering the evidence was held not prejudicial error, where nothing was said at the trial to enlist sympathy.
Mich.—Noll v. Hirschfeld, 195 N.W. 101, 224 Mich. 439.

74. Cal.—Freeman v. Nickerson, 174 P.2d 688, 77 C.A.2d 40.
Or.—Arthur v. Parish, 47 P.2d 682, 150 Or. 582.
4 C.J. p 1050 note 92.

75. Ill.—Green v. Smith, 180 Ill.App. 572.

76. Ga.—C. J. Kamper Grocery Co. v. Sauls, 144 S.E. 403, 38 Ga.App. 487.

77. Ga.—C. J. Kamper Grocery Co. v. Sauls, supra.
4 C.J. p 1051 note 95.

78. Ariz.—Chernov v. Sandell, 206 P.2d 348, 68 Ariz. 327.
Ga.—Central of Georgia Ry. Co. v. Deas, 96 S.E. 267, 22 Ga.App. 425.
Ind.—Prudential Ins. Co. of America v. Martin, 196 N.E. 125, 101 Ind. App. 320.
Iowa.—Conover v. Hasselman, 202 N.W. 502, 199 Iowa 661—Hopkins v. Convy, 182 N.W. 225, 191 Iowa 402.
Minn.—Merrill v. St. Paul City Ry. Co., 212 N.W. 533, 170 Minn. 332.
Mo.—Villmer v. Household Plastics Co., 250 S.W.2d 964.
George v. Kansas City American Ass'n Baseball Co., App., 219 S.W. 134.
Neb.—Thomas Kilpatrick & Co. v. London Guarantee & Accident Co., 237 N.W. 162, 121 Neb. 354.
Tex.—Export Ins. Co. v. Axe, Civ. App., 36 S.W.2d 572, affirmed Export Ins. Co. of New York v. Axe, Com.App., 58 S.W.2d 39—O'Brien v. McDow, Civ.App., 8 S.W.2d 561—Donoho v. Hunter, Civ.App., 242 S.W. 282, affirmed, Com.App., 276

bility of witnesses,[79] the relative force of positive and negative testimony[80] or circumstantial evidence,[81] the weight or preponderance of the evidence,[82] the form of the verdict,[83] and the unanimity of the jury.[84]

Prejudicial error. When it is probable that appellant was prejudiced thereby, the judgment will be reversed for the failure or refusal of the court to give proper instructions as to the burden of proof,[85] the credibility of witnesses,[86] the weight or preponderance of the evidence,[87] or the form of

S.W. 174, reheard 287 S.W. 47—Lasater v. Jamison, Civ.App., 203 S.W. 1151, error refused—Rick Furniture Co. v. Smith, Civ.App., 202 S.W. 99—Levy v. Jarrett, Civ.App., 198 S.W. 333.

Va.—Bradshaw v. Booth, 105 S.E. 555, 129 Va. 19—Atlantic Coast Line R. Co. v. Church, 92 S.E. 905, 120 Va. 725.

Immaterial issue

Failure properly to instruct the jury regarding the burden of proof on an issue submitted cannot be complained of where the issue was immaterial.

Tex.—Reilly v. Buster, Civ.App., 52 S.W.2d 521, reversed on other grounds 82 S.W.2d 931, 125 Tex. 323.

Other instruction given

(1) Refusing an instruction that the burden was on plaintiff to explain certain receipts is harmless, where the court placed a greater burden of proof on plaintiff than the law required, including explanation of the receipts.

Ala.—Turner v. Birchfield, 140 So. 381, 224 Ala. 316.

(2) Refusal to give requested instruction placing burden of proof as to contributory negligence on defendant in automobile collision case would not require reversal where jury were charged that defendant had burden of proving "affirmative defenses," since quoted words have a well-known meaning in accordance with common usage of the English language.

Cal.—Davis v. Franson, 296 P.2d 600, 141 C.A.2d 263.

79. Cal.—In re Ross' Estate, 178 P. 510, 179 C. 629.

Huber v. Henry J. Kaiser Co., 162 P.2d 693, 71 C.A.2d 278—McSweeney v. East Bay Transit Co., 141 P.2d 787, 60 C.A.2d 807—Kern County Finance Co. v. Iriart, 79 P. 2d 763, 26 C.A.2d 483.

Ga.—Cedrone v. Beck, 40 S.E.2d 388, 74 Ga.App. 488—Callaway v. Fischer, 25 S.E.2d 131, 69 Ga.App. 251.

Ill.—See Smiley v. Barnes, 196 Ill. App. 530.

Iowa.—Davis v. Rudolph, 52 N.W.2d 15, 243 Iowa 744.

Kan.—Godfrey v. Kansas City Public Service Co., 88 P.2d 1037, 149 Kan. 592.

Mo.—Soltesz v. J. H. Belz Provision Co., 260 S.W. 990.

Thompson v. Portland Hotel Co., 239 S.W. 1090, 209 Mo.App. 476—Milton v. Holtzman, App., 216 S.W. 828.

Mont.—Slifer v. Yorath, 155 P. 1113, 52 Mont. 129.

Ohio.—Behan v. Cincinnati St. Ry. Co., 69 N.E.2d 160, 78 Ohio App. 129.

Pa.—Hunter v. Robinson Tp., 96 A. 1036, 251 Pa. 436.

Tenn.—Rice-Stix Dry Goods Co. v. Self, 101 S.W.2d 132, 20 Tenn.App. 498.

80. Iowa.—Stanley v. Cedar Rapids, etc., R. Co., 93 N.W. 489, 119 Iowa 526.

4 C.J. p 1050 note 93.

81. Neb.—Heeney v. Churchill, 50 N.W.2d 72, 154 Neb. 848.

Tex.—Marine Bank & Trust Co. v. Epley, Civ.App., 10 S.W.2d 739.

82. Cal.—Burr v. Goss, 205 P.2d 61, 91 C.A.2d 351—McCollum v. Barr, 176 P. 463, 38 C.A. 411.

Ga.—Rushing v. Akins, 80 S.E.2d 813, 210 Ga. 450.

Ill.—Wacker-Wabash Corp. v. City of Chicago, 112 N.E.2d 903, 350 Ill. App. 343.

Iowa.—Eaves v. City of Ottumwa, 38 N.W.2d 761, 240 Iowa 956, 12 A.L.R.2d 1164.

Ky.—Hutcherson v. Hutcherson's Ex'rs, 232 S.W.2d 995, 313 Ky. 575.

Mich.—Earley v. Sutherby, 67 N.W. 2d 174, 341 Mich. 77.

Minn.—Erickson v. Northern Minn. Nat. Bank of Duluth, 50 N.W.2d 489, 235 Minn. 232.

Mo.—Brockman v. Robinson, App., 48 S.W.2d 128.

83. Ga.—Atlantic Coast Line R. Co. v. Spearman, 156 S.E. 824, 42 Ga. App. 536—Powers v. Franklin, 124 S.E. 363, 32 Ga.App. 641.

Ky.—Allen v. Ferguson, 253 S.W. 2d 8.

S.C.—Hooper v. Hutto, 158 S.E. 726, 160 S.C. 404.

84. W.Va.—Riddle v. Baltimore & O. R. Co., 73 S.E.2d 793, 137 W.Va. 733, 34 A.L.R.2d 1228—Robertson v. Hobson, 171 S.E. 745, 114 W. Va. 236.

85. Ariz.—Stallcup v. Coscarart, 282 P.2d 791, 79 Ariz. 42—Whitlock v. Boyer, 271 P.2d 484, 77 Ariz. 334.

Iowa.—Augustine-Stalker Co. v. Bracha, 212 N.W. 936, 204 Iowa 253.

Md.—Smith v. Whitman, 150 A. 856, 159 Md. 478.

Mo.—Randolph v. Supreme Liberty Life Ins. Co., App., 215 S.W.2d 82, affirmed 221 S.W.2d 155, 359 Mo. 251—Mackler v. Barnert, App., 49 S.W.2d 244.

Neb.—Carlson v. Roberts, 274 N.W. 473, 133 Neb. 166.

Okl.—McBee v. Dennis, 229 P.2d 179, 204 Okl. 296.

Pa.—Arco Metalscraft Co. v. Shaw, 70 A.2d 850, 364 Pa. 39.

Tex.—Panhandle & S. F. Ry. Co. v. Napier, Civ.App., 90 S.W.2d 926, error dismissed—Smith v. Smith, Civ.App., 200 S.W. 540.

Vt.—In re Delligan's Estate, 13 A.2d 282, 111 Vt. 227—Stoddard Bros. v. Howard, 139 A. 776, 101 Vt. 1.

Sharp conflict in evidence

Where there is a sharp conflict in the evidence, the refusal of a requested charge placing the burden of proof on the right party cannot be held harmless error.

Minn.—Cox v. Edwards, 139 N.W. 1070, 120 Minn. 512.

Mo.—Edling-Adcock Real Est. Co. v. Thompson, 134 S.W. 681, 153 Mo. App. 543.

Tex.—Texas Midland R. Co. v. Ray, Civ.App., 168 S.W. 1013.

4 C.J. p 1051 note 96.

Shifting of burden

Failure to instruct, when requested, as to when and under what circumstances the burden of proof shifts to defendant is reversible error.

Miss.—Stevens v. Pendleton, 53 N. W. 1108, 94 Mich. 405.

Tex.—Beall v. Evans, 20 S.W. 945, 1 Tex.Civ.App. 443.

86. Ga.—Georgia R. & Banking Co. v. Radford, 85 S.E. 1006, 144 Ga. 22.

Georgia Ry. & Power Co. v. Pounds, 92 S.E. 1026, 20 Ga.App. 201.

N.Y.—Nachwalter v. Feldman, 135 N. Y.S.2d 260, 284 App.Div. 984.

87. Ariz.—Welch v. Medlock, 286 P.2d 756, 79 Ariz. 247.

Ark.—Martin v. Vaught, 194 S.W. 10, 128 Ark. 293.

Ga.—Turner v. Joiner, 48 S.E.2d 907, 77 Ga.App. 603—Great American Indemnity Co. v. Oxford, 24 S.E. 2d 726, 68 Ga.App. 884—A. F. Gossett & Sons v. Wilder, 168 S.E. 903, 46 Ga.App. 651.

Ill.—Rudolph v. City of Chicago, 119 N.E.2d 528, 2 Ill.App.2d 370.

Ky.—Whittaker v. Thornberry, 209 S.W.2d 498, 306 Ky. 830.

Pa.—Beard v. Mossman, 19 A.2d 850, 144 Pa.Super. 508.

Tex.—Stewart v. Coats, Civ.App., 91 S.W.2d 421.

the verdict;[87.5] and it has been held that refusal of a requested instruction that the jury had a right to infer, from the failure of one defendant to testify that his testimony would be unfavorable to his own and another defendant's defense, was prejudicial error.[88]

It has also been held that, in an action for personal injuries, the refusal of the court to instruct that the mere fact that defendants have introduced no evidence by way of defense should not raise the presumption in the minds of the jury of the guilt of defendants, but that plaintiff is held to the same strictness of proof of the allegations as if defendants had introduced evidence, is prejudicial error.[89]

§ 1776. —— Error Cured by Verdict or Judgment

a. In general
b. Amount of damages

a. In General

Where the verdict shows that no injury resulted to the appellant thereby, the refusal of a request for an instruction is harmless.

Refusal to give proper instructions requested is harmless, where the verdict shows that no injury resulted therefrom,[90] as where the verdict was in appellant's favor,[90.5] the issue to which the refused instruction related is found in appellant's favor,[91] or

87.5 Ohio.—Mates v. Spitzig, App., 122 N.E.2d 639.

88. N.Y.—Wright v. Lockie, 205 N. Y.S. 55, 209 App.Div. 849.

89. Ill.—Gibbons v. Chapin, 147 Ill. App. 575.

90. Ala.—Hill v. Wyrosdick, 113 So. 49, 216 Ala. 235.
Miller v. Bryant, 151 So. 362, 25 Ala.App. 564, certiorari denied 151 So. 366, 227 Ala. 570—J. B. Brown & Co. v. Matthews, 70 So. 287, 14 Ala.App. 428.
Ariz.—Downs v. Sulphur Springs Val. Elec. Co-op., Inc., 297 P.2d 339, 80 Ariz. 286.
Ark.—Wisconsin & Arkansas Lumber Co. v. Thomas, 219 S.W. 779, 143 Ark. 106.
Cal.—**Corpus Juris cited in** Paulos v. Market St. Ry. Co., 28 P.2d 94, 96, 136 C.A. 163.
Conn.—Frechette v. City of New Haven, 132 A. 467, 104 Conn. 83.
Idaho.—Peterson v. Hailey Nat. Bank, 6 P.2d 145, 51 Idaho 427.
Ill.—See McIntire v. Morris, 199 Ill. App. 20.
Ind.—Horner v. Boomershine, 161 N. E. 641, 88 Ind.App. 57—Pittsburgh, C., C. & St. L. R. Co. v. Rushton, 149 N.E. 652, 90 Ind.App. 227—Clark v. Spangler & Grouleff Lumber Co., 135 N.E. 890, 78 Ind.App. 613—Spielman v. Herskovitz, 134 N.E. 909, 78 Ind.App. 131—Merchants' Heat & Light Co. v. Hoffmeyer, 134 N.E. 485, 78 Ind.App. 16—Grand Trunk Western Ry. Co. v. Thrift Co., 116 N.E. 756, 68 Ind.App. 198—Bright Nat. Bank v. Hanson, 113 N.E. 434, 68 Ind.App. 61.
Iowa.—Adamson v. McKeon, 225 N. W. 414, 208 Iowa 949, 65 A.L.R. 817—Schultz v. Starr, 164 N.W. 163, 180 Iowa 1319.
Kan.—Cramer v. Overfield, 222 P. 85, 115 Kan. 197, rehearing overruled 223 P. 1100, 115 Kan. 580—Martin v. Bell, 203 P. 691, 110 Kan. 192—Kansas Milling Co. v. Edwards, 197 P. 1113, 108 Kan. 616, 109 Kan. 194.
Ky.—West v. Butler's Ex'r, 58 S.W. 2d 662, 248 Ky. 404—Chesapeake & O. Ry. Co. v. Ryan's Adm'r, 209 S.W. 538, 183 Ky. 428.
Mass.—Davis-Hill Co. v. Wells, 149 N.E. 693, 254 Mass. 118—Kilroy v. Schimmel, 137 N.E. 366, 243 Mass. 262.
Mich.—Mazzolini v. Kalamazoo County, 199 N.W. 648, 228 Mich. 59.
Minn.—Stacy v. Goff, 62 N.W.2d 920, 241 Minn. 301—Erickson v. Kuehn, 262 N.W. 56, 195 Minn. 164—Castigliano v. Great Northern Ry. Co., 154 N.W. 744, 131 Minn. 107.
Mo.—Gray v. Shelton, 282 S.W. 53.
N.J.—Eatley v. Mayer, 158 A. 411, 10 N.J.Misc. 219.
N.M.—Kandelin v. Lee Moor Contracting Co., 24 P.2d 731, 37 N.M. 479.
N.C.—Nichols v. Wachovia Bank & Trust Co., 56 S.E.2d 429, 231 N.C. 158—Becker Coal & Builders' Supply Co. v. Board of Education of Pender County, 155 S.E. 252, 199 N.C. 575.
Ohio.—Northern Ohio Traction & Light Co. v. Carr, 17 Ohio Cir.Ct., N.S., 200, affirmed 95 N.E. 1153, 84 Ohio St. 458.
Okl.—Clements v. Canon, 40 P.2d 640, 170 Okl. 340—Cosden Pipe Line Co. v. Berry, 210 P. 141, 87 Okl. 237.
S.C.—Collins-Plass Thayer Co. v. Hewlett, 95 S.E. 510, 109 S.C. 245.
Tex.—Barnhart Mercantile Co. v. Bengel, Civ.App., 77 S.W.2d 295—Wood v. Williams, Civ.App., 46 S. W.2d 332—Williams v. City of Galveston, Civ.App., 14 S.W.2d 1049—Gulf, C. & S. F. Ry. Co. v. Williams, Civ.App., 290 S.W. 846—Fort Worth & D. C. Ry. Co. v. Williams, Civ.App., 275 S.W. 415, certiorari denied 46 S.Ct. 356, 270 U.S. 661, 70 L.Ed. 786—Payne v. Richards, Civ.App., 248 S.W. 771—Middleton v. Moore, Civ.App., 248 S. W. 768—Panhandle & S. F. Ry. Co. v. McCrummen, Civ.App., 240 S.W. 607—Grice v. Herrick Hardware Co., Civ.App., 219 S.W. 502—Abilene Gas & Electric Co. v. Thomas, Civ.App., 211 S.W. 600—Duke v. Hatcher, Civ.App., 207 S.W. 575—Pecos & N. T. Ry. Co. v. Chatten, Civ.App., 185 S.W. 911—Amend v. Jahns, Civ.App., 184 S.W. 729, error refused—Shipp v. Cartwright, Civ.App., 182 S.W. 70—Pecos & N. T. Ry. Co. v. Winkler, Civ.App., 179 S.W. 691.
Utah.—McAfee v. Ogden Union Ry. & Depot Co., 218 P. 98, 62 Utah 115.
Va.—Monroe & Monroe v. Cowne, 112 S.E. 848, 133 Va. 181.
Wash.—Amann v. City of Tacoma, 16 P.2d 601, 170 Wash. 296—Beeson Bros. v. Chambers, 285 P. 433, 155 Wash. 564—Van Allen v. Post, 226 P. 721, 130 Wash. 224.
Wis.—Tofte v. Crolius, 220 N.W. 225, 196 Wis. 608.
4 C.J. p 1051 note 99.
Error held not cured by verdict
Minn.—Webber v. Seymour, 51 N.W. 2d 825, 236 Minn. 10.
N.M.—Kirkpatrick v. McMillan, 157 P.2d 772, 49 N.M. 100.
N.C.—Harvell v. City of Wilmington, 200 S.E. 367, 214 N.C. 608.
Pa.—Jones v. MacConochie, 56 A.2d 284, 162 Pa.Super. 124.

90.5 Md.—Ehrhart v. Board of Education of Carroll County, 182 A. 424, 169 Md. 668.
S.D.—Hodkinson v. Parker, 16 N.W. 2d 924, 70 S.D. 272.

91. Ala.—Ellard v. Goodall, 87 So. 196, 204 Ala. 644—Central of Georgia Ry. Co. v. Chambers, 72 So. 351, 197 Ala. 93.
Cal.—Daniels v. McGuire, 198 P. 421, 52 C.A. 188.
Ind.—Louisville & S. I. Traction Co. v. Lottich, 106 N.E. 903, 59 Ind. App. 426.
Kan.—Cherry v. State Auto. Ins. Ass'n, 310 P.2d 907, 181 Kan. 205—Crowder v. Williams, 226 P. 774, 116 Kan. 241—Jones v. City of Kingman, 168 P. 1099, 101 Kan. 625.

specially found to be untrue;[92] the jury did that which the request was designed to effect;[93] or where, under any possible view of the law and evidence, plaintiff would be entitled to recover in at least the amount of the verdict.[93.5]

Likewise, a refusal to give proper instructions requested is harmless where the finding on the issue with respect to which the instruction was refused did not affect the judgment;[94] where the judgment entered is correct[95] or amply supported by the evi-

Ky.—Tackitt v. Newsom, 216 S.W. 376, 186 Ky. 188.
Md.—Ehrhart v. Board of Education of Carroll County, 182 A. 424, 169 Md. 668.
Mass.—Lowenstein v. Silton, 146 N. E. 779, 251 Mass. 320—Walsh v. Adams, 139 N.E. 379, 245 Mass. 1.
Mich.—Connor v. McRae, 160 N.W. 479, 193 Mich. 682.
Mo.—Cochran v. Wilson, 229 S.W. 1050, 287 Mo. 210—Bobb v. City of St. Louis, 205 S.W. 713, 276 Mo. 59.
Byington v. School Dist. of Joplin, 30 S.W.2d 621, 224 Mo.App. 541—Jegglin v. Randolph, 7 S.W. 2d 441, 222 Mo.App. 738.
Neb.—Hauenstine v. Barnett, 152 N. W. 655, 98 Neb. 312.
N.M.—Reed v. Sibley, 296 P. 572, 35 N.M. 307.
N.C.—Webb v. Western Union Telegraph Co., 83 S.E. 568, 167 N.C. 483.
N.D.—Salewski v. Minneapolis, St. P. & S. S. M. Ry. Co., 181 N.W. 72, 47 N.D. 64.
Ohio.—Miller v. Johnson, App., 123 N.E.2d 61—Chenoweth v. Cary, App., 31 N.E.2d 716, appeal dismissed 23 N.E.2d 949, 136 Ohio St. 123.
Okl.—Barall Food Stores v. Bennett, 153 P.2d 106, 194 Okl. 508.
Or.—Brown v. Gessler, 230 P.2d 541, 191 Or. 503, 23 A.L.R.2d 815—Hill v. Wilson, 261 P. 422, 123 Or. 193.
R.I.—Gardner v. Gardner, 129 A. 3.
S.C.—McCall Co. v. Surasky, 128 S. E. 849, 132 S.C. 59.
Tenn.—Saucier v. Roberts, 2 Tenn. App. 211.
Tex.—Whited v. Powell, 285 S.W.2d 364.
Borho v. Austin Laundry & Dry Cleaning Co., Civ.App., 260 S.W.2d 110, error refused no reversible error—American Nat. Ins. Co. v. Massengale, Civ.App., 105 S.W.2d 373—Houston Belt & Terminal Ry. Co. v. Daidone, Civ.App., 62 S.W.2d 524—Williams v. City of Galveston, Civ.App., 14 S.W.2d 1049—Mann v. Cook, Civ.App., 11 S.W.2d 572—Coleman Nat. Bank v. McDonald, Civ.App., 286 S.W. 487—Rio Grande, E. P. & S. F. R. Co. v. Kraft & Madero, Civ.App., 212 S. W. 981, dismissed for want of jurisdiction—Brown v. Houston, E. & W. T. Ry. Co., Civ.App., 198 S.W. 986, dismissed for want of jurisdiction—Shipp v. Cartwright, Civ. App., 182 S.W. 70.
Va.—Kemp v. Miller, 186 S.E. 99, 166 Va. 661.
Wis.—Weber v. Mayer, 63 N.W.2d 318, 266 Wis. 241.
4 C.J. p 1051 note 1.

Finding disregarded or set aside

(1) Appellants cannot complain of a refusal to charge in a suit in equity where the jury's verdict favored them, notwithstanding the verdict was disregarded by the court.
Cal.—Simon Newman Co. v. Woods, 259 P. 460, 85 C.A. 360.

(2) Plaintiff, seeking reversal of a judgment, entered for defendant after setting aside a verdict for plaintiff, was not prejudiced by the refusal of instructions.
Va.—Young v. Dyer, 170 S.E. 737, 161 Va. 434.

Finding of court

(1) Refusing defendant's requested charges as to plaintiff's negligence was not prejudicial, where the court found plaintiff negligent as a matter of law.
Wis.—Wussow v. Badger State Bank of Milwaukee, 234 N.W. 720, 204 Wis. 467, rehearing denied 236 N. W. 687, 204 Wis. 467.

(2) In action for death of motorist struck by train at crossing, refusal of requested charge which asserted the law correctly with respect to contributory negligence was not prejudicial error, where court ruled that motorist was contributorily negligent, thereby precluding a recovery as for initial negligence of the defendant.
Ala.—Pollard v. Crowder, 194 So. 161, 239 Ala. 112.

Issue not decided adversely

Where instructions offered by defendant appellant and refused by the court relate to the alleged damages during a certain period, if the jury did not find any damages for that period, it is unnecessary to examine the instructions offered by appellant on that point.
Ky.—Union Charcoal & Chemical Co. v. McIntosh, 294 S.W. 798, 220 Ky. 74.

92. Cal.—Bronge v. Mowat & Co., 155 P. 827, 29 C.A. 388.
Idaho.—Kinzell v. Chicago, M. & St. P. Ry. Co., 190 P. 255, 33 Idaho 1.
Ind.—Federal Life Ins. Co. v. Relias, 185 N.E. 319, 99 Ind.App. 115—Travelers' Ins. Co. v. Fletcher American Nat. Bank of Indianapolis, 150 N.E. 825, 84 Ind.App. 563.
Me.—Stevens v. Chase, 113 A. 10, 120 Me. 549.
Minn.—Rennie v. Skellett Co., 186 N.W. 130, 151 Minn. 63.
Mo.—Harris v. St. Louis & S. F. R. Co., App., 200 S.W. 111.
Tex.—Texas Electric Ry. v. Jones, Civ.App., 262 S.W. 131—Middleton v. Moore, Civ.App., 248 S.W. 768—Davis v. Christmas, Civ.App., 248 S.W. 126—Kansas City, M. & O. Ry. Co. v. Blackstone & Slaughter, Civ.App., 217 S.W. 208, rehearing denied 218 S.W. 552, error refused—Collier v. Harbour, Civ.App., 174 S.W. 686.
Vt.—Maidment v. Frazier, 98 A. 987, 90 Vt. 520.
Wis.—Siegl v. Watson, 195 N.W. 867, 181 Wis. 619.
4 C.J. p 1051 note 2.

93. Ark.—Moore v. Coit, 274 S.W.2d 651, 224 Ark. 490.
Cal.—Paulos v. Market St. Ry. Co., 28 P.2d 94, 136 C.A. 163.
Conn.—Attardo v. Connecticut Ry. & Lighting Co., 132 A.2d 70.
Ill.—Edson Keith & Co. v. Atchison, T. & S. F. Ry. Co., 192 Ill.App. 350.
N.C.—Newbern v. Hinton, 129 S.E. 181, 190 N.C. 108.
Tex.—Kuehn v. Kuehn, Civ.App., 259 S.W. 290—Tyler v. McChesney, Civ.App., 190 S.W. 1115, error refused—Nanny v. Vaughn, 187 S.W. 499, 60 Tex.Civ.App. 290.
4 C.J. p 1052 note 3.

Cure by amount of verdict

In trover for grain and cotton bought from one alleged to be a cropper under plaintiff, and hence without title to the property sold, failure to instruct that the cropper would have had title to a part of the grain, if it had been divided, is not prejudicial to defendant where the amount of the verdict shows that no recovery was allowed as to such grain.
Ga.—Bryant v. Pugh, 12 S.E. 927, 86 Ga. 525.

93.5 Okl.—City of Holdenville v. Kiser, 64 P.2d 1223, 179 Okl. 216.

94. Mo.—Elmer v. Rubenstein, App., 24 S.W.2d 657.
N.C.—Sharp v. Tatham, 170 S.E. 654, 205 N.C. 827.
4 C.J. p 1052 note 4.

95. Ill.—Schillo v. City of Chicago, 62 N.E.2d 22, 326 Ill.App. 463—Powell Bros. v. Penn Mut. Life Ins. Co. of Philadelphia, 48 N.E.2d 206, 318 Ill.App. 643.
Okl.—Goehler v. Grove, 234 P. 622, 108 Okl. 159.

Judgment corrected

In suit on note given for merchandise with defense of partial failure of consideration, where defendant ad-

dence;[95.5] where no other conclusion could be reached on the evidence;[96] where appellee was entitled to a directed verdict;[97] where the court on the whole evidence correctly instructed the jury to find for appellee;[98] or where appellant would not be entitled to recover in any event.[99]

Where the verdict eliminated consideration of the question to which the requested instruction was directed, its refusal is not ground for reversal,[1] as where a finding on one issue rendered the issue on which the requested instruction was based immaterial,[2] or negatived the facts on which the refused

mitted receiving all the merchandise except a small item, failure of trial court to charge on partial failure of consideration was harmless, where the judge of superior court wrote the amount of the item off the judgment.
Ga.—Daniel v. Rich's Inc., 52 S.E.2d 557, 78 Ga.App. 888.

95.5 Ill.—Zelinski v. Chicago & N. W. Ry. Co., 82 N.E.2d 905, 336 Ill.App. 49.

96. Ala.—Holczstein v. Bessemer Trust & Savings Bank, 136 So. 409, 223 Ala. 271.
Ga.—Hickox v. Griffin, 55 S.E.2d 351, 205 Ga. 859—Grimsley v. Morgan, 172 S.E. 49, 178 Ga. 40.
Norris v. Macon Terminal Co., 198 S.E. 272, 58 Ga.App. 313.
Ind.—Perkins v. Sullivan, App., 143 N.E.2d 105.
Md.—Chiswell v. Nichols, 115 A. 790, 139 Md. 442.
Mo.—Summers v. Peoples Elevator Co., App., 136 S.W.2d 81.
Neb.—Leichner v. First Trust Co. of Lincoln, 274 N.W. 475, 133 Neb. 170—Stiefler v. Miller, 232 N.W. 620, 120 Neb. 6—Advance-Rumely Thresher Co. v. Bartzat, 206 N.W. 7, 114 Neb. 35.
Okl.—Oklahoma City v. Page, 6 P. 2d 1033, 153 Okl. 285.
Va.—Klingstein v. Vaughan, 140 S. E. 275, 149 Va. 147—Honaker Lumber Co. v. Kiser, 113 S.E. 718, 134 Va. 50—Standard Red Cedar Chest Co. v. Monroe, 99 S.E. 589, 125 Va. 442.
4 C.J. p 1052 note 5.

97. Ala.—McCarty v. Skelton, 172 So. 901, 233 Ala. 531—Lawler v. Hyde, 161 So. 523, 230 Ala. 467—Lambert v. Southern Ry. Co., 108 So. 255, 214 Ala. 438.
Knights of Modern Maccabees v. Gillespie, 71 So. 67, 14 Ala.App. 493.
Ark.—Mechanics' Lumber Co. v. Yates American Mach. Co., 26 S.W. 2d 80, 181 Ark. 415—Yarnell v. Mechanics' Ins. Co., 13 S.W.2d 303, 178 Ark. 1106.
Ky.—Sizemore v. Hoskins, 235 S.W. 2d 1011, 314 Ky. 436.
Mass.—Barber v. Rathvon, 145 N.E. 866, 250 Mass. 479.
Mich.—Le Duc v. Beechler, 233 N.W. 440, 252 Mich. 633.
Mo.—Waldmann v. Skrainka Const. Co., 233 S.W. 242, 289 Mo. 622.
Sutton v. North American Accident Ins. Co., App., 208 S.W. 499.
Neb.—Buzzello v. Sramek, 193 N.W. 743, 110 Neb. 262.
Okl.—Stacy v. Browne, 219 P. 336, 99 Okl. 104.
Tex.—Missouri Pac. R. Co. v. Baldwin, Civ.App., 261 S.W. 418, affirmed, Com.App., 273 S.W. 834, certiorari denied 46 S.Ct. 336, 270 U.S. 645, 70 L.Ed. 777—Jackson v. Home Nat. Bank of Baird, Civ. App., 185 S.W. 893.
Utah.—Butler v. Payne, 203 P. 869, 59 Utah 383.
4 C.J. p 1052 note 6.

98. Ala.—Acme Machine & Welding Co. v. Home Industry Iron Works, 135 So. 183, 223 Ala. 248—Kinney v. Cullman County Farm Bureau, 117 So. 189, 217 Ala. 569.
Tex.—Unknown Heirs of Buchanan v. Creighton-McShane Oil Co., Civ. App., 176 S.W. 914.
4 C.J. p 1052 note 7.

Affirmative charge correctly given
The reviewing court will not consider the refusal of requested charges dealing with an issue as to which the trial court correctly gave the affirmative charge against appellant.
Ala.—Kelly v. Hanwick, 153 So. 269, 228 Ala. 336.
4 C.J. p 1052 note 7 [a].

99. Cal.—Graban v. Gonzales, 26 P. 2d 39, 134 C.A. 657—Malone v. Los Angeles Ry. Corporation, 238 P. 110, 72 C.A. 736.
Conn.—Petrillo v. Kolbay, 165 A. 346, 116 Conn. 389.
Ga.—Buttrill Guano Co. v. Curry, 92 S.E. 521, 147 Ga. 11.
Williams v. Miller, 192 S.E. 244, 56 Ga.App. 84.
Idaho.—Beloit v. Green, 251 P. 621, 43 Idaho 265.
Kan.—Home State Bank of Medicine Lodge v. Hogard, 209 P. 973, 112 Kan. 36.
Ky.—Hogle's Guardian v. Wolfzorn, 58 S.W.2d 577, 248 Ky. 396.
Mo.—Roehl v. Ralph, App., 84 S.W. 2d 405.
Neb.—Nielsen v. Yellow Cab & Baggage Co., 265 N.W. 420, 130 Neb. 457.
Ohio.—Stark Electric R. Co. v. Brooks, 114 N.E. 245, 94 Ohio St. 324.
S.D.—Haines v. Waite, 248 N.W. 207, 61 S.D. 250.
Tex.—Schaff v. Young, Civ.App., 264 S.W. 582.
4 C.J. p 1052 note 8.

Verdict demanded by evidence
Where the verdict rendered was demanded by the pleadings and evidence, any errors in refusing charges were harmless.
Ga.—American Surety Co. of New York v. Pettie, 171 S.E. 916, 178 Ga. 26—Buttrill Guano Co. v. Curry, 92 S.E. 521, 147 Ga. 11.

1. Ala.—Konidaris v. Burgess, 137 So. 303, 223 Ala. 512—Newell Contracting Co. v. Glenn, 107 So. 801, 214 Ala. 282—Bank of Ramer v. Derden, 101 So. 594, 211 Ala. 666.
Ga.—Nalley Land & Investment Co. v. Merchants & Planters Bank, 199 S.E. 815, 187 Ga. 142.
Wallace v. Howard, 198 S.E. 812, 58 Ga.App. 428—McCarty v. McCarty, 190 S.E. 376, 55 Ga.App. 411.
Ind.—Lake Erie & W. R. Co. v. Howarth, 124 N.E. 687, 73 Ind.App. 454, rehearing denied 127 N.E. 804, 73 Ind.App. 454.
Iowa.—Miller v. Griffith, 66 N.W.2d 505, 246 Iowa 874—Fagen Elevator v. Pflester, 56 N.W.2d 577, 244 Iowa 633—Beck v. Dubishar, 36 N.W.2d 438, 240 Iowa 267.
Kan.—Robertson v. Wangler, 190 P. 788, 107 Kan. 45.
Mass.—Rosenberg v. Morgan Memorial Co-op. Industries & Stores, 159 N.E. 499, 262 Mass. 68—Kos v. Brault, 146 N.E. 16, 250 Mass. 467—Levi v. Rubin, 134 N.E. 234, 241 Mass. 40.
N.J.—Brice v. Austin, 105 A.2d 680, 31 N.J.Super. 10—Tsibikas v. Morrof, 79 A.2d 64, 12 N.J.Super. 102.
Ohio.—Matis v. Woodruff, 166 N.E. 203, 31 Ohio App. 73.
Pa.—Rohland v. Nagy, 85 A.2d 88, 369 Pa. 186.
Utah.—Malia for Use and Benefit of Creditors of North Sanpete Bank v. Seeley, 57 P.2d 357, 89 Utah 262.
Wis.—Schwartz v. Schneuriger, 69 N.W.2d 756, 269 Wis. 535.
4 C.J. p 1052 note 9.

2. Ala.—Cargall v. Riley, 95 So. 821, 209 Ala. 183—J. A. Lindsey & Co. v. Steenson, 79 So. 11, 201 Ala. 589.
Cal.—Atherley v. MacDonald Young & Nelson, Inc., 298 P.2d 700, 142 C.A.2d 575.
Conn.—Hoffberg v. Epstein, 36 A.2d 388, 130 Conn. 613.
Ga.—Rainey v. Moon, 2 S.E.2d 405, 187 Ga. 712.
J. R. Mitchell & Son v. La Fayette Investment & Realty Co., 118 S.E. 777, 30 Ga.App. 696.
Ill.—Bux v. Illinois Cent. R. Co., 229 Ill.App. 50.
Ind.—Spice v. Astry, 110 N.E. 201, 184 Ind. 1.
Kempf v. Himsel, 98 N.E.2d 200, 121 Ind.App. 488.

instruction was predicated,[3] or where findings of the jury are only advisory and the court has made independent findings on the same evidence and has rendered judgment thereon.[4]

A finding that defendant was negligent and plaintiff was not does not cure error in refusing to charge on the issue of proximate cause.[5] A verdict allowing punitive damages in an action for false arrest and imprisonment, under an instruction that, if defendant had reasonable cause to believe plaintiff committed the theft, no punitive damages should be allowed, is not an implied finding that plaintiff was not guilty curing error in refusing defendant's requested charge that, if plaintiff was guilty of the theft, he could not recover.[6] A verdict for only a part of the compensation claimed under an employment contract does not establish that it was based only on compensation found to have become due within the applicable statute of limitations so as to render the denial of instructions as to the statute nonprejudicial.[6.5]

b. Amount of Damages

The judgment will not be reversed where error in refusing to charge on the measure of damages is cured by the verdict.

Error in refusing to charge on the measure of damages is not prejudicial where the jury do not find any damages to have been suffered,[6.50] as where

Iowa.—Schroeder v. Kindschuh, 294 N.W. 784, 229 Iowa 590—Carpenter v. Wolfe, 273 N.W. 169, 223 Iowa 417—Enfield v. Butler, 264 N.W. 546, 221 Iowa 615.

Kan.—Bair v. Plummer, 118 P.2d 566, 154 Kan. 397—Meneley, by Myers v. Montgomery, 64 P.2d 550, 145 Kan. 109—Forsberg v. Snow, 22 P.2d 421, 137 Kan. 886—Stanly v. Buser, 185 P. 39, 105 Kan. 510, 10 A.L.R. 218.

Ky.—Ellis v. Glenn, 269 S.W.2d 234—Jarboe v. Shane, 254 S.W.2d 695—Wight v. Rose, 273 S.W. 472, 209 Ky. 803.

Mass.—Gill v. Jakstas, 90 N.E.2d 527, 325 Mass 309—Askowith v. Massell, 156 N.E. 875, 260 Mass. 202—Walsh v. Adams, 139 N.E. 379, 245 Mass. 1.

Mich.—Turner v. Rosema, 268 N.W. 757, 276 Mich. 620—Jozefiak v. Detroit United Ry., 159 N.W. 540, 193 Mich. 318.

Minn.—Ammundson v. Tinholt, 36 N.W.2d 521, 228 Minn. 115, 7 A.L.R. 2d 1318.

Miss.—Illinois Cent. R. Co. v. Paxton, 193 So. 915, 187 Miss. 858.

Mo.—Cochran v. Jefferson County Lumber Co., App., 132 S.W.2d 32.

Ohio.—Erdman v. Mestrovich, 97 N.E.2d 674, 155 Ohio St. 85, 31 A.L.R. 2d 1417.

Northern Ohio Traction & Light Co. v. Carr, 17 Ohio Cir.Ct., N.S., 200.

R.I.—Malfetano v. United Electric Rys. Co., 191 A. 491, 58 R.I. 129.

Tex.—Olivares v. San Antonio Public Service Co., Civ.App., 134 S.W. 2d 821, error refused—De Leon v. Longoria, Civ.App., 4 S.W.2d 222—Baker v. Streater, Civ.App., 221 S.W. 1039, dismissed for want of jurisdiction—Wichita Valley Ry. Co. v. Somerville, Civ.App., 179 S.W. 671.

Wis.—Piek v. Knitter, 35 N.W.2d 193, 254 Wis. 103—Hanson v. Matas, 249 N.W. 505, 212 Wis. 275.

4 C.J. p 1052 note 10.

Two-issue rule held applicable to plaintiffs

The two-issue rule, which provides that where a favorable finding on either of two issues would authorize the verdict, and no interrogatories were submitted to determine on which issue the verdict was based, any error in the refusal of instructions on any issue other than the one properly presented is not prejudicial, applies to plaintiffs as well as defendants.

Ohio.—Berger v. Grandview Bldg. Co., App., 59 N.E.2d 759—Zimmerman v. Second Nat. Bank, 156 N.E. 157, 24 Ohio App. 48.

3. Ala.—City of Dothan v. Hardy, 188 So. 264, 237 Ala. 603, 122 A.L.R. 637.

Ark.—Safeway Cab & Storage Co. v. Hamilton, 112 S.W.2d 973, 196 Ark. 1179.

Cal.—Stickel v. San Diego Elec. Ry. Co., 195 P.2d 416, 32 C.2d 157.

Power v. Crown Stage Co., 256 P. 457, 82 C.A. 660.

Ind.—Taggart v. Keebler, 154 N.E. 485, 198 Ind. 633.

Kempf v. Himsel, 98 N.E.2d 200, 121 Ind.App. 488—New York Cent. R. Co. v. Verpleatse, 59 N.E.2d 916, 116 Ind.App. 1, rehearing denied 60 N.E.2d 784, 116 Ind.App. 1.

Iowa.—Hansen v. Nelson, 39 N.W. 2d 292, 240 Iowa 1298—Hanley v. Fidelity & Casualty Co., 161 N.W. 114, 180 Iowa 805, followed in Hanley v. Travelers' Protective Ass'n, 161 N.W. 125.

Kan.—Duran v. Mission Mortuary, 258 P.2d 241, 174 Kan. 565.

Ky.—Huntzicker v. Pennsylvania R. Co., 13 Ky.Op. 371.

Md.—Commercial Credit Corporation v. Rozier, 136 A. 636, 152 Md. 268.

Mass.—Forra v. Hume, 194 N.E. 301, 289 Mass. 266—Marsh v. Beraldi, 157 N.E. 347, 260 Mass. 225—Goldstein v. Slutsky, 150 N.E. 326, 254 Mass. 501—Frewen v. Page, 131 N.E. 475, 238 Mass. 499, 17 A.L.R. 134.

Mich.—Van Houtum v. Associated Broadcasting Corp., 40 N.W.2d 784, 326 Mich. 736.

Neb.—Jacobsen v. Poland, 80 N.W.2d 891, 163 Neb. 590.

N.H.—Small v. Saunders & Lipson, 129 A. 270, 81 N.H. 520.

N.J.—Loeb v. Cook, 166 A. 134, 110 N.J.Law 417.

Wiese v. Baldanza Bros., 179 A. 377, 13 N.J.Misc. 472—Halpin v. Tillou, 126 A. 665, 2 N.J.Misc. 1100.

N.C.—Bryant v. Stone, 100 S.E. 578, 178 N.C. 291—Bond v. Carolina, C. & O. Ry., 96 S.E. 22, 175 N.C. 606.

Ohio.—Vukovic v. Walnut Grove Country Club, App., 124 N.E.2d 463.

Crew v. Pennsylvania R. Co., 153 N.E. 95, 21 Ohio App. 143.

Okl.—Keahey v. Craig, 96 P.2d 521, 186 Okl. 162—Boswell v. Simpson, 76 P.2d 266, 182 Okl. 84—Whitworth v. Riley, 269 P. 350, 132 Okl. 72, 59 A.L.R. 584.

Tex.—Phillips Petroleum Co. v. Capps, Civ.App., 170 S.W.2d 522, error refused—Rosser v. Cole, Civ. App., 226 S.W. 510, dismissed for want of jurisdiction—Kendrick v. Polk, Civ.App., 225 S.W. 826—Kirby Lumber Co. v. Bratcher, Civ. App., 191 S.W. 700, dismissed by agreement—International & G. N. Ry. Co. v. Vogel, Civ.App., 184 S.W. 229.

Vt.—Webster v. Canadian Pac. Ry. Co., 156 A. 524, 103 Vt. 460.

4 C.J. p 1052 note 11.

4. Kan.—Munn v. Gordon, 125 P. 7, 87 Kan. 519.

Okl.—Jenkins v. Abercrombie, 228 P. 2d 657, 204 Okl. 213.

5. Tex.—Texas & N. O. R. Co. v. Owens, Civ.App., 54 S.W.2d 848.

6. Mo.—Harris v. Terminal R. Ass'n of St. Louis, 218 S.W. 686, 203 Mo. App. 324.

6.5 Mass.—Kelly v. McIntyre, 81 N.E.2d 825, 323 Mass. 313.

6.50 Ky.—Talbert v. City of Winchester, 125 S.W.2d 1002, 277 Ky. 164.

the verdict is for defendant,[7] or for plaintiff on defendant's counterclaim;[7.5] and the same rule applies where the jury act as if the instruction had been given,[7.10] where the amount awarded is fully sustained by the evidence,[8] is not questioned,[9] is admitted to be justified,[10] is for a less sum than the damages proved,[11] or as small as it could rightfully have been had the charge been given,[11.5] or is approximately right,[11.10] or not excessive,[11.12] although it has been held that the mere fact that a ver-

7. Ala.—Strickling v. Whiteside, 4 So.2d 416, 242 Ala. 29—Roll v. Dockery, 122 So. 630, 219 Ala. 374—Elder v. Ralls Sanitarium, 122 So. 41, 219 Ala. 298—Morris v. Corona Coal Co., 109 So. 278, 215 Ala. 47—Allen v. Birmingham Southern R. Co., 97 So. 93, 210 Ala. 41.
Cal.—Miller v. Cranston, 106 P.2d 963, 41 C.A.2d 470—Peluso v. City Taxi Co., 182 P. 808, 41 C.A. 297.
Colo.—Barr v. Henson, 263 P. 713, 83 Colo. 204.
Conn.—Cornwell v. Rosoff, 78 A.2d 544, 137 Conn. 458—Le Count v. Farrand, 171 A. 623, 118 Conn. 210.
Ga.—Bazemore v. Powell, 188 S.E. 282, 54 Ga.App. 444—Parker v. Lee Baking Co., 167 S.E. 747, 46 Ga. App. 470—Howard v. Georgia Ry. & Power Co., 133 S.E. 57, 35 Ga. App. 273—Sarman v. Seaboard Air Line Ry. Co., 125 S.E. 891, 33 Ga. App. 315—Union Brokerage Co. v. Fine, 119 S.E. 343, 30 Ga.App. 788—Jackson v. Merritt Hardware Co., 107 S.E. 394, 26 Ga.App. 747.
Ill.—Woodlawn Farm Co. v. Farmers' & Breeders' Live Stock Ins. Co., 227 Ill.App. 577—Jent v. Old Ben Coal Corporation, 222 Ill.App. 380.
Iowa.—Janvrin v. Broe, 33 N.W.2d 427, 239 Iowa 977—Ferguson v. Lux, 188 N.W. 898, 198 Iowa 1139.
Kan.—Masopust v. Hopkins, 231 P. 843, 117 Kan. 366.
Ky.—Lawrence v. Merrick, 252 S.W. 2d 5—Edmonds v. Hensley, 240 S. W.2d 631—Goodwin v. Miller, 276 S.W. 117, 210 Ky. 407—Milner's Adm'r v. Evansville Ry. Co., 221 S.W. 207, 188 Ky. 14.
Md.—Barone v. Winebrenner, 55 A. 2d 505, 189 Md. 142.
Mass.—Adams v. Hayden, 128 N.E. 798, 236 Mass. 454—McNeil v. Middlesex & B. St. Ry. Co., 123 N.E. 676, 233 Mass. 254.
Mich.—Zoterell v. Repp, 153 N.W. 692, 187 Mich. 319.
Miss.—Mitchell v. Eagle Motor Lines, Inc., 87 So.2d 466.
Mo.—Simmons v. Wells, 20 S.W.2d 659, 323 Mo. 882.
Legger v. Great Northern Life Ins. Co., App., 216 S.W.2d 106—Citizens Bank of Senath v. Johnson, App., 112 S.W.2d 916.
Neb.—Shiman Bros. & Co. v. Nebraska Nat. Hotel Co., 18 N.W.2d 551, 146 Neb. 47—Johnson v. Batteen, 13 N.W.2d 625, 144 Neb. 384.
Okl.—Williams v. Slaughter, 15 P.2d 27, 159 Okl. 254—Mathews v. Cifers, 221 P. 468, 94 Okl. 168.
Or.—**Corpus Juris Secundum cited in** Tycer v. Hartsell, 198 P.2d 263, 264, 184 Or. 310—Mason v. Allen, 195 P. 2d 717, 183 Or. 638.
Pa.—Skovran v. Pritz, 126 A.2d 456, 386 Pa. 425—Leonhardt v. Green, 96 A. 1096, 251 Pa. 579.
Tex.—Knight v. Texas & N. O. R. Co., Civ.App., 26 S.W.2d 672.
Utah.—Malia for Use and Benefit of Creditors of North Sanpete Bank v. Seeley, 57 P.2d 357, 89 Utah 262.
Wash.—Bissell v. Seattle Vancouver Motor Freight, 168 P.2d 390, 25 Wash.2d 68.
4 C.J. p 1052 note 13.

Nominal damages

Error in failing to submit the issue of nominal damages for an admitted trespass to the jury does not require retrial, where on the issue of substantial damages the jury found in defendant's favor. In such case the verdict will be reversed and the cause remanded with directions to the trial court to enter a judgment in plaintiff's favor for a sum not exceeding one dollar.
Neb.—Kochenthal v. Omaha & Council Bluffs St. Ry. Co., 240 N.W. 295, 122 Neb. 244.

7.5 Ga.—Guffin v. Kelly, 14 S.E.2d 50, 191 Ga. 880.

7.10 Ga.—McElroy v. Lambert, 192 S.E. 258, 56 Ga.App. 127.
N.C.—Garland v. Penegar, 70 S.E.2d 486, 235 N.C. 517.

8. Ala.—Lehigh Portland Cement Co. v. Higginbotham, 167 So. 259, 232 Ala. 235.
Conn.—Rutkowski v. Connecticut Light & Power Co., 123 A. 25, 100 Conn. 49.
Iowa.—Maguire v. Wm. Grettenberg Grain Co., 186 N.W. 644, 193 Iowa 23.
Pa.—Wilk v. Borough of Mt. Oliver, 33 A.2d 73, 152 Pa.Super. 539—Armstrong v. McGraw, 175 A. 279, 115 Pa.Super. 156.
Tex.—Farmers' Gin Co. v. Smith, Civ.App., 28 S.W.2d 839.
4 C.J. p 1053 note 14.

Failure to request instruction

"Where the testimony in a case for damages to property by elevating the grade of the street showed the difference in value immediately before and immediately after the improvements, and the jury returned a verdict not in excess of such testimony, the court will not reverse for the failure of the parties to request a proper instruction as to the damage in such case."
Miss.—City of Canton v. Hart, 107 So. 195, 141 Miss. 655.

9. Ky.—Hines v. May, 230 S.W. 924, 191 Ky. 493.
Or.—Bowerman v. Columbia Gorge Motor Coach System, 284 P. 579, 132 Or. 106.
4 C.J. p 1053 note 15.

10. Ill.—Grimm v. East St. Louis, etc., R. Co., 180 Ill.App. 92.

11. Ind.—Aufderheide v. Rohr, 118 N.E. 823, 187 Ind. 205.
Md.—Bernstein v. Merekel, 95 A. 55, 126 Md. 454.
Pa.—Kerns v. Ripka, 85 Pa.Super. 97.
4 C.J. p 1053 note 17.

Burden of proof

Where insured and her witness testified that articles of furniture insured under a fire policy were in fine condition when destroyed, and were in the same condition as when insured, and the value fixed in the policy was one thousand five hundred dollars, and the verdict was for nine hundred eighty-seven dollars, defendant insurer could not complain of the refusal of an instruction placing the burden of proving such value on insured.
Mo.—Painter v. Concordia Fire Ins. Co., App., 256 S.W. 531.

Exemplary damages

Failure to give an instruction limiting exemplary damages for fraudulently inducing the purchase of land was held not prejudicial to defendants, where the amount of exemplary damages awarded by the jury was less than the maximum amount authorized by statute.
Tex.—Hawthorne v. Walton, Civ. App., 30 S.W.2d 397.

11.5 Ga.—Roberts v. McClellan, 55 S.E.2d 736, 80 Ga.App. 199.
Ill.—Schultz v. Stephan, 132 N.E.2d 30, 8 Ill.App.2d 550.

Failure to instruct as to use of mortality tables has been held not harmful error in view of modest verdict.
Ga.—American Fidelity & Cas. Co. v. Farmer, 48 S.E.2d 141, 77 Ga.App. 192.

11.10 Mo.—General Exchange Ins. Corp. v. Young, 206 S.W.2d 683, affirmed 212 S.W.2d 396, 357 Mo. 1099.
Utah.—Boskovich v. Utah Const. Co., 259 P.2d 885.
W.Va.—Franklin v. Pence, 36 S.E. 2d 505, 128 W.Va. 353.

11.12 Mo.—Hertz v. McDowell, App., 203 S.W.2d 500, affirmed 214 S.W. 2d 546, 358 Mo. 383.
Okl.—Bunch v. Perkins, 180 P.2d 664, 198 Okl. 517.

dict is not excessive does not necessarily make the refusal to give a proper instruction harmless.[11.13]

Moreover, error in refusing to charge on the measure of damages is not prejudicial where only nominal damages are recoverable on the evidence,[12] where the verdict eliminates consideration of the question to which the requested instruction is directed,[12.5] where the evidence is confined to specific items and the instructions restrict the jury to the consideration of such items,[13] or where the error is cured by remittitur,[13.5] or by action of the court[14] or successful party[15] in reducing the amount of the verdict.

Likewise a refusal to limit the amount of damages recoverable to the amount demanded by the complaint is not prejudicial error where the award is for less than, or not in excess of, what might have been recovered under the complaint;[16] and a refusal of charges prohibiting recovery for certain items is not reversible error where it does not appear that any substantial amount for such items is included in the verdict.[17]

So, where it is manifest from the amount of the verdict that the jury did not include exemplary or punitive damages, the error, if any, in refusing to give a charge excluding a finding for such damages is harmless;[18] and where, under the evidence, punitive damages are not recoverable, the refusal of a request to charge on that subject is not prejudicial.[19] Similarly, it has been held that any error in the refusal to submit the question of the right to punitive damages is harmless where the jury awarded no damages,[19.5] although it has been held that, where defendant sought to recover only punitive damages, error of the court in failing to instruct the jury as to the measure of such damages was prejudicial notwithstanding the finding was against defendant, since the failure to instruct may have entered into, and affected the finding of, the jury on the question of liability or nonliability of plaintiff.[19.10]

Error in omitting an instruction on the measure of damages based on defendant's version of the facts is harmless, where the jury accepted plaintiff's version.[20]

11.13 Ind.—Highshew v. Kushto, 134 N.E.2d 555, 235 Ind. 505, petition denied 135 N.E.2d 251, 235 Ind. 505.

12. Ala.—Tuskegee Land, etc., Co. v. Birmingham Realty Co., 59 So. 557, 5 Ala.App. 499.

12.5 Ky.—Louisville & N. R. Co. v. Thomas, 183 S.W.2d 19, 298 Ky. 494.

13. Kan.—McCune v. Ratcliff, 129 P. 1167, 88 Kan. 653.

13.5 Ind.—Meyer v. Garvin, 37 N.E. 2d 291, 110 Ind.App. 403.
Tenn.—Nashville, C. & St. L. Ry. v. Hines, 94 S.W.2d 397, 20 Tenn.App. 1.

14. Ga.—Daniel v. Rich's Inc., 52 S.E.2d 557, 78 Ga.App. 888.
Tex.—Thomas v. Pugh, Civ.App., 6 S.W.2d 202.
Wash.—Tigner v. Zosel, 21 P.2d 239, 172 Wash. 552.
4 C.J. p 1053 note 26.

15. Tex.—Jones v. Myers, Civ.App., 165 S.W. 523.

16. Cal.—Parsell v. San Diego Consol. Gas & Electric Co., 115 P.2d 539, 46 C.A.2d 212.
Mo.—Northcutt v. St. Louis Public Service Co., App., 48 S.W.2d 89—Andersen v. Wells, App., 261 S.W. 952—Cook v. City of St. Joseph, 220 S.W. 693, 203 Mo.App. 430—Kinsolving v. Kinsolving, App., 194 S.W. 530.
Wash.—Oliver v. Taylor, 205 P. 746, 119 Wash. 190.
4 C.J. p 1053 note 20.

Special damages

In an action by a father to recover damages caused him as the result of injuries sustained by his son through defendant's negligence, failure to limit, in the instruction, the amount of plaintiff's recovery for special damages to an amount within the pleadings and evidence, was held not reversible error, where the amount of the special damages proven did not exceed the amount specified in the pleadings.
Mo.—Scanlon v. Kansas City, 81 S. W.2d 939, 336 Mo. 1058.

17. Ala.—Walker County v. Davis, 128 So. 144, 221 Ala. 195.
Md.—Maryland Casualty Co. v. East Baltimore Driving Ass'n, 108 A. 517, 135 Md. 105—United Laundries Co. v. Bradford, 105 A. 303, 133 Md. 363.

18. Ala.—Johnson v. Martin, 52 So. 2d 688, 255 Ala. 600—W. E. Belcher Lumber Co. v. Woodstock Land & Mineral Co., 15 So.2d 625, 245 Ala. 5—Bradley v. Ashworth, 100 So. 663, 211 Ala. 395.
S.C.—Moody v. Dillon Co., 43 S.E.2d 201, 210 S.C. 458—Brewer v. Atlantic Coast Line R. Co., 147 S.E. 596, 149 S.C. 454.
4 C.J. p 1053 note 21.

It has been said, however, that refusal of defendant's requested instruction as to malice, affecting the rule of damages, the right to award punitive damages depending on the libel being found to be malicious, cannot be held harmless, merely because the verdict is so moderate that it apparently includes no punitive damages.
N.Y.—Cohalan v. New York Press Co., 106 N.E. 115, 212 N.Y. 344.

19. Tex.—Grice v. Herrick Hardware Co., Civ.App., 219 S.W. 502.
4 C.J. p 1053 note 22.

Cure by finding

In an action for conversion, refusing a charge on exemplary damages is rendered harmless by a finding of no willful conversion.
Tex.—Cox v. Citizens' State Bank of Rockdale, Civ.App., 52 S.W.2d 695.

19.5 Ky.—Bailey v. Shrader, 97 S. W.2d 575, 265 Ky. 663.

Counterclaim seeking actual and punitive damages

Defendants who filed counterclaim seeking actual and punitive damages for destruction of hedge fence were not prejudiced by refusal to give instruction on punitive damage, in view of fact that jury found in favor of plaintiff.
Ky.—Jones v. Goss, 210 S.W.2d 958, 307 Ky. 263.

19.10 Ga.—Head v. John Deere Plow Co., 30 S.E.2d 662, 71 Ga.App. 276.

20. Ala.—Oden-Elliott Lumber Co. v. Butler County Bank, 104 So. 3, 213 Ala. 84.
Ark.—Lipsmeyer v. Farmers Tractor & Implement Co., 255 S.W.2d 165, 221 Ark. 670.
Ky.—Louisville Ry. Co. v. Kramer, 11 S.W.2d 930, 226 Ky. 739.
Okl.—Cherry Bros. Trading Co. v. Rock Island Implement Co., 214 P. 559, 89 Okl. 201.

Set-off and recoupment

In an action for breach of contract, where defendants interposed a plea of set-off and recoupment, refusal of an instruction as to defendant's

Where the verdict is for nominal damages, the refusal of instructions that, in determining the amount of damages recoverable, the jury should take into consideration facts in evidence which tend to show that appellant was entitled to substantial damages is error.[21] So also the refusal of an instruction enunciating a correct rule for measuring damages is not harmless error, where it appears that the jury estimated the damages by a different rule[22] or where the damages awarded were excessive;[23] and error in refusing a correct instruction that plaintiff is not entitled to recover any damages on a certain ground is prejudicial, where it cannot be determined what part of the actual damages allowed by the jury was based on that ground.[24]

Refusal of a proper charge that no recovery can be had for punitive damages is prejudicially erroneous where the court is unable to say whether or not any punitive damages were included in the verdict.[25] The refusal to define "malice," used in an instruction on exemplary damages, has been held not cured by the jury's answer, to a special issue, that the act complained of was willful and deliberate.[25.5]

Error consisting in instructing as to measure of damages, if the personal injuries in suit were permanent, but omitting to instruct as to measure of damages, if the injuries were not permanent, was held reversible, even though the motion for new trial did not allege that the damages awarded were excessive.[26]

§ 1777. Modification of Instructions

A judgment will not be reversed for erroneous modification of an instruction where no prejudice could have resulted.

Although a modification made is erroneous, the judgment will not be reversed where no prejudice could have resulted;[27] and where a requested in-

measure of damages was harmless, where the verdict was for plaintiff.
Ala.—Oden-Elliott Lumber Co. v. Daniel-Gaddis Lumber Co., 110 So. 607, 215 Ala. 392.

Usury

"Where a defendant is sued on a series of promissory notes, which he claims arose out of a usurious contract for the loan of money made in New York between himself and plaintiff, who were residents of that state, and performable there, and the laws of that state render such contract void and forfeit the entire debt, and the jury, under instructions given on the theory that such contract, if so entered into, would be void, finds generally for the plaintiff, there inheres in such verdict a finding that no usurious contract was entered into, and error, if any, in refusal to instruct the jury on the right of defendants to recover double the amount of interest claimed to have been charged, is harmless."
Okl.—Blumenfield v. Mann, 258 P. 918, 126 Okl. 64.

21. N.Y.—Lord v. New York Evening Journal Pub. Co., 114 N.Y.S. 299, 130 App.Div. 105.

22. Ala.—Duke v. Anniston, 60 So. 447, 5 Ala.App. 348.

23. Wis.—Prange v. Rognstad, 236 N.W. 650, 205 Wis. 62.

24. Mo.—Reding v. Reding, 127 S. W. 936, 143 Mo.App. 659.
Tex.—Texas Coca-Cola Bottling Co. v. Lovejoy, Civ.App., 138 S.W.2d 254, error refused.

25. Ala.—Jefferson Garage & Sales Co. v. Thompson, 108 So. 632, 21 Ala.App. 369.

25.5 Tex.—Kirk v. Marshall, Civ. App., 247 S.W.2d 454.

26. Ga.—Seaboard Air Line Ry. v. Brewton, 102 S.E. 439, 150 Ga. 37.
Seaboard Air Line Ry. v. Brewton, 102 S.E. 920, 25 Ga.App. 168.

27. Cal.—Sill v. Ceschi, 140 P. 949, 167 C. 698.
Flynn v. Young, 78 P.2d 245, 25 C.A.2d 614—Collins v. Jones, 22 P.2d 39, 131 C.A. 747.
Ill.—Christ v. Chicago Rys. Co., 191 Ill.App. 69. See Wagler v. Norris, 205 Ill.App. 69—Elliott v. Maves, 196 Ill.App. 605.
Md.—Annapolis & Chesapeake Bay Power Co. v. State, 136 A. 615, 152 Md. 241—City of Hagerstown v. Crowl, 97 A. 544, 128 Md. 556.
Mo.—Schnell v. Landis Mach. Co., 199 S.W. 993.
N.J.—Mellen v. Public Service Interstate Transp. Co., 166 A. 216, 110 N.J.Law 557.
N.C.—Buchana v. Ritter Lumber Co., 84 S.E. 50, 168 N.C. 40.
Ohio.—Cincinnati Traction Co. v. M. Pierce, 21 Ohio Cir.Ct.,N.S., 489.
Va.—Norfolk & W. Ry. Co. v. Whitehurst, 99 S.E. 568, 125 Va. 260.
4 C.J. p 1047 note 67—64 C.J. p 932 note 80.

Jury not misled

Where plaintiff sued on ten causes of action on implied contract to three of which the defense of express contract was interposed, it was not prejudicial error for the court, when defendant requested three similar instructions relating to each of those counts, to give the first instruction only, modified to refer to the causes of action generally, even if the instruction as modified was not technically accurate, since the jury could not have failed to understand that the instruction related only to the causes in which the defense of express contract was interposed.
Mont.—Baldwin v. Silver, 193 P. 750, 58 Mont. 495.

Unnecessary modification

In an action for personal injuries resulting from a collision between a stage and plaintiff's truck, stopped partially on the highway, it was not prejudicial error to add an unnecessary statement that plaintiff contended that he had a red light in place of the white light, to defendant's requested instruction given, in substance, that the absence of a white light required by law on the left rear side was negligence, and, if such negligence contributed to the collision, plaintiff could not recover.
Or.—Martin v. Oregon Stages, 277 P. 291, 129 Or. 435.

Modification after reading request

Where the court read appellant's request to the jury and then instructed them to disregard the last two lines, the jury not having the request before them, the error, if any, was harmless; appellant got the benefit of the whole request.
S.C.—Matthews v. Payne, 113 S.E. 381, 121 S.C. 84, affirmed 44 S.Ct. 179, 263 U.S. 686, 68 L.Ed. 506.

Erasures and interlineations

While the practice of modifying instructions by erasures and interlineations has been criticized by reviewing courts, it is not reversible error where no harm results therefrom.
Ill.—Smith v. Stover Mfg. Co., 205 Ill.App. 169.

Modification of request

An instruction that plaintiff automobile guest and defendant drivers were the only parties interested in an action for injuries resulting from an automobile accident, which modified a requested instruction that no insurance company was interested in

struction is erroneous and should have been refused, a modification thereof, although itself wrong, is not a ground for reversal,[28] at least if the modification frees the instruction from some of its faults.[29] So modification of appellant's requested instruction presenting a correct statement of law is not prejudicial, where the instruction as given was a complete statement of the law and was as favorable to appellant as the original instruction.[30] Further it has been held that, where a requested instruction as modified by the court correctly applied the law to the facts, it was not reversible error for the court to state that the instruction was requested.[31]

On the other hand, it is prejudicial error to modify a correct instruction on a material point,[32] as, for instance, by assuming, as in dispute, material facts as to which there is no controversy.[33] So prejudicial error is committed by adding to an instruction on one point of the case words directing the jury as to other branches of the case,[34] by practically eliminating the main defense presented thereby,[35] by adding words which practically nullify the original instruction,[36] or by submitting other matters of inducement merely, and not of the substance of the charge, and which, if true, would make a different cause of action, especially where there was no proof of such other matter.[37]

Manner of submitting modified instruction. Submission to the jury of an original requested instruction adopted by the court with a portion so stricken by the court as to leave the whole legible, while not commendable, was not prejudicial error, where the instruction as modified conformed to the instructions given by the court.[38]

Refusal to modify. Refusal to modify an instruction, even though the requested modification could properly have been made, is not reversible error where appellant was not prejudiced thereby, as where the instruction given sufficiently covered the point raised by the request for modification.[39]

the case, in which one juror had asked whether one driver carried liability insurance, was held not prejudicial to the driver.
Cal.—Godfrey v. Brown, 29 P.2d 165, 220 C. 57.

28. Ill.—Decatur Cereal Mill Co. v. Gogerty, 54 N.E. 231, 180 Ill. 197 —Shaw v. Camp, 43 N.E. 608, 160 Ill. 425.
Minn.—Simmons v. St. Paul, etc., R. Co., 18 Minn. 184.
Miss.—Louisville, etc., R. Co. v. Sudduth, 12 So. 205, 70 Miss. 265.
4 C.J. p 1048 note 68.

29. S.C.—Knobelock v. Germania Sav. Bank, 27 S.E. 962, 50 S.C. 259.

Change curing instruction
In a personal injury action against a railroad company by a guest in an automobile, modification of a prayer as to contributory negligence to eliminate the objectionable part, if error, was not prejudicial, where the court would have been justified in rejecting it altogether.
Md.—Baltimore, C. & A. Ry. Co. v. Turner, 136 A. 609, 152 Md. 216.

30. Ark.—Harris v. Ashdown Potato Curing Ass'n, 284 S.W. 755, 171 Ark. 399.
W.Va.—Barna v. Gleason Coal & Coke Co., 98 S.E. 158, 83 W.Va. 216.

Immaterial deletion
In an action for injuries to a pedestrian due to an intersection collision of a truck and an automobile, modification of an instruction by striking out a statement that it was admitted that a collision had occurred was harmless, where the fact was undisputed.
Cal.—Chandler v. Benafel, 39 P.2d 892, 3 C.A.2d 373.

31. Mich.—Anthony v. Cass County Home Tel. Co., 130 N.W. 659, 165 Mich. 388.

32. Ill.—See Osborn v. City of Mt. Vernon, 197 Ill.App. 267.
Mo.—Easton-Taylor Trust Co. v. Loker, App., 205 S.W. 87.
4 C.J. p 1048 note 71.

Accidental change
A material change in a written charge after it was presented to counsel and read to the jury, even though such change is accidental, was prejudicial error.
Tex.—Texas & P. Ry. Co. v. Bryan, Civ.App., 15 S.W.2d 1098.

Submission for objection
In an action for the death of the occupant of an automobile the court's change in the charge regarding the issue of the occupant's contributory negligence without submitting such change to defendant for objection was prejudicial.
Tex.—West Texas Transp. Co. v. Hash, Civ.App., 43 S.W.2d 152.

33. Pa.—March v. Metropolitan, L. Ins. Co., 40 A. 1100, 186 Pa. 629, 65 Am.S.R. 887.

34. Ill.—Cohen v. Schick, 6 Ill.App. 280.

35. Ill.—Chicago v. Cram, 80 Ill. App. 350.

36. Mass.—Tompkins v. Quaker Oats Co., 131 N.E. 456, 239 Mass. 147.

37. Ill.—Chicago West Div. R. Co. v. Hughes, 69 Ill. 170.
4 C.J. p 1048 note 75.

38. Wash.—Kennedy v. Supreme Tent of Knights of Maccabees of the World, 170 P. 371, 100 Wash. 36.

39. Mass.—Dodge v. Sawyer, 193 N. E. 15, 288 Mass. 402.

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